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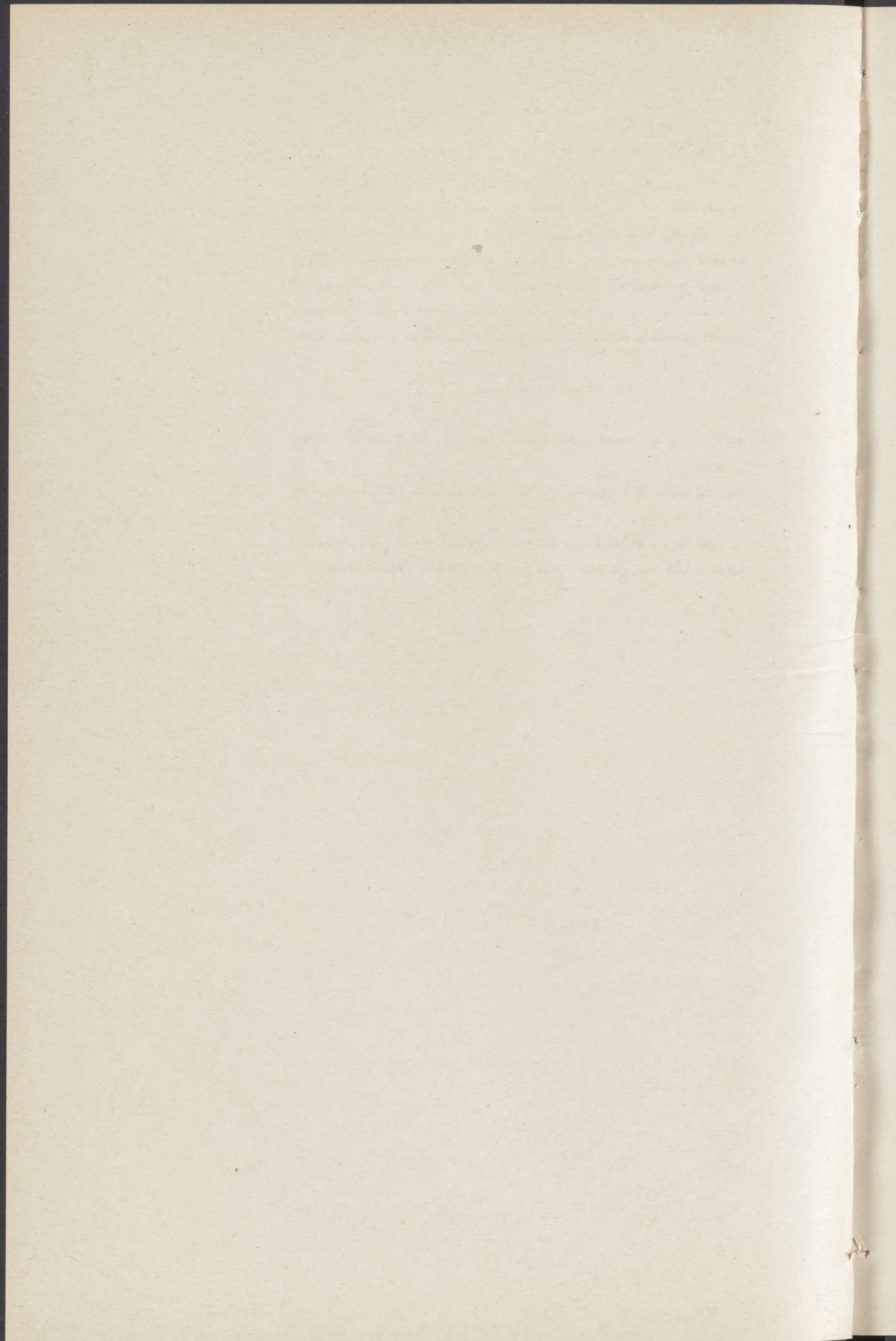
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EXHIBITS

- P-1—Map of scene of occurrence, in evidence on page 6.
- P-2—Statement of Stanley Wasylyk. For identification on page 142. Printed on page 187.
- D-1—For identification—Photograph of motorcycle on page 43. In evidence on page 142.



Complaint
COMPLAINT

(Filed November 10, 1930)

NEW JERSEY SUPREME COURT

Alvin Edmund Van Der Byl, vs. William Schepp,	}	Plaintiff, Defendant.	}	Action At Law	10
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Plaintiff, residing in the Borough of Prospect Park, in the County of Passaic and State of New Jersey, says that:

First Count

1. On August 30, 1930, plaintiff was driving his motorcycle in a northerly direction on the Paterson Hamburg Turnpike, a public highway in the Township of Wayne, Passaic County, N. J. 20

2. On the same date, the defendant was driving his Lincoln Sedan in a southerly direction on the Paterson Hamburg Turnpike, proceeding at an excessive rate of speed on the left side of the road, in a careless and negligent manner, without giving warning of his approach and without regard to persons or property lawfully upon the highway.

3. As a result of the carelessness and negligence of the defendant, the plaintiff's Motorcycle was struck by defendant's car causing plaintiff to be thrown from the Motorcycle and dragged along the road for a considerable distance which resulted in very serious injury to plaintiff. 30

Complaint

4. As a result of the injuries sustained by plaintiff through defendant's negligence, plaintiff was and still is confined to the Paterson General Hospital of the City of Paterson and has suffered and is still suffering great pain and mental anguish. Plaintiff also received severe shock to his nervous system and has been and will continue to be considerably incapacitated.

- 10 5. By reason of the premises, plaintiff has been compelled to engage the services of a physician and has incurred obligations for medical care and attention all of which resulted in damage to plaintiff in the sum of \$25,000.00 for which judgment is claimed on this count.

Second Count

1. Plaintiff repeats paragraphs 1 and 2 of the
20 first count and makes them part of this count.

2. As a result of the carelessness and negligence of the defendant, plaintiff's Motorcycle was struck by defendant's car causing plaintiff to be thrown from the Motorcycle and dragged along the road for a considerable distance which resulted in the demolishing of the plaintiff's Motorcycle as well as the damaging of plaintiff's clothing to such an extent that they were of no further use to the plaintiff.

- 30 3. By reason of the premises plaintiff was damaged to the extent of \$500.00 for which judgment is claimed on this count.

Answer**Third Count**

1. Plaintiff repeats paragraphs 1, 2, 3, and 4 of the first count and makes them part of this count.

2. By reason of the premises, plaintiff was, still is and will continue to be deprived of the normal use of the members of his body as well as the normal functions of the various organs of the body which will greatly hinder him or totally and permanently deprive him of pursuing his usual occupation. 10

3. By reason of the premises, plaintiff has been damaged in the sum of \$25,000.00 for which judgment is claimed on this count.

Peter Hofstra,
Attorney of Plaintiff.

ANSWER

20

(Filed November 18, 1930)

Defendant, answering the complaint filed in the above entitled matter, says:

First Defense To First Count

1. He denies paragraphs 1, 2, 3, 4 and 5 of the First Count.

30

First Defense To Second Count

1. He denies paragraphs 1, 2 and 3 of the Second Count.

Answer

First Defense To Third Count

1. He denies paragraphs 1 and 2 of the Third Count.

Second Separate Defense To Each Count

1. Defendant was guilty of no negligence that
10 was the proximate cause of the accident and injuries suffered by the plaintiff.

Third Separate Defense To Each Count

1. The injuries sustained by the plaintiff were the result of an unavoidable accident and plaintiff therefore cannot recover.

Fourth Separate Defense To Each Count

- 20 1. The alleged injuries sustained by the plaintiff were brought about by the negligence of the plaintiff by his careless and negligent operation of the motorcycle on which he was riding and his said negligence was the proximate cause of the alleged injuries suffered by him.

Fifth Separate Defense To Each Count

- 30 1. Plaintiff was guilty of contributory negligence, in that he controlled and operated his motorcycle in a careless and negligent manner and did not give warning or signal that he was about to make a turn in the road; and did not keep a proper lookout for other vehicles using the said highway; and carelessly and negligently rode in

Reply

front of defendant's automobile; and carelessly and negligently ran into defendant's automobile; and carelessly and negligently attempted to pass in front of defendant's automobile; and carelessly and negligently made a turn in the road without giving proper or sufficient warning to other vehicles following behind and did not control and operate the speed and direction of the said motorcycle in a reasonably careful and prudent manner and 10 his negligence aforesaid was the proximate cause of the alleged injuries set out in the complaint.

Bernard L. Stafford,
Attorney of Defendant.

REPLY

(Filed November 25, 1930)

Plaintiff denies the second, third, fourth and fifth separate defenses to each count.

Peter Hofstra, 20
Attorney of Plaintiff.

Alvin Edmund Van Der Byl—direct
 NEW JERSEY SUPREME COURT
 Passaic County

	Alvin Edmund Van Der Byl,	}	At Law
	Plaintiff,		
	vs.		
10	William Schepp,	}	
	Defendant.		

Paterson, N. J., January 15, 1932

Before

Hon. William B. Mackay, Judge,
 and a Jury.

Appearances:

For the Plaintiff: Ward and McGinnis, Esqs.

For the Defendant: Bernard L. Stafford, Esq.

20

(A jury was called and sworn.)

Mr. Ward—If your Honor please, we have a sketch which counsel has consented to use. Perhaps we can put it on the easel now.

(Map marked exhibit P-1 in evidence.)

(Counsel for the respective parties opened the case to the jury.)

30

ALVIN EDMUND VAN DER BYL, sworn.

Direct Examination by Mr. Ward:

Q. Mr. Van Der Byl, how old are you? A. Twenty-one.

Alvin Edmund Van Der Byl—direct

Q. When were you twenty-one? A. Last February 22.

Q. Whereabouts do you live? A. 202 Fairview Avenue, Prospect Park.

Q. And with whom? A. My folks.

Q. Consisting of whom? A. Father and mother and one sister.

Q. In August, 1930, had you been driving a motorcycle? A. Yes, sir. 10

Q. For how long a period of time had you been driving a motorcycle? A. About two years.

Q. On the 30th of August, 1930, were you on the Hamburg and Paterson Turnpike? A. Yes, sir.

Q. The turnpike to which I refer begins at about where—

Mr. Ward—You have no objection to this leading, I suppose, for the record, have you? 20

Mr. Stafford—Not for descriptive purposes, Mr. Ward.

Mr. Ward—Yes.

Q. There is what is known as Snake Hill, is there not? A. Yes.

Q. And that is where there is a continuation of that turnpike? A. Yes.

Q. And then there is also what is known as 30 Gaede Hill, is there not? A. Yes.

Q. And that roadway curves around and crosses the Pompton-Paterson-Hamburg Turnpike at rightangles right by the blacksmith shop there; is that correct? A. Yes, sir.

Alvin Edmund Van Der Byl—direct

Q. And the Hamburgh and Paterson Turnpike practically begins at that point, doesn't it? A. Yes, sir.

Q. Running out towards Pompton? A. That is right.

Q. So that the Paterson end of the turnpike would be the southerly end and in the direction of Pompton north? A. Yes, sir.

10 Q. And going along that turnpike, going towards Pompton, the east would be on your right? A. Yes, sir.

Q. And the west on your left? A. Yes, sir.

Q. That is correct, is it not? A. Yes, sir.

Q. At the time of this accident what was the character of this roadway at the place where the accident happened? A. There was quite a considerable grade there.

Q. Have you been up there since and made observations? A. Yes, sir.

20 Q. At the request of your lawyers? A. Yes, sir.

Q. With reference to the summit of the grade whereabouts did the accident happen? A. Right on the summit.

Q. In the direction of Paterson, a hundred feet from that summit, can you see any more than a hundred feet beyond the summit, north, which would be towards Pompton? A. No, sir.

30 Q. Can you see approaching cars or anything of that kind? A. No, sir.

Q. The roadway itself is how wide? A. Forty feet.

Alvin Edmund Van Der Byl—direct

Q. And it consists of what? Just describe that, if you will, please, to the Court and the jury.

A. Consists of four lanes, four traffice lanes.

Q. Four traffic lanes? A. Yes, sir.

Q. And right at the summit or the place where this accident happened what was the character of the roadway itself? A. It is asphalt.

Q. And beyond that, towards the north, what is its character? A. It is concrete. 10

Q. And about how far beyond the place where the accident happened is it concrete? A. r'ifteen to twenty feet.

Q. These lanes of which you speak, how wide are they? A. They are ten foot wide.

Q. At the sides of the roadway, what is there? A. Curbs.

Q. It is curbed all along there, isn't it? A. Yes, sir.

Q. What kind of a day was the 30th of August? A. It was a very clear day. 20

Q. And at what time did this accident happen? A. Somewhere between five-twenty and five-forty.

Q. Was it light or not at that time? A. Yes, it was.

Q. Were you accompanied by anybody? A. Yes, sir.

Q. From where had you come? A. Pater-son.

Q. And where were you going? A. Pompton Lakes.

Q. Were you familiar with this road? A. Yes, sir.

Q. Had you traveled over it before or not? A. Yes, sir.

Alvin Edmund Van Der Byl—direct

Q. Will you just tell the Court and the foreman and the ladies and gentlemen of the jury what happened as you went long the roadway?

10 A. As I reached the brow of the hill, which is the first hill after you turn the corner by the cross-roads, my hat blew off, and my friend was riding with me, and he was 200 or 300 feet in front of me. I closed up the gap a little bit and blew my horn and motioned to him that my hat fell off and he got the signal right away, of course, so I turned around there. I saw some cars coming about two or three hundred feet away north, coming in my— coming in the direction of Paterson—

Q. When you say north, that would be towards Pompton? A. Yes, sir.

Q. And coming in the direction of Paterson; that is correct? A. Yes, sir.

20 Q. And about two or three hundred feet north of you? A. Yes, sir.

Q. As you turned? A. Yes, sir.

Q. Go on. A. That gave me plenty of time to turn around.

Mr. Stafford—I can't hear you.

30 A. That gave me plenty of time to turn around, so I continued back towards where my cap had blown off, and as I reached that point—

Q. In what lane did you continue back? A. I was riding in the most—

Mr. Stafford—I can't hear you.

A. I was riding in the most westerly lane.

Alvin Edmund Van Der Byl—direct

Q. That would be going back towards Pater-
son, the right-hand lane? A. Yes, sir.

Q. That was the most westerly lane, yes. Go
on; continue. A. And as I reached the cap I
turned around to see if there was anything com-
ing, and I noticed a car about a hundred feet in
back of me. That gave me plenty of room to turn
around, so I gave a signal with my left hand that
I was going to turn around, and I got over to the 10
other side of the road and I had already reached
the cap, I was just stooping over, bending to
pick up the cap, when this second car that had
been following the car that I had seen decided
to pass the first car—

Mr. Stafford—Now, I object to that and
ask to have it stricken out, your Honor.

The Court—Strike it out.

Q. What did it do; not what it decided to do. 20
What did you actually see it do?

The Court—Strike it out. All right,
what else did you see it do?

A. I reached the cap, and when I looked up—I
don't know what made me look up—but just at
that time I looked up and I saw this car riding
towards me, about thirty feet away, I guess, and
it had been riding in the second lane, but when I 30
saw it it was over in the third lane, that is, the
center easterly lane, and before I could do any-
thing it was on top of me.

Q. What, if anything, was it doing with refer-
ence to the car that you had first seen, when you

Alvin Edmund Van Der Byl—direct

looked up and saw it about thirty feet or so away? A. It was passing that car.

Q. Now, when your hat blew off upon what lane were you travelling then? A. I was in the second lane.

Q. And where did your hat fall? Where was your hat lying during this time? A. Practically right on the summit of the hill.

10 Q. With reference to the most easterly lane and the second easterly lane where was your cap or hat? A. It laid about on the dividing line between the easterly lane, that is, the right-hand lane, and the lane next to it.

Q. Can you come down to this map and indicate that, please? You say you were going in this direction. This would be towards Pompton? A. Yes.

Q. And this towards Paterson, and this is the summit, as you say. Can you indicate about
20 where your cap fell? A. The cap lay about here.

Q. Will you mark that with an A? A. (The witness complied.)

Q. When you started to make this—I will withdraw that, if your Honor please.

Q. You continued on towards Pompton, I think you said? A. Yes.

Q. Closed up the distance, and when you started to make this turn to go back towards
30 Paterson to pick up your cap, how far was this car, or were these cars that you then saw in the direction of Pompton, how far away from you? A. 250 or 300 feet.

Q. And after you had made the turn so that

Alvin Edmund Van Der Byl—direct

you were going back towards Paterson, in what lane did you then travel? A. I was traveling in the most westerly lane. That would be my right-hand lane traveling towards—

Q. That would be this lane going towards Paterson; is that correct? A. Yes, sir.

Q. Upon what lane were these cars traveling that you have mentioned? A. They were in the center westerly—center westerly lane; that is right. 10

Q. That would be this lane? A. Yes, sir.

Q. So that you were in this lane where I am indicating with my finger? A. Yes, sir.

Q. And the cars were in this lane? A. Yes, sir.

Q. You say that when you got to the summit of the hill, when you were about to make your turn, that you made some observation? A. Yes, sir.

Q. What did you do? A. I turned around to see if there was anything coming.

Q. And how far was the nearest car to you then? 20
A. About a hundred feet.

Q. In which direction? A. In back of me.

Q. Well, would that be towards Paterson or towards Pompton? A. Towards Pompton.

Q. Towards Pompton? A. Yes, sir.

Q. And in which lane was that car then? A. It was in the second lane.

Q. When you say the second lane, what lane do you mean? A. The middle westerly lane.

Q. That would be this lane? A. Yes, sir. 30

Q. How sharp a turn did you make? A. I don't know. I guess—

Q. I beg your pardon? A. —I just made an ordinary turn right by the cap.

Alvin Edmund Van Der Byl—direct

Q. How fast were you going as you were making that turn? A. About three or four miles an hour, I guess.

Q. And in making this turn whereabouts did you make it with reference to the vicinity of where your cap was? Do you understand what I mean by that? A. Yes, sir.

10 Q. Did you make it before you got to your cap, where your cap was, or beyond your cap, or what? A. I went a little past the cap before I started to turn.

Q. About how far beyond the cap? A. Oh, about five feet or so.

Mr. Stafford—Five feet?

Mr. Ward—Five feet or so.

Q. Were you going or standing still when you
20 looked up and saw this automobile which was passing the other automobile approaching you? A. I was standing still.

Q. And what was your position with reference to your motorcycle? What was the position of that? Do you understand what I mean by that? A. No. I don't.

Q. Well, was it pointed towards Paterson or the side of the road, the east side or the west side or
30 towards Pompton or where? A. It was pointed towards Pompton.

Q. And with reference to the line about where you have indicated your cap was, where was your motorcycle? A. It was between the cap and the curb on that side.

Alvin Edmund Van Der Byl—direct

Q. Were you within reaching distance of your cap or not at the time you stopped? A. Yes, sir.

Q. Can you give us any idea of how fast this car was coming that struck you? A. I couldn't say exactly, but it was—it must have been going pretty fast.

Mr. Stafford—I object to that, if the Court please. 10

Q. Not what it must have been. If you are familiar with speeds—if your Honor will permit me—if you are familiar with speeds and you can give us any idea of in your opinion how fast that car was coming as it passed that first car, do so; if you can't, all right. A. About fifty miles an hour, I should imagine.

Q. Whereabouts did it strike you? A. It hit me on the left side. 20

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

Q. And what part of you was struck? A. The left side.

Q. What happened to you? A. Why, I was thrown a distance of about thirty to thirty-five feet.

Q. Were you conscious or unconscious? A. I was conscious.

Q. What did you do after you were thrown this distance? A. Well, I went to get up, and I stood up on one leg and I went to stand up on the other, and it wouldn't hold me up. Then I found out it was broken, and I stood on the end of the bone that protruded through the skin. 30

Alvin Edmund Van Der Byl—direct

Q. Where was this car that had struck you? A. Do you mean what lane was it in?

Q. Well, yes, and how far away from you? A. It was in the—

Q. I am referring to the time when you attempted to get up and you found out your leg was broken.

A. The car was about thirty to thirty-five feet north of me.

10 Q. That would be towards Pompton? A. Towards Pompton, yes, sir.

Q. And in what lane? A. It was then in the second easterly lane.

Q. That would be the lane that I am indicating here; is that correct? A. Yes, sir; that is right.

Q. Did you notice any marks there? A. No, I didn't.

Q. Did you notice where your motorcycle was? A. Yes, I did.

20 Q. How far from you was your motorcycle? A. About fifteen feet.

Q. In which direction? A. Towards Pompton.

Q. By the way, have you got that motorcycle here? A. No, but I can get it any time.

Q. Well, after you arose to your feet, then Mr. Schepps came to your assistance, did he not? A. Yes, sir.

Q. And you were taken where? A. Paterson General Hospital.

30 Q. In his car? A. Yes, sir.

Q. Accompanied by whom? A. There was a fellow in the back with me and Dr. Giger was in the front.

Q. When you got to the hospital did you discover

Alvin Edmund Van Der Byl—direct

—did you discover what your injuries were? A. Yes, they told me—

Q. Not what they told you; what you yourself saw. A. No, I didn't see it at the time.

Q. Well, at any time did you see what your injuries were? A. Yes, sir.

Q. And what were they? A. I had lacerations on both arms; I had two holes in my shoulder up here. I don't know how they were caused. And I 10 had a laceration on my right ankle and a broken leg.

Q. Which leg was broken? A. The left leg.

Q. Where? A. Halfway between the ankle and the knee.

Q. The lacerations of your both arms have healed up, have they not? A. Yes, sir.

Q. They are all right now? A. Yes, sir.

Q. And don't cause you any trouble, do they? A. No, sir.

Q. This condition of your shoulder, did that heal 20 up all right? A. Yes, it took quite some time.

Q. Are there any scars there now? A. Yes, sir.

Mr. Ward—I am perfectly willing to have counsel or counsel's physician see them, Mr. Stafford, if you desire.

Q. And what about the laceration on your right ankle? A. Why, that doesn't bother me. 20

Q. That is all right, also, is it? A. Yes, sir.

Q. Is there a scar there, however? A. Yes, sir.

Q. How large a scar, about? A. About two inches long.

Alvin Edmund Van Der Byl—direct

Q. What was the nature of the break in your leg? A. It was a compound fracture of both bones, and one of the bones protruded through the skin about two or three inches.

Q. What treatment was given you at the hospital? A. Well, I was given morphine and so forth to stop the pain.

10 Q. I mean, what treatment was given to the leg? A. It was put up in pillow splints at the time I was put in the hospital.

Q. That was immediately after you went into the hospital? A. Yes, sir.

Q. How long did it remain in splints, in that character of splint? A. About a week.

Q. And then what was done? A. Then they set the leg.

Q. Who was it set it? A. Dr. DeYoe.

20 Q. He attended you, by the way, did he not, during all of this time? A. Yes, sir.

Q. You were a ward patient? A. Yes, sir.

Q. So that there is no bill, so far as Dr. DeYoe is concerned, as I understand it; is that correct?

A. Yes, sir.

Q. What was your hospital bill? A. \$342.

Q. How much? A. \$342.

Q. Now, after the expiration of a week what did Dr. DeYoe do to your leg? A. He tried to set it.

30 Q. Were you in any pain during that time? A. Yes, sir.

Q. And after he set it—what did he do in order to set it, if you can tell us briefly? A. Well, he tried to set it first without giving me a—without giving me ether, because as he told me they were afraid I wouldn't come out of the ether if they gave

Alvin Edmund Van Der Byl—direct

it to me, so he tried to set it without giving me any, and the pain was too great. I couldn't stand it, so they had to give me ether, anyway.

Q. Then, after he set it what was the position of your leg? A. It was put up in splints again and it was sort of raised in bed like that (indicating).

Q. How long were you in the hospital? A. Three and a half months.

Q. During that time did you suffer any pain? 10

A. Yes, sir, a great deal.

Q. Was anything ever given to you to relieve your pain? A. Yes, sir, almost every night for the first few months.

Q. Was there anything else done with reference to the setting of the leg during the time that you were in the hospital? You have stated that when you first went in this was done as you have described, put it up in splints, then a week after that something was done and you were in there for three 20 and a half months. Now, during that last three months, we will say, was there anything done? A. Why, yes, the wound where the bone protruded was dressed every day.

Q. What was there there? A. Why, there was a great deal of pus there all the time.

Q. When you got out of the hospital what was the condition of the leg? A. When I got out of the hospital it was still in a cast, and once a week—

Q. When was the cast put on? A. The cast 30 was put on just before I left the hospital.

Q. I see. And then the cast was on for how long after you left the hospital? A. Until about a week before I went to work.

Alvin Edmund Van Der Byl—direct

Q. And when was that? A. 30th of February.

Q. And after you got out of the hospital and up to the time that you went to work how did you get around? A. Crutches.

Q. Then, when you started to work how did you get around? A. I had to use a cane.

Q. And up to the time that you went to work did anything else develop about your leg? A. Well,
10 it had to be dressed every day.

Q. Why? A. The wound hadn't healed up then; it was still infected.

Q. Up to the time you went to work? A. And past that time, too.

Q. How long past that time? A. Well, the first time it healed up was a year later.

Q. A year later? A. Yes, sir.

Q. How long did you continue to use your cane in and about your work? A. About the end of March.

20 Q. And after your leg healed up, which would have been about in August, as I understand it,—
A. Yes, sir.

Q. —1931, did it ever break open again? A. Yes, sir.

Q. How often has that wound broke nopen? A. Six or seven times.

Q. What has happened when it breaks open? A. Why, it seems like it is infected and fragments of
30 bone come out.

Q. When was the last time it broke open? A. About a month ago.

Q. Is it healed just now? A. Yes, sir.

Q. Have you been—since you left the hospital have you seen Dr. DeYoe or not? A. Yes, sir.

Alvin Edmund Van Der Byl—direct

Q. Before this accident what was your business?

A. I worked for the State Highway, doing surveying.

Q. And in doing surveying what was it necessary for you to do? A. Why, at that time I was working on construction that took extended climbing around and walking all day long.

Q. Did you have any difficulty in doing that?

A. Before the accident? No. 10

Q. Before the accident? A. No, sir.

Q. And after you went back to work, when you were using a cane, what kind of work did you do?

A. Why, I was forced to work in the office, doing computations and clerical work.

Q. Now do you do any surveying or assist in doing any surveying? A. Yes, sir.

Q. Do you have any difficulty in doing that? A. Yes, sir.

Q. In what respect? A. Well, I am not able 20 to get around.

Q. Why not? A. Because of the leg.

Q. Well, what effect does that have upon you?

A. Well, sometimes—sometimes it opens, and other times it seems like I don't trust it; I am afraid it is going to break again.

Q. How long were you out of employment? A. About five and a half months.

Q. And how much were you making? A. Nine- 30 ty dollars a month.

Q. Now, aside from the loss of wages and aside from the hospital, were you put to any other expense for bandages or anything of that kind? A. Yes, sir:

Alvin Edmund Van Der Byl—direct

Q. About how much? A. That amounted to about fifty dollars.

Q. Your crutches, I believe, were included in your hospital bill? A. Yes, sir.

The Court—What was fifty dollars?

Mr. Ward—About fifty dollars, sir.

The Court—What was it?

10

Mr. Ward—For bandages and so forth for the running wound.

The Court—Oh, yes.

By Mr. Ward:

Q. Were you put to any other expense? A. Only the motorcycle.

Q. How much did you pay for your motorcycle?

A. It was around \$430.

20

Q. And what is its condition now? A. I guess it is worth about twenty-five dollars.

Q. How long had you had it before the accident?

A. Four months.

Q. Alvin, did you ever dance or swim? Did you ever dance before this accident? A. Yes, sir.

Q. Have you tried to dance since? A. Yes, sir.

Q. What effect does it have upon you? A. Why, I can't do it.

Q. What about swimming? Could you swim before the accident? A. Yes, sir.

30

Q. Have you ever swam since the accident? A. Why, I haven't tried.

Q. Why not? A. Why, I know it would bother me if I tried to swim, because when I use the leg—it hurts if you use it.

Alvin Edmund Van Der Byl—cross

Q. What about playing the usual sports such as football and baseball? Did you play them before?

A. Yes, sir.

Q. Have you played them since? A. No, sir.

Q. Why not? A. I can't.

Q. Do you suffer any pain with your leg now?

A. Yes, sir.

Q. What pain? A. Well, where the break was there seems to be continual pain, something like a toothache. It bothers me off and on, and the ankle bothers me all the time. 10

Q. Is there any shortening of that leg? A. Yes, sir.

By Mr. Stafford:

Q. How long had you been riding that motorcycle that afternoon, Alvin? A. About—

Mr. Ward—Pardon me, one thing I omitted. 20

By Mr. Ward:

Q. Have you lost any in weight? A. Yes, sir.

Q. How much? A. About twenty-five pounds.

Mr. Ward—Cross examine.

Cross Examination by Mr. Stafford:

Q. How long had you been riding that motor- cycle on this particular August 30, 1930, in the afternoon? A. Well, I rode it just long enough to go downtown and back to the scene of the accident. 30

Q. Well, where did you live on August 30, 1930?

A. In Prospect Park.

Alvin Edmund Van Der Byl—cross

Q. Had you been riding that motorcycle all of that afternoon? A. No, I hadn't.

Q. You left your home in Prospect Park, did you?
A. Yes, sir.

Q. You kept the motorcycle there? A. Yes.

Q. Where did you go then? A. I went downtown to the motorcycle dealer.

Q. You went downtown to the motorcycle dealer
10 alone? A. No, with my friend.

Q. What time was that? A. That was around half past four.

Q. I see. Then where did you go? A. I went back to Pompton Lakes. Stopped at my house first.

Q. You stopped at your home in Prospect Park?
A. Yes, sir.

Q. And you left there what time? A. It was about ten after five, I guess.

Q. Ten after five. Then where did you go? A.
20 I went up towards Pompton Lakes, up Gaede's Hill.

Q. Did you have some particular purpose in mind in going toward Pompton? A. Yes, sir.

Q. Where were you going? A. Going up to see a friend.

Q. Who? Who were you going to see? A. Do you want the name?

Q. Yes. A. Richard Cook.

Q. And he lived where? A. Pompton Lakes.

Q. What street? A. I think it is Pompton avenue; I am not sure.
30

Q. Pompton avenue. A friend of yours, is he?
A. Yes, sir.

Q. I see. And you left your home in Prospect Park about five what? A. About ten minutes after five.

Alvin Edmund Van Der Byl—cross

Q. Ten minutes after five. Do you remember when this accident happened? A. Yes, sir.

Q. What time? A. Approximately between five-twenty and five-forty.

Q. Approximately between five-twenty and five-forty. Do you know how far the scene of this accident is from your home? A. No, I don't.

Q. Have you ridden there from your home since the time of the accident? A. Yes, sir. 10

Q. How long does it take you to get there, do you recall? A. A few minutes.

Q. How many minutes? A. About five or six, I guess.

Q. Five or six minutes. You left your home this afternoon at five? A. About ten minutes after five.

Q. Ten after five. And you figure this accident happened a few minutes after you left your home, then, do you? A. No, No, sir. 20

Q. Well, did it only take you a few minutes to reach the scene of this accident from your home on August 30? A. No, sir. I stopped for gas on the way up.

Q. Oh, you stopped for gas. Where did you stop? A. In the Standard station.

Q. And how long did you stay there? A. Just long enough to fill the tank up.

Q. Where was the Standard station? A. At the corner of Haledon avenue and Squaw Brook road. 30

Q. I see. Did you have an appointment with your friend, Mr. Cook? A. No, I didn't.

Q. Did he know you were coming? A. Well, he had an idea I was going to be there.

(Interruption.)

Alvin Edmund Van Der Byl—cross

Q. Did your friend stop with you at the gas station, Mr. Van Der Byl? A. Yes, sir.

Q. And that was how far from the scene of the accident, do you know? A. In actual distance, I don't know.

Q. I beg your pardon? A. In actual distance I don't know.

10 Q. Could you approximate it? About how far? A. About a mile, I guess.

Q. About a mile. Do you remember when you left the gas station, about what time it was?

A. No, I do not.

Q. Well, when you left the gas station what road did you take from Haledon Avenue? A. Right straight up Gaede's Hill.

Q. Right straight up Gaede's Hill? A. Yes, sir.

20 Q. Until you met the turnpike there? A. Yes, sir.

Q. Then did you turn right? A. Yes, sir.

Q. Now, how far is the turn at the end of Gaede's Hill from where this accident happened?

A. I couldn't say exactly. Approximately about eight or nine hundred feet.

Q. About eight or nine hundred feet; where you made a right turn to go toward Pompton? A. Pompton, yes, sir.

30 Q. Now, when you made your right turn to go toward Pompton on the turnpike what lane did you take? A. I was in the second lane.

Q. The second lane. There was lots of traffic that afternoon, wasn't there, Mr. Van Der Byl, Saturday afternoon, August 30, 1930? A. About the average, I guess.

Q. And you mean by average what? A. Well, it wasn't overcrowded.

Alvin Edmund Van Der Byl—cross

Q. Well, when you made your right turn into the turnpike were there any automobiles in the first lane to your right? A. Yes, sir.

Q. Was there a line of traffic in that lane? A. No.

Q. How many cars, can you recall, as you got in there? A. No, I can't.

Q. Well, were there any automobiles in the second lane, the lane which you say you took? 10
A. No, sir.

Q. No automobiles at all? A. No, sir.

Q. Did you pass many automobiles as you drove down the turnpike in the direction of Pompton? A. No, sir.

Q. Did you pass the automobiles that were in the first lane? A. No, sir.

Q. Did they keep ahead of you all the way down? A. Yes, sir.

Q. I see. How fast were you driving? A. 20
About twenty-five.

Q. Twenty-five miles an hour? A. Twenty or twenty-five.

Q. How were you dressed, Mr. Van Der Byl?
A. I had on a pair of trousers and a shirt, and I had a sweater tied around my neck.

Q. What kind of a shirt did you have on? A. White.

Q. And what kind of a sweater? A. It was a blue and orange. 30

Q. It was an orange stripe, wasn't it? A. No.

Q. A blue stripe? What was it? Explain it, please. A. It was a blue sweater with orange sleeves in it.

Q. A blue sweater with orange sleeves in it.

Alvin Edmund Van Der Byl—cross

Did your companion have on the same kind of a sweater? A. No, sir.

Q. What color was his sweater? A. I think he had a blue shirt.

Q. You are the one that had on the sweater with the orange sleeves? A. Yes, sir.

Q. Well, now, as you turned down—turned to the right to go out the turnpike, was your friend
10 in front of you or in back of you? A. He was in front of me.

Q. How far ahead of you? A. Oh, about 200, 250 feet.

Q. 250 feet ahead. Any automobiles in front of him? A. I don't remember.

Q. You don't remember. Did you keep the same distance in back of him, going at twenty-five miles an hour? A. Yes, sir.

Q. As you rode along the turnpike? A. Yes, sir.

20 Q. Well, now, how far had you gone up the turnpike, Mr. Van Der Byl, at that speed, when your hat blew off? A. I had gone right up to the summit.

Q. You had gone up to the summit? A. Uh huh.

Q. That is the first hill after you made your right turn, is it? A. Yes, sir.

Q. And that would be—you had not yet reached a spot in front of Mr. Hugh Lendrin's
30 home, had you? Do you know where that is, the house on the left? A. Is that the house on the left?

Q. Yes. A. Yes.

Q. You had not yet reached that, had you?

Alvin Edmund Van Der Byl—cross

A. I think that was almost opposite it.

Q. Almost opposite. And that was where your hat blew off, was it? A. Yes, sir.

Q. And when your hat blew off were there any automobiles in front of you then? A. Yes, there was cars in the first lane.

Q. Cars in the first lane. Any in the second lane in which you were riding? A. No, sir.

Q. I see. Well, now, when your hat blew off 10
were you right opposite Mr. Lendrin's home on the summit of the first hill? A. I don't know whether it was right opposite the home, but I was right on the summit.

Q. Right on the summit. When your hat blew off? A. Yes, sir.

Q. Well, now, when it blew off which way was the wind blowing? A. I don't remember that.

Q. Which way did your hat fall, to the left or right? A. It seemed to blow off my head this 20
way.

Q. Oh, it went off backwards? A. Yes, sir.

Q. What kind of a hat was it, Mr. Van Der Byl? A. It was a tam.

Q. A tan cap? A. No, it was—

Q. A Fedora? A. No, it was a tam, they call it.

Q. Oh, one of those close Tom-O-Shanters? A. Yes.

Q. Close-fitting hats. What color was that? A. Dark green.

Q. Dark green. So that blew off backwards? A. Yes.

Q. And you were going then what speed, when your hat blew off? A. The same speed.

Alvin Edmund Van Der Byl—cross

Q. Twenty-five miles an hour. Now, there was no wind blowing across you, was there, at that time, Mr. Van Der Byl? A. I don't remember.

Q. Either from the right or left? A. I don't remember. I don't think so.

Q. You don't think so. Now, how far did you go up the turnpike, Mr. Van Der Byl, after your hat fell off, as you say, on the summit of the first
10 hill after making a right turn into the turnpike?

Mr. Ward—What was that, Mr. Stafford?

(The question was read by the reporter.)

Mr. Ward—How far he went after his hat fell off?

Mr. Stafford—Yes.

20 A. About three hundred feet.

Q. You rode a distance in the same direction three hundred feet after your hat blew off? A. Yes, sir.

Q. Did you change the speed of your motorcycle? A. Yes, sir.

Q. You were going twenty-five miles an hour when your hat blew off; is that true. A. Yes, sir.

Q. To what speed did you slacken the car as
30 you went the three hundred feet? A. I didn't slacken the speed.

Q. Oh, you didn't slacken the speed? What did you do? A. I rode a little faster.

Q. Rode a little faster. I see. And you increased the speed from twenty-five miles an hour

Alvin Edmund Van Der Byl—cross

to how many miles an hour? A. I would say about thirty.

Q. About thirty? A. Yes, sir.

Q. And you continued about thirty miles an hour for what distance? A. About 250 feet, until I caught up to my friend.

Q. You increased the speed of your motorcycle to thirty miles an hour and you came up at that speed until you caught up with your friend; 10
is that it? A. Almost to him.

Q. Well, how near did you get to him? A. Close enough so he could hear my horn.

Q. Well, how close is that, Mr. Van Der Byl?
A. I couldn't say.

Q. Well, was it five feet? A. No, it was further than that. It was about a hundred feet, I guess, seventy-five or a hundred.

Q. You increased the speed of your motorcycle to thirty miles an hour and then you gradually lessened the distance between your two motorcycles? A. Yes, sir. 20

Q. And finally, when you got a hundred feet from your friend who was ahead of you, what did you do? A. I blew the horn.

Q. I see. A. And he looked around. I motioned to my head and he knew right away what had happened.

Q. Just what you did, Mr. Van Der Byl. You motioned to your head? A. Yes. 30

Q. And you were still going thirty miles an hour. What did you do then? A. I slowed down.

Q. To what? A. Slow enough so I could turn around.

Alvin Edmund Van Der Byl—cross

Q. Well, you slowed down to what speed, Mr. Van Der Byl?

(Interruption.)

(The question was read by the reporter.)

A. Three or four miles an hour.

10 Q. Three or four miles an hour. Now, were there any cars coming from the direction of Pompton toward Paterson? A. Yes, sir.

Q. Before you turned? A. Yes, sir.

Q. A line of traffic? A. No, I only saw two cars.

Q. You only saw two cars? A. Yes, sir.

Q. From the point where you made your turn on the roadway after your hat blew off, looking in the direction of Pompton Lakes, you only saw two cars on that boulevard; is that true? A. Yes,
20 sir.

Q. And they were how far away, Mr. Van Der Byl? A. 250 or 300 feet.

Q. 250 or 300 feet. Were they coming—and they were coming down at what speed? A. I couldn't say that.

Q. Well, they were only 200 feet away; couldn't you tell how fast they were going? Did you turn in front of them or in the rear of them? A. I turned in front of them.

30 Q. You turned in front of them. What lanes were the two cars in? A. They were in the second lane, one following the other.

Q. Both cars were in the second lane? A. (No audible response.)

Alvin Edmund Van Der Byl—cross

Q. Are these the two cars you refer to that were there at the time of the collision? A. Yes, sir.

Q. They were the same two cars? A. Yes, sir.

Q. How far from where you turned was the point of impact between your motorcycle and the defendant's automobile? A. You mean the second time I turned? 10

Q. No. How far from the spot where you made your left turn after your hat blew off was it to the actual point of impact down the road, between your motorcycle and the defendant's automobile? A. Well, the distance that I went, about 300 feet, I guess.

Q. About 300 feet. Now, I again ask you, Mr. Van Der Byl, how fast were the two cars going when you made your first left turn to go back for your hat? A. Average, average speed, I guess, forty miles an hour. 20

Q. Average speed? You testified on direct examination that the cars were traveling fifty miles an hour, didn't you?

Mr. Ward—Oh, no. I object to that, sir. He said at the time this car loomed up thirty feet away from him he thought it was going, his best opinion, it was going about fifty miles an hour. 30

Mr. Stafford—That is what I say.

The Court—That is what he says.

Mr. Ward—No, now you say both cars.

Q. Didn't you say that immediately prior to the accident those cars were driving fifty miles

Alvin Edmund Van Der Byl—cross

an hour, or was I mistaken? A. I said that the car that hit me was going that fast.

Q. The car that hit you was going fifty miles an hour?

By the Court:

Q. How fast was the other car going? A. I
10 couldn't say, your Honor. He was passing the other car.

Q. Well, how fast was the other one going? You saw them both. Give us your best judgment, just before the accident. A. About forty-five miles an hour.

By Mr. Stafford:

Q. Forty-five miles an hour, the other car? A. Yes, sir.

20 By the Court:

Q. A woman driving it? A. I don't know, your Honor.

Q. You didn't notice the driver? A. No, sir.

Q. How far in back of you was she, or was that driver when you made that last turn to go and get your hat? A. About a hundred feet, your Honor.

Q. A hundred feet in back of you? A. Yes,
30 sir.

Q. And you had slowed down to five miles an hour? A. Yes, sir.

Q. And you made a left turn with a car in back of you? A. Yes, sir.

Q. Going forty-five miles an hour? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Alvin Edmund Van Der Byl—cross

The Court—All right. I don't want the jurors to discuss this case. I have motions at one o'clock, so, of course, we have to take a recess until Monday morning. Return Monday morning at ten o'clock, and do not discuss the case with anyone between now and that time. You are not supposed to discuss it at home or abroad. Come back Monday morning, and after the 10 case is all over you can talk about it as much as you like.

(Adjourned to Monday, January 18, 1932, at ten o'clock a. m.)

(Trial of the Cause continued.)

ALVIN EDWARD VAN DER BYL, resumed.

20

Cross Examination (continued) by Mr. Stafford:

Q. Mr. Van Der Byl, you told us the speed of these automobiles at the time of the actual or immediately prior to the actual collision. Will you kindly tell us, to the best of your recollection, the speed of these or one of those automobiles when you made your first left turn to go back in the direction of Paterson? A. I guess they were going around forty miles an hour.

30

Q. Forty miles an hour. That is when they were how many feet north of you? A. Two or three hundred.

Q. Two or three hundred feet. And you made a turn, I understand, about three hundred feet

Alvin Edmund Van Der Byl—cross

from where the cap fell off? A. Yes, that is about right.

Q. I see. What speed did you drive your motorcycle at when you made your first left turn to go back after your hat until you reached the hat? A. After I made the turn?

Q. After you made your first left turn, yes. A. About thirty to thirty-five.

10 Q. Thirty or thirty-five miles an hour. I believe you have testified, Mr. Van Der Byl, that after the collision you were about thirty to thirty-five feet from the automobile. A. Yes.

Mr. Stafford—May I have that map, please, if the Court please?

Mr. McGinnis—I will get it.

Q. Do you recall, Mr. Van Der Byl, how far you were from the point of impact?

20

Mr. Ward—What do you mean, Mr. Stafford? A. About—

Q. Where the motorcycle and the automobile came together, how far was your body from that point? A. My body?

Q. Yes. A. About thirty-five feet.

Q. About thirty-five feet. And how far was your body from the cap after the point of impact?

30 A. About thirty-five feet.

Q. Thirty-five feet. So your cap and the automobile at the time of the impact was practically on the same line if drawn across the roadway; is that so? A. Yes, sir. Yes, sir.

Alvin Edmund Van Der Byl—cross

Q. So, then, Mr. Van Der Byl, as I understand it, the automobile—the collision between your motorcycle and this automobile occurred right on a line almost parallel with your cap; is that true?

A. It occurred at the same spot where the cap was.

Q. The same spot. And after it happened both the cap and the automobile were thirty or thirty-five feet from where you lay on the roadway; isn't that true? A. I don't know about the cap. 10

Q. I just asked you that. How far was your cap away from where you were lying on the roadway after the collision? A. Oh, yes.

Q. Thirty to thirty-five feet? A. Yes.

Q. How far was the automobile from where you were lying on the roadway? A. The same distance.

Q. Thirty to thirty-five feet. So you say the automobile and the cap were practically on the same parallel line across the roadway; is that true? A. I couldn't say for sure. 20

Q. But you feel it was about thirty or thirty-five feet? A. Yes.

Q. Both the car and the cap from where you were lying; is that true? A. I know I was thirty-five feet; I don't know about the cap.

Q. I am asking you that. The point where the cap lay on the roadway, which you have testified to as the spot where you stooped to pick your cap up, was thirty-five feet from where you were lying in the roadway after the collision; is that what you have testified to? A. No, sir; I was thirty-five— 20

Alvin Edmund Van Der Byl—cross

Q. Your answer is no. You were lying on the roadway thirty-five feet from the automobile, weren't you? A. Yes, sir. Yes, sir.

Q. How far from the cap were you—from the point of collision between your motorcycle and the automobile were you when you were lying in the roadway? A. I see. I was about forty-five or fifty feet, I guess, from that point.

10 Q. You were fifty feet away from that point? A. About that, yes, sir.

Q. Well, then, the motorcycle and the automobile came together at the point in the roadway that you have marked on the map where your hat was lying? A. Yes, sir.

Q. The car, you say, knocked you thirty feet; is that true? A. Yes, sir.

Q. Eh? A. Yes, sir.

20 Q. But you say that after the collision you were lying in the roadway forty or fifty feet from where the automobile struck you; isn't that true? A. Yes, sir.

Q. Now, which is true? A. The car skidded about fifteen feet—

Q. Just a moment. I am not talking about that, Mr. Van Der Byl; I am talking about distance, and you are a surveyor. A. Yes?

Q. And you are well acquainted with distances, aren't you? A. Yes, sir.

30 Q. That is your business? A. Yes, sir.

Q. Now, is it a fact, Mr. Van Der Byl, that after the collision you were lying in the roadway fifty feet from where your cap was lying at the time of the collision? A. Yes, sir.

Q. Is that true? A. Yes, sir.

Alvin Edmund Van Der Byl—cross

Q. And your automobile was how far from the point where your cap was lying at the time of the collision—or your motorcycle? A. Twenty-five to thirty feet.

Q. Twenty-five to thirty feet away from the automobile of Mr. Schepp? A. No, away from the cap.

Q. Oh, away from the cap? A. Yes.

Q. I see. After the collision? A. Yes, sir. 10

Q. Now, where was Mr. Schepp's car with reference to the point on the roadway where the cap was after the collision? A. About fifteen feet south of the cap.

Q. Fifteen feet south of the cap. I see. Your companion on that day was Mr. Willis? A. Yes, sir.

Q. And he had just bought a second-hand motorcycle, hadn't he? A. No, sir.

Q. He had a second-hand motorcycle, didn't he? A. No, sir. 20

Q. Was it a new one? A. The motorcycle didn't belong to him.

Q. He borrowed it? A. Yes, sir.

Q. He was trying it out, wasn't he? A. I don't know about that, sir.

Q. Didn't you and he go out to try and determine what kind of a motorcycle this motorcycle was that Willis was going to buy; isn't that true? A. No, sir.

Q. Wasn't he going to buy it? A. No, sir. 30

Q. You are sure of that, are you? A. Yes, sir.

Q. But you and he talked about the power and speed of this motorcycle which he was riding and

Alvin Edmund Van Der Byl—cross

which he didn't own, didn't you? A. I don't remember.

Q. How many times did you pass up and down this turnpike before the collision, Mr. Van Der Byl?

Mr. Ward—You mean on that day, Mr. Stafford?

10 Mr. Stafford—On that particular day and that particular afternoon, yes.

A. That was the first time that day.

Q. That is the first time that day? A. Yes, sir.

Q. There is no question about that, is there?

A. No, sir—for me.

Q. Yes, for you. Do you recall, Mr. Van Der Byl, the men who picked you up off the roadway?

A. Yes, I think so.

20 Q. Do you remember how far they carried you to Mr. Schepp's car? A. I guess it was about twenty-five or thirty feet.

Q. Well, now, the car was forty feet away from where you were lying; is that true? A. No, it wasn't that far; it was about thirty feet.

Q. The car was about thirty feet from where you were lying in the roadway. How many men came over and picked you up? A. I am not sure. I think there were two.

30 Q. Was Mr. Schepp there? A. I don't remember.

Q. Dr. Giger there? A. Yes, he was there.

Q. And you say they carried you thirty feet north to where Mr. Schepp's car was standing?

A. Yes, sir.

Alvin Edmund Van Der Byl—cross

Q. Are you sure of that, too? A. Yes, sir.

Q. Do you recall, Mr. Van Der Byl, practically immediately after this collision happened the woman in the first car saying something to you?

A. No, sir.

Q. You don't remember that, do you? A. No, sir.

Q. I see. Now, Mr. Van Der Byl, what was the length of your motorcycle? A. I don't know 10
the exact length.

Q. What was the name of it? A. Harley-Davidson.

Q. A few months old? A. Yes, sir.

Q. I see. You don't know the length— How long had you been driving motorcycles? A. Two years.

Q. Two years before the accident happened? A. About that, yes, sir.

Q. And you don't know the length of this particular machine, do you? A. No, I don't. 20

Q. Was it seven feet in length? A. No, I don't think so.

Q. You don't think so. Was it six feet in length? A. I don't know, Mr. Stafford.

Q. You don't know. Well, when you made this second left turn going three or four miles an hour, Mr. Van Der Byl, you have testified that you went five feet past the cap before you made a left turn? A. About that, yes, sir.

Q. Could you make a left turn on a Harley-Davidson motorcycle giving five feet leeway and turn left to go down and pick your hat up? A. Could I make the turn?

Q. Yes, or would you have to go down about twelve or fifteen feet to make that kind of a turn? A. No, I don't think so.

Alvin Edmund Van Der Byl—cross

Q. You would have to make a very sharp turn within five feet of a cap, wouldn't you? A. No, sir.

Q. You would have to make a very low left bank turn, wouldn't you, to get the circle in there? A. Not the way I turned, sir.

Q. Not the way you turned? Well, which way did you turn, Mr. Van Der Byl? A. Well, 10 I couldn't say exactly if it was five feet.

Q. Well, you testified Friday— A. But that was near it.

Q. Yes. Well, I am asking you. Could you make such a turn with your motorcycle in order to pick up an object in the roadway five feet to your left, without making a very low bank left turn and complete the circle? A. In five feet to my left?

Q. Five feet. A. The cap laid on the other side of the road. 20

Q. Wasn't it to your left when you made the turn, Mr. Van Der Byl? A. Yes, but it was more than five feet.

Q. You drove—you rode five feet past the hat, you said Friday? A. Yes.

Q. Then you made your turn? A. Yes.

Q. Could you make such a turn with a Harley-Davidson motorcycle within five feet to pick up a hat and complete the arc? A. Yes, I think so.

Q. What kind of a turn would you have to make? A. You could make an ordinary turn. 30

Q. What kind of a turn is an ordinary turn with a motorcycle? A. Well, it is just a turn like this (illustrating).

Q. In other words, when you reached a point five feet past the hat you then had to still go

43

Alvin Edmund Van Der Byl—cross

north, didn't you, on your turn, or did you make a sharp left turn, a low bank left turn and cut the distance? Isn't that the purpose of it? A. No, I took quite a wide turn.

Q. You took quite a wide turn? A. Yes.

Q. Going three or four miles an hour? A. Yes, sir.

Q. Where did you have your motorcycle stored after the collision, Mr. Van Der Byl? A. At the 10 dealer's.

Q. Speer's? A. Yes.

Q. On Main Street? A. Yes, sir.

Q. I show you a photograph and I ask you if that is your motorcycle (handing a photograph to the witness). A. Yes, sir.

Q. That is? No question about it? A. No, sir.

Mr. Stafford—I ask to have it marked for identification. 20

(Photograph marked D-1 for identification.)

Q. Now, Mr. Van Der Byl, when you started to make your second left turn you had made how much of this left turn when you saw, as you say, Mr. Schepp's car passing the car in front of him? A. I had completed the turn.

Q. I beg pardon? A. I had completed the 30 turn.

Q. You had completed the turn? You had made this arc from the first lane over into the third lane or fourth lane? Which? A. I was about on the dividing line of the most easterly lane.

Alvin Edmund Van Der Byl—cross

Q. You were on the dividing line between the third and fourth lane to the west of this highway; isn't that true? To the west of the highway coming down from Paterson? A. Yes, sir.

Q. That is true? A. Yes.

Q. And you looked up and saw Mr. Schepp's car; is that true? A. Yes, sir.

Q. Was that the first time you had seen Mr. Schepp's car? A. Well, no, I had seen it when I made the first turn.

Q. You had seen the two cars when you made your first turn? A. Yes, sir.

Q. Well, when you made your second left turn did you see Mr. Schepp's car before, as you say, it attempted to pass the car in front of it? A. No, I didn't.

Q. You knew it was there, though, didn't you? A. Well, I didn't know.

Q. You had seen it only a moment before, 20 han't you? A. Yes, but it might have turned in somewhere; I didn't know.

Q. Were they the only two cars on the highway? You testified to that Friday. A. Yes.

Q. And you saw them when you made your first left turn? A. Yes, sir.

Q. And you went down the road in the same direction as the two cars were going? A. Yes, sir.

Q. So you knew the two cars were in back 30 of you, didn't you? A. Yes, sir.

Q. Well, now, when you made your second left turn, Mr. Van Der Byl, you looked left, didn't you, when you started the turn? A. I looked in back of me, yes.

Alvin Edmund Van Der Byl—cross

Q. You looked to your left as you started to make this left turn, didn't you? I am not trying to confuse you, Mr. Van Der Byl. You are going in a southerly direction— A. Yes, sir.

Q. —and you had—

Mr. Ward—Towards Paterson.

Mr. Stafford—Yes.

10

Q. —and you had already made a left turn to go in that direction? A. Yes.

Q. Now, when you started to make a second left turn didn't you look to your left to see what happened to the two cars that were riding in back of you? A. I looked in back of me first.

Q. You looked in back of you first? A. Yes.

Q. I see. Over your shoulder? A. Yes.

Q. And what did you see? A. I saw one car.

Q. You only saw one car. Then what did you do? A. It was quite a distance away and I had plenty of time to turn, so— 20

Q. No; what did you do, Mr. Van Der Byl, when you saw the one car in back of you? A. I gave a signal to it that I was going to cross the street.

Q. I see. And that is the car you have testified in answer to his Honor's question was going forty-five miles an hour; that is the car to which you refer, isn't it? A. Yes, sir.

Q. And it was a hundred feet in back of you? 20
A. About that.

Q. Yes. Well, after you had looked over your shoulder and commenced your turn did you then look to the left to see how the car was progress-

Alvin Edmund Van Der Byl—cross

ing, coming in your direction at such speed? A. Yes.

Q. Didn't you see the second car then? A. Why, no, sir.

Q. You didn't see the second car. Well, how far was this second car away from you when you saw it for the first time? A. About thirty feet.

10 Q. Thirty feet way. And where were you? I mean, where were you with reference to the spot where your hat was? A. I was right at the spot.

Q. Right at the spot. And Mr. Schepp's car was thirty feet away from you? A. About that, yes, sir.

Q. I see. What lane was it in then? A. It was in the—going towards Pompton Lakes it was in the second lane.

20 Q. No, going toward Paterson. A. It was in the third lane.

Q. In the third lane. Was your motorcycle out of the third lane entirely? A. No, sir.

Q. How much of your motorcycle was in the third lane? A. About half, I guess.

30 Q. About half in the third lane. Well, now, when you looked up and saw Mr. Schepp's automobile thirty feet away from you, how far away from you was the woman, whose name I don't know, in the other car, the first car? How far was that car? A. I don't know, sir. I didn't pay any attention to that car.

Q. Well, that was the car nearest to you, wasn't it? A. After I reached the point where my cap was, why, I was out of danger of that car and I didn't pay any more attention.

Q. Just a second. You don't recall, do you? A. No, sir.

Alvin Edmund Van Der Byl—cross

Q. You don't know where that first car went to, do you? A. No, I don't.

Q. Do you know what lane it was in when it passed you? Did it pass you? A. Why, yes, it passed me.

Q. What lane was it in? A. It was in the second lane.

Q. In the second lane? A. Yes, sir.

Q. Do you recall it passing you? A. Yes, 10
sir.

Q. Just immediately prior to the collision? A. I think I do, yes, sir.

Q. How fast was it going then? A. About the same speed.

Q. Forty-five miles an hour as it passed you? A. I think so, yes, sir.

Q. Now, isn't it a fact that this automobile, Mr. Van Der Byl, driven by the woman, stopped abruptly, immediately as you passed in front of it? A. No. 20

Q. That is not true, is it? A. No, sir.

Q. Had you touched your cap when this collision happened? A. No, sir.

Q. How far away from it were you? A. About two feet, I guess.

Q. Two feet away? A. I mean I was right over the top of it but my hand was two feet away from it.

Q. You were standing practically over the spot where the cap was? A. Yes. 30

Q. And that was on the dividing line? A. Just about, yes, sir.

Q. Do you remember what part of this automobile of Mr. Schepp came in contact with your motorcycle? A. Why, the front part.

Alvin Edmund Van Der Byl—cross

Q. The front part of Mr. Schepp's automobile came in contact with what part of your motorcycle? A. The left-hand side of my motorcycle.

Q. The left-hand side, but what part of your left-hand side? Was it the front, the middle, the rear? A. Why, it hit the front left first, I think.

10 Q. It hit the front left first? A. Uh huh.

Q. Mr. Schepp went to the hospital with you? A. Yes, sir.

Q. You went in his car? A. Yes, sir.

Q. Do you remember telling Mr. Schepp that you shouldn't have made the turn? A. No, sir.

Q. You don't remember saying that several times? A. No, sir.

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

Q. Were you under salary when this happened, Mr. Van Der Byl? A. Under what, sir?

20 Q. Salary, wages. A. Yes, sir.

Q. You had finished school, had you? A. I was attending night school at the time.

Q. You were attending night school? A. Yes.

Q. Where? A. Newark Tech.

Q. Were you working every day? A. Yes, sir.

Q. For the State Highway Department, was it? A. Yes, sir.

Q. As what? A. As a surveyor.

30 Q. Well, you don't mean—do you mean a line-man or a rod man? A. Yes.

Q. Not as a surveyor? A. No, sir.

Q. You were not a surveyor, were you? A. I guess not.

Alvin Edmund Van Der Byl—redirect

Q. You were studying, were you, to be— A. Yes, sir.

Q. Studying engineering, were you? A. Yes, sir.

Q. Did you work all year round or did you go to school part of the time? A. At that time I worked all year round.

Q. All year round. What were your wages, Mr. Van Der Byl? A. Ninety dollars a month. 10

Q. Ninety dollars a month. That is all.

Redirect Examination by Mr. Ward:

Q. Mr. Van Der Byl, you were asked a few moments ago with reference to turning. You made reference to the westerly lane. Now I ask you, When this accident happened whereabouts was your motorcycle? A. It was just on the dividing line between the most easterly lane and the second lane.

20

Q. Were you going or standing still at the time? A. I was standing still.

Q. This car to which you have referred as the first car, had you completely passed that or not? A. Yes, sir.

Q. I asked you last Friday about the scar on your leg, or the sore, rather, there. Can you describe that in a general way to the jury?

Mr. Stafford—What was that question, please?

Mr. Ward—The scar on his leg.

Mr. Stafford—I object to that. That is not redirect examination, your Honor.

Mr. Ward—Mr. Stafford objects to my questioning him about the appearance of

Alvin Edmund Van Der Byl—redirect

10 his scar on his leg at this time. Your Honor will recall I asked your Honor if you deemed it necessary to show that scar to the jury and we agreed that perhaps it would be just as wise not to. I didn't go into it further at that time. It has been suggested to me since that perhaps it would be well to have the witness describe the appearance of the scar and the character of the scar at this time.

The Court—Haven't you a doctor?

Mr. Ward—I beg your pardon, sir?

The Court—Haven't you a doctor?

Mr. Ward—Well, I don't know whether the doctor has been in attendance upon him recently.

By Mr. Ward:

20 Q. How long is it since Dr. DeYoe has seen the leg? A. About two weeks, two or three weeks.

By the Court:

Q. Well, has it changed any or is it just the same as it was? A. Just about, your Honor.

30 Mr. Ward—I won't press the question, then. That is all.

Charles Henry Willis—direct

CHARLES HENRY WILLIS, sworn.

Direct Examination by Mr. Ward:

Q. Mr. Willis, where do you live? A. 66
Lenox Avenue, Pompton Lakes.

Q. Where were you living in August, 1930?
A. The same place.

Q. Were you acquainted with Alvin Van Der
Byl? A. Yes, sir. 10

Q. Were you with him at the time this acci-
dent happened? A. I was.

Q. Turning right from the Gaede Hill or Gaede's
Hill, what have you to say as to whether or not the
Paterson and Hamburg Turnpike is straight for
some distance? A. It is.

Q. Do you recall the crest of the hill? A. I do.

Q. And how far beyond the turn to which I have
referred is that crest? A. About eight or nine
hundred feet. 20

Q. What kind of a grade is there there? A.
Well, it is rather a steep grade.

Q. Have you been up there since the accident?
A. I have.

Q. Have you made observations? A. Yes, sir.

Q. And standing one hundred feet beyond the
crest of the hill—that would be north of the crest
of the hill—how far can one see to the south of the
crest of the hill? A. Probably sixty or seventy
feet. 30

Q. That is, approaching automobiles; is that cor-
rect? A. That is right.

Q. And the roadway itself is how wide? A.
Forty feet.

Charles Henry Willis—direct

Q. Curbed, is it not? A. It is.

Q. How many lanes? A. Four lanes.

Q. And the road consists of what? A. Amesite and concrete.

Q. And the concrete is where? A. Coming up the hill from the north towards Paterson.

Q. From Pompton? A. That is right.

Q. And where does that end? A. Right at the
10 crest of the hill.

Q. And then beyond that towards Paterson or south is the— A. Amesite.

Q. —amesite? A. That is right.

Q. Or what other term do you use for that? Sort of a tarry substance; isn't that right? A. That is right.

Q. What kind of a day was it when this accident happened? A. It was a clear day.

Q. And about what time of day did it happen?

A. A little after five.

20 Q. Was there anyone else with you and Alvin?
A. No, there was not.

Q. As you crossed or passed the crest of that hill, can you tell us about how fast you were going?

A. About thirty-five.

Q. And who was ahead? A. I was.

30 Q. Do you remember anything happening after you had passed the crest of the hill? A. I had gone about three hundred feet, I guess, when I heard the horn blow and I turned around and looked, and Alvin motioned to his head, and I saw that his hat was gone, and he motioned that he was going to turn around and go back, so about 150 feet ahead of me there were some cars coming, so I just slowed down. Alvin was probably 200 or 250 feet beyond

Charles Henry Willis—direct

me, and he turned around while I waited for the cars to go by me, and then I turned around directly behind them and followed them up the hill.

Q. Now, after the turn had been made by Alvin and by you what was the order in which you proceeded back towards Paterson? A. Why, Alvin was first and then there were two cars between him and myself.

Q. Whereabout was Alvin? In what lane? A. 10
He was in the first lane to the right going towards Paterson.

Q. That would be the most westerly lane, wouldn't it? A. That is right.

Q. And where were the cars? A. They were both in the second lane from the right.

Q. That would be the second westerly lane; is that correct? A. That is right.

Q. And where were you? A. I was in the most westerly lane, that is, the first one to the 20
right.

Q. So that you were directly back of Alvin; is that correct? A. That is right.

Q. In the same lane, at least? A. Right.

Q. Now, will you tell us what happened after that, please? A. When Alvin reached the top of the hill I saw him turn around and look and motion—

Mr. Stafford—I can't hear you, Mr. Willis.

20

A. I am sorry. When Alvin reached the top of the hill he turned around and looked behind him and he put out his left hand to signal that he was going to turn around, and as he swung around to the left the two cars were in the second lane from the right,

Charles Henry Willis—direct

and they were just approaching the top of the hill, and as he swung over to the left-hand side of the road the second car started to pass the first one, and when he had reached the line between the third and fourth lanes from the right-hand side of the road, why, he had slowed down to about a stop to pick up his cap, and as he did the second car pulled over into the third lane, bearing over, and right at the top of the hill he struck Alvin.

Q. Have you any idea how fast that car that struck Alvin was going at the time it struck him and at the time it was passing the first car? A. When he was passing the first car I should say he was going about fifty.

By Mr. Stafford:

Q. Fifty miles an hour? A. Yes, that is right.

By Mr. Ward:

Q. Had or had not Alvin completely passed in front of the first car? A. He had.

Q. And about what was the position of his motorcycle at the time this car which we refer to as the second car struck him? A. Half the machine was on the third lane from the right and half of it was on the fourth lane, and he was heading at that time just a little angle; he was headed towards the north, but it was just on a slight angle.

Q. And when you say the third and fourth lanes you refer to the lanes counting from the westerly side; is that right? A. That is right.

Q. Over towards the easterly side? A. That is right.

Charles Henry Willis—direct

Q. When this car struck Alvin what effect did it have upon the motorcycle and upon Alvin? A. Well, it threw the motorcycle for about fifteen or twenty feet and it threw Alvin about fifteen feet beyond the motorcycle.

Q. And what became of the car? A. Well, the car stopped directly in line with the motorcycle and Alvin.

Q. With reference to the motorcycle, how far 10
from the motorcycle did the car stop? A. About twenty feet.

Q. Then what was done? A. Why, I was about seventy-five feet behind the two cars, and when Alvin got struck I pulled up on the right-hand side of the road, right alongside of the—

Q. That would be the westerly side? A. That is right, right alongside of where Alvin lay, and I stopped my machine and went over across the street, and Alvin was just trying to stand up, and the people 20
in the car—they had gotten out and they were just walking up towards him.

Q. How many people were in that car that struck Alvin? A. I think there were five.

Mr. Ward—Is Mr. Schepp in court?

A Voice—Yes.

Q. Is that the gentleman (indicating)? A. Yes, it is. 30

Q. Then what happened? A. As I was crossing the road Alvin tried to stand up. He stood up on one leg all right, but when he went to stand on the left leg it was broken and he fell down again, and I helped to pick him up—I don't remember who

Charles Henry Willis—direct

the other fellow was—and we carried him to Mr. Schepp's car and put him in the back seat.

Q. He was taken away then, was he not? A. Yes, sir.

Q. Now, after that—he was taken away in Mr. Schepp's car; is that correct? A. Yes, sir.

Q. And after that did Mr. Schepp return? A. He did.

10 Q. Did you remain there, Mr. Willis? A. Why, I stayed there long enough to put the machine on one side of the road and take the glass out of the road; then I followed down to the hospital, but I couldn't get in so I went over to the Harley dealer and told him.

Mr. Stafford—I object to any conversations.

20 Q. You had some conversation with the Harley dealer; is that right? A. I did.

Q. And then what did you do? A. Why, I went back to the scene of the accident.

Q. Accompanied by whom? A. Well, I was alone going back.

Q. Did anyone else come up there afterwards? A. Yes, they did.

Q. Did you notice any marks on the road? A. I did.

30 Q. Where were those marks? A. Most of them were in the third lane.

Q. Pardon me? A. I say, most of them were in the third lane from the right-hand side of the road.

Q. That would be the easterly lane; is that right? A. Yes, that is right.

Charles Henry Willis—direct

- Q. The second lane from the most easterly side?
A. That is right.
Q. And where did they begin?

Mr. Stafford—Now, I object to that, if the Court please, unless a time is specified that the witness saw them.

Mr. Ward—Well, I think that perhaps, sir,
I can make it even more close than that. 10

Q. At the time this accident happened, before you left to go to the hospital, did you observe any marks in the road? A. I did.

Q. And that was how soon after the accident?
A. Well, I was directly behind the car when it was going in the third lane.

Q. Which car? A. Dr. Schepp's car.

Q. The car that struck Alvin? A. That is right. 20

Q. And at that time did you or not observe any marks that were made by that car? A. Yes, I did.

Q. Will you just tell us about those marks, please? A. As I was coming up behind the car I saw Alvin just about completed his turn and when the car got into the third lane he tried to stop.

Q. Which car? A. Dr. Schepp's car.

Q. Yes? A. And he slid his back wheels along for fifteen or twenty feet. I was about, oh, sixty feet behind him at that time.

Q. I see. A. And then as I did the machine on the right-hand side of the road crossed from where Alvin lay. I went over and helped put him in the car and the car pulled out right away, and I stayed there and put the machine to the side of the road,

Charles Henry Willis—direct

and there were marks in the road from where the machine had bounced along, and also the skid marks.

Q. First there were these marks for about fifteen feet, you say? A. Yes.

Q. Then beyond that was there anything? A. Not for fifteen or twenty feet more there wasn't any marks.

10 Q. Was there anything beyond that? A. Then the marks of the machine on the macadam.

Q. What machine? A. Of Alvin's motorcycle.

Q. And after this collision had occurred and after the automobile had stopped, how far ahead of the automobile was the motorcycle, about? A. About twenty feet.

Q. And how far ahead of the motorcycle was Alvin? A. About fifteen feet.

Q. After you returned from the hospital did Mr. Schepp come there? A. He did.

20 Q. Did you have any conversation with him? A. We did.

Q. Who had this conversation with him? A. Well, there was myself and Frank Speer, the motorcycle dealer, and there were two or three other fellows there.

Q. What conversation did you have? A. Well, the doctor came back up to—

Q. When you say the "doctor" you mean whom? A. Dr. Schepp, I believe.

30 Q. Is it Dr. Schepp? No, it is Mr. Schepp. A. I understood it was Dr. Schepp.

Q. I see. A. Well, when Mr. Schepp came back—I believe he came back to look over the scene of the accident.

Charles Henry Willis—direct

Mr. Stafford—I object to that, if the Court please.

Q. Well, you saw him there? A. He came back to get a headlight for his—the left front headlight on his car. The rim had fallen off at the time of the accident.

Q. What kind of a car was it, by the way? A. It was a Lincoln sedan. 10

Q. Yes? A. And the rim of his headlight lay to one side of the road. I had picked it up and put it along the curb.

Q. On which side of the road was it? A. On the most easterly side of the road.

Q. And how far from the curb, about? When I say the curb I mean the easterly curb, which would be the left curb coming towards Paterson. A. Do you mean where I picked the rim up?

Q. Yes. A. I should say about twelve or thirteen or fifteen feet, something like that. 20

Q. And when Mr. Schepp came back what happened then? A. He asked if we had found the rim of his headlight, and someone picked it up. It was right along the curb, and he gave it to him, and then we stood there and talked for a little while and we went back and looked at the marks in the road, and we asked Mr. Schepp if he had any idea of how it happened.

30

Mr. Stafford—I object to that, if the Court please. The witness says “we” asked him.

The Court—Yes.

Charles Henry Willis—direct

Q. Well, who asked him. A. Why, Frank Speer, I believe, was the one that asked him.

Q. Frank Speer asked him? A. That is right.

Q. Yes? A. At first he said there were a lot of bicycles on the right-hand side of the road and in order to avoid hitting them he pulled sharply to the left, and that when he saw the skid marks he admitted they were his, but he wouldn't admit he was
10 on the wrong side of the road.

Q. Were those skid marks on the easterly side of the road or not? A. They certainly were.

Q. And what else did he say with reference to the accident, if anything? A. Why, after I talked to him a little—

Mr. Stafford—What was that, please?

A. After I talked to him he said he didn't seem to remember how it happened, but—
20

Q. There was more conversation, was there not?

A. Yes, there was.

Q. At that time, Mr. Willis, there were other things said, were there not? A. There was.

Q. Now, did you know Alvin before this accident? A. I did.

Q. What kind of a boy was he? I mean with reference to dancing and playing the usual games that young men play and all that. A. He was a
30 healthy sort of outdoor fellow; he enjoyed all outdoor sports, and by reason of that—

Q. Since then has he changed in appearance at all, with reference to his weight? A. I believe he has.

Leon E. DeYoe—direct

Q. In what respect? A. Well, he doesn't look as sort of heavy as he was before. He looks sort of thinner. You can tell it in his face more.

Q. Does he indulge in those outdoor sports in which he indulged before? A. I have never seen him.

Mr. Ward—That is all. With your Honor's permission and counsel's permission I will withdraw this witness and put on Dr. DeYoe. 10

Mr. Stafford—I reserve the right to cross examine this witness.

(Witness temporarily withdrawn.)

LEON E. DeYOE, sworn.

Direct Examination by Mr. Ward: 20

Q. Doctor, you are a practicing physician of this County and State? A. Yes, sir.

Q. And you have been for how many years?

Mr. Stafford—I will admit the doctor's qualifications.

Mr. Ward—I simply want them generally on the record. I will be very brief.

Q. You have been how many years, Doctor? 30
A. Eleven.

Q. Are you connected with any institution or institutions? A. Paterson General Hospital.

Q. In what capacity? A. Chief of the surgical service.

Leon E. DeYce—direct

Q. Have you specialized in any particular branch of medical science? A. Surgery.

Q. For how long? A. Ever since I have been in practice.

Q. And I believe you came in contact with Alvin Van Der Byl at the time of this accident? A. Yes, sir.

10 Q. He was in the ward, was he not, Doctor?
A. Yes, sir.

Q. And the bill that he says he paid to the hospital was \$340. Is that a fair and reasonable charge for the services that were rendered by the hospital to him? A. Yes, sir.

Q. I believe you rendered no bill; is that correct? A. No bill.

Q. And that was because he was in the ward? A. Yes, sir.

20 Q. Will you please describe to the Court and jury the condition in which you found him when you first saw him? A. He had a fracture of the leg below the knee. It was a compound fracture of both bones.

Q. And by a compound fracture what do you mean? A. That there was a communication between the lines of fracture and the skin. And he was in considerable shock, so that we did not reduce his fracture for a couple of days, because we didn't want to give him anesthesia.

30 Q. Now, do you remember his other injuries?
A. He had several other lacerations, but they were minor. I can't give you any—

Q. They cleared up, did they not? A. Yes, sir.

Q. How soon after he went to the hospital was his fracture reduced? A. I would say it was the third day afterward.

Leon E. DeYoe—direct

Q. And in what manner? A. An incision, a small incision, was made and the bone was—

Q. By an incision you mean a cut? A. Yes. The bone could not be put back in very accurately without that, and this was done, and then a plaster dressing applied to his leg.

Q. Was that condition a painful one or not, Doctor? A. Yes, sir.

Q. Did he or not, in your opinion, suffer pain? 10
A. He did.

Q. To what extent? A. Well, he had pain for several weeks, and rather severe pain, quite severe pain.

Q. This first operation that was performed, the incision and so forth, how long was he permitted to continue in that condition before anything else was done? A. I can't accurately answer. It was perhaps from six weeks to two months, I think it was, we had him in the plaster cast.

Q. And then what was done? A. It may 20
have been longer than that. I am not sure. Then he was gotten on crutches and went to the operation department and I saw him no more. He was dressed by the men in the operation department.

Q. Did he ever attend the infirmary or come to the infirmary? A. The operation department dispensary.

Q. Yes? A. Yes, when he was discharged from the hospital he went there, I think.

Q. Were you in attendance there at all, Doctor? A. No. 30

Q. I see. Do you know anything about the wound in his leg? A. It is healed now, I believe. It was the last time I knew about it. It has opened

Leon E. DeYoe—direct

two or three times in the interval and discharged little pieces of bone, but I believe it is healed now.

Q. Then, between the day he went to the hospital— A. Of its original healing to the present time.

Q. I see. Can you describe in a general way this sore, opening, or whatever you term it? A. Well, there is a certain amount of deformity at
10 the point where the callus was formed where the fractures united, and this scar, which was a couple of inches in length, over the front of the tibia, the most prominent bone, about halfway between the knee and the ankle—the last time I knew of it that was firmly healed, and there wasn't very much tenderness or soreness to that.

Q. But prior to that time what had happened? A. Well, there had been a discharging wound there for several months. I can't tell you the exact time.

20 Q. Well, the last time that you saw or knew about this wound being healed was when? A. It was sometime during the past summer. I can't give you accurately the date. He came to my office at that time and talked to me about it and I gave him certain instructions as to what to do in the event—

Q. Was the wound healed or open at that time? A. At that time it was.

Q. It was healed. And what had been its con-
30 dition prior to that time? A. It had been healed and then broken down and discharged some small spicules of bone.

Q. What had caused that breaking down? A. The original infection that was introduced at the time of the accident.

Leon E. DeYoe—direct

Q. And at the time of the accident, or at least how soon after the accident did this infection develop? A. Well, it is present at once, of course, and as a result of it a condition known as osteomyelitis takes place in the end of the bone.

Q. And by osteomyelitis what do you mean? A. It is an infection of bone as a result of which certain small portions of the bone die, become necrotic, and are expelled from the wound. 10

Q. The fact that this condition continued for approximately a year—I mean the osteomyelitis—for approximately a year after the accident, what have you to say as to the probability of this breaking down again in the future? A. It is possible that it may do so and again discharge a little piece of bone, I should think, but it is very—

Q. And is there any way that you can fix the time that that may last, any definite way? A. No, I don't think there is.

Q. You spoke of a deformity of the bone, Doctor, in the process of healing. Will you describe that to the jury, please? A. Well, in the process of healing there is thrown out a substance which is known as callus and into this callus is deposited lime salts, and when the lime salts are deposited that bone becomes firm, one solid piece of bone. That is the way in which union takes place. The apposition of his reduction of the bone is pretty good, but there is this lump there of callus. Now, considerable of that still will be absorbed, I would think, but there is a slight amount of deformity still present. 20

Q. Is that deformity permanent or not? A. I think there will be an irregularity in the contour of the bone at that point, probably.

Leon E. DeYoe—cross

Q. Is there any shortening? A. I can't answer that question.

Q. I see. Would it be possible for you to measure that and tell us, Doctor? A. I think so.

Q. While you are here? A. I haven't the tape measure. If you can produce the measure I will.

10 Q. During this treatment, Doctor, what was done, if anything, to alleviate his suffering? A. Why, during the period of the severe pain in his leg he was, I presume, given hypodermics of morphine. It is a routine standing order on my service that **that be done**.

Q. How long is it since you have seen him? A. He came in my office about, I think, two or three weeks ago and asked me if I would testify for him, but I didn't examine him at that time.

20 Mr. Ward—Cross examine.

Cross Examination by Mr. Stafford:

Q. Doctor, this reopening of the wound, you said, was possible. Is it probable? A. I don't know how to tell you about that.

Q. It may not happen, that is what you mean? A. That is correct.

30 Q. He may go on and live his entire life and that not happen; is that so, Doctor? A. Yes, sir, and it is very difficult to say which ones are going to and which ones are not.

Mr. Stafford—That is all.

Mr. Ward—Doctor, if you can wait a moment I will try to see if I can get a measure, with his Honor's permission.

Charles Henry Willis—cross

CHARLES HENRY WILLIS, recalled.

Cross Examination by Mr. Stafford:

Q. Whose motorcycle were you riding that day, Mr. Willis? A. I was riding a motorcycle owned by Richard Cook of Pompton Lakes.

Q. Pompton Lakes. When had you gotten it? A. Why, sometime in the morning.

Q. And you had been riding it all day, hadn't you? A. **That is right.** 10

Q. With Mr. Van Der Byl; you had gone for a ride, the two of you? A. No, I had been riding alone.

Q. You had been riding alone? A. That is right.

Q. Where? A. Well, I was riding around Pompton Lakes and about one o'clock in the afternoon I came from Pompton Lakes to Paterson, down to Alvin's house, and we stayed at his house 20 till possibly around four in the afternoon, and then we went from Alvin's house down to the motorcycle dealer's place and back to Alvin's house, and then we started towards Pompton Lakes together.

Q. Were you going to any particular place?

A. Why, yes, we were going up to see Richard Cook.

Q. The man from whom you had borrowed the motorcycle? A. That is right. 30

Q. Had you ever ridden that motorcycle before? A. Yes.

Q. How frequently? A. Why, I should say two or three times a week.

Q. Two or three times. You were contemplating buying it, weren't you? A. No.

Charles Henry Willis—cross

Q. Well, it had been repaired, hadn't it, and you were trying it out? A. No.

Q. Where did you get it, in Pompton Lakes or Paterson, that morning? A. Pompton Lakes.

Q. Did you ride up to get it? A. I live in Pompton Lakes.

Q. Oh, you live in Pompton Lakes? I see. A. That is right.

10 Q. Well, now, Mr. Willis, after you had made the turn to the right from Gaede's Hill and had passed this summit or crest of which you speak, which was eight or nine hundred feet from the exit of Gaede's Hill, you were going at what speed? A. Approximately thirty-five.

Q. Thirty-five miles an hour? A. That is right.

Q. Were there any automobiles in either the first or second line going north as you turned right into the highway? A. I believe there was one or
20 two.

Q. I can't hear you. I beg your pardon? A. I think there were one or two.

Q. One or two in what lane? A. In, well, between the first and second lanes.

Q. You don't know which lane it was in; is that what you mean? A. Well, half on one and half on the other.

Q. Half on one and half on the other. Going north? A. That is right.

30 Q. And you were three hundred feet ahead of Mr. Van Der Byl? A. At the time he blew his horn I was about 250.

Q. Well, when you turned into the turnpike from Gaede's Hill, do you know how far in back

Charles Henry Willis—cross

of you he was? A. Why, I couldn't say for sure.

Q. You don't know where he was, do you? A. He was directly behind me some place, but I couldn't say what distance.

Q. You don't know whether it was a hundred or five hundred feet? A. Well, it was within five hundred feet.

Q. Within five hundred feet. Now, as you got over this crest that you speak of you continued in the first lane? A. That is right. 10

Q. Toward Pompton Lakes? A. That is right.

Q. How far had you gone beyond this summit when you say you heard the horn that Mr. Van Der Byl blew? A. Oh, I was about three hundred feet beyond it.

Q. I beg your pardon? A. About three hundred feet beyond.

Q. Three hundred feet beyond what? A. Beyond the summit going north.

Q. Oh, you were three hundred feet beyond the summit when you heard the horn; is that true? A. That is about right. 20

Q. That is true. Now, when you heard the horn you were three hundred feet beyond the summit, how far in back of you was Mr. Van Der Byl? A. About two hundred feet.

Q. Two hundred feet? A. Yes.

Q. He was a hundred feet from the summit, then, wasn't he? A. That is about right. 20

Q. Was it there that you made the turn? A. Why, no, I should say it was possibly a hundred feet further.

Q. Well, let's see. You were three hundred feet from the summit when you heard Mr. Van

Charles Henry Willis—cross

Der Byl's horn blow and he pointed to his head?

A. That is right.

Q. That is true. And he was a hundred feet in back of you, or two hundred? Which? A. Two hundred.

Q. Two hundred feet in back of you? A. That is right.

10 Q. Was it then that he made his first left turn to go back to Paterson? A. No, it was just—it was possibly a hundred feet or more to the north of that.

Q. Oh, he continued riding a hundred feet after he had pointed to his head? A. Well, that is right.

Q. Is that true? A. To slow down from about thirty-five or forty miles an hour to—

Q. I just want to get the distances. It was a hundred feet when you got the horn and he rode another hundred feet? A. Approximately.

20 Q. That made two hundred feet from the summit; is that true? A. Yes.

Q. Two hundred feet from the summit, and that is when he made his first left turn? A. That is right.

Q. Now, when he was two hundred feet from the summit going north and he made his left turn, did you see the two cars going south on that highway? A. I did.

30 Q. How far from the summit were they when you saw them? A. Well, I was about three hundred feet from the summit and they were about 150 feet in front of me.

Q. Ahead of you, going in the opposite direction? A. That is right.

Charles Henry Willis—cross

Q. About 450 feet? A. That is right.

Q. I see. From the summit? A. That is right.

Q. How fast were they going? A. I should judge about forty miles an hour.

Q. Forty miles an hour. How far had you continued up the road before you turned? A. Just long enough for those two cars to pass me; then, I circled around directly behind them. 10

Y. Well, how far up the road did you go, Mr. Willis? A. One hundred feet, about.

Q. One hundred feet. You made a left turn? A. That is right.

Q. Well, these cars that had passed you, going forty miles an hour, and you went for a hundred feet and then made a left turn, how far were those cars in advance of you when you finally straightened out your motorcycle to go south? A. About seventy-five feet. 20

Q. Well, didn't they pass you at forty miles an hour? A. Yes.

Q. And you drove a hundred feet, didn't you, and then turned? A. No.

Mr. Ward—Oh, I object to that. He didn't say that.

Mr. Stafford—Well, I am asking him.

Mr. Ward—He said he turned immediately. 30

Mr. Stafford—Maybe I am wrong. I will withdraw the question.

Charles Henry Willis—cross

By Mr. Stafford:

Q. When these two automobiles—there were two, were there not? A. Yes.

Q. Both going forty miles an hour; is that true? A. That is about it.

Q. How far did you go north on this highway before you turned? A. Well, they were a hundred foot—

10 Q. No. How far did you go before you turned after these cars passed you going forty miles an hour? A. I turned directly behind them.

Q. Directly in back of them? A. That is right.

Q. You didn't go any distance at all, did you? A. Well, I might have gone ten or fifteen feet behind them.

Q. Ten or fifteen feet. You turned at what speed? A. Oh, about five miles an hour.

20 Q. Five miles an hour. Well, when you straightened out your motorcycle and had it pointed south, how far in advance of you were the two cars then? A. Oh, they were about one hundred feet.

Q. One hundred feet ahead of you? A. That is about all.

Q. I see. You were in what lane? A. In the most westerly lane, the first one to the right.

Q. The first one to the right going south? A. That is right.

30 Q. What speed did you ride in back of these two cars? A. Well, I was riding forty miles an hour.

Q. You were riding forty miles an hour? A. After I turned around I picked up to about forty miles an hour.

Charles Henry Willis—cross

Q. You picked up to about forty miles an hour? A. That is right.

Q. Did you keep up with those two cars? A. No.

Q. You couldn't catch them? A. I didn't try.

Q. You were riding at a speed of forty miles an hour, but did not come up in back of the two cars that you say were riding forty miles an hour? A. No. 10

Q. You kept the same distance apart, did you, from the time you turned until the collision?

A. Around seventy-five feet or a hundred feet behind them all the time.

Q. I see. You had the both automobiles and your friend, Mr. Van Der Byl, in your sight from the time that you made this left turn to follow him south on the highway, didn't you? A. Yes.

Q. You had the three objects in front of you constantly? A. That is right. 20

Q. Your cut-out was going full blast? A. There aren't any cut-outs on motorcycles.

Q. What are they? Exhausts? What makes the explosion, the noise? A. The motor.

Q. The motor? Well, that was making a lot of noise, wasn't it? A. Well, the motor makes the usual amount of noise.

Q. The usual amount of noise a motorcycle makes? A. Yes.)

Q. Could you determine at what speed Van Der Byl was going in front of these two cars?

A. I couldn't say for sure.

Q. You couldn't say. Do you know far in front of these cars he was? A. About 150 feet in front of the first car.

Charles Henry Willis—cross

Q. 150 feet in front of the first car? A. About that.

Q. The first car was driven by a woman, wasn't it? A. I believe it was.

Q. And that was the car that was going forty or forty-five miles, which? A. Forty.

Q. Forty miles an hour. Did it continue that speed right up until the time of the collision?

10 A. I believe it did.

Q. It did. The first car didn't slacken its speed at all, did it? A. No.

Q. And the second one kept on with the first car? A. That is right.

Q. The same speed? A. Until he got to the crest of the hill.

Q. Until he got to the crest of the hill? A. Yes.

20 Q. You mean the actual top—you know what crest means? That is the top; is that what you mean, or do you mean the incline leading to the hill? A. I think until he got within thirty feet within the crest of the hill.

Q. Oh, until he got within thirty feet of the highest point of that crest; that is the top; that is what you mean, don't you? A. That is right.

Q. How far in back of the first car was the second car? A. About twenty or twenty-five feet.

30 Q. Twenty to twenty-five feet in back? A. That is right.

Q. I see. Then, when this second car reached a point within thirty feet of the crest, the top of this hill there going down to the entrance to Gaede's Hill, what happened? A. He suddenly

Charles Henry Willis—cross

swerved to the left from the second lane on the right over to the third lane.

Q. Yes? A. And he went about forty or forty-five feet and then he struck Alvin. That was right on the summit.

Q. All right. After he had made a left swerve he went forty to forty-five feet and the collision happened? A. That is right.

Q. That is true, isn't it? A. That is right. 10

Q. Now, did he pass the car in front of him? A. Not quite.

Q. He didn't, did he? A. No.

Q. No. And isn't it a fact, Mr. Willis, that Mr. Van Der Byl when he made this left turn, cut directly in front of the car driven by the lady? A. He turned around in front of her, yes.

Q. How many feet in front of the car was he when he made the left turn? A. When he started to turn he was one hundred feet ahead of her, anyway. 20

Q. No question about that, is there? A. No.

Q. And you were how far away from him when you saw him start this turn? A. Oh, I was about almost two hundred feet.

Q. Almost two hundred feet away from— A. About two hundred feet, isn't it?

Q. And you were riding at forty miles an hour? A. That is right.

Q. Did you see Mr. Van Der Byl make that turn? Were you watching him when he made it? A. Yes, I was. 30

Q. What kind of a turn did he make? A. Well, a wide sweeping turn, like.

Charles Henry Willis—cross

Q. A wide sweeping turn to the left. At what speed? A. No more than five miles an hour. Under five miles an hour.

Q. Under five miles an hour? A. Yes.

Q. And you saw him look back at these two cars, didn't you, a hundred feet in his rear? A. That is right.

Q. Eh? A. That is right.

10 Q. No question about that? A. No.

Q. Do you know what happened to the car driven by the lady after Alvin passed in front of her car? A. Why, she stopped.

Q. She stopped? A. Just about alongside where Alvin lay.

Q. She stopped immediately, didn't she, after he passed in front of her? A. Oh, no.

Q. That is not true, is it? A. No.

Q. I see. In other words, she stopped how far from the actual point of impact, the actual place
20 where the collision happened? A. About sixty feet to the south of it.

Q. She stopped sixty feet to the south? A. That is right.

Q. That would be over the summit and down the hill, wouldn't it? A. Just a little, yes.

Q. Eh? A. Yes.

Q. The accident happened on the summit, didn't it? A. That is right.

Q. So that would be sixty feet down the hill
30 toward the entrance of Gaede's Hill; is that right? A. That is right.

Q. And where did Mr. Shepp's automobile stop after the collision? A. Well, about twenty-five feet from the crest of the hill.

Charles Henry Willis—cross

Q. I see. His machine stopped nearer to the scene of the collision than the automobile driven by the lady; that is what you mean, don't you?

A. That is right.

Q. I see. Do you know what part of the automobile came in contact with Mr. Van Der Byl's motorcycle? A. The left-front of the car.

Q. The left-front of the car struck what?

A. Just about the center of the motorcycle. 10

Q. Struck the center of the motorcycle? A. Just about the center.

Q. Did you notice whether the car driven by the lady pulled to the right just as Alvin turned to the left? A. No, she did not.

Q. She did not? A. No.

Q. In other words, she kept straight on and did not stop for fifty feet down the roadway?

A. That is right.

Q. Well, now, Mr. Willis, you say Mr. Shepp's car was going fifty miles an hour thirty feet from where the accident happened; am I right? A. I don't think I said that. 20

Q. Well, possibly I am mistaken. Didn't you say that the second car pulled over into the third lane and struck Alvin? A. That is right.

Q. The second car was going fifty miles an hour; am I wrong or are you mistaken? A. Approximate. If I said it, that is approximate speeds, yes.

Q. I don't want you to agree with me, Mr. Willis. I am asking you if you said it. A. I believe I did. 30

Q. I beg your pardon? A. I think I did.

Q. You think you said fifty miles an hour. Well, now, was it going fifty miles an hour thirty

Charles Henry Willis—cross

feet from where the accident happened? A. Approximately.

Q. Approximately fifty, and the other car continued at forty? A. That is right.

Q. And the second car never passed the first car, did it? A. No.

Q. No. And after the accident the first car was still a point farther south than the defendant's, Mr. Shepp's car? A. That is right.

Q. Then, as you glanced down and saw Mr. Van Der Byl had passed the first car driven by the lady, was it at that time you say Mr. Schepp pulled to his left to pass the first car, the first automobile?

(The question was read by the reporter.)

Mr. Stafford—That is my mistake.

Q. As you glanced down and you say you saw Mr. Schepp's car trying to pass the automobile driven by the lady, it was then thirty feet from where the accident happened? A. About thirty feet from where the accident happened.

Q. From where the accident happened? A. He started to pull out to pass.

Q. He started to pull out? A. That is right.

Q. Yes. Well, now, at that time, thirty feet away, was Mr. Van Der Byl's whole motorcycle off the second lane— A. Yes.

Q. —going south? A. Well, he was going north.

Q. Was it off the second lane going toward Paterson entirely? A. Yes.

Q. That is going south. A. That is right.

Q. How much of his motorcycle was in the

Charles Henry Willis—cross

third lane? A. At the time Mr. Schepp was thirty feet from the top of the hill?

Q. Yes, yes. A. All of it.

Q. All of it. And Mr. Van Der Byl had stopped his motorcycle partly in the third lane and partly in the fourth lane, hadn't he? A. That is right.

Q. So, as a matter of fact, then, when Mr. Schepp pulled from behind the first car going 10 fifty miles an hour, Mr. Van Der Byl, who was thirty feet way had come to a dead stop, hadn't he? A. Just about. He might have moved two feet or three feet. He was stopping.

Q. Stopping. Had he reached his hat? A. Well, I should say the front wheel was right alongside of his hat. He only had to pull up about two or three feet to reach down and get it.

Q. And the hat lay on the dividing line between the third and fourth lane? A. That is right. 20

Q. Do you remember just where Mr. Van Der Byl lay in the roadway from where the scene of this collision occurred, the point in the roadway where it occurred? A. At what distance from the car you mean?

Q. No. At what distance from where the accident actually happened? A. From where he was struck?

Q. Yes. A. About fifty or sixty feet. 30

Q. About fifty or sixty feet from where he was actually struck? A. That is right.

Q. Did you pick up his hat afterwards? A. Quite a while afterwards, yes.

Q. Do you know how far from the point where his hat lay that Mr. Van Der Byl lay in the roadway? A. That is about the distance.

Charles Henry Willis—cross

Q. Fifty or sixty feet? A. Fifty or sixty feet, yes.

Q. Do you know how far from the point where the hat lay that Mr. Schepp stopped his automobile? A. About twenty feet.

Q. Twenty feet from where the hat lay? A. Twenty-five feet, something like that.

Q. Do you know how far Mr. Van Der Byl's
10 body was from Mr. Schepp's car after the collision? A. About thirty to thirty-five feet.

Q. There isn't any question about that, is there? A. I don't think so.

Q. Did you carry Mr. Van Der Byl to the car? A. Yes, sir.

Q. Eh? A. Yes, sir.

Q. Who helped you? A. I don't know who helped me.

Q. How many men helped you? A. I believe there was only one there.

20 Q. Only one other? A. That is right.

Q. And you carried him thirty feet to Mr. Schepp's car? A. Yes.

Q. When Mr. Schepp went back to the scene of this accident there were a crowd of motorcyclists around him, quite a lot of them, weren't there? A. I should say about six.

Q. Six. All belong to the same club?

30 Mr. Ward—To the same what, Mr. Stafford?

Mr. Stafford—Club, motorcycle club.

A. I don't know. I don't know of any club.

Q. I beg your pardon? A. I don't know of any club that they belonged to.

Leon E. DeYoe—direct

Q. You saw Mr. Van Der Byl's motorcycle after the collision, did you not? A. Yes.

Q. I show you this photograph marked exhibit D-1 for identification and I ask you if that is the photograph of Mr. Van Der Byl's motorcycle after the collision (handing a photograph to the witness).

A. That is it.

Q. That is his motorcycle after the collision? A. Yes.

10

Mr. Stafford—That is all.

LEON E. DeYOE, recalled.

Direct Examination by Mr. Ward:

Q. Doctor, did you make the measurement as I requested? A. Yes, sir.

Q. And did you find any shortening?

20

Mr. Stafford—Just a moment.

By Mr. Stafford:

Q. Doctor, was that made with a steel tape, or one of these cotton tapes? A. A cotton tape, but that is of no importance, sir.

Q. It is not? A. No, sir.

Q. Aren't those measurements usually made with steel tape? A. Yes, but the relative difference between the both legs would be the same whether it is made with a steel tape or a cotton tape, because I measured both legs with the same tape, so the error, if there were an error, is the same in both legs.

30

Leon E. DeYoe—direct

Q. An error could occur in a cotton tape by pulling it or stretching it. A. If I used a great deal of force on one leg and not on the other.

Q. You couldn't make an error of that kind with a steel tape, could you, Doctor? It is not resilient, does not stretch? A. No, sir, this is a new cotton tape.

10

Mr. Stafford—I object to it, if the Court please.

By Mr. Ward:

Q. You were offered the steel tape, were you not, Doctor? A. Yes, sir.

Q. We had one here for you? A. Yes, sir.

Q. To use if you desired? A. Yes, sir.

Q. As a matter of fact, you haven't any interest in this matter at all?

20

Mr. Stafford—Oh, I don't say that, Mr. Ward.

A. None whatsoever.

Q. Now, I ask you if you found any shortening.

A. Yes, sir.

Q. What shortening? A. One-half inch.

30

Mr. Ward—Cross examine.

Mr. Stafford—No questions.

Joseph S. Hoffman—direct

JOSEPH S. HOFFMAN, sworn.

Direct Examination by Mr. Ward:

Q. Mr. Hoffman, where do you live? A. I live on Pompton Turnpike, on Walter Mills' estate.

Q. Do you remember this accident that happened on the 30th of August, 1930? A. Yes, sir, I was working out in the field.

Q. Whereabouts? A. About three hundred feet from the main highway. 10

Q. You are familiar with this highway, are you not? A. Yes, sir.

Q. And there are four lanes there consisting of ten feet each; is that correct? A. Yes, sir.

Q. And the curb on each side, on the easterly side and the westerly side? A. Yes.

Q. And the highway runs from the south, in the direction of Paterson, north in the direction of Pompton; that is right, isn't it? A. Yes, that is right. 20

Q. The highway itself is composed of concrete up to a certain point, about at the crest of the hill?

A. Yes, sir.

Q. And then beyond that of amesite, is it called?

A. Amesite, yes, sir. I say it is amesite; it is black.

Q. And the highway itself from the corner down by the blacksmith, what road do you call that? A. They call that the Ratzer Road. 30

Q. From the Ratzer Road which is south leading towards Pompton— A. Yes, sir.

Q. —the highway is straight, is it not? A. Yes, sir.

Q. What was the first thing that attracted your

Joseph S. Hoffman—direct

attention to this accident? A. I was out in the field working there and I heard two motorcycles go up the road.

Q. What direction were they going? A. They were going toward Pompton Lakes.

Q. What was their position on the roadway? A. Well, one of them was a short distance ahead of the other. I wouldn't say just exactly how far, but apparently appealed to me would be about a hundred feet or maybe a little more.

Q. In what lanes were they? A. They apparently appealed to be in the first lane, that would be the first lane on the east side, my western side they were.

Q. What was the next thing that attracted your attention? A. The next thing that attracted my attention, I heard one of them come back.

Q. Yes? A. I glanced up and saw him make a turn, a left-hand turn.

20 Q. When you say you heard one come back— A. Yes?

Q. —that would be going in the direction of Paterson? A. In the direction of Paterson.

Q. First they were going toward Pompton? A. Yes, sir.

Q. Then the ones that came back were going in the direction of Paterson? A. Yes, sir.

Q. And when you glanced up and saw him make a left-hand turn did you observe any car or cars there? A. No, sir.

30 Q. What was the next thing you observed? A. A. The next thing I heard a crash.

Q. And what then? A. That is when I looked

Joseph S. Hoffman—direct

up. I saw something sprawled in front of an automobile.

Q. And what was the position of the automobile?

A. Well, the position of the automobile, it was facing Paterson.

Q. Yes? A. It was in the third lane from the west side, or the second lane from the east side, whatever you call it.

Q. That would be its left-hand side of the road; 10
is that correct? A. Yes, sir. Yes, sir.

Q. And what was sprawled out in front of it?

A. It apparently appealed to me like a man on a motorcycle.

Q. And how far was the motorcycle in front of the car? A. Well, it was right there at a collision, not the first collision, of course, but just when I noticed it after. It apparently appealed to be—it looked to be about twenty-five feet.

Q. First you heard an impact? A. Yes, sir. 20

Q. And then when you looked up what did you see? A. I saw a man on a motorcycle sprawling in front of the automobile. It looks as though the automobile had stopped dead, just like that, and something fell in front of it, see.

Q. And then, how far did the motorcycle go?

A. Well, it looked to me as though the motorcycle laid about fifteen feet ahead of the car.

Q. And the man? A. And the man laid about fifteen feet beyond the motorcycle. That is just 30
with a rough estimate from where I stood.

Q. What did you do, Mr. Hoffman? A. Well, I kind of watched my way to get out in between the trees where I was working and tried to get out as fast as I could to see what it was all about.

Joseph S. Hoffman—direct

Q. Was it a clear day? A. Yes, sir.

Q. About five-thirty? A. Around five-fifteen, I would say.

Q. Five-fifteen? A. I wouldn't say exactly, but around five-fifteen.

Q. About that time? A. Yes, sir.

Q. When you got out on the highway, did you notice any marks? A. Yes, sir.

10 Q. Where were they? A. They were in the third lane from the west end—from the west side, or in the second lane from the east side.

Q. And with reference to the car that you had seen in collision with this motorcycle, or you had seen in the position you had described, where were those marks? A. The marks were behind the car. They were about fifteen feet long in the road. They were twelve feet away from the left-hand curb, because I had a six-foot ruler in my pocket and I measured it.

20 Q. Twelve feet away from the left-hand curb, that would be the easterly curb? A. That would be the easterly curb.

Q. Is that correct? A. Yes, sir.

Q. And they extended back north how many feet? A. I would say about fifteen feet. I didn't measure exactly how long they were, but I just threw the ruler down there, threw it twice, enough to guess the rest.

30 Q. What kind of a car was it in the collision? A. A brown Lincoln sedan.

Q. Did you see the other car? A. There was a car stopped down the road a little ways from it.

Q. Which direction? A. Facing Paterson.

Q. About how far beyond the place where the

Joseph S. Hoffman—direct

actual collision occurred? A. Well, I would say approximately about fifty or sixty feet.

Q. What was done then, Mr. Hoffman? A. When I got out on the road a man was picking this man up that got hit with the automobile and put him in the automobile.

Q. Did you see, when you looked and saw the impact— A. Yes, sir.

Q. —that you have described or as you have described it, what was the position of the motorcycle on the road? A. The position of the motorcycle, it was facing Pompton Lakes. 10

Q. Yes. And how close to the easterly side? A. I would say around ten feet from the easterly side.

Q. What part of the automobile, do you know, came in contact with the motorcycle? A. I would say the bumper.

Q. Which bumper? A. The front bumper of the motorcycle. 20

Q. On which side? A. Well, I would say the— almost in the center or a little bit to the left side of the bumper.

Q. Do you remember the man who was injured being taken away? A. I remember a man being taken away, yes, sir.

Q. Were you there when the gentleman who owned the Lincoln car came back? A. Yes, sir.

Q. That is Mr. Schepp over here. There is no doubt about the ownership or operation, Mr. Stafford, is there? 30

Mr. Stafford—No.

Mr. Ward—That is admitted.

Joseph S. Hoffman—direct

Q. Were you present when there was any conversation had between Mr. Schepp and anyone else there? A. Yes, sir.

10 Q. What explanation, if any, did Mr. Schepp make with reference to the accident? A. When Mr. Schepp first returned there were several others there besides myself. We all went down and gathered around the automobile. First one would ask a question and then another would ask a question, and I guess everyone of us there asked a lot of foolish questions and a lot of good questions.

Q. Do you recall what Mr. Schepp said? A. Yes. Mr. Schepp said that Alvin needn't worry about anything, that he would take care of everything.

The Court—He asked you to explain how the accident happened.

20 Q. What did he say with reference to the skid marks, if anything?

Mr. Ward—I might say that I have not spoken to this witness at all, sir.

Q. Just with reference to the skid marks.

30 The Court—You had better withdraw the witness.

Mr. Ward—Withdraw him?

The Court—Withdraw him for the present and recall him later.

Mr. Ward—All right. May I put him on again after instructing him?

The Court—Yes.

Frank W. Speer—direct

FRANK W. SPEER, sworn.

Direct Examination by Mr. Ward:

Q. Mr. Speer, where do you live? A. 283 Van Houten Street.

Q. What is your business? A. Motorcycle business.

Q. Do you know Mr. Van Der Byl? A. I do. 10

Q. Do you remember this accident? A. Yes, sir.

Q. When did you first learn about it? A. About ten minutes of six, I imagine, on Saturday afternoon. The day it happened.

Q. And where did you go? A. I went up to the scene of the accident.

Q. Did you see Mr. Schepp there? A. Why, yes, sir.

Q. Did you make any observations with reference to any marks? A. Yes, sir. 20

Q. What marks did you see there, if any? A. Why, automobile skid marks for about fifteen feet.

Q. And where were they? A. On Mr. Schepp's left-hand side of the road, in the second easterly lane.

Q. How far from the easterly curb? A. We measured at the time. It was just about twelve foot.

Q. And how far did they extend from the place where they ended, that is, the southly end, towards the north? In other words, how long were they? 30
A. About fifteen feet.

Q. Did you notice any headlight glass there? A. There were broken bits of it.

Frank W. Speer—direct

Q. Do you know anything about Mr. Schepp's headlight? A. We found the rim from his left headlight at that time.

Q. And where was that rim? A. At that time it was lying on the side of the road, up on the gutter. Somebody picked it up and threw it up there.

Q. I see. Did you have any conversation with Mr. Schepp? A. I did.

10 Q. With reference to these skid marks? A. Yes, sir.

Q. And with reference to how the accident happened? Nothing else, now. A. Yes, sir.

Q. Will you just tell us what he said? A. At the time Mr. Schepp came back, why, we all went over and started to talk to him and asked him how it did happen, and he at that time couldn't give any explanation of how it happened, apparently. He said all he knew, all of a sudden Mr. Van Der Byl
20 was right there in the middle of the road in front of him. I said to him he wasn't in the middle of the road, he was over on his right-hand side, and I said those are your skid marks, aren't they and he said yes, but he wouldn't admit that he was on the left-hand side of the road.

Q. Did he or not admit those were his skid marks? A. Yes, sir, he said that Al had no business to stay in the middle of the road like that. I said, "He wasn't in the middle of the road; he was
30 on his right-hand side." I said, "If you had been on your right-hand side, no matter what he was doing, you would not have hit him."

Q. What did Mr. Schepp say? A. He didn't say anything.

Mr. Ward—Cross examine.

Frank W. Speer—cross

Cross Examination by Mr. Stafford:

Q. You were not there when the accident happened, were you? A. No, sir.

Q. Were you interested in the case? A. Only that I was called up to get the machine.

Q. Why did you take it upon yourself to accuse Mr. Schepp of being on the wrong side of the road?

A. Just a matter of discussion about the accident. 10

Q. Why did you interest yourself in it? A. Why did I interest myself in it? Because the machine still had a balance to be paid on it, and I wanted to see that Al, who was taken away from the scene of the accident and couldn't get the dope himself—that somebody would get it for him.

Q. You were interested in securing evidence so that your bill would be paid; is that it? A. Not exactly that the bill would be paid.

Q. Isn't that what you just said? A. Yes, to see that he would be taken care of right. 20

Q. You interested yourself in the case because the whole bill for the motorcycle had not been paid?

A. Yes, sir, I had an interest in the motorcycle.

Q. Weren't you interested in the case for your account, too? A. Not in the case, no, sir.

Q. Didn't you just say so, that was why you took it upon yourself to interrogate Mr. Schepp? A. I did.

Q. How many motorcyclists were gathered 30 around Mr. Schepp threatening him? A. There were nobody threatening.

Mr. Ward—One minute. I object to that, sir.

Frank W. Speer—cross

Q. How many motorcyclists were gathered around Mr. Schepp talking at once? A. About three or four.

Q. There were more than that, weren't there, Mr. Speer? A. Yes, there was—let's see exactly. There was about five.

Q. About five of them. And they all rushed over to his car as soon as he got there, didn't they? A. 10 Well, we didn't rush over; we were all standing there talking and when we pulled up somebody said, "There is the—Mr. Schepp, the man that hit Al," and we walked over and started to talk to him. There were nobody threatening.

Q. How long after the collision was it that you got there? A. Possibly thirty-five minutes.

Q. And the motorcycle was brought back to your garage, wasn't it? A. Yes, sir.

Q. On Main Street? A. Yes, sir.

Q. I show you exhibit marked D-1 for identifica- 20 tion and ask you if that is the car in question as it appeared in your garage after the collision. A. Yes, sir.

Q. Mr. Schepp told you he was not on the wrong side of the road, didn't he? A. Yes, sir.

Q. He told you that Mr. Van Der Byl had suddenly pulled to the left in front of his machine and that he put his brakes on; isn't that true? A. Yes, 30 sir.

Q. Eh? A. That is what he said.

Q. Yes. He told you, furthermore, that Mr. Van Der Byl had pulled to the left in front of a car driven by a lady ahead of his own car, didn't he? A. He didn't say anything about pulling in front of a car driven by a lady.

Frank W. Speer—redirect

Q. Didn't he say there were two cars on the road in that immediate vicinity, his own and one driven by a lady? A. He said there was another car and some bicycles.

Q. Yes, but didn't he say that Mr. Van Der Byl had pulled in front of both cars suddenly? A. He didn't say that. He said he had turned around and stopped there and he didn't see him until he almost hit him. That is what he told me.

10

Q. I see. Didn't he say he didn't see him until he suddenly came from in front of this other car, in front of his own car, and then he put the brakes on? Isn't that what he said, Mr. Speer? A. No, sir.

Q. He said he put the brakes on, didn't he? A. He said he put the brakes on as soon as he saw him.

Q. As soon as he saw him he put the brakes on? A. Yes.

20

Mr. Stafford—That is all.

Redirect Examination by Mr. Ward:

Q. Mr. Speer, I neglected to ask you, with the Court's permission, how much was that motorcycle—how much was the price of that motorcycle? A. About \$390.

Q. And after the accident how much was it worth? A. About \$50.

20

Mr. Ward—That is all.

Joseph S. Hoffman—direct & cross

JOSEPH S. HOFFMAN, recalled.

Direct Examination (continued) by Mr. Ward:

Q. Now, Mr. Hoffman, merely with reference to what Mr. Schepp said, if anything, as to what he knew about the accident and how it happened, do you recall anything that was said? A. I recall of
10 him saying that he don't know just exactly what had happened until he saw Alvin in front of his car. He says he put on his brakes and it all happened so fast he said he didn't know just what happened.

Q. Was there anything said about marks or the skid marks? A. Yes.

Q. Will you tell us about that? A. Somebody asked him if they was his marks back there in the road, and he said they apparently must have been,
20 but he wouldn't admit that he was over on the left-hand side of the road.

Q. And where were those skid marks? A. They was on the left-hand side of the road, that would be on his left-hand side. They were twelve feet from the easterly curb.

Mr. Ward—Cross examine.

Cross Examination by Mr. Stafford:

30 Q. Do you know Mr. Van Der Byl? A. No, sir.

Q. Do you know Mr. Willis? A. No, sir.

Q. Know anybody involved in this accident? A. No, sir.

Q. How long did you stay around the scene of the accident after you left the field? A. Until

Joseph S. Hoffman—cross

Frank Speer came up to take care of the motorcycle, and Mr. Schepp, if that is his name, had left the scene.

Q. Do you know Mr. Speer? A. No, sir. I did not know him at the time.

Q. You call him Frank and you call Mr. Van Der Byl Alvin. Have you been talking to them before this case was started? A. I never met—I call him Alvin because I cannot remember his last 10 name.

Q. Well, before getting on the stand today have you spoken to them about this accident? A. No, sir.

Q. You haven't spoken about it? A. It was just last night Alvin came up to me and asked me if I had saw anything of the accident, and I told him yes, and he asked me if I would come down as a witness.

Q. That is the first time since the accident 20 happened that you spoke to anybody? A. That is not the first time I spoke to anybody about it.

Q. You spoke to someone else, did you? A. Yes, sir.

Q. With whom did you speak? A. I spoke to Frank Speers about it.

Q. Who is he? A. Why, Rogers, George Rogers, I believe his—George Fredericks.

Q. Did you know George Rogers? A. George Fredericks is his name. 30

Q. What? A. George Fredericks is his name.

Q. Did you know George Fredericks? A. Yes, sir.

Q. And you talked with him about the accident? A. Yes, sir.

Joseph S. Hoffman—cross

Q. When was that? A. That was a short time ago.

Q. And you didn't talk to anybody from the time it happened until a short time ago when you spoke to George Fredericks; is that true? A. Yes, sir.

Q. What was your employment on the day of this accident? A. Farm superintendent for Walter Mills.

Q. Walter Mills? A. Yes, sir.

Q. What field were you working in when this accident happened? A. Right over alongside of the road.

Q. On the right side going to Paterson or on the left side? A. On the left side going to Paterson, on the east side of the road.

Q. Well, were you in the woods or in an open field? A. No, sir. It is an open field with evergreen trees there about six inches tall.

20 Q. What were you doing? A. Transplanting and working these evergreen trees, trimming and taking care of these little trees.

Q. Three hundred feet from the roadway? A. Yes, sir, about.

Q. I beg your pardon? A. About.

Q. How many times did you see these motorcyclists before the collision? A. Saw them once before the collision, going toward Pompton Lakes.

30 Q. And you had not seen them before that at all? A. No, sir. There hadn't been any motorcyclists passed up there within the last hour before that.

Q. An hour before that? A. No, sir.

Q. Did you notice how Mr. Van Der Byl was

Joseph S. Hoffman—cross

dressed, what kind of a sweater he had? A. No, I didn't take particular notice of any of their clothing.

Q. Well, you took particular notice of the lane they were riding in, didn't you? A. I took particular notice of the lanes where the marks was in.

Q. Did you pay particular attention to the lane they were riding in when they were going toward Pompton? A. No, sir. They apparently appeared to be in the right-hand side near the curb. 10

Q. The right-hand side of what? A. Of the east side going toward Pompton Lakes.

Q. Which lane? A. They apparently appealed to be in the first lane.

Q. In the first lane? A. Yes.

Q. Going toward Pompton Lakes? A. Yes, sir.

Q. Were there any other automobiles on the highway? A. I didn't see any. 20

Q. Hadn't seen any for an hour? A. I hadn't seen no motorcycles for an hour.

Q. Well, had you seen any automobiles on the highway within an hour? A. Yes, sir. There had been automobiles passing backward and forward, but not at that particular time.

Q. There is always a lot of traffic on that boulevard there, isn't there? A. Not always, no. 20
sir.

Q. On Saturday afternoon in August? A. Not always.

Q. Between five and six? A. Not always.

Q. Well, were there any automobiles on the

Joseph S. Hoffman—cross

highway when you saw the motorcyclists come along for the first time? A. No, sir, not at that particular time.

Q. Have you seen any immediately prior to that? A. I saw a car go up the road a few minutes before, yes, sir.

Q. Did you see the two cars that came down afterwards, going to Paterson? A. I saw the one
10 car that hit Alvin coming down from there right after the accident.

Q. Didn't you see the other car? A. The other car was knocked about fifty or sixty feet from it.

Q. Did you see a car coming down the road-way towards Paterson? A. No, sir, I didn't.

Q. You were not looking, were you? A. No, sir, not at that particular time.

Q. You can't judge the speed of the automob-
20 biles as they came towards Paterson? A. No, sir, I wouldn't say the speed of the automobile.

Q. Did you see the automobiles before the actual collision? A. No, sir.

Q. It was the noise of the collision that made you look up, is that it? A. Yes, sir.

Q. Well, when you looked up you said that the auto stopped dead. A. It apparently appeared to stop dead, yes, sir.

Q. Stopped dead, where? A. Right where it
30 had—

Q. Right where it had hit the man on the motorcycle? A. Yes, sir.

Q. And it did not move after that, did it? A. Not to my estimation.

Q. You were not watching it, were you? A.

Joseph S. Hoffman—cross

Yes, I was watching it. After I heard the crash I looked—

Q. Now, just a moment. When you heard the crash you looked up, didn't you? A. Yes, sir.

Q. And at that time that you looked up the automobile had stopped dead, hadn't it? A. It apparently appealed to, yes, sir.

Q. You were looking at it? Didn't you say it stopped dead? A. An automobile can't stop 10 just like that (snapping fingers).

Q. Didn't you use the expression on your direct examination that you saw the man on the motorcycle, and then the automobile, when I looked up, stopped dead? Didn't you say that? A. Yes, apparently it did.

Q. Did you mean that? A. It appealed to me as though it stopped dead, yes.

Q. Yes. Where was the other car? A. The other car, when I noticed it, seemed to be about 20 fifty or sixty feet down on the right-hand side of the road, stopped.

Q. Down from where? A. From the accident, down toward Paterson.

Q. Down from where the accident happened? A. Yes.

Q. No question about that, either? A. No, sir.

Q. Didn't that stop dead, too? A. It was stopped when I noticed it. 30

Q. But you didn't see it, then, until sometime later on? A. No, sir, I didn't notice it right away.

Q. I see. Did you hear the noise made by the motorcycles where you were as they went up the road towards Pompton? A. Yes, sir.

Joseph S. Hoffman—cross

Q. Making the customary noises that motor-cycles make? A. Yes, sir.

Q. Now, you say you heard one come back?

A. Yes, sir.

Q. Did you look up and back and look at it?

A. I glanced up.

Q. Where was it? A. It was turning around when I noticed it.

10 Q. Turning around? A. Yes, sir.

Q. And you had to look to your right? A. I had to look to my left.

Q. Coming down from Pompton to Paterson, weren't you working on the left-hand side? A. Yes, sir.

Q. Eh? A. Yes, sir.

Q. Well, now, when the motorcycles had gone up the road and made a turn you had to look to your right, didn't you? A. No, sir. I was standing right out in the field.

20 Q. You looked up toward Pompton Lakes, didn't you, right or left? A. No, sir. I didn't have to look right or left; I was standing right there facing the road.

Q. Well, had these motorcycles gone in a northerly direction toward Pompton Lakes when they turned? A. Yes, sir, after they made this turn it did.

Q. After it made its turn? A. When I first noticed it it was going toward Pompton Lakes.

30 Q. Yes? A. Then it came back again facing Paterson.

Q. Just a moment. Did you see it make the turn and come back toward Paterson? A. Yes, sir.

Q. That is what I am asking you. A. Yes.

Joseph S. Hoffman—cross

Q. You saw it make the turn to come back toward Paterson, didn't you? A. I saw it make the turn to go back toward Pompton Lakes. I didn't see it make the turn coming back towards Paterson, no. I saw it when it was coming back toward Paterson and make a turn to go back again towards Pompton Lakes.

Q. Then, you saw this motorcycle make a left turn on the highway to go back to Pompton Lakes, didn't you? A. Yes, sir. 10

Q. There is no question about that, Mr. Hoffman? A. No, sir.

Q. And did you see the two automobiles there, then? A. No, sir. I didn't see the automobiles there, then, at that time.

Q. When Mr. Van Der Byl made a left turn, as you say, to go toward Pompton Lakes— A. Yes?

Q. —weren't there two automobiles going to Paterson just directly— A. There is a curve there in the hill— 20

Q. Wasn't there? A. And you couldn't see over it.

Q. Will you answer my question, please? A. I didn't see the automobiles, no, sir.

Q. But you saw the spot where it happened? A. Yes, sir.

Q. And you saw Mr. Van Der Byl starting his turn, didn't you? A. I saw him. 20

Q. You saw him make his turn? A. Yes.

Q. You saw him make a complete full turn? A. Yes, sir.

Q. And you didn't see the automobiles? A. Not at that particular time.

William R. Watson—direct

Q. And you saw the collision, did you? A. I saw the collision.

Q. You saw the collision? A. When it cracked.

Q. And you saw the collision when Mr. Van Der Byl was making his turn to go to Pompton, did you? A. No, sir, I saw—

10

Mr. Stafford—That is all.

WILLIAM R. WATSON, sworn.

Direct Examination by Mr. Ward:

Q. Mr. Watson, where do you live? A. 242 North Eighth Street.

Q. And you are a friend of Mr. Van Der Byl? A. I am.

20 Q. Do you remember the time when this accident happened? A. Yes, sir.

Q. Were you at the scene of the accident after it happened? A. Yes, sir.

Q. About what time? A. Well, as near as I can guess, about six o'clock.

Q. Whom did you see there, if anybody? A. I saw Charlie Willis.

Q. Who? A. Mr. Willis.

Q. I didn't get that name. A. Mr. Willis.

30

Q. Willis? A. Yes.

Q. Yes? A. And I came up with Frank Speer and George Fredericks.

William R. Watson—direct

By Mr. Stafford:

Q. George who? A. George Fredericks.

By Mr. Ward:

Q. Did you see Mr. Schepp there? A. He wasn't there when we got there.

Q. How long after you got there did he come there? A. Oh, a few minutes, I suppose. 10

Q. Now, before he got there did you observe any marks on the roadway? A. Yes, sir.

Q. There are four lanes there, are there not? A. Yes, sir.

Q. Whereabouts were these marks with reference to the easterly side of the road? A. The skid marks started about two foot on the concrete and at that point they were twelve feet off the left-hand gutter.

Q. Twelve feet where? A. From the left-hand gutter, from the easterly— 20

Q. That would be the easterly side; is that right? A. Yes, sir, that is right.

Q. How far did they extend? A. Well, as near as you could figure from just looking at them, I guess about fifteen feet, maybe a little more.

Q. After that did you see Mr. Schepp there? A. Yes, sir.

Q. Did you hear him say anything? A. Well, I picked up his headlight rim on the side of the road. 30

Q. Whereabout was that headlight rim? A. It was over the gutter.

Q. Pardon me? A. It was where the sidewalk should be.

William R. Watson—cross

Q. I don't want you to tell us anything else but what he said about how the accident had happened and he had seen and what he knew about the accident. Now, can you do that? A. Yes, sir.

Q. Will you just tell us what he said or what was said, generally, with reference to that. A. He was asked what happened and why he happened to be at
10 the left-hand side of the road, and he said, "There was a bunch of bicycles coming up there," and that was the reason he swerved. And we asked him if they were his skid marks and he said, "Yes." And then we asked him was he on the left-hand side of the road, and he said, "No," and we told him, we says, "If they are your skid marks, you surely must have been on the left-hand side of the road." He says, "No, I really don't know how it happened."

Mr. Ward—Cross examine.

20

Cross Examination by Mr. Stafford:

Q. But he did talk about Mr. Van Der Byl turning left in front of his automobile, didn't he, Mr. Watson? A. I didn't hear nothing.

Q. What? A. I didn't hear nothing, no, sir.

Q. You were there, weren't you? A. Yes, sir.

Q. Were you one of the motorcyclists? A. Yes.

Q. Gathered around Mr. Schepp? A. Yes.

30 Q. You were also engaged in interrogating him?

A. In what?

Q. Asking him questions. A. Yes.

Q. Mr. Speer asked him questions? A. Yes, sir.

Q. Mr. Hoffman asked him questions? A. Yes, sir.

Emily Van Der Byl—direct

Q. Mr. Willis asked him questions? A. Yes, sir.

Q. How many were there asking questions,—motorcyclists? A. Oh, I don't know. Four or five, I suppose.

Q. And they were all firing questions at him? A. I wouldn't say they were firing questions at him.

Q. Wern't they? A. No. 10

Q. How long was he there while he was being questioned? A. How long?

Q. Yes. A. Well, as nearly as I can judge, he hung around about fifteen minutes.

Q. Fifteen minutes? A. Around that time.

Q. And during the time he was there you were all asking him questions, wern't you? A. Not all the time, no.

Q. Didn't he tell you that Mr. Van Der Byl had pulled left in front of his car? A. I didn't hear 20 that myself, no, sir.

Q. You didn't hear that, did you? A. No, sir.

Mr. Stafford—That is all.

EMILY VAN DER BYL, sworn.

Direct Examination by Mr. Ward:

Q. Mrs. Van Der Byl, you are the mother of 30 Alvin? A. Yes, sir.

Q. He lives with you? A. Yes, sir.

Q. And he did in August, 1930? A. Yes, sir.

Q. Will you just tell his Honor and the ladies

Emily Van Der Byl—direct

and gentlemen of the jury, generally what his condition of health was before this accident? A. He was always a very healthy boy.

Q. Keep your voice up; we can't hear you.

A. He was a very healthy boy.

Q. Did he dance? A. Yes, he danced.

Q. I can't hear you. A. Yes, he did.

10 Q. Do you know whether or not he played football and baseball? A. Oh, yes, he did.

Q. What was his business or occupation? A. He worked for the State Highway, and studied at night to take up civil engineering.

Q. I am sorry, but we can't hear what you say. A. He was working for the State Highway and went to school at night to take up civil engineering.

20 Q. Do you remember how long he was out of work or kept away from work by reason of this accident? A. He went back the 9th of February.

Q. Do you know how much time he lost at school? A. The entire year.

Q. Has he changed any in appearance? A. Yes, he has.

Q. In what respect? A. Highly nervous.

Q. Has he changed any in appearance so far as his weight is concerned? A. Oh, yes, he has.

30 Q. In what respect? A. Well, he was fleshy; he lost a lot of weight, and he is not what he was before.

Q. Since his return from the accident have you ever given him any personal care or attention with reference to his leg? A. Yes, sir; I have, always.

Emily Van Der Byl—direct

Q. What? A. Well, after he came back from the hospital—

Q. Won't you please talk louder? A. After he came back from the hospital—

Q. All these ladies and gentlemen must hear. A. He went two or three times to the clinic. I had a man to take him, and it was for a long time, the cast was on there up to that time, and when the cast was taken off I dressed it until the 10 17th of August.

Q. What was his condition when you dressed it? What was there there? A. It was terrible.

Q. Tell us about it. What did it look like? A. It was an open flesh wound.

Q. Yes? A. And it took until the 17th of August to heal. We had to dress it every night, wash it and dress it.

Q. And how many times during the year did that wound break open? A. Splinters came 20 out, and then each time it would make—

Q. Pardon me? A. Splinters came out of the wound, and it would make the condition worse again. It was oozy, you know, and serum came out, and until the splinters were removed it was worse again, and it opened again. I think it was three or four times, and it was very painful each time.

Q. Does he dance now? A. No.

30

Mr. Ward—Cross-examine.

Mr. Stafford—No questions.

Mr. Ward — We rest, if your Honor please.

(The Plaintiff Rested.)

Motion for Non-suit

MOTION FOR NON-SUIT

10

Mr. Stafford—If the Court please, I move for a non-suit on the ground that the plaintiff is guilty of contributory negligence, in as much as he had full knowledge of the cars approaching him; had full knowledge of the speed at which they were traveling; and with that knowledge in his possession he attempted to make a left turn on the highway, the result of which left turn was a collision, which collision was caused by the negligence by the plaintiff, and that was the proximate cause of his injuries. I will ask for a non-suit on that ground.

20

The Court—I do not think it is contributory negligence as a matter of law. I think it is a factual question for the jury.

Mr. Stafford—I ask for an exception.

30

TESSIE K. BRESSLER, sworn.

Direct Examination by Mr. Stafford:

Q. Where do you live, Mrs. Bressler? A. 450 East 32nd.

Q. How long have you been living there? A. About two years.

Q. Were you driving a car on August 30, 1930? A. Yes. 10

Q. In the vicinity of the Turnpike at Gaede's Hill? A. Yes.

Q. Where had you been that afternoon? A. I had taken my children swimming at Hinchman's Farm, and we were just returning home.

Q. And you were returning on what road? A. On the Turnpike.

Q. Turnpike? A. On the Turnpike Road.

Q. Coming back toward Paterson? A. Yes.

Q. About what time, Mrs. Bressler? A. About 20 five, ten after five or so.

Q. I see. Now, at what speed were you traveling on the— A. I was going about twenty-five miles an hour.

Q. Were there any cars in front of you or in back of you? A. There was one car in back of me, and it passed me on the left.

Q. Do you recall when this accident happened, the injuries to Mr. Van Der Byl and the motorcycle? Do you remember when it was? A. Well, 20 immediately after the car passed me on the left.

Q. I see. Now, when did you first see Mr. Van Der Byl? A. All I heard was the yelling, "My leg, my leg," and they took him in the car and took him to the hospital.

Tessie K. Bressler—direct

Q. I see. Now, did you see Mr. Van Der Byl in front of you as you came down the Turnpike riding the motorcycle? A. No, sir, I didn't see anything.

Q. Did you see Mr. Van Der Byl when he made a left turn in the highway? A. The children said they saw him.

10

Mr. Ward—One minute. I object to that. I ask to have it stricken out.

Q. No, did you? Did you? A. I didn't see that.

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

Q. Did you see Mr. Van Der Byl, the motorcyclist, at all? A. No.

Q. Prior to the collision? A. No, I couldn't see him.

20

Q. I see. Where was your car when the accident happened? A. I was to the right.

Q. Yes? A. And the car that passed me was in front of me.

Q. Yes? A. And right up against the motorcycle.

Q. I see. Now, how far did you go from the point where this collision took place, Mrs. Bressler? A. I didn't go any distance.

Q. What did you say? A. As soon as I heard the crash I pulled to the side and I stayed there.

30

Q. How fast were you going at that time? A. About twenty-five miles an hour.

Q. How far beyond where this accident happened did your car go before you stopped it? A. I didn't go beyond the crash at all.

Tessie K. Bressler—direct

Q. But you stopped immediately, did you? A. I stopped immediately.

Q. Where did the car driven by Mr. Schepp stop? A. Right in front of me.

Q. How far from where the accident happened? A. Well, right there.

Q. Now, Mrs. Bressler, did you see Mr. Van Der Byl, the plaintiff, at any time, put out his left hand and make a left turn in front of the machine? A. No, I didn't see anything. 10

Q. Do you recall how far Mr. Van Der Byl lay in the roadway from Mr. Schepp's car after the accident? A. No, I couldn't see, because the other car was right in front of me.

Q. I see. A. It had stopped on the left, and I couldn't see. All I could see when they picked him off the road and put him in the car.

Q. You saw that, did you? A. Yes.

Q. You saw him carried to Mr. Schepp's automobile? A. Yes. 20

Q. How far did they have to carry him? A. Not very far. They just picked him up and put him in the car, and I was told to stay there, which I did.

Q. Yes? A. And the children got very much upset. We waited about half an hour, and they were crying and nervous about the accident, and I went on home.

Q. Now, Mrs. Bressler, did you drive down that highway at any time from forty to forty-five miles an hour? A. No, I don't drive at that rate. 30

Q. How long was this car in back of you going down the highway toward Paterson before the

Tessie K. Bressler—direct

accident, Mrs. Bressler? A. Well, he couldn't have been—

Mr. Ward—Well, now—

Q. How long was he in back of your car? For what distance? A. In back of my car?

Q. Yes. A. Before he passed me?

10 Q. Well, how long—yes—before the accident happened was it, that he stayed in back of your car coming down toward Paterson? For what distance?

By the Court:

Q. How long had it been following your car? A. Oh, for—I can't say exactly how long. I don't remember.

By Mr. Stafford:

20 Q. Well, could you tell us in distance? Was it a mile or half a mile? A. No.

Q. Or a quarter of a mile? A. No, just a little ways.

Q. Just a little ways. Now, you said, Mrs. Bressler,—did the car pass your car? A. Yes.

Q. It passed your car? A. Yes.

Q. Where? A. Just about passed me.

Q. Yes? A. And the accident happened right there, just as he passed me.

30 Q. What lane were you in, Mrs. Bressler? A. I was as far right as possible.

Q. On what line? A. The first line to my right.

Tessie K. Bressler—direct

Q. And how close to your car did this car pass you? A. Well, it must have been right in the second lane, because if it were any closer—

Mr. Ward—I object to that.

A. —he would have smashed my car.

Mr. Ward—I object to that, sir, and ask 10
to have it stricken out, unless she knows.

The Court—Yes. Not what he must have done.

Mr. Stafford—I will consent to it, your Honor.

Q. Now, Mrs. Bressler, you say that you were in the first lane? A. Yes.

Q. Going towards Paterson? A. Yes.

Q. On the extreme right? A. Yes, sir.

Q. How close to your car in the first lane was the car of Mr. Schepp as he pulled alongside of you? A. He was in the second lane. 20

Q. How close to your car in the first lane? A. Well, he was quite close to me.

Q. Quite close to your left side? A. Yes.

Q. I see. Where was this motorcycle when the motorcycle and Mr. Schepp's car came together? A. Well, I couldn't see the motorcycle, because he was so close to me that my view was obstructed. 20

Mr. Ward—I object to the reason, sir, because; I ask to have it stricken out.

The Court—Strike out the reason.

Tessie K. Bressler—cross

Q. Did you see the motorcycle and the automobile of Mr. Schepp come together? A. I couldn't see. I heard the crash.

Q. All right. Well, now, when you heard the crash, will you please tell the Court and jury just where Mr. Schepp's car was? A. It was to the left of me.

10 Q. In what lane? A. In the second lane.
Q. Eh? A. In the second lane.

Mr. Stafford—That is all.

Cross-Examination by Mr. Ward:

Q. You heard the crash? A. Yes.

Q. Who was in your car? A. My children and myself.

Q. What kind of a car was it, Mrs. Bressler?
A. A navy blue Chevrolet, a coach.

20 Q. It is Mrs. Bressler, isn't it? A. Yes.

Q. How long had you been driving, Mrs. Bressler? A. At that time?

Q. Yes, indeed. A. Just a few months.

Q. And you had never gone forty miles an hour? A. No.

Q. No matter what the condition of the road?
A. No.

Q. No matter what the conditions may be, you have never gone at that rate of speed? A. No,
30 sir.

Q. You have never driven in a car that has gone that rate of speed? A. I never drove, no.

Q. I mean, you have never driven in a car that has gone at that rate of speed? A. Oh, yes, with somebody else driving.

Tessie K. Bressler—cross

Q. Oh, you have? A. Yes.

Q. Driven by your husband? A. No.

Q. By others? A. Yes.

Q. You haven't remonstrated when they drove at that rate of speed? A. Yes.

The Court—Oh, no, that would not be relevant.

10

Q. Well, how do you judge speed? A. By my speedometer.

Q. Do you keep your eyes on your speedometer? A. Positively, at times.

Q. How fast was the fastest you went that day? A. Well, I wasn't going very fast. I wasn't in any particular—

Q. Can you give us any idea of the fastest you went that day? A. Maybe thirty.

Q. Maybe thirty, but you don't know? A. Well, the most, thirty. 20

Q. But you don't know? You are not sure, are you? A. I am sure that I did not go any faster than thirty.

Q. But you may have gone at the rate of thirty miles an hour; is that so? A. Yes.

Q. Now, this car that passed you passed you on the left? A. Yes.

Q. And you were not paying any particular attention to that, were you? A. No, because I was very much to my right and I knew nothing could happen to me. 30

Q. And you had seen nothing ahead of you at all? A. No, sir.

Q. You had not even observed any motorcycle ahead of you, had you? A. No.

Tessie K. Bressler—cross

Q. You were not paying attention, were you?

A. I was very much to the right and I was just going slowly.

Q. Well, you were not paying any attention to what was ahead of you, were you? A. There was nothing ahead of me. The only thing that I saw was this car passing me on the left.

Q. Now, please, just answer. I am referring
10 to what was ahead of you.

The Court—She said nothing.

Q. You didn't notice any motorcycle— A. Nothing.

Q. —or anything turn around to the left in front of you and ahead of you? A. No.

Q. You are sure of that? A. Yes.

Q. Whereabouts was it that this car passed you? A. On the road.

20 Q. Yes, but with reference to the brow of the hill, do you know whether or not there is a brow or a crest of a hill, or don't you know that? A. Yes, but I didn't pay particular attention.

Q. Well, do you know? A. The road was open.

Q. Yes? A. There weren't very many cars passing at the time.

Q. Do you know with reference to the crest of the hill where this accident happened or don't
30 you know that? If you don't, tell us.

The Court—The top of the hill.

A. It was near the top of the hill.

Tessie K. Bressler—cross

Q. You know what I mean by the crest, do you not? A. Yes.

Q. That is the very top? A. Yes, sir.

Q. Can't you tell us how near to the top of the hill it was that this accident happened? A. No, I can't exactly.

Q. Can you tell us how near to the top of the hill you were when the car passed you? A. Well, I should think I was very near to the top 10 of it.

Q. Well, about how far away? A. Just a few feet, perhaps.

Q. Well, when you say a few feet, do you mean twenty-five, fifty, seventy-five, a hundred, five, ten, or what? A. Oh, about ten feet, perhaps.

Q. About ten feet. So that when you were about ten feet from the top of this hill— A. Uh huh.

Q. —this car passed you, didn't it? A. Yes. 20

Q. And with reference to the place where this car passed you, where did the accident happen? A. It happened immediately there, right there.

Q. Well, do you mean—how far in front of you? A. Just a few feet in front of me.

Q. Can't you give us any idea? Ten or fifteen feet or what? A. About six or seven feet in front of me.

Q. Six or seven feet in front of you? A. Uh, huh. 20

Q. You had seen nothing pass in front of you, had you? A. No, sir.

Q. And your eyes were on the road? A. Yes, sir.

Tessie K. Bressler—cross

Q. So whatever this Lincoln car ran into must have been stationery on the road there; that is true, is it not?

Mr. Stafford—I object to that, if your Honor please.

The Court—No, that calls for a conclusion.

10

Q. Well, you had seen nothing pass before you, had you? A. No.

Q. And you had seen this Lincoln car coming up to pass you? A. Yes.

Q. How far did you go from the time this Lincoln car passed you until you heard this crash?

A. I stopped immediately, as soon as I heard the crash.

Q. Well, I know, but you say the crash happened, you think, about six feet ahead of you; that is true, isn't it? A. As soon as the car passed me I heard the crash.

20

Q. Well, you say about six feet ahead of you? A. Yes.

Q. And then, within what time, from the time the Lincoln car passed you did you stop your car? A. I stopped immediately.

Q. By that you mean within a foot or two feet or three feet or a dozen feet or what? A. Well, about three feet.

30

Q. Three feet? A. Yes.

Q. So that while you were going these three feet this Lincoln car must have been going about six feet; is that so?

Tessie K. Bressler—cross

Mr. Stafford—I object to that as a conclusion on the part of the witness.

The Court—Sustain the objection.

Q. You have said that this accident happened and you heard it about six feet ahead of you?

A. Yes.

Q. And you went about three feet, didn't you?

A. Yes. 10

Q. And the accident happened about six feet ahead of you; that is true, isn't it? A. Yes.

Q. So the Lincoln car must have been going about twice as fast as you; that is true, isn't it?

Mr. Stafford—I object to that, if the Court please, as a conclusion.

The Court—I will sustain it.

Q. Well, the Lincoln car travels this six feet while you travel three feet, according to you; that is so, isn't it? 20

By the Court:

Q. These are approximate, Mrs. Bressler? A. I can't say exactly, because when I heard the crash I stopped, but I couldn't measure in feet or in distance at the time. The children were with me and they were crying and they were all upset over the yelling of the boy and the noise of the crash. 30

Mr. Ward—That is all.

A. And I had all to do to quiet them.

Mr. Ward—That is all.

Stanley Wasylyk—direct

STANLEY WASYLYK, sworn.

Direct Examination by Mr. Stafford:

Q. Where do you live, Stanley? A. 14 Jackson Street.

Q. Do you go to school? A. Yes, sir.

Q. What school? A. Passaic High.

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

10 Q. Do you remember being at the North Jersey Country Club on August 30, 1930? A. Well, I was on the day the accident happened; I don't know the date.

Q. You were working there as a caddy? A. Yes, sir.

Q. Did you come down in anybody's automobile?

A. I came down with Mr. Schepp.

Q. Did anything happen while you were in Mr. Schepp's car? A. Well, on the road down to Paterson we had an accident with a motorcycle.

20 Q. I see. And you were riding in Mr. Schepp's car when it happened? A. Yes.

Q. Do you remember seeing these motorcyclists on the road before the accident? A. No, sir.

Q. Now, will you tell the Court and jury where the motorcycle was when you saw it for the first time? A. Well, I would say thirty or forty feet ahead of the car.

Q. And what was it doing? A. It was weaving in and out of the road.

30 Q. I see. And how far—was there another car in the immediate vicinity of your car? A. Yes, there was a car on the right of us.

Q. Do you know whether that was driven by a man or a woman? A. I don't know, sir.

Stanley Wasylyk—direct

Q. I see. What did you next notice, Mr. Wasylyk? You just tell the Court and jury what you actually saw. A. Well, I noticed—just as soon as we were going by the bottom of the hill there we noticed the motorcycle there. He was weaving in and out of the road. Then suddenly, a blue tam or some hat, a dark color, blew off his head.

Q. Just a moment there. In what direction was he going when that blew off his head? A. Going 10 toward Paterson.

Q. I see. Then what happened? A. Then, this dark tam blew off his head and he turned around to get it, and this was about thirty or forty feet ahead of us, and then Mr. Schepp put on his brakes and he hit the motorcyclist in the left leg, I think it was. I jumped out of the car and I went over and tried to pick him up, and then several other men picked him up and I went in the car and I held his leg up all the way to the hospital, and then I went home. 20

Q. Well, now, could you see these motorcyclists—this motorcyclist at that time he started to make this left turn? A. Yes, sir.

Q. Did he put his hand out? A. No, sir.

Q. Do you know whether or not he looked back? A. He didn't look back.

Q. I see. What lane was he riding in when his hat blew off, Stanley? A. He was riding about the middle of the first and second lane.

Q. How far past the point where his hat blew 20 off did he make his left turn in front of Mr. Schepp's car? A. I should judge about forty feet.

Q. I see. Now, at the time he had the left turn in front of Mr. Schepp's car, how fast was Mr. Schepp's car going? A. I know he wasn't going

Stanley Wasylyk—direct

faster than thirty miles an hour; he wasn't going anywhere near.

Q. Could you see this motorcycle after it made its left turn, how far it progressed into the roadway when the collision happened? A. Well, he sort of went down towards the first lane, then he cut right over.

10 Q. How far had he gotten over when the collision happened? What lane was he riding in going towards Paterson? A. He was right in the middle—right on the lane between the first and second—between the second and third, I should say.

Q. On the line between the second and third lane? A. About half and half.

Q. When the collision happened? A. Yes, sir.

Q. How far from the actual point of collision did Mr. Schepp stop his car? A. Well, he stopped almost instantly, at the most about five feet, I should
20 say, just put his brakes on.

Q. I see. Did you notice how far the body of Mr. Van Der Byl was after the collision from Mr. Schepp's car when it was stopped? A. Well, the body was about in the middle of the third lane from our right-hand side.

Q. And about how many feet from the nearest point of Mr. Schepp's car would that be? A. Well, I wouldn't—it was about five feet, right straight from the front of the car, and then about five feet
30 over.

Q. Well, on a straight line from Mr. Schepp's car to Mr. Van Der Byl was about how much? How many feet? A. I couldn't judge. About five or ten feet at the most.

Stanley Wasylyk—cross

Q. Where was the motorcycle after the collision?

A. Well, the motorcycle was beyond the body.

Q. I see. Who carried Mr. Van Der Byl to Mr. Schepp's car? A. I went out and I tried to pick him up. I took him by the shoulders and then Mr. Giger and Schepp came over and helped me put him in the back.

Q. I see. Did Mr. Willis put him in Mr. Schepps' car? Will you stand up, Mr. Willis, please? Did this man put him in Mr. Schepp's car? A. No, sir. 10

Mr. Stafford—That is all.

Cross Examination by Mr. Ward:

Q. You know Mr. Schepp pretty well, do you not?

A. No, sir.

Q. You know Dr. Giger quite well? A. No, sir, I just know him.

Q. They were taking you back to Paterson, were they, that day? A. Yes, sir. 20

Q. You say that you first noticed this motorcycle at the foot of the hill? A. It was further down. He was about a little short of the hill, the foot of the hill.

Q. Now, you mean towards Pompton, or towards the North Jersey? A. Towards Paterson.

Q. Pardon me? A. Towards Paterson.

Q. Toward Paterson? A. Yes, sir.

Q. Do you know where Mr. Mill's place is there? A. No, sir. 30

Q. Do you know where the crest of the hill is?

A. Yes, sir.

Q. Do you mean that it was beyond the crest of

Stanley Wasylyk—cross

the hill south, towards Paterson? A. Well, I meant he was—the motorcycle was short of the hill, north, towards Pompton Lakes.

Q. That is, the motorcycle had gotten over the crest of the hill; is that it? A. He was going towards Paterson.

Q. Yes, but do you know what I mean by the crest of the hill, the top of the hill? A. Yes, sir.

10 Q. Was the motorcycle nearer Pompton than the crest or summit or top of that hill? A. What do you mean, nearer toward Pompton Lakes?

Q. Yes. A. Well, no, he was right near the top of the hill.

By the Court:

Q. Was he north of the top of the hill or was he south of it? A. Well, he was that way, north.

Q. North of it? A. Yes.

20 By Mr. Ward:

Q. And you said something about being at the foot of the hill, as I understood you. Was I correct in understanding you that way? A. Yes, sir, that is right.

Q. So he was at the foot of the hill when you first saw him. How long is that hill? A. I don't I couldn't tell you.

Q. But he was going towards Paterson? A.
30 That is right.

Q. And while he was riding towards Paterson you saw his cap fall off? A. That is right.

Q. And that was before he reached the top of the hill; is that it? A. That is right.

Stanley Wasylyk—cross

Q. How far from the top of the hill was it that his cap fell off? A. Oh, I should judge twenty to thirty feet.

Q. Now, the cap—I will withdraw that, if your Honor please. A. When he was going towards Paterson he was on the right-hand side of the road, wasn't he? A. He was.

Q. And the cap fell on the right-hand side of the road, then, didn't it? A. It fell to the left. 10

Q. To the left-hand side of the road? A. Yes, sir, blew right off, and the wind took it over to the left.

Q. All the way to the left? A. Yes, sir.

Q. How far over to the left? A. About the edge of the third lane from the right-hand side.

Q. So that the cap did fall, then, on the dividing line between the third and fourth lanes, that is, counting from the west? Do you understand what I mean? That is where the cap was, Mr. Wasylyk. 20
Whereabouts was it this motorcycle turned? A. What do you mean, turned?

Q. Did it turn around to go towards Pompton? A. It turned around to go back towards Pompton.

Q. And where was it then? A. It was about thirty to forty feet ahead of us.

Q. Had it gone beyond the crest of the hill? A. No, sir.

Q. Did it turn right at the crest of the hill? A. Short. 30

Q. Or north of the crest of the hill? A. It was short of the hill—north.

Q. And there was no other car there that you saw? A. There was a car on the right of us.

Q. Well, where was the motorcycle with refer-

Stanley Wasylyk—cross

ence to this car that was on the right of you? A. It was more or less on the—a little toward the left, I should judge one or two feet.

Q. Do I understand you to say the car that you have mentioned was on your right? Then, the motorcycle was also on your right; is that correct?

A. He was on the right, that is right.

10 Q. And how far back of this car was the motorcycle? I mean—

Mr. Stafford—I object to that, if the Court please. That is not the witness's testimony. The motorcycle was back of this car.

Q. I don't mean the car in which you were riding; I mean the car that was on your right. How far back of that car was this motorcycle? A. I don't get that.

20 Q. Well, there was a car on your right, wasn't there? A. That is right.

Q. And there was a motorcycle on your right, and the car that was on your right, that was ahead of you, wasn't it? A. Yes.

Q. How far ahead of you? A. How far was the car ahead of us?

Q. How far ahead of you was the car that was on the right? A. We was just pulling up to it. Our front bumper was about even with their rear.

30 Q. And you were in the second lane at that time? A. Yes.

Q. That would be the second lane from the west? A. That is right.

Q. And the motorcycle was ahead of you, wasn't

Stanley Wasylyk—cross

it, but not ahead of the car, was it? A. It was ahead of the other car, yes.

Q. Ahead of the other car as well? A. Sure.

Q. About how far ahead of the other car? A. I couldn't tell from the other car.

Q. So that, as a matter of fact, you were attempting to pass this other car, weren't you?

Mr. Stafford—I object to that.

10

A. I don't know what he wanted to do.

Mr. Stafford—This boy is a passenger in this collision.

Q. Your car was actually passing the other car?

A. I don't know what he wanted to do. I wasn't driving.

Q. But it was passing the other car, wasn't it? 20

A. It didn't pass it up yet. I don't know what he wanted to do.

Q. Didn't it pass at all?

The Court—Their front bumper was even with the rear bumper of the other car.

Q. Well, did the Lincoln car in which you were driving pass this other car at all at any time? A. After it did. 30

By the Court:

Q. Did it get by? Did it get by before the accident? A. It was about two or three feet—I mean,

Stanley Wasylyk—cross

the front bumper was about two or three feet ahead of front bumper.

Q. At the time of the accident? A. Yes, sir.

By Mr. Ward:

Q. And where was the motorcycle then? A. On our bumper.

10 Q. Pardon me? A. On our bumper. It got hit then.

Q. It got hit then. That is, just as your car, the Lincoln car, was passing the other car the Lincoln car hit the motorcycle, is that right? A. That is right.

Q. Please answer. A. That is right.

Q. Was the motorcycle turning? A. Yes, it was.

20 Q. How near to the cap was the motorcycle when it was struck by the Lincoln car? A. I don't know. I didn't look back for the cap. I couldn't tell, because we were just driving ahead and I didn't even look back at the cap, and I didn't know what speed the motorcycle was going at.

Q. Had the motorcycle passed the cap at the time this collision occurred? A. Why, yes, the car—the hat blew off.

Q. How far past the cap had it gotten? A. Well, I don't know.

Q. Haven't you any idea? A. No, sir.

30 Q. How near to the line dividing the first and the center lane on the westerly side—you understand what I mean by that, do you not?—was this car to which you have referred when you passed it? A. I don't get that. Will you please repeat it?

Stanley Wasylyk—cross

Q. Well, there was a car on your right that you passed? A. Yes.

Q. And you say you just got, as I understood it, a few feet past when this collision occurred. Now, how far from the division line between the first and second lane was that car when you passed it? A. Was our car?

Q. No, the other car. A. I don't know how far that car was then. I know it was about the center of the lane, the first lane on the right. 10

Q. And where was your car with reference to the second lane? A. It was a little to the right, a little close to the first dividing line.

Q. You mean on the right of the— A. It was on the right—it was on the right of the second lane.

Q. I see. And the motorcycle was in the third lane, wasn't it? A. Yes, sir.

Q. Where, then, was your car? A. On the division line on the first and second. 20

Q. I beg your pardon? A. On the first—

The Court—"On the division line between the first and second."

Q. About forty feet ahead of your car? A. About.

Q. And when he started to make the turn he was about forty feet ahead of your car, wasn't he? A. Yes. 20

Q. And you were going slowly, you say? A. That is right.

Q. And you could plainly see him trying to make this turn, couldn't you? A. I don't know what he wanted to do, but he didn't stick out his hand.

Stanley Wasylyk—cross

Q. Could you see the turn? The only traffic you met was this car that was on your right, that is, one car? A. That is right.

Q. That is so, isn't it? A. That is right.

Q. When he started to turn you could see his motorcycle turning, couldn't you? A. I don't know what he wanted to do.

10 Q. I didn't ask you that. You could see the motorcycle turning, couldn't you? A. Well, he was weaving in and out of traffic then. How do I know it was going to turn?

Q. Could you see that motorcycle turning to the left?

The Court—When? When?

Q. At the time it was forty feet ahead of you.

A. It was closer up before it started to turn.

20 Q. Now, you said at the time you passed this other car the motorcycle was about forty feet ahead of you, as I understood you; that is correct; is it not? Is that so? A. That is right.

Q. Please answer so we can get it down. A. All right, sir.

Q. And you have said it was just as you were a few feet past this other car that the collision occurred? A. That is right.

30 Q. How many feet past this other car?

The Court—Three, he said before.

A. Two or three.

The Court—Two or three feet, his bumper ahead of their bumper.

Stanley Wasylyk—cross

Q. And the motorcycle was going very fast, wasn't it? A. I don't know what speed it was going.

Q. Well, it was going as fast as the car you were passing? A. It was going about the same rate.

Q. And when that motorcycle started to turn to the left you could see it, couldn't you? A. I could see the motorcycle, yes.

Q. And it was then about forty feet ahead of 10 you, wasn't it? A. It was closer than that.

Q. About how much closer? A. I don't know. He was getting closer.

Q. Haven't you any idea? A. No. He was getting closer and closer.

Q. Can you give us any idea in this room here. A. I couldn't do it.

Q. Can you give us any idea in feet? A. No, sir.

Q. Do you know where the motorcycle was 20 struck? A. On the left side.

Q. Do you know with reference to the road where it was struck? A. It was struck about a little to the left of the center lane—I mean to the second lane.

Q. A little to the left of the center lane, you said first.

The Court—The second lane.

Mr. Ward—First he said center lane, sir. 30

A. I meant the second.

Q. There is no center lane there.

The Court—There are four lanes. It can't be the center.

Stanley Wasylyk—cross

Q. Yes. You know where the center line is, don't you? A. Yes.

Q. That motorcycle was struck to the left of that line, wasn't it? A. No, sir, struck on the left side of the second lane.

Q. Of the second lane? A. Yes, sir, from our right.

Q. Well, now, let's understand each other, please.
10 The first lane is the westerly lane, on the westerly side, isn't it; the second lane is what we might call the second westerly lane; that is the second lane, isn't it? Did you mean it when you just said that that motorcycle was struck to the left of that second lane? A. Yes, sir.

Mr. Ward—That is all.

The Court—We will take a recess for one hour.

20 (A recess was taken until 1:45 o'clock P. M.)

Afternoon Session, 1:45 P. M.

STANLEY WASYLYK, resumed.

Cross Examination (continued) by Mr. Ward:

Q. Mr. Wasylyk, when this motorcycle turned,
30 in which direction did it turn? Towards the left or the right? A. The left.

Q. The left. You are quite sure of that? A. It took a sweeping turn to the left.

Stanley Wasyluk—cross

Q. And it was hit on which side, then, the left side? A. The left side.

Q. And in which direction did Mr. Schepp turn his car? A. He turned it out immediately; he tried to avoid it.

Q. That is, towards the left? A. Yes.

Q. He turned his car to the left, too, you are quite sure of that? A. Yes, sir.

Q. Did Mr. Schepp stop his car immediately? A. 10
Well, he might have gone a foot or two, but he didn't go more than that.

Q. Did he skid at all? A. No, sir.

Q. Did he skid twelve feet? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. There were no cars in front of Mr. Schepp's car, A. No, sir.

Q. You said on your direct examination this morning that there was this other car in front of his car and that he attempted to pass it? A. That 20
is right.

Q. Is that true or not? A. Yes, sir.

Q. I see. Now, you say that there was a car in front of Mr. Schepp's car? A. Not at the time of the collision.

Q. No, but before that. A. Yes, sir.

Q. Was this car at any time from a block to three-quarters of a block ahead of the motorcycle? A. I didn't notice it.

Q. You did not notice it? Now, you are sure 20
the motorcycle was not pulling from the place where it was to the right when it was struck? A. I am sure of that. It was not.

Q. And you are sure the motorcycle was not struck on the right side? A. Yes, sir.

Stanley Wasylyk—cross

Q. You mean that you are sure the motorcycle was not struck on the right side? A. (No audible response.)

Q. Was the left leg of the motorcycle rider injured? A. Yes, sir.

Q. Not the right leg? A. No, sir.

Q. You do remember a woman driving in a car, don't you? A. No, sir.

10 Q. You don't remember that? A. No, sir. I don't know who was driving the car.

Q. Well, you don't remember any woman driving a car which was either in your rear—which was probably in your rear, which was neither to the left nor to the right of you? A. The car was on the right of us.

Q. There was a car to the right of you? A. Yes, sir.

Q. So, whatever car you refer to was on the right
20 of you and not to your rear of you? A. No, sir. It might have been a little, but it wasn't all the way back of us.

Q. Well, I mean at any time, now, before this accident happened. A. Well, about three feet ahead of the other car.

Q. And that was all? A. That was all.

Q. You overtook it and got three feet ahead of it? A. That is right.

Q. Was there any other traffic on that road? A.
30 Well, away ahead of us, there was.

Q. Light or heavy? A. It was pretty heavy.

Q. Now, do you remember writing out this statement (handing the papers to the witness)? A. Yes, sir.

Stanley Wasylyk—cross

Q. That is all in your handwriting, isn't it? A. No, sir. It is my signature, but it is not my writing.

Q. It isn't your writing? A. No, sir.

Q. But you read it over, didn't you? A. Yes, sir.

Q. Read it very carefully? A. That is right.

Q. Before you signed it? A. Yes.

Q. Will you take that, please? A. Yes.

Q. In that statement did you say your name was Stanley Wasylyk? A. Yes, sir. 10

Q. "Of 14 Jackson Street, Passaic, New Jersey?"

A. Yes, sir.

Q. And did you say, "I was riding with Dr. Schepp?" A. That is right.

Q. Did you call him Dr. Schepp in the statement?

A. Yes, sir. Yes, sir.

Q. "I was employed at the North Jersey Country Club as a caddy?" A. That is right.

Q. And that was the truth? A. Yes, sir. 20

Q. "I was sitting in the middle of the rear between two other caddies." Did you say that? A. Yes, sir.

Q. "I don't know the other caddies' names?" A. No, sir.

Q. That is correct. You stated that, I mean.

A. That is right, yes, sir.

Q. "When I first saw the motorcycles they were twenty-five to thirty feet in front of us, proceeding at the same speed we were, near the two gas stations, near the first bend coming from the Country Club." Did you state that? A. Yes, sir. 30

Q. Was that the truth? A. Yes, sir.

Q. Did you see two motorcycles? A. Yes, sir.

Stanley Wasylyk—cross

Q. You didn't state that this morning, did you?

A. I don't think I was asked that.

Q. You only stated that you saw one motorcycle this morning, didn't you? A. I don't think I was asked about two motorcycles.

Q. To proceed, "We were riding the first lane of the curb all the way from the club at the rate of twenty-five miles per hour;" correct? A. That is
10 right.

Q. "And we were riding the first line of the curb and were about halfway between the first bend coming from the club and where the accident occurred, when one of the rider's hat's blew off?" A. That is right.

Q. "The hat was a dark tammy, I think. The motorcycle was traveling towards Paterson at the time"; correct? A. That is right.

Q. "The motorcycle driver turned to get his hat. At the time it was the same distance, maybe a little
20 less"? A. That is right.

Q. That would be from twenty-five to thirty feet away? A. That is right.

Q. So he did not turn directly in front of Mr. Schepp's car, did he? A. What do you mean, directly in front?

Q. Well, twenty-five to thirty feet or a little less away? A. That is right.

Q. "The motorcycle which got hit was about on
30 the line between the first and second lanes on the right-hand side going to Paterson"; correct? A. That is right.

Q. "Dr. Schepp tried to pull in towards the curb to avoid the accident"? A. That is right.

Stanley Wasylyk—cross

Q. You realized what was in that statement when you signed it? A. Yes.

Q. That was not the truth, then, was it? A. What?

Q. That he tried to pull in towards the curb? A. He tried to pull out.

Q. You say, "In," do you not, distinctly in that statement? A. That is what it says here.

Q. "In towards the curb to avoid the accident." Now, which is the truth? A. Pulled out. 10

Q. So that what you put in that statement was not the truth? A. Maybe I didn't read it over careful, then, that is all.

Q. Why, before you signed it, you stated, "I have read and testify that these two sheets are correct testimony of the accident"? A. That is right.

Q. That is so, isn't it? To continue: "As soon as the motorcycle turned the doctor jammed on his brakes. The motorcycle was about ten or fifteen feet in front of the front of the car when it turned"; that is correct? A. That is right. 20

Q. Was it that distance? A. Yes, sir.

Q. Was he turning to the right or left then? A. To the left.

Q. To the left. "As soon as he turned"—to continue reading the statement—"as soon as he turned, the doctor put on his brakes and turned to the curb." Is that the truth or not? A. No, sir. 30

Q. So that what you put in the statement at that time wasn't the truth, then?

Stanley Wasyluk—cross

The Court—He did not write that statement.

Mr. Ward—I beg your pardon, sir?

Q. Or what was put in the statement, rather.

By the Court:

10 Q. Which is right? A. He pulled to the left.

The Court—Left.

By Mr. Ward:

Q. Not to the right or to the curb, as you say—as is said in the statement? A. No, sir.

Q. “We skidded these twelve feet and hit the motorcycle with the left-front part of the car”; is that true or not? A. I never said that. Never skidded, never said that we skidded. I am perfectly sure of that.

20 Q. “The accident happened between four and six o’clock in the afternoon, Saturday in August, the latter part of August. I had just finished summer school.” That was true, wasn’t it? A. That is right.

Q. “There was no other cars in front of Dr. Schepp’s. There was one in front of the motorcycle a block and three-quarters ahead, as I judge.” Was that the truth or not? A. I don’t know. It might be possible a car was away ahead, but I didn’t notice it.

30 Q. Do you mean that your memory is not so fresh now as it was when you signed the statement? A. I don’t know. There may have been several cars away ahead.

Stanley Wasylyk—cross

Q. But you don't know now? A. I don't know if there was one car.

Q. Did you know at the time you signed this statement? A. Well, I must have if I signed it.

Q. To continue: "The motorcycle was pulling into the right from the line between the first and second lanes on the right side of the road to turn around; and the car hit the cycle on the right side." Is that true or not? A. No, sir, 10 that is not.

Q. Well, why did you sign your name to the statements if it wasn't true? A. I may have not read it over carefully, that is all, I didn't pay attention.

Q. But you did read it, didn't you? A. I read—I scanned it over; I didn't read it carefully.

Q. But you testified a moment ago that you read it? A. Not carefully. I just scanned it over. I took it at his word. 20

Q. To continue, "The motorcycle was turned towards the left side of the road. The rider's right leg was injured and bleeding. There was a hole in his pants through which it was gushing." Was that true or not? A. It was through his left leg.

Q. So that you put—or what was put in that statement was not true? A. I don't think I ever had it this way. I think I had it the left leg 30 there.

Q. There is no doubt about this being your signature? A. No, there is no doubt about that.

Q. So that the part that "I have read and testify that these two sheets are a correct testimony of the accident"— A. That is right.

Q. And upon the back there was a sketch drawn, showing, as you thought, that the automobile had turned towards the right; that is correct, isn't it? A. May I show you something here?

Q. No. Is that correct or not? A. The sketch is, but may I say something?

Q. Is that so, as a sketch? Please answer.

10 A. Yes, that is all right.

Q. Now, did you say this: "There was a woman driving a car at the accident, who was probably in our rear, as she was neither on the left nor the right of us." Did you say that? A. It is down here. It must be.

Q. You must have said it, then; is that true?

A. No.

Q. Pardon me? A. No, sir.

Q. You didn't say that? A. It is not true.

Q. Well, did you say it at that time? A. I
20 don't know.

Q. You don't know whether you said it at that time or not. To continue: "Traffic was heavy on the other side of the road, light on our side, especially in front, in which direction I was naturally looking." Did you say that? A. It is down here. It must be.

Q. Well, do you remember whether or not you said that? A. I don't remember.

Q. To continue: "The accident happened a
30 little before the sun guard tower with the wooden top on the right of the road." Did you say that?

A. That is right. That is about the right distance.

Q. Did you say it? A. You didn't ask me where. You asked me the distance. You didn't ask me for the sun house.

Stanley Wasylyk—cross

Q. I am asking you if you said that when the statement was taken? A. Oh, yes.

Q. And that is the truth? A. Yes, that is right.

Q. "The rider was put in the auto of Dr. Schepp and rushed to the hospital"; is that true?

A. That is right.

Q. "Dr. Giger, Dr. Schepp, the rider, and I went in the car at the time of the riding to the hospital"? A. That is right.

Q. "I have read and testify that these two sheets are correct testimony of the accident," and then your signature? A. That is right.

By the Court:

Q. What is that on the back? A. I don't know. It is just some diagram.

Q. Did you put that on? A. No, sir. I didn't put that on.

20

By Mr. Ward:

Q. You signed your name to it? A. I put my name on.

By the Court:

Q. I mean did you put the diagram on? A. No, sir.

30

Mr. Ward—I ask that this be marked, sir.

Mr. Stafford—I object, if the Court please.

Mr. Ward—Not in evidence, of course. This is the defendant's case.

Stanley Wasylyk—redirect

Ray Giger—direct

The Court—For identification.

(Papers marked P-2 for identification.)

Mr. Ward—That is all.

Redirect Examination by Mr. Stafford:

Q. Just a moment. Who took this statement
10 off you? A. I don't know. Some representa-
tive of the defendant's, I think. I don't know who
it was.

Q. This gentleman who is standing up, going
over there (indicating)? A. I don't know who
it was.

Q. Where was it taken? A. Up at my house.

Mr. Stafford—I see. That is all.

20 RAY GIGER, sworn.

Mr. Stafford—I offer it in evidence as an
exhibit, your Honor, this photograph bear-
ing the mark exhibit D-1 for identification.

Mr. Ward—No objection.

(Photograph previously marked D-1 for
identification now becomes Exhibit D-1 in
evidence.)

30 Direct Examination by Mr. Stafford:

Q. Doctor, you are a licensed dentist in the
City of Paterson? A. I am.

Q. You have been practicing dentistry how
long? A. Since 1905.

Q. You are a member of the North Jersey
Country Club? A. I am.

Ray Giger—direct

Q. Were you playing golf on August 30, 1930?

A. I was.

Q. With whom? A. With Mr. Schepp, I believe. I couldn't just figure who the foursome was at that time.

Q. Mr. Schepp was one of them? A. Mr. Schepp was playing with us, yes.

Q. And did anything out of the ordinary happen on your way home? A. I drove home in 10 his car and this accident happened.

Q. I see. Was anybody else in the car besides you and Mr. Schepp? A. Three caddy boys.

Q. When you came out of the Country Club grounds what line did you take going towards Paterson, doctor? A. The second lane.

Q. Were there any cars in the first lane? A. There was—of course, at the time I didn't notice. There were cars on the lane, but I didn't pay any particular attention to them.

Q. Did you see any motorcycles on the high- 20 way at that time? A. Not as we came from the Country Club.

Q. Where were you on that turnpike when you first saw motorcycles? A. We were about the first turn of the road at the gas station, which I should judge would be about three hundred yards from the club entrance.

Q. I see. And how many motorcyclists were there, doctor? A. There were two motorcycles, as 30 far as I could see.

Q. And in what direction were they going, do you recall? Were they going in the direction of Paterson or in the direction of Pompton Lakes? A. At the time of the—as I was riding on the right side of Mr. Schepp's car, I was at-

Ray Giger—direct

tracted by the attention—I was talking to him and attracted by the attention—the noise and the speed of a motorcycle.

Q. Well, which direction was it going? A. At that time I saw the motorcycle coming from Pompton.

Q. Pompton? A. Pompton.

Q. I see. Do you recall whether or not you
10 saw that motorcycle again, doctor? A. I did not until after we made a turn, after we made the turn of the road going towards Hugh Lendrin's house.

Q. Yes? A. I should judge from that turn that I made the remarks to Mr. Schepp about the motorcycle.

Mr. Ward—One moment. I object.

The Court—No.

Mr. Stafford—He is only giving the distance, that is all.
20

The Court—Not what you said to Mr. Schepp.

Q. It was what distance, doctor? You were going to mention distance. A. I was going to mention the distance.

Q. What was the distance? A. Well, I should judge about two hundred feet.

Q. Two hundred feet. Now, where were the
30 motorcyclists when you saw them for the second time? A. The motorcyclest that I was attracted by was going toward Paterson.

Q. I see. Could you tell what kind of clothing he wore? A. The one that I saw had some-

Ray Giger—direct

thing of a orange color, either orange sleeves or orange body or—

Q. Where was he, doctor? A. He was going toward Paterson.

Q. What part of the road was he on? A. He was weaving in and out towards the first lane.

Q. I see. Now, were there any cars near Mr. Schepp's car going in the same direction when you saw these motorcycles ahead of you? A. 10 There were cars.

Q. Where were they, doctor? A. Of course, I didn't pay any attention until the time of the accident. It was a woman's car who had been stalled.

Q. Yes? A. From the time that the motorcycle was turned in front of her, and stalled her car.

Q. I see.

Mr. Ward—I ask to have it stricken out, 20
sir.

The Court—Yes.

Mr. Stafford—All right.

The Court—Strike out that part.

Q. Just a moment, doctor. You saw this motorcyclist riding a machine with orange sleeves, I believe you said. A. Yes.

Q. Going down the road? A. Yes.

Q. Now, when you next saw that same motorcyclist on the machine, when was it? A. I just saw him in the distance, weaving in and out, and the next time I saw him was the time of the accident.

Ray Giger—direct

Q. All right. Just explain to the Court and jury to the best of your recollection about the accident as you recall it, doctor. A. As we were riding to the top of—I should say by Hugh Lendrin's house that is about as near as I can figure it—

Q. Yes? A. This car was riding on the first lane ahead of us.

10 Q. Yes? A. And we were directly in back of her. I would say between the first and second lane. We were just about—

Q. Yes? A. When we were suddenly stopped by the stalling of this woman's car.

Q. The stopping of it, you mean? A. The stopping of it.

Q. Yes? A. And with that this motorcycle came out in front of her car.

Q. Yes? A. And in order to try to avoid—

20 Mr. Ward—I object to that, sir.

Q. Yes, just tell us—

Mr. Ward—I ask to have it stricken out.

The Court—You may strike out that part.

Q. Just tell us what happened. A. I am trying to. This motorcyclist—

30 Q. Came where? A. In front of this car.

Q. Yes? A. And, of course, we only had about the distance of a car and we stopped our car immediately.

Q. Yes? A. And as we did he was just in this direction.

Ray Giger—direct

Q. Yes? A. And our right lamp, as I recall it, struck him on the left side or he struck us, coming in contact this way.

Q. I see. A. So that when our car stopped, which we stopped almost immediately, I should judge his motorcycle was five or ten feet away from us.

Q. I see. A. And he was off the motorcycle.

Q. I see. Now, Doctor, can you tell us whether 10
or not this Mr. Schepp's car skidded twelve feet at any time prior to this accident? A. Positively not.

Q. Can you tell us how far from Mr. Schepp's automobile Mr. Van Der Byl was lying in the roadway after the collision? A. Well, he may have been two feet off his motorcycle, and the motorcycle wasn't five feet from our car, and, of course, the motorcycle fell to the side.

Q. Yes. Do you know who carried Mr. Van Der Byl to Mr. Schepp's car? A. I immediately 20
rushed out of the car—

Q. Yes? A. —and saw that the boy was hurt.

Q. Yes? A. And I ordered Mr. Schepp and the caddy boys to assist me in helping him in the car.

Q. Did you help? A. I did.

Q. Who carried him into the car, Doctor? A. Well, I did the greater bulk of it. I had the boys 30
assist so that I could see that he—he had an injury and he was bleeding, and I put a tourniquet on him.

Q. Who were the men who put him in the car? You and who else? A. Mr. Schepp, and I think the caddy boy who was here on the stand.

Ray Giger—direct

Mr. Stafford—Is Mr. Willis here?

(A gentleman arose in the court room.)

Q. Did that man carry Mr. Van Der Byl over to Mr. Schepp's car? A. No, sir.

Q. What distance did you have to carry him, Mr. Van Der Byl, over to Mr. Schepp's car? A. Well, Mr. Schepp's car—we put him in the back
10 seat. Of course, it was only about six feet from the car.

Q. Six feet from the car. I see. Now, Doctor, did you see this motorcyclist give any signal or warning that he was about to make a left turn in the highway? A. I did not.

Q. Did you hear this motorcyclist with the orange sleeves in his sweater sound a horn at any time within hearing distance? A. I did not.

Q. Of the car you were riding in? A. I did not.

20 Q. Eh? A. I did not.

Q. How fast was Mr. Schepp's car going at the time of the collision? A. I should judge from about twenty-five to thirty miles per hour.

Q. Can you tell us how fast this other car was going that you speak of on the first lane? A. I imagine about the same speed we were, but I did not notice it until she had stopped or at the time she stalled, but we followed her for—

Q. Did you go over and speak to the woman?

30 A. As I got out of the car—

Q. Don't mention what you said to the woman. A. No.

Q. Did you notice where her car stopped? A. Directly—

Q. At the time of the collision. A. —in front of our car.

Ray Giger—direct

Q. When you say in front, do you mean directly in front or where. A. I mean on the side. She was practically on the first lane.

Q. But ahead of yours, and on a different lane; is that what you mean? A. She was on my right, yes.

Q. Did you notice at all, Doctor, the speed at which this motorcycle crossed in front of Mr. Schepp's car? A. I couldn't tell you, Mr. Staf- 10
ford.

Q. I see. How far was Mr. Schepp's car from this motorcyclist when the motorcyclist first put in an appearance making this left turn? A. Well, we being in back of the car, it may have been three or four feet.

Q. Three or four feet? A. Yes.

Q. I see. On what lane was this motorcycle when it came into collision with Mr. Schepp's car? A. On the second lane.

Q. Do you recall what lane the motorcycle was 20
in after the collision? A. It was lying partly on the second lane of the other line.

Q. And where was the machine? A. The motorcycle?

Q. Yes? A. I should judge about on the line between the second lane and our lane.

Q. I see. What part of Mr. Schepp's automobile came into contact with the motorcycle? A. As far as I remember, the right lamp. 20

Q. Came in contact with what part of the motorcycle? A. We were about in line where his lights would be, I guess.

Q. Which side, right or left? A. Left side.

Q. Left side. I see.

Ray Giger—cross

Mr. Ward—The left side, did he say?

Mr. Stafford—The left side of the motorcycle.

Mr. Ward—The left side of the motorcycle?

Mr. Stafford—Yes. That is all.

Cross Examination by Mr. Ward:

10

Q. Doctor, you had been playing golf with Mr. Schepp, had you? A. Yes, sir.

Q. All afternoon? A. All afternoon, yes.

Q. When you came out from the North Jersey Country Club you say there was no traffic in the immediate vicinity where you turned into the turnpike? A. As far as I remember, not—

Q. But you do recall that you took the second lane? A. The second lane.

Q. That would be the second lane from the west; is that correct? A. Second lane from the west, yes.

20

Q. Your second lane from your right-hand side? A. Yes.

Q. At that time did you notice any other car ahead of you? A. There were several cars ahead.

Q. Well, the car that afterwards you say stalled, did you notice that? A. I didn't recognize that car, no more than any other.

30

Q. Well, the car ahead of you, Doctor, was the nearest car at that time? A. Well, there was—we saw traffic along the road, and I saw cars. I couldn't tell exactly how far—from the Country Club, you mean?

Ray Giger—cross

Q. Yes, from the Country Club. A. Oh, several car lengths ahead.

Q. About how far do you think it is or was from the Country Club, that is, the entrance to the Country Club, to the place where this accident happened? A. Oh, it is the top of Hugh Lendrin's hill.

Q. Well, there is quite some distance, is there not? A. Quite some distance. 10

Q. Then there is a curve to the right? A. That is right.

Q. And then after one makes the curve to the right there is this hill that you go up? A. Yes, sir.

Q. Towards Lendrin's place? A. Yes.

Q. It is right on the brow of the hill; that is correct, isn't it? A. It is.

Q. Now, the traffic was moving along there at the usual rate of speed, wasn't it? A. I would say so. 20

Q. It wasn't going slowly? A. It wasn't going fast.

Q. No, but the usual rate of speed? A. The usual rate of speed.

Q. Upon roads such as that? A. Right.

Q. That is true. And you think that when you left the Country Club the car in front of you was two or three car lengths ahead of you? A. I would think not more than that. 30

Q. Well, as you approached the scene of the accident you diminished the distance between the Lincoln car in which you were riding—when I say you, of course, I mean the driver of the car—you diminished the distance between the Lincoln

Ray Giger—cross

car in which you were riding and the car that was ahead of you, didn't you? A. Yes.

Q. Were you still driving on the second lane?

A. We were.

Q. And do you know just where this accident happened? A. Yes, I do.

Q. Whereabouts? A. Just about the entrance to Hugh Lendrin's house.

10 Q. Do you know where the tower is? That is right on the brow of the hill, isn't it? A. That is correct.

Q. It was right opposite that, was it not? A. Right about there, yes.

Q. When I say the tower, the old well? A. That is right.

Q. Of field stone with the wooden cover? A. That is right.

Q. Now, when had you begun to diminish the distance between the car ahead of you and
20 your car? A. It was gradual.

Q. And you had gotten within a distance of three feet of it, hadn't you? A. No.

Q. Didn't you testify to that a moment ago? A. At the time of the impact, correct.

Q. Yes. You had gradually decreased the distance of two or three car lengths between you, this car—your car, the Lincoln car, and the car ahead of you so that you were within two or three feet— A. Correct.

30 Q. —of the car ahead of you? A. Yes, sir.

Q. And this car ahead of you was on the one lane, the right-hand lane, which would be the westerly lane? A. That is right.

Q. And you were on the passing lane? A. Correct.

Ray Giger—cross

Q. That is correct, is it not? A. That is correct.

Q. And you continued right ahead? A. The car stalled and stopped us.

Q. How fast was the Lincoln car going when the other car stalled? Do you understand what I mean? I mean, how fast was the Lincoln car in which you were driving going at the time the other car, as you say, stopped or stalled? A. 10
Well, we were pretty near the top of the hill; we were going probably twenty-five miles an hour.

Q. Did Mr. Schepp stop—did Mr. Schepp apply his brakes immediately when this other car stopped? A. Positively.

Q. And did he stop immediately? A. He did.

Q. Within how many feet? A. Her car was ahead of our car when he stopped.

Q. Well, within how many feet did this Lincoln car stop? A. Well, no more than about— 20

Q. Two or three? A. Maybe five or six feet.

Q. And this other car was about how long in length? Have you any idea? A. The usual length of—

Q. Let's see. About 130-inch wheelbase, are they? A. I imagine it was that. I don't recall what car it was.

Q. So that your Lincoln car had not gotten more than halfway past this car that was to the right of you; that is true, isn't it? In other words, 30
if you stopped within five or six feet you closed up this gap of two or three feet and ran up past this car which was on your right two or three feet more; that is right, isn't it? A. We were behind her at the time that she stopped.

Ray Giger—cross

Q. Well, is my deduction correct, Doctor, about that? A. I don't quite get it.

Q. Well, you say that this car which was in front of you about—did you say three or four feet or what? A. I said three or four feet when we stopped.

10 Q. Yes? A. At the time that she stalled and we stopped there was a distance of about three or four feet ahead of our car. That is what I said.

Q. Well, now, you testified—do you mean—I will withdraw the last, sir. Do you mean that when you came to a stop, that the rear of her car was three or four feet in front of the front of your car? A. No.

Q. You mean the front of her car was three or four feet in front of the front of your car; is that correct? A. That is so, yes.

20 Q. I see. Now, Doctor, you testified on direct examination that before this accident you had decreased the distance between the car in front of you from two to three car lengths to three or four feet; is that correct? A. Yes, that is correct.

Q. And then I think you say that she stopped suddenly and Mr. Schepp immediately applied his brakes and went possibly five or six feet; I think that was your evidence? A. That is all
30 right.

Q. So that he had—the Lincoln car, then, had closed up this gap of three or four feet and traversed a distance of two or three feet past the rear of the car which was on your right and which had stopped; that is right, isn't it? A. Yes, sir.

Ray Giger—cross

Q. So that the front of this car which was on your right was possibly four or five feet or more in front of the Lincoln car, wasn't it? A. Possibly.

Q. And these lanes are 10-foot lanes? And this car on your right was probably in the center of the lane? A. Probably. She was a little bit more towards the line.

Q. Well, about the distance—you mean towards the line in the roadway; is that correct? 10
A. Yes.

Q. Rather than towards the curb? A. Right.

Q. And your car was about how far to the left—the Lincoln car was about how far to the left of this car that you say stopped? A. You mean at the time of the collision?

Q. At the time they both—they were both standing still after they both had stopped? A. We were about on the line of the third line or the second line. 20

Q. That would be the first line from the curb? A. We were—take the right, you have one line and you have the line that runs—

Q. There is the curb, then there is one line on the westerly lane, then a center lane? A. That is correct.

Q. Which line do you mean? A. We were about on the center line.

Q. About on the center line? A. Yes. 30

Q. And that would be about four or five feet out from this standing car, wouldn't it? A. Away from her?

Q. Yes. I mean to her left, of course. A. Well, I can't tell you—

Ray Giger—cross

Q. Those lanes are ten feet wide? A. Well, I don't know.

Q. Is that your best estimate? A. I would say a few feet.

Q. Your best idea. A. I would say a few feet; I don't know just how far.

Q. A few feet. Doctor, you say you first saw these two—or, at least, saw two motorcyclists going toward Pompton, going in the direction of Pompton the first you saw them? A. The first?

Q. Yes, is that correct? A. The first I saw going towards Pompton.

Q. And you saw two of them at that time; is that correct? A. I saw the second one as he was going toward Paterson. He had made his turn.

Q. I mean the first time that you saw any motorcyclists they were going towards Pompton, were they not? I think that was your direct examination. A. I saw two motorcycles.

Q. Yes, going towards Pompton. A. Right.

Q. Now, when you next noticed any motorcycles you only saw one; that is true, isn't it? A. At the time of the accident I saw it.

Q. No, I mean you first saw two cyclists going towards Pompton. Now, there was some time after that that you noticed one or more motorcyclists, and at that time there was only one that you noticed, wasn't there? A. I saw only the one after that.

Q. And that one that you saw was ahead of your car, wasn't it? A. He was weaving in and out.

Ray Giger—cross

Q. Yes, but he was ahead of your Lincoln car?

A. Yes.

Q. And ahead of this other car that was two or three car-lengths ahead of you; that is true, isn't it? A. Well, I just had a glimpse of him as he wove in and out.

Q. Yes, but he was ahead of the other car, wasn't he? That is so? A. I don't know.

Q. You don't know that? A. No.

10

Q. At the time this accident happened the only glimpse—I will withdraw that, if your Honor please. You noticed this one cyclist, then you paid no more attention to him, did you? I mean, the second time that you made some observation of a motorcyclist. Do you quite get my point?

A. I do not.

Q. I don't want to confuse you. First you noticed two going towards Pompton, you say? A.

Yes.

Q. Then on some occasion later, some few moments later, you noticed some cyclist, motorcyclist, in front of the car in front of you, I think you said weaving? A. Right.

20

Q. That is correct? A. That is after the turn, after that first turn of the road.

Q. Yes. And you noticed him in front of this other car going in the direction of Paterson? A. Right.

Q. That is correct. Then you didn't observe him again until the time of the collision, did you?

A. No, sir.

Q. And what happened, according to you, was that something came out in front of this car that was stopped and ran into the right side of your Lincoln—the right headlight of your Lincoln—of

Ray Giger—cross

the Lincoln car, Doctor? A. Yes, that is the next notice that I had of him.

Q. Doctor, he would have had to come right directly toward the front of your car and directly back towards Pompton, wouldn't he— A. He was making that—

Q. —to have done that? A. He made a left bank turn in front of that car.

10 Q. Yes, but a left bank turn he would have had to have turned directly in front of that one car and not gone across the road at all, excepting in front of that one car; that is so, isn't it? A. But he went in front of that car and stalled that car.

Q. He went in front of the one car and then, according to you, turned so sharply that he ran into the right front or the right headlight of your Lincoln car? A. He did, positively.

20 Q. And then after that you saw the motorcycle where? A. On my left.

Q. So that although the motorcycle was going towards Pompton, which would be north, and had struck the right front of the Lincoln car, when you next saw the motorcycle it was over here to the left, wasn't it? A. Over to the left.

Q. Yes, your left? A. Yes, certainly.

Q. In some way it had gotten from this position on the right over to the left, hadn't it? A.

30 Certainly. He fell off his motorcycle or his motorcycle went down on him.

Q. Your car was stationary, wasn't it, when this motorcycle struck the Lincoln car? A. Yes. We were on that angle (indicating).

Ray Giger—cross

Q. Nothing to push it forward, to push the motorcycle forward or anything of that kind, was there? A. But he struck our side and fell over with it.

Q. Yes, I know, but I mean there was nothing, no impelling force, so far as your Lincoln car was concerned, to push it forward towards Paterson, was there? A. Why—

Q. Pardon? A. —our car stopped immediately. He struck our car and bounded over. 10

Q. Yes? A. Certainly.

Q. And yet that motorcycle, according to you, by some force was impelled forward towards Paterson how many feet? Three feet, did you say? A. No more than three feet.

Q. Well, some little distance? A. Possibly three feet.

Q. And the person who was riding in the direction of Pompton and who came in contact with the right of your Lincoln car was even beyond the motorcycle towards Paterson, wasn't it? I think you said about six feet. A. I don't quite get that question. 20

Q. Well you said that after the accident you noticed the motorcycle on your left, about, I think you said, three feet, and you say now it might have been less? A. No, I didn't say that.

Q. In front of your Lincoln car towards the left, in front of your Lincoln car, and the body of some person, the rider,—I presume you knew it was the rider? A. Yes. 30

Q. About six feet beyond that towards Paterson. That was as I understood you. Am I correct in that? A. Why, I don't think it was quite

William J. Schepp—direct

six feet from the motorcycle. I don't say that. He was off his motorcycle.

Q. I know you didn't measure or anything of that kind. You are giving us your best estimate, aren't you? A. I am, yes.

Q. And in your opinion it was approximately six feet beyond, towards Paterson? A. Yes, sir.

10

Mr. Ward—That is all.

WILLIAM J. SCHEPP, sworn.

Direct Examination by Mr. Stafford:

Q. Mr. Schepp, you were the owner of the car that was involved in this accident? A. Yes, sir.

Q. And you were out playing golf that afternoon, I presume? A. Yes, sir.

20

Q. With whom were you playing, Mr. Schepp? A. With Dr. Giger and two other men. I don't recall their names.

Q. What time did you finish your golf game?

A. I imagine around half past four. We must have left the club sometime after five.

Q. And did you pick anybody up on the way down? A. Picked up three caddies inside the club grounds.

30

Q. I see. When you came out of the exit from the Country Club what lane did you take on your way down to Paterson? A. I took the second lane because there were other cars in the first lane.

Q. And as you went down the turnpike in the direction of Paterson at what speed were you driv-

William J. Schepp—direct

ing? A. About twenty-five or thirty miles an hour.

Q. And was there a car near you driven by Mrs. Bressler? A. I noticed that car as I got on the incline.

Q. Yes? What incline, Mr. Schepp? A. The incline in question.

Q. Leading up to— A. Leading up to the crest of the hill. 10

Q. —to Mr. Lendrin's home there? A. Yes, sir.

Q. Now, will you describe to the Court and jury the physical contour of that particular locality, looking both north and south? A. As you come out of the club you have to go about three hundred yards and then you make a turn, and that turn is such that your vision is blind on your first lane, and I kept in the second lane in making the turn. Then I proceeded along and I saw— 20
do you want me to continue?

Q. Yes, what is the physical condition there? A. And then you ride along a level stretch and then you start in on this grade, on the brow of which is where the accident happened.

Q. Well, now, from the crest of this brow that you are talking about, the brow of this hill looking in a northerly direction, how far can you see, Mr. Schepp? A. You mean looking towards Pompton? 20

Q. I mean looking in a northern direction. A. You can see the whole road down there, all over the whole valley there.

Q. You can? A. Yes, sir.

Q. Well, now, Mr. Schepp, as you approached

William J. Schepp—direct

this incline going up to Mr. Lendrin's property did you notice any motorcyclists on that highway?

A. Yes, sir.

Q. When did you first see the motorcycles?

A. After I had made the turn I saw them coming down the incline.

Q. And going in what direction? A. In the direction of Pompton.

10 Q. Yes. How many were there? A. There were two.

Q. Were they close together? A. Not very close.

Q. What did the first one do? Anything, as he neared you? A. The first one passed me.

Q. Yes? A. And then the second one cut right in front of me, I should say within twenty-five feet.

20 Q. Now, when he cut in front of you, Mr. Schepp, where was Mrs. Bressler's car? A. She was then more in the first lane; I was in the second.

Q. I see. How fast were you driving at that time? A. About twenty-five to thirty miles an hour.

Q. Did you see that motorcycle again on that highway? A. Not until the accident happened.

30 Q. Well, now, will you just explain to the Court and jury to the best of your recollection how this accident happened? A. When he made his first turn in front of me I was trying to figure out what his motive was.

Mr. Ward—One moment. I object to that and ask to have it stricken out.

William J. Schepp—direct

Q. Just tell what happened actually. A. He made a sharp left turn in front of me on this hill and this lady was in the first lane and I was in the second, and as I went up the hill I turned into the first lane, and just as I got to the brow of the hill this lady stopped suddenly and pulled out into the second lane, and as I pulled out there Mr. Van Der Byl was coming in my direction, and I put on my brakes and that was where the accident happened. 10

Q. Did you see Mr. Van Der Byl put out his hand? A. No, sir.

Q. Or give any sign, signal, or warning that he was going— A. No, sir.

Q. —to make a left turn? A. No, sir.

Q. How fast were you going when Mrs. Bressler's car came to a stop? A. About twenty-five to thirty miles an hour.

Q. And when her car stopped, Mr. Schepp, 20 what lane were you in? A. I was in the first lane, in back of her.

Q. When you pulled over into the second lane what speed were you going? A. About the same speed.

Q. How far did you go in the second lane before the collision occurred? A. Not very far.

Q. Well, about how many feet? A. Oh, I should judge about five or ten feet.

Q. I see. Now, where with reference to the 30 motorcycle—where was this motorcycle when you saw it first make—cut out from in front of Mrs. Bressler's car? How far were you from it? A. Well, it seemed so close in front of me that I couldn't estimate any distance. It seemed to be

William J. Schepp—direct

almost running right into me as I looked out the windshield.

Q. Well, then what did you do? A. I immediately put on my brakes.

Q. I see. What part of the motorcycle came in contact with your automobile? A. The handlebar turned and put out the headlight of the right headlight, and the front tire, I think,
10 bumped the left fender.

Q. Was your left headlight damaged at all? A. No, sir.

Q. Did anybody afterwards give you the rim from your left headlight? A. Yes, sir—no, the right headlight.

Q. Which headlight was it, your right or left? A. The right.

Q. At the time of the actual impact, Mr. Schepp, how fast were you going? A. I should judge about twenty-five or thirty miles an hour.

20 Q. At the time you came in contact with the motorcycle? A. Yes, sir.

Q. How far did you go after the collision? A. I seemed to stop so quickly I shouldn't judge more than three feet at the most.

Q. Where was Mrs. Bressler's car when you stopped? A. She was more or less opposite; just how far in front or in back I couldn't judge. I just could see that there was a car opposite me.

Q. In what lane was she when you stopped?
30 A. She was in the first lane.

Q. In what lane were you when you stopped? A. The second lane.

Q. How far was this motorcycle from your automobile after the collision? A. Within six feet.

William J. Schepp—direct

Q. How far was the body of Mr. Van Der Byl from your car after the collision? A. Just a little beyond the motorcycle, a foot or two.

Q. I see. How far was your automobile from Mr. Van Der Byl's body after the collision? A. About six or seven feet.

Q. Who carried Mr. Van Der Byl to the car? A. The three of us, Dr. Giger, Stanley Waslyk, and myself. 10

Q. Mr. Willis, will you stand up, please? Did this gentleman carry Mr. Van Der Byl to your car? A. I didn't see him.

Q. No. Now, Mr. Schepp, when Mr. Van Der Byl was placed in your car where did you drive? A. I took him down to the Paterson General Hospital.

Q. And then did you go back to the scene of the accident? A. Yes, sir.

Q. When you got back there were there any motorcyclists there? A. Yes. There seemed to be quite a large group of motorcyclists. 20

Q. What happened when you got there? A. They surrounded my car and started to fire all kinds of questions at me.

Q. Yes. Did you admit to them that your car had skidded twelve feet? A. No, sir.

Q. Did you admit to them that you didn't know how the accident happened? A. No, sir.

Q. Did you say to any of them that you didn't know how the accident happened, but that you were on the wrong side of the road? A. I don't just quite get your question. 30

Q. Well, did you say to any of them that you were on the wrong side of the road? A. I said

William J. Schepp—cross

I was on the right side and I had no idea why he made the turn until later.

Q. And you subsequently found out later why he did? A. Yes.

Q. I see. Did you tell any of those men that you had jammed your brakes on and your car had skidded twelve feet? A. No, sir.

10 By Mr. Ward:

Q. Mr. Schepp, you were not intimidated at all, were you? You were not intimidated by these—

Mr. Stafford—There was one omitted question, if the Court please.

By Mr. Stafford:

20 Q. You had a conversation with Mr. Van Der Byl while he was in your automobile on the way to the hospital. What did he say, Mr. Schepp?

A. He kept saying on the way down, "Why did I turn, why did I turn?"

Q. How many times did he say, "Why did I turn?" A. About four or five times.

Mr. Stafford—That is all.

30 Cross-Examination by Mr. Ward:

Q. When you had the conversation with these men you were not intimidated, were you? A. No, but simply outnumbered. I was all alone.

Q. But there was no intimidation or threats or anything of that kind? A. I wouldn't say that.

William J. Schepp—cross

Q. A general inquiry as to how it happened and a general discussion about it; that is correct, is it not, Mr. Schepp? A. Yes, they were all firing questions.

Q. And when you came out from the Country Club you turned left to go to Paterson? A. Yes, sir.

Q. And at that time did I understand you to say that there was quite some traffic passing? 10

A. There were a few cars, yes.

Q. Did that prevent you from going upon the first lane? A. Well, I thought it was better to pull on the second lane, as long as other cars were in the first lane, because we were pulling from the opposite side. The Country Club entrance is on the left.

Q. On the left? A. And in order to pull in the direction of Paterson you have to cross the road.

Q. You pulled into the second lane, did you? 20
A. The second lane.

Q. Yes, the second lane. D'd you travel in that second lane all the way up to the place of the accident? A. No, sir.

Q. Well, now, how far is it to the foot of the hill from the place where you came out of the Country Club? A. Well, there is two hills there, but one is a very slight grade.

Q. Yes? A. You mean from the foot of the hill on which the accident occurred— 30

Q. Yes. A. —and the Country Club?

Q. Yes. A. I should say it is about four or five hundred yards.

Q. Whereabouts was it you got into the first lane? A. In the middle of the hill.

William J. Schepp—cross

Q. In the middle of the hill? A. Yes, sir.

Q. Had you passed any other cars? A. Up until that time, no.

Q. Had any other cars passed you? A. No, sir.

Q. Where was it that you first saw these two young men on the motorcycles? A. After I had made the turn.

10 Q. When you say after you had made the turn, do you mean after you had come out of the Country Club? A. Yes, sir, when you come out of the Country Club you go along a distance and then the road turns in a different direction.

Q. To the right? A. Yes, turns to the right.

Q. There is a little grade there? A. Yes, sir, as you come out of the club you can't see this last hill on account of the turn.

Q. It was about where that you saw these two men? A. I saw them on the hill.

20 Q. You mean the hill where the accident happened? A. Yes, sir.

Q. Now, as I understand you, and you are quite sure of this, only one passed you? A. Yes, sir.

Q. And Dr. Giger was right there with you in the front seat, was he, at the time? A. He was, but I never believe a passenger—

Q. Please just answer my question. A. He was on my right; he was on my right.

30 Q. And the young man, Mr. Wasylyk, he was in the back seat? A. They were in the back seat.

Q. And they were both in a position, so far as you know, where they could observe and see; is that true? A. Yes, sir.

William J. Schepp—cross

Q. And yet after this one motorcyclist had passed you the second one made a turn, you say, to his left—he was going towards Pompton, he turned towards his left, and started back towards Paterson? A. That is right.

Q. Where you came out of that Country Club, about how far in front of you was the nearest car? A. Well, they were on my side; they were in the first lane and I was in the second lane. 10

Q. Well, how far from you in front of you, if they were in the first lane? Do you understand what I mean? A. Probably a car's length.

Q. A car's length? A. Yes, sir.

Q. And there was just the one car there, driven by this woman? A. Well, that was finally, there was only one car in front of me.

Q. Finally only one car in front of you? A. As much as I could see.

Q. How many were there in front of you when you came out of the Country Club, that you could see? A. I should judge four or five or six. 20

Q. And did these other cars draw away or did you pass them or what? A. No, they just went along. There was no passing.

Q. So that there was then left this one car in which Mrs. Bressler was? A. Yes, sir.

Q. You pulled out from that first lane into the second lane, didn't you, at some time? A. At what time?

Q. I beg your pardon? A. I didn't get what time. 20

Q. Before the accident actually happened. A. Yes, as she stalled in the first lane I was right in back of her. I pulled into the second lane.

William J. Schepp—cross

Q. How far were you in back of her? A. At that time I should judge about four or five feet.

Q. Is that all? Were you traveling as close as that to her, only four or five feet in back of her? A. Maybe. I imagine it must have been always a car's length between.

Q. Four or five feet is only about that distance, isn't it? A. Probably. That was just the
10 time that she turned—

Q. Is that the distance you were traveling behind this lady? A. No, I was a car's length. I mean, at that time, at the brow of the hill, just as she stopped in front of me if closed up to within four or five feet.

Q. I see. So that at the time she stopped you had closed this gap up, so that you were only four or five feet back of her? A. Yes, sir.

Q. And you did that intentionally, didn't you? A. No, sir.

20 Q. Well, you closed up that gap; you were conscious of it? A. I closed up because she stopped.

Q. You said at the time she stopped that you were only four or five feet back of her? A. I meant on account of—on account of this lady stopping the car, that brought it within that distance.

Q. No, at the time you came out of the Country Club you were quite some distance back of her, weren't you? A. Well, I didn't recognize her
30 particular car until we got on the hill.

Q. I see. But you were quite some distance back of any car in front of you, weren't you? A. Well, within the car's length.

Q. And you did close that gap up, didn't you,

William J. Schepp—cross

as you were going up that hill? A. Only when this lady stopped.

Q. Well, do you mean it wasn't until she stopped that you closed the gap up? A. Yes, sir.

Q. And then you didn't attempt to stop? A. No, sir; I attempted to pull into the second lane.

Q. She didn't pull up to the curb or anything of that kind, did she? A. No, she stopped suddenly in front of me. 10

Q. You have seen Mrs. Bressler on the stand, have you not? A. Yes, sir.

Q. You saw her here this morning? A. Yes.

Q. And it is not so that she continued on until you had actually passed her?

The Court—Well, that is what she said. Are you trying to compare it now?

Mr. Ward—No, sir. I am asking, Is it or is it not so that she actually continued 20 on until you passed her four or five—three or four feet?

A. I don't know just the distance from her car to mine. I just saw a car over there and my mind was involved with what was in front of me.

Q. But haven't you just said, Mr. Schepp, that it wasn't until she stopped her car that you closed this gap? A. Yes, sir, but—

Q. And, as a matter of fact, she had stopped 30 her car before you began to close this gap up; is that so? A. Not before. Her stopping closed the gap.

Q. That is what I say. When she stopped you closed the gap up? A. Yes.

William J. Schepp—cross

Q. Is that correct? A. Yes, sir.

Q. And it is not so that both cars were moving at the time you attempted or started to pass her? That is not correct? A. No. I pulled into the second lane as she stopped.

Q. Well, when you were passing her she was actually stopped, was she, according to you? A. Yes, sir.

10 Q. Now, you didn't stop your car three or four or five feet back of the front of her car, did you? A. I don't know the distance in relation to her car.

Q. Did you stop—was the front of your car back of the front of her car? A. That I couldn't tell you.

Q. When this accident happened? A. I couldn't tell you. I only knew there was a car on the other side. My mind was involved on this side and I couldn't judge distances.

20 Q. You knew of the brow of the hill? A. Yes.

Q. You knew that you couldn't see five hundred feet, didn't you? A. From which direction?

Q. Well, coming up over that hill? A. Coming up the hill you couldn't, yes.

Q. Mr. Schepp, don't you know, as a matter of fact, that you positively cannot? A. Cannot see, no.

30 Q. That is what I mean, until you get to the top of the hill? A. Yes.

Q. And yet you actually did—although, as you say, she stopped you actually did pass her, didn't you? A. Part of my car passed her, because I pulled into the second lane.

William J. Schepp—cross

Q. Well, no matter what caused it, you did actually do that, didn't you? A. Yes.

Q. In other words, you did not stop, did you, back of her car? A. No, sir.

Q. And I think you said that the first you noticed this motorcyclist who had turned—and I am now referring, Doctor—I don't want to confuse you—I am now referring back to the time that you mentioned when you saw the cyclist turn to the left to go back towards Paterson— A. Yes, sir. 10

Q. —the first that you saw him after that was when he came out in front of Mrs. Bressler's car; is that correct? A. Yes, sir.

Q. And he was actually making a turn then, wasn't he? A. Yes, sir.

Q. You think that some part of the left part of your car came in contact with him, don't you? A. Yes, sir.

Q. And what part do you think came in contact with him? A. The left fender with his front tire. 20

Q. Do you think it was the fender or the bumper? The bumper is in front of the fender, is it not? A. Well, the bumper hit his leg, I believe.

Q. I see. Now, when this woman slackened her speed or stopped and I think, as I understand you, you don't know whether she actually had come to a stop when you passed her or not; is that so? A. That is so. 30

Q. You don't know which? A. Well, I know she practically came to a stop.

Q. Whether she had actually come to a stop or not you don't know? A. No, sir, I couldn't say exactly.

William J. Schepp—cross

Q. But then your car passed hers? A. Partly.

Q. And then the collision occurred between your car and this motorcycle? A. Yes, sir.

Q. That is so, isn't it? A. Yes, sir.

Q. And the motorcycle was practically pointed north, that is, towards Pompton, wasn't it— A. Yes, sir.

10 Q. —at the time of this collision? A. Yes, sir.

Q. Did you see the cap there? A. No, sir, never saw the cap.

Q. I see. How far in front of your car was this motorcycle after the accident? A. After the accident?

Q. Yes. A. I should judge within six feet.

Q. And then this man or this boy was some distance beyond the motorcycle, wasn't he? A. About a foot or so.

20 Q. Did you pick the motorcycle up, by the way, or move it at all? A. The motorcycle?

Q. Yes. A. No, sir.

Q. And the motorcycle, as you sat in your car, was to your left, wasn't it, after the accident? A. Yes, sir.

Q. That is, going towards Paterson, of course? A. Yes, sir.

Q. And you were going towards Paterson? A.

30 Yes.

Q. Mr. Schepp, when you went back there do you recall your attention being called to those marks? A. I heard them mention something about the marks.

William J. Schepp—cross

Q. And you heard them say that the marks were on your left side of the road? You heard them say that? A. I heard them making different statements. I don't remember just exactly—

Q. And they indicated those marks to you, didn't they? A. There were more than one talking at one time.

Q. But what I mean is this: Somebody at some time— A. Somebody may have made that— 10

Q. —indicated where those marks were? A. They may have.

Q. And they said it was on your left side of the road; that is correct, is it not? A. They may have done that.

By the Court:

Q. Called your attention to it? A. They may have done that, yes. 20

By Mr. Ward:

Q. How long had you had this Lincoln car? A. 1928.

Q. Do you know what power it has? A. Yes, sir; I think it has about thirty-five horse power.

Q. Your brakes, of course, were in good condition at that time? A. Yes, sir, four-wheel brakes.

Q. Four-wheel brakes? A. Yes, sir.

Q. And they were working all right, I presume? 30
A. Yes, sir.

Mr. Ward—That is all.

EUGENE ZINN, sworn.

Direct Examination by Mr. Stafford:

Q. Mr. Zinn, you are an automobile mechanic, are you not? A. Yes, sir.

Q. At my request did you examine Mr. Schepp's headlights? A. I did.

10 Q. Which one was damaged? The right or left?
A. I can see on the report. Have you got the report there?

Q. Can you tell without referring to the report to refresh your memory whether or not, Mr. Zinn, it was the right or left headlight? A. I think it was the right.

Q. The right headlight. Well, I show you—is that your report? Will that help you in refreshing your memory as to what headlight was damaged?

20 Mr. Ward—Is that in his handwriting?

Q. That is the report he submitted to me, Mr. Ward, yes. A. The right headlight, lens, and door.

Q. Right headlight, lens, and door. Anything the matter with the left light? A. No.

30 Mr. Stafford—All right, that is all.
Mr. Ward—No questions.
Mr. Stafford—We rest, your Honor.

The Defendant Rested.

Charge

Mr. Ward—We offer the statement in evidence, sir, made by Mr. Wasylyk. We rest, sir.

(Paper marked exhibit P-2 in evidence.)

Both Sides Rested.

(Mr. Stafford summed up the case to the jury on behalf of the defendant.) 10

(Mr. Ward summed up the case to the jury on behalf of the plaintiff.)

(The Court charged the jury as follows:)

COURT'S CHARGE TO THE JURY

Mackay, J.

Members of the Jury:

The plaintiff in this case, Alvin Van Der Byl, is seeking to recover damages from the defendant, William Schepp, because of an accident occurring on August 30, 1930, sometime between five-twenty and five-forty p. m. I understand it was daylight on a clear, warm day when this accident occurred. 20

The basis of the plaintiff's claim in this case is negligence with resulting injuries, and the claim of negligence which the plaintiff makes in this case is that the defendant was traveling at an excessive rate of speed and that he traveled from his right-hand side of the road over to his left-hand side of the road and struck the plaintiff's motorcycle, with the plaintiff on it, between what is called, I think, the two easterly lanes which were on the defendant's left-hand side of the road. 30

Charge

Just briefly, it appears that the plaintiff was traveling in a northerly direction from Paterson toward Pompton Lakes on the Paterson-Hamburg Turnpike, about at the crest of this hill that has been described to you, or near that point, when his cap blew off, and he speeded up his motorcycle to get in touch with his friend, who was 250 or 300 feet ahead, and he sounded a horn and motioned to his head, and
10 his friend turned around; that he then swung to the left in front of two on-coming cars, one of which was the defendant's car. He described to you where the cars were when he made that left turn, and he then turned to go south toward Paterson. He then described to you about ascending the hill and reaching a point just a little beyond where the cap was lying. He said he looked back, gave a signal and made a turn at about four or five miles an hour, and when he got over near his cap I think he said the
20 motorcycle was stopped and he was about to reach down for the cap when the defendant's car struck his motorcycle on the left side and threw him quite some distance—I have forgotten whether it was thirty or forty or fifty feet—threw the motorcycle some distance, and causing the injuries complained of. He said that that accident happened over on the defendant's left-hand side of the road.

The defendant's story is somewhat different.
30 When I speak of the plaintiff and the defendant I mean the plaintiff and the plaintiff's witnesses and the defendant and the defendant's witnesses. And yet all of the stories are not exact by the witnesses on either side of the case. There are some things that some say or testify to that seem to be a little different from what others have testified to.

Charge

Now, the defendant said that he made this turn out of the golf club with his friend and the three caddies, and swung into the westerly, middle westerly lane and traveled south; that this motorcycle of the plaintiff cut in front of him, about twenty-five feet in front of him, and traveled south; that there was a woman driving a car ahead; that he swung behind her finally, and that she came to a sudden stop; that there was no signal and no warning; that he, the defendant, swung to the left into his middle westerly aisle, where he had a right to swing; that the plaintiff made a short turn; that no signal had been given so far as he could hear, he saw nothing; that the motorcycle cut toward him, I suppose at somewhat of an angle; and that the right front lamp came in contact with the motorcycle; and that he was not traveling at an excessive rate of speed. He claims he was traveling about twenty-five, perhaps thirty miles per hour.

Of course, this is open country, and I believe the Traffic Act provides for a speed of about thirty-five miles an hour, perhaps it is forty; I don't know. In any event, he said it was twenty-five to thirty, which, of course, is different from the story of the plaintiff.

In other words, there is a conflict in the testimony as to the rate of speed at which the defendant was traveling. There is also a conflict in the testimony as to which side of the road the accident happened on and whether the defendant stayed on his side of the road or went over to the other side of the road, and also the direction in which the motorcycle appeared to be facing at the time of the accident; the plaintiff claiming his motorcycle was standing still

Charge

and the defendant claiming it was on an angle coming back somewhat in the direction of Pompton so that his right head-light and the right part of the bumper struck the motorcycle.

10 The defendant said that the motorcycle was a distance of about six feet and the plaintiff's body about seven to eight feet from the defendant's automobile after the accident, instead of the distances mentioned by the plaintiff.

There is testimony in the evidence of a boy by the name of Wasylyk, for the defendant, and there is a statement read to him of what he had said previously. That statement has been offered in evidence, and the purpose of offering that statement is to affect the weight that you can give to that boy's testimony.

20 Now, you see, from all of the conflicting evidence in the case it is the plaintiff's claim that the defendant was negligent and that his negligence caused these injuries. And the defendant's claim is that he was not guilty of negligence, but even though he was guilty of negligence the plaintiff was guilty of contributory negligence which prevents him from recovering a verdict in this case.

30 The burden of proof is upon the plaintiff to satisfy you by a fair preponderance of the testimony that the defendant was negligent in the operation and control of his car at the time of and just prior to the happening of the accident, and that means by the greater and weightier evidence, it means by the more convincing testimony. If you find the testimony on that question is evenly balanced or preponderates in favor of the defendant, your verdict must be in

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Charge

favor of the defendant and against the plaintiff, no cause of action.

As I told you, the defendant says that the plaintiff was guilty of contributory negligence which bars a recovery by him in this case. In other words, he claims that the plaintiff made a turn, a sudden turn, and swung over, stopping the car ahead of the defendant, causing the defendant to turn left, and that the plaintiff then swung back on an angle and came in contact with his car while he was on his side of the road, and therefore the defendant claims the plaintiff was guilty of negligence in the operation and control of his motorcycle at the time of the happening of the accident. And, of course, if you find that the plaintiff was guilty of any act of negligence which directly contributed to this accident or was guilty of any lack of ordinary care on his part, whether the act is an active one or an omission to do what he ought to have done under the circumstances, and you find that such lack of care, act, or omission contributed to the accident, without which the accident would not have happened, then you cannot render a verdict in favor of the plaintiff, but your verdict must be in favor of the defendant and against the plaintiff, no cause for action. 10 20

The burden of proving contributory negligence is upon the defendant, to prove it by a fair preponderance of the testimony.

Now, if you find that the plaintiff has sustained the burden by a fair preponderance of the testimony that the defendant was negligent in the operation and control of his car at that time and that that negligence was the proximate and natural cause of the accident and injuries, and that the plaintiff was 30

Charge

not guilty of contributory negligence, you would come to the question of the plaintiff's damages. And he would be entitled to such sum as you believe to be fair and reasonable for the bodily injuries sustained. The testimony is that there was a fracture of both bones of the leg below the knee and that it was a compound fracture. I think the plaintiff said that part of one of the bones was sticking through
10 his trousers after the accident. The testimony further is that he was taken to the hospital, and I think was there for a period of about six weeks or two months; that they did not set the fracture until the third day. I think the doctor said osteomyelitis set it, which is an inflammation of the bone, and affected the bone in such a way that it was infected and caused an opening of this wound, and I think there was an opening of it, because of this infection, two or three times, perhaps more. You will remember
20 what the testimony was on that score. I think Dr. DeYoe said that it finally healed and has been healed for a month or more. You will remember, also, what the testimony is in that respect.

There is also testimony that there were lacerations of both arms, which are now healed; that there were two small holes in the shoulder, which are now healed; and lacerations of the right ankle, which have healed but which have left a two-inch scar; that for six weeks to two months the leg was in a
30 plaster cast; that after that period the plaintiff was on crutches; and I believe the testimony is that there is a one-half inch shortening of that leg.

So you take into consideration, if you find for the plaintiff, the nature, extent, and probable

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Charge

of those bodily injuries in fixing what would be a fair and reasonable sum for that item of damage.

The plaintiff is also entitled to fair and reasonable compensation for the pain and suffering endured and undergone as the result of the happening of this accident, and such pain and suffering as he may undergo in the future, if any, again taking into consideration the nature, extent, and probable duration of those injuries. 10

He is entitled to reasonable compensation for the hospital bill. The testimony to that effect was that the amount of \$342 is owing to the hospital. He is also entitled to reasonable compensation for the loss of earnings. The plaintiff said he was earning ninety dollars a month and was out of work for a period of five and a half months, which would be an item of \$495. He paid for bandages and medicine, in an endeavor to be cured of these injuries, the sum of fifty dollars. 20

He is also entitled to fair and reasonable compensation for the damage done to the motorcycle as the result of the accident, if you find in his favor. And the testimony, as I recall it, is that the value of the motorcycle before the accident was \$390 and after the accident \$50, making a difference of \$340. Now, those various items total, \$342, \$495, and \$340—make a total of \$1,177. I believe there is testimony that they are the fair and reasonable amounts. It is for you to say from 30 the evidence as you have it.

So if you find in favor of the plaintiff and against the defendant in this case you will render a one-lump-sum-verdict in money for the bodily

Charge

injuries, the pain and suffering, and these items that I have given you. In other words, you put them all together, if you find for the plaintiff in this case, and render a one-lump-sum verdict in favor of the plaintiff and against the defendant. If you find in favor of the defendant and against the plaintiff, then you bring in a verdict in favor of the defendant and against the plaintiff, no
10 cause for action.

Now, you must determine what the truth of the matter is. You are the sole judges of all of the facts in the case, and if a witness's testimony is partly false you disregard it if you believe it is partly false; if it is partly true and you so believe, then you follow the part that is true; and if it is entirely true in your opinion then you follow it entirely; if you believe it is entirely false you disregard it entirely. So, you see, the matter
20 is entirely up to you on all of these disputed questions of fact to determine just what the truth of the matter is.

If you find for the plaintiff it is in one lump sum for the various items I have given you, bodily injuries, pain and suffering, hospital bills, loss of earnings, bandages and medicine, and the damage to the motorcycle.

Now, take the case, give it your careful consideration, and render a verdict that will square
30 with the evidence as you have it.

Let the jury retire.

(There were no exceptions taken to the charge of the Court by either counsel.)

Postea and Judgment

(Filed January 22, 1932)

POSTEA AND JUDGMENT

The case was tried before Judge William B. Mackay with a jury at the Passaic Circuit on Monday, January 18, 1932.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for Seven Thousand Dollars (\$7000.00). 10

Whereupon it is adjudged that the plaintiff Alvin Van Der Byl do recover of the said defendant William Schepp the sum of Seven Thousand Dollars damages together with his costs which have \$7000.00 been taxed at the sum of seventy-
 73.41 three dollars and forty-one cents making in the whole the sum of seven thousand
 \$7073.41 and seventy-three dollars and forty-one cents.

Judgment signed and entered January 22, 1932. 20
 Wm. S. Gummere,
 C. J.

Notice of Appeal and Grounds

(Filed February 2, 1932)

NOTICE OF APPEAL AND GROUNDS

To

Peter Hofstra, Esq.,
Attorney of Plaintiff,
152 Market Street,
Paterson, N. J.

10 Or to Whom It May Concern:
Sir:

Please take notice that the defendant in the above entitled cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following ground, to wit: the trial Court erroneously refused to order a non-suit against the plaintiff and in favor of the defendant at the close of the plaintiff's case when
20 moved so to do by counsel of defendant, for the reason that the plaintiff had been guilty of contributory negligence.

Respectfully submitted,

Bernard L. Stafford,
Attorney of Defendant.

Service acknowledged January 22, 1932.

Peter Hofstra,
Attorney of Plaintiff.

Exhibit P-2

EXHIBIT P-2

Stanley Wasyk, 14 Jackson St., Passaic, N. J. I was riding with Dr. Schepp. I was employed at the North Jersey Country Club as a caddy. I was sitting in the middle in the rear between two other caddies. I don't know the other caddies' names. When I first saw the motorcycles they were 25 ft. to 30 ft. in front of us proceeding at the same speed as we were and near two gas stations near the first bend coming from the country club. We were riding the first lane on the curb all the way from the club at a rate of 25 miles per hour. We were riding the first lane on the curb and were about half way between the first bend coming from the club and where the accident occurred, when one of the rider's hat blew off. The hat was a dark tammy, I think. The motorcycle was traveling toward Paterson at the time. 10

The motorcycle driver turned to get his hat. At the time he was the same distance, maybe a little less. The motorcycle which got hit was about on the line between the first and second lanes, on the right hand side going to Paterson. Dr. Schepp tried to pull in toward the curb to avoid the accident. 20

As soon as the motorcycle turned the Doctor jammed on his brakes. The motorcycle was about 10 ft. to 15 ft. in front of the front of the car 30 when it turned. As soon as he turned the Doctor put on his brakes and turned to the curb. We skidded the 12 ft. and hit the motorcycle with the left front side of the car. The accident happened between 4 and 6 o'clock in the afternoon on Satur-

Exhibit P-2

day, in August, the latter part of August, (I had just finished summer school).

There were no cars in front of Dr. Schepp, there was one in front of the motorcycles about a block or three quarters ahead as I judge.

10 The motorcycle was pulling in to the right from the line between the first and second lanes on the right side of road to turn around and the car hit the cycle on the right side. The motorcycle was thrown towards the left side of the road. The rider's right leg was injured and bleeding, there was a hole in his pants through which it was gushing.

20 There was a woman driving a car at the accident, she was probably in our rear as she was neither on the left nor right of us. Traffic was heavy on the other side of the road, light on our side especially in front in which direction I was naturally looking. The accident happened a little before the stone guard tower with a wooden top on the right of the road. The rider was put in the auto of Dr. Schepp and rushed to the hospital. Dr. Giger, Dr. Schepp, the rider and I were in the car at the time of the riding to the hospital.

I have read and testify that these two sheets are a correct testimony of the accident.

Stan Wasylyk.

New Jersey Court of Errors and Appeals

ALVIN EDMUND VAN DER BYL,
Plaintiff-Respondent,

vs.

WILLIAM SCHEPP,
Defendant-Appellant.

Action at Law.

On Appeal
from New
Jersey
Supreme
Court.

BRIEF FOR DEFENDANT-APPELLANT.

The Facts.

This is an appeal by the defendant-appellant (hereinafter referred to as defendant) from a final judgment recovered in favor of the plaintiff-respondent (hereinafter referred to as plaintiff) in the sum of Seven thousand (\$7,000.00) Dollars. The facts arise out of an automobile collision.

On August 30th, 1930 plaintiff, while operating his motorcycle on a public highway, known and designated as the Paterson-Hamburgh Turnpike, situate in the Township of Wayne, County of Passaic and State of New Jersey, came in contact with an automobile owned and operated by the defendant, as a result of which contact plaintiff sustained injuries to his person and damages to his motorcycle.

The Paterson-Hamburgh Turnpike, at the place of contact, consisted of four traffic lanes, each

about 10 feet wide; running in a general northerly and southerly direction.

Plaintiff was operating his motorcycle in a general northerly direction, between 5:20 and 5:40 P. M. (Case, p. 9, line 23). He was riding 20 or 25 miles an hour (Case, p. 27, line 22) when his cap blew off. (Case, p. 10, line 8). He continued in a northerly direction and signalled his friend (Case, p. 10, line 10) who was also riding a motorcycle 250 feet ahead (Case, p. 28, line 12). Plaintiff then lessened the speed of his motorcycle to 3 or 4 miles an hour (Case, p. 32, line 9) and made a left turn on the highway to return to the spot where his cap had fallen (Case, p. 10, lines 1 to 14). As he made his first left turn he noticed two cars 250 or 300 feet away (Case, p. 32, lines 14 to 22). The motorcycle and the two cars then travelled in a southerly direction along the said highway. The two cars were the same two cars involved in the collision (Case, p. 33, lines 1 to 14) and both cars were travelling about 40 miles an hour (Case, p. 33, lines 19 and 20).

After making this left turn, plaintiff travelled southerly at a speed of 30 or 35 miles an hour (Case, p. 36, line 9).

Plaintiff knew the two cars were in back of him (Case, p. 44, line 30); when plaintiff reached a spot 5 feet beyond his cap (Case, p. 41, line 29) he turned and noticed a car 100 feet in back of him (Case, p. 11, line 6), coming in his direction at a speed of 45 miles an hour (Case, p. 34, line 14). He gave a signal with his left hand that he was going to turn around (Case, p. 11, line 10), made a left-hand turn at 5 miles an hour (Case, p. 34, line 32), reached his cap when he saw the second car 30 feet away (Case, p. 11, line 28) coming toward him at 50 miles an hour (Case, p. 15, line 17) passing the first car (Case, p. 12, line 2).

Plaintiff and his motorcycle were struck on the left side by the front of the second car and as a result thereof received his alleged injuries.

At the close of plaintiff's case defendant moved for a non-suit on the ground of contributory negligence on the part of the plaintiff, and that the said contributory negligence of the plaintiff was the proximate cause of his own injuries. The trial judge denied the motion and allowed defendant an exception to the court's ruling.

ARGUMENT.

POINT I.

The trial judge erred in refusing to grant a non-suit on the ground that the negligence of the plaintiff contributed to, and was the proximate cause of his own injuries.

At the close of plaintiff's case the following facts were undisputed.

When plaintiff made his first left turn he had knowledge that he was making a turn in front of two automobiles (Case, p. 32, lines 17 to 22), which automobiles were going 40 miles an hour (Case, p. 33, lines 17 to 20).

Plaintiff, after making his first left turn, proceeded in a southerly direction at a speed of 30 or 35 miles an hour (Case, p. 36, lines 3 to 9).

Plaintiff knew the same two automobiles were in the second lane in back of him (Case, p. 32, lines 30 to 32) (Case, p. 44, lines 22 to 30).

These two automobiles were the same two automobiles involved in the collision (Case, p. 33, lines 1 to 4).

Plaintiff rode 5 feet beyond the spot where his

cap was in the roadway (Case, p. 4, lines 14 to 16) (Case, p. 42, lines 23 and 24). He turned around and noticed a car about 100 feet in back of him (Case, p. 11, lines 4 to 7) (Case, p. 34, lines 24 to 28). This car was going 45 miles an hour (Case, p. 34, lines 12 to 17); nevertheless plaintiff signalled with his left hand and made a left turn on the highway (Case, p. 11, lines 8 to 10). As he reached his cap he saw the second automobile 30 feet away from him riding toward him (Case, p. 11, lines 24 to 28) at a speed of 50 miles an hour (Case, p. 15, lines 16 and 17) (Case, p. 33, lines 33 and 34) (Case, p. 34, lines 1 and 2), attempting to pass the first automobile which was going 45 miles an hour (Case, p. 34, lines 1 to 18).

The second car, owned and operated by the defendant, struck the plaintiff and his motorcycle on the left side.

The testimony of Charles Henry Willis, a witness testifying for the plaintiff, was as follows:

After plaintiff made his first left turn witness turned his motorcycle around to follow plaintiff; in so doing he followed the two cars in back of plaintiff. Plaintiff was in the first lane, the two cars following him in the second lane, and witness followed in the first lane (Case, p. 53, lines 1 to 24); both automobiles were going 40 miles an hour (Case, p. 71, lines 4 to 10); witness followed in the rear (Case, p. 71, lines 15 to 19) at a speed of 40 miles an hour (Case, p. 71, lines 21 to 26); the second car was 20 or 25 feet in back of the first car (Case, p. 74, lines 26 to 31); witness saw plaintiff look back at the two cars 100 feet in his rear (Case, p. 76, lines 5 to 9). Plaintiff then made a left turn in front of the first car, which was 100 feet away (Case, p. 75, lines 14 to 22). The second car attempted to pass the first car 30 feet from the place where the accident happened

(Case, p. 78, lines 20 to 30); the second car was going 50 miles an hour (Case, p. 78, lines 3 to 6); the second car never passed the first car (Case, p. 78, lines 5 to 9); the second car then collided with the plaintiff on his motorcycle.

The following questions were asked by the court and answers were given by the plaintiff (Case, p. 34, lines 9 to 37):

Q. How fast was the other car going? A. I couldn't say, your Honor. He was passing the other car.

Q. Well, how fast was the other one going? You saw them both. Give us your best judgment, just before the accident. A. About forty-five miles an hour.

Q. A woman driving it? A. I don't know, your Honor.

Q. You didn't notice the driver? A. No, sir.

Q. How far in back of you was she, or was that driver when you made that last turn to go and get your hat? A. About a hundred feet, your Honor.

Q. A hundred feet in back of you? A. Yes, sir.

Q. And you had slowed down to five miles an hour? A. Yes, sir.

Q. And you made a left turn with a car in back of you? A. Yes, sir.

Q. Going forty-five miles an hour? A. Yes, sir.

Q. Is that right? A. Yes, sir.

The testimony of the plaintiff and his eye-witness, Charles Henry Willis, shows conclusively that the plaintiff had full knowledge that both cars were following in his rear, had full knowledge of the speed of both cars and knew both cars were but 100 feet away from him when he made his second left turn and yet, with all this knowledge,

heedlessly proceeded in the face of danger and brought upon himself his own misfortune.

Under the above facts we submit that not only is the inference of negligence on the part of the plaintiff irresistibly manifest, but it is equally manifest that but for that negligence the accident could not have occurred. The rights of the parties on the highway were equal, and the fundamental duty of using reasonable care in operating a motorcycle and an automobile rested upon both the plaintiff and the defendant. While the speed of the defendant's automobile might be considered negligence on the part of the defendant, on the other hand, there was conclusive evidence of the failure of the plaintiff to use that ordinary degree of care which, if it had been exercised, would have saved him from the untoward consequences which resulted.

Sharpe vs. Public Service Ry. Co., 103 N. J. L. at page 583.

Upon the above facts it clearly appeared that negligence on the part of the plaintiff did exist, and that it had a causal relation to the accident, and the question therefore became one of law for the court.

New Jersey Express Co. vs. Nichols, 33 N. J. L. at page 434.

Salvatore vs. Feigenspan, 1 N. J. Misc., at page 541.

If obstacles temporarily intervene to prevent observation, reasonable prudence would dictate delay until such observation as is requisite has been made.

Newark Passenger Railway Co. vs. Black, 55 N. J. L. page 605, at page 612.

A non-suit is justified when the contributory negligence of the plaintiff clearly appears, conclusively as a fact, or by necessary exclusive evidence from the plaintiff's evidence.

Brewster vs. N. Y. Central R. R. Co., 80
N. J. L., page 447, at page 451.

Conclusion.

For the reasons above it is respectfully submitted that the action of the trial court in refusing to grant defendant's motion for a non-suit was erroneous and that therefore the judgment entered on the verdict of the jury should be reversed and a new trial granted.

Respectfully submitted,

BERNARD L. STAFFORD,
Attorney for and of Counsel
with Defendant-Appellant.

New Jersey Court of Errors and Appeals

Alvin Edmund Van Der Byl, Plaintiff-Respondent, vs. William Schepp, Defendant-Appellant.	} Action at Law. On Appeal from New Jersey Supreme Court.
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Brief on Behalf of Plaintiff-Respondent

STATEMENT OF FACTS

Plaintiff recovered a judgment against the defendant for the sum of \$7,000.00 as the result of serious injuries received as the result of being run down by defendant's automobile. The accident occurred on the Paterson-Hamburgh Turnpike, in the Township of Wayne, County of Passaic and State of New Jersey. This highway travels in a northerly and southerly direction, starting from Paterson at the southerly end and proceeding north through Pompton Lakes and on. The road was a four lane concrete road, each lane being ten feet wide and distinctly marked.

On the afternoon of August 30th, 1930, plaintiff and a companion, by the name of Charles Willis, were out riding their motorcycles on this highway. They had left Paterson and were proceeding north towards Pompton Lakes, Willis riding first, and the plaintiff about 200 feet behind him and both travelling on the most easterly lane. While thus riding, the plaintiff's hat blew off and

fell to the ground, near the junction of the easterly lane and the lane adjoining it. Plaintiff signalled to his companion ahead, and both reversed to ride back.

At this instant there were proceeding south on the lane adjoining the most westerly lane two cars, one behind the other. Plaintiff crossed in front of these cars and proceeded south on the most westerly lane. As he reached a point opposite where his hat lay, he put out his hand and slowly crossed in front of the oncoming cars at a speed of about four miles an hour. At this time the nearest car was about 100 feet away. He crossed the second lane, that is the lane adjoining the most westerly lane in front of these cars, and had almost passed across the next lane, that is the lane adjoining the most easterly lane, when the second of the two approaching cars, at a point of about 30 feet back, suddenly jumped out of line and crossed over in a diagonal fashion towards where plaintiff was picking up his hat and struck him with terrific force. Willis, who was traveling behind the cars, estimated the speed at the moment of impact at about fifty miles an hour, and the point of contact, the junction of the easterly lane, and lane adjoining it. The impact was so strong that plaintiff was hurled a distance of 30 or 35 feet south.

This story was testified to by the plaintiff and strongly corroborated by his companion Willis, and in many respects by other witnesses. This accident would not have happened if the defendant's car had not left the line of travel. We may add at

the point of contact there was a crest of a hill to which the parties had been travelling. The reason the defendant pulled out of line, as indicated, was for the purpose of passing the car ahead, at least this apparently was the reason, and if so, the act of the defendant driver was in violation of the motor vehicle law.

It should be borne in mind that when plaintiff started across the second lane in front of the oncoming cars, he had only 10 feet to travel, and the first car was 100 feet away.

POINT 1

THE SOLE POINT UPON WHICH DEFENDANT SEEKS TO OBTAIN A REVERSAL OF THE JUDGMENT WAS THE REFUSAL OF THE TRIAL JUDGE TO GRANT A NON-SUIT ON THE GROUND OF CONTRIBUTORY NEGLIGENCE.

No motion was made on the theory that the defendant was not guilty of negligence, and no motion of any kind was made at the close of the whole case. The motion is set out in full at page 108. The Court held that the question of contributory negligence was one for the jury. In this ruling we contend that the Court was correct.

The plaintiff, the first witness, whose testimony begins at page 6, described the road as running north and south, Paterson being at the southerly end and Pompton at the northerly end. (P. 8, l. 1-10.) That at the point where the accident happened there was a grade, and this accident hap-

pened at the summit of the grade (P. 8, l. 15-30). The highway consisted of four lanes, each of about 10 feet in width and the highway paved with concrete north of the summit and with asphalt south of the summit (P. 9, l. 1-15).

He further testified that the grade was such that at a point of 100 feet back from the summit of the grade, a person could not see beyond 100 feet (P. 8, l. 23-30). He said that he and his companion were traveling north towards Pompton (P. 9, l. 29). He then described the accident as follows:

“As I reached the brow of the hill, which is the first hill after you turn the corner by the cross-roads, my hat blew off, and my friend was riding with me, and he was 200 or 300 feet in front of me. I closed up the gap a little bit and blew my horn and motioned to him that my hat fell off and he got the signal right away, of course, so I turned around there. I saw some cars coming about two or three hundred feet away north, coming in my—coming in the direction of Paterson.

Q. When you say north, that would be towards Pompton? A. Yes, sir.

Q. And about two or three hundred feet north of you? A. Yes, sir.

Q. As you turned? A. Yes, sir.

Q. Go on? A. That gave me plenty of time to turn around.*****

Q. In what lane did you continue back?

A. I was riding in the most westerly lane. (P. 10 entire.) Witness continued:

Q. That could be going back towards Paterson, the right-hand lane? A. Yes, sir. (P. 11 at top.)

Again: I reached the cap, and when I looked up—I don't know what made me look up—but just at that time I looked up and I saw this car riding towards me, about thirty feet away, I guess, and it had been riding in the second lane, that is, the center easterly lane, and before I could do anything it was on top of me.

Q. What if anything, was it doing with reference to the car that you had first seen, when you looked up and saw it about thirty feet or so away? A. It was passing that car.

Q. Now, when your hat blew off upon what lane were you travelling then? A. I was in the second lane.

Q. And where did your hat fall? Where was your hat lying during this time? A. Practically right on the summit of the hill.

Q. With reference to the most easterly lane and the second easterly lane where was your cap or hat? A. It laid about on the dividing line between the easterly lane, that is, the right-hand lane, and the lane next to it. (P. 11 at botton; P. 1-15.)"

Witness stated that when he started to make the turn, it was at the crest of the hill, the situation was that he was travelling in the most westerly lane; that the approaching cars were in the lane

next to him and called the center westerly lane; that when he made the turn the nearest car was about 100 feet away (P. 13, l. 5-20). He crossed the second lane at three or four miles an hour; that he had crossed the lane in front of the approaching cars, and at the point of picking up his cap when struck (P. 13, l. 25 to bottom). The cap as pointed out before lay on the dividing line between the easterly lane and the one next to it. This was the situation when the defendant car suddenly jumped out of line about 30 feet back, traveled across the second westerly lane and struck plaintiff.

CHARLES WILLIS, whose testimony begins at page 51, was the friend who had gone on the trip with the plaintiff. He testified to hearing plaintiff blow his horn and turning saw that he had lost his hat, and was motioning for him to go back. At that time plaintiff was about 200 or 250 feet back of him, while 150 north were two cars approaching. Both men turned and proceeded back south towards Paterson. The procession then being, plaintiff riding the most westerly lane, the two cars following in the lane adjoining this and witness behind the two cars and in the most westerly lane, the lane in which the plaintiff was travelling (P. 53, entire).

When plaintiff reached the top of the hill, witness saw him turn around and look and put his left hand out to signal that he was going to turn, and then he swung around to the left. The two cars in the second lane from the right were just ap-

proaching the top of the hill. As plaintiff was doing this, the second car attempted to pass the first one. At this instant plaintiff was on the dividing line of the most easterly lane and the one adjoining it, picking up his cap. The car that jumped out of line and passed the first car and was in the opinion of witness going about fifty miles an hour. When it struck plaintiff witness said that half of the machine was on the third lane from the right, and the other half on the fourth lane and pointed on an angle, that is to say, the car was pointed in a diagonal position straggling the dividing line of the most easterly lane and the one adjoining it (P. 54, entire). As an indication of the severity of the impact, the motorcycle was thrown fifteen or twenty feet, and the plaintiff fifteen feet beyond the motorcycle (P. 55, at top).

Witness testified that the defendant car skidded in the third lane 15 or 20 feet upon striking the plaintiff (P. 57, l. 25-30). After the accident witness pointed out to defendant these skid marks (P. 59 at bottom), and asked for his explanation of the accident. Witness said he admitted these skid marks were his, and gave his excuse for pulling to the left, that there were a lot of bicycles on the right hand side of the road (P. 60). This is not a fact, as no other witness testified to the presence of bicycles.

JOSEPH S. HOFFMAN, whose testimony begins at page 83, was working in the fields nearby, and saw the motorcycles going north towards Pompton and then going back. Then he heard a crash and looking up saw that the automobile which had

caused the damage was facing south towards Patterson and in the third lane from the westerly side (P. 85, l. 1-10). He too saw the skid marks and measured them and said they were 15 feet long in the road and 12 feet from the left hand curb (P. 86, l. 15-20), thus making the skid marks near the dividing line of the most easterly lane, and the one adjoining it.

This witness as to the accident itself said that he saw plaintiff make the left hand turn, and that he did not observe any other cars in sight then. When he heard the crash he also saw the impact at the same instant (P. 87, l. 10), and at that instant the position of the motorcycle was that it was facing Pompton Lakes, that is north on the easterly side of the road about ten feet from the easterly curb; that it was the front bumper of the automobile which struck the motorcycle a little bit to the left side of the bumper (P. 87, l. 10-22).

FRANK W. SPEER, whose testimony begins at page 89, did not see the accident, but arrived there ten minutes of six. The accident happened between 5:20 and 5:30. He testified as to the skid marks; they measured about 15 feet and were in the second easterly lane, and exactly 12 feet from the easterly curb. Thus showing that defendant had not only passed out of his lane, which would have been the third lane from the easterly curb, but had almost completely crossed the lane adjoining on his left (P. 89, l. 5-35). He also noticed broken glass, from the head light and a broken rim from defendant's left headlight (P. 89, at bottom; P. 90, at top).

In a conversation witness had with the defendant, defendant said he didn't know how the accident had happened and admitted that the skid marks in question were his. Q. "Did he or not admit those were his skid marks?" A. "Yes, sir, he said that Al had no business to stay in the middle of the road like that. I said, 'He wasn't in the middle of the road; he was on the right-hand side.'" I said, "If you had been on your right-hand side, no matter what he was doing, you would not have hit him." (P. 90, l. 25-35.)

WILLIAM R. WATSON, whose testimony begins at page 102, did not see the accident, but was on the scene of the accident a few minutes after. He saw the skid marks, and said they were 12 feet off the left hand gutter, which would be the easterly side, and estimated their length at about 15 feet. He picked up the head-light rim of defendant's car (P. 103, l. 18-33). This witness had a conversation with defendant and when asked how it happened defendant answered:

"He was asked what happened and why he happened to be at the left-hand side of the road, and he said, There was a bunch of bicycles coming up there, and that was the reason he swerved. And he asked him if they were his skid marks and he said, 'Yes.' And then we asked him was he on the left-hand side of the road, and he said, 'No,' and we told him, we says, 'If they are your skid marks, you surely must have been on the left-hand side of the road.' He

says, 'No, I really don't know how it happened.' (P. 104, l. 8-20.)"

This was the plaintiff's case.

To summarize this testimony, it is difficult to see where contributory negligence can be spelled out. Concededly, plaintiff had a right to be where he was at the time he started to make the turn, viz., on the extreme right west lane. His testimony, that he put out his hand indicating that he would be making a turn across the road is corroborated and uncontradicted. In doing this he was thus obeying the law. He then successfully passed out of the westerly lane in the second westerly lane in which the cars were approaching, and successfully crossed this lane into the third lane, counting from the west. Had the two cars traveling south remained in the second lane, there would have been no accident.

We are not dealing here with a case of the plaintiff crossing into the second lane and struck by the on coming car; it should be borne in mind that he had cleared the lane in which these cars were traveling. Further, he had practically crossed the third lane and had turned his vehicle north to pick up his hat. At this instant the driver of the second car, probably because his vision was obscured by the car in front of him, pulled out to pass the car ahead, and was upon plaintiff before he had time to do anything. Surely this was negligence on the part of the defendant. The driver of the first car, Mrs. Bressler, testified that at the time of the accident she was going about twenty-

five miles an hour (P. 110, l. 33). The testimony of the defendant and his corroborating witness is that the defendant's car was going forty-five or fifty miles an hour. It can thus be readily seen that defendant was anxious to pass the slower car in front. He was close behind and was in fact so much so that according to the plaintiff and his corroborating witness, from the time he jumped from his line and moved over into the third lane to pass the first car, was a distance of only about 30 feet. In the fraction of the second that would be consumed in this maneuver, plaintiff could have done nothing to save himself. The skid marks of 15 feet point conclusively to speed on the part of the defendant, and the fact that he saw that he was about to strike the plaintiff.

No contributory negligence can be charged in this case, unless it be asserted as a matter of law that plaintiff had no right to be in the third lane facing north, that is to say, he had no right to be on the right hand side of the road traveling as any other vehicle would. The plaintiff in a position in which he was had the right to assume that his rights on the road would be respected by other vehicles. Finally, it should be borne in mind, that the defendant was violating the Traffic Act in attempting to pass a car while up a hill. This of course only incidentally affects the case in the sense that plaintiff had the right to assume that defendant would not do this thing.

To hold that plaintiff was guilty of contributory negligence it would be necessary to go to the extreme that plaintiff had no right to be on the road.

In considering the law in this case, it should be borne in mind, (1) that the motion for a non-suit on the ground of contributory negligence, upon which appellant's point is based, that in considering the evidence, every inference should be in favor of the plaintiff; (2) that the burden to prove contributory negligence is always upon the defendant.

POINT 2

THERE IS NO MERIT IN THE APPEAL.

As we have pointed out the sole point is that the Court should have non-suited the plaintiff because of the alleged contributory negligence.

This Court held in the case of *Baker v. Fogg & Hires Co.*, 95 N. J. Law, P. 230 that:

"Contributory negligence is a matter of defense under our present Practice Act and not a ground for taking the case away from the jury upon the plaintiff's proofs."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that there is no merit in the single point urged on the appeal, that the defendant was guilty of contributory negligence.

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May Term.

