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New Jersey
Court of Errors and Appeals

Notice and Grounds of Appeal. 10

Filed May 8, 1926.

ESSEX COUNTY CIRCUIT COURT

MARIA BORA and FRANK W. BORA, her husband, vs. YELLOW CAB Co. a corporation, Defendant.	}	Action at Law	20
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To Howe & Davis, Esqs., Attorneys of Plaintiffs:

Take Notice that the defendant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgments entered in this case on the following grounds: 30

1. That the trial court refused to grant a motion for a judgment of nonsuit made by the defendant whereas said court should have granted said motion.
2. That the trial court on the refusal to grant the motion to the defendant for a judgment of nonsuit made certain remarks as his reasons therefor in the presence of the jury which said 40

Summons

remarks should not have been made to which remarks the defendant took exception.

10 3. That the trial court over the objection of the defendant admitted testimony of the plaintiff which was inadmissible to which rulings the defendant took exception.

4. That the trial court refused to grant a motion for a direction of a verdict in favor of the defendant and against the plaintiffs whereas said court should have granted said motion.

Yours respectfully,

E. R. McGLYNN,
Attorney of Defendant.

20

Summons.

Filed May 1, 1925.

The State of New Jersey to Yellow Cab Co.

30 You are summoned to answer the annexed complaint of Marie Bora and
(Seal) Frank W. Bora, her Husband, in an
action at law in the Essex County
Circuit Court. And take notice that unless you
file your answer in said complaint with the Clerk
of the said Essex County Circuit Court, at New-
ark, New Jersey, within Twenty days, after the
service upon you of this writ, and the annexed
40 complaint, the plaintiffs may proceed in this suit,
and judgment may be entered against you.

Complaint

Witness Nelson Y. Dungan, Judge of the Essex County Circuit Court at Newark, New Jersey, this 28th day of April, Nineteen Hundred and Twenty-five.

JOHN H. SCOTT,
Clerk. 10

HOWE & DAVIS,
Attorneys.

Complaint.

Filed May 1, 1925.

ESSEX COUNTY CIRCUIT COURT 20

MARIE BORA and FRANK W. BORA, her husband, <div style="text-align: right;">Plaintiffs,</div> <div style="text-align: center;">vs.</div> YELLOW CAB Co., a corporation of the State of New Jersey, Defendant.	}	Action at Law	30
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FIRST COUNT:

The plaintiff, Maria Bora, residing at East Orange Essex County, New Jersey, complains of the defendant as follows:

I. On March 14, 1924, the plaintiff, Maria Bora, proceeding in a northerly direction was crossing Park Avenue in East Orange aforesaid 40

Complaint

and when she had almost reached the northerly side of Park Avenue at the westerly side of Grove Street she was run into by one of the automobile taxicabs of the defendant proceeding in a westerly direction along Park Avenue, and negligently
10 driven by one of the agents or servants of the defendant.

2. The negligence of the defendant consisted in driving said taxicab at an excessively high rate of speed and approaching the said Marie Bora without blowing a horn or giving warning of any other kind, and in driving out of the usual path of traffic and almost up to the northerly curb line of Park Avenue without any necessity for so doing.
20

3. By reason of said collision plaintiff, Maria Bora, was thrown to the ground and her right knee was seriously injured and bruised and swollen, and her ankles hips, limbs, arms, and body were bruised and discolored and said plaintiff became lame and underwent great pain, suffering and loss of sleep, and will in the future be lame and undergo pain and suffering and loss of sleep and has been unable to attend to her household
30 duties and will in the future be unable to attend to her household duties.

4. Plaintiff, Marie Bora, demands as damages under this count the sum of Ten Thousand Dollars \$10,000.

SECOND COUNT:

Plaintiff, Frank W. Bora, husband as aforesaid
40 residing at East Orange, aforesaid says:

Complaint

1. He repeats the allegation of the First Count.

2. By reason of the injuries to his said wife plaintiff as aforesaid, this plaintiff, Frank W. Bora was forced to lay out and expend moneys for the caring of his wife and to employ physicians, pay for nurses, medicines and the like and for assistance in doing the household duties formerly performed by his said wife, and by reason of her injuries this plaintiff was deprived of the society and services of his said wife from the time of the accident down to the present time and will in the future likewise be deprived of such society and services and will in the future be forced to lay out and expend moneys for physicians, nurses, medicines, household assistance and the like.

3. Plaintiff, Frank W. Bora, husband as aforesaid demands as damages under this count the sum of Five Thousand Dollars (\$5,000).

HOWE & DAVIS,
Attorneys for Plaintiffs.

30

40

Answer.

Filed April 30, 1925.

ESSEX COUNTY CIRCUIT COURT

10	MARIE BORA and FRANK W. BORA her husband, vs. YELLOW CAB Co. a corporation of the State of New Jersey, Defendant.	}	Plaintiffs, Action at Law
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20 The defendant, Yellow Cab Co. a corporation of the State of New Jersey, answering the complaint says:

ANSWER TO FIRST COUNT.

1. Paragraph one, two, three and four are denied.

ANSWER TO SECOND COUNT.

30 2. Paragraph one, two and three are denied.

FIRST DEFENSE.

1. Plaintiff was guilty of contributory negligence.

2. Defendant was not guilty of any negligence.

Dated April 29, 1925.

40 JOHN A. BERNHARD,
Attorney for Defendant.

Interrogatories.

ESSEX COUNTY CIRCUIT COURT

MARIA BORA and FRANK W. BORA, her husband, Plaintiffs, vs. YELLOW CAB Co., a corporation of the State of New Jersey, Defendant.	}	Action at Law	10
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To:
 Messrs. Howe & Davis,
 Attorneys for Plaintiffs,
 282 Main St., Orange, N. J. 20

SIRS:

PLEASE TAKE NOTICE, that the defendant requires answers, under oath, to the within Interrogatories propounded of the plaintiffs, Marie Bora and Frank W. Bora in the above entitled cause, within ten days after service thereof upon you. 30

MARIE BORA:

1. What is your age and place of residence?
2. Was there anyone with you at the time of the accident? If so, please give names and addresses.
3. State explicitly the physical injuries suffered by you in the accident, for which you seek to recover damages in this suit. 40

Interrogatories

4. Did you go to a hospital after the injury complained of, and if so, what hospital and where is it located?

10 5. Were you confined to your bed by reason of the injury complained of, and if so, for how long?

6. Were you confined to your house by reason of the injury complained of, and if so, for how long?

7. Please give the name and address of the physician or physicians who attended you, when they were called, and how long their attendance continued?

20 8. Where were you at the time of their attendance, at home or in the hospital; and if they attended you in both places, how long at each?

9. Give the names and addresses of the physicians whom you intend to use as witnesses to give expert testimony at the trial of this cause.

30 10. Are you entirely cured of the injuries for which you are seeking to recover damages in this suit? If your answer to the last question is "No" then state fully and particularly in what respect you still suffer from such injuries.

FRANK W. BORA:

1. Give an itemized statement of the disbursements and losses for which you claim re-imburements in this suit.

40 2. Were you compelled to employ anybody to attend to your wife's household duties while she was incapacitated as alleged? If so, whom, giv-

Answers to Interrogatories

ing names and addresses, the period of attendance of each, and how much did it cost you?

Yours respectfully,

JOHN A. BERNHARD,
Attorney for Defendant. 10

Answers to Interrogatories.

Filed December 21, 1925.

ESSEX COUNTY CIRCUIT COURT

20

MARIE BORA and FRANK W. BORA, her husband, vs. YELLOW CAB Co., a corporation of the State of New Jersey, Defendant.	}	Plaintiff, Action at Law
--	---	--

ANSWERS OF MARIA BORA TO INTERROGATORIES. 30

1. Thirty years, 24 Franklin Place, Summit New Jersey. (133 North Maple Avenue, East Orange, N. J. at time of accident.)

2. No. There were two occupants in cab.

3. Left ankle and both hips bruised, internal lateral ligament of right knee wrenched and internal injuries to right lung. 40

Answers to Interrogatories

4. Yes. Orange Memorial Hospital (for X-ray) 188 S. Essex Ave., Orange, N. J.
Glockner Hospital and Sanitarium, Colorado Springs, Colorado
(Sometime after the accident I was confined in
10 Glockner Hospital and Sanitarium.)
5. Yes 8 weeks, March 14 to May 9th.
6. Yes 18 weeks, March 14th to July 24th, day on which the brace was removed from my leg.
7. I was attended by five different physicians from March 14th, 1925 up to the present time.
8. Partly at home and partly in hospital and
20 sanitarium. At home until June 24th, 1925 and in the Hospital and Sanitarium from then until September 3d, 1924. The rest of the time at home.
9. My attorney instructs that I am under no obligation to disclose the names of my witness.
10. No. There is still some occasional pain in my right knee and I favor it by using a sidewise motion when descending stairs. More serious
30 than this is the lesion in my right lung which showed signs of activity in an X-Ray taken shortly after the accident which were not present before. This will prevent me from doing house work for at least a six months period and will require my resting each afternoon and my retiring each night at an early hour for an indefinite period. It may even make it necessary for me to leave New Jersey, entirely and to go to some more
40 favorable climate to live.

Answers to Interrogatories

I have a housemaid, Mrs. Lillian Mann, of Summit, New Jersey, who comes in each day and helps me because I am not strong enough to do my housework. Prior to that accident I did this work without fatigue myself.

10

ANSWERS OF FRANK W. BORA.

1. Doctor bills up to date	\$36.00	
Ambulance	10.00	
X-Ray	15.00	
Stockings	2.00	
Brace	57.00	
High Shoes (special for brace)	9.50	
Medicine (including back rest and crutches)	21.17	20
Telephone Extension	3.00	
Mrs. Annie Bora's board 11 weeks	110.00	
Railroad fare, East Orange to Colorado Springs and return for Mrs. Bora	153.00	
Railroad fare East Orange to Chicago (twice myself)	176.80	
Railroad fare Chicago to Colorado Springs and return Mrs. Casey	64.60	30
Railroad fare Lawrence, Mass. to East Orange and return Mrs. Annie Bora	19.00	
Glockner Hospital and Sanitarium, June 24 to July 24	103.50	
Other doctors bills not yet rendered.		
2. It was necessary for me to bring my mother Mrs. Annie Bora, 169 Haverhill Street, Lawrence, Massachusetts, to my home for eleven weeks, from		40

Answers to Interrogatories

March 16th, to May 29th (at which time I took Mrs. Bora to her mother, Mrs. Mary Gasey, 2625 West 36th Street Chicago, Illinois). As a result of the work she did she became ill and left the train at Providence, R. I. on her way home and
 10 was treated by two doctors of Artie Center, R. I. for approximately a three months period.

Their bill which I am paying now amount to \$445. I paid my mother no salary and I estimate that the expenses of boarding her amounted to about Ten Dollars a week or a total of \$110.

HOWE & DAVIS,
 Attorneys for Plaintiffs.

20

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

Marie Bora, of full age, being duly sworn on her oath, according to law, says, that she is one of the plaintiffs in the suit in which the foregoing answer to interrogatories are made, and that she is familiar with the case and that the facts set out in the said answers and the statements made therein are true to the best of her knowledge as
 30 she verily believes.

MARIE BORA.

Subscribed and sworn to this
 16th day of December, 1925,
 before me,
 Robert P. Williams,
 A Notary Public of
 New Jersey,
 Seal.

40

Answers to Interrogatories

State of New York, }
 County of New York. } ss:

Frank W. Bora, of full age, being duly sworn on his oath, according to law, says that he is one of the plaintiffs in the suit in which the foregoing answers to interrogatories are made, and that he is familiar with the case and that the facts set out in the said answer and the statements made therein are true to the best of his knowledge as he verily believes. 10

FRANK W. BORA.

Subscribed and sworn

to this 15th day of

December, 1925,

before me, 20

Mary A. Bigelow,

A Notary Public of

New Jersey.

Affidavit of Marie Bora.

ESSEX COUNTY CIRCUIT COURT

10	MARIE BORA and FRANK W. BORA, her husband, <div style="text-align: right; padding-right: 20px;">Plaintiffs,</div>	}
	vs.	
	YELLOW CAB Co., a corporation of the State of New Jersey, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}

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

20 Marie Bora, the above-named plaintiff, being
 duly sworn according to law, on her oath says that
 Dr. L. A. Conway resides out of the State of New
 Jersey, to wit, at the City of Colorado Springs,
 in the State of Colorado, and deponent has been
 advised by her counsel that the said Dr. L. A.
 Conway is a material witness for her in the trial
 of the above-stated cause, and deponent verily
 believes she cannot safely go to the trial of the
 said cause without his, the said Dr. L. A. Con-
 30 way's, evidence.

MARIE BORA.

Subscribed and sworn to this
 2nd day of February, 1926, before me,
 Geo. V. Lum,
 Notary Public for N. J.

Rule for Commission.

ESSEX COUNTY CIRCUIT COURT

MARIE BORA and FRANK W. BORA, her husband, <div style="text-align: right;">Plaintiffs,</div> <div style="text-align: center;">vs.</div> YELLOW CAB Co., a corporation of the State of New Jersey, <div style="text-align: right;">Defendant.</div>	}	10
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Upon reading the affidavit of Marie Bora, it appears that Dr. L. A. Conway is a material witness for the trial, and that the said Dr. L. A. Conway resides in the City of Colorado Springs, County of El Paso, and State of Colorado, and that the said Marie Bora cannot safely go to trial of this cause without his evidence; It is, therefore, Ordered, that a commission issue out of and under the seal of this court, directed to N. Mark Hanna, of the City of Colorado, in the County of El Paso and State of Colorado, authorizing him, the said N. Mark Hanna, to examine *de bene esse* the said Dr. L. A. Conway, the witness above named, on oath or affirmation, upon the interrogatories annexed to said commission and to reduce such examination to writing and to return the same annexed to the said commission, on or before the 31st day of March next.

On motion of Howe & Davis, attorneys of plaintiffs.

Dated February 10, 1926.

Let this rule be entered on the minutes.

WM. A. SMITH,
Judge.

I consent to the foregoing rule.

JOHN A. BERNHARD,
Attorney of Defendant.

Commission.

New Jersey, ss:

The State of New Jersey to N. Mark
Hanna, in the City of Colorado
Seal Springs in the County of El Paso
and State of Colorado, GREETING:

10 Know Ye, that we, in confidence of your prudence
and fidelity, have appointed you, and by these
presents do give unto you, full power and au-
thority, diligently to examine Dr. L. A. Conway,
in the City of Colorado Springs, in the County
of El Paso, in the State of Colorado, upon certain
interrogatories to be exhibited to you, as well
upon the part of the said plaintiff as well as upon
20 the part of the said defendant, in a certain action
now pending in our said Essex County Circuit
Court, wherein Marie Bora and Frank W. Bora,
her husband are plaintiffs, and Yellow Cab Co.,
a corporation of the State of New Jersey is de-
fendant, in a plea of not guilty, therefore, we
command you, that at certain days and places to
be appointed by you for that purpose you cause
the said witness to come before you, and then
and there examine him upon his oath or affirma-
30 tion first taken before you, and that you do take
his examination and cause the same to be reduced
to writing and signed by said witness and your-
self, and when you have so taken such depositions
you are to send them to us in our said Essex
County Circuit Court without delay, closed up
under your seal, distinctly and plainly set to-
gether with the said interrogatories and this writ.
And we further command you before you act in
or be present at the swearing or examination of
40 any witnesses, you do take the oath of affirmation

Interrogatories

faithfully fairly and impartially to execute this commission and that you take such oath or affirmation before any person lawfully authorized to administer an oath or affirmation in the State of Colorado, where you reside.

Witness, William A. Smith, Judge of the Essex County Circuit Court, at Newark, New Jersey, this 9th day of February, A. D. 1926. 10

JOHN H. SCOTT,
Clerk.

HOWE & DAVIS,
Attorneys.

20

Interrogatories.

ESSEX COUNTY CIRCUIT COURT

MARIE BORA and FRANK W.
BORA, her husband,
Plaintiffs,

vs.

YELLOW CAB Co., a corporation
of the State of New Jersey,
Defendant.

30

Interrogatories to be administered to Dr. L. S. Conway, a witness to be produced, sworn and examined upon the part of plaintiff Maria Bora, in a certain cause now pending in the Essex County Circuit Court, between the above-named plaintiffs and the Yellow Cab Co., a corporation of the 40

Interrogatories

State of New Jersey, before N. Mark Hanna, appointed in that behalf, pursuant to a rule of the said Circuit Court made on the 10th day of February, 1926.

- 10 1. State your age, residence and occupation.
2. State your professional qualifications as a physician.
3. Do you know Marie Bora, one of the plaintiffs in this case? If so, how long have you known her, where did your acquaintance with her commence, and how frequently and for what have you attended her?
- 20 4. When and where did you first attend Mrs. Bora after March 14th, 1925? How long was she constantly under your observation since that time?
5. At the time you attended her since March 14th, 1925, for what purpose did you attend her? What was her lung condition? Give in detail her condition, noting progress or decline during the time she was under your observation. What is your opinion as to the cause of her increased pulmonary involvement at the time she was first seen
- 30 after March 14th, 1925?
6. If you have said that her health was affected by an accident which took place on March 14th, 1925, are the effects of that accident still present? If so, in what manner? Give details. Are the effects permanent or temporary? If temporary, how long are they apt to continue?
- 40 7. Had you attended her prior to March 14th, 1925, and if so, give details and all information regarding her previous condition of health.

Cross-Interrogatories by Defendant

4. Was the patient in bed when you first attended her professionally for this accident?

5. Were the injuries she alleges she received from this accident?

10 6. State in detail the dates upon which you attended her professionally.

JOHN A. BERNHARD,
Attorney of Defendant.

State of Colorado, }
County of El Paso. } ss:

Be It Remembered, that on this 18th day of February, in the year of our Lord one thousand
20 nine hundred and twenty-six at Colorado Springs, in the County of El Paso and State of Colorado, before me who am a notary public and lawfully authorized to administer oaths and affirmations, in the state and county aforesaid, personally appeared N. Mark Hanna, residing in the City of Colorado Springs, in the County of El Paso and State of Colorado, the commissioner in the within
30 Commission named, who being by me duly sworn on her oath, does say that she will faithfully, fairly and impartially execute the said Commission.

Sworn and subscribed before me the day and year above written.

MARK HANNA,
Commissioner.
(Seal)

My commission expires September 10, 1929.
40 Audrey L. Nelson,
(Seal) Notary Public within and
for El Paso County, Colorado.

Deposition of Dr. L. A. Conway.

ESSEX COUNTY CIRCUIT COURT

MARIE BORA and FRANK W. BORA, her husband, <div style="text-align: right;">Plaintiffs,</div>	} 10
<div style="text-align: center;">vs.</div> YELLOW CAB COMPANY, a corpor- ation of the State of New Jer- sey, <div style="text-align: right;">Defendant.</div>	

Be It Remembered, That on this 18th day of February, in the year of our Lord, One thousand 20
 nine hundred and twenty-six, in the office of Mc-
 Intyre & McIntyre, 109½ North Tejon Street,
 Colorado Springs, in the County of El Paso and
 State of Colorado, being the time and place ap-
 pointed by me for taking the examination of the
 witness named in the commission to which this
 schedule is annexed I, N. Mark Hanna, the com-
 missioner therein named, having first taken the
 oath required of me in this behalf, proceeded to
 examine the witness upon the interrogatories an- 30
 nexed to the said commission as signed by the
 said witness, and signed the same myself as here-
 inafter sworn that the answers he should give to
 the said interrogatories should be the truth, the
 whole truth and nothing but the truth.

Deposition of the Witness, Dr. L. A. Conway.

To the first interrogatory he says: My age
 is 31 years; my residence is Colorado Springs, 40
 Colorado; my occupation is that of physician.

Deposition of Dr. L. A. Conway

To the second interrogatory he says: I have an M. D. degree; have had two years of special hospital work; two years of special study in tuberculosis at Woodmen Sanatorium; five years of practice, devoted to specialization in tuberculosis.

10

To the third interrogatory he says: I do know Marie Bora, one of the plaintiffs in the case. I have known her since April, 1923. I first became acquainted with her in Colorado Springs. She has been under my care on three different occasions, each time for pulmonary tuberculosis.

To the fourth interrogatory he says: June, 20 1925, at Glockner Sanatorium, Colorado Springs. Since that time she was constantly under my observation from June, 1925, to September 4, 1925.

To the fifth interrogatory he says: Pulmonary tuberculosis; the upper right lung showed activity; at all times while in Colorado Springs, she showed improvement. The increased pulmonary involvement shown since the previous examination was probably due to an accident which she 30 had on March 14, 1925.

To the sixth interrogatory he says: I cannot state if the effects of the accident are still present, as I have not seen her since September, 1925. Active tuberculosis, however, cannot be closed in sixty days, ninety days, or six months. I should say that with proper treatment she should continue to improve; the effects and improvement 40 shown should be permanent with proper treatment, all depending upon her and her advisers.

Deposition of Dr. L. A. Conway

To the seventh interrogatory he says: I saw her first in April, 1923, at which time she had active tuberculosis with positive sputum; she was spitting blood at that time. She remained under my observation until December, that year, at which time her case was quiescent. She was discharged in December and returned east, coming back to Colorado Springs in June, 1924, merely to spend the summer here. She remained that year until September, 1924, during which time she was an arrested case. She was sent back east, and I next saw her in June, 1925. 10

To the eighth interrogatory he says: The only thing is this, to men doing tuberculosis work, accidents have a bearing on reactivation of an old tuberculosis. This is my reason for believing that the accident in question caused an old lesion to become active, through lowering of body resistance. 20

Cross-Interrogatory

To cross-interrogatory No. 1 he says: I have never treated Marie Bora for injuries as a result of the alleged accident. 30

To cross-interrogatory No. 2 he says: Prior to that date I had treated her professionally.

To cross-interrogatory No. 3 he says: I did not treat her with reference to this accident.

To cross-interrogatory No. 4 he says: I refer you to my answer to cross-interrogatory No. 3. 40

Deposition of Dr. L. A. Conway

To cross-interrogatory No. 5 he says: I cannot state whether the injuries alleged to have been received were from the accident or not.

10 To cross-interrogatory No. 6 he says: I first attended her professionally in April, 1923, for pulmonary tuberculosis. I attended her from that time up to December, 1923; I attended her again from June, 1924, to September, 1924; and from June, 1925, to September, 1925, in each instance for pulmonary tuberculosis.

Examination taken, reduced to writing, subscribed and sworn to this February 19, 1926.

20

L. A. CONWAY, M. D.

Mark Hanna,

Notary Public and Commissioner.

(Notarial Seal.)

My commission expires December 26, 1927.

Certificate.

ESSEX COUNTY CIRCUIT COURT

MARIE BORA and FRANK W. BORA, her husband, <p style="text-align: right;">Plaintiffs,</p>	}	10
<p style="text-align: center;">vs.</p> YELLOW CAB Co., a corporation of the State of New Jersey, <p style="text-align: right;">Defendant.</p>		

Depositions of Dr. L. A. Conway, taken before N. Mark Hanna, a commissioner appointed to take said testimony, on the 18th day of February, 1926, in the above-stated cause, by virtue of a rule of the said court made in the above-stated cause on the 10th day of February, 1926. 20

MARK HANNA,
Commissioner.

My commission expires December 26, 1927.

(Seal)

30

40

Judgment After Verdict.

ESSEX COUNTY CIRCUIT COURT

10	38034 MARIE BORA and FRANK W. BORA, her hus- band, Plaintiffs,	} Action at Law. After Verdict Judgment Entered April 21, 1926.	
	vs.		
	YELLOW CAB COMPANY, a corporation of the State of New Jersey, Defendant.	} Damage \$3500.00 " 1500.00 Costs 66.89	
			\$5066.89 Total

20 Howe & Davis, Attys. of Pltf.

Judgment after verdict in the above-entitled action was rendered on the Twenty-first day of _____, A. D. Nineteen Hundred and Twenty-six in favor of the plaintiff Marie Bora and against the defendant Yellow Cab Company, a corporation of the State of New Jersey, for the sum of Thirty-Five Hundred Dollars (\$3500.00), and also find in favor of the plaintiff Frank W. Bora and against the defendant Yellow Cab Company, a corporation of the State of New Jersey, for the sum of Fifteen Hundred Dollars (\$1500.00) damage and Sixty-six dollars and eighty-nine cents costs of suit.

Judgment entered and signed April 21, 1926.

WILLIAM S. GUMMERE,
Judge.

40 Book 101 Circuit Court Judgments, page 176.

Clerk's Certificate.

ESSEX COUNTY CLERK'S OFFICE

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

I, John H. Scott, Clerk of the Circuit Court, in
 and for the County of Essex in the State of New
 Jersey, 10

Do Hereby Certify, That the foregoing is a
 true and correct copy of all the pleadings in the
 case of Marie Bora and Frank W. Bora, her hus-
 band, Plaintiffs vs. Yellow Cab Co., a corporation,
 Defendant, prepared for an appeal. And the same
 is taken from and compared with original copies
 of all the pleadings and as the same now remains 20
 on the files of said office.

IN TESTIMONY WHEREOF, I have hereunto
 set my hand and affixed the official
 (Seal) seal of said Court and County at
 Newark, N. J., this Second day of
 June, A. D., 1926.

JOHN H. SCOTT,
 Clerk. 30

Testimony.

ESSEX COUNTY CIRCUIT COURT

10	MARIE BORA and FRANK W. BORA, <div style="text-align: right; padding-right: 20px;">Plaintiffs,</div>	}	Action at Law.
	vs.		
	THE YELLOW CAB COMPANY, <div style="text-align: right; padding-right: 20px;">Defendants.</div>		

Tuesday, April 20, 1926.

20 Before: Hon. Worrall F. Mountain, J., and a
 Jury.

For the Plaintiffs appear Howe & Davis (by Edward L. Davis and Richard J. Fitz Maurice).

For the defendant appears John A. Bernhard (by Edward R. McGlynn).

(A jury is called and sworn.)

Mr. Davis opens for the plaintiffs.

30 Mr. McGlynn opens for the defendant.

ARTHUR W. BINGHAM, sworn in behalf of the plaintiffs.

Direct-examination by Mr. Fitz Maurice:

Q. You are a practicing physician of this state?

A. Yes, sir.

40 Mr. McGlynn: We will admit the doctor's qualifications.

Arthur W. Bingham—Direct

Q. In March, 1925, did you have as a patient Marie Bora, one of the plaintiffs in this case?

A. Yes, sir.

Q. Where did she first consult you, at your office or at your home? A. I had seen her previous to the accident. Do you mean on this occasion? 10

Q. Yes. A. I saw her on March 15th, at her home.

Q. In what condition did you find her? A. I might explain I did not take care of Mrs. Bora on account of her pregnant condition, and when she had the accident she called me in to see how serious it was. I found she had injured her knee and I suggested that she keep quiet a couple of days, using a compress on it, and in case it did not improve to get Dr. Adams, because it was 20
entirely out of my line to treat such a condition.

Q. Did you examine her knee? A. Yes, sir.

Q. What did you find? A. I found it tender to touch and slightly swollen.

Q. What Dr. Adams did you refer her to? A. Dr. John King Adams.

Q. Of East Orange? A. Yes, sir.

Q. Did you continue then to treat Mrs. Bora? A. I followed her pregnant condition while she was in East Orange, but I did not treat the knee any further. 30

Q. Do you recall for how long? A. I saw her once more.

Q. What was her condition in regard to pregnancy? A. She was about four and a half months pregnant at that time.

Q. What have you to say as to that condition after the accident? A. I saw her once more and then she left town later and the baby was born out west. I know nothing about that. 40

John King Adams—Direct

Q. Other than the suggestion of Dr. Adams and the compress, you did nothing about the knee or the other injuries? A. No.

10 Q. Did you render a bill for that service? A. No, I was looking after the pregnancy for her. I rendered a bill for that call. I looked over her pregnant condition the same time I looked at her knee.

Q. That is what I am trying to get at, whether you rendered a bill as the result of the accident or as a result of any examination as a result of the accident?

20 Mr. McGlynn: I understood the doctor to say his bill was for the pregnancy.

A. She paid me for the call, and paid me for calling a month later; that's all there was to it.

Q. What did she pay you for the call? A. Four dollars.

(Cross-examination waived.)

30 JOHN KING ADAMS, sworn in behalf of the plaintiffs.

Direct-examination by Mr. Fitz Maurice:

Q. You are a practicing physician of this state?

A. Yes, sir.

Mr. McGlynn: I admit the doctor's qualifications.

40 Q. You specialize? A. In orthopedic surgery.

John King Adams—Direct

Q. Did you have as a patient Marie Bora, one of the plaintiffs in this case? A. Yes, sir.

Q. Last year? A. Yes, sir.

Q. Where did you see her first? A. At 133 North Maple Avenue, East Orange.

Q. Her home? A. Yes; I say it is 133; I think 10
it is.

Q. Do you recall when that was? A. It was on the 17th of March, 1925.

Q. When you went there, in what condition did you find Mrs. Bora? A. I found Mrs. Bora in bed and asked her what was the matter with her and she said she had to be in bed because her knee pained her. I examined the knee and found it to be slightly reddened, distinctly swollen and 20
painful to touch or to move the joint, and that the joint itself contained an appreciable amount of fluid.

Q. How did you ascertain that the joint had this fluid? A. By palpating it with the fingers.

Q. Is that a natural or an unnatural condition? A. An unnatural condition.

Q. What is it caused by? A. It is caused by an irritation in the interior of the joint from some cause that might be a condition within the joint, 30
such as a growth, or it might be due to traumatism, that is, force having injured the joint surface.

Q. In your opinion, what was the cause of the condition you found? A. In my opinion the cause of the condition was caused by the automobile accident she described a few days before.

Q. Was there any indication of trauma at that point? A. I do not think so; that is, no visible 40
indication. You mean of the skin being broken?

John King Adams—Direct

Q. Anything like that? A. I do not think so.

Q. Will you illustrate on the board in back of you just what you mean by the fluid and where it was located? A. I am not very much of an artist, but I will do the best I can. Now, I do
10 not know exactly what you want me to do, but am I to go into this knee joint and say where I think the trouble was?

Q. Indicate to the jury the region in which you discovered the trouble. A. Yes. This is supposed to be looking at it from in front. This is a picture of the left knee joint. The knee joint being composed of the lower end of the thigh bone which is known as the femur, and the upper end
20 of the large leg bone which is known as the tibia and the smaller bone which is on the outer side and is known as the fibula. You will notice the lower end of the femur, or large bone, has two rounded knobs on the end of it, that is, it is generally called the inner and the external condyle. These large prominences at each end of the lower end of the thigh bone and the upper surface of the leg bone, although it has a ridge running anterior posterior, that is from before backward,
30 in the middle, as a cup-shaped depression, on each side of which these large rounded prominences on the lower end of the thigh bone work, that is, there is a joint there on which each one of these work separately. This femur and its tibia are attached to one another very largely by ligaments and muscles. Of course, they are lined by a very smooth substance which is known as the synovial
40 membrane which secretes a certain amount of fluid normally, and which permits of the normal motions that take place in the knee joints in per-

John King Adams—Direct

fect health. This structure here is known as the internal lateral ligaments of the knee joints and it passes from the inner condyle of the femur downward into what is known as the inner tuberosity, which is a rather prominent bony place here (indicating) in which this portion of the ligaments is inserted; that is known as the inner tuberosity of the tibia, or large leg bone. Shown on the outer side there is another ligament which holds these two bones in position which is known as the external lateral ligament. Of the two ligaments, the internal lateral ligament is the more important ligament, although it is very poorly represented here. As this ligament comes down from its attachment from the internal condyle of the femur, a little piece is given off which runs into what is known as the internal semi-lunar cartilage, which is a round disc and more like elastic on the top of a preserve jar than anything else I can think of. It looks like it in your hand, except it is not exactly round; it is a little bit oblong and it fits on top of the thigh bone of the cup-shaped depression and makes it a little deeper than it would be ordinarily. Here is the one on the other side (indicating). In other words, when you lay this preserve jar rubber effect on the top of the thigh bone, it is very thin and cartilagenous and smooth and glistening, and when laying on the outside of the top of this cup-shaped depression, makes the depression deeper and secures this lower end of the femur in the cup-shaped depression with more safety, in other words, it lies right here (indicating). The cross section would lie that way (indicating). As I have told you, when this internal lateral ligament

John King Adams—Direct

comes down here, it gives off this little filament at this point (indicating) which becomes inserted in this cartilage here and comes down into it, and the fibres of it run around and become inseparable, blended with that cartilage. In other words,
10 the two form a kind of "Y." At this point one goes to the interior of the knee joint and is connected with the internal semi-lunar cartilage and the other goes into the internal tuberosity of the tibia, which is outside of the joint and not in it. That is very important for this reason, that it is well recognized in all injuries around the knee joint where there is a distinct force brought to bear on the outer side of the leg so that the knee
20 itself is bent inwards this way (indicating). In other words, this ligament (indicating) would be put on the stretch; so this front of the left leg, if the blow was struck on the outerside of this leg opposite the joint it would cause a bulging here (indicating) which would immediately put that filament on the stretch. In doing so, if the force was continued to a certain degree, it would make this joint become tight, and not becoming tight it would lift the semi-lunar cartilage off the
30 top of the leg bone and in doing so it would injure the interior of the joint, because this semi-lunar cartilage is attached to the upper surface of this bone by very fine little pieces of ligaments—they are like hairs, they are so small, yet enough to hold this and this (indicating). It moves very little, and is attached to this bone by this little ligament, which is known as the popliteal ligament. When force is either gradually applied—it
40 is very well recognized—either gradually applied with great force or applied with not very much

John King Adams—Direct

force but continues for long periods of time, it will cause a separation of this (indicating) from the head of this bone, and if the force is great enough this cartilage often becomes fractured and broken in two and when that happens it is necessary to remove the cartilage. It is so well 10 understood in the coal industry in England that Sir Robert Jones has opened and removed over one thousand semi-lunar cartilages of coal miners. Why? Not because coal miners are subject to acute inflammation after injuries, but they are subject to chronic forms of injury standing in this position (indicating); when they lift the knee bone this filament is put on the stretch and they so injure it that it has to be removed. If you get 20 a severe blow here it is the commonest thing in the world—foot-ball blows cause injury to the internal lateral ligaments and as soon as that takes place it fills up with fluid. In the front of the knee joint, running down into it, is a large sack known as the synovial sack, which runs around here (indicating) and goes into the joint and comes out. This is the knee cap (indicating) and when the joint becomes injured this fluid that I spoke of before, which is secreted in the interior 30 of this synovial track, becomes—the secretion becomes markedly stimulated, and as the result of it being stimulated, the fluid is poured out and this whole sack becomes extended and the ordinary dimples you can see on each side of a person's knee cap following an injury of this type, disappear, because the space becomes entirely filled up with fluid and you cannot see the depression on each side of the knee cap, which you can 40 see on any person's knee in normal health. This

John King Adams—Direct

space becomes obliterated as the result of the pouring out of the fluid and filling up of the natural joint and if the fluid which is secreted by this membrane runs into the region of the patella, known as the synovial sack, it runs in the interior
 10 of the joint. In other words, what is called when a person has one of these injuries, you have, in the language of the laity, a case of water on the knee, when such an accident as this takes place.

Q. What effect has the presence of that fluid on the locomotion? A. The normal fluid which is there normally, aids normal motion. The reason that fluid is poured out in such excessive quantities in an injury is because it is an effort on the
 20 parts there to separate the injured areas from one another and act as a cushion. That fluid is admitted on the part of the body to take care of the injured joints. It always takes place in every severe injury to the knee joint. Always. In no possible circumstance is it absent in the knee joint itself where the interior of a knee joint is actually injured.

Q. What did you prescribe for Mrs. Bora, when you found that condition? A. Put her leg in a
 30 plaster cast from the ankle to the hip.

Q. How long did that remain that way? A. About three weeks, when it was taken off and another applied.

Q. By you? A. Yes, sir.

Q. The purpose of the cast was what? A. The purpose of the cast was to put the joint at perfect rest.

Q. For how long a period of time did you con-
 40 tinue to treat Mrs. Bora? A. Until the 24th day of May.

John King Adams—Direct

Q. The same year? A. The same year.

Q. For how long a period of time did she have this cast or casts on? You say you put two on, do you? A. I couldn't tell you the exact number of casts. I put on two or three and when I put on the last one I put on a brace which she had 10 on when I last saw her on the 24th day of May. In other words, her leg was absolutely immobilized from the day I first saw her until the last day I saw her; there was no motion permitted.

Q. What sort of a brace did you apply? A. I applied a brace which extended from the groin to the shoe and which had a lock joint at the knee.

Q. Did you provide the brace? A. No, I did 20 not provide it, I sent a brace maker there who measured her for it and he made it.

Q. Is there anything else you prescribed in addition to the brace? A. Yes, sir; after she had worn the brace for a comparatively short length of time I gave her about five degrees of motion at the knee. Then, I gave her a little more—the idea of the lock joint being that you take out a screw—I can make it very plain if I draw it. This brace is simply a thing like this (indicating) 30 that comes from the groin down to the ankle. It has a lace, a place that laces up above and below the knee joint and is attached to the shoe and looking at it from the side, here is the bar running down the side (indicating). There is a wheel at that point (indicating) that has a lot of screw holes all the way around. By taking out one screw hole and turning it and putting the screw in you lock it to prevent any more motion. 40 If you advance the screw hole at the time, you

John King Adams—Direct

advance from five to ten degrees of motion. In other words, you make it from a perfectly still, immobile knee joint to any one degree of motion you wish.

Q. You increased that from time to time? A.
10 Yes, sir.

Q. You spoke of a shoe. Is there a shoe that comes with this brace? A. No, it is attached to the ordinary shoe.

Q. Did you prescribe any medicine or anything of that kind? A. I don't think so.

Q. Other than the brace you did not prescribe anything? A. Possibly an ice cap, but other than that nothing?

20 Q. On May 24th, 1925, the last time you saw her, was her knee completely cured? A. No, I wouldn't say it was; she was still wearing the brace.

Q. That is the last time you examined her? A. I examined her this morning.

Q. Did you examine the knee? A. Yes, sir.

Q. How did you find it? A. Very good, I thought very good. There was some tenderness, slight over the region of the lateral ligaments, but
30 I thought the function of the knee joint was excellent.

Q. How did you discover the tenderness? A. By pressing on it and she said it hurt her.

Q. Based on the injury as you saw it in March up to and including May 24, would the injury you saw of that knee then, at this time give pain? A. Yes, it might. It would not necessarily, but it might.

40 Q. The test you used this morning would that be an indication of whether or not there was pain

John King Adams—Cross

at this time? A. Yes, she said it hurt her. There isn't any possible evidence to me that there is anything the matter with her knee.

Q. Were there any other injuries to her knee or any other part of her that you took care of at that time? A. I do not think so; if there were they were very trivial; I do not remember. 10

Q. Did you render a bill for your services in this matter? A. Well, I think I did, but I think I sent it to the wrong address, which really amounts to the fact I never did.

Q. Do you recall the amount of it? A. No, I do not, but Mrs. Bora told me they had never received it, but I am quite certain I sent it to the address they had left. 20

Q. Can you tell us the amount of your bill for services? A. Not exactly, but it would be under \$150.

Q. How much? A. I think it would be in the neighborhood of \$125.

Q. That would be a reasonable charge for your services? A. I think so.

CROSS-EXAMINATION by Mr. McGlynn:

Q. Which knee did you say this was you put these casts on, and this brace? A. I do not think I said, but I think it was the left knee, but I am not absolutely positive. I didn't think to look it up. 30

Q. Which knee did you examine this morning, both or one? A. I examined one knee this morning. No, I didn't either, I examined both knees.

Q. Which knee was it you examined this morning? A. This morning I examined the right knee particularly. 40

John King Adams—Cross

Q. Do you remember Dr. Steiner being at the Orange Memorial Hospital, I think about April 1st, 1925, when one of these casts were removed from Mrs. Bora? A. Yes, I remember it very well.

10 Q. Had there been an X-ray taken previous to that occasion, or was there one taken at that time? A. I think it was taken at that time. I think that is the reason she was there, to have the X-ray taken.

Q. The cast was removed at the same time or subsequent to the X-ray? A. I think the cast was removed before the X-ray was taken.

20 Q. Have you any recollection as to the question of her temperature during the time you treated her as to whether or not it was normal? A. There was a very slight elevation of temperature a few times, as I recall it.

Q. By very slight, what do you recall as being the highest? A. Her temperature ran 100, 101.

Q. Did it last very long? A. No, I do not think so.

30 Q. The only thing you recall outside of something perhaps superficially, which you did not pay any attention to, was the knee situation? A. Yes; of course, I understood the fact that she was pregnant.

Q. I do not mean the fact that she was pregnant so much, but other evidences of injuries from the history she gave you, you knew was an automobile accident. A. I knew that she told me she had had this tubercular condition; I knew
40 that, yes.

John King Adams—Cross

Q. You knew about the accident from the history she gave you? A. Yes, sir.

Q. Do you recall when you saw her the first time? A. I think so. At her home.

Q. As I understand it, you say the date was March 17th; is that right? A. I think so. 10

Q. Have you looked up some office records to refresh your recollection on that? A. Yes.

Q. March 17th is your first entry? A. I think so; yes, sir.

Q. The only sign of physical injury to her body at that time was a swollen condition at the knee joints? A. I won't say she didn't have some superficial marks.

Q. I do not mean those; I suppose she has some scratches? A. I don't know about that. I will say her knee was the only condition I treated. 20

Q. You knew no other physician was treating her at the time when you were treating her? A. Except I understood she was under the medical care of Dr. Bingham.

Q. You did not see her again from May 4th, 1925, until today? A. I think that is right. I have no recollection of having seen her in the meantime. 30

Q. I mean she did not come back to you professionally in the meantime? A. No.

Q. When she left you in May, 1925, how far had this knee situation which you have described to us, developed so far as locomotion was concerned? You said you increased each time five to ten per cent? A. Yes, I increased it, and I think I increased it a little bit too much one 40

John King Adams—Cross

day and got a little fluid back, and then I put it back again and went through that process again.

Q. I am talking about the last time you saw her in 1925? A. I should say the last time, the day I saw her, that she had approximately 75 degrees
10 of motion.

Q. What were your instructions in regard to the continued use of that brace? A. My instructions were she would wear the brace and would put herself in charge of someone who her physician would recommend as a competent person to handle the apparatus when she got it.

Q. This picture which you have drawn on the board for us was intended to represent the left
20 knee? A. I do not mean this represented Mrs. Bora's knee; this represented a left knee.

Q. I mean if it was the right knee there wouldn't be very much difference between the two. A. The only difference would be this bone would be on the other side of this one.

Q. But in all other respects it would be the same practically? A. Yes, sir.

Q. Your explanation of the situation applies to both knees? A. Yes, sir.

30 Q. Then, in the normal condition of that knee joint and those names you gave us, that I could not even attempt to pronounce, there is always a cup there between those two, isn't there? A. You mean at this point (indicating)?

Q. Yes. A. They are always in contact; this bone is always touching this bone (indicating).

Q. Isn't there some little gap in there? A. No, they are always touching, they move on one
40 another, but they are always in contact.

John King Adams—Cross

Q. They are always in contact and mobile and between there is this fluid? A. There is a very slight degree of fluid normally, a very slight degree of fluid which is there normally that can never be demonstrated by an examination. I know it is there but you can demonstrate abnormal fluid by an examination. 10

Q. Everyone's joints have the same amount of fluid. A. Approximately. You cannot demonstrate the normal fluid in the knee joint under normal conditions. You can demonstrate the knee joint abnormally, easily.

Q. Doesn't an X-Ray picture of a normal knee joint of that kind show a slight gap? A. Yes, the X-ray does show a slight gap, the reason being that these cartilages do not show in the X-ray and that makes a gap; the cartilages are not bone. 20

Q. In the X-ray taken of this particular knee we are discussing was there any evidence or indication that those cartilages which you described as resembling the rubber band on a Mason jar, were torn from their normal place or any dislocation or tearing of those fine hair ligaments which you described which attach them to the bones on which they rest? A. The X-ray would not show that. 30

Q. The X-ray would not show that? A. No.

Q. It would not show any signs of their having been loosened or they are not there in their normal resting place? A. If the whole cartilage had been torn off and piled off in a heap on top of the bone that would probably show enough shadow on the X-ray to give some shadow in the picture, but in a normal cartilage or any carti- 40

John King Adams—Re-direct

lage that has been subject to slight injury the X-ray shows absolutely nothing.

Q. Would it make any difference if the picture which was taken was not taken until three or four weeks after the accident, or rather a short time
10 after the accident? A. No, I do not think so. As a matter of fact I think it would show better if any damage had been done three or four weeks after, because in the effort to make some repairs there might be some bone thrown out which would show on the plate.

Q. Was there any bone injury in that joint?
A. I do not think so.

20 RE-DIRECT-EXAMINATION by Mr. Fitz Maurice:

Q. During this period of your treatment what have you to say as to Mrs. Bora's ability to do her housework? A. Housework? She was in bed pretty nearly all the time.

Q. All that time? A. Not all of it, she would be up with the brace on getting around a little bit, but she could not do any work.

30 Mr. McGlynn: May I put our Doctor on now so that he may get away?

Mr. Fitz Maurice: No objection.

The Court: You may.

Edwin Steiner—Direct

EDWIN STEINER sworn in behalf of the defendant:

Direct-examination by Mr. McGlynn:

Mr. Fitz Maurice: We admit the doctor's qualifications. 10

Q. At the request of the defendant you examined Mrs. Bora? A. Yes, sir.

Q. What was the date of your first examination? A. The 25th of March, 1925.

Q. Where was your examination made? A. At her home, 133 North Maple Avenue, East Orange.

Q. Tell us what you found? A. At the time I went there Mrs. Bora's right leg was in a plaster paris dressing and she still had a plaster cast on when I was there and Dr. Adams was treating her at that time for a laceration of the lateral ligament of her right knee and also some bruises of her left ankle. 20

Q. Which knee did you say? A. She had plaster on her right leg and she had a few bruises on her left ankle.

Q. Any other things? A. At the time I examined her I made note that the examination was unsatisfactory, as the cast was on her leg, the abrasions on her left ankle were practically healed at that time. Mrs. Bora was under the care of Dr. Bingham who was looking after her condition and there was no evidence that the accident in any way interfered with her pregnancy, as she had the usual symptoms of a live child and up to that time Dr. Adams had not taken an X-ray. He said he would do so sometime during 40

John King Adams—Cross

the week, and he at that time notified me when he had it taken and I was present.

Q. When was the second occasion when you were present? A. April 2d, 1925, at the Orange Memorial Hospital.

10 Q. Did you see the X-ray plate? A. At that time they took an X-ray and it showed some separation between the femur and the tibia, that is the bone of the thigh and the bone of the leg which was due to some fluid, and at that time we agreed it was due to a fluid, synovitis.

Q. Did the X-ray show any evidence of the bone injury? A. No, there was no bone injury at that time at all.

20 Q. Any fracture of any kind? A. No, sir, no fracture.

Q. Did you make any examination at that time with reference to her general condition of health, temperature, and so forth? A. Well, she was apparently well at that time, in fact, Mrs. Bora said she was not complaining of anything except her pregnancy and the leg, that's all.

Q. Did you examine her today? A. Yes, sir.

30 Q. What have you to say with reference to her right knee? A. I looked at both knees this morning and they looked apparently the same. She walked without any discomfort and there was no lameness and no apparent pains in walking. There is no swelling. In fact her knees were equal, one the same as the other.

CROSS-EXAMINATION by Mr. Fitz Maurice:

40 Q. What about the locomotion of the knee in using the stairs, either ascending or descending?

John King Adams—Cross

A. The knees she has there would make no trouble in ascending or descending.

Q. Did you observe her ascending? A. I didn't observe her at all.

Q. That is speculation? A. That is my experience in those cases. 10

Q. You did not observe her ascending or descending stairs, so you do not know whether there was any arrest in motion, do you? A. As far as she is concerned, no.

Q. Did you make any test to find out whether there was any tenderness? A. Yes.

Q. And found none? A. She said she had some tenderness, but I found no evidence for the tenderness. 20

Q. But she did say she had tenderness? A. She said she had tenderness.

Q. You attributed then the separation between those two bones at the time the X-ray was taken to fluid? A. Yes.

Q. You gave a rather careful examination in March, 1925, some two weeks after the accident, was it not? A. Yes.

Q. She was in bed? A. Yes.

Q. In the cast that Dr. Adams described? A. 30 Yes.

Q. That is the usual prescription for that injury, is it not? A. Some men put them in casts right away; others wait.

Q. The cure for that injury is rest, stopping of movements? A. Yes.

Q. A cast is about the best known means for preventing movements, is it? A. Yes.

Q. You found bruises on the left ankle? A. 40

John King Adams—Cross

Yes, she had some abrasions there which were practically healed at that time.

Q. Did you examine her hips at all? A. If I remember correctly the hip was in a cast.

Q. The left hip? A. Yes.

10 Q. The right hip, did you examine that? A. I don't remember, I have no notation here, at least she did not complain of anything there otherwise I would have a notation here.

Q. You do not know anything about her lungs, do you? A. No, the first I heard of it was this morning.

Q. You did not examine her at any time for that? A. No, sir.

20 Q. You specialize in bone surgery? A. Just general surgery.

Q. The injury that Mrs. Bora had, from the time of your first examination, what is the usual length of incapacitation? A. When I went over this thing with Dr. Adams he described her injury as a laceration of the lateral ligament and I was quite surprised this morning to find she had some trouble with her semi-lunar cartilage.

30 Q. That does not answer my question as to how long the injury, as you described as evidenced by the X-ray, would last. A. I have a notation on my record here it lasted about four weeks.

Q. Is that true as a general thing? A. It is in synovitis, yes.

Q. That is water on the knee? A. Yes, sir.

Q. Occasioned by trauma? A. Yes.

Q. Trauma is a blow? A. Yes.

40 Q. So that the average period of time to cure that condition in your opinion is four weeks? A. An acute synovitis, yes.

John King Adams—Re-direct, Re-cross

Q. Did the fact that Mrs. Bora had another condition, pregnancy, have anything to do with the length of time, in lengthening it? A. The accident may hurt her pregnancy, but the pregnancy won't hurt the other.

10

RE-DIRECT-EXAMINATION by Mr. McGlynn:

Q. What was Dr. Adams diagnosis given you at the time of this examination? A. He made a diagnosis of a laceration of the lateral ligament, internal lateral ligament of the knee joint, and at that time Dr. Adams described this laceration of the internal lateral ligament with pencil and paper for me.

20

Q. The same general drawings we have here? A. No, it did not include the semi-lunar cartilage at that time.

Q. Would the situation or the diagnosis then be apt to clear up sooner than the one he described this morning? A. Yes.

Q. This examination you made this morning, can you tell from that examination whether or not a person, in the condition you found this lady, could ascend or descend stairs without difficulty? 30

A. Yes, I should say she could ascend and descend stairs.

RE-CROSS-EXAMINATION by Mr. Fitz Maurice:

Q. This diagnosis that the Doctor gave you was it before or after the X-ray? A. It was after the X-ray, because Dr. Adams—in fact we went downstairs together.

40

Q. It was after the X-ray? A. After the X-ray, yes.

Maud Keat—Direct

MAUD KEAT, sworn in behalf of the plaintiffs:

Direct-examination by Mr. Fitz Maurice.

Q. You live where? A. 244 High Street, Orange.

Q. You go to business? A. I am a teacher in the High School in Orange.

Q. On the date of this accident, March 14, 1924, were you present at the scene of the accident?

A. I was in a cab coming from the Pennsylvania station.

Q. What cab was it, do you know? A. I don't know the number of the cab.

Q. No, the type of cab? A. We took the cab, my son and I took the cab at the Pennsylvania station and the starter there at Market Street station—it must have been a Yellow Cab.

Q. You took the cab for the purpose of going to Orange, did you? A. Yes, sir.

Q. Did you eventually get to Park Avenue? A. Yes, sir.

Q. When you got on Park Avenue tell us what happened. A. Well, if I may say so, my son and I were talking; I just returned from my mother's funeral and did not pay much attention to what was going on, but we were going up Park Avenue and I noticed a large car to my left; I couldn't say what it was; I was just sitting at the left of the cab and I noticed a large car and paid no attention to how the car was being driven, the Yellow Cab or the other car, but I know our own car swung to the right of that car and I don't know whether we were at Grove Street or where

Maud Keat—Direct

we were, but it swung to the right and then there was a sudden lurch to the left. I heard a woman scream and that's all I know. Naturally, I was nervous.

Q. When the Yellow cab swung to the right of the car that was at your left, what part of the roadway did that place the Yellow cab in? A. I don't know what you mean. 10

Q. You were going westerly. A. We were going westerly on Park Avenue.

Q. You say the car was on your left? A. Yes, sir.

Q. The cab you were in passed to the right of that car? A. Yes, sir.

Q. What part of the roadway of Park Avenue did that place the Yellow cab with respect to the curb? A. It placed the Yellow cab to the curb on the north. 20

Q. With respect to the curb on the north how close; do you recall? A. Well, I was on the left; that was impossible for me to answer. I was next to the large car.

Q. After you heard the woman scream what happened? A. My son—the car stopped immediately. 30

Q. The cab stopped? A. Yes, my son and the driver got out and assisted Mrs. Bora into the car.

Q. Where was Mrs. Bora? A. That I didn't see, I covered my eyes.

Q. Did you observe any appearance of Mrs. Bora? A. No, I saw nothing.

Q. You just covered your eyes, did you? A. Yes, naturally. 40

Maud Keat—Cross

Q. Where, when Mrs. Bora got into the cab, where did the cab go? A. We asked her if she wanted to be taken to the hospital and she sat beside me and she said, "No, go home," and the cab took her to the North Maple Avenue Address.

10 Q. That's all you know about it? A. That's all.

CROSS-EXAMINATION by Mr. McGlynn:

Q. You say as the cab in which you were driving was going west on Park Avenue you were sitting on the left? A. Of the cab.

Q. And there was a car on the left? A. Yes, sir.

20 Q. You mean— A. Some kind of an automobile.

Q. You mean another automobile? A. Yes, sir.

Q. Have you any idea how long before this accident you just described this car was either on your side or ahead of you? A. No, I couldn't tell you that.

Q. Do you mean to say— A. It seems to me that car slowed up slightly and we moved in alongside of that car; I am not sure, but if I recollect it
30 correctly.

Q. The car ahead of you slowed up? A. I don't know if it was ahead of me. The first thing I knew it loomed up on the side of us, it wasn't going fast, I don't think so.

Q. You do not think either car was going fast? A. The car on the left was certainly slowing up, it must have been.

Q. Your recollection is that neither the car on
40 your left nor the cab in which you were driving was going fast? A. The first thing I knew was

Maud Keat—Cross

the jerk. I don't know that it was going fast—I don't know what you call fast.

Q. Do you drive an automobile? A. I sometimes attempt to.

Q. Have you a license to drive? A. I have a license, yes. 10

Q. You are a teacher in the Orange High School? A. Yes, sir.

Q. Was this before you took your examination for a license to drive? A. I took the examination last summer and this happened in March.

Q. At the time of the accident you were not a licensed automobile driver? A. No.

Q. And since then you have become one? A. Yes. 20

Q. Have you any idea at all as to the miles per hour this car, that you say was on your left, was going up Park Avenue alongside of you? A. Indeed I couldn't say.

Q. Isn't it your recollection that the two cars, the one in which you were riding and the one you have described to us, went to the corner of Park Avenue and Grove Street? A. Well, they were very close together. I think they must have been coming right there. I really don't know. 30
I was talking to my son on the right and just noticed this car on the left; naturally that's all there was to it.

Q. Was there anything on the car on the left which would indicate to you it was about to stop or turn in either direction on Grove Street? A. I wouldn't like to take an oath on that, but I thought the car had stopped for something and was starting on. 40

Maud Keat—Re-direct

Q. Your recollection is it had started on? A. Yes, sir.

Q. Have you any recollection now as to whether that car, after this accident, went straight up Park Avenue towards Orange or turned to the right or left on Grove Street? A. I couldn't tell you.

Q. Did you see the lady before she was hit? A. I did not. Impossible.

Q. It was impossible? A. Yes. I was here (indicating). My son was here (indicating), and the driver was in front and she was hit over on this side (indicating).

Q. You did not see her at all? A. No.

Q. You do not know from which side of the street she came or in which direction she was going except for what she told you afterwards? A. No.

Q. You did not see her at all? A. Until she was put into the car.

Q. You do recall a turn to the right and a sharp curve to the left of the cab in which you were riding? A. I didn't notice a turn to the right, but I do know it swerved sharply to the left; I felt that.

Q. Did he stop the cab within a very short distance? A. I think so, I didn't see.

Q. Where was the cab after it came to a stop, if you know? A. I don't know. We were even in Grove Street until my son told me—

RE-DIRECT-EXAMINATION by Mr. Fitz Maurice:

Q. I want to get on the record the location of

Marie Bora—Direct

you and your son in the car. You were sitting back of the driver? A. Yes, sir.

Q. Is the driver on the right or the left side of the car? A. I suppose, ordinarily, he is on the left-hand side.

Q. You were on the left, were you? A. Yes, 10
sir, my son was on the side towards the north.

Q. Was it the right or the left side of the taxicab that struck Mrs. Bora? A. Well—

Mr. McGlynn: I object. The lady has already testified on direct-examination that she could not even see the curb.

Mr. Fitz Maurice: Withdraw the question. 20

MARIE BORA, one of the plaintiffs, sworn in her own behalf:

Direct-examination by Mr. Fitz Maurice:

Q. You are one of the plaintiffs in this case?

A. Yes, sir.

Q. You live where, please? A. I live at 24 30
Franklin place, Summit.

Q. Your husband lives at that address with you? A. Yes, sir, he does.

Q. How old are you? A. Thirty years old.

Q. In March, 1925, where were you living? A.
133 North Maple Avenue, East Orange.

Q. On March 14th last year did you meet with an accident? A. I did.

Q. Where? A. At Park Avenue and Grove 40
Street.

Marie Bora—Direct

Q. East Orange? A. East Orange.

Q. Just describe to the court and jury how you met with that accident. A. I was walking north towards Springdale Avenue on Grove Street.

Q. Do you recognize this map (indicating)?
10 Are you able to make that out, Park Avenue and Grove Street, and this is supposed to be the shrubbery in the center of the road, and this is supposed to be the east and the west crosswalk. Is that clear in your mind? Indicate on that where you were and what you started to do. A. I was going toward Springdale Avenue going to Grove Street, and I crossed the first section, and I saw
20 a car coming south on Grove Street and a car going west on Park Avenue, so, I stopped there to see which car would get the right of way and the car coming south on Grove Street got the right of way, and I walked off and was just about to cross the street and just about to get up on the curb when I was hit.

Q. Do you know what car struck you? A. It was a Yellow Cab.

Q. Did you see the Yellow Cab coming? A. No.

30 Q. At the time you made your observation of the car going west on Park Avenue, was it the Yellow Cab you saw? A. No, it was not a Yellow Cab. A car was right there.

Q. At the time you made that observation did you see that Yellow Cab? A. No, I did not.

Q. With respect to the curb just how far were you when you were struck? A. I was right at the curb. I didn't step on it, but I was about
40 ready to step up on the curb.

Marie Bora—Direct

Q. How long of a wait did you have where you indicated at the center of that aisle? A. It was just a short time.

Q. Just indicate where the car was that was going south on Grove Street when you first saw it? A. The car was right here (indicating). 10
They had both come to a stop, as I remember it.

Q. Both cars had come to a stop? A. Yes, sir.

Q. Which car, then, started first? A. This car started south on Grove Street.

Q. As that car started south what did you do, if anything? A. I started to walk north.

Q. At the same time? A. At the same time.

Q. When you were struck what happened? A. Well, I was struck and knocked down and the car 20
went up this way (indicating) cross ways, as I remember it. It was not straight and then the driver and Mr. Keat got out and picked me up.

Q. Did you have anything in your hands? A. I had an umbrella and gloves, yes, sir.

Q. What happened to those? A. I threw them. They went around on Grove Street.

Q. What do you mean "You threw them"? A. I didn't know it. They went when I was knocked, they were around there when I came to. 30

Q. They landed around on Grove Street? A. Yes. I must have thrown them when I was knocked.

Q. What time of day was this? A. About a quarter to eight in the evening.

Q. Was it light or dark? A. It was dark, I believe. Yes, it was dark.

Q. This was in March of last year? A. Yes, sir. 40

Marie Bora—Direct

Q. Were the street lights lighted? A. I know that blinker light was lit, because I looked at it. I am quite sure the other lights were lit, too.

Q. Was it clear? A. Yes, it was clear.

10 Q. You were taken home in the cab? A. Yes, I was taken home in a cab.

Q. What happened then? A. Some one went up and told my husband and he came down and helped me upstairs.

Q. When you got upstairs what happened? A. Of course, I called Dr. Bingham immediately, because we didn't know how serious it would be and he was not in and his nurse told me what to do if I got dangerously ill later—

20 Q. As a result of what the nurse told you what was done? A. She told my husband to get—

Q. As a result of what she told your husband what was done with you? A. He put an application, I believe, on the knee.

30 Q. Did you attempt to walk about? A. No, I went to bed and my knee became getting sorer and the leg getting stiffer, and I told my husband I thought I had better get up and go to the doctor and I did and I fainted, and he put me back to bed again.

Q. You were pregnant at that time? A. Yes, sir.

Q. Did you have any other pain at that time than the right knee? A. Of course, my left ankle was sore, because it was skinned and my both hips were bruised.

Q. Both hips? A. Well, both hips were bruised.

40 Q. When did Dr. Bingham arrive? A. He came in the morning.

Marie Bora—Direct

Q. The following morning? A. Yes, sir.

Q. When he arrived where were you? A. In bed.

Q. How long a time did you stay in bed? A. I stayed in bed eight weeks, I believe.

Q. Did you have any physician other than Dr. Bingham? A. Dr. Adams. 10

Q. Why did you have Dr. Bingham? A. Well, I called Dr. Bingham because Dr. Bingham had been giving me pre-natal care.

Q. You were under his care for your pregnant condition? A. Yes, sir.

Q. Why did you call him after the accident? A. Because I had some pain and I was afraid there might be some trouble. 20

Q. When did Dr. Adams come? A. Dr. Adams came the following Tuesday.

Q. What did he do? A. Well, he told me I would have to go in a cast immediately and I think he came back that same day and put me in a plaster paris cast.

Q. What part did he put in the cast? A. Right below the hip to the ankle.

Q. Which limb? A. My right leg.

Q. For how long did you remain in the cast? 30
A. Well, for the eight weeks I was in bed.

Q. The same cast? A. No, he took me to the Orange Memorial Hospital and took an X-ray and removed the first cast and put on another one that day.

Q. How were you taken to the hospital? A. In an ambulance.

Q. How did you get to the ambulance? A. Well, they carried me down on a stretcher. 40

Marie Bora—Direct

Q. Who were they? A. The ambulance attendants.

Q. They brought you in the ambulance to the Orange Memorial Hospital? A. Yes, sir.

Q. How long did you remain there? A. Just
10 that day.

Q. That was for the purpose of the X-ray?
A. Yes, sir.

Q. How did you return home? A. In the ambulance.

Q. Was the cast applied at the hospital? A. I believe the cast was applied at home.

Q. The X-ray was taken at the hospital? A. Yes, sir.

Q. When you got back home what was done to you? A. They put me back to bed.

Q. All told you were there eight weeks? A. Eight weeks.

Q. When you got up out of bed was the cast removed? A. The cast was removed when I got up out of bed and they put a brace on immediately.

Q. What sort of brace? A. With a steel brace that had leather bands one above the knee and one
30 below the knee, and there was a leather cap at the knee.

Q. What sort of shoes did you wear with the brace? A. High shoes with low heels. The brace was fitted on the shoe.

Q. How did you go to get those shoes? A. My husband had to buy them, because the brace had to be fitted to the shoe.

Q. Were they worn with the brace? A. With
40 the brace.

Marie Bora—Direct

Q. Did you wear any other appliance or anything of any character or description as the result of this accident? A. No.

Q. When you got the brace on were you able to go about then? A. Oh, no, I could not because the brace weighed about six or eight pounds, because it was a steel brace and I could only walk a short distance at first and then the doctor gave me a little play and he stretched it again. 10

Q. Prior to the accident did you have help in your domestic work? A. No, I did not.

Q. You ran the house alone? A. Yes, sir.

Q. Did you have any children? A. No, I did not.

Q. Subsequent to the accident, while you were in bed, was there any housework assistance? A. Yes, my mother-in-law came down and took care of me. 20

Q. Any one else? A. No, only a laundress.

Q. You had the laundress before you were hurt, didn't you? A. Yes, sir.

Q. How long did your mother-in-law stay there and take care of you? A. She stayed until the day I left to go west.

Q. When was that? A. The last part of May, I don't know whether it was around the 24th or the 28th. 30

Q. At the time in March when you left for the west were you able to do any housework? A. No, I was not.

Q. Did you do any housework? A. No, I did not.

Q. Where did your mother-in-law live at that time? A. She lived at Lawrence, Massachusetts. 40

Marie Bora—Direct

Q. She stayed at your house all the time she did the housework? A. Yes, sir.

Q. She lived right there? A. Yes, sir.

Q. With respect to the brace, when you went west did you go with or without the brace? A.
10 I had the brace on when I went west.

Q. How long did you have to wear it? A.
Until the 20th of July.

Q. Of last year? A. Last year.

Q. Why did you go west? A. Because I had a tubercular condition that had been healed, and when I had an X-ray taken—

Mr. McGlynn: I object.

20 The Court: Do not tell us about the X-ray.

A. I wrote to my doctor whose care I was under when my tuberculosis case was arrested and he advised me—

Mr. McGlynn: I object.

Q. Prior to the accident had you had a tubercular condition? A. I had, but it had been arrested.

Q. When was that? A. That was in 1923.

30 Q. Where were you when it was arrested? A. In Colorado Springs, Colorado.

Q. From there you returned to East Orange? A. I returned to Brooklyn.

Q. What part of 1923 was that? A. Well, I didn't go until February, 1924.

Q. Which lung or both lungs were affected? A. It was in both lungs.

40 Q. From the time you returned in 1923 until the accident was that condition present or absent? A. It had been absent.

Marie Bora—Direct

Q. Following the accident what have you to say as to that condition? A. Well, the doctor told me—

Mr. McGlynn: I object.

Q. Not what any one told you, only what you yourself know. A. I know that I fatigued very easily and I could not do anything that I could do before. 10

Q. Following the accident what symptoms did you have with respect to the tubercular condition?

Mr. McGlynn: I object. There is no testimony here that this lady can qualify to give us the symptoms of tuberculosis. 20

(Argument.)

The Court: I think the objection to part of the question probably is as to symptoms. I will let her tell how she felt.

Q. How did you feel after the accident? A. Well, of course, I couldn't tell you. It wasn't until I got up that I could feel anything. Of course I tired, I could not stay up very long, I had to rest every morning and every afternoon, which, of course, I still sometimes have to do. 30

Q. From the time you returned from Colorado in 1923 down to the day before the accident in March, 1925, were you obliged to rest in the morning and afternoon? A. I never rested in the morning, no; I always rested in the afternoon.

Q. In May, 1925, you went to Colorado, did you? A. In June I went. I stopped in Chicago, of course, because that is where my mother lives. 40

Marie Bora—Direct

Q. How long did you stay in Chicago? A. About two or three weeks.

Q. With your mother? A. With my mother.

Q. Then you went on to Colorado? A. Yes, sir.

10 Q. How long did you stay there? A. Until the very last of September.

Q. Where did you stay in Colorado? A. At the Glockner Sanitarium.

Q. Who was the physician in charge of your case there? A. Well, I had three of them. I had Dr. Wooder who took care of my knee; Dr. Jaeger who took care of my pre-natal condition, and Dr. Conway who took care of my tuberculosis.

20 Q. Is he the same physician who had previously treated you? A. Yes, he was the doctor under whose care I was when my case was arrested.

Q. How long did you stay there? A. All the time, from the time I went in June until the last of September.

Q. Of 1925? A. Yes, sir.

Q. Under whose care were you practically during that period of time in respect to your tubercular condition? A. Dr. Conway.

30 Q. When you returned in September, 1925, was that condition arrested or otherwise? A. No, it was not arrested. Dr. Conway told me—

Mr. McGlynn: I object.

A. It was not arrested.

Q. Is it now arrested? A. I believe it is.

Q. How do you feel now? A. Well, I know I can't do very much, I have to go to bed every
40 morning and work two or three hours every after-
noon.

Marie Bora—Cross

Q. Do you do your own housework? A. No, I do not.

Q. Who does your housework? A. Lillian Mann.

Q. What work does she do? A. She does all the housework. 10

Q. Who does the cooking and the preparation of the meals? A. I do some of it and she does some of it.

Q. Did you have any assistance in that connection before March, 1925?

Mr. McGlynn: I object because I do not see the situation is the same.

The Court: I will admit it.

Defendant's counsel prays an exception to this ruling of the court. 20

Exception noted as ground of appeal.

A. No, I did not.

Q. Your right knee; how is that today? A. Well, my right knee I notice when I tire, or go up a lot of stairs; I have to favor it. It pains a little bit when I do anything unusual. If I kneel on it and say my prayers or anything like that, I can kneel down for a few minutes, and it won't bother me, but I can't do anything unusual which tires. 30

CROSS-EXAMINATION by Mr. McGlynn:

Q. You say when you made this observation looking east down Park Avenue you stood at a point indicated on the so-called picture between the blinker light and the shubbery? A. No, I stood right here (indicating). 40

Marie Bora—Cross

Q. In about the center of the street? A. That is right at the Parkway.

Q. Where? A. At the Parkway. Isn't this supposed to be the shrubbery?

10 Q. Yes, with the concrete base around it. A. Yes.

Q. Did you stand in the center of that or were you over further on the other side of Park Avenue? A. I suppose I was right there, as I remember it.

Q. As you remember it it was about the center of Park Avenue? A. Yes, sir.

Q. How far could you see north on Grove Street towards Springdale Avenue when you looked?

20 A. I noticed a car right there.

Q. Have you any recollection as to how far you could see? A. No, I have not.

Q. Do you recall whether the new lighting system on Park Avenue was in operation at the time of the accident, with those very bright electric lights? A. I don't recall.

Q. Have you any recollection as to how far you could see when you looked east on Park Avenue towards Newark? A. No.

30 Q. You do not know how far you could see? A. No, I do not, because I just saw the car there and that's all I was concerned in.

Q. Did you make any observation for the purpose of ascertaining or observing whether any other cars were coming west on Park Avenue except the one you could see? A. No.

Q. You did not? A. No.

40 Q. There was a space there, wasn't there, between the car which you say you saw just east

Marie Bora—Cross

of Grove Street coming west on Park Avenue and the north curb line of Park Avenue, wasn't there? A. I suppose there was.

Q. There was, wasn't there? A. All, I could see was the car, I couldn't see through the car.

Q. Your recollection of the position of the car 10 which you could see— A. Was right here (indicating).

Q. Indicating a position just north of the shrubbery in the center of Park Avenue? A. Yes, sir.

Q. Do you know whether or not there was any space in between the space of that car which stood there and the northerly curb line of Park Avenue? A. I believe there was.

Q. Is it your recollection now there was a space 20 enough there for another car to go through? A. I don't know.

Q. Which observation did you make first before you started to walk from where you stood to the north side of Park Avenue up Grove Street towards Springdale Avenue, or east of Park Avenue? A. Well, I know I just looked at both of them and they both stopped, as I remember it, and I waited to see which one got the right of way. I have no recollection of which way I looked 30 first.

Q. From the time you left the point where you stood when you made this observation until you were struck by this car, did you make any other observations to the east on Park Avenue? A. I don't believe I did.

Q. Have you any recollection as to how long, if at all, before you was struck you saw this Yellow taxicab? A. No.

Marie Bora—Cross

Q. Did you see it at all? A. I didn't see the Yellow taxicab.

Q. You never saw it at all? A. No.

Q. Did you make any observation behind you to the south on Grove Street before you started to
10 walk across Park Avenue? A. You mean after I got here (indicating) or before?

Q. Starting from the point or the place you stood at in the center of Park Avenue alongside of the shrubbery, then, from that time, I am trying to find out what you did in reference to observations. You came to a dead stop there? A. Yes.

Q. Absolutely stood still? A. Yes, sir, abso-
20 lutely stood still.

Q. You told us about your observation to the north towards Springdale Avenue, and you told us about your observation to the east. Did you make any observation to the back of you to the south? A. I don't remember, but I imagine I looked in all directions.

Q. You are positive, are you not, that you made no further observation than you have told us about, from the time you started to walk until you
30 were struck, to the east? A. I don't remember; I don't know whether I did or not.

Q. If you did, you did not see the Yellow taxicab? A. I did not see the Yellow taxi.

Q. The position of the car which you did see to your right-hand side, that is east of Grove Street going west up Park Avenue, where was that you say in reference to what has been indicated as an imaginary crosswalk from here, in-
40 dicating the north side of Park Avenue, the northeast corner to the shrubbery. How far back of

Marie Bora—Cross

this line would you say this car was you told us about? A. It was very close anyway.

Q. Would you say it was up to what would be the crosswalk or in back of what would be the crosswalk? A. It comes right up to the shrubs.

Q. Was it moving or standing still? A. As I remember it was standing still. 10

Q. It was close to the shrubbery? A. As I recall, yes.

Q. The shrubbery does not extend out over what would be the crosswalk, it is back of that. A. I don't know.

Q. You lived at that time over on North Maple Avenue? A. Yes.

Q. Corner of William Street? A. Yes, sir. 20

Q. You were going from your home to Springdale Avenue? A. Yes, sir.

Q. You say you went to Colorado Springs in June? A. Yes, sir.

Q. That is, you left East Orange in May and went to Chicago, and went to Colorado Springs in June? A. Yes, sir.

Q. When was your baby born? A. The 7th of August.

Q. Were you treated by any physician in East Orange prior to the time you left for the west for this tubercular condition? A. No, I was not. 30

Q. Have you been treated by any physician in Summit, I believe you live there now? A. Yes.

Q. Since you returned from Colorado Springs for this tubercular condition? A. No, I have not.

Q. When did you first go to this Dr. Conway for treatment for the tubercular condition after March 14, 1925? A. The first day I got to Colorado Springs, which was the 1st of June. 40

Marie Bora—Cross

Q. He was the first physician you saw upon your arrival? A. He was.

Q. Was he in the same sanitarium in which you were located when your child was born? A. Yes, sir.

10 Q. You did not hire this young lady to assist you in your housework naturally until you returned from the west? A. No, sir.

Q. Did you hire her immediately upon your return from the west? A. Yes, sir.

Q. How many rooms did you occupy on North Maple Avenue? A. Three rooms.

Q. That was an apartment house, was it not? A. Yes, sir.

20 Q. What sort of a house do you live in now? A. An apartment.

Q. How many rooms? A. Five rooms, smaller rooms.

Q. Five of them? A. Yes, sir.

Q. As I understand it the accident happened on March 14th, about eight o'clock in the evening? A. Yes, sir.

Q. You did not see Dr. Bingham until March 15th? A. No.

30 Q. And after your visit to Dr. Bingham you did not see Dr. Adams until the 17th? A. Yes, sir.

Adjourned to Wednesday, April 21, 1926,
at ten o'clock a. m.

Marie Bora—Re-direct, Re-cross

SECOND DAY

Wednesday, April 21, 1926.

Continued pursuant to adjournment. 10
Present, counsel as before stated.

MARIE BORA, one of the plaintiffs, re-called:

Re-direct-examination by Mr. Fitz Maurice.

Q. You said yesterday that when you stopped to make an observation you were on the west side of Grove Street near that little park, strip of parkway in the middle. A. Yes, sir.

Q. When you made that observation what did you see to the east? A. I saw the car stop. 20

Q. What did you see to the north on Grove Street? A. I saw the car stop.

Q. Now, then, before you proceeded what happened? A. The car on the north started south.

Q. How soon after it started south did you start off? A. I started right away.

Q. How far was this car that had stopped and which was east of you, from you at the time when you made your observation. About the width of Grove Street? A. Oh, yes, it was on the other side of the street. 30

RE-CROSS-EXAMINATION by Mr. McGlynn:

Q. It is your recollection that car going west on Park Avenue which you say was standing still at the time you made this observation was here, indicating the shrubbery to the east of Grove 40

Marie Bora—Re-direct

Street or nearer to this blinker light? A. It was east.

Q. Your recollection is it was east? A. Yes, it was right alongside there.

10 Q. Had you seen that car prior to the time it had stopped? A. No. They both came to a complete stop.

Q. Your recollection is they both came to a complete stop? A. Yes, sir.

Q. One was on the north side of Park Avenue and the one on Grove Street coming in the southerly direction was that at or near the crosswalk at the north side of Park Avenue over Grove Street? A. Yes, sir.

20 Q. (By the Court.) As you were crossing the remaining part of Park Avenue going north towards the curb, this south-bound car on Grove Street was passing you? A. Yes, sir.

Q. Did you hear any warning or any horn? A. No.

RE-DIRECT-EXAMINATION by Mr. Fitz Maurice.

30 Q. Why did you go to Colorado in June following the accident?

Mr. McGlynn: I object. I do not see that the motive in going to Colorado is material or evidential.

The Court: Is that re-direct?

Mr. Fitz Maurice: I do not recall. I brought that out on direct-examination. I think that is part of the main case.

40 The Court: She testified she went back to Colorado because of her tubercular condition.

Marie Bora—Re-cross

Perhaps that was the first time she went. I am not sure of that. I will admit that question.

Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal. 10

A. I went because I had lost considerable weight and I was running a temperature; I wanted to protect myself.

RE-CROSS-EXAMINATION by Mr. McGlynn:

Q. You also went to make sure when your baby was born and if your previous condition with reference to tuberculosis in anyway affected the child that the child could be protected, didn't you? A. Well, the child was never born with tuberculosis. 20

Q. I didn't ask you that. A. I went because I was so run down from the accident.

Q. You went because you were run down from the accident? Then, you did not go back principally because of the tubercular condition you have testified about, did you? A. Well, but in combination with the accident. 30

Q. You stopped at your mother's house in Chicago for two or three weeks, didn't you? A. Yes, because—

Q. You were not so terribly worried about your tubercular condition then, were you? A. Because the trip was so far.

Q. Didn't you principally go to Colorado Springs in the summer of 1925 because you wanted to— A. Protect myself. 40

Marie Bora—Re-direct

10 Q. Pardon me. Let me finish my question. Didn't you principally go to Colorado Springs in the summer of 1925 because you wanted to be where you could give your child, which was about to be born, the benefit of everything possible, if your former tubercular condition in anyway affected the child, which was about to be born, isn't that so? A. I didn't go for the child, I went for myself.

Q. Notwithstanding your worry about your condition you did not consult any physician in East Orange or anywhere else in the East about your tubercular condition before you went west, did you? A. I had an X-ray taken.

20 Q. I recall asking you yesterday if you had been treated? A. I had not been treated.

Q. You did not go to any physician because of your tubercular condition, did you? A. Other than having an X-ray.

Q. Who took the X-ray? A. The American Telephone and Telegraph Company.

30 Q. On your way to Colorado Springs you stopped in at your mother's in Chicago for three weeks? A. Yes, sir.

RE-DIRECT-EXAMINATION by Mr. Fitz Maurice:

Q. Why did you stop in Chicago?

Mr. McGlynn: I object.

The Court: I will admit it.

Defendant's counsel prays an exception to this ruling of the court.

40 Exception noted as ground of appeal.

Samuel H. Keats—Direct

A. Because the trip from New York to Colorado Springs is so far and I had this brace and I couldn't get around and I was in such a condition I needed that much rest.

10

SAMUEL H. KEATS sworn in behalf of the plaintiffs:

Direct-examination by Mr. Fitz Maurice:

Q. Where do you live? A. 244 High Street, Orange.

Q. Were you in the taxicab involved in this accident? A. Yes, sir.

20

Q. Who else was with you? A. My mother.

Q. When the cab arrived at Grove Street and Park Avenue just tell the court and jury what you observed? A. I was in the car standing here (indicating) and we swung out that way and across the street and I heard a screech and we turned in towards a tree.

Q. Suppose you stand up there and face this way and describe that. A. There was the car standing here (indicating).

30

Q. (By the Court.) You were not in that car? A. No, I was in the Yellow cab and we were coming along Park Avenue and swung out to pass this car and as he got across the street he swung to his left and I heard a shriek, and by that time he had swung his front wheels into the evergreen and I got out and helped Mrs. Bora into the cab.

Q. When the cab in which you were riding passed the standing car, did it pass it to the right or the left? A. Passed it to his right.

40

Samuel H. Keats—Cross

Q. When you got out of the cab to assist Mrs. Bora where was Mrs. Bora? A. She was about ten feet behind the door of our cab in the curb, lying up against the curb, right near the corner of Park Avenue.

10 Q. When you speak of the curb do you mean the right or the left-hand side? A. The right-hand side, the north side of Park Avenue.

Q. What did you do? A. I got out and helped her in the cab.

Q. Did you observe anything of her appearance? A. After I put her in the cab she asked for her gloves and umbrella and I got out and got them.

20 Q. Where were they? A. Lying up near the corner.

Q. On Park Avenue or Grove Street? A. I don't remember that.

Q. Right near the corner? A. Right near the corner; I had to walk back to get them.

Q. Then, you took her home? A. Then we took her home.

CROSS-EXAMINATION by Mr. McGlynn:

30 Q. Did you see Mrs. Bora before she was hit? A. No, I did not, the first thing I heard was a shriek.

Q. You were seated on the right-hand side of the back seat? A. Yes, sir.

Q. It was about 8:30 p.m., around eight o'clock? A. Around eight o'clock, I believe.

Q. Were the lights on the taxicab lighted? A. The dashlights were lit, always are.

40 Q. Was the sign in the middle of the windshield

Edward W. Neill—Direct

which says, "Yellow" lighted? A. I don't remember that.

Q. Were the headlights lit? A. Yes, sir.

Q. Was the blinker light working on the corner? A. It was.

Q. This car which was standing at the corner of Grove Street and Park Avenue, how far was it from the shrubbery which you indicated east of Grove Street? A. It was right against the shrubbery, right at the corner there. 10

Q. Right against the shrubbery? A. There is only two cars in that street.

Q. Was there room between the right-hand side of the car which you say was standing still and the north curb of Park Avenue for the taxi to go through? A. Yes, sir, there was. 20

Q. (By the Court.) Did you hear any horn or signals? A. I don't remember say. He may have sounded this horn.

EDWARD W. NEILL sworn in behalf of the plaintiffs:

30

Direct-examination by Mr. Fitz Maurice:

Q. You live where? A. 60 Clinton Street, East Orange.

Q. You are employed in the office of Howe & Davis? A. I am.

Q. Did you make measurements at Park Avenue and Grove Street? A. I did.

Q. When? A. This morning.

Q. What did you use in making the measurements? A. A fifty foot tape. 40

Edward W. Neill—Direct

Q. What distance did you measure it? At what point, calling your attention to the map. A. I measured from the west crosswalk to the west nose of the aisle in which the shrubbery is placed on Park Avenue. The distance from here (indicating)—
10

Mr. McGlynn: I object. There is no proof that the conditions were the same when he measured there as they were in March, 1925.

Q. Do you live in East Orange? A. Yes, sir.

Q. How long have you lived there? A. Twenty-three years.

20 Q. Are you familiar with the intersection of Park Avenue and Grove Street? A. Yes, sir.

Q. Were you living in East Orange in March, 1925? A. Yes, sir.

Q. Do you drive an automobile? A. Yes, sir.

Q. Did you drive an automobile in March, 1925? A. I did.

Q. Did you use Park Avenue and Grove Street?

A. Yes, sir.

30 Q. Are you familiar with the conditions of Park Avenue and Grove Street in March, 1925? A. Yes, sir.

Q. Were they the same as they are today? A. They are.

40 Q. Go ahead. A. The distance from the west crosswalk to a point directly opposite the nose of the aisle in which the shrubbery is placed in the center of Park Avenue is 65 feet. The distance from the curb on the east side of Park Avenue to the nearest side of the aisle is twenty-one feet.

Q. Put in the distances you refer to at the point

Edward W. Neill—Cross

you indicate. A. From the crosswalk to a point 65 feet here and 21 feet here (indicating).

CROSS-EXAMINATION by Mr. McGlynn:

Q. Did you make any other measurements? A. Yes, sir. 10

Q. Did you measure the distance from the northerly edge of the shrubbery on the west side of Grove Street to the north side of Park Avenue? A. No, sir.

Q. This line which you say you drew from here to here, where did you make those exact measurements from, what point to what point? A. The park on Grove Street extends on a direct line on the outside of the sidewalk to directly across from that point to a point in a line parallel with Grove Street extending from the curb to the nose of this aisle is 65 feet. 20

Q. In a straight line or on an angle? A. In a straight line.

Q. This line, you say, was the continuation of the westerly edge of the shrubbery? A. No, at the nose of this aisle is a concrete border which is on the arch of the circle. This line would be perpendicular to the lines of which this arc was made, and this line would be at right angles to the southerly side of Park Avenue; in other words, this would be perpendicular. 30

Q. (By the Court.) In other words, you mean you measured from the west crosswalk to the east crosswalk; is that it? A. I did, exactly.

Q. (By Mr. McGlynn.) The sidewalk you mean is the one in front of the church here (indicating)? A. Yes, sir. 40

Frank W. Bora—Direct

Q. You measured from a line from the easterly side of the sidewalk to a line on the westerly edge of the other side here (indicating)? A. Yes, sir; I didn't take the sidewalk, of course; the sidewalk is on this side of the aisle (indicating).

10 Q. There is no distinct sidewalk; it is all straight pavement? A. Yes, sir.

Q. Did you measure the distance from the edge of the shrubbery to the blinker light? A. No, sir.

Q. Is the blinker light in the middle of the street there? A. I didn't measure it, but it appears to be.

20

FRANK W. BORA, one of the plaintiffs, sworn in his own behalf.

Direct-examination by Mr. Fitz Maurice:

Q. You are the husband of Marie Bora? A. Yes, sir.

Q. You are also one of the plaintiffs in this suit? A. Yes, sir.

30 Q. Where do you live? A. 24 Franklin Place, in Summit.

Q. Where did you live in March, 1925? A. 133 North Maple Avenue, East Orange.

Q. What is your business? A. Engineer with the American Telephone & Telegraph Company.

Q. Were you at home the day of the accident? A. Yes, sir; I was at home.

40 Q. When did you first see Mrs. Bora after the accident? A. I first saw Mrs. Bora after the accident after Mr. Keat came up to my apartment

Frank W. Bora—Direct

and notified me that Mrs. Bora had met with an accident and she was in a taxicab at the door.

Q. Did you help bring her up? A. I helped bring her upstairs; that's right.

Q. You continued to live at that address for how long? A. We continued to live at that address up until late in May; I don't remember the exact date; it was in some leased apartment where the people were returning the first of June and we had to be out of the apartment the first of June, and we left the apartment late in May. 10

Q. Between that period, from March to May, were you home every night? A. As far as I remember right now, I was home every night. I did do some traveling and it may be possible I was out of town for a night or two. 20

Q. Were you away on any extended trips? A. No, I didn't go away at that time on any extended trips.

Q. During that period of time, from March until May, was Mrs. Bora around the house, or otherwise? A. During practically all that time she was confined to her bed.

Q. Did you observe any appliance or apparatus she was wearing? A. Yes, Dr. Adams, who was attending her for her knee condition, applied two braces, the first brace in the early part of the week after the accident and the second brace two or three weeks later, as I recall. Subsequent to the removal of the second brace he ordered that the right leg be put in the steel, I should have said plaster paris casts—subsequent to the removal of the two plaster paris casts he ordered that the right leg be put in the steel brace, which she wore up to the time that I saw her last. 30 40

Frank W. Bora—Direct

Q. Was that brace worn constantly or otherwise? A. The brace was worn constantly during the day and on the first night of her confinement. The pain, however, at the end of the first night was so severe she had to take the brace off and
10 with Dr. Adams' permission from that time on the brace was taken off every night and half of one of the plaster paris casts which had previously been used was strapped to her leg each night to insure no motion at the knee.

Q. Who bought the brace you speak of? A. I bought the brace.

Q. What did you pay for it? A. As I recall, I paid \$57.50. May I refer to my manuscript,
20 if you are going to ask me questions about it?

Q. Did you keep a record of your expenditures? A. Yes, sir.

Q. Have you it with you? A. Yes, sir.

Q. Did you make it yourself? A. Yes, sir.

Q. Is the brace on that list? A. I think it is.

Q. Suppose you look. A. Yes, the amount here is \$57.

Q. Did you pay any doctor's bills? A. Yes, sir.

30 Q. To whom? A. I paid doctor's bills to Dr. Bingham.

Mr. McGlynn: I object to Dr. Bingham's item. Dr. Bingham testified to that.

Q. Other than Dr. Bingham and other than Dr. Adams. A. To doctors other than Doctors Bingham and Adams, I have paid \$30; \$15 to Dr. Ware in Colorado Springs to take care of Mrs. Bora's
40 knee subsequently, and \$15 to Dr. Conway.

Q. \$30? A. Yes, sir.

Frank W. Bora—Direct

Q. Who paid for the ambulance? A. I paid for the ambulance.

Q. How much? A. \$10.

Q. Who paid for the X-rays? A. I paid for the X-rays too. They cost me \$15.

Q. (By Mr. McGlynn.) X-rays or rays? A. I think there were two pictures; I am not absolutely sure of that. 10

Q. (By Mr. Fitz Maurice.) Did you pay for any medicine? A. Yes, I paid for a considerable amount of medicine for Mrs. Bora during this time. It amounted, including the back rest and crutches Dr. Adams ordered, \$21.17.

Q. That is including these appliances? A. He did not order the back rest; he ordered the crutches; I got the back rest as a matter of convenience. 20

Q. Did you buy any special shoes?

Mr. McGlynn: I object to that testimony as the evidence is no special shoes were necessary.

The Court: I think you first have to prove that the shoes which were bought were necessary to assist in the cure of the injury and to alleviate the suffering of the party to the accident, before you can prove the cost. 30

(Argument.)

The Court: You can put this in and I will strike it out if it is not connected up. 40

Frank W. Bora—Direct

Q. What was the price of the shoes? A. The shoes cost \$9.50.

10 Mr. McGlynn: You need not bring Mrs. Bora back to prove that. I will not worry about \$9.50.

Q. Prior to March, 1925, did you have any domestic help in your household? A. No.

Q. Subsequent to the accident did you have any domestic help? A. Yes, sir.

Q. Who was it? A. At the East Orange address I arranged to have my mother come down from Lawrence, Massachusetts, two or three days after the accident, and she remained with me up
20 to the time Mrs. Bora left for Chicago.

Q. Did you pay your mother anything?

Mr. McGlynn: I object.

The Court: I will admit it.

A. I did not pay my mother.

Q. Where did your mother live while she was taking care of the house? A. She lived right in the house with us, in the living room. It is a small apartment and she had to sleep in the living
30 room.

Q. In May, 1925, where did your wife go, do you know? A. Yes, I took my wife to Chicago during the latter part of May.

Q. Where in Chicago? A. To her mother's house, 2625 West 35th Street.

Q. From there where did she go? A. From there to Colorado, and I came back to New York.

Q. Prior to March, 1925, did your wife suffer
40 from tuberculosis? A. Yes, sir.

Q. When? A. She suffered from tuberculosis—

Frank W. Bora—Direct

Mr. McGlynn: I object. I do not think this is proper proof.

The Court: Sustain the objection.

Mr. Fitz Maurice: I will connect this up by a deposition of a doctor I intend to read next. 10

(Argument.)

(Previous question and answer read.)

The Court: I say if he will connect it up I will let it stand; otherwise I will strike it out.

Mr. McGlynn: Do I understand that counsel will continue asking questions about this tuberculosis? 20

The Court: No, I will let him put in the deposition.

Mr. Fitz Maurice: At this time?

The Court: You can read it now to the jury, if you wish.

Mr. Fitz Maurice: I will withdraw the question until I get to the interrogatories.

Q. Who paid the railroad fare of Mrs. Bora from East Orange to Colorado? A. I did. 30

Q. What did that amount to? A. \$153.

Mr. McGlynn: I object.

A. There and back again.

Mr. McGlynn: I object on the ground it is not a proper measure of damages.

(Argument.)

40

Argument

The Court: I will not let it in until we compare the doctor's testimony and then I will give the defendant's counsel another chance to argue before it is let in.

10 Mr. Fitz Maurice: These are interrogatories propounded to Dr. L. A. Conway, a witness sworn in behalf of the plaintiff on the 10th of February of this year. "5. *Question*. At the time you attended her since March 14, 1925, for what purpose did you attend her? What was her lung condition? Give in detail her condition, noting progress or decline during the time she was under your observation. What is
20 your opinion as to the cause of her increased pulmonary involvement at the time she was first seen after March 14, 1925? *Answer*. Pulmonary tuberculosis; the upper right lung showed activity; at all times while in Colorado Springs she showed improvement. The increased pulmonary involvement shown since the previous examination was probably due to an accident which she had on March 14, 1925."

30 (Mr. McGlynn reads as follows): Cross-interrogatory No. 1 propounded of Dr. L. A. Conway. "*Question*. State the time, date, hour and place when you first examined Marie Bora for injuries as result of the alleged accident. *Answer*. I have never treated Marie Bora for injuries as the result of the alleged accident."

40 The Court: What was the last question?

Frank W. Bora—Direct

Q. (Last question and answer read as follows):
 “What did that amount to? Answer. \$153. There
 and back again.”

Mr. McGlynn: I object. I say the rail-
 road fare to Colorado Springs and back 10
 is not a proper element of damages.

The Court: I will admit it. I think it is
 a question of fact. The jury may deter-
 mine it was not; the jury may determine
 that this accident was not the cause of the
 reaction of the pulmonary tuberculosis con-
 dition, or they may decide that a cure could
 be effected without going to Colorado
 Springs, but I think the testimony is com- 20
 petent. I will admit it.

Q. Does that \$153 include all railroad fares
 from East Orange to Colorado Springs? A. Yes,
 sir.

Q. (By the Court.) Do you mean Mrs. Bora's
 alone? A. I thought that is what he meant, Mrs.
 Bora and return.

Q. (By Mr. Fitz Maurice.) Did anyone accom-
 pany Mrs. Bora to Colorado Springs? A. No 30
 one accompanied her; her mother went there and
 got her, and brought her back.

Q. Who paid the railroad fare of her mother?

Mr. McGlynn: I object.

The Court: Sustain the objection.

Q. Who paid Mrs. Bora's expenses at the
 Glockner Sanitarium?

Mr. McGlynn: I object on the ground, as 40
 I outlined to your Honor when talking to

Frank W. Bora—Direct

your Honor about the railroad fare. I do not see how we can be forced to go into the realms of speculation to decide which portion of this expense was due to conditions other than the accident.

10 The Court: That is a jury question. I will admit it.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A. I paid the expenses.

Q. What did they amount to? A. Up to the time the brace was removed, they amounted to \$103.50.

20 Q. When was that? A. As I recall, it was the 20th of July; I am not sure of that day.

Q. Were there any other expenses you paid subsequent to that date as the result of her being at that institution? A. Yes, sir.

Q. What did they amount to?

Mr. McGlynn: I object. What were they for?

The Court: Sustain the objection.

30 Q. What were the expenses for? A. I don't know what they amounted to.

Q. What were they for? A. The pregnant condition.

Mr. Fitz Maurice: Withdraw the question.

40 Q. Have you paid any other expenses incidental to this accident?

Frank W. Bora—Direct

Mr. McGlynn: I object. We are entitled to know what they are for.

The Court: He can answer yes or no.

A. Yes.

Q. What were they for?

10

Mr. McGlynn: I object.

The Court: I will admit it.

A. They were stockings which were ruined at the time of the accident, \$2.00. For an extension of the telephone—

Mr. McGlynn: I object to that.

The Court: Sustain the objection.

A. That's all.

20

Q. When did you move from East Orange to Summit? A. I moved to Summit in November of this year. I moved to East Orange last May and in the meantime I lived in New York by myself. Mrs. Bora was not with me again until November.

Q. When Mrs. Bora returned from Colorado, where did you take up your residence? A. Summit.

Q. That is where you are living now? A. Yes, sir.

30

Q. Have you any domestic assistance in your household at this time? A. Yes, sir.

Q. When did that commence? A. We have one maid. That commenced the first week Mrs. Bora came back.

Q. What does that assistance consist of? A. It consists principally in the doing of housework for Mrs. Bora, the making of beds, sweeping of

40

Frank W. Bora—Cross

the floors, and the doing of the other incidental work around the house, like helping Mrs. Bora get her lunch and washing the floors.

Q. Is that a man or a woman? A. It is a woman.

10 Q. Prior to March, 1925, did you have such assistance? A. No, Mrs. Bora took care of her own work prior to that time.

Q. What are you paying this woman?

Mr. McGlynn: I object.

The Court: Sustain the objection.

(Argument.)

20 Q. Prior to March, 1925.

The Court: Since then they have moved to some other place and have had their establishment enlarged, have had a baby born, and I think you need some testimony that is really medical to establish the fact that the help they have now in their home is necessary as the result of the accident and that the injuries which caused this necessity were probably due to the accident. You have a long way to go before you can get that in.

30

CROSS-EXAMINATION by Mr. McGlynn:

Q. You kept a very accurate account of everything you spent since March 14, 1925, did you not? A. That's right.

Q. Can you tell me what the seventeen cents is on the medicine bill? A. I cannot give you an
40 itemization of those expenses.

Frank W. Bora—Cross

Q. How did you total them? A. I beg your pardon?

Q. How did you total \$21.17? A. By adding up the various individual items and expenses.

Q. Then the memoranda which you have is not an original memoranda, but one made up after a computation of bills, and receipts, and so forth? 10
A. That's correct.

Q. On what did you keep the record on which the disbursements themselves were made? A. I have some check book records; I have some notations in a memoranda, in note books; others which Mrs. Bora kept, and records which she had.

Q. Have you Dr. Conway's bill with you, for \$15? A. I am sorry; I haven't got it. 20

Q. Have you any recollection as to whether it was itemized? A. My recollection is it was not itemized.

Q. Was it for the professional services he rendered from the time your wife arrived in Colorado Springs in June until she left in September? A. Yes, sir.

Q. So far as you know, he was the only physician who at any time subsequent to March 14, 1925, treated your wife professionally for any tubercular condition? A. Treated her, yes. 30

Q. He is the only physician, Dr. Conway? A. That has treated her. She has been examined by other physicians, but no treatment has been prescribed.

Q. Dr. Conway is the only physician, from March, when the accident happened, up to today, who has treated your wife professionally for the tubercular condition, and his entire bill was \$15; 40
is that right? A. That's right.

Plaintiffs rest.

Motion for a Nonsuit

Mr. McGlynn: On behalf of the defendant, I move for a nonsuit on two grounds.

10 First, on the ground the record as it now stands, discloses no facts, either proving negligence or from which any inference or deduction can be made, which in any way proves negligence on the part of the defendant operating this cab. There is no proof as to the speed, there is no proof as to reckless driving, and there is absolutely no proof of any character which explains this accident, except the testimony of the plaintiff herself, because, as I take it, the two passengers' testimony was practically negligible so far as proof of negligence was concerned.

20 I have had the plaintiff's testimony and examination written out for the purpose of the argument on my second motion of a nonsuit, which is that the case, as it now stands, shows a pure, absolutely unadulterated case of contributory negligence.

On those two grounds I respectfully ask for a nonsuit.

30

(Argument.)

The Court: The motion will be denied for this reason: You state that if she looked to the right she must have seen the car. This is the case: Park Avenue at that point is bisected by a narrow strip of shrubbery and foliage, so that cars going west go on the north side of Park Ave-

40

Motion for a Nonsuit

nue, and those going east go on the south side of Park Avenue. This lady was going north on Grove Street and she was on the westerly side of Grove Street; she crossed the line of east-bound traffic, if there was any, that is, she crossed the south 10 half of Park Avenue to a point where she reached the easterly elbow of this little park in the middle of the street and there she stopped. Now, it was at night and the lights were lit. She stopped because of a reason which she gives; she said there was an automobile approaching from the north on Grove Street and that there was another 20 automobile coming from the east on Park Avenue. As I recollect her testimony, both of these machines stopped, and she stopped. If that was so, they were all three stationary. She was watching to see what they were going to do before she crossed the intervening space. When one of them started, and the one that started was the one going south on Grove Street, she stepped forward. She was on a crosswalk where she had the right of way. She 30 stepped forward, and in a sense, to use an old faithful term, she was having the advantage of that southerly-proceeding automobile because as she was going north, it was going south. She had made an observation both ways, and counsel in the argument has said she must have seen this Yellow Cab coming west.

I, for the purposes of this motion, must 40

Motion for a Nonsuit

10 resolve all the most favorable inferences
for her. The unquestioned testimony of
the people who have given us the benefit
of what they saw, particularly the two oc-
cupants of this Yellow Cab, was that it
came up behind or a little to one side of
the standing automobile on Park Avenue
and then turned to the right. If that was
so, probably Mrs. Bora could not see it.
I recollect there is a portion of the Traffic
Act which does not give an automobile the
right to pass another car on its right, and
it seems to me that the Traffic Act pro-
20 vides that a car passing another one must
pass it on the left. To say that this lady
was guilty of contributory negligence un-
der the circumstances and under the case
of Pool vs. Brown, where the facts were
not nearly as strong as they are here, in 89
New Jersey Law, a Court of Errors case,
I think I would be committing legal error.

You may have an exception.

30 Mr. McGlynn: I respectfully pray an ex-
ception to your Honor's ruling on the non-
suit, and also to your Honor's remarks, as
I think some of them may be prejudicial to
the defendant.

The Court: I have to give the reasons
for the denial of the motion, and if you
make motions you will have to take my
reasons for the nonsuit; that is the chance
you take.

40

I. Edward Gluckman—Direct

I. EDWARD GLUCKMAN sworn in behalf of the defendant.

Direct-examination by Mr. McGlynn:

Q. You are a practising physician in the State of New Jersey? A. I am. 10

Q. And have been how many years? A. Twenty-two years.

Mr. Fitz Maurice: We admit the Doctor's qualifications.

Q. Have you specialized in any particular line of work? A. I have.

Q. What? A. Tuberculosis.

Q. Are you connected with any institutions in which you specialize in that particular subject? A. Yes. 20

Q. What institutions? A. A member of the Advisory and Consulting Staff of the Essex Mountain Sanitarium; former superintendent of Verona, director of the State Tuberculosis League; a member of the Jewish Tuberculosis Association, a member of the American Sanitarium Association; a member of the New York Tuberculosis Association. That's all. 30

Q. Did you at my request examine Mrs. Bora? A. Yes, I did.

Q. At your office? A. Yes, sir.

Q. What, if anything did your examination disclose with reference to her present condition in so far as her tuberculosis is concerned? A. I found her present condition was a negative tubercular condition. She had had an old tubercular condition which was negative at the present time. 40

I. Edward Gluckman—Direct

Q. How was her temperature? A. 98; normal.

Q. Your examination was made right after her evidence here yesterday afternoon? A. Yes, sir.

10 Q. Within a few minutes thereafter? A. Yes, sir.

Q. You have heard the testimony in this case with reference to the date of this accident and the details of the accident. So far as her injuries were concerned, have you not? A. I have.

20 Q. What have you to say with reference to whether or not the injuries, which have been testified to here, she sustained on March 14, 1925, would have to do with the tubercular condition which was active in 1923 and arrested in the fall of 1923, for which she was given treatment in December, 1924, as to whether or not those injuries would be likely to have any effect on her tubercular condition? A. An injury of any kind might start up a reaction in an old tubercular condition.

30 Q. Accompanying that, what symptoms would you have to have? A. A general reactivation of symptoms in active tuberculosis, such as rising temperature, pulse, sweats, severe increase in coughing, loss of weight, general debility, weakness.

Q. What effect, if any, would pregnancy have on an arrested condition of tuberculosis? A. It may have every one of the effects I stated.

40 Q. That is in addition to the injury, the pregnant condition might make that condition reactive? A. The pregnant condition might do it, with the injury.

I. Edward Gluckman—Direct

Q. Would a reactivated case of tuberculosis be likely to be arrested in a patient between June and September if, during that period, she gave birth to a child?

Mr. Fitz Maurice: I object. There is no testimony as to the birth of the child. 10

A. I did not exactly get that question.

Q. What is going through my mind is this: The woman had a tubercular condition in 1923, and it was arrested in the fall of that year, there seems to be some dispute about the summer of 1924, she complaining it did not become reactive and the physician who treated her claims he treated her for that condition in the summer of 1924. Now, she has an accident on March 14, 1925, and she claims she went back to Colorado Springs because her condition became reactive and during the time she was at Colorado Springs, which was, I think, from June until September, in your opinion would it be possible to arrest a reactive case of tuberculosis in that short time, if at the same time, on August 7th, she gave birth to a child? 20

Mr. Fitz Maurice: I object because part of the question is not supported by testimony. 30

(Argument.)

The Court: Suppose you reframe your question, indicating that during 1924, while she was at Colorado Springs, according to the testimony of Dr. Conway, she was an arrested case. 40

I. Edward Gluckman—Direct

Q. (By the Court.) It can be arrested, but cannot be cured? A. It depends on the amount of involvement in the first place. If she had sufficient involvement it could not be cured; it could be arrested. An incipient case can be cured where
 10 there isn't much breaking down of the tissues, but after the tissues are broken down, then you can only arrest it.

Mr. McGlynn: Strike out the hypothetical question and I will go at the question a different way around.

Q. (By Mr. McGlynn.) What effect does it have on a person suffering from pulmonary tu-
 20 berculosis in coming from the high altitude of Colorado Springs back to the East?

Mr. Fitz Maurice: I object.

The Court: I will admit it.

A. A case coming from an altitude of five thousand or more feet to a low altitude of less than six hundred feet, very often relapses. I have seen practically six or seven hundred cases in the last twenty years that have relapsed coming
 30 from Colorado to this climate here.

Q. What is that due to? A. The sudden drop from the high altitude to a low, heavy air, from a rarified air to heavy air.

Q. What comparison is there between that situation you just described and a woman in a pregnant condition? A. What comparison?

Q. Yes, as far as making an arrested case active again. A. Oh, a pregnant woman might at any
 40 time reactivate the tubercular condition, if she had had any.

I. Edward Gluckman—Direct

Q. I mean coming from a high altitude to a low altitude has an effect on your circulatory system, hasn't it? A. There is no question about it.

Q. Does the strain on that at some time, as in a good many cases, make these old lesions break out again? A. I wouldn't say that. 10

Q. What is it coming from a high to a low altitude which makes one react? A. The sudden changes of the pressure of air on the blood vessels have an effect very often in doing that.

Q. From your examination of this lady yesterday was it possible for you to determine whether or not the injuries she testified she received in March, 1925, were actually the cause of making her old tubercular condition reactive? A. I 20
couldn't say that at all. The question is I have to be perfectly satisfied in my mind whether it had been active at that time? If she was active, I cannot for the life of me see how she could have been arrested in two months time.

Q. That is what I am getting at. She was active when she went out there in December, 1925?

A. According to the testimony she was.

Q. During this time she gave birth to this child out there. Is it probable that an active condi- 30
tion could have been arrested in September, 1925?

A. I haven't seen it, in two months time.

Q. Is there anything from the present condition by which you can gauge as to how long ago she did have a reactive condition? A. She is a thoroughly negative case at the present time. I couldn't tell whether she had a reaction from that.

Q. Are there places nearer to East Orange, 40

I. Edward Gluckman—Cross

New Jersey than Colorado Springs at which treatment can be given for tuberculosis? A. Plenty of them. They have a place at Verona, Glen Gardner, a place at Summit, Saranac Lake, Liberty, South Carolina, White Haven.

10

CROSS-EXAMINATION by Mr. Fitz Maurice:

Q. Colorado Springs, however, is recognized as a very good place. A. Yes.

Q. If a patient goes there and gets relief, it is to the advantage of the patient to return there if there is again activity, is it not? A. It would be to his advantage if he was once relieved there,

20 yes.

Q. I take it from your statement that the arrest could not be made in two months, based on the fact that you were under the impression that she was entirely cured when she left Colorado in September, 1923, is that so? A. I would have to infer that from the testimony.

Q. Now, if the testimony of Dr. Conway, showed referring to the answer to the fifth interrogatory, that at all times while in Colorado Springs she showed improvement and that nowhere in his testimony is there a statement that when she left there she was cured, but that with proper treatment she would continue to improve, would that change your answer? A. Well, it might modify it.

Q. I take it from your answer that it is hard to distinguish or differentiate between the injury or the pregnancy as causing the reactivation, is that right? A. Either one of them might do it.

40

Harry Greenhouse—Direct

Q. The accident would not help to repair it?
A. No.

Q. Certainly the accident would help to break down the tissues and also increase the line of resistance, would it not? A. If there was sufficient accident. 10

Q. Assuming the woman was struck by an automobile while pregnant and knocked to the ground sustaining an injury to her knee which necessitated eight weeks in bed, loss of weight, would that in your opinion, based on your wide experience, would that tend to increase her powers of resistance or otherwise? A. No, it would have a tendency to lower her powers of resistance.

The Court: Why is it advantageous to send a pulmonary patient to a place that has a high altitude? 20

Witness: Why is it advantageous?

Q. Yes, because of the dryness of the air? A. We do not consider it advantageous any more. We used to years ago, but today it doesn't mean anything, the altitude; it is the treatment and the pure, fresh air.

Q. Whether it is high or low? A. Yes, they do well either place. 30

HARRY GREENHOUSE sworn in behalf of the defendant:

Direct-examination by Mr. McGlynn:

Q. Where do you live? A. 132 South Thirtieth Street. 40

Harry Greenhouse—Direct

Q. Are you employed by the Yellow Cab Company? A. Yes, sir.

Q. And have been how long? A. Close to two years.

10 Q. How long have you been driving an automobile? A. Seven years.

Q. Were you driving cab No. 175? A. Yes, sir.

Q. On the evening of March 14, 1925? A. Yes, sir.

Q. Where did you pick up your passengers? A. Pennsylvania Railroad station.

Q. How many passengers did you have? A. Two.

20 Q. About what time did you approach the corner of Park Avenue and Grove Street? A. Around the hour of eight o'clock p. m.

Q. In the evening? A. Yes, sir.

Q. How was the weather? A. Good.

Q. How was the pavement, wet or dry? A. Dry.

Q. This cab No. 175, had you driven that cab before? A. Yes, sir.

Q. Did you usually drive the same cab? A. Yes, sir.

30 Q. That is, you operated it on one shift and someone else operates it on the other? A. Yes, sir.

Q. When you go back on the shift do you get the same cab, or another one? A. The same cab.

Q. Have you any recollection as to how long a time you had been operating cab No. 175? A. I judge seven or eight months.

40 Q. What was the condition of its mechanism? A. Perfect.

Harry Greenhouse—Direct

Q. What was the condition of its brakes? A. Good.

Q. Do you recall when you came west on Park Avenue whether the street lights were lighted?

A. Yes.

Q. Were the lights on your cab lighted? A. 10
Yes, sir.

Q. What lights did your cab have on? A. Why, it had the two side lights and the "Vacant" light and the tail light.

Q. Where is that "Vacant" light? A. Over the center of the windshield.

Q. How long is it, twelve or fourteen inches? A. Every bit of that.

Q. What kind of a light has that in it? A. 20
Two bulbs in it.

Q. Two bulbs? A. Yes, sir.

Q. What sort of a piece of glass is in the front, white or yellow? A. Yellow glass.

Q. Were those two bulbs lighted? A. Yes, sir.

Q. Now, as you approached the corner of Grove Street going west on Park Avenue that night were there any cars, or was there a car in front of you? A. Yes, sir.

Q. At about what point, if you remember, on 30
Park Avenue, did you pick up that car which was ahead of you? Where did you get behind it? A. Just as I was crossing over that railroad bridge going up Park Avenue, around South Seventeenth Street.

Q. Did you pass that car or did you continue to follow it? A. I continued to follow it.

Q. As you approached Grove Street going west, just before you got to the corner back of the block, 40

Harry Greenhouse—Direct

what was the relative position of the two cars, the car which was ahead of you, and the cab that you were driving with reference to the space between the shrubbery and the curb? A. Why, we were continuing up about the same distance.

10 Q. I do not mean the distance behind, I haven't gotten to that yet. I mean with reference to the space between the shrubbery and the curb line, what was the relative position of the two cars? Was the car ahead of you on the left-hand side of the street going up or the right-hand? A. The right-hand side.

Q. It was on the right? A. Yes, sir.

20 Q. Where were you? A. Directly in back of him.

Q. You were directly in back of it? A. Yes, sir.

Q. How far in back of him? A. About a car's length.

Q. As you approached close to the corner of Grove Street and Park Avenue did this car ahead of you in any way give you any signal that it intended to change its direction?

30 Mr. Fitz Maurice: I object to that as being wholly immaterial as to what the car ahead of him did.

Q. Did you get my question? Did he give you any signal which indicated what he was going to do? A. He did not.

Q. Did his line of travel continue up the same or did it change? A. It changed.

40 Q. How did it change? A. In the direction of left.

Harry Greenhouse—Direct

Q. About how far back from where Grove Street crossed Park Avenue would you say his car was when he changed his direction? A. Why, just as he got about to the center.

Q. (By the Court.) How far from the east crosswalk? 10

Q. (By Mr. McGlynn.) This line here indicates the imaginary crosswalk line here, and this the east side of Grove Street where it intersects Park Avenue. How far east, if at all, was this car ahead of you when he indicated to you he would change his direction? A. Well, I noticed.

Q. Was he east of that line when he changed his direction? A. Yes, sir. 20

Q. Do you know which, what it was? A. Yes, sir.

Q. How far was it east when he first indicated to you any change of direction that he was not going to continue straight? A. He did not indicate his direction until he got just about to here (indicating).

Q. Indicating a place east of the blinker? A. Yes, sir.

Q. What did he do then? A. Why, he cut around this blinker here (indicating) without stopping. He didn't stop here (indicating). He was coming around slow. 30

Q. What did you do after he changed his direction? A. Turned my wheel to the right to continue up Park Avenue, slowed down and put my car in second gear and turned to the right to continue up Park Avenue.

Q. How far had you gotten past this car which 40

Harry Greenhouse—Direct

was making this turn when you first saw this lady? A. I didn't get you.

10 Q. You say you turned right, as I understand it to get around this car which was making this turn. How far had you gotten in that direction or where were you when you first saw this lady?

A. I didn't have to turn as close to the curb, because he was giving me the right of way by his turning; that didn't take me much off my course.

Q. That didn't take you much off your course?

A. No, sir.

Q. When did you see this lady, how far away from this westerly crosswalk were you when you first saw her? Where did she come from? A.

20 As he turned around this bend here I was about up to here (indicating), and I noticed the lady just about three feet in front of my car.

Q. What, if anything, did you do then? A. Swung sharp to the left to avoid hitting her and the right front fender grazed her and threw her down to the pavement.

Q. How far did the car go after your fender grazed her? A. I stopped immediately.

30 Q. Where was your car when it stopped? A. Outside of that shrub there, against the curb of the shrub.

Q. What did you do then? A. I got out of my cab and assisted her in, put her in my car with the other gentleman.

Q. Who helped you? A. Yes, sir.

Q. Where was she when you picked her up? A. Right in the center of the right side of the car.

40 Q. (By the Court.) Whereabouts in the street,

Harry Greenhouse—Direct

can you tell us that? A. Well, that was, I judge, about two or three feet away from the curb. I can locate it better on the diagram here.

Q. Yes, show us. A. The car was against the shrub and she seemed to me, as I noticed, was about here (indicating). 10

Q. (By Mr. McGlynn.) That is two or three feet from the curb you think? A. Yes, sir.

Q. Just before you got to the corner of Park Avenue and Grove Street, before you got to the corner, at about what rate of speed were you driving? A. At the rate of fifteen miles an hour.

Q. When this car made this turn around this blinker light, did you increase your speed or decrease your speed? A. I had to shift from third 20 to second gear and I had to decrease.

Q. At that time what did you figure your rate of speed was about? A. Why, I judge about five to eight miles an hour.

Q. Had you thrown your lever back from second into high before you saw this lady, or hadn't you had time to do that? A. After I seen her?

Q. What? A. I had my car in second speed before I seen this lady.

Q. Then, when you stopped your car did you 30 change your car to high or did you stay in second? A. I don't understand.

Q. You were in second gear as you came around this car? A. Yes, sir.

Q. As you came around the car, about three feet in front of you you saw this woman, had you shifted from second into high again, or were you still in second? A. Still in second.

Q. Can you tell me within how many feet you 40

Harry Greenhouse—Cross

stopped your car? A. I stopped immediately; the speed was so slow I could stop immediately.

Q. What part of the car did you say grazed her? A. The right front fender.

Q. What sort of warning signal did you have
10 on that cab? A. Klaxon horn.

Q. Hand or electrical? A. Hand.

Q. Does that make a loud noise? A. If you push it hard it makes a loud noise.

Q. If you push it easy does it make a loud or a soft noise? A. Enough for anyone to hear.

Q. Did you push it that night? A. Yes, sir, it all occurred in the sudden stop.

Q. Did you tell me what you did after you got
20 the lady in the cab? A. I assisted her in the cab and asked her if she wanted any medical attention and she said, "No" she just felt nervous and wanted to go home. I drove her over to 133 North Maple Avenue and got out of the cab and rang the doorbell and her husband came down and assisted her into the house, and I left my name and cab number with him.

Q. And took your passengers on? A. And proceeded.

30 Q. Did you see any other cars at Grove Street at or about that time? A. No, sir.

CROSS-EXAMINATION by Mr. Fitz Maurice.

Q. Then, you did not when you arrived at Grove Street, bring your car to a stop, did you? When you reached Grove Street you did not bring your car to a stop, did you? When you came up
40 here this way (indicating) you did not stop anywhere here, you kept right on going, is that it?
A. I did, yes, sir, because the car—

Harry Greenhouse—Cross

Q. Just answer my question. You did not stop? A. I slowed down.

Q. You did not stop? A. No, sir.

Q. You did stop over here (indicating)? A. Yes, sir.

Q. With your two front wheels against the cement curb there? A. No, just the left wheel. 10

Q. Against the cement curb? A. Yes, sir.

Q. Is that what stopped you? A. No, sir.

Q. When you got out of your car wasn't your car fifteen feet ahead of Mrs. Bora, where she was lying on the road? A. No, sir.

Q. Wasn't Mrs. Bora lying in the gutter close to the curb here at the corner (indicating)? A. Well, if you judge the distances from the car to the curb that is how close she was laying, she was laying right alongside of the car to the right. 20

Q. Wasn't Mrs. Bora lying in the gutter, close to the curb, to this corner when you came back from your cab? A. No, sir, she was lying right alongside of my cab.

Q. Wasn't her pocketbook and umbrella picked up around the corner on Grove Street here? A. I didn't notice any such thing.

Q. How big is this light you have on top of your cab? How wide is it, about an inch wide, isn't it? A. I think at least two or three inches. 30

Q. Three inches? A. About two inches.

Q. How long is it? A. About a foot and a half long.

Q. Show me what a foot and a half is. A. I judge about that (indicating).

Q. That long, is it? A. Yes, sir.

Q. It has black letters on it, all across the face 40

Harry Greenhouse—Cross

of it "Vacant"? A. Just the paint, but the frame is yellow.

Q. The letters are painted on there "Yellow"?

A. Yes, sir.

Q. Those two side lights you refer to are the
10 cowl lights, aren't they? A. Yes, sir.

Q. You have headlights, haven't you? A. No, sir.

Q. You have no headlights on your cab? A. No, sir.

Q. It is rather dark on Park Avenue, you know that by experience, don't you? A. Not at that intersection, no, sir.

Q. It is not dark there? A. No, sir.

20 Q. So, you could see perfectly, couldn't you? A. Yes, sir.

Q. You did not see this lady on the crosswalk, did you? A. I seen her three feet in front of my **cab.**

Q. As a matter of fact, when this car ahead of you reached Grove Street it stopped? A. It did not stop.

Q. And you swerved around to the right of it and struck Mrs. Bora practically in the gutter at
30 the corner, isn't that so? A. Yes, sir.

Q. You say this thing happened all of a snap, is that your expression? A. Yes, sir.

Q. Do you mean by that all at once and suddenly? A. Yes, sir.

Q. You mean when you hit her the whole thing flashed on her? A. Yes, sir.

Q. In other words, when you got around the car you suddenly saw Mrs. Bora and you pressed
40 your horn and put on the brakes and everything. She flashed right at you, is that it? A. Yes, sir.

Harry Greenhouse—Cross

Q. After you got around the car? A. I didn't have to make a full circle, I just had to go a trifle.

Q. As you got around this car that was ahead of you, that is when you first saw her and you blew your horn and attempted to swerve away from her? A. Yes, sir. 10

Q. You say you caught up to this car at the railroad bridge on Park Avenue, that is two or three blocks east of Grove Street, isn't it? A. I think it is more than that.

Q. How many would you say? A. Well, South Seventeenth Street, Grove Street—I judge about four or five blocks.

Q. You travelled in back of this other car at fifteen miles an hour for four or five blocks, is that it? A. Yes, sir. 20

Q. Then, when you got up to this point (indicating) you went around the car? A. Yes, sir.

Q. You did not see any car coming out of Grove Street crossing the street? A. No, sir.

Q. You did not stop to let that car go by? A. I didn't see them.

Q. (By the Court.) How far back of this car in front of you did you pass as it turned south on Grove Street? A. I was just about the car's length in back of it. 30

Q. Yes, as it turned how far from it were you when you went across Grove Street. How far from the back of this other car when you turned to your left. Do you remember that, or can you show us in the room how far? As far as from you to where I am? A. As the car was coming around this bend in Grove Street, how far was I from it? 40

Motion for the Direction of a Verdict

Q. Yes. A. I judge about a foot or a foot and a half, as I passed.

Defendant rests.

10 Mr. McGlynn: I respectfully move for the direction of a verdict in favor of the defendant on the same grounds as I set forth in my motion for a nonsuit.

The Court: I will deny the motion for the same reason.

Does counsel admit that the buildings in that vicinity are on an average of less than one hundred feet apart?

20 Mr. McGlynn: Yes, there is no question about that.

Mr. Fitz Maurice: Yes.

Mr. McGlynn sums up for the defendant.

Mr. Fitz Maurice sums up for the plaintiffs.

The court charges the jury as follows:

30

40

Charge.

MOUNTAIN, J.

There are two plaintiffs, husband and wife, and they have brought this action against the defendant Yellow Cab Company alleging that the defendant company was negligent because a taxicab driven by one of its agents in East Orange on the night of March 14, 1925, struck one of the plaintiffs at the intersection of Park Avenue and Grove Street in the City of East Orange. Park Avenue at this intersection runs generally east and west and Grove Street runs generally north and south. Park Avenue, as you know, from a considerable distance eastward is divided by a strip of shrubbery which separates the east from the westbound traffic. This little ribbon of shrubbery appears to end on the east side of the intersection of Park Avenue and Grove Street and continues again on the west side.

The plaintiff cannot recover against the defendant unless the plaintiff proves that the defendant was negligent and so, let us first examine the story of the plaintiff for the purpose of ascertaining whether such proof has been adduced and then let us examine the story of the defendant indicating, on the defendant's part, as the defendant claims first, that there was no negligence and secondly that Mrs. Bora herself was guilty of contributory negligence.

She alleges that in the evening about eight o'clock she was proceeding in a northerly direction on Grove Street on the west side of the street and that when she came to the intersection of that street with Park Avenue she crossed over to the

Charge

little strip of shrubbery I have referred to and she noticed then an automobile approaching from the north and an automobile approaching from the east. I think her testimony was that she stopped and that both these automobiles stopped;
10 she said her purpose in stopping was to see which one was going to have the right of way and that the one which was approaching south on Grove Street proceeded first and after she had ascertained that it was going to cross Park Avenue in a southerly direction she started north. If she started about the same time you may find she was proceeding in a northerly direction while the automobile was proceeding in a southerly direc-
20 tion just to her right. She alleges she heard no sound or no signal that when she was a few feet from the curb, or just about to step on the curb, she was suddenly struck by an automobile and knocked down; she was not run over.

Two witnesses were called who occupied, as passengers, seats in this automobile belonging to the defendant which struck her and each of these witnesses testified that the Yellow cab swung to
30 the right. That swing which I have referred to, as I understood it, was to avoid or pass around this automobile which had preceded it up Park Avenue and which you may find was the automobile which Mrs. Bora saw standing still at the easterly side of Grove Street as she started to cross.

The defendant denies that it stopped at all, but you may find that the only way you can account,
40 if you believe the testimony of these two wit-

Charge

nesses produced by the plaintiff, for that swing to the right, was that the automobile of the defendant swung around this other automobile, whether it was standing or whether it was moving. The driver of the defendant car testified that when he passed the automobile which Mrs. Bora said was standing still and which I say he denies, that he came to a stationary position; he passed around it one foot or one and a half feet, that is he passed behind it that distance. 10

It is admitted by counsel that Mrs. Bora was walking on a crosswalk. At the time she was struck she was four and a half months pregnant.

That has to do with the facts and with the injuries suggested by the plaintiff's case and by the witnesses called for the plaintiff. At that particular place there was a blinker which was lit; the lights were lit that night. Mrs. Bora testified that when she stopped and made her observation she did not see any car except the two I have referred to and said she was not concerned with any car to the east except this one which had stopped. It is for you to determine whether this Yellow cab was behind that car or whether it was not, as it is for you to determine whether the car which she said had stopped to her right had actually stopped or was proceeding towards her and made the turn as the defendant says it did. 20 30

Now, let us turn to the defendant's case. The defendant places Harry Greenhouse, its operator, on the stand. He said he was driving, on that night, cab No. 175, which was in good mechanical condition. He was going west on Park Avenue 40

Charge

and the pavement was dry, night clear, and the time about eight o'clock. He said his lights were lit. He referred to a railroad bridge at a considerable distance east of the intersection of these two streets and said that at about that place as he

10 was proceeding he picked up a car which you may find was the car which Mrs. Bora said she saw standing there as she made an observation in an easterly direction. He said that the car proceeded in front of him and he followed it, and that this car, which was in front of him, was on the right-hand side of the road as he was because he alleges he was following it a cars length behind. When the car ahead arrived at the inter-

20 section of Grove Street he said that it gave no signal, but it made a turn to the left but it did not stop but continued and went around the blinker. He said he turned to the right to continued up Park Avenue. You may find that expression meant he made a swing, perhaps, to go around this car which he said he passed, as I have stated, a foot or a foot and a half from the rear. He testified that he was not taken much off his course in making this turn; that he saw Mrs. Bora three

30 feet in front of him and he swung sharply to the left and said the right front fender threw her down and that he stopped immediately and that she was lying two to three feet from the northerly curb of Park Avenue. He said at that time his speed was five to eight miles per hour and he was driving in second gear. He said, as I understood him, that he signalled before he crossed and he testified that he made no stop, but continued, as I

40 say, on his course when this other car swung, as

Charge

he testified it did. Now, all that has to do with the facts adduced by the litigants and not with the damages. Before we consider the damages suppose we consider the law. There is a presumption in this case as in all such cases against negligence, in other words, there is the presumption of innocence from any negligent act, and that presumption is in this case for the benefit of the defendant. The mere fact that an accident happened, without any proof of negligence, or rather proof of facts from which you can decide that there was negligence, is not of itself negligence. Then, what facts should you consider to determine whether or not the defendant was negligent and, too, you must consider whether or not Mrs. Bora was negligent? What right did these respective parties have that night at that time and place upon the street? It was, of course, her right to use the street and to make the crossing there as she did and it was the right of the taxi driver also to use the street; that is what the streets are for, but with that right there was a reciprocal duty upon both of the users of the streets in this instance and that was the duty to exercise due care for others who were lawfully using the street. Mrs. Bora had to use reasonable care for her own safety; she was under a legal duty to observe the conditions in the highway in pursuance of that degree of care, to determine how to cross, when to cross and where to cross and it was her duty, of course, to make some observation for that purpose. It was the duty of the driver of this taxi-cab to exercise such care as a reasonably careful and prudent man would have exercised under similar conditions.

Charge

The burden of proof is upon the plaintiffs to prove the defendant was negligent, as the burden of proof is upon the defendant to prove that the plaintiff, Mrs. Bora, was guilty of contributory negligence. If she was she cannot be successful
10 in this action. Of course, her husband cannot recover unless she can, because his right to recover depends on her right to prevail. Contributory negligence may be found to be present in Mrs. Bora if by her own negligence she contributed to the injury in such a way that but for that negligence she would have received no injury from the negligence of the defendant, if any there was. Of course, if you find that both Mrs. Bora and Green-
20 house were negligent then she cannot recover, nor can her husband.

Assuming that you find that the defendant is entitled to your verdict you would bring in a verdict for the defendant. Assuming you find the plaintiffs are entitled to a verdict then you should bring in two verdicts, one for the husband and one for the wife and these are the elements of their respective damages; in the first place what-
30 ever damages you find must be the natural and proximate result of the defendant's negligence in the absence of any negligence by Mrs. Bora. She can recover for the pain and suffering which she has had and the bodily injury which she has sustained and the effect of this injury upon her health as to degree and probable duration. When she was first examined by Dr. Bingham he was caring for her pre-natal condition and discovered the swollen knee and perhaps suspecting some
40 bone difficulty he recommended Dr. John King

Charge

Adams. Dr. Adams treated that knee and she had, as he stated, acute synovitis, which is ordinarily called water on the knee. As I understood it he treated her from shortly after the accident until May 24th, 1925, placing her limb in a cast for a period of time and subsequently ordering a brace which she used. I think she had an abrasion of the ankle and perhaps some other slight injuries which have escaped my memory, but the plaintiff's case goes further than the injury to which I have referred and insists that damages should be awarded because, at the time, she was suffering from a tubercular condition and that this accident was naturally and proximately responsible for the reoccurrence of that condition. That is a question of fact which you should give great consideration. Tuberculosis is a disease of the lungs; it is a pulmonary disease. She had had it before and it may or may not have been in an arrested state at that time. She was pregnant at that time.

The plaintiffs' contention is that whether or not it was in an arrested state that this accident made it reactive and that caused her to have a high temperature and to become, as she expressed it, "run down," as a proximate result of which she says that she had to go to Colorado Springs for treatment. You have to ask yourselves the question as to whether that act was the proximate and natural cause of that or not; I say you have to, because the testimony of the physicians is rather conflicting. Dr. Conway who treated her in Colorado Springs testified, as I recall it that he thought this reactivation was probably due

Charge

to the accident. The expert called by the defendant in this case, Dr. Gluckman, testified that pregnancy may have had the same affect that this injury had and he, in answer to a question remarked that if she had this condition actively after she
10 went out there after the accident he did not see how it could be arrested in two months time; in other words, his testimony was to the effect, as I understood him, that while the injury might have caused the reactivation of this tubercular condition it also may have been caused by the pregnancy. So, I say it is for you to decide whether this accident was the proximate and natural cause of this reaction because if Mrs. Bora
20 had a dormant disease which was brought into activity, or a latent weakness which was aggravated by the accident, found to be the natural and proximate result of the defendant's negligence in the absence of any contributory negligence on her part, under those conditions you can consider that as an element of damages. If you find this condition was the result of pregnancy and not the result of her contact with the automobile, of course, it would be unfair to assess dam-
30 ages against the defendant and of course as one of the greatest commentators of the law stated, "One must be just before one is generous"—particularly with other people's money.

Now, what can Mr. Bora recover; what are the elements of his damages? He can recover for the loss of his wife's society, services, consortium and companionship. He can recover such reasonable
40 amounts as he has expended or is obligated to expend to cure or alleviate his wife's injuries, as-

Charge

suming, of course, as I say, you decide for the plaintiffs.

There is testimony and I will briefly give it to you of what I think may be considered, or used as a guide by you, under this latter element. Dr. Bingham stated his bill was four dollars; Dr. Adams, \$125. Dr. Conway's bill was said to be \$15. Dr. Ware \$15, ambulance \$10; brace \$57; X-rays \$15; medicines \$21.17; shoes were \$9.50; stockings \$2 and the Glockner Sanitarium was \$103.50. I haven't added those figures up, but I think I heard counsel say they amounted to \$427 and there was an item of railroad fare to Colorado and back of \$153. I have a word to say about this Colorado railroad fare. It is the husband's duty as a married man to care for his wife, and in the care of his wife to pay her doctors bills, or dental bills, or other bills for that purpose. In a case like this where he seeks to recover he can only recover such reasonable amounts that the jury may find are proper. To exaggerate, so you will see what I mean, a jury may find it was entirely unreasonable if a doctor should recommend that a man's wife should have a trip, that the man send her around the world. On the other hand a jury might find it was entirely reasonable if he sent her off to the country or to Atlantic City or California or to some other place for a cure, if that was necessary, or appeared to be necessary from the medical advice rendered.

It is for you to determine whether it was reasonable for her to go out to Colorado Springs or not. If you think she could've gotten the same attention, care and nursing here as there, then, you would disallow this bill, probably.

Charge

In answer to the last question which I answered Dr. Gluckman he said it was not so much a question of altitude as it was a question of care and treatment and fresh air. If you find on the other hand that that was the reasonable thing to do, 10 considering all the facts in this case, you would be justified in allowing it.

There is one thing I omitted to say in connection with the law and that was that this lady was progressing across Park Avenue on what we know as a crosswalk. The law of this state is that where the houses are on an average of less than one hundred feet apart pedestrians shall have the right of way on a crosswalk and as that was admitted to be the situation here Mrs. Bora had the 20 right of way on that crosswalk. The right of way means that if an automobile comes along at such a distance that if she continues her course and it continues its course, and a meeting is liable, the automobile shall stop and give her precedence. It does not excuse her, however, from the exercise of reasonable care, that is, it is not an arbitrary right of way and would not excuse her from the 30 exercise of reasonable care if she should perceive, or did perceive that this car was going to disregard her rights. However, you may find that in view of the testimony that she never saw this Yellow cab that that question did not enter into the situation, if you believe her testimony.

I will deny the requests as I think I have covered them.

40 (The jury retires.)

Defendant's Requests to Charge

Mr. Fitz Maurice: I respectfully pray an exception to your Honor's refusal to charge the plaintiffs' request to charge.

Exception noted as ground of appeal.

Mr. McGlynn: I respectfully pray an exception 10
to that portion of the charge where your Honor started off by saying that a pedestrian has the right of way and then your statement that if she did not see the Yellow cab then that situation did not present itself, without taking into consideration the fact that if she did make careful observation she must have seen it.

Exception noted as ground of appeal.

20

DEFENDANT'S REQUESTS TO CHARGE

1. The law of the road provides (1924 C. S. 179-699) that in places where the houses are on the average less than one hundred feet apart, pedestrians shall have the right of way over vehicles at any street crossing. Therefore if you find that Mrs. Bora was crossing Park Avenue at a street crossing and that she arrived at that crossing before the taxi cab arrived there, she was entitled 30
to the right of way.

DENIED.

2. If the taxi driver, approaching Grove Street, saw the plaintiff had arrived at the crosswalk previous to his arrival there, his failure to give her the right of way would be negligence on his part, which would make the company liable.

DENIED. 40

Defendant's Requests to Charge

3. The law of the road also provides that any vehicle overtaking another, shall pass on the left side of the overtaken vehicle. Therefore, if this taxi cab driver disregarded that rule and passed to the right of a vehicle stopped or moving slowly
10 near Grove Street, such action on his part would constitute negligence.

DENIED.

4. It would not in itself be contributory negligence for the plaintiff to rely upon her right to cross the street at the cross walk if she arrived there before any motor vehicle, provided the result of her observation justified her in believing that approaching automobiles were recognizing
20 that right of way.

DENIED.

New Jersey
Court of Errors and Appeals

MARIE BORA and FRANK W. BORA, Plaintiffs-Appellees, vs. YELLOW CAB Co., a corporation, Defendant-Appellant.	}	On Appeal.
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BRIEF OF DEFENDANT-APPELLANT.

The Facts.

Marie W. Bora, the plaintiff in this action, was injured by reason of having been struck by a taxicab owned by the defendant and operated by its servant. The plaintiff was proceeding northerly on Grove Street, in the City of East Orange. When she arrived at the intersection of Grove Street with Park Avenue, she proceeded across the southerly one-half of the latter thorofare to the northerly side of the area of grass and shrubbery by which Park Avenue is bisected. At that point, she stopped and observed two cars approaching, one proceeding south in Grove Street, the other west in Park Avenue. According to her testimony she stopped to ascertain which car should have the right of way. When she noticed

that the car proceeding south in Grove Street was starting to continue its course, and without making further observations as to other cars on the highway, she crossed the northerly one-half of Park Avenue and as she approached the curb, was struck by the defendant's cab. The driver of the cab had been proceeding at a moderate rate of speed westerly on Park Avenue, directly behind another car which was apparently the car which the plaintiff saw stopped in Park Avenue when she made her observations as she stood in the center of the street. As the two cars approached Grove Street, the driver of the first car signalled the driver of the cab that he intended to turn to the left into Grove Street and to that end proceeded along the left-hand side of the northerly half of Park Avenue. The driver of the cab thereupon turned slightly to the right and passed the car ahead of it. As he reached the westerly crosswalk, the plaintiff stepped directly in front of the cab. He swerved sharply to the left in an attempt to avoid striking her, but was unsuccessful and the right front fender of his cab struck her, knocking her to the ground. His car did not move more than ten or twelve feet from the moment he first saw her until he had completely stopped.

THE ARGUMENT.**POINT ONE.**

The plaintiff, by her own conduct, was guilty of contributory negligence as a matter of law.

The first ground of reversal set out in the grounds of appeal is that the trial court refused to grant the defendant's motion for a judgment of non-suit at the conclusion of the plaintiff's case. At the trial the motion was strenuously argued on the bases, first, that the plaintiff, by her own testimony, was guilty of contributory negligence; and secondly, that the case was utterly lacking in any proof of negligence on the part of the defendant.

The first point urged on the argument of the motion for a judgment of non-suit and for a direction of a verdict in favor of the defendant, was that the appellee, by her own conduct, was guilty of contributory negligence; that the contributory negligence of the plaintiff will bar his recovery is one of the most elementary propositions of law of torts.

Moore v. Central R. R., 24 N. J. L. 824.

Runyon v. Central, 25 N. J. L. 556.

Telfer v. Northern R. Co., 30 N. J. L. 188.

Harper v. Erie R. R. Co., 32 N. J. L. 88.

Matthews v. Pa. R. R. Co., 36 N. J. L. 531.

Toffey v. D., L. & W., 38 N. J. L. 525.

Bonnell v. D., L. & W., 39 N. J. L. 300.

Mannebach v. Stevens, 71 N. J. L. 368.

The case at bar, then, resolves itself into the proposition as to whether or not the appellee was or was not contributorily negligent as a matter of law, so that on this ground alone, the trial court should have taken the case from the jury.

The case shows that the appellee looked to her right and saw a car stopped at the intersection of Grove Street and Park Avenue, on Park Avenue; that she saw a car stopped at Park Avenue in Grove Street; that the latter car started first and that thereupon she proceeded without making further observations for other cars (State of the case, pages 66 *et seq.*).

It is most urgently contended on behalf of the appellant that the facts as testified to by the appellee show conclusively that she was guilty of contributory negligence. In this connection, the case of *Ruggieri v. Public Service Railway Company*, 86 N. J. L. 698, decided in this court, is exactly in point with the case at bar. There, this court said, quoting the *per curiam* filed in the Supreme Court:

“We have this situation: The plaintiff, standing on the sidewalk about fifteen feet from where he was struck, a car was passing about ten feet away which the plaintiff watched until it had gone seventy-five or eighty yards and then started to cross the street, and after taking two steps, which would be about five feet, he looked again, and while seeing the south-bound car about eighty yards away, saw no car going north approaching, yet when he walked only ten feet, about four steps, he was struck by a car which was at least more than eighty yards away, and must have

covered that distance while plaintiff took four steps. This is so unreasonable as to be incredible, for if the plaintiff had looked when only ten feet from the track, as he said he did, he would have seen the car, and the only inference is that he did not look, or if he did, that he would have seen the car so near as to surely strike him, if he continued to walk toward it; but he says he did not see the car, so he is not within the line of cases where the pedestrian seeing an approaching car, exercises his right of judgment as to his liability to cross safely. In this case, the car must have been within his vision if he had looked, and the fact that he did not see it is a demonstration that he did not look with reasonable effectiveness such as was required of him under the circumstances, and he was therefore guilty of such contributory negligence as required a non-suit, the refusal of which was error."

Another case in this court to the same effect is that of *Brown v. Eliz., etc., R. R. Co.*, 68 N. J. L., 618. There Chancellor Magie, speaking for this court, said:

"He admitted that when he started to cross the tracks he saw lights away up on the hill, and did not know what light it was. Prudence required him then to wait a sufficient time to enable him to observe whether the light which he saw were those of the street lamps on the side of the avenue, or were those of a car in the middle of the avenue. Without waiting, he proceeded to cross. When he says that, at that

time, he could see no trolley in sight, he conclusively establishes that he did not make the observation which duty required of him, because if he had done so, he would undoubtedly have discovered the approaching car, and have been able to avoid a collision."

The contention of the appellant is that this appellee, if she had exercised that care and caution for her own safety which the law requires and which the dictates of common prudence demand, must have seen the car approaching, and if, as she maintains, she did not see it, then she was guilty of that degree of negligence, so that if she had not been negligent, she would not have been injured, no matter how negligent the appellant was.

POINT TWO.

The proof produced by the plaintiff utterly failed to adduce any facts which showed or tended to show the particular acts or breaches of duty wherein the defendant was negligent.

It is a proposition almost too elementary to require citation of authorities that the burden of proving negligence is on the plaintiff. The following are a few of a long line of cases which enunciate this doctrine.

Bien v. Unger, 64 N. J. L. 596.

Solatinow v. Jersey City, etc., R. Co.,
70 N. J. L. 154.

- Wyckoff v. Birch, 76 N. J. L. 646.
Austin v. Penn. R. R., 82 N. J. L. 416.
McCombe v. Public Service R. Co., 95
N. J. L. 187.
Niebel v. Winslow, 88 N. J. L. 191.
Alvino v. Public Service R. Co., 97 N.
J. L. 526.
Ferdon v. McConnell, 99 N. J. L. 180.

The allegations of the defendant's negligence, as alleged in the complaint are (1) that the taxicab was driven at an excessively high rate of speed; (2) that it approached the plaintiff without sounding a horn; and (3) that it was driven out of the usual path of traffic and almost up to the northerly curb line of Park Avenue. The proof adduced by the defendant at the trial showed conclusively that the cab was moving very slowly when the accident occurred. On direct-examination, the appellee testified that both the car coming south on Grove Street and the car going west on Park Avenue, behind which the cab was proceeding, had come to a full stop (state of the case, p. 57). On cross-examination, she testified to the same facts (state of the case, pp. 68-69). The testimony of the appellee's witness, Maud Keat, also indicates that the cab was proceeding slowly, as does also that of Samuel H. Keat.

All of the testimony produced indicates clearly and unequivocally that the cab of the appellant was proceeding slowly.

As to the second allegation of negligence, there is nowhere in the testimony any statement of any of the witnesses to indicate whether or not a horn was sounded, so that for the purposes of this ar-

gument it is unnecessary to even consider the point.

The third and last allegation is that the appellant was operating its cab out of the usual path of traffic, and almost up to the northerly curb line of Park Avenue. Now, the testimony in the case indicates that the northerly line of Park Avenue is also the right-hand side, when one is proceeding west on that thoroughfare. It is admitted that the cab of the appellant was on the right-hand side of the street, but this appellant is at a loss to appreciate how this fact, standing alone, can be made the ground of an action for negligence. Does not the Traffic Act specify that an automobile must be driven on the right side of the road, and do not all the rules of the road require the driver of a car to keep to the right? How, then, can an action for negligence in operating a motor vehicle be predicated on such an obvious compliance with one's plain duty?

The following quotations from the cases cited *supra* are pertinent to the proposition as to the burden of proof in a negligence action.

The case of *McCombe v. Public Service Ry. Co.*, 95 N. J. L. 187, the opinion being by Justice Black, sitting in this Honorable Court, is illuminating:

“So, it has been said, mere theories and inferences do not authorize a verdict in a case of this nature, unless they are the only conclusion which can reasonably be drawn from the facts proven. Negligence is a fact which must be shown. It will not be presumed. There is always a presumption against negligence. 29 *Cyc.*, 589; *Bien v. Unger*, 64 N. J. L. 596.

“For the plaintiff to succeed it is incumbent on him, in the absence of direct evidence, to show not only the existence of such possible responsibility, but the existence of such circumstances as would justify the inference that Saunder’s death was caused by the wrongful act of the defendant, and which would exclude the idea that it was a cause with which the defendant was unconnected. *Suburban Electric Co. v. Nugent*, 58 N. J. L. 658; *Austin v. Pennsylvania R. R. Co.*, 82 *id.* 416.”

The case of *Alvino v. Public Service Ry. Co.*, reported in 97 N. J. L. at pages 526, *et seq.*, also decided in this court, is to substantially the same effect:

“The only presumptions of fact which the law recognizes are immediate inferences from the facts proved. *Price v. N. Y. Central Ry. Co.*, 92 N. J. L. 429; *McCombe v. Public Service Ry. Co.*, 95 N. J. L. 187; *Adriance v. Schenck Bros.*, 95 N. J. L. 185.

“Proof of a collision or facts from which a collision could be inferred by a jury does not make out a *prima facie* case of negligence. The doctrine of the *maxim res ipsa loquitur* is not applicable. *Conover v. Delaware, etc., Co.*, 92 N. J. L. 602.

“When the plaintiff’s evidence is equally consistent with the absence as with the existence of negligence on the part of the defendant, the plaintiff must fail (*Cotton v. Wood*, 8 C. B. [N. S.] 568), because there is always a presumption against negligence and in favor of innocence. *Philadelphia,*

etc., R. Co. v. Hummell, 44 Pa. St. 375. A probability is not sufficient. *Searles v. Manhattan Ry. Co.*, 101 N. Y. 661.”

It is respectfully urged on behalf of the appellant that the two paragraphs last above cited are applicable in a most striking manner to the case at bar. The proof adduced by the appellee and her witnesses showed merely the happening of an accident and nothing more. Reduced to its simplest form, her own testimony showed that she started to cross the street and was struck. There is nowhere in the case the proof of any facts which go to indicate the slightest degree of negligence on the part of the driver of this appellant’s cab, and as the cases hereinabove quoted hold, the mere proof of the happening of an accident without the showing of additional facts which at least tend to show in what particulars the appellant was derelict in its duty to use reasonable care, is insufficient to make out a *prima facie* case of negligence.

It is therefore respectfully contended on behalf of this appellant that the judgment of the Court below should be reversed and that a *venire de novo* should issue, to the end that the manifest errors of law committed by the trial court in his refusal to grant the appellant’s motion for a judgment of non-suit and his refusal to direct a verdict in favor of this appellant may be rectified.

Respectfully submitted,

JOHN A. BERNHARD,
Attorney for Defendant-Appellant.
E. R. McGLYNN,
Of Counsel with Defendant-Appellant.

New Jersey Court of Errors and Appeals

MARIE BORA and FRANK W.
BORA,

Plaintiffs-Appellees,

vs.

YELLOW CAB COMPANY, a corpo-
ration of the State of New
Jersey,

Defendant-Appellant.

BRIEF FOR RESPONDENT.

Facts.

The plaintiff, Marie Bora, was injured on the evening of March 14, 1924, at the corner of Park avenue and Grove street, East Orange, when she was struck by a taxicab owned by the defendant as she was attempting to cross Park avenue. Park avenue and Grove street are both main thoroughfares of East Orange. But Park avenue is a county thoroughfare and a parkway. It is a broad street divided throughout its length by a strip of shrubbery, so that traffic going in opposite directions is separated. Grove street is not such a wide street, but it is a busy one.

The plaintiff testified that she was on Grove street where it crosses Park avenue, and on the westerly side of the street. She had gotten half-way across the street, and had reached the concrete curb at one end of the shrubbery. When she reached that point she stopped to ascertain her position. For there she saw an automobile approaching her coming along Grove street, and another approaching her coming westerly along Park avenue. Both automobiles slowed down (p.

56). "I saw a car coming south on Grove street, and a car going west on Park avenue, so I stopped there to see which car would get the right-of-way and the car coming south on Grove street got the right-of-way, and I walked off and was just about to cross the street and just about to get up on the curb when I was hit." Neither of these cars was the taxicab which hit her. Both of them had come to a stop (p. 57). She didn't see the taxi at all before being hit (p. 68). She looked east on Park avenue toward Newark before proceeding from her place of safety (p. 66). She says (p. 67), "All I could see was the car, I couldn't see through the car."

The reason why she couldn't see the taxi is accounted for by the witness, Samuel H. Keat, who says (p. 75) that the taxi came around a standing car, passing it on the right. He was a passenger in the taxi. His mother corroborates him (pp. 50, 51). "I noticed a large car and paid no attention to how the car was being driven, the Yellow Cab or the other car, but I know our own car swung to the right of that car and I don't know whether we were at Grove street or where we were, but it swung to the right and then there was a sudden lurch to the left. I heard a woman scream and that's all I know." Even the taxi driver admits that he passed the car on the right. He says (pp. 103-104) that he had followed a car up Park avenue and that he was directly in back of it; that it changed its direction to the left, that the other car cut around the blinker without stopping, that he turned his wheel to the right to continue up Park avenue, and that the first he saw of Mrs. Bora was when he noticed her about three feet in front of his car (p. 110). That when he got

around the car he suddenly saw Mrs. Bora and pressed his horn and put on his brakes and everything.

The other portions of the case refer to damages, regarding which there seems to be no appeal taken.

LAW.

The first and fourth grounds of appeal may well be considered together inasmuch as the discussion of law must be the same in both instances. They are as follows:

“1. That the Trial Court refused to grant a motion for a judgment of non-suit made by the defendant whereas said Court should have granted said motion.”

“4. That the Trial Court refused to grant a motion for a direction of a verdict in favor of the defendant and against the plaintiffs whereas said Court should have granted said motion.”

The motion for non-suit was as follows (p. 92):

“First, on the ground the record as it now stands, discloses no facts, either proving negligence or from which any inference or deduction can be made, which in any way proves negligence on the part of the defendant operating this cab. There is no proof as to the speed, there is no proof as to reckless driving, and there is absolutely no proof of any character which explains this accident, except the testimony of the plaintiff herself, because, as I take it, the two passengers’ testimony was practically negligible so far as proof of negligence was concerned.

“I have had the plaintiff’s testimony and examination written out for the purpose of the

argument on my second motion of a non-suit, which is that the case, as it now stands, shows a pure, absolutely unadulterated case of contributory negligence."

The motion for a direction of a verdict was as follows (p. 112):

"I respectfully move for the direction of a verdict in favor of the defendant on the same grounds as I set forth in my motion for a non-suit."

It is urged that the negligence on the part of the taxi driver consisted of this: That he did not accord to the plaintiff the right of way to which as a pedestrian she was entitled under the statute; also that he passed a standing or slow-moving car on the right instead of the left; also that he did not sound his horn soon enough, if he sounded it at all.

The rules of the road (2 Cum. Suppl. 179-699) provide as follows:

"12. In places where the houses are on the average less than one hundred feet apart, pedestrians shall have the right-of-way over vehicles at any street crossing."

In this case it was admitted that the houses were on the average less than one hundred feet apart (p. 112).

Mrs. Bora's story in her own language is as follows (p. 56): "I was going toward Springdale avenue, going to Grove street, and I crossed the first section, and I saw a car coming south on Grove street and a car going west on Park avenue, so I stopped there to see which car would get the right-of-way and the car coming south on Grove street got the right-of-way, and

I walked off and was just about to cross the street and just about to get up on the curb when I was hit." She did not see the Yellow Cab coming. The car going west on Park avenue was not the Yellow Cab. "I was about ready to step up on the curb." She says (p. 66) that she does not know how far east she could see on Park avenue because she just saw the car there and that's all she was concerned in. "All I could see was the car, I couldn't see through the car." She says (p. 71) that when she stopped to make her observation she was on the west side of Grove street, that both the car coming along Grove street and that coming on Park avenue stopped; then the car on the north (or on Grove street) started south, and that the car on Park avenue was on the other side of the street, and that she heard no warning or horn.

It was testified to by Mr. and Mrs. Keat and also admitted by the driver that the Yellow Taxi passed the Park avenue car on the right, instead of on the left. This was in violation of section 4 of the rules of the road (2 Cum. Suppl. 179-689), which provides "A vehicle overtaking another shall pass on the left side of the overtaken vehicle," etc.

The driver apparently did not see Mrs. Bora until he came around the rear of the other car on Park avenue and then he "noticed the lady just about three feet in front of my car" (p. 106). He approached the intersection of two important streets, as the presence of the blinker should have warned him even if he happened to be unfamiliar with the locality; he continued ahead without making proper observation, when his view of the crosswalk was apparently blocked by the car ahead of him, and, passing to the right of that vehicle, did not see Mrs. Bora until

he was within three feet of her. Had he waited until his view of the crosswalk was unobstructed, had he given the pedestrian on the crosswalk her legal right-of-way, and had he slowed down until he could safely pass the car ahead of him in the proper manner, the accident would not have happened. Plainly in proceeding as he did, he was guilty of negligence.

In the case of *Minarcsik v. Blank*, 4 Adv. Repts., 515, it was said:

“The principal contention is that the trial judge should have directed a non-suit or ordered a verdict for the defendant. The first ground on which this contention is based is that there was no proof of negligence on the part of the defendant. The boy’s story was that as he started to cross the New Point road from west to east he observed the defendant’s truck about one hundred and fifty feet away, coming toward him; that he walked fast, and that when he was almost across the street he saw the truck again, and that it was then only a few feet from him; that he tried to avoid it, and in doing so slipped on the ice and fell down, and that the truck then ran over his leg. On these facts it was clearly for the jury to say whether or not the defendant was negligent in failing to see the boy in time to avoid running over him; or, if he did see him, in failing so to operate his truck as to avoid running the boy down, the boy having the right of way over the truck at this point and the defendant being under a statutory duty to observe that right. Pamph. L. 1916, p. 49.

“It is further argued that these motions should have been granted because the boy was guilty of contributory negligence in attempting to cross the street in front of a truck whose approach he had observed. But, as has already been pointed out, the boy had the right of way, and the defendant

was required to recognize that right; and, in this situation it cannot be said as a matter of law, that the boy was negligent in doing what the statute authorized him to do."

It was held by the Court of Errors and Appeals in the case of *Venghis v. Nathanson*, 3 Adv. Repts., 183, at page 185, as follows:

"The appellant first argues that there was no evidence of negligence of the driver of the automobile—the defendant's husband. But that question was properly submitted to the jury particularly in view of the fact that the evidence tended to show that the plaintiff had the right of way over the automobile at that street crossing. Our Traffic Act (Pamp. L. 1915, p. 305, Sec. 25; Pamph. L. 1916, p. 49, Sec. 12) provides, in effect, that in places where (as in the instant case) the houses are on the average less than one hundred feet apart, pedestrians shall have the right of way over vehicles at any street crossing, in the absence of any municipal regulation relating to such crossing (and no such regulation was shown to exist). Thereunder, when a pedestrian and an automobile moving in different directions approach such a crossing at the same time or in such a manner that if both continue their respective courses there is danger of collision, then the pedestrian, having been accorded the preference by the statute, is entitled to first use the crossing, and it is the duty of the driver of the automobile to stop or to so reduce speed as to give such pedestrian a reasonable opportunity to pass in safety, and to that end to have such automobile under such control as to enable him to do so. That duty, the evidence tended to show, the driver of the automobile failed to perform. There was evidence to the effect that the plaintiff had already entered upon the crossing as the defendant's automobile approached at a speed in excess of that allowed by the Motor

Vehicle Act (Pamph. L. 1921, p. 669, Sec. 16) at that place, and that the proximate cause of the accident was the failure of the driver to observe his duty in respect to the control of the car and the rights of the plaintiff at the crossing. Such disregard of the plaintiff's right of way, due to excessive speed, while not conclusive as to the driver's negligence, is a factor in the situation, which considered as a whole, presented a jury question as to the negligence of the driver. *Winch v. Johnson*, 92 N. J. L. 219; *Chiapparine v. Public Service Railway Co.*, 91 *Id.* 581.

"The appellant further urges, in support of her contention that the motion for a directed verdict should have been granted, that contributory negligence of the plaintiff was conclusively shown. But that is not so. Of course, the statute giving a pedestrian at a street crossing (in the absence of any municipal regulation) the right of way over an automobile approaching such crossing at the same time, does not relieve him of the legal duty to use reasonable care to avoid colliding with such automobile should its driver disregard such right. *Erwin v. Traud*, 90 N. J. L. 289; *Rabinowitz v. Hawthorne*, 89 *Id.* 308. But where the evidence tends to show (as here) that a pedestrian reached and started across a street crossing at a time and under circumstances giving him the right of way, and then, upon observing the defendant's automobile rapidly approaching, stepped back towards the curb, such pedestrian cannot be said to be guilty of contributory negligence as a matter of law when injured by such automobile which skidded under the application of brakes upon the slippery street, and hence, the question whether he exercised the reasonable care required of him in the circumstances, including the driver's disregard of his right of way, was properly submitted to the jury."

We urge that, applying the principle laid down in that case that the "disregard of the plaintiff's right of way, due to" passing another car on the right (instead of excessive speed, as in that case) "is a factor in the situation, which, considered as a whole, presented a jury question as to the negligence of the driver."

In the case of *Thomas v. Metzendorf* (Errors & Appeals) 3 Adv. Repts., 608, it was held that the mere fact that the plaintiff an elderly man, failed to observe the defendant's automobile, approaching about "a block away" when he looked in that direction as he started in the nighttime to cross a street at a proper crosswalk, does not, as a matter of law, render him guilty of contributory negligence when struck near the opposite curb by such automobile, negligently driven in respect to speed and control, and giving no audible signal of its approach.

But the Court of Errors case of *Pool v. Brown*, 89 N. J. L. 314, is exactly in point. In that case it was held that where there was testimony that the plaintiff attempted to cross a street between two standing vehicles which obstructed his view for some distance, and that after he had reached a point where he had a view to both north and south, he looked to the north and saw a slow-moving wagon about 30 or 40 feet away and then looked to the south and saw nothing approaching, whereupon he took a step forward about three feet, when he was struck by defendant's automobile coming from the north, which gave no signal or warning of its approach, that the question of the negligence of the defendant and the contributory negligence of the plaintiff was for the jury. The opinion said, in part:

"The suggestion has been made that since it appeared that the appellant had only

succeeded in taking a single step forward after he had a view to the north, when he was struck by the automobile coming from that direction, it is a legal presumption that if he had looked with any degree of care he could not have failed to see the automobile so close to him that the danger of attempting to cross in front of it would have been apparent to an ordinarily prudent person in the exercise of reasonable care for his own safety. We do not think that the testimony justifies such a presumption either of law or fact * * *

“At the very outset it is highly important that it should not escape observation that the situation, presented by the facts under consideration, relates to a pedestrian in the exercise of a lawful right to cross a public highway and the driver of a vehicle who had no superior legal right in the use of the street. Under such circumstances, the law imposes reciprocal obligations. Those reciprocal obligations are the offspring of elementary and familiar legal principles, which, by reason of their soundness and wisdom, have become firmly imbedded in the law. In fact, it is a strict observance of those legal principles that tends to make our public highways passable and safe to the drivers of vehicles and pedestrians alike. The circumstance that new elements of locomotion, such as electricity, steam, &c., have been added to vehicles using public highways has not wrought any modification of those legal principles.

“The driver of the automobile was under a legal duty to use reasonable care to avoid colliding with other vehicles or persons in the public highway. His duty was to be on the alert, to observe persons who were in the street, or about to cross the street, and to use reasonable care to avoid colliding with them. He was under a duty to have his automobile under proper control. He was under an obligation to take notice of the conditions existing in the public street and

to propel his car in a manner suitable to those conditions. He was under a duty to observe the condition which existed at the crosswalk, in that for a distance of twelve feet the view of a person crossing from the east to the west side of Halsey street was obscured by the top wagon. The uncontradicted fact in the case is that the driver of the automobile gave no audible signal or warning of his approach to the obscured part of the crosswalk. From that fact alone the jury might properly have found that the driver's failure to sound a warning of the approach of his automobile to the crossing was negligent conduct. Furthermore, from the testimony, the jury might have found that the chauffeur was negligent in driving too close to the obscured part of the crosswalk, or that, in the exercise of reasonable care, he might have avoided the accident by steering his car to the right. At least, there was a jury question whether, in the circumstances which then existed, the chauffeur could have avoided striking the appellant if he had exercised reasonable care.

“On the other hand, the law cast upon the appellant the duty to use reasonable care for his own safety. He was under a legal duty to observe the conditions in the highway. He had a right to rely on the driver of the automobile respecting his, the appellant's, equal right in the street, and that the driver would control his car accordingly, and would use reasonable care to avoid running it against the appellant. Of course, if it had appeared that the appellant rashly stepped in front of the automobile, under circumstances that would justify no difference of opinion among reasonable men as to the negligent character of such conduct, then a non-suit would have been properly ordered. But that does not appear, from the evidence in the cause, to have been the case. The testimony shows that when the appellant looked to the north

before he took the step to cross the street, the team wagon was within thirty feet of the spot where he was standing. The appellant saw no automobile, and that might very well have been so; for if the automobile was behind the team wagon, which was proceeding in the centre of the highway, or was to the right of the wagon, the automobile would have been concealed from the view of the appellant. If, while the appellant was looking toward the south to guard against any danger to be apprehended in that direction, the automobile suddenly spurted from behind the team wagon, it is not an unfair inference that the appellant, when he took the step forward to continue crossing the street, was suddenly overtaken by an unexpected peril * * *.

“Under the Traffic Law of this State the driver of a vehicle is required to pass the vehicle ahead of him to the left. That requirement, however, is subject to the conditions existing in the highway and does not relieve the driver of the passing vehicle from the duty of exercising reasonable care to ascertain whether he can pass the vehicle ahead with safety to other vehicles or pedestrians which, or who may, happen to be on the left side of the street. *Smith v. Barnard*, 82 N. J. L. 468.

“From what has been said it is manifest that the question, whether or not the appellant had acted with reasonable care in the circumstances which confronted him at the time he made the attempt to cross the street, was one for the jury and not for the court to pass upon.

“In *Fox v. Great Atlantic and Pacific Tea Co.*, 84 N. J. L. 726, 728, this court quoted with approval the statement made by Mr. Thompson, in his valuable work on negligence, to the effect that cases of collision on highways almost invariably involve questions of concurrent negligence on the part of both actors; and that, as the circumstances attending such injuries are within

the range of every day observation and experience, the question of contributory negligence, in those cases, is in a peculiar sense a question for a jury, though, of course, within the limits of the principle that there must be evidence tending to that conclusion, and subject also to the rule that, in cases where the evidence tends only to the conclusion, the judge can decide it as a matter of law.”

Plainly there was a case where the circumstances were much more against the plaintiff than in the present case. Yet the Court held it to be a jury question. Here the plaintiff was acting with great care for her own safety. She did not proceed beyond her point of safety at the end of the strip of shrubbery until traffic commenced to move parallel with her and at a time when vehicles approaching her from the east (so far as she could see them) were obviously giving her the right-of-way. As a pedestrian at a street crossing she had right to rely on an automobile affording her her statutory right-of-way; she could see that no automobile could pass the standing automobile in a legitimate manner, and would be entitled to rely on that fact; traffic was moving with her and not against her. Relying on all these things she went ahead, and we insist that any reasonable person would have done likewise. If there be any possible doubt, then it is a question of fact for the jury to decide. The jury have so decided, and they have decided against the defendant.

It is urged in appellant's brief that the case of *Ruggieri v. Public Service Railway Co.*, 86 N. J. L. 698, is authority to sustain appellant's contention that the plaintiff in this case was negligent. That opinion says in part (that portion being quoted in appellant's brief) that “If the

plaintiff had looked when only ten feet from the track, as he said he did, he would have seen the car, and the only inference is that he did not look, or if he did, that he would have seen the car so near as to surely strike him, if he continued to walk toward it; but he says he did not see the car, so he is not within the line of cases where the pedestrian seeing an approaching car exercises his right of judgment as to his liability to cross safely. In this case, the car must have been within his vision if he had looked and the fact that he did not see it, is a demonstration that he did not look with reasonable effectiveness such as was required of him under the circumstances, and he was, therefore, guilty of such contributory negligence as required a non-suit." Such a situation is not present in this case. The actual situation is that the plaintiff did look and from the fact that a car was standing at the easterly crosswalk of Grove street waiting for north and southbound traffic to pass, justifies the jury in inferring what was actually the fact—that the defendant's taxi being in the rear and to the right of the standing car, could not have been seen from plaintiff's point of view. In the Ruggieri case, the Court held that if he looked, he must have seen. In this case, although she looked, she could not see. It is for the jury to say to what extent she was justified in relying upon the traffic rules that forbid a car to pass another on the right. From her position, she could see that no car was able to pass the standing car properly on the left. She would be justified in assuming that no car would disregard the law and pass it on the right. This being so, she is not guilty of contributory negligence.

In the case of *Brown v. Railroad Co.*, 68 N. J. L. 618, quoted by appellant in reliance of his

theory that the plaintiff was guilty of contributory negligence, the Court said: "When he says that, at that time, he could see no trolley in sight, he conclusively establishes that he did not make the observation which duty required of him, because if he had done so, he would undoubtedly have discovered the approaching car, and have been able to avoid a collision." In the present case, we have proved circumstances that show that although the plaintiff looked in the direction from which the taxicab was coming, it would nevertheless have been concealed from her view by the intervening vehicle.

We respectfully urge that the question of the defendant's negligence and of the plaintiff's contributory negligence was properly left to the jury, and that their finding on these questions of fact should not be disturbed.

II.

The second ground of appeal is as follows:

"2. That the Trial Court on the refusal to grant the motion to the defendant for a judgment of non-suit made certain remarks as his reasons therefor in the presence of the jury which said remarks should not have been made to which remarks the defendant took exception."

No argument is made on this point in the brief and we, therefore, conclude that it is abandoned.

III.

The third ground of appeal is as follows:

"3. That the Trial Court over the objection of the defendant admitted testimony of the plaintiff which was inadmissible to which rulings the defendant took exception."

No argument is made on this point in the brief and we, therefore, conclude that it is abandoned.

* * * * *

For all of the foregoing reasons it is respectfully submitted that the judgment of the Circuit Court should be affirmed.

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