

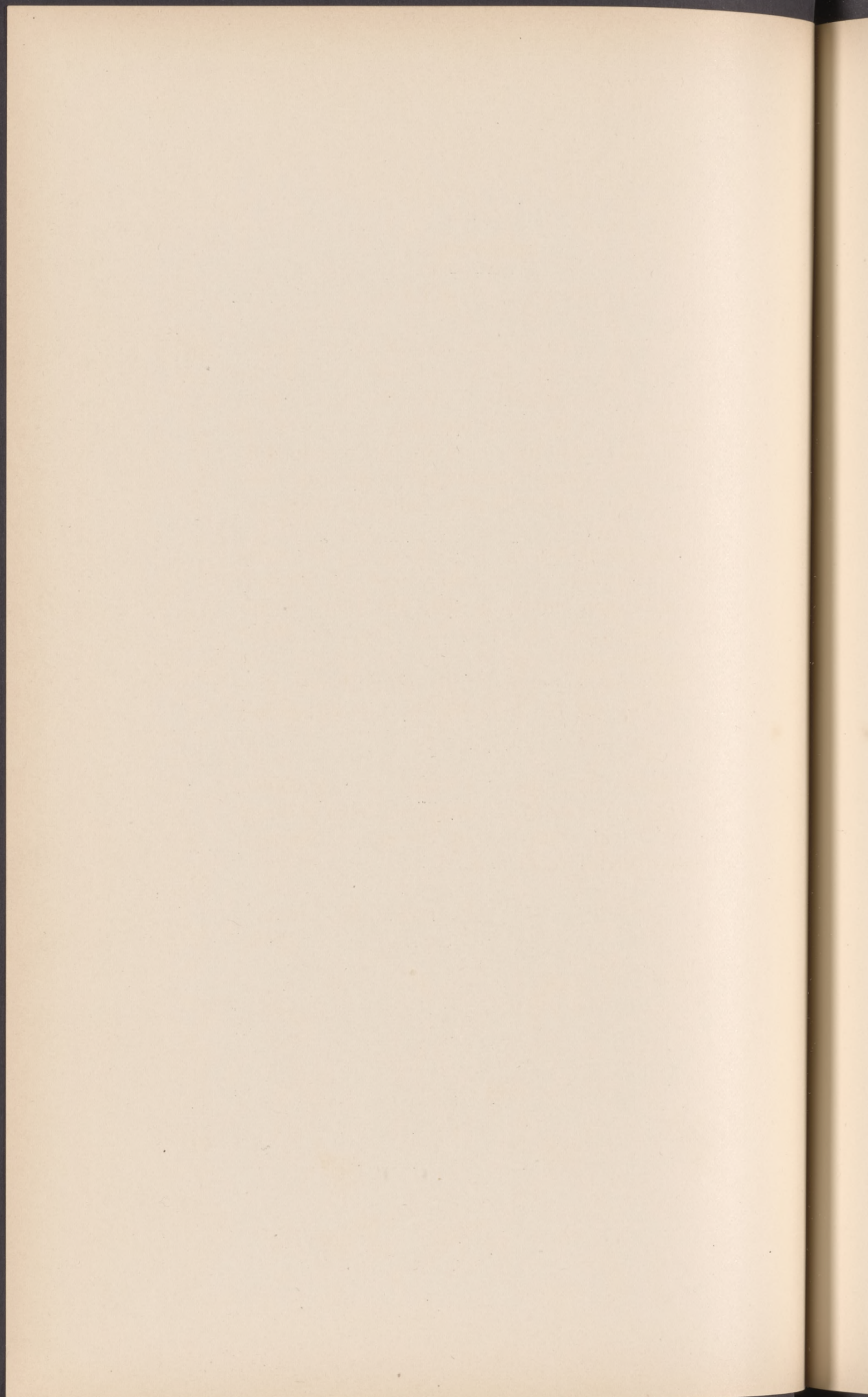
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## Summons.

THE STATE OF NEW JERSEY TO

RIVERLAWN SANATORIUM, a corpo- 10  
ration of New Jersey, and in the  
alternative CLARA S. MILLSPAUGH.  
(L. S.) You are summoned to answer the  
annexed complaint of Eugenie Hoh-  
mann, administratrix *ad prosequen-*  
*dum* of Charles Hohmann, deceased,

in an action at law in the New Jersey Supreme  
Court. And take notice, that unless you file your  
answer to said complaint with the Clerk of the  
New Jersey Supreme Court at Trenton, within 20  
twenty days after service upon you of this writ  
and the annexed complaint, the plaintiff may pro-  
ceed in the suit and judgment be entered against  
you.

Witness, Honorable WILLIAM S. GUMMERE,  
Esq., Chief Justice of the Supreme Court at Tren-  
ton, N. J. this 19th day of December, Nineteen  
Hundred and Twenty-five. 30

EDWARD J. KELLEHER,  
Clerk.

LEWIS B. EASTMEAD,  
Attorney.

**Complaint.**

(Filed December 31, 1925.)

NEW JERSEY SUPREME COURT,

10

HUDSON COUNTY.

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EUGENIE HOHMANN, administra-  
trix *ad prosequendum* of the  
Estate of CHARLES HOHMANN,  
deceased,

Plaintiff,

*vs.*

20

RIVERLAWN SANATORIUM, a Corpo-  
ration of New Jersey, and in  
the alternative CLARA S. MILLS-  
PAUGH,

Defendants.

Action at  
Law.

---

Plaintiff, Eugenie Hohmann, residing at No. 954 Courtland Street, in the Township of North Bergen, in the County of Hudson and State of New Jersey, says that:

30

1. Defendant, Riverlawn Sanatorium was and still is a Corporation of New Jersey and at all the times mentioned herein was such Corporation engaged in the business of owning and operating a private hospital, institution or sanatorium for the care of persons suffering from mental or nervous diseases and was and is conducted for private gain.

40

2. On September 16th, 1925, plaintiffs intestate, Charles Hohmann, was admitted to the Sana-

*Complaint.*

torium of the defendants, as a paid patient, suffering from neurasthenia and mental disorders, which condition was known to the defendants. All bills due defendants are paid.

3. Plaintiffs intestate, Charles Hohmann, continued to be a patient in the sanatorium of the defendant until September 26th, 1925 when through the gross negligence of the defendant, its agents, servants or employees, in not properly guarding the said Charles Hohmann, he escaped and left the said sanatorium and became lost in the woods in the vicinity of said sanatorium.

10

4. Defendant, through its servants, agents or employees negligently allowed said Charles Hohmann to remain at large and made no effort to apprehend him until on September 30th, 1925, the body of said Charles Hohmann was found in the woods.

20

5. As a result of the negligence of the defendant, its agents, servants or employees, in not protecting and guarding the person of Charles Hohmann and allowing him to roam at large, said Charles Hohmann died on September 30th, 1925, within twenty-four calendar months of the commencement of this action.

30

6. The death of said Charles Hohmann, was due entirely to the negligence of the defendant, its agents, servants or employees.

7. Said Charles Hohmann, died a resident of Hudson County and on November 23rd, 1925, letters of administration *ad prosequendum* were

40

*Complaint.*

granted to his widow, Eugenie Hohmann, the plaintiff, herein who brings them into court.

10 8. Said, Charles Hohmann, left surviving him, his widow Eugenie Hohmann, the plaintiff herein, as his only surviving next of kin and she has by his death suffered great pecuniary loss.

Plaintiff demands as damages the sum of Twenty-five Thousand Dollars (\$25,000.00) from the defendant.

Plaintiff, Eugenie Hohmann, in the alternative, says that:

20 1. Defendant Clara S. Millspaugh was engaged in the business of owning and operating a private hospital, institution or sanatorium for the care of persons suffering from mental or nervous diseases which said business was and is conducted for private gain.

30 2. On September 16th, 1925, plaintiffs intestate, Charles Hohmann, was admitted to the Sanatorium of the defendant, as a paid patient, suffering from neurasthenia and mental disorders, which condition was known to the defendant. All bills due defendant are paid.

40 3. Plaintiffs intestate, Charles Hohmann, continued to be a patient in the sanatorium of the defendant until September 26th, 1925 when through the gross negligence of the defendant, her agents, servants, or employees, in not properly guarding the said Charles Hohmann, he escaped and left the said sanatorium and became lost in the woods in the vicinity of said sanatorium.

*Complaint.*

4. Defendant, through her servants, agents or employees, negligently allowed said Charles Hohmann to remain at large and made no effort to apprehend him until on September 30th, 1925, the body of said Charles Hohmann was found in the woods. 10

5. As a result of the negligence of the defendant, her agents, servants or employees, in not protecting and guarding the person of Charles Hohmann and allowing him to roam at large, said Charles Hohmann died on September 30th, 1925, within twenty-four calendar months of the commencement of this action.

6. The said death of said Charles Hohmann, was due entirely to the negligence of the defendant, her agents, servants or employees. 20

7. Said Charles Hohmann, died a resident of Hudson County and on November 23rd, 1925, letters of administration *ad prosequendum*, were granted to his widow, Eugenie Hohmann, the plaintiff herein who brings them into Court.

8. Said Charles Hohmann, left surviving him, his widow Eugenie Hohmann, the plaintiff herein, as his only surviving next of kin and she has by his death suffered great pecuniary loss. 30

Plaintiff demands against defendant, Clara S. Millspaugh, in the alternative, in the sum of Twenty-five Thousand (\$25,000.00) Dollars damages.

LEWIS B. EASTMEAD,  
Attorney for Plaintiff. 40

**Answer.**

(Filed January 7, 1926.)

## NEW JERSEY SUPREME COURT,

10

HUDSON COUNTY.

EUGENIE HOHMANN, administra-  
trix *ad prosequendum* of the  
Estate of CHARLES HOHMANN,  
deceased,

Plaintiff,

*vs.*

20

RIVERLAWN SANATORIUM, a cor-  
poration of New Jersey, and  
in the alternative, CLARA S.  
MILLSPAUGH,

Defendants.

Action  
at Law.

Riverlawn Sanatorium a corporation of New Jersey, one of the defendants herein, answering says:

- 30 1. Defendant admits paragraph one of the complaint.
2. Defendant denies paragraph two of the complaint.
3. Defendant denies paragraph three of the complaint.
4. Defendant denies paragraph four of the complaint.
- 40 5. Defendant denies paragraph five of the complaint.

*Answer.*

6. Defendant denies paragraph six of the complaint.

7. Defendant has no information or knowledge sufficient to form a belief as to paragraph seven of the complaint. **10**

8. Defendant has no information or knowledge sufficient to form a belief as to paragraph eight of the complaint.

Clara S. Millspaugh, one of the defendants herein residing in the City of Paterson, County of Passaic and State of New Jersey, answering says:

1. Defendant denies paragraph one of the complaint. **20**

2. Defendant denies paragraph two of the complaint.

3. Defendant denies paragraph three of the complaint.

4. Defendant denies paragraph four of the complaint.

5. Defendant denies paragraph five of the complaint. **30**

6. Defendant denies paragraph six of the complaint.

7. Defendant denies paragraph seven of the complaint.

8. Defendant denies paragraph eight of the complaint.

*Answer.*

## SEPARATE DEFENSES.

10 First Separate Defense: The plaintiff, Charles Hohmann, since deceased, was admitted to the defendant sanatorium for treatment upon his own request. There was no duty upon the defendant corporation to watch him and care for him, nor to retain him on the defendant's premises. Defendant had no authority to keep plaintiff on its premises nor could he be held there against his will as he was a voluntary patient and presented himself at the sanatorium for treatment.

20 Second Separate Defense: When the patient was admitted to the sanatorium he was asked by the authorities in charge if he required or wanted an attendant. Plaintiff answered that he did not but that he merely wanted treatment.

JOHN L. GRIGGS,  
Attorney of Defendant.

A true copy

30 EDWARD J. KELLEHER,  
Clerk.

**Reply.**

(Filed January 14, 1926.)

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

10

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EUGENIE HOHMANN, administra-  
trix *ad prosequendum* of the  
Estate of CHARLES HOHMANN,  
deceased,

Plaintiff,

*vs.*

RIVERLAWN SANATORIUM, a cor-  
poration of New Jersey, and  
in the alternative, CLARA S.  
MILLSPAUGH,

Defendants.

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Action  
at Law.

20

Plaintiff replying to the Answer of the defend-  
ant, says that:

REPLY TO FIRST SEPARATE DEFENSE.

30

1. Plaintiff denies the allegations of the First  
Separate Defense.

REPLY TO SECOND SEPARATE DEFENSE.

1. Plaintiff denies the allegations of the Second  
Separate Defense.

LEWIS B. EASTMEAD,  
Attorney for Plaintiff.

A true copy EDWARD J. KELLEHER, Clerk.

40

**Postea.**

(Filed June 19, 1926.)

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

10

EUGENIE HOHMANN, administra-  
trix *ad prosequendum* of the  
Estate of CHARLES HOHMANN,  
deceased,

Plaintiff,

*vs.*

20

RIVERLAWN SANATORIUM, a cor-  
poration of New Jersey, and in  
the alternative, CLARA S. MILLS-  
PAUGH,

Defendants.

This action came regularly on for trial on the  
third day of May, 1926 before Judge Willard W.  
Cutler at the Hudson County Circuit. It was  
ordered that plaintiff be non-suited.

30

Signed June 15, 1926.

WILLARD W. CUTLER,  
Judge.

A true copy EDWARD J. KELLEHER, Clerk.

40

**Notice of Appeal.**

(Filed July 2, 1926.)

NEW JERSEY SUPREME COURT,

10

HUDSON COUNTY.

EUGENIE HOHMANN, administra-  
trix *ad prosequendum* of the  
Estate of CHARLES HOHMANN,  
deceased,

Plaintiff-Appellant,

*vs.*

20

RIVERLAWN SANATORIUM, a cor-  
poration of New Jersey, and in  
the alternative, CLARA S. MILLS-  
PAUGH,

Defendants Respondents.

To JOHN L. GRIGGS, Esq.,

Attorney for Defendants Respondents.

30

*Sir:*

You will please take notice, that the plaintiff-  
appellant, Eugenie Hohmann, administratrix *ad  
prosequendum* of the Estate of Charles Hohmann,  
deceased, herewith appeals to the New Jersey  
Court of Errors and Appeals, from the judgment  
of non-suit, of the New Jersey Supreme Court,  
made and entered in the above matter, and that  
she will, within the time prescribed by law and the

40

*Notice of Appeal.*

rules of the Court serve upon you, her reasons or grounds of appeal.

Dated June 25, 1926.

10

Yours, etc.,

LEWIS B. EASTMEAD,  
Attorney for Eugenie Hohmann, Ad-  
ministratrix *ad prosequendum* of  
the Estate of Charles Hohmann,  
deceased,

Plaintiff-Appellant.

20

A true copy EDWARD J. KELLEHER, Clerk.

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40

## Grounds of Appeal.

(Filed July 2, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

EUGENIE HOHMANN, administra- trix <i>ad prosequendum</i> of the Estate of CHARLES HOHMANN, deceased, <div style="text-align: right; padding-right: 20px;">Plaintiff-Appellant,</div>	10
<i>vs.</i>	
RIVERLAWN SANATORIUM, a corpo- ration of New Jersey, and in the alternative, CLARA S. MILLSPAUGH, <div style="text-align: right; padding-right: 20px;">Defendant-Respondent.</div>	20

} Action  
} at Law.

To JOHN L. GRIGGS, Esq.,  
 Attorney for Defendant-Respondent.

*Sir:*

The above named Appellant states the follow-  
 ing Grounds of Appeal.

30

1. THE TRIAL COURT ERRED IN DIRECTING A VER-  
 DICT OF NON-SUIT against the plaintiff for the fol-  
 lowing reason:

The plaintiff-appellant had clearly made out a  
 cause of action under the DEATH ACT.

2. THE TRIAL COURT ERRED IN DIRECTING A VER-  
 DICT OF NONSUIT against the plaintiff for the fol-  
 lowing reason:

The question of whether plaintiff had made a  
 sufficient showing of negligence was for the jury

40

*Grounds of Appeal.*

and it was therefore error for the Trial Court to direct a verdict of nonsuit.

10 3. THE TRIAL COURT ERRED IN DIRECTING A VERDICT OF NONSUIT against the plaintiff for the following reason:

The question as to whether plaintiff had made out a proper cause of action under the facts of the case, was for the jury and it was therefore error for the Trial Court to direct a verdict of non-suit.

LEWIS B. EASTMEAD,  
Attorney for Plaintiff-Appellant.

20

30

40

**Testimony.**

NEW JERSEY SUPREME COURT,  
HUDSON COUNTY.

<p>EUGENIE HOHMANN, Administra- trix <i>ad prosequendum</i> of the Estate of CHARLES HOHMANN, deceased,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;"><i>vs.</i></p> <p>RIVERLAWN SANATORIUM, a corpo- ration of New Jersey, and, in the alternative, SARA S. MILLS- PAUGH,</p> <p style="text-align: right;">Defendant.</p>	}	<p style="text-align: right;">10</p> <p style="text-align: center;">Before: HON. WILLARD W. CUTLER, Judge, and a jury.</p> <p style="text-align: right;">20</p>
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Jersey City, N. J., May 3, 1926.

Appearances:

LEWIS B. EASTMEAD, Esq., Attorney for plain-  
tiff.

JOHN L. GRIGGS, Esq., (By CHARLES E. STET-  
LER, Esq.), for defendant. 30

A jury was impanelled, declared satisfactory,  
and sworn.

Mr. Eastmead opened for the plaintiff.

Mr. Griggs opened for the defendant.

*Eugenie Hohmann, Plaintiff—Direct.*

EUGENIE HOHMANN SWORN.

*Direct examination by Mr. Eastmead:*

10 Q. Where do you live, Mrs. Hohmann? A. 954 Cortlandt Street, North Bergen.

Q. Are you the widow of Charles Hohmann? A. Yes, sir.

Q. When were you married to Charles Hohmann? A. Four years and eight months at the time of his death.

20 Q. Prior to September, last year, what had been the state of your husband's health? A. Well, he complained, of course, of nervousness, he couldn't sleep, and loss of appetite.

Q. That was at about what time? A. He started about the middle of August.

Q. Prior to August first, had his health been good? A. Yes, he was all right.

Q. And about the middle of August of last year he started to complain, did he? A. Yes.

Q. Did he get worse? A. Yes, he got worse.

Q. Who was treating him, if anybody? A. Dr. White.

30 Q. What happened on or about September 16, or September 15, with regard to his condition of health? A. On September 16, we brought him over to the Riverlawn Sanatorium.

Q. Was that on anybody's advice? A. Yes; I called at Dr. White's office two days before, and after talking to him, he had a lot of directories and magazines there, and he looked up and he recommended the Riverlawn Sanatorium.

40 Q. Did he say to you the Riverlawn Sanatorium? A. Yes, I suppose it was in one of the books he had looked at.

*Eugenie Hohmann, Plaintiff—Direct.*

Q. What was the name of the book you saw it in? A. I think it was the Medical Journal.

Q. Is that the advertisement you saw, (showing witness)? A. Yes, that is the one I saw in the book.

10

Mr. Eastmead: Is there any objection to this going in?

Mr. Stetler: Is it material?

Mr. Eastmead: I think so.

The Court: How does it throw any light on this subject?

Mr. Eastmead: Counsel has stated in his opening, that this sanatorium specialized in alcoholic and nervous cases, and I want to show they treated mental and nervous cases. It is simply for the purpose of showing that it is a private sanatorium, but admitted mental and nervous cases and not simply alcoholic.

20

Mr. Stetler: I object to the materiality of it. I will admit we treated nervous diseases, if that is your point in putting it in.

Mr. Eastmead: That is my point in putting it in.

Mr. Stetler: I will admit that.

30

Mr. Eastmead: All right.

Q. Have you been appointed administrator *ad prosequendum* of your husband's estate? A. Yes.

Q. (Paper shown witness.) Is this the certificate you got from the Surrogate? A. Yes.

Mr. Eastmead: I offer in evidence certified letters *ad prosequendum*.

Received and marked Exhibit P-1 of this date.

40

*Eugenie Hohmann, Plaintiff—Direct.*

Q. You say about September 16th you went with your husband to the Riverlawn Sanatorium; where is that sanatorium? A. Paterson.

10 Q. Who was with you besides your husband, when you went there? A. My sister and brother-in-law, and the chauffeur who drove us out in the car.

Q. Who went into the sanatorium with you? A. My sister and I.

Q. Whom did you see inside? A. Dr. Powelson.

Q. Is he the medical director of that institution? A. Yes, sir.

20 Q. Will you just tell us the conversation that took place at that time between Dr. Powelson and yourself? A. He asked me, of course, what I thought brought on the nervousness; I said I thought it was brought on by an overtaxed brain and over-study, and then he referred to Mr. Hohmann and asked him how he felt, because he said he was always hearing noises in his head, and he had attempted suicide twice, and always felt people were trying to kill him. The doctor asked him if that was right, and he said yes, because they were driving him out.

30 Q. What else was said; did Dr. Powelson ask him anything? A. Dr. Powelson asked him what drove him to do that, and he said he always had those noises in his head, and they were trying to drive him to suicide.

Q. He told that to Dr. Powelson, that he had always heard noises in his head? A. Yes, that he heard those noises in his head.

40 Q. Was anything said about terms? A. Yes; he said they only accepted for two weeks, and you had to pay two weeks in advance. I had only fifty dollars with me, I was going to pay from week

*Eugenie Hohmann, Plaintiff—Direct.*

to week, so I paid him fifty dollars, and sent next day a money order for fifty dollars.

Q. Did you get a receipt for the fifty dollars you paid in cash? A. Yes.

Q. (Paper shown witness.) Is that the receipt you got for that fifty dollars? A. Yes. 10

Mr. Eastmead: I offer that in evidence. Received and marked P-2.

Q. Thereafter you say that you sent them fifty dollars? A. Yes, in a money order.

Q. You sent that by a post office money order? A. Yes.

Mr. Stetler: I will admit the receipt of that. 20

Q. Then did you have him there? A. Yes. Then the doctor said: "We will keep him under observation for two weeks."

Mr. Eastmead: Is Dr. Powelson in the court room?

Mr. Stettler: Yes, right here in court.

Mr. Eastmead: Will you stand up, please? 30

(Dr. Powelson stands up.)

Q. Is that Dr. Powelson? A. Yes.

Q. Did you go there afterwards to see your husband? A. Yes, I went a week later, on a Wednesday.

Q. Who was with you at that time? A. My cousin.

Q. What was her name? A. Mrs. Vax.

Q. Did you see your husband at that time? A. Yes. 40

*Eugenie Hohmann, Plaintiff—Direct.*

Q. How did he seem? A. He seemed a little better.

10 Q. Did Dr. Powelson tell you how long he thought your husband would have to remain in the institution before he was cured? A. No, he did not say how long, but he said after two weeks, it would go from week to week if we wanted him to keep him longer.

Q. After you visited him two days later, when did you next hear from the hospital? A. I think it was on the 26th, the Saturday he escaped.

Q. Was anything said to you at the time you made these arrangements about a special attendant? A. No, nothing was said to me.

20 Q. And the day he escaped you said you heard from him? A. They phoned to us.

Q. What date was that? A. That was on a Saturday morning.

Q. Was that the same day he escaped? A. Yes, that was on the 25th.

Q. Who phoned you, if you know? A. I don't know, my brother-in-law answered the phone.

Q. When you say your brother-in-law do you mean Mr. Kennelly? A. Yes.

30 Q. As the result of that telephone message did you do anything? A. We waited to see if he came home; they said he was probably on his way home, and we should watch for him, so after three or four hours we phoned them.

Q. Did he come home? A. No.

40 Q. When did you next hear anything? A. Sunday morning, I sent my brother-in-law out, I said "You had better go out and find out the particulars," and my brother-in-law and my niece went out; I think they did not see Dr. Powelson, but an assistant doctor spoke to them.

*Eugenie Hohmann, Plaintiff—Direct.*

Q. When did you hear anything after Sunday?

A. I didn't hear anything until we were notified of his death.

Q. When was that? A. The 30th of September.

Q. Who notified you of his death? A. I think it was the Prosecutor at Paterson phoned and said they had found his body hanging from a tree.

Q. Did he tell you where? A. In West Paterson, in the woods.

Q. Did you go to Paterson? A. We then went to Paterson to the morgue.

Q. And you found your husband's body there? A. Yes, sir.

Q. What did you do after that; you made funeral arrangements after that, I suppose? A. From there we went to the sanatorium; we drove over to the sanatorium because it wasn't so far; I didn't see Dr. Powelson, I saw an assistant.

Q. Right from the morgue you drove over to the sanatorium? A. Yes.

Q. And when you got there whom did you see? A. The assistant doctor. I asked for Dr. Powelson but they said he had a cold and couldn't come down.

Q. And you saw the assistant? A. Yes.

Q. What did the assistant say to you? A. I was so upset at the time I left the others do the talking.

Q. Did you hear the talking?

Mr. Settler: I object to any conversation she might have had after the fact that he had escaped.

Mr. Eastmead: It is all part of the *res gestae*. Our case, of course, is built around

*Eugenie Hohmann, Plaintiff—Direct.*

10 their negligence in permitting this man to escape, and if we can get any statements made at or near the time, we should have them—naturally, when she goes to the hospital to find out what had happened, it seems to me perfectly proper and part of the *res gestae*.

Mr. Stetler: I submit it is too remote.

The Court: What effect would it have as binding the hospital?

Mr. Eastmead: I will not press it.

Q. Then what did you do with the body of your husband after you found him in the morgue? A. Then he was brought home.

20 Q. And you had an undertaker? A. Yes.

Q. Who was the undertaker? A. Schlemm.

Q. Where was your husband buried? A. In the Weehawken Cemetery.

Mr. Eastmead: I understand you admit ownership and operation of the sanatorium as a corporation?

30 Mr. Stetler: Yes. We admit that it is a corporation of the State of New Jersey, and in the alternative that Mrs. Millspaugh is simply an officer of the corporation.

The Court: And you admit that the corporation is a corporation of the State of New Jersey?

Mr. Stetler: Yes sir.

Mr. Eastmead: And that they conducted this sanatorium?

Mr. Stetler: Yes.

40 The Court: They have admitted that already in their answer.

*Eugenie Hohmann, Plaintiff—Direct.*

Mr. Eastmead: I simply want it on the record now.

The Court: You allege in your first paragraph that it is a corporation.

Mr. Eastmead: Do you admit that he was admitted as a pay patient at this time, or do you still deny it? 10

Mr. Stetler: I have admitted that.

Q. How old was your husband at the time of his death? A. Forty-three years old.

Q. How old are you? A. Forty-six.

Mr. Eastmead: I have here a copy of the American Experience Tables of Mortality, and I have consulted with counsel on the other side as to whether it will be necessary for me to produce an actuary to prove the Mortality table? 20

Mr. Stetler: I have no desire to cause expense, and, if counsel says that is the proper table, I do not put in any objection.

The Court: What have you got there?

Mr. Eastmead: I have here a copy of what purports to be the American table of Mortality. 30

The Court: I think you gentlemen had better agree on what the expectancy of life is.

Mr. Eastmead: If we cannot agree I must get an actuary here. According to the table, I think at forty-three the expectancy of life was——

Mr. Stetler: I agreed on twenty-six years before.

Mr. Eastmead: For a man of forty-three, 40

*Eugenie Hohmann, Plaintiff—Direct.*

he has an expectancy of twenty-six years of life, and at the age of forty-six the expectancy of life is twenty-three years and eighty-one one hundredths.

10

Mr. Stetler: That is agreed to.

Q. What business was your husband in? A. He was a chef.

Q. Where did he work? A. At the Bluebird restaurant, 33rd Street and 8th Avenue, New York.

Q. Do you know how long he had been working there? A. About three years.

Q. What were his wages?

20

Mr. Stetler: I object to that; there is no foundation laid for that question.

Q. Do you know what his weekly wages were? A. Fifty dollars.

By the Court:

Q. How do you know? A. Because he always told me he got fifty dollars, and that was the wages a chef would get.

30

By Mr. Eastmead:

Q. Did he bring his pay home to you weekly? A. Yes.

Q. How much money did he give you each week? A. Twenty-five dollars.

Q. How long, how many years, months or days before his death had he given you that amount?

40

A. For the four years and eight months we were married.

*Eugenie Hohmann, Plaintiff—Cross.*

Q. Who paid the rent? A. He paid the rent out of his money.

Q. Who paid the gas bills? A. I paid them.

Q. At the time of his death did Mr. Hohmann leave any children? A. No.

Q. Nobody except yourself? A. That is all. 10

Q. You are the sole surviving next of kin? A. Yes.

*Cross-examination by Mr. Stetler:*

Q. How long before Mr. Hohmann went to the sanatorium did he give you his weekly wages? A. Well, about four weeks he stopped working.

Q. He stopped working about four weeks just prior to entering the sanatorium? A. Yes, sir. 20

Q. Did you see your county physician about sending him to the sanatorium? A. I think that was about four days before we sent him away, that I went down and saw Dr.— about four days before the 16th, that must have been about the 12th.

Q. And did your physician advise you to take Mr. Hohmann to the sanatorium? A. I wanted to find out how it was he was always hearing these voices, and the doctor thought his mind was affected. 30

Q. And he advised you to take Mr. Hohmann to the sanatorium? A. He wanted to go away somewhere to be examined by an expert doctor, so I went to Dr. White to see what I should do about it, and Dr. White had this Medical Journal there, and I arranged it that way because it was near my home and I could see him.

Q. And it was your husband that you wanted to be treated? A. Yes. 40

*Eugenie Hohmann, Plaintiff—Cross,*

Q. And you went to the Riverlawn Sanatorium with him on September 16th? A. Yes sir.

10 Q. And you talked to Dr. Powelson, did you not? A. I think about two days before I phoned them to ask them if they accepted such patients and what the rates were.

Q. And what did he tell you? A. That they were fifty dollars a week, and we went on the 16th.

Q. Then you went on the 16th in the afternoon to see Dr. Powelson at the sanatorium? A. Yes sir, between five and six o'clock in the evening.

20 Q. Who did most of the talking, did Dr. Powelson, yourself, or your husband do most of the talking? A. Most of the questions were directed to my husband.

Q. Did your husband at that time say anything to the doctor about wanting to come there for treatment? A. Yes; he asked him how he felt first, and he told him then about the noises in his head, and that he had attempted suicide twice.

Q. Did he say he wanted to be treated for his mental trouble? A. Yes sir.

30 Q. And was there anything said about a special attendant, a special nurse? A. No sir.

Q. Well, what was your fifty dollars a week to include? A. I suppose the board and treatment and doctors, and examinations.

Q. And did you understand that that fifty dollars per week was to include a special nurse with your husband every minute of the day? A. Naturally I thought it would be——

40 Mr. Eastmead: I object to that.

The Court: I think that is proper.

*Eugenie Hohmann, Plaintiff—Cross.*

The Witness: (Continuing.) — yes, I would expect that.

Q. You expected a private nurse with your husband every minute of the day? A. Yes, I expected he would be watched very closely, after they knew he had attempted suicide twice. 10

Q. I did not ask you that, I asked you did you expect a private nurse with your husband every minute of the day? A. Yes, that he would be under observation all the time.

Q. You said "Yes", and you had answered the question. When did you next go to see your husband? A. The following Wednesday.

Q. Do you remember what day of the week September 16th was? A. If it was Wednesday, it was the next Wednesday I went to visit him, I went to visit him a week later. 20

Q. That was seven days after he was entered? A. Yes.

Q. Do you remember whether or not that was the day before your husband escaped, that you went to see him? A. No, he escaped about five days later.

Q. So you did not see your husband the day before he escaped? A. No, not the day before; it was on the Wednesday before, and the Saturday he escaped, the Saturday following. 30

Q. Did you request Dr. Powelson to walk round the grounds with your husband alone? A. Not Dr. Powelson, but the attendant, and we walked around the grounds with him, my cousin and myself.

Q. And did you request that no one should be with you? A. No, I didn't request that, but he said it was all right. 40

*Eugenie Hohmann, Plaintiff—Cross.*

Q. And you did, as a matter of fact, walk around the grounds with your husband? A. Yes.

Q. For about half an hour or so? A. About half an hour.

10 Q. And there was no attendant with you then?  
A. No.

Q. How did your husband seem that day? A. He seemed a little better.

Q. Did he tell you he had an attendant with him all the time? A. I don't think I asked him that.

Mr. Eastmead: I object to that, I do not see that this is proper cross-examination,—this man is deceased.

20 The Court: Objection sustained.

Mr. Eastmead: I move to strike out the answer, whatever it was.

The Court: Yes.

Q. You were notified, were you not, by the sanatorium immediately your husband escaped? A. Yes.

Q. When was that? A. The Saturday following the Wednesday I had been out there.

30 Q. What time of day was it? A. I should think about nine o'clock, because I was just having breakfast.

Q. When was the next time that you inquired from the sanatorium about your husband, after you were notified that morning? A. We phoned about every four hours during the day, and next day we kept phoning.

40 Q. You did nothing else but phone? A. That is because we always expected that he would be coming home.

*Eugenie Hohmann, Plaintiff—Re-direct.*

Q. Had he ever gone away before? A. Well, he went to the park one day and we missed him, and then we found him there—when he attempted suicide.

Q. How long before he went to the sanatorium was that? A. I think about three weeks before. 10

Q. And you waited with him for three weeks after that time before you took him to the sanatorium? A. Yes, because he seemed to be all right afterwards, he calmed down, and Dr. White was treating him and he seemed to be getting all right.

Q. Did he go to work? A. No, he did not go to work then, he rested, and he was given medicine. 20

Q. How do you know your husband was forty-three years of age? A. Because I have his naturalization papers, those papers I mean, when he was drafted for the war.

Q. Have you those with you? A. I did not bring those with me, but I could get them.

Q. Have you any family bible records, or any birth certificate, or any real record to show us his age? A. Not any birth certificate, only his naturalization papers, and insurance, and that sort of thing. 30

Q. Did your husband leave any insurance policy?

The Court: That is immaterial. Do not go into that.

*Re-direct examination by Mr. Eastmead:*

Q. What was the rent your husband was paying? A. Thirty-six dollars. 40

Q. And he was paying that out of his own

*Ellen Kennell, for Plaintiff—Direct.*

pocket besides the twenty-five dollars he gave you? A. Yes.

Q. How long had he been paying that thirty-six dollars rent? A. Four years or four years and a half.

10

MRS. ELLEN KENNEL, SWORN.

*Direct examination by Mr. Eastmead:*

Q. Where do you live, Mrs. Kennell? A. 954 Cortlandt Street, North Bergen.

Q. What relation are you, if any, to the plaintiff, Mrs. Hohmann? A. Sister.

20

Q. On or about September 16th last year, did you go to the Riverlawn Sanatorium with your sister and her husband? A. I did, yes, sir.

Q. And did you go inside the institution with her? A. Yes, I went inside.

Q. Whom did you see there? A. Dr. Powelson.

Q. Is this Dr. Powelson here? A. Yes, sir.

Q. Did you hear a conversation that took place at that time? A. Yes, sir, I did.

30

Q. Will you just tell us what it was? A. He was asking about Mr. Hohmann, his age and everything, and where he was born, and what his ailments were, and how he felt; whether he was nervous—I can't quite remember all those things. He said to my sister about two weeks she would have to pay, and she only had fifty dollars with her.

Q. Did she pay fifty dollars then? A. Yes, and the next morning she had a money order made out for fifty dollars.

40

*Ellen Kennell, for Plaintiff—Cross.*

Q. Was there any talk between Mr. Hohmann and Dr. Powelson? A. Yes.

Q. What did he say? A. Mr. Hohmann complained about how he felt voices in his head, and advising him to suicide. 10

Q. So he felt like committing suicide? A. Yes.

Q. What else did he say? A. He said he had attempted to commit suicide twice.

Q. Do you recall Dr. Powelson saying anything in reply? A. He look much surprised when he said that.

Q. Did he say anything? A. No, but after that—after he left he said he would put him under observation.

Q. Was there anything said at this time by Dr. Powelson to you or in your hearing about having a special nurse or special attendant? A. No, sir. 20

Q. Nothing whatever? A. No, sir.

Q. When did you next go out there? A. I didn't go out any more after that.

Q. And Mr. Hohmann was left there? A. Yes.

Q. And you and your sister came back to North Bergen? A. Yes, sir.

*Cross-examination by Mr. Stetler:* 30

Q. Dr. Powelson said he would put him under observation, is that right? A. Yes, when we left.

Q. You never came back to the sanatorium after? A. No, I only went there once.

Q. And you did not walk round the grounds with Mr. and Mrs. Hohmann, as referred to a short time ago? A. No, sir.

Q. What was your understanding from what you heard while you were in the office, as to the 40

*Ellen Kennell, for Plaintiff—Re-direct.*

treatment that Mr. Hohmann was to receive while he was there, what treatment he was to receive?

10 Mr. Eastmead: I object to the witness' understanding. She may tell what was said.

The Court: Yes, what was said.

Q. What was said relative to the treatment while you were there, that you heard? A. Well, he said he would get good care, be watched.

Q. Are you sure that was said? A. That he would have good care and be put under observation, and we understood he would have an X-ray—that is what we sent him there for.

20

*Re-direct examination by Mr. Eastmead:*

Q. Did Dr. Powelson say anything to you about the probability of a cure of this patient?

Mr. Stetler: I object to what Dr. Powelson said to this witness.

The Court: What difference does it make what he said about being cured?

30 Mr. Eastmead: To show how long this patient would have to be incarcerated in this institution.

The Court: That is not what your action is for.

40 Q. Did you hear any other conversation except what you have already told us? A. Yes, I heard Dr. Powelson say to Mr. Hohmann, "Did you ever feel tired of living, and didn't care about living any more?" and he said "Yes, he had attempted suicide in the park twice", and showed the wounds on his wrists, and Dr. Powelson was surprised.

*Jean Kennell, for Plaintiff—Direct.*

*Re-cross-examination by Mr. Stetler:*

Q. Are you sure that was Mr. Hohmann who said that, and not Mrs. Hohmann? A. No, it was Mr. Hohmann.

Q. You are sure it was Mr. Hohmann? A. Yes. 10

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JEAN KENNEL SWORN.

*Direct examination by Mr. Eastmead:*

Q. Where do you live? A. 954 Cortlandt Street, North Bergen.

Q. Were you to the Riverlawn Sanatorium at any time? A. Yes, I went there on Sunday, September 27th. 20

Q. With whom did you go, if anybody? A. With my father.

Q. What is his name? A. Mr. John Kennell.

Q. What date did you say that was? A. The 27th of September.

Q. Was that after you had received word of the escape of Mr. Hohmann? A. That was after, that was the Sunday following.

Q. Whom did you see at the sanatorium? A. 30  
We asked for Dr. Powelson, and we were admitted into the room and saw the assistant doctor; we did not know it was not Dr. Powelson, we were under the impression it was him.

Q. Was it this gentleman here (indicating Dr. Powelson)? A. No, it was not.

Q. What was said by you to the assistant doctor?

Mr. Stetler: I object to that.

40

*Arthur E. Powelson, for Plaintiff—Direct.*

The Court: The question is whether the person had any authority.

Mr. Eastmead: How does your Honor rule on that?

10 The Court: I say you cannot give that unless you show the person had some authority.

Q. Well, did this party you saw tell you who he was? A. Yes, he mentioned his name, but I really don't know who it was, but I could identify him if I saw him.

Q. Is he in court here to-day? A. No.

20 Mr. Eastmead: I will withdraw this witness for the moment, and call Dr. Powelson.

---

DR. ARTHUR E. POWELSON, sworn as a witness testifies:

*Direct examination by Mr. Eastmead:*

Q. Dr. Powelson, are you the medical director of the Riverlawn Sanatorium? A. I am.

30 Q. Have you any assistants there? A. I usually have one, that is all.

Q. Is his name Dr. Powell, or Pole? A. Dr. Powell was with me but he left.

Q. Was he with you at the time Mr. Hohmann was there? A. Yes sir.

Q. And is Mrs. Millspaugh part of your community; what is her connection with this institution, if you know?

40 Mr. Stetler: That is objected to as immaterial. The suit here is against a cor-

*Jean Kennell (Recalled), for Plaintiff—Direct.*  
*John Kennell, for Plaintiff—Direct.*

poration, and we have admitted it as a corporation.

The Court: I think that is proper.

A. I can answer truthfully, I don't know. 10

(No cross-examination.)

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JEAN KENNEL, resumes the stand.

*Direct examination by Mr. Eastmead (resumed)*

Q. Miss Kennell, would you know the name of this doctor if you heard it? A. Maybe I would. 20

Q. Was it Dr. Pole or Powell? A. My father and I were under the impression it was something like Powell.

Q. But you do not know yourself? A. No, I really do not remember that part.

Mr. Eastmead: That is all.

(No cross-examination.)

---

30

JOHN KENNEL, SWORN.

*Direct examination by Mr. Eastmead:*

Q. Mr. Kennell, where do you live? A. 954 Cortlandt Street, North Bergen.

Q. Were you out to this Riverlawn Sanatorium any time in September last year? A. Yes sir, I was out there in regard to the disappearance of Mr. Hohmann. 40

*John Kennell, for Plaintiff—Direct.*

Q. That was after his escape? A. Yes.

Q. Who went with you? A. My daughter went along with me, my daughter Jean.

10 Q. Whom did you see out there at the sanatorium? A. Well, we were talking to a doctor out there, and I was told his name was Pole or Powell, something like that.

Q. Was he in charge at the time you were there.

Mr. Stetler: Objected to as calling for a conclusion.

Mr. Eastmead: Question withdrawn.

20 Q. When you went there did you ask to see the man in charge? A. I asked to see Dr. Powelson, and I was shown into the room where this Dr. Pole or Powell was.

Q. You asked for Dr. Powelson, and instead of that they showed you in to this Dr. Pole, is that it? A. Yes, that is the idea.

Q. What conversation did you have with Dr. Pole or Powell?

Mr. Stetler: Objected to as not binding upon the defendant corporation.

30 Mr. Eastmead: Dr. Powelson has testified that Dr. Powell was his assistant at that time; he only had one assistant at the time and at that time Dr. Powell was his assistant.

The Court: He does not say what assistant he was.

Mr. Eastmead: He testified that he was manager of the hospital, or medical director of the hospital.

40 Mr. Stetler: Powelson was.

*John Kennell, for Plaintiff—Direct.*

Mr. Eastmead: Yes; and he only had one assistant and that assistant was Dr. Powell.

The Court: That does not show what sort of an assistant Dr. Powell was.

Q. Well, what did you do while you were at the sanatorium? A. Well, I went up and talked to this doctor here and I asked——

10

Mr. Stetler: I object to any conversation as not being binding on the defendant corporation.

The Court: No, I do not think it is binding unless you show the authority of this man to represent the company. You are suing a corporation.

20

Mr. Eastmead: If your Honor please, we are also suing an individual.

The Court: But you have not shown anything about the individual.

Mr. Eastmead: She is still in the case, however.

The Court: But you have to show then, that this man was authorized by the individual.

30

Q. You were not there at the time these arrangements were made, at the outset? A. Oh, yes, I was there, but I was on the outside in the car.

Q. You did not go into the hospital then? A. No, I did not.

Q. But you were in the automobile which took Mr. Hohmann out to this place, in the first instance? A. I was.

Q. Did you go to the morgue? A. I did.

40

*John Kennell, for Plaintiff—Direct.*

Q. Did you find the body of Mr. Hohmann there? A. Yes.

Q. And did you go to the funeral? A. Yes.

Q. And you saw him buried? A. Yes.

10

Mr. Eastmead: That is all.

(No cross-examination.)

Mr. Eastmead: If the court please, I have a doctor on the way down here. I telephoned to him at two o'clock but he has not got here yet; I think he will be here any moment. At this time, I understand that counsel has agreed that this man, Hohmann, was found in the woods.

20 Mr. Stetler: I agreed that he died, I do not know how he died.

Mr. Eastmead: I do not want to get the coroner and the chief of police down here, that is all.

Mr. Stetler: I have a certificate here which you can offer, but as to how he died I do not know.

Mr. Eastmead: The coroner and the chief of police, of course, would simply testify to the finding of the body hanging in the woods. I suppose counsel will admit that?

30

Mr. Stetler: I do not know.

Mr. Eastmead: What does the death certificate show?

The Court: I have been wondering since the case was going on how you could recover in this case?

Mr. Eastmead: If your Honor wants us to argue that now I will do so.

40

The Court: You might as well argue it now. How can you recover under the Death Act? How do you come in under that Act? You are limited

*Colloquy of Counsel.*

in your recovery to such causes as the Act provides.

Mr. Eastmead: Are you speaking now of the damages?

The Court: Of recovery at all. "That whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof." 10

Mr. Eastmead: Your Honor, that simply says where death is the result of a negligent act, and the right of action would have arisen if death had not ensued. Your Honor does not contend that if this man had got out and broken his leg, we could not hold the hospital? 20

The Court: That is a different situation. The question now comes under the Death Act.

Mr. Eastmead: This man was suffering from a form of insanity, and their neglect consisted in this, that they knew he had a malady, a suicidal propensity, and my client was paying fifty dollars a week so that he might have proper care. I fail to see how we could be precluded under the Death Act. 30

The Court: The question is whether the negligence caused the death.

Mr. Eastmead: I have a number of authorities, your Honor, that hold a hospital or private sanatorium can be held in a case of this kind. There is the Texas case, for instance.

The Court: What is the Texas case?

Mr. Eastmead: (Refers to Corpus Juris), 272 S. W. 297. I do not seem to find a case that does not hold a private institution is not liable on this state of facts. We have nothing in New Jersey. 40

*Colloquy of Counsel.*

I would ask leave to submit a memorandum on that point, your Honor.

10 The Court: If you rested your case now, I would be obliged to non-suit the plaintiff, because you have shown no acts of negligence in this case.

Mr. Eastmead: This Texas case holds it is negligence.

The Court: In New Jersey negligence is never presumed. Even if all these safeguards were there and people knew about them, you have to show they were negligent. I do not see that you have shown anything at all except that the man got away.

20 Mr. Eastmead: I have no further proof on the question of the escape.

The Court: You see you have to face the situation. You have plenty of time, if you think I am wrong, to take your appeal now and carry it up, which would be better than taking a lot of testimony before you did that. I am very clear, under the situation as stated, it appears from the evidence that even if there was negligence in this case, there could be no recovery under the Death Act. I am going to direct a verdict of non-suit, and you can raise the question at once, so you can do it without any expense.

30 Mr. Eastmead: I take an exception.

The Court: I direct it on both grounds, first, because you have not shown an act of negligence, and second, that it does not come under the Death Act.

Mr. Eastmead: I would like an exception on both grounds.

40 The Court: Gentlemen, in this case a legal question has arisen which the court has had to deal with, and which the court has dealt with, so you can retire to your jury room.

**Exhibit P-1.**

STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON. } ss. :

I, JAMES F. NORTON, Surrogate of the County of Hudson, do certify that on the 23rd day of November in the year of our Lord one thousand nine hundred and twenty-five Administration *ad prosequendum* upon the estate of Charles Hohmann, late of the County of Hudson, who died intestate was granted by me to Eugenie Hohmann of the County of Hudson, for the purpose of enabling her to prosecute an alleged claim against the proper defendant. These letters of administration, however, do not authorize the said administratrix to receive any moneys in settlement of any claim, either before or after suit or to receive any assets of said estate such claim, moneys or assets to be paid to a general administrator when appointed.

WITNESS, my hand and seal of Office, the twenty-third day of November in the year of our Lord, one thousand nine hundred and twenty-five.

(SEAL)

JAMES F. NORTON,  
 Surrogate.

per

John F. Callahan,  
 Deputy Surrogate.

**Exhibit P-2.**

RIVERLAWN

Paterson, N. J., Sept. 16, 1925.

10

Received from Mrs. Chas. Hohmann

Fifty 00/100.....Dollars

Drives \$.....

Incidentals \$.....

Treatment 1 Weeks \$ 50.00

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 To Sept. 23, 1925 \$ 50.00

20

Account of ....Husband....

RIVERLAWN SANATORIUM

DANIEL T. MILLSPAUGH, M. D.

30

40

## New Jersey Court of Errors and Appeals

EUGENIE HOHMANN, administra-  
triv *ad prosequendum* of the  
Estate of Charles Hohmann,  
Deceased,

Plaintiff-Appellant,

*vs.*

RIVERLAWN SANATORIUM, a corpo-  
ration of New Jersey, and in  
the alternative, CLARA S. MILLS-  
PAUGH,

Defendants-Respondents.

Action-at-Law.  
On Appeal from  
New Jersey  
Supreme Court.

### BRIEF OF EUGENIE HOHMANN, ADMINIS- TRATRIX *AD PROSEQUENDUM*, ETC., PLAINTIFF-APPELLANT.

#### Statement of Facts.

This is an appeal taken from the action of the trial Judge at the Hudson Circuit of the New Jersey Supreme Court, in directing a verdict of non-suit against the plaintiff.

The plaintiff, Eugenie Hohmann, is the widow and sole next of kin of Charles Hohmann, deceased. Letters of Administration *ad prosequendum* on the estate of the said Charles Hohmann

were duly granted plaintiff by the Surrogate of the County of Hudson on November 23rd, 1925 and were produced in Court as plaintiff's exhibit P-1 (State of Case, Page 41).

On September 16th, 1925, plaintiff's intestate, Charles Hohmann, was admitted to the Riverlawn Sanatorium, as a paid patient, suffering from neurasthenia and mental disorders which condition was known by the defendants.

**Said Riverlawn Sanatorium is a private institution conducted for private gain by the defendants, or one of them, and as such was under a legal duty to safeguard its patients and to exercise due care and control thereof, so that no harm would befall them.**

Plaintiff's intestate, Charles Hohmann, continued to be a patient of said Riverlawn Sanatorium until September 26th, 1925 when through the gross negligence of the defendant, in not properly guarding the said Charles Hohmann, he escaped and left sanatorium and became lost in the woods in the vicinity of said sanatorium. Defendants made no efforts to apprehend him until September 30th, 1925, when the dead body of said Charles Hohmann was found in the woods near said sanatorium.

This action was brought by plaintiff under the Death Act (P. L. 1848, p. 151; Rev. 1877, p. 294; 2 C. S., p. 1907) to recover damages from defendants for negligence resulting in the death of her intestate the said Charles Hohmann.

The trial Judge directed a verdict of non-suit against the plaintiff, from which this appeal is taken.

## LAW.

### POINT I.

The Trial Court erred in directing a verdict of non-suit against the plaintiff, for the following reason:

The plaintiff-appellant had clearly made out a cause of action under the Death Act.

In *Murphy vs. Board of Chosen Freeholders*, 57 N. J. L. 245, Justice Lippincott says,

“This (the Death Act) is a remedial statute to be construed liberally to suppress the mischief existing in the common law and to advance the remedy, and it is applicable to that class of persons and to those classes of corporations on whom a liability for injuries when death does not ensue, caused by neglect, is imposed.”

It cannot be doubted that if plaintiff's intestate Charles Hohmann, had been permitted to escape through the negligence of the defendants and had been injured as a result thereof, that an action would lie against the defendants.

It seems obvious therefore that where such negligence results in death, a right of action accrues to the next of kin.

“A private hospital owes its patients the duty of protection and must exercise such reasonable care toward a patient as his known condition may require.

This care extends to safeguarding the patient from dangers due to mental incapacity and to the use of any instrumentality producing pain” (30 C. J., page 467, and cases cited).

While the case seems to be one of novel impression in New Jersey, the rule laid down in *Corpus Juris* seems to be universally upheld.

The Defendant, Riverlawn Sanatorium was fully conversant with the mental condition of plaintiff's intestate and of his suicidal tendencies.

See TESTIMONY, STATE OF CASE:

Page 18, lines 20 to 31;

Page 26, lines 25 to 29;

Page 27, lines 9 to 11;

Page 31, lines 3 to 19;

Page 32, lines 34 to 40.

*It therefore follows defendant was negligent in permitting plaintiff's intestate to escape. At any rate, there was a sufficient showing of negligence to be submitted to the jury, bearing in mind the rule that on a motion to non-suit, every presumption must be resolved in favor of plaintiff.*

## POINT II.

**The Trial Court erred in directing a verdict of non-suit against the plaintiff, for the following reason:**

**The question of whether plaintiff had made a sufficient showing of negligence was for the jury and it was therefore error for the Trial Court to direct a verdict of non-suit.**

“A patient is generally admitted to a hospital, conducted for private gain under an implied obligation that he shall receive such reasonable care and attention for his safety as his mental and physical condition, if known, may require.’ ANY OTHER RULE WOULD BE A REPROACH TO THE LAW AND TO HOSPITAL MANAGEMENT.”

- Wetzel vs. Omaha Maternity & General Hospital Association*, 96 Neb. 636; 148 N. W. 582, Vol. 36 Am. & Eng. Ann. Cases (1915 B) 1224, citing:—
- Hogan vs. Clarksburg Hospital Co.*, 63 W. Va. 84—59 S. W. 943.
- Fawcett vs. Ryder*, 23 N. D. 20, 135 N. W. 800;
- University of Louisville vs. Hammock*, 127 Ky. 564; 106 S. W. 219, 12 Am. St. Rep. 355, 14 L. R. A. (N. S.) 784.

In an action against a hospital, conducted for private gain, to recover damages for negligence in caring for a delirious patient whose death resulted from his jumping from an unprotected, unfastened, and unguarded window in the absence of an attendant, the issue of negligence was held to be for the jury, where the evidence tended to show that he was knowingly admitted to the hospital under an implied obligation that he should receive such reasonable care and attention for his safety as his mental and physical condition required, and that the nurse in charge, at the time of the accident, had been absent for a period estimated by one witness to be less than five minutes and by another to be about an hour. *Wetzel v. Omaha Maternity and General Hospital Association*, 96 Neb. 636; 148 N. W. 582. 36 Ann. Cases 1915 B. 1224.

In the instant case, plaintiff's intestate, Charles Hohmann, was admitted to the hospital of the defendant, under express knowledge of his mental condition and his suicidal tendencies.

The evidence showed he was permitted to escape and thereby met his death. This stood uncontradicted at the time the non-suit was granted.

It is respectfully urged that this was a prima facie showing of negligence sufficient at least to put the defendant on his defense and it was therefore error for the Trial Judge to non-suit the plaintiff.

### POINT III.

The Trial Court erred in directing a verdict of non-suit against the plaintiff for the following reason:

The question as to whether plaintiff had made out a proper cause of action under the facts of the case was for the Jury and it was therefore error for the Trial Court to direct a verdict of non-suit.

In a recent New York case, *Robertson vs. Charles B. Towns Hospital*, 178 App. Div. 285—165 N. Y. S. 17, the Court says,

“It is the duty of the owner of a sanatorium conducted for private gain to use reasonable care and diligence not only in treating but in safeguarding a patient, measured by the capacity of the patient to provide for his own safety in the discharge of this duty, physicians and nurses possessing that reasonable degree of learning and skill that is ordinarily possessed by persons similarly engaged must be employed and they must act with reasonable care and diligence.

“We think the evidence recited presents a Jury Question as to whether the physician or nurse should not in the exercise of the requisite skill and care, have foreseen such a casualty and protected the decedent from the unguarded window in the bathroom.”

In a case in Texas, Arlington Heights Sanitarium *vs.* Deaderick, Tex. Civ. App., 272 S. W. 497, the facts were very similar to the instant case. The deceased escaped from a sanitorium and wandered into a railroad yard where he was killed by a railroad train. The sanatorium was held liable.

The Chief Justice writing the opinion in the Texas Case, says:

**“When a patient is placed in a sanitarium suffering with mental trouble, it is the duty of the officers and employees to use ordinary care in watching, caring for and treating him and such duty is not performed if the patient is negligently permitted to escape, and the guilty party will be liable for all damages proximately arising from such negligence. The negligence in permitting deceased to leave the sanitarium was a distinct wrong and appellant (Sanitarium) was liable for all injurious consequences resulting from such wrong.”**

It is respectfully urged that the escape of plaintiff's intestate Charles Hohmann, in view of defendant's knowledge of his mental condition and suicidal tendencies, which was uncontradicted was a sufficient showing of negligence and it was therefore, error for the trial Judge to non-suit.

I believe it is settled law in New Jersey that on a motion to non-suit, every presumption and inference must be resolved in favor of plaintiff for the purpose of the motion, and therefore, it is again respectfully urged that it was error for the trial Judge to grant a non-suit.

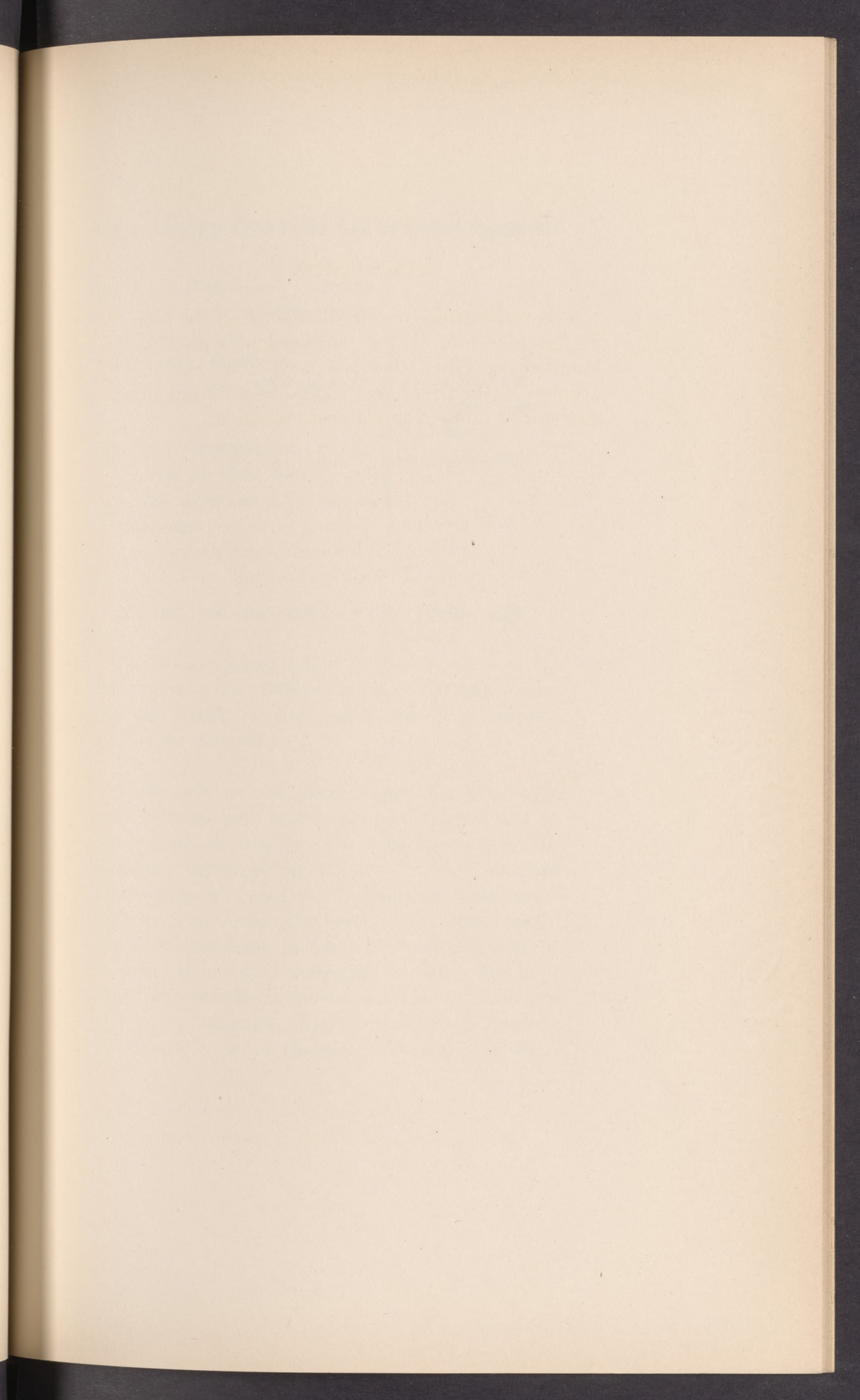
So far as Counsel has been able to ascertain, the authorities in all the reported cases, agree that a hospital conducted for private gain, is responsible in damages for negligence resulting in injury or death to a patient.

## CONCLUSION.

It is respectfully urged in view of all the facts in this case and of the reasons and authorities hereinabove cited, that the verdict of non-suit granted by the trial judge should be reversed and a new trial granted to plaintiff-appellant.

Respectfully Submitted,

LEWIS B. EASTMEAD,  
Attorney for and of Counsel with  
Eugenie Hohmann, administratrix,  
etc., Plaintiff-Appellant.





## New Jersey Court of Errors and Appeals

Eugenie Hohmann, administratrix *ad prosequendum* of the Estate of Charles Hohmann, deceased,

Plaintiff-Appellant,

vs.

Riverlawn Sanatorium, a corporation of New Jersey, and in the alternative, Clara S. Millspaugh,

Defendants-Appellees.

Action-at-Law  
On Appeal from  
New Jersey  
Supreme Court.

### **BRIEF OF DEFENDANTS-APPELLEES**

This is an Appeal taken from the action of the trial Judge at the Hudson Circuit of the New Jersey Supreme Court, in directing a verdict of non-suit against the plaintiff.

In the brief of the plaintiff-appellant the Statement of Facts sets forth conclusions of law and inferences drawn that are not substantiated by the testimony introduced at the trial below. Counsel states on page 2, line 22, "Defendants made no efforts to apprehend him until Sept. 30th, 1925," while the testimony at the trial below contains no reference to any such statement of facts. The brief of plaintiff-appellant also contains in its Statement of Facts a statement that the defendants-appellees were guilty of gross negligence, a conclusion which

is in dispute and which is improperly a part of any statement of facts before arguing.

The plaintiff, Eugenie Hohmann, administratrix, *ad prosequendum* of the Estate of Charles Hohmann, deceased, brings this suit against Riverlawn Sanatorium, a corporation of New Jersey, and in the alternative, Clara S. Millspaugh, under the Death Act for the death of Charles Hohmann, allegedly caused by the negligence of the defendant corporation or in the alternative, Clara S. Millspaugh.

The defendants-appellees make, with reference to said judgment of non-suit, the following points:

**POINT 1.**

*The Trial Court below properly ordered a judgment for non-suit against the plaintiff for the following reason:*

*The plaintiff-appellant failed to prove any negligence on the part of the defendants-appellees or either of them.*

The Death Act specifically provides that in order for an action to lie for the death of another the death itself shall be caused by the wrongful act, neglect or default of the defendant. The plaintiff must therefore, in order to make out a *prima facie* case, introduce into evidence testimony showing neglect or lack of care on the part of the defendant. The plaintiff at the trial below introduced no evidence of any description or character from anyone, setting forth or showing lack of

care or negligence on the part of the defendants-appellees.

Plaintiff-appellant introduced testimony to the effect that the deceased entered Riverlawn Sanatorium at his own request for treatment. This was evidenced by the testimony of the plaintiff-appellant, wife of the deceased, who was present at the time the consultation took place between Dr. Powelson of the Riverlawn Sanatorium, the deceased, and the administratrix *ad prosequendum*, the plaintiff-appellant in this Appeal. The terms and conditions concerning his stay at the Sanatorium are evidenced by the following testimony.

Eugenie Hohmann, Plaintiff Cross Examination:

Q. Then you went on the 16th in the afternoon to see Dr. Powelson at the sanatorium? A. Yes, sir, between five and six o'clock in the evening.

Q. Who did most of the talking, did Dr. Powelson, yourself, or your husband do most of the talking? A. Most of the questions were directed to my husband.

Q. Did your husband at that time say anything to the doctor about wanting to come there for treatment? A. Yes; he asked him how he felt first, and he told him then about the noises in his head, and that he had attempted suicide twice.

Q. Did he say he wanted to be treated for his mental trouble? A. Yes, sir.

Q. Was there anything said about a special attendant, a special nurse? A. No, sir.

Q. Well, what was your fifty dollars a week to include? A. I suppose the board and treatment and doctors, and examinations.

The above testimony clearly shows that the deceased was admitted for treatment upon his own volition and it was not shown that there was a duty on the part of the Sanatorium to restrain the deceased. The deceased was merely admitted to the Sanatorium for mental treatment. It is the contention of the defendants-appellees that should the deceased have evidenced a desire to leave the Sanatorium, the defendants-appellees would have been powerless to restrain him. A sanatorium may only confine a patient within the institution against the will of said patient upon the order of a tribunal or such persons designated by the statute or statutes therefor provided. There was no such evidence introduced at the trial nor does such a contingency exist. It follows therefore that when the plaintiff-appellant introduced testimony to the effect that the deceased had left the Sanatorium, that such leaving, *ipso facto*, is not evidence of negligence on the part of the Sanatorium.

Eugenie Hohmann, Plaintiff on Direct Examination:

Q. Did Dr. Powelson tell you how long he thought your husband would have to remain in the institution before he was cured? A. No, he did not say how long, but he said after two weeks, it would go from week to week if we wanted him to keep him longer.

Q. After you visited him two days later, when did you next hear from the hospital?

A. I think it was on the 26th, the Saturday he escaped.

Q. Was anything said to you at the time you made these arrangements about a special attendant? A. No, nothing was said to me.

Q. And the day he escaped you said you heard from him? A. They phoned to us.

Q. What date was that? A. That was on a Saturday morning.

Q. Was that the same day he escaped? A. Yes, that was on the 25th.

Q. Who phoned you, if you know? A. I don't know, my brother-in-law answered the phone.

Q. When you say your brother-in-law do you mean Mr. Kennelly? A. Yes.

Q. As the result of that telephone message did you do anything? A. We waited to see if he came home; they said he was probably on his way home, and we should watch for him, so after three or four hours we phoned them.

Q. Did he come home? A. No.

Q. When did you next hear anything? A. Sunday morning, I sent my brother-in-law out, I said "You had better go out and find out the particulars," and my brother-in-law and my niece went out; I think they did not see Dr. Powelson, but an assistant doctor spoke to them.

This then is the only evidence introduced as to the manner in which the deceased left the Sanatorium. Nowhere in the testimony does there appear

any other testimony relative to the departure of the deceased, nor does there appear any testimony showing any negligence on the part of the defendants-appellees or either of them.

No evidence of negligence being submitted at the trial below it is elementary that the trial judge was acting within the full scope of his authority in directing a judgment of non-suit in favor of the defendant.

#### *POINT II.*

*The Trial Court below properly ordered a judgment of non-suit on the following ground:*

*Plaintiff-appellant failed to prove that the alleged negligence was the proximate cause of the decedent's death.*

It is contended by the plaintiff-appellant that the judge at the trial below erred in not permitting the jury to determine whether or not the plaintiff had made out a *prima facie* case. It is submitted and contended by your orator that it is within the province of the jury to determine whether or not the proven act of an individual was negligent or the act of a prudent person, but we respectfully submit that it is peculiarly the province of a trial judge to determine whether or not the plaintiff has produced testimony to establish a *prima facie* case.

It was shown by the plaintiff-appellant that the deceased left the Riverlawn Sanatorium on the 25th

of Sept., 1925, and that someone telephoned her on the 30th day of September, six days thereafter, whom she thought to be the Prosecutor of Passaic County, and that she was informed that the body of the deceased was hanging from a tree.

Line 25, page 20, Eugenie Hohmann, Plaintiff on Direct examination:

Q. Was that the same day he escaped?

A. Yes, that was on the 25th.

Q. Who phoned you, if you know? A. I don't know, my brother-in-law answered the phone....

Line 1, page 21:

Q. When did you hear anything after Sunday? A. I didn't hear anything until we were notified of his death.

Q. When was that? A. The 30th of September.

Q. Who notified you of his death? A. I think it was the Prosecutor of Passaic phoned and said they had found his body hanging from a tree.

Q. Did he tell you where? A. In West Paterson, in the woods.

Q. Did you go to Paterson? A. We then went to Paterson to the morgue.

Q. And you found your husband's body there? A. Yes, sir.

The testimony immediately above quoted is the only evidence of any kind of the manner in which the deceased departed this life. There was no testimony introduced as to how the body was

hung on the tree, how he met his death, whether or not the hanging was the cause of his death, or how long the body of the deceased had been there before found. There is not one single iota of evidence introduced to show that decedent did not meet with death at the hands of someone else or by virtue of any extraneous causes. It follows, therefore, that even if the plaintiff-appellant had proven that the Riverlawn Sanatorium was guilty of negligence in permitting the deceased to leave the Sanatorium, it certainly was not proven at the trial court below that such alleged negligence was the direct and proximate cause of the death of the deceased, and a *prima facie* case was not made out.

### *POINT III.*

*The Trial Court below properly ordered a judgment of non-suit against the plaintiff-appellant for the following reason:*

*The plaintiff-appellant failed to prove a prima facie case under the Death Act.*

The Pamphlet laws of 1848, page 151, Rev. 1877, page 294 provide who shall be entitled to sue for the death of another, and in what instances recovery may be had.

That whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof then and in every such case the person who, or the

corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

The act above referred to and under which this action is brought was practically a replica of Lord Campbell's act which was enacted some time previous in England and sought to remedy the common law situation by providing a right of recovery in the case of death by a wrongful act, and remains in substance as originally enacted. The act is intended to give a right of action against persons or corporations against whom a liability existed if death had not ensued. The facts as introduced in this cause upon appeal show that six days after the leaving of the Sanatorium, the body of the deceased was found hanging from a tree in the wood in an entirely different township. Clearly no cause of action would lie against the defendants-appellees for the mere leaving of the Sanatorium. It follows therefore that the mere leaving of the Sanatorium not being actionable, an action for death does not lie. This question has not arisen in this state nor in any other state as far as counsel can ascertain where Lord Campbell's act has been followed. This is to be distinguished from a case where the deceased in making his escape has met with death on the premises through a defective building or an overt act which contributed to the death. In the case at bar had the deceased gone to his home the mere act of leaving the Sanatorium is clearly not actionable had death not ensued.

The plaintiff-appellant cites several cases in other jurisdictions to support his action and in each case negligence on the part of the defendant was definitely proven. Your orator contends therefore, that the citations have no place here on the ground that the question at bar is whether or not a *prima facie* case has been proven. Your orator contends that there is no evidence to support the allegation that the defendants-appellees were guilty of negligence.

It is respectfully urged in view of all the facts in this case and the fundamental, elementary, underlying principles of law that the trial court below properly ordered a judgment for non-suit and that this Appeal should be dismissed.

Respectfully submitted,

JOHN L. GRIGGS,

Solicitor for and of counsel with  
Defendants-Appellees.

