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**Notice of Appeal.**

**New Jersey Court of Errors and Appeals.**

(Filed March 27, 1919.)

10

MINNIE HAHN, *et al.*,  
*Plaintiff-Respondent,*

*v.*

THE DELAWARE, LACKAWANNA AND  
WESTERN RAILROAD COMPANY,

*Defendant-Appellant.*

Action  
at Law.

20

To Weller & Lichtenstein, Esqs., Attorneys of  
Plaintiff-Respondent:

Sirs:

You will please to take notice that The Delaware, Lackawanna and Western Railroad Company, defendant-appellant in the above entitled action, herewith appeals to the New Jersey Court of Errors and Appeals from the judgment rendered and entered in the above entitled cause in the Hudson County Circuit Court and from the  
affirmance of said judgment by the New Jersey  
Supreme Court, and that it herewith sets down its  
grounds of appeal to be as follows:

30

1. Because the plaintiff-respondent's attorney in his summing up to the jury made illegal, improper and prejudicial remarks, to-wit: that "the defendant-appellant could have produced an X-ray plate of this woman's stomach if it wanted to do so. They did not want us to show ours.

40

*Notice of Appeal.*

2. Because the Trial Court refused to charge the defendant's request that "If you believe that the ulcerous condition of Mrs. Hahn existed before the accident to her you cannot allow her anything for the acceleration of said condition because there is no evidence to show how much said condition was aggravated and accelerated, and on account of the absence of such evidence you are not permitted to speculate on said matters".

3. Because the New Jersey Supreme Court, on the appeal of the above entitled cause, held that there was no error committed by the Trial Court in the improper remarks of the plaintiff-respondent's counsel made on the trial of the above cause before the jury, because no request was made by the counsel for the defendant-appellant that the plaintiff-respondent's counsel be rebuked by the Court or that the jury be instructed to disregard the improper remarks of the plaintiff-respondent's counsel.

4. Because the New Jersey Supreme Court erred in affirming the judgment of the Hudson County Circuit Court wherein it held that no error was committed by the Trial Court in refusing to charge the defendant-appellant's request to charge that "If you believe that the ulcerous condition of Mrs. Hahn existed before the accident to her you cannot allow her anything for the acceleration of said condition because there is no evidence to show how much said condition was aggravated and accelerated, and on account of the absence of such evidence you are not permitted to speculate on said matters," because there was no evidence whatsoever introduced upon the trial of the above entitled action of an ulcerous condition of the plaintiff-respondent, Mrs. Hahn's, stomach, or of any latter disease from which the

plaintiff-respondent was suffering, which was aggravated by the actions or negligence of the defendant-appellant.

5. Because the New Jersey Supreme Court erred in other and divers respects with respect to the affirmance of the judgment of the Hudson County Circuit Court.

Yours, etc.,

FREDERIC B. SCOTT,  
Attorney of Defendant-Appellant.

10

Dated March 11, 1919.

**Notice and Grounds of Appeal to Supreme Court.**

(Filed March 8, 1918.)

**HUDSON COUNTY CIRCUIT COURT.**

MINNIE HAHN, et al,  
*Plaintiffs-Respondents,*

*v.*

THE DELAWARE, LACKAWANNA AND  
WESTERN RAILROAD COMPANY,  
*Defendant-Appellant.*

Action  
at Law.

20

To:

WELLER & LICHTENSTEIN, ESQS.,  
Attorneys of Plaintiffs-Respondents.

30

Gentlemen:

YOU WILL PLEASE TO TAKE NOTICE that The Delaware, Lackawanna and Western Railroad Company, the defendant in the above entitled action, herewith appeals to the New Jersey Supreme Court from the judgment rendered and entered in the above entitled cause, and that it herewith sets down its grounds of appeal to be as follows:

40

*Notice and Grounds of Appeal.*

FIRST: Because the plaintiff's attorney in his summing up to the jury, made illegal, improper and prejudicial remarks, to wit, that "the defendant could have produced an X-ray plate of this woman's stomach if it had wanted to do so. They did not want us to show ours."

10 SECOND: Because the Trial Court refused to charge the defendant's request to charge: "If you come to the conclusion that the internal injuries of the plaintiff, Mrs. Hahn, were not the result of the accident, the only injury for which there can be a recovery at all on her behalf would be for the external bodily bruises which the plaintiff suffered."

20 THIRD: Because the Trial Court refused to charge the defendant's request to charge that "If you come to the conclusion that the railroad company is only liable for the external bodily bruises and that the internal condition was not caused by the accident, there can be no recovery for expense, damages, bills, etc., connected with the treatment of such internal condition."

30 FOURTH: Because the Trial Court refused to charge that "While it is claimed that a fall produced the internal condition of plaintiff, Mrs. Hahn, before you can allow a verdict for such a condition, it should appear not only that the fall was the possible cause of that condition, but other causes should be excluded and the circumstances should be such as to leave a reasonable inference that the fall was the actual cause of said internal condition."

40 FIFTH: Because the Trial Court refused to charge the defendant's request to charge that "The existence of the internal or stomach condition of the plaintiff, Mrs. Hahn, is not proven

by evidence of a subsequent condition which is merely consistent with its existence."

SIXTH: Because the Trial Court refused to charge the defendant's request that "If you believe that the ulcerous condition of Mrs. Hahn existed before the accident to her, then you cannot allow her anything for the acceleration of said condition, because there is no evidence to show how much said condition was aggravated or accelerated and on account of the absence of such evidence you are not permitted to speculate on said matters." 10

Dated, March 7, 1918.

Yours truly,  
 \_\_\_\_\_  
 FREDERIC B. SCOTT,  
 Attorney of Defendant-Appellant.

### Return.

The answer of Luther A. Campbell, Esquire, Judge of the Circuit Court, holden in and for the County of Hudson and within named the record and proceedings of the plaint whereof mention is within made with all things touching the same, I send to the Justices of our Supreme Court of Judicature at Trenton, N. J. at the day and year within contained, in a certain appeal to this writ annexed as within I am commanded. 20

LUTHER A. CAMPBELL,  
 Judge. 30

**Complaint.**

Filed, Nov. 15, 1915.

**HUDSON COUNTY CIRCUIT COURT.**

10	MINNIE HAHN and CHARLES HAHN, her husband,  <i>Plaintiffs,</i>  <i>v.</i>  THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,  <i>Defendant.</i>	}	Action at Law.
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Plaintiffs, Minnie Hahn and Charles Hahn, complaining of the defendant, say that:

20 1. On the 16th day of July, 1915, and before and after that time, the above-named defendant ran and operated a certain ferry, to wit, the Fourteenth Street ferry, between 14th Street in the City of Hoboken, N. J. and 23rd Street in the City of New York, N. Y.

30 2. On said 16th day of July, 1915, the plaintiff, Minnie Hahn, became a passenger on one of the boats of said defendant plying between said City of Hoboken and said City of New York, at 14th Street, Hoboken, N. J. aforesaid, for hire or reward paid by her to the said defendant.

3. The defendant, by its agents, servants and employees, negligently wet and scrubbed the floor of the ladies' cabin of said boat in which the said plaintiff, Minnie Hahn, had been invited to enter, and just as she was entering the same, and negligently and carelessly placed water, soap, and other slippery substances on the floor of said boat.

4. In consequence of said negligence and im-

proper conduct of the defendant, its agents, servants and employees, said Minnie Hahn slipped and fell on said floor and was thereby greatly injured.

5. The plaintiff, Minnie Hahn, was not guilty of any negligence that contributed to said injury.

6. The plaintiff Charles Hahn was by reason of said injuries obliged to pay, lay out and expend a large sum of money for medicines and doctor's bills in endeavoring to heal and cure said injuries, and was obliged to employ a servant to perform the work of said Plaintiff, Minnie Hahn, for a long space of time, to wit, from thence hitherto and by reason of said injury has lost and been deprived of aid, comfort and consortium of his said wife. 10

The plaintiff Minnie Hahn, demands \$2,000 damages.

The plaintiff, Charles Hahn demands \$500 damages. 20

WELLER & LICHTENSTEIN,  
Attorneys for Plaintiff.

### Answer.

Filed, Jan. 8, 1916.

The above named defendant, answering the allegations contained in the complaint of the above plaintiff, says:

1. That it admits the allegations contained in the first paragraph of said complaint. 30

2. That it has not knowledge or information sufficient to form a belief so as to answer the allegations contained in the second paragraph of the plaintiff's complaint.

3. That it denies the allegations contained in the third, fourth, fifth and sixth paragraphs of the plaintiff's complaint.

And for a separate and distinct defense, this defendant says that if the said plaintiff Minnie Hahn, was a passenger on one of the boats of this defendant plying between the City of Hoboken and the City of New York, at 14th Street, Hoboken, New Jersey, on the 16th day of July, 1915, and was injured by slipping and falling on the floor of one of this defendant's boats, then this defendant says that the said Minnie Hahn, one of the

10 above plaintiffs, was guilty of contributory negligence in this that she failed to use due care in and about her actions in going into the ladies cabin of said boat, and further in this that she carelessly and negligently failed to make a due and proper observation of the condition of the floor of the ladies' cabin of said boat.

WHEREFORE, this defendant prays that the above suit may be dismissed against it, with its costs in the premises.

20

FREDERIC B. SCOTT,  
Attorney for defendant.

**Order,**

Filed, Sept. 4, 1917.

Application having been made to me by the defendant in the above entitled cause for a Rule to Show cause why the verdict rendered in the above

30 entitled cause should not be set aside and for nothing holden, it is, on this 27th day of August, 1917, after due deliberation and consideration of said matter.

ORDERED, that the rule to show cause in the above entitled cause be made absolute as to damages only and that a venire de novo be awarded upon that question only.

LUTHER A. CAMPBELL.

Judge.

### Judgment.

This action was tried before Judge Luther A. Campbell with a jury at the Hudson Circuit, December 12-13, 1917.

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

They say they find for the plaintiffs, and against the defendants and they assess the damages of the plaintiff on occasion of the premises at the sum of Two thousand eight hundred thirty-five dollars and fifty cents (\$2,835.50). 10

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of Two thousand eight hundred thirty-five dollars fifty cents and his costs which are taxed at Fifty-seven dollars eighty-nine cents (\$57.89), making in the whole the sum of Two thousand eight hundred ninety-three dollars thirty-nine cents (\$2,893.39). 20

AND it is adjudged that the plaintiff assents to the deduction of said verdict to the amount of Two thousand dollars and his costs which amount to Fifty-seven dollars eighty-nine cents, making in the whole the sum of Two thousand and fifty-seven dollars and eighty-nine cents (\$2,057.89).

Judgment entered this 13th day of December, 1917.

Attest:

JOHN J. MCGOVERN, 30  
Clerk.

(L. S.)

**Rule to Show cause.**

(Filed, Dec. 17, 1917).

**HUDSON COUNTY CIRCUIT COURT.**


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 MINNIE HAHN and CHARLES HAHN,
*Plaintiffs,*

10

*v.*
 THE DELAWARE, LACKAWANNA AND  
 WESTERN RAILROAD COMPANY,
*Defendant.*
 Action  
 at Law.

 —  
 Rule to  
 Show Cause.

20

This cause having been tried before this Court on the 12th and 13th days of December, 1917, and a verdict rendered in favor of the plaintiffs on the said 13th day of December, 1917, the entry of judgment on said verdict being subject to certain disposition of the Court in the premises on account of the plea that the above plaintiffs were alien enemies, and it appearing to this Court that the said plaintiffs did, notwithstanding the determination of this Court in the premises, which has not yet been made, actually entered judgment final in their favor against the said defendant on the said 14th day of December, 1917, it is hereby

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ORDERED on this 17th day of December, 1917, that the said plaintiffs do show cause at this Court at the Court House in Jersey City at ten o'clock in the forenoon of that day, to-wit: January 4th, 1918, why the said judgment so improvidently entered should not be opened, and it is

40

FURTHER ORDERED that the said plaintiffs at the same time and place show cause why the further entry of judgment in said cause should not be arrested and stayed until the termination of the

war between the United States and the Empire of Germany or the declaration of peace between said countries.

LUTHER A. CAMPBELL,  
J.

(Filed February 21, 1918.)

**Order Dismissing Rule to Show Cause.**

This matter coming on to be heard on a rule to show cause as to why the judgment heretofore rendered in this cause in favor of the plaintiffs, Minnie Hahn and Charles Hahn, and against the defendant, Delaware, Lackawanna and Western Railroad Company, a corporation, for the sum of \$2,500, should not be set aside on the grounds: (1) that said judgment was improvidently entered; (2) why said judgment should not be arrested and stayed until the termination of the war between the United States and the Empire of Germany, or the declaration of peace between said countries, on account of the plea that the plaintiffs were alien enemies. And the Court having considered the arguments of counsel for and against said rule, and being of the opinion that the rule should be dismissed:

IT IS, on this 21st day of February, 1908, ORDERED that the rule to show cause, heretofore granted in this cause, be and the same is hereby dismissed, with costs to the plaintiffs.

LUTHER A. CAMPBELL,  
Judge.

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**Testimony.****HUDSON COUNTY CIRCUIT COURT.**

	MINNIE HAHN, et al,	}	
	<i>Plaintiffs,</i>		
	<i>v.</i>		Action at Law.
10	THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,		
	<i>Defendant.</i>		

Tried December 12, 1917, before HON. LUTHER  
A. CAMPBELL, Judge, and a jury.

— • —

WELLER & LICHTENSTEIN (Mr. Tiffany), for the  
20 Plaintiffs;  
FREDERIC B. SCOTT, Esq., for the Defendant.

— • —

(Opening by Counsel.)

MR. TIFFANY: With the Court's permis-  
sion, I will change the order of the witnesses,  
so that these doctors may be called at once  
and then go. Now I will first call Dr. Stack.

THE COURT: Very well.

— • —

30 JOSEPH STACK, M. D., sworn.

DIRECT EXAMINATION BY MR. TIFFANY:

MR. TIFFANY: How about the doctor's  
qualifications, Mr. Scott?

MR. SCOTT: Well, I think you had better  
qualify him.

Q. Doctor, you are a practicing physician, of  
this state? A. Yes, sir.

40 Q. Having your office in Hoboken? A. Yes,  
sir.

*John Stack, M. D.—Direct.*

Q. How long have you practiced? A. Twenty years.

Q. Twenty years. You have done some work for the Lackawanna Railroad, haven't you? A. Do you mean me?

Q. Examining surgeon? A. No.

Q. Do you know Mrs. Hahn? A. Yes, sir.

Q. Did you ever treat her? A. Yes, sir. **10**

Q. How often did she call to see you with reference to some injuries which she claims she sustained on or about the 16th of July, 1915? Did she call to see you about that? A. She called July 16th.

Q. 1915? A. 1915.

Q. At your office? A. Called at my office.

Q. Did you examine her? A. Yes, sir.

Q. Just tell the jury what you found? A. I found some contusions on both knee joints and she complained of both pain in the head and pain in the stomach. **20**

Q. How long did you treat her, doctor? A. About three weeks.

Q. What did you treat her for? A. For contusions of the knee joints, some headache, and she was very nervous.

Q. As to this stomach injury of which she complains? A. No, I didn't treat her for that.

Q. You didn't treat her for that? A. No. **30**

Q. Were you able to ascertain any injury to the stomach? A. No, sir.

Q. What did you prescribe for her, doctor? A. Gave her some lotions, then later on some liniments to rub on, and I guess I gave her some nervous medicine.

Q. What was that last?

(Latter portion of answer read by the stenographer). **40**

*John Stack, M. D.—Cross.*

Q. What did she complain about in reference to the stomach, doctor? A. Yes, sir; she said she had pain in the stomach.

Q. Were those medicines that you gave her for the purpose of relieving that pain? A. No, for the nerves.

10 Q. You didn't do anything in reference to that injury at all? A. No.

Q. How long did you treat Mrs. Hahn? A. Treated her for about three weeks and then she came off and on a few times afterwards to the office, about two months, I guess.

Q. During that period of time did you have any other doctors come in and see her? A. No.

Q. Did you recommend any? A. I told her if she complained of her stomach I would have to take it to see a specialist.

20 Q. What was your bill, doctor, for your services? A. I never sent a bill in the case.

Q. What is your bill for services? A. I should judge about thirty-five dollars.

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

Q. What symptoms, if any, did she tell you that she had with reference to her stomach, any? A. Simply pain.

Q. Pain? I see, and that is all you know about the matter? A. That is all.

30 Q. You didn't testify at the former trial? A. No.

MR. TIFFANY: That is all.

THE COURT: Cross-examine.

CROSS EXAMINATION BY MR. SCOTT:

Q. When you treated her, you treated her for contusions on her knees, doctor? A. Yes, sir.

Q. Both knees? A. Both knees; yes, sir.

40 Q. Was the skin abraded? A. Yes, sir.

*John Stack, M. D.—Cross.*

Q. Very much? A. Not very much.

MR. TIFFANY: Excuse me, may I ask the doctor a question?

MR. SCOTT: Yes.

BY MR. TIFFANY:

Q. You haven't seen Mrs. Hahn since that time for examination purposes? A. No, sir. 10

MR. TIFFANY: That is all.

BY MR. SCOTT:

Q. The skin on the knees was not abraided very much? A. Not very much.

Q. What did you find? A. There was some swelling there, discoloration.

Q. Slight discoloration? A. Yes, sir.

Q. Slight swelling? A. Yes, sir. 20

Q. That was discolorable on the time you first saw it? A. The first time.

Q. Did that clear up very quickly? A. About three weeks.

Q. About three weeks? A. Yes.

Q. In your treatment, did you find discolorations in any other part of the body? A. No, I couldn't find any, not as I noticed.

Q. You made examinations for them—did she have any discolorations on her head? A. No, she had some swelling on her right side, slight swelling. 30

Q. Slight swelling on her right side? A. Yes, sir.

Q. Was the skin abraided, doctor? A. No, I didn't notice it.

Q. Did that clear up in a short time? A. About three weeks she complained of the head and the knees.

Q. At the time that she left, after that period 40

*Charles Hahn—Direct.*

of three weeks, the contusions that she had on the knees and the swelling of the head had cleared up?

A. Had cleared up, yes.

Q. Neither the contusions of the knees or the swelling on the head, would you consider as a medical man very serious injury? A. No, nothing permanent.

10 Q. Nothing permanent? A. No.

Q. And nothing serious? A. No, I did not think it was serious.

Q. And you found no other evidences of anything else from the examination so far during the three weeks to warrant you in thinking that she had been seriously injured? A. The only thing she complained of was the stomach.

Q. Except what she complained of? A. Yes.

20 Q. Did you make any examination? A. Just external, just about the stomach, externally, that was all.

Q. Nothing to be found by that examination? A. I didn't find anything; still, she complained every day or said she had suffered pain in the stomach.

(WITNESS EXCUSED.)

---

CHARLES HAHN, SWORN.

30 DIRECT EXAMINATION BY MR. TIFFANY:

Q. Mr. Hahn, you are the husband of Minnie Hahn? A. Yes, sir.

Q. Plaintiff in the case—and one of the plaintiffs? A. Yes, sir.

Q. You were living with her in 1915? A. Yes, sir.

Q. And are now? A. Yes, sir.

40 Q. How long have you been married? A. Fifteen years.

*Charles Hahn—Direct.*

Q. Continued always to live together? A. Yes, sir.

Q. Prior to the time of her accident on the Lackawanna ferry boat in July, 1915, and during the time that you have lived with her prior to that time, what was her condition as to her health, was she able to do the housework? A. Yes.

10

Q. Sick or anything like that? A. No never sick.

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

Q. What is the age of the youngest? A. Five.

Q. Now, on the day of the accident, where did you meet your wife, after the accident? A. In New York.

Q. Whereabouts in New York? A. Twenty-eighth Street and Eighth Avenue, at my uncle's house.

20

Q. Did you accompany her home? A. Yes, sir.

Q. How did you come home? A. Took the car.

Q. Took the car home? A. Yes, sir.

Q. When you saw her at your uncle's house, what was her condition that you saw her, as to her appearance, as you saw it? A. Well, she looked kind of pale and nervous to me.

Q. Sitting up or laying down? A. She was lying on the sofa.

Q. Lying on the sofa? A. Yes, sir.

30

Q. Was that the appearance that she always had to you even before the accident? A. No.

Q. Since the accident, can you tell us in what way your wife is different to-day from what she was and her appearance was and her health before the accident? A. Well, she cannot do the housework and she is very nervous.

Q. What do you mean by "nervous," how do you know she is nervous? A. Well, every little thing excites her, you know.

40

*Charles Hahn—Cross.*

Q. Did you speak to her about this condition or anything? A. I beg pardon?

Q. Did you speak to her about this condition? (No answer).

Q. Did you pay any doctors' bills? A. Not so far.

Q. You haven't paid them? A. No.

10 Q. After the accident, did your wife continue to do her housework? A. No.

Q. Who did it? A. I got a woman.

Q. What was that woman's name? Is she here to-day? A. Yes, sir.

Q. Did you pay any medicine bill? A. Yes, sir.

Q. About how much, do you know? A. Between twenty and twenty-five dollars.

Q. How much did you pay this lady for doing the housework? A. You mean a day?

20 Q. A day? A. Well, I paid her a dollar and a half; now I have to pay two dollars.

Q. A dollar and a half and two now? A. Yes, sir.

Q. Does she still continue to do the housework? A. Two days a week.

Q. Did she do it before the accident? A. This woman—no.

Q. Did she ever help your wife? A. No.

Q. Except yourself? A. Yes, sir.

30 Q. You say you haven't paid the doctor bill at all? A. No.

MR. TIFFANY: That is all.

THE COURT: Cross-examine.

## CROSS EXAMINATION BY MR. SCOTT:

Q. Have you got those medicine bills here, Mr. Hahn? A. No, sir.

40 Q. Have you got them home? A. Most of them —you know how it is, you pay them when you get them.

*Charles Hahn—Cross.*

BY THE COURT:

Q. Paid it when you got the medicine? A. Yes, sir.

BY MR. SCOTT:

Q. How do you know that you paid twenty or twenty-five dollars for medicine then? A. Well, is what I figure up. **10**

Q. How did you figure it up when you made this computation, when did you figure up this amount? A. Oh, perhaps come to more, that is close.

Q. Are you not just guessing at the amount? A. Well, it is about right what I figured it, you see, between twenty and twenty-five dollars.

Q. Is that a close figure of it? A. Pretty close figure. **20**

Q. How do you figure it out? How much did you spend the first week she was sick for medicine? A. The first week?

Q. Yes? A. I couldn't tell you that.

Q. How much did you spend the second week? A. If I don't make a mistake it was between three and four dollars, something like that.

Q. Second week? A. No, the first week.

Q. How much the second? A. I couldn't tell you right. **30**

Q. Can you tell us any other time outside of the first week that you spent any money? A. I beg pardon? **30**

Q. You cannot give us any amount of money that you spent for any week outside of the first week? A. Well, sometimes it amounts to two dollars, sometimes less and sometimes more.

Q. Now, isn't it a fact, Mr. Hahn, that you are just guessing at that? A. Well, that is what I figured it; that is as I set it down. **40**

Q. I say, isn't it a fact that you are just guessing at those amounts? A. I don't know—

*Charles Hahn—Cross.*

Q. I say, isn't it a fact that you are just guessing at those amounts? A. Well, it is a rough guess, it is of the—

Q. Rough what, rough guess? A. It is between twenty to twenty-five dollars, what I wrote it down.

10 Q. You didn't write it down? A. Only one night I sat down and we figured how much it cost about.

Q. You didn't have anything to figure it up from? A. I figured it out on a piece of paper.

Q. Just from your head, just figured up what it was that you remembered? A. Yes, sir; that is right.

20 Q. You just figured it out it must have been between twenty and twenty-five dollars? A. Yes, sir; I didn't figure too much, I know; I figured up what I recollected and just put that down.

Q. But you didn't have any record at all; you didn't keep any memorandum when you bought medicine or anything? A. No.

Q. You figured it up from your head just before suit was started? A. Yes, sir; that is right.

Q. You say that you figured this from what you remembered before the suit started? A. That was the first, I guess.

30 Q. When the case first came up, was that this first case? A. Yes, the first case.

Q. Now, you say that as the result of these injuries your wife got nervous? A. Yes, sir.

Q. And that this nervousness was shown by the fact that she gets excited at every little thing? A. Yes, sir.

Q. That was the only way that the nervousness is shown, isn't it? A. No, and then she gets headaches on the right side, too.

40 Q. That is what you told us—? A. Yes.

Q. But the only thing that you know about the

*Charles Hahn—Cross.*

way that this accident affected her was the fact that when she got nervous she had arguments with you? A. Yes.

Q. And that was the only way that this nervousness was evidenced so that you can know that she was nervous? A. Yes, sir.

Q. The only way? A. It is mostly, yes; that is right; that is what everybody noticed, not only me. 10

Q. But outside of these arguments when she got nervous, did she show in any other way the results of this accident? A. No.

Q. That was the only way? A. That was the principal way.

Q. Now, what are these arguments about Mr. Hahn? A. The last one—

Q. Can't you recall? A. Sometimes to me, sometimes to the children, now, you see, I say something and she takes it up wrong. 20

Q. When was the last argument? A. We have them every day.

Q. Sir? A. I get that every day.

Q. You get that every day? A. Yes, sir.

Q. How old did you say the children are? A. One is five; the other goes on nine.

Q. Both healthy children? A. Yes, sir.

Q. Boys or girls? A. Two girls.

Q. Two girls? A. Yes, sir. 30

Q. What was—just tell the Court and jury, if you can recollect, about any one of these arguments? A. Oh, well, now—

Q. Now, you are here to tell us, Mr. Hahn; the jury wants to know how to figure out how Mrs. Hahn was damaged, and I want you to tell us just how this nervousness was shown by these arguments. A. Well, if I speak and say something, she is just the contrary of it, and I come around sometimes and she feels like picking up things and throwing at me. 40

*Charles Hahn—Cross.*

Q. Can't you recollect any argument you have had with her? A. No—nothing—the least little thing it makes her nervous and she starts into a howl.

Q. Now, just think for a moment and see if you cannot tell the jury just one of these arguments. I won't ask you for a lot of them; I will just ask  
 10 you for one of them. Take out any one you want, and tell the jury about any of these arguments that happen when she gets nervous, which you think was on account of the accident? A. Any one—

Q. Pick out the one that is freshest in your mind? A. I couldn't say nothing about that, every day the same, because I say something and she says the opposite of it.

Q. Did that happen yesterday? A. Yes; sir;  
 20 that is every day it happens.

Q. Did that happen yesterday? A. Yes, sir; I am a pretty quiet man, all right, and sometimes it gets my goat, too much.

Q. Did it happen yesterday? A. It happens every day.

Q. Now, what happened yesterday? A. Yesterday, oh, there was something yesterday.

Q. Now, you don't remember what happened yesterday? A. Not at present; I know it was  
 30 something.

Q. What happened the day before? A. Oh, it was about the children; they were playing in the room.

Q. Yesterday? A. Yes, sir; and they were making too much noise for her, they were making a noise playing; it was too cold for them to play outside, and she flew up like that, and didn't like it.

Q. And the children were making too much  
 40 noise in the house? A. As soon as they finished

*Charles Hahn—Cross.*

supper she sent them to bed when they were playing and she said they made too much noise for her and sent them to bed.

Q. This was the youngsters? A. Yes, sir; last night.

Q. What were they playing in the dining room?  
A. Kitchen—they were in the kitchen.

Q. Did she have an argument with you about it? A. Yes, sir; she said she cannot stand it, too much noise for her. I brought up some toys from downstairs for them to play with, and she went out there and she told them to go to bed. 10

Q. Told the children to go to bed? A. I said the children had to play with something.

MR. TIFFANY: Speak up louder.

A. She said it was too noisy.

Q. You said the children had to play with something, did you? A. Yes. 20

Q. And she said they made too much noise? A. Yes, sir.

Q. And she told them to go to bed? A. Yes, sir.

Q. Now, you didn't have much of an argument over that? A. No, that was a small one.

Q. That was a small one? A. Yes, sir.

Q. And the children were making a little noise, weren't they, playing around the house in the kitchen? A. Yes, sir. 30

Q. Like good, healthy children always do? A. Yes, sir; but I didn't make any noise.

Q. No, you were the quiet one of the family?  
A. And I got the most of it.

Q. Now, all of those other times that she got in arguments with you on account of this nervousness, were they like this time last night? A. Yes, sir.

Q. Something because the youngsters were mak- 40

*Charles Hahn—Cross.*

ing too much noise or something like that? A. It isn't only the children, it is any other thing that happens, too, she is the same way, you know.

Q. Well, she never had an argument with you about making too much noise? A. No, but if I say something or pass remarks, and things like that, she just goes against them.

10 Q. She disagrees with you, and she lets you know her mind, does she? A. Yes, sir.

Q. But outside of that those were the only arguments? A. I have them just now.

Q. Those were the only serious arguments? A. You see, sometimes like when sitting here, she makes it disagreeable for me, and I am glad when morning comes to get out; I am always home night.

20 Q. Do you work in the day time, Mr. Hahn? A. Yes, sir.

Q. You are a waiter, aren't you? A. Yes, sir.

Q. Where? A. In Fleischman's.

Q. In Fleischman's restaurant? A. Yes, sir.

Q. What time do you get home at night? A. I finish there at three o'clock, and then I work at Bath Beach the whole summer—

Q. Summer? A. Summer and winter.

Q. And then you go down there? A. Yes, sir; that is Saturday and Sunday, and sometimes during the week.

30 Q. The rest of the time you stay home? A. Yes.

Q. Does your wife have these arguments with you every night? A. Most of the time.

Q. Most of the time—are they about the children? A. Children, too; yes, sir.

Q. I say, most of the time they are about the children? A. I would not say that most of the time they are about the children; I think she picks more on me than on the children.

40 Q. Has she any pet subject to argue with you? A. She picks one out.

*Charles Hahn—Re-Direct.*

Q. She can have a number of subjects to argue with you? (No answer.)

Q. And those things that you have just told us now are the evidences, as you say, of the nervousness? A. Yes, sir.

Q. Which have occurred since the accident? A. Yes, sir.

Q. How long— A. She gets so nervous she starts to cry. 10

Q. How long have you been married? A. Fifteen years.

Q. Before this accident, ten years? A. Yes, sir; no, it was twelve years.

Q. Did she never disagree with you during that twelve years before? A. No.

Q. Never had any disagreement in the twelve years before? A. Well, you know, sometimes we will have them, and then it is all over; that happens in every house. 20

Q. Little arguments? A. Little arguments.

Q. But the general disturbances in the house now, you think, is attributable to the Lackawanna railroad? A. Yes, sir.

MR. SCOTT: That is all.

## RE-DIRECT EXAMINATION BY MR. TIFFANY:

Q. Just following that up, you say your wife was not this way prior to the accident? Did the children annoy her prior to the accident as they do now? A. No. 30

Q. How old were the children before the accident? A. One was two and the other between five and six.

MR. TIFFANY: That is all.

*Charles Hahn—Re-Cross; Homer Axford—Direct.*

RE-CROSS EXAMINATION BY MR. SCOTT:

Q. During all those years that you had these little children, they never annoyed Mrs. Hahn before? A. I beg pardon?

Q. I say, during those years before the accident while she had the children, the children never annoyed her before? A. Oh, no!

10 Q. Never before? A. Oh, you know how children are sometimes.

Q. Just like children are, they did annoy her a little before? A. Oh, but not the way she is acting now.

MR. SCOTT: That is all.

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(WITNESS EXCUSED.)

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HOMER AXFORD, M. D., sworn.

DIRECT EXAMINATION BY MR. TIFFANY:

Q. Doctor, you are a physician and surgeon of this state? A. Yes, sir.

Q. And connected with Christ Hospital? A. Yes, sir.

Q. Making a specialty of X-ray work? A. Yes, sir.

30 Q. Do you know this lady, Mrs. Hahn? A. I would not remember her.

Q. Well, presuming that this is Mrs. Hahn, do you remember taking an X-ray for stomach trouble? A. Yes, sir.

MR. TIFFANY: Will you admit that this is Mrs. Hahn?

MR. SCOTT: I think it must be.

MR. TIFFANY: All right.

40

Q. About Dec. 7, 1915? A. Yes, sir.

*Ferdinand James Pflug, M. D.—Direct.*

Q. Have you got that X-ray plate with you, doctor? A. No, I haven't.

Q. You were subpoenaed to bring it here, weren't you? A. Yes, sir.

Q. Did you attempt to get it? A. Yes, sir; I did.

Q. Just why could you not get it? A. They are making some changes; they are doing some new work around the hospital, building a new elevator, and our old plates are back in behind the part that they are renewing or altering, and it was impossible to get at them, but I looked up my record in regard to the examination. 10

Q. Now, as you made this X-ray did it show any condition—what part of Mrs. Hahn did you X-ray? A. I examined her kidneys, stomach and intestines.

Q. And from that examination what did you find. 20

MR. SCOTT: I object on the ground that the X-ray plates are the best evidence.

(Extended argument.)

Q. Doctor, did you make any examination of Mrs. Hahn other than by X-ray? A. I did not, no.

Q. You say the reason you cannot get these X-rays from the hospital is because of the repairs they are making preventing you from reaching them? A. Yes, sir. 30

(Extended argument.)

Q. Just what is the nature of the obstruction that made it impossible for you to get them, doctor? A. Well, they have torn out a lot of plaster and ceiling lath and a lot of new material has been placed in front of the place where we kept the old X-ray plates—you see, this dates back two years— 40

*Ferdinand James Pflug, M. D.—Direct.*

Q. Yes. A. —while I could get them by having that removed, it would be a terrible job.

(Discussion.)

Q. Doctor, for this examination in December did you make a charge to Mrs. Hahn? A. I did.

Q. What charge did you make? A. Fifty dol-  
10 lars.

Q. Was that a reasonable charge? A. It is.

BY THE COURT:

Q. What was that charge for, doctor? A. Examination of the stomach, bowels and kidneys.

Q. That is aside from the radiograph or through the radiographs? A. Through the radiograph.

BY MR. TIFFANY:

20 Q. You say that was a reasonable charge, doctor? A. Yes.

(Discussion; witness withdrawn.)

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FERDINAND JAMES PFLUG, M. D., sworn.

DIRECT EXAMINATION BY MR. TIFFANY:

Q. Doctor, you are a practicing physician of this state? A. I am.

30 Q. How long have you been practicing? A. Three years.

Q. Where is your office? A. Hoboken, New Jersey.

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

Q. Have you examined her? A. I have.

Q. When? A. About three weeks ago.

Q. Have you been treating her? A. I have.

40 Q. Tell us the examination you made and what you found? A. Why, Mrs. Hahn came to me and complained of stomach trouble, and I examined her in the usual routine examination.

*Ferdinand James Pflug, M. D.—Direct.*

Q. Speak louder so that the jury can hear you.

A. I decided that she had an ulcer in the pyloric end of the stomach, and I treated her for that.

Q. That end of the stomach, is that the intake or the outlet? A. The outlet.

Q. Did she tell you the history of an accident which she had had? A. Yes, sir; she told me that.

Q. Are there such things as traumatic ulcers, doctor? A. Yes, sir; there are traumatic ulcers, and ulcers due to the psychic effect of a shock will often result because in addition to the traumatism, the increased secretion acting on the traumatism is very apt to form an ulcer. **10**

Q. And in your opinion what character ulcer was this that you found? A. Traumatic ulcer.

Q. Are ulcers of that kind painful, doctor? A. All ulcers are some pain, same condition. **20**

Q. What is the remedy, doctor, for an ulcer of this character? A. Why, there is palliative treatment, medicinal treatment and operative treatment.

Q. Are ulcers considered by the medical profession as being serious or commonplace ills? A. Serious ills.

Q. What do they lead to? A. If they have enough contracture and they are large enough they can lead to a blocking of the food passing along by constriction, and in a great many cases they develop into cancers. **30**

Q. What are the symptoms, doctor, of ulcer? A. Why, pain is one of the most important symptoms.

Q. Yes, pain where? A. Pain in the epigastrium.

Q. Now tell us in layman's language so that the jury can understand? A. It is pain right in the region between where the ribs diverge, right in this region (indicating). **40**

*Ferdinand James Pflug, M. D.—Direct.*

Q. Was that where she complained of pain?

A. That was where she complained of pain; yes, sir, and also radiates to the back at times; distress and pain especially on taking food, in some form of ulcer coming on immediately, other forms an hour afterward; and if the ulcer is bleeding they will have hemorrhage in the stool or they will vomit blood. I did not get any history of bleeding in this case at all.

MR. SCOTT: Doctor, will you kindly talk a little louder?

MR. TIFFANY: I want Mr. Scott to hear this; he is interested.

Q. Pardon me; are you treating her now? A. I am treating her now.

Q. For what? A. For ulcer of the stomach.

20 Q. Have you rendered your bill? A. No, I have not.

Q. What is your bill to-day, doctor? A. Why, I could not give it to you just now.

Q. How long, in your opinion, will these treatments have to continue for this condition that you found, doctor? A. I could not state.

Q. Permanently? A. Permanently; yes, sir.

30 Q. How much do you charge for a visit—she comes to you, I presume, to your office? A. To my office, two dollars.

Q. Two dollars, was that a reasonable fee? A. Yes, sir.

Q. How many times has she been to your office? A. Two or three times.

Q. Two or three times within the past— A. Three weeks.

Q. How often will these treatments be required by you? A. Why, she might come for some time.

40 Q. I see; you cannot tell how long that will continue? A. No, sir.

*Ferdinand James Pflug, M. D.—Cross.*

MR. TIFFANY: Take the witness.

CROSS-EXAMINATION BY MR. SCOTT:

Q. Doctor, have you treated any cases of traumatic ulcer of the stomach before this case? A. I have.

Q. How many? A. I should say about ten or fifteen cases. 10

Q. Ten or fifteen cases? A. Yes, sir.

Q. All of them cleared up in time under your treatment? A. I do not know what becomes of them, they either cleared up or got tired of me, I don't know.

Q. They either cleared up or what? A. They either cleared up or were not satisfied and might have changed to another doctor; those cases are so stubborn to treat and the people really expect so much that really if they do not get better in three or four weeks, why, they generally change doctors; but two or three cases I have got that are going along well, they still complain of some distress. 20

Q. Are all of these traumatic ulcers of the stomach? A. You mean—

Q. Are all of these ten or fifteen cases traumatic ulcers of the stomach? A. Well, I have had other cases— 30

Q. That you have treated? A. I have had other cases that I do not think were traumatic; since I have been practicing I have had about fifteen.

Q. Had about fifteen? A. That I should judge were of a traumatic nature.

Q. And those cases where the patient—take these fifteen traumatic cases—those cases where the patient suddenly left—I do not mean “suddenly”—I mean when they left you and did not come back, up to that time had they been progressing fairly well? A. Yes, in my estimation they had. 40

*Ferdinand James Pflug, M. D.—Cross.*

Q. They had? A. I had tried to do all I could for them.

Q. So far as your opinion is concerned, they were getting along nicely? A. Yes, sir; I think they were doing fairly good under the treatments.

10 Q. When was the last traumatic ulcer of the stomach case that you had before Mrs. Hahn came to you? A. Just about a year ago.

Q. Just about a year ago? A. Yes, sir.

Q. Do you remember who that was? A. I could not just remember his name; I remember the party very well, though; he was only in to me on two different occasions.

Q. Sir? A. He called for consultation on two different occasions; I think his name was Donald, or something like that.

20 Q. You do not know where he lived? A. No.

Q. Can you give us the name and address of any other of these ten or fifteen patients? A. Not offhand, no.

Q. Not offhand? A. No.

Q. Those patients that came to you and did not leave evidently for some reason unbeknown to you, did those cases clear up and get well? A. Why, yes.

Q. They cleared up? A. Yes.

30 Q. Now, in all of those cases you say that there was traumatic ulcer of the stomach— A. Yes.

Q. —and in your examination of those cases did you ascertain where the trauma or blow or force was applied that caused that traumatic ulcer of the stomach? A. Why, I had one case that was—he said he was a shoemaker—and I attributed it to the fact that it was due to the trauma of holding the shoe in the manner they usually do.

40 Q. Holding the shoe in here (indicating) so that it will give the force of the blow against his stomach? A. Yes.

*Ferdinand James Pflug, M. D.—Cross.*

Q. Now, in that case the blow is directly—the trauma or blow is directly at the point where the ulcer is located? A. It was in that case.

Q. In that case. Now, these other cases—have you any recollection whether you ascertained how the force was applied that caused the stomach—the traumatic ulcer of the stomach? A. That, I do not remember any distinct cases. 10

Q. You have no distinct recollection? A. No.

Q. Now, it is a fact, I take it, from what you have already told us in regard to the shoemaker's case, and the designation of the term "traumatic ulcer of the stomach", it follows from that that a traumatic ulcer of the stomach, that there must be a blow on the stomach or at the point where the ulcer is subsequently found? A. Why, not exactly; it does not have to be directly on the stomach. 20

Q. How far away from the point where the ulcer forms in the stomach is it possible to have a blow on the body that will produce a traumatic ulcer of the stomach? A. I think a blow on any part of the body that would cause enough shock to interfere with the secretion of gastric juices—psychic shock—would be enough to cause an ulcer.

Q. Would that condition then cause traumatic ulcer, doctor? A. I would consider it a traumatic ulcer in view of the fact that a shock had caused—that was what formed my opinion in this case. I did not make up my mind that there had been a direct traumatism to the stomach, but that due to a fall—traumatic fall of the body—hitting the ground or something—this woman had had an increased secretion of gastric juices, which acid acted on the stomach and caused an ulcer. 30

Q. Now, can you tell me any authority that warrants the statement that you can get a traumatic ulcer of the stomach except from a blow directly over the stomach? A. Why, yes, De Costa. 40

*Ferdinand James Pflug, M. D.—Cross.*

Q. And what other authority? A. That was the only one I can mention just now.

Q. And what did he say? A. Just what I have stated just now.

Q. Did you read it up just before you came up to court? A. I came from Jefferson Medical College, where Dr. De Costa is professor of surgery, and I remembered that from my memory.

10 Q. That is in his textbook? A. That is in his textbook.

Q. On what? A. On ulcer of the stomach.

Q. Is it "De Costa on ulcer of the stomach"? A. De Costa on surgery.

Q. What college is that? A. Jefferson Medical College, Pennsylvania.

Q. Your notion also from your experience is that if a person just receives a psychic shock, that they can get an ulcer of the stomach? A. Not, from my experience, but from my reasoning.

Q. Talk a little louder, doctor. A. In my opinion such a thing can be possible; and that was why I thought it was possible in this case.

Q. Would you state in your opinion that if a person who was at a railroad crossing and got frightened by seeing a train pass by that they could get an ulcer of the stomach—a traumatic ulcer of the stomach? A. If directly after that occurrence they developed an ulcer of the stomach and at that time they received a shock and I could find no other reason for the formation of the ulcer, I would form an opinion that it was from that.

Q. You would? A. Yes, sir.

Q. You would form the opinion that that is what caused it, that immediately because they were frightened at a railroad train going by quickly at a railroad crossing, and you find that they had an ulcer of the stomach, that in your opinion

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*Ferdinand James Pflug, M. D.—Cross.*

the fright of seeing that train go by would be looked upon by you as the cause of this traumatic ulcer of the stomach? A. I would consider it if I would outrule other causes.

Q. By outruling other causes you would have to have an exact knowledge, first, would you not—an X-ray, would that assist you? A. An X-ray would be of assistance. 10

Q. An X-ray would be of assistance. In this case you did not have an X-ray? A. No.

Q. You did not look at any X-ray plates of Mrs. Hahn, did you? A. I did not; no, sir.

Q. Do you know of any other disease, doctor, outside of nervous diseases that are caused by psychic shock? A. Outside of nervous diseases?

Q. Outside of nervous diseases, yes? A. Why, I do; I have had a case—about three years ago when I was an interne in the hospital where a man, apparently in good health, was going to work, and he was struck by a wagon, and I was called in the ambulance— 20

Q. Right there, doctor, there was a man that was hit by something— A. He was hit by something?

Q. That was not psychic— A. Why—

Q. That was an actual injury; I did not want you to tell us about an actual injury—I want a case of psychic shock. A. I was just going to say that the man did not show any signs of an injury when I got there although he— 30

Q. Did he show trauma? A. —after I got there they claimed he was struck there was nothing to show it; he claimed he was struck and the driver claimed that he was not struck, that he had just got almost to the wagon and just about to cross it and stepped back and the man fell down. I brought him into the hospital and I examined him and another doctor, an interne, in 40

*Ferdinand James Pflug, M. D.—Cross.*

the hospital, examined him, and that man died that night, and we were at a loss what to sign the death certificate, and finally signed it as acute dilatation of the heart. I think in that case the psychic shock of that accident had a lot to do; whether the man had a diseased heart before the accident, I could not say.

10 Q. Is that your explanation of what a psychic shock would be? A. That was.

Q. That was the only case that you know of on record— A. That was the—to my knowledge.

Q. Where psychic shock cause something other than a nervous disease? (No reply.)

Q. Might not Mrs. Hahn be suffering from hyperchlorhydria or excessive acidity of the stomach? A. She is.

20 Q. She is? A. Yes, sir.

Q. Even though she had no ulcer of the stomach, isn't the condition of excessive acidity—the symptoms of excessive acidity practically the same as of an ulcer of the stomach? A. They are not as severe.

Q. But outside of that the symptoms are the same? A. Yes.

Q. Where did this situation with regard to this fellow dying of heart disease happen, doctor? A. St. Mary's Hospital.

30 Q. In Hoboken? A. Yes.

Q. Do you know when it was? A. No, it was in the year 1915 though.

Q. 1915. Now, if a woman bumped her head, that would not cause a traumatic ulcer of the stomach, would it? A. No, I can't say that in every case where a person is shocked—

40 Q. I am just asking where a woman had bumped her head—had a bump on her head—that would not cause psychic shock, or if she fell

*Ferdinand James Pflug, M. D.—Cross.*

down on her knees or abraided the knees, that would not cause it?

MR. TIFFANY: I think I object to the form of the question, "if she fell down on her knees," assumption on the part of Mr. Scott.

THE COURT: Read the question.

(Question read by the stenographer.)

MR. SCOTT: I have it that Dr. Stack has testified that this woman had struck her head—

10

THE COURT: And that she had an abrasion on both of her knees.

Q. If the woman had, by some manner, fallen down on her knees, abraded her knees, would that cause an ulcer of the stomach in itself? A. Not in all cases—

Q. Not in all cases. A. —but I think in this case, why, it had some influence on her; that was only my opinion, and that is all.

20

Q. Only your opinion? A. That is the way I made it up to my mind.

Q. You do not know how long that ulcer, if there is an ulcer in the stomach, has been there? A. No.

Q. You don't know what its condition is doctor? A. I do not.

Q. Very frequently a person may have an ulcer of the stomach without being aware of it for some time, might they not? A. Why, I should think anybody with an ulcer of the stomach would be aware of it; they might not know just what is causing the distress, but they surely would have a knowledge of it, would be aware of the fact that something was wrong inside of them, because they are very painful.

30

Q. And did this pain start suddenly? A. Why, all degrees of pain in ulcer of the stomach.

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*Ferdinand James Pflug, M. D.—Cross.*

Q. Well, did the severe pain start suddenly, or did it gradually work up? A. Why, as I tried to tell you, there are all kinds of pain; every person who has an ulcer of the stomach might complain of different kinds of pain; it would depend on the individual, how they describe pains, etc. I never had one so I could not tell you the exact feeling.

10 Q. Well, taking the word "severe" itself. If a person told you they had severe pains, having that construction in mind, does the severe pain connected with an ulcer of the stomach come on suddenly, or it is a matter of gradual development as the condition progresses? A. Why, that is hard for me to say as to that.

Q. That is something you do not know anything about? A. That is from personal experience, I do not know anything about it. I have had people  
20 with ulcer of the stomach tell me that pains come on an hour after eating and they they come on very suddenly; then, there are some people with an ulcer of the stomach, where the pain is continually present.

Q. But do people find as the result of having an ulcer of the stomach that it is formed or discovered, as it were, by them, by their suddenly having an awful pain in their stomach, or is it a matter of gradual development? A. Why, that  
30 would depend on the individual cases, I should think.

Q. Well, if the person did receive a direct blow to the stomach, or received a blow to some other part of the body, would they be apt to develop that severe pain of an ulcer of the stomach immediately after? A. Would they develop an ulcer of the stomach immediately after they received the blow?

40 Q. If they had this severe pain of the ulcer of the stomach, would they have it immediately after

*Ferdinand James Pflug, M. D.—Cross.*

they received the blow on the body not directly over the place where the ulcer was supposed to be found? A. That would depend, as I say, on the individual; I do not know how the pain would come on after an ulcer developed, it would depend on the case.

Q. How soon after a person gets a psychic shock would an ulcer of the—the severe pain of the ulcer of the stomach result? A. Why, if a patient had an ulcer, the ulcer would become painful just as soon as the secretion of the stomach acted on the ulcer to cause pain; but as far as the individual case is concerned, why, I am only a physician, God alone knows how that pain comes on. 10

Q. But it would not develop in ten or fifteen minutes? A. What do you mean; do you want my opinion, whether I think it would develop in ten or fifteen minutes, is that what you want? 20

Q. Yes, I want your opinion; yes, sir. A. I do not think it would, no.

Q. You do not think it would. How long would it take an ulcer of the stomach to develop to any extent, doctor? A. Why, I do not know.

Q. Sir? A. I do not know.

Q. They do not come all at once, do they? A. Why, from what I know about them, the patient has a pain, they go to the doctor and the doctor makes a diagnosis. Now, I do not believe anybody can say when that ulcer came, excepting in view of the fact that a doctor examines the patient states that an ulcer is there, if the ulcer was not there before, and so if they consult a doctor and find out that it was there. If anybody comes into my office and wants an examination and I find out that they have not been under the care of a physician, I make an examination of them to make up my mind what is wrong with them, and then I tell them. 30 40

*Ferdinand James Pflug, M. D.—Cross.*

Q. But in all these cases that you talk about when people go to the doctor, they have their ulcer there with them, they take it with them, it is a developed thing at the time? A. If I find in my opinion that there is an ulcer there, why, they have got it.

10 Q. Now, as a matter of fact, the mere fact that you make up your mind after an examination that a patient has an ulcer of the stomach, that is not a matter of certainty that it is there, is it? A. Why, no.

Q. Because the matter is covered up inside in the body, in the internal part of the body, and you only base your opinion upon—largely—to a large extent—on what the patient tells you? A. On what I find on examining the patient.

20 Q. What did you find in this case? A. I found tenderness over the stomach, and I also examined the gastric juice, at least, I had it examined, and I found excessive secretion of gastric juice, hydrochloric acid in excess.

Q. And those were the two things that you found? A. Yes, sir.

Q. That was all you found? A. I didn't make the examination myself, I had it made.

Q. Then, the only thing that you found on examination was this tenderness? A. Yes.

30 Q. And at the time that you found this tenderness, how did you ascertain that, by pressing or palpating? A. By palpation.

Q. On the abdomen or over the stomach of Mrs. Hahn? A. Yes, sir.

Q. Was there any rigidity when you made that examination of that part? A. Yes, sir.

Q. Sir? A. There was rigidity.

40 Q. Was it pronounced? A. It was very tender to the touch, and the rigidity, was, I should say, fairly well pronounced.

*Ferdinand James Pflug, M. D.—Cross.*

Q. When did you last examine her? A. About two weeks ago.

Q. And you say that—how many times did you examine her for the tenderness? A. About three times.

Q. Sir? A. About three times.

Q. And was this rigidity present each time? A. It was present but not of the same—it was of different rigidity—at one time it was—first time she was very rigid and the second time she was getting less and the third time it was even less, and I thought that there was some improvement in the condition. **10**

Q. When Mrs. Hahn came to you, did she tell you that she had an ulcer of the stomach? A. No, she just complained of the pain.

Q. Did she tell you that she had an ulcer? A. She told me that, yes. **20**

Q. Did she tell you what she claimed in her lawsuit to be her condition? A. She did not.

Q. And she told you at the time that the lawsuit was on account of a certain accident which she claims resulted in this ulcerous condition of the stomach? A. Yes, she did.

Q. Did she tell you how the accident happened? A. Yes, she told me that she fell, she slipped on a wet floor at some ferry, at the time.

Q. But that was all? A. That was all she told me. **30**

Q. She told you with respect to how the accident happened? A. Yes, sir.

MR. SCOTT: That is all; thank you.

MR. TIFFANY: Now, I have just one question more, if the court please.

THE COURT: All right.

*Ferdinand James Pflug, M. D.—Re-Direct.*

RE-DIRECT EXAMINATION BY MR. TIFFANY:

Q. Some of these ten or twelve cases that you referred to of traumatic ulcer were during your experience as an interne in the hospital where you were treating cases? A. Yes, sir.

10 Q. Now, doctor, basing your opinion or your answer upon the fact that a woman had been walking through a ferry boat, something struck her feet and she fell down there, so that her head struck the seat, she fell upon her knees and abrasing both knees, bumping one side of the head, the knees were scratched or abraded, and that prior to the fall she had not experienced any pain or feelings in her stomach other than a well person would experience, within a very few minutes after the fall she had terrible pains in the pit  
20 of her stomach, thereafter vomiting occurred in the morning, that thereafter she has suffered from insomnia belching gas, headaches, pain in the stomach after meals, bloody passage of the stools, and that she continued to vomit from time to time for weeks and months after the accident, would you say that there was any connection between that fall and the condition that I have described?

30 MR. SCOTT: Objected to on the ground that it contains facts not in evidence in the present case, Your Honor.

MR. TIFFANY: If you will tell me what is there, Mr. Scott—

THE COURT: You see the difficulty, gentlemen, is that as far as the order of witnesses are concerned, the manner in which you are calling them, is so that so far in this case you have very few of those facts.

40 MR. TIFFANY: Your Honor, if the testimony does not show them, I consent that it be struck out.

*Colloquy.*

THE COURT: The only thing is that she had an ulcer, abrasion on both of her knees and the swelling on her head.

MR. TIFFANY: I was reading from the testimony at the former trial.

THE COURT: Yes, but that is not this particular case.

MR. TIFFANY: I say that we will consent to strike it out, if we do not connect it up. 10

THE COURT: But how am I to allow you to do it now, I cannot allow you to ask something that is not in the case.

MR. TIFFANY: I will consent to its being stricken from the record, if I do not connect it up.

THE COURT: I cannot help you, if your opponent objects. Those are the only things that you have shown which I have mentioned, so far in this present inquiry, the abrasion of the knees and the swelling on the head, that is all of the injury you have shown, by going out of the order, so far. 20

MR. TIFFANY: (To witness) That is all. Would you just wait a few minutes, doctor?

The Witness: Yes.

MR. TIFFANY: I will call Mrs. Hahn. 30

Take the stand, Mrs. Hahn.

(Witness withdrawn)

*Mrs. Minnie Hahn—Direct.*

MRS. MINNIE HAHN, SWORN.

DIRECT EXAMINATION BY MR. TIFFANY:

Q. Mrs. Hahn, you are the plaintiff in this case?

A. Yes, sir.

10 Q. And prior to July 16, 1915, what was your condition as to health? A. I was perfectly healthy.

Q. Do your housework? A. Yes, sir.

Q. Have any pain in your stomach prior to that time? A. No, sir.

MR. SCOTT: May it please the court, I object to that as leading.

THE COURT: Yes.

20 Q. Just tell the court and jury what happened to you on that day while on the ferry boat. A. In the morning of the 16th of July I was going over to New York—(crying)—my mind is getting—over to my uncle—getting buried—taking over flowers. As I entered the boat the porter was mopping up and he throwed the mop, striking my feet, and I fell towards the seat, striking my head. As I recovered one of the deck hands helped me up; they asked me where it hurted me, and I told him that my stomach and that I hurt my head and my head  
30 hurted me very much. Of course, he wanted my name, and I could not give it to him, being too nervous. Of course, I lost my bouquet. He tried to put it into my hand but it fell down. So of course he asked me my name—

Q. Now, never mind that. When you fell down you say you suffered pain where? A. My stomach.

Q. Where else? A. In my head, knees and head.

40 Q. Was there anything the matter with your knees? A. My knees—tore my skirt—was through.

*Mrs. Minnie Hahn—Direct.*

Q. Your knees went through that? A. Yes.

Q. Was your skirt torn or not? A. Yes.

Q. Your knees were hurt and— A. Yes.

Q. Your head? A. It was looking red, swelling.

Q. Now, after you fell, what kind of pain, describe this pain in your stomach? A. I hurted my stomach and it felt like something came up from my—

10

Q. Describe the pain you had—you say you had pain in your stomach—what do you mean? A. Well, like something burst in it, it was like something coming up in my mouth.

Q. Was it a sharp pain or dull pain? A. Yes, sir; sharp pain.

Q. What did you do after that? A. The deck hand helped me up on the seat and I sat awhile until I thought I would be able to go and he asked me if I was alright. I said, "Well, I am not alright, but I would like to get there for the time before the funeral," and I wanted to get there, so of course he took my name then and a man sitting in the boat took his name, so of course—

20

THE COURT: We do not care about that.

Q. What did you do then? A. I went outside of the boat and I got as far as just outside of the boat when I felt faint, and I went up to a cop standing outside by the entrance of the door and asked him to assist me as I felt faint for just a few minutes. I said, "I would be alright," and he said, "Madam, have you had an accident or what happened, you are looking very bad"—

30

MR. SCOTT: I object.

MR. TIFFANY: I will ask that it be struck out.

Q. From there where did you go? A. This cop put me on the car, telling the conductor—

40

*Mrs. Minnie Hahn—Direct.*

THE COURT: Never mind that.

Q. What did you do? A. I went on to Twenty-eighth Street and Eighth Avenue.

Q. What did you have in your hands at the time  
A. Flowers.

Q. What kind of flowers were they? A. A  
10 wreath.

Q. Did you have that in your hand when it fell?  
A. Yes, sir; it fell on the boat.

Q. What did you do when you got to the Twenty-eighth Street house? A. I go into the door and the lady opened the door and said to me—

Q. Never mind what it was? A. Well, I got in and gave the flowers and laid on the couch, and she asked me what happened.

Q. Never mind that. How did you get home?  
20 A. My husband called for me.

Q. What time did you leave that house there?  
A. About around four to five.

Q. What time was the accident? A. In the morning between eleven and twelve.

Q. After you got home, what did you do? How did you get home? What did you come in? A. He come in and took off my clothes and laid awhile on the bed.

Q. Go ahead and tell us what you did? A. I  
30 said to my husband—

Q. Never mind what you said to him. What was the matter and what did you do? A. I had pain.

Q. Where? A. In my stomach, in my head and I said, "I cannot stand the pain, I will have to have the doctor."

Q. Did you get a doctor? A. My husband, he said, "Do you want me to call for him?"

Q. Never mind. You got a doctor? A. Yes.  
40

Q. Who was he? A. Dr. Stack.

Q. When? A. At that time.

*Mrs. Minnie Hahn—Direct.*

Q. Did he examine you? A. Yes.

Q. And prescribe for you? A. Yes, sir.

Q. How long did you continue to be treated by Dr. Stack? A. Well, for three weeks he come every day.

Q. Did he come there or you go to his house?

A. Yes, sir; he come to the house, and about three months I went to the office. 10

Q. During those three weeks, what were you doing there, were you around the house working, or what? A. No, I couldn't do anything.

Q. Did you stay in bed or get up or what? A. Yes, sir; I stayed in bed the first three weeks.

Q. Do your housework? A. No, no work, I wasn't able, I could not do the housework.

Q. Now, during those three weeks, were you just the same as you were before the accident, or were you sick or what? A. No, I was not the same. 20

Q. Now, tell us your condition? A. Well, I was not in pain continually and I couldn't do anything, and every morning—

Q. Now, tell me what hurt you? A. My stomach, my head and my nerves bothered me very much.

Q. Did you have anything else occur to you? A. Well, I passed blood, I said.

Q. In your stools, do you mean? A. Yes, sir. 30

Q. What else? A. Vomited every morning.

Q. When did you vomit it? A. Well, about four o'clock in the morning it would wake me up and I vomited.

Q. What vomit did you notice? A. Sometimes a little blood sometimes just slimy—

Q. Would it be easy vomiting or what—describe it: A. Well, sometimes it just came up sudden and sometimes it took a while.

Q. Describe the feeling, the experience that you 40

*Mrs. Minnie Hahn—Direct.*

had, when you vomited; was it pleasant or otherwise? A. I had a terrible lot of pain with it to bring it up.

Q. How long did that condition of vomiting continue? A. I vomit yet; I vomited this morning in the court three times.

10 Q. How does your head feel, does that bother you or not? A. Well, every morning—

Q. How? A. Headaches all of the time.

Q. Did you have headaches prior to the accident? A. Any what?

Q. Did you have them before the accident? A. No.

Q. Did you have any vomiting? A. Never vomited.

Q. Pain in your stomach? A. No, never.

20 Q. How about your sleep? A. I sleep very poor, I don't rarely ever sleep until four in the morning, and if I do sleep I have to get up at four in the morning because I have to vomit or I feel like vomiting.

Q. Did you experience that condition before the accident? A. No, I always had a good sleep.

Q. How about meal time? A. About meal times?

30 Q. What is your condition around meal times, when you eat? A. Sometimes I am very hungry but after I eat I do not relish the meal.

Q. What do you mean, "you don't relish?" A. It hurts me.

Q. Where? A. I am not comfortable—stomach.

Q. Is it a dull hurting or what? A. No, it is a sharp pain it makes.

Q. How long does it continue? A. Well, I am always in pain.

40 Q. How long after your meals, you say it pains, how long does that continue? A. All of the time; I am never without it.

*Mrs. Minnie Hahn—Direct.*

Q. You said that after your hearty meals you would have pain in your stomach—A. More pain than at other times, but I am always in pain with the stomach.

Q. After Dr. Stack treated you, who treated you? A. Dr. Nattrass.

Q. Dr. Pflug also has been treating you since? A. Yes, sir. 10

Q. Prior to the accident, did you do your own housework? A. Yes, sir.

Q. Have you been doing it since? A. No, sir.

Q. Why? A. Because I am not able to.

Q. Why aren't you able to do your housework? A. My stomach hurts me and I cannot do the work and my knees—I cannot get down on my knee—and then I have continually—if I wanted to do anything I cannot do it because my head bothers me too. 20

Q. Any other part of your body hurt you? A. On the back of my spine it hurts very bad.

Q. Whereabouts? A. I—

MR. SCOTT: I am surprised at this evidence; the bill of particulars makes no specification about injury to the spine; that is something new injected into the case, and I am surprised at this evidence at this time, if Your Honor please. 30

THE COURT: Will you consent that it be stricken out?

MR. TIFFANY: I will; excuse me, I did not know anything about it.

THE COURT: It may be stricken out then.

Q. Never mind your spine injuries; I will just ask for this purpose—how long has that been there this spine trouble? A. Well, I haven't had that very long, not very long; I have had it about two months or so. 40

*Colloquy.*

MR. TIFFANY: Well under that circumstance, if the court please, I submit that it is perfectly proper. The bill of particulars were given before the trial, the last—

10 THE COURT: Aren't you confined, Mr. Tiffany, upon this inquiry as to the situation, I mean, as expressed in the bill of particulars, the injuries complained of, and the answer?

MR. TIFFANY: Oh, Your Honor, I do not for a moment think so.

THE COURT: Then you are going into matters that Mr. Scott knows nothing about.

MR. SCOTT: Your Honor, I ask for a mistrial in view of the fact—

MR. TIFFANY: On what grounds.

MR. SCOTT: On the grounds of surprise.

20 THE COURT: You have been.

MR. SCOTT: And I submit that has been done by the injection of something into the case that has not been claimed before going to trial.

THE COURT: There won't be any harm, Mr. Scott, if it is struck out; the harm will be if it is left in, and then your position may be one of surprise.

30 MR. TIFFANY: Your Honor, I will consent it be struck out for the time being rather than to have a mistrial.

MR. SCOTT: Your Honor, I ask for a mistrial on the ground of the prejudice that has been produced at this time in the trial of this case.

40 THE COURT: No, I will not permit a mistrial for that reason. I will simply say to the jury that when it is stricken out, the case, so far as they are concerned, is in the same situation as if it had not been testified to at all; it is not in the case, has not any bearing

*Mrs. Minnie Hahn—Cross.*

in the issues before you, and what has been said upon this subject is stricken out. May I have the question before that?

(Question read by the stenographer as follows: "Q. Any other part of your body hurt you?")

MR. TIFFANY: I will withdraw that.

10

Q. Did you use medicine for Dr. Stack's treatment, Mrs. Hahn? A. Yes, sir.

Q. How often would you get this medicine? A. Well, I got sometimes twice a week—prescription.

Q. The first—A. Those first weeks I had every other day one—

Q. What would you pay for the prescription?

A. Sometimes eighty-five cents, sometimes a dollar fifteen and so on.

Q. Do you know how many prescriptions you got? A. Oh, I couldn't remember no; I can't remember very well since the accident.

20

MR. TIFFANY: Take the witness.

CROSS EXAMINATION BY MR. SCOTT:

Q. You remember testifying on the other trial, don't you, Mrs. Hahn? A. Well, I can't remember very good since—

BY THE COURT:

30

Q. But you remember the fact that you did testify at the other trial? A. Yes.

BY MR. SCOTT:

Q. You did not testify at that trial at all about vomiting any blood? A. What did you say?

Q. I say, you did not testify at the other trial at all about vomiting any blood? A. Oh, yes, I did.

Q. You did? A. Yes, I did.

40

*Mrs. Minnie Hahn—Cross.*

Q. And at the time that you went on the ferry boat and then at the time of the accident, was the boat moving? A. The boat had been going, yes.

Q. The boat was going at the time? A. Yes.

Q. At the time that the accident happened? A. Yes, sir.

10 Q. You are positive of that? A. I am positive of that.

Q. And when you came home that night on the ferry boat with your husband, do you recollect making an inquiry as to who the gentleman was that took your name in the morning? A. I don't remember that.

Q. As a matter of fact, will you say that you did not try to find out what his name was? A. I don't remember.

20 Q. You do not remember? A. I don't remember.

Q. Do you remember testifying on the other trial, that, being asked this question. "You learned Mr. Fitzpatrick's name that night when you came back?" Which you answered, "No, I learned it then," and also being asked this question, "Don't you recall (recollect) returning on the boat that night, making an inquiry as to who the gentleman was that took your name, and what his name was," and you answered "No, sir," and

30 "Q. Will you say you did not?" and answering you said, "I don't recall that." Then you were asked again, and you say you didn't, you answered, "I didn't." A. I don't remember.

40 Q. Did you or did you not, or does that refresh your recollection as to whether you made inquiry about this Mr. Fitzpatrick on the night when you were returning home with your husband the day of the accident? A. Yes, I do remember asking for the gentleman, but I don't remember if it was just before I left the boat or after I come home, I cannot say.

*Mrs. Minnie Hahn—Cross.*

Q. Now, Mrs. Hahn, you do not know how much you weighed at the time of the accident, do you?

A. I haven't been weighed.

Q. You do not know what you weigh now? A. Yes, I have been weighed.

Q. How much do you weigh now? A. Not just now.

Q. When was that? A. Sometime ago. 10

Q. When did you weigh last? A. I don't know—about six months ago.

Q. How much did you weigh then? A. I don't remember; Dr. Natrass weighed me at the office sometime ago after that.

Q. How much did you weigh then? A. I cannot remember that.

Q. Do you know what you weigh now, at the present time? A. No, I don't know what I weigh now. 20

Q. Any time? A. I only know that I weigh less by my clothes because they are too large for me.

Q. But you do not know what you do weigh now? A. I don't know; no, sir.

Q. And you do not know what you did weigh at the time of the accident? A. No, but I was always a heavy woman.

Q. What do you claim to be the result of the injury to you on the ferry boat? A. Well, because I feel at times I am desperate around the house, I am not reasonable at times because I make it miserable for everybody in the house, the children my husband and myself sometimes; sometimes I don't care to live. 30

Q. But, I say, what do you claim to be the matter with you as the result of the accident? A. Well, the most of all is my pain in the stomach, I suffer painfully. 40

*Mrs. Minnie Hahn—Cross.*

Q. Pain in your stomach? A. Yes, sir.

Q. Do you make any other claim about any other condition? A. And my headaches.

Q. And your headaches? A. And then I cannot remember anything.

Q. Do you make any claim about anything else except those? A. On the left knee.

10 Q. Left knee? A. Yes, sir.

Q. What is the matter with your left knee, Mrs. Hahn? A. Well, I don't know—if I want to put it down it seems to click, my leg, on that side all of the time.

Q. Is it any different from the other knee? A. Yes, sir; it does not look like—

20 Q. Does it look any different? A. No, I don't think it does on the outside, but it cracks once in a while, I know it hurts me at night, and sometimes I have pain in the knee.

Q. Was that all that was the matter with the knee? A. That was all.

Q. Anything else that is the matter with you—  
A. No, I have had a sprain on the hands when I fell, but once in a while, it only bothered my thumb, so I don't pay much attention to it because—

30 Q. And do you claim that that was any different than your other hand? A. Oh, yes, you could see, it is right about here (indicating) and the other has not got it, and whenever this hurt comes at the thumb it is effect, but I haven't paid much attention to it for I use it, but once in a while I have to massage it and rub it a little; I do believe Dr. Axford X-rayed the hand but—

Q. Dr. Axford? A. Yes, he did or Dr. Natrass; somebody had the X-ray on it, I am not sure now, either one.

40 Q. Did you say that this nervousness affects you about the house? A. Very much.

*Colloquy.*

Q. You do not care anything about living at times? A. I don't care about anything, I am very melancholy.

Q. Are you German, Mrs. Hahn? A. I am.

Q. Is your husband German? A. Yes, sir.

Q. Is he a naturalized citizen?

MR. TIFFANY: I object to this, if the court please, attempting to bring before the jury that this country is at war with Germany. 10

MR. SCOTT: What is the purpose of it?

MR. SCOTT: The husband is a party plaintiff to this suit; I have a certain standing with the court under the act of Congress with respect to matters of this character.

THE COURT: In what connection?

MR. SCOTT: As regards one of the plaintiffs. 20

THE COURT: An action commenced after the declaration of war, does it include an action before that?

MR. SCOTT: I will request the court if the matter appear in the record that a party plaintiff is not a citizen, that the proceedings be stayed.

MR. TIFFANY: If the court please, under that act, if that were so, but I do not admit it for a moment if it were so, I would say that the Custodian of Alien Property has that very matter in charge; I have had the matter up with Mr. Palmer, the Custodian of Alien Property, and they hold that every German citizen in this country does not come within the scope of that act, unless they can show that it is an Enemy Alien before that matter can enter into the question, and if they are residents of that country, it does not necessarily apply to them; and I submit that my clients do not come under that act. 30 40

*Colloquy.*

THE COURT: What is your objection, Mr. Scott?

MR. TIFFANY: It is not proper cross-examination for another thing.

THE COURT: Let me have your exact contention as to the relevancy of this line of testimony, for what purposes, to show what?

10

MR. SCOTT: To show that the condition—we are admitting this case—the liability in this case—it is clearly on the matter of damages as regards the physical condition of this woman on account of the alleged accident, that part of the alleged injuries are a certain melancholy condition, that a certain situation where the situation has arisen at the present time, that the court will take judicial cognizance of it; that plaintiff herself is a German woman—and I have not—it does not appear in the record at the present time just what the status of her husband is, but I have a right to inquire, to make those inquiries, because it has a bearing upon those alleged mental disturbances which we claim has nothing to do with this accident at all.

20

THE COURT: Then, the purposes of these questions are going in an entirely different direction from what I first understood you were going in.

30

MR. TIFFANY: Your Honor, were that so, it would be objectional on the ground that it is not proper cross-examination, and it is based upon ridiculous assumption that every person of German birth, whether they are citizens or not, are enemies of this country, and the condition of their German fatherland creates a case of so-called melancholy.

40

THE COURT: If you say it is not proper cross-examination, permit me to ask you this?

*Colloquy.*

Anything that goes to the question of the cause of this alleged melancholy, irritability or whatever you may call it, isn't that relevant upon the cross-examination?

MR. TIFFANY: It would be, yes, but it is not proper to ask if you are a citizen of a country that is at war with this country, the obvious purpose of the examination being to influence the jury; if it is anything to go to show the condition of the witness, the plaintiff, and if it shows that the fact of the present status of the war has got anything to do with the condition of the plaintiff, then it would not be objectionable for that purpose; but still if that be the purpose, as stated here, and—it gets to the jury facts which are contrary to the motive of the question; and I submit—

MR. SCOTT: I stated to the court now that our purpose is for the purpose that I have already stated to the court, which I understand appears on the record.

MR. TIFFANY: My objection is that that it is not proper cross-examination, that it is immaterial; the question if answered by this witness would not make it so as to her husband has been on the stand and he was not asked that question.

THE COURT: I think, however, I will overrule the objection; you may take your exception.

MR. TIFFANY: I ask for an exception.

THE COURT: Yes.

BY THE COURT:

Q. Answer the question.

MR. SCOTT: Read the question.

MR. TIFFANY: Did you answer the question?

*Mrs. Minnie Hahn—Cross.*

(Question read by the stenographer).

10 A. One year he has reached in the application for the second papers, his first papers being too old, but he didn't know that this other paper is no good, so we have tried to get it through, but it has been before the notice; the first paper was too old, and nothing can be done with it, no good, too old, so of course he had a second time asked for the application.

MR. SCOTT: I ask that so much of the plaintiff's answer as was not responsive to the question, as to their doings and actings, be stricken out.

20 THE COURT: Well, now, what do you mean by that, just what part, Mr. Scott? You have sat there and listened to the whole answer without any objection at all; now, after it is all before you and before the court you ask me to strike it out. No, I won't strike it out, unless you indicate to me what parts you say are not responsive.

MR. SCOTT: Well, I won't take up the court's time, because—

THE COURT: Because I have to go into it, if you insist on it.

30 MR. SCOTT: I will withdraw my request.

Q. When were these second papers taken out? Before the war with America, madam? A. Before we got into war with America.

Q. Do you know when it was? A. I couldn't tell you, but I don't know the date, but I know it was before the war, because as soon as my husband found out that the first paper was too old, he asked for the second.

40 Q. The first paper was too old? A. It was too old; he didn't know that they had to be certain years, only was when he asked for an appli-

*Mrs. Minnie Hahn—Cross.*

cation they told him that his paper was too old, so he took out the other one.

Q. When was the time of this second application? A. I could not tell you; I don't know the date, but I know it was two years.

Q. Two years? A. Yes.

BY THE COURT:

10

Q. You don't mean by that, Mrs. Hahn, that he made his application for the first papers two years ago? A. No—and when they told him it was too old, he reached in for the other.

Q. Now, when was that that he reached in for the other? A. Two years ago for the second papers.

BY MR. SCOTT:

Q. Do you know a Mr. Chris. Helwke? A. Yes. 20  
Yes.

Q. And is he related to you? A. No, not to me.

Q. Is he related to the woman who had worked for you? A. No, not related to her.

Q. Where does he live? A. I couldn't tell you; I haven't heard of him in a couple of years.

Q. How long? A. About two years ago.

Q. Where did he live then? A. New York City.

Q. Do you know where? A. I never known his address where he lived.

30

Q. When you went to Dr. Pflug, the last doctor that was on the stand, did you tell him about this accident? A. Well, not the very morning I came in, I only asked him to give me something for my pain because I had very much pain.

Q. You told him you had a suit against the railroad company? A. No, not right away, I didn't.

Q. Did you tell him the first time you went there? A. I do not remember whether I did or not the first time.

40

Q. You do remember that you told him that

*Mrs. Minnie Hahn—Cross.*

you did have a suit against the railroad company, don't you? A. I don't remember whether I told him that then or sometime after, if I told him when I fell, I don't think I did.

Q. Do you remember when you had the last case, you claimed you had an ulcer of the stomach, didn't you? A. I didn't claim—

10 Q. You didn't claim—A. I didn't know it until the doctor said so.

Q. But do you remember hearing at that time some of the doctors saying that they thought you had an ulcer of the stomach? A. Yes, sir.

Q. And then when you went to Dr.—this last doctor here—A. Dr. Pflug.

Q. —you told him about having an ulcer of the stomach? A. No, I didn't tell him about having an ulcer; I went on the request of a lady next door. Her husband is a plumber, and she said to me, "Why don't you try Dr. Pflug once," because I had such pain, she said, "Why not go right over and see Dr. Pflug?" and I went over to see him; she was not in the room when I seen Dr. Pflug, she was in the waiting room.

20

Q. Did you discharge Dr. Natrass? A. No, not exactly, but because I was in pain and I tried everything, because I had so much pain that I would try someone else for a change.

30 Q. You were not satisfied with the way Dr. Natrass treated you? A. Yes, sir; I am satisfied, but if you are in agony you would try several doctors too, and I am in pain.

Q. Did you discharge Dr. Natrass before you went to Dr. Pflug? A. No, I did not; Dr. Natrass don't know anything about it; I went to Dr. Pflug—in fact I didn't want to go because Dr. Natrass is my physician and I think a whole lot of Dr. Natrass.

40

Q. But you were not satisfied with the way you

*Mrs. Minnie Hahn—Cross.*

were getting along? A. Well, not exactly dissatisfied, but I thought I would have something else once, another medicine.

Q. Did this Dr. Pflug treat you the same way as Dr. Natrass did? A. Well, not exactly; he washed my stomach out, and Dr. Natrass never did.

Q. Dr. Natrass never washed the stomach out? **10**

A. No, sir.

Q. Now, what other thing did Dr. Pflug do for you that Dr. Natrass didn't do? A. Otherwise, he did the same thing, only prescribed medicine for me, and I have been taking it too.

Q. Did they both prescribe medicine for you? A. Yes, they both did, not at the same time, but Dr. Natrass has always given me medicine.

Q. And the only difference then between the treatment of Dr. Natrass and Dr. Pflug was that one washed the stomach out and the other did not? A. Yes. **20**

Q. But they both gave you medicine of some kind? A. Prescriptions, yes.

MR. SCOTT: That is all.

MR. TIFFANY: That is all.

(Witness excused)

MR. TIFFANY: Will the court permit me to call Dr. Pflug for a moment? **30**

THE COURT: Yes, if it won't take too long.

*Ferdinand James Pflug, M. D.—Direct.*

FERDINAND JAMES PFLUG, M. D., resumed the stand.

DIRECT EXAMINATION BY MR. TIFFANY:

Q. Doctor, you heard Mrs. Hahn testify just now—you heard her testify? A. Partly.

10 Q. Basing your answer upon your examination of Mrs. Hahn and the fact that prior to the 16th of July, 1915, she was well, carried on her household duties, had not had any pain or distress in the stomach or headaches or vomit, but that on that day about between eleven or twelve o'clock, by reason of something striking her feet, she fell, striking her head on the seat, causing the abrasion—or the bump, striking her knees, tearing the dress, and causing an abrasion of the knees, or striking her on this part of the body, indicating  
20 the stomach, that she immediately felt a pain such as something bursting inside or pressing up; that she felt somewhat faint, a few moments after going outside that she went the distance of the Twenty-third Street Ferry, New York, to Twenty-eighth Street, New York, by trolley cars, and there rested upon a couch part of the time, came home about five o'clock in the evening, laid down and was confined to her bed three weeks, during which time she suffered vomiting spells, tenderness, pain  
30 in the stomach, especially after eating, and that she passed bloody stools afterwards, and that there was evidences of blood in the vomiting at times, would you say that there was any connection between that fall and the condition in which you found her when you examined her a short time ago? A. I think that there was; yes.

Q. Would you think that the condition which you found from your examination was due to that fall? A. I do not know of anything else that I  
40 can attribute it to.

*Ferdinand James Pflug, M. D.—Cross.*

Q. Basing your answer upon the question that I asked you a moment ago, without knowing the facts in the case, would you say that the fall produced the injuries from which she suffered at the time you examined her? A. Yes.

MR. TIFFANY: Take the witness.

CROSS EXAMINATION BY MR. SCOTT:

10

Q. And you came to the conclusion then, doctor, that she had a traumatic ulcer of the stomach? A. Yes.

Q. And you washed her stomach out? A. Yes, and gave—

Q. Gave her what? A. I examined her stomach and after I ascertained the contents of the stomach I washed the stomach out with sodium bicarbonate.

20

Q. When did you determine that she had an ulcer of the stomach, before or after you washed the stomach out? A. Why—

Q. Before or after? A. Why, I thought she had it before.

Q. You thought she had it before you washed the stomach out? A. Yes.

Q. Then, after you had this idea in your mind that she had the ulcer of the stomach, then you washed her stomach out? A. Yes, sir.

30

Q. Now, don't you know, doctor, that was a very improper thing to do to wash a person's stomach out that had an ulcer of the stomach? A. I do not consider that it is.

Q. You do not consider that it is? A. No.

Q. You think it is all right to wash the stomach out? A. Because her condition was not acute.

Q. And has it gotten better since you have had charge of it? A. I think so.

40

*Ferdinand James Pflug, M. D.—Cross.*

Q. You think so? A. I think so.

Q. What is your best judgment, doctor, as to when you, if she continues under your treatment, when you will have her around in good shape? A. (No reply.)

10 Q. Assuming and taking into consideration the progress, which, in your opinion, she has made, how long will it take? A. I should judge in the year she will be all right if things go along as they are going.

Q. She will be all right at that time then? A. Yes, sir.

Q. That requires how many visits a week, two you said? A. Two visits a week.

MR. SCOTT: That is all.

MR. TIFFANY: That is all, doctor.

20 THE COURT: We will take a recess at this time until ten o'clock tomorrow morning.

(Witness excused.)

(Adjournment taken.)

December 13, 1917, 10.00 A. M.

Court met pursuant to adjournment.

Appearances as before.

30 MR. SCOTT: Before we proceed with taking the first testimony, I want to call your Honor's attention to what occurred yesterday a short time prior to the adjournment of the case, in which it appeared on the cross-examination of Mrs. Hahn, with respect to certain nervous conditions, and the question on the cross-examination which your Honor ruled was proper, that Mrs. Hahn was a German and that her husband was not a naturalized citizen. In view of that cross-examination, on

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*Colloquy.*

the question of damages, I advised Mr. Tiffany last night over the telephone that I would seek this morning to amend my answer in this case by setting forth a *third and distinct defense*, that the defendant says that the said plaintiffs, Minnie Hahn and her husband, Charles Hahn, are alien enemies and subjects of the Emperor of Germany, and as such alien enemies have no right to maintain their action in this court, and this court is without jurisdiction to try the above entitled case (count); therefore, this defendant prays that the above entitled action of the above entitled plaintiffs against it be dismissed. In view of the testimony adduced yesterday from the cross-examination of Mrs. Hahn, I notified Mr. Tiffany last evening that I would seek to amend my answer, and I now ask leave of your Honor to so amend by setting that up as a third and distinct defense.

10

20

THE COURT: Is there any objection?

MR. TIFFANY: Yes, your Honor, the objection as to the amendment, if it were made, would be—of course, it comes within the discretion of the court to make that amendment, to allow that amendment to be made; these facts have been obtained in this case at the prior trial, and were known, I believe, by the defense.

30

THE COURT: Yes, but it was not a defense at the last trial.

MR. TIFFANY: It was a defense at the last trial, which was in May, and we were at war with Germany at the time, but even were that true, under the Enemy Alien Act itself, these people are not enemy aliens within the meaning of that Act. Of course, this all goes to

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*Colloquy.*

the matter of the defense, but I say this at this time, that it should not stop us from going through with the trial, and then if the Enemy Alien Act should apply to the case; then their remedy would be this, if the court please, that if these plaintiffs were awarded damages by the jury, they can simply say  
 10 "We refuse to pay under the terms of the Trading with the Enemy Act."

THE COURT: Are either of you gentlemen able to present to me the text of the Alien Enemy Act?

MR. TIFFANY: Yes, your Honor, I have a copy of it.

THE COURT: Now, the court's position would be to allow all reasonable latitude in favor of the Government.  
 20

MR. TIFFANY: Certainly.

THE COURT: It is my duty so to do.

MR. TIFFANY: But, your Honor, I do not oppose it from that standpoint; my reason is that I believe it would be a miscarriage of justice under the Act itself to prevent this trial from proceeding. I have here the Act itself, if the court please (handing paper to the court). If the court will just let me interrupt, I want to call your Honor's attention  
 30 to Section 4 of the Act concerning naturalization.

THE COURT: That does not relieve him, as I understand, Mr. Tiffany, from his citizenship and allegiance to some other country; that is a mere declaration of intention which he may, at any time, as it were, renounce.

MR. TIFFANY: But the moment he makes that declaration he is renouncing his allegiance to the Emperor of Germany. The ques-  
 40

*Colloquy.*

tion that Mr. Scott raises is that he is now a subject of Germany, which is not so under the Act.

THE COURT: I do not think so.

MR. TIFFANY: He had to do that to take out his first papers.

THE COURT: He has not finally renounced his rights of citizenship of the Empire of Germany until he has applied for and received his final papers of citizenship. 10

MR. TIFFANY: Let me read this again.

MR. SCOTT: It has no concern with the matter of the motion—my right to amend.

MR. TIFFANY: But I should think that it has a bearing on the matter before the court, and we should have these facts before us.

MR. SCOTT: Your Honor will probably recollect the case—I do not recall the name of it—that raised the question about setting up special defenses, where the inquiry was raised in the opinion of the Court of Errors in which they said that it was proper to make—said we must set up our special defenses—the inquiry was raised, I think, that where it appears on the examination that the party was guilty of contributory negligence, it was proper to set up a special defense as to that. 20

MR. TIFFANY: But, even so, that does not apply here. I have the original act, if the court please, that classifies these three things. 30

THE COURT: Is there not a proclamation on the part of the President as to persons who are aliens and were subjects of Germany? Has there not been such a proclamation, declaring them to be termed “enemy aliens?”

MR. TIFFANY: No, sir; there has not, and I say that by authority of the Custodian of 40

*Colloquy.*

Alien Enemy Property; on December 1st, I wrote Mr. Palmer, in regard to another matter, which sets forth the state of facts there, and I have received this reply (handing paper to the court).

10 MR. SCOTT: I refer to your Honor a case in the 78th New Jersey Law, in the case of *Cetofonte v. Camden Coke Company*, p. 670. In that case the question was raised that the right to maintain an action under the Death Act, and in that case the Court of Errors and Appeals states:

20 "The decedent, \* \* \* not being an alien enemy, if he had survived the injury, might have maintained an action therefor, if not otherwise specially disabled by law" the inference being that if he was an alien enemy he was not entitled to maintain this action.

MR. TIFFANY: That has absolutely no application to this case, because we were there at peace.

30 THE COURT: I am going to allow the amendment. As to whether or not it will have any bearing in the end, we will have to consider that question at that time. I am taking that stand because it is, beyond peradventure, my duty so to do.

MR. TIFFANY: It is purely discretionary with the court; I will ask for my exception.

THE COURT: Yes, you may.

MR. TIFFANY: Thank you.

THE COURT: Proceed with your next witness, Mr. Tiffany.

MR. TIFFANY: Doctor Natrass, will you take the stand.

*Robert B. Natrass, M. D.—Direct.*

ROBERT B. NATRASS, M. D., SWORN.

DIRECT EXAMINATION BY MR. TIFFANY:

Q. Doctor, you are a practicing physician and surgeon of this state? A. I am.

Q. Having your office in the City of Hoboken?

A. I have.

10

Q. How long have you been practicing, doctor?

A. Since 1905.

Q. Graduate of what school? A. New York Homeopathic Medical College.

Q. Do you know Minnie Hahn? A. I do.

Q. Ever treated her and her children? A. I have.

Q. Will you just tell the Court and Jury what you treated her for after July 16, 1915, I think it was, with relation to some injury to the stomach or other parts of her body? A. I treated her for ulcer of the stomach.

20

Q. For ulcer of the stomach? A. Yes, sir.

Q. How long did you treat her, doctor? A. Oh, a year and a half.

Q. Do you recall when she first came to see you? A. I do.

Q. What date, do you remember about when it was? A. I do not know the exact date, but I remember when she came; it was the summer, the early summer of 1915.

30

Q. When she—what was the amount of your bill, doctor, if you recall? A. About twenty-five dollars, I think.

Q. Has it been paid? A. No.

Q. You made an examination of Mrs. Hahn? A. I did.

Q. This ulcer, where did you determine it to be located, doctor, in your examination? A. The pains together with the vomit.

40

*Robert B. Nattrass, M. D.—Direct.*

Q. Where was it? A. The pain of the stomach inside of the belly.

Q. Pain of the stomach at the pyloric end? A. Yes, sir.

Q. These ulcers of the stomach, doctor, are they or are they not a painful proposition? A. They are painful.

10 Q. Do they—what do they lead to? A. They lead to one of three things; they either heal, or they break through causing perforation, or they tend to cancer.

Q. And that means death? A. Fatal.

Q. And the operation to relieve ulcers, are they easy or difficult? A. Major operation.

Q. Major operation or minor? A. Major.

Q. By that you mean they are difficult? A. Serious operation.

20 Q. Aren't they always successful? A. No.

Q. Were you the physician that advised the X-ray? A. I was.

Q. Would an ulcer of the stomach, such as you in your opinion, believe Mrs. Hahn had, prohibit a woman from carrying on her usual household duties? A. It would.

Q. What are the symptoms, doctor, of ulcer of the stomach? A. In Mrs. Hahn's case?

30 Q. Medical symptoms? A. Pain after eating, tenderness over the stomach, vomiting of blood, passage of blood in the stools.

MR. TIFFANY: Take the witness.

THE COURT: Before you start on the cross-examination, have you the text of your amendment there, Mr. Scott?

MR. SCOTT: That was the amendment (handing paper to the Court).

40 THE COURT: To which Mr. Tiffany is objecting.

*Robert B. Nattrass, M. D.—Cross.*

MR. TIFFANY: Yes.

Q. Pardon me, doctor; was that amount that you named of twenty-five dollars a reasonable amount, doctor? A. It was.

THE COURT: Cross-examine.

CROSS-EXAMINATION BY MR. SCOTT:

10

Q. When did you first examine Mrs. Hahn? A. In the early summer of 1915.

Q. Do you know exactly? A. Not the exact date, I do not recall it.

Q. Have you any notes with you? A. No, I have not.

Q. Were you asked to bring them here? A. No, I was not.

Q. Were you told why you were coming here? A. Why, I have been up before on this case. 20

Q. You have been here before? A. Yes, I testified in this case before.

Q. Didn't you know your notes would be valuable in assisting the Jury in determining the facts in this case with respect to the medical testimony? A. I do not know what things I had to bring that I could not bring in my head.

Q. How many cases have you had since last trial of this class? A. How many cases of the what? 30

Q. How many cases of all kinds in your general practice? A. Why, I should say seven or eight thousand a year.

Q. Seven or eight thousand a year? A. Yes, sir.

Q. And right off the bat you can tell about any of those cases? A. Oh, no.

Q. You would have to have notes in those cases, wouldn't you? A. I would have to have notes, I would say, yes. 40

*Robert B. Nattrass, M. D.—Cross.*

Q. Now, was it from the fact that you were up here on the other trial of this case to testify—is there anything particular or special about this case that causes you to remember the facts so very distinctly? A. Yes, sir; the time I lost, in testifying in the lawsuit.

10 Q. The time you lost in testifying? A. Yes, sir; the time I lost in testifying.

Q. The time you lost in testifying? A. Yes, sir.

Q. Does that cause you to remember the facts? A. Yes, sir; very distinctly.

Q. In regard to the accident? A. Very distinctly.

Q. Very distinctly? A. Yes, sir.

20 Q. Now, the mere fact that you lost some time in court the last time is the only reason that you remember all of the facts? A. It would bring it more prominent into my mind; yes, sir.

Q. That was the only reason that these facts are so prominent in your memory? A. No, Mrs. Hahn's case was interesting in itself.

Q. Interesting? A. In itself.

Q. Is it a special case? A. Yes, sir.

Q. First case you ever had of that kind? A. No.

Q. How many cases did you have before that time? A. Of gastric ulcer?

30 Q. No, of traumatic ulcer of the stomach? A. Very few.

Q. How many? A. I do not recall now.

Q. You remember testifying at the last trial some time ago? A. I do.

Q. Can you remember testifying at the last trial of this case, the last time? A. Yes, sir.

Q. Do you remember testifying at the last trial that you had had six cases of traumatic ulcer?

40 MR. TIFFANY: What page?

*Robert B. Natrass, M. D.—Cross.*

MR. SCOTT: It is in the record.

MR. TIFFANY: Refer to it please.

MR. SCOTT: Page 46.

Q. Do you remember being asked this question: "Q. How many cases in your practice, doctor, have you had of traumatic ulcer of the stomach?" and that you answered, "A. Oh, I guess six"? A. I guess two. 10

Q. Today it is two? A. Yes.

MR. SCOTT: If that is the case, I will withdraw the question.

Q. So you think today you have only had two cases of the kind? A. I have had very few, the exact number I cannot state.

Q. Were those cases traumatic ulcer in the stomach? A. Beg pardon? 20

Q. Were those cases of traumatic ulcer in the stomach? A. Those were traumatic ulcers.

Q. Is there any question in your mind that Mrs. Hahn's case was not traumatic ulcer of the stomach? A. Yes, sir.

Q. There is that question? A. Yes, sir.

Q. What leads you—what causes the question in your mind with respect to Mrs. Hahn's ulcer of the stomach not being a traumatic ulcer of the stomach? A. Because there was no direct violence. 30

Q. Because there was no direct violence. As a general and usual thing it is necessary that there must be direct violence to cause a traumatic ulcer of the stomach? A. That has been my opinion.

Q. That is your opinion? A. Yes, sir.

Q. And by direct blow you mean over the point where the ulcer is discovered? A. Yes, sir.

THE COURT: Speak up; do not shake your head. 40

*Robert B. Nattrass, M. D.—Cross.*

THE WITNESS: Yes, sir.

10 Q. Now, if a woman should get on a ferry boat and as she was walking along there on a damp or wet floor, suddenly—the porter was cleaning up the floor, touched her with the mop in such a way as to cause her to fall down on her knees and hitting her head against the seats of the ferry boat, and to abrase or scrape her knees sufficient to cut her dress, would such a blow or an accident or fall of that character, in your opinion, cause a traumatic ulcer of the stomach? A. I should not think so.

Q. You have already told us, I think, doctor, that you do not know exactly how long the ulcer itself had existed before you treated it the first time? A. No, I do not know.

20 Q. It might have been existing for a long period? A. I do not know.

Q. Can't you tell? A. No.

Q. Couldn't you tell at the time you examined her? A. No, I could not.

Q. The progress, if any, that it had made? A. No, sir; I could not.

Q. Is there any way that you could have told? A. I know of no way.

30 Q. You know of no way? A. No, I do not know of any way of deciding how old an ulcer is.

Q. Of determining how old an ulcer is? A. No.

Q. Do they develop, as it were, like mushrooms, over night? A. They are apt to follow any direct trauma.

Q. Except from a direct trauma; but where there is no direct blow to the stomach at the point where the disease is, the ulcer might have been a matter of gradual growth of quite a long time, might it not? A. Possibly.

40 Q. Now, in your opinion and from your observa-

*Robert B. Natrass, M. D.—Cross.*

tions, when a person has an ulcer of the stomach, do they experience severe pains? A. Yes.

Q. Does it continue? A. Yes, sir; the pain is severe when the ulcer is established.

Q. And for how long a time, in your opinion, may the ulcer be established and formed, before those severe pains are felt? A. Why, the condition which precedes ulcers not caused traumatically is that of excessive acidity, and it is always detected by burning pains; I do not know how long this exists before the ulcer becomes formed or established. 10

Q. Now, as I take it, from this last answer the principal symptom of ulcer is this burning pain, coming from what? A. Excessive acidity.

Q. Will you just tell us just what you mean by that, I mean from the medical standpoint but telling it in lay language so the Jury can understand? A. There is more than a normal amount of acid in the stomach. 20

Q. Now, doctor, how can that be determined? A. By an examination of the stomach contents and by the administration of alkalines to the patient.

Q. How do you examine the stomach contents? A. Washing the stomach out and sending the contents to the laboratory.

Q. Did you wash Mrs. Hahn's stomach out? A. I did not. 30

Q. Will you tell us why? A. Because she had hemorrhages.

Q. Why? A. Because she had hemorrhages.

Q. During all of the time that you doctored her, did you never wash it out? A. No, sir.

Q. Did you have any different—any other way to determine the acidity of her stomach? A. By the administration of alkalines. 40

*Robert B. Natrass, M. D.—Cross.*

Q. What do they determine? A. That relieved the pain.

Q. Now, when did you first administer these alkalies? A. At once or at least after the examination. I tried to settle in my mind what I thought the condition was.

10 Q. By at once you mean within one or two visits after you came to the conclusion she had ulcer? A. Yes, sir.

Q. Did you notice at the time then that the administration of these alkalies produced the relief that you thought they ought to produce? A. They helped her.

Q. They helped her? A. They did help her.

20 Q. And this excessive acidity in the stomach, what is that caused by? A. It can be caused by a nervous shock.

Q. Any other causes? A. Tobacco in men.

Q. Sir? A. Tobacco in men and coffee in both men and women.

Q. Are there any other causes than that? A. Those are the main causes.

Q. What are the main causes? A. Tobacco and coffee.

Q. Tobacco and coffee are the main causes? A. And nervous shock, worry—nervous worry.

Q. And worry? A. Yes, sir.

30 Q. For how long a time must this excessive acidity in the stomach be prevalent, doctor, before it develops the ulcerous condition in the stomach? A. Well, there can be no set time for that; it depends upon the strength of the acid and the lining of the stomach wall itself before it becomes pronounced so as to be an ulcer; there is no definite time, it is several weeks anyway.

40 Q. Several weeks? A. Yes, sir; before an ulcer will develop following the excessive acidity.

*Robert B. Nattrass, M. D.—Cross.*

Q. Aside from the reaction which you say took place—I do not know if using the word “reaction” is proper in the medical sense—but aside from the results that you got when you administered these alkalis to Mrs. Hahn, and the fact that you believed they produced relief to a certain extent, and relieved her pains to a certain extent, did you ascertain the extent of the acidity in the stomach? A. I did not. 10

Q. For the strength? A. I did not.

Q. And is that the only method—are the two methods that you spoke of the only methods of discovering the fact of the acidity in the stomach? A. Those are the only two I know.

Q. If a person has this acidity of the stomach, it might go along for quite a while before it would develop an ulcerous condition? A. It might. 20

Q. By “quite a while”, which, to my mind, is indefinite, have you any definite opinion from a medical standpoint what “quite a while” would mean? A. I believe my testimony illustrated that. I said it depends upon the amount of the—the strength of the acid, the amount of it, and the strength of the stomach walls or lining before there would be an abrasion of the stomach walls; it undoubtedly was quite a few weeks, but you cannot state.

Q. How would you get this abrasion on the tough lining of the stomach? A. By rough particles. 30

Q. And the acidity of the stomach? A. That is one of the supposed reasons of ulcer.

Q. And that goes along sometimes for quite a while without any pain or discomfort? A. Along present with ulcer is pain, and a person with ulcer has pain.

Q. But I mean before? A. Acidity has pain. 40

*Robert B. Natrass, M. D.—Cross.*

Q. The acidity will create pain? A. Yes, sir; burning pain.

Q. Without abrasing of the stomach wall? A. Without ulcer—you can have pain from hyper-acidity.

Q. Is it possible, doctor, when people have an ulcer of the stomach, without having pain? A. I cannot imagine such a condition.

Q. Is it so that a person may have ulcer of the stomach without having pain? A. I do not believe it.

Q. Now, about seven-eighths of the symptoms that Mrs. Hahn—that you found in Mrs. Hahn in determining that she had this ulcer of the stomach were known as subjective symptoms, were they not? A. Yes, sir; they were.

Q. Now, the jurymen and lawyers might not know what you mean by “subjective”. Now, by “subjective symptoms” is meant any such symptoms as the patient tells the doctor? A. Yes, sir.

Q. And if the patient—you have to rely then absolutely on the statements of the patient for these subjective symptoms, doctor? A. Yes, sir.

Q. For those seven-eighths? A. Yes, sir.

Q. Now, the one-eighth or remaining symptom in Mrs. Hahn in determining your judgment as to this ulcerous condition of the stomach was an objective symptom? A. Yes, sir.

Q. And that is something that you, as a doctor can by reason of your experience, can find by looking at her or feeling or by handling the patient? A. Yes, sir.

Q. Or seeing? A. Yes, sir.

Q. Now, will you just tell the Jury what this one-eighth set of objective symptoms were that caused you to determine that Mrs. Hahn had the ulcer of the stomach? A. Pain on pressure over the stomach.

*Robert B. Natrass, M. D.—Cross.*

Q. That is one. A. Pain—and blood in the stools.

Q. That in itself is not objective, is it? A. Blood in the stools?

Q. Bloody stools? A. It can be an objective sign.

Q. Did you see the bloody stools? A. I did not.

Q. Well, then, even that would be more properly classified in subjective symptoms? A. Yes. 10

Q. Things that Mrs. Hahn told you? A. Yes.

Q. And the pain in her stomach, that would be a subjective symptom to a large extent because she told you that she had that? A. Instead of pain I had better say "rigidity of the muscles".

Q. Rigidity? A. Rigidity of the muscles and then the X-ray findings which were objective.

Q. Now, with respect to the X-ray findings, you do not know anything about this yourself, except from what somebody told you, do you? A. Correct. 20

MR. SCOTT: I ask that the statement of the doctor with respect to the X-ray findings be struck out.

MR. TIFFANY: No objection.

THE COURT: They may be stricken out.

Q. Then, so far as we have gone, the only objective symptom that we have now is the rigidity of the stomach? A. Yes, sir. 30

Q. Can you think of any other objective symptom? A. No.

Q. Mightn't that rigidity have been present in any other inflammatory condition? A. Yes, sir.

Q. Was this rigidity present during all of the time she was under your care? A. She improved at certain times, and then the rigidity relaxed.

Q. When was the last time you examined her? 40

*Robert B. Natrass, M. D.—Cross.*

A. Oh, somewheres along in the summer, I think it was, June or July—somewheres there.

Q. Had you been treating her up to that time?

A. Yes, sir; I had.

Q. Had she improved under your care? A. She had improved, and then she complained again in the spring that the pains were bad again.

10 Q. Did you take into consideration when she came to you in the summer the fact that she had this— A. Yes, sir; I considered it.

Q. Might that not have been in your mind in the matter of describing the pain which she had?

A. It might.

Q. There was no way for you to determine that?

A. No.

Q. You would have to rely upon your patient?

20 A. Yes, sir.

Q. Now, doctor, if she suffered this pain prior to July 15, 1915, and she vomited as she has said she had, and had these bloody stools, as she has said she had, and loss of sleep, only sleeping until about four o'clock in the morning, and was nervous and irritable at night when the husband comes home, wouldn't that show on Mrs. Hahn?

A. It would.

Q. Does that show on Mrs. Hahn at the present time? A. In what way do you mean?

30 Q. From her physical make-up, as she appeared here, sitting in court today? A. I do think she looks as well as she did.

Q. She is a well nourished woman, isn't she?

A. She is what is called a fatty anæmic patient.

Q. You do not believe she has lost weight? A. I do not believe she has lost weight?

Q. I say, you do not believe she has lost weight?

A. No.

40 Q. An ulcer produced by shock, doctor, is not a traumatic ulcer? A. I do not believe so.

*Robert B. Natrass, M. D.—Re-Direct.*

- Q. The very term— A. "Trauma" means injury.
- Q. The very term would indicate it was not?
- A. Yes, sir.
- Q. That would give what kind of an ulcer, psychic ulcer? A. The only ulcer it could be.
- Q. And that means what? A. The effect on the nerves over the secretion of the acid.
- Q. Will you tell us, doctor, how long it takes from the time an ulcer starts until it develops into a real ulcer? A. I do not know. **10**
- Q. A week or three weeks? A. I do not know.
- Q. You have no knowledge whatever on that?
- A. No.
- Q. It couldn't occur, in your opinion, in fifteen minutes, could it? A. Only by direct violence.
- Q. Only by direct violence and that is— A. Only over the part. **20**
- Q. A blow directly at the place where it is located? A. Yes.

RE-DIRECT EXAMINATION BY MR. TIFFANY:

- Q. Doctor, one other question. I understood you to say that a nervous shock does cause acidity or psychic ulcer? A. Yes.
- Q. Shocks such as would be caused by an accident? A. Yes, sir.
- Q. Would an accident such as Mr. Scott—or an accident and the condition such as Mr. Scott has described to you be apt to aggravate a condition of ulcer that may have existed prior to the accident? A. Of direct blow, do you mean? **30**
- Q. No, such as he described to you in this case, would that aggravate a condition of ulcer in the stomach? A. A fall such as Mrs. Hahn had would aggravate an ulcer there.
- Q. By reason of the shock or otherwise? A. **40**

*Robert B. Natrass, M. D.—Re-Cross,*

The fall would have to be, I should think, more violent than the one Mrs. Hahn had.

Q. It depends upon the violence of the fall?

A. Yes, sir.

MR. TIFFANY: That is all.

Q. Doctor, while we are waiting for the re-cross,  
 10 how much do you think Mrs. Hahn weighs, what is your opinion of her weight? A. Well, maybe 165 pounds.

MR. TIFFANY: That is all.

## RE-CROSS EXAMINATION BY MR. SCOTT:

Q. How high, how tall is she, doctor? A. Five feet, six.

Q. Is that a normal weight for a woman of  
 20 that height? A. At her age, I should think so.

Q. Sir? A. At her age, I should think so.

Q. Do you know her age? A. About approximately.

Q. Thirty-five? A. She is in the change of life when women put on more weight anyway.

Q. Mr. Tiffany spoke to you something about the fall aggravating the condition of the ulcer of the stomach? A. No, he asked me did I think the fall by increasing the acidity aggravate the condition, and I said "yes".  
 30

Q. And that presupposes that the ulcerous condition existed before the fall? A. Yes, sir.

Q. And you also stated, as I recollect, that the fall as described to you from the evidence in the case was not such a fall as would have increased the acidity of the stomach? A. No, the worry following the accident is what I meant would increase the acidity of the stomach.

Q. The worry following an accident? A. Wor-  
 40

*Robert B. Nattrass, M. D.—Re-Direct.*

ry following an accident would increase the acidity.

Q. When did you see her, about how long after the accident? A. One month, I think.

Q. One month? There were no marks on the head at that time, was there? A. No.

Q. No marks on the knees? A. No, sir.

Q. So far as you can say, there was nothing to cause worry from those injuries which were suffered at the time? A. No, only the way her wrist pained her. 10

Q. That is what she told you? A. No, at that time, it had swollen, I think.

Q. It had swollen? A. Yes.

Q. Do you know whether it is now? A. No.

Q. Had it gone down when you last examined her? A. No, it was still there. 20

Q. Still there? A. Yes.

Q. That is the only cause of worry that you could think—that you could see that had any tendency to produce— A. That I could see—

Q. —acidity of the stomach? A. Yes, sir; that I could see from what she told me.

Q. You have already told us the fact that litigation might be a source of worry? A. At the time I first saw her I did not know whether she contemplated litigation or not.

Q. But you knew her condition after she was served in this case, as I understand? A. Yes, but I am speaking of the first time I saw her. 30

Q. Now, I will go a little further, that might have been a cause of worry, the fact of litigation? A. Yes, sir.

## RE-DIRECT EXAMINATION BY MR. TIFFANY:

Q. Now, doctor, are you sure as to whether it was a month or longer after the accident when 40

*Robert B. Natrass, M. D.—Re-Cross.*

You saw her? A. It was either three weeks or a month, I think.

Q. I just want to show you a statement (handing paper to the witness); does that refresh your memory as to when it was? A. Seems it was three months.

10 Q. Never mind reading it. A. I was under the impression it was three weeks.

Q. This accident happened in July. A. I think Dr. Stack saw her three or four weeks; I guess that is right; I may have seen her later than that.

## RE-CROSS EXAMINATION BY MR. SCOTT:

Q. Was this statement made by you, doctor?

A. Yes, that is a bill that I rendered; yes, sir, Mr. Scott.

20 MR. TIFFANY: I just wanted to use it to refresh his memory on the date.

MR. SCOTT: Oh, it just gives the date; that is all.

Q. And that first date would be December 5, 1915? A. Yes, sir; according to that, on that other statement; I think I saw her earlier than that.

(Witness excused.)

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*Mrs. Anna Brown—Direct.*

MRS. ANNA BROWN, SWORN.

## DIRECT EXAMINATION BY MR. TIFFANY:

Q. Married lady? A. Yes, sir.

Q. Where do you live? A. 251 Sixth Street, Hoboken.

Q. Do you know Mrs. Hahn? A. Only through business. **10**

Q. Only through business? A. Only through working for her.

Q. When did you first make her acquaintance?  
A. When her husband called on me.

Q. Do you know when that was? A. July 16, 1915.

Q. What is it that fixes that date in your mind?  
A. When I came there she was sick in bed.

Q. Accident or something? A. Accident, her husband said. **20**

Q. What did you do there? A. I had to do the housework.

Q. And have you continued to do it, did you after that? A. Every day in the week, about six or seven weeks, if I am not wrong.

Q. How much would you receive on those occasions and a half a day.

Q. After that six or seven weeks, how often did you go there, if at all. A. A few times a week, I went on this work; I would go twice a week, and then evenings I would come home—back home—to do my own work. **30**

Q. How long did that continue? A. All of the time up until about three weeks ago.

Q. Then you say the cause is—A. Because of the increase in the family.

Q. And you have not gone back there to work yet? A. Not yet, but I will afterwards.

Q. You expect to? A. Yes. **40**

*Mrs. Anna Brown—Cross.*

Q. When you got there once or twice a week—would you ever go less than twice a week? A. No, sir.

Q. How much would you receive on these occasions? A. Now, two dollars.

Q. Beg pardon. A. Now, two dollars.

10 Q. How long has the two dollar rate been in existence? A. Oh, it was about six or seven months ago.

Q. Before that time it was a dollar and a half? A. It would be a dollar and a half.

Q. And you have been paid? A. Yes, sir; paid every day.

Q. During this time would Mrs. Hahn do the housework or would you? A. I do—what was that?

20 Q. I say, did you do the work there? A. I did the housework.

Q. The first six or seven weeks, what would you say was Mrs. Hahn's condition—what did she do around the house? A. Nothing at all.

MR. TIFFANY: That is all.

THE COURT: Cross-examine.

CROSS-EXAMINATION BY MR. SCOTT:

30 Q. You say she was in bed for a certain time? A. Yes, sir.

Q. Can you tell whether she stayed in bed on account of her knee? A. She didn't complain anything about her knee; I know she was ill.

Q. Did she ever talk about her knee hurting her? A. Yes, sir; her knee.

Q. When was she up and around—at the end of three weeks? A. I cannot recollect, it was quite a while after.

40 Q. You said she was in bed for about three weeks? A. You mean when she got up, when she was getting up.

*Mrs. Anna Brown—Cross.*

- Q. Yes. A. Yes, she would walk.
- Q. Then she got up to go around? A. Yes, but she couldn't do anything.
- Q. But she could walk around? A. We would put her on a chair—a pretty big job at that time.
- Q. When was she able to get around without the aid of you and the chair? A. This was so long ago I cannot recollect. **10**
- Q. You cannot give us your judgment—give us your best judgment? A. Quite a while after.
- Q. A week or so after? A. I just couldn't state.
- Q. After she did start to go around, she can walk around the house all right? A. Yes, sir.
- Q. She didn't walk lame about a month after the accident, did she? A. Oh, she has limped a little.
- Q. It went away? A. I suppose so. **20**
- Q. Well, it was not noticeable to you? A. Well, at times, I do notice that she don't go around the way she used to.
- Q. But did she limp at that time? A. Sir?
- Q. About a month after the accident, did she walk around the house? A. Yes, sir.
- Q. Did she limp at that time? A. Yes, sir.
- Q. Now, will you just tell the jury—will you tell us—tell the jury when you ceased to notice her limping about the house? A. Oh, it might have been about two months after. **30**
- Q. About two months after? A. Yes.
- Q. Now, when she got out of bed could she lift things in her hand? A. Nothing at all.
- Q. In either hand? A. The other hand—the other—she didn't have to do any lifting because I was there to do everything.
- Q. So that she did not make any effort to lift anything? A. She tried, but she couldn't.
- Q. How long was it before she was able to lift anything in either hand? A. It was quite a while after. **40**

*Mrs. Anna Brown—Re-Direct.  
Motion to Dismiss.*

Q. About two months? A. About that.

Q. About that? A. Yes.

MR. SCOTT: Now, that is all.

RE-DIRECT EXAMINATION BY MR. TIFFANY:

10 Q. You come here under subpoena, do you not?

A. Yes.

MR. TIFFANY: That is all.

(Witness excused.)

MR. TIFFANY: That is the case.

(PLAINTIFFS REST.)

20 MR. SCOTT: May it please the Court, I ask  
at this time that this suit be dismissed in  
view of the amended answer shown in this  
case that was admitted this morning, in view  
of the facts that the plaintiffs in this case  
are alien enemies and, therefore, have no  
standing in this Court to maintain their  
rights, and that the Court is without juris-  
diction to determine the said matter. I take  
it that the Court will take judicial notice of  
the existence at the present time of a war  
30 between the Empire of Germany and the  
United States, and the Court will also take  
notice, I take it, that aliens themselves have  
a standing in this Court to defend their rights  
and to redress their wrongs, but that there  
is an exception with respect to what aliens  
can maintain their rights in this Court or in  
the courts of the United States, and that ex-  
ception applies to alien enemies; and, further,  
40 that at the present time, a person who is a  
subject of the Emperor of Germany or the  
Empire of Germany is an alien enemy, un-

*Colloquy.*

less there is something in the laws of the United States or the proclamations of the President which have been given the effect of laws to change their status. The fact that an alien enemy cannot maintain a suit in court, I think, is well established, and it is laid down in 2 Corpus Juris, Aliens, Section 37, and in 2 Cyc., 167, and in the Camden Coke case which I have just cited to your Honor. 10

THE COURT: I do not think there is going to be any question as to that at the present time, Mr. Scott, on the present motion. The question is as to who are alien enemies.

MR. SCOTT: The next situation or the next point in the development of my argument, I would state to be this, remembering the testimony yesterday that Mr. Hahn applied or made application or a petition to take out his first papers, and that by some reason or other or lack of knowledge or something of that character, he did not follow it up and they lapsed and he made another declaration. The courts of the United States have said that with respect to a declaration, that the declaration did not change his condition, nor did his allegiance change, by merely coming to this country and residing here, nor has the declaration of intention altered the situation. He does not by that determine to renounce his allegiance to his country but it is merely his declaration that it is his intention to do so at some later time, and so far as his allegiance is concerned, he still remains an alien. This situation applies to the plaintiff's wife, who is also a plaintiff as well as his wife. In two cases in the United States courts, the courts have held that the husband, be- 20  
30  
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*Colloquy.*

10 ing the head of the family, the wife and the minor children take his citizenship, it being inconsistent with the theory of our laws that the wife should be a citizen and the husband an alien. Your Honor recollects the Act of Congress which provides that when an American woman marries a foreigner, she shall take the nationality of her husband. And, under those circumstances, unless you can find something in the law that is to the contrary, I take it that the plaintiffs have no standing in court. Looking through this recent Act of Congress, approved October 6, 1917, which I take to be commonly designated as the "Trading with the Enemy Act," I find in Section 7 that

20 "Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in Section ten hereof:—"

(Argument.)

30 MR. TIFFANY: If the Court please, I do not want to be placed in a position of action contrary to the wishes of this country, but I say this, that we should not be bound by the somewhat hysterical conditions which surround this country at the present time, and deprive these people of rights which the law really gives them.

40 MR. SCOTT: I think that it is the duty of both counsel in this case, irrespective of their respective clients, to urge upon the Court or to call the Court's attention to such situations as this, in view of the fact that any relief the Government may be entitled to, it is our duty to do so, irrespective of the clients in the case itself, and to have this matter threshed out before the Court.

*Colloquy.*

THE COURT: There is no question about that in the case. It is your duty, if you see such circumstances that would not otherwise come to the attention of the Court, it is undoubtedly your duty to bring it to the attention of the Court, as it would be the duty of Mr. Tiffany, and I know it would be acted upon by him in that manner if it came to his attention. All that I am inclined to do, gentlemen, is this, not to grant the motion that is now made, particularly because of the fact of the difficulty in my mind as to exactly what the law is today upon the subject, and I am inclined to deny your motion and to allow the suit to proceed, for, in other respects, it should go to the jury; but I will hold or control their verdict, if it be in favor of the plaintiffs, and, if not, I need not be concerned nor need you be concerned, Mr. Scott; but I will so control their verdict if it be in favor of the plaintiffs, until such time as I have been satisfied as to whether or not they have a right to have it paid over to them at that time, and as to whether or not they have a right to prosecute their action at this time, and if they have not, then, under this act, if that applies, it may be that you will be entitled to some relief. I am not sure of that. \* \* \* \* I am going to deny the present movement, for which Mr. Scott will undoubtedly take an exception, because he wants to protect himself, and I will proceed as if the question had not arisen, and after the verdict I will be in a position where, if you gentlemen present or are unable to present me with the law upon the subject, I shall go into it myself, because if I find, even after the verdict, that I had no right

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*Colloquy.*

to proceed with this action, you can rest perfectly assured that I will do that which will set aside all that has been done. That is, if I find that there has been such a proclamation that this Act provides for,—that is the first step,—if it should go further than what Mr. Tiffany said and absolutely debar (deprive)

10 him from proceeding or taking one step forward, certainly, under my oath, I could not permit any verdict to stand if I should find that to be the situation, but I am reserving that question until I have the opportunity of going into the statute as well as the proclamation. Of course, I have a way to reach that which you gentlemen have not, because a mere demand upon the proper officials of the Government will bring to me whether or

20 not there has been such a *certification*.

MR. SCOTT: I desire that the objection be noted.

THE COURT: It will be.

MR. SCOTT: And should your Honor subsequently determine from matters which come to your Honor by reason of your judicial knowledge that the action is properly maintainable and the verdict, no matter what it is, is sustainable or maintainable, then I take

30 it there would be nothing on the record with respect to the right of the defendant against such a ruling, subsequently to the verdict, by the Court, and I would ask that my objection as now noted on the record be embrasive and conclusive for the purpose of, if necessary, a review of the questions which form the basis of your Honor's determination of the matter.

40 THE COURT: I shall certainly not announce my conclusions if they be favorable or unfa-

*William J. Arlitz, M. D.—Direct.*

avorable, to your present contention, until upon notice to both of you and Mr. Tiffany, so with that assurance you can properly present your objections to what my findings may be. If favorable to you, of course, you won't want to take it, but if unfavorable to you, you may do so then. But my duty primarily under the present state of the matter is that I am reserving to myself the determination of these questions at some later time than the time of the finding by the jury and submitting the question of fact to the jury. **10**

MR. TIFFANY: May I ask your Honor at this time to say to the jury that this discussion, which is, in itself, very prejudicial, from its very nature, to the plaintiffs, does not concern them; in other words, that they are not to be influenced or are not interested in this discussion. **20**

THE COURT: I will take care of that in my charge. I think the jury has understood that in all the discussion concerning this matter that they are not concerned with the motions made by counsel nor in the discussion respecting them.

MR. TIFFANY: That is sufficient, sir.

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WILLIAM J. ARLITZ, M. D., sworn. **30**

DIRECT EXAMINATION BY MR. SCOTT:

Q. Dr. Arlitz, you are a practicing physician?

A. I am; yes, sir.

Q. And a graduate of what medical college?

A. University of Maryland.

BY MR. TIFFANY:

Q. Pardon me, may I ask what you are looking **40**

*William J. Arlitz, M. D.—Direct.*

at? A. I was looking at the two reports that I made in the case.

BY MR. SCOTT:

Q. You have practiced for how long? A. Twenty-seven years.

10 MR. TIFFANY: I will admit the doctor's qualifications.

Q. And during that time what has been the nature of your practice? A. Surgery and neurology for the past fifteen years.

Q. And with respect to traumatic ulcers of the stomach, does that come under either one of the lines that you have specialized in? A. It is a subject that comes under the head of surgery.

20 Q. Will you tell us when you first saw Mrs. Hahn? A. I first saw her on July the 31st, 1915.

Q. Where? A. At her residence, 1007 Willow Avenue.

Q. You examined her on behalf of the defendant railroad company? A. I did.

Q. And when you examined her at that time, did you take the subjective history of this woman? A. I did.

30 Q. What is the purpose of taking the subjective history of these cases? A. The purpose of taking the subjective history is to aid the examining physician regarding pain and such manifestations and arrive at a proper conclusion; while a subjective history is not always necessary, yet at times it is very important.

40 Q. Now, what was the subjective history of this woman at your first examination? A. Subjectively, she mentions headaches, headache which is of frequent occurrence, nervousness, abdominal pain which is persistent in character, and a pain in the left thumb.

*William J. Arlitz, M. D.—Direct.*

Q. Yes. A. And I might say in putting down this subjective history, I am not using the history exactly as she gave it to me; I am putting it down in my own phraseology to make it more concise and more comprehensive.

Q. And at that time did she mention the matter of vomiting? A. She did not.

Q. Did she mention the matter of bloody vomit? **10**  
A. She did not.

Q. Or bloody stools? A. She did not; she never gave a history of that kind on either occasion that I examined her.

Q. On two occasions you examined her? A. Yes, sir; I saw her the second time on the 14th day of February, 1916, at her home, 1007 Willow avenue.

Q. What were her subjective symptoms at that time, doctor? A. The subjective symptoms at that time I have mentioned, that is the second examination; at the time of the first examination she mentioned abdominal pains and nervousness. **20**

Q. Now, what were the objective symptoms, as you found on her first examination, doctor? A. None.

Q. Will you tell the jury just what you mean by finding no objective symptoms? A. By objective symptoms, you mean something that you can see, something that the patient does not tell you about. At the time of that examination there was nothing that I could see that indicated that she had any injury; she stated that she had a pain in her abdomen and that it extended upwards towards the chest. That area of pain I have marked off in a diagram in connection with the report. In the second examination there were no evidences of injury. She had a small swelling on the right wrist, on the sheath of one of the flexor tendons of the thumb,—one of the flexor tendons of the thumb. **30**  
**40**

*William J. Arlitz, M. D.—Direct.*

Q. When was that first examination? A. The first examination was on the 31st of July, 1915. The examination was made by having her disrobe and expose her abdomen. She was lying on the bed at that time. I palpated her abdomen in the usual way that the surgeon does to determine if there was anything wrong. After the completion of the examination I went over her nervous system to determine if there was a foundation for the nervousness that she complained of having. I had her stand in an upright posture to determine the state of her equilibrium, which was normal in character. I then tested her ocular reflexes, which were normal. I tested her knee jerks and found that they were normal. I then made a certain test to determine if she had a condition known as "ankle clonus," which is one of the manifestations of neurasthenia; such a thing was not present in her case. So far as I could determine at that particular time and on the following occasions, she was a woman of general average resistance and did not present any of the phenomena of a recent injury.

Q. Did you find at that time, on the first examination, which was some fifteen or sixteen days after the accident, did you find at that time any cause for worry on her part with respect to any injuries? A. None.

Q. That she had received—you said none? A. None.

THE COURT: None.

Q. The second examination was made at what time? A. The second on the 14th day of February, 1916.

Q. How did Mrs. Hahn appear in physical appearance at that time compared to her physical appearance when you first examined her? A. About the same so far as I could judge.

William J. Arlitz, M. D.—Direct.

Q. And with respect to her physical appearance at the present time, how did she compare with her appearance on the first examination? A. I should say she is about the same. Of course, I think it is about a year since I saw Mrs. Hahn last, and a number of months had elapsed in the interval, so I really could not state definitely whether she has lost any weight or not. She certainly has not lost a great deal of weight. She appears about the same. I might say that in connection with the examination, the second examination, I also examined her *prevaginum* and I found that she had a considerable laceration of her womb and that her perineum, the perineum being the tissue between the front passage and the rectum, was considerably torn. These two conditions bear no relationship to this accident. They are due to childbirth.

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Q. Did you examine her with respect to this condition which she claimed in regard to the stomach? A. I did, I palpated her abdomen in the usual way.

Q. And by "palpating," you mean what? A. It means "percussing" it in this manner (illustrating) and feeling for her spots of tenderness.

Q. Was there any rigidity discovered by you at that time? A. None whatever. The only thing in the case was what she stated, the history that she gave; she said that she had pain in the abdomen. In connection with that case, with that examination, I made a test that I usually make where I am desirous of knowing if the patient has a pain or not; prior to palpating or pressing on the part, the pulse rate is approximated; if you make pressure over an area that is painful and pain does exist or does occur from this pressure, the pulse rate is very much accelerated. In this case that did not occur.

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Q. That test is rather an involuntary indica-

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*William J. Arlitz, M. D.—Direct.*

tion, involuntary in nature? A. Well, it is a psychic test, if I may so put it; it is something over which the patient has no control. It is very much like a man having lumbago, if he were sitting in a certain position or if he was lying in bed and did not move, he would be fairly comfortable and his pulse would be slow, but let that man attempt  
 10 to get up or to move from his seat, the pain would be so much greater that it would cause the pulse acceleration.

Q. You say on that test there was no acceleration of the pulse? A. None.

Q. Now, if Mrs. Hahn fell or was walking on one of the ferryboats of the railroad company and fell down on a slippery floor by reason of being hit by the mop of a porter who was mopping up the floor with sufficient force to abrase her knees and tear her skirt through and also hitting her  
 20 head at that time, could such a fall cause a traumatic ulcer of her stomach? A. By no process of reasoning could I arrive at a conclusion of that kind.

Q. How can a traumatic ulcer of the stomach be caused? A. Traumatic ulcers of the stomach are usually chemical in character; they are brought about by the swallowing of certain caustic fluids or caustic materials. A direct blow over the area  
 30 of the stomach or the duodenum might cause an ulcer if it was of sufficient force. In this case, if a person's general resistance was below the average, the force of that violence would naturally be expended in the part having the least resistance; that would be the part of least resistance. In have never seen one that was due to direct trauma.

Q. Did you ever hear of psychic ulcer of the stomach, doctor? A. Never.

40 Q. What is your opinion with respect to a

*William J. Arlitz, M. D.—Direct.*

shock producing an ulcer of the stomach? A. I have never heard of it, do not believe it could do it. I could understand this: If a person had a small ulcer of the stomach, that had an excoriation of the mucous membrane of the stomach, if they had a profound shock there again the same situation would prevail; the tender spot in the stomach is the spot with least resistance, it would grow worse, but the shock in itself would not produce an ulcer of the stomach. 10

Q. So—— A. It would be just as well to believe it would produce an ulcer of the brain or an ulcer of the great toe.

Q. —the ulcer would have had to be there—— A. I should imagine it would.

Q. —before shock itself could cut any figure at all? A. That is my interpretation of it. 20

Q. You say, doctor, that you have never seen a traumatic ulcer of the stomach? A. Never. 20

Q. Do you know whether it is considered a rare condition or not? A. Not to my personal experience; I know that it is mentioned. Johns Hopkins University Bulletin mentions the fact that there are about six or seven cases with traumatic history in some two thousand cases, something of that kind; of course, that is hearsay.

MR. TIFFANY: I ask that that be struck out, if the court please, hearsay. 30

MR. SCOTT: I take it that that is competent.

BY THE COURT:

Q. Now, I understand, doctor that you are now referring to a publication? A. Yes, sir.

Q. Or a work on the subject? A. Yes, sir.

THE COURT: I do not see that that is hearsay. 40

*William J. Arlitz, M. D.—Cross.*

MR. TIFFANY: I think we are entitled to have that work here to have what the entire article says, inasmuch as they are entitled to have had our X-ray plates here.

10 THE COURT: No, I do not think the situation is the same; you have a right to show that it is not so by other testimony, if you can. With a plate—an X-ray plate it is different.

MR. TIFFANY: I will take an exception to your Honor's ruling.

THE COURT: You may.

MR. SCOTT: That is all.

CROSS EXAMINATION BY MR. TIFFANY:

20 Q. Doctor, what was her condition compared on the second visit as with that on the first? A. Very much the same, I should judge.

Q. A well woman, I presume? A. She did not appear ill to me.

Q. On the first visit she had absolutely no objective symptoms? A. None.

Q. Of any injury? A. None.

Q. No injury to her thumb? A. Not a recent injury.

30 Q. I didn't ask you that. Did she have any objective symptoms to her thumb on the first visit? A. Yes, sir; she has a small swelling on the right wrist, on the sheath of one of the flexor tendons of the thumb.

Q. Was it the left or the right wrist, doctor? A. I have it on the right, I think it was the right.

Q. What does your other report say? A. I do not mention it, it was not mentioned at the time of my first examination.

40 Q. It was not mentioned at the time of your first examination? A. No.

Q. You heard Mrs. Hahn testify yesterday to its

*William J. Arlitz, M. D.—Cross.*

being on the left wrist? A. I did not; I won't dispute it though.

Q. You may be wrong on that? A. I dictated this report to my secretary.

Q. Where are your original notes, doctor? A. In my files.

Q. You haven't got them here? A. No. This is the first report (indicating paper); the first report is in my own writing and the second report is in the handwriting of my office amanuensis. 10

Q. And the second examination was at your office? A. At my office.

Q. Then, you were in error when you said on direct examination your second examination was at the house at 1007 Willow Avenue? A. Yes, sir; the second examination, I should have said—while I stated it as at 1007 Willow Avenue, but I examined her at No. 702 Hudson Street. 20

Q. Now, doctor, in your personal experience, which has been quite vast—you are considered eminent? A. I would not say "eminent;" I would say that I have had an average amount of experience.

Q. You have had such patients as every doctor has that has left them— A. I do not know.

Q. I do not mean that they have gone to another doctor. A. Yes, patients have left me and gone to other doctors too. 30

Q. Because they are not satisfied with your treatment, doctor? A. Oh, yes, many of them.

Q. I suppose you, as all human beings, make mistakes, are not infallible? A. I surely have made some mistakes.

Q. And you have treated accident cases which died? A. Yes, sir.

Q. And you say that this psychic condition of shock of the stomach—did I understand you to say would aggravate an ulcer that had been there? 40

*William J. Arlitz, M. D.—Cross.*

A. I do; I think so, so that any shock—now, I would not call it psychic—I would say that any shock might accentuate a pre-existing condition.

Q. A shock, for instance, such as receiving an injury by a fall, would accentuate a condition that existed at the time? A. It would depend upon the character of the fall, such as tripping and falling, there the influence, of course, the shock, would be very moderate as compared with the falling from the top of a house.

Q. Undoubtedly you are speaking now from your observation and not from any experience? A. I have had many falls.

Q. Not from the top of houses? A. But I have often tripped.

Q. And been tripped? A. Yes, sir; some times.

Q. You are the traveling physician and surgeon for the Lackawanna Railroad, aren't you? A. Yes, sir.

Q. And you are in the hospital at the Lackawanna Terminal in Hoboken? A. Yes, sir.

Q. That, of course, does not in any wise affect your opinion—your honest opinion in this case, does it? A. I do not think so; my usefulness would be destroyed as an employee of theirs if I would permit that to interfere with my judgment.

Q. That is what you told me on the last trial? A. Did I say it in the same way?

Q. In the same way. On your second examination, doctor, you did not have Mrs. Hahn disrobe? A. I do not recall.

Q. Does your report say that you did or did not? A. It shows that I had her in the operating chair and that I examined her genital organs.

Q. How about her stomach, does it show any examination of her stomach, disrobing, uncovering or just disrobing? A. No, she was probably

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disrobed and put on the operating chair; most of that is done by my nurse, I stay out of the room until the patient is placed on the table, and then I go ahead with the examination.

Q. Under cover—you are working under cover?

A. The idea is not to expose the patient unnecessarily.

Q. These ulcers of the stomach—X-rays are very good evidence where there is an ulcer present or not? A. Of course, that was the proper way to determine it. 10

Q. You made no X-ray or had none made? A. None.

Q. Did you ever make an effort to see the X-rays taken at the Christ Hospital? A. I am not sure whether I saw it here at the last trial or not.

Q. Did you see it? A. As I recall—I am not positive as to that. 20

Q. I think not, because they were not there? A. No, I do not know whether I saw them at the hospital or not; I am not sure of that.

Q. Do you remember seeing them at all? A. I am not sure; I think I did, but I am not sure.

Q. If you ever saw them, do you remember what they showed? A. Why, I think—no, I cannot speculate.

Q. I do not want you to speculate. A. I do not want to. 30

Q. Now, it is true that the symptoms of ulcer are to a large extent subjective? A. Yes.

Q. Therefore, you have to take the patient's word to a great extent as to their being pain, vomitus, stool passages with blood? A. That is not speculative; that is an objective history—a person giving a history of blood in the stools. If a patient had told me that, I might arrive at a conclusion, but it would not be a scientific conclusion. 40

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Q. Now, is it a fact that such symptoms—with-  
draw that—What are the objective symptoms of  
ulcer? A. Ulcer of the stomach or duodenum—  
either one of the two—pain which can come on  
after eating or pain which is sometimes relieved  
by eating, that is at or near the duodenum; vomit-  
ing, if the ulcer is in the stomach, the vomited  
10 matter contains blood, sometimes blood in tre-  
mendous quantities is vomited, and that is fol-  
lowed by a considerable degree of shock, the pa-  
tient loses weight, often looking profoundly an-  
aemic; stools pasty or mushy in character, dark  
in color, which contain blood, and that is verified  
by chemical analysis of the stool.

Q. What is the relation of the pyloric end of  
the stomach with the duodenum? A. It is the  
20 joining, where one joins the other; that is the  
favorite seat of ulcers.

Q. It is the favorite seat of ulcers? A. Yes, sir.

Q. Will you say from your examination that  
Mrs. Hahn has an ulcer? A. I am sure now, as  
I look at her, that she has not.

Q. Basing your answer upon your examinations,  
both the first and second time, she has not an  
ulcer? A. From my inspection made at that time,  
that she has not an active ulcer of the stomach.

Q. At the time you made your examination,  
30 doctor? A. Yes.

Q. You say you can see no connection what-  
ever between a fall such as Mrs. Hahn has de-  
scribed with the immediately resulting of this  
sharp pain in the stomach and an ulcer? A. I  
said to you that a shock might accentuate a con-  
dition, no matter where it may be.

Q. My question is, do you see any connection  
between that fall, with its attendant pain in the  
40 stomach, following immediately, never having had

*William J. Arlitz, M. D.—Re-Direct—Re-Cross.*

the pains and having been in ordinarily good health prior to that, and the ulcerous condition which the other doctors have described as having been existing now? A. I do.

MR. TIFFANY: That is all.

RE-DIRECT EXAMINATION BY MR. SCOTT:

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Q. There is one question, that is if a woman is lacerated, both in the womb and the perineum, as you have described, that has a tendency to cause them to be nervous, irritable, headaches, pain in the back? A. We have been operating for fifty years for the relief of those nervous conditions, operating on these parts.

Q. For the relief of that condition? A. We used to at one time, we thought that most all of the nervous symptoms that married women who had borne children suffered with were due to lacerations of the uterus and lacerations of the perineum. We, of course, perhaps did too much operating years ago; we do not do so much of it now; but it is a well known fact that where there is a tear of the perineum and a tear of the uterus, that the parts above become heavy, the uterus becomes heavy, and the parts above sag downward and they produce more or less abdominal discomfort, and they produce backaches, together with occipital headaches, and a well defined train of neurological symptoms.

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MR. SCOTT: That is all.

RE-CROSS EXAMINATION BY MR. TIFFANY:

Q. This condition which you have outlined comes by reason of childbirth? A. Yes, sir; that laceration in her case has no bearing on this accident.

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MR. TIFFANY: That is all.

*Walter S. Washington, M. D.—Direct.*

RE-DIRECT EXAMINATION BY MR. SCOTT:

Q. Might it on her nervousness, doctor? A. Yes, sir.

MR. SCOTT: That is all.

MR. TIFFANY: That is all.

Witness Excused.

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WALTER S. WASHINGTON, M. D., sworn.

DIRECT EXAMINATION BY MR. SCOTT:

Q. Doctor Washington, you are a practicing physician?

MR. TIFFANY: I will admit the doctor's qualifications.

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A. Yes, sir.

Q. For how long have you been practicing, doctor? A. Nearly forty-two years.

Q. And your practice has been where? A. In Newark for thirty years.

Q. What has been the nature of your practice? A. General practice.

Q. At the request of the railroad company, did you examine Mrs. Hahn recently? A. I did.

30 Q. When was it, doctor? A. I examined her on the morning of December 10th, three days ago.

Q. What did you find her condition to be at that time? A. You mean to give you the history of what she told me and so on?

Q. What did you find at that time both subjectively and objectively? A. I saw Mrs. Hahn at her home, 720 Park Avenue; she told me that she had been hurt on a ferry boat of the Delaware, Lackawanna & Western Railroad; that both knees

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*Walter S. Washington, M. D.—Direct.*

were hurt, the left one having an abrasion, the right one not having any mark; also that her forehead struck the edge of the seat when she fell; that she was in bed for three weeks; and that she was up and down for three months afterwards; she said that she began to have pain in her stomach before she left the ferry boat, which was only a few minutes; that she went from there to Twenty-eighth Street and in the afternoon she came home; she said she had had headaches ever since the accident; she also had had pain in her stomach, over the pit of her stomach, ever since the accident, she said that her right knee was perfectly well but that she had some crackling in the left knee; that she had some trouble with her left wrist; and that at times her left thumb pained her; she said that she had nausea at times but vomited very seldom, the vomit was simply what she had eaten; she said she did not sleep well, and that her best sleep was after four o'clock in the morning; she said she was nervous, that she was irritable, that many things annoyed her and at times she did not want to talk to people; she said she was not constipated, that her bowels were rather loose, if anything; she said that she had pain in her back, low down, right over the center of the spine, that that had for a long period of time and before the last two or three months she had had pain on the left side of the spine, running around towards the front. I think that was the extent of the history she gave me of her injury and the symptoms that she had suffered from since the accident. I examined her downstairs first for any evidences of nervous disturbances; she seemed very calm and equable temperament, not heady, not easily excited, not speaking rapidly or anything of that kind; I found that her pupils were normal and reacted to the light

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*Walter S. Washington, M. D.—Direct.*

and accommodation; that she had no tremor of the tongue or the hands; that her knee jerks were normal; that her equilibrium was normal; and that she had no objective evidences of any disturbances of the nervous system. After making this examination, Mrs. Hahn went upstairs and removed the clothing from her abdomen and chest  
 10 so that I might examine her; in examining her over the pit of the stomach she complained of tenderness, there was no rigidity of the muscles with the fingers kept pressing down in over the stomach or with the muscles held or being drawn, but she complained of pain every time I pressed down over that neighborhood; the pain over the spine was over what is spoken of as the lumbar region, that is the region about the lumbar vertebrae; the pain over the left side of the chest was  
 20 over the—it was higher up and run around. This was the objective examination. It gave me no clue whatever as to what she really might be suffering from; there was not sufficient evidence to determine.

Q. Then on that morning when you made that examination, what have you to say as to her appearance, does she appear to be apparently a well nourished woman? A. Yes, she said she had lost a few pounds in weight, but very little;  
 30 yes, sir; she is well nourished and she has a very good color, and she had the appearance, as I say, of being a very well, a fairly well woman, at least a normal woman.

Q. In examining her knees, what did you find?  
 A. What is that?

Q. In examining her knees, what did you find?  
 A. I found the crackling in both knees; they were both alike, there was no difference in size, they  
 40 measure exactly, alike, same limitation of motion in both knees; this crepitus condition is quite com-

*Walter S. Washington, M. D.—Direct.*

mon, everybody has it often, it was present in the right knee so far as it was in the left, so that so far as that is concerned, it is of no physical importance, and there was nothing the matter with the knee; the left wrist is of the same size and appearance as the right one; whether she had pain or not in the thumb, there is no possible examination by which to determine it, and there is nothing abnormal about the appearance or the size of the motion in the joint to the inward or that there was any disease or that showed any injury there, 10

Q. Did you examine Mrs. Hahn with respect to determining whether she had a traumatic ulcer of the stomach, doctor? A. Yes, sir.

Q. And to what conclusion did you come? A. That she had not; traumatic ulcer is of the stomach, absolutely impossible, except by direct injury to the stomach itself, either a direct blow over the pit of the stomach or if the body is caught between two pieces, like two bumpers in a car; it must be a direct injury to the abdominal wall which is transmitted through to the stomach. That does not produce an ulcer immediately. That produces a condition in which an ulcer might develop. The only possible injury that would be produced then would be a laceration of the mucous membrane, that is, the lining of the stomach. If that occurred and the conditions were favorable an ulcer might develop, but it does not develop immediately. An ulcer is a process that takes time to develop. An ulcer is caused by the death of tissue, the death of a small amount of tissue, and that tissue when it dies is separated from the healthy tissue; but you cannot put a nickel in the slot and get an ulcer. It takes time, you have to, first, have the death of the tissue of the stomach, the thick wall, to have an ulcer; and, in order to have a traumatic ulcer, you would 20 30 40

*Walter S. Washington, M. D.—Cross.*

have to have a laceration of the mucous membrane, then the unfavorable action of the gastric juices, the hydrochloric acid and other acids of the stomach, may produce the ulcer. It is extremely rare. I never saw a case in forty-two years, and the record in Johns Hopkins University, in Baltimore, of 1699 cases, seven gave a history of having been  
 10 hurt, but in every case it was an injury over the stomach, never any other. Now, hundreds of people are injured over the stomach, they may have a laceration of the mucous membranes of the stomach, the same as you have in the mouth; they heal up, they are simple matters. It is only in the stomach that you have it because you have there the contents of the stomach which act on the sore place, the denuded part.

20 Q. Did you ever hear of a psychic ulcer? A. No.

Q. Of the stomach? A. No. A psychic shock, as spoken of, never produces any change in either the anatomy or the physiology or the pathology of the human system; it never produces a disease, except nervous ones, never a physical disease under any possible circumstances. It is impossible; the effect is always on either the nervous system or the mental system.

30 Q. Is an ulcer of the stomach in any one—can it by any designation be classified as a nervous condition? A. Oh, no; that is an actual condition produced by some actual change in the wall and in the mucous membrane first of the stomach itself, never in any other way.

MR. SCOTT: That is all.

CROSS EXAMINATION BY MR. TIFFANY:

40 Q. Doctor, your examination you said took place about three days ago? A. Yes, sir; December 10th.

*Walter S. Washington, M. D.—Cross.*

Q. Mrs. Hahn was very willing to exhibit her person? A. Oh, yes, she had some clothes on her at the time I examined her, a chemise or gown, I think it was.

Q. And she told you everything and submitted freely to all examinations that were required? A. I think she told me everything; I have repeated what she had told me, and she submitted without the slightest hesitation to everything that I asked her to do. **10**

Q. And her doctor was not present nor was her counsel? A. No, I expected to meet her doctor there, but he was not there.

Q. Did you make memoranda? A. Oh, yes, I have full notes.

Q. You haven't them here with you, have you? A. I have not the actual notes that I took there, Mr. Tiffany; from my notes I dictated to a stenographer what she said I took down, as I always do, at the time, the actual statements of the claims, and then I dictated them to the stenographer, and I have copies of that examination, I have that here, but that is not the original notes. **20**

Q. You say she has a very good color at the present time? Isn't it a fact, doctor, that nervous conditions cause color to come to the face? A. Oh, yes, sometimes. **30**

Q. You did not know, of course, what this woman's condition was away back in 1915 at the time of this accident or afterwards? A. No, I knew nothing about her except what she told me and what I gathered from the examination right there.

Q. You and Dr. Arlitz discovered that Johns Hopkins Bulletin, didn't you, this morning? A. No, I did not discover it. **40**

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Q. You thought of it? A. I called Dr. Arlitz's attention to it during the last case.

Q. Was that new to Dr. Arlitz? A. I do not suppose it was new to him.

Q. You reminded him of it, is that the idea? A. Yes, I reminded him of it; I suppose I am responsible for digging it up.

10 Q. So really Dr. Arlitz is testifying to what you told him that the pamphlet said, is that so? A. I do not know whether—I think Dr. Arlitz—I do not know whether he had run across it himself or not, he probably had and had forgotten it; the information is available to anyone who will read. Osler, for instance, writes articles for it.

Q. That is the man that said we all ought to die at a certain age, isn't it? A. Yes, sir.

20 Q. Is it a fact that ulcer becomes most prevalent in women about forty to forty-five years of age? A. Oh, no, I would not say that.

Q. I say at that time they reach their height? A. From twenty to thirty is the age for women—

Q. And men? A. Around thirty to forty; in women twenty to thirty, after that they are not so common.

30 Q. Do you believe that a condition of shock would aggravate an ulcerous condition in the stomach? A. Well, that would depend on the amount of the shock, the extent of it, and the length of time it lasted. Shock is a temporary condition, except it produces some change in the nervous system or in the mental system; ordinarily shock passes over in a very few hours. In this particular case the shock could have been a very mild one because she was able to get up and could walk off the boat and go to Twenty-eighth street, and there she lay down; but if the shock  
40 had been severe she would not have been able to do that at all.

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Q. Persons who are injured oftentimes do peculiar things after accidents, do they not? A. Peculiar things?

Q. Yes, sir, such as walking away and then afterwards developing serious conditions internally? A. Oh, yes.

Q. And this ulcer would have to be internal—ulcers are internal? A. Oh, it is always internal in the stomach, certainly. **10**

Q. You used the words, doctor, that she was a fairly well woman, fairly well, normal, we will call it, why do you say that? A. I would say that comparing her with the average woman of her age, who had had two children, that had to do her own housework and that sort of thing, that she would average up with them. She is well—a very well nourished woman; she is not a woman that shows any evidence of nervousness; I saw her on the witness stand under cross-examination, she was perfectly calm and quiet, responsive in her answers, and showed no evidences of confusion; now, I should say that she did better than a very great many women who go on the witness stand and who are even in better health than she may possibly be. **20**

MR. TIFFANY: I think that is all.

MR. SCOTT: That is all. **30**

(Witness excused.)

MR. SCOTT: We rest.

(DEFENDANT RESTS.)

Mr. Scott summed up for the defendant.

Mr. Tiffany summed up for the plaintiffs.

In summing the case for the plaintiffs, Mr. Tiffany stated:

MR. TIFFANY: \* \* \* The defendant **40**

could have produced an X-ray plate of this woman's stomach, if it had wanted to do so; they did not want us to show ours.

MR. SCOTT: May it please the Court, I think that is unfair and ask that an objection be noted to such remarks.

Objection noted.

10 MR. TIFFANY: I do not want to be unfair about it; Mr. Scott was within his rights in refusing to have them shown here.

The Court then charged the Jury as follows:

### Charge.

20 Gentlemen of the Jury: This case, as it comes before you, has only one issue or thing for your determination, and that is the question of damages. All of the other things which naturally are to be found in a case of this character have already been disposed of, but it leaves for you, as I have said, just one matter for determination, and that is the question of damages.

You will keep in mind that in this case there are two parties plaintiff, namely, the husband and the wife, and each is asking for a recovery.

30 You will also keep in mind that the burden of satisfying you upon all of the points and all of the matters which I will bring to your attention is upon the plaintiffs, and they must satisfy you on each and all of them by a fair preponderance of the evidence. It is necessary that you should have that in your minds at this time, gentlemen, and that you should keep it in your minds during all of my charge, and, likewise, during all of your deliberations. The burden of satisfying you upon all of the matters which I am immediately bring-

*Charge.*

ing to your attention is upon the plaintiffs, and they must satisfy you of them by a fair preponderance of the evidence.

As to the wife, for what may she recover in a case of this character? She may recover for pain and suffering; mental and physical, and any disabilities which she may show are the proximate results of this happening on July 16, 1915. She may be compensated for the pain and suffering and disability which she has had, that which she may be presently enduring, and that which in all reasonable probability she will endure in the future, remembering, gentlemen, if that pain and suffering and disability which she has shown to you by a fair preponderance of the evidence she has had and is enduring and will in reasonable probability endure in the future, as well as having shown to you by a fair preponderance of the evidence that that pain and suffering and disability of which she complains and asks for a recovery is the proximate and natural result of this occurrence or happening to her on July 16, 1915. Now, if she has satisfied you in that direction, or as to any of these matters, and as to time, then to that extent she is entitled to be compensated.

The most serious question, probably, in the entire case—the most serious question with which you will have to deal is the question of the ulcer of the stomach of which she complains. Of course, gentlemen, again I must say to you that the burden is upon her or upon the plaintiff to satisfy you of those things to which I now direct your attention, that she has an ulcer of the stomach, and, again, that that ulcer is the proximate result of what happened to her on July 16, 1915, or, that if it was a condition already existing at that time that what happened to her on July 16,

*Charge.*

1915, aggravated or increased that condition. So I will have to say to you again, gentlemen, the burden is upon her to satisfy you of those things. If she has not satisfied you that this condition of which she complains is an ulcer, or that the pain and suffering has not existed to the extent to which she says it has, or has not existed at all, or she has not satisfied you that, although she has satisfied you that it does exist, it does exist as a result of or approximately because of what happened to her on July 16, 1915, then she has failed to make out the case in that direction and you will not award compensation to her for that condition until she has established it by the fair preponderance of the evidence that it does exist as a proximate result of this happening on July 16, 1915.

20 Again, on the question which I have already presented to you, if she has satisfied you, or if the preponderance of the evidence which she has produced or raised in the case is that this ulcerous condition as alleged was one which existed prior to and was in existence at the time of the happening of July 16, 1915, then she says, "I am entitled to be compensated for the aggravation of that condition and for the pain and suffering and disability so aggravated." In law she will be, but the burden is upon her to have satisfied you that such aggravation was the proximate and natural result of the happening in question, and also to satisfy you to what extent that aggravation has gone to cause this aggravated condition. Only in such an instance as that I am now stating to you will she be entitled to have a recovery.

In line with all of that, gentlemen, there is this rule, that it is not enough for a plaintiff to show you that it is possible that this condition, which she attributes to the ulcer, if one exists, is attri-

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*Charge.*

butable to this happening of July 16, 1915. No, that is not what the law calls upon her to do. But the law calls upon her to do this, to satisfy you by a fair preponderance of the evidence in finding that, after looking at and examining all of the facts and circumstances and conditions, it is probable, reasonably probable, that this condition of which she complains is the natural proximate result of the happening on July 16, 1915. 10

In other words, gentlemen, the law says to you that you must deal, not with possibilities but with probabilities, and the burden which she must sustain is to satisfy you by a fair preponderance of the evidence, so that having looked at and examined all of the facts and circumstances and conditions, as you find them to be and appear in this case, that you should reasonably conclude that it is reasonably probable that this condition of which she complains is the proximate natural result of the happening on July 16, 1915. 20

Now, has she so satisfied you? If she has upon these things so satisfied you as to entitle her to have a verdict, there is only this much for you to consider in conclusion, and that is as to what her verdict should be for. She is to be compensated only, and that means in law what you and I in our every day life consider the word "compensated" to mean. 30

To be more explicit, she is not entitled to any sum to be placed in the verdict which she shall have by way of punishment of the defendant, because that is not a particular for which she can have a verdict, nor is that a question which the law permits you to consider in your verdict.

She is entitled only to be compensated in money for the pain and suffering and disability, if any, which she has or will in all reasonable proba- 40

*Charge.*

bility endure in the future, being the proximate natural result of the happening on July 16, 1915, and, as I said before, before she is entitled to be compensated for that, she must make out by the preponderance of the evidence in the case that that pain and suffering and disability, if any, which she has now and will in all reasonable probability endure in the future, was the proximate natural result of the happening of July 16, 1915.

As to the husband, again let me say that the burden is upon the plaintiff to establish all of the things of which I am now about to speak.

He will be entitled to recover for all past expenditures he has made for the purpose of effecting a cure of his wife, for those moneys which he has expended or which you have been satisfied he has obligated himself to expend in and about effecting a cure of his wife. Those items are generally doctors' or physicians' bills and medicines. In this case, I think, the only items of that character spoken of are physicians' bills and medicines. My recollection only serves me in this direction as to the direct evidence as to physicians' bills, as follows: That of Dr. Stack, \$35.00; Dr. Axford, \$50.00; and Dr. Natrass, \$25.00, making a total in that direction of \$110.00. Of course, if there are other items of that character, gentlemen, which I do not recall, and if your recollection serves you that there are such other items you will, of course, take cognizance of them and disregard what I say about it.

Likewise, as to the evidence of the plaintiff, the husband, as to the expenditure for medicine of \$20.00 to \$25.00, the burden in that direction is that they must have satisfied you by a fair preponderance of the evidence that these moneys have been expended or that the plaintiff has obli-

*Charge.*

gated himself to expend; secondly, that they were reasonably necessary, that is, the payment for the services or the purchases were reasonably necessary under the circumstances of the case; and, thirdly, that the quantity of the expenditures or the obligation is reasonably necessary under the circumstances of the case.

After all, of course, as I said to you, gentlemen, I shall finally say to you as to all of the rights of recovery of the plaintiff, the husband, as to the expenditures he has made or the obligations to pay that he has incurred, he is entitled also to have a recovery for loss of services of his wife. In that direction is the testimony which regards the employment of a woman for services in the house, as to the length of time that that service has existed, and whether it is still continuing or not, and what the amounts were testified to as having been paid or being paid, I shall have to leave to your recollection of the testimony. 10

In that direction the burden is also upon the plaintiff to satisfy you that those services were reasonably necessary, have been and are and will be in the future, and as to how far in the future they will be necessary; and they will also have to satisfy you, in that direction, as to the reasonableness of the charges that have been made for those services. 20

There has been some testimony as to the rate paid per day for these services as having formerly been a dollar and fifty cents per day and now being two dollars per day. That is the point to which I am now directing your attention, as to whether or not that expenditure is reasonable under the circumstances of the case, and the burden in that direction is upon the plaintiff to satisfy you as to its reasonableness. 30

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*Charge.*

The husband is also entitled to be compensated for the loss of society, consortium, of his wife. The burden in all of these instances, gentlemen, as I have stated before, is upon the plaintiff, and they must satisfy you on every part of it by a fair preponderance of the evidence.

10 Along with this claim for which the husband seeks a recovery in this case, I must say this to you, that the question of the thing or things from which his wife is suffering is important to be determined by you, and has this important bearing upon the right of the husband to a recovery for what he asks, namely, again going back to this stomach trouble, if you have not been satisfied by the plaintiffs that this condition which is complained of exists, and exists as the proximate result of this happening in question, or, having  
20 existed, has been aggravated by the happening in question, then you see the situation as it is before you, is that some of the things—at least some of the things—for which the husband asks for recovery have been expended for and directed to the cure or alleviation of, or for something for which these plaintiffs have not satisfied you this defendant company is responsible, and as far as the showing is in that direction that is the fact, or, rather, as he is claiming in that direction, and  
30 they have failed to show you the liability of the defendant company in that direction, under the rules which I have given you, then the husband is not entitled to have a recovery for those expenditures.

He is entitled to be compensated and made whole only for those things which they have shown by a fair preponderance of the evidence was the proximate natural result of this happening of  
40 July 16, 1915; so that if you get in that situation,

*Charge.*

gentlemen, you will be in that position where you can find for him only for those expenditures or items that he has obligated himself to expend, that he has lost because, of those things which they have satisfied you are the proximate result of the happening in question.

If he has not satisfied you upon those points, then you should not speculate, because the burden is upon him to have satisfied you of those things and the reasonableness of those items and their necessity which would permit a verdict for him without the use of speculation on your part. That is a burden which rests upon him. **10**

With that, gentlemen, you may take the case, with the exception of some requests which I am willing to charge:

First, I charge you that you are to disregard, in fixing the amount of damages to be awarded the plaintiffs, the fact that a question has been raised as to whether or not they are enemy aliens. **20**

Second, it is immaterial to you whether or not the plaintiffs are enemy aliens; you are only concerned with the amount of damages to be awarded for the injuries which you find Minnie Hahn has sustained.

Third, the fact that the plaintiffs are alien enemies, if they are, must not be considered by you in figuring the damages which you are to award. **30**

Again, because on the trial of this case, you are to determine only the question of the amount of damages, if any, the plaintiff suffered on account of this accident, rather than the question of liability of the railroad company, and also what damages the plaintiff suffered on account of said accident, that fact should not influence you in the slightest degree in determining your verdict. **40**

*Charge.*

Finally, if the internal conditions of the plaintiff, Mrs. Hahn, have not been proven to you with reasonable certainty to have been caused by her fall, there can be no recovery therefor; ; and I am charging that with this addition, taking you back to what I have said upon the question of the condition preceding the happening of July 16,  
**10** 1915.

I will say further and finally to you, gentlemen, this—I think it is quite unnecessary that I should do so, but for perfect safety's sake, I do bring it to your attention in closing—and that is that whatever has happened during this case, whatever arguments there have been made and addressed to the Court—and then all have been addressed to the Court—whatever arguments  
**20** there have been upon these motions and whatever the result of those motions was, that is a matter of no concern to you whatever. You should put yourselves in the position, as I am sure as reasonable men you can and will, that the argument of the parties and the Court at the time they were made do not form any part of the case, as far as you are concerned, at all. You are simply interested in and concerned with what the evidence is in the case as you get it from the witnesses on the witness stand, and what the rules  
**30** of law are as the Court has endeavored to give them to you; those are the only things with which you are concerned, and I am sure, gentlemen, they are the only two things which you will consider.

You will take the evidence and determine which way the evidence goes in the case, whether or not it stands for a fair preponderance of the evidence in favor of the plaintiff upon all of those things  
**40** which I have brought to your attention; then you

*Charge.*

will apply the rules of law which I have given you, and then in that manner you will find your verdict, which is the only reasonable manner in which you may decide cases of this character.

With that, gentlemen, you may take the case.

(JURY RETIRES.)

THE COURT: The defendant's requests are seven in number, and I have charged only two, Nos. 1 and 6; the rest I decline to charge, except in the manner in which I have already charged and the language in which I have charged. **10**

MR. SCOTT: I desire to note an objection to the refusal of the Court to charge the requests to charge which were refused, and the refusal to charge in the identical language of the requests requested and also to the Court's allowing the Jury to consider the matter of the aggravation of the ulcerous condition of the stomach, on the ground that I conceive that there was no evidence warranting the Jury to determine whether there was any aggravation of such condition. **20**

THE COURT: Is that all, Mr. Scott?

MR. SCOTT: Yes.

The defendant's requests to charge, which the Court declined to charge, except as charged, are as follows: **30**

No. 2. If you come to the conclusion that the internal injuries of the plaintiff, Mrs. Hahn, were not the result of the accident, the only injury for which there can be a recovery at all would be for the external bodily bruises which the plaintiff suffered.

No. 3. If you come to the conclusion that the railroad company is only liable for the external bodily bruises and that the internal condition **40**

*Charge.*

was not caused by the accident, there can be no recovery for expenses, doctors' bills, etc., connected with the treatment of such internal condition.

10 No. 4. While it is claimed that a fall produced the internal condition of the plaintiff, Mrs. Hahn, before you can allow her a verdict for such a condition, it should appear not only that the fall was the possible cause of that condition, but other causes should be excluded and the circumstances should be such as to leave a reasonable inference that the fall was the actual cause of said internal condition.

No. 5. The existence of the internal or stomach condition of the plaintiff, Mrs. Hahn, is not proven by evidence of a subsequent condition, which is merely consistent with its existence.

20 No. 7. If you believe that the ulcerous condition of Mrs. Hahn existed before the accident to her, then you cannot allow her anything for the acceleration of said condition, because there is no evidence to show how much said condition was aggravated or accelerated and on account of the absence of such evidence you are not permitted to speculate on said matters.

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**Opinion of the Supreme Court.**

Filed Nov. 25, 1918.

**NEW JERSEY SUPREME COURT.**

June Term, 1918.

MINNIE HAHN,  
*Plaintiff and Respondent,*

v.

DELAWARE, LACKAWANNA & WEST-  
ERN RAILROAD COMPANY,  
*Defendant and Appellant.*

10

Submitted July 5, 1918; decided November 25,  
1918.

## SYLLABUS.

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1. The fact that the person injured had a predisposition to disease, or a latent weakness, cannot avail the defendant to relieve him from liability from damages which ensue when his negligence brings the dormant disease into activity, or aggravates the latent weakness.

2. Where the latent disease or weakness itself did not cause pain, suffering, etc., to the plaintiff, but such condition plus the fall caused such pain, the fall and not the latent condition is the proximate cause, and the plaintiff is entitled to recover the entire damage shown to have resulted from such fall, from the one whose negligence caused it, without proving how much the plaintiff would have suffered from such latent disease if she had not received the injury.

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3. When, upon objection to an improper remark concerning evidence by counsel in addressing the jury, counsel promptly and frankly with-

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*Opinion of the Supreme Court.*

draws such remark, and no request is made either that counsel be rebuked by the court or that the jury be instructed to disregard it, and the incident is thus closed, a reversal is not justified because of such remark.

On appeal from the Hudson County Circuit Court.

10 Before Gummere, Chief Justice and Justices Swayze and Trenchard.

For the appellant, Frederic B. Scott.

For the respondent, Weller & Lichtenstein.

The opinion of the court was delivered by, Trenchard, J.

20 Minnie Hahn brought this suit to recover for personal injuries sustained whilst a passenger on a ferry boat of the Delaware, Lackawanna and Western Railroad Company.

The evidence disclosed that she was struck by a mop handled by one of the defendant's deck hands; that she fell to the floor, striking a seat in the fall, and was injured. The jury rendered a verdict in her favor and the defendant appealed from the consequent judgment.

We are of the opinion that the judgment must be affirmed.

30 The defendant's responsibility for the injury is not questioned. The only grounds of appeal argued are, *first*, the refusal of the trial judge to charge the defendant's seventh request; *second*, the alleged improper comment by counsel in summing up the case.

The request was as follows:

40 "If you believe that the ulcerous condition of Mrs. Hahn existed before the accident to her, then you cannot allow her anything for the acceleration of said condition,

*Opinion of the Supreme Court.*

because there is no evidence to show how much said condition was aggravated or accelerated, and on account of the absence of such evidence you are not permitted to speculate on said matters."

That request appears to be based upon the assumption that the evidence permitted of the inference that an ulcerous condition existed before the accident. We do not question that it did in the sense that a tendency to ulcer existed due perhaps to "excessive acidity" which had weakened the stomach, but there was no evidence that any ulcer had developed at that time. The evidence tended to show that prior to the accident Mrs. Hahn was apparently in good health. She had had no pain or other symptoms of ulcer. But immediately after the accident she had and continued to have severe pains in the region of the stomach and passed blood. According to the testimony on ulcer of the stomach then developed due to or accelerated by the injury received in the accident.

Now the fact that the plaintiff had a predisposition to disease, or a latent weakness, cannot avail the defendant to relieve it from liability from the damages which ensued when its negligence brought the dormant disease into activity, or aggravated the latent weakness. See cases collected in 48 L. R. A. (N. S.) 123 note.

The request, which was refused, seems to have recognized that rule, in part at least, but was based upon the theory that no damages could be allowed for the acceleration of the ulcerous tendency because the evidence does not show how much such condition was accelerated. But that is not so.

Where, as here, the latent disease or weakness itself did not cause pain, suffering, etc., to the

*Opinion of the Supreme Court.*

plaintiff, but such condition plus the fall caused such pain, the fall and not the latent condition is the proximate cause, and the plaintiff is entitled to recover the entire damage shown to have resulted from such fall, without proving how much she would have suffered from such latent disease if she had not received the injury.

10 *Sherman v. Indianapolis T. & T. Co.*, 58 Ind. App., 623; *Baltimore City Pass. R. Co. v. Kemp*, 61 Md., 619; *Chicago City R. Co. v. Saxby*, 213 Ill., 274; *Ehrgott v. New York*, 96 N. Y., 264.

We conclude, therefore, that the instruction requested was properly refused.

The only other ground of appeal argued is because the plaintiff's attorney, in summing up to the jury, remarked that "the defendant could  
20 have produced an X-ray plate of this woman's stomach if it had wanted to do so. They did not want us to produce ours."

Of course this remark was improper. It was improper because the evidence did not show that the defendant could or should have produced such a plate, and there was nothing to show that the defendant did not want the plaintiff to produce her plate except the fact that when she undertook to prove what her plate disclosed the  
30 defendant properly enough objected to the evidence because the plate itself was not produced.

But when plaintiff's counsel made such remark the defendant's attorney objected saying, "I think that is unfair, and ask that an objection be noted." Thereupon plaintiff's counsel at once said: "I do not want to be unfair about it; Mr. Scott (defendant's attorney) was within his rights in refusing to have them shown here."  
40 Nothing more was said upon that topic. Apparently the incident was closed to the satisfaction

of all concerned by the prompt and frank withdrawal of the improper remark. At least no request was made either that counsel be rebuked by the court, or that the jury be instructed to disregard the improper remark. In these circumstances we think a reversal would not be justified. *Minard v. West Jersey R. Co.*, 74 N. J. L., 39; *Christensen v. Lambert*, 66 N. J. L., 531.

The judgment below will be affirmed, with costs.

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**Rule on Affirmance.**

(Filed Nov. 27, 1918.)

**NEW JERSEY SUPREME COURT.**

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MINNIE HAHN,  
*Plaintiff and Respondent,*

v.

DELAWARE, LACKAWANNA & WEST-  
ERN RAILROAD Co.,

*Defendant and Appellant.*

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This cause having been duly argued at the present term of this court by Weller & Lichtenstein, attorneys for the plaintiff, and Frederic B. Scott, attorney for the defendant, and the court having considered the same, and finding no error in the record or proceeding in the Circuit Court:

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It is thereupon ordered and adjudged that the judgment of the Circuit Court, removed by appeal in this cause, be affirmed with costs; and that the record be remitted to the Circuit Court to be proceeded with in accordance with this judgment and the practice of said court.

Entered Nov. 27, 1918.

On motion of Weller & Lichtenstein, Attorneys for Plaintiff.

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at all times of the day and night with  
a view to the safety of the public and  
the convenience of the community. It is  
the duty of the Council to see that the  
public interest is always kept in view  
and that the most efficient and economical  
arrangements are made for the purpose  
of the said Act. The Council shall be  
empowered to do all such things as may  
be necessary or expedient for the  
purpose of the said Act.

ARTICLE 10. THE CHAIRMAN.

The Council shall elect a Chairman  
from among its members for such term  
of years as may be determined by the  
Council. The Chairman shall hold office  
until he or she is re-elected or until  
he or she resigns or is removed from  
office by the Council. The Chairman  
shall be the chief executive officer of  
the Council and shall be responsible  
for the management and control of the  
Council's affairs.

The Chairman shall have the right to  
appoint and dismiss such officers and  
employees as may be necessary for the  
efficient management of the Council's  
affairs. The Chairman shall also have  
the right to delegate to any of his  
officers or employees such powers and  
duties as he may think fit.

The Chairman shall be entitled to  
such remuneration and allowances as  
may be determined by the Council. The  
Chairman shall also be entitled to  
such other benefits as may be  
determined by the Council. The  
Chairman shall be eligible for re-  
election at the expiration of his or  
her term of office.

## New Jersey Court of Errors and Appeals 10

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MINNIE HAHN,  
Respondent,  
against  
DELAWARE, LACKAWANNA AND  
WESTERN RAILROAD COMPANY,  
Appellant.

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### Statement.

The only question involved in this case is that of an alleged error contained in the argument of counsel for the respondent in summing up the case before the jury. The remarks complained of are as follows: "The attorney could have produced an X-ray plate of this woman's stomach if it had wanted to do so; they did not want us to show ours" (page 113, line 40; page 114, lines 1 to 3). The appellant's counsel then said: "May it please the Court, I think that it is unfair and ask that an objection be noted to such remarks." Respondent's counsel promptly answered: "I do not want to be unfair about it. Mr. Scott (Appellant's Counsel) was within his rights in refusing to have them shown here" (page 114, lines 8 to 10). Nothing further was said or done in reference to the statement.

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The appellant in its brief sets out the decision of the Supreme Court in affirming the judgement, reported in 105 At. 459, and we shall not repeat it here.

The respondent contends that there is no reversible error.

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### POINT I.

**Counsel must request that objectionable statements be eliminated before any ground for review is laid.**

The Court of Errors and Appeals, in a unanimous opinion, in *State vs. Terry*, 91 N. J. L., 543, speaking through Chancellor Walker, said:

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“The rule in this state, undoubtedly, is, that where counsel, in summing up to the jury, goes outside of the testimony and makes appeals based upon facts which have not been proved, but rests upon his unsupported assertions, the party injuriously affected must, in order to be relieved, move the trial judge to order the remarks stricken out and to charge the jury that they should be disregarded; *an objection only to the illegal remarks does not require the trial judge to strike them out of his own motion, and unless counsel requests their elimination no ground for review is laid.*”

30

In *See vs. Public Service Co.*, 82 N. J. L., 144, Judge Kalish, held, although the remarks of counsel for plaintiff in summing up were improper, where they were discontinued upon objection being made thereto by defendant's counsel, and the Court was not asked to admonish counsel nor was there any request made to the Court to charge the jury

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to disregard the remarks, nor was there any refusal of the Court to interpose, that there was no basis for a valid assignment of error requiring a reversal.

In *Minard vs. West Jersey Rwy. Co.*, 74 N. J. L., 39, in an action of tort to recover damages for the negligence of the defendant company, during the course of the argument to the jury the plaintiff's counsel stated, "are you going to take the testimony of those railroad employees whose bread and butter is at stake?" objection being made by the defendant's counsel to which the Court stated. 10

"I do not think the Court can control counsel, even though the inferences that are drawn seem to the Court not to be warranted."

On the matter coming up on rule to show cause Justice Fort, said (page 41): 20

"The Court should have required counsel to withdraw the statement, there being no evidence in the cause to justify the remark. But we deem the refusal of the Court in this case to be harmless error and not sufficient to entitle the defendant to a new trial."

In the case of *Christensen vs. Lambert*, 66 N. J. L., 531, the Court said (page 533): 30

"One of the grounds urged was that the counsel of the plaintiffs in addressing the jury, made the improper remarks touching the financial standing of the defendant, whereupon the Court, in the presence of the jury, cautioned the plaintiff's attorney against the same and said that they were entirely improper, and thereupon plaintiff's counsel apologized 40

for having made them. In the charge the Court also told the jury that the questions of the financial standing of the plaintiff were not to be considered by them in reaching their verdict. The Court held that the error was harmless and was not ground for reversal."

10 In *Crumpton vs. U. S.*, 138 U. S., 361, the Court said:

"It is the duty of the defendant's counsel at once to call the Court's attention to the objectionable remarks, *and request its interposition and in case of refusal, to note an exception.*"

20 In 1 *Thompson on Trials*, Sec. 962, the learned editor says:

"The attention of the court should be called to it (the objectionable remark) by a seasonable *objection* which, if overruled, should be followed by an exception which exception should be noted."

30 In an elaborate note in 46 L. R. A., 645, the editor says objection to statements by counsel in argument in the presence of the jury cannot be considered on appeal where no action of the court with reference to such statements was demanded or requested. Numerous cases from a great number of states are cited.

In discussing the subject "Argument of Counsel" as constituting reversible error, the Editor in 2 R. C. L., page 440, says:

40 "The exception, taken when opposing counsel use improper argument, must be to the ruling of the court on an objection to the use of

the argument, and not to the argument. The reason for this rule is that the Appellate Court does not reverse the conduct or actions of the counsel in the case, but reviews the rulings, order or judgment of the Trial Court, and since the Trial Court has not made an order, in reference to the conduct of counsel, the Appellate Court cannot make one."

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In 16 Corpus Juris, 915, the editor says:

"Although an objection has been taken, complaint cannot, as a general rule, be made of misconduct or improper remarks in argument, although prejudicial, unless the Court has been requested to withdraw the same or to instruct the jury to disregard them and has refused so to do" (citing cases from nearly all the states).

20

The appellant, in asking that his objection be noted, did nothing more than protest against the remark of counsel. He did not ask that the jury be instructed to disregard the statement, nor did he ask for any affirmative act by the court. He rested his objection solely upon protest and under the principle announced in the cases above cited there is no ground for review.

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## POINT II.

**As counsel immediately withdrew the alleged improper remark, the retraction overcome any error, if any was committed.**

In the case of Dunlap vs. U. S., 165 U. S., 486, the district attorney made certain improper state-

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ments in argument but immediately thereafter withdrew them. The Court said at page 498:

10            “If counsel promptly withdraw the remark, the error will generally be deemed to be cured. If every remark made by counsel outside the testimony were ground for a reversal, comparatively few verdicts would stand.”

In *People vs. Benham*, 160 N. Y., 402, a remark by a district attorney in a prosecution for murder that defendant was a seducer, and his attention being called to the impropriety of the remark immediately withdrew it, the Court held that the error if any was cured by the withdrawal.

20            In *Drew vs. State*, 124 Ind., 9, where prejudicial statements outside the evidence were made by the prosecuting attorney, who, upon being told that the remarks were improper, withdrew them, and no ruling in regard to it as was asked for or made, it was held that there was no ground for reversal.

In *Smallis vs. State*, 105 Ga., 669, where the prosecuting attorney in prosecution for homicide characterized the defendant as a burglar, but before objection was made to it withdrew the statement, it was held no error was committed.

30            In *Sawyer vs. U. S.*, 202 U. S., 150, the Supreme Court said in reference to an improper statement made in argument where the attorney expressed a regret if he had made an error and withdrew his remarks, that the Trial Court in commenting upon an exception to the remark after such withdrawal, in stating that the exception was frivolous, was not error.

40            Judge Thompson says in 1 *Thompson on Trials*, Sec. 960, that any prejudice from any improper remark will ordinarily be cured by a prompt withdrawal of the alleged objectionable statement.

It seems to us that the remark was too trivial to constitute reversible error.

But we do insist that as there was no request made of the Court to instruct the jury either at the time the statement was made or any other time to eliminate from their consideration the alleged error, it leaves no ground for review; and that the prompt and frank withdrawal by counsel of the statement cured the error if any was committed. 10

Respectfully submitted,

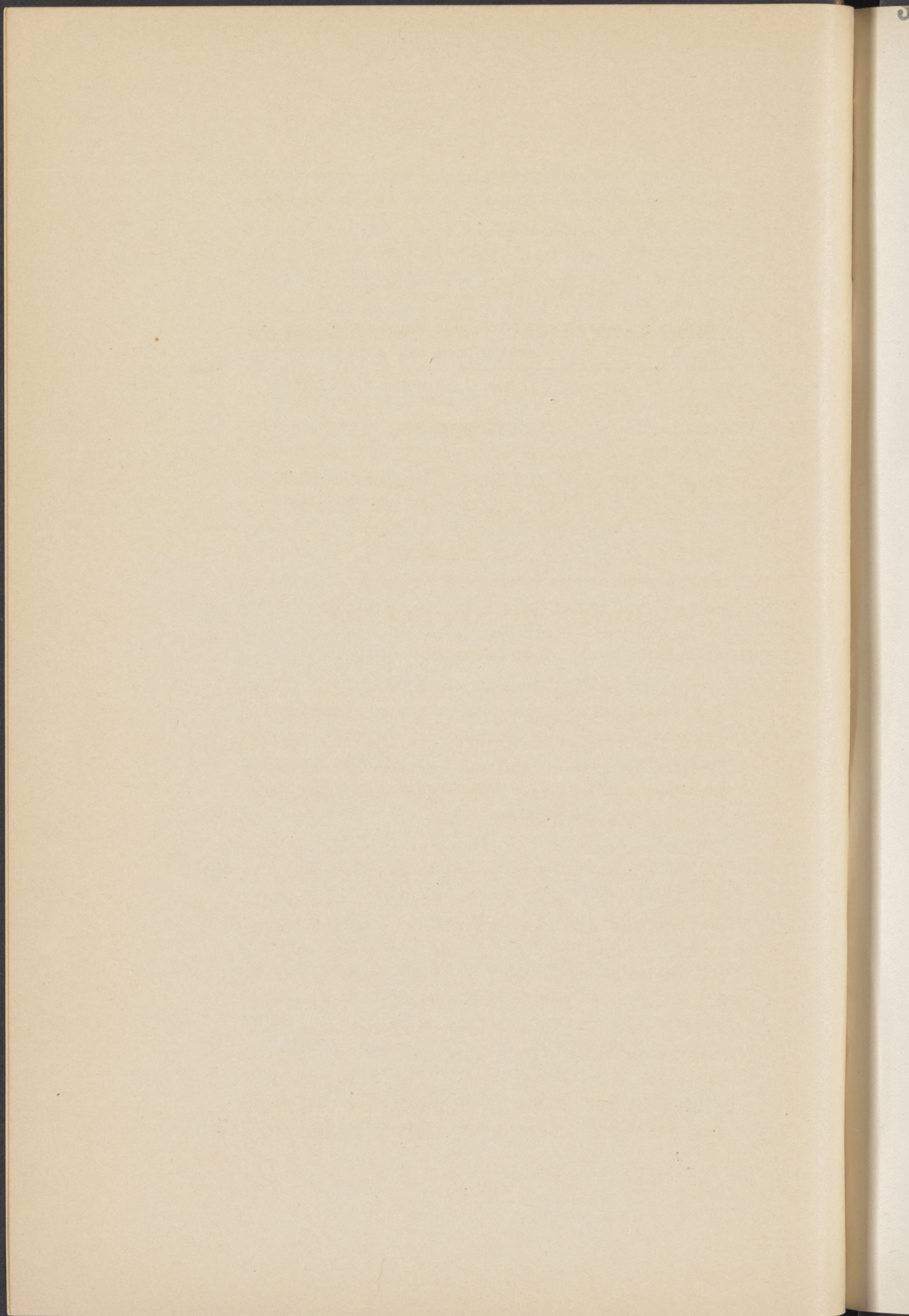
WELLER & LICHTENSTEIN,  
Attorneys for Respondent.

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Case No. 36.  
Submitted June, 1919, Term.

**New Jersey Court of Errors and Appeals.**

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MINNIE HAHN,	}	10
<i>Respondent,</i>		
<i>against</i>		Action at
THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD CO.,		Law.
<i>Appellant.</i>		

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**BRIEF OF APPELLANT.**

**Statement.**

This is an appeal from the affirmance by the New Jersey Supreme Court of a judgment entered upon the verdict of a jury, for \$2,835.50 at the Hudson Circuit on the second trial of an action for personal injuries. The case was tried as to the question of damages only.

The respondent, Minnie Hahn, while a passenger on one of appellant's ferry boats came in contact with a mop in the hands of one of the porters who was cleaning the floor of the ladies' cabin, causing her to fall on her knees, tearing her dress and her head striking against one of the seats. An examination made by her physician on the day of the accident disclosed some contusions on both of her knees and a swelling on the right side of her head. She complained of a pain in her stomach, although this physician was unable to ascertain any injury to the stom-

ach. Aside from the alleged injuries to the stomach, her other injuries were not of a serious character; the fall, it being claimed, produced what is called a traumatic ulcer of the stomach. While it was most strenuously contended by the appellant that a blow of the nature and character which respondent suffered could not have caused the ulcerous condition of the respondent's stomach, nevertheless, it must be conceded that there was some evidence to warrant the submission of that question to the jury.

It appeared on the trial that the respondent had had a number of X-ray photographs taken for the purpose of showing the ulcerous condition of her stomach (p. 26, l. 33 et seq.) but on trial of said cause said X-ray plates were not produced by the respondent and an objection was made to an endeavor on the part of the respondent to detail the conditions alleged to have been disclosed by the X-ray plates without their production in court (p. 27, l. 20, et seq.). There was no evidence whatsoever that the appellant had ever had any X-ray photographs taken of the respondent's stomach or that it was in possession of any such plates. Nevertheless on the summing up to the jury, respondent's counsel spoke as follows:

"The defendant could have produced an X-ray plate of this woman's stomach, if it had wanted to do so; they did not want us to show ours" (p. 113, l. 1; p. 114, ll. 1-3).

To these remarks the appellant prayed objection, and the same was noted and thereupon the respondent's counsel stated:

"I did not want to be unfair about it. Mr. Scott was within his rights in refusing to have them shown here" (p. 114, ll. 8-10).

The Supreme Court in affirming the judgment below and dealing directly with the point in question, stated as follows:

"The only other ground of appeal argued is because the plaintiff's attorney, in summing up to the jury, remarked that 'the defendant could have produced an X-ray plate of this woman's stomach if it had wanted to do so. They did not want us to produce ours.'

"Of course this remark was improper. It was improper because the evidence did not show that the defendant could or should have produced such a plate, and there was nothing to show that the defendant did not want the plaintiff to produce her plate, except the fact that when she undertook to prove what her plate disclosed the defendant properly enough objected to the evidence because the plate itself was not produced. 10

"But when plaintiff's counsel made such remark the defendant's attorney objected saying, 'I think that is unfair, and ask that an objection be noted.' Thereupon plaintiff's counsel at once said: 'I do not want to be unfair about it; Mr. Scott (defendant's attorney) was within his rights in refusing to have them shown here.' Nothing more was said upon that topic. Apparently the incident was closed to the satisfaction of all concerned by the prompt and frank withdrawal of the improper remark. At least no request was made either that counsel be rebuked by the Court, or that the jury be instructed to disregard the improper remark. In these circumstances we think a reversal would not be justified. *Minard v. West Jersey R. Co.*, 74 N. J. L., 39; *Christensen v. Lambert*, 66 N. J. L., 531" (p. 128, l. 15, et seq.; p. 128, l. 1, et seq.). 20 30

### Argument.

**There should have been a reversal for the prejudicial remarks of the respondent's attorney in summing up the case before the jury** (Ground of Appeal No. 1, p. 1, l. 34, et seq.; p. 113, l. 40; p. 114, l. 1, et seq.).

- 10 To the cases cited by the Supreme Court in support of their ruling upon the point in question, the cases of *State v. Biango*, 75 N. J. L., 284 and *Kaighn v. Fox*, 95 Atl. Rep., 994, may be added as the only cases in New Jersey wherein the propriety of such remarks have been passed upon. The four cases above noted, however, are cases in our Supreme Court and an examination of the authorities discloses that this Court has never passed upon the question involved nor laid down any rule concerning the same. No rule
- 20 having been laid down by this Court in matters of this character we urge upon it the adoption of the rule as laid down in the case of

*Bullard v. B. & M. R. R.*, 5 Atl. Rep., 838, wherein it is held that:

- 30 "When counsel in argument makes a statement of a material fact not in evidence, against the objection of the other party, he violates the right of a fair trial and his client assumes the burden of presenting and proving his claim that the decision was not affected thereby."

See also

*Baldwin v. Grand Trunk R. R.*, 15 Atl. Rep., 411;

*Lamy v. Demeris*, 94 Atl. Rep., 262.

The reasons for the adoption of such a rule, appear to us to be as follows:

- 40 (1) It is a fact that the courts will take judicial notice that the majority of accident cases are taken on a contingency basis, wherein the

attorneys for the plaintiff litigants have more than the usual interest in the trial of the cause.

(2) Because such extra-judicial remarks are violative of the canons of the legal profession. For as said by Judge Sharswood:

"It need hardly be added that a practitioner ought to be particularly cautious in all his dealings with the Court to use no deceit, imposition or evasion, to make no statement of fact that he does not know or believe to be true, to distinguish carefully what lies within his own knowledge from what he has merely derived from his instructions, to present no papers or books, intentionally garbled. 'Sir Matthew Hale abhorred,' says his biographer, 'those too common faults of misreciting witnesses, quoting precedents or books falsely or asserting anything confidently by which ignorant juries and weak judges are too often wrought upon.' Essay on Professional Ethics." Report American Bar Association, 1907, Vol. 32, p. 72.

See also

"Ethical Obligations of the Lawyer", by Archer, Sec. 8, p. 178;

Code of Professional Ethics, American Bar Association, 1908, Sec. 22.

(3) Because there is in reality no method by which the appellate court can gauge the harm done by such remarks. For, as said by Chief Justice Ryan:

"Verdicts are too often founded against evidence, and without evidence, to warrant so great a reliance on the discrimination of jurors. And, without notes of the evidence, it may be often difficult for jurors to discriminate between the statements of fact by counsel, following the evidence, and outside of it. It is sufficient that the extra-professional statements of counsel may greatly prejudice the jury, and affect the verdict."

*Brown v. Swineford*, 44 Wis. 282, 292.

(4) Because, as a practical matter well known to all the members of the Bar, the instructions to

a jury to disregard such remarks as that on which the appellant has predicated error, is a matter in which the appellate court cannot well determine the efficaciousness and effect of such instructions.

10 (5) Because the rebuking of offending counsel is just as apt to be more prejudicial to his opponent's client than beneficial to the party calling upon the court to administer such censure.

(6) Because the adoption of such a rule is more conducive to proper administration of justice.

(7) Because the adoption of such a rule in no way abridges the right of counsel, noted by Justice Minturn in the case of *Kaighn v. Fox*, 95 Atl. Rep. 994, 995, where he says:

20 "A liberal latitude of expression in addressing the jury has been invariably allowed to counsel in the discretion of the trial court, confined, of course, within limits warranted by the testimony and the inferences which may be reasonably drawn therefrom. Without this liberal tendency upon the part of the courts the notable forensic efforts of some of our greatest names which have distinguished English and American law would not have been transmitted to us as standards of argument and eloquence to grace and embellish our jurisprudence."

30 We take it that there is sufficient in the record of respondent's attorney's remarks to the jury from which this court can see that manifest wrong had been done and injury suffered by the appellant, for, as stated in the case of *Bullard v. B. & M. R. R.*, *supra*, (p. 840-841):

40 "The law does not transfer the defendants' property to the plaintiff as damages without a fair trial, and, in a legal sense, a trial is not fair when such statements as were made in this case have any influence favorable to the party making them. He is therefore

bound to do everything necessary to be done to rectify his wrong, and restore to the trial the fairness of which he has divested it. He is legally and equitably bound to prevent his statement having any effect upon the verdict. This he cannot do without explicitly and unqualifiedly acknowledging his error and withdrawing his remark in a manner that will go as far as any retraction can go to erase from the minds of the jury the impression his remark was calculated to make. But it is by no means certain that the jury will, at his request, disregard the fact stated. It is necessary they should be instructed that the unsworn remark is not evidence, and can have no weight in favor of the party improperly making it. *It is the duty of the wrong-doer to request such instructions.* The other party does his duty when he objects to the wrong inflicted upon him, and does not allow it to be understood that he waives his objection. In spite of the fullest and frankest retraction, and the most explicit and emphatic instructions to lay the remark entirely out of consideration, the trial may not be fair. It may not be in the power of the retracting counsel and the court to remove the prejudice. Their combined and vigorous exertions may not control the mental operations of the jury. The jury may not be able to wholly free their memory or their judgment from the unfair and illegal impression made by a plausible statement of fact, which may seem to them entitled to more respect than the rule of law that excludes it. The statement, withdrawn not because it is contrary to the fact, but because it is not a legal mode of proving the fact, may do as much damage as if it had not been withdrawn. Erroneous testimony corrected by the witness who gave it, and an erroneous ruling corrected by the judge who made it, stand on different ground.”

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How far the courts have gone with respect to investigating the effect of such remarks even upon a trial judge sitting alone as a jury may be gathered from the case of *Jacques v. Bridgeport H. R.*

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*Co.*, 41 Conn. 61, cited in the *Bullard* case, *supra*, wherein the court there said:

10 "Nor is the effect of this testimony upon the mind of the judge, in reaching the decision pronounced on the merits, to be entirely disregarded. We cannot accede to the claim of the plaintiff that the defendant could not have been injured by this testimony because it was ultimately rejected and ruled out. The operations of our minds are mysterious even to ourselves. We cannot always appreciate the influences which lead us to a result. No doubt the judge who tried the cause intended to disabuse his mind of any influence from this testimony. No doubt he was unconscious of being affected by it. Possibly he was not. Still we do not deem it improbable that he was; especially when we look at the amount of damages assessed in the case, which seems to us unwarrantably large in view of the legitimate evidence."

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In the *Bullard* case there was also cited *Dougherty v. Welch*, 53 Conn. 558, wherein the court said:

"No man can be quite certain that he is aware of all the influences which have produced conviction. It is one thing to prevent the entry of an influence into the mind; quite another to dislodge it.

30 "It would be impossible to conduct judicial investigations upon the theory that everything which reaches the ear of the trier affects his final determination of questions of fact, beyond all power of resistance upon his part."

Further quoting the *Bullard* case, we would have the court note what was said at page 844:

40 "The party violating the right of fair trial accepts the burden of presenting and proving his claim that he has made full restitution, and that the decision of the jury was not affected by his admitted wrong. On the question of influence, his acknowledgment, re-

traction, and apparent motives, the instructions given at his request, and the verdict, are evidence, but do not shift the burden of proof. That burden is not to be unjustly thrown upon the other party, by putting him to a petition for a new trial; *nor is his exception unjustly overruled by a conclusive legal presumption as to the effect of instructions.* If a perfect reparation of the violated right is not found as a fact, the injured party remains entitled to redress, and neither on exception nor on petition can the fact be falsely found by an inference of law. A discretionary power of compelling him to submit to an unfair trial is not vested in the court."

10

We know of no more pernicious practice indulged in at Circuit, even by those who otherwise bear the respect of our trial courts.

We most respectfully insist that the duty and obligation of righting *the conceded wrong as it was admitted both by the respondent's attorney and the Supreme Court in its opinion on the affirmance of said judgment* (p. 128, l. 23 et seq.) be cast upon the respondent and her attorney.

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That the respondent did not consider her case a serious one is apparent by her reduction of the verdict by \$835.50, as evidenced by the judgment (p. 9 of printed case) and the record of the medical testimony which is set forth at large in the printed case.

We earnestly urge upon this court the adoption of the rule hereinabove referred to with respect to matters of the character which is the subject of this appeal and request that the judgment against the appellant be reversed unless the plaintiff obtains an amendment of the record supplying the fact that has not been found, that the unlawful and illegal remarks in no way affected the verdict rendered against the appellant in the instant case.

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Respectfully submitted,

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FREDERIC B. SCOTT,  
Attorney for Appellant.

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Respectfully submitted,  
 Edmund H. Brown,  
 Attorney for Applicant

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