

# INDEX

	PAGE
Summons .....	1
Complaint .....	2
Answer .....	7
Reply .....	10
Postea .....	11
Notice of Appeal.....	12
Grounds of Appeal.....	13
Motion for a Non-suit.....	89
Motion for Direction of a Verdict.....	103
Charge to Jury .....	103
Exceptions to Charge.....	111

## TESTIMONY.

### *For Plaintiffs.*

Salvatore Sarentino,		
direct examination.....	16	
cross " .....	20	
Theodore Wimmer,		
direct examination.....	23	
cross " .....	27	
re-direct " .....	29	
re-cross " .....	30	
Joseph J. Gorman,		
direct examination.....	32	
cross " .....	39	
re-direct " .....	47	
re-cross " .....	47	
Mrs. Mary Keating,		
direct examination.....	48	
cross " .....	54	
Dr. Emil Stein,		
direct examination.....	57	
cross " .....	67	
Dr. Morris Borow,		
direct examination.....	72	

	PAGE
Dr. Albert J. Murphy,	
direct examination.....	77
cross " .....	78
Henry Willhardt,	
direct examination.....	79
cross " .....	80
Mrs. Jennie L. Ryan,	
direct examination.....	80
cross " .....	83
Mrs. Matilda Oliver,	
direct examination.....	84
cross " .....	88
 <i>For Defendants.</i>	
John Anthes,	
direct examination.....	89
cross " .....	92
Stanley Weiss,	
direct examination.....	94
cross " .....	96
re-direct " .....	98
re-cross " .....	99
Michael Hanley,	
direct examination.....	99
cross " .....	101

**SUMMONS.**

State of New Jersey to Elizabeth-  
Union-Irvington Line, Inc., a corpora-  
(L. s.) tion; and John Anthes.

YOU ARE SUMMONED to answer the  
annexed complaint of Joseph J. Gor- 10  
man, Mary Keating, Jennie L. Ryan and Matilda  
Oliver, in an action at law in the New Jersey  
Supreme Court. And TAKE NOTICE that unless  
you file your answers to said complaint with  
the Clerk of the Supreme Court, at Trenton,  
New Jersey, within twenty (20) days after serv-  
ice upon you of this writ and the annexed  
complaint, the plaintiffs may proceed in the suit  
and judgment may be entered against you.

WITNESS, WILLIAM S. GUMMERE, Chief Justice 20  
of our Supreme Court, at Trenton, this first day  
of February, A. D. Nineteen Hundred and twen-  
ty-eight.

EDWARD J. KELLEHER,  
Clerk.

ROBERT NEWTON CRANE,  
Attorney.

30

40

## COMPLAINT.

## New Jersey Supreme Court

UNION COUNTY.

10

JOSEPH J. GORMAN, MARY KEATING, JENNIE L. RYAN and MATILDA OLIVER,

*Plaintiffs,**vs.*

ELIZABETH-UNION-IRVINGTON LINE, INC., a corporation, and JOHN ANTHES,

*Defendants.*

20

*Action  
at Law.**Complaint.*

## FIRST COUNT.

Plaintiff, Joseph J. Gorman, residing in the City of Elizabeth, County of Union, and State of New Jersey, complains and says:

1. On January 16, 1928, he was driving a Willys-Knight automobile in a northerly direction along Morris avenue in the Township of Union, County of Union, and State of New Jersey.

30

2. At the same time the defendant, Elizabeth-Union-Irvington Line, Inc., by its agent and servant, the defendant John Anthes, was driving an omnibus along the same street in a southerly direction, in the said Township of Union.

40

3. It then and there became and was the duty of the defendants to use reasonable care to operate and propel said omnibus in such a

*Complaint.*

manner as to avoid colliding with and running into other users of the highway.

4. This plaintiff says that the defendants were negligent in this: (a) that they drove and propelled said jitney bus at a high and excessive rate of speed; (b) that they failed to keep said jitney bus under control; (c) that said jitney bus was mechanically imperfect and was not equipped with proper brakes; (d) that they violated the provisions of the Traffic Act and failed to keep to the right of the center of the road. 10

5. By means of said divers acts of negligence on the part of the defendants, the jitney bus of the defendant was driven into and collided with the automobile of this plaintiff, whereby the same was broken and damaged, and this plaintiff sustained severe and permanent personal injuries. 20

6. This plaintiff did nothing on his part that in anywise contributed to the collision.

7. As a direct and proximate cause of the divers acts of negligence on the part of the defendants, this plaintiff sustained injuries to various parts of his body and received other injuries of a technical nature which he is unable to describe, and has been and will at all times in the future be deprived from following his usual calling, that of a solicitor; and he was obliged to lay out and expend large sums of money in and about attempting to effect a cure of his injuries. His automobile was damaged and greatly depreciated in value. 30

Plaintiff, Joseph J. Gorman, demands Five Thousand Dollars (\$5,000.00) damages.

*Complaint.*

## SECOND COUNT.

Plaintiff, Mary Keating, residing in the City of West Orange, County of Essex and State of New Jersey, complains and says:

10 1. On January 16, 1928, she was riding in an automobile being driven along Morris avenue in the Township of Union, County of Union, and State of New Jersey, as the invited guest of one Joseph J. Gorman.

2. Paragraphs 2, 3 and 4 of the first count are repeated.

20 3. By means of the said divers acts of negligence on the part of the defendants, the jitney bus of the defendants was driven into and collided with the automobile in which this plaintiff was riding as an invited guest, whereby she was severely and permanently injured.

4. This plaintiff did nothing on her part that in anywise contributed to the collision.

30 5. As a direct and proximate cause of the negligence of the defendants, this plaintiff received injuries to various parts of her body, and her arms were severely and permanently injured; her nervous system was disordered and she received other injuries of a technical and permanent nature which she is unable to describe, and she was obliged to lay out and expend large sums of money in and about attempting to effect a cure of her said injuries, and she has been, and will at all times in the future be prevented from following her business, that of a solicitor.

40 Plaintiff, Mary Keating, demands Ten Thousand Dollars (\$10,000.00) damages.

*Complaint.*

## THIRD COUNT.

Jennie L. Ryan, one of the plaintiffs herein, residing at Newark, in the County of Essex, and State of New Jersey, complains and says:

1. On January 16, 1928, she was riding in an automobile being driven along Morris avenue in the Township of Union, County of Union, and State of New Jersey, as the invited guest of one Joseph J. Gorman. 10

2. Paragraphs 2, 3 and 4 of the first count are repeated.

3. By means of the said divers acts of negligence on the part of the defendants, the jitney bus of the defendants was driven into and collided with the automobile in which this plaintiff was riding as an invited guest, whereby she was severely and permanently injured. 20

4. This plaintiff did nothing on her part that in anywise contributed to the collision.

5. As a direct and proximate cause of the negligence of the defendants, this plaintiff received injuries to various parts of her body, and her knee was fractured; her nervous system was disordered and she received other injuries of a technical and permanent nature which she is unable to describe, and she was obliged to lay out and expend large sums of money in and about attempting to effect a cure of her said injuries, and she has been, and will at all times in the future be prevented from following her business, that of a solicitor. 30

Plaintiff, Jennie L. Ryan, demands Ten Thousand Dollars (\$10,000.00) damages.

*Complaint.*

## FOURTH COUNT.

Matilda Oliver, one of the plaintiffs herein, residing at Newark, in the County of Essex, and State of New Jersey, complains and says:

10 1. On January 16, 1928, she was riding in an automobile being driven along Morris avenue in the Township of Union, County of Union and State of New Jersey, as the invited guest of one Joseph J. Gorman.

2. Paragraphs 2, 3 and 4 of the first count are repeated.

3. By means of said divers acts of negligence on the part of defendants, the jitney bus of the defendants was driven into and collided with the automobile in which this plaintiff was riding as an invited guest, whereby she was severely and permanently injured.

20

4. This plaintiff did nothing on her part that in anywise contributed to the collision.

5. As a direct and proximate cause of the negligence of the defendants, this plaintiff received injuries to various parts of her body and face, her nose was broken and her eyes were permanently injured; her nervous system was disordered and she received other injuries of a technical and permanent nature which she is unable to describe, and she was obliged to lay out and expend large sums of money in and about attempting to effect a cure of her said injuries, and she has been and will at all times in the future be prevented from following her business, that of a solicitor.

30

Plaintiff, Matilda Oliver, demands Fifteen Thousand Dollars (\$15,000.00) damages.

ROBERT NEWTON CRANE,  
Attorney of Plaintiffs.

40

## ANSWER.

NEW JERSEY SUPREME COURT.

UNION COUNTY.

---

JOSEPH J. GORMAN, MARY KEATING,  
JENNIE L. RYAN and  
MATILDA OLIVER,

*Plaintiffs,**vs.*

ELIZABETH-UNION-IRVINGTON  
LINE, INC., a corporation,  
and JOHN ANTHES,

*Defendants.*

10

*Action  
at Law.**Answer.*

20

Defendants, Elizabeth-Union-Irvington and Hillside Bus Line, Inc., a corporation of New Jersey, having its principal office in the City of Elizabeth, County of Union and State of New Jersey, and John Anthes, of the City of Elizabeth, County of Union and State of New Jersey, in answer to plaintiffs' complaint, say that:

## FIRST COUNT.

30

1. They deny contents of paragraph 1.
2. They deny contents of paragraph 2.
3. They deny contents of paragraph 3.
4. They deny contents of paragraph 4.
5. They deny contents of paragraph 5.
6. They deny contents of paragraph 6.
7. They deny contents of paragraph 7.

40

*Answer.*

#### SECOND COUNT.

1. The deny contents of paragraph 1.
2. They repeat their answers to contents of paragraphs 2, 3, 4 of the first count and make them part of this count.
- 10 3. They deny contents of paragraph 3.
4. They deny contents of paragraph 4.
5. They deny contents of paragraph 5.

#### THIRD COUNT.

1. The deny contents of paragraph 1.
2. They repeat their answers to contents of paragraphs 2, 3, 4 of the first count and make them part of this count.
- 20 3. They deny contents of paragraph 3.
4. They deny contents of paragraph 4.
5. They deny contents of paragraph 5.

#### FOURTH COUNT.

1. They deny contents of paragraph 1.
2. They repeat their answers to contents of paragraphs 2, 3, 4 of the first count and make them part of this count.
- 30 3. They deny contents of paragraph 3.
4. They deny contents of paragraph 4.
5. They deny contents of paragraph 5.

#### FIRST SEPARATE DEFENSE.

3  
40 Plaintiff, Joseph J. Gorman was guilty of contributory negligence in that he operated his

*Answer.*

automobile at a high and reckless rate of speed; in that his car was equipped with defective brakes; in that he did not make a proper observation for other vehicles in the vicinity; in that he gave no warning of his approach; in that he was generally careless and negligent.

10

#### SECOND SEPARATE DEFENSE.

Plaintiff, Mary Keating was guilty of contributory negligence.

#### THIRD SEPARATE DEFENSE.

Plaintiff, Jennie L. Ryan was guilty of contributory negligence.

#### FOURTH SEPARATE DEFENSE

20

Plaintiff, Matilda Oliver was guilty of contributory negligence.

SCHNEIDER & SCHNEIDER,  
Attorneys for Defendants.

30

40

## REPLY.

NEW JERSEY SUPREME COURT.

UNION COUNTY.

10	JOSEPH J. GORMAN, MARY KEATING, JENNIE L. RYAN and MATILDA OLIVER, <p style="text-align: right;"><i>Plaintiffs,</i></p>	}	<i>Action</i>
	<i>vs.</i>		<i>at Law.</i>
	ELIZABETH-UNION-IRVINGTON LINE, INC., a corporation, and JOHN ANTHES, <p style="text-align: right;"><i>Defendants.</i></p>		<i>Reply.</i>

20 Plaintiffs, for their reply to the answer of the defendants, say:

1. They deny each and every affirmative allegation contained in the first, second, third and fourth separate defenses of said answer.

ROBERT NEWTON CRANE,  
 Attorney for Plaintiffs.

30

40



## NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

UNION COUNTY.

10	JOSEPH J. GORMAN, MARY KEATING, JENNIE L. RYAN and MATILDA OLIVER, <p style="text-align: right;"><i>Plaintiffs,</i></p>	}	<i>Action at Law.</i>
	<i>vs.</i>		<i>Notice of Appeal.</i>
	ELIZABETH-UNION-IRVINGTON LINE, INC., a corporation, and JOHN ANTHES, <p style="text-align: right;"><i>Defendants.</i></p>		

20 To Robert Newton Crane, Esq., attorney of  
plaintiffs.

DEAR SIR:

PLEASE TAKE NOTICE that the defendants appeal to the New Jersey Court of Errors and Appeals, court of last resort of all causes in New Jersey, from the whole of the judgment entered in this cause in the New Jersey Supreme Court.

30 Dated, December 1, 1928.

SCHNEIDER & SCHNEIDER,  
Attorneys of Defendants.

**GROUNDS OF APPEAL**

NEW JERSEY SUPREME COURT.

UNION COUNTY.

JOSEPH J. GORMAN, MARY KEATING, JENNIE L. RYAN and MATILDA OLIVER,  <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;"><i>vs.</i></p> ELIZABETH-UNION-IRVINGTON LINE, INC., a corporation, and JOHN ANTHES,  <p style="text-align: center;"><i>Defendants.</i></p>	} <i>Action at Law.</i>  } <i>Grounds of Appeal.</i>	10
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1. The trial court erroneously admitted the following question to be answered of the witness, Joseph J. Gorman, over objection: 20

“At the time of the happening of this accident what were your actual earnings?”

2. The trial court erroneously admitted the following question to be answered of the witness, Joseph J. Gorman, over objection:

“For a period of a year preceding the accident what were your average earnings weekly?” 30

3. The trial court erroneously admitted the following question to be answered of the witness, Joseph J. Gorman, over objection:

“When you got back to your business after being ten weeks from it, what was its condition?”

4. The trial court erroneously refused to permit the following question to be answered of the witness, Joseph J. Gorman, on cross examination: 40

*Grounds of Appeal.*

“You had enough to keep all the ladies busy that morning?”

5. The trial court erroneously refused to strike out the testimony as to the \$100.00 worth of stock on the ground that the plaintiff did not know what had happened to it.

10

6. The trial court erroneously permitted the following question to be asked of the witness, Mary Keating, over objection:

“How much was the bill?”

7. The trial court refused a motion to strike out testimony of Dr. Stein regarding the ear condition testified by him in the case of Mrs. Oliver.

20

8. The trial court erroneously refused the defendants' motion for a non-suit.

9. The trial court erroneously refused the defendants' motion for a direction of verdict in favor of the defendant.

SCHNEIDER & SCHNEIDER,  
Attorneys of Defendants.

30

40

## TESTIMONY.

## SUPREME COURT—IN CIRCUIT.

JOSEPH J. GORMAN, MARY KEATING,  
JENNIE L. RYAN and  
MATILDA OLIVER,

*Plaintiffs,*

*vs.*

ELIZABETH-UNION-IRVINGTON  
LINE, INC., a corporation,  
and JOHN ANTHES,

*Defendants.*

10

Elizabeth, New Jersey,  
November 16, 1928.

20

Before Hon. Alfred A. Stein, *J.*, and a jury.

Appearances:

Robert N. Crane, for the plaintiffs.

Schneider & Schneider, by William P. Braun,  
for the defendants.

(A jury of twelve was sworn and impaneled.)

(Mr. Crane opens for the plaintiffs.)

(Mr. Braun opens for the defendants.)

30

Mr. Crane: I offer the map in evidence.

(Received in evidence and marked P. 1.)

It is stipulated by and between counsel that the ownership and operation of the bus by the defendant Elizabeth-Irvington-Hillside Company is admitted and that John Anthes was in the employ of the company at the time.

40

*Salvator Sarentino, direct.*

SALVATOR SARENTINO, called as a witness,  
being duly sworn, testified as follows:

*Direct examination by Mr. Crane.*

10 Q Where do you work? A The Consolidated  
Corporation.

Q Where do you live? A I live at 325  
Loomis street, Elizabeth.

Q On January 16, 1928, were you working for  
the Consolidated Company? A Yes, sir.

Q What did you do for the Consolidated  
Company that day? A Burning lead all the  
time.

20 Q What part of Elizabeth were you working  
in that day? A Morris avenue near the city  
line, about 200 feet from the city line.

Q Is that anywhere near North avenue? A  
Yes, sir.

Q What was the Consolidated Company doing  
on Morris avenue on the day we are talking  
about? A Laying gas pipes.

Q Along Morris avenue? A All the way  
along from North avenue down.

Q On which side of Morris avenue were you  
putting the gas pipes in? A On the left side  
going up Union avenue.

30 Q What was on the right-hand side of Morris  
avenue going to Union? A Pipes.

Q Where were the pipes?

Mr. Braun: I object.

A They were all the way along.

Q A row of pipes? A Yes.

Q What else did the Consolidated Company  
have on Morris avenue that day? A A pump.

40 Q What kind? A A gasoline pump.

*Salvator Sarentino, direct.*

Q It was used for what? A To pump water from the trench.

Q About where was the pump located with reference to the city line? A About two hundred feet, or 225 feet; I didn't measure it.

Q As a result of what the Consolidated Company was doing there putting in the pipes, and with this pump that you mentioned, was the street blocked? 10

Mr. Braun: I object as calling for a conclusion of the witness.

The Court: I don't think so. It is a fact. He can tell what he sees.

Mr. Braun: May I have an exception?

The Court: Yes. 20

Q As a result of what the Consolidated Company was doing there, putting in the pipes, and with the pump that you mentioned, was the street blocked? A No, sir; not blocked; it was one way, not blocked altogether. One way it was going and he had a man there to stop you.

Q Who did the man work for? A For the same company. He is not here any more. He went away. I guess he is in Connecticut. His name was Louis. 30

Q Did you see Louis there that morning? A Yes, sir.

Q What was Louis doing? A He had a red flag in his hand, and sometimes he made you go to Union and sometimes to Elizabeth.

Q Where the street was partly blocked, Morris avenue, as you said it was, how far was it that it was partly blocked—how many feet? A From the city line? 40

*Salvator Sarentino, direct.*

Q From where the traffic could go both ways, where it could go one way, and was blocked again? A Fifty feet one way, or fifty feet from the other side.

Q Did you see an accident that occurred between an automobile and a bus? A Yes, sir.  
10 I saw the automobile stop and after I saw the bus come. I don't know whether it was fast. I don't know anything about it. I saw—he didn't want to hit the car and he hit the car on the left.

Q This way was stopped? A Yes, sir.

Q Which way was he going? A To Elizabeth.

Q Do you know why the car stopped? A The man held him.

Q The man with the flag? A Yes, sir. He  
20 said after, "Go ahead," and they go the other side.

Q When he shook the flag as you indicated and told him to go ahead to whom was he saying that? A For the man to go to Union.

Q When Louis gave the man the signal to come on and go ahead to Union, did he go ahead? A Yes, sir.

Q When Louis gave the signal to stop the  
30 traffic coming from Union to Elizabeth, did the bus stop? A The fellow stopped and one car in front stopped

Q In front of the bus? A Yes, sir.

Q Did the bus stop? A It stopped when it hit the car.

Q Did you see who was in the car? A There was a man and three or four ladies. We picked them up and put them in a car.

Q You picked them up and took them to a  
40 hospital? A They put them in different cars to go to the hospital.

*Salvator Sarentino, direct.*

Q About what time of the day was it? A I don't remember the time. It was very long now.

Q It was in January. Do you remember whether it was in the morning or in the afternoon? A I don't remember what time it was.

Q When the bus and the automobile in which the man and the three ladies were riding came together what part of the bus came in contact or touched what part of the car going to Union? 10

A What part of the car?

Q Yes. A On the right side.

Q The right side of what? A Of the car.

Q What part of the bus hit what part of the car? A I don't know.

The Court: It is rather hard for him to make out. Two cars came together—the bus and the other car. How did they come together? 20

The Witness: One car was in front and there were two more. They caught wheels when he hit the car in front. Maybe he was scared and he went over and hit the car in front.

The Court: When he hit the car in front, what part did he hit it? 30

The Witness: The car going to Union, he hit on the right.

The Court: What part of the bus hit the car on the right?

The Witness: In the front.

Q Were those people in the automobile hurt? A Sure. I thought one was dead.

Q One of the ladies? A No, sir; the man. I thought the man would die. 40

*Salvator Sarentino, cross.*

Mr. Crane: That is all.

*Cross examination by Mr. Braun.*

10 Q Where were you working with reference to the pump—how far away from the pump were you working? A About 50 or 60 feet or something like that.

Q Towards Elizabeth or towards the other way from the pump? A To Elizabeth about 50 feet.

Q You were 50 feet from the pump towards Elizabeth? A Yes, sir. On the trench side I was.

Q On the trench side of the road? A Yes, sir.

20 Q Can you understand that map? A I don't know.

Q That is the pavement (indicating). This colored part is the asphalt part of Morris avenue. This is North avenue. This is towards Elizabeth and this is towards Union Center. Do you understand that? How far from North avenue—which way from North avenue was this pump—towards Union Center or towards Elizabeth? A To the side.

30 Q On the left side going to Union? A Yes, sir.

Q How far from North avenue? A A little over 200 feet.

Q You were working fifty feet towards Elizabeth from the pump? A Yes, sir.

The Court: Did you ever look at a map like this before?

The Witness: No, sir.

40 The Court: It is too confusing for him. It is much better for him to tell his story.

*Salvator Sarentino, cross.*

Q You were 50 feet from the pump towards Elizabeth? A Yes, sir.

Q What were you doing there on the ditch side of the road? A I had laid a pipe. There was a fire burning a lead. I have to watch it and see I didn't burn myself.

Q What were you doing with the lead? A Putting it in the pipe, to put the pipes together. 10

Q Had you been working at that this morning? A I worked all the time.

Q What time of the day did this happen? A I don't remember.

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

Q You don't remember the date, do you? A I remember it was in January.

Q It was cold, wasn't it? A Yes, sir; it was cold. 20

Q You were staying pretty close to your fire to keep warm? A Yes, sir.

Q Where was Louis—at the end of the obstruction? He was towards Union Center? A On the left side to Union.

Q He was over 100 feet from you, wasn't he? A No, sir; he was closer than that.

Q You said that this went fifty feet each side of the pump, didn't you, and he was fifty feet the other side of the pump, wasn't he? A No, sir. He was near the pump and with his hand he stopped traffic before they reached the pump; and they couldn't go any more and he stopped them before. 30

Q He stopped them fifty feet from the pump? A That car didn't stop; that stopped near the pump.

Q Were you looking at Louis? A I had my eyes there looking. 40

*Salvator Sarentino, cross.*

Q And you were watching him all the time?

A No, sir; but that time I was looking and I saw him.

Q You don't know whether Louis was there all the time with the flag? A Yes, sir; every day.

10 Q Didn't he do anything else? A No, sir.

Q Didn't he help you sometimes? A No, sir. They had him there every day.

Q What color was the car that stopped in front of the jitney bus? A Blue, I think.

Q Did it stop before it got to where the road was narrow? A It stopped eight or ten feet from the pump, not far from the pump.

20 Q Between where that car stopped and the other side of the road, on the other side of the asphalt, there was not anything, was there? A The pipes crossed the street near the curbstone.

Q Did this pipe run all along the other side of the street from the trench? A Yes, sir; all along from where we were working. When we lay the pipes we haven't got any pipes.

Q It was not up Union Center past the pump, was it? A Yes, sir; on this side it goes to Elizabeth.

30 Q How far from the edge of the road were they? A The pipes?

Q Yes. A Right along the edge.

Q They were not out on the pavement? A Right along the edge.

Q Where did this blue car stop—close to the other side of the road; or the side you were on?

A It stopped right in front of the pump. He had enough room on this side.

40 Q There was plenty of room to pass him? A Yes, sir; to go to Union.

*Theodore Wimmer, direct.*

Q The bus stopped behind him—and the other car? A It stopped and he should go left.

Q The jitney bus didn't hit the blue car? A No, sir.

Q When they came together they were not past the blue car towards the pump? A No, sir. 10

Q Right at the rear of it, weren't they? A Yes, sir.

---

THEODORE WIMMER, called as a witness,  
being first duly sworn, testifies as follows:

*Direct examination by Mr. Crane.*

Q Where do you reside? A 130 Reid street, Elizabeth. 20

Q What is your business? A Tester for the Packard Company.

Q In Elizabeth? A Yes.

Q I call your attention to the map on the wall marked P. 1. I ask you if you recognize that as a map of Morris avenue at North avenue, just over the city line? A Yes, sir.

Q On January 16, 1928, were you driving an automobile along Morris avenue towards Elizabeth? A Yes, sir. 30

Q What time of the day was that? A About nine o'clock A. M.

Q Will you take an indicator and explain to the jury what the physical conditions were along Morris avenue at the point we are talking about? A About 200 feet this side of North avenue the construction company was laying pipes and they obstructed about half of the road, on the right-hand side coming towards Elizabeth. On this 40

*Theodore Wimmer, direct.*

side of the road—the other side of the road was open; there were pipes, not lying directly on the asphalt, but the road extends beyond the asphalt, and there is a trench here (indicating). From this trench there was a pipe laying; they were going right down. The obstruction extended from  
 10 here, about 75 feet, going 75 feet; in this place were pumps and derricks. The construction company had a watchman at the point and he gave us the signal to go or stop as the occasion demanded. There was only room for one car to go by at the same time. I got a signal and I stopped at the far end of the obstruction in order to let this car go towards Union Center.

Q When you say you got a signal to stop, that signal was given to you by the watchman?

20 A Yes, sir.

Q What did he have in his hand? A A red flag.

Q After you had stopped, did he give another signal to the traffic coming towards Union?

Mr. Braun: I object to it as leading.

The Court: The question is, after you stopped, did he give another signal? There is nothing wrong about that. That is not  
 30 leading. I grant you an exception.

A I don't remember whether he gave a signal to the other man or not; I don't know.

Q After you stopped, what did the other man do? A He was proceeding on Morris avenue towards Union and kept coming—the driver of the other car.

Q In the meantime, what were you doing? A  
 40 Standing there waiting my turn to go.

*Theodore Wimmer, direct.*

Q How far through this part of the road that was partly obstructed did the car going towards Union get? A Almost to about to the end of it.

Q Then what happened? A The bus hit him.

Q What part of the road was the car going towards Union occupying at the time it was hit?

A That right-hand side going towards Union. 10

Q Did you see the accident? A No, sir. It happened just behind my car.

Q How did you know that an accident happened? A I heard the noise.

Q Was there much noise connected with the impact? A The crash of the jitney going into the touring car.

Q Where did the jitney bus come from? A From Hillside.

Q It was going in the same direction you were going? A Yes, sir. 20

Q After you heard the crash, what did you do? A I got out of the car and ran down Morris avenue to the police box and called up the Union police.

Q When you got out of the car immediately after you heard this crash, did you see the jitney bus and the automobile? A Yes, sir.

Q Where were they? A About opposite the rear end of the car I was driving. 30

Q What were the relative position? A The touring car was on the road probably, the left wheel further off; but I didn't notice particularly.

Q Which side of the road? A On the right side; and the right hand of the front fender and front wheel were locked with the touring car opposite the driver's seat.

Q I show you a picture that purports to show the relative position of the bus immediately after the accident, and ask you if that truly represents 40

*Theodore Wimmer, direct.*

the position of the touring car and the bus as you saw them immediately after the accident?

A From what you can see here, it does. But you can't see the hood of the bus and you can't see the front end of the bus at all on this picture; you can only see the body.

10 Q Where was the hood of the bus? A That part was all right. I don't think the hood of the bus hit the car. I think the wheel hit it—against the bumper.

Mr. Braun: I move to strike this out as a conclusion of the witness. He said he didn't see them come together.

The Court: Yes.

20 Q But were they together?

The Court: He can tell you what he saw of the two cars after.

A Yes, sir.

Q Did you see who was in the touring car?

A Yes, sir.

30 Q Who was in the touring car? A The man driving and—I don't know how many people, but at least three other people, three ladies.

Q Did you see whether they were hurt? A Yes, sir.

Q Do you know what happened to them after?

A Yes, sir.

Q Were they taken away from the scene? A Yes, sir.

Mr. Crane: That is all.

*Theodore Wimmer, cross.*

*Cross examination by Mr. Braun.*

Q Did you see what else was in the touring car besides the women? A There was perfume and soap, toilet articles. ✓

Q How much? A I don't know; perhaps a case or two cases. 10

Q How many women in the touring car besides the driver? A At least three; I don't know whether three or four. I didn't stay there.

Q There was quite a lot of stuff in the car? A Yes, sir.

Q Did you notice the license number of the touring car? A No, sir.

Q You were testing this Packard car at the time? A Yes, sir. ✓

Q You had passed the bus just before the accident occurred? A Probably 500 feet, between three and 500 feet; I don't know exactly. 20

Q When you passed the bus, how fast were you going? A About 25 or 30 miles an hour. ✓

Q When did you first see this watchman with the flag? A When I first saw him?

Q Yes. A I don't know. Maybe I saw him all the way down; I just watched for his signal. I watched every day in the week. 30

Q Did you see him out there with the flag when you passed the bus? A That was too far away, I guess. Maybe I was 200 feet from the watchman when I saw him.

Q You were only a short distance from him when you first saw him? A No, sir.

Q You stopped on the right-hand side of the road? A Yes, sir.

Q You saw the car coming in the opposite direction? A Yes, sir. 40

*Theodore Wimmer, cross.*

Q Did you see anything as to the condition of the roadway where the touring car was traveling, as to moisture? A It was wet.

Q There was some ice there? A I don't know about that, but there was water because they were pumping water out of the excavation.

10 Q It was cold weather? A Yes, sir.

Q It was freezing—a freezing temperature? A I think it was.

✓ Q This thing happened very suddenly? A Yes, sir.

Q There was not much time between the time you stopped and the time of the crash? A No, sir.

20 Q You didn't see this watchman waiving at anybody outside of holding up the traffic coming from your direction, did you? A No, sir.

Q Did you see the lead burner who was on the witness stand? A No, sir.

Q Did he help you pick the people out of the car? A Nobody helped me because I didn't take anybody out.

Q Do you know how they got to the hospital? A No, sir. I saw one lady being put in an automobile, but I don't know whether this man did. The ambulance came down later.

30 Q Who called for the ambulance?

The Court: The police?

The Witness: I called the Union police to call for an ambulance.

The Court: How did you make the call in the police box?

The Witness: The same as you make any other call.

The Court: Did you have a key?

40 The Witness: The key is in the box.

*Theodore Wimmer, re-direct.*

Q Was any part of the radiator of the bus damaged? A I don't know.

Q Did you notice anything damaged on the bus outside of the—

The Court: There is no claim that I can see for property damage on the part of the defendant. 10

Mr. Braun: I am not asking it for that purpose. I am asking it to show what part came in contact with the other and what part was damaged.

Q Did you notice anything damaged on the bus, outside of the left front wheel? A And the left front fender. ✓

Mr. Braun: That is all. 20

*Re-direct examination* by Mr. Crane.

Q At the time you stopped on the signal from the watchman, about how far did Mr. Gorman's car travel before the collision took place?

The Court: If you know.

A I don't know. 30

Q Have you any idea? A How far it traveled before the collision?

Q From the time you stopped at the watchman's signal, how far did Mr. Gorman's car go before the crash? A Seventy-five or 100 feet. ✓

Q When the crash came you got out of your car and saw where the cars were. On what side of the street was the Gorman car? -A The right-hand side going towards Union.

Q On his own right-hand side? A Yes, sir. 40

*Theodore Wimmer, re-cross.*

Q On what side was the bus? A About the center of the street.

Q Which way? You viewed the thing after you got out of your car. How was the bus headed? A Towards Elizabeth.

10 Q And the Gorman car? A Towards Union.

Q Were they parallel? A The bus was headed on an angle into the touring car.

Q On an angle towards the left or right-hand side of the road? A Towards the bus' left.

The Court: About what part of the touring car was the bus nosed into?

The Witness: Just about the driver's seat.

20 Q On which side? A On the bus' left side.

Q On the touring car's side? A On the left side.

*Re-cross examination by Mr. Braun.*

✓  
30 Q Was there anything wrong with the left front wheel or the left front fender of the touring car? A The fender was bent. I don't know whether there was anything wrong with the wheel.

Q It was swiped off? A I don't know.

The Court: Is it possible in this case for you to agree as to some things? I mean some of the things must be undisputed facts. We are taking a lot of time on the direct and cross examinations as to how the impact took place. Certainly, some impact took place. Can't you agree at all as to how that happened?

*Theodore Wimmer, re-cross.*

Mr. Braun: Our contention is that the left front of the bus and the left front of the touring car came together.

The Court: They claim the left front of the bus came in contact with the left of the touring car at a point where the driver sits. What is the difference whether it was there or a little further front? 10

Mr. Braun: It might make some difference in the jury's minds.

Q Was there anything between the bus, in its position after the accident, and the other half of the road over as far as the ditch? A Between the bus and the ditch where they were struck or the other ditch?

Q The other side of the road? 20

The Court: There was nothing to the right of the touring car. The touring car could have run either side.

The Witness: There were pipes there.

The Court: How far out?

The Witness: Twenty-five or 30 feet.

Q The ditch is half-way between the edge of the pavement and the headlights on the map? 30  
A Yes, sir.

Q There was a distance of approximately the same width from the center of the pavement to the ditch? A No, sir. I would say six feet from the edge of the pavement to the pipes.

Q And the ditch from the center of the road, one-half was unobstructed and there was another distance of approximately the width of the pavement? A Yes, sir.

*Joseph J. Gorman, direct.*

JOSEPH J. GORMAN, one of the plaintiffs, called as a witness, being duly sworn, testified as follows:

*Direct examination by Mr. Crane.*

10 Q Where do you reside? A 110 Lorraine avenue, Union.

Q What was your business on January 16, 1928? A We were soliciting from house to house well-known household products of all kinds.

Q On the morning of January 16th, did you have three ladies working for you, Mrs. Keating, Mrs. Ryan and Mrs. Oliver? A I did.

Q Did you have an automobile that day? A Yes, sir.

20 Q What kind of an automobile? A A Willys-Knight touring car.

Q About 9 o'clock in the morning were you and the ladies going along Morris avenue from Elizabeth towards Union? A Yes, sir.

Q When you got to the city line on Morris avenue at about North avenue, what did you see in the road in front looking towards Union? A I saw in front of me some excavation work which was being done. There were piles of dirt  
30 on the left-hand side of the road and large pipes on the right-hand side. I saw a man there with a flag who was directing traffic. On the other side of this excavation I saw an automobile.

Q What else did you see? A A bus coming down behind this automobile.

Q What did the man with the flag do? A He signaled for me to proceed through.

Q What did the automobile do that was going towards Elizabeth? A He signaled for the traffic coming toward Elizabeth to stop, and I

*Joseph J. Gorman, direct.*

saw the automobile come to a stop as I was proceeding through this half passageway. ✓

Q You later saw that the car that had stopped was driven by Mr. Wimmer? A Yes, sir.

Q When you got about parallel with Mr. Wimmer's car what happened? A When I got about parallel with Mr. Wimmer's car I saw this bus shoot out from behind his car. ✓

Q Mr. Wimmer's car? A Yes, sir; towards us. I pulled my wheel as hard as I could to the right to avoid a head-on collision.

Q What happened? A He struck me on the left hand side of the car about the front left side—the driver's seat.

Q What happened to you? A I was rendered unconscious immediately.

Q When you regained consciousness where were you? A In the Elizabeth General Hospital, in the men's surgical ward.

Q How long did you stay in the hospital? A Three days.

Q During the three days that you were there did you suffer any pain? A I suffered severe pain in the head, in the chest, on the left side of the chest.

Q After three days in the hospital where did you go? A To my sister-in-law's house at 913 Sheridan avenue, Elizabeth.

Q When you got there what did you do? A I went to bed and stayed there two weeks.

Q During the time you were in bed at home did you have a doctor? A Yes.

Q Who was he? A Dr. A. F. Murphy.

Q After you had gotten out of bed how long was it before you could go back to your

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*Joseph J. Gorman, direct.*

work? A It was about ten weeks from the time the accident occurred.

Q At the time of the happening of this accident what were your actual earnings? A The average—

10 Mr. Braun: I object to this on the ground that there has not been shown the source of his earnings—whether by salary or not or whether it is something that his personal ability enters into or that is something that he could have hired somebody else to do.

The Court: That is subject to cross examination. If he testified his earnings were so much a week—isn't that proper?

20 Mr. Braun: Not until he shows the source of his earnings.

The Court: You can show that and if it turns out that the source is not proper you can make a motion to strike out and I will grant it. I will see to it that you are not hurt if you see to it that the matters are important and are proper.

30 Q At the time of the happening of this accident what were your actual earnings? A About \$60 a week.

Q How long had you been in the business that you were in prior to the time of the accident in January, 1928? A About three years.

Q For a period of a year preceding the accident what were your average earnings?

Mr. Braun: I object, not the proper measure of damage.

40 The Court: Did you keep any books?

*Joseph J. Gorman, direct.*

The Witness: A day book.

The Court: Does your day book show what your earnings were?

The Witness: No, sir; the sales.

The Court: You kept no book as to your earnings? 10

The Witness: No, sir.

The Court: Read the question.

(The stenographer read the last question as follows:

“Q For a period of a year preceding the accident what were your average earnings weekly?”)

Mr. Braun: That is not the proper question because it takes a period of time which is not proper as showing what his income would be over a longer period of time; it takes something—a year, and a year is not proper. 20

The Court: What do you say is proper?

Mr. Braun: I don't think his average earnings—

The Court: What do you say is proper for a period to be taken?

Mr. Braun: I can't until the nature of the business is disclosed. 30

The Court: Neither can I.

Mr. Braun: We should hear the source.

The Court: I will hear you later on your motion.

Q For a period of a year preceding the accident what were your average earnings weekly?

A About \$75 a week. 40

*Joseph J. Gorman, direct.*

Q You say you were unable to work for a period of about ten weeks? A Yes, sir.

Q When you went back to your business what was the condition of it?

Mr. Braun: I object to that.

10 The Court: Let us find out what was his business.

Mr. Crane: I think he told us.

The Court: He has not.

Q You say you were engaged in selling from house to house? A Yes, sir.

Q And had solicitors? A Yes, sir.

Q Did you tell us what you sold? A Household products.

20

The Court: That does not mean anything. What kind of products did you sell? Did you sell ash cans or wash boards or what?

The Witness: At that time we were selling facial soap, Castile soap, liquid cocoanut shampoo, skin lotions and anti-moth products.

30 Q Was anybody with you who could take your place? A My wife.

Q Did she take your place during your illness? A No, sir.

Q When you got back to your business after being ten weeks from it, what was its condition?

Mr. Braun: I object to that. The measure of damage is what it would cost to hire somebody to take his place, unless it develops that his income resulted from in-

40

*Joseph J. Gorman, direct.*

vested capital plus his own personality, like a boy who solicits magazines and things of that kind, buys and sells them himself; he can't recover for loss of his personality.

The Court: Where did you get that from?

10

Mr. Braun: That is the rule.

The Court: I would like to read it. I never heard of any law that a professional man, who has a business depending on his personality, that if he is sick and in a position where he cannot follow his profession, that he cannot recover for his loss.

Mr. Braun: I never heard of one who was successful in proving it.

The Court: I allow this testimony subject to its being stricken out. 20

Mr. Braun: On the further ground—

The Court: I will strike it out and instruct the jury so that they will not pay any attention to it.

Mr. Braun: On the ground also that the condition of or the difference in his business before and after the accident, is the proper measure of damage, that is not the proper way to show how much he has suffered; he should show what his average earnings were after that. 30

The Court: Let him show one thing at a time.

Q When you got back to your business after being ten weeks from it, what was its condition? A I had to start all over again, to get new solicitors, which are hard to get—new ones. 40

*Joseph J. Gorman, direct.*

The Court: Why new ones?

The Witness: Because my ladies had been hurt in the accident and they could not work, except one of them—a full crew; we worked with six in a crew. I had to hire new women and it takes three or four weeks to break a woman in. After four weeks we started to run an average business—that is, the quota we placed on them.

10

Q When you started your work after the ten weeks' absence had you entirely recovered from the effects of the injuries you had received in the accident? A No, sir.

20

Q What was the matter with you? A I had very severe headaches at times and bruises through my body.

Q Was your head hurting you? A Yes, sir. I had lacerations on the scalp right behind the left ear—concussion of the brain.

Q At this time have you entirely recovered from your cuts? A No, sir; not entirely from my headaches.

Q I show you this bill from the hospital for \$24. Did you pay that bill? A Yes, sir.

30 Q I show you Dr. Murphy's bill for \$77. Is that the bill he rendered to you? A Yes, sir.

Mr. Crane: Any objection to the bills going in?

Mr. Braun: Yes.

Mr. Crane: I offer them for identification.

(Received and marked P. 1 for identification and P. 2 for identification.)

40

*Joseph J. Gorman, cross.*

*Cross examination by Mr. Braun.*

Q You were three days in the hospital? A Yes, sir.

Q That is all? A Yes, sir.

Q You were in bed in your sister-in-law's house two weeks? A Yes, sir. 10

Q Did you get up then? A Yes, sir.

Q You were not in bed longer than two weeks? A No, sir.

Q Why did you say under oath or interrogatories that were asked you, in answers to questions—"Were you confined to your bed by reason of the injuries complained of and if so for how long? A I was in the hospital about one week and in bed at home three weeks." Is that your signature on the affidavit saying these answers are true and correct and you had read them? A Yes, sir. 20

Q Why did you say that in answer to the interrogatories before this case came up for trial? A The first week, I don't know exactly how many days I was in the hospital until I went to the hospital and found out and got my paid bill because my mind was completely shattered of all remembrance; I couldn't remember a thing after that accident. 30

Q It has cleared up this morning? A Yes, sir; it is clear for the last couple of months.

Q How long did that condition exist? A What condition?

Q The vagueness as to details? A I should say about four months anyway.

Q Did you realize that that condition existed? A Only at times.

Q You were hazy when you made those answers? A I don't think so; no sir. 40

*Joseph J. Gorman, cross.*

Q When did you get your hospital bill?

Mr. Crane: Here it is.

Q When did you get it? Did you have the hospital bill before you got that bill? A My wife paid the bill. I didn't have the bill at all.

Q You didn't think it necessary to check up on those details about which you were hazy? A No, sir.

Q Although you were going to answer them under oath, that didn't make any difference? A I didn't think two or three days would make a great deal of difference. I didn't know how long it was until I went to the hospital and found out it was three days. It seemed a week to me.

Q You realize it makes a difference in your bill? A Yes, sir.

Q You realize two or three weeks in bed at home is quite a little variance? A Yes, sir.

Q You made no effort to check up on the answers before you swore to them, is that right? A Yes, sir.

Q You didn't think it necessary; is that right? A I really never gave it a second's thought to tell you the truth.

Q Doesn't your oath mean anything to you? A Yes, sir.

Q Didn't you ever give it a second's thought? A Yes, sir.

Q Didn't you realize you were swearing to these answers? A I did.

Q You say you saw this bus following the other car when you were about to enter the section of the road that was narrowed down by the excavation; is that right? A Yes, sir.

*Joseph J. Gorman, cross.*

Q How far away was the bus then? A From where?

Q From you. A I should say about 300 feet or more.

Q Was the bus moving? A It was.

Q Was the other car—the Packard car? A When I was going through it had stopped. 10

Q When you first saw them? A Yes, sir; it was moving in my direction.

Q You saw the Packard car stop? A Yes, sir.

Q Did you watch the bus? A No, sir.

Q Did you see it? A I could see it, but I was not watching it closely.

Q What section of the road was the Packard car in when you first saw it? A On the left-hand side of the road, going towards Elizabeth. 20

Q The left-hand side? A On my left-hand side; that would be on his right side.

Q What position in the road did the bus occupy? A The same position only further towards Union.

Q You could see the bus regardless of the fact that the Packard car was in between? A Yes, sir.

Q But you could not see it after the Packard car had come to a stop; is that right? A Yes, sir; I could see it. 30

Q Did you see it? A I don't remember seeing it; no, sir.

Q Did you look? A My mind was centered on this one-way passage because I didn't have much room to go through there and I devoted my attention to the obstruction in the road that I might go through it.

Q You were going through that section of the road and the pavement was wet? A Slightly. 40

*Joseph J. Gorman, cross.*

Q There was some ice? A I don't recall any ice.

Q You suddenly saw this bus shoot out from behind the Packard car? A Yes, sir.

Q What kind of a looking car was the Packard—a sedan or a touring car or what? A A  
10 sedan.

Q When it did you applied your brakes and pulled to your right? A Yes, sir.

Q How far were you from the bus at that time? A At what time?

Q When you applied your brakes and pulled to the right? A He was very close to me.

Q How close? A About ten feet or twelve feet, I should say; not over that.

Q How far was it behind the Packard car?  
A When I saw him he shot right out from behind the Packard car; it was half way in the  
20 middle of the road, coming towards me.

Q How far on the other side of the Packard car was he when he came out? A I don't know that.

Q You can't tell us that? A No, sir; I can't.

Q What kind of a license did you have for your car—a pleasure license?

30 Mr. Crane: I object to that.

The Court: What has he said so far about it?

Mr. Braun: I will come to that.

The Court: He has been asked that question in the interrogatories?

Mr. Crane: No, sir.

The Court: You want to show that he  
40 had no license? He had not talked about a car license.

*Joseph J. Gorman, cross.*

Mr. Braun: That he didn't have the proper one.

The Court: He should have had a commercial license because he was peddling these things?

Mr. Braun: Yes, sir.

10

The Court: Did you have a pleasure car license or a commercial license?

The Witness: A pleasure car license.

Q You delivered this stock?

Mr. Crane: I object to that.

The Court: You carried some things around in your car to show to customers?

The Witness: Yes, sir.

20

Q You made sales?

The Court: What difference does it make?

Mr. Crane: It makes no difference. There is no bearing on the materiality of the issue.

The Court: The question we are here trying is, whether Mr. Anthes was negligent in the operation of his car or whether the other man was guilty of contributory negligence.

30

Q How much of this stuff did you have in your car? A About \$100 worth.

Q You had enough to keep all the ladies busy that morning?

Mr. Crane: I object.

The Court: Sustained.

Mr. Braun: Exception.

40

*Joseph J. Gorman, cross.*

Q Where were the ladies seated in the car?

A Mrs. Keating was on the front seat with me, on my right; Mrs. Oliver and Mrs. Ryan were in the rear seat.

Q Where was this material? A The material was in front of them.

10

The Court: In the tonneau of the car on the floor.

The Witness: Yes, sir.

Q How long had they been working for you?

The Court: What difference does that make?

Mr. Braun: He told us his business went to pieces because these women were injured.

20

The Court: All right. I will take it. How long had they worked for you?

The Witness: Mrs. Keating was with me about three years; Mrs. Oliver about a year; it was Mrs. Ryan's second week.

Q Did you have any other ladies at that time?

A Yes, sir.

Q How is it they were not with you? A One was sick—

30

The Court: What do we care?

Mr. Braun: It is on the question of his earnings.

Mr. Crane: Were they working somewhere else?

The Witness: Yes, sir.

Q You had two other working elsewhere? A

40 Yes, sir.

*Joseph J. Gorman, cross.*

Q Didn't you discharge or lay off a couple of solicitors just before this accident because work was slack?

Mr. Crane: I object.

The Court: Overruled.

Mr. Crane: Exception.

10

A No, sir.

Q Didn't you say you usually had six in a crew? A Six constitutes a full crew.

Q Why didn't you have a full crew working at this time?

Mr. Crane: I object.

The Court: Overruled.

Mr. Crane: Exception.

20

A Just because I didn't.

Q Business was not of such a volume to warrant it? A No, sir. It is very hard to get good solicitors and it takes time to build up a crew of six good women. You might hire thirty women and if you got six out of the thirty you are lucky.

Q How many times in three years have you had six working at the same time? A About seventy per cent. of that time.

30

Q How long before the accident had you last had six women working full time? A A little over two months, about two months before the accident.

Q Did you buy this product outright and then retail it? A Yes, sir.

Q You paid these women for their time or did they get a commission? A They were paid for their time and commissions over a certain quota.

40

*Joseph J. Gorman, cross.*

Q Your wife assisted you in this? A She was not very active at that time.

Q She knew all about the business? A She did; yes.

10 The Court: Why didn't you run the business while you were sick?

The Witness: I didn't have a car and we hadn't any salesladies but these two, who were at their homes and worked from their homes. The reason they were working from their homes at that time was they couldn't go out.

Q Why not? A One had two or three children and two had measles and the other didn't  
20 feel very well at the time.

Q How much actual selling did you do personally? A I didn't do any personally.

Q You relied entirely on what the women did? A Yes, sir.

Q You bought the stuff and took them to different points to go around and sell it. These ladies were on salaries and commission? A Yes.

Q How much salary did you pay them? A  
30 \$18 a week.

Q How much commission? A Thirty per cent. on all over \$10 worth of business per day.

Q You are not making your claim for any payments that you made to them while they were laid up, are you; you made no compensation payments to them, did you? A No, sir.

Mr. Crane: I object to that.

The Court: He said no.

40 Mr. Braun: That is all.

*Joseph J. Gorman, re-direct—re-cross.*

*Re-direct examination by Mr. Crane.*

Mr. Crane: I forgot to ask the witness two questions.

Q Was the goods you had in the car completely destroyed? A Yes. 10

Q About how much was it worth? A About \$100.

Mr. Braun: I object to that.

The Court: Overruled.

Q As a result of the collision what happened to your automobile? A Our automobile was completely destroyed.

Q How much was that worth on January 16, 1928? A \$250. 20

The Court: Did he say how much the stock was worth?

Mr. Crane: \$100.

*Re-cross examination by Mr. Braun.*

Q How long did you have this car? A About a year. 30

Q Was it new or second-hand when you bought it? A Second-hand.

Q How many miles had you run it all told since?

Mr. Crane: I object to the question all told.

A I don't know that. The speedometer was fixed and it was adjusted, and it was sent back. 40

*Mrs. Mary Keating, direct.*

Q How far did you run it? A I don't remember the mileage. I imagine about 17,000 miles.

Q All sorts of weather? A Yes, sir.

Q How much did you pay for the car when you bought it? A \$400.

10 Q And you ran it 17,000 miles and you think it was worth \$250? A Yes, sir.

Q Did you see how far it had run before you got it? A No, sir.

Q What became of the stock that was in the automobile? Did you have anybody pick it up?  
A When I saw the car—

The Court: Do you know what became of it?

20 The Witness: I don't know what became of it.

Q You don't know whether it was lost or destroyed? A No, sir.

Mr. Braun: Then I move to strike out the \$100 item because he says he doesn't know what happened to it.

The Court: Motion denied.

30 Mr. Braun: Exception.

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MRS. MARY KEATING, one of the plaintiffs, called as a witness, being duly sworn, testified as follows:

*Direct examination* by Mr. Crane.

40 Q Where do you reside? A 141 Franklin avenue, West Orange.

*Mrs. Mary Keating, direct.*

Q On January 16, 1928, were you riding in the automobile belonging to Joseph Gorman? A Yes, sir.

Q Along Morris avenue in the Town of Union? A Yes, sir.

Q What part of the automobile were you riding in? A In the front seat with Mr. Gorman. 10

Q As you got to the Elizabeth city line what did you see in the road ahead? Did you look towards the Town of Union? A I saw a trench on one side or the left of the road, dirt piled up ahead of us, and I saw a car and a man with a red flag.

Q What else did you see? A I see the man give a signal.

Q To whom? A To whoever was in the car ahead. 20

Q The car that was coming towards Elizabeth? A Yes, sir.

Q What did he do as to Mr. Gorman? A He gave him a signal to go on.

Q Did Mr. Gorman go on in response to the signal? A Yes, sir.

Q When he got about alongside of the car that was going towards Elizabeth and that had stopped, what happened? A All I remember seeing was this street bus coming from the back of the car and crashing right into us. 30 ✓

Q What happened to you? A I went through the windshield.

Q After the accident were you taken to the Elizabeth General Hospital? A Yes, sir.

Q What was the matter with you? A I had a severe bump on the head. They thought I had a fractured skull when they brought me to. I had my front teeth out. 40

*Mrs. Mary Keating, direct.*

Mr. Braun: I move to strike out as to what they thought.

The Court: Yes.

A And a gash on my left arm.

10 The Court: Speak out.

A A bump on my head, three front teeth knocked out and a gash on my left arm; that gash required six stitches.

Q How long were you at the hospital? A Twenty days.

Q Until February 5th? A Yes, sir.

The Court: Twenty days.

20 Mr. Crane: From January 16th to February 5th.

Q I show you this bill from the Elizabeth General Hospital for \$78 and ask you if that was the bill rendered to you?

Mr. Braun: That is improper. I object.

30 Q I show you this bill from the Elizabeth General Hospital for \$78 and ask you if that was the bill rendered to you?

Mr. Braun: Counsel knows that is improper; it is improper to give the witness that instrument that he not even marked for identification. I move that it be stricken out and the jury instructed to disregard it.

40 The Court: I struck out \$78 from the record and you gentlemen of the jury pay no attention to it because if counsel cannot

*Mrs. Mary Keating, direct.*

prove it was \$78 I will have to ask you to leave it out of consideration. Leave it out until he proves the bill. Is that your hospital bill?

The Witness: Yes, sir.

The Court: Which was rendered to you? 10

The Witness: Yes, sir.

The Court: Mark it for identification.

Q What is the amount of the bill?

Mr. Braun: The instrument speaks for itself and he should not characterize it.

The Court: What is the amount of the bill you received from the hospital?

The Witness: \$78. 20

Mr. Braun: I object.

The Court: Overruled and an exception allowed.

Q After you left the hospital where did you go? A To my home.

Q What did you say was the matter with you?

A I had a bump on the head, three front teeth knocked out and lacerations of the left arm that required six stitches. 30

Q Anything the matter with your eye? A My left eye had busted a blood vessel due to the bump on my head; the chest and side bruised.

Q When you left the hospital did you go home? A Yes, sir.

Q When you got home did you go to bed?

A Right to bed.

Q How long were you in bed? A I was in bed for three weeks. 40

*Mrs. Mary Keating, direct.*

Q After you got out of bed where did you go?

A I just moved around the house for about three weeks more, two or three weeks more.

Q While you were at home after coming from the hospital were you attended by a doctor? A Yes, sir.

10 Q Who was the doctor? A Dr. Winifred Banks.

Q Did Dr. Banks render you a bill? A Yes, sir.

Q For services? A Yes, sir.

Q How much was the bill? A \$35.

Mr. Braun: I object to that question on the same ground.

The Court: Overruled.

20 Mr. Braun: Exception.

The Court: If it is not finally connected up and shown to be a reasonable charge for services rendered, I will strike it out on motion made. Counsel has an exception. How much was the amount?

The Witness: \$35.

Q Did you wear glasses at the time of the accident? A Yes, sir.

30 Q Did anything happen to your glasses in the accident? A Yes, sir; they were knocked out of shape and the nosepiece broken.

Q Did that necessitate your getting new glasses? A Yes, sir.

Q Did you get new glasses? A Yes, sir.

Q From whom? A Dr. Bryan.

Q How much did they cost you? A \$29.

Mr. Braun: I object to that on the same ground.

40

*Mrs. Mary Keating, direct.*

The Court: Objection overruled.

Mr. Braun: Exception.

Q How long had you been working for Mr. Gorman at the time of the accident? A About three years.

Q What salary did you receive from him? A I received \$25 or \$30; on an average of \$25 a week.

10

Q That included what he paid you and your commission? A Yes, sir.

Q How many weeks were you out of work? A From the day of the accident until about May 1st.

Q Then did you go back to work? A Yes, sir; until May 18th.

Q When you went back to work for whom did you go to work? A Mr. Gorman.

20

Q During the time you were in the hospital did you suffer any pain? A Yes, sir.

Q During the time that you were in bed, confined to your bed at home, did you suffer any pain? A Yes, sir.

Q Aside from the general hospital bill and Dr. Banks' bill and the optician's bill, what other expenses did you have in connection with the accident? A I had a woman in for three weeks.

30

Mr. Braun: I object unless the amounts are excluded from the answer at this time.

The Court: You want him to put two questions while one will do?

Mr. Braun: No, sir. I object to the amounts, but I don't want to object to the question unless the amounts are excluded.

40

*Mrs. Mary Keating, cross.*

The Court: Did you have any other expenses? Yes or no?

The Witness. Yes, sir.

Q What were those expenses? A I had a woman in to take care of me.

10 Q For how long? A Three weeks.

Q That was the three weeks immediately following your discharge from the hospital? A Yes, sir.

Q What was her name? A Helen Keating.

Q How much did you pay her? A \$5 a day.

Q What other expenses did you have in connection with the accident? A Medicine which cost \$12, and my dentist bill for \$6, and Dr. Bryan for examining my eyes and the bill was \$3; washing.

20 Q How much? A \$1 a day.

Q For how long a period of time up to the present time—what is your condition at this time, have you entirely recovered from the accident? A No, sir.

Q What are you suffering from? A Headaches and blurring of my left eye.

Q Is that the eye that the blood vessel broke in? A Yes, sir.

30

Mr. Crane: That is all.

*Cross examination by Mr. Braun.*

Q How many hours a day did you put in on the canvassing? A About five hours.

Q That was all the actual work? A Yes, sir.

Q That did not include going to and from the scene of your activities? A No, sir.

40

*Mrs. Mary Keating, cross.*

Q Sometimes you traveled quite a distance?

A Yes, sir.

Q So that you would be out of the house seven or eight hours a day? A Possibly.

Q Sometimes a little longer? A Sometimes.

Q Do you live alone? A Yes, sir.

Q Did you keep house? A Yes, sir. 10

Q Who did the work for you before the accident? A I did it myself.

Q Everything about the house? A Yes.

Q Did you ever have any help come in? A No, sir.

Q How old are you? A Forty-eight.

Q How long did you say you were in the hospital? A Twenty days.

Q Twenty days? A Yes, sir.

Q You were in bed during those twenty days? 20

A Not entirely; I was up in a wheel-chair a few days about a week before I was discharged, a few hours at a time.

Q Do you remember doing any walking or sitting in the chair, in an ordinary chair? A Yes; I sat in the chair and I walked with the help of the nurse.

Q After you got home you continued to become more and more active? After a certain time you were not confined entirely to your bed at home? A I was helped up a few hours each day, brought to my sitting room and brought back again. 30

Q How long was it before you were able to spend the entire time up? A About three weeks after I got home.

Q In your answer to interrogatories I see you have hospital three weeks and bed at home two weeks. Is that a mistake or were you up about three weeks and two weeks at home? A I was up part of the day. I just got out of the 40

*Mrs. Mary Keating, cross.*

bed and I was helped up and taken to the sitting room and then brought back again.

Q You are working for Mr. Gorman again?

A Yes, sir.

Q Since when? A Since July.

10 Q You make \$25 a week since then? A Not always.

Q You are averaging about the earnings you always did? A No, sir; not quite.

Q Is it a business that fluctuates some? A I think—

Q Doesn't your business fluctuate? A Yes, sir; at times.

Q Sometimes you sell more than at other times? A Yes, sir.

20 Q And all the products you are selling are seasonal to a certain extent? A Yes, sir.

Q When is your best season? A It depends on the product.

Q Don't you have the best season just before the Christmas holidays? A Yes, sir.

Q The slack season is usually during the summer months when people are away? A Sometimes, not always.

30 The Court: We will take a recess until 1:15.

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*Dr. Emil Stein, direct.*

AFTER RECESS.

DR. EMIL STEIN, called as a witness for the plaintiffs, being duly sworn, testified as follows:

*Direct examination by Mr. Crane.* 10

Q You are a physician and surgeon practicing in Elizabeth? A Yes, sir.

Mr. Braun: I admit his qualifications.

Q With what institutions are you connected?

The Court: He admitted his qualifications.

Mr. Crane: I would like to show them. 20

A I am connected with the Elizabeth General Hospital, I am connected with the St. Elizabeth's Hospital, I am surgeon at St. Elizabeth Hospital and attending surgeon at the Elizabeth General Hospital.

Q In January, 1928, were you connected with the Elizabeth General Hospital? A Yes, sir; I was on duty at the time.

Q Did there come under your attention professionally at the hospital there on the 15th of January, 1928, Mr. Joseph J. Gorman? A Not Mr. Gorman, no. 30

Q Mrs. Mary J. Keating was under your care? A Yes.

Q When did you first see her? A On the day of the admission, on the 16th of January.

Q Did you make an examination of her at the time? A I did. 40

*Dr. Emil Stein, direct.*

Q What did your examination disclose? A She had lacerations of the left arm, an extended cut of about two and a half inches; she had a cut lip; she had bruises on the left side of her chest and severe bruises on the head.

10 Q How long was she in the hospital? A She was admitted on the 15th of January and discharged the 5th of February, 1928.

Q Wasn't it the 16th of January? A Yes; the 16th.

Q During the time that she was at the hospital how often did you see her? A Daily, sometimes twice a day.

Q Were any X-ray pictures taken of Mrs. Keating's body? A Yes, sir; but they don't show any evidence of a skull fracture nor of the  
20 left elbow, which was very tender.

Q What did your treatment consist of? A The left arm was sewed.

Q How many stitches were taken in it? A I don't recall; either seven or eight, and an incision of about two and a half inches.

Q During the time that Mrs. Keating was at the hospital did she suffer pain? A Yes, sir.

Q When she left the hospital had she entirely recovered from her injuries? A No;  
30 she still is complaining.

Q I show you this bill of the General Hospital from it to Mrs. Keating and ask you if that is a reasonable charge for the services that the hospital rendered her? A So far as my knowledge is concerned, it is; but I have nothing to do with that.

Q You know the reasonable charge? A At \$2.50 a day is the usual charge.

40

Mr. Crane: I offer the bill in evidence.

*Dr. Emil Stein, direct.*

Mr. Braun: No objection.

(Received in evidence and marked P. 4.)

Q Did you make an examination of Mrs. Keating at my request today? A Yes, sir.

Q Where was the examination made? A At the Elizabeth General Hospital.

10

Q Will you tell the jury what the examination today disclosed as to her condition? A Objectively, there was not anything present; but subjectively she had plenty of reason for that—she complained of headaches, more or less numbness of the left arm, she complained of her left side and also the head, but there was nothing objectively shown on the examination.

Q From having treated this case at the hospital and from your examination today, how long in your opinion would it be before Mrs. Keating is entirely recovered from her injuries? A That is indefinite. It may take months or longer; she may get well at any time because all these things are probably due to her nervous condition.

20

Q Have you a record there of Mrs. Jennie Ryan's case? A Yes, sir.

Q When was she admitted to the hospital?

A The same day, on January 16th.

30

Q How long was she at the hospital?

Mr. Braun: I would like to have it established if she was under the doctor's care.

The Court: I take it for granted that he will not testify unless she was.

The Witness: Except for a day or two when there was a misunderstanding.

Q What did your examination disclose when you first saw her at the hospital? A She had

40

*Dr. Emil Stein, direct.*

a fracture of the knee-cap on the left side, abrasions of the knee and contusions of the left leg and back—bruises: the most important injury was the broken knee-cap of the left knee.

Q How long was she at the hospital? A She came in on the 16th and was discharged on the 19th of February.

Q How often did you see her while she was at the hospital? A She was under my services daily and sometimes twice a day.

The Court: How long was she there?

The Witness: From the 16th of January and was discharged on the 19th of February.

Q While you were there did she suffer pain?

A Yes, sir.

Q Did you make an examination of Mrs. Ryan this noon at my request at the Elizabeth General Hospital? A Yes, sir.

Q What did the examination disclose? A She had a stiffness of the left knee to the extent of about 40 per cent.

Q How long would it be before that disability clears? A I am inclined to believe that it will be permanent.

Q I show you these bills which the hospital had against Mrs. Ryan and ask you if those charges are reasonable charges, from your knowledge of the hospital charges? A Yes, sir.

Q And the charge for the X-ray is the usual charge? A Yes, sir.

Mr. Crane: I offer the bills in evidence.

Mr. Braun: No objection.

(Received in evidence and marked P. 5 and P. 6.)

*Dr. Emil Stein, direct.*

Q Did you take X-rays of Mrs. Ryan's injured knee? A Yes, sir.

Q Have you the X-rays here? A Yes.

Q Do they show the fracture that you speak of? A Yes, sir.

Q Will you put the X-ray and plate in the machine and read it to the jury. 10

Mr. Braun: Did the doctor take those X-rays?

Q Did you take the pictures yourself? A No, sir.

Q Who were they taken by? A Dr. Fulger, who has charge of the X-ray department of the Elizabeth General Hospital.

Q Do you know whether they are the pictures that were used in connection with Mrs. Ryan's case, pictures of her knee? A Yes, sir. 20

Q You used them in the treatments in this case? A Yes, sir.

Mr. Braun: I would like to cross examine the doctor further on that, as to whether or not the plates are properly identified.

The Court: Have you any objection to his showing these X-rays and describing the injuries? 30

Mr. Braun: Yes, sir; they haven't been properly identified or traced by the man who took them or by the person in whose charge they have been since.

The Court: How did they come to take these X-rays, so far as you are concerned?

The Witness: On my orders on the regular form. 40

*Dr. Emil Stein, direct.*

The Court: How do you know these are the X-rays?

The Witness: They are identified by markings and I saw them the next day. Dr. Fulger gives a report and we go ahead.

10 The Court: And these X-rays are with the report?

The Witness: They are on file and we see them when we go to the X-ray room and these are shown to us by Dr. Fulger.

Mr. Braun: You didn't take those pictures?

The Witness: No, sir.

The Court: He said no.

20 Mr. Braun: You are not present when they are taken?

The Witness: No.

Mr. Braun: You are not present when they are delivered to the files?

The Witness: No.

Mr. Braun: They are not handled by Dr. Fulger when they are filed?

The Witness: By his assistant.

30 Mr. Braun: Haven't you that clerk who takes care of them?

The Witness: Dr. Fulger has an assistant.

The Court: Is there any objection to Dr. Stein testifying? You can get Dr. Fulger? Where is Dr. Fulger?

The Witness: Probably in his office.

40 The Court: I will adjourn the case until you get him if you object to the doctor showing these X-rays with the situation that is given.

*Dr. Emil Stein, direct.*

Mr. Braun: How are these identified?

The Witness: There is an order made out for X-rays of Mrs. Ryan, of the ward and bed she is in; the card goes to the X-ray Department and when the department is ready they send for her. They are all numbered—these pictures, and as soon as the X-rays are taken and they are numbered, these are also numbered in the book where the record is kept. This number means Mrs. Ryan's picture of the hip. 10

Mr. Braun: Does the report show the numbers of the pictures?

The Witness: No; we don't have to have that.

The Court: There is no necessity of going into all that. If you want to adjourn so that you can get Dr. Fulger I will adjourn the case. 20

Mr. Braun: I wanted to satisfy myself that there cannot be any slip-up in the pictures. Dr. Fulger may not be able to help.

Q The number—whose handwriting is that?

A Miss Millsworth.

Q Are they put on immediately? A Yes, sir. The first picture taken was January 16th, which was a picture of the hip. The next picture was taken on the 6th day of February after she came out of the cast and this extended to here, which shows where the crack was right here (indicating). There was a large amount of extra bone callus thrown out around this. If this was normal this should be smooth serviced like the rest of the bone, but this has a ragged edge and a crack there. That has a large amount of bone—callus thrown around it, which 40

*Dr. Emil Stein, direct.*

is called callus and that produces stiffness so that there is no motion. It also takes in the tendon so that there cannot be the usual amount of motion. If she was a younger person her chances would be better for her to recover, but for a person of her age she cannot so readily  
 10 recover. There is also bound to be a certain percentage of permanent disability in the movement of the knee, and the pain involved.

The Court: How old is she?

The Witness: There is no record here.

Q Mrs. Oliver came under your treatment at the hospital? A Yes, sir; at the same time.

Q What did your examination disclose that she was suffering from? A Mrs. Oliver had a  
 20 fracture of the nose and a fracture of the second metacarpal, which means the bone of the hand right here (indicating the back of the index finger). She had a fracture of the fifth finger, also a fracture of the fourth metacarpal. She had a swelling of the eyelids. She was bruised over the chest, over the knees and over the right thigh.

Q Were X-ray pictures taken of Mrs. Oliver?

A Yes.  
 30

Q Have you the X-rays? A Yes, sir.

Q Explain the injuries Mrs. Oliver received and the X-rays gave her.

Mr. Braun: I think the X-rays should be introduced into evidence.

The Court: Mark Mrs. Ryan's X-rays in evidence—those that were used.

(Received in evidence and marked P. 7 and P. 8.)

*Dr. Emil Stein, direct.*

Q Give the roll of X-rays of Mrs. Oliver so that we can mark those.

The Witness: This shows the fracture of the nose.

The Court: Mark that in evidence. When he testifies he will refer to the X-ray he has specified to. 10

(Received in evidence and marked P. 8 and P. 9.)

A P. 8 shows a fracture of the nose. When this occurred the outside of her face was swollen, there is a crack in there, the outside and inside of the nose was swollen and made breathing very difficult, and there was pain with it. P. 9 shows the fracture of the bone of the hand. There is a fracture which we call the second metacarpal; it has a crack right there on the index finger. There is a fracture of the fourth metacarpal, a crack right there. There is a fracture of the fifth finger across there (indicating). 20

Q How long was Mrs. Oliver in the hospital?

A She left on the 5th day of February, 1928.

The Court: From January 16th to February 5th? 30

The Witness: Yes, sir.

Q I show you the hospital bill in Mrs. Oliver's case amounting to \$93 and ask you if that is a reasonable bill? A Yes, sir.

Mr. Crane: I offer the bill in evidence.

(Received in evidence and marked P. 10.)

Q What was the reasonable charge for X-rays in Mrs. Oliver's case? 40

*Dr. Emil Stein, direct.*

Mr. Braun: I don't know whether the doctor is qualified. I think you should first find out.

Mr. Crane: I will not raise it. It is only \$10. I withdraw the question.

10 The Court: I allow the doctor to testify and on cross examination you can examine as to his ability to tell what is the reasonable charge for the X-rays.

Mr. Braun: Are you familiar with the reasonable charges for X-rays of this kind?

The Witness: Yes, sir.

Mr. Braun: I have no objection to the doctor testifying.

20 Q What was the reasonable charges for the X-rays in Mrs. Oliver's case? A They should be \$10 a plate. We had the head taken and the hand taken.

Q That would be \$20? A Yes, sir.

Q At my request did you make an examination of Mrs. Oliver today at the Elizabeth General Hospital? A Yes, sir.

30 Q Will you tell the jury what your examination disclosed? A She had difficulty in breathing on account of the fracture and she complained she could not hear well with the left ear. On the examination I found she could hear with the left ear from a distance of three feet from an ordinary tone, speaking in a conversational tone. She also has a slight dent in the forehead, which was the result of the contusions and injury at the time. She complained of pain in the back and she is also unable to close her hand on account of the fracture and has limitation of motion there.

40

*Dr. Emil Stein, cross.*

Q How long in your opinion will it be before she regains the full use of her hand? A I don't think she will ever regain the full use of that hand.

Q In your opinion, what per cent. of loss of use has she sustained? A She had about 40 per cent. loss of the functions of the hand. 10

Q Will the fracture of the nose correct itself? A I am not sure she will be bothered with a difficulty in breathing all the time because it should be corrected by this time.

Q What effect will the obstructed nasal passage and broken nose have on her general health? A It makes breathing uncomfortable, it gives one a dry mouth and she will be more subject to infection than a normal person would be.

Q Did you examine her hip today? A I examined her back. She had pain there but there was nothing objective on it. 20

Q How long in your opinion will it be before her defective hearing corrects itself? A I am not prepared to say on that. She should see an ear specialist on that.

Q Who treated Mr. Gorman at the hospital? A I understand Dr. Murphy.

Q Have you the X-rays in his case there? A No, sir. 30

*Cross examination by Mr. Braun.*

Q What did you treat Mrs. Oliver for at the hospital? A For a fractured nose. I referred her to the nose doctor. Anything that comes in for a specialist we refer to the doctor in charge of that department. I took care of the fractured hand, the contusions and bruises and all the other conditions that appeared. 40

*Dr. Emil Stein, cross.*

Q These contusions and bruises were about the head and shoulders? A The chest, knees, eyelids and thigh.

Q Did you do anything for her hearing at the time she was at the hospital? A No, sir.

10 Q In fact, there had been no complaint about the ear at the time? A No, sir.

Q So far as you know, there is no connection with the ear condition and the accident? A I can see the possibility.

Q But not the probability? A Yes; also the probability of it.

Q Where was the fracture of the nose? A On the left side.

20 Q What bone or bones did it involve? A The nasal bone and it extended alongside to the molar.

Q Was it a complete fracture? A Yes, sir.

Q All on the left side? A Yes, sir.

Q It didn't extend from the center point of the bone? A The septum was not broken.

Q What did you do today outside of asking her questions? A I tested her hearing and closed up the right ear.

30 Q Why did you test the hearing? A Because she told me she could not hear very well out of the left ear.

Q Did she give you any history as to rheumatism or anything like that? A No, sir.

Q Did you ask her about it? A She had no rheumatic history.

Q Did you ask her about it? A No, sir.

Q She was not volunteering anything? A I had no history of rheumatism. There is no history of any illness on the chart.

Q The fracture of the hand—there was no displacement there? A Yes, on the finger.

40 Q Which finger? A It is the fifth.

*Dr. Emil Stein, cross.*

Q Displacements of the fragments? A No, sir; on her examination you could see the finger is displaced.

Q Is there any pathology apparent now? A Yes, sir.

Q What? A Thickening.

10

Q Which is a normal result of the fracture?

A It is a result of the fracture because at this time it should be absorbed, if you get 100 per cent. function.

Q All the bony callus that is thrown out by any other is not always absorbed? A It usually smooths itself out.

Q It is still thicker than it was before the fracture? A It depends about what bone you are talking about. The long bone of the leg takes longer. The small bone of the finger should be absorbed in nine months.

20

Q Nature repairs bone like the welding of two pieces of metal together, by adding bony material that is accumulated and change it to bone? A Yes, sir.

Q How else did you examine her besides listening to her left ear? A That was all I was capable of examining it.

Q You are not capable of using a light to inspect her nostrils? A That would not reveal anything to me at present because it was not in my department. I was not interested in that phase of it.

30

Q Are you testifying to her inability to breathe from what you found or from what you heard? A There was an obstruction in the left side, while the right side breathes nicely.

Q The obstruction is on the left side? A Yes, sir.

40

*Dr. Emil Stein, cross.*

Q It is total? A On the left side it is practically total; you can't get breathing through there.

Q Does it get some? A Yes, sir.

Q That is much better than having both sides so? A Yes, sir.

10 Q She had no other pathology? A No, sir; except the depression of the forehead, but there was no depression on the plate.

Q You are not an ear man? A No, sir.

Q You don't profess to know anything about the ear except in a general way? A No, sir.

Q As to Mrs. Ryan, what did you treat her for? A Fracture of the knee-cap, abrasions of the knee-cap, contusions of the leg and back.

20 Q What did that treatment consist of aside from the cast or splint? A When she first came in she was in a considerable shock. She had enemas given. She was given morphine and atrophine by hypo at 12:15; during that night she needed another dose of morphine on account of the shock.

30 Q What did you do for her after the cast was removed? A After she came back to my care I took the cast off, and after seeing the picture, the fragments, both fragments of the fracture, splinted it posterially.

Q After the splints were removed what did you do? A We gave it a baking and massage, which goes with fracture treatment.

40 Q How much of it did she have? A I ordered it, but how much she has had of it I don't know. She couldn't have had much of it at the hospital because she was in splints. She probably got one or two treatments before she left the hospital.

*Dr. Emil Stein, cross.*

Q When did you order the baking and massage? A I told her before she went home she would have to continue the baking and massaging.

Q Did you tell her where to get them? A She lives in Newark but I referred her to the family physician. 10

Q What baking and massaging treatment did you recommend? A I told her she would need treatments thereafter.

Q What is the purpose of baking and massaging? A To help absorb the extra amount of callus and bring back the functions of the knee. Heat applied twenty minutes twice a day; that is baking. It is on the same principles. It is the application of heat. She was to get that twice a day. It is on the chart here. 20

Q You recommended the continuation of it after she left your care? A I told her to see her doctor and ordered her to have these things done for her after she left the hospital.

Q If she didn't get them that would have a material effect on the ultimate result? A I think it would help to clear up her knee joint. That would do that to a certain extent.

Q If she didn't, she would have much more stiffness in the knee than otherwise? A Generally speaking, your theory is correct, but it can't be true in every case. 30

Q You examined Mrs. Keating today and found nothing but the objective symptoms? A Yes.

Q That is what the patient tells you? A Yes, sir.

Q Her condition you think was primarily due to nervousness? A To the injury and nervousness. 40

*Dr. Morris Borow, direct.*

Q That nervous condition may in some way be attributable to anxiety in anticipation of a suit? A Not when she had had it all the time since the accident.

Q Don't you think it has some effect on her condition? A No. Anxiety might make her nervous but it would not give her pain.

Q I am talking about the nervous condition. Does that affect any person who had a suit? A I don't think so.

Q You don't think it has any connection then with it? A No, sir.

Mr. Braun: I move to strike out the doctor's testimony in regard to the ear condition in the case of Mrs. Oliver on the ground that there is no connection shown between that and the accident, and he is not qualified to say as to that except what the patient tells him; therefore, it is not properly connected.

The Court: I will allow it.

Mr. Braun: Exception.

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DR. MORRIS BOROW, called as a witness for the plaintiffs, being duly sworn, testified as follows:

*Direct examination by Mr. Crane.*

Q Were you in the Elizabeth General Hospital as an interne during January, 1928? A Yes, sir.

Q Were you in charge of the cases resulting from the bus accident on Morris avenue on January 16th? A Yes, sir.

*Dr. Morris Borow, direct.*

Q Did you have personal charge of the case of Joseph J. Gorman while he was at the hospital? A As house surgeon; yes, sir.

Q What did his injuries consist of? A When he was brought in he was in an unconscious state. He had lacerations on the scalp, and his shock lasted for the time he was in the hospital. 10

Q When did he retain consciousness? A It must have been three or four hours after admittance but he was still severely shocked.

Q What did his injuries consist of? A Lacerations of the scalp and it extended to the occipital region—to the base of the skull.

Q Which way did it extend? A I can't say definitely but I know the laceration was there.

Q How long was he at the hospital? A He was admitted on the 16th day of January and discharged on the 19th. 20

Q During the time he was there did he suffer pain? A Quite a bit; yes, sir.

Q Did Mrs. Keating come under your attention? A Yes, sir.

Q What was her condition when you first saw her at the hospital? A She was severely shocked; she had lacerations of the left arm and on the lips and contusions on the side of the head and face. 30

Q How long was she at the hospital? A She was admitted on the 15th of January and discharged on the 5th day of February.

Q During the time she was there how often did you see her? A As many as three and four times a day.

Q During the time she was there did she suffer pain? A Much pain.

Q And the case of Mrs. Ryan came to your attention? A Yes, sir. 40

*Dr. Morris Borow, direct.*

Q When was she admitted? A January 16th.

Q I understood you to say Mrs. Keating was admitted on the 15th. Was that a mistake? A It must have been a mistake in the chart. They were all admitted at the same time.

10 Q What was Mrs. Ryan's condition when she was admitted? A She was severely shocked; she had a fractured patalla; she had many abrasions; we classed them as cerebral concussions.

Q How long was she there? A From the 16th of January to the 19th of February.

Q While she was there how often did you see her? A Three or four times a day.

20 Q When did she leave the hospital? A February 19th.

Q During the time she was there did she suffer pain? A Much.

Q Did you also have Mrs. Oliver under your care? A Yes, sir.

30 Q What was she suffering from when she was brought there? A She had a fracture of the nose and a fracture of the second metacarpal, the fifth phalanx, a fracture of the fourth metacarpal, a marked contusion of the eyelid, contusions on the chest, knee and thigh.

Q During the time that all four of these people were at the hospital, was it necessary to administer opiates to them? A Yes, sir.

Q How often in the case of Mrs. Keating?

Mr. Braun: We have been over this with one doctor—unless this doctor administered some of the opiates—I think we have the record complete. Unless this doctor is qualified to testify to that, I will object to it.

40 The Court: I will assume he is qualified.

*Dr. Morris Borow, direct.*

Q How often in the case of Mrs. Keating?

The Court: He was the house doctor at the hospital.

The Witness: Yes, sir.

The Court: You don't think he is qualified to say whether or not it is necessary to administer opiates to a patient who is under his charge? 10

Mr. Braun: The other doctor testified that they were under his care.

The Court: The house doctor is in charge all the time of all the patients in the hospital. You take charge of all the patients?

The Witness: Yes, sir. I have charge of them before the doctor comes in.

The Court: If a doctor is absent and it is necessary to give an opiate, they send for you? 20

The Witness: Yes, sir.

Mr. Braun: I object to his reading from the record of what somebody else did.

The Court: Can you answer the question without the record?

The Witness: Yes, sir. In these cases of cerebral concussion, and they were cases of cerebral concussion, cerebral shock, opiates are not given early because it is considered that they depress the vital centers; if given early it would cause depression of the vital centers. On the second day of Mrs. Keating's admission to the hospital she was given an opiate and it was repeated. 30

Mr. Braun: In your presence?

The Witness: By my orders. 40

*Dr. Morris Borow, direct.*

Q Did you make an examination of Mrs. Keating at your office in Plainfield sometime within a month? A Yes, sir.

10 Q What did your examination of Mrs. Keating disclose? A Objectively, there was not very much to be found. I listened to her chest and I went over her carefully. Subjectively, she complained of quite a bit of pain, headaches and dizziness; after attempting to do anything, in a little while she became very, very dizzy; and she complained of severe headaches.

Q From your knowledge of the case in the hospital and the injuries she received in this accident, in your opinion, are these things she complained of the probable result of her injury? A Yes, sir.

20 Q Did you examine Mrs. Ryan at your office this month? A Yes, sir.

Q What did your examination disclose? A Marked stiffness of that left knee.

Q Where the cap was broken? A Yes.

Q Did you make an examination of Mrs. Oliver? A Yes, sir.

30 Q What did your examination disclose? A I found a weakness of that left hand; marked loss of function there; deformity of the nose can still be noted, and she complains of headaches and weakness.

Q Did you examine her back? A Yes.

Q What did you find? A Objectively. I couldn't make out anything but subjectively she complained of a lot of pain.

Mr. Crane: That is all.

Mr. Braun: No questions.

*Dr. Albert J. Murphy, direct.*

DR. ALBERT J. MURPHY, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

*Direct examination by Mr. Crane.*

Q You are a physician practicing in Elizabeth? A Yes, sir. 10

Q Do you know Mr. Joseph J. Gorman? A Yes, sir.

Q Did you treat him at the Elizabeth General Hospital after he had been in an automobile accident on January 16, 1928? A Yes.

Q What did your examination consist of—show what he was suffering from when you first examined him? A He was suffering from nervous shock and concussion of the brain, lacerations back of the left ear an inch or so long. He was in an unconscious condition when I first saw him. 20

Q How long was he at the hospital? A Three days.

Q What was his condition when he left the hospital? A He was not completely recovered but there was nothing more we could do for him there than they could do for him at home.

Q Did he entirely regain consciousness? A Yes, sir. 30

Q Or was he in a daze condition? A I would say he had fully regained consciousness when he went home.

Q After he was taken to his home did you continue to treat him there? A Yes, sir.

Q How long did you continue to treat him? A He was confined to his home for two weeks after that. Then I saw him in the office a couple of times a week for a month or so. 40

*Dr. Albert J. Murphy, cross.*

Q When was the last time you made an examination of him? A I examined him in the office one day last week.

10 Q What did you find his condition to be when you examined him last week? A I didn't find him suffering from any permanent disability. Apparently he had regained all his normal faculties again.

Q Did you render a bill for your medical services? A Yes, sir.

Q I show you a bill to him for \$77 and ask you if that is a reasonable charge for the services which you rendered to him? A Yes, sir.

Mr. Crane: I offer this bill in evidence.

20 (Received in evidence and marked P. 11.)

*Cross examination by Mr. Braun.*

Q When was the last time you saw him for treatment? A April some time.

Q He made a very good recovery, did he not? A Yes; I will say he made a fairly good recovery.

30 Q Will you say he was discharged as cured when you saw him the last time? A He didn't complain of anything at that time.

Q What would you say as to his mental condition? A Then or now?

Q Then. A Then he had some subjective symptoms. He complained of pains in his head but not to any extent.

Q Was he able to carry on a clear conversation? A Yes.

40 Q And describe details? A Yes, sir; at that time.

*Henry Willhardt, direct.*

Q So far as you know he had no relapse between then and the 1st of June? A Not that I know of.

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HENRY WILLHARDT, called as a witness on 10  
behalf of the plaintiffs, being first duly sworn,  
testified as follows:

*Direct examination by Mr. Crane.*

Q You are in the garage business, are you?  
A Yes, sir.

Q Where is your garage? A North avenue  
and Monroe avenue.

Q Do you know Mr. Gorman, one of the plain- 20  
tiffs in this action? A Yes, sir.

Q Did you see his car after it was in the  
accident on January 16th? A Yes, sir; I have  
it yet.

Q It was brought to your garage? A Yes,  
sir.

Q Will you tell the jury what part or parts  
of the automobile were damaged? A The whole  
left section of the body is totally wrecked; two  
doors are off; the frame is crushed in, the front 30  
left wheel is all damaged; the steering wheel is  
wrenched off its bolt; the entire windshield is  
broken, and the frame is bent and the top sec-  
tion of the car frame is splintered; the engine  
hood is damaged and the front side is wrenched  
out of place and the back section of it is pushed  
back; the front seat is damaged and its frame  
work is damaged.

Q In your opinion, is the car worth repairing?  
A No, sir. 40

*Mrs. Jennie L. Ryan, direct.*

*Cross examination by Mr. Braun.*

Q Is there anything wrong with the running gear? A It can't be run; the front axle is bent and it is all out of shape; it can't be driven.

10 Q Where did you get the car? A From my young man.

Q You didn't get it at the scene of the accident? A No, sir.

Q You don't know whether anything was done to the car after it left the scene of the accident? A No, sir.

Q You don't know whether any repairs or anything was done to the car at the time of the accident? A I don't know; I don't think there has been.

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MRS. JENNIE L. RYAN, one of the plaintiffs, called as a witness, being duly sworn, testified as follows:

*Direct examination by Mr. Crane.*

Q Where do you reside? A 149 Clifton avenue, Newark.

30 Q On January 16th you were working for Mr. Gorman? A Yes, sir.

Q What were you doing for him? A Canvassing.

Q Were you riding in his automobile on Morris avenue towards Union about 9 o'clock on January 16th? A Yes, sir.

Q What part of the automobile were you in? A In the back.

40 Q As you got near the Elizabeth city line did you look up the street in front of you? A Yes, sir.

*Mrs. Jennie L. Ryan, direct.*

Q What did you see? A I saw the road had been torn up and on the right-hand side were pipes, on the left hand there was a ditch and a lot of dirt, down the road further I saw a pump and dirt and a man with a flag directing traffic.

Q What was the man with the flag doing?

A He was giving signals for these people to stop. 10

Q What people? A On the other side.

Q People coming towards Elizabeth? A Yes, sir.

Q When you say that do you mean somebody driving a car? A Yes, sir.

Q Did the car stop? A Yes, sir.

Q What did Mr. Gorman's car start to do? A He started to go through this narrow opening in the road. 20

Q When he got about opposite the car that had stopped what happened? A We were about through there.

Q What happened? A It came from behind this car that was standing still and then we had the accident.

Q What happened? A It ran into the automobile I was in.

Q What happened to you? A I don't know much—the injuries I got? 30

Q Yes. A I was knocked unconscious.

Q When did you regain consciousness? A In the hospital.

Q When you regained consciousness in the hospital did you find out what was the matter with you? A No, sir; not for a couple of days.

Q Did you find out at any time? A Yes, sir.

*Mrs. Jennie L. Ryan, direct.*

Q What was the matter with you? A I fractured my knee-cap, my face was badly cut and my back was injured.

Q How long were you at the hospital? A Five weeks.

10 Q You were at the hospital and you went from there to your home? A Yes, sir.

Q At the time of the accident how were you working for Mr. Gorman—by the day? A Yes, sir.

Q How much did you get a day? A \$3 and carfare.

Q You didn't get a commission? A No, sir. I said five weeks I was in the hospital. I came home Sunday night and Monday morning it would have been five weeks.

20 Q I see. After you got home how long were you confined to your house? A Four weeks.

Q Then where did you go? A The fifth week I was able to go down on the sidewalk with the use of a crutch.

Q In the meantime, after you got home, did you have a doctor? A No, sir; not then, only going down to the hospital.

Q What hospital? A The General Elizabeth Hospital.

30 Q You went back to the Elizabeth General Hospital? A Yes, sir.

Q How often did you go back there? A Four times.

Q What did you go there for? A I was having considerable trouble with the knee. I went back again and they X-rayed it twice to find out what was the matter with it.

40 Q Did you spend anything for medicines or bandages, or anything of that sort? A Yes, sir; I had to buy soap liniment.

*Mrs. Jennie L. Ryan, cross.*

Q About how much did you spend? A \$25 or \$30 for liniment until the 5th of June.

Q Before this accident did you do your own housework? A Yes, sir.

Q From the time of the accident were you able to do it? A No, sir.

Q Did you hire somebody to do it? A Yes, 10  
sir.

Q Who did you hire? A I went down to the employment bureau.

Q How much did you spend for help? A Washing, about \$12 a month.

Q Was your clothing damaged in the accident? A Yes, sir. I lost my hat and a pair of gloves and my stockings were ruined and I had to have the dress cleaned.

Q Have you been able to work since the accident? A No, sir. 20

Q Are you entirely recovered from your injuries? A No, sir.

Q What is the matter with you today? A I can't use my knee. If I walk very far the walking causes much stiffness and the instep of my foot gets badly swollen. And then I can't stand on my knee long at a time.

Q How old are you? A 51.

*Cross examination by Mr. Braun.* 30

Q You haven't had a doctor since? A Yes, I had Dr. Randall of Newark.

Q When did you first get him? A When I was home two months.

Q Did you make any arrangements for baking and massaging your knee after you left the hospital? A The doctors in the hospital told me I would have to have the knee massaged and baked. 40

*Mrs. Matilda Oliver, direct.*

Q Did you make arrangements for that? A With the physician?

Q Did you get any such treatment? A Yes, and I am getting it today.

Q When did you first get it after leaving the hospital? A A day or two after.

10 Q After? A At home.

Q Who did that? A I had it done myself. I had to buy an electric baker.

Q You did it yourself? A Yes, sir.

Q You were seated on which side in the rear? A On the right.

Q Your car was going when the collision took place? A Very, very slow.

20 Q Did you notice any water or ice in the roadway? A No, sir; I didn't, but I noticed a pump there, but I didn't notice any water or ice.

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MRS. MATILDA OLIVER, one of the plaintiffs, called as a witness, being duly sworn, testified as follows:

*Direct examination by Mr. Crane.*

30 Q Where do you reside? A 274 Woodside avenue, Newark.

Q How old are you? A Sixty-four.

Q For some time before January 16, 1928, had you been employed by Mr. Gorman? A Yes, sir.

Q For about how long? A Fourteen or fifteen months.

40 Q What was your business? A We were canvassing or soliciting for orders.

*Mrs. Matilda Oliver, direct.*

Q For the time you had worked for Mr. Gorman before the accident what were your average earnings a week? A \$18 to \$22.

Q Were you riding in that automobile on the morning of the 16th of January along Morris avenue towards the town of Union? A Yes, sir. 10

Q In what part of the automobile were you? A On the back seat on the left-hand side.

Q Tell the jury in your own way what you saw of this happening. A Joe slowed down—Mr. Gorman—he slowed down as we entered this narrow place and we saw the man with the flag and he waved for Joe to go on.

Q You mean Joe Gorman? A Yes, sir; we were almost up to the sedan, the Packard sedan car, when this bus came around and I didn't know any more. 20 ✓

Q When the bus came around from behind the Packard was it going fast or slow? A It was certainly coming fast. We didn't have a chance. ✓

Q After the bus came into the car where you were riding in what happened to you? A I don't know.

Q When did you know something after that? A When I heard Mrs. Ryan scream it brought me to consciousness. 30

Q Was that at the scene of the accident? A Yes, sir.

Q You were taken from there to the Elizabeth General Hospital? A Yes, sir.

Q How long were you there? A Nearly three weeks, about 20 days.

Q While you were there did you find out what was the matter with you? A Yes, sir. 40

*Mrs. Matilda Oliver, direct.*

Q What was the matter with you? A I had this hand fractured.

Q That is your left hand? A Yes, sir.

Q What is the matter with your hand today? A I have no knuckle here at all.

10 Q Have you power in your hand today that you had before the accident? A No, sir; I can't carry my pocketbook with that hand.

Q What else was the matter with you? A I was all bruised over here; the doctors had me bandaged me up; and I had two black eyes, good black eyes; and this knee was hurt, my right thigh—oh, I can't tell you all about it.

Q After you were at the hospital, when you got out of there, where did you go? A Right home.

20 Q How long were you home? A I was about five weeks home. Then I was not able to do anything in bed all the time.

Q During the time you were at the hospital did you suffer pain? A Yes, sir.

Q During the time you were at your home in bed did you suffer pain? A Yes, sir; my left knee and I had to have two hot bottles on it for over two weeks steady. Some nurse came there to attend to it—a nurse from the Metropolitan Hospital, from the insurance company.

30 Q Your bill at the hospital was \$93? A Yes, sir.

Q Did you have any doctor in Newark taking care of you? A No, sir; I didn't have the money.

Q How much did you spend for medicine? A It was just medicine; I got a prescription from the hospital which cost me about \$5 for something for my nerves. There was nothing physically wrong with me, only the broken  
40 bones.

*Mrs. Matilda Oliver, direct.*

Q Have you been able to work since the accident? A No, sir; I am not able to do my housework yet.

Q Did you do your housework before the accident? A Yes, sir.

Q Since the accident who had been doing it? A I had a woman come in five weeks. 10

Q How much did you pay the woman a week? A \$25. I think it was my daughter that paid the bill.

Q This woman nursed you and did the housework? A Yes, sir; I had a nurse from the Metropolitan Insurance Company come in every day to attend to my hand and my head and other things.

Q What was your general physical health before this accident? A It was good because I did all my housework. I kept two boarders and I worked every day besides. 20

Q What has been your health since the accident? A My physical health is pretty good, only this broken bone, I can't get along.

Q Are you suffering any inconvenience today as a result of the accident? A I suffer from my head. There is something the matter with my thigh. If I walk very long you would think there is a burden on my back. And my hip bone is very sore. When I move my head you would think there was something crushing in it. 30

Q Do you have headaches? A It is not headache or anything like that, but this awful thing on my brain.

Q Did you use that cane before the accident? A No, sir.

Q Why do you use it now? A Because of my knee. It is so weak; the muscles seem to 40

*Mrs. Matilda Oliver, cross.*

have no strength in them at all. If I didn't use a cane I would fall down. I can't go up steps either without a cane.

*Cross examination by Mr. Braun.*

10 Q Where was this bus when you saw it before the accident? A It just came from around behind the sedan, the standing sedan.

✓ Q It was about how far away from you at the time? A I couldn't judge because it seemed so quick. I was knocked out before I could say, "God bless you."

Q It was too close? A Yes, sir. That car was close to the sedan.

✓ Q The whole thing only took an instant? A Yes, sir.

20 Q You couldn't say how fast in miles an hour that car was going? A No, sir.

✓ Q When you saw the bus coming around you mean the whole thing happened like that. You were not paying particular attention to what was going on? A I was looking ahead.

Q You were conversing with the other lady? A No, sir. I don't talk much. I am not that make. I am Scotch.

30 Q You are tight with your talk also. These other ladies were talking, were they not? A No, sir; Mrs. Keating was in the front and she couldn't be talking.

Q The car was pretty well packed up with this other stuff? A No, sir; not so much. We had plenty of room in the car.

Q You sold that material for Mr. Gorman? A Yes, sir.

Q You had been working for him some time? A Yes, sir; and I worked for his brother before him.

40

*John Anthes, direct.*

Q This insurance company nurse you spoke of, that was something the insurance company paid for? A Yes, sir.

Q That was not something that Mr. Gorman furnished? A No, sir; he knew nothing about it.

Q You never got any compensation from him? A No, sir. 10

Mr. Braun: That is all.

Mr. Crane: The plaintiffs rest.

Mr. Braun: I move for a non-suit on the ground that except for the fact that there has been an accident there has been no evidence that there was any negligence on the part of the defendant or the employing company or neither of them. 20

The Court: Motion denied.

Mr. Braun: Exception.

JOHN ANTHERS, one of the defendants, called as a witness, being duly sworn, testified as follows:

*Direct examination by Mr. Braun.* 30

Q Where do you reside? A 212 Spring street, Elizabeth.

Q What is your business? A I am running a bus line from Elizabeth to Irvington.

Q Have you any other occupation or office? A Yes, sir.

Q What? A I am a member of the Board of Chosen Freeholders. 40

*John Anthes, direct.*

Q You were the driver of the bus involved in this accident on January 16, 1928? A Yes, sir.

Q You were driving from where to where? A From Irvington to Elizabeth.

10 Q As you approached the scene of the operation described by the construction company, will you describe to the jury what the outlook was ahead of you and what the physical conditions were? A The excavation was there for about four months. I passed it twice an hour for eight hours a day. Always as I approached that I am always careful.

Mr. Crane: I move to strike that out.

20 A There were several accidents there.

Mr. Crane: I move to strike that answer out.

The Court: Yes; the latter part of the former answer. On this day, is the question.

30 A I kept to my right and as I neared the excavation I saw this man with the red waving flag and a Packard car was on my left. I was then going at about seventeen miles an hour. I was to be exact about 75 feet of the excavation and this Packard car that was on the extreme left shot in front of me. He came to a stop. I did all I could, I pulled out and I struck his rear fender and stopped. I was in the act of getting out when the crash came.

40 Q At the time you stopped where was the left side of your bus with reference to the road or the center line of the road? A I was about

*John Anthes, direct.*

even with the excavation; it was about the center of the road. I just turned my wheel a least bit and I struck the Packard on his rear left fender. When I pulled up I was in the act of getting out of my seat. ✓

Q What is that? A I had touched the Packard. He pulled in front of me and I pulled up. 10

Q What happened to the Packard car? A I dented his rear left fender.

Q Where were you with reference to the Packard car when you stopped? A I was in the rear of the Packard car. My right front fender bruised the Packard car—cracked it; came in contact with the fender.

Q Did your right front fender go past the fender of the Packard car? A No, sir. I was at about a 45-degree angle towards the road. 20

Q What part of the bus and what part of the Gorman car came together? A My left front wheel; that is where I was struck. ✓

Q What part of the Gorman car? A Mr. Gorman was going along at a pretty good clip because when I looked he saw me. ✓

Q What part of the cars were locked together? A The wheels, the wheels struck us. ✓

Q What was the condition of the roadway where the traffic was traveling past this obstruction or excavation? A There is two places—in the evening when they use the pump where they leave the water, it freezes. When they start in the morning they use the pump and it is frozen. It is always frozen until about 11 o'clock in the morning. On this day it was frozen in two places. 30

Q Something was said about the occupants of the yellow car being taken care of. Do you know what happened to them after the accident? 40

*John Anthes, cross.*

A When the cars struck there was a lady seated in the seat. She was reading. She slid off the seat and she naturally cried. They took her out. I went to the car and I looked at Mrs. Ryan and the three ladies. I assisted them to the ambulance—I and another gentleman there—we assisted them to the ambulance.

10 Q What did you find besides the passengers in the car? A It was loaded with soap or perfumes.

Q Was the car overturned? A No, sir.

Q How were the soaps and perfumes loaded in the car—were they packed or how? A In packages, loose.

Q Were they still in the car? A Yes, sir.

20 Q At the time of the contact between your car and the Gorman car was your car moving or standing still? A I was just coming to a stop. The excavation was there and the drivers could—

Mr. Crane: I move to strike that out.

The Court: Strike that out.

30 Q At the time of the collision between the bus and the Gorman car was your car moving or standing still? A Standing still. I was out of my seat.

*Cross examination by Mr. Crane.*

40 Q Do I understand you to say that at the time the collision took place your car was not in motion? A It was not; no, sir.

Q It was not in motion? A No, sir.

Q What was it doing on the wrong side of the road?

*John Anthes, cross.*

Mr. Braun: I object to that. The testimony doesn't show that it was on the wrong side of the road.

The Court: The plaintiffs' witnesses said it was.

Q What was it doing on the wrong side of the road? A It was not on the wrong side of the road. When the Packard car pulled in front of me, which is a brand new car—at least a new paint job—I just pulled up and turned to my left—mean to 45 degrees, which may mean not quite in the center of the road, and I had struck his fender and I pulled and was in the act of getting out. 10

Q Why were you going to get out? A To tell the man in the Packard car what I thought of him for pulling in front of me. 20

Q You are sure you struck the end of the Packard car? A Yes, sir. I paid my bill.

Q What bill did you pay? A I had to pay for the fender \$36.

Q How much? A \$36.

Q It was not your fault that you ran into the Packard car? A It was his fault.

Q And yet you paid him? A It was the easiest way out. 30

Q You made a statement of the case to the Union police right after the accident? A Yes, sir.

Q Didn't you say this—you were sworn before a notary public? A No, sir.

Q You were not sworn? A No, sir.

Q Didn't you say: "On the 16th day of January, 1928, about 9:05 A. M., I was operating a bus, registered No. 06790-B, on Morris avenue, Union Township, going towards Elizabeth"? A Yes, sir. 40

*Stanley Weiss, direct.*

Q "And another automobile came in the same direction and passed me"? A Yes, sir.

Q That you were about 200 feet west of North avenue? A Yes, sir.

10 Q "I was driving at about fifteen miles an hour"? A Yes, sir.

Q "This car that passed me stopped in front of me and to avoid striking on the rear of this car I swerved my bus to the left." Did you say that? A Yes, sir. I tried to avoid striking him and I did strike him.

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20 STANLEY WEISS, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

*Direct examination by Mr. Braun.*

Q Where do you reside? A 74 Princeton avenue, Hillside.

Q What is your occupation? A Canvasser.

Q What? A Vanilla extracts and so forth.

Q The same line of business as Mr. Gorman? A I wouldn't exactly say so. It is not the same line.

30 Q Where were you at the time this accident occurred? A On the bus.

Q Where were you located? A Standing right behind the jitney bus driver.

Q As you approached that excavation just what did you see happen? A As I looked out towards the front I saw the car in front stop all of a sudden and I saw the driver grab the emergency brake, the bus driver, and the foot brake, and swing to the left to avoid hitting the

40

*Stanley Weiss, direct.*

car in front of his and all of a sudden I heard the crash.

Q Had you seen that car in front of your bus—do you know how it got in front of you?

A No, sir; I didn't see it pass.

Q How long before you saw it had you looked in that direction? A In front of us? 10

Q Yes. A About a second before he applied his brakes.

Q You hadn't seen it at that time? A No, sir.

Q About how fast was the bus running at the time? A On the average running about twenty miles an hour or so.

Q Can you say anything as to the speed of the Gorman car? A No, sir.

Q Could you see ahead after the Packard car had passed you? Was the bus moving or standing at the time of the collision? A We were just coming to a stop. 20

Q What was its position in the road? A I noticed—

Q What was the bus' position in the road? A It was on an angle like.

Q Where was it with reference to the center line of the road, where was the left side of the bus with reference to the center line of the road? A Towards the right. I mean towards the left. 30

Q Was the left side to the left or to the right or towards the center of the road? A It was about 45 degrees on the road, about on the left-hand side.

Q I don't think you understand my question. Can you say from the map there about where the left front of the bus was at the time of the collision with reference to the center line? The bus came in this direction. Was the left of the 40

*Stanley Weiss, cross.*

bus to the right or left of that center line at the time of the collision? A It was right on the center line the way I looked at it.

Q What did you do after the collision? A I hollered out to one of the fellows to get the women out of the car that was hurt.

10 Q Did you see what was in the car aside from the women and Mr. Gorman? A I did. On my way going to Elizabeth I noticed a lot of jars of bath salts and soaps scattered around.

Q Was the car overturned? A No, sir.

*Cross examination by Mr. Crane.*

Q You started to say something about something being on an angle. You mean the bus was on an angle about 45 degrees across the road? A Because had to swing out to avoid hitting the car in front.

Q And he hit the Gorman car? A No, sir.

Q Didn't you tell me yesterday he did? A No, sir. You asked me what I saw and I didn't say anything.

Q Was that the truth? A Yes, sir. I am telling you what I saw.

Q Did you tell me the truth in the hall yesterday when you said you saw nothing of the accident? A Just—

Q Answer my question. Did you tell me, Mr. Crane, the truth yesterday in the hall when you said you saw nothing of the accident you didn't know why you were here? A Certainly I didn't know.

40 The Court: You were asked if you didn't say to him yesterday that you knew nothing of the accident and saw nothing of it; did you say that?

*Stanley Weiss, cross.*

The Witness: Mr. Crane—

The Court: Did you say that yesterday?

You can answer that yes or no.

The Witness: I said I didn't know nothing about the accident to Mr. Crane because I didn't know who Mr. Crane was for. 10

Q That was untrue when you told me that?

A I wouldn't say it was exactly untrue.

Q Did you know anything about the accident yesterday? A I recall it.

Q At the time you were talking to me you didn't know anything about it, did you? A I didn't know what we were up here for.

Q Didn't I ask you whether you knew anything about the happening of this accident and didn't you tell me you didn't know anything about it and why you were here? A Yes, sir. 20

Mr. Braun: I object to this repetition. He has answered the question before.

Q When did you find out that you knew something about the accident—after you had talked with me? A Yes.

Q You knew that before? A Yes, sir.

Q Who told you what you knew about it yesterday? A Nobody said anything to me. In fact, I didn't see anybody until I saw you and Mr. Gorman. 30

Q I didn't tell you anything about the accident? A No, sir.

Q Seeing Mr. Gorman, did that refresh your memory? A Yes, sir.

Q Let us see what you did say. You were standing up in the back of the automobile driver? A In the bus. 40

*Stanley Weiss, re-direct.*

Q You were looking down the road ahead of you? A Not always.

Q At any time, did you? A I did. I was reading a paper and once in a while I would raise my head and look out in front.

10 Q As you casually raised your head from the paper did you see the Packard car that was right in front of the bus? A No, sir; I didn't see it pass or anything.

Q How close to the bus was the Packard when you first saw the Packard? A I should judge about 15 feet.

Q And the bus couldn't stop within 15 feet or rather didn't stop within 15 feet? A All I know is he applied his brakes.

20 Q He didn't stop within 15 feet because he had to swing out? A I said about 15 feet.

Q Did he hit the Packard car? A I couldn't tell you.

Q And you were standing right back of the driver? A Yes, sir. I was the last one off the bus.

Q You were standing on the bus while he was manoeuvring? A Yes, sir.

30 Q You don't know whether he hit the Packard? A No, sir.

*Re-direct examination by Mr. Braun.*

Q You didn't see the Gorman car come in contact with the bus? A Yes, sir. I said when the bus driver applied his brakes I was looking out and he swung out to the left and I saw Mr. Gorman's car come towards him.

Q Did you know Mr. Gorman before? A No, sir; I didn't.

40 Q Did you know him since? A Yes, sir.

*Michael Hanley, direct.*

Q Where did you meet him? A Where I bought my articles is where Mr. Gorman did in Newark.

Q Is that the reason why seeing him later recalls what you are here for? A What?

Q Is it because you saw him and Mr. Crane together that refreshed your memory? A Yes, sir. 10

Q That was the day before yesterday? A Yes, sir.

*Re-cross examination by Mr. Crane.*

Q Mr. Gorman's presence didn't help you realize what I was talking about, did it? A I wouldn't say that.

Q Did you see this man out there with the flag waving to people to stop? A No, sir; I didn't see nobody. 20

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MICHAEL HANLEY, called as a witness for the defendants, having been duly sworn, testified as follows:

*Direct examination by Mr. Braun.*

Q Did you see this accident or anything that happened? A I was in the bus. 30 ✓

The Court: Yes or no?

The Witness: Yes, sir.

Q Tell the Court and jury what you saw of it yourself. A I came down Morris avenue on this day. I was sitting on the front seat, on the right-hand side of the door as you go out. As 40 ✓

*Michael Hanley, direct.*

10 we came up to where these laborers were working a Packard car came around us and shot directly in front of the bus. The driver pulled his emergency brake and he swerved a little to the left and he couldn't escape hitting the Packard car at the hub in the rear. When he hit the Packard car the Packard moved up a few feet. I was in the act of getting out of the door to see how much damage he did to the Packard. Before I got out of the door, my hand was on the door, and the crash came and my hand went through the glass in the door. I said to the driver, "What's this"? I looked to see and saw the car hooked with the left rear wheel of the bus.

The Court: What wheel?

20 The Witness: The left front wheel of the bus. I got out of the door of the bus and ran to the car where the women were seated and I pulled two or three articles out and assisted the three women to cars that were nearby. In the meantime I asked the Packard man if he would take one of the women to the hospital and he said he would not move his car until the police came and saw the damage done to his car and our car was hit. That was the Packard car. With a few words, he left and I said something to him and I went to get another car and I said, "Run these people to the hospital because they are hurt." I assisted the three ladies to walk to different cars. I turned away and saw Mr. Gorman, I think at the wheel in the car, and I assisted him out of the car.

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Q Was he conscious or unconscious? A He was unconscious.

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*Michael Hanley, cross.*

Q Where was the left front of the bus with reference to the center of the road at the time it stopped after coming in contact with the Packard car? A It was about in the center of the road.

Q What would you say as to the condition of the road between the left of the bus and the opposite side? A It was all water and ice; it was frozen water and they were pumping the water out of the excavation. 10

Q How much room is there for the passage of vehicles? A On the pavement there might have been about nine feet and off the pavement six or seven more feet, and there was no obstruction for passing.

Q How fast was the bus traveling at the time the Packard car got in front of it? A About 18 miles an hour. 20

*Cross examination by Mr. Crane.*

Q Did you see the man with the flag? A No, sir; my view was on the Packard.

Q Did you see the man with the flag? A No, sir.

Q How far ahead of the bus was the Packard when it stopped? A It must have been seven or eight feet directly in front of us. It pulled directly in front of us and pulled to a stop. 30

Q What is your idea of seven or eight feet? A About the length of the table there (indicating). About eight feet; it is a little longer.

Q You say the driver applied his brakes? A Of the bus.

Q He pulled his car to the left? A A little to the left. 40

*Michael Hanley, cross.*

Q A whole lot to the left? A No, sir. His bus was projecting—the left front wheel was projecting outside of the Packard car right in front of the bus, the goose neck hit the fender of the Packard car.

10 Q Was the bus across the road at an angle of 45 degrees? A The bus was dragged across the road.

Q I am talking about when it was swinging out in back of the Packard car. A It was not across the road.

Q It was on an angle? A A little angle.

Q How much of an angle? A A little angle doesn't mean anything. A It was so little it is hard—

20 Mr. Braun: He is not an engineer.

The Court: This is cross examination.

Q Can you give us your best judgment of about what angle the bus was on as it pulled behind the Packard car? A I couldn't see it. The bus didn't pull around the Packard. The bus hit the back of the Packard.

30 Q The Packard and the bus were locked? A The front of the bus hit the rear of the Packard car.

Q They were locked together? A No, sir. He hit the back bumper and pushed him ahead.

Q Were you in court today? A Yes, sir.

Q Did you hear the driver of the Packard car on the witness-stand? A Yes, sir.

Q Did you hear him say anything about being struck? A No, sir.

40 Mr. Crane: That is all.

*Charge to Jury.*

Mr. Braun: I think Dr. Lowenstein is supposed to be on his way here. But he is not here. That is the defendants' case. I move for a direction of a verdict for the defendants on the ground that the undisputed evidence shows that there was no negligence in the operation of the bus. 10

The Court: Motion denied.

Mr. Braun: I have an exception?

The Court: Yes.

Mr. Braun sums up to the jury.

Mr. Crane sums up to the jury.

**CHARGE.**

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**Gentlemen of the Jury:**

At the outset I want to say that I am sure you will not allow the lateness of the hour to interfere with a fair and proper consideration of the case. You are engaged a little longer than the rest of the jurors; but do not let that interfere with your duties.

You are trying four cases as one because there are four plaintiffs who seek damages against one defendant. The defendant happens to be the Elizabeth-Union-Irvington line, a corporation, and John Anthes, who drove, it is admitted, the bus of the defendant company on the day of this happening. 30

The mere fact that four plaintiffs were injured as you have heard judges in this court room say before, does not give rise to an action at law. These plaintiffs, before they can recover, must satisfy you by a fair preponderance of the evi- 40

*Charge to Jury.*

dence that the defendant corporation and its servant and agent, on the occasion in question, was negligent; that the corporation was negligent through its agent and servant; that in the operation of the car, Mr. Anthes was negligent; not only that the defendants were negligent but  
 10 that it was negligence which was the proximate cause of the injuries of which these plaintiffs now complain. Until the plaintiffs have satisfied you by a fair preponderance of the evidence that there was negligence on the part of the defendants and that the negligence was the proximate cause of the injuries, there can be no recovery.

The defendant has requested that I charge you on certain questions of law and I will do that  
 20 now.

“The driver of a vehicle has a right to go to the left of the center of the road when the width of the improved part of the road or the fact that he is passing another vehicle or obstruction makes it necessary, so long as he keeps as far to the right as is practicable under the circumstances.”

“Failure to take the wisest course or an honest mistake of judgment when confronted by a sudden emergency does not constitute negligence so that if you find that defendant Anthes, through  
 30 no fault of his, was suddenly confronted by an emergency because of the sudden stopping of the Packard car and that he acted as an ordinarily prudent person would have acted under the same circumstances, then the plaintiffs cannot recover.”

“If you find that the accident was caused solely by the driver of the Packard car”—of course

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*Charge to Jury.*

that goes to the question of proximate cause of the injuries—"plaintiffs cannot recover."

"If you find that it was an unavoidable accident the plaintiffs cannot recover."

The third request I will refuse to charge in the language as therein contained.

The law describes negligence in these particular cases to be the failure to act as a reasonably prudent person would act at the time and place and under the circumstances. So that in the consideration of whether or not the defendant corporation, by its servant and agent Anthes, acted as a reasonably, prudent person would act depends on what were the circumstances surrounding this accident; the condition of the roadway, therefore, the time of the day, these and other things play an important part.

The testimony substantially, as I understand it, is that there were obstructions on either side of the road; on one side there being an opening in the roadway for the reception of pipes; some improvements were being made on Morris avenue; and on the other side were pipes to be placed in the opening.

You have heard the testimony of the various witnesses both for the plaintiffs and for the defendants in which they endeavored to describe for you just how at that time the roadway was open for public traffic. At the place in question there was also stationed by the Consolidated Company one of its men who undertook to, and was on the day in question, directing traffic, because as I understand the testimony there was not sufficient width of the road for two cars to pass; and this man stationed there to direct the traffic was indicating to the users of the high-

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*Charge to Jury.*

way at that point which of them was to pass first.

10 The plaintiffs' contention is that the person so regulating the use of the highway through those obstructions on either side had signalled the traffic coming from the opposite direction to stop and at the same time signalled to Gorman, the plaintiff, who was driving the car in which the plaintiffs were riding, to come through.

20 That there was a Packard car that passed the bus of the defendant company is not questioned; and that the Packard car passed and then stopped, in obedience to, as the driver of the Packard car said, the signal to stop. To the rear of the Packard, driven by the witness who was on the witness-stand, was the bus, and the plaintiffs say that the bus proceeded to the left of the standing Packard car at a time when the plaintiff's car was coming through that passage-way between the obstructions, and collided with the plaintiff's car. That is disputed by the defendant and by the driver of the car, Mr. Anthes. He said that the Packard car overtook and passed him and stopped rather suddenly; and to avoid running into the Packard car he pulled his car suddenly to the left and that the collision then took place. He said he could not help it. He said that as it was, he did come in contact with the Packard car. He and one other witness say that is so. The driver of the Packard car said nothing about it. He was not asked anything about it by anybody.

30 Of course it is essential that drivers of cars should have their cars under control. Now here you have a picture of the situation at that point—the point at which the driver of the bus, Anthes, accordingly to himself, was thoroughly  
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*Charge to Jury.*

familiar. He said he passed that point twice an hour every day during the period consumed in doing this work, whatever it was. You heard the testimony. I don't know whether it was weeks or months, but he knew that at that point this work was going on. If he acted, under that evidence, as a reasonably prudent person would at this time and place and under the circumstances then he was not guilty of negligence. If he did not, he was guilty of negligence, and the company for which he was driving, whose servant and agent he was, would be chargeable with the negligence. 10

I do not recall exactly how far from the point where the accident happened it was that the Packard car passed Anthes, but the evidence is that the Packard car was going between 20 and 25 miles an hour and the bus proceeded at a rate just a little better than one-half that speed. If that is so, you may ask yourselves the question, why it was that Anthes did not stop or could not stop without going so close to the Packard car when it stopped, as he says he did, and collided with it and had to pull out to the left in order to run into the rear of it. Did he have control of his car? Was the situation there one where he should have slowed down and even stop—less than the speed at which he was driving—in view of the fact that he was driving a bus, in view of the fact that a little ahead this work was going on where the traffic could go only one way? These are questions you can ask yourselves on the question of whether or not he was acting as a reasonably prudent person should have acted at the time and place and under the circumstances. If he was not, he was guilty of negligence. If the injuries of which the plain- 20 30 40

*Charge to Jury.*

tiffs complain were caused proximately by the negligence of the defendant, then the plaintiffs are entitled to recover.

10 If you should find that on this occasion the driver of the Gorman car, Joseph J. Gorman, and the driver of the bus, the defendant's car, Anthes, were both negligent, then the plaintiffs cannot recover because they were engaged in a joint venture.

These plaintiffs were all occupying that car, going with Gorman in a common enterprise of selling goods and merchandise. If you find that the driver Gorman was guilty of contributory negligence, and that is such negligence on his part except for which the accident could not and would not have happened, they cannot recover.

20 You have a picture of his testimony, I am sure, practically in your mind. You know the rules of law with reference to negligence—it all hinges upon whether or not this defendant drove his car as a reasonably prudent person would at the time and place and under the circumstances. There is the test. Here is the situation described to you that existed to you at the time.

30 If they are entitled to recover—the plaintiffs—you will have to render a verdict in each case separately and say what each plaintiff shall receive.

The injuries in some of the cases are more severe than in others. You heard the injuries which Gorman received. He was rendered unconscious. He was in the hospital three days, and in bed at home two weeks. He suffered pain, had severe headaches for some time afterwards, he had cerebral concussion and lacerations of the scalp. Each of the plaintiffs, if entitled to re-  
40 cover, is entitled to receive compensation for the

*Charge to Jury.*

pain and suffering they endured, and which are likely to endure in the future. According to the evidence in each case, the limitation placed on the jury is fair and reasonable compensation, and what that is you should say.

Gorman is also entitled to recover for a money loss—wages, hospital bill, also damage to his car and damage to his goods. The figures you have heard. These items testified to are not conclusive so far as you are concerned, but they are simply evidence from which you can say what money damage was sustained, what pecuniary loss was occasioned by the accident. 10

Mrs. Mary Keating had a severe bump on the head. She lost three teeth. They were her teeth, teeth that God gave her. She was entitled to keep them; and they will never be replaced by mechanical teeth to do services that natural teeth will do. It doesn't make any difference in a case of a woman from that of a man. These are things you have a right to consider. There was a gash on the forehead that required a number of sutures, her left hand, and other pain and suffering. She had a money loss, hospital bill and doctors' bills; she had to buy eyeglasses, nurse's wages. You heard her average wages—what they were. That does not bind you but it is evidence, if you can say what were her average earnings, what were her earnings and what she lost. 20 30

Jennie L. Ryan. This plaintiff suffered from a fractured knee-cap. She had a number of bruises on the knee-cap and in the back. She has a permanent injury—about 40 per cent. stiffening or loss of motion in the knee, which will be permanent. Is it going to interfere with her 40

*Charge to Jury.*

in the future—in her earning capacity? If so, how much? She had a right to the legs that God gave her, and the knees that go with them. If there was negligence, as I have described it, through no fault of her own, she is entitled to be paid for it. The jury are to decide justly between the litigants on the questions of right.

10 Matilda Oliver. She is 64 years old. She had a fracture of the nose and certain fingers on the right hand; bruises on different parts of the body, and other injuries which have been described here.

You haven't any right to take, and you must not take from me, any evidence. I simply give you my recollection. If it coincides with yours, all right; if it does not, you must depend on your recollection of the evidence because you are the sole judges of the facts. The law you must take from the Court. So that you will see that this woman, the doctor said, will have difficulty in breathing hereafter, and her hearing, she claims, is affected. She had a 40 per cent. loss of motion in her hand, which I believe was said to be permanent.

20 You see the importance of the function of the jury in cases of this kind. You are to fix the damages if you come to the conclusion that the plaintiffs are entitled to damages. This is their one day and the only time that damages can be fixed. Unless you fix them, that is the end of it; and it is the end not only for the plaintiffs, but for the defendants. So that it is important that it should be fixed right, having regard to the rights of the defendants as well as to the rights of the plaintiffs. It must not be done hastily; it must be done carefully. I know

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*Exceptions to Charge.*

you will give the consideration it is entitled to receive at your hands under your oaths.

Mr. Crane: I take exception to the Court's charging the second request of the defendants' counsel. I also take exception to the Court's remark in charging concerning the joint enterprises of the plaintiffs and whatever the Court said on that subject. 10

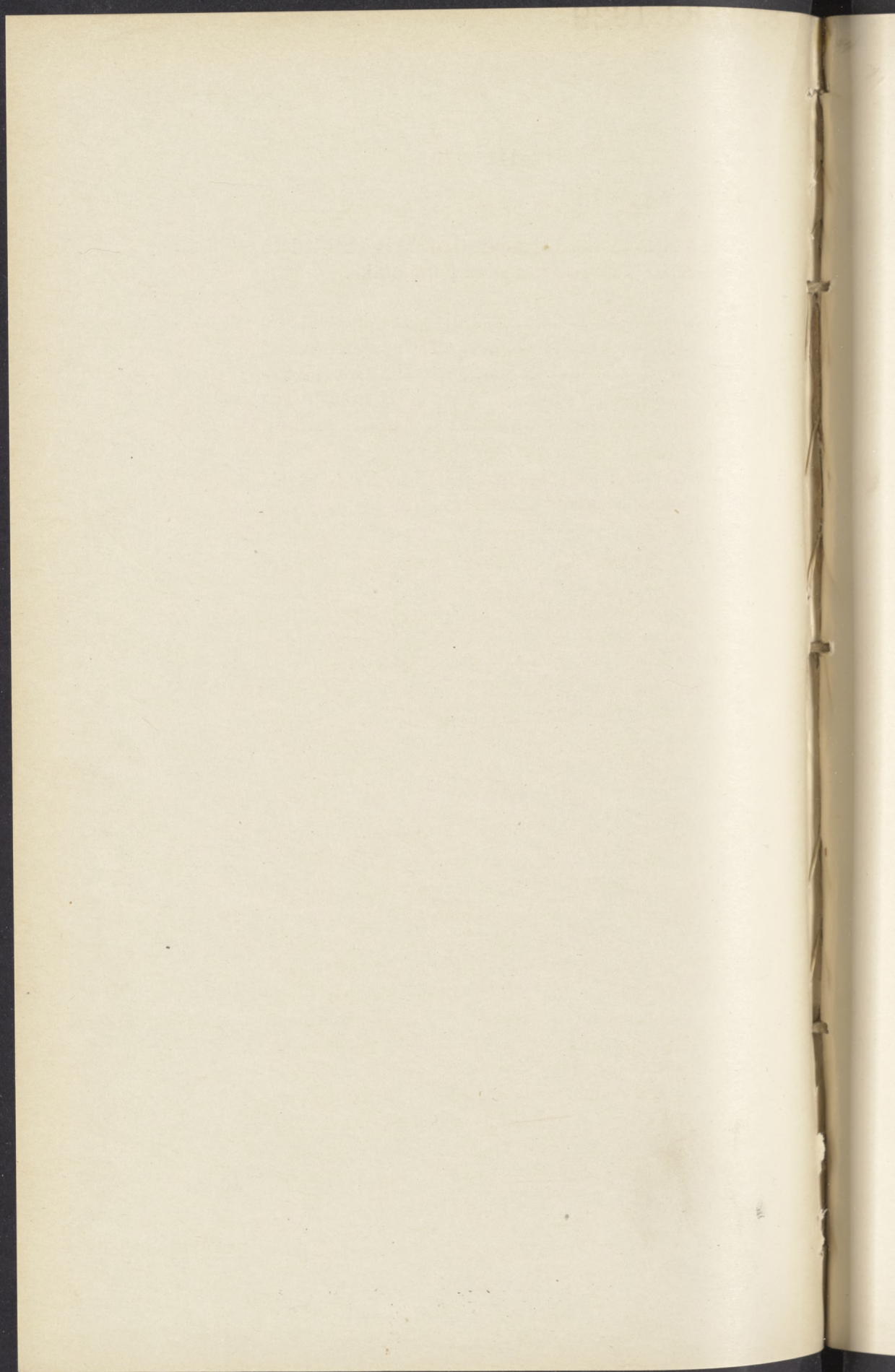
Mr. Braun: I take exception to the Court's failure to charge my sixth request.

(The jury retired.)

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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

JOSEPH J. GORMAN, MARY KEATING,  
JENNIE L. RYAN and  
MATILDA OLIVER,  
*Plaintiffs-Respondents,*

*vs.*

ELIZABETH - UNION - IRVINGTON  
LINE, INC., a corporation, and  
JOHN ANTHES,  
*Defendants-Appellants.*

*Action  
at Law.*

*On Appeal  
from  
Supreme  
Court.*

#83

### BRIEF FOR APPELLANTS.

This appeal is from judgments entered in the New Jersey Supreme Court on verdicts rendered by a jury on November 16, 1928, against the defendants and in favor of the following named plaintiffs for the sums mentioned, to wit: Joseph J. Gorman \$2,000, Mary Keating \$2,000, Jennie L. Ryan \$5,000 and Matilda Oliver \$4,500.

#### Facts.

The various causes of action arose out of an automobile collision that occurred January 16, 1928, on Morris avenue, about 200 feet from North avenue towards Union center and just over the city line of the City of Elizabeth, Union County, New Jersey. At the scene of the accident the right-hand side of the road going towards Elizabeth was partially blocked for a distance of about fifty to seventy-five feet by the operations of the Consolidated Company who were laying gas pipes, and who in addition to making excavations had a pump in operation and pipes and other paraphernalia in the roadway.

On the other side of the road, namely, on the right-hand side going towards Union center, there were no obstructions and that half of the road was open to traffic. A flagman was stationed there by the Consolidated Company for the purpose of regulating traffic, and by this means vehicles going in both directions alternately used the open portion of the road. As the bus of the defendant corporation, driven by defendant, Anthes, approached the obstruction, the bus then being headed towards Elizabeth, it was suddenly passed by a car driven by one Theodore Wimmer, a testor for the Packard Company. Immediately after passing the bus, Wimmer noted the flagman and stopped suddenly. Defendant Anthes in endeavoring to prevent a rear-end collision with the Packard, applied his brakes and swung suddenly to the left, but was unable to stop before coming in contact with the left rear fender of the Packard. In the meantime the plaintiffs, all riding in the car of the plaintiff Gorman, who in fact was driving, and by whom the rest of the plaintiffs were employed as sales-ladies, were going through the open portion of the road heading towards Union center. The left front of the bus having swung slightly to the left, out beyond the left side of the Packard, and Gorman being to a large extent preoccupied in observing the various obstructions along the road, and thereby having little or no warning of the presence of the bus, the left front wheel of the Gorman car and the left front wheel of the bus locked and as a result of the collision all of the plaintiffs were more or less injured and Gorman's car was damaged. Gorman also claimed that some merchandise which he had in the car was damaged or destroyed, but the testimony in the case established the fact that he

did not in fact know what had become of this merchandise.

Motions in behalf of the defendants for non-suits and for directions of verdicts were denied and the jury rendered verdicts as above set forth.

### Errors Alleged.

1. The Court erroneously permitted the plaintiff Gorman to be asked over objection, the following question: "At the time of the happening of this accident, what were your actual earnings?" (C. 34, ll. 29-31).

2. The Trial Court erroneously admitted the following question to be asked of plaintiff Joseph J. Gorman over objection: "For a period of a year preceding the accident what were your average earnings?" (C. 35, ll. 16-18).

3. The Trial Court erroneously refused to strike out the testimony of the witness Joseph J. Gorman as to the value of the stock in his automobile on the ground that Gorman did not know what had happened to it (C. 48, ll. 25-29).

4. The Trial Court refused a motion to strike out the testimony of Dr. Stein regarding the ear condition testified to by him in the case of Matilda Oliver (C. 72, ll. 16-26).

5. The Trial Court erroneously refused defendants' motions for non-suits (C. 89, ll. 15-22).

6. The Trial Court erroneously refused defendants' motions for directions of verdicts in favor of the defendants (C. 103, ll. 6-13).

**ARGUMENT.**

For the convenience of the Court, Points V and VI will be argued together as Point V.

**POINT I.**

The Trial Court erroneously permitted the following question to be asked of and answered by the plaintiff, Joseph J. Gorman, over objection: "At the time of this accident what were your actual earnings?" (C. 34, ll. 29-31).

At the time this question was asked (C. 34, ll. 29-31) there was nothing to indicate what the source of Gorman's earnings or income was, but it later developed that Gorman employed various saleswomen to canvass various neighborhoods and that he did not do any actual selling personally but relied entirely on what the women did (C. 46, ll. 21-24); that his wife could have taken his place but did not (C. 36, ll. 30-33); and there was nothing to show that Gorman was prevented from earnings or deprived of income from his business by reason of his injuries of a nature that would be properly recoverable in an action of this nature. The loss of profits in conducting a business involving the labor of others is not a necessary consequence of injuries to the plaintiff (VIII Ruling Case Law 473).

Where a party is injured and thereby incapacitated from conducting his business, either wholly or partially, the measure of damages for such loss is the compensation ordinarily paid to others for rendering like service (*Loschiavo v. Northern Ohio T. & L. Co.*, 27 A. L. R. 424; see also note page 431—*Masterson v. Mt. Vernon*, 58 N. Y. 391).

It is, therefore, respectfully contended that the permission to introduce this question and answer was improper and harmful error to the defendants.

## POINT II.

The Trial Court erroneously admitted the following question to be asked of and answered by plaintiff, Joseph J. Gorman, over objection: "For a period of a year preceding the accident, what were your average earnings?" (C. 35, ll. 16-18).

This question immediately followed a question and answer which were as follows: "How long had you been in the business that you were in prior to the time of the accident on January 16, 1928?" Answer: "About three years" (C. 34, ll. 32-34).

As previously outlined under Point I, the plaintiff would not be entitled to loss of profits in conducting a business involving the labor of others. It is true that under some circumstances loss of profits may be submitted to the jury, not as a measure of damage, but merely to assist them in assessing damages. In *New Jersey Express v. Nichols*, 33 L. 434, a professional man was permitted to show his average yearly profits over a period of years, but in the case at bar, although the plaintiff Gorman had been in business for three years; the question asked was confined only to the year immediately preceding the accident and called for the average earnings for a much smaller period of time. This was manifestly unfair in view of the fluctuating nature of business conditions, and was manifestly not the proper evidence from which the jury could construct a measure of damages. The plaintiff should have brought others in the same line of

business to testify what the average earnings are, or in order to give the jury a proper measure of damages, should have introduced evidence to show the cost of engaging another to do his work during his disability.

### POINT III.

The Trial Court erroneously refused to strike out the testimony of the witness, Joseph J. Gorman, as to the value of the stock in his automobile on the ground that Gorman did not know what had happened to it (C. 48, ll. 25-29).

Plaintiff Gorman was permitted to testify that he had about \$100 worth of stock in the car at the time of the accident (C. 47, ll. 11-12). On cross examination he admitted that he did not know what had become of this stock, whether it was lost or destroyed (C. 48, ll. 18-24). A motion was then made to strike out this item (C. 48, ll. 24-27). It was denied by the Court.

There was no allegation or claim for damage or destruction of merchandise in the complaint (see First Count, Case, pp. 2 and 3), but even if this had been set up as an item of damage, there was no evidence to show that the goods were lost or destroyed as a proximate result of the accident in question. It has been repeatedly held that where damages are claimed, they must be shown by the plaintiff to have been the proximate result of the defendant's negligence, and where their disappearance or destruction is unexplained or unaccounted for, or shown to be the result of some intervening cause, they are not properly recoverable.

## POINT IV.

The Trial Court refused a motion to strike out the testimony of Dr. Stein, regarding the ear condition testified to by him in the case of Matilda Oliver (C. 72, ll. 16-26).

Dr. Stein testified that at the time he first treated Mrs. Oliver she had the following injuries: a fractured nose, fracture of the second, fourth and fifth fingers, swelling of the eyelids and bruises of the chest, nose and right thigh (C. 64, ll. 19-29). Subsequently in testifying to his findings as a result of an examination made on the day of the trial—many months after the accident—he stated that among other things she complained of difficulty in hearing and described his findings as to the condition of her left ear (C. 66, ll. 30-35). Mrs. Oliver herself, however, testified that “there was nothing physically wrong with me only the broken bones” (C. 86, ll. 38-40); nor was there any testimony on her behalf regarding loss of hearing.

In *Potter v. Batt*, 72 L. 470, J. Dixon, speaking for the court, said (pp. 472-473):

“In *Cuff v. Newark & New York Railroad Company*, 6 Vroom 17, Mr. Justice Depue, after full examination of the cases summed up the general doctrine as to the necessary connection between tort and recoverable damage in these words: ‘damage to be recovered must be the natural and proximate consequence arising from the wrong complained of,’ and his views were afterwards approved by this court.” *Id.* 574.

In *Hammill v. P. R. R. Co.*, 27 *Id.* 370, 379, it was said that

“the efficient and predominating cause, the *causa causans*, must be looked to in determining liability. The plain import of this and similar expression is that the tort of

the defendant must be the efficient cause of the damage sustained in order to hold them responsible therefor."

(See also *Batten v. P. S. Corporation of N. J.*, 75 N. J. L. 857; *Davenport v. McClellan*, 88 N. J. L. 653; *D., L. & W. R. R. v. Salmon*, 39 N. J. L. 299.)

It is, therefore, respectfully submitted that this testimony should be stricken out and that it was harmful error to permit the jury to consider it.

#### POINT V.

The Trial Court erroneously refused the defendants' motions for non-suits and for direction of verdicts (C. 89, ll. 15-22; C. 103, ll. 6-13).

On the plaintiffs' direct case there was very little evidence showing actually what caused the accident in question. Witness Wimmer testified to passing the bus and stopping and suddenly hearing a crash as the Gorman car passed him. He admitted that this happened very suddenly and that there was not much time between the time he stopped and the time of the crash (C. 28, ll. 14-18). He admitted that the left front fender of Gorman's car was bent (C. 30, ll. 26-30), and Henry Willhardt, a mechanic who testified to the damage to Gorman's car, testified that the front left wheel of the Gorman car was all damaged (C. 70, ll. 30-31). Gorman himself testified that he was passing the Wimmer car and saw the bus shoot out from behind it (C. 23, ll. 10-12), but admitted that his attention was devoted to the obstruction in the road and not on the bus (C. 41, ll. 34-38). Mrs. Oliver testified that the accident only took an instant and she could not say as to the speed of the bus (C. 88, ll. 18-22).

Even though it were possible by a stretch of the imagination to draw some inference of negligence on the part of the defendants as a proximate cause of the accident from the meagre testimony adduced by the plaintiffs, the overwhelming weight of the evidence adduced in favor of the defendants, corroborated by absolutely disinterested witnesses, was such as to clearly entitle the defendants to at least a direction of verdict.

Defendant Anthes testified that he was traveling towards Elizabeth to the right of the road at about seventeen miles per hour when the Packard car driven by Wimmer suddenly shot in front and stopped without warning; he hit the Packard before he could stop, notwithstanding the fact that he tried to avoid the collision by applying his brakes and turning slightly to the left; that his car was at a standstill and he was in the act of getting out when the Gorman car coming in the opposite direction locked wheels with the bus (C. 90, ll. 30-40; p. 91, ll. 1-28; p. 92, ll. 28-31). He further testified that he was not on the wrong side of the road (C. 92, ll. 10-12).

Stanley Weiss, a disinterested witness traveling in the bus, testified that the bus was going at approximately twenty miles per hour; that he had looked out and saw a car stop suddenly in front of the bus, which car had not been there when he had looked ahead a second before (C. 94, ll. 36-40; p. 95, ll. 1-17). He further corroborated Anthes to the effect that the bus stopped to the right of the center of the road (C. 95, ll. 1-40; p. 96, ll. 1-30).

Witness Hanley, another disinterested witness who was also riding in the bus, testified that the Parkard shot directly in front of the bus; that

the bus swung a little to the left but struck the Packard before it could stop; that after the bus had stopped and the driver was in the act of getting out, the Gorman car suddenly struck the bus, hooking its left front wheel with the wheel of the bus (C. 100, ll. 1-20). He placed the left front of the bus at about the center of the road at an angle (C. 101, ll. 1-8). He also corroborated Anthes to the effect that the bus before the Packard had shot in front of it had been travelling at about eighteen miles per hour (C. 101, ll. 19-21).

From the overwhelming weight of the testimony in the case it has been clearly established that Anthes was not guilty of negligence which could be inferred as the proximate cause of the accident. Before the accident his bus was travelling at a reasonable rate of speed, to the right of the road, where it belonged. Had the Packard car not come into the picture there would have been no accident. Wimmer, however, by suddenly pulling around and in front of the bus and stopping without warning created a sudden emergency, and it could hardly be argued that Anthes' actions in applying his brakes and swerving slightly to the left to avoid a collision with the Packard was not the act of an ordinarily prudent person under the surrounding circumstances existing at the time. He had no other recourse, and it was his duty to do just what he did. At no time in the evidence does it appear that he ever violated the rules of the road or encroached on the plaintiffs' side of the highway. On the other hand, it might be argued that Gorman in paying more attention to the obstructions existing in the highway than to other vehicles when he had ample room to manoeuver his car and avoid the collision, had he been properly alert,

certainly contributed to the happening of the accident, and while his contributory negligence would not be necessarily a bar, as a matter of law, to the right of the other plaintiffs to have their cases submitted to the jury if any negligence had been shown on the part of Anthes, it should certainly preclude him from any recovery.

It has been held that the defendant turning to the left in order to avoid collision with an automobile approaching on his side of the street is excused, even though the other car immediately turned back to its right, and that collision occurred on the plaintiff's side of the street. *Bragdon v. Kellog*, 105 Atl. 433, Me. 6 A. L. R. 669.

It being, therefore, an uncontroverted fact that Wimmer cut in front of the defendants-appellants' bus and stopped short, almost immediately, without warning of any kind, in front of the bus, it is respectfully submitted that it was Wimmer's negligence and not that of the defendants-appellants which was the direct and proximate cause of the accident.

It is further submitted that the act of the defendants-appellants was not such an independent intervening act as to destroy the causal connection between the negligence of Wimmer and the accident, but was rather an act done to avoid a collision with Wimmer, and hence was an act necessitated by the latter's carelessness. It is, therefore, but a link in the chain of causal connection.

Such a set of facts is on all fours with the famous SQUIB CASE. (*Scott v. Shepherd*, 2 Bl. R. 892; Smith L. Cases 797.)

In *Davenport v. McClellan*, 88 N. J. L. 653, it was said (on p. 654):

“an intervening cause is the act of an independent agency which destroys the causal connection between the negligent act of the defendant and the wrongful injury, the independent act being the immediate cause, in which case damages are not recoverable because the original wrongful act is not the proximate cause.” *Cuff, Administratrix v. Newark & New York R. R. Co.*, 35 N. J. L. 17; *Claypool v. Wigmore*, 71 N. E. Rep. 509.

In *Scott v. Shepherd* (*supra*), the defendant was held liable for injuries arising from the throwing of a lighted squib, although it had passed through the hands of at least two persons before exploding, each adding a new propelling force which the court held was but the continuance of the original wrong, the unlawful throwing of the unlighted squib, and that the proximity of the defendant's act was not destroyed by what happened between the throwing and the explosion of the squib.

In *D., L. & W. R. R. Co. v. Salmon*, 39 N. J. L. 299, the court (at p. 308) approved of the test as laid down in *Cuff v. Newark & New York Railroad Co.* (*supra*) and said:

“In *Cuff v. Newark & New York Railroad Co.* the intervention of the independent act of a third person between the wrong complained of and the injury suffered, which was the immediate cause of the injury, was adopted as a test of that remoteness of damage which forbids its recovery.”

In *Hammill v. P. R. R. Co.*, 56 L. 378, at page 378, the court said:

“We look for the primeal negligence contributing to the injury, and then follow it up to its natural consequence and ascertain whether any independent efficient cause intervened to produce the injury.” The court

further said (at p. 379), 'the rule may be said to be that the negligence to render the defendant liable must be *causa causans* and not merely *causa sine qua non*. Whoever does a wrongful act is answerable for all the consequences that may ensue in the ordinary and natural course of events though such consequences be immediately and directly brought about by intervening causes, if such intervening causes were set in motion by the original wrong-doer. 2 Thomp. Negl. 1063, and numerous cases cited in the note. And when it has been once determined that there is negligence, the person guilty of it is equally liable for the consequences whether he could have foreseen them or not. *Smith v. London, etc. Railway Co.*, L. R. 6 C. P. 14; *Beven Negl.* 81. It is sufficient if the probable consequences occur. *Milwaukee, etc. R. R. Co. v. Killogg*, 94 U. S. 469 and 475.'

Proximate cause was defined in *Batten v. Public Service Corporation of N. J.*, 75 N. J. L. 857, at page 859, as follows:

"proximate cause is the efficient cause—the one that necessarily sets the other causes in operation. The causes that are merely instrumental or instruments of a superior or controlling agency are not proximate causes and the responsible one though they may be nearer in time to the result."

It is further submitted that even if the driver of the bus exercised poor judgment in attempting to avoid a collision with Wimmer's car by swerving to the left—if such an inference could possibly arise from the proof in the case—yet that would not be sufficient to establish the resultant acts of the bus driver as an independent intervening cause sufficient to destroy the causal action between Wimmer's negligence and the accident, if it was Wimmer's negligence which necessitated the exercising of judgment by the bus driver, and there is no legal liability attach-

ing to a mistake in judgment when it is occasioned by reason of another's negligence.

In *The Township of Morris v. Joseph Harris & Sons, Inc.*, 7 Misc. Rep. 17, the Supreme Court upheld the following charge of the trial court:

“Of course, there is also this, that if in exercising his judgment at the moment he erred and made a mistake, I am obliged to say to you that you could not hold him therefor for contributory negligence, and if that situation so called upon him to exercise that judgment, there would be no negligence on his part; in other words, if he found himself in that situation while driving that truck as the result of negligence of defendant's driver, bearing in mind what I have said to you about contributory negligence there could be no recovery.”

It is, therefore, respectfully contended that the failure of the court to grant defendants' motion for non-suits and for direction of verdicts was harmful error to the defendants.

Respectfully submitted,

SCHNEIDER & SCHNEIDER,  
Attorneys of Defendants-Appellants.

66 FEB. 1, 1929  
Docket Capital copy  
Appellate

## New Jersey Court of Errors and Appeals

JOSEPH J. GORMAN, MARY KEATING,  
JENNIE L. RYAN and MATILDA  
OLIVER,

Plaintiffs-Respondents,

*vs.*

ELIZABETH-UNION-IRVINGTON LINE,  
INC., a corporation, and JOHN  
ANTHES,

Defendants-Appellants.

On Appeal  
from  
Supreme Court.

Sat Below:  
Stein,  
C. C. J.

### BRIEF OF RESPONDENTS.

#### Facts.

On the morning of January 16, 1928, the defendants' jitney bus crashed into a touring car in which the four plaintiffs were riding. The touring car was demolished, and all of the plaintiffs were rendered unconscious and rushed to a hospital in Elizabeth. The four plaintiffs joined their separate causes of action in one suit against the two defendants. The trial resulted in verdicts for each of the plaintiffs and against both defendants.

As is usual, the defendants were dissatisfied with the verdicts against them and applied to the Trial Judge for a rule to show cause, which was denied. The case is now before this Court for review on the defendants' writ of error.

Morris Avenue is a highway about forty feet wide, extending from Elizabeth to Union, New Jersey, the general directions of the street being

north and south—north being toward Union and south being toward Elizabeth.

On January 16, 1928, the Consolidated Corporation was engaged in laying gas pipes in a trench on the westerly side of Morris Avenue near the Elizabeth City line, in Union, N. J. About two hundred feet to the north of the Elizabeth City line there was a gasoline pump in operation on the westerly half of the road pumping water from the trench, with the result that the westerly half of Morris Avenue at that point was blocked for about 75 feet.

The Consolidated Corporation maintained a flagman there that morning to regulate the direction of traffic passing the part of the road thus obstructed (Case, pp. 16, 17, 18 and 19).

On the morning in question the respondent, Gorman, whose business was that of soliciting from house to house for household products of all kinds, was driving his Willys-Knight along Morris Avenue from Elizabeth toward Union. In the car with him were the three female respondents who were employed by him as solicitors (Case, p. 32, ll. 10-30). When he got to the part of Morris Avenue where the gas pipes were being laid he saw that the road in front of him to the left was partly blocked and that a flagman was there directing traffic. Beyond the excavation to the north he observed an automobile and a bus coming toward Elizabeth. The flagman signalled traffic coming toward Elizabeth to stop. Gorman saw the automobile coming toward Elizabeth (a Packard) stop at the flagman's signal. The flagman then directed Gorman to proceed in a North-erly direction, and when his automobile was about parallel with the Packard which the flagman had stopped at the North end of the excavation, the appellants' bus struck the left side of Gorman's

automobile at about the driver's seat, and he was rendered unconscious (Case, p. 32, ll. 30-40; P. 33, ll. 1-20). Respondent, Mary Keating, who was riding in the front seat with Gorman, saw the flagman signal traffic coming toward Elizabeth to stop; saw the Packard car stop at the signal; saw the flagman signal Gorman to come ahead, and when Gorman's automobile was alongside of the one which had stopped at the watchman's signal "it (the bus) came crashing right into us and I went through the windshield" (Case, p. 49, ll. 10-35). See also testimony of Jennie L. Ryan (Case, p. 81, ll. 10-29); testimony of Matilda Oliver (Case, p. 85, ll. 15-21).

Theodore Wimmer, a disinterested witness, describes the happening of the accident so graphically that his testimony is quoted in part *verbatim*, as follows:

"A. About 200 feet this side of North Avenue the construction company was laying pipes and they obstructed about half of the road, on the right-hand side coming towards Elizabeth. On this side of the road—the other side of the road was open; there were pipes, not lying directly on the asphalt, but the road extends beyond the asphalt, and there is a trench here (indicating). From this trench there was a pipe laying; they were going right down. The obstruction extended from here, about 75 feet, going 75 feet; in this place were pumps and derricks. The construction company had a watchman at the point and he gave us the signal to go or stop as the occasion demanded. There was only room for one car to go by at the same time. I got a signal and I stopped at the far end of the obstruction in order to let this car go towards Union Center.

Q. When you say you got a signal to stop, that signal was given to you by the watchman? A. Yes, sir.

Q. What did he have in his hand? A. A red flag'' (Case, p. 23, ll. 37-40; p. 24, ll. 1-22).

The witness then proceeded to recite how he was waiting his turn to go while the Gorman car was coming through the 75 feet of the obstructed road, when he heard a crash in back of him and looked around and saw that the bus had crashed into the Gorman car (Case, p. 24, ll. 38-40; p. 25, ll. 1-18).

This, in substance, was the respondents' case, as to liability, when they rested.

The appellant, Anthes (driver of the bus), claimed that he was going south along Morris Avenue at about 17 miles an hour approaching the excavation where the flagman stood directing traffic; that a Packard car driven by the witness Wimmer (whose testimony was quoted at length above) pulled directly in front of his bus and stopped suddenly. That he immediately applied both foot and hand brakes, pulled his bus slightly to the left, in order to avoid striking the Packard car in front of him, and was in the act of getting out of the bus when Gorman's car crashed into it (Case, p. 90, ll. 28-37).

Stanley Weiss, a defendants' witness, who was a passenger on the bus, described the accident this way:

''A. As I looked out toward the front (front of the bus) I saw the car in front (Wimmer's car) stop all of a sudden and I saw the driver (defendant Anthes) grab the emergency brake, the bus driver, and the foot brake, and swing to the left to avoid hitting the car in front of his and all of a sudden I heard the crash'' (Case, p. 94, ll. 36-40; p. 95, ll. 1-2).

The reason for the respondents going into such apparent detail with the facts and the testimony relating to the happening of the accident, is so that they may deal with the motions of the appellants for a non-suit and a directed verdict later on without further mention of the facts.

### **Answering Point I.**

The appellants complain because the Court allowed Gorman to answer the question:

“Q. At the time of the happening of this accident what were your actual earnings?”  
(Case, p. 34, ll. 5-8).

Gorman had already testified that his business was that of soliciting, from house to house, household products of all kinds, and that on the day of the accident he had the three female respondents working for him (Case, p. 32, ll. 12-17). It had also developed that by reason of the injuries he sustained in the accident he was unable to work for a number of weeks.

The colloquy which followed between counsel and the Court appears on page 34, ll. 10-28. The Court then took the witness in hand on the subject and brought out the fact that the witness kept no books that would show what his earnings were (Case, p. 35, ll. 1-18), which made the witness's statement of his earnings perfectly proper. But the Court, in its extreme fairness to the appellants, reserved to them the right to strike out the testimony concerning the witness's earnings, after the cross-examination, if they saw fit. Lengthy cross-examination was had by the appellants concerning the witness's earnings, and at the conclusion of the cross-examination they did not make a motion to strike out the question complained of.

The Trial Court was thereafter entitled to assume that the appellants were content with this phase of the case, and they should not be allowed at this time to be heard contending about it.

### Answering Point II.

The appellants complain because the Court allowed this question:

“Q. For a period of a year preceding the accident, what were your average earnings?”  
(Case, p. 34, ll. 35-36).

An objection was made that this was not a proper measure of damages, but it does not appear that any exception was allowed on the objection. On the contrary, the record shows that the Court then took the witness in hand and it developed that the witness kept no books that would show his earnings. Then the appellants switched their objection to the ground that the witness's earnings for a year preceding the accident were not for a long enough period (Case, p. 35, ll. 1-37). The appellants in cross-examination of the witness, went into minute detail about his business, the volume of it, the profits derived from it, and elicited the fact that one of the reasons—in addition to the witness's injuries—that he couldn't go ahead with his work, was because he didn't have any car (it having been destroyed in the accident) and his trained women solicitors were hurt in the accident, so that it would be useless to give evidence on what it would cost to hire any one else to take his place, if such a person could have been hired.

### Answering Point III

The appellants complain because the Court refused to strike out the testimony concerning an item of \$100.00 representing the value of the stock in trade in Gorman's car, because he said he didn't know what happened to it.

It is true that there is no specific claim in Gorman's complaint for the merchandise in his car. No objection was made to the admission of the evidence on that ground, because had there been, an amendment could and would have undoubtedly been allowed.

Gorman's testimony was that when the bus crashed into his automobile he was rendered unconscious and regained consciousness in the Elizabeth General Hospital (Case, p. 33, ll. 18-24). That two weeks later he found that his automobile had been taken to a garage and that none of his merchandise was in it, and that he never saw the merchandise after the accident. To argue that the loss of the merchandise was not properly chargeable to the negligence of the defendants is spinning the gold too fine.

### Answering Point IV.

The appellants complain because the Trial Court refused a motion to strike out the testimony of Dr. Stein, regarding the ear condition testified to by him in the case of Matilda Oliver.

Dr. Stein, who treated Mrs. Oliver at the hospital immediately after the accident, said that she had a fracture of the nose and a fracture of the second metacarpal; she had a fracture of the fifth finger, also a fracture of the fourth metacarpal;

she had swelling of the eyelids; she was bruised over the chest, over the knees and over the right thigh (Case, p. 64, ll. 19-28).

He also examined her on the day of the trial, and amongst other things he found, on examination, that she could hear with the left ear from a distance of three feet from an ordinary tone, speaking in a conversational tone (Case, p. 66, ll. 33-37).

At the conclusion of the doctor's testimony a motion was made to strike it out so far as it related to Mrs. Oliver's hearing, because he was not qualified. Apparently the theory was that before Dr. Stein could give testimony about her hearing, he would have to be an ear specialist. Dr. Stein is a surgeon of some note. His qualifications appear on page 57, ll. 22-30. The fact that he was not an ear specialist might go to the weight of his testimony, but surely it would not disqualify him as a witness.

What Mrs. Oliver said (who at the time of the trial was a lady 64 years old) was that at times when she moved her head, it sounded as though something was crushing in it. It was undoubtedly this condition that caused Dr. Stein to test her hearing.

Appellants do not quote the testimony of Mrs. Oliver with reference to her injuries with strict accuracy, because she says (Case, p. 86, ll. 13-16):

“A. I was all bruised over here; the doctors had me bandaged me up; and I had two black eyes, good black eyes; and this knee was hurt, my right thigh—oh, I can't tell you all about it.”

When the enormity of the damage done to each of the respondents is considered, the objections so far raised by the appellants are about as help-

ful as a drowning man grasping at a straw. Mrs. Ryan, beside her pain and suffering, suffers a total disability—a broken knee cap (Case, p. 60, ll. 20-29); Mrs. Oliver has lost the full use of her hand permanently (Case, p. 67, ll. 1-4); Mrs. Keating suffers from a numbness of the left arm, pains in her left side and also in her head and her complete recovery is indefinite (Case, p. 59, ll. 12-25). Mr. Gorman sustained nervous shock and concussion of the brain (Case, p. 77, ll. 17-23). Each of the respondents had considerable hospital bills, medical bills and loss of wages and personal property losses.

#### **Answering Point V.**

**Motion for non-suit was properly denied.**

At the close of the plaintiffs' case the jury could and should have found from the facts, the following:

(a) That the plaintiffs, while proceeding through the obstructed part of Morris Avenue at the direction of the flagman, were run into by the bus of the defendants, which at the time, was on the wrong side of the road;

(b) That the driver of the defendant's bus was not attentive to the flagman's warning to stop, because the Packard car, which was in front of the bus, had been standing in response to the flagman's warning, while the Gorman automobile had traveled about 75 feet through the obstructed part of the street;

(c) That the defendant's bus was being driven at a high and excessive rate of speed so that when the driver came upon the stand-

ing Packard car and saw the signal of the watchman, it was impossible for him to bring his bus to a stop by the application of both the hand and foot brake, and that he crashed into the standing Packard automobile, and thence into the Gorman car which was coming through the excavation at the direction of the flagman.

**The motion for a directed verdict at the close of the entire case was properly denied.**

The only testimony offered by the appellants to meet the case made by the respondents was a denial, if it could be dignified as such, although the testimony of one of the appellants' witnesses, Stanley Weiss (Case, pp. 94 and 95), rather tended to corroborate the respondents' version of the accident. But for the sake of argument, let us assume that the respondents' case was met with a complete denial. This, of course, made a case for the jury.

*Barry vs. Borden & Co.*, 100 N. J. L. 106.

The motion for a non-suit and the motion for a directed verdict are the only objections made to the verdicts found in favor of the respondents, Mary A. Keating and Jennie L. Ryan.

By the method in which the appellants have briefed this case they have endeavored to make it appear that there are many trial errors of which they complain, when, as a matter of fact, the only complaint made in the cases of Mary A. Keating and Jennie L. Ryan, is that the Trial Court refused to non-suit or direct a verdict. In the Gorman case, in addition to the foregoing, they make a trivial complaint about the admis-

sion of three questions of evidence, which in no way substantially affected the verdict in that case. In the Oliver case complaint is made because the Court refused to strike out certain testimony which had been theretofore properly received in evidence, which under the circumstances was entirely within the discretion of the Trial Court.

**A careful examination of the record in this case shows the trial to have been free from error, and that the verdicts should be affirmed.**

Respectfully submitted,

ROBERT NEWTON CRANE,  
Solicitor and of Counsel with the  
Plaintiffs-Respondents.

The first part of the report is a general  
 description of the work done during the  
 year. It is divided into three main  
 sections: the first dealing with the  
 general results, the second with the  
 details of the work, and the third  
 with the conclusions. The first section  
 is the most important, and it is here  
 that the main results of the work are  
 given. The second section is a  
 detailed account of the work done, and  
 the third section is a summary of the  
 conclusions reached.

The second part of the report is a  
 detailed account of the work done during  
 the year. It is divided into three main  
 sections: the first dealing with the  
 general results, the second with the  
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The third part of the report is a  
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 is divided into three main sections: the  
 first dealing with the general results,  
 the second with the details of the work,  
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