

## INDEX

	Page
Grounds of Appeal .....	1a
Notice of Appeal .....	3a
Order Discharging Rule .....	4a
Opinion of the Supreme Court .....	6a
Complaint .....	1
Answer of Adolph Shryer .....	5
Reply to Answer of Adolph Shryer .....	7
Judgment .....	8
Postea .....	9
Rule to Show Cause .....	10
Reasons on Rule to Show Cause .....	11
Warrant for Satisfaction of Judgment Be- tween Plaintiff and Defendant Bloom ..	13
Testimony .....	15
Motion to Amend Complaint .....	144
Motion for Nonsuit .....	160
Motion to Strike Out Complaint .....	161
Motion for Direction of Verdict .....	268
Charge of the Court .....	270

### WITNESSES

#### *Plaintiff's:*

Lewis Bloom,	
Direct .....	16
Cross .....	25
Recalled:	
Direct .....	125
Cross .....	127
Max Engber,	
Direct .....	25
Cross .....	29
Dr. Lewis Greenberg,	
Direct .....	39

	Page
Fannie Klein,	
Direct .....	55
Cross .....	72
Recalled:	
Direct .....	124
Esther Dingol,	
Direct .....	93
Cross .....	100
Adolph Shryer,	
Direct .....	134
Cross .....	135
Rose Owen,	
Direct .....	135
Cross .....	137
Re-direct .....	140
Hannah Owen,	
Direct .....	140
Cross .....	141
Dr. John J. Moorehead (deposition),	
Direct .....	147
Cross .....	160
 <i>Defendant Shryer's Testimony:</i>	
Adolph Shryer,	
Direct .....	162
Cross .....	170
Re-direct .....	192
Re-cross .....	193
Re-direct .....	199
Re-cross .....	200
Re-direct .....	201
Re-cross .....	201
Re-direct .....	202
Hyman Bodner,	
Direct .....	203
Cross .....	206

	Page
Bertha Shryer,	
Direct .....	216
Cross .....	218
Sarah Bodner,	
Direct .....	225
Cross .....	227

*Defendant Bloom's Testimony:*

Max Engber,	
Direct .....	234
Cross .....	236
Lewis Bloom,	
Direct .....	245
Cross .....	248
Re-direct .....	256
Re-cross .....	257
Harry D. Kohlman,	
Direct .....	260

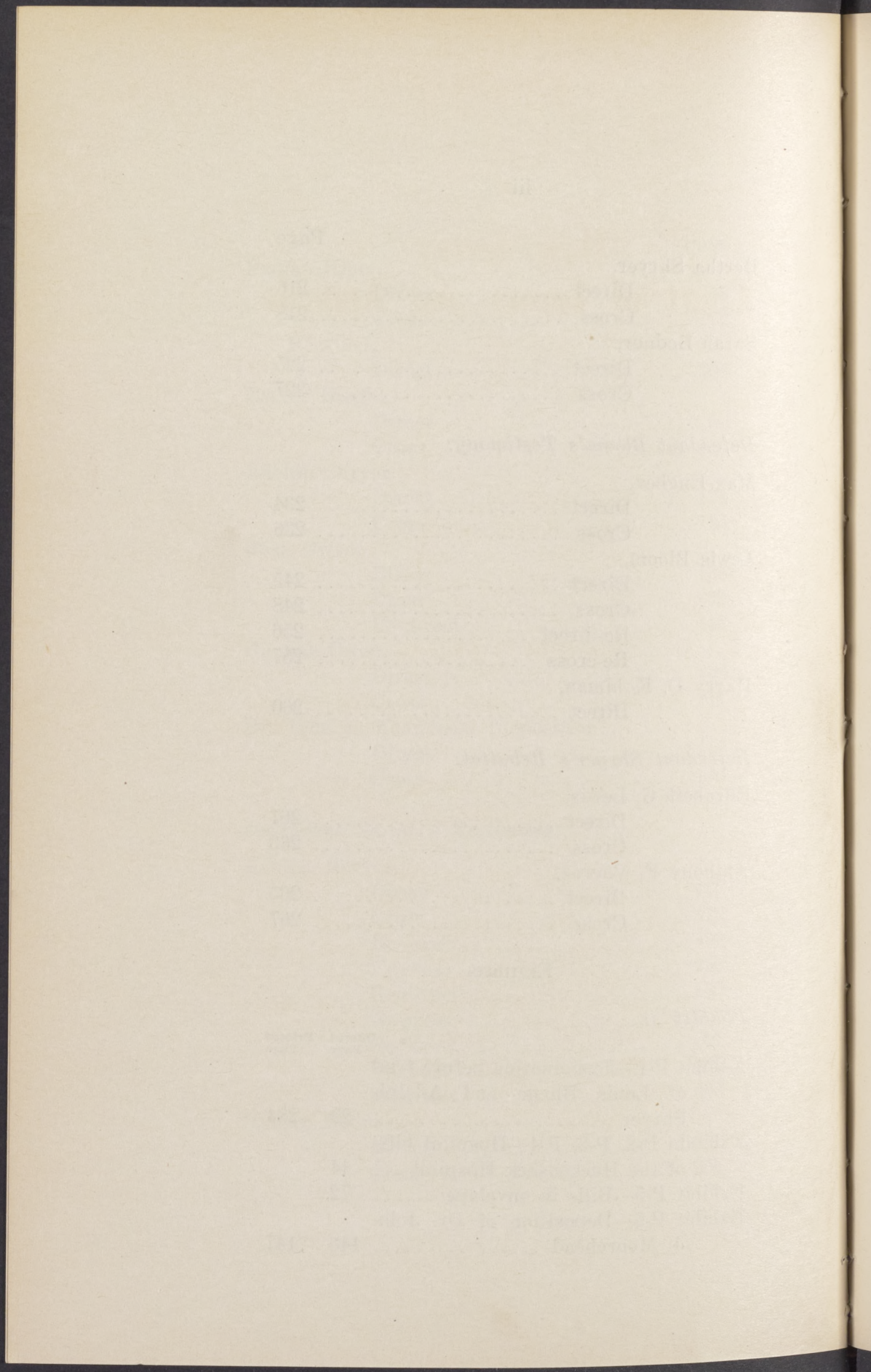
*Defendant Shryer's Rebuttal:*

Elizabeth G. Lewis,	
Direct .....	261
Cross .....	263
Anthony F. Vacras,	
Direct .....	265
Cross .....	267

EXHIBITS

*Plaintiff's:*

	Offered Page	Printed Page
Exhibit P-1—Examination before trial of Louis Bloom and Adolph Shryer .....	29	284
Exhibits P-2, P-3, P-4—Hospital bills of the Hackensack Hospital ...	44	
Exhibit P-5—Bills in envelope .....	72	
Exhibit P-6—Deposition of Dr. John J. Moorehead .....	146	147



# New Jersey Court of Errors and Appeals

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FANNIE KLEIN,			
	Plaintiff,		10
	vs.		
ADOLPH SHRYER, LOUIS BLOOM and BLOCKDEL REALTY Co., INC., a corporation,		At Law	
	Defendants.		

## GROUNDS OF APPEAL.

20

The following are the grounds of appeal of the defendant, Adolph Shryer to the judgment of the New Jersey Supreme Court:

1. The Trial Judge erroneously refused to charge the jury at the trial of the said cause, as follows:

“(3) Unless you can decide from the evidence what particular injury, if any, was caused by Mr. Shryer’s car, you must give a verdict of no cause of action as to him. The plaintiff cannot recover from Mr. Shryer unless she has shown what particular injury his car did to her.”

2. The Trial Judge erroneously refused to order a judgment of nonsuit in favor of the defendant Adolph Shryer on the grounds that the plain-

40

*Grounds of Appeal*

tiff had failed to make out a prima facie case against the defendant Adolph Shryer.

3. The Trial Judge erroneously refused to direct the verdict in favor of the defendant Adolph Shryer, on the ground that no negligence had  
10 been shown on the part of the defendant.

4. The Trial Judge erroneously refused to direct the verdict in favor of the defendant Adolph Shryer, on the ground that the plaintiff was guilty of contributory negligence.

5. The Trial Judge erroneously refused to direct the verdict in favor of the defendant Adolph Shryer on the ground that there is no proof in  
20 the case of any injuries that were caused to the plaintiff by the automobile of the defendant, Adolph Shryer.

6. The Trial Court erroneously refused to order a judgment of nonsuit in favor of the defendant Adolph Shryer, on the plaintiff's opening to the jury, in which the plaintiff's attorney stated that the automobile driven by Louis Bloom hit the plaintiff a violent blow, throwing her in the  
30 path of the automobile of the defendant Adolph Shryer in the open road.

7. The Trial Court erroneously charged the jury that if Mr. Bloom was negligent he would be liable only for those damages which were the proximate result of his negligence.

8. The judgment of the New Jersey Supreme Court is erroneous, defective, and contrary to  
40 law.

*Notice of Appeal*

9. There is no legal evidence upon which to base the judgment of the New Jersey Supreme Court in favor of the plaintiff Fannie Klein against the defendant Adolph Shryer.

TURNER and STALTER, 10  
Attorneys and of Counsel with  
Defendant-Appellant, Adolph  
Shryer.

**NOTICE OF APPEAL.**

## NEW JERSEY SUPREME COURT

20

FANNIE KLEIN,  vs.  ADOLPH SHRYER, <i>et als.</i> ,  	Plaintiff,    Defendants.
---	---------------------------------------

*To Fannie Klein, Plaintiff, and Feder & Rinzler,* 30  
*her attorneys:*

Take Notice that the defendant, Adolph Shryer, hereby appeals to the New Jersey Court of Errors & Appeals, from all of the judgment rendered in the above case on the Twenty-third day of October, One Thousand Nine Hundred and Twenty-eight.

Yours respectfully, 40  
TURNER and STALTER,  
Attorneys and of Counsel with  
Defendant, Adolph Shryer.

## ORDER DISCHARGING RULE.

## NEW JERSEY SUPREME COURT

Nos. 26, JANUARY TERM, 1929

10	FANNIE KLEIN, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div>	}	On Rule to Show Cause.
	vs.		
	ADOLPH SHRYER, <i>et als.</i> , <div style="text-align: right; padding-right: 20px;">Defendants.</div>		

20 At the trial of the above cause in the New Jersey Supreme Court, Passaic County, the jury having returned a verdict in favor of the plaintiff, Fannie Klein, and against the defendant, Adolph Shryer, in the sum of Three Thousand Five Hundred (\$3,500.00) Dollars, and the judgment having been accordingly entered on said verdict in this court in favor of the plaintiff and against the defendant, Adolph Shryer, and a rule to show cause having been issued on application of the defendant, Adolph Shryer, requiring the plaintiff

30 to show cause, if any, why the said verdict should not be set aside and a new trial granted, and the arguments of the attorneys of the plaintiff and of the defendant, Adolph Shryer, on said rule having been duly heard and considered by this Court at the January Term, 1929;

40 It is, on this 29th day of April, 1929, Ordered, that the aforesaid rule to show cause be, and the same is hereby discharged, and the said judgment

*Order Discharging Rule*

be, and the same is hereby affirmed; and it is further

Ordered, that the defendant, Adolph Shryer, pay plaintiff her costs to be taxed on the said rule to show cause. 10

Entered April 29, 1929,

On motion of

FEDER & RINZLER,  
Attorneys of Plaintiff.

A true copy,  
Fred L. Bloodgood,  
Clerk.

20

## OPINION OF THE SUPREME COURT.

(Filed April 19, 1929)

## NEW JERSEY SUPREME COURT

Nos. 26, JANUARY TERM, 1929

10

FANNIE KLEIN,

Plaintiff,

v.

ADOLPH SHRYER, *et als.*,

Defendants.

On Rule to  
Show Cause.

20

Submitted January Term, 1929. Decided April  
19th, 1929.

Before Justices BLACK, CAMPBELL and CASE.

For the Rule: Frank G. Turner, Esq.

Contra: Messrs. Feder &amp; Rinzler.

Per Curiam.

30

This suit was brought to recover compensation for personal injuries. The trial resulted in a verdict in favor of the plaintiff and against the defendant Adolph Shryer for \$3,500.00. A rule to show cause was obtained by the defendant Adolph Shryer; he writes down seven reasons for granting a new trial. Our reading of the reasons and the testimony sent up with the rule lead is to the conclusion that the rule should be discharged and it is discharged.

40

# New Jersey Supreme Court

## COMPLAINT.

NEW JERSEY SUPREME COURT 10

PASSAIC COUNTY

FANNIE KLEIN,

Plaintiff,

vs.

ADOLPH SHRYER, LOUIS BLOOM  
and BLOCKDEL REALTY Co.,  
INC., a corporation,

Defendants.

Action at Law.

20

The plaintiff, residing in the Borough of Brooklyn, City and State of New York, says that:

### FIRST COUNT.

1. On or about the 18th day of September, 1927, the plaintiff, Fannie Klein, was lawfully upon a public highway, namely, Kinderkamaac Road, which is a public highway of the State of New Jersey. 30

2. At the said time and place the defendant Adolph Shryer was the owner of and in control of a motor vehicle commonly known as an automobile.

3. At the said time and place the defendant Blackdel Realty Co., Inc., was the owner of a cer- 40

*Complaint*

tain motor vehicle, commonly known as an automobile which was being driven by its servant, agent and employee, Louis Bloom.

10 4. At the said time and place the said Adolph Shryer was operating his said automobile along the aforesaid Kinderkamae Road in a northerly direction toward Riveredge, New Jersey.

5. At the said time and place the said defendant Blockdel Realty Co., Inc., was operating its said automobile on the aforesaid Kinderkamae Road by its servant, agent and employee, Louis Bloom in a southerly direction.

20 6. At the aforesaid time and place and while the plaintiff Fannie Klein was lawfully upon the public highway aforesaid and while the two motor vehicles hereinbefore mentioned were being operated by their respective drivers, aforesaid, and in the careless and reckless, malicious and negligent manner hereinafter referred to, the plaintiff, Fannie Klein, was caused to be thrown to the ground with great force and violence thereby sustaining great physical and mental suffering as hereinafter enumerated.

30 7. The occurrence mentioned in the last paragraph was caused by the negligence of the defendants Adolph Shryer and Louis Bloom, the servant, agent and employee of Blockdel Realty Co., Inc., in the operation of their respective vehicles in that they operated the said vehicles at a high and excessive rate of speed without obeying traffic laws and regulations, without making proper  
40 observation, without keeping their respective automobiles in a safe and controlable condition,

*Complaint*

without giving proper signal or warning and generally in a negligent, careless, reckless and malicious manner.

6. On account of the above collision the plaintiff, Fannie Klein, was severely and permanently injured in her head, body, limbs and nervous system and particularly in her head and body. She moreover was obliged to abstain, and will in the future be obliged to abstain from her work for a long space of time and will thereby lose great profits; and she moreover was obliged to expend divers large sums of money for medical treatments and medicines and will in the future be obliged to expend divers large sums of money for such medicines and treatments; and moreover she has great pain and suffering both physical and mental and will in the future have great pain and suffering physically and mentally; and will moreover suffer permanent disfiguration and injury.

## SECOND COUNT.

1-6. Paragraphs one to six of the first count are hereby repeated and made paragraphs one to six inclusive of this count.

7. The occurrence mentioned in the last paragraph was caused by the negligence of Adolph Shryer in the operation of his said motor vehicles in that he operated the said vehicle at a high and excessive rate of speed without obeying traffic laws and regulations, without making proper observation, without keeping his said automobile in a safe and controlable condition, without giving

*Complaint*

proper signal or warning and generally in a negligent, careless, reckless and malicious manner.

8. Paragraph eight of the first count is hereby repeated and made paragraph eight of this count.

10

## THIRD COUNT.

1-6. Paragraphs one to six inclusive of the first count are hereby repeated and made paragraphs one to six of this count.

7. The occurrence mentioned and in the last paragraph was caused by the negligence of the defendant Louis Bloom, the servant and agent and employee of the defendant Blockdel Realty Co., Inc., in the operation of its said motor vehicle, in that he operated same at a high and excessive rate of speed without obeying traffic laws and regulations, without making proper observation, without keeping it in a safe and controlable condition, without giving proper signal or warning and generally in a negligent, careless, reckless and malicious manner.

8. Paragraph eight of the first count is hereby repeated and made paragraph eight of this count.

9. The plaintiff Fannie Klein demands as damages the sum of Fifty Thousand Dollars (\$50,000.00) on the first count, Twenty-five Thousand Dollars (\$25,000.00) on the second count, and Twenty-five Thousand Dollars (\$25,000.00) on the third count, besides costs of suit to be taxed.

40

FURST & FURST,  
Attorneys for Plaintiff.

## ANSWER OF ADOLPH SHRYER.

## NEW JERSEY SUPREME COURT

## PASSAIC COUNTY

FANNIE KLEIN,  <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">vs.</div> ADOLPH SHRYER, LOUIS BLOOM and BLOCKDEL REALTY Co., Inc., a corporation, <div style="text-align: right;">Defendants.</div>	}	10       Action at Law.
--	---	--

The answer of Adolph Shryer of Passaic, New Jersey, to the complaint of the plaintiff: 20

1. Defendant denies the allegations of the complaint.

## FIRST SEPARATE DEFENSE.

1. Defendant says that the said plaintiff was guilty of contributory negligence at the time and place of the alleged accident charged in the complaint, as follows: 30

2. She failed to exercise due care for her own safety. She voluntarily placed herself in a position of danger. She carelessly and negligently entered upon that part of the highway used by motor vehicles without first making proper observations as to approaching and passing vehicles. She attempted to run or race across the highway in front of approaching vehicles. By her own wrongful acts she caused any accident in which she participated. 40

*Answer of Adolph Shryer*

## SECOND SEPARATE DEFENSE.

1. Defendant says that the said alleged accident charged in the complaint was caused by the sole negligence of the defendant Louis Bloom and  
10 Blockdel Realty Co., Inc., as follows:

2. The said defendant Louis Bloom, the agent and servant of the Blockdel Realty Company, Inc., drove his automobile in a careless and negligent manner at an excessive rate of speed on the wrong side of the road and violated the New Jersey Motor Vehicle Act and New Jersey Traffic Act. He failed to give proper signals of his intentions to start and turn. He was an incompetent  
20 driver and the automobile and the brakes and equipment thereon were defective. He failed to make proper observations for persons in and upon the said highway. By his wrongful acts he caused the said alleged accident.

## THIRD SEPARATE DEFENSE.

1. This defendant says that the said alleged accident charged in the complaint was caused by  
30 the joint negligence of the plaintiff, Fannie Klein and the defendant, Louis Bloom and Blockdel Realty Co., Inc., as follows:

2. Defendant repeats the second paragraph of the first separate defense.

3. Defendant repeats the second paragraph of the second separate defense.

FRANK G. TURNER,  
Attorney of Defendant Adolph Shryer.

## REPLY TO ANSWER OF ADOLPH SHRYER.

NEW JERSEY SUPREME COURT

PASSAIC COUNTY

FANNIE KLEIN,

Plaintiff,

vs.

ADOLPH SHRYER, LOUIS BLOOM  
and BLOCKDEL REALTY Co.,  
INC., a corporation,  
Defendants.

Action at Law.

10

The plaintiff, replying to the answer of Adolph Shryer, says that:

20

1. She denies that she was guilty of contributory negligence as set out in paragraph one of the first separate defense.

2. She denies each and every allegation contained in paragraph two of the first separate defense.

3. She denies each and every allegation contained in paragraph one of the second separate defense.

30

4. She admits paragraph two of the second separate defense, with the exception of the last sentence thereof and denies this last sentence insofar as it alleges that the alleged accident was caused by the wrongful actions of the defendant Louis Bloom, personally.

5. She denies each and every allegation set out in paragraphs one, two and three of the third separate defense.

40

FURST & FURST,  
Attorneys for Plaintiff.

## JUDGMENT.

## NEW JERSEY SUPREME COURT

10	FANNIE KLEIN, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div>	}	Action at Law.
	vs.		
20	ADOLPH SHRYER and LOUIS BLOOM, <div style="text-align: right; padding-right: 20px;">Defendants.</div>		

It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant, Adolph Shryer, for the sum of three thousand five hundred dollars, and against the defendant Louis Bloom for the sum of fourteen thousand five hundred dollars, besides costs to be taxed nisi.

Entered October 29, 1928. On motion of

FURST & FURST,  
Attorneys.

30 Damages \$3,500.00 against A. S.  
 " \$14,500.00 " L. B.

Costs \$116.49

Defts. R. to S. C.

Pltffs. R. to S. C.

Satisfied as to Louis Bloom only

Dec. 6, 1928.

## POSTEA.

## NEW JERSEY SUPREME COURT

## PASSAIC COUNTY

---

 FANNIE KLEIN,

Plaintiff,

vs.

 ADOLPH SHRYER, LOUIS BLOOM  
 and BLOCKDEL REALTY Co.,  
 Inc., a corporation,  
 Defendants.
 

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10

} Action at Law.

This case was tried before Judge Clifford L. Newman, with a jury, at the Passaic Circuit of the New Jersey Supreme Court, on October 23rd, 1928.

At the close of the plaintiff's case, a motion of defendant, Blockdel Realty Co., Inc., a corporation, for a nonsuit was granted.

The jury returned a verdict in favor of the plaintiff and against the defendant Adolph Shryer in the sum of Three Thousand Five Hundred (\$3,500.00) Dollars, and a verdict in favor of the plaintiff against the defendant Louis Bloom, in the sum of Fourteen Thousand Five Hundred (\$14,500.00) Dollars.

CLIFFORD L. NEWMAN,  
 Judge.

40

## RULE TO SHOW CAUSE.

## NEW JERSEY SUPREME COURT

## PASSAIC COUNTY

10	FANNIE KLEIN, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 5px 0;">vs.</div> ADOLPH SHRYER, LOUIS BLOOM and BLOCKDEL REALTY Co., Inc., a corporation, <div style="text-align: right; padding-right: 20px;">Defendants.</div>
----	--

20 A verdict having been rendered in favor of the plaintiff and against the defendant, Adolph Shryer, in the above entitled action on the twenty-fifth day of October, One Thousand Nine Hundred and Twenty-eight, and application having been made for this Rule, within six days after the rendering of the verdict herein,

It is thereupon on this 26th day of October, One Thousand Nine Hundred and Twenty-eight, on  
 30 motion of Frank G. Turner, attorney of the defendant, Adolph Shryer,

Ordered, that the said plaintiff show cause before the Supreme Court of New Jersey, at the State House in the City of Trenton, on the Third Tuesday of January, One Thousand Nine Hundred and Twenty-eight, at ten o'clock in the forenoon why the verdict against said Adolph Shryer herein should not be set aside and a new trial  
 40 granted.

*Reasons on Rule to Show Cause*

And it is further Ordered that all the said defendant's exceptions be reserved.

CLIFFORD L. NEWMAN,  
Judge.

Entered November 1, 1928.

10

On motion of  
Frank G. Turner,  
Atty. of Deft.  
Adolph Shryer,

---

**REASONS ON RULE TO SHOW CAUSE.**

NEW JERSEY SUPREME COURT

20

PASSAIC COUNTY

FANNIE KLEIN,

Plaintiff,

vs,

ADOLPH SHRYER, LOUIS BLOOM  
and BLOCKDEL REALTY Co.,  
Inc., a corporation,

Defendants.

Action at Law.

30

*To the Plaintiff and Her Attorney:*

The following are the reasons on which the defendant, Adolph Shryer, rests his application for a new trial in the above cause:

40

*Reasons on Rule to Show Cause*

1. The verdict against this defendant is contrary to law.
2. The verdict against this defendant is contrary to the charge of the court.
- 10 3. The verdict against this defendant is against the weight of the evidence.
4. There was no evidence by which the jury could legally find that this defendant was guilty of negligence.
5. There was no evidence from which the jury could find what, if any, injuries had been sustained by the plaintiff because of the alleged negligence of this defendant.
- 20 6. The jury having found a verdict of Fourteen Thousand Five Hundred Dollars in favor of the plaintiff and against the defendant, Louis Bloom, was estopped from finding a verdict against this defendant in the sum of Thirty-five Hundred Dollars.
7. The evidence in this cause showed that the sole negligence was on the part of the defendant, Louis Bloom, and that no negligence was imputable to this defendant, Adolph Shryer.
- 30

FRANK G. TURNER,  
Attorney and of Counsel with  
Defendant Adolph Shryer.

**WARRANT FOR SATISFACTION OF JUDG-  
MENT BETWEEN PLAINTIFF AND DEFENDANT  
BLOOM.**

*To the Clerk of the New Jersey Supreme Court  
of the State of New Jersey:*

WHEREAS, FANNIE KLEIN, heretofore, to wit, on 10  
the Ninth day of November, in the year of Our  
Lord One Thousand Nine Hundred and Twenty-  
eight, obtained final judgment in the New Jersey  
Supreme Court of the State of New Jersey,  
against LOUIS BLOOM, for Fourteen Thousand  
Five Hundred (\$14,500.00) Dollars, and One Hun-  
dred Sixteen Dollars and Forty-nine (\$116.49)  
Cents, costs as by the record thereof may ap-  
pear: 20

It being expressly understood that this instru-  
ment shall not operate as a bar against the said  
FANNIE KLEIN, from making or instituting any  
claim, suit or demand against ADOLPH SHRYER,  
and shall not bar her right of recovery against  
the said ADOLPH SHRYER; and that this instru-  
ment shall not operate as a release of the said  
ADOLPH SHRYER;

AND WHEREAS, FANNIE KLEIN received satisfac- 30  
tion for the same, these are, therefore, to desire  
and authorize you to enter an acknowledgment of  
satisfaction upon the record of the said judgment,  
and for your so doing this shall be your sufficient  
warrant and discharge in that behalf.

IN WITNESS WHEREOF, I, JACK RINZLER, of the  
firm of FEDER & RINZLER, ESQS., Attorneys of FAN-  
NIE KLEIN, have hereunto set my hand and affixed 40  
my seal, the 28th day of November, in the year

*Warrant for Satisfaction of Judgment Between  
Plaintiff and Defendant Bloom*

of Our Lord One Thousand Nine Hundred and  
Twenty-eight.

FEDER & RINZLER,  
By Jack Rinzler,  
Attorneys of Fannie Klein (L. S.)

10

Signed, Sealed and Delivered  
in the Presence of  
Samuel Samuelson.

State of New Jersey, }  
County of Passaic. } ss:

Be It Remembered, That on this 28th day of  
20 November, in the year of Our Lord One Thousand  
Nine Hundred and twenty-eight, before me, an  
attorney at law of New Jersey, personally ap-  
peared Jack Rinzler, who, I am satisfied, is the  
person named in and who executed the foregoing  
instrument, and I having first made known to  
him the contents thereof he did acknowledge that  
he signed, sealed and delivered the same as his  
voluntary act and deed, for the uses and purposes  
30 therein expressed.

SAMUEL SAMUELSON,  
An Attorney at Law of New Jersey.

## TESTIMONY.

## NEW JERSEY SUPREME COURT

## PASSAIC CIRCUIT

FANNIE KLEIN,

Plaintiff,

vs.

ADOLPH SHRYER, LOUIS BLOOM  
and BLOCKDEL REALTY COM-  
PANY,

Defendants.

10

At Law

Paterson, N. J., October 23, 1928.

20

Before HON. CLIFFORD L. NEWMAN,  
Judge, and a Jury.

## Appearances:

Feder &amp; Rinzler, Esqs., for plaintiff.

Frank G. Turner, Esq., and Charles G. Stalter,  
Esq., for defendant Shryer.

30

Mackay & Mackay, Esqs., for defendants Bloom  
and Blockdel Realty Co.

(Mr. Rinzler opened for the plaintiff.)

Mr. Stalter: If the Court please, on behalf of  
Adolph Shryer, whom I represent, I move, your  
Honor, for a nonsuit on the plaintiff's opening.  
The plaintiff alleges in his opening that the car 40

*Lewis Bloom—Direct*

driven by Lewis Bloom hit this young lady a violent blow, throwing her in the path of our automobile in the open road. I submit, sir, that that makes out no *prima facie* case against Adolph Shryer.

10 The Court: I will hold your motion in abeyance.

LEWIS BLOOM, sworn.

Direct-examination by Mr. Rinzler:

Q. Mr. Bloom, you are a defendant in this case? Are you not? A. Yes.

Q. Now, without going into the details of the accident, that is, as to how it happened, you were  
20 driving an automobile on Kinderkamaack Road, Riveredge, in the direction of Westwood to Hackensack? A. Yes.

Q. On September 18, 1927, were you not? A. Yes.

Q. Without going into the nature of the accident, you are an employe of the defendant Blockdel Realty Company, Incorporated, aren't you? A. I am a salesman for them.

Q. Employed by the company as a salesman?  
30 A. Yes.

Q. That corporation is a company engaged in the real estate business, is it not? A. Yes, sir.

Q. That corporation owns some real estate in Westwood, New Jersey, does it not? A. Yes, sir.

Q. That is the place from where you were driving at the time? A. Yes, sir.

Q. Where in Westwood was the company's real estate located? A. On Ridgewood Road.

40. Q. That is where you were coming from at the

*Lewis Bloom—Direct*

time? A. From Westwood, yes, Washington Township.

Q. You were coming from Westwood? A. Yes.

Q. From the place in Westwood where the real estate of the company is located? A. Yes.

Q. You were there at the company's real estate with someone else? A. No; I just happened to go out that day because some of the salesmen were out there. I had no appointment out there. I thought I would ride out, anyway. We always meet a lot of the boys out there. 10

Q. Two or three salesmen of the company meet that day? A. Not all of them, no.

Q. How many of them? A. Oh, I don't know; probably four or five of them out there. 20

Q. Where? At the company's real estate location? A. No, on the property.

Q. I mean, on the real estate property of the corporation. A. Yes.

Q. Where did you meet on the property? What store or building? A. They have no building.

Q. Just at the platform there or what? A. No particular place.

Q. Well, was there anything there to show that the corporation owned the property there? A. Yes, signs there. 30

Q. If there was anybody interviewed there where would you talk to them? Right on the property? A. Yes, sir.

Q. And these signs were there showing that the corporation owned the real estate? A. For sale, right. Yes.

Q. And the corporation's name was on the sign? A. Yes, sir. 40

*Lewis Bloom—Direct*

Q. There was at that time on that day a conference of four or five salesmen of the corporation? A. Well, there was no particular conference. If a man had an appointment and he asked his party out there, maybe he was out there that  
10 time. There was no particular party of us out there.

Q. How many salesmen conferred at that time, the salesmen of the corporation? A. There was no conference at all.

Q. How many got together there at that time? A. Well, that wasn't by any appointment.

Mr. Mackay: I object to it as immaterial, what other salesmen may have done.  
20

The Court: I can't tell yet.

Q. How many of you salesmen of the company met there? A. We had no appointment to meet anywhere.

Q. I didn't ask you that, Mr. Bloom. How many of the salesmen of the corporation met there? A. I don't know; probably three or four of them out there that day.

Q. Was any real estate being sold at that time?  
30 A. I don't know, unless the other salesmen had appointments to sell.

Q. Well, for what reason did you go to the company's real estate at that time? A. Well, I didn't have nothing to do in the office, so I rode out there.

Q. Your office was where? A. In Jersey City.

Q. You do interview people on Sundays, do you not? A. If they have an appointment.

40 Q. If anybody applied to the property and

*Lewis Bloom—Direct*

there is a salesman on hand, he does interview the prospective buyer about the real estate of the company? A. If there is any. Only by appointment. We only have interview by appointment.

Q. Did you ever go out to the place of the location of this property on a Sunday before? A. 10  
Oh, yes; I went out there before that.

Q. About how many times?

The Court: What difference does it make?

A. I don't know.

Mr. Rinzler: Master and servant proposition.

The Court: Ask him what he did on that 20  
occasion.

Q. Were there any customers interviewed at the site of the property that day?

The Court: By him or by somebody else?

Q. Either by you or the other salesmen? A. Not by me. Probably by some of the other salesmen.

Q. Did you take part in it? A. No, sir. 30

Q. Tell us, then, for what reason you went to the site at that time? A. Well, it was a nice day.

Q. Eh? A. I didn't care about staying inside, so I thought I would take a ride out there.

Q. What did you do there when you arrived?

A. Why, just talked to some of the boys.

Q. About what? A. Why, we talked about anything.

Q. About what? A. Something as we sit there. 40

Q. At that time what did you talk about, that

*Lewis Bloom—Direct*

day? A. I don't remember what I talked about that day. Not about property.

Q. What did you talk about? A. I don't know what we were talking about; maybe baseball.

Q. Why of all the other places in the world did  
10 you go to the company's real estate site on that day? A. Because it is a nice sight to go in there, there is nice, big apple trees there, and sometimes the boys take out families out there and sit down.

Q. Who paid for the automobile that you were driving? A. My automobile?

Q. The automobile you were driving on that day. A. I didn't get paid for it.

20 Q. I say, who paid for the automobile you were driving on that day? A. Nobody.

Q. Who bought the automobile? A. I bought the automobile.

Q. Was it paid for? A. Yes.

Q. Who paid for it? A. I paid for it.

Q. For what purpose did you use that automobile? A. If I had an appointment to take anybody out, why, I took them out.

Q. Was it usual to take people to the site of  
30 the real estate for the company? A. Only by appointment.

Q. Was it used for that purpose? A. Yes, for pleasure and for that purpose.

Q. Didn't you go down to the real estate site from time to time to see if anybody had applied or inquired about the property? A. No; we never had any of these.

40 The Court: You say this car was your car?

The Witness: Yes.

*Lewis Bloom—Direct*

Q. You bought it for the purpose of using it as a salesman for the corporation? A. Well, for pleasure and for salesman.

Q. Where did you live at that time? A. Jersey City.

Q. Well, now, was there any railway communication or transportation from Jersey City to the site of this property? A. It is not so very good on Sunday. 10

Q. Is there any subway line there? A. No.

Q. Trolley car runs from Jersey City to this place? A. No, sir.

Q. For that reason, and in order for you to act as salesman for the corporation, you got this automobile, didn't you? A. No; we had the Erie Railroad, too. 20

Q. Does that take you to the site of the property? A. Yes, takes you to Westwood.

Q. How far from the site? A. Oh, I should judge about a mile or a mile and a half.

Q. You never used it? A. No; we have taxicabs there.

Q. You didn't use them? A. Yes, I used those taxicabs in there.

Q. Who paid for the upkeep of the automobile? A. I did. 30

Q. With your own money? A. Yes.

Q. How did you get paid by the corporation? A. On commissions. If I sold anything I got paid a commission on it.

Q. They did not contribute towards the upkeep of the car? A. The only time they contribute, if you have an appointment with a customer and you are taking them out, then they paid for your trip; otherwise they don't pay you. 40

*Lewis Bloom—Direct*

Q. But if you used the car for the company's business they paid for the transportation? A. If you used it for the company's business, taking one of their parties out.

Q. Who is the man who was with you in the car  
10 at the time? A. Mr. Engber.

Q. Who is he? A. He is a friend of one of the salesmen out there.

Q. For what reasons did you take him out to the property at that time? A. I didn't take him out to the property; he was there when I got there.

Q. Did you go there alone? A. Yes.

Q. How long were you at the real estate site?  
A. Well, I don't know; I should judge about pro-  
20 bably four hours.

Q. What did you do there during the four hours? A. Just hung around and pitched ball to one another when there was nothing—a man had an appointment, if he was through.

Q. What did you do there? A. Didn't have nothing to do there.

Q. What did you do there? A. I just went out there and parked my car and was picking apples off the trees.

30 Q. For four hours? A. I don't know about four hours. I probably went in and had my lunch in Westwood, too.

Q. Tell us what you did during the four hours there. A. I can't tell you everything I did; that I don't know. Talked to the boys around there.

Q. About what? A. Maybe about baseball; I can't tell you.

40 Q. Did you have a conference arranged of salesmen of the company to meet on that day? A. No.

*Lewis Bloom—Direct*

Q. Didn't the salesmen go to the real estate site regularly on Sunday for the purpose of interviewing such people as might apply for property or inquire about it? A. Only for the ones that have an appointment.

Q. Didn't you have a sign on there that people could be interviewed on Sunday? A. There is a sign; doesn't say anything about interviewing on Sunday. 10

Q. Did you have an appointment there for that Sunday? A. No, sir.

Q. Did you know anybody that was going to be there? A. Well, usually there is some of the boys going to be there.

Q. For what reason? A. Somebody has appointments out there. 20

Q. Well, if they have an appointment there that kept them there for four hours, did you take the customer back? A. It is not the same man. Some go right back. Some of them stay around for a while.

Q. What did you do, then, for the four hours? A. I was fooling around the property, fooling around with the fellows.

Q. Doing what? A. Just kidding around, I guess. 30

Q. Went to Westwood, to the real estate site of the Blockdel Realty Corporation, to fool around?

A. Well, you can go up there and walk around the property, picking apples off the trees, pears off the trees, sit around.

Q. Isn't it a fact that you went there on that day so that you might effect a sale or interview a prospect on that day? A. I had no appointment for that day. 40

*Lewis Bloom—Direct*

Q. Well, whether you had an appointment or not, didn't you go there with that object in mind?

A. No, sir.

Q. Supposing a prospect had applied, would you have talked to him about the prospective  
10 sale? A. Well, in that case—

Mr. Mackay: I object to what he might have done.

The Court: I think that is speculative.

Mr. Mackay: What he did do.

Mr. Rinzler: Excepting as relating to the scope.

The Court: That wouldn't make any dif-  
20 ference. It is speculative.

Q. Didn't you go there with the object of interesting yourself with the sale or the prospective sale of some of the real estate for the corporation? A. No, sir.

Q. Didn't you go there for the purpose of being at a conference of the salesmen in behalf of the company? A. No, sir.

Q. Didn't you go there to see if anybody would apply for and interview about buying some prop-  
30 erty or asking about its terms of sale? A. No, I did not.

Q. You simply went there with no definite plan, with no idea of meeting anybody, and simply for the ride; is that correct? A. Yes; I went out there.

Q. You brought back Mr. Who with you? A. Mr. Engber.

Q. That is all.

40 Mr. Turner: No questions.

*Lewis Bloom—Cross*  
*Max Engber—Direct*

CROSS-EXAMINATION by Mr. Mackay:

Q. Whose automobile were you driving, Mr. Bloom? A. My own automobile.

Q. You have a bill of sale for it? A. Yes, sir.

Q. On this particular day you say you had no appointment? A. No, sir. 10

Q. Or no prospective customers for the Blockdel Realty Company.

Q. Were you doing any business affairs at all on this day? A. No, I did not.

Q. That is all.

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20

MAX ENGBER, sworn.

Direct-examination by Mr. Rinzler:

Q. Where do you live, sir? A. I live in Brooklyn.

Q. What business were you in at the time of the day of this accident? A. I am a clerk in the Customs House.

Q. Where did you first see Mr. Louis Bloom on the day of the accident? A. I met him out at the real estate development. 30

Q. What took place there? A. I don't know; there were boys talking and I was picking apples.

Q. Why did you go there? A. I went out to see a friend of mine by the name of Mr. Feld.

Q. What is his business? A. He is a salesman.

Q. For whom? A. Blockdel Realty Company.

Q. What took place there with this salesman 40

*Max Engber—Direct*

that day? A. I don't know; I didn't hang around them. I was enjoying myself.

Q. What did you see take place? A. I didn't see anything take place.

10 Mr. Mackay: I object to that as immaterial, in so far as the defendant Bloom is concerned.

The Court: I do not see how what he saw the other fellows doing would be material.

Q. Who got there first? You or Bloom? A. He was there, I think, ahead of me, because I didn't see him come.

Q. Did you see him there at all? A. No, I  
20 didn't notice him.

Q. Did you see him there at all? A. I didn't notice him at the time I got there.

Q. Didn't you see him there at all on that day? A. Yes, I seen him there that day.

Q. When you first saw him what was he doing there? A. Talking to some of the men.

Q. About what? A. I don't know.

Q. Didn't you hear? A. No, I didn't.

Q. Didn't you pay any attention? A. I was  
30 not interested.

Q. Did you hear what subject they were discussing? A. No.

Q. They were talking about real estate? A. I don't know what they were talking about.

Q. Did they have buyers there? A. I didn't see. I don't know a buyer if I seen one.

Q. Did they have people?

40 The Court: Not "they." He is the one we are interested in.

*Max Engber—Direct*

Q. Did the salesmen have any applicants inquiring for or applying for terms?

Mr. Mackay: I object.

The Court: Sustain the objection.

Q. What did Mr. Bloom do there? A. I don't know what he was doing there. 10

Q. Well, how did you happen to go home with him? A. Why, he happened to be going to Jersey City, and it was easy for me to travel that way home, and I asked Mr. Feld if he couldn't fix me up, if he knew anybody was going that way. So he says, "Why, Mr. Bloom is going that way." And he introduced me to him and I went with him. 20

Q. What is Feld's first name? A. I couldn't say; I think it is Morris.

Q. Whereabouts does he live? A. Why, he lives in a hotel in New York.

Q. What hotel? A. Well, at that time he was living in the Navarre; I don't know where he lives now.

Q. Where did he work? A. Works to the real estate company.

Q. Which real estate company? A. Blockdel Realty Company. 30

Q. What was he doing there? A. He is a salesman; I don't know what he was doing there. I couldn't say.

Q. Did a number of the salesmen assemble at that real estate site on that day? A. Yes; there was three or four or five men around there.

Q. How long were you there? A. I was there about, I should judge about five hours, until I started over with Mr. Bloom. 40

*Max Engber—Direct*

Q. Tell me what you saw take place while you were there? A. Why—

The Court: It doesn't make any difference about the other part of this case.

10 Q. Well, as far as Bloom is concerned. A. I didn't see what Mr. Bloom was doing, to tell you the truth; I didn't even know Mr. Bloom.

Q. Is Mr. Feld here? A. I don't know; I don't see him.

Q. Do you know him? A. Yes.

Q. Do you see him here now? A. No, I don't see him.

Q. Did any customers apply or applicants apply  
20 to inquire about the property? A. Why, I couldn't say whether they were customers or who they are.

Q. Did anybody inquire or apply about that property? A. Not while I was there, because I wasn't interested in any business that was going on.

Q. What did you do there for four hours? A. I went out to enjoy myself.

30 Mr. Mackay: I object.

The Court: I will permit it.

Q. What kind of property is this? A. It is land; it is real estate.

Q. All vacant? A. It has trees on it, it has bushes on it.

Q. Any buildings on it? A. Well, not that I seen. I didn't notice. There is buildings around there. Across the street there is a building.

*Max Engber—Cross*  
*Testimony of Louis Bloom, Read in Evidence*

CROSS-EXAMINATION by Mr. Mackay:

Q. Well, you didn't know Mr. Bloom before this day? A. No, sir.

Q. That is the first time you ever met him? A. First time I was introduced to him. 10

Q. He volunteered to drive you back to Jersey City? A. Jersey City, and from there I could take the tube and go home, with the tube.

Q. That is all.

Mr. Rinzler: If your Honor please, I offer in evidence the testimony given by the defendant Bloom and Shryer when they were examined before trial. 20

The Court: Each man's testimony is admissible as against him. Any objection to that?

Mr. Mackay: All right.

Mr. Rinzler: I offer it in evidence.

(Paper marked Exhibit P-1.)

Mr. Rinzler: I would like to read it, sir.

(Mr. Rinzler read testimony as follows:) 30

"Mr. Louis Bloom, sworn, testified as follows:

By Morris Dobrin:

Q. What is your name, sir? A. Louis Bloom.

Q. And where do you reside? A. 2814 Boulevard, Jersey City, New Jersey.

Q. Were you in the vicinity of Kinderkamack Road in Riveredge, New Jersey, on September 18, 1927, when the girl known as Fannie Klein was injured? A. Yes. 40

*Testimony of Louis Bloom, Read in Evidence*

Q. In what direction were you proceeding on that road? A. South.

Q. About how wide is that road? A. I should judge that road to be about thirty feet—thirty-five feet.

10 Q. And is it an asphalt road? A. Yes. I think it is an asphalt road. It is a county road.

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

Q. About how close to the edge of the right-hand side of the road were you? A. I should judge about six feet from the curb.

Q. And just before the accident happened about how fast were you going? A. About fifteen or  
20 eighteen miles an hour.

Q. Did you see the plaintiff, Fannie Klein, as she started across the roadway? A. No, sir.

Q. With whom were you riding at that time? A. With a gentleman by the name of Engber.

Q. What sort of a car have you, a touring car? A. No, a sedan.

Q. And Mr. Engber was riding in the front with you? A. Yes, sir.

Q. From where were you coming? A. From  
30 Washington Township, right above Westwood, New Jersey.

Q. Were you out on business? A. No, sir.

Q. You were talking to Mr. Engber? A. Well, I might have been saying a word, I don't remember.

Q. You had some conversation with the man? A. Probably I had some conversation with him.

Q. When did you first see the plaintiff as she  
40 started to cross the road? A. When she darted in front of my machine.

*Testimony of Louis Bloom, Read in Evidence*

Q. She ran across in front of your machine?

A. Yes, sir. Two machines that were parked on the roadway. She started in between them right on the road.

Q. What part of your car struck her? A. No part of my car struck her. 10

Q. Well, you hit her with your car, didn't you?

A. No. She was not hit by me or by my car.

Q. She darted in front of your car, didn't she?

A. She darted in front of my car from the place where she was and must have gained momentum.

Q. And what happened after she had passed your car? You continued driving? A. No, sir.

Q. What did you do? A. Somebody yelled and I pulled my emergency brake and stopped. 20

Q. Where did you stop in respect to the roadway? A. Right the way I was facing.

Q. In the center of the road? A. No, I didn't stop there. I couldn't.

Q. You stopped in the center of the road? A. Six feet from where I was driving. Right on the edge of the road.

Q. You didn't pull your car ahead for the purpose of parking your car, did you? A. I couldn't, because there was cars parked on both sides and because of the traveling; you didn't have much room. 30

Q. Is that a residential section? A. Just building it and calling it Riveredge Model Homes. That is why machines were parked on both sides of the road.

Q. There were large fields on both sides of the road, wasn't there? A. I guess there was a few.

Q. On both sides? A. I think there is. I am 40

*Testimony of Louis Bloom, Read in Evidence*

not sure there are fields in the place. I never visited those fields. I don't know whether there are or not.

Q. How close were those cars that were parked? Were they close to each other? A.  
10 Some three feet. Some four feet. Naturally parked. I don't know exactly.

Q. And the fact that there was cars on the right-hand side prevented you from pulling over to your right to park your car when you heard this shout? A. I didn't try to park my car, I just drew my brakes.

Q. Why did you do that? A. That was just instinct on my part.

20 Q. Wasn't it instinctive on your part to pull to the right?

Mr. Mackay: I object; calling for conclusion.

Q. And what did you do after you stopped your car? A. The car that was going north—my car was going here (indicating on table)—the car going north stopped right about this way (indicating on table); in other words about half the range  
30 of my car. We were stopped—the girl was under the first wheel of the first car, upon the car that was going north. Somebody said, 'Take her to the hospital,' and I helped Mr. Engber put her in my car and took her to the hospital.

Q. Can you recall the man that was driving the car? A. I didn't look at anybody that was driving that car. In fact, I don't know.

Q. You took the girl to the hospital? A. I  
40 did.

*Testimony of Louis Bloom, Read in Evidence*

Q. And the fellow that was driving the other car, what did he do? A. I don't know. From what this—

Mr. Turner: I object.

By Mr. Dobrin:

10

Q. What did the fellow that struck the girl do?

A. I don't know.

Mr. Turner: I object, because the witness has not stated who struck the girl. He should be asked to tell us that somebody struck the girl.

By Mr. Dobrin:

Q. Did anybody acknowledge themselves to be the owner of the car? A. The car that was over the girl? 20

Q. Yes. A. I didn't question anybody.

Q. Did anyone else volunteer to take the girl to the hospital? A. No, sir.

Q. Will you repeat what part of the car the girl was under? A. The back of the front wheel?

Q. The left front wheel or the right front wheel? A. Well, now, I can't tell you exactly. I can only tell you the side that my car was on. This car coming this way. She was in back of that front wheel (indicating in what direction on the table). 30

Q. You say the girl darted in front of your car? A. She ran right in front of my car.

Q. Did you make any effort to slack the speed of your car? A. I stopped the minute somebody yelled. It all happened just like that (snapping his fingers). 40

*Testimony of Louis Bloom, Read in Evidence*

Q. Did you see a car approaching from the opposite direction? Did you notice that car? A. I never noticed a car going in the opposite direction. The cars on that road is very heavy traffic on account of so many cars going to the  
10 125th Street Ferry. The road was checked with traffic and you absolutely could not go very fast.

Q. You placed the girl in your car and took her to the hospital. Did you make a report of the accident? A. There was a policeman right there that came to the hospital from Riveredge.

Q. With you in the car? A. No, he came in a motorcycle.

Q. That is all.

20

CROSS-EXAMINATION by Mr. Turner:

Q. Mr. Engber, where does he live? A. In Brooklyn, New York.

Q. Do you remember his first name? A. I think it is Max.

Q. What is his address? A. (Address furnished by Mr. Mackay.)

Q. Do you know what business he is in? A. He is working for the Government in the Customs  
30 Department.

Q. You don't know where he is working, do you? A. No, sir.

Q. That is all.

CROSS-EXAMINATION by Mr. Mackay:

Q. You owned the car that you were driving at that time? A. Yes, it was my car.

Q. Your personal car? A. Yes.

40 Q. It didn't belong to the Blockdel Realty Company? A. No, it is mine.

Q. That is all.

*Testimony of Louis Bloom, Read in Evidence*

CROSS-EXAMINATION by Mr. Dobrin:

Q. Have you the bill of sale with you at this time? A. Yes, right here. (Produced in evidence by Mr. Mackay.)

Q. Are you connected with the Blockdel Realty Company? A. I am a salesman for them. 10

Q. Are you an officer of the corporation? A. No.

Q. General Manager? A. No.

Q. Just a salesman? A. Yes.

Q. At the time you were driving along this highway, you were on business for the Blockdel Realty Company? A. No, I was not.

Q. Was this a Sunday? A. Yes.

Q. And you do some real estate business on a Sunday, don't you? A. We do, if we have somebody to take out. 20

Q. Who was this gentleman that was with you on this day? A. Mr. Engber.

Q. Wasn't he a prospective customer? A. No.

Q. What had you been going in to Riveredge for? A. I used to go out to see if there was anything doing.

Q. In the real estate line? A. No, I went out to see the boys. 30

Q. Wasn't there developments going up there? A. Yes.

Q. And you were out to see the boys there? A. I knew that there were some there.

Q. The gentleman that was with you was a customer? A. No.

Q. Did you want to show him some property? A. No.

Q. Went there for the purpose of looking for 40

*Testimony of Louis Bloom, Read in Evidence*

the property? A. No. I took a ride out there to see the boys.

Q. They were re there for business? A. I don't know.

Q. When you say boys, you refer to those connected with the Blockdel Realty Company? A. Well, yes.

Q. They had an office there? A. No.

Q. They had a stand there? A. There was no stand.

Q. They were there for business? A. I don't know what they were there for. They were there.

Q. What did you want to see them for? A. To spend the day with them; they were all friends of mine.

Q. Where do they live? A. Some in New Jersey. Some in New York.

Q. But they didn't any of them live in the vicinity of the development? A. No.

Q. If they didn't live there, why did you go to see them in that place? A. Because they often took rides there, and I thought I might see them.

Q. They had a car there? A. Yes.

30 Q. And if a prospective customer showed up they would do business? A. No.

Q. Did you arrange to meet them there? A. No.

Q. You didn't know that they would be there? A. No.

Q. But you were there to spend the time with the boys? A. Yes. I took a ride on Sunday.

Q. They were all there on Sunday? A. Some 40 of them were and some weren't.

*Testimony of Louis Bloom, Read in Evidence*

Q. Who are the officers of this corporation?

A. Why, Mr. Block.

Q. What is his first name? A. Louis Block.

Q. Where does he live? A. I think he lived in Chicago at that time.

Q. At the present time? A. I think he lives in New York. 10

Q. Where? A. I don't know his address.

Q. Who are the other officers of the corporation? A. Mr. Delafield.

Q. Where does he live? A. He lives in New York, 27 Eighty-sixth Street.

Q. And the others? A. There are only the two.

Q. They were there on this day in question? 20  
A. No, they were not.

Q. Who were the boys that were there? A. I don't know. Some of the boys that were working for the company.

Q. Other salesmen? A. I suppose they were salesmen.

Q. The fellow that was with you at the time, was he a friend of yours? A. He knew one of the boys.

Q. And he was there to see one of the boys in respect to some of the property? A. No. 30

Q. Was he a friend of yours? A. No.

Q. He isn't a friend of yours? A. Well, I knew him. He was a man that was out with the boys and I took him in.

Q. They have a small office there? A. They never had.

Q. Where did they interview people in respect to the buying of property? A. In their office. 40

*Testimony of Louis Bloom, Read in Evidence*

Q. Where was their office? In New York? A. Jersey City.

Q. But they had a sort of gathering place there? A. No.

Q. Did they have chairs there? A. No.

10 Q. What is the name of the gentleman that was with you? A. That was Engber.

Q. Where does he live? A. Brooklyn.

Q. Where? A. I don't know his address.

Q. A friend of yours and you don't know his address? A. He isn't such a friend that I know his address.

Q. Whereabouts in New York does he live? A. In Brooklyn.

20 Q. Whereabouts in Brooklyn? A. I don't know.

Q. That is all.

I hereby certify that the foregoing is a transcript of the testimony given by me on September 19th, 1928.

(Signed September 25, 1928,

30

LOUIS BLOOM.)

(A recess was taken until two o'clock P. M.)

40

*Dr. Lewis Greenberg—Direct*

Afternoon session.

Mr. Rinzler: Your Honor, may I call a doctor who is here from out of town?

The Court: Yes.

10

Dr. LEWIS GREENBERG, sworn.

Direct-examination by Mr. Rinzler:

Q. Are you a practicing physician and surgeon of New Jersey? A. Yes.

Q. You are licensed, and what year? A. 1916.

Q. Have you ever since that time been practicing as a physician and surgeon in this state? A. Yes.

20

Q. Where do you maintain your office? A. At Lodi, New Jersey.

Q. On September 18, 1927, were you affiliated with any hospitals? A. Yes, I was on the Surgical Staff of Hackensack Hospital.

Q. Are you still on that Surgical Staff? A. I am still on that Surgical Staff.

Q. While so affiliated on the Surgical Staff of the Hackensack Hospital was the plaintiff, Miss Fannie Klein, admitted as a patient? A. Yes.

30

Q. Were you on at that time? A. I was on duty at that time.

Q. Did you or not examine her upon admission to the hospital? A. Yes, sir.

Q. What did you find was her condition? A. If I may refer to the official records of the hospital. Well, the patient was lying in bed semi-conscious, that is to say, she was keeping her eyes closed and would not talk, although she

40

*Dr. Lewis Greenberg—Direct*

could be aroused by manipulation or loud questions. She had bruises over her face, swelling of her one eye.

Q. Which eye? A. The right eye.

Q. Was it blood-shot? A. It was blood-shot.

10 Q. Yes? A. Both her legs were deformed and swollen and they gave considerable pain, apparently, on handling.

Q. When you say "deformed" do you mean as a result of a recent injury or they were naturally deformed? A. No; when I say deformed I mean that they were curved, angulations at abnormal places.

Q. Were they injured? A. Yes, they usually  
20 denote fracture at that particular point.

The Court: What did you say?

The Witness: They usually denote fracture at this particular point.

Q. In this case did they denote it from the appearance of the legs? A. Yes.

Q. Or deformity? A. Yes.

Q. That the legs were fractured? A. Yes, I  
30 mean superficially and painfully. This examination had to be hasty, because it was very painful. There were fractures of both bones of the—I mean the thigh bones on both legs.

Q. Did your subsequent examination and care and knowledge of the case confirm the diagnosis of the fracture? A. Yes; subsequent examination, X-rays, and so forth showed the injuries more in detail.

Q. Now, which part of each leg was fractured?  
40 A. Now, on the right side there was the—

*Dr. Lewis Greenberg—Direct*

Q. You mean the right leg? A. Yes, I mean the right leg. There was a fracture on the middle of the shaft of the femur, that is, the thigh bone.

Q. Yes? A. Also fractures of each upper end of the—well, the lower leg just beyond the knee; and both fractures extending up into the knee joint. 10

Q. In other words, you found how many fractures of the right leg, Doctor? A. It would be three fractures on the right leg.

Q. Do you mind indicating on your own legs just where the point of fractures were? A. On the right-hand side was one fracture just about the center of the thigh bone.

Q. On the front part of the leg? A. Well, 20 practically that point.

Q. Clear through? A. Yes.

Q. Yes? A. Then, on this, the prominence of the knee, that portion of the lower bone.

Q. Is that a knee joint and a portion of the lower bone? A. This is the upper portion of the lower bone which goes up and participates in the formation of the knee joint. Both of those had fractures, identical fractures this way, separating, as it were, these prominences on each side. 30

Q. At that juncture there were two fractures? A. Two fractures extending forward and into the joint.

The Court: What about the left?

A. On the left leg there were two fractures of the thigh bone, one at the upper third and one about the lower third. See, this. In other words, this bone was broken into three fragments. 40

*Dr. Lewis Greenberg—Direct*

Q. You may sit down, Doctor. Were there any other injuries to either or both legs? A. No; there were no other injuries to the legs.

Q. Now, describe the deformity that you found. How did the legs look in appearance? A. Well,  
10 they were greatly swollen, considerably out of shape, and as they were lifted there was always a tendency for them to bend, or, as we call it, angulate, to form an angle at the point of fracture.

Q. That is, she walks bow-legged? Is there an angle formed as the result of the injury? A. There is bowing; there is always more or less bowing at the point where the bone is broken.

20 Q. And the girl was at the hospital for how long? A. The girl was in the hospital from the day after admission, September 18, to September 24.

Q. Do you know how long it was before she regained consciousness? A. Yes, she regained consciousness late that same night.

Q. Do you recall about what time she was brought in? A. No, I don't.

30 Q. In your judgment, were those severe injuries or not? A. They were.

Q. What was the girl's condition when she left the hospital? A. Well, her own and her family's main objective was to remove her to New York as soon as possible, so we could not institute the appropriate treatment with the condition, and simply had to put her up in any way that would facilitate the transportation to New York.

40 Q. She was in your hospital for a week, was she not? A. Yes.

*Dr. Lewis Greenberg—Direct*

Q. In what posture was she kept during that time? A. Flat in bed, of course, till September 21, that is, around the third day afterwards; we had to allow her to get out of shock. At that time I put her up in plaster from just a little above the waist down to and including both feet, up to the toes. 20

Q. You say up to a point a little above the waist line? A. Above the waist, the lower part of the chest, really.

Q. About this point on the body, you are indicating, are you not? A. Yes.

Q. Then down? A. All the way down.

Q. Over the body? A. Yes, up to the toes on both sides. 20

Q. Up to the toes on both legs? A. Yes.

Q. Is that a necessary application? A. Yes. That, of course, immobilized all the fragments, did not allow for any false motion or grating, and in this way she could easily be transported in an ambulance.

Q. Was it a necessary thing to do? A. Yes.

Q. In your judgment, Doctor, was she in pain during that time? A. Before she was put in plaster, yes, considerable pain. 30

Q. She was in bed throughout the week? A. Yes.

Q. Then, you have not seen the young lady until today, have you, sir? A. No, sir.

Q. (Will you rise, Miss Klein, please?) Doctor, will you step down for a moment? Do you observe the bowing of the legs as they now appear? Raise your skirt a little. A. (Plaintiff complies.) 40

*Dr. Lewis Greenberg—Direct*

Q. Are they as they appeared when you first examined the young lady? A. No. Well, there was no bowing below the knee due to any injury. You see, all the injuries were above the knee.

10 Q. Now, Doctor, did you observe there are some scars—one looks like at least two inches long and one over there several inches long and rather rugged, each of them? Are they or not the result of injuries that she received? A. No; they look like surgical wounds due to her subsequent treatment.

Q. Oh, subsequent operations, you mean? A. Yes.

20 Q. Now, doctor, did you make a charge for your treatment? A. Yes, sir.

Q. What charge was made? A. Fifty dollars.

Q. Is that a reasonable charge? A. Yes.

Mr. Rinzler: Gentlemen, I do not suppose you make any objection, do you, to these hospital bills of the Hackensack Hospital?

(Papers examined by Mr. Turner and Mr. Mackay.)

30 Mr. Rinzler: I offer them, your Honor. (Papers marked Exhibits P-2, P-3, and P-4.)

40 Mr. Rinzler: Exhibit P-2, sir, shows it is dated September 24, the word "ambulance" crossed out; anesthetics \$15; cast \$8; telephone Passaic call five cents; X-ray of legs \$20; one day credit, Miss Lane, \$8.50; to something credit I can't make out, Miss Lane, \$17; total \$43.05, credit \$25.50, balance \$17.55.

*Testimony of Adolph Shryer, Read in Evidence*

The bill is dated September 24, 1927, and the amount was \$43.05.

Then, P-3 is a bill dated the same date as the previous exhibit, and it says September 24, operating room—no, ambulance \$20; then it says for carriages \$1.60; total \$21.60. Both these receipts are marked paid, as well as Exhibit P-4, which is marked paid. Exhibit P-4 is dated September 21, 1927. September 18, 1924, room \$28, from 19th to 25th; special nurse, Miss Lloyd, \$49; special nurse, Miss Lane, \$49; board of special nurse, \$10.50; and a similar sum of \$10.50 board for special nurse; Bensonhurst telephone call, 15 cents; X-ray of right and left leg, \$20; total \$167.15.

Q. These bills are reasonable, are they not, Doctor? A. Yes, sir.

Mr. Mackay: No questions.

Mr. Turner: No cross-examination.

Mr. Rinzler: I will continue the reading of the testimony. (Reads as follows:)

“Mr. ADOLPH SHRYER, sworn, testified as follows:

By Mr. Rinzler:

Q. Where do you live, sir? A. 30 Stewart Street.

Q. You are being sued in this case? A. Yes.

Q. On September 18, 1927, when this accident happened, what kind of a car did you own? A. A Chevrolet coach.

*Testimony of Adolph Shryer, Read in Evidence*

Q. Who was driving this car? A. I was.

Q. Where did the accident happen? A. As I recall, I should say Riveredge.

Q. On what street? A. I don't know the name of the street.

10 Q. Do you recall the name to be Kinderkamack Road? A. I have heard that name mentioned a few times, but I have never inquired.

Q. Where were you coming from? A. From Hackensack.

Q. Were you coming from that direction? A. Yes.

Q. Toward what direction were you driving?

A. Well, driving: We were just taking a ride on  
20 Sunday afternoon.

Q. Toward what direction were you proceeding? A. That is as far as I went.

Q. Toward what town were you going if you had gone on? A. As a rule when I drive that way, I drive left all the way down going from Hackensack to Westwood to Riveredge.

Q. Were you going north? A. No.

Q. Who was in your car besides yourself? A.  
30 Mr. Hyman Bodner, his wife, my wife and my baby.

Q. Who sat in the front? A. Mr. Bodner sat in the front.

Q. And the others in the rear seat? A. Yes, in the rear seat.

Q. What time of the day did this accident happen? A. It was late in the afternoon. It may have been about four or five o'clock.

Q. Was it a clear, bright day? A. Yes, a clear,  
40 bright day.

*Testimony of Adolph Shryer, Read in Evidence*

Q. Who is this Mr. Bodner that was in your car? A. Hyman Bodner.

Q. Where does he live? A. 11 Offord Street, Passaic, New Jersey.

Q. How did this accident happen? A. Approaching to that place, a car was parked on the opposite side. 10

Q. Whose car? A. Somebody's car. A car was parked there. A girl ran out from the side of that car to the front and was hit by an approaching car from the same direction.

Q. What car hit her? A. A car coming from the opposite direction.

Q. Who drove that car? A. I don't know.

Q. (Indicating the defendant, Louis Bloom) 20 Did you see him that day? A. I never met that gentleman, except once in Riveredge when we were in that court.

Q. There was just one car that was approaching from the opposite direction? A. There was a lot of cars approaching.

Q. This one car came and hit the girl? A. Yes.

Q. And then what happened with this car? A. He stopped, and then got off and lifted the girl in the car and was gone in the car. 30

Q. Was the injured girl, Miss Klein, under the car? A. No.

Q. Was she underneath any part of this car? A. No. She was picked up in the front without interfering with me.

Q. What part of this car struck her? A. The other car?

Q. Yes. A. I would say the left front side. I 40 don't exactly know.

*Testimony of Adolph Shryer, Read in Evidence*

Q. On what side of the street was this other car driving? A. On the girl's side.

Q. What side of the street were you driving on? A. On my right.

Q. How wide is the road? A. Very narrow.  
10 About twenty feet.

Q. Did you exactly see this car hit her? A. I know what kind of a car it was that hit her. The people I were with said it was a Pontiac.

Mr. Mackay: I object.  
Stricken out.

By Mr. Rinzler:

Q. How far away from the girl was your car  
20 when she went into the roadway from the curb?  
A. I was hugging the curb.

Q. How far away from her were you at the time, that is, toward Hackensack? A. Toward Hackensack, about fifteen feet.

Q. And how far away from the curb in the opposite direction was the car that hit her when she first went into the road? A. When she first went into the road?

Q. When she first went into the road that car  
30 was far away from her, wasn't it? A. I couldn't say exactly.

Q. About. A. Well, the car was approaching at a moderate speed.

Q. But how far away was it? A. About thirty feet.

Q. And when she first entered into the road, how far did you say your car was away from her? A. About forty feet, away away.

40 Q. Your car was forty feet away from Miss

*Testimony of Adolph Shryer, Read in Evidence*

Klein in that direction when she entered the road, and at a point alongside? A. Approaching from Hackensack, it must have been forty or fifty feet when she started running, and when the girl first entered the roadway, this car was approaching from Hackensack and was at least forty or fifty feet away from her. 10

Q. What rate of speed were you traveling at?

A. About fifteen miles an hour. It was impossible to go faster because we were in line.

Q. Coming from Hackensack, your car was next to the one Miss Klein was in? A. I don't know.

Q. When the car coming in the opposite direction hit her, what happened to Miss Klein? A. I didn't see Miss Klein. Somebody grabbed her off the road. 20

Q. Where did she land? In the center of the road near your car? A. Yes.

Q. How near your car? A. I didn't see her.

Q. Well, you know where you stopped? A. Yes.

Q. And you know where the car was when she was struck? A. Yes.

Q. Now, how near your car did this girl land?

A. Five or six feet from the front of the car. 30

Q. From the right or left? A. From my front left.

Q. Was any part of her body underneath any part of your car? A. No. I hadn't reached that far.

Q. When did you first apply your brakes? A. I applied my brakes when I saw the girl starting off.

Q. And at that time your car was going fifteen miles an hour? A. Yes. 40

*Testimony of Adolph Shryer, Read in Evidence*

Q. How long had you been riding that evening before the accident? A. From the curb a—

Q. No. How long were you riding then? A. About an hour.

Q. How fast was your car traveling when the  
10 other car struck Miss Klein? A. My car was stopped then.

Q. How far was your car from the point where Miss Klein was struck when the other car hit her? A. There was a clearance between five or ten feet from the other car.

Q. You say that when she entered the road you were traveling at the rate of fifteen miles an hour? A. Yes.

20 Q. And you promptly applied your brakes when she entered the road? A. Yes.

Q. You state the other car hit her, and your car came to a stop and was standing at the point where it came to a stop as you applied your brakes and that it did remain standing at a point about five or ten feet from where the girl was struck? A. Yes.

Q. How long did you have this car? A. At that time?

30 Q. Yes. A. I believe I bought my car in May, 1927.

Q. Did you buy it new? A. Yes.

Q. So that the car was about four months old? A. Yes.

Q. In what condition was the car? A. New.

Q. What condition were the brakes? A. New.

Q. Did they work effectively? A. Yes.

Q. And did they operate effectively? A. Yes.

40 Q. Promptly? A. Yes.

*Testimony of Adolph Shryer, Read in Evidence*

- Q. How long have you been driving a car?  
 A. Seven years.
- Q. Did you apply your brakes hard? A. Yes.
- Q. Jam them on? A. Yes, jam them.
- Q. How wide did you say the road was? A.  
 About twenty feet or less, not much wide. 10
- Q. Did you say your car was more than fifty feet away from Miss Klein when she first entered the road? A. I did.
- Q. Did you guess at that? A. Yes.
- Q. Then, you can't say whether your car was more than fifty feet away? A. Yes.
- Q. But you say about fifty? A. Yes.
- Q. Do you still own that car? A. No.
- Q. When did you dispose of it? A. In Janu- 20  
 ary of this year.
- Q. Within how many feet can you stop your car, going at the rate of twenty miles an hour, in the condition that the brakes were in at the time of the accident and the condition that the roadway was in at that time? A. About ten to fifteen feet.
- Q. Within how many feet can you bring that car to a stop after applying your brakes upon the conditions existing at that time in question, going at the rate of fifteen miles an hour? A. 30  
 Ten feet.
- Q. Going at the rate of thirty miles, within how many feet? A. What?
- Q. If you had been going thirty miles an hour under those conditions, within how many feet can you stop? A. I couldn't say.
- Q. Did you ever drive that car as much as thirty miles an hour? A. Occasionally, but I 40  
 have never come to an emergency.

*Testimony of Adolph Shryer, Read in Evidence*

Q. Did you ever drive that car with the brakes in the same condition as they were in when the accident happened, drive at the rate of thirty miles an hour or not? A. No.

10 Q. Up to the time of the accident you never drove thirty miles an hour? A. No.

Q. For what purposes did you use that car? A. Both business and pleasure.

Q. When you say for business do you mean to say you daily interview your customers? A. No. Interviewing and collecting.

Q. You also use that car for pleasure purposes? A. Yes.

20 Q. How much mileage had that car made at the time of the accident? A. Less than two thousand.

Q. About how many miles? A. About 1,800 miles.

Q. And you used it every day in your business? A. Yes.

Q. And you used it week-ends for pleasure? A. No, only Sundays.

Q. And in the nighttime if you needed it you used it? A. No. Days.

30 Q. Did you own any other car at that time? A. No.

Q. What was the fastest rate of speed you ever drove that car before the accident? A. Twenty-five miles an hour.

40 Q. Under the conditions that were then existing and with the brakes in the condition they were in at the time of the accident, if you had been driving at the rate of twenty-five miles an hour, within what distance could you stop your car when

*Testimony of Adolph Shryer, Read in Evidence*

you applied the brakes? A. I can hardly say that.

Q. You say you have driven at that rate of speed? A. I never made any emergency stops.

Q. But within how many feet can you stop your car driving under those conditions with your brakes under the condition they were in at the time of the accident at the rate of twenty-five miles an hour? A. I should judge about twenty feet. 10

Q. When this girl entered the roadway which brake did you apply? A. Both the emergency and the foot brakes.

Q. And it was both sets of brakes that brought your car to a stop in the manner that you described, under those conditions, and at the point that you described when the accident happened? 20

A. Yes, sir.

Q. The car ahead of you was twenty feet away? A. Yes.

Q. It did not strike Miss Klein? A. No.

Q. You have remarked that the driver of the car that hit her was Mr. Bloom, haven't you? A. I don't know.

Q. After this accident happened, you went to the home of Mr. Bloom, the driver of the car that hit Miss Klein, didn't you? Yes or no. A. I did. 30

Q. Pointing now to the defendant, Louis Bloom, is that the man that you spoke to after the accident? A. I have not met Mr. Bloom.

Q. When you went to the house didn't you see him? A. I went to the house but didn't see anybody. 40

*Testimony of Adolph Shryer, Read in Evidence*

Q. Did you see him at any time after the accident? A. Yes.

Q. How much longer? A. A few weeks.

Q. Did he say he drove the car that hit the girl? A. Not that I know of.

10 Q. Is that the man that you saw (indicating the defendant, Bloom)? A. Yes.

Q. Where did you go immediately after the accident? A. I drove around.

Q. For how long? A. About a half an hour.

Q. And where did you go then? A. I drove home.

Q. Well, when did you go to Mr. Bloom's house? A. About three hours later.

20 Q. About what time of the day did this accident happen? A. About five o'clock.

Q. And it occurred on September 18th, 1927? A. I don't remember the exact date.

Q. Was it about the middle of September? A. It must have been about September.

Q. Was the sun still bright? A. Bright day, right.

30 Q. For what reason did you go to the home of Bloom the night of the accident? A. A gentleman calling himself the Chief of Riveredge came to my home and questioned me and asked me to go along and I went along with him.

Q. You say you actually saw Miss Klein enter the roadway? A. Yes.

Q. That is all.

**CROSS-EXAMINATION** by Mr. Turner:

40 Q. Was the car that hit Miss Klein going in the same direction or in the other? A. In the other direction.

*Testimony of Adolph Shryer, Read in Evidence  
Fannie Klein—Direct*

Q. And the car that hit her was going in the opposite direction, toward you? A. Yes, toward me.

Q. Did you see what happened to Miss Klein when she was hit? A. No. 10

Q. That is all.

By Mr. Mackay:  
No questions asked.  
That is all.

I hereby certify that the foregoing is a transcript of the testimony given by me on September 19th, 1928. (Signed September 25, 1928.) 20

ADOLPH SHRYER.”

---

FANNIE KLEIN, sworn.

Direct-examination by Mr. Rinzler:

Q. Miss Klein, do you live in Brooklyn? A. Yes. 30

Q. Lived there when the accident happened?

A. Yes, sir.

Q. On September 18, 1927, how old were you?

A. Twenty-two.

Q. Is that the date of the accident? A. Yes.

Q. On that day did you go out hiking? A. Yes.

Q. Hitch-hiking? A. Yes.

Q. With whom did you go? A. Rose Owen, Hannah Owen, and Esther Dingol.

Q. Are the young ladies here? A. Yes. 40

*Fannie Klein—Direct*

Q. Where did you go to on the hike? A. We went to a camp situated in Highland Mills, I think it is called, New York.

Q. On the homeward journey did you likewise hitch-hike? A. Yes.

10 Q. Homeward bound did you meet some man and wife that gave you girls a hitch? A. Yes.

Q. Do you know who that man is? A. No.

Q. On the homeward journey did the driver of that car stop? A. Yes.

Q. Where did he park? A. He parked on his right of the road against the curb.

Q. On what street and in what town? A. I think it was in Riveredge, but I don't know the  
20 street.

Q. Was it Kinderkamack Road? A. Yes.

Q. You say he parked on the right of the road? A. Yes.

Q. Was it away from or against the right curb? A. It was against the right curb.

Q. For what purpose was the car stopped? A. We wanted to pick some flowers.

Q. Who got out of the car? A. Hannah Owen, I, and Esther Dingol, and the man and his wife.

30 Q. Did one of the girls remain in the car? A. Yes, Rose Owen.

Q. Now, as you got out of the car which door did you use? A. It was a coach and we all had to get out of the front door.

The Court: Speak out so the jury can hear you.

Q. You say that the car you had this hitch in  
40 was a coach? A. Yes.

*Fannie Klein—Direct*

Q. You all got out of the right front door?

A. Yes, sir.

Q. Now, after you got out of the car where did you go? A. We walked diagonally right in back of the car.

Q. Away from it? A. Yes. 10

Q. To go where? A. To go into the fields.

Q. What was in the fields? A. They had some wild flowers growing that we wanted to pick.

Q. After you reached the sidewalk did you continue further or not? A. No, we did not.

Q. What did you do? A. I did not like the flowers on that side of the street, and so looked across the street and the flowers there were nicer, so I decided I would cross and pick those. 20

Q. Well, on making that decision to go across the street into the fields on the other side, what did you do? A. I walked over to the curb and looked to the left of me to see if there were any cars coming. I saw a car coming which seemed to be about 175 feet from me.

The Court: Which way was that coming?

The Witness: That was going towards Hackensack. 30

Q. From Westwood? A. Yes.

Q. Going south? A. Yes.

Q. That was from your left; is that right? A. Yes.

Q. Now, was that the nearest car that approached? A. Yes.

Q. From that direction? A. Yes.

Q. When you started to cross how many feet 40

*Fannie Klein—Direct*

in back of the parked car were you? A. Fifteen feet away.

The Court: Were you crossing from the east side to the west or from the west to the east?

10

The Witness: Well, I don't know.

The Court: The road runs north and south, so you were crossing, going toward Hackensack, from your right to left, or from left to right?

The Witness: Well, from that, on this side, I am crossing to this side.

Mr. Rinzler: I can clear that up.

20 Q. The car had been traveling in the direction from Westwood to Hackensack when it parked, had it not? A. Yes.

Q. When it parked did it park on the right of the street going to Hackensack? A. Yes, sir.

Q. As you crossed the road did you cross from the right of the road where the car had parked to go to the other side? A. Yes.

Mr. Rinzler: So that would be from the east to the west, your Honor, would it not?

30

The Court: Yes.

Q. Now, you say that that was the nearest car to your approaching from your left. Was it? A. Yes.

40 Q. Observing the car at that distance, what did you do? A. Then I walked past the range of our parked car in order to look to the right of me, and I saw a car coming which seemed to be about the same distance, 175 feet away.

*Fannie Klein—Direct*

Q. How far into the roadway from the right-hand curb that you left were you when you made that observation southerly toward Hackensack?

A. Well, that was about seven feet, I should judge.

Q. Was there any car in sight approaching from that direction, from Hackensack? A. Yes. 10

Q. About how far away from you was it at that time? A. 175 feet away.

Q. Did you observe at that time again where the car was that approached southerly from Westwood? A. Yes.

Q. Where was it at that time? A. It seemed to be almost 125 feet away.

Q. Then what did you do? A. I continued to cross, because I saw it was safe, and I was more than half way across the road and I heard the whirring of an automobile coming from the left, and I looked up and saw a car shoot out to the left ahead of the car that had been in front of it, and I tried to get out of its way and I go to the curb, but before I was able to do so it hit me on the left. 20

Q. Now, referring to the car that you saw on your observation before you entered the road, or on your second observation when you got out of the range of the parked car, what side of the roadway did that car occupy? 30

The Court: Which car? The car coming north?

Q. The car going south, from Westwood to Hackensack. A. Well, that car seemed to be hugging the middle of the road. 40

*Fannie Klein—Direct*

Q. How wide is that road? A. About twenty-six feet.

Q. Now, is that car which was hugging the road the car that hit you? A. No.

Q. Or is it the car that overtook that car? A.  
10 It was the car that overtook the one.

Q. When you heard the whirring and looked, how far away from you was the car that was hugging the center of the road? A. About twenty-five feet.

Q. What part of the roadway did the other car occupy when overtaking the car which had been ahead of it? A. It was way over on its left side.

Q. So the overtaking car hit you? A. Yes, sir.

20 Q. When that car struck you what part of the roadway had you reached? A. Almost two-thirds across.

Q. What part of the car hit you? A. The front part.

Q. What part of your body did it strike? A. The left side.

Q. Then what happened to you? A. I was knocked unconscious.

30 Q. When you looked and saw the car which was hugging the left of the road about twenty-five feet away from you, about how fast was that car traveling? A. About thirty miles an hour.

Q. You say that car was overtaken by the car that hit you? A. Yes.

The Court: Which car was going at thirty?

The Witness: The original car.

40 The Court: The first car?

The Witness: Yes.

*Fannie Klein—Direct*

The Court: How fast was the one coming that struck you?

The Witness: Why, it was going about thirty-five or forty miles.

Q. Did the driver of either of those cars give any signal or warning before this accident? A. No. 10

Q. Now, you say you were knocked unconscious, do you? A. Yes.

Q. Do you know what next occurred to you then, as far as the accident is concerned? A. No.

Q. When you were revived where were you? A. In the Hackensack Hospital. 20

Q. At Hackensack? A. Yes, sir.

Q. In bed? A. Yes.

Q. What condition were you in? A. I was in a dreadful condition. I know my both legs pained me dreadfully, and my eye was all inflamed, and I had a hemorrhage of the eye.

Q. Are you indicating your left eye? A. No.

Q. Which eye are you pointing to? A. My right one.

Q. What happened to it? A. It was all blood-shot and swollen and blue, and I had contusions behind the ear, and my whole face was scarred and scratched and so were my arms. 30

Q. Miss Klein, you wore knickers on this occasion, did you not? A. What say?

Q. Did you girls wear knickers on this occasion? A. Yes, sir.

Q. What color? A. White.

Q. You wore white? A. Yes. 40

*Fannie Klein—Direct*

Q. How long were you confined to the hospital at Hackensack? A. Six days.

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

10 Q. How did you feel during that period? A. I couldn't seem to realize that I was hurt, they kept giving me needles constantly, I was sleeping most of the time, and I couldn't seem to remember anything.

Q. Gave you needles constantly? A. Yes, I know I was always sleeping.

Q. What did the doctor do for you, aside from that? A. Well, the third day he put me into a cast so that I could be transferred to Post Graduate Hospital; took me up to the operating room.

20 Q. Where is the Post Graduate Hospital located? A. Twentieth Street and Second Avenue, New York City.

Q. Is that the cast that Dr. Greenberg described? A. Yes.

Q. How were you taken to the Post Graduate Hospital? A. I was taken in the ambulance.

Q. You went to bed there? A. Yes.

30 Q. Who took charge of your case? A. Dr. John J. Moorehead.

Q. He is a surgeon of New York City? A. Yes.

Q. Connected with that hospital? A. Yes, sir.

40 Q. What did he do for you? A. Well, the third day I was there he took me up to the operating room and when I woke up I found that he had driven eight-inch nails into both my legs and from the nails they had suspended weights, they were fifteen pound weights, and they always seemed

*Fannie Klein—Direct*

to keep dragging and pulling at me as though they would just tear me apart, and then I couldn't stand anyone to touch my bed; when I had to have my bed made, they would need four nurses to lift me. I would scream so my mother who is there, she would have to run down to the first floor, she couldn't bear to hear the pain I was in, and even the nurses would leave me crying at times, and they said they couldn't stand it. 10

Q. How long, Miss Klein, were these nails kept in? A. They were in a few months.

Q. Was that painful? A. Very. And he took them out while I was conscious. He told me that would save me a trip to the operating room.

Q. Did you have any anesthesia administered? A. He took those out without any anesthesia. 20

Q. Was that painful? A. Dreadfully.

Q. You made several visits to the hospital? A. Seven.

Q. Seven visits? A. Seven operations.

Q. I haven't got there. I say, you made several visits to the hospital? A. Yes, three.

Q. Your first stay there endured for how long? A. Five months.

Q. During that five months were you able to get out of bed? A. No. 30

Q. Were you constantly in bed? A. Yes, except towards the end, before I was ready to go home.

Q. How long towards the end? A. Well, I was walking two weeks when they sent me home; I was up about three weeks.

Q. Were you in pain throughout that period? A. Yes. 40

*Fannie Klein—Direct*

Q. What else did the doctors do for you? A. Well, after—it seemed that my right leg wouldn't get better with the nails, and at the end of three weeks he had to take me up to the operating room and put a cast on similar to the one Dr. Greenberg had put on, from my waist down to my ankles, and that would cut and rub me all the time. It was padded with cotton, and I begin to perspire and it would itch me, and I wouldn't be able to get to it, and I developed bed sores from it, and I couldn't be moved or anything, I had to lie flat on my back all the time, my feet were raised higher than my head; I was never in a normal position.

20 Q. Were your legs suspended in the air by certain instruments? A. They had blocks of wood about this high (indicating).

Q. About how high? A. Under the bed, and then the base, you know, would be moved up and down, so I was laying this sort of a position, with my knees just on the incline.

Q. How many times, Miss Klein, did Dr. Moorehead operate on you during your first stay at the hospital? A. Four times.

30 Q. What was the nature of the third operation, and when did it take place? A. The third one took place about six weeks after I had the cast on. He told me he intended taking me up to the operating room and take the cast off, taking out the stitches I had for my first incision and measuring my legs. When I woke up from the ether I found the cast was still on me. You can't understand how disappointed I was.

40 Q. He was a specialist, was he not? A. Yes.

*Fannie Klein—Direct*

Q. Go ahead. A. And after that day, later the nurse came in and wanted to know if I knew which leg was going to be shorter and how much. They all expected one leg to be shorter.

The Court: Do not tell us about that. 10

Q. Is your leg shorter? A. No; accidentally it is not. Then, I was out of the cast for about two weeks and he came down and told me that they would have to put me into a cast again, that my leg was not healing, and he kept me in a cast again for five weeks; and after that they had me measured for braces, and I lay in bed with braces for a while.

Q. How long did you have the braces on? A. 20  
A few weeks, but I wore them after I walked, also.

Q. Even before you left the hospital you wore them on your leg? A. I wore them home six weeks.

Q. Was that during the first day you had three operations? A. Four.

Q. How many times did Dr. Moorehead operate upon you altogether? A. Six.

Q. Well, when you left the hospital after your first visit did you walk? Were you able to walk, 30  
rather, without the aid or assistance of some sort?

A. No. I used crutches and braces.

Q. Both crutches and braces for how long? A.  
I used crutches and braces for six weeks, then  
I used the crutches for a few weeks longer.

The Court: How long were you in the hospital altogether?

The Witness: The first time I was in five months; the second time a week; the third 40  
time a week.

*Fannie Klein—Direct*

Q. And six days at the Hackensack Hospital?

A. Yes.

Q. So your stays at the Post Graduate Hospital were three; is that right? A. My what?

Q. Three visits at the Post Graduate Hospital?

10 A. Yes, sir.

Q. For what reason did you return to the hospital on your second visit? A. Well, both my knees are very stiff, and Dr. Moorehead thought if he would take me up to the operating room and try to bend them under ether. The first time he did, but it was not successful, and I had to have massages after that. A month later he decided to take me to the hospital and tried to bend them

20 again, and this time he made five incisions in my legs. He thought that would help, because he cut something, but the knees did not bend either.

Q. Are the marks that we saw some while ago as you stood up marks that are the result of the incisions that were made? A. Yes, sir.

Q. On your right leg? A. On my right and left.

Q. Did you have such marks on your left leg?

30 A. Yes.

Q. Well, how long did you feel that stiffness in the knees? A. Well, I still have it.

Q. Have you ever been cured of that at all? A. No.

Q. Then, how long all told did you use the crutches without the braces? A. Almost three months—oh, without the braces?

40 Q. Yes. A. About a month and a half or two longer.

*Fannie Klein—Direct*

Q. Then, after you gave up the crutches what did you do then? A. I used a cane.

Q. Have you ever been able to walk without a cane? A. No.

Q. Have you tried? A. I have tried.

Q. With what success? A. I can't do it. 10

Q. Can you do much walking, even with the cane? A. No.

Q. Have you or not at present any turning of the legs as a result of this accident? A. Yes; my right leg turns and my left leg a little.

Q. Which the most? A. My right.

Q. Did either of the legs ever turn or bow before the accident? A. No.

Q. Before the accident had you ever had any trouble with your legs, or either of them? A. No. 20

Q. Well, had you ever been athletically inclined? A. Yes.

Q. What sports did you engage in? A. Ice skating, swimming, horseback riding, played some tennis, and ball.

Q. Extensively engaged in sports? A. Yes.

Q. Have you ever been able to do any of those things since? A. No. 30

Q. Can you dance now? A. No.

Q. Have you ever been able to? A. Yes.

Q. Were you able to before the accident? A. Yes.

Q. Can you climb stairs? A. If I drag my right foot after it.

Q. How do you walk now with the cane? A. Can't walk well.

Q. Why not? A. Because my legs are sore and they hurt. 40

*Fannie Klein—Direct*

Q. Now, when did you last see Dr. Moorehead? A. About three weeks ago.

Q. Did he do anything for you then? A. No; he just examined me.

Q. He is arranging—hopes to operate upon you again? A. Yes, sir.

Q. He has not yet. Were you employed at the time of this accident? A. Yes.

Q. Where? A. The Pacific—the hat company, Tarnower Brothers.

Q. At New York City? A. Yes, sir.

Q. What sort of work did you do there? A. I was stenographer and assistant bookkeeper.

Q. How much did you earn? A. Twenty-two a week.

Q. Twenty-two dollars a week? A. Yes.

Q. How long were you disabled from work and out of work by reason of the injuries sustained in your accident? A. It was over thirteen months.

Q. Are you still out of work? A. Yes.

Q. Why don't you go to work now? A. I am not able to.

Q. You still suffer pain? A. Yes.

Q. Where? A. My knees and thighs.

Q. Have you received any salary or wages since the accident? A. No.

Q. You say your knees and what? A. My thighs, where I had the incisions.

Q. Can you stand up for any length of time on your feet at all? A. No.

Q. Did you have any nurses attend you at the hospital at New York? A. Yes, sir.

Q. How many? A. Two special nurses, day and night.

*Fannie Klein—Direct*

Q. You mean a day nurse and a night nurse?

A. Yes, sir.

Q. How long? A. About a week or two weeks.

Mr. Rinzler: You gentlemen object to these bills going in evidence?

(Counsel for the defendants examine papers.)

10

Q. You say you are not through with treatment yet at the hands of Dr. Moorehead? A. No.

Q. How much have you already paid Dr. Moorehead? A. \$500.

Q. I have here a bill under date of December 22, 1927, reading, "\$500, on account \$450, balance \$50." Has that balance been paid? A. Yes, sir.

20

Q. How much did you pay Dr. Greenberg? A. \$50.

Q. Since the rendering of the bill for \$500 by Dr. Moorehead which you have already paid he has treated you quite considerably, has he not? A. Yes.

Q. You have not paid him for that? A. No.

The Court: When was the bill of \$500 rendered? What time?

30

Mr. Rinzler: I have it here. Dr. Moorehead's testimony shows that. That is why I did not go into it.

The Court: All right.

Q. Now, you have a batch of hospital bills from the New York Post Graduate N. P. S. Hospital. Are they all bills that you have paid to that hospital? A. Yes, sir.

Mr. Rinzler: Any objection to these going in evidence?

40

*Fannie Klein—Direct*

Q. Have you totaled these bills? A. I totaled them together with the Hackensack bills.

Q. You mean the doctor bills? A. No, just all the hospital bills in one total.

Q. Leaving out the doctors' bills? A. Yes.

10 Q. What is the total sum that you have paid out for hospital bills to the Hackensack Hospital and the Post Graduate N. P. S. Hospital? A. It amounts to almost \$1,500.

The Court: How much? What is the exact amount?

The Witness: I have it written down.

Q. Is this the calculation? A. Hospital bills  
20 amount to \$1,321.85.

The Court: That is including the Hackensack Hospital?

The Witness: Yes, sir.

Q. Then, you paid \$50 to Dr. Greenberg? A. Yes, sir.

Q. \$500 on account to Dr. Moorehead? A. Yes, sir.

Q. Taxi bills? Did you pay anything for that?  
30 A. Yes.

Q. You used the taxis for what purpose? A. To go to the doctor and from the doctor and to the hospital.

Q. You live in Brooklyn? A. Yes, sir.

Q. What street? A. Sixty-first Street and Eighteenth Avenue.

Q. Where is Dr. Moorehead's office located?  
A. He lived Sixty-fourth Street, that is in the  
40 city.

*Fannie Klein—Direct*

- Q. You mean Brooklyn or New York City?  
 A. New York City.
- Q. You traveled up and back from your home to the doctor's in New York City? A. Yes.
- Q. What was the total amount that you expended for taxi bills? A. That was \$74. 10
- Q. What other expenses did you have and for what purpose in connection with your injuries?  
 A. Well, to date the massage bills are \$260, but I am still having massages three times a week.
- Q. Where did you get these massages? A. The woman comes to our house.
- Q. Is she a masseuse? A. Yes.
- Q. Is she a trained masseuse? A. Yes, sir.
- Q. What kind of massages do you get? A. I get 20  
 massages on my entire leg, so that she could try to bend it.
- Q. You say that cost \$260? A. Yes, to date.
- Q. What are these miscellaneous bills, \$45, represent? A. Well, \$5.50 for the shoes that keep up my braces.
- Q. What kind of shoes? A. Special shoes.
- Q. You wear them with the braces? A. Yes.  
 \$40 for the braces.
- Q. For the braces themselves? A. Yes. 30
- Q. That makes a total outlay to date of \$2,261.35? A. Yes.

Mr. Rinzler: Now, if your Honor please, I will be glad to let all these bills go into evidence, if counsel is satisfied, so they may be examined or scrutinized. Satisfactory?

Mr. Mackay: Yes, as far as I am concerned.

*Fannie Klein—Cross*

Mr. Rinzler: Mark them as one exhibit. Is it satisfactory, your Honor, if I put them all in this envelope and mark them?

The Court: Yes.

10 (Envelope containing bills marked Exhibit P-5.)

Mr. Rinzler: Your Honor is apparently familiar with the location of this accident. Your Honor says that going to Hackensack is south?

The Court: From Westwood, it is.

Mr. Rinzler: That would result in her crossing the street from the westerly to the easterly side.

20 The Court: She said going down on the right that would be—yes, west to east.

Mr. Rinzler: Yes, that would be from west to east.

## CROSS-EXAMINATION by Mr. Turner:

Q. Miss Klein, on what day did you start on your hitch-hike? A. September 18th.

Q. That was Sunday morning, was it? A. Yes.

30 Q. What time did you leave your home? A. About six in the morning.

Q. Did these other girls leave your house with you? A. Yes.

Q. Where did you say you went? A. To Highland Mills.

Q. That was up in New York State? A. Yes.

Q. On the road going to Newburgh, wasn't it?

A. I am not very definite about the direction.

40 Q. Well, Highland Mills, of course, is a long, long ways from Brooklyn, isn't it? A. Yes.

*Fannie Klein—Cross*

Q. Over a hundred miles, isn't it? Just how did you get up to Highland Mills? A. Well, we took a ferry across to Jersey and then we received automobile rides and walked part way.

Q. Walked part of the way? A. Yes.

Q. Then you asked for rides, did you? A. Yes. 10

Q. On the way up. Now, what time did you get up to Highland Mills? A. Must have been about dinner time, I think.

Q. Well, what time did you first get over to Jersey? A. I don't know.

Q. Don't you know what time it was when you got there, across the ferry? A. It was about eight, but I am not definite; perhaps earlier.

Q. Then, how many rides did you have to ask for to get up to Highland Mills? A. About two or three. 20

Q. What time did you leave Highland Mills to come back? A. I don't remember. It was after one. Must have been about one o'clock, but I am not definite.

Q. So that in four hours you made over a hundred miles just by asking rides? A. Yes.

Q. How many girls were there? A. Four of us.

Q. Now, when you got to Highland Mills, what did you do? A. We had lunch there. One of the girls had been councillor at the camp there, and we talked to the people that were there; she knew all of them, and we just looked around places and then left. 30

Q. Well, was this camp at Highland Mills or was it farther on toward Newburgh? A. I don't know anything about the camp. My friend took me there. 40

*Fannie Klein—Cross*

- Q. Highland Mills is a little town, isn't it? A. Yes.
- Q. Did you go through the little town? A. I don't remember.
- Q. Well, don't you know where you were? A. 10 Well, my friend was leading us.
- Q. Well, you went into Highland Mills in somebody's car that you asked to get a ride, did you? A. Yes.
- Q. Is that right? A. Yes.
- Q. You see, you have to talk loud. A. We didn't go all the ways up; we walked part way, though.
- Q. When you actually got into Highland Mills, 20 did you ride in? A. No.
- Q. Walked in? A. Yes.
- Q. Now, from what point did you walk in? A. I don't know.
- Q. How far did you walk? This last part of the trip to get to Highland Mills. A. I don't remember.
- Q. You can't tell us? A. No.
- Q. Well, you left Highland Mills, and did you 30 leave the town or were you at the camp beyond the town? A. I don't know what the place is like; it was the first time I had been there.
- Q. Well, you know whether you left a little town or not, don't you? A. I don't remember.
- Q. Can't tell us that? A. No.
- Q. Well, who told you you were going to Highland Mills? A. My friend did, the one who had been councillor at the camp there.
- Q. After dinner you started back for Brook- 40 lyn? A. Yes.

*Fannie Klein—Cross*

Q. You knew you had a hundred miles or more to go? A. Yes. I don't know what the distance was.

Q. You started out to walk back, did you? A. We started out to walk.

Q. Started to walk. Now, how far did you get after you left Highland Mills before you got somebody to give you a ride? A. I don't remember. 10

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

Q. Well, how many rides did you have to ask for and get all the way back? A. That was our second ride. We had two rides.

Q. This was your second ride? A. When I was hurt.

Q. Where did you get your first ride? Do you remember? A. No. 20

Q. Well, where did you get the second ride? A. On the Kinderkamack Road.

Q. How far from the place of the accident? A. I don't remember. Must be—we had not been very long, I know.

Q. Do you know how many miles you had ridden? A. Perhaps a half a mile.

Q. Half a mile? A. I don't know, though.

Q. All right. That is what you think, a half a mile. Now, how far had you ridden on the first ride that you got on the way back? A. A few miles. 30

Q. A few miles. What do you mean by a few? A. Well, I was not keeping account of the distance.

Q. Well, you knew there was practically a hundred miles from Highland Mills down to Brooklyn, did you not? A. I didn't know how far Highland Mills is from Brooklyn. 40

*Fannie Klein—Cross*

Q. You knew it was a long ways, didn't you?

A. I didn't know it was a long ways.

Q. Now, you are talking about the Highland Mills that is on the road to Newburgh, aren't you? A. Yes.

10 Q. You know where Harriman is? A. Harri-  
man?

Q. Harriman, New York. A. No, I don't know that place at all. I don't know anything outside of Brooklyn.

Q. Tell us some of the towns you went through on your way up. A. I wasn't watching the towns with any particular interest.

20 Q. But you were going somewhere, weren't  
you? You were going to Highland Mills? A.  
Yes, but we were talking all the time, we were not watching.

Q. Wasn't it Highland Mills, New York, that you were going to, Miss Klein? A. Yes.

Q. It was? You are sure about that? You are sure you went all the way up through New Jersey and had gotten into New York State again; is that right? A. Yes.

30 Q. You are sure, then, that you had come all  
the way down through to New Jersey to get to Brooklyn, weren't you? A. Yes.

Q. What I want to know is, if you can tell us, the first ride that you got on your way back. Where you got in to ride on the first ride. A. I don't know.

Q. Well, can you tell us any towns you went through? A. No. I don't know New Jersey.

40 Q. Now, were you really hitch-hiking or were  
you riding in a car with some relative of yours?

A. We were hitch-hiking.

*Fannie Klein—Cross*

Q. You are sure you were not riding with any relative? A. No.

Q. Sure about that? Any of your relatives have automobiles? A. Yes.

Q. Who? A. My brother.

Q. You were not riding in your brother's car this day? A. No. 10

Q. Now, this car that you say you were in, you had ridden a half a mile, what kind of a car was that? A. I am not sure. It was a coach, I know.

Q. Well, do you know what make it was? A. An Essex, I think.

Q. An Essex coach? A. I think so.

Q. Was it an old-style Essex, that is, a black Essex, or was it one of the bright colored ones? A. It was a black car. 20

Q. Black Essex. How many people were in that black Essex? A. My four friends and the man and his wife. My three friends and I, that is four, and the man and his wife.

Q. Just tell us where you all sat in that car after you first got in it. A. The man and his wife sat in front, and I and two of my friends was sitting—one was sitting on one of her laps and kept changing. 30

Q. Did you learn where this man came from? A. No.

Q. Did you learn where he was going? A. No.

Q. Well, how did you get onto the Kinderkamaack Road, do you know that? A. I know we had gotten off the route we intended to follow.

Q. How did you get off that route? A. I don't know. The man kept driving on, and we were not very sure about the whole route, anyway. 40

*Fannie Klein—Cross*

Q. Well, how long did you walk before you got into this last ride? A. About a block.

10 Q. Walked about a block. How did you come to get out of the first car? What was the cause of your getting out if you walked only a block or a half a block and then took another one? A. That was a two-seated car and I didn't want to stay in there, I was afraid, because we were very crowded and I didn't want to get into it in the first place.

Q. How many miles had you ridden in that two-seated car? A. I don't know.

Q. You had ridden fifty miles, hadn't you? A. I don't know how far we had gone.

20 Q. Then you got into this car, the Essex. Do you know what kind of a license it had, whether it was a New Jersey or a New York license or what? A. I don't know definitely.

Q. What kind of looking people were this man and woman that you rode with? A. Well, they were either German or Swedish.

Q. Talk English? A. With an accent.

Q. Did you tell them where you were going?

30 A. Yes, sir.

Q. Whose suggestion was it that you should stop and pick flowers up at Riveredge when you still had to go to Brooklyn? A. It was that man's suggestion.

Q. This man. Did he get out and pick flowers? A. Yes, sir.

Q. Did he? A. Yes.

Q. Was he picking flowers at the time of the accident? A. I don't know.

40 Q. Did his wife get out of the car? A. Yes, sir.

*Fannie Klein—Cross*

- Q. Both of them? A. Yes.
- Q. And the only one left in the car was whom?  
A. Miss Rose Owen.
- Q. Is she here now? A. Yes.
- Q. (Will you stand up, Miss Rose Owen?)  
This is the young lady who was left in the car, 10  
was it? A. Yes, sir.
- Q. Now, this car was parked on your right-hand side of the road, wasn't it? A. Yes, sir.
- Q. You were going—do you know what town you were going towards? A. To Hackensack.
- Q. Towards Hackensack. Did you know how near you were to Hackensack? A. No.
- Q. Do you know the last town you had been in before you were coming to Hackensack or before the accident? You don't know that? A. No. 20
- Q. You don't know any of the towns in New Jersey at all, do you? A. No.
- Q. Well, when you got this hitch-hike, this last one, did you or any of your party tell the driver where you were going? A. Yes.
- Q. Who told him? A. I don't remember which one of us told him.
- Q. Told him that you were going where? A. To Brooklyn. Told him we were headed for the 30  
ferry.
- Q. Now, you recall one car hitting you, don't you? A. Yes, sir.
- Q. That car was also going towards Hackensack, wasn't it? A. Yes, sir.
- Q. The same direction that you had been going? A. Yes, sir.
- Q. Now, when you first started to pick flowers were you on your right-hand side of the road or 40

*Fannie Klein—Cross*

your left? A. I did not pick flowers; I intended to, but I did not pick them.

Q. Well, did you start for the flower field for the purpose of picking flowers? A. I started for the field.

10 Q. Which field did you start for first, your right or your left? A. Well, that was on my left.

Q. Your what? A. When you got out of the car that was on the left.

The Court: Which side of the road was that on?

The Witness: On the right side of the road.

20 Q. On the right side of the road? A. Yes.

Q. So that you first started toward the field that was on your right side of the road? A. Yes, sir.

Q. Did you go over into that field at all? A. No.

Q. Did the others go into that right field? A. No.

Q. No one? A. They didn't go into the field.

30 Q. None of your party went into that right field. Now, this man that you said was Swedish, you thought, and his wife, they were all out and two of the girls were out, besides yourself? A. Yes.

Q. And you all started for the field on the right? A. Well, I didn't watch what the man and wife were doing; I think they went straight from the car, went straight into the field and we walked diagonal right in back of the car.

40 Q. Did this man and his wife go into that field to pick flowers? A. I didn't watch them.

*Fannie Klein—Cross*

Q. Did they go into the field? A. I don't know.

Q. But this was the man you were riding with?

A. Yes. I was with my friends. I didn't look to see what he was going to do.

Q. You didn't know where this man went to, the man that was driving the car? A. No. 10

Q. But you expected to ride on with him towards the ferry? A. Yes. Well, we were all in the same plot of ground, I know that, the same street.

Q. Then, you and the other two girls did not go into the field on your right? A. No.

Q. Now, then, you made up your mind you were going over to the field across the road? A. Yes.

Q. What time of the day was it? A. Between 20 four and five.

Q. Four and five in the afternoon. That was on September 18th, was it? A. 18th.

Q. Do you know about what time it got dark then? A. About eight in the evening.

Q. You were not concerned about getting home at all; you thought you had plenty of time to pick the flowers, did you? A. Yes.

The Court: It was daylight saving time, 30 I suppose?

The Witness: Yes.

Q. Now, when you started, then, to go the field on your left where the flowers were more beautiful, you thought, who went first? A. I was the only one to go.

Q. What did your two girl friends do? A. They decided they would stay on that side of the street. 40

*Fannie Klein—Cross*

Q. They what? A. They decided to stay on the side of the street we were on and pick the flowers.

Q. Oh, so two girls did go into the field? A. They did not go into the fields, however.

10 Q. Where did they pick flowers from? A. They intended to pick flowers, but they did not.

Q. I see. So you started alone across the road? A. Yes.

Q. Now, in addition to the Essex car of the gentleman who had been driving you, were there other cars parked on that right side of Kinderkamack Road? A. No.

20 Q. Only that one. Were there any cars parked on the left side, your left side of Kinderkamack Road? A. I don't remember.

Q. Could you tell us, now? You say you don't remember? A. I don't remember.

Q. Have no picture of it in your mind at all? A. No.

Q. They may have been or they may not have been? A. No.

Q. You don't know? A. I don't know.

30 Q. Now, when you started to cross the road did you start from in front of that Essex or in back of it? A. In back of the car. Fifteen feet in back.

Q. Fifteen feet in back. By the way, did you walk or run? A. I walked.

Q. Did you walk slowly or rapidly? A. Slowly.

40 Q. Now, this Essex car that you were in had been in a line of cars before it pulled up at the curb, had it not? A. I don't know.

*Fannie Klein—Cross*

Q. This was Kinderkamack Road on a Sunday afternoon; very heavy traffic, isn't it? A. I don't know. It was the first time I had ever been there.

Q. You saw it that day? A. I was not conscious of it, though. 10

Q. What? A. I was not conscious of many cars.

Q. Well, can you tell us whether there were or were not, or just you don't remember? A. I don't remember.

Q. Don't remember. There were cars ahead of the Essex, were there not? A. I don't remember.

Q. What kind of a car did you get out of? A. 20  
That was the Essex. You mean the first car?

Q. The first car. A. Just a two-seater; I don't know what make it was.

Q. Did you notice cars coming from Hackensack towards Westwood? A. Yes.

Q. There was quite a line, wasn't there? A. Not—I don't remember.

Q. Don't remember that. Now, when you started to cross the road over to your left, as your left would be when you are facing Hackensack—when you started across to your left, how far could you see down the road towards Hackensack? A. It was a very clear road, clear view; I could see very far down. 30

Q. A mile? A. Perhaps. Half a mile.

Q. Half a mile you could see towards Hackensack. Now, looking up towards Westwood how far could you see? A. About as far as that.

Q. Half a mile. So that you could see half a 40

*Fannie Klein—Cross*

mile in each direction when you got out to the edge of the Essex coach, couldn't you? A. Yes.

Q. How many cars did you observe coming from Hackensack towards Westwood? A. I don't remember.

10 Q. I don't mean particularly, but did you see a great many coming or did you see only one or two? A. I don't remember.

Q. Have no recollection at all? A. No.

Q. Haven't any recollection at all of anything that you saw when you walked out beyond that Essex coach? A. Yes, I saw one car coming, that car I watched for, and that seemed far away from me, it seemed 175 feet away.

20 The Court: Which way was that?

The Witness: That was coming from Hackensack towards Riveredge.

Q. What I want to know is, did you in that half a mile see anything? Could you see anything at all in that half mile? A. I don't remember.

The Court: She says one car.

30 Q. Now, in the half mile towards Westwood can you tell us anything you saw? A. Yes; I saw one car coming. That was all.

Q. There wasn't anything to prevent you seeing all the cars that were in the half mile, was there? A. There was not.

Q. If you had looked you could see them all? A. Yes.

40 Q. In that half mile have you any recollection, either towards Hackensack or towards Westwood, of having seen any other cars? A. No.

*Fannie Klein—Cross*

Q. If they were there you did not see them; is that so? A. Yes.

Q. Of course, there were some there, because you got hit by one, didn't you? A. Yes.

Q. Is that true? Now, how do you account for the fact that you did not see this car that came from Westwood and hit you? A. Because there was a car in front of it. 10

Q. Yes, but you had a clear view of a half a mile? A. That was the only car I saw, that I watched out for.

Q. You didn't look for any other cars except the one that was nearest to you, did you? A. Yes.

Q. Now, this car that was coming from Westwood, that is the car that hit you, wasn't it? A. Which car? That came from Westwood? 20

Q. Well, a car that came from Westwood hit you? A. A car, yes.

Q. You don't know which one, but a car. Now, this car, the one that hit you, this car that came from Westwood, when that car hit you how far had you gotten away from the Essex coach that was parked? A. Well, I was almost two-thirds of the way across the road. 30

Q. Can you tell me this? I want to know how far from the Essex coach you were, if you can tell. A. About sixteen feet.

Q. Sixteen feet?

The Court: Can you tell us which driver, the name of the driver who was driving the car which struck you?

The Witness: No. I didn't see any of them. 40

*Fannie Klein—Cross*

Q. Now, do you know the make of the car that hit you? A. No.

Q. Do you know what kind of car it was? A. No.

Q. What color it was? A. No.

10 Q. Did you see the driver in it before it hit you? A. No; I saw a form, but nothing distinct.

Q. So that you cannot identify the car that hit you? A. No.

Q. And this car that hit you, after that car hit you, you have no recollection of anything else? A. No.

20 Q. How far away from you was this car that hit you when you first saw the car? A. About thirty feet.

Q. Thirty feet. Which way did you start to go when you saw the car, this Westwood car, we will call it now, the car from Westwood—when you saw this Westwood car thirty feet away from you how far were you from the edge of the street? A. About seven feet.

Q. What did you do? Did you walk or run? A. I tried to run over to the curb.

30 Q. You started to run? A. To the curb.

Q. To which curb? A. To the left curb.

Q. Where the Essex was? A. No.

Q. To the other curb? A. Yes.

Q. How far did you run before you were hit by this Westwood car? A. I didn't get a chance to do any running. I tried to, but before I was able to it was on me and hit me.

40 Q. You mean to say that from the time this Westwood car was thirty feet away you did not move from where you were? A. I tried to.

*Fannie Klein—Cross*

Q. Well, did you move from where you were? You have the Westwood car, now, thirty feet away; you are two-thirds of the way across; now, did you move from that spot before you were hit or were you right in the same spot when you were hit? A. I don't remember. 10

Q. Don't remember that. One of these girls with you was your sister-in-law, wasn't it? A. No.

Q. She is now, isn't she? A. I haven't—my sister-in-law wasn't with me.

Q. What? A. My sister-in-law was not with me.

Q. One of these girls is now married to your brother? A. Who? 20

Q. One of these girls? A. No, no, none of them are. They are all friends of mine.

Further CROSS-EXAMINATION by Mr. Mackay:

Q. Now, Miss Klein, you say that your car that you were riding in parked on the right-hand side of the Kinderkamark Road? A. Yes.

Q. You got out and stood on the sidewalk? A. Yes. 30

Q. And you did not like the flowers that were on the right-hand side and decided to go across the street into another field? A. Yes.

Q. Is that right? What did you do? A. Well, I walked to the curb and looked to the left of me first.

Q. Where were you at that time, when you walked to the curb, with reference to the— A. I was on the walk. 40

*Fannie Klein—Cross*

Q. With reference to the parked car. Were you in front of it? A. In back of it. About fifteen feet in back of it.

Q. Fifteen feet in back of it? A. Yes.

10 Q. Well, had you been fifteen feet in back of it all the time? A. We began to walk in back of it; when we stopped we were fifteen feet in back of it.

Q. Were you at any time in front of it? A. No.

Q. At no time were you in front of it? A. No.

Q. Then you started to walk across the street, did you? A. I looked first to make sure it was  
20 safe to walk across the street.

Q. Which way did you look? A. I looked to the left of me first, and then after I walked past the range of the parked car looked to the right, and then I looked to the left again.

Q. As you looked to your right, I believe you said in answer to Mr. Turner's question, that you saw cars coming from Hackensack towards Westwood? A. Yes.

30 Q. How many did you see? A. I don't remember. I was conscious of one.

Q. You saw at least one coming toward you from Hackensack? A. Yes.

Q. How far away was that car? A. Almost a block away.

Q. About a block? Would you say how many feet? A. 175 feet, 180.

Q. About 175 or 180 feet. Could you tell how fast that car was approaching? A. Yes.

40 Q. How fast? A. Seemed to be going about thirty-five or forty miles an hour.

*Fannie Klein—Cross*

Q. Quite fast. Then you started to cross the street? A. Then I looked to the left again.

Q. Then you looked to the left again. What did you see when you looked to the left again?

A. I saw that the car I had seen was about 125 feet away, 100 feet. 10

Q. That is the car that you saw the first time?

A. Yes.

Q. When you looked to the left? A. Yes.

Q. The first time you looked, how far away was it? A. About 175 feet.

Q. About the same distance that the other car was coming in the other direction? A. Yes.

Q. Is that so? A. Yes.

Q. Then when you looked the second time towards Westwood you saw this other car 125 feet away? A. Yes. 20

Q. What did you do then? A. Then I began to cross, then.

Q. Began to cross? A. Yes.

Q. Did you get across? A. No.

Q. How far over did you get? A. Almost two-thirds over.

Q. Two-thirds? A. Yes.

Q. Then did you look again, when you got two-thirds of the way across? A. I heard a speeding car coming. I heard a car whirring along. 30

Q. You just heard a car whirring along? A. Yes.

Q. You did not look again? A. When I heard the whir I looked up.

Q. You had already seen this other car approaching, hadn't you? A. Yes. 40

*Fannie Klein—Cross*

Q. You knew when you got two-thirds of the way across that there were cars coming in both directions toward you, did you not? A. Yes.

Q. You did not look again when you got two-thirds of the way across? A. I did look when I  
10 heard the car coming.

Q. Which way did you look? A. To the left.

Q. Then what did you see when you looked to the left again? A. I saw a car shoot out to the left, ahead of the car that I had seen.

Q. Then you were about seven feet from the curb, I believe you said? A. Yes.

Q. Seven feet from the curb? A. Yes.

Q. Almost across the street? A. Yes.

20 Q. You saw this other car coming from Westwood? A. Yes.

Q. Did you look to your right again to see the car that was approaching from your right? A. I didn't have a chance.

Q. Did you look? A. I couldn't. This car came bearing down on me.

Q. This car came bearing down on you, but you were seven feet from the curb? A. Yes.

30 Q. This car must have been bearing down in a line with you away over on the left-hand side of the street? A. Yes.

Q. Evidently on a direct line with the car approaching from Hackensack? A. Yes.

Q. Is that so? That was seven feet from the curb? A. Yes.

Q. Did you look back to see where your friends were? A. No. I couldn't.

40 Q. Did you at any time as you went across the street look back to see if they were following you? A. No.

*Fannie Klein—Cross*

Q. At the time you made up your mind to cross to the other side, did you say anything to your friends about the flowers on the other side of the street? A. Yes.

Q. What did you say to them? A. I told them I didn't like the flowers on our side and I intended to cross. 10

Q. What did they say? A. Well, one was in doubt whether she should go with me, but she decided not to, and the other didn't care to go along, either.

Q. Just the three of you? A. Three of us outside of the car.

Q. Three of you outside of the car. Where was this lady and the gentleman who had given you the ride down? A. They were off on the street somewhere. 20

Q. Didn't see them? A. No.

Q. Didn't talk to them? A. Not after we got out of the car.

Q. Are they here in court today? A. I don't see them.

Q. They are not here. You don't know who they were? A. No.

Q. Didn't find out their names and addresses? A. No. 30

Q. So that when you were seven feet from the other side you saw this car approaching from Westwood about thirty feet away from you; is that right? A. Yes.

By the Court:

Q. That is the car that struck you? Is that the car that struck you? A. Which car do you mean? 40

*Fannie Klein—Cross*

Q. The one that Mr. Mackay is asking about.

A. The one speeding out ahead of the original one?

Q. He passed the other car? A. Yes.

Q. What became of the car that he had passed?

10 A. I don't know.

By Mr. Mackay:

Q. You don't know what became of that car that passed? A. No.

Q. Do you know what became of the car that you saw the first time when you looked toward Westwood? A. That is the one I don't know what became of.

20 Q. You don't know what became of that? A. No.

Q. Do you know what became of the car that passed that car? A. I know that one hit me.

Q. The one that passed the first car you saw? A. Yes.

Q. You don't know who was driving the cars? A. No.

Q. You don't know who was driving the car that came from Hackensack toward you? A. No.

30 Q. But you do know that traffic was quite heavy coming from Hackensack to Westwood? A. I don't know.

Q. Didn't you see the traffic? A. I don't remember. I was not conscious of it.

Q. You don't remember that? A. No.

Q. But you do have a clear picture in your mind of these three cars? A. Yes.

40 Q. Two coming from Westwood and one from Hackensack? A. Yes.

*Esther Dingol—Direct*

Q. Is that right? A. Yes.

Q. That is clear in your mind? A. Yes.

Q. Nothing else that you remember? A. No.

Q. That is all.

Mr. Rinzler: That is all.

10

ESTHER DINGOL, sworn.

Direct-examination by Mr. Rinzler:

Q. You are a friend of Miss Klein? A. Yes.

Q. You are one of the group of hitch-hikers of which Miss Klein was one, too? A. I was.

Q. Were you one of the girls who was with Miss Klein and entered this car that ultimately parked on the right side of Kinderkamack Road in River-edge? A. Yes. 20

Q. For what purpose was the car parked? A. Well, this gentleman and his wife had seen the flowers and that they were rather pretty, and they suggested to us that we should stop and pick the flowers.

Q. I didn't hear you. A. I said they suggested to us that we should all stop and pick flowers, and we did. The car was parked and we got out to pick them. 30

Q. Are they the people in this car you had gotten your last hitch-hike on your homeward journey? A. Yes.

Q. Going in the direction towards Hackensack, was the car parked on the right or left side of the road? A. The right. 40

*Esther Dingol—Direct*

Q. Did you and Miss Klein and one of the other girls get out of the car? A. We did.

Q. The other two girls are sisters, aren't they?  
A. They are.

10 Q. Which girl remained in the car? A. Miss Rose Owen.

Q. When you got out of the car what did you girls do? A. Well, we turned directly towards the flower fields.

Q. Did you walk away from the back of the car? A. We did.

Q. How far? A. We walked about fifteen feet north, away from the car.

Q. Away from the back of the car? A. Yes.

20 Q. Then what happened? A. Well, Miss Klein said she thought the flowers on the other side of the street were much prettier and she mentioned that herself to Hannah Owen, who said that there wasn't any point in her crossing the street, so Miss Klein said she was going to cross the street.

Q. Then what did you do? A. Well, I turned with my back toward the street.

30 Q. With your back toward the street? A. Yes.

Q. Then what was the next thing took place, to your knowledge? A. The next thing I heard a scream and I turned around a little and I saw a white figure.

Q. All right, one moment. When you heard the scream you were facing the field on the right side of the street? A. Yes.

40 Q. Your back was toward the roadway; and then when you turned did you turn toward the roadway? A. Yes.

*Esther Dingol—Direct*

Q. Now, what kind of attire did Miss Klein wear at that time? A. Miss Klein wore a white blouse and white knickers.

Q. As you turned to the street what did you see? A. I saw this white bundle just hurdled in the air—well, practically parallel or about fifteen feet towards the southern end of the road. 10

Q. What was it that hit what you term the bundle? A. Well, this car that was coming in a southern direction.

Q. Did you see the car strike her? A. I did not see the car strike her. I heard the scream that was aroused by the striking of the car.

Q. As you saw this bundle hurdled in the air, how high in the air was it? A. It must have been about ten to fifteen feet. 20

Q. Where? What direction was the bundle traveling? A. The bundle traveled south.

Q. Towards Hackensack? A. Towards Hackensack.

Q. On what side of the road did it land? A. Well, it landed toward the left side of the road.

Q. In the direction toward Hackensack? A. Yes. 30

By the Court:

Q. Can you identify in the room the man that was driving that car? A. Yes, I can.

Q. Do it. A. Well, he is sitting over there, the gentleman who came over (indicating).

Q. The man who was driving the car which you assumed caused her to roll and struck her? A. There is a gentleman sitting in the third row from the back—Mr. Bloom. 40

*Esther Dingol—Direct*

Q. Bloom. All right.

By Mr. Rinzler:

Q. What color hair has he, if he has any? A. Well, he has dark hair, what he has.

10 The Court: She identified him as Mr. Bloom.

Mr. Rinzler: Will you rise, Mr.— is your your name the defendant Bloom?

A Voice: Bloom.

Q. Is that the man that drove the car toward—  
A. Towards Hackensack.

Q. Was that the nearest car to the girl at the  
20 time? A. Yes.

Q. Now, when you first saw this figure which  
you have termed a bundle in the air, was there  
any car approaching northerly from Hackensack,  
that is, from your right? A. There was a car,  
but it seemed to be about 80 to 85 feet away from  
the figure.

Q. Then what happened to the figure, to the  
body? A. Well, the figure lay flat on the ground.

By the Court:

30 Q. Was there any other car right around that  
immediate neighborhood? A. There was only  
this car that was parked, you see, about fifteen  
feet from where we were, and that is the only one  
I remember seeing.

Q. The car that was parked there was the car  
that struck her and the car that was coming the  
other way? A. Yes.

Q. That is the only car you saw? A. Yes.  
40

*Esther Dingol—Direct*

By Mr. Rinzler:

Q. You say the car that came southerly from Hackensack was about 80 feet away? A. Yes, sir.

Q. When? A. Well, at the time I saw her on the ground. 10

Q. When she landed on the ground? A. Yes.

Q. This car that came south from Hackensack was 80 feet away? A. Yes.

Q. Now, when this bundle landed on the ground—

The Court: North from Hackensack.

Q. Oh, north from Hackensack—pardon me. A. Yes. 20

Q. When this bundle landed on the ground what position did it lie? A. Well, Miss Klein lay with her head toward the left side and her feet toward the side on which we were standing.

Q. Across the road? A. Across the road, yes.

Q. Was the bundle Miss Klein? A. Well, it turned out to be. I did not know at the moment.

Q. As she landed on the ground what did the driver of the car do that came northerly from Hackensack? A. Well, we heard a jamming of the brakes, the tremendous impetus and the grinding sound you have when you put brakes down in a hurry, and then the car went for quite some distance and ran over Miss Klein with the left front wheel. 30

The Court: What was that?

The Witness: Just ran over Miss Klein, and they were coming from Hackensack.

The Court: The one coming from Hackensack? 40

The Witness: Yes, your Honor.

*Esther Dingol—Direct*

Q. For how long a distance before that car ran over Miss Klein did the car travel with its brakes jammed on? A. I should judge about thirty feet.

Q. Could you hear the jamming for all that  
10 distance? A. Yes, it was very audible.

Q. What part of the car, as it traveled north-  
erly, ran over Miss Klein? A. Well, I saw the  
left front wheel going a northerly direction going  
over Miss Klein.

Q. What part? A. It went over the upper part  
of her legs.

Q. When the car that ran over her legs stopped  
where did she lay with respect to that car? A.  
20 Well, she lay between the front and the rear  
wheels.

Q. Of the car that ran over her? A. Of the  
car that ran over her.

Q. Can you point out who it was that drove that  
car that ran over her? A. This gentleman in  
the front row, Mr. Shryer.

Q. The defendant, Adolph Shryer? A. Yes.

Q. You point at? A. Yes.

Q. How fast, in your judgment, was he driving  
30 his car? A. I think he was going easily thirty-  
five miles an hour.

Q. Did he give any signal before the accident?  
A. He gave no signal whatsoever except the jam-  
ming of the brakes.

Q. That was the only thing that was audible?  
A. That was the only thing I noticed.

Q. Was that a loud jamming of the brakes? A.  
Very loud.

40 Q. She lay between the front and rear right

*Esther Dingol—Direct*

wheels or left wheels? A. Well, left wheels—halfway in the width of the car.

Q. You think that one of the Owen sisters remained in the car? A. Yes.

Q. What took place after that? A. Well, after that, well, naturally a great commotion was aroused and people flying all over the place, and Miss Hannah Owen went with Miss Klein to the hospital. 10

Q. Is she one of the girls that was out of the car? A. Yes; she was the other girl who was out of the car besides myself.

Q. Well, did you find the other Owen girl in the car? A. Yes, she was still in the car.

Q. What condition did you find her in? A. 20 Well, she was half faint, she was terribly upset by it.

Q. Where did you go? A. This gentleman took us to the Hackensack Hospital immediately after Miss Klein was taken there, and there they waited until we told them how she was, and then they went off immediately without—refusing to leave their names or anything.

Q. Did you endeavor to ascertain their names? A. We did. We tried to, but they made us promise on our words of honor if they should take us to the hospital. Everybody. We didn't take down any information about them, or didn't involve them in any way in this case. 30

Q. Did you know what their license number was? A. No, I did not, because when I gave my word—

Q. Did you get his name or her name? A. I did not. 40

*Esther Dingol—Cross*

Q. Or know anything about their whereabouts?  
 A. No; I just know they deal in eggs or something, because they were bringing eggs from New Jersey.

10 CROSS-EXAMINATION by Mr. Turner:

Q. Miss Dingol, where do you work? A. I am working at R. H. Macy and Company.

Q. Were you working there at the time of this accident? A. No; I was in college then.

Q. Where? A. I was at college then—New York University.

Q. You were going to school then? A. Yes.

20 Q. How many times had you been on these hitch-hikes with Miss Klein? A. I think that is the first time any of us had been on a hitch-hike.

Q. Who was it suggested you go to Highland Mills? A. Well, I was the individual who did the suggesting.

Q. You suggested that? A. Yes.

Q. How far was that from your home, do you know? A. Well, forty-two miles or forty-three miles.

30 Q. From where? A. From Twenty-third Street.

Q. From the Jersey side? A. Well, it is forty-three miles from the New York side, but ferry across before you go there.

Q. That is by train? A. Yes, by train.

Q. How far is it by road? A. Well, it is the same, forty-three miles, because the road runs parallel to the train road.

40 Q. How far do you live from Twenty-third Street? A. Takes me a half hour to get there by train.

*Esther Dingol—Cross*

Q. Ten miles? A. Yes, about ten miles.

Q. You planned, then, that you were going to hitch-hike up there and back on this Sunday? A. Certainly.

Q. Maybe you can tell us, on your way back, what time you left Highland Mills. A. We left 10 about one-thirty.

Q. You had dinner at the camp? A. Yes.

Q. Is this camp outside of Highland Mills? A. No, it is in Highland Mills; it just a mile from the village proper.

Q. Out along that stream, is it? A. What?

Q. Is it along the stream? A. No, it is not. It is in the opposite direction from Monroe.

Q. When you left Highland Mills how did you 20 go, by automobile or walk? A. We walked down to the village and then we started walking on the road, and there was someone who was going the same direction we were, so we took a rig for the time being.

Q. You mean you took a hike, you hailed somebody to give you a ride? A. Certainly.

Q. How far did you ride with these people you hailed? A. We rode with this gentleman until, I think it was, Paterson, or on the road to Pater- 30 son.

Q. Paterson? A. Yes, it was about fifteen or twenty miles.

Q. About how far? A. Twenty miles, I guess.

Q. Well, how far had you walked? A. What do you mean? Oh, I don't think we walked more than three miles at the most.

Q. Did you get into Paterson? A. We were not in Paterson proper, you see. We planned to 40

*Esther Dingol—Cross*

go home through Paterson, but he was not going in that direction.

Q. Where did you get out of his car? A. We got out of his car on a road whose name I don't know; it was on the outskirts of Paterson.

10 Q. Well, then, how far did you walk? A. Oh, we didn't walk far at all, because Sunday the stream going to the city was quite good and we could get a lift, you see.

Q. You mean the stream of traffic? A. Yes.

Q. Cars going both ways? A. It was not a heavy traffic, but there were cars going.

Q. There was a stream of traffic going both ways? A. There was traffic going both ways; it is not exactly a stream.

20 Q. About what would you say the average distance was between cars on the road? A. Oh, I guess—

Q. Bearing in mind this was Sunday afternoon, of course. A. You mean between cars?

Q. Yes, what was the average space? A. Cars weren't nearer than two hundred feet, unless one car wanted to pass another.

Q. About two hundred feet on the average? A. Yes.

30 Q. Some, of course, were closer together and some were farther apart? A. Yes.

Q. On an average? A. Yes.

Q. So you would have two lines of traffic about on an average two hundred feet apart? A. Yes.

Q. You observed this at this point where you got your second lift; is that right? A. Well, I didn't observe it at that point, but now, when  
40 I look back, I can see it.

*Esther Dingol—Cross*

Q. You can see it is true now? A. Yes.

Q. It was true at the point where you got your second lift? A. Yes, sir.

Q. Now, this second lift, is that the Essex car that you got into? A. Yes.

Q. How far did you ride in the Essex car? A. 10  
We rode until we got to Riveredge.

Q. From Paterson? A. Yes.

Q. You were on the Kinderkamack Road all the time, were you? A. I don't know. I know the accident occurred on Kinderkamack Road.

Q. Did you turn off any roads to get on Kinderkamack Road? A. I did not follow the route of the car very closely and I couldn't answer that.

Q. You didn't know whether you were going 20  
towards home or not? A. Well, the traffic was going that way, and it looked like a big road. It might have been Kinderkamack Road all the way.

Q. Did you know that you were going home in this car—towards your home? A. Yes; we knew that we were going toward Forty-second Street Ferry.

Q. How did you know that? A. How did we know that?

Q. How did you know you were going to the 30  
Forty-second Street Ferry? A. This gentleman and his wife were anxious to get there and they advised us they were going to New York.

Q. So they were New Yorkers, weren't they?  
A. They were.

Q. Did you know whether they were related to any person in that party? A. They were not.

Q. You are sure about it? A. I am quite sure.

Q. Did you know Miss Klein and her family? 40

*Esther Dingol—Cross*

A. Well, I know Miss Klein, because Miss Klein lives three blocks from my home.

Q. Know the brother and the rest of the family? A. Yes, I went to high school with Miss Klein.

10 Q. You are sure these people were not related to Miss Klein? A. Yes, I am quite positive.

Q. From what you know of the family? A. Yes.

Q. You did not have any arrangement during all this distance up and back that anybody was to take you; in other words, you were going to gamble on whether you could get a ride or not?

A. Certainly. We had enough money to ride  
20 home by train.

Q. You were not on any tracks? A. Why, the railroad station runs very near there, and we were always conscious of the same direction.

Q. Did you look up any time tables? A. I was acquainted with the time table, because I had been councillor at the camp there for a whole summer.

Q. Did you go to any station to get a train? A. The train runs through Suffern, through Tuxedo through Mahwah.

30 Q. Go to any station to get a train? A. We went two miles and we had plenty of time to gamble on a chance to get home.

Q. You had time to gamble on a chance to get home? A. Yes.

Q. So you were gambling whether you could get a ride on the automobile? A. If we can't get that we would take the train home.

Q. You didn't intend to walk it, then? A.  
40 Well, walk it for a short way, but not to any great extent.

*Esther Dingol—Cross*

Q. So that you were only going to walk a little ways until you got a ride and then you were going to ride in an automobile if somebody would give you a lift? A. If they didn't, we would walk.

Q. What is the last town that you saw that you know, from the time you left the outskirts of Paterson up to the time of the accident? A. I know we passed Passaic. 10

Q. Through Passaic? A. Yes.

Q. Remember that? A. Yes.

Q. Then where did you go? A. Then I don't remember the small towns along.

Q. So that you did ride more than a half a block in this direction, didn't you? A. Oh, yes; 20 we rode about a half an hour in the direction.

Q. Half an hour? Now, when you say you saw this, what you say was a bundle, going through the air, white bundle, how far in feet did that bundle travel in the direction of Hackensack from the direction of Westwood? A. Fifteen feet.

Q. About fifteen feet? A. Yes.

Q. Did you see the bundle when it first started to travel? A. I saw it when it was hurled into 30 the air by this car that struck her.

By the Court:

Q. How fast did you say this Shryer car was coming when going north from Hackensack? A. Oh, I am not sure, but I believe it was going about thirty-five miles an hour.

Q. You say it ran over her legs? A. Yes, sir

Q. Go ahead.

*Esther Dingol—Cross*

By Mr. Turner:

Q. You have identified Mr. Bloom as the driver of the car from which this bundle started, have you? A. Yes.

Q. Did you see where Mr. Bloom's car went  
10 after that bundle started through the air? A. Well, it didn't go—no, I didn't say where it went.

Q. Didn't say where it went at all? A. No; because I understand it was the car that took her to the hospital, but I have no definite knowledge about that fact.

By the Court:

Q. It ran over her legs with both wheels or just the front wheel? A. The Shryer car, just  
20 the front wheel, your Honor.

Q. Go ahead.

By Mr. Turner:

Q. Now, did this bundle go straight toward the Shryer car from the time it went through the air? A. Well, it went in that direction; it went south.

Q. The Shryer car was on its right side of the road, wasn't it? A. Yes.

Q. The Bloom car, you say, was on its left?  
30 A. Well, the Bloom car was pretty near on the same side of the road that the Shryer car was, because it had swerved to the left.

Q. I understand that, but you say Shryer was on its right? A. Yes.

Q. And the Bloom car was on its left? A. Oh, yes.

Q. They were going in opposite directions?  
40 A. Yes.

*Esther Dingol—Cross*

Q. So as they were there on the road, the two cars were coming toward each other, weren't they? A. Yes.

Q. If the Bloom car had not changed its direction and gotten on its right side, of course, the two cars might have come together; that is what you mean, isn't it? A. Yes. 10

By the Court:

Q. What portion of the road was the Bloom car on when you saw it? Its left, or its right, or in the middle? A. Its left.

By Mr. Turner:

Q. Now, when the Bloom car, as you say, hit this girl or hit this bundle, how near to the point where you were standing was the Bloom car then? 20

A. The Bloom car?

Q. Well, was it toward Hackensack or towards Westwood from you? A. Well, it was just about directly in front of me.

Q. I see. A. But about twenty feet out on the road.

Q. About what? A. About eighteen or twenty feet out on the road.

Q. How near to the Essex were you standing then? A. I was standing about fifteen feet north of the Essex. 30

Q. North of the Essex; that is, towards Westwood? A. Yes.

Q. So that when the Bloom car had gotten up to you the Shryer car was how far away from you towards Hackensack? A. About eighty feet.

Q. Had you seen the two cars before that? A. Never. I had not turned around to see what the road situation was when Miss Klein went to cross. 40

*Esther Dingol—Cross*

Q. How long a time would you say it was from the time this girl was struck until the point when you say she came into contact with the Shryer car? A. Oh, it was a matter of moments. That just happened.

10 Q. A matter of moments. How long would you say it was? A. Oh, just—I can't tell. I never bothered to—

Q. But approximately? A. A few seconds.

Q. What? A. A few seconds.

Q. When you say a few seconds how many do you mean? A. Well, I am liable to say five and mean ten. I am sorry I can't answer that question.

20 Q. I don't want you to say five and mean ten. Do you mean ten? If you mean ten, let us have it. A. It happened just in the flash of a second, I don't know just how long it took.

Q. Have you any idea at all? A. Sorry, I have not.

Q. You have no idea? A. No.

Q. Can't give us an approximation of the time at all? A. No.

30 Q. Around five seconds, as you say, or may have been ten seconds? A. I don't think it was as long as all that. It happened too quickly. But I can't give you a definite number of seconds.

Q. You did not have a stop watch, of course? A. No.

Q. Would you say it was between five and ten? A. No, it was less than five.

40 Q. You don't know how much less. Of course, all the time that this body, this bundle, was going through the air, the Shryer car was still coming up toward you, wasn't it? A. It was.

*Esther Dingol—Cross*

Q. There was a line of cars back of it, wasn't there? A. No pronounced line of cars; I don't remember any.

Q. What? A. I don't remember cars in back of it.

Q. There were cars in back of it and cars in front of it, weren't there? A. Well, there wasn't a car very much in front of it, because the road was clear, when Miss Klein started to cross, of two hundred feet.

Q. How do you know the road was clear when she started to cross if you didn't watch her? A. I am only speaking of Miss Klein's testimony.

Q. How much of your testimony is based upon what Miss Klein said and how much is based upon what you know yourself? A. This is the first statement I have made; it was an explanation of a statement you made and there was a steady stream of traffic.

Q. I want to know what you saw, not what Miss Klein told you. Do you know, or don't you know whether at the time Miss Klein was crossing there were two lines of traffic going back and forth there? A. Well, there was a line going north and there was a line going south, but it was not heavy.

Q. There was two lines of traffic? A. Yes.

Q. You say they were not heavy? A. Yes.

Q. Now, in all those lines of traffic, from the time you first got there until after the accident, did you hear a horn blown by any car at all? A. Not a horn.

Q. What? A. No.

Q. How many hundred cars do you suppose

*Esther Dingol—Cross*

passed that spot in that time? A. I don't think even one hundred cars passed that spot in that time.

Q. You don't? A. No.

10 Q. Well, all right, we will say less than a hundred. Of that less than a hundred cars can you tell us positively whether any of them did or did not blow horns? A. I did not hear a single horn blown during the entire time.

Q. I didn't ask you that. I am asking you whether you can say positively whether in that less than one hundred cars any of them did or did not blow a horn? A. You asked me to speak of what I heard.

20 Q. I want you to admit that you don't know. A. All right, I don't know.

Q. You don't know, do you? You don't know whether these cars blew a horn? A. I didn't hear a horn blown, and I was rather attentive to it.

Q. You told us on your direct-examination that they did not blow horns. Now, what you want to say is that you didn't hear any horns and you don't know whether they did or not; isn't that  
30 true? A. Well, according to my logic I did not hear a horn; it stands to reason one was not blown.

Q. So when you do not hear a horn you say a horn is not blown? A. I think that is the most logical thing.

Q. How many horns have you heard blown today? A. At least a hundred and fifty.

40 Q. Keep track of them? A. No; I have been in the city and I have been riding through and I heard them.

*Esther Dingol—Cross*

Q. On this Sunday afternoon you don't recall any horns being blown at that point? A. Yes.

Q. How far was it from the street intersection?  
A. Pardon me?

Q. How far was it from a street intersection?  
A. Well, there is street intersections only on one side of the street, that did not go through the entire town. 10

The Court: We will adjourn now until ten o'clock tomorrow morning.

(Adjourned to October 24, 1928, at 10 A. M.)

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Paterson, N. J., October 24, 1928.

(Trial of the cause continued.)

ESTHER DINGOL, resumed.

Cross-examination (continued) by Mr. Turner:

Q. Miss Dingol, will you just give me the names of all the girls who left Brooklyn at six o'clock on Sunday morning? A. Fannie Klein, Rose Owen. 30

Q. How do you spell that last name? A. Owen, O-w-e-n.

Q. Yes? A. Hannah Owen.

Q. Yes? A. And myself.

Q. Was Miss Goldstein in your party? A. No, I don't know any Miss Goldstein.

40

*Esther Dingol—Cross*

Q. You don't know Miss Goldstein? You don't know Jennie Goldstein? A. No, not at all.

Q. Fannie's brother has a black Essex coach also, hasn't he? A. I don't know the make of his car at all.

10 Q. Did you ever ride in it? A. I did ride in it. I don't know what make it is.

Q. Do you mean to say that you rode in Herman Klein's Essex coach and didn't know that it was an Essex? A. Well, I rode in it twice, and once was in the evening when I piled in the back and I didn't see what it was, and the second time was very early in the morning.

Q. Was the second time the Sunday morning  
20 about six o'clock? A. No, it was not. It was just this year. About, I guess, a month back, less than a month, even.

Q. Well, would you say that you don't know what kind of a car Herman Klein has? A. I am quite sure.

Mr. Rinzler: I object on the ground it is not relevant.

The Court: Yes, it is proper.

30 Mr. Rinzler: What car the brother owned?

The Court: I will permit it.

Mr. Rinzler: I ask an exception.

Q. You are sure, are you, that it was not Herman Klein that was driving this Essex coach that you were riding in just before this accident? A. I know that at the time of the accident Herman Klein was in Chicago.

40 Q. What? A. He was in Chicago at the time of the accident.

*Esther Dingol—Cross*

Q. You know that? A. Yes, because—

Q. You are sure it was not his car you were riding in? A. I am quite sure, because I don't know what kind of a car he has.

Q. If you don't know what kind of a car he had how do you know it was not his car you were in? A. Because it was an Essex coach that we were in and it belonged to these two people. They said it was their car. 10

Q. Now, tell us what arrangement did you make with these two people after the accident? A. Well, they were very much concerned about being involved and we were anxious to get to the hospital.

Q. Just let me stop you a minute. You say 20 they were very much concerned about being involved. Just how did they say that they might be involved in this accident? A. Well, they would be witnesses, because they had seen what had happened.

Q. Well, did they tell you that? A. Well—

Q. Don't tell me what you think they had in their minds. I want to know what they told you? A. After the accident happened—

Q. Wait a minute. You said that they were afraid they might be involved in this accident? 30

A. Yes.

Q. Now, did they tell you how they thought they might be involved in this accident? A. They said they wouldn't want to be witnesses.

Q. Yes? A. That is all they said.

Q. Now, just tell us the rest of your arrangement with them. A. We were very anxious to get to the Hackensack Hospital to find out the 40 condition of Miss Klein.

*Esther Dingol—Cross*

Q. Yes? A. They told us they would take us there providing we would not take their number or take their names.

Q. Yes? A. And we gave our word that providing they took us there immediately we wouldn't  
10 use their names in this case.

Q. Yet, as far as you knew, Miss Klein might die, might she not? A. Yes, as far as I knew.

Q. You thought probably she was dead then, didn't you? A. Well, I wasn't so pessimistic.

Q. Yet on the face of it you told these people that you wouldn't take the number of their car and you wouldn't ask their names? A. I did.

Q. Just tell us what this man looked like, the  
20 driver of this Essex coach. A. Well, he was a rather gaunt, more of the New England type.

Q. Rather what? A. Rather gaunt type of individual.

Q. That doesn't mean anything to me. You say he was gaunt? A. Yes, and spare.

Q. Describe him. A. Rather tall and spare.

Q. Spare? A. Yes.

Q. Is that all you can tell us about him? A. Well, I don't remember the color of his eyes.  
30

Q. How old was he? What would you say was his age? A. In the thirties or forties.

Q. Didn't look like Herman Klein, did he? A. I didn't know Herman Klein at the time.

Q. Didn't you say you had ridden out in Herman Klein's car before that time? A. I did not. I said I had ridden out in his car just about a month ago.

Q. You said you had been out in his car twice?  
40 A. Both of these times were a month ago.

*Esther Dingol—Cross*

Q. A month ago? A. Right.

Q. One you said was at night and one very early in the morning? A. Yes.

Q. Was it the same trip? A. No, it was not the same time; one trip was on a week-day and the other was on a Sunday. 10

Q. Do you know what Herman Klein looks like now? A. Yes.

Q. Does this man resemble Herman Klein? A. Not in the least.

Q. You don't think so. Don't you know? A. I said, "Not in the least."

Q. What did this lady look like who was in the car? A. She was the same type of person as he, spare, but shorter. 20

Q. You did not take the number of their car? A. I did not.

Q. And none of you girls took the number of their car? A. We did not, because we had pledged our word that we would not.

Q. You did not ask their names? A. We did not.

Q. Now, they took you to the Hackensack Hospital? A. They did.

Q. You said their license was a New York license? A. I didn't say so. I don't know what their license is. 30

Q. Didn't you tell yesterday that the license of this car was a New York license and that they were going to New York, to the ferry, the same place you were going? A. I said they were going to the ferry, but I don't know—I didn't say they had a New York license.

Q. What kind of a license did they have? A. 40 I don't know. I didn't look at it.

*Esther Dingol—Cross*

Q. Not at all? A. Not at all. I said I wouldn't.

Q. If you said yesterday they had a New York license, you didn't mean to say it?

10 Mr. Rinzler: I object, sir. She said yesterday she didn't know.

The Court: I do not think that is a proper question, because the jury heard what she said, whether she did say it or did not.

Q. Now, they took you right to the Hackensack Hospital direct, did they? A. Yes.

Q. Left you there? A. They did.

20 Q. Did not wait for you? A. No; they didn't wait for us. They waited a few minutes, and I brought out word that Miss Klein was now—she had suffered injuries but she was resting comfortably; and then they went off.

Q. They waited for word? A. Yes.

Q. That Miss Klein was resting comfortably? A. Yes.

Q. How did you get home from the hospital, as a matter of fact? A. Mr. Bloom took us in his car, I think, to the tubes, and then we rode  
30 home on the tubes and out to Brooklyn where we live.

Q. How many girls got in Mr. Bloom's car from the Hackensack Hospital? A. Miss Rose, Miss Hannah Owen, and myself.

Q. Did you tell us how old you thought this man was? A. I told you he was in his thirties or forties.

40 Q. You said he was the man that suggested you stop and pick flowers? A. He and his wife, yes.

*Esther Dingol—Cross*

Q. By the way, what kind of flowers did you pick? A. They were black-eyed Susans and goldenrods.

Q. Now, on this day, this Sunday, have you a pretty definite idea of how many miles you girls walked during that day? A. No, I haven't a definite idea. 10

Q. Well, have you an indefinite idea? A. I guess I have. Must have walked ten miles all through the day.

Q. Ten miles during the day? A. About two or two and a half hours walking.

Q. And the rest of the time you rode? A. Yes.

Q. Did any other cars go to the hospital besides this Essex coach that you had been riding in? A. I don't know. 20

Q. Now, I understood on direct-examination you stated that you lived only a few doors from the Kleins? A. I didn't say a few doors. I said a few blocks.

Q. You had visited there before this time? A. I had.

Q. Then, of course, you knew Herman Klein before this time? A. No, I didn't know Herman, because Herman Klein is married and lives apart from Miss Fannie Klein. 30

Q. Was he married at that time? A. I believe so. I don't know him well. Yes, he was married at the time.

Q. At the time of the accident he was married? A. Yes.

Q. He lived where? A. I don't know where he lived, but he didn't live with Mr. and Mrs. Klein.

Q. Do you know Irving Klein? A. Yes; I have seen him quite often in the house. 40

*Esther Dingol—Cross*

Q. Before the accident? A. Yes, I had seen him.

Q. He was not in that Essex coach on that day of this accident? A. No, not at all.

10 Q. Sure about that? A. Quite sure.

Further CROSS-EXAMINATION by Mr. Mackay:

Q. Miss Dingol, you stated to Mr. Turner a minute ago that you didn't know whether there was any other automobile that went to the hospital besides the one that drove you there? A. Yes, I did.

20 Q. Is that right? A. Well, I know that the automobile that took Miss Klein to the hospital went there.

Q. Yes. Mr. Bloom went to the hospital, you know that? A. I didn't know that at the time.

Q. Why, didn't you drive away in Mr. Bloom's car? A. I didn't drive—I drove from the hospital in Mr. Bloom's car.

30 Q. Yes. Well, that car was there at the hospital, wasn't it? A. Yes. I suppose I interpreted Mr. Turner's statement, I thought from that he meant other cars besides the one that took Miss Klein to the hospital.

Q. Oh, you thought he meant other cars? A. It stood to reason some car had to take her.

Q. What other cars did you think he meant? A. Any others that might have come, which I was not aware.

Q. Well, wasn't his question clear to you? A. It was not.

40 Q. About how many cars were there? A. It was not.

*Esther Dingol—Cross*

Q. What was there uncertain about it in the way he asked you that question? A. Well, from the question—well, I assumed he would know that some car had taken Miss Klein to the hospital.

Q. Well, what was there uncertain about the manner in which he asked you that question, whether there were any other cars at the hospital? A. He didn't say—may I have his question referred to, Judge? 10

The Court: Yes.

(Previous question and answer repeated by the stenographer as follows:)

“Q. Did any other cars go to the hospital besides this Essex coach that you had been riding in? A. I don't know. 20

Q. What is that? A. I don't know.”

A. Well, when he asked me if any other cars went to the hospital—

Q. Besides the Essex coach, he said. A. Besides the Essex coach. Well, I presume he knew that the car had taken Miss Klein to the hospital, and I answered the only other car.

Q. I am asking you whether there was anything uncertain about that question. A. Then, I misunderstood. 30

Q. Anything complicated about it? A. I misinterpreted the question.

Q. In what way was it that you could misinterpret that question? It was plain, wasn't it? A. It wasn't plain, to my way of thinking.

Q. It was not plain? A. No. I assumed he knew what car had taken Miss Klein to the hospital, and the only other one I knew of was the one in which we rode. 40

*Esther Dingol—Cross*

Q. Getting down to the scene of the accident, you were standing on the sidewalk? A. I was.

Q. You had your back to the roadway? A. Yes.

10 Q. Looking into the field where the flowers were? A. Yes.

Q. Is that correct? A. Right.

Q. You did not see Mr. Bloom's car, then, coming down Kinderkamack Road, did you? A. did not.

Q. You did not see Mr. Shryer's car coming from Hackensack? A. Oh, I did see Mr. Shryer's car.

Q. You did? A. I did.

20 Q. When did you see that for the first time?

A. I saw it for the first time when Miss Klein's body landed on the ground after it had been hit by a car.

Q. You did not see it get hit by a car? A. I saw it hurdled into the air after it was hit by a car.

Q. Yes. You don't know which car hit her? A. No, I do not.

30 Q. Did you see one car or two cars coming from Westwood? A. From Westwood?

Q. Yes. A. Well, there was one car that passed by that I don't know anything about, and Mr. Bloom's car came to a halt.

Q. When his car came to a halt where was Miss Klein? A. Well, when his car came to a halt Miss Klein had started hurdling through the air and landing about fifteen feet away from where Mr. Bloom's car was.

40 Q. In front of the car? A. No; I said she landed about fifteen feet away from—

*Esther Dingol—Cross*

Q. In front of his car? A. Slightly diagonally right.

Q. Where was Mr. Shryer's car? A. Well, at the time she landed Mr. Shryer's car seemed to me about 80 or 85 feet away from her.

Q. Coming very fast? A. Yes, coming at a 10 fast speed.

Q. Quite a speed? A. Quite a speed.

Q. You say Mr. Shryer's car ran over Miss Klein? A. Yes.

Q. Is that so? A. Yes.

Q. You saw that? A. Yes.

Q. Was she at that time seven feet from the right-hand—from the curb on the other side?

A. She was about that distance. 20

Q. About seven feet from the curb? A. No; I don't think she was seven feet from the curb. She must have been about three or four feet from the curb, because it was about—about three or four feet.

Q. About three or four feet from the curb? A. Yes.

Q. You heard Miss Klein testify?

Mr. Rinzler: I object. 30

The Court: It doesn't make any difference what she heard.

Q. You say she was three or four feet from the curb when Mr. Shryer's car ran over her?

A. Yes.

Q. That is correct, is it? A. Well, her head was three or four feet from the curb, yes.

Q. Just where with reference to Miss Klein was Mr. Bloom's car? A. You mean after she was 40 run over by Mr. Shryer?

*Esther Dingol—Cross*

Q. Yes. A. Mr. Bloom's car moved ahead as I figured about fifteen or twenty feet in front of the Essex coach in which we had been riding.

Q. Where did it move from? What spot in the roadway? A. Where it had hit Miss Klein.

10 Q. Well, what spot in the roadway, with reference to Miss Klein? You say he had stopped there? A. Well, it was about fifteen feet back and diagonally left from where Miss Klein had landed after he had hit her.

Q. So Miss Klein was diagonally fifteen feet to the front of Mr. Bloom's car, lying in the roadway? A. Towards the right.

Q. About four feet from the curb? A. Yes.

20 Q. Is that correct? A. Yes.

Q. Now, you say you saw another car come past Mr. Bloom's car from Westwood? A. Well, it continued riding on from Westwood passing by.

Q. You saw that car come past? A. Yes.

Q. When did you first see that car come past?

A. Well, when I saw where Miss Klein came hurtling in the air and resting there on the street.

Q. That is when you saw that car come past?

A. Yes.

30 Q. That went right on, did it? A. Yes.

Q. Did you see that car before Miss Klein was hit or after? A. I saw it after Miss Klein was hit, not before.

Q. After Miss Klein was hit? A. Yes.

Q. That is when it came past; is that right? A. Yes.

Q. So that it had not come past before she was hit? A. Yes.

40 Q. Is that correct? A. Yes.

Q. That is all.

*Esther Dingol—Re-direct*

RE-DIRECT-EXAMINATION by Mr. Rinzler:

Q. Miss Dingol, are you related to Miss Klein?

A. Not at all.

Q. Related to anybody that is in any wise related to her or any member of her family? A. 10  
No.

Q. On the day of this accident did you see either Herman Klein or Irving Klein or any boy by the name or known by the name of Klein? A. No, because—no, I did not.

Q. Was there any male person or man or young man or any male person in the hitch-hiking party that day? A. No.

Q. When the girl actually landed on the road- 20  
way, how far away from her was the Shryer car?

A. About 80 or 85 feet.

Q. That is all.

The Court: Now, Mr. Rinzler, the testimony so far, as I see it, of this young lady, and I think it was the only direct testimony, was that this girl was struck on two separate and distinct occasions. First that she was struck by Mr. Bloom on his way south 30  
toward Hackensack, and that after he had knocked her over she was struck by Mr. Shryer coming north on that same road. Now, as I read the complaint it refers only to one striking—one time you accuse one man and the other time the other. It accuses them of a joint tort. Now, which striking are you proceeding on, Mr. Rinzler?

Mr. Rinzler: All of them. There are 40  
three counts in the complaint.

(Discussion.)

*Fannie Klein—Direct*

The Court: I am not ruling on it now, but I am pointing it out, because it probably will come up eventually and have some bearing on the Court's action in the matter, and I am pointing it out so you may be thinking it over. You may proceed.

10

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FANNIE KLEIN, recalled.

Direct-examination by Mr. Rinzler:

Q. Miss Klein, who is Herman Klein and Irving Klein? A. Herman Klein is my eldest brother and Irving Klein is my youngest brother.

20

Q. Is either or both of them married? A. Herman Klein is, but Irving Klein is not.

Q. Was Herman Klein married at the time of the accident? A. Yes.

Q. Was he living at the home of your parents where you lived? A. No.

Q. Where did he live? A. He was a traveling salesman and he was in the vicinity of Chicago at that time.

30 Q. He and his wife were not living at the home of your parents? A. No.

Q. Was either Herman Klein or Irving Klein on this hitch-hike trip? A. No.

Q. Was either of your brothers with you on that day from the time you left your home to go on the hike? A. Neither of them were in town then.

Q. Neither was in town? That is all.

40

No cross-examination.

*Lewis Bloom—Direct*

LEWIS BLOOM, recalled.

Direct-examination by Mr. Rinzler:

Q. Mr. Bloom, you are a defendant in this case and you have already testified? A. Yes.

Q. You say that you were driving your car 10 north? A. South.

Q. South, rather, from Westwood to Hackensack? A. Yes, sir.

Q. You say that Shryer, the defendant, was driving his car in an opposite direction from Hackensack to Westwood? A. North.

Q. Yes, north, in an opposite direction from you? A. Yes.

Q. Now, without going into how the accident 20 happened, did an automobile traveling from Westwood in the direction towards Hackensack, or south, run into or hit or run over Miss Klein? A. I couldn't tell.

Q. Did any car that came south hit her? A. I couldn't tell.

Q. Did you see any car going south hit her? A. There was a lot of cars going south.

The Court: Did you see any hit her?

The Witness: No, sir. I couldn't tell if 30 it was or not.

Q. Did the car that you drove hit her? A. No, sir.

Q. Are you sure about that? A. Positively.

Q. Which car did hit her? A. I can't tell you. I don't know. That I can't tell you. All happened like that (snapping fingers).

Q. You didn't know she was in an accident at 40 all? A. I stopped like that there.

*Lewis Bloom—Direct*

Q. Did you know she was in an accident? A. Not until I saw it.

Q. Why did you stop? A. Somebody yelled, and as somebody yelled I just stopped, put my brakes right on, like any driver would do if some-  
10 body yelled.

Q. Was there any car right ahead of yours?  
A. A lot of them.

Q. Going the same direction? A. Whole line of them.

Q. Did any car ahead of you hit her? A. I don't know.

Q. What? A. I don't know. I can't see in front of a man's car that is going ahead of me.

20 Q. Did you pass her? A. Did I pass who?

Q. Miss Klein? A. I stopped right there.

Q. Did you pass her on the roadway anywhere?  
A. No; she ran out in front of me.

Mr. Rinzler: I ask that that be stricken out.

The Court: He said no. Strike out all except no.

30 Q. Did you pass her on the roadway? You did not? A. No, sir.

Q. After the accident Miss Klein was lying on the roadway, on the right side of the street going toward Westwood, between the left front wheel and the left rear wheel of the Shryer car; is that correct? A. I know it was the right side. It is the east side. Her feet were facing towards the east side. I don't know whether that is right or left.

40 Q. Now, wait a second. A. I know the east and west side of it.

*Lewis Bloom—Cross*

Q. Just listen. Shryer's car was traveling north, wasn't it? A. Yes.

Q. Towards Westwood? A. Yes.

Q. After the accident the body of Miss Klein was lying underneath Shryer's car, wasn't it? A. In back of the first front wheel. 10

Q. In back of the front left wheel of Shryer's car; is that right? A. I don't know if it is right or left.

Q. But in back of its front wheel? A. Yes. I don't know if it was Shryer's car.

Q. One moment. That is all, sir.

Mr. Turner: I would like to ask some questions of the witness. 20

## CROSS-EXAMINATION by Mr. Turner:

Q. Counsel asked you whether you passed Miss Klein on the roadway. Now, did you see Miss Klein on the roadway before the accident? A. I saw a girl in a pair of white knickers running right out in front of the car like that.

Mr. Rinzler: I object on the ground this is not responsive.

The Court: That is only raisable by the man who asked the question. 30

Mr. Rinzler: May I have an exception?

The Court: You may have it.

Q. You saw a girl in white knickers running out. Now, where did she run from?

Mr. Rinzler: I object on the ground it is not proper cross-examination.

The Court: I will permit it. 40

Mr. Rinzler: I ask an exception.

*Lewis Bloom—Cross*

A. I couldn't see, but I think off the terrace she was—she got momentum going across.

Q. You mean what would be the sidewalk? A. She must have been above the sidewalk, the momentum she ran, because she could not pick that  
10 up in two steps or ten steps.

Q. You were coming from Westwood to Hackensack? A. Yes.

Q. Did she come from your right-hand or your left-hand? A. Well, I will tell you, she came from the west side; I can't tell you whether that is right or left.

Q. Now, let me get you straight. You are going toward Hackensack from Westwood? A.  
20 Yes.

Q. Now, which is the west side, your right or your left? A. I don't know. I just can't place the road.

Q. Did she come to your right or left when she, as you said—you saw her run off the terrace. Was the terrace on your right or left? A. That is on the west side of the street.

Q. Well, was that on your right-hand or left-hand? A. I can't get the idea of the street so  
30 I can tell which side I was driving.

Q. You are a real estate salesman, aren't you? A. Yes.

Q. You know the direction of a compass point? A. I know right—that is, west and south and north and east, but I can't get the—

Q. All right. Were you going north or south? A. I was going south.

Q. South? A. Yes.  
40

*Lewis Bloom—Cross*

Q. And she came, you say, from the west? A. Yes.

Q. Well, that would be your right-hand, wouldn't it? A. I don't know. I think a driver—

Q. All right. Assume you are looking south. You are looking south, now, we will say. Now, 10  
which side is west?

The Court: It seems to me, Mr. Turner, that your cross-examination has been sufficiently broad to cover anything on which he has been examined.

Mr. Turner: The only thing, I wanted to fix the direction, that is all.

The Court: You are going now into how 20  
it happened. He was not asked anything about how it happened.

Mr. Turner: I am not going to ask him about the operation of the car, but I am anxious, because counsel asked him whether he passed the girl, to know the location of the car.

The Court: You may fix that, but do not go any further.

Q. Assuming, now, that you are looking south. 30  
Now, west would be on your right-hand, wouldn't it? A. I don't know. If I am looking south and west is on my right-hand, this would be west.

Q. Yes. Well, then, you know, as a matter of common fact and knowledge, that the girl came from your right-hand, don't you? A. Well, I don't know. I know she came from the west side of the road. I can't get it. If I was standing on 40  
the road I would know.

*Lewis Bloom—Cross*

By the Court:

Q. Can't you visualize if you are going down the road whether something came from your right or left? A. I know from the west side of the road, all I know.

10 Q. How do you know it is the west side if you don't know it is right or left? A. I know New York lies on the east side and the other side is west.

Q. Don't you know which is your right side? A. If I was on the road right now I could tell.

Q. Couldn't you tell without being on the road whether she was on your right or left? A. No.

Q. All right.

20 By Mr. Turner:

Q. When you look to the north where is your right hand?

The Court: Look to the south, he said.

Mr. Turner: Well, I am trying to get him straight on these directions.

Q. When you went to school didn't the teacher tell you that when you looked to the north your right-hand is east and your left-hand is west? 30 Didn't the teacher tell you that? A. I don't remember that.

Q. I didn't suppose anybody ever forgot that. A. The east is the left hand.

Q. Don't you know when you look to the north your right-hand is east and your left-hand is west? You know that, don't you? You are a real estate salesman? A. Yes, but according to that it must 40 be on the left-hand. I don't know.

*Lewis Bloom—Cross*

Q. Now, then, don't you understand? You will concede that is true, that when you look to the north the right-hand is east? You know that?  
A. North, my right-hand is east.

Q. When you look to your south your right-hand is west, just the reverse, isn't it? A. Yes. 10

Q. That is true, isn't it? Simple, isn't it? A. If I am looking south my right hand is west.

Q. When you are looking south your right hand is west. You know that, don't you? A. (No answer.)

Q. Well, now, you went to school, didn't you?  
A. Yes, sure.

Q. Went to high school, didn't you? A. No, sir. 20

Q. All right. You don't have to go to high school to get that, anyhow. Now, that is true, when you look south your right hand is to the west? A. Yes.

Q. That is true, isn't it? A. All right.

Q. Now, did this girl come from your right or your left? A. She must have come from the left side, because I was going south.

Q. You are going south? A. Yes.

Q. You said she came from the west side, didn't you? A. Yes. 30

Q. And the west side is your right hand? A. Yes; she must have come from the right.

Q. You know it, don't you? A. Well, if that is the fact, she must.

Q. Now, what I want to know is this: When you first saw that girl in white, which we now know at this time, where was she? A. I didn't see her until she was darting right out. 40

*Lewis Bloom—Cross*

Q. No; don't tell me that. I want to know the first time you saw her. Where was she the first time you saw her? A. About the middle of the road.

10 Q. Middle of the road. Now, when you saw her in the middle of the road the first time, was there any automobile between you and the girl?

A. Oh, there was a regular row of automobiles going south.

Q. Now, you can answer that, can't you? When you saw her the first time in the middle of the road was there anything to interfere with your view of her? Could you see her plainly? A. When I first saw her?

20 Q. Yes. A. In the middle of the road?

Q. How far was she from you in the middle of the road? A. Gosh, I don't know; she just darted out.

Q. Don't have her darting out, now, because she is in the middle of the road. A. Yes.

Q. She is in front of you. A. I just threw my brakes on.

30 Q. The girl is in front of you on the middle of the road. Will you point to something in the room which shows how far she was from you when she was there in the middle of the road, darting out, as you now say, but nevertheless in the middle of the road? Point to something in the room. A. She was so very close I just clapped my brakes and just stopped.

Q. Now, she was so very close—was she as close as from you to the jury-box here? A. She couldn't have been much further from that.

40 Q. Would you say that is about right? A. I would say so.

*Lewis Bloom—Cross*

Q. About five or six feet in front of you; is that right? A. Well, maybe about five feet.

Q. About five feet in front of you. Now, you saw this girl darting out in front of you, five feet from your automobile. How much further did you see that girl move before the accident? A. 10  
All I done is threw my brakes on and stopped.

Q. Will you answer the question? My question is not about you at all. I am not asking about you. As a matter of fact, I am not supposed to ask about you. I don't want to ask about you. I want to know this: how far you saw that girl move from the time she was five feet in front of your car. A. I don't know. I sit right there; I can't tell you, because it just happened 20  
in a flash, it was just a flash.

Q. Let me ask you this question: When you saw that girl five feet in front of your car did you see her again after that? A. Well, when I stopped that girl was lying—

Q. Please don't tell me about yourself, because I am not supposed to ask about you. You are on the plaintiff's case now; I am only asking about the girl. The question is, when you saw that girl in the center of the road, five feet in front of your car, did you see her again? A. I saw her laying 30  
under a car that was going north.

Q. I see. So that from the time you saw the girl five feet in front of your car you did not see her again until she lay on the road over near another car? A. Right across. About the middle of my car.

Q. Now, let me ask you this question: How far was it from the place where you saw the girl the 40

*Adolph Shryer—Direct*

first time in the middle of the road up to the place she was laying when you saw her the second time? A. I don't know; the both cars were stopped right opposite me.

10 Q. Listen, please! A. This car was stopped right opposite me.

Q. You are going to get me into trouble. The Court asked me not to ask you about these cars. I am asking you about the girl. How far was the girl from the place she stood in the center of the road—how far was it to the place where she lay in the road, how many feet? A. Oh! I imagine about four feet.

20 Q. Four feet? That is all.

Mr. Mackay: That is all.

---

ADOLPH SHRYER, sworn.

Direct-examination by Mr. Rinzler:

30 Q. Without regard to how the accident happened, did the car that you drove on the day of this accident hit or run over Miss Klein? A. No.

Q. Without regard to how the accident happened, did a car going in the direction that you were traveling hit or run over Miss Klein? A. In the same direction I was traveling?

Q. Yes. A. Going north?

Q. Yes. A. No.

40 Q. Without regard to how the accident happened, in what direction did the car travel which did strike Miss Klein? A. Traveling south.

*Adolph Shryer—Cross*  
*Miss Rose Owen—Direct*

Q. You mean in the direction opposite to you?  
A. Opposite to me, towards Hackensack.

Q. That is all.

Mr. Turner: No cross-examination.

10

CROSS-EXAMINATION by Mr. Mackay:

Q. How many cars did you see, Mr. Shryer, traveling south? A. That I couldn't say; a lot of cars.

Q. More than one? A. More than twenty.

Q. More than twenty? A. More than fifty.  
The road was full of them.

Q. Traffic quite heavy? A. Very heavy.

Q. Do you know who was driving the car that  
you saw strike Miss Klein? A. No.

20

Q. That is all.

Miss ROSE OWEN, sworn.

Direct-examination by Mr. Rinzler:

Q. You are a friend of Miss Klein, are you not?  
A. Yes, I am.

30

Q. You started out with Miss Klein and the rest of the group on the hitch-hike on the day of this accident? A. Yes.

Q. Who went along in the party? A. Miss Dingol, Miss Klein, my sister, and myself.

Q. Well, what men were in the party? A. There were no men in our party.

Q. Wasn't Irving or Herman Klein— A. No,  
they were both out of town.

40

*Miss Rose Owen—Direct*

Q. They were not with you at all on that day?  
A. No.

Q. Now, when the car that gave you your last hitch on the homeward journey had parked did you stay in the car or get out? A. No; I remained.  
10

Q. Did anyone else remain in the car? A. No, no one else.

Q. In what part of the car were you sitting?  
A. Why, the left rear seat.

Q. And the car was facing Hackensack? A. Yes, sir.

Q. This was a closed car? A. Yes.

Q. A coach? A. Coach.

20 Q. After the rest of the occupants of the car left it and got out, what occurred? A. We saw a car pass by; a little after that car passed I saw the left front wheel of a car run over Miss Klein's body, and after that I fell into a temporary faint.

By the Court:

Q. The car that first passed, which way was that going—south? A. To Hackensack.

Q. That is south? A. South.

30 Q. The other car that ran over the girl, which way was it going? A. Opposite, towards Westwood.

By Mr. Rinzler:

Q. The car which passed you was going toward Hackensack? A. Yes.

Q. Did that stop or did it continue as if nothing happened? A. It continued on. It continued on.

40 Q. And the car under which you saw Miss Klein lying was going north, was it? A. Yes.

*Miss Rose Owen—Cross*

Q. Did you hear anything which attracted your attention? A. I heard screams and jamming of brakes.

Q. Where did the jamming sound come from?  
A. Why, from Hackensack.

10

CROSS-EXAMINATION by Mr. Turner:

Q. You said, Miss Owen, that a jamming sound came from Hackensack? A. Right.

Q. Just what do you mean by that? A. Why, when someone puts on the brakes suddenly and tries to stop his car, I guess.

Q. Could you tell whether the car was in Hackensack or coming from Hackensack or coming from Westwood because you heard brakes put on? 20

A. Why, yes, I saw the brakes being put on.

Q. You saw the brakes being put on, did you?  
A. Yes.

Q. Well, just tell the jury what you saw about the brakes being put on? A. I saw the man clutch at it instantly, see, and tried to stop.

Q. Saw him put his hand on the hand brake?  
A. Yes.

Q. Now, which way was that car going? A. That was going north. 30

Q. Going north? A. Yes.

Q. Was that car in a line of automobiles? Automobiles in the line, were they? A. I believe there were cars in the rear of that.

Q. Cars in front of it, too? A. Why, I don't think so.

Q. How is that? A. I don't think so.

Q. You don't think so. Do you know? A. I don't know. 40

*Miss Rose Owen—Cross*

Q. You don't know. Now, how many times did you hear brakes put on, right around that time?

A. I don't know exactly.

Q. What? A. I should judge two times.

Q. You should judge about two times? A. Yes,  
10 but I don't know exactly.

By the Court:

Q. How long did that car continue to proceed after you heard the screeching of brakes? A. Why, that went over the body of the girl.

Q. No; how far did it proceed after you first heard the screeching? A. Why, just a few feet, not many.

Q. How many is that? A. I should judge  
20 about four or five feet.

By Mr. Turner:

Q. At the time of this accident you were picking flowers, were you? A. I remained in the car.

Q. You were sitting in the Essex coach? A. Yes.

Q. Was anyone in the coach with you? A. No; myself at the time.

Q. Now, did you see the car coming from West-  
30 wood? A. No, I could not, because—which car do you mean?

Q. Well, the car that struck the girl and sent her up in the air. Did you see that car? A. No, I did not see that car.

By the Court:

Q. Did you see that car strike her? A. From the rear? You mean from Westwood?

Q. The car coming from Westwood. Did you  
40 see that car strike her? A. No, I did not.

*Miss Rose Owen—Cross*

By Mr. Turner:

Q. What did you see, if you did not see that car strike her? Did you see the girl's body?

A. I saw the one car run over her. The left front wheel of a car run over her body.

Q. Where did the body come from? A. It was 10  
on the ground when I saw it.

Q. So you did not see the girl until she had been struck and gone through the air and landed on the ground? A. Yes. The first thing I saw of that was when she was on the ground.

The Court: Did she fly up in the air?

The Witness: I did not see that.

Further CROSS-EXAMINATION by Mr. Mac- 20  
kay:

Q. You say, Miss Owen, that you did see another car pass? A. I did.

Q. And go on? A. Yes.

Q. And right after that you saw this other car coming from Hackensack ride over Miss Klein? A. Yes.

Q. You did see that? A. Yes.

Q. That car went on? A. The first car went 30  
on.

Q. Towards Hackensack? A. Yes.

Q. Immediately after that you saw the other car run over Miss Klein? A. I did.

Q. Was she four feet from the curb on the other side of the road? A. I judge her head was about that, yes.

*Miss Rose Owen—Re-direct*

*Miss Hannah Owen—Direct*

RE-DIRECT-EXAMINATION by Mr. Rinzler:

Q. Did the body of the car which ran over Miss Klein pass over her head? A. Over her body.

10 Q. I mean the body, not the wheels.

The Court: The front wheels?

A. The front wheels passed over her.

Q. What part of her did the front left wheel run over? A. Her thighs.

Miss HANNAH OWEN, sworn.

20

Direct-examination by Mr. Rinzler:

Q. Are you a sister of the last witness? A. Yes.

Q. You were also in this party of hitch-hikers? A. Yes, I was.

Q. Did you see either Irving or Herman Klein that day? A. No, I did not.

Q. Was either of them in the party? A. No.

30 Q. On the homeward journey, after the car which gave you the last hitch had parked, did you get out of the car with Miss Klein and your sister? A. Yes, I did.

Q. With Miss Klein, rather, and Miss Dingol? A. Yes.

40 Q. After you girls got out of the car what took place? A. Well, Miss Klein told me she was going to cross the street to pick some flowers, and she asked me to go along with her, but I decided to stay on the same side of the street that I was on.

*Miss Hannah Owen—Cross*

Q. Tell us what happened? A. And before I could get a chance to do anything I heard a sudden jamming of brakes, and when I did look around I saw Miss Klein lying under a car.

Q. From what direction did the sound that you heard come? A. Well, it was coming— 10

Q. From what town? A. From Westwood.

Q. Under which car was she lying? A. Under the car coming from Hackensack.

Q. Was it on its right of the road? A. Yes, it was.

Q. Under which part of that car was she lying? A. She was lying on the front—under the front left wheel.

Q. Did you hear any signals given by a bell or horn or otherwise before that? A. No, I did not. 20

Q. Is your hearing good? A. Yes.

Q. You recognize Shryer? A. Yes, I do.

Q. Is he the man that drove the car under which she was lying? A. Yes.

## CROSS-EXAMINATION by Mr. Turner:

Q. Miss Owen, at the time of this accident you were picking flowers? A. Yes.

Q. You had your back turned to the road? A. Yes. 30

Q. How far were you from the roadway? A. Well, just a few feet.

Q. Meaning how many? A. Well, I was standing on the sidewalk there.

Q. You were standing on the sidewalk with your back to the road? A. Yes.

Q. This car that came from Westwood, did you see that car? A. Well, no. 40

*Miss Hannah Owen—Cross*

Q. Did you see it after the accident? A. Yes. When I heard the—when I heard the jamming of brakes.

Q. Where was this car that came from Westwood? A. Well, it was about twenty-five feet  
10 away from the parked car.

Q. Well, how near was this Westwood car from the young lady's body after the accident? A. About twenty-five feet.

Q. Do you mean to tell us that the car from Westwood was twenty-five feet from this young lady's body as it lay in the road? A. Yes.

Q. Is that right? A. Yes.

Q. How far or how near was the other car, the  
20 car coming from Hackensack, to her body when you saw it? A. Well, she was under the car.

Q. The car was stopped? A. Yes, and she was—

Q. When you saw the car from Hackensack, that was stopped? A. Yes.

Q. And the car from Westwood was stopped? A. Yes.

Q. So that all you saw was that after the accident—you saw the thing after the accident was  
30 over? A. Yes.

Q. Was one car stopped coming from Hackensack and one car stopped coming from the direction of Westwood? A. Yes.

Q. You did not see the accident? A. Well, I just saw the wheels of the Shryer car going over Miss Klein.

Q. Didn't you tell us that the car from Hackensack was stopped when you first saw it? A. Well,  
40 I just saw the part of the wheels going over her.

*Miss Hannah Owen—Cross*

Q. Didn't you tell us that? A. Well, that was after the accident.

Q. When you first saw the car from Hackensack, didn't you say it was stopped? It was stopped after, when you saw it? A. Well, it was, yes. 10

Q. Yes, it was. That is all.

Further CROSS-EXAMINATION by Mr. Mackay:

Q. As I understand it, then, Miss Owen, you did not see the car from Westwood strike Miss Klein? A. No, I did not.

Q. You did not see that. When you turned around after you heard screams and the jamming of brakes, as you call it, the only thing that you saw was Miss Klein lying in the roadway and the car from Hackensack run over her? A. Yes. 20

Q. Is that correct? A. Yes.

Q. How far was Miss Klein on the other side of the road? Was she four feet from the curb, about? A. Which side? Of the road, do you mean?

Q. The side she was going across to. A. Well, must have been about five or six feet away. 30

Q. Five or six feet from the other side? A. Yes.

Q. Almost to the other curb? A. Yes.

Further CROSS-EXAMINATION by Mr. Turner:

Q. Just one question more. When counsel said that the car from Hackensack ran over her, did you understand by that that the car was stand- 40

*Motion to Amend Complaint*

ing there and that she was between the wheels?  
Is that your understanding of it? A. Yes.

Q. That is all.

Mr. Rinzler: That is all.

10

## MOTION TO AMEND COMPLAINT

Mr. Rinzler: If your Honor please, I should like to respectfully move for leave to amend the complaint by adding thereto allegations substantially stated as follows:

20

That there was negligence and the failure to exercise reasonable care on the part of each defendant mentioned in the complaint; and with respect to the defendant Bloom, that his negligence was attributable to his master, the corporation, for which he was servant at the time; and that the driver of each of said motor vehicles was negligent as stated, failed to exercise reasonable care, and that each automobile so driven by these respective defendants struck the plaintiff, one striking her and the other car striking her in addition.

30

The Court: Well, as I understand it, your opening claimed that they were jointly liable. You now make it two separate and distinct torts?

Mr. Rinzler: Yes.

The Court: What do you say to that? Any objection to that?

40

Mr. Turner: We do not claim surprise, your Honor. Of course, there is a legal

*Motion to Amend Complaint*

question as to whether there can be such a joinder.

The Court: I suppose I can consolidate them if it happened at the same time and occurred in the same accident.

Mr. Mackay: I have no objection, your Honor. 10

The Court: What do you say?

Mr. Turner: I think, your Honor, that as long as we are all here we might as well try this case.

The Court: That is what I think. Do you want to amend your pleadings, your reply, in any way?

Mr. Turner: No, I do not think I do. 20

The Court: Do you?

Mr. Mackay: Simply to enter the denial.

The Court: We will assume that the same defenses, same answers, may be made to these original counts. We will all assume that, I suppose?

Mr. Mackay: Yes.

The Court: Well, the amendment will be allowed, then. Call your next witness.

Mr. Rinzler: I offer in evidence the depositions taken of Dr. John J. Moorehead. 30

(Paper marked Exhibit P-6.)

(Mr. Rinzler read the deposition of Dr. John J. Moorehead, as follows:)

*Deposition of Dr. John J. Moorehead, Offered in  
Evidence*

“Deposition of Dr. John J. Moorehead, taken at his office, at 115 East 64th Street, in the Borough of Manhattan, City, County and State of New York, on the 27th day of September, 1928,  
10 pursuant to an agreement entered into between Feder and Rinzler, Esqs., attorneys for the plaintiff, Mackay and Mackay, Esqs., attorneys for the defendants Louis Bloom and Blockdel Realty Co., Inc., and Frank G. Turner, Esq., attorney for the defendant Adolph Shryer, before Isadore P. Halpern, a Commissioner of Deeds of the County and City of New York, State of New York.

20 Present:

Feder & Rinzler, Esqs., by Jack Rinzler, appearing for the plaintiff.

Mackay and Mackay, Esqs., by George Mackay, appearing for the defendants, Louis Bloom and Blockdel Realty Co., Inc.

Frank G. Turner, Esq., appearing for the de-  
30 fendant, Adolph Shryer.

Dr. John J. Moorehead, being first duly sworn by the said Commissioner of Deeds, to tell the truth and nothing but the truth in the above entitled action pending in the New Jersey Supreme Court, Passaic County, between Fannie Klein, as plaintiff, and Adolph Shryer, Louis Bloom and Blockdel Realty Co. Inc., as defendants, testified  
40 as follows:

*Deposition of Dr. John J. Moorehead, Offered in Evidence*

DIRECT-EXAMINATION by Mr. Rinzler:

Q. Dr. Moorehead, are you a licensed physician and surgeon of the State of New York? A. Yes.

Q. When were you licensed to practice that profession? A. 1897. 10

Q. From what medical college did you graduate? A. New York University.

Q. After your graduation, what did you do with respect to practicing your profession? A. I became a member of my hospital house staff and subsequently attached myself to various hospitals.

Q. Doctor, have you constantly practiced your profession since you have become admitted? A. Yes. 20

Q. Do you do surgery? A. Yes.

Q. Extensively? A. Yes.

Q. For how long? A. Practically ever since I graduated.

Q. What hospital affiliations have you now? A. I am attending surgeon and one of the professors at the Post Graduate Hospital and Medical School in New York, and am consulting surgeon at Bellevue Hospital, Harlem branch of it, and consulting surgeon in Veterans Bureau, and consulting surgeon in the Marine Hospital, and consulting surgeon in two or three hospitals outside of New York. 30

Q. You maintain your office at 115 East 64th Street, New York City, in the State of New York, do you not, Doctor? A. Yes, I do.

Q. Doctor, did you have occasion to professionally examine and treat the plaintiff, Miss Fannie Klein? A. Yes. 40

*Deposition of Dr. John J. Moorehead, Offered in  
Evidence*

Q. Can you tell us, please, when she first came under your observation? A. Yes, on the 24th of September, 1927.

Q. Where did you first see her? A. At Post  
10 Graduate Hospital, New York City.

Q. Was she confined there? A. Yes, she was.

Q. Did you examine her? A. Yes.

Q. What did you find; what did your examination disclose? A. I found that she had a fracture of both thighs, known as multiple fracture of both femurs; that she also had a swelling and discoloration in the region of the left temple.

Q. Do you specialize in surgery, Doctor? A.  
20 I do.

Q. And have been for how long? A. For fifteen to twenty years.

Q. Doctor, will you please tell us what you mean by a multiple fracture? A. It means a fracture of a bone in many sites or many levels.

Q. In that respect it is distinguishable from a simple fracture? A. Yes.

Q. And there was that type of fracture in both bones of each leg? A. Yes, that is, in each bone  
30 of each thigh.

Q. When you first observed Miss Klein, was she confined to the bed at the hospital? A. Yes, she was.

Q. Was her confinement to bed, in your opinion, necessary? A. Yes.

Q. Was it possible for her to use her limbs or walk? A. No.

Q. As a result of the condition in which you  
40 found Miss Klein upon your examination of her,

*Deposition of Dr. John J. Moorehead, Offered in  
Evidence*

what treatment did you deem necessary and what did you actually do for her? A. On my complete examination, which was supplemented by X-ray examination, I found it necessary to attempt a setting, a re-setting of her thighs, and after I had made this further examination I found that in addition to a fracture of both thighs, that she had on one side a fracture of the top of the shin bone, technically known as tibia, and that she also had a fracture on the opposite side, not only of the thigh but also of the knee-cap. 10

Q. Doctor, the shin bone of which leg was fractured? A. Right.

Q. And the knee of which leg? A. The left. 20

Q. The X-ray confirmed your diagnosis? A. Yes, the X-ray showed that.

Q. What treatment was then given to her, Doctor? A. Then, on the 27th of September, 1927, I took her to the operating room and I performed an operation which goes by the name of a transfixation operation, which consists in putting the patient to sleep in the ordinary way and then passing a steel pin about eight inches long and about five-sixteenths of an inch thick through the thigh bone, leaving it to extend out on either side of the thigh, and then this pin is on each side protected by certain gauze dressing, and when the patient is returned to bed a weight is attached to this pin with the idea of drawing down into place the bones which have been over-lapping, and she remained in that apparatus for considerable time. 30

Q. Does the operation and the after-effects cause pain to the patient, Doctor? A. Yes. 40

*Deposition of Dr. John J. Moorehead, Offered in  
Evidence*

Q. And did it cause her pain? A. Oh, yes.

Q. In what measure, Doctor? A. Considerable pain.

10 Q. She continued to be in the condition that you describe with the weights and other instruments used in treating her for how long, Doctor?  
A. For a matter of several weeks. I should have to look up the record to show just exactly how long.

Q. Then, for several weeks, the pins and apparatus were used, were they not, Doctor? A. Yes.

20 Q. And during that time she was not able to leave her bed, was she, Doctor? A. No, she was not.

Q. In what position was she obliged to lie? A. Flat on her back.

Q. And that treatment and the operation was necessary, was it? A. Yes.

30 Q. And after the lapse of those several weeks, Doctor, what did you then find and what did you do for her? A. I have a note that on the 10th of October she was again taken to the operating room, and it was then found that the right thigh was not doing well, and a plaster of paris dressing was applied to the right thigh, and an examination was made of the condition of the left thigh. Then I have another note showing that on the 3d of November—

40 Mr. Turner: I don't like to interrupt you, Doctor, but does this mean that you did these things yourself?

*Deposition of Dr. John J. Moorehead, Offered in Evidence*

A. Yes, and these notes were made in the operating room as a result of my own dictation. On the 3d of November, she was again taken to the operating room and a re-application was made of the plaster of paris dressings. They were allowed to remain in place until the 5th of December, when she was again taken to the operating room and another application of splintage was made, and it was then noted that the right thigh had still failed to unite. Now, on the 15th of February a note in my own handwriting on the history of the case, says that she had been up and around on crutches for three days. That was the first time that she had been up and out of bed. 20

Q. How long had she the splintage on? A. Up to early February, I should say.

Q. Did she continue to use the crutches, and necessarily so, from the time you just mentioned a moment ago? A. She did. The final note dictated to the house surgeon by me was that she was discharged in a much improved state and that she was able to walk using crutches.

Q. When was that? A. The 17th of February, 1928. 30

Q. And she was under your treatment and observation up to that time? A. Yes.

Q. After that time was it necessary for her to go back to the hospital for treatment? A. Yes.

Q. Was it necessary? A. Yes.

Q. Did she? A. She did.

Q. What made it necessary? A. She came to the hospital because of stiffness in the knees and inability to bend the knees. 40

*Deposition of Dr. John J. Moorehead, Offered in  
Evidence*

Q. That was due to the injuries which you found on your first examination of her? A. Yes. And may I add that the right knee could scarcely be bent at all?

10 Q. She went back to the hospital on what date? A. April 25, 1928, and she remained that time until the 29th of April.

Q. And what did you do for her there, Doctor, during that period? A. I manipulated her thighs, under an anesthetic, that is, I bent them to try to overcome the stiffness.

Q. With what result? A. Not much, I am sorry to say.

20 Q. Was it possible to have attained any better result up to that time, Doctor? A. In my judgment, no, because of the fact that the callus in her thigh bones was not hard and also because she had fractures below the knee and that it would be unsafe to use much force.

Q. So that condition was surgically unavoidable? A. Yes.

Q. Was she still under pain, in your judgment, during that time? A. Oh, yes.

30 Q. After her second discharge from the hospital, what occurred, so far as her case was concerned? A. She became an office patient, and she again entered the hospital, at my suggestion, on the 23d day of May, 1928. She was discharged on the 29th of May.

40 Q. For what reason did you find it necessary for her to go again that third time? A. Again because of the stiffness of the knees, particularly the right knee.

*Deposition of Dr. John J. Moorehead, Offered in  
Evidence*

Q. What did you do for her during her stay there during that period? A. At that time I performed a cutting operation which goes by the name of fasciotomy, which means that the tissues under the skin are crosscut, with the idea of relieving or releasing adhesion so that the parts can be made to bend or give. 10

Q. Was it a necessary operation? A. Yes.

Q. Was it painful? A. Oh, yes.

Q. She was discharged then on what day? A. On May 29th, 1928.

Q. Did you see her after that for treatment again? A. Yes.

Q. Was she again an office patient? A. Yes. 20

Q. Did she come quite frequently? A. She came at intervals until I went away at the country the latter part of June of this year.

Q. Was she left under treatment during your absence? A. Yes, one of my associates looked after her during my absence.

Q. You returned about when? A. About the 12th or 13th of September.

Q. And then did you again take care of her, or take her under your care for treatment? A. Yes, she was here on the 18th of September at my office. 30

Q. What was her condition? A. I noted she still walked with a limp and a curious sort of wobble; that she was able to bend her left knee to a right angle, and that is straightening it, it over-straightened, showing that she had sustained some injury to the deeper ligaments of her leg.

Q. What disability would that produce? A. It would produce unsteadiness in her gait. 40

*Deposition of Dr. John J. Moorehead, Offered in  
Evidence*

Q. Is that permanent? A. Yes. And on the right side, she was able to bend that knee from a straight line only about fifteen degrees, and when she walked, it was noted that she toed in very  
10 decidedly.

Q. Were all those conditions the approximate result of the original injury? A. Yes.

Q. On your return, was her condition as good, as far as improvement was concerned, as could be expected, from the said injury? A. I should say yes.

Q. Did you find it necessary, Doctor, to continue her under your observation and treatment?

20 A. Yes, she still is under my observation and treatment, and I shall have to do something more for her.

Q. After your return, Doctor, did she go to the hospital again? A. You mean after—just now?

Q. You said you were absent for a time and left one of your associates in charge, and took her under your personal treatment on your return home? A. She has had no other hospital attention except as I have mentioned before.

30 Q. At the Post Graduate Hospital? A. Yes.

Q. Where is the Post Graduate Hospital located, Doctor? A. At Second Avenue and 20th Street, New York City.

Q. All told, how long was she confined, in the aggregate, at the Post Graduate Hospital in New York City? A. Her first stay was from September 24, 1927, to February 17, 1928. Her second stay was from April 25, 1928, to April 29, 1928.  
40 Her third stay was from May 23, 1928, to May 29, 1928.

*Deposition of Dr. John J. Moorehead, Offered in  
Evidence*

Q. Is she still under your care and treatment?

A. Yes.

Q. What are the reasonable charges for her confinement to the hospital for that time? Give us the aggregate. 10

Mr. Turner: I don't suppose the doctor can qualify, but if he knows—

A. I know that those are the ordinary bills they send out and these are the bills that have been attached to her record (indicating the bills of the Post Graduate Hospital), and I assume they are authentic. They come from the Treasurer's office. I assume they are accurate. The 20 first bill is for 146 days, for her care, including nurses, operating room and laboratory expenses, amounting to \$994.30. Her second stay amounted to \$76.25. Her third stay, \$58.50.

Q. Those are the usual, and they are reasonable charges, are they not? A. Yes.

Q. Doctor, when did you last see Miss Klein?  
A. September 18, 1928.

Q. What was her condition then, as a result of the injuries you describe? A. Her condition 30 was, she could bend her right knee only about fifteen degrees from a straight line; that she walked with a limp; that she had a peculiar swaying, wabby gait and that in walking she toed in, and that she carried a cane.

Q. Was that necessary? A. Yes.

Q. Are those conditions, in your opinion, permanent? A. Yes, with this modification—that I believe a further operation on the right thigh 40

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Evidence*

will give her more bending power, but I am quite certain that that over-straightening of the left knee will be a permanent condition. I am quite certain that I will not be able to bend that right  
10 knee very much more. I am quite certain that she will have a permanent defect in her gait.

Q. Will a further operation, that which you expect to perform, for the purpose of giving her the added relief you hope to get, will that require another operation and further confinement at the hospital? A. Yes.

Q. And how much time do you think and how much of an expenditure and outlay will that further treatment and hospital service necessitate?  
20

A. It will mean a week or ten days in the hospital with the ordinary hospital charges, and the operation will have to be a cutting operation.

Q. And the whole thing, all told, what do you think will be the reasonable expense of all that?

A. The hospital costs will be at the rate of \$5 per day. The operating room charges will be \$25 or \$50, and if she has any more X-rays, she will have to pay \$5 to \$5 per plate for them.  
30

Q. Do the hospital bills incurred already include payment of X-rays? A. Yes.

Q. So far as your own charges to date are concerned, Doctor, what do you consider a reasonable charge for same to date? A. On October 13, 1927, I rendered Miss Klein a bill for \$500.

Q. Does that bill include services and treatment given her since the rendering of that bill to date or not? A. It does not include the subsequent hospital attention. It includes up to that  
40 time.

*Deposition of Dr. John J. Moorehead, Offered in Evidence*

Q. What do you consider will be the fair and reasonable charge for the services you gave her and the treatment you have given her to date since the rendition of the first bill? A. I should say about \$350. 10

Q. In the aggregate, the reasonable charge for your services and treatment to date would be about \$850? A. Yes.

Q. What do you consider, Doctor, will be the fair and reasonable cost or charge to perform the further operation which you say is necessary and which you expect to perform, including your care and treatment afterwards? A. If it is an operation similar to the one I have already performed, somewhere in the neighborhood of \$150 to \$200. 20

Q. Do you expect it to be of that nature? A. Yes.

Q. The lameness inflicted as a result of this injury is easily apparent, is it not, Doctor? A. Oh, yes.

Q. As you observe her in her present condition, is there a turning out of one or both of her legs? A. Oh, yes, there is angulation. 30

Q. Is that apparent? A. Yes.

Q. Is it necessary for her to still use a cane in walking? A. Yes.

Q. Will she ever be a normal person physically, Doctor? A. She will always have a deformity of both lower extremities, and she will always have an abnormal gait and lameness.

Q. Will she always have to use a cane or some other foreign aid in walking, in your opinion, Doctor? A. If this further operation is success- 40

*Deposition of Dr. John J. Moorehead, Offered in  
Evidence*

ful, it will, I think, give her balance enough to dispense with her cane.

Q. Is it your opinion that it will be successful, Doctor? A. I am quite hopeful. One object is  
10 to give her about ten degrees more motion in that knee. If I can give her that I feel that it will let her dispense with the cane.

Q. How long will that take, in the event that you succeed with the operation? A. Probably six weeks to two months after the operation.

Q. Doctor, what, in your opinion, is the loss of function, use, and disability in her limbs as a result of the injury? A. The percentage loss?

20 Q. I mean the permanent percentage loss. A. In the left lower limb, I should say the percentage loss was somewhere about twenty-five to thirty per cent, in the left. In the right, at this stage, sixty to seventy per cent loss.

Q. Doctor, the injury which she suffered in the region of the left temple, did that heal up? A. Yes.

Q. You say she still feels pain in walking and going about, Doctor? A. Yes. Oh, yes.

30 Q. In your opinion, Doctor, has she ever since this injury been able to dance, run, or engage in any sports or athletics at all? A. No.

Q. She will have that permanent injury you mention; is that correct? A. Yes.

Q. Was it necessary for her to get massages, and was it your advice that she get them? A. Yes.

Q. And did she get them? A. She did.

40 Q. As a matter of fact, she cannot now walk without the cane, can she, Doctor? A. I think

*Deposition of Dr. John J. Moorehead, Offered in  
Evidence*

she could go short distances, but I think it unsafe, except across the room, or place where she had familiarity with.

Q. Doctor, can you tell us something about the fracture to the shin? A. It was a fracture into the knee joint on the right side through what is known as the head of the tibia. 10

Q. I think you said the bones fractured in each leg were the tibia and fibula? A. No, I said in each thigh the bone fractured is known as the femur.

Q. What bone is that? A. That is the bone which extends from the knee to the hip.

Q. What function does it play in the limb? A. Why, it is the main support in carrying our weight and letting us walk. 20

Q. That was fractured in each limb? A. Yes.

Q. Did you find it necessary to see that Miss Klein was provided with braces? A. Yes, she had a double brace at first to take the place of the splints and to give her support during the time the bone was knitting.

Q. How long did she wear these braces? A. A matter of several weeks. 30

Q. That was necessary? A. Oh, yes.

Q. Would you say \$40 would be a reasonable charge for those braces? A. Oh, yes.

Q. In your opinion, Doctor, will Miss Klein ever be able to dance? A. Not with facility and with considerable difficulty, I should say.

Q. Would it be a sightly thing for her to dance, Doctor? A. Not in her present condition.

Q. Would you say, Doctor, that she could go horseback riding and skating, either roller or ice 40

*Deposition of Dr. John J. Moorehead, Offered in  
Evidence*

skating? A. No, not under present circumstances, she could not.

Q. Her defect will be permanent? A. Yes.

10 CROSS-EXAMINATION by Mr. Turner:

Q. If this operation is successful, there will be no reason in the world why she could not go horse-back riding, is there, Doctor? A. I don't expect that I can get anything more than a right-angle bending in that knee.

Q. What effect will it be in percentage if the operation is successful? A. If the operation is successful, I expect it to be cut down from in-  
20 stead of sixty to seventy per cent loss, to forty to fifty per cent loss.

Q. You said in your testimony that you re-set the bones? Had they been re-set before she came to you? A. An attempt had been made to set them.

Q. You don't know any of the details as to who had attempted to set them before? A. No, I only know the effect.

Q. The attempt, however, had been made by  
30 a medical man, somewhere? A. I understand so, yes."

Plaintiff rests.

MOTION FOR NONSUIT

40 Mr. Stalter: May it please the Court, in the renewal of my motion for a nonsuit on behalf of Mr. Adolph Shryer, I base it upon the following ground: that a *prima-*

*Motion to Strike Out Complaint*  
*Motion for Nonsuit*

*facie* case has not been made out against Adolph Shryer.

The Court: It seems to me that it is a question for the jury, and I will deny it. You may note an exception. 10

MOTION TO STRIKE OUT COMPLAINT

Mr. Mackay: I would like to make a motion at this time to strike out of the complaint in the first paragraph or first count, paragraph six, the word "malicious." I do not think there has been any testimony before the Court about any malice. 20

The Court: What do you say?

Mr. Rinzler: There is no evidence of malice, but there is no reservation of a motion to strike out anything in the complaint.

The Court: I will strike out the word "malicious."

MOTION FOR NONSUIT

Mr. Mackay: If your Honor please, I also would like at this time to move for a non- 30  
suit in so far as the defendant Blockdel Realty Company is concerned. I think the plaintiff's case has established clearly that the defendant, Mr. Bloom, owned this car personally and that he was simply taking a ride on this Sunday for pleasure.

The Court: It does not seem to me to be any evidence to hold the Blockdel Realty Company, and I will grant the motion as 40  
to that defendant.

Mr. Rinzler: May I have an exception?

*Adolph Shryer—Direct*

DEFENDANTS' TESTIMONY

ADOLPH SHRYER, re-called.

Direct-examination by Mr. Turner:

10 Q. What is your business? A. Merchant, wholesale stationery.

Q. Where are you located in business? A. Passaic, New Jersey.

Q. How long have you been located there? A. Seven years.

Q. And on the day of this accident were you driving an automobile? A. Yes.

Q. What kind? A. Chevrolet.

20 Q. How old a car was it? A. I bought the car in May.

Q. And the accident happened in September? A. Yes.

Q. Same year? A. Same year.

Q. How long had you been driving automobiles? A. Since 1921.

Q. What was the condition of this car in so far as its steering qualities and brakes were concerned? A. The car was practically new, as I  
30 only drive locally in Passaic.

Q. Was it a coach? A. A coach.

Q. That means there is one door on each side? A. One door on each side only.

Q. Room for four occupants? A. Four or five.

Q. Where did you start from that day? A. From Mr. Bodner's house.

Q. In Passaic? A. Yes; that is, from my house and picked up Mr. and Mrs. Bodner, in-  
40 vited them for a ride.

*Adolph Shryer—Direct*

Q. Who was in the car with you? A. Mr. Bodner in front with me, Mrs. Bodner and my wife and my baby in the rear.

Q. Did you go to Hackensack? A. Yes.

Q. Then did you go out on the Kinderkamack Road, which would be the direction of Westwood? 10

A. I did.

Q. At the place where this accident happened were there any cross-streets there, any street intersections? A. Not that I noticed.

Q. Open country? A. Open country, but not intersections, no cross-roads.

Q. It was open country? A. Open country.

Q. Fields on the sides? A. Fields.

Q. Not a built-up city section? A. No. 20

Q. How about the traffic just before the accident? Was it heavy or light? A. The traffic was very heavy.

Q. When you say it was very heavy, just tell the jury what you mean by that. A. I kept on shifting—stopping, first, second, back to high, and back to second.

Q. Well, how close together were the automobiles? A. Twenty-five or fifty, sometimes somebody slows up, so we keep in line with them. 30

Q. Were there two lines of traffic or only one? A. One line on each side.

Q. One line going towards Westwood? A. One line coming the other direction.

Q. Now, will you tell us just what you saw of this accident? Tell us what you noticed. A. I noticed the young lady coming out from the left side of the road.

Q. That was your left? A. My left. Left side 40 of the road.

*Adolph Shryer—Direct*

Q. How was she traveling? A. She ran into the middle of the road.

Q. Ran into the middle of the road? A. Ran.

Q. Then what did you see happen? A. She was hurled by an approaching car into the air  
10 quite far, about fifteen feet, and then toward my car.

Q. Did you see where she was when she landed on the ground? I mean, did you see her land on the street? A. I did see her land, but I didn't see her down there; she was picked up too quick.

Q. When she did land how far was she from your car? A. According to the people that picked her up, about four feet.

20

Mr. Rinzler: I object.

The Court: No, no.

Q. I want what you saw. A. I say, according to the people I seen pick her up.

Q. All right. When was she picked up? A. I don't say according to anybody's statement. I say according to the people I seen pick her up. I did not see the body down there. I seen her  
picked up.

30

Q. Just answer the questions and do not answer Mr. Rinzler at this time.

Mr. Rinzler: I have not asked him.

The Court: He says he is not going to say what they said, but where they were.

No; I say, I have seen the people lean down pick her up.

40

Mr. Rinzler: He just said he didn't see a body down there; he was going to tell

*Adolph Shryer—Direct*

where he saw the people that picked her up.

The Court: You may proceed.

Q. This place where the people picked her up from the road, how far was that from your car? 10

Mr. Rinzler: I object.

A. Four feet to my left.

Mr. Rinzler: I object. He said he didn't see the body picked up. He only saw the people. He could tell where the people were where he saw them picking her up.

The Court: Yes; he didn't see them actually pick her up, these people whom he assumed picked her up. 20

Q. Did you see the people picking up the girl?

A. Yes.

Q. Well, when they picked her up could you see any part of her body? A. I seen the body when they carried her.

The Court: When they carried her, but when they picked her up? 30

Q. When they picked her up did you see any part of her body? A. Yes, certainly, I seen them pick up the body and carry her away.

Q. What I want to know, how far was that from the front of your car? A. It was not in front of my car, it was facing—

Q. Was it sideways? A. Facing my front wheel, parallel with my front wheel.

Q. Parallel with the front wheel. 40

*Adolph Shryer—Direct*

The Court: That was after. You did not strike her?

The Witness: I was stationary. I was not riding at the time she was hurled.

The Court: You were not riding?

10

The Witness: I stopped before then.

Q. Now, you said they picked her up parallel with your front wheels? A. Yes.

Q. How far was that from your left front wheel? A. About four feet.

Q. When you say parallel do you mean alongside? A. Alongside.

Q. Four feet? A. Four feet.

20 Q. Now, did your automobile or any part of it come into contact with this girl? A. No.

Q. You mean to say that your fenders or your wheels or any part of your car touched this girl? A. No part of my automobile touched it.

Q. Now, there has been testimony here that she lay between your front and your rear wheels. Bearing in mind that you have testified that she was parallel, will you just tell us how she was parallel? Parallel with what part of your car? A. Front left wheel. Parallel to the front left  
30 wheel.

Q. Parallel to the front left wheel? A. Yes.

Q. Which part of her body was toward the front and which was towards the rear? A. That I could not say.

Q. You couldn't tell that? A. No.

The Court: Was she lying with her head or feet toward the curb?

40

The Witness: That I didn't see; they picked her up so fast and ran away.

*Adolph Shryer—Direct*

Q. Did your car run over her or not, or did it run over anything at all? A. No, sir; my car was stationary.

By the Court:

Q. Who picked this girl up? A. Two men. 10

Q. Do you know who they were? A. No.

By Mr. Turner:

Q. Well, do you know now who they were? A. Only what I heard in court.

Q. Did you see Mr. Bloom here? A. I seen Mr. Bloom.

Q. Was he one of the men that picked her up? A. I don't know.

Q. How fast were you actually traveling when you applied your brakes? A. About twelve to fifteen. 20

Q. How far did it take you to stop your car? In other words, how many feet did your car travel from the time you put on your brakes until you stopped? A. At first I just applied my brakes and then I jammed them.

Q. Yes. How far did your car travel after you jammed on your brakes? A. After I jammed the brakes on it stopped, my car stopped. 30

Juror No. 6: How fast were you going at the time this bundle was hurled in the air?

The Witness: Between twelve to fifteen miles; faster was not possible.

Q. Why couldn't you go faster than that? A. I couldn't run into another car.

Mr. Rinzler: I object to that as calling for a conclusion. 40

The Court: I will permit the question.

*Adolph Shryer—Direct*

Q. The car in front of you, how fast was that going? A. We were all traveling the same speed.

The Court: No, no; not all. How fast was this car in front of you going? The car right in front of you?

10

The Witness: About the same speed I went.

Q. How far had these lines been traveling at that rate of speed? A. How far?

Q. When did you get into the line of traffic? A. Oh, leaving Hackensack, about two miles out of Hackensack.

Q. Did you ever get out of the line of traffic at all from that time until the accident? A. I did not.

20

Q. Now, did you see what kind of a car it was that struck this girl? A. Yes.

Q. What kind was it? A. A Pontiac.

The Court: Open or closed car?

The Witness: Closed.

Q. Did this girl, after she was struck by the Pontiac, travel in the air in a straight line or did she go diagonally? A. Diagonal.

30

Q. Now, this Pontiac that struck the girl, on which side of the road was it? A. It was quite centrally, because it had to go around this parked Essex car.

Q. Went around the parked Essex car? A. Well, the Essex car occupied the extreme right and any car that had to pass had to pass up the Essex.

40

Q. Was any part of this Essex car on the paved part of the road? A. It was parked on the extreme right.

*Adolph Shryer—Direct*

Q. Well, you know what I mean by the paved part of the road; I mean the traveled part of the road. Was it on the extreme right of the traveled part of the road or was it off the asphalt part of the road? A. It was parked close to the curb, but I don't remember just how far 10 the macadam extends.

Q. I see. Now, when this Pontiac came around the Essex could you tell us about how much space there was between the Essex and the Pontiac? A. I couldn't exactly, no.

Q. Now, this Pontiac, after it struck the girl, what did it do? A. Proceeded and stopped in back of me.

Q. Back of you? A. Of me, about seventy-five 20 feet or more.

The Court: He stopped seventy-five feet behind you?

The Witness: Behind me. Proceeded on the same direction as that car was traveling.

Q. After the accident you said that these two men picked up the girl? A. Yes.

Q. What did they do with her? A. When I 30 got off my car I seen them start off with that car already; they had the girl packed in that car.

Q. What car was it that took the girl away? A. That same car, that same Pontiac.

Q. Pontiac? A. Yes.

By the Court:

Q. How far were you from the girl when you first saw her lying on the road? A. Must have been about—when I saw her lying in the road? 40

*Adolph Shryer—Cross*

Q. Yes. A. Lying in the road? I was standing then.

Q. That is the first time you saw her, when you were standing? A. Oh, no. I seen her when I was driving.

10 Q. How far was she when you first saw her?  
A. Not lying in the road.

Q. What was she doing? A. She alighted from the other car and ran into the road.

Q. Was she running when you stopped? A. She alighted from that other car and ran into the center of the road.

Q. Go ahead.

20 CROSS-EXAMINATION by Mr. Rinzler:

Q. You were driving a Chevrolet? A. Yes.

Q. In first-class condition? A. Yes.

Q. Good as new? A. Yes.

Q. Brakes better than new? A. Yes.

Q. Worked in right? A. Yes.

Q. Eh? A. Yes.

Q. You were watchful and observant on the roadway as you traveled? A. Yes.

30 Q. Who sat in front of you? A. In front of me?

Q. I mean, in front with you? A. Mr. Bodner.

Q. What is his first name? A. Hyman Bodner.

Q. Who else sat in the car? A. Mrs. Bodner and my wife.

Q. What is her name? A. Mrs. Sarah Bodner.

Q. What is your wife's name? A. Bertha.

Q. So there were four in the car? A. Yes.

40 Q. You have two sets of brakes? A. Two sets of brakes.

*Adolph Shryer—Cross*

- Q. Foot brake? A. And emergency.
- Q. All in perfect condition? A. Yes.
- Q. Likewise was the emergency brake? A. Yes.
- Q. Perfect condition? A. Yes.
- Q. You applied both the foot brake and the emergency brake? A. At first the foot brake only, then I jammed both. 10
- Q. How far did you travel ultimately before the accident with two brakes jammed, thoroughly applied? A. When I jammed the brake I stopped.
- Q. But you did jam both brakes? A. Yes.
- Q. Now, I think you said that there was quite some congestion on the road in both directions? A. Yes. 20
- Q. There was a constant, steady stream or line of traffic in each direction? A. Yes, sir.
- Q. And the cars were traveling about twenty feet apart from each other? A. I didn't say twenty.
- Q. Well, how many would you say? A. Fifty or more.
- Q. Fifty or more? A. Yes, sir.
- Q. Do you say to this Court and jury that the cars were traveling fifty or more feet apart at the rate of about twelve to fifteen miles an hour? A. Yes. 30
- Q. For how many miles did you travel that way at the rate of twelve to fifteen miles an hour? A. I travel that way all the time, because I wasn't in no particular hurry.
- Q. You are never in a hurry, I understand. A. Not at that time. 40

*Adolph Shryver—Cross*

- Q. On that day before the accident for how many miles and for how many hours had you been traveling before the accident at the rate of twelve to fifteen miles an hour? A. I traveled about one hour.
- 10 Q. Where did you leave? A. Passaic.  
Q. Passaic is a city, isn't it? A. Yes.  
Q. With considerable business districts? A. Yes.
- Q. On what street did you live? A. I started from Offert Street, that is about Bloomfield Avenue.
- Q. In Passaic. About what time? A. That I don't remember.
- 20 Q. Oh, let us have the time, approximately. A. Ought I to make up the time?  
Q. I am not asking you to make up the time. A. I don't remember the exact time.  
Q. Have you made up anything so far? A. I have not.  
Q. All right. About what time did you leave? A. I don't remember the exact time.  
Q. Well, was it right after midnight of the day? A. It was in the afternoon.
- 30 Q. About what time in the afternoon? A. Must have been around three o'clock.  
Q. When you left your home what course did you take from Offert Street? A. Down Passaic Street.  
Q. That is a business district, isn't it? A. Yes.
- Q. Did you travel twelve to fifteen miles an hour there? A. Yes.
- 40 Q. On Offert Street, too? A. Yes, sir.

*Adolph Shryer—Cross*

Q. Offert Street is a residential district, isn't it? A. Yes.

Q. This was on a Sunday? A. Yes.

Q. There are no trolleys running on Passaic Street, are there? A. No.

Q. There weren't any trolleys running on the day of this accident? A. No. 10

Q. Then you went down to Wall Street, didn't you? A. Yes.

Q. You crossed the bridge? A. Yes.

Q. Then you entered Garfield? A. Yes.

Q. And Garfield is a much smaller municipality than Passaic, isn't it? A. Yes.

Q. There are two trolleys running in Garfield? A. No. 20

Q. Then from Garfield you went into Lodi? A. Yes.

Q. Lodi is a borough? A. Yes.

Q. There are no trolleys running in Lodi? A. No.

Q. Then through Lodi where did you go? A. Union Avenue.

Q. On Union Avenue is an open country road, isn't it? A. Yes.

Q. Then from there where did you go? A. 30  
Then I turned left into Hackensack; I don't know the name of the street.

Q. That is open country road, isn't it? A. Yes.

Q. Kinderkamack Road was an open country road, wasn't it? A. Yes.

Q. How many miles had you traveled from the time you started from your home to the time of the accident? A. I traveled about an hour. 40

*Adolph Shryer—Cross*

Q. How many miles? A. I don't know how many miles.

Q. Two miles? A. Is it two miles from Passaic?

10 Q. About how many did you travel? A. As far as it is from Passaic to there.

Q. About how many miles? A. I don't know how many miles.

Q. Well, how long have you been driving an automobile? A. Seven years.

Q. You are in the confectionery business? A. Stationery.

Q. You drive a car for your business? A. Yes.

20 Q. You are driving in all these suburban municipalities or up near Passaic; right? A. Yes.

Q. Including the towns that you went through on the day of this accident? A. Yes.

Q. You had been to those towns before many times? A. Not many times; I am not acquainted there.

Q. How many times? A. Several times.

Q. But you won't attempt approximately even the distance that you had traveled before you had this accident? A. About ten miles.

30 Q. You left the house at three o'clock, approximately, did you? A. Yes.

Q. The accident happened about five o'clock, didn't it? A. Five, or less than that.

Q. About what time? A. Between four and five.

Q. Had you made any stops? A. No.

40 Q. So that for two hours approximately you traveled at the rate of twelve or fifteen miles an hour on a Sunday on mostly the country, open

*Adolph Shryer—Cross*

country road, without making a stop, and covered about ten miles; right? A. Considering all the stops in Hackensack and Garfield and Passaic, intersections.

Q. Well, did you? A. Yes.

Q. Where did you stop in Passaic? A. I 10  
observe every stop sign.

Q. Every what? A. I observe every stop signal there is.

Q. In Passaic you have one stop sign, the first one being the corner of Main Avenue and Passaic; right? A. Yes.

Q. Then you travel all the way down to Second Street for the next one, don't you? A. Yes.

Q. Then there isn't another stop sign on the 20  
route into Passaic, is there? A. On River Road in Garfield.

Q. I mean Passaic. A. No.

Q. Not until you get to the River Road across the bridge in Garfield do you reach the first stop sign in Garfield? A. Yes.

Q. Then there isn't another stop street in Garfield at all, is there? A. No.

Q. And the first stop signal that you come to 30  
next is in Lodi? A. Yes.

Q. On the extension road, which is the extension of Main Street? A. Yes.

Q. Where the road turns off to Hackensack? A. Yes.

Q. Then the next one you don't hit until you get to Market Street; isn't that right? Along the river there it is all open country? A. Next one, I believe, is in Hasbrouck Heights.

Q. How far away is that? A. That is the next 40

*Adolph Shrager—Cross*

light from Lodi—Hasbrouck Heights, an intersection.

Q. There is no sign there, is there? A. Always.

Q. At that time? A. Yes.

10 Q. On what street? A. I remember that sign at least four years.

Q. On what street? A. Coming up from Forty-second Street to the ferry.

Q. You have given us four signs now; is that right? A. That is the fifth sign.

Q. Now, you are not in the habit of driving faster than twelve to fifteen miles an hour, are you? A. Positively not, with my family in.

20 Q. Well, then, you are not in the habit of driving twelve to fifteen miles an hour? A. I drive more carefully when I am with myself.

Q. Not when your wife is with you? A. When my wife and baby are with me I take more care.

Q. What is the fastest you ever drive under those conditions? A. With my wife and baby?

Q. Yes. A. She will not allow me to drive faster.

30 Q. What is the fastest you drive under those conditions? A. Fifteen to twenty miles.

Q. Does she molest you when you drive the car? A. She doesn't have to molest me.

Q. Is she rather— A. She tells me not to drive fast.

Q. Is she a back-seat driver? A. She sits in there with me.

Q. But acts as a back-seat driver, doesn't she? A. I don't know just what you mean.

40 Q. Does she drive the car? A. No.

*Adolph Shryer—Cross*

Q. Your brakes were in good condition? A. Yes.

Q. And you can stop, when you are going twenty-five miles an hour, in ten feet, can't you, with two brakes in excellent condition applied on a dry road? A. Yes. 10

Q. So that you could travel twenty-five miles an hour and make a stop within ten feet, couldn't you? A. I suppose if necessary.

Q. Don't you know whether you could? A. I suppose so.

Q. Well, don't you know, from your experience as a driver, from your experience in driving that type car, and from your knowledge of the conditions of the car, in particular its brakes? Don't you know? A. Well, yes. 20

Q. You didn't stop your car in twenty feet on the day of this accident, did you? A. I applied my brake.

Q. Yes or no, sir. On the day of this accident you did not stop your car within the distance of twenty feet or ten feet, rather, did you? A. No.

Q. On the day of this accident, Shryer, you did not stop your car in a distance of even twenty-five feet, did you? A. I did. Less than that. 30

Q. In how many feet did you stop? A. About twenty to twenty-five.

Q. About twenty to twenty-five? A. Yes.

Q. You were driving then at the rate of twelve to fifteen miles an hour? A. Yes.

Q. Although when you travel under the same conditions twenty-five miles an hour you can stop in twenty feet; is that right? A. Yes.

Q. Now, you saw this girl enter the road, didn't you? A. I did. 40

*Adolph Shryer—Cross*

Q. You saw her run into the road? A. Just as soon as I saw her running I jammed the brakes.

Q. Wait a minute, Shryer. We shall get to that point. You saw her rush into the road? A. Yes.

10 Q. Cars were ahead of you? A. Yes.

Q. There was a stream of traffic in each direction? A. Yes.

Q. Did you see her run by looking over the cars which were in your line and also in the line going towards Hackensack? A. I had a clear vision to the left.

Q. Was your vision by looking over the cars in each line of traffic? A. I seen the girl to the  
20 left, not over the cars.

Q. Was your vision by looking over the cars in each line of traffic? A. No.

Q. Well, how did you see her with this heavy stream of traffic that way steadily flowing in each direction? A. At that moment there was no car interfering.

Q. Well, do you want to say to this Court and jury now, at this time, that the heavy traffic stopped? A. The traffic did not stop.

30 Q. Well, up to that point it was heavy, wasn't it? A. It was heavy; after that, too.

Q. But for that one fleeting moment it subsided, it was not heavy any more; is that right? A. I observed the girl coming out of the car.

Q. Do you say to this Court and jury that for that one second the traffic was not heavy and therefore you were able to see? A. The traffic was just as heavy and I have observed the girl  
40 come out.

*Adolph Shryer—Cross*

Q. How did you observe her come out? A. By seeing her.

Q. How did you see her? Over the cars? A. I seen her.

Q. By looking over the cars? A. With my eyes I seen her coming out of that car. 10

Q. Without being smart, Shryer, did you look over the cars? A. No.

Q. How did you see her? That is what we want to know. A. I seen her coming out of that car.

Q. Out of what car? A. Out of that Essex, from the side of that Essex.

Q. Right in back of it? A. She came out from the side.

Q. Right in back of the car? A. Back of which car? 20

Q. The Essex. A. No, from the side of the Essex.

Q. Suppose this is the car (illustrating), the Essex, towards that wall to which I look, beyond Hackensack. This is the door on the right side of the car. A. Yes.

Q. Was she coming from in back of the car? A. From the side of the car.

Q. From the side of the car? A. From the right side of the car. 30

Q. Then she walked in back, didn't she? A. She came out from the side of that car and walked into the center of the road.

Q. Did you see her when she came out of the door of the car? A. No, from the side of the car.

Q. Did she pass in front of the car or the back of the car? A. She passed in the front of that car. 40

*Adolph Shnyer—Cross*

Q. Oh! You say that she passed in front of the Essex car, do you? A. Yes.

Q. Was there another car parked in front of the Essex car or ahead of it? A. No.

10 Q. There wasn't another car parked on that side of the street, was there? A. Not that I observed.

Q. So she passed in front of that car? A. Front of the car.

Q. When she started to enter the road you were then fifty feet away or more, weren't you, as you testified in your direct-examination? A. And I jammed my brakes.

20 Q. Wait a minute.

The Court: How many feet away were you when you first saw her going into the road?

The Witness: About fifty.

Q. Isn't it a fact that when you testified before trial you said that when she first entered the roadway you were then fifty or more feet away? A. Yes.

30 Q. You were then traveling at the rate of twelve to fifteen miles an hour? A. Yes.

Q. You were then in a position and able to stop your car immediately, weren't you? A. Yes.

Q. You did not stop immediately, did you? A. Not yet.

Q. You stopped how many feet away from the point where you were when you first saw her enter the road? A. About twenty feet or twenty-five from there—from that time.

40 Q. From the time you first saw her enter the

*Adolph Shryer—Cross*

road to the time you stopped you traveled how many feet? A. About twenty to twenty-five feet.

Q. Then you saw this bundle or girl in white in the air? A. Yes.

Q. When you first saw her in the air, how many feet were you away from her? A. About fifteen feet. 10

Q. Fifteen. You could have stopped immediately, couldn't you? A. I could have.

Q. When did you first apply your brakes? A. When I seen the girl alight from the side of the car.

Q. So when you first saw the girl leaving the sidewalk and enter the road you first applied your brakes? A. I did not. 20

Q. Your foot brakes? A. My foot brakes.

Q. Then you had how many feet? Your car was not brought to a stop yet, was it? A. No.

Q. So you traveled a distance of how many feet with your foot brakes applied before you applied the emergency? A. About a second when I noticed the girl—

Q. About how many feet, Shryer? How many feet? A. About ten to fifteen feet.

Q. So with your foot brake applied, traveling ten to fifteen feet, the car did not stop; then you jammed on the emergency brake and traveled how many feet before you stopped? A. About five feet or ten. 30

Q. You did not give a signal, did you? A. A signal?

Q. Yes. A. I did put my left hand out.

Q. Was that a signal to the girl that you were coming? A. I didn't give the girl any signal. 40

*Adolph Shryer—Cross*

Q. Did you blow a horn, blow a whistle, give her any audible signal that anybody can hear? A. No, I stopped.

Q. Stopped in the manner you have just testified? A. Yes.

10 Q. You put your hand out? A. Yes.

Q. You saw that this girl was running out into the roadway that was congested with a constant stream of traffic going in each direction, didn't you? A. Yes.

Q. Why didn't you immediately apply or jam on both brakes, the emergency and the hand? A. When I noticed the girl running into the street I jammed on my brake.

20 Q. You said you traveled fifteen feet and then you jammed your emergency, didn't you? A. Yes, sir.

Q. Why didn't you apply both brakes, then, so that you could have stopped within a reasonable distance when you first saw her enter the road? A. I didn't know the young lady was going to cross the street.

Q. You saw her running into the middle of the road? A. Yes, and I jammed the brakes.

30 Q. Wait a minute, now. You said on direct-examination you were coming south—or north?

The Court: Don't tell him what he said.

Q. Didn't you testify on direct-examination that you saw this girl dart out into the middle of the road? A. Yes.

Q. Well, when you saw her begin to do that why didn't you at once apply the emergency brake?

40 A. When she darted into the road I applied my emergency brake.

*Adolph Shryer—Cross*

Q. After traveling fifteen feet with your foot brake on? A. About ten or fifteen feet.

By the Court:

Q. How far were you away from the girl when she was struck by the other car? A. Well, she was parallel to my front wheel. 10

Q. That is when they were picking her up. But how far was she away from you when she was struck by the other car? A. About fifteen or twenty feet.

By Mr. Rinzler:

Q. In other words, when she started to run into the road you had a distance of fifty feet or more in which to stop your car without hitting her; 20 is that correct? A. Yes.

Q. That is all.

Further CROSS-EXAMINATION by Mr. Mackay:

Q. Now, Mr. Shryer, when you came from Hackensack in this line of traffic, after you left Hackensack proper, how many cars would you say were in the line proceeding on the Kinderkamack Road toward Westwood? A. I could not estimate the cars. There were a lot of cars, a big line. 30

Q. A lot of cars in line? A. Yes.

Q. Were there cars also in line coming down the other way? A. Yes.

Q. From the time you left Hackensack up to the time you reached the point where this accident happened, did you see any cars pull out of line and try to pass another car? A. Occasion- 40

*Adolph Shryver—Cross*

ally they do that,—not that I paid special attention.

Q. In other words, occasionally there were openings in the traffic when the other cars would pull from behind? A. To overtake someone.

10 Q. And get ahead; is that right? How many would you say passed you in that way up to the scene of the accident? A. I haven't paid any attention to that.

Q. Have you any idea at all? A. No.

Q. Could you just give us an approximation? A. No idea. I wouldn't even say there was or not, I would not be sure.

Q. Could you say there were five or ten? A. I  
20 wouldn't say anything.

Q. Could not say. Could you see any pass coming down from Westwood on your way up? A. I noticed some.

Q. Could you tell us about how many passed—pulled out of line and passed the cars ahead, coming down? A. No.

Q. You don't know? A. I didn't pay any attention to it.

Q. But you did see some? A. Some, yes.

30 Q. Didn't you see one do that just about the time this accident happened? A. I did not.

Q. Didn't you see a car pull out of line just about the time this girl ran into the road and go past her and continue on down? A. I didn't remember that.

Q. Toward Hackensack? A. I don't remember seeing any.

Q. You don't remember seeing it. You  
40 wouldn't say you didn't see it? A. Wouldn't say I seen it.

*Adolph Shryer—Cross*

Q. You wouldn't say you had seen it? A. I don't remember anything of the kind.

Q. It might have happened? A. It could have happened. I heard so, but I haven't seen it.

Q. When you saw this girl run out into the roadway, as you say, where did she come from? 10

A. From the side of that parked car, from the right side of that car.

Q. Was she walking or running? A. She came out and dashed into the road.

Q. Dashed into the road? A. At a fast pace.

Q. When you stopped your car you say she lay alongside of your car? A. Yes.

Q. That is right alongside to your left? A. Yes. 20

Q. About four feet out in the road? A. Yes.

Q. Alongside of you? A. Yes.

Q. Which way was she lying, north or south, east and west? A. I haven't seen her lying on the ground.

Q. Beg pardon? A. I haven't seen her lying on the ground. I seen her hurled down but I haven't observed her lying on the ground.

Q. I thought I understood that she was parallel with your car on the ground when you saw the other people pick her up. A. By parallel I mean 30  
out on the front side.

Q. That is your left-hand side? A. Yes.

Q. So that you looked out over your left-hand side and saw her being picked up by someone? A. Yes.

Q. Now, how many people picked her up? A. Two.

Q. Who were they? A. Who they were I don't 40

*Adolph Shryer—Cross*

know; they went back to that standing Pontiac car.

Q. Men or women? A. Men.

Q. Two men? A. Two men picked her up.

Q. What did they do with her? A. They took  
10 her to that standing Pontiac car and drove off.

Q. Took her over to the other car? A. To the Pontiac car.

Q. Where was that? A. That was in back of me.

Q. In back of you. Carried her over there? A. Yes.

Q. You said you saw that car standing there and then proceed in back of your car? A. I didn't  
20 see that car standing there. I seen that car drive off when I got off my car.

Q. Drive off? Did you get out of the car? A. Yes.

Q. Did you go over to the other car to see what was wrong? A. I went over to the Essex and to the rest of the people that remained there.

Q. I beg pardon? A. I went over to that parked Essex car and I spoke to the rest of the people that remained there.

30 Q. You went over to the parked Essex? A. Yes.

Q. Who did you see there? A. The man that drove the Essex spoke to me. He was quite nervous, and he asked me whether I wouldn't let him have my name in case he will be involved in this, so I could witness it.

Q. Did you give him your name? A. I did. So did Mr. Bodner. He asked us to give our  
40 names.

*Adolph Shryer—Cross*

Q. Did you ask him for his name? A. No.

Q. Why not? A. I wasn't quite interested. I simply asked him who this party was to him, so he told us they were just hitch-hiking and he gave them a ride.

Q. You didn't ask his name? A. No, I did not. 10

Q. Did you look at the license number on the car? A. No.

Q. Did not do that? A. I did not.

Q. Did you go over to the other car where the young lady had been carried by these two men?

A. That car was gone.

Q. That car was gone? A. By the time I got off my car that car pulled away.

Q. How soon after they picked up this young lady did you get out of your car? A. Immediately. 20

Q. Immediately. Well, then, you saw them carry her seventy-five feet into the other car?

A. Yes, and drove off—had no chance—and they drove off.

Q. You did not go with them at all? A. No, sir.

Q. Why didn't you go with them? A. I walked over to the people that were standing there and asked them— 30

Q. Why didn't you go with them? You knew this young lady had been injured, evidently? A. I didn't know where they went to.

Q. Didn't you know this young lady had been injured? A. Sure, I know.

Q. You saw her lying in the roadway alongside of your car? A. People said that the other party took the young lady to the hospital. 40

*Adolph Shryer—Cross*

Q. Beg pardon? A. The people that were there said the young lady was taken to the hospital by the other car.

Q. You saw them carry her seventy-five feet, didn't you? A. Yes.

10 Q. Why didn't you go back to that car where she was instead of going over to the Essex car?

A. That car drove off immediately. I could not reach that car.

Q. Then you went over to the Essex and gave them your name and address; is that right? A. They asked me for it.

Q. You did not ask their names? A. No.

20 Q. Could you describe the man who was in the Essex car? A. Slightly.

Q. What did he look like? A. He was short, blonde, rather stocky, about thirty-five to forty years of age.

Q. Have not seen him since then? A. No, sir.

Q. How far do you say that this young lady was from the curb on your side, on your right-hand side? A. About ten feet.

By Juror No. 6:

30 Q. How far was your car from the curb? A. My car was on the extreme right.

Q. How many feet from the curb? A. No feet from the curb.

Q. You were right up along the curb? A. Along the curb.

Q. At the time they picked this young lady up, you mean you were right along the curb then?

A. Yes, into the curb, the extreme right.

40 Q. Do you always ride along the curb, then? I mean, here is a curb. How many feet from that

*Adolph Shryer—Cross*

curb was your car when you stopped? A. My car was immediately near the curb, perhaps a half a foot or so.

The Court: Go ahead.

A. And I stood there for about twenty more 10 minutes.

By Mr. Mackay:

Q. Had you been driving along the curb, right against the curb, on this roadway all the way from Hackensack? A. Not exactly.

Q. At the scene of this accident? A. Not exactly, but at the time I stopped I was stopped near the curb.

Q. At the time you stopped? A. Yes. 20

Q. At the time you first saw this other car ahead of you coming from Westwood, how far were you from the curb? A. About one foot from the curb.

Q. About one foot? A. Yes.

Q. How wide is your car, Mr. Shryer? A. Chevrolet coach.

Q. How wide? A. I don't know the exact width.

Q. About? Four feet? A. About five to six 30 feet; I don't know the exact width.

Q. Five or six. What type Chevrolet? A. Chevrolet coach.

Q. You were right against the curb, you say? A. Yes.

Q. This young lady was four feet further out in the roadway? A. Yes.

Q. Is that right? A. Yes. 40

*Adolph Shryer—Cross*

Q. Now, as you saw this other car coming from Westwood,—when you first saw it how far away was it? A. Well, it is hard for me to estimate that distance. I was going one direction and that car was far away.

10 Q. I don't want you to give me it exactly right down to the inches, but give me your best judgment. A. It is impossible for me. I wouldn't know the difference, whether it was 100 or 150 feet or 75 feet.

Q. You knew four feet when you saw it. A. Four feet is easier to estimate than that distance.

Q. Well, now, how many times that distance away from you was this car that was approaching  
20 from Westwood when you first saw it? A. I could not possibly estimate that.

Q. Can't give us any idea at all? A. I could not.

Q. 200 feet, would you say? A. I could not estimate it.

Q. You won't venture any number of feet at all? A. No.

Q. How fast was it coming? A. Not very fast.

Q. Not very fast? A. No.

30 Q. It was coming slowly, wasn't it? A. Not slowly, but not fast.

Q. Not fast. A. Perhaps twenty feet.

Q. What rate of speed would you say it was traveling? A. Perhaps twenty to twenty-five.

Q. What rate of speed were you traveling at?  
A. Between twelve and fifteen.

Q. Twelve to fifteen, and this other car you saw going from twenty to twenty-five was not  
40 traveling fast? A. I couldn't say. I couldn't es-

*Adolph Shryer—Cross*

timate the exact speed the other car was going. How could I?

The Court: Is that the Pontiac you are referring to?

The Witness: Yes. Probably—I wouldn't estimate that. 10

Q. It did not appear to be traveling fast toward you, did it? A. It did not appear to be traveling very fast.

Q. In fact, it traveled moderately, didn't it, at a moderate rate of speed? A. Well, something—somewhat more than moderate.

Q. Something more than moderate? A. More than moderate; not fast. 20

Q. What do you call something more than moderate? A. About twenty miles.

Q. You were examined before trial in this case, weren't you? A. Yes.

Q. Do you remember being asked this question: "Q. When she first went into the road that car was far away from her, wasn't it? A. I couldn't say exactly." A. Yes.

Q. "Q. About? A. Well, the car was approaching at a moderate speed. 30

"Q. But how far away was it? A. About thirty feet." Do you recall those questions and giving those answers before trial in this case? A. Yes.

Q. Well, now, you judged the distance at that time, didn't you? A. Yes. I was pressed into that judgment, but I will not—

Q. You gave your judgment then, did you not? A. Yes.

Q. Why can't you give us your judgment now 40

*Adolph Shryer—Re-direct*

and tell us how far away this car was that was approaching from Westwood when you first saw it? A. Far away just from where?

Q. From your car? A. From my car?

Q. When you first saw it. A. From my car?

10 Q. Yes. A. Well, we were both traveling.

Q. Well, coming towards each other, I understand that. A. Yes.

Q. How far apart were you when you first saw this other car? A. That may have been a hundred feet or more apart.

Q. What is it now that makes you say that this car was going more than a moderate rate or more than a moderate rate of speed? A. I say this car  
20 did not travel fast. I call moderate ten or twelve or fifteen miles.

Q. Now, you cannot tell us how far apart the cars were and you cannot tell us, or you say you cannot, rather, that the car was going more than a moderate rate of speed; is that right? A. Well, I don't know exactly how fast that car was going. How is that possible for me to say?

Q. That is all.

30 RE-DIRECT EXAMINATION by Mr. Turner:

Q. One question. Mr. Shryer, was there more than one Pontiac car coming from Westwood? Did you see more than one Pontiac at the scene of the accident? A. Not at that moment.

Q. But the one Pontiac you saw, is that the one that hit the girl? A. Yes, sir.

Q. Now, you have told the counsel for the plain-  
40 tiff as to your taking twenty or twenty-five feet before you brought your car to a stop. A. Yes.

*Adolph Shryer—Re-cross*

Q. When you first put on your foot brake, did you intend then to bring your car to a stop? A. No.

Q. Was there any occasion at that time for you to bring your car to a stop? A. Not yet.

Q. Now, when you saw the girl struck by the Pontiac what brakes did you put on then? A. I was stationary at that time; I was standing already. 10

Q. Well, did you know or could you see from her position in the road that she was going to be struck by it? A. Yes.

Q. Then, when you saw that what did you do? A. When I have seen her darting out at a fast pace I jammed my brakes and stopped. 20

Q. Now, what I want to know is this: How far did it take you to stop your car if you really intended to stop and jammed your brakes? A. About five to ten feet at the most.

Q. Counsel asked you if you asked for the names of any witnesses. Did you have any reason why you should ask for witnesses? A. No.

Q. Did you know whether or not you had been involved in an accident? A. I wasn't interested any further than I just wanted to know who was injured. 30

Q. You knew you had not been in an accident? A. I knew that.

Q. That is the reason why you didn't ask for witnesses? A. Yes.

## RE-CROSS EXAMINATION by Mr. Rinzler:

Q. Did you report this case to anybody before you were served with papers in court? A. I did not. 40

*Adolph Shryer—Re-cross*

Mr. Turner: I object to that as not re-direct-examination.

The Court: You may ask him, if he knew.

- Q. You were in an accident, were you not? A. I was not.
- 10 Q. Did you write a letter to anybody at all? I am not asking you to whom. A. No.
- Q. Or make a statement to anybody? A. No.
- Q. Any verbal or written report that you had an accident? A. Not until I was examined.
- Q. Not until then? A. No.
- Q. Sure? A. Sure.
- Q. You had a lawyer before that time? A. No.
- 20 Q. Didn't you have a lawyer? A. No.
- Q. Let's see. You didn't intend to stop first? A. No.
- Q. Did not intend to stop, but you applied your foot brakes? A. Slowed down.
- Q. You did not intend to stop, although you saw a human being running out into the middle of the road and into two lines of traffic, one going in each direction; right? A. No.
- Q. Is that correct? A. That is not right.
- 30 Q. Did you see this human being run into the middle of the road? A. Yes.
- Q. Did you know you were in a line of traffic traveling north? A. Yes.
- Q. Did you know there was a constant line of traffic traveling in the opposite direction? A. Yes.
- Q. You saw her run into the middle of the road? A. Yes.
- 40 Q. You did not want to stop, did you? A. Then I jammed my brakes.

*Adolph Shryer—Re-cross*

Q. You knew that this human being ran into the roadway, into the two lines of traffic, when you first saw her run into the roadway from the curb, didn't you? A. It takes a few steps to run alongside of the road.

Q. Assuming that this edge is the curb, and beginning here is the roadway (illustrating), you saw when she ran from the curb into the roadway? A. Yes. 10

Q. You saw it was a human being running into the middle of the road? A. Yes.

Q. You knew that two lines of traffic were constantly moving in each direction, one in each direction? A. Yes.

Q. Yet you did not want to stop, did you? A. I did so. 20

Q. Did you want to stop? A. Yes.

Q. Did you try to stop when you first saw her run into the road? Yes or no. A. I jammed my brakes and stopped.

Q. When you first saw her run into the road from the curb? A. I did not see her first run into the road,—she first darted out and then into the road.

Q. Did you see her first run into the road from the curb? A. First she ran alongside the car and then turned into the road. 30

Q. But when she first left the road she ran, you saw her? A. And then I jammed my brakes.

Q. Did you see her dart from the curb into the road? A. Yes.

Q. When you saw her darting into the road from the curb did you want to stop your car or didn't you? A. Yes. 40

*Adolph Shryer—Re-cross*

Q. Then, how many feet did you travel from that second before you stopped your car? A. Five to ten. No more than ten feet.

Q. Five to ten? A. Yes.

Q. So that from the time she first left the curb  
10 you only traveled five to ten feet; is that right?  
A. Yes.

Q. Is that what you said before on cross-examination? A. Yes, sir.

Q. Didn't you say before you applied your foot brakes first and you traveled ten to fifteen feet?  
A. She started—

Q. Wait a minute. Didn't you say before on  
cross-examination that you first applied your foot  
20 brakes and you traveled ten to fifteen feet and you  
did not stop, and then you for the first time  
jammed on the emergency brake, and then you  
stopped within about five feet? A. Yes.

Q. Is that the truth? A. Yes.

Q. Now, you said in answer to Mr. Mackay's question that you were pressed into forming a judgment when you were examined before trial. Didn't you? A. Yes.

Q. Were you pressed into forming a judgment?  
30 A. Well, the same as now.

Q. Were you? Yes or no. A. Yes.

Q. Was Mr. Frank G. Turner, who is your lawyer in this case, present at the office of the Supreme Court Commissioner when you were examined before trial? A. Yes.

Q. Were you sworn to tell the whole truth? A. Yes.

Q. And nothing but the truth? A. Yes.

40 Q. Were you asked each question that was put

*Adolph Shryer—Re-cross*

to you in the presence of Mr. Frank G. Turner, your own lawyer? A. Yes.

Q. Didn't even he ask you some questions, too?  
A. I don't remember exactly.

Q. Well, did anybody force you to answer the questions? A. No. 10

Q. When I asked the lawyers in your presence whether the witness's signature would be waived and they both said no—didn't they? A. I don't remember.

Q. Well, the fact is after you were examined before trial you went away from the Commissioner's office, didn't you? A. Yes.

Q. You came back on the same day of the following week to the Commissioner's office? A. 20  
Yes.

Q. And Mr. Bloom also came back; right? A. Yes.

Q. And Mr. Bloom carefully read his testimony that he gave and you and he read your testimony? A. Yes.

Q. You arrived there before I did, didn't you? A. Yes.

Q. When I came there you told me that you had read the testimony as it was transcribed on the 30  
typewriter; right? A. Yes.

Q. And you called to my attention that in your judgment there were some mistakes in the transcript of the testimony, didn't you? A. Yes.

Q. And you yourself personally corrected those mistakes in your own handwriting, didn't you? A. Yes.

Q. And after you corrected those mistakes in your own handwriting and gave what you claimed 40

*Adolph Shryer—Re-cross*

was the true answer, and with my permission, you initialled each and every correction and you wrote "Corrected by me, Adolph Shryer," didn't you? A. Yes.

10 Q. Then, after you read it, made corrections, corrected the mistakes, and wrote down "Corrected by me," and signed your name after each correction, you finally signed your name at the end of it, didn't you? A. Yes.

Q. You saw this man and wife in the Essex coach, didn't you? A. I didn't take notice of any wife.

Q. A man and woman? A. I have spoken to the man.

20 Q. Did you notice a woman in the car? A. There were more women.

Q. In the Essex coach? A. No; they were standing in the street.

Q. I asked you whether you noticed the occupants of the Essex coach. A. I have not seen anybody inside that Essex coach.

Q. Did you talk to the man by the Essex coach? A. Yes.

Q. Did you ask him his name? A. No.

30 Q. Yet he asked you your name, didn't he? A. Yes.

Q. And you were not involved in the accident, were you? A. No.

Q. Your car did not hit this girl, did it? A. No.

Q. Your car did not touch her? A. No.

Q. She was not found behind the left wheel of your car? A. No.

40

*Adolph Shryer—Re-direct*

Q. But you waited there for twenty minutes?  
A. I did.

Q. The only other car that came to a stop after the accident besides your own car was the car that was traveling north and the car which you say hit her? A. Yes. 10

The Court: Traveling south.

Q. Traveling south, which you say was the car that hit her? A. Yes.

Q. You don't know the license number of that Essex coach? A. No.

Q. You were traveling in the line of traffic, weren't you? A. Yes.

The Court: Who was the driver of the Pontiac car? Was that you? 20

The Witness: I didn't take notice.

Q. One more question. Did you take the license number of the Pontiac car? A. No.

Q. Did you get the driver's name and address of that car? A. No.

RE-DIRECT EXAMINATION by Mr. Turner: 30

Q. You gave your name to this driver of the Essex car as a witness, didn't you? A. Yes.

Q. Now, counsel has asked you a great many questions about this examination before trial. That was after suit had been brought, wasn't it, after the papers had been served on me, after the summons and complaint had been served on you, that this examination before trial was held, wasn't it? A. Now, what do you mean? 40

*Adolph Shryer—Re-cross*

Q. You know you were served with suit papers?

A. Yes.

Q. This examination before trial that he has been taking about, that took place down in Passaic in a lawyer's office; that was after suit had  
10 been brought, wasn't it? A. Yes.

Q. Now, you said that you had been pressed into an answer as to the speed. Now, just tell us what the circumstances were; in other words, what the questions were that counsel asked you to which you say you were pressed into giving an answer, and your testimony then being that this driver was going, as you said, at a moderate rate of speed. A. Yes.

20 Q. Then I asked you to tell us how fast he was going. A. Yes.

Q. And could you tell? A. I could not.

Q. Your best estimate then was a moderate rate of speed, wasn't it? A. Yes.

Q. That is all.

RE-CROSS EXAMINATION by Mr. Rinzler:

Q. But you went to Bloom's house after the accident, didn't you, on the same night it hap-  
30 pened? A. Yes.

Q. You went to his home and you looked for him? A. I did not.

Q. You went? A. I was taken along.

Q. You went there, though, didn't you? A. Yes.

Q. That is all.

*Adolph Shryer—Re-direct, Re-cross*

RE-DIRECT EXAMINATION by Mr. Turner:

Q. Well, how did you come to go to Mr. Bloom's house the night of the accident? Who went there with you? A. I was practically under arrest. I was taken there.

Q. Well, what did you do there when you went to Mr. Bloom's house? Who went with you? A. Chief of Police of Riveredge and one officer. 10

Q. They asked you to go down to Bloom's house, didn't they? A. Yes, they ordered me to go.

Q. When you got down to Bloom's house what happened? A. We waited there until after midnight.

Q. Until after midnight that same night. Did Mr. Bloom show up? A. Nobody showed up. 20

Q. After you waited there until after midnight that night, then where did you go? A. They told me to go home and they went home.

Q. Did you ever go to Mr. Bloom's house again? A. I have never seen Mr. Bloom again at all.

Q. If the police had not asked you to go would you have gone?

Mr. Rinzler: I object to that as speculative. 30

Q. Did you ever intend going there until the police asked you to go? A. No.

Q. Was there any occasion for you to go until the police asked you to go? A. No.

RE-CROSS EXAMINATION by Mr. Mackay:

Q. When you went back to read over your testimony, Mr. Shryer, you did not correct any of 40

*Adolph Shryer—Re-direct*

the questions and answers which I asked you before, did you? You did not sign any of those with your name and correct them in any way? A. I don't remember just what questions I corrected.

Q. The questions I asked you were about when  
 10 she first went into the road, that the car was far away from her, wasn't it, and your answer, "I couldn't say exactly. Q. About. A. Well, the car was approaching at a moderate speed. Q. But how far away was it? A. About thirty feet." You did not correct any of those, did you? A. No.

Q. That is all.

20 RE-DIRECT EXAMINATION by Mr. Turner:

Q. You don't want to correct them now? A. I am not insisting it was thirty. I can't.

Q. One more question. When you went to Bloom's house that night did the police ask you if you were willing to make a charge against Mr. Bloom for hitting this girl?

Mr. Rinzler: I object.

30 The Court: Sustain the objection.

Q. Did they ask you to make such a charge?

Mr. Rinzler: I object.

The Court: Sustain the objection.

Q. That is all.

*Hyman Bodner—Direct*

HYMAN BODNER, sworn.

Direct-examination by Mr. Turner:

Q. Mr. Bodner, on the day of this accident where did you live? A. 11 Offert Street, Passaic.

Q. Were you riding in Mr. Shryer's automobile? A. Yes. 10

Q. Where were you riding? What road? A. Just that he went towards Hackensack.

Q. Kinderkamack Road did you go on? A. Kinderkamack, that is what they called it,—Kinderkamack Road.

Q. About how fast was Mr. Shryer's automobile traveling before the accident? A. Very slowly. 20

Q. Why was it going slowly? In other words, what were the conditions on the road? A. It was quite congested, and he—you know, we wasn't in a particular hurry. We went very low pace.

Q. Were there two lines of traffic? A. At times.

Q. Just before the accident were there two lines? A. Yes; there was cars coming and going.

Q. Now, did you see this young lady before the accident? A. Yes, I did notice her standing there in the road, you know, because there were quite a few other people there standing alongside of that parked car. 30

Q. Then, did you see what this plaintiff, Miss Klein, did from that time on? A. Yes; I noticed that as soon as the road was kind of clear, you know, from the congestion, that Miss Klein took a jump right into the road.

Q. Then, did you see what happened to her 40

*Hyman Bodner—Direct*

after she got out into the road? A. She was hurled up in the air.

Q. What sent her up in the air? A. Well, a car that came from Westwood.

10 Q. What kind of a car was that? A. I really didn't see the car—that is, I seen the car, but I didn't notice the name of the car.

Q. You did not see an Indian head on it? A. Well, I didn't think of that.

Q. That is on the back tire, anyhow. A. Yes; it passed right by.

Q. Did you see the car hit her? A. Yes.

20 Q. When this car hit her what happened to her? A. She was thrown up in the air and she was landed right alongside of the other side of the road.

Q. How near to Mr. Shryer's car was she when she landed? A. Must have been about three or four feet.

Q. When this girl landed in the road after being struck by the Pontiac or whatever it was—when this girl landed was Mr. Shryer's car moving or was it standing still? A. He was stationary.

30 By the Court:

Q. Stationary when she landed? A. When she landed we was standing actually—we didn't move at all.

By Mr. Turner:

Q. Did Mr. Shryer's car move at all from the time this girl first landed in the road? A. Not at all.

40 Q. Now, how far would you say Mr. Shryer's car was standing from the place where this girl was hit? A. It must have been about ten feet.

*Hyman Bodner—Direct*

Q. In other words, between the front of the two cars you would say about ten feet? A. Yes, sir.

Q. Then what happened, after the girl landed?

A. He got out of the car after he hit the girl and she flew as far as our car which stood there, and she was landed right alongside of the car. 10

Q. What did they do with her then? A. Two men came back from the car that hit her; they stopped as quick as they could; and they came running back and picked the girl up in a hurry and ran with her quick and took her into the car and ran away; we didn't see no more.

Q. The two men that ran and picked the girl up and put her in the car, did they stop to talk to anybody or give their names to anybody? A. 20  
Not a word.

Q. Did they say a word to anybody before they picked this girl up and whisked her away to the hospital? A. Nobody at all.

Q. Did you or anybody else know who they were? A. We didn't know anything about them.

Q. Can you tell us about how fast Mr. Shryer's car was going before he brought it to a stop? A. Well, Mr. Shryer, when he came along, we noticed the other car stopping, quite a few people, he 30  
slackened down considerably, and then we came along right in front where the accident actually occurred; he came to a stop altogether; about ten feet before there we stopped.

Q. Did Mr. Shryer's car or the wheels of his car run over anything at all? A. Nothing at all.

Q. Any obstruction or leg or arm or anything else? A. Absolutely nothing.

*Hyman Bodner—Cross*

CROSS-EXAMINATION by Mr. Rinzler:

Q. You live in Passaic? A. Yes.

Q. The same as Shryer? A. Yes, sir.

Q. You are friends? A. Yes.

Q. Your folks are friends? A. Yes.

10 Q. Aren't you related to Shryer? A. Not at all.

Q. Are you his landsman, his countryman? A. Yes.

Q. How long have you known him? A. Well, I know Mr. Shryer since 1920, I should judge.

Q. You are quite intimate, quite friendly? A. I don't know what you call intimate; we are friends.

20 Q. Although you say you went out in his company, with his wife and your wife, you say you are not friendly? A. Yes, I am.

Q. That is why you went out for the ride? A. Right.

Q. You sat in the front? A. Yes.

Q. With Mr. Shryer? A. Yes.

Q. The women had the back seat? A. Yes.

Q. They were in the back seat? A. Yes.

30 Q. Shryer did the driving? A. Shryer was driving.

Q. You talked to Shryer? A. Talked to him? Occasionally.

Q. In the car. A. Well, once in a while.

Q. Not much? A. Not much, no.

Q. Very little talking between you in the two hours? A. Very little talking.

40 Q. Between the two men and the two women very little talking? A. I don't say nothing about the women.

*Hyman Bodner—Cross*

Q. How about the men? A. Well, we were talking once in a while, you know, but we were not talking—when a man has got his eyes on the wheel you can't talk to him too much. I drive myself, and I don't like to be talking when I am driving. 10

Q. You say when a man drives he can't talk?

A. I wasn't talking with him, because I didn't feel like it.

Q. He had hardly anything to say to you? A. Exactly.

Q. Maybe once in an hour he talked to you? A. Maybe a half hour.

Q. Once in a half hour. Were you talking to him when the accident happened? A. After the accident I spoke to him. 20

Q. Did you talk to him before the accident? A. Not exactly before.

Q. How long was it from the last time before the accident you spoke to him? A. I couldn't say that.

Q. In other words, how long did you and he both keep quiet before the accident, without saying a word? A. Well, maybe for about a half hour. 30

Q. Pretty long, wasn't it? A. Yes.

Q. You saw the whole accident? A. I did.

Q. You say that this girl was running into the road? A. Right.

Q. But you say that as a matter of fact you first saw her go into the road and stop? A. I didn't say she stopped.

Q. Oh! Didn't you say that the girl was standing in the road? A. She— 40

*Hyman Bodner—Cross*

Q. Wait a minute. A. Yes.

Q. —to allow the traffic to clear, and that as soon as the road was clear she went into the road? A. I said—

10 Q. Did you say that? A. Not in the road. I said she was standing on the side of the road.

Q. Didn't you say that this girl stood about ten feet into the roadway? A. I didn't say ten feet.

Q. Waiting for traffic to clear, and that when the road was clear she went into the road? A. I never said ten feet. I said she stood there on the edge of the road alongside of the car that was parked.

Q. How far away from the curb did she stand?

20 A. Well, I should judge about six or seven feet.

Q. Looking up and down the street? A. She was looking over the other side of the street.

Q. Left? A. Yes.

Q. Didn't she look right, too? A. She did not look right.

Q. The traffic which she would approach would be the traffic from the left? A. The traffic, of course, from Westwood.

30 Q. Would you say she stood about six or seven feet into the roadway? A. Yes.

Q. That would be about parallel or on a line with the Essex coach that was parked? A. Exactly, that is where she stood.

Q. Then, as she waited there, while she stood there for the traffic to clear— A. I suppose that is what she did. I don't know what was in her mind.

40 Q. All right. When the traffic cleared she then went into the roadway? Right? A. Yes.

*Hyman Bodner—Cross*

Q. How fast were you riding since you started that day? A. How what?

Q. When you started out on your ride how fast did you run? A. We were going at a very low pace, I did not time it.

Q. How many hours did you travel at a low place? A. We traveled right along on a low pace. 10

Q. For how many hours? A. We were out altogether about an hour, until that accident.

Q. Just an hour? A. About that.

Q. Didn't you start out about three o'clock? A. Well, three o'clock, yes.

Q. Didn't this happen about five o'clock? A. Five? I can't place the time. Probably it was five. Maybe it was only half past hour. An hour 20 and a half.

Q. You traveled about twelve or fifteen miles an hour, by the way? A. Yes.

Q. How many stops did you make before the accident? A. We stopped different places. We had stop signs.

Q. How many? A. You can figure that out yourself. You have got about ten of them.

Q. About how much time did you lose while standing there, which you did not travel? A. 30 Well, I can't estimate that.

Q. Half an hour? A. Probably—less than that.

Q. Well, about how much? I want to know. A. I think about twenty minutes.

Q. You were traveling about an hour when the accident happened? A. About that.

Q. So that you had only forty minutes of actual travel; is that right? A. It must be that. 40

*Hyman Bodner—Cross*

Further CROSS-EXAMINATION by Mr. Mackay:

Q. You say, Mr. Bodner, that this young lady was lying in the roadway when Mr. Shryer stopped his car? A. He stopped his car before  
10 she was lying in the roadway.

Q. Before? A. Yes.

Q. And the other car that you say struck her—  
A. Right.

Q. —went beyond your car seventy-five feet?

A. Seventy-five feet? How did you get that figure? You said seventy-five feet.

Q. How far did it go? A. How far did what?

Q. The other car go past Mr. Shryer's car. A.  
20 Oh, after she passed them off? Well, I don't know. Maybe it was fifty or seventy-five feet; I don't know how far it was. It was a little until he stopped her.

Q. Was it about seventy-five feet, would you say? A. Maybe about fifty or seventy-five.

By the Court:

Q. Mr. Shryer stopped before she was struck by the Pontiac? A. He stopped before she was  
30 struck.

Q. How long before? A. It must have been probably a minute or a half minute, or maybe —he stopped right immediately when he noted she was hit.

By Mr. Mackay:

Q. So, as I understand it, Mr. Shryer's car was stopped? A. Exactly.

Q. Before this young lady was struck? A. Ab-  
40 solutely.

*Hyman Bodner—Cross*

Q. That is right, is it? A. Yes.

Q. And the car that struck her, you say, passed Mr. Shryer's car and went a distance of fifty or seventy-five feet? A. About that.

Q. And stopped? A. Right.

Q. Pulled over to the curb? A. I didn't see him pull anywheres. He stopped on the middle of the road. 10

Q. You saw that car? A. I saw the car, yes.

Q. You know where it stopped? A. It stopped right in the middle of the road. He did not pull any other place.

Q. Why didn't you say so? A. You didn't ask me.

Q. Why, I understood a minute ago you did not see the car? A. I said I did see the car. 20

Q. You did see it? A. I did.

Q. Fifty or seventy-five feet away? A. Yes.

Q. You were stopped and this young lady was lying in the roadway? A. She was laying there. I say she was not laying there long, because they picked her right up.

Q. But they had to come back from the point you say they stopped at; they had to get out of their car and come back from that point and pick her up? A. Yes. 30

Q. And you say she was ten feet in front of your car? A. I said she was ten? She was hit about ten feet in front of our car.

Q. Well, how far in front of your car was she? A. She was laying alongside of our car, after she was thrown towards our car.

Q. What part of your car was she alongside of? A. She was lying right in front of our car. 40

*Hyman Bodner—Cross*

Q. In the front or at the side of it? A. No, the side of the car, but on the front part.

Q. Well, which front part? A. You know, like alongside the front wheel, you know, near the running-board.

10 Q. I don't know. I want you to tell the Court and jury. A. If this is the front car—this is the front wheel and the running-board, she was lying right on that road alongside of our car on the front.

Q. Here is your car. Say this is your car (illustrating). A. Yes.

Q. Was she in front of here or was she over here (indicating)? A. Not front; on the side.

20 Q. On the side? A. Yes.

Q. By the front left wheel? A. Yes.

Q. How close to the car was she? A. About three or four feet.

Q. Three or four feet out from the car? A. Out from the car, yes.

Q. On what part of the car? A. In the front.

Q. Well, there is no front. You said the side, now. You said the side of the left wheel. A. Hasn't the side got a front and a rear end? She  
30 was not lying across the rear end, but she was lying towards the front end on the side of the car.

Q. You mean the front of the left side? A. Yes.

Q. Now, near what part of the front of the left side, by the front wheel or past the front wheel? A. Past nothing. She was lying right alongside of the car on the road, about three feet away, just  
40 from the front of the car towards about the center of the fender—of the running-board.

*Hyman Bodner—Cross*

Q. Four feet right by the running-board? A. Yes, alongside of the running-board.

Q. By the running-board? A. Yes.

Q. On the left side of your car? A. Well, sure, that was the left side.

Q. You were standing still before she got in that position? A. Absolutely. 10

Q. Weren't you? A. Yes.

Q. And you saw her land there? A. I saw her land there. I saw her picked up after.

Q. Why didn't you get out of the car and try to assist her before these other men, who were seventy-five feet past her, came back there to render assistance? A. Well, until we got out those men were already after her to pick her up. 20 They just take like a slide with their car and stopped and came right back and picked her up before we had a chance, even, to get out.

Q. They went fifty to seventy-five feet, you say? A. Yes, sir; they went as far as until they could stop their car.

Q. Was there much traffic on this roadway? A. Well, at that time, you know, there was nobody in front of that car that came from the traffic already passed. 30

Q. Was there no traffic on that roadway? A. Yes, there was traffic.

Q. Did any cars pass after you saw this young lady in the roadway? A. I don't remember that.

Q. You don't remember? A. No.

Q. Did any cars come from the back of your car? A. They must have come, but they didn't pass us.

Q. Did they? Not what they must have done. 40

*Hyman Bodner—Cross*

Did you see any? A. I don't remember seeing any.

Q. You don't remember seeing any? A. No.

Q. You know there was considerable traffic on that road that day? A. There was quite some  
10 traffic there that day, yes, sir.

Q. Don't you? A. Yes, sir.

Q. All the time that you were standing still this other car went past you say, seventy-five feet, and those two men came back and picked this young lady up out of the roadway? A. They did, sure.

Q. They did? A. Yes.

Q. Did you get out of the car? A. Sure, we got out. By the time we got out she was already  
20 taken away.

Q. She had been taken away? A. Yes.

Q. Did you see them moving her? A. I seen—I saw where they came from and they picked her up—hurry—and they threw her into the car and they started running off with her.

Q. Did they? A. Yes.

Q. Did you run after them? A. We noticed that. We didn't know what happened.

Q. Did you run after them? A. After him?  
30 No, I didn't.

Q. What do you mean, you didn't know what had happened? A. Well, you know, we—when this happened we got like stunned, we were sitting there.

Q. You knew what had happened? A. I knew what had happened, sure, I knew; but, you know, for the moment we got scared, like. By the time her—

40 Q. No; you I am speaking of, not what he did.

*Hyman Bodner—Cross*

I am speaking of you. You were not scared? A. Why I sure was scared. I wasn't scared, exactly, but, you know, it give me a shock, like.

Q. Gave you a shock? A. Yes.

Q. Did you feel any bump as the car stopped? A. No, sir. 10

Q. Didn't feel any bumping of any kind? A. There was no bump, no, sir.

Q. That is all.

Further CROSS-EXAMINATION by Mr. Rinzier:

Q. Your point is that the Shryer car was at a complete standstill even before the other car hit her; right? A. Our car was absolutely— 20

Q. Listen, Bodner.

Mr. Turner: He ought to be allowed to answer the question.

Q. You say, do you not, that before the other car even hit the girl, Shryer had already brought his car to a complete stop? A. It was to a stop, absolutely.

Q. He stood there for how long? A. We stood there after the accident. 30

Q. You stood there from the time you stopped until the time the girl was actually hit, about how long? A. That was a few seconds, no fractions.

Q. That is all.

(Recess.)

*Mrs. Bertha Shryer—Direct*

Mrs. BERTHA SHRYER, sworn.

Direct-examination by Mr. Turner:

Q. Mrs. Shryer, where do you live? A. 30  
Stewart Street, Passaic, New Jersey.

10 Q. On the day of this accident were you riding  
in a Chevrolet coach? A. Yes.

Q. With whom? A. I was riding with Mrs.  
Bodner and my baby was sitting in the rear seat,  
and Mr. Bodner and my husband were sitting in  
the front seat of the car.

Q. About how long had you been out before  
this accident happened? A. Well, I should think  
about an hour or an hour and a half. An hour  
20 and a half, I should say.

Q. You left about three, did you? A. I should  
think it was closer to about three-thirty; I don't  
remember exactly, but I should think it was about  
three-thirty.

Q. The accident happened between four and  
five? A. I don't remember when the accident oc-  
curred.

Q. Didn't note your time? A. No, I didn't.

30 Q. Before you got to the place where the acci-  
dent happened did you see this Essex coach that  
was parked on the right side of the road? A. I  
don't remember that.

Q. What have you to say as to the traffic condi-  
tions? A. Well, there were cars coming stead-  
ily; they were not very close together, but they  
were coming, streaming steadily along on both  
sides of the street.

40 Q. Had you been on that road on Sunday after-  
noons before this? A. Well, I don't remember  
exactly. I never take notice the roads we are go-  
ing on.

*Mrs. Bertha Shryer—Direct*

Q. Could you tell us whether your car was going slowly or rapidly? A. We always go slow. We have never gone fast yet. That is one thing I object to.

Q. You usually ride in front? A. Sometimes, when we are alone I ride there. 10

Q. You are not a back-seat driver, are you? A. What do you mean by that? I don't know what you mean by that.

Q. I don't know; I only mean what everybody else means. A. I don't know what you mean by that.

Q. You don't tell your husband how to drive, do you? A. I never do. I only make it a point when I get in the car, I say, "Please drive slow; 20 otherwise, I will get out."

Q. On the day of the accident did you see Miss Klein or did you see anybody that you afterwards learned to be Miss Klein before the accident? A. Before the accident? After we stopped I saw somebody hurled through the air, but I didn't see it before we stopped.

Q. Now, talking about the time you were stopped? A. Yes.

Q. Did your car come to a dead stop? That is to say, was it stopped still? A. It was stopped; we were standing. 30

Q. Now, when you were standing there, just tell us what you saw. A. Well, after we stopped my husband—we heard Mr. Shryer say, "That Pontiac," and I looked up and I saw the girl hurled through the air; I didn't see exactly what hurled her, but I saw the girl hurled through the air and she fell down. 40

*Mrs. Bertha Shryer—Cross*

Q. Where did she fall after she went through the air? A. Well, she fell down—she went up and she diagonally, like—when we stopped she was quite a little ways away from us, about as far as this place here, and she was lying like  
10 diagonal on the floor, but we were stopped at that time, when she fell.

Q. You say this space here? A. Yes.

Q. Do you mean from the front of the witness-stand to the back of it? A. Well, she laid about this much away. No; about four feet, she laid, five feet; I don't exactly know how much.

Q. Four or five feet from what? A. From our car. She was lying at that time when she hit the  
20 ground.

Q. Did your husband's car or any of the wheels of your husband's car run over this girl? A. No, sir, absolutely not.

Q. Or any part of your car come into contact with her body? A. No, sir.

## CROSS-EXAMINATION by Mr. Rinzler:

Q. You are testifying in behalf of your husband in this case? A. I am testifying as to the  
30 car I was in; it makes no difference whose it was.

Q. This is your husband (indicating)? A. Yes, it was his car.

Q. You and your husband live where? A. 30 Stewart Street.

Q. On the day of this accident, you say, you warned your husband not to drive fast? A. It has been an understanding between us.

40 The Court: Not at that time. At this time, did you?

*Mrs. Bertha Shryer—Cross*

The Witness: Of course. Every time I get in I say the same thing, "Please don't drive fast."

Q. You have had that understanding ever since your marriage? A. Not ever since we married, but before I get in. 10

Q. That would be several years? A. I always said that, every car I get in.

Q. Do you drive? A. No, sir.

Q. Where do you generally sit? In front? A. When we are alone I generally sit in front, but when we have someone else, I sit in back.

Q. You say also on this occasion you cautioned your husband not to drive fast? A. I did. 20

Q. You always do it? A. Absolutely, every time I get in a car.

Q. Doesn't he pay any attention to your cautioning? A. Always does. He always drives slowly.

Q. If that has been your understanding ever since you were married, why was it necessary for you to warn him? A. It is a matter of habit, and I say it every time I get into the car.

Q. Did you warn your husband about things that he does anyway? A. Absolutely. 30

Q. You are married for how long? A. Four years.

Q. So that, although for four years you have had an understanding with your husband that he should drive slowly, you warn him every single, solitary time? A. Every time I get in a car.

Q. And you warned him again on this occasion? A. Absolutely. 40

*Mrs. Bertha Shryer—Cross*

Q. As a matter of fact, how long had your husband's car been standing at a full stop before the other car hit the girl? A. It had just stopped; it happened like in a flash of a moment; I can't say how long it was, but we were standing when  
10 we saw the girl hurled through the air; that is, when I did.

Q. Yes. Were you standing when the other car hit her? A. Which other car?

Q. Whatever car hit her. A. Well, I just saw the girl go up into the air; I did not see the car hit her, but I saw the girl go up in the air.

Q. You did not see the girl enter the road, did you? A. No, I did not.

20 Q. Didn't know how she started from the curb?

A. No; I don't know how she started.

Q. Or where she was? A. No.

Q. Were you talking in the car? A. Well, no, we were not talking at that time.

Q. Don't you talk much? A. I don't talk much.

Q. No? A. No.

Q. I see. A. I don't talk much.

Q. You left about half-past three, didn't you?

A. I should judge it was around that time; I don't  
30 know exactly.

Q. Do you know what time the accident happened? A. I don't know what time it happened. I understand it happened—

Q. About half-past four or five? A. I didn't take any interest in the time it happened.

Q. Going along slow, you know? A. We were going very slow, I know that; I don't know, but I can't judge how many miles.

40 Q. About how slow? A. I don't know. I can't say. I won't tell a lie.

*Mrs. Bertha Shryer—Cross*

Q. No. Were you going along twelve miles an hour? A. I don't know. We were going very slow. I know that, but I can't tell you how fast we were going.

Q. You say you do drive or you don't? A. I don't drive. 10

Q. Would you say you were going six miles an hour? A. I don't know. I can't answer that.

Q. You have been riding with your husband now for four years? A. Absolutely.

Q. You go out on Sundays on a pleasure ride or any other day? A. Absolutely.

Q. On any other day you use the same car? A. We don't go out during the week. I only go out on Sundays. 20

Q. In this same car? A. Yes, sir.

Q. Every time you go out you warn him to go slowly? A. I always warn anybody, any car I get into.

Q. Did you look at the speedometer? A. No; I don't look at the speedometer.

Q. Did you? A. No, I did not.

Q. You don't know where the accident happened? A. No. That is, I hear it was at five o'clock, and I know it was in the afternoon, it was after dinner hour. 30

Q. You were driving half a foot from the right curb? A. I know we were on the right of the road; I can't say whether it was a half a foot or a foot.

Q. Right close? A. I can't tell you that. I know it was near the curb.

Q. Show me with your hands the distance you were traveling. A. I should say about—well, we 40

*Mrs. Bertha Shryer—Cross*

will say if that was the curb, we were about over here.

Q. That is less than a foot, isn't it? A. I don't know. It is less than a foot the way I am showing you. About over here.

10 Q. Yes. Your husband's car was in the line of traffic going in the same direction he was? A. Yes; we were keeping in line.

Q. Was the whole line of traffic there as close to the curb as your husband's car was? A. I should think so.

Q. How far apart were the cars in that line?

A. Well, some cars was closer together, but we were—I imagine we were going a little slower  
20 than the car in front of us, because there was a little more space between us.

Q. How much space was there between your husband's car and the other? A. I can't say.

Q. Show us in this court. Was it a block? A. No.

Q. Three-quarters of a block? A. About a half a block, I should say.

Q. How far behind your husband's car was the nearest car behind him? A. I don't know. I  
30 didn't look behind.

Q. Half a block? A. I can't say. I didn't look behind.

Q. That same distance had you been following the car ahead of you? A. I don't know how far. I don't remember that, how far, but I know we were on that road together.

Q. For how long a time had your husband's car been following the car ahead? A. I don't  
40 know that. I don't remember.

*Mrs. Bertha Shryer—Cross*

Q. Would you say it was less than ten minutes or more? A. I won't say anything, because I won't tell a lie. I don't know.

Q. I haven't said that you are telling a lie. A. I don't know. I can't say. I don't know. I don't know. 10

Q. Why do you keep on saying you can't tell lies? A. Because I can't. All I told you I can't tell an untruth, because I don't know.

Q. Did any car pass you in the road? A. No; we were all keeping in line.

Q. So you must have been behind that car ahead of you for some considerable time? A. I suppose so. I don't know how far—how long we were on that road. 20

Q. Yet you say you must have been going slower than the car ahead of you because there was a half a block between you? A. I imagine so, because some cars were closer together, I imagine.

Q. But not a car passed you, and you kept behind that car for some considerable time? A. Yes.

Q. When you say to your husband, "Please drive slow or I will get out of the car"— A. I never said that. 30

Q. My dear lady, didn't you say on direct-examination that you said to your husband, "Please drive slow or I will get out of the car?" A. But I never said that to him. I always told him that because we drive, "Drive slow or I won't drive with you."

Q. Didn't you testify on the direct-examination, madam— A. When did I?

Q. When this gentleman, Mr. Turner, this gen- 40

*Mrs. Bertha Shryer—Cross*

tleman here, was asking you questions from the witness-stand a few moments ago, didn't you testify? A. I don't remember that. If I did—

Q. Didn't you say that you said to your husband that he should please drive slowly; otherwise you  
10 would get out of the car? A. Well, I said that before we started out from home, if I did say it at all, because I never said anything to him on the road.

Q. You were not in the car then, were you?  
A. When?

Q. When you said it? A. No; we were home.

Q. So when you were still in the house you warned your husband to please drive slowly or  
20 you would get out of the car? A. Absolutely. I always did that.

Q. That is all.

Further CROSS-EXAMINATION by Mr. Mackay:

Q. Which side of the car were you sitting on?

A. I was in the—I think I was in the center right.

Q. Center right? A. We had a baby with us. There was two in the back and my baby was with  
30 us.

Q. You were on the right side? A. Yes, in the center. Not exactly near the right, I was in the center.

Q. But was anyone on your right? A. I think I had the baby on the right, if I am not mistaken.

Q. Baby on the right? A. Yes.

Q. That is all.

*Mrs. Sarah Bodner—Direct*

Mrs. SARAH BODNER, sworn.

Direct-examination by Mr. Turner:

Q. Mrs. Bodner, where do you live? A. 11 Of-  
fert Street.

Q. You are the wife of Mr. Bodner, one of the 10  
previous witnesses? A. Yes, sir.

Q. On the day of this accident were you riding  
in this Chevrolet coach? A. Yes.

Q. Leaving out the details before the accident,  
just before the accident can you tell us whether  
the car of Mr. Shryer was going rapidly or  
slowly? A. We were going quite slowly.

Q. What have you to say to the traffic on the  
road? A. There was quite some traffic. 20

Q. Now, before the accident did you see this  
young lady, Miss Klein, in the road? A. The  
first time I seen this young lady was passing us  
in the air.

Q. She was up in the air when you saw her?  
A. Yes.

Q. Did you see where she had come from? A.  
Well, she was coming this way, so she must have  
come from the back going front.

Q. Did you see whether there was any auto- 30  
mobile in the road from the place where she had  
started? A. Not at that time.

Q. Did you see the Pontiac car? A. The first  
I heard of the Pontiac car was just as we seen  
the girl, I think it was Mr. Shryer said, "A Pon-  
tiac done it," or "A Pontiac run over her," some-  
thing like that.

Q. Did you see where the Pontiac went? Did  
you observe and see where the Pontiac went after 40  
that? A. The first time I seen the Pontiac was

*Mrs. Sarah Bodner—Direct*

after the girl had fallen down and I looked for it and looked back quite a bit—must have been—well, a lot of my house—fifty or sixty feet, something like that—I seen that car stationed there, and before I noticed it I seen her being carried—  
 10 I didn't even see who carried her, but some of her clothes were off and I seen her being carried into the car and the car driving off, and all was all in commotion.

Q. Was that the Pontiac car that she was put into? A. She was put into that car that had stopped a bit out in the road and turned there—I didn't know what it was, only that I heard Mr. Shryer say that it was a Pontiac.

20 The Court: Oh, no.

Q. You can't tell us what he said. When this girl landed on the ground was Mr. Shryer's car moving or was it standing still? A. We stopped an instant before the girl's body landed.

Q. Now, did Mr. Shryer's car or any part of it run over this girl? A. No, no, because she was picked up ahead of our car, just like these two.

Q. Did the car run over anything at all? A. No, sir; not that I seen or could see, because she  
 30 was picked up—

Q. Did you feel it run over anything? A. No, sir.

Q. You said the girl was which way from the car? A. Like this (indicating).

Q. You see, the stenographer won't get that, now. Was it to your right or left? A. To our left.

Q. How far from the car was the girl's body  
 40 lying? A. A couple of feet, maybe three, four, or five; I don't know.

*Mrs. Sarah Bodner—Cross*

Q. Was any part of her body touching Mr. Shryer's car at that time? A. No, sir.

CROSS-EXAMINATION by Mr. Rinzler:

Q. Mrs. Bodner, you say the car was probably from—a car was from two to five feet away from Shryer's car? A. About from three to five, I think. 10

Q. What was Mr. Shryer doing just immediately before the accident? A. Well, the first I knew anything was going to happen—

Q. No; before the accident. A. We were driving.

Q. Yes? Wasn't everybody engaged in conversation? A. Nothing that I can remember. 20

Q. He had not talked for how long before the accident? A. I had not spoken.

Q. Mr. Shryer? A. I don't remember if he had or not.

Q. Had anybody talked, say, an hour before the accident? A. Oh, yes.

Q. How long before the accident was the last time? A. I don't know.

Q. When did you start out from your home? A. Must have been in the neighborhood of half-past three. 30

Q. Do you know what time this accident happened? A. No, I don't know. All I know it was broad daylight. What time it was I don't know.

Q. Left home about half-past three? A. About that; I am not sure.

Q. Do you know when the accident happened? A. I don't know.

Q. You didn't know Mr. Bloom at all, did you? A. Never. 40

*Mrs. Sarah Bodner—Cross*

Q. You had not known the occupants in his car? A. No, sir.

Q. Who picked up the girl? A. I don't know. I seen her being picked.

Q. Was it a man or woman or men and women?  
10 A. A man.

Q. One man? A. It was all in a muddle, all I seen was.

Q. All what? A. All I seen was the girl on a man's shoulder being carried away.

Q. But the girl landed a few feet in front of your car, in front of Shryer's car? A. All I can say, the way she was picked.

Q. Just please answer the question. A. Yes.  
20 Q. Did the girl land on the ground in front of Shryer's car? A. On the side front.

Q. Was it in front of the car? A. More to the side.

Q. But in front of the car? A. Yes.

Q. You mean to the left of the front of the car?  
A. That is it.

Q. But away from the front end? A. A bit away, yes.

30 The Court: Was her body lying across the way?

The Witness: I did not see the body, where it layed.

Q. You don't know what position she landed in the road? A. No, sir.

Q. Do you know what she wore? A. I am telling you I seen some of her clothes being torn; I know it was white, and I think it was pink un-  
40 derneath; that is all I seen.

*Mrs. Sarah Bodner—Cross*

Q. You don't know what position she lay or landed in the road? A. No, sir.

Q. You don't know who was driving any other car there, do you? A. No, not at that time.

Q. You don't know whether Bloom was driving or not? A. No, sir. 10

Q. You don't know who was in his car? A. No, sir.

Q. You don't know what time the accident happened? A. No, sir.

Q. You don't know how many miles you traveled? A. I didn't say so.

Q. Do you know? A. Well, we traveled from our house until past Hackensack.

Q. Just how many miles to the point of the accident? A. Oh, I never measured. I don't know. 20

Q. Do you know what town the accident happened in? A. I heard where it happened. I didn't know.

Q. Do you know yourself? A. No. All I know, we were going.

Q. Do you know how close to the right curb Shryer's car was? A. Pretty close. 30

Q. How close? A. I don't know.

Q. Do you know how wide the road is? A. It is a narrow road.

Q. Do you know how narrow or wide it is? A. No.

Q. You did not see the girl enter the road? A. No.

Q. You say the car was standing before the girl landed on the road? A. An instant before the girl landed we stopped. 40

*Mrs. Sarah Bodner—Cross*

Q. Stopped completely. Were any men who were picking her up to the side of your car where the driver is? A. They were on this side.

Q. Where the driver sits? A. Yes.

Q. And right where the driver sits in where  
10 they were? A. Yes, on that side.

Q. The left front wheel is right where the driver sits, isn't it? Just answer that question, please, whether it is or not. A. Of course, yes, the front wheel is.

Q. Where did you sit? A. Back of Mr. Shryer.

Q. So that you had a good view there, didn't you? A. Well, I wasn't just looking, maybe, that way. I was sitting this way. I wasn't watching  
20 who was coming in the road.

Q. You sat right in back of the driver? A. Yes.

Q. So you had a seat in the rear left side?  
A. I was sitting this way.

Q. Yes. How far ahead of Shryer's car was the next car ahead of it? A. I don't know.

Q. How far behind him was the nearest car behind? A. I wasn't looking around.

Q. Had any car passed you on that street? A.  
30 Not that I saw.

Q. Do you know whether any car passed at the time of the accident or immediately before or after the accident, going towards Hackensack?  
A. After the accident? I don't remember any cars passing.

Q. All you saw was somebody was carrying the girl? A. That is all. I seen the girl hurled through the air, and she landed front right of our  
40 car, that is right immediately up to the front.

*Mrs. Sarah Bodner—Cross*

- Q. The front right of your car? A. Front left.
- Q. Where the left front wheel is, or the driver's seat is? A. No; in front of the left wheel, not by the wheel.
- Q. She was picked up at the left wheel? A. No; in front of the left wheel she was picked up, not at the left wheel—at the front of it. 10
- Q. Were the men that picked her up, as they did so, by the left front wheel? A. They were in front of our car to the left.
- Q. Where were they? Where the driver sits in Shryer's car? A. Not quite by the driver, a little ahead.
- Q. When you say "they," do you mean more than one? A. I only seen, as far as I remember, one man's shoulder carrying the girl. 20
- Q. Why do you say "they were picking her up?" A. That is what I heard, that there were two men.
- Q. You don't know how much about it, do you? A. What I know I have told you.
- Q. Do you know how many cars were ahead of Shryer's car in the road? A. No, but there were cars on both roads.
- Q. Do you know the rate in miles per hour that Shryer's car was traveling? A. Pretty slowly. 30
- Q. Do you know how many miles per hour it was traveling at the time of the accident? A. Not exactly.
- Q. Might it have been twenty miles? A. I don't think we were going twenty miles.
- Q. Might it have been twenty? A. I don't think so.
- Q. Did you ever drive a car? A. No. 40

*Mrs. Sarah Bodner—Cross*

Q. Did you look at the speedometer? A. I couldn't very well be looking at the speedometer when I was sitting in back.

Q. Are you just guessing at the speed? A. Well, I am judging from what I know.

10 Q. Did you ever test the speed of a car? A. I have been watching speedometers, yes.

Q. Did you watch or test it? A. No; I was in the rear seat. How could I watch?

Q. Did you hear Mrs. Shryer caution her husband not to drive fast? A. No, sir.

Q. Did she mention it at all? A. No, sir.

Q. Did you ever in your lifetime ride with the Shryers before this day? A. Yes.

20 Q. Did you ever in your lifetime hear her caution her husband not to drive fast? A. I don't remember her cautioning her husband, but I know she likes to drive in a slow car.

Q. Answer the question. Did you ever at any time—

Mr. Turner: I object to the interruption.

The Court: It is cross-examination.

Mr. Rinzler: I ask to strike out the last part.

30 The Court: Strike out the answer.

Q. Do you know how fast the cars were traveling in the opposite direction toward Hackensack? A. About the same rate we were going, I should judge. There was a line of cars. It was Sunday afternoon traffic.

Q. That is all.

*Mrs. Sarah Bodner—Cross*

Further CROSS-EXAMINATION by Mr. Mackay:

Q. You say the cars coming in the other direction were going about the rate you were traveling? A. I should judge so.

Q. You were driving very slow, weren't you? 10  
A. Pretty slowly.

Q. Did you notice, from the time you left Hackensack on your way to the point where this accident happened, whether or not any other cars passed your car? A. Not that I remember.

Q. Don't remember. You remember any pulling out of line coming in the opposite direction and passing as they came down from Westwood toward Hackensack? A. I don't remember. 20

Q. In other words, you were not paying very much attention, were you? A. Not much, no.

Q. You say this all happened just in the flash of a moment? A. Flash of a moment.

Q. Did you see this young lady jump off the terrace, as they called it? A. I did not.

Q. Was there a high terrace there or any kind of a terrace on the side of the road? A. Not so very high, but after we stopped I noticed there was, I think, a terrace on the one side and lower on the other. There were wild flowers growing on both sides. That is what I noticed after the accident. 30

Q. Did you notice whether there were any other cars parked along the roadway? A. Well, after the accident there were some cars parked behind us on account of the accident, I presume.

Q. Were any in front of you? A. I don't think so. 40

*Max Engber—Direct*

Q. Were there any on your right, parked on the side of the road? A. Well, this Essex, but I didn't know it was an Essex; I know there was a little coach standing there and there were some girls or women and a man there, that is all I  
10 seen.

Q. Weren't there some cars parked on the right-hand side as you went toward Westwood?  
A. In front of us?

Q. Yes. A. No, not that I remember.

Q. Well, would you say they were or were not parked? A. Well, if I don't remember I can't say. I didn't take notice.

Q. That is all.

20 Mr. Turner: Except for rebuttal, we rest.

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 DEFENDANT BLOOM'S TESTIMONY.

MAX ENGBER, recalled.

Direct-examination by Mr. Mackay:

30 Q. Where do you live, Mr. Engber? A. Brooklyn.

Q. What is your business? A. I am a clerk in the Customs House.

Q. Do you recall the 18th of September last year, 1927? A. Well, I don't remember exact to the date. I think it was some date.

Q. Do you recall sometime last September when you were riding in the car with Mr. Bloom? A.  
40 I do.

*Max Engber—Direct*

Q. Coming from Westwood toward Hackensack in the Kinderkamack Road? A. I was.

Q. Where had you met Mr. Bloom? A. I met him in a development in Washington Township, just outside of Westwood.

Q. Had you known him before that day? A. 10  
No, sir.

Q. Where were you going? A. I was going home.

Q. Now, did you see an accident that occurred there on the Kinderkamack Road? A. Why, the direct accident I did not see.

Q. Didn't see. Do you recall seeing this young lady, seated at the end of the table here, on that day? A. Why, her face is somewhat familiar, 20  
because I picked this girl up and I carried her into Mr. Bloom's car with the aid of Mr. Bloom, and one of the girls who was with her got in the car and we took her to the hospital.

Q. Did you say you and Mr. Bloom picked her up? A. Yes.

Q. Where was she when you picked her up? A. She was underneath the left front wheel of a car.

Q. Do you know whose car it was? A. No, sir. 30

By the Court:

Q. You mean the wheels were on her leg? A. No, not on it; past the front.

Q. The wheels were fast? A. Yes.

By Mr. Mackay:

Q. You picked her up? A. Yes.

Q. Did the car in which you were riding strike her? A. Not to my knowledge. It didn't touch 40  
her.

*Max Engber—Cross*

Q. Where were you sitting in the car? A. I was sitting on the right-hand side of Mr. Bloom, front seat.

Q. About how fast would you say Mr. Bloom was driving that day? A. Well, it was a big  
10 line of traffic; I should judge we were going anywhere from twelve to fifteen miles an hour.

Q. When you went to the hospital, or, rather, when you picked this young lady up and put her in Mr. Bloom's car to take her to the hospital, did you see Mr. Shryer there? A. At the hospital?

Q. At the scene of the accident? A. No, sir; I didn't notice anybody.

20 Q. Didn't notice anybody? A. No, sir. In the excitement I didn't notice anybody.

Q. Did you see him at the hospital when you got there? A. No, sir.

Q. Didn't go to the hospital? A. Who?

Q. Mr. Shryer. A. I didn't see him there. I don't know whether he got there or not.

Q. You never saw Mr. Shryer before that time, had you? A. Why, the first time I ever seen him was in the court, I think it was in Riveredge, some  
30 place like that I was called one time.

Q. That was after the accident? A. Yes, sir.

## CROSS-EXAMINATION by Mr. Rinzler:

Q. Did you get the names of the occupants of the Essex coach that was parked? A. I didn't even see an Essex coach.

Q. A lot of excitement there? A. What's that?

Q. You were excited? A. Who? Me? I  
40 wasn't excited when I picked up the girl.

*Max Engber—Cross*

Q. You do know where the girl was lying on the road when you picked her up? A. Yes.

Q. You say she was lying underneath a car and she was at a point behind the left front wheel of that car? A. Yes, sir.

Q. And that car was facing in a direction from Hackensack towards Westwood? A. Yes. 10

Q. Not in the direction that Bloom was driving his car, but in an opposite direction? A. Yes, sir.

Q. Do you know what kind of a car it was that she was lying under? A. No, sir.

Q. Was it a closed car? A. I couldn't even recollect that, on account of the excitement.

Q. She was lying, you say, behind the left front wheel of the car and her body was underneath the car? A. Yes. 20

Q. Her legs were extending beyond the left side of the car? A. No, sir; just the opposite of it, her legs were under the car, but her head was toward—

Q. Where was her head? A. Her head was out toward the center of the road.

Q. She was lying across the road? A. Yes, toward the center of the road. 30

By the Court:

Q. Didn't her legs go under the car? A. Yes.

Q. Were they past the straight line from the front wheel to the rear? A. Yes.

Q. How far did they stick past that line? A. Well, I couldn't judge the distance, because I kind of—well, I judge the distance that the running-board came to about her hips. That is about how I could judge the distance. 40

*Max Engber—Cross*

By Mr. Rinzler:

Q. From a point of about where the hips are downward on her body to her feet, that part of her body was underneath this car? A. About that distance.

10 Q. The rest of her body was lying cross-wise across the road? A. Yes, sir.

Q. Her legs were underneath the car? A. Yes, sir.

Q. She was lying between the front wheel and the rear wheel of the left side of the car? A. Yes, sir.

Q. You did not see the girl enter the road, did you? A. No, sir.

20 Q. The first time that you saw the girl was when she was lying underneath that car? A. No.

Q. When? A. That I wouldn't say—I was smoking a cigar and we were about two car lengths behind or about two car lengths away from her when she ran between two cars; that is she came from out, from between two cars, and ran across the road, past us.

30 Q. Did you see two cars parked there? A. I seen more than two cars parked there.

Q. Did you see two cars parked there? A. I seen more than two cars.

Q. The two cars between which she came out of were how far apart? A. Well, I judge about anywhere from two to three or four feet.

Q. How far away from the girl was Bloom's car when you first saw her come into the road?

40 A. Why, about—I don't know; maybe three, two and a half car lengths.

*Max Engber—Cross*

Q. About twenty-five feet? A. Well, I don't know. I couldn't say feet, because I am not a judge of distance.

Q. You say your car was going a moderate rate of speed? Slow? A. Slow to fifteen miles an hour. 10

Q. You did not hit her? A. No, sir.

Q. How far away from her was the nearest car to her that was going in an opposite direction? A. That I can't say, because I was smoking and I wasn't—just star gazing, as the saying is.

Q. How far apart were the cars in the line of traffic that were going north? A. Well, it was a regular line of traffic. 20

Q. How far apart were they? A. I couldn't say. I don't know. I am not a judge of distance.

Q. You say you picked her up? A. With the aid of Mr. Bloom.

Q. And Bloom helped you? A. Yes, sir.

By the Court:

Q. Where did you stop your car and get out to pick her up? A. Immediately.

Q. Where do you mean, immediately? Right before you got to the girl or after or where? A. 30 Why, the girl about cleared—the girl cleared our car, and where we picked her up was about even with the rear end of our car or maybe, might say right by the last door of the car, which is about a car's length past where the girl got by us.

Q. You had seen the girl going out? A. I seen her go by.

Q. Go by what? A. By our car.

Q. Go by? A. Yes; that is, she got clear, past 40 the car.

*Max Engber—Cross*

Q. Which way was she going? A. She was going from my right towards the left.

Q. That is, she went in the front of your car? A. Yes, sir. We were about a car and a half, two car lengths away when she got by.

10 Q. She went by the front of your car? A. Yes, by the front of it.

Q. Now, how far were you away from her when she went by the front of your car? A. About a car and a half length, two car lengths away.

Q. What happened to her when she went by the front of your car? A. I didn't see her any more.

Q. You did not see her until she was on the ground? A. I did not, no.

Q. When she went by the front of your car was there any car between your car and her? A. Was there any car between our car?

Q. Was there any car in front of your car, between your car and her? A. Yes, there was cars running all along there with a line of traffic.

Q. I say, when you saw her go by were there cars going by between her and your car? A. Between her and our car? Why, it was a regular line of traffic; there was cars going continuously.

Q. I say, was there any car going by in front of your car, between your car and her? That is a plain question. A. Between our car and her? No, there wasn't. No.

Q. Then, there was nothing to prevent your seeing what happened to her, was there? A. Why, the accident happened to the left of us, if there was any accident that happened.

40 Q. I asked you where she went to. A. She ran in front of our car about two car lengths away.

*Max Engber—Cross*

Q. There was nothing to prevent you from seeing what became of her? A. No, I didn't.

Q. What became of her? A. She got to the left of us.

Q. What happened to her? A. I didn't see what happened to her after that. 10

Q. What was there to prevent you? A. Because I wasn't looking out at her. I wasn't giving her a thought.

Q. Go ahead.

By Mr. Rinzler:

Q. You did not watch her cross the road, then, did you? A. No, I did not. I just seen her go by, that is all. I was smoking. 20

Q. You say she passed the front of your car and then you paid no more attention to her? A. That is it.

Q. What she did after that you don't know? A. I don't know.

Q. You simply know the next thing that occurred there you saw her lying between the two wheels on the left side of the car? A. The next thing I know Mr. Bloom put on his brakes and we stopped and we jumped out. Of course, we heard screaming and screeching of brakes and so forth. 30

Q. Where was the girl at the time Mr. Bloom applied his brakes? A. She was about more than half way across the front of our car past it, I remember.

Q. You did see her, then. She was already to the left of our car? A. Sure. Not to the left of it, to the front of our car, half way past the front of our car. 40

*Max Engber—Cross*

Q. Then you saw Bloom apply his brakes? A. I didn't see him; I heard him.

Q. Then you didn't watch any more? A. I was excited at the time.

Q. The girl wasn't hit yet, then? A. When you  
10 see anybody laying in front of a car, naturally you get—

Q. Were you afraid Bloom's car was going to hit her? A. Was I afraid?

Q. Yes. A. No, I wasn't afraid.

Q. Were you afraid some car coming in the opposite direction was going to hit her? A. Sure. I wasn't afraid then, either.

Q. You said a moment ago you didn't even  
20 know how far away from you the nearest car was that was going from Hackensack, didn't you? A. I said—

Q. Didn't you say that? Yes or no. A. What?

Q. That you didn't know how far away from the girl was the nearest car that was approaching north toward Westwood from Hackensack? A. I said that, yes. I did say that.

Q. You know what kind of a car you were riding in? A. No, I don't know the name of it.

Q. Do you know the name of the man that was  
30 driving the car you were in? A. Yes, I do know that.

By the Court:

Q. How many feet did you say the car was ahead of you when she crossed in front of the Bloom car ahead of you? A. How many feet past our car?

Q. How many feet in front of you she went  
40 ahead. A. Why, she was about two car lengths

*Max Engber—Cross*

in front of us at the time—a car and a half or two car lengths.

Q. You saw no cars between your car and this girl? A. Not that I noticed.

Mr. Rinzler: That is all. 10

Further CROSS-EXAMINATION by Mr. Turner:

Q. Mr. Engber, did you see the girl when she was flying through the air? A. No, sir.

Q. Then, your car had passed the place where she was flying through the air, if she was? A. I didn't see her flying through the air.

Q. Did you see her in the air at all? A. No; I seen her running in the street. 20

Q. Saw her running in the street. How fast was she running? A. I don't know how fast she could run.

Q. Well, did she run as fast as anybody can run or did she just jog trot, or what? A. Why, it was a pretty good gait, pretty good speed.

Q. Ran at a pretty good gait. Now, did any car pass you while she was running at that gait? A. No. There was a line of traffic there. 30

Q. You were in a line of traffic. When you heard the brakes applied on Mr. Bloom's car was the girl still in front of you? A. No; she was past. When we put the brakes on, do you mean?

Q. Yes. A. She was still in front, to a certain extent.

Q. How far in front of you was she when Mr. Bloom put the brakes on? A. About a car and a half length. 40

*Max Engber—Cross*

By the Court:

Q. Was the girl standing up then, or on the ground? A. She was running.

By Mr. Turner:

10 Q. Mr. Bloom said at one time that the girl was five feet in front of his car. Did you see her when she was five feet in front of his car? A. No, sir.

Q. You did not see that? A. No, sir.

Q. You said you were star gazing? A. Star gazing, exactly.

Q. So you did not see what happened; is that right? A. What do you mean?

20 Q. You didn't see what happened until the girl was lying in the road? A. Exactly.

Q. When you say you were star gazing you mean you were looking some other direction? A. Thinking of something, yes.

By Mr. Mackay:

Q. You were not driving the car? A. No.

Q. That is all.

By Mr. Rinzler:

30 Q. At the time the girl was passing in front of Bloom's car or before she started to pass or at any time after she started to pass, there was no signal or warning given by any car, was there? A. No, sir.

Q. That is all.

*Lewis Bloom—Direct*

LEWIS BLOOM, recalled.

Direct-examination by Mr. Mackay:

Q. Where do you live? A. 2814 Boulevard, Jersey City.

Q. Do you recall the day of this accident that 10 occurred on the Kinderkamack Road? A. Yes.

Q. Were you driving a car on that day? A. Yes.

Q. What kind of a car were you driving? A. Pontiac sedan.

Q. Where had you been, Mr. Bloom? A. I was in Westwood.

Q. In Westwood? A. Yes, sir.

Q. Who was with you in the car? A. Mr. Eng- 20 ber.

Q. The witness who just testified? A. Yes, sir.

Q. Did you know him before this day? A. No, sir.

Q. Never met him before? Where were you driving to? A. I was driving home to Jersey City.

Q. Now, will you just describe to the Court and jury what you know about this accident that oc- 30 curred on the Kinderkamack Road? A. Yes. About twenty minutes or quarter to five daylight saving time I was going south on the Kinderkamack Road. That road is about twenty-five or thirty feet, and as I was going home, when we hit about Orandell the traffic is very heavy, because there is a lot of cars going to the 125th Street Ferry, and we had to stay in line pretty tight there. As we were going along we got to 40 about Riveredge, somebody yelled—

*Lewis Bloom—Direct*

Q. Will you talk a little louder, Mr. Bloom?

A. We got to Riveredge, was going along as—  
there is a place there where they were building  
something and there was houses—there was cars  
10 parked on both sides of the road; I think they  
had model homes there or something they were  
showing, and there was quite a number of cars  
parked on both sides of the road. We were go-  
ing north, cars coming south, and when we got  
to about Riveredge somebody yelled, and of course  
the first thing somebody ran out in the middle of  
the road right from back of some cars that were  
parked along there, along the edge of the road,  
ran right out in the middle of the road; I threw  
20 on my brakes and somebody yelled as I threw  
it on; it all happened just like a flash, as fast as  
a curtain would drop; and I stopped right there,  
and when I stopped, as my car was facing north—  
or facing south—and the car come going north,  
stopped right there. At that point about the mid-  
dle of my—well, to the back door of my car, and  
the girl ran out was right in back of the front  
wheel; and Mr. Engber and I stopped and we  
stepped out of the car and somebody says, “Take  
30 her to the hospital,” and I picked her up, put her  
in our car, and some girl who was a friend of hers  
got in the car with us and went to the hospital  
with us; and when we got to the hospital we took  
her off and put her on some table, like, and we  
come out. A policeman was there from River-  
edge, and a young lady that was with them pick-  
ing flowers, or whatever it was, says to the officer,  
40 “What do you want Mr. Bloom for? He didn’t  
touch that girl.”

*Lewis Bloom—Direct*

Mr. Rinzler: Says to whom?

The Witness: To the officer—"What do you want Mr. Bloom for? He didn't hit that girl."

Mr. Rinzler: Who made that remark?

The Witness: The tall girl that came 10  
later, I think her name was Dingbell. I think I can point her out.

Q. In the courtroom? A. Yes, the girl right there.

Q. Is that the one? A. Yes.

Q. Go ahead. A. And that was all. The officer said, "All right."

Q. After you got to the hospital how long did you stay there? A. Oh, probably, we will say, a 20  
half hour.

Q. Then what did you do? A. Why, we took—we asked those girls—they asked if we would take them along to Jersey City, so I says, "Yes, we will take them along with us."

Q. Did you drive them to Jersey City from the hospital? A. Yes.

Q. They did not ask to be taken back to the scene of the accident again where the Essex car 30  
had been parked that day? A. Didn't what?

Q. Didn't ask to be taken to the accident, where the Essex car was parked on the side of the road. A. Nobody asked me to take them back to the accident.

Q. So you drove them from the hospital to Jersey City? A. Yes, in fact—

Q. How fast, Mr. Bloom, would you say you were driving on this day? A. Well, there is 40

*Lewis Bloom—Cross*

places where you can go twelve, fifteen, and eighteen miles an hour.

The Court: At this time?

The Witness: At this particular time?  
 10 Oh, I should judge fifteen to eighteen miles an hour.

Q. Was there much traffic on the road? A. Very heavy traffic at that time going to the ferry.

CROSS-EXAMINATION by Mr. Rinzler:

Q. Was each line of traffic maintaining the same rate of speed? A. Well, I presume they were.

Q. That would be about fifteen or eighteen  
 20 miles an hour? A. Yes, sir.

Q. How far was the next car ahead of you in front of your car? A. I should say, oh, about a car and a half length.

Q. Did you see Shryer's car approach you? A. I don't know Shryer's car. I never looked at the cars that were coming north, because I was just following my own line of traffic. It was pretty close.

Q. Did you see, after the accident, Miss Klein  
 30 lying underneath— A. Yes.

Q. The left front wheel, or behind, rather, the left front wheel of the car going north? A. Yes.

Q. Who was driving that car? A. I don't know.

Q. Do you recognize the man? A. Well, they tell me it is Mr. Shryer's car.

Q. What was the name of the car? A. I didn't look at the—

40 Q. Was it a closed car? A. It was a closed car.

*Lewis Bloom—Cross*

Q. Were there a few men and women in it?

A. Well, I can't tell you that. I really didn't look inside the car to see who it was.

Q. Do you recognize any of the people now?

A. That I seen at the—

Q. Yes. A. Well, only from what—since I 10  
heard it around in this case.

Q. Do you recognize those to be the people now? A. Well, I wouldn't say they were the ones that were in the car.

Q. She was lying under the car that was facing north? A. Yes, sir.

Q. Right? A. Yes.

Q. Her legs were underneath the car? A. Yes, 20  
sir.

Q. Did you ascertain or try to ascertain the names or addresses of the occupants of the Essex car? A. Did I try to get their names?

Q. Yes. Yes or no. A. I don't know anything about any Essex car.

Q. Did you try to get their names? A. Why, no, I did not.

Q. Did you ascertain or make a record of the license number of that car? A. What car is that?

Q. The Essex. A. I don't know anything about 30  
an Essex car.

Q. Did you get anybody's license number? A. The young lady—

Q. Yes or no. A. No.

Q. Just tell us what Miss Dingol said to the officer, will you? A. She said that Mr. Bloom—

Mr. Turner: What Miss Dingol said to the officer, I don't see how that is material. 40

*Lewis Bloom—Cross*

The Court: It is not material unless it was in the presence of the plaintiff. There has been no testimony on it.

Mr. Rinzler: It is in now. Mr. Turner did not object to it.

10

The Court: If it was in, it was in without testimony, because there was no objection to it, but I say it is not permissible. It is not permissible unless it was said in his presence.

Mr. Rinzler: Since it is in without objection—

The Court: That does not entitle you to cross-examine.

20

Mr. Rinzler: May I ask the question? I have not asked it yet.

The Court: Yes.

Q. What did you testify was the conversation between Miss Dingol and the officer?

Mr. Turner: I object on the ground it is incompetent and immaterial.

The Court: Objection sustained, there being no evidence of the presence of the plaintiff.

30

Mr. Rinzler: I note an exception, because I have a right to cross-examine, as the testimony was admitted without objection.

Q. After the accident did you give Miss Dingol this card and write the names on it which are written on it, in Passaic? A. I probably gave it to Mr. Engber, because I think he wrote it on for me. I asked him to write it on there. I

40

*Lewis Bloom—Cross*

probably gave it to Mr. Engber and asked him to write on it.

The Court: Repeat the question.  
(Question repeated by the stenographer.)

The Court: Yes or no. 10

A. No.

Q. Did you give that card to Miss Dingol? A. No, sir.

Q. Did you give it to any of the girls? A. Did I give it? I don't know.

Q. Do you know how the girl, or one of the girls, got it?

The Court: He didn't say she had it. 20

Q. Did you want one of the girls to get it?

A. I probably did give it to them.

Q. Probably did? A. Yes.

Q. Was it you that wrote these names on? A. That is not my writing.

Q. Or did you ask Mr. Engber to write it? A. I probably asked Mr. Engber. That is not my writing.

Q. Mr. Delafield is the officer of the corporation? A. Yes. 30

Q. Blockdel Realty Company? A. Yes.

Q. What officer? A. President.

Q. For what reason did you give this card to Mr. Engber to give to one of these girls? A. So I could get in touch with them if I wanted to get in touch with them.

Q. You wanted the girls to get this card so if you wanted to get in touch with them you would be able to? A. They would know where I was, 40 too.

*Lewis Bloom—Cross*

Q. Wasn't this because you were on the business of the corporation at the time? A. No, sir.

Q. You say it was not your car that hit her? A. No, sir.

10 Q. It was not any car that went toward Hackensack that struck the girl? A. I can't tell you that.

Q. Before she was found lying underneath that car bound south, no signal was given from any car? A. There wasn't any time for any signal.

Q. Was there any given? A. No, sir.

Q. Was your car damaged? A. Was it damaged?

20 Q. Don't you hear me? A. I don't know of any damage that was on my car.

Q. You don't know? A. No.

Q. Did you examine it after the accident? A. No, I didn't examine it.

Q. You don't know whether it was damaged at all? A. I do not, no.

Q. Was the car underneath which the girl was lying damaged? A. I don't know that.

30 Q. You don't know that. Did you take notice of the car under which the girl was lying? A. I wasn't concerned with it.

Q. Did you do any repairs to the front left fender of your car? A. No, sir.

By the Court:

Q. Did you make any effort to find out who, if anybody, had struck the girl? A. No. I wasn't really concerned. I did not make any effort.

*Lewis Bloom—Cross*

By Mr. Rinzler:

Q. Do you know how far away from the girl the nearest south-bound car to her was—the nearest car bound, rather, north, was to her? A. I don't know. All I know is when we stopped.

Q. How far away from the car under which the girl was lying did your car stop? A. Why, practically opposite it. 10

Q. Now, were there cars parked on both sides of the street? A. Yes.

Q. Was there enough space for a car to travel within half an inch from the curb going north? A. Going north? There is no curb on that side.

Q. Well, was it possible for a car traveling north to travel a half a foot or a foot from the right edge of the road? A. How is that? 20

(Question repeated by the stenographer.)

A. Yes, I guess so.

Q. There was? A. I think so.

Q. I thought you said there were cars parked there? A. Yes, but there is no curb there, so you could go—

Q. I don't care about the curb. There is an edge of the road, isn't there? A. Yes, there is an edge of the road. 30

Q. Were there cars parked on the edge of the road, on the right side of it? A. Probably inside of the edge of the road.

Q. You mean into the road? A. No, off the road, because there is no curb. For instance, this is the end of the road, and there is no curb; you can come in here like that.

Q. If the cars were parked off the road would 40

*Lewis Bloom—Cross*

any part of the cars project onto the road? A. That I don't know.

Q. You don't know what I mean? A. No; I don't know that there was any cars that was projecting on the road.

10 Q. You don't know? A. No.

Q. You didn't notice that? A. No, sir.

Q. How far from the right edge of the road was the car, the right side of the car, under which Miss Klein was lying? A. I didn't notice the distance.

Q. How far from the right of the road was your car traveling? A. Why, on the side my car was traveling there is a curb and there is cars parked  
20 along there, and I was going right south at that time; I would judge, then, it must have been about seven feet.

Q. From the right side of the road? A. Yes.

Q. How wide is the road? A. Probably twenty-five or thirty. I don't know.

Q. You were hugging the center of the road? A. Yes. Could not help it, because there was cars parked there.

Q. Cars parked on the left side of the road—  
30 on the road? A. Probably part of them was on the road; I don't know.

Q. Don't you know, Bloom? You were there. A. I don't know. I didn't take notice of that.

Q. You don't even know what side of the road or how near from the right edge of the road stood the car under which you picked up Miss Klein from, do you? A. What do you mean?

Q. You can't tell us how far from the right  
40 edge of the road was the right side of the car under which Miss Klein was lying? A. No.

Q. That is all.

*Lewis Bloom—Cross*

By the Court:

Q. How far was Miss Klein ahead of you when you first saw her? A. About—ahead of me? I would say about a car or a car and a half.

Q. Was there any car between your car and her when you saw her? A. Between my car and her? You mean in front of me? 10

Q. In front of you? A. Yes, there was cars going south.

Q. How many cars were there in front of you? A. Oh, probably a car and a half or two car lengths, between the two cars.

Q. Was there any car or cars between you and her when you first saw her? A. When I first saw her? Yes, the car was in front of me. I didn't see then—no; there was cars ahead of me if I was traveling this way. 20

Q. You were traveling south? A. Yes; there is a car going south, I am going south.

Q. I don't care how you were going. The question is, at the time was there any car ahead of you, between you and her? A. Yes.

Q. How many cars? A. Well, I should say that one car was in front of me.

Q. Then, when you first saw her where was she? A. Why, I didn't see her until she was in the middle of the road. She just shot out. 30

Q. She was in the middle of the road when you first saw her? A. Yes, sir.

Q. Then what did she do? A. Well, just the same as somebody yelled I stopped.

Q. I don't care if somebody yelled? What did Miss Klein do? A. I didn't have time to look.

Q. You didn't see her after that? A. No. 40

*Lewis Bloom—Cross*

Q. When was the next time you saw her? A. Right as I stopped. There was a car standing right opposite me and she was lying with her legs under the car, and we opened up our car.

10 Q. And her head or legs toward you? A. Her head towards us.

Q. Legs toward the other side? A. Yes.

Further CROSS-EXAMINATION by Mr. Turner:

Q. Mr. Bloom, you know who hit this girl, don't you? A. No, I don't.

Q. You know who hit the girl, don't you? A. No, I do not.

20 Q. Didn't you see anybody hit her? A. Did I see anybody hit her?

Q. Yes. A. I can't say that I did.

Q. Did you have a dent in your left front fender? A. I don't know, unless it got that way—I didn't really examine.

Q. Did not examine the front fender to see if you had a dent in it? A. No, sir.

Q. Do you remember having a conversation with Mrs. Lewis? A. Miss who?

30 Q. Miss Lewis. (Miss Lewis, will you stand up, please?) Remember having a conversation with that lady about this accident? A. Why, that lady was up to see me about four or five days ago, I think.

Q. Now, did you say to her, "Shryer, poor devil, didn't have anything to do with this accident at all, but the Kleins are trying to hold him"? A. No.

40 Q. Didn't you say that to Miss Lewis? A. No, no, no, no, no.

Q. That is all.

*Lewis Bloom—Re-direct, Re-cross*

RE-DIRECT EXAMINATION by Mr. Mackay:

Q. When did you say this lady came to see you? A. I think it was about four or five days ago.

Q. Four or five days ago? A. Yes. 10

Q. Where did she come? To your home? A. No. I think that same lady was up to see my wife once, too, and she—

Q. Stand up, please. A. And told her a story about she was involved in the accident.

Mr. Turner: I object.

The Court: Strike it out.

Q. That is the first time you saw her? A. 20  
Yes.

Q. Did you see her at the hospital after the accident? A. I have never seen that woman before or after that, only one time.

Q. Only that one time? A. Yes.

Q. That is all.

Further CROSS-EXAMINATION by Mr. Rinzier:

Q. Well, was the first time you saw this girl 30  
in the middle of the road? A. Yes, when she shot out.

Q. Answer the question. Was she in the middle of the road the first time you saw her? Yes or no. A. No, I won't say that.

Q. What part of the— A. She was darting out.

Q. What part of the road was she in when you first saw her? A. She ran out from in back of 40  
some machines.

*Lewis Bloom—Re-cross*

Mr. Rinzler: I ask that that be stricken out.

The Court: Strike it out.

Q. Didn't you answer his Honor's question by  
10 saying that she was in the middle of the road  
when you first saw her? A. Well, yes.

Q. All right.

By the Court:

Q. Is that the first time you saw her, now? A.  
When I saw her she was running.

Q. Is that the first time you saw her, when she  
was in the middle of the road, or did you see  
her before? A. Well, she ran in front of me.

20 Q. Then, she was not in the middle of the road  
when you first saw her? A. No, sir.

Q. Where was she? A. I should say about the  
center of my car.

By Mr. Rinzler:

Q. You have said twice that she was in the  
middle of the road when you first saw her? A. I  
didn't understand.

Q. You answered it that way, didn't you? A.  
30 Well, yes. You asked me so many times.

Q. You made that statement, however, didn't  
you? A. I don't know if I did.

Q. You don't know whether you testified today  
that she was in the middle of the road when you  
first saw her? A. No, I do not.

Q. You don't know? A. No; I would like to  
hear the question.

Q. Did you just a moment or two ago, at the  
time that you testified, say she was in the middle  
40 of the road when you first saw her? A. Well,  
not when I first—the first time I saw her.

*Lewis Bloom—Re-cross*

Q. Didn't you say so? Whether it was the fact or not, didn't you say so a few minutes ago? A. I don't know if I did or not.

Q. That she was in the middle of the road the first time you saw her? A. I don't know if I did or not. 10

Q. That is all.

Mr. Mackay: I would offer in evidence this card, which Mr. Rinzler has referred to.

The Court: What do you want to prove by that?

Mr. Mackay: I want to use it as evidential. 20

The Court: Of what?

Mr. Mackay: To show the attitude of this defendant after this accident.

The Court: You cannot offer evidence that has been manufactured by your own witness, can you?

Mr. Mackay: To show his disposition after the accident had occurred.

The Court: That doesn't show the disposition. 30

Mr. Mackay: I won't press it.

*Harry D. Kohlman—Direct*

HARRY D. KOHLMAN, sworn.

Direct-examination by Mr. Mackay:

Q. Where do you live, Mr. Kohlman? A. Riveredge.

10 Q. Do you hold any official position in Riveredge? A. I am an officer up there.

Q. Were you an officer in September, 1927? A. Yes, sir.

Q. Did you go to the hospital after an accident occurred there last September where this young lady was injured? A. Yes.

Q. Who did you see at the hospital? A. Mr. Bloom and another man and that girl over there  
20 with the brown hat, Miss Dingol.

Q. Will you stand up, please? Is that the young lady? A. Yes.

Q. Was she there? A. Yes. I think it was her.

Q. That is all.

Mr. Rinzler: No questions.

Mr. Mackay: The defendant rests.

Mr. Rinzler: We rest.

*Elizabeth G. Lewis—Direct*

DEFENDANT SHRYER'S TESTIMONY IN  
REBUTTAL.

Mrs. ELIZABETH G. LEWIS, sworn.

Direct-examination by Mr. Turner: 10

Q. Mrs. Lewis, where do you live? A. I live at 103 Fayette Street, Perth Amboy, New Jersey.

Q. At my request did you investigate this case? A. Yes, sir.

Q. Did you have an interview with Mr. Bloom, one of the defendants here? A. Yes, October the 4th.

Q. Did you have a conversation with him about the happening of this accident? A. Yes. 20

Q. What was that conversation you had with Mr. Bloom?

Mr. Rinzler: I object to the conversation in so far as the plaintiff is concerned, because he does not show it was had in her presence, and therefore would not be admissible.

The Court: Do you want to limit it to the defendants? 30

Mr. Turner: Limit it to the defense.

Mr. Rinzler: Your Honor will limit it. That should be limited in your instructions to the jury when you charge.

The Court: I will tell the jury now it hasn't anything to do with the plaintiff.

Q. What was the conversation you had with Mr. Bloom? A. Well, I went up there to see Mr. Bloom and he was telling me about his—about 40

*Elizabeth G. Lewis—Direct*

having an accident, and he said it was a very peculiar thing, and they was holding for \$150,000 in court, and he goes to the box and he gets out two names; one was Rose Owen's, 1752 Fifty-seventh Street, and the other was Esther Dingol, and he said these two girls were witnesses, and he said—well, he said to tell you it is a very peculiar thing; they are holding—he says the car that ran this girl down was an Essex car and they are holding this poor devil in Passaic for the accident, and he is absolutely innocent of the accident. He did not mention the name, only mentioned that the man was from Passaic. And I said to him, “Did you witness the accident?” And he said, “Why, certainly.” He says, “I was traveling south and the girl came out from around an Essex car and came to the center of the road and there she was struck and hurled in the air and under the wheel of another car coming in the opposite direction.

Q. Did you ask Mr. Bloom about the fenders of his car, or did he suggest anything himself?  
A. Yes, he said—I asked him if his car was damaged and he said, “Yes, the fender was damaged,” and I asked him where he kept his car. It is the Uray Company garage where he kept his car. At the same time I asked him what his license was for the year 19—I have the license number which he gave me. I have it on a piece of paper, your Honor. May I read it?

The Court: Whatever Mr. Turner says.

Q. That is all right. A. He told me his license was a non-resident's license, that his car was a Pontiac car, 4-5298, for 1927.

Q. That is all.

*Elizabeth G. Lewis—Cross*

CROSS-EXAMINATION by Mr. Mackay:

Q. You say this was October 4, this year? A. Yes, sir.

Q. You went there at the request of Mr. Turner? A. Yes, sir.

Q. Did you go to see Mr. Shryer, also? A. No, I did not. 10

Q. You did not go to investigate his side of the story at all, did you? A. No, I did not.

Q. You just went to see Mr. Bloom? A. I did. I interviewed Mr. Bloom.

Q. I suppose that is your business, is it, investigating cases? A. Beg pardon?

Q. Is that your business? A. Yes, I am an investigator. 20

Q. You are paid for making your investigations? A. Certainly.

Q. You did not go to Mr. Bloom until October 4 of this year? A. I had been to see his wife.

Q. I say Mr. Bloom. I didn't go to see Mr. Bloom, no.

Q. You had not talked with him until October of this year? A. Of this year, but I had interviewed—

Q. Do you know when this accident happened? A. Yes, sir. 30

Q. What day did it happen? A. It happened September the 18th, 1927.

Q. That is more than a year ago, isn't it? A. Yes.

Q. You say Mr. Bloom told you that it was an Essex car that ran this young lady down? A. That is what he told me. He said it was an Essex car that struck her that was coming from the north. 40

*Elizabeth G. Lewis—Cross*

Q. An Essex car that struck her? A. Yes, sir.

Q. But you made no investigation in so far as Mr. Shryer was concerned? A. Oh, yes, I made other investigations.

10 Q. I mean with reference to him on October 4th or any time. Did you? A. Yes; I had been to his house on several occasions to see him. I had interviewed his wife.

Q. No, Mr. Shryer, I mean. A. Oh, Mr. Shryer, no.

Q. Mr. Shryer? A. I thought you meant Mr. Bloom.

20 Q. I mean Mr. Shryer. A. I was nearly three weeks trying to locate Mr. Bloom before I interviewed him. I had interviewed his wife, and in my interview—

The Court: Just a minute.

30 Q. You did not know, did you, anything with reference to this card that Mr. Bloom had given to this young lady after the accident, to one of her friends, did you? A. I know Mr. Bloom had two names, and he told me about ringing the young ladies up to invite them out for lunch, and that he had also—that is, Miss Owen's and Miss Dingol's.

Q. Answer the question. You did not know Mr. Ploom right after the accident had given his card to the ladies, showing the address where he was employed? A. Oh, yes; he told me he did.

Q. Did you know it? A. Oh, yes; he told me he did, he gave them his address.

40 Q. Why did you have such difficulty in locating him? A. I didn't know that until I had interviewed him.

*Anthony F. Vacras—Direct*

Q. Did you know where he lived, or didn't you?  
 A. No; I didn't know where he lived, no; not his business address. No.

Q. Yet you knew about this card? A. Not until I interviewed him.

Q. Not until then? A. No. He had a little lock box and he stated to me that the young ladies gave him their names, and one was a Miss Rose Owen, the other was a Miss Esther Dingol, and Miss Dingol lived on Sixty-fourth Street, and Miss Owens lived on Fifty-seventh Street, in Brooklyn. 10

Q. That is all. A. And that he had invited them out for dinner.

Q. That is all. 20

Mr. Turner: That is all.

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 ANTHONY F. VACRAS, sworn.

Direct-examination by Mr. Turner:

Q. Chief, you are the Chief of the Borough?  
 A. Of Riverside Borough. 30

Q. You remember the day when this accident happened? A. Yes, sir.

Q. Now, that night did you make an effort to find Mr. Bloom? A. Yes, sir.

Q. Just tell the Court and jury what effort you made to find Mr. Bloom that night and how long you were at it.

Mr. Rinzler: I object to it as not proper rebuttal. 40

*Anthony F. Vacras—Direct*

The Court: Well, there are two defendants. It does not affect the plaintiff at all.

Mr. Rinzler: I object to that, because it is not proper rebuttal.

10

The Court: I will permit it until he undertakes to infringe on the plaintiff's case, and then I will stop him. As long as it does not infringe upon the plaintiff's case, it may be rebuttal.

Mr. Turner: Yes.

Q. All right, then, tell us what effort you made to find Mr. Bloom and what time you gave it. A. After I was called on the case I tried to ascertain how this accident happened. I found on records  
20 in the hospital—

Q. Don't tell us what you found. A. That the two men mentioned in the case was Mr. Bloom—

Q. All right; you found Mr. Bloom's name in the hospital? A. Yes, Mr. Bloom.

Q. What did you do to find Mr. Bloom? A. I then tried to locate Bloom.

Q. What did you do? A. I went to his home on Boulevard and waited there until three o'clock  
30 in the morning.

Q. Three o'clock in the morning? A. With the other officer—two other officers and myself.

Q. Did he come at that time? A. No.

Q. Did he get home at three o'clock? A. No, I didn't see him at all.

Q. You left at three o'clock? A. Left at three o'clock that morning.

Q. That is all.

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*Anthony F. Vacras—Cross*

CROSS-EXAMINATION by Mr. Rinzler:

Q. Who gave you Shryer's name and license number? A. A little louder.

Q. Who gave you the license number and the name of Shryer in connection with this accident?

A. I found Shryer—

10

Q. Who gave you his name and his license number? A. Well, the officer gave me the name, because Mr. Bloom had taken the girl to the hospital.

Q. Not because. The officer that was on the witness stand gave you the name and license number of Adolph Shryer, eh? A. Yes.

Q. That is all.

20

Further CROSS-EXAMINATION by Mr. Mackay:

Q. Chief, did you inquire from any of the parties who were in this accident as to where Mr. Bloom lived? A. Yes.

Mr. Turner: I object to his inquiries. He doesn't know.

The Court: I thought you offered the Chief to show what difficulty there was to locate Mr. Bloom.

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Mr. Turner: Yes, but the question is as to the parties.

The Court: You may ask him that.

Q. Did any of them tell you that Mr. Bloom had given them this card at the time of the accident?

A. No, I never saw this card before.

Q. You never saw that before? A. No.

Q. How did you finally find out where Mr. Bloom lived? A. I did that night, yes.

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*Anthony F. Vacras—Cross*  
*Motion for Direction of Verdict*

Q. How? A. From the records in the hospital.

Q. The hospital? A. Yes.

Q. You got the address there? A. They had  
10 his address.

Q. That is all, Chief.

Mr. Turner: We rest.

Mr. Mackay: We rest.

The Court: Any further rebuttal?

Mr. Rinzler: No.

20 MOTION FOR DIRECTION OF VERDICT.

Mr. Turner: On behalf of the defendant Adolph Shryer, I move for a direction of verdict on the ground that no negligence has been shown on the part of this defendant; secondly, on the ground that the plaintiff is guilty of contributory negligence; and, thirdly, there is no proof in the case of any injuries that were caused to the  
30 plaintiff by the automobile of Adolph Shryer.

The Court: The question of whether there is negligence or not has not been changed any since the motion for non-suit was made when I decided it would go to the jury. Whether she was guilty of contributory negligence, I suppose, is a jury question.

Mr. Turner: Your Honor allow me an exception?

40 The Court: Yes.

*Motion for Direction of Verdict*

Mr. Stalter: If your Honor please, before I sum up I should like to call upon the plaintiff for an opening statement to the jury on the part of the defendant Adolph Shryer as to what he will base his argument on as against Adolph Shryer. 10

The Court: You are entitled to it. You may state, and of course you must remember that the defendant may say he is satisfied without replying to that opening.

Mr. Rinzler: I will talk long enough to make him satisfied. I have heard that stunt before. I will give an opening statement. How does the defendant Mackay feel about it?

The Court: The same thing. 20

Mr. Rinzler: May I know?

Mr. Mackay: I have nothing to say.

Mr. Rinzler: Does he want an opening statement?

The Court: He has not asked for any opening.

(Mr. Rinzler made an opening statement, and counsel for the respective parties summed up to the jury.) 30

(Adjourned to October 25, 1928, at 10 A. M.)

## COURT'S CHARGE TO THE JURY

Paterson, N. J. October 25, 1928.

NEWMAN, J.

Members of the Jury: This is an action  
10 brought by Fannie Klein originally against Ad-  
olph Shryer, Louis Bloom, and Blockdel Realty  
Company. The Court has granted a non-suit as  
against the Blockdel Realty Company, leaving  
for your consideration the case of Miss Klein  
against Shryer and Bloom. But, of course, the  
fact that the Court granted a non-suit as to a de-  
fendant should not influence your verdict one  
way or the other as concerns the other defendants.  
20 The Court did not undertake to deal with any  
questions of fact. The Court only dealt with  
questions of law on the motion for a non-suit,  
and in the judgment of the Court there was not  
sufficient evidence to hold the Realty Company,  
as it is alleged in the complaint that certain torts  
were committed by Mr. Bloom, who was then  
acting as the agent of the Realty Company.

This case was originally instituted as one joint  
tort committed by both defendants, but the plain-  
30 tiff in this case has applied to the Court to amend  
the complaint by alleging two separate and dis-  
tinct torts, and in the judgment of the Court that  
position was sound, and the defendants, very  
properly I think, stated that they were not sur-  
prised by the facts to be thus urged, and that  
they were willing that the jury hear all the facts  
pertinent to the alleged injuries, and so the Court  
40 granted such an amendment. And it comes be-  
fore you now upon the allegation to two distinct  
and separate torts, one tort against Mr. Bloom

*Court's Charge to the Jury*

and one tort against Mr. Shryer; so they are in the same position as though two separate and distinct causes were instituted and were tried together by the direction of the Court and consent of counsel.

It will be necessary for you to render two separate and distinct verdicts; one verdict for Miss Klein or Mr. Bloom, and dealing with the tort alleged to have been committed by him; and the other verdict upon the alleged claim of Miss Klein against Mr. Shryer, and dealing with the alleged tort committed by him. So that your verdict in each of those cases will be in favor of Miss Klein for damages or in favor of the respective defendants, no cause of action; but at any rate, rendering two verdicts, thus disposing of the two respective causes of action. 10 20

This case has been, of course, of considerable length, through no fault of any person, but it is simply the result of the length of time it took to present the case and the respective defenses, and you have listened very intently to the evidence as it was unfolded to you. The case has not only been well tried by counsel on both sides, but ably argued, so that it is not the intention of the Court to undertake to rehearse in detail or at any length the testimony in the case. If the Court in delivering its charge should make reference to the testimony of any of the witnesses in the case, and the Court's reference or attempted quotation of the evidence does not correspond with your recollection of the matter, you must entirely discard the Court's attempted quotation or reference to the testimony, and rely solely upon what your 30 40

*Court's Charge to the Jury*

recollection of it was; because, finally you are the sole judges, not only of what the testimony was, but also as to the truth or effect of any of the evidence in the case, and what inferences should be drawn from the evidence adduced by  
10 any of the witnesses.

Now, the plaintiff in this case, Miss Klein, says she on this occasion, in company with three of her girl friends, had gone for a hike through the country, hitch-hiking, I think it has been referred to, and that they had gone to some place, Highland Mills or some similar place, and that they were then returning from this hitch-hike; that  
20 they had at this time or shortly before received a ride from some person, whose name has not been disclosed by the evidence, and that the person who was thus conveying them had stopped on the public road which has been described, as I recall it, as Kinderkamack Road on the way from Oradell to Hackensack, and that this car had stopped on this public road and parked on its right-hand side of that road going towards Hackensack, and that three of these young ladies  
30 had alighted from this car and were about to, or had engaged in the occupation of picking flowers which grew upon each side of the road; that this young lady had decided that the flowers on the east side of the road were nicer than those which were on the west side; and that she determined to cross this road, going from the west to the east side of the road for the purpose of picking flowers on that side of the road.

40 She says that she proceeded to cross; that there was a car approaching the place where she

*Court's Charge to the Jury*

crossed from the north going towards Hackensack and there was also a car approaching this place from the south, going north towards Oradell; that when she had reached a certain place in the road, approximately two-thirds or three-quarters of the way, another car, which she alleges was driven by Mr. Bloom, undertook to pass the car which was then coming from Oradell south towards Hackensack, on its left-hand or easterly side of the road, and that this car was coming at an excessive rate of speed, I think around thirty miles an hour, and proceeding on its left-hand side of the road, and through his negligence in that respect and other respects ran into this plaintiff, striking her with the front of his car and throwing her somewhat to his left or the easterly side of the road. She says further that while she was there remaining in a more or less unconscious state the car which was approaching in a northerly direction from Hackensack proceeded to come on, and it, too, as I recall it, was going at a speed somewhat around thirty-five miles an hour, and he failed to stop in time, and that through his negligence he came on and ran over her legs, which were then in the road, with the front left-hand wheel of his automobile, and she says that she received very serious injuries. She says further that each of these defendants—she alleging that the one coming north from Hackensack was being operated by Mr. Shryer, the other defendant—and she says that each of these defendants was therefore guilty of a separate and distinct tort, and therefore that each of them shall be called upon to respond in

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*Court's Charge to the Jury*

damages which are the natural and proximate effect of the tort committed by him.

10 Now, the defendants do not agree with the plaintiff's version of what happened. Taking up, first, the defendant Mr. Bloom, he says that his car did not strike the plaintiff, and therefore that he was not guilty of any tort as is alleged by her. He says that there was a car ahead, as I recall it—you must be the judges, of course—and between him and Miss Klein when she was crossing this road, and he says that he saw her dart out or run out, whatever the testimony was, from his right side of the road, and that he lost sight of her until just as he was passing her she was  
20 upon the ground, and that someone called that she was hurt, or words to that effect, and that he immediately stopped his car. Some witnesses, I think, stated he stopped seventy-five feet past where she lay. And he says that immediately, in the interest of humanity, he got out of his car, picked this girl up, and proceeded to take her to the Hackensack Hospital, where she received some treatment.

30 And so Mr. Bloom says that he is not responsible for any injury to this plaintiff, because his car or the car he was operating, did not touch her or come in contact with her.

Now, as to the other defendant, Mr. Shryer, he likewise says that he is not liable to the plaintiff for a tort or for any damages, as she claims, because he says that his car did not touch her, either; that instead of her lying across the road,  
40 as is claimed by the plaintiff, he saw her approach-

*Court's Charge to the Jury*

ing to cross the road, he attempted to stop his car and was in the act of stopping it, and he says that Mr. Bloom struck her and knocked her where she lay, but that his car did not touch her, and that he stopped his car alongside of Miss Klein, that she was lying in a northerly and southerly position and not across the road, and that the front wheel of his car did not go over her legs nor did he touch her with the car in any particular, and that he stopped there because of the apparent or threatened danger, and therefore he says that he should not be liable in this case for any tort, as is alleged by the plaintiff. 10

So that you will see that the statements of the respective parties and their witnesses are not in harmony, that there are disputes as to what the facts are, and therefore it becomes your duty to settle and determine what the facts really are. You have seen and heard all the witnesses in the case, and you have had an opportunity from your vision and your hearing of them to determine what weight or credibility shall be accorded by you to any of the witnesses that have appeared. The settlement and determination of the facts is solely within your province. The Court has nothing to do with the settlement or determination of what the facts are, but the Court gives you the rules of law which you must apply to the facts as you find them, and you must accept from the Court the rules of law which the Court gives to you. If the Court is in error in its declaration of what the law is or is not, any party who feels himself or herself aggrieved in that respect may have those errors corrected by an appellate court. 20 30 40

*Court's Charge to the Jury*

Now, the first rule of law to which the Court would direct your attention is that Miss Klein cannot recover against either party merely upon the ground that she was injured, or merely upon the ground that she suffered grievous injuries; 10 but before she may recover against either party she must satisfy you by a fair preponderance of the evidence, that is, by the greater weight of the evidence—not necessarily the number of witnesses, but by the greater weight of the evidence—that that particular defendant was negligent and that his negligence was the proximate cause of some portion of her injuries. Otherwise, she cannot recover.

20 If she does satisfy you by a fair preponderance of the evidence that such defendant was negligent, that is, failed to exercise reasonable care, and that his failure to exercise such reasonable care was a proximate cause of some portion of her injury, then, of course, she would be entitled to recover against that particular defendant, unless she herself were guilty of contributory negligence, as is alleged by each defendant.

30 Now, each defendant in this case says that she ought not to recover, even though that particular defendant may have been guilty of negligence, because she herself was guilty of what is known in the law as contributory negligence. Contributory negligence is a defense, and the burden of establishing contributory negligence by a fair preponderance of the evidence rests upon the defendant who asserts it. Contributory negligence 40 is such negligence that the plaintiff would have

*Court's Charge to the Jury*

received no injury from any negligence on the part of the defendant if she had not been so guilty of such contributory negligence, and that is a question of fact for your settlement and determination, as to whether or not she exercised reasonable care for her own safety. So that you must determine that question upon the evidence in the case. 10

As I have already stated, you have heard all the evidence in the case, and therefore you are to determine from such evidence as has been adduced whether or not Miss Klein herself was guilty of contributory negligence so as to debar her right of action against either or both defendants. And you must keep in mind what the Court has now said as to contributory negligence, because such statement must be kept in mind and repeated, although not expressly repeated by me, in the question of the damages, about which I shall hereafter speak, and about the responsibility or liability of either or both defendants. 20

Now, of course, so far as Mr. Bloom is concerned, if the accident was the result of the negligence both of Mr. Bloom and Miss Klein, that, of course, would defeat her right of action against Mr. Bloom. As far as Mr. Shryer is concerned, the same rule applies, namely, that if the accident, as far as he was concerned, was the result of negligence of both Mr. Shryer and Miss Klein, that would likewise defeat her right of action against Mr. Shryer. 30

I have already stated that this is not a joint tort. It is alleged that there were two separate 40

*Court's Charge to the Jury*

and distinct torts. So that you must not undertake to apply the rule as to any tort being the result of the negligence of both Mr. Bloom and Mr. Shryer.

10 Now, before I talk about the damages or the measure of damages, I will repeat some general rules as to the liability of the respective defendants, and what liability, and to what extent it exists if there is such liability.

The law requires that the damages chargeable to a wrongdoer must be shown to be the natural and proximate effects of his delinquency. The term "Natural" imports that they are such as  
20 might reasonably have been foreseen, though not in fact anticipated, and such as occur in an ordinary state of things. The term "proximate" indicates that there must be no other culpable, that is, blamable and efficient agency intervening between defendant's dereliction and the loss. So you must keep that rule in mind in attempting to ascertain the damages for which the defendant is liable, if at all, and the damages which the plaintiff would be entitled to recover against  
30 that particular defendant.

Now, as to Bloom, if he were negligent and liable—of course, as I have stated, you must keep in mind the question of contributory negligence in all these remarks—then he would be liable in damages to the extent I have already indicated as the rule governing it.

40 As to Shryer, if he were negligent and liable, then he would be liable for such damages as are the proximate and natural effects of his negli-

*Court's Charge to the Jury*

gence as gauged by the above rule which I have just declared.

Now, in this case there is no such thing as a joint liability, and therefore there can be no damages awarded to the plaintiff against each or both defendants for the same identical item of damages. The award may be against each defendant for similar damages, but not for the same item of damages. Each defendant is charged with a separate and distinct tort, and either, if liable, is liable for such damages as I have already indicated. Neither defendant is liable unless the plaintiff has satisfied you by a fair preponderance of the evidence, that is, the greater weight of the evidence, that such defendant was negligent, that is, failed to exercise reasonable care, and such negligence was the proximate cause of some of her injuries. Proximate cause is that cause which necessarily sets the other causes in operation, and then only to the extent that I have already indicated.

As to the injuries of which the plaintiff complains, I shall not undertake to rehearse them in detail nor indicate how much is, nor how many of them, if any, are chargeable to each or either defendant. That function rests solely with you.

So, as I have stated, I shall undertake to rehearse in general the damages of which this plaintiff complains. How much of them, or to what extent either or both of the defendants is liable is solely within your function.

Now, plaintiff alleges that in this case she was knocked down on the road, and that as a result

*Court's Charge to the Jury*

of the injuries which she received on this occasion she suffered a multiple fracture of each leg. Just the nature of that and the extent of the suffering which she has undergone, and the result of it and the incidental bruises accompanying it, are  
10 for you. As I recall it—and you must be the judges of what the testimony was—she incurred a doctor bill of \$500 to Dr. Moorehead, \$50 to Dr. Greenberg, hospital bills of \$1,321.85, massages \$260, shoes and brace \$45, making a total of \$2,261.35.

Now, of course, if she recovers she would be entitled to any reasonable sum which she necessarily expended or was made reasonably necessary to expend in endeavoring to heal herself of  
20 the injuries which she received.

Then, she says further that she will have to have or undergo a further operation, that it will require her presence in the hospital for a week or ten days, that her expenses in connection with that operation will be \$5 a day for the hospital, the operating room \$25 or \$30, and the sum of \$150 to \$200 for doctor's services in this further  
30 operation.

She also says that since the rendering of this bill of \$500 which I have referred to, she has been obliged to undergo a further indebtedness of \$350 to the physician.

Now, of course, having ascertained the nature and extent of her injuries, she would be entitled to reasonable compensation for any pain and suffering which she has undergone or will be obliged  
40 to undergo in the future, because of the future

*Court's Charge to the Jury*

operations, and which have been rendered necessary or will be rendered necessary by the injuries which she received in this accident; and she would also be entitled to any reasonable sum which she has expended or which she has necessarily had to expend that was rendered reasonably necessary to incur because of the injuries which she has received in the accident. Perhaps I should change the terms and say, any sum which has been rendered reasonably necessary because of the injuries which she has received or will be reasonably necessary because of the injuries which she has received. 10

Then, she also alleges that she has undergone a permanent injury, not only to her knees, but to other parts of her body, which you, of course, during these two days, have had the chance to observe; and she says further that there is a loss to the left knee, as I understand it, of twenty-five to thirty per cent, and to the right knee of from sixty to seventy per cent, which will be cut down by the future operation. Of course, whatever permanent injuries she has suffered as a result of the injuries she received, she would be entitled to a reasonable compensation for such permanent injury. 20 30

Then she alleges that she has lost certain wages by reason of her injury; that she was earning at the time of her injury \$22 per week, and that she has been unable to earn anything for a period of 13 months. She would be entitled to recover any reasonable sum which she has lost by reason of her inability to work and because of the injuries she received. 40

*Requests to Charge*

Now you must give this case your very careful and very earnest consideration, exercising your good judgment and common sense in determining, first, whether either or both defendants are liable, and if so, for how much, keeping in mind the rule  
10 of damages that I have already explained as applying to each defendant.

You must render two separate and distinct verdicts, either for her for damages, or in favor of either defendant on that claim, no cause of action. You will render two verdicts.

Are there any facts I have misstated?

I have here three requests to charge on the part  
20 of the defendant Shryer:

“(1) The defendant Shryer is not responsible for any injuries caused to this plaintiff through any negligence of Bloom, regardless of whether they were caused by the striking of plaintiff by the car of defendant Bloom or after she fell to the ground.”

I so charge you.

“(2) If the defendant Shryer were in the ex-  
30 ercise of reasonable care he would not be responsible for any injuries caused to this plaintiff, even if she had been thrown under the wheels of his car by contact with another car.”

I so charge you.

I think I have practically covered the third request in the charge. Number 3 I decline to charge.

*Defendants' Exceptions*

## DEFENDANTS' EXCEPTIONS.

Mr. Turner: I except to the refusal of the Court to charge the third request. I want to except to that part of the charge wherein the Court said that if either of the defendants was negligent and his negligence was the proximate cause of some portion of the injuries to the plaintiff, that she can recover. I except to that on the ground that I urged, that she must show the exact injuries caused by the defendant Shryer before she can recover against Shryer. In other words, that it is not sufficient to show that he caused some portion of her injuries. She must show exactly what it was before she can recover against him. I want to except to that part of the charge wherein the Court says that if Mr. Bloom was negligent, that he would be liable only for those damages which were the proximate result of his negligence; on this ground, that it is my contention and I urge that Mr. Bloom would be responsible, if he were negligent, not only for damages which were caused by the contact with his car, but also the damages caused by contact with the Shryer car, regardless of whether Shryer was or was not negligent.

The Court: I did not deal with that. That is a jury question. I quoted the Supreme Court, which is affirmed by the Court of Appeals.

Mr. Mackay: For the record, may I have the same exceptions that Mr. Turner took?

The Court: Yes.

*Defendant Shryer's Request to Charge*  
*Exhibit P-1*

DEFENDANT SHRYER'S REQUEST TO  
CHARGE.

(3) Unless you can decide from the evidence  
10 what particular injury, if any, was caused by Mr.  
Shryer's car, you must give a verdict of no cause  
of action as to him. The plaintiff cannot recover  
from Mr. Shryer unless she has shown what par-  
ticular injury his car did to her.

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**EXHIBIT P-1.**

20 NEW JERSEY SUPREME COURT

PASSAIC COUNTY

	FANNIE KLEIN,	}	Action at Law Examination before Trial.
	Plaintiff,		
	vs.		
30	ADOLPH SHRYER, LOUIS BLOOM and BLOCKDEL REALTY Co., INC., a corporation,		
	Defendants.		

Before: JOSEPH J. WEINBERGER

Supreme Court Commissioner.  
September 19, 1928.

Appearances:

40 Feder & Rinzler, by Jack Rinzler and Morris  
Dorrin.

New Jersey State Library

*Exhibit P-1*

Frank G. Turner.

Mackay & Mackay, by Howard Mackay.

Tillie Rinzler, stenographer, sworn.

Mr. LOUIS BLOOM, sworn, testified as follows: 10

By Morris Dobrin:

Q. What is your name, sir? A. Louis Bloom.

Q. And where do you reside? A. 2814 Boulevard, Jersey City, New Jersey.

Q. Were you in the vicinity of Kinderkamack Road in Riveredge New Jersey, on September 18, 1927, when the girl known as Fannie Klein was injured? A. Yes. 20

Q. In what direction were you proceeding on that road? A. South.

Q. About how wide is that road? A. I should judge that road to be about 30 feet—35 feet.

Q. And is it an asphalt road? A. Yes. I think it is an asphalt road. It is a county road.

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

Q. About how close to the edge of the right-hand side of the road were you? A. I should judge about 6 feet from the curb. 30

Q. And just before the accident happened about how fast were you going? A. About fifteen or eighteen miles an hour.

Q. Did you see the plaintiff, Fannie Klein, as she started across the roadway? A. No, sir.

Q. With whom were you riding at that time? A. With a gentlemen by the name of Engber. 40

*Exhibit P-1*

Q. What sort of a car have you, a touring car?

A. No, a sedan.

Q. And Mr. Engber was riding in the front with you? A. Yes, sir.

Q. Where were you coming from? A. From  
10 Washington Township, right above Westwood,  
New Jersey.

Q. Were you out on business? A. No, sir.

Q. You were talking to Mr. Engber? A. Well,  
I might have been saying a word, I don't remem-  
ber.

Q. You had some conversation with the man?

A. Probably I had some conversation with him.

Q. When did you first see the plaintiff as she  
20 started to cross the road? A. When she darted  
in front of my machine.

Q. She ran across in front of your machine?

A. Yes, sir. Two machines that were parked on  
the roadway. She started in between them right  
on the road.

Q. What part of your car struck her? A. No  
part of my car struck her.

Q. Well, you hit her with your car, didn't you?

A. No. She was not hit by me or by my car.

30 Q. She darted in front of your car, didn't she?  
A. She darted in front of my car from the place  
where she was and must have gained momentum.

Q. And what happened after she had passed  
your car, you continued driving? A. No, sir.

Q. What did you do? A. Somebody yelled and  
I pulled my emergency brake and stopped.

Q. Where did you stop in respect to the road-  
way? A. Right the way I was facing.

40 Q. In the center of the road? A. No, I didn't  
stop there. I couldn't.

*Exhibit P-1*

Q. You stopped in the center of the road? A. Six feet from where I was driving. Right on the edge of the road.

Q. You didn't pull your car ahead for the purpose of parking your car did you? A. I couldn't because there was cars parked on both sides, and because of the travelling, you didn't have much room. 10

Q. Is that a residential section? A. Just building it and calling it Riveredge Model Homes. That's why machines were parked on both sides of the road.

Q. There were large fields on both sides of the road, wasn't there? A. I guess there was a few.

Q. On both sides? A. I think there is. I am not sure there are fields in the place. I never visited those fields, I don't know whether there are or not. 20

Q. How close were those cars that were parked? Were they close to each other? A. Some three feet. Some four feet. Naturally parked. I don't know exactly.

Q. And the fact that there was cars on the right-hand side, prevented you from pulling over to your right to park your car when you heard this shout? A. I didn't try to park my car, I just drew my brakes? 30

Q. Why did you do that? A. That was just instinct on my part.

Q. Wasn't it instinctive on your part to pull to the right?

Mr. Mackay: I object. Calling for conclusion. 40

*Exhibit P-1*

By Mr. Dobrin:

Q. And what did you do after you stopped your car? A. The car that was going north—my car was going here (indicating on table)—the car going north stopped right about this way (indicating on table) in other words about half the range of  
10 my car. We were stopped—the girl was under the first wheel of the first car, upon the car that was going north. Somebody said take her to the hospital and I helped Mr. Engber put her in my car, and took her to the hospital.

Q. Can you recall the man that was driving the car? A. I didn't look at anybody that was driving that car. In fact, I don't know.

20 Q. You took the girl to the hospital? A. I did.

Q. And the fellow that was driving the other car, what did he do? A. I don't know. From what this—

Mr. Turner: I object.

By Mr. Dobrin:

Q. What did the fellow that struck the girl do? A. I don't know.

30 Mr. Turner: I object because the witness has not stated who struck the girl. He should be asked to tell us that somebody struck the girl.

By Mr. Dobrin:

Q. Did anybody acknowledge themselves to be the owner of the car? A. The car that was over the girl?

Q. Yes. A. I didn't question anybody.

40 Q. Anyone else volunteer to take the girl to the hospital? A. No, sir.

*Exhibit P-1*

Q. Will you repeat what part of the car the girl was under? A. The back of the front wheel.

Q. The left front wheel or the right front wheel?

A. Well, now, I can't tell you exactly. I can only tell you the side that my car was on. This car coming this way. She was in back of that front wheel (indicating in what direction on the table). 10

Q. You say the girl darted in front of your car?

A. She ran right in front of my car.

Q. Did you make any effort to slack the speed of your car? A. I stopped the minute somebody yelled. It all happened just like that (snapping his fingers).

Q. Did you see a car approaching from the opposite direction? Did you notice that car? A. I never noticed a car going in the opposite direction. The cars on that road is very heavy traffic on account of so many cars going to the 125th Street, ferry. The road was checked with traffic and you absolutely could not go very fast. 20

Q. You placed the girl in your car and took her to the hospital. Did you make a report of the accident? A. There was a policeman right there that came to the hospital from Riveredge. 30

Q. With you, in the car? A. No. He came in a motor cycle.

That is all.

CROSS-EXAMINATION by Mr. Turner:

Q. Mr. Engber, where does he live? A. In Brooklyn, New York.

Q. Do you remember his first name? A. I think it is Max. 40

*Exhibit P-1*

Q. What is his address? A. Address furnished by Mr. Mackay.

Q. Do you know what business he is in? A. He is working for the government in the customs department.

10 Q. You don't know where he is working, do you?  
A. No, sir.

That is all.

CROSS-EXAMINATION by Mr. Mackay:

Q. You owned the car that you were driving at that time? A. Yes, it was my car.

Q. Your personal car? A. Yes.

20 Q. It didn't belong to the Blockdel Realty Co.  
A. No. Its mine.

That is all.

CROSS-EXAMINATION by Mr. Dobrin:

Q. Have you the bill of sale with you at this time? A. Yes, right here. Produced in evidence by Mr. Mackay.

Q. Are you connected with the Blockdel Realty Co.? A. I am a salesman for them.

30 Q. Are you an officer of the corporation? A.  
No.

Q. General Manager? A. No.

Q. Just a salesman? A. Yes.

Q. At the time you were driving along this highway, you were on business for the Blockdel Realty Company? A. No, I was not.

Q. Was this a Sunday? A. Yes.

40 Q. And you do some real estate business on a  
Sunday, don't you? A. We do, if we have some-  
body to take out.

*Exhibit P-1*

Q. Who was this gentlemen that was with you on this day? A. Mr. Engber.

Q. Wasn't he a prospective customer? A. No.

Q. What had you been going in to Riveredge for? A. I used to go out to see if there was anything doing. 10

Q. In the real estate line? A. No. I went out to see the boys.

Q. Weren't there developments going up there? A. Yes.

Q. And you were out to see the boys there? A. I knew that there were some there.

Q. The gentlemen that was with you was a customer? A. No.

Q. Did you want to show him some property? 20  
A. No.

Q. Went there for the purpose of looking for the property? A. No. I took a ride out there to see the boys.

Q. They were there for business? A. I don't know.

Q. When you say boys, you refer to those connected with the Blockdel Realty Company? A. Well, yes. 30

Q. They had an office there? A. No.

Q. They had a stand there? A. There was no stand.

Q. They were there for business? A. I don't know what they were there for, they were there.

Q. What did you want to see them for? A. To spend the day with them, they were all friends of mine.

Q. Where do they live? A. Some in New Jersey. Some in New York. 40

*Exhibit P-1*

Q. But didn't any of them live in the vicinity of the development? A. No.

Q. If they didn't live there, why did you go to see them in that place? A. Because they often took rides there and I thought I might see them.

10 Q. They had a car there? A. Yes.

Q. And if a prospective customer showed up they would do business? A. No.

Q. Did you arrange to meet them there? A. No.

Q. You didn't know that they would be there? A. No.

Q. But you were there to spend the time with the boys? A. Yes. I took a ride on Sunday.

20 Q. They were all there on Sunday? A. Some of them were and some weren't.

Q. Who are the officers of this corporation? A. Why, Mr. Block.

Q. What is his first name? A. Louis Block.

Q. Where does he live? A. I think he lived in Chicago at that time.

Q. At the present time? A. I think he lives in New York.

30 Q. Where? A. I don't know his address.

Q. Who are the other officers of the corporation? A. Mr. Delafield.

Q. Where does he live? A. He lives in New York. 27—86th Street.

Q. And the others? A. They are the only two.

Q. They were there, on this day in question? A. No, they were not.

40 Q. Who were the boys that were there? A. I don't know. Some of the boys that were working for the company.

*Exhibit P-1*

Q. Other salesmen? A. I suppose they were salesmen.

Q. The fellow that was with you at the time, was he a friend of yours? A. He knew one of the boys.

Q. And he was there to see one of the boys in respect to some of the property? A. No. 10

Q. Was he a friend of yours? A. No.

Q. He isn't a friend of yours? A. Well, I knew him. He was a man that was out with the boys and I took him in.

Q. They have a small office there? A. They never had.

Q. Where did they interview people in respect to the buying of property? A. In their office. 20

Q. Where was their office? In New York? A. Jersey City.

Q. But they had a sort of gathering place there? A. No.

Q. Did they have chairs there? A. No.

Q. What is the name of the gentlemen that was with you? A. That was Engber.

Q. Where does he live? A. Brooklyn.

Q. Where? A. I don't know his address.

Q. A friend of yours and you don't know his address? A. He isn't such a friend that I know his address. 30

Q. Whereabouts in New York does he live? A. In Brooklyn.

Q. Whereabouts in Brooklyn? A. I don't know.

That is all.

I hereby certify that the foregoing is a transcript of the testimony given by me on September 19th, 1928. 40

Signed Sept. 25, 1928.

LOUIS BLOOM.

*Exhibit P-1*

Mr. ADOLPH SHRYER, sworn testified as follows:

By Mr. Rinzler:

Q. Where do you live, sir? A. 30 Stewart  
10 Street.

Q. You are being sued in this case? A. Yes.

Q. On September 18, 1927, when this accident happened, what kind of a car did you own? A. A Chevrolet coach.

Q. Who was driving this car? A. I was.

Q. Where did the accident happen? A. As I recall, I should say Riveredge.

Q. On what street? A. I don't know the name  
20 of the street.

Q. Do you recall the name to be Kinderkamac Road? A. I have heard that name mentioned a few times, but I have never inquired.

Q. Where were you coming from? A. From Hackensack.

Q. Were you coming from that direction? A. Yes.

Q. Toward what direction were you driving?  
A. Well, driving. We were just taking a ride on  
30 Sunday afternoon.

Q. Toward what direction were you proceeding?  
A. That is as far as I went.

Q. Toward what town were you going if you had gone on? A. As a rule when I drive that way, I drive left all the way down going from Hackensack to Westwood to Riveredge.

Q. Were you going north? A. No.

Q. Who was in your car besides yourself? A.  
40 Mr. Hyman Bodner, his wife, my wife and my baby.

*Exhibit P-1*

Q. Who sat in the front? A. Mr. Bodner sat in the front.

Q. And the others in the rear seat? A. Yes, in the rear seat.

Q. What time of the day did this accident happen? A. It was late in the afternoon. It may have been about four or five o'clock. 10

Q. Was it a clear bright day? A. Yes, a clear bright day.

Q. Who is this Mr. Bodner that was in your car? A. Hyman Bodner.

Q. Where does he live? A. 11 Offord Street, Passaic, New Jersey.

Q. How did this accident happen? A. Approaching to that place, a car was parked on the opposite side. 20

Q. Whose car? A. Somebody's car. A car was parked there. A girl ran out from the side of that car to the front and was hit by an approaching car from the same direction.

Q. What car hit her? A. A car coming from the opposite direction.

Q. Who drove that car? A. I don't know.

Q. Indicating the defendant, Louis Bloom, did you see him that day? A. I never met that gentleman, except once in Riveredge when we were in that court. 30

Q. There was just one car that was approaching from the opposite direction? A. There were a lot of cars approaching.

Q. This one car came and hit the girl? A. Yes.

Q. And then what happened with this car? A. He stopped, and then got off and lifted the girl in the car and was gone in the car. 40

*Exhibit P-1*

Q. Was the injured girl, Miss Klein, under the car? A. No.

Q. Was she underneath any part of this car? A. No, she was picked up in the front without interfering with me.

10 Q. What part of this car struck her? A. The other car?

Q. Yes. A. I would say the left front side, I don't exactly know.

Q. On what side of the street was this other car driving? A. On the girl's side.

Q. What side of the street were you driving on? A. On my right.

Q. How wide is the road? A. Very narrow.  
20 About 20 feet.

Q. Did you exactly see this car hit her? A. I know what kind of a car it was that hit her. The people I were with said it was a Pontiac.

Mr. Mackay: I object.  
Stricken out.

By Mr. Rinzler:

Q. How far away from the girl was your car when she went into the roadway from the curb?

30 A. I was hugging the curb.

Q. How far away from her were you at the time, that is toward Hackensack? A. Toward Hackensack, about fifteen feet.

Q. And how far away from the curb in the opposite direction was the car that hit her when she first went into the road? A. When she first went into the road?

Q. When she first went into the road that car  
40 was far away from her wasn't it? A. I couldn't say exactly.

*Exhibit P-1*

Q. About. A. Well, the car was approaching at a moderate speed.

Q. But how far away was it? A. About thirty feet.

Q. And when she first entered into the road, how far did you say your car was away from her? 10  
A. About forty feet, away away.

Q. Your car was forty feet away from Miss Klein in that direction when she entered the road, and at a point alongside? A. Approaching from Hackensack, it must have been forty or fifty feet when she started running, and when the girl first entered the roadway, this car was approaching from Hackensack and was at least forty or fifty feet away from her. 20

Q. What rate of speed were you travelling at?  
A. About fifteen miles an hour. It as impossible to go faster because we were in line.

Q. Coming from Hackensack, your car was next to the one Miss Klein was in? A. I don't know.

Q. When the car coming in the opposite direction hit her what happened to Miss Klein? A. I didn't see Miss Klein. Somebody grabbed her off the road.

Q. Where did she land? In the center of the road near your car? A. Yes. 30

Q. How near your car? A. I didn't see her.

Q. Well, you know where you stopped? A. Yes.

Q. And you know where the car was when she was struck? A. Yes.

Q. Now, how near your car did this girl land?  
A. Five or six feet from the front of the car.

Q. From the right or left? A. From my front left. 40

*Exhibit P-1*

Q. Was any part of her body underneath any part of your car? A. No. I hadn't reached that far.

Q. When did you first apply your brakes? A. I applied my brakes when I saw the girl starting  
10 off.

Q. And at that time your car was going fifteen miles an hour? A. Yes.

Q. How long had you been riding that evening before the accident? A. From the curb a—

Q. No. How long were you riding then? A. About an hour.

Q. How fast was your car travelling when the other car struck Miss Klein? A. My car was  
20 stopped then.

Q. How far was your car from the point where Miss Klein was struck when the other car hit her? A. There was a clearance between five or ten feet from the other car.

Q. You say that when she entered the road you were travelling at the rate of fifteen miles an hour? A. Yes.

Q. And you promptly applied your brakes when she entered the road? A. Yes.

30 Q. You state the other car hit her, and your car came to a stop and was standing at the point where it came to a stop as you applied your brakes and that it did remain standing at a point about five or ten feet from where the girl was struck. A. Yes.

Q. How long did you have this car? A. At that time?

Q. Yes. A. I believe I bought my car in May,  
40 1927.

*Exhibit P-1*

- Q. Did you buy it new? A. Yes.
- Q. So that the car was about four months old?  
A. Yes.
- Q. In what condition was the car? A. New.
- Q. What condition were the brakes? A. New. 10
- Q. Did they work effectively? A. Yes.
- Q. And did they operate effectively? A. Yes.
- Q. Promptly? A. Yes.
- Q. How long have you been driving a car? A.  
Seven years.
- Q. Did you apply your brakes hard? A. Yes.
- Q. Jam them on? A. Yes, jam them.
- Q. How wide did you say the road was? A.  
About twenty feet or less, not much wide.
- Q. Did you say your car was more than fifty 20  
feet away from Miss Klein when she first entered  
the road? A. I did.
- Q. Did you guess at that? A. Yes.
- Q. Then you can't say whether your car was  
more than fifty feet away? A. Yes.
- Q. But you say about fifty? A. Yes.
- Q. Do you still own that car? A. No.
- Q. When did you dispose of it? A. In Janu-  
ary of this year. 30
- Q. Within how many feet can you stop your car  
going at the rate of twenty miles an hour in the  
condition that the brakes were in at the time of  
the accident and the condition that the roadway  
was in at that time? A. About ten to fifteen feet.
- Q. Within how many feet can you bring that  
car to a stop after applying your brakes upon the  
condition existing at that time in question, going  
at the rate of fifteen miles an hour? A. Ten feet.
- Q. Going at the rate of thirty miles, within how 40  
many feet? A. What?

*Exhibit P-1*

Q. If you had been going thirty miles an hour under those conditions, within how many feet can you stop? A. I couldn't say.

Q. Did you ever drive that car as much as thirty miles an hour? A. Occasionally, but I have never  
10 come to an emergency.

Q. Did you ever drive that car with the brakes in the same condition as they were in when the accident happened, drive at the rate of thirty miles an hour, or not? A. No.

Q. Up to the time of the accident you never drove thirty miles an hour? A. No.

Q. For what purposes did you use that car? A. Both business and pleasure.

20 Q. When you say for business do you mean to say you daily interview your customers? A. No. Interviewing and collecting.

Q. You also use that car for pleasure purposes? A. Yes.

Q. How much mileage had that car made at the time of the accident? A. Less than 2,000.

Q. About how many miles? A. About 1,800 miles.

30 Q. And you used it every day your business? A. Yes.

Q. And you used it week-ends for pleasure? A. No. Only Sundays.

Q. And in the night time if you needed it you used it? A. No. Days.

Q. Did you own any other car at that time? A. No.

40 Q. What was the fastest rate of speed you ever drove that car before the accident? A. Twenty-five miles an hour.

*Exhibit P-1*

Q. Under the conditions that were then existing and with the brakes in the condition they were in at the time of the accident, if you had been driving at the rate of twenty-five miles an hour, within what distance could you stop your car when you applied the brakes? A. I can hardly say that. 10

Q. You say you have driven at that rate of speed? A. I never made any emergency stops.

Q. But within how many feet can you stop your car driving under those conditions with your brakes under the condition they were in at the time of the accident at the rate of twenty-five miles an hour? A. I should judge about twenty feet. 20

Q. When this girl entered the roadway, which brake did you apply? A. Both the emergency and the foot brakes.

Q. And it was both sets of brakes that brought your car to a stop, in the manner that you described under those conditions, and at the point that you described when the accident happened? A. Yes, sir.

Q. The car ahead of you was twenty feet away? A. Yes. 30

Q. It did not strike Miss Klein? A. No.

Q. You have remarked that the driver of the car that hit her was Mr. Bloom, haven't you? A. I don't know.

Q. After this accident happened, you went to the home of Mr. Bloom, the driver of the car that hit Miss Klein, didn't you? Yes, or not? A. I did.

Q. Pointing now to the defendant, Louis Bloom, 40

*Exhibit P-1*

is that the man that you spoke to after the accident? A. I have not met Mr. Bloom.

Q. When you went to the house, didn't you see him? A. I went to the house but didn't see anybody.

10 Q. Did you see him at any time after the accident? A. Yes.

Q. How much longer? A. A few weeks.

Q. Did he say he drove the car that hit the girl? A. Not that I know of.

Q. Is that the man that you saw (indicating the defendant, Bloom)? A. Yes.

Q. Where did you go immediately after the accident? A. I drove around.

20 Q. For how long? A. About a half an hour.

Q. And where did you go then? A. I drove home.

Q. Well, when did you go to Mr. Bloom's house? A. About three hours later.

Q. About what time of the day did this accident happen? A. About five o'clock.

Q. And it occurred on September 18th, 1927? A. I don't remember the exact date.

30 Q. Was it about the middle of September? A. It must have been about September.

Q. Was the sun still bright? A. Bright day, right.

Q. For what reason did you go to the home of Bloom the night of the accident? A. A gentleman calling himself the chief of Riveredge came to my house and questioned me and asked me to go along and I went along with him.

40 Q. You say you actually saw Miss Klein enter the roadway? A. Yes.

That is all.

*Exhibit P-1*

CROSS-EXAMINATION by Mr. Turner:

Q. Was the car that hit Miss Klein going in the same direction or in the other? A. In the other direction.

Q. And the car that hit her was going in the opposite direction, toward you? A. Yes, toward me. 10

Q. Did you see what happened to Miss Klein when she was hit? A. No.

That is all.

By Mr. Mackay:

No question asked.

That is all. 20

I hereby certify that the foregoing is a transcript of the testimony given by me on September 19th, 1928.

(Signed September 25, 1928.)

ADOLPH SHRYER.

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I hereby certify that the foregoing is a true and correct transcription of the testimony taken by me before Joseph J. Weinberger, A Supreme Court Commissioner on September 19th, 1928. 30

TILLIE RINZLER.

*Exhibit P-1*

I hereby certify that the foregoing is a true and correct transcription of the testimony signed and sworn to before me, A Supreme Court Commissioner, and was taken by Tillie Rinzler on September 19th, 1928.

10

Dated: Sept. 24, 1928.

JOSEPH J. WEINBERGER,  
Supreme Court Commissioner of N. J.

20

## New Jersey Court of Errors and Appeals

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FANNIE KLEIN,

Plaintiff,

vs.

ADOLPH SHRYER and LOUIS  
BLOOM,

Defendants.

} On Appeal

### BRIEF OF DEFENDANT-APPELLANT, ADOLPH SHRYER.

#### FACTS.

On September 18, 1927, plaintiff a young woman was hitch-hiking on the Kinderkamac Road, River Edge, New Jersey returning to New York City from a picnic. She got out of the car in which she had been a passenger to gather flowers in an adjacent field, on the same side of the road, that the car, which she had quitted, was parked. This car was parked on its right side of the road pointed south. Plaintiff ran from the field in rear of the parked car to cross the road to another field and was struck by the south-bound car of our co-defendant, Louis Bloom. The plaintiff was hurled ten or fifteen feet in the air in the path of your defendant-appellant, Adolph Shryer's car, who, it is contended by one witness, ran

over her. A great many witnesses say not. Your appellant was proceeding north on the extreme right of the road, of necessity, because the road was narrow and the defendant Bloom going south was passing a parked car pointed south, the same direction in which Bloom was proceeding, while your appellant was proceeding north.

The plaintiff recovered a verdict of \$14,500 against Louis Bloom, for which a Warrant of Satisfaction has been filed (Case p. 13). The plaintiff also recovered a verdict in the same suit of \$3,500 against Adolph Shryer, your appellant.

Esther Dingol, a witness for plaintiff says (Case, p. 95):

“Q. As you turned to the street, what did you see? A. I saw this white bundle just hurled in the air—well, practically parallel or about fifteen feet towards the southern end of the road.

“Q. What was it that hit what you term the bundle? A. Well, this car that was coming in a southern direction.

“Q. Did you see the car strike her? A. I did not see the car strike her. I heard a scream that was aroused by the striking of the car.

“Q. As you saw this bundle hurled in the air, how high in the air was it? A. It must have been about ten to fifteen feet.

“Q. Where? What direction was the bundle traveling? A. The bundle traveled south.

“Q. Towards Hackensack? A. Towards Hackensack.

“Q. On what side of the road did it land? A. Well, it landed toward the left side of the road.”

And further (Case, p. 97):

“Q. When this bundle landed on the ground, what position did it lie? A. Well, Miss Klein lay with her head toward the left side and her feet toward the side on which we were standing.

“Q. Across the road? A. Across the road, yes.

“Q. Was the bundle Miss Klein? A. Well, it turned out to be; I did not know at the moment.”

Adolph Shryer was called by the plaintiff (Case, p. 134):

“Q. With regard to how the accident happened, did the car that you drove on the day of this accident hit or run over Miss Klein? A. No.

“Q. Without regard to how the accident happened, did a car going in the direction that you were traveling hit or run over Miss Klein? A. In the same direction I was traveling?

“Q. Yes. A. Going north?

“Q. Yes. A. No.

“Q. Without regard to how the accident happened, in what direction did the car travel which did strike Miss Klein? A. Traveling south.”

The accident happened on an open country road (Case, p. 163).

No part of Mr. Shryer's car came into contact with the plaintiff (Case, p. 166).

Mr. Shryer testifies (Case, p. 193):

“Q. Now, when you saw the girl struck by the Pontiac, what brakes did you put on then? A. I was stationary at that time; I was standing already.

“Q. Well, did you know or could you see from her position in the road, that she was going to be struck by it? A. Yes.

“Q. Then, when you saw that, what did you do? A. When I have seen her darting out at a fast pace, I jammed my brakes and stopped.

“Q. Now, what I want to know is this: How far did it take you to stop your car if you really intended to stop and jammed your brakes? A. About five to ten feet at the most.”

Hyman Bodner testifies (Case, p. 204):

“Q. Did you see the car hit her? A. Yes.

“Q. When this car hit her, what happened to her? A. She was thrown up in the air and she was landed right alongside of the other side of the road.

“Q. How near to Mr. Shryer's car was she when she landed? A. Must have been about three or four feet.

“Q. When this girl landed in the road after being struck by the Pontiac, or whatever it was—when this girl landed, was Mr. Shryer's car moving or was it standing still? A. He was stationary.

“By the Court:

“Q. Stationary when she landed? A. When she landed we was standing actually—we didn't move at all.

“Q. Did Mr. Shryer's car move at all from the time this girl first landed in the road? A. Not at all.

“Q. Now, how far would you say Mr. Shryer's car was standing from the place where this girl was hit? A. It must have been about ten feet.”

Mrs. Bertha Shryer testifies (Case, pp. 217-218):

“Q. Now, when you were standing there just tell us what you saw. A. Well, after we stopped my husband—we heard Mr. Shryer say, ‘That Pontiac,’ and I looked up and I saw the girl hurled through the air; I didn’t see exactly what hurled her, but I saw the girl hurled through the air and she fell down.

“Q. Where did she fall after she went through the air? A. Well, she fell down—she went up diagonally, like—when we stopped she was quite a little ways away from us, about as far as this place here, and she was lying like diagonal on the floor, but we were stopped at that time, when she fell.

“Q. You say this space here? A. Yes.

“Q. Do you mean from the front of the witness stand to the back of it? A. Well, she laid about this much away. No, about four feet, she laid, five feet; I don’t exactly know how much.

“Q. Four or five feet from what? A. From our car. She was lying at that time when she hit the ground.

“Q. Did your husband’s car or any of the wheels of your husband’s car, run over this girl? A. No, sir; absolutely not.

“Q. Or any part of your car come into contact with her body? A. No, sir.”

Mrs. Sarah Bodner testifies (Case, p. 226):

“Q. When this girl landed on the ground was Mr. Shryer’s car moving or was it standing still? A. We stopped an instant before the girl’s body landed.

“Q. Now, did Mr. Shryer’s car or any part of it, run over this girl? A. No, no; because she was picked up ahead of our car, just like these two.

“Q. Did the car run over anything at all? A. No, sir; not that I seen or could see, because she was picked up.

“Q. Did you feel it run over anything? A. No, sir.”

Louis Bloom, our co-defendant says that the plaintiff darted in front of him from between two cars (Case, p. 30):

“Q. When did you first see the plaintiff as she started to cross the road? A. When she darted in front of my machine.

“Q. She ran across in front of your machine? A. Yes, sir; two machines that were parked on the roadway. She started in between them right on the road.”

The following testimony of Adolph Shryer, your appellant, was read in evidence on the *plaintiff's case*.

“Q. How did this accident happen? A. Approaching to that place, a car was parked on the opposite side.

“Q. Whose car? A. Somebody's car. A car was parked there. A girl ran out from the side of that parked car to the front and was hit by an approaching car from the same direction.

“Q. What car hit her? A. A car coming from the opposite direction.

“Q. Who drove that car? A. I don't know.

“Q. (Indicating the defendant, Louis Bloom.) Did you see him that day? A. I never met that gentleman, except once in Riveredge, when we were in that court.

“Q. There was just one car that was approaching from the opposite direction? A. There was a lot of cars approaching.

“Q. This one car came and hit the girl? A. Yes.

“Q. And then what happened with this car? A. He stopped and then got off and lifted the girl in the car and was gone in the car.

“Q. Was the injured girl, Miss Klein, under the car? A. No.

“Q. Was she underneath any part of this car? A. No. She was picked up in the front, without interfering with me.

“Q. What part of this car struck her? A. The other car?

“Q. Yes. A. I would say the left front side. I don't exactly know.

“Q. On what side of the street was this other car driving? A. On the girl's side.

“Q. What side of the street were you driving on? A. On my right.

“Q. How wide is the road? A. Very narrow. About twenty feet.

“Q. Did you exactly see this car hit her? A. I know what kind of a car it was that hit her. The people I were with said it was a Pontiac.

“Mr. Mackay: I object.

“(Stricken out.)

“By Mr. Rinzler:

“Q. How far away from the girl was your car when she went into the roadway from the curb? A. I was hugging the curb.

“Q. How far from her were you at the time, that is, toward Hackensack? A. Toward Hackensack, about fifteen feet.

“Q. And how far away from the curb in the opposite direction was the car that hit her when she first went into the road? A. When she first went into the road?

“Q. When she first went into the road, that car was far away from her, wasn't it? A. I couldn't say exactly.

“Q. About? A. Well, the car was approaching at a moderate speed.

“Q. But how far away was it? A. About thirty feet.

“Q. And when she first entered into the road, how far did you say your car was away from her? A. About forty feet, away away.

“Q. Your car was forty feet away from Miss Klein in that direction when she entered the road, and at a point alongside? A. Approaching from Hackensack, it must have been forty or fifty feet when she started running, and when the girl first entered the roadway, this car was approaching from Hackensack and was at least forty or fifty feet away from her.

“Q. What rate of speed were you traveling at? A. About fifteen miles an hour. It was impossible to go faster because we were in line.

“Q. Coming from Hackensack, your car was next to the one Miss Klein was in? A. I don't know.

“Q. When the car coming in the opposite direction hit her, what happened to Miss Klein? A. I didn't see Miss Klein. Somebody grabbed her off the road.

“Q. Where did she land? In the center of the road, near your car? A. Yes.

“Q. How near your car? A. I didn't see her.

“Q. Well, you know where you stopped? A. Yes.

“Q. And you know where the car was when she was struck? A. Yes.

“Q. How near your car did this girl land? A. Five or six feet from the front of the car.

“Q. From the right or left? A. From my front left.

“Q. Was any part of her body underneath any part of your car? A. No. I hadn't reached that far.

“Q. When did you first apply your brakes? A. I applied my brakes when I saw the girl starting off.”

Plaintiff, Fannie Klein says that our co-defendant Louis Bloom coming from her left was passing another car going south in the same direction and struck her when she was two-thirds across the street. She says nothing about your appellant Adolph Shryer hitting her.

“Q. How far into the roadway from the right-hand curb that you left were you when you made that observation southerly toward Hackensack? A. Well, that was about seven feet, I should judge.

“Q. Was there any car in sight approaching from that direction, from Hackensack? A. Yes.

“Q. About how far away from you was it at that time? A. 175 feet.

“Q. Did you observe at that time again where the car was that approached southerly from Westwood? A. Yes.

“Q. Where was it at that time? A. It seemed to be almost 125 feet away.

“Q. Then what did you do? A. I continued to cross, because I saw it was safe and I was more than halfway across the road and I heard the whirring of an automobile coming from the left, and I looked up and saw a car shoot out to the left ahead of the car that had been in front of it, and I tried to get out of its way and I go to the curb, but before I was able to do so, it hit me on the left.

“Q. Now, referring to the car that you saw on your observation before you entered the road, or on your second observation when you got out of the range of the parked car, what side of the roadway did that car occupy?

“The Court: Which car? The car coming north?

“Q. The car going south from Westwood to Hackensack. A. Well, that car seemed to be hugging the middle of the road.

“Q. How wide is that road? A. About twenty-six feet.

“Q. Now, is that car which was hugging the road the car that hit you? A. No.

“Q. Or is it the car that overtook that car? A. It was the car that overtook the one.

“Q. When you heard the whirring and looked, how far away from you was the car that was hugging the center of the road? A. About twenty-five feet.

“Q. What part of the roadway did the other car occupy when overtaking the car which had been ahead of it? A. It was way over on its left side.

“Q. So the overtaking car hit you? A. Yes, sir.

“Q. When that car struck you, what part of the roadway had you reached? A. Almost two-thirds across.

“Q. What part of the car hit you? A. The front part.

“Q. What part of your body did it strike? A. The left side.

“Q. Then what happened to you? A. I was knocked unconscious.

“Q. When you looked and saw the car which was hugging the left of the road about twenty-five feet away from you, about how fast was that car traveling? A. About thirty miles an hour.

“Q. You say that car was overtaken by the car that hit you? A. Yes.

“The Court: Which car was going at thirty?

“The Witness: The original car.

“The Court: The first car?

“The Witness: Yes.

"The Court: How fast was the one coming that struck you?"

"The Witness: Why, it was going about thirty-five or forty miles.

"Q. Did the driver of either of those cars give any signal or warning before this accident? A. No.

"Q. You say you were knocked unconscious, do you? A. Yes.

"Q. Do you know what next occurred to you then, as far as the accident is concerned? A. No.

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#### POINT ONE.

The Trial Judge erroneously refused to charge the jury at the trial of said cause, as follows:

"(3) Unless you can decide from the evidence what particular injury, if any, was caused by Mr. Shryer's car, you must give a verdict of no cause of action as to him. The plaintiff cannot recover from Mr. Shryer unless she has shown what particular injury his car did to her."

There was not one iota of evidence submitted in this case as to what injuries were inflicted by defendant Adolph Shryer, if indeed any were inflicted at all by him. Even if we are to believe the story of each of the plaintiff's witnesses *in toto*, none of them with one exception, saw the Shryer car run over the plaintiff; they only saw the girl under the car of the appellant, with the legs of the girl in the road. This one girl concluded that the left front wheel of the Shryer car ran over the plaintiff. Now, it is conceded by almost everybody that the co-defendant Bloom struck this plaintiff going at a fast rate of speed,

in heavy traffic, on a warm September Sunday afternoon, with such force as to throw plaintiff fifteen feet in the air and fifteen feet toward our right of the road. Plaintiff herself says she was  $\frac{2}{3}$  across when struck by Bloom and all others say she was hurled, in the direction diagonally toward the south right in front of the north-bound appellant. It is, therefore, self-evident, that the negligence of Bloom is the proximate cause of the injury, without which negligence the injury caused by your appellant, if there was any so inflicted by your appellant would not have happened. The witness who concluded that your appellant's car ran over plaintiff with left front wheel also says (Case, p. 108, ll. 20 to 23):

“Q. I don't want you to say five and mean ten. Do you mean ten? If you mean ten, let us have it. A. *It happened just in the flash of a second.*”

We submit that from that description of this accident by plaintiff's star witness, it is humanly impossible to ascertain what damage was done by this appellant. We also urge it is elementary that damages must be proven, and never conjectured in order that recovery may be had. It must also be proven against this defendant what damages were the proximate result of this defendant's negligence and we submit that, not only were we not negligent, but it was not proven what damage we did, if any. Our request was a proper legal one, and it was certainly prejudicial to refuse to charge it. It must be remembered that plaintiff's counsel, during trial, amended his complaint so as to make these actions two separate and distinct torts (see Case, p. 144).

Query—What negligence was there on our part, and moreover what injury did we do to the plaintiff? We think from the evidence introduced, the answer to both questions should be, none. There was not even a hint by any witness, doctor or layman, as to whether or not the plaintiff's legs were broken before the left front wheel of our car ran over plaintiff, as was stated by one witness. In conclusion we submit that the refusal of the Court to charge as set up at the beginning of this point, was prejudicial error.

#### POINT TWO.

**The Trial Judge erroneously refused to order a judgment of nonsuit in favor of the defendant Adolph Shryer on the ground that the plaintiff had failed to make out a prima facie case against the defendant, Adolph Shryer.**

In view of the fact that our co-defendant, going in the opposite direction that your appellant was proceeding struck the plaintiff while she was running across the road, throwing her violently and for some distance immediately in front of our car, which car all plaintiff's witnesses say was on its right side of the road, it would seem that here was none of what our courts term an intervening cause and no evidence of negligence shown on appellant's part. The only evidence that could possibly have been construed as negligence on our part was the testimony of one witness that we were proceeding at the rate of thirty-five to forty miles per hour. Assuming for the purpose of nonsuit that this was so—and being so, assuming that it is some evidence of negli-

gence—yet it does not supply an “intervening cause,” such as to make us in anyway responsible for the injuries suffered by the plaintiff. In *Davenport v. McClellan*, 96 Atlantic, 921 an intervening cause is defined, “An intervening cause is an act of an independent agency which destroys the casual connection between the negligent act of the defendant and the wrongful injury.” In that case the defendant negligently built a fire in the street and a boy in adding fuel hereto was burned. The Court held that this was but the continuing of the original wrong and did not defeat the recovery against the original wrongdoer. The Court there used the precedent of the famous “Squibb Case” in reaching its conclusion. And so by analogy we submit that the same principle is applicable here. If heaping fuel upon a fire is no intervening cause, then surely the original wrongdoer here is the proximate cause of plaintiff’s injuries, and so the nonsuit should have been granted. It must be remember that this was a country road; we were not exceeding the limit of speed per hour permitted by law on such highways; we were on the right side of the road and the plaintiff was catapulted to the front of our car. It is also significant that plaintiff’s star witness states, as do all the witnesses of plaintiff that the accident all happened in a flash (see testimony *supra*) so that there could have been no time for this defendant to avoid hitting the plaintiff after she was thrown at us, if indeed, we did hit her, for there was testimony even on the plaintiff’s case that there was no contact with your appellant’s car and the plaintiff. We think that the original wrongdoer is responsible for the consequential damages which may be rea-

sonably apprehended would have resulted from such an act. We think the judge below erred in not granting a nonsuit as to this defendant.

### POINT THREE.

The Trial Judge erroneously refused to direct the verdict in favor of the defendant, Adolph Shryer, on the ground that no negligence had been shown on the part of the defendant.

Your appellant in addition to the discussion set forth in point two, would call your Honor's attention to the portions of testimony quoted under FACTS, *supra*. The four eye-witnesses who took the stand for the defense all corroborate the plaintiff's case in so far as the story that the co-defendant Bloom struck the plaintiff first and hurled her to the immediate front of our car, is concerned. Here it ends, however, for they all say that your appellant was in the line of the usual Sunday afternoon traffic proceeding at a moderate rate of speed; that he stopped immediately after the girl was struck by the Bloom car and that no part of your appellant's car struck or ran over the plaintiff. See testimony under FACTS, *supra*. It is respectfully submitted, therefore, that the Trial Judge should have directed a verdict in favor of your defendant-appellant, Adolph Shryer.

## POINT FOUR.

The Trial Judge erroneously refused to direct a verdict in favor of the defendant, Adolph Shryer, on the ground that the plaintiff was guilty of contributory negligence.

Louis Bloom, co-defendant, says the following (see Case, p. 30):

“Q. When did you first see the plaintiff as she started to cross the road? A. When she darted in front of my machine.

“Q. She ran in front of your machine? A. Yes, sir. Two machines were parked on the roadway. She started in between them right on the road.”

The plaintiff herself admits she crossed the road from behind one car to look for flowers on the opposite side thereof. It is significant that none of her friends attempted to go with her. This was a country road leading to Newburg and the traffic was heavy going both north and south.

“Q. Where were you riding? What road? A. Just that he went towards Hackensack.

“Q. Kinderkamack Road, did you go on? A. Kinderkamack, that is what they called it—Kinderkamack Road.

“Q. About how fast was Mr. Shryer's automobile traveling before the accident? A. Very slowly.

“Q. Why was it going slowly? In other words, what were the conditions on the road? A. It was quite congested, and he—you know, we wasn't in a particular hurry. We went very low pace.

“Q. Were there two lines of traffic? A. At times.

“Q. Just before the accident were there two lines? A. Yes; there was cars coming and going.

“Q. Now, did you see this young lady before the accident? A. Yes, I did notice her standing there in the road, you know, because there were quite a few other people there standing alongside of that parked car.

“Q. Then, did you see what this plaintiff, Miss Klein, did from that time on? A. Yes, I noticed that as soon as the road was kind of clear, you know, from the congestion, that Miss Klein took a jump right into the road.

“Q. Then, did you see what happened to her after she got out into the road? A. She was hurled up in the air.

“Q. What sent her up in the air? A. Well, a car that came from Westwood.

“Q. What kind of a car was that? A. I really didn't see the car—that is, I seen the car, but I didn't notice the name of the car.

“Q. You did not see an Indian head on it? A. Well, I didn't think of that.

“Q. That is on the back tire, anyhow. A. Yes; it passed right by.

“Q. Did you see the car hit her? A. Yes.

“Q. When this car hit her, what happened to her? A. She was thrown up in the air and she was landed right alongside of the other side of the road.

“Q. How near to Mr. Shryer's car was she when she landed? A. Must have been about three or four feet.

“Q. When this girl landed in the road after being struck by the Pontiac or whatever it was—when this girl landed was Mr. Shryer's car moving or was it standing still? A. He was stationary.”

This then bears out the story of our co-defendant, Bloom.

Mrs. Sarah Bodner, corroborating the condition of traffic testified:

“Q. On the day of this accident, were you riding in this Chevrolet coach? A. Yes.

“Q. Leaving out the details before the accident, just before the accident, can you tell us whether the car of Mr. Shryer was going rapidly or slowly. A. We were going quite slowly.

“Q. What have you to say to the traffic on the road? A. There was quite some traffic.”

Also relative to traffic, Bloom the co-defendant says:

“Q. Now, will you just describe to the court and jury what you know about this accident that occurred on the Kinderkamack Road? A. Yes. About twenty minutes or quarter to five daylight saving time I was going south on the Kinderkamack Road. That road is about twenty-five or thirty feet, and as I was going home, when we hit about Oradell the traffic is very heavy, because there is a lot of cars going to the 125th Street Ferry, and we had to stay in line pretty tight there. As we were going along we got to about Riveredge, somebody yelled—”

The plaintiff herself says:

“Q. How far into the roadway from the right-hand curb that you left were you when you made that observation southerly toward Hackensack? A. Well, that was about seven feet, I should judge.

“Q. Was there any car in sight approaching from that direction, from Hackensack? A. Yes.

“Q. About how far away from you was it at that time? A. 175 feet away.

“Q. Did you observe at that time again where the car was that approached southerly from Westwood? A. Yes.

“Q. Where was it at that time? A. It seemed to be almost 125 feet away.

“Q. Then what did you do? A. I continued to cross, because I saw it was safe, and I was more than half way across the road and I heard the whirring of an automobile coming from the left, and I looked up and saw a car shoot out to the left ahead of the car that had been in front of it, and I tried to get out of its way and I go to the curb, but before I was able to do so it hit me on the left.

“Q. Now, referring to the car that you saw on your observation before you entered the road, or on your second observation when you got out of the range of the parked car, what side of the roadway did that car occupy?

“The Court: Which car? The car coming north?”

“Q. The car going south, from Westwood to Hackensack? A. Well, that car seemed to be hugging the middle of the road.

“Q. How wide is that road? A. About twenty-six feet.

“Q. Now, is that car which was hugging the road the car that hit you? A. No.

“Q. Or is it the car that overtook that car? A. It was the car that overtook the one.

“Q. When you heard the whirring and looked, how far away from you was the car that was hugging the center of the road? A. About twenty-five feet.

“Q. What part of the roadway did the other car occupy when overtaking the car which had been ahead of it? A. It was way over on its left side.

“Q. So the overtaking car hit you? A. Yes, sir.

“Q. When that car struck you, what part of the roadway had you reached? A. Almost two-thirds across.

“Q. What part of the car hit you? A. The front part.

“Q. What part of your body did it strike? A. The left side.

“Q. Then what happened to you? A. I was knocked unconscious.

“Q. When you looked and saw the car which was hugging the left of the road about twenty-five feet away from you, about how fast was that car traveling? A. About thirty miles an hour.

“Q. You say that car was overtaken by the car that hit you? A. Yes.

“The Court: Which car was going at thirty?

“The Witness: The original car.

“The Court: The first car?

“The Witness: Yes.

“The Court: How fast was the one coming that struck you?

“The Witness: Why, it was going about thirty-five or forty miles.

“Q. Did the driver of either of those cars give any signal or warning before this accident? A. No.

“Q. Now, you say you were knocked unconscious, do you? A. Yes.

“Q. Do you know what next occurred to you then, as far as the accident is concerned? A. No.”

Now, therefore, there can be no doubt that this plaintiff was guilty of contributory negligence. It is certain that the traffic was heavy, there was no crosswalk here, and for her own safety, plaintiff should have waited until the car going thirty

miles per hour, as she says, passed, instead of walking or running in its path. Of course there is a diversity between plaintiff's and our co-defendant's testimony. Plaintiff states that Bloom before he hit her passed a moving vehicle while Bloom says it was stationary and parked. With reference to either story, the theory of contributory negligence applies. We submit that the plaintiff walking in front of a fast moving vehicle is placing herself in a position of danger so as to be guilty of contributory negligence. We submit as well, that when darting from between two parked cars on a highway in heavy traffic she is guilty of such negligence that she would have received no injury from any negligence on the part of either or both defendants if she had not been so guilty of such contributory negligence.

We submit that the Trial Judge below erroneously refused to direct the verdict.

#### POINT FIVE.

The Trial Judge erroneously refused to direct the verdict in favor of your defendant-appellant, **Adolph Shryer**, on the ground that there is no proof in the case of any injuries that were caused to the plaintiff by the automobile of defendant, **Adolph Shryer**.

The discussion in point one is herein repeated and made a part of this point, as there were no injuries proven that were caused by this defendant.

**POINT SIX.**

The argument set forth in POINT TWO is herein repeated and made a part of this POINT.

**POINT SEVEN.**

The Trial Court erroneously charged the jury that if Mr. Bloom was negligent he would be liable only for those damages which were the proximate result of his negligence.

We submit, that as applicable to the facts herein proven, without modification, this part of the charge is erroneous, misleading and prejudicial to your defendant-appellant, for the reason that there is no evidence of any injury caused by this appellant. This part of the charge would intimate that as the original wrongdoer, Bloom could *not* be held liable for the whole of the injuries inflicted, if there was no intervening cause under the case of *Davenport v. McClellan, supra*, that intimation is erroneous. We think also that the charge was erroneous when not modified in conformity with the rule laid down in the Squibb case, because the jury could not properly apply the rules as laid down by the Court to their finding of acts. The Court did not go on to charge that the original wrongdoer could be held responsible for all the injuries received by the plaintiff, even if the instrument of a third party inflicted or contributed to the bodily harm sustained by the plaintiff.

We think that this part of the charge was erroneous also on the ground that it was impossible to determine from the evidence who inflicted the injury. Let us suppose for the sake of argument

that the plaintiff died. There being no evidence introduced to designate otherwise who could have determined which car killed her. Should the jury have guessed, even if they found as a matter of fact that our left front wheel ran over the girl? Did that kill her, or did the blow that catapulted the plaintiff fifteen feet high and fifteen feet laterally dealt by a car travelling thirty-five miles per hour kill her? We submit that either *one* or the *other* of the defendants is responsible to this girl and that one we urge is the one who was the original wrongdoer, not your defendant-appellant. We think the Court below erred in this part of the charge.

**POINT EIGHT.**

The judgment of the New Jersey Supreme Court is erroneous, defective, and contrary to law.

We urge in support of this point the discussion set forth herein under POINT SEVEN.

**POINT NINE.**

There is no legal evidence upon which to base the judgment of the New Jersey Supreme Court in favor of the plaintiff, Fannie Klein, against the defendant, Adolph Shryer.

We urge that the discussion herein before set forth under POINT Two be repeated and made a part of the POINT.

We respectfully submit that the judgment of the Supreme Court herein should be reversed.

*Turner and Stalter*  
TURNER and STALTER,

*Attorneys and of Counsel with Defendant-Appellant, Adolph Shryer.*

The Otsego Press, Cooperstown, N. Y.

## New Jersey Court of Errors and Appeals

<p style="text-align: center;">FANNIE KLEIN, Plaintiff-Appellee,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">ADOLPH SHRYER, Defendant-Appellant.</p>	}	<p>Action at Law.</p> <p>On Appeal by Defendant, Adolph Shryer.</p>
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### BRIEF FOR PLAINTIFF-APPELLEE.

#### Statement.

Plaintiff sued the defendants, Adolph Shryer, Louis Bloom and Blockdel Realty Co., Inc., a corporation, to recover damages for the injuries which they negligently inflicted upon her on September 18th, 1927, at a quarter to five in the afternoon (Daylight Saving Time). While crossing a public street, plaintiff was first struck by a motor vehicle approaching from her left and owned and driven by the defendant Bloom as the alleged servant of the defendant, Blockdel Realty Co., a corporation. The force of the blow hurled her in the air and after she landed upon the roadway, a car driven by the defendant, Adolph Shryer, and approaching from her right, ran over her legs and injured her. There were separate acts of negligence—separate torts committed by each driver.

The trial, which occurred on October 28th, 1928, before the late Judge Clifford L. Newman, with a jury, at the Passaic Circuit of this Court, resulted in a nonsuit in favor of the Blockdel Realty

Co., Inc., a corporation, upon the ground that there was no evidence of the relationship of master and servant between the owner of that car and the driver, and two verdicts for the plaintiff; one against Louis Bloom for Fourteen Thousand Five Hundred (\$14,500.00) Dollars, which is not involved on this appeal, and one in the sum of Three Thousand Five Hundred (\$3,500.00) Dollars against the defendant, Adolph Shryer.

The defendant, Adolph Shryer, obtained a rule to show cause why a new trial should not be granted, which rule was discharged by the Supreme Court (See opinion, Case p. 6a). He now appeals from the judgment entered on the jury's verdict.

### POINT I.

#### **The Trial Judge did not err in refusing to charge the third request to charge.**

The request to charge reads as follows:

“(3) Unless you can decide from the evidence what particular injury, if any, was caused by Mr. Shryer's car, you must give a verdict of no cause of action as to him. The plaintiff cannot recover from Mr. Shryer unless she has shown what particular injury his car did to her.”

There was no error in refusing this requested instruction.

On appeal, the facts must be assumed to be as found by the jury. The defendant, therefore, has no right to challenge the credibility of the witnesses that were produced.

The fact is, as shown by the testimony, that the Shryer car ran over the upper part of both legs

of the plaintiff and fractured the thigh bones of both legs. (Case p. 98, ll. 15-16; p. 40, ll. 28-32; p. 148 & 149). There was evidence, therefore, from which the jury could estimate the damage caused by Shryer's car.

Counsel for the defendant argue in their brief that it is humanly impossible to ascertain what damage was done by Shryer's car.

Dr. Greenberg said "there were fractures of both bones of the—I mean the *thigh* bones on both legs" (Case p. 40, ll. 31); and again, "there was a fracture on the middle of the shaft of the femur, that is, the *thigh* bone (the right leg) also fractures of each upper end of the—well, the lower leg just beyond the knee; and both fractures extending up into the knee joint" (Case p. 41, ll. 1-10; and again "on the right hand side there was one fracture just about the center of the *thigh bone*" (Case p. 41, ll. 18-20); and "on the left leg there were two fractures of the *thigh bone*, one at the upper third and one about the lower third. See, this. In other words, this bone was broken into three fragments (indicating the *thigh* on left leg)" (Case p. 41, ll. 35-40).

To the same effect is the testimony of Dr. John J. Moorehead, an eminent physician, of the Post Graduate Hospital of New York. He says, "I found that she had a fracture of both *thighs*, known as multiple fracture of both femurs" (Case p. 148, ll. 12-20):

"Q. And there was that type of fracture in both bones of each leg? A. Yes, that is, in each bone of each *thigh* (Case p. 148, ll. 28-30)

Q. As a result of the condition in which you found Miss Klein upon your examination of her, what treatment did you deem necessary and what did you actually do for

her? A. On my complete examination, which was supplemented by X-ray examination, I found it necessary to attempt a setting, a re-setting of her *thighs*, and after I had made this further examination I found that in addition to a fracture of both *thighs*, that she had on one side a fracture of the top of the shin bone, technically known as tibia, and that she also had a fracture on the opposite side, not only of the *thigh* but also of the knee-cap. (Case p. 149, ll. 1-15)."

There was also evidence of the amount of the monies expended by the plaintiff for nurses, hospital service and doctor's bills. From this evidence, it was for the jury to say what injuries were sustained by the plaintiff because of the negligence of the defendant Shryer. The jury would be justified in concluding that the fractures of the thighs were the result of the defendant, Adolph Shryer's negligence, because the left front wheel of his car ran over the thighs of both legs of Miss Klein.

The present case is controlled by the decision by this court in *Jenkins vs. Pennsylvania Railroad Co.*, 67 N. J. Law 331, where the syllabus (2) reads as follows:

"In an action of tort, if it be impossible, in the nature of the case, to distinguish between the damage arising from the actionable injury and damage which has another origin, the jury should be left to make from the evidence the best estimate in their power, as reasonable men, and award to the plaintiff compensatory damages for the actionable injury."

The trial judge followed that rule of law by appropriate instructions to the jury. These instructions were as follows:

"If she does satisfy you by a fair preponderance of the evidence that such defendant was negligent, that is, failed to exercise reasonable care, and that his failure to exercise such reasonable care was a proximate cause of some portion of her injury, then, of course, she would be entitled to recover against that particular defendant, unless she herself were guilty of contributory negligence, as is alleged by each defendant". (Case p. 276, ll. 20-30).

"Now, before I talk about the damages or the measure of damages, I will repeat some general rules as to the liability of the respective defendants, and what liability, and to what extent it exists if there is such liability."

"The law requires that the damages chargeable to a wrongdoer must be shown to be the natural and proximate effects of his delinquency. The term 'Natural' imports that they are such as might reasonably have been foreseen, though not in fact anticipated, and such as occur in an ordinary state of things. The term 'proximate' indicates that there must be no other culpable, that is, blamable and efficient agency intervening between defendant's dereliction and the loss. So you must keep that rule in mind in attempting to ascertain the damages for which the defendant is liable, if at all, and the damages which the plaintiff would be entitled to recover against that particular defendant".

"As to Shryer, if he were negligent and liable, then he would be liable for such damage as are the proximate and natural effects of his negligence as gauged by the above rule which I have just declared." (Case p. 278, ll. 10-40, and Case p. 279 top.)

"Each defendant is charged with a separate and distinct tort, and either, if liable, is liable for such damages as I have already indicated". (Case p. 279, ll. 13-18).

In the Jenkins case *supra*, the opinion points out that in the case of *Railway Co. vs. Hoag*, (cited in the opinion), the trial judge was requested to give the following instruction to the jury:

“If the jury cannot from the evidence determine what part or portion, if any, of damage was occasioned by the water escaping from the tank, then in no event can they find for the plaintiff more than nominal damages on account of damages he may have suffered from the flowing of the water.’”

And that

“The court of review held this proposed instruction objectionable, as liable to mislead the jury to understand that, unless they could determine to a certainty the extent of damage from each of these sources, they should find only nominal damages for the plaintiff; the court declared that if the jury could not separate and distinguish between the several amounts of the damage caused by the water from the tank and the surface water, respectively, they should have been left at liberty to estimate, as best they might, from the evidence, how much of the whole damage was occasioned by the water from the tank. See also, *Learned v. Castle*, 78 Cal. 454, 18 Pac. 872, 21 Pac. 11; *Priest v. Nichols*, 116 Mass. 401; *Mark v. Bridge Co.*, 103 N. Y. 28, 8 N. E. 243.”

Justice Pitney, in the *Jenkins* case *supra* said:

“To say that the plaintiff must be denied a substantial recovery because of the impossibility of distinguishing between the consequences that were unlawfully imposed upon him is to say that in such circumstances the best approximation to justice attainable in a court of law is to require the injured party to bear the entire burden of loss. From the

standpoint of natural justice, it would be better to permit the wrongdoer to bear the whole. But the rule above indicated does equal justice to both, so far as the nature of the case permits."

Moreover, the trial court was legally justified in refusing to charge the third request upon another ground. It was faulty—it contained an unsound proposition of law. The requested instruction conclusively states that if the jury could not decide from the evidence what particular injury was caused by Shryer's car, the jury must give a verdict of no cause for action as to him. Not so. The plaintiff would be entitled to a verdict, at least, for nominal damages. The rule is that a trial judge is not required to charge a request to charge which contains an incorrect statement of the law.

*Christy et al. vs. N. Y. Central & H. R. R. Co.*, 90 N. J. Law 540 (Decided by the Court of Errors and Appeals.

*Max vs. Kahn*, 91 N. J. Law 170 (Decided by the Court of Errors and Appeals.

The defendant is not now entitled to have this court consider this ground of appeal as we shall presently show.

The fifth reason relied on by the defendant on the rule to show cause why a new trial should not be granted, and which was argued in the Supreme Court, was as follows:

"There was no evidence from which the jury could find what, if any, injuries had been sustained by the plaintiff because of the alleged negligence of this defendant" (Case p. 12, ll. 17-20).

That reason, filed in the Supreme Court and

argued in defendant's brief, embraces the same subject matter as the requested instruction now under consideration.

A party is not entitled to have this court hear or consider as a ground of appeal a matter which was made the subject matter of a reason filed in the Supreme Court on a rule to show cause why a new trial should not be granted.

In *Catteral vs. Otis Elevator Co.*, (Court of Errors and Appeals), 103 N. J. Law 381, the syllabus (1) by the Court reads:

"The general rule is that, where a rule to show cause why a verdict should not be set aside is allowed, with exceptions reserved, and the party obtaining the rule specifies, as his reasons for asking that it be made absolute, the matters upon which the reserved exceptions are based, and, upon the return of the rule, argues those matters, and the court afterwards considers and determines them, the exceptions are to be considered as having been abandoned with the approval of the court, and the right to have them reviewed by an appellate tribunal is lost."

This case was followed by the Supreme Court, in *Lewis vs. Schlicting*, 6 Misc. 340, where the case is cited with approval in the opinion.

## POINT II.

Under Point 2 of their brief, counsel for the defendant says that the trial judge erroneously refused to order a judgment of nonsuit in favor of the defendant, Adolph Shryer, on the ground that the plaintiff had failed to make out a prima facie case against him. Defendant is not entitled to

have this point considered by this court because he assigned the same point as a reason upon which he relied on the rule to show cause why a new trial should not be granted, which was argued in the Supreme Court.

*Central vs. Otis Elevator Co., and  
Lewis vs. Schlecting, supra.*

The fourth reason on the rule to show cause (Case p. 12) reads:

“There was no evidence by which the jury could legally find that this defendant was guilty of negligence.”

The seventh reason on the rule to show cause (Case p. 12) reads:

“The evidence in this cause showed that the sole negligence was on the part of the defendant, Louis Bloom, and that no negligence was imputable to this defendant, Adolph Shryer”.

### POINT III.

**There was no error in the refusal to direct a verdict.**

Reasons Nos. 4 and 7 which were relied upon by the defendant on the rule to show cause for a new trial are identical with Point 3 in defendant's brief on appeal. Defendant is not, therefore, entitled to have the same question reviewed upon the appeal.

*Central vs. Otis Elevator Co., and  
Lewis vs. Schlecting, supra.*

Without waiving our objection to the right of the defendant to have this court again consider the question of negligence of the defendant Shryer, we shall demonstrate that the testimony shows that he was negligent.

We have already shown that when the plaintiff lay on the ground, Shryer's car, which was approaching from the right, was a distance of 80 to 85 feet away. If he had his car under control, if he was exercising reasonable care in the operation of his automobile, and was not driving too fast, he could and should have been able to stop his car in that distance, or change his course, so as to avoid running over the plaintiff, but he did not do so. Notwithstanding when the plaintiff landed on the ground the car was 85 feet away, Shryer did not apply the brakes until he reached a point about 30 to 35 feet from where the body lay, and then after jamming on his brakes, his car nevertheless travelled that distance (30 to 35 feet), without being able to stop and ran over the plaintiff's both legs. The plaintiff was afterwards found lying between the front and rear wheels of Shryer's car (Case p. 98, ll. 1-25); no signal was given by Shryer or from his car (Case p. 141, ll. 1-25); Shryer's car was travelling at a speed of about 35 miles an hour (Case p. 98, ll. 29-31); he applied his brakes twice, and was travelling so fast that, as the witness says, his brakes screeched, yet he was unable to control the car, check its speed or stop it (Case p. 96, ll. 25-40; Case p. 136, ll. 2-40; Case p. 137, ll. 1-18).

This evidence denotes negligence.

**POINT I V .**

**Whether the Plaintiff was guilty of contributory negligence was a question of fact for the jury.**

The trial judge did not err in refusing to direct a verdict in favor of the defendant Shryer on that ground.

The plaintiff's testimony showed that she exercised unusual care and precaution in crossing the highway. She says that she had been riding in a car which pulled over to the right curb and parked; she and the other occupants got out of the car intending to pick flowers in the fields on the right side of the street; she observed prettier flowers in the fields across the street, and she reversed her course, intending to cross over (Case p. 55, ll. 10-40; Case p. 56, ll. 1-40; Case p. 57, ll. 1-15); she walked to the curb, and before entering the roadway, made observations to the left and to the right to see if any cars were coming; she saw a car coming from her left about one hundred seventy-five (175) feet away driving south from Westwood (Case p. 57, ll. 15-40) as she crossed the road, she was about fifteen (15) feet behind the parked car in which she had been riding (Case, p. 57, ll. bottom and p. 58, ll. top.) Believing that it was safe to cross, the plaintiff walked past the range of the parked car and then looked to the right and saw a car (the Shryer car coming from her right and driving from Hackensack to Westwood, a distance of about one hundred seventy-five (175) feet away. She was then about seven feet from the curb from which she started to cross. At

that time, the car approaching from her left was about one hundred twenty-five (125) feet away; she proceeded across the road because she "saw it was safe" and traversed more than half way across the road, when she heard the whirring of an automobile coming from her left twenty-five (25) feet away, whereupon she looked up and saw a car shoot out on the left of the road to overtake the car ahead (the car which the plaintiff first saw one hundred seventy-five (175) feet away); she tried to get out of the way of the "overtaking" car, but before she was able to do so, it (the Bloom car) struck her on the left side. The Bloom car was on the left of the road, both when it overtook the car ahead, which was hugging the middle of the road, and when it struck the plaintiff (Case p. 58, ll. 20-40; 59, ll. 1-40). The width of the road is about twenty-six (26) feet (Case p. 60, ll. 1-20). When the plaintiff was hit by the Bloom car, she was two-thirds across the street. As a result of this blow, plaintiff was knocked unconscious, and consequently, she was unable to relate what happened afterward; she was revived in the Hackensack Hospital. The car which was overtaken was driving about thirty miles an hour; the "overtaking" car was driving about thirty-five to forty miles an hour (Case p. 60, ll. 20-40; p. 61, ll. 1-20)

#### POINT V.

Under this head, counsel for the defendant in their brief refer to the same subject matter which is made the basis of Point I, dealing with the request to charge that the jury cannot say what injuries were inflicted by the defendant Shryer. Without further discussing the subject counsel refers to the argument furnished under Point I of their brief.

This, in our judgment, needs no further discussion on our part either. We also refer the court to our discussion under Point I of this brief for our argument under this head.

### POINT VI.

Under this point, counsel for the defendant say in their brief that the argument set forth under Point 2 of their brief applies here. For our reply, we repeat the same argument.

### POINT VII.

Under Point 7 of their brief, counsel for the defendant deal with the seventh ground of appeal, which reads as follows:

“The Trial Court erroneously charged the jury that if Mr. Bloom was negligent he would be liable only for those damages which were the proximate result of his negligence” (Case p. 2a, ll. 33-36).

Defendant is not entitled to have this court consider that ground of appeal because it is too general—it does not recite the portion of the trial court’s charge to the jury complained of by the defendant, and which he seeks to make the basis of a ground of appeal.

“Grounds of appeal must state the judicial action complained of with sufficient precision to apprise the court and counsel of the injury complained of. If such action be an instruction to the jury, the language of the instruction should be given in the

ground of appeal." O'Brien v. Staiger, 101 N. J. L. 526 (Err. & App.)

"Passages of charge attacked as legally incorrect, without quoting them, need not be considered by appellate court as grounds for reversal." Rothstein's v. Rothstein, 6 A. R.

1460 (Syll.) decided by this court.

*a ground of appeal must reproduce the language of that portion of the charge which is challenged. Chapin v. The N. J. A. R. 1058.*

And in addition, we say that if there was any error in the trial court's statement to the jury regarding Bloom's negligence, that only Bloom himself could complain of that charge. A party cannot complain about any action of the court which solely affects another party. If the charge to the jury does not relate to the defendant Shryer and does not affect his liability or rights, it cannot be made the basis of a ground of appeal in his favor.

*Rose vs. Squires*, 101 N. J. Law 438.

Moreover, when the trial court charged the jury that the defendant Bloom, if negligent, would be liable only for those damages which were the proximate result of his negligence, it was a correct statement of the law. It should be observed that the defendants Bloom and Shryer committed separate torts. In that situation, the rule is as laid down by the Supreme Court, affirmed by this court, in *LaBella vs. Brown*, et al, 103 N. J. Law 491, affirmed in 103 N. J. Law 493, on the opinion of the court below, where it was held:

"Where a person seeks to recover from several tort-feasors compensation for separate injuries resulting from distinct and disconnected wrongful acts, some of which were committed solely by one wrongdoer and others by entirely different persons, a single action will not lie in his behalf against all of such wrongdoers jointly. The correct

rule upon this subject is thus stated in Cyc., vol. 38, p. 484 as follows:

‘Where wrongdoers have not acted in concert, and separate and distinct injuries are caused by the act or neglect of each, the liability is several only’ ”.

### POINT VIII.

Following the course taken by counsel for the defendant, in their brief, we respectfully refer this court to our discussion under Point 7.

### POINT IX.

Following the course taken by counsel for the defendant, in their brief, we respectfully refer this court to our discussion under Point 2.

### Conclusion.

We respectfully submit that none of the grounds of appeal justify this court in disturbing the judgment, and that the defendant has not shown that he has suffered manifest harm, wrong or injury.

**We respectfully submit that the judgment should be affirmed and the appeal dismissed.**

Respectfully submitted,

FEDER & RINZLER,  
Attorneys of Plaintiff-Appellee.

FEDER & RINZLER,  
Of Counsel.