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Notice of Appeal and Grounds.

New Jersey Supreme Court

HUDSON CIRCUIT.

CATHERINE MANGONE, Plaintiff, *vs.* JOHN M. PATTERSON, and MAC'S AUTO SERVICE, INC., a New Jersey Corporation, Defendants.	Action at Law.

To: William C. Kronmeyer, Esq.,
Attorney for Plaintiff, Catherine Mangone.

SIR:

PLEASE TAKE NOTICE that the defendant John M. Patterson, one of the defendants in the above entitled cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the folowing ground, to-wit:

1. Because the Court erred in giving judgment to the plaintiff Catherine Mangone instead of to the defendant John M. Patterson, in that;

(a) Because the Court refused to direct a non-suit in favor of the defendant John M. Patterson, when requested so to do.

(b) Because the verdict of the jury against the said defendant John M. Patterson was excessive.

Notice of Appeal and Grounds.

(c) Because the verdict against the said John M. Patterson was against the weight of the evidence.

(d) Because the plaintiff Catherine Mangone failed to prove by a fair preponderance of the evidence that the defendant John M. Patterson was responsible for the accident.

(e) Because the Court erred in its charge.

(f) Because the verdict was against the charge of the Court.

(g) Because the verdict should have been found against the defendant Mac's Auto Service, Inc., a New Jersey Corporation, instead of against the defendant, John M. Patterson.

(h) Because there was no medical testimony adduced at the trial to show that the said plaintiff Catherine Mangone, was suffering from the injuries that she alleged she was suffering from.

(i) Because by reason of the fact that the plaintiff Catherine Mangone called the defendant John M. Patterson as a witness she was bound by his testimony and as a result of the said testimony of John M. Patterson in the case of the plaintiff, the Jury should not have found either as a matter of fact or as a matter of law that said defendant John M. Patterson was negligent, nor should they have found that he was responsible for the said accident.

Respectfully yours,

WILLIAM A. KAVANAGH,
Attorney of Defendant
John M. Patterson.

Summons.

THE STATE OF NEW JERSEY to JOHN M. PATTERSON and MAC'S AUTO SERVICE, INC., a New Jersey corporation:

[SEAL]

YOU ARE SUMMONED to answer the annexed complaint of Catherine Mangone in an action at law in the New Jersey Supreme Court, and take notice that unless you file your answer to said complaint with the Clerk of the New Jersey Supreme Court, at Trenton, New Jersey, within twenty days after service upon you of this writ, and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, William S. Gummere, Esq., Chief Justice of our Supreme Court at Trenton, N. J., this 8th day of June, Nineteen hundred and twenty-six.

EDWARD J. KELLEHER,
Clerk.

WM. C. KRONMEYER,
Attorney for Plaintiff.

Complaint.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY, NEW JERSEY.

CATHERINE MANGONE,
Plaintiff,

against

JOHN M. PATTERSON, and MAC'S AUTO SERVICE, INC., a New Jersey Corporation,
Defendants.

Action at Law.

The plaintiff above-named, residing in the township of Weehawken, County of Hudson and State of New Jersey, by William C. Kronmeyer, her attorney, for her complaint herein, complaining of the defendants, respectfully shows to the court, and alleges and says that:

1. The defendant Mac's Auto Service, Inc., is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New Jersey.

2. At the times hereinafter mentioned the defendant Mac's Auto Service, Inc., was and still is conducting the business of a common carrier and was at all the times hereinafter mentioned maintaining and operating automobiles known as taxicabs in connection with said business.

3. At all the times hereinafter mentioned the said defendant Mac's Auto Service, Inc., maintained and operated said taxicabs, among other places in the township of Weehawken, County of Hudson and State of New Jersey.

4. On March 1st, 1926, the defendant Mac's Auto Service, Inc., let out said taxicabs with auto drivers or chauffeurs to all persons who applied therefor, and on said day let out the taxicab hereinafter mentioned with a driver or chauffeur to the plaintiff for hire or reward paid or agreed to be paid by plaintiff for the purpose of conveying plaintiff from the Weehawken Ferry, Weehawken, N. J., to her home on King Avenue, Weehawken, N. J.

5. Upon information and belief, the said defendant Mac's Auto Service, Inc., maintained and operated through its servant, agent or employee, the taxicab hereinafter mentioned.

6. Upon information and belief, on the 1st day of March, 1926, the said defendant Mac's Auto Service, Inc., was the owner of a certain taxicab hereinafter mentioned.

7. The defendant John M. Patterson on said 1st day of March, 1926, was the owner of a certain automobile hereinafter mentioned and that said automobile so owned by said defendant Patterson bore registration number H-46511, N. J.

8. On said 1st day of March, 1926, the plaintiff hired at or near the Weehawken Ferry, in the township of Weehawken, Hudson County, N. J., from the chauffeur, driver, servant, agent, or employee of the defendant Mac's Auto Service, Inc., a taxicab maintained by said defendant

Mac's Auto Service, Inc., and operated by its chauffeur, driver, agent, servant or employee (the plaintiff intending to become a passenger for hire upon said taxicab and to be taken from the said place where she hired and boarded said taxicab to her home on King Avenue, in the township of Weehawken, County of Hudson and State of New Jersey).

9. On said 1st day of March, 1926, said automobile of defendant John M. Patterson at the time hereinafter mentioned was driven by said defendant John M. Patterson, or by his servant, agent or employee, at the time hereinafter referred to.

10. On said 1st day of March, 1926, said automobile of defendant John M. Patterson was being driven along a public highway known as the Hudson Boulevard, in the said township of Weehawken, in the County of Hudson and State of New Jersey.

11. On said 1st day of March, 1926, at the time hereinafter mentioned, said taxicab was being driven along a public highway known as the Hudson Boulevard, in the township of Weehawken, County of Hudson and State of New Jersey.

12. On said 1st day of March, 1926, while the plaintiff herein was in said taxicab as or intending to become a passenger for hire, the said taxicab and the said automobile of the defendant John M. Patterson collided on said Hudson Boulevard East, a public highway, at or near Second Street, also a public highway, in the said township of Weehawken, County of Hudson and State of New Jersey.

13. The collision aforesaid was caused by the negligence, carelessness and recklessness of the defendants, their servants, agents or employees, which consisted in this: Failure to use reasonable care by the said defendants, their servants, agents or employees.

14. The negligence and carelessness of the defendant Mac's Auto Service, Inc., consisted in this, namely, Failure to use reasonable care by the said defendant in the following particulars:

a. To operate said taxicab and control the motion thereof so as to avoid the collision above referred to.

b. To give warning of the approach of said taxicab.

c. To propel the same at a rate of speed safe to the said plaintiff and other persons, and vehicles in the vicinity of said taxicab.

d. To keep a lookout for other persons and vehicles in the vicinity of said taxicab.

e. To equip the same with proper lights, appliances and brakes as provided by statute in such case made and provided.

f. To operate said automobile on the right side of the street.

g. To operate the same with due regard for life and limb.

h. To operate the same in accordance with the provisions of the ordinances of the said township of Weehawken, County of Hudson and State of New Jersey, in such case made and provided.

i. To employ a fit, capable and skillful servant, agent or employee to manage or control said taxicab or automobile.

j. By operating said taxicab in a careless, reckless and negligent manner.

15. The negligence and carelessness of the defendant John M. Patterson consisted in this, namely, failure to use reasonable care by the said defendant in the following particulars:

a. To keep a lookout for other vehicles in the vicinity of said automobile of said defendant Patterson.

b. To operate the said automobile and control the motion thereof so as to avoid the collision above referred to and to avoid striking other vehicles in the vicinity thereof.

c. To give warning of the approach of said automobile.

d. To propel the same at a rate of speed safe to persons and other vehicles in the vicinity thereof.

e. To keep a lookout for other persons and vehicles in the vicinity thereof.

f. To equip the same with proper lights, appliances and brakes as required by the statute in such case made and provided.

g. By operating said automobile on the wrong side of the street and otherwise in a careless, reckless and negligent manner.

h. To operate the same with due regard for life and limb.

i. To operate the same in accordance with the provisions of the ordinances of the said township of Weehawken, County of Hudson and State of New Jersey in such case made and provided.

16. By reason of the recklessness, carelessness and negligence of the defendants as aforesaid, the plaintiff Catherine Mangone was seriously injured in and about her legs, head and other parts of her body, confined to her bed, suffered severe and serious shock to her nervous system, suffered and continues to suffer great pain and inconvenience, and plaintiff is informed and believes that she will continue to suffer great pain and inconvenience, and that certain of the injuries so sustained and the results thereof will be permanent, and that plaintiff has been put to expense for medicines, hospital and medical treatment and for nursing and attendance, and has become liable to pay therefor and will become liable to incur additional expense of a similar nature, and will be compelled to undergo medical treatment in the future, and that plaintiff's earning capacity has been permanently impaired and her clothing and wearing apparel damaged, all to plaintiff's damage in the sum of Fifteen Thousand Dollars ($15,000.00).

17. Plaintiff, Catherine Mangone, was at all times in the exercise of due care for her safety, and free from negligence contributing to the accident.

18. Upon information and belief, at all the times hereinabove mentioned said taxicab was being used in and for the defendant Mac's Auto

Service, Inc., business and in the scope of its said business.

WHEREFORE, plaintiff demands judgment against the defendants for the sum of Fifteen Thousand Dollars ($15,000), together with the costs and disbursements of this action.

WILLIAM C. KRONMEYER,
Attorney for Plaintiff,
Office and P. O. Address,
No. 309 Central Avenue,
Union City, N. J.

Answer of Defendant John M. Patterson.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

CATHERINE MANGONE, Plaintiff, *vs.* JOHN M. PATTERSON and MAC'S AUTO SERVICE, INC., a New Jersey Corporation, Defendants.	Action at Law.

John M. Patterson, one of the defendants herein, answering the complaint, says that:

1. He has no knowledge or information as to the truth of the allegations in paragraphs 1, 2, 3, 4, 5, 6 and 8, and therefore denies the same.

2. Paragraph 7 is admitted.

3. Paragraph 9 is admitted.

4. Paragraph 10 is admitted to the extent of driving along a public highway in the Township of Weehawken, County of Hudson and State of New Jersey.

5. Paragraph 11 is admitted to the extent of driving along a public highway in the Township of Weehawken, County of Hudson and State of New Jersey.

6. Paragraph 12 is denied.

7. Paragraph 13 is denied.

8. Paragraph 14 is admitted.

9. Paragraph 15 is denied.

10. Paragraph 16 is denied.

11. Paragraph 17 is denied.

12. Defendant has no knowledge or information as to the truth of the allegations in paragraph 18 and therefore denies the same.

FIRST SEPARATE DEFENSE.

Defendant, John M. Patterson, was guilty of no negligence.

SECOND SEPARATE DEFENSE.

If there was any negligence, defendant Mac's Auto Service, Inc., was guilty thereof.

THIRD SEPARATE DEFENSE.

Plaintiff is guilty of contributory negligence.

WILLIAM A. KAVANAGH,
Attorney for Defendant,
John M. Patterson.

Reply.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY, NEW JERSEY.

CATHERINE MANGONE,
Plaintiff,

against

JOHN M. PATTERSON and MAC'S AUTO SERVICE, Inc., a New Jersey corporation,
Defendants.

Action at Law.

The plaintiff, in reply to the Answer of the defendant John M. Patterson, filed herein, says:

1. Plaintiff denies the allegations contained in the paragraph entitled "First Separate Defense" of the said Answer.

2. Plaintiff admits the allegation contained in the paragraph entitled "Second Separate Defense" of the said Answer to the effect that defendant Mac's Auto Service, Inc., was guilty of negligence, but plaintiff alleges and says that the defendant John M. Patterson was also guilty of negligence as alleged in the complaint. Plaintiff has on knowledge or information sufficient to form a belief as to the other allegations contained in said "Second Separate Defense".

3. Plaintiff denies the allegations contained in the paragraph entitled "Third Separate Defense" of the said Answer, and plaintiff denies that she exposed herself to any risk of an accident and neglected to take proper precaution or exercise

care to guard and protect herself, and denies that she was in any way guilty of contributory negligence or in any way by her acts contributed to the injuries which she sustained, as is alleged in said "Third Separate Defense" of the said Answer.

Plaintiff, therefore, asks judgment as prayed for in the complaint in this action.

Dated: July 13th, 1926.

WILLIAM C. KRONMEYER,
Attorney for Plaintiff,
No. 309 Central Avenue,
Union City, N. J.

Testimony.

HUDSON COUNTY SUPREME COURT.

Before: Hon. HENRY E. ACKERSON, J., and a Jury.

KATHARINE MANGONE,

vs.

JOHN M. PATTERSON and MAC'S AUTO SERVICE, INC.

Jersey City, N. J., January 10, 1927.

Appearances:

WILLIAM C. KRONMEYER, Esq., for the Plaintiff.

WILLIAM A. KAVANAGH, Esq., for the Defendant Patterson.

TRUEX & KOCH, Esqs. (by Mark Townsend), for the Defendant Mac's Auto Service.

Mr. Kronmeyer: I understand ownership and operation is admitted.

Mr. Kavanagh: Yes.

Mr. Townsend: Yes.

Mr. Kronmeyer: Will counsel admit that this woman was a passenger in the taxicab?

Mr. Townsend: Certainly.

The Court: It is admitted that the taxicab was a common carrier.

Mr. Townsend: I am perfectly willing to admit that we operated the taxicab and that we were carrying her for hire on this night.

The Court: Can it be conceded as to the distance the houses are apart on an average?

Mr. Kronmeyer: Will counsel concede that the houses on the west side are less than 100 feet apart?

Mr. Townsend: Certainly, and that there are no houses on the easterly side of the Boulevard.

Mr. Kavanagh: Certainly.

Mr. Kronmeyer: I want to ask counsel on the other side if they will also admit that Dr. Walter S. Simiotti at the time of the accident was a practicing physician of this State and attended Miss Mangone? We will prove from Miss Mangone that she was attended for about 28 days. Dr. Simiotti died the 31st day of March and I happened to be the attorney for Dr. Walter S. Simiotti's estate and the estate has rendered a bill for $100 for about 28 visits. I want to know if counsel will admit that he was a practicing physician and that the charge of $100 is a reasonable charge?

Mr. Kavanagh: I will admit it.

Mr. Townsend: Certainly.

Mr. Kronmeyer: I have had Mr. Patterson under subpoena.

Mr. Kavanagh: I know, but I told him an hour ago that he could leave, when it appeared that this case was not going on. I have sent for him, however, and he will be here.

WILLIAM J. REISEL, sworn.

Direct examination by Mr. Kronmeyer:

Q. Where do you live? A. 415 Twenty-fourth street, Union City.

Q. What is your occupation? A. Chauffeur.

Q. For whom? A. Mac's Auto Service.

Q. You were chauffeur for the Mac's Auto Service on March 1st? A. Yes, sir.

Q. Do you recall that day? A. Yes, sir.

Q. Do you know Miss Mangone? A. Yes, sir.

Q. Had you driven her before that day? A. Yes, sir.

Q. Will you tell us about whether or not she hired a taxi from you on that date? A. She hired a taxi at the West Shore Ferry.

Q. What time was that? A. About 10:35.

The Court: To go to the West Shore ferry?

The Witness: No, sir, from the West Shore ferry.

Q. And what were your charges for taking her to her place of residence? A. 60 cents.

Q. How much is that a mile? A. 40 cents a mile.

Q. Did she board the taxi? A. Yes, sir.

Q. Well then, just tell us what occurred. Did an accident occur on Eastern Boulevard and Second Street, Weehawken? A. Yes, sir, near the intersection.

Q. About where? A. 20 feet north of Second Street.

Q. On what side of the street? A. On my right hand side.

Q. At this point which I am indicating on the blackboard? A. Yes, sir.

Q. Is there an apartment house here? A. Yes.

Q. Do you know how many stories high that apartment house is? A. I don't believe I do.

Q. Are the houses between Second and Third Street close together? A. Yes.

Q. Just tell us what occurred at the place you indicated just now 20 feet north of Second Street on Eastern Boulevard. A. I was proceeding south on the Boulevard and I seen this car coming zig-zagging down the Boulevard. As I neared Second Street he suddenly shot over and hit me head on, about three feet from the curb on my side of the Boulevard. He was facing east and west in the center of the Boulevard.

Q. You said you saw the other car going along in a zig zag manner? A. Yes.

Q. How far away from this other car were you when you first saw it? A. I judge about 100 feet.

The Court: Who was driving the other car?

The Witness: Mr. Patterson.

The Court: John M. Patterson?

The Witness: Yes, sir.

Q. How fast were you going at the time? A. About 15 miles an hour.

Q. And within how many feet could you stop your taxicab going at that rate? A. Five feet.

Q. Did you suspect that this car would run into your taxicab? A. No, sir.

The Court: How long had you been driving this taxicab for your company?

The Witness: For about five months.

The Court: And during that time did you take fares or passengers indiscriminately; whoever offered themselves to be carried?

A. Yes, sir.

The Court: I mean did you solicit passengers generally?

The Witness: Yes, sir.

Q. If anybody came along and wanted to be carried you took them? A. Yes, sir.

Q. And you made no exception? A. No, sir.

Q. And you had an established rate, didn't you? A. Yes, sir.

Q. For all passengers? A. Yes, sir.

Q. When you noticed that the car coming from the south swerved over toward the wrong side of the road, how far away was it? A. I didn't notice it at all. I sat in my car dumbfounded when he hit me.

Q. Did you look? A. It came so suddenly I didn't have a chance to look.

Q. You first saw him 100 feet away, didn't you? A. Yes, on the right side of the road then.

Q. You said you saw him coming along in a zigzag manner? A. Yes, on the right side of the road.

Q. Were you facing this car as you saw him 100 feet away? A. Yes, sir.

Q. Well, I am asking you now, how many feet away was he when you saw him swerve from the right side of the road to the left side? A. About 15 feet.

Q. Why didn't you stop your car at that time? A. I did stop.

Q. Well you said you could stop within five feet. A. I stopped my car. My brakes were locked.

Q. Did you have a governor on your car? A. Yes, sir.

Q. Where were you when you stopped your car? A. About three feet from the curb.

Q. And how far from Second Street? A. 20 feet.

Q. Where was the other car? A. The other car was head-on into me.

Q. In what position was the other car? A. East and west.

Q. What happened to Miss Mangone, your passenger, at the time of the accident?

Mr. Kavanagh: I object to that.

Mr. Kronmeyer: I withdraw the question.

Q. Was Miss Mangone injured at the time of the accident?

Mr. Kavanagh: I object to that. There is no proof here that he saw what happened to her exactly at the time of the accident.

The Court: He may have turned around and found her in the car injured.

Mr. Kavanagh: That is not shown.

The Court: I will allow the question.

Mr. Kavanagh: Exception.

A. My first thought was about the passenger and I opened the back door and she was badly bruised about the legs.

Q. And do you know whether she was taken to the hospital or not? A. Yes.

Q. What hospital? A. North Hudson.

Q. Were you at the hospital? A. No, sir.

Q. Did you notice the condition of Mr. Patterson at the time of the accident? A. Yes, sir.

Q. What was his condition? A. Well, I smelled the odor of liquor on his breath.

Mr. Kronmeyer: That is all.

Cross-examination by Mr. Townsend:

Q. How did he talk? You say you smelled the odor of liquor on his breath. Did you talk to him at all? A. Well, he told me the passenger in his car was——

Q. Not what he told you. I am asking you the manner of his conversation. Was it intelligible, coherent, incoherent, or what?

The Court: How did he act?

The Witness: Well, he acted wobbly.

Q. And you say you smelled the odor of liquor on his breath? A. Yes, sir.

Q. Was any one in the car with him? A. Yes, sir.

Q. Do you know who it was? A. He told me it was his daughter.

Q. A young lady? A. Yes, sir.

Q. Do you know whether she was taken to the hospital or not? A. Yes, sir.

Q. In what gear was your car going, and what speed was your car going at the time the accident happened? A. The car was in second speed on account of the hill I was traveling up.

Q. Is that a hill all the way from the ferry up? A. Yes, sir.

Q. And does that hill extend up to Second Street? A. No, sir. There is a bad turn there and you have to keep in second. There is an incline until you come to Second Street, then it is level ground.

Q. There is a hotel there? A. Yes, sir, Mazulis.

Q. You have to make a sharp turn around it? A. Yes, sir.

Q. And traffic going south, coming from the West Shore ferry goes that way? A. Yes, sir.

Q. Do I understand there is an incline up to Second Street? A. Yes, sir.

Q. So that you were going slightly uphill? A. Yes, sir.

Q. You said that your car was about three feet from the right hand curb. In order to have it appear on the record, what curb do you mean, the west curb? A. Yes, sir.

The Court: How far out were you from the westerly curb?

The Witness: Three feet.

Then do I understand that your car was going south about three feet from the westerly curb and Patterson's car was going north on the right hand side of the Boulevard, which would be the easterly side of the Boulevard? A. Yes, sir.

Q. And the Boulevard at that point is about 60 feet wide? A. Yes, cir.

Q. Now, when your car stopped where was your car? A. The car was about 20 feet from the corner and about three feet from the curb.

Q. And were you in relatively the same position as you had been running in? A. No, sir, the force of the impact threw me further over.

Q. Toward the curb? A. Yes, sir.

Q. So that you had been going along three to five feet from the westerly curb as you came up from the hotel? A. Yes, sir.

Q. What particular part of your car was it that the Paterson car collided with? A. The left front wheel and mudguard.

Q. Were you thrown as a result of the impact? A. Just my chest against the wheel.

The Court: How fast was this other car going, if you can estimate the speed?

The Witness: About 30 miles an hour.

Q. Now you said to Mr. Kronmeyer that you were about 15 feet away from him when he suddenly came across from the other side of the street? A. Yes, sir.

Q. What did you do then? A. Well, I slammed on all my brakes and I swerved toward the curb, tried to get away from him.

Q. And he continued on? A. Yes, sir.

The Court: When he took the last zigzag, the last steer toward your direction, how far away was he then? Do you understand what I mean? You say he was zigzagging, according to your statement. Now when he took the last turn toward your side of the road, how far was he from your car then, if you recollect? A. About 15 feet.

Q. Now, is it a fact as counsel for Mr. Patterson said in his opening, that there was another automobile, a Ford, came out of Second Street and cut him off and thereby caused him to go on the wrong side of the street? A. No, sir.

Q. Was there any other Ford car there at that time? A. No, sir.

Q. I understand you have driven Miss Mangone frequently before the accident? A. Yes, sir.

Q. Have you driven her frequently since the accident? A. No, sir.

Q. Have you driven her at all since the accident? A. No, sir.

Q. Do you know whether she had ridden in your cab since the accident? A. Yes, sir.

Q. Did you ever have any conversation with Miss Mangone after that relative to this accident? A. No, sir.

Q. Did you have a conversation with her in the Court House? A. No, sir.

Q. I show you a photograph and ask you if that correctly depicts the conditions as they existed at that time at this point where the accident happened. A. Yes, sir.

Q. That is a view looking north, is it? A. Yes, sir.

Q. I notice a white line in here. There was a white line on the Boulevard at that time? A. Yes, sir.

Q. In the same position as it is there? A. Yes, sir.

Q. That indicates the center of the Boulevard, does it? A. Yes, sir.

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

(Marked Exhibit D-M-1 for identification.)

Mr. Kronmeyer: I have no objection to its going in evidence.

(Marked Exhibit D-M-1 in evidence.)
(Handed to Jury.)

Q. Right after the accident did any police officers appear there? A. Yes, sir.

Q. How many? A. Four.

Q. Are these the gentlemen that were present, that are in the court room here? A. Yes, sir.

Mr. Townsend: That is all.

Cross-examination by Mr. Kavanagh:

Q. How long have you been driving an automobile? A. Four years.

Q. How long have you been driving for the Mac's Auto Service? A. Since December, 1925.

Q. How long before this accident? A. Five months.

Q. Five months before? A. Yes, sir.

Q. Where was your taxicab stand? A. West Shore Terminal.

Q. Right outside the West Shore Ferry depot? A. Yes, sir.

Q. And you had been in the habit of conveying Miss Mangone from the ferry to her home? A. Yes, sir.

Q. On how many occasions before this did you convey her from the ferry to her home? A. I don't quite remember how many times.

Q. Approximately. A. About five times.

Q. During the day or night? A. Well, during the rush hours between seven and nine.

Q. Between seven and nine in the evening? A. Yes, sir.

Q. Where did Miss Mangone live at the time? A. 23 King Avenue.

Q. Where is that located with reference to the location of where this accident occurred? A. That is south.

Q. How many blocks south? A. About eight blocks south.

Q. Down the hill? A. No, sir.

Q. Now, there is a curve in the Boulevard at Second Street, is there not? A. Yes.

Q. Quite a sharp curve, isn't there? A. Not a sharp curve.

Q. Well, if you were traveling on the Boulevard at Second Street north, could you see Third

Street before you came to the turn in the curve? A. Yes.

Q. If you were on the left side or the right side? A. On my right side.

Q. You would have to be on the right side to see Third Street? A. On the right side.

Q. Assuming you were on the westerly side you could not see where Third Street joins the Boulevard, could you? A. Going south?

Q. Going north. We are looking north now. You could not see where Third Street joins the Boulevard, could you?

The Court: From what position?

Mr. Kavanagh: From the west side of the Boulevard at Second Street going north. Isn't that right?

The Witness: No, sir.

The Court: I don't think he understands the question. The Court does not either.

Q. Where does the curve on the Boulevard begin, at what street? A. Before you come to Second Street.

Q. Going south or going north? A. Going north.

Q. Which is it now? A. Before you come to Second Street going north, there is a little curve.

Q. And where does the curve end? A. It ends right after you pass Second Street. It is only a small curve.

Q. Are you sure of that? A. Positive.

Q. Isn't there a curve at that part of the Boulevard where Third Street joins it? A. After you pass Third Street there is a curve leading down to the ferry.

Q. At Third Street, where Third Street joins the Boulevard isn't there a curve in the Boulevard itself?

Mr. Townsend: I confess that until this minute I have not understood what counsel means. He is putting the man going north. Now, Third Street is north of Second Street.

The Court: Just put him in the position you want him to tell you where the curve is.

Q. Does this diagram show any curve in the Boulevard at all? A. No.

Q. Now you say the curve on the Boulevard begins south of Second Street, isn't that what you said? A. South of Second Street.

Q. And it goes something like this, doesn't it? A. No, sir.

Q. To Fourth Street? A. No, sir, just the opposite way.

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

Q. How long have you been driving a car on the Boulevard? A. About three or four years.

Q. You want this court and jury to believe that the curve goes the other way, is that right?

Mr. Townsend: I object.

Q. All right. What kind of a night was this? A. A clear night.

Q. It was not raining, was it? A. No, sir.

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

Q. Don't you know as a matter of fact that it had been raining about an hour before this accident? A. No, sir.

Q. Was the roadway on the Boulevard dry or was it wet? A. Dry.

Q. You are sure it was dry? A. Yes, sir.

Q. What time did you start to work that night? A. Seven o'clock.

Q. What night was it? A. March 1st.

Q. And you are sure that it was not raining? A. It was not raining.

Q. You are sure that the roadbed of the Boulevard was dry, is that right? A. Yes, sir.

Q. Had it been raining during the day? A. No, sir.

Q. Were you working during the day? A. No, sir.

Q. What time did you start to work? A. Seven o'clock.

Q. And were you indoors or out of doors before seven o'clock? A. I got up at five o'clock.

Q. You had been sleeping all day I presume? A. Yes, sir.

Q. You worked from seven in the evening until when in the morning? A. Seven in the morning.

Q. Then you go to bed and sleep until five? A. Yes, sir.

Q. Therefore you do not know whether it had been raining during the day or not? A. Well, it was not raining from the time I got up. That is what I mean.

Q. Had you taken any other passenger prior to the time you took Miss Mangone? A. Yes, sir.

Q. How many others? A. I don't quite remember how many others.

Q. Well, one or two or three or how many? A. It might have been ten.

Q. Now, you picked Miss Mangone up at the ferry, didn't you? A. Yes, sir.

Q. And she directed you to deliver her to her destination? A. I knew where she was going to go.

Q. Did she direct you where to drive her? A. Yes, sir.

Q. And you came up the hill? A. Yes, sir.

Q. How fast were you going coming up that hill? A. About 12 miles an hour.

Q. What? A. 12 miles an hour.

Q. Don't you know it is impossible for you to go up that hill 12 miles an hour with that kind of a car? A. No, sir.

Q. Don't you know to get up that hill that night you had to go over 30 miles an hour? A. No, sir.

Q. Did you have a speedometer on your car? A. No, sir.

Q. You didn't have a speedometer? A. No, sir.

Q. How could you tell you were going 12 miles an hour up that hill? A. Well, I was going pretty slow in second speed. You cannot make the hill in high speed in that car.

Q. Therefore you have to make it at a pretty good rate of speed? A. No, sir.

Q. More than 12 miles an hour, isn't that so? A. No. You cannot push this car because it has a set spark.

Q. Does that mean to say you cannot go any more than 12 miles an hour with the car? A. Well, you can make it go fast; you can't make it go 30 miles an hour.

Q. How fast can you make it go?

Mr. Townsend: Do you mean in second speed?

Mr. Kavanagh: I am not speaking of any speed at all.

Mr. Townsend: I object.

The Court: Sustain the objection.

Q. How fast can that car go in any speed?

Mr. Townsend: I object as immaterial.

The Court: How fast can you go when you are set so that you can go your fastest?

The Witness: I only go 25 miles an hour on the Boulevard.

The Court: How fast can you go in second speed? Not what you were doing, but how fast can you go?

The Witness: The best you can make is 15 miles an hour in second speed up that hill.

Q. So that you were going more than 12 miles an hour at the time you were coming up the hill? A. No, sir, the hill is pretty crowded.

Q. Were you in second speed coming up the hill? A. Yes, sir.

Q. How fast was your car geared to go when it ran in second speed? A. I don't know.

Q. Well, in second speed how many miles an hour can you make going up that hill? A. 15.

Q. You cannot make 25 miles an hour? A. No, sir.

Q. Why not? A. Because you cannot. I don't know why you can't, but you can't.

Q. You know the car, you know the mechanism of the car and its operation, don't you? A. Certainly.

Q. And isn't it a fact that you can go up that hill more than 15 miles an hour if you want to, if the car is running in second speed? A. No, sir.

Q. You said you came up at about 15 miles an hour? A. About 12.

Q. What way did you turn when you got up to the top of the hill? A. Turned south.

Q. There were other cars proceeding in the same direction with you when you turned south? A. No, sir.

Q. Was there any other car going south when you turned the curve? A. No, sir.

Q. Sure of that? A. Yes, sir.

Q. Why did you say a minute ago that you turned the curve and you saw this car of Mr. Patterson's about 100 feet away?

Mr. Townsend: I object if the Court please on the ground that the question is based upon an unwarranted assumption of fact.

Q. You did, as a matter of fact, see no other car coming north, did you, when you were proceeding south? A. Yes, sir.

Q. And it is not true that you did not see any other car coming north?

The Court: He has already mentioned the Patterson car.

Q. Beside the Patterson car which you say you saw going zigzag, did you see any other cars going north? A. No, sir.

Q. Did you see any other car or cars except the one you say you saw going zigzag? There was no other car going north, was there? A. No, sir.

Q. All right. Now, how far away were you from zigzag going north? A. About 100 feet away.

Q. And what side of the roadway was the Patterson car on going zigzag, as you say? A. On his right hand side.

Q. On the right hand side of the Boulevard? A. Yes, sir.

Q. That is on the easterly side? A. Yes, sir.

Q. No doubt about that? A. No, sir.

The Court: Was he on his right side or his left side?

The Witness: His right side.

Q. Can you tell us how far from the right curb of the Boulevard going north he was when you saw him going zigzag? A. No, sir.

Q. Was he near the right curb or more toward the middle of the Boulevard? A. He was on his right side in between the lines and the curb.

Q. And you were on the left side between the lines? A. Yes, sir.

Q. Between the sidewalk and the middle of the street?

Mr. Townsend: That is objected to.

Q. You were between the middle line and the sidewalk on the right hand side of the street going south, is that right? A. Yes, sir.

Q. How far away were you from Mr. Patterson's car when you saw him zigzagging over toward the other side of the Boulevard? A. 15 feet.

Q. 15 feet away? A. Yes, sir.

Q. Now, how fast were you going at the time? A. About 15 miles an hour or 20 miles an hour.

Q. Still going at 15 miles an hour, is that correct? A. I am still in second speed.

Q. Well, you were not on a hill at that time, were you? A. You got to keep in second speed until after you pass Second Street because there is an incline there.

Q. An incline? Where is the incline? A. Right after you make the turn coming out from the ferry hill.

Q. An incline? A. Yes, sir.

Q. You mean a hill? A. Yes, sir, not quite a hill, just a small incline, but if you put it in high, the engine will labor.

Q. Well, you were going more than 15 miles an hour? A. Between 15 and 20 miles an hour.

Q. You were not going any faster than that? A. No, sir.

Q. Weren't you gonig about 30 miles an hour or more? A. No, sir.

Q. Weren't you instructed by Miss Mangone to hurry her home as quickly as you could, when she got in your taxicab? A. No, sir.

Q. Didn't she tell you she had an appointment at home, people were waiting for her and she wanted to get home as quickly as you could drive? A. No, sir.

Q. Isn't that a fact? A. No, sir.

Q. It is not true, is it? A. No, sir, it is not true.

Q. Didn't she say anything to you at all when she got into your car about hurrying home? A. No, sir.

Q. To get home as quickly as you could? A. No, sir.

Q. Never said anything at all? A. Not a word.

Q. She just got in your car and you simply drove her home, is that right? A. Yes, sir.

Q. Did she talk with you as you approached Second Street at all? A. No, sir.

The Court: Did she say anything?

The Witness: No, sir. I had my back window closed.

Q. Now, you say you saw Mr. Patterson's car zigzagging across the Boulevard when he was 15 feet away, is that right? A. Yes.

Q. How far was he from you when you first saw him begin to zigzag, can you tell us that? A. When I first noticed him he was 100 feet away.

Q. Are you sure he was not more than that? A. No, sir.

Q. And you are not sure whether it was less than that? A. No, sir.

Q. How did you judge him to be about 100 feet

away? A. Well, he was about three of them telegraph poles away.

Q. About three telegraph poles? A. Yes, sir.

Q. Now, just indicate by your hand or your arm how he zigzagged when you saw him about 100 feet away. Just show the court and jury by indicating with your arm. A. Going this way on the Boulevard.

Q. You mean over from the easterly side of the Boulevard to the westerly side of the Boulevard then from the westerly side of the Boulevard to the easterly side of the Boulevard and then back? A. No, sir, he kept on his right side while he was zigzagging.

Q. You mean he kept on the right side of the road? A. Yes, sir.

Q. And you were on your right side of the roadway? A. Yes, sir.

Q. That is, between the easterly sidewalk and the middle of the Boulevard? A. That is where he was.

Q. He kept within that space, did he? A. Yes, sir.

Q. And he zigzagged from the sidewalk to the middle line and back from the middle line to the sidewalk? A. Yes.

Q. And back again from the sidewalk to the middle line, is that what you want the court and jury to understand by your testimony? A. I cannot say from the sidewalk, the curb. He was zigzagging.

Q. But you told the court a moment ago that he was on his right side when he was zigzagging? A. Yes, sir.

Q. And he was not outside the middle line of the Boulevard? A. No, sir.

Q. Now, do you know what kind of a car Mr. Patterson was driving? A. A Chrysler.

Q. Well, what kind of a Chrysler car was it? A. A Chrysler four.

Q. And are you familiar with the makes of Chrysler cars? A. No, sir.

Q. Have you ever driven a Chrysler car? A. No, sir.

Q. Do you know anything at all about Chrysler cars? A. No, sir, never drove one.

Q. Do you know the length of a Chrysler car, how many feet would you say a Chrysler car is in length? A. I could not say.

Q. How many feet was your taxicab in length? A. About eight feet, I believe; I could not say for sure.

Q. Eight feet? A. I don't know how many feet that is in length.

Q. Don't you know approximately? A. No, sir.

Q. You say 18. Don't you know as a matter of fact the taxicab you were driving is nearly 15 feet long? A. I don't know, sir.

Q. What was the width of the Boulevard—it is about 60 feet, isn't it? A. Yes, sir.

Q. You never measured it, did you? A. No, sir.

Q. Did you tell this jury and this court how, if that car belonging to Mr. Patterson, never went outside of the intervening line in the middle of the Boulevard, how it could have crashed into your car?

Mr. Townsend: I object if the court please on the ground the question is based upon an unwarranted assumption of fact. In the first-place the witness is positive, according to his testimony,—

A. He was zizzagging like that, between the line and the curb, then after that he lost control of the car when he came to the curve and came right into my car. My both brakes were locked.

Mr. Townsend: Indicate that point with an X.

The Court: And you say that was three feet out from the curb?

The Witness: Yes, sir.

The Court: And that was how far north of the northerly curbline of Second Street?

The Witness: About 20 feet.

Q. And that was how far north of the northerly curbline of Second Street?

The Witness: About 20 feet.

Q. Now, you were going at 20 miles an hour when you saw Mr. Patterson's car, is that right? A. Yes, sir.

Q. And you saw him about 15 feet away the last time he zigzagged, is that right? A. Yes, sir.

Q. Did you stop your car? A. I jammed on my brakes.

Q. Did you stop your car when you saw him zigzag? A. When he was 15 feet away?

Q. Yes. A. I didn't have a chance to stop it.

Q. I am asking you did you stop it, whether you had a chance or not. A. I don't know whether I did or not.

Q. Well, you were driving in your car, weren't you? You had a passenger Miss Mangone in the back of your car and you saw this car 15 feet away as you told the court and jury zigzagging, coming over to where you were driving in a southerly direction. Now, did you stop your car or not? A. I don't know, because he hit me all of a sudden.

Q. Well, was your car moving when you were struck or was it at a standstill? A. It was moving.

Q. And you did not stop your car, did you? A. No, sir.

Q. Did you hear the impact of this collision? A. Yes, sir.

Q. Pretty loud, wasn't it? A. Yes, sir.

Q. It could be heard all over, couldn't it, so that three or four or five policemen came to the scene at that time? A. Yes, sir.

Q. Isn't it a fact that your car was going much more than 20 miles an hour when you struck the Patterson car? A. No, sir.

Q. Now, let me ask you this. You say you did not see any Ford car crossing in front of Mr. Patterson, did you? A. No, sir, I didn't see any.

Q. Did you see any car at all crossing in front of him, cutting him off when he was going north on the Boulevard? A. No, sir.

Q. Do you mean to tell this court and jury that there were no other cars there at the time of this collision except you and the Patterson car? A. I didn't see any cars cutting him off.

Q. Did you look for any other cars? A. No, sir.

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

Q. And you want the court and jury to believe that you and Patterson were the only two cars on the Boulevard at this point, at this location, at the time of the accident, is that right? A. Yes, sir.

Q. That is true, is it? A. Yes, sir.

Mr. Kavanagh: That is all.

Re-cross-examination by Mr. Townsend:

Q. You think it was a Chrysler? A. Yes, sir.

Q. Was it one of the 70 Chrysler that is guaranteed for 70 miles an hour?

Mr. Kavanagh: I object. That is very unfair.

Mr. Townsend: You brought it out.

Mr. Kavanagh: He said he didn't know anything about Chrysler cars and you heard his answer. It is very unfair to ask him that and I ask that it be struck out.

The Court: Do you know anything more about Chrysler cars than you have stated?

The Witness: No, sir.

Q. What kind of a cab was this you were driving? A. Yellow Cab.

Q. Was it a Shaw? A. Yes.

Q. And that has a 120-inch wheel base, hasn't it, approximately? A. I don't know, sir.

Q. You were going south when you were hit? A. Yes, sir.

Q. I show you another photograph looking south, apparently taken a little north of Second Street, and ask you if that correctly depicts the condition of the street looking south at the time of this accident? A. Yes, sir.

Q. And does that show the curve about which we have been speaking? A. Yes, sir.

Mr. Townsend: I ask that this be marked for identification.

(Marked Exhibit D-M-2 for identification.)

Mr. Townsend: Do you want to have me offer this in evidence so that the jury can see it?

Mr. Kavanagh: I have no objection.

Mr. Kronmeyer: I have none.

(Marked Exhibit D-M-2 in evidence.)

Re-direct examination by Mr. Kronmeyer:

Q. This road coming up from the ferry is known as what? A. Pershing Road.

Q. Generally when you get to the top of the hill you increase your speed, don't you? A. There is a beacon light there.

Q. But when you straighten up, coming into the Boulevard, you increase your speed, don't you? A. Yes.

Q. Isn't there a stairway at this point down to the ferry? A. No, sir.

Q. Well, where is that stairway? A. Five blocks away, Columbia Terrace.

Q. Isn't there another one right here? A. No, sir.

Q. Isn't this where the sculptor's home is? A. Yes.

Q. And isn't that where the stairway is? A. Yes.

Q. Isn't there another stairway right here, going down to the ferry? A. No, sir. That is at Columbia Terrace about five blocks away.

Mr. Kronmeyer: That is all.

Re-cross-examination by Mr. Townsend:

Q. Pershing Road comes up from the ferry this way and makes a turn like this? A. Yes, sir.

Q. And there is a beacon light about at the point L where you have to go around it, is that correct? A. Yes, sir.

Q. And this is the West Shore ferry down here? A. Yes, sir.

Q. You passed over a railroad bridge along there? A. Yes, sir.

Mr. Townsend: That is all.

JOHN M. PATTERSON, sworn.

Direct examination by Mr. Kronmeyer:

Q. What is your full name? A. John M. Patterson.

Q. Where do you live? A. I live in West New York.

Q. What is your business? A. General supply business, leather goods, 221 Washington Street, Hoboken.

Q. Do you recall the first day of March, 1926? A. Yes, sir.

Q. Were you driving a car on the Eastern Boulevard, near Second Street? A. Yes, sir.

Q. What kind of a car was it? A. A Chrysler.

Q. And did you own the car at that time? A. Yes, sir.

Q. Were you the only occupant of that car? A. There was another party there with me going to a friend's house in West New York. I just closed up my store on Washington Street and left there and was going directly up to this party's house in West New York.

Q. Was this a man or a lady with you? A. A lady, a friend of the people I was going to.

Q. And did you see a taxicab coming in the other direction? A. Well, I will tell you how the accident happened——

Q. All right, tell me how the accident happened. A. I was driving on the right hand side of the street slowly. I had plenty of time. A Ford car came along, I don't know why he done it, and he pulled by me, passed by me and pulled in front of me and almost came to a standstill, and to avoid having an accident crashing into the Ford, I tried to get around it. I was going down hill and I could not, even though I was only going 15

miles an hour at the time—if I applied my brakes, the hydraulic brakes, if you apply them very quickly, it is dangerous, and I tried to get around the Ford car and just as I pulled around the Ford car I see the taxicab coming and I applied my brakes as easily as I could, but we were too near.

The Court: You were on your right side of the center?

The Witness: Yes, sir.

The Court: When you turned to pass the Ford?

The Witness: I was in the center of the street then.

The Court: Were any of your wheels over on your left side of the center line then?

The Witness: I don't think so.

Q. Now, Mr. Patterson, how far away was the taxicab when you first noticed it? A. The taxicab was about, I judge, 20 feet or more.

Q. That is the first time you saw the taxicab? A. As soon as I pulled around the Ford. The Ford came practically to a standstill, and while I was not going fast, still and all I didn't want to crash into the Ford.

Q. The Ford car was going—— A. The Ford car passed me and pulled in front of me and came to a standstill. I don't know whether he did it out of spite or what.

Q. Was this Ford driving in the same direction you were? A. Driving in the same direction I was driving in.

Q. How many feet was he in front of your car? A. He passed me and pulled in front of me and when he came to a standstill he was, I judge, nine or ten feet.

Q. When did you first notice the Ford car, how far from Second Street? A. The car was going up the loop and he was behind me all the way going up the loop.

Q. Well, let's understand this thing, Mr. Patterson, I don't quite get it. You were driving on the Boulevard East? A. Yes, sir.

Q. Going from south north to West New York? Is that right? A. Yes, sir, to West New York.

Q. This is Second Street. How far were you from Second Street when you first noticed this Ford car? A. The Ford car was traveling in the same direction as I was.

Q. Traveling in the same direction as you were? A. Yes, sir.

The Court: Where was he when you first saw him?

The Witness: When I first noticed the Ford car on the Boulevard it must have been going up that hill. It was right behind me all the way from——

Q. Out the Boulevard loop? A. This is where the electric ferries are now.

Q. When you say the Boulevard loop you mean down here, the road that comes up from Union City and winds over toward Eastern Boulevard, do you? A. No, sir, I mean the loop that starts from where the electric ferries are now in Weehawken.

Q. You mean the loop where the Alexander Hamilton monument is, do you? A. It starts from where the electric ferries are.

The Court: How far away from Second Street did you first notice this Ford?

The Witness: I noticed the Ford about

ten blocks before that. The Ford was right behind me all the way from Weehawken.

Q. When did the Ford get in front of you? A. Right near Second Street where the accident happened. The Ford passed me by there and pulled in front of me and practically stopped.

Q. How far did the Ford proceed in front of you? For how long a distance? A. Not more than 20 feet, then practically stopped.

Q. And your car was behind him nine or ten feet? A. My car was behind the Ford.

Q. About nine or ten feet you said? A. Yes, sir, and when he stopped I didn't know why he stopped and I didn't want to strike him and have an accident. I tried to go around him.

Q. Where was the Ford, in the center of the Boulevard? A. Right in front of me, on the right hand side of the street.

Q. And how far from the curb? A. I should judge about——

Q. How far from this curb? A. I should judge about six feet—more than that.

The Court: How far were his right wheels out from the easterly curb?

The Witness: I had just enough road to get around him——

The Court: No, no, how many feet were his right wheels out from the curb about, if you know?

A. Well, I don't know that. There was just enough room to pull around him to avoid an accident. And when I pulled out around him I was rolling down on compression, and it was down grade when I seen the taxicab coming.

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The Court: How fast were you going at the time you pulled to your left to pass the Ford?

The Witness: Not more than 15 miles an hour.

Q. And when the Ford stopped you were 10 feet behind the Ford, is that right? A. No. When the Ford stopped, when I was traveling behind the Ford, when the Ford passed me by and got in front of me he was there about 10 feet, but when he stopped he was about 7 or 8 feet, just about enough room for me to get around him.

Q. All right, Mr. Patterson, where did the impact take place? Where was the collision between you and the car, the Mac's Auto taxicab—where did that take place?

The Court: The exact point where they came together.

The Witness: Well now, the exact point —it was back from the intersection but I don't know the exact point.

Q. Where was it, at the intersection of Second Street and the Boulevard? A. It was not far from the intersection.

Q. Was the taxi three feet from the curb? A. The taxi was right in the center of the street.

Q. The taxicab was right in the center of the street? A. Yes, sir.

Q. And your car was in the center of the street too, wasn't it? A. Mine was not over the white line.

Mr. Townsend: That is objected to as leading.

Mr. Kronmeyer: All right, I will withdraw the question.

Q. Where was your car? A. In the center of the street, on the right hand side, not over the line.

Q. Is there a painted line there in the center of the street? A. Yes.

Q. And how far were you from that painted line? A. On the right side of the painted line.

Q. How far from the painted line, how many feet? A. Well, in the middle, about two inches.

Q. And how far was the taxicab from the painted line? A. I never looked.

Q. And haw far away was the taxicab when you first saw it? A. I think I answered that question before.

Q. Well, please answer it again. A. Well, I pulled around the Ford and the taxicab was almost right straight ahead, about 20 feet, and I tried to apply my brakes, tried to stop without skidding, because the street was slippery and wet. It had rained before. It was not raining then.

Q. How fast was the taxicab coming at that time? A. Well, that I cannot say.

Q. You have not any idea how fast it was going? A. I haven't.

Q. And did you hear any horn or warning given by the taxicab? A. No. There was no warning.

Q. No warning of any kind by yourself or by the taxicab? A. No, sir. It was not a cross street. There was no warning there.

Q. Although you were approaching Second Street? A. That is not a cross street. Second Street is a dead end street.

Q. Isn't it a one way street? A. Yes, it ends at the Boulevard though.

Q. Third Street is a one way street too, isn't it? A. That I don't know.

Q. Don't you know that Third Street is a one way street? A. No, sir.

Q. Don't you know that Third Street is for traffic coming from west to east to the Boulevard and Second Street is for traffic going east to west, don't you know that? A. That I don't know.

Q. Would you say that the taxicab was traveling faster than you were at the time of the accident?

Mr. Townsend: I object, leading.

The Court: Sustain the objection. Can you judge the rate of speed the two cars were traveling at the time of the accident?

The Witness: No. The speed of my car was about 15 miles an hour and if the taxicab was traveling at 15 miles an hour——

The Court: No, no. How fast was it going?

The Witness: I cannot say. If he was traveling at 15 miles an hour uphill, he should have stopped much sooner.

The Court: Strike that out. I asked you if you could tell how fast he was traveling.

The Witness: My car was going 15 miles an hour.

The Court: And you don't know how fast the other car was going?

The Witness: No, sir, I cannot say.

Q. And what was the position of the cars at the time of the accident? What was the position of your car and what was the position of his car?

The Court: How did they stand in the street?

The Witness: About a half head on collision.

The Court: What do you mean by that, each car going straight?

The Witness: Yes, sir.

The Court: And your left wheel was inside of the other car's left wheel?

The Witness: My left wheel caught him and his left wheel caught mine. It was a head on collision with both left wheels on the line.

Mr. Kronmeyer: That is all.

Mr. Kavanagh: I will recall Mr. Patterson later as my own witness. I do not want to cross-examine him now.

Cross-examination by Mr. Townsend:

Q. This car was a Chrysler sedan? A. A Chrysler coach.

Q. Capable of going pretty fast? A. I don't know, I never tried how fast they go.

Q. What is the fastest you had ever driven that car? A. The fastest? I never traveled fast.

Q. What was the fastest you ever traveled? A. The fastest I ever drove the car was about 28 miles an hour. That was in the open country.

Q. With no traffic? A. No traffic, but on Eastern Boulevard I am traveling every day, morning, noon and night, and I am pretty careful on Eastern Boulevard or in the city.

Q. And you never go over 15 miles an hour I take it? A. I never go more than that—if it is a clear road—more than 20 or 25 miles an hour.

Q. Suppose it is wet? A. Then I will go a little more carefully.

Q. That is the fastest you have ever had that car up to, 28 miles an hour out in the open country? A. Yes.

Q. You had hydraulic brakes? A. Yes, sir.

Q. They are the kind that are not supposed

to skid? A. Yes, but if you throw them on too quick they are bad, especially if you are going down hill.

Q. You are not supposed to skid with hydraulic brakes, are you? A. You have to apply them carefully.

Q. How long had you been driving an automobile at the time of the accident? A. Oh, about a couple of years.

Q. You were going down on compression at this time, you said? A. Yes, on compression because I was waiting for the red light——

Q. With your clutch in?

Mr. Kavanagh: Let him finish.

A. I was going down to the intersection and if you are in a car——

Q. Please—I asked you if you were going down on compression? A. On compression, yes.

Q. Then you had your clutch in, did you? She was in gear? A. Yes, sir.

Q. Hydraulic brakes? A. Yes.

Q. Brakes in good condition? A. Yes.

Q. Going 15 miles an hour and you could not stop within 20 feet? A. Not when I tried to pass the Ford to avoid a collision.

Q. Well, you were 20 feet away when you saw this taxicab you said, as you pulled out from behind this alleged Ford. A. I was on compression when I was behind the Ford but when the Ford stopped and cut me off I had to pass by the Ford.

Q. So you put on the juice? A. Well, when I passed by the Ford the taxicab was coming straight on to me.

Q. But you put on the juice when you tried to pass the Ford? A. Well, when you are starting in first you could not put on much juice.

Q. I am asking you if you did. You said you were on compression. Now, did you put the gas on or not? A. I was on compression when I was back of the Ford car.

Q. Did you say you were in first gear? A. I had to go in first gear to pass the Ford.

Q. You were in third gear and the Ford suddenly stopped about eight or ten feet ahead of you, is that correct? A. I was rolling on compression, that is in neutral when I was behind the Ford.

Q. Then you were not in gear? A. I was in gear when I was behind the Ford.

Q. How long had you had that car in neutral? A. Not more than five minutes.

Q. You had it in neutral for five minutes coasting down this hill? A. Yes.

Q. So you were running about 15 miles an hour when the Ford suddenly stopped and you shifted your gear to first? A. Into first.

Q. From neutral in a car going 15 miles an hour? A. Yes.

Q. And you had only driven two years and knew how to do that, is that correct? A. I don't get you just right.

Q. Do you mean to say that in a car going 15 miles an hour, in neutral, you can put your car in first gear without stopping? A. Oh, yes.

Q. You can do that? A. Yes.

The Court: Well, did you increase your speed or decrease your speed when you started to go by the standing Ford?

The Witness: Well, when I changed the car into first I gave her a little more gas, but that didn't increase the speed more than about 12 miles an hour in first.

Q. Well then I understand you were in neutral going 15 miles an hour when this car suddenly slowed up in front of you about eight or ten feet away? A. Yes.

Q. Did it stop or slow up? A. The Ford car?

Q. Yes. A. The Ford car practically stopped when it got about 10 feet ahead of us.

Q. Was there any signal given, did the man stick his hand out or anything like that? A. No.

Q. Oh, you were watching him? A. Naturally.

Q. Then you pulled out eight or ten feet because you could not stop? A. I tried to get around him to avoid a collision.

Q. But you could not stop? A. It was downhill.

Q. So you went around him? A. Yes.

Q. And when you went around you threw her into first? A. Yes. Then the taxicab was coming.

Q. And you saw the taxicab 20 feet away? A. Yes.

Q. Why didn't you stop then? A. I was going downhill. I had no chance. I applied my brakes as much as I could.

Q. You applied them as much as you could, and you could not stop? A. No.

Q. What happened to the Ford afterward? A. The Ford got away.

Q. Did you get his number? A. Nobody got his number, that is what we are all talking about that night.

Q. Who were you talking to that night? A. The policemen there at the scene.

Mr. Townsend: Will the officers stand up?

Q. Were you talking to any of those fellows about it? A. I cannot recognize any men I was

talking to, but that was the conversation, that the man that caused the accident got away.

Q. But you were talking to the policemen about it? A. We were all talking together.

Q. About this Ford? A. About the Ford that got away, that caused the accident.

Q. Well now, your car then had been going not over 15 miles an hour? A. I may have gone 20 miles an hour going up the hill, but after I got over the hill I was not going more than 15 miles an hour.

Q. You said on direct examination there was a lady with you, a friend of the lady where you were taking her? A. Yes, sir.

Q. I judge from that that you did not know this lady very well? A. I knew her, yes.

Q. She was a friend of yours, was she? A. A friend of the family for years.

Q. A friend of yours? A. A friend of the family for years.

Q. A friend of your wife's? A. A friend of all my family's.

Q. You are married, are you? A. Yes, sir.

Q. And you have children, haven't you? A. Yes, sir.

Q. Well, what was this lady's name? A. Miss Elizabeth Hughes.

Q. Is she in court today? A. No, sir, I don't know.

Q. Have you subpoenaed her here as a witness? A. No, sir.

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

Q. When was the last time you saw her? A. About—I don't really recall, about three or four weeks.

Q. Did you see her yesterday? A. No, sir.

Q. She lives in Hoboken, doesn't she? A. Yes.

Q. And you say that she is a friend of your family's? A. She boarded with my sister for years.

Q. You were going to a birthday party that night? A. I was going to a party—I believe it was a birthday party of Mr. Kelly's daughter.

Q. And you were taking Miss Hughes there? A. I was not taking her, exactly, she was going there and when I closed up my store she happened to pass by and told me she was going to this birthday party and I told her she could come along in the car with me as I was going there.

Q. You were invited there, too? A. I was invited there, yes.

Q. So that the two of you were going to this party which was in North Bergen some place? A. West New York.

Q. What time was this party supposed to start? A. That I don't know, I could not leave my business before nine o'clock.

Q. What time did this accident happen? A. I don't exactly know.

Q. What time did you leave your place of business, at nine o'clock? A. About nine or nine fifteen.

Q. Don't you know that this accident happened about half past ten or quarter of eleven? A. Well, I might have been delayed in my business. I close my store at nine o'clock, but if you come in at nine o'clock to buy something, I will stay there for an hour.

Q. After you closed your store where did you go? A. I went direct up there.

Q. You did? A. Yes.

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

Q. Had you been drinking anything that night? A. No, sir. There was a police doctor there examined both the driver and myself.

Q. Had you been drinking anything that night? A. I drank a couple of glasses of wine about an hour before.

Q. Where was it that you drank the wine? A. I refuse to answer.

Mr. Townsend: I submit I am entitled to an answer.

The Court: Answer the question.

The Witness: I drank it at Third and Grant Street, Hoboken.

Q. About an hour before this accident happened? A. Yes, sir.

Q. And who was with you at that time? A. I drank alone.

Q. Was Miss Hughes with you? A. She was in the car, but I was alone.

Q. She was in the car and you were alone? A. Yes, sir.

Q. Your business is where? A. 221 Washington Street.

Q. That is near Second Street? A. Between Second and Third.

Q. So before starting for this birthday party you had gone into this place at the corner of Second or Third Street and Grand Street and had two or three drinks? A. Two glasses of wine.

Q. Nothing stronger? A. Nothing stronger.

Q. And from there you proceeded directly up to the scene of the accident? A. Yes.

Q. How long did you stay in this place where you had the two or three glasses of wine? A. I should say I stayed there not more than 10 minutes or so.

Q. So that you closed your store at nine or nine fifteen and you went into this place—— A. I don't know exactly the time I left the store.

Q. What is your best judgment? A. Well, I tried to close at nine o'clock but I never take the time of what time I close.

Q. You had to go to this birthday party and you had Miss Hughes waiting for you or did you call for her? A. I didn't call for her, she happened to pass by the store.

Q. She happened to pass by the store at the time you were closing? A. Yes, and she told me she was going to the party.

Q. That was the first time you knew her? A. No, sir.

Q. You knew her before? A. Yes.

Q. You knew she was going to the party before that? A. No.

Q. You knew you were going? A. I expected to go. I was not very particular whether I went or not.

Q. When was it you had gotten the invitation to go to the party? A. Probably a week before, I don't know. That is a question I could not answer.

Q. And when was the last time before this night that you had seen Miss Hughes? A. That I cannot answer. I don't know. I have seen her often. She was living with my sister——

Q. She just happened to pass by your store as you were closing? A. Yes.

Mr. Kavanagh: I object to all this, it is absolutely immaterial, incompetent and improper cross-examination.

The Court: It is too late to object.

Mr. Kavanagh: I have let him go far enough, but I am going to object now, if your Honor please.

The Court: There is no question before the court now.

Q. You closed your store and went to a place at Third and Grand Street?

Mr. Kavanagh: I object, it has already been answered and it is absolutely improper cross-examination, incompetent, irrelevant and immaterial.

The Court: I overrule the objection.

Mr. Kavanagh: Exception.

A. Third and Grand.

Q. Grand Street is how far from Washington Street? A. Well, there is Bloomfield, Garden, Park, Willow, Clinton and Grand.

Q. Five blocks? A. Yes.

Q. Five blocks west of Washington Street; you had gone all the way over to Grand Street and stopped at this place, then started for this party, that is correct, is it? A. Yes.

Q. Washington Street was your direct route up there, wasn't it? A. Pardon me. This gentleman at Third and Grand Street is a friend of mine and I often go in there on business, even though I don't go in for a glass of wine.

Q. What kind of a place does he keep there? A. A cafe.

Q. A regular saloon, is it? A. Well, if you want to call it that.

Q. Well, we will dignify it by the name of cafe. A. If you want to call it that, that is what it is.

Q. Did you go over there on business that night? A. On business, yes.

Mr. Kavanagh: I object to that if your Honor please, improper cross-examination, incompetent, irrelevant and immaterial.

The Court: The witness has answered it and besides it is perfectly competent cross

examination. The objection is overruled.
Mr. Kavanagh: Exception.

Q. What time do you think you left your friend's place at Third and Grand Street? A. I don't know.

Mr. Kavanagh: I object to that.
The Court: Overrule the objection.
Mr. Kavanagh: Exception.

Q. How long did it take you to run from there to the point where the accident happened? A. Well, I never figured out the time, but I should judge about 12 or 14 minutes.

Q. Now, can you give the gentlemen of the jury any idea of the time this accident happened? A. I didn't take the time.

Q. You cannot tell whether it was half past nine, ten, half past ten, eleven or half past eleven? A. I didn't take the time. The thing I was anxious about was to see if there was anyone injured when the accident happened and have them taken care of.

Q. This Chrysler, what series is that, a 70? A. A 70, yes.

Q. You had followed this Ford all the way from the hill down at Weehawken, had you? A. No, sir.

Q. Where was the first place you had seen him? A. The Ford was behind me.

Q. Oh, he had followed you? A. Yes, he followed me.

Q. All the way from Weehawken? A. Yes, and passed me just previous to the accident.

Q. And about Second Street he passed you? How far from Second Street did he pass you? A. I don't know, I didn't get out and measure it.

Q. You do not even know about where he passed you? A. Well, right before the accident happened he passed me. I think I answered that.

Q. Just before the accident happened? Did he pass you on his left side or right side of the road? A. He continued on the right side, but he stopped in front of me and when the accident happened, he had time to get away.

Q. Was he on his right side of the Boulevard? A. Yes.

Q. Don't you know that from the center of the Boulevard over to the curb is about 30 feet? A. I never measured it.

Q. Would you say it was approximately? A. I could not answer that question, I am not sure.

Q. Well, you go up and down there several times a day, I understand you to say? A. Yes, but I am not much at measuring.

Q. You had a conversation with the driver of this car immediately after the accident, didn't you, Mr. Patterson? A. I really don't recall it.

Q. Don't you remember telling him who the young lady in the car was? A. No, sir, I do not.

Q. Are you sure you did not tell him? A. I don't say I didn't tell him, but I don't remember telling him. The most thing I was anxious about after the accident was to see who was injured and get them to the hospital and I asked the officer——

The Court: Never mind that.

Q. Will you deny the fact that you told him that this lady that was in the car with you was your daughter? A. I don't deny it, but I don't recall it.

Q. Had you had any conversation with Miss Hughes before this accident happened? A. What do you mean conversation?

Q. As you were coming up from Hoboken. A. Not that I remember.

Q. Had she said anything to you? A. Not that I know of.

Q. So that you never said anything to her on the way from Hoboken? A. I am very careful when I am driving.

Q. When you are driving you do not talk? A. When I am driving I do not talk.

Q. Did you talk this night? A. I don't recall.

Q. Did she talk with you? A. I don't think so.

Q. Isn't it a fact that she told you not to go so fast and to go a little bit easier? A. No, sir.

Q. She did not tell you that? A. No, sir, not that I recall.

Q. And that you then moved over to let this car pass. Didn't she tell you that? A. No, sir.

Q. Well, did you do that? A. I moved over and let the car pass me.

Q. Did you do that after she had had a conversation with you? A. No, sir.

Q. And you say she is not here to-day? A. No, sir.

Q. And you have not subpoenaed her? A. No, sir, I didn't think it was necessary, no, sir.

Q. Which way was your car facing after the accident? A. Facing the way I was driving.

Q. Are you sure of that? A. Yes, sir, none of the cars were turned around.

Q. Are you sure of that? A. Well, as I told you before, the main thing I was interested in was to see who was hurt——

The Court: Just answer the question. He asked you were you sure of that. A. I am not sure.

Q. Then you do not know which way your car was facing? A. I am sure that the car was not turned around.

Q. And you are not sure as to where your car was, are you? A. It was on the right side of the line.

Q. You saw that line, did you? A. Yes, sir.

Q. You saw Dr. Stein, didn't you? A. Yes.

Q. He examined you, didn't he? A. Yes, sir.

Q. You told him you had been drinking, didn't you? A. I admitted to the Doctor that I had a couple of glasses of wine, and he detected the odor of wine on my breath, but he told me I was not under the influence of drink.

Q. Now the fact is, is it not, that when your car came to a stop, after the accident, Miss Hughes was taken to the hospital, wasn't she? A. Yes, sir.

Q. And Miss Mangone was taken to the hospital? A. Yes, sir.

The Court: Did the officers come there?

The Witness: Yes, sir.

The Court: Had there been any change in the position of the cars before the officers got there or were they in the same position as they were right after the accident?

The Witness: I don't know, your Honor.

The Court: You did not change them?

The Witness: I did not.

Q. You were not hurt, were you? A. No, sir.

Q. So far as you know the cars were in the same position as they were at the time of the accident, when the officers got there? A. I know my car was taken away without me giving any instructions.

Q. But that was after the officers had got there? A. Yes, sir.

Q. Where was your car taken? A. To a garage to have repairs made.

Q. Who took the car? A. I don't know; the officers gave the orders.

Q. The fact is, is it not, that when the officers got there your car was only a few feet away from the westerly curbline, up against the left front wheel of the taxicab? Do you say that that is true or is not true? A. Where was the other car then?

Q. I am speaking of your car. A. My car was on the center of the street.

Q. I am asking you whether it is not a fact that when the officers got there your car was only a few feet, three or four feet away from the westerly curbline of the Boulevard. A. Then I cannot understand——

Q. Well, you saw everything there that night? A. Yes.

Q. You are sure you saw everything after the accident? A. Yes.

Q. You saw the white line after the accident? A. I think I answered that before.

Q. Then you won't mind answering it again. A. When the accident happened I got out of the car as quickly as I could——

Q. Did you see the white line? A. I seen the white line when the accident happened.

The Court: Before or after the accident?

The Witness: After the accident happened, I didn't look for a white line or anything else. I was anxious to see who was injured.

Q. So after the accident happened, you do not know where your car was in relation to the white line, do you? A. After the accident I don't know.

Q. And you don't know where the taxicab was in relation to the white line, do you? A. I didn't look. I looked for the ones that were injured.

Q. Where is Miss Hughes living to-day? A. I don't know, sir.

KATHARINE MANGONE, sworn.

Direct Examination by Mr. Kronmeyer:

Q. Where do you live? A. 23 King Avenue.

Q. Weehawken? A. Yes, sir.

Q. And were you living there on the first of March, 1926? A. Yes.

Q. And on the first of March, 1926, did you hire a taxicab from the Mac's Auto Service in Weehawken? A. Yes, sir.

Q. To take you where? A. Home.

Q. And you have been in court this morning, haven't you? A. Yes, sir.

Q. And you heard the testimony of these witnesses? A. Yes, sir.

Q. An accident occurred on that day, didn't it? A. Yes.

Q. At Second Street and the Boulevard? A. Yes.

Q. Was the impact of those two cars light or was it loud? A. It was loud.

Q. Would you say very loud? A. Quite loud, yes.

Q. And what happened to you by reason of that accident? A. I was thrown to my knees on the iron heater in the taxicab.

Q. And you were then taken to what hospital? A. The North Hudson Hospital.

Q. And from the North Hudson Hospital you were taken home? A. Home, yes.

Q. And who attended you at your home? A. Dr. Simiotti.

Q. Dr. Walter F. Simiotti? A. Yes.

Q. Is Dr. Simiotti living now? A. No.

Q. Do you know that he died on March 31st, 1926? A. Yes.

Q. How many days did he call at your house after the accident? A. He called almost every day.

Q. For how many days, until what day? A. Until two or three days before his death.

Q. And you say almost every day from March 1st, to March 28th or 29th? A. Yes, sir.

Q. And who attended you after that? A. Dr. Hellstern.

Q. Is Dr. Hellstern in court? A. Yes.

Q. And he was your attending physician and is at the present time? A. Yes, sir.

Q. Will you describe to the jury just what injuries you sustained by reason of this accident. A. Water on the knee.

The Court: Which knee?

The Witness: That knee.

Q. Did you have pains there? A. Yes, sir.

Q. Any other injuries? A. Just a few scratches on my arms and my other knee.

Q. What did Dr. Simiotti do to you? A. He treated me for about a week with some medicine and he strapped it up after that.

Q. Were you in bed at that time? A. Yes, sir.

Q. How long were you in bed? A. I was confined to my bed for two weeks and continually in the house for three weeks.

Q. You say Dr. Simiotti gave you what after the accident? A. Some sort of medicine and an ice bag.

Q. What else did he do? A. He strapped it up.

Q. How did he strap it? A. With adhesive tape.

Q. Then what was done? A. Then he strapped it again tighter.

Q. How long was it strapped up? A. It was strapped a week each time.

Q. Then what was done after that? A. Then I had to get an elastic knee cap.

Q. And how long did you have to wear the elastic knee cap? A. I had to wear it until November.

Q. And what was done after that? A. I have had my knee baked.

Q. Who did that? A. Dr. Hellstern.

Q. And how many times did you go to Dr. Hellstern? A. Well, I went frequently at first; now I go about every two weeks.

Q. Have you pain? A. Only in bad weather now.

Q. Where? A. On my knee.

Q. How are those pains? A. They are quite severe.

Q. Did you have those pains at any time previous to the accident? A. No, never.

Q. What pain did you suffer immediately after the accident when you were in bed? A. My knee, my whole leg at first.

Q. What leg was that? A. My left leg.

Q. Have you any scars on the left leg at the present time? A. Yes, a small scar.

Q. As a result of this accident? A. Yes, sir.

Q. Did the estate of Dr. Simiotti render you a bill for his services? A. Yes, sir.

Q. What was the amount of that? A. I think it was about $100.

Q. Did Dr. Hellstern render a bill? A. Yes.

Q. And how much is that? A. Well, he rendered one until July, I think June or July, for $96, and he has not sent me another one yet.

Q. You say you have water on the knee? A. Yes.

Q. Just tell us how it happened, how were you thrown about in this taxicab—you said against the heater? A. Yes, they have a grating, I don't know whether it is made of iron or not, just a little hump, and I fell against that.

Q. With great force? A. Yes, sir.

Q. Just describe what were the injuries you had, were they mostly about the legs? A. Yes, on both knees.

Q. But the right knee is entirely healed? A. Yes, the left knee was badly injured.

Q. And you say you were confined to your bed for how long? A. Two weeks.

Q. And you were confined to your home after that how long? A. After that I was around the house for a week.

Q. How long did you keep that rubber knee cap? A. Until about the first of November.

Q. How did you go about? A. Well, the first few months I had to use a cane.

Q. Are you obliged to use a cane at the present time? A. No, sir.

Mr. Kronmeyer: That is all.

Cross-examination by Mr. Kavanagh:

Q. Miss Mangone, you had been in the habit of riding in Mac's Auto Service taxicab on many occasions prior to this? A. Yes, sir.

Mr. Kronmeyer: I object.

The Court: It is proper. She had indicated how she was hurt and she has described the interior of this taxicab.

Q. And you never were in any other accident, were you? A. No.

Q. Never in any other accident at all outside of a taxicab accident? A. No.

Q. Now, you got into this taxi at the West Shore ferry? A. Yes.

Q. And nobody else was in the taxicab? A. No.

Q. Did you give the chauffeur any instructions as to how to get you home? A. Just my address.

Q. What did you say to him? A. "23 King Avenue."

Q. You did not tell him to get you home as quickly as he could? A. No.

Q. You never had told him or any other driver at any other time to get you home as quickly as possible? A. No.

Q. Now, do you drive a car yourself, Miss Mangone? A. Yes, sir.

Q. How long have you been driving a car? A. Three or four years.

Q. What kind of a car have you driven, or cars? A. Several kinds.

Q. Tell me the names of them, please. A. A Franklin, a Cadillac, a Dodge. I don't remember if I have driven any other.

Q. You are pretty familiar with the operation of automobiles, aren't you? A. Yes.

Q. And also very familiar with the speed of automobiles? A. Yes.

Q. Now, you were in the car coming up the hill? A. Yes.

Q. Can you tell the court and jury at what rate of speed he was driving up that hill? A. I don't remember.

Q. Was he driving 25 miles an hour? A. I don't think so.

Q. Driving up the hill pretty fast, wasn't he? A. I don't remember, I paid no attention.

Q. You remember his turning into the Boulevard and heading south, though? A. Yes.

Q. He was going pretty fast at that time too, wasn't he? A. I don't remember.

The Court: Did you see this other car before it hit you?

The Witness: Yes, sir.

The Court: How far away?

The Witness: Just a very few feet, just before.

The Court: How many feet?

The Witness: I really don't know.

The Court: Did you do anything or say anything at that time?

The Witness: No, sir, because it was too close at the time.

The Court: Had you been looking out of the car before that?

The Witness: No, sir.

The Court: What were you woing?

The Witness: I was not doing anything, just thinking.

The Court: You were not looking out?

The Witness: No, sir.

The Court: What made you look out at the time you looked out and saw the car there just a few feet away?

The Witness: I don't know, the lights of the other car.

Q. You tell us you have driven cars a good many years; are you acquainted with the operation and speed of different kinds of cars? A. I am.

Q. You say you don't know what rate of speed the taxicab was traveling on this night, is that right? A. No.

Q. You say you don't know the rate of speed it was going up that hill from the ferry? A. No.

Q. And you don't know the rate of speed it was traveling at on the Boulevard when it was struck? A. Yes, 20 or 25 miles an hour.

Q. Could it have been more? A. It may be; I don't think so.

Q. How is it you do not know the rate of speed it was coming up the hill? A. I didn't pay any attention to it coming up the hill. You were asking me about the Boulevard.

(Recess Until Two P. M.)

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2 P. M.

(After Recess.)

Mr. Kronmeyer: One thing I omitted. We had some ex-rays taken for which we paid $25 to Dr. Goldstone and $10 for a knee cap.

Mr. Townsend: We will admit that.

Mr. Kavanagh: No objection.

Cross-examination by Mr. Kavanagh (continued):

Q. As a matter of fact, Miss Mandone, I asked you on your cross-examination before lunch if you knew the rate of speed your car was traveling when it turned into the Boulevard and you said

you did not remember. Do you desire to change that testimony? A. No.

Q. Then I understand you to say you do not remember what rate of speed your car was traveling when it turned and went south on the Boulevard? A. No.

Q. Notwithstanding the fact that you said a while ago that you could not remember. A. I said I could not remember.

Q. Were you taken to the hospital right after this accident? A. Yes.

Q. What hospital? A. North Hudson.

Q. How long were you confined there? A. About a half hour.

Q. Were you examined by a physician? A. No.

Q. Well, were you taken into any of the wards or private rooms of the hospital? A. No.

Q. Who took you to the hospital? A. I don't know the man's name.

Q. Well, you were unconscious at the time the accident happened, were you? A. No.

Q. Did the driver take you to the hospital? A. No; two men stopped but they gave no name.

Q. Did Mr. Patterson take you to the hospital? A. No, he was in the car, though.

Q. Did you have any conversation with Patterson after the accident? A. In the hospital.

Q. I mean at the time the accident occurred at Second Street and the Boulevard? A. No.

Q. You did not talk to him, did you? A. No.

Q. Did he talk to you? A. No.

Q. Did the driver of your taxicab inquire of you about the extent of your injuries? A. No, he just said are you hurt?

Q. Well, you heard him testify this morning that he examined your leg and said that you had a number of bruises on your leg.

The Court: He didn't say he examined it. He said that she was bruised on the legs.

Mr. Kavanagh: I withdraw the question.

Q. Did the driver of the taxicab attempt to examine your leg to ascertain the extent of your injuries? A. No.

Q. Did Mr. Patterson right after the accident when he got out of his car question you as to whether you had been injured or not? A. No.

Q. Did anybody? A. Just the policeman and the driver asked me if I was hurt.

Q. The driver then did ask you, didn't he? A. Yes.

Q. And what did he say to you? A. He just said he was sorry.

Q. I mean did he ask you if you were hurt? A. Yes.

Q. What did you tell him at the time? A. I don't know; I probably said yes.

Q. You do not remember what you told him? A. No.

Q. Did you tell him that you had a few bruises on one of your legs? A. No.

Q. Do you remember telling him anything regarding what injuries you sustained? A. I only asked to be taken home. I said nothing about my injuries.

Q. Well, you tell the court and jury now that he asked you whether you had received any injuries or not; that is true, is it? A. Yes.

Q. Did you answer his question as to what happened to you? A. I said I was hurt.

Q. Did you tell him where you were hurt? A. No.

Q. You did not mention anything about your legs being bruised, did you? A. No.

Q. You did not mention anything about having an injury to a knee cap, did you? A. No.

Q. You walked out of that car as perfectly as you walk today, didn't you, Miss Mangone? A. No, I did not.

Q. You did not have to be assisted out of the car, did you? A. Yes, I had to be assisted out of the car.

Q. By whom? A. The driver and the policeman.

Q. Did they carry you out of the car? A. Positively, yes.

Q. Who carried you out of the car? A. A policeman and the driver.

Q. Isn't it a fact that you got out of the car immediately after the accident occurred, that you opened the door yourself and stepped out? A. No, the driver came up.

Q. Madam, didn't you open the door yourself? A. No, sir.

Q. Didn't you tell me a second ago that you did open the door? A. No, I didn't.

Q. Who opened the door for you? A. The driver and the policeman.

Q. And you were able to step down into the roadway? A. I was not.

Q. You were able to step down into the roadway? A. No, I had to be assisted.

Q. Did anyone enter the car to carry you out? A. No, they just assisted me from the steps.

Q. You got up from the seat and walked down to the roadway? A. I didn't get up from the seat because I was on the floor of the taxicab.

Q. Well, you got up from the floor? A. As best I could.

Q. And stepped out? A. I was assisted out.

Q. You are sure you were assisted out? A. Yes, I am sure.

Q. And you did not tell the driver at that time that you just had a few bruises on your leg? A. No.

Q. How long did you remain at the scene of the accident before you were taken to the North Hudson Hospital? A. I don't think it was any more than five minutes.

Q. Did you ask to be taken to the hospital? A. No, I asked to be taken home.

Q. Did you have any conversation with the police officer regarding your being taken to the hospital? A. No.

Q. Did you object to being taken to the hospital? A. No.

Q. Did anyone ask you whether you wanted to be taken to the hospital or not? A. No, they just told me they were going to take me there.

Q. Who told you? A. I cannot remember now.

Q. You cannot remember that at all? A. It must have been the policeman.

Q. Well, you were perfectly conscious at that time, were you? A. I was conscious, yes.

Q. You were not excited, were you? A. I don't know whether you would call it excited.

Q. You were not excited at all, you knew what you were doing every moment after that accident? A. Yes.

Q. And when the policeman suggested to you that he would take you to the hospital you did not tell him to take you to your home, did you? A. No, not after he said that.

Q. You coincided with his wishes to take you to the hospital? A. Yes.

Q. Who did you see at the hospital when you were taken there? A. The policeman, Mr. Patterson and a nurse.

Q. Who else? A. That was all.

Q. Did you see any doctor there, Madam? A. No, an intern came down.

Q. Well, an intern is a doctor attached to the hospital, isn't he? A. Yes.

Q. Do you remember the name of the intern or the doctor that examined you? A. He didn't examine me.

Q. Why? A. Because I asked to be taken home to my own doctor.

Q. Did you refuse to be examined by the doctor? A. Yes.

Q. Did he volunteer to examine you? A. I don't remember.

Q. My goodness, here were you, a woman who had been injured in a taxicab accident and taken to the hospital at the suggestion of an officer in Weehawken, and you were taken there, and an intern attached to the hospital was there when you were brought in—do you mean to tell this court and jury that you refused to be examined by the intern? A. The intern went to Miss Hughes immediately.

Q. She was injured too? A. Yes.

Q. And he attended to her first? A. Yes.

Q. Well, he volunteered to attend to you too? A. No, he attended to her first, and he was the only one in there.

Q. Did you get angry because he attended to Miss Hughes first? A. No, I did not.

Q. Well you tell the court and jury why he attended to Miss Hughes first? A. I really don't know, I suppose she was——

Q. Did you see her when she was brought in? A. I saw her; they took us in the same automobile.

Q. And you saw the blood was running very profusely from her eyes and from a very great scar on the side of her face, under her chin and

on the top of her forehead where she had been struck by broken glass? A. I saw a lot of blood, but I did not notice the cuts.

Q. You were not bleeding, were you? A. My knees were bleeding, yes.

Q. But I mean, there was no visible signs of blood on your face or on your arms? A. My arms had scratches on them.

Q. I mean, you were not bleeding from your face, were you? A. No.

Q. Or the forehead or nose or mouth? A. No.

Q. And the blood that you say was coming from these scratches on your arms and on your legs was not visible to the attending doctor, the intern at that time, was it? A. Well, my knees were very visible.

Q. Was it visible to the intern at the time? A. Yes.

Q. You knew that Miss Hughes was more seriously injured than you were? A. She probably was if you say so.

Q. Her face was entirely covered with blood, blood running very profusely from three or four cuts on her forehead and her cheek and her chin, isn't that so? A. I didn't see any cuts; I just saw the blood.

Q. Well, you could not have seen any blood without there being cuts, could you Madam? A. Blood covered everything; I saw no cuts.

Q. Will you tell the court and jury why didn't you demand, if you were so seriously hurt, that the Doctor should be brought to attend to you? A. Because I preferred my own doctor.

Q. Notwithstanding the fact that you say you had been seriously hurt and brought to a hospital, nevertheless you would not remain there a minute to be attended by the intern who attended Miss Hughes? A. No.

Q. Were you employed at the time of this accident? A. No.

Q. You never was employed——

Mr. Kronmeyer: I object; we are not raising any question about loss of services.

Q. You say that Dr. Simiotti who is since deceased, attended you for what you call water on the knee? A. Yes.

Q. You were never laid up with any water on the knee, Madam, were you? A. I certainly was.

Q. Why, you were able to walk one or two days immediately after this accident, weren't you? A. I didn't walk, I could not walk.

Q. You were confined to bed for two weeks as you say? A. I certainly was.

Q. In your bed for two weeks? A. I was in bed for two weeks.

Q. And you want the jury and the court to believe that you did not arise from your bed at any time during the two weeks? A. I was carried a week later to the doctor, Dr. Goldstone, for an X-ray, but I could not walk.

Q. Isn't it a fact, Madam, that you did go about your own personal business, attend theaters, go over to New York within three or four days after this accident? A. No, that is not a fact.

Q. That is about March 5th of last year? A. No.

Q. Did you have a nurse at your house? A. No.

Q. At any time Dr. Simiotti was attending you, as you allege, for water on the knee? A. No, I had no nurse.

Q. Now you still say you were in bed continuously for two weeks? A. Yes.

Q. For this alleged water on the knee? A. Yes.

Q. Are you over that water on the knee yet? A. There is no more fluid on the knee now.

Q. Don't you know as a matter of fact Madam, there was never any water on your knee, as you call it? A. There may be a medical term for it, fluid on the knee.

Q. Do you walk with a halt or with a limp at the present time? A. Not any more.

Q. You walk perfectly normally and perfectly naturally, don't you? A. Now?

Q. Yes. A. Yes.

Q. And you did walk perfectly normally and naturally about less than a week after this accident? A. No, I did not.

Q. You never had to use a crutch? A. I had a cane.

Q. Well, don't you know as a matter of fact, Madam, that a person who is afflicted or affected with water on the knee must necessarily resort to a crutch? A. No; I used a cane.

Q. Don't you know when a person has ever had water on the knee at any time during his life, that it leaves him halted and lame for the balance of his life, Madam? A. No, not if they are taken care of.

Q. Don't you know that as a matter of fact? A. Do I know what?

Q. That I have just said. A. That a person with water on the knee is lame always.

Q. Yes. A. No.

Q. Notwithstanding the fact that he or she has been well taken care of or not during the time of their disability? A. I have never heard of it.

Q. Do you know what water on the knee is? A. It is fluid on the knee.

Q. Do you know the nature of the injury at all? A. Yes.

Q. How do you know it? A. I had it.

Q. Somebody else told you that, didn't they? A. The Doctor told me I had it, yes.

Q. The Doctor told you? A. Certainly.

Q. Notwithstanding the fact that you never had to use a crutch? A. I used no crutch. I had a cane.

Q. And you were confined to bed for two weeks continuously? A. Yes, sir.

Q. And then you got up and walked naturally? A. I did not.

Q. Well, how long did you use a cane? A. I had to use a cane for about a month.

Q. For about a month afterward? A. Yes.

Q. Will you tell the court and jury that the doctor told you that you had water on the knee and you were confined to bed for two weeks? A. Yes.

Q. Unable to walk, never got up, you say? A. No.

Q. And after another week, the third week, you got up and walked without the use of a cane? A. Yes.

Q. And you want us to believe that you had water on the knee? A. Yes.

Q. When did you throw your cane away? A. I didn't throw it away.

Q. You still have it? A. I still have it.

Q. Have you got it here in court today? A. No.

Q. When did you last walk with the aid of a cane? A. I told you I walked with a cane for about a month.

Q. About a month after the accident? A. Yes.

Q. That would be about up to the first of April? A. I walked a month after I got up.

Q. That would be about six weeks, bringing it to about the middle of April of this year, is that right? A. Yes.

Mr. Kavanagh: That is all.

Re-direct examination by Mr. Kronmeyer:

Q. Miss Mangone, who attended the nursing at your home for you? A. My mother and my sister.

Mr. Kronmeyer: That is all.

Cross-examination by Mr. Townsend:

Q. What time was this accident do you recall? A. It was after ten.

Q. You spoke of the fact that the driver asked you where you were injured. A. Which driver do you refer to? The driver of the taxicab?

Q. The one that was on the stand here. A. Yes.

Q. And I understand you to say that you had driven frequently in these taxicabs before the accident and never had an accident of any kind? A. Yes.

Q. You have driven in them frequently since the accident? A. Yes.

Q. And you never had any accident, did you? A. No, sir.

Q. The fact is that your limbs were bruised, were they not? A. Yes.

Q. Is it also a fact, Miss Mangone, that after this accident happened your car was very near the westerly curb, only a short distance away, three or four feet? A. It was near the curb; the distance I didn't notice.

Q. And isn't it a fact that the Patterson car was up against your car at the time? A. Yes.

Q. Near the westerly curb? A. Yes.

Mr. Townsend: That is all.

ALBERT C. HELLSTERN, sworn.

Direct examination by Mr. Kronmeyer:

Q. Where do you live, Doctor? A. Hudson Heights.

Q. You are a practicing physician of the State of New Jersey? A. Yes.

Q. Duly licensed as such? A. 23 years ago.

Q. Are you connected with any institutions? A. I am, yes.

Q. What institutions? A. I am now at the Holy Name Hospital at Teaneck.

Q. Any other institutions? A. I am on the Adjunct Associate, North Hudson Hospital; no more active.

Mr. Townsend: I will admit the Doctor's qualifications.

Mr. Kavanagh: Yes.

Q. Did you attend Miss Catharine Mangone? A. I did.

Q. When? A. About April 1st, 1926.

Q. For what did you treat her at that time? A. Injuries to her knee.

Q. Did you find any evidence of an injury? A. There was, yes.

Q. What knee was that? A. The left knee. There was a scar there and the knee is still swollen.

Q. Did she have any other injuries? A. No.

Q. For how long a period did you treat her? A. Why, she still comes up for treatment occasionally.

Q. What did you do for her at that time, on April 1st? A. I started to bake it and give her lotions and salves to rub on it.

Q. And could you tell at that time whether or

not there was water or fluid on the knee? A. I could not tell at that time. There was no fluid then. It was still swollen however.

Q. And what in your opinion was that swelling due to? A. From the history I got, from an injury.

Q. Would you say that it occurred from falling down in a taxicab in a collision that occurred between two cars? A. Yes.

Q. How many visits did you make to Miss Mangone's home or did Miss Mangone make to your office? A. I didn't make any to her home; they were all made to my office.

Q. Do you know how many visits were made? A. At the present time something like 42 or 43.

Q. And you massaged the knee and so forth? A. Yes.

Q. And what else did you do? A. Electric heat; baked it.

Q. Would you say that a person with an injury like that would suffer pain from it? A. When?

Q. At any time. A. It is possible, yes. She might have weather indications.

Q. Would you say that weather conditions would have anything to do about increasing the pain? A. There might be pain during weather changes.

Q. Did Miss Mangone say anything to you about the pain she had?

Mr. Kavanagh: I object to that.

The Court: The question will be allowed. This was her own physician.

Mr. Kavanagh: Exception.

A. Yes.

The Court: Did she complain of anything?

The Witness: Yes, she did, when the weather changed.

Q. What was the reason for baking the knee? A. To take the swelling out.

Q. And do you know what treatment she is liable to need in the future? A. I don't think she will have any. I think she will progressively get better.

Q. Do you think she will eventually fully recover from this injury? I believe so.

Q. Do you know how long, Doctor, it will take before there is a permanent recovery? A. That you cannot tell.

Q. Have you any idea how many more visits she will have to make to your office before she is fully recovered? A. No.

The Court: Do you say she complained of pain at the time you were diagnosing her case?

The Witness: She complains now, when she comes up she will tell me she has pain——

The Court: Strike out what she tells the doctor now.

The Witness: Of course I cannot see pain.

The Court: You were asked whether she complained of pain for the purpose of receiving treatment. In other words, was that one of the symptoms she gave you?

The Witness: That was one of the symptoms she gave me.

Q. She did complain of pain at that time, didn't she? A. Yes.

Q. Did she say anything about the pain she has since you first treated her? A. It is not as bad as it was.

Q. Did she tell you she has pain during bad weather and so forth?

The Court: You are getting past the purpose of admissions for the purpose of treatment.

Q. Would this condition of fluid or water on the knee have any effect upon——

Mr. Kavanagh: I object to that.

The Court: Let's find out what the question is.

Mr. Kavanagh: There is no evidence of water on the knee, according to the Doctor's testimony.

The Court: Assuming that she had.

Q. Doctor, assuming that your patient, Miss Mangone, had water on the knee, would such a condition in any way affect her in her walking? A. You mean now?

Q. No, at the time of the accident. A. At the time of the accident, yes.

Q. Did she use a cane at any time while you were attending her? A. Yes.

Q. For how long, Doctor? A. I should judge about the latter part of April was the last I saw her with a cane.

Q. Will you tell us what your charges are for attending Miss Mangone up to the present time? A. In the neighborhood of 120 or 125 dollars.

Q. And is that a reasonable value of your services? A. Yes.

Mr. Kronmeyer: That is all.

Cross-examination by Mr. Townsend:

Q. Your office is where? A. Hudson Heights.

Q. That is north of Guttenberg, isn't it? A. Yes, right north of Guttenberg and Woodcliff.

Q. Up near Palisade Park? A. Before you hit Palisade Park.

Q. Miss Mangone lives on King Street, down in Weehawken? A. Yes.

Q. When she made visits to your office, how did she come, by automobile? A. Automobile.

Q. In her own car? A. I suppose so, or her mother's.

Q. And do I understand that so far as her condition to-day is concerned, she has recovered, made full recovery except that when the weather is damp she feels pain or complains of pain in the knee? A. Yes.

Q. Like anyone that has had rheumatism feels pain in bad weather? A. Yes.

Q. So that there is no limitation of motion in her knee to-day? A. None.

Mr. Townsend: That is all.

Cross-examination by Mr. Kavanagh:

Q. What is water on the knee, Doctor? A. That is a fluid in the bursa, in the joint from a bruise or injury.

Q. And you began your treatment of Miss Mangone on April 1st, is that right? A. Yes.

Q. That was a month after the injury? A. I believe so.

Q. You never at any time called at the residence of Miss Mangone to attend her? A. No.

Q. Any time she came to your office from the first of April she always came in an automobile? A. Yes.

Q. You attended her at your office? A. Yes.

Q. She walked into your reception room without any difficulty? A. She would limp in with a cane.

Q. Do you claim that this young lady, Miss Mangone, the plaintiff in this case, at any time had water on the knee? You do not claim that, do you? A. No reason why she could not have.

Q. Well, you did not attend her until a month after this accident, did you? A. No.

Q. And you did not know any of the symptoms that she was suffering with or afflicted with prior to April 1st when you say she first came to your office? A. Only what I had heard, that she had an injury.

Q. Don't you know that a person suffering from water on the knee cannot walk at all without the assistance of a crutch? You know that from your experience, Doctor? A. No, sir.

Q. Don't you know Doctor, that the person afflicted with water on the knee cannot stand the leg on the ground at all? A. No sir, I do not know that.

Q. By the way, let me ask you how many cases of people, men and women, have you had that were suffering from water on the knee? A. Probably 100 or more.

Q. And can you tell me over what duration of time that water on the knee would last? A. All depending upon how quickly it would be absorbed.

Q. Don't you know that a person suffering from water on the knee is laid up for the very least three or four months at a time before he or she could even put his or her leg under them? A. No sir, I do not.

Q. You do not know that, do you? A. No, sir.

Q. Now, you don't undertake to tell this court

and jury, Doctor, that Miss Mangone suffered from water on the knee as a result of this accident, do you? A. I say she could have had water on the knee.

Q. You do not say that as a matter of fact, do you? A. I have only got to take the lady's symptoms as she presents them to me and what I have to do afterward, from them.

Q. Now Doctor, you say that the young lady in question, Miss Mangone, never at any time have you come to her house to attend her for her alleged injuries, that is true, is it? A. Absolutely.

Q. You never at any time during the period that you attended her subsequent to taking the place of Dr. Simiotti, of late memory, came to her house to attend her for water on the knee, did you? A. No, sir.

Q. Now, isn't that very strange, Doctor, that you would have a patient come to your office from her house to be prescribed for or attended by you, if she had the very serious disease or affliction of water on the knee? A. I don't understand. I don't know why she should not come to me.

Q. Don't you know that people afflicted with water on the knee always have the Doctor come to visit them at their own residence? A. Not when they are able to go around.

Q. Was she able to go around? A. When she came to me, yes.

Q. Certainly she was able to walk from the automobile up your stoop and into your consultation room and into your office without any assistance whatsoever, wasn't she? A. Outside of the cane she carried at the beginning.

Q. You did not see her use the cane when she left her house, did you Doctor? A. No, I was in my office at the time.

Q. You did not see her use the cane at any time except the time she brought it into your office? A. That would be the only time I would see the lady.

Q. But you saw her in your consultation room and in your office, didn't you? A. Yes.

Q. You never saw what she did between the times that she visited at your office, did you? A. I don't claim to.

Q. You couldn't tell this court and jury how she walked, whether she walked without the assistance of a cane or not, could you? A. I don't claim to.

The Court: She has not claimed that.

Q. All you prescribed for the lady was some lotions for an alleged swelling of her leg, isn't that a fact? A. No, sir.

Q. Did you operate on Miss Mangone? A. No, sir.

Q. Don't you know that people affected with water on the knee must necessarily have some kind of an operation? A. No, sir.

Q. You do not mean to tell this court and jury that people with water on the knee don't have to have the knee opened to let out the water? A. No, sir, I do not. I would not attempt it.

Q. Did you ever operate on any people with water on the knee? A. No, sir.

Q. Never did? A. No, sir.

Q. Sure of that? A. Absolutely.

Mr. Kavanagh: That is all.

Re-direct examination by Mr. Kronmeyer:

Q. Doctor, you had to use some apparatus when she called at your office for the treatment you gave her, didn't you? A. Yes. I used a thermo-light.

Q. It is not customary for you to take this apparatus and carry it around to people's houses, is it? A. No.

Re-cross-examination by Mr. Kavanagh:

Q. What apparatus did you have to use, Doctor? A. A thermolight.

Q. What did you use that for? A. To take down the swelling.

Mr. Kavanagh: That is all.

(Witness excused.)

Mr. Kronmeyer: That is the plaintiff's case.

Mr. Kavanagh: I desire at this time to move for the direction of a verdict in favor of the defendant John Patterson on the ground that on the testimony of John M. Patterson, one of the defendants in this case who was called by the plaintiff, Miss Mangone as a witness, there can be at no time a verdict rendered by the jury against Mr. Patterson. Mr. Patterson was called by the plaintiff's attorney this morning and he testified to a certain state of facts——

The Court: Are you resting your case now?

Mr. Kavanagh: No, I am not resting my case.

The Court: Then I deny your motion.

Mr. Kavanagh: Exception.

The Court: I cannot direct a verdict on the close of the plaintiff's case.

Mr. Townsend: On behalf of the defendant Mac's Auto Service, Incorporated, I move for a non-suit on the ground that

there is no evidence of negligence under the testimony.

The Court: I deny that motion.

Mr. Townsend: Exception.

DEFENDANT'S CASE.

JOHN M. PATTERSON, recalled.

Direct examination by Mr. Kavanagh:

Q. The chauffeur of the taxicab belonging to the Mac's Auto Service testified this morning before you had come into court, I believe, that he observed your car while he was proceeding in a southerly direction on the Boulevard, your car coming northerly, and he testified when about 100 feet from your car, that your car was zigzagging across the Boulevard; is that true? A. I could not very well be zigzagging when I pulled in to let the Ford car pass me.

Mr. Townsend: I object; the question is based upon an unwarranted assumption of fact.

The Court: Strike it out.

Mr. Kavanagh: I agree to strike out the answer.

The Court: Just answer the questions directly, giving a yes or no answer when you can.

Q. Did your car at any time during the time that you were driving along the Boulevard approaching Second Street zigzag? A. No, sir.

Q. Now you testified about how you came to pull out from the back of this Ford car which got in front of you. A. Yes.

Q. Now, when the automobile belonging to the

Mac's Auto Service and your automobile came together, was the impact very great? A. Not very great.

Q. And how fast do you say your car was traveling at that time? A. About 15 miles an hour.

Q. Are you sure of that? A. Not more; it might have been 12 or 13, but not more than 15 miles an hour.

Q. And I believe on your direct examination, on the part of the plaintiff, Miss Mangone, this morning, you testified that you could not tell from your observation at what rate of speed the Mac's car was approaching? A. I could not tell, no.

Q. Now, directly after the accident, Mr. Patterson, what did you do; just tell the court and jury what you did in all its details. A. I got out of the car as fast as possible and went to the other car and found out the extent of the injuries.

Q. Of whose injuries? A. In both cars, the girl that was in my car and also in the other car. And the officer, I asked him to take me to the hospital instead of to the station house with the other driver, to have the injured persons taken care of. That is all I was interested in after the accident happened. And while in the hospital I seen the two injured persons, that is the two girls, Miss Mangone and Miss Hughes. Miss Mangone refused to stay in the hospital and the other girl stayed there for a couple of days, until she was treated.

Q. Well now, did you notice Miss Mangone, the plaintiff in this suit at that time? A. No, I did not.

Q. Did you talk to her in the hospital? A. Only to the extent of her injuries. I seen the extent of her injuries; the only injuries she had then was

some scars on her knees; that is all I could find out.

Q. Did you talk to her? A. Yes, I did.

Q. Just tell the court and jury what you said to her and what she said to you. A. She refused to stay at the hospital.

Q. Did she tell you that? A. To the Doctor, yes.

Q. What did she say to you? A. She was anxious to go home.

Q. Was she walking perfectly at that time? A. Yes, she was walking.

Q. Was anybody assisting her at that time? A. Not that I seen.

Q. Now, when you got out of the car immediately after the impact or collision did you notice the other car? A. The taxicab?

Q. Yes, was Miss Mangone in it at that time? A. No, I didn't notice that.

Q. You did not notice her getting out or being assisted? A. I didn't notice whether she was assisted out of it or not.

Q. Do you know who it was took Miss Mangone to the hospital? A. I believe it was the police car but I am not sure.

Q. And who took you to the hospital? A. The police car.

Q. How many police cars were there there at that time? A. Only one that I seen.

Q. And were you taken in the same car? A. I was taken in a Ford police car.

Q. And Miss Mangone and Miss Hughes, they were not in the same car that you were in? A. No, they had arrived at the hospital before we got there.

Q. And do you remember the policeman that conversation with? A. I do not, no, sir.

Q. Do you see him in court? A. I would not recognize him. I never even looked at the man. I was more anxious to see that the injured persons were taken care of.

Q. Now, Miss Hughes was bleeding quite profusely? A. Yes, she was cut from the glass.

Q. From the glass on the windshield? A. Yes, she was cut badly.

Q. The glass of your windshield? A. Yes. The taxicab was coming up hill and I was going down hill, so I got the worst part of it on account of my car going down hill.

The Court: How do you explain that?

The Witness: Well, I was going down the hill when the taxicab was coming up.

The Court: Therefore you hit the other car harder, is that the idea?

The Witness: Well, the other car hit me harder. It does not matter. The impact comes harder on my car on account of me going down grade.

Q. You mean naturally the momentum of your car, going downhill, would probably be greater than the momentum of the car coming up hill? A. Yes. Even if my car was standing still it would be worse for me when it was on a down grade, even if it was just rolling.

Mr. Kavanagh: That is all.

Cross-examination by Mr. Townsend:

Q. You were not injured, were you? A. No, sir.

Q. You were taken to the hospital in the police car, were you? A. I asked the policeman to take me there.

Q. I say, you were taken there in the police car? A. No. I asked the policeman to take me there.

The Court: Well, how did you get there, in what car?

The Witness: In the police car.

The Court: That is what you were asked.

Q. Well, before you went to the hospital you were accused by the driver in the presence of the policeman of being drunk, weren't you? A. The police——

The Court: Just answer the question yes or no.

The Witness: No.

Q. You were not? A. No, the police doctor examined both drivers.

Q. Before you left the scene of the accident weren't you accused by the driver of the taxicab of having been drunk or being drunk? A. No, sir.

Q. And for some reason unknown to you you were taken in the police car to the police surgeon, Dr. Stein, weren't you? A. I asked the police to take me to the hospital.

Q. Did you ask the police officer to take you to the police doctor, Dr. Stein? A. Will you let me explain that?

The Court: Your counsel will have the opportunity to bring out anything he wishes.

The Witness: In the station house both drivers were taken to the police doctor.

Q. You were then taken to the hospital? A. To the hospital first, then to the station house, and then both drivers were taken to the police doctor afterwards.

Q. And you were taken to the police doctor for the purpose of being examined to see whether you were intoxicated or not, were you? A. Both drivers were taken——

Mr. Kavanagh: I object to that as improper cross-examination.

The Court: Objection overruled.

Mr. Kavanagh: Exception.

A. Yes. Declared not intoxicated or under the influence of liquor.

Q. Please answer the question. A. Declared not intoxicated.

Q. And you told the doctor then when you were there of having drunk this wine you spoke about? A. Yes.

Q. And you are sure it was nothing else than wine? A. Yes.

Q. Did the doctor examine the taxicab driver to see whether he was drunk or not? A. He examined both of us. I didn't pay any attention to his examination.

Q. Did he examine him to see whether he was—— A. Both drivers were examined. I was examined first and I was not interested in the examination of the other driver.

The Court: Did you see the examination of the other driver?

The Witness: The other driver came in with me and he was examined right after I was but I didn't pay any attention to his examination.

Q. What did your examination consist of? A. The examination consisted of—he asked we to walk up and down, to blow my breath on him; he asked me if I had drunk anything and I told him

absolutely the truth, I had drunk two glasses of wine about an hour or so previous and he said: "I detect the odor of wine off this man's breath, but he is not intoxicated."

Q. And that was at least a half hour or an hour after the accident happened, wasn't it? A. Pardon me?

Q. That was at least a half hour or an hour after the accident happened, wasn't it? A. I didn't take the time; I cannot be explicit to the exact time.

Q. I appreciate that Mr. Patterson. A. I don't want to answer anything incorrectly if I possibly can. I want to tell you the truth.

Q. How long did you stay in the hospital? A. Not very long, I could not tell you the exact time.

Q. I appreciate that, but approximately. A. When I got to the hospital I had to wait until Miss Hughes got dressed and the other young lady was taken care of.

Q. How long was that? A. I should say about 15 minutes, around that time.

Q. And from there you were taken back down the hill to the Weehawken police station? A. Yes.

Q. And after being taken to the police station you were then taken to Dr. Stein's office? A. Yes.

Q. Back up the hill again? A. Yes, with the other driver. We had to wait in the Weehawken police station for the other driver when we got back.

The Court: How long?

The Witness: About five or ten minutes.

Q. Did you go up there in an open or a closed car? A. In a Ford car.

Q. Open or closed? A. I didn't pay any attention to whether it was open or closed.

Q. You do not even know that? A. I didn't care whether it was open or closed.

Mr. Kavanagh: I object and ask that it be struck out.

A. Probably if I was a reporter I would pay attention to those things, whether it was closed or opened.

Q. Can you give the jury any idea how long after this accident happened it was before you were examined by Dr. Stein? A. No, sir, I cannot give you the exact time.

The Court: Was it six hours?

The Witness: Oh, no, sir, not six hours.

The Court: Then tell us how long it was.

The Witness: It was not more than an hour I should judge.

The Court: We are not asking you to be exact to a minute.

Q. This wine that you had was about 12 or 15 minutes before the accident, wasn't it? A. I should say about a half hour, between 15 minutes to 20 minutes or 25 minutes to 30 minutes.

Q. See if I can refresh your recollection. You told us this morning that it took you about 12 or 15 minutes to drive from your friend's place at Third and Grand Street up to the scene of the accident. How long after you had the last glass of wine was it that you left your friend's place of business? A. There is a possibility of talking about five or ten minutes after you have a glass of wine, before you start.

Q. So then the doctor did not examine you, in your opinion, for at least an hour and a half after you had been drinking? A. Probably about an hour.

Q. By the way, is Miss Hughes here yet? A. I do not even know where she is.

Q. Did you send for her since this morning? A. I don't know her address.

Q. Do you mean that? A. At the present time I don't know her address. She had lived with my sister and she moved away from there and I don't know where she is living now.

Q. You saw her about three weeks ago? A. About three weeks ago.

Q. And she has moved from that time? A. She has moved—she moved about four weeks ago.

Q. Have you made any effort to find out where she was living? A. I was not interested.

Q. You were not? A. No.

Q. You knew this case was coming up for trial, didn't you? A. I did not.

Q. When did you first find out that this case was coming up for trial? A. Last week.

Q. Have you made any effort since last week to find out where she is? A. I don't know how I could if I wanted to.

Q. You did not go to your sister and inquire from her where she went? A. My sister does not know.

Q. I didn't ask you that. I asked you whether you went to your sister to inquire from her where she lived. A. My sister I know does not know because she has no——

Q. Will you please answer the question?

The Court: Did you ask your sister?

The Witness: I did not ask my sister.

Q. Now you knew that Miss Hughes was going to be an important witness for you in this case, didn't you? A. I didn't, no.

Q. You knew Miss Hughes would either cor-

roborate or discredit your story as to how this accident happened, didn't you? A. I didn't know.

Q. You did not know? A. No.

Q. You knew that she knew about how fast you were traveling, didn't she? A. I did not know. I felt the whole thing was taken down in the police station and that everything——

Q. Did Miss Hughes have her eyes open as you were traveling up there? A. I didn't know. Few people pay attention to how fast you are driving unless you are driving the car yourself or used to driving a car.

Q. You knew Miss Hughes knew something about how this accident happened, didn't you? A. She probably did when she was sitting there.

Q. And you have not made any effort to get her here in court and let the gentlemen of the jury hear her story? A. I didn't know where to find her.

Q. You saw her three weeks to a month ago? A. Yes.

Q. And up to that time you had seen her continuously since this accident? A. I have not, no, sir.

Q. Why, she has lived only around the corner from you, hasn't she since this accident? A. Since the accident I seen her about three times altogether.

Q. Did you go to the party afterward? I assume you did not. A. I will say I didn't.

Q. Miss Hughes is no relative of yours, is she? A. No.

Mr. Townsend: That is all.

Cross-examination by Mr. Kronmeyer:

Q. You said you saw Miss Hughes about three weeks ago. Where did you see her? A. She

passed by the store on Washington Street. I just tipped my hat to her and that was all. I was not talking to her; I didn't ask the young lady where she lived or where she moved to or anything else.

Q. You say you had a talk with Miss Mangone at the hospital? A. Just to the extent of her injuries.

Q. The only thing you said to her is this, isn't it: "My car has been terribly damaged" isn't that what you told her? A. I may have said that, I don't remember it.

Q. And that is all you did say to her? A. And I found out——

Q. Isn't that all you said to her?

The Court: Will you please answer the question?

A. I asked her how much she was injured.

Q. Do you remember asking her that? A. Yes, sir.

Q. But you do not remember saying "My car has been terribly damaged" do you? A. No, I do not recall that.

Q. You might have said it? A. I might have.

Q. You do not know all the conversation? A. I No I do not.

Mr. Kronmeyer: That is all.

Re-cross-examination by Mr. Townsend:

Q. Was your car badly damaged? A. It was damaged, yes.

Q. What part of it? A. The windshield and the bumper.

Q. How about the hood? A. The hood was all right.

Q. How about the radiator? A. The radiator was just dented a little.

Q. How long was it before you could use the car after this accident? A. I turned the car in.

Q. How long after the accident was it you turned the car in? A. I turned it in the next week.

Q. For a new one? A. For a new one, yes.

Q. How long had you had the car at the time of the accident? A. Well, I don't know. I would say about nine or ten months, something like that.

Q. You made no effort to have it repaired, you just turned it in for a new one? A. I turned the car in for a new one.

Q. How much did they allow you on it? A. Seven hundred dollars.

Q. And this was a sedan? A. A Chrysler coach.

Q. Is that a closed car, model 70? A. Yes.

Q. That is the same model that they guarantee will go 70 miles an hour, is it? A. Well, I don't remember the exact figures that they allowed me on it, but I can find it out for you.

Q. I didn't ask you that; I asked you if that was the same model Chrysler that they guarantee will go 70 miles an hour, the model 70? A. Model 70.

Q. That is the one they guarantee will go 70 miles an hour? A. Well, I don't know about their guarantee, I never tried it.

Q. You never went over 28 miles an hour I understand you to say? A. 28 miles an hour.

Re-cross-examination by Mr. Kronmeyer:

Q. Where were these two cars when they came together as to the middle of the roadway? A. Both left wheels were about the center of the roadway.

Q. Would you say that the left wheel of the taxicab was over the center of the road? A. Both were on the center.

The Court: Would you say that the left wheel of the taxi was over the center of the roadway?

The Witness: I testified that my car was about——

The Court: I don't care about your car. You either know or don't know whether the left wheels of the taxicab were over to your side of the center line.

The Witness: The taxi must have been over the line a little bit to hit my car.

The Court: Do you say that they were?

The Witness: Must have been; I figure I was not on the line.

The Court: Then you say that the left wheels of the taxicab were over on your side of the line?

The Witness: To the best of my knowledge I was about two inches from the line.

The Court: That is all.

Re-cross-examination by Mr. Townsend:

Q. As a matter of fact, you never saw the line there, did you? A. Well, you generally observe the line as you are driving——

Q. I say, you did not see it?

The Court: The question calls for a yes or no answer or that you do not know.

A. I did.

Q. Before the accident or after, or both? A. Before the accident.

Q. After the accident you never saw the line, did you? A. After the accident I didn't pay any attention to the line or anything else.

Q. So when you say that this was over the line you are merely guessing at it, aren't you? A. After the accident I didn't look at the line.

Q. Well, you told the court that after the accident he was over on your line? A. About two inches over the line.

Q. That is just what you told Judge Ackerson, isn't it? A. After the accident? I think I have told you——

The Court: I asked him about the time of the accident, at the time when they came together.

The Witness: After the accident the only thing I thought of was the injured persons. I didn't look at the line or anything else after the accident.

Q. So that when you say you were in the middle of the Boulevard after the accident you do not know anything about that, do you? A. Well, the line is in the middle.

Q. You never saw the line after the accident? A. After the accident I didn't, I didn't pay any attention to the line after the accident.

Q. You do not know where your car was or where the other car was after the accident do you, because you did not pay any attention to it? A. I didn't pay any attention after the accident.

Q. And it was not your physical condition that prevented you from paying any attention? A. I was more anxious about the injured persons after the accident.

Mr. Townsend: That is all.

Mr. Kavanagh: The defendant, John Patterson, rests.

DEFENDANT'S CASE.

(Mac's Auto Service.)

CHARLES REINECKE, sworn.

Direct examination by Mr. Townsend:

Q. You are a member of the Hudson County Police Department on the Boulevard? A. Yes.

Q. And you were at the time of the accident? A. Yes.

Q. At the time of this accident you were stationed on the Boulevard East, were you? A. Yes, sir.

Q. Do you recall an accident happening a little north of Second Street on Eastern Boulevard? A. Yes.

Q. Where were you at that time? A. Fourth Street and Boulevard East at the police box there.

Q. Is that in the vicinity of the houses shown on Exhibit P-1? A. Yes sir, over on that side there.

Q. That is the police box at the intersection of the Boulevard and what street? A. The Boulevard and Fourth Street.

Q. What attracted your attention, if anything, to this accident, Officer? A. A crash.

Q. Did you go down there right away? A. Yes sir, I did. I had to turn the lights on the box.

Q. And when you got there where did you find the two cars? A. On the west side of the Boulevard about 25 feet north of Second Street.

Q. And where were they in relation to the wes-

terly curb? A. The front of the cab was stove in toward the curb and the rear the cab stuck out toward the center of the roadway.

Q. How near was the front end of the cab to the curb, in feet? A. About two feet.

Q. And where was this Patterson car in relation to that? A. Into the left front wheel of the cab. They were hooked in there together.

Q. How wide is the Boulevard at this point? A. 60 feet.

Q. And there is a white line down the center? A. Yes.

Q. Do I understand from your testimony that the Patterson car at the time you got there was west of the white line? A. Yes sir.

Q. On the west side of the street? A. Yes sir.

Q. In which direction was the Patterson car facing? A. East and west.

Q. And in which direction was the taxicab facing? A. South—well, on a little angle. The front of the cab was stove in toward the curb and the rear end of the cab was sticking out.

Q. The Boulevard runs approximately north and south? A. Yes; there is a slight bend in the road there.

Q. You took the injured people to the hospital? A. Yes, we assisted Miss Mangone and Miss Hughes into a passing car which I stopped.

Q. Did you examine Patterson at that time? A. Well, he seemed to be drinking.

Mr. Kavanagh: I object if the court please.

Q. I don't mean a physical examination. Did you observe Patterson's actions and condition at the time? A. Yes, which we always do.

Q. What were his actions and what was his

condition? A. Why, it seemed as if he was wobbly and had been drinking and I could smell——

Mr. Kavanagh: I object to what he had been drinking and ask that it be struck out.

The Court: Just what you observed.

A. Why, from his breath—I had a talk with him—he had been drinking.

Mr. Kavanagh: I object and ask that it be struck out. This man is not qualified to testify.

The Court: He might have been drinking water. What did you observe about his breath.

The Witness: His breath smelled from

The Court: Liquor?

The Witness: Liquor, yes.

Mr. Kavanagh: I object and ask that that be struck out as an unwarranted assumption of fact.

The Court: It is not unwarranted, he admits he had been drinking.

Mr. Kavanagh: This man is not competent to testify to anything regarding the fact that the man seemed to be drinking or seemed to smell of certain alcoholic preparations, or anything of the kind.

The Court: We struck that out, but he now says he smelled liquor on his breath.

Mr. Kavanagh: Then I object to that and ask that it be struck out.

The Court: That is the very best kind of evidence.

Mr. Kavanagh: I am objecting to it on

the ground that he is not a competent witness.

The Court: You smelled this man's breath?

The Witness: Yes.

The Court: And this man had liquor on his breath?

The Witness: Yes, sir. That is what we do in all cases when we stop drunken drivers, or anything of the kind.

Mr. Kavanagh: Same objection.

The Court: Objection overruled.

Mr. Kavanagh: Exception.

Q. You said he appeared to be wobbly, I understand? A. Yes.

The Court: Did he appear to be intoxicated?

The Witness: Well, we did not know exactly then, because from the crash and the shape the cars were in.

Q. Well, subsequently you took him to Dr. Stein, the police surgeon, didn't you? A. I didn't myself, no, sir.

Q. Did you take him down to police headquarters? A. No, I stayed in the hospital with Miss Mangone and Miss Hughes.

Q. What was the condition of the weather? A. Very nice night.

Q. Had it been raining at all? A. No, sir.

Mr. Townsend: Cross-examine.

Cross-examination by Mr. Kavanagh:

Q. You were not there at the time the accident happened, were you, Officer? A. No. I was there right after it occurred.

Q. And you do not know the position of the cars when the impact took place, do you? A. They were still in the same position when I got there.

Q. You do not know the position of the respective cars, Patterson's car and the Mac's Auto Service car when the impact or collision took place, do you? A. Yes, I seen the position of the cars.

Q. When the impact took place? A. No, not when it took place.

Q. You came up how long after the accident? A. Just time enough to turn up the two lights.

Q. How long would that take? A. About two or three minutes, four minutes.

Q. You had to walk about two blocks and a half, didn't you? A. Yes.

Q. And in the meantime you had to turn the two or three lights at your signal box at Fourth Street and the Boulevard? A. Yes.

Q. So that it must have taken you how long to turn the lights? A. Well, I would not say any more than about a minute or a minute and a half.

Q. And how long would it take you to walk the two blocks and a half? A. I ran.

Q. How long would it take you to run? A. I suppose a couple of minutes.

Q. And you don't know what happened as to the position of the cars after the impact took place and the position that they were in after the collision, do you? A. I seen them——

Q. Not having seen the accident?

Mr. Townsend: Let him finish.

A. I didn't see the accident, but I seen the position of the cars because we had to push them apart.

Q. Was this a light taxicab? A. No, sir.

Q. A heavy taxicab? A. Yes.

Q. How many feet long? A. Oh, the cab is about 10 feet in length.

Q. More than 10 feet in length, isn't it? A. I would not say any more than about 11 feet.

Q. And what kind of a car was the Patterson car? A. A Chrysler coach.

Q. And was it longer or shorter than the cab? A. It might be about two feet longer.

Q. Now, you say it was not raining that day? A. Positively.

Q. What time did you come on duty that night? A. Four P. M. to twelve.

Q. Four o'clock in the afternoon? A. Yes, sir.

Q. Had it been raining before four? A. No, sir.

Q. Where were you before four o'clock? A. I was out that morning.

Q. Where? A. Well, with my wife.

Q. Was it raining after four o'clock? A. No, sir, it rained that night, but not before this accident.

Q. Don't you know as a matter of fact, officer, that it was raining or had been raining at the time this collision took place? A. No, sir.

Q. Why do you say that? A. Because when it rains we do not ride motorcycles.

Q. Well, you did not have any motorcycle at the time? A. Yes, I had.

Q. You did not come on your motorcycle from the place where you were to the place of the accident? A. I didn't take the motorcycle being it was so near. The motorcycle would not do me any good to bring the people to the hospital.

Q. Don't you know that the roadway of the Boulevard was wet? A. No, sir.

Q. Do you tell this court and jury——

The Court: That is what he said.

Mr. Kavanagh: I am asking him again.

Q. Do you tell this court and jury that the roadway on the Boulevard was not wet at the time of this accident? A. Yes.

Q. And you were there at the time? A. I was there, yes.

Q. What other officers were with you? A. Well, there was not any with me at the booth at the time, but there were other officers that got there before I did.

Q. Now, I will change my question to a considerable extent regarding wetness and I will withdraw the idea of being wet. Was there any moisture on the roadbed of the Boulevard at the time the accident happened? A. No, sir.

Q. What time of the evening was this, March 1st? A. Oh, a very good evening, very nice evening, clear.

Q. Well, when did it rain? A. About ten minutes to twelve that night.

Q. Ten minutes to twelve? A. Yes, sir.

Q. What time did the accident take place? A. Ten forty.

Q. That is about twenty minutes to eleven? A. Yes, sir.

Q. And there was no moisture of any kind? A. No, sir.

Q. No moisture from fog on the roadway of the Boulevard when the accident took place, is that right? A. No.

Q. You did not examine the roadway of the Boulevard, did you? A. I can see it.

Q. You were there, back and forth on the Boulevard from four until the time you were sum-

moned down to where this accident took place, weren't you? A. Yes.

Q. Was there any fog that night? A. No, sir.

Q. No fog overhanging the Boulevard? A. No, sir.

Q. What? A. No, sir.

Q. No river fog over the Boulevard at the time? A. No, sir.

The Court: You have asked him that two or three times.

Q. Now, Mr. Reinecke, did you have a talk with Mr. Patterson? A. At the time of the accident, yes.

Q. And did he ask you to take the injured girl to the hospital? A. No, sir.

Q. Did you take her to the hospital? A. I stopped a car, yes.

Q. You took Miss Hughes to the hospital? A. Miss Hughes and Miss Mangone to the hospital.

Q. Whom did you take first? A. Miss Mangone was taken out of the cab and put into the car I stopped by Officer Anderson and the young man driving the cab, and we put Miss Hughes in the car.

Q. Did you take Miss Mangone out of the cab? A. No, sir.

Q. Did you see her taken out? A. Yes, sir.

Q. You saw her taken out? A. Yes, sir.

Q. Who took her out? A. Officer Anderson and the young man driving the cab.

Q. The chauffeur? A. Yes.

Q. And who assisted Miss Hughes out of the automobile? A. That I could not say; I didn't see her get out.

Q. The only one you saw assisted was Miss Mangone? A. Yes, sir.

Q. Who subpoenaed you here, Officer? A. I don't know, there was a subpoena left at headquarters for me.

Q. Well, I didn't subpoena you, did I? A. No, sir.

Q. No. You were subpoenaed by Mr. Townsend, weren't you? A. I don't know, there was nobody there.

Q. You were subpoenaed by Mr. Townsend, weren't you? A. I believe it was. I didn't even look at it.

Q. You are Mr. Townsend's witness, aren't you?

Mr. Townsend: I vouch for him.

Mr. Kavanagh: Let him answer.

Q. You are Mr. Townsend's witness, aren't you? A. I believe so. I am only here to tell what I know.

Q. The only one you saw taken out of the taxicab was Miss Mangone? A. She was the only one in the cab.

Q. You did not see Miss Hughes taken out of the Patterson car? A. No.

Q. You did not assist Miss Hughes at all, did you? A. Not I, no, sir.

Q. Well, who did? A. I believe it was the lieutenant and some one else standing there.

Q. Well, did you see them? A. I wouldn't say for sure.

Q. Then you cannot tell, as a matter of fact, who assisted Miss Hughes, can you? A. No, I could not. I could not do two things at once.

Q. Well, you only did one thing at once this time, didn't you? A. Yes, I could not stop a car to get these people to the hospital and assist them out of the car at the same time.

Q. But you did assist Miss Mangone? A. Not I.

Q. Not you? A. No.

Q. And you did not assist Miss Hughes either? A. No, sir. I assisted them both out of the car at the hospital.

Q. I am not speaking of at the hospital, I am speaking of the scene of the accident now.

The Court: At the time they got out of the cars.

The Witness: No, sir.

Q. You did not assist either one, did you? A. No.

Q. Who reached the scene of the accident first, you or the other officers? A. I believe it was the lieutenant.

Q. Not what you beliece, what you saw? A. The lieutenant and Officer McMahon.

Q. They were there before you came there? A. No, sir.

Q. Did you notice Miss Hughes' condition at that time? A. No.

Q. Did you notice Miss Mangone's condition? A. No.

Q. Did you see any injuries on Miss Mangone? A. No sir, only what the driver said, that the woman in the cab was hurt.

Q. Did you speak to her about her injuries? A. No sir, I wanted to stop a car right away.

Q. You did not have any conversation with her at all regarding her injuries, did you? A. No sir, I didn't think it would be right. I thought the proper thing was to get her to the hospital where her injuries could be taken care of.

Q. You do not mean to tell this court and jury that you did not ask the doctor at the hospital

where she was hurt? A. I might have known where she was hurt.

Q. The question is whether or not you asked. A. I asked her going to the hospital where she was hurt.

Q. Then you did ask her? A. Yes, going to the hospital.

Q. Why didn't you say so before? Now, where did she tell you she was hurt? A. About the limbs, the knees.

Q. She got out of the car into the hospital, didn't she? A. No, sir.

Q. Did you carry her in? A. I helped, yes.

Q. Did you carry her in? A. Yes, I helped carry her in.

Q. In what? A. Into the hospital.

Q. How did you carry her in? A. Well, in my arms.

Q. You carried her in your arms? A. Yes.

Q. And did you hear her testify this morning that she walked, herself, into the hospital?

Mr. Kronmeyer: I object; she never testified to that.

Q. Do you want this jury to believe that you carried her in your arms? A. Yes, sir.

Q. Into the hospital? A. Yes, sir.

Q. And that her feet were not on the ground at any time? A. Not going into the hospital, they were not.

Mr. Kavanagh: That is all.

Mr. Kronmeyer: No cross-examination.

Re-direct examination by Mr. Townsend:

Q. You say you had a talk with Patterson after the accident? A. Yes, sir.

Q. What did you say to him and what did he

say to you? A. I asked him how he got on that side of the road.

Q. And what did he say? A. He said he didn't know.

Q. He said he didn't know? A. Yes.

Q. You said something about pulling the cars apart. A. Yes.

Q. Did anyone assist you? A. I don't know how many there were; we tried to pull them apart and we finally got a tow wagon to take both of them away.

Q. Did Patterson say anything at that time about a Ford stopping in front of him? A. No.

Q. As a matter of fact, was there any other automobile than his proceeding along the Boulevard just about the time of the accident? A. Not that I seen.

Q. You were on traffic duty only two blocks away? A. Yes.

Q. And you did not see a car going north? A. No, sir.

Q. Showing you Exhibit P-1, a view looking north on the Boulevard, can you indicate there with a pen about where this car was after the accident. This is Second Street here. A. This is where Patterson's car was and the other car was in toward the curb.

Q. The point marked P is Patterson's car? A. Yes.

Q. And the cab was pointed in toward the curb, facing in a westerly direction? A. Yes.

Mr. Townsend: That is all.

Recross-examination by Mr. Kavanagh:

Q. You were detailed up there at Fourth Street and the Boulevard for how long? A. I was detailed up there for eleven months.

Q. Are you still there? A. Yes—not at the booth.

Q. And you know that the Mac's Auto Service has the taxicab privilege at the West Shore depot, don't you? A. Yes.

Q. And you know the proprietors of the Mac's Auto Service, don't you? A. Yes.

Q. And you have known them for years, haven't you? A. I would not say for years.

Q. You know those gentlemen for years, don't you, and Mr. McMahon? A. I would not say for years.

Q. Well, for how many years do you know him? A. Maybe three years or so.

Q. Only three years? A. That is about all.

Q. And you are not a personal friend of his? A. No.

Q. Are you sure of that? A. Positive.

Q. You only know him for three years? A. That is about all I know him.

Mr. Kavanagh: That is all.

JOHN J. MCMAHON, sworn.

Direct examination by Mr. Townsend:

Q. You are a member of the Police Department of the Town of Weehawken? A. Yes.

Q. Do you remember this accident happening on the Boulevard near Second Street on March 1st, 1926? A. I do.

Q. Where were you at that time, Officer? A. I was standing at Fulton Street and the Boulevard East with Sergeant Timoney.

Q. How far away was that from Second Street? A. About two blocks, a block and a half.

Q. And your attention was attracted by the noise of a collision? A. By the crash, yes.

Q. Were you the first officer there? A. Sergeant Timoney and I, yes, sir.

Q. Now, when you got there, what was the position of these two automobiles? A. The position of the two automobiles was across the white line on the west side of the street.

Q. That is, the west side of the Boulevard? A. Yes, sir.

Q. And how far was the taxicab away from the westerly curb line? A. About three feet.

Q. And where in relation to the taxicab was the Patterson car? A. Facing east and west, like this.

Q. Was the front end of the Patterson car up against the taxicab? A. Yes, sir.

Q. What part of the taxicab? A. The bumper was locked underneath the front left wheel.

Q. There was a white line along the Boulevard down the center of the Boulevard? A. In the center of it, yes, sir.

Q. And I understand that the Patterson car was west of that white line? A. Yes.

Q. Did you help remove any people from either the taxicab or the other car? A. Yes, sir, Miss Elizabeth Hughes.

Q. You helped take her out of the Patterson car? A. Yes, sir.

Q. Did you go to the car with them? A. No, sir.

Q. Afterward, you returned to the police station down in Weehawken? A. At the end of my tour of duty.

Q. Were you at the stationhouse when Patterson was taken to Dr. Stein to be examined? A. No, sir, I was not.

Mr. Townsend: Cross-examine.

Mr. Kavanagh: No questions.

Mr. Kronmeyer: No questions.

Mr. Townsend: One question I forgot: What was the condition of the weather at the time?

The Witness: Very clear.

Cross-examination by Mr. Kavanagh:

Q. You did not examine the roadbed of the Boulevard to ascertain whether it was moist or not, did you? A. It was not moist.

Q. I say, you did not examine the roadbed of the Boulevard to ascertain whether it was moist or not, did you? A. No, sir, I did not examine it.

Mr. Kavanagh: That is all.

Redirect examination by Mr. Townsend:

Q. You were on the Boulevard? A. Yes, sir.

Q. You could observe the condition from standing on the Boulevard, couldn't you? A. Yes, sir.

Q. And from having passed, and standing there, was it moist or was it not? A. It was not.

Mr. Townsend: That is all.

Recross-examination by Mr. Kavanagh:

Q. Was there any river fog that night? A. No, sir.

Q. No fog at all? A. Positively there was no fog.

Q. Don't you know that every night there is a river fog overhanging that part of the Boulevard especially in the spring of the year? A. Not every night, no, sir.

Q. Well, five nights out of a week, you know

that from your experience, don't you? A. I do not, no, sir.

Q. When did it rain that night? A. About ten minutes to twelve.

Q. Oh, it did rain, didn't it, some time that night? A. Yes, after the accident.

Q. You did not examine the roadbed before the time it rained to ascertain whether the river fog had made the road bed of the Boulevard moist or not, did you? A. No, sir.

Q. You were not at the hospital, were you? A. No, sir.

Q. You did not see, as this other officer alleges, that he carried Miss Mangone in his arms into the hospital; you did not see that, did you? A. No, but I did stop a car——

Q. I am not asking you about that, I am speaking of at the hospital; you did not see him carry her in? A. I did not leave the scene of the accident.

Mr. Kavanagh: That is all.

Cross-examination by Mr. Kronmeyer:

Q. You were not at the hospital? A. No, sir; I was not.

JOHN J. TIMONEY, sworn.

Direct examination by Mr. Townsend:

Q. Sergeant, you are a member of the Weehawken Police Department? A. I am.

Q. And you were on March 1st, 1926? A. Yes, sir.

Q. Do you recall an accident happening on the Boulevard East in the vicinity of Second Street? A. I do.

Q. Where were you at the time? A. At Fulton Street and the Boulevard approximately two blocks south of Second Street.

Q. And were you alone or with anybody? A. Patrolman McMahon was with me.

Q. What attracted your attention to the fact that there was anything wrong? A. The crash.

Q. Well, what did you then do? A. I ran up to Second Street.

Q. Now, when you got there, what position did you find the car in, and where in relation to the street? A. I found the taxicab on the west side of the street about 20 feet north of Second Street. The taxi was about two and a half or three feet from the west curb. The Chrysler car was locked into the front left wheel of the taxicab, both cars being on the west side of the center line of the road.

Q. And what direction was the Chrysler car facing? A. Approximately east and west.

Q. Did you observe the condition of the weather that night? A. Clear.

Q. Was the street dry? A. I didn't examine the street.

Q. Now, did you help carry anybody out of the car? A. No, I did not.

Q. Did you go to the hospital with them? A. No, I took charge of the situation and told the men what to do.

Q. Were you with Patterson when he was taken to Dr. Stein? A. No, I didn't go to the hospital nor leave the scene of the accident.

Mr. Townsend: Cross examine.
Mr. Kavanagh: No questions.

Cross-examination by Mr. Kronmeyer:

Q. Did I understand you to say, Officer, that both cars were west of the center of the road? A. Both cars to the west of the center line.

Mr. Kronmeyer: That is all.

FRED ANDERSON, sworn.

Direct examination by Mr. Townsend:

Q. You are connected with the Weehawken Police Department? A. Yes, sir.

Q. And you were on March 1st, 1926? A. Yes, sir.

Q. Do you recall an accident happening that night? A. Yes, sir.

Q. Where were you stationed at the time of the collision, where were you at the time? A. I was walking east on Third Street.

Q. That is, you were walking toward the river? A. Walking toward the river, yes.

Q. What attracted your attention to anything wrong there? A. The crash.

Q. When you got there did you notice the position of the automobiles? A. Yes, sir.

Q. Where were they? A. They were—the taxicab was up against the curb of the west side of the Boulevard and the other car was locked right into the left wheel.

Q. And what direction was the other car, that is, the Chrysler car, the Patterson car, facing? A. West.

Q. Did you assist anybody out of the automobiles? A. Miss Mangone.

Q. Did you go to the hospital with her? A. Yes, sir.

Q. Did you notice the condition of Patterson right after the accident? A. I didn't take much notice to Patterson.

Q. You were taking care of Miss Mangone? A. Yes, sir.

Q. Did you go up to Dr. Stein's with Patterson afterwards? A. No, I didn't.

Q. Officer Chamberlain went up? A. Yes, sir.

Q. Do you know where he is today? A. He is sick with tonsilitis.

Q. Unable to come out? A. Yes, sir.

Q. What was the condition of the weather at that time? A. Clear.

Mr. Townsend: Cross examine.

Cross-examination by Mr. Kavanagh:

Q. You did not examine the roadbed of the Boulevard, did you, to determine whether it was moist or not, did you, Officer? A. No.

Q. Did Miss Mangone walk into the hospital unassisted? A. No, sir.

Q. Did she walk into the hospital? A. No, sir.

Q. Were her feet on the ground at any time before she went into the hospital? A. No, sir.

Q. How did she get into the hospital? A. She was carried in by Officer Reinecke.

Q. Do you mean to tell this court and jury that this girl's feet never touched the sidewalk or the road at any time after she was taken out of the police car? A. No, sir.

Mr. Townsend: I object, improper cross examination.

The Court: Sustain the objection.

Q. Did you hear Miss Mangone testify this morning and again this afternoon, that she walked directly from the police car into the hospital?

Mr. Kronmeyer: I object, that is an unwarranted assumption of fact. She never so testified.

The Court: I do not recall that she did.

Mr. Kavanagh: Well, I do, if your Honor please.

Q. Did you or did you not hear her testify to that? A. I didn't hear her say anything of the kind.

Q. Were you in court all day during the trial of this case? A. Yes, sir.

Q. This morning and this afternoon? A. Yes, sir.

Q. And you want the court and jury to believe on your oath that this Officer Reinecke carried Miss Mangone from the car into the hospital?

Mr. Townsend: I object.

The Court: Yes. If you insist on going back to it, we will look it up.

Mr. Townsend: I object to the form of the question. He is asked whether he wants the court and jury to believe on his oath. The man is already under oath.

Mr. Kavanagh: All right, I will withdraw the question.

Mr. Townsend: The defense rests.

Counsel for defendant, John M. Patterson, moves for a nonsuit on the ground that there is no evidence of negligence on the part of the defendant John M. Patterson, and on the further ground that the cause of the accident was an intervening

efficient and proximate agency; on the further ground that there could be no verdict in favor of the plaintiff against the defendant John Patterson arrived at by a preponderance of the evidence, for the reason that the only two witnesses called by the plaintiff to wit, John M. Patterson and the taxicab driver gave testimony diametrically opposed.

The Court: It is fundamental that before a plaintiff can have a verdict the jury must find that he has established his case by the preponderance of the evidence, therefore if they find that two witnesses agree on the case and they are trustworthy witnesses, and there are no other witnesses, there is a preponderence. If the two witnesses disagree, then somebody must be wrong, and it is for the jury to find out who is wrong. If one of them is, then the preponderance is with the other. I deny your motion and will allow you an exception.

The Court's Charge.

The Court charges the jury as follows:

The Court: Gentlemen of the jury: On March 1st, 1926, a taxicab belonging to Mac's Auto Service, Incorporated, driven by its agent or servant and in which Katharine Mangone was riding as a passenger, came in contact with an automobile driven by Mr. John M. Patterson on the Boulevard East in Weehawken near its intersection with Second Street sometime in the evening of that day, and as a result of this collision Katharine Mangone claims to have suffered injuries. She has brought the suit against both John M. Patter-

son and Mac's Auto Service, Incorporated, as defendants in an effort to recover damages from both or at least one of these defendants.

Now, the mere fact that these two automobiles came together on this public highway and the fact, if it is a fact, that this plaintiff was injured as a result of such collision, standing alone, does not entitle this plaintiff to a verdict at your hands against either of these defendants. The burden rests upon the plaintiff of establishing to your satisfaction by a fair preponderance of the evidence in this case that she was injured as the natural and proximate result of the negligence of one or both of these defendants, and that such negligence was the proximate cause of the accident, and the injuries which she sustained.

The suit therefore is based upon a charge of negligence in either one or both of the drivers of these two automobiles; and negligence presupposes that there has been the breach or violation or failure to perform some duty which one or more persons owe to another, and so in the first place, since there are two defendants here, and you have to examine the conduct of each of them, you want to know what duty John M. Patterson owed to this plaintiff who was a passenger in another automobile at the time of this occurrence.

He was required to so manage, control and operate his automobile and to make such observation for other vehicles on that thoroughfare and to exercise such judgment to avoid colliding or coming in contact with other vehicles as a reasonably prudent person would have done under the same circumstances. Now, you will say, if that was the duty of Mr. John M. Patterson, what duty did the driver of the taxicab owe with reference to this plaintiff who, concededly, was a passenger in his car?

A taxicab owner who undertakes to carry for hire all persons who apply for passage is a common carrier of passengers and as such he owes them a high degree of care for their safety. I recall no testimony in this case refuting the assertion of the driver that he carried all persons who applied to him for passage in this taxicab. If that is so, then he was a common carrier.

Now gentlemen, the measure of duty required of a common carrier, I have already briefly indicated to you, and I might say that a common carrier must exercise as high a degree of care for the safety of those who commit themselves to him for passage as foresight can anticipate.

By foresight is meant, not "fore-knowledge" absolutely, not that exactly such an accident as happened was expected or apprehended, but rather that the characteristics of the accident are such that it can be classified among events that without due care are likely to occur and that due care would prevent. So, in considering this question of negligence, you will want to know certain traffic rules, or rules of the road, as they are called. With regard to the question of speed, gentlemen, it is provided, and probably you are familiar with the provision, that in places where the houses are on an average of less than 100 feet apart the rate of speed which may be maintained but which shall not be exceeded is 12 miles an hour. Of course, in the open country, socalled, where the houses are more than 100 feet apart, the rate of speed is 30 miles an hour except at the intersection of prominent cross roads where the rate of speed is 15 miles an hour. But in connection with this rule respecting speed, there is a proviso to the effect that nothing therein contained (referring to the rule) shall be held to

permit an automobilist to drive his car recklessly or at any rate of speed greater than is safe under the circumstances or so as to endanger the life or limb or property of any other person.

Then too, of course, there is the requirement that automobiles must be equipped with a signaling device which shall be sounded where ever necessary to insure the safety of persons using the highway and on approaching street intersections or other vehicles using the highway; but the horn, bell, or the signaling device shall not be sounded unnecessarily.

Now, in this case, as I recall it, the drivers of both of these automobiles saw each other before this impact. Their version as to how far the cars were apart when they respectively saw the other car may be at variance, but they at least saw each other, so it may or may not be important as to whether or not a signal was or was not sounded.

Then too, where the highway is of sufficient width, automobiles shall keep to the right of the center line of the street. This street was 60 feet in width, therefore the duty of those drivers was to keep to the right of the center line of the street, considering the direction in which they were proceeding.

But the mere fact, if it should turn out to be a fact, gentlemen, and you so find, that there had been a violation of a traffic rule, standing alone, by itself, disassociated from the surrounding circumstances, would not be negligence. It would be evidence of negligence which should be taken into consideration by you in connection with all of the circumstances of the case in order to ascertain whether or not under all of the circumstances, having regard for any violation that may be found to have existed, but also at the same time having

due regard for all the other circumstances, whether or not the driver, whose conduct you are investigating, exercised reasonable care under all those circumstances, remembering however, gentlemen, in this connection that with respect to the common carrier in the transportation of a passenger, such a one is required to exercise a high degree of care for the safety of a passenger.

So it is for you to say, when you come to consider the conduct of Mr. Patterson: did he exercise reasonable care under the circumstances of this case? What did he do which a reasonably prudent person would not have done, or what did he fail to do which a reasonably prudent person would have done under the same circumstances. If he did not conduct himself as a reasonably prudent person would have done, then he was negligent. Then, with respect to the driver of this taxicab, if he was a common carrier, concerning which there seems to be no dispute, then he was required to exercise a high degree of care with respect to the safety of this plaintiff.

If you should find that Mr. Patterson was negligent, then before you could find a verdict against him, not considering for the moment the question of contributory negligence on the part of the plaintiff, you would have to go further and ascertain whether or not his negligence was the proximate cause of this accident.

By proximate cause we mean that cause which naturally and probably led up to and which might be expected to produce the very result which is now complained of, that is, the moving, efficient cause of an accident. If he was negligent, but his negligence was not the proximate cause of this accident, then of course there could be no recovery as against him.

Now, with respect to the driver of the taxicab, if he was not negligent, there could be no recovery as against the owner of the taxicab.

Of course it is conceded, gentlemen, in this case, the driver of the taxicab was the agent or servant of the owner; that is to say, the defendant, the Mac Auto Service Corporation. So any negligence on the part of the driver of the taxicab would be imputable and chargeable to the owner of it.

If he was not negligent, there could be no recovery against this defendant corporation. If he was negligent, then you have an important thing to consider, and that is the same question as applied to the consideration of the conduct of Mr. Patterson, that is, whether or not any negligence on the part of the driver of the taxicab was the proximate cause of this accident, because even though that driver was negligent, and his negligence was not a proximate cause of this accident, then under the rule respecting proximate cause that I have given you, you could not rightfully render a verdict against the Mac Auto Service Corporation. You would have to bring in a verdict in favor of that corporation and in favor of this plaintiff, a verdict of no cause of action.

Some of you will say: "Here are two defendants: What would be the situation if they were both negligent?" Now, gentlemen, as a general rule it may be said that negligence, to render a person liable need not be the sole cause of an injury. It is sufficient that his negligence, concurring with one or more efficient causes, other than plaintiff's fault, is the proximate cause of the injury. So that where two causes combine to produce injuries a person is not relieved from liability because he is responsible for only one of

them. Within the rule the causes concurring with one's negligence may be the negligent act of another, if the act of such other is not imputable to the person injured, or inevitable accident, act of God, or some inanimate cause. A person is not excused from liability for failure to perform a duty because another person failed to perform his duty. Where several causes producing an injury are concurrent, the injury may be attributed to all or any one of the causes. It is sufficient if the negligence of the party sought to be charged is an efficient cause, without which the injury would not have resulted, and that such other cause is not attributable to the person injured.

Concurrent causes within the rule are causes acting contemporaneously, and which together cause the injury, which injury would not have resulted in the absence of either. But, where the negligence of one consists in a condition merely which is rendered injurious by the subsequent negligence of a third person, the acts of the two persons are not concurrent.

Now, if you should find in this case that Patterson was negligent, but there was no negligence on the part of the driver of the taxicab which concurred with the negligence of Patterson in bringing about this accident, so that you could not honestly say under the oath that you have taken, that this accident was produced as the proximate cause by the concurrent negligence of both of these parties, then you could not bring in a verdict against this taxicab corporation, nor the other way around. And so, to repeat, by way of emphasis, it is not necessary, if you should find that there was negligence in this case, that you should find a verdict against both of these defendants, because they happen to be involved in this accident.

You could only bring in such a verdict—not considering for the moment the question of contributory negligence on the part of the passenger herself—if you found that the drivers of the two cars were both negligent so that they were concurrently negligent within the rule that I have given you here, and that such concurrent negligence was the proximate cause of this accident.

Now, if those elements are not established on the part of the plaintiff by a fair preponderance of the evidence, then there could not be a joint verdict against both of these defendants, even though you should find that one of them was negligent, and that his negligence was the proximate cause of the accident.

If it was not concurrent and only one party was negligent, and such negligence was the proximate cause of the accident, your verdict in that event would be against the one defendant whose negligence was the proximate cause of this accident.

If you find that the plaintiff here is entitled to recover as against one or both of these defendants, then these defendants have both raised the question of whether or not the young woman plaintiff herself was guilty of contributory negligence. Having raised that as a defense the burden rests upon the defendants of proving that to your satisfaction by a fair preponderance of all the evidence in this case.

There is very little testimony here respecting the actual conduct of this young woman in this taxicab prior to this accident. She was required to exercise reasonable care for her own safety, such care as a reasonably prudent person would exercise under the same circumstances, and so, if you find that this young woman did not exercise reasonable care for her own safety, and she

thereby contributed in any degree to the happening of this accident, that would preclude a recovery by her against either of these defendants; but if on the other hand you reach the conclusion that one or both of these defendants was negligent and that such negligence was a proximate cause of this accident, and you further find that this young woman was free from contributory negligence, then she would be entitled to a verdict against one or both of these defendants as the case might be, and if she is entitled to recover then she is entitled to be compensated, gentlemen, for the injuries which she personally sustained as the natural and proximate cause of the accident.

She claims that she was thrown forward in the taxicab and that her knees and other parts of her body were bruised, and that as a result of the accident her left knee had water on it, so that she was confined to her bed for two weeks, and was unable to go out of the house for three weeks. As I say, she is entitled to be compensated for those things if they are the natural and proximate result of this accident, and that would include pain and suffering for so long a time as you find she has experienced or will experience pain and suffering. There is no claim that she is permanently injured, but there is some testimony here that at the present time on changes of weather she does experience some pain. If so, she is entitled to be compensated for it. The duty is always upon the plaintiff to prove her injuries to your satisfaction by a fair preponderance of the evidence in the case. Compensation will also include, gentlemen, any medical expenses reasonably and necessarily incurred by her in an effort to cure herself of the injuries which she sustained

as the natural and proximate result of this accident. There is some testimony here by one of the doctors that a reasonable bill for his services would be one hundred and twenty or one hundred and twenty-five dollars, and it was admitted with respect to the other doctor that his reasonable bill would be one hundred dollars. If those things are so, gentlemen, and you find that this young woman is entitled to recover, she would be entitled to be compensated for that loss.

I have certain requests to charge on behalf of the plaintiff. Number one I refuse to charge except as I have already charged. It does not make any reference to proximate cause.

Number two I have already charged, only much fuller, therefore I refuse to charge.

Number three I refuse to charge, because it imposes upon the taxicab driver only the degree of reasonable care.

Number four I refuse to charge, except as I have already charged.

Number five: "The plaintiff was a passenger in the taxicab, and therefore cannot be charged with any negligence of the driver of the taxicab." I charge you that, gentlemen. Possibly I did not develop that in the main charge. It is conceded, as I said at the outset, that this young woman was a passenger in the taxicab of this defendant corporation. That being so, if you should find that the driver of the taxicab was negligent under the evidence that could not be chargeable against her, because she had no control over the operation or management of the car. When I spoke of contributory negligence, I was speaking only of her own conduct. It had no reference to the driver of the car because, as I say, she was a passenger and had no control over his conduct,

therefore his negligence could not be attributable to her.

Number six I refuse to charge except as I have already charged. It leaves out the element of proximate cause.

Now, gentlemen, in conclusion, I wish to admonish you that you are not to allow symathy, passion, prejudice or any outside influence of that charter that might tend to wrap judgment to creep into this case, to interfere with the exercise of the oath that you have taken. You are to pass upon the case solely on the evidence that has been produced here, find out what the facts are in this case and then apply the rules of law which the court has given you to the facts as you find them. If you do that, then your verdict will be a right verdict.

Motions were made here for a non-suit and for the direction of a verdict, and they were denied by the court, but I think you have served here long enough now to realize that in passing on those motions the court is not attempting to indicate what your verdict should be. The court was merely deciding that in the case there is conflicting evidence of a character that should be submitted to you for your determination, applying the rules of law which the court gives you.

It might be well if I read to you the names of parties again. The plaintiff is Catherine Mangone. She is suing two defendants, John M. Patterson, and Mac's Auto Service, Incorporated. Now, if you should find a verdict in her favor against both of these defendants, you would say so and express the sum which you thus find. If you find in favor of the plaintiff against one of these defendants you would say you found in favor of the plaintiff and against that defendant,

and express the amount that you so find, but with respect to the other defendant, if you should find that no recovery should be found against the other defendant, then you would say we find in favor of that other defendant and against the plaintiff a verdict of no cause of action.

PLAINTIFF'S REQUESTS TO CHARGE.

1. If from the evidence you find that both the operator of the taxicab and Patterson were careless, you may bring in a verdict in favor of the plaintiff and against both defendants.

2. There was a duty imposed by law upon the taxi driver to use a high degree of care toward his passenger.

3. If from the evidence you find that if the taxi driver had exercised reasonable care, he could have avoided the collision, and he failed to use such care, he would be guilty of negligence.

4. If from the evidence you find that Patterson showed a reckless disregard for the safety of others on the highway, and especially if he was intoxicated, or his drinking in anywise interfered with his driving, so as to charge him with a reckless disregard for the safety of others, you may assess additional damages by way of punishment as a warning to others.

5. The plaintiff was a passenger and therefore cannot be charged with any negligence of the driver of the taxi.

6. If from the evidence you find that the driver of the taxi had reason to believe that Patterson was coming into him, and he failed to exercise a high degree of care, he is negligent, and you may assess damages against his employer.

New Jersey Court of Errors and Appeals

CATHERINE MANGONE,
Plaintiff-Respondent,

vs.

JOHN M. PATTERSON,
Defendant-Appellant.

On Appeal from Supreme Court.

BRIEF FOR JOHN M. PATTERSON, DEFENDANT-APPELLANT.

Statement.

This is an appeal from a judgment in the Hudson County Circuit of the Supreme Court entered in favor of Respondent (hereinafter called the Plaintiff) and against the Appellant (hereinafter called the Defendant) for the sum of Fifteen Hundred ($1500.00) Dollars.

The complaint filed by the said Plaintiff in the Supreme Court named the said John M. Patterson and the Mac's Auto Service Co., Inc., as co-defendants.

The jury brought in a verdict of Fifteen Hundred ($1500.00) Dollars against the Defendant, John M. Patterson alone, finding no cause of action against the Defendant, Mac's Auto Service Co., Inc.

In his appeal appeal to this Court, the Defendant John M. Patterson respectfully contends that the verdict found by the jury against him alone

and exonerating the Mac's Auto Service Co., Inc., was against the weight of the evidence, and also that the plaintiff failed to prove by a fair preponderance of the evidence that the said defendant John M. Patterson was responsible for the accident; also that by reason of the fact that the said Plaintiff called the said Defendant John M. Patterson as a witness for her to prove her case, she was bound by his testimony as to how the accident happened and to the manner in which it occurred and as to the facts and circumstances surrounding the said collision between Mr. Patterson's automobile and the taxi-cab belonging to the Mac's Auto Service Co., Inc., in which she was a passenger, and as the result of the said sworn testimony given in the Plaintiff's case by the said Defendant John M. Patterson and also given by him in his own case in denying the allegations in the Plaintiff's complaint, the verdict found by the jury against the said Defendant John M. Patterson was clearly against the weight of the evidence, and was the result of passion, bias and prejudice; and not only was the said verdict clearly against the weight of the evidence on the testimony adduced on the part of the Plaintiff and in respect to his own defense in which he clearly testified that he was not responsible for the injuries sustained by the Plaintiff, but also the verdict of the jury was excessive.

Facts.

The facts giving rise to the controversy briefly stated are as follows:

On the evening of March 1st, 1926, Defendant Patterson was driving his automobile along the East Boulevard in the Town of Weehawken in a northerly direction. The Plaintiff was a passen-

ger in a taxi-cab belonging to the Mac's Auto Service Co., Inc., which was being driven in a southerly direction along the East Boulevard, Weehawken. A collision took place between the automobile belonging to Patterson and the said taxi-cab of the Mac's Auto Service Co., Inc., the Plaintiff being a passenger therein, as a result of which accident the said Plaintiff was injured.

There were only two eye-witnesses to the accident itself, who testified at the trial of the case respecting the actual occurrences preceding and at the time of the collision, and these two persons were one William J. Reisel, chauffeur of the taxi-cab containing the Plaintiff, and the said Defendant Patterson. At the trial the Plaintiff called Mr. Patterson as a witness to prove the collision and accident in her case, and she also called the chauffeur of the taxi-cab Reisel. It was brought out on the Plaintiff's case by the Defendant Patterson that he was not responsible for the accident; that he was guilty of no negligence in the driving, management and operation of his automobile; that he was proceeding slowly in a northerly direction when a Ford automobile which was proceeding along the same direction as he, speeded in front of his car and when in front of his said automobile came almost to a dead-stop, and Mr. Patterson, in order to avoid either injuring himself or running into and colliding with the said automobile or damaging the said Ford, swerved to the left of the Ford car and just as he did so he observed the taxi-cab coming in the same direction. The taxi-cab made no attempt to stop. Patterson when he saw it coming head on to him, jammed on his brakes in order to bring his car to a standstill, but the collision occurred.

POINT ONE.

Defendant Mac's Auto Service Co., Inc., was guilty of contributory negligence.

It is respectfully submitted that the chauffeur of the taxi-cab was guilty of contributory negligence in that he testified that when he saw Mr. Patterson's car zig-zagging to avoid striking the Ford automobile, he did not bring his car to a stop, but continued to drive headlong into Patterson's car (see Case, page 34). On cross-examination of the chauffeur, Mr. Reisel, lines 18 to 40:

> "Q. Now, you were going at 20 miles an hour when you saw Mr. Patterson's car, is that right? A. Yes, sir.
>
> Q. And you saw him about 15 feet away the last time he zig-zagged, is that right? A. Yes, sir.
>
> Q. Did you stop your car when you saw him zig-zagging? A. When he was 15 feet away?
>
> Q. Yes. A. I didn't have a chance to stop it.
>
> Q. I am asking you did you stop it, whether you had a chance or not? A. I don't know whether I did or not.
>
> Q. Well, you were driving in your car, weren't you? You had a passenger, Miss Mangone, in the back of your car and you saw this car 15 feet away as you told the court and jury zig-zagging, coming over to where you were driving in a southerly direction. Now, did you stop your car or not? A. I don't know, because he hit me all of a sudden.
>
> Q. Well, was your car moving when you were struck or was it at a standstill? A. It was moving.
>
> Q. And you did not stop your car, did you? A. No, sir."

POINT TWO.

The verdict of the jury against the defendant John M. Patterson was contrary to and against the weight of the evidence.

The verdict of the jury against the defendant John M. Patterson was contrary to and against the weight of the evidence and there was no preponderance of evidence, not even a fair preponderance of evidence made out by the plaintiff to justify the verdict against the said John M. Patterson.

The testimony sworn to by the defendant Patterson when he was called in the case of the plaintiff showed that on the evening of March 1st, 1926, he was driving his car in a northerly direction on the East Boulevard, near Second Street, Weehawken, slowly and in a careful manner and on the right side of the road when a certain Ford automobile coming in the same direction as he, passed in front of the autohobile of Patterson, cutting him off and almost coming to a standstill, and in order to avoid running into and colliding with the said Ford automobile which pulled in front of him and cut him off, the said Patterson quickly applied his brakes and swerved around the left hand side of the Fort automobile, at which time he saw the said taxi-cab of the Mac's Auto Service Co., Inc., coming in an opposite direction. The taxi-cab was only about 20 feet or more from the defendant's car. The defendant, Patterson, immediately applied his brakes and tried to come to a stand-still but the taxi-cab kept on coming on and moved towards the automobile of Mr. Patterson and a head-on collision between the two cars occurred (see Testimony of Defendant Patterson, Case, pp. 35 to 45).

The plaintiff, Catherine Mangone, testified that she did not see how the accident occurred, but that the two cars came together with a very loud impact and she was thrown to her knees on the iron heater in the taxi-cab, that after the collision she was taken from the taxi-cab to the North Hudson Hospital where she remained for a few minutes, and then was taken to her home where she was confined to her bed for about two weeks. Said plaintiff also testified that she was not looking out of the window of the taxi-cab before the accident occurred, and also that said taxi-cab was going at the rate of about 20 miles or 25 miles an hour or perhaps more (see Case, page 59, lines 33 to 40, and Case, page 65, lines 12 to 15).

We therefore respectfully submit that under the testimony of Reisel, the chauffeur of the taxi-cab practically admitted that he was guilty of contributory negligence as set forth hereinbefore in Point One, and there being no other witnesses to the actual occurrence of the accident outside the Defendant Patterson under the following testimony of Patterson regarding how the accident occurred, it is contended and it certainly must be clearly seen by this Court that the Plaintiff did not sustain the burden of proof that Patterson was negligent, nor was her case even established by a fair preponderance of the evidence.

The testimony of Mr. Patterson brought out by the Plaintiff on the Plaintiff's case when she called Mr. Patterson as her own witness in respect to how the accident happened, is as follows:

> "Q. And did you see a taxi-cab coming in the other direction? A. Well, I will tell you how the accident happened" (Case, pp. 38 39).

"Q. All right, tell me how the accident happened. A. I was driving on the right hand side of the street slowly. I had plenty of time. A Ford car came along. I don't know why he done it, and he pulled by me, passed by me and pulled in front of me and almost came to a standstill, and to avoid having an accident crashing into the Ford, I tried to get around it. I was going down hill and I could not, even though I was only going 15 miles an hour at the time—if I applied my brakes, the hydraulic brakes, if you apply them very quickly, it is dangerous, and I tried to get around the Ford car and just as I pulled around the Ford car I see the taxi-cab coming and I apply my brakes as easily as I could, but we were too near.

The Court: You were on your right side of the center?

The Witness: Yes, sir.

The Court: When you turned to pass the Ford?

The Witness: I was in the center of the street then.

The Court: Were any of your wheels over on your left side of the center line then?

The Witness: I don't think so.

Q. Now, Mr. Patterson, how far away was the taxi-cab when you first noticed it? A. The taxi-cab was about, I judge, 20 feet or more.

Q. That is the first time you saw the taxi-cab? A. As soon as I pulled around the Ford. The Ford came practically to a standstill, and while I was not going fast, still and all I didn't want to crash into the Ford.

Q. The Ford Car was going—— A. The Ford car passed me and pulled in front of me and came to a standstill. I don't know whether he did it out of spite or what.

Q. Was this Ford driving in the same direction you were? A. Driving in the same direction I was driving in.

Q. How many feet was he in front of your car? A. He passed me and pulled in front of me and when he came to a standstill he was, I judge, 9 or 10 feet.''

And the aforesaid testimony of the said Patterson clearly shows that he did what any reasonable intelligent man operating an automobile would do under the circumstances and said testimony clearly shows that he was not negligent and was not responsible for the injuries sustained by the plaintiff.

The testimony of the defendant Patterson as heretofore set forth when he testified as a witness for the plaintiff in the plaintiff's case and when he testified in his own behalf on the defendant's case (See Case, pp. 85-88) coupled with the admission of the chauffeur of the taxi-cab that he did not stop his car but kept on moving when he saw Patterson's car swerve out and approach his car must clearly convince the minds of this Honorable Court that the act of Patterson in that emergency and to avoid an absolute inevitable accident wherein he might have been either injured or killed himself or might have injured or killed the occupant of the Ford car, was not the proximate cause of the accident and of the injuries to this plaintiff. The real and active intervention and essential proximate cause of the accident and the injuries to the occupant of the taxi-cab was the negligence of the driver of the Ford car in running in front of Patterson's car and almost coming to a standstill.

At best, under the testimony adduced by Patterson as a witness for the plaintiff and the testimony of Reisel, the driver of the taxi-cab; the jury should have found that under all the circumstances and acts in emergency on the part of both that it was an absolute unavoidable accident.

It does not therefore require any great deal of argument to convince the minds of this Honorable Court that the plaintiff having called Patterson, the defendant, as a witness, did not make out her case even by a fair preponderance of the evidence. In fact the evidence at the end of the plaintiff's case clearly preponderated in favor of the defendant Patterson, and the jury's verdict against him demonstrated passion, bias and partiality.

> ''The right of the Defendant to have the Plaintiff bear the burden of the affirmative is a substantial one, the denial of which is injurious error''.
>
> ''In an action of negligence, the burden of proving the negligence of the defendant is upon the plaintiff and as a proposition of law for the jury's guidance at the close of the case, it never shifts to the defendant.''

Niebel, et al. vs. *Winslow,* 95 Atl. 995.

> ''To establish a case of negligence and fix the liability of the defendant, it is encumbent upon the Plaintiff to prove some fact which is more consistent with negligence of the defendant than with the absence of it. When the Plaintiff's evidence is equally consistent with the absence as with the existence of negligence on the part of the Defendant, the Plaintiff must fail. A probability is not sufficient.''

Alvina vs. Public Service Ry. Co., 117 Atl. 709.

> ''Negligence is a fact which must be shown. It will not be presumed.''

Alvina vs. *Public Service Ry Co.,* 117 Atl. 709.

POINT THREE.

A non-suit should have been directed by the Trial Court in favor of the defendant John M. Patterson.

Patterson testified as a witness for the plaintiff and his testimony showed that he was not guilty of any negligence in the operation of his car, nor was his action in the great emergency and to avoid an absolutely inevitable accident and probably injury to himself and others; the proximate cause of the accident and of the injuries to the plaintiff.

Reisel, the chauffeur, testified that he did not stop his car when he saw Patterson's car turning out and approaching his, consequently there was no evidence at the end of the plaintiff's case to charge Patterson with any negligence even by inference, nor by a fair preponderance of the same. In fact both at the close of the plaintiff's case and at the close of the entire case the evidence preponderated in favor of the defendant Patterson. Therefore, the jury could not reasonably infer that defendant Patterson's negligence caused the accident and the injuries to the plaintiff. Therefore, a non-suit in favor of the defendant Patterson should have been granted by the Trial Court.

> "If, when the plaintiff rests, there is no evidence from which the jury may reasonably infer that defendant's negligence caused the injury complained of, plaintiff should be 'non-suited.'"
>
> *Kelly & McAlinden Co.* v. *Central R. R. Co.*, 70 L. 190.

> "Non-suit should be directed in an action for negligence; the evidence, though showing no negligence in plaintiff, showing none in defendant, but merely an accident."
>
> *McGuire* v. *Central R. R. Co.*, 68 L. 608.

> "Where, at the time of the collision between a street car and vehicle, each party was using such reasonable care as the circumstances demanded, the collision was an unavoidable accident, and there could be no recovery for injuries sustained."
>
> *White* v. *Wilmington City Railway Co.* (Del.), 63 Atl. 931.

POINT FOUR.

The verdict of the jury was excessive.

The verdict was Fifteen Hundred ($1,500.00) Dollars.

The plaintiff was not employed, therefore she lost no wages as a result of the accident (Case, p. 72, line 1).

She was thrown to her knees on the iron heater in the taxi-cab (p. 59, line 40) * * * taken to the North Hudson Hospital, but she refused to remain there and was taken home where she was attended by her family physician, Dr. Simiotte, who died about a month after the accident (Case, p. 60).

She was afterwards attended by a Dr. Elstern, who attempted to tell the jury that the plaintiff had been suffering from water on the knee, although he did not see her alleged injuries or attend her until more than a month after the accident occurred (Case, p. 83).

She sustained a few scratches on her arms and her other knee and was treated by Dr. Simiotte

for about a week and was confined to her bed for two weeks after the accident and continually in the house for three weeks without leaving it. (Case, pp. 60-62) * * * and was able to walk around after three weeks, although for a month thereafter she was compelled to use a cane in walking around (Case, p. 74, line 33). The entire length of her confinement in her home was for a period of three weeks after the accident (Case, p. 62).

There was no permanent injury whatsoever, no restricted motion. She incurred doctor's bills of approximately One Hundred and Ninety-five Dollars ($195.00).

Immediately after the accident occurred plaintiff did not complain about having sustained any injuries (p. 67, lines 40-41) nor did she mention anything about having sustained an injury to her knee cap (p. 68, lines 1-2) nor when she was taken to the North Hudson Hospital, but she asked for no treatment there but remained there for only five minutes and then was taken to her home (Case, p. 69, lines 1 to 40), and in fact she also refused to be examined by the doctor at the hospital (Case, p. 70, lines 1 to 15).

We respectfully submit that this verdict is grossly excessive and demonstrates bias, prejudice and passion on the part of the jury.

For the reasons hereinbefore stated, the verdict should be set aside and a new trial granted.

WILLIAM A. KAVANAGH,
Attorney for and of Counsel with
Defendant-Appellant.

New Jersey Court of Errors and Appeals.

CATHERINE MANGONE,
Plaintiff-Respondent,

vs.

JOHN M. PATTERSON,
Defendant-Appellant.

On Appeal from Supreme Court.

BRIEF FOR CATHERINE MANGONE, PLAINTIFF-RESPONDENT.

Statement.

This is an appeal from a judgment in favor of the plaintiff-respondent (hereinafter called the "plaintiff") and against the defendant-appellant (hereinafter called the "defendant") for the sum of Fifteen hundred ($1500) Dollars upon a verdict after a trial before Mr. Justice Ackerson and a jury in the Hudson County Circuit of the Supreme Court.

The plaintiff sued the defendant John M. Patterson and the Mac's Auto Service, Inc., for injuries sustained by her (while riding as a passenger in a taxicab belonging to the Mac's Auto Service, Inc.) in a collision between said taxicab and the automobile of the defendant John M. Patterson.

The jury rendered a verdict of Fifteen hundred ($1500) Dollars against the defendant John M. Patterson, finding no cause of action against the other defendant Mac's Auto Service, Inc.

The plaintiff respectfully submits that there is no evidence whatsoever in the case charging the plaintiff with contributory negligence; that the evidence in the case conclusively shows that the defendant was responsible for the accident; that the verdict was based on the weight of evidence and was not the result of passion, bias or prejudice; that the verdict of the jury was not excessive; and that this is a typical case in which the verdict of the jury should be regarded as conclusive.

Moreover, plaintiff contends that the testimony of the appellant himself shows that he was guilty of negligence in the operation of his car.

The defendant, *at the close of the plaintiff's case*, moved for the *direction of a verdict* in favor of the defendant, *at the end of the defendant's case* moved for a *non-suit*, did not submit to the trial Court any requests to charge, and took no exceptions whatsoever to the Court's charge or to the plaintiff's requests to charge.

Facts.

Briefly and generally stated, the evidence tended to show that:

On the evening of March 1st, 1926, the defendant Patterson was driving his automobile along the East Boulevard, at or near the intersection of Second Street, in the town of Weehawken, in a northerly direction, when he turned from the right side of the road, that is the east side of the East Boulevard, and ran his automobile into the taxicab belonging to the Mac's Auto Service, Inc., which was proceeding in a southerly direction along the west side of the East Boulevard.

The plaintiff was a passenger in the taxicab at

the time of the collision and as a result of the accident the plaintiff was severely injured.

There is a painted white line in the center of the Boulevard (Case, pp. 22, 43).

The defendant admitted that he had been drinking some wine previous to the accident (Case, pp. 50, 51), and the testimony of other witnesses was to the effect that he was wabbly at the time of the accident and that the odor of liquor could be detected on his breath (Case, pp. 18, 19, 101).

At the trial, in addition to the plaintiff and Dr. Hellstern (one of the physicians who attended the plaintiff), plaintiff called as witnesses the defendant Patterson and one William J. Reisel, chauffeur of the taxicab in which the plaintiff was a passenger at the time of the accident.

Reisel testified that the automobile of the defendant was zigzagging on the East Boulevard, swerved from the right side of the Boulevard at the intersection of the Eastern Boulevard and Second Street, two public highways, shot over from the right side of the said Boulevard and hit the taxicab head-on (Case, p. 16, also pp. 32, 33). In other words, *the defendant's automobile was on the wrong side of the road*, namely, the east side, when the accident occurred. Moreover, he testified that he smelled the odor of liquor on the defendant's breath and that the defendant acted wabbly (Case, pp. 18, 19). Miss Mangone, the plaintiff, testified that the impact of the cars was very loud; that the taxicab was very near the westerly curb, on the right side of the Boulevard, three or four feet from the curb, and that the automobile of the defendant was on the wrong side of the road up against the taxicab (Case, p. 75). Police officer Reineke heard the crash of the cars (Case, p. 99) and when he arrived at the scene of the accident he found both cars on

the west side of the Boulevard (Case, p. 99); that the defendant's car was west of the white line, namely, the white line in the centre of the Boulevard; that the front end of defendant's car was about two feet from the west curb hooked into the other car (Case, pp. 99, 100), and that the defendant's condition was wabbly and that his breath smelled of liquor (Case, p. 101). Police officer McMahon, who was a block and a half away from the accident (Case, p. 111), testified that he heard a crash; that the two automobiles were across the white line on the west side of the Boulevard (Case, p. 112). Sergeant Timoney of the Weehawken Police Department testified that he was two blocks away, heard a crash, ran to the scene of the accident, and *found both cars on the west side of the Boulevard,* the taxicab about two and a half feet from the west curb (Case, p. 115). Police officer Anderson of the Weehawken Police Department heard the crash. He testified that the taxicab was up against the curb on the west side of the Boulevard and that *the defendant's car was locked right into the left wheel of the taxicab* (Case, p. 116). The only one who speaks about the accident occurring in the centre of the Boulevard is the defendant, yet the defendant gives no explanation as to how his car got on the wrong side of the Boulevard, that is, the west side, only a few feet from the west curb, locked right into the left wheel of the taxicab, when the four police officers, who were only a couple of blocks away and who heard the crash, arrived at the scene of the accident. The only person who says that there was a Ford car on the Boulevard at the time of the accident is the defendant, although he, the defendant, admits that he did not get the number of this alleged Ford car (Case, p. 48; see Reisel testimony, Case, pp. 21, 28; also Reineke testimony, Case, p. 110).

The defendant admits that he gave no warning of any kind (Case, p. 43). He says that the impact of the two automobiles was not very great. This is contrary to the testimony of all of the other witnesses. He is the only one who says that at the time of the accident the street was slippery and wet and says that he tried to stop his car without skidding (Case, p. 43). This is contrary to the testimony of the other witnesses who say the roadway was dry (see testimony of Reisel, Case, p. 25; testimony of officer Reineke, Case, p. 104; testimony of officer McMahon, Case, p. 113; testimony of officer Timoney, Case, p. 115; and testimony of officer Anderson, Case, p. 117).

The defendant did not know whether it was an open or closed Ford in which he was taken to the hospital (Case, p. 91). He could not recognize any of the police officers in the Court with whom he was supposed to have spoken (Case, p. 48). He did not know what time the accident occurred (Case, p. 54). He did not know how far from Second Street the alleged Ford passed him (Case, p. 54). He did not know how fast the taxicab was going (Case, p. 44 and p. 86). He did not remember the police officer who spoke to him (Case, p. 87). He would not recognize him (Case, p. 88). He admitted that after the accident he did not know where his car was in relation to the white line in the centre of the Boulevard (Case, p. 59). He admits that there was another lady in the car with him (Case, p. 38). He told the police officer at the time of the accident that this lady was his daughter and he does not deny that he might have said this (Case, p. 55) whereas in fact this lady was not his daughter but a friend (Case, p. 49). He said he

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did not subpœna her because he did not think it was necessary (Case, p. 56). He admits that he did not give any warning although he was approaching Second Street (Case, p. 43).

The facts clearly point to one conclusion, namely, that the defendant was solely responsible for this accident.

POINT ONE.

Even if Mac's Auto Service, Inc., was guilty of contributory negligence, its negligence is not to be imputed to the plaintiff, *a passenger.*

Plaintiff was a passenger for hire in a taxicab of Mac's Auto Service, Inc., at the time of the accident. She was being taken from the Weehawken Ferry to her home in Weehawken.

Counsel at the trial admitted that she was a passenger in the taxicab and that she was being carried for hire on the night of the accident (Case, p. 14). The driver of the taxicab admitted, in answer to a question of the Court, that he took fares or passengers indiscriminately (see Case, pp. 16 and 17).

Plaintiff submits that negligence of operator is not imputable to passenger.

Hubby on Automobiles (7th Ed.), Section 191, at page 183:

> "* * * One who hires a public hack and gives the driver instructions where to go, but exercises no other control over the conduct of the driver, is not responsible for the driver's negligence."

And again, Section 192, at page 183:

> "The general rule that a passenger in a public hack is not chargeable with the negligence of the driver, applies when an injury is caused to the passenger by the negligence of a third person, such as a railroad or street railway company or person using another automobile, who seeks to escape liability by charging the contributory negligence of the driver to the passenger. *As a general proposition, the negligence of the driver is not to be imputed to the passenger, and the latter's freedom from contributory negligence is to be determined solely from his own acts and omissions.* The question is quite similar to that involved when a guest riding in a pleasure car receives an injury from the joint negligence of the owner and of the driver of another vehicle; in that class of cases, *the negligence of the owner or driver is not imputed,* as a general rule, to a guest in a machine" (citing cases).

> "Under the general rule, if a guest or passenger in a vehicle is injured by reason of a collision with another vehicle, or with a railroad train, or a street railway car, or on account of defects in the highways or bridges, and he has no control over the driver and is not guilty of contributory negligence, he will not be barred from a recovery for his injuries, merely because the driver of the machine was guilty of negligence." (Hubby on Automobiles (7th Ed.), Section 807.)

Joy v. *Flax,* 3 N. J. Adv. R. 519;
Tronto v. *Reo Motor Co.,* 92 N. J. L. 595; 106 Atl. 383;
Horandt v. *Central R. R. Co.,* 81 N. J. Law, 488;
Weber v. *Philadelphia, etc., R. Co.,* 88 N. J. Law, 398; 96 A., 54;
Lange v. *New York, etc., R. Co.,* 89 N. J. Law, 604; 99 A., 346.

"It is immaterial whether the driver of the car in which the plaintiffs were riding as a passenger was also negligent or not."

Consentino v. *Geldseiler,* 4 N. J. Adv. Reps. 955, 134 Atl. 908;
Koplow v. *Hiczwa,* 4 N. J. Misc. Reps. 134; 134 Atl. 891;
Dumphy v. *Thompson,* 3 N. J. Misc. Reps. 1086, 130 Atl. 639;
Horandt v. *Central RR. Co. of N. J.,* 81 N. J. Law, 488, 83 Atl. 511;
Tronto v. *Reo Motor Co.,* 92 N. J. Law, 595, 106 Atl. 383;
Carero v. *Breslin,* 3 N. J. Misc. Reps., 507; 128 Atl. 883;
Poynter v. *Townsend,* (Del.) 130 Atl. 678.

Plaintiff, however, submits that there was no contributory negligence on the part of plaintiff (see testimony of Reisel, Case, p. 31).

Mr. Reisel, chauffeur, testified that at the time of the accident he was on the right side of the road and that the defendant suddenly shot over and struck his taxicab head-on. He further testified that he stopped his taxicab and that his brakes were locked (Case, p. 17) and that he jammed on his brakes (Case, p. 34).

The defendant in his brief, under Point One, speaks of the preponderance of evidence.

The Court, in the case of

Goldberg v. *Kravet* (June, 1926), 4 N. J. Adv. Reps. 582, 133 Atl. 766,

said:

"While the testimony in the case presented entirely a question of fact, the conclusion upon which we are not, under the well settled rule, warranted in disturbing."

In

Uvalde Asphalt Paving Co. v. *Central Union Stockyards Co.* (Ct. of Errors & Appeals, N. J.), 86 Atl. Rep. 425,

the Court held:

"Questions of fact, however disproportionate may be the weight of the evidence, are for the jury",

and said:

"To warrant a nonsuit at the trial or the direction of a verdict, something more than the mere weight of the evidence must be involved."

POINT TWO.

Weight of testimony will not be heard by the Appellate Tribunal.

The Court said, in the case of

Bozza v. *Leonardis,* 3 N. J. Misc. Reps. 1186 (Oct., 1925),

"The first ground is that the verdict was against the weight of the evidence. This ground cannot be considered on an appeal. We have nothing to do with the weight of the evidence."

Vansciver v. *Public Service Rway. Co.* (June, 1921), 96 N. J. L. 13.

"The first and second grounds of appeal submitted by the appellant are (1) that the verdict was against the weight of the evidence, and (2) that the sum awarded was entirely inadequate to compensate the plaintiff for his loss. It is enough to say in disposing of these two matters that they cannot be considered by an appellate

> tribunal; the only matters properly coming before it for determination are alleged errors committed by the trial court during the trial of the case."

In the case of

> *Ratz* v. *Hillside Bus Owners Assn.* (decided Jan. 31, 1927), 5 N. J. Adv. Reps. 219,

the Court said:

> "That this court has no jurisdiction to reverse a judgment because the verdict is not supported by the weight of the evidence or that the damages are excessive, has been decided over and over again. In fact, so often has it been decided that the courts, latterly, in adjudicating the question, rather deem it a work of supererogation to cite authorities to support the position."

Weight of evidence is not cognizable in an appellate tribunal but only on rule to show cause.

> *Ratz* v. *Hillside Bus Owners Assn.*, *supra.*

The defendant speaks of proximate cause. Negligence as proximate cause of an injury is a question for the jury where fair-minded men may differ about inferences from disputed facts.

> *Podalsky* v. *Sautter* (N. J. case), 133 Atl. 199.

> "Whether a person's alleged negligence naturally and proximately caused an injury is ordinarily a question for the jury."

> *Smith* v. *Public Service Corpn.,* 78 N. J. L. 478, 75 Atl. 937;
> *Cox* v. *Penn. R. R. Co.,* 76 N. J. L. 786, 71 Atl. 250.

A jury may infer negligence from facts which reasonably impute it.

> *Napurana* v. *Young,* 74 N. J. L., 627; 65 A., 1052.

POINT THREE.

The trial Court did not err in refusing to non-suit the plaintiff.

The defendant at the trial did not request a non-suit. He asked at the close of plaintiff's case for the direction of a verdict.

The Court's refusal to non-suit plaintiff held not error where there was evidence of defendant's negligence.

> *Meyer* v. *Public Service R. Co.,* 89 A., 1004; 85 N. J. L., 461.
> *Leonard* v. *Cacciappoli,* (Del.), 133 Atl. 68.

One who suffers injury from joint negligence of two or more persons has a right of action against them either jointly or severally.

> *Smith* v. *Yellow Cab Co.,* (Pa.) 132 Atl. 124.

> "In an action for personal injuries against owner of jitney bus and another where bus in which plaintiff was riding as a passenger collided with truck of other defendant, defendants were joint tort feasors and either one or both were liable; hence one was not entitled to instruction that jury were limited to evidence adduced by one only."

> *Willows* v. *Meyer & Bush Co.,* Vol. 4 (No. 8) N. J. Misc. Reps., 78; 131 Atl. 882;

Schadel v. *Honig,* Vol. 4 (No. 7) N. J. Misc. Reps., 56; 131 Atl. 624.

In

Uvalde Asphalt Paving Co. v. *Central Union Stockyards Co.* (Court of Errors & Appeals, N. J.), 86 Atl. 426,

the Court said:

> "To warrant a nonsuit at the trial of the direction of a verdict, something more than the mere weight of the evidence must be involved."

Where there is any evidence at all to sustain the verdict the upper Court will do so.

Nelson v. *Public Service Trans. Co.,* 5 N. J. Misc. Reps. 73.

Plaintiff, therefore, submits that when plaintiff rested there was ample evidence for the Court refusing a non-suit. (See testimony of Reisel, Case, p. 16; Miss Mangone, Case, p. 75.)

This was not an unavoidable accident and the testimony shows that the defendant, and he alone, was responsible for the accident.

POINT FOUR.

Excessive verdict will not be considered by Appellate Tribunal.

Ratz v. *Hillside Bus Owners Assn.* (decided Jan. 31, 1927), 5 N. J. Adv. Reps. (No. 8) 219,

held that damages are excessive or inadequate

are not cognizable in appellate tribunal, but only on a rule to show cause.

Vansciver v. *Public Service Ry. Co.,* 96 N. J. L. 13;
Bozza v. *Leonardis,* 3 N. J. Misc. Reps. 1186.

Dr. Walter Cimiotti attended the plaintiff and made 28 visits until his death; then Dr. Hellstern attended her and was attending her at the time the case was tried. She had water on the knee. She had to wear an elastic knee cap from the time of the accident on May 1st to November 1st (Case, p. 62). She was obliged to use a cane. Her mother and her sister attended to the nursing at home for her (Case, p. 75). Dr. Hellstern, a practicing physician for 23 years, testified that he attended her since Dr. Cimiotti's death on April 1st, 1926 (Case, p. 76); that her knee was still swollen (Case, p. 76); that he was still attending her and that he could not say when she would permanently recover from the injury (Case, p. 78).

The plaintiff testified that she was still being attended to by Dr. Hellstern for the injuries she sustained in the accident and that she still had pains on her knee, especially in bad weather (Case, p. 61), and that pains are quite severe (Case, p. 61). She has a scar on her leg (Case, p. 61). She paid Dr. Cimiotti for 28 visits $100. This is admitted (Case, p. 14). Dr. Hellstern's charges to date of trial were in the neighborhood of $120 or $125 (Case, p. 79), but he is still attending her. She paid Dr. Goldstone $25 for an X-Ray and $10 for a knee cap. This is admitted (Case, p. 65).

POINT FIVE.

Appellant in his notice of appeal mentioned other alleged grounds of appeal, but respondent assumes that the appellant has abandoned the same for the reason that these matters are not covered in his brief.

Appellant did not take any exceptions to the Judge's charge, did not submit any requests to charge, and did not take any exceptions to plaintiff's requests to charge. Owing to the fact that he did not take any exceptions, these matters will not be considered by an appellate tribunal. Numerous cases can be cited to sustain this point; however, inasmuch as appellant has not referred to the same in his brief, respondent has taken the position that the same have been abandoned.

Grounds of appeal which point out no error and ~~will~~ are not argued will not be considered.

A. Mackray, Inc., v. *McCullough*, 5 N. J. Adv. Reps., 221.

POINT SIX.

For the reasons hereinbefore stated, the judgment in this case should be affirmed.

WILLIAM C. KRONMEYER,
Attorney for and of Counsel with Plaintiff-Respondent.