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NOTICE OF APPEAL.

(Filed June 5th, 1928.)

ATLANTIC COUNTY CIRCUIT COURT.

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ANNA EICHINGER, by her  
next friend, CLARA EICH-  
INGER, and CLARA EICH-  
INGER, her mother, in her  
own right, } 10  
*Plaintiffs,* }  
v. } Action at Law.  
CHARLES M. KROUSE, } Notice of Appeal.  
*Defendant.* }

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To John Rauffenbart, Esq., Attorney for Plaintiff: 20

Take notice that the defendant appeals to the  
Court of Errors and Appeals from the whole of the  
judgment entered in this cause.

STARR, SUMMERILL & LLOYD,  
*Attorneys of Defendant.*

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[ENDORSED] 30

Service of a copy of within notice  
acknowledged this 28th day of April,  
1928.

John Rauffenbart,  
Attorney for Plaintiff.

—————

GROUNDS OF APPEAL.

(Filed July 3rd, 1928.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10

ANNA EICHINGER, by her  
next friend, CLARA EICH-  
INGER, and CLARA EICH-  
INGER, her mother, in her  
own right,

*Plaintiffs-Appellees,*

v.

CHARLES M. KROUSE,

*Defendant-Appellant.*

20

Action at Law.  
Grounds of Appeal.

—————

The appellants state the following grounds of ap-  
peal:

30 1. The learned trial Judge erred in refusing on  
the facts and law of the case as tried before him, the  
defendant's motion for a non-suit on the ground  
that there was no evidence of any negligence on his  
part.

2. The learned trial Judge erred in refusing de-  
fendant's motion for a non-suit on the ground that  
the testimony showed beyond all possible doubt that  
plaintiff, Anna Eichinger, was guilty of contribu-  
tory negligence.

3. The learned trial Judge erred in refusing to grant defendant's motion for a direction of verdict in favor of the defendant for the reason that the testimony showed beyond all possible doubt that the plaintiff, Anna Eichinger, was guilty of contributory negligence.

4. The learned trial Judge erred in refusing to grant defendant's motion for a direction of verdict in favor of the defendant on the ground that there was no evidence of any negligence on the part of said defendant. 10

5. The learned trial Judge erred in charging the jury that the plaintiff, Anna Eichinger, was to be considered as a pedestrian and had the right of way at street intersections, although she was at the time proceeding across the street on roller skates.

STARR, SUMMERILL & LLOYD,  
*Attorneys of Defendant.* 20

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[ENDORSED]

Service acknowledged this 14th day  
of June, 1928.

John Rauffenbart,  
Atty. Plaintiffs-Appellees.

30

## SUMMONS.

(Filed Dec. 29th, 1926.)

10 THE STATE OF NEW JERSEY TO CHARLES M. KROUSE:

You are summoned to answer the annexed complaint of Anna Eichinger by her next friend, Clara Eichinger and Clara Eichinger, her mother, in her own right; in an action at law in the Atlantic County Circuit Court. And take notice, that unless you file your answer to the said complaint with the clerk of said Court, at May's Landing, within twenty days after the service upon you of this writ  
20 and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness W. FRANK SOOY, Judge of the Atlantic County Circuit Court, at May's Landing, this 18th day of December, A. D. 1926.

WM. A. BLAIR,  
*Clerk.*

JOHN RAUFFENBART,  
*Attorney.*

30

COMPLAINT.

ATLANTIC COUNTY CIRCUIT COURT.

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<p>ANNA EICHINGER, by her next friend, CLARA EICH- INGER, and CLARA EICH- INGER, her mother, in her OWN right,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>CHARLES M. KROUSE, <i>Defendant.</i></p>	}	<p style="text-align: right;">10</p> <p>Action at Law. Complaint.</p>
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Plaintiff, Anna Eichinger, by her next friend, Clara Eichinger, who resides in the City of Atlantic City, New Jersey, says that: 20

FIRST COUNT.

1. On October 23, 1925, plaintiff, Anna Eichinger, was lawfully crossing, on foot, New Jersey Avenue, a public highway in the City of Atlantic City in the County of Atlantic in said State, at the point where the same intersects the southerly side of Atlantic Avenue, another public highway in said city. 30

2. Defendant at the time and place aforesaid was the owner of a certain automobile, then being driven and operated by himself or his servant, agent or employe.

3. It then and there became the duty of the defendant, or his servant, agent or employe, to use a reasonable degree of care in the operation, management and control of the said automobile.

4. Yet, nevertheless, the said defendant, by or through his servant, agent or employe, wholly failed in his duty so to do, but so negligently carelessly and improperly ran, operated, managed and controlled said automobile in such a reckless and dangerous manner, and at such a high rate of speed, without any warning or signal of any kind, in violation of the traffic laws of said city and State, thereby endangering the lives and limbs of plaintiff and other lawful users of said highways at said crossing, that the said automobile ran into, hit, struck, threw and knocked down plaintiff, Anna Eichinger, with great force and violence to and upon the highway, at said intersection, and injured her without her fault.

5. So, as the result of said accident, plaintiff, Anna Eichinger, was seriously and permanently injured both internally and externally, suffered great pain, sustained deep laceration and contusion of the right thigh, for the treatment of which she was confined to a hospital for the space of 52 days, was scarred and disfigured, incapacitated for the future, and is, thereby prevented from following the occupation of professional dancer for which she was then preparing.

6. Plaintiff herein, Anna Eichinger, by her next friend, Clara Eichinger says, that as the result of said accident, an action at law has accrued to her and that she has sustained damage in the sum of

\$25,000.00, therefore, she brings her suit by and through her next friend, Clara Eichinger.

SECOND COUNT.

Clara Eichinger, also a plaintiff herein, says that she resides in the City of Atlantic City, New Jersey, and that she was and still is the mother of the plaintiff, Anna Eichinger, whose father died prior to the injury above complained of, and who is an infant of the age of fourteen years, and that by reason of the matters, facts and things in the above complaint mentioned, all of which for brevity are made a part of this count, she has sustained damage by being deprived of the services and earnings of her said daughter, and that she has been obliged to expend and lay out a large sum of money endeavoring to have her said daughter healed and cured of her said injuries, as aforesaid, therefore, she brings her suit for damages in the sum of \$5,000.00 damages. 10 20

JOHN RAUFFENBART,  
*Attorney of Plaintiffs.*

ANSWER.

(Filed Jan. 5th, 1927.)

ATLANTIC COUNTY CIRCUIT COURT.

10

ANNA EICHINGER, by her  
next friend, CLARA EICH-  
INGER, and CLARA EICH-  
INGER, her mother, in her  
own right,

*Plaintiffs,*

v.

CHARLES M. KROUSE,

*Defendant.*

Action at Law.  
Answer.

20

Defendant, residing in the City of Atlantic City,  
County of Atlantic and State of New Jersey, an-  
swering the plaintiffs' complaint, says that:

1. He admits the allegations contained in para-  
graph 1 of the first count of the complaint, except  
that he denies that the plaintiff, Anna Eichinger,  
30 was lawfully crossing on foot.

2. He admits paragraph 2 of the first count of  
the complaint.

3. He denies the allegations contained in para-  
graph 3 of the first count of the complaint.

4. He denies the allegations contained in paragraph 4 of the first count of the complaint.

5. He has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5 of the first count of the complaint and, therefore, denies same.

6. He denies the allegations contained in paragraph 6 of the first count of the complaint. 10

7. He has no knowledge or information sufficient to form a belief as to the allegations contained in the second count of the complaint and, therefore, denies same.

FIRST DEFENSE.

1. Defendant performed each and every duty and obligation that he owed to the plaintiffs. 20

SECOND DEFENSE.

1. Plaintiffs were guilty of contributory negligence.

2. Plaintiffs contributed to the injuries complained of.

3. Plaintiff, Anna Eichinger, while on roller skates, in a place of safety, skated directly into and against the automobile of the defendant, thereby causing the injuries complained of. 30

STARR, SUMMERILL & LLOYD,  
*Attorneys of Defendant.*

REPLY.

(Filed Jan. 6th, 1927.)

ATLANTIC COUNTY CIRCUIT COURT.

10

ANNA EICHINGER, by her  
next friend, CLARA EICH-  
INGER, and CLARA EICH-  
INGER, her mother, in her  
own right,

*Plaintiffs,*

v.

20

CHARLES M. KROUSE,  
*Defendant.*

Action at Law.  
Reply.

Plaintiffs deny all the allegations set forth in the  
answer.

JOHN RAUFFENBART,  
*Attorney for Plaintiffs.*

30

TESTIMONY.

NEW JERSEY CIRCUIT COURT.  
ATLANTIC COUNTY.

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<p>ANNA EICHINGER, by her next friend, CLARA EICH- INGER, and CLARA EICH- INGER, her mother, in her own right,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>CHARLES M. KROUSE, <i>Defendant.</i></p>	}	<p style="text-align: right;">10</p> <p style="text-align: center;">Action at Law.</p>
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The above entitled case was tried March 14, 1928,  
before HONORABLE WILLIAM FRANK SOOY, Judge, and  
a jury.

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APPEARANCES:

JOHN RAUFFENBART, Esq., for the plaintiffs.  
MESSRS. STARR, SUMMERILL & LLOYD, (Wm. I. Gar-  
rison, Esq., of counsel), for the defendant.

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30

(Mr. Rauffenbart opened the plaintiffs' case to  
the jury.)

(Mr. Lloyd opened the defendant's case to the  
jury.)

ANNA EICHINGER, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Rauffenbart:

- 10 Q. Anna, you were injured in an automobile accident; were you?  
A. Yes, sir.  
Q. When was that?  
A. It was on October 23, 1925.  
Q. Where were you living about that time?  
A. 35 South Massachusetts Avenue.  
Q. And whom were you living there with?  
A. My mother.  
Q. And brothers and sisters?  
20 A. Yes.  
Q. What time of the day or evening did this accident occur?  
A. About seven or seven-thirty; around that.  
Q. Around seven or seven-thirty?  
A. Yes.  
Q. Where did it occur?  
A. At New Jersey and Atlantic Avenues.  
Q. Was some one with you at the time?  
A. Yes, sir.  
30 Q. Who?  
A. Antoinette Miller.  
Q. Antoinette Miller. How old are you now?  
A. I will be seventeen the 22nd of this month.  
Q. You will be seventeen the 22nd of this month?  
A. Yes, sir.  
Q. Then you were about —

A. Fourteen.

Q. Fourteen when the accident occurred?

A. Yes, sir.

Q. In your fifteenth year. You were on roller skates, weren't you?

A. Yes, sir.

Q. And which side of Atlantic Avenue were you proceeding on?

A. On the other side of Atlantic Avenue.

Q. Now, speak loud so the lady away over here, 10 number twelve juror, can hear you. By the other side, do you mean the Ocean side of Atlantic Avenue?

A. Yes, sir.

Q. And in which direction were you going?

A. I was going up.

Q. This way?

A. Yes, sir.

The Court: That means west?

20

Mr. Rauffenbart: West.

Q. You were proceeding, you say, down that way?

A. Yes, sir.

Q. West. What speed were you going? Were you going fast?

A. No, sir. Just skating along with Antoinette Miller.

Q. Were you going any place in particular?

30

A. No, sir.

Q. Did you stop as you went along to look in a window?

A. Yes, sir.

Q. Now, did you notice the lights when you got toward New Jersey Avenue, the traffic lights?

A. Wel, I was skating down the Avenue and the lights were red.

Q. Now, red for what traffic?

A. For Atlantic Avenue.

Q. Going east and west?

A. Yes, sir.

Q. And you proceeded then on down Atlantic Avenue; did you?

A. Yes, sir.

10 Q. What did you do when you got the curb?

A. When I got to the curb I looked up and the light had turned yellow, I kept —

Q. Was it yellow when you stepped into the street?

A. Yes, sir.

Q. Then what happened?

A. Well, I stepped down off the curb and looked down the street and I didn't see any machines coming. So I kept on going. I got to the center of  
20 the street and I saw a machine coming. I tried to turn around, and as I did it struck me.

Q. What attracted you to the machine?

A. The lights.

Q. It was dark, was it?

A. (No answer.)

Q. Was the machine coming slow or fast?

A. I couldn't say how fast it was going, but it was coming fast to my eye.

Q. How is that?

30 A. I don't know how fast it was going, but it was coming fast in my eyes.

Q. Fast in your eyes?

A. Yes.

Q. That was the light?

A. Yes, sir.

Q. But you cannot say how fast?

A. No, sir.

Q. What did you do then when you noticed the machine coming?

A. I tried to turn around.

Q. And what happened?

A. And it struck me.

Q. And that was at the intersection?

A. Yes.

Q. Well, did the machine stop immediately or did it keep on going?

A. Well, it went a ways but I don't know how far it rolled. 10

Q. Did it take you with it?

A. Yes, sir.

Q. Drag you?

A. Yes, sir.

Q. Now as the result of that accident there were you injured?

A. Yes, sir.

Q. Where?

A. On my right leg. 20

Q. And what happened after the accident?

A. Well, Mrs. Krouse had stepped out of the machine and her husband came over after her and they picked me up and put me in the back of the car.

Q. And put you on the seat of the car?

A. No, sir; they put me on the floor where there were some tools.

Q. Some what?

A. Some tools. 30

Q. Was there anything else in the machine?

A. Not that I noticed.

Q. Did you see their little girl there?

A. Well, I think I did, and again I don't. I am not sure.

Q. You are not sure. Where did Mrs. Krouse sit?

A. In the front of the car.

Q. Then were did you go?

A. Went to the hospital, Atlantic City Hospital.

Q. Did they keep you at the hospital?

A. Yes, sir.

Q. How long did they keep you at the hospital?

A. Seven weeks and some odd days; about three days.

Q. Seven weeks and —

10 A. Three days.

Q. Three days. Did they treat your leg there?

A. Yes, sir.

Q. Put it on a board; did they?

A. Yes, sir; from the hip to the heel.

Q. Are there any wounds on your legs other than this one wound?

A. Yes, sir. I have wounds on my left leg where they grafted skin.

20 Q. They grafted skin from one leg to put on the other?

A. Yes, sir.

Q. Is there a scar on your leg yet where this happened?

A. Yes, sir.

Q. Would you mind showing that scar to this jury, so they can understand just what the injury was?

A. (Witness exhibits her leg to the jury.)

30 Q. Can you all see that? Judge, do you desire to see that?

The Court: No, no; I don't have to pass on it.

Q. Anna, after your discharge from the Atlantic City Hospital, where did you go?

A. I continued to the Jefferson Hospital in Philadelphia.

Q. For how long a period?

A. Well, I went every day for three months.

Q. Well, after the expiration of that period —

A. I went once a week for about a month.

Q. And how long after your treatments at the Jefferson Hospital did you continue to treat your leg, if you did treat it?

A. Well, I treated it every night until last summer, but now I just treat it every once in a while.

Q. What did that treatment consist of, Anna? 10

A. Well, the Doctor said I should rub it —

Mr. Lloyd: Not what the doctor said.

Q. What did you do?

A. I rubbed it with olive oil.

Q. And you say you still do it occasionally now?

A. Yes, sir.

Q. Why do you do it occasionally now?

A. Because it gets cramped. I have to massage it 20  
to ease it.

Q. You mean it stiffens up on you sometimes?

A. Yes, sir.

Q. How recently has that happened, Anna?

A. Just mostly in the change of weather.

Q. Directing your attention to last May when this case was previously tried, did you have any trouble that time?

A. Yes, sir. When I was walking on the boardwalk at the time the case was on, my leg got 30 cramped and I had to go down and rest it a while.

Q. Now, this wound that was in your leg, this big wound that you had in your leg, did that readily heal at the hospital?

A. No, sir.

Q. Did proud flesh develop in it?

A. I don't know what you mean.

Q. Did you have some operations on it?

A. Oh, yes, sir; three of them.

Q. How many?

A. Three.

Q. Was it painful?

A. Very.

Q. When you went to the hospital for treatments each day, did you suffer pain?

10 A. I suffered so much I cried.

Q. Every time they would change the dressing?

A. Yes, sir.

Mr. Rauffenbart: Cross-examine.

Cross-examination.

By Mr. Lloyd:

20 Q. Anna, where had you come from just before this accident?

A. From my home.

Q. And you and Antoinette were together?

A. Yes, sir.

Q. How did you come down to Atlantic Avenue, on the sidewalk or in the street?

A. On the sidewalk.

Q. And you had come from Massachusetts Avenue?

30 A. Yes, sir.

Q. And did you come straight down Atlantic Avenue on the side toward the ocean?

A. Yes, sir.

Q. Down into New Jersey Avenue?

A. Yes, sir.

Q. Were you going slowly or were you going pretty fast?

A. Well, I would not call it fast, but we were going along shopping through the windows; just skating alone.

Q. Now, isn't it a fact that you and Antoinette were racing?

A. No, sir.

Q. You weren't?

A. No, sir.

Q. Well, now, you weren't paying any particular attention to lights; were you?

10

A. Well, I was skating down the Avenue. I noticed it was red.

Q. And then did you continue to look at the light or did you go turning your attention to the windows?

A. While I was crossing the street I looked up at the lights.

Q. Didn't you look for traffic before you started across the street?

A. Yes, sir.

20

Q. And there was no traffic there?

A. No, sir.

Q. Nothing in sight?

A. No, sir.

Q. How far up New Jersey Avenue—or how far toward Pacific Avenue could you see?

A. Just about Pacific Avenue, I guess.

Q. You could see about to Pacific Avenue?

A. Yes, sir.

Q. And were you at the curb line when you looked?

A. Yes, sir.

Q. You didn't see anything?

A. No, sir.

Q. Then you started on across New Jersey Avenue?

A. Yes, sir.

Q. Now, when you started across New Jersey Avenue and you were in the middle of the street, was it then that you looked at the light again?

A. When I got off the curb is when I looked at the light, and when I got in the street I looked down the street again.

Q. Now, as I understand you, as I understood it, you came off the sidewalk, and as you reached the curb, just stepped off the curb, you then looked  
10 down the street?

A. Yes, sir.

Q. And there wasn't anything on the street?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Q. And why did you look at the light then if there wasn't anything on the street?

A. I don't know why I did; just looked at it.

Q. And what was the light at that time?

20 A. Yellow.

Q. And you didn't look to see what color the light was before you went in the middle of the street; did you?

A. Well, it was yellow as I was skating down off the curb.

Q. Now I understood you to say just now to us that you were in the middle of the street and you looked at the light and saw it was yellow.

30 Mr. Rauffenbart: No. That is not the testimony at all.

Mr. Lloyd: I think it is.

Q. Now, when you skated off the curb which way did you look, at the light or toward Pacific Avenue?

A. First I looked down the avenue.

Q. And that was just as you were going off the curb?

A. Yes, sir.

Q. And you were moving all the time; weren't you?

A. Yes, sir.

Q. Moving pretty fast?

A. No, sir.

Q. Moving so fast that you couldn't stop?

A. No, sir.

10

Q. Then you saw the light was yellow?

A. Yes, sir.

Q. Why didn't you stop?

A. Well, if it was yellow I didn't have to stop. I knew it was going to turn green for Atlantic Avenue.

Q. Well, do you know what the traffic regulations are in Atlantic City?

A. Well, I know the rules of the lights.

Q. Don't you know that you have to come to a stop on a yellow light?

20

Mr. Rauffenbart: I object. I do not think that is the rule and I do not think the question is a proper question.

The Court: I will permit the question.

Q. (Repeated by the stenographer.) Don't you know that you have to come to a stop on a yellow light?

30

Mr. Rauffenbart: I think the witness should be instructed to answer that yes or no.

The Court: If you don't know, just say, "I don't know."

A. I don't know.

Q. You don't know. Do you know that pedestrians alone have the right of way on a yellow light?

Mr. Rauffenbart: That calls for a conclusion of law, if your Honor please. I do not think it is a proper question.

The Court: I will permit it. She can say, "Yes" or "No."

Q. (Repeated by the senographer.) You don't know. Do you know that pedestrians alone have the right of way on a yellow light?

A. No, sir.

Q. Then you really didn't pay any attention to the lights; did you?

A. Well, enough attention to know what I was doing.

20 Q. But immediately before you went off the curb, the light was green, wasn't it, for traffic on New Jersey Avenue?

A. No, sir.

Q. Well, it was red for traffic on Atlantic Avenue, you said?

A. Yes, sir.

Q. Doesn't that make it green for New Jersey Avenue?

A. Yes, sir.

30 Q. Then it was green, wasn't it?

A. Yes, sir.

Q. Now you said the car dragged you. The car didn't drag you; did it?

A. Yes, sir.

Q. Didn't drag you any, did it?

A. Yes, sir.

Q. What?

A. Sure it did.

Q. Now, where were you immediately after the collision?

A. What is that?

Q. Where were you lying when you were knocked down?

A. On the street.

Q. And you were between the automobile and the curb from which you had just come; weren't you? 10

A. Yes, sir.

Q. And lying down right by the right front wheel of the automobile?

A. Yes, sir.

Q. And you never did get in front of that automobile; did you?

A. Yes, sir.

Q. What?

A. Yes, sir. I was in front of it as I turned around. I moved down further. 20

Q. Now after the collision, you weren't thrown forward in front of the automobile, were you?

A. No, I was dragged with the wheel.

Q. You were thrown back, weren't you?

A. I don't know.

Mr. Rauffenbart: She said she was dragged by the wheel.

Q. Now, you were on the side of the car afterward, weren't you? 30

A. Yes, sir.

Q. Between the curb and the car?

A. Yes, sir.

Q. That is, the curb from which you had just skated off?

A. Yes, sir.

Q. About how far away from the wheel were you?

Mr. Rauffenbart: From the what?

Q. From the right front wheel?

A. When what happened? I don't know what you mean.

Q. When you were lying down in the street after the collision?

10 A. My wheels—legs were at the wheel.

Q. Your leg was at the wheel?

A. Yes.

Q. Which leg?

A. Both of them.

Q. Both legs were at the wheel? Now, you saw the front of this car; didn't you?

A. Yes, sir.

Q. And you saw a bumper on it, a round bumper?

A. No, sir.

20 Q. Well, you know there was one there, don't you?

A. Well, I guess there is one on every car.

Q. And that bumper didn't strike you; did it?

A. I don't know, sir.

Q. What?

A. I don't know.

Q. Which part of your leg was it that was hurt?

A. The inside of the right.

Q. The inside of the right leg?

30 A. Yes, sir.

Q. And at that time I understood you to say you had turned around in the middle of the street?

A. Yes, sir.

Q. And attempted to get back to the curb from which you had just come; is that right?

A. Yes, sir.

Q. Then your right side was toward the automobile?

A. Yes, sir.

Q. The outside of your body?

A. Yes, sir.

Q. Was toward the automobile. Now, why didn't you keep on going across the street?

A. It would have knocked me all over then, I guess. The force of the whole machine would have hit me then.

Q. Weren't you in the middle of the street when you turned around?

A. No, sir; not exactly in the middle. I was more toward the curb than I was the middle.

Q. Well, New Jersey Avenue is not a very wide street, is it?

A. No, sir.

Q. And you could have got clear by going straight across—couldn't you?

A. No, sir, I don't think I could.

Q. Had you stopped just before you got to the middle? Is that right?

A. Yes, sir.

Q. And turned around?

A. Yes, sir.

Q. And tried to get back to the curb?

A. Yes, sir.

Q. Then the collision came. Did Antoinette call to you just before you went off the curb?

A. She said she did but I didn't hear her.

Q. You didn't hear her?

A. No, sir.

Q. Now you saw this automobile just before you went off; didn't you?

A. No, sir.

Q. And you made every effort to stop?

A. I didn't see it before I went off.

10

20

30

Q. What?

A. I didn't see it before I went off.

Q. Why didn't you see it?

A. Because I didn't see it coming.

Q. Why not? It had lights on it, didn't it?

A. Yes, sir.

Q. And it was there in the street, wasn't it?

A. Yes, sir.

10 Q. Well, now, you had the distance from Sandler's store window to the curb —

A. Yes.

Q. —that you could have seen all the way up the street to Pacific Avenue, couldn't you, had you looked?

A. Yes, sir.

Q. But you just didn't look; did you?

A. Yes, sir.

Q. What?

A. Yes, sir. I looked.

20 Q. The automobile was there, wasn't it?

A. I didn't see it.

Q. Will you say it was not there?

Mr. Rauffenbart: She said she didn't see it.

A. I didn't see it.

Q. You didn't see it at all until you were out in the street?

A. No, sir.

30 Q. What sort of roller skates did you have on?

A. I don't know what kind they were.

Q. Were they ball-bearing?

A. I really don't know.

Q. Did they skate easily?

A. Well, I don't really know myself. The only pair I ever rolled on.

Q. Could you skate as fast as Antoinette could?

A. I guess I could.

Q. And did that have anything to do with your not being able to stop in time?

A. No, sir; no, sir.

Q. What?

A. No, sir. I was not going that fast that I couldn't stop.

Q. Well, you were going pretty fast, weren't you?

A. Not fast enough that I couldn't stop.

10

Q. It was a smooth pavement there all the way along Atlantic Avenue; wasn't it?

A. Yes, sir.

Q. And there is a down slope to it from Sandler's store window to the curb; isn't there?

A. Yes, sir.

Q. Now, did you attempt to stop at all between the store window and the curb?

A. Well, I was going slow. I didn't have to stop. I could have.

20

Q. In how short a distance could you have stopped?

A. Well, about a foot or so, I guess. Just as soon as I twisted my foot I could have stopped.

Q. Were you just barely moving?

A. Well, we were skating along. I wouldn't say just moving, but skating.

Mr. Lloyd: That is all.

Mr. Rauffenbart: That is all.

30

(Witness excused.)

HELEN BURKE, called as a witness on behalf of the plaintiffs, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Rauffenbart:

10 Q. Helen, you know Anna Eichinger, who was just on the stand?

A. Yes, I do.

Mr. Lloyd: Now, speak up a little, will you, Helen?

Q. How old are you, Helen?

A. Fifteen.

20 Q. Speak a little loud so this lady way back here can hear you.

A. Fifteen.

Q. Fifteen. Do you remember when Anna had this accident at New Jersey and Atlantic Avenue?

A. I do.

Q. Were you there near New Jersey and Atlantic?

A. I was.

Q. Where were you?

30 A. I was—well, about—well, I was almost up to them.

Q. Almost up to them?

A. Yes, sir.

Q. And which direction were you going, Helen?

A. I was going down town.

Q. The same direction that Anna was going?

A. Yes.

Q. And where were you going?

A. I was going to the store for my mother.

Q. Where do you live—where did you live at that time?

A. 122 Seaside Avenue.

Q. That is uptown, is it?

A. Yes, sir.

Q. And you were on your way down town. Did you see Anna on skates?

A. I did.

10

Q. Did you see Anna when she stepped off the sidewalk at New Jersey and Atlantic Avenues, at Sandler's corner?

A. Well, I didn't—I saw her step off the sidewalk.

Q. Did you see something else just about the time she stepped off?

A. I noticed the lights.

Q. What was the color of the light?

A. Amber.

Q. The light was amber when Helen stepped off the sidewalk, was it?

20

A. Yes, when Anna stepped off.

Q. Or Anna. Did you see the little girl that was with Anna?

A. I did.

Q. Where was she?

A. She was standing on the corner by Sandler's store, looking in the window cater-corner.

Q. Was she right at the corner?

A. She was.

30

Q. And right close to Anna?

A. Yes.

Q. Did you see the accident?

A. I did—well, after the accident had occurred I saw Anna on the ground.

Q. You didn't see the machine actually hit her?

A. I didn't see it actually hit her, no, I didn't.

Q. So that when you first saw Anna step down off the curb you didn't see the automobile?

A. No. I turned around to say something to Antoinette.

Q. Then did you see anything?

A. I saw Mrs. Krouse picking her up—Anna was on the ground and Mrs. Krouse got out of the car and picked her up and put her in the car, and we wanted to go down to the hospital with them, and  
10 Mrs. Krouse or Mr. Krouse wouldn't let us. So we went back to Anna's house and we left Antionette's skates there, and the man there, George—Charlie, I think, or Harry—I don't know his name—why, he gave us jitney fare.

Q. Whom did he give that fare to?

A. He gave the fare to Antoinette, and going down I had used my mother's money to the meat market to pay the fare down, and coming back Antoinette showed me the money she had, and I didn't  
20 know she had it. So she paid the fare back.

Q. Did you see Anna when you got to the hospital?

A. No; they wouldn't let us.

Q. Where had you come from just prior to this accident?

A. Home.

Q. From your own home?

A. Yes, sir.

Q. When you got to Eichinger's home, you told  
30 the man what occurred, did you?

A. Yes.

Q. And you are sure that the light was amber when Anna stepped down off the curb?

A. Positive.

Q. Was Anna racing?

A. Anna was not racing.

Q. And Antoinette was standing looking in the window, was she?

A. She was looking in the window; she was standing still.

Cross-examination.

By Mr. Lloyd:

Q. How did you go from the scene of the accident to Anna's house immediately after the accident? 10

A. Immediately after the accident?

Q. Yes.

A. We turned around and walked back to her home on Massachusetts Avenue.

Q. Who did?

A. Antoinette Miller and I.

Q. Were you on roller skates, too?

A. No; I was not on roller skates. 20

Q. You were walking?

A. Yes, sir.

Q. And you and Antoinette turned around and how did you go to Anna's home?

A. Went back up town, of course.

Q. By way of what street?

A. Atlantic Avenue.

Q. You went up Atlantic Avenue to where?

A. Massachusetts.

Q. And did you cross Massachusetts Avenue? 30

A. We crossed from the corner of Massachusetts, the drug store there, over to the school; turned to our left and walked down to Anna's house, down—well, it was about—it might have been six doors from Pacific Avenue.

Q. Between Pacific and Arctic?

A. Between Pacific and Atlantic.

Q. I mean between Pacific and Atlantic.

A. Yes.

Q. You turned and went down toward the beach.  
Were you right together?

A. Antoinette Miller and I?

Q. Yes.

A. Yes.

Q. Did you have her hand or were you holding  
10 on to her hand?

A. We were not holding hands at all.

Q. She was just skating along slowly?

A. She was not skating. Antoinette had taken  
her skates off.

Q. Where had she taken her skates off?

A. Why, at the scene of the accident at New  
Jersey and Atlantic Avenues.

Q. Did you see her take them off?

A. Positively.

20 Q. You were talking to her at the time?

A. I was.

Q. Now, you didn't start out with Antoinette and  
Anna; did you?

A. No, I did not.

Q. Where did you first see them?

A. I was about in the middle of the block, and I  
hollered to them. They didn't seem to hear me  
and I hollered again, and they didn't seem to hear  
me, and I walked up—well, I half-way ran and half-  
30 way walked to catch up to them.

Q. Now, where was it that you first saw them?

A. On Atlantic Avenue.

Q. And how far ahead of you were they?

A. Oh, maybe that distance, from that wall to  
that wall, the length of the room—or the width of  
it.

Q. Say forty feet?

A. I suppose about that.

Q. And how long were you that distance apart?

A. Not very long.

Q. But you were between New Jersey and Connecticut Avenues; is that right?

A. In the middle of New Jersey and Connecticut Avenue.

Q. And were Anna and Antoinette—were Anna and Antoinette together?

A. They were.

10

Q. Did they have hold of hands in skating?

A. No.

Q. Who was ahead?

A. Not either of them was ahead. They were both together.

Q. They were both together?

A. As far as I could see.

Q. How were they skating?

A. Oh, at a moderate pace. They were not skating fast or slow either.

20

Q. Had you seen them before that evening?

A. I had seen them earlier in the evening. They were supposed to meet at Anna's house—they were supposed to wait at Anna's house for me until I came back from the store. But I suppose they thought they could go out a while and would be back in time for me.

Q. But you didn't see them at that time just before you left your home?

A. Beg pardon?

30

Q. Just before you left your home you didn't see them?

A. No.

Q. And the first you did see them was between Connecticut and New Jersey Avenues?

A. It was.

Q. You came down to the store window and there you stopped to talk to Antoinette?

A. I did.

Q. Did you talk to Anna, too, there?

A. Well, Anna was getting ready to go across the street. I told you that before.

Q. How was she getting ready to go across the street?

A. She was stepping off the sidewalk.

10 Q. Well, had she stopped before she went off the sidewalk?

A. Well, she was getting ready to step off the sidewalk. That is how I saw her. I couldn't tell you whether she stopped or not.

Q. You weren't on the corner of Sandler's store at this time; were you?

A. When the accident occurred?

Q. Yes.

A. Yes, I was.

20 Q. Do you recall the last time you testified in this case right here?

A. Yes, I do.

Q. Didn't you say at that time that you were on the other side of the street?

Mr. Rauffenbart: Objected to.

The Court: On what ground?

30 Mr. Rauffenbart: It is not put in the proper form. He can put the question and answer and ask if such a question was asked and such an answer given.

Mr. Lloyd: This is for the purpose of attacking her credibility.

The Court: I think you have a right to ask the question. Of course, in order to test the credibility you have to follow it up further.

Mr. Rauffenbart: I think I will withdraw the objection and let him go ahead.

Q. (Repeated by the stenographer.) Didn't you say at that time that you were on the other side of the street?

10

A. No. I didn't say I was on the other side of the street.

Q. Now, did you see Mrs. Krouse the next day?

A. Positively no.

Q. Did you ever see her before?

A. Only the first time I come up here to testify is the first time I ever saw Mrs. Krouse.

Q. And didn't you say to her that you were not at the scene of the accident and you didn't know anything about it?

20

A. Positively no.

Q. You are sure of that?

A. Absolutely sure.

Q. Now, I understood you to say on direct examination you asked Mr. and Mrs. Krouse to take you to the hospital?

A. I did.

Q. Did Antoinette, too?

A. We both asked.

Q. Asked to take you to the hospital and they refused?

30

A. And they refused.

Q. How did you come to ask them that?

A. Well, when they had Anna in the car most likely it would be right for us to ask her. We asked to go down with them and they wouldn't let us go down.

Q. And they went right away, did they?

A. Went right to the hospital.

Q. And you went home with Antoinette?

A. I didn't go to my home.

Q. No, to Anna's home?

A. Yes.

Q. How did you get the skates off Anna?

A. How did who get the skates off Anna?

Q. You?

10 A. I didn't get the skates off Anna. I didn't take the skates off Anna.

Q. You said on direct examination that you took Anna's skates home.

A. No, I didn't. I beg your pardon.

Q. Maybe I misunderstood you. You didn't take Anna's skates home?

A. No, I did not.

Q. You say now that you didn't say that you took her skates home?

20 A. I do. I did say that Antoinette took her skates off and carried them home herself.

Q. Just whereabouts on the corner were you, Helen? Were you on New Jersey Avenue or were you on Atlantic Avenue?

A. Well, I was catercorner to the window. You might say I was half on Atlantic and half on New Jersey.

Q. And you were looking at the lights?

A. I had looked at the lights, yes.

30 Q. When had you looked at the light?

A. Why, when I stopped on the corner.

Q. You had been standing there some time, hadn't you?

A. You would not call it some time. I hadn't been standing there very long at all.

Q. How long do you think you had been standing there?

A. I just couldn't recall, but it was not a very long time.

Q. About how long?

A. Maybe three or four minutes; something like that.

Q. Maybe four minutes?

A. Maybe three or four minutes.

Q. And during that time you saw the lights change? You were watching the lights, were you?

A. I wasn't constantly watching the lights. I did 10 look at them, though.

Q. But you saw the lights change red, yellow and green?

A. I didn't say the light changed green.

Q. Didn't see any green light? You couldn't see a green light?

A. Well, I think if I looked I could see a green light.

Q. So you then didn't look?

A. No. I did. 20

Q. You weren't paying any attention to those lights?

A. I beg your pardon. I told you before I did look at the lights. I was paying attention to them.

Q. You were paying strict attention to the lights?

A. Well, you would not call it strict attention, no.

Mr. Lloyd: That is all.

Mr. Rauffenbart: That is all. 30

(Witness excused.)

CLARA EICHINGER, called as a witness on behalf of the plaintiffs, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Rauffenbart:

10 Q. Mrs. Eichinger, you are the mother of Anna Eichinger, the little girl who was injured?

A. Yes, sir.

Q. You, of course, know nothing about — you weren't at the scene of the accident?

A. No, sir.

Q. And where did you first see Anna after the accident?

A. The night after the accident I seen Anna in the hospital.

20 Q. The day of the accident where were you?

A. Up in the Guarantee Trust Company of Philadelphia, signing some papers.

Q. Philadelphia?

A. Yes, sir.

Q. You are a widow; are you?

A. Yes, sir.

Q. How many children have you?

A. Five.

30 Q. At the time this accident occurred where did you live?

A. 35 South Massachusetts Avenue.

Q. Have you other daughters?

A. I got a daughter fifteen, next to Anna.

Q. Now, when did you first—when do you say you say Anna after the accident?

A. The night after the accident I saw Anna in the hospital.

Q. How long had she remained at the hospital?

A. Well, I just couldn't exactly say how long she remained at the hospital.

Q. Do you recall what month she came out?

A. No, I have forgotten all of that. I have been under a doctor's care ever since, and I have forgotten.

Q. Do you know how much of a bill you got from the hospital?

A. Well, I know it was over one hundred dollars, but I can't just exactly say how many dollars it was over. 10

Q. After Anna came out of the hospital here, what did you do with her?

A. I had her transferred up to the Jefferson Hospital. I got a nervous breakdown and had to go to Philadelphia, and had her transferred to Philadelphia, Jefferson Hospital.

Q. How long did she go to the Jefferson Hospital?

A. I don't exactly remember the month but I know it was a long time she had been going to the Jefferson Hospital. 20

Q. She continued to receive treatment in the Jefferson Hospital?

A. Yes. And after that she continued treatments at home.

Q. Up to what time did she continue the treatments at home?

A. Well, I just couldn't exactly say.

Q. Does she have any trouble with her leg now?

A. Yes, up to today. 30

Q. Does she sometimes treat it now?

A. Yes.

Q. Well, what treatment?

A. Well, she has—after that she had—after she came from the hospital she had soaked it every night in olive oil, as the doctor told her to. Then after

she stopped treating it with olive oil every night she probably did it two or three nights a week, and now every once in a while her leg cramps on her and I massage it with olive oil.

Q. Did she complain of her leg after the accident, after she was dismissed from the Jefferson Hospital?

A. Yes, up to the last time we were down here on the case. She took a cramp down towards the Boardwalk and I had to stop on the Boardwalk with her quite a while before I brought her back here to the court room.

Q. That was last May, was it?

A. Well, whatever month the case was here.

Q. Was she going to school here at the time the accident occurred?

A. Yes, sir.

Q. Did she have to remain out of school as a result of the accident?

A. She remained out of school all the time she was in the hospital, and she lost quite a good bit. After we had went to Philadelphia, she lost a good bit of her time from school.

Q. Was it necessary for her to keep off of her feet?

A. Yes. She can't walk—she couldn't walk then on her foot much. It would cramp up when she would walk on her foot much. It would cramp up when she would walk on her foot.

Q. Had she previous to this helped you about the house, previous to the accident?

A. Well, not up until here lately.

Q. Previous to the accident had she helped you about the house?

A. No, no. She didn't do anything around the house.

Q. Do you understand what I mean?

Mr. Lloyd: If your Honor please, she has answered the question.

Mr. Rauffenbart: Well, I do not care anything about it.

The Court: I think I will permit that to be repeated.

Mr. Rauffenbart: I do not care anything about it. 10

The Court: You said "previous."

Mr. Rauffenbart: I thought maybe she didn't understand what I meant.

The Court: I should think the word "before" would be better.

Q. Before she was hurt did she assist you about your household duties? 20

A. Oh, yes. Anna was a great help to me before she was hurt.

Q. And after she was hurt was she able to do the things, any of those duties about the house for you?

A. No; she never did anything for me around the house after she was hurt.

Q. You don't recall exactly how much the doctor's bill was, do you?

A. No. I did have a bill. I don't know whether I gave it to you or who, but I know it was over one hundred dollars. I can't say how many odd dollars it was. 30

Q. That was the Atlantic City Hospital?

A. Yes, sir.

Mr. Lloyd: If you have a copy of that bill —

Mr. Rauffenbart: It was \$104.

Mr. Lloyd: We make no objection.

The Court: \$104.

Cross-examination.

By Mr. Lloyd:

10

Q. Anna is now employed; isn't she?

A. Yes, sir.

Q. And has been for some considerable length of time?

A. Well, she has been employed at Mrs. Keidle's house.

Q. And she has had a number of positions in the last two years?

A. Well, no. She has been there I judge about six or seven months.

20

Q. Well, she had other positions before that; didn't she?

A. Well, maybe at times she would go to work for a week or sometimes two weeks. Sometimes she would work a week. She never was steady. Just like when she wanted a pair of shoes or something like that during her vacation time, she would go to work.

Q. She is now working steadily?

30

A. Yes. She is working from twelve to six for Mrs. Keidle's bakery store.

Re-direct examination.

By Mr. Rauffenbart:

Q. How long has she been working there?

A. I judge about six or seven months. I don't know exactly how many months she has been working there.

Q. That is the last six or seven months?

A. Yes, sir.

Q. Is that the only time she has worked steady since the accident occurred? 10

A. Yes, sir.

Re-cross examination.

By Mr. Lloyd:

Q. This is really the first steady job she ever had, isn't it? 20

A. Well, she could have had steady jobs but she was not able to work.

Q. She didn't want to work; did she?

A. Yes, indeed. Anna was a good worker.

Q. She never had a position before this accident, did she?

A. Well, she worked in Whitman's. She could have had a nice position there. But she couldn't work on account of her leg.

Q. When did she have a position in Whitman's? 30

A. I can't just recall the date.

Q. How long did she work there?

A. I don't exactly know.

Q. Where else did she work besides Whitman's?

A. Well, then she worked at the Modern Laundry, for a while.

Q. How long did she work there?

A. I don't exactly know the time.

Q. Now, do you know whether she worked one day or one week —

A. Well —

Q. —or one month?

A. She would sometimes work once a week and she would complain of her leg, and I would tell her to stay home and she would go back again.

10 Q. Go back to a new position?

A. Back to the laundry. She went back to the laundry I think twice.

Q. Did she ever go back to Whitman's?

A. No; she never went back to Whitman's.

Q. And do you know how long she worked at Whitman's?

A. No, I don't.

Q. Didn't she work anywhere else?

A. Well, I just can't recall.

20 Q. This is the first steady job that she has ever had, though, that she has ever wanted?

A. Well, I just can't tell—well, this is the first job she has ever worked steady at. She works from twelve to six.

Q. Before she used to go to work whenever she wanted a pair of shoes or a new dress or something like that.

A. Well, if she felt good enough, yes. I didn't have the money to buy new clothes.

30 Q. Before that time she was too young to go to work, wasn't she?

A. No; she never went to work when she was too young, only in the summer time during the vacation of school.

Q. Then she has only been working since she has been old enough to work?

A. Yes.

Q. That is the last six months?

A. Yes.

Q. Steadily, except for odd jobs before that?

A. Yes.

By Mr. Rauffenbart:

Q. Did she quit these other jobs because she could not stand on her feet?

10

Mr. Lloyd: I object.

A. She quit these other jobs ——

Q. Why did she quit these other jobs?

Mr. Lloyd: I object.

Mr. Rauffenbart: All right. I withdraw the question.

20

(Witness excused.)

---

CHARLES KRAUSS, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

30

By Mr. Rauffenbart:

Q. You are the defendant in this case, aren't you?

A. Yes, sir.

Q. I show you what purports to be a written statement of the accident here made in writing on Octo-

ber 23, to the Police Department, and ask if that is your signature?

A. That is right.

Q. Is that your writing?

A. That is right.

Q. You wrote that statement yourself, did you?

A. I believe I did.

Mr. Rauffenbart: I offer it in evidence.

10

Mr. Garrison: No objection.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff, P1.)

PLAINTIFF RESTS.

20

DEFENDANT'S MOTION FOR NON-SUIT.

Mr. Lloyd: I move at this time for a non-suit on two grounds: First, there is no evidence of any negligence on the part of the defendant; secondly, that the plaintiff clearly shows she was guilty of contributory negligence.

30

The Court: I will deny the motion and grant an exception.

Mr. Lloyd: Exception.

DEFENDANT'S CASE.

EDNA M. KRAUSS, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Lloyd:

10

Q. Mrs. Krauss, where do you live?

A. You mean where we were at the time of the accident or where do we live now?

Q. Where do you live at the present time?

A. 4410 Ventnor Avenue.

Q. Where did you live at the time of the accident?

A. 119 St. James Place.

Q. How long have you lived in Atlantic City?

A. All my life. I was born and raised here. 20

Q. And you are married?

A. Yes, sir.

Q. Who is your husband?

A. Charles M. Krauss.

Q. What is his business?

A. City fireman.

Q. How long has he been in the fire department?

A. It will be twelve years this June.

Q. Have you any children?

A. Yes, sir; one little girl. 30

Q. How old is she?

A. She is eleven now.

Q. On October 23, 1925, did you own an automobile?

A. Yes, sir.

Q. You or your husband, rather, did?

A. Yes, sir.

Q. What kind of car was that?

A. Studebaker light six.

Q. And do you know what model it was?

A. I would not say for sure but I believe it was a 1922, but I really don't know that for a fact.

Q. It was an old car?

A. It was an old car.

Q. Was it an open car or closed car?

A. It was a closed car.

10 Q. Do you recall the night of this accident?

A. Yes, sir.

Q. Where were you just prior to the accident?

A. The night of October 23rd we left our home on St. James Place, my husband, little girl and myself got in the car, turned east on Pacific Avenue, went up Pacific Avenue until we reached New Jersey and Pacific, where we stopped and waited for the light to make a left-hand turn on to New Jersey Avenue. When the light changed we turned left on to New Jersey Avenue, were proceeding north on New Jersey between Atlantic and Pacific, and we were about in the center of the square. The light we noticed was amber. Mr. Krauss had slowed down to come to a stop. When we were probably within 75 feet of the corner the green light went on for us to proceed ahead. We proceeded ahead. When I should say we were within four or five feet of the line of Atlantic Avenue where the store windows runs along, a child suddenly appeared from around the corner on roller skates. She threw up her hands and screamed just before she left the pavement. She was going very fast.

20  
30

Q. I didn't hear that.

A. She threw up her hands and screamed just before she left the pavement. She realized she couldn't stop, she was going so fast, when she came from around the corner.

Mr. Rauffenbart: I think that should be stricken out.

The Court: Yes, as a conclusion.

Q. How was she coming around the corner?

A. You see, we were on New Jersey Avenue and we had not got to the store line yet, which would make us still on New Jersey, and she was coming around the corner from Atlantic Avenue. We were 10 both coming in the opposite direction.

Q. Now, just go on and tell us what happened.

A. The child suddenly came off of the pavement into the side of our car.

Q. Now, how far did your car go after this happened?

A. I should imagine between two and three feet.

Q. Were you going fast or were you going slowly before?

A. No. Mr. Krauss had slowed down to come to a 20 stop, when the green light had gone on, and we just started up —

Q. You just started to go on?

A. Yes, started to go on.

Q. And where was the little girl, after your car stopped?

A. She was lying beside our car. I should say beside the right front fender and the running board, about so far from the car as I stepped out.

Q. Was she lying between your car and the curb 30 from which she had just come?

A. Yes, she was.

Q. Did she at any time get in front of your car?

A. No. She came into the side of us.

Q. What did you do immediately afterward?

A. Got out of the car, took the child to the hospital.

Q. Now, did you see Helen Burke there?

A. No, I did not.

Q. Was she there?

A. I didn't see Helen Burke there.

Q. Did she ask you to take her to the hospital?

A. No. No one asked us to take them to the hospital.

Q. Did you see Antoinette there?

A. Yes.

10 Q. Did she ask you to take her to the hospital?

A. No. No one asked to go to the hospital with us.

Q. Now, did you stay there any length of time?

A. Stay where?

Q. After the collision occurred?

A. At the scene of the accident?

Q. Yes.

A. No. We immediately picked the child up, put her in the automobile and went right to the hospital.

20 Q. Were there many other people around there?

A. There was Antoinette and there were some boys around there. Traffic was at a standstill on Atlantic Avenue.

Q. Did you know anybody else that was there?

A. No.

Q. You didn't get the names of anybody else?

A. No. We immediately got in the car and took the child to the hospital.

30 Q. What did you do after you took Anna to the hospital?

A. We called up the Accident Bureau.

Q. What did you do in that respect?

A. Well, two men came down to the hospital and one stayed there, and another young gentleman went to the City Hall with us.

Q. Was a charge made against your husband?

Mr. Rauffenbart: I object.

The Court: What difference does it make?

Mr. Lloyd: I don't suppose it makes any difference.

The Court: No.

Q. What, if anything, did you do the next day? 10

A. The next day I went up to the home of the injured girl to see if the mother came home, and the injured girl's mother had not arrived home yet.

Q. Did you see anybody there?

A. Yes, Antoinette Miller.

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

A. I asked her if she would like to go down to the hospital to see Anna. She said yes. We went to the hospital and Antoinette was under age and they wouldn't allow her up to see Anna. 20

Q. Wouldn't let Antoinette up to see Anna?

A. No.

Q. Did you go to the hospital to see Anna several times?

A. I went to the hospital to see Anna the next day after the accident.

Q. You were interested, of course?

Mr. Rauffenbart: I object —

30

A. I was.

Mr. Rauffenbart: I think the attorney should put the questions and let the witness answer, instead of testifying himself.

The Court: Yes.

Q. Was Anna going fast or was she going slow when she came off the sidewalk?

A. She came off the corner very fast. She couldn't stop herself and she threw up her hands and screamed before she left the pavement.

Q. Did you say whether or not she was in front of your car?

A. Anna was in front of our car?

Q. Yes.

10 A. No. She came into the side of our car.

Q. Never was in front of your car?

A. No.

Q. She didn't go in the middle of the street and turn around and come back?

A. No.

Q. You are certain of that?

A. I am positive.

Q. Where were you seated in the car?

20 A. In the front seat opposite Mr. Krauss—in the front seat beside Mr. Krauss.

Q. You had a good view?

A. Well, see, she came to my right. So I really had the full view.

Q. You saw her all the time?

A. I seen her as she came from around the corner.

Q. And this accident didn't take very long to happen, did it?

A. No. It all happened in a second.

30 Q. Now, did you see Helen Burke at any time after this accident?

A. Yes. I seen her at the home of the injured girl after we left the City Hall.

Q. Was that the same night?

A. Yes.

Q. Or the next day?

A. That was the same night.

Q. You saw her at Anna's home?

A. Yes.

Q. Did you have a conversation with her?

A. Yes. I asked her for her name and address, and also Antoinette; because I thought they probably had both seen the accident, and she gave them to me.

Q. Did you ask her about the accident?

A. No, not that night.

Q. You didn't ask her?

10

A. We didn't discuss it.

Q. Now, did you see at any time after that?

A. The next morning, which would be the second day of the accident. I went around to her mother's home, and Helen and her mother were both there, and her mother and Helen both said Helen did not see the accident; that she was nowhere near the scene of the accident; that she was at the home of the injured girl when it happened.

Q. You are certain of that?

20

A. I am positive.

Mr. Lloyd: Cross-examine.

Cross-examination.

By Mr. Rauffenbart:

Q. What did you say you first did after leaving the hospital?

30

A. We went to the City Hall.

Q. Did you make a statement there?

A. No, I didn't make any statement.

Q. Did your husband?

A. Yes, I believe he made a written statement.

Q. Before writing the statement you had a talk with Mr. Braash?

A. No, I didn't talk to Mr. Braash.

Q. Your husband did, didn't he?

A. Mr. Krauss, I believe, had seen him at the hospital.

Q. Didn't he talk with Mr. Braash when he wrote the statement up at the City Hall?

A. That I couldn't tell you.

Q. Well, you were right with him all the time?

A. I wasn't sitting with him, no.

10 Q. How far were you from him?

A. Well, he would be in one corner and I would be in the other.

Q. You could hear, it was all in the same little room, wasn't it?

A. Yes.

Q. Small room, tiny room, wasn't it?

A. Yes.

Q. Room enough for one big desk?

A. No, I should say it would be larger than that.

20 Q. Well, two big desks?

A. Probably.

Q. So that you could hear all the conversation was had in there in the ordinary tone of voice, couldn't you? Could you, Mrs. Krauss?

A. I could if Mr. Krauss talked very loud, but Mr. Krauss is not a loud talker.

Q. He is not allowed to talk?

A. No, I say he is not a loud talker.

30 Q. Well, he would not have to talk very loud in this room to hear what he said; would he?

A. That I don't know.

Q. You signed the statement; didn't you?

A. I signed the statement as a witness; yes, sir.

Q. You knew what you signed, didn't you?

A. No.

Q. Oh, you didn't?

A. No.

Q. Well, what did you imagine it was?

A. I put my name there as a witness.

Q. And did you know what Mr. Krauss was doing when he was writing that?

A. No, I didn't look at it.

Q. Did you think he was making his will?

A. Well, I would not say that, but you see I wasn't over there. I was sitting in the corner with my little girl.

Q. And you didn't have the slightest idea of what 10 he was doing?

A. I saw Mr. Krauss writing, yes.

Q. Well, did you know what he was writing?

A. No, I didn't.

Q. Did you have any idea what he was writing?

A. I imagine he was making a statement.

Q. A report of the accident?

A. Report, yes.

Q. As a matter of fact, you knew that; didn't 20 you?

A. No; I never was in anything like that before.

Q. Well, what did you suppose you went to the City Hall for?

A. Well, I think it was the best thing to do.

Mr. Lloyd: What was that answer?

The Witness: I thought it was the best thing to do.

Q. And he made this statement there and you 30 signed it; that was the first place you went after leaving the hospital?

A. Yes, sir.

Q. And as far as you know he might have been drawing up a separation agreement or something like that?

A. He may have, yes.

Q. You weren't supposed to have anything to do with this accident, were you?

A. I saw it.

Q. Now, didn't you read it?

A. Beg pardon?

Q. Didn't you read it?

A. No. I didn't read it.

Q. Do you remember any conversation at all took  
10 place between the man in charge and he?

A. No.

Q. Just indicate to the jury how big this room is where the statement was made.

A. I should say it would start about here and wind up about the corner of your table here, Judge, and around.

Q. Yes. That is about eight by eight, or something like that; it is a very small room. Did you hear anything that was said at all?

20 A. Why, when we first went in, Judge Paxon was there.

Q. Yes.

A. My husband said there had been an accident to a child.

Q. Beg pardon?

A. My husband said there had been an accident with a child coming into his car on roller skates.

Mr. Lloyd: I object to that. The man was ac-  
30 quitted of being —

The Court: I do not think that anything that happened at the City Hall is of any material value in this case one way or the other. I do not see that it makes much difference in this case whether Mrs. Krauss read that statement or not.

Q. Why did you—where did you go from the City Hall?

A. We went to the home of the injured girl.

Q. Whom did you see there?

A. We saw Antoinette and Helen Burke and a man.

Q. Hadn't you see those two little girls prior to that time?

A. No. I had only seen Antoinette.

Q. You had seen Antoinette, had you?

10

A. Yes.

Q. You had not seen Helen Burke up to that time?

A. No.

Q. You never had any idea that Helen Burke had seen this accident at all?

A. When I seen —

Q. Did you have any idea up to the time—well, the last time that you visited Mrs. Eichinger's, that Helen Burke knew anything about this accident?

A. The night of the accident I thought that Helen Burke did see the accident; but the next day her mother told me she did not see the accident; that she was not there. 20

Q. So that the night of the accident you thought that Helen Burke did see the accident?

A. Yes, because she was at the home of the injured girl.

Q. And the next day you didn't think she had because you say who told you?

A. Her mother.

30

Q. That they didn't see the accident?

A. That Helen didn't see the accident.

Q. That Helen didn't see the accident. Now, did you see Antoinette at the scene of the accident?

A. Yes.

Q. Did you talk with her there?

A. No.

Q. Didn't she ask you to take her to the hospital?

A. No, she did not. No one asked to go to the hospital with us.

Q. Now, when you went down to the Eichinger home, did you have any conversation there with anyone?

A. Yes, the man at the house told me the mother was out of town, and there were two small children, I believe, at home, and he didn't know where to locate the mother. So I offered to stay with those two little children until the mother came home and keep house for them.

Q. What did he say?

A. He told me he didn't need it.

Mr. Garrison: I object to that. How can that be evidential?

Mr. Rauffenbart: All right.

20 Q. Did you tell the gentlemen there at the house that the little girl was only slightly cut?

A. No, I did not.

Q. Did you tell him there that you would have your own physician take care of her?

A. No.

Q. Did you tell him there that you would have a private ward for her?

A. No.

30 Q. Did you tell him there that the accident was unavoidable; that you could not stop?

A. No, sir, I did not.

Q. You have been to Antoinette Miller's home since—prior to the trial of this case the last time you went there; didn't you?

A. It was a year and a half longer when we first received notice that the trial was coming up.

Q. Did you go just prior to the trial the last time to Miller's?

A. Yes.

Q. Did you talk to Antoinette Miller after the accident?

A. That night I seen her at the injured girl's home.

Q. Did you say in the presence of—did you tell Mrs. Miller in the presence of Antoinette that you were going to pay all expenses?

A. No, sir; I did not.

10

Mr. Garrison: I object.

Mr. Rauffenbart: She has answered. She said no. I think it goes to the credibilty of the witness, if the Court pleases.

The Court: Yes. I think if you expect to show that such a statement was made it goes to the credibility; that is all.

20

Mr. Rauffenbart: That is all, yes.

Q. Now, you say that you were going from Pacific Avenue up New Jersey to Atlantic Avenue, and it was your intention to cross Atlantic Avenue; wasn't it?

A. Yes.

Q. And you wanted to make the green light there for that purpose; didn't you?

30

A. No.

Q. Well, you cannot cross except on a green light, can you?

A. No, but we were in no hurry. We were not going very fast.

Q. I didn't ask you that.

A. You asked me if we wanted to make the green light.

Q. You have to make the green light before you can cross?

A. Yes, but we were in no hurry to make it.

Q. You were in no hurry to make it. Now, how fast were you going when you reached the intersection of Atlantic and New Jersey Avenues, if you know?

A. Around eight miles an hour.

Q. Who was driving?

A. Mr. Krauss.

Q. Did you notice the speedometer?

A. No, I did not.

Q. You said something on your direct examination about having slowed down. How far from Atlantic Avenue were you when you slowed down?

A. Mr. Krauss started up about the center of the square when he first noticed the yellow light was on, and he was drifting I should say until we got to about 75 feet of the corner, when the green light went on.

Q. How fast were you going when you were drifting as you say?

A. Somewheres around eight.

Q. About eight miles an hour?

A. About, yes.

Q. So then you were within seventy-five feet of Atlantic Avenue when the green light went on; weren't you?

A. Yes.

Q. And as soon as the green light went on, then Mr. Krauss, your husband, put on the gas again?

A. Just a little bit. We were going very slow because we were coming to a street intersection.

Q. Well, you said eight miles an hour?

- A. Around that.  
Q. Then he put on the gas?  
A. We went ahead.  
Q. And you went faster; didn't you?  
A. No; we traveled very slow.  
Q. Now, when he opened on the gas, you mean to say you didn't go any faster?  
A. Just a trifle.  
Q. Weren't you going twelve miles an hour at the intersection? 10  
A. No; we were not.  
Q. You have read that statement, haven't you?  
A. No, I did not.  
Q. It was read to you at the last trial, wasn't it?  
A. No, I don't think so.  
Q. Now, when did you ——

Mr. Garrison: We have no objection to your letting her read it. 20

- Q. Do you care to read it?  
A. Yes.  
Q. (Counsel hands statement to the witness.)  
Have you read it?  
A. Yes, sir.  
Q. Is that statement true?  
A. Is it true?  
Q. Yes, is it true?  
A. Well, at the time that my husband made that 30 statement, he made it with all truthfulness.  
Q. And you were there when he made it?  
A. I was there when he wrote it.  
Q. It was right after the accident or a short time after?  
A. Yes.

Q. So the facts would be fresher in his memory, in his mind?

A. (No answer.)

Q. He was driving, was he?

A. Yes.

Q. And he says here: "I don't know whether the right front wheel went over the girl or whether she skated into the right front mudguard." Now, he was a man in control of the car and naturally looking ahead, wasn't he?

A. Yes.

Mr. Lloyd: I object to that. What he was naturally doing does not bind this witness.

Mr. Rauffenbart: We don't want to bind the witness. We are trying to bind the defendant.

The Court: I will sustain the objection to the question in its present form.

Q. Now, after having read this statement, will you say that you were not going twelve miles an hour at the crossing?

A. In my estimation we were going around eight miles. We were traveling very slow.

Q. Your husband is a fireman; isn't he?

A. Yes.

Q. He drives a fire truck; doesn't he?

A. He drives any car.

Q. How long has he driven a fire truck?

A. Around ten years.

Q. And he was the driver of this automobile?

A. Yes.

Q. And drives you around and did drive you around considerably?

A. Yes.

Q. When he says, "We slowed down at the crossing to twelve miles an hour," you say he told that in all truthfulness; isn't that what you said?

A. Yes.

Q. And when he said, "I don't know whether I ran over her or the mudguard hit her," he told that in all truthfulness; didn't he?

A. Yes.

Q. Now, you say she was coming down Atlantic Avenue at a high rate of speed?

10

A. Yes.

Q. When did you first observe her?

A. As she came around the corner from Sandler's store.

Q. Do you know of your own knowledge whether or not your husband observed her at the same time?

A. I couldn't say for sure, but I am quite sure that he would have seen her at the same time.

Q. What?

A. I am quite sure that he would have saw her at the same time that I did.

20

Q. That he did see her?

A. Yes.

Q. But you are not sure about that; are you?

A. I wouldn't say for sure.

Q. No. And what made you quite sure, that you said that he did know?

A. What?

Q. What made you say that you were quite sure that he saw her at the same time you did?

30

A. You see, we were looking ahead and she came out so quickly that he didn't see her, he didn't see her.

Q. He should have seen her, shouldn't he?

A. Yes.

Q. You saw her just before she passed the corner store of Sandler's?

A. She came out very quickly past the window.

Q. How far past the corner were you at the time you first observed her?

A. I should imagine between four and five feet.

Q. Four or five feet of where, of the property line?

A. Where the windows begin.

Q. You were four or five feet back of that?

A. Yes.

10 Q. You saw her just come by the window. The sidewalk there is about ten feet wide; isn't it?

A. I imagine the same as any other street.

Q. Of course, you were driving right along the curb line; weren't you?

A. No; we were not.

Q. Weren't you driving close to that curb line of New Jersey Avenue?

A. No; we were not.

Q. Well, how far were you from it?

20 A. I should judge about so far. (Indicating.)

Q. Five feet?

A. Yes; between four and five, I should imagine.

Q. The sidewalk is about ten feet wide, you say?

Mr. Lloyd: She did not say that. "Same width as any other sidewalk." I don't know how wide they are.

Q. Well, you don't have any idea how wide it is?

30 A. No.

Q. The width of the sidewalk. And you were about five feet out in the street?

A. From the sidewalk.

Q. And you weren't going over eight miles an hour?

A. We were going around that. To be sure. I

cannot say just how fast we were going, but we were going very slow.

Q. Now, what did your husband do immediately on your seeing the little girl?

A. We came to a stop.

Q. What did he do? Do you drive a car?

A. Yes.

Mr. Garrison: What difference does that make? 10

The Court: Well, she said yes.

Q. Do you know what he did?

A. Well, to be exact I can't say what he did, but I imagine that he threw his clutch and put on his brake.

Q. Did he do that after he hit her or before?

A. Before.

Q. Now, do you remember this question and answer at the previous trial of this case—this is a question put to you, and your answer: “Q. Did your husband stop right away? A. I should imagine after he had struck her he applied his brake right away, and after he struck her I imagine he went around three feet, two or three feet, after applying the brakes.” Do you remember giving that answer in answer to the question I have just repeated? 20

A. No, I don't remember.

Q. Will you say you didn't? 30

A. No.

Q. What is that?

A. No.

The Court: “No,” she says, she wouldn't say she did not.

Q. Then which is correct now—just one minute. Have you read this testimony since the last trial?

A. No.

Mr. Garrison: What difference does that make?

The Court: She says she has not.

Q. You have not had a copy of this?

10 A. No.

Q. All right. Now, if you did give such an answer to such a question, which is the truth, what you are telling now or what you told then?

A. As soon as my husband saw the child —

Q. Answer the question. Now, if you did give such an answer to such a question, which is the truth, what you are telling now or what you told then?

A. What I am telling now.

20 Q. And what you told then, last May, was untrue?

A. No. If I said that I didn't understand your question right, Mr. Rauffenbart.

Q. Well, let me repeat it and see if that question is one that you couldn't understand. I want you to get it right. I don't want you to be put in a bad light.

Mr. Lloyd: Don't worry about that.

30 Q. "Did your husband stop right away?"

A. Yes.

Q. No, that is the question that was asked the last time. I am just repeating it.

Q. "Q. Did your husband stop right away?" Now, is that a question hard to understand?

A. No.

Q. Is there any reason why you should not have understood that question at the last trial?

A. Well, in so far as I can say, but you see, Mr. Rauffenbart —

Q. I will repeat the answer: "A. I should imagine after he had struck her he applied his brake right away and after he struck her——" Mind you, you repeat that twice—"I imagine he went around three feet, two or three feet after applying the brakes." Now, do you still say you don't remember 10 answering that question?

A. No, I don't.

Q. And do you still say that you didn't understand the question if you answered it that way?

A. Yes, sir.

Q. Now, you say that the little girl was coming at a terrific rate of speed?

A. Yes.

Q. Terrific rate of speed off the sidewalk?

A. Yes. 20

Q. And that you saw her just before she got to the corner of the store?

A. Just as she left the store window. She had to get out beyond the window before we could see her.

Q. And you were four feet back and five feet from the curb, and it was like the snap of a finger when she hit the car?

A. Yes.

Q. That is what you said before, wasn't it?

A. Yes, sir. 30

Q. And you had a closed car; did you?

A. Yes.

Q. Did you say before in answer to my question or in answer to the question of Mr. Lloyd what part of the car she hit —

A. The right —

Q. Did you say, "She hit the car just about where I was sitting?"

A. I don't remember that question.

Q. Will you say you didn't answer such a question in that way?

Mr. Garrison: I object. Let him read the question.

10 The Court: I thought he had read it.

Mr. Rauffenbart: I have read it.

The Court: Let her have the question and answer.

20 Mr. Garrison: We will admit that whatever is in that transcript is what Mrs. Krauss said at the last trial. It would be impossible for her to say everything —

The Court: They have a right to cross-examine. Proceed.

30 Q. Now, in answer to the question of Mr. Lloyd: "Now, will you tell me just how you drove up to the point of the accident?" And this answer: "Yes. On the night of October 23rd, around, I should judge, seven-twenty or so, Mr. Krauss got in, and I sat beside him in the front seat. We turned St. James and Pacific, proceeded up Pacific Avenue to New Jersey. We waited for the light to change there, and the light changed and we turned with the light and proceeded north on New Jersey Avenue." That is correct so far?

A. Yes.

Q. "We were about in the center of the block of New Jersey Avenue, and the light turned to amber on New Jersey and Atlantic Avenue." You remember that?

A. Yes.

Q. "About in the center of the block."

A. Around that

Q. "Well, he had slowed up the car in order to prepare to come to a stop when the light changed to green and he started the car again."

10

A. Yes.

Q. That was about the center of the block, wasn't it?

A. (No answer.)

Q. "And just as we neared the corner of Atlantic Avenue where the pavement runs down to Sandler's store, all of a sudden a child darted off the pavement into the street. She was really racing, she came so fast. She came into the right-hand side of our car and struck the fender right about where I was sitting."

20

A. That is what I say, the right front fender.

Q. "Right where I was sitting." Did you say that?

A. Well, that I couldn't say.

Q. Well, will you say that you didn't so testify?

A. No.

Q. Today, though, you didn't say she hit the car right where you were sitting; did you?

A. You didn't ask me where she hit the car. Did you?

30

Q. Well, I will ask you now. Where did you say you picked her up?

A. We picked her up beside the car, beside the front fender and the running board on the right-hand side.

Q. Did you say between the front wheel and the running board?

A. No, I don't think so.

Q. And that is even in front of where you were sitting; isn't it?

A. In front of where I was sitting?

Q. When you picked her up, had the car proceeded so far that she was back of the seat where you were sitting?

10 A. No.

Q. She was in front of it; wasn't she?

A. No. I would say she was—you see, she was quite long and her body would be lying right along there beside the running board and the fender, which I believe was back in—right by the front door where I was sitting.

Q. If you said that she hit the car right about where you were sitting, that was not the fact, was it?

20 A. She came into the right-hand front fender.

Q. Yes, but is this answer that you gave at the previous trial to Mr. Lloyd correct or not, that she hit the car just where you were sitting?

Mr. Lloyd: Read the whole, not any particular part.

30 Mr. Rauffenbart: I read it. That is all the answer.

The Court: You got her all the way from St. James Place.

Mr. Rauffenbart: Yes; I read it all the way through.

Mr. Lloyd: Well, she has already answered that that is true to the best of her recollection.

The Court: No, I don't think she did. If she did I overlooked it. I will let him repeat that question, the last question.

Q. (Repeated by the stenographer.) But is this answer that you gave at the previous trial to Mr. Lloyd correct or not, that she hit the car just where you were sitting? 10

A. Well, to the best of my knowledge, the child came into the front fender.

Q. You can answer that question.

A. Yes.

Q. That is true?

A. Yes.

Q. And you said on your direct examination that after you hit the child the car went three feet; didn't you? 20

A. Between two and three feet.

Q. Well, I am going to take three feet. That suits me better. Now, if she had hit the car when she ran into it, as you said, just about where you were sitting, and you went three feet and didn't drag her as you say you didn't drag her, she would be back of the rear wheel; wouldn't she, when your car stopped?

A. Mr. Rauffenbart, I believe if you read that testimony over again — 30

Q. No —

A. The right-hand front fender.

Q. If I read the testimony what?

A. Would you please, and see?

Q. Did you read this particular question and answer here?

A. No.

Q. Now, what is it you want me to look at and see?

A. If she had come into the car where I was sitting, she would have come into the door.

Q. "She was really racing, she came so fast. She came into the right-hand side of our car and struck the fender right about where I was sitting." That is plain enough; isn't it?

10 A. Well, you see, the fender does not run clear down to the door. So I don't know why I said, "where I was sitting"; because she came—oh, somewhere around the side of the fender, but I couldn't say just where.

Q. You say here that you slowed down in the middle of the block until the amber light changed to green.

A. Yes.

20 Q. Now, that block is 550 feet long; isn't it? Don't you know?

A. I don't know.

Q. Well, you know about what the distances are; don't you?

A. I can judge.

Q. Well, as a matter of fact, it is 550 feet there. So that if you stopped about the middle of the block, you would have been approximately 225—let's see, 275 feet from the corner; wouldn't you?

A. If we did what?

30 Q. Stopped in the middle of the block?

A. But we didn't stop in the middle of the block.

Q. You were in the middle of the block when the light changed to amber?

A. Yes.

Q. Then you drifted along at about eight miles an hour?

A. Yes.

Q. Then when you got within seventy-five feet of Atlantic Avenue, Mr. Krauss started to pick up?

A. The green light went on and we started to go ahead.

Q. And you say you were going then about twelve miles an hour?

A. No.

Q. Didn't you say at the previous trial that you were going twelve miles an hour and you had a right to because you knew the law?

A. No; I didn't say we were going twelve miles an hour. We were going about eight miles an hour when the child was struck.

Q. Didn't you say twelve miles an hour was all right; that you had a perfect right to go that speed?

A. When you insisted I was going twelve miles an hour, I said, "Mr. Rauffenbart, if we were we would still be within our rights;" but I didn't say we were going that fast when we struck the child.

Q. But you have not read this testimony?

A. No.

Q. And you at no time were going as fast as twelve miles an hour?

A. Yes.

Q. When?

A. Before we came to a stop, or before we seen the yellow light went on, when we left Pacific Avenue.

Q. You didn't stop?

A. No.

Q. You didn't stop at the crossing; did you?

A. When we got to Atlantic Avenue.

Q. When the child was struck?

A. The machine stopped.

Q. That was the only time you stopped?

A. Yes.

Q. That was the only time your husband applied

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the brakes after he picked up seventy-five feet from Atlantic Avenue?

A. No. He applied his brakes when we were in the center of the block to slow down.

Q. But after you picked up, the green light came on, I understand?

A. Yes.

Q. And you picked up?

A. Yes.

10 Q. He did not apply the brakes again until he hit the child?

A. Yes, before.

Q. When was that?

A. I imagine as soon as he saw the child; because the car stopped.

Q. You imagine that?

A. Yes.

Q. Do you know?

20 A. I couldn't say for a fact about the car going to a standstill.

Q. Were you going faster at the crossing than you were when you were drifting?

A. You see, when we were drifting we were going around eight and of course when we started to go ahead I should judge we were going between eight and nine, to be truthful with you. We had to go a little bit faster to go ahead.

Q. Were you going faster when you crossed the crossing than when you were drifting?

30 A. Just a little bit.

Q. So that you didn't slow up at the crossing as you had in the middle of the block; did you?

A. No, because the green light was on.

Q. Because the green light was on?

A. Yes.

Q. And you thought that you had the right of way then; did you?

A. There was nothing in sight. Everything was at a standstill.

Q. Did you think you had the right of way because the green light was on?

A. Yes.

Q. And that nobody else had a right to cross the street?

A. No.

Mr. Lloyd: That is objected to. This witness 10  
was not driving the car.

The Court: No. That does not make any difference.

(Recess to ten o'clock the following morning.)

March 15, 1928.

(Trial resumed pursuant to adjournment.)

EDNA KRAUSS, recalled.

10 Cross-examination.

By Mr. Rauffenbart (continued):

Q. Mrs. Krauss, after you left the City Hall, after your husband made the statement, where did you go?

A. To the injured girl's home.

Q. And that is the time that you saw Mr. "Kingsley?"

20 A. I saw a man at the house.

Q. Then did you go back again to the injured girl's home?

A. Yes. I went back the next afternoon to see if the mother was home. She was not home and I went to the hospital from there.

Q. Then where did you go again? Did you go back again?

A. Yes. Mr. Krauss and I went back.

30 Q. Accompanied by Mr. Krauss. And did you see Mrs. Eichinger at that time?

A. Yes, we did.

Q. And did you talk with her?

A. Yes, sir.

Q. About the accident?

A. No, sir; we asked the condition of the child.

Q. Nothing said about the accident at all?

A. No, we didn't go into the details.

Q. But you had been to the hospital just previously, hadn't you?

A. That same evening.

Q. The day before?

A. The day before; yes, sir.

Q. And you knew the condition of the child then?

A. At that time; yes, sir.

Q. And you went there for the purpose of inquiring the condition of the child? 10

A. Yes, sir.

Q. You didn't think of calling the hospital for that purpose?

Mr. Lloyd: I object to that.

A. My sister-in-law lived across the street, Mr. Rauffenbart.

The Court: What difference does that make? 20

A. (Continuing). And I was visiting my sister

The Court: One minute.

The Witness: Oh, pardon me.

The Court: What difference does it make? 30

Mr. Rauffenbart: Is the question overruled?

The Court: Yes.

Q. Then you went down to the house with Mr. Krauss; did you?

A. Yes.

Q. And while you were there did you tell Mrs. Eichinger that the accident was unavoidable?

A. No, sir, I did not.

Q. And did you tell her that the little girl was only slightly hurt?

A. No, sir.

Q. And did you tell her that you had your own doctor attend to her?

10 A. No, sir.

Q. And did you tell her that you had a private room at the hospital?

A. No, sir; I did not; because we couldn't afford it.

Q. And did you tell her that you would take care of all expenses?

A. No, sir.

Q. When did you next see Mrs. Eichinger?

A. On a Sunday night at the hospital.

20 Q. Did you go up to see the little girl?

A. No, sir, we stopped at the window.

Q. Who was with you?

A. Mr. Krauss.

Q. Was Mrs. Eichinger accompanied by some one?

A. Yes. She had a lady with her.

Q. Did Mrs. Eichinger say to you: "I thought you told me that you were going to have your own doctor and private room and you were going to take care of my little girl and that she was only slightly  
30 injured?"

A. No, sir.

Q. Did she say that to you?

A. No, sir, she did not.

Q. What did she say to you?

Mr. Lloyd: I object.

A. She said that she was on her ——

Mr. Lloyd: I object.

The Court: I will permit it. I understand Mr. Krauss was with her.

A. She said that she was on her way up to the little girl. She didn't stay very long. And she went on and left us. 10

Q. Well, what was the conversation that took place? She talked to Mr. Krauss?

A. She spoke to Mr. Krauss.

Q. And what was said?

A. That I couldn't tell you. He bid her the time of evening, and she was in a hurry to get up to the little girl, and she didn't stand and talk to him.

Q. There was no conversation at all?

A. No, sir.

Q. Did Mr. Krauss say anything to her at all? 20

A. He spoke to her.

Q. What did he say?

A. "Good evening."

Q. Is that all that was said?

A. Yes, sir.

Q. Not another thing?

A. No, sir.

Q. And not another thing was said to you by Mrs. Eichinger in Mr. Krauss' presence?

A. I asked Mrs. Eichinger the condition of the little girl, and she said she was on her way up to see her then. 30

Q. You had just inquired?

A. No. We were just going in as we met her at the door.

Q. And she was going in?

A. Yes.

Q. Neither one of them had been up there yet to see the girl?

A. She had been in the afternoon, I think.

Q. How do you know that?

A. I took it for granted because they have visiting hours.

Q. She didn't tell you that?

A. No, sir.

10 Q. You say that you didn't have any conversation with either Antoinette or Helen at the scene of the accident?

A. No, sir.

Q. And they didn't ask you to take them down to the hospital?

A. I only seen Antoinette ——

Q. They didn't ask you to take them to the hospital?

A. No, sir; no one asked.

20 Q. You remember them coming to the hospital, however; don't you?

A. I seen Antoinette at the hospital.

Q. Wasn't Helen with her?

A. I didn't see Helen. She probably was there but I didn't see Helen.

Q. You didn't see Helen at the hospital?

A. No, sir.

Q. When did you next see Helen?

30 A. At the home of the injured girl that same evening, after we left the City Hall.

Q. Did you have a talk with her there?

A. I asked her her name and address.

Q. Yes. Then you say you saw her again?

A. I seen her the next morning at her home.

Q. Why did you ask her name and address?

A. Because being that she was at the home of the

injured girl I thought probably she had seen the accident.

Q. If there had been half a dozen others there, would you have asked them their names and addresses, too?

A. Maybe I would.

Q. You think you would, no matter who was there—you would have asked them, each one, their names and addresses?

A. No; but being they were alone, I thought they were together. 10

Q. You had some reason, then, for believing that Helen had seen the accident; didn't you?

A. No, sir.

Q. Well, would you have asked anyone that was present there, whether you believed it or not, what their names or addresses were?

A. Yes, sir. I asked Antoinette and Helen both.

Q. Was Antoinette there, too?

A. Yes. 20

Q. And you asked Helen Burke?

A. And Antoinette, both.

Q. At the home of Mrs. Eichinger?

A. Yes, sir.

Q. What did you ask Antoinette?

A. Her name and address.

Q. Did you write it down?

A. Yes, sir.

Q. How about Helen's? Did you write hers down? 30

A. Yes, sir.

Q. Was this the same day or the next day?

A. That was the night of the accident.

Q. Was your husband with you?

A. Yes, sir.

Q. And it was after you had been to the City Hall and made your report?

A. Yes, sir.

Q. And you knew Antoinette Miller before; didn't you?

A. No. I had never seen the child only at the hospital and the scene of the accident.

Q. You knew her name?

A. I didn't know her name until the child told me.

Q. You mean to say that you didn't know Antoinette Miller before you asked her name at Mrs. Eich-  
10 inger's?

A. No, sir.

Q. You never knew her name before?

A. No, sir.

Q. And you didn't know her address?

A. No, sir.

Q. And you went there for the purpose of getting her name and address?

A. No, sir. I went to Mrs. Eichinger's home to notify the mother, and the mother was out of  
20 town.

Mr. Lloyd: If your Honor please, we have been all over this once.

Mr. Rauffenbart: If your Honor please, we have not.

The Court: If we have not, go ahead.

30 Q. You didn't ask Antoinette her name at the time you went to the hospital from New Jersey Avenue?

A. No, sir.

Q. You didn't ask her then?

A. No.

Q. You didn't ask her at the hospital?

A. No.

Q. And you never knew who she was, what her name was, or her address, until you got it from her at Mrs. Eichinger's house?

A. Yes, sir.

Q. And Helen Burke was there, too?

A. Yes, sir.

Q. That was the first you knew of it?

A. That was the first.

Q. And before going there you had been and made your report to the police? 10

A. Yes, sir.

Q. Now, you said that the little girl skated into the side of your car?

A. Yes.

Q. And that this statement was made by your husband with the utmost truthfulness?

A. Yes, sir.

Q. Now, he says that he saw Anna Eichinger on roller skates, "was going west on the sidewalk on the south side of Atlantic Avenue, and went across 20 New Jersey Avenue directly in front of my car."

The Court: Well, what is the question?

Mr. Rauffenbart: I am framing it.

Mr. Lloyd: Well, I object to any question —

Mr. Rauffenbart: Let me finish the question. 30

The Court: I do not know what it is going to be.

Q. ——"directly in front of my car." Was your husband in such a position that he could have told at the time of the accident just where —

Mr. Lloyd: Objected to as calling for a conclusion. I do not care what the rest of the question is.

The Court: I haven't heard the question yet.

Q. ——"what the position of the young lady was —"

A. No, sir.

10 Q. ——"at the —"

Mr. Lloyd: That is objected to, if your Honor please.

Mr. Rauffenbart: All right. It is answered, anyhow.

Q. You say the little girl hit the fender on the right side of the car; that the fender hit her leg; is that correct?

20 A. That is correct.

Q. And that the fender hit her leg or injured her leg; is that correct?

A. Yes.

Q. But you say that she skated right into the car off the sidewalk, into the side of the car?

A. She came into the front fender on the right-hand side.

Q. Directly into the fender, skated into it; didn't she?

30 A. As she came—yes, she came off very quickly.

Q. Well, can you explain to the jury, then, how that injury—how she was injured as she was, inside of her right leg?

A. I believe the injury was here, wasn't it?

Q. In here, I think.

A. She skated into the front of the fender, the

front of the fender that runs along came into the child's leg just like that.

Q. Then it was the front of the fender that hit her? The fender went into her and she was in front of the car when she was struck; is that right?

A. No, I wouldn't say she was in front of it, because the fender runs along the beginning of the fender.

Q. And she was coming in this direction and you were going in that direction, and she would come face on? 10

A. She came sideways into the car like that.

Q. What?

A. She came sideways into the car.

Q. She came sideways?

A. Yes.

Q. Which way was she facing?

A. Because she tried to stop herself before she left the pavement.

Q. Which way was she facing?

A. She was coming like this and we were coming here. 20

Q. Was she facing your car?

A. When she came into it?

Q. Yes.

A. I should say she probably would be, trying to stop herself.

Q. Probably be trying to stop herself?

A. Yes; that she would be turned around just a trifle.

Q. That is your explanation of the location of the injury? 30

A. Yes, sir.

Q. Now, you went to Mrs. Burke's house, didn't you?

A. Yes, sir.

Q. And you met Mrs. Burke?

A. Yes.

Q. And you had a talk with Mrs. Burke about the accident, didn't you?

A. No, sir. I asked her if her daughter had seen the accident and her daughter and her both said no; that they—that her daughter had not seen it; that she was nowhere near the scene of the accident.

Q. And did you tell Mrs. Burke that you were at fault in the accident?

10 A. No, sir; I did not.

Q. That it was unavoidable?

A. No, sir.

Q. That you provided a private room and your own doctor for the little girl?

A. No, sir.

Q. Nothing like that?

A. No, sir, I did not.

Q. And that you would see that they were put to no expense because you had a little girl of your  
20 own?

A. No, sir; I did not. We couldn't afford it.

Q. Now, previously you said it was so fast—she was coming at such a terrific rate of speed that it was only from the time you saw her up until she hit the car, the snap of your finger?

A. Yes, sir.

Q. And you want this jury to believe in that time

Mr. Garrison: I object to what she wants the jury  
30 to believe.

Q. And you mean to say that in that time you could have come before this jury and explain in detail just how this accident occurred, just how she hit the car, where she hit it and how the injury was sustained?

A. Yes, sir. It all just happened like that, but I will never forget it.

Q. And you saw Antoinette there; didn't you?

A. Yes, sir.

Q. Was your car a closed car?

A. Yes, sir.

Q. And your window was up; wasn't it?

A. Yes, sir.

Q. It was in October—closed. And did Antoinette scream? What did she say when she called?

A. She just screamed. She hollered, "Oh, Anna!"

10

Q. Now, then, did you notice where that scream came from?

A. Antoinette screamed and I think the injured girl screamed just before she left the pavement. I heard the two screams, and the injured girl threw her hands up just before she came off the pavement.

Q. When did you—whom did you see first?

A. Antoinette—the injured girl.

Q. How did you know it was Antoinette who screamed?

20

A. I heard two screams.

Q. Well, do you know whom the other scream came from?

A. No, sir.

Q. You said on direct examination that Antoinette screamed. You don't mean that; do you?

A. Well, I heard two screams.

Q. You don't know whether Antoinette said anything or screamed or not?

A. No, sir.

30

By Mr. Lloyd:

Q. Have you had other accidents that you have gone to the Police Department for?

A. No, sir.

Mr. Rauffenbart: I object.

The Court: What difference does it make? I sustain the objection.

Q. What is your husband's salary?

Mr. Rauffenbart: Objected to.

10 The Court: I sustain the objection.

Mr. Rauffenbart: I will withdraw the objection.

A. At the time of the accident Mr. Krauss was making \$85.25 every sixteen days, I believe.

Q. \$85.25 every sixteen days?

A. Yes.

Re-cross examination.

20 By Mr. Rauffenbart:

Q. \$85.25 every sixteen days?

A. They were paid the first of the month and the 16th.

Mr. Rauffenbart: That is all.

(Witness excused.)

30

CHARLES M. KRAUSS, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Lloyd:

Q. Mr. Krauss, what is your business?

A. Atlantic City Fire Department.

10

Q. What sort of work do you do in the Atlantic City Fire Department?

A. I don't understand that. I do like everybody else does.

Q. Maybe the jury don't know what anybody else does. What are your duties in the Fire Department?

A. I drive the apparatus, and then, of course, I do what any other fireman does after getting to the fire.

20

Q. Help put out the fire?

A. Try to, yes.

Q. How long have you been driving automobiles?

A. I would say about twelve or fourteen years.

Q. How long have you been with the Fire Department?

A. I couldn't just tell you. I guess pretty near fourteen years, I guess; twelve or fourteen years.

Q. Now, do you remember this accident?

A. Yes.

Q. Immediately before the accident where had you come from?

30

A. Came from my home.

Q. Now, describe to his Honor and the jury how you came and what happened in your own words.

A. Well, I left my home. I got in the car and we

went to Pacific Avenue and then we turned right and went up Pacific Avenue until we reached New Jersey Avenue and Pacific, and there I had to wait for the light to turn, and when the light turned, why, I went around and proceed on towards Atlantic Avenue, and when I got about the middle of the block I noticed the light was yellow and naturally I just kept right on going, and when I got—oh, I don't know, I should say—I don't know how close I was to the corner; I seen the green light, I should say, somewhere  
10 around seventy-five or one hundred feet from the corner, I don't know just, but that is the way it seems to me, and naturally I let my clutch come up and proceeded on, and when I got right close to Atlantic Avenue, it just happened so quick it is really hard to explain just how it did happen, I don't know; because by the time I seen the child, we just seemed to come so quickly together there, there wasn't nothing to it, that I couldn't do anything. The only  
20 thing I could do was just throw my brake on, and after I hit the child I only moved about three or four foot; so it shows that I wasn't going fast; and naturally I got right out and picked the child up and put her in the machine and ran her right down to the hospital.

Q. Now, where was Anna in relation to your machine and the curb from which she had come after you had stopped and got out?

A. Why, she was lying right back of the right-  
30 hand front wheel, or alongside of it.

Q. Had your machine gone over her?

A. No.

Q. Did the front bumper of your car strike her?

A. Why, I wouldn't say it did; because if it had she would have got run over, I believe.

Q. Did she ever get in front of your machine?

A. No.

Q. You said she was alongside of your right front wheel?

A. Yes.

Q. Was she between the automobile and the curb?

A. Yes, right close to the automobile.

Q. How do you suppose—how much space was there between your car and the curb?

A. Between my car and the curb?

Q. Yes.

A. Well, of course, I didn't stop to measure it or anything like that. 10

Q. Well, roughly.

A. Well, I would say about five or six foot, I should say. I don't know that. But I just judge it would be about that.

Q. And she was between your car and the curb?

A. Yes, sir.

Q. Do you have a bumper on your car?

A. Yes. 20

Q. What sort of bumper was it?

A. It was a black iron bumper.

Q. Did that extend out to the wheels on either side?

A. Yes.

Q. And about how high was that?

A. I don't know.

Q. Was it as high as the hub cap?

A. Oh, it is higher than the hub cap.

Q. It is higher than the hub cap?

A. Yes, a little higher than the hub cap. I don't know. I should say about eighteen inches. I don't know whether that would be it or not, but somewhere around that, I imagine.

Q. Now, what did you do immediately after the accident?

A. After the accident occurred?

Q. Yes.

A. Why, I picked the little girl up and put her on the back seat and took her to the hospital.

Mr. Lloyd: Cross-examine.

Cross-examination.

10 By Mr. Rauffenbart:

Q. Immediately after leaving the hospital you made this statement; did you?

A. Yes, sir.

Q. Is this the only statement you made?

A. It is the only one I can remember.

Q. Well, what do you mean by that? That you might have made another that you don't remember?

A. I say that is the only one I remember making.

20 Q. Well, may you have made another one that you don't remember?

A. I don't think so.

Q. You know you didn't; don't you, Mr. Krauss?

A. Well, yes. I would say that I didn't.

Q. Didn't you go back to the Accident Bureau after you and your wife and little daughter had been there, and made and signed this statement.

30 Mr. Lloyd: I object to that as not proper cross-examination.

The Court: I will permit it.

Mr. Lloyd: Exception.

Q. (Repeated by the stenographer.) Didn't you go back to the Accident Bureau after you and your

wife and little daughter had been there, and made and signed this statement?

A. Did I go back to the Accident Bureau?

Q. Yes.

A. And signed that statement?

Q. No, you signed it when you went there the first time didn't you?

A. I just ——

Q. You wrote that statement out?

A. I wrote the statement, but I don't remember 10  
just whether I signed it just at that present time  
or no.

Q. Well, did you go back again?

A. Yes.

Q. When?

A. I couldn't just tell you when it was. I think  
it was the next day.

Q. What did you do then?

A. Why, I gave them that statement.

Q. Did Mrs. Krauss witness this statement in the 20  
presence of Mr. Braasch there at the Accident Bu-  
reau?

A. She was there when I was writing some of it,  
but we had to get this child's name or something—  
we had to get those children's names or something.  
That statement wasn't made all that night. What I  
mean to say is that it was not given in that night.

Q. So that you had the statement and you had it  
all that night to think it over; didn't you?

A. Yes. 30

Q. What?

A. Yes.

Q. And at that time the accident was fresh in your  
mind, wasn't it?

A. Yes, sir.

Q. You couldn't have forgotten it by the next  
day—what happened; could you?

A. Not hardly.

Q. And you were in better position to say then just what occurred than you are now; weren't you?

A. Well, no; I would not say that.

Q. Why weren't you?

A. Why, the way I felt—did you ever have an accident?

Q. Yes, two or three of them.

A. Well, you know how it feels, then, I imagine.

10 Q. You weren't injured, were you?

A. No; I was not, but it was just as bad as if I was.

Q. You knew at the time you made the statement just what had occurred; didn't you?

A. I knowed what had happened; yes.

Q. And you kept this statement and didn't give it to them until the next day?

A. I don't believe so, no.

Q. Well, you know you didn't?

20 A. I don't know any such thing. I just don't remember.

Q. Now, you say that the little girl—when did you first see her, Mr. Krauss?

A. Well, we were right close—just as the Mrs. says, right close to the property line, right close to Atlantic Avenue where the curb starts, I should say, just about three or four foot.

Q. From what?

30 A. Well, we were about three or four foot from the property line, or the beginning of where Sandler's window is.

Q. Back?

A. We were back of that, yes.

Q. How many feet, five or six feet out from the curb?

A. Yes; I would imagine that. I am not sure.

Q. When you saw her come past the window?

A. Yes.

Q. When she came into the side of your car?

A. Yes.

Q. Hit the fender?

A. That is the way it appeared to me, yes.

Q. And you think that you didn't run over her?

A. I would say that I didn't run over her.

Q. And you didn't see her in front of your car?

A. She was not in front of the car.

Q. And you slowed down to twelve miles an hour at 10  
the crossing or about twelve miles an hour

A. Well, I don't imagine I was going that fast,  
even, because I was in no hurry.

Q. Well, you don't imagine, but do you know?

A. No.

Q. Well, you said in your statement that you  
slowed down to twelve miles an hour at the crossing.

A. I might have said anything in that. I don't  
know what I put in there at that time.

Q. And you said also in there that Anna was di- 20  
rectly in front of you, of your car; didn't you?

A. I don't know. I did if it is in there.

Q. If it is in there, did you say it?

A. Yes. I must have wrote it.

Q. Well, it was true, wasn't it?

A. At that time I tell you I was so upset I would  
have put anything on that paper to get away.

Q. Well, you took the paper with you?

A. I didn't know that I was going to take it with  
me. 30

Q. But you did take it with you?

A. Yes.

Q. And you had not told it to the Department of  
Public Safety at that time—you had not delivered  
it to the Department of Public Safety at that time;  
you had it with you, didn't you?

A. Yes, I took it home.

Q. And in thinking the accident over during the night or next day or whenever it was that you delivered that, if you decided that this was not the true state of facts, wouldn't you have told them?

A. I didn't go into the facts of that paper then. I was glad to get that turned in. I didn't bother with that paper any more.

10 Q. Didn't you think it was important to give the Department of Public Safety the facts and tell them just how the accident occurred so they could determine just who was at fault?

A. Well, I suppose it should have; but I just didn't think of it that way at that time. I wrote down there whatever come into my mind at that time.

Q. And wasn't that accident very much in your mind at that time?

A. Yes.

20 Q. And you are a fireman; aren't you?

A. Yes.

Q. Supposed to be on the alert for every emergency in a fire; aren't you?

A. That's right.

Q. Sure.

A. That's right.

Q. Not to be upset by accidents so that you couldn't remember just what happened?

A. That is only human nature.

30 Q. If there is a child in the building on the second or third or fourth floor —

Mr. Lloyd: I object.

The Court: I sustain the objection.

A. That is different.

Q. You say in this statement—say that you don't know whether your front wheel went over her or not, and you say on examination today that she skated into the fender of the car —

Mr. Lloyd: I object. The statement is in evidence.

Q. Now, how do you reconcile those two statements? 10

A. Why, I tell you that when I made that statement there I didn't really know what I was really writing, because I was all upset at that time.

Q. Sure. Now, the next night you still had the statement with you; didn't you?

A. I don't know. I don't know just when I turned it in. I couldn't really tell you that.

Q. Well, how long were you in this daze?

A. In a daze?

Q. Yes. 20

A. I wasn't in a daze.

Q. That you don't remember what happened?

A. Well, do you know how long back that is? It has been a couple of years; hasn't it?

Q. Well, then, it is because it is so far back that you cannot remember; is that it?

A. Why, I suppose if it were a couple of days back, why—that that particular thing that you ask I could answer.

Q. You didn't get Antoinette's name until you 30 went down to Mrs. Eichinger's house the next night and met Mrs. Eichinger there?

A. I didn't do that. The Mrs. done that.

Q. She got the name?

A. Yes.

Q. And it was the next night, as she testified, wasn't it?

A. I believe that is what she testified; yes.

Q. So that it must have been the following day—two days afterward before you took the statement in to the Department?

A. I tell you I don't know. Is there no record there of when I took it in? Maybe they have it wrote down.

Q. It is dated when you signed it, October 23rd?

A. I don't know just when I did take that in there.

10

Mr. Garrison: You have a right to see it if you want to. (Paper handed to the witness, P1.)

Q. That is your statement; isn't it.

A. Yes, sir.

Q. And when you made that statement you knew that you were supposed to tell the truth about it; didn't you?

A. Yes, sir; certainly.

20

Q. And you knew you were supposed to give them the exact facts; didn't you?

A. Well——

Q. Didn't you know that you were supposed to give them the exact facts as to that accident?

A. I imagine that you were supposed to tell it to the best of your ability.

Q. You are a fireman; aren't you?

A. Yes.

30

Q. Didn't you know that you were supposed to give the exact facts as you knew them at that time of that accident?

Mr. Lloyd: Objected to as calling for a conclusion.

The Court: I will permit it.

Mr. Lloyd: Exception.

A. Well, I imagine you would, certainly.

Q. You knew that. You did it, didn't you?

A. At that time, the best that I knowed how, yes; but I say I didn't know what I was doing at that time.

Q. You had a day or two days to think it over?

A. I didn't bother with that statement after that.

Q. Well, who took it down to the Department? 10

A. I mean I didn't bother writing it over or anything. I didn't try to fix it up or anything. I just put it in.

Q. So you took it down yourself; didn't you?

A. I believe I did. I am sure I must have.

Q. Two or three days later?

A. I wouldn't say that; I don't know.

Q. Well, you know it was at least two days?

A. (No answer.)

Q. You didn't come to a stop at the crossing; did 20  
you?

A. At the crossing? No, my car didn't stop, not until it hit the child.

Q. And you dragged her about five feet, according to your statement?

A. I didn't drag her.

Q. But you saw her on the sidewalk just as you came to the corner of Sandler's store?

A. Yes.

Q. What did you do? 30

A. What did I do? I put on my brake right away.

Q. Did you have two brakes? Did you?

A. Two brakes?

Q. Did you have two brakes?

A. The car has two brakes, which you know, yes.

Q. Which brake did you put on?

A. Foot brake.

Q. Did you use your emergency?

A. No. My brakes are good. That is one thing I always had about an automobile—good brakes.

Q. And you were about four feet back from the corner of the window?

A. I would imagine so.

Q. When you saw the little girl you immediately applied your foot brake, which was a good brake?

10 A. Yes.

Q. And you didn't stop until after you had hit the little girl, and you had gone about five feet?

A. I wouldn't say it was five feet.

Q. Well, your statement says five feet.

A. Well, I told you I might have wrote anything in that statement.

Q. Do you remember meeting Mrs. Eichinger with another lady at the hospital on the Sunday?

20 A. I remember another lady there with her, yes. I believe she was with her.

Q. Did you have a conversation with Mrs. Eichinger there?

A. I don't know whether it was the Mrs. asked her or I asked her how the child was.

Q. Was that all that was said?

A. That was all that was said.

30 Q. Did Mrs. Eichinger ask you why you didn't provide the doctor, or ask the wife why she didn't provide the doctor and the private room as she had promised?

A. No.

Mr. Rauffenbart: That is all.

Re-direct examination.

By Mr. Lloyd:

Q. You were asked on cross-examination if you didn't know that you were to give exact details to the Department. I understood you to say yes. Now, the Department did determine whether or not you were guilty in this case; didn't it? 10

Mr. Rauffenbart: Objected to.

The Court: Objection sustained.

(Witness excused.)

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ANTOINETTE MILLER, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows: 20

Direct examination.

By Mr. Lloyd:

Q. Antoinette, where do you live?

A. 29 Taylor Avenue.

Q. How long have you lived there? 30

A. Ten years.

Q. Just speak up so we can all hear you, will you please? How long?

A. Ten years.

Q. Were you with Anna on the day of this accident?

A. Yes, sir.

Q. Now, just tell his Honor and the jury what happened, in your own way.

A. Well, we were coming from Anna's house, and we were skating quite fast coming down the Avenue. So as we were coming near New Jersey Avenue ——

Q. Try and make it a little louder.

A. We were coming near New Jersey and I looked through Sandler's window and Anna had  
10 went ahead of me. So I saw the lights of the car coming and I hollered to her and when I looked she was already near the car and hit then, by that time. I didn't remember nothing after that.

Q. What did you do after that?

A. Well, one of my skates fell off and I took it and went right home to Anna's house.

Q. Did you ask Mrs. Krauss to take you to the hospital?

A. No, sir.

20 Q. You went right back to Anna's house?

A. Yes, sir.

Q. Was that the first thing you did?

A. Yes, sir.

Q. Did you stand there and see them drive away, or anything?

A. Well, right after they took her right up from the street and put her in the car, and right after they picked her up she hollered for me to go with her and I wouldn't do it, and I went right home  
30 after that to her house.

Q. What did you do at her house?

A. I was just coming up the steps when I saw Helen Burke, and she hollered to me and asked me what had happened.

Q. Where did you see Helen Burke?

A. Right as I was at Anna's house, going up the first step.

Q. Now where did Anna live?

A. At the time of the accident?

Q. Yes.

A. Massachusetts Avenue.

Q. And did she live between Atlantic Avenue and Pacific Avenue?

A. Yes, sir.

Q. On Massachusetts?

A. Yes, sir.

Q. How did you know to go to Anna's house? 10

A. By way of Atlantic Avenue.

Q. Did you go straight up Atlantic Avenue to Pacific or to Massachusetts?

A. Yes, sir.

Q. Then towards Pacific to Anna's house?

A. Yes.

Q. Which direction did you see Helen Burke coming?

A. She was coming from Pacific Avenue way.

Q. Now, did Helen Burke have a conversation with you at the time of the accident? 20

A. Well, we went right up to the house and got money off the boarder.

Q. No, back at the accident, where the accident happened?

A. I saw no one there that I knew.

Q. Was Helen Burke there?

A. No, sir.

Q. Did you and Helen Burke go back together to Anna's house? 30

A. No, sir.

Q. Did you and Helen Burke ask Mrs. Krauss to take you to the hospital and she refused?

A. No, sir. I wasn't even talking to Mr. and Mrs. Krauss.

Q. Did you say you saw Helen Burke coming from Pacific Avenue?

A. Yes, sir.

Q. And Helen Burke didn't go back along Atlantic Avenue with you?

A. No, sir.

Q. And up to Anna's house?

A. No, sir.

Q. What did Helen say to you?

A. She asked me what had happened.

Q. What did you tell her?

10 A. Well, I didn't tell her nothing. I just told her that Anna was run over and we went right up in the house, and as we were going down the hospital I explained all the details to her.

Q. As you saw them?

A. Yes, sir.

Q. Now, when you were skating down Atlantic Avenue, were you going fast?

A. Yes, sir.

Q. Both of you?

20 A. Yes, sir.

Q. You didn't go out into the street; did you?

A. No, sir.

Q. You stopped?

A. Yes, sir.

Q. What caused your skate to come off?

A. By the way I was stopping. I saw the lights, and as soon as I saw the lights I fixed my foot so that I could go over — I had a way of stopping myself, and as I stopped myself my skate went off.

30 Q. Can you stop as fast on roller skates as you can running?

A. Well, I guess you could.

Q. Have you ever tried it?

A. Yes.

Q. And you think you can stop as quickly?

A. Why, in some way you can.

Mr. Rauffenbart: The witness has said you can.

Q. Did you say anything to Anna before she went out into the street?

A. I hollered to her.

Q. And then what did she do?

A. Well, she was hit by that time.

Q. She went right on off ——

A. Yes, sir.

Q. Into the car. At the last trial you were subpoenaed by Mr. Rauffenbart? 10

A. Yes, sir.

Q. And you didn't testify for him?

A. No, sir.

Mr. Rauffenbart: Objected to, and I ask to have it stricken out—well, leave it in. I think it better be left there.

Cross-examination.

20

By Mr. Rauffenbart:

Q. You admitted, however, on the stand after you were called by Mr. Lloyd that you changed your testimony after talking with Mr. Lloyd and the Krauss'?

Mr. Lloyd: Objected to. She didn't admit any such thing. 30

Mr. Rauffenbart: I think she did.

The Court: If there is a question of dispute there, I think the testimony should be consulted.

Q. Now, you say you were going very fast?

A. Yes, sir.

Q. All right. Now, do you remember this question and answer: "Q. I understood you to say that you didn't stop to look in Sandler's store and you weren't standing there? A. I was going slow. That is the reason I saw the lights."

A. No, sir; I stopped suddenly when I saw the lights.

10 Q. Did you answer that question, Antoinette, that way?

A. Yes, sir; I guess I did; but I was nervous then and didn't know.

Q. Antoinette, this question was asked you at the last trial: "Q. I understood you to say that you didn't stop to look in Sandler's store and you weren't standing there? A. I was going slow. That is the reason I saw the lights." Is that right?

A. Well, Anna was ahead of me.

20 Q. Won't you answer that question, Antoinette?

A. Yes; I did say that.

Q. That you were going slow. Now, why, then, did you say on the stand today that you were going very fast —

A. Because when I come to think of it I didn't know what I was saying then.

Q. Oh, you didn't know what you were saying. And this testimony you gave last May; that is May of 1927, here in this court room, didn't you? Last  
30 spring, wasn't it?

A. Yes, sir.

Q. A year or so after the accident. Well, why didn't you know what you were saying, Antoinette?

A. Well, because you had me all worked up then. I was nervous then. I didn't understand a thing.

Q. Why, Antoinette, that was a question of your

own lawyer, or by the lawyer for the other side. Now, why didn't you know?

Mr. Lloyd: She has answered the question.

The Court: No, she has not.

Q. (Repeated by the stenographer.) Why, Antoinette, that was a question of your own lawyer, or by the lawyer for the other side. Now, why didn't you know? 10

A. Because I tell you I didn't understand anything. I couldn't remember everything.

Q. Well, why can you remember now if you couldn't remember then?

A. Because I didn't take time to think everything over then.

Q. Well, you had plenty of time to think it over, hadn't you?

A. Well, yes. 20

Q. The night previous to your going on the stand to testify, you had been talking with Mr. Lloyd and to the Krauss'; hadn't you?

A. I have never talked to the Krauss' about the accident.

Q. Well, now, let's see if you didn't. Didn't Mrs. Krauss and Mr. Krauss come down to your house?

A. I was never home when they came down.

Q. And didn't they in answer to my questions at the previous trial say that you were home once when they were there? 30

A. They were there quite a few times, but I was never home.

Q. Weren't you asked this question: "Q. Did Mrs. Krauss say in your presence to your mother that they were going to take care of all expenses?"

And your answer: "A. Yes, sir." Do you remember saying that?

A. No, sir.

Q. Well, if you did say it, was it true?

A. No, sir.

Q. What is that?

A. No, sir.

Q. It was not true?

A. No.

10 Q. Well, if you did say it, why did you tell an untruth?

A. Because I didn't remember then. I told you when I went down to the hospital Mrs. Krauss was talking to me then, and I told you I couldn't even remember what she was saying to me then.

Q. Well, do you mean to say then immediately after the accident you didn't know anything more?

A. No, sir.

Q. You didn't remember anything?

20 A. No, sir.

Q. You don't remember who was there?

A. No, sir.

Q. Or what was said or anything that was done? You picked up your skates and beat it?

A. Yes, sir.

Q. And you don't know who was there and witnessed the accident?

A. No.

30 Q. Why do you say then that Helen Burke didn't witness it?

A. I didn't say that Helen Burke didn't see it.

Q. So that Helen may have seen the accident, so far as you know?

A. Well, maybe she did; but she asked me what had happened. That is the reason I thought that night maybe she didn't.

Q. But you never heard Helen say that she didn't see the accident?

A. No; she never talks to me about the accident.

Q. Never talked to you about it. When you saw these lights through—you saw them through the window, the lights of the automobile?

A. Yes, sir.

Q. And they were coming very fast; weren't they?

A. Well, they didn't look fast.

Q. Didn't you say they were going so fast they looked as big as a house? 10

A. Well, through the window it looked like they were going fast.

Q. Well, that is where you saw them; wasn't it?

A. Yes, sir.

Q. All we want, Antoinette, is the truth. I don't want you to tell anything that didn't happen.

A. I am telling you the best I can remember.

Q. And you said at the last trial that this car was coming very fast and the lights looked as big as a house; didn't you? 20

A. Well, I was all excited then. I couldn't tell you what things looked like then.

Q. Well, why didn't you say, Antoinette, that you didn't know?

A. (No answer.)

Q. You didn't say at the last trial that you were racing, did you, Antoinette?

A. I don't remember.

Q. Well, you said you were going slow; didn't you? And that was the reason you could stop? 30

A. Well, I slowed down towards the corner.

Q. You stopped. All right. You weren't racing, were you?

A. Well, we were racing down Atlantic Avenue.

Q. Did you say so at the last trial?

A. No; I don't believe I did.

Q. Didn't you go up with Helen Burke to Mr. "Kinser's" room at the Eichinger home?

A. Yes, sir.

Q. And didn't Helen Burke tell Mr. Kinser about the accident?

A. Yes, sir; we both told him.

Q. She told him as well as you told him; didn't she?

10 A. Well, she kept telling him that Anna was runned over, and I was telling him of the details that I knew.

Q. And she told him, too; didn't she?

A. No; she just told him that Anna was runned over.

Q. Do you remember this question: "Q. Didn't you tell me you didn't know whether or not she was there? A. —"

A. That who was there?

20 Q. Helen.

A. At the accident?

Q. Yes.

A. Yes, I told you I didn't know whether she was there or not.

Q. And then at the last trial in answer to Mr. Lloyd's question, you said that Helen was not there; didn't you?

A. I didn't see her there.

30 Q. In answer to this question: "Q. You told me you didn't know anything that happened, you were so scared? A. Yes, sir."

A. Yes, sir.

Q. And didn't you say you didn't know whether or not Helen followed you home from the accident?

A. Yes, sir.

Q. To your house or not, because you were so scared?

A. Yes, sir.

Q. Well, why do you say today, then, that she came from Pacific Avenue? You didn't say that at the last trial?

A. That I said Helen didn't come from Pacific Avenue?

Q. You didn't say she came from Pacific Avenue the last time. You said you didn't know whether or not she followed you home.

A. I told you the same thing I am telling this time 10  
about where I saw her.

Q. Well, were you so scared that you didn't remember what happened or who was there?

A. I didn't remember anything that happened after the accident, around the accident, at least, where it happened.

Q. And you don't know whether Helen went home, as she said, along Atlantic Avenue, along Massachusetts, or not; do you?

A. No. The only place I saw her was coming 20  
from Pacific Avenue way.

Q. You didn't say that at the last trial, did you?

A. Yes, sir.

Q. Will you say now that you did?

A. Yes, sir.

Q. You testified that she came from Pacific Avenue?

A. Yes.

Mr. Lloyd: She has answered that "Yes" once. 30

Q. Now, this question. Do you remember this question: "Q. And you don't know where Helen came from; do you?"

Mr. Lloyd: What page is that, please?

Mr. Rauffenbart: 78, down toward the bottom.

Q. "Q. And you don't know where Helen came from; do you? A. No."

A. After the accident?

Q. Yes.

A. The only time ——

Q. Won't you answer that question? Did you at the previous trial in answer to this question, "Q. 10 And you don't know where Helen came from; do you?" answer, "No"? Did you so answer?

A. Yes, sir.

Q. And you had not told me the story that you told on the stand the last time when you talked to me; had you? You changed it somewhat; didn't you?

A. I am only telling you what I remember. I am just telling you what I remember. I didn't change anything that I know of.

20 Q. Did you at the previous trial say that this car was coming very fast and you saw the lights through the window and they looked as big as a house, and you screamed?

A. Yes, sir; I said that.

Q. Do you know what color the light was when Anna stepped into the street?

A. The signal light?

Q. Yes.

30 A. No, sir, I didn't notice that.

Re-direct examination.

By Mr. Lloyd:

Q. Before the last trial you were in Mr. Rauffenbart's office?

A. Pardon me?

Q. Before the last trial, you were in Mr. Rauffenbart's office?

A. Yes, sir.

Q. And you were subpoenaed by him; isn't that true?

A. Yes, sir.

Mr. Rauffenbart: That is objected to.

10

The Court: That has been all gone over on direct.

Mr. Lloyd: Strike that question out, if you want to.

Q. You told him at that time the same story that you are telling now; did you?

Mr. Rauffenbart: Objected to as leading.

20

The Court: I sustain the objection.

Q. What story did you tell Mr. Rauffenbart that time?

A. Well, then I told him all that I could remember by that time. I was so worked up when I went to his office I just told him what I could remember.

Q. Was there any difference between that and what you are telling now?

A. I am telling the truth now.

30

Q. Didn't you tell him the truth then, too?

A. Well, I don't remember then what I was telling him.

Q. You don't remember what you told him. Did you tell any falsehoods about this to anybody?

A. No, sir.

Q. Sure of that?

A. Yes, sir.

Q. You told the truth right straight through?

A. Yes, sir.

Q. Both to him and the Court and jury here and to me?

A. Yes, sir.

(Witness excused.)

10

DEFENDANT RESTS.

---

ANNA MARIE BURKE, called as a witness on behalf of the plaintiff, in rebuttal, being sworn, was examined and testified as follows:

Direct examination.

20

By Mr. Rauffenbart:

Q. Mrs. Burke, you are the mother of Helen Burke?

A. Yes, sir.

Q. Do you know this lady, Mrs. Krauss?

A. Yes.

Mrs. Krauss: Yes, sir, I met her once.

30

Q. Do you know this lady, Mrs. Burke? Do you remember having met Mrs. Krauss?

A. Yes, sir.

Q. Where did you meet her?

A. In my home.

Q. Was anybody else present when she came to your home?

A. She had Antoinette Miller with her.

Q. Was Helen home?

A. No, sir.

Q. Did she have conversation with Helen in your presence in your home?

A. No, sir.

Q. Did Helen on that occasion or any other occasion in your presence say to Mrs. Krauss that she did not see this accident?

A. No, sir.

10

Q. Did Mrs. Krauss tell you that little Anna was not seriously hurt?

A. No.

Q. What did she say?

A. That she knew she was hurt pretty bad.

Q. What else did she say?

A. She said, "I met her mother and told her mother not to worry."

Mr. Lloyd: I object to this.

20

Mr. Rauffenbart: This is in rebuttal of what Mrs. Krauss said.

Mr. Lloyd: I have no objection.

Q. And what else did she say she told her?

A. That, "We would do all we could for her. We were in fault." She said, "It meant nothing to her; they were fully covered with in —"

30

Mr. Lloyd: I object.

The Court: No.

The Witness: I am just telling you what she said to me.

Mr. Lloyd: I would like to make a motion.

The Court: I know what it is and I will refuse it. I want to say to the jury that any reference that this witness made in the last part of her answer the jury will entirely ignore the same as though it had not been said. It was a slip and has nothing to do with this case at all.

10 Q. Did Mrs. Krauss say that she was going to furnish her own doctor to take care of the little girl?

A. Yes.

Q. Did she say she was going to have a private room for her?

A. Yes, sir.

Q. That all expenses would be taken care of?

A. Yes, sir.

20 Mr. Rauffenbart: Cross-examine.

Mr. Lloyd: No questions.

(Witness excused.)

---

30 HARRY KINZER, called as a witness in rebuttal on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Rauffenbart:

Q. Mr. Kinzer, what is your business?

A. Painter.

Q. Painting contractor?

A. Yes, sir.

Q. Were you living in Atlantic City in the fall of 1925?

A. I was; yes, sir.

Q. Where were you living?

A. I was boarding at 35 South Massachusetts Avenue.

Q. Is that the home of Mrs. Eichinger?

A. That is the home of Mrs. Eichinger.

10

Q. The mother of the little girl who was injured?

A. Yes, sir.

Q. Do you know this lady, Mrs. Krauss?

A. I met them that evening, the only time.

Q. Did Mrs. Krauss tell you that Anna was only slightly injured?

A. They thought she was slightly injured, yes.

Q. Did she tell you that she was going to have her own doctor take care of her?

A. Said they had phoned for their own private physician.

20

Q. Did she tell you they were going to have a private room for her at the hospital?

A. Yes, sir.

Mr. Rauffenbart: Cross-examine.

Mr. Lloyd: No questions.

(Witness excused.)

30

MAY FOWLER, called as a witness in rebuttal on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Rauffenbart:

10 Q. Mrs. Fowler, you know Mrs. Eichinger?

A. Yes, sir.

Q. Are you acquainted with Mr. and Mrs. Krauss?

A. Seeing Mr. and Mrs. Krauss at the hospital on Sunday night following the accident.

Q. Did you hear a conversation between Mrs. Eichinger and Mr. and Mrs. Krauss?

A. Yes, sir.

20 Q. Did Mrs. Eichinger say to Mrs. Krauss, "I thought you were going to have your doctor and a private room for my little girl"?

A. And Mrs. Krauss said, "No," she didn't.

Q. Did Mrs. Eichinger ask her that?

A. Yes.

Q. What did Mrs. Krauss say?

A. No; that she never said that.

Q. Was any other conversation held?

A. Yes.

30 Q. Was the accident—the injury to the young lady talked over?

A. No.

Q. What was the rest of the conversation?

Mr. Lloyd: I object.

Mr. Rauffenbart: All right. That is all.

Cross-examine.

Mr. Lloyd: No questions.

(Witness excused.)

---

MRS. CLARA EICHINGER, recalled in rebuttal.

10

By Mr. Rauffenbart:

Q. Mrs. Eichinger, did you meet Mr. and Mrs. Krauss at the hospital on the Sunday following the accident?

A. I met them following—the following night after the accident before I met them at the hospital.

Q. Well, did you meet them at the hospital on the Sunday following the accident?

A. Yes.

20

Q. Did you have a conversation with Mrs. Krauss?

A. Yes.

Q. Did Mr. Krauss merely bid you the time of day as Mrs. Krauss said?

A. No. We had quite a conversation.

Q. Did you ask Mrs. Krauss why she had not furnished her doctor and a private room to your little girl as she had promised?

A. Yes, sir.

30

Q. What did she say?

A. She said she had never said them words to me in my home.

Q. Had she said them?

A. Yes, sir.

Q. You say you met her previous to that?

A. Yes, sir.

Q. Previous to Sunday. Did you have any conversation with her at that time?

A. Yes, sir. We had a conversation in our home.

Q. Did she tell you then she would have her own doctor attend to your little girl?

A. Yes, sir.

Q. Did she tell you she would furnish a private room?

A. Yes, sir.

10

Mr. Lloyd: I object. We have been all over this on direct examination.

The Court: My recollection is that this lady testified to that on her direct examination.

Mr. Rauffenbart: No further questions.

Mr. Lloyd: No cross-examination.

(Witness excused.)

20

HELEN BURKE, recalled in rebuttal:

By Mr. Rauffenbart:

Q. Helen, did you at your home when you were with your mother tell Mrs. Krauss that you didn't witness the accident?

A. No, I did not.

30

Q. Were you home at any time Mrs. Krauss was there?

A. No.

(Witness excused.)

PLAINTIFF RESTS.  
DEFENDANT RESTS.

DEFENDANT'S MOTION FOR DIRECTION OF VERDICT. 10

Mr. Lloyd I renew my motion, now, for a direction of verdict in favor of the defendant, for the sake of the record, on the same grounds.

The Court: Yes and same ruling.

Mr. Lloyd: And I ask an exception.

The Court: Yes. This is for direction. 20

Mr. Lloyd: Yes.

(Counsel summed up for the respective parties.)

30

## COURT'S CHARGE TO THE JURY.

Sooy, J.:

Ladies and gentlemen of the jury:

There are two plaintiffs in this case, Anna Eichinger, an infant, and her mother.

10 The action is based on allegations of negligence, the plaintiffs charging that by reason of the negligence of the defendant, Krauss, the plaintiff, Anna Eichinger, received the injuries for which she seeks compensation.

In the first place, therefore, I charge you that the plaintiffs must satisfy you by the greater weight of the believable evidence that the defendant, Krauss, was negligent and that they sustained their injuries or damage as a proximate result of the negligent conduct of the defendant, and if they do  
20 not establish that they cannot recover.

The defendant says that he was not negligent in any manner and that even if you find he was guilty of negligence the plaintiff, Anna, was guilty of contributory negligence in such a manner as to bar her recovery.

You are the sole judges of the facts, and the facts are so clearly before you that I do not intend to refer to them.

30 The first question for your consideration will be: Has the plaintiff satisfied you by the greater weight of the believable evidence that the defendant was negligent and that his negligence was the proximate cause of the injuries she sustained?

I have charged you so many times the definition of negligence that I hesitate to do it again and yet I presume I must.

Negligence has been defined by our courts to be

the failure to observe for the protection of the interests of another person that degree of care, caution and vigilance which the circumstances and surrounding conditions justly demand, whereby such other person is injured.

The burden is on the plaintiff to prove that Mr. Krauss failed to observe for the protection of the plaintiff, Anna, that degree of care, caution and vigilance which the circumstances and surrounding conditions in this case justly demanded whereby she sustained her injuries. 10

You will review the testimony of the plaintiff and the plaintiff's witnesses and of the defendant and the defendant's witnesses, and you will consider not only the testimony but all fair inferences that arise from it. You will consider the demeanor of the witnesses on the stand, the probabilities of the truthfulness of their story, and after a full, fair consideration of that testimony and those inferences, plus the exhibits in the case, you will determine whether or not the plaintiff has carried the burden of proof and established negligence which was the proximate cause of the injury, on the part of the defendant. 20

If the evidence does not so satisfy you, then your verdict must be in favor of the defendant.

If it does so satisfy you, you will proceed to the second question for your consideration, and that is: was the plaintiff herself guilty of contributory negligence?

I charge you that it was the duty of the defendant to operate, control and manage his automobile as a reasonable, prudent and careful person should and would have under the surrounding circumstances and conditions, and that it was the duty of the plaintiff in attempting to cross this street, to cross it as a reasonable, prudent person would and should have done under all the circumstances. 30

So that you see they each owed a duty to the other. The defendant owed a duty to the plaintiff and the plaintiff, you might say, owed a duty to herself to cross as a reasonable and prudent person would and should have done under the circumstances. It is for you to determine from the testimony whether or not she did that.

10 The burden of proving the contributory negligence, however, is on the party asserting it, in this case the defendant, and the defendant must satisfy you by the greater weight of the believable evidence that the girl was guilty of contributory negligence in such a manner as to bar a recovery, in order that she shall be barred from recovery.

If you find from the evidence that she was negligent in such a manner that she would have received no injury from the negligence of the other party had she not been negligent herself, then she would not be entitled to recover.

20 If you find that she is not guilty of contributory negligence, and the defendant guilty of negligence which was the proximate cause of the accident, then she would be entitled to recover.

There is an element for you to consider arising from the testimony in the case, which will have whatever weight you give to it in arriving at the questions of both negligence and contributory negligence in this case.

30 The testimony of the plaintiff, as I remember it, is that as she stepped off the sidewalk she saw the yellow light burning.

The testimony of the defendant, as I remember it, is that as he approached Atlantic Avenue, and when he got within seventy-five or one hundred feet of it, he saw the green light go on for his passage across Atlantic Avenue.

Now, under the traffic laws of the State, pedes-

trians at street intersections have the right of way. Under the laws of the city, when the amber light is burning, vehicular traffic stops and pedestrian traffic has a right to proceed. The green light is a signal to proceed for traffic bearing north and south on New Jersey Avenue. The red light is a signal for traffic to stop.

Now, then, these laws are laws passed by the Legislature in the city, and I charge you that in considering them the mere fact that a party did not observe them is not negligence per se. It is an element for you to consider in determining whether or not there was negligence, but the failure to observe does not constitute negligence per se. 10

If you determine that the plaintiff is entitled to recover, she would be entitled to such a sum in money as you find from the evidence would compensate her for the following elements of damage: 20

First, the bodily injury she has sustained.

Second, the pain she has undergone.

Third, the effect on her health according to its degree and its probable duration as likely to be temporary or permanent.

She would be entitled to recover such a sum of money as would compensate her for the disfigurement she has sustained.

The mother would be entitled to recover a verdict that would include such a sum of money as you find from the evidence would compensate her for the expenses incidental to an attempt to cure the daughter of her injuries, and the pecuniary loss suffered by the mother by reason of the daughter's injuries. 30

The daughter, being a minor, the mother, the guardian, would be entitled to recover those earnings.

If your verdict is in favor of the defendant, it would be for no cause of action.

You could not return a verdict in favor of the mother against the defendant and not in favor of Anna against the defendant. In other words, the sole right of recovery of the mother would be your finding that the defendant was guilty of negligence which was the proximate cause of the injuries.

Have you anything to suggest?

10

Mr. Lloyd: Your Honor treats this young lady as a pedestrian?

The Court: Yes.

Mr. Lloyd: I except to that portion of the charge in which you spoke of pedestrians at street intersections having the right of way.

20

The Court: Of course, when I charge you with reference to your deliberations as to whether or not either one of these parties acted as reasonable and prudent persons would and should have done under all the circumstances, you are to take into consideration all of the circumstances—the manner in which each one approached; that one was in an automobile, the other on roller skates. You take all those things into consideration, and you determine whether or not under all those surrounding circumstances and conditions the party was or was not in the exercise of that degree of care to which I have called your attention.

30

Now, I think the jury may take out with them the summons and complaint and the answer.

(The jury retired.)

EXHIBIT P1.

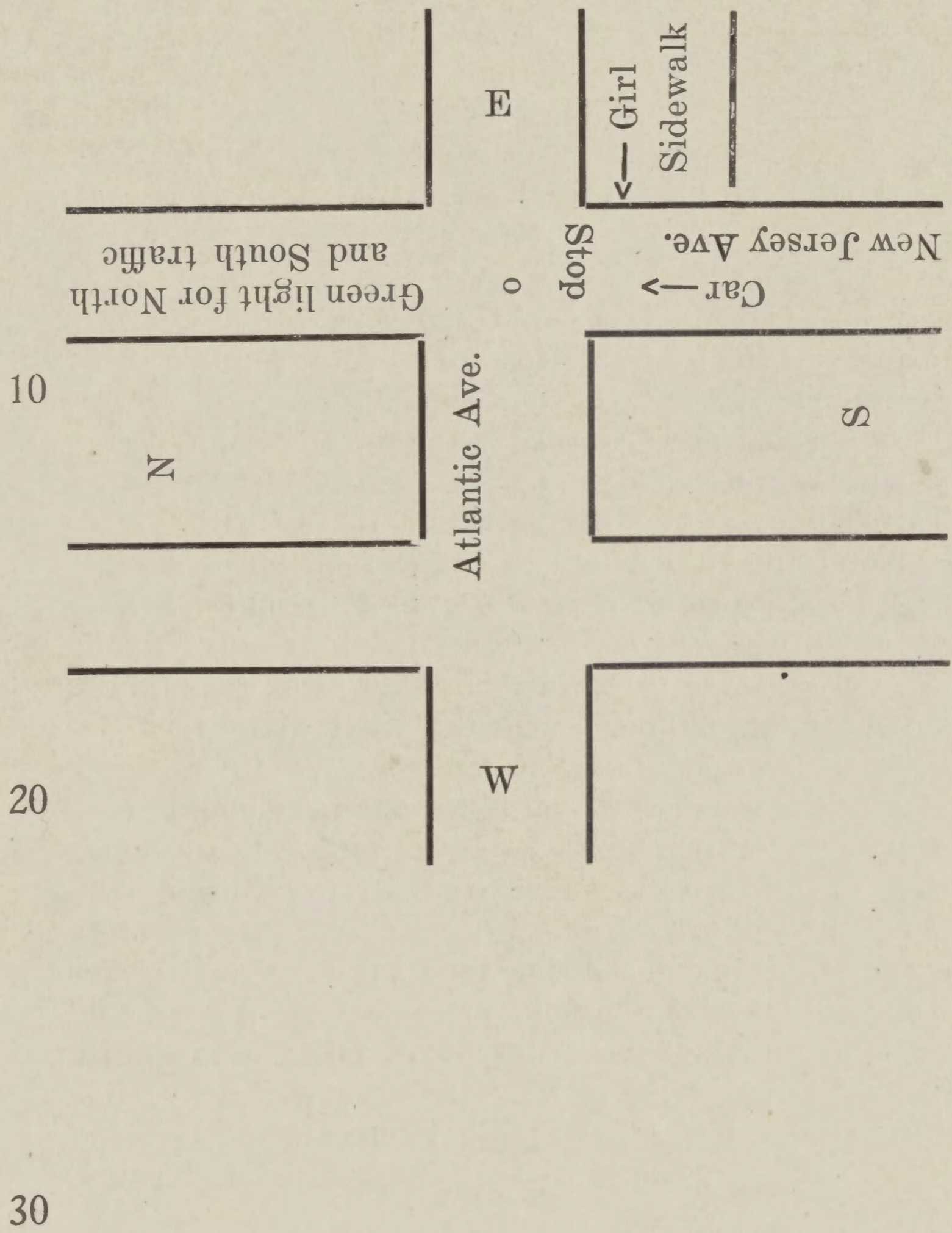
DEPARTMENT OF PUBLIC SAFETY  
BUREAU OF POLICE  
ATLANTIC CITY  
STATEMENT OF ACCIDENT.

Name in full Charles M. Krauss Date Oct. 23, 1925  
Residence 119 St. James Place 10  
Driver's License No. 187786.  
Business address Penna. Ave.  
Fire House Vehicle Registration No. 140016.

Referring to accident of Charles M. Krauss Time  
7.30 P. M. at or near New Jersey & Atlantic Ave. .  
I herewith make the following voluntary statement:  
As I was proceeding north on New Jersey Ave. ar-  
riving near Atlantic arriving near Atlantic Ave.  
slowed down to about 12 miles per hour to cross  
Atlantic Ave. with green light. Anna Eichinger on 20  
roller skates was going west on sidewalk on south  
side of Atlantic Ave. and went across New Jersey  
Ave. directly in front of my car. I immediately  
applied brakes and stopped car in about 5 feet. Do  
not know whether right front wheel went over girl  
or whether she skated into right front mud guard.  
Immediately picked girl up and rushed her to Hos-  
pital and reported to accident bureau.

Signature In full Charles M. Krauss.

Witness: 30  
Edna M. Krauss.



JUDGMENT.

ATLANTIC COUNTY CIRCUIT COURT.

18875

January Term, 1928.

ANNA EICHINGER, by her  
 next friend, CLARA EICH-  
 INGER, and CLARA EICH-  
 INGER, her mother, in her  
 own right,  
*Plaintiffs,*  
 v.  
 CHARLES M. KROUSE,  
*Defendant.*

Action at Law.  
 On Verdict.  
 John Rauffenbart,  
 Atty.

10

20

Judgment entered March 17, 1928, at 9 A. M.  
 Damages for Anna Eichinger.....\$2,000.00  
 Damages for Clara Eichinger..... 250.00  
 Costs. . . . . 75.48

Total. . . . . \$2,325.48

This action was tried before Judge William Frank Sooy, with a jury, in the presence of counsel of the respective parties on March 14th, 1928, 30 the jury returned their verdict in favor of the plaintiffs and against the defendant.

Whereupon, it is, on motion of John Rauffenbart, attorney for the plaintiffs, ordered that the plaintiff, Anna Eichinger, by her next friend, Clara Eichinger, recover of the defendant, Charles M.

Krouse, the sum of two thousand dollars damages and the plaintiff, Clara Eichinger, her mother in her own right recover of the defendant, Charles M. Krouse, the sum of two hundred fifty dollars damages and seventy-five dollars and forty-eight cents costs of suit.

WILLIAM A. BLAIR,  
*Clerk.*

10 Execution issued March 19, 1928.  
Circuit Judgment Book No. 15, page 234.

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STATE OF NEW JERSEY.  
COUNTY OF ATLANTIC.

20 I, William A. Blair, clerk of the County of Atlantic, and also clerk of the Circuit Court holden therein, said court being a court of record, having a common seal, do hereby certify, that the foregoing is a true copy of a certain judgment—Anna Eichinger, by her next friend, Clara Eichinger, and Clara Eichinger, her mother in her own right, plaintiffs v. Charles M. Krouse, defendant, as the same appears of record in my said office.

In testimony whereof, I have hereunto set my hand and affixed my official seal at May's Landing, N. J., this 3rd day of May, A. D. 1928.

WM. A. BLAIR,  
*Clerk.*

30 (Seal)

By

*Deputy Clerk.*

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

---

ANNA EICHINGER, by her next friend, CLARA EICH-  
INGER and CLARA EICHINGER, her mother,  
in her own right,  
*Plaintiffs-Respondents,*

v.

CHARLES M. KRAUSE,  
*Defendant-Appellant.*

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ON APPEAL FROM ATLANTIC CIRCUIT.

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BRIEF FOR PLAINTIFFS-RESPONDENTS.

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GENERAL STATEMENT.

This case was tried before his Honor William Frank Sooy, Circuit Court Judge, and a jury, at the Atlantic County Circuit, on March 14, 1928, and resulted in a verdict for the plaintiffs for the amount of the jury's estimate of compensation to which plaintiffs were entitled due to the negligence of the defendant.

This result of the trial is criticized by the defendant as the product of judicial error in three aspects,

viz: (1) the trial Court erred in refusing to nonsuit plaintiffs at the close of plaintiffs' case; (2) the trial Court erred in refusing to direct a verdict for the defendant at the close of the entire case, and (3) the trial Judge erred in his charge to the jury. This appeal by the defendant to this Court challenges the legality of the judgment entered in the verdict.

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### FACTS.

The essential and pertinent facts involved in this appeal are these: On October 23, 1925, the plaintiff, Annie Eichinger, then 14 years of age, was injured while attempting to cross, on roller skates, New Jersey Avenue at the intersection of Atlantic Avenue, in Atlantic City, by being struck by an automobile owned and operated by the defendant.

Three witnesses were called and examined on the part of the plaintiff respecting the accident. The testimony of Annie Eichinger was that on October 23, 1925, the day of the accident, at about 7:00 or 7:30 o'clock, in the evening, she and a companion, Antoinette Miller, were proceeding on roller skates along the southerly side of Atlantic Avenue in a westerly direction between Connecticut and New Jersey Avenues; that before reaching New Jersey Avenue, which crosses Atlantic Avenue in a northerly and southerly direction, she looked at the street traffic lights and observed that they showed red for Atlantic Avenue, indicating that traffic for vehicles on Atlantic Avenue was suspended and on New Jersey Avenue open until a change in the automatic signals should open Atlantic Avenue and close New Jersey Avenue to traffic movement; that when she

arrived at the curb on the easterly side of New Jersey Avenue at the intersection of New Jersey and Atlantic Avenues, and before attempting to cross, she looked up at the traffic signal lights and saw that they had changed to yellow, indicating that all vehicular traffic must cease and pedestrians might cross, and that the lights were still yellow when she stepped down from the curb into the street preparatory to crossing New Jersey Avenue. Asked what happened then, she answered: "Well, I stepped down off the curb and looked down the street and I didn't see any machine coming, so I kept on going. I got to the center of the street and I saw a machine coming. I tried to turn around and as I did, it struck me" (Case, page 14). Her attention was attracted to the machine by its lights. She did not say as to the speed of the approaching machine. She says: "I couldn't say how fast it was going, but it was coming fast to my eye" (Case, page 141). Asked what she did when she noticed the machine approaching, she said: "I tried to turn around, and it struck me, and that was at the intersection." (See Case, Eichinger, direct, p. 15; cross-examination, pp. 19, 20, 21.) Helen Burke, a witness for plaintiff, testified that she was present at the time of the accident and saw Anna when she stepped off the sidewalk at the corner of New Jersey and Atlantic Avenues, and noticed the traffic lights at the time she stepped off the sidewalk into the street and that they were amber in color (Case, p. 29); that she was positive that the light was amber when Anna stepped off the curb and that Anna was not racing (Case, p. 30). This witness did not see the actual collision. The defendant was called as a witness for the plaintiffs to prove that after the accident he reported it to the police authorities and made a written statement of the facts to the effect that

when he approached the crossing he slowed down to about 12 miles an hour to cross Atlantic Avenue on a green light; that plaintiff went across New Jersey Avenue directly in front of his car; that he applied the brakes and stopped the car in about 5 feet and that he did not know whether the right front wheel passed over the plaintiff or whether she skated into the right front mud guard (Case, pp. 46, 127, Exhibit P1).

This was substantially the evidence on the part of the plaintiffs at the time the motion for a non-suit was made and denied.

## LAW.

### I.

The first point made by appellant, that the trial Court erred in denying the defendant's motion for a non-suit, is plainly without merit.

There was evidence that the plaintiff, before leaving the sidewalk to cross the street, looked up and saw that the amber or yellow light was showing, indicating that all traffic with vehicles was suspended and that pedestrians or foot passengers might safely cross; that after leaving the sidewalk and stepping into the street she looked down New Jersey Avenue for approaching vehicles and, seeing none, she continued on her way across; that the point where she attempted to cross was a public crossing at the junction of two streets; that before she had safely crossed and when she had reached the centre of the street, her attention was attracted by the lights of the defendant's automobile which, to her eyes, was coming very fast; that she tried to turn around and retrace her steps and

as she did so was struck by the machine driven by the defendant who, while proceeding north on New Jersey Avenue, on arriving near Atlantic Avenue, reduced the speed of his car to about 12 miles an hour to cross Atlantic Avenue; that plaintiff went across New Jersey Avenue directly in front of the car; that he applied the brakes and stopped the car in about 5 feet and that he did not know whether the car passed over her or whether she skated into the car.

From these facts, one legitimate inference would be that the plaintiff, advised by the traffic lights that she might proceed in safety, had begun to cross the highway at a public crossing before the defendant's automobile engaged in the same attempt, and while it was sufficiently distant to have avoided the collision but for either the speed at which it was progressing, or lack of sufficient control over the car in its operation, or from the inattention of the defendant operating the car to the conditions upon the crossing that he was approaching. As was said by this Court in *Vrooman v. North Jersey St. Ry. Co.*, 70 N. J. L. 818, reviewing on error the refusal of the trial Judge to grant a non-suit and his refusal to direct a verdict for defendant in a negligence action arising out of a collision between a trolley car and a truck:

“Neither the driver of the truck nor the company could drive their respective vehicles at a rate of speed incompatible with the safe and customary use of the street by other vehicles and foot passengers.”

Citing *Consolidated Traction Co. v. Reeves*, 58 N. J. L. 576, where Mr. Justice Lippincott said:

“If, from the facts in evidence, two inferences or conclusions can be reasonably deduced

—one favorable to the plaintiff, and the other against him—a question then is presented which conclusively calls for the opinion of the jury. This principle is alike applicable whether negligence, as a proximate and sole cause of the injury, has been established against the defendant or not.

In *Pennsylvania R. Co. v. Matthews*, 36 N. J. L. 531, this Court said:

“It is sufficient for all useful purposes to say, that the evidence on this subject is open to fair debate, and leaves the mind in a state of doubt on this question, whether the driver of the horses which were destroyed, exercised or not the degree of care which his legal duty exacted. This being the case, the Judge would not have been justified in taking the question from the jury. Such a course is proper only when the absence of caution is apparent, and is in reason, indisputable.”

In *Turner v. Hall*, 74 N. J. L. 214, a boy about 12 years of age was playing in the roadway of a street, throwing a ball and running to catch it. The defendant's auto, driven by himself, was coming along the street, at full speed, in the middle of the street, giving no warning, and when it approached the boy it “twitched” and hit him. On motion for non-suit on the ground of contributory negligence, it was held for the jury and the motion denied—because the alleged negligence must be deduced from facts and circumstances in evidence.

Whether the plaintiff, in noting the traffic signals before stepping from the sidewalk into the street and in looking down the street for approaching vehicles before attempting to cross the highway, and

seeing the signal lights showing safety and observing no vehicle approaching that might suggest a source of danger, and then attempting to cross at a public crossing and when she discovered the defendant's auto attempting to turn back to avoid collision, was using such precaution and care for her safety as a reasonably prudent man would use under the circumstances, was essentially a jury question under the rule declared in *Newark Passenger Ry. Co. v. Block*, 55 N. J. L. 605, cited on the brief for appellant.

Clearly on the facts as established by the evidence on the part of the plaintiffs at the close of their case, the learned trial Judge would not have been justified in granting the motion for non-suit. The condition of the proof was such that negligence of the defendant was a legitimate inference, and that inference was for the jury. No contributory negligence was apparent nor any facts from which contributory negligence might be inferred, but had there been such facts that inference was also for the jury.

It is for the Judge to say whether any facts have been established, by evidence, from which negligence might be reasonably inferred, and for the jury to say whether, from the facts submitted to them, negligence ought to be inferred.

*Newark Pass. Ry. Co. v. Block, supra;*  
*Hummer v. Lehigh Valley R. Co.*, 75 N. J.  
L. 703.

The refusal to non-suit was proper.

## II.

There was no error in the refusal to direct a verdict for the defendant. The decisions of this Court,

cited above, abundantly vindicate the propriety of that ruling.

It may be well to notice, in this place, two instances of errors of substance that, unwittingly, perhaps, appear in the brief for the appellant. On page 2 of the brief, it is stated—referring to the testimony as given by defendant on page 90, Case, “that he let up the clutch and proceeded *slowly* on.” Turning to the State of the Case, at page 90, line 13, it is disclosed that what he testified to was, “I let my clutch come up and proceeded on.” Again, on the same page of the brief, referring to Case, p. 90, l. 20, it is asserted that “the defendant *immediately* applied his brake.” What the defendant really said in his testimony was, “The only thing I could do was just throw my brake on.” The importance of this testimony is that it is some evidence bearing upon the conduct of the defendant in the operation of the car, and from which the only possible inference would be that he not only had the car under control, but that he promptly exercised that control. It will also bear the inference that, having regard to the conditions, the speed was not slow nor his application of the brakes immediate.

*Kaufman v. Bush*, 69 N. J. L. 645.

The power to direct a verdict is identical with and rests upon the same foundation as the power to non-suit.

*Newark Passenger Ry. Co. v. Block*, *supra*.

In the case last cited, Mr. Justice Magie, speaking for this Court, further observes that:

“The duty of the trial Judge, when requested to non-suit or direct a verdict, is to say whether any facts have been established by evidence

from which negligence may be reasonably inferred. If none, there is no case to go to the jury; but, if, from the facts established, negligence may be reasonably and legitimately inferred, it is for the jury to say whether from these facts negligence ought to be inferred. \* \* \* If the real facts have not been established by evidence, but remain in substantial dispute, the trial Judge must submit them, and the inferences to be drawn from those which the jury find established, to the determination of the jury."

Some of the facts testified to by plaintiff, Annie Eichinger, and her witnesses were squarely contradicted by testimony of defendant and his witnesses. For the trial Judge to have said, when the request to direct a verdict for the defendant was made, that the facts of the case had been established would have been an impossibility. The real facts could only be determined by the jury.

### III.

The last point made by the appellant (par. IV, p. 11, brief) is that, "The trial Judge erred in charging the jury that the plaintiff was to be considered as a pedestrian, and had the right of way at street intersections, although at the time she was proceeding across the street on *roller skates*."

What the Judge said in his charge to the jury was this:

"Now, under the traffic laws of the State, pedestrians at street intersections have the right of way. Under the laws of the city, when

the amber light is burning, vehicular traffic stops and pedestrian traffic has a right to proceed. The green light is a signal to proceed for traffic bearing north and south on New Jersey Avenue. The red light is a signal for traffic to stop. *See charge, Case, p. 124, commence last line, continuing on p. 125, lines 1-8.*

In charging this proposition, the learned trial Judge was careful to instruct the jury that in considering these statutory and municipal regulations, the mere failure to observe them does not amount to negligence *per se*, but is only one element among others to be considered in determining the question whether or not there is negligence. The foregoing quoted statement of the trial Judge being excepted to by defendant's attorney, the Judge thereupon delivered the following further instructions:

"You are to take into consideration all the circumstances—the manner in which each one approached; that one was in an automboile, the other on roller skates. You take all these things into consideration, and you determine whether or not under all those surrounding circumstances and conditions the party was or was not in the exercise of that degree of care to which I have called your attention." *Charge, Case, p. 126, l. 20.*

These instructions were proper and are justified under the decision of this Court in *Kaufman v. Bush*, 69 N. J. L. 645.

That case bears a striking similarity, both in the facts involved and controlling principles to be applied to the case *sub judice*. The action was brought by an infant of 5 years, to recover damages for being run down by defendant's vehicle upon a pub-

lic highway. The gravamen was the careless management of defendant's horse. The case went to the jury and judgment went against the defendant, who brought a writ of error, contending that the plaintiff should have been non-suited, or that a verdict for the defendant should have been directed, each of which motions was made and denied. For the purpose of each motion, the facts dealt with were that the plaintiff, in full daylight, started to cross a public highway upon which the defendant's team was being driven. The point was a public crossing, at the junction of two streets, and when the plaintiff was about leaving the sidewalk, the defendant's team, which was approaching the crossing at a high rate of speed, seemed to the witness, Quinn, to be half a block away. When the plaintiff had got between 4 and 5 feet from the sidewalk, which she had just left, she was struck by the forefeet of the defendant's horse. As to the speed at which the horse was coming, the witness, Quinn, testified that it was coming fast, but there was other evidence on the part of the plaintiff from which the only possible inference was that the horse was under control.

Mr. Justice Garrison, speaking for this Court, said:

“The part of the street in which the collision took place, namely, within four or five feet of the curb, the fact that it was at a public crossing near a corner, and in full daylight, are all circumstances bearing upon the duty of the driver, and his alleged negligence with respect to it.

If, from this testimony, the jury found, as they might, that the plaintiff had reached the crossing first, and was using it at a time when the driver of the approaching vehicle ought to have seen her, and could, by exercising proper

care over a horse that was under proper control, have either stopped or turned aside so as to avoid running her down, a case of negligence was sufficiently made out. The dangerous character of public crossings, *the rule that gives the person who has commenced to cross a priority of right*, and the serious consequences that must flow from the neglect of drivers to approach crossings circumspectly, and in reasonable control of their horses, are all involved in determining the degree of care that would absolve a driver from negligence when, in point of fact, he has run down a pedestrian at a public crossing."

The age of the plaintiff, the fact that she was crossing the street on roller skates and the fact that the defendant was operating a motor car instead of driving a horse, while they do not, *per se*, alter the rule by which the negligence of the operator is to be gauged, are circumstances to be taken into consideration in measuring the sort of care he was exercising and in determining what inferences should be drawn from the other facts respecting the accident, of which the circumstance that it occurred at a public crossing which the plaintiff had reached first and was using at the time, is one.

We have examined the authorities cited in the appellant's brief, and, in view of the facts in the record, they seem to be without application.

Respectfully submitted that the judgment of the Circuit Court should be affirmed.

JOHN RAUFFENBART,  
*Attorney of Plaintiffs-  
Respondents.*

U. G. STYRON,  
*Of Counsel.*

NEW JERSEY COURT OF ERRORS AND  
APPEALS.  
ATLANTIC COUNTY CIRCUIT COURT.

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ANNA EICHINGER, by her next friend, CLARA EICHINGER and CLARA EICHINGER, her mother, in her own right,  
*Plaintiffs-Appellees,*  
v.  
CHARLES M. KROUSE,  
*Defendant-Appellant.*

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ON APPEAL.

---

BRIEF FOR DEFENDANT-APPELLANT.

---

The only questions involved in this case are:

1. The Court erred in its refusal to grant defendant's motion for non-suit.
2. The Court erred in its refusal to grant defendant's motion for the direction of a verdict.
3. The Court erred in charging the jury that the plaintiff, who was on roller skates, was to be considered as a pedestrian, and had the right of way at street intersections.

## FACTS.

The defendant testified on C. p. 90 that on October 23rd, 1925, between 7 and 7.30 P. M., accompanied by his wife and little girl, he drove away from their home on St. James Place in his car. He further testified that he turned east on Pacific Avenue, went up Pacific Avenue until he reached the corner of Pacific and New Jersey Avenues where he stopped to wait for the light to permit him to make a left-hand turn on New Jersey Avenue and then proceeded north on New Jersey Avenue. When he reached the middle of the square, C. p. 90, he noticed that the light at the intersection of New Jersey Avenue and Atlantic Avenue was amber and he then drifted to within seventy-five feet of the corner when the light turned to green. With the change of the lights, he testifies, on C. p. 90, that he let up the clutch and proceeded slowly on.

The defendant's wife testified, on C. p. 74, l. 28, that they were proceeding at the speed of about nine miles an hour. At this time the defendant was driving within five or six feet of the curb, C. p. 91, l. 14. When he was within four or five feet of the property line on Atlantic Avenue, plaintiff suddenly appeared around the corner of the building on the sidewalk on roller skates going very rapidly, C. p. 84, l. 30. The defendant immediately applied his brake, C. p. 90, l. 20, but the plaintiff struck the right-hand front fender, C. p. 84, l. 30. Defendant stopped within three or four feet and got out of his car, lifted the plaintiff in and took her directly to the hospital, C. p. 90, l. 25.

On C. p. 13, l. 22, plaintiff testified that she was

skating west on Atlantic Avenue, and on C. p. 19, l. 21, plaintiff testifies on cross-examination that she looked up New Jersey Avenue and did not see any traffic and that she was in a position to have seen clear up Pacific Avenue. Plaintiff testified, C. p. 22, l. 27, that immediately before she went off the curb the light was red for traffic on Atlantic Avenue, down which she had been skating, and hence must have been green for traffic on New Jersey Avenue.

On C. p. 49, l. 13, Mrs. Krouse, wife of the defendant, testified that the light was green for traffic on New Jersey Avenue, as they approached the intersection, it having just previously been changed from amber when they were within seventy-five feet of the crossing. On C. p. 49, l. 35, Mrs. Krouse testified that at no time was the plaintiff in front of the car and that the plaintiff hit somewhere along the front right-hand fender. On C. p. 84, l. 25, Mrs. Krouse testified that plaintiff skated into the right front fender. On C. p. 48, l. 30, the same witness testified that the plaintiff was coming very fast and this fact is further brought out in the cross-examination of Mrs. Krouse, C. p. 69, l. 20, and also shown in the cross-examination of the same witness, C. p. 84, l. 30.

On C. p. 102, l. 6, Antoinette Miller, who had been skating with the plaintiff west on Atlantic Avenue, describes that they were skating quite fast coming down the avenue, that she, Antoinette Miller, saw the lights from the car coming and called to the plaintiff, but that she was already crossing

## REASONS OF APPEAL.

1. The learned trial Judge erred in refusing, on the facts and law of the case as tried before him, the defendant's motion for a non-suit, on the ground that there was no evidence of any negligence on his part.

2. The learned trial Judge erred in refusing the defendant's motion for a non-suit on the ground that the testimony showed as a matter of law that the plaintiff, Anna Eichinger, was guilty of contributory negligence.

3. The learned trial Judge erred in refusing to grant defendant's motion for a direction of verdict in favor of the defendant for the reason that the testimony showed as a matter of law that the plaintiff, Anna Eichinger, was guilty of contributory negligence.

4. The learned trial Judge erred in refusing to grant defendant's motion for a direction of verdict in favor of the defendant on the ground that there was no evidence of any negligence on the part of said defendant.

5. The learned trial Judge erred in charging the jury that the plaintiff, Anna Eichinger, was to be considered as a pedestrian and had the right of way at street intersections, although she was at the time proceeding across the street on roller skates.

I.

Where there is no evidence of negligence on the part of the defendant found in the plaintiff's evidence, the Court should grant the defendant's motion for non-suit.

In *Bauer v. Great Atlantic and Pacific Tea Company*, 99 N. J. L. 451, Court of Errors and Appeals, plaintiff's intestate, a boy of seven years of age, was run over and killed by the defendant's truck, when the boy jumped from a trolley car on which he was riding and stumbled or fell in front of the truck.

Upon appeal to this Court from denial of the motion for a non-suit and to a directed verdict, the Court held that the proper disposition of the case was either to have non-suited the plaintiff or directed a verdict for the defendant.

"The duty of the driver was to use the care of an ordinarily prudent person. In driving upon a highway a driver's duty is to make observations as to possible or probable dangers from all directions. In so doing, it necessarily follows that a driver cannot at all times direct his attention to a single object. There must be a time when his attention will be drawn at least momentarily from one object to another.

In view of the fact that the truck was proceeding in a proper place in the highway; that it was being driven at a moderate rate of speed; that the deceased jumped off the wrong side of the car, in front of a moving vehicle, that the driver was not obliged to assume that the boy would jump while the truck was passing the car—we are of the opinion that the case lacked such evidence of negligence on the part of the

driver of the truck as to warrant the submission to the jury of the question of the defendant's negligence."

In the case at bar, the defendant could not be expected to anticipate that the plaintiff would suddenly dash around the corner on roller skates. In proceeding at a low rate of speed and in obeying the traffic lights, the defendant's course of conduct was that of an ordinarily prudent person.

On C. p. 14, l. 17, plaintiff testified that when she stepped off the curb, she did not see any machines coming, but when she got to the center of the street, she was attracted by the lights of the machine, attempted to turn around, and was then struck. On C. p. 22, on cross-examination, the plaintiff testified that immediately before she went off the curb, the light was red for Atlantic Avenue traffic. It hence must have been green for traffic on New Jersey Avenue. On C. p. 14, l. 27, when plaintiff was asked how fast the car was coming, she testified that she could not say how fast it was coming, stating only that it was coming fast in her eyes. That is, in the eyes of the plaintiff, the young girl herself, moving on roller skates and attracted only by the lights. At no other point in plaintiff's testimony is an attempt made to impute negligence to the defendant's conduct.

Helen Burke, the plaintiff's other witness, testified on C. p. 30, l. 2, that she did not see the accident but was talking to a third person. Neither of the other two plaintiff's witnesses saw the accident.

Negligence is a fact which must be proved. It will not be presumed. *McCombe v. Public Service Railway Company*, 95 N. J. L. 187. Negligence cannot be inferred from the mere happening of the

accident itself. *Kingsley v. the D. L. & W. Railway*, 81 N. J. L. 536.

II.

A non-suit should be granted where plaintiff has by her own evidence shown herself to be guilty of contributory negligence.

In *Brown v. Railroad Co.*, 68 N. J. L. 618, this Court reversed the judgment for the plaintiff, holding that the trial Judge should have granted a non-suit. Plaintiff attempted to cross on foot the trolley tracks laid in the middle of the street at 7.00 o'clock in the evening on February 12th, when it was dark and raining. He was struck by a trolley coming from the east. In that direction the street was straight for a long distance. The headlight on the trolley was lighted, as were also the lights inside. The plaintiff testified that when he started to cross the street he did not see the car, but before he succeeded in crossing he was struck, though he stepped as quickly as he could. It was held that upon this testimony the plaintiff was so clearly guilty of contributory negligence as to require the granting of a non-suit. The Court said:

“In attempting to cross the tracks a duty was imposed on the plaintiff to take such care for his safety as reasonable prudence under the peculiar circumstances. He was bound to use his powers of observation to discover the approaching car, and to exert his judgment how to avoid the danger of a collision.”

In *Eagen v. Jersey City, etc., Ry. Co.*, 74 N. J. L. 699, this Court reversed a judgment for the plain-

tiff because of his contributory negligence. He alighted from a trolley car and passed behind the car and stepped upon the other track, where he was struck by a trolley going in the opposite direction. The Court said:

“The duty of a person crossing a roadbed of a public highway used by such vehicles has been declared in this court to require him to use his powers of observation to observe approaching vehicles, and to exercise a reasonable judgment when and how to cross without collision.”

In *Fitzhenry v. Consolidated Traction Co.*, 64 N. J. L. 674, this Court sustained a non-suit. The plaintiff, a girl nine years of age, was crossing Newark Avenue in Jersey City. She had with her her three-year-old brother. They were struck by a street car. The little boy was killed and the plaintiff was injured. The Court said:

“The salutary rule of duty which requires the ordinary traveler, in crossing a street railway, to use his powers of observation to discover approaching vehicles, and his judgment how and when to cross without collision, is also binding upon the child, that is *sui juris*; and if the facts are undisputed, and it appears clearly that he has acted in entire disregard of that degree of prudence which may be reasonably expected from one of his years, and he suffers injury thereby, he cannot recover, and in that case the question of contributory negligence becomes one for the Court to determine.

I think, therefore, when the plaintiff attempted to cross defendant's track at a quick pace, as she did, either in front of the car, which she saw, or by rushing heedlessly into danger

without looking, acted in such entire disregard of her duty that there is room but for one opinion, and that is that she was guilty of contributory negligence."

In re *Bora, et al. v. Yellow Cab Company*, 135 Atlantic, 889, we find this Court stating:

"Our Traffic Act (Pamphlet Laws, 1915, page 305, Section 25 and Section 12) as amended by Pamphlet Laws, 1916, page 49, Section 1, provides, in effect, that in places where (as in the instant case) the houses are on the average less than one hundred feet apart, pedestrians shall have the right of way over vehicles at any street crossing *in the absence* of any municipal regulation relating to such crossing."

Even if the plaintiff were a pedestrian, her testimony clearly shows that traffic at the intersection of New Jersey and Atlantic Avenues, was controlled by lights operated by the city, C. p. 22, also C. p. 125, the Courts charged the jury. On C. p. 22, on cross-examination, plaintiff testified that the light was red for traffic on Atlantic Avenue down which she was going when she started to cross the street.

### III.

Where the testimony shows as a matter of law that the plaintiff is guilty of contributory negligence the Court should grant a motion for a direction of verdict.

Plaintiff in this case disregarded the traffic lights, C. p. 22, l. 20. She further was proceeding at a very rapid rate, C. p. 84, l. 30. On C. p. 102, l. 7, her com-

panion, Antoinette Miller, testified, "We were skating quite fast coming down the avenue." Further, the plaintiff either disregarded, or because of her speed was unable to obey the warning call of her companion.

See *Bauer v. Great Atlantic and Pacific Tea Company, supra*.

In *McGrath v. The New Jersey Street Railway Company*, 66 N. J. L. 312, this Court affirmed the direction of the verdict for the defendant because of the plaintiff's contributory negligence. Plaintiff was crossing Market Street in Newark and did not look for a street car except as he left the sidewalk. The accident occurred about nine o'clock in the evening near the intersection of Broad and Market Streets. Plaintiff did not see the car until the instant of the accident. In this case, quoting from the case of *Newark Passenger Railway Company v. Block*, the Court said:

"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 path 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.”

IV.

The trial Judge erred in charging the jury that the plaintiff was to be considered as a pedestrian, and had the right of way at street intersections, although she was at the time proceeding across the street on roller skates.

A careful examination of the cases has failed to disclose any in which the term “pedestrian” has been defined or in which the question here raised has been presented. Webster’s Dictionary defines the pedestrian as follows:

- “1. Going on foot, performed on foot.
2. Of or pertaining to walking, hence slow, dull or commonplace.”

By common usage, and correctly so, the word has become descriptive of that class of people who move comparatively solely from place to place, unaided by any mechanical machinery. A pedestrian walks, while a roller skater may be said to glide, making use of wheels revolving in sets of ball bearings.

It has never been contended that a person propelling a bicycle was a pedestrian, yet such a person is progressing solely by using the feet, aided by a mechanical device.

Likewise, one on a tricycle is not considered a pedestrian. Yet, such a person is merely making use of a mechanical device in conjunction with power supplied by the legs and applied by pressure on the pedals by the feet.

In the present case plaintiff's progress was aided by artificial means. The roller skates attached to her shoes permitted her to travel at a rate of speed many times faster than she could have walked. While it was necessary that she use her limbs in propelling herself, one must also use the limbs when riding a bicycle. In walking, the means of locomotion provided by nature is alone used. It is obviously clear that a pedestrian pacing along has instant control over his movements, in contrast to one moving on wheels set in roller bearings, and unaided by any brake. It is illogical to place in the same category with comparatively slow-moving pedestrians a group who by virtue of their ability to speed and their decreased ability to control themselves are constantly proving a menace and danger to those same pedestrians. This is undoubtedly the position taken by a great number of municipalities, resulting in the passage of ordinances dealing specifically with roller skates.

See for example an ordinance regulating roller skating on the public streets of the City of Camden, passed at a meeting of the Camden City Council, March 28th, 1907:

"C—No such skater shall propel himself or herself or allow himself or herself to be propelled at a greater speed on any such public street than at the rate of eight miles an hour.

H—No such skater shall use any sidewalk of any public street in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth or

Tenth Wards of the City of Camden for roller skating purposes, where such street is paved with sheet asphaltum, nor shall any such skater use any sidewalk of any public street in the Eleventh or Twelfth Wards of said city for roller skating purposes.”

This ordinance, and other similar ordinances demonstrate that roller skaters are to be considered as a separate class of those using the highways.

The State Traffic Act, Chapter 156, Laws of 1915, as amended by Chapter 24, Laws of 1916, Chapter 141, Laws of 1918, would seem to recognize this distinction. Part 2, Section 7 (3) catalogues together bicycle riders and persons on roller skates, whereas there is a separate section dealing with pedestrians.

We therefore respectfully submit that for the reasons above stated, the judgment should be reversed.

STARR, SUMMERILL & LLOYD,  
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Defendant-Appellant.*