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(Filed August 16, 1927)

New Jersey Supreme Court

Passaic County

Beatrice Brotman, Plaintiff, vs. Emanuel Doan, Defendant.	Action at Law

COMPLAINT

The plaintiff by her attorneys, Ward & McGinnis complains of the defendant as follows:

1. The plaintiff is a resident of the City of Paterson, County of Passaic, and State of New Jersey.

2. The defendant is a resident of the City of Paterson, County of Passaic, and State of New Jersey.

3. That at the time of the committing of the grievances hereinafter mentioned, the defendant, Emanuel Doan owned and operated the automobile hereinafter mentioned.

4. That, on to wit, the 16th day of November, 1926, the defendant operated his automobile in a general northerly direction on a certain public street or highway known as East 18th Street, in the City of Paterson, County of Passaic, and State of New Jersey.

5. That on the day and year aforesaid, the plaintiff, Beatrice Brotman was proceeding in a general westerly direction across East 18th Street from the easterly side thereof, to the westerly side

thereof, where it intersects Tenth Avenue, another public highway in the City of Paterson, aforesaid.

6. That on the day and year aforesaid, the defendant, Emanuel Doan so carelessly, negligently, and wrongfully operated his automobile at a high and excessive rate of speed, and so carelessly, negligently, and wrongfully operated the same while it was in a defective condition, and so carelessly, negligently and wrongfully operated the same without giving any signal or warning of its approach, and so carelessly, negligently, wrongfully operated the same with poor and defective brakes, and so carelessly, negligently, and improperly operated the same without any headlights, and so carelessly, negligently, and recklessly operated the same without due regard to the rights of the public on said highway, and so carelessly, negligently, and wrongfully failed to look in the direction in which he was approaching, and so carelessly, negligently, and wrongfully operated his automobile while he was an incompetent driver, and so carelessly, negligently, and wrongfully failed to check the speed of his automobile as he was approaching an intersection, and failed to steer or guide the same, so that by reason of the premises, aforesaid, the defendant, Emanuel Doan ran his automobile into and upon the person of the plaintiff, with such great force and violence, as she was at the crossing on East 18th Street, about two feet from the easterly side thereof, that she sustained severe and permanent injuries.

7. By reason of the premises, the plaintiff has been laid up for a long period of time and was rendered sick, sore, lame, disordered, diseased, wounded and debilitated, and in the future will continue likewise.

8. By reason of the premises, the plaintiff suffered severe and excruciating pain, and in the future will continue likewise.

9. By reason of the premises, the plaintiff sustained severe cuts, bruises, contusions and abrasions over her entire body; she was black and blue over her entire body; she suffered cuts, bruises, and disfigurements over her head, face, neck, chest, arms, and legs; her eyesight was impaired; her hearing was impaired; she suffered a fracture of the internal malleolus of her leg; she was rendered unconscious; her ankles were wrenched; her walking ability was impaired; her ligaments were torn and twisted; her leg was fractured; and she suffered a severe and permanent shock to her nervous system.

10. By reason of the premises, the plaintiff was obliged to lay out and expend a large sum of money in order to heal and cure herself of the injuries sustained, and in the future will continue likewise.

11. By reason of the premises, the plaintiff has been unable to carry on her usual work and employment, and has lost the profits, gains, and earnings which she otherwise would have had, and in the future will continue likewise.

By reason of the premises, the plaintiff has suffered damages in the sum of Ten Thousand Dollars ($10,000), for which amount she will claim judgment.

Louis C. Friedman,
Ward & McGinnis,
Attorneys of Plaintiff.

(Filed August 30, 1927).

NEW JERSEY SUPREME COURT
Passaic County

Beatrice Brotman, Plaintiff, vs. Emanuel Doan, Defendant.	Action at Law

ANSWER

The defendant residing in the City of Paterson, County of Passaic and State of New Jersey, answering the complaint herein alleges:

1. He has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1.

2. Admits paragraph 2.

3. Answering paragraphs 3 and 4, he admits that on the 16th day of November, 1926, he was the owner and operator of the automobile mentioned in the complaint which was proceeding at the intersection of East 18th Street and Tenth Avenue, in the City of Paterson, County of Passaic and State of New Jersey.

4. Denies paragraphs 5, 6, 7, 8, 9, 10 and 11.

Separate Defense

1. Defendant alleges that any injuries or damages sustained by the plaintiff herein at the time or on the occasion in the complaint referred to were caused in whole or in part by the negligence

and want of care of the said plaintiff and not by any negligence or default or want of care on the part of this defendant.

2. The negligence of the plaintiff consisted in that she did not make reasonable and proper observations at the time and place mentioned in the complaint and carelessly and negligently walked, moved and proceeded in and about crossing the said mentioned highway and carelessly and negligently used an umbrella which she was carrying in such a manner as to obstruct her view of vehicles passing in and along the highway at said time and place and crossed the said highway at a place other than the regular cross walk thereof and carelessly and negligently placed herself in a position of known danger in the said mentioned public highway.

Wm. B. Stiles,
Attorney for Defendant.

(Filed September 1, 1927.)

NEW JERSEY SUPREME COURT
Passaic County

Beatrice Brotman, Plaintiff, vs. Emanuel Doan, Defendant.	Action at Law

REPLY

The plaintiff denies all the matters contained in the first and second paragraphs of the separate defense of the defendant's answer.

Louis C. Friedman,
Ward & McGinnis,
Attorneys of Plaintiff.

(Filed March 8, 1928.)

NEW JERSEY SUPREME COURT
Passaic County

Beatrice Brotman, Plaintiff, vs. Emanuel Doan, Defendant.	Action at Law

POSTEA

This action was tried before Judge Joseph A. Delaney, with a jury at the Passaic Circuit on March 1st and 2nd, 1928.

The plaintiff having submitted her evidence and rested her case and the court being of the opinion that such evidence did not establish a cause of action against the defendant, Emanuel Doan, ordered upon motion of defendant's counsel that the plaintiff be non-suited.

Jos. A. Delaney, Judge.

A true copy—Edward J. Kelleher, Acting Clerk.

(Filed March 30, 1928.)
NEW JERSEY SUPREME COURT
Passaic County

Beatrice Brotman,
Plaintiff,
vs.
Emanuel Doan,
Defendant.
} Action at Law

NOTICE AND GROUNDS OF APPEAL.

To: William B. Stites, attorney of defendant:

Please take notice, that the plaintiff appeals from the whole of the judgment of nonsuit entered in the above stated cause, and every part therefrom, to the New Jersey Court of Errors & Appeals in the last resort in all causes, and that the following are the grounds of appeal:

1. Because the trial Court committed error in ordering a judgment of nonsuit against the plaintiff and in favor of the defendant.

2. Because the trial Court should have refused the defendant's motion for a nonsuit.

Louis C. Friedman,
Ward & McGinnis,
Attorneys of Plaintiff.

Due and legal service of a within copy is hereby acknowledged this 28th of March, 1928.

Wm. B. Stites,
Attorney of Defendant.

NEW JERSEY SUPREME COURT
Passaic County

Beatrice Brotman,
Plaintiff,
vs.
Emanuel Doan,
Defendant.
} Action at Law

Paterson, N. J., March 1, 1928.

Before Hon. Joseph A. Delaney, J., and a Jury.

Appearances:

For the Plaintiff: Louis C. Friedman, Esq.

For the Defendant: William B. Stites, Esq.

(A jury was called and sworn and counsel for the respective parties opened the case to the jury.)

BEATRICE BROTMAN, sworn.

Direct Examination by Mr. Friedman:

Q. Miss Brotman, you live in Paterson? A. Yes.

Q. Do you remember having an accident on November 16, 1926? A. Yes, I do.

Q. On which street were you proceeding before the street where the accident occurred? A. On Tenth Avenue.

Q. Speak a little louder. A. On Tenth Avenue.

Q. So the last juror can hear you. A. On Tenth Avenue.

Q. In which direction on Tenth Avenue? A.

I was going up straight Tenth Avenue to cross the street to East 18th Street.

Q. I see. Was it raining that night? A. Yes, very hard.

Q. And you had an umbrella with you? A. Yes, I did.

Q. Now, when you got to the corner what did you do? A. I looked on both sides. They was passing several machines and I was waiting till they passed, and then when I looked at the right I didn't see no machines; and then I looked at the left, you know. I didn't hear any sound of a machine, no lights, and the rain hit me in the face so I protect my face with the umbrella on the right-hand side, and I started across the street. As soon as I stepped off the corner and I took about three steps I got hit by an automobile.

Q. On which side were you struck by the automobile? On the left? A. On the left.

Q. Now, you say you protected your face from the rain with the umbrella? A. Yes.

Q. Now, on which side did you have that umbrella, the left side or the right side? A. On the right side.

Q. On the right side? A. Yes.

Q. So, the rain was coming from your right? A. Yes.

Q. Was the wind blowing that night? A. Yes, yes, sure.

Q. I see. Did you have this umbrella turned towards your right? A. It strike my face, so I shall be able to look, you know, and keep my eyes open.

Q. Where did you look then, to the right or to the left? A. To the right.

Q. And then you looked to the left; is that right? A. Yes, yes.

Q. Now, before you—how long were you on that corner before you started across the street? A. Oh, I shall say a couple of minutes or so. You know, there was no machines coming and I started across the street.

Q. Now, before you started to cross the street did you or did you not hear any horns from machines blowing? A. No horn at all. No sound of a horn.

Q. Did you see any headlights from any automobile coming from your left? A. No, no, no.

Q. And then you started to cross the street? A. Yes.

Q. How many steps did you take before you were struck? A. About three steps.

Q. Were you knocked unconscious? A. Yes.

Q. When you woke up where were you? A. In the machine yet.

Q. In the machine? A. Yes, going to the hospital.

Q. What hospital were you at? A. Barnert Hospital.

Q. Barnert Hospital. How long were you at the hospital? A. Just a week.

Q. A week? A. Yes.

Q. How long were you laid up? A. I was laid up in succession till I got the cast off, and then, you know, I was still lying in bed—

Q. How many weeks was that, Miss Brotman? A. It was about two months, you know; I had

this cast on for six weeks, but then after, when they took the cast off in the hospital, they put it back on, and they gave me a treatment, you know; my back hurt me with the cast on. Then I had it on for another two weeks.

Q. How many weeks were you prevented from going to work? A. Twenty weeks.

Q. Twenty weeks? A. Yes.

Q. What kind of work do you do? A. Weaving.

Q. Silk weaving? A. Yes.

Q. What is your salary per week? A. Before? Thirty dollars.

Q. What is your salary now? A. From eighteen to twenty.

Q. How many looms did you work at before the accident? A. Three.

Q. How many looms do you work on now? A. Two.

Q. If you work on more looms is your salary greater? A. Of course.

Q. Now, do you remember what you spent for doctor bills?

Mr. Stites—I object to that.

The Court—Answer yes or no. The question is do you remember?

Mr. Stites—"Yes or no," yes; I have no objection to yes or no.

A. Yes, I remember.

Q. How much did you spend for doctors?

Mr. Stites—I object to that question.

The Court—I will sustain the objection.

Mr. Friedman—I take an exception.

Q. What leg was injured, Miss Brotman? A. The left one.

Q. How long were you in bed? A. In bed? I was for two months, you know. And after, you know, when I was walking around on crutches or I stand up or sat down a little on a chair, and then I went back to bed. You know, I didn't lay in bed straight ahead, you know; I sit down.

Q. I see. Was this a painful injury you had? A. Oh, I'll say.

Q. How do you feel now? A. Well, I don't feel good since—I always have trouble and my leg hurts me.

Q. Will you speak a little louder? A. That place where it has been bruised from the wheel, you know, it always hurts me, even to touch it. It is sore. That part of it is sore. And if it is in a little bad weather, even now, you know, the weather isn't clear or changes, I feel it draws and it sticks with pins; that is how I feel.

Q. In your work do you sit or stand? A. I don't stand much by two looms, you know, I got a chance to sit down. That is why I am working by two looms only.

Q. Are you tired now if you stand long on your feet at the machine? A. Oh, sure, my leg is too weak to stand all day long.

Q. Now, the clothes you wore on the night of the accident, Miss Brotman; were they destroyed or damaged in any way? A. It was rubbed off several places so I couldn't wear it no more, the coat, you know.

Q. What apparel, wearing apparel, of yours was damaged? What clothes that you wore that evening? A. You know, the stockings, the shoes, and the dress are all full of dirt, you know, mud. I had a new dress, and the coat, I couldn't wear no more.

Q. What kind of a coat was it? A. A thirty-dollar sport coat.

Mr. Stites—I move that the answer be stricken out. There is no claim in the case for any loss of wearing apparel, as I understand it.

Mr. Friedman—There isn't?

Mr. Stites—I don't think so. I hadn't noticed it.

Mr. Friedman—That is right.

Mr. Stites—Will Your Honor strike it out?

The Court—It is stricken out.

Q. After you left the hospital did you still have medical treatments? A. Oh, yes, I went for treatments three months in the hospital.

Q. After you left the hospital? A. Yes, sure.

Q. How many times a week would you go to the hospital after you left? A. Well, in the beginning three times, and then—

Q. Per week? A. A couple of months, around about six weeks or two months, about six weeks I took only two treatments a week, you know, because it was a different treatment, and the last couple of weeks, about two weeks or so, I took just one treatment.

Q. What kind of treatments were those? A. Electric treatments of different kinds.

Q. Electric treatments? A. Yes.

Q. Did they hurt? A. Well, electric massaging, you know, sticks like pins.

Q. Well, did it hurt you? A. Yes, it did. You know, it burns. There are different kinds of treatments I had, and burns.

Q. How did you get to the hospital for these various treatments from your home? A. By a taxi.

Q. What were your taxi fares?

Mr. Stites—I object to that, your Honor.

Mr. Friedman—That is part of the expenditures.

The Court—I will sustain the objection.

Q. Now, Miss Brotman, did you have anyone take care of you while you were home? A. Yes, a lady, you know a friend of—not exactly of mine, but of my mother from Europe. She knew me and she took me into her house and, of course, I paid her. I didn't have anybody else to take care of.

Q. How long did she take care of you? A. I still am with her, about seven weeks.

Q. Seven weeks? A. Seven weeks I paid her for her service.

Q. How much did you give her a week? A. Thirty-five—

Mr. Stites—I object to that, your Honor.

The Court—It is not the proper way to prove expenditures. I shall sustain the objection.

Mr. Friedman—That is the way I have been proving it across the hall.

The Court—If you have it can't be done on this side of the hall.

Mr. Friedman—I think the witness's testimony of what she paid for a woman to take care of her is relevant and competent—the witness's own testimony. If the defendant wishes to attack the credibility, he can do that.

The Court—If I observe the situation correctly at this point there is nothing before the Court.

Mr. Friedman—I will take an exception to your Honor's ruling.

Q. How long did you have the cast on your foot, Miss Brotman? A. Well, I shall say six weeks, and about two weeks after it was taken off they put it back on for two weeks.

Q. Then, you had a cast on your foot for— A. Two months.

Q. —eight weeks? A. Yes.

Q. And that was a plaster cast? A. Yes.

Q. Now, in what position would you be with that plaster cast on your foot? Was your foot raised or what was the position of your foot? A. No, not raised; just I had to lay straight.

Q. You had to lay straight? A. Straight all the time; yes, I couldn't walk.

Q. Now, do you know whether or not this man who ran his car into you blew his horn that night before he came— A. No, no, no.

Q. He did not blow his horn? A. No.

Mr. Friedman—Take the witness.

Cross Examination by Mr. Stites:

Q. Miss Brotman, how long have you lived in Paterson? A. In Paterson? Well, when I arrived to America I was only about three months in Paterson; then I left for Pennsylvania and I lived there for two years, almost. Yes—no, it was over two years, a little over. Then I same back to Paterson in April.

The Court—Talk up toward the jury.

A. In April, 1926, if I am not mistaken, yes. Well, since then I lived in Paterson. It will be two years this April, you know, since I came back from Pennsylvania.

Q. And you returned to Paterson about April, 1926? A. Yes.

Q. Where did you go to live in Paterson? A. In Paterson?

Q. Yes. A. I lived—I stayed with my brother.

Q. With your brother? A. Yes.

Q. Is that Harry? A. No, Morris.

Q. Morris? A. Yes.

Q. What address?

Mr. Friedman—Just a moment. I don't see how that is competent or material, where this girl lived.

Mr. Stites—She was asked on direct examination if she lived in Paterson.

Mr. Friedman—Yes.

Mr. Stites—This is cross examination.

The Court—Yes. You may go ahead.

A. 461 East 22nd Street, Paterson.

Q. Still reside there? A. No.

Q. Where now? A. On Harrison Street, 258 Harrison.

Q. Is that this friend of your mother's that you speak about? A. Yes, sure. Yes.

Q. Now, Tenth Avenue runs in what direction?

Mr. Friedman—If the witness knows.

Mr. Stites—Certainly, if she knows.

The Court—If she doesn't know she will say so.

A. What do you mean, it runs?

Q. Runs north, south, east or west? A. Well, I am not so much educated, but the only thing I know where I lived. Of course, I wouldn't say. I don't know the map, if it is south or west.

Q. You don't know whether it runs east or west or not? A. No, I just can tell where I live, you know, and where I was going, but not where it is about.

Q. On the night of the accident, can you tell us in what direction you were walking on Tenth Avenue? A. I was walking from East 22nd Street, Tenth Avenue, straight up East 18th Street.

Q. Do you know whether that was in an easterly or westerly direction? A. What? Beg your pardon?

Q. Do you know whether that was walking east or west? A. I don't know east or west. I wouldn't say. I was going up Tenth Avenue to East 18th Street.

Q. But can't you tell us whether that was east

or west, the direction in which you were walking? A. I imagine that is east.

Mr. Friedman—I ask to have it stricken out, "I imagine," your Honor.

The Court—Yes.

Mr. Friedman—It is a characterization.

The Witness—You know, I wouldn't say.

The Court—All right, if you don't know.

The Witness—I don't know, no.

Q. I understood you to say you lived in Paterson since April, 1926? A. Yes, yes.

Q. And still live here? A. Yes, sure.

Q. And you don't know the directions in which the streets run? A. I know the direction where I was going.

Q. But you don't know which is north and which is south? A. No, no, I don't know the map.

Q. Well, where were you going the night of the accident? A. To night school.

Q. And where was the night school located? A. Where I was going to?

Q. Yes. A. It is in high school, right across here, high-school night school.

Q. What street? A. It is right across the court.

Q. The high school? A. Yes, Central High School night school.

Q. That is where you were going? A. Yes.

Q. And in order to reach the high-school building— A. Yes.

Q. —you had to cross Eighteenth Street? A. Yes.

Q. And when you reached Eighteenth Street what course had you intended to take to reach the high school? A. I was going to take the bus.

Q. The bus? A. The bus to night school.

Q. Where were you to get the bus? A. On the corner, East 18th and Tenth Avenue.

Q. The bus stopped on the corner of Tenth Avenue? A. Yes.

Q. And Eighteenth Street? A. Yes. Then I used to take the bus always on that corner.

Q. And did you have to cross East 18th Street? A. Yes, sir.

Q. To reach the point where the bus stopped? A. Yes, I have to cross Eighteenth Street.

Q. Well, but did the buses stop at the corner just before they reached the corner? A. If the bus stopped?

Q. Yes. A. There was no bus yet.

Q. But usually did they stop at the corner or just before they reached the corner? A. At the corner.

Mr. Friedman—I object to the question.

The Court—She has answered it. She says they stopped at the corner.

The Witness—Right at the corner.

Q. Did the buses have any regular stops, do you know?

Mr. Friedman—I object to the question on the ground it is irrelevant.

The Court—No, it is important. She said she was going to get a bus. Now the inquisitor wants to know whether they had regular stops.

Mr. Friedman—But there was no bus there, your Honor.

The Court—I shall admit the question.

Mr. Friedman—I take an exception.

The Court—The exception is noted.

Q. These buses had regular stops on Eighteenth Street, didn't they? A. Yes, on every corner they stopped. I usually took the bus on East 18th and Tenth Avenue, on that corner.

Q. Was this a foggy night or just raining? A. It was raining and foggy.

Q. Both? A. Yes.

Q. And about what time was it when you reached the corner or—. A. It was about seven o'clock.

Q. And you had an umbrella? A. Yes, I did.

Q. Holding it over you? A. Yes, holding it.

Q. In which hand? A. On my right hand.

Q. And do you recall whether or not there was a hardware store on the corner there? A. Yes, there is a hardware store.

Q. A hardware store? A. Yes.

Q. That is on the north-east corner, isn't it, of East 18th Street and Tenth Avenue? A. I don't know.

The Court—She doesn't know.

The Witness—I know that—

The Court—All right.

Q. Now, next to the hardware store there is a

little fruit store, isn't there? A. Yes, I guess—the next? Next door there is a fruit store; that is right. I guess so, yes.

Q. And that is the corner where you were injured? A. Yes, that corner; that is right.

Q. Is that right? A. On the same side.

Q. Now, when you reached the corner on East 18th Street did you stop? A. Yes, I did.

Q. And where were you when you stopped? A. On the sidewalk on that corner.

Q. How close to the curb? How close to the curb or to the gutter? A. Right on the corner, you know. I didn't—

Q. Do you know where the gutter is? A. Yes.

Q. The gutter runs along the edge of the sidewalk. A. Oh, how far? I don't remember, but I was on the sidewalk, that is the only thing I know.

Q. But you don't know how far away from the gutter you were? A. No.

Q. But you did stop? A. I did stop, yes.

Q. What did you stop for? A. To look around for the machines, if there is any machines coming.

Q. And you had the umbrella over you at the time? A. Yes.

Q. Raining hard ? A. Yes.

Q. And you looked to your right first? A. Yes.

Q. Did you see any automobiles coming? A. Yes, I did see several, you know, several automobiles—not many. It was very quiet on that time. Then I waited until they passed.

Q. Did you see their headlights? Did you see the lights on the automobiles? A. Those—yes, the

lights was on the automobiles, yes, some of them had, sure.

Q. Now, when you stopped and looked to your right up East 18th Street, how far up the street could you see? A. I don't know how far.

Q. Well, one block or two blocks or how far? A. I can see—I have—I could see very good.

Q. You could see very good? A. Yes.

Q. You saw cars coming? You saw cars coming towards you on Eighteenth Street? A. Those cars I saw coming, I waited till they pass.

Q. Yes. Well, now, how far could you see in the direction from which those cars were coming? How many blocks? A. I shall say—oh, I don't know; about two or three blocks.

Q. Two or three blocks. Then you waited for those cars to pass? A. Yes.

Q. Then, what did you do next? A. The next, when I didn't see any machines coming, I started crossing the street.

Q. After you looked to the right? A. Yes.

Q. You saw machines coming, you say? A. Yes.

Q. And you waited? A. Yes.

Q. What did you do then, if anything? A. What I did?

Q. Yes. Did you do anything else except look to your right? A. Well, I looked to my left. I looked on both sides.

Q. When you looked to your left did you see any machines coming? A. There was a machine passing, one or two machines before.

Q. You saw them? A. Before I started.

Q. Did you see them? A. What?

Q. Did you see them? A. Yes, sure, I do.

Q. Did you see their headlights? A. Yes.

Q. Did they blow their horns? A. Well, some of them, yes, and some not.

Q. Was anyone else crossing the street? A. No, that time was nobody in the street, not a soul.

Q. There was no one there? A. No, sir.

Q. Now, how many cars passed you which were approaching from your left before you started to cross the street? A. I can't say that; I didn't count machines. I can't say that. I know I just remember several machines was passing; it was a big traffic.

Q. I see. Well, you say you didn't see the lights on the car of Mr. Doan? A. No, I didn't see any lights.

Q. You didn't see any lights on his car? A. No, no.

Q. Well, you didn't see his car before the accident, did you? A. His car?

Q. Yes. A. No, I didn't; otherwise, I would stop.

Q. You didn't see it. Certainly. And you didn't see his car after the accident, did you? A. Well, in the meantime, you know, I got hit from that automobile and thrown away off a distance.

Q. Yes, but you were unconscious? A. Yes, after that I got knocked unconscious. I don't know after what happened, but in the machine I woke up.

Q. Then, you don't know positively whether there was any lights on Mr. Doan's car or not, do you? A. I didn't see any lights.

Mr. Friedman—Just a minute. Counsel is asking these questions repeatedly, and I think these questions have been answered. It is just mere repetition.

Mr. Stites—I don't like to make repetition, your Honor, but I don't think it is.

The Court—All right. All right. Proceed.

Q. The first time that you saw Mr. Doan's automobile was when you regained consciousness and were in the car; isn't that right? A. I didn't see the machine, but I just—I just felt—you know, when I got hit. But I didn't see the machine. The only thing I know I was in the machine, you know; I didn't look at the machine when I was—got hit and thrown away. No. I knew at that time that I got hit from an automobile. I was screaming loudly.

Q. You knew it was an automobile that struck you? A. Yes.

Q. Well, when you regained consciousness you were in the automobile of Mr. Doan? A. Yes.

Q. On the way to the hospital? A. Yes.

Q. Now, what part of your body was struck by the automobile? A. On the left side.

Q. And when you stepped down off the sidewalk to cross the street, which way were you looking? A. First on the right and then on the left.

Q. Yes. That was before you stepped down from the sidewalk? A. Yes.

Q. Now, when you stepped down off the sidewalk which way were you looking or facing? A. The left side.

Q. I see. And you didn't see the automobile coming? A. No, not his automobile, not that automobile I got hit from.

Q. Well, when you stepped down from the sidewalk and were crossing the street the automobiles had passed, hadn't they? A. Had passed?

Q. Yes. A. When I stepped off the sidewalk the automobile had passed?

Q. Certainly. A. Well, I wouldn't get run over if the automobile had passed.

Q. These cars that you saw. A. They had passed, yes.

Q. They had passed? A. Yes.

Q. Then, when you stepped down from the sidewalk into the street you didn't see any cars coming then? A. No, no.

Q. And you say you could see about three blocks away? A. Yes, sure. I can see very good, you know, but this time I didn't see any car.

Q. You could see either to your right up East 18th Street or you could see to your left about three blocks in each direction? A. Yes.

Q. Right? A. Yes, yes.

Q. Then, after you stepped down from the sidewalk you couldn't see to your right, could you, on account of the umbrella? A. No.

Q. And could you see to your left? A. Yes.

Q. And you didn't see the automobile of Mr. Doan's coming at any time? A. No, no.

Q. You didn't see it? A. No.

Q. And you were looking? A. Yes, I did.

Q. All the time? A. Not all the time. When I was crossing the street I didn't look on the side; I looked straight when I was crossing. I looked

before. When I stepped off the corner, when I stepped off the sidewalk, I looked.

Q. Yes. When you stepped off the sidewalk into the street you looked to your left? A. Yes.

Q. You didn't see any cars coming then? A. No.

Q. And you took three steps and were struck? A. Yes.

Q. Now, you had passed that corner several times before, hadn't you? A. Before?

Q. Yes. On your way to school? A. Yes, every evening, and I used to in the morning, too, when I used to go to work I used to take that bus—

and I used to in the morning, too, when I used to go to work I used to take that bus—

Q. How many street lights are there on that corner? A. How many street lights?

Q. Yes. Two? A. I don't know. I know the corner was litted, but I don't know the lights.

Q. There was light on the corner, but you don't know the number? A. The number of what?

Q. The lights. A. No, no.

Q. But there was light there? A. Yes, the corner was litted, sure.

Q. You say you stood on the corner about two minutes before you passed over? A. I really don't remember exactly, you know. I stopped and looked around and I didn't see no more machines and started crossing the street. I didn't look—I didn't even have a watch with me. I couldn't tell how—how much, exactly.

Q. Did the rain interfere somewhat with your crossing the street? A. Yes, it was raining, sure.

Q. It interfered with your walking across?

Mr. Friedman—I don't think she understands the word interfere.

A. Interfere what?

Q. Did it make it difficult for you to walk across the street—the rain? A. Why, no.

Q. Were you carrying any books with you? A. Yes, one book, just one book.

Q. In which hand were you carrying your book? A. In the left hand.

Q. Now, during the time that you were laid up, you were not in bed continually, were you, for three months? A. No, not for three months continually. I was continually for two months.

Q. In bed? A. Yes, when I had a cast on, yes.

Q. For two months— A. Yes.

Q. —you had the cast on? A. Yes.

Q. And you were in bed all that time? A. Yes.

Q. And you were in the hospital one week? A. Yes, one week.

Q. And then went home? A. Yes, then they sent me home. They have no room in the ward any more.

Q. Was all the medical treatment that you received given you at the hospital? A. No. Medical treatment?

Q. Yes, the doctors? A. No, not in the hospital. I just pay for the treatments after I went.

Q. Did you have any other doctor come to your house or anything like that? A. After that, you know, when I started walking around all the time, a few months after, $ was just having the doctors

private, you know, because I suffered on my ankle and leg.

Q. And you had a private doctor? A. No.

Q. Well, did you go to the hospital for all of your treatments? A. Yes, for my treatments I went to the hospital.

Q. All of them? A. Yes.

Q. I see. The electrical treatments and everything were performed at the hospital? A. Yes.

Q. Now, you recall where the fruit store is there on the corner, don't you? A. Yes, I just remember it was light on the corner. Was that hardware store and next was like a vegetable and fruit store; yes, I do remember.

Q. Well, now, which store was it that you were crossing in front of? The hardware store or the fruit store? A. The hardware store, yes.

Q. I see. A. Yes.

Q. And about how far from the corner was it that you were crossing? A. On the sidewalk?

Q. Where you went across. A. How far? It isn't far. Just on the corner I crossed. I didn't walk away from the corner when I came up Tenth Avenue. I didn't walk away; I just went up straight.

Q. Didn't you turn to walk to your right on Eighteenth Street? A. No, no, no.

Q. You did not? A. I didn't have to, because on the corner the bus stops.

Q. The bus doesn't stop right at the corner, does it? A. Right at the corner, yes.

Q. Doesn't it stop some feet away from the corner? A. No.

Q. Sure about that? A. I know the bus used to stop on the corner.

Q. But it doesn't go right down to the corner, does it? It stops a few feet back? A. Maybe three or four steps away from the corner. I don't know. You know usually the bus stopped on the corner, always.

Q. You say your ankle hurts you yet? A. Yes, yes, always now.

Q. What is wrong with it now?

Mr. Friedman—I object to the question. This witness isn't a doctor; she doesn't know what is wrong with her ankle.

The Court—She can explain what the trouble is with her ankle. She ought to know whether it hurts her.

Mr. Friedman—Yes, but she doesn't know what the trouble is.

The Court—If there is any internal trouble, of course, she can't explain that.

Mr. Friedman—It is a subjective symptom.

Q. Well, does it hurt you now? A. Yes, that feels from here to here (indicating).

Q. Does it hurt you today? A. Yes. Not only today, but always, in that place. I can't touch. It is sore. That has been bruised, that place, and besides, you know, the weather changed, I feel terrible; I have an awful pain.

Q. Is there any difference in the size of your ankles now? A. No, I don't think so.

Q. They both look the same, don't they? A. Yes.

Q. Would you mind standing up, please? A. There is a big mark on it.

Q. Please face the jury. Just put your ankles together.

(The witness stood before the jury and complied with the request of Mr. Stites.)

Q. That is all; thank you. Now, you say you formerly operated three looms? A. Yes.

Q. When did you first go to work operating looms? A. Back to work.

Q. When did you start? A. The month of April.

Q. When you came back to Paterson? A. No, the next April.

Q. The following April? A. The following April, yes.

Q. Is that right? A. Yes.

The Court—I don't think the jury can hear you.

Q. And when you went to work on the three looms how long did you remain working on three looms? A. Till I got the accident; till that day, till the last day.

Q. When did you go back to work? A. Come back to work?

Q. Yes. A. April 1927.

Q. No. Is that when you returned to work? A. After the accident, yes.

Q. Yes. A. Sure.

Q. And you didn't do any work from November? A. November.

Q. 1926? A. 1926. No, no work at all.
Q. Until April, 1927? A. 1927.

Mr. Friedman—Speak a little louder. I can't hear you and I am sure the jury can't hear you.

The Witness—Yes.

Mr. Friedman—Raise your voice.

The Witness—I did return to work on April 1927 you know, since after the accident.

Q. And were you doing the same kind of work after you returned? A. Yes, the same kind.
Q. Except you operated one less machine? A. Yes.
Q. That is all? A. Yes.
Q. Well, when you went back to work in April, 1927, wasn't the silk industry a little slack at that time? A. Well, I don't remember. I know I got a job on a different place; not at the same place.
Q. Wasn't the reason that you only operated two looms the fact that business in the silk industry was not so good at that time, in April, 1927? A. What was the reason I operated two looms?
Q. Yes. A. On account of mine leg I couldn't get the same job back, you know.
Q. Did your ankle prevent you—

Mr. Friedman—Let her finish her answer.

A. I could get the same job back, you know. Mine brother took a friend of his on that job and he told him, "As soon as my sister will come back I want you to give her that job back," but I couldn't take it no more.
Q. Did you go back there to take it? A. No, I didn't. I just went up and took my tools. I had my tools up there yet.
Q. You went up to the place where you had worked at the time you were injured to get your tools? A. Well, at that time I was recovered; I was out looking for a job already.
Q. I see. Well, did you go up to the office to find out if you could get your old job back? A. No, I didn't go up to get my job back.
Q. Why not? A. I couldn't take the three looms back.
Q. How did you know if you didn't try? A. How do I know?
Q. Yes, if you didn't try. A. Well, he told me, he said, "Can you take back now three looms?" I said, "No." Of course, the boss didn't have anything to do with it, but that man, the same man was still working on that job, and he would give it back to me, the job, any time I come for it.
Q. But you didn't try to see if you could operate the three looms, did you? A. No.
Q. And then you sought a job at another place? A. Yes.
Q. And found one? A. Yes.
Q. And in that position you operated two looms? A. Yes, two looms.

Q. Did you try to operate three looms in that position? A. No.

Q. Then, you don't know at any time whether you could have done it or not, do you? A. Yes, sometimes the work was running a little bad and I had to stand on my feet more than—you know—then I shall be—I couldn't! my foot was too weak. And after I came home I had to massage it and take a hot bath. Sometimes silk doesn't run so good; sometimes runs better; sometimes it runs various and I get bad silk.

Q. When you are operating two looms you have to be on your feet, don't you? A. No, not always. I sit most of the time.

Q. Don't you have to walk around one loom to the other? A. Yes, little by little, stand up and look around and when everything is straightened out I sit down again.

Q. You couldn't sit down all the time and operate two looms, could you? A. I can sit down for ten minutes in succession and stand up for two minutes or three minutes.

Q. Couldn't you do that operating three looms? A. No, three looms I have to be on my feet, you know, all the time.

Q. You couldn't get any rest operating three looms? A. I couldn't get any rest.

Q. You couldn't sit down at all? A. No.

Q. Is that what you mean? A. Yes.

Q. That ankle is all right now, isn't it? A. My ankle is all right?

Q. It is all right now, isn't it? A. It is not.

Q. It is not? A. No.

Q. Does it hurt you today? A. Today? Yes.

Q. Do you limp when you walk? A. No, you can't notice when I walk slow especially, you can't notice much.

Q. How does it feel today when it hurts you? A. Today it draws a little.

Q. Draws a little? A. Yes, and that place hurts me; you know, it is sore.

Q. Can't you touch it? A. No.

Q. It hurts you to touch it? A. Yes, if I shall just touch it against something it hurts like anything.

(At this point the witness was temporarily withdrawn and the witness Moses Carl Sucoff testified on behalf of the plaintiff.)

BEATRICE BROTMAN, resumed.

Redirect Examination by Mr. Friedman:

Q. Miss Brotman, counsel for the defendant asked you before how far you could see to your left or to your right and you said two or three blocks. Now, what did you mean when you gave counsel that answer?

Mr. Stites—I object to that. It is plain English, and the answer was explicit, what she meant.

Mr. Friedman—This witness doesn't clearly understand the English language.

Mr. Stites—She seemed to answer very intelligently.

Mr. Friedman—I want to make sure. I have got the right to ask her.

The Court—Well, let us see if she understands.

A. Yes, I do.

Q. Speak louder. A. I can see quite a distance if I see a light.

Q. You said you could see two or three blocks to your right or left, didn't you? A. Yes.

Q. What did you mean when you said you could see two or three blocks to your right or left? A. I meant by—if I see a light from machines coming I could see.

Q. Two or three blocks? A. Yes, maybe further than that.

Re-cross Examination by Mr. Stites:

Q. The streets were lighted at the time, weren't they? A. What?

Q. The streets were lighted? The streets lights were lighted? A. Yes, on the corner.

Q. The corner light? A. The corner light.

Q. Did you see the lights? A. The corner light. I mean machine lights, also.

Q. Could you see the street lights down at the next block to your right? You say you could see lights? A. Yes.

Q. Well, could you see the street lights, too? A. Yes, of course. Yes.

Q. How many blocks away could you see the street lights? A. Quite a distance.

Q. Three blocks? A. About that much.

Mr. Stites—That is all.

(A recess was taken until March 2, 1928, at two o'clock P. M.)

Paterson, N. J., March 2, 1928.
Afternoon Session.

MORRIS BROTMAN, sworn.

Direct Examination by Mr. Friedman:

Q. Mr. Brotman, you are the brother of the plaintiff in this case? A. I am.

Q. Did you ever go to the home of Mr. Doan? A. I did, sir.

Q. And do you recall how soon after the accident that was? A. About two months.

Q. Two months. Was Mr. Doan home the first time you went there? A. He was not.

Q. Did you see his wife home? A. Yes, sir.

Q. Did you have a conversation with his wife? A. I did.

Q. Did she or did she not tell you she was riding with Mr. Doan at the time of the accident? A. She did.

Mr. Stites—I object to any conversation between this witness and Mrs. Doan. She is not a party to the action. How could that be binding on the defendant.

The Court—Not in the presence of the defendant?

Mr. Stites—No.

The Court—I shall sustain the objection.

Mr. Friedman—I take an exception.

Q. Did you have a conversation with Mr. Doan at any time? A. Yes, about two weeks after the —after I was there again.

Q. Two weeks after the first time you went to his home? A. Yes.

Q. And was he at home the second time? A. He was at home.

Q. What were you talking about? A. Well, I wanted to find out whether he was the owner and the driver of the car.

Q. What did he say? A. Well, he claimed that while they were discussing between him and his wife, Mrs. Doan, they were discussing about a certain accident which occurred about two days before on a very dear friend of theirs named Mrs. Solow.

Mr. Stites—I object to that, your Honor, and move to have it stricken out. It doesn't seem to me to have anything to do—

By the Court:

Q. What did he say? A. What did Mr. Doan say?

Q. Yes. A. Mr. Doan said he was the owner of the car.

Q. That answers the question. A. And he drove it at the time.

Q. Talk toward the jury.

By Mr. Friedman:

Q. Did he say anything else? A. Well—

Q. In reference to this accident. A. In refer ence to this accident?

Q. Yes. A. Well, he said that it would be well taken care of.

Q. I see. Did he tell you how the accident occurred? A. He did.

Q. What did he say? A. He says he hasn't seen the girl until he struck her.

Q. Did he take care of this case after that?

Mr. Stites—I object to that, your Honor.

Mr. Friedman—I will withdraw the question. Take the witness.

Cross Examination by Mr. Stites:

Q. When did this conversation take place, Mr. Brotman? A. I don't remember the date exactly, but it was around ten weeks or three months past the accident occurred.

Q. Well, what month was it? A. Well, it was in December—around the beginning of the year of 1927.

Q. But you don't remember the— A. Around January.

Q. You don't remember the date? A. No, sir.

Q. Did your sister go with you? A. At the time? She didn't. She was laid up.

Q. Where was she? A. At 29 Benson Street, where I put her.

Q. Did you live there, too? A. No, sir.

Mr. Stites—I think that is all.

Mr. Friedman—The plaintiff rests, your Honor.

Plaintiff Rests.

MOTION FOR NON-SUIT

Mr. Stites—Your Honor, I move for a non-suit upon the grounds that the evidence shows that the plaintiff was guilty of contributory negligence and on the further ground that there has been no evidence offered in the case that would show any negligence on the part of the defendant. Now, the plaintiff's testimony is the only testimony in the case of the occurrence of any accident whatever and her testimony is that—

(Mr. Stites argued at length.)

Mr. Friedman—As I recall the testimony, your Honor, the plaintiff said that what she meant by not being able to see—she could see, rather, two or three blocks, was that she could see an automobile if it had lights on for two or three blocks. Your Honor recalls yesterday I asked her what she meant by that, there being some doubt in my mind as to her answer. She said if an automobile had lights on she could see for two or three blocks. She never said, or never meant to say, that she could see it for two or three blocks up the street either way. She testified that she saw several automobiles pass which had lights on; that she looked to her left and to her right before she crossed the street and she didn't see any lights on any automobile coming from her left; that she didn't see any lights on any machine coming from her left; that she didn't hear any horn blow; and that no horn was blown.

Now, assuming there is an arc light on the corner, still that doesn't relieve the defendant from operating an automobile without lights and depend upon the carefulness of a pedestrian to depend on an arc light to see whether a car is coming.

Counsel for the defendant would ask for a non-suit on that ground. And I say that when she said she could see either way that was later explained by what she meant, and I respectfully submit that it is a factual question, whether she looked to the left or to the right or whether she looked properly to her right and left, and whether the defendant had any lights on his car, whether he blew his horn.

The mere fact that an arc light was on the corner does not relieve the defendant from the responsibility to blow a horn and keep lights on a car in the night-time. It is a factual question for the jury to say whether a violation of the Traffic Act or Motor Vehicle Act constitutes negligence in any respect.

The Court—Under the evidence as it stands in this case at this point, I believe counsel's motion for a non-suit is well taken, and I shall order it in. I will excuse the jury.

Mr. Friedman—I want to take an exception to your Honor's ruling.

The Court—The exception is noted.

New Jersey Court of Errors and Appeals

Beatrice Brotman, Plaintiff-Appellant, vs. Emanuel Doan, Defendant-Appellee.	On Appeal from Supreme Court

BRIEF FOR PLAINTIFF-APPELLANT
STATEMENT OF FACTS

This is an appeal from a judgment of nonsuit entered on the ground that the plaintiff was guilty of contributory negligence and that there was no negligence shown on the part of the defendant.

On the evening of November 16, 1926, the plaintiff while crossing on a crosswalk from Tenth Avenue to East 18th Street, in the City of Paterson, was struck by the automobile of the defendant (P. 9 and 10, S. of C.).

The plaintiff testified as follows on P. 10, S. of C., l. 8:

> "Q. Now, when you got to the corner what did you do? A. I looked on both sides. They was passing several machines and I was waiting till they passed, and then when I looked at the right I didn't see no machines; and then I looked to the left, you know. I didn't hear any sound of a machine, no lights, and the rain hit me in the face so I protect my face with the umbrella on the right-hand side, and I started across the street. As soon as I stepped off the corner and I took about three steps I got hit by an automobile.

Q. On which side were you struck by the automobile? On the left? A. On the left.

Q. Now, you say you protected your face from the rain with the umbrella? A. Yes.

Q. Now, on which side did you have that umbrella, the left side or the right side? A. On the right side.

Q. On the right side? A. Yes.

Q. So, the rain was coming from your right? A. Yes.

Q. Did you have this umbrella turned towards your right? A. It strike my face, so I shall be able to look, you know, and keep my eyes open." (P. 10, S. of C., l. 30.)

"Q. Where did you look then, to the right or to the left? A. To the right.

Q. And then you looked to the left; is that right? A. Yes, yes.

Q. Now, before you—how long were you on that corner before you started across the street? A. Oh, I shall say a couple of minutes or so. You know, there was no machines coming and I started across the street." (P. 11, S. of C., l. 5 to 10.)

"Q. Now, before you started to cross the street did you or did you not hear any horns from machines blowing? A. No horn at all. No sound of a horn.

Q. Did you see any headlights from any automobile coming from your left? A. No, no, no.

Q. And then you started to cross the street? A. Yes.

Q. How many steps did you take before

you were struck? A. About three steps" (P. 11, S. of C., l. 10 to 20).

The foregoing testimony was the plaintiff's testimony on direct examination. On cross examination, the plaintiff testified that when she got to the corner of East 18th Street, and Tenth Avenue, she stopped.

"Q. Now, when you reached the corner on East 18th Street, did you stop? A. Yes, I did.

Q. And where were you when you stopped? A. On the sidewalk on that corner.

Q. How close to the curb? How close to the curb or to the gutter? A. Right on the corner, you know" (P. 22, S. of C., l. 8 to 15).

She testified further:

"Q. But you did stop? A. I did stop, yes.

Q. What did you stop for? A. To look around for the machines, if there is any machines coming" (P. 22, S. of C., l. 22 to 25).

"Q. And you looked to your right first? A. Yes.

Q. Did you see any automobiles coming? A. Yes, I did see several, you know, several automobiles—not many. It was very quiet on that time. Then I waited until they passed" (P. 22, S. of C., l. 29 to 34).

"Q. Did you see their headlights? Did you see the lights on the automobiles? A.

Those—yes, the lights was on the automobiles, yes, some of them had, sure'' (P. 22, S. of C., l. 35).

The plaintiff testified further on cross examination that she saw cars coming towards her on East 18th Street, and she waited until those cars passed, and that she could see those cars about two or three blocks, and when she didn't see any more machines coming, she started to cross the street, and that the cars that she could see two or three blocks, had lights on (P. 22, S. of C., l. 30 to 35; P. 23, S. of C., l. 5 to 20). After the cars which had lights on had passed her, she testified that besides looking to her right, she looked to her left; she looked on both sides (P. 23, S. of C., l. 20 to 30) and that she saw one or two machines before she started to cross the street, and they had headlights on, and that some of them blew their horns, and some did not (P. 23, S. of C., l. 30 to 35) P. 24, S. of C., l. 1 to 5).

The plaintiff testified she didn't see any lights on the car of the defendant, otherwise she would have stopped (P. 24, S. of C., l. 20 to 24). She testified that there weren't any lights on the defendant's car (P. 24, S. of C., l. 31 to 35). The plaintiff testified further on cross examination that when she stepped down from the sidewalk into the street, she didn't see any cars (P. 26, S. of C., l. 15 to 18). The plaintiff testified further on cross examination, she could see either up to the right of East 18th Street, or to the left, about three blocks in each direction, and that she didn't see the automobile of the defendant coming at any

time (P. 26, S. of C., l. 20 to 30), and that she was looking before she crossed the street, and then she took three steps and was struck, (P. 27, S. of C., l. 3 to 6). The plaintiff testified further that she was right on the corner (P. 27, S. of C., l. 20).

The plaintiff's entire contention in the case is that the defendant's automobile was operated without any lights, or any other kind of lights, so that pedestrians who were about to cross the street, couldn't see his car proceeding on the highway, and the defendant's contention seems to be that the plaintiff was guilty of contributory negligence, because if she would have looked, she would have seen, and would, therefore, have not been struck by the defendant's automobile.

The defendant's arguments were that if she would have looked, she would have seen, and would have avoided being struck by the defendant's car. This defendant seems to overlook the proposition, as this accident took place when it was raining, and it was foggy, and misty, and furthermore, the plaintiff testified she saw other automobiles pass her, and she saw them two or three blocks away, because they had lights upon them. But the plaintiff, when she testified that she could see two or three blocks to her right or to her left before she crossed the street, and didn't see the defendant's automobile coming, explained what she meant by that statement. She said she could see the other automobiles which passed her two or three blocks away because they had lights on. (Case, 22, l. 30 to 35); Case, 23, l. 5 to 20.)

On cross examination as to this fact, she testified as follows:

"Q. You could see either to your right up East 18th Street or you could see to your left about three blocks in each direction? A. Yes.

Q. Right? A. Yes, yes.

Q. Then, after you stepped down from the sidewalk you couldn't see to your right, could you, on account of the umbrella? A. No.

Q. And could you see to your left? A. Yes.

Q. And you didn't see the automobile of Mr. Doan's coming at any time? A. No, no.

Q. You didn't see it? A. No.

Q. And you were looking? A. Yes, I did.

Q. All the time? A. Not all the time. When I was crossing the street I didn't look on the side; I looked straight when I was crossing. I looked before. When I stepped off the corner, when I stepped off the sidewalk, I looked" (P. 26, S. of C., l. 20 to 35; P. 27, S. of C., l. 1 to 2).

After the above testimony on cross examination, the plaintiff's counsel on re-direct examination asked her the following questions:

"Q. Miss Brotman, counsel for the defendant asked you before how far you could see to your left or to your right and you said two or three blocks. Now, what did you mean when you gave counsel that answer? A. I can see quite a distance if I see a light.

Q. You said you could see two or three blocks to your right or left, didn't you? A. Yes.

Q. What did you mean when you said you could see two or three blocks to your right or left? A. I meant by—if I see a light from machines coming I could see.

Q. Two or three blocks? A. Yes, maybe further than that" (P. 35, S. of C., l. 20 to 25; P. 36, S. of C., l. 8 to 18).

The plaintiff when she said on cross examination she could see two or three blocks to her right or left meant that she could see two or three blocks away the machines which had lights on and passed her (C. 22, l. 30 to 35), (Case, p. 23, l. 5 to 20).

The plaintiff was a student at night school, and was a foreigner, and in all probability made an honest mistake when she said she could see two or three blocks either way up the highway before she crossed the street, and in good faith attempted to say she could see two or three blocks up the highway if an automobile had lights on, and as she said, maybe further.

After the plaintiff's testimony was in, the defendant's counsel moved for a nonsuit, and it was granted, which the plaintiff now argues was error. The defendant's counsel relied upon the case of McGrath v. North Jersey Street Railway Company, 66 N. J. L., P. 312, but the plaintiff contends the McGrath case is not authority for defendant's proposition. In the McrGath case, it

was on a busy highway in Newark, where traffic was moving all the time. It was a clear evening. The car which struck the plaintiff in that case was a large object with conspicuous lights.

In the McGrath case there were several witnesses who saw the car approaching before it struck the plaintiff, and in that case, the Court very rightfully held that if McrGath looked, he would have seen, because there was testimony by two other witnesses that the car was approaching in the direction of the plaintiff's left, and that if he would have looked, he would have seen. The very rightfully held that if McGrath looked, he and did not observe that car, and in the McGrath case, there was a large crowd moving all the time on a busy highway, and there was a procession with music to the beating of a drum, which might have directed McGrath's attention away from the direction to observe where he was proceeding.

In the plaintiff's case sub judice, she testified it was very quiet, not a soul was crossing the street. That several other cars passed with lights on; that she saw them for quite a distance, some of them blew their horns, and some of them didn't. That when they passed she looked to her right and to her left, and saw no cars approaching, and then she stepped off the corner from East 18th Street and Tenth Avenue, and was struck by defendant's automobile when she had taken three steps.

All a plaintiff is bound to do in crossing the street is to use his powers of observations in a reasonable and careful manner. The plaintiff in this case, testified very minutesly how careful

she was before crossing the street, and furthermore, the evidence shows she crossed from a corner, and was on the crosswalk.

POINT I.
THE TRIAL JUDGE COMMITTED ERROR IN NONSUITING THE PLAINTIFF.

The plaintiff testified and explained what she meant when she said she could see two or three blocks up the highway before she crossed the street, and didn't see the automobile of the defendant. She said she could see the defendant's car if he had lights on it two or three blocks away, or further, and with this explanation before the Court and jury, the trial Court should have permitted the jury to decide whether there was any contributory negligence, or negligence as to the defendant, because an explanation at least is a factual question for a jury to decide.

In the case of Andrew v. Mertens, 88 N. J. L., p. 626, the Court said, syllabus 1:

> "In passing upon motions to nonsuit and for the direction of a verdict, the court cannot weigh the evidence, but must take as true all evidence which supports the view of the party against whom the motions are made, and must give him the benefit of all legitimate inferences which are to be drawn in his favor."

If this is so, the trial Court committed error in nonsuiting the plaintiff in the case sub judice, because, if all legitimate inferences to be drawn from

the facts are to support the plaintif's contention, her explanation as to what she meant when she said she could see two or three blocks up the highway before she crossed the street, had to be decided in her favor to wit: "that she could see two or three blocks up the street if an automobile had lights on it," and if this is so, the instant case should have been left to be decided by the jury, as to evidence of contributory negligence.

Assuming, however, that the trial Court thought or believed the plaintiff in her explanation, was telling a wilful and deliberate untruth as to a material fact, then even at that rate, it was error for him to nonsuit the plaintiff, for such a wilful or deliberate statement of a material fact would affect the credibility of her testimony, and would go against the weight of her evidence, and therefore was a factual question for the jury, as was said by Justice Kalisch in State v. Duggan, 84 N. J. L., p. 603, at p. 606, middle of second paragraph,

> "The maxim falsus in uno falsus in omnibus is not a mandatory rule of evidence, but is rather a permissible inference that the jury may or may not draw when convinced that an attempt has been made to mislead them in some material respect."

The same has been held by Justice Pitney in the case of Addis v. Rushmore, 74 N. J. L., p. 649.

The plaintiff's testimony, that she looked to her left, and didn't see any lights on the defendant's

car, was enough to make it a jury question, whether the defendant was operating his car with or without lights, and whether that constituted negligence. If it was broad daylight, and the plaintiff looked and didn't see the defendant's car, in all probability, the trial Court would have been correct, but this accident occurred at night, and it cannot very well be said, that if she would have looked, she would have seen, for the defendant's automobile might have sped around the corner from her left but made a wide turn and struck her unlike the McGrath case, supra.

How could the plaintiff see the defendant's car if she looked, when she testified before she crossed the street she looked and didn't see any automobiles coming or any lights, or hear any horns blown, and it was very quiet on the street; not a soul was on the street?

In this respect, the case differs from the McGrath case, where the Court found, as a matter of fact, that the trolley car which struck the plaintiff had a large headlight on it, which was well-lighted, and which the plaintiff in that case would have seen, if he looked. In the case sub judice there weren't any witnesses who could testify where the defendant's automobile came from as in the McGrath case, supra. No one knows whether the defendant's car came in a straight line from the plaintiff's left or around the corner from her left.

The case of Farese v. North Jersey Street Railway Company, 76 N. J. L., p. 457, was a case where a boy was struck on a dark, foggy and misty night,

and in that case, the Court held the plaintiff was guilty of contributory negligence, because the automobile which struck the plaintiff in that case, had headlights on the car, which were lighted, and the car was lighted inside, which fact was also found, and testified to by the plaintiff's own witnesses, and in that case, the plaintiff testified he could see a light seventy-five feet from the place where he was standing, and the plaintiff's witness in the Farese case, testified that he could see a dim light on the car, fifteen or twenty feet away.

There is no such testimony in the plaintiff's case, the only testimony being there were not any lights, and there was not any horn blown, and therefore it was a jury question whether the automobile which struck the plaintiff had lights on it, or blew its horn before approaching the intersection of the street where the plaintiff was struck and whether it came in a straight line from her left or came around the corner from her left at a high rate of speed without lights or warning.

POINT 2.
CONTRIBUTORY NEGLIGENCE IS A JURY QUESTION.

> "A motion to nonsuit will be reviewed on the ground of contributory negligence, unless it is established by the evidence beyond fair debate." Brewster v. New York etc. Railroad Co., 80 N. J. L., p. 447; Mahnken vs. Freeholders of Monmouth, 62 N. J. L., p. 404.

The Courts have also held that a motion for nonsuit admits the truth of the plaintiff's evidence, and of every inference of fact which can be legitimately drawn therefrom. Jones v. Public Service Railway Co., 86 N. J. L., p. 646.

As the proof stood at the close of the plaintiff's case, the contributory negligence of the plaintiff, and negligence of the defendant, was a jury question. Newark Electric etc. Co., v. Ruddy, 62 N. J. L., p. 505; Najarian v. Jersey City etc. R. R. Co., 77 N. J. L., p. 704; Napurana v. Young, 74 N. J. L., p. 627.

In the case of Durant v. Palmer, 29 N. J. L., p. 544, at 547, second paragraph, the Court said:

> "As a general rule, there can be no recovery in such action when the want of ordinary care is proved. If it appear by the plaintiff's own case, he must of course be nonsuited; for then he supplies his adversary with what is usually a matter of defense, but he is not bound to prove affirmatively that there was no want of ordinary care on his part; for that would be equivalent to say that the law presumes that the person injured contributed by his negligence to the accident, and that such presumption, unless overcome by positive proof, of itself is sufficient to defeat a recovery. The want of ordinary care is negligence, culpable negligence, not to be presumed, but to be proved by the party who avers it. In general, it is a matter of defense, to be shown affirmatively by the defendant, and then it presents a question of fact for the jury."

This case very clearly shows that contributory negligence being a matter of defense must be proved affirmatively unless the plaintiff's own case supplies the defendant's proof beyond fair debate.

How could the trial Court have held that the plaintiff supplied the necessary proof for the defendant, when the jury could have found that the automobile which struck the plaintiff did not come in a straight line all the way down the highway from her left, but could have in all probability, turned around the corner from her left where she was standing, and therefore she couldn't see it when she looked.

In other words, if the plaintiff stood on the corner, as she testified, the defendant's automobile might have come from the side street on her left, and as she crossed the street, it turned around the corner and struck her. That was an inference for a jury to draw, and the Court committed error in not leaving the jury to find that as a fact.

The Court also committed error in nonsuiting the plaintiff, by not letting a jury decide whether or not the defendant had lights on his car on the evening of the accident, because a failure by him to comply with the Traffic Act, or the Motor Vehicle Act, would be such an infraction of the Statute, which the jury had a right to decide whether or not it was evidence of negligence on the defendant's part.

The Court also committed error in not permitting the jury to decide whether or not the contributory negligence of the plaintiff, if there was any, contributed proximately to the injuries which she sustained.

The defendant's counsel, in his motion for nonsuit, stated that the evidence showed the plaintiff was guilty of contributory negligence, (P. 40, S. of C., l. 1), and the plaintiff contends that the Court's granting the nonsuit on that ground was error because the motion did not state that the contributory negligence of the plaintiff, if there was any, contributed proximately to the injuries which she sustained.

In other words, assuming for the sake of argument, that the plaintiff was guilty of contributory negligence, that in itself did not prevent the plaintiff from recovery unless her contributory negligence contributed proximately to the injuries which she sustained. See case of Pennsylvania Railroad Company v. Righter, 42 N. J. L., p. 180.

POINT 3.
THE PLAINTIFF PROVED NEGLIGENCE ON THE PART OF THE DEFENDANT.

The plaintiff testified that the defendant's car had no lights on it, and no horn or other signal was given by his automobile, and that it was very quiet on the street at the time of the accident, and not a soul was on the street. With this fact in evidence, to wit: the quietness of the neighborhood, the jury could very readily have inferred that if a horn was blown, the plaintiff would have heard

it, or if the defendant's car had lights on it the plaintiff would have seen them, as there was no other thing to distract her attention as in the McGrath case supra.

The mere fact that an arc light was burning on the corner, did not relieve the defendant from having his lights burning or from blowing his horn as he approached the intersection. It being a rainy night, the arc light in all probability, might have cast a reflection from a lighted area to a dark area, so as to prevent the plaintiff from seeing the defendant's car. As the Court well knows where there are two areas close to each other, one space darkened and another space well lighted, the law of physics is that a person can see standing in a dark area what is going on in the lighted area, but the person who is in the lighted area is totally blind as to what occurrences are taking place in the darkened area.

In other words, the reflection of the arc light might have covered up the defendant's automobile to prevent the plaintiff from seeing it. Whereas the plaintiff standing on the corner in the direct rays of the arc light, could have easily been seen by the defendant while he was proceeding on the road in a dark space, if he was proceeding carefully, and slowly and observing the direction in which he was approaching. These are all facts which should have been left for the jury to find, and the Court's motion in granting a nonsuit was error in this respect.

The defendant might have been proceeding at such a fast rate of speed that the plaintiff in all probability could not have seen such a rapidly approaching car, and this is also a fact which should have been left for the jury to decide. As was said in the case of Shiles v. Public Service Corp., 77 N. J. L., p. 600,

> "Where the plaintiff looked through a small window in the back of his wagon to see if a trolley car was approaching, failed to see a rapidly approaching car, and by reason of such failure, drove upon the trolley track where he was struck. It was held that the question of a plaintiff's negligence was for the jury."

For all of which reasons, it is respectfully submitted that the judgment of nonsuit entered in the above cause be hereby reversed, vacated and for nothing holden, and that a venire de novo issue.

WARD & McGINNIS,
LOUIS C. FRIEDMAN,
Attorneys of Plaintiff-Appellant.
PETER J. McGINNIS,
Of Counsel.

May Term, 1928.

Peter J. McGinnis
of Counsel.

New Jersey Court of Errors and Appeals

BEATRICE BROTMAN,
Plaintiff-Appellant,

v.

EMANUEL DOAN,
Defendant-Appellee.

BRIEF FOR DEFENDANT-APPELLEE

POINT I.

The non-suit was properly granted.

The testimony of the plaintiff showed conclusively that she was guilty of contributory negligence in crossing the street in the manner in which she proceeded in not making careful and proper observations both before and while crossing (Case, p. 10, l. 2): "Q. I see, was it raining that night? A. Yes, very hard. Q. And you had an umbrella with you? A. Yes, I did. Q. Now, when you got to the corner, what did you do? A. I looked on both sides. They was passing several machines and I was waiting till they passed, and then when I looked at the right I didn't see no machines; and then I looked at the left, you know. I didn't hear any sound of a machine, no lights, and the rain hit me in the face so I protect my face with the

umbrella on the right-hand side, and I started across the street. As soon as I stepped off the corner and I took about three steps I got hit by an automobile."

It appears by the testimony that at the time of the accident, it was raining (Case, p. 10, l. 25) and the accident occurred about 7 p. m. (Case, p. 21, l. 18) and the plaintiff was holding the umbrella over her (Case, p. 21, l. 20). She could see up and down the street very good (Case, p. 23, l. 8) for a distance of two or three blocks (Case, p. 23, l. 15; Case, p. 26, l. 20) and there was considerable traffic at the time (Case, p. 24, l. 15). She didn't see defendant's automobile before the accident (Case, p. 24, l. 22).

(Case, p. 25, l. 10): "Q. The first time that you saw Mr. Doan's automobile was when you regained consciousness and were in the car; isn't that right? A. I didn't see the machine, but I just—I just felt —you know, when I got hit. But I didn't see the machine. The only thing I know I was in the machine, you know; I didn't look at the machine when I was—got hit and thrown away. No. I knew at that time that I got hit from an automobile. I was screaming loudly."

When the plaintiff stepped from the sidewalk, she was facing left, which was in the direction from which defendant's automobile was approaching (Case, p. 25, l. 35) and had taken three steps when struck by the automobile (Case, p. 11, l. 20; Case, p. 27, l. 5).

The street at the point where plaintiff was crossing was well lighted (Case, p. 27, l. 20; case, p. 36, l. 22).

It is apparent from the testimony of the plaintiff that if she did look up and down the street she certainly looked carelessly as the automobile of the

defendant was certainly within the range of her vision before she started to cross the street, as she could see good, as she expressed it, for a distance of three blocks in either direction, and there was plenty of light, as there was an arc light on the corner, and she was struck by defendant's automobile after she had proceeded about three steps from the curb and the defendant contends that the plaintiff was guilty of contributory negligence in not making reasonable and careful observations at the time of crossing the street and that she should have seen defendant's automobile approaching as it was certainly in the street coming toward her at the time and there does not seem to be any reason for her not seeing it if she had either looked or made careful observations before crossing.

The rule requiring one exercising his lawful rights in a place where the exercise of lawful rights by others may put him in peril, to use such precaution and care for his safety as a reasonably prudent man would use under the circumstances, is the measure of duty for one who crosses a public highway on foot. He must use his powers of observation to discover approaching vehicles, and his judgment how and when to cross without collision, but his observation need not extend beyond the distance within which vehicles moving at lawful speed would endanger him. IF OBSTACLES TEMPORARILY INTERVENE TO PREVENT OBSERVATION, HE SHOULD WAIT UNTIL THE REQUIRED OBSERVATION CAN BE MADE. (Newark Passenger Ry. Co. v. Block, Errors and Appeals, 55 N. J. Law, p. 605).

In the above case, the court at page 612 states as follows:

> "The duty devolving on one using a highway for passage on foot varies with circumstances,

which are indefinitely various. It may be of one degree when the highway is a quiet country road, and of another degree when it is the crowded street of a great city. It may differ at different hours of the day, with respect to different vehicles and the differing rates of speed at which they are moving, and by reason of different opportunities of observation.

It is impossible, in my judgment, to classify these variant circumstances, and to lay down a precise rule as to the degree of care required in each class. In dealing with cases of this sort we must recur to the general rule, which requires one, in exercising his lawful rights in a place where the exercise of like rights by others may put him in peril, to use such precaution and care for his safety as a reasonably prudent man would use under the circumstances.

From this rule it may be said in general that one who passes on foot along a sidewalk or footpath of a highway must use his powers of observation in respect to other passers thereon, and a reasonable judgment to avoid collision. In crossing the roadway a foot passenger must likewise use his powers of observation to discover approaching vehicles, and a like judgment when and how to cross without collision. In the latter case, doubtless the degree of care required exceeds that required in the former case, not because the right of the foot passenger and the right of the driver of a vehicle differ, but because of the circumstances. The vehicle usually travels at a greater speed—it cannot be so quickly stopped or diverted from its course; a street car cannot deviate from its track; while the passer on foot may quickly

stop, turn aside or even retrace his steps. So it may also be generally said that if obstacles temporarily intervene to prevent observation, reasonable prudence would dictate delay until such observation as is requisite has been made."

One who passes on foot along a crosswalk over a highway is bound to use his powers of observation to discover approaching vehicles, and should exercise a reasonable judgment as to when and how to cross without collision. McGrath v. North Jersey Street Ry. Co., 66 N. J. Law, page 312, Errors and Appeals.

In the above case, like the case at bar, the plaintiff did not see the car which caused the accident until the instant of the accident, page 316, paragraph 2.

The court in this case stated as follows at page 317: Two conclusions seem inevitable. One is that if the plaintiff, just before the accident, had not been inattentive to his surroundings, he must have seen this eastbound car, within a few feet of him, either in motion or at rest, on the track upon which he was about to step. The car was a large object. Its lights made it conspicuous. There was no impediment to vision. Unfortunately the plaintiff was looking away from the car, and so did not see it.

The other conclusion that results from the testimony is that the plaintiff, when he looked to the west, before stepping off the curb, and saw no eastbound car, must have looked carelessly, etc. At page 318, near the top of the page, the court further commented as follows: The time that elapsed between his leaving the curb and the accident was brief; only what a man would occupy in walking

twelve or fifteen feet at a "nice, ordinary walk". The car, just before he encountered it, had crossed a street eighty or ninety feet wide. In doing so it had made a full stop and had waited an appreciable time to allow pedestrians to pass in front of it at a crossing, or, perhaps, for another car to get out of its way. It had then been started again, and had gone forward. At the moment of the accident its fender had reached a point at least as far east as the easterly side of the crosswalk, the width of which does not appear, but which the counsel for the plaintiff estimated, on the argument, at six feet. IT IS INCONCEIVABLE THAT THIS CAR, WHEN THE PLAINTIFF LOOKED TOWARD THE WEST, WAS NOT SOMEWHERE WITHIN THE RANGE OF PRUDENT OBSERVATION.

In the case of Jewett v. Paterson Railway Co., report in 62 N. J. Law at page 429, states as follows: From the case above detailed the conclusion results that the car, moving at any rate of speed that the jury could have attributed to it under the evidence, must have been so near to the plaintiff, when he looked for it before going on the track, that if he had not looked carelessly he would have seen it and have been warned of imminent danger. His failure to see it, and so to receive warning, was therefore due to his own negligence. The result will not be altered if it be supposed that the plaintiff was mistaken in saying that he looked for the car when he was close to the track. Under the circumstances not to look was negligence. In either view the nonsuit was right.

It is contended by the defendant that the above citations are in point upon the question of the contributory negligence of the plaintiff in the case at bar, and that under the rulings laid down in the

cases above cited, the plaintiff, according to her own testimony, was careless in and about the crossing of the highway at the time she received her alleged injuries and should therefore be barred from any recovery of damages in this action.

It is respectfully contended that the judgment of nonsuit entered herein be affirmed with costs.

WM. B. STITES,
Attorney and of Counsel for Defendant.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.
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