

INDEX

	PAGE
Rule to Show Cause	1
Reasons	3
Summons	9
Complaint	10
Answer	13
Reply	17
Postea	18
Motion for a Non-suit	116
Defendants' Motion for Direction of a Verdict	335
Charge to Jury	336
Plaintiffs' Exception to Charge	356
Further Instructions to Jury	356
Plaintiffs' Requests to Charge	358
Defendants' Requests to Charge	359
Opinion of Supreme Court	367
Rule Discharging Rule to Show Cause	372
Rule for Judgment Final in Supreme Court	373
Notice of Appeal	374
Grounds of Appeal	375

TESTIMONY.

Plaintiffs' Witnesses.

Annie Bennett,	
direct examination.....	20
cross "	31
re-direct "	53
Alexander W. Bogatko,	
direct examination.....	55
cross "	61
Walter Rinck,	
direct examination.....	66
cross "	69
John Bennett,	
direct examination.....	76
cross "	78
re-direct "	82

	PAGE
Solomon Greenbaum,	
direct examination.....	82
cross “	86
re-direct “	92
Arthur C. M. Herling,	
direct examination.....	92
cross “	96
Charles F. Baker,	
direct examination.....	101
Dora Williams,	
direct examination.....	104
cross “	106
Anna Madeline Bennett,	
direct examination.....	107
Christine Evans,	
direct examination.....	108
cross “	110
Wiley R. Deal,	
direct examination.....	111
cross “	112
Robert E. Humphreys,	
direct examination.....	113
cross “	115
Carl R. Keppler,	
direct examination.....	121
cross “	136
re-direct “	139
re-cross “	139
William J. Donahue,	
direct examination.....	179
cross “	188
re-direct “	201

Defendants' Witnesses.

Thomas P. Sheerin,	
direct examination.....	117
cross “	120
Edward A. Schilling,	
direct examination.....	140
cross “	142

Albert A. Kling,	
direct examination.....	143
cross “	146
re-direct “	146
Martha Hackett,	
	PAGE
direct examination.....	147
cross “	149
re-direct “	150
Irving Willner,	
direct examination.....	154
cross “	156
Dorothy Vanderbilt,	
direct examination.....	156
cross “	157
Mary Bonforte,	
direct examination.....	160
cross “	162
David A. Kraker,	
direct examination.....	166
cross “	171
Elbert S. Sherman,	
direct examination.....	176
cross “	178
re-direct “	178
re-cross “	178
Isidore J. Lawrence,	
direct examination.....	201
Truman W. Drew,	
direct examination.....	203
cross “	204
C. Hubert Derivaux,	
direct examination.....	204
cross “	207
re-direct “	207
Clara Thoma,	
direct examination.....	207
cross “	209

	PAGE
John J. Bassin,	
direct examination.....	210
cross “	217
Joseph H. Wyatt,	
direct examination.....	221
cross “	228
re-direct “	237
James H. Trainor,	
direct examination.....	237
cross “	241
re-direct “	247
re-cross “	248
Ambrose F. Dowd,	
direct examination.....	250
cross “	256
Carl F. Hinrichsen,	
direct examination.....	260
cross “	269
re-direct “	277
Mary Kerner,	
direct examination.....	277
Jacob Lang,	
direct examination.....	279
cross “	280
re-direct “	281
Elizabeth C. Lewis,	
direct examination.....	283
cross “	288
Joseph Derivaux,	
direct examination.....	293
cross “	301
re-direct “	308
re-cross “	308
Joseph F. Powers,	
direct examination.....	309
Cecilia Derivaux Hinrichsen,	
direct examination.....	310
cross “	311

	PAGE
Rose Marie Larkin,	
direct examination.....	312
John J. Clancy,	
direct examination.....	313
cross “	313
<i>Plaintiffs' Rebuttal.</i>	
Charles F. Baker,	
direct examination.....	314
cross “	317
Carl R. Keppler,	
direct examination.....	318
Anna Bennett,	
direct examination.....	319
cross “	321
Walter Rinck,	
direct examination.....	322
cross “	324
Annie Bennett,	
direct examination.....	326
cross “	329
John Bennett,	
direct examination.....	331
cross “	332
Alexander W. Bogatko,	
direct examination.....	333
cross “	335

EXHIBITS.

	Off'd	P't'd
P. 1, P. 2. Dr. Herdling's bills for		
X-rays	94	
P. 3 to P. 12. X-rays	96	
P. 13 to P. 26. X-rays	102	
P. 27. Bill of Dora Williams	105	
D. 28. Docket	331	
D. 1. Rent Receipt	262	362
D. 2. Complaint, Bennett <i>v.</i> Stein- reich and others	152	
D. 3 for Iden. Telephone Slip	203	
D. 4. X-ray	223	
D. 5. X-ray	224	
D. 6 to D. 8. X-rays	225	
D. 9. X-ray	226	
D. 10. X-ray	227	
D. 11, D. 12. X-rays	228	
D. 13. Record of disposes proceed- ings	282	362
D. 14. Letter, July 20, 1925. Palmer & Cooper to Carl Hin- richsen		364

RULE TO SHOW CAUSE.

Filed February 1, 1929.

New Jersey Supreme Court

ESSEX COUNTY.

10

ANNIE BENNETT and PHILIP C. BENNETT, her husband, <i>Plaintiffs,</i>	}	<i>Action at Law.</i>
<i>vs.</i>		<i>Rule to Show Cause</i>
MARIA CECILIA DERIVAUX HIN- RICHSEN, JOHN A. DERIVAUX, MARIA KATHRYN DERIVAUX, ALOYSIUS J. DERIVAUX and CHARLES HUBERT DERIVAUX, <i>Defendants.</i>	}	<i>why New Trial Should not be Granted.</i>

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This matter being opened to the Court on motion of Samuel D. Williams and Wolber and Gilhooly, attorneys of defendants, above named, and application having been made within six (6) days after the rendering of the verdict in the above-entitled cause;

It is on this 30th day of January, 1929,
ORDERED that the plaintiffs show cause before the Justices of our Supreme Court at the State House, in Trenton, on the First Tuesday in May next, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the verdict entered should not be set aside and a new trial granted; and it is further

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ORDERED that the defendants' exception to the refusal of the Trial Judge at the trial of said

40

Rule to Show Cause.

cause to order a non-suit at the close of the plaintiffs' case and to direct a verdict for the defendants at the close of the whole case, when moved so to do by the counsel of defendants on the ground of contributory negligence on the part of the above-named plaintiff, Annie Bennett, be and the same are hereby reserved; and it is further

ORDERED that leave be given to the defendants to take testimony before one of the Supreme Court Commissioners of this State upon notice to the attorneys for the plaintiffs concerning newly discovered evidence.

NELSON Y. DUNGAN,
Circuit Court Judge.

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Reasons.

The Court: He may answer yes or no whether she ever spoke to anybody about it.

Q Just answer yes or no. A Will you just repeat that question?

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

A About my occasion I assume that is?

Q Yes. A Yes.

Q When was it? A On or about the first of July.

Q Where was it? A In her dining room.

Q Was the person to whom she spoke introduced to you? A Do I understand that the person to whom she spoke of this—

20 Mr. Gilhooly: I object as not being responsive to the question.

The Court: He is asking for an explanation of the question.

The Witness: Absolutely.

The Court: I think that is entirely proper.

Q Was the person to whom she spoke about your accident introduced to you there?

30 A Oh, that is better. Yes.

Q By whom? A By Mrs. Bennett.

Q As whom? A Mr. Hinrichsen.

Mr. Gilhooly: If your Honor please, I object on the ground that the statement made by Mrs. Bennett is hearsay. This man cannot identify him. He does not know to whom he was talking.

Mr. Munsick: We do not pretend that he does.

40 The Court: The answer may remain.

Reasons.

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

Exception noted as ground of appeal.

4. The Trial Judge admitted into evidence over the defendants' objection certain testimony of Dr. Keppler as follows:

10

Q What did you find her condition to be at that time? A I found her condition to be one of extreme—

Mr. Gilhooly: If your Honor please, I object to the question on the ground they have not established any casual connection between the injuries and her condition in May, 1928, and Dr. Greenbaum, who was the attending physician, did not give us any particular evidence of any injury. He treated her up until sometime around October. Now, until they establish some casual connection between her injuries at the time of the accident and the present date, I don't think the evidence is admissible.

20

The Court: I think her own testimony is sufficient to entitle them to show her condition at the various times, because as I understand her own testimony it has been practically a continuing condition, being better at some times and worse at other times. True she has had the other accident which you mentioned, in the meantime, but as I suggested before when you objected to the X-rays, that the extent of that accident according to her testimony seems to have been an injury to the knee and to the elbow, which does not appear to have been connected in

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Reasons.

any way with the condition of which she now complains. So I will overrule the objection and an exception to that ruling may be noted as ground of appeal.

10 5. The Trial Judge admitted into evidence over the defendants' objection certain testimony by Dr. Donahue as follows:

Q Dr. Donahue, assuming that Mrs. Bennett previous to July 13, 1925, had had no accident or injury from accident, and on July 13, 1925, she had fallen downstairs practically from the top to the bottom, that thereafter she complained of pains in the back and was confined to bed for, we will say three months, after which she was in bed part of the time and up a good deal of the time, traveling around doing her usual duties, although complaining of pain, that that condition continued practically until the first part of October, 1928, when she took to her bed, and that about the middle of November, 1928 paralysis set in—

20

The Court: The middle of October she she said she took to her bed.

Q (Continuing.) She took to her bed the middle of October, and then it was shortly after that—I don't remember the exact date—that the paralysis set in. And she has continued in bed up until the time you saw her; and include in the hypothetical question that the only other injury she had had since 1925 when she fell was on one occasion when she was struck by a door of a trolley car in getting off, and complained of bruises to her elbow, her ankle, and shin; and also in 1926 she claims to have had glass thrown into her eye—what in your

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Reasons.

opinion is the cause of the condition as you found it?

Mr. Gilhooly: I object to the question on the ground that it leaves out a very major factor in the entire history of this case, and that is the treatment which Dr. Greenbaum gave her for a period of a couple of months. 10

The Court: Do you understand that if the facts stated in the hypothetical question are correctly stated, that the mere fact that some fact is omitted makes it objectionable?

Mr. Gilhooly: I understand such a major fact as treatment by a physician at the time of the injury without a statement of what he discovered at that time would make it objectionable. 20

The Court: The objection will be overruled.

Mr. Gilhooly: Your Honor will allow me an exception.

A If I may ask you, where was the eye injury?

Q You mean what part of the body? A Yes, right or left. 30

Q I think it is in the right.

The Court: I think so, but I will see Dr. Sherman's testimony.

The Witness: Where was the elbow injury, right or left?

The Court: Just a minute. I think I will be able to tell you. The right eye; the left elbow and ankle.

The Witness: Her condition today could not have been caused by that accident 40

Reasons.

in the accident where she received the glass in the eye, nor the accident where something struck her elbow, but the accident which she sustained in a fall.

- 10 6. The Trial Judge improperly received in evidence certain X-rays which are marked Exhibits 3 to 12 inclusive.

WOLBER & GILHOOLY,
Attorneys for and of Counsel
with Defendants.

Service of the within reasons is hereby acknowledged this 19th day of March, 1929.

DONALD B. MUNSICK,
Attorney for Plaintiffs.

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SUMMONS.

The State of New Jersey to Maria
 Cecilia Derivaux Hinrichsen, John A.
 (SEAL) Derivaux, Maria Kathryn Derivaux,
 Aloysius J. Derivaux, Charles Hubert
 Derivaux and Rose Marie Derivaux 10

Larkin:

You are summoned to answer the annexed complaint of Annie Bennett and Philip C. Bennett, her husband, in an action at law in the Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiffs may proceed in the suit and judgment may be entered against you. 20

WITNESS, William S. Gummere, Chief Justice
 of the Supreme Court, at Trenton, this 9th day
 of December, A. D. 1925.

EDWARD J. KELLEHER,
 Clerk.

PALMER & COOPER,
 Attorneys.

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COMPLAINT.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

10	ANNIE BENNETT and PHILIP C. BENNETT, her husband, <div style="text-align: right;"><i>Plaintiffs,</i></div>	}	<i>Action at Law. Complaint.</i>
	<i>vs.</i>		
20	MARIA CECILIA DERIVAUX HIN- RICHSEN, JOHN A. DERIVAUX, MARIA KATHRYN DERIVAUX, ALOYSIUS J. DERIVAUX, CHARLES HUBERT DERIVAUX and ROSE MARIE DERIVAUX LARKIN, <div style="text-align: right;"><i>Defendants.</i></div>		

The plaintiffs, residing at 127 Spruce street,
Newark, New Jersey, say that:

FIRST COUNT.

1. In his lifetime Francis X. Derivaux was
the owner of premises known as No. 8 Quitman
30 street, Newark, Essex County, New Jersey.

2. The said Francis X. Derivaux died testate
on or about April 12, 1923.

3. Said premises were devised under the
eleventh paragraph of the last will and testament
of the said Francis X. Derivaux in fee simple,
and share and share alike, to Maria Cecilia Deri-
vaux Hinrichsen, John A. Derivaux, Maria Kath-
ryn Derivaux, Aloysius J. Derivaux, Charles
Hubert Derivaux and Rose Marie Derivaux
40 Larkin.

Complaint.

4. The plaintiffs were tenants of the said Francis X. Derivaux at the time of his death and thereafter of the defendants named in paragraph 3 hereof, up to and including July 13, 1925.

5. The defendants reserved to themselves the control of the hallways and staircases of said building, and they were in common use by the plaintiffs and other tenants of said premises as a means of ingress and egress to and from the apartments of said building to the street. 10

6. On July 13, 1925, the plaintiff Annie Bennett, while lawfully passing along the upper hallway, the floor on which her apartment was located, and starting down the said stairs, caught her foot in a torn or worn spot in the linoleum on the stairs, so maintained by said defendants, and was caused thereby to fall, by reason of said defective condition. 20

7. The defendants were well aware of the condition of the stairway and linoleum.

8. By reason of the tenancy of this plaintiff, Annie Bennett, she was entitled to the use of the aforementioned hallways and stairways and was entitled to have them kept in a fit and safe condition for use. 30

9. As a result of the negligence of the said defendants, Annie Bennett was severely wounded, bruised and injured in and about her body, head, arms, limbs, and nervous system, and she became sick, sore, lame and disabled, and she was and is and in the future will be confined to her bed and has been made permanently injured, and has and will suffer great pain and mental anguish. 40

Complaint.

Wherefore plaintiff Annie Bennett demands as damages of the defendants the sum of \$25,000 and costs of this suit.

SECOND COUNT.

10 1. The plaintiff Philip C. Bennett re-alleges and makes a part hereof paragraphs 1 to 8 of the first count.

20 2. By means of these premises the plaintiff Philip C. Bennett was and is and for a long time will be deprived of the aid, comfort and society of his wife, and was and will be forced to pay out large sums of money for medicine, X-rays, physicians' services, and care and attention in an endeavor to have his said wife, Annie Bennett, healed and cured of her aforesaid injuries, and he was and will be obliged to pay large sums of money to others to perform the necessary housework in his house which his said wife was accustomed to perform.

Wherefore plaintiff Philip C. Bennett demands of the defendants as damages the sum of \$5,000 and costs of this suit.

PALMER & COOPER,
Attorneys of Plaintiffs.

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ANSWER.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

ANNIE BENNETT and PHILIP C. BENNETT, her husband, <i>Plaintiffs,</i>	}	<i>Action</i>	10
<i>vs.</i>			
MARIA CECILIA DERIVAUX HIN- RICHSEN, JOHN A. DERIVAUX, MARIA KATHRYN DERIVAUX, ALOYSIUS J. DERIVAUX, CHARLES HUBERT DERIVAUX and ROSE MARIE DERIVAUX LARKIN, <i>Defendants.</i>	}	<i>at Law.</i>	20
		<i>Answer.</i>	

The answer of the defendants, Maria Cecilia Derivaux Hinrichsen, John A. Derivaux, Maria Kathryn Derivaux and Charles Hubert Derivaux, of the City of Newark, Essex County, New Jersey, to the plaintiffs' complaint, shows:

ANSWERS TO FIRST COUNT. 30

1. These defendants deny the allegations of paragraph 1 of the first count of the plaintiffs' complaint.

2. These defendants deny the allegations of paragraph 2 of the first count of the plaintiffs' complaint.

3. As to the allegations of paragraph 3 of the first count of the plaintiffs' complaint, these defendants say that the persons mentioned in said 40

Answer.

paragraph are the owners of the premises at No. 8 Quitman street, Newark. They deny that they became the owners by a devise under the will of Francis X. Derivaux, as alleged in said paragraph.

10 4. These defendants deny the allegations of paragraph 4 of the first count of the plaintiffs' complaint.

5. As to the allegations of paragraph 5 of the first count of the plaintiffs' complaint, these defendants admit that they reserve to themselves the control of the hallways and stairways of the building at No. 8 Quitman street.

20 6-9. These defendants deny the allegations of paragraphs 6, 7, 8 and 9 of the first count of the plaintiffs' complaint.

These defendants deny that the plaintiff Annie Bennett is entitled to damages in the sum of \$25,000 or in any other sum as against these defendants.

ANSWERS TO SECOND COUNT.

30 1. These defendants make the same answers to the paragraphs mentioned in paragraph 1 of the second count as they have already made to these paragraphs under the first count.

2. These defendants deny the allegations of paragraph 2 of the second count of the plaintiffs' complaint.

These defendants deny that the plaintiff Philip C. Bennett is entitled to damages in the sum of \$5,000, or in any other sum as against these defendants.

Answer.

AFFIRMATIVE DEFENSES.

These defendants, by way of affirmative defense to the plaintiffs' complaint, aver:

1. That on the thirteenth day of July, 1925, the plaintiffs were not tenants in the building at No. 8 Quitman street, Newark. That therefore the defendants did not owe to the plaintiffs the duty or obligation reserved to a tenant from a landlord. 10

2. That on the thirteenth day of July, 1925, the top floor hall and stairway and the floor covering of the hall and stairway were in the same condition as they had been for a long time prior to said date, and that the plaintiffs both knew the condition of said hallways and stairways and floor covering of said hallways and stairways because of their daily use of said halls and stairways, and that if, as alleged in their said complaint, there was a torn or worn spot in the covering of the stairs it existed and had existed with the full knowledge of both of the plaintiffs, and that the plaintiff Annie Bennett on the thirteenth day of July, 1925, failed to use such care and take such precaution in the use of said stairway as was consistent of her knowledge of its condition, and that her failure to use such care and to take such precaution contributed to the fall alleged to have been sustained by her. 20 30

3. That no complaint or notice was ever made to the defendants, or either of them, by the plaintiffs or any other tenants of the building at No. 8 Quitman street of the alleged worn or damaged condition of the stair covering for the stairway for the top apartment in the building at No. 8 Quitman street, and that these defendants had 40

Answer.

no knowledge that said stair covering was torn, worn or in a condition likely to be dangerous, or dangerous to persons using said stairway.

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Attorney for Defendants, Maria Cecilia Derivaux Hinrichsen, John A. Derivaux, Maria Kathryn Derivaux and Charles Hubert Derivaux.

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REPLY.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

ANNIE BENNETT and PHILIP C. BENNETT, her husband, <i>Plaintiffs,</i>	}	10
<i>vs.</i>		
MARIA CECILIA DERIVAUX HIN- RICHSEN, JOHN A. DERIVAUX, MARIA KATHRYN DERIVAUX, ALOYSIUS J. DERIVAUX, CHARLES HUBERT DERIVAUX and ROSE MARIE DERIVAUX LARKIN, <i>Defendants.</i>	}	20

*Action
at Law.*

Reply.

The plaintiffs by way of reply to the answer of the defendants, Maria Cecilia Derivaux Hinrichsen, John A. Derivaux, Maria Kathryn Derivaux and Charles Hubert Derivaux, say that:

1. They deny the material allegations of paragraphs 1, 2 and 3 of said answers.

PALMER & COOPER, 30
Attorneys of Plaintiffs.

POSTEA.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

10	ANNIE BENNETT and PHILIP C. BENNETT, her husband, <i>Plaintiffs,</i>	}	<i>Action at Law. Postea.</i>
	<i>vs.</i>		
20	MARIA CECILIA DERIVAUX HIN- RICHSEN, JOHN A. DERIVAUX, MARIA KATHRYN DERIVAUX, ALOYSIUS J. DERIVAUX and CHARLES HUBERT DERIVAUX, <i>Defendants.</i>		

This case was tried before Judge Nelson Y. Dungan, with a jury, at the Essex Circuit, on January 25, 1929.

The jury rendered a general verdict against the defendants and in favor of the plaintiff, Annie Bennett, for ten thousand dollars (\$10,000.00); and a general verdict against the defendants and in favor of the plaintiff, Philip C. Bennett, for one thousand two hundred dollars (\$1,200.00).

NELSON Y. DUNGAN,
Circuit Court Judge.

TESTIMONY.

NEW JERSEY SUPREME COURT.

ESSEX CIRCUIT.

Tuesday, January 22, 1929.

10

ANNIE BENNETT and PHILIP C.
BENNETT, her husband,
Plaintiffs,

vs.

MARIA CECILIA DERIVAUX HIN-
RICHSEN, JOHN A. DERIVAUX,
MARIA KATHRYN DERIVAUX,
ALOYSIUS J. DERIVAUX,
CHARLES HUBERT DERIVAUX
and ROSE MARIE DERIVAUX
LARKIN,

*Defendants.**Action
at Law.*

20

Before Hon. Nelson Y. Dungan, *J.*, and a jury.

For the plaintiffs appear Donald B. Munsick
and Fred G. Stickel.

For the defendants appears Samuel D. Wil- 30
liams (by Edward J. Gilhooly of Wolber and
Gilhooly).

A jury is called and sworn.

The Court: Motion is made to increase the
amount of damages asked for in the count from
\$25,000 to \$70,000. Objection is made by Mr.
Gilhooly on behalf of the defendants. The mo-
tion is granted and an exception to that ruling
may be noted.

40

Annie Bennett, direct.

Mr. Gilhooly: My exception is based upon the fact that more than two years have expired since the cause of action arose, and it is adding a new demand not covered by the original demand.

10 Mr. Munsick: The second motion is to include in the first count of the claim of Annie Bennett a claim for disbursements, medical expenses and loss of earnings.

Mr. Gilhooly: I object to the amendment on this ground, if your Honor please, because the complaint alleges that her husband was compelled to expend divers large sums of money, and in view of the information which has come to us regarding the situation between the husband and wife in this case, we did not press the plaintiff
20 for any interrogatories as to her expenditures; and it would certainly cause us considerable surprise at this date to meet such a demand.

The Court: The motion will be denied.

Mr. Munsick: Paragraph 6 in the first count, the allegation is that plaintiff caught her foot in a torn or worn spot in the linoleum on the stairs. I wish to amend that to read in the linoleum or carpet on the stairs.

30 The Court: I suppose there will be no objection to that.

Mr. Gilhooly: No objection.

ANNIE BENNETT, the plaintiff, sworn in her own behalf.

Direct examination by Mr. Munsick.

Q Where do you live, Mrs. Bennett? A 24
Waverly avenue.

40 Q Are you married? A Yes, sir.

Annie Bennett, direct.

Q Have you any children? A Yes.

Q Did you formerly live at 8 Quitman street, Newark? A Yes, sir.

Q When did you move into 8 Quitman street, Newark? A I think it was May, 1924.

Q How did you happen to take rooms at 8 Quitman street? A I wanted to live there. 10

Q Whom did you see about going into that property? A Mrs. Hinrichsen and Mr. Hinrichsen.

Q Is Mrs. Hinrichsen one of the defendants? A Yes, sir.

Q How long were you at 8 Quitman street altogether? Until what date? A Twenty-first of July, 1925.

Q Where was your apartment at that property? A On the top floor. 20

Q How many floors were there? A Four.

Q Did you make your renting arrangement with Mrs. Hinrichsen? A Yes.

Q What was the rent to be? A Forty dollars.

Q A month? A Yes.

Q While you were there did you have a fall? A Yes, sir.

Q On what day was it that you fell? A Thirteenth of July, 1925. 30

Q On what portion of the stairway did you fall? Between what floors? A I fell right at the top.

Q How many apartments or tenements were there at that property? A What do you mean?

Q How many different families occupied places at that property? A Three— Oh, when I fell? You mean when I fell?

Q Yes, when you fell? A I don't remember.

Q What time of day was it when you fell? A About half-past two. 40

Annie Bennett, direct.

Q In the afternoon? A Yes.

Q Now, will you tell us in your own way how you fell? A I heard a baby crying and I just went downstairs—that is my baby—and I was going downstairs to get him, and the insurance man went downstairs ahead of me and John
10 was upstairs, and he was going downstairs to work there—my son John—and the carpet at the head of the stairs was tore, and I got the heel of my left foot, went down into the hole; and I felt myself going forward, and I tried to save myself, and I swung around, but I missed the banister and I went down backwards. I hit my back here, here (indicating), fell on the back of my head, and then I turned over and I knocked my teeth out. I ain't got no teeth. I knocked
20 my teeth out; and I don't remember no more after that.

Q Where on the stair was this carpet that you mentioned? A Just when you step from the hall into the landing, on the top. It is on the back of the step.

Q What do you mean by the back of the step, Mrs. Bennett? A There was oilcloth on the hall, and then it must have been carpet there years ago on the back of the step, and then you
30 go down to the landing. Well, there was oilcloth on the landing, and there was nothing on the stairs—not what you step on, the back of the step.

Q Do you know what the riser of a step is? A No.

Q Do you mean the face of the step? A I don't know what you mean.

Q There are two faces, the top and the side, to a step; is that right? A Oh, you know you
40 put your foot on a step and then you have to

Annie Bennett, direct.

raise your foot to get on another step. Well, it is the back. You don't step on it.

Q Is that where the carpet was? A Yes.

Q Where was the hole? A Right along the edge by the hall.

Q Well, I mean where on the step or on the back of the step, as you call it, was the hole? A All along the top. 10

Q Did the carpet go up and around and over the top? A No, it just came up to the top. It might have went under the oilcloth; I don't know; but the hole didn't.

Q Was the hole near the bottom or near the top of the back of the step? A The top.

Q Near the edge? A Yes.

Q What part of your shoe caught in that hole? A My heel. 20

Q How long had you been in the property before you fell, about? A I guess it was over a year.

Q Had you always lived on that top floor? A Yes.

Q Had you ever noticed the condition of the stairs before? A Yes.

Q Had you ever noticed the particular step before? A Yes.

Q Have you any idea how long before you fell? A Well, about a month; maybe more. I guess it was more. 30

Q Did you ever speak to anybody about the condition of the step when you noticed it? A Yes.

Q To whom? A First the insurance man—

Q That isn't proper. Who collected the rents? A Sometimes I paid it to Mrs. Hinrichsen, sometimes Joe Derivaux came and got it; sometimes Mr. Hinrichsen. 40

Annie Bennett, direct.

Q Did any of those people named ever make any repairs around the place? A Yes.

Q Who? A I don't know who had the repairs made.

10 Q I don't mean physical work. Did anybody any of those three that you named, ever apparently superintend the work? A Yes; Mr. Hinrichsen.

Q Did you ever speak to him about this stair? A Yes.

Q Do you know when that was before you fell; about how long? A I guess it was about two weeks before I fell.

20 Q How did you happen to speak to Mr. Hinrichsen about it? A The blind boy nearly fell down.

Q Who is the blind boy? A Walter Rinck.

Q Did you see that? A Yes; I saved him.

Q How did he nearly happen to fall? A Well, you know their only guard is a stick, a cane, and he caught it in that hole and he was going to fall when I caught him.

Q Did you say guard or guide? A Oh, you know; I guess it is a guide.

30 Q When, after that, did you speak to Mr. Hinrichsen? I am referring to this occasion. A Walter Rinck fell around the first, and I had told him about two weeks—I guess I told him about the third. I don't know when it was.

40 Q I mean this, Mrs. Bennett: How long after Walter, as you say, nearly fell did you speak to Mr. Hinrichsen about it? A Oh, let me see. I guess about the middle of June it was that Walter nearly fell, and I must have told him on the first of July. That is right. Yes, when he came for the money; that is when I told him.

Annie Bennett, direct.

Q Was anybody present when you spoke to Mr. Hinrichsen? A Walter Rinck was there, and we took him out, and Walter showed him how he nearly fell, and he said he will get it fixed. It was a bad thing.

Q Mrs. Bennett, is Walter Rinck a friend of yours? A Yes, sir. 10

Q What was he doing at your house? A Visiting.

Q After you spoke to Mr. Hinrichsen did you, at any time, see him around the hall? A Yes. I thought he was fixing it one day when I looked through the dining room window.

Q Where is the window that you refer to? A I mean the door. One glass is—a half of it is glass, and the window is in the door.

Q Does that door open out into the hallway? A Yes. 20

Q Are there any windows or were there at this time any windows opening from the hallway to the outside? A You mean in the hall?

Q Yes. A You don't mean a skylight, do you?

Q I will mention that in a minute. Were there any windows? A No.

Q Was there any direct light from the outside? A No. 30

Q Was there a skylight? A Yes, but it was broken. He had an old black thing over it so you couldn't see. He had it to keep the rain out, you know.

Q Where was this skylight with reference to the stairs? A Over the stairs.

Q You said before that you went out because you heard the baby crying, is that right? A My baby.

Q How old was your baby? A Going on ten months. 40

Annie Bennett, direct.

Q Where was your baby? A In the carriage down in the street.

Q Did you have on high-heeled shoes? A I never wore no high-heeled shoes.

Q Have you any idea how high the heel was? A Oh, about an inch and a half, I guess.

10 Q What is the first thing you remember after you fell? A Dr. Greenbaum—of course, I was in bed. Dr. Greenbaum was doing something to me. I don't know what they were doing.

Q What is your first recollection of how you felt after you fell? A It seemed as though everything was double that I looked at.

Q Did you have any pains or anything of that sort? A Oh, my God, yes.

20 Q Where were the pains? A Oh, here in the back, my back, and here (indicating), all over my head, and my legs hurt me so much, and my mouth, my shoulders, my hands here (indicating). I must have caught it on a nail and tore it.

Mr. Gilhooly: I ask that that last part be stricken out.

The Court: It will be stricken out.

30 Q Do you know when it was that you first noticed these thing; what time of day it was? A No.

Q Or what day? A No.

Q How long did you remain in bed? A About three months.

Q All the time? A Yes.

Q How long did you remain at 8 Quitman street? A What do you mean?

Q When did you leave 8 Quitman street? A On July 21. A stretcher carried me out.

40 Q And you went from there where? A 127 Spruce street.

Annie Bennett, direct.

Q Did you move from Spruce street to where you now are? A Yes, sir.

Q Do you recall when about? A Maybe it was September, but I ain't sure. I guess it was 1926. I think it was.

Q Now, you were in bed then after you moved to Spruce street? A Oh, yes. 10

Q Can you tell us about when you got up? A The insurance doctor wanted to examine me.

The Court: The last answer will be stricken out.

Q Do you recall on what day it was you got out of bed about? A I don't know.

Q How did you feel after you first got out of bed? A Oh, terribly dizzy. I had terrible pains. 20

Q Where were the pains? A In my back.

Q Did you, after you got up, continue to stay up for any length of time? A No.

Q Well, now, what was the situation from that point on to say two years? A Oh, I spent the greatest part of the time in bed ever since.

Q Were you up at all? A What do you mean?

Q Did you ever get out of bed? A Oh, yes. I couldn't get out myself. They used to take my legs and pull them out, and then stand me up so I am all stiff. I can't move my legs. Somebody else used to pull my legs out; not me. 30

Q What was the trouble with your legs? What did you notice? A I was stiff and numb.

Q Could you walk? A Oh, after a fashion.

Q What do you mean "after a fashion"? A I used to drag that left foot and then my—my right is short, and the heel is all up, and I step on the toes, and then I go all down, you know 40

Annie Bennett, direct.

what I mean, terribly lame, and then come up again, if you call that walking. It was untold agony.

Q Did you finally take to your bed again continually? A Yes.

10 Q Where were you living then? A 24 Waverly avenue.

Q Do you remember about what date that was? A Oh, around the last of September or the first of October.

By the Court.

Q What year was this? A 1928.

By Mr. Munsick.

20 Q Why did you take to your bed again? A I lost the power in my back. I couldn't stand up or sit up any more.

Q Did you have any pain? A I am never free of pain.

Q Where did the pain particularly affect you? A Oh, right in there (indicating), there in my back, right there in my spine, in my spine (indicating).

30 Q You mean the place in your back that corresponds with where you put your hand? A Yes, the small of my back.

Q After you had taken to your bed, as you say, did you subsequently notice any other change in your condition? A I didn't have no feeling in my legs.

Q Do you recall about when you first noticed the back? A Oh, I started to get numb after I fell. Now I haven't got any feeling at all.

40 Q I am referring now to the time after you took to your bed. Did you, after that, notice any

Annie Bennett, direct.

change in your condition? A Yes, sir. I couldn't move my legs.

Q Do you know about when that was; what date? A No. I don't know, maybe the last of October, sometime in October.

Q Since you took to your bed, as you say, this last time, have you been out of it? A Oh, they lifted me up out of bed twice to put the brace on. 10

Q Have you been out of bed under your own volition? A No.

Q So far as you can tell, what is your condition at the present time?

Mr. Gilhooly: I object to that, if your Honor please. I think it appears by medical examination, and I think the doctors are better qualified to testify and theres would be the best evidence of her present condition. 20

The Court: I think she knows better than anybody else how she feels. I suppose that is what Mr. Munsick means.

Mr. Gilhooly: If it is limited to that I have no objection.

Q How do you feel at the present time? A Oh, I feel so sick. I feel terrible. 30

Q Tell us what bothers you. A I am heart-sick all over. I feel as if I was dying.

Q How about your legs? A I don't know nothing about the legs.

Q What do you mean by that statement? A I don't feel I have got them at all.

Q Have you lost any function? A Oh, yes. Must I tell you?

Q Yes. A I wet the bed and I don't know it. My bowels won't move without enemas. 40

Annie Bennett, direct.

Q How do you feel anywhere else? A My heart hurts me, and I am so short of breath.

Q Did you, at any time, have X-ray pictures taken? A Yes.

Q Who took them? A Mr. Herdling, in Orange.

10 Q Anybody else? A Yes; Baker took them.

Q Have you had doctors during this period since the accident? A Oh, yes.

Q Which doctor took care of you most particularly? A You mean lately?

Q No; from the beginning, say for two years. A Oh, I don't know which one took most particular care.

Mr. Munsick: I will lead a little bit.

20 Q Did you go to Dr. Twinch? A Yes.

Q Do you know for how long? A Till he died.

Q When was that? A I don't remember.

Q Since his death have you had doctors? A Oh, yes.

Q Whom do you live with now, Mrs. Bennett? A With my children.

Q Who are they? A John and Raymond and Clifford and Annie and Livingston and Lloyd.

30 Q Now, Mrs. Bennett, at the time you fell you have told us that there was a skylight there in the hall. Was there any other light? A No.

Q Was there any light in the hall? A No.

Q Did any light come in from any place? A Oh, sort of light got in through the skylight, and the window in my dining room gave a little bit of light, too.

40 Q Was the hallway, did you say, light or dark? A It was dark; particularly the second and third floor was very dark.

Annie Bennett, cross.

Q When you spoke, as you testified, to Mr. Hinrichsen, where was that conversation? A In my dining room.

Q Do you know what relation Mr. Hinrichsen is to any of these defendants? A Yes. He is one of the Derivaux girls' husbands.

10

A recess is taken from 12:30 to 1:30 o'clock.

Cross examination by Mr. Gilhooly.

Q If, at any time, you should feel tired just let me know and I will stop. Mrs. Bennett, who lives with you at your present address at 24 Waverly avenue, Newark? A My children.

Q Does your sister live with you there? A No. 20

Q Is there any other family living in that house? A No.

Q Since you have been living at 24 Waverly avenue what has your husband's business been? He is a brush maker, isn't he? A I don't know what he is doing ever since March. Before then he was a brush maker.

By the Court.

30

Q You mean March, 1928? A Yes, sir.

By Mr. Gilhooly.

Q And your husband's name is Philip Bennett, is that right? A Yes, sir.

Q Were you a brush maker, too, Mrs. Bennett? A Yes.

Q You were the only Mrs. Bennett living at 24 Waverly avenue, Newark; is that right? A Yes, sir.

40

Annie Bennett, cross.

Q Mrs. Bennett, isn't it a fact that you rented the apartment at 8 Quitman street from Mr. Carl Hinrichsen? A From both of them, Mr. and Mrs. Hinrichsen.

10 Q And you recall, do you not, that Mr. Hinrichsen wrote out a receipt when you paid your first installment, didn't he? A Yes.

Q Have you the original receipt or have you given it to your attorneys? A I have given it to my attorneys.

Mr. Gilhooly: I have served a notice to produce. Have you it, Mr. Munsick?

The Witness: I am not referring to Mr. Munsick. It was given to an attorney.

20 Q Mrs. Bennett, you testified your rent was \$40 a month; is that right? A Yes.

Q Isn't it a fact that the receipt which you gave to your attorney says that the rent would be \$40 for the month of April, 1924, and that it was agreed that the tenancy was from month to month, that on September 1st the rent would be \$45 a month; isn't that right? A No, that is not. There was nothing said about \$45 a month when I rented the house.

30 Q You did the renting for your husband, didn't you? A I did it for myself.

Q I understand you to say that this accident happened at 2:30 in the afternoon; is that right? A About that.

Q On July 13, 1925, had you been to the office of Palmer & Cooper, lawyers? A No.

40 Q Now, I ask you to refresh your recollection clearly before answering that and tell me whether or not you remember that you were not there on July 13th. A No.

Annie Bennett, cross.

Q You did consult Palmer & Cooper around that time, did you not? A Yes.

Q What day in the month was it with respect to July 13, 1925, that you consulted either Mr. Palmer or Mr. Cooper? A I think it was about a week before.

Q Did you visit their office after July 13, 1925, and within the next two weeks thereafter? 10

A Within two weeks after that?

Q Yes. A No.

Q Did Mr. Cooper visit you at any time during that interval? A Yes.

Q When was that? A Two or three days after the accident.

Q Mrs. Bennett, can you tell us how long you observed the tear in the carpet on the top riser leading to the fourth landing? How long prior to the accident had you observed it? A About the last of May I saw it. 20

Q And when was the first time that you spoke to any of your landlords about that? A I think it was in June.

Q Did you ever speak to Mr. Joseph Derivaux? A Yes.

Q When did you speak to Joseph Derivaux about this? A In June.

Q Do you know what time in June? A I don't remember. 30

Q Mr. Joseph Derivaux was around the place at that time or about that time supervising some repairs, was he not? A He was there for his rent.

Q And he was there supervising the repairs, too, wasn't he? A I don't know.

Q In the early part of July did you complain to the Board of Health about the failure of the landlord to fix a drain pipe in your wash drain in the kitchen? 40

Annie Bennett, cross.

Objected to as immaterial.

Objection sustained.

Q Did you complain to Mr. Derivaux? A
Yes.

10 Q Now, isn't it a fact, Mrs. Bennett, that
plumbers came there to repair this work and
you refused to let them in?

Mr. Munsick: I object to it. He is talk-
ing about something in the apartment ap-
parently.

The Court: I do not see the relevancy.

Mr. Gilhooly: She charges neglect to
maintain the house, and I want to lead up
to that.

20 The Court: Oh, well, you are not con-
cerned with something else. I sustain the
objection.

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

Exception noted as ground of appeal.

Q Mrs. Bennett, you have a back stairway
leading to your apartment, have you not? A
There was one, yes.

30 Q That was there at the time of this alleged
accident, wasn't it? A Yes.

Q Were you accustomed to using the back
stairway as well as the front stairway? A
Yes.

Q Now, after this Rinck boy, as you say,
caught his cane or support in the carpet, did
you try to remove the torn carpet yourself? A
No.

40 Q Now, this portion of the carpet in which
there was this rent, as you say, was only a small

Annie Bennett, cross.

piece about seven inches high and about two and a half feet wide, wasn't it? A I guess so.

Q And that was merely tacked in, was it not?
A I didn't examine it.

Q You examined it to find that there was this hole in it, didn't you? A Well, you could see that. 10

Q And you saw this hole there daily, didn't you? A No, I can't say that.

Q Well, you saw it as often as you would go down the staircase, didn't you? A I can't answer that either.

Q You knew, of course, that it was there, didn't you? A Oh, yes.

Q Now, on July 13th as you started to go downstairs did you try to step over this hole in the carpet? A I thought the thing was fixed and I wasn't giving it a thought. 20

Q Then as far as you know Mr. Hinrichsen repaired this carpet, is that right? A He said he was going to fix it.

Q Did he fix it? A I don't know nothing about it. Couldn't have if I fell down.

Q Well, now, you knew, did you not, Mrs. Bennett, that Mr. Hinrichsen had not made any repair to that carpet, didn't you? A I don't know. I didn't know anything about it at the time. 30

Q Now, the linoleum on top of the carpet was all right, wasn't it, Mrs. Bennett? A I suppose so.

Q Well, it was so, wasn't it, Mrs. Bennett?
A I couldn't swear to it.

Q But you wouldn't say there was anything wrong with it, would you? A To tell you the truth I don't know.

Q How did you know, Mrs. Bennett, that your heel caught in the carpet? A I felt it. 40

Annie Bennett, cross.

Q Well, now, you know you fell but you don't know over what you fell, do you? A You bet your life I do.

Q How do you know that the carpet was torn all along the edge of the top landing? A When I caught my heel in it.

10 Q Did you see it as your heel was being caught? A No.

Q Did you see it immediately before? A No.

Q And I understand you were stunned afterwards, is that right? A I was unconscious after.

Q So you didn't see this hole after the accident happened, did you? A No.

20 Q You have testified, Mrs. Bennett, that the carpet was torn from one side of the step to the other, is that right? A Not exactly.

Q How much of it was, then? A I didn't measure it.

Q Would you estimate that it was half the width of the step? A I am not estimating anything. The carpet was torn.

30 Q Then I understand you would want to withdraw the statement you made to Mr. Munsick that it was torn all along the edge, the entire width of the step? A No.

Q That isn't right then? A I told you it was tore across the top and I caught my heel in it.

Q Mrs. Bennett, after the accident you were treated by Dr. Greenbaum, is that right? A Yes.

40 Q Dr. Greenbaum treated you for several months thereafter, is that right? A A couple of months; something like that.

Annie Bennett, cross.

Q After this accident isn't it a fact that you were out on Quitman street or in the vicinity thereof on the evening of July 16th? A No, positively I wasn't.

Q You are sure of that? A Very positive.

Q Now, Mrs. Bennett, you have some neighbors by the name of Hackett; you did at that time, didn't you? A I don't know. 10

Q Don't you know the Hacketts who lived at 6 Quitman? A No, I don't know them.

Q Do you know a little Vanderpool girl who lived next door at 6 Quitman street? A No.

Q You don't know any of those children then? A No.

Q Did you see Mr. Hinrichsen on the night of July 16th? A No. 20

Q Did you see him at any time within the week succeeding the happening of this accident?

A Do you mean before the accident?

Q No, after it? A After?

Q Yes. A Oh, yes. I saw him one afternoon.

Q After the accident? A Yes. He came in the house.

Q When did he come in your house? What day was it? A I think it was Thursday, about the eighteenth or nineteenth. 30

Q Did you see Mr. Derivaux on the night of July 16th riding in an automobile on Quitman street? A No.

Q Or any other street? A No. I was in bed then.

Q Do you know Mrs. Hinrichsen? You do, don't you? A I have seen her.

Q You would know her, of course, if you saw her, wouldn't you, at that time? A Yes. 40

Annie Bennett, cross.

Q Did you see her on the night of July 16th or any night shortly after the accident? A No.

Q Mrs. Bennett, isn't it a fact that you saw Mr. Derivaux and Mrs. Hinrichsen and Mrs. Larkin and Mr. Hinrichsen riding in an automobile on the night of July 16th? A No.

10 Q You are sure of that, are you? A I am positive. I heard that story before.

Q Did you hear the story about the Hackett girls seeing you, Mrs. Bennett, before? A No.

Q Do you remember being examined by Dr. Trainor in October, 1925? A Yes.

Q You were examined at Dr. Greenbaum's office, were you not? A Yes.

Q And Dr. Greenbaum was your physician at the time, wasn't he? A Yes.

20 Q How did you get to Dr. Greenbaum's office from your home? A With a lady friend with the aid of a cab.

Q Where is Dr. Greenbaum's office? Where was his office at the time of this examination? A Corner of West Kinney street and Quitman street, Newark.

Q Are you sure you didn't tell the doctor that you walked over there? A I am sure I didn't tell him that. He didn't even ask that question.

30 Q Did Dr. Greenbaum take any X-rays of you, Mrs. Bennett? A No.

Q Did you continue to take treatments from Dr. Greenbaum after the examination in October, 1925? A I don't think so.

Q Did you limp in October, 1925? A Yes.

Q Was your right leg shortened at that time? A I didn't measure it.

40 Q Do you know what caused the limp that you speak of at that time? A No. The doctors told me.

Annie Bennett, cross.

Q But you are sure that you limped at that time? A Yes.

Q Did you tell Dr. Trainor that you limped?
A I don't remember.

Q Were you confined to your bed in February, 1926? A I guess so.

Q Now, you say you were able to get out with the aid of crutches, do I understand? A No. 10

Q Did you ever use crutches? A Yes.

Q Did you require the use of crutches in February of 1926? A I don't think so.

Q Were you suffering much pain in February, 1926? A In February? Yes.

Q Now, Mrs. Bennett, you appeared as a witness in the East Orange District Court in the year 1926, didn't you? A I don't remember. 20

Q Mrs. Bennett, you remember that you appeared in a suit in that court, and Mr. Schilling was your attorney, isn't that right? A I don't recall.

Q Do you recall that the defendant in that case was named Maurer; do you recall? A I don't recall it now.

Q Would you say that you weren't there? A No. 30

Q Do you know a police officer named Mr. Sheerin? A I heard of him.

Q Did you ever visit him? A I was to his wife once.

Q You went to his home on several occasions, didn't you? A No.

Q Did you ever interview him when he was on duty about an accident to your son? A Yes.

Q About how many times did you interview him? A Only once when he sent for me. 40

Annie Bennett, cross.

Q Where did you interview him? A He was on duty at Clinton and Broad.

Q And you interviewed him, did you not? While he was directing traffic? Isn't that right?

A I only asked him one question.

10 Q Were you forced to travel back and forth on the street as he talked to you? A No.

Q Did he stand still while you talked to him and asked him this one question? A Yes.

Q Did you limp at that time? A Yes.

Q Did you tell the officer you were in pain? A No.

Q Were you in terrible pain at that time? A Yes.

20 Q Did you drag your leg, as you spoke about earlier in your testimony, at that time? A Yes.

Q Could you tell the jury whether it was marked or not? Was it noticeable? A People that have eyesight—they could see it.

Q What was the last time that you spoke to Officer Sheerin? A Way back, I think it was, in May or in June.

Q Of 1928? A I think so.

Q You were around investigating this accident about which I have spoken, weren't you?

30 A What accident?

Q The accident in which your son was? A No, not at that time.

Q You had been doing so previously, had you not? A Before my own accident, long before it.

Q Had you made any investigation about your son's accident after your accident? A I don't think so.

40 Q Did you go in Mr. Schilling's office at any time after your accident? A I think I did.

Annie Bennett, cross.

Q Isn't it a fact that you went into Mr. Schilling's office almost every week up until October, 1928? A No.

Q On the occasion you visited Mr. Schilling's office, did you limp? A Yes.

Q Were you in extreme pain at that time? A Yes. 10

Q Were you wearing any brace at that time? A Yes.

Q Were you wearing the brace which is now about your head at that time? A No.

Q Were you not in Mr. Schilling's office as late as October, 1928? A No.

Q What is the last time that you were in Mr. Schilling's office? A Back in May when I spoke to that traffic officer; May or June.

Q Do you remember a lady visiting you in the month of December making inquiry about the Bennetts, in 1928? A I think I do. 20

Q She was somewhat stout? She wasn't a thin woman, was she? Wasn't she fairly stout? A Yes.

Q Did you talk to her? A A little while.

Q Have you ever been to St. Louis, Mrs. Bennett, since the accident? A No.

Q Did you ever tell this lady who visited you that you had been to St. Louis? A No. 30

By the Court.

Q Have you been to St. Louis? A No, sir.

By Mr. Gilhooly.

Q Was there a Mrs. Williams taking care of you, or was there such a person taking care of you? A Yes.

Q Did you tell that to this lady who visited you? A Yes. 40

Annie Bennett, cross.

Q Did you tell her that Dr. Pinneo was treating you? A I think so.

Q At the time of her visit to you were you wearing the brace which is about your head now?

A Yes.

10 Q Are you sure of that, Mrs. Bennett? A Yes.

Q Did you not say to her that the doctor, one of the doctors who had treated you had since died? Did you tell her that? A I don't think so.

Q Did you say to her that you had been examined and treated by many doctors? A No.

Q Did you say that you had consulted bone specialists in Chicago and St. Louis and Brooklyn? A That is a lot of lies.

20 Q Did you say you had to go to Dr. Carl Johnson of Brooklyn for treatment? A No.

Q Did you ever go to Dr. Carl Johnson? A I don't know him, no.

Q Did you have a sister-in-law or brother-in-law in Brooklyn? You have, haven't you, Mrs. Bennett? A I guess so.

Q Have you visited them recently? A No.

30 Q Did you tell this lady that when you visited Dr. Johnson you go to Brooklyn and stay with your sister-in-law? A No.

Q Were you downtown in Newark in the month of September, 1928? A Maybe.

Q Did you get on a Public Service trolley car at Broad and Market streets on September 17, 1928? A Yes.

Q Were you injured as you got on that trolley car on that date? A Yes.

40 Q Did you take up with the Public Service your injuries that happened on that day? A Yes.

Annie Bennett, cross.

Q Were you confined to your bed after that as a result of the injuries you received on this trolley car? A No.

Q Did you go to the office of Dr. Kraker in the Medical Towers Building on September 28 or 29? A Twenty-eighth.

Q That was in the year 1928; is that right? 10
A Yes.

Q How did you go there? Did you go by vehicle or on foot? A Automobile.

Q Who was with you? A Nobody.

Q Isn't it a fact that there was a little girl who was with you at that time? A No.

Q Were you examined by Dr. Kraker? A He just looked at the elbow and ankle.

Q Did he ask you how you felt? A No. 20

Q Now, Dr. Kraker was the examining physician for the Public Service, is that right? A I suppose so.

Q You know so, don't you, Mrs. Bennett? That is why you went there, isn't it? A I don't know who he is supposed to be.

Q You had made a claim with the Public Service, had you not? A No.

Q Do you remember an investigator of the Public Service coming to see you in September, 1928? A Yes. 30

Q Do you remember his name? A No.

Q Did he tell you in September, 1928, that his name was Kling and that he was from the Public Service? A I think so.

Q Did you say at that time that you were a brush maker? A Yes.

Q And did you say that you were doing work in the basement of your home? A No.

Q Did you say to the investigator that you had been earning from five to twelve dollars a 40

Annie Bennett, cross.

day? Did you say that, Mrs. Bennett? A
When?

Q When he called on you in September, 1928?

A I can't say that I did.

Q Did you tell him at any time that you aver-
aged from five dollars to twelve dollars a day?

10 A I don't recall.

Q Were you in bed when he called on you at
that time? A Yes. I got up to let him in.

Q Did you have to go back to bed while the
interview lasted? A No.

Q You remained up all the time, didn't you?
A About ten minutes.

Q Now, on the second visit that he made to
you— He made two, didn't he? A No.

20 Q He only made one? A Yes.

Q Did you have any X-rays taken at that
time after the Public Service accident? A Yes.

Q And you had them made by Dr. Herdling,
didn't you? A He is not a doctor.

Q He is a roentenologist, isn't he? A Mr.
Herdling.

Q He made X-rays at that time, didn't he?
A Yes.

Q And his bill was \$30, wasn't it? A I
don't remember.

30 Q You directed him to send the bill to the
Public Service, didn't you? A They requested
it.

Q It was sent there, wasn't it? A I don't
know.

Q Getting back to this examination by Dr.
Kraker, did you tell Dr. Kraker that you had
trouble with your spine? A No.

Q Did you tell him that you had previously
fallen downstairs and injured your spine? A
40 No.

Annie Bennett, cross.

Q Did you walk with a limp at the time of this examination? A Yes.

Q Did the doctor examine your legs to ascertain the cause of this limp? A No. He just looked at the ankle.

Q Did he attempt to rotate your arm? A No. 10

Q Did he examine you to ascertain whether there were any bruises on your person? A No.

Q Did you tell him that you had severe pains all over your body? A No.

Q Did you tell him that you were confined to your bed intermittently? A No.

Q Just what injuries do you think you received in the Public Service accident? A Elbow and ankle was bruised.

Q That is all? A That is all. 20

Q You don't attribute your present illness to the Public Service accident? A No, sir.

Q Did you tell the Public Service investigator that you didn't expect to be laid up very long? A No.

Q Did you tell him that you would be willing to accept \$120 in payment of your claim? A Oh, that is all lies.

Q Did you tell him that you would be willing to accept any particular sum of money in settlement of your claim? A No. 30

Q Were you, as a matter of fact, Mrs. Bennett, earning from five to twelve dollars a day as a brush maker? A I can't say.

Q Were you making any money at all as a brush maker? A I don't remember.

Q Since the accident? A I don't remember.

Q Have you earned any money at all since the accident, Mrs. Bennett? A I can't say now.

Q Well, now, why can't you say whether you have or not? A I don't remember. 40

Annie Bennett, cross.

Q Then you earned nothing, am I to understand, since that time? A I told you I don't remember.

Q Getting back to this accident of your son's, did you in investigating that accident call on a Dr. Fine? A Yes.

10 Q He was treating your boy, was he not? A No.

Q Did you call him in as an expert in your son's case? A No.

Q Did you not consult Dr. Fine from time to time at his office? A No.

The Court: You see we haven't heard when that was, whether it was before or after.

20 The Witness: It is all lies.

Q Have you consulted Dr. Fine since the accident which you were in? A Oh, no.

Q Have you consulted Dr. Gluckman since the accident which you were in? A No.

Q Can there be any doubt in your mind about that? A No. Oh, if there weren't so many lies.

30 Q Do I understand that you didn't investigate this accident of your son's because of your own disability; that you were unable to do it; is that right? A I don't know how to answer that question.

Q I guess it is pretty hard because it embraces two. I will change it. Was it because of your own disability that you were unable to consult these doctors in connection with your son's injuries? A Not exactly.

40 Q After you left 8 Quitman street in the ambulance, Mrs. Bennett, where were you taken? A 127 Spruce street.

Annie Bennett, cross.

Q Were you taken to the City Hospital? A
No.

Q In October, 1919, you said—

Mr. Gilhooly: I will withdraw that. Strike
that out.

10

Q You said that you started to get numb
right from the time after the accident, is that
right? A Do you know what you are talking
about? 1919?

Q That was my mistake. A I guess so.

Q 1925 I should say.

Mr. Munsick: The accident was in 1925.

Q In 1925 right after the accident did you
commence to get numb? A Yes. 20

Q Did you commence to feel loss of sensa-
tion in your legs in October, 1925? A Yes.

Q When Dr. Trainor examined you did you
tell him that? A Yes.

Q Did you tell him about this numbness? A
Yes.

Q Now, after Dr. Twinch died, by whom were
you treated? A I don't recall just now.

Q You can't tell me the name of the doctor
who treated you? A I don't recall it just now. 30

Q Were you treated by a doctor? A Yes.

Q Can't you recollect the name of the doctor
who treated you after Dr. Twinch died? A
Can't you believe me?

Q Was it Dr. Pinneo? A I don't think so.

Q Was it Dr. Ill? A I tell you I don't re-
member.

Q Let us start back now. Who is the doctor
treating you at the present time? A Dr. Kep-
pler. 40

Annie Bennett, cross.

Q How long has Dr. Keppler been treating you? A I can't say.

Q Is it a week? A No, it is more.

Q Is it a month? A I don't remember.

Q Has Dr. Pinneo treated you? A Yes.

10 Q During what periods of time has Dr. Pinneo treated you? A I don't remember.

Q Did Dr. Holden treat you for your present injury? A Yes.

Q How long had Dr. Holden been treating you? A I don't remember.

Q Did you call him in to treat you? A No.

Q You called him in to have that brace made, is that right? A My son called him. I didn't call him in.

20 Q Now, Mrs. Bennett, you have a telephone in your home, haven't you? A Yes.

Q Your telephone is right alongside of your bed, isn't it? A Yes.

Q Have you been able to use the telephone in the last couple of months? A Yes.

Q Now, you have called up your doctors over that telephone, haven't you? A No. I think I called one doctor once. I don't remember.

30 Q What is the last time that you have been able to use the telephone? A Maybe two weeks ago or three, I don't remember.

Q Have you ever called your attorneys in the last two weeks? A I don't think so.

Q Now, when did you call this doctor? A What doctor?

Q The doctor that you said you called over the telephone? A Which one is that?

Q Let us start over again. Did you say you called up a doctor on the telephone? A Yes.

40 Q What doctor was it you called up? A I don't remember.

Annie Bennett, cross.

Q Do you remember when it was you called up this doctor? A It was a couple of months.

Q You haven't called up any doctor within two weeks, have you? A No.

Q Were you mistaken when you said that you called up a doctor within the last two weeks? A I didn't say that. I said about two months. 10

Q But you don't remember calling up your lawyers, do you? A I know I did.

Q Were you using the telephone in December, 1928? A Maybe.

Q Did you use the telephone on December 31, 1928? A Maybe.

Q Well, it is a fact that you did, isn't it, Mrs. Bennett? A I don't remember.

Q You won't deny that you did, will you? A Yes, I will. 20

Q You will? A I don't remember if I did or not.

Q Do you remember telling this lady who called on you on December 31st that you did a business over the telephone? A No.

Q Did you tell her that you sold automobiles over the telephone? A Oh, my God, no. What have you got all them lies there for?

Q Did you tell this lady that you were connected with the Whitehead Art Works? A No. 30

Q Did you tell her that you could conduct a business along that line, the art line, by calling up people over the telephone? A No.

Q Did you ever go to the Social Service Bureau? A No.

Q Did a social service worker ever visit you? A No.

Q Did you ever pay Mrs. Williams because she was injured? A No. 40

Annie Bennett, cross.

Q Did you not tell this lady about that? A That is a lot of lies they are asking me. It is a lot of lies they are asking me.

Q Did you say to this lady, "I might be dead from the hips down, but I am very much alive from the hips up"? A No.

10 Q Did you say to her, "Because I am lying here in bed don't think I am not making money"? A No.

Q Did you say, "Anyone who has a nice soft voice on the telephone can earn a living"? A No.

Q Did you say, "One firm I worked for is the Whitehead Art Company"? A No. Stop asking me so many lies, will you?

Q Do you know a Mrs. Hughit? A I met her.

20 Q Did Mrs. Hughit call on the day that this lady was visiting you?

The Court: I am just wondering, Mr. Gilhooly, whether or not, since this is a party, it is necessary for you to lay any foundation for such testimony as this. If that is your purpose, of course, maybe you have to do it.

30 Mr. Gilhooly: I am trying to lay the foundation to call this woman who had this conversation.

The Court: This is the plaintiff. Do you have to lay a foundation where a plaintiff is concerned, where a party is concerned? If it were a mere witness you would have to lay the foundation.

Mr. Gilhooly: I appreciate that.

40 The Court: Now, this is a party, and anything she said which bears upon her

Annie Bennett, cross.

present claim you may give in evidence without laying such foundation, may you not?

Mr. Gilhooly: I have felt that way, but in view of the fact that this witness will be removed I want to give her an opportunity to deny these things in advance. 10

The Court: I do not mean to say that you haven't the right to do it, but I am just rather suggesting that in view of her apparent condition, that you may give that in evidence just the same and then let the other side, if they want to, meet that by rebuttal, unless they prefer that you should go ahead and ask these questions now so that they will not be required to bring back Mrs. Bennett. What is your preference? 20

Mr. Munsick: We will try to keep this lady for any purpose, not necessarily here, but at her home, and bring her back.

The Court: Wouldn't that be better?

Mr. Gilhooly: I think that would.

By Mr. Gilhooly.

Q Mrs. Bennett, you said that the skylight was broken, is that right? A Yes. 30

Q How long had that condition existed? A I don't remember.

Q Had it existed a month? A I don't remember.

Q Do you remember a man being there to repair the roof a short time before your accident?

A That was a quite a while before.

Q But you remember him being there, don't you? A Yes, I think I do. 40

Annie Bennett, cross.

Q Your floor was the top floor, is that right?

A Oh, yes.

Q Now, you said there was some black thing over the skylight, is that right? A Yes.

Q Do you know what that was? A No.

10 Q Did you look at it to find out? A What would I be going up on the roof for such a thing?

Q Why do you say it was black? A Well, it was a dark object. It looked like black.

Q Did you observe that on more than one occasion? A I don't know.

Q Was it there before the day of the accident? A I think so.

Q But you don't know how long? A No.

20 Q When were the first X-rays taken, Mrs. Bennett? A When I went to Twinch.

Q Did you go to Twinch immediately after leaving Dr. Greenbaum? A I think so.

Q And when were the next X-rays taken? A I don't remember.

Q Do you know a Mrs. Koerner? A I have heard of her.

Q You used to live in Mrs. Koerner's house, didn't you? A No.

30 Q You were never a tenant in Mrs. Koerner's house? A No.

Q Did you not make a complaint to Mrs. Koerner at any time that you had fallen down her stairs? A I told you I didn't live there.

Q Did you ever complain to Mrs. Koerner that you had fallen down her place? A Ask me some truthful questions, will you? I am sick of answering lies.

40 The Court: I am just wondering what the relevancy of that would be?

Annie Bennett, re-direct.

Mr. Gilhooly: Well, I am laying the foundation for a conversation which she had with Mrs. Koerner. Probably along the same line I may take that up later.

The Witness: I had no conversation about a fall with her.

10

Q Where did you live before you moved to 8 Quitman street? A 16 Montgomery.

Q Is that a house owned by Mrs. Koerner?

A No; Gosh, if you don't make me sick.

Q Mrs. Bennett, during the month of December did you telephone to Dorothea Antel at 316 West Seventy-second street, New York City, about twenty-five times? A I don't think so.

Q Did you call her at any time? A I don't remember.

20

Q Did you ever live at 304 West Fourteenth street, New York City? A No.

Q Were you ever in any other accident since July 13, 1925, other than the one that you complained of at 8 Quitman street and the Public Service accident? A I can't say now.

Q Can't you tell us whether or not you were in any other accident other than those two? A No.

Q Will you say that you weren't in any other accident? A No, I can't remember. 30

Q Is that the best answer you can give, Mrs. Bennett? A Yes.

Re-direct examination by Mr. Munsick.

Q Mrs. Bennett, when was your telephone put in? A I don't remember. I think the twenty-eighth of November.

Q Did you have a telephone prior to that? A No. 40

Annie Bennett, re-direct.

Q Just how were you hurt on the trolley car? How did you receive those injuries? A When I was getting in the motorman shut the door and hit my elbow and my ankle.

Q Is that all? A Yes, sir.

Q You were asked by Mr. Gilhooly if after
10 a certain time you had discontinued the treatment of Dr. Greenbaum. Do you remember that question? A Yes.

Q Did you leave Dr. Greenbaum? A Yes.

Q Why?

Objected to.

Objection sustained.

Q When did you get this brace affair around
20 your head? A I don't know. I guess it was the last of October or the first of November. I don't know. Sometime in November.

Q This year? A Last year.

Q Did Dr. Holden or Dr. Pinneo give you treatment? A What do you mean by that?

Q What did Dr. Holden do? A He got a brace made for me, this thing (indicating). I got a steel jacket and this here on my head (indicating). I got the jacket there some place (indicating).
30

Q What did Dr. Pinneo do? A He said there was no hope for me, no hope for me.

Mr. Gilhooly: I object to that. The question is what did Dr. Pinneo do and the witness started to give an unresponsive answer by telling what the doctor told her.

Mr. Munsick: All right. I withdraw it.

Q Did he do anything? A He examined me.
40

Alexander W. Bogatko, direct.

- Q Were you ever a brush maker? A Yes.
- Q Did you work at a factory? A No.
- Q Where did you work? A At home.
- Q How long is it since you have made any brushes? A I don't remember.
- Q Prior to the time that you fell in July, 1925, Mrs. Bennett, did you have any accidents? 10
- A Never in my life.

ALEXANDER W. BOGATKO, sworn in behalf
of the plaintiffs.

Direct examination by Mr. Munsick.

Q Where do you live, Mr. Bogatko? A 386 20
Lyons avenue.

Q Newark? A Newark, yes, sir.

Q You were formerly an agent for an insurance company? A Yes, sir; Metropolitan Life Insurance Company.

Q Did your debit take in 8 Quitman street, Newark? A Yes.

Q How often did you make your collection?
A Well, I have been there every day outside 30
of Sundays.

Q At this one address? A Well, throughout the whole debit.

Q How often did you stop at 8 Quitman street? A There is 8 Quitman street and 6 Quitman street is the adjoining apartment, comprising eight families. I had one day here one party, another day another party; all depends when they had money for me to collect.

Q Were your collections weekly? A Yes. 40

Alexander W. Bogatko, direct.

Q Do you recall about when you first went into that neighborhood to collect at those addresses? A It was in August, 1922.

Q When did you stop? A Also in August, 1926.

10 Q Are you familiar with 8 Quitman street?
A Yes.

Q Do you know Mrs. Bennett? A I have collected insurance from her.

Q Do you recall the day she fell? A Yes, sir.

Q Where were you? A At that time she fell I was at the bottom of the stairs.

Q Going in which direction? A Going downstairs.

20 Q Where had you been? A I was on the third floor, on the landing of the third floor.

Q I mean, where had you been before that? A Up in Mrs. Bennett's house collecting.

Q What was the first time you knew that she had fallen, or how did you know that she had fallen? A Well, there was a scream. At the same time something hit my legs in the back, so I looked down and I seen Mrs. Bennett's face.

Q She was on her back? A Yes.

30 Q How near were you to the landing of the third floor and the hallway on the third floor? A Well, I was already down solid on it.

Q What? A I was already on the landing down.

Q What condition was she in immediately after the accident? A Unconscious.

Q Speak up a little bit. A She was unconscious.

40 Q What did you do about it? A I don't know. I guess I yelled. I yelled for Johnnie, because he was in the house there. I guess that is about the only thing I done right there.

Alexander W. Bogatko, direct.

Q Did you help carry her upstairs? A Yes, sir.

Q How long did you stay around up there?

A Well, when we carried her upstairs I sent Johnnie for the doctor and I stayed up there till doctor came. When doctor came, why, he was there a couple of minutes; that is, I was there a couple of minutes. I had to go out on business.

10

Q You didn't go till after the doctor came?

A Yes.

Q Were you accustomed to using all the stairways in these two buildings? A Naturally, sure.

Q And in 8 Quitman street? A Yes. That is all this job is, stair-climbing, practically.

20

Q Do you remember what covering the stairs from the third to the fourth floor at 8 Quitman street had just before and at the time Mrs. Bennett fell? A Yes, sir. There was no particular way of dressing, of covering those stairs, because they all were dressed different; each flight had something else patched up.

Q I am referring to the flight from the third to the fourth floor, the one she fell down? A The stairs themselves was bare.

30

Q Was there anything on the stairs or attached to the steps or the landing? A Well, up at the top there at the landing where there was a half turn from the floor to the landing, and then comes the stairs, there was one time must have been a carpet there.

Mr. Gilhooly: I object except as to what he saw.

The Court: Yes, strike that out.

40

Alexander W. Bogatko, direct.

A (Continuing.) Well, I saw a carpet there, which was partly attached to the back of the stair step.

Q When you say the back, do you mean the riser? A Well, whatever you call it.

10 *By the Court.*

Q That was the upright, was it? A No. That was on the first step from the hallway.

Q From what floor? A Top floor.

By Mr. Munsick.

Q Did that carpet go on around the step and continue back from the top of it? A No. It was just nailed in here and the top was sticking out just against it.

20 Q Where were the nails? A I don't know. I never looked at it because I never paid any attention.

Q Where did it appear to be fastened? A To the side.

Objected to.

Objection sustained.

Q Was there anything on top of that step?

30 A On that one particular there was oilcloth there. On the step or the landing?

Q On the landing? A There was oilcloth on the whole thing there.

By the Court.

Q In the hallway? A Yes, in the hallway.

By Mr. Munsick.

Q How long had this condition existed, if
40 you know? A I couldn't tell you, because I

Alexander W. Bogatko, direct.

went there for that many years, and it is more or less always I noticed always the same way.

Q Do you recall any changes being made in those stairs? A Yes, there was, I think, after Mrs. Bennett fell, I think that was removed.

Q No, I don't mean that. I mean before that, after you started to go there. A Changes? Well, there were changes occasionally made as being of a pretty big house there, why, they made all sorts of changes. 10

Q Did you, at any time, have any difficulty with this step? A Yes.

Objected to.

Objection overruled.

Defendants' counsel prays an exception to this ruling of the Court. 20

Exception noted as ground of appeal.

Q What was it? A At one time I caught my heel in it going down.

By the Court.

Q Where was that that you caught your heel? A On the same carpet there. It was on the top landing. 30

By Mr. Munsick.

Q Do you know about how long that was before Mrs. Bennett's accident? A I couldn't tell you exactly. It was some weeks previous to that, maybe a month previous; probably a little longer.

Q Did you continue to visit her apartment after the accident? A Yes, sir. 40

Alexander W. Bogatko, direct.

Q Do you recall when she left or that she left? A I couldn't tell you the exact date when she did move out of there, because I had to transfer insurance, but I went there every week. I couldn't tell you exactly the date.

10 Q Did you see her after the accident? A I did.

Q At her apartment? A I believe the same week; yes, sir.

Q Did you see her after the same week? A Yes. I went. Usually on Mrs. Bennett I called once a week, but I believe on that particular week that she fell I went back the second time there sometime in the middle of the week to find out how she was.

20 Q Where was she when you got there? A In bed.

Q After that did you see her again? A What do you mean? After the accident, directly after?

Q You have already described one incident when you were there. After that did you see her again? A Yes, I have seen her every week after that, or sometime. After she moved away even I seen her when I transferred the business.

30 Q You went over to Spruce street? A It was through my territory, although I covered only half of the street. I had to straighten that out before I transferred.

Q When you took her upstairs, you and her son, I think you said, did you notice anything about her? Did you notice any evidences of a fall? A She was unconscious.

40 Q Anything else? A I didn't examine the lady. I couldn't tell you except there is a little streak here of blood on the cheek (indicating). That was all.

Alexander W. Bogatko, cross.

Cross examination by Mr. Gilhooly.

Q What company were you employed by? A Metropolitan Life Insurance Company.

Q The Metropolitan? A Yes, sir.

Q What kind of book do you call that that you had reference to before, the book you keep? 10

A Why, weekly collection book.

Q Collection book? A Yes, sir.

Q Do you call that a debit book? A Yes, sir. I think it was debit 442, if I am not mistaken, if you want to refer to it.

Q Please just answer the question. A Yes, sir.

Q Did you collect anything from Mrs. Bennett that day? A That I couldn't tell you whether I did or not. 20

Q How long had it been prior to that that you had been at her house? A About seven or eight months, nine months, maybe.

Q Before that day in question? A What do you mean? How long I have collected from Mrs. Bennett?

Q Before the day on which you say this accident occurred, what was the previous time you had been to the house? A The week previous.

Q The week previous? A Yes. 30

Q What day of the week? A Monday, always on Monday. That was my debit day there.

Q Did you collect anything the week before? A I couldn't tell you. I generally collect \$2.58 from Mrs. Bennett.

Q Did you write it down on your debit book? A Possibly.

Q You don't know whether you wrote it down on this occasion? A I couldn't tell you because sometimes she paid me one week, and sometimes she made it two weeks at a time. 40

Alexander W. Bogatko, cross.

Q As you go downstairs, there are a couple of steps that run in the direction of the side wall, aren't there? A Right. There is one, I believe, if I ain't mistaken.

Q There are two, aren't there? A Well, if you want to call that a step, yes.

10 Q And maybe three? A No, sir; couldn't be three.

Q Positive it isn't three? A Because they are pretty wide, so that couldn't be so. It is a sort of one pair turn there.

Q After you caught your heel in this carpet, as you say, how much of a rent did you make in it? How much of an opening? A I just may have caught a thread; that is about all. I don't believe I made any rent, because if I did

20 I believe I would have fallen.

Q You just caught a thread? A Couple of threads sticking out, yes.

Q Is that what caused it to open? A I don't know whether it did or not.

Q You were there. Did or didn't it? A I didn't notice it.

Q When you caught your heel in it, did you cause that carpet to pull from the staircase?

30 A When I caught my heel in that I wasn't watching that.

Q Do you mean to tell us you caught your heel on a thread and it almost threw you? Is that what I understood? A Yes.

Q How big was the hole there? A I don't know how big the opening was. In the first place I couldn't tell that.

Q You don't know whether there was any opening there or not, do you? A I looked at it after to see what was the trouble with me.

40

Alexander W. Bogatko, cross.

Q Did you cause it to be torn by your heel being caught in it? A I don't know whether I caused it or not. But the opening was there when I looked at it.

Q How wide was that opening? A Oh, probably was an inch and a half away from the wood. 10

Q An inch and a half away from the wood? A Yes.

Q How wide was that opening? A Oh, probably that wide (indicating).

Q About a foot? A Probably around a foot.

Q And that extended away in which direction? A That sort of bellied out.

Q Did you notify the landlord? A I swore at that time the next time I seen Mrs. Bennett I told her about it; I told her what had happened to me. 20

Q The next time you saw her did you tell her what had happened to you? A I believe I did, because I was very indignant about it.

Q You told her the next week, is that right? A I believe it was.

Q Was it the week before this thing happened that you caught your foot? A Oh, no. It was some time previous. 30

Q The very next time you told Mrs. Bennett? A I believe it was.

Q That was only a small piece of carpet, wasn't it? A I believe so.

Q It would not have taken much to pull it off, from what you observed, would it? A Well, I don't know just how tight that was nailed down.

Q You told Mr. Munsick it was nailed in there, didn't you? A Yes, but I didn't know how tight. 40

Alexander W. Bogatko, cross.

Q Did you look to see if it was nailed? A No.

Q How do you know it was nailed? A What could hold it to there?

10 Q Then you surmise it was nailed? A That is right.

Q Did you try to undo the damage you had done when you caused that opening? A I didn't do no damage to that because that was already damaged when I must have done it.

Q You said it was about an inch then when you caught your heel. Did you make it about a foot? A After I caught my foot I noticed how it was.

20 Q Did you see the carpet on it? A I just caught it on a couple of threads that were sticking out.

Q It didn't cause you to fall, though? A No. I just grabbed the banister.

Q Then you went about your business, is that right, without trying to fix it? A Well, that isn't my property, not my business. I would be put in jail if I tried to rip up something that didn't belong to me.

30 Q That is why you didn't do anything; you didn't want to go to jail? A No, that isn't the point. That isn't my business. I see a lot of things on all the front stairs.

Q You didn't immediately go back and tell Mrs. Bennett, did you? A No.

Q You knew she had children there, didn't you? A Yes.

Q Now, you say you were attracted to Mrs. Bennett falling by a scream and then something hitting you? A The back of my legs; yes.

40 Q Your back was turned to her, is that right? A Yes.

Alexander W. Bogatko, cross.

Q You don't know where she fell from, do you? A No, sir.

Q You don't know whether it was up at the top or right near you? A I don't know where she fell from.

Q You heard a scream? A Yes.

Q And then you were hit? A Yes. 10

Q Did this happen quickly? A Well probably.

Q Just the flash of a second, wasn't it? A Well, yes.

Q At the time you heard the scream and you were hit? A Well, at the time I heard the scream I sort of stopped there, and then I was hit.

Q And you preceded her down the stairs? A Well, I don't know whether she meant to follow me or not, but I was already downstairs. 20

Q Had you just gone downstairs? A Yes. I was going down.

Q You were in the act of descending, having come from her apartment, isn't that right? A That is right.

Q And your back was to Mrs. Bennett when you were hit? A Right.

Q Are you connected with the Newark office? A I am in business for myself for the last three years. 30

Q At that time were you? A Yes.

Q You were working out of the Newark office? A Newark district.

Q Will you give me the number of your book again? A 442. 442 or 441, because there was a consolidation of debits there. I don't know when it took before or after.

Walter Rinck, direct.

WALTER RINCK, sworn in behalf of the plaintiffs.

Direct examination by Mr. Munsick.

Q Where do you live, Mr. Rinck? A 796
10 Hunterdon street, Newark, New Jersey.

Q You are blind, are you not? A Yes.

Q How long have you been blind? A Since the age of three. I am twenty years old at present.

Q How old are you now? A Twenty.

Q Do you know Mrs. Bennett? A I do.

Q Do you know her son John? A Yes.

Q How did you make their acquaintance? A
20 Well, I knew John, and I made the acquaintance of the family through helping him with his Latin while he was at South Side High School, Newark.

Q Are you a graduate of South Side High?

A I am.

Q You are at present attending a law school?

A Yes, sir; New Jersey Law School.

Q Did you visit them frequently? A Well, I wouldn't say frequently.

Q How often? A Well, as often as I had
30 time.

Q Did you ever visit Mrs. Bennett or John at 8 Quitman street? A I did.

Q Did you go up and downstairs yourself?
A What was that?

Q Did you go up and downstairs yourself?
A I did.

Q Using the cane as a guide? A Yes, sir.

Q Do you know of your own knowledge whether or not prior to July 13, 1925, there was any irregular or defective condition of the top
40 step?

Walter Rinck, direct.

Mr. Gilhooly: I object to the form of the question. I think he may say what he learned by traveling over them, but to use the word "defective condition," I think it is certainly objectionable.

The Court: Strike out the word "defective" out of the question. 10

Q Did you have any difficulty prior to July 13, 1925, in coming downstairs? A I did.

Q From the fourth to the third floor? A From the fourth to the third floor. I wouldn't place it in just that form.

Q Do you remember about when this was?

A You mean the time of my difficulty?

Q Yes. A Toward the latter part of June.

Q Of what year? Nineteen twenty what? A 20
Is that for me to answer?

Q Do you remember the year? A 1925.

Q When did this difficulty you had occur? A It occurred—it was caused by bulging carpet on the riser of a single step. This step wasn't a part of the flight, the stair or flight proper, the flight of stairs. It was a single step which lay between the fourth landing and the entrance to the dining room door.

Q Did the stairs take any change of direction at the landing? A Yes. 30

Q What happened to you? A I was leaving the dining room, came out of the dining room, accompanied by Mrs. Bennett, when I had my cane a bit ahead of me to detect that step, and the cane was caught into this bulging carpet and stopped from going any further. Of course I proceeded and the cane stood still, and as a result, why, I was about to swerve and probably would have fallen if Mrs. Bennett hadn't guided me and my left-hand touched the banister. 40

Walter Rinck, direct.

Q How do you know that it was the carpet?

A How do I know?

Q Yes. A I put my hand down to feel what had stopped my cane.

Q What did you find? A I found this bulging carpet that I speak of.

10 Q Where did that bulging carpet bulge from?

A From the riser of that single step over which you had to pass before turning to the left and going on the main flight.

Q Did Mrs. Bennett, in your presence, tell anybody about that occasion?

Mr. Gilhooly: I understand this man is blind. I think we at least ought to have the proper identification before we proceed.

20 The Court: He may answer yes or no whether she ever spoke to anybody about it.

Q Just answer yes or no. A Will you just repeat that question?

(The last question is read by the stenographer.)

A About my occasion I assume that is?

Q Yes. A Yes.

30 Q When was it? A On or about the first of July.

Q Where was it? A In her dining room.

Q Was the person to whom she spoke introduced to you? A Do I understand that the person to whom she spoke of this—

Mr. Gilhooly: I object as not being responsive to the question.

40 The Court: He is asking for an explanation of the question.

Walter Rinck, cross.

The Witness: Absolutely.

The Court: I think that is entirely proper.

Q Was the person to whom she spoke about your accident introduced to you there? A Oh, that is better. Yes.

Q By whom? A By Mrs. Bennett. 10

Q As whom? A Mr. Hinrichsen.

Mr. Gilhooly: If your Honor please, I object on the ground that the statement made by Mrs. Bennett is hearsay. This man cannot identify him. He does not know to whom he was talking.

Mr. Munsick: We do not pretend that he does.

The Court: The answer may remain. 20

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

Exception noted as ground of appeal.

Q What did she say to him with reference to your incident? A She spoke of the carpet generally, and I interrupted by saying that the carpet was in a bad condition, and I spoke of my mishap, and to make things stronger I asked if he wouldn't come out, and he did, and I showed him how my cane had caught into the carpet and how I might have fallen had it not been for someone steadying me at the time, Mrs. Bennett steadying me at the time, and she—that about covers your question. 30

Cross examination by Mr. Gilhooly.

Q Mr. Rinck, what time of the day was it, if you know, when you were introduced to this man 40

Walter Rinck, cross.

whom Mrs. Bennett said was Mr. Hinrichsen?

A I don't recall.

By the Court.

10 Q What was your answer? A I don't recall the time of day.

By Mr. Gilhooly.

Q Was it morning? A If I don't recall I don't recall; that is all. There is no use of my quibbling about it.

Q It is very important that we get the exact time. Won't you try to recollect? Would you say it was morning, afternoon, or night? A I don't care to manufacture any evidence, sir.

20 Q Please answer my question.

The Court: He said he didn't recall.

A I don't recall.

Q You recall the conversation that you had with Mr. Hinrichsen, is that right? A Yes.

30 Q Do you recall pointing out to this man a rent or bulging in the carpet, is that right? A I won't state it as specifically as that. I showed him that the carpet was in such condition that it caught my cane, and he was there and could see that the carpet was bulging. I do not say that the bulge itself was the cause. It was a tear in the carpet in which my cane fitted. I didn't say anything about the bulge exactly.

Q Now, what fixes the date as being July 1 in your mind? A Well, just what do you mean?

By the Court.

40 Q Why do you say it was July 1 when you showed this to Mr. Hinrichsen? A Well, I

Walter Rinck, cross.

would assume that it was about July 1. I have no special reason. I can't say right offhand, unless the gentleman is willing to proceed a little further. At this point I can't say why I am assuming July 1. That is the day that I have been carrying in my mind.

10

By Mr. Gilhooly.

Q I do not want to appear to be officious, but can't you tell the difference between day and night? A Well, do you mean due to light perception?

Q No, due to your keenness of understanding.

A Well, I certainly know whether— I do know from my daily work when it is nighttime or daytime. Just what do you mean? If I were to lapse into unconsciousness and come back, do you mean whether or not I would know it was day or night at that time?

20

Q No, I don't. I mean can you tell when it is time to attend your lectures at law school? A Well, I believe I do.

Q To that extent. You go at night or in the daytime? A I go in the morning.

Q Are you assisted to law school or do you go yourself? A None other than my cane.

Q You go all by yourself? A Absolutely.

30

Q And I take it that when you visited the Quitman street house you went by yourself? A I did.

Q Now, then, you could tell the difference between whether you were there in the day or night if your recollection served you right, isn't that right? A Yes, but it doesn't serve.

Q Was anybody there with Mr. Hinrichsen? A Do you mean did anyone come with Mr. Hinrichsen, accompany him?

40

Walter Rinck, cross.

Q That day that you speak of? A No.

Q How long had you been at the Bennett house on that day in question? A How long? I don't know exactly. I was there long enough. What do you mean by the day in question?

10 *By the Court.*

Q The day when you had your near accident?
A Well, I was there long enough to pay a short visit and to meet Mr. Hinrichsen and to show him the defective condition of the carpet.

By Mr. Gilhooly.

Q You didn't go there for that purpose, however, did you? A What purpose?

20 Q To show Mr. Hinrichsen the defect in that carpet? A Oh, as I stated before, I was there previously to have a meeting with Mr. Hinrichsen.

Q You were there to have a meeting with Mr. Hinrichsen? A Previously.

Q Whom did you go to visit on that day? A Whom did I go to visit?

Q Yes. A I went to visit Mrs. Bennett.

30 Q When did you enter law school? A I am in the third year now. It is a three-year course.

Q Where were you going to school in 1925?
A 1925. Directly after leaving high school I went to law school; no lapse, gap rather.

Q You weren't to school on the day in question, were you, that you speak of? A Why, no.

Q You are sure you weren't to school that day? A How can I be in two places at once?

Q Were you there in school at any time that day? A I see. I don't recall, sir. Your question isn't clear.

40

Walter Rinck, cross.

Q You don't remember whether you were in school that day or not, do you? A I don't. I might say this—

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

Q But you know it was July 1 or June 29?
A On or about July 1. 10

Q Now, as you proceed along you use your cane for the purpose of discovering anything that might interfere with your progress, isn't that right? A That is so.

Q And as soon as you locate anything that might interfere with your progress, you immediately come to a stop, don't you? A Generally.

Q You never have any accidents because of your sense, isn't that right? A Well, that is presumably. That is true in most of the cases. 20

Q Do you carry your cane as a rule in your right hand or your left hand? A Right hand.

Q As you came along you felt this hole in the carpet, is that right, with your cane? A Well, yes, at the time, assuming, of course, I didn't know that it was a hole in the carpet. I felt something obstructing the cane, holding the cane back. I didn't know at the time what it was.

Q Did the cane go into this thing that was obstructing your progress? A Sufficiently to hold the cane back, yes. 30

Q Did you proceed to go on? A No. If I had it would have been unfortunate.

Q Did you come to an immediate stop? A I don't know just how immediate it was. It was immediate enough so that no serious results happened.

Q You testified on direct examination that as you came to this step your left hand grasped the banister? A So? 40

Walter Rinck, cross.

Q Were you turned around by reason of this impediment to your progress? A I wasn't necessarily turned around. I put my hand out to steady myself.

10 Q And you came in contact with the banister with your left hand? A Yes.

Q As you came up the stairs the banister is on your left, isn't it? A As I am coming upstairs?

Q Yes. A No.

Q The banister is on your right? A Absolutely; coming up, that is.

Q But you weren't in any imminent danger of falling, were you? A I don't know.

20 Q Why did you say that if it had not been for the fact that Mrs. Bennett grabbed you you might have fallen? A Well, I said what I meant. I might have fallen. It was the fact that she steadied me and I kind of regained my balance. There is a possibility that my grasping the banister might have been sufficient.

Q Never mind possibilities. Just tell us what you meant. A Well, I said that Mrs. Bennett steadied me so that a possible fall—and you object to possible—that a fall was prevented.

30 Q Did you, thereafter after you grabbed the banister, proceed to go downstairs? A Why, yes.

Q Did you continue on down? A Did I continue going down?

Q Yes. A Yes.

Q That is right after Mrs. Bennett had steadied you? A Yes.

Q Then you left the apartment? A Yes.

Q You are sure of that, are you? A I am.

40 Q Then if you left the apartment immediately after Mrs. Bennett had steadied you, you didn't

Walter Rinck, cross.

stop to feel this bulging carpet, did you? A You assume there that—

Q I am asking you whether that is right or not. A I did stop and feel the bulging carpet.

Q Then you didn't go right out, did you? A It was a matter of a moment.

Q You just stopped for a moment, is that right? A To find out, yes. 10

Q At what point in your progress did you come to that stop? A Gracious.

Q How many steps did you go down? A I don't recall that.

Q You don't remember? A No.

Q Did you go down one, two, or what? A I don't recall.

Q Then did you turn around and face the top landing again? A Once I started down, having felt the carpet, and so forth, once I started down I went down directly. I made no stops. 20

Q But you told me that as soon as Mrs. Bennett had steadied you you proceeded right out. A Yes.

Q That wasn't right, then, was it? A It wasn't, no.

Q You then proceeded down the stairs a way and then stooped, is that right? A I say that once, after having examined the carpet, once I was on my way down the stairway proper I didn't stop after having discovered what caused my cane to be caught. 30

Q Now, you said something about as you came out of the dining room door, being something on the landing. I may have misunderstood you. Was there anything on the landing as you left the dining room as near as you know? A You mean in the nature of a covering? 40

John Bennett, direct.

Q Yes. A I don't know.

Q Do you know whether there is any linoleum on there or not? A I don't know to be exact; I can't say. It never offered me the— the covering on the landing proper never offered any resistance or any trouble, so I had no reason
10 to know what was on the floor.

Q Did you feel anything there when you looked around to feel the bulging carpet? A That was all. I confined my attention to the thing that was causing the trouble at the time. I didn't bother to feel over the floor.

Q You just felt the bulging carpet? A Absolutely.

Q You didn't feel on top of the landing at all, rub your hand around? A No, no. I had
20 no reason to. That had offered no trouble.

An adjournment is taken to Wednesday, January 23, 1929.

SECOND DAY.

Wednesday, January 23, 1929.

30 Continued pursuant to adjournment.
Appearances, same as before.

JOHN BENNETT, sworn in behalf of the plaintiffs.

Direct examination by Mr. Munsick.

Q Mr. Bennett, are you a son of Annie Bennett, the plaintiff in this case? A Yes.

40 Q How old are you? A Twenty-two.

John Bennett, direct.

Q Where do you work? A In the post office.

Q Were you living with your mother when she lived at Quitman street? A Yes.

Q Do you recall the day she fell? A Yes.

Q Where were you at the time she fell? A I was in the dining room at the door.

Q Does that open off the hallway? A Yes. 10

Q Did you see your mother fall? A Yes, sir.

Q Just tell us what you saw. A Mr. Bogatko had already gone downstairs and mother was just—was going to go down after him, and she caught the heel of the shoe of her left foot into this carpet and fell forward, and she tried to catch the banister with her right hand, and she fell, going down backwards.

Q What did you do? A I tried to catch her. I ran out there, and I was too late. 20

Q What did you do after that? A Then I ran downstairs and I helped Mr. Bogatko up with mother.

Q You testified as to how she fell. Did you find your mother's shoe afterward? A Yes.

Q Where was it? A The heel of it was in the carpet.

Q In what in the carpet? A That is this here space, the space from where the carpet was out from the— 30

Q I do not think we can hear you very well. A The carpet was torn there at the step, and the shoe was in this carpet, or the heel part of it was caught in that space.

Q What kind of shoe was it? A It was one of these pumps, one of these ties.

John Bennett, cross.

Cross examination by Mr. Gilhooly.

Q What are your office hours in the post office? A Well, I work from 7:30 until 3:00.

Q 7:30 in the morning? A That is right.

10 Q Until three in the afternoon? A Yes.

Q What was the occasion of your being home on the thirteenth of July, 1925? A I came home to get my lunch.

Q You came home to get your lunch? A Yes, sir.

Q You finished your work at three o'clock, is that right? A That is right.

Q What is your lunch period? A Well, we usually take any time we please.

20 Q So on this day in question I understand you came home to lunch and this accident happened at half-past two, is that right? A That is right.

Q And you were going to go back to your post office to complete your tour of duty at three o'clock, is that right? A Yes.

Q Did you go back that day? A Yes.

Q What time did you get back to the post office? A I believe it was around—in the afternoon sometime after four o'clock.

30 Q What was your object in going back when your tour of duty was at an end? A We work overtime too.

Q You went back to perform some overtime work? A That is right.

Q Now, when your mother left the dining room to go downstairs, did she close the door after her? A No, sir.

Q She left the door open? A That is right.

40 A No, sir, I wasn't.

John Bennett, cross.

Q I beg your pardon. A I say I wasn't.

Q Had you completed your dinner? A Yes, I did.

Q You had completed your dinner. Now, what was the occasion of your being in the dining room? A I was there— See, we heard the baby crying there, so I just saw mother and Mr. Bogatko go down the stairs. 10

Q Why were you in the dining room particularly? A I guess that is just where I ate.

Q Had you finished eating in the dining room? A Yes.

Q Now, the baby was in the back yard? A No, he was in the front.

Q How many rooms have you got in that apartment? A I believe we have about eight rooms. 20

Q And the room nearest to Quitman street is your front room or parlor, is that right? A That is right.

Q Then you have a bedroom, haven't you? A Yes.

Q Have you got another bedroom after that? A Then comes the dining room.

Q You have a parlor, a bedroom, and the dining room? A That is right.

Q And the door before your mother left to go downstairs, leading to the hall, was closed, was it not? A That dooor wasn't closed. 30

Q Now, you heard the baby cry from the street below, four stories below, four flights below where you were, is that right? A Why, you could hear a conversation from the window in the dining room. There is an alley way running to the back there.

Q Was the baby in that alley way or out on Quitman street? A On Quitman street. 40

John Bennett, cross.

Q And you could hear that baby cry from Quitman street, that distance? A Yes.

Q Now, you say you tried to catch your mother, is that right? A That is right.

10 Q How many feet is it from the point where you were standing in the dining room to the end of the top landing as you descend the stairs? A That distance was about four feet.

Q Four feet from your dining room? A That is right.

Q Will you point out in the court just how far it was from where you are sitting to the point where the staircase begins? A It was about from me to this gentleman right here, a little less than that (indicating).

20 The Court: That would be about six feet.

Q You were sitting down, I presume, just having finished your dinner, weren't you? A No, I was standing up. I just got through.

Q You were just in the act of rising? A No. I was near the door in the dining room.

30 Q What attracted you to look at your mother? A They were going downstairs and I was facing their position.

Q Then your mother tripped over this carpet? A That is right.

Q And you saw her and you rushed up, is that right? A That is right.

Q Didn't she hesitate at all after she caught her heel? A No. She just went forward there.

Q Precipitated on to the floor below? A And then turned around.

40 Q As you started to go down the staircase from the dining room, the first two steps are

Solomon Greenbaum, direct.

facing the wall, are they not? A Just one step facing the wall.

Q Just one step facing the wall? A That is right.

Q And you have to make that turn as you descend before you start to descend down the stairs straight, is that right? A That is right. 10

Q Did your mother, as she tripped on that carpet—was she turned against that wall? A She did fall against that wall.

Q With one hand or two hands? A She tried to catch the banister with her right hand as she was falling.

Q Did she fall against the wall? A She must have hit the wall and then tried to catch it.

Q I am asking you did she hit the wall. You were there. A She scraped up against the wall. 20

Q Did that temporarily block her fall? A I couldn't say whether that blocked her fall or not.

Q Did it give you chance enough to run out and grab her? A I didn't. She fell on a diagonal that way.

Q Now you went to get the doctor, did you not? A That is right.

Q Your mother said she was unconscious for some time after, is that right? A Yes, sir. 30

Q Did you leave the home before your mother regained consciousness? A Yes, sir.

Q You did; you went to the post office before you knew that she had recovered, is that right? A Yes.

Q Why, can you tell us, did you leave for the post office before you knew your mother was out of danger? A I had to get back on the job again. 40

Solomon Greenbaum, direct.

Q I thought your tour of duty ended at three o'clock? A See, the doctor was there at that time.

Q You felt as long as she was in the hands of a doctor, that she was perfectly all right, is that right? A That is right.

10

Re-direct examination by Mr. Munsick.

Q Who sent for the doctor? A Mr. Bogatko sent me.

Q Where did you go? To what doctor? A I went to Dr. Greenbaum.

Q Where was his office? A On the corner of West Kinney and Quitman.

Q Is that far from your place? A No, sir.

20

Q Was he the nearest doctor? A Yes.

SOLOMON GREENBAUM, sworn in behalf of the plaintiffs.

Direct examination by Mr. Munsick.

Q Dr. Greenbaum, are you authorized to practice medicine in the State of New Jersey?

30 A Yes, sir.

Q For how long have you been licensed? A Forty-one years.

Q Where was your office in 1925? A It was on 142 West Kinney street, corner Quitman; 142 West Kinney here in Newark. Oh, wait a moment. No, I practiced in New York for ten years; but do you mean at the time?

40

Q Yes, in 1925. A Altogether I practiced forty-one years here, but I practiced ten years in New York before I moved to Jersey, and I moved to 142 West Kinney street.

Solomon Greenbaum, direct.

Q And you practiced in Jersey for about thirty years? A Thirty years, thirty years or more.

Mr. Gilhooly: If your Honor please, I shall readily admit the doctor's qualifications.

10

Q Were you called in to treat Annie Bennett? A Yes, sir.

Q Do you remember the day? A I remember it was in July, about the thirteenth of July in 1925.

Q Where was she when you were called in? A I found her in the bed.

Q Have you any recollection of the time of day? A Sure. It was in the afternoon at about between two and three I think, between two and three o'clock.

20

Q In what condition did you find her when you got there? A I found her shocked. I couldn't talk to her. She wouldn't answer any questions, but I only found out from another man who happened to be there.

Mr. Gilhooly: I ask that that be stricken out.

30

The Court: That will be stricken out.

Q How long did you stay there that afternoon? A I remained there about two and a half hours. I thought she might come to herself and she will explain me everything that happened, but I couldn't find it out yet from her, and then I left her, because I lived around the corner only. I left her and I came back at about six o'clock. She moaned in the bed,

40

Solomon Greenbaum, direct.

but the husband wasn't home and he couldn't tell me anything about it.

Q How long did you stay in the evening? A I was there for about half an hour, but I came back at ten o'clock. I made another call. She still wasn't fit, and I asked the family, but one
10 man was there when I made the first call and he told me he helped that woman bring in, that she fell on the stairs.

Mr. Gilhooly: I object to what the witness said to him.

The Court: It will be stricken out.

Q Do you know when you came again after that evening? A I didn't catch that.

20 Q When was the next time you called after the evening you said you were there at ten o'clock? A Why, yes. I regularly called on her. I made ten calls afterwards. I think almost every day or every other day, but I made about ten calls I hade afterwards yet to her.

Q Do you remember when, after the evening of the thirteenth, you called again? A Surely. The next day I called.

30 Q Was she conscious then? A I found her in the bed.

Q Was she conscious then? A She was more or less conscious already, not entirely, but I could understand something from her from the history of the case.

40 Q What did she complain of when she was able to talk to you? A Well, she complained like every sick person; everything hurts her; but mostly she complained that she can't straighten her back. She has got a headache

Solomon Greenbaum, direct.

and her feet hurt her and she was shocked and she was a little bleeding like in the mouth, what I noticed, but she complained of everything; everything hurt her.

Q How long did you continue to treat her?

A I treated her regularly for ten days, when I went every day there. 10

Q What treatment did you give her? A I think they told me she will have to move from this place.

Q She did move, did she not? A Then she did move, yes. Afterward I didn't see her in that new place, but they came to report to me, some of the family, how she is getting along.

Q During the ten-day period what treatment did you give her? A There is practically only— 20

By the Court.

Q What treatment did you give her, doctor, is the question. A I understand what treatment I want to tell you.

Q What treatment did you give her, is the question. A Yes, I understand it. I want to answer that, your Honor. She couldn't go down from this bed unless I will allow it. Without my consent she can't go down, because she simulate in shock. That simulates concussion, but it isn't—but it looks that way, but afterwards it turned out it wasn't a concussion but it was a terrible shock and the pain, and I told her if she want to avoid trouble she should be in bed. 30

Q Did you have X-rays taken at that time?

A No, sir.

Q Did you see her afterward at all? A Why, yes. I saw her on and off. I saw her 40

Solomon Greenbaum, cross.

several months afterward. She came—I mean a doctor came with her, I think it was from the company and her lawyer.

10 Q Do you mean Dr. Trainor came with her to your place? A Who? Dr. Trainor was there several months; I don't remember was it several weeks or several months they were in my office.

Cross examination by Mr. Gilhooly.

Q Doctor, I understood you to say that you didn't see Mrs. Bennett in the new place after she moved? A No, I didn't see her.

20 Q You saw her at 8 Quitman street, the place where this accident is alleged to have happened, is that right? A Yes.

Q You say you treated her there for ten days steadily? A Yes.

Q And every time you called she was in bed? A She was in bed, sure.

Q Now, doctor, did she ever make any visits to your office? A She did.

30 Q How many visits did she make to your office? A In my office she came afterward about three or four. Then she came to my office when I moved to East Orange in the year 1927, and I saw her now in November I examined her, this year, 1928. I saw her in November in her house. She couldn't move any more.

40 Q Now, doctor, do you keep any records of visits made by you to your patients? A I keep a record, but I moved three times since the accident. After living for such a long time I moved several times, and I recollect the case very good, but I can't say exactly the dates because I moved several times from the place.

Solomon Greenbaum, cross.

Q That is why you haven't got your records in court today, is that it; you lost them? A I remember exactly everything what happened.

Q Doctor, when you got to this house on the afternoon of July 13th you found this woman in what you call an unconscious state, is that right? A Yes, sir. 10

Q Did you do anything at that time to take her out of her shock? A Why, yes.

Q What did you do? A Well, I ordered lots of things; applications for the head.

Q What did you do as the attending physician? Did you tell me what you did? A I told you what I did. I didn't do. We ordered things. I am not a nurse; but I tried everything to revive her.

Q Did you send for a nurse? A I didn't send for a nurse. 20

Q All right, then. Whom did you order to do things? A At that time I didn't send. I thought I would watch the case and see whether it is necessity for a nurse, because we don't do anything at that time. She must be in bed. That is the principal treatment.

Q Doctor, you said you ordered certain things done, is that right? A Yes.

Q Whom did you give those orders to at the time you were called? A I couldn't give her any orders at all because I couldn't talk to her. That is the reason why I went back about six o'clock when the husband was home, and there I gave my orders. 30

Q Did I understand you when I thought you said that you didn't do anything but you ordered certain things to be done? Was I wrong in understanding that? A Yes. There was nobody home only the children. 40

Solomon Greenbaum, cross.

Q Did you just stay in the room and watch her as she lay on that bed? A Yes, sir. I was there for two and a half hours.

Q Was her son there with you during that time? A Who?

10 Q Her son John, the boy that came and got you, or didn't he come and get you? A There was a man there in the front room, or in the kitchen. He told me about the case.

Q How many men were there there, one or two or three? A How many men?

Q Yes. A I don't remember exactly, but I spoke only to one man. I don't remember exactly.

20 Mr. Gilhooly: Is the Bennett boy in court?

Q Was that boy there during the two and a half hours that you were there? A I wouldn't recognize him. I wouldn't recognize him because I didn't pay attention who was there, in fact. I was sitting near her and trying to revive her.

30 Q Now, you said you tried to revive her. What did you do to try to revive her? A I gave her massage. I tried to revive her. She was unconscious.

By the Court.

40 Q The question is: What did you do to try to revive her? A That is what I explain here. I massaged all over, tapped on the heart and rubbed the heart and the limbs. I asked there for vinegar, or something what was in the house. I tried to give her medication because I

Solomon Greenbaum, cross.

have always an emergency set with me, but she couldn't swallow.

By Mr. Gilhooly.

Q The ten days that you visited her—were those visits made at 8 Quitman street? A Yes.

10

Q Here at 8 Quitman street? A Oh, treatment, the personal treatment—

Q Just wait a minute, doctor. The ten days that you treated her were at 8 Quitman street, isn't that right? A Yes.

Q Thereafter you didn't treat her until she came to your office a few times? A Oh, she came in my office several times. She came in my office there; as long as I lived on Kinney street she came, but then I moved away, too, and she didn't find me because I was in the country mostly. I didn't practice so regularly at the time. I didn't feel good.

20

Q Doctor, do you remember the examination conducted at your office by Dr. Trainor? A Yes, sir.

Q Do you remember that? A It was yet on Kinney street, when I lived there yet, on Kinney.

Q Does your memory serve you to the extent that you will recollect that that examination was in October, 1925? A It might be, yes, at that time. It might be, but I don't recollect, but I think so.

30

Q Mrs. Bennett came to your office, did she not? A She came with the doctor and with the lawyer in the office. I don't know; I think it was a lawyer.

Q Why do you say it was a lawyer, doctor? Do you know it was a lawyer? A They introduced him as a lawyer.

40

Solomon Greenbaum, cross.

Q Did they tell you his name? A Yes.

Q What was his name? A I don't remember, but I know they told me he has the office in the corner on Broad and Market.

Q It was Mrs. Bennett's lawyer, wasn't it?

A Who?

10 Q It was Mrs. Bennett's lawyer, was it? A I think so.

Q Now, did Mrs. Bennett have anybody else with her at that examination? A There was nobody there only Dr. Trainor and this lawyer; whether it was his or hers I don't know.

Q She wasn't accompanied by anybody, then, any woman attendant, was she? A Maybe it was downstairs in the waiting room, but I had the office upstairs.

20 Q Well, she didn't walk upstairs to your office accompanied by any woman attendant, did she? A She had to come up to the office. I don't know with whom she came.

Q You examined her, too, didn't you? You looked her over, too, at that time, didn't you? A Yes.

Q You saw no necessity at any time during your treatment of her to order X-rays, did you? Say yes or no. A The X-ray treatment—

30 Q May I have that answer? A I saw her once; yes, sir.

By the Court.

Q Do you understand the question, doctor? Did you, at any time, deem it necessary to have X-rays taken of her? A I lost track of the case.

Q Did you, at any time while you were treating her, think it necessary to take X-rays?

40 A I told her so; yes, sir.

Solomon Greenbaum, cross.

By Mr. Gilhooly.

Q When did you tell her that, doctor? In November, 1928, or in October, 1925? A 1928, November, I saw her for the last time.

Q That is when you told her that she ought to have X-rays, is that right? A Yes. 10

Q You didn't tell it to her in October, 1925, though, did you?

The Court: July you mean?

Q Between July and October. A I saw her before she had X-ray treatments several times, but since the time that she had X-rays I saw her only in November, 1928.

By the Court. 20

Q You aren't answering the question at all, doctor. The question is whether from July to October, 1925, you thought it necessary to take X-rays? A I advised to take it.

Q In 1925? A Oh, but I don't know whether she did take it.

Q One minute. Did you advise it in 1925? A Yes, I advised her to take an X-ray. 30

By Mr. Gilhooly.

Q Didn't you tell Dr. Trainor in that examination that you saw no necessity for X-rays? Did you say that? A I don't remember whether I have said it.

Q You might have said it, though, is that right? A I don't remember whether I said it or not. I wouldn't remember. 40

Arthur C. M. Herdling, direct.

Re-direct examination by Mr. Munsick.

Q Doctor, did you submit bills to Mrs. Bennett? Did you send a bill to Mrs. Bennett? A Yes, sir.

10 Q What was the amount of your bill? A My bill is \$55.

Q Has it been paid? A No. They couldn't pay.

Q Is that a reasonable charge? Is that a fair charge? A Well, it is according to her condition, I think it is reasonable.

20 ARTHUR C. M. HERDLING, sworn in behalf of the plaintiffs.

Direct examination by Mr. Munsick.

Q Where is your place of business, Mr. Herdling? A Orange, New Jersey.

Q You are a physician, are you? A No, sir.

30 Q What is your business? A X-ray technician.

Q How long have you been in that business? A Sixteen years.

Q Did you take pictures of Mrs. Annie Bennett? A I did.

Q Do you know when, without referring to memoranda? A 1926, I think it was February, on two different dates; also in 1928.

40 Q At whose request did you take pictures? A First one by Dr. Twinch's request. The second one was for Dr. Albee in New York.

Arthur C. M. Herdling, direct.

By Mr. Gilhooly.

Q Doctor who? A Albee.

Q In New York? A Yes.

By Mr. Munsick.

Q Do you know, of your own knowledge, what became of the first set? A I do. They were turned over to Dr. Twinch and Dr. Twinch has died since, and I believe all the property and all the fixtures were destroyed that were of no value. 10

Q What is that that you have in your hand?
A X-rays taken by me.

Q Can you identify those X-rays? A I can.

Q What are they? A X-rays of Mrs. Bennett. 20

Q And that is the second set, then, I take it?
A The second set.

By the Court.

Q You took them? A Yes.

By Mr. Munsick.

Q Have you submitted bills to Mrs. Bennett, Mr. Herdling? A I did. 30

Q There seem to be two bills here. Are those the bills you submitted? A Yes, sir.

Q Are they reasonable for the work? A Yes, sir.

Mr. Gilhooly: I have no objection to those bills, if the Court please.

The Court: What is the total of them, Mr. Munsick?

Mr. Munsick: \$185. 40

Arthur C. M. Herdling, direct.

(The papers referred to are received in evidence and marked Exhibits P. 1 and P. 2 respectively.)

Mr. Munsick: I offer the pictures in evidence.

10 Mr. Gilhooly: I object to the offer on the ground that there has been no testimony that the condition of Mrs. Bennett remained the same in 1928 as it was in 1925. They haven't tied it up.

The Court: Well, the testimony is distinctly to the contrary that it was the same in 1928. As I understand from Mrs. Bennett's testimony, she complains of a continuous illness which became worse in the latter part of 1928.

20 Mr. Gilhooly: But, if your Honor please, in addition to that she admitted to being in an accident on a Public Service trolley car in September, 1928, and that has not been explained away, and I maintain for that reason that the pictures are inadmissible.

30 The Court: Her testimony as to that was that she had a slight injury to her knee and elbow and that was all the injury she received in that accident, and that she has been in no other accident either before this fall in 1925, July 13th, or since, except the one on the Public Service, that she remembers.

40 Mr. Gilhooly: If your Honor please, I asked her distinctly, if I recall the testimony, whether or not she had been in any accident between July 13, 1925, and September 17, 1928, and she said, "I don't remember." For that reason I do not think

Arthur C. M. Herdling, direct.

she has negatived any subsequent condition to the time of her alleged accident.

The Court: The X-rays will be admitted.

Mr. Gilhooly: Your Honor will allow me an exception.

The Court: Subject, however, to motion 10
to strike out if it be definitely shown that her present condition, her condition in 1928 when these X-rays were taken, was not the result of the accident and the fall on these stairs.

Mr. Munsick: Perhaps it would clear it up a little if I asked what they cover.

By Mr. Munsick.

Q Mr. Herdling, what portions of the body 20
are covered in these pictures? A The neck, back, spine from the top of her head down to the spine and her pelvis.

By Mr. Gilhooly.

Q Is that all? A Yes.

By the Court.

Q How do you differentiate between the neck 30
and the back and the spine and the pelvis? A From the top of the spine, top of the head down to the lower end of the spine.

Q Including the pelvis? A Including the pelvis.

Q So that all the way down the back to the
lower end of the pelvis is included in these
X-rays? A Yes.

The Court: Put them in beginning the 40
one that shows at the top of the head down

Arthur C. M. Herdling, cross.

to the spine and then the various portions of the spine and lastly the pelvis. Put them in in that order.

10 (The X-rays referred to were received in evidence and marked Exhibits P. 3, P. 4, P. 5, P. 6, P. 7, P. 8, P. 9, P. 10, P. 11 and P. 12 respectively.)

By the Court.

Q I suppose these were taken from the top down, were they? A One front view and one lateral view; one view of the back and one of the side view. I have the neck side view and also the back view. I have the spine back view and also the lateral view of that.

20 Q The back view is taken with the patent on her face? A No, on her back.

Q And all the views that are taken that way are taken with her on her back? A Yes.

Q The lateral views are taken from the right side to the left side? A On the left side and the right; they are marked.

Q They are marked? A Yes.

Cross examination by Mr. Gilhooly.

30 Q Doctor, I will hand you these X-rays. I notice that on some of them there is no name; for instance this Exhibit P. 12? A You are right.

Q Can you still identify that as being yours? A I can, yes.

Q Is there any mark of identification on there to indicate that that was taken by you? A Yes, sir; that is.

40 Q Now, I show you Exhibit P. 11 and it is marked "lateral," and where the word "doc-

Arthur C. M. Herdling, cross.

tor'' appears there has been an erasure. I ask you if you made that erasure? A No, sir.

Q Was that made after they left your custody? A Yes, sir.

Q Have you any knowledge as to why that name would be taken off there? A No.

10

Q Was your name on there originally? A Yes, sir.

Q Did anybody consult you about removing your name? A No, sir.

Q I see on this X-ray P. 10 stamped on here, Arthur M. Herdling, Windsor Hotel, Orange, New Jersey. Who is he? A Herdling; that is my name.

Q Is that where your office is, in Orange? A Yes, sir.

20

Q Can you tell me, doctor, why you didn't stamp on this X-ray the date that you took it? A They were on there.

Q Did somebody remove it? A Yes.

Q Could it be probable that this was one of the X-rays which were taken in 1926 for Dr. Twinch? A No, sir.

Q That is not probable at all? Did you take an X-ray of the pelvic region of the lower spine in 1926? A I did.

30

Q What was there about that X-ray to differentiate it from the X-ray that you took in 1926 that makes you so positive in that statement? A First of all I moved my office since then.

Q That is the only reason? A And from the other dates.

Q You still have the stamp, haven't you, that is marked? A That is marked "Windsor Hotel."

40

Arthur C. M. Herdling, cross.

Q It wouldn't be any great trouble putting that on, would it, if anybody wanted to put it on? A No.

Q Now, Mr. Herdling, can you tell me why you put on your name in addition to your stamp? Is there any particular reason you have for that? A Why I put on my name?

Q In the paster as well as stamping the film. A Simply identify it in case the tag should come off, which has happened.

Q Were all these pictures taken at the same time? A No, sir.

Q When were those X-rays taken? A Some were taken in September and October, some in November.

Q Where were they taken? Better skip back to the September pictures. Where were they taken? A Orange, Windsor Hotel.

Q At your office? A Laboratory.

Q Mrs. Bennett of course came to your office, is that right? A Yes, sir.

Q And that was in September, 1928. Let us get to the October pictures. Do you remember what date in October these pictures were taken? A Some were taken around October 1.

Q I refer you to Exhibit P. 9, which bears date October 12. Is that the date that was taken? A Yes, sir.

Q Where was that taken? A Orange, Windsor Hotel.

Q Have you any later pictures? A I believe they were the last.

Q Who accompanied Mrs. Bennett to your office when these pictures were taken? A One of the boys at one time and a daughter at another time.

Q Do you recall which boy it was, was it the boy who testified here today? A Yes, it was.

Arthur C. M. Herdling, cross.

Q Now, you took some pictures in 1926, you say you think in February? A Yes.

Q Now, will you tell us when you moved your office to the Windsor Hotel, Mr. Herdling? A September, 1926.

Q Now, will you please tell the Court and jury why it was that you took the pictures in February, 1926, and your bill is dated October 1, 1927? A This was for some X-rays taken for which I didn't render a bill at that time to Mrs. Bennett. It was rendered to Dr. Twinch. It was taken for him. 10

Q Oh, you rendered your first bill to Dr. Twinch? A Yes, sir.

Q And then it wasn't paid? A No, sir.

Q And then thereafter you rendered it to Mrs. Bennett? A Yes. 20

Q Now, I notice on this bill of November 17, 1928, you have a charge under date of February, 1926, radiograph of spine, and I believe that is sternum, pelvis, Dr. Twinch, \$50. A Yes, sir.

Q Can you explain to the Court and jury the difference between your bill of \$50 on that date and your present bill of \$35 handed to Mrs. Bennett in 1927? A Very simple. The first bill was a complete examination from the top of the head to the lower end of the spine and the pelvis. The other examination was made in different positions that the doctor wanted to take her in. 30

Q Then this charge of October 1, 1927, is not for the services which you rendered in February, 1926, is it? A No, sir.

Q Did you take other plates then? A I did.

Q Do you know where they are? A Same place; taken a day or two after.

Q You used to do a considerable amount of work with Dr. Twinch, didn't you? A Yes. 40

Arthur C. M. Herdling, cross.

Q You are still acquainted with Mrs. Twinch, aren't you? A Yes.

Q She is still living in Newark, is she not?

A Yes.

Q She still maintains the same home that the doctor maintained in his life, does she not?

10 A Yes, sir.

Q Did you make a search of his files to locate these X-rays? A No, not since doctor died.

Q When did the doctor die? A January last year, not this year.

Q January of 1928? A Yes.

Q Now, on September 5, 1928, you are charging \$50 for a radiograph for Dr. Albee. Is that the man in New York? A Yes.

20 Q What pictures did you take then? How many were they in number? A At that time there was eight.

Q Eight in number. And on September 24 you charged him the sum of \$25 for a picture of the cervical region, axis and atlas, a lateral view. How many pictures were there there? A There were four.

Q On October 12 you made a charge of \$25 for a lateral spine and hip. How many pictures? A Four.

30 Q That is eight and four and four; that is sixteen pictures? A Yes.

Q Can you tell us where the remaining six pictures are, Mr. Herdling? A I cannot.

Q Do you remember taking some pictures in connection with the Public Service accident of Mrs. Bennett? A I do.

Q Do you remember sending a bill to the Public Service dated October 1, 1928, for \$30?

A Twenty dollars, I believe.

40 Q You sent that to the Public Service, did you not? A Yes.

Charles F. Baker, direct.

Q Have you the pictures that you took at that time? A No.

Q To whom did you give these pictures?
A To Mrs. Bennett to take down to Dr. Goldstein and Dr. Van Ness.

Q How many pictures did you take of her at that time? A Four. 10

Q And as far as you know they were delivered by you to Mrs. Bennett? A Yes.

CHARLES F. BAKER, sworn in behalf of the plaintiffs.

Direct examination by Mr. Munsick.

Q Dr. Baker, you are a practicing physician in the City of Newark? A I am. 20

Q You have been for how long? A Twenty-six years.

Q You have made a specialty of X-ray work? A Yes, sir.

Q For how long? A Fourteen years.

Q Did you take some pictures of Mrs. Annie Bennett? A I did.

Q Do you recall when? A November 1, 1927. 30

Q I show you a batch of pictures here and ask you if you can identify those as of Mrs. Bennett? A Yes, sir. These are the ones taken on November 1, 1927, the only time I examined her.

Q What part or parts of the body do they cover? A They include the entire spine, the entire skull and a shoulder. I will tell you which shoulder in just a moment. The right shoulder. 40

Charles F. Baker, direct.

Mr. Munsick: Shall we mark these the same way?

The Witness: There are two of the right shoulder.

10 (The X-rays referred to were received in evidence and marked Exhibits P. 13 and P. 14 respectively.)

The Witness: Four of the skull.

(The X-rays referred to were received in evidence and marked Exhibits P. 15, P. 16, P. 17 and P. 18 respectively.)

The Witness: Two of the neck.

(The X-rays referred to were received in evidence and marked Exhibits P. 19 and P. 20.)

20 The Witness: Two lateral spines.

(The X-rays referred to are received in evidence and marked Exhibits P. 21 and P. 22 respectively.)

By the Court.

Q Which side, doctor? A Well, taken through the side, I can't tell from which side it was taken by looking at the plates.

30 Q Just let the doctor see those last two.
A Taken from right to left; and four of the remainder of the spine and pelvis, antero-posterior, front to back.

(The X-rays referred to are received in evidence and marked Exhibits P. 23, P. 24, P. 25 and P. 26 respectively.)

Charles F. Baker, direct.

By Mr. Munsick.

Q Have you read those plates, Dr. Baker?

A Yes, sir. I have read them. I have seen them many times since.

Q Did you find any evidence of injury on those films? A Yes, sir. 10

Q What? A I found deposits of calcium between the eleventh and twelfth dorsal vertebrae, apparently in the disc or in the space between the bodies of these two vertebrae, and I found deposits of new bone around the margins of the right sacro-iliac joint in the pelvis. There was also a cloudiness of that joint, which suggests that there is an abnormal condition present.

Q Would either of the conditions which you have described be likely to give pain over any length of time? A Yes, sir. 20

Q One more than the other? A The sacro-iliac condition should be painful over a long period of time. The exact degree of the injury at the lower dorsal spine could not be stated because the changes were not definite enough. There were simply some deposits there which are not present in a normal patient.

Q What, in your opinion, caused those deposits? A I think they were due to an injury. 30

Q And the pain in the sacro-iliac joint, which you have mentioned, would manifest itself where? A About the joint and downward into the thigh.

By the Court.

Q Are they sufficient to cause any disability?

A The deposits themselves would not cause disability because they don't impinge against any articular surface of another bone, but they 40

Dora Williams, direct.

indicate that there must have been an injury, probably to the attachments of the ligaments that join the two surfaces together.

Mr. Munsick: That is all, doctor.

Mr. Gilhooly: No cross examination.

10

DORA WILLIAMS, sworn in behalf of the plaintiffs.

Direct examination by Mr. Munsick.

Q Mrs. Williams, where do you live? A 78 Barclay street, Newark.

Q Do you know Mrs. Bennett? A Yes, sir.

20 Q Have you seen her in the last two or three months? A Yes, I just left her.

Q Have you been at her house? A I just left her.

Q I mean during the last two or three months. A Yes.

Q For what purpose? A To take care of her.

Q When did you go there? A Went there every day.

30 Q I mean when did you first go there? A Fifteenth of October; fifteenth of October.

Q Fifteenth of October? A Yes, sir.

By the Court.

Q What year? A 1928.

By Mr. Munsick.

Q Have you been there since? A Yes.

40 Q How often? A I go every day.

Dora Williams, direct.

Q What have you done there? A I wash, I iron, I take care of the children, and I take care of her.

Q During that time where has Mrs. Bennett been? A In the bed.

Q Has she been up? A No, sir. She is not able to get up. 10

Q Do you feed her? A Yes, sir.

Q Do you personally wash her and attend to her? A I personally wash her and take care of her.

Q You have submitted a bill, have you not? A Yes.

Q How do you work out these figures? A How do I work it out? Six dollars a day.

Q Have you had any money from Mrs. Bennett? A No, sir. 20

Q None at all? A All in these months I haven't had any. She hasn't any to give.

Q Is this the bill that you handed in? A This is the bill.

Q The total of the bill is \$348? A That is the total.

Q That is based on six dollars a day? A Yes, sir.

Q How long has your day been in her house? A I stay there till five, from about half-past seven till five in the afternoon. 30

Q Half-past seven in the morning? A Yes, until five in the afternoon, and some days of course I stay until bedtime when she is really bad off.

Mr. Munsick: I offer the bill in evidence.
(The paper referred to is received in evidence and marked Exhibit P. 27.)

Dora Williams, cross.

Q Have you also in addition to what you have described supplied her with a bed pan? A Yes, I supplied her with a bed pan and I have to give enema. She can't pass anything.

Cross examination by Mr. Gilhooly.

10

Q I understand you have been there since October 15, 1928? A Yes.

Q Has she been out of bed since that time? A No, she has not been out of bed.

Q How long have you known Mrs. Bennett? A I know Mrs. Bennett about seven or eight years.

Q Do you know when she took to bed? A Do I know when she took to bed?

20

Q Yes. A I know when she took to bed; she took to bed about two days, I guess, before I went there.

Q That would be on October 13? A Yes.

Q Why do you say that she took to bed then? A The girl came and told me her mother had been in the bed two days when she came for me.

30

Q Did you visit her very frequently between 1925 and 1928? A Well, I was not in Newark all that time. I moved out to Vaux Hall.

Q You didn't visit her during that time? A No, not from the time of 1925 until 1928.

Q You don't know anything about her personally during that time, do you? A I don't know nothing about when she got hurt because I wasn't there. I was in Vaux Hall.

Q Did she ever get out of bed at any time between October 15, 1928, and the present time?

40

A No, she hasn't been out unless we just take her off to fix her bed; we has to take her out.

Anna Madeline Bennett, direct.

Q She has a telephone in her room, hasn't she? A Yes, there is a telephone by her bed.

Q Where is the telephone located? A Sitting by her bed.

Q She has used the telephone, has she not? A She hasn't used the telephone when I am there. I use the telephone for her. 10

Q You mean to tell me that she has never used the telephone? A I couldn't tell you about that. She hasn't used the telephone while I am there. The girl uses it and John and I.

Q Didn't you ever see her use the telephone in all the time you have been there? A No.

Q You usually charge four dollars a day when you go out, don't you? A When I do washing and ironing I get four dollars a day, and when I take care of the sick I get six dollars a day. 20

Q Are you not the Mrs. Williams who broke her arm? Did you ever break your arm? A Broke who arm? I never broke no limbs of mine at all.

ANNA MADELINE BENNETT, sworn for the plaintiffs. 30

Direct examination by Mr. Munsick.

Q Anna, you are Mrs. Bennett's daughter, are you not? A Yes.

Q How old are you? A Sixteen.

Q You are living with your mother at twenty-four Waverly avenue? A Yes, sir.

Q Do you go to school ordinarily? A Yes, sir. 40

Christine Evans, direct.

Q Have you been to school the last two or three months? A No, I haven't.

Q What have you been doing? A I had to take care of my little brothers while my mother was sick.

10 Q Can you speak a little louder? A I had to mind my little brothers while my mother was sick.

Q How long have you been doing that? A About three months.

Q Where has your mother been during that time? A In bed.

Q What? A In bed.

Q Have you been around most of the time? A Yes, I have.

20 Q Hasn't she been out of bed during the time that you have been staying home to take care of your brothers? A No, she has not.

Q Has Mrs. Williams been there? A Yes, she has.

Q How long? A Since my mother got hurt, the last three months. I say during the last three months she has been there every day.

Q Mrs. Williams has? A Yes.

Mr. Munsick: All right. Go ahead.

30 Mr. Gilhooly: No questions.

CHRISTINE EVANS, sworn in behalf of the plaintiffs.

Direct examination by Mr. Munsick.

40 Q Where do you live, Mrs. Evans? A 12 Spruce street.

Christine Evans, direct.

Q Did you live there in 1925? A I just moved there in 1925.

Q You moved there in 1925? A Yes.

Q Do you know Mrs. Annie Bennett? A Yes.

Q Does she live near you? A Next door.

Q Did you see her occasionally when she lived there? A Yes, sir. 10

Q How often? A Every day I seen her.

Q You saw her every day? A Yes.

Q Do you remember how long she lived there? A I think she moved in about a year after I moved there.

Q That would have been about when? A About 1926.

Q About what month? A 1926 about.

Q I mean, do you recollect the month? A I know it was before Thanksgiving sometime; I don't know exactly when. 20

Q Now, while you were seeing her every day did she appear to have any illness? A She was in bed part of the time.

Q How often? A Mostly all the time.

Q Did you help her? A Yes.

Q What did you do? A I hung up her clothes for her and done odds and ends around the house. 30

Q I can't hear you. A I hung up the washing for her and done odds and ends around the house that I could.

Q Have you any idea how much of the time she was in bed? A Every time I seen her she was in and out of bed.

Q Did she give any outward indication, something you could see, as to what was the matter? A Yes. I know she was sick.

Q Did it show from the outside so that you could see? A Well, I didn't know her 40

Christine Evans, cross.

before the accident, so of course I couldn't take that. I knew she wasn't able to get around and walk very well.

Q You could tell that? A Could I tell that? She would have to hold onto chairs and such like, walking out to the kitchen.

10 Q What was the condition of her home? A It was in pretty bad order.

Cross examination by Mr. Gilhooly.

Q Mrs. Evans, how long did you live at 127 Spruce street? A I am still there.

Q You are still there? A Yes.

Q Now, the man next door to you is a man named Steinreich, isn't it? A No. That is the landlord.

20 Q Do you remember, in October, 1926, Mrs. Bennett having an accident by reason of somebody next door throwing something out of the window? A No, sir.

Q You never heard of that suit? A No, sir.

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

Q Do you know Mr. Okin, a painter? A Yes.

30 Q Didn't you know, Mrs. Evans, that Mrs. Bennett is suing Okin and Steinreich? A I did not.

Q You never have talked to her about that? A No.

Q Did you see her go out on the street during the time that she lived there? A No.

Q You never saw her out on the street? A No.

Q So the only times you made any observations of her were when she was in her home?

40 A In her home, yes.

Wiley R. Deal, direct.

Q Did she ever hang up any clothes in your presence, and things like that? A Did she? No.

WILEY R. DEAL, sworn in behalf of the plaintiffs. 10

Direct examination by Mr. Munsick.

Q Are you a minister, Dr. Deal? A I am.

Q What faith? A Clinton avenue Baptist Church.

Q How long have you been there? A Since May 1 a year ago. This coming May it will be two years.

20

By the Court.

Q That is 1927, then, since May 1, 1927? A Yes.

By Mr. Munsick.

Q Do you know Mrs. Annie Bennett? A I do.

Q How long have you known her? A Well, I came acquainted with her soon after I became pastor of the church, perhaps a month or two after I became pastor of the church. 30

Q Did she attend your church? A She has attended some, yes. Her boys attend quite regularly.

Q Have you ever visited her in her home? A I have.

Q Do you know how often? A Well, I couldn't say how many times, but for the last 40

Wiley R. Deal, cross.

several months I have been there every week or two.

10 Q During those times when you visited her where was she? A Well, I can't give the exact date, but I am quite sure that since before Thanksgiving, since in October, that I have always found her in bed, and I have found her in bed before that when I have visited her on occasions.

Q Have your visits been any more numerous recently than they were before? A I don't understand you.

Q Have your visits been very frequent recently? A Oh, yes. The last two or three months they have been much more frequent.

20 *Cross examination by Mr. Gilhooly.*

Q Doctor, have you seen Mrs. Bennett on the street at any time since you became acquainted with her? A I have seen her. I don't think I have seen her on the street. I have seen her in the church I think twice since I have been there, perhaps three times.

30 Q Can you tell me approximately at the time you saw her? A The impression she made?

Q No; when? A Well, it has been—I am satisfied it has been perhaps ten months ago since I have seen her in church.

By the Court.

40 Q That is the most recent time? A Yes. I am not positive, but I know it has been—I know I haven't seen her since June. I don't think I have seen her since June of last year in the church.

Robert E. Humphreys, direct.

By Mr. Gilhooly.

Q During the past two months you visited her at her home? A Yes.

Q Did she have a telephone alongside of her bed when you were there, doctor? A She does now, yes.

Q Have you ever heard her talk over the 'phone to anyone? A Yes. 10

Q Very frequently? A No. I think twice only.

Q She had no difficulty in using the 'phone, as far as you could see? A Well, she could talk. Of course she talked in a nervous strain, but I had no special difficulty in understanding her.

Q She could hold the receiver to her ear? A I have never seen her do that. I have talked to her over the telephone. 20

By the Court.

Q That is, those calls were to you? A Yes.

ROBERT E. HUMPHREYS, sworn in behalf of the plaintiffs. 30

Direct examination by Mr. Munsiek.

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

Q You have been for how long? A Since 1912.

Q Are you connected with any institutions? A I am the chief surgeon of the New Jersey Orthopedic Hospital. 40

Robert E. Humphreys, direct.

Q Will you tell us what orthopedic means, and what it deals with?

Mr. Gilhooly: I will admit Dr. Humphreys' qualifications.

10 Mr. Munsick: I would like to have them.

A Orthopedic means really straightening children. It is derived from the Greek; ortho, straight, and pais meaning the child; and not ortho, straight, and pedis meaning foot. Most people think orthopedic means crooked feet. It doesn't. It has now come to mean the treatment of any kind of crippled condition.

Q Do you know the plaintiff, Annie Bennett?

A Yes, sir.

20 Q Do you recall when you saw her? A No, sir, I cannot.

Q Have you examined the X-ray plates taken of Mrs. Bennett? A Yes, sir.

Q Did you find any evidence of injury? A Yes.

Q What is it, doctor? A There is a crushing of the eleventh dorsal vertebrae.

30 Q Can you show us on the screen? A This X-ray, which is a lateral X-ray of the spine, shows, in my estimation, very distinctly that there is something the matter with this particular vertebrae.

By the Court.

40 Q I didn't get that number. A That is this particular vertebrae, the eleventh. If you will notice all of these vertebrae are square with the exception of this one. You see a wedging of that vertebrae; that is, if these lines were drawn out they would come to a point, and that is

Robert E. Humphreys, cross.

abnormal. The spacing between the vertebrae are about the same. If it was caused by disease this spacing, the disease would probably affect the spacing instead of the vertebrae. As it is it is a crushing of the vertebrae itself. There is definitely a wedging of that vertebrae; X-ray P. 22. P. 21 also shows the same condition of this vertebrae, wedging of the vertebrae. 10

Q Is that also a lateral view? A That is also a lateral view. That wouldn't be shown distinctly in an antero-posterior view of the spine.

By Mr. Munsick.

Q Dr. Humphreys, what does that indicate? What source might that come from? A Well, it must come from an injury of some kind, I should say. 20

Q Including a fall? A Well, a fall would be a common cause of injury. It would be the most common cause of injury.

Cross examination by Mr. Gilhooly.

Q Dr. Humphreys, are you acquainted with Dr. Baker of Newark? A Yes. 30

Q And he is considered to be probably one of the best known men in these parts, isn't he? A Yes.

Q You think very highly of his opinion, do you not, doctor? A Yes.

Q Dr. Baker says the X-rays to which you have referred show deposits between the vertebrae of which you have spoken. A Yes, sir.

Q And not a crushing. Do you disagree with Dr. Baker? 40

Motion for a Non-suit.

The Court: Oh, no, he does not say that.

Mr. Gilhooly: He does not call it a crushing.

The Court: No. He did not say it was not a crushing.

- 10 Q He says that there is a deposit between there. Do you disagree with that? A No, sir.
 Q You do not disagree with it? A No, sir.
 Q But you do agree that there is a deposit there? A Yes, sir.

Plaintiffs rest reserving the right to introduce further medical testimony.

- 20 Defendants' counsel moves for a non-suit on the ground of contributory negligence.

- 30 The Court: I think in this case the subject of contributory negligence is one for the jury and not for the Court. It is true that she knew of this condition before, from her own testimony. It is true that she had another stairway which she could have used, the back stairway, but she had the right to use the front stairway, and upon this occasion there seems to have been a peculiar circumstance; namely, the fact that her baby was downstairs in a baby carriage and she heard the baby crying and was going downstairs and using these particular stairs, it may be assumed, in order to get quickly to her crying baby. I think that all the circumstances have to be taken into consideration on the subject of contributory negligence, and where there are circumstances at all which bear upon that subject and where it does not lead irresistibly to
- 40

Thomas P. Sheerin, direct.

the conclusion that there must have been contributory negligence, that question is always for the jury and not for the Court.

That being the view of the Court the motion will be denied.

Defendants' counsel prays an exception to this ruling of the Court. 10

Exception noted as ground of appeal.

THOMAS P. SHEERIN, a witness sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Officer, you are connected with the Newark Police Department, are you not? A Yes. 20

Q You have been for how long? A Eleven and a half years.

Q Are you acquainted with Mrs. Annie Bennett, the woman who testified here? A I am.

Q You saw her when she testified in court? A I did.

Q That is the Annie Bennett to whom you have reference, is that right? A Yes.

Q How did you come to get acquainted with Mrs. Bennett? A About five years ago her son, standing with a bicycle, was backed into by an automobile at Bank and Broad street where I was working. 30

Q Were you doing traffic duty at that point? A Yes, sir.

Q Please go on with the story. A So I exchanged names and addresses with them. The boy was apparently unhurt, was nothing much to do. On the following morning I was told that the boy was very sick; he was in bed. 40

Thomas P. Sheerin, direct.

Mr. Munsick: If your Honor please, I object to that.

Q Tell us your relations with Annie Bennett.

10 The Court: Do you think it is proper to give the details of something that occurred five years ago?

Mr. Gilhooly: I just want to bring out how he came to be acquainted.

Q She consulted you about an accident that happened to her son, is that right? A She did.

20 Q That is all on that subject. Now, officer, did you have occasion to see Mrs. Bennett thereafter? A Yes, sir.

Q Where and when? A Well, over the period of five years approximately twenty-five or thirty times.

Q Now, starting from July, 1925, do you recall whether you saw her subsequent to that time? A What do you mean? Before that time?

Q No, after July, 1925. A Oh, yes.

30 Q About how many times would you say you saw her since July, 1925? A About ten times.

Q Where did you see her? A She was both to Bank and Broad streets and my home at 785 South Fifteenth street.

Q About the occasions that you met her on Bank and Broad street, did she talk to you then? A Yes. The last time she talked quite a while.

40 Q At her other visits did she talk to you? A Yes.

Thomas P. Sheerin, direct.

Q Did she discuss her son's case with you?

A Yes, sir.

Q Now, where would these interviews be held? A Where were they held?

Q Yes. A Well, outside of one time in my home, the others were all at Bank and Broad street in the center of the street. 10

Q Were you on duty at that time? A Yes.

Q Were you directing traffic while she was talking to you? A Yes, sir.

Q Do you stand in a stationary position when you are directing traffic? A No, sir.

Q Do you move back and forth? A Yes, sir.

Q Did she move with you? A Yes, sir.

Q Were you able to observe her general physical condition? A Yes. 20

Q Did she walk with a limp? A No, sir.

Q Did she manifest any expression of pain during your interviews with her? A No, sir.

Q When was the last time that you recall that she interviewed you, officer? A Latter part of May, 1928.

Q What, if any, conversation did you have with her at that time? A Well, she done most of the talking. About twenty minutes she was there. She went away and came back and talked with me for about five minutes more. 30

Q Did she say anything about her ability to dodge traffic? A Yes.

Q What did she say as to that? A In the meantime after the first visit she had called up a lawyer and I had been talking to the lawyer after she left me.

Q Never mind that. Tell us the conversation you had with her. A Why, it is hard to tell. 40

Thomas P. Sheerin, cross.

Well, all I told her, that she said to me, "Did you tell my lawyer that I nearly got run over?"

Mr. Munsick: I object to this.

Mr. Gilhooly: This is her conversation.

10 A (Continuing—“that I nearly got run over.” I said “Yes.” I didn’t say it that way. I stated that “You almost got run over.” She said, “I am fully able to take care of myself as you are.”

Q Is that the last time that she interviewed you? A Yes. At that time I told her that it was the report of the accident at headquarters, if she wanted to subpoena me to headquarters, and her place was on the sidewalk.

20 *Cross examination by Mr. Munsick.*

Q She came to see you with reference to her son? A Yes.

Q The last time she saw you of course she came out into the street after you? A Yes.

Q You don’t mean that you and she walked up and down together? A She crossed the rails one or two times when I go over on the other side and direct traffic. I would go over
30 to this side which is nearest the safety aisle.

Q But you and she didn’t walk up and down together in the middle of Broad street, did you? A Yes. She crossed over the tracks a couple of times.

Q Yes, to get to where you were? A Yes.

Q To talk to you? A Yes.

Q But you and she didn’t parade up and down in the center of Broad street together, did you? A By the center of Broad street—I
40 would be standing on the westbound side of

Carl R. Keppler, direct.

the tracks, cross over and stop traffic on the eastbound, and she would cross over to that side; and then after I got things straightened out there I came back. That happened maybe once or twice.

Q When she left you she left you and you took care of your traffic? A Yes. 10

CARL R. KEPPLER, sworn in behalf of plaintiffs.

Direct examination by Mr. Munsick.

Q Dr. Keppler, you are a practicing physician in the State of New Jersey? A I am. 20

Q You have been for how long? A I have been practicing physician for thirty years. 20

Q Have you specialized in any branches of the science of medicine? A Orthopedic surgery.

Q Anything else? A Well, in X-ray work with orthopedic surgery.

Q For how long have you been engaged in practice? A Since 1901.

Q Are you connected with any institutions, doctor? A You see I was practicing in New York from 1901 to 1915, and at that time I was connected with Vanderbilt Clinic Orthopedic Department, Ruptured and Crippled Hospital, Beth Israel Hospital, Mt. Sinai Hospital. I have been professor of Orthopedic Surgery in Fordham, connected with Fordham Hospital and Harlem Hospital. I have been in New Jersey since 1915. I have had hospitals in Elizabeth, Morristown, Sommerville, Passaic, and here in Newark, connected with the City Hospital, City 30 40

Carl R. Keppler, direct.

Dispensary, St. Barnabas and others; also am the Advisory Physician for the State Elks' Association, Crippled Kiddies Work for the State of New Jersey.

10 Q When you say orthopedic, do you refer to bones generally? A To crippled conditions. You asked me about X-ray. I put up the first X-ray apparatus in the United States with Dr. Carl Beck back in 1894 in New York. I also worked with Dr. I. S. Hirsh, perfected myself in X-ray work with my orthopedic work; and also with others.

Q Do you know the plaintiff Annie Bennett?

A I do.

20 Q Do you recall when you first saw her? A I can say about May. I can refresh my memory from the card, May 3, 1928.

By Mr. Gilhooly.

Q Doctor, do you find it necessary to refer to that memorandum? A Just to get the correct date.

30 Q You don't need it any further than that? A If I am asked questions of May I would rather look at this card because I couldn't tell you definitely what the different symptoms were.

Q Can you testify from your own recollection or do you have to refer to the memorandum? A To make it perfectly sure I would like to testify from this memorandum.

40 Mr. Gilhooly: I object to the use of the memorandum. I think we ought to have his recollection. He may refresh his recollection by the memorandum and then testify.

Carl R. Keppler, direct.

The Court: He does not mean by that that he is going to read the card.

Mr. Gilhooly: I thought probably he was.

The Witness: Oh, no, no.

By Mr. Munsick.

10

Q You said it was May. Where did you find her, doctor? A She came to my office.

Q Did you examine her? A Yes.

Q What did you find her condition to be at that time? A I found her condition to be one of extreme—

Mr. Gilhooly: If your Honor please, I object to the question on the ground they have not established any casual connection between the injuries and her condition in May, 1928, and Dr. Greenbaum, who was the attending physician, did not give us any particular evidence of any injury. He treated her up until some time around October. Now, until they establish some casual connection between her injuries at the time of the accident and the present date, I don't think the evidence is admissible.

20

The Court: I think her own testimony is sufficient to entitle them to show her condition at the various times, because as I understand her own testimony it has been practically a continuing condition, being better at some times and worse at other times. True she has had the other accident which you mentioned, in the meantime, but as I suggested before when you objected to the X-rays, that the extent of that accident according to her testimony seems to have been

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Carl R. Keppler, direct.

an injury to the knee and to the elbow, which does not appear to have been connected in any way with the condition of which she now complains. So I will overrule the objection and an exception to that ruling may be noted as ground of appeal.

10 (The last question was read by the stenographer as follows: "What did you find her condition to be at that time?")

A I found her condition to be one of nervous disorder affecting her entire structure, affecting her posture, affecting her gait and affecting the strength of her lower limbs. To be a little more concise, may I now look at this card?

20 Mr. Gilhooly: Yes, yes.

A (Continuing.) Thank you. There was a complete spinal curvature. This is in May, 1928. She had over the lumbar and lower dorsal region painful areas to the touch, definitely, at times, localized. The head she had tilted to one side, and that was a point which I noted, as well as her shoulder, but her right pelvis was thrown up on the same side causing this peculiar and extreme—

30

By Mr. Gilhooly.

Q May I interrupt? Are you referring to your physical examination or X-rays? A Physical examination entirely. You see I had her stripped for the examination. With a tilting upward the right pelvis, drawing her whole body over to the right side lowering her right shoulder and shortening the right leg so that

40

in walking she had a distinct limp at that time,

Carl R. Keppler, direct.

throwing her body over to the right. I tried to correct this myself, but it was a fixed condition in the spinal column. There was an ankle clonus at that time, which means a peculiar disturbed nervous condition of the lower limbs. As you pushed the feet up they shake in this manner instead of coming to placidly as they do in the normal person. This was in both feet. She had a tender abdomen which was flacid, and a quivering of the muscles of both lower limbs, slightly so of the entire body. 10

Q Did you make a recommendation to her for treatment? A I did. I recommended another X-ray and I recommended a plaster paris jacket under a slight stretch of the spine.

Q Did you examine her again? A I did.

Q When was that? A January 8, 1929. 20

Q Where did you examine her at that time?

A That was at her home.

Q What did your examination consist of? A She was lying in bed. She couldn't sit up. She couldn't get up. She was apparently in extreme exhaustion. I examined her first to see if there was a hysterical tendency, and as much as I could make it from the nose test, from the finger test, from the pupillary reaction, from the tongue test there was no evidence of hysteria. From her mid-trunk down the woman was and is paralyzed. 30

By the Court.

Q Can you indicate on yourself, doctor? A Yes. From what we call about the 11th dorsal vertebrae just at the end of the ribs and through this way, and a little lower over the abdomen.

Q What we call the waist line? A The waist line. The pulse at that time was 86. The 40

Carl R. Keppler, direct.

heart was regular. This was on January 8th. Both legs were in complete spastic scissors adduction spasm or paralysis, but if you tried to separate them they would snap together. In other words, a spastic paralysis was and is present of both lower limbs at the present time. 10 The feet are both down in spastic equinus. There is only in the right foot a very faint plantar reflex over which she has absolutely no control.

By Mr. Munsick.

Q What kind of reflex? A Plantar reflex. That is, when you irritate the plantar fascia of the lower part of the foot, there is a slight amount of contraction. In this case I wouldn't 20 call that Babinski as we do, but it is irregular. She has absolutely no control over this plantar reflex in the right foot. In the left foot there is none at all. There is a complete spastic paralysis. There is anaesthesia as far as I could determine to heat and cold, superficial heat, and there is not only a motor but also a sensory disturbance of extreme amount—

By the Court.

30 Q I didn't get the last part of your answer. A Anaesthesia to heat and cold and to deep superficial irritation appears to be complete in both lower limbs.

Q That is you mean there is no response? A She couldn't determine the difference between heat and cold. I tried it with test tubes, cold water and hot water. She couldn't tell me which was which.

40 Q Did you try the pricking test? A I tried the prick test and the tap test. She couldn't

Carl R. Keppler, direct.

locate any spot at all nor was there any contraction of muscles.

Q How deep was the pricking? A The pricking was with this (indicating). I use a nail file and definitely press in with the point of that, oh, I would say about a sixteenth of an inch.

10

By Mr. Munsick.

Q And you had no reaction? A No reaction at all. The tilting of the body, the pelvis tilted upward spastically, and the right shoulder downward, was the same of not more than when I saw her in May. There was no possibility of drawing the legs up, as I said before. She couldn't do it. She apparently tried, and I tried again, and again I got this same fixed spastic adduction spasm called the scissors spasm of a spastic paralysis. There was also distinct tenderness with an apparent knuckling at the 11th dorsal vertebrae.

20

Q An apparent what, doctor? A Knuckling, slight distortion of the spinal column called the vertebral column.

Q Is there any doubt in your mind as to the paralysis? A None at all.

Q How much of an area did you cover with your pricking operations? A From the waist line all the way down to the feet posterior and anterior every spot that I could think of.

30

Q I think you said her pulse was 86. What would that indicate? A That she was in a normal mental state.

Q What is the probable course of the present condition in the future? A Since I saw her on January 8th she became worse physically generally.

40

Carl R. Keppler, direct.

By the Court.

Q You saw her later than that, then? A Yes, I have seen her several times, because they called me about four days later very much excited, and I went over, although I don't like to
10 make calls, because they begged me for help and said they were alone. At that time her pulse was 150 odd. She was nearly in Cheyne-Stokes respiration which is (illustrating), and that passing away and then stopping again. So I immediately administered camphorated oil, gave her digitalis, upon which she started to improve, and we have been feeding her with those drugs with broths of the highest types, with wines, and she is improving in the last few days.

20 Q What is your prognosis, doctor? A Bad.

Q By that what do you mean? A I think she will die.

By Mr. Munsick.

Q Can you designate this specific paralysis with any particular name? A Yes, it is of the order of a transverse myelitis, traumatic, according to the history of course.

30 Mr. Gilhooly: I must object to that because I don't think that he can make any prognosis upon the history because it is based on hearsay, what has been told to him. He has not been called there for treatment.

Mr. Munsick: He was originally.

By the Court.

40 Q Is that so? A I was called for treatment in May.

Carl R. Keppler, direct.

Mr. Gilhooly: May I cross examine him on that?

The Court: Yes.

By Mr. Gilhooly.

Q Doctor, didn't I understand you to say 10
that you made certain recommendations to Mrs.
Bennett? A Yes.

Q Did you follow up those recommendations?
A She didn't come back.

Q With respect to an X-ray you don't know
whether any was taken pursuant to your in-
structions, do you? A I have seen X-rays
taken apparently relative to my instructions.

Q They were taken a long time after? A 20
I think in September.

Mr. Gilhooly: I respectfully submit that
he did not treat the patient and anything
that she told him is hearsay.

The Court: Of course if the doctor was
consulted simply for the purpose of testify-
ing he is not entitled to testify to the his-
tory if he founded his opinions upon the
history, but a doctor who is called here and
is called for treatment may consider the 30
history, may he not?

Mr. Gilhooly. I grant that, your Honor,
but I think it is quite patent that that was
not the case here because she did not go
along with his treatments.

The Court: I understood the doctor to
say regardless of what took place in May
that in January, on January 8, and since
that time he has been treating this patient. 40

Carl R. Keppler, direct.

By the Court.

Q Is that correct? A Correct, your Honor.

10 Mr. Gilhooly: I understood him to say that he merely gave restoratives. He did not try to treat this condition of which it is complained this paralysis. He is not called upon for that purpose.

By the Court.

20 Q What is the fact about that? A The woman is in no condition at the present time, or was not, except to treat her for her general conditions. Terrible breaking down of her general health; and that is all I have done at the present time; but in May she was referred to me for treatment.

The Court: Of course, if there be any doubt about it, Mr. Munsick, I will assume with the doctor's general qualifications it could be covered with a hypothetical question.

Mr. Munsick: I will do that anyhow.

30 *By Mr. Munsick.*

Q Have you examined the X-rays of Mr. Bennett, Dr. Keppler? A Yes.

40 Mr. Gilhooly: I suppose we are going to lead up to the same results, and I will withdraw my objection. He may testify what he was going to say, because I would presume it would lead to the same thing. I don't want to take the time of the Court. I will withdraw my objection.

Carl R. Keppler, direct.

The Court: The objection is withdrawn.

By Mr. Munsick.

Q Did you find any evidence of injury in the plates, the pictures? A Yes.

Q What did you find? A I found an erosion of the space between the 11th and 12th dorsal vertebrae. Again I will have to look at my slip; is that all right? This was in the lateral position; that is, the X-ray taken in the lateral position, both of Dr. Herdling's and of Dr. Baker's, the two X-rays. The lower surface of the body of the 11th dorsal vertebrae was distinctly eroded, and the upper surface of the body of the 12th with a decrease of the invertebral space; and also an erosion of the lower surface of the 12th dorsal vertebrae, not as distinct as that between the 11th and 12th, but there was a distinct destructive condition between the 11th and 12th. There is also in Dr. Baker's X-ray a peculiar increased separation between the 4th and 5th lumbar vertebrae and between the 5th and the sacrum with an apparent distortion of the opposing surface of the 5th lumbar and the sacrum closely resembling a spondylolisthesis as we call it.

By the Court.

Q And in plain English that means what? A It means a dislocation of the sacrum backward upon the spine, a fixed, usually post-traumatic condition from the tearing of the ligaments between the vertebrae. Now, the antero-posterior, which means front pictures, of both men, in the cervical region, cervical-dorsal, rather, there is a marked twist, which is unnatural and which is fixed, between the last cervical and the first dorsal vertebrae.

Carl R. Keppler, direct.

Q Now, in order that we may understand just where this is, the spinal column is diverted into what named vertebrae? A The cervical.

Q How many of them are there? A Seven.

Q And then the dorsal? A And then the dorsal, of which there are twelve.

10 Q Then? A The lumbar, of which there are five.

Q And then? A And the sacrum, which is in the pelvis. It is between the last cervical vertebrae or at the last cervical vertebrae—that is the neck vertebrae—and the first, there is this distinct kinking with a twisting in there of the entire cervical portion on to the dorsal. This is to the right. Then there is a marked curvature to the left of the entire dorsal spine, 20 an extreme tilting downward to the right of the shoulder girdle, and lower down a marked curvature of the lumbar spine to the left—that is, to the opposite side from the dorsal with a compensatory fixed tilting, as we call it, compensation, fixed tilting upward to the pelvis to the right and downward to the left so as to compensate that bending of the lumbar. And there is a destruction, a partial destruction of the second and third lumbar, not dorsal but lumbar, inter- 30 vertebral spaces. That is between the second and third lumbar vertebrae, I mean, that space, especially on its right side where there appears to be an arthritic change.

By Mr. Munsick.

Q Well, now, doctor, all that you found there is not evidence of injury, is it? A I beg your pardon?

Q Are all these descriptions that you have 40 given us of what you found—that is not evidence

Carl R. Keppler, direct.

of an injury, is it? A The evidence of injury would be the condition between the 11th and 12th dorsal vertebrae. The others are of course, from the physical examination and from the X-ray, might be taken to be, or would be understood to be post traumatic in character; that is, developmental.

10

Q What do you mean by that? A That is developing after the injury to the spine, and especially the injury to the nerve complex, the nervous system, the spinal cord.

Q Did you get a history of the case when Mrs. Bennett came to see you in May? A I did.

Q Before the objection was withdrawn you started to tell us something about transverse myelitis. A She told me at that time that about two and a half years ago she fell downstairs and was severely injured. That was the history she gave me at that time.

20

By the Court.

Q Two and a half years before this time? A No, before my examination in May; that she fell down and was severely injured, and since that time she has been gradually tilting forward—this is her history that she gave here—and to the right. She could not at the present time, she told me, raise the hands above the head and she cannot move her head very well. She told me that. And she suffers intense pain in the back.

30

By Mr. Munsick.

Q This was in May? A This was in May, 1928. And her right leg seems to be shorter

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Carl R. Keppler, direct.

to her and more difficult to walk on than the left.

Q You started to say something about myelitis? A Myelitis is of course—there is a transverse myelitis which is entirely pathological and develops usually more frequently in women than in men, but it follows more often a severe disturbance of the genital organs with an operation for that condition; and follows very often a very severe childbirth, not often. I mean to say it follows a very severe childbirth, or we get a history of a very severe mental shock.

By the Court.

Q By myelitis you mean a pain, doctor, or a deterioration? A No, a deterioration of the spinal cord with formation of little globules of fat or fluid in the spinal cord.

Q It is not osteomyelitis? A Not at all. I am talking of the spinal cord. Of course from an injury it would occur from the tearing either of the spinal cord itself or of the dura which covers it, with formation of globules of fat over the torn blood vessels. They break down, and then cause this beginning and increasing and more and more developing condition called myolitis.

By Mr. Munsick.

Q Why do you say, doctor, that you think she will die? A On account of the fact that she has become so much worse since I know her, on account of the fact that she now has a distinct fixed spastic paralysis of her entire lower body.

Q Will it extend or increase in any way? A It looks as though it will increase, as though

Carl R. Keppler, direct.

it will ascend, especially due to the fact that she had this heart attack which shows that the non-striated muscles of the internal organs have become involved.

Q In view of the fact that she gave you a history, what in your opinion is this condition that you described due to? 10

The Court: You mean the present condition?

Q Both in May and at the present time? A Why, I should judge it was due to this injury that she suffered two and a half years ago, since she gave me that distinct history when she came to see me. 20

Q Would the fact that she had had an injury in a trolley car and the door closed on her elbow and ankle cause you to change your opinion?

Objected to.

(Question withdrawn.)

By the Court.

Q It appears by the evidence now, doctor, that instead of the accident of falling down occurring two and a half years ago, it was three and a half years ago; would that change your opinion? A Not at all. The error may have been made, or it may have been misunderstood by me. These things are very slowly developmental. You see it has taken nearly a year for her to get as bad as she is from the time I saw her when I thought a jacket was so necessary. 30 40

Carl R. Keppler, cross.

By Mr. Munsick.

Q Did you notice any loss of function when you examined her the last time in January?

A Of both legs, yes.

10 Q Any other loss of function? A Yes, complete loss of function.

Q I believe you said the area of the paralysis extended from the 11th dorsal? A Yes.

Q Down around the waist line? A From the waist line down. I couldn't set her up, for instance, in bed. It was impossible for me to do so.

20 Q Would the fact that Mrs. Bennett had since the accident been walking around until about the middle of October, 1928, cause you to change your opinion? A No, she was at that time when she came to see me walking.

Q In May? A But I considered it severe enough to advise this jacket under a light stretch only, and some more X-rays.

Cross examination by Mr. Gilhooly.

30 Q Doctor, I understand you to say that you recommended that brace? A I recommended a jacket, a plaster of paris jacket. I was going to put it on.

Q Your recommendation was a plaster of paris jacket, is that right? A Yes.

Q Did you ever see a leather and steel jacket? A I did.

Q Is that what you recommended? A No.

40 Q So, whoever recommended that didn't follow your idea of what she required, is that right? A Whether we use a leather jacket or whether we use a plaster of paris jacket is

Carl R. Keppler, cross.

simply a matter of personal opinion. They both support the spine.

Q Your idea of plaster of paris was to get greater rigidity? A To get support for the spine.

Q Greater support? A Yes.

Q And your recommendations you found out later were not carried out? A They weren't carried out; why, yes. 10

Q Do you think that might have been responsible in some measure for her present condition? A You mean her neglect to herself, or what?

Q Her neglect to follow your recommendation might be responsible in some measure for her present condition? A You mean—I will have to answer this question because I don't know quite what you mean, whether you are questioning what the other doctor did or not. I wouldn't like to be asked that question. 20

(The last question was read by the stenographer.)

A It is not responsible for her present condition, but she may have become less affected by this time if she had followed it.

Q If she had followed your advice? A Yes. 30

Q Doctor, when you called on Mrs. Bennett in January, 1928, you found that she had a brace on her head, did you not? A January, 1929?

Q January, 1929? A No, she didn't have a brace on.

Q She didn't have any brace? A She did not.

Q Did she have a jacket on? A She did not.

Q Did you find loss of function in the arms?

A No. Yes, there is stiffness in the shoulders. 40

Carl R. Keppler, cross.

Q Not in the arms? A But not paralysis, no paralysis of the arms.

Q When you examined her in May did you find loss of function in the arms? A Not particularly, no. There was a slight stiffness of both arms. She complained of that, that she
10 could not raise them above her head.

Q Doctor, in forming your present opinion as to the cause of Mrs. Bennett's present condition, you are relying upon the truth of everything that has been told to you, isn't that true? Isn't that so? A Surely.

Q If it should appear to you, doctor, that Mrs. Bennett had told you that she had been down to Newark frequently in 1928, and walked about, did not limp, would that change your opinion in
20 any way as to her present condition and its cause? A You mean when she told me that in May? No.

Q If you had known that in January when you formed your opinion, would that have caused you to change your opinion at the present time? A No, we never can tell how quickly this will progress or how slowly it will progress.

Q Did you make inquiry when you came there in January to ascertain who had been treating
30 her in the interim between her visit to you?

Objected to as immaterial.

Objection overruled.

A I heard who had been treating her.

Q Did you hear that Dr. Holden was treating her? A Yes. I looked at the corset and looked at the chin piece and found it to be a very perfect piece of work and one that I would have used myself, but they had been removed be-
40 cause I was to examine Mrs. Bennett.

Carl R. Keppler, re-direct—re-cross.

Q Do you know if Dr. Pinneo had been treating her? A I do not.

Q Do you know of any doctor who was treating her from May until January, when you were called in so hurriedly? A The only one I heard about was Dr. Holden.

Q Dr. Holden? A Yes.

10

Re-direct examination by Mr. Munsick.

Q If she had put on the brace that you recommended, would that have permanently arrested the development of this condition? A Not at all. It would only ameliorate it and help her symptoms rather than the condition.

Q Do you know what a brace of that character costs? A I do not.

20

Q Do you know what your bills have been, Dr. Keppler? A I suppose my bill will aggregate about \$200.

Re-cross examination by Mr. Gilhooly.

Q The bill will aggregate \$200. Will you itemize that, doctor, for us? A I couldn't just at the present time. I have seen her, and I saw her last May, and I would have to have my secretary here to look up the amount, and I expect to see her some more.

30

Q You can't tell us whether that is a reasonable charge if you have to consult your secretary, can you, doctor? A You see, I would have to look up the number of visits I made, and I don't know how often I will see her from now on. I am simply making that a round sum.

40

Edward A. Schilling, direct.

By the Court.

Q I suppose what you had better do is to tell us the reasonable value of your services up to this date according to your recollection regardless of what your secretary may say. You see she is not here today. A Reasonable a hundred dollars up to date.

By Mr. Gilhooly.

Q And the other hundred dollars is for what? A Probable future work that I may do for her, which I expect to do. She has asked me to take care of her.

Q Including your appearance here today? A Pardon me?

Q Including your appearance and testifying today? A Yes.

EDWARD A. SCHILLING, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Mr. Schilling, you are a member of the New Jersey Bar? A I am.

Q You have been for how long? A Almost fifteen years, fourteen years.

Q Are you acquainted with Annie Bennett? A I am.

Q By the way, are you subpoenaed here today? A Yes, I am here by virtue of subpoena.

Q When did you first become acquainted with Mrs. Bennett? A Sometime during the year 1925, probably early in the year.

Edward A. Schilling, direct.

Q Now, after July 13, 1925, did you have occasion to see Annie Bennett? A Yes, I did.

Q In connection with what matter? A In connection with a case of her son's and herself as next friend for her son.

Q Now, subsequent to July, 1925, and in the year 1925, did Mrs. Bennett visit your office? A Yes. 10

Q I don't want you to tell any conversations you had with her, but did you observe her physical condition? Did you observe her? A I observed her.

Q Did she walk with a limp? A I never noticed any.

Q Did she ever manifest any pain? A Never.

Q During the year 1926 did you see her? A Frequently. 20

Q Did she walk with a limp during that time? A Never.

Q Did she ever manifest any pain? A Never.

Q Did you ever hear her groan or moan? A Never.

Q During the year 1927 did you see her? A Yes.

Q Can you give me any idea about the frequency of her visits to your office during 1926 and 1927? A It would be hard to say except that I would judge that I have seen her in 1925, 1926 and 1927, perhaps twenty or twenty-five times, might be thirty. I would say between twenty and thirty times. 30

Q At any time did you notice her walk with a limp? A I did not.

Q Now, then, in the year 1928, did she visit your office? A She did.

Q Do you recall when her son's case came up for trial at the last term of court? A Well, I 40

Edward A. Schilling, cross.

don't remember when it actually came up or was reached.

Q Was she present in court at any time prepared to go ahead with the trial? A She was.

Q That was in the year 1927? A I would say in December Term of 1927. Whether that carried
10 over into 1928 or not I don't know.

Q Did you represent her in the suit in the East Orange District Court against a party by the name of Maurer in 1926? A I did, yes.

Q Did she testify at that trial on behalf of her daughter? A Well, I can't say she testified, because—

Q Was she present in court? A Well, I can't answer that. I didn't actually try that case myself. She left our office to go to court. My
20 brother tried the case.

Q But she left your office? A She was in the office that morning and went to court from the office. My brother tried the case. I did not.

Q Can you tell us about the last time in 1928 that you saw her? A Yes. I would say that I saw her last very soon after Labor Day of 1928. It might have been the first week or the second week in September, but it was after Labor Day and before the opening of the September term of
30 court.

Q At that time did she walk with a limp? A I didn't notice any.

Q Did she show any manifestations of pain? A None to me.

Cross examination by Mr. Munsick.

Q There isn't any reason why she should, is there, Mr. Schilling? A No.

Q You were only interested in her son's case?
40 A I was only interested in the son's case.

Albert A. Kling, direct.

Q And the case that you mentioned is the same case that Officer Sheerin spoke about, was it not? A Yes. He was the officer on duty at the time her son was injured.

Q Where did you generally see her? A In the office.

Q So that you didn't see her walk very much, anyhow, did you? A Only I might possibly have seen her once in the hall. I generally saw her in the office. She would be seated and I might walk out and see her there and call her in and she would walk into my private office.

10

By the Court.

Q Was this case in the Orange District Court her own case or the case of her daughter? A That was the case of her daughter.

20

By Mr. Munsick.

Q In which you got a judgment? A Yes.

ALBERT A. KLING, sworn in behalf of the defendants.

30

Direct examination by Mr. Gilhooly.

Q Mr. Kling, what is your business? A Investigator for the Public Service Co-ordinated Transport.

Q Were you an investigator for the Public Service in the month of September, 1928? A I was.

Q In the course of an investigation conducted by you did you call on Mrs. Bennett? A I did.

40

Albert A. Kling, direct.

Q Where did you meet Mrs. Bennett? A At her home.

Q Where was that? A What part of her home?

Q No. Where was her home? A Oh, on Waverly avenue; I think 24 Waverly avenue.

10 Q For what purpose did you go to see Mrs. Bennett? A Why, in reference to a mishap she had on a trolley car she had on Broad and Market on September 17, if I remember rightly.

Q Of 1928? A Yes, sir.

Q When you arrived at Mrs. Bennett's home was she in bed or was she up? A She was up.

Q What was your conversation with her at that time? A Why, I obtained a statement from her relative to the accident.

20 Q What did she say to you?

Mr. Munsick: If your Honor please, unless it has something to do with our case, I do not see how it is material.

The Court: I suppose what you want to inquire about is what she said to him regarding the injuries she received at that time.

30 Mr. Gilhooly: Yes, I do. I am not trying to prove the Public Service case. We are not interested in that.

By the Court.

Q What she said to you about the injuries she had received in that accident? A She said that as the door closed on this car it struck her elbow, and if I remember rightly she said she had been treated once and expected to go to the doctor that day that I was there, which was two days
40 later.

Albert A. Kling, direct.

Q Do you remember the date? A The nineteenth, if I remember rightly.

Q The nineteenth of September? A The nineteenth.

Q Did she tell you on the seventeenth or nineteenth what her occupation was?

10

Objected to as immaterial.

(Argument.)

Q She said that she made brushes home, but she was unable to make these brushes.

Q Speak up. A But she was unable to work on these brushes since the accident due to the fact that she couldn't bend her elbow.

Q Now, when you saw her on the nineteenth, was she in bed at that time? A No, sir.

20

Q Did she tell you how long she expected her disability to last? A She didn't.

Q Did she limp as she walked around? A I didn't notice.

Q Did you see her walk? A Yes.

Q Did you notice any limp at that time? A I didn't notice any.

Q Did she manifest any expressions of pain? A Not to me.

30

Q Did she complain to you at that time of any other injuries than to her ankle and to her elbow? A She didn't.

Q And you were there for the purpose of ascertaining fully of her injuries, weren't you, for your report? A I was, in reference to our accident; yes, sir.

Q You wanted to know everything that was to be said, is that right? A Yes.

Q Did you see her after the nineteenth?

40

Albert A. Kling, cross—re-direct.

The Court: I do not think he told us that she complained of any injury to her knee.

Mr. Gilhooly: The elbow he said.

10 Mr. Stickel: I think it was elbow and ankle.

The Court: I mean ankle.

By the Court.

Q I do not think you have told us anything about that. A If I remember right, your Honor, it was only the elbow.

The Court: In your question you said ankle.

20 *By Mr. Gilhooly.*

Q Oh, you said only the elbow? A Only the elbow was mentioned.

Cross examination by Mr. Munsick.

Q The only injuries you were interested in were injuries that were occasioned by the accident in the trolley car? A That was all.

30 Q And is that your recollection, that it was on the elbow? A There was nothing about anything else.

Re-direct examination by Mr. Gilhooly.

40 Q However, Mr. Kling, she didn't say to you that she was injured in her elbow in this accident and that she had been injured elsewhere in another accident? A She didn't mention any other accident.

Martha Hackett, direct.

Q Did you ask her if she had any other accident? A I did not.

MARTHA HACKETT, sworn in behalf of the defendants. 10

Direct examination by Mr. Gilhooly.

Q Martha, where did you live in July, 1925?
A 6 Quitman street.

Q And that is next door to where Mrs. Bennett used to live? A Yes.

Q Did you know Mrs. Bennett then? A Yes, sir.

Q Did you ever talk to her at that time? A 20
Once in a while.

Q Did she ever address you or speak to you?
A Yes, she said hello.

Q Did she know who you were? A Yes.

Q Did she ever call you Martha? A Yes.

Q Do you remember hearing about an accident on July 13, 1925? A I was told by Anna.

Q By whom? A By Anna.

Q Anna Bennett? A Her daughter.

Q Do you remember when the accident happened? I mean, you remember that period when the accident happened? A Yes. 30

Q When was the first time that you saw Mrs. Bennett after this accident? A About two days later.

Q Where did you see her then? A She got out of a taxicab.

Q Where did she go? A In the house.

Q In a taxi? A No. She got out of the taxicab and went in her house. 40

Martha Hackett, direct.

Q When was the next time you saw her? A On the sixteenth.

Q Was that the next day? A Yes.

Q Where did you see her then? A She went down the front stoop.

10 Q Where did she go after she went down the front stoop? A She went down towards Clinton avenue.

Q On Quitman street? A Yes.

Q That evening when you saw her go down towards Clinton avenue, did you see Mr. Hinrichsen? A That night I saw him.

Q Where did you see him? A He came out of his car.

Q Do you know Mr. Derivaux? A Yes.

20 Q Mr. Derivaux is one of the landlords, isn't he? A Yes.

Q Did you see him there, too? A Yes.

Q Did you see any of his sisters? A I saw Mrs. Hinrichsen and another lady.

Q Where was she? A In the car.

Q Where did you see the car stop? A In front of 8 Quitman street.

30 Q Did Mr. Hinrichsen go in the house? A No. He went up the front stoop and asked for Mrs. Bennett or Mr. Bennett.

Q Did Mr. Derivaux go up, too? A No.

Q Now, were you or your sister in the East Orange District Court as witnesses in 1926? A When?

Q Did you go to the East Orange District Court as a witness in 1926? A I was supposed to, but I was sick in bed.

Q Who asked you to go? A Mrs. Bennett.

40 Q Did you see Mrs. Bennett at any time after that on the street? A After what?

Martha Hackett, cross.

Q After the date that you mention as the sixteenth? A No, I didn't.

Q When did you move from 6 Quitman street?

A In 1926.

Q And Mrs. Bennett moved in July, did she?

A Yes, sir.

Q 1925? A 1925.

10

Q Mrs. Bennett moved in July, 1925? A Yes.

Q You didn't see her thereafter? A No.

Cross examination by Mr. Munsick.

Q When did Anna Bennett tell you about the accident? A The day that it happened.

Q How old are you now? A Thirteen.

Q So that you were around ten at this time, a little less than ten. When did you first meet Mrs. Hinrichsen? A Well, she came to the house once in a while for the rent.

20

Q Mrs. Hinrichsen did? A Yes.

Q When did you first meet Mr. Hinrichsen? A When he came for the rent.

Q Is that the way you met Mr. Derivaux? A Yes.

Q Who was with them on the night of July 16? A It was Mr. Hinrichsen, Mr. Derivaux, Mrs. Hinrichsen and another lady.

30

Q Did they speak to you? A No. They went to 8 Quitman street.

Q They didn't speak to you? A No.

Q How do you fix it as July 16? A Well, I remember the date.

Q Is there any way that you can remember the date? A By a paper that was written I remember the sixteenth, and then on the paper it had the sixteenth.

40

Martha Hackett, re-direct.

Q What paper? A The paper that was shown me by Mr. Hinrichsen.

Q Mr. Hinrichsen showed you a paper with the date of July 16 on it? A Yes, after the accident.

10 Q What did he say about the paper? A He asked me if I remembered it and I said yes.

Q Was anybody with you when he showed you that paper? A My sister.

Q Anybody with him? A No.

Q What was on that paper?

Mr. Gilhooly: Do you want it? I have got it.

20 A It was on July 16 about 8:00 P. M. Mr. Hinrichsen, Mr. Derivaux, Mrs. Hinrichsen and another lady drove up in the car to 8 Quitman stree, Mr. Hinrichsen got out of the car and asked Raymond Bennett if he might see Mr. Bennett or Mrs. Bennett. Raymond replied that his mother was sick in bed, and Mr. Hinrichsen told him that he had seen Mrs. Bennett walk down Quitman street, but Raymond said that when he had last been in the house Mrs. Bennett was sick in bed.

30 Q And this paper was handed to you by Mr. Hinrichsen to be signed, wasn't it? A Yes.

Q And you signed it? A Yes.

Q And you remember it quite clearly, don't you? A Yes.

Re-direct examination by Mr. Gilhooly.

Q Now, Martha, Mr. Hinrichsen came to see you after the accident happened, didn't he?

40 A Yes.

Martha Hackett, re-direct.

Q And he asked you if you had seen Mrs. Bennett, didn't he? A Go into the house.

Q And you told him at that time? A Yes.

Q And then this paper was written up by Mr. Hinrichsen? A Yes.

Q Did you read it at the time? A Yes. He read it to us. 10

Q Was that the truth at the time you signed it? A Yes.

Q You wouldn't sign it if it wasn't the truth, would you? A No.

Q You have seen this since, haven't you? A Yes.

Q That was shown to you, wasn't it? A Yes.

Q And you refreshed your recollection from that? A Yes. 20

Q After reading this paper; do you know what I mean by refreshed? A Yes.

Q Did it call this thing back to your mind? A Yes.

Q So that what you have told us is what you know as of that time? A Yes.

Q It is not from this paper that you are testifying.

Mr. Munsick: The questions are a little leading. 30

The Court: A little, did you say?

Mr. Gilhooly: There is no question but what she saw her statement. Doctors even need statements to refresh their recollection.

(A recess is taken from one to two o'clock P. M.)

Reading Exhibit D. 2.

AFTER RECESS.

10 Mr. Munsick: If the Court please, I should have stated that it is admitted that the defendants at the time mentioned herein were the owners of the property 8 Quitman street. Is that right?

The Court: I think that was admitted.

Mr. Gilhooly: That is admitted.

Mr. Munsick: Oh, I did not know that.

20 Mr. Gilhooly: There is one who is not a party defendant who is mentioned in the caption for the case. That is Mrs. Rose Marie Larkin. She is not properly in this action; but it is admitted that all of the defendants are owners of the property.

If your Honor please, at this stage I would like to offer in evidence the file in an action pending in the Essex County Circuit Court between Annie Bennett, George Steinreich, and others, and I ask Mr. Munsick if that is the same Annie Bennett who is the plaintiff in this suit?

30 Mr. Munsick: That is the same Annie Bennett; but I do not know whether that is material. I represent her in that case.

(Discussion.)

The Court: It will be admitted.

(The folder referred to is marked Exhibit D. 2.)

The Court: You had better read those portions that you want.

40 Mr. Gilhooly: I will read the bill of complaint of an action pending in the Essex County Circuit Court.

Reading Exhibit D. 2.

The Court: I wouldn't read it all; just the portions showing the date of the accident.

Mr. Gilhooly: Plaintiff residing in the City of Newark, Annie Bennett, at the times hereinafter mentioned, the defendant George Steinreich was the owner of a certain six-family apartment house located at No. 509 Eighteenth avenue, City of Newark, Essex County, New Jersey; and the plaintiff occupied one apartment on the first floor as tenant. Along one side of the said building, running from the street rearward and separating the same from the premises adjoining was a narrow alleyway. 10

“On or about July 26, 1926, the defendant George Steinreich instructed the defendant Solomon Okin to clean out one of the upper floors of said building preparatory to painting; and likewise directed the said Solomon Okin to throw the rubbish and debris from the window of said upper floor into the said alleyway. 20

“The said Solomon Okin, agent for the defendant George Steinreich as aforesaid, did thereupon undertake to clean out the said floor, and in the course thereof did negligently and carelessly toss out a piece of oilcloth or other material as to cause the same to fall against the screen in a window of the plaintiff's apartment, causing the said screen to fall inward. 30

“Plaintiff investigated the resultant noise, and in doing so glanced upward from said window, and the said Solomon Okin, agent or servant of the said defendant George Steinreich, did negligently, carelessly, and 40

Irving Willner, direct.

improperly and with utter disregard, dump from such window a quantity of dirt and rubbish which fell upon the plaintiff's face.

10 "As a result certain particles of glass were imbedded in the plaintiff's eyes; and her eyes were otherwise filled with dust and dirt; she has sustained painful and permanent injury and loss of sight, suffering great pain and shock, and has been and will be compelled to expend considerable sums of money for medical treatment, care, attention, and treatment and examination of her eyes and for glasses. Plaintiff demands the sum of \$5,000. Donald B. Munsick, attorney for the plaintiff."

20

IRVING WILLNER, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Doctor, you are a practicing physician in the City of Newark? A I am, sir.

30 Q Your office is where? A At 18 Waverly avenue, Newark, New Jersey.

Q Did you have occasion in the year 1928 to examine Annie Bennett? A I did. I have seen her on occasions besides that. I have examined her besides that. I treated her once or twice.

40 Q Oh, you have treated her once or twice. When did you treat Mrs. Bennett, if you recall, doctor? A I couldn't recall the exact time. She lives two doors away from me, and I have seen her from time to time; treated her children. I just finished treating her husband about two weeks ago.

Irving Willner, direct.

Q Who? A Her husband, for an injured finger.

Q Doctor, did you make a particular examination of Mrs. Bennett in 1928? A I examined her on September 8, 1928, after arranging an appointment with Mr. Munsick.

Q For what purpose was that examination? 10
A For the purpose of examining her as a result of an accident which happened on July 26, 1926.

Q Did you make any inquiry, doctor, of Mrs. Bennett as to whether she had suffered any previous injury? A I was interested in the injuries to—

Q Answer yes or no. A Except to her eyes.

Q Did she say she had any previous injury? 20
A I don't recall her saying.

Q Will you look at your report and see if that refreshes your recollection? A I have on my report she denies any previous accident or injury, but that refers to the eyes, because I spoke to her only in reference to the eyes, there being a history of glass in her eye and things of that sort.

Q Did you have an opportunity of observing her generally when you made your examination? 30
A Well, she walked into my office. I examined her in the office.

Q Was she accompanied by anybody else or was she unattended? A She came alone.

Q Did you notice her limp or not? A She did not.

Q Did you observe her general appearance? 40
A She looked to me like she always did. I have seen her for a number of years.

Q Did she give you any indication by her facial expression or otherwise that she was in pain? A No.

Dorothy Vanderbilt, direct.

Q Or intense pain? A No.

Cross examination by Mr. Munsick.

Q You made that examination by arrangement with me? A Yes. I made it through Mr. Kelly and I called your office. I think you sent me a letter, Mr. Munsick, and said, "Send it to my office" after that.

DOROTHY VANDERBILT, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

20 Q Dorothy, where did you live on July 13, 1925? A Six Quitman street.

Q Did you know Mrs. Bennett at that time? A Yes, sir.

Q Did you ever talk to her then? A Yes.

Q Did she ever talk to you? A Yes.

Q Do you remember the happening of this accident? A I was told by her daughter Anna.

Q You were told by her daughter Anna? A Yes, sir.

30 Q Do you know Mr. Hinrichsen? A Yes, sir.

Q Did you see Mr. Hinrichsen shortly after that accident? A I saw him on July 16th.

Q Shortly after that did he take a statement from you? A Yes, sir.

Q I want you now to rely upon what you said as of that time, not what was in the statement. Do you understand? A That was in the statement.

40 Q I mean I want you to tell what you remember at that time. Can you do that, or don't you understand me? A I don't understand you.

Dorothy Vanderbilt, cross.

Q Well, did you see Mrs. Bennett at any time after the accident within the next week or two?

A I saw her the next day coming off the trolley car coming down Quitman street.

Q The next day? A Yes, sir.

By the Court.

10

Q The next day after what? A After the accident.

By Mr. Gilhooly.

Q And that is the day after Anna told you her mother had been in an accident? A Yes.

Q Where did she go after she got off the trolley car? A She went in the house.

Q Did you see her after that? A I saw her on the 15th. 20

Q That is the next day? A Coming out of a taxicab, going into the house.

Q Did you see her after that? A I saw her the 16th going out of the house down Quitman street, going towards Clinton avenue.

Q Did you see her after that? A No, sir.

Q Do you know when she moved away? A Shortly after.

Q Did you continue to live down there for awhile? A Yes, sir. 30

Cross examination by Mr. Munsick.

Q When did the accident happen? A On July 13th.

Q Do you recall that now? A Yes, sir.

Q From your own memory? A Yes, sir.

Q Have you any way of fixing it? A I don't understand you. 40

Dorothy Vanderbilt, cross.

Q Is there any way that you can fix that particular date in your mind as being the day that you were told of the accident?

(No answer.)

10 Mr. Munsick: Well, let me withdraw that.

Q Did you sign a statement? A Yes, sir.

Q Where did the statement come from? A Mr. Hinrichsen.

Q Do you know when he gave it to you? A He gave it to me shortly after seeing Mrs. Bennett on the 16th of July.

Q He gave it to you shortly after that? A Yes, sir.

20 Q Why do you say it was July 13th that she fell? A (No answer.)

Q Let me ask you this. Do you know the day of the week? A No, sir.

Q When did Mr. Hinrichsen first speak to you about it? A It was a couple of day after he seen Mrs. Bennett on the 16th.

30 Q Who told you he saw Mrs. Bennett on the 16th? A I saw him. He came into the house after she went out. He came and asked their son to see if he could speak to his mother or father, and the son says that she was upstairs sick in bed, and their reply—Mr. Hinrichsen told them that they saw her down on Quitman street.

Q You don't know that Mr. Hinrichsen saw her, then, on Quitman street, do you, except from what he said? A No, sir.

Q Then it was after that that he handed you this statement? A Yes, sir.

Q Who is Benny? A That is her son.

Dorothy Vanderbilt, cross.

Q Which son is that? Do you know his name, his full name? A No, sir.

Q You don't know who Benny is? A I didn't know his full name. I just know him by that name.

Q Was he here today? A No, sir.

Q He wasn't here today? A No.

10

Q Was it Raymond? A Raymond.

Q Raymond Bennett? A Yes, sir.

Q Was he on the porch when Mr. Hinrichsen came there? A Yes, sir.

Q Who else was there? A That is all that I can remember on that porch.

Q What is that? A On that porch, that was all I can remember.

Q No other member of the Bennett family there? A No, sir.

20

Q Was Anna there? A No, sir.

Q Do you remember what time of day it was that Anna told you that her mother had fallen?

A It was sometime in the afternoon.

Q She told you then? A Yes.

Q That her mother had fallen. Did you ever see her mother? A Yes, sir.

Q Where did you see her? A I saw her out in the yard different times talking to the children.

Q I mean after the accident. A Coming off the trolley car, coming out of the taxicab, and going out.

30

Q Did you ever go up to her home? A I was up once.

Q Do you know when that was? A That was after the accident, when she was going to move.

Q When she was going to move? A Yes.

Q Where did you see her then? A She was in bed.

Q In bed? A Yes, sir.

40

Mary Bonforte, direct.

Q Was anybody else there? A Not that I remember.

Q Just you? A Just myself.

Q And she was in bed? A Yes, sir.

10

MARY BONFORTE, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Mrs. Bonforte, you are a friend of the Derivauxs, aren't you? A Yes, I am.

20 Q Do you know Mrs. Bennett? A Yes, I have known her casually about ten years, I should say. I have always lived around the neighborhood where she has lived.

Q You knew her, of course, before the accident? A Yes, I did, to say how do you do and to bid her the time of day.

Q Did you hear of this accident? A Yes, I did. I heard the day after it occurred.

Q You heard of it the day after it occurred? A Yes, I did.

30 Q Did you see Mrs. Bennett on the street anywhere at any time in close proximity to that time? A I saw her the night of the accident and I was very much surprised when I heard that she—

Q Don't tell us your feelings. A I was surprised to hear that she had fallen because—

Q Where did you see her the night before you had heard of this accident? A She was passing my house going south towards Clinton avenue.

40 Q What street did you live on? A On Quitman, and I could look directly out the bay window.

Mary Bonforte, direct.

Q Do you know what time it was, about? A It was getting dusk. I don't know what time it was. It was getting dark. I was calling one of my boys in.

Q Do you recall whether or not at that time she limped, walked lame? A No, I didn't notice anything peculiar about her, and she was walking just as anyone would. 10

Q As a result of what you saw did you tell the Derivauxs? A Why, yes, I told them that.

Q Did you see her at any later time? A I saw her on any number of times. I saw her downtown after the accident, and I saw her at her home on Waverly avenue. I used to go to the bakers.

Q Where is the bakers? A Corner Quitman and Clinton street. 20

Mr. Munsick: I would like to have the date fixed.

The Witness: After the accident.

Q How long after the accident? A Well, it may have been a month later, a couple of months later. I don't just remember.

Q Do you recall whether you saw her in 1928? A I saw her downtown in 1928. 30

Q Do you know about when? A It was in September; I don't know whether the latter part or the middle or just when. It was in September, because I moved in October.

Q And it was before you moved? A I moved to Maplewood in October.

Q Do you know where you saw her downtown? A It was on Broad, somewhere near Market. I don't just recollect whether it was near Academy or where; I don't know just where. 40

Mary Bonforte, cross.

Q It was on Broad street in that vicinity?

A Yes, near Market.

Q Did you notice her gait at that time? A Well, any time I ever saw her, I saw her quite frequently.

10 Q On this particular time. A Why, she was walking very straightly.

Q She didn't limp or walk lame? A No, I didn't notice it.

Cross examination by Mr. Munsick.

Q You haven't seen her recently, have you?

A Well, the last time I saw her was in September, and I haven't seen her since because I have moved to Maplewood.

20 Q Who told you that Mrs. Bennett had a fall?

A A lady next door to me.

Q A lady next door to you? A Yes.

Q Where did you live? A At No. 20 Quitman.

Q 20 Quitman? A Yes.

Q Where did Mrs. Bennett live? A She lived on No. 6 or 8. She lived on the same side of the street.

30 Q Who is the lady that told you she had had a fall? A Mrs. Kelly.

Q When did she tell you? A The day after in the afternoon.

Q How do you know it was the day after? A I know because my sister-in-law's birthday is on the 13th, and I sent her a card. That is how I remembered the accident. That was the 14th she told me, on the 14th.

40 Q You remember sending a card to your sister-in-law? A I sent her one every year in July. That is her birthday.

Mary Bonforte, cross.

Q You mean you can fix a conversation with Mrs. Kelly that way? A No. I say that is how I remember the accident as being on that day.

Q How do you remember when Mrs. Kelly told you about the accident? A How do I remember? Why, she said to me, "Did you hear the news?" I said, "No."

10

Q I asked how do you remember. A In which way?

Q How do you fix the date when she told you as being definitely the 14th? A Why, I figured I sent out the card on the 12th to my sister-in-law. Her birthday was on the 13th, and that was two days later.

Q In other words, you fix it by a postal card that you sent to your sister-in-law? A Yes.

20

Q You are willing to say now that you can remember that you talked to Mrs. Kelly two days after you sent a card to your sister-in-law? A Yes.

Q When was it you saw Mrs. Bennett on the street? A It was the night of the accident.

Q You didn't know it was at that time? You didn't know then that she had fallen? A No, I didn't. Only Mrs. Kelly told me the following day that she had fallen, and I was surprised.

30

Q Did you report that she didn't appear to limp? A Why, certainly. I said to her I didn't see anything the matter.

Q You had no reason to expect that she would limp, did you? A Why, no. I didn't know she had an accident, and I was surprised she had one.

Q Exactly. There wasn't any reason why you should notice that she limped, was there? A No. Well, Mrs. Bennett didn't limp at that time I saw her.

40

Mary Bonforte, cross.

Q Did you take particular notice of her? A Sure. It wasn't quite dark and I saw her walking across the street.

Q Why should you take notice of Mrs. Bennett walking across the street? A I have seen Mrs. Bennett any number of times, and I have
10 known her as well as I would anyone that I used to see her every single day.

Q I know. What I am getting at is this: Why should you have taken particular notice of Mrs. Bennett walking down the street? A Because I was looking for my boy, and I just saw her go across the street.

Q Just casually as you had seen her a good many times. A Yes, I did, because I used to
20 call them in when it started to get dark, dusk.

Q So you had no reason to take notice whether she was limping or not. A As far as I could see she walked just as well as I did.

Q There wasn't any reason why your attention should be called to that? A Why, no, but if I saw you or anybody else that same day I would notice you; if you had a limp I would probably have noticed it.

Q But you paid no particular attention to
30 Mrs. Bennett? A No; all I saw her—I never spoke to her, and no conversation. I used to say how do you do to her, bid her the time of day and walk on.

Q When was it you told the Derivauxs about it? A About what?

Q About having seen Mrs. Bennett. A Oh, I don't know. It was a long time ago. I don't remember just when.

Q How long after you saw Mrs. Bennett? A
40 After I saw Mrs. Bennett?

Mary Bonforte, cross.

Q Yes. A I don't know. I hadn't told them until a long time ago.

Q Have you any recollection of how long it was after you saw Mrs. Bennett that you told the Derivauxs? Whom did you tell, Joë Derivaux?

A I told Mrs. Hinrichsen.

Q Have you any recollection how long it was after you saw Mrs. Bennett that you told Mrs. Hinrichsen? A Well, it was a couple of—gee, I don't really remember when I told her. I met her on the street one time. I don't know when it was.

Q You met her on the street and you told her?

A Yes. She told me about the accident. She said she was having trouble in her house. That is when it was. I don't know just when it was.

Q You knew about the accident before that?

A Why, sure I did.

Q But you hadn't spoken to her about it? A Who? To Mrs. Bennett?

Q To Mrs. Hinrichsen. A No. You see, I didn't visit there or anything. I know them from school.

Q You never went to see Mrs. Bennett, did you? A No, I never did.

Q You said it was about dusk, is that correct?

A Yes, it is.

Q That was in July. I suppose we had daylight saving time, didn't we? A Yes.

Q Can you fix the time? A Well, I don't know. Sometimes it got dark—it might have been about eight-thirty.

Q Was it before supper? A No, it was after I did the dishes.

Q After you did the dishes? A Yes.

Q Then you are positive you are stating now that that is the night Mrs. Bennett is supposed to have fallen? A Yes.

David A. Kraker, direct.

DAVID A. KRAKER, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Doctor, you are a practicing physician in
10 the City of Newark? A Yes, sir.

Q Is that your memorandum? A Yes, sir.
That is my original report.

Q And you made that yourself? A I did.

Q Did you make that report that you have
there at the time that you made your examina-
tion? A Yes, sir; during the time.

Q Doctor, you have been a physician for a
number of years, have you not? A How is that?

Q You have been a physician for a number
20 of years? A Twenty-five years.

Q In the course of that time what has your
practice been generally? A My practice has
been general medicine and surgery.

Mr. Munsick: We will admit his qualifica-
tions.

Q Doctor, did you have occasion to examine
Annie Bennett recently? A I examined Annie
Bennett for the purpose of the Co-ordinated
30 Transport in my office on September 27, 1928, at
4:30 P. M.

Q Did she come to your office accompanied by
any person? A That I am not sure. She was
in my office; that is, in my consulting room, alone.

Q Did you examine her? A Yes, sir.

Q Before examining her did you make any
inquiry from her? A Yes, sir.

Q About what did you inquire from her? A
40 Reading from my report, which is filled in, I
asked her the date of the accident and the place.

David A. Kraker, direct.

Q What did she answer to that? A She said that she was injured on September 17, 1928, at Broad and Market street, at 4:00 P. M., that while boarding a trolley car at the South Broad safety aisle here he, meaning, I suppose, the operator, slammed the door, "injuring my left arm. He slammed the door, injuring my left arm, left ankle and shin." I further asked her, of course, the name of her husband, her address, the name of her husband, whether she was married, single, widowed or divorced. She said she was married, had six children. She said she was thirty-five, weighed 110, five feet two, brown hair, fair complexion, born in New York City, that she was a brush maker, and that she was employed by herself at 24 Waverly avenue, that her doctor was Dr. S. Goldstein of 40 Johnson avenue, and she had had Dr. John Van Ness, 21 Johnson avenue, for this same condition; that is, the same injury; that she had never been in a hospital. The question was, "Inmate of what hospital?" And she said, "None." "Any prior accidents?" "None." Previous history; denies any serious illness except childbirth. Now, my report was that she claimed that she had some contusion of the left shoulder, arm, elbow and forearm.

By Mr. Munsick.

Q Was this with reference to the Public Service accident? A Yes.

Mr. Munsick: I do not know that it is material, if your Honor please.

The Court: Isn't it insisted that her injury at that time may have had some relation to her present condition?

David A. Kraker, direct.

Mr. Gilhooly: Oh, yes.

The Court: It may be given, then.

10 A (Continuing.) That she complains of pain over the biceps of her arm, over the deltoid—that is, the top of the shoulder—also a pain over the inner condyle—that is, the inner side of the knee—contusion of the left external malleolus, that is, the outside of the left ankle—and of the shin bone, the tibia—that is over the lower third of the leg. Now, there was discoloration present for a distance of one inch over the outside of the left ankle. The movements of all joints are normal. She is able to be about and do her work at this time. That is my opinion and conclusion.

20 *By Mr. Gilhooly.*

Q When you say that the movements of her joints were normal, you made an examination to ascertain that? A Yes.

Q What was the nature of that examination, doctor? A That examination consisted of moving manually the leg upon the hip joint and the knee joint being flexed forward and the ankle joint being moved—that is, moved by me—and then, of course, asking her to do the same thing.

30 Q Did that appear to be normal to you at that time? A It was my conclusion; yes, sir.

Q As she walked did she limp or appear lame to you? A No, sir; there were no evidences of injury on coming into the office at all.

Q Did she complain of severe pains in her lumbar region to you? A No, not at that time.

Q Did she complain of any severe pains in her neck? A No, sir.

40 Q Did she complain of a numbness in her leg at that time, doctor? A No, sir.

David A. Kraker, direct.

Q Did she have any appearance of having numbness in her leg? A That would be suggestive. She would have to say so, but she didn't. She said she had pain.

Q As she moved her legs, was there any indication of paralysis at that time? A No, sir; none at all. 10

Q Doctor, in your opinion, if a woman was in an accident on July 13, 1925, from which she immediately felt the effects thereof, and that her illness became more intensified as time went on, ultimately resulting in a condition which apparently is paralysis of the lower extremity, in your opinion would the symptoms have been manifested in September, 1928?

Mr. Munsick: If your Honor please, I object to that. There are a lot of things left out that he would have to know. He certainly would have to know what kind of injury it was, and what the developments have been since the time of the injury. 20

The Court: Well, of course if the doctor can answer that question upon the facts stated he may do so. If he require other facts, I suppose the doctor will say he cannot answer it. I never understood that in a hypothetical question all the proven facts in the case must be included. 30

Mr. Munsick: Oh, I do not say that, but I should think the particulars of the injury itself ought to be included.

The Court: Well, perhaps the doctor will require those particulars. However, if upon the facts stated he can answer the question he may do so. 40

David A. Kraker, direct.

A I would just like to know to elucidate whether the symptoms of paralysis at any time antedated this particular injury for which I examined her.

10 Q I will reframe my question. If a woman claimed to be in an accident whereby her spine was injured on July 13, 1925, and the X-ray pictures taken on November 1, 1927, indicated a slight crushing between the eleventh and twelfth dorsal vertebrae, and that subsequently and in January, 1929, she now appears to be paralyzed from the hips down, would that paralysis have manifested itself in some degree at the time of your examination? A Yes, sir.

20 Q Doctor, if a woman were in a position whereby she could move about, could walk, in the month of May, 1928, and had claimed an injury to her spine in July, 1928, and could walk about in the month of September, 1928, as she did when she walked to your office, do you think from the examination that you made in September, 1928, that the progress of this paralysis would have been so rapid as to leave her totally disabled in January, 1929? A I would have to answer that by saying this. If at the time of the accident the injury resulted in injury to
30 the cord, which had produced paralysis at any subsequent time, in my opinion the subsequent time would have been practically immediately following the accident and continuous up to this time.

Q In other words, the symptoms of paralysis would have manifested themselves almost immediately after if the cord had been injured? A Yes, sir.

David A. Kraker, cross.

Cross examination by Mr. Munsick.

Q What is creeping paralysis? A Creeping paralysis is a term that is used more or less indiscriminately. My interpretation of that would be a progressive paralysis where the original involvement which was definitely manifest was gradually increased by some degree of disease superinduced upon the injury to the cord. 10

Q What is myelitis? A Myelitis, an inflammation of the spinal cord.

Q How does myelitis result? I mean, what is the outcome of myelitis? A Myelitis often—of course, if it is a severe degree of myelitis, you have a condition involving certain of the definitely serious—by that I mean more sensitive parts of the cord—it might produce death. If it involves certain of the motor filaments of the cord it will produce paralysis. If they are sensory filaments, it will produce sensory paralysis; that is, more or less loss of sensation. 20

Q That may be a progressive affair? A It may, yes.

Q Are you willing to state now that it is impossible that Mrs. Bennett could have injured her back in July, 1925, and not become paralyzed until the middle of November, 1928? A I should say it was rather improbable. 20

Q You wouldn't say it could not be? A Anything is possible.

Q Did you find any evidence of injury to her when she went to see you? A What I just before described.

Q What was that, doctor? You did mention a bruise. A I found a discoloration over the external malleolus—that is the outside of the large bone outside of the ankle. 40

David A. Kraker, cross.

Q You, of course, made no examination of her spine, did you? A Nothing complained of of her spine; no occasion to.

Q She only came to see you about this Public Service proposition. A Well, of course presumably she complained of the injury she sustained.
10 Of course, if I had noticed any difficulty about walking, and so on, I would have insisted upon examining her spine. These cases are quite common.

Q Suppose, doctor, that Mrs. Bennett had received an injury to her spine in July of 1925, and thereafter she did keep up, she spent part of her time in bed and the rest of the time around walking attending to her duties, and so forth, how would that affect the possibility of subsequent paralysis? A Of course, in all of these cases we must consider the patient's statement, and her statement was to me as to any accident previously, none, and she denied any previous injury; so there was no occasion for me to look for it.
20

Q Did she deny a previous injury to her elbow and ankle? A She denied any previous injury previous to that accident.

Q Now, I do not think you answered quite directly what I had in mind. If she, as a matter of fact, received an injury on July, 1925, and thereafter she spent part of her time in bed and the rest of the time walking around attending to her duties—when I say received an injury, I mean to the spine—how would the fact that she did after that use her faculties, go about her business, walk, and so forth, affect a future paralysis? A I should say that that would not be paralysis; it would be hysteria.
30

Q You would call it hysteria; and hysteria is a form of paralysis, isn't it? A No.
40

David A. Kraker, cross.

Q It is not a hysterical paralysis? A Hysteria is a suggestion, a basic suggestion in the mind of the patient, either something that they think of themselves by auto suggestion, or suggestion by others, which produces a definite line of symptoms.

Q A neurologist ought to be able to determine whether or not it is hysteria, should he not? A Yes.

10

Q He should? A He should be able to determine whether there is a traumatic lesion, whether there is a pathological basis or a mental basis for this particular paralysis.

Q Producing hysteria? A And producing paralysis. We are discussing paralysis, not hysteria.

Q I asked you if a neurologist could determine if it were hysteria. A He could.

20

Q Do you know how he would go about it? A By an examination, both physical and oral, from the patient. He would have to assume that the patient was telling him the facts.

Q Do you know some of the usual tests? A There are a great many tests. Of course primarily paralysis should show definitely first a loss of sensation, or a loss of motion, or both. then certain circumscribed areas involving the paralysis—that is, certain parts of the cord that are involved—will show definite paralysis of certain parts of a limb, not necessarily the whole limb; either the flexors or extensors of the leg or the limb may be involved unless there is a very large pathological involvement. You will find of course areas that are perfectly normal. In addition to that you will find certain tests which are rather intricate and delicate, which go to show co-ordination of muscles either voluntary

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David A. Kraker, cross.

or involuntary, and which, of course, in paralysis are destroyed or in some instances increased. There are very definite things that a trained neurologist can definitely determine.

10 Q Dr. Keppler testified that he used an instrument to prick both legs all the way, I think, from the waist line or approximately there, and he got no reaction. Is that a test? A That is a test. It all depends. I didn't hear what Dr. Keppler said.

Mr. Gilhooly: He said he got no sensation, no reaction.

Mr. Munsick: I think I asked him if he got reaction.

20 The Court: He said he got no reaction.

The Witness: Well, of course it is pretty hard to say as to what the findings are when you did not listen to the man's testimony.

By the Court.

Q Well, doctor, is complete paralysis of sensation and motion produced by hysteria curable?

30 A Yes. If it is hysterical it is curable because there is no pathology; there is no injury to the spine. It is merely mental and not pathological.

Q Do you think that is curable? A Absolutely.

Q The injuries which you found as the result of her accident in 1928; that is, your examination was on the seventeenth of September? A Twenty-seventh of September.

40 Q The seventeenth of September, 1928? A That was the accident.

David A. Kraker, cross.

Q Yes. Your examination was September 27th. That is right. Now, were the injuries which you found at that time sufficient to cause a condition of complete paralysis from the waist down? A No, sir.

Q So that accident caused no complete paralysis? A No, sir. 10

Q So that as I understand you, then, you rather suggest that if it comes as the result of the accident in 1925, it was produced by hysteria? A I should say it was suggestive. If the accident of 1925 had produced a paralysis that paralysis would have been present when I examined her, in my opinion. If she has had a paralysis since, it is either due to some other cause after the time I examined her, or it is a progressive, suggestive paralysis. 20

By Mr. Munsick.

Q If her X-ray plates showing her condition subsequent to the accident on July 13, 1925, showed evidences of injury to the spine, would you still say it was hysteria?

Mr. Gilhooly: I object unless he is specific as to the condition of the spine disclosed by the X-ray, because it gives him great latitude. He has got to be specific as to what the doctors have said as to the condition of the respondent. 30

The Court: Again I say that if the doctor can answer the question from the predicated facts, it may be answered. If he cannot, why, he can say so. The doctor is a careful witness. He is frequently on the stand. He will not hesitate to say. 40

Elbert S. Sherman, direct.

A I think the question isn't clear. You asked whether injury to the spine. By spine we medical men mean the spinal cord. By spine you possibly mean the spinal column. We can have serious injury to the spinal column without injury to the cord, fortunately.

10 Q You can have injury to the spinal cord without injury to the column? A Yes, by disease.

Q By concussion? A Yes, we can have injury by concussion, of course.

ELBERT S. SHERMAN, sworn in behalf of the defendants.

20 *Direct examination by Mr. Gilhooly.*

Q Doctor, you are a practicing physician in the City of Newark? A Yes, sir.

Q You have been for quite some time? A Yes, quite some time.

Q You are an eye specialist? A Yes.

Q Doctor, did you have occasion to examine Annie Bennett recently? A I examined Mrs. Annie Bennett on the eighteenth of September, 1928.

30 Q Where was that examination held? A At my office.

Q What was the purpose of that examination? A She was sent to me by an insurance company to determine the condition of her right eye, I believe, relative to some damage resulting—that is, an alleged damage—resulting from an injury said to have occurred in 1926.

Q Did you make an examination of her? A
40 Yes.

Elbert S. Sherman, direct.

Q Now, doctor, I don't want to go into that accident because that is something entirely different than this particular cause of action, but did you observe her generally at that time? A No, I made no special general examination.

Q But you saw her as she came to your office? A She walked into the office the same as other people do. 10

Q Did you notice anything abnormal about her at that time? A No.

Q Did she walk with any perceptible limp? A No.

Q Did she manifest any lameness to you, doctor? A No.

Q Did she come with anybody or did she come unattended? A That I can't recall.

Q Did you question her as to whether she had a previous injury or not, do you recall? A Well, I don't believe I questioned her in regard to any general injuries. It is my custom to inquire regarding previous injuries of the eye when I make my examination. 20

Q Did she say she had any previous injury to her eye? A I can't be sure about what she told me with regard to that. My record doesn't show.

Q Did she say that she had any previous injury to her spine? A No. 30

Q Would that be material for you to know in examining the eye? A Not necessarily. It depends upon the sort of examination I am making, what I am looking for.

Q As you observed her, her general condition was normal? A Yes.

Elbert S. Sherman, cress—re-direct—re-cross.

Cross examination by Mr. Munsick.

Q Dr. Sherman, you made that examination by arrangement with me, did you not? A I don't know who you are, sir.

Q My name is Munsick, sir? A Sorry.

10 Q You and I talked about it over the telephone? A Yes, I think we did.

Q You never completed the examination, did you? Didn't you tell me you hadn't completed the examination? A Yes.

Q She never came back again? A No.

Re-direct examination by Mr. Gilhooly.

20 Q Doctor, isn't the reason she never came back because you wanted to put some drops in her eyes to find out what really was the trouble with her? A Yes. I wanted to put some drops in her eyes to make a more complete examination.

Q And Mr. Munsick objected? A I have forgotten who had objected.

Q Someone objected? A Someone objected, yes.

30

Re-cross examination by Mr. Munsick.

Q Do you remember the grounds of my objection? A I think you told me—my recollection is you told me that some chiropractic physician objected.

Q A chiropractor? A I think so. Possibly an osteopath.

40 Q Wasn't it Dr. Christian? A No, that isn't my recollection at all.

William J. Donahue, direct.

By Mr. Gilhooly.

Q Doctor, when is the first time you heard about this case, the one that you are testifying in now? A Last night.

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WILLIAM J. DONAHUE, sworn in behalf of the plaintiffs.

Direct examination by Mr. Munsick.

Q Doctor, where do you live? A 173 Roseville avenue, Newark.

Q Dr. Donahue, are you a practicing physician in the City of Newark? A I am.

Q You have been for how long? A I have been licensed to practice since 1910. 20

Q Have you made any specialty in the practice of medicine? A My specialty is neurology and psychiatry, and has been that for fifteen years.

Q What do those branches of the science deal with? A They deal with conditions of the brain and spinal cord and nervous system generally.

Q Are you connected with any institutions? A I am neuro-psychiatrist of the City Hospital, St. Michael's Hospital, and the Assistant Consulting Neuro-psychiatrist of the Newark Eye and Ear Infirmary. 20

Q Are you associated with any doctor in Newark? A I am associated with Dr. Christopher Beling.

Q Did you examine Mrs. Bennett? A I did.

Q When did you examine her? A If I may refresh my memory, on the 11th of January, 40

William J. Donahue, direct.

1929, on the 12th of January, 1929, and on the 19th of January, 1929.

Q Did you make a neurological examination?

A I did.

Q Where did you examine her? A At her home, 24 Waverly avenue, or Place, Newark.

10

Q Where was she when you went there? A In bed.

Q Will you describe your examination? A Well, I found the woman lying in bed practically helpless, unable to move either leg, unable to move her left arm at all, move her head on the neck very slightly, and her right arm very slightly from the shoulder up off the bed. She couldn't turn from one side to the other, and when she was assisted in turning by pulling her up this way she fell back. She was unable to raise her legs or her thighs off the bed, and her feet were in a position what we call dropped foot. Those legs were paralyzed from the hip down. She couldn't move them one way or the other. They were paralyzed as far as the muscular motion was concerned, and they were paralyzed as far as sensation was concerned. When I attempted to test out her sensation she could not tell whether I touched her with something warm or something cold, and I had a metal rod which I stuck in a gas flame there and she couldn't tell me the difference between the plain pencil which was cold or the metal rod which was put in the heat. That loss of sensation extended up about as high as the navel, until she began to perceive sensation up around the edge of the ribs. I noticed also that there was a lessened degree of sensation on the right side of her face, neck, shoulder, and arm. She had better sensation on the left side than she did

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William J. Donahue, direct.

on the right. She had no sensation on the back of her legs or thighs or up as high as the hip bones in the back.

By the Court.

Q Did you use any tests besides heat and cold? A The pin point, blunt and dull, and she could not perceive the difference below the umbilicus, below the navel. She was insensible to blunt or sharp or heat or cold from about the navel down. There was a decided loss of grip in both hands, but greater in the right. In my examination I noticed that her urine had poured out on to the bed, and I asked her how she knew when she had to urinate and she told me that she did not know, that the urine ran away from her. I found no evidence of any loss of sensation in the eyeball. I found no loss of sensation in the pharynx. Her sense of perception by having me hand her something and asking her what was the shape of it or the size of it was better on the left side than it was on the right. The cutaneous reflexes of the abdomen, which are tests neurologists use to determine the presence of injury to the nervous system, were definitely absent. When one strokes an apparently normal healthy human being on the abdomen, the nerve reflex is a come-back like a rebound, and in this case there were no abdominal reflexes obtainable. I tried those three times during that examination thinking possibly that I might have tired them out, as often occurs with these bed-ridden cases; and I found out that she had no knee jerks and no ankle jerks on either side. Normal human beings usually do have knee jerks and ankle jerks. Now, that test is elicited by rapping on the knee and the

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William J. Donahue, direct.

10 foot kicks up. If you rap on the ankle the foot
 kicks up, and in this woman they were absent
 on each side. There was marked contraction
 and stiffening of all the muscles of the lower ex-
 tremities. They felt like a lead pipe underneath
 the skin. Now, that condition is known in medi-
 cine as a spastic paralysis, a spasticity is what
 you say. There is a marked spasticity present.
 These muscles are hardened, indurated, and the
 intermuscular spases have been filled with fluids
 of the body and have undergone a process of
 dehydration whereby the fluid stays in there like
 fibrin, fine, thin-meshed fibrous tissues, and it
 occurs in these cases where there is paralysis
 of muscle. I was also unable to obtain the
 deep muscular reflexes. These are signs that
 20 neurologists have to look for in examining cases
 which are referred to them either in office or
 hospital practice, and on the obtainment of
 those signs or their absence we come to certain
 conclusions about the condition of the patient.
 The wrist jerks here, and the elbow jerk, the
 triceps and biceps jerks at or about the elbow
 were increased, whereas those on the right-hand
 side, the right triceps and biceps jerks, were
 absent, whereas the wrist jerk on the right was
 30 present. I had some conversation with the
 patent then, and roughly that closes the neuro-
 logical examination.

By Mr. Munsick.

Q Did you take her temperature or blood
 pressure? A I know I didn't take her tempera-
 ture, and I have no record of her blood pres-
 sure. I doubt if I took it.

Q What is your conclusion? What was the
 40 matter with her? What was the matter with

William J. Donahue, direct.

her at the time you examined her? What was your conclusion as the result of your examination? A She was suffering from a spastic paralysis of the lower extremities on both sides.

Q Spastic paralysis is a definite paralysis, isn't it? A Yes, sir.

Q It is not hysteria? A No, sir.

10

Q Nor hysterical paralysis? A No.

By the Court.

Q How can you differentiate, doctor? A Well, it is a matter of fine differentiation at times, but in this case I was able to exclude it rather readily due to the fact of the foot drop the woman had, and the marked muscular hardening underneath the skin.

20

Q Of course the hysterical condition is one for which neurologists look, is it not, in their examination? A Absolutely. And they must exclude it. In this particular case, if you Honor please, the condition made one definitely exclude that which you have mentioned before coming to a conclusion that it was due to anything else.

By Mr. Munsick.

Q Doctor, what, in your opinion, was this condition due to? A Well, this woman went into a history.

30

Mr. Gilhooly: If your Honor please I object to that. I think the doctor can testify as to what he found.

The Court: It may be that the doctor is not going to testify to the history. Of course it would be improper to testify to that. The mere fact that she gave a history

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William J. Donahue, direct.

would not be objectionable. The mere statement of that fact is not objectionable, but to state what the history was would be improper of course.

10 Mr. Gilhooly: If your Honor please, if he is relying on the history I think it is objectionable because he is called here certainly for the purpose not of treating her but for the purpose of testifying.

Q I do not mean what the original cause may have been? A I think it was due to a spinal cord injury, spinal cord compression or spinal cord trauma of some kind at some time somewhere.

20 Q Could the trauma or whatever it is you call it—trauma and what else? A Compression or injury.

Q What is the probable cause of trauma? A It often occurs when for instance a spinal column is injured, the bony column around the cord. It occurs when the spinal cord itself is injured.

30 Q Without the column? A Yes. It occurs when the column alone is injured, the bony column alone is injured and the inflammation extends from there to the cord, giving the patient what we call a myelitis, which is an inflammation of the lining membranes of the cord.

Q It results eventually in what, doctor? A Well, in a picture of paralysis which I have just described.

By the Court.

40 Q Is not an increase of reflexes an incident of spastic paralysis? A I would think not in spastic paralysis. If your Honor please, the

William J. Donahue, direct.

utmost impossibility of securing a reflex is evident when you listen to the description of this lead feel of the muscle underneath the tissue. There was only the slightest evidence of any muscular reflex activity in this particular case, and that was on examining the left foot, as we do, in stroking the left foot underneath, there was the slightest possible contraction of the dorsum of that left foot at the great toe, and that was the only reflex that was obtainable in the entire examination below. The muscles themselves would become so hardened and the spaces filled with fibrin they become in medical term indurated with the reflexes unobtainable. 10

Q Was your examination made in connection with Dr. Keppler or an independent examination? A Mine was an independent examination. No one was present except the patient and myself. 20

By Mr. Munsick.

Q Dr. Donahue, assuming that Mrs. Bennett previous to July 13, 1925, had had no accident or injury from accident, and on July 13, 1925, she had fallen downstairs practically from the top to the bottom, that thereafter she complained of pains in the back and was confined to bed for, we will say three months, after which she was in bed part of the time and up a good deal of the time, traveling around doing her usual duties, although complaining of pain, that that condition continued practically until the first part of October, 1928, when she took to her bed, and that about the middle of November, 1928, paralysis set in— 30

The Court: The middle of October she said she took to her bed. 40

William J. Donahue, direct.

10 Q (Continuing.) She took to her bed the middle of October, and then it was shortly after that—I don't remember the exact date—that the paralysis set in. And she has continued in bed up until the time you saw her; and include in the hypothetical question that the only other injury she had had since 1925 when she fell was on one occasion when she was struck by a door of a trolley car in getting off, and complained of bruises to her elbow, her ankle, and shin; and also in 1926 she claims to have had glass thrown into her eye—what in your opinion is the cause of the condition as you found it?

20 Mr. Gilhooly: I object to the question on the ground that it leaves out a very major factor in the entire history of this case, and that is the treatment which Dr. Greenbaum gave her for a period of a couple of months.

The Court: Do you understand that if the facts stated in the hypothetical question are correctly stated, that the mere fact that some fact is omitted makes it objectionable?

30 Mr. Gilhooly: I understand such a major fact as treatment by a physician at the time of the injury without a statement of what he discovered at that time would make it objectionable.

The Court: The objection will be overruled.

Mr. Gilhooly: Your Honor will allow me an exception.

A If I may ask you, where was the eye injury?

40 Q You mean what part of the body? A Yes, right or left.

William J. Donahue, direct.

Q I think it is in the right.

The Court: I think so, but I will see Dr. Sherman's testimony.

The Witness: Where was the elbow injury, right or left?

The Court: Just a minute. I think I will be able to tell you. The right eye; the left elbow and ankle.

10

The Witness: Her condition today could not have been caused by that accident in the accident where she received the glass in the eye, nor the accident where something struck her elbow, but the accident which she sustained in a fall.

By the Court.

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Q That is in July, 1925, your mean? A I believe that is the date, if your Honor please.

Q I suppose, doctor, the fact that it could would be rather too remote for a recovery in a case of this kind, because that would be a possibility. The question is whether or not it is probable? A I would say that it is probable.

By Mr. Munsick.

20

Q There isn't any doubt in your mind as to the present condition? A None, sir, none. The woman is a helpless invalid. She is able to use the telephone, one of the continental telephones. She is not able to use the ordinary telephone which requires two hands. She uses the continental telephone, one hand, that is all.

Q That is the one piece phone? A Yes. She is bed confined. She doesn't even know when she soils herself. She soils herself with her

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William J. Donahue, cross.

own bodily secretion, such as urine—well, urine is the only one I saw. She required someone to move her in bed. She couldn't lift the right arm above that level (indicating), whereas the left she can pick up here (indicating).

10 *By the Court.*

Q Your idea then is that her present condition is permanent or not, doctor? A I regard it as being permanent, your Honor.

Q A paralysis which results from hysteria— is that necessarily permanent? A That may or may not be depending upon the degree and severity of it. The onset of paralysis due to spinal cord injuries, is not a quick process. In
20 the development of these conditions, it sometimes takes years. Where a man has a direct trauma, run over by a railroad train or a wheel of a car runs over him, he is rushed to the hospital, that paralysis exists then and two or three days later, why, he is in bad shape; but the extension of paralysis in this case has been due to an inflammation of the spinal cord or the compression of the cord at the time of the injury, or in extension of the inflammation from spinal
30 column injury; and it doesn't travel fast. It takes quite a long time to develop and it develops and gives the symptoms which I have described to you.

Cross examination by Mr. Gilhooly.

Q Doctor, I just understood you to say that this could come from inflammation of the spinal cord or injury to the spinal cord, is that right?
A Yes.

40

William J. Donahue, cross.

The Court: He thinks it is due to spinal cord injury or depression.

The Witness: Compression. Compression of the spinal cord.

Q Myelitis might be responsible for this present condition that you have seen, might it not? A A myelitis as the end result of injury, yes. 10

Q Now myelitis, isn't it a fact, doctor, is a disease of the spinal cord? A You mean in an acute inflammatory thing? It is usually traumatic.

Q Is it, doctor, or not; is myelitis a disease of the spinal cord? A I must distinguish. As a result of trauma, injury, yes. As the result of inflammation, no. 20

By the Court.

Q Did you intend to answer that way doctor?

The Court: Just read that last question and answer.

(The last question and answer were read by the stenographer twice.) 30

The Witness: I see what you mean. The ending "itis" being an inflammation in that thing that you add it to.

By Mr. Gilhooly.

Q And therefore that is an inflammation of the spinal cord caused by disease, is that right?

A Not exactly that, not caused by disease.

Q It can be? A Yes.

Q You won't say it can't be? A No. 40

William J. Donahue, cross.

Q Many of these symptoms that you have described in the lower extremities of this woman are similar to those for locomotor ataxia, are they not? A No.

10 Q You mean there are none of those symptoms present in locomotor ataxia? A There is a marked difference between locomotor ataxia.

Q Of course there is, but there are many symptoms of locomotor ataxia present in what you found in this woman? A No.

Q None present? A You say many and you say some. Which is it?

Q Are there some? A There are some, yes.

20 Q Locomotor ataxia is a disease of the spinal cord, is it not? A Yes, but it is a disease of only one part of the spinal cord, the posterior column of the spinal cord with the posterior roots, whereas the symptoms which this woman presents are both motor and sensory. The motor roots are certainly—the motor root symptoms are not to be confused with the sensory symptoms. This woman has a disturbance of motion and sensation as well. Now, you don't get that in locomotor ataxia.

By the Court.

30 Q Which do you not get? A The sensory disturbances to any great extent.

By Mr. Gilhooly.

Q Doctor, you say she soils herself without knowing it? A Yes.

40 Q That that is due to the fact that there is a paralysis there and there is no control over those particular organs, is that right? A And then she has lost vesicle control, the control of the bladder.

William J. Donahue, cross.

Q How about defecation, doctor. Doesn't she soil herself? A I don't know. I could only get a history of that. I couldn't find out anything about that. She told me—

Q Doctor, if this woman is paralyzed shouldn't she lose control in that regard, too?

A You are dealing with two entirely different substances.

10

Q Answer yes or no. A No.

Q I don't know anything about medicine. A All right, then. The urine is liquid and trickles over as the bladder becomes too full. The feces are solid substances, and they require muscular power to expel them. If she has a rectal paralysis she has lost control of that muscular power of the rectum. The result is she has obstipation, not constipation. In constipation the bowels move with difficulty, whereas this woman's bowels never move, she says.

20

Q You are relying on that, of course? A I didn't quote that. I didn't mention her bowels. I mentioned her bladder only.

Q Do the bowels play any part at all in your opinion, in your conclusion? A It has not up to this time.

Q Can you disregard it? A I have up to this time because I could only quote her and in giving that opinion I wouldn't include that.

30

Q Is myelitis a slow process? A Very slow.

Q Very, very slow? A Very slow.

Q Doctor, would you change your views in this case if you were informed that she was seen as late as September, 1928, by three physicians in apparently normal condition? Would that change your views, the conclusions you reach?

A Was either of the three who examined her at that time a neurologist?

40

William J. Donahue, cross.

Q Do you find that necessary? A I certainly do, sir. I certainly do.

10 Q The fact that you find in January a woman apparently paralyzed from the hips down, who is able to walk around in September without limping, without an apparent limp and without showing any apparent pain, would you say that the paralysis in that case must have been very progressive? A Very progressive meaning—

Q Very rapidly; must have come about very rapidly? A I say that paralysis in this type of cases is not rapid.

Q Doctor, please answer my question. Would you say it is or it is not? A I said that it wasn't rapid. I said that it was slow.

20 Q Would you say that a person who was able to walk around in 1928 in September and has paralysis in January—would you say that that was slow progress? A For the final stage of it, but this thing might have been developing the last year or so.

30 Q Doctor, would not these symptoms have manifested themselves over a period of three and a half years? A They would to a neurological examination, not to the examination of either physicians who are not accustomed or skilled to a neurological examination.

40 Q Then do I take it that these symptoms would be moving along very slowly over a period of a little over three years and then suddenly in the last two months become so very progressive; is that what you want us to understand? A As soon as the arc is broken. As long as she has some fibres left in the anterior horn and the posterior horn, it is still functioning, and then those fibres function as long as

William J. Donahue, cross.

they persist and as long as they are doing their job. She is getting along fairly well, but a neurologist could perceive if she was slipping gently and gradually before there is a breaking up. It is like the reflex arc, or the arc in a double circuit, and when it is broken she no can do. And that is what has happened. Now, this may have happened to several levels in the cord, not only at the place of injury, but below and slightly above the place of injury. 10

Q Now, doctor, if this woman was cured in 1925 of the accident in question, then you of course, would look for some other cause naturally, wouldn't you, for her present condition? A You mean spinal cord injury or spinal column injury? 20

Q Yes. A If it were possible to cure her of a spinal cord injury or spinal column injury in 1925, she might not have the symptoms she has today. I said if it were possible.

Q But, doctor, don't you think that if this spinal condition was produced by trauma, a severe blow on the spine in July, 1925, that her symptoms would have been so manifest at the time that the attending physician would have observed something radically wrong with the woman? A If you will permit me, that depends on the attending physician. 30

Q Can you answer that yes or no? A No, it depends upon the attending physician.

Q Assuming the attending physician was a reasonably careful and prudent doctor, should he not discover it in that time? A If he were skilled in some of the neurological features of a general physical examination, he might have been able to discover some. 40

William J. Donahue, cross.

Q Doctor, do you have to be a neurological expert in order to discover these things? A Ofttimes that has been our experience.

Q Then a person who goes to the ordinary practicing physician is taking a chance, is that right? A Let the buyer beware.

10 Q After all is said and done, doctor, isn't it a matter of fact that whether a person has major hysteria or has paralysis is a matter of medical opinion amongst neurologists? Isn't that a fact? A Unless you have spastic paralysis—

Q Just a moment, doctor, please. Is that not a matter of opinion? You may qualify it when your own attorneys take you up? A Yes.

20 Q That is a matter of opinion. And another neurologist might come along, might he not, and form a different opinion than you? A Yes.

Q In this particular case? A Yes.

Q And you think you are right? A I do.

Q And he may think he is right. Now, doctor, isn't it a fact that the least bit of myelitis shows immediate symptoms? A Immediate? What do you mean? How long?

30 Q Well, I don't know. I am a lawyer. A The first two or three days after compression of the cord with a fine neurological examination you may be able to develop some sensory symptoms. If you don't catch them before ten days have elapsed you are lost then for the reason that the fluids of the spinal cord begin to be absorbed and they don't show up again until the deterioration of the cord begins. If you get them in the stun period—a man is stunned, he has a period of unconsciousness—when you stun
40 the cord there are certain changes then which may be observed.

William J. Donahue, cross.

Q If you had made your examination in May, 1928, and had discovered an injury to the spinal cord which was serious, you would expect then the myelitis to have developed to a point where it would be rapidly progressing, wouldn't you, as it has been in this case? A Now, wait a minute. The rapid progression does not come until the arc is broken. As long as there are one or two little like wires left in the circuit, the thing functions, and then as soon as the entire lot of wires are snapped through or degenerated, then no business. You can't do it. 10

Q Up to that point where you come to the snapping of these fine wires, it would manifest itself, wouldn't it, in the reflexes? A You get lesser and lesser and lesser of the neurological reflexes, of the neurological impulse than you do for instance on the normal side or on the normal individual. It progressively decreases until eventually it snaps and there is no function left. 20

Q Now, if in May, 1928, an eminent neurologist examined Mrs. Bennett and advised immediate X-rays because he could tell a serious injury to the spine, and had recommended a brace, don't you think up to that period at that particular period we had gotten pretty close to the fine wires about which you speak? A Well, I can't— 30

Q Gotten pretty close. A I can't say what prompted him—what did prompt him to do what he did. I don't know.

Q Doctor, have you had much experience with people who are suffering from major hysteria? Have you had many cases of major hysteria? A I was neuro-psychiatrist; certainly. 40

William J. Donahue, cross.

By the Court.

Q What is that? A I was neuro-psychiatrist at Walter Reade Hospital at Washington, D. C., which is the base hospital for the A. E. F. camps American Military Posts.

10 Q Then I take it you have seen many cases of major hysteria? A Yes.

Q Have you known of any case of anybody suffering from major hysteria recovering? A Yes.

Q In these cases there has been complete recovery? A Yes.

Q Doctor, when a person is suffering from major hysteria, they can manifest almost everything known to medicine, can't they, being wrong with them? A There are just a few which
20 they are unable to simulate. They cannot simulate the breaking of a reflex arc.

Q Of course they can't simulate the breaking of a bone? A And they can't simulate the breaking of a reflex arc.

By the Court.

Q Do I understand that you have known—of course, this wasn't included in Mr. Gilhooly's
30 question. Have you known cases where spastic paralysis has been caused by major hysteria? A I have not.

By Mr. Gilhooly.

Q But spastic paralysis is something entirely different from major hysteria, isn't it? Isn't paralysis different from hysteria? A
40 Many is the time hysterical shows a form of paralysis.

William J. Donahue, cross.

Q When you speak of paralysis you mean in the medical sense an injury to the spine, don't you? A Oh, no.

Q You mean that to embrace hysteria too? A Paralysis is loss of muscular power. Paralysis doesn't include injury to the spine.

Q It includes injury to the spinal cord? A In this particular instance, but paralysis itself is loss of muscular power.

10

Q When you speak of paralysis in the general sense you mean in injury to the spinal cord? A I mean loss of muscular power. You might have paralysis of the thumb.

Q And that may be present with major hysteria too? A Yes, and spastic paralysis.

The Court: I think Mr. Gilhooly means to include in his question loss of sensory powers as well as muscular powers. Did you not? 20

Mr. Gilhooly: Yes.

The Witness: That does not co-exist as is outlined in this particular case.

Q I am not talking about this specific case. I am talking generally. A We have ceased to use the term "major" in reference to hysteria for some years back. Hysteria was a peculiar form of paralysis but they don't show spastic paralysis. 30

Q Now, doctor, if the spinal column were not broken, then you would negative myelitis from traumatic condition; that is, a blow, wouldn't you? A In the spinal column, you say?

Q If that is broken, then you would negative myelitis as coming from an injury from a blow?

A No, it may come from compression to the 40

William J. Donahue, cross.

spinal cord. It may come from the injury which the cord itself sustained even by a little squeeze.

Q If there were depression, then you would discount that and remove that from your consideration, wouldn't you, if there were no compression? A In the history of trauma, in the

10 history of an injury.

Q In the history of an injury to a spinal cord, that is what you call, I believe myelitis?

A But you and I agreed—

Q I don't agree on anything because I don't know? A This itis was an inflammation of the linings of the spinal cord and that may be due to trauma of the column, the bony column itself; it may be due to compression of the cord itself.

Q What else? A As a result of injury.

20 Q And disease? A Disease of the cord, yes.

Q Those are the three, are they? A Yes.

Q Now, if there were no compression of the spinal column, then you would take that out of your consideration, wouldn't you? A No; spinal column means bony column.

Q Yes, I appreciate that. A Injury to that is throwing spicules of bone into the spinal cord, which is the vital thing in there.

30 Q But you would want, however, to know that that bone was injured? A Or as a result of injury to the bony substance there was a proliferation and an inflammation; an inflammation of the bony substance is itself due to the injury in instances where you don't have fractures, where you don't have breaks, if it is on account of a proliferation and inflammation of the bodies of the spinal bones themselves set up, and wherever there is an inflammation and proliferation of the tissue there is an involvement of the contiguous

40 substance.

William J. Donahue, cross.

Q Do you expect to find proliferation without break? A Often see it.

Q But that would have to be something that would strike or injure the spinal column, wouldn't it, to cause that proliferation? A One blow from the outside without injuring the skin often will give you an injury to the spinal column. 10

Q But it would cause injury to the spinal column too, wouldn't it? A No, because the spinal column itself might just be flattened for a minute, and on account of its resiliency go back to its normal position, but the cord would be injured in its flattening.

Q But there is a blow to the spinal column, isn't there? A Yes.

Q If there was no evidence of that blow to the spinal column and you found that that cord had been injured and you wanted to attribute it to that compression, you would say that the spinal column came together and came back again to its normal position, is that right? A Yes. 20

Q It would have to come back practically to its normal position, or it would be something, it would have to be something that would be shown by X-rays? A I don't know anything about X-rays. 30

Q Didn't you examine the X-rays in this case? A I don't want to see them.

Q Doctor, don't you think it is necessary in determining the injury to the spine? A I am dealing with nature's guides, the efferentes and afferentes nerves in the spinal column.

Q If you had that same information from an expert roentgenologist don't you think that would have assisted you materially? A Listen, 40

William J. Donahue, cross.

let him testify for his own field. I have got enough to do for my own.

Q Doctor, would it have helped you in your opinion? A Once again you are up against it. One says yes, and the other says no.

10 Q If you had working along with you this expert X-ray man, he could tell you whether or not that bone had been crushed? A Yes.

Q Would that have enabled you to fix a specific cause for an injury to the spinal column? A Why should I? I don't want to.

Q But it would have helped you? A No. I don't want to.

Q You could have stopped your tests right then and there, couldn't you? A I would not.

20 Q If he said that that spinal column was intact, that there was nothing wrong at all, then you would look for major hysteria? A No. I told you I don't want to have anything at all to do with X-ray plates.

Q Have you any confidence in X-ray plates? A I don't look at them. It requires an expert to interpret them. I don't look at them.

Q Then you have no confidence in them? A I read the report of the man who sends the report to me. I don't want the pictures.

30 Q You go by that report then, but you do place some confidence in X-rays, don't you? A I place confidence in the roentgenologist and it depends on who he is.

Q Then your further study of the case is dependent upon expertness of that particular individual, isn't it? A If I am ever going to be guided by X-ray pictures, I say I want some X-ray pictures and an interpretation given by so and so, and I accept his findings, because I
40 have found that he has been reliable and that

Isidore J. Lawrence, direct.

they are satisfactory and that they are a help to me.

Q Now, if the X-rays taken in this case had been taken at your request by that individual, would you have placed confidence in the X-rays?

A I beg your pardon?

Q Were there X-rays in this particular case? 10

A No.

Q Then I take it you didn't consult the X-rays nor the report of the roentgenologist? A No.

Re-direct examination by Mr. Munsick.

Q Do you consider that this case is of a border-line class which would be likely to cause neurologists to differ as to the condition?

20

Objected to.

Question withdrawn.

ISIDORE J. LAWRENCE, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

30

Q Mr. Lawrence, what is your business? A Roofing.

Q Was that your business in 1924 and 1925?

A Yes, sir.

Q Do you also attend to skylights? A Yes, sir.

Q Did you go upon the Derivaux property at 8 Quitman street in 1924 and 1925? A Yes.

Q Do you know when you went there about that time? A In March and November.

40

Isidore J. Lawrence, direct.

By the Court.

Q What year? A 1924.

By Mr. Gilhooly.

10 Q Were you there in November, 1924? A Yes.

Q What was the purpose of your visit there?

A Repairing the leaks in the roof.

Q Did you make the repairs to the leaks in the roof? A Yes.

Q Did you examine the skylight up there?

A We always do.

Q You did it then? A It wasn't necessary.

Q I mean, did you examine it? A Yes, sir.

20 Q To find out whether it was necessary or not? A Everything was perfect.

The Court: Just a minute. We haven't had an answer to that question yet as to whether or not he examined the skylight.

Q Did you examine it? A Yes, sir.

Q What condition did you find the skylight in in November, 1924? A All right. It was in good condition.

30 Q Was there any glass out of it? A No, sir.

Mr. Gilhooly: That is all.

Mr. Munsick: No questions.

Truman W. Drew, direct.

TRUMAN W. DREW, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Are you connected with the telephone company? A Yes, sir. 10

Q Have you got the toll slips for Mrs. Bennett's telephone? A Yes, sir.

Q Have you got them here? A Yes, sir.

Q Over what periods do they cover? A December 5, 1928, to January 19.

Q January 19 of this year? A Yes.

Q Have you got a slip there for Haddingway 6135? A Yes, sir.

Q May I have it? A Yes, sir.

Q Haddingway 6135, dated January 2, 1929. 20

Mr. Gilhooly: I would like to have this marked for identification.

(The paper referred to is marked Exhibit D. 3 for identification.)

Q Can you show me the name of the party holding that telephone? A The name of the party calling?

Q The name of the party in whose name Haddingway 6135 is listed. A No, sir. I don't think I have it here. 30

Q You haven't got it? A No, sir.

Q I show you a memorandum and ask you if you made this? A Yes, sir, I made it.

Q Did you check up to find out in whose name that telephone was? A Yes.

Q In whose name was it? A Tony Princeri.

Q What is the address? A 74 McDougall street, Brooklyn. 40

C. Hubert Derivaux, direct.

Cross examination by Mr. Munsick.

Q At whose request did you make that up?

A Make up the list? At the request of— I made it up at the request of the fellow who subpoenaed me. I don't know who that was.

10

By Mr. Gilhooly.

Q Is this the gentleman here (indicating)?

A That is the gentleman over there.

C. HUBERT DERIVAUX, sworn in his own behalf.

20

Direct examination by Mr. Gilhooly.

Q Mr. Derivaux, you are one of the defendants in this action? A I am.

Q You are a member of the Bar of this State? A I am.

Q Do you remember of going to 8 Quitman street on the twenty-fourth or thirtieth of June, 1925? A I do.

30 Q In whose company did you go? A In the company of Carl F. Hinrichsen and Joseph Derivaux.

Q Joseph Derivaux is your brother? A He is.

Q And Mr. Hinrichsen is your brother-in-law? A That is right.

40 Q Why did you go there on that day? A For the purpose of serving Mr. and Mrs. Bennett with a three-months' notice to vacate the premises.

C. Hubert Derivaux, direct.

By the Court.

Q You said that was in company with Mr. Hinrichsen and whom else? A And my brother Joseph Derivaux.

By Mr. Gilhooly.

10

Q Did you go in the house? A I did.

Q Did you go up the stairs to the fourth floor? A Yes.

By the Court.

Q What was the date? A June 29, 1925.

By Mr. Gilhooly.

Q Was Mrs. Bennett home on that occasion?

A I don't know whether she was or not.

20

Q Did you knock? A We did.

Q Did you gain admittance? A No, we did not.

Q How long did you remain there? A About fifteen minutes or so.

Q Do you recall the time that you went there? A The hour?

Q Yes. A Oh, it was shortly after six, I should judge about ten minutes after or quarter after six, something like that.

30

Q Now, on the occasion of this visit did you have an opportunity of observing the staircase, particularly the fourth landing? A Yes, I did for the reason that we didn't—

Q Don't tell me the reason. You did make the observation? A I did, yes.

Q As you ascended the stairs, you of course could see the riser next to the top landing, couldn't you? A Yes.

40

C. Hubert Derivaux, direct.

Q Did you see the carpet that was on there?

A I don't recall the carpet particularly, no.

Q Did you see any tear in that carpet? A No.

Q Did you see the linoleum? A Generally, yes.

10 Q Was the linoleum flat against the carpet?

A It was.

Q Now, what was the light condition at that time? A It was very good. There was a skylight directly over the stairway.

Q How large about is that skylight? A I should roughly judge about five feet by seven, seven and a half, possibly eight.

Q Is that directly over the top landing? A Directly over the stairway and landing.

20 Q Was there—was it a clear day or a cloudy day as you remember? A It was clear as far as I recall.

By the Court.

Q Since that was about the longest day in the year, I suppose it was daylight? A It was.

By Mr. Gilhooly.

30 Q And you left after remaining around there fifteen minutes? A About that, yes.

Q Where did you stand at the time you were waiting? A In front of the door of the apartment on the fourth floor, which is a glass door right near the stairway.

Q I presume you were there to be a witness as to the service of the notice? A That is correct.

40 Q What did you ultimately do? A We tacked the notice on the door, because we couldn't gain admittance.

Clara Thoma, direct.

Q You left then after about fifteen minutes?
A That is right.

Cross examination by Mr. Munsick.

Q You had no particular reason for looking at that top step, did you? A No particular reason; had nothing else to do there. 10

Q You won't say that you particularly looked at that top step, will you? A Not particularly, no.

Re-direct examination by Mr. Gilhooly.

Q Was the lighting condition such that if there were a hole in that carpet, that you could have seen it? A Absolutely so; would have seen it if there had been. 20

CLARA THOMA, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Mrs. Thoma, you are the mother of Mrs. Bonforte, are you? A Mother, yes.

Q Do you know Mrs. Bennett? A I know Mrs. Bennett. 30

Q How long have you known Mrs. Bennett, Mrs. Thoma? A Oh, I know her since over ten years.

Q Did you live around Quitman street? A I used to live on Quitman street over ten years.

Q Was Mrs. Bennett living there when you lived there? A Mrs. Bennett lived first on Montgomery street, and then I know her from there, and she moved on Quitman street. 40

Clara Thoma, direct.

Q You knew her there? A Yes.

Q Did you remember hearing about this accident? A Yes, I heard.

Q Did you see Mrs. Bennett at any time after the accident? A Yes, I saw her.

10 Q When did you see her the first time after the accident happened? A Oh, this was not right away I saw her; maybe a few minutes after. I can't say the time. But I saw her 1927 sitting outside on the stoop.

20 Q Were you talking to her? A And she passed and she came and she said, "Hello, Mrs. Thoma." I said, "Hello." And she said, "How are you?" I said, "I am all right, but my husband is very sick." So she said, you know she had a big roll of paper, and she said, "Do you know what this is?" I said, "What is this?" So she said, "I got an X-ray taken from that fall," when she fell. So I said, "What is the matter? You are all right." And she said, "No. I am all right now," she said, "but I going to fix it up and take all the money of these people." She said, "Nobody can fool me."

Q Where did this conversation take place? A This was my stoop, 17 Quitman street I lived at that time.

30 Q 17 Quitman street? A Yes.

Q When was the last time you saw her, Mrs. Thoma? A That was last time. I never seen her.

Q You have never seen her since? A Since then I haven't seen her.

Q Did you know her to talk to when she lived on Montgomery street? A Yes, I saw her. She was very sick at that time. I used to see the children, and I feel so sorry for her children.

40 Q Did you go to visit her? A No, I didn't visit her; and I passed lots of times, and I

Clara Thoma, cross.

asked what is the matter with the poor children.
So a lady told me that she is already very sick.

The Court: No, no.

A (Continuing) A lady told me that she is so sick.

10

Q No, you must not say that. And you knew her when she moved into Quitman street, is that right? A Yes.

Q Did you know her? A Yes.

Q Did you talk to her from time to time when she lived on Quitman street? A The last time was it when I told you before.

By the Court.

Q 1927? A 1927.

20

Cross examination by Mr. Munsick.

Q Do you know Mr. Hinrichsen? A No, not Mr. Hinrichsen.

Q Do you know any of the Derivaux family?
A I know her father very good, over twenty years ago, Dr. Deviraux.

Q Whom did you give this information to, in the Derivaux family?

30

By the Court.

Q Whom did you tell this story to? A To Mrs. Hinrichsen.

By Mr. Munsick.

Q When? A A few weeks ago I came home from the church, from our church, and I said, "Hello," and she said, "Hello," and I said, "How are you," so she said—

40

John N. Bassin, direct.

The Court: Never mind.

A (Continuing)—she said, “I got lots of trouble,” and she told me—

Q At that time you gave Mrs. Hinrichsen this information? A Yes. Then I said, “How
10 could she be sick? I saw her in 1927.”

A recess is taken until Thursday, January 24, 1929, at 10:00 A. M.

Thursday, January 24, 1929.

THIRD DAY

20 Continued pursuant to adjournment.

Appearances, counsel as before stated.

Mr. Gilhooly: I would like to introduce my medical testimony today, and I have the deposition of Dr. Bassin which I have here, and I would like to read that now to the jury.

30 JOHN N. BASSIN, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Doctor, you are and have been for a number of years a practicing physician? A Yes, twenty-six years.

Q Do you know Annie Bennett? A Well, now, I don't know her, except that she called me. I got a telephone call to come to her house on
40 the 11th of January, 1927. I was called from New York. I was operating at the college at

John N. Bassin, direct.

the time, and I came to see her on Waverly avenue. I found her up and around with a child, rather a young baby. She called me as a bone specialist, she said, recommended by her doctors as a consultant. The doctors are Dr. Greenbaum and Dr. Shapiro. She didn't first give me their names. She says she wanted me for herself, but after I examined her I insisted that as a consultant I cannot treat her without her doctor being present, and as long as any other doctor was in charge I could not treat her. She referred me to Dr. Shapiro, whom I called up on the 'phone, and he told me he is no more in charge of the case, that a certain Dr. Greenbaum in the Oranges was, thereupon Mrs. Bennett became very indignant. 10

Mr. Munsick: I object to those remarks. 20

A (Continuing) Oh, perhaps I should not say that. She became hysterical anyway. She became very nervous and said that she couldn't see why I couldn't treat her myself without asking the other doctors in charge to refer the case to me, but I told her that is the way I had to do with cases that were referred to me as consultant. I quieted her down, but I did go to Dr. Greenbaum. I fished him up in the Oranges. And she promised to appear. That was the next day. He was sick in bed, and I told him the position I was in. I wanted to do what I could for the patient, but I couldn't do it without his permission if he is in charge. He said no, he is not in charge. She promised to appear, but she didn't show up. I waited there the whole afternoon. I wanted to know from Dr. Greenbaum what he knew of the previous history as a family physician, and Shapiro gave 30 40

John N. Bassin, direct.

me very little information about her, so I had to get something to go by, a previous history. Well, his information was that he treated her for colds, previously, and that after an alleged accident she became very hysterical and he stayed with her on one occasion for two hours, but he couldn't make out just what the cause of that condition was.

Mr. Munsick: I object to what Dr. Greenbaum told him.

Q Go on and tell your story. A Well, she didn't show up. I came him, and instead she came to my office at about 8 o'clock that night, and wanted to know what is the result of my consultation with the doctors.

20 Q Did you tell her, doctor? A I said I can't tell her anything about it. If she wants me to treat her I must get permission from those doctors, either one or both, or else she must discharge the doctors. I cannot ethically treat her, so she insisted on information as to what the result of the consultation was and what is going to become of her case, just in those words, if I recall it, "What is going to become of my case." Well, my answer was that I was not
30 interested in any case. I thought I was there to treat her and would treat her, was willing to treat her. I was inclined to believe that I guess she has no doctor; one if sick, and other said he had nothing more to do with the case. Well, she didn't show up but once since. She paid me \$10 for my visit at home. I then proceeded to examine her. I must complete my examination that I started at her home, and since I could get
40 no further information except what I said from Dr. Greenbaum. Before the examination she

John N. Bassin, direct.

alleged an accident, tripping from some stairways, falling down some distance. I don't recall the date of the accident that she gave me because I left it in Dr. Twinch's office, whom as you know died last year, with whom I had a subsequent consultaiton at her request, with Dr. Twinch. I went on to examine her and I found that her chief complaint was a rather rigid neck, and the left upper extremity—that is, the arm, forearm, the hand, and the muscles, were rigid, but her reflexes were extremely exaggerated and she was very emotional, emotional beyond the point of relaxation. There was no paralysis. There was some sensory disturbance such as anaesthesia, but no motion or motor disturbances. She had no Babinski, no plantar foot reflexes, no Oppenheim, and no such reflexes, which are usually present when the spinal cord in any manner, shape or form is involved. I found that entirely negative. But she held herself in a certain position which suggested rigidity and discomfort, and on examination I found that she has a point, a painful point on pressure over the seventh cervical vertebra, about that region.

Q That is the last cervical, isn't it? A Yes, the seventh cervical. That was the most prominent point. I couldn't get anywhere else because she was so rigid. She was so rigid she wouldn't relax. Whether she could or she could not I don't know, but she wouldn't relax. She was rigid, hysterically rigid, called hysterical rigidity. Well, my diagnosis then was based upon the objective signs, not considering the history at all, that she was suffering from hysteria involving the regions that I have mentioned. Whether that is due to an accident that she alleged or to something else I don't know because

John N. Bassin, direct.

I couldn't obtain any history from the doctors, one telling me that he treated her for colds and the other telling me that he is through with the case.

Mr. Munsick: The same objection to that.

10

A (Continuing) She then appeared here again and insisted on treatment. She came in fairly straight and I examined her and didn't find the same symptoms. The picture had changed. She was relaxed, but she was interested in her case, and I told her then that I am absolutely against having anything whatever to do with any case. I will treat her as a surgeon, but I am not a lawyer. I will have nothing whatever to do with it. Well, she went away. She left me, and
20 the first thing I knew I was called up by various attorneys requesting that I give information as to what I know about the lady. I refused as it was a privileged communication. I then referred them to the doctors who treated her previously and probably could give them information, that I wasn't interested in the case, that I really am out of it; I didn't treat her. She doesn't give me an opportunity to treat her. Dr. Twinch
30 then calls me up, tells me that the lady is there, and she told him that I treated her, and he went over carefully, and that she requests with his permission and consent that I come in consultation with him and see her. That was last year, 1928.

30

Q When did he die? A He died about last year. I think he died in March. It is February or March. It was before he left for California. Well, I came in there and he showed me a series of X-rays, and I went over her again, and the
40 X-rays showed that she had a markedly—we

John N. Bassin, direct.

will put it in English—crooked spine, the lower and the middle spine markedly distorted— We call it a rotary lateral curvature—out of all proportion to anything that I had seen in that lady before, and the picture of the X-ray in that region was rather vague. I will not commit myself. The lower picture of the spine was very vivid, the dorsal and the lumbar region badly distorted with the same thing, no motor paralysis, symptoms of anaesthesia of the upper extremities, and holding herself in a rather awkward position, rigid, but we could straighten her up, we could straighten her out. That is, at times during the examination she would relax enough to straighten her out. We held a consultation then as to what is to be done for the lady. Dr Twinch had written down his findings, and I incorporated mine. You know he wrote down what I told him, my findings. And I left my part of the history there. I don't know; I never could recover that part of my own previous history. I am giving you now what I recall fairly distinctly of what is left of my own history in the house previously, and the rest of the history was left in Dr. Twinch's office with the incorporation of my findings with his, and having been buried meanwhile, why, I don't know what became of them. The main point at which we differed or that we weren't sure of was whether or not the diagnosis was one of traumatic hysteria—that means hysteria following an accident—or if such accident did occur, because we weren't interested in the legal aspect. We wanted to get at it from a surgical viewpoint. If such accident did take place, was there one accident or was there more than one accident, and if more than one accident, what was the interval between those accidents, so as to co-ordinate

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John N. Bassin, direct.

our findings with the patient's statement. Well, frankly speaking we couldn't do it because we couldn't co-ordinate. We couldn't co-ordinate those two things unless we were positive about the X-ray condition here in the neck, and that was very vague. Well, we decided the only thing to do was to treat her really neurologically. It was my suggestion as we knew there was a case pending and she was extremely interested in it because she was talking about the case, and we thought if we could only get that case idea out of her head we could probably do something for the hysterical manifestations, but I couldn't do it; he couldn't do it. Well, he has made the report to whomever sent the lady to him of our findings; that is, of his findings; and in the meantime we managed to see what we could do to relax her, straighten her. She could straighten out pretty well. Now, I had in the course of this time various inquiries from attorneys. Lord knows who they are, and I think McCarter & English or somebody to that effect, their office called up, and some other reliable firm.

Q Doctor, don't talk about the attorneys. A But I couldn't give the information because of the relation, privileged communication.

Q Doctor, did you see Mrs. Bennett any time after your consultation with Dr. Twinch? A No.

Q You have never seen her since? A No.

Q Do you recall, doctor, whether or not the X-ray showed any fracture of the 11th and 12th vertebrae? A Well, we weren't satisfied that there was a fracture, Dr. Twinch and I. We wanted other X-rays. We thought that there was a shadow there and we weren't satisfied that there was a true fracture. In other words, if

John N. Bassin, cross.

there was a fracture it was one of long standing, long since healed, but certainly not within, I say, two or three years' standing which would have given us pretty vivid description. We weren't satisfied if there were a fracture.

Q I take it you couldn't tell whether or not there was a fracture? A We couldn't settle positively from the X-ray alone because the symptoms that she has had did not point to that region. 10

Q At that time, doctor, do you know whether she was able to walk all right, as you remember? A Yes. In fact, she called up one time, or they told me, that she is all right now, and you had better send in the bill for the \$200 I owe you.

Cross examination by Mr. Munsick. 20

Q Doctor, the last time you saw her, then, was around January or February of 1928 approximately? A Well, approximately that time or before that time.

Q Is that the time you had the consultation with Dr. Twinch? A Yes, that is before he left for California.

Q Is that when you examined the plates? A Yes. 30

Q But there did appear to be something wrong about the 11th and 12th vertebrae? A No, there appeared to be a shadow in the lumbar region rather than the dorsal, and it was so vague that to commit one's self upon that shadow would be such a height of speculation that I wouldn't commit myself.

Q You don't recollect that there was anything wrong between the 11th and 12th vertebrae? A Exactly. She had the curvature I 40

John N. Bassin, cross.

mentioned. That was the very marked curvature of the purely hysterical type. There were no cartilages involved.

Q That was of the spine itself? A The spine itself.

10 Q You don't recall anything particularly with reference to the 11th and 12th? A Well, I wouldn't say that. I recall a shadow in the region of the dorsal lumbar space which would take in the 11th and 12th, but not particularly the 11th and 12th; it may take in others. From my opinion, from my experience in reading X-rays—that is, as medical students at college—I wouldn't dare to commit myself on that particular phase.

20 Q Did Mrs. Bennett complain to you at any time that she didn't seem to be getting satisfaction from the doctors?

Mr. Gilhooly: I object to that. Her complaint would be self serving. I object on the ground it is self serving.

The Court: I sustain the objection.

Q Was the date of the first time you saw her January 11, 1927? Is that what you said?

30 A Yes.

Q Did you take that from a record? A Well, I believe that is in the record and my recollection. I might have seen her before. I can't tell you the dates.

Q I don't want to pin you down. What I want to get is this. It was approximately a period of a year during which she saw you? A This was in January.

40 Q Between the 1st and last times you saw her? A Well, it was, I guess a year.

John N. Bassin, cross.

Q And you saw her I think three or four times? A No, I saw her more than that. I saw her once at home, twice here—three times, in consultation—I saw her five or six times.

Q During the year? A During the course of my seeing her altogether that is.

Q Between the first and last times you saw her, whatever they may be? A Yes.

Q Would it make any difference in your opinion of conditions as they existed at that time if Mrs. Bennett was now suffering from spastic paralysis?

Mr. Gilhooly: I object on the ground that the doctor is being called upon to express the conditions as he saw them at the time he was treating her.

The Court: That may be answered.

A No, it would not if it is of a hysterical nature. Spastic paralysis is hysterical paralysis or else is of an organic origin. If I told you that she had no Babinski and she had no signs proving that she has organic lesions, spinal cord injury anywhere. Now, if she has a Babinski since I saw her, and if she has signs of motor paralysis then it would make a difference, but if she has no signs now the fact that she has a spasticity, which is not true paralysis, would not make any difference.

Q By motor paralysis you mean what? A Paralysis involving the actual impingement or organic involvement of the spinal cord or nerves coming thereto and from.

Q Is there no difference in the result, in the apparent result between what I call spastic paralysis and what you designate as hysteria?

John N. Bassin, cross.

A Oh, yes, there is a difference, hysterical paralysis.

Q I mean only in the result? A Oh, yes, there is a difference. In one case you will always get a Babinski.

10 Q That is what? A That is spastic paralysis, either spastic or—it doesn't make any difference—paralysis of any kind, spastic or flaccid. In one case you have a paralysis due to either injury or to disease, one or both, in or about the spinal cord or nerves leading thereto or coming therefrom in connection of course with the brain as it goes up into the skull, but in the hysterical conditions you may have a paralysis which is transient, functional, one from which one can get well, and there are no such signs.

20 Q Well, now, objectively is there any difference? A That is objective, you know. The Babinski is an objective sign.

Q I wish you would define it. What do you mean? A Babinski is when you put your finger underneath the plantar region, that is the sole, the big toe goes in a certain position. That is an involuntary act. The patient can't feign it or simulate it. That is a sign of organic trouble in the spinal cord somewhere. In the hysterical condition usually you won't get it.

30 Q What about rigidity? A Rigidity you usually will get that in the hysterical. Rigidity you may get in the hysterical condition, mostly in the organic. Lesions of the spinal cord due to injury or disease you will get usually, not get so much rigidity but you will get actual paralysis, flaccidity like infantile paralysis.

40 Q Drop foot is an indication of what? A Drop foot may be an indication of paralysis, infantile. It may be an indication of paralysis of

Joseph H. Wyatt, direct.

the spinal cord, the motor region, the motion, not sensation, and in hysteria you get sensation, sensation disturbances, but not motion. You may get a great deal of sensory disturbance.

Q In which? A In hysteria. You may get hysterical conditions, sensory disturbance, anaesthesia, hyperaesthesia, and that is not in my judgment constant; that is, functional, transitory, and is dependent upon the state of mind and aggravation or anxiety and emotion usually. The other has nothing whatever to do with emotions. It is there. You will get it in sleep. I mean true paralysis based upon organic lesion of the cord in those cases, you can tell the difference of the paralysis given by those patients even when the patient is asleep. You can tell the fact oftentimes, pick it up, one will be more rigid than the other. 10 20

Q Which will be more rigid? A The good foot will be more rigid than the one that is paralyzed. The one that is paralyzed will be more flaccid like, and the one that is paralyzed will not draw up voluntarily. If somebody pricks you with a needle at night the foot will go up before you know it, not if the foot is paralyzed, but in hysteria that is a different thing. In hysteria the foot may not go up at all. It may just remain rigid and that is all. Hysterical people don't relax. 30

JOSEPH H. WYATT, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Dr. Wyatt, you are a practicing physician in the City of Newark? A I am. 40

Joseph H. Wyatt, direct.

Q You have been for how long? A I have been in Newark eight years.

Q In your practice, in addition to your general practice, have you specialized in any particular work? A X-ray.

10 Q You were so specializing in 1928? A I was.

Q Did you make any X-rays of Mrs. Bennett, the plaintiff in this action? A I did.

Q Where were they made? A At her home.

Q Did you use a portable set to take the pictures? A I did.

Q Doctor, I show you nine X-ray plates and I ask you if they are the pictures that you took of Mrs. Bennett? A They are.

20 *By the Court.*

Q All taken at the same time? A They were; yes, sir.

Q I mean, on one day? A Yes.

Q One day? A Yes.

Q What was the date? A December 26, 1928.

By Mr. Gilhooly.

30 Q Doctor, you had never taken any pictures of Mrs. Bennett prior to that time, had you? A I had not.

Q Doctor, will you kindly step down here so that you can explain to the jury what you find on these pictures? Doctor, will you start at the dorsal, please. A This is a film taken which shows the lower cervical vertebrae, the dorsal spine and the chest. On this film you see the left shoulder is elevated. In taking these pictures I had to take into consideration the patent
40 complaining a great deal, and I couldn't give

Joseph H. Wyatt, direct.

her any more, put her to any more discomfort than was possible; so I had to make the best of the positions I could get her in. This shoulder was elevated, but I can see no evidence of any pathology about the left shoulder.

By the Court.

10

Q By pathology what do you mean, doctor?
A Deviation from the normal. The chest I examined. There is no evidence of tuberculosis in the chest. For the dorsal vertebrae that is not so good, because there wasn't enough penetration; therefore I had to take others.

The Court: Just one minute before we pass that. Do you want them marked?

Mr. Gilhooly: I think we had better have them marked. 20

(The X-ray referred to is received in evidence and marked Exhibit D. 4.)

By Mr. Gilhooly.

Q This plate was taken with the patient lying on the back with the tube above, the X-ray tube above? A There is shown on here a slight deviation towards the right.

30

By the Court.

Q What is that? A That is a slight tilt.

Q What portion of the spine? A This is the dorsal vertebrae.

Q All of them? A The one that I am showing at the present time has all the dorsal vertebrae; yes, sir. No, down to the twelfth, down to the twelfth. On this radiogram there is a slight tilt towards the right about the fourth dorsal, 40

Joseph H. Wyatt, direct.

but I can see no evidence of any bone pathology at that region.

By Mr. Gilhooly.

Q What do you mean by bone pathology?
 10 A Well, I can't see any evidence of bone destruction or any evidence of a fracture. Then we take a lateral exposure to show that dorsal vertebrae.

The Court: Before you depart from any of them hand them over to the stenographer to be marked.

(The X-ray referred to is received in evidence and marked Exhibit D. 5.)

20 The Witness: This is a lateral exposure taken with the patient lying on the side and showing right through.

Q Taken from which side? A The patient was lying on the right side when this was taken.

Q It was taken from the left to the right?
 A Yes, sir. This shows the third, fourth, fifth and sixth, and eleventh dorsal vertebrae. There is no evidence of bone pathology in this film, but
 30 between the eleventh and twelfth dorsal is shown a calcified, some calcified deposits.

By Mr. Gilhooly.

Q Doctor, what causes the calcified deposits?

A Calcified deposits are always seen when there is an injury to the cartilage.

Q That injury to the cartilage is not an injury to the spinal column, is it, doctor? I mean, that is the bone?
 A It can happen without
 40 injury to the bone.

Joseph H. Wyatt, direct.

(The X-ray photograph referred to is received in evidence and marked Exhibit D. 6.)

The Witness: This film shows the lateral.

The Court: Now, this is another one.

The Witness: This shows a lateral exposure of the seventh, eighth, ninth, tenth, eleventh, and twelfth dorsal. That is just the first, second, and third lumbar vertebrae. This shows between the eleventh and twelfth that calcified deposits laid down between those vertebrae, but there is no evidence of bone pathology noted on these films. 10

By Mr. Gilhooly.

20

Q Doctor, by that you mean there is no evidence of fracture there? A There is no evidence of fracture.

(The X-ray photograph referred to is received in evidence and marked Exhibit D. 7.)

The Witness: This is a lateral exposure of the twelfth dorsal, the first, second, third, and fourth lumbar vertebrae, which shows no evidence of bone pathology. 30

By the Court.

Q Is that the same way, left to right? A Yes, sir.

(The X-ray photograph referred to is received in evidence and marked Exhibit D. 8.)

40

Joseph H. Wyatt, direct.

10 The Witness: This is a plate, a film of the lumbar vertebrae taken with the patient on the back. See, there is a slight rotation there of the vertebrae. There is a slight rotation of the patient. I couldn't get her straight. She complained if you moved her, and I didn't want to give her any pain that I could avoid. That shows no evidence of fracture.

By the Court.

Q How is that? A That shows no evidence of fracture or bone disease.

20 (The X-ray photograph referred to is received in evidence and marked Exhibit D. 9.)

Q That does not include any portion of the sacrum? A Very little. I have one here that includes the sacrum. This film was taken to show the third, fourth, and fifth lumbar vertebrae, the pelvis, the right and left hips, and the upper part of the thigh, the upper third. There is a tilt to the pelvis, as you notice there.

30 Q Which way is the tilt? A The tilt is towards the left.

Q That is, the left is lower? A The left is lower than the right. That throws the contour of the pelvis out of alignment. That is why you get that position; and then you see some calcified deposits at the joint between the sacrum and the ilium.

40 Q Both joints? A On both joints; yes, sir; you see a calcified deposit. There are spurs of bone. There is no evidence of a fracture noted in the pelvis, and the right and left hips show no

Joseph H. Wyatt, direct.

evidence of bone pathology. The proximal third of the right femur shows no evidence of pathology, and the left femur shows no evidence of pathology.

Q I notice you have given a little different interpretation to the word pathology in applying it to the bone and your explanation given when you were showing the first one, Exhibit D. 4. You said that was any deviation from the normal. A This is the same thing. 10

Q Is that what you mean each time? A Yes, sir.

Q When you use the word pathology, you mean by that— A Deviation from the normal.

Q When you say no pathology, you mean it shows no deviation from the normal? A Yes.

(The X-ray photograph referred to is received in evidence and marked Exhibit D. 10.) 20

By Mr. Gilhooly.

Q Now, doctor, you are now examining X-rays taken by Dr. Baker on November 1, 1927, is that right? A Exhibit P. 20.

Q You are examining Exhibit P. 20. Now, doctor, do you find any evidence of fracture in the cervical region? A No, sir. 30

Q No evidence of fracture. Now, doctor, did you take an X-ray of the cervical region of Mrs. Bennett in December, 1928? A I did.

Q Will you tell us what the X-ray that you took discloses? A There is a fracture of the fourth, fifth, and sixth—of the laminae of the cervical vertebrae.

Q Is that fracture of the fourth, fifth, and sixth cervical clear to find? A Yes. 40

Joseph H. Wyatt, cross.

Q You can find no evidence of fracture on the picture taken by Dr. Baker? A No, sir.

Q As you find it on that? A No, sir.

(The X-ray photographs referred to are received in evidence and marked Exhibits D. 11 and D. 12.)

By the Court.

Q You didn't tell us how they were taken, whether they were lateral or posterior-anterior views? A The one was taken lateral and the other antero-posterior.

By Mr. Gilhooly.

Q Which one is lateral? A That is lateral.

Mr. Gilhooly: That is marked D. 11.

By the Court.

Q D. 11 is which? A D. 11 is the lateral.

Cross examination by Mr. Munsick.

Q Doctor Wyatt, you took two sets of pictures, didn't you? A Yes, sir.

Q The first ones didn't come out well? A The first ones didn't come out well.

Q So you went back and took some others? A Yes. Then I went back and took some others, and I took them with a portable set in Mrs. Bennett's home. Both were taken there the same day.

Q You did, in fact, move her around, didn't you? A Not any more than I had to. I had to move her to take these laterals, and antero-posterior.

Joseph H. Wyatt, cross.

Q You weren't there when the first set was taken, very long, were you? A Not very long.

Q You used that—what do you call that bed pan affair? A Oh, the Buckey diaphragm.

Q And she had to be lifted around, turned around and strapped down on that, and so forth?

A Yes, sir. 10

Q You don't think these pictures, most of them, are very clear? A Yes, sir.

Q You do? A I think they are very good.

Q Do you think that that of the dorsal area is pretty clear? A It is not as good as you get on a big machine, but for a portable. That is a diagnostic plate, taken on a big machine or a portable.

Q But it is not as penetrating and clear as you would get with your office equipment? A No. 20

Q Now, you found evidence of calcific deposits between the eleventh and twelfth vertebrae? A Yes, sir.

Q You said it can happen without injury to the bone, is that correct? A Yes, sir.

Q It can also indicate an injury to the spinal cord, can it not? A That is due to cartilage. It can happen without injury to the spinal cord; yes, sir. 30

Q Is the intervertebral cartilage a part of the spinal column? A It is between—that is cartilage that is put between the bone to protect the bone.

Q And in these pictures there is an indication that the intervertebral space between the eleventh and twelfth has been lessened, isn't there? A Yes, sir.

Q Quite considerably? A There is a lessening of that space; yes, sir. 40

Joseph H. Wyatt, cross.

Q Showing a destruction of that cartilage?

A Some destruction of the cartilage; yes.

Q Particularly in view of the calcified deposits which are shown there? A Yes.

10 Q Now, an injury of the spinal column, destruction of that space, is as important as a bone injury, isn't it, if you are looking for injuries to the spine? You have said there is no fracture? A Yes.

Q By that you mean that there is no indication that the bone was injured itself; isn't that what you mean? A There is no indication that it was injured itself.

Q But you don't mean to say that the spinal cord wasn't injured, doctor? A You can't show spinal cord nor nerves on an X-ray.

20 Q You don't know? A I don't know.

Q And the fact that that space between the eleventh and twelfth dorsal has been lessened may indicate an injury to the spinal cord, may it not? A It is a possibility that the cord is injured, yes, but there is nothing to show on an X-ray.

Q You wouldn't expect to find this destruction between the eleventh and twelfth unless there had been an injury, would you? A No.

30 Q Then you think there was an injury? A I do.

Q Now, the tilting of the pelvis and the shoulder which you have mentioned—have you examined the other X-rays? A Yes, sir.

Q It is the same in all, isn't it? A There isn't a tilt on the others, as I remember them. I would rather look at them and be positive.

Q And if there is a tilting in the others, that indicates a fixed condition down there, doesn't it?

40 A Not necessarily.

Joseph H. Wyatt, cross.

Q If they were taken as long ago as they were taken? A A patient if they are not on the film absolutely right you will have a deviation. It may be due to the position that the patient is in.

By the Court.

10

Q It wouldn't be likely to be the same deviation, however, if taken after a long interval of time, would it, doctor. A It wouldn't be the same deviation taken by different men.

By Mr. Munsick.

Q If it is the same in the different pictures, then you think it is a fixed condition? A I would think that that patient has a deviation there, yes.

20

Q Not an assumed position. A Well, I would think that it wouldn't be an assumed position, because different men pull their patients down.

Q You would think it would not be an assumed condition? A I wouldn't think it would be an assumed condition if it was the same on all the films.

Q If it shows the same on all the films? A No, I wouldn't think it was assumed.

30

Q By pathology you mean deviation? I am referring to bone pathology. You have mentioned bone pathology. Do you mean a deviation from the normal? A That there is no bone pathology, yes.

Q And you find no bone pathology in the dorsal region? A In the dorsal region? No.

Q Did you say that? A I said that I didn't find any evidence of bone pathology except that

40

Joseph H. Wyatt, cross.

tilt that is there, which from my films I couldn't see any evidence of fracture.

Q Well, then, again you are referring to fracture as direct bone injury? A A direct bone injury, yes.

10 *By the Court.*

Q Would a destruction or impairment of the cartilage between two vertebrae, notably in this case the eleventh and twelfth dorsal, cause a deviation in the spine, cause a spinal curvature? A If there was nerve injury, but from those films there is no curvature.

Q No curvature? A No, sir; there is not.

20 Q Doctor, didn't you say there was some curvature in the pictures of the lumbar? A I said that there is a rotation there.

By Mr. Munsick.

Q Isn't there a curvature there? A There is a rotation.

Q What do you mean? A The Judge just asked me if the eleventh and twelfth—

The Court: I limited it to that.

30 *By the Court.*

Q Where is the rotation, doctor? A Throughout the lumbar vertebrae there is a rotation there. I couldn't get the patient straight.

Q The lumbar you say? A Yes.

By Mr. Munsick.

40 Q When you use the word curvature, doctor, that means of the whole spine, doesn't it, not

Joseph H. Wyatt, cross.

any one particular spot? A A curvature usually means more than one vertebra, yes.

Q What do you call it where there is a sharp deviation of some kind? A If there is a sharp deviation? There is a tilt.

Q In one particular point? A In one particular point? Why, there is a deviation. 10

Mr. Gilhooly: I object that there is any deviation at any one particular point from the film.

The Court: The doctor says there is a rotation, and I understand him to differentiate rotation from curvature.

By the Court.

Q I assume that a rotation can take place between two single vertebra, can it? A A rotation could, but there is a rotation of the lumbar vertebrae due to the position that the patient is in. 20

Q Do you think that is due to the position? A It is a possibility that it is due to the position.

Q Can you tell? A Not from my plates; no, sir. I couldn't straighten the patient out without she complained. 30

By Mr. Munsick.

Q Could you tell possibly from the other plates whether the rotation was due from her position or not? A No, sir.

Q Why not? A Because the rotation— A person can have rotation at one time and have none at another. These films that I have taken are taken at a later date, and the rotation that 40

Joseph H. Wyatt, cross.

I have on there was due to the position of the patient. The patient couldn't come down straight.

Q Do you say definitely it was due to the position, or it might have been due to the position? A It might.

10 Q Couldn't you, by referring to the other pictures, determine? A Say positively? No, sir.

Q Now, isn't it so that between the cervical and the lumbar or sacro-lumbar, if that is the correct designation, lumbo-sacro region there is a curvature of the spine? A Surely; on every one.

Q On every one? A On an anterior curvature.

20 Q Is there a lateral curvature? A A lateral curvature may be physiologic and not pathologic.

Q Is there one in this case? A I am talking from my films there. I cannot come out and say from my films whether there is a rotation, because I couldn't put that patient in a proper position. I couldn't stretch the patient out. I worked under difficulties with those, because the patient would complain at the slightest movement.

30 Q But she didn't object in any way to your doing what you could do? A She would do what she could; surely; but if you moved her too much she would holler and then stop.

Q You would finally get her around there? A In a fashion.

Q Well, you did take lateral pictures of her? A Yes.

Q You had her strapped down on that machine of yours? A Sure; yes, sir.

40 Q Referring to Exhibit D. 9, doctor, that indicates what? What do you call it; an anterior curvature? A Well, now, it has got a curvature

Joseph H. Wyatt, cross.

there, that the body is rotated towards the left. The vertebrae is rotated towards the left. That is the position that she assumed on the plates.

Q Do you state that as positive, or is that your opinion? A Why, no, it is positive, because I couldn't get it down on the plate. Whether she could come down on it I don't know, and there is no way for me to tell, because I couldn't force her down. That is the position which she assumed. I don't know whether she could be forced down in a direct position. 10

Q Didn't you use that broad canvas belt fastened to your machine? A Yes.

Q On which there is a lever arrangement to work it down? A Surely; but you can't take a patient that is going to complain—you would only put as much pressure as you could. When she complained, I just made it a little bit tighter, an exposure made, but there wasn't force used on it; that is, much force. 20

Q So far as you know she didn't assume any position either, while you were taking the pictures? A I couldn't say whether she did or not. From my observation she gave me co-operation.

Q Yes, she made no effort to resist, did she? A No. 30

Q But she did complain. A She would complain, and when she would assume a position, say it hurt her too much, we would stop on that.

Q During the time you were there and while you were moving her around, she remained stiff, did she not, from the waist down? A I couldn't answer that question; I don't know.

Q You must have seen her legs because you had to have help, didn't you, to put her over? 40

Joseph H. Wyatt, cross.

A I had to have help, but I didn't notice any stiffness that she had there.

Q You didn't notice any stiffness in the legs? A No, sir; I didn't.

10 Q What was the help for? A To get her around, to help her around so that we could—I always give a patient the benefit of the doubt in taking them and helping them around, so they don't have any more pain than possible, and her legs must have been stiff; I couldn't answer that question.

Q You can't tell now whether or not while you were taking these pictures her legs were stiff? A No.

Q Is your assistant here? A He is not.

20 Q You were there for a while he was taking the first set of pictures? A I was.

Q Did you notice her legs then?

(Discussion.)

A Well, I didn't notice her legs. I didn't notice whether they were stiff or not. I noticed we had to move them over, but we would move them over even on a patient who can move the legs. We always do.

30 Q But you couldn't say that her legs were stiff? A I didn't say they were stiff; I don't know.

Q You wouldn't say that? A No.

Q You won't say they were flaccid, would you? A No.

Q Was Dr. Pinneo there the first time you took those pictures? A Yes.

40 Q Do you remember him helping on the bottom of the bed, turning her over? A Yes, I remember that.

James H. Trainor, direct.

Q Why would he turn her over? A To help her.

Re-direct examination by Mr. Gilhooly.

Q Doctor, I don't believe you brought out which side of the neck the fracture was on. Will you kindly tell the jury? A The fracture is on the—I am not quite positive about the side, but I think that it is on the left side—or the right side from the antero-posterior position. 10

Q The right-hand side? A When you come down here it is on the right side (indicating).

Q Was Dr. Pinneo the doctor who was treating Mrs. Bennett? A I don't know.

By the Court.

20

Q In speaking of the condition of the legs as being stiff, I suppose you understood Mr. Munsick to speak of muscular rigidity, did you not? A Yes.

Q You don't know whether the muscles of the leg were rigid? A I do not.

JAMES H. TRAINOR, sworn in behalf of the defendants. 30

Direct examination by Mr. Gilhooly.

Q Doctor, you are a practicing physician in the City of Newark? A Yes, sir.

Q And you have been for how long? A Twenty-five years.

Q And your experience during that time has been what, doctor? Kindly tell the jury. A 40

James H. Trainor, direct.

I have done general practice. I am a general practitioner of medicine.

Q Did you examine Annie Bennett in October, 1925? A I did.

Q Where did you examine her? A At Dr. Greenbaum's office in West Kinney street, Newark.

Q Who was present at that examination? A Mr. Ralph Cooper, a lawyer.

Q Who is he? A He is a lawyer in Newark; Dr. Greenbaum, Mrs. Bennett, and myself.

Q Now, did you get the history of Mrs. Bennett's case from Dr. Greenbaum? A Of her case?

Q Yes. A I got it mostly from her. She told me she had fallen downstairs, and I refrained from asking any more about the way the accident happened, because Mr. Cooper didn't want me to ask any further questions on that.

By the Court.

Q When was the examination? A On the ninth of October, 1925, five o'clock in the afternoon. After I had gotten her name and address and age and her marital status, I asked her what her injuries had been, and she told me that she had sprained her left shoulder, a sprained left ankle, contusions of the left side of her chest, and of her right calf. She said there were no other injuries.

Q Did you examine her then, doctor? A Yes, sir.

Q What was the result of your examination? A That there were no objective signs of injury then. There were no black and blue spots. Motions of her left shoulder and in her ankle were

James H. Trainor, direct.

free, but she said they hurt her; she had pain. She had walked to the doctor's office, she told me that, but she had difficulty walking because her ankle hurt her. The ankle wasn't swollen, but when I moved it she said it hurt her.

Q Did she, at that time, make any complaint about any injuries to her spine? A She said there was no injury except those that I have mentioned. 10

Q Were there any objective symptoms that you observed? A Of her spine?

Q Yes. A No.

Q Doctor, did you see Mrs. Bennett again? A Yes.

Q When did you see her again? A The next time was November 15, 1928.

Q Where did you see her at that time? A At her home, 24 Waverly avenue. 20

Q Tell us what happened. A That examination was most unsatisfactory for this reason. Mr. Munsick had made an appointment for me to see her about half-past four in company with Dr. Pinneo. Dr. Pinneo was late, and dusk fell just about the time he arrived, and there wasn't any light in the house. Something had happened to their electricity or gas, and there was a lamp or candle, and so we made a hurried examination of her that wasn't satisfactory. However, at that time I determined that she had a paralysis of her legs, with a loss of sensation. She had both motor and sensory paralysis. 30

Q When you speak of paralysis, what do you mean, doctor? Any particular form of paralysis? Was it due to any particular cause? A She held both her legs in a very rigid position. It was almost impossible to move them. It was impossible to move her knee joints. They 40

James H. Trainor, direct.

acted like they were completely ankylosed, and her feet, her toes were turned down. She had a spastic paralysis and there was a loss of sensation. I pricked her feet and her legs. She didn't feel it at all.

10 Q Doctor, in your practice have you had experience— A I saw her after that.

Q I beg your pardon? A I saw once after that. I was present when Dr. Dowd examined her on January 7. I didn't conduct the examination, but he did, and I was present while it was done. Mr. Munsick was there that day. He made a careful and thorough examination, I know.

20 Q Dr. Dowd did? A Yes; a number of tests that I have never seen before or knew about.

Q Doctor, have you had experience with myelitis? A A little, not much. I have seen but a few cases of it in the twenty-five years I have been practicing.

Q Doctor, with respect to myelitis, that is something that is gradual, or what are the symptoms? A No. My idea of any sort of myelitis is that it is essentially an acute condition.

30 Q Would it manifest itself, all its symptoms, very early in a patient's case? A Early after what? It comes on very quickly.

Q What do you usually find if a patient is suffering from myelitis, doctor? What objective symptoms are there? A We get a spastic paralysis, particularly if it is a transverse condition.

40 Q With respect to the bladder? A A transverse myelitis never occurs without loss of control of bladder and rectum. There is a paralysis of both of those organs.

James H. Trainor, cross.

Q Now, from your examination did you see any indication of myelitis in the examinations?

A This woman may have one. She may have a myelitis. She certainly has a spastic paralysis, which is one of the symptoms of a cord injury, or a cord degeneration, but on the two occasions that I saw her I know her bed wasn't wet. 10

Q Her bed wasn't wet? A There was no urine smell about her at all. She was very clean, certainly no loss of control of her rectum.

Q Is that usually present? A That is always a symptom in a transverse myelitis.

Q Doctor, upon your examination that you made of Mrs. Bennett on October 9, 1925, and your subsequent examination in November, 1928, and the further examination made by Dr. Dowd, at which you were present, would you, in your opinion, say that Mrs. Bennett at the present time is suffering from injuries sustained by her in July, 1925? A I can't conceive that to be possible. The injuries that she had when I first saw her weren't of a serious nature, simply sprains of two of her joints and contusions of her chest and one calf, and it doesn't seem possible to me that so long after that, three and a half years after, she should have symptoms of this kind. 20 30

Q You would then attribute it to some other cause? A I would, yes.

Cross examination by Mr. Munsick.

Q There is no doubt in your mind as to the condition when you found her in November, 1928, is there, about the paralysis? A Oh, no. It was quite manifest. 40

James H. Trainor, cross.

Q What date was that? A The fifteenth of November.

10 Q Now, when you saw her first in October, 1925, you found only those few matters which you mentioned? A Those are the ones which she told me about. There was no evidence of those even.

Q No evidence of those? A Except her subjective evidence. She said she had pain.

Q Did you report to anybody that you thought she had tuberculosis? A Oh, yes.

Q Why? A Because I examined her chest.

Q Was there a bloody sputum? A She said there was.

Q Wasn't that serious? A That is the reason I thought she had tuberculosis.

20 Q But you didn't mention that on your direct examination? A Because that wasn't brought to my attention by her.

Q How was it brought to your attention? You couldn't tell by looking at her chest? A She was emaciated. She weighed 97 pounds. I took her temperature that afternoon. It was five o'clock in the afternoon. Her temperature was ninety-nine and a half.

30 Q She had fever, didn't she? A She had fever; she had a pulse of about 144, and she had ralls all through her chest.

Q And that was quite serious? A I thought it was.

Q You didn't mention that on your direct examination? A He asked me about injuries. I didn't think that was injury.

Q Did you take her temperature? A Yes.

Q Do you remember the thermometer that you used? A Oh, no.

40 Q You don't remember that? A I don't.

James H. Trainor, cross.

Q Do you remember whether it was yours?

A Oh, it was mine.

Q Do you remember looking for one in the doctor's office? A No, I don't.

Q You don't claim now that she had tuberculosis at that time? A Well, that has been disproved, apparently. 10

Q It has apparently been disproved? A Yes. She had sputum test made. She was dreadfully run down. She told me that she dropped from 135 or 137 down to 97 pounds.

Q After you examined her you thought that that was a serious condition? A Yes.

Q On your direct examination why didn't you mention that? A I did not consider that was as a result of the accident.

Q Why didn't you mention it? A Because 20
it wasn't due to injury.

Q Did you say in your report that she had tuberculosis? A I thought she had pulmonary tuberculosis.

Q But you know now it wasn't pulmonary tuberculosis? A No, apparently that wasn't true, not a fact.

Q So, at the time it meant something in your examination of her injuries resulting from her fall? A I do not say that it resulted from 30
the fall. I don't think they did.

Q Did you report that in your report? A I did.

Q Did you report the loss of weight in your report? A I did.

Q Did you put down in your report possible injuries, fracture of the skull? A No, I don't think I did.

Q Anything else of that sort? A No.

Q No other possible injuries? A I don't 40
remember that I did.

James H. Trainor, cross.

Q Do you object to my looking at your report? A Not at all if it is here. I haven't got it.

Mr. Gilhooly: I haven't got any report.

10 A (Continuing) That examination wasn't made for Mr. Gilhooly. That is probably the reason he hasn't got it.

Q But you made it for the defendant. You made a report, didn't you? A Yes.

Q The last time you examined her did you find her neck, shoulders, and pelvis were twisted? A Yes.

Q You don't think that that was assumed? A Oh, no. The woman undoubtedly has a spastic paralysis now. What it is due to, I don't know.

20

Q Do you think that was something of rather long standing? A My estimation is that it is not of as long standing as three and a half years.

Q But do you think it is something of long standing? A No, I don't. I thought that she had an acute myelitis, and that is not a chronic disease, in my estimation.

30 Q Do you think it might have existed in May, 1928? A May, 1928? It might have. She told me at that examination that she had been in bed nearly all the time from the time of my first examination; that nearly all of her time was spent in bed during those three and a half years.

Q Do you remember what she told Dr. Dowd? A About what?

Q About that same thing. A No, I don't.

40 Q Didn't she tell you that she had been in bed possibly half of the time and out of bed

James H. Trainor, cross.

the other half of the time? A I don't recall that.

Q Didn't you, at the time of the examination, finding her in that high fever— A That wasn't a high fever. It wasn't even a fever. It was a rise of temperature, not serious, of one degree. 10

Q In her emaciated condition, in your opinion she had tuberculosis, didn't you recommend that she go to some other doctor? A Oh, no.

Q You didn't? A Certainly not. I didn't make any recommendation to her at all.

Q You are quite sure that you didn't list a possible fracture of the ribs? A No, I know I didn't.

Q Pains in the back? A There was nothing said about her back at all to me, at that examination. 20

Q I mean, did you list these as possibilities? A No, I didn't.

Q Have you got a copy of your record? A No, I haven't.

Q Did she have any teeth out? A No. There was nothing said to me about that at all.

Q You didn't examine her mouth? A I noticed that she had bad teeth at the time, but there was nothing said about her having them knocked out in that accident. 30

Q Were there teeth out? A Yes.

Q But she said nothing about teeth having been knocked out in that accident? A I learned that subsequently.

Q When? A At the time Dr. Dowd examined her on January 7.

Q That was the first you learned of it? A Yes.

Q She made no complaint except what you have given us? A At what time? 40

James H. Trainor, cross.

Q When you first saw her? A That was all. I remember that very distinctly.

Q You testified in your opinion myelitis was an acute condition? A Yes, as I understand it.

10 Q What do you mean by acute? A That it is not a chronic condition that lasts for years. It is essentially an acute condition, and usually it is fatal within a few weeks.

Q You mean that phase of it where disintegration reaches the point where the paralysis sets in, then it is acute? A It is acute from the time it starts.

Q Where does it start? A Depending on their causes, due to disease or injury.

20 Q You do not necessarily when it is acute say that it has got to follow immediately the injuries, do you? A It usually does. For instance a patient who has myelitis may have a cord sensation in the afternoon, sensation about the cord, peculiar type of sensation, and the next morning waken with one or both legs paralyzed. It is as acute as that.

Q What is myelitis? A A disintegration of the cord from some reason or other.

30 Q Does disintegration of the cord occur as rapidly as all that? A Yes, it does particularly if it is due to accident.

Q You never heard of an instance where the injury occurred some time before the acute condition set in, did you? A Not as long as three and a half years.

40 Q You have never heard of it? A I have had but very few cases of it. I think nearly every case I have seen has been syphilitic in origin. They were due to syphilis.

James H. Trainor, re-direct.

Q Oh, the cases you have had were due to syphilis? A I think I have never known a myelitis that was due to injury.

Q You have never known any due to accident? A No.

Q But it does occur from injury? A The text books tell us that it can, yes. 10

Q Then as a matter of fact you aren't very familiar with that? A I told you that my experience has been very little in this disease.

By the Court.

Q Doctor, do you think that Mrs. Bennett is suffering from myelitis? A I am not in a position to say. I thought that she was, yes, either that or that she had a very marked hysteria and I can't differentiate between the two. I am not in a position to do that. It is possible that she has. 20

Q From her condition if it be myelitis, is she in the condition which you have described generally for a person afflicted with myelitis; that is, her condition likely to become fatal within a short time? A Yes, sir. It is essentially a fatal disease. If that is what she had, if, in my opinion, she hasn't had it very long, she will not live long. 30

Q Would you indicate the length of time? Would you care to do that? A I don't know.

Re-direct examination by Mr. Gilhooly.

Q Doctor, on the other hand, if it is a major hysteria, then she can get well? A Oh, yes. Hysterical cases clear up.

Q Doctor, did you speak to Dr. Greenbaum in the presence of Mrs. Bennett as to any X-ray 40

James H. Trainor, re-cross.

pictures? A Yes. I asked him if any X-rays had been taken. He said he saw no need of having them taken.

Q That was in your examination of October 9? A That was in the original examination.

10 *Re-cross examination by Mr. Munsick.*

Q Did you tell her she had better have any taken? A No, I didn't. I made no recommendation to her at all.

Mr. Munsick: Will you read that answer to Mr. Gilhooly's question?

(A previous question and answer were read by the stenographer as follows: Question: Doctor, did you speak to Dr. Greenbaum in the presence of Mrs. Bennett as to any X-ray pictures? Answer: Yes, I asked him if any X-rays had been taken. He said he saw no need of having them taken.)

20

The Witness: The reason I asked that, it is one of the questions on my examination form.

Q And that is the only reason? A I think so, because both the joints were free and I thought painless, but she said they hurt her when I moved them.

30

Q Which did? A The left ankle and left shoulder.

Q But you don't consider that Mrs. Bennett is suffering from hysteria, do you? A I don't know. If she has I have never seen a case like that.

Q It would be an unusual case? A Oh, very.

40

James H. Trainor, re-cross.

Q It looks more like— A It looks more like that she had a myelitis to me.

Q That is true spastic paralysis? A She has a true spastic paralysis undoubtedly.

By the Court.

Q Is spastic paralysis an incident of hysteria? A Yes.

10

By Mr. Munsick.

Q It is transitory in that case, isn't it? A Usually. Pending litigation will keep it up. Perhaps when it is over the hysteria will frequently clear up.

By the Court.

20

Q I suppose, doctor, to the patient a spastic paralysis produced by hysteria is just as real as a spastic paralysis produced by— A Any other cause.

Q (Continuing)—pathological causes, is it not? A Yes, anything; yes, sir.

By Mr. Munsick.

Q It may result exactly the same, may it not? A I didn't get that.

30

Q It may result just the same as spastic paralysis? A They are almost identical in the mind of the patient.

By the Court.

Q And as I understand it they are the same except as to the— A Their cause.

Q Except as to the cause and except as to the future outcome? A Well, yes; and there

40

Ambrose F. Dowd, direct.

are signs that the neurologists know that will tell whether the condition is a hysterical one or a pathological one.

By Mr. Munsick.

10 Q A neurologist is better able to tell? A
I think so.

AMBROSE F. DOWD, sworn in behalf of the
defendants.

Direct examination by Mr. Gilhooly.

20 Q Dr. Dowd, you are a practicing physician
in the City of Newark? A Yes.

Q You have been for how long? A Nine-
teen years.

Q Before you were admitted to practice
medicine, what university did you attend? A
University of Vermont.

30 Q After you were admitted to practice, what
was your experience in the medical line? I
would like to have the details given to us. A
Why, I was connected with the Newark City
Hospital, St. James' Hospital, Mountainside
Hospital, Irvington General Hospital, New
Jersey Department of Labor and Rehabilita-
tion Commission as consultant in nervous and
mental diseases.

Q You specialize in what? A Nervous and
mental diseases.

Q Doctor, did you examine Mrs. Bennett?
A Yes.

40 Q Do you remember the date of your ex-
amination? A January 7, 1929.

Ambrose F. Dowd, direct.

Q Where was that examination held? A 24
Waverly avenue.

Q Who was present at the examination? A
Mr. Munsick and Dr. Trainor and the patient.

Q Now did you speak to Mrs. Bennett at
that time, doctor? A Yes. 10

Q What history did she give? A Mrs. Ben-
nett said that on the thirteenth of July, 1925,
she fell downstairs, and that subsequent thereto
she had had a continuous increasing disability,
that her vision wasn't as acute as it had for-
merly been, that she didn't hear well in her left
ear, that she for a time and at times with the
assistance of crutches had been able to get
about, that she couldn't raise her arms above the
level of her shoulders, that her legs were para-
lyzed, and that she couldn't fully control her 20
urine, that at times it dribbled away from her,
that some teeth had been knocked out at the
time of the accident. I think that covers her
subjective history.

Q Now, doctor, did she make any mention
about the drag of the right foot? A Yes. She
mentioned that she dragged her right foot when
she walked with crutches.

Q Doctor, will you please tell us what ex-
amination you made and what condition you 30
found? A I examined Mrs. Bennett, who was
in bed. She presented a curvature of the spine,
a lateral curvature.

Q Doctor, will you stop there and tell the
jury what that means? A It is a curvature to
one side from the usual line.

Q Does that denote any injury to the spinal
cord in any way? A To the spinal cord?

Q Yes. A No, not to the spinal cord. She
presented a conspicuous and tremendous rigid- 40

Ambrose F. Dowd, direct.

ity and immobility of her legs. They were rigid, immobile, and it was impossible to flex her knees without injuring the knees or her, so that wasn't done. There was a total loss of sensation of her toes, feet, legs, and thighs. Loss of sensation terminated at the pelvic rim, just where
10 the abdomen begins. There was a loss of sensation over her left shoulder, and an area of increased sensation in the region of the left collar bone, an area of increased sensation over the right shoulder. She had no Babinski.

Q Doctor, what does that "no Babinski" mean? What does that mean? A A Babinski is a flexion of the great toe toward the body when you stroke the sole of the foot. She had no Clonus.

20 Q What is a Clonus, doctor? A Clonus is a rapid movement of the foot when you press upon the sole of the foot. She had no Oppenheim.

Q What is an Oppenheim? A It is a dorsal flexion of the toes when you stroke the inner surface of the leg. She had no Gordon.

Q That is what, doctor? A That is a flexion of all the toes when you make pressure upon the calf muscles. She had no Chaddock and no
30 Mendel-Dechtere. Her plantar reflexes and her achilles reflexes were normal. The knee jerks could not be elicited because of the tremendous rigidity of her legs. Her biceps, triceps, radial reflexes were all normal. Her pupils reacted normally to light and accommodation, and her eye grounds were normal. She couldn't raise her arms above the level of her shoulders, and she had the sensory disturbance there that I have already mentioned. Several teeth were
40 missing. Her neck was rigid and apparently

Ambrose F. Dowd, direct.

painful. Her abdominal reflexes, upper and lower, were both normal.

Q Doctor, had she lost control of the bladder or rectum, do you know? A The bed wasn't soiled or wet at that time. She said she had trouble with her bladder, that urine dribbled away from her, and that her bowels moved only with the assistance of enemas. 10

Q Would you say that indicated a loss of function? A It indicates disturbance with the bladder, certainly, and the rectal disturbance might be due to a constant or more or less constant presence in bed, or due to a disturbance in the cord.

Q Doctor, as a result of the examination you made, what opinion did you form as to her present condition? A I think that she has a functional, entirely psychogenic and recoverable disability. 20

Q What do you mean by functional? A That there isn't any cord injury or disease that explains the findings that I have enumerated.

Q Did you examine the X-rays, doctor? A Yes.

Q You examined the X-rays taken by Dr. Wyatt, I presume? A Yes. 30

Q Do you find that the disability in her legs has any organic basis? A The disability in her legs, in my opinion, has no organic basis.

Q Won't you kindly explain that so that we laymen can understand what you mean? A It isn't due to cord injury. I think I should say here that the disability in her arms, in my opinion, may have an organic basis. I think that is explicable on an organic basis.

Q Doctor, in your opinion as a result of what you found, do you feel that— 40

Ambrose F. Dowd, direct.

The Court: I suppose by that you mean whether it is his opinion?

Mr. Gilhooly: Yes.

10 Q Is it your opinion that it was necessary for Mrs. Bennett to get around on crutches for the past few years? A It may have been. Functional disabilities are sometimes completely disabling over long periods.

Q Now, doctor, you think that Mrs. Bennett is recovering, that her condition is recoverable? A Recoverable.

Q Because it is functional? A Yes.

20 Q You feel, doctor, in your opinion, that if this trial is over and the excitement pertinent thereto is relieved, that Mrs. Bennett's condition might greatly improve? A If this trial is the sole operating cause, yes. If it is the sole operating cause.

Q By that you mean if there are no other mental worries, is that right, doctor? A Yes.

30 Q Doctor, what effect or what picture would you have if there is no Babinski? What does that bring to you? What does that information prove? A It proves that there is no involvement of the lateral pyramidal of the motor tracks of the spinal cord.

Q Doctor, have you had experience with myelitis? A Yes.

Q Tell us something about myelitis. What is it? A Myelitis is an inflammation of the spinal cord.

40 Q What can it be caused by? What is it due to? A Caused by acute infectious diseases, metabolic diseases, and it can be caused by injury.

Ambrose F. Dowd, direct.

Q Do you find myelitis to be a progressive disease where caused by injury; that is, progressive over a long period of time? A Myelitis or transverse myelitis?

Q Well, now both. A Myelitis itself may progress if caused by injury. Transverse myelitis progresses and reaches its maximum within a few weeks or a few months and then becomes stationary. 10

Q Can a transverse myelitis come from an injury, or must that be from a disease? A Oh, you can have a complete transverse myelitis from injury if the cord is entirely divided by the injury.

Q Could you have that, doctor, if there is no evidence of bone injury, in your opinion? A Can you have it without bone injury? Oh, yes, you can have it without bone injury. 20

Q Then it must be a disease; isn't that right, doctor?

The Court: He said it may be by either.

A No, you can divide a spinal cord without fracturing the spine, from trauma. It can be done. It has been done.

Q Doctor, if Mrs. Bennett had no Babinski in January, 1927, would you say that that would aid you in your present conclusion that she has no injury to her spinal cord? Would that play any part, in your opinion? A It has no part whatsoever. 30

Q Doctor, with all the normal reflexes that you have mentioned without the presence of some pathological reflexes, what is your opinion as to whether or not this present complaint of Mrs. Bennett in her lower extremities is from an anatomical standpoint— 40

Ambrose F. Dowd, cross.

The Court: I suppose by complaint you mean condition?

A I don't think it has any anatomical basis.

Cross examination by Mr. Munsick.

10

Q You won't say it has no anatomical basis?

A In my opinion it has not.

Q Did you make a heat and cold sensation test? A No. She has a total anaesthesia.

Q I mean a hot and cold test. A No, I didn't. She has a total anaesthesia.

Q There isn't any doubt about the spaticity? A None whatsoever. It is most conspicuous.

20 Q You also say that you attempted to flex the knees? A Right.

Q You worked pretty hard on that, didn't you, doctor? A Well, as hard as I dared. I didn't want to injure her knees.

Q You didn't turn her over and examine her back physically, did you? A Oh, no, it couldn't be done.

Q Or on the side? A No. She couldn't be rolled over.

30 Q You did give her a pricking test? A Yes.

Q Quite a thorough one? A I think so.

Q Now, Mrs. Bennett also told you in your preliminary to the examination, when she had taken to bed permanently, didn't she? A She may have done so. I wouldn't say.

Q Haven't you got it in your notes? A No, I haven't I haven't got my original notes here.

40 Q You took original notes? A I certainly took volumes of them.

Ambrose F. Dowd, cross.

Q She also told you, didn't she, when this paralysis began to set in? A She said a short time after the injury, as I recall it. That is my recollection. It may be inaccurate.

Q I think so. Didn't she also tell you that from the time of the injury down to recently she had been maybe half of the time in bed and half of the time out? A She told me she had been about with assistance of crutches and dragged her right leg. 10

Q Did she use crutches? Did she say that? A She said she used crutches.

Q You haven't got your notes? A No, I am recollecting that.

Q Where are they? Do you know? A Yes, I know where they are.

Q Are they here? A No, they are in my office. 20

By the Court.

Q Doctor, I want to see if I have recorded you correctly on my notes. When you were asked to give your opinion my notes say that you said she had a functional and entirely psychogenic and recoverable paralysis. A So far as the legs are concerned.

Q Now, then, will you explain what you mean by the word psychogenic? A Yes, that it is due to a dissociation of her personality, that her personality has been altered by these or other experiences or many experiences possibly, and that the various component parts of that personality are not working in harmony. 30

Q Now, has that any relation to what some of the other experts here have called hysteria? A Yes, hysteria is due to a dissociation of the personality. 40

Ambrose F. Dowd, cross.

Q By the use of the word psychogenic you mean that it may be expressed in the ordinary term of hysteria? A Yes.

By Mr. Munsick.

10 Q But you concede that it may have an anatomical basis? A No, I did not.

Q Not at all? A Only as far as the arms are concerned.

Q Why? A Why, because she has definite nerve root symptoms expressed in nerve root areas over her shoulders and clavicle.

Q There is something organic there you say? A Yes, I said that. I have said that. If she had a myelitis of long standing she would inevitably and necessarily have pathological reflexes. Her plantar reflexes would be absent and her achilles would be absent. The pathological reflexes do not exist and the other do, and her abdominals would be absent, and they are present; very much present.

20

Q Her which did you say? A Her abdominal reflexes.

Q Would be absent? A Would be absent if she had a myelitis in this area, transverse myelitis.

30

Q In what area? What do you mean by "This area"? A Anywhere below the tenth dorsal segment of the cord.

Q Will you indicate where you mean? A I mean about here, around here (indicating).

By the Court.

Q Indicating where? A Around the lower part of my chest.

40

Ambrose F. Dowd, cross.

By Mr. Munsick.

Q Where did you find any reflexes? A In her abdominal wall.

Q Whereabouts? Whereabouts in the abdominal wall? A Upper and lower, both are present. Only place they can be. They are two sets of abdominal reflexes, upper and lower. They are present and normal. 10

Q How did you endeavor to ascertain the plantar reflexes, doctor? A Stroked the sole of the foot.

Q And you kept it up quite a while, didn't you? A Oh, I did it two or three times, I think.

Q It was more than that, wasn't it? A No, not for that purpose. That was for the purpose of the Babinski, Clonus, Mendel-Dechtereia. 20

Q What did you find the reflexes? Were they in both feet? A Yes, both feet.

Q Were they the same in effect? A Yes.

By the Court.

Q By the use of the term "transverse myelitis," do you mean a complete severing of the spinal cord at once? A Not at once. At a given level in the cord, so that there would be a cross-section. It is due either to disease or injury. 30

Q May the spinal cord be injured in such a way that the progress of the deterioration of the spinal cord may be gradual and then a final severance as a result of that injury? A Within two or three months, yes.

Q But it must be within two or three months?

A Within two or three months.

Q Could that occur over a period of three years? A I don't think it is possible. 40

Carl F. Hinrichsen, direct.

By Mr. Munsick.

Q You don't make any definite statement, two or three months, do you? A I do, yes; very, very definite.

10 Q It couldn't be more than two or three months? A Not in a transverse myelitis. You divide the spinal cord, and it degenerates very, very rapidly.

Q Oh, yes, sure. I didn't know what you meant. Once divided it develops quickly, doesn't it, the degeneration? A Yes.

20 Mr. Gilhooly: I have the deposition of Carl F. Hinrichsen, of whom considerable mention was made by Mrs. Bennett in her testimony. This was taken the other night at his home where he is ill.

CARL F. HINRICHSEN, one of the defendants, sworn in his own behalf.

Direct examination by Mr. Gilhooly.

30 Q Are you familiar with Annie Bennett, formerly a tenant at 8 Quitman street? A Yes.

Q How did you come to first meet her? A I met her at the flat, fourth floor, 8 Quitman street, Newark.

Q Did you have any conversation with her about the renting of this flat? A Well, she came during the evening.

Q Where did she come? A At 623 High street. She had been here in the afternoon to see my wife.

40 Q She came in the evening? A She came in the evening, and my wife and I were present,

Carl F. Hinrichsen, direct.

and we finally after some negotiations agreed on the terms of the renting.

Q What agreement did you come to with Mrs. Bennett regarding the rental? A Why, from April, 1924, up to, I think, September, 1924, the rent was to be \$40 a month, and beginning I think September, 1924, the rent was to be \$45 a month, this arrangement being made because she was to take the premises as they were without our making any, you know, fixing them up as often is necessary for a new tenant. 10

Q You mean interior decorating and all that? A Yes.

Q Did she pay you any deposit? Did you give her a receipt or anything? A We always gave the tenants receipt books. I gave her a receipt book. 20

Q I show you a paper bearing date 1924 and I ask you if you can tell me what that is. Answer yes or no. A Yes, I know what that is.

Mr. Gilhooly: Have you that original agreement?

Mr. Munsick: No, we haven't.

Mr. Gilhooly: I would like to read that exhibit. This is the receipt, "March 31, 1924. Received of William Bennett \$40 for rent of premises, fourth floor, 8 Quitman street, rent for month of April, 1924. Agree that the tenancy is from month to month, and that on September 1 rent will be \$45 per month." 30

Q I ask you then what this paper is that I have just shown you? A Well, that is a copy of the original receipt and agreement. 40

Carl F. Hinrichsen, direct.

Q Does that copy express the result of your agreement with Mrs. Bennett? A That was the terms of the agreement.

Mr. Gilhooly: I offer in evidence this copy of the receipt.

10 Mr. Munsick: No objection, subject to our right to cross examination on it.

(The paper referred to was received in evidence and marked Exhibit D. 1.)

Q After March, 1924, did you have anything to do with the premises 8 Quitman street in the line of renting it or collecting the rents? A You mean from Mrs. Bennett or other tenants?

20 Q On behalf of the owners did you have anything to do with the premises? A Yes.

Q What were your duties with regard thereto? A Why, if there were vacancies, try to get new tenants, and if the tenants didn't send the rent over, either I or my brother-in-law, Joe Derivaux, would go over and collect the rents.

30 Q Did anybody other than you and your brother-in-law, Joseph Derivaux, ever have anything to do with the management of the building? A Well, I don't think any of the others went over there, but most of the tenants would go to 623 High street, and anyone that was here would receipt for the rent.

Q Did you have occasion from time to time between March, 1924, and July 13, 1925, to go over to this house? A Yes.

Q Were your visits frequent or infrequent? A They were frequent.

40 Q What was the purpose of going over there? A Well, the only thing is we always wanted to see if the place was kept right.

Carl F. Hinrichsen, direct.

Q Did you supervise that or did Joseph Derivaux? A Joseph Derivaux did.

Q To whom was it left to supervise the upkeep of the premises? A Joseph Derivaux.

Q What is your occupation? A Lawyer.

Q And you have been for how long? You were between 1924 and 1925? A Yes. 10

Q And you still are? A Yes.

Q You are actively in practice? A Yes.

Q And you were then? A Yes.

Q Did you at any time personally make any repairs—you yourself? A Personally?

Q Yes. A No.

Q Did you have occasion to go to 8 Quitman street alone or in company with others in the month of June or the early part of July, 1925? Answer yes or no. A Yes. 20

Q Do you know the date upon which you went to these premises around that period? A Yes.

Q Please give it to us? A Well, I think it was on two different occasions, once—whether this was the early part of June or the latter part of May, I couldn't say, but we were trying to have the electric wiring put in and Mrs. Bennett being sick, we were willing to wait until she had recovered to have the mechanics proceed with the work, so I was over there frequently to see how she was getting along. And, finally, one day she told me if the men were there eight o'clock the next morning they could get in to do the electrical work, and I notified the electricians; and the next day they were over there, but they weren't allowed in and they came over here and I went over there with them, and we stayed there, oh, over half an hour. There were people inside, but we could gain no admission. Or that was the early part of June or the latter 30 40

Carl F. Hinrichsen, direct.

part of May; I don't know; but on June 29th I, together with Joseph Derivaux and Hubert Derivaux, on June 29th went over there about 6 o'clock or 6:15 in the evening to serve a three months' notice.

Q On whom? A On the Bennetts.

10 Q For what purpose? When you speak of three months' notice, what do you mean? A To have them moved.

Q Go on? A And we knocked at the door and we could see shadows inside, and then they closed the doors and we would knock at them. We were outside the entrance there on the fourth floor of 8 Quitman street, oh, I guess fifteen or twenty minutes, and it was broad daylight. It was in June, Daylight Saving, but they
20 wouldn't let us in, so we simply tacked up the notice.

Q Where did you tack the notice? A On the door.

Q On June 29th or any other date in June or July were you ever introduced to a blind boy by Mrs. Bennett? A I never met any other people there.

Q Did you ever meet a blind boy who pointed out to you a hole in the carpet at the top riser of the staircase? A No one ever pointed out
30 a hole in the top riser.

Q Did a blind boy ever point out to you a place where his cane was obstructed as he attempted to descend? A Never.

Q Did you ever meet a blind boy by the name of Rinck at any time at 8 Quitman street or at any other place? A I don't recall the name at all.

Q Did you ever meet a blind boy at 8 Quitman street or at any other place? A Not that
40 I recall.

Carl F. Hinrichsen, direct.

Q Did Mrs. Bennett at any time point out to you any defect on the staircase? A She never spoke to me about any defect.

Q Did you at any time in the year 1925 make any repair to the staircase—you yourself personally? A No.

Q Did you ever go on the premises for that purpose? A No, I would look at the staircase. You had to as you went up.

Q Did you go on the premises at any time for the purpose of making any specific repairs? A No.

Q Now, on June 29, 1925, when you were unable to serve the notice to move, did you make an effort to serve that notice at any other time personally? A I think we tried to serve it on Mr. Bennett the next day.

Q On the premises? A I have some notes, if I could refresh my memory.

Q When did you make the notes? A At that time.

Q Did you make them immediately after the events occurred? A Yes, the next day.

Q What are you referring to? This here (referring to papers)? A Yes. On June 30th, Joseph Derivaux and I went over and waited downstairs until Mr. Bennett left, and then we overtook him and served him with the notice.

Q Previous to July 1, 1925, had you any litigation with Mrs. Bennett?

Mr. Munsick: I object to that on the ground that it is immaterial.

The Court: I sustain the objection.

Q Did you speak to her about letting the electricians in? A Yes.

Carl F. Hinrichsen, direct.

Q You have already testified to that? A Yes.

Q With respect to a complaint regarding a wash tray, did you know anything about that?

Mr. Munsick: I object to that question on the ground it is immaterial and irrelevant.

10

The Court: I will sustain the objection.

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

Exception noted as ground of appeal.

Q Now, did you have any litigation with Mrs. Bennett after July 1, 1925? A Just a minute. You want me to go into the litigation before July 1st?

20

Q I am asking you about the litigation after July 1, 1925. A We started suit to dispossess for non-payment of rent.

Q And in the course of these proceedings did you appear in court? A I did.

Q Did you learn of a money order for \$40 being received by Joseph Derivaux? A I did.

30

Q In the dispossess proceedings did you mention the receipt of this in the trial? A When I was on the stand I told Judge McMahon that the total amount of rent owing was \$5 in arrears from May, \$5 in arrears from June, and \$45 for July, and that this money order, \$40, still left a deficit.

Q Was Mrs. Bennett in arrears on July 1, 1925, in her rent? A She was.

Q And the amount of the arrearage is as you have just described? A Yes.

40

Q Have you ever been paid the sum of \$55, the amount which you have now mentioned as being the arrears? A No.

Carl F. Hinrichsen, direct.

Q What eventually became of the forty-dollar money order? A The Derivaux estate held it.

Q It was deposited? A Deposited.

Q Did you hear of an accident to Mrs. Bennett? A Indirectly.

Q And as a result of what you heard what did you do? A On July 16, 1925, Joseph Derivaux and Mrs. Hinrichsen and Mrs. Larkin and I, the four of us, were going out, and I said we ought to go over there and see really— 10

Q Don't tell us what you told them, just tell us what you did. A Well, we drove over there. Joseph Derivaux took us in his car and we went over High street to Montgomery and up Montgomery street to Quitman, and just as we approached Quitman street we saw Mrs. Bennett walking along very briskly toward Clinton avenue, and Joseph Derivaux turned the car into Quitman street and overtook Mrs. Bennett and said, "How do you do, can't we give you a lift?" And all she said was no, and she didn't make any further remarks. She just walked along apparently all right, and then we turned back. 20

Q Just let me interrupt there. When you saw her at this point you now mention, did she walk with any perceptible limp? A No.

Q Did she manifest by any outward expressions that she had pain? A No. 30

Q Did she continue on Quitman street in the direction of Clinton avenue? A Yes.

Q After that where did you go? A Then we turned and went back to 8 Quitman street.

Q At that place did you meet anybody? A Yes.

Q Don't tell us what you said. Tell us whom you saw. A One of the Bennett children was on one side of 8 Quitman street and at 6 Quitman 40

Carl F. Hinrichsen, direct.

street there were Dorothy Vanderbilt and the two Hackett girls.

Q Did you talk to them? Just say yes or no.

A Well, in the course of the evening, yes, I talked to them.

10 Q About what time was this now that you were there? A It was still daylight.

Q Did you go into 8 Quitman street? A Yes.

Q Did you go up to her apartment? A Yes.

Q Who went with you? A Joseph Derivaux.

Q Anybody else? A No.

20 Q What did you see between the third landing and the fourth landing with respect to the staircase? A Well, as I remember, the carpet begins at the top riser, away at the right. It was pulled out from under the linoleum.

Q Was all of it pulled out? A No, just a corner.

Q What corner was pulled out? A As I remember, it was the right corner.

Q The right corner as you ascend or descend? A Going up.

Q The right corner as you go up? A Yes.

30 Q Did that part that stuck out stick out all along the step? A Just at the very right corner.

Q How much would you say was sticking out? A Oh, about two and a half inches.

Q When you went there on June 29, 1925, was that carpet sticking out as you saw it? A Everything was tight.

Q Was it light when you went there on June 29th, 1925? A Yes.

40 Q Now, when you went there on July 16, 1925, was there any covering over the skylight? A No.

Carl F. Henrichsen, cross.

Q Was light coming through that at that time? A Yes.

Q On June 29, 1925, was there any covering over the skylight? A No.

Q Was that skylight as far as you observed in good condition? A Yes.

Q Was there any black rag or any other cloth over the skylight? A No. 10

Q Were you ever notified by Mrs. Bennett that she had been in any accident at that time? A No.

Q Did you go around to see her at 8 Quitman street after the accident at any time? A Not to see her; just to see that she was going to move.

Q Did you at any time in the year 1925 tell Mrs. Bennett that you would repair the carpet at the top landing? A No, we never had any conversation about the carpet. 20

Mr. Gilhooly: You may cross examine.

Cross examination by Mr. Munsick.

Q Mr. Hinrichsen, did you notify the plumber to go down there? A Yes, I called up Kern.

Q Did you also notify the electrician? A Yes. Mrs. Bennett told me if the electricians were there a certain morning at 8 o'clock they could get in, and I told them to be there, and they were there and she didn't allow them in. 30

Q You also said that "we," meaning, I think, you and Joe Derivaux, were frequently at the place? A Yes.

Q Did you not, in fact, oversee the plumbing repairs? A They weren't made then. The plumber went there three times; he couldn't get in and the work wasn't done until after she moved out. 40

Carl F. Henrichsen, cross.

Q Did you at any time yourself attempt to fix the stoppage in the pipe? A No.

Q Did you oversee the electrical work? A Mr. Derivaux did.

10 Q This money order that was received was cashed on July 29th, was it not, if you know?
A I don't know what date.

Q But you know it had been received by Joe Derivaux before your hearing in the District Court? A Yes, I had it. I showed it to Judge McMahan.

Q Now, Mr. Hinrichsen, on June 29, 1925, you said you went to 8 Quitman street; I don't recollect the purpose. A The purpose was to serve the notice, three months' notice to move.

20 Q Do you know what time of day it was when you went there? A It was about six o'clock or 6:15 in the evening, I went with Joe Derivaux and Hubert Derivaux.

Q You went directly to Mrs. Bennett's? A Went up the front stairs.

Q All the way to the fourth floor? A To the fourth floor.

30 Q You took no particular notice of the steps, did you? A Well, we were there for about twenty minutes. We looked all around to see that everything was right. We had nothing else to do. We hoped that finally they would weaken and let us in, but they didn't.

Q You took no particular notice of the steps going up, did you? A Well, I can say that I know that everything was tight.

Q Well, did you look at each step specifically? A Well, the rest of the steps were all just wood. We only had to look at the top one.

40 Q And the top one wasn't just wood, was it?
A That had linoleum on it.

Carl F. Henrichsen, cross.

Q Where was the linoleum? A On the top platform.

Q Is that the floor of the top hallway? A Yes.

Q What was on the face of the step, the riser step I ought to call it? A Well, against the top riser there was carpet. 10

Q Did that carpet run under the linoleum? A Yes.

Q Had it been there before the linoleum was put down? A I don't remember when it was put down. I had nothing to do with that.

Q When is the earliest that you had anything to do with the property? A About 1919.

Q Was that linoleum there at that time? A Yes.

Q You said that subsequently you looked at the step and the carpet had been pulled out? A Yes, about two inches at the extreme right. 20

Q Then, if I understand what you mean by pulled out— A A little triangle was hanging down.

Q Before that had the carpet run under the linoleum? A Yes.

Q So far as you know, it was an old carpet? A I don't know anything about that.

Q Had the stairs always been bare, to your recollection? A Not always. 30

Q What had been on the stairs? A Carpet.

Q Isn't this carpet a part of that carpet that had been on the stairs? A I imagine so.

Q Do you recall when that carpet was taken off the stairs? A No, I don't know.

Q How long before Mrs. Bennett fell? A I don't know.

Q Was it subsequent to 1919 when you say you became familiar with the place? A I think it was. 40

Carl F. Henrichsen, cross.

Q Now, this tear—you said something about two and a half inches. Is that the width of it along the step? A Well, about that.

Q Do you recall how far out it extended from the riser itself? A Not far.

10 Q Have you any recollection of the distance in inches? A Maybe an inch. It had been pulled out some way.

Q The rest of the carpet on that step was all right? A Yes.

20 Q Also on June 29th while you were there did you take any particular notice of the sky-light? A Well, the way we always did, we looked over the place. We were trying to sell the place. We wanted the place looking right. We knew that it was bright, very bright and clear there while we were there. It didn't need any artificial light.

Q Was there a gas light in the hall at that time? A There is a gas jet there.

Q I mean, was there a light? A No.

30 Q Do you remember a blind boy coming here to the house and talking to you about renting the first floor of one of the apartments in the first floor of 8 Quitman street, coming here with his brother some time after July, 1925? A So many people were always coming here to rent the place; there were eight flats there; that I wouldn't remember who came and who didn't come.

40 Q Don't you think you would remember if it were a blind boy? A I wouldn't remember particularly. If I had rented it to him, then, of course, there would have been something concrete, but there were so many people always coming, and negotiations, I don't remember whom I saw and whom I didn't see.

Carl F. Henrichsen, cross.

Q You simply have no recollection of it? A I have no recollection.

Q Now, you testified I have a note that you said you went there just to see that Mrs. Bennett was going to move. When was that? A Well, that week I was over there quite often because the judgment of possession was entered July 9th, and she was to be out in three days, and I just kept tabs on the place. That is all.

10

Q Do you recall how many times you were there that week? A I couldn't say.

Q What did you say to her when you went there? A Oh, I never saw her to speak to. I was never able to get in to see her; that is, at that time. A month prior or so I could get in and she promised to pay the \$5 arrears rent and all like that.

20

Q Do you remember being there one time after she fell and an insurance man named Bogatko was there and you were speaking to Mrs. Bennett from her dining room? A Would that have been after the furniture went out?

Q Well, I don't know. It was shortly after she fell? A I know that on July 16th was the night we saw her on the street, and then when her lawyers tried to get permission for her to stay there longer, stating that she was laid up in bed, couldn't get out, and I having been seen her with my own eyes on the street, I got judgment or a warrant for possession on the 17th and told the constable to go ahead.

30

Q Well, do you recollect this incident that I have described? A I don't remember any insurance man.

Q Do you remember being in her dining room, I think, and speaking to her while she was in bed and he was standing there? A Well, I think

40

Carl F. Henrichsen, cross.

the furniture went out on the 20th. I think on the 21st we were able to get the plumber there to do what was necessary, and on the 21st Mrs. Bennett was still in bed in the other room. I don't know that I had any conversation with her. Joseph Derivaux was with me. He may have spoken to her.

Q The conversation that might have taken place was that you told her not to forget she had to be out by the 21st or 22nd?

Mr. Gilhooly: I object to the form of the question.

The Court: I sustain the objection.

Q Did you ever make such a statement to Mrs. Bennett?

(The following was read by the stenographer: "The conversation that might have taken place was that you told her not to forget that she had to be out by the 21st or the 22nd.")

A I don't remember saying anything like that.

Q Would you say positively that you never did make that statement? A I don't think I spoke to her. What day is this supposed to be?

Q The time or date upon which you say you went there and went there just to see whether she was going to move or see that she was going to move? A I don't remember having any conversation with her at all.

Q It would be some time subsequent to the accident? A I don't think I saw her after the 16th of July, because as I remember on the 21st of July I was in one room and I didn't go into

Carl F. Henrichsen, cross.

the room where Mrs. Bennett was at all. I was there to see that the plumbers were able to fix up the repairs.

Q You said somewhere along in your replies to Mr. Gilhooly that on account of Mrs. Bennett being sick that you were willing that she recover, or to that effect. When was that? 10

Mr. Munsick: Mr. Gilhooly raised a question there.

Q Did you say anything like that? A Well, I said she had been ailing through May and the early part of June, and I would go over there, and, of course, she owed the arrears of the rent, and sometimes I could see her and sometimes I couldn't. When I did see her she was in bed. So I told her, I said, "Now, as soon as you are up we must arrange to have the electricians in." So, after persistent effort, one day I did get a promise of her. She said that she was better and she was going to go up to the country, I don't know where, but to some relatives, and that if the electricians would be there the next morning at eight o'clock she would let them in. 20

Q Now, you say she then owed rent, but on June 29th you fastened on the door, as I understand it, a notice to vacate the premises on October 1st? A Yes, a three months' notice. 30

Q Although she owed rent prior to that time? A Yes. She owed \$5 from May and \$5 from June. She actually paid us \$45 a month until May, and then she only paid us \$40.

Q Do you remember whether or not at the first dispossess proceeding in June she produced receipts? A She had a receipt book and the receipt book showed that she had paid \$45 a 40

Carl F. Henrichsen, cross.

month in accordance with that copy of the agreement.

Q But she did have a receipt book at that time? A She did.

10 Q This copy that has been marked Exhibit D. 1, Mr. Hinrichsen, was made when? A The night that she was here. It was an unusual arrangement, providing for a different rental after a certain period; so I made a copy for my own records.

Q And is that signature meant to be the estate of F. X. Derivaux? A Per C. F. H.

Q Who was the estate of Francis X. Derivaux? A Well, the owners called themselves, for the sake of convenience, the estate. The individuals called themselves the estate.

20 Q It wasn't an incorporated estate, was it? A No.

Q Actually it didn't own property, did it? A No, but all our receipts and everything read "The Estate of F. X. Derivaux."

Q And your affidavits in the dispossess were also made by you as agent of the estate, were they not? A As agent for the estate, yes.

30 Q Did Mrs. Bennett have the original of this at the time of the June trial, if you remember? A I don't think she did.

Q Did you see Mrs. Bennett along about July 1st for her rent? A I wasn't able to see her. I saw her husband at the church where he worked.

40 Q Didn't she around about the first offer you forty dollars for the month of July? A She didn't. When I went and demanded the rent of Mr. Bennett he says, "What are you bothering me for? Go up and see Mrs. Bennett." I says, "I was up there, but I can't get in."

Mary Kerner, direct.

Re-direct examination by Mr. Gilhooly.

Q When you, in the company of Joseph Derivaux and C. Hubert Derivaux, went on the premises and up to the fourth floor of 8 Quitman street on June 29, 1925, if the carpet had been torn, was there anything there that would have obstructed your view of this torn carpet? A Nothing was torn that day. Everything was tight. 10

Q There was nothing that would obstruct your view? A No.

Q Now, on the 21st of July, 1925, about which there has been some testimony about your going in Mrs. Bennett's apartment, was Joe Derivaux with you at that time? A Yes.

Q After July 13, 1925, do you recall whether or not you ever went up to her upon the demised premises alone? A I don't think so. 20

Q But you did go up, as you think, on the 21st of July in company with Joseph Derivaux? A Yes.

MARY KERNER, sworn in behalf of the defendants. 30

(The testimony of this witness is taken through the German interpreter.)

Direct examination by Mr. Gilhooly.

Q Mrs. Kerner, where do you reside? A 16 Montgomery street.

Q Do you know Mrs. Bennett? A Yes.

Q How long have you known Mrs. Bennett? A This coming March five years. 40

Mary Kerner, direct.

Q Did she ever live in your house at 16 Montgomery street? A Yes.

Q When did she live in your house on Montgomery street? A In March.

Q What year? A Five years ago.

10 Q Did she move to Quitman street after she left your house, do you know? A Yes.

Q Now, when she was living in your house at 16 Montgomery street, did you have any conversation with her about a fall downstairs? Just say yes or no?

Mr. Stickel: Wait a minute. I would like to have the interpreter repeat what she said.

20 The Interpreter: She had no fall; she was sick; and now her answer is, "I haven't spoken to her."

Q Did Mrs. Bennett ever say to you that she had fallen downstairs in your apartment?

Objected to as already answered.

Objection sustained.

30 Q Mrs. Kerner, what was the condition of Mrs. Bennett's health while she lived in your house? A I bought the house and I told her that she has to move, and she told me she cannot because she is sick.

Mr. Gilhooly: That is all.

Mr. Munsick: No questions.

Jacob Lang, direct.

JACOB LANG, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Mr. Lang, what is your business? A Painter by trade. 10

Q Were you a painter in 1925? A Yes.

Q Were you engaged by Mr. Derivaux to do any painting work at 8 Quitman street? A Yes.

Q What work were you engaged to perform? A I painted the halls.

Q When did you paint the halls? A Well, I can't exactly tell you the date, but as my books shows, I gave the bill the fifteenth of July.

Q How long prior to that did you do the work? A Well, maybe about ten days. 20

By the Court.

Q What year? A 1925.

Q What date in July? A The fifteenth I made out the bill.

By Mr. Gilhooly.

Q You say you did your work a short time time prior to that? A Before. 30

Q Now, what did your work consist of, Mr. Lang? A Well, to paint the halls, and to varnish the steps, the railings, to complete the halls by painting.

Q Did you personally do the work? A Yes, inside I did myself and outside I had a man.

Q Did you varnish the staircase leading from the third floor to the fourth floor? A From the top to the bottom.

Q Now, Mr. Lang, when you were varnishing the staircase from the third landing to the fourth 40

Jacob Lang, cross.

landing, did you see any hole in the carpet at the top landing? A I didn't notice anything.

Q What did you do in connection with your painting work to anything that you saw on that staircase? A Well, if it should be something wrong in my own case I would remove this.

10 Q Did you actually do that work? If anything was wrong did you actually fix it up?

By the Court.

Q What do you mean by, "In my case"? You mean to your work? A On my work, sure, because I was moving the whole day up and down, up and down, was carrying ladders. If it should be something wrong, so I would see if in my own case, for my own sake I would remove it.

20

By Mr. Gilhooly.

Q Did you see anything wrong with the carpet on the fourth landing when you were doing that work? A I said that before, that I didn't notice anything.

Q Was Mr. Derivaux supervising these repairs? A Yes, sir. He was almost every day on the job.

30

Q That is, Mr. Joseph Derivaux? A Yes, Joseph.

Cross examination by Mr. Munsick.

Q How long were you working between the third and fourth floors? A Oh, how long; about half a day.

40 Q Half a day? A Yes.

Jacob Lang, re-direct.

Q How many ladders did you carry up from the third and fourth floors? A One, two sometimes.

Q Two ladders or twice a ladder? A Oh, one at a time.

Q You carried it twice, perhaps? A No. 10
During the day? Oh, sometimes more, too.

Q Have you got a copy of your bill here? A No.

Q Did you actually paint the stairs, the steps? A I just varnished.

Q Varnished them? A Yes.

Q Was there a carpet on the top step, on the face of it? A I don't think so.

Q You don't think there was any carpet on the top step? A Well, I don't remember that.

Q You don't know, do you, Mr. Lang? A I 20
say, I don't remember if it was any or not.

Q Do you remember whether there was a carpet on the face of that top step or not? A Yes.

Q Do you know whether there was linoleum on top of that? A I don't know either this. Who can remember since three years.

Re-direct examination by Mr. Gilhooly.

20

Q If you saw a hole in the carpet, that would attract your attention to that, wouldn't it? A Oh, sure.

Mr. Gilhooly: I desire, at this time, if your Honor please, to offer in evidence a certified copy of the record of dispossess proceedings in the First District Court.

Mr. Munsick: If the Court please, the record is here.

40

Jacob Lang, re-direct.

10 Mr. Gilhooly: I got a true copy in order to save the necessity of producing the record. I see no necessity of the record going in except the jury would have to take it to the jury room. If you have anything in addition to what I have, perhaps I can offer the whole record.

20 Mr. Munsick: Without going into all details of our objection, in the first place, on neither the record itself nor this summary of it, the certified copy of this, is the name of the landlord identified as these defendants. The defendants are the owners of this property. They are individually the owners of this property. The estate of Francis X. Derivaux was nothing but a name that was assumed by them.

Mr. Gilhooly: If your Honor please, the letting was made by the estate of Francis X. Derivaux, and it is an elementary principal or rule that a tenant cannot dispute his landlord's title, and if he took it under the estate he is bound to the estate.

The Court: Is there any other objection?

30 Mr. Munsick: To the record itself, no. The record I object to on that ground.

The Court: It will be admitted.

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

Exception noted as ground of appeal.

(The papers referred to are received in evidence and marked Exhibit D. 13.)

Elizabeth C. Lewis, direct.

ELIZABETH C. LEWIS, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Mrs. Lewis, what is your occupation? A Investigator. 10

Q Were you an investigator on December 31, 1928? A Yes.

Q Did you make an investigation of this case for me at that time? A Yes, sir.

Q Did you go to the home of Annie Bennett? A Yes, sir.

Q When did you first go to her home? A I first went on Saturday, December 28, but I didn't receive any entrance.

Q Did you see anyone there? A No, no one answered the ring of the doorbell. 20

Q When did you go again? A I called back December 31.

Q Were you admitted? A Yes.

Q By whom? Do you know? A Yes, by the daughter, Anna.

Q Did you see Mrs. Bennett? A Yes.

Q Did you talk to her? A Yes, sir.

Q Will you kindly tell the jury where you talked to her? A I was admitted by the daughter to a foyer, and then ushered into the bedroom where Mrs. Bennett was lying in bed, and it was about eleven o'clock when I arrived. 30

By the Court.

Q In the morning? A Yes, sir; and I remained with her till 4:30 in the afternoon.

Elizabeth C. Lewis, direct.

By Mr. Gilhooly.

Q Did you talk to her and did she talk to you during this period of time? A All that period of time she was talking.

10 Q You say she was lying in bed? A Yes, sir.

Q Now, at that time did she have a brace over her head, Mrs. Lewis? A No.

Q Did you see any brace of metal? A Yes. I saw the brace. The brace was on a chair in the corner.

20 Q Will you kindly describe the condition that you saw when you were admitted? A Yes. I was admitted to the room, and the bed—her head was north; her feet were south. Beside the bed were two crutches and then a chair, and over across this chair was a soiled towel, and then there were several books and a box, and on this was a continental telephone. At the foot of the bed there was a little distance between—that you could walk. There was a table, and it had fruit on it and several things, and to the side was a gas heater burning, and over on the opposite side of the room there was a door leading into the front room where the Christmas tree was, and right there was this great big metal thing.

30 Q What do you mean? Sort of a brace? A The brace, quite a metal thing, over on this chair, and I sat right by the heater, by the door.

40 Q Now, describing this metal, can you give us a description of that? A Yes. It was a big thing about this wide (indicating), and it was steel, kind of like steel down, you know, in strips about that wide, and it was laying there. It was absolutely—it was perfectly new. It showed it had never been worn.

Elizabeth C. Lewis, direct.

Q Was was the subject of your discussion?

A Well, the pretext I used in interviewing Mrs. Bennett was that I was looking for a family by the name of Bennett.

Q Did she give you information regarding the family? A Yes, she told me all her family history, and she told me her husband's family history. 10

Q Did she tell you the names of her children?

A Yes, she said she had— Do you want me to go into details?

Q I don't think it would take too much time.

A Well, she said—I will tell you the date of her birth. She said she was born December 6, 1888, and she is the daughter of James and Frances Watts.

Mr. Munsick: I do not think this is material, if your Honor please. 20

Mr. Gilhooly: I do not think so, either.

Q Did she discuss any accident which happened to her? A Oh, yes. She discussed about her children. She said she had six children, and each and every one of them had had an accident, and she had had her share herself.

Q Did she discuss the present accident with you? A Yes. 30

Q What did she say about that, if you recall, Mrs. Lewis? A Why, when I entered the room she greeted me with "I have just been having a fight over the telephone with my attorney."

Q Don't mention any more about the attorney. We want to know what she had to say about the accident. Go ahead. A Why, she said, she told me the story that coming down, falling down the stairs, but she led me to believe that she lived in Montgomery street. 40

Elizabeth C. Lewis, direct.

Mr. Munsick: I object to that.

The Court: It will be stricken out.

Q Proceed? A She said that her back was hurt, but that she hadn't been permanently disabled till five months ago, that she was able to
 10 be up and about her work; that since five months ago she had been permanently disabled; and that prior to going to bed she walked with crutches. Then she told me that she had been to St. Louis to see a doctor; she had been to Chicago to see a doctor; and she said there was a Dr. Boies—she spelled his name.

Q Where was he? In Chicago? A He was in Chicago. And she said that she went to Chicago and St. Louis by automobile, that a friend of
 20 hers, a Mrs. Catharine Breedy, had an automobile with a swinging seat, and that she went in this car, and that Mrs. Breedy had often taken her quite a number of places. She also said that she had been confined to the ruptured and crippled hospital in New York. She had also been to the Neurological Hospital, and that she had been at another hospital—she couldn't remember the name—and she had been refused admittance to
 30 two hospitals in New York. And she had also been treated by Dr. Carl Johnson of Brooklyn, and she usually went over and stayed with her sister-in-law when she was treated by him.

Q Did you see Mrs. Williams there when you were there? A No. Anna was going to the show and she was going after Mrs. Williams to come and stay with her.

Q Did Mrs. Bennett say anything about the duties performed by Mrs. Williams? A Yes.
 40 She said Mrs. Williams was very, very kind to her, that she came in and looked after her, but

Elizabeth C. Lewis, direct.

that Mrs. Williams had had her hand broken and that she had appealed to the Social Service to help Mrs. Williams out till she was able to go to work, and they wanted her to move in cheaper quarters, and she paid her house rent for her of \$22.

Q Did Mrs. Bennett say that she was doing any work at that time? A Why, yes, she said that she was doing soliciting over the telephone for the Whitehead Art Company, and they paid for all her telephone calls and gave her a nice salary, and she was expecting the postman to bring her a hundred-dollar check that day, and she was very much disappointed. 10

Q Did she say anything else about any other business? Did she say she was engaged in another occupation? A Oh, yes. She said that there was a new automobile that was being put out, and she was calling people up, telling them about this new car, that they would become interested; and she said it was very easy to make a nice living over the telephone; anyone could that had a nice voice, and she did. 20

Q Did she make any comment upon the steel brace while you were there? A Yes. She pointed over to it. She told me about she is expecting her trial to come up, and she says, "You see that thing over there in the corner? That is what I have got to be decked up to go to the trial." She says, "I know it is going to be torture to wear it." While I was there a Mrs. Hughit came in. 30

Q Were you introduced to her? A Yes. We both went in and looked at the Christmas tree. Mrs. Hughit and I did. And while Mrs. Hughit was present Mrs. Bennett asked me to sit down at her bed, at the end, which I did, and Mrs. 40

Elizabeth C. Lewis, cross.

Hughit took her chair; and when I was leaving a Miss Chester came in.

Q Who is Miss Chester? A I don't know. Mrs. Bennett didn't seem to know her when she came in.

10 Q Mrs. Lewis, as a result of the information given to you by Mrs. Bennett, did you interview any members of the Bennett family? A Yes. I located Mr. Joseph Bennett.

Q Who is he? A In Brooklyn. That is Mr. Bennett's brother.

Q Did you talk to him? A Yes.

Mr. Munsick: He is not a member of her family.

20 Mr. Gilhooly: I will not go any further on that. It is liable to lead into hearsay.

Q You say you left about 4:30? A 4:30, and I left Miss Chester with Mrs. Bennett.

Q Did you have any difficulty in obtaining this information from Mrs. Bennett? A No, not at all. She was perfectly lovely to me while I was there.

Q She volunteered this information, did she? A Yes.

30

Cross examination by Mr. Munsick.

Q You went there under a pretext, Mrs. Lewis? A I did.

Q How did you happen to go there at all? A I was sent there.

Q By whom? A By Mr. Gilhooly.

Q What is your business? A Investigator.

40 Q Are you connected with any organization or are you independent? A Independent.

Elizabeth C. Lewis, cross.

Q Where do you have an office? A Perth Amboy.

Q In Perth Amboy? A Yes, sir.

Q Did you have an office, or do you do it from home? A From my home. I have an office in my home.

Q How long did you keep the pretext up? A Well, of course, all the time, because naturally after I got in there, why, we talked about everything.

10

By the Court.

Q You were asked about how long you kept up the pretext? A After she told me—

Q One minute. How long did you keep up the pretext? A I told her when I first came in. There was no more questions about it.

20

By Mr. Munsick.

Q You mean it dropped? A After she gave me the history of the family.

Q Then it dropped? A It dropped, and we talked about other things.

Q Did you start the conversation about other things? A No, she did.

Q Just a friendly conversation between you? A Yes. She greeted me very friendly.

30

Q Have you ever seen her before? A Never did.

Q You have never seen her since? A No, I did not.

Q Did you introduce yourself as a friend of the family in any way? A Oh, no. I told her I was an investigator.

Q You told her you were an investigator? A And I was looking for a Bennett family.

40

Elizabeth C. Lewis, cross.

Q Did you tell her whom you were investigating for? A Oh, no. She didn't ask me.

Q Did she telephone anybody while you were there? A No, she had just got through talking to you when I came in.

Q You assume that.

10

The Court: That will be stricken out.

Q Did she tell you that she was coming here, or she had to have this brace to be bedecked up? Is that your word? A No, she said that.

Q You remember that word? A Yes, I do.

Q Do you distinctly remember that she told you she had been bed-ridden for five months? A She did tell me that.

Q There is no doubt about that? It might have been four? A She told me five months.

20 Q Positively five months? A Yes, positively five months.

Q Where was she when you were talking to her? A She was lying in bed.

Q She was in bed all the time you were there? A All the time I was there.

Q Lying in bed? A And she didn't move at all.

Q She didn't move at all? A No.

30 Q She told you she had been to St. Louis and Chicago? A Yes.

Q To see doctors? A Yes.

Q And you gave us the name of one of them? A Yes. She spelled his name, Boies.

Q And that she was doing a business over the telephone? A Yes, sir; she did.

Q She didn't do any business while you were there? A Not at all. Before.

40 Q The postman didn't happen to bring that hundred-dollar check while you were there? A

Elizabeth C. Lewis, cross.

No. The only thing he brought was a Christmas card from Dr. Pinneo.

Q From Dr. Pinneo? A Yes.

Q Did you look at it? A Yes. She handed it to me to read.

Q And you stayed until 4:30 in the afternoon? A 4:30. 10

Q Did you write this all down as you were sitting there? A No, sir.

Q You wrote that down after you got home? A I made my notes when I got out.

Q What? A I made my notes after I left there.

Q When did you make your notes? A Immediately after leaving. I stood down on the corner.

Q And you wrote all this up on the corner? A Oh, I don't know. I can remember vividly everything she told me right now. 20

Q Did you write up the notes on the corner after you left the house? A Why, I made notes of my own, yes, to recall.

Q All this detailed information is what you wrote up at the time? A Oh, no. I dictated that.

Q Oh, you dictated that later on? A Yes.

Q Have you got your original notes? A The original notes? It is on my file at home. 30

Q You mean in your file? A Yes.

Q Did Mrs. Bennett tell you one of her children had been burned? A Yes, sir; she did.

Q She told you what had happened to the other children? A Yes, sir.

Q Did she talk to you about falling down the stairs at 8 Quitman street? A She didn't mention Quitman street. She told me about falling down the stairs. 40

Elizabeth C. Lewis, cross.

Q Why did you assume it was Montgomery street? A She told me in giving me the history, she gave me different addresses of where she had lived, the date of her children's birth and everything.

10 Q Have you spoken to anybody around this court house about this testimony in the last day or so? A There has been general conversation. What do you mean?

Q With anyone.

Mr. Gilhooly: I object, if your Honor please, unless he be specific.

Mr. Munsick: I want her to tell.

20 Q Of course, I assume you spoke to Mr. Gilhooly? A Oh, yes.

Q Have you talked over this information with anybody else? A Why, I have talked it with Mr. Young over there. You mean giving information from my files? Oh, no.

Q This information that is contained in your statement? A Oh, no.

Q You haven't talked with anybody about it? A Well, it has been general conversation. I don't know who you mean.

30 Q Were you talking with a stranger here yesterday about it? A No, not that I know of, only Mr. Litell. I was talking to Mr. Litell.

Q Who is Mr. Litell? A He was one of the jurors. He was telling me that he told Judge Stickel. Not one of these jurors. He said that he was telling Judge Stickel about hearing that Mrs. Bennett had had other accidents, and that is how he came up to me. He said Judge Stickel said yes, it had been rumored around, that the rumor was around.

40

Joseph Derivaux, direct.

Q You are quoting what Mr. Litell had said to you? A Yes.

Q But you said nothing to Mr. Litell about it? A Oh, I said, yes, she had had other accidents.

Q You did? A Yes.

10

Q You knew that he was on the jury panel? A Not on this.

Q On the panel of all the jurors? A Oh, no, I didn't know that.

Q And I assume he is a juror? A He is. He has been on one of the cases. He is sitting out there.

Q At the present time? A Well, no. He wasn't on no jury yesterday.

Q I know, but is he here to do jury duty now? A Why, I assume so, yes.

20

Q And you told him that she had had other accidents? A It was general conversation. We were sitting there. How it came up, we talked about the Public Service.

Mr. Munsick: That is all.

By the Court.

Q Is that Mr. Edgar Litell? A Yes, sir.

30

Q Who is a member of this panel of jurors? A Yes.

JOSEPH DERIVAUX, sworn in his own behalf.

Direct examination by Mr. Gilhooly.

Q Mr. Derivaux, are you one of the owners of 8 Quitman street? A I am.

40

Joseph Derivaux, direct.

Q In 1925 were you acting as a representative of the family to take care of the renting and managing of the property? A Yes.

Q Mr. Derivaux, were you familiar with the premises by reason of your occupation; that is, taking care of rents and repairs? A Yes.

10 Q About how often did you visit the premises during the early part of the month of July, 1925? A I visited the property about once a week and sometimes twice a week.

Q Now, taking the top landing, will you kindly describe the landing on the fourth floor? By the way, what is your profession in life?

A I am in the real estate business.

By the Court.

20 Q I am wondering if that can be illustrated on the blackboard by you, Mr. Derivaux? A Yes.

Q Could you illustrate it on the blackboard? A Yes. I believe it would be advisable just to show two views of it.

Q All right. A (The witness draws upon the blackboard.) This represents the stairway leading up to the landing. This represents a landing and one more step to the hall.

30 Q And where is that step? A Here is the hall door.

By Mr. Gilhooly.

Q Show the step, Mr. Derivaux. A This is the step in question.

By the Court.

40 Q The one step? A This is the step in question.

Joseph Derivaux, direct.

By Mr. Gilhooly

Q That looks like the landing to me. A It is one step to the landing.

By the Court.

Q That is, you mean from the hall itself down to the landing is one step? A That hall has one step to a landing. 10

Mr. Gilhooly: Oh, yes. Now I see.

The Witness: The step in question is the one indicated.

Q And the cross-lines there indicate steps?

A They are steps, the flight of steps. Now, the detail of the carpet is what you want. 20

Q I think you can give that full scale, can't you, the size it was there, showing that nosing? Is it about an inch or an inch and a quarter nosing? A Yes.

Q All right. Let us have the full-size step now. A (The witness draws upon the black-board.)

Q Suppose by a similar arrow you mark what that is on the riser? A Linoleum.

Q On the riser I mean. A That is the riser (indicating). 30

Q What is in front of the riser? Indicate that similarly. A This here? This was merely the shape of the wood.

Q That line that you have drawn on this side? A Oh, this is indicated as the carpet in question (indicating).

Q Just put your arrow to that and so mark it? A (The witness marks upon the black-board.) 40

Joseph Derivaux, direct.

Q Where you have marked the linoleum, that is the hall? A That is the hall itself. That is this portion (indicating).

Q And the portion lower there is the landing? A That is the platform (indicating).

10 *By Mr. Gilhooly.*

Q Now, what is the size of the skylight? A The skylight was about five or six by eight feet roughly, six by eight about.

Q Of what material was it composed? A Of a translucent glass, and metal frame.

Q And with respect to the top hallway and landing, where was the skylight located? A It was symmetrically located over the stairway and hall with respect to all four walls.

20 Q Now, have you had occasion to go on the roof within a short time of July 13, 1925? A During July?

Q Yes. A I don't believe I was on the roof.

Q Not during July, but shortly prior to that time? A Oh, yes. That is a matter of maybe a month or so.

Q What was that for? A That was to attend to a leak in the roof.

30 Q Did you have a roofer look at it? A I looked at it first.

Q What was the condition of the skylight when you looked at the roof? A There was nothing wrong with the skylights at all.

Q On June 29 were you on the premises? A Yes.

Q Was anything wrong with the skylight at that time? A No.

40 Q Now, after this alleged accident on July 13, did you go in the premises? Did you go on

Joseph Derivaux, direct.

the fourth floor at any time thereafter, after the accident? A Yes.

Q When was that? A On July 16.

Q Were you with Mr. Hinrichsen at that time? A I was with Mr. Hinrichsen.

Q What was the condition of the skylight at that time? A Of the skylight? 10

Q Yes. A There was nothing wrong with it at all.

Q Was there, at any time during the periods that I have mentioned, any black cloth or any other cloth over the skylight? A Never to my knowledge.

Q Now, were you having any repairs made approximately around July 1 and 15 or in that period? A Yes. The electrical contract wasn't yet finished. 20

Q Had you had the halls painted shortly prior thereto? A Shortly prior they were painted.

Q Now, did you supervise the work that was being done by the electricians and the painter? A Yes.

Q And in addition to the work in the halls and the electricity, were you having any other painting done? A I don't recall. 30

Q Did you go around there during the latter part of June? A I had been there almost every day during June.

Q With respect to the electricity, did you have any difficulty in having your electricity installed in Mrs. Bennett's apartment? A I did.

Q Did you speak to Mrs. Bennett?

Objected to as immaterial. 40

Joseph Derivaux, direct.

Q Did you talk to Mrs. Bennett about letting the electricians in? A No.

Q You didn't do that; Mr. Hinrichsen talked to him? A The electrician informed us that he couldn't be admitted.

10 Mr. Munsick: I move that that be stricken out.

Mr. Gilhooly: Strike it out.

Q In how many apartments had electricity been put up to July 13, 1925? A Seven out of eight were completely wired, and there was a delay of at least a month to six weeks as Mrs. Bennett wouldn't admit the electrician.

Q And there was no electricity in her apartment? A No.

Q Now, getting down to June 29, did you go to the apartment at 8 Quitman street on that day? A I did.

Q For what purpose? A For the purpose of serving a three-months' notice on Mrs. Bennett to vacate.

Q Were you admitted? A No.

Q What did you finally do? A I left Mr. Hinrichsen and my brother Hubert standing at the front door at this platform, and I went down with a view of seeing her at her kitchen. Possibly she didn't hear our knock, and I went to the kitchen door to make certain of that fact.

Q Was there anybody there? A I saw her son eating his supper no doubt.

Q Did you knock? A I did.

Q Were you admitted? A I wasn't admitted, but he saw me as he looked over to the door when I knocked, it being a glass door.

40

Joseph Derivaux, direct.

Q Did you then go out and away from the place? A Seeing that I was deliberately not admitted, I walked out and went down.

Q Now, Mr. Derivaux, as you went up the stairs on June 29, could you see the carpet as you ascended, the top riser? A Yes. 10

Q Now, at that time did you see any rents or holes in that carpet at the top landing? A I saw no holes at the top landing in the carpet.

Q What time of day was it when you went there on the twenty-ninth? A It was around six o'clock, maybe six-fifteen.

Q Was it light? A Very well lighted.

Q Did Mrs. Bennett at any time ever tell you that the carpet was torn? A She has never told me.

Q Did she, at any time, ask you to repair the carpet? A No. 20

Q Now, you heard of this accident, I suppose, didn't you? A I heard of it.

Q Tell me when you heard of it. A I heard of it on the night, on the evening of July 16 at our supper table.

Q As a result of what you heard what did you do? A I immediately went to the scene of this alleged accident right after supper. 30

Q And you were in the company of whom? A In the company of my two sisters, Mrs. Hinrichsen and Mrs. Larkin; also Mr. Hinrichsen.

Q Did you see Mrs. Bennett that night? A I proceeded in my automobile over High street, then up Montgomery street, and to my surprise as I was approaching Quitman street I saw Mrs. Bennett cross the street, going towards Clinton avenue she was.

Q Why do you say you were surprised? A I was surprised because I was going over for 40

Joseph Derivaux, direct.

the express purpose of interviewing Mrs. Bennett about this alleged accident, and so I was most deeply surprised that I should see her in very good walking condition, walking rapidly. I was further surprised in this, that as there were proceedings for vacating the premises, I didn't
 10 wish to have her removed after the accident if she was sick. I couldn't have asked her to move if she was sick.

Q Did you talk to her? A I crossed to Quitman street and proceeded down in the same direction that she was going, and made it an express point to get out to the side and speak to her. So I said, "Good evening, Mrs. Bennett." And she looked at me and I said, "Can I give you a lift?" And she said, "No." There-
 20 after I turned my car around and decided to investigate this scene where the accident is supposed to have happened.

Q Did you do that? A I did that immediately.

Q And as you entered the stairs, what condition did you find the carpet on the fourth landing in? A I found that on the right-hand corner, the right-hand upper corner of the carpet, this corner which is lapped under the lin-
 30 oleum—

Q The right hand as you ascend or descend? Will you point it out on this sketch? A I must show you that the carpet is on this point now, this being the riser.

Q Point out what you mean by the right. A Well, this riser. Now, on this right-hand corner of this carpet, on the right-hand upper corner in this elevation as shown in here I found that there was—the carpet had been pulled away
 40 a distance of about three inches along this line

Joseph Derivaux, cross.

here, a distance there about three inches from the right-hand upper corner, so that it was hanging over like a triangle.

Q Did that extend over the entire width of the step or only for the three inches? A Only about three inches.

10

By the Court.

Q How far away from the step was it? How far out away from the step was it? A About two inches.

(A recess is taken from one to two P. M.)

AFTER RECESS.

20

Direct examination (continued) by Mr. Gilhooly.

Q I believe, Mr. Derivaux, you finished before the noon recess in describing the top landing after you had heard of this accident. Were you ever notified at any time by Mrs. Bennett that she had been in an accident? A No.

Cross examination by Mr. Munsick.

30

Q When did you hear, Mr. Derivaux, that Mrs. Bennett had been in an accident? A I heard it on the evening of July 16.

Q Where? A At the supper table.

Q At whose home? A At my sister's home.

Q Is that Mr. Hinrichsen? A Mr. and Mrs. Hinrichsen's home.

Q Who told you that she had been in an accident? A I was informed by my sister at the supper table.

40

Joseph Derivaux, cross.

Q Mrs. Hinrichsen? A Yes, Mrs. Hinrichsen, that an accident had been reported.

Q To her? A To her by a health officer that afternoon.

Q And then you proceeded down there in your car? A Immediately after supper I went
10 to investigate what this accident may have been.

Q And you saw Mrs. Bennett on the street? A Yes.

Q Were you quite surprised? A Very much surprised.

Q But all you said to her was, "How do you do, Mrs. Bennett?" "Can we give you a lift?" A I first greeted her, "Good evening, Mrs. Bennett," and she looked over to the car. She didn't stop walking. She just continued
20 walking, and she looked at me and I said, "Can I give you a lift?" And she said, "No."

Q And that is all there was to it? A That is all she said.

Q Although you had just heard a short time before that she had had an accident in your house falling down the stairs? A That is so. That is true.

Q Then where did you go after you talked with her? A I immediately turned my car
30 around and went back to number eight Quitman street.

Q Was anybody on the porch? A Yes.

Q Who? A There were the Hackett girls, two in number, and also the young Vanderpool girl.

Q Any Bennett people? A Yes.

Q Who? Do you remember? A I recall seeing one of her sons.

Q Do you know them apart? A Yes.

Q Was it Raymond? A Why, I don't know
40 them by name.

Joseph Derivaux, cross.

Q Did you hear Mr. Hinrichsen speak to him about his mother? A One of us spoke about his mother. I couldn't tell you now whether I asked this question or whether Mr. Hinrichsen.

Q What did you ask? A The question asked was whether his mother was upstairs.

Q What did he say? A He said she was in bed. 10

Q Did you go up? A I immediately went up.

Q At that time? A At that time.

Q Alone? A No, with Mr. Hinrichsen.

Q And he went up, too? A Yes, sir.

Q Was there anybody up there? A In the hall?

Q In her apartment? A There was no response to my knocking. 20

Q And then you came down again? A No. I went to see what might have been the cause of this accident.

Q Then you examined the stairs at that time?

A At that time I examined the carpet.

Q How long had you been in charge or taken an active interest in this property? A Since 1923.

Q Since 1923? A Yes.

Q So long as you have been familiar with the property, has there been anything on the stairs? 30

A There has been no carpet on the steps.

Q They have been bare? A They have been bare.

Q Only this one step had carpet on, is that correct? A That is correct.

Q And that carpet was on the riser surface?

A Yes.

Q And the linoleum was fastened down on top of it, was it? A That is right. 40

Joseph Derivaux, cross.

Q Do you know when that linoleum was put down? A Well, the linoleum had been there before I took over the property.

Q So that if the linoleum had been there before you took it over, the carpet had too, had it? A Yes.

10 Q Now, when you went up the stairs on June 29 to give Mrs. Bennett a notice to vacate, there were several of you, weren't there? A Yes.

Q Who? A There was Mr. Hinrichsen, my brother Hubert Derivaux, and myself.

Q Three of you? A Three of us.

Q You took no particular notice of that top step, did you? A No.

Q You had no occasion to take any particular notice of it? A No more than looking
20 around as I stood on that step and on that carpet for at least fifteen minutes.

Q On the carpet? A On the linoleum.

Q You mean in the hall there? A Yes, sir; on the linoleum, and also the platform one step below. I stood there about fifteen minutes and I saw nothing.

Q Waiting? A Waiting.

Q The carpet then was an old carpet, wasn't it? A It had been in use, but it wasn't in
30 imperfect condition in any manner.

Q The carpet ran along— What is the name of that little round part, the nosing? The nosing, is that it? The carpet ran all along the step along the nosing here, didn't it? A Yes, in that manner.

Q It came out beyond the linoleum? A Yes.

Q Where it would naturally receive considerable wear, wouldn't it? A Not much. It
40 was perhaps an eighth of an inch beyond the linoleum.

Joseph Derivaux, cross.

By the Court.

Q Well, was there any hole in the carpet itself, or was it simply pulled loose? A There was no hole in the carpet whatsoever. It was only pulled loose.

Q Just pulled loose and forward? A Yes. 10

By Mr. Munsick.

Q Have you any idea how far back the carpet extended under the linoleum? A Yes. About three inches.

Q About three inches. Did you check that up afterward? A That was part of my investigation on the night of the sixteenth, and I took particular notice of how the whole construction was. I noticed that it was fastened by two sets of tacks, one set fastening the carpet directly to the floor and another set of tacks on the edge of the linoleum fastened through the carpet, making it very secure against any slipping. 20

Q And one set of tacks along the lower edge?

A On the lower edge of that riser, yes.

Q And you found at that time a space two inches long, you said? How long did you say?

The Court: About three inches. 30

Q About three inches long and extending away from the face of the step about two inches?

A Two inches or less.

Q Two inches or less. Was there an opening there? A There was no opening outside of the right-hand corner had been pulled over about three inches.

Q Did this hole run from the end of the step in three inches? A What hole? 40

Joseph Derivaux, cross.

Q This opening or this pulling, whatever you call it. A The tacks had been raised and there was a distance of about three inches that this was affected.

Q Did it run all the way over to the end of the step? A Yes.

10 Q Right to the end of the step? A Right-hand end.

Q And was hanging down from that end of the step? A Yes.

Q Otherwise there was nothing at all wrong with that carpet? A That is true.

Q Did you ever go to see Mrs. Bennett personally after she fell? A I had seen Mrs. Bennett once after she fell. Outside of the evening of the sixteenth you mean?

20 Q Yes. A Outside of that I had seen her once.

Q Where did you see her? A She was in her bedroom.

Q Do you remember when that was? A That was on the morning of about the twenty-first of July. I had gone up to the premises, having known that her furniture had been moved the day before. I wanted to see how the work was progressing with the plumber, he having been notified immediately to go over and fix the drain. I went up the back stoop and found that the door to the kitchen was open and the apartment apparently vacated, and I went into the apartment, and I was surprised to see in the bedroom that Mrs. Bennett was still there, and I apologized by telling her that I didn't know she was in the apartment, and I was up here believing it was empty, vacated.

40 There was no furniture in fact.

Joseph Derivaux, cross.

Q But she was in there in bed? A She was there in bed.

Q Were you there when she left the place?
A No.

Q You weren't there when she left? A No. I remained there perhaps maybe one minute.

Q One minute. You just looked in and walked out again? A I just said, "Mrs. Bennett, oh, excuse me. I didn't know you were in this apartment. I thought you moved yesterday."

Q Had you expected her to move yesterday, whatever day it was? A Yes. The moving van took everything away but this bed, apparently.

Q What was yesterday, the date? A That must have been the twentieth.

Q And she was there until the twentieth of July, 1925? A Yes.

Q How wide are the steps there, Mr. Derivaux? A Well, I should say thirty inches about.

Q About thirty inches. Did you make any effort to pull this carpet out? A I did.

Q Could you do it? A No. I was unable to do it.

Q You couldn't pull it out? A I wasn't able to pull it out.

Q But you are quite positive that when you looked underneath there was none near that opening; there was none underneath the linoleum? A Yes.

Q There was none? I mean at the place. A It was pulled out and leaving none left.

Q There was none under the linoleum? A There was none under the linoleum.

10

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30

40

Joseph Derivaux, re-direct—re-cross.

Re-direct examination by Mr. Gilhooly.

Q Now, did I understand you what you said? There was no carpet on the linoleum, or was that corner out? What was it? A I am speaking of that corner had been pulled out from
10 under the linoleum, leaving nothing on that corner left under the linoleum.

Q You say you removed the carpet? A I did remove the carpet.

Q How did you remove it? A Being unable to pull it off, I proceeded down to my car and brought a screw driver up, and by prying under the linoleum I was able to raise the linoleum, and then by prying underneath the carpet I pulled the carpet off, and there was a
20 lower set of tacks, and I pulled them out and then pulled the carpet up.

Re-cross examination by Mr. Munsick.

Q You took it all off? A I took it all off.

By the Court.

Q Between the twenty-ninth of June and the sixteenth day of July, did you visit the property?
30 A I don't recall that I visited Mrs. Bennett's apartment, but I have visited the property.

Q You don't recall that you went up those stairs? A I don't recall especially that I did, no.

Joseph F. Powers, direct.

JOSEPH F. POWERS, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Mr. Powers, you were connected with the Board of Health in the year 1925? A Yes. 10

Q And in the month of July of that year?
A Well, I was connected from the sixteenth of March, 1925.

By the Court.

Q With what? A With the health department.

By Mr. Gilhooly.

Q Did you have occasion during the month of July to go to the apartment known as 8 Quitman street, Newark? A I had occasion to go there. I don't exactly remember the month. 20

Q Did you remember the incident? A I remember the incident, certainly.

Q You went there pursuant to directions given to you by one of your superiors? A Yes.

Q For what specific purpose did you go to the fourth floor? A I was informed by my superior that a plumber had not been admitted, and I was told to go and inform the tenant, the tenant at the top floor, to admit the plumber. 30

Q Did you go into the apartment? A I went into the apartment.

Q Did you see Mrs. Bennett? A I saw Mrs. Bennett.

Q Where was Mrs. Bennett? A Mrs. Bennett was in bed. 40

Cecilia Derivaux Hinrichsen, direct.

Q Do you know what day of the month that was? A No, I don't.

Q You don't recall the month? A I cannot recall.

Q Did she talk to you? A She did.

10 Q What did she say? A First, of course, I opened up with what I had been sent for. I told her to admit the plumber, and she said she had fallen downstairs and asked me to look at the carpet.

Q Now, as the result of what she told you what did you do? A Then I walked out and looked at the carpet.

20 Q Your recollection of the condition of the carpet is what, if you have any recollection? A I can't recall exactly. It is too long a time. I cannot recall. There was a defect in that I recall.

Q But you don't know how much? A I don't know exactly.

Q What did you do thereafter? A I made my report and I believe it was the next day I was instructed to inform the owner that the defect existed, which I did.

Q Did you notify the Hinrichsens? A I did.

30 Mr. Gilhooly: That is all.

Mr. Munsick: No questions.

CECILIA DERIVAUX HINRICHSEN, one of the defendants, sworn in her own behalf.

Direct examination by Mr. Gilhooly.

40 Q Mrs. Hinrichsen, you are the wife of Carl Hinrichsen? A Yes, sir.

Cecelia Derivaux Hinrichsen, cross.

Q Did you hear about this alleged accident to Mrs. Bennett? A Yes.

Q Are you the one that was notified by the Board of Health? A Yes, sir.

Q Now, as the result of that notice did you go over to 8 Quitman street on the sixteenth? A Yes, I did. 10

Q Who was with you? A In the company of my sister, Rose Marie, Joseph, and my husband.

Q On that evening did you see Mrs. Bennett? A Yes, I did.

Q Where was she? A She was crossing Montgomery street at Quitman street.

Q Did anybody in your party speak to her? A Yes, either my husband or my brother—I don't remember just which it was—addressed her and said, "Mrs. Bennett, good evening. Mrs. Bennett, can we give you a lift?" And she answered, "No." 20

Q Did she proceed on her way? A She proceeded on.

Q What did you do? A We went back to Quitman street, to number eight Quitman street, and then the boys, Mr. Hinrichsen or Joe, spoke to the children there.

Q Don't tell us what they said to the children. Did they go into the apartment house? A Yes, they did. 30

Q And later they came back? A Yes.

Q And then you drove away? A Yes.

Q Did you go up in the apartment? A No, sir. I remained in the car.

Cross examination by Mr. Munsick.

Q You are one of the defendants, are you not, Mrs. Hinrichsen? A Yes. 40

Rose Marie Larkin, direct.

Q So is Joseph Derivaux? A Yes. All of us are.

Q That was all of the conversation that took place between any of you and Mrs. Bennett when you saw her on the street? A Yes, with Mrs. Bennett; that was the sum and substance of our conversation.

Q You only saw them go into the front door of the building, isn't that all? A Oh, I heard them speak to one of the children, one of the Bennett children.

Q You say they went in. You mean the front door of the building, the front entrance? A Yes, they entered the front door, Mr. Hinrichsen and my brother you mean.

20

ROSE MARIE LARKIN, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Mrs. Larkin, you are a sister of Mrs. Hinrichsen? A Yes.

Q Do you remember the night of the sixteenth when you accompanied her? A Yes, sir.

30 Q Did you know Mrs. Bennett before this accident? A No.

Q You don't know whether that woman was Mrs. Bennett, that you met, of your own personal knowledge, do you? You don't know whether that woman was Mrs. Bennett that you met, of your own personal knowledge, do you, only from what you have been told? A Only by what I have been told.

Mr. Gilhooly: That is all.

40

Mr. Munsick: No questions.

John J. Clancy, direct—cross.

JOHN J. CLANCY, sworn in behalf of the defendants.

Direct examination by Mr. Gilhooly.

Q Mr. Clancy, what is your occupation? A Attorney and Counsellor at law. 10

Q Were you such in October and November, 1928? A In 1928 I was.

Q Do you know Annie Bennett, the plaintiff in this case? A I do.

Q Where did you meet her? A I met her in our office. I am associated with Merritt Lane, and she came into the office in October or September, 1928.

Q Did you observe her at that time? A I did. 20

Q Did you talk to her? A I did.

Q Did she limp at that time? A I didn't notice any limp.

Q Did she manifest any expression of pain at that time? A None at all, except that she looked very thin.

Cross examination by Mr. Munsiek.

Q There wasn't any reason why she should manifest any pain to you, was there? A Except that she wanted our office to take a case which she had. 30

Q You wouldn't do it? A We wouldn't do it.

Q And you saw her in your private office? A I did, a number of times.

Q You don't observe clients to see whether they limp or not, do you, Mr. Clancy? A Well, I imagine in a prospective suit, if she complained of a limp I would have remembered it. 40

Charles F. Baker, direct.

Q If you were interested? A Well, I was, at the time, until I investigated.

DEFENSE RESTS.

10 CHARLES F. BAKER, sworn in behalf of the plaintiffs, in rebuttal.

Direct examination by Mr. Munsick.

Q Dr. Baker, I show you X-ray plate marked Exhibit D. 11, which has been identified as the picture of Mrs. Bennett taken by Dr. Wyatt. Have you seen that picture? Have you looked it over? A Yes.

20 Q Is there any evidence of fracture there? A I do not see any.

Q Can you explain the difference of the angle between what appears to be the bones? I am not very familiar with the terms? A Well, the square portion in the front of the so-called bodies of the vertebrae with the projection on this side are called spinous processes. These lines between the processes are articulations or joints. I can see no fracture lines or callus
30 formation to indicate that there has been a fracture.

Q Have you compared that with your picture of the same portion of the body? A Yes, sir.

Q What is the difference? A I see no fracture on mine there. There is a slight difference in the obliquity at which the two were taken. This is Exhibit P. 20.

40 Q Now, is that taken in a different position? A This is a lateral view but not taken quite as far on the patient's side as the other.

Charles F. Baker, direct.

Q That is your picture that you are pointing to there now, isn't it, doctor? A This is my picture.

Q If you had taken your picture at the same angle that Dr. Wyatt took his, would it show the same think that his shows?

10

Mr. Gilhooly: I object to that. He has not taken it. I do not see how he can tell what would happen.

The Court: The doctor will say so if he cannot do it.

A If they are taken from exactly the same position they should certainly show the same outlines. At the time when my pictures were being taken the patient had a very sore shoulder, which was the occasion of our taking the shoulder pictures which are already in evidence. I don't remember exactly that that was the reason we didn't get this angle, but as this is certainly a sufficiently good side view, we didn't bother to take any more.

20

Q Now, I show you a plate marked "Exhibit D. 7," also taken by Dr. Wyatt.

The Court: I thought the other one was D. 7.

30

The Witness: The first neck picture is Exhibit D. 11, and mine was Exhibit P. 2.

The Court: Now this is Exhibit D. 7.

The Witness: D. 7.

Q You understand, Dr. Baker, that these pictures were taken on December 26, 1928? A Yes, sir.

40

Charles F. Baker, direct.

Q Do you see any difference between that picture and this picture of the same portion of the body? A Yes, sir.

Q What is that difference? A A slight increase in the angle between the eleventh and twelfth dorsal.

10 Q Which indicates what, Dr. Baker? A Well, it indicates to me that there is a pathological process which has permitted the vertebrae to change their position.

Q Continuous process you mean?

Objected to as leading.

Question withdrawn.

A Pathological process, I said. That means
20 disease.

Q If a person remained flat on the back, would that tend to straighten out between the time of the two pictures? A Yes, it would tend to straighten out.

Q The fact, then, that the picture indicates that it has not straightened out would tend to show that the angulation, if that is the proper term, is greater now than it was when you took your picture, isn't that so? A Yes, sir.

30 Q What did that indicate, Dr. Baker?

Objected to as having been thoroughly explained on the direct case.

Objection overruled.

A To my mind this shows that in the interval which elapsed between the taking of the two pictures, about thirteen or fourteen months, there has been a decided change in the spine.

Charles F. Baker, cross.

Cross examination by Mr. Gilhooly.

Q By that you mean the spinal column? A
The vertebrae.

Q Not the spinal cord? A I can't testify
about the condition of the spinal cord.

Q You say there is an increase in the calcifi- 10
cation, is that right? A I testified to that the
day before yesterday.

Q Is that what I understand you to say that
there is an increase in the width between the
eleventh and twelfth dorsal? A No.

Q You will have to come down to my level,
doctor, because I am only a lawyer. A You
follow the border of the spine, the front or
anterior border. In this film you see a decided
angle at the twelfth. If you follow the line all 20
the way down you see no angle, a slight gradual
curve. I think that this has come on since that
first picture was taken.

Q Doctor, just as it appeared in the cervical,
could that not be due to the different angle at
which it was taken? Would you negative that
entirely? A I think so, yes.

Q That is a matter of opinion, however, isn't
it? A Yes.

Q And whether or not there is a fracture in 30
the cervical is a matter of opinion, too, isn't it?
A Of course it is.

Q You are now expressing your opinion that
there is no fracture in the fourth, fifth, or sixth
cervical, is that right, doctor? A Certainly.

Carl R. Keppler, direct.

CARL R. KEPPLER, recalled in behalf of the plaintiffs, in rebuttal.

Direct examination by Mr. Munsick.

10 Q Dr. Keppler, you examined the picture Exhibit D. 7 taken by Dr. Wyatt? A Yes.

Q And you compared it with Exhibit P. 7. Do you find any difference in the two pictures? A Yes. Whereas here with this destruction between the eleventh and twelfth dorsal vertebrae there is still the rounded back that we find, not so much destroyed but just an associated condition, here we have a distinct angulation—

By the Court.

20 Q You have said it is here, doctor, without indicating the X-ray to which you referred at the time? A In P. 7 there is no angulation, but a distinct rounded curve of the entire vertebral column there shown, whereas in D. 7 there is a distinct angulation between the eleventh and twelfth dorsal vertebrae with an apparent thinning down of the front part of the body of the twelfth and a certain diminished space between the front part of the bodies compared to the
30 space between the other bodies.

Q What, in your opinion, does that indicate, doctor? A It indicates to me a destructive process at that spot.

Q I show you Exhibit D. 11 and P. 20, D. 11 having been taken by Dr. Wyatt and P. 20 by Dr. Baker, and ask you if you have examined those two pictures? A I examined those two
40 pictures, and in P. 20, taken by Dr. Baker, there is absolute—

Anna Bennett, direct.

By Mr. Gilhooly.

Q Haven't you got that upside down, or doesn't it make any difference to you? A You mean this way?

Q Yes. A There is no abnormality shown at all in that lateral picture, no fracture seen. The other picture, D. 11, is taken at a more lateral angle, and again in my opinion does not show a fracture but simply the normal spaces in this exposure of these laminae of the spinous processes; the bodies aren't at all involved. 10

ANNA BENNETT, recalled in behalf of the plaintiffs, in rebuttal.

Direct examination by Mr. Munsick.

20

Q Anna, were you present at home when Mrs. Lewis came? Were you here this morning? A Yes, I was.

Q Do you know whom I mean by Mrs. Lewis? A Well, when she came to our house she said she was Mrs. Livingston, and I recognized her when she came up here.

Q We can't hear. A I say I recognized her when she came up on the stand. 30

Q When she came to your house she said what? A When she came to our house she said she was Mrs. Livingston.

Q What did she say she was there for, if she said anything? A She said she was from the research office in New York and she was looking for some heirs to the Bennett family, a relative of the Bennett family down in the South.

Q Did you let her in? A And I told her to wait a moment and I would ask my mother, and 40

Anna Bennett, direct.

I went in and asked my mother if we had any relations in the South.

Q Never mind that. Did you let her in? A And my mother said no, and I turned around to go back and tell her, and she had walked in and was right in back of me, into the room.

10 Q How long did she stay there? A Probably a half an hour.

Q Are you sure about that? A Positive.

Q Were you there when she left? A Yes, I was.

Q Do you recall what your mother's condition was that day? A My mother was very sick that day. She didn't feel like talking at all; in agony.

20 Q Can you remember whether or not you were at 8 Quitman street on the evening of July 16, 1925? A Why, yes, I was.

Q How are you sure that it was July 16? A Well, it was three days after my mother's accident.

Q Where were you? A I was on the front stoop with George Quick.

Q What is his name? A George Quick.

Q Did you see Mr. Hinrichsen that night? A Why, yes.

30 Q Did he come to the house? A Two men and two women. The two men were Mr. Hinrichsen and Mr. Derivaux. They drove up in an automobile, and George Quick and I were sitting on the front stoop, and I don't know which one of the two men it was. I think it was Mr. Derivaux came over and asked me where my mother was, and I told them she was upstairs sick in bed, and he got in the car and drove back down about as far as Montgomery street, and he came back
40 again and he says, "Where did you say your

Anna Bennett, cross.

mother was?" And I said, "Upstairs in bed. She is sick." And he says, "Why, I was just talking to her down on Montgomery street." And I told them to come on upstairs with George and I if he didn't believe me, but he wouldn't come up. He got in the car and drove away. So Walter Rinck was upstairs with my mother at the time. 10

Q What did you do after that? A I went upstairs.

Q Who was in your apartment? A Walter Rinck was with my mother at the time.

Q Where was your mother? A In bed.

Cross examination by Mr. Gilhooly.

Q Now, Anna, did you remember it was two days after the accident? A It was three days after. 20

Q Three days after the accident. Was your mother in at the time or was she out? A What did you say?

Q When they came there was she in or was she out? A She was in bed.

Q She went out the night of the accident, didn't she? A No, she didn't.

Q Were you home all the time? A I was. 30

Q All day and all night? A Yes.

Q And you were home the next day all the time? A I was home every day with her.

Q For three months? A No, for two weeks.

Q Were you there all the time that Dr. Greenbaum was treating her? A Why, my mother, my brother went there at the time Dr. Greenbaum was treating her.

Q Were you there when he would call on your mother to treat her? A Yes, but I wasn't with her. 40

Walter Rinck, direct.

Q Were you there the ten days that he said he treated your mother after the accident? A Yes, I was.

Q That was at 8 Quitman street all the time you were there? A Yes, I was.

10 Q Your mother had this accident on the twenty-third, isn't that right; on the thirteenth?

A On the thirteenth.

Q And you moved on the twentieth, didn't you? A Oh, it was around that week.

Q It was the twentieth, wasn't it? A I don't know. I am not sure about that.

20 Q There has been testimony that Mr. Derivaux called to see your mother on the twenty-first and the furniture had been moved out the day before, hadn't it, over to Spruce street? A I am not sure. I don't recall just what day it was, or the date.

Q You don't recall that you moved on the twenty-first or the twentieth? A No, it was in the week of the twentieth.

Q Are you sure that Dr. Greenbaum came steadily for ten days? A Yes, sir.

Q Are you sure it wasn't eleven? Are you sure it wasn't nine? A Well, about two weeks he called straight.

30 Q Two weeks straight. All at the Quitman street house, is that right? A Yes.

WALTER RINCK, recalled on behalf of the plaintiffs, in rebuttal.

Direct examination by Mr. Munsick.

40 Q Mr. Rinck, were you at 8 Quitman street on July 16? A I was.

Walter Rinck, direct.

Q How do you know it was the sixteenth? A Well, because it was three days after the thirteenth.

Q What were you doing there? A I was visiting Mrs. Bennett.

Q What time of day? A I would say in the evening somewhere after seven P. M. or thereabouts. 10

Q While you were there did Anna Bennett come in and speak about Mr. Hinrichsen or anybody else having been at the place? A She did.

Q Did you hear the conversation? A I did.

Q So far as you know where was Mrs. Bennett at the time? A She was lying in bed. I was sitting at the head of her bed.

Q How long had you been there? A I don't just recall the length of time. 20

Q Well, what did Anna Bennett tell her mother?

Objected to.

Objection sustained.

Q Mr. Rinck, did you ever make inquiry personally with reference to an apartment at 8 Quitman street? A Inquiry of whom? 30

Q Of anybody? A Yes.

Q Do you know when it was? A No.

Q Well, do you know whether it was before or after the accident? A I don't recall.

Q Did you go with someone? A I did.

Q Who was the someone? A My brother.

Q Do you know where you went? A Yes.

Q Where did you go? A 623 High street.

Q Did you talk with anyone there about renting a place? A I did. I talked to a gentleman. 40

Walter Rinck, cross.

Q You talked to a gentleman? A Yes.

Q What did you talk about? A I talked on the business that I personally went there for, in regard to renting a flat in number eight Quitman street.

10 Q What did you say about it? What did he say? A He agreed that he would allow me to have—

Mr. Gilhooly: I object to what was said except that he had a conversation. He is put on to rebut Mr. Hinrichsen's testimony that he had no such conversation.

Q Were you talking with one person? A As far as I remember, one; yes, sir.

20 Q Do you know who lives at 623 High street? A Well—

Q If you don't know, say so. A I presume I know.

Mr. Gilhooly: Do you know; not do you presume.

A Well, I was told who was there. That is as far as I know.

30 Mr. Munsick: That is all.

Cross examination by Mr. Gilhooly.

Q What day of the month and year was it that you went to see Mr. Hinrichsen about this apartment? A I don't know.

Q Don't you remember that date? A I don't know.

40 Q Was it in the daytime or was it in the nighttime? A I don't remember.

Walter Rinck, cross.

Q Was it six months after this accident? A I don't remember.

Q Was it one year after the accident? A Oh, for goodness sake, I told you I don't remember.

Q I am trying to aid your memory A I know you are. 10

Q What time did you say you were in the Bennett house on July 16? A I was in the Bennett house July 16 somewhere about seven P. M.

Q You weren't there at six or six-fifteen, though, were you? A No.

Q So you don't know what went on at six or six-fifteen, do you? A Presumably not.

Q Are you positive that it was seven o'clock when you were there on the sixteenth? A No.

Q You aren't positive? A No. 20

Q It might have been eight o'clock, might it not? A No, that is not so.

Q Why could it not be eight o'clock instead of seven? A Well, I won't say it was seven exactly, but I am sure it was shortly after, if not seven.

Q Now, of course you can't tell time by sight. How do you tell time? By people telling you? Have you got a watch that indicates it? A Oh, yes, yes. 30

Q Did you feel that watch on the day in question? A I don't recall whether I did or not. It is quite possible that I did.

Q Why do you say it was seven o'clock or shortly thereafter if you didn't feel your watch?

A That is the time that has been recorded in my mind.

Q Since when has that been recorded in your mind? A Well, I just can't answer that point blank. Long enough for me to know it now. 40

Annie Bennett, direct.

Q Now, Mr. Rinck, you went to see Mr. Hinrichsen at 623 High street, and I presume your brother told you it was 623? A Yes.

Q Who told you that the Hinrichsens live at 623 High street? Mrs. Bennett? A Is that necessary?

10 Q I am asking you. A I don't care to answer that.

ANNIE BENNETT, the plaintiff recalled in her own behalf in rebuttal.

Direct examination by Mr. Munsick.

20 Q Mrs. Bennett, the first time you received a receipt for rent was in what month? A When I first rented the house.

Q Did you have a receipt for rent for that month? A Yes, sir.

Objected to as not proper rebuttal and as having already been asked.

Q Can you see Exhibit D. 1? A I can't read it.

30 Q I will read it to you. It is dated March 31, 1924. "Received of William Bennett, \$40 for rent of premises, fourth floor, 8 Quitman street, rent for month of April, 1924. It is agreed the tenancy is from month to month, and that in September, on September 1, rent will be \$45 a month. Estate of F. X. Derivaux, per C. F. H." Is that a copy of the receipt that you received? A No, sir.

40 Q Did you, at the time, sign any written agreement of any kind? A No.

Annie Bennett, direct.

Objected to as not being proper rebuttal and having been covered in the direct case.

Q Do you recall, Mrs. Bennett, when you were in the District Court in July, 1925, on a dispossess proceeding? A Yes.

Q Were you there personally? A Yes. 10

Q Was anybody else with you? A My son John and a lady friend and Farley.

Q Did you hear Mr. Farley, in your presence, have a conversation after the District Court hearing with Mr. Hinrichsen? A Yes.

Q Where? A Down in the hall.

Q With reference to what? A He just wanted me to give him ten dollars, five for this month and five for that, and I said I wouldn't give it to him.

20

Mr. Gilhooly: I object to that, as to what happened during the dispossess proceeding.

Mr. Munsick: I am asking a conversation that occurred with Mr. Hinrichsen subsequent to the District Court proceeding. The proceedings are on record, and I think I have a right to show any subsequent agreement made by Mr. Hinrichsen with reference to the property. 30

The Court: That is the purpose of it?

Mr. Munsick: Yes, sir.

The Court: You may proceed.

A (Continuing) I mean June, June and July. I wouldn't give it to him because I didn't owe it to him. And then Mr. Farley said, "You can't put people off when their rent is paid. You have to give them some notice," and he says, 40

Annie Bennett, direct.

“Joe Derivaux and Mr. Hinrichsen said I could stay till the twenty-second of the month to use out the forty dollars worth that I had given him.”

Q Now, had you given them forty dollars?

A I sent a money order for the forty dollars.

10 Q When? A I think it was July 3, for the month of July. I had a letter in there stating it was for my rent and it would pay it to August 1.

Mr. Munsick: Have you got any note of that kind?

Mr. Gilhooly: No. The envelope came just by itself.

20 *By the Court.*

Q Had you at any time paid \$45 a month rent? A Never.

Q Was your rent paid up to July 1? A Oh, yes, sir.

Q Without the forty dollars that you sent by money order on July 3? A Yes, sir.

By Mr. Munsick.

30 Q Did Mr. Hinrichsen claim a different rent? A He only asked me for five dollars more to pay for the electric he was putting in the halls.

Q What did you say? A I told him I couldn't pay any more; I was paying all I could.

Q When did you leave the premises? A In the City Hospital ambulance.

Q No, when? A July 21.

By the Court.

40 Q What time of day? A In the afternoon I think it was. I am not sure.

Annie Bennett, cross.

By Mr. Munsick.

Q Mrs. Bennett, do you recall a woman calling upon you on December 31 by the name of Livingston? A Yes.

Q How long did you talk with her? A I didn't talk to her. I just had a couple of words. 10

Q How long do you suppose she was there? A Oh, maybe a half an hour.

Q Did you tell her that you were going or contemplated going in the automobile business?

A Who?

Q You. A No.

Q Do you know a Mrs. Thoma? A No, sir.

Q Don't you know anybody by the name of Thoma? A No, sir.

20

Cross examination by Mr. Gilhooly.

Q Mrs. Bennett, when was this conversation that you relate as having had with Mr. Farley and Mr. Hinrichsen regarding the continuance of your tenancy for the month of July? When was it? A Oh, I don't remember the date.

Q Was it while you were in the District Court? A Yes, sir.

Q And that was when they sought to eject you in the month of July, wasn't it? A Yes. 30

Q And this conversation took place in the District Court when you appeared to contest the case, is that right? A After.

Q As a result of this conversation which you had after you appeared to contend the case, you sent a money order, is that right? A No. I told you I sent the money order about the third of the month, and that must have been the ninth or the seventeenth, something like that. 40

Annie Bennett, cross.

Q Was it the seventeenth, do you think, Mrs. Bennett? A I don't know. No, it wasn't. I fell the thirteenth. It couldn't have been. I think it was about the ninth or tenth, something like that. I don't know.

10 Q You are sure Mr. Farley was there, are you? A I am positive.

Q What were you and Mr. Farley and Mr. Hinrichsen doing in the District Court on the tenth, if you weren't there on the return day of the summons; do you know? A I can't answer you that question. I don't know what date it was there.

Q It might have been on the ninth, might it not? A Maybe.

20 Q And that is the time you tried the case, is it not? A I don't remember.

Q And on the ninth you lost the case, isn't that right? A I don't know.

Q Now, when Mrs. Lewis came there to talk to you, or when Mrs. Livingston came to talk to you about the Bennetts, you gave the family history, didn't you? A No.

Q Didn't you give her any of your husband's relatives? A No.

30 Q Didn't you give your sister-in-law in Brooklyn? A No.

Q Doesn't your sister live in the same house with an Italian who has a telephone? A Yes.

Q Didn't you telephone to your sister within the past two weeks through this Italian? A No.

Q Don't you remember doing that? A That was about the middle of January.

Q It was about the middle of January that you telephoned to your sister in Brooklyn, is that right? A Oh, I don't know. Maybe it

John Bennett, direct.

was. No, wait a minute. My niece was engaged Christmas eve. That is when it was, around Christmas time. I congratulated her over the 'phone. That is the only time I ever called.

Q And that sister-in-law lives in Brooklyn, doesn't she? A Yes.

Q And Mrs. Livingston knew that because you told her, isn't that right? A No. 10

Mr. Munsick: I can offer in evidence the docket of this particular case, and also the original files.

Mr. Gilhooly: No objection.

(The papers referred to are received in evidence and marked "Exhibit P. 28.")

20

JOHN BENNETT, recalled in behalf of the plaintiffs, in rebuttal.

Direct examination by Mr. Munsick.

Q Were you present in the District Court on July 9 or thereabouts when a dispossess proceeding was tried? A Yes, sir.

Q Did you hear any conversation after the suit with Mr. Hinrichsen and Mr. Farley? A Yes. 30

Q Where was that held? A That was just held right outside the door in the hall.

Q Speak up a little bit. A That was held in the hall outside the door.

Q What did Mr. Hinrichsen say and what did Mr. Farley say to Mr. Hinrichsen with reference to you or your family remaining at 8 Quitman street? A Mr. Farley asked Mr. Hinrichsen if he wouldn't please allow her a little more time, 40

John Bennett, cross.

and he said he would, that he would allow her to remain to the twenty-second to run out that forty dollars which she had given him.

Cross examination by Mr. Gilhooly.

10 Q Then Mr. Hinrichsen left your mother and your family remain in there to the twenty-second, is that right? A That is right.

Q Then you weren't put out, were you? You went out voluntarily, isn't that right? That is right, isn't it? A That I don't recall.

Q Well, you weren't put out, were you? You had an agreement to stay there till the twenty-second, didn't you? A I don't recall just the way that was.

20 Q How is it you can't recall that, John? You recall what was said. What causes your memory to lapse? A I was present at that time.

Q You remembered that you had an agreement that you could stay there till the twenty-second of July? A That is right.

Q There is no question in your mind about that, is there? A No, it is not.

Q And Mr. Farley was there, too? A That is right.

30 Q Was that after the trial had been held? A That was after the trial had been held.

Q So you moved out voluntarily on the twenty-second pursuant to your agreement, rather than the twentieth or twenty-first? A I said I don't recall that part.

Q Well, you moved out voluntarily, though, didn't you? A I don't know whether—how he came to serve a notice or anything else about that.

40

Alexander W. Bogatko, direct.

Q You understand what the word voluntarily means, don't you, John? A Yes. Go of our own accord.

ALEXANDER W. BOGATKO, recalled in behalf of the plaintiffs, in rebuttal. 10

Direct examination by Mr. Munsick.

Q Mr. Bogatko, you testified that you were at 8 Quitman street on July 13? A I have.

Q Were you there that same week again? A I was later on during the week.

Q Do you know what day it was? A It was Thursday.

Q How do you know? A It was the day of our accounts. 20

Q What do you mean by "your accounts"? A Well, in the insurance business we turned all our accounts in on Thursday. It was after the accounts I turned in I went back on the job.

Q You went back after that one? A Yes.

Q Did you go to Mrs. Bennett's apartment? A I did.

Q Was there anybody there? A When I walked in there was a tall gentleman there speaking to Mrs. Bennett. 30

Q Where was Mrs. Bennett? A She was in bed.

Q Where was she? A She was in the bedroom and he was in the dining room just as you walk in from the hallway.

Q Did you hear him say anything to her?

(Discussion.)

40

Alexander W. Bogatko, direct.

Q Was there a conversation with reference to Mrs. Bennett's tenancy there? A When I walked in there was something said between—

By the Court.

10 Q No. Just answer that question. A There was something said.

By Mr. Munsick.

Q What was there said?

Objected to unless the witness identifies the gentleman.

20 Q Was that party identified to you after the conversation? A Yes. I was told who that party is, because I asked for it.

Q What did he look like? A Oh, tall gentleman.

By the Court.

Q Have you seen him here? A No, I haven't. I heard he is sick.

By Mr. Gilhooly.

30 Q It is Mr. Hinrichsen you are talking about, isn't that right? A Yes.

By Mr. Munsick.

Q Did Mrs. Bennett tell you it was Mr. Hinrichsen? A I asked her and she said yes.

40 Q What did he say to Mrs. Bennett that you overheard? A He told her, "Don't forget"—he was going out when he said that, "Don't forget. We gave you only till the twenty-second to stay here, to be here."

Defendants' Motion for Direction of a Verdict.

Cross examination by Mr. Gilhooly.

Q You went in this apartment every day? A
Every week.

Q Only every week? A Yes.

Q Sometimes twice a week? A Occasionally.

Q You weren't calling there every day, were
you? A No, sir. 10

Q You took from that conversation that Mr.
Hinrichsen had extended her time to get out un-
til the twentieth, is that right? A No. That
is what struck me first. It struck me the tone
that he talked to her.

Q He said, "You have until the twenty-sec-
ond"? A He said, "Don't forget"—

Q "You have until the twenty-second"? A
Yes, to get out. 20

Q Are you sure of that now? A Positive.

PLAINTIFFS REST.

DEFENDANTS REST.

Defendants' counsel moves for a direction of
a verdict on the ground of contributory negli-
gence.

Motion denied.

Defendants' counsel prays an exception to this
ruling of the Court. 30

Exception noted as ground of appeal.

CHARGE.

The Court charges the jury as follows:

DUNGAN, *J.*

10 Gentlemen, before discussing the facts and
the law of this case, there are two or three
matters to which I desire to allude. One is the
very great courtesy which has appeared in this
case between the attorneys trying it. During
the entire case, which has lasted most of the
week, there has been apparently no word or act
of one toward the other which could grate upon
the sensibilities of the other, except perhaps a
passing remark or two in the argument. That
is always a gratification to the Court, I am sure
it is to the jury, and it always adds to the
20 pleasantness of trying a case.

Another is the splendid attention by this jury
to the evidence of this case which augurs well
for the careful consideration which you will give
to it when you go to the jury room to determine
what your verdict should be.

30 Another matter which is somewhat outside of
the record relates to the oath which you have
taken. Your verdict must be founded, as your
oath indicates, solely upon the evidence in this
case. It is not to be founded upon sympathy
on the one hand or prejudice upon the other.
When we see the pitiable condition of this plain-
tiff who was brought into court on a stretcher,
who admittedly, admitted by all the physicians
on both sides, is unable to move her legs from
her hips, from her waist down, whose upper ex-
tremities are partially paralyzed (Dr. Dowd says
the neck and one arm and sensation on one side
of the body is impaired while the other side is
40 exaggerated, over sensitive)—none of us can

Charge to Jury.

view this condition with equanimity, but our utmost sympathies go out to this woman. The judge, the jury, the witnesses, the attorneys for the plaintiffs, and notwithstanding his duty to the defendants I am sure the attorney of the defendants, and the defendants themselves, have the utmost sympathy for this woman, which possibly makes it necessary for the Court to warn the jury that your verdict is not to be founded upon sympathy, but under your oaths is to be founded upon the evidence which is here produced both on the subject of liability and the plaintiff's condition resulting from injuries which she received. 10

The mere happening of the plaintiff's fall and the fact that it occurred in the defendants' house do not alone entitle the plaintiffs to your verdict. The seriousness of her injuries and the present seriousness of her condition do not alone entitle her to your verdict. Even the fact, if it be a fact, that her fall was caused by a defective condition of the carpet on the riser of the top step of the stairs from which she fell does not alone entitle her to your verdict. This action is founded on negligence, and to entitle Mrs. Bennett to your verdict it must appear by the greater weight of the evidence in the case that the defendants were negligent in that they failed to exercise that degree of care toward her which they owed to her if at the time of her fall she was a tenant in their house. 20 30

The plaintiffs' complaint alleges that the defendants were the owners of 8 Quitman street, Newark; that the plaintiffs, Mrs. Bennett and her husband, were tenants of the defendants up to and including July 13, 1925; that the defendants reserved to themselves the control of the hallways and staircases of the said building 40

Charge to Jury.

and they were in common use by the plaintiffs and other tenants of said premises as a means of ingress and egress to and from the apartments of said building.

10 The first charge in the complaint, that the defendants were the owners of the building, is admitted. The second charge, that the plaintiffs were tenants, is denied. The third charge, that they had retained to themselves the control of the building, is admitted or is amply proven by the evidence in the case.

20 The plaintiff also charges that on July 13, 1925, the plaintiff Annie Bennett, while lawfully passing along the upper hallway, the floor on which her apartment was located, and starting down the stairs, caught her foot in a torn or worn spot in the linoleum or carpet on the stairs so maintained by the defendants, and was caused thereby to fall. This allegation is denied. The next one is that the defendants were well aware of the condition of the stairway and linoleum, which is denied. The next is that by reason of the tenancy of this plaintiff Annie Bennett she was entitled to use the aforementioned hallways and stairways and was entitled to have them kept in a fit and safe condition for her use. This is denied, although the evidence in the case amply proves that she was entitled to use this stairway. Then it is charged that as a result of the negligence of the defendants Annie Bennett was severely wounded, bruised, and injured, and so forth.

30 The allegations in this complaint presuppose that the plaintiffs were tenants of the defendants. If they were not, then under the evidence in this case they were trespassers; and if trespassers, then the defendants owed to them only the duty

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Charge to Jury.

to abstain from wilfully or wantonly injuring them or one of them.

Wilful or wanton injury can only be established by showing that one with knowledge of existing conditions, and conscious from such knowledge that injury will likely or probably result from his conduct, and with reckless indifference to the consequences, consciously and intentionally does some wrongful act or omits to discharge some duty, which produces the injurious result, and that those injuries resulted from the gross neglect of the defendants to exercise toward them that degree of care which the law imposes upon them. There is no evidence in this case from which you can find gross neglect or wilful and wanton injury done by these defendants to the plaintiffs. 10

There is no question but that she had been a tenant in this property for some months prior to this time; but it appears that early in July a proceeding was commenced in one of the district courts of the City of Newark to dispossess these plaintiffs, that such proceedings were had, that on the 9th day of July, 1925, judgment was given by the district court against these plaintiffs for possession of the portion of the defendants' tenement house which they occupied. 20

This required them to remove from the premises immediately; but the Landlord and Tenant Act provides that the warrant of removal may not issue until three days after the judgment for possession, which would have been on the 12th of July, which was the day before Mrs. Bennett's fall. But it appears from the record in the district court that such warrant was not issued until July 17th, four days after the accident, and was not returned executed until July 30

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Charge to Jury.

21, which was the very day Mrs. Bennett says they removed from the defendants' property to Spruce street.

10 While the plaintiffs, as indicated, could have been removed on the 12th, since that was not done and in view of the evidence of Mrs. Bennett, her son, and Mr. Bogatko as to statements of Mr. Hinrichsen to Mrs. Bennett, it will be for you to say whether or not there was an agreement, either express or implied, on the part of Mr. Hinrichsen, who was one of the persons having charge of the house, that they might remain until July 22.

20 Mrs. Bennett says that following the district court proceedings and after they had left the court room a Mr. Farley was with them, and she says, "And then Mr. Farley said to Mr. Hinrichsen, 'You can't put people off when their rent is paid. You have to give some notice,' and he said Joe Derivaux and Mr. Hinrichsen said I could stay until the 22nd of the month to use out the forty dollars that I had given him." It appears that prior to this day Mrs. Bennett had sent to Mr. Hinrichsen a post office money order for forty dollars, which had not not yet been used.

30 John Bennett, her son, testifies that he was with them upon that occasion and that Mr. Farley asked Mr. Hinrichsen if he would allow her to remain a little longer, and that Mr. Hinrichsen said he would allow them to remain until the 22nd. Mr. Bogatko says that he was at the apartments of the Bennetts at 8 Quitman street shortly after. He said it was on Thursday after the plaintiff fell, and that would appear to be the 16th, since the plaintiff fell upon the 13th, which was a Monday. He said there was a man
40 there who was introduced to him as Mr. Hin-

Charge to Jury.

richsen, and as he was going out he said to Mrs. Bennett, "Don't forget. We will give you only until the 22nd to stay here."

Now, it is denied on the part of the defendants that there was any conversation at all with Mr. Derivaux or Mr. Hinrichsen either at the district court or at the apartments on the 16th. Indeed, they say that they did not get into the apartment at all on the 16th, although they admit that they went there. They say that they did not see Mrs. Bennett and did not get into the apartments on that date. Of course you will consider their denial in connection with this testimony that the time was extended to the 22nd.

In addition to that it appears that Mrs. Bennett had sent, as I stated a moment ago, a money order to Mr. Hinrichsen for forty dollars, the amount which she claimed she would owe for the July rent, which was fifteen dollars less than Mr. Hinrichsen claimed was due. He claimed she had underpaid five dollars in May, five dollars in June, and that the rent for July was forty-five dollars instead of forty dollars. There is produced here a copy of a receipt which it is claimed was given to Mrs. Bennett when she paid her first month's rent, to the effect that the rent up to a certain date, September 1, 1924, would be forty dollars a month and after that it would be forty-five dollars a month. It is insisted on behalf of the defendants that after that date and up until May, 1925, she did pay forty-five dollars a month.

She denies ever having received such a receipt. She denies that there was ever any bargain that she was to pay forty-five dollars a month. She denies that she ever paid forty-five dollars a month and says that all she paid was

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Charge to Jury.

forty dollars a month. If she is right about that, then she was fully paid up to the first of July, because admittedly she had paid forty dollars a month up to the first of July. I mean by that it is claimed that she paid forty-five dollars prior to May, but it is admitted that she paid 10 forty dollars for May, forty dollars for June, and that the defendants received this post office money order for forty dollars for July, which would have paid them in full for the month of July. It is true they did not use that money order until the latter part of that month, but they did use it. They retained it. They had the money.

But assuming that Mr. Hinrichsen was right about it and that forty dollars would not have 20 paid for the full month of July, is it likely that in a spirit of fairness he would have permitted them to stay in the premises for such portion of July as the forty dollars would pay? You have a right where testimony differs, and it does in this case upon that point, to consider the probabilities. If there was such an agreement and the greater weight of the evidence so shows, then Mrs. Bennett was a tenant to whom the defendants owed the duty which landlords owe 30 to their tenants. Here is the statement of law upon which this whole case is based, if you decide she was a tenant. It was to use reasonable care to have such premises in a safe condition for their use.

However, under that rule landlords are not 40 insurers of the safety of their tenants using the stairways and other portions of the premises, nor are the landlords required to keep a continuous and watchful oversight of their premises to discover defects, but they are required

Charge to Jury.

to make reasonably frequent and reasonably careful inspection of their premises to discover defects which may be dangerous to their tenants in the use of them, and to take reasonable care to repair such defects, unless of course they have been told of them and know of them, in which event they are required to make prompt repair. 10

This carpet which it is claimed was defective was not upon the floor or the tread of the step, but was upon the riser as shown in the diagram upon the blackboard substantially. The top portion marked linoleum shows the hallway. The arrow points to the riser, and another arrow points to the carpet. Admittedly there was a defective condition of the carpet about that time. The defendants' witnesses admit that on July 16, three days after the accident, the upper right-hand corner for about three inches along the top was pulled away from the step an inch or two; but it is insisted that its appearance was such as to indicate that it had been deliberately pulled away by loosening the tacks or nails, and they say there was no hole in the carpet, and those who were in charge of the premises also testify that they did not know of the condition before; and right here I think I will take up one of the defendants' requests. 20 30

This is the fourth request. "Where a building is owned by several persons it is not required that each and every one of the co-owners must personally inspect the same to keep the halls and stairways in a reasonably safe condition, but on the contrary, if this duty is entrusted to one or more of them or to another to act as their representative and such person or representative exercises reasonable care to keep such premises in a reasonably safe condition, then no lia- 40

Charge to Jury.

bility can be placed on the owners," or such of them as do not make such inspection.

10 Mrs. Bennett speaking of the occurrence of this accident says that her fall was on July 13. She describes in her way where this carpet was about which now there can be no doubt. We had some difficulty in getting her testimony, you will recall, she being brought here upon a stretch-
er and unable to move or to speak in a tone of voice which we could hear, her testimony hav-
ing to be given to us through the medium of the stenographer. She says that there was a hole all along the top of this carpet, which was out from the riser, out from the step, that she had noticed the condition about a month before, maybe more, and that she had spoken to Mr.
20 Hinrichsen about two weeks before she fell. She says that the blind boy, Walter Rinck, nearly fell down. She saw it and saved him. He caught his cane in that hole. This was about the first of July she thinks, and she told Mr. Hinrichsen about the third. She says that at that time when she told Mr. Hinrichsen Walter was there, and she says, "We took him out and showed him how he fell and he said he would have it fixed."

30 Mr. Bogatko, who it seems was an insurance collector, says that he had an experience there some time before. He caught his heel in the same carpet some weeks, maybe a month, before her accident, and he testifies to the condition of that carpet. He said that the carpet was partially attached to the back of the first step from the fourth floor, that it was nailed, the top sticking over, and he thinks the opening after he caught his foot was about one and a half inches away from the step.

40 Walter Rinck, about whom Mrs. Bennett spoke, testifies to his experience, which he thinks was

Charge to Jury.

the latter part of June. He is blind, if you will recall. He said he caught his cane in the carpet and would have fallen if he had not been caught by Mrs. Bennett; and he corroborates Mrs. Bennett as to the conversation with Mr. Hinrichsen in her apartments soon afterward, about the first of July he says. He says that he asked Mr. Hinrichsen to come out, "And he did, and I showed him how my cane had caught in the carpet." 10

The son John Bennett says that after his mother had fallen he came out and found his mother's shoe with the heel caught and still in this hole in the carpet.

If it be true that the carpet was in the condition these witnesses of the plaintiff and the plaintiff herself say it was, and that the defendants or those whom they had put in charge of the house knew of its defective condition, or if the defect had continued for such a time as to give them reasonable opportunity to discover and repair that condition and they failed to do so and Mrs. Bennett fell downstairs because of such condition, that was negligence for which the plaintiff may recover if she herself was exercising due care. 20

However, it is a rule of negligence law that where a person is seeking to recover damages for the negligence of others, if it appear that such person was herself guilty of some negligence, some want of care which contributed to the accident, she cannot recover even though those from whom she is seeking to recover are shown to have been negligent. 30

Mrs. Bennett admits that for some weeks she had known of the defective condition of this carpet and had, as already stated, reported it to both 40

Charge to Jury.

Mr. Hinrichsen and Mr. Joseph Derivaux. So she is not in the situation of one who did not know of the defect. It is insisted that she was not obliged to use this stairway as there was a back stairway, but of course while she was not obliged to use it, the landlords had no right to permit defects to that portion of the premises over which they retained control and which the tenants had a right to use, which would make it dangerous to do so. Mrs. Bennett had a right to use these stairs, but when she did so knowing of their defective and dangerous condition, it was her duty to use care commensurate with the dangers of which she knew. A failure to do so resulting in injury to herself would prevent her from recovering from the defendants even though they were negligent.

Our Supreme Court in *Rooney* against *Siletti*, 96 New Jersey Law, p. 312, says this: "While a landlord is bound to use reasonable care to keep premises belonging to him and of which several tenants have the common use in safe condition, where a tenant has full knowledge of the dangerous condition of the premises and attempts to make use of them while in that condition, there can be no recovery against the landlord for injuries resulting from such user." So if she knew at the time of the accident on the 13th day of July, 1925, that this carpet was defective, yet notwithstanding that knowledge she persisted in using the stairway a part of which was covered, she took the risk of doing so and cannot recover damages against her landlord when she deliberately walked into a danger which she knew beforehand.

But did she know on that day and at that time of the defective condition? She says she knew

Charge to Jury.

it before and notified Mr. Hinrichsen before, but she says that when she told Mr. Hinrichsen about the carpet he promised to have it repaired, and a few days later she saw him around there one day and thought he was fixing it. She says that there were no windows or direct light from the outside into the hall except the skylight overhead, which she said had some glass broken and which had been covered with some dark object; and that she had not observed the carpet for a short time before her fall. If that be true it will be for you to say whether, from her previous knowledge of the defective condition and what she says about the condition of the skylight and the promise of repair and her seeing Mr. Hinrichsen around there afterward, she was justified in using the stairs, and whether or not she used such care as a reasonably careful and prudent person having the knowledge which she had would have used under the same or similar circumstances and conditions. If she did then there was no contributory negligence; and if you decide that there was negligence on the part of the defendants she and also her husband are entitled to your verdict.

But if the greater weight of the evidence shows that she failed to use such care and thereby proximately contributed to her accident and to her injuries, she cannot recover even though the defendants were negligent.

The burden of proving that the defendants were negligent in failing to discover and repair this defect, if there was a defect, is upon the plaintiffs. That must be made to appear to you by the greater weight of the evidence in the case before you should find the defendants negligent.

Charge to Jury.

On the other hand, the burden of proving contributory negligence is upon the defendants, and it must appear by the greater weight of the evidence in the case that Mrs. Bennett by some want of care on her part contributed to her accident and to her injuries. If that appear by the greater weight of the evidence, then you will apply the rule of law I have already given you.

If upon considering this case you decide that the evidence fails to establish by its greater weight that the defendants or those who were put in charge of the premises were negligent, then your verdict should be in favor of the defendants. Or if you decide that there was some negligence on the part of Mrs. Bennett which contributed to the accident and to her injuries, and that that has been established by the preponderance of the evidence in the case, then even though you decide that the defendants were negligent the defendants are entitled to your verdict.

But if contributory negligence has not been established and the negligence of the defendants has been established, then and not until then do you come to the consideration of the question of damages. That question should not be considered by you at all until you have first decided these three questions: the question of tenancy, the question of the negligence of the defendants, and the question of the contributory negligence of the plaintiff. With all those questions decided in favor of the plaintiff, you then take up for consideration the question of damages.

On the subject of damages we have two plaintiffs, Mr. Bennett and Mrs. Bennett, husband and wife. Mr. Bennett's right to recover de-

Charge to Jury.

pend upon Mrs. Bennett's right to recover. If she is not entitled to your verdict, neither is he. If she is entitled to your verdict, then Mr. Bennett is also.

Taking up first his damages, I would say that ordinarily in a case of this kind a husband is entitled to compensation for the loss of the services and the society of his wife as he had been accustomed to enjoy that society and those services prior to her injury; and that is so not only from the time of the injury up until the time of the trial, but for such period as the disability of the wife is likely to continue. It appears that up until March, 1928, or rather, there is nothing to indicate but that up to that time Mrs. Bennett and her husband lived together. There is some intimation that they have not been living together since that time in her statement that since March, 1928, she does not know what her husband does.

Now, as long as the relation of husband and wife existed or is likely to exist, the husband is entitled to compensation for the loss of the society and services of his wife. Of course if he choose not to live with her for any reason and voluntarily withdraws himself from her, then he is not entitled to compensation for the loss of her society and services. While they are married, however, the possibility and perhaps probability exists that that marriage relation will be resumed even though they may be apart at the present time, but notwithstanding that the husband is responsible for the bills incurred in the attempts to cure the wife or to alleviate her pain and suffering and may recover in a case of this kind, if he is otherwise entitled, for those expenses. Those expenses as I have them are Dr. Greenbaum's bill, \$55; Mr. Herdling for

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Charge to Jury.

X-rays, \$185; Mrs. Williams for working in the house, \$348, provided you find that bill to be reasonable. Mrs. Williams' bill is at the rate she says of six dollars a day. She says that she charges for washing four dollars a day, but when people are sick she charges six dollars a day, which for seven days would be forty-two dollars, or for six days would be thirty-six dollars. I think she said she went there six days a week.

Is that correct?

Mr. Munsick: I do not recall, your Honor.

The Court: Well, she said it amounted to that for the number of days she had been there. Dr. Keppler's bill is a hundred dollars. This amounts altogether to \$688, which, if the plaintiffs are entitled to your verdict, Mr. Bennett is entitled to recover in any event in addition to such compensation as you award to him, if any, for the loss of the society and services of his wife.

Now we come to Mrs. Bennett's damages, which is of course the more important item. There is no question about the condition of Mrs. Bennett at the present time. The physicians on both sides substantially agree. I do not mean to say that in every minor particular they agree, but they all agree to the condition of paralysis. They agree that either from the pelvis down or from the hips down she is completely paralyzed with spastic paralysis, which means that the legs are entirely rigid. Dr. Keppler says that when they are drawn apart they snap back, so great is the rigidity. I think that was Dr. Keppler; at least it was one of the witnesses.

Dr. Dowd, the neurological expert produced on behalf of the defendants, says that he found in his examination on the seventh day of January,

Charge to Jury.

in addition to the condition of the legs, that there was a loss of sensation in the left shoulder while on the other side there were areas of increased sensibility; that she could not move her arms above the level of her shoulder, and that her neck was rigid and painful.

While these experts agree substantially as to her paralyzed condition, there is a substantial disagreement as to the cause of her present condition. She says that after her injury she was in bed about three months, and she stated to you what her injuries were. She stated that after that time, while she was up and around at times, she walked with great difficulty and walked with a limp and in great pain when she did so; but that most of the time from the time of her injury in 1925 up to the time of this trial in 1929 she has been in bed.

Dr. Greenbaum testifies that he was called the day of her injury, and that he found her in bed and unconscious, that he stayed with her for two hours the first time, that he returned again later and again a third time the day of the injury, at all of which times she was unconscious; and even when he returned the next day she was not entirely out of her unconscious condition, although able to talk and tell him about the occurrence. Other witnesses in the case testify to having seen her in bed when they called there, and one of her children testifies to her having been in bed. The other, the daughter, testifies only to her condition since October, 1928.

Dr. Keppler, who is an orthopedic surgeon of Newark, says that he examined her May 3, 1928, in his office, and he found her condition one of nervous disorder affecting her gait and the posture of the lower limbs, that she had a com-

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Charge to Jury.

plete spinal curvature, that her head was tilted to one side and the pelvis drawn up on that side as the result of the curvature. The right shoulder was lowered and the right leg shortened, and he thinks that is a fixed condition. He testifies that on January 8 of the present year he
10 examined her at her home in bed and found that she could not sit up. He found that from the waist down she was paralyzed with spastic paralysis of both legs, that there was no reaction to heat or cold or the pricking test, and he says that there was no evidence at that time of hysteria. He tells you the distortions which he sees in the X-rays, as to which I think no good purpose can be served by repeating. He finally gives it as his opinion that her present condition is due to the injury which she suffered, he
20 said two and a half years ago, but when his attention was called to the fact that it was three and a half years ago, he said that would make no difference.

Dr. Donahue, who is a neurological and psychiatric expert, testifies that he examined Mrs. Bennett on January 11, 1929, that she was unable to move either leg or the left arm at all and the right arm and neck very slightly, that the legs were paralyzed from the hips down both in motion and sensation. She did not respond to heat and cold and to the pin point prick. He
30 found a lessened sensation on the right side of the face, head and arm, and he says that she has a spastic paralysis of the lower extremities on both sides. He says that hysteria was definitely excluded, and he thinks that her condition is due to a spinal cord injury or compression which is not rapid in its development, and that her accident in 1925 probably caused her
40 present condition.

Charge to Jury.

On the other hand, a number of witnesses produced on behalf of the defendant testify to having seen Mrs. Bennett upon the street upon very many occasions, the policeman Sheerin being the first one. He testifies that he saw her twenty-five or thirty times, that she would come down to his post at Broad and Bank streets and walk around with him there as late he thinks as September, 1928, and that at that time or at any time she showed no limp and gave no evidence of pain. 10

Doctors have been produced who testify to having examined her for two other accidents which she had. One occurred on the 26th of July, 1926, when some glass was thrown from a window above and struck her in the eye; and another on September 17, 1928, when her elbow and ankle were injured as the result of the closing of a door by the motorman of a trolley car. The doctors say that she came into their offices apparently alone, and that she showed no limp or evidences of pain. 20

Physicians have been produced who, as I say, while they do not differ materially on her present condition, do differ as to the cause of her present condition and say that in their opinion her present condition is not the result of the injuries received in this accident in falling downstairs on July 13, 1925. Dr. Trainor says, "I cannot conceive it to be possible that her present condition is due to her injuries in 1925, which were not serious," but he thinks, he says, that it is due to myelitis, which he thinks is the result of disease. He says myelitis is an acute condition, myelitis being, according to his definition, a deterioration of the spinal cord. Dr. Dowd says 30

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Charge to Jury.

an inflammation of the spinal cord. They may mean the same thing.

Dr. Dowd says (I am using almost his exact words), "I do not think the present condition has any material basis in the 1925 injury."

10 Both he and Dr. Trainor speak of a condition of hysteria. Dr. Trainor eventually gives it as his opinion that it looks more like myelitis than hysteria, while Dr. Dowd thinks that it is caused by a condition of hysteria, although he does not express it just that way. Dr. Dowd says that in his opinion she has a functional and entirely psychogenic and recoverable paralysis. Psycho-

20 Now, whether her present condition is caused by myelitis or any other pathological cause, pathology being defined as a departure from the normal by Dr. Wyatt, or whether it is psychogenic, meaning the result of hysteria, there is no question but that the paralysis, both muscular and sensory, exists. If its existence is the result of injuries received in a fall downstairs, it makes no difference whether it is pathological or psychogenic; she is certainly entitled to recover compensation for that condition, if she is entitled

30 to your verdict, up to the present time and for such time as you believe from the evidence an impaired condition will last. The difference between the two causes—that is, pathological and psychogenic—is that all the doctors who testify on that subject agree that if her condition is the result of hysteria she will improve and may get well, while if it be pathological, the result of injury and probably myelitis, she will die as the result of it.

40 What she is to receive by way of a verdict at your hands is compensation for the injury which

Charge to Jury.

she received as the result of this fall and for the consequences of those injuries to the extent, if at all, that her present condition is and her future condition is likely to be the result of injuries received in this fall. Beyond that you should not go. It is your duty, if you decide she is entitled to your verdict, to express that compensation in terms of dollars and cents based upon the injuries received July 13, 1925, and the results of those injuries. 10

I have here some requests to charge. I think I have covered most of them except those which relate to the district court action, which I decline to charge except as I have charged.

Have I covered yours?

Mr. Gilhooly: You have charged everything but six and seven. 20

The Court: Counsel for the defendants states that the Court has charged all of their requests except the sixth and seventh, which I shall treat with now.

“Six. If you find from the testimony of Annie Bennett that her recollection is good as to the fact that she had no accidents prior to July 13, 1925, and that she does not remember whether or not she has had any accident between that date and the date of the Public Service accident in September, 1928, her failure to remember whether or not she had any accidents between these two periods may be taken into consideration by you in determining what weight you will give to her testimony.” 30

I charge you that.

“Seven. If you find that any witness has falsified his or her testimony in any material particular you are entitled to disregard all of the 40

Charge to Jury.

testimony of such witness on the theory that false in one thing, false in everything."

That is a well-known maxim of the law. Expressed in legal terms it is "Falsus in uno, falsus in omnibus," meaning just as is here stated, that where a witness is false in one thing he may be regarded as false in all things. That does not mean that if a witness is mistaken about one thing or if a witness testifies differently from some other witness as to one thing, you are to disregard the whole testimony. It means if a witness with deliberation wilfully testifies falsely to a material fact in the case, then you are entitled to disregard any other testimony of that witness. Of course that applies to the witnesses of the defendants as well as the witnesses of the plaintiffs; and if you conclude that any witness has with deliberation wilfully testified to what is not true, then you would be justified in disregarding everything that witness has said.

(The jury then retires.)

Plaintiffs' counsel prays an exception to the failure of the Court to charge those requests which have not been charged as requested.

(The jury later returns.)

The Court: Gentlemen, I understand you desire some instruction.

A Juror: We do.

The Court: Will you advise the Court what you desire?

A Juror: We desire if possible to get the deposition taken from Mr. Hinrichsen by the lawyers to read it over, if it is permissible.

Charge to Jury.

The Court: Unless the attorneys consent to that I shall be unable to give it to you, but I have it before me here and can read you any portion which is in doubt. You see if I give it to you that gives to the testimony which you have the opportunity to read an importance beyond that of other witnesses; that is, you have not before you the testimony of other witnesses to read, and the mere fact that the testimony of a witness is taken by deposition does not entitle you to have that with you in the jury room where the fact that you have it in black and white right before you may give undue importance and emphasis to that testimony; but I shall call up the attorneys and see if they are willing, or I shall endeavor to answer from the testimony any question about it you have in mind.

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A Juror: May I state the question in mind?

The Court: Yes.

A Juror: We are discussing whether Mr. Hinrichsen admits he was notified of the defect in this carpet prior to the accident.

The Court: He does not.

A Juror: He does not admit it?

The Court: No.

A Juror: That is all.

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The Court: Now, I shall endeavor to find what he says upon the subject.

“Question: Did you at any time personally make any repairs, you yourself personally? Answer: No.”

That is not exactly the question you are asking, but it may bear upon the testimony of Mrs. Bennett that she saw him around there after he promised to make repairs.

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Plaintiffs' Requests to Charge.

Now I shall go on. "Question: On June 29 or any other date in June or July were you ever introduced to a blind boy by Mrs. Bennett? Answer: I never met any other people there. Question: Did you ever meet a blind boy who pointed out to you a hole in the carpet at the top riser in the staircase? Answer: No one ever pointed out a hole in the top riser. Question: Did a blind boy ever point out to you a place where his cane was obstructed as he attempted to descend? Answer: Never. Question: Did Mrs. Bennett at any time point out to you any defect in the staircase? Answer: She never spoke to me about any defect."

Does that cover the point?

A Juror: That covers it, thank you, your Honor.

(The jury again retires.)

PLAINTIFFS' REQUESTS TO CHARGE.

1. The fact that a judgment of possession was entered in the District Court on July 9, 1925, does not affect the right of the plaintiffs to recover.

2. The dispossess proceedings in the District Court having been instituted and prosecuted in the name of the agent of the Estate of Francis X. Derivaux; and the Estate of Francis X. Derivaux, nor then nor any time being the landlord or owner, the proceedings are defective jurisdictionally and of no effect.

3. If the plaintiffs remained at 8 Quitman street until after July 13, 1925, with the consent, actual or implied, of the owners or their agents,

Defendants' Requests to Charge.

the proceedings in the District Court have no effect upon the right of recovery.

4. The dispossess proceedings in the District Court having been instituted and prosecuted in the name of the Estate of Francis X. Derivaux and that estate not being a corporation, there was in fact no plaintiff the entire proceeding was a nullity and the plaintiff herein could not be affected thereby— 10

5. The order of dispossession on July 9, 1925, is not conclusive on the right of the plaintiff to remain in the premises thereafter and until after July 13, 1925, if it now appears that there was no right in the Estate of Francis X. Derivaux to dispossess the present plaintiff. 20

DEFENDANTS' REQUESTS TO CHARGE.

1. The fact that the defendants were the owners of the premises known as 8 Quitman street does not in itself make them liable for any injuries which the plaintiff Annie Bennett claims she sustained because the owner of a building, renting out parts thereof to various tenants, reserving the halls and stairways for the common use of the tenants is not an absolute insurer of the safety of those using such stairways. The law places the landlord under an implied duty to use reasonable care to keep such places in a reasonably safe condition. 30

2. If you find that the defendants exercised reasonable care to keep the halls and stairways in a reasonably safe condition your verdict must be for the defendants. 40

Defendants' Requests to Charge.

3 The burden of proving that the defendants were negligent rests upon the plaintiffs and the plaintiffs must establish the negligence of the defendants by a fair preponderance of the evidence.

10 4. Where a building is owned by several persons it is not required that each and every one of the co-owners must personally inspect the same to keep the halls and stairways in a reasonably safe condition, but on the contrary, if this duty is entrusted to one or more of them or to another to act as their representative and such person or representative exercises reasonable care to keep such places in a reasonably safe condition then no liability can be placed on the owners.

20 5. If you find that the plaintiff Annie Bennett herself was negligent and her negligence contributed to the happening of the accident then she can not recover against the defendants.

30 6. If you find from the testimony of Annie Bennett that her recollection is good as to the fact that she had no accidents prior to July 13, 1925, and that she does not remember whether or not she has had any accident between that date and the date of the Public Service accident in September, 1928, her failure to remember whether or not she had any accidents between these two periods may be taken into consideration by you in determining what weight you will give to her testimony.

40 7. If you find that any witness has falsified his or her testimony in any material particular you are entitled to disregard all of the testimony of such witness on the theory that false in one thing, false in everything.

Defendants' Requests to Charge.

8. If you find that the plaintiffs were in arrears in the payment of their rent on July 13, 1925, and that the plaintiffs did not thereafter pay to the defendants the full amount of the arrearages of rent then the plaintiffs can have no recovery against the defendants unless it is shown by a fair preponderance of the evidence that they were guilty of gross neglect.

10

9. Willful or wanton injury can only be established by showing that one with knowledge of existing conditions and conscious from such knowledge that injury will likely or probably result from his conduct, and with reckless indifference to the consequences, consciously and intentionally does some wrongful act or omits to discharge some duty which produces the injurious result.

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30

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Exhibits D. 1 and D. 13.

EXHIBIT D. 1.

Mar. 31, 1924

Received of William Bennett forty dollars for
rent of premises 4th floor 8 Quitman St. rent
for month of April 1924. It is agreed that
10 tenancy is from month to month and that on
September First rent will be forty-five dollars
per month.

EST. F. X. DERIVAUX
Per C. H.

EXHIBIT D. 13.

20 FIRST DISTRICT COURT OF THE
CITY OF NEWARK.

No. 40653

IN TENANCY.

ESTATE OF FRANCIS X. DERI-
VAUX,

vs.

30 WILLIAM BENNETT, also known
as PHILIP BENNETT.

Summons	\$2.10
Mileage	
Entering Judgt.	1.00
Warrant	1.60

40 An affidavit was filed and a summons issued
in the above cause on the second day of July,

Exhibit D. 13.

1925; returnable on the Seventh day of July, 1925.

The summons was served and returned as follows:

“The said defendant not being found and I being denied admission to the dwelling occupied by him, I served with the within summons July 2, 1925 by affixing a copy thereof to the door of the premises occupied by said tenant. 10

THEODORE J. CONLISS,
Constable.

1925

July 7. Adjourned to July 9, 1925.

July 9. The defendant's wife appeared and admitted the facts as set forth in the affidavit, and the Court entered judgment for possession of the premises in favor of the landlord. 20

July 17. A warrant of removal was issued and returned as follows:

“I returned this writ July 21, 1925 duly served having dispossessed the defendant and placed the plaintiff in full possession of the within described premises. 30

JOS. TANENBAUM,
Constable.”

Exhibit D. 14.

I, LOUIS HECHT, Clerk of the First District Court of the City of Newark, N. J., do hereby certify that the foregoing is a true copy of the records and proceedings had in the above named matter as taken from Tenancy Docket Z of this Court page #40653.

10

Dated: November 23rd, 1928.

LOUIS HECHT,
Clerk of 1st District Court of the
(SEAL) City of Newark.

EXHIBIT D. 14.

20

PALMER & COOPER
Counsellors-at-Law
Kinney Building
Newark, New Jersey

July 20, 1925

Carl Hendrickson, Esq.,
Essex Building,
Newark, N. J.

Dear Sir:

30

Unfortunately I was not in the office on Friday last, and therefore asked Miss Hagney to call you in my absence. It appears that on July 10th or thereabouts Mrs. Bennett, leaving on the fourth floor of 8 Quitman Street, Newark, was ordered to vacate in five days for non-payment of rent. On Monday, the 13th, she came to my office to see whether or not anything could be done to give her some further time. I realize that as a legal proposition nothing

40

could be done, but told her that I would endeavor

Exhibit D. 14.

to see the landlord or his attorney to ask for a slight extension of time in order to give her an opportunity to find other rooms. Unfortunately she was seriously injured on the afternoon of the 13th, and has been confined to her bed ever since. Miss Hagney, informs me that you believe Mrs. Bennett was seen on the street on or about July 17th. I can assure you that she has not left her bed since the 13th. 10

They have obtained other rooms but her doctor, one S. Greenbaum of 142 West Kinney Street, Newark, assures me that it would be serious to move her at this time. Under the circumstances as to her condition and in view of the fact that she did forward through a relative \$40. to the landlord and will be willing to pay the additional \$5. as claimed by the landlord, would you not be willing to recommend to your client the landlord that she be allowed to remain until the last of July? 20

We will be glad if you will get in touch with Dr. Greenbaum to confirm what we are telling you, about the condition of Mrs. Bennett. We would also appreciate it if you would advise us whether Mrs. Bennett could remain in her apartment until the end of July, and that your client the landlord will accept the \$40. she sent him by money order and if he wishes it another \$5. which will make the full payment for July in accordance with his claim as to the rent will be sent him. We are making this request knowing full well that there is nothing which can force the landlord to make any such concession, but trust that under the circumstances of Mrs. Bennett's very serious condition, and the fact that the husband does not seem to be able to make any other arrangements for moving her for the 30 40

Exhibit D. 14.

next two weeks, and the fact that there are six children some of which are infants in arms, you will give this further consideration and grant this request.

Very truly yours,

10

PALMER & COOPER,
By Ralph E. Cooper.

20

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OPINION OF SUPREME COURT.

Filed February 26, 1930.

NEW JERSEY SUPREME COURT.

No. 76 May Term, 1929.

ANNIE BENNETT and PHILIP C.
BENNETT, her husband,
Plaintiffs,

vs.

MARIA CECILIA DERIVAUX HIN-
RICHSEN, JOHN A. DERIVAUX,
M A R I A KATHRYN DERIVAUX,
ALOYSIUS J. DERIVAUX and
CHARLES HUBERT DERIVAUX,
Defendants.

10

20

On defendants' rule to show cause.

Before Gummere, Chief Justice, and Justices
Kalisch and Campbell.

For the rule Wolber & Gilhooly.

Contra Fred G. Stickle, Jr.

PER CURIAM:

30

There was a verdict in this case at the Essex
Circuit in the sum of ten thousand dollars in
favor of the plaintiff, Annie Bennett and in favor
of her husband, Philip C. Bennett for twelve
hundred dollars.

The case is brought here on a rule to show
cause "reserving exceptions to the refusal of the
trial judge at the trial to order a non-suit at the
close of the plaintiffs' case and to direct a verdict
for the defendants at the close of the whole case,

40

Opinion of Supreme Court.

when moved so to do by counsel of defendants on the ground of contributory negligence on part of the above named plaintiff, Annie Bennett."

10 In plaintiffs' brief under caption, "Statement of Facts" there is a statement as follows: "The summary contained in appellants' brief is substantially correct."

There is some confusion in the printed record by entitling the brief of defendants as "Brief of defendants-appellants" and the same error appears in the brief, on behalf of the plaintiffs, the brief being entitled "Brief of plaintiffs-respondents," whereas the case is not before us on appeal, but on rule to show cause.

20 A summary of the facts in the case is necessary in order to ascertain whether the verdict was against the greater weight of the evidence, which is one of the reasons presented on the question why a new trial should not be granted. The other reasons presented are, newly discovered evidence, errors in the admission and rejection of testimony by the trial judge in the course of the trial.

30 From the statement of facts as given by counsel of the defendants in his brief, it appears that Annie Bennett brought her action to recover damages against the defendants, as owners of premises known as No. 8 Quitman street, Newark, New Jersey, for injuries sustained by her which injuries which she alleged was the result of a fall on the stairs from the fourth floor to the third floor, on July 13, 1925. Mrs. Bennett claimed that she was a tenant in the above premises at the time of the accident, and she claims that the defendants were negligent in failing to have the stairway in a fit and safe condition for use.

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Opinion of Supreme Court.

The answer of the defendants admits ownership of the premises, but denies any negligence on the part of the defendants, and they allege that the premises were in a reasonably safe condition while used by the plaintiff. The answer also sets up that at the time of the alleged fall of the plaintiff, Annie Bennett, that neither she nor her husband was a tenant in the premises. The defendants' statement of facts, among other things, sets forth the following: "The premises in question was a four-story apartment and the Bennetts lived on the top floor. The staircase proper was uncovered and consisted of the bare wood, stained and varnished. There was linoleum on the fourth floor landing. There was a small piece of carpet covering the riser from next to the last step in ascending, to the fourth floor landing, and this small piece of carpet was tacked under the linoleum. The carpet was about seven or eight inches in height and about two and one-half feet in width. The balance of the staircase was in the bare wood. It was contended by the plaintiff that there was a tear in this carpet along the edge of the top landing where the linoleum on the top landing overlapped it and under which it was tacked and that as a result of this tear she caught her heel in the opening and was thrown down the stairs to the floor below. Above the top landing and directly over the step in question was a skylight. The plaintiff claimed that there was a dark covering over part of the skylight. This was strenuously denied. In descending from the fourth floor landing to the floor below there were two steps at right angles to the outside wall of the building and then there was one large step forming a curve in the staircase and the remaining steps ran straight to the floor below."

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Opinion of Supreme Court.

So, on this phase of the case, the question before us for our determination is whether or not the verdicts rendered are so clearly against the weight of the evidence that we can say they were the product of partiality, mistake, passion or prejudice—and that we cannot say after a
10 careful review of the testimony bearing on that branch of the case. The testimony at most is conflicting, and is of such a nature that it was pre-eminently within the province of the jury to decide which version of the circumstances and conditions under which the accident happened, was supported by the greater amount of credible, and probative testimony.

We next take up a consideration of the alleged newly discovered evidence. There is nothing before us in the testimony, taken under the rule,
20 which indicates that by the exercise of due diligence the testimony now sought to be introduced could not have been discovered. Moreover we have examined the alleged newly discovered evidence and find nothing therein but what was readily ascertainable by the exercise of due diligence before the trial.

The next point argued in the brief of counsel of defendant is, that the trial judge erred in admitting improper evidence. It is contended under
30 reason three, that the trial judge erred in permitting Walter Rinck, a blind boy, to testify to a certain statement made by Mrs. Bennett in the presence of one Hinrichsen. The record discloses, that after the witness had answered the question propounded to him, without the interposition of any objection by counsel of defendants, counsel of defendants then offered an objection, and the Court said, "The answer may
40 remain." There was no motion made to strike

Opinion of Supreme Court.

out the answer. Even if we overlook that fact, we think the testimony, even if objectionable, was harmless.

The next question, which counsel of defendants claims to have been improperly allowed to be put by the trial judge was a certain question directed to Dr. Keppler, on his direct examination: "Q What did you find her condition to be at that time? A I found her condition to be one of extreme * * *" the witness was interrupted by an objection made by counsel of defendant, and a colloquy ensued between court and counsel, and finally resulted in the admission of the testimony. Dr. Keppler was permitted to testify as to Mrs. Bennett's condition in May, 1928. He made an examination of her then and gave her a course of treatment, and it is difficult to see upon what theory the doctor's testimony was not admissible.

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Another objection made and argued, in brief of counsel of defendants, is, that the trial judge, against the objection of counsel of defendants, permitted Dr. Donahue to answer the hypothetical question put to him by counsel of plaintiffs.

An examination of the hypothetical question put, makes it quite manifest that it was a proper one, and there was no substance in the objection made to its admission by counsel of defendants.

30

We have examined the other points made by counsel of defendants, as to the legal propriety of the trial judge to permit counsel of plaintiff to put certain questions to the medical witnesses, and find no merit in any of the objections made.

The rule is discharged, with costs.

40

**RULE DISCHARGING RULE TO
SHOW CAUSE.**

NEW JERSEY SUPREME COURT.

10	ANNIE BENNETT and PHILIP C. BENNETT, her husband, <div style="text-align: right;"><i>Plaintiffs,</i></div>	}	<i>Action at Law.</i> <i>On Postea.</i> <i>And R. to S. C.</i>
	<i>vs.</i>		
20	MARIA CECILIA DERIVAUX HIN- RICHSEN, JOHN A. DERIVAUX, ALOYSIUS J. DERIVAUX, CHARLES HUBERT DERIVAUX, and MARIA KATHRYN DERI- VAUX, <div style="text-align: right;"><i>Defendants.</i></div>		

\$10,000.00 A. B.
 1,200.00 P. C. B.

\$11,200.00
 129.11

\$11,329.11

30 The rule to show cause heretofore entered in this cause having been discharged by the Court, It is ordered that judgment final be and hereby is entered against the defendants and in favor of Annie Bennett, plaintiff, for the sum of ten thousand dollars, and in favor of Philip C. Bennett, plaintiff, for the sum of one thousand two hundred dollars, besides costs to be taxed.

Entered March 4, 1930 as of January 29, 1929.

On motion of

40 DONALD B. MUNSICK,
 Attorney.

RULE FOR JUDGMENT FINAL.
NEW JERSEY SUPREME COURT.

ANNIE BENNETT and PHILIP C.
BENNETT, her husband,

Plaintiffs,

10

vs.

MARIA CECILIA DERIVAUX HIN-
RICHSEN, JOHN A. DERIVAUX,
ALOYSIUS J. DERIVAUX,
CHARLES HUBERT DERIVAUX,
and MARIA KATHRYN DERI-
VAUX,

Defendants.

*Action
at Law.*

On Postea.

20

R. to C. C. judgment final.

Donald B. Munsick, attorney.

\$10,000.00 A. B.

1,200.00 P. C. B.

\$11,200.00

129.11

\$11,329.11

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Judgment entered this fourth day of March, A. D. nineteen hundred and thirty as of January 29, 1929, against the defendants and in favor of Annie Bennett, plaintiff, for the sum of ten thousand dollars damages and in favor of Philip C. Bennett, plaintiff, for the sum of one thousand two hundred dollars damages and one hundred twenty-nine dollars and eleven cents costs.

WM. S. GUMMERE,

C. J.

40

NOTICE OF APPEAL.

Filed April 2, 1930.

NEW JERSEY SUPREME COURT.

10	ANNIE BENNETT and PHILIP C. BENNETT, her husband, <i>Plaintiffs-Appellees,</i> <i>vs.</i> MARIA CECILIA DERIVAUX HIN- RICHSEN, JOHN A. DERIVAUX, M A R I A KATHRYN DERIVAUX, ALOYSIUS J. DERIVAUX and CHARLES HUBERT DERIVAUX, <i>Defendants-Appellants.</i>	}	<i>On Appeal from New Jersey Su- preme Court. Notice of Appeal.</i>
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Dear Sir:

PLEASE TAKE NOTICE that the defendants in the above-entitled cause appeal to the Court of Errors and Appeals in the last resort in all cases in New Jersey from the whole of the judgment entered in this cause.

Respectfully yours,

30
 WOLBER & GILHOOLY,
 Attorneys of Defendants-Appellants.

Dated March 28, 1930.

To Donald B. Munsick, Esq., attorney for plaintiffs-appellees, or to whom it may concern:

Service of the within notice of appeal is hereby acknowledged this 28th day of March, 1930.

40
 DONALD B. MUNSICK,
 Attorney for Plaintiffs-Appellees.

GROUNDS OF APPEAL.

Filed April 3, 1930.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

ANNIE BENNETT and PHILIP C.
BENNETT, her husband,
Plaintiffs-Appellees,

vs.

MARIA CECILIA DERIVAUX HIN-
RICHSEN, JOHN A. DERIVAUX,
MARIA KATHRYN DERIVAUX,
ALOYSIUS J. DERIVAUX and
CHARLES HUBERT DERIVAUX,
Defendants-Appellants.

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

*Grounds
of Appeal.*

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To Donald B. Munsick, Esq., attorney for plain-
tiffs-appellees, 763 Broad street, Newark, New
Jersey.

Dear Sir:

PLEASE TAKE NOTICE that the defendants-ap-
pellants write down the following grounds upon
which they will rely for a reversal of the judg-
ment heretofore entered in the New Jersey Su-
preme Court:

30

1. The learned trial judge erroneously re-
fused to grant the motion of the defendants-ap-
pellants to non-suit the plaintiffs at the close of
the plaintiffs' case.

2. The learned trial judge erroneously re-
fused to grant the motion on behalf of the de-
fendants-appellants at the close of the entire

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Grounds of Appeal.

case for a direction of a verdict in favor of the defendants.

Respectfully yours,

WOLBER & GILHOOLY,
Attorneys for and of Counsel with
Defendants-Appellants.

10

Dated March 28, 1930.

Service of the within grounds of appeal is hereby acknowledged this 28th day of March, 1930.

DONALD B. MUNSICK,
Attorney for Plaintiffs-Appellees.

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New Jersey Court of Errors and Appeals

ANNIE BENNETT and PHILIP C.
BENNETT, her husband,
Plaintiffs-Respondents,

vs.

MARIA CECILIA DERIVAUX HIN-
RICHSEN, JOHN A. DERIVAUX,
MARIA KATHRYN DERIVAUX,
ALOYSIUS J. DERIVAUX and
CHARLES HUBERT DERIVAUX,
Defendants-Appellants.

*Action
at Law.*

On Appeal.

BRIEF OF DEFENDANTS-APPELLANTS.

Statement of Facts.

The plaintiffs, Annie Bennett and Philip C. Bennett, her husband, brought this suit to recover damages against the defendants, the owner of premises known as No. 8 Quitman street, Newark, New Jersey, because of a certain fall which Annie Bennett claims she had on the stairs leading from the fourth floor to the third floor of said premises on July 13, 1925. The plaintiff, Annie Bennett claimed that she was a tenant in said premises at the time and her action was predicated upon the alleged negligence of the defendants in failing to maintain the stairway in a fit and safe condition for use. The answer of the defendants admitted ownership of the premises but denied any negligence on their part and it was affirmatively pleaded that the plaintiff was guilty of contributory negligence in using said staircase in the manner and at the time as disclosed in the complaint.

The trial of said action was held at the Essex Circuit on January ^{twentieth} second to January twenty-fifth, inclusive, in the year nineteen hundred and twenty-nine. The trial resulted in a verdict in favor of Annie Bennett in the amount of ten thousand dollars and in favor of Philip C. Bennett, her husband, in the amount of twelve hundred dollars.

On January 30, 1929, a rule to show cause why a new trial should not be granted was allowed by Nelson Y. Dungan, Circuit Court Judge, and in the said rule to show cause the defendants' exception to the refusal of the trial judge at the trial of said cause to order a non-suit at the close of the plaintiffs' case and to direct a verdict for the defendants at the close of the whole case, when moved so to do by counsel of the defendants, on the ground of contributory negligence on the part of the said plaintiff, Annie Bennett, was reserved (S. C., pp. 1-2). The rule to show cause was argued at the May term of the New Jersey Supreme Court and the rule was discharged (S. C., p. 372), and a rule for final judgment was entered on March 4, 1930. The present appeal is taken on the exception reserved in the rule to show cause to the refusal of the trial judge to non-suit at the close of the plaintiffs' case or to direct a verdict at the close of the entire case on the ground of contributory negligence of the plaintiff, Annie Bennett. This question was not argued before the Supreme Court as evidenced by the reasons appearing on page 3 of the State of the Case.

The premises in question was a four-story apartment and the Bennetts lived on the top floor. The staircase was uncovered and consisted of the bare wood, stained and varnished. There was linoleum on the fourth floor landing. There

was a small piece of carpet covering the riser from next to the last step in ascending to the fourth floor landing and this small piece of carpet was tacked under the linoleum. The carpet was about seven or eight inches in height and about two and one-half feet in width. In descending from the fourth floor landing to the floor below there were two steps at right angles to the outside wall of the building and then there was one large step forming a curve in the staircase and the remaining steps ran parallel to the outside wall to the floor below. It was contended by the plaintiff that there was a tear in the carpet along the edge of the top landing where the linoleum on the top landing overlapped it and under which the carpet was tacked and that as a result of this tear she caught her heel in the opening caused by the alleged tear in the carpet and was thrown down the stairs to the floor below.

In this brief we are arguing only the question of contributory negligence of Annie Bennett. Admittedly if this question had been presented on the argument in the Supreme Court it could not be presented here but the present appellants avoided all questions pertaining to contributory negligence in the Supreme Court and consequently the matter comes on to be heard for the first time on this appeal.

Annie Bennett testified that she fell on July 13, 1925 (S. C., p. 21), at about 2:30 P. M. (S. C., p. 32). She said there was a hole in the carpet near the top of the back of the step referring to the last step in ascending to the fourth floor (S. C., p. 23). She said that she had been in possession of the demised premises for about a year before this accident and that she noticed the condition of the carpet about

one month or more before she fell (S. C., p. 23). She stated that she spoke to Mr. Hinrichsen, the husband of one of the defendants, about two weeks before she fell. She stated that she must have told him around the first of July. The accident happened July 13 (S. C., p. 24). She testified that one Walter Rink had nearly fallen about one month before she had her fall and that she examined the condition of this small piece of carpet at that time (S. C., p. 24). Later she testified that she saw the tear in the carpet about the last of May and that she spoke to the landlord in June (S. C., p. 33). She knew that this alleged hole in the carpet was there all during this time (S. C., p. 35). Although she testified on page 25 of the State of the Case that she thought Mr. Hinrichsen was fixing the carpet one day she nevertheless testified as appears on page 35 that she did not see Mr. Hinrichsen make such repair or know that it had been made. She further testified that directly over this portion of the staircase was a skylight, but on page 25 she said that the skylight had been partly covered by a dark object due to the alleged defective condition of the skylight. That this condition existed or that there was any tear in the carpet to the knowledge of the landlord was strenuously denied, but that is beside the point in this appeal. Mrs. Bennett further testified that there was a rear stairway leading from the ground up to her apartment and that she and the members of her family used the rear stairway as well as the front stairway (S. C., p. 34). She further testified (p. 34) that she never tried to remove the carpet alleged to be torn.

On page 22 she testified that she heard a baby crying downstairs, her baby, and she was going

down the stairs to get it. There was no testimony by any of the witnesses called by the plaintiff that the baby was actually downstairs nor was there any evidence that any conditions existed necessitating the presence of the plaintiff on the street at the time nor was there any testimony that any attention was given to this baby after the alleged accident. As far as any urgent necessity for the plaintiff attending to the baby was concerned the case was devoid of any testimony along that line as this plaintiff was taken upstairs to her bed thereafter and there was no further mention of this child.

It is our contention herein that the plaintiff, Annie Bennett, knew of the alleged tear in this carpet for a considerable time prior to this alleged fall and that she was guilty of contributory negligence in using this staircase under the circumstances disclosed in the plaintiff's case and this is particularly so because the piece of carpet was so small that the plaintiff could have easily removed it or if it was not desired by the plaintiff to remove the carpet it could easily have been tacked under the linoleum, and with this condition existing, she contributed to the happening of this accident by her own negligence in using this staircase with the knowledge of this condition without exercising some precaution for her own safety. In considering this argument it should be borne in mind that there was a rear staircase leading from the fourth floor to the ground below which could have been used by the plaintiffs and the members of their family and the evidence in the case disclosed that it was at all times in condition for such use. This rear staircase was not the case of a rear fire escape which might be used with some hazard by the occupants of the apartment, but it was a rear

staircase in the building installed for the purpose of ascending and descending by the tenant.

LAW.

In the case of *Williams v. Fenster*, 103 N. J. L. 566 (137 A. 406), decided in our Supreme Court in 1927, the plaintiff sought to recover personal injuries received in falling in a toilet used by the plaintiff and other tenants in common. The premises consisted of living quarters in a two-family house with a single toilet for both apartments located in the yard of the premises. The toilet at the time of the letting was out of repair. The landlord agreed to repair it. The landlord repaired the locks but did not repair the floor. The action was in contract and not in tort and Mr. Justice Katzenbach who wrote the opinion for the Supreme Court said among other things the following:

“The claim of the plaintiff rests entirely upon an alleged breach of a contract to repair. If an action for negligence had been instituted, the plaintiff would have been prevented from recovery by her negligence in the use of the toilet which she knew had been out of repair for months and but for the use of which the accident would not have happened.”

In the case of *Rooney, et al. v. Siletti*, 96 N. J. L. 312 (115 A. 664), an action was brought by a husband and wife to recover compensation for injuries received by the wife through falling down the cellar steps of the building in which they occupied an apartment rented from the defendant. The cellar of the building was subject to the common use of the occupants thereof, under their respective leases, for the purpose of storing coal. The only means of access which the tenants had to the cellar was an outside

stairway, the top of which was in an alley adjacent to the building. The proofs showed that on the occasion in question Mrs. Rooney had occasion to go into the cellar for the purpose of getting coal. There had been a snowstorm some little time before, and the stairs were covered with frozen snow and ice. This condition was observed by her before she undertook their descent. She had a present need for coal and although she observed the condition of the stairs she was compelled to take the chance. A motion to non-suit was made on the ground that she assumed the risk of accident which might happen to her through the use of the stairway. The motion was refused and the trial resulted in a verdict in favor of the plaintiff. The judgment was reversed and Chief Justice Gummere who wrote the opinion for the Supreme Court said in part as follows:

“But assuming the negligence of the landlord, still no right of recovery against her was established, for Mrs. Rooney, having full knowledge of the danger which she would incur in attempting to go down these stairs, assumed the risk of an accident which might result from their use. This is the doctrine declared by this court in the case of *Vorrath v. Burke*, 63 N. J. Law, 188, 42 Atl. 838, where the circumstances were quite similar to those in the case now before us. There the plaintiff attempted to go down a cellar stairway, the top of which was covered by a door. This door had attached to it a counterbalancing weight so as to make its raising and lowering easy, but the weight had become detached from the door. The plaintiff was fully aware of these facts, but nevertheless attempted to go down the stairs, holding the door up while she did so. Her strength was not equal to the burden she put upon it, the door fell, and she was injured. It was considered that, as she was fully aware of the condition of the door—

that is, that the weight was detached from it—and, notwithstanding, attempted to go down the stairs, she deliberately assumed what risk there was in descending, and that consequently there could be no recovery against the landlord. This case is cited with approval by the Court of Errors and Appeals in *Saunders v. Smith Realty Co.*, 84 N. J. L. 276, 86 Atl. 404.”

In the case of *Saunders v. Smith Realty Co.*, 84 N. J. L. 276 (86 A. 404), decided in this court in 1913, the defendant, Smith Realty Company was the owner of an office building one hundred feet wide, fifty feet deep and four stories high. Below the first floor of the building there was a cellar, in which were located the elevator shaft and elevator drum. The cellar was divided into two parts, the rear cellar being two and one-half feet lower than the front, and three steps, including the landing, led from one to the other. The Paterson Textile Institute occupied one-half part of the fourth floor and the plaintiff was in its employment. One of his duties was the sweeping up of the refuse from the floor and disposing of it. It was his custom to take it down on the elevator to the front cellar, carry it through to the back cellar, and leave it there. Prior to the day on which the accident occurred to him which was the basis of the suit, he had been depositing the rubbish in the back cellar for about six months. On the day of the accident, while returning from the back cellar, he stumbled upon the steps and fell, his hand was caught between the elevator drum and the cable and was so severely crushed that it became necessary to amputate several of his fingers. There was a judgment for the plaintiff. This court after disposing with the question of the liability of the owner of the building, held that the judgment was objectionable for another reason. The

opinion states that the case showed (and it was undisputed) that the defendant had so equipped the front and back cellar with lights, that both the steps, the elevator and elevator drum as well as their surroundings, were plainly visible when the lights were on. The plaintiff's claim was that at the time of the accident none of these lights were burning; that the cellar was so dark he could see nothing, and had to grope his way from the front to the rear and back again, depending for guidance upon keeping his hand on the cellar wall. He admitted that he was perfectly familiar with the condition of the cellar, having learned them while the lights were burning; this being the case on many of his trips to the cellar. This court stated that accepting as proved by the fact that the passageway from the front to the rear cellar was dangerous to one passing through it in the dark, the danger was as obvious to the plaintiff as to the defendant. "He was *sui juris*, and when he undertook to use the passageway with full knowledge of the danger he ran in doing so he assumed the risk of such injury as might result to him from such use, and cannot now charge it upon the defendant." Citing *Vorrath v. Burke*, 63 N. J. L. 189. It was further stated by this court as follows:

"In addition, it may be said that his conduct in attempting to pass along this dangerous way in total darkness was culpably negligent. The evidence discloses no necessity for his doing so. If he was unable to turn on the lights himself, he could either have had this done for him by the janitor or some one else, or, in the event of his being unable to do this, could have left the emptying of his rubbish until a more seasonable time, when he should find the passageway properly lighted. In this respect the case is quite similar to that of *Mullen v.*

Rainear, 45 N. J. Law, 520, where the plaintiff was injured by the breaking down of a balcony—part of the premises occupied by him as tenant—while he and his wife were carrying a heavy stove across it. His case was that the balcony was weak and out of repair; that the defendant, who was his landlord, was responsible for its condition, and therefore liable to him for the injuries which he received. The court held that, although the landlord was bound to keep the balcony in repair, nevertheless, if the plaintiff knew of its weak condition when he subjected it to the strain of the combined weight of his wife, the stove and himself, he was guilty of negligence contributing to the accident, and could not recover. This case, although not decided by this court, correctly states the rule involved in its decision and meets with our approval.”

In the case at bar the plaintiff had it within her means to use the staircase in the rear if in truth and in fact the front staircase was in disrepair. According to her testimony she was aware of the condition of the front staircase for a period of about one month. This was not a case where the plaintiff had to use the staircase upon which she alleges she fell or remain in her apartment, because the landlord had provided adequate means of descending to the street below by the rear staircase. If she found it advisable and convenient to use the front staircase, and assuming that the landlord was remiss in his duty, she could easily have removed or could have caused to be removed without much effort this small piece of carpet. If she did not care to use the rear staircase and if she did not desire to remove what appeared to her to be a dangerous condition so easily corrected, then she should have taken some extra precaution in descending these stairs. It was carefully developed

during the plaintiffs' case that she learned of this condition at least a month or possibly more before she fell. She felt that the condition was one of danger because she claimed that Walter Rink who had visited her had almost fallen. She gave testimony that although there was a skylight directly above this portion of the staircase which would have emitted sufficient light under ordinary circumstances, the skylight was partly covered by some dark object due to the defect in the skylight. If she attempted to descend under these circumstances she was, in our opinion, beyond a doubt, guilty of contributory negligence. She could not reasonably contend that a sudden emergency arose which caused her to take the course which she did. She was not put in a position of peril by any act of the defendants and she could have readily used the rear staircase as well as the front.

We think this case is clearly distinguishable from the case of *Kramer v. Lehrhoff*, 99 N. J. L. 47 (122 A. 540), where the plaintiff sustained a fractured leg by falling down the stairs in a tenement house by having her skirt caught on a nail on the step of the stairs, where the iron nosing had broken off, leaving nails sticking out. There was testimony in that case that the step was thus left in a rather dilapidated condition for some months prior to this accident, and that the defendant had express notice of the condition, but ignored it. It was urged in the last-mentioned case by the defendant, that the plaintiff assumed the risk of using a stairway which she must have known from continued usage to have been dangerous. It was held that the plaintiff was not guilty of contributory negligence as a matter of law because the landlord could not sit quietly by and speculate upon the contributory

risks his tenants incur by the very necessity of being compelled to use that portion of the leased premises. Mr. Justice Minturn in writing the opinion for that Court states that the defense of contributory negligence in that case contained three obvious legal illusions which would prevent its acceptance as a logical solution of the plaintiff's difficulty and he stated in part:

“And the third and final assumption is based upon the theory that the tenant, rather than use the stairs and assume the risk, may confine herself *ex necessitate* to her apartments, in comforting meditation upon the benignant solicitude of the landlord and the unequal distribution of the joys and privations of human existence. Thus one of the tenants testified that he heard his wife, about two months before the accident, tell the landlord:

“‘Why don't you fix the stairs? You see people fall down!’ And he said: ‘Let them fall. Let them all get killed!’ My wife says, ‘I won't pay the rent before you fix it,’ and he said, ‘You will pay.’”

“In all the cases cited by the appellant upon this subject there is conspicuously lacking this element of complacent platonic restfulness and watchful waiting of the landlord for the inevitable to happen as an essential part of the *quid pro quo*.”

It is respectfully submitted that the plaintiff in this case would not have been compelled to remain in her apartment “in comforting meditation upon the benignant solicitude of the landlord” because she had available at all times for her use the rear staircase.

We are not unmindful of the legal rule so frequently stated in this court that where fair-minded men might honestly differ as to whether the conduct of the plaintiff was such as an ordinary prudent person would have pursued under

the conditions existing at the time he was called upon to act, it cannot be said as a matter of law that he was guilty of contributory negligence. Nevertheless we do not think that under the facts disclosed in this case the plaintiff exercised the care which a prudent person would exercise.

In *Gleason v. Boehm*, 58 N. J. L. 475 (34 A. 886) the plaintiff who was a visitor of a tenant in an apartment house attempted to pass down a stairway with which she was unfamiliar in the dark, without waiting for a companion, who was familiar with it, or seeking from her friend a light to enable her to see the flight of steps, and using no precaution for safety, but feeling with her hands and feet, was held to be guilty as a matter of law of contributory negligence.

In *Vorrath v. Burke*, 63 N. J. L. 188 (42 A. 838) the plaintiff having full knowledge of the condition of a cellar stairway in an apartment house undertook to raise the door and descend the stairway and in so doing was injured. It was held that there could be no recovery because she assumed the risk of injury. It was urged in that case that there was no other way to return to the house except through the apartment of another tenant unless this doorway was opened by the plaintiff. This was held to be immaterial. It was further argued that inasmuch as she had come up safely she might assume that she could go down safely but the Court said that this was a matter of judgment and the very argument implies ability to reason. If she were old enough to reason she would be old enough to be subjected to the consequence of a mistake.

In conclusion we urge that in our opinion this case cannot be distinguished from *Saunders v.*

Smith Realty Co., Vorrath v. Burke, Mullen v. Rainear, 45 N. J. L. 520; *Rooney v. Siletti* and *Williams v. Fenster*, and that the learned trial judge should have directed a verdict in favor of the defendants because of the contributory negligence of the plaintiff.

Respectfully submitted,

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EDWARD J. GILHOOLY,
Of Counsel on the Brief.

New Jersey Court of Errors and Appeals

ANNIE BENNETT and PHILIP C.
BENNETT, her husband,
Plaintiffs-Respondents,

vs.

MARIA CECILIA DERIVAUX HIN-
RICHSEN, JOHN A. DERIVAUX,
MARIA KATHRYN DERIVAUX,
ALOYSIUS J. DERIVAUX and
CHARLES HUBERT DERIVAUX,
Defendants-Appellants.

*Action
at Law.
On Appeal.*

BRIEF OF PLAINTIFFS-RESPONDENTS.

Statement of Facts.

The summary given in the appellants' brief is substantially correct. Where deemed necessary, references to specific testimony are hereinafter given.

POINT 1.

The appellants have lost their right to review the grounds of appeal herein, the questions being res judicata by virtue of the decision of the Supreme Court in discharging rule to show cause.

On January 30, 1929, the appellants herein obtained a rule to show cause why the verdict should not be set aside and a new trial granted, reserving the exceptions to the refusal of the trial judge to non-suit and to direct a verdict (State of Case, pp. 1-2). In the reasons filed on the rule, No. 2 is that the verdict was against the greater weight of the evidence (State

of Case, p. 3). The opinion of the Supreme Court on the rule is found in the State of Case, on page 367, and it discussed in full the question of whether or not the verdict was against the greater weight of the evidence. The Supreme Court decided that it was not (State of Case, p. 370, first paragraph).

In the case of *Cleaves v. Yeskel*, 104 N. J. L. page 497, Court of Errors and Appeals (1928), certain of the headnotes read:

“1. Where a defendant on rule to show cause sets down as reasons for granting the rule that the verdict was contrary to the weight of the evidence, and also contrary to the charge of the court, all of which was decided, it becomes *res judicata* and cannot afterwards be made grounds of appeal.

“2. On appeal from a judgment entered after defendant's rule to show cause has been discharged, the appellate court will not consider and decide any question which was assigned as ground for setting the verdict aside on the rule, such question being *res judicata*, whether argued or not, and although not decided in terms on the rule to show cause.

“3. Where a rule to show cause why a verdict should not be set aside is allowed, with exceptions reserved, and the party obtaining the rule specifies as reason for asking that it be made absolute, matters upon which the reserved exceptions are based, and, upon the return of the rule argues the matter, the exceptions are considered as having been abandoned with approval of the court, and the right to have them reviewed by an appellate tribunal is lost.

“4. Reasons assigned for a new trial that the verdict is contrary to the weight of the evidence, are necessarily embraced within exceptions to the refusal to non-suit

and to direct a verdict on the ground that there was no evidence of defendant's negligence, and that contributory negligence of the plaintiff conclusively appeared, and therefore such exceptions cannot be considered on appeal."

In our opinion the case cited fully disposes of the right of the appellants here to raise as matters of appeal the question of the plaintiff's contributory negligence.

POINT 2.

Discussion of Law.

If we are wrong in Point 1, we nevertheless believe that there is no error in the refusals challenged.

We think it advisable to insert here the remarks of Judge Dungan at the trial, on motions to non-suit and to direct verdict, and that portion of his charge respecting contributory negligence.

Ruling on motion to non-suit (State of Case, p. 116).

"The Court: I think in this case the subject of contributory negligence is one for the jury and not for the Court. It is true that she knew of this condition before, from her own testimony. It is true that she had another stairway which she could have used, the back stairway, but she had the right to use the front stairway, and upon this occasion there seems to have been a peculiar circumstance; namely, the fact that her baby was downstairs in a baby carriage and she heard the baby crying and was going downstairs and using these particular stairs, it may be assumed, in order to get quickly to her crying baby. I think that all the circumstances have to be taken into considera-

tion on the subject of contributory negligence, and where there are circumstances at all which bear upon that subject and where it does not lead irresistibly to the conclusion that there must have been contributory negligence, that question is always for the jury and not for the Court.

“That being the view of the Court the motion will be denied.”

Charge as to Contributory Negligence (State of Case, p. 345, l. 30):

“However, it is a rule of negligence law that where a person is seeking to recover damages for the negligence of others, if it appear that such person was herself guilty of some negligence, some want of care which contributed to the accident, she cannot recover even though those from whom she is seeking to recover are shown to have been negligent.

“Mrs. Bennett admits that for some weeks she had known of the defective condition of this carpet and had, as already stated, reported it to both Mr. Hinrichsen and Mr. Joseph Derivaux. So she is not in the situation of one who did not know of the defect. It is insisted that she was not obliged to use this stairway as there was a back stairway, but of course while she was not obliged to use it, the landlords had no right to permit defects to that portion of the premises over which they retained control and which the tenants had a right to use, which would make it dangerous to do so. Mrs. Bennett had a right to use these stairs, but when she did so knowing of their defective and dangerous condition, it was her duty to use care commensurate with the dangers of which she knew. A failure to do so resulting in injury to herself would prevent her from recovering from the defendants even though they were negligent.

“Our Supreme Court in *Rooney against Siletti*, 96 New Jersey Law, p. 312, says this: ‘While a landlord is bound to use reasonable

care to keep premises belonging to him and of which several tenants have the common use in safe condition, where a tenant has full knowledge of the dangerous condition of the premises and attempts to make use of them while in that condition, there can be no recovery against the landlord for injuries resulting from such user.' So if she knew at the time of the accident on the 13th day of July, 1925, that this carpet was defective, yet notwithstanding that knowledge she persisted in using the stairway a part of which was covered, she took the risk of doing so and cannot recover damages against her landlord when she deliberately walked into a danger which she knew beforehand.

"But did she know on that day and at that time of the defective condition? She says she knew it before and notified Mr. Hinrichsen before, but she says that when she told Mr. Hinrichsen about the carpet he promised to have it repaired, and a few days later she saw him around there one day and thought he was fixing it. She says that there were no windows or direct light from the outside into the hall except the skylight overhead, which she said had some glass broken and which had been covered with some dark object; and that she had not observed the carpet for a short time before her fall. If that be true it will be for you to say whether, from her previous knowledge of the defective condition and what she says about the condition of the skylight and the promise of repair and her seeing Mr. Hinrichsen around there afterward, she was justified in using the stairs, and whether or not she used such care as a reasonably careful and prudent person having the knowledge which she had would have used under the same or similar circumstances and conditions. If she did then there was no contributory negligence; and if you decide that there was negligence on the part of the defendants she and also her husband are entitled to your verdict.

“But if the greater weight of the evidence shows that she failed to use such care and thereby proximately contributed to her accident and to her injuries, she cannot recover even though the defendants were negligent.

“The burden of proving that the defendants were negligent in failing to discover and repair this defect, if there was a defect, is upon the plaintiffs. That must be made to appear to you by the greater weight of the evidence in the case before you should find the defendants negligent.

“On the other hand, the burden of proving contributory negligence is upon the defendants, and it must appear by the greater weight of the evidence in the case that Mrs. Bennett by some want of care on her part contributed to her accident and to her injuries. If that appear by the greater weight of the evidence, then you will apply the rule of law I have already given you.

“If upon considering this case you decide that the evidence fails to establish by its greater weight that the defendants or those who were put in charge of the premises were negligent, then your verdict should be in favor of the defendants. Or if you decide that there was some negligence on the part of Mrs. Bennett which contributed to the accident and to her injuries, and that that has been established by the preponderance of the evidence in the case, then even though you decide that the defendants were negligent the defendants are entitled to your verdict.

“But if contributory negligence has not been established and the negligence of the defendants has been established, then and not until then do you come to the consideration of the question of damages. That question should not be considered by you at all until you have first decided these three questions: the question of tenancy, the question of the negligence of the defendants, and the question of the contributory negligence

of the plaintiff. With all those questions decided in favor of the plaintiff, you then take up for consideration the question of damages."

In our opinion the charge correctly expresses the legal situation.

All of the cases cited by the appellants in their brief are cases in which at *the very time of the accident* the perilous situation was obvious and the injured parties acted "with full knowledge." There were no circumstances presented from which a jury could find the exercise of proper care; the plaintiffs proceeded in the face of, and fully cognizant with, the unquestionable danger ahead. The actors knew that the situation in itself was dangerous.

In *Williams v. Fenster*, 103 N. J. L. 566, the Court, while not directly ruling on the point discussed here because the case was one of breach of contract, indicated that the plaintiff knew, at the time, of the condition of the floor. Parenthetically, we would like to call attention to a very similar case, *Rush v. Commercial Realty Co.*, also a Supreme Court case reported in 7 Misc., p. 337, involving quite similar facts in which the Court said that whether it was contributory negligence for the plaintiff to step on a floor which she testified was in bad order, was a question for the jury to solve according to its finding of the conditions and her knowledge of them, or what she should have known of them. The latter case is dealing directly with the question of contributory negligence raised and discusses all of the circumstances; whereas the prior case deals with reference to the testimony adduced on a breach of contract suit.

In *Rooney v. Siletti*, 96 N. J. L. 312 (which was referred to by Judge Dungan in his charge), the opinion states that the plaintiff frankly admitted that the condition was dangerous at the time; the condition being apparent to her, namely, ice and snow in front of her, when she acted; obviously the plaintiff "took a chance."

Saunders v. Smith Realty Co., 84 N. J. L. 276, was also an obvious situation; darkness so great that the plaintiff admitted that he had to grope his way along; and again the words "full knowledge."

The *Saunders* case cites *Mullen v. Rainear*, 45 N. J. L. 520. The opinion in that particular case is on an appeal from a refusal to charge as requested. The Court simply passed upon the request to charge and remitted the case for a new trial. There is nothing to indicate circumstances upon which the jury might pass in dealing with the question of contributory negligence. The only facts considered were that the plaintiff knew of the weak condition before him and nevertheless proceeded to act.

Gleason v. Boehm, 58 N. J. L. 475, likewise presents a perfectly obvious situation, namely, plaintiff, unfamiliar with the stairway, nevertheless proceeding in the dark and using no precaution for safety. Here again the plaintiff "took a chance."

Vorrath v. Burke, 63 N. J. L. 188, is a case in which the plaintiff, having full knowledge, at the time, of the condition of a door to a cellar stairway, nevertheless proceeded to act.

The testimony of the plaintiff in the present case, concerning the conditions which existed the day she fell, mentions that she heard her baby crying and she was going downstairs to get him

(State of Case, p. 22, ll. 2-10); that the hole in the carpet was along the edge of the back of the top of the step (State of Case, p. 23, ll. 15-20); that she had spoken to Mr. Hinrichsen in the presence of Walter Rinck, a blind boy, and that Mr. Hinrichsen had said he would get it fixed (State of Case, p. 25, ll. 1-10); that she thought Mr. Hinrichsen was fixing it one day when she looked through the dining room window, which she described as being in the door to the hallway (State of Case, p. 25, ll. 12-20); that her 10-months-old baby was crying (State of Case, p. 25, ll. 38-40); and that the baby was in a carriage down in the street (State of Case, p. 26, ll. 1-2). She further testified on cross examination that she could not say that she saw the hole daily, or as often as she used the stairway, and that the day she fell she thought the thing was fixed and wasn't giving it a thought; that Mr. Hinrichsen said he was going to fix it; that she didn't know anything about whether he fixed it or not, except that he couldn't have if she fell down; she didn't know at the time whether or not Mr. Hinrichsen had made any repair to the carpet; that she knew the carpet was torn when she caught her heel in it; that she did not see the tear immediately before (State of Case, pp. 35 and 36, ll. 1-20); that there was no light in the hall, but that a sort of light got in through the skylight, and the window in the dining room gave a little bit of light; that the hallway was dark, particularly that the second and third floors were very dark (State of Case, p. 30, ll. 30-40).

These various items were considered by the trial judge, both in his remarks and in his charge; with particular reference to the question of whether or not the plaintiff *at the time knew* that the torn condition existed.

In the case of *Pesin v. Jugovich*, 85 Law 256, Court of Errors and Appeals, the Court in discussing the contributory negligence of the plaintiff, who used a dark stairway to deliver some goods, said as follows:

“The plaintiff had a right to use the stairs in question to make delivery of goods to the customer of his employer.

“If a person, in doing that which it is his right to do in discharge of his duty, exercises reasonable care and prudence, he is not chargeable with contributory negligence as a matter of law, although the result showed that he imperiled his personal safety in doing as he did. 29 Cyc. 523.

“Reasonable care means, not extraordinary care, but such care as an ordinarily prudent person would exercise under the conditions existing at the time he is called upon to act.

“Where fair-minded men might honestly differ as to whether the conduct of the plaintiff was such as an ordinarily prudent person would have pursued under the conditions existing at the time he was called upon to act, it cannot be said as a matter of law that he was guilty of contributory negligence.

“We think that is this case.

“The plaintiff had a right to presume that the defendant had performed the duty, cast upon him by the Tenement House Act, to keep the lights burning. He was familiar with the stairs, having frequently used them to deliver goods to his employer's customer on the top floor. There was a window at each floor and it may well be that he was well advanced upon the stairs before he noticed the absence of lights. What would an ordinarily prudent person have done under such circumstances? Would he have stayed where he was or gone back or continued upward in the reasonable expectation that the defendant had at least performed his

duty with respect to the lights on the upper floors? He had upon his shoulder a box weighing eighty pounds. His team was standing outside in the snow. He had no matches to make a light, and no person was there to make one for him. We are bound to concede that fair-minded men might honestly conclude that his conduct in proceeding to deliver his goods was that of a reasonably prudent person under the conditions existing at the time."

Pennsylvania Railroad Co. v. Righter, 42 Law 180. Court of Errors and Appeals. On page 184, the Court said:

"The question of the presence or absence of negligence must be largely dependent upon the circumstances surrounding each case. The test is the absence of such caution as a person of ordinary prudence would exercise under the circumstances."

All circumstances are to be considered, and that circumstances do alter cases is illustrated in the quotation from the case of *Pesin v. Jugovich*, above.

Under the testimony presented in this case, can it be said that fair-minded men might not honestly differ as to whether or not the conduct of the plaintiff was such as an ordinarily prudent person would have pursued under the conditions existing? We feel that the question was very properly submitted to the jury, in the charge, and of course, assuming that the jury were fair-minded, they obviously did differ on this point, with the appellants.

Illustrations of the disposition made in cases similar to the one under discussion may be found in the following:

Blumkin v. Shyowitz, 4 Misc. 919, Supreme Court. Plaintiffs were tenants on the first floor. Wife went to the second floor at eight o'clock in the evening to visit another tenant. When she undertook to return to the first floor from the second, the hall of which was poorly lighted, she fell. The evidence was that the floor of the corridor on the second floor, near the top of the stairs, was defective in that the tile was broken, leaving a hole, and that metal strips on the nose of the top step and some of the others, were defective, loose and standing up. The evidence tended to show that in trying to avoid the hole, the plaintiff tripped on the stripping. The Court said:

“We think the motions to non-suit and to direct a verdict for the defendants were properly denied. Questions of negligence of the defendants, and of alleged contributory negligence of the wife, were proper jury questions, and we cannot say the verdict was against the great weight of the evidence.”

Polgar v. Kantor, 3 Misc. 1122, Supreme Court. A defective roof, allowing rain to enter the plaintiffs' apartment and the hall outside. Defendant promised the plaintiffs that if they would not move the roof would be repaired. Upon entering the hall, the plaintiff slipped and fell downstairs. The Court said:

“The mere fact that the plaintiff knew the roof was defective, and that water leaked through during stormy weather, would not, *ipso facto*, justify the court, as a matter of law, in finding that the plaintiff assumed the risk or was chargeable with contributory negligence on using the premises under the conditions.”

Rush v. Commercial Realty Co., 7 Misc. 337, has been referred to hereinabove.

O'Brien v. Staiger, 101 L. 526, Court of Errors and Appeals. Plaintiff slipped on a wet spot caused by a leak in the roof. Under part 4, page 528, the Court said:

“Contributory negligence by plaintiff. The argument is that she was negligent as a court question if she stepped on the wet spot knowing or believing it was there. She testified that she walked in a careful manner, and the court would have erred if it had held that as a court question she was bound to avoid the wet spot entirely. This whole matter was plainly for the jury.” And on page 530, under Section 6 (g): “Request 13 was properly refused, as it amounted to a direction that if plaintiff knew the water was there, or likely to be there, and that she was likely to slip and fall because of it, there must be a verdict for the defendant. This has already been treated under point 4.”

Rhodes v. Fuller Land & Improvement Co., 92 Law 569, Court of Errors and Appeals. Plaintiff had proceeded down a dark stairway. On page 572:

“In view of the fact that she was familiar with the stairway; that she was half-way down before she noticed, or could have noticed, the absence of a light, and in view of the fact that there was no one present to whom she could have applied to make a light, we think it must be conceded that fair-minded men might honestly consider that her conduct was that of a reasonably prudent person.”

It is contended that the plaintiff was negligent, or assumed the risk, because of light conditions. It appears that she knew the stairs, and her testimony indicates that on her floor, which was the fourth, absolute darkness did not prevail. It is also contended that she should have used the back stairs. We do not think that she was com-

pelled to use them simply because of the tear which existed on one step of the front stairs. These matters were elements to be considered.

The case of *Roman v. King*, 289 Missouri 641, also reported in 25 A. L. R. 1263, presents points similar to those now raised by the appellants. In that case, the plaintiff was injured using steps which she knew were in bad condition.

On page 1269 (middle of the last paragraph), the Court said:

“This has made necessary another rule which has become thoroughly established in our jurisprudence, and is expressed by the Kentucky court of appeals, in *Home Realty Co. v. Carius*, 189 Ky. 228; 224 S. W. 751, as follows: ‘It is urged that plaintiff’s equal knowledge with defendant of the condition of the steps bars her right to recover herein. We cannot agree with this contention. These steps constituted practically the only means of access to the two apartments, and were used by both tenants—facts necessarily known to the landlord. Because of their inaccessibility and condition the other entrances were seldom used. Mere continued use of a common passageway, after knowledge of its dangerous condition, is not of itself conclusive evidence of a lack of due care on the part of the tenant, since such knowledge does not require the tenant to desist from using same in a careful manner, or render the careful use of same contributory negligence. *Looney v. McLean*, 129 Mass. 33; 37 Am. Rep. 295.’

“We think the proposition expressed in these and other cases is a sound one. We do not think the law should encourage the wrongdoer in interposing his own wrong as a defense against one who has suffered from its effects. It is true that in this case the plaintiff had access through a rear door to her back yard, and we will presume that

this way wound somewhere safely to a street. It may also be that under some circumstances it might have been plaintiff's duty to protect her landlord from loss by subjecting herself to the same roundabout process, but she also had the right to consider to some extent, at least, her own convenience secured to her by her lease, even to the extent of encountering a danger which might possibly react upon the landlord who violates it. The law will not compel her, without good reason, to abandon her front door, the full and free use of which was included in her monthly rental."

And on page 1272, the Court further said:

"As it will be necessary to reverse and remand the cause for the errors already noticed, it may be of service, in connection with further proceedings in the trial court, to briefly state the rule of contributory negligence as applicable to this particular class of cases. * * * The free and constant use of these steps was necessary to the enjoyment of her own residence, and the law does not require her to cease that enjoyment the moment the owner chooses to permit it to become dangerous. While the approach is in the possession of the owner, the easement is a part of her own premises, and the tenant may still continue to use it in the exercise of reasonable care, to be determined in view of the extent and nature of the danger created by the owner's neglect or refusal to perform his duty, and her own right of enjoyment. *Home Realty Co. v. Carius and Looney v. McLean, supra.*

"If, upon due notice or with knowledge of such dangerous condition, he still fails to make the necessary repairs, she is not bound to vacate the premises and resort to her suit in damages for relief, but may, in the exercise of such care as is indicated by the danger, continue to use the premises, if practicable to do so with reasonable safety. The landlord may not set a deadfall before

the front door of his tenant, and claim exemption from damages for the consequent injury on the sole ground that he had succeeded in making it dangerous to enter or leave by that route. In such a case the jury may weigh the need of the tenant in the same balance into which the cupidity of the owner has already been cast."

We therefore respectfully submit (1) that the questions raised herein are *res judicata*; (2) that because of the nature of the dangerous condition, which affected only one step; the promise to repair; the presence of Mr. Hinrichsen; the light conditions; the baby's cry and age; the fact that it was in front; the familiarity of the plaintiff with the stairway; and in fact, all of the circumstances which entered into the action of the plaintiff in using the stairway, the matter of her contributory negligence was very properly presented to, and left with, the jury as honest men who might differ; that there was no error in either the refusal to non-suit, or to direct a verdict for the defendant.

Respectfully submitted,

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