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Supreme Court of Canada

Cour suprême du Canada

START OF FILE

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same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Supreme Court of Canada | Cour suprême du Canada

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Casefile No.: 6597

Date Initiated: 1938

Short Style of Cause: Ogawa v. Fajiwara et al.

N° de Dossier: _____

Date du dossier: _____

Intitulé: _____

_____

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- Notice of Motion on Application for leave
- Application for leave to Appeal
- Respondent's memorandum of Argument
- Discontinuance
- Minute Sheet
- Order Granting Leave to Appeal/Formal Judgment
- Bill of Costs taxed

A) Requête en autorisation

- Avis de requête en autorisation de pourvoi
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- Mémoire de l'intimé
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- Ordonnance/jugement
- Taxation des dépens

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- Inscription
- ✓ Respondent's Factum
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- Minute Sheet
- ✓ Formal Judgment/Oral Judgment
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B) Pourvoi

- Avis de pourvoi
- Dossier imprimé sur appel
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- Mémoire de l'appelant
- Inscription
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- Mémoire de l'intervenant
- Feuille des minutes
- Jugement/jugement oral
- Motifs de jugement
- Taxation des dépens

same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

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In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

C. OGAWA,

(Defendant) APPELLANT,

AND:

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

(Plaintiffs) RESPONDENTS.

CASE ON APPEAL

WALSH, BULL, HOUSSER, TUPPER, RAY & CARROLL,
Solicitors for the (Defendant) Appellant:
Vancouver, B. C.

NELLIS, THOMPSON & ELLIS,
Ottawa Agents for Appellant.

LOCKE, LANE & NICHOLSON,
Solicitors for the (Plaintiffs) Respondents:
Vancouver, B. C.

NEWCOMBE & COMPANY,
Ottawa Agents for Respondents.

SUPREME COURT OF CANADA
FILED
JAN 15 1938

same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIA

BETWEEN:

C. OGAWA,

(Defendant) APPELLANT,

AND:

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

(Plaintiffs) RESPONDENTS.

CASE ON APPEAL

WALSH, BULL, HOUSSER, TUPPER, RAY & CARROLL,
Solicitors for the (Defendant) Appellant:
Vancouver, B. C.

NELLIS, THOMPSON & ELLIS,
Ottawa Agents for Appellant.

LOCKE, LANE & NICHOLSON,
Solicitors for the (Plaintiffs) Respondents:
Vancouver, B. C.

NEWCOMBE & COMPANY,
Ottawa Agents for Respondents.

same was affirmed and that ...

was dismissed with costs to be paid by the said Appellant to the said Respondents.

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same was affirmed and [illegible]

was dismissed with costs to be paid by the said Appellant to the said Respondents.

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same was affirmed and that the said Appeal should be [illegible]
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same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

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same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

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15 March 1938
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Endorsement on Writ.

ENDORSEMENT ON WRIT

The Plaintiff's Claim is for general and special damages arising in consequence of the Defendant's negligence while driving a motor car on St. John's Road, in the City of Port Moody, in the Province of British Columbia on the 10th day of November A.D., 1935.

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same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Statement of Claim

STATEMENT OF CLAIM

Writ Issued March 6th, 1936.

1. The Plaintiff Tsuru Fujiwara, is the wife of the Plaintiff Asa J. Fujiwara, and resides with him at 2207 West 43rd Avenue, in the City of Vancouver, in the Province of British Columbia; the plaintiff Asa J. Fujiwara, is a dentist, and resides at 2207 West 43rd Avenue aforesaid, and is the father of the infant plaintiff Alan Fujiwara, and of the infant plaintiff Wesley Fujiwara; the plaintiff Alan Fujiwara is an infant with no occupation and resides at 2207 West 43rd Avenue aforesaid; the Plaintiff Wesley Fujiwara is an infant with no occupation and resides at 2207 West 43rd Avenue aforesaid; the Plaintiff Shotaro Sato is a farmer, and resides in the City of Mission, in the Province of British Columbia, and is the father of the infant plaintiff Teruko Sato, and the Plaintiff Teruko Sato, an infant, is a domestic servant and resides at 4176 Crown Crescent, in the said City of Vancouver.

2. The Defendant is a salesman and resides in the said City of Vancouver.

3. On the 10th day of November, A.D. 1935, the plaintiff Asa J. Fujiwara was driving his automobile, a Chevrolet sedan, in an easterly direction on St. John's Road, in the City of Port Moody, in the Province of British Columbia, and the plaintiffs Tsuru Fujiwara, Alan Fujiwara, Wesley Fujiwara and Teruko Sato were pasengers therein, and the defendant was driving a Ford Sedan automobile in an easterly direction on St. John's Road aforesaid, and the automobile driven by the defendant, in attempting to pass the said automobile driven by the plaintiff Asa J. Fujiwara, collided with the same by reason of the negligent driving and operation of his said automobile by the defendant, whereby the automobile driven by the plaintiff Asa J. Fujiwara was badly damaged and the plaintiffs Tsuru Fujiwara, Alan Fujiwara, Wesley Fujiwara and Teruko Sato sustained personal injuries, resulting in loss and damage to the plaintiffs.

4. Particulars of the defendant's negligence are as follows:

(a) In driving the said automobile at an excessive rate of speed;

(b) In failing to keep a proper, or any, lookout;

(c) In failing to have the said automobile under proper control;

(d) In attempting to pass, and in passing the automobile driven by the plaintiff Asa J. Fujiwara, from the rear without giving any warning of his intention so to do;

same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

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Registrar

Statement of Claim.

(e) In failing to give to the plaintiff Asa J. Fujiwara the right of way to which he was entitled;
(f) In swerving to the right when passing the automobile driven by the plaintiff Asa J. Fujiwara, and in running into and colliding with the said automobile;
(g) In failing to swerve to the left or to do anything towards avoiding the said collision;
(h) In failing to drive and operate his said automobile in a careful and prudent manner, having regard to all the circumstances including the rate of speed at which he was proceeding, the nature and condition, and the use of the said highway, and the traffic which actually was at the time, or might reasonably be expected, to be on the said highway.
(i) In stopping his automobile after the collision in dangerous proximity to the probable course of the automobile driven by the plaintiff Asa J. Fujiwara;
(j) In stopping his automobile after the collision in such a manner as to obstruct the highway;
(k) In driving carelessly and negligently and in a manner dangerous to the public, and contrary to the "Motor Vehicle Act" being Chapter 177 of the Revised Statutes of British Columbia and amending acts;
(l) In operating the said automobile contrary to the provisions of the "Highway Act", being Chapter 24 of the Statutes of British Columbia 1930, and amending acts.

5. By reason of the happening of the said collision and the negligence of the defendant, the plaintiff Tsuru Fujiwara suffered personal injuries, resulting in great pain and suffering, particulars of which are as follows:—
(a) Concussion of the brain causing severe and persistent headaches;
(b) Injury to her back causing severe bruises and extreme and protracted pain;
(c) Abrasions and bruises on the back of the head and right cheek;
(d) Injury to her jaw, and
(e) Suffering during a lengthy confinement to bed and continuing to the present time.

6. By reason of the happening of the said collision and the negligence of the defendant, the plaintiff Alan Fujiwara suffered personal injuries, particulars of which are as follows:
(a) Fracture of the collar bone.

7. By reason of the happening of the said collision and the negligence of the defendant, the plaintiff Wesley Fujiwara suffered personal injuries, particulars of which are as follows:

same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

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Registrar

Statement of Claim.

(a) Bruises, contusions and shock.

8. As a result of the injuries to the plaintiff Tsuru Fujiwara the plaintiff Asa J. Fujiwara lost the society and services of the plaintiff Tsuru Fujiwara for six (6) months.

9. By reason of the happening of the said collision and the negligence of the defendant, the plaintiff Asa J. Fujiwara incurred expenses for hospital, surgical and medical treatment in respect of his wife, Tsuru Fujiwara, his son, Alan Fujiwara, and his son Wesley Fujiwara, and the plaintiff Asa J. Fujiwara was deprived of the use of his automobile for a period of twenty-one (21) days and had to hire another one for use in connection with his work, incurred expenses for the repair of his said automobile, and the said automobile has depreciated in value. Particulars of such expenses and depreciation are as follows:

Royal Columbian Hospital	$41.60
Dr. W. J. S. Millar	11.00
Dr. H. W. Shimokura	70.00
Dr. Howard McEwen	100.00
Dr. H. S. Saita	57.00
W. G. Eccles (X-Ray)	12.50
Special Nurses and Help at home	50.00
Repairs to automobile	416.90
Hire of another automobile.....	63.00
Depreciation of automobile	25.00
	$847.00

10. By reason of the happening of the said collision and the negligence of the defendant, the plaintiff Teruko Sato sustained personal injuries, particulars of which are as follows:

(a) Cuts and lacerations on right cheek causing permanent disfigurement.

11. As a result of the injuries to the plantiff Teruko Sato she was prevented from attending to her duties as a domestic servant and lost wages to the amount of $20.00.

12. By reason of the happening of the said collision and the negligence of the defendant, the plaintiff Shotaro Sato incurred expenses for hospital, surgical and medical treatment in respect of his daughter, the infant plaintiff Teruko Sato, particulars of which expenses are as follows:

Royal Columbian Hospital	$ 2.50
Dr. E. J. Eacrett	2.00
Dr. W. R. L. Davis	30.00
Medicines, etc.	.50
	$35.00

same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
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Registrar

Statement of Claim.

WHEREFORE the plaintiff Tsuru Fujiwara claims general damages in the sum of $3000.00, the plaintiff Asa J. Fujiwara claims general damages and special damages to the amount of $1098.00, the plaintiff Alan Fujiwara claims general damages in the sum of $500.00, the plaintiff Wesley Fujiwara claims general damages in the sum of $50.00, the plaintiff Shotaro Sato claims special damages in the amount of $37.00, the plaintiff Teruko Sato claims general damages in the sum of $500.00, and the plaintiffs claim the costs of this action.

DATED at Vancouver, B.C., this 21st day of September, A.D. 1936.

Place of Trial—Vancouver, B. C.

W. S. LANE
Solicitor for the Plaintiffs.

FILED AND DELIVERED by William Stuart Lane, of the firm of Messrs. Locke, Lane & Nicholson, whose address for service is at 703 Rogers Building, 470 Granville Street, Vancouver, B.C.

To: The Defendant

And to: His Solicitors,
Messrs. Walsh, Bull, Housser & Co.
Royal Bank Building,
Vancouver, B.C.

same was affirmed and that the said Appeal should be ami the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Statement of Special Damages

Re FUJIWARA ET AL vs. OGAWA

PARTICULARS OF SPECIAL DAMAGES RESULTING TO PLAINTIFFS AS RESULT OF ACCIDENT NOVEMBER 10, 1935

PLAINTIFF ASA J. FUJIWARA:

Royal Columbian Hospital	$ 41.60
Dr. W. J. S. Miller	11.00
Dr. Howard McEwan	100.00
Dr. H. S. Saita	241.00
Dr. H. W. Shimikura	125.00
W. G. Eccles (X-ray)	12.50
Dr. S. E. C. Turvey	25.00
Special Nurse (Miss Thomson)	8.00
Miss D. S. Hijii (housekeeping services)	42.00
Damage to automobile	416.90
Paid car hire during period while automobile being repaired	75.00
	$1098.00

PLAINTIFFS SHOTARO AND TERUKO SATO:

Royal Columbian Hospital	$ 2.50
Dr. E. J. Eacrett	2.00
Medicines, etc.	.50
Dr. W. L. R. Davis	30.00
	$35.00

same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Statement of Defence.

STATEMENT OF DEFENCE

1. The defendant denies each and every allegation of fact set forth in paragraph 3 of the Statement of Claim herein, and specifically denies that the plaintiffs Tsuru Fujiwara, Alan Fujiwara, Wesley Fujiwara and Teruko Sato were passengers in an automobile driven by the plaintiff Asa J. Fujiwara as therein alleged or at all, or that the automobile driven by the defendant collided with the automobile driven by the plaintiff Asa J. Fujiwara as therein alleged or at all, or that thereby the automobile driven by the plaintiff Asa J. Fujiwara was damaged, or that the other plaintiffs therein named sustained personal injuries resulting in loss or damage to them, as therein alleged, or at all, or that the defendant was in any way responsible therefor.

2. The defendant denies each and every allegation of fact set forth in paragraph 4 of the Statement of Claim herein, and says:

(a) He was not driving at an excessive rate of speed;
(b) He did not fail to keep a proper or any lookout;
(c) He did not fail to have his automobile under proper control;
(d) He did not attempt to pass, nor pass, the automobile driven by the plaintiff Asa J. Fujiwara from the rear without giving any warning of his intention so to do, or in the alternative no warning was necessary under the circumstances;
(e) The Plaintiff Asa J. Fujiwara was not entitled to any right-of-way under the circumstances;
(f) He did not swerve to the right when passing the automobile driven by Asa J. Fujiwara, or run into or collide with the said automobile;
(g) He did not fail to swerve to the left or to do anything towards avoiding a collision;
(h) He did not fail to drive or operate his automobile in a careful or prudent manner having regard to all the circumstances including the rate of speed at which he was proceeding, the nature and condition and the use of the said highway, and the traffic which actually was at the time or might reasonably be expected to be on the said highway.
(i) He did not stop his automobile in dangerous proximity to the probable course of the automobile driven by the said Asa J. Fujiwara;
(j) He did not stop his automobile in such manner as to obstruct the highway;

same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
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J. F. Smellie
Registrar

Statement of Defence

(k) He was not driving negligently or carelessly, or in a manner dangerous to the public, and contrary to the Motor Vehicle Act, being Chapter 177 of the Revised Statutes of British Columbia and Amending Acts, and the defendant further says that no breach of the Motor Vehicles Act or Amending Acts will afford to the Plaintiffs or any of them any cause of action;

(l) He did not operate the said automobile contrary to the Highway Act, being Chapter 24 of the Statutes of British Columbia 1930 and Amending Acts, and the defendant further says that no breach of the said Act would afford to the plaintiffs or any of them any cause of action.

3. The defendant denies each and every allegation of fact set forth in paragraph 5 of the Statement of Claim herein, and specifically denies that the plaintiffs therein mentioned suffered personal injuries or pain or suffering as therein alleged, or that he is in any way responsible therefor.

4. The defendant denies each and every allegation of fact set forth in paragraph 6 of the Statement of Claim herein, and specifically denies that the plaintiff therein mentioned suffered personal injuries as therein alleged, or at all, or that the defendant is in any way responsible therefor.

5. The defendant denies each and every allegation of fact set forth in paragraph 7 of the Statement of Claim herein, and specifically denies that the Plaintiff therein mentioned suffered personal injuries as therein alleged or at all, or that the defendant is in any way responsible therefor.

6. The defendant denies each and every allegation of fact set forth in paragraph 8 of the Statement of Claim herein and specifically denies that the plaintiff Asa J. Fujiwara lost the society or services of the plaintiff Tsuru Fujiwara as therein alleged or at all, or that the defendant is in any way responsible therefor.

7. The defendant denies each and every allegation of fact set forth in paragraph 9 of the Statement of Claim herein and specifically denies that the plaintiff Asa J. Fujiwara incurred expenses for hospital, surgical and medical treatment in respect of his wife Tsuru Fujiwara, his son Alan Fujiwara, or his son Wesley Fujiwara, or that the plaintiff Asa J. Fujiwara was deprived of the use of his automobile and had to hire another one for use in connection with his work, or that he incurred expenses for the repair of his automobile or that the said automobile has depreciated in value, or that the defendant is in any way responsible therefor.

same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Statement of Defence

8. The defendant denies each and every allegation of fact set forth in paragraph 10 of the Statement of Claim herein, and specifically denies that the plaintiff therein mentioned sustained personal injuries as therein alleged or at all, or that the defendant is in any way responsible therefor.

9. The defendant denies each and every allegation of fact alleged in paragraph 11 of the Statement of Claim herein and specifically denies that the plaintiff therein mentioned was prevented from attending to her duties as a domestic servant, or that she lost wages as therein alleged, or at all, or that the defendant is in any way responsible therefor.

10. The defendant denies each and every allegation of fact set forth in paragraph 12 of the Statement of Claim herein and specifically denies that the plaintiff Shotaro Sato incurred expenses as therein alleged or at all, or that the defendant is in any way responsible therefor.

11. In further answer to the whole Statement of Claim herein the defendant says that if the plaintiffs or any of them suffered injury or expense (which is not admitted but is specifically denied) the said injuries or expenses were caused solely by the negligence of the plaintiff Asa J. Fujiwara, particulars of which are as follows:

(a) He was driving at an excessive rate of speed;
(b) He left the travelled portion of the highway without cause;
(c) He lost control of his automobile without cause;
(d) He failed to apply his brakes properly or at all or in the alternative that the brakes on his automobile were not in proper repair;
(e) He put his foot on the accelerator instead of on the brake; or in the alternative, if he did apply his brakes he applied them in such a manner as to cause the accelerator to be pressed down at the same time;
(f) He increased the speed of his car instead of decreasing the same at the time the defendant was lawfully attempting to pass him;
(g) He made no attempt to avoid striking the telephone post, which collision was the sole cause of the injuries and damage alleged to have been suffered by himself and his co-plaintiffs;
(h) If the defendant's car did collide with the plaintiffs' car (which is not admitted but is specifically denied) the plaintiff Asa J. Fujiwara failed to resume normal driving and so avoid hitting the said telephone post as he could have and should have done by steering his motor

same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Statement of Defence

vehicle properly or stopping the same.

12. The defendant says that the plaintiff Asa J. Fujiwara was guilty of ultimate negligence as hereinabove set forth.

13. In further answer to the whole Statement of Claim herein the Defendant says that if the Defendant was guilty of any negligence causing or contributing to the damages alleged to have been sustained by the plaintiffs or any of them, the plaintiff Asa J. Fujiwara was guilty of contributory negligence as
10 hereinabove set forth, and the defendant pleads the provisions of the Contributory Negligence Act, being Chapter 8 of the Statutes of British Columbia 1925, and Amendments thereto.

DELIVERED at Vancouver, B.C., this 19th day of November A.D. 1936, by

W. W. WALSH

of the firm of Walsh, Bull, Housser, Tupper, Ray & Carroll, whose place of business and address for service is 1500 The Royal Bank Building, Vancouver, B.C., Solicitor for the Defendant.

nts.

same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Reply and Joinder of Issue.

REPLY AND JOINDER OF ISSUE

1. The Plaintiffs, and each of them, join issue with the Defendant on paragraphs 1 to 10 inclusive of the Statement of Defence herein.

2. The Plaintiffs, and each of them, join issue with the Defendant on Paragraph 11 of the Statement of Defence herein, and in further answer thereto the Plaintiffs, and each of them specifically deny that at the time and place in question, or at any time or place, the plaintiff Asa J. Fujiwara was negligent in any manner alleged in said paragraph, or in sub-paragraphs (a) to (h) of the said paragraph, or in any manner whatsoever.

3. The Plaintiffs, and each of them, join issue with the Defendant on Paragraph 12 of the Statement of Defence herein, and in further answer thereto the plaintiffs, and each of them, deny that any negligence of the plaintiff, Asa J. Fujiwara, either caused or contributed to the occurrence of the collision referred to in the Statement of Claim herein.

4. The plaintiffs, and each of them, join issue on Paragraph 13 of the Statement of Defence herein, and in further answer thereto the Plaintiffs, and each of them, deny that at the time and place in question, or at all, the plaintiff, Asa J. Fujiwara, was guilty of contributory negligence as alleged in said paragraph 13 or otherwise.

5. In further answer to the whole of the Statement of Defence herein, if the Plaintiff, Asa J. Fujiwara, was negligent as alleged or otherwise, which is not admitted but is specifically denied, the plaintiffs, and each of them, say that the defendant by the use of ordinary care and caution and reasonable skill could have avoided driving the said Ford Sedan automobile so that it came into collision with the motorcar driven by the plaintiff Asa J. Fujiwara.

DATED at Vancouver, B.C., this 8th day of December, A.D. 1936.

"W. S. LANE"
Solicitor for Plaintiffs.

To the Defendant,

And to W. W. WALSH, ESQ.,
His Solicitor.

THIS REPLY AND JOINDER OF ISSUE was filed by Wm. S. Lane of the firm of Locke, Lane & Nicholson, whose place of business and address for service is 703 Rogers Building, 470 Granville Street, Vancouver, B.C.

same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Proceedings at Trial.

IN THE SUPREME COURT OF BRITISH COLUMBIA

(Before the Honourable Mr. Justice Manson)

Vancouver, B. C.

308/36

January 18th, 1937.

BETWEEN:

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

Plaintiffs,

AND:

C. OGAWA,

Defendant.

PROCEEDINGS AT TRIAL

J. R. NICHOLSON, ESQ., and
K. L. YULE, ESQ.,
appearing for the Plaintiffs.

ALFRED BULL, ESQ., K.C., and
HUGO RAY, ESQ.,
appearing for the Defendant.

MR. NICHOLSON: I appear, my lord, for the Plaintiffs, with Mr. Yule.

MR. BULL: I appear with Mr. Ray for the Defendant, my lord.

THE COURT: I hope that you will get at it in a language that we will understand.

MR. NICHOLSON: I hope so, my lord. In this case, my lord, I want first to apply for three slight amendments in the Statement of Claim. If your lordship will look at Paragraph 9 of the Statement of Claim.

THE COURT: Yes.

MR. NICHOLSON: Particulars of the expenses, the account of Dr. H. W. Shimokura should be $125.00, my lord.

THE COURT: Yes.

MR. NICHOLSON: The account of Dr. H. S. Saita, $241.00. These were the accounts at the time the Statement of Claim was

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delivered.

THE COURT: You must think that the Plaintiff is going to win, Mr. Nicholson.

MR. NICHOLSON: Well, I hope so, my lord, or I wouldn't be here.

THE COURT: No, but the doctors, I say they must expect that the Plaintiff is going to win. Who is next?

MR. NICHOLSON: The next is Dr. S. E. C. Turvey, he is a nerve specialist. That is an account for $25.00.

THE COURT: Yes, anything else?

MR. NICHOLSON: And the hire of another automobile, the account of $63.00 should be $75.00.

THE COURT: Yes.

MR. NICHOLSON: And in the prayer for relief at the end of the Statement of Claim, my lord, "Wherefore the Plaintiff Tsuru Fujiwara claims general damages in the sum of $300.00, the Plaintiff Asa J. Fujiwara claims—I am asking your lordship to insert the words "General Damages" and— that is the claim for general damages as alleged in Paragraph 8, and the amount of the special damages would be $1098.00 instead of $847.00.

THE COURT: Yes.

MR. NICHOLSON: And while your lordship is on that page, I haven't given my friend notice of this, but he won't object to it. Paragraph 12, item for medicines, $2.50, is only 50 cents.

THE COURT: Yes.

MR. NICHOLSON: To facilitate matters, my lord, my friends and myself have prepared a memorandum dealing with the special damages, and we are agreed that with the exception of the two items, the item of $416.90 and the item of $75.00 for car hire—

THE COURT: That is special damages only.

MR. NICHOLSON: Special damages only, I say that these two items—the last two items in the claim of the Plaintiff Asa J. Fujiwara, damage to the automobile and the car hire, that will have to be proven.

THE COURT: That is car hire—$75.00?

MR. NICHOLSON: That is car hire, and the one just above that—damage to automobile.

THE COURT: Now, let me make a note of that then. It is agreed that the items of special damages be taken as proven subject to the admission of general liability as to items $416.90 and $75.00. That is correct?

MR. NICHOLSON: Yes, that is correct, my lord.

THE COURT: Yes.

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MR. NICHOLSON: My lord, this case differs greatly from the ordinary automobile damage case that comes on for trial in the Supreme Court or in any court, in that this action is brought from damages resulting from a collision between the Plaintiff's automobile and the electric light standard that was on the side of the road.

THE COURT: All right.

MR. NICHOLSON: The Plaintiffs allege, my lord, that as they were driving along in a car owned and driven by the Plaintiff, Dr. Fujiwara on the main highway in the City of Port Moody in November, 1935, going along, according to the admitted evidence, at a moderate speed of approximately 25 miles an hour. The Defendant's automobile came up from behind, speeded up to pass them, and the allegation of the Plaintiffs is that as the other automobile passed it it cut in sharply to the right and forced the Plaintiff's car off into the gravel, resulting in a temporary loss of control by the Plaintiff, that is the Plaintiff Fujiwara who was driving. He went to put his foot on the brake, and apparently put it on the gas instead, causing the car to speed up, so that it hit the light standard and ran along and crashed into another light standard 100 feet farther on.

THE COURT: In other words, as a result of the reckless pasing by the Defendant your car got out of control and damage ensued.

MR. NICHOLSON: Yes, my lord. Now, we base our claim on the principles laid down in the case of Harding v. Edwards. The principles are clearly enunciated in that case, my lord.

THE COURT: What do you call it?

MR. NICHOLSON: Harding v. Edwards & Tatisich, 1929, 64 O.L.R., page 98, affirmed by the Supreme Court of Canada in 1931, SCR. p. 167.

MR. BULL: That is a Japanese case, I suppose that is why my friend thinks it is analogous.

MR. NICHOLSON: My friend is wrong there, I think Tatisich is Russian.

THE COURT: All right.

MR. NICHOLSON: With your lordship's permission, I will call the medical evidence first. There are several doctors. Dr. H. McEwen.

THE COURT: Well you will not need to call them unless to prove the question of the injuries.

MR. NICHOLSON: Yes, my lord.

THE COURT: Now, this is Dr. McEwen.

EDWIN HOWARD McEWEN, a witness called on behalf of the

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Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NICHOLSON:

Q. You are a duly qualified medical practitioner, Doctor?
A. Yes.

Q. Practising your profession in the City of New Westminster? A. Yes, sir.

Q. Do you specialize in any particular branch of your profession? A. We do general practice, but I am doing more surgical than anything else.

Q. Now, do yo know the Plaintiff, Mrs. Tsuru Fujiwara?
A. I met her on this occasion.

Q. And do you know the Plaintiff Alan Fujiwara?
A. That is the husband?

Q. No, the little boy? A. The boy, yes. I also met him on this occasion.

Q. And the Plaintiff Mr. Teruko Sato? A. Yes.

Q. Now, I understand that you saw and treated the three Plaintiffs that I have just named at the Royal Columbian Hospital in New Westminster? A. Yes.

Q. On the morning of the 10th November, 1935? A. Yes.

THE COURT: The 10th November, 1935. That is a long time ago.

MR. NICHOLSON: Yes, my lord. The reason for the delay my lord, was the condition of the Plaintiffs, the alleged injuries—we were more concerned—the Writ was issued some ten months ago.

Q. Now, would you just describe, Doctor, the condition of Mrs. Fujiwara—

THE COURT: Let me see which one she is.

MR. NICHOLSON: She would be Tsuru Fujiwara. Asa J. is Dr. Fujiwara.

THE COURT: Oh, yes, Tsuru.

Q. What have you got to say about her? A. That is Mrs. Fujiwara.

MR. NICHOLSON: Q. Yes, would you just describe the condition in which you found her? A. When I first went to the hospital, she was lying in bed, somewhat propped up, semi-conscious. She had an abrasion on the back of her head in which there was a little bleeding, but no wound which could be sutured very well—it didn't require it at least. It was more of a bruising. The right jaw was very much swollen and edemetous.

THE COURT: Yes.

MR. NICHOLSON: As compared with its normal size,

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Doctor? A. Oh, it would be approximately twice the normal size, particularly towards the point of the—the angle of the jaw.

Q. Yes? A. And there was a blood clot at that area underneath the skin.

THE COURT: Q. Now, what do you mean by that? A. Well, there was evidently a bruise and some passage had been ruptured underneath the skin and had bled, causing a hematoma. The right eye was also swollen to two or three times—that is the area surrounding the eye—the tissues surrounding the eye were swollen to two or three times the normal size; and there also was a hematoma in that neighborhood.

Q. You mean by that a kind of another bleeding passage formed underneath the skin? A. Yes, my lord.

Q. Yes? A. A blood vessel broken underneath and bleeding underneath the skin. It is an aggravated black eye.

Q. I thought all black eyes were aggravated? A. You are speaking of cases, I was speaking of the average—

THE COURT: All right.

MR. NICHOLSON: Q. Yes, Doctor? A. She also was apparently having great difficulty in breathing.

Q. To what was that due, Doctor? A. There was an extensive bruise at the base of the chest on the posterior aspect.

Q. That is on the back? A. On the back, yes.

THE COURT: Q. A bruise at the base of the chest? A. The chest.

Q. Posterior, whereabouts would that be? A. About down around here, towards the bottom of the ribs.

THE COURT: All right.

MR. NICHOLSON: Q. Now, were you able to talk to her, Doctor? A. I spoke to her, yes, but as I say she was semi conscious. She would perhaps rouse and give a word now and then which was intelligible, but altogether you could not depend on her response.

Q. And how long was it, Doctor, before she was able to—did you continue to treat her in the hospital? A. I treated her in the hospital for eleven days.

Q. Yes, and how long during that period did this difficulty on her part, or inability to talk rationally, continue? A. It is difficult to state a definite date, but I would say at least a week.

THE COURT: Q. You say there was mental confusion for a week? A. Yes, and then following that, my lord, she was not entirely clear when she was dismissed from the hospital.

MR. NICHOLSON: Q. Did that indicate to you a terrific brain injury? A. Absolutely.

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Q. How would you describe that injury, doctor?
A. When I first saw her, I questioned the possibility of a hemorrhage in the cranial cavity.

Q. Yes? A. That is what I was most afraid of, but after getting a negative X-ray as to fracture of the skull following this case, I decided it was a brain shift.

Q. Just what do you mean by that, Doctor? A. The brain is contained in the skull cavity, slung on ligaments made by the membranes surrounding it.

Q. Yes? A. In case of a severe blow of any kind that brain is thrown violently against the bony cavity, and there may be laceration of the brain, or rupture of one of the internal passages, causing hemorrhage in that area.

Q. I see? A. That is what we call a brain shift.

Q. Is that what you would describe as a serious injury, or otherwise? A. It is, there is no way of measuring it at the start how serious it may be.

Q. You did treat her during this eleven day period that she was in the hospital? A. Yes.

Q. And had her continuously under observation during that time? A. Yes.

Q. Now, from your observations of her condition at the time she left the hospital, did you form any prognosis as to her case? A. It was absolutely impossible to give a definite prognosis at that time.

Q. I see? A. In fact, she left the hospital against my wishes.

Q. Yes?

THE COURT: By the way, how do you spell prognosis. Is there a "C" in it? A. P-r-o-g-n-o-s-i-s.

MR. NICHOLSON: Q. I understand that she was taken over by the family physician, Dr. Shimokura? A. That was my understanding, yes.

Q. Dr. Shimokura also went to the hospital on the 10th November, did he not? A. I met him that day.

Q. Yes. Would it be necessary for her to remain in bed for any time after she left the hospital? A. I think it was advisable.

Q. Now, an injury of this sort, what results would you expect would follow from it, Doctor? A. It depends on the extent of the injury.

Q. Yes?

THE COURT: You heard what he said. He said he couldn't give a prognosis, at that stage.

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Q. Now, did you see her later? A. I saw her either two or three weeks afterwards.

Q. Did that help you on the prognosis? A. She still had symptoms at that time. One of the most prominent symptoms that persist in these is violent and persistent headache.

MR. NICHOLSON: Q. Yes. A. And a certain amout of dizziness. That was, I have no doubt, persisting in her case when I saw her afterwards.

THE COURT: Q. Violent and persistent headaches? A. And dizziness.

MR. NICHOLSON: Q. Could you give any indication, Doctor, as to how long you would expect that condition to continue? A. I can give no opinion regarding that.

Q. Would it be unreasonable if continuing practically up to the present time?

THE COURT: Cross-examining now, Mr. Nicholson.

A. I may say, your lordship, that as far as an opinion concerning that is concerned, it depends absolutely on the extent of the injuries.

Q. Yes? A. All the medical injury may clear up in a very few weeks, but there are certain cases on record where they extend over a very long period of time, and in fact some cases that they never entirely recover.

Q. History is about the only thing that will determine that, in other words? A. History and observation.

MR. NICHOLSON: Q. Now, the Plaintiff Alan Fujiwara.

MR. NICHOLSON: Would you have Alan come forward, please. I want to have him identified, my lord. I am not calling him as a witness.

THE COURT: Alan. He must have been born in Canada.

MR. NICHOLSON: Yes, my lord.

Q. Do you recognize the little boy there, Doctor? A. I wouldn't go so far as to say that I recognize him, Mr Nicholson, but he certainly looks like the lad that I attended at that time.

Q. I see; and this is Dr. Fujiwara? A. Yes, I recognize Dr. Fujiwara.

MR. NICHOLSON: All right, thank you.

Q. Now, what injuries did you find the boy Alan had, when you examined him on the morning of the 10th? A. He had a fractured clavicle.

Q. That is the collarbone? A. The collarbone.

Q. And what did you do? A. Set that and bandaged it.

Q. Now, your account, Doctor, for services rendered— Fujiwaras, $100.00? A. Yes.

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MR. RAY: We have admitted that.
MR. NICHOLSON: Yes.
Q. Now, the third Plaintiff—
THE COURT: Now, just let me ask a question, if I may, Mr. Nicholson.
Q. This fractured clavicle, how long did that last. He was quite a little youngster at that time? A. Yes.
Q. How long did that incapacitate him? A. Well, we figured between three and four weeks.
MR. NICHOLSON: I am calling Dr. Shimokura on that my lord.
THE WITNESS: I didn't see him after the first day.
Q. I understand that you set the collarbone and put on a retaining bandage. Isn't that so, Doctor? A. Yes, to hold the shoulders back in position.
Q. He then returned to his home and was taken over by Dr. Shimokura? A. Yes, he went home and was treated in Vancouver. I don't know anything about that.
Q. But there were no complications in the collarbone?
A. Not as far as I know.
Q. Now, Miss Sato, the third plaintiff, whom you saw that morning? A. Yes.
Q. What injuries—
THE COURT:Who is she—Shotaro?
MR. NICHOLSON: Teruko.
A. She had a wound in the cheek.
Q. Yes? A. And it required a few stitches to close it up. This was done without an anaesthetic at all.
THE COURT: A wound in the cheek, a few stitches.
MR. NICHOLSON: Q. You haven't seen her since, Doctor? A. No. And I gave very little attention to her at the time.
THE COURT: Q. I beg your pardon? A. I gave very little attention to her at the time; I was more concerned about Mrs. Fujiwara. I was very much worried about her.
MR. NICHOLSON: Q. Because, as you say, she had a serious brain injury? A. Yes.
MR. NICHOLSON: That is all.

CROSS-EXAMINATION BY MR. RAY:

Q. Now, Doctor, you say that you first saw Mrs. Fujiwara in the hospital, and you treated her there for about eleven days, and then she left the hospital. Is that correct? A. Yes.

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Q. And you next saw her about two or three weeks afterwards, did you? A. Yes.

Q. She had improved a lot by then, hadn't she? A. I wouldn't say she had improved a lot.

Q. Well, she had improved? A. She had improved.

Q. Some? A. Yes, she had improved.

Q. In that period. Now, when did you next see her? A. I haven't seen her since.

Q. You haven't seen her since? A. No. They reside in Vancouver, and it was difficult for me to pay any attention to the case. It was transferred to her family physician.

MR. RAY: That is all.

MR. NICHOLSON: That is all, thank you.

Any reason why Dr. McEwen should not be excused?

MR. RAY: No, I don't think so.

MR. NICHOLSON: I would ask. my lord, that Dr. McEwen be excused from further attendance. We could recall him if necessary. He is over from Westminster.

THE COURT: I do not see any probability of wanting him.

MR. NICHOLSON: Thank you, doctor.

(Witness aside.)

MR. NICHOLSN: Dr. Shimokura.

HAROLD M. SHIMOKURA, a witness called on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NICHOLSON:

Q. Dr. Shimokura, you are a duly qualified medical practitioner, I believe. A. I am.

Q. Practising your profession in the City of Vancouver and vicinity? A. Yes.

Q. Would you speak up, please? A. I am.

Q. Now, you are the family physician, I believe, of the Fujiwara family, who are Plaintiffs in this action? A. Yes.

Q. Have been for some years? A. Well, for two years or so.

Q. Two years. Now, you were called to the Royal Columbian Hospital, were you not? A. Yes.

Q. At New Westminster on the morning of the 10th November, 1935? A. Yes, about eleven o'clock in the morning.

Q. Yes, and did you see the Plaintiff, Mrs. Fujiwara, that is, Tsuru Fujiwara? A. Yes, I did.

Q. What was her condition at that time? A. Well, she

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was, as Dr. McEwen said, propped up in bed, and she was—she was conscious but in a state—she was not quite rational.

Q. Semi-conscious or irrational, is that the way of putting it? A. Yes, she was not unconscious—

THE COURT: Q. She was conscious or unconscious?

A. She was conscious, but not rational.

THE COURT: Conscious, but not rational, in the hospital. Now, just a minute until I get the date again. That is on the 10th November, 1935.

MR. NICHOLSON: Q. Was she delirious? A. Yes, from the gash—the bruise that Dr. McEwen described, and I tried to put her some questions, but she wouldn't answer. She just said pain—painful, in Japanese.

Q. Yes, how long was this gash, by the way, Doctor? A. I would say about three or four inches.

THE COURT: Q. That is the gash on the back of her head? A. Yes, just about on the right side of the head.

MR. NICHOLSON: Q. And you have heard Dr. McEwen's evidence as to the damage done to the cheek bone and the right eye? A. Yes, that was correct.

Q. Yes, you agree with that evidence. Dr. McEwen had seen Mrs. Fujiwara before you got there? A. Oh, yes, I saw her in the afternoon—early in the afternoon, I think.

Q. Now, you saw her again, did you, in the hospital, in New Westminster? A. Yes, I saw her once or twice more—before she was discharged, that is.

Q. From your knowledge do you know how long this period of delirium continued? A. Yes, I was able to talk to her the second or third time that I visited there.

THE COURT: Q. That is where—at the home? A. At Westminster; but she doesn't remember anything about it now. When I ask her now about it, she doesn't remember anything, but at the time she was able to talk to me.

Q. Now, when was that? A. About three days afterwards, I think.

Q. About three days afterwards that you saw her still in the hospital? A. Yes.

Q. That would be about the 13th? A. Yes, about that; but she doesn't remember anything about it at the present time when I ask her about it.

MR. NICHOLSON: Q. Was she delirious at all after that, do you know? A. Well, I guess she was.

THE COURT: Well, the question is not so much of delirium as it is of being irrational.

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MR. NICHOLSON: Irrational, yes.
THE COURT: The want of rationality.
MR. NICHOLSON: Q. Do you remember when she was discharged from the hospital? A. I was notified.
Q. You were notified? A. Yes.
Q. And you took her over as a patient immediately? A. Yes.
Q. Yes. Now, what was her condition at that time as regards rationality? A. I think she was quite rational, although she doesn't remember anything about it, but when I asked a question, she was able to answer.
Q. She could answer? A. She was giving rational answers.
THE COURT: Q. You talked to her on the 21st, did you? A. Well the next day after she came home from the hospital.
THE COURT. The 22nd or 23rd.
MR. NICHOLSON: Q. Did you continue to see her at her home Doctor? A. Yes, I did.
Q. Yes? A. I continued to see her till the summer of last year, that is 1936.
Q. Continued to see her? A. Yes, of course I wasn't—the last time I made a full examination was March 26th, 1936.
Q. That was a full examination? A. Yes, and after that I used to see her every now and then during the Summer.
Q. Yes, I see. What treatment did you prescribe for her, Doctor, upon her return to home after the hospital? A. Well, I put her to bed, absolute rest in a darkened room.
Q. Absolute rest in a dark room? A. I had the room darkened a bit.
Q. Yes? A. And that was for about—say about five weeks or so.
Q. About five weeks? A. About five weeks in bed.
Q. Yes? A. Most of the time in bed, and after that another five or six weeks, I was there trying to get her up gradually, say ten or fifteen minutes a day, and gradually increasing it, and after about six weeks or so she was able to stay up.
Q. That would be about five or six weeks the first condition and another five or six weeks— A. Yes, about the middle of February she was able to stay up. Even then quite often she used to get dizziness or headaches. She had to stay in bed occasionally.
Q. Even after February? A. Yes.
Q. What would you say as to her general condition, Doctor, during the period of time that you were seeing her more or less

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regularly. That would be up until the end of March? A. Yes.

Q. What would you say as to her general condition during that time? A. Well, she was improving steadily, but I wouldn't say she was well.

Q. Well, was she able to do any work at all during that period? A. Well, I tried to get her to—get her interested in things, you know, trying to make her do a little light housework, but even then she had a very hard time doing anything.

Q. A hard time doing anything? A. Yes, she had her daughter to do the housework for her.

Q. Now, do you know—

THE COURT: Q. What time is this you are speaking of, that she did very little light housework? A. Well, after February—the middle of February, after she started to get up.

MR. NICHOLSN: Q. Well, has she been able to take over her household duties now, Doctor? A. I don't think so— not even at the present time.

Q. Not even at the present time? A. No.

Q. Why is that, Doctor? A. Well, she still has the persistent headache and dizziness, and sometimes the ears—something wrong with the ears. If she stoops over she gets fainting spells—almost falls over. She has even had stockings put on for her even now—

THE COURT: Just a minute.

Q. You say when she stoops over she gets dizzy? A. Yes.

MR. NICHOLSON: Q. Is that a condition that you would expect, doctor, after an injury such as she had to her brain? A. Yes, I think so.

Q. Now, what about her back? A. She has—I and Dr. Turvey examined her just yesterday—the day before yesterday I was present and—

Q. Yes, but could you describe the general condition of the injury in the middle of the dorsal region as indicated by Dr. McEwen? A. There is a—on examining her I couldn't find anything wrong with the spinous process of the spine, but she can bend down quite fully, on extending backward the extension—she complains of pain in some spot, but there is no crepitus or anything in the movement—

Q. What is crepitus? A. Crepitus is a sort of creaking sound.

Q. Now, has she been able to sleep? A. She said she used to have—after the accident she had insomnia due to pain. Every time she shifts in bed it causes her a little pain, and she couldn't sleep for a long time, but now she says she is getting

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better, and she can sleep for six hours during the night.

Q. She can sleep for six hours during the night? A. Yes.

Q. Now, your last visit to her house, I believe, was the 26th March, 1936? A. Yes, but I did see her since then—in the summer—

Q. She came to your office since? A. Yes, the last visit was the 26th at the house.

Q. At the house was the 26th? A. Yes, the 26th March.

Q. Now, would you say she is still recovering? A. Yes, I would think so.

Q. Slowly, or otherwise? A. Yes, pretty slowly, I think.

Q. Did you know anything about her mental attitude before the accident, Doctor? A. Well, I knew her for some years, and she has always been healthy and cheerful and very pleasant to talk to, and everything like that, but nowadays she doesn't seem to be as pleasant as she used to be. She is always worried about something.

Q. Always worried about something? A. Yes, she is very nervous about anything.

Q. Yes? A. And she doesn't talk to you, or talk as much as she used to, to guests and friends.

Q. She doesn't talk to guests and friends? A. No, she goes on, and says she doesn't feel like doing any talking or anything.

THE COURT: Q. How old a woman is she? A. She is 45—46, I think.

MR. NICHOLSON: Q. You recently called in Dr. Turvey, nerve specialist? A. Yes.

Q. To check her up? A. To get a final check-up.

Q. You were present when Dr. Turvey made that examination? A. Yes.

Q. You gave Dr. Turvey the medical history as you had checked it from time to time? A. Yes.

Q. Your account, I believe, is $125.00 A. Yes.

Q. Now, you saw the boy Alan Fujiwara, who was brought up here by his father a few moments ago? A. Yes, I saw him the same day of the accident, in the afternoon.

Q. You took Alan over from Dr. McEwen on the 10th November, 1935? A. Yes.

Q. Alan didn't remain in the hospital? A. No.

Q. You had—did you have an X-ray taken of the collarbone A. I did. I have it here with me.

Q. And what does it show? A. It shows a complete fracture of the right clavicle about the junction of the lateral third

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and the middle third.

Q. The junction of the— A. The lateral third and the medial.

Q. Did you splint that? A. Yes, I had—Dr. McEwen had a figure 8 bandage to keep it in position, and he complained of pain, so I changed over to what we call a clavicular "T" — crossed on the back, holding the bones in apposition in the same way, not probably as uncomfortable as the first tone. I changed over.

Q. Yes, and how long did the splint that you put on remain on the shoulder, Doctor? A. I don't exactly remember—between three and four weeks.

Q. Have you got your notes there. I suggest to you that it was taken off on the 24th December the day before Christmas? A. Yes, something like that—about three or four weeks.

Q. The accident was on the 10th of November? A. Yes.

Q. He had Dr. McEwen's bandage on first, and then the splint which you put on? A. Yes, I put it on because it—I changed it.

Q. Now, can you check that date to show how long the splint was on? I suggest to you it was the 24th November.

MR. BULL: December.

MR. NICHOLSON: Of December? A. Well, I can't—I don't remember the exact date, but—

Q. Would that be approximately correct? A. Yes, about four weeks, I think—three or four weeks.

Q. Now, during that period of time did you see him often? A. Yes. I used to go pretty near every day for the first few days —he moved around so much that the splint tended to come off, and I had to go over and put it back again.

Q. An active little boy? A. Yes.

Q. I see. Did this injury cause him much pain, Doctor, that is, while the splint was on, say in the early stages? A. No, boys usually don't complain so much of pain.

Q. And what would you say as to his recovery? A. As far as functioning, recovery, I think that is perfect.

Q. Yes, good recovery? A. Yes.

MR. NICHOLSON: That is all.

CROSS-EXAMINATION BY MR. BULL:

Q. He wasn't going to school at all at the time of the accident, was he Doctor? A. I beg your pardon?

Q. The young child was not going to school when the acci-

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dent happened? A. No.

Q. He was too young? A. He was not going to school.

Q. So he did not lose any school time by reason of it? A. No.

Q. And as you say, he is all better now? A. Yes.

Q. As far as Mrs. Fujiwara was concerned, all the physical signs have gone, havn't they? A. Yes.

Q. Of injury? A. Except pain, when she stretches—

Q. I know, but I mean having examined Mrs. Fujiwara, you canot find anything the matter physically, can you? A. No.

Q. And you say that she complained of pain in her back, and that when you examined her back carefully, you could not find any physical reason to cause that pain, could you? A. No.

Q. Now, about these headaches, and these dizzy spells, your evidence on that is based on what Mrs. Fujiwara told you, is it not? A. Yes.

Q. And there is nothing you can do to check that up, is there—such as examination? A. Well, I examined her, but I don't know exactly how to tell—probably Dr.—

Q. One thing you could check up was the back, and as you told us, you found nothing physically wrong with her back? A. No.

Q. She is improving gradually, isn't she? A. Yes, she is.

Q. I suppose having this lawsuit on her mind doesn't help this case either? A. I don't know, it all depends on the people.

Q. No, but just having a lawsuit pending does not help people who are nervous, to recover? A. I mean that full recovery—

Q. Yes? A. Yes. I don't think it would help any.

Q. I beg your pardon? A. I don't think it would help any.

Q. It wouldn't help, so when the lawsuit and everything is settled one way or the other, you would expect her to recover still more rapidly? A. I can't say for sure, but I think she might.

MR. BULL: Thank you.

MR. NICHOLSON: Thank you.

(Witness aside.)

MR. NICHOLSON: Dr. Turvey.

SAMUEAL EDWARD TURVEY, a witness called on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NICHOLSON:

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Q. Dr. Turvey, you are a duly qualified medical practitioner? A. Yes, sir.

Q. Practising your profession in the City of Vancouver? A. Yes, sir.

Q. Do you specialize in any particular branch of your profession, doctor? A. In neurology.

Q. Now, you were called into consultation, I believe, to examine and check up on the Plaintiff Mrs. Fuijwara, by her attending physician, Dr. Shimokura. Isn't that so? A. Yes, sir.

Q. And you saw her along with Dr. Shimokura and made an extensive examination? A. Yes, sir.

Q. Would you tell us—

THE COURT: Q. What date? A. January 16th, 1937.

MR. NICHOLSON: Q. Now, did you get from Dr. Shimokura, the medical history? A. Yes, sir.

Q. That he found her, she was in a semi-conscious condition talking irrationally, and that that continued for a period of several days. Did you get that history? A. No, sir, I got the history that she had been entirely unconscious for a certain period, and then delirious for another period.

Q. I see. You didn't hear Dr. McEwen's evidence this morning. A. No, I did not, sir.

THE COURT: Q. Just a minute, now. Tell me that history again that you got, Doctor? A. I got the history from them that she was unconscious for some hours, and then followed a period during which she—they were mixed up on the words—on the meaning of the words conscious and delirious and semi-conscious, but I gathered from them that she had been talking irrationally for several days following that.

MR. NICHOLSON: Q. Well, Dr. McEwen, the physician who attended her in the Royal Columbian Hospital, said this period of irrationality, if there is such a word, was present for at least a week? A. That is the history I got.

Q. Yes. Now, would you just go on and tell us what you found Doctor, as a result of your examination? A. I found all her complaints were subjective, that there were no organic signs of nervous disease.

THE COURT: Just a minute now. Yes?

MR. NICHOLSON: Q. What were the complaints, Doctor, that you got from her? A. The complaints were of headaches, which on analysis and closer questioning she admitted had—the actual pain element had more or less disappeared now, and it was chiefly pressure on her head.

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Q. Yes? A. Dizziness appearing on stooping or any exercise.

Q. Now, just a moment. Did you get the history, doctor, as to how long the headaches continued? A. The headaches had continued up until about six months ago, and in the last six months had shown definite improvement.

THE COURT: Q. Now, just a minute. They had continued till six months ago? A. Yes, that was roughly—that was an approximate period. They didn't mention any particular day.

Q. And then— A. Improved steadily.

Q. Showed definite steady improvement? A. Yes, sir.

MR. NICHOLSON: Q. The dizziness, Doctor? A. The dizziness had lessened too, but she still has it on stooping or on any exercise.

THE COURT: Yes.

MR. NICHOLSON: Q. What about her hearing, Doctor? A. She had had a buzzing of one ear that affects any hearing, but that buzzing had disappeared in the last few months, and her hearing had improved, and she now only had a sensation as of a light pressure in the ear. That was in the left ear.

Q. What other complaints, Doctor, if any? A. She had some pain in her neck at the extremes of the ranges of movement. That also was less than it had been.

Q. Doctor, would you expect to get pain of that sort if the woman had been thrown out of a car and landed on the back of her head on the cement sidewalk or some hard substance? A. Oh, you might.

Q. Yes. What about her ability to concentrate? A. She said that was poor.

Q. Yes, and her memory? A. She said that was poor. I could not test her on this. She had no English.

Q. Did you get the history of her attempts to resume her household duties? A. Yes, that all her symptoms were aggravated if she tried to do any work at all.

Q. Is that what you would expect from a serious head injury, I mean is that unusual? A. That is a common complaint.

Q. A common complaint. Now, did you come to any conclusion, Doctor, as to the nature and extent of this woman's injuries, and the disability resulting therefrom? A. Yes, I concluded that she had a degree of cerebral concussion.

Q. Severe or otherwise?

THE COURT: Just a minute now. Yes?

MR. NICHOLSON: Q. Severe or otherwise, Doctor? A. Yes, I concluded she had a moderate degree of concussion, not a

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gravely severe one, but a moderately severe one.

Q. A moderately severe one. Now, is she suffering from any disability at the present time? A. Some.

Q. In what respect? A. Well, insofar as the symptoms are aggravated if she does any work?

Q. That is the back and the dizziness? A. The back and the dizziness and the pressure in her head and so on.

Q. Were you able to form any opinion, Doctor, from the picture that you got from Mrs. Fujiwara, and from her attending physician, Dr. Shimokura, as to the probable duration of the period of disability? A. I didn't think—I thought it unlikely that there would be any permanent disability.

Q. Yes.

THE COURT: Q. Unlikely? A. Yes, that there would be any permanent disability, and that it was likely she would make a good recovery in a short period of time—say two or three months.

MR. NICHOLSON: Two or three months? A. Yes.

Q. She received some scars in the accident, I believe, doctor. They have healed up pretty well? A. Excellently.

Q. Is it unreasonable, Doctor, in your opinion, that a woman who has had the injuries which have been described to you, and the complaints that you have heard from her, and from her doctor, is it unreasonable to expect that she should be disabled from continuing her usual domestic duties for the period of fourteen months, which has elapsed since the accident? A. Yes, that is a reasonable period.

Q. It is reasonable. You think that will continue, perhaps for another two or three months? A. At the most, yes.

MR. BULL: No questions, thank you.

(Witness aside)

MR. NICHOLSON: Dr. Davis.

HENRY ROY L. DAVIS, a witness on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NICHOLSON:

Q. Dr. Davis, you are a duly qualified medical practitioner? A. Yes.

Q. A member of the College of Physicians and Surgeons of this Province? A. Yes.

Q. Practising your profession in the City here? A. Yes.

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Q. And you were practising your profession in November, 1935? A. Yes.

Q. Do you know the Plaintiff, Miss Teruko Sato, or as she is commonly known, Edna Sato? A. Yes, I know—she gave her name to me as Edna Sato.

THE COURT: Which one is she—Teruko?

MR. NICHOLSON: Teruko. She is employed in the City as a maid, and took the English name of Edna. I think that is the name she used at school.

Q. When did you attend Miss Sato, Doctor? A. November 23rd, 1935, in my office.

Q. Yes.

THE COURT: The 23rd November, yes.

MR. NICHOLSON: Q. What did you find? A. Well, she had three recently healed scars on her right cheek, one was horizontal, about in this situation—just over the middle eminence and just one and a quarter inches long. There is a vertical scar just below that about the centre—

THE COURT: Q. One and a half inch long? A. One and a quarter inches. A vertical scar of three quarters of an inch and after that horizontal scar at the—just about the—literally on the eye, and then a vertical scar about a quarter of an inch. They were all recently healed, and scars when they are recently healing you know have a reddish look, naturally worse, later on they fade, and they are whiter. And in addition to that she had a wound in front of her right ear, which looked as if—it was infected, and it looked as if it had been abraded—

THE COURT: Q. Had been what— A. Abraded, rubbed, the skin around it was raw and there was—in the centre of this wound was what we call a sinus, that is, an opening going to the deeper tissues, and I probed this opening and took out a piece of glass. It was as big as a pencil and—

THE COURT: Q. What kind of a pencil—not this one? A. No, no, smaller than that.

Q. What part of the pencil? A. No, about this big—about probably less than a quarter of an inch in diameter, and probably an inch or three quarters of an inch long. I got that by probing, and took it out with a pair of forceps. It was buried in the sub-adjacent tissue. It was buried in the sub-adjacent tissue.

THE COURT: It was buried where? A. In the sub-adjacent tissue, probably in the parotid gland, which is just below —it is just right over here.

MR. NICHOLSON: Q. Under her ear? A. Yes.

Q. The lobe of the ear? A. No, just in front, it comes round

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like that, and this wound is just about here.

Q. You are indicating just in front of your right ear? A. Yes, that is the place.

Q. You dressed the wound on that occasion? A. Yes, I dressed it on nine occasions, and the last time was December 9th, 1935. At that time there was an L-shaped scar.

THE COURT: Q. What date? A. December 9th, 1935.

Q. Yes, an L-shaped scar? A. Yes, with each arm about three quarters of an inch. I looked at these scars today. The patient is in court, and I looked at them, and the scars are still present.

MR. NICHOLSON: Q. In your opinion, Doctor, are those scars likely to be permanent? A. Oh, yes, I don't think they will change much now.

THE COURT: Q. But the colour has come out of them, I presume? A. Oh, yes, they look like old scars now.

Q. The red has disappeared? A. Yes.

THE COURT: Yes.

MR. NICHOLSON: Q. Your account, doctor, for these services, $30.00? A. $30.00.

MR. BULL: No questions, thank you.

(Witness aside)

THE COURT: Next.

MR. NICHOLSON: Dr. Saita.

HAROLD S. SAITA, a witness on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NICHOLSON:

Q. Dr. Saita, you are an osteopath, I believe? A. Yes.

Q. And a member of the College of Physicians and Surgeons of this Province? A. Yes.

Q. Now, Dr. Saita, you have attended the Plaintiff, Miss —Mrs. Tsuru Fujiwara, the wife of Dr. Fujiwara, for some months now? A. Yes, about 13 months.

THE COURT: Who is this. He is an osteopath.

MR. NICHOLSON: Mrs. Fujiwara. He was the osteopath in connection with it.

Q. Have you seen her frequently during that time, Doctor? A. Yes, I believe I have been seen her twice, sometimes two and three times a week.

Q. Yes, where did you see her first? A. At her home.

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Q. And how long did you continue to see her at her home, up to what date? A. Until about May.

Q. May of 1936? A. Yes.

Q. And since then? A. I advised her to come and see me at the office.

Q. At your office? A. Yes.

Q. And how often have you seen her on an average during the last year? A. About twice a week.

Q. Twice a week? A. Yes.

Q. You have heard the evidence of the other Doctors? A. Yes.

Q. That she has continued to improve during that period? A. Yes.

Q. Do you agree with that? A. Well, I think she is going to improve—as far as complete recovery is concerned, it is doubtful from my situation.

Q. You don't think there will be complete recovery? A. I don't think so.

Q. Your account, Doctor, I believe, is $241.00? A. Yes.

Q. For your treatment? A. Yes.

THE COURT: Q. What does your treatment consist of Doctor? A. More of manipulative treatment.

Q. I beg your pardon? A. Manipulative treatment.

THE COURT: All right.

MR. NICHOLSON: Q. That was for what injury. Your manipulations, Doctor, were for what injuries? A. Well, I had better tell you the condition, what I found, you see.

Q. Yes, just describe it? A. The former Doctor has been stressing more on the brain, but as far as I am concerned, when I met her I found a sort of sprained condition in her neck.

Q. Yes? A. The upper portion here—from the middle up, she had a sort of contraction, she couldn't bend her neck around due to the severe contraction of the muscles in the neck and the upper part of her back. Of course dizziness, headaches and memory was very poor at that time, and for about six months treatment, and then her movement of her neck was improved, but that lesion—we call it a lesion—in the third rib on the left side remains—seems to remain. On account of this injury she had in the brain, seems to continually bring that condition back. Right now you can find tenderness, a sort of swelling of the third rib—the left rib, but this condition—or this nature of accident from my past experience, I find it is possible to remain for a long time, and I am sure that she has to be under my care for at least —well, for temporary I think she needs my nature treatment for

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some time.

Q. The treatment will continue for how long, do you think, Doctor? A. Oh, I don't know—maybe ten years.

Q. Ten years.

MR. BULL: About ten years more.

MR. NICHOLSON: That is, if this condition continues? A. Of course temporary relief, I can give that, but as far as permanent relief is concerned, I don't think so.

CROSS-EXAMINATION BY MR. BULL:

Q. Doctor Saita, the only thing that you treated Mrs. Fujiwara for was these pains she had in her neck. Is that right, and for the pain she said she had in her back, just by the left rib, is that correct? A. Well, that was her complaint, but I expect to help her brain condition too, or perhaps improving the circulation of her brain.

Q. But so far the treatment you have given her has been treatment for the pains in her neck, and the pains in her back, isn't that correct? A. Yes.

Q. And when you said that you thought she would never make any recovery, were you not referring to the pains in her neck and her back? A. Well, that is, well, the injury occurring at the time of the accident.

Q. Yes? A. The sort of sprains in the neck and back.

Q. Yes, but I just want to see what you mean, Dr. Saita, because in answer to a question of my friend, you said that you thought her complete recovery was at least doubtful. Now, when you said recovery were you referring only to the trouble she had in her neck and in her back, because that is what you treated her for? A. Yes, of course, yes.

Q. I am correct, then, when I say, when you said her recovery was doubtful, you are only referring to the pain she had in her neck and her back? A. Oh, yes.

Q. And you heard the other doctors say that when they examined her back, they could find nothing wrong with it physically, didn't you. You heard that this morning?

MR. NICHOLSON: They said they found the function—

MR. BULL: Yes, when they pressed it more unduly.

THE COURT: Shimokura said it hurt, but they could find nothing physically or organically wrong. A. You mean just by looking at it.

MR. BULL: Q. By examining, by pressing it, and looking

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at it? A. Well, I can find it.

Q. What? A. I can find it.

THE COURT: Q. Did you find evidence subjectively, or can you find it by physical examination? A. Physically, yes.

Q. Now, how can you tell it physically? A. Well, I can find the sort of—I wouldn't say dislocated, but the head of the rib is pointing up, and there is a swelling around that joint.

Q. How do you find that, by X-ray or— A. No, by palpation.

Q. That is the head of the third left rib? A. Yes.

Q. Do you use X-ray, Doctor? A. No.

Q. Never? A. Yes, I do when it is required, when I think it is required.

THE COURT: That is all.

(Witness aside)

MR. NICHOLSON: Dr. Fujiwara. The next doctor is not a doctor, my lord, he is a dentist.

THE COURT: What is his name.

MR. NICHOLSON: Dr. A. J. Fujiwara—one of the Plaintiffs, my lord.

ASA J. FUJIWARA, one of the Plaintiffs herein, called as a witness on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NICHOLSON:

Q. Dr. Fujiwara, you are one of the Plaintiffs in this action? A. Yes, sir.

Q. And the Plaintiff Tsuru Fujiwara, is your wife? A. Yes, sir.

Q. How long have you been married, Doctor? A. 29 years.

Q. Yes, and the two infant Plaintiffs Fujiwara, Wesley and Alan, are your sons? A. Yes.

Q. And the sons of your co-plaintiff Tsuru Fujiwara? A. Yes, sir.

Q. You are a dentist, I believe, Doctor? A. Yes, sir.

Q. How long have you practised your profession in Vancouver? A. About eight years.

THE COURT: Q. Practised here how many years? A. Eight years.

MR. NICHOLSON: Q. Now, in addition to your practice, Doctor, in the City, do you have any clinic practice? A. Yes,

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sir. I have a free clinic every Sunday on Lulu Island and the Fraser Valley, under the auspices of United Church.

Q. Yes, every Sunday, you say? A. Every Sunday.

Q. Your practice, I believe, is to go to Lulu Island on one Sunday and the Fraser Valley next? A. Yes.

Q. Now, do you remember the morning of the 10th November, 1935? A. Yes.

Q. Sunday morning? A. Yes, sir.

Q. Where were you going that morning? A. It was the second Sunday, so I was going to Whonnock and Mission City.

Q. Now, there was an accident occurred that morning, I believe, shortly before nine o'clock? A. Yes, sir.

Q. And you were driving a car that morning? A. Yes, sir.

Q. Your own car? A. My own car, Chevrolet sedan.

Q. Chevrolet sedan? A. Yes.

THE COURT: "I was driving my own sedan". Just lead him right along to the point of the accident—travelling what direction and so forth.

MR. NICHOLSON: Q. Travelling east through Port Moody? A. Yes, east towards Whonnock.

Q. Toward Whonnock.

THE COURT: About where, now, about how far is Whonnock?

MR. NICHOLSON: At the City of Port Moody, my lord.

THE WITNESS: Yes.

THE COURT: Travelling east through—

THE WITNESS: Through Vancouver, Hastings Street—

MR. NICHOLSON: Q. Going through Port Moody? A. I wasn't going through yet. I was just going to go through.

THE COURT: Q. Yes, that is where the accident happened? A. Yes.

Q. Now, this is on the main smooth highway? A. That is on St. John's Road.

MR. NICHOLSON: Q. That is on St. John's Road, it is the main highway through Port Moody.

THE WITNESS: It is the main highway.

MR. NICHOLSON: It is an asphalt road.

THE COURT: Asphalt.

MR. NICHOLSON: Yes, my lord.

THE COURT: It is an asphalt centre, I suppose.

MR. NICHOLSON: An asphalt centre with gravel on the side, that is right, my lord.

THE COURT: With gravel shoulders.

MR. NICHOLSON: Q. Now, in your car, Doctor, as pas-

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sengers were your wife? A. Yes, sir.

Q. And your two sons, Alan and Wesley? A. Yes, sir.

Q. And Miss Teruko Sato? A. Yes, sir.

Q. But she is known as Edna Sato? A. Yes.

Q. Miss Sato, I believe, was in the front seat? A. Yes, beside me.

Q. Your wife and the two boys in the rear seat? A. Yes, the others all back seats.

THE COURT: Q. Now, we had better get them located. Miss Sato in the front at your right, the other three at the back? A. All in the back, sir.

THE COURT: Yes.

MR. NICHOLSON: Q. How long, Doctor, had you been driving in your car prior to the accident? A. About 18 months —one and a half years.

Q. One and a half years? A. Yes, sir.

THE COURT: Q. This particular car? A. Yes, sir.

MR. NICHOLSON: Q. And prior to your driving in that car, had you previous driving experience? A. Yes, sir, about four years before that.

Q. Did you ever have an accident before the 10th November, 1935.

MR. BULL: Well, I object to that, my lord, that has nothing whatever to do with this case.

THE COURT: No.

MR. NICHOLSON: Q. Now, what time did you leave home that morning? A. Oh, we left at half past seven.

Q. Now, you remember rounding the curve there as you enter the City of Port Moody, and go on to St. John's Road? A. Yes, sir.

Q. And just tell us what happened after you rounded the curve? A. Well, when I rounded it, in going round it I slowed down my car to about ten or twelve miles an hour—

THE COURT: Just a minute.

MR. NICHOLSON: Q. Is that curve a sharp one, Doctor, or otherwise? A. This is a very sharp curve.

THE COURT: I suppose you have not got a map.

MR. NICHOLSON: Yes, the map unfortunately doesn't show the cruve, my lord. This happened about one block east of the curve.

Q. Now, you knew the curve prior to that, did you? A. I beg your pardon?

Q. Did you know that curve—were you familiar with the road before this? A. Yes, sir.

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Q. Now, in rounding the curve at this speed that you have told us about, just continue, please? A. Yes, well, I slowed down to ten or twelve miles, and gradually was increasing it to about 20—25 miles.

THE COURT: Q. What is that now, gradually increased? A. Yes, gradually increased it to 20—25 miles.

MR. NICHOLSON: Q. That is as you were going along St. John's Road? A. Yes, and—

THE COURT: Just a minute now. All right.

A. And after I pased the first intersection, that is Douglas Road—

MR. NICHOLSON: Q. Now, Douglas Road is one block east of the curve? A. One block east, yes.

Q. Yes? A. When I passed about 100 feet or more I heard a horn behind my car.

THE COURT: Q. I heard a horn behind my car? A. I heard only once; I don't think I heard any more.

Q. Just once, I think? A. Just one honk.

Q. Yes? A. And I looked in my reflective mirror.

MR. NICHOLSON: Q. Yes? A. I see one maroon coloured—

Q. Yes, maroon— A. Maroon coloured Ford car was approaching with very fast speed.

THE COURT: Q. Now, I will just make a note there. All right? A. So I pulled my car towards — almost close to the gravel—

Q. I pulled to the right? A. Yes, to let this car pass.

Q. When you pulled to your right, you said something about what? A. Very close—almost close to the line of the pavement and the gravel.

MR. NICHOLSON: Almost close to the end line of the pavement and the gravel.

THE COURT: I suppose he means by that to the edge?

MR. NICHOLSON: To the edge of the hard surface.

THE COURT: To edge of hard surface.

MR. NICHOLSON: Q. Yes, just continue, Doctor? A. First I noticed this car passing twice faster than my car.

Q. What would be your speed? A. About—

THE COURT: It passed you how fast did you say? A. Oh, well, my car is going about twenty, twenty-five miles—close about 25 miles, and the other car is more than 45 miles, and when I see it try to pass I see some Japanese there in it.

THE COURT: Q. What is that, I did not get that.

MR. NICHOLSON: When that other passed I saw there

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were some Japanese in it.

THE COURT: Q. You mean you saw that as they were going by, or when? A. Going by, I was going about 25 miles speed—less than 25 miles.

MR. NICHOLSON: Q. That would be your speed? A. Yes, and when—just before he passed my car, they made a very acute curve.

THE COURT: Q. To the right? A. Very sharp curve, yes.

Q. To the right? A. To the right.

Q. Yes? A. And their car struck my car at left hand side of hood.

Q. The maroon— A. The maroon coloured Ford.

Q. "Struck my car," where? A. At the head of left hand side. .

MR. NICHOLSON: From the left side.

THE COURT: Q. What did he strike, the bumper or the fender or what? A. Well, I didn't know, because I couldn't see what part, but they struck pretty hard.

Q. Yes? A. When they struck me the car almost jumped up. I heard a noise—

Q. Just a minute. "I heard a noise," yes? A. And my car was forced out on to the gravel.

Q. Yes? A. On the uncleared boulevard.

THE COURT: Are you sure that is what he said—uncleared boulevard.

MR. NICHOLSON: Yes.

THE WITNESS: Yes, sir.

THE COURT: Q. All right? A. I tried to put my brake on, but my car travelling very fast, might be twice as fast as—
Just a minute, your car— A. Might be twice as fast as—

MR. BULL: What is that?

MR. NICHOLSON: Q. Maybe twice as fast, my car travelling very fast, maybe twice as fast." A. Fast as I was going on main road.

THE COURT: Q. Yes? A. My car went up on the sidewalk.

Q. Yes? A. And there is an electric light pole on the slope of the lawn of the residence.

Q. I see, an electric light? Yes? A. And I remembered my car was running straight to this pole.

Q. "I remembered"? A. Yes, sir.

Q. "My car was" what—heading straight? A. Straight to this pole, but I avoid this pole.

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Q. Yes? A. But left hand side, both fenders are badly damaged, and I heard much noise.

Q. Was what? A. Was badly damaged, because it scratched this pole.

Q. Badly damaged. You heard much noise, did you say? A. Yes, sir. That is due to bumping those fenders on the pole. This car was very hard to control.

Q. Yes? A. Because when I bumped this pole the car made a big swing right up and down.

Q. To right? A. Right and left both sides, swung just up and down, because the side—the sidewalk and boulevard is all up and down, irregular circles, because sidewalk is narrow. It is narrower than the width of the car.

MR. NICHOLSON: Q. The sidewalk is narrower than the width of the car? A. Yes.

Q. A cement sidewalk, is it not? A. Yes, and with the side there—

THE COURT: Just a minute now. All right.

A. That moment I thought it must be wrong with the brake.

MR. BULL: I object to that—no matter what he thinks.

MR. NICHOLSON: I think, my lord, that it is important.

MR. BULL: No, he can't give us his thoughts, he can only tell what happened.

MR. NICHOLSON: Q. Yes, what did you do, Doctor? A. Well, I thought the only thing is to go back to the main road, because I couldn't stop the car.

THE COURT: Q. "I headed back for the main road as I couldn't stop the car?" A. But I saw maroon coloured Ford—

Q. What? A. When I was going back to the main road.

Q. Yes? A. I saw this maroon coloured Ford, and he struck my car, was right in front of my car.

Q. Standing still or what? A. I don't know if it was moving or stopped.

MR. NICHOLSON: Q. You don't know? A. I don't know, I see the car.

Q. But when you say you don't know, do you mean by that— A. There is the car, but I don't know if this car was moving or it is stopped.

Q. Yes, but can you tell us whether the car was still racing away at 40 to 45 miles an hour, or was stopped or almost stopped? A. No, I don't know that time. I couldn't figure out that time, but I saw the front of my car.

Q. All right? A. So I think I turn—

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MR. BULL: I object to that.

MR. NICHOLSON: Q. What did you do? A. So I think I turn to the right—

MR. BULL: Now, witness, when an objection is made, just wait, you see.

THE WITNESS: All right.

MR. BULL: You see, my objection is that you must not say what you think.

THE WITNESS: All right.

MR. BULL: You have to tell his lordship what you did, you see.

THE WITNESS: Yes.

MR. NICHOLSON: Q. Just tell us what you did? A. Well, I turned slightly to the right.

MR. BULL: Q. Turned slightly to the right? A. Yes, sir.

THE COURT: Q. To the right? A. To the right, to avoid hitting other car which I saw in front of my car.

Q. Yes? A. And struck this second electric light pole very hard. My car was badly damaged at front right wheel and front right part of the radiator, and first I see my wife was thrown out on to the sidewalk.

MR. NICHOLSON: Q. That is on the cement sidewalk? A. The cement sidewalk. First I thought she was already dead —killed.

MR. BULL: You see you are saying what you think again.

THE COURT: It doesn't make any difference, sometimes many people can't help themselves thinking.

Q. Go ahead? A. So I held my wife in my hand right away, I walked out my car, and I held my wife, and I remember before I walked out, Miss Sato walked out too.

MR. NICHOLSON: Q. Miss Sato got out?

THE COURT Q. She was not thrown out? A. No, she was on my right hand side seat.

THE COURT: Yes.

MR. NICHOLSON: Q. What about Wesley? A. When I held my wife I saw Wesley was kind of dizzy. He is standing something like this way—moving about.

Q. Sort of staggering? A. Yes, and blood on his face.

Q. Blood on Wesley's face? A. Yes, and I heard sharp crying, my little boy.

THE COURT: Q. A sharp cry? A. My little boy, Alan, and strongly blood was discharging from Miss Sato's face. She was holding her hand, so I gave my handkerchief to hold

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this bleeding and—

MR. NICHOLSON: Q. Yes, go on? A. And there is a man coming—a Japanese coming to me, and it was Mr. Higuchi.

THE COURT: Q. Coming from the east, was he? A. I don't know where he come from. He came to me.

Q. Mr. What? A. Mr. Higuchi.

MR. NICHOLSON: H-i-g-u-c-h-i.

MR. BULL: He might as well be identified now. He came from the other car. Isn't that correct.

MR. NICHOLSON: That is correct.

MR. BULL: He was a passenger in our car, my lord, Mr. Higuchi.

MR. NICHOLSON: Q. Anyone with him? A. Yes, there is the other man with him.

Q. That was Mr. Ogawa? A. Yes, I knew that afterwards.

Q. You knew Mr. Higuchi before the accident? A. Yes, I know Mr. Higuchi more than twenty years.

Q. But you didn't know Mr. Ogawa? A. No. That is why I could describe the name here, because I know him more than twenty years. He is Manager of M. Furuya Company, well known store in this town.

Q. Now, when you saw these two gentlemen, Mr. Higuchi and Mr. Ogawa coming towards you, did you see then the maroon coloured car? A. Yes, it was same colour that struck my car, so I thought—well, I won't say I thought, I found out this is car which hit my car.

Q. Now, how far was that maroon coloured car from your car at that time? A. About ten or twelve feet.

THE COURT: Q. That is, it was now standing still? A. Yes.

MR. NICHOLSON: Q. It was on the main road, was it? A. The main road.

Q. Now, from the time that your car was struck by this other car, as you have told us, and forced off into the gravel until you came in contact with the electric light pole that damaged your car so badly, that is the second crash, could you give us any idea of the length of time that elapsed? A. I don't know, it was very fast, I couldn't figure for how long, it might be one half second, it might be two seconds. It was very fast.

Q. Now, when Mr. Ogawa and Mr. Higuchi came towards you, did you have any conversation with them or either of them? A. Well, Mr. Higuchi, he first talked to me, he said in Japanese "Oh, it was you"—because he know me.

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THE COURT: Was Mr. Ogawa there?

MR. NICHOLSON: Q. Was Mr. Ogawa there? A. Yes, he was standing behind him.

THE COURT: Q. Mr. Higuchi in the presence of Mr. Ogawa said what? A. He said "Oh, it was you."

Q. Yes. A. "We thought some very slow car was going ahead of us." This he said in Japanese.

MR. NICHOLSON: Q. What were the last words.

THE COURT: Some very slow car going ahead of us.

MR. NICHOLSON: Q. Did Mr. Ogawa say anything. Did you say anything?

THE COURT: Q. Just give the whole conversation. What else was said? A. That is all he said. Then I point out my finger to this maroon coloured Ford. "Whose car is this?"

THE COURT: Q. "I pointed out"— A. To maroon coloured Ford car.

Q. Maroon Ford car and asked "Whose car is this?" A. Yes, asked him. Mr. Ogawa tell me his name, and he tell me his car.

Q. Told you his car and his name? A. And Mr. Higuchi and Mr. Ogawa helped me to take all these injured people to hospital in New Westminster, B. C.

THE COURT: Yes.

MR. NICHOLSON: Q. That is in Mr. Ogawa's car? A. In Mr. Ogawa's car.

Q. Now, you took your wife and Alan? A. Alan.

Q. And Miss Sato? A. Miss Sato. I left Wesley behind to watch this damage to my car.

Q. Yes, and two of the passengers—I believe there were two other passengers in Mr. Ogawa's car, were there not? A. Yes, they left there too.

Q. They stayed there too? A. Yes.

Q. Now, after going to the hospital in New Westminster, did you return to New Westminster? A. Yes.

Q. Did you come back in Mr. Ogawa's car? A. Yes, not in Mr. Ogawa's car. Mr. Akagawa—

Q. Mr. Akagawa? A. Yes, the Reverend Akagawa—the Minister of United Church.

THE COURT: Q. The Reverend— A. A-k-a-g-a-w-a.

MR. NICHOLSON: Q. Now, Mr. Akagawa drove you back to Port Moody, and Mr. Higuchi and Mr. Ogawa returned in the Ford? A. Well, I don't know, he might do after that.

Q. By the way, when you were at the hospital in New Westminster, did you see Mr. Higuchi there? A. Yes, Mr.

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Higuchi came to the door of my wife, and he want to see me so I went up to the hall.

THE COURT: Q. Oh, towards the ward? A. And he asked me—

MR. NICHOLSON: Q. Don't tell us conversation — any conversation that you had while Mr. Ogawa wasn't there. Don't tell us that, but you did have a conversation with Mr. Higuchi? A. Yes.

Q. Now, after you got back to Port Moody, what did you do, if anything? A. At Port Moody?

Q. Yes? A. Well, I went to Police Station first.

THE COURT: Q. I went what? A. To Police Station.

MR. NICHOLSON: Q. Police station? A. Yes.

Q. Did you see the Chief Constable—Chief Mackie? A. Yes, and myself, my son Wesley, went to this Ford maroon car.

THE COURT: Q. Went to what? A. To Ford maroon car—maroon coloured Ford car.

Q. Yes? A. To make examination. My son Wesley, he found first—

Q. "My son?" A. Wesley.

Q. What did he do?

MR. NICHOLSON: Q. What did Wesley find? A. Found first—

Q. Wesley found something. Found first what? A. On the right hand side of running board of this car.

THE COURT: Q. On the right hand side of running board? A. On the rubber is kind of new mark—fresh mark on the rubber.

MR. NICHOLSON: Q. Was it cut at all or just rubbed? A. It wasn't cut, but kind of rubbed—new, fresh, no dust, just fresh.

Q. Fresh rubbed? A. Yes, so he show me he must have bumped—his car it must have bumped his running board of my car.

MR. BULL: He is giving conversations now between himself and Wesley.

MR. NICHOLSON: No, he is not giving conversations at all.

MR. BULL: He said something about Wesley?

THE WITNESS: So I found—I put my finger underneath the runing board, that is the very edge of the car part, I found two indentations—

MR. NICHOLSON: Q. Now, what was the nature of the material. I suppose there was a rubber mat on the outside of the running board? A. Yes, it is all full covered by rubber.

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Q. Now, what is the nature of the material under the rubber mat? A. The rubber mat, under the rubber mat was steel.

Q. Steel? A. Steel, and the steel indentation too—I think between first and second, about 12 inch.

Q. Two indentations? A. Two indentations.

Q. In the steel? A. The steel.

Q. You think about a foot between the two? A. Yes, so I made conversation—

THE COURT: Q. Never mind conversation? A. With my son.

MR. BULL: Now, this must be—

MR. NICHOLSON: Just a moment until I lay the foundation.

Q. Now, who was there? A. So we went back to call Chief Mackie.

Q. You called Chief Mackie? A. Yes, and with Chief Mackie, Mr. Higuchi and Mr. Ogawa come with us.

THE COURT: What?

MR. NICHOLSON: "With Chief Mackie, Mr. Higuchi and Mr. Ogawa come with us."

Q. That is with you and Wesley? A. Yes.

Q. Back to the car? A. Back to the car.

THE COURT: Q. Yes? A. And we show this new mark and indentation in the steel, this running board, to Chief Mackie and to Mr. Ogawa and Mr. Higuchi.

THE COURT: Yes.

MR. NICHOLSON: Q. Now, was anything said at that time when Mr. Ogawa was there? A. Well, Mr. Ogawa didn't say anything, but Mr. Higuchi said in Japanese—

Q. In the presence of the Chief Constable and the others? A. Yes, before the Chief Constable. He said by Japanese—

THE COURT: Q. In the presence of Ogawa too? A. Yes, sir.

Q. Higuchi. Yes? A. And he said by Japanese "I wonder— I wonder if that was so after all."

Q. Yes? A. Then we all go back to the Chief's Office to make report.

MR. NICHOLSON: Q. Now, coming back to the time the accident occurred, as you drove along St. John's Road before the accident, did you have your car under control or not, that is as you were driving along there. A. This is well controlled.

Q. And after you went off the pavement you say you started to apply your brake, that is, off the hard surface into the gravel? A. Yes.

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Q. And what happened? A. Well, my car travelling very fast so it must be I put my foot on the accelerator instead of the brake.

Q. It must be that you put your foot on the accelerator instead of the brake? A. Yes, because this accelerator and the brake are very close with me on my car.

Q. That is the Chevrolet car? A. Chevrolet car.

Q. On that model? A. Yes, 1933 model, it is very close, the brake and accelerator.

Q. Now, had you ever had that happen before, that is, try to put your foot on the brake and step on the accelerator instead.

MR. BULL: I object to that.

MR. NICHOLSON: I think, my lord, that that is material. It is admissible because if—

THE COURT: I do not see how it can help us, Mr. Nicholson. You are giving circumstances from which it had happened. That is a pretty far step.

MR. NICHOLSON: My lord, if it is disclosed—even the examination for discovery which I will put in is that after he left the hard surface of the highway the car speeded up, and I want to give your lordship the reason for that, if it is at all possible to do.

MR. BULL: He says he put his foot on the accelerator.

THE COURT: Where is the car now.

MR. NICHOLSON: The car has been repaired. I have the mechanic who made the repairs, and I will be calling him and he will describe the condition, and the distance between the brake and the accelerator.

THE COURT: Well, I think that is sufficient.

MR. NICHOLSON: Q. Now, did you later take certain photographs of the scene of the accident, Mr. Fujiwara? A. Yes, sir.

THE COURT: You will have several questions yet, Mr. Nicholson.

MR. NICHOLSON: Yes, my lord.

THE COURT: I suppose we might as well have lunch now. Adjourn till 2:15 (1:00 p.m. Court adjourned until 2:15 p.m.)

I hereby certify the foregoing to be a true and accurate report of the said proceedings.

"WILLIAM R. HILL"
Deputy Official Stenographer.

Vancouver, B.C., January 18, 1937.

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(2:15 p.m. COURT RESUMED PURSUANT TO ADJOURNMENT)

ASA J. FUJIWARA, Witness, resumes stand.

DIRECT EXAMINATION CONTINUED BY MR. NICHOLSON:

Q. Now, when the court rose, Mr. Fujiwara, I was asking you about the photographs which you took. A. Yes, sir.

Q. How long after the accident was it that you took the photographs? A. Well, I have been there several times to take the light picture and I don't know which one was light picture, but I think it was about six months after.

Q. I am going to ask to have these marked. I presume the list of special damages would be marked as an exhibit.

THE COURT: Well, I thought of that at the time, but it is in the notes. The pictures were taken about six months after.

MR. NICHOLSON: Q. Now, look at that photograph, what does that represent? A. It represents that first pole which I struck at.

Q. Now, at the left of the photograph you are indicating a pole. That is the first pole you struck? A. Yes.

(PHOTOGRAPH MARKED EXHIBIT No. 1)

THE COURT: Now what does he say about something he sees on that photo?

MR. NICHOLSON: The pole on the extreme left of that photo is the first electric pole that his car collided with.

Q. Now what does the next photograph represent? A. It represents the first pole and second, and the steps.

Q. It shows the two electric light poles and the highway running along to the north of the pole? A. Yes.

(PHOTOGRAPH MARKED EXHIBIT No. 2)

THE COURT: It shows both poles referred to in evidence?

MR. NICHOLSON: Yes, and the steps.

THE COURT: What steps are they? I cannot see the picture.

THE WITNESS: The steps on the lawn that I mentioned this morning.

THE COURT: Q. Are they not shown on that photograph?

A. No.

MR. NICHOLSON: They are not shown very clearly. They are shown right in the corner near the post.

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THE COURT: I see. The steps are farther down.

MR. NICHOLSON: Q. Now, will you take this photograph, Exhibit 2, and in pencil trace on that as nearly as you can recall, the course that you followed? A. Yes.

Q. From the time that you left the road until your car came to a stop against the second post. These are the steps in there, are they not? A. Oh, yes.

Q. I think they will have to be drawn in ink or red pencil they don't show up very good. A. I have a fountain pen.

Q. Try it with the fountain pen. A. Yes.

THE COURT: Now what is this—a photo. Now, you had better do you thinking before you do your marking.

THE WITNESS: If you will show me the other photo.

THE COURT: Let me get a look at this thing first. That is not asphalt in the centre there, is it—is that crushed rock or asphalt, or what? A. Asphalt.

MR. NICHOLSON: Q. It is a paved surface? A. It is a hard surface.

THE COURT: It is hard surface but it does not look like asphalt here? A. This is the gravel here.

Q. All right, do your marking. A. This is the little piece of branch—when I took the photograph it was still left on there —the car was right in here.

MR. NICHOLSON: Mark that point "1".

THE COURT: That is not a pen you have got, that is a broad axe or something of that sort—a paint brush—that is what it is.

THE WITNESS: By this tree, you see. There is the first tree. There is a little tree there. Then I went this way to the sidewalk, and then I go back to this part of the photo—that is from here.

THE COURT: Put in there marked Exhibit 1, showing course of car—from point '1'—you had better add to what I gave you there. All right. Marks Exhibit 2 with black pen dots as in the case of Exhibit 1. Now is there anything you want to add to that showing course of car?

MR. NICHOLSON: No, I think not.

Q. Now, while you were following this course—that is the dots between the two poles shown on Exhibit 2, did you apply your brakes? A. I don't think I did because I saw the brakes gone broke.

Q. Why did you think that? A. Because I could not stop the car.

Q. You could not stop the car? A. No, I tried to stop.

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Q. Had you applied your brakes earlier? A. Well, I think I did. I am not sure on that point.

Q. That is the point — you are not sure whether you put your foot on the brakes or on the accelerator? A. No.

Q. But you intended to apply your brakes? A. Yes.

Q. But now you are not sure whether you applied your brakes or not? A. No.

MR. BULL: He said he didn't because they were no use.

MR. NICHOLSON: I shall have that looked up. No, I think you are right there.

THE COURT: Do not blot this, Mr. Clerk, because it is a highly polished surface. All right.

MR. NICHOLSON: Q. Now, as a result of the accident, Dr. Fujiwara, you have been put to certain expenses? A. Yes, sir.

Q. Now, by consent, the amounts of the bills that you have incurred have been admitted with the exception of your claim for damage to your automobile, and a claim for hire of another automobile while your car was being repaired. After the accident what was done to your car? A. You mean the old car?

Q. Yes. A. Well, I sold it. I exchanged it for a new car.

Q. But it was brought to Stonehouse Motors in Vancouver, was it not? A. Yes.

Q. And they are the Chevrolet dealers? A. Yes.

Q. Now, did they appraise it and make an estimate of the repairs? A. Yes.

MR. NICHOLSON: Now, might I explain this, my lord? The repairs to this car were ordered and proceeded with but while the repairs were in the course of being made and just as they were completed, Dr. Fujiwara bought a new car and traded in the old car.

THE COURT: Did he pay for the repairs? Were they charged up to him or what happened? I presume Stonehouse Motors will prove that.

MR. NICHOLSON: Yes, he will be called on that — Mr. High, the shop foreman is being called.

Q. Now, while your car was being repaired, and before you bought a new car, did you need a car? A. I needed it more than ever because I—

Q. Just a moment now.

THE COURT: Yes, go ahead. A. Because my wife in hospital and my son at house, and I had to continue my practice because so many patients were on my hands, and I had to visit Miss Saro at Mission City.

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Settled:
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Proceedings at Trial
Asa J. Fujiwara—Direct Exam. Called for Pltff.

Q. Just a moment. Who did you have to visit at Mission City? A. Miss Saro, my patient. She lives at Mission City.

Q. Why did you have to visit her? A. She is my patient not a medical patient but a dental patient.

MR. NICHOLSON: I think that is more of a friendly gesture.

Q. Did your clinics continue that day? A. Not that day.

Q. Not on the 10th? A. No.

Q. Did they on the 17th and 24th? A. On the second Sunday of the month— I went there the second Sunday of the next month because other Sundays I have to go other places.

Q. Now, did you use a car to attend your clinic the following Sunday? A. Yes.

Q. And to go to Westminster and elsewhere? A. I was up to Strawberry Hill in the morning.

Q. Where did you get the car that you used during the period that your car was being repaired and before you bought the new car? A. I hired it from Stonehouse.

Q. How much did that cost you? A. $75.

THE COURT: Q. How long did you have it? A. I think —I am not sure, but 25 days I guess.

THE COURT: Q. Was it a new car? A. No, a used car. I hired a used car. First they tried to sell them to me.

MR. NICHOLSON: Q. Is this the bill that you received for the car hire at that time, for the twenty-five day period? A. Yes.

(ACCOUNT MARKED EXHIBIT No. 3)

Q. Now you say you have been married for twenty-nine years, Doctor? A. Yes.

Q. Before the accident?

THE COURT: Well, you are not pursuing that matter of trade-in any further.

MR. NICHOLSON: No. I shall have to get Mr. High, the shop foreman. I think it will save time.

THE COURT: Married twenty-nine years.

MR. NICHOLSON: Q. Before the accident what was the condition of your wife's health? A. She was in good condition.

Q. Who did the housework in your home? A. She did.

Q. What family have you, Doctor? A. I have two daughters and three sons, and one daughter is married.

THE COURT: Three sons. How many daughters? A. Three sons and two daughters.

MR. NICHOLSON: Q. Now at the time the accident occurred— A. One daughter was away in Japan to study.

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Q. Studying in Japan? A. Yes.
Q. And one of your daughters is married? A. Yes.
Q. She was living in Vancouver? A. Yes, she was living with me after the accident, to help in the home.
Q. She came right away? A. Yes.
Q. To take charge of the home? A. Yes.
Q. Now, are there three sons living at home? A. Not at that time; two sons were living home and one was on Vancouver Island at that time.
Q. Wesley and Allen are the two co-plaintiffs in this action? A. Yes.
Q. They were living at home? A. Yes.
THE COURT: How old were they at that time—the two sons at home? A. Sixteen and five.
MR. NICHOLSON: Q. Wesley was sixteen and Allen five? A. Yes.
THE COURT: That means they are ranging from eighteen and seventeen— A. No, seventeen and fourteen.
MR. NICHOLSON: Q. Now you referred to having some other help in? A. Yes.
MR. NICHOLSON: And that claim I think is admitted, is it not?
MR. BULL: Is that on the list?
MR. NICHOLSON: $42. Miss Fiji.
THE COURT: For housekeeping services.
MR. BULL: Yes.
MR. NICHOLSON: Q. Now, when did your daughter who was studying in Japan, return home? A. Oh, about eight months after, I guess.
Q. Why did she come home? A. Because my wife was not satisfied to have any other lady except my own family. She was so nervous that I had to call my daughter back from Japan to look after her.
Q. She preferred to have a member of her own family? A. Yes.
Q. And has your daughter been running the home since then? A. Yes.
THE COURT: Q. That is eight months ago you say? A. Yes.
MR. NICHOLSON: Q. And she was brought back from Japan for that purpose? A. Yes.
THE COURT: Q. What was she studying in Japan? A. Japanese home education. She graduated in high school here and then right after graduation she went to Japan to get Japanese education over there.

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Q. And did she finish her course over there? A. No.

MR. NICHOLSON: Q. And she has to go back to finish her course? A. Yes.

Q. Now, during the eleven days that your wife was in the hospital in New Westminster, did you visit her frequently? A. Sometimes four times a day.

Q. And you have heard the condition described by Dr. McEwen this morning, that for about a week after the accident she was irrational in her talk.

THE COURT: Now, Mr. Nicholson, that is not the proper way to put the question to this witness.

MR. NICHOLSON: I don't want to press it. I want to pass on from that.

THE COURT: Well, pass on.

MR. NICHOLSON: I will.

THE COURT: It is much better when you are proving damages, not to ask questions that are leading.

MR. NICHOLSON: Q. Will you describe your wife's condition after she left the hospital and when she returned home? A. I heard Dr. McEwan say—

Q. No, just tell what you yourself found? A. She was unconscious for about thirty hours—semi-conscious,—according to speaking in Japanese language—she could not remember anything, and she said she belonged to British Church and she used be British when she was a child, and she was dreaming about British Church, and she was entirely unconscious. She could not answer anything.

THE COURT: Q. You mean by that, delirious? A. Before that, yes.

Q. For thirty hours? A. For thirty hours.

MR. NICHOLSON: Q. Well now, just describe her condition after she returned home from the hospital? A. Yes.

Q. What was done? Was she able to move about or did she have to stay in bed? A. She had to stay in bed. She could not move.

Q. For how long? A. She could not move at all for seven or eight weeks, and every time I had to help her or somebody had to help to change her position in bed.

Q. And after that, Doctor? A. She is gradually getting better. And about two months after she walked to the kitchen —two and a half months.

Q. Yes?

THE COURT: About two and a half months after? A. About two and a half months after she was able to walk to

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kitchen from bed. Her bed was on the same floor as the kitchen; and she was able to go to toilet herself after two months laying in bed.

MR. NICHOLSON: Q. She could get up and go to the toilet herself? A. Yes.

Q. Now, did you notice any change in her general condition during that time? A. A great change.

Q. In what way? A. You mean just today?

Q. No, at that time? A. Oh, yes, yes, a great change.

Q. In what respect, Doctor? In what way? A. Well, she was complaining of pain and headaches, and was nervous, and otherwise very cranky, and crying, and very hard to handle. My married daughter tried to handle her but she was very difficult to handle.

Q. And how did that compare with her general condition?

THE COURT: Now, just a minute.

MR. NICHOLSON: Q. How did her condition compare with her manner and general condition before the accident? A. Oh, before that she was strong. Her appetite was good. But at that time she had no appetite. She was complaining about all her food.

Q. And what about her general attitude apart from the appetite—her disposition before the accident? A. Oh, she did all her housework before, but after that she could not do anything.

Q. Was she troubled with headaches or dizziness before the accident? A. No, she had no headaches or anything before the accident, but after the accident, yes.

Q. Well, you say she was cranky after the accident. What about before the accident? A. No, she was not cranky, none at all.

THE COURT: Well, I would not worry much about the crankiness. That is one of the things that might be a matter of temperament.

MR. NICHOLSON: Well, it follows from nervousness.

THE COURT: Oh, yes, it follows from nervousness.

MR. NICHOLSON: Q. And what about her memory? A. She lost her memory. For about three months after, she could not remember anything, but gradually it seems to be coming back a little bit.

Q. It is gradually coming back? A. Yes.

THE COURT: Well, now, you say that if there was something happened last week she cannot remember now? A. No a few days ago she left her umbrella somewhere and she could not remember anything.

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Q. A lot of people forget their umbrellas. But supposing she were down town last week, don't you think she could remember it today if you asked her? A. Not one hundred per cent.—about eighty per cent. she might remember, but the twenty per cent. is all lost.

Q. Well, that is a fair way to put it.

MR. NICHOLSON: Q. But that is improving, you say? A. Yes, that is improving.

Q. Now, has she been able to resume her household work? A. I don't think so myself.

Q. Well, has she done any of it so far. Just tell what she has done around the home? A. Well, she just washes dishes, but she does not complete the whole of it. My daughter does it —she only helps my daughter.

Q. Well, is she getting more useful around the home? A. Well, it isn't improved lately—the last six months about the same.

Q. The last six months? A. Yes.

Q. What about this complaint that she had about dizziness? A. Still she has.

Q. She still has some? A. Yes.

THE COURT: When she stoops over, is that it?

MR. NICHOLSON: Q. His lordship asks you when she bends over, is that it? A. She cannot bend at all yet.

Q. Is that when she gets dizzy? A. Yes.

THE COURT: Q. But that is the only time, isn't it? A. No, when she is walking on street her head gets dizzy and then she seems to turn left—she seems to think she is going straight, but she is going left side—even today.

MR. NICHOLSON: Q. Even today? A. Yes, even today.

Q. Now, what about Alan—you are suing as Alan's next friend in this action? A. Yes.

Q. What about his collar bone? A. Oh, it is getting better all right, fine, but there is a little lump to the left.

MR. NICHOLSON: I am frank enough to confess in this case it would be a little lower—

MR. BULL: What was it in the other case?

MR. NICHOLSON: $225.

Q. Now, did his shoulder bother him very much, Doctor, while it was being splinted? A. Yes.

THE COURT: I presume it hurt him somewhat, but I do not know that it is necessary to spend much time on that.

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MR. NICHOLSON: Well, I cannot call the little fellow, so I shall have to get it from him.

THE COURT: How old was Alan at that time?

MR. NICHOLSON: Five.

Q. Were you hurt, Doctor, in the accident? A. Well, nothing shown on outside, but I felt very sore about two weeks —left-hand side and right side here.

Q. But you haven't made any claim for that? A. No.

Q. You knew Miss Sato before the accident? A. Yes.

Q. And you have seen the scars on the right side of her face above the ear? A. Yes.

Q. Were they there before the accident? A. No.

THE COURT: I don't suppose there is a lump on that collar bone there now. A. Yes, there is.

Q. It is gradually reducing, isn't it? A. It is reducing, but it is still there.

Q I know from experience with my leg it takes pretty nearly a year to get better.

MR. NICHOLSON: I think with a girl in a bathing suit it might be noticeable, but with a boy it would not detract very much.

THE COURT: What did you say about Miss Sato?

MR. NICHOLSON: I simply said the scars that are now on her face were not there before the accident.

Q. And how long after the accident was it, Doctor, that you decided to trade in your own car? A. You mean the old car?

Q. How long after the accident was it before you traded it in? A. Oh, about twenty days, I think, and I had to wait for five days for it to come in.

Q. Well, the repairs to your car were not completed at that time? A. No, because they had to get new material from the factory.

Q. They had to get new parts? A. Yes.

THE COURT: Did you get your car within the twenty days? A. No, twenty-five days. I wasn't quite sure, but this bill shows twenty-five, so it must have been twenty-five days after that I got it, because I had a car right away, the same day of the accident.

THE COURT. What you should have done was to change your mind every day and try out a new car for twenty-five days. It would probably have saved you money.

MR. NICHOLSON: I think at first he did not intend to buy a new car.

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Asa J. Fujiwara—Cross-Exam. Called for Pltff.

THE COURT: Go ahead with the cross-examination.

CROSS-EXAMINATION BY MR. BULL:

Q. You remember after you got around the curve and went on to St. John Street A. Yes.

Q. You say you took that curve very carefully? A. Yes.

Q. And slowed down to twenty to twenty-five miles an hour? A. Yes.

Q. When you got around that curve, what cars did you see on the road? A. Behind my car?

Q. No, in front of your car? A. None at all.

Q. Didn't you see a motor car? A. No.

Q. You didn't see that as soon as you got around the curve? A. Until they honked—there was no car in front of my car.

Q. There were no cars coming towards you on the road, were there? A. No.

Q. No cars in front of you at all? A. No.

Q. And you hadn't seen any cars behind you, even after you got around the curve until you heard a honk? A. Just the honk.

Q. You said, I think, to my friend, Mr. Nicholson, that you heard one honk and you don't think you heard any more? A. No.

Q. But you know Mr. Ogawa says he honked twice, don't you? A. I don't know.

Q. Didn't you read his examination for discovery? A. No.

Q. You didn't. All you heard was one honk? A. Yes.

Q. Although he might have honked more than once? A. I don't know.

Q. What is that? A. I don't know.

Q. You only heard one? A. Just one.

Q. But he might have honked more than once? A. I don't think so.

Q. But he might have done, is that right? A. I don't think so.

Q. And you saw this car—did you see it before you heard the honk? A. Pardon?

Q. Did you see the other car before you heard its horn? A. Repeat again, please.

THE COURT: Q. Did you see it—did you see the maroon car before you heard the honk? A. No.

MR. BULL: Q. It was the sound of the horn that attracted your attention? A. The reflection in my mirror.

Q. You used the rear vision mirror? A. Yes.

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Q. And then you saw the maroon car? A. Yes.
Q. Did you see any other car behind that maroon car?
A. No.
Q. Did you see any other car on the road? From the time you heard that honk until the time you landed into the telephone pole? A. On the road?
Q. Yes? A. I see one car away two hundred feet ahead of the maroon car—that is all I saw.
Q. You saw that after the accident? A. Yes.
Q. How is it you did not see it before the accident? A. Because it wasn't there.
Q. It wasn't there? A. No.
Q. Well, how did it get there? A. Which one?
Q. The one that you saw 200 feet beyond? A. I don't know. Maybe it is there before—maybe it came there after the accident.
Q. I think we had better have a plan.
THE COURT: Let me see if I understand what you said there, "After the accident, I saw another car about 200 feet—" in what direction does this road run?
MR. NICHOLSON: East and West.
THE COURT: 200 feet east of the maroon car? A. Yes.
Q. On the right-hand side of the road? A. Yes.
Q. In other words, it was coming west? A. No, the car faced to the east.
Q. It was facing east? A. Yes.
MR. BULL: Now, let us have these positions marked on this plan.

(PLAN MARKED EXHIBIT No. 4)

Q. You were coming from this direction—have you seen this plan before? A. Yes.
Q. You have.
THE COURT: That goes in by consent, I presume, Mr. Bull.
MR. NICHOLSON: Yes.
MR. BULL: This is Douglas Street? A. Yes.
Q. And the curve is back further this way. It isn't shown on the plan? A. No.
Q. When you were passing Douglas Street how fast were you going? A. About twenty-two to twenty-five.
Q. Twenty-two to twenty-five miles an hour? A. Yes.
Q. And where was your car when you first heard the horn behind you? A. Right here. This is the big—the right line on my side— I always coming here. I heard the horn and I was—

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Q. I am not referring to the road. I am referring to the distance past Douglas Street. Where were you down that way when you first heard the horn behind you? A. I can figure it out by my finger.

Q. This is the first pole you struck, you see? A. Yes.

Q. And these are the trees? A. Those are the trees. It must be along here.

Q. All right. Now.—

MR. NICHOLSON: Point 1.

MR. BULL: I will not mark it yet. I want to identify it first. Were you in the middle of the road or where? A. On the very right-hand side.

Q. Then you heard the horn? A. Yes.

Q. You are sure about that? A. Yes, because I moved two inch more to the right-hand side when I heard the horn.

THE COURT: I was on right-hand side.

MR. BULL: Q. Draw your car when you first heard the horn, will you—like a car.

MR. NICHOLSON: Block it in.

MR. BULL: Q. Block it in on the road. A. This is the centre?

Q. No, there is the centre there. Now, that is where you were when you first heard the horn? A. Yes.

(PLAN MARKED EXHIBIT No. 5)

Q. What is this?

THE COURT: Just a moment until I get my bearings.

MR. BULL: Perhaps I had better show your lordship the starting point, just past the letter "y" there and that is where he says he was when he heard the honk.

THE COURT: Now, that is Exhibit 5, Mr. Registrar.

MR. BULL: Q. Now, that is where your car was when you heard the horn behind you? A. Yes.

Q. And then you looked through your rear vision mirror? A. Yes.

Q. And where was the car that was coming behind you? A. About here.

Q. Block in the other car—that will be "B." A. I could not see, but I could hear the car.

Q. That looks like a little Baby Austin compared to yours? A. The same size—a little more behind.

Q. Well, let me rub this out and then we can start over again? A. Yes.

THE COURT: Mr. Bull, just let me have it the way it is on the notes or substantially the same. I was at—

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MR. BULL: "My car was at "A" when I heard the honk behind me."

THE COURT: Yes.

MR. BULL: "And I looked through my rear-vision mirror and saw the other car which is marked "B."

THE COURT: Yes, I think that gets me cleared up.

MR. BULL: Q. Now, by the way when you first looked in your rear-vision mirror and saw the car, you could not tell what color that car was? A. Oh, yes.

Q. What part could you see? A. I could see the fenders and part of the radiator.

Q. Well, the radiator would not be a maroon color, would it? A. No.

Q. And the fenders would not be maroon, would they? A. Yes.

Q. I thought it would be black? A. No, maroon.

Q. Is this car maroon all over? A. All maroon.

Q. Well, that is rather unusual. You have it that it is maroon all over? A. Yes.

Q. Now, what did you do as soon as you heard this horn? A. I might have moved two inch and not more, because I was already moved—I was always—when I drove on the highway, I always drive right close to the edge.

Q. And you moved two inches? A. Yes.

Q. That does not take up very much? A. No, because I haven't much time to move, because the speed was so fast.

Q. Now, I will leave out your little detour for the moment? A. Yes.

Q. And I will come now to the pole that you finally finished at. This is the one, isn't it? A. This too.

Q. That is the second one? A. Yes.

Q. We will pass that for the moment. I will mark this "C." Now, just so that your lordship can follow this, this is the pole away down here where he finally finished at.

THE COURT: He touched this one, though, did he not?

MR. BULL: Yes, I haven't taken him over his course, yet. It is away beyond St. John Street. I want to get this other motor car — the third one, you see, fixed. As I understand you when you first came around this curve and were going up here, there were no cars up here at all? A. No.

Q. You are quite sure about that? A. Yes.

Q. When did you first see that there was another car ahead of you on the road? A. After the accident.

Q. After the accident. Did you see that car pass you? A. No.

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Q. Do you know how it got there? A. No.
Q. And where would it be having regard to this particular electric light pole. How much farther on? A. It might have been along here somewhere.
Q. Now, after the accident—
MR. NICHOLSON: That is 200 feet.
MR. BULL: Q. The maroon car was parked here after the accident, was it? A. About here.
Q. Out in the middle of the road? A. Yes.
Q. About ten or twelve feet from the curb? A. Yes.
Q. Put it "D." That was the maroon car after the accident? A. No, you have got the wrong place.
Q. You fix it? A. This is it.
MR. NICHOLSON: You have it on the ditch.
MR. BULL: Where would you say it was? A. About there.
Q. Maroon Car? A. Yes.
Q. Mark that "D"—that is after the accident? A. Yes.
Q. And this other car was how many feet beyond that? A. Oh, about 200 feet.
Q. Now, this scale is twenty feet to the inch. That would be ten inches. That would not be on here, would it? A. No.
Q. Now, you say you saw this other car. Was it parked? A. Yes.
Q. In the same way as "D" was? A. Yes, something like it.
Q. Two hundred feet? A. Well, it is hard to tell the exact position, but I would say about there.
THE COURT: East.
MR. BULL: Q. Where was the maroon car after the accident—just about opposite this pole.
THE COURT: We should have numbered those poles—1, 2, 3, 4 and 5.
MR. BULL: It is marked "C." This is the maroon car after the accident.
THE COURT: My car was at point "C" and maroon car at "D" after the accident.
MR. BULL: Yes.
THE COURT: And where does he say the third car was?
MR. BULL: The third was about 200 feet east of "D." This map would not show it.
Q. Was it parked or was it moving? A. It was parked.
Q. And you don't know how it got there? A. No.
Q. You never saw anyone from that car when you were standing around after the accident? A. No.

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Q. But you are quite sure it wasn't there when you were coming along before the accident? A. Yes.

Q. Now, you say you were going from twenty-two to twenty-five miles an hours? A. Yes.

Q. Well, this other car, if it passed you, must of necessity been going considerably more than that? A. Yes, twice as fast as myself.

Q. Well, even to pass you it would have to go much faster than you? A. Yes.

Q. I mean it was not passing you at any unusual speed for a car undertaking to pass another, was it? Do you understand my question? A. Yes. Well, it should be an unusual speed.

Q. What is that? A. It should take unusual speed to pass another car.

Q. You mean it does take unusual speed to pass another car? A. Yes.

Q. And that was just going past you at the ordinary speed that one would take to pass another car, is that right? A. Oh, I don't know.

Q. If you had been in the maroon car— A. Yes.

Q. —and were passing the other car— A. Yes.

Q. At the rate you were going— A. Yes.

Q. —you possibly would have gone at the same rate of speed that the maroon car would pass you at? A. Yes, you have to put on more speed to pass another car.

Q. And there was nothing unusual about that? A. No.

Q. And you had plenty of room out here? A. Yes.

Q. It is quite a wide road. It is eighteen feet, isn't it? A. Yes.

Q. And as he was passing, you turned your head, did you, and looked at that car? A. No, I could see by sight because she was right here.

Q. No, but you were looking ahead, weren't you? A. Yes.

Q. And as the car was passing did you turn your head to the left? A. I don't remember that.

Q. You don't remember that? A. But I see it.

Q. Well, would you say you did not turn your head to the left? A. No, I don't think I have time to turn my head because it was so sudden.

Q. Well, when did you discover then that there were Japanese in the other car? A. Well, it was momentary. I see the Japanese were there.

Q. No, but where was the other car in relation to yours when you saw that there were Japanese in the other car? A. Sure—when they came from there I could see.

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J. F. Smellie
Registrar

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Q. Was it through your rear-vision mirror you saw that?
A. No.

Q. Was it by looking through the side of your car that you saw that? A. Yes, I think.

Q. So you must have turned your head to the left? A. I don't think very much, because they came right in ahead of my car. They came in front of my car.

Q. Well, then, you say you saw them through the front window of your car—was it from the windshield? A. Well, I don't know which one, but I saw black heads.

Q. But is isn't always Japanese who have black heads? A. Oh, but I could tell—because I am a dentist—I notice right away on the face, because it is the face that is most important for my practice.

Q. Well, were you loking into the faces of these people or at the back of their heads when you noticed they were Japanese? A. The side of their face.

Q. Well, then, you must have seen them when the front of their car was passing the front of your car, is that it? A. It wasn't quite past, but just same way.

Q. Well, was it before or after the impact that you say took place? A. Pardon?

Q. Was it before or after the two cars came together? A. You mean when I discovered the Japanese?

Q. Yes? A. Well, at that moment. I don't know how to explain, but it was at that moment when I seen the black head and brown skin.

Q. At what moment? A. The moment he struck my car. He made an acute curve— when he made an acute curve.

Q. So we heard that—

MR. NICHOLSON: Let the witness finish. Don't interrupt him.

A. When he made an acute curve— from the front seat of the car you could see very clear.

MR. NICHOLSON: Yes, all right.

MR. BULL: Q. And which one did you see, the driver or someone else? A. I don't think it was the driver— it was this side of the car—a person.

Q. Well, you could not tell it was a Japanese who was driving the car; it was someone else in the car? A. No, I could not tell that, but the Japanese was sitting there.

Q. Now, as this car passed you, you say it suddenly turned into you? A. Yes.

Q. And hit you? A. Yes.

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

Q. Well, if you did not know then, you don't know now, do you? A. Oh, yes, I know, because I seen the mark—you see the mark on my car.

Q. No, but what part of the other car hit you? A. Oh, I know now, because I see the mark.

Q. You saw the mark on the other car? A. Yes.

Q. We will come to that in a moment. You did not see what part of that car hit you, though, did you? A. No.

Q. In fact you did not see it hit you at all? A. Pardon?

Q. You didn't see the other car hit you at all, did you? A. Well, I feel— I see— I heard.

MR. NICHOLSON: He says he saw and felt it.

THE WITNESS: There is no noise when you—

MR. BULL: Q. Did you see it hit you? A. Yes.

Q. Well, what part of the other car hit you? A. Oh, about the middle of his car. I could not say exactly what part.

Q. About the middle of his car hit what part of your car? A. Well, I am not sure— about the left side of the front part of my car.

Q. Your fender? A. I don't know.

Q. Your bumper? A. I don't know.

Q. You have no idea? A. No.

Q. But you do know that it was the centre of the runing board of the other car, because you saw marks on that running board? A. Yes, that was after the accident we found that.

Q. And that is the only reason you say it was the running board that hit your car? A. No, I say the maroon car—the Japanese old car—and no other maroon colour car there—only one maroon colour there—no other.

Q. Well, you say you don't know what part of the maroon car hit you? A. When he hit me—when he make an acute curve I know he was going to hit me and I was kind of mad to look at it.

Q. You were what? A. When he made an acute curve he made it more like on purpose and it made me mad and I look at the curve and at that time I see the Japanese. I did not need to move my head, because he moved his car this way.

Q. And it made you mad? A. Yes, when another car make an acute curve towards your car.

Q. Well, what did you do when you got mad? A. What I do?

Q. Yes? A. Well, after they struck my car was forced into the gravel.

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Q. Forced into the gravel? A. Yes.
Q. It did not accelerate your speed at all? A. No.
Q. It did not upset you? A. No.
Q. And the wheels were still all four on the road? A. Yes. and my hands on the wheel.
Q. And your car was in perfect running order? A. I could not say that.
Q. Well, as far as you could see? A. Well, my car was going at a terrible speed after they hit my car.
Q. Then your car turned to the right? A. Yes, straight to the right.
Q. And went over the gravel portion of the road, which is 12 feet 6 inches wide, is that correct? A. Yes.
Q. And then over the boulevard which is 17—or along this boulevard and scraped these trees, didn't you? A. Yes, when I went over there.
Q. You scraped with your left-hand side this pole which is in front of the wooden steps. Your lordship can see that. You scraped the west side of that?
MR. NICHOLSON: Which would be west of the wooden steps.
THE WITNESS: I am not positive when I struck those steps.
MR. BULL: I have not come to the steps yet, but I think you said you scraped the poles—the left-hand side— A. Yes.
Q. And then you went along the sidewalk and went across the sidewalk and broke of some of these steps, didn't you? A. I don't remember that, but now I see that after the accident.
Q. You now know you did it? A. Yes.
Q. Broke some of these steps? A. Yes.
Q. And then came down on the sidewalk again and hit the pole at point "C"? A. Yes.
Q. Now, will you just trace your course in there from the point "A" here? A. Where are the small trees?
Q. Here are the small trees and you have to go to the right of that pole, rather? A. Yes. Where is the second pole?
Q. It is a long way to go, isn't it? And then you came up against this pole at the point "C," is that right? A. Yes.
Q. And that was what caused the damage to your car? A. Yes.
Q. And caused all the injuries to the people in the car? A. Yes.
Q. It was the fact that you went up against that pole? A. Yes.

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Q. And that is correct? A. Yes.
Q. Now, I think you said when you first went off the road you tried to put on your brakes? A. Yes.
Q. But you think now, because your car went twice as fast after it got off the road as it had been on the road, that you must have put your foot on the accelerator instead? A. Our brake was being broken.
Q. No, didn't you say that you must have put your foot on the accelerator? A. Yes.
Q. And that is what you still think? A. No, I still think both ways.
Q. Now, just a minute. I want to come and get just what you said, you see. You said, "I must have put my foot on the accelerator instead of brake." Isn't that correct? A. Yes.
Q. And that is what you think now? A. No, I am still thinking.
Q. Do you want to change that? A. No, I don't change.
Q. You don't change that? A. No.
Q. You still think then that you put your foot on the accelerator instead of the brake? A. It is very hard to say. It is very hard to figure out what I think.
Q. Your car went faster? A. Yes.
Q. So, therefore, you must have put your foot on the accelerator? A. Yes.
Q. And that is the only explanation, is it? A. Yes, now.
Q. Now, to come back to your movements again. Then you got past this first pole, which I think we had better mark "E".
THE COURT: Which pole do you mark "E"?
MR. BULL: This is the intermediate one, my lord.
MR. NICHOLSON: The first pole that he struck.
MR. BULL: It is the intermediate one of these three.
Q. Now, when you got up here and grazed this pole and then continued on on the sidewalk and hit the steps, my learned friend, Mr. Nicholson, asked you whether you put on your brakes betwen that point "E" and the point "C" and I think you said that you didn't, because you thought your brakes were not working, didn't you? A. Yes.
Q. And you explain that by saying that you had not stopped the car before? A. No.
Q. And you thought that you must have put your foot on the accelerator? A. Yes.
MR. NICHOLSON: That is what he thinks now.
THE WITNESS: Yes.

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MR. BULL: Q. But the fact is you did not put your foot on the brake betwen the point "E" and the point "C"? A. Well, my foot was there, but I did not give no attention—I give more attention to the hand brake.

Q. You gave no more attention to the foot brake. Your foot was where you put it first? A. Well, I don't know that. It might be there.

Q. You went at a pretty good rate of speed between the point "E" and the point "C", didn't you? A. Well, the speed was a little bit decreased after we hit this pole.

Q. I should think it would be. I should think striking any pole would stop you up a bit, but you were still going at a pretty good rate of speed along there? A. Yes.

Q. So your foot must have been still on the accelerator? A. It must be.

Q. When did you try to put on your hand brake? A. Right after.

Q. After "E"? A. Yes, after "E."

Q. And did you get it on? A. Yes. I got it on, but I could not stop.

Q. So your foot must have been still on the accelerator? A. Yes.

Q. So with one hand you were trying to hold the car back? A. Yes.

Q. And with your foot you were trying to send it forward? A. Yes.

Q. So it was a contest between the two as to which was going to win out? A. Pardon?

Q. Well, that is all right. I think you said at one time or other—perhaps it was on your examination for discovery—when you got past the first pole "E" you saw this maroon car and you were afraid you were going to hit it? A. Yes, when I was passing it—when I was going straight on the main road I seen the maroon car here.

Q. Before you hit the pole at "C"? A. Yes, just in a moment I seen the maroon car there and this car was moving and he was going to stop there and I seen it.

Q. And did that affect your actions at all? A. I did not want to hit this car and I think I twisted it a bit.

Q. And hit the pole? A. Yes.

Q. And you think you did all that to avoid running into the maroon car? A. Yes—from this "A" to "C" it was just a flash.

Q. That is about 190 feet, isn't it? A. Yes.

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Q. What did you say—it was just like a flash? A. Yes.

MR. NICHOLSON: "A" to "C" is 190 feet, not "E" to "C".

MR. BULL: Q. So you got down to the point "C" almost as quickly—that is from "A"—as the maroon car got from "B" to "D", did you? A. I don't know how they got there, but I seen this maroon car either moving or stopped, but I seen it just ahead of my car.

Q. And you are sure that is the first time you saw it? A. No, that is the second time I saw it.

Q. And the second time you saw it you were afaid you were going to move into it? A. Yes.

THE COURT: "C" is what again?

MR. BULL: "C" is the electric light pole what the plaintiff finally ran into.

THE COURT: All right, then.

Q. Now, I think you said—perhaps it was in your examination for discovery—that you managed to avoid hitting the pole at "E" by your steering gear? A. Yes.

Q. So you had that much control over your car? A. Yes.

Q. You could have done that. You were able to do that, is that right? A. Yes.

Q. Will you please explain, if you had your faculties about you sufficiently so that you could steer a course like that, why didn't you take your foot off the accelerator? A. How could I in the momentary time. I hadn't time to think. I just see the pole and when I was passing here I was thinking—my wife and children in back seat, I must not hurt, and if I move I hit this pole—it is gone and I tried not to hit this post.

Q. Well, when you were thinking of your wife and family why didn't you take your foot off the accelerator? A. I didn't have time to think that and my hand was on brake and I never thought it was on the accelerator at that time.

Q. Well, you must have known there was something wrong—you were going between twenty and twenty-five miles an hour and I think you said if you had applied your brake then you could have stopped within fifteen feet, if you had applied your brake? A. Yes.

Q. Is that so? A. Yes.

Q. Now, surely, you must have been driving a car long enough to know when you got off the road there and doubled your speed it was only acceleration that made you go so fast? A. Yes.

Q. I cannot understand and perhaps you can explain, why it didn't occur to you to take your foot off the accelerator?

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MR. NICHOLSON: He didn't know he had it on.
MR. BULL: You must not suggest that.
A. I was giving more pressure to the brake because I saw it was the brake—
Q. What you thought you were doing was giving pressure to the brake? A. Yes.
Q. Which you think was the accelerator now? A. Yes.
Q. On this car is the accelerator very close to the brake? A. Yes.
Q. Is it very close to the brake pedal? A. Yes, the brake pedal on the right-hand side of steering post and right next is accelerator.
Q. What sort of an accelerator is it? A. Automatic starter.
Q. What sort of a pedal is it? A. You know—like a foot print.
Q. Well, it is like a foot print, is it? A. Yes.
Q. And your brake pedal is something like the same, is it? A. Yes, square.
Q. Do they look alike? A. If your foot moves two or three inches—two inch to right side, your foot would be touching the accelerator, the same side as brake.
Q. In what respect is that different to an ordinary car? A. An ordinary car has more room.
Q. Is that so? In all these cars you are supposed to know when you have your foot on the brake and when you have it on the accelerator, aren't you? A. Yes, but if your foot there—there may be your foot touching there on the accelerator and at the same time as on the brake.
Q. Well, you were a little excited, weren't you, and you were mad too? A. Oh, maybe a little bit.
Q. You said you were mad and you said you got a little bit excited, too, didn't you? Did you get a little bit excited? A. No, I don't get excited very much.
Q. Now, you say you never had an accident before? A. No.
Q. Have you had one since then? A. No.
Q. Does anybody else drive your car? A. I beg your pardon?
Q. Does anybody else drive your car? A. No.
Q. You are the only one who drives it? A. Yes.
Q. What is the licence number of your car now? A. I don't remember.
Q. What? A. I don't remember.
Q. You don't remember the present licence number of your car?

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THE COURT: The plates?

THE WITNESS: No, I don't. I have to look at my car.

MR. BULL: Is it 71-316? A. Oh, that is another car. That is my old car.

Q. Oh, you owned that car on May 21st, 1936? A. Yes.

Q. Didn't you have an accident at 37th West and Blenheim Street at 5:45 p.m.? A. Yes, slight damage.

Q. Well, it was an accident, wasn't it? A. Oh, I don't call that an accident. It was a small one.

Q. A report was made that Mrs. Rogers who was in the other car was injured, wasn't she? A. No. she was not injured.

Q. And you estimated the damage to your car as between sixty and seventy dollars, didn't you? A. No, forty dollars.

Q. Who paid that for you?

MR. NICHOLSON: My lord, I don't see that this is relevant. I have no objection to my learned friend examining him on the issue of credibility, but surely he should not be allowed to pursue it any further than he has.

THE COURT: Oh, he has the right to examine him on credibility and can go quite a distance. It is all right so far. He had a slight accident on 37th and where?

MR. BULL: 37th Avenue West and Blenheim Street.

Q. That was a collision between those two cars, wasn't it? A. Yes.

Q. And you were driving? A. Yes.

THE COURT: On what date?

MR. BULL: On the 21st of May, 1936.

Q. Now, when did you find out the name of the driver of the maroon car? A. Right after the accident.

Q. And after you were told that, you rememberer it, I suppose? A. Oh, sometimes I forget. I have to look at my memorizing book to remember.

Q. Did you ever hear of Mr. Ogawa before? A. No.

Q. You never heard of him before? A. No.

Q. But you knew the other man, Mr. Siguchi before? A. Yes, I knew him.

Q. And who told you Mr. Ogawa's name — Mr. Siguchi after the accident? A. I don't remember who, because I was so excited on account of my wife. I don't remember at all.

Q. But, anyway, you were told Mr. Ogawa's name? A. Yes.

Q. Now, do you know a man—what is his name now, Mr. Imisuki? A. No.

Q. Mr. T. Imisuki who is the editor of the Daily People. Do you remember a paper called "Daily People"? A. I know the paper called "The Daily People".

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Q. You know the paper? A. Yes, three papers they all rang me up.

Q. And do you take the paper? A. No.

Q. Do you ever read it? Do you ever see it? A. I see, but I never read.

Q. You don't subscribe to it? A. Yes, I am taking it at house, but I never read—I read other papers.

Q. You take it in the house, do you? A. Yes.

Q. And how often is the Daily People published? A. Every day, I guess, except Sunday.

Q. Where is it published? A. Powell Street.

Q. Now, I want to show you the issue of November 12, 1935, two days after the accident? A. Yes.

Q. Did you see that copy? Did you see this particular one at your house? A. No.

Q. You see there is the one of Tuesday, November 12th? A. Yes.

Q. You can see that—the one that is outlined in red there? A. Yes.

Q. You can see that? A. Yes.

Q. You can read it? A. Yes.

Q. And you know that is an account of the accident that occurred to you? A. Yes.

Q. You have to turn it up that way? A. Yes.

Q. Did you ever see it before today? A. No.

Q. Did someone ring you up on the night of the accident? A. Yes.

Q. Did you know he was connected with the Daily People? A. Yes.

Q. And he asked you about the accident? A. Yes.

Q. Did you recognize the voice of the man who was speaking to you? A. No.

Q. Have you ever heard it before? A. No.

Q. Have you heard it since? A. No.

Q. So you don't know whether that was Mr. Imisuki or not? A. No.

Q Now, I am instructed that Mr. Imisuki rang you up, either the same day or the next day—either it was the same day or the next day he rang you? A. I don't remember whether it was the same day or the next day he rang me up. I am reading this, excuse me.

Q. All right, you go ahead and read it? A. Yes, all right, go ahead.

Q. Now, you have read that? A. Yes.

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Q. Now, I am instructed that Mr. Imisuki is the man who rang you up on behalf of "The Daily People" and asked you for particulars of the accident, and you gave him the particulars which are contained in that newspaper, did you? A. No, I don't give particulars to any newspaper. I just give him my name. That is all.

Q. You have read that account? A. Yes, this is wrong.

Q. Now, I may tell you I am going to call Mr. Imisuki? A. Yes.

Q. Now, you just follow that and tell me if this is a good translation of that account? A. Yes.

Q. Four Japanese injured? A. Yes.

Q. Yesterday morning Dr. Fujiwara's car was struck from behind by other car. Does it say that? A. Yes, and that is wrong.

Q. It says that, does it? A. Yes.

THE COURT: You do not suggest, Mr. Bull, that you ever had to give particulars to a newspaper. I thought they always suplied those free. Is that not correct?

MR. BULL: Q. "Yesterday morning Dr. and Mrs. Asojiro Fujiwara, dentist, and his family, and also Miss Teruko Sato of Mission City, left for Mission Clinic in their car." Is that correct so far? A. Yes.

Q. "At 9:30 a.m. at Port Moody, a car driven by a white man, with high speed struck Mr. Fujiwara's car at the back end and their car hit a telephone post." A. That is wrong.

Q. "Mrs. Fujiwara was injured on head, face and chest and was taken to the Westminster Hospital." A. Yes.

Q. "Mrs. Fujiwara regained consciousness at 7 p.m. and there is a probability of a rib fracture." Is that correctly translated? A. Yes.

Q. "Miss Sato was injured at two places on her face." A. Yes.

Q. "Noberniori, age 5, collar bone broken;" A. Yes.

Q. "Mitsuniori (15 years) had a few scratches and felt all right, but the next day he had toothache, and there seems to be he was struck at the jaw." A. Is that right? A. Yes.

Q. "Doctor himself was not hurt, but it was a terrible accident." A. Yes.

Q. Now, that is all correct, you say. But when he says "car driven by white man at high speed struck Mr. Fujiwara's car at the back end", that is wrong? A. That is wrong.

THE COURT: You are referring to the language in the newspaper and the translation.

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MR. BULL: Yes.
THE COURT: What I understand him to say is he has admitted your translation there.

(NEWSPAPER MARKED EXHIBIT No. 6)

MR. BULL: And the translation will be exhibit 7.
THE COURT: That is the newspaper "The Daily People" and the translation.

(TRANSLATION MARKED EXHIBIT No. 7)

MR. BULL: Now, I put it to you, witness, that the report as printed in that paper is the report that you gave to Mr. Imisuki? A. No.
Q. When he telephoned? A. No.
Q. But there is no doubt of the occasion. You remember the man who 'phoned you? A. I remember some of it—I don't know who it was.
Q. You gave particulars to somebody? A. No particulars except he hit my car.
THE COURT: Well, did you give—let us understand it—did you tell this person who rang you up everything that is in there except who hit the car? A. Except who hit my car—I don't say who it is—Japanese or white man.
Q. Did you tell him all about the injuries that were sustained? A. I don't remember.
Q. Well, that is what I want to know. You said a minute ago you did not give particulars to anybody? A. No.
Q. Did you or didn't you? A. I don't.
Q. Well, we are not asking you now as to the correctness of this, but what you told them? A. I told them I had accident.
MR. BULL: All right, let me have the translation again.
Q. You told him you had accident? A. Yes.
Q. And you told him the time of the accident? A. Yes.
Q. Where it took place? A. Yes.
Q. And who were with you in the car? A. Yes.
Q. And the names of those in the car? A. Yes.
Q. And gave the particulars of the injury of each of those who were injured? A. No, I don't think I give that, because I don't know.
Q. Well, this is correct: Mrs. Fujiwara was injured on the head, face and chest and was taken to New Westminster Hospital? A. Yes.
Q. Did you give him that information? A. Yes.

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Q. And she regained consciousness at 7 p.m. " and there is a probability of a rib facture." Did you say that "Miss Sato was injured at two places on her face." A. Yes.

Q. And one of your boys had a collar bone broken? A. Yes.

Q. And one of them had a few scratches and felt all right, but the next day had a toothache? A. No, I don't think I did say that.

Q. "And there seems to be he was struck at the jaw?" A. Yes.

Q. And did you say you yourself were not hurt? A. Yes.

Q. And you said it was a terrible accident? A. Yes.

Q. Well, we have the most of it there. Now, in discovery you remember you were examined for discovery a few days ago. At question 143—you were being questioned about this telephone conversation and this question was asked: "But you did tell him that the other car in the accident was driven by a Japanese?" A. Yes.

Q. Did he ask you the name? A. No, I can remember Ogawa, because I don't know his name. I can remember his name.

Q. But this man from the newspaper didn't ask you the name? A. Yes, he asked, but I said I don't know.

Q. But you told him it was a Japanese? A. Yes, even when he asked whose car it is, I don't know his name. I learn his name Ogawa about two days after; insurance agent come to my office and tell me his name Ogawa."

Q. Now, you learned his name was Ogawa right after the accident, didn't you? A. Yes.

Q. Why did you say that in discovery? A. It is hard to remember things in accident. I was quite excited when I see my wife's condition.

Q. No, it was after that you learned Ogawa's name. Did you forget it the next day? A. Yes, I had too many things to remember.

Q. Well when you first saw Ogawa and Siguchi after the accident—

THE COURT: Let me understand what he said there. You did learn Ogawa's name at the time of the accident and then you forgot it. A. Yes.

Q. And then somebody else told you about it two days later. Is that what you want to say? A. Yes.

Q. All right.

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Asa J. Fujiwara—Cross-Exam. Called for Pltff.

MR. BULL: Q. Now when you first saw Ogawa and Siguchi after the accident, what did you say to them? A. After the accident?

Q. Yes, after the accident? A. To Siguchi or Ogawa?

Q. What did you say to Ogawa? Did you say anything to him? A. I don't think I remember anything. I don't think I said anything.

Q. You knew then that he was the man who was driving the maroon car, didn't you? A. Yes.

Q. Why didn't you say, "What do you mean by running into me?" A. I don't think I said that.

Q. Well, why didn't you say that? A. I don't thing I said that.

Q. You didn't tell him—all the time you saw him there, you didn't say anything about him running into you? A. I was too busy running after my wife, I thought she already dead and I had no time to think of those things.

Q. Well, but after the accident you had time to go to the hospital and talk over all these things? A. I know Mr. Siguchi well, but I don't know Mr. Ogawa.

Q. And you never said anything to Mr. Ogawa about running into you? A. No.

THE COURT: And this place was at Port Moody, was it? A. Yes, at Port Moody.

Q. Now, in discovery at question 91: "Q. Did you have any talk with Ogawa after the accident? A. Yes.

Q. Did you know him before? A. No.

Q. What did he say about it? Where were you first when you had this talk? A. I was holding my wife. Four Japanese coming toward my side and soon I seen Japanese and few men there and I point out my finger to maroon car; whose car is that, I said, in English, and Mr. Ogawa answered by Japanese: "It is mine." And I asked him—that was about not right away, but when we started towards the hospital. That is all I say to him there.

Q. After that what talk did you have with Ogawa? A. I never talk after that.

Q. Never any more after that anywhere? A. No.

Q. Did you tell Ogawa he had made this turn, going like that (indicating). A. No, not to Mr. Ogawa."

So that is true you did not say anything to him at all? A. No.

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Q. And then he drove you to the hospital, didn't he, with your wife? A. Yes.

Q. Were you sitting in the front seat with him? A. No, back seat.

Q. Who was in the front seat with him? A. I don't know.

Q. Where was your wife? A. I was holding my wife in my arms.

Q. In the back seat? A. Yes.

Q. Well, then, it must have been Miss Sato who was in front. A. It must be.

Q. And there was conversation all the way going to hospital? A. No, I don't remember anybody—

Q. Well, how long does it take to go—twenty minutes? A. Yes.

Q. And no conversation at all? A. It might be somebody, but I never had conversation with anybody.

Q. Mr. Siguchi was there, too? A. Yes.

Q. And no one mentioned this accident? A. Just said, "Sorry, sorry, sorry, that is all."

Q. Who said that? A. Mr, Suguchi.

Q. Well, he was sorry your wife was hurt? A. Well, I don't know that he done much talking.

Q. Now, you say after you came back from the hospital you went over to where the maroon car was? A. Yes.

Q. With your boy? A. Yes.

Q. Which one? A. Wesley.

Q. That is the one age 15? A. Right.

Q. And with the Chief of Police? A. No, not first.

Q. And you were looking at the running board—on the right-hand side of that car to see whether there were any indications of its having hit your car? A. Yes.

Q. And you only saw the usual marks that you see on cars? A. Not the usual marks—fresh marks.

Q. And where was that mark? A. On the cover of the running board—outside of the steel on the running-board—rubber sheet.

Q. The rubber sheet? A. Yes, the running board is here and no steel showing outside and then there is one foot long on this corner here fresh marks—just something like this one on right-hand side running board.

THE COURT: On which corner? A. On this corner here.

THE COURT That does not mean a thing.

MR. BULL: Well, it would be at the top edge of the running board? A. Yes.

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Q. The rubber was not cut, was it? A. No.
Q. Just a little bit bruised? A. Yes.
Q. Which might have been caused by a curb, or anything? A. No, because it was fresh.

THE COURT: Q. How long was this rub? A. Oh, about twelve inches.

MR. BULL: And it was not severe enough to cut the rubber? A. No.

Q. Just a little chafing of the rubber? A. Yes.
Q. And then you saw your son put his fingers underneath the running board? A. No, I put my fingers there.
Q. And what did you find? A. I found two indentations in the steel.
Q. And how far apart? A. About twelve inch.
Q. And did you get down and see? A. Yes, I see the indentation from out this way.
Q. How big were the indentations? A. Oh, quite big—as big as thumb, and more than big as thumb.
Q. You didn't get your head down under and look at them, did you? A. Yes, I put my knee down.

THE COURT: And they were about twelve inches apart, do you say? A. Yes, the first one was slightly larger than the second one.

Q. You mean the one that was forward? A. Yes.

MR. BULL: What is that running board made of, steel? A. Steel and covered by rubber.
Q. It is not covered by rubber underneath, is it? A. No.
Q. Is it covered with anything underneath? A. No, except paint and Duco.
Q. Now, this was what you said on your discovery at question 113—111, first.

"Q. Just rubbed?" That is referring to the rubber. "A. Yes, just rubbed, brand new, so my son said, 'Something hit our car'. 'Something hit our car'." Is that what he said? A. I think so.

Q. "So I put finger underneath and I see deep indentation." A. Yes.
Q. You mean you felt indentation? A. No, I see with my eye, too.

Q. "So I put finger underneath and I see deep indentation." You saw that through your fingers, I suppose? A. No, with eye.
Q. Underneath? A. Yes.

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Q. "Q. Underneath? A. Yes. So I put my finger down and see it and when I slide my finger around, I see another one there and those marks, new marks, is one indentation of the beginning and one indentation of the end.

Q. You felt that with your finger? A. Yes."

A. Yes.

Q. Now, do you mean to suggest there that not only did you feel it, but you got down and looked? A. Yes, I got down on knee and looked at it.

THE COURT: What was the name of the Chief of Police?

MR. BULL: : Mackie.

THE COURT: Did he examine the car with you?

MR. NICHOLSON: He was called after that, my lord, and I might say I am calling the Chief of Police.

THE COURT: He ought to know all about it, if he knows his job.

MR. BULL: My lord, we have several witnesses on that question of marks on the car and I might inform your lordship that their evidence is quite diametrically opposed to this.

THE COURT: I think it must be, otherwise he would not be here defending it. There is no doubt about that. I am just looking up what this witness said in chief.

MR. NICHOLSON: My lord, I think this should be clear. There were two inspections of the car: One he made with his son and then there was another one he made with the Chief of Police.

THE COURT Yes, but you didn't go into very much detail in chief. You did not find out just how he saw those things or whether he did see them or not.

MR. BULL: Q. Now, when you got down underneath and looked under this running board, did you see a running board that was caked with mud as most running boards are? A. There was no mud there at all.

Q. There was no mud on that running board at all? A. No.

Q. Not a bit? A. No.

Q. Did you ever examine that car again? A. I did twice.

Q. On the same day? A. No. I did twice on the same day and I did again on the time of the trial.

Q. Of the police court hearing? A. Yes.

Q. Afterwards? A. Yes.

Q. And did you find anything on the day of the trial? A. No.

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Discussion

Q. And you suggest that it had been repaired, do you? A. No, I don't— it must be.

Q. All right.

RE-DIRECT EXAMINATION BY MR. NICHOLSON:

Q. My learned friend said — or questioned you as to whether or not you said anything to Ogawa about running into you and you said most of your talk was with Mr. Siguchi? A. Yes.

Q. Now you say you had known Mr. Siguchi before? A. Yes.

Q. For twenty years? A. Yes.

Q. Now, before you made an examination, or before any examination was made of the car at Port Moody, had you had any conversation with Mr. Siguchi about the car running into you? A. I made conversation at the hospital.

MR. BULL: I object to this, unless Mr. Ogawa was there. This is not proper re-direct examination.

THE COURT: No.

MR. NICHOLSON: I might say this, my lord: My learned friend very cleverly brings your lordship up to the point that he did not talk to Ogawa about running into him, but he carefully refrains from mentioning any conversation he had with Siguchi—this man whom he had known for twenty years.

THE COURT: I do not blame him for that, because Ogawa was not there and if you do not call the other man you cannot go into it. That is all.

(Witness aside)

MR. NICHOLSON: The next witness is the Chief Constable and before he is called I would like to put in certain excerpts from discovery.

THE COURT: You are getting towards the close of your case, are you?

MR. NICHOLSON: No, I have several other witnesses, but I would like these excerpts put in first.

THE COURT: Which ones do you wish put in?

MR. NICHOLSON: Questions 1 and 2; questions 10 and 13; questions 21 and 27; questions 32 and 33; question 42; questions 66 to 68; questions 77 to 79; questions 83 and 84; questions 91 to 93; questions 98 to 100; questions 106 and 107; questions

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132 to 141; questions 166 to 168; questions 179 to 183; questions 197 to 212; questions 216 and 217; questions 284 to 296. In each case inclusive, my lord.

THE COURT: Quite.

MR. NICHOLSON: Questions 1 and 2 are purely introductory.

THE COURT: You can skip those.

MR. NICHOLSON: Questions 10 and 13; they are also introductory. Questions 21 to 27; that simply identifies him with the ownership of the car and the drive along through Port Moody on the morning in question. Questions 32 and 33 establish the color of the car as a maroon-colored car. It is a Ford V-8 as appears in the earlier question. Question 42; questions 66 to 68.

THE COURT: All right, go ahead.

MR. NICHOLSON: (Reading same) Questions 77 to 79; questions 83 and 84; questions 91 to 93. That is the curve coming on to St. John Road, my lord. Questions 98 to 100; questions 106 to 107; questions 133 to 141; Now, here, my lord, it clears up the point."

THE COURT: Yes.

MR. NICHOLSON: "You mean of Dr. Fujiwara's car." That is the defendant's own language.

MR. BULL: Well, what is the significance of it? My learned friend is making some comment there.

MR. NICHOLSON: I simply made the comment to identify it.

MR. BULL: There is no doubt our car did pass the other.

THE COURT: However, this is not the time for comments.

MR. NICHOLSON: I just drew your lordship's attention to that bit of evidence. Questions 166 to 168; questions 179 to 183; questions 197 to 212; questions 216 and 217; 284 to 296.

THE COURT: All right, the next witness.

THOMAS MACKIE, a witness called on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NICHOLSON:

Q. Mr. Mackie, you are the chief constable at Port Moody?
A. I am.

Q. How long have you held that office? A. Nineteen years and four months.

Q. Do you remember being called to the scene of the acci-

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dent on St. John Street, or in Port Moody on the morning of the 10th of November, 1935? A. I do.

Q. That accident had occurred, I believe, between the intersection of Douglas Street and Elgin Street on St. John Road? A. It did.

Q. Now, when you arrived there what did you find, Chief? A. When I arrived there, there was a car against the pole and on the boulevard.

THE COURT: We will call it— A. The Chevrolet car—Dr. Fujiwara's car.

THE COURT: Dr. Fujiwara's car. There is no argument about it.

MR. NICHOLSON: The other car had gone to the hospital at that time.

THE COURT: Had it?

MR. NICHOLSON: Yes, my lord.

THE COURT: And you found his car where? A. By a pole on the boulevard, facing north.

Q. Yes? A. The injured—I saw the son, Wesley Fujiwara. He was there and I asked who was the driver of the car and he said his father and he said he had gone to the hospital with the injured.

MR. NICHOLSON: Q. Now, did you make an examination at that time, Chief, as to any marks on post and on the highway? A. On the post, yes—I saw the tracks, yes, where it left the highway.

Q. Where what had left the highway? A. Of Fujiwara's car, where it had left the highway. It came over a small tree that was on the boulevard.

Q. You say a small tree. How would you describe that? A. Oh, just a young growing tree—the branches very light and it crossed over the sidewalk and then went over the bank on the terrace and over the steps and came diagonally along and up against another pole and it was resting against that pole, the rear portion of the car.

THE COURT: Oh, it was turning north—back over the sidewalk again? A. Yes, and the right side of the car was against the pole.

Q. It didn't hit apparently head on? A. Partly head on because it had hit the pole and grazed past—more to the right of the car.

Q. Your conclusion from what you saw was that it had hit with the front end A. Yes.

Q. All right.

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MR. NICHOLSON: Q. Now, what is the width of the travelled portion of St. John Street in that block? A. There are eighteen feet of hard-surfaced road.

Q. Is that asphalt road? A. Yes.

THE COURT: Now, is it asphalt? It certainly does not look like it to be—that in the picture. Is it asphalt or black bitulithic? A. It is black tarvia.

Q. It isn't like the smooth asphalt we have in town here? A. No.

Q. That is what they call tarvia or bitulithic. It has a much rougher surface on it. You can see it in the picture? A. It is a hard-surfaced road.

MR. NICHOLSON: Q. And immediately to the right and left of the hard surface, what have you got? A. Well, it is soft dirt.

Q. The shoulders are gravel or dirt? A. Just soft dirt.

Q. They call it gravel on the plan. It is gravel and dirt, is it? A. Yes, just loose gravel and sand.

Q. Loose gravel and sand? A. Yes.

THE COURT: Is that sand deep? Is that material deep off the hard surface, or what kind of material is it? Just tell me a little bit more about it? A. Well, the side shouldering, it is soft, and it is the same height as the hard surface.

Q. Is it the kind of thing your wheel would go down in and disturb your steering? A. Yes, you could go down a little—but not when it is dry.

Q. Well, a man hitting it straight, how would it affect your steering? A. You could sink down.

Q Was it a dry morning, this morning of the 10th? A. Yes, it was a dry morning.

MR. NICHOLSON: It would affect your steering — it would deflect your steering into that soft surface? A. Yes, it would affect your steering.

Q. That is, if you were knocked off in a hurry? A. Yes.

Q. Now, did you mention the distance from the point where the Fujiwara car left the highway until it came to a stop? A. Approximately 192 feet.

THE COURT: This is from the starting point—the 192 feet across? A. Approximately.

MR. NICHOLSON: Q. And what is the distance from the point where he first went off until he grazed the first pole? A. After he left the highway until he grazed the first pole?

Q. Yes? A. It would be about ninety feet—about ninety feet.

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Q. Now, do you recall later that morning, Chief, Dr. Fujiwara and Mr. Ogawa, the driver of the other car that was involved in the accident and some other Japanese— A. Yes.

Q. —returning to Port Moody? A. Yes, I remember them returning from the hospital.

Q. You remember them returning from the hospital. A. Yes.

Q. Now, did you have a conversation with the defendant Ogawa? A. I only just asked him to make a report, and they both came down to the City Hall and made reports.

THE COURT: So when they returned from the hospital, what conversation do you say you had? A. I asked him to come down—

Q. You asked whom? A. Ogawa.

Q. Yes? A. And make out a report. After they parked down near the City Hall, a question arose about a mark in the fender—that was after they arrived at the City Hall in Port Moody, which was about three blocks away.

Q. Yes, what happened then? A. I examined the car along with them.

MR. NICHOLSON: Just a moment. What make of car was it, Chief? A. The other car?

Q. Yes, Ogawa's car? A. A Ford V-8.

Q. And its color? A. Maroon color.

Q. Yes, was Mr. Ogawa, the defendant, present when you examined that car? A. Yes, he was there.

Q. And Dr. Fujiwara and his son Wesley? A. Yes, and there were other Japanese—I don't know all their names who were there—several.

Q. There were other Japanese? A. Yes.

THE COURT: Yes, all right.

MR. NICHOLSON: Q. And what, if anything, did you find, Chief? A. We examined under the running board.

THE COURT: Q. The right-hand running board? A. The right-hand running board and there was a slight dent on the side of the running board.

Q. Just a minute now—the right running board, there was a slight dent in— A. In the rubber.

Q. In the rubber? A. The covering over that running board.

Q. That was on the surface, wasn't it? A. Yes, on the surface.

Q. What appearance had it, fresh or otherwise? A. It would seem quite fresh—just like a knock.

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Q. Any scraping or anything along there? A. I didn't notice any other scraping.

Q. All right, what else did you find? A. Underneath there was a fresh mark under the runing board and the steel plate part of it there was a slight hole in two places there and you could put your finger in there and feel it and there were two slight marks underneath that.

Q. What would you call them, indentations A. Yes.

Q. Underneath were two indentations? A. Yes.

Q. And you could put your finger in. How far apart were they? A. Oh, they might be six inches or seven.

Q. Did you get under and look at them? A. No, I just felt it. I didn't go down under.

Q. You don't know whether it was a scrape or knock? A. I couldn't say. It was just a slight impression there. The running board was close to the ground and I could not see under there.

MR. NICHOLSON: Q. You are sure there were two different indentations? A. Well, they felt like that to me.

Q. Now, while you made this examination you say that Dr. Fujiwara and Wesley and the defendant Ogawa and other Japanese were there? A. Yes.

Q. And was there any conversation in Japanese? A. They were talking in Japanese, but I did not know what they said. They afterwards went in and made out their reports at the Police Station.

Q. Now, do you remember the morning of Saturday, the 23rd? A. Yes.

Q. And the trial for driving to the common danger? A. Yes.

Q. Now, during the course of the hearing do you remember a question being asked as to whether there were indentations on the right side of Ogawa's car? A. Yes.

Q. And did you that morning during the trial attend with the Magistrate and with Counsel and examine the right side of that car? A. I did.

Q. And what did you find on that occasion yourself—that is on the morning of Saturday, the 23rd? I could not find the same marks then as I did on the morning of the 10th.

Q. Did you make a careful examination on the morning of the 23rd ? A. Yes—pushing that thing across the running board and I could not feel the same thing.

Q. You could not feel any marks? A. No.

Q. Now, did you—at the time of your investigation on the

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morning of the 10th, did you make a sketch of the scene? A. Well, not that morning. It was the day after, I think.

Q. The day after? A. Yes, or two days after it might have been.

Q. But while the marks were still fresh there? A. Oh, yes, yes.

Q. Have you that sketch with you?

MR. BULL: What is this?

MR. NICHOLSON: A sketch made by the Chief Constable immediately after the accident.

MR. BULL: Well, we haven't seen this, have we?

THE COURT: Shortly after.

THE WITNESS: It might have been within two days after.

THE COURT: He said while the marks were still fresh.

THE WITNESS: The marks could still be seen in the bank.

MR. BULL: No, we cannot agree to that, with these marks on it.

MR. NICHOLSON: I don't press it, my lord.

MR. BULL: We have got the distance on the notes.

MR. NICHOLSON: Oh, the course that the Fujiwara car followed during the first ninety feet when he went off the highway, was it sharp or otherwise? A. It was a gradual movement in a diagonal direction.

Q. A gradual movement in a diagonal direction? A. Yes.

Q. That is all. Just a moment. And the time of the accident, Chief—at least, what time did you arrive there? A. When I called, it was a quarter to nine, but it had happened about 8:30 before I was called. It was on St. John Street.

CROSS-EXAMINATION BY MR. BULL:

Q. Mr. Mackie, I want you to look at exhibit 2. This is a copy of exhibit 2—a photograph of the road there. Is that a fairly good one, would you say? A. Well, it shows the highway all right.

THE COURT: If you are in doubt you might put it under the light. You can take it over here and look at it, if you like.

MR. BULL: Is it a good photograph? A. Yes, it is similar to what it is there.

Q. Well, I don't suppose you can say anything better about a photograph than that. It shows it as it is. It is quite a wide road right there? A. Yes.

Q. And eighteen feet of that is hard surface? A. Yes.

Q. And beyond that we have ten feet of gravel? A. Yes.

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Q. And that is a good surface, too? A. Yes.
Q. And we see on that photograph the steps people have in front of their gates showing they drive their cars on that gravel? A. Right to the side.
Q. Well, you don't mean to suggest that there was anything in that strip that would make a motor car sink in? A. No.
Q. It is a good hard-surfaced road? A. Yes, a good shouldered road.
Q. Good hard gravel? A. Yes, you can pull in all right.
Q. Yes, and people habitually do it, don't they? A. They do there.
Q. Now, do you drive a car yourself? A. No, I don't.
Q. Never have driven a car? A. No.
Q. You examined the runing board of this Ford Car because you were asked to do it? A. Yes, by the others.
Q. By the Plaintiff's? A. Yes.
Q. Fujiwara—and you just described now the mark on the rubber as I understood you? A. Just a slight notch on the rubber.
Q. A little notch, was it? A. Yes.
Q. Was the rubber cut through? A. No, Just a dent in it.
Q. Well, there was nothing in that which would enable you to judge whether it was a new one or an old one? A. Well it seemed fresh then because the other was tramped over.
Q. How do you mean tramped over? A. Well, the matting—
Q. What? A. The rubber matting, it was quite fresh then.
Q. Yes, but this wasn't cut through? A. No, it wasn't cut through.
Q. As I understand you it was just a little notch? A. Yes.
Q. And it was such as some hard object might make by hitting it on a certain spot, is that right? A. Yes.
Q. You wouldn't say the rubber was scraped for a length of twelve inches? A. No.
Q. Or roughened? A. No.
Q. Nothing like that? A. No.
Q. Was it right in front of the front door, the one that you saw? A. About there, yes.
Q. Now, just about where you get into the car? A. Near there.
Q. Now, you didn't get down and look underneath this running board, did you? A. No.
Q. So you don't know what it looks like underneath there? A. No.

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Proceedings at Trial

Thomas Mackie—Cross-Exam.	Called for Pltff.
Thomas Mackie—Redirect-Exam.	Called for Pltff.

Q. You just put your finger under there and you felt two little depressions there? A. Yes.

Q. Which might have been caused by anything? A. Yes.

Q. And it might have been caked mud on it, might it not? A. It didn't feel like anything like that.

Q. Well, it might have been two holes in the caked mud? A. Oh, it was a little deeper than that.

Q. How much deeper? A. Well, you could distinctly feel it underneath.

Q. And did you feel on the other side of the car to feel if there were any there? A. No.

Q. You remember after this common-danger hearing you examined it again? A. At that hearing.

Q. And you could not find anything there? A. No.

Q. Were you there when the mechanic was called to inspect it? A. He was there, but I didn't see him inspect it.

Q. Clem Carter—do you know him? A. Yes.

Q. He is a mechanic up at Port Moody? A. Yes.

Q. And he was called there to inspect it, wasn't he? A. Yes, he gave evidence.

Q. He gave evidence? A. Yes.

Q. And he is a reliable sort of fellow, I suppose? A. As far as I know.

RE-DIRECT EXAMINATION BY MR. NICHOLSON:

Q. After Clem Carter was called as a witness in the common-danger hearing, you were called in rebuttal, were you? A. Yes, I believe I was.

MR. BULL: Now, there is another thing I wish to ask. After that common-danger hearing you called at the place of business of the Defendant Ogawa, didn't you? A. I did.

Q. The next day, wasn't it? A. Yes.

Q. What was your purpose in doing that? A. Well, to change his driver's license.

Q. To change his driver's licence? A. Yes, because he got away from the court before he got his blue one.

(Witness aside)

MR. NICHOLSON: Do you think it likely it will be necessary for the Chief to come back tomorrow?

THE COURT: As far as I am concerned, it is not necessary for him to be here and the only person who would want him would be myself. I was just wondering if I want to ask a

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Asa J. Fujiwara—Recalled

Called for Pltff.

question. Oh, yes, Dr. Fujiwara, I want to ask him one question, and I think I will get it off my mind now.

ASA J. FUJIWARA, resumed stand.

THE COURT: Doctor, you looked underneath the running board at that time. Tell me exactly what you saw? Tell me first how did you look—did you put your head under the running board? A. Yes, I put knee down on ground.

Q. And then you curled your head around? A. Yes, exactly—this way (illustrating).

Q. Tell me exactly what you saw—just with regard to these indentations? A. I saw fresh indentations there—two there.

Q. Why do you say it was fresh? A. Because there was the paint and the duco being moved.

Q. Was it ducoed underneath? A. Well, I don't know whether it was ducoed or not, but slightly painted—not exactly maroon, but just showing a little lightish color.

Q. And you say these indentations were about twelve inches apart? A. Yes.

Q. Now, what else did you see under there if anything with regard to the markings? A. Nothing at all—just these two indentations.

Q. Well, were these two indentations connected in any way? And was there any mark between them? A. No.

Q. No scraping between them? A. No, but there was scraping outside the rubber.

Q. I know that, but I just wondered if there was any scraping between the two indentations—if there was anything dragged there—and you say not. That is all, thank you.

MR. NICHOLSON: I am not sure whether this witness was questioned as to whether there was any mud there when he looked under.

MR. BULL: He told me there was no mud there.

(Witness aside)

THE COURT: We will adjourn until eleven tomorrow.

(4:30 p.m. Court adjourned until 11 a.m., January 19, 1937)

I HEREBY CERTIFY the foregoing to be a true and accurate report of the said proceedings.

"E. BLYGH"
Deputy Official Stenographer.

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Proceedings at Trial
Clifford Eugene Hygh—Direct-Exam. Called for Pltff.

Vancouver, B. C., January 19, 1937; 11 a.m.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. NICHOLSON: I will call Mr. Hygh.

CLIFFORD EUGENE HYGH, a witness called on behalf of the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NICHOLSON:

Q. You are the shop foreman, I believe, Mr. Hygh, of the Stonehouse Motors Limited? A. Yes sir.

Q. And your firm's place of business is on Georgia Street West? A. Right.

Q. In this City. How long have you occupied the position of shop foreman of that firm? A. Approximately 5 years.

Q. Now in November of 1935, did you inspect a car belonging to the Plaintiff Dr. Fujiwara? A. I did.

Q. It was brought into your shop, I believe around the 11th or 12th November? A. Yes.

Q. Now did you personally check the damage? A. I did.

Q. Was the car repaired? A. It was, sir.

Q. Under your supervision? A. Under my supervision.

Q. Have you with you your daily and your reports to show what the damage to that car consisted of, and what repairs were necessary? A. I have.

Q. Would you tell us, please, the nature of the damages and the other particulars. A. The estimate given on the car was $418.85.

THE COURT: Q. Estimate, $418? A. 85 cents.

MR. NICHOLSON: Q. How was that made up, divided between labour and parts, Mr. Hygh? A. There were General Motors parts of $124.54.

THE COURT: Q. $124.54, yes? A. Accessories, $10.24.

Q. Yes? A. Tire and tube, $15.75, oil $2.25.

Q. $2.25? A. Right. Gasoline, 58 cents; outside work of $71.95.

Q. Outside work? What do you mean by that? A. That consisted of straightening the frame, front end, alignment and wheels.

Q. Outside work $71? A. 95 cents. There was mechanical labour of $48, and fender shop labour of $145.54.

Q. Shop labour? A. $145.54.

Q. Yes? A. That is the total, $418.85.

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MR. NICHOLSON: Q. Now when was work commenced on the car, Mr. Hygh? A. November 13th.

Q. November 13th.

THE COURT: Q. The 13th, you said? A. Yes.

MR. NICHOLSON: Q. How long did it take? A. It took three weeks to complete it.

Q. Would you describe the nature of the damage to the car? A. The car was damaged on the left side and the right front corner.

Q. The car was damaged on the left side and right front corner, yes. What about fenders? A. The two front fenders were damaged beyond repair.

Q. The running-board? A. The left side running-board was smashed, and also the right side.

THE COURT: Q. Just a moment. Both running-boards? A. Yes.

Q. Smashed? A. Yes.

MR. NICHOLSON: Q. The radiator? A. The radiator shell and radiator core and grill work pushed in.

THE COURT: Q. The radiator shell, core and what? A. Yes.

Q. And what? A. And grill. The grill, core and shell—the grill. The steering-gear assembly was damaged. That consists of the steering column and the front axle, and the water pump assembly was damaged, and there was a new front bumper which was damaged beyond repair, and the new front wheel.

MR. NICHOLSON: Q. Which one? A. I believe it was on the right-hand front corner, and there was a new engine hood.

THE COURT: Q. Just a minute. Pretty nearly a new car? A. And a new windhshield, and two new front fenders, and one new door glass.

Q. Two what? A. Front fenders, and one door glass.

Q. Yes.

MR. NICHOLSON: My learned friend suggests, my lord, we put in a copy of the bill Mr. Hygh has there in his hand.

THE WITNESS: I still have another page.

THE COURT: Does it speak for itself? Does it tell us the story?

MR. BULL: I think so.

THE COURT: All right put it in.

(ACCOUNT MARKED EXHIBIT 8)

MR. NICHOLSON: Q. Now are the charges contained on this bill here, Exhibit 8, Mr. Hygh, reasonable charges for

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the labour and for the parts and accessories furnished, and so on? A. Yes.

Q. Now you say the car was repaired? A. Yes.

Q. Was the car returned to Dr. Fujiwara after it was repaired, or if not, why not? A. We kept it. We sold him a new car.

Q. You sold him a new car? A. We took that one in trade.

Q. Did you take it in as a fully repaired car or a damaged car? A. A fully repaired car.

Q. What did you allow him? A. $675, the market value at that time.

Q. The $418.85 was taken into on that $600 odd figure. A. Yes.

Q. Now this car, I believe, was a 1933 Chevrolet? A. Yes.

Q. And I believe the Stonehouse Motors are the Chevrolet dealers in the City? A. Yes.

Q. Do you in your capacity as shop foreman for that firm have much to do with Chevrolets? A. Quite a bit.

Q. Do you have much to do with Chevrolets of that particular year? A. Yes.

Q. Would you describe to the court, please, the position of the foot brake and the accelerator in that particular car? A. I have a little sketch here. The foot accelerator—

MR. NICHOLSON: It is quicker than having him draw one.

MR. BULL: Yes.

MR. NICHOLSON: Q. This sketch that you have produced here, my learned friend has seen it here and I am going to ask it be filed as the next exhibit. It isn't objected to.

(SKETCH MARKED EXHIBIT 9)

Q. Now, Mr. Hygh, will you just explain to the Court here —come around here for a moment, please. On this exhibit 9 you show here, clutch pedal and steering shaft? A. Yes.

Q. Brake pedal? A. Yes.

Q. And a shaft here vertical, while the others are flat? A. Yes.

Q. What does this drawing with the lines on it represent? A. It is corrugated rubber. Also the pedals are corrugated.

Q. The brake pedal and the clutch pedal are corrugated, and the pedal, or rather this part of the equipment immediately to the right of the brake pedal, is also corrugated rubber? A. Yes.

Q. What does it represent? A. The pedal here?

Q. Yes. A. It represents the foot throttle.

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Q. What is near the clutch—the accelerator? A. Yes.

Q. What is the distance between the right side of the brake pedal and the accelerator? A. 5/8ths of an inch. When you push the pedal down there is a clearance between the two of 5/8ths of an inch.

Q. From your experience in the handling of Chevrolet cars, do you know whether or not drivers in putting down the brake pedal and attempting to apply the brakes have applied the accelerator instead?

MR. BULL: I object to that.

MR. NICHOLSON: This witness can state that. He has had extensive experience with this type of car. I will ask the witness if he has had the experience himself.

MR. BULL: I don't know on what grounds that would be admissible even if this witness had that experience.

MR. NICHOLSON: My learned friend has raised in the pleadings an issue of whether or not the plaintiff Dr. Fujiwara acted reasonably or otherwise after his car left the highway on the occasion in question, and I submit that the experience others have had, particularly an expert with the experience Mr. Hygh has had with the handling of cars of this make, that it is an important element for your lordship to take into consideration when you consider whether or not this plaintiff acted reasonably on this occasion.

MR. BULL: The defendant hasn't stated any principle or rule on which evidence of that kind can be admitted. There is nothing in the pleadings to that effect, that he was driving a defective car.

MR. NICHOLSON: I am not suggesting he was driving a defective car.

MR. BULL: One that shouldn't be turned out on the roads at all. I don't know whether this witness is going to say that about his car or not, but whether he does or not, it isn't in issue. The Plaintiff says, "I put my foot on the accelerator instead of the brake", and my friend is trying to show that numerous other people have done that—

MR. NICHOLSON: I am sorry.

MR. BULL: —against every rule of evidence.

MR. NICHOLSON: I submit, my lord, with respect that to prove the capacity to cause a certain occurrence—this evidence is admissable, and I have here the Canadian Encyclopedic Digest: "the tendency . . . similar things."

THE COURT: I will tell you. There is no jury present and we will take it subject to the objection, and I will consider

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it. I do not know that it makes much difference anyway. He may be driving a defective car, but however, go ahead.

MR. NICHOLSON: Q. Now would you tell the Court—

MR. BULL: Of course, it is hearsay of the worst kind. He is going to say he heard of it, and so they did a certain thing.

MR. NICHOLSON: Q. I will ask the witness if he ever had that experience himself then. A. Yes, I have.

THE COURT: I have Mr. Bull's objection, but going further than that is not probably sound. I do not think there is any doubt about that.

MR. NICHOLSON: I will ask this witness.

THE COURT: His own experience, I think.

MR. NICHOLSON: Yes, and anything he has actually seen himself.

MR. BULL: Oh, no, no.

MR. NICHOLSON: It isn't hearsay evidence if he has seen it.

THE COURT: It is not hearsay if he has actually seen it, if he can go that far, but to say the result or tell us what occurred, that he cannot do, clearly.

MR. NICHOLSON: Q. What experience, if any, Mr. Hygh, have you had with the application of brakes on this particular type of car of this year? A. Oh, it is quite a common thing to have your foot slip off it. I have had it happen to me in the shop. It is quite easy to slip off. I have had it happen in the shop many a time.

THE COURT: Q. There is no more than the average car would be? A. There is no more, no.

Q. There is no more on any car? Is it not always possible to slip from the foot brake to the accelerator? A. Yes.

Q. That is why they make them with corrugated, is so your foot will not slip. The reason, I think, is and I see the man's view, it is rather bothersome? A. I prefer that it is not made of corrugated rubber. The rainy weather and with feet wet, it is very easy to slip off the corrugation runing the same way as the pedal.

Q. Horizontally instead of vertically? A. Yes.

MR. NICHOLSON: Q. Now has this particular car, a 1933 Chevrolet, a quick pick-up or not? A. Yes, it has quite a fast pick-up. It is a high speed motor.

Q. Can you give us any idea how quickly it can pick up assuming it was going along a highway at a speed of 25 miles an hour and something happens, and the foot is put on the accelerator instead of the brake for a distance of say 70 to 80 feet?

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What would you expect would be in the increase in speed of say 100 feet? A. It is pretty hard to give an exact figure. A lot would depend on the circumstances, but it would certainly pick up a great deal in that distance.

THE COURT: I think that is as far as you can go on that. It depends on pressure, and so forth. It is a high speed car. It is a difficult point.

CROSS-EXAMINATION BY MR. BULL:

Q. In exhibit 9 you have drawn a sketch of these three pedals, which simply shows the superficial area of each, isn't that correct? Looking down at the top of each of them? A. Looking right at it, yes.

Q. Of course, the brake pedal and clutch pedal are much higher from the floor than the accelerator? A. Yes.

Q. Several inches higher? A. Yes.

Q. The accelerator is quite close to the floor? A. Well, the bottom is hinged to the floor, and the top is about 2½ inches off the floor.

Q. No one used to driving a car, say a person who has driven this model of a car for 18 months, wouldn't do anything about where he had his foot on the brake or on the accelerator? A. I couldn't say as to that.

Q. What do you think yourself? A. It depends on the circumstances.

Q. If you were driving this car for eighteen months steadily, you would know when you had your foot on the brake and when you had it on the accelerator? A. It would depend on the circumstances very much.

Q. What do you think? A. If I was driving along naturally I would know.

Q. If you were not driving naturally—you say driving naturally. A. Just the everyday driving.

Q. Take the speed— A. In the case of an accident, if someone hit me, for the moment I wouldn't take my foot off the throttle.

Q. I am not asking about an accident. I am not asking about any accident at all. I am taking the case that you know this car, having driven one for 18 months steadily, and I am simply asking you if you have any doubt in the world as to whether you would have your foot on the foot-brake or on the accelerator. A. Driving on the straight I would know right away.

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Wesley M. Fujiwara—Direct-Exam. Called for Pltff.

Q. If you wanted to put your foot on the brake you would know where to put your foot? A. Yes.

Q. If you wanted to put your foot on the accelerator, you would know where to put your foot? A. Yes, certainly.

Q. There is nothing unusual about that car, is there? A. The same as any other car.

MR. NICHOLSON: Q. But you qualified your remarks to my learned friend by saying that is under ordinary circumstances? A. That is under ordinary circumstances, yes.

Q. In the case of an accident or where you found yourself, with all the experience you have had, you became excited, you see, different considerations—

MR. BULL: This isn't re-examination; it is cross-examination. My friend is putting words in his mouth.

THE COURT: It is pretty close to it, Mr. Nicholson.

MR. NICHOLSON: I will re-phrase my last question.

THE COURT: You want to be careful about re-examination.

MR. NICHOLSON: I submit this arises directly out of the cross-examination.

THE COURT: You cannot cross-examine on anything that arises on cross-examination. I think I would let it rest where it is.

MR. NICHOLSON: All right.

THE COURT: You may talk about what the witness said. I know about what happened.

(Witness aside)

WESLEY M. FUJIWARA, one of the Plaintiffs herein, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NICHOLSON:

Q. You are one of the plaintiffs in this action, witness? A. Yes.

Q. Speak out, please. Now you remember the morning, the Sunday morning the 10th November, 1935? A. Yes.

Q. And the trip which your father and mother made? A. Yes.

Q. To Port Moody that morning? A. Yes.

Q. You were on your way to Whonnock? A. Yes.

Q. You know the accident which is the subject of this action here? A. Yes.

Q. Would you just describe in your own words what happened after you took the turn on to St. John's Road in the City

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of Port Moody? A. Well, after turning that corner we started to accelerate slowly as we had slowed down to the corner. I don't know exactly how far we went, but we must have been going about 25 miles an hour when I saw the other car start to pass us.

Q. Yes. You were sitting, Wesley, in the rear seat, I believe? A. Yes, I was sitting in the rear seat on the right-hand side.

Q. Do you recall whether or not there was any horn blown? A. No, I don't remember hearing a horn.

Q. But you did see another car? A. Yes.

Q. Do you know the colour of that car? A. I don't know exactly—sure—of the car, but I know it was a fairly dark colour.

THE COURT: Q. When you say a fairly dark colour, what do you mean by that? A. It could have been dark blue. I don't think it could have been black. It could be dark blue, dark red or dark brown.

Q. You did not look very hard? A. I didn't see the body part. I just saw the door as it came abreast of us, and I looked over and saw the occupants were Japanese. The one nearest to the window had his face slightly turned in my direction, and I recognized immediately it was Japanese who were passing us the way cars usually pass another car, but when the front end of the other car started to pass the front end of ours it suddenly swerved in and cut right in front of ours, and it was about the centre of the car that bumped the left hand front corner of our car.

THE COURT: Q. The centre of his car bumped what? A. The front left corner of our car.

MR. NICHOLSON: Q. Did you see that or feel it, Wesley? A. I didn't actually see the impact there, but I felt it and heard it.

Q. You didn't actually see the impact, but you felt it and heard it? A. Yes.

THE COURT: "I felt and heard but did not see impact."

MR. NICHOLSON: Q. Did you estimate the speed of the other car at that time, Wesley? A. I didn't estimate it at that time, but afterwards. I don't know exactly how fast a car would have to go to pass another one, but I know it went at a fairly good rate of speed. There may be perhaps a shade faster than the speed an ordinary car would pass another one, but I couldn't give you an exact figure there.

Q. Now just go on then. What happened? You felt the impact? A. I felt its impact.

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Q. Just pardon me before you go on. At the time you felt the impact, where was your car travelling? Were you on the hard surface? A. We were right over to the right-hand side of the road so other cars can pass right away.

Q. Were you on the hard surface or on the gravel? A. Well, I don't know about that. I couldn't be sure of that.

Q. Well, just go on then. A. I felt the car lurch.

THE COURT: Q. Just a minute; yes. A. And we were jolted right off the road, and the next moment I remember we were bouncing up and down on the boulevard there and going at— we suddenly seemed to speed up there, and I remember a small tree about 2 inches in thickness suddenly disappear in front of the car. Then I remember we scraped the first telephone pole. We scraped it pretty hard there, and it made a loud—

THE COURT: Q. Just a minute. The right or left-hand side of your car? A. With the left-hand side of our car.

Q. Where did you touch it—with the bumper or fender or running-board, or what? A. It was the whole side of the car. It just scraped it right there. There was a pretty hard impact there and it scraped about 4 inches thickness off the whole car.

Q. What? A. It scraped 4 inches thickness and crumpled up the car. I looked afterwards and saw it was crumpled.

Q. You mean it crumpled the fender in 4 inches. A. Yes.

Q. Excuse me, is this the first bump? A. This is the first bump, yes.

Q. Yes. A. So after that telephone pole I remember we were on the sidewalk, and the next thing we were on the slope of the lawn. The right wheels run up the lawn there, and we came back on to the sidewalk again. After, I don't remember anything clearly. In fact I don't remember anything at all, except I remember I got a sickening feeling all over, and the next thing I remember I was picking myself up off the boulevard. There was about 10 feet from the car and the telephone pole—

Q. What? A. The second telephone pole.

Q. About how far? A. About 10 feet.

Q. From what? East of the telephone pole, did you say? A. Yes, about east. After that, things seemed to be sort of vague to me. I vaguely remember there was sort of a maroon-coloured car parked, it was right close to the telephone pole there. I am not sure whether it was ahead of it or in line with it, and there seemed to be quite a few people around there.

Q. A car parked? A. I remember Miss Sato's face was bleeding pretty badly, so I was wiping it with my handkerchief. Then all those injured people were bundled into the maroon-

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coloured car. My Dad was carrying my Mother, and then they went to the hospital. They left behind two of the Japanese passengers there.

Q. Who? A. Well, I don't know what their names are.

Q. You were left behind, were you? A. I was left behind.

MR. NICHOLSON: Q. You mean two passengers from the other car? A. Yes, I mean two passengers from the other car, and I was left behind from my car.

THE COURT: Q. Those were all the people that were there belonging to the two cars there? A. I think there were a few people around there. There were about two or three around there.

Q. They did not belong to the two cars? A. No.

MR. NICHOLSON: Q. Now you remained there, I believe, Wesley, until your father returned from Westminster? A. No, I didn't remain there until my father returned from Westminster. The Rev. Dr. Akagawa came down there after some time, I think and he took me to the hospital.

THE COURT: Q. Rev. whom? A. Akagawa.

MR. NICHOLSON: That is the United Church Minister whom the father spoke about yesterday, Akagawa.

THE COURT: Akagawa took him to the hospital.

THE WITNESS: And from there Rev. Dr. Akagawa took my father and myself back to the scene of the accident. Oh, at the time of the accident I remember I sat down on the front seat, because I was feeling sort of nervous right then, and I sat down on the front seat.

THE COURT: Q. That is after the accident? A. Yes, soon after the accident.

Q. In your own car? A. Yes, in the wrecked car. I was feeling sort of weak and nervous.

Q. That is before you went to the hospital? A. Yes. So I sat in the front seat and I noticed that the hand-brake—

Q. Yes? A. I noticed that the hand-brake was pulled back as far as it would go.

Q. Yes? A. Before Rev. Dr. Akagawa came, Chief Mackie came from the Police Station, and he asked me the particluars of the accident there. He asked me why my Dad—

Q. You cannot give this unless Ogawa was there. Was he there? A. No, Ogawa was over at the hospital.

THE COURT: You cannot tell what he said in his absence.

MR. NICHOLSON: Q. After your father returned with Dr. Akagawa, did you see Mr. Ogawa and Chief Mackie? A. Oh, yes, I saw Chief Mackie there.

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Q. Yes. A. I am not sure whether Mr. Ogawa was there, but still, either Mr. Ogawa or Mr. Uchi was standing at the Ford car. It was parked close to the Police Station.

THE COURT: Q. That maroon-coloured car? A. Yes.

Q. This was after they returned? A. Yes.

Q. Yes. A. I know there must have been some mark on the car because a bump like that would have to leave some mark.

MR. BULL: I think if the witness would state what he saw, and not give his conclusions, that he formed in his mind, that would be much better and still conform to the rules of evidence.

THE WITNESS: I looked at the fenders, and there were some scratches there, but they were rusty.

MR. NICHOLSON: Q. You looked at the two fenders of the maroon car? A. Yes.

Q. Ogawa's car.

THE COURT: Q. You saw two scratches, but they were rusty? A. There were several scratches, but they were all rusty.

Q. Yes? A. I remember it was about the centre of the car that hit ours, so I looked at the doors and running-board.

Q. Yes? A. There were no marks on the doors, but on the running-board I found, I think it was two fairly deep gouges on the rubber matting or rubber covering.

Q. Two what? A. Two gouges.

MR. NICHOLSON: Q. Was the rubber itself cut?

A. You couldn't say it was cut. It was sort of gouged out a bit, and the rubber was sort of gouged and there were shreds—small shreds of rubber here and there, still clinging to that gouge there.

THE COURT: Q. You say that gouge there. Were there one gouge or two gouges? A. There were two gouges. There was one gouge, and then about a foot behind that one was another gouge.

Q. And the running-board, was this on the right or left? A. The right running-board.

Q. Tell me a little more about these gouges, just exactly what they looked like. A. When I saw them my attention was drawn to them right away, because you could tell that they were fresh. They didn't have that even film of dirt and sort of dusty mud these running-boards usually have. It was dark and fresh. You could see the fresh rubber underneath the piece—well, the other part of the rubber had an even film of dirt and dust on it,

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but this gouge didn't have any dirt, dust or grime. That is about all I can say about those gouges.

Q. All right. A. Then my Dad happened to be there with me, so I drew his attention to those gouges.

MR. NICHOLSON: Q. Did you do anything further yourself? A. I am not sure after that whether I put my hand underneath there or not. I couldn't say exactly, but my Dad felt underneath there and looked underneath there.

THE COURT: Q. You do not remember whether you did or not? A. No, I don't remember whether I did or not.

Q. All right. A. Then my Dad went to get Chief Mackie from the Court House. He came down with the four other Japanese passengers from the maroon-coloured car.

Q. He came, yes. A. I showed him these gouges there.

Q. Showed— A. To Chief Mackie.

MR. NICHOLSON: Q. In the presence of the occupants? A. Yes, in the presence of the four occupants of the other car.

THE COURT: Q. Including Ogawa? A. Well, I didn't know Ogawa there because the whole occupants were there.

Q. Yes. A. I showed—oh yes, Chief Mackie put his hands underneath the running-board there and felt the two deep indentations in the steel.

MR. BULL: My lord—

THE COURT: I got you, Mr. Bull, before you start. This witness cannot tell that.

MR. BULL: He didn't put his hands under himself.

THE COURT: He does not remember whether he did.

MR. BULL: However, it is only—

THE COURT: All he can say is he saw Chief Mackie put his hands on the running-board. He does not know what he felt unless he said something, unless he said something in the presence of the defendant.

THE WITNESS: I think I felt—a week after at the summons I felt underneath those same gouges and those indentations were there.

MR. NICHOLSON: Q. Is that the day of the Court? A. That is the day of the Court. They were sort of slight.

MR. BULL: Q. That is good. Mackie says they were not there. A. They were still there. They were sort of slight.

MR. BULL: However, that is all right.

THE COURT: Q. Let me hear again what you found when you did feel under there a week later. You say you found— A. Right underneath the gouges there were two indentations,

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but they were very slight, so I didn't think very deeply about them.

MR. NICHOLSON: Q. While you were at the side of the car on the morning of the accident when the other occupants of the other car were there and your father was there and the Chief Constable, do you remember any conversation taking place, in English or Japanese? A. I don't remember any conversation, but I remember one comment either Mr. Uchi or Mr. Ogawa made there.

MR. BULL: I object to that.

THE COURT: If Ogawa was there?

MR. BULL: How can he say if Ogawa was there if it was made by either one?

MR. NICHOLSON: Ogawa's Discovery admits he was there.

THE COURT: In any event, this boy said the whole four were there, and he said either one or the other made the remark.

THE WITNESS: After those dents were thoroughly examined he said—

MR. BULL: Q. Who said? A. I am not sure which one it was.

THE COURT: Q. Either Uchi or Ogawa, I understand? A. Yes. He said this in Japanese, "I wonder if that was so after all."

THE COURT: Yes.

MR. NICHOLSON: Q. Anything further said, Wesley? A. I don't remember anything further right there.

Q. Could you assist the Court, Wesley, as to the length of time from the time you first felt the impact of this dark-coloured car against the right front—the left front of your car until you were up on the sidewalk? A. Up on the sidewalk?

Q. Yes, running along by the lawn. A. One moment we were hit, and the next moment we were on the grass and then we were on the sidewalk. I can't exactly say how many seconds it was.

THE COURT: Q. Just a rough estimate. A. It was like a flash right there. It happened very quickly.

THE COURT: Yes.

MR. NICHOLSON: Q. What injuries, if any, Wesley, did you receive in the accident? You told us about going to the hospital. A. When I was thrown out of the car I landed on the right side of my face, and I had scratches right down the side of my face. It was all bruised there and my jaw was sore. That is all.

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THE COURT: Q. Of which you have made a complete recovery? A. Yes.

MR. NICHOLSON: Q. Were you wearing glasses then? A. I was wearing glasses then, and I landed on one of the glasses and one of the lenses broke.

THE COURT: Are you claiming the glasses?

MR. NICHOLSON: It isn't there. His injuries aren't serious.

THE COURT: Are you claiming for the glasses? Sometimes they cost and sometimes they are not costly.

MR. NICHOLSON: Q. What did the glasses cost? It is an element might take into consideration. A. The repairs cost $1.75.

Q. Where was your mother when you first saw her after the accident? A. After the accident?

Q. Yes, when you came to. A. When I came to—well, she seemed to be half out of the car. Her legs and half her body were in the car, and the other half were out on the ground there.

THE COURT: Q. The legs, yes. A. No. Her head was out. Her legs were in the car.

MR. NICHOLSON: Q. Where with relation to the cement sidewalk, if you know her head— A. I am not sure about that. I didn't know where the line was—the sidewalk and the boulevard there.

Q. You were groggy, I understand? A. Yes.

CROSS EXAMINATION BY MR. BULL:

Q. Would you mind saying in Japanese the words which you heard either Uchi or Ogawa say? A. Well, was this—

THE COURT: No one can take it down.

MR. BULL: No, my lord.

THE WITNESS: Was this when we were examining the dents on the car?

MR. BULL: Q. I believe that is the occasion when you said either Uchi or Ogawa said something. A. He said in Japanese, it is this way (speaking Japanese). That is about the effect of it.

Q. You were born in Canada, were you? A. Yes, I was born in Canada.

Q. And you went to school here? A. Yes.

Q. And I suppose you speak English in your family? A. With my brothers and sisters I do.

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Q. You have more or less a tendency to the Japanese Language? A. To my mother and father and their relations I speak in Japanese.

Q. How old are you? A. I am 17.

Q. You say you were more or less knocked out, were you? A. Yes.

Q. And were you thrown out of the car? A. Yes, I was thrown right out.

Q. And you picked yourself up, and what was the first thing you did? A. The first thing I did, I remember I felt the side of my face, and then I noticed Miss Sato was there and there was blood coming out of her cheek, so I took my handkerchief out and started to wipe it.

Q. And did you see them all off in the maroon car to the hospital before you got into the front seat of the parked car? A. I am not sure of that. I remember when my father was holding my mother and trying to take her in there, but I don't remember the car going off.

Q. You don't remember how long after it was that you went and sat in the damaged car? You said you were weak and nervous? A. Yes, I was weak and nervous. I walked back to the skidmarks there and I looked at all the scattered things that were in the car on the ground, and I think I walked around the car once and sat inside.

Q. Some little time elapsed after the crash before you sat in there? A. Yes.

Q. It was then you noticed the handbrake on the left-hand side was pulled back? A. No, the right-hand side, yes.

Q. The right-hand side. But you don't know who pulled it back? A. No, I don't know who pulled it back.

Q. When you were standing around there later on examining the car, you have told us why you looked for marks—By the way, why did you look for marks on the car? What was the idea? A. My Dad told me the other party said there were no marks on the car, and he took me down there to help him find the marks.

Q. And you saw nothing on the door? You looked at the running-board? A. Yes.

Q. And you say you saw two deep gouges? A. Well, by deep I mean—well, deep for hard rubber.

Q. Deep for hard rubber? A. Yes.

Q. And you pointed them out to your father, did you? A. I pointed them out to my father.

Q. And you pointed them out to Chief Mackie? A. Yes, afterwards.

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Q. And you heard what your father said he saw there? A. I don't know what he said then.

Q. Did you hear his evidence here? A. Yes.

Q. Do you remember what he said they were? A. Yes.

Q. What did he say they were? A. You mean on the outside, on the rubber?

Q. Yes. A. He says they were cuts or scratches.

Q. Is that your recollection of what he said? A. That is about the closest.

Q. Don't you remember him being asked whether it was cut, and he said no? A. Oh, yes, I remember that part.

Q. Do you remember him using the word gouge at all? A. No.

Q. Didn't he say the rubber was chafed for about 12 inches on the length of the rubber—scratched? A. Yes.

Q. For about a foot? A. Yes.

Q. It is quite different from what you say, isn't it? A. Yes, it is a bit different.

Q. Do you remember what Chief Mackie said? Don't you remember what he said? He saw one little indentation in the rubber. A. I don't know about one.

Q. Did you hear him say any more than one? A. I don't know exactly.

Q. You were here when he gave evidence? A. Yes.

Q. You heard his evidence? A. Yes, I heard his evidence.

Q. Did you hear either your father—

MR. NICHOLSON: Let the witness finish.

MR. BULL: Q. Do you want to say anything more? A. I didn't hear them deny it possibly.

Q. Your hearing is good, isn't it? A. Yes.

Q. You understand the language they were speaking? A. Yes.

Q. You didn't hear Mackie say there was one indentation? A. I didn't hear him say that.

Q. Did you hear him say there were little shreds of rubber hanging to these things? A. No.

Q. Not a word about that. Then who suggested someone should put their hand under the running-board? A. I don't know whose suggestion it was.

Q. Who did it first? A. My Dad did first.

Q. Do you say he crawled under and looked at it? A. He didn't crawl under. I am not sure whether he went on his hands and knees or not, but he looked under it.

Q. You remember being examined for discovery, question

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103? You remember being examined for discovery? A. Where was this?

Q. You were examined by my learned friend Mr. Ray? A. Oh, yes.

Q. "103. Q. Did you crawl under and look? A. No.

"Q. Did you have a flashlight? A. No.

"Q. Did your father crawl under and look? A. No, I don't know whether he did."

MR. NICHOLSON: That is the same evidence he is giving now.

MR. BULL: Q. Did you mean by that you didn't know whether your father looked under the running-board or not? A. No.

Q. What did you mean by that? A. I meant he didn't crawl under and look.

Q. Did you mean to suggest to Mr. Ray he looked under and didn't crawl under? A. I meant that.

Q. Why didn't you say that? A. I meant that.

Q. You said, "I don't know whether he did"? A. Yes.

Q. Did you mean to say to Mr. Ray he looked under but he didn't crawl under? A. I don't know.

Q. Instead of saying— A. It didn't occur to me.

Q. It didn't occur to you, yes. Now do you remember speaking of another car which was behind the maroon car before the trouble? A. I don't remember whether it was behind there or not, but after I picked myself up from the boulevard I remember there was another car somewhat ahead of the maroon-coloured car. I was rather dazed, so I am not exactly sure whereabouts it was, but I remember it was somewhat ahead of the other car.

Q. That was after the accident? A. Yes.

Q. Didn't you say at the hearing in Port Moody there was another car behind the Ogawa car before the collision?—before your trouble, rather? A. I don't think I did.

Q. You don't think you did? A. No.

Q. I am instructed you did say that there was another car behind the Ogawa car. A. Maybe that was a surmise of mine.

Q. Maybe that was a surmise of yours? A. Yes.

Q. Why would you make that surmise? A. I don't know.

Q. No reason for it? A. Well, obviously they were all there somewhere, and I remember they kept going in the same direction the car was pointed after the accident.

Q. It kept going in the same direction—the people in the other car? A. Yes.

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Q. And that car wasn't parked there when you first came into St. John's Street past Douglas Street? A. I am afraid I don't know whether it was parked there or not.

Q. The first time you saw the car was after the accident? A. The first time I saw the car was after the accident.

Q. And you hadn't seen it previously? A. I hadn't seen it previously.

Q. And you heard your father say there was no other car in view when this car tried to pass you? A. Yes.

Q. Now you were sitting in the back, on which side? A. On the right-hand side.

Q. And who was next to you? A. I am not sure whether it was my mother or my little brother now. It was either my mother or my little brother.

Q. The three of you were there and going at a moderate rate of speed? A. Yes.

Q. Nothing out of the ordinary? A. No.

Q. You were paying no particular attention to the driving of the car? A. No.

Q. Carrying on a conversation? A. I don't remember if I did or not.

Q. You don't remember hearing another car honking behind you? A. No.

Q. You don't remember if you did? A. No.

Q. If you weren't driving the car you wouldn't pay attention? A. Yes.

Q. Another car passing you on the highway isn't a thing that would excite your attention? A. I usually look at the car.

Q. I say if you were not driving a car, the mere fact that a car might want to go past you doesn't as a rule excite your attention, does it? A. To me it does.

Q. Always? A. Always.

Q. Why? A. After we got the car I started to get interested in different kinds of cars. I look at the car to see what make it is and see if I can tell whether it is a Chev. or a Ford, and what year and make it is.

Q. Have you driven a car yourself? A. Yes.

Q. We can take it you are always interested in a car passing you, whether you are a passenger or not? A. Yes.

Q. When did you become conscious that a car was passing you? A. When their front part of the car was about the centre of ours.

Q. When the front of their car was about the centre of yours? A. A little bit ahead, I think.

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Q. You didn't hear it coming? A. I didn't hear it coming.
Q. You just looked up and saw it passing you? A. Yes.
Q. And it was passing in a normal way? A. Yes.
Q. How many feet would you say separated the two cars? A. I couldn't say exactly. I was away over to the right side. It was about the normal width of two cars when they pass.
Q. Everything looked normal? A. Yes.
Q. And continued normal for how long? A. Until that other car— the front part of the other car was a little bit ahead of our car, and then that other car seemed suddenly to come right up towards ours.
Q. Could you say it turned to the left? Your father turned to the left? A. I know our car didn't turn to the left. I would feel it.
Q. How would you feel it? A. Going at 25 miles an hour you can tell when a car starts to swerve suddenly to the left.
Q. I am talking of a slight turn? A. It wasn't a slight one.
Q. You would have felt a slight turn? A. Not a slight turn.
Q. You say these cars came into contact? A. Yes.
Q. Did you see it or feel it? A. I only felt it.
Q. From where you were sitting you couldn't see it, could you? A. Yes.
Q. What sort of a bump was it? A. How do you mean?
Q. Was it a severe bump? A. Yes, it was fairly. I don't think it was severe enough to damage the car badly. It was just that the car semed to lurch a bit. The left hand side seemed to rise up a bit. It seemed to go over a bit like that (indicating).
Q. You didn't hear any splintering? A. No.
Q. Or any banging, metal against metal? A. No, it didn't feel metal against metal. It was a slight bump.
Q. A light touch, you would say? A. I wouldn't say it was a slight touch.
Q. It didn't jolt you in your seat? A. I wouldn't say it jolted me in my seat.
Q. It wasn't as severe as rubbing up against the first light pole? A. No.
Q. That was pretty severe, wasn't it? A. Yes.
Q. You could both feel it and hear it? A. Yes.
Q. Could you hear the running-board being splintered? A. I don't know about being splintered. It made a sound.
Q. It just scratched it? A. Yes.
Q. And didn't stop your car at all. You scraped it?
THE COURT: Q. Now, witness, was it crumpled up, the

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running-board? A. Yes.

MR. BULL: Q. It wouldn't be as severe as that, would it? A. Which?

Q. The bump between the two cars? A. No.

Q. It wouldn't be as severe as that bump against that first electric light pole? A. Yes.

Q. Do you know what happened after? A. After which?

Q. After this bump, as you say, between the two cars? A. The next thing I remember is over on the boulevard.

Q. Did you see your car come off the boulevard? A. I don't know. I don't think I remember that going across.

Q. You had to cross 10 feet of gravel after you got off the the hard surface? A. Yes.

Q. You remember going across that? A. No, I don't remember the 10 feet of gravel.

Q. Where was the car when you first realized you were off the road? A. The front part of the car was on that boulevard there or when—after that bump that is the first thing I remember.

Q. After the bump that is the first thing you remember. Did you realize your car was going about twice as fast as it had been on the road? A. Not at that instant. It was when we went over that tree. I didn't actually think of it, but I was conscious it was a bit faster, quite a bit faster.

Q. You heard your father say it was going about twice as fast, is that right? Is that about right? A. I couldn't say. We were going about 25 miles an hour. I don't think we were going about 50.

THE COURT: I do not think he said that at that moment when he crossed the tree they were going 50. He said they seemed to speed up, if I remember.

MR. BULL: "It may be twice as fast as I was going on the main road."

THE COURT: Yes, I remember that part.

MR. BULL: "I was forced out on the gravel and the uncleared boulevard. I tried to put my foot on the brake, but my car travelled very fast, maybe twice as fast as going on main road."

THE COURT: He did not say definitely when it was.

MR. BULL: I am not being definite now, either, I say after he left the main road and got off on this detour.

THE COURT: As long as the witness understands it.

MR. BULL: Q. I am asking whether that is so, sometime after you left the main road your car was going about twice as fast as on the main road? A. I am afraid I couldn't say.

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Q. Well, that is fair enough; you can't say. I want to go back to the occasion at Port Moody on the 23rd November, when you say you put your hand under the running-board and felt two slight indentations. A. Yes.

Q. Would you describe those? A. When I looked at the outside of the running-board at first it was quite hard to find them, but when I looked closer I just saw where these gouges were. They seemed to have filled out, and I put my hand underneath there for these indentations there, and just at the very spot I noticed where this gouge was there was a slight indentation of the metal there.

Q. Was it covered with mud? A. Well, I am afraid I don't know that at that moment.

Q. Now I am going— It was the same occasion on which Mr. Clem Carter examined it? A. I am afraid I don't know.

Q. Is this the condition underneath the running-board? Did you look under? A. No.

Q. You just felt under. It was caked with mud, and I suggest that there was no indentation at all. Now do you say in spite of that, and evidence will be given to that effect, you say you felt indentations there? A. At least there was a bump there.

Q. You said an indentation a moment ago, now you say a bump. A. Now what I say is the indentation was on the outside, and there was a bump on the metal on the inside.

Q. I am afraid you will have to explain that a little more. Take this book as the running-board. That is the edge of the running-board there. Of course, it is thicker than that book. Take that and explain where the bumps were and where the indentations were. This is the second examination, you know. A. The running-board was bent over. About this I am not sure.

THE COURT: Q. You mean the actual bend was as a result of damage to it? A. No, it wasn't as a result of damage.

Q. It was the natural bend? A. I am not sure whether it was the running-board or the rubber was bent on the surface, came over like this, and there was a surface on this side.

Q. Yes. A. And the gouges were about on the corner there and a foot behind the other one was there at that spot. I put my hand underneath there and I felt a sort of a slight bump there.

Q. That is what you referred to as an indentation?

MR. BULL: He says a bump now.

A. That is what I mean. The indentation caused—

Q. And what you suggest now is this, witness, that there was an indentation on the rubber? A. Yes.

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Q. And precisely under that you felt underneath the bump, which you think was a result of that indentation going right through? A. Yes.

Q. Right through this steel running-board? A. I don't mean through, I mean caused it. Something that made that gouge there. I couldn't say the indentation went right through. I don't exactly know what you mean.

Q. I am trying to find out what you mean. I am trying to find what you found underneath. A. I found a bump.

Q. One or two? A. Under that one there was one, and under the other one there was a slight bump.

Q. Did you hear Chief Mackie say he examined it at Port Moody on the same occasion and these indentations which he thought were there had disappeared? A. I didn't hear him say that.

Q. Did you hear his evidence? A. No.

Q. You didn't hear it? A. His voice was kind of low and it is hard to hear back there.

MR. NICHOLSON: That is all, thank you.

THE COURT: Just a minute.

MR. NICHOLSON: I am sorry.

THE COURT: All right.

(Witness aside)

TSURU FUJIWARA, one of the plaintiffs herein, being first duly sworn, testified through Interpreter as follows:

(MASANORI YAMATA, sworn as Interpreter)

DIRECT EXAMINATION BY MR. NICHOLSON THROUGH INTERPRETER:

Q. Mrs. Fujiwara, you are one of the plaintiffs in this action? A. Yes.

Q. Now do you remember leaving your home to go to Whonnock on the morning of Sunday, November 10th, 1935? A. Yes, I do a little bit.

Q. Do you remember waking up in the hospital in New Westminster sometime after that? A. Yes.

Q. Now what is the last thing you remember before you woke up in the hospital? A. We left home a little before 8 o'clock; sometime before 8 o'clock.

Q. Yes. A. My husband went with me to get Miss Sato at 4th Avenue.

Q. Yes. A. I usually went routes the Westminster way

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and never before passed Port Moody way, and I don't know about the geography around there so I can't say very much.

Q. You can't say very much.

MR. RAY: Put it to save time.

MR. NICHOLSON: Q. You remember being in the hospital and you remember this particular morning you had been driving out towards Whonnock, and the evidence shows where you were. Now do you remember the accident at all? A. No, I don't.

Q. You don't remember the accident. Do you remember anything happening or being stopped and so on as you were driving along the highway that morning? A. I remember Wesley or Miss Sato said, "Those are Japanese people."

Q. You remember Wesley or Miss Sato saying they are Japanese people? A. I don't know who said that, but one of them said that.

Q. That is when you were in the car, was it? A. Yes, I believe so. I can't think now.

Q. You can't think now; you can't remember. You remember hearing that remark made, and the next thing you were in the hospital? A. Yes.

Q. I see. Now you received certain injuries in the accident, Mrs. Fujiwara? A. Yes.

Q. After you left the hospital in New Westminster you were brought to your home in Vancouver and you were put to bed. How long did you remain in bed following your return to your home in Vancouver? A. I think about three months.

Q. Yes. Now during that time did the injuries that you received in the accident bother you—trouble you? A. Yes, I suffered a great deal.

Q. In what way? A. I felt great pain at head and couldn't keep my head even on the pillow.

THE COURT: Q. "I couldn't" — what? A. Couldn't keep my head even on the pillow because it was very painful.

MR. NICHOLSON: Q. Painful even to rest your head on the pillow. Yes? A. And the next thing I felt pain on the back.

Q. Pain in your back? A. And I cannot turn my neck.

Q. You couldn't turn your neck. You are now able to turn your head, are you? A. Yes, I can do now but feel still heavy at my head.

Q. You still feel heavy in the head, but you can twist your neck? A. I can turn my head to the right side or the left side, but I can't bend down.

Q. Why can you not bend down? A. Head become heavy and I dizzy and painful.

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Tsuru Fujiwara—Direct-Exam. Called for Pltff.

Q. Now have you been troubled much with dizziness since the accident? A. What did you say?

Q. Now have you been troubled much with dizziness since the accident? A. At the beginning I felt like I am on a body shaking. The whole body I felt shaking, but now became much better.

Q. How long did the pains in the head and the spells where she thought she was shaking— I think she was trying to get out dizziness?

THE COURT: She has a very good memory, as you might notice. She might feel it as a bit of seasickness.

MR. NICHOLSON: Q. I want to know how long that feeling of being upset, as if she was on a boat, how long it continued. She says she is getting better now, but how long did it last? A. About five months.

Q. Now before the accident I understand you did all your own housework and looked after the home and the children? A. Yes, I did myself.

Q. Now since the accident have you been able to take over the housework and carry on? A. No, I couldn't.

Q. Have you tried it? A. Yes, I tried. I wanted to be well, so I tried to train myself, but I found it impossible.

Q. And now does your back still bother you? A. Yes, the biggest of the pain is on the back.

Q. Are you able to sleep now? A. Yes, I sleep better than before.

Q. Now before the accident occurred did she have any trouble sleeping? A. Yes, before the accident I did sleep well.

Q. And now she says she is sleeping better now. In the interval of the accident did she have any trouble with sleeplessness? A. For about six months I could not sleep soundly.

Q. Now are you able to read and write without difficulty? A. Very hard to read and to write. Feel very difficult in writing and reading.

Q. In what way, Mrs. Fujiwara? She is demonstrating something, my lord. A. I have been reading book lately, so I try to read, but I cannot read down like this, but if I raise book like that I can rest little bit.

THE COURT: Q. Read what? A. For a little while.

MR. NICHOLSON: Q. She says she is fond of reading, but it is the stooping that causes the pain in her head, is it? A. Yes.

Q. How was your memory before the accident? A. Before accident?

Q. Yes. A. Everything was normal. Nothing was wrong.

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Proceedings at Trial

Tsuru Fujiwara—Direct-Exam. Called for Pltff.
Tsuru Fujiwara—Cross-Exam. Called for Pltff.
Teruko Edna Sato—Direct-Exam. Called for Pltff.

Q. Now since the accident? A. Very easy to forget.

Q. Does her memory seem to be improving? Witness, does your memory seem to be improving? A. No, I cannot describe how I became better. I don't know.

Q. But she is improving, though? A. Yes, I think much better than right after the accident.

MR. NICHOLSON: That is all, thank you.

CROSS-EXAMINATION BY MR. RAY THROUGH INTERPRETER:

Q. Mrs. Fujiwara, these headaches and aches are getting much better, aren't they? A. Yes. At the beginning was very great, but I am getting better.

MR. RAY: That is all, thanks.

(Witness aside)

TERUKO EDNA SATO, one of the Plaintiffs herein, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NICHOLSON:

Q. You live now, I believe, in Vancouver, Miss Sato? A. Yes, sir.

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

Q. Just speak out, please. And you are the daughter of your co-plaintiff, Shotaro Sato? A. Yes.

Q. Your father, I believe, lives at Mission City? A. Yes, sir.

Q. And you are working in the City? A. Yes, sir.

Q. As a domestic servant? A. Yes, sir.

Q. You know the Plaintiff, Dr. Fujiwara? A. Yes, I know him.

Q. Do you remember the morning of Sunday the 10th November, 1935? A. Yes, sir.

Q. You were a passenger in Dr. Fujiwara's car that morning? A. Yes, sir.

Q. He was giving you a lift out to visit your people at Mission City? A. Yes, sir.

Q. He was going out to hold his clinic, is that correct? A. Yes, sir.

Q. Have you driven through Port Moody before? A. Yes, sir.

Q. Often? A. Not very often.

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Q. But you have gone through. How old are you? A. I am 18 now, sir.

Q. You have gone through Port Moody several times? A. Yes, sir.

Q. Do you know St. John's Road? A. Yes, I know the main road in Port Moody.

Q. Do you remember Dr. Fujiwara's car being driven along that main road on the morning of the 10th November, 1935? A. Yes, sir.

Q. You were sitting in the front seat of the car? A. Yes, sir.

Q. As you were going along this main road to Port Moody that morning, would you tell us in your own words what happened? A. After we turned the curve on to the main road, well, I saw another car coming from behind, and they passed us, and after passing us, when they were about— when their front tire was near—well, I mean the back end of our car, that is when I first saw them.

THE COURT: Q. What is that again?

MR. NICHOLSON: Q. When the front of their car was near the back of your car, that is when you first saw them? A. Yes, and then I noticed it was Japanese occupant.

Q. You noticed it had Japanese occupants? A. Yes, sir, and they were—at the beginning they were passing us quite all right, and all of a sudden they came in right towards our side of the road. They came right in and hit the front left end of our car.

THE COURT: Q. Hit the what? A. The front left.

Q. The front left end of our car? A. Yes, sir.

MR. NICHOLSON: Q. Did you notice the colour of that car, Miss Sato? A. Well, I know it was a dark colour. I wasn't quite sure whether it was—I don't know. Anyways, it was dark.

Q. Yes. Could you say anything about the speed of Dr. Fujiwara's car at that time? A. Anyways, it wasn't fast.

Q. What about the speed of the other car, one that passed you? A. The speed of the other car, I think, was just about twice as fast as ours.

Q. Did you see the other car collide with Dr. Fujiwara's car? Did you see that yourself? A. I didn't see what part hit us, but I felt a definite bump and heard a noise.

Q. And then what happened, Miss Sato? A. Then right at that instant we swerved off the main road, and I wasn't sure where we went, but I know we missed — we hit one telephone pole and then we bumped into the other pole—it all happened very quickly.

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Q. And Dr. Fujiwara's car stopped at the second post you hit? A. Yes, sir.

Q. You had driven with Dr. Fujiwara before then, had you? A. Yes, sir.

Q. Now did you receive any injuries in the accident? A. Yes, I received this injury, a cut on my face right here, and my ear.

Q. Would you just step out of the box to the side, please and come forward here?

MR. NICHOLSON: I draw your lordship's attention to the welt or cheloid.

THE COURT: The what?

MR. NICHOLSON: The welt or cheloid.

THE COURT: Q. Where did it hit your ear? A. Here (indicating).

MR. NICHOLSON: About there. This V-shaped scar. I would estimate—your lordship can see it there.

THE COURT: The scar is not so bad. There is quite a callus there, I suppose.

MR. BULL: I don't mind the view a bit, but I don't think my learned friend should address your lordship.

THE COURT: Should what?

MR. NICHOLSON: Just a moment, Miss Sato, while you are here. Your lordship can see the other marks on the face?

THE COURT: Oh, yes, I can see them quite distinctly. They are not so bad, the other ones.

MR. NICHOLSON: Q. Now these scars to which the court's attention has just been drawn, they were caused from the injuries that you received in this accident you have been referring to, Miss Sato? A. Yes, sir.

Q. You went to your home in Mission City that day? A. Yes.

Q. And you were only away for a few days? A. Yes, three days.

THE COURT: Q. What is your education, Miss Sato? A. I beg your pardon.

Q. What is your education? A. I went up to Grade 8.

Q. Pardon? A. Went up to Grade 8.

Q. In Public School? A. Yes.

Q. Well, 8 is in Public School?

MR. NICHOLSON: Yes.

Q. High School Entrance? A. Yes.

THE COURT: Q. You are what—17? A. 18 now.

MR. NICHOLSON: Q. 17 at the time of the accident?

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Teruko Edna Sato—Direct-Exam. Called for Pltff.
Teruko Edna Sato—Cross-Exam. Called for Pltff.

A. Yes.

Q. Now during the two or three weeks immediately after the accident this scar which is in front of your right ear, that shows the callus there now, what was the condition of it? A. This one here?

Q. Yes. A. The pus started coming out of here and I told the lady—I mean the lady told me to go and see the doctor, and I went to Dr. Davis and he got the glass out of there.

Q. It was discharging for two weeks after the accident? A. Yes. Right after the trial at Port Moody, that night.

Q. Before that you had been treated by a rough dressing at the hospital in Westminster by Dr. Eacrett at Mission City? A. Yes.

MR. NICHOLSON: The bills are admitted.

THE COURT: Who is Dr. Eacrett?

MR. NICHOLSON: He is a general practitioner at Mission City.

THE COURT: Q. How did he come to miss the glass? A. I don't know. He didn't find it.

THE COURT: From what Dr. Davis told me, he could have found it. It was big enough.

MR. NICHOLSON: Dr. McEwen didn't find it either.

THE COURT: Dr. McEwen had a very serious case on his hands.

MR. NICHOLSON: I think it was the fact she was discharged and they didn't find it at that time. Dr. Davis had to probe for it.

THE COURT: It was a pretty big piece, I would think.

CROSS EXAMINATION BY MR. BULL:

Q. Miss Sato, you were sitting in the front seat with the driver, weren't you? A. Yes, sir.

Q. And I suppose you were talking the usual way, were you? A. No, I wasn't talking, sir.

Q. You didn't talk to him from what time, how long before? A. Oh, not that time, anyway.

Q. I am not asking you that. You were starting out on a long drive to Mission? A. Yes, sir.

Q. You are not suggesting you were going to sit there silent all the time? A. We don't usually talk much.

Q. You don't usually talk much? A. Not when I am driving.

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Q. Well, you weren't going to say anything to him at all?
A. Well—
Q. You would carry on the ordinary conversation, wouldn't you? A. Yes.
Q. If anything occurred to you to talk about. You knew him pretty well, didn't you? A. Yes.
Q. There is no harm in that, mind you. A. No.
Q. And you would probably talk if anything arose to talk about, wouldn't you? A. Yes.
Q. And you weren't paying particular attention to the driving, I suppose, were you? A. No, sir.
Q. You let him do that? A. Yes.
Q. Now you say you saw a car coming from behind you. How did you see that car? Did you turn around and look? A. Yes, I turned around this way.
Q. What drew your attention? A. They must have blew the horn.
Q. They must have blew the horn? A. Yes.
Q. You heard the horn? A. Yes.
Q. Once or twice? A. I don't know, sir.
THE COURT: Q. I did not hear your answer to the last question, once or twice? A. I don't know.
MR. BULL: Q. You don't know, but you know you heard a horn? A. Yes.
Q. And then you turned around and saw a car which was about to pass you? A. Yes, and I noticed it was Japanese occupants.
Q. Yes. There was nothing unusual about a car passing you on the road, was there? A. No.
Q. They often do that, don't they? A. Yes.
Q. You didn't regard it as anything out of the ordinary, did you? A. No.
Q. This car was passing you after blowing its horn in the normal way up to a certain point? A. When I saw it, yes.
Q. What was your position on the road when they started to pass you? A. We were right on the edge of the main road.
Q. On the very edge? A. Yes.
THE COURT: That is the right-hand side, of course.
MR. BULL: Q. That is on the right hand side, of course, before it started to pass you? A. Yes.
Q. Then it wasn't necessary for Dr. Fujiwara to move over at all, was it? A. No sir.
Q. He was already over? A. Yes, he was already over.
Q. And he didn't in fact move over, did he? A. I don't know, sir.

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Q. What? A. I don't know, sir.
Q. You don't think.
MR. NICHOLSON: She said, "I don't know, sir."
MR. BULL: Q. He was so far over you wouldn't see any necessity for him moving over any further? A. Yes.
Q. Yes. After the car began to pass you then you say it seemed to draw near? A. It came straight in towards us. I thought they were doing it on purpose.
Q. Of course, they wouldn't do it? A. On the looks on their faces.
Q. Did they look mad? A. No, they didn't look mad.
Q. Did they look like murderers? A. On the expression on their faces I thought they were doing it on purpose.
Q. Explain that. I thought if a person was going to commit a murder you could tell by the look on their face. What sort of an expression had they? Were they smiling? A. Yes.
Q. It looked to you as though it was a joke? A. Something as a joke.
Q. And that they wanted to intentionally injure you? A. Not intentionally.
Q. The look on their faces suggested they were having a little joke, is that it? A. Yes.
Q. And you say these cars came together? A. Yes, sir.
Q. You only heard that, you didn't see it? A. I felt a definite bump.
Q. What kind of a bump? A. It made me jump up off the seat.
Q. It didn't knock you off the seat? A. It made me jump up a little.
Q. You jumped up yourself? A. No, the bump made me.
Q. It was very quick. It didn't knock the motor to one side or anything?
THE COURT: You mean the motor or the motor-car?
MR. BULL: Q. The motor-car. A Oh, no, no, sir. Anyway we were forced right off the main road.
Q. You remember when my friend Mr. Ray examined you a few days ago? A. Yes.
Q. You were asked this at question 62:

"Q. Did it shake you out of your seat, or did you just keep sitting where you were? A. I know I was still there.

"Q. Didn't make you move, did it? A. I don't know.

"Q. You mean you don't know or don't remember? A. I don't remember."

Was that correct, that answer? A. Yes.

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Q. That is really the truth, isn't it? A. All I know was it made me move a little bit.

Q. But you said, "I don't know," and you said, " I don't remember." You were telling the truth on that examination, weren't you? A. Yes.

Q. You were sworn to tell the truth? A. Yes.

Q. Then you didn't know much about what happened that day, did you, except that you hit one electric light pole. You felt that bump, didn't you? A. Yes.

Q. You heard the noise too? A. Yes.

Q. Then you ran into another one? A. Yes.

Q. Yes. Now after these two cars came together you kept on watching the other car, didn't you? A. Yes.

Q. And they kept on going straight—straight on?
A. Yes.

Q. Is that right? A. Yes.

Q. Did you see any other motor-cars on the road? A. No, sir.

Q. About the time of the accident? A. I didn't see any others.

MR. BULL: All right, thanks.

THE COURT: Q. Just a minute. After the car got ahead of you did you notice its colour? A. No. I only know it was dark. I don't know whether it was—

Q. Did you speed up much after the accident? Did your car go much faster after the other car passed? A. Oh, yes, it went much faster.

THE COURT: That is all.

(Witness aside)

MR. NICHOLSON: That is the case for the plaintiffs, my lord.

THE COURT: 2:15, gentlemen.

(COURT ADJOURNED AT 1:00 P. M. UNTIL 2:15 P. M.)

(COURT RESUMED AT 2:15 P. M. PURSUANT TO ADJOURNMENT)

MR. BULL: My lord, I think the issue of fact is quite apparent to your lordship, and I don't think I can be of any service in outlining the defendant's evidence.

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Proceedings at Trial
Extracts from Discovery
of Defendant

Put in by Pltff.

EXTRACTS FROM DISCOVERY OF DEFENDANT

(Questions 1 and 2 incl.)

1. Q. You are C. Ogawa? A. Yes.

2. Q. And you are the defendant in this action brought by Asa J. Fujiwara, Wesley Fujiwara, Tsuro Fujiwara, Shotaro Sato and Teruko Sato for damages resulting to them from an automobile accident which occurred in November 1935, isn't that so?

(Questions 10 to 13 incl.)

10. Q. What is your occupation? A. You mean the business?

11. Q. Yes? A. Commercial traveller.

12. Q. Commercial traveller? A. Yes.

13. Q. Or salesman? A. Yes.

(Questions 21 to 27 incl.)

21. Q. Now, on the morning of Sunday the 10th of November 1935 you were driving an automobile along St. John's Road in the City of Port Moody, isn't that right? A. Yes.

MR. RAY: That is the name of the road. I admit that. That is the name of the road, in case you don't know it.

THE WITNESS: Yes.

MR. NICHOLSON: 22 Q. What kind of an automobile were you driving? A. A Ford V-8.

23. Q. A sedan? A. No, a Tudor.

24. Q. It is a Tudor sedan? A. Yes.

25. Q. And there were other people in that automobile? A. Yes.

26. Q. Who owned that automobile? A. It was mine.

27. Q. You own it yourself? A. Yes, I own it myself.

(Questions 32 and 33 incl.)

32. Q. What is its colour, Mr. Ogawa? A. Maroon.

33. Q. Maroon? A. Yes.

(Ques. 42)

42. Q. Now, do you remember the bend or curve in the road in Port Moody just before you come on to St. John's Road? A. Yes, I know it.

(Ques. 66 to 68 incl.)

66. Q. Now, just after you came around the bend on to St. John's Road, you tried to pass the car that was just ahead of you, didn't you? You pulled out to pass the car that was ahead of you? A. Well, I might say that is—I cannot say very much.

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of Defendant

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67. Q. Well, didn't you try to pass the car? A. Did I?
68. Q. Yes? A. Yes.

(Ques. 77 to 79 incl.)

77. Q. Well, take your time. We will get this—we will take it in bits. You were going East along St. John's Road, weren't you? A. Yes.
78. Q. And after you made the turn you crossed one intersection? A. Yes.
79. Q. One street intersection? A. Yes.

(Ques. 83 and 84 incl.)

83. Q. Then you tried to pass the other car, is that right? A. Yes.
84. Q. That is right? A. Yes.

(Ques. 91 to 93 incl.)

91. Q. Now what was the speed of your automobile before you went around the curve? A. I think 22 or 25.
92. Q. Yes, and what was the speed of your automobile when you pulled out to pass this car that was ahead of you? A. Oh, I think about—you see when I am driving about 20 or 25 and when I have passed it it comes to more, you know.
93. Q. You mean to pass it you increased your speed? A. Yes, more speed.

(Ques. 98 to 100 incl.)

98. Q. How far were you behind this car that you tried to pass when you blew your horn—the first time you blew your horn? A. The first time I blew the horn?
99. Q. Yes? A. About 20 or 25 feet.
100. Q. You were about 20 or 25 feet behind this other car? A. Yes.

(Ques. 106 and 107)

106. Q. Did you notice whether it was being driven by Japanese? Did you notice it had Japanese passengers in it and a Japanese driver? A. Well, I knew it had a Japanese driver.
107. Q. You knew it had a Japanese driver? A. Yes.

(Ques. 133 to 141 incl.)

133. Q. Well, how many feet from the side of his car would it be to the edge of the side of the road? A. I don't see him.

MR. RAY: If you don't know, say you don't know.

MR. NICHOLSON. 134. Q. You don't know? A. I don't know.

135. Q. What was his speed when you started to pass

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Extracts from Discovery
of Defendant

Put in by Pltff.

him? A. You mean of Dr. Fujiwara's car?

136. Q. That is correct? A. Well, I don't know.

137. Q. Well, what is your estimate? A. Oh, I think about thirty, I think 25 or 30, I think.

138. Q. His car was going 25 or 30? A. I think about 25.

139. Q. When you first blew your horn? A. Yes.

140. Q. And he was going at the same speed when you started to pass him? A. Well, he came just a little this way, you know.

141. Q. At the same speed—or did he change his speed at all? A. No.

(Questions 166 to 168 incl.)

166. Q. Dr. Fujiwara's car according to you was going 25 or 30 miles an hour? A. Yes.

167. Q. And you passed him and you say it didn't take you long to pass him, so you must have been going a great deal faster than he was? A. Well, it doesn't take so long.

168. Q. Well, he is going along at the same time, isn't he? He is also moving, isn't that right? His car is going all the time? A. Yes, his car was going all the time.

(Ques. 179 to 183 incl.)

179. Q. You were coming along behind Dr. Fujiwara's car? A. Yes.

180. Q. And you blew your horn the first time? A. Yes.

181. Q. And then you blew the horn the second time? A. Yes.

182. Q. And then you speeded up to pass his car? A. Yes.

183. Q. Now, what happened after that? You pulled partly over to the left side of the road to go by him, didn't you? A. Yes.

(Questions 197 to 212 incl.)

197. Q. When it hit the post and came to a stop, where was your car? A. As he hit the post?

198. Q. Where were you? A. I am here.

199. Q. Well, how far away? A. I am near the next post.

200. Q. Well, how far in feet would you be away? A. Feet?

201. Q. How many feet was your car away from his when he hit the post? A. Oh, I don't know how many feet. I have not measured.

202. Q. Well, how far do you estimate—as far as you can remember? A. I think about 25 or 30 feet.

203. Q. 25 or 30 feet? A. Yes.

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of Defendant

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204 Q. You mean East of where he was? A. Yes.
205. Q. When you heard his car hit the post, you were about 25 feet East of that point? A. Yes, that is right.
206. Q. Was your car stopped at that time when he hit the post, or slowing down? A. No, just slowing down.
207. Q. Just slowing down? A. Yes.
208. Q. What did you do then? A. I go to the right—the sidewalk is right here.
209. Q. You came to the right side of the road? A. Yes.
210. Q. And you stopped, did you? A. Yes.
211. Q. How far was your car from Dr. Fujiwara's car when you stopped? A. About 25 or 30 feet.
212. Q. Your car was 25 or 30 feet from his car when you stopped? A. Yes.

(Questions 216 and 217)

216. Q. Did his car seem to go faster after it went off the hard-surfaced road than it did before? A. You mean at more speed?
217. Q. Yes. A. Oh, yes.

(Questions 284 to 296 incl.)

284. Q. Now, did the Chief of Police come out to the scene of the accident when you were there? A. Yes.
285. Q. Did he examine your car? A. He looked at my car, yes.
286. Q. Did he feel under the side of your car—under the running-board? A. No, he afterwards feel my car.
287. Q. Afterwards he did feel? A. Yes.
288. Q. Did you feel, too A. You see, I didn't stand there. Mr. Siguchi was there.
289. Q. Well, when the chief felt the side of your car, did you put your hand under, too, to feel any bumps? A. No, I didn't.
290. Q. Do you know whether there were any bumps there or not, under the running board—under the rubber? A. No.
291. Q. You don't know? A. No.
292. Q. Did you hear Dr. Fujiwara say anything to Mr. Siguchi about bumps under the running board? A. Dr. Fujiwara?
293. Q. Yes? A. Yes.
294. Q. Talking to Mr. Siguchi? A. Yes.
295. Q. What did he say? A. I don't know. I was standing on this side and Dr. Fujiwara and he looked at it.
296. Q. Looked at the bumps? A. Yes.

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Clement John Carter—Direct-Exam. Called for Defdt.

DEFENCE

MR. BULL: I will call Mr. Carter.

CLEMENT JOHN CARTER, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULL:

Q. I think you live at Port Moody, don't you? A. Yes.
Q. And by occupation you are a mechanic? A. Yes.
Q. You have a service station up there? A. Yes, I run general repairs and sell gasoline and oil.
Q. Do you remember November of 1935 on the occasion of a Police Court hearing at Port Moody examining Mr. Ogawa the Defendant's car, a Ford V-8 car? A. Yes, I remember the time of examining it.
Q. It was standing outside of the Police Station, was it?
THE COURT: About what date was it?
MR. BULL: Q. What was the date—the 26th?
MR. NICHOLSON: Saturday, November 23rd.
MR. BULL: Q. Saturday, November 23rd, that was the occasion? A. Yes.
Q. You were asked to make an examination for a certain purpose? A. Yes.
Q. What was that purpose? A. To see if there had been any work done on the running board.
Q. Any work done on it? A. Yes.
Q. I see. Did you make an examination of the running-board on the right-hand side of the car? A. Yes, I did.
Q. Or on both sides? A. Yes, I did on both sides.
Q. Did you notice any particular difference in the appearance of the two? A. I examined it with a flashlight underneath, and I couldn't see where there were any marks of any work being done on it.
Q. What was the condition of the underneath side of the running-board on the right-hand side? A. Well, there is a slight bend in the running-boards.
Q. Was that on the inside or the top side? A. Underneath.
Q. What sort of bends? A. Just like it was a case of—very slight.
THE COURT: Very slight in shape? A. Yes.
Q. And that was underneath the right board? A. Underneath both running-boards it was much the same.
MR. BULL: Q. The same kind of bends underneath the

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Clement John Carter—Cross-Exam. Called for Defdt.

left side? A. Yes.

Q. Did you judge how those had been caused?

MR. NICHOLSON: Well, my lord—

MR. BULL: Well, just a moment. If my friend has an objection he had better make it.

A. It is very hard to tell how they could be done. There is so many ways they could be put there.

Q. They were the same on both sides? A. They were not the same, but similar.

Q. Can you give any better description than those dents? A. Well, it is hard to give a description of them because most cars have those dents, anyway.

Q. Most cars have them? A. Yes.

Q. Was there anything unusual about the appearance of those running-boards to you? A. Nothing out of the ordinary.

THE COURT: Q. How many of them were under the right running-board? A. There were about two, I think, underneath the right.

Q. How far apart? A. Oh, they would be about hardly a foot apart, somewhere. I didn't measure them; it is just guessing.

Q. Approximately.

MR. BULL: Q. Could you judge from the appearance whether they were newly made or old ones? A. They looked like old ones, as if they had been there for a long time.

Q. What did you do in order to see them? A. I took a flashlight to see if they were made freshly, but they didn't look fresh. However, they looked much the same on the other side.

Q. Did you get underneath the running-board? A. I crawled underneath to see them.

Q. Could you have told if the running-board had been repaired recently from your examination? A. I examined it very carefully, and I couldn't see where it had been removed or any repair work done on it.

CROSS-EXAMINATION BY MR. NICHOLSON:

Q. Do you remember me examining you at the common danger hearing after you made this examination, Mr. Carter? A. Yes.

Q. And you remember saying in answer to Mr. Ray, who examined you before I did, that if there had been dents under the running-board they would have to be knocked out with a hammer. Do you remember saying that? A. Yes.

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Q. Then do you remember me suggesting to you in cross-examination that in many garages today you find rubber-headed hammers? Do you remember me asking you that? A. Yes.

Q. And asking you if the slight dents which you found under that, these two dents, couldn't have been knocked in with a rubber-headed hammer. Do you remember me asking that? A. Yes.

Q. And do you remember saying to me that was possible? A. I don't—

Q. Did you or did you not say that to me? A. I don't remember that.

Q. If the dents which you saw were slight dents they could have been knocked in with a rubber-headed hammer? A. I don't remember saying that. I remember saying I didn't use a rubber hammer.

Q. You didn't use a rubber-headed hammer. Do you remember me asking you if they could have been knocked out with a rubber-headed hammer, and you saying it was possible? A. I don't remember that.

Q. Do you deny saying it? A. I don't remember it.

Q. It is possible, is it? A. I have never used a rubber hammer.

Q. Do you know that rubber hammers are used in garages today quite commonly for knocking dents out of fenders and even running-boards—don't you? A. I have never heard of them being used to knock out dents on running-boards.

Q. You have heard of them being used to knock out dents on fenders? A. On bodies.

Q. And on fenders? A. Not on fenders.

Q. If they could be used to knock out a dent out of a body equally well, they could be used to knock in a dent under a running-board, isn't that so? A. Well, I don't know, because I never tried it.

Q. But you know this, that immediately after you gave evidence as to the examination you made of the car the Chief Constable went into the box after you and swore that the dents had been there 13 days before. Didn't you hear him give that evidence, that whereas if they were not there that morning they had been there when he examined it 13 days before? Don't you remember that? A. I remember him saying he felt dents there.

Q. And they were gone, or at least only slight signs of them, on that morning, is that right? A. I remember him saying it.

THE COURT: Q. Did the Chief examine it on the occasion you examined it? A. He didn't. As far as I know, he didn't.

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MR. NICHOLSON: Q. Don't you remember the court being adjourned for the Chief to go out and put his hands under it to see if the dents were there, and the magistrate and counsel went out?

MR. BULL: Is my friend giving evidence?

MR. NICHOLSON: I am asking the witness if he remembers it. A. I am not sure, for all I remember is being called up there to see if the dents were there.

MR. NICHOLSON: In fact if my memory serves me, the Chief did give that evidence here at this trial, that the trial was adjourned and counsel and the magistrate attended, and after that the Chief was called in rebuttal.

THE COURT: He says, "I attended with the magistrate and counsel on the 23rd November, in the morning. Couldn't find same marks then."

MR. NICHOLSON: Q. Now you wouldn't attempt to suggest how long those dents on the right-hand running-board had been there, would you? A. It would be impossible.

Q. They might have been caused two weeks before? A. They might have been a year before.

Q. For a week or two days before? A. They could have been there any time.

MR. BULL: Q. How high is this running board off the ground? A. About a foot and a half.

Q. Then in order to get to the dents you would have to crawl underneath? A. Yes, you would have to crawl underneath.

THE COURT: Q. I suppose on that if you want to get beside the running-board and put your shoulders on the ground and get on one knee, you could get your head down and look underneath? A. Yes.

Q. I would be surprised if you could not. You would not see as well as if you had a flashlight and got under there, would you? The best way was with the flashlight and getting under the running-board and lying on your back. A. That is why I took a flashlight. I had to see underneath.

Q. And something would depend on whether the car had been through wet weather after the indentations had been put there? A. Yes.

Q. Was there much mud under the running-board? A. There was quite a bit, similar on both sides.

MR. NICHOLSON: Q. Do you remember what the weather was like for the two weeks preceding your examination? It was the fall of the year.

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Clement John Carter—Cross-Exam.	Called for Defdt.
Roy Howard—Direct-Exam.	Called for Defdt.

THE COURT: He is a good man if he does, unless he has a special reason for remembering. That is all, thank you.

(Witness aside)

ROY HOWARD, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RAY:

Q. What is your occupation, Mr. Howard? A. I am proprietor of Roy Howard Limited Automotive Service.

Q. Will you just tell the court how long you have been in that business? A. Nearly 30 years.

Q. What sort of business is carried on there? A. Automotive service and repair.

Q. Do you remember examining a car belonging to a Japanese named Ogawa, that is, a Ford V-8 car, during the month of November 1935? A. I examined a Ford V-8 in that month, November.

Q. Tell the court what you did and what did you find and what you examined it for? A. I was asked to go to the Central Garage on Seymour Street and examine a Ford V-8 there. It was on the hoist and was pointed out to me, and I was asked to look for the damage on the right side, particularly the running-board.

THE COURT: Q. Particularly the running-board? A. Yes, sir. The only damage I found to the running-board was a mark or indentation in the centre of the running-board just about where the running-board folds over, like that would be, you see. It was pressed in a fair amount and the rubber was somewhat damaged.

Q. Now just a minute. Did you say where it was—about the centre of the running-board? A. About the centre of the running-board, your lordship, yes.

MR. RAY: Q. Where would that mark be with relation to the door of the right side of the car? A. I didn't notice. I didn't really notice. I know it was in the centre of the running-board.

Q. Did you look or did you find any marks underneath the running-board? A. No, I couldn't discern any marks underneath the running-board.

Q. Did you look? A. Yes, I did.

Q. Did you examine that running-board to ascertain whether or not in your opinion any repairs had been made on

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the running-board there recently? A. Yes. I was asked to do that, but I couldn't discern any evidence of repairs having been done.

Q. Could you say from your examination of that running-board whether any had been—

THE COURT: He said he could not find any. What more can he say?

MR. RAY: Well—

THE COURT: I got it the first time.

MR. RAY: Q. I would like to ask the witness this question. If repairs had been made to that running-board indications would have remained so when you examined it you could have told they had been made? A. If the repairs had been recent, yes.

THE COURT: Q. That depends, Mr. Howard, on the workmen that do the job? A. To a great extent, your lordship.

Q. If you have a real good workman; after a week or ten days if a car had gone through mud or rain it would be difficult? A. If it is done to cover it up.

MR. RAY: Q. This mark you found on the running-board where it folds over, was it a deep mark or a slight mark? A. It wasn't a mark of any great consequence. I wouldn't say it would be more than half an inch deep.

THE COURT: Q. How thick is that rubber on an auto? A. I should say it was about 3/16ths of an inch. It is vulcanized right into the metal of those cars.

Q. The rubber is vulcanized into the running-board. Tell me, is that rubber a hard rubber? A. It is a reasonably tough rubber. It isn't the same kind of rubber they use on tires. It is usually a poor grade, but it is usually a tough rubber.

Q. About 3/16ths of an inch thick, you say? A. Yes, approximately.

Q. I would have thought it was a little thicker. Is it not corrugated? A. I took into account the corrugation on it. At the face of the corrugation it wouldn't be that thick.

Q. I would have thought it was thicker. Is not your corrugation 3/16ths? A. They don't spend any more on rubber that they have to. It is pretty thin at the bottom of the corrugation.

THE COURT: However, that is your job.

MR. RAY: Q. Supposing you have a car going at 25 miles an hour, a Chevrolet 1933 model sedan, and you have this particular Ford car passing it at a speed which was fast, and you are told that the car that was overtaking cut in front and struck

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apparently the car which was passing, would you or would you not expect to find some extensive damage on the car that was doing the passing?

THE COURT: Strictly speaking—I know his reputation, so I am not worrying very much. I do not think you have laid the foundation. You see, this is driving experience, not a mechanical experience, do you not think?

MR. RAY: I thought it might be sufficient. From the experience of 30 years repairing cars, that is sufficient experience.

THE COURT: I think it is on pure driving.

MR. RAY: Q. Have you ever driven a car yourself? A. Yes.

Q. For how long? A. The same length of time.

Q. 30 years? A. Yes.

Q. Have you had any experience of one car being struck by another car as it was passing? A. Not personally, but I have seen lots of the effects.

THE COURT: Q. I do not doubt that you do. That is your business. A. Yes.

MR. RAY: Q. Have you been called on to repair cars which were damaged either in passing or passed in that manner? A. Yes.

Q. And the damage you found.

MR. NICHOLSON: My lord, one would have to have the evidence as to the nature of the accident.

THE COURT: It is very problematical. You know, it is one of those cases that is so extremely hard for anyone that has not seen—

MR. BULL: It is a question of the weight of the evidence. I don't know on what ground it can be excluded.

THE COURT: It is a straight driving problem.

MR. BULL: He is qualified in both ways.

THE COURT: He can go further and say while seeing the effects in a shop is one thing, it is a question whether he can come here and say, "I have seen cars in collision where one passes in front." If he cannot say that he cannot help us much.

MR. BULL: If he couldn't say that, I don't know who could. It strikes me that I could get in the box and say that, and I am not an expert on cars. Here is a man with 30 years in the business, with every kind of car. Your lordship may discredit his answers, but as far as the evidence is concerned, I don't know how it can be excluded, with great respect to your lordship.

THE COURT: Well, it is excluded.

MR. BULL: It is excluded?

THE COURT: Yes.

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Roy Howard—Cross-Exam.
Chochi Ogawa—Direct-Exam.

Called for Defdt.
Called for Defdt.

CROSS-EXAMINATION BY MR. NICHOLSON:

Q. Do you recall the date when you made that examination, Mr. Howard? A. I made a notation. It was somewhere about the 26th.

Q. Somewhere about the 26th, I see. All you can say is you didn't discern any trace of any repairs? A. Exactly.

Q. Seeing you discerned no trace of repairs, can you say that the dent which you saw under there had not been knocked in with a hammer which had its head covered? You couldn't detect that after having been done it had had two or three weeks driving after the accident occurred? A. No. It has a tendency if severe damage has been done to loosen the rubber if it has been pounded back.

Q. It is possible it would be otherwise? A. I wouldn't say it didn't.

Q. In this case you say you saw some damage on the rubber? A. Naturally it would have to be on the rubber. It dents the metal.

Q. Was it of a rubbing character, the damage? A. I couldn't say that.

THE COURT: Q. Did you say it damaged the metal underneath the rubber? A. Yes, it dented it as it hit the rubber. It dent it in.

MR. NICHOLSON: Q. It dent the steel underneath? A. Yes, the running-board was steel, and the dent over it.

Q. And the dent half an inch deep was in the steel underneath it? A. Yes. It couldn't be in the rubber, you see.

(Witness aside)

MR. BULL: I will call the defendant.

CHOCHI OGAWA, the Defendant herein, being first duly sworn, testified on his own behalf as follows:

DIRECT EXAMINATION BY MR. BULL:

Q. How long have you lived in Canada? A. About 12 years.

Q. About 12 years? A. Yes.

Q. And what is your occupation? What do you do? A. Oh, I am a commercial traveller.

Q. You are a commercial traveller. For whom do you work? A. Pacific Importers.

Q. And what is their business? What do they sell? A. Japanese fancy goods.

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Q. How long have you been with them? A. About 12 years.

Q. Four years? A. No, 12 years.

Q. And you use a motor-car in your business, do you? A. Yes.

Q. What district do you cover in your business? A. I am mostly covering in Vancouver.

Q. You mostly cover Vancouver? A. Yes.

Q. Just in the city? A. I am going up sometimes to the Fraser Valley.

Q. You go up to the Fraser Valley sometimes. How long have you been driving a motor-car before this occurrence in Port Moody in November of 1935? A. I think about 10 years.

THE COURT: Q. I did not get the last. A. 10 years.

Q. 10 years where?

MR. BULL: He has been driving a car before this accident for 10 years.

Q. At the time of this accident to the plaintiffs I understand that you owned and were driving a 1933 Ford V-8 tudor? A. Yes, sir.

Q. How old a car was it? How long had you had it? A. I think about two years.

Q. You think about two years? A. Yes.

Q. Yes. It was new at the time you bought it, was it? A. Yes, sir.

Q. Had you been driving that car practically every day? A. Yes, sir.

Q. On business? A. Yes, sir.

Q. Now on the Sunday in question were you driving for pleasure or on business? A. Oh, just—not business, I am calling for friends, you know.

Q. It was a Sunday? A. Yes.

Q. Who did you have with you? A. Mr. Hoguchi and Mr. Sakomato.

THE COURT: Q. Just a minute. A. And Tokunaga.

MR. BULL: Q. Three other men in the car? A. Yes.

Q. Who is Mr. Hoguchi? A. He is working for M. Furuya Company.

Q. Is he the manager? A. Yes.

Q. He is the manager of Furuya & Company? A. Yes.

Q. Who was in the front seat with you? A. Mr. Tokunaga.

Q. Tokunaga, is that it? A. Yes.

Q. And where were you going? A. I am going to Mission.

Q. Mission? A. Yes, sir.

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Q. Yes. And you arrived at Port Moody about a quarter to nine in the morning, didn't you? A. Yes.

Q. And you remember the curve in the road before you get into St. John's Street? A. Yes.

Q. When did you first see the plaintiff's car, Dr. Fujiwara's car? A. I saw, what do you call it—around corner in John's Road, the Vancouver side.

Q. The Vancouver side of the curve? A. Yes, the Vancouver side of the curve.

THE COURT: Q. I did not quite get it.

MR. BULL: Q. There is a curve before you get into St. John's Street. He was on the Vancouver side—nearer Vancouver when you first saw the Fujiwara car? A. Yes.

Q. How far ahead of you was that car when you first saw it? A. I think about 40 or 50 feet.

Q. You think about 40 or 50 feet when you first saw it? A. Yes.

Q. You must have seen it when you came around the curve or something, did you? A. Come around the curve I get up to about 25 or 30.

Q. As you came around the curve? A. Yes.

THE COURT: Just a minute. All right.

MR. BULL: Q. Did you notice anything about the way the car ahead of you was being driven, or the course it was taking? A. He was driving like this (indicating).

Q. You are makng a motion with your hand? A. Yes, like this.

Q. A waving motion? A. Yes, like this.

Q. I see. When did you notice that, before or after you turned the corner? A. After I turned the corner.

Q. After you turned the corner? A. Yes.

Q. Did you try to pass it before you got into St. John's Street? A. No.

Q. When did you first determine you would pass the car? A. After the intersection.

Q. You mean the intersection after the curve. I will show you a plan. Now here is a plan, you see. Apparently these marks show the start at the post. A. Yes.

Q. There is Douglas Street there, passing Douglas Street at the intersection? A. Intersections, yes.

Q. The corner isn't shown on here, you see. A. No.

Q. As you were coming along across Douglas Street, you see? A. Yes.

Q. How far ahead was he of you then? How far was the other car ahead of you? A. Ahead of my car, you mean?

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Called for Defdt.

Q. Yes. How far was he ahead of you? A. Not so far.
Q. Not very far? A. No.
Q. It was after you passed the intersection of Douglas Street that you decided you would pass him, was it? A. Yes. After I pass those intersections and I am going this way.
Q. You are going past him? A. Yes, sir.
Q. What did you do before you proceeded to pass him? What did you do? A. Well, I am just passing this car and we had—
Q. That is not what I mean. What I want to know is whether you sounded your horn or not. Did you sound your horn? A. Yes, sir.
Q. How many times? A. About twice.
Q. About twice? A. Yes.
Q. What sort of a horn is it? A good loud horn? A. Yes, loud horn.
Q. And when you sounded your horn what was the position of the Fujiwara car on the road, having regard to the centre of the road? A. Mostly centre.
Q. Mostly in the centre? A. Yes.
Q. Was he nearer to the centre than the right-hand side? A. Yes, sir.
Q. What did he do, if anything, when you sounded your horn? A. He moved a little to the right-hand side.
Q. He moved a little to the right-hand side: Yes. A. Yes, he moved.
Q. Did you see any other cars there? A. One car behind mine.
THE COURT: Q. What did you say about cars?
MR. BULL: Q. I asked if you saw any other cars then? A. Yes, behind my car.
Q. You say there was a car behind you? A. Yes, sir.
Q. How far behind you? A. About 25 or 30.
Q. About 25 or 30 feet? A. Yes.
Q. When did you first know that car was behind you? Where were you? A. When I turned this corner here.
Q. When you turned the curve? A. Yes.
Q. It was about 25 or 30 feet behind you? A. Yes.
Q. Do you know what kind of a car it was? A. A coupe car.
Q. A coupe car? A. Yes, that is all I know.
Q. Did you see that car again that day? A. Yes, I saw that car in the New Westminster Hospital.
Q. The same car that was behind you? A. Yes.
Q. The same day? A. Yes.

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Q. Did you see it before you left for the hospital? You took some of the people to the hospital? A. Yes.

Q. Did you see more of the coupe car before you left? A. No, sir.

Q. Did you see it at the hospital? A. Yes.

Q. Do you know whose car it was? A. No. It was English people's car.

Q. You mean that might have been Canadians? A. Yes.

Q. You mean they were not Japanese? A. No.

Q. There were no cars coming towards you when you were passing Fujiwara's car, were there? There were no cars meeting you? There were no cars in front of you when you were passing Fujiwara? A. No.

THE COURT: Coming the other way?

MR. BULL: Q. No cars coming the other way? A. No.

Q. Just explain how you passed him, will you? A. Explain?

Q. Yes; tell his lordship. A. I am just passing on the left-hand side and passing just this way.

Q. How fast were you going? A. Oh, about 30—about 35 or 40.

Q. How fast was he going when you decided to pass him? A. He is going?

Q. Yes. What is his speed before you passed him? A. His speed? I don't think not so fast.

Q. You don't think so fast, no. You have to go faster than he does, of course, to pass him? A. Yes.

Q. And you mean when you say you are going at 35 to 40 it is in order to pass him you were going that? A. Yes, to pass him.

Q. As you passed him how far over to the left side of the pavement were your left wheels? A. Left wheels just in of the tip.

Q. What? A. About in of the tip.

Q. End of the paved road? A. Yes.

THE COURT: Q. You mean just inside the edge of the pavement?

MR. BULL: Yes.

Q. Did you look at the other car as you passed him? Could you see who was in the car? A. Well, no, I don't see him.

Q. You didn't see him? A. No.

Q. You were looking ahead, I suppose? A. Yes.

Q. Did you know Dr. Fujiwara before? A. No, I don't know him.

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Q. What happened as you passed him? Did your car hit his car? A. No, I didn't hit his car.

Q. Were you near him? A. No.

Q. How far were you away from his car? As you passed what was the distance between the two cars? A. Two cars?

Q. Yes. A. When I stopped?

Q. When you passed him how far apart were you? A. About 30 or 35.

Q. That is the speed. A. You mean—

Q. You were going past him like that, you see. A. Yes.

Q. I want to know how far apart your two cars were. A. About 4 or 5 feet.

Q. About 4 or 5 feet. He says as you passed him you turned in. A. No, sir.

Q. And hit him. What do you say about that? A. I didn't hit anything.

Q. You didn't hit anything? A. No.

Q. Did you know at once anything had happened to the other car? A. Well, I am just going to go into the middle of the road and somebody says something happened, and I looked just, you know, for the mirrors, and Mr. Fujiwara's car was going up the step on the road, at front of house—the steps.

THE COURT: Q. Now just a minute.

MR. BULL: Q. How did you see that?—by looking out the side?

THE COURT: No, he said he saw it in the mirror. He could not say—as a matter of fact he is obviously mistaken. If he tells me he saw that in the mirror he is telling me something I do not think is possible at all.

MR. BULL: Q. Perhaps you can convince his lordship. His lordship doesn't think you saw it in the rear-vision mirror. A. Someone said something happened, and I saw mirror just one minute, you know. You know the mirrors, and I looked back like this.

Q. What did you see in your mirror? A. Just what do I say? Can you explain it for me, Mr. Ide?

Q. Oh, you would like the interpreter to explain it?

MR. BULL: I think perhaps we had better have Mr. Ide.

THE COURT: Let him try it first and if he needs an interpreter, all right.

MR. BULL: Q. You say, witness— In order that it might be clear we will go back. I think I asked you when you knew anything had happened, you see. A. Yes.

Q. And you said as you were getting back towards the centre of the road? A. Yes, sir.

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Q. Someone in your car— A. Yes.
Q. —said something had happened to the other car? A. Yes.
Q. So far is that correct? A. That is right.
Q. Then you said something about your mirror? A. Yes.
Q. Now what did you see in your mirror? A. I don't see very much.
Q. You didn't see very much.
THE COURT: Q. What?
MR. BULL: Q. Did you see anything in your mirror? A. Just I saw, you know, just like it is here. You better explain how it is.
Q. A flash or—
THE COURT: Q. Go ahead and take your time. What did you see in your mirror? You saw the other car in the mirror, did you? A. Just only a short time.
Q. Just only a short time. What was it doing? A. That is all right.
Q. You were looking up in the mirror? A. Yes.
Q. What was the other car, the doctor's car, doing? A. I looked only one minute in mirror.
Q. Well, one second. A. One second, and next time I saw like this.
Q. Tell me what you saw in the mirror. What was it doing when you looked at it? A. I saw the car, yes, Mr. Fujiwara's car.
Q. What was it doing? A. Well, what I say, just only a second I saw his car, you know.
Q. Where was it? A. Well, his car is, I should say, on the step. Not on, but near the steps. Around near the steps.
Q. Did you see that in the mirror? A. No, just only one second I saw that.
THE COURT: I guess you had better get him the interpreter, Mr. Bull, I want to be fair to the witness, you know.

TADASU IDE, sworn as interpreter.

THE COURT: Mr. Bull, I suggest you explain to the interpreter what you want and let them wrangle it out between them. I know Mr. Ide. He will get the point, and it is very important we should just have it clear. Let them wrestle it out between them, and Mr. Ide can give us the answer. I think that is the best way.
MR. BULL: Q. You understood me as far as I went. When you were getting back towards the centre of the road your

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attention was called by someone in the car to something that happened to the other car. Just a moment. I think for the purpose of the record would you tell me how far I have gone, Mr. Reporter? Tell me what I said.

(Reporter reads: "Did you know at once anything had happened to the other car?")

Then you said you saw something in your rear-vision mirror, and then his lordship intimated that is impossible. That is why we have got into this difficulty at the moment. Now I want to know what you saw in your rear-vision mirror. Put that to him now, will you? A. Well, what I saw in the vision mirror, it happened very fast, so I cannot describe exactly what it was, but it was a flash in a second, but I cannot describe exactly.

THE COURT: Q. Can he not tell us how far he followed the car in the mirror?

MR. BULL: May I interrupt? He doesn't say he followed the car. The interpreter said he saw something for a fraction of a second in the mirror.

THE COURT: What got us into all this difficulty was the statement he made in the first question. There wasn't any doubt about that statement. Now I might have stopped there and said nothing and just let it go as it stood, but I did not. I think after all, we should be fair to the witness, but now I think he should be very, very careful to tell us how far he travelled in the mirror. If he didn't travel—

MR. BULL: Those questions were put in his mouth. This interpretation didn't say anything about following a car. Would you repeat what the witness said in answer to the question? Let us get it right now.

THE INTERPRETER: I saw in the rear-vision mirror. It happened very fastly. It only took a second. Something reflected in the mirror

THE COURT: Q. Well, what was it? A. I can't name exactly what it was.

MR. BULL: Q. All right, we have got that far. What did you do after that? After you looked at the mirror and saw something in the mirror, what did you do? A. I slowed down my car and cut into—cut into the right-hand side.

Q. Yes. Did you look and see the other car? A. Yes.

Q. You did see the other car then? A. Yes, sir.

Q. Where was it then? A. That is running for the step.

Q. He says some step there. A. Yes.

Q. When you saw the other motor-car at the steps of the house, and of course we all know where it is on the plan, where

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were you looking? Were you looking in your rear vision mirror, or were you looking out of the side of the car? These are the steps, you see, according to the evidence. A. Yes.

Q. Did you see the other car at these steps, or near these steps? A. About this here. It is nearer the steps.

MR. NICHOLSON: Better mark that.

THE COURT: Oh, near the steps is good enough.

MR. BULL: Q. You had better mark it in red and mark it F. A. This one here?

A. Yes? A. F.?

A. Yes. You saw it there. Did you see it there in your rear-vision mirror or otherwise, and what were you looking? A. I saw back like this.

Q. Through the side of the car, you mean? A. Yes.

Q. All right. What did you do then? A. I slowed down.

Q. You slowed down? A. Yes.

Q. And where did you bring your car to a stop? Where did you stop your car? A. Oh, stopped right-hand side.

Q. How far away from the electric light pole that stopped the other car? How far from that? A. I think 25 or 30 feet.

Q. You think 25 or 30 feet from beyond that pole? A. Yes.

Q. Did you see Fujiwara strike that pole? A. Yes.

Q. That second pole? A. Yes, sir.

Q. Did you hear the noise it made? A. Yes.

Q. Had your car stopped then when he hit the pole, or was it still going? A. Mine just slow down, not stop, but slow down.

Q. When Fujiwara hit that pole that stopped him up, were you still going or had you stopped?

MR. NICHOLSON: He said he was still going.

MR. BULL: I am asking the witness.

MR. NICHOLSON: I know, but you are cross-examining him.

MR. BULL: I am not cross-examining him. I am asking him a question. It is perfectly right in examination. If my friend doesn't understand it, I will repeat it.

MR. NICHOLSON: May I state my objection to the court? The witness stated, "I wasn't stopped. I was then slowing down," and my learned friend afterwards after that went back over the same ground.

MR. BULL: That is quite a different thing, asking a question twice.

MR. NICHOLSON: A different question. It is the second question that I objected to.

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THE COURT: He did answer it.

MR. BULL: So many times refinements are made about these answers, and we are dealing with one that doesn't speak the language very well.

Q. Do you understand the question? A. Yes, sir.

Q. What is your answer to it? A. Pretty nearly—pretty nearly stopped.

Q. You had almost come to a stop? A. Yes.

Q. Did you actually see Fujiwara hit the pole? Put that to him. A. Yes.

Q. You saw that? A. Yes.

Q. And then you brought your car to a stop, did you? You brought your car to a stop at the side of the road, did you? A. Yes.

Q. Did you back up?

THE COURT: He means by that he saw—it is hard—or he saw the result.

MR. BULL: Of course, there is another difficulty dealing with—

THE COURT: He said, "I saw him hit it." He said it twice. As a matter of fact, one is not any too certain what he means by that. Perhaps you had better clear it up through the interpreter.

MR. BULL: Q. Would you make it clear that what we want to know is whether he actually saw the impact or whether he saw it after it hit?

THE COURT: Q. Be careful that he gets that. There is a difference between before and after. We know he saw it afterwards, but did he actually see it?

(Question interpreted)

A. Yes, I actually saw it.

MR. BULL: Q. "Yes, I actually saw it." Yes, we have that.

THE COURT: Yes. We want to be sure about it, that is all.

MR. BULL: Q. Now when you brought your car to a stop, did you stop on the side of the road or in the middle of the road? A. About the right-hand side.

Q. About the right-hand side? A. Yes.

Q. Did you park there or move away? A. Moved it back.

Q. Moved it back? A. Yes.

Q. Nearer the pole which Fujiwara struck? A. Yes.

Q. And how far away from that pole? A. How far away from that pole?

Q. Yes. A. I couldn't exactly say. About, I think, 15—no, 15 or 20 feet.

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Q. 15 or 20 feet? A. Yes.
Q. Yes. Then I think after the accident you took the injured people off to the hospital at New Westminster? A. Yes.
Q. And who went with you? A. Mr. Hoguchi.
Q. And Mr. Fujiwara? A. Yes.
Q. And you took Mrs. Fujiwara? A. Yes, sir.
Q. And Miss Sato? A. Yes, sir.
Q. And did Fujiwara say anything to you about the accident? A. No, sir.
Q. Did he explain to you how it happened? A. Nothing at all.
Q. Didn't say a word to you at all? A. No.
THE COURT: Q. Who did you say?
MR. BULL: I asked whether Fujiwara had asked him—
THE COURT: I did not know whether you said Fujiwara or Hoguchi.
MR. BULL: Q. And he didn't say anything to you about it at all? A. No, sir.
Q. Who was sitting in the front seat with you? A. I think Mr. Hoguchi, I remember.
Q. Going to the hospital you think it was Mr. Hoguchi? A. Yes.
Q. Now then, you drove back to the scene of the accident with Mr. Hoguchi and Dr. Fujiwara, did you? A. Yes.
Q. Did you have any conversation on the way back?
MR. NICHOLSON: No, he didn't drive back.
MR. BULL: I don't know why my friend is assuming that tone. Does my friend think I want him to say he drove back if it isn't the truth? I certainly thought he drove back.
THE COURT: It is a point.
MR. BULL: Why does my friend say I am putting words in the witness's mouth?
Q. Did you drive back to Port Moody? A. Yes.
Q. Who drove back with you? A. Mr. Hoguchi.
Q. You left the other man there, did you? A. Yes, sir.
Q. Did you see them when they came back to Port Moody? A. Yes, sir, I saw him.
Q. You saw him at Port Moody again? A. Yes, sir.
Q. Did he then say anything about the accident—Fujiwara? A. Mr. Fujiwara?
Q. Yes. A. He didn't say anything.
Q. Did he ever say anything to you about having hit him? A. No, sir.
Q. Now somebody said, I think the young boy Wesley Fujiwara said that when you were all standing together there at

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Port Moody after you had got back from the hospital, either you or Hoguchi said—wait until I get these words—"I wonder if that were so after all." Did you say anything like that? A. I didn't say anything.

Q. Did you see them examining your car; the running-board of your car? A. Mr. Fujiwara examining?

Q. Did you see any of those people looking at the running-board of your car at Port Moody? A. Yes.

Q. Who? Did Fujiwara look at it? A. Mr. Fujiwara, yes sir.

Q. And his son? A. And his son.

Q. Were you there when he was doing it? A. No, I was standing to one side.

Q. You were standing to one side. Did they say anything in your presence about what they found on your running-board? A. No, sir.

Q. Did you say Mr. Hoguchi say anything about it? A. I don't know.

Q. Were you talking in Japanese or in English? A. I am talking more Japanese.

Q. Any conversation that took place was in Japanese, was it? A. Yes.

Q. Was there any damage done to your car? A. I have no damage.

Q. Did you have your car repaired at all after this accident? A. No.

Q. You sold it afterwards, didn't you? A. I beg your pardon?

Q. How long did you have that car afterwards before you sold it? A. About 11 months.

Q. About 11 months? A. Yes.

Q. Then you sold it? A. Yes.

Q. And after this thing happened at Port Moody, when did you first take it into a garage to have it looked at?

(Question interpreted)

A. What garage do you mean?

Q. Any garage. Just a minute. Don't go away. The Central Garage. A. Yes, the Central Garage and Roy Howard.

Q. When did you take it to the Central Garage? How long after this accident? A. Let's see. I am not sure what day.

THE COURT: The Central is at Port Moody?

MR. BULL: No, the Central is here.

Q. That is where Roy Howard examined it, isn't it? A. Yes.

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Q. You took it in for that purpose, did you? A. Yes.
Q. You were asked to take it in there to have it examined to see if there was anything wrong with the running-board, is that right? A. Yes.
Q. It was in the Central Garage? A. Yes.
Q. Now that would be how long afterwards? A. I think after we had the court at Port Moody.
Q. After you had the court at Port Moody? A. Yes.
Q. Did you have any repairs done to the running-board of your car at any time after the accident? A. No, sir.
MR. BULL: All right.

CROSS-EXAMINATION BY MR. NICHOLSON:

Q. When you first saw Fujiwara's car you were rounding the curve in the road, were you not? A. You mean the—
Q. The first you saw of it, you were just coming around the curve? A. Yes.
Q. And you caught up to it at the first intersection? A. You mean go up?
Q. Caught up.
THE COURT: You have to be very, very careful. This man has only a fair knowledge of English. It is obvious he misinterprets an odd word now and again.
MR. NICHOLSON: Q. You came up close behind it at the first intersection?
THE COURT: Q. By Douglas Street? A. When I arrived at the first intersection I was about 15 or 20 feet away from the first car.
MR. NICHOLSON: Q. That is from Fujiwara's car? A. Yes.
Q. And you then blew your horn and speeded up to pass him, is that right? A. No.
Q. What did you do then?
THE COURT: You see, Mr. Nicholson. I think you had better use the interpreter. It is obvious what he did. I do not think he intends to deny it. Now I think you had better step in here, Ide, and take charge.
MR. NICHOLSON: Q. I say when he got up about 15 or 20 feet behind the Fujiwara car he blew his horn and speeded up his car to go by the Fujiwara car, is that so? A. No, that is not so.
Q. What did you do then? A. After I blow the horn twice, and having found that Dr. Fujiwara's—

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THE COURT: Q. What? A. I blow the horn twice, having noticed doctor's car move to the right-hand side.

Q. Yes.

MR. NICHOLSON: Q. Then what did you do? A. Then I proceeded.

Q. Now when you speeded up or increased your speed to pass Dr. Fujiwara's car, where was this other car that you speak of, this coupe? A. The coupe is coming behind from my car.

Q. Did you see it as you were going along St. John Street? A. Yes, I did.

Q. Behind your car? A. I did.

Q. To the left or the right of your car? A. You mean to say the car coming from behind?

Q. Yes, the car coming from behind. A. Just about the middle side of the centre of the road.

THE COURT: Q. That is the coupe? A. That is the coupe.

MR. NICHOLSON: Q. The coupe was about the centre of the road. That would be to your left, would it not? That would be partly to the left of your car? A. The coupe was travelling to the centre of the road behind my car.

Q. And where were you travelling? Weren't you travelling along on your proper side of the road before you came up to Fujiwara's car? A. I was travelling on almost the centre of the road.

Q. You were travelling on almost the centre of the road. You would be right ahead of this other car? A. Yes.

Q. How did you see it then? A. I could see it through the mirror.

Q. So as you were going along your rear-vision mirror was set so you could see traffic coming along behind you? A. Yes.

Q. Well, then, how could you see Dr. Fujiwara's car when it was up on the sidewalk near these steps out of your sight-vision mirror? A. I said it has all just happened—the flash reflection on the mirror, so I noticed something might happen.

Q. Did you not say on your examination for discovery that you actually saw Dr. Fujiwara's car up by the steps through your rear-vision mirror? A. Well, on account of my lack of English I may not be able to understand distinctly at the time of the examination for discovery.

Q. I suggest to you, witness, on your examination for discovery I suggested to you that you had looked over your shoulder, then you saw the car up by the steps, and you corrected me and said, "No, the rear vision."

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MR. BULL: What question?

MR. NICHOLSON: 188 to 190 of the discovery. I will read it. Question 188:

"Q. You are going in middle of road? A. And going about—I think about 50 feet as I remember—I am not sure, but about 45 or 50 feet and somebody says—I think I remember Mr. Tokanaga or somebody says, 'something happen. Something happen to another car.' And I looked this way—like this, you see—that way.

"MR. RAY: (Indicating looking through the rear mirror—rear vision).

"MR. NICHOLSON: No, he indicated looking over his shoulder.

"THE WITNESS: No, through mirror. There are small mirrors in car—

"Q. That is Dr. Fujiwara's car? A. Yes, the first time I saw—I don't know what you call this—this is a small step here.

"Q. Steps up by the sidewalk—on the side of the road? A. Yes."

Q. So that there you corrected me and said you hadn't looked over your shoulder to see the car, but you had seen it in the mirror. Mr. Ide, would you ask him if he doesn't remember on his examination for discovery when I suggested to him to see the things on the sidewalk and this step he speaks of, he must have looked over his shoulder. Ask him if he doesn't say, "No, the first time I saw it was in my rear-vision mirror," A. Well, I mean the first I noticed through the rear-vision mirrors I answered to the question at the time of the examination for discovery to that effect.

Q. Did you see that automobile when it was up over the steps through your rear-vision mirror? A. What I want to say —I mean immediately ahead somebody says something happened. I just noticed some flash in the mirror reflecting.

Q. Didn't you say you saw Dr. Fujiwara's car up by the steps and you saw that in your rear-vision mirror? A. Well, to that effect I am sorry. I couldn't understand distinctly at the time the question put it up.

Q. I see. Why did you correct me when I suggested you were looking over your shoulder, and you mentioned the mirror? A. If I could explain the details, the details I have the question at the time, of course, I would, but I am unable to understand the details in my kind of English.

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Q. Witness, you said to-day you couldn't see those who were in the other car as you passed it, is that correct? A. What did you say?

Q. I understood him to say in answer to Mr. Bull that he couldn't see those who were in the other car, that is, Fujiwara's car, as he passed it. He said, "I couldn't see them." A. I wish you would repeat again distinctly, Mr. Nicholson, the question.

Q. Did he not say to Mr. Bull a few moments ago that when he, that is when the witness here passed Fuijwara's car, he couldn't see those who were sitting in Fujiwara's car? A. In fact I didn't see any in the doctor's car.

Q. Did you see the doctor's car? A. I didn't pay any attention because I am looking forward, so I do not draw any attention at all.

THE COURT: He said, "I didn't look at them. I didn't look at Fujiwara."

MR. NICHOLSON: Q. I am going to suggest on discovery —I wanted to be sure—I just wanted to be sure there was no mistake in what the witness had said. Did you not say on your examination for discovery, witness, that you had seen the driver of the other car and you recognized him as a Japanese? A. In fact, at the time I passed the doctor's car I didn't see any other person in his car.

Q. I want to read you questions 105 to 107 of your discovery? "Q. Now when you passed this other car did you notice then what make of car it was? A. No, I don't know. I didn't see that." Do you follow that Mr. Ide? A. Yes.

Q. I will read the three questions. Then you can put them to him: "Q. Did you notice whether it was being driven by Japanese? Did you notice it had Japanese passengers in it and a Japanese driver? A. Well, I knew it had a Japanese driver. "Q. You knew it had a Japanese driver? A. Yes."

And question 246 which I want to read to you: "Q. Now as you passed Dr. Fujiwara's car you saw it was a Japanese driving it? A. Yes." Will you read those questions, Mr. Ide, 105 to 107 and 246, and ask the witness if he gave those answers on discovery.

THE COURT: 240—what?

MR. NICHOLSON: 105 to 107, and the straight question 246, my lord—and 246, Mr. Ide.

Q. Now did you give those answers to those questions on your examination for discovery? A. I don't remember what answer I gave to it.

Q. Were those answers true? A. I don't remember exactly what answer I gave to it.

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Q. I am asking you now, are those answers to those questions true? A. In fact, when I passed the car I didn't notice who was driving in the car.

Q. Did you notice whether or not it had a Japanese driver? A. I didn't notice any.

Q. You didn't notice that; I see. Well, then, do you deny giving those answers on discovery? A. I have no intention of denying, but I don't understand clearly what Mr. Nicholson's question put it up.

Q. Just answer me in English now. You knew that the car had a Japanese driver. Do you understand that?

MR. BULL: Is that a question or a statement?

MR. NICHOLSON: Q. Do you understand that statement? A. No.

Q. You can't follow that? A. No.

Q. But you were able to answer most of Mr. Bull's questions without an interpreter, but you can't follow a simple question like that? A. Can you repeat it if you can?

Q. Yes. Did you know this other car that you passed had a Japanese driver? A. No.

Q. You don't know that? A. I don't know it.

Q. Well, then that question was put to you on discovery, "Did you notice it had Japanese passengers in it and a Japanese driver?" and your answer, "I knew it had a Japanese driver." Questions 105 to 107 and 246, my lord. It is the answer to question 106. It is the significant one. The answer to question 106, it is very significant: "I knew it had a Japanese driver."

THE COURT: 246. Here he did not know what he was talking about.

MR. NICHOLSON: Your lordship saw him.

THE COURT: Yes, I know I saw him making explained answers.

MR. NICHOLSON: Q. Witness, when you passed this other car—after you passed it, did you pull back to the right-hand side of the road again? A. You mean after he passed the car?

Q. Yes, after he got past the front of Fujiwara's car, did you pull back to the right-hand side of the road? A. No, I didn't.

Q. You didn't? A. No.

Q. Didn't you draw a sketch for me on the examination for discovery and show that you did make a turn to the right after you passed the car? Look at this sketch. Didn't you draw this block here marked "A"? A. Yes.

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Q. And didn't you draw this other block marked "B"?
A. Yes.
Q. And didn't you say "A" was Fujiwara's car when you passed it? A. Yes.
Q. And "B" was your car? A. Yes.
Q. And didn't you say the line there, 1 to 2, represented the course of your car after you passed Fujiwara's car? Didn't you say that, and didn't you draw the line? A. Well, I should say I didn't go in front of his car, but this sketch more or less made a mistake at the time I drew the sketch.

THE COURT: What did he say?

MR. NICHOLSON: It is exhibit 1 on the examination for discovery, my lord. I might say that I will have to refer your lordship to the discovery, and the witness has indicated during the examination the course that his car made, and if your lordship will look, he indicated this direction here, and this heavy line—your lordship will see the heavy line—was actually drawn by a pencil. I think Mr. Ray then drew the witness's attention to the fact that that line had not been drawn by himself, and I am going to refer your lordship to it, and in order to clear it I asked the witness to draw it, and he drew from 1 to 2 and he swore he didn't want to change it, and that is the correct line. I will refer your lordship to the discovery there. It starts at 127.

THE COURT: 242 is where the mark was made?

MR. NICHOLSON: Yes, and it is also at question 223 to 226 of the discovery.

THE COURT: 223 to what?

MR. NICHOLSON: 223 to 226, my lord, and 242, my lord, to 245. You see there the sequence—the indication of the curve appears in 223—the swerve appears in 223. Going back there to get the sequence: 221:

"Q. Did you swerve to the right at all? A. Well, I am coming from here and his car is here, you see, and I just went on like this.

"222. Q. His car is A? A. Yes.

"223 Q. You have blocked out A—put A in again. A. Yes, I am coming this way and went just like this.

"224. Q. Well, that line there—mark it—the one that you have drawn there, 1 to 2. Will you take your pencil and put 1 there? A. This here?

"Q. That is the course that you followed—drawing it in pencil and put 2 at the end of that line? A. This here?

"Q. Yes. Now that was your course, was it, 1 to 2? A. 1 to 2, yes.

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"MR. NICHOLSON: You might mark this sketch.

"MR. RAY: You might have it noted the heavy mark before the witness made the other mark there was made by Mr. Nicholson."

That is one where the witness indicated the course and said that is where he indicated his course right on the map, and that is how that mark was made.

"MR. NICHOLSON: But he makes this other lighter mark further to the south."

If your lordship would look at the sketch you will see a lighter mark, and I say:

"243. Q. Do you want to change that line 1 to 2 as appears there, or do you say it is correct as it appears on that plan? A. I think it is all right.

"244. Q. Do you think the heavy part of all right? A. Yes, this is the heavy part. This is all right, I think.

"245. Q. You think that is all right? A. Yes."

My lord, he has there his answers.

THE COURT: Yes, but you must not argue it now.

MR. NICHOLSON: I think, my lord, those questions should be read to the witness, along with the sketch, and have him asked if he gave those answers to the questions.

THE COURT: I guess that is the proper way, but it takes time.

MR. NICHOLSON: I will tender the sketch as the next exhibit.

(SKETCH MARKED EXHIBIT 10)

MR. NICHOLSON: Mr. Ide, will you take the examination and start at question 221 and read to the witness along with the sketch, now exhibit 10, questions 221 to 226?

THE COURT: You are starting where?

MR. NICHOLSON: I am starting at 221, my lord.

Q. "Q. Did you swerve to the right at all?"

(Question interpreted)

MR. NICHOLSON: Now go on to the next page, Mr. Ide.

THE COURT: He read 221 to what?

MR. NICHOLSON: 221 to 226. So he will have the whole picture, go on to the remarks of counsel following 242.

THE INTERPRETER: 242?

MR. NICHOLSON: Yes.

THE INTERPRETER: It is a very short question.

MR. NICHOLSON: These are marked immediately after that,

"MR. NICHOLSON: You might mark this sketch.

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"MR. RAY: You might have it noted—"
So the witness will have the whole thing, 242 and 243 and 245, for in those places he says it is correct.

MR. RAY: My lord, I might say when Mr. Nicholson said, "You might mark this sketch." he was referring to the reporter, not the witness.

MR. NICHOLSON: Yes, that is true.

MR. RAY: It is a little ambiguous, perhaps.

MR. NICHOLSON: Your lordship, to get the sequence and the difference between the two lines, the thin line to the south is the one the witness drew.

MR. RAY: After you made the other one.

MR. NICHOLSON: I appreciate that, but I asked him if he wanted to correct that. This is his course, not mine, and you will see it carries on.

THE COURT: What did you say that was?

MR. NICHOLSON: On this, my lord, the fine line to the south is the one the witness drew, and when I asked him to pencil it in he drew the whole thing heavy.

Q. Did you give those answers to those questions on your examination for discovery, witness? A. I think I did.

Q. And 1 to 2 on that sketch, now exhibit 10, does represent the course that you followed after you passed Fujiwara's car? A. When I draw this sketch, particularly in the question of the curving down here, I made some mistake down here.

Q. You are mistaken on the curve. Did you not make a switch to the right when you passed Fujiwara's car? A. That was after?

Q. Well, put it when you passed Fujiwara's car did you not make a swerve to the right? A. I did not.

Q. Did you make a swerve to the right after you passed Fujiwara's car? A. I just kept going on straight.

Q. On the wrong side of the road? A. I just kept going on straight on the wrong side for a while, and gradually gaining on the right-hand side of the road.

Q. When I asked you if you wanted to change the course of that line, why didn't you correct it on the examination for discovery? A. Well, I didn't understand the meaning of the correctness.

Q. In fact, witness, you drew this thin line in here—see this line here in light pencil to the south of the heavy line—this line here? You drew that light line as representing your course, didn't you—a light line and then a heavy line? A. This one here? My intention was to draw like—I never intend to draw the sketch like this making the curve.

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Q. You say you got along on the wrong side of the road. You didn't pull over at all? A. Yes, I just kept going on the wrong side, just for a short time.

Q. And were you on the wrong side of the road when Mr. Tokanaga sang out "Something has happened to the other car"? A. No. After I came back to the centre of the road Mr. Tokanaga said something had happened.

THE COURT: Q. Just a minute. What did he shout? A. Something had happened.

MR. NICHOLSON: Q. If you had swung back to the right-hand side of the road—had swung back to the right before Mr. Tokanaga made that statement? A. When Mr. Tokanaga made the statement I was travelling on the right side of the road.

Q. And, witness—

THE COURT: Just a minute. He was on the centre of the road.

MR. NICHOLSON: I think he means he had come back more to the right side. I am not trying to pin him down.

THE COURT: Q. Where were you when Tokanaga spoke to you? Were you on the right-hand side of the road or the centre of the road? A. Centre.

THE COURT: That is what I thought. That is probably it. In any event, there is not one man in a dozen travels on the right side.

MR. NICHOLSON: Q. Now, witness, you are quite sure you had come back to the centre of the road when Tokanaga made that statement, "Something has happened to the other car," or words to that effect? A. True.

Q. And your car had only gone about 40 feet from the time you passed Fujiwara's car until you heard that exclamation by Tokanaga? Only 40 feet, isn't that right—45 feet, I am sorry.

THE COURT: What time?

MR. NICHOLSON: From the time he passed the other car, until he heard the shout, was only 45 feet, my lord. A. I cannot describe how far I did travel.

Q. You can't describe how far you did travel, but didn't you say on your examination for discovery that you think you had gone about 45 or 50 feet? Question 187 and 188: "And somebody says, 'Something happened. Something happened to another car.'" And you say you think it was Tokanaga.

"A. When I passed this car I am going just in the middle of the road.

"188. Q. You are going in the middle of the road? A. And going about—I think about 50 feet, as I remem-

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ber—I am not sure, but about 45 or 50 feet, and somebody says—I think I remember Mr. Tokanaga or somebody says, 'Something happen. Something happen to another car'."

THE COURT: What question is it?

MR. NICHOLSON: 187 and 188, my lord.

(Question interpreted)

THE COURT: I would think it is a speech.

MR. NICHOLSON: It is a speech from the witness. The question is only seven words.

THE INTERPRETER: It is all right, Mr. Nicholson.

Q. Did you give those answers to those questions 187 and 188 on your examination for discovery? A. I did.

Q. Are those answers true? A. Well, as to the distance which I travelled, 45 or 50 feet, as I said, I don't remember exactly what the distance was.

Q. I asked you are the answers you gave to those questions correct? A. I think it was about 45 or 50 feet.

Q. At that time you were going — when Mr. Tokanaga spoke to you you were about at what speed—about 35 miles an hour? A. Well, the speed was moderate. I can't describe how fast it was, but it was a very moderate speed.

Q. Witness, I asked you if your speed was not 35 miles an hour, that is, when Mr. Tokanaga spoke? A. I don't remember.

Q. You don't remember. You didn't slow down immediately you passed the other car and stop right in front of it, did you? A. No, I didn't.

Q. I suggest that when you speeded up to pass the other car you continued that speed until you were well clear of it, surely? A. What I did—of course, I speeded up when I passed the car, but after I passed the car knowing the vision was very clear, I slowed down.

THE COURT: Q. Knowing what was not clear? A. knowing the vision was clear.

Q. Knowing the vision was clear. What does he mean? A. Sight is clear.

Q. Up in front? A. Up on the beyond, you know.

Q. You slowed down.

MR. NICHOLSON: Most people go slow.

THE COURT: Some speed up. A. I kept on at a moderate rate.

MR. NICHOLSON: Q. Now, witness, I suggest to you that you did cut in in front of Fujiwara's car, perhaps not intentionally, but you cut in sharper than you thought you did? A. Never did.

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THE COURT: He is clear about that, anyway.

MR. NICHOLSON: Q. You were on the opposite side of the car from Fujiwara's car, weren't you? You were on the left-hand side of your car? A. Yes, the left-hand side.

MR. BULL: A left-hand driver.

MR. NICHOLSON: Now from the time that you passed the front end of Fujiwara's car until his car hit the post, that is, the second post, did it take long? A. It was a very short time.

Q. It all happened very quickly? A. It happened very quickly.

Q. Now do you remember when you and Mr. Hoguchi walked up to Dr. Fujiwara as he was holding his wife in his arms after the accident? Do you remember getting out of the car and coming over to them? A. Yes, I do.

Q. Do you remember Mr. Hoguchi saying to Dr. Fujiwara, "Oh, it is you"? A. I don't know.

Q. Did you hear Mr. Hoguchi also say, "We thought it was some slow car"? A. What do you mean, slow car?

Q. I say I am asking the witness if he heard Mr. Hoguchi say to Dr. Fujiwara, "Oh, it is you. We thought it was some slow car ahead of us"? A. I don't remember.

Q. You don't remember that. Now, witness, on the way from Port Moody to the Hospital Dr. Fujiwara was in the back seat of your car with his wife, wasn't he? A. Yes.

Q. And she was lying there unconscious and he was holding her, isn't that so?

THE COURT: They are all agreed on that. There was no conversation. That is that.

MR. NICHOLSON: My learned friend seemed to stress the fact. A. That is correct.

Q. Now, witness, you say that Dr. Fujiwara didn't speak to you about how the accident occurred? A. He didn't mention anything.

Q. Do you know, or rather did Mr. Hoguchi tell you that he had a conversation with Dr. Fujiwara at the hospital as to how the accident occurred? A. I don't know.

THE COURT: Who was it that had the conversation?

MR. NICHOLSON: Mr. Hoguchi.

Q. Mr. Hoguchi is an older man than you are, is he not? A. Yes, he is.

Q. Is he connected with the Pacific Importers? A. No relation at all.

Q. Well, after you got back to Port Moody—this is after you had been to the hospital—you remember Dr. Fujiwara and

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Wesley going and getting the Chief of Police, do you not? A. I do.

Q. And they brought the Chief of Police back, and you and Mr. Hoguchi accompanied them to your car, isn't that so? A. I know.

THE COURT: Q. What is that? A. I know it.

MR. NICHOLSON: Q. And there in your presence Dr. Fujiwara drew Chief Mackie's attention to the dents that were under the running-board of your car, isn't that so? A. Well, I don't know what happened, because I was standing a little far aside.

THE COURT: Q. Standing where? A. A little away from my car.

MR. NICHOLSON: Q. Did you not see the Chief of Police put his hand under your running-board and feel? Put his hand under there? A. I don't know.

THE COURT: Q. What does he mean—don't know? Does he mean "I don't know anything about it" or "I can't remember"? A. I don't know anything about it.

MR. NICHOLSON: Q. Witness, did you not see the Chief of Police put his hand under the running-board of your car and feel? A. I don't know anything about it.

Q. Didn't you tell me on your examination for discovery that the Chief of Police did feel under the car in your presence, under the running-board?

MR. BULL: Question?

MR. NICHOLSON: 284 to 296.

THE INTERPRETER: What number?

MR. NICHOLSON: 284 to 296, and not only spoke to him, but had a conversation. I will read the questions and answers and the interpreter can read them to you:

"Q. Now did the Chief of Police come out to the scene of the accident when you were there? A. Yes.

"Q. Did he examine you car? A. He looked at my car, yes.

"Q. Did he feel under the side of your car—under the running-board? A. No, he afterwards feel my car.

"Q. Afterwards he did feel? A. Yes.

"Q. Did you feel, too? A. You see, I didn't stand there. Mr. Siguchi was there.

"Q. Well, when the chief felt the side of your car, did you put your hand under, too, to feel any bumps? A. No, I didn't.

"Q. Do you know whether there were any bumps there or not, under the running board—under the rubber? A. No.

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"Q. You don't know? A. No.
"Q. Did you hear Dr. Fujiwara say anything to Mr. Siguchi about bumps under the running-board? A. Dr. Fujiwara?
"Q. Yes? A. Yes.
"Q. Talking to Mr. Siguchi? A. Yes.
"Q. What did he say? A. I don't know. I was standing on this side and Dr. Fujiwara and he looked at it.
"Q. Looked at the bumps? A. Yes."

Read those questions and answers to the witness, Mr. Interpreter, and ask him if he gave those answers.

MR. BULL: It is going to take some time.

THE COURT: I am not going to sit late. I do not know whether you want to finish this point or not.

MR. NICHOLSON: I would like to get this.

MR. BULL: Perhaps your lordship wouldn't mind if I leave.

THE COURT: We will stay on this point. We are not going further than that.

MR. NICHOLSON: Q. Read these questions, 284 to 296. Read these, Mr. Ide.

(Questions Interpreted)

Q. Witness, did you give those answers to those questions, 284 to 296, that have been just read to you by the interpreter? A. Well, when the Chief has made inspection, that has been after I came back from New Westminster.

Q. That is exactly what I asked you earlier to-day. I said after you came back from New Westminster. I made that very clear, is that right? A. After I came back from New Westminster, right at the spot where the accident took place.

Q. Right at the spot the accident took place the chief examined your car? A. The Chief make inspection, going around my car.

Q. And he put his hand under and felt the dents in the running-board? A. No, he didn't do that.

Q. Why did you tell me there that he did feel your car? A. At the time of the examination for discovery I didn't quite understand the question which you put up.

Q. I say here, "Did the Chief of Police come out to the scene of the accident when you were there?" and your answer is yes. There is no difficulty about it, is there? A. Well, the Chief made an inspection when I was down there.

Q. The Chief made an inspection when you were down there. Then the next question: "Did he feel under the side of your car, or under the running-board?" and your answer: "No,

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he afterwards feel my car." A. No, he didn't do that at that time.

Q. He did it down at the police station that very same morning? A. Well, it might have happened after my car was brought down to in front of the police station at Port Moody.

Q. Didn't you say there: "Afterwards he did feel?" and your answer "Yes." A. At the time of the question, putting it up to me at the examination for discovery, I didn't clearly understand what the question meant.

Q. I suppose you wouldn't understand the evidence of the Chief of Police that he did examine your car there and feel it in your presence? A. Well, I didn't understand what the Chief of Police was saying in the witness-box.

Q. You didn't understand what the Chief said.

MR. NICHOLSON: I don't think I can finish the cross-examination of this witness to-night.

THE COURT: To-morow morning at 11 o'clock.

(COURT ADJOURNED AT 4:30 P.M. UNTIL 11 A.M. JANUARY 20, 1937)

I hereby certify the foregoing to be a true and accurate report of the said proceedings.

"T. P. HORROBIN"
Deputy Official Stenographer.

January 20th, 1937

PROCEEDINGS RESUMED AT 11 A.M. PURSUANT TO ADJOURNMENT.

CHOCHI OGAWA, resumes Stand.

THE REGISTRAR: You have already been sworn, witness, you are still under oath.

CROSS-EXAMINATION BY MR. NICHOLSON:

Q. Mr. Ogawa, I want to ask you again did you or did you not realize that the driver of the car which you were passing was a Japanese when you went by? A. When I think it very carefully I think it was a Japanese.

Q. And I suggest to you, Mr. Ogawa, that you did recognize that the driver was Japanese and that one reason you cut over so sharply was you wanted to see who the other occupants of the car were, that you wanted to see if they were Japanese? A. No.

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Q. I am not suggesting you cut over intentionally, but naturally, seeing one of your fellow countrymen, you turned around to see who the others were, to see if you recognized them? A. No.

Q. Now, you were charged with driving to the common danger in connection with this accident, weren't you? A. Do you mean at Port Moody?

Q. In the police court at Port Moody? A. Yes.

Q. Now, you heard the chief of police give evidence in Port Moody, did you not, to the effect that when he first examined the car on the 10th November he felt bumps under the running-board on the inside of the running-board?

MR. BULL: Indentations.

MR. NICHOLSON: Q. He felt indentations on the running-board, but naturally he would feel bumps on the inside.

MR. BULL: He said indentations. You put it wrong.

MR. NICHOLSON: Call them indentations—

MR. BULL: I think you had better. One is the opposite of the other.

MR. NICHOLSON: I don't think any of us were confused what the witness was trying to describe; indentations on the outside and bumps on the inside.

Q. Did you hear the chief of police say in the police court at Port Moody that when he put his hand under the running-board he could feel an indentation? A. I did.

Q. And did you hear him say later on in the same trial at Port Moody that when he examined the car on the morning of the 23rd November he couldn't feel these indentations or bumps or whatever you want to call them? A. I did.

Q. I suggest to you, witness, that you were troubled about these proceeding in the police court out there—you had never been in the police court before, had you? A. No, never been in a police court.

Q. I suggest that was the reason why the bumps were knocked out; you had them knocked out. A. How do you mean?

Q. I suggest this witness, being afraid of the consequences that might flow in the police court, that he had these bumps knocked out before the court case came on the 23rd of November? A. No, never did.

Q. You didn't like being brought into police court, did you? A. No.

(Witness aside)

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Proceedings at Trial
Ukon Higuchi—Direct-Exam. Called for Defdt.

UKON HIGUCHI, a witness called on behalf of the Defence, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULL:

Q. How long have you lived in Canada? A. About 20 years.

Q. I think you are manager of Furuya and Company? A. Yes.

Q. What is their business? A. I am manager of the company.

Q. But what is their business? A. General merchants.

Q. Is it a large business? A. Not very large; just about medium.

Q. You, I think, were with the defendant, Ogawa, when he was driving through Port Moody on the 10th of November, 1935? A. Yes, sir.

Q. And you were in the front seat with him, were you? A. No, rear seat, on right-hand side.

Q. How long had you known Ogawa? A. Quite many years.

Q. I think you also knew the plaintiff, Fujiwara, did you not? A. Yes; many years, also.

Q. You remember the trip quite well, do you? A. Yes.

Q. And you know the curve in the road before you get on to St. John's Street at Port Moody? A. Yes.

Q. Do you remember going around that curve? A. Yes.

Q. Approximately at what rate of speed was Ogawa travelling then? A. I don't remember exactly, but a reasonable speed.

Q. Did you see any traffic ahead of you? A. Yes.

Q. I mean going the same way? A. Oh, yes.

Q. Where? A. Travelling east on the same road, St. John's Road. Dr. Fujiwara's car going ahead.

Q. He was behind you.

THE COURT: Going ahead.

THE WITNESS: Going ahead.

MR. BULL: That is right.

Q. Apparently Ogawa, after he got on to the straight road, wished to pass him, is that right? A. Yes.

Q. Just tell us what happened after that in your own way. A. When passing Dr. Fujiwara's car I note Dr. Fujiwara driving his car.

THE COURT: Q. What? A. When passing Dr. Fujiwara's car I note Dr. Fujiwara driving. Of course, I know him

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many years. And after we passed, gradually moving to the centre of the road, I don't know how many feet with Dr. Fujiwara's car, but somebody crying in the car—

MR. BULL: Q. In your car? A. Yes, that something happened.

Q. That something happened? A. Yes. At the same time I hear some big noise, car crashing bank, and also I think before that, maybe crashing to the telephone pole—several times crash with the bank, and then drive again to another telephone pole, I understand.

Q. Did you see all this? A. No, I didn't see, just at the last when Mrs. Fujiwara thrown out.

Q. Is that the first time you saw the other car after you had passed it, when you saw it strike the second electric light pole? A. Yes.

Q. Mrs. Fujiwara thrown out? A. Yes.

Q. But before seeing that you heard something, did you? A. Yes, noise.

Q. What did you say attracted your attention to that? A. In my car?

Q. Yes? A. Just somebody saying something happened.

Q. You don't know who said that? A. No.

Q. Do you say that happened after you passed Dr. Fujiwara's car? A. I don't know how many feet from the second telegraph pole, about maybe 40 to 50 feet from the second telephone pole, about centre of road; but as soon as we note accident Mr. Ogawa stopped then 5 or 6 feet, maybe more, back, and parked on the sidewalk, immediately getting out of car and assisting Mr. Fujiwara.

Q. Just going back from that a minute. It has been said by Dr. Fujiwara and two of his passengers that Mr. Ogawa's car hit the Fujiwara car when it was passing it. What do you say about that? A. I didn't notice anything at all.

Q. Didn't notice anything? A. No.

Q. Did you feel anything? A. No, sir.

Q. Were you looking at the time? A. When passing I note Dr. Fujiwara's car through the window. In car, Dr. Fujiwara, through the window.

Q. Were you sitting on the right-hand side? A. Right-hand side, rear end.

Q. And there was a window there? A. Yes.

Q. And you saw him through the window? A. Yes.

Q. Did you recognize him before you were abreast of him. You didn't recognize him from the back, did you. Can you follow what I mean? A. I can some.

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Q. When did you first know that it was Dr. Fujiwara? A. When passing his car.

Q. That is when you yourself were passing him? A. Yes.

Q. I may be leading, but I hope my friend won't mind, but I want to clear this up. You know what I mean? A. Yes.

Q. You were personally abreast of him before you recognized him? A. Yes.

Q. How far away would you say you were from him—your car was away from the Fujiwara car? A. After the accident?

Q. No; when passing—between the two cars? A. I don't know exactly, but 3 or 4 feet, more I think, because our car—after the accident happened I just see the tire marks. Our car run just about left-hand side paved road.

Q. Do you mean you went back to look? A. Yes. Not that time—I don't know exactly when passing his car.

Q. But you say that afterwards you went back? A. Yes. After accident happen we see tire mark.

Q. Who went back with you? A. Just all the men come back from the hospital.

Q. And you say you could see some tire marks there? A. Yes.

THE COURT: Q. This was after you came back from the hospital? A. Yes.

MR. BULL: Q. And those tire marks you saw, where were they? A. One left hand tire out on the paved road.

Q. You said the left hand or right? A. Left hand side of the tire.

Q. Was where? A. Just out off the paved road.

THE COURT: Q. Just off the paved road; just off the edge? A. Yes.

MR. BULL: Q. Of course others could identify those as being made by your car. What you mean is you did see some tire marks, to be fair about it? A. Yes.

Q. After the accident, I understand, you went to the hospital with Mr. Ogawa? A. Yes.

Q. In the front seat with him? A. Yes.

Q. And you took some of the injured persons there, didn't you? A. Yes.

Q. And when you came back, do you remember when the car was in front of the police station that Dr. Fujiwara and his son were examining the running-board of Ogawa's car? A. Yes.

Q. Just tell what happened there, will you? A. Dr. Fujiwara and son and Chief Mackay examining those marks on the running-board and say something.

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Ukon Higuchi—Cross-Exam. Called for Defdt.

Q. Did you hear what they said? A. No, I don't remember exactly.

Q. Did you see Dr. Fujiwara examine it ? A. Yes.

Q. How did he do it? A. Just touching it by his hand.

Q. Did he get down and look underneath? A. No, just by touching by hand.

Q. Are you quite sure he didn't get down and look under?

MR. NICHOLSON: I might agree, I think, that Dr. Fujiwara didn't say he got down in the presence of this witness. It was before the chief of police came.

MR. BULL: Q. Were you there when Dr. Fujiwara was there before the chief of police came? A. I don't remember exactly if examined it before or after, but those three men together at the time.

Q. Did you say "I wonder if that were so after all"? A. No.

Q. You didn't? A. No.

Q. In Japanese? A. No.

Q. Did you hear anyone else say that? A. No.

Q. You didn't make any examination of the car? A. No, sir.

CROSS-EXAMINATION BY MR. NICHOLSON:

Q. Did you hear Mr. Ogawa blow his horn before he passed the other car? A. Yes.

Q. And did you see him pull over to the left-hand side of the road to pass Dr. Fujiwara's car? A. When passing.

Q. Yes. Do you remember that? A. You mean out off the paved road.

Q. You were driving along your own side of the road, I suppose? A. Yes.

Q. Do you remember Ogawa pulling over to the left-hand side to pass Fujiwara? A. Yes.

Q. And you would be on the left side of the pavement, your car, wouldn't you? A. Yes.

Q. Did you speed to pass Fujiwara? A. I understand just reasonable when passing the car.

Q. He had to go pretty fast to pass a car going 25 miles an hour? A. I don't remember.

Q. You don't remember whether fast or not? A. No.

Q. But you do remember that just after you passed Dr. Fuijwara's car your car swerved back to the centre of the road. Do you remember that? A. Gradually moved up to the centre of the road.

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Ukon Higuchi—Cross-Exam. Called for Defdt.

Q. You can modify it if you like; but you do remember coming back to the centre of the road after you passed Fujiwara's car? A. Yes.

Q. Were you paying very much attention to the driving—you weren't driving, were you? A. Yes; I am driving.

Q. Ogawa was driving? A. I am not driving that time.

Q. When you drive in a car you don't watch the road very much?

MR. BULL: He must. He does drive, I think.

MR. NICHOLSON: Q. What do you say? A. When driving you must watch road.

Q. But passengers don't? A. No.

Q. When you saw the Fuijwara car up on the sidewalk, saw it smash against the post, didn't you wonder what happened?

A. Oh, yes.

Q. And you examined the side of your car, didn't you? A. No, sir.

Q. Never looked at it at that time? A. No, I didn't look any time at all.

Q. Did the other passengers examine the car in your presence? A. Oh, yes. You mean Dr. Fujiwara?

Q. No. Did Tokunaga or Sakamoto or Ogawa? A. No, not before me.

Q. Did you or Ogawa look at the car when you were at the hospital? A. No.

Q. Do you remember having a conversation with Fujiwara at the hospital? A. No, sir.

Q. In New Westminster? A. No.

Q. You don't remember any conversation? A. Only I asked the condition of his wife and girl and boy.

Q. Do you remember, Mr. Higuchi, when at the hospital in New Westminster, saying to Dr. Fujiwara "How did it happen?" Do you remember asking him how the accident happened. Do you remember asking him that? A. No, sir.

Q. Do you say you didn't ask him that? A. No, I didn't.

Q. Why not? A. No reason; no special reason.

Q. You saw him up there running along the sidewalk and smashing into a post and never even thought to ask him what happened? A. At the time everybody excited. I am not asking anything at all.

Q. But after the thing was over wouldn't you want to know? A. Only worrying about condition of patient hurt. I didn't say anything at all about the accident.

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Proceedings at Trial
Ukon Higuchi—Cross-Exam. Called for Defdt.

Q. I suggest to you that Dr. Fujiwara said to you when you were at the hospital—or rather you asked him first about his wife. Then you asked him "How did it happen". And he said "The maroon car"—that is, Ogawa's car—"cut in or pulled in and struck my car and forced me off the road". Do you remember him telling that? A. No, sir.

THE COURT: Q. You don't remember? A. No, sir.

MR. NICHOLSON: Q. I suggest, Mr. Higuichi, that you said to him at that time "That is what we thought but we examined our car and we can't find any marks on it." Did you say that to Dr. Fujiwara in Japanese? A. No, sir, I didn't say anything like that.

Q. Are you quite sure? A. Sure.

Q. You don't remember any such conversation? A. No, sir.

Q. Do you remember any words to that effect? A. I asked the condition—

Q. I suggest to you, Mr. Higuchi, that at that time, after you made the remark "We thought that might have happened but we examined our car but can't find any marks"—I suggest Dr. Fujiwara then said to you "There must be some mark because that maroon car did hit mine". Do you remember him saying that? A. No.

Q. And wasn't that the reason, witness, why, after Dr. Fujiwara did examine the car and find the marks that he brought Mr. Ogawa and yourself and the chief of police up and showed you the marks on the car after you got back to Port Moody? It was this very conversation at the hospital. A. No, sir, not with me.

Q. Not with you? A. No, sir.

Q. And you say that you do remember Dr. Fujiwara and his son and the chief of police feeling the car and examining the side of Mr. Ogawa's car at Port Moody? A. Yes.

Q. Why didn't you put your hand under there and examine the car to see if any dents there? A. I didn't pay very much attention.

Q. You didn't pay very much attention? A. No, sir.

Q. You had seen this accident? A. Yes.

Q. You were friendly or rather you had known the man many years, he had his car smashed, his wife seriously injured, you knew he was pointing out to the chief of police a mark on your car, and you never even bothered to put your hand under the running-board? A. No, sir, because I know Dr. Fujiwara know Mr. Ogawa very well, and I don't want any trouble with these two people.

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Q. You didn't want to take any part in it? A. No.

Q. You don't remember making the remark in the presence of the chief of police that morning, saying in Japanese "I wonder if that is so after all"? A. No.

Q. You are quite sure of that? A. Quite sure.

Q. You don't remember feeling any bump when you passed Dr. Fujiwara's car? A. No.

MR. BULL: It isn't a question of memory. He said in chief he didn't feel a bump.

MR. NICHOLSON: Q. How long were you at the hospital? A. I don't know. About 20 minutes, I think.

Q. How long did it take you to get from Port Moody to the hospital? A. About half an hour, I think.

Q. And half an hour to get back again? A. Oh, no, back again take about, I think, one hour. I don't know for sure.

Q. You didn't make any examination of the marks on the highway until after you came back from the hospital? A. You mean examine the place of the accident?

Q. Yes. A. Yes.

Q. Before? A. Oh, no, after the accident.

Q. Before you went to the hospital or after? A. After come back from the hospital?

Q. And I suppose there were lots of cars going along the highway that morning?

THE COURT: How would he know. I think Mr. Bull summed that up very well. Will you read the direct evidence of this witness, Mr. Stenographer.

(Direct evidence read)

(Witness aside)

TAKAICHI UMEZUKI, a witness called on behalf of the Defence, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULL:

Q. What is your occupation? A. Editor, Japanese newspaper.

Q. What is the name of the newspaper? A. "Daily People".

Q. Where is that published? A. 514 Powell St., Vancouver.

Q. Were you editor of the paper in November, 1935? A. Yes, sir.

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Q. And did you know Dr. Fujiwara? A. Yes.
Q. You knew him before that, did you? A. Yes.
Q. How long have you known him? A. Oh, about 5 years, I think.
Q. Did you know him well? A. Yes.
Q. You had occasion to communicate with him sometime about the 10th of November, 1935, didn't you? A. Yes.
Q. As a result of information you received about an accident? A. Yes.
Q. Did you communicate with him? A. Yes, by telephone.
Q. Where did you get him, at his house? A. I think at his office.
Q. Was that on the Sunday or Monday? A. Tuesday morning about 10 a.m.
Q. Your paper was published every day? A. Yes.
THE COURT: Q. That would be November 12th? A. Yes.
Q. About 10 o'clock, did you say? A. Yes.
MR. BULL: Q. Monday was Armistice Day, wasn't it? A. Yes.
Q. You close down? A. Yes.
Q. I am showing you a copy of the paper, Exhibit 6, "Daily People", Tuesday, November 12th. There is an article outlined in red pencil. Did you write that article? A. Yes.
Q. From whom did you get the information contained in that article? A. First of all I get that information from "News Herald", morning paper in Vancouver.
Q. You mean you got the information about there being an accident? A. I noticed it from the "News Herald". Usually insofar as Japanese concerned we always try to confirm the facts by communicating by telephone or by direct contact whom those Japanese concerned, so I did in this case that way too.
Q. You communicated with? A. Dr. Fujiwara.
Q. Is that the only one you communicated with to get the facts? A. Yes.
Q. Did he give you the facts? A. Yes.
Q. Did you tell him who was speaking? A. Yes.
Q. And he told you the facts, did he? A. Yes.
Q. Will you just state the facts he told you? A. First of all I ask—
MR. NICHOLSON: Q. Have you got the notes of what he said to you? A. Just I translate.
Q. Have you got the notes you made at the time when he spoke to you.

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MR. BULL: Q. My friend wants to know if you have got any notes. Did you make any notes at the time he spoke to you? A. No.

THE COURT: Then depend on your memory. Just tell us what you remember. Never mind the newspaper. Just tell us what you recall.

THE WITNESS: First of all I ask the condition of the injured person. Then Dr. Fujiwara told me that his wife injured at face, head and chest, and was removed to Royal Columbia Hospital, Westminster, and regained consciousness. He told me last night about 7 p.m.—

THE COURT: I want a copy of that News Herald if you can get it.

MR. NICHOLSON: I have sent for it, my lord.

THE COURT: Q. "Last night". That would be Monday night? A. Yes.

Q. Yes? A. I don't remember exactly name of his son, so allow me look at the paper—which is the youngest or oldest —he told me in Japanese 5 years old, I think, he received the injured collar bone.

Q. He told you the youngest boy? A. I don't remember exactly.

MR. BULL: Q. You don't remember the names of the two? A. No.

Q. Which is which?

THE COURT: He said the youngest boy got a broken collar bone.

MR. BULL: Q. But he is not sure which of the two had the injured collar bone, is that right? A. Yes.

Q. But there were two boys and one had an injured collar bone? A. Yes. And another boy, 15 years old, had injured lower part of jaw bone, and Dr. Fujiwara told me "Yesterday this boy didn't complain of anything but this morning he felt little pain in that injured part," in the lower jaw bone and he feared it might be broken there; and Miss Sato, her injuries just a bruise to her face two places.

THE COURT: Q. Two cuts on her face? A. Just bruises. And Dr. Fujiwara did not have any injury; and that accident happen about 9:30 at Port Moody, hit by a white man's car from behind, so he skid the road on to the sidewalk and hit the telephone pole.

Q. That is, the doctor skidded? A. Yes, skidded his car from the road and bumped on to a sidewalk and lost the control and finally hit the telephone pole. That is how accident happened.

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Q. Lost control and hit telephone pole? A. Lost control and hit telephone pole.

MR. BULL: Q. Is that the whole of the conversation? A. Yes. So I express our very much sympathy to this misfortune of Dr. Fujiwara. I think that is all we talked about.

Q. Did you speak in Japanese? A. Yes.

Q. You speak the same tongue, don't you? A. Yes.

Q. Is there any doubt in your mind as to whether you understood what he told you about the cause of the accident? A. No, I believe his talk, his tongue and accent, through everything I know it was Dr. Fujiwara.

Q. Is he a subscriber to your paper? A. Yes, I think so.

CROSS-EXAMINATION BY MR. NICHOLSON:

Q. Now, I suppose you were very interested? A. Yes.

Q. In publishing any news articles which have to do with the Japanese people in the Japanese community here? A. Yes.

Q. Any cases in court in which the Japanese are interested or any accidents. you publish them in the paper, isn't that so? A. Yes.

Q. You went out to Port Moody for the common danger hearing on the 23rd of November, didn't you? A. Yes.

Q. And you sat through court on the morning of the 23rd November? A. Yes.

Q. Why didn't you publish an article about that? A. It is not clear to me.

Q. The other Japanese newspapers published it, didn't they? A. I don't remember.

Q. But you were there to report that trial, and yet there was no publication in your paper, isn't that so? A. I think so.

Q. I will suggest to you why. Do you know Iwoshita? A. Yes.

Q. What is his connection with the Japanese Daily People? A. He is a member of our union.

Q. And he is prominently identified with the paper, isn't he? A. Yes.

Q. What is his connection with the Pacific Importers? A. I think he is director of some kind.

Q. Ogawa's employer, isn't that right? A. Yes.

Q. And I suggest to you the reason you didn't publish an article about the incidents of the 23rd November in the Police Court in Port Moody was because Ogawa was an employee? A. No. It is not our intention—

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Q. Just let me finish the statement. You are apparently anticipating what I am going to say. I suggest to you that the reason you didn't publish a news item about the proceedings on the 23rd of November was because Mr. Ogawa was employed by the Pacific Importers, of which Mr. Iwoshita is a director, and Mr. Iwoshita is a director of your newspaper, and you didn't want it made public that an employee of the Pacific Importers had been convicted in the police court of careless driving and running into—

MR. BULL: Is my friend giving evidence now. This is the first time anyone ever suggested anything about a conviction in the police court. Is my learned friend giving evidence on that?

MR. NICHOLSON: I thought my learned friend brought it out himself.

MR. BULL: No; nothing said.

THE COURT: I have not heard it.

MR. NICHOLSON: The chief of police referred to the matter of the driver's license.

THE COURT: I remember that.

MR. NICHOLSON: I am simply testing this witness's credibility; and I am saying the reason he didn't want to publish it—

MR. BULL: He shouldn't do it by making speeches which involve statements of fact and evidence which is not before the court.

MR. NICHOLSON: Well, I can bring it out from this witness.

MR. BULL: No. It is not relevant evidence.

MR. NICHOLSON: With the greatest respect, it is relevant evidence, and I could have made it a part of my case.

MR. BULL: I submit not. That has been constantly ruled out.

THE COURT: I don't know what the rule has been, but I know this, that the conviction or acquittal in another court would not weigh with me, because I do not know what evidence they had, and you would not, against the defendant?

MR. NICHOLSON: No.

THE COURT: It certainly should be ruled out where there is a jury.

MR. NICHOLSON: I submit it is admissable on this ground. The evidence is admissible that there was a conviction by a court of competent jurisdiction identified with this particular case, to the effect that on the morning of 10th November, 1935, at that particular point Ogawa had been guilty of negligent driving. That is admissible as prima facie evidence of negligence.

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The matter has been argued in the courts. Just the same as a man charged in the criminal court with theft or conversation and convicted: the conviction can be tendered against him as prima facie evidence of theft. In fact, in a case tried before Mr. Justice D. A. McDonald a conviction made by a County Court judge in Vancouver here was held to be prima facie evidence of conversation, and in the subsequent civil proceedings that evidence was introduced that he had been convicted on the criminal case.

THE COURT: Let us get back to this particular case.

MR. NICHOLSON: I want to follow that up. In a case somewhat similar to this one, an automobile accident, a conviction recorded in the police court on a charge of driving to the common danger, and referred to in the statement of claim, was allowed by Mr. Justice Fisher after a careful review of the authorities. I was in the case, and I remember it clearly. His lordship held it was not binding on him, the mere fact a magistrate felt a driver was negligent didn't bind him, but it was found that went to make out a prima facie case of negligence against the defendant.

THE COURT: I don't understand you are tendering that as evidence here?

MR. NICHOLSON: No.

THE COURT: You are testing this witness's credibility and searching for the reason he did not report this item in the newspaper?

MR. NICHOLSON: Yes.

THE COURT: For that purpose I think you are entitled to examine him. The weight of it is another matter. Whether I would agree with my brothers admitting it or not I do not think I have to rule now.

MR. NICHOLSON: Q. You know, do you not, that on the morning of 23rd November, 1935, Mr. Ogawa was convicted of driving to the common danger on the occasion which is the subject of this action here?

MR. BULL: I object to that, my lord. If it was open to my learned friend to prove that as a fact he should have done it as part of his case. It is not in evidence, and my learned friend cannot make it evidence by cross examining a witness and making that statement.

THE COURT: I agree to this point. I think Mr. Nicholson is entitled for one purpose only at this stage to ask this witness with regard to it. He is entitled to enquire whether this witness knows of the fact of a conviction with the sole purpose

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of pursuing the matter why he did or did not report the matter in his paper.

MR. BULL: Nevertheless the fact is coming before your lordship in an indirect way. I don't want to prolong the argument because I do not think it affects your lordship one bit what a magistrate did at Port Moody, but it seems to me quite wrong and not the way to conduct the trial. Evidence that he is not able to adduce as part of his case should not be allowed to get in by the back door under the guise of credibility.

THE COURT: In any event I am going to permit Mr. Nicholson to ask this question for this purpose. It will not have the slightest influence with me whether these people should be held liable in a civil case or not, because I know too well, particularly with magistrates who very often have not got the opportunity, the convenience of counsel and police officers, we have in a city. It wouldn't weigh the slightest, and I say that with every respect of course. Go ahead.

MR. NICHOLSON: Would you read the question?

(Question "Just let me finish the statement . . . . running into" read).

THE COURT: That is a terrific question, Mr. Nicholson. You have got a whole speech in that question. You are dealing with a foreign witness. You should break it up. Can you not put the simple fact whether he knows there was a conviction, and then pursue it.

MR. NICHOLSON: Q. You knew, witness, did you not, when you were at Port Moody on the 23rd of November that Mr. Ogawa was convicted of driving to the common danger? A. Yes.

Q. And you knew he was fined? A. Yes; I think $10.

Q. And you knew that that conviction arose out of the accident which you had reported in your newspaper on the morning of the 12th November? A. Yes.

Q. Why didn't you publish that fact in your paper on the 24th or 25th November? A. Usually we didn't publish a common danger or such thing.

Q. The other Japanese newspapers published it, didn't they? A. I don't know.

THE COURT: Q. Your answer is you do not report common danger cases? A. Usually we don't publish minor cases. Our paper is only four pages, so we can't put everything in.

MR. NICHOLSON: Q. The case was sufficiently important to send a reporter from Vancouver out to Port Moody, isn't that so? A. Yes; interested in what was going on.

Q. Weren't you sent out by your paper? A. Yes.

Q. And yet didn't publish it? A. No.

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THE COURT: Q. Are you the manager of the paper or editor or what? A. Just editor—reporter, rather.

Q. You are not in charge of the editorial news policy of the paper? A. No.

Q. Did you turn in a report on this thing to your employers of the hearing at Port Moody. Did you turn in a report to the office? A. Just I reported very simply.

Q. But you did turn in a report? A. Just the conversation.

Q. The average reporter, I understand, turns in what is commonly known as copy or something, and then it is for the editor or someone else to tell him how much to print. Did you do that? A. In that case I didn't produce any written notes.

Q. You didn't make a written report? A. No.

Q. But you did talk it over with the editor? A. Just a few words.

MR. NICHOLSON: Q. Did you talk it over with Iwoshita? A. I think so.

Q. He was at the common danger charge, too, wasn't he, at Port Moody? A. Yes.

Q. I suggest to you that was why the article wasn't published? A. No; no intention.

THE COURT: Q. Did you go out with Iwoshita?

MR. NICHOLSON: Q. Did you drive out with Iwoshita? A. I think so.

Q. You wouldn't want to admit that you had turned in and caused an article to be published in the paper that was not true, would you? A. I believe it is the truth which I publish.

Q. I suggest you didn't want to show that this was a collision between those two Japanese cars and that your reason for mentioning its being a white man's car driven by a white man was just so that the Japanese community wouldn't think that there had been a collision between two cars driven by their own people; that you didn't want that made known? A. I didn't know anything about Mr. Ogawa until that time at Port Moody.

Q. What did you go out for, then? A. Just I have interest in this case; something going on, I heard.

Q. Do you mean to tell me that working in the same office of which Iwoshita is a director, you didn't know that Ogawa, employed by the Pacific Importers, had been charged with driving to the common danger before you went out there that morning? A. I didn't know.

Q. You, a newspaper man in the community, never knew it until that morning? A. No.

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Q. And drove out in a car with Iwoshita, his boss? A. I didn't think about that such connection.

Q. I suggest to you that your stating that this was a white person driving this other car, that that was your own concoction; that Dr. Fujiwara never made that statement about a white man but simply said he was struck by another car passing him, and that he never said it was a white man, Japanese or who it was. Isn't that so? A. I heard Dr. Fujiwara tell me hit by white man.

THE COURT: Q. The doctor told you it was a white man? A. Yes, by telephone conversation.

Q. Have you sat through this trial this last couple of days? A. No; this first time.

Q. And you suggest the doctor told you a white man hit him from behind? A. Yes.

MR. NICHOLSON: You didn't know he had the chief of police the previous Saturday—

THE COURT: Just a minute.

MR. BULL: That is what he said in direct evidence, my lord, and the article supports it.

THE COURT: I rather thought that might be an explanation, it might have come from somewhere else.

MR. BULL: He said he got it from no-one else except Dr. Fujiwara. I brought that out, and he related exactly what Dr. Fujiwara told him.

MR. NICHOLSON: I have the news item, my lord, from the News Herald.

THE COURT: Ask the witness if he saw this; if this is the item he refers to.

MR. NICHOLSON: Q. You told us, witness, that you saw an article in the News Herald in the issue of November 11th or 12th and that was what drew your attention to this accident? A. Yes.

Q. Would you look at this clipping here from the newspaper and tell me if that is the item in the News Herald? A. I think it was.

THE COURT: Q. Was it on the front page, do you remember? A. I don't remember such thing.

THE COURT: You should have the paper, Mr. Nicholson. A clipping from a newspaper, you know—

MR. NICHOLSON: I have sent for the issue, my lord.

Q. You think this is the article? A. Yes.

(NEWSPAPER CLIPPING MARKED EXHIBIT 11)

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Proceedings at Trial
Takaichi Umezuki—Cross-Exam. Called for Defdt.

Q. You say that at the same time you were talking to Dr. Fujiwara he told you that the accident happened at 9.30? A. Yes.

Q. Are you sure of that? A. Yes.

Q. Did you notice that the News Herald says 9 o'clock? A. Yes. As I told you, insofar as Japanese concerned we confirmed the facts by direct contact.

THE COURT: But the sad part is that isn't the fact. I don't see why he should tell you 9.30. There hasn't been a witness suggested it happened at 9.30.

MR. NICHOLSON: Everyone has said before 9 o'clock.

THE COURT: Yes. Of course, that is a minor matter.

THE WITNESS: Pardon. It is my mistake. In this it is "about 9 o'clock". That is correct.

MR. NICHOLSON: Relying on your memory this morning you weren't sure about it. Without looking at the newspaper this morning you said Dr. Fujiwara said 9.30.

THE COURT: There is not a great deal turns on that even if he made the error.

MR. NICHOLSON: I might say it is rather significant that the witness gave it when he was speaking from recollection at 9.30, and if your lordship will look at the translation put in by my friend it says 9.30.

THE COURT: Mr. Ide, take a look at that Daily People and say what is there.

INTERPRETER: It says "about 9 o'clock in the morning."

THE COURT: Who made this translation, Mr. Bull?

MR. BULL: I had that made and I showed it to Mr. Ide, and he said that translation was about correct.

THE COURT: Better have another look at it and see if it is correct.

INTERPRETER: My lord, I didn't look at the time.

THE COURT: We have to depend on you around here, you know. You are a disinterested party, and you are a man we have a good deal of confidence in.

INTERPRETER: "About 9 o'clock in the morning" is what the paper says.

MR. NICHOLSON: It is rather peculiar that relying on his memory he said 9.30 and the other is 9.30.

THE COURT: I know. Coincidences happen.

MR. NICHOLSON: Q. What time does your paper go to press, witness? A. Usually half past 3 to 4.

Q. In the afternoon? A. Yes.

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Proceedings at Trial
Takaichi Umezuki—Cross-Exam. Called for Defdt.
Hideo Sakamoto—Direct-Exam. Called for Defdt.

THE COURT: Q. Was there anything in the "Sun" or "Province" about this accident? A. I didn't notice. Maybe, but as far as I got it from Dr. Fujiwara we didn't need any further information from English paper.

THE COURT: I know that, but I was wondering if you had seen it in the other papers.

MR. NICHOLSON: Q. You saw an item, did you not, in the Canadian Daily News, the other Japanese paper, following the common danger hearing. You saw that, did you not?

MR. BULL: What has that got to do with this case. Surely my friend is not going to put in newspaper reports.

THE COURT: A little turns on this, you know. This man was called to prove that the plaintiff told him certain things immediately after the accident, and now his credibility is being attacked. The doctor denied he said these things or some one.

MR. BULL: He only denied the one essential thing. He admitted all the other things.

THE COURT: I do not recall them for the moment, but this witness's credibility is being attacked now. I do now know that would be admissible from him on cross-examination.

MR. BULL: My friend might take the "London Times" and go through the whole thing and ask if he saw that on the 23rd of November. What has that got to do with the conversation between this plaintiff—

THE COURT: I do not know that it has anything to do with it. I think probably you are right unless it were shown. I do not know if he can do that.

MR. BULL: Even what my friend has in his hand, he hasn't shown it to me. As a rule counsel show documents.

MR. NICHOLSON: My friend never showed me any of his.

THE COURT: You are both guilty of that. However, we will not go into that. Suppose it could be shown the other Japanese paper printed a report and got the report from the same source as this one.

MR. BULL: But this is a report of the trial at Port Moody.

MR. NICHOLSON: I won't press it, my lord. I think it is relevant on the issue of bias, but I am not going to press it.

(Witness aside)

THE COURT: I still want that News Herald. You had better stick around for a few minutes. We might want you.

HIDEO SAKAMOTO, a witness called on behalf of the Defence, being first duly sworn, testified as follows:

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Proceedings at Trial
Hideo Sakamoto—Direct-Exam. Called for Defdt.

DIRECT EXAMINATION BY MR. RAY:

Q. How is your English. Do you speak English or do you want an interpreter? A. I think I can speak English.

Q. What is your occupation? A. Book-keeper.

Q. And on Sunday, the 10th November 1935, I believe you were a passenger in a car driven by Mr. Ogawa, is that right? A. Yes.

Q. And you were on your way to Vancouver, up the Fraser Valley? A. Yes.

Q. Whereabouts in the car were you sitting? A. Left side of back seat.

Q. Do you remember before you get to Port Moody you have to turn a corner? A. Yes.

Q. When did you first see a car in front of you as you were approaching Port Moody? A. I don't know what street, but from Vancouver to Port Moody there is a curve on the road.

Q. Was it after you passed the curve? A. No.

Q. Just before? A. Yes.

Q. You saw a car in front of you? A. Yes.

Q. Just tell the Court the way that car was being driven when you first saw it. Anything particular you noticed about that car? A. I don't know.

THE COURT: Q. You don't remember anything about it. Is that what you want us to understand?

MR. RAY: Q. You just saw a car in front of you, is that right? A. Yes.

Q. And it turned the corner, did it, to go through Port Moody? A. Yes.

Q. And you followed it? A. Yes.

Q. When you got on the straight road just tell the Court what happened after that? A. After we passed some car I saw this way.

Q. Just before getting to that. Did Mr. Ogawa try to pass this other car? A. Yes.

Q. Just tell me what happened after that? A. I saw the right side.

THE COURT: I guess we will have to have the interpreter. I cannot get it.

MR. RAY: I knew he was a little hard to understand.

THE COURT: He speaks English, but I cannot follow it. Mr. Interpreter, just put the questions exactly as counsel puts them, and then what the witness says word for word regardless of consequences or bad English or bad Japanese. If he makes mistakes, you say it just word for word, and do not give meanings. Just use his words.

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Proceedings at Trial
Hideo Sakamoto—Direct-Exam. Called for Defdt.

(Evidence interpreted from this point on)

MR. RAY: Q. Now, we have you sitting in the left back seat of Mr. Ogawa's car? A. Yes.

Q. And Mr. Ogawa is just about to pass the other car in front of him? A. Yes.

Q. Just tell us your story of what happened, starting from the time when Mr. Ogawa was starting to pass the other car. A. Well, when Mr. Ogawa intended to pass another car naturally he speeded up.

Q. Can you tell me about how fast he was going before he passed the other car? A. I don't remember the speed.

Q. Did Mr. Ogawa sound his horn? A. He did.

Q. How many times? A. Once or twice.

Q. Before your car passed the other car.

THE COURT: Just a minute. It is not important, but when you say "once or twice," which was it, once or twice? A. I don't remember exactly how many.

Q. But you do definitely remember once, anyway? A. Yes, I do remember once.

MR. RAY: Q. After that, or at least just before Mr. Ogawa sounded his horn, where was the other car travelling in relation to the centre of the highway? A. Right side, on the centre of the road.

Q. And what did the other car do after Mr. Ogawa sounded his horn? A. He swerved a little to the right side.

THE COURT: Q. Who swerved. The other car? That is, the doctor's car? A. Yes.

MR. RAY: Q. And what did Ogawa do? A. Mr. Ogawa kept going on straight forward.

Q. As Mr. Ogawa passed Dr. Fujiwara's car, where was the Ogawa car with relation to the centre of the road? A. Mr. Ogawa's car was left side of the centre of the road on the pavement of St. John Road.

Q. Can you tell me about how far the two cars were apart as Mr. Ogawa went by?

THE COURT: Q. He is on the left-hand side, mind you. Can you tell how far the cars were apart? A. I can't tell because I was sitting on the left side.

MR. RAY: Q. As the Ogawa car went by Dr. Fujiwara's car, did it touch it? A. No, it did not.

Q. Did you feel anything as the Ogawa car passed the Fujiwara car? A. No, I didn't feel anything at all.

Q. As the Ogawa car went by the Fujiwara car, what course

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did it take? A. Ogawa car going straight and gradually to the centre.

THE COURT: Q. I do not think he said gradually. Answer that in Japanese to Mr. Ide. How did the Ogawa car go as it passed and immediately after? A. Just kept going straight forward and gradually in the centre of the road.

MR. RAY: Q. And what happened after that? A. When I turned my head towards the right side I saw the other car was travelling on the sidewalk.

Q. As you went by the other car could you tell if it was being driven by Japanese or had Japanese passengers? A. I did.

Q. Did you look at the Fujiwara car after you passed it? A. Yes, when I saw the other car which was travelling on the sidewalk.

Q. Which window of the Ogawa car did you look through when you saw the Fujiwara car travelling on the sidewalk? A. I don't remember which window.

Q. But you did see the Fujiwara car on the sidewalk, did you? A. I did.

Q. Was it going fast or slow when you first saw it there? A. Travelling very fast.

Q. Do you think it was going faster when you saw it on the sidewalk than it had been going on the road? A. I don't remember the speed.

Q. Did you keep watching the Fujiwara car after you saw it on the sidewalk? A. Yes. I just keep going on my watching.

Q. And what did you see? A. And shortly afterwards I heard some noise.

Q. Well, what did you see after you saw the Fujiwara car on the sidewalk. You say you kept watching. What did you do? A. Mr. Ogawa stop the car and back, and we get out of the car.

Q. Just before that. You have told me you saw the Fujiwara car on the sidewalk and you kept watching it. What did you see the Fujiwara car do after it was on the sidewalk? A. I actually saw doctor's car smash against telegraph pole.

Q. And where was the Ogawa car with relation to that telephone pole when you saw the Fujiwara car hit it? A. I don't know how many feet away—I don't know how far Ogawa car away from telegraph pole.

THE COURT: Just ask him roughly.

WITNESS: Approximately about 30 to 40 feet.

MR. RAY: Q. On which side, the Vancouver side or Mission side? A. To the Mission side.

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Proceedings at Trial
Hideo Sakamoto—Direct-Exam. Called for Defdt.
Hideo Sakamoto—Cross-Exam. Called for Defdt.

Q. When you saw the Fujiwara car hit the telephone pole, was the Ogawa car still going or not? A. Mr. Ogawa still in motion.

Q. Slow or quickly? A. Slow.

Q. And then after that what did Mr. Ogawa do? A. He stopped the car and backed up nearer to the telegraph pole.

Q. What did you do after that? A. We get out of the car and went to the spot where the impact took place.

Q. How did Dr. Fujiwara seem to be then; what was his condition? A. I do remember this much; Dr. Fujiwara was holding his wife in his arms.

Q. And how did he seem to be himself? A. I don't remember.

Q. Did you have any conversation with him then? A. I did not.

Q. Did you see any other car as you were going along the straight part of the road through Port Moody besides Dr. Fujiwara's car and your own? A. I saw one automobile which looked like a coupe.

Q. Where was that automobile when you first saw it? A. That car mentioned was behind our car.

Q. Where was the Ogawa car with relation to the curve that you came around when you saw this other car behind you? A. I don't remember the distance it was.

THE COURT: Q. But it was behind — you didn't pass him?

MR. RAY: Q. Did this other car pass you? A. No, it did not.

Q. When did you next see it. You have told us you saw it behind the Ogawa car. When did you next see this other car? A. After we passed the curve I notice one car like a coupe coming behind our car.

Q. When did you next see it? A. After the accident happened I saw the car mentioned stopped in front of Mr. Ogawa's car.

Q. After you passed the Ogawa car — at least after you passed the Fujiwara car you kept looking at the Fujiwara car, didn't you? A. Yes.

Q. Then after that Mr. Ogawa took the people in Dr. Fujiwara's car that had been hurt to the hospital, didn't he? A. Yes.

Q. And you stayed at Port Moody, didn't you? A. Yes.

CROSS-EXAMINATION BY MR. NICHOLSON:

Q. When you were passing Dr. Fujiwara's car you say you

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were on the left-hand side of the highway, is that right? A. Yes.

Q. And Mr. Ogawa had speeded up to pass Dr. Fujiwara's car, hadn't he? A. Yes, he did.

Q. And after you passed Dr. Fujiwara's car the next thing you remember was seeing Dr. Fujiwara's car on the sidewalk, is that right? A. Yes.

Q. Now, how long was that—how long in time after you passed the Fujiwara car before you saw it on the sidewalk? A. I don't remember how many minutes.

Q. Was it very quick? A. I don't remember that.

Q. But you say that when you saw the Fujiwara car on the sidewalk the Ogawa car was then going slowly, isn't that right? A. The meaning is a little different.

THE COURT: What was the question again?

MR. NICHOLSON: Did you not say when you saw the Fujiwara car on the sidewalk the Ogawa car was then moving slowly?

MR. RAY: That wasn't the answer. He said the Ogawa car was going slowly at the time that the Fujiwara car hit the telephone post.

MR. NICHOLSON: That is not what the witness said.

THE COURT: I have "I heard a noise and saw it hit pole. The Ogawa car was then 40 to 50 feet ahead of the doctor's car. Ogawa's car was still in motion, slowly. Then backed up near the pole and we got out and went to the accident."

MR. RAY: That is my recollection of it.

MR. NICHOLSON: Q. Now, when you saw the Fujiwara car after you passed it, it was on the sidewalk, wasn't it? A. Yes.

Q. And you have told us it was then going fast; that Fujiwara's car when you saw it on the sidewalk was travelling fast, is that right? A. Yes.

Q. Did you not also say that at that time Ogawa's car was travelling slowly? A. What I mentioned was when we passed the doctor's car, of course he speeded up but after he passed the curve gradually slowing down.

Q. You didn't slow down because you felt a bump and thought there was some trouble?

MR. RAY: Is that a question or a statement?

MR. NICHOLSON: Q. Did you feel any bump? A. No, I didn't feel any bump at all.

Q. When you pass another car on the road, if you are a passenger in another automobile do you pay much attention to the other car? A. You mean if I was driving the car?

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Proceedings at Trial
Hideo Sakamoto—Cross-Exam. Called for Defdt.

Q. If you were not driving? A. No, I do not pay any special attention.

Q. Why did you pay so much attention at this time, witness, because today you told us you heard the car, you remember the car speeding up, you remember that you were over on the left-hand side of the road, very close to the edge of the hard surface—

THE COURT: He did not say how close they were to the edge, if my recollection is correct.

MR. RAY: He said they were on the edge.

MR. NICHOLSON: Q. On the left-hand side of the road; and kept going forward and gradually gained the centre of the road. You remember all these things, witness, in connection with this one passing on the highway, is that right? A. What do you mean, Mr. Nicholson?

THE COURT: Q. He remembers all these things? A. Yes.

MR. NICHOLSON: Q. Why do you remember them so clearly in this case? A. What I remembered.

Q. I will suggest why you remember. See if this is correct. Mr. Ogawa, your friend, was charged with driving to the common danger at Port Moody, and before you went out there to give evidence on the common danger charge—you did give evidence on the common danger case, didn't you?

THE COURT: Q. Did you give evidence at Port Moody? A. Yes, I did.

MR. NICHOLSON: And Mr. Higuichi gave evidence at Port Moody? A. Yes.

Q. And Mr. Ogawa gave evidence at Port Moody? A. Yes.

Q. And Mr. Tokunaga gave evidence at Port Moody? A. Yes.

Q. And I suggest that before you went out there the four of you got together and talked over the details of what you were going to say? (Witness shakes head).

Q. Didn't talk it over with anybody? A. We did talk but we did not go into further details.

THE COURT: Q. Did you go out together in the same car? A. I did.

MR. RAY: I suppose the others went in the same car, too —the Fujiwaras.

(Witness aside)

THE COURT: Call the editor if you have got that paper.

MR. BULL: There is no question about that item, my lord.

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Proceedings at Trial

Hideo Sakamoto—Cross-Exam.	Called for Defdt.
T. Umezuki—Recalled	Called for Defdt.
Akira Tokunaga—Direct-Exam.	Called for Defdt.

THE COURT: I just want to see if he can identify it.
MR. NICHOLSON: It is identical with Exhibit 11.
THE COURT: He didn't quite say that.

T. UMEZUKI, recalled

THE REGISTRAR: You have already been sworn; you are still under oath.

MR. NICHOLSON: Q. I am showing you the morning issue of the News Herald of Tuesday, November 12th, 1935, and on page 5 of that issue you see the article headed "Vancouver woman hurt in collision, Port Moody, November 11th?" A. Yes.

THE COURT: Q. Is that the item you saw? A. Yes.

THE COURT: That is what I want. Put it in as an exhibit.

(NEWSPAPER MARKED EXHIBIT 12)

(Witness aside)

AKIRA TOKUNAGA, a witness called on behalf of the Defence, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RAY:

Q. How long have you lived in Canada? A. 25 years.
Q. And do you speak and understand English? A. A little.

MR. RAY: Shall we try this witness without the interpreter?

THE COURT: Yes.

MR. RAY: Q. On Sunday, the 10th of November, 1935, you were riding with Mr. Ogawa in his car on his way from Vancouver to Mission, is that right? A. Yes.

Q. And you were going to go through Port Moody? A. Yes.

Q. Whereabouts in Mr. Ogawa's car were you sitting A. Right side.

Q. Right side of front seat? A. Yes.

Q. Now, you remember before going through Port Moody you got to a curve? A. Yes.

Q. Before you come to the straight road. Had you noticed any other cars in front of you at that time? A. Yes. I saw one car in front of our car.

Q. About how far in front of your car would it be when you got to the curve? A. About fifty or more feet.

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Proceedings at Trial
Akira Tokunaga—Direct-Exam. Called for Defdt.

Q. And this first car turned the corner and you turned the corner? A. Yes.

Q. As you got on the straight road going through Port Moody how far behind would you be? A. About the same distance.

Q. Now, what did Ogawa start to do after that? A. The next corner near to the other car, and—

Q. You passed one more corner, did you? A. Yes.

Q. Then what did Ogawa do? A. Mr. Ogawa speed up his car and passed the other car.

Q. Did he sound his horn? A. Yes.

Q. How many times? A. Twice.

Q. Before he passed the other car, where was the other car with regard to the centre of the highway? A. About the centre.

Q. After Mr. Ogawa sounded his horn what did the other car do? A. Moved to the right.

Q. About how far to the right? A. Not very much.

Q. So what did Ogawa do? A. Ogawa passed on the left-hand side.

Q. You mean when Ogawa passed he was on the left-hand side of the centre of the road, is that right? A. Yes.

THE COURT: He said he passed on the left-hand side.

MR. RAY: Q. I'm sorry, my lord. As Mr. Ogawa passed the other car where would he be with relation to the centre of the highway or with relation to the left-hand edge of the pavement?

THE COURT: Your phrase "with relation" is hard for this witness to understand. You can put it some simpler way.

MR. RAY: Q. As Ogawa passed the other car was the right-hand side of his car near the centre of the highway or where was it?

THE COURT: Q. When the two cars were passing you passed the doctor how close? A. Distance?

Q. How close the two cars? A. Three or 4 feet.

Q. Which side of the centre was the doctor on when you were passing him. Was he over on his own side? A. Right-hand side, and our car left-hand side.

Q. And you were 3 or 4 feet apart? A. Yes.

MR. RAY: Q. As you went by the other car could you tell whether it had Japanese passengers or not? A. Yes.

Q. Were you looking at it? A. Yes.

Q. Just tell the Court the course or how Mr. Ogawa's car went as he went by the other car and afterwards. How did he pass the other car? A. First?

Q. Yes? A. I can't understand.

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Proceedings at Trial
Akira Tokunaga—Direct-Exam. Called for Defdt.

Q. As the Ogawa car went past the Fujiwara car, did the two cars touch? A. No.

Q. Did you feel any bump? A. No.

Q. As he went by the other car did Ogawa swerve to his right or keep going straight? A. Yes.

Q. Which? A. Straight?

Q. And then what happened after that, after you got past the other car? A. Someone cry.

THE COURT: Is this the last witness that was in the car?

MR. RAY: Yes, my lord.

THE COURT: They have all said someone.

MR. RAY: I should have perhaps asked the last witness.

THE COURT: The last witness said "someone", too, if I remember rightly.

THE WITNESS: I think Sakamoto cry. Yesterday he says my name, but no.

MR. RAY: Q. You think Sakamoto's voice cried out, do you? A. Yes.

Q. You know Sakamoto's voice, do you? A. Yes.

Q. And you think his voice called out that something happened, is that right? A. I can't remember.

THE COURT: Alright. Let it go at someone.

MR. RAY: Q. What happened after that? A. Someone cry after me, and I saw this way.

Q. You looked to your right, did you? A. Yes.

Q. Out through a window? A. Yes.

Q. What did you see? A. One car going on sidewalk.

Q. You saw a car on the sidewalk? A. Yes.

Q. Was it going fast or slow? A. Fast.

Q. Did you keep looking at the other car that was on the sidewalk? A. Yes.

Q. And what did you see it do. What happened to the other car? A. It touched the bank and come back this way.

Q. You are indicating a curve to your left. It went up the bank and curved to its left? A. Yes.

Q. And then what did it do? A. Touched the telephone pole.

Q. Are you referring now to the telephone pole where it stopped? A. Yes.

THE COURT: Q. It did more than touch that one, did it not? A. Pardon.

Q. It did more than touch that one, did it not, that it stopped at?

MR. RAY: That is perhaps a refinement of English.

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THE COURT: Q. It hit the second pole good and hard, did it not? A. Yes.

Q. All same go and break? A. Yes.

MR. RAY: Q. After this other car hit this electric light pole, where was your car, at least Ogawa's car? A. Before that other car.

THE COURT: Q. Ahead? A. Ahead, yes.

Q. About how far ahead of the telephone pole was your car? A. About 30 feet.

MR. RAY: Q. And were you moving or stopped? A. I think we were moving.

Q. Slowly or quickly? A. Slowly.

THE COURT: Q. Where—on the right or left-hand side of the road, your car? A. I think our car in centre at that time.

MR. RAY: Q. And then what did Ogawa do after that. After the Fujiwara car hit the telephone pole what did Ogawa do? A. Moved to the right-hand side and stopped there.

Q. And you stayed at the scene of the accident while the others went to the hospital? A. Yes.

(Witness aside)

(ADJOURNED AT 1 P.M. TO 2:15 P.M.)

PROCEEDINGS RESUMED AT 2:15 P.M. PURSUANT TO ADJOURNMENT.

AKIRA TOKUNAGA, resumes stand.

MR. RAY: Just one or two questions I want to ask this witness.

THE REGISTRAR: You are still under oath, witness.

MR. RAY: Q. Now, Mr. Tokunaga, as you were going along the straight part of the highway, was there any other car on the highway except Mr. Ogawa's car and Dr. Fujiwara's car? A. I think one car behind us.

Q. Behind your car? A. Yes.

Q. How do you know that? A. Well, through the mirror.

Q. You saw a car travelling behind your car? A. Yes.

Q. Where were you when you noticed this car coming behind you; where was your car then? A. I think about 50 or more than 50 feet.

Q. 50 feet from where? A. From our back.

Q. You mean the other car was 50 feet behind you? A. Yes.

Q. But whereabouts was your car with relation to the Fujiwara car at that time? A. Mr. Fujiwara's car was before us.

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Proceedings at Trial
Akira Tokunaga—Direct-Exam. Called for Defdt.
Akira Tokunaga—Cross-Exam. Called for Defdt.

THE COURT: Q. How far? A. Oh, about 30 feet.

MR. RAY: Q. Was that before you passed the Fujiwara car?

THE COURT: It must have been.

MR. RAY: I suppose it must have been. I want to get this witness to state the relative positions of these three cars.

THE COURT: Alright.

MR. RAY: Q. Now, what happened to that other car. Did you see it again? A. No.

Q. You didn't see it again? A. No.

THE COURT: Q. What kind of a car was it, the one behind? A. I think a Ford car.

Q. What kind; sedan, coupe or truck? A. Coupe.

Q. What colour? A. I think black.

CROSS-EXAMINATION BY MR. NICHOLSON:

Q. Mr. Tokunaga, do you remember giving evidence at the police court in Port Moody? A. Yes.

Q. Who did you drive out to the police court in Port Moody with, Mr. Ogawa? A. Yes.

Q. In his car? A. Yes.

Q. Did Mr. Higuichi and Mr. Sakomoto go along with you? A. Yes.

Q. And before the police court that morning you were back at the place where the accident occurred, on the morning of the hearing in the police court, isn't that right? A. Yes.

Q. And all of you were looking around there, looking at the marks on the post and trees and stepping off distances, everything, that morning, and you were talking the case over together, weren't you; that is, you and Sakomoto. That is what you went there for, isn't it? A. Yes.

Q. Do you remember giving evidence in the police court. Do you remember the evidence you gave in the police court? A. Yes.

Q. Now, listen to this and see if this is what you said. "I was in front seat next to driver; two in front seat and two in the back"? A. Yes.

Q. "I saw another car ahead", is that right? A. Ahead.

Q. "Later I knew it was Dr. Fujiwara's car". Do you remember that. Do you remember saying that? A. Ahead.

Q. Later on you knew it was Dr. Fujiwara's car after you caught up to it? A. I don't remember.

Q. Well, listen to this and see if you remember this. "We caught up"—

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Settled:
15 March 1938
J. F. Smellie
Registrar

Proceedings at Trial
Akira Tokunaga—Cross-Exam. Called for Defdt.

MR. BULL: What is my learned friend reading from?

MR. NICHOLSON: Notes I made at the time.

MR. BULL: I do not think that is quite the proper way to cross-examine as to former statement. I think my learned friend should produce a transcript of the evidence.

THE COURT: Not necessarily. All he has to do is recall the time and place and circumstances with sufficient detail to enable him to bring to his memory the occasion and so forth.

MR. BULL: That is not the point. My learned friend is putting to the witness statements which he is alleged to have made before. He should put the precise statements, not something my learned friend took down in his notes.

MR. NICHOLSON: I can ask if he made these statements or statements to that effect.

THE COURT: No doubt about that.

MR. NICHOLSON: Q. Do you recall giving this evidence or evidence to this effect: "We caught up and passed it"—that is the other car—"on highway at Port Moody." Do you remember saying that? A. I think so.

Q. "We went to pass it and did pass it"? A. Did pass.

Q. "Nothing happened when we passed it." Did you say that? A. Yes.

Q. Do you remember this: "When we passed, Fujiwara was still on the highway." "After we went a little space it went the other way to the right of the road." Did you say that? A. Yes.

Q. "After we passed we stopped because we heard a sound as if something struck the electric pole." Did you say that? A. Yes.

Q. Now, today you said, did you not, that someone — you think Sakomoto—cried out and that was what caused you to look. Which was it. Was it because somebody cried out or because you heard the noise? A. Cried out.

Q. Cried out? A. Yes.

Q. You said this morning that after you passed the Fujiwara car your car went straight? A. Yes.

Q. And then gradually came back to the centre of the road. How far were you ahead of Dr. Fujiwara's car before you got back to the centre of the road? A. Not very far.

Q. Will you look at Exhibit 10, sketch marked by Ogawa on his examination for discovery. Have you ever seen this before? A. No.

Q. Look at this line here, from 1 to 2. Do you follow that. See that line? A. Yes.

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Registrar

Proceedings at Trial
Akira Tokunaga—Cross-Exam. Called for Defdt.

Q. Do you agree that is the course your car followed or do you not agree? A. This car come this way and this way (indicating).

Q. Make a dotted line on that sketch and show what you think is the course you followed. Mark your line with "T", for Tokunaga. (Witness complies)

THE COURT: Course of Ogawa's car with relation to doctor's car shown by dotted line and marked "T".

MR. NICHOLSON: It is really a light line marked "T", my lord.

Q. But you do say, Mr. Tokunaga, you weren't very far ahead of Dr. Fujiwara's car when you were back in the centre of the road. You stated that a few minutes ago. You remember that? A. Yes.

Q. Now, you say, Mr. Tokunaga, that when you were passing the other car you noticed the passengers were Japanese? A. Yes, I saw.

Q. And were you the one who smiled? A. Smiled?

Q. Did you smile at Miss Sato? A. I don't know Miss Sato in there or not.

Q. But you recognized a young Japanese lady in the front seat, did you not? A. No; just Dr. Fujiwara.

Q. You said this morning you saw the other car had Japanese passengers. Which is correct. You didn't say driver; you said Japanese passengers. A. Yes. I could see the back seat.

Q. How could you see the passengers sitting in the back seat? A. I can see from back.

Q. You couldn't see them? A. Sure.

Q. You did see them? A. Yes.

Q. And you didn't see the passengers in the front seat? A. In there I mean.

Q. You did see them? A. Yes.

THE COURT: Wait a minute. Take your time. Let us get what he says.

MR. NICHOLSON: Q. Did you see them or not? A. I can see.

THE COURT: Q. Not "can't"? A. No.

Q. "I can see"? A. Yes.

Q. That Japanese in other car? A. Yes.

MR. NICHOLSON: Q. Didn't you smile at the people in the car? A. I don't think so.

Q. You were doing quite a bit of smiling this morning. That is what made me think that seeing fellow countrymen you might have smiled at them. A. No.

aforesaid was ...

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Settled:
15 March 1938
J. F. Smellie
Registrar

Q. Don't remember that? A. No.

Q. But you won't say you didn't smile? A. I didn't say so, no.

THE COURT: Q. Do you know what "smile" means? A. Yes.

MR. NICHOLSON: Smile at me. (Witness complies)

MR. NICHOLSON: He did pretty well.

THE COURT: Perhaps he might be laughing at you.

MR. NICHOLSON: He might be.

Q. Now, Sakomoto, you think, cried out, and then you looked and saw this other car, did you? A. Yes.

Q. Was it then on the sidewalk? A. Yes.

Q. How far away from the post that it hit? A. You mean car and post?

Q. You saw it going along the sidewalk? A. Yes.

Q. You know there were two electric light posts hit? A. Yes.

Q. Was it near the first post or second post when you saw it? A. I can't remember that.

Q. You can't remember that? A. No; because few minutes see.

Q. Very quick? A. Yes.

Q. But when you saw this other car was your car going fast or slow? A. Fast, I think.

Q. Your car was going fast? A. Yes.

Q. Still going about 35 to 40 miles an hour? A. I think so.

Q. Your question is ambiguous, Mr. Nicholson. At least, it is rather meaningless. I attach no importance to the reply because you have not identified the time you are referring to. I think I know what you mean, but it is not clear the witness does.

MR. NICHOLSON: Q. Do you remember somebody singing out and you looked up and saw the other car going along the sidewalk at the same time? A. Yes.

Q. How fast was your car going at that time; fast or slow? A. Fast.

Q. You were still going fast? A. Yes.

Q. How fast—

THE COURT: Q. As fast as you were when you were passing? A. Yes.

Q. You think you were still going as fast as that? A. Yes.

MR. NICHOLSON: Q. You didn't go to the hospital, did you? A. No, sir.

Q. Do you remember Ogawa's car coming back after the hospital? A. Yes.

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Settled:
15 March 1938
J. F. Smellie
Registrar

Proceedings at Trial
Akira Tokunaga—Cross-Exam. Called for Defdt.

Q. Came back to Port Moody? A. Yes.
Q. And do you remember Dr. Fujiwara taking the chief of police up to examine the car, to look at the side of your car? A. Yes.
Q. And when the chief of police went up, Mr. Ogawa, Mr. Higuichi, Mr. Sakomoto and yourself were all asked to come along, isn't that so? A. Yes.
Q. And in the presence of all of you, that is, the four of you from Ogawa's car, Dr. Fujiwara pointed to the chief of police to the side of that car, is that right? A. Yes.
Q. And the chief put his hand under the running board? A. Yes.
Q. Did you put your hand under to see what was there? A. No.
Q. Did you examine the running board to see if rubbed? A. No.
Q. You didn't bother? A. No.
Q. Did you hear any conversation or anything said in Japanese at that time when the chief of police was there? A. No.
Q. The chief of police said in his evidence that he heard something said in Japanese. Do you recall what that was? A. I don't remember.
Q. Do you remember Mr. Higuichi saying there when you were all standing by the car, after the chief put his hand under the running-board—do you remember Higuichi saying in Japanese "I wonder if that is so after all"? A. I don't know. I didn't hear.
Q. Didn't hear that? A. No.
Q. Maybe it was said? A. I didn't hear.
MR. BULL: He said he didn't hear. Anything might be said he didn't hear.
Q. When you were going out that morning, did you pass other cars on the road? A. I don't remember.
Q. Do you know how many feet there were between you and the other cars you met on the highway?
MR. BULL: He said he doesn't remember any.
THE WITNESS: You mean other cars, not the Fujiwara car?
MR. NICHOLSON: Q. Yes. A. I don't remember.
Q. Why do you remember so much about this one. I suggest it was because you talked it over before the common danger case and got your partners to agree, isn't that right? A. I don't think so.
Q. You don't think so.
(Witness aside)

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Settled:
15 March 1938
J. F. Smellie
Registrar

Proceedings at Trial
Rebuttal
Asa Fujiwara—Direct Exam. Called for Pltff.

MR. BULL: That is all the evidence for the defence, my lord.

MR. NICHOLSON: One witness in rebuttal, my lord, Dr. Fujiwara.

REBUTTAL

ASA FUJIWARA, recalled.

THE REGISTRAR: You are still under oath, Dr. Fujiwara.

DIRECT EXAMINATION BY MR. NICHOLSON:

Q. You have been in Court, doctor, throughout the whole of this trial? A. Yes.

Q. And you heard the evidence given by the defendant, Mr. Ogawa? A. Yes.

Q. Did you hear him say that as he was overtaking you on St. John's Road on the morning just before the accident that your car was weaving—I think that was the expression he used —before he caught up to you? A. Yes.

Q. What have you to say about that? A. Lie. It is not right. I was going straight.

Q. You were what? A. I was going straight.

Q. You told me the other day in your direct evidence that when you were at the hospital, after you had taken your wife to the hospital you had some conversation with Mr. Higuichi? A. Yes.

Q. Was that the same Higuichi who gave evidence here this morning? A. Yes.

Q. Would you tell his lordship what that conversation was. Was it in English or Japanese? A. In Japanese.

Q. Just tell the conversation. A. Well, he want to see me. He came to the door, so I went up the hall and met him, and he asked me first what condition of wife. Then he asked me "What made this accident, you think?" So I said "Of course, those maroon coloured Ford car struck my car." So I said "This is the whole cause of this accident." Then Higuichi said "That is what we thought." Therefore we made inspection of our car, but there is no mark on our car." I said "That is very funny. There should be mark somewhere on those car." That is all about this accident I made conversation.

Q. That was all that was said at the hospital? A. Yes.

Q. Then he made the further remark after the car was inspected later on? A. Yes.

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Settled:
15 March 1938
J. F. Smellie
Registrar

Proceedings at Trial
Rebuttal
Asa Fujiwara—Cross Exam. Called for Pltff.

CROSS-EXAMINATION BY MR. BULL:

Q. You remember being asked that same thing on your discovery, don't you? A. Yes.
Q. Did you read that discovery over? A. No.
Q. Have you ever read that discovery? A. No.
Q. Not since you were examined? A. No.
Q. Has it been read to you? A. No.
Q. Never saw it? A. No.
Q. I want to read what you said on discovery:

"101. Q. What was said to Higuichi? A. Higuichi, he want to see me, so I went in the hall at the hospital, and he ask me "What do you think made this accident?" in Japanese. I said "Of course that maroon colored Ford car." I don't know whose car. Of course I remember Ogawa afterwards, but at that time Maroon car hit my car that caused this accident. And he said at that time "That is what we thought. So we made inspection of our car, but there is no mark."

"102. Q. No mark on your car at all? A. No, and I said 'It is funny.'

"103. Q. You said Higuichi had made an inspection of their car? A. Yes.

"104. Q. And they couldn't find any mark? A. He said no mark on car, and I said 'Very funny, because I know I feel maroon Ford car hit my car; should be mark somewhere.' That is what I talked to Mr. Higuichi. But he inclined his head. (Indicating.) 'It is very funny, if we hit your car we should have mark somewhere.' And I said same way.

"105. Q. What else did you and Higuichi say to each other? A. He said 'Don't you think some other car hit yours?' I said 'If there is another same coloured car over there, if maroon car was there, but no other maroon coloured car there, so it must be his car.'

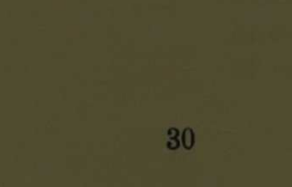
"106. Q. Is that all you and Higuichi said at the hospital? A. Yes."

You say you haven't read that since you were examined on discovery? A. No.
Q. Nor had it been read to you? A. No.

THE COURT: Q. Did Higuchi suggest to you that you might have been hit by another car? A. Yes.

(Witness aside)

MR. NICHOLSON: That is the rebuttal, my lord.



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Settled:
15 March 1938
J. F. Smellie
Registrar

Proceedings at Trial
Discussion

(Argument by Mr. Bull)

THE COURT: I can only say this to you. I do not know that I made any observations that indicated what my finding is to be, but I remember very well a case in which I think Mr. Nicholson and Mr. Murphy acted—I am not sure—but I had my mind rather definitely made up before argument started, and I confess the argument changed it, so one never knows—I am not encouraging you to make unnecessary speeches—and I frankly tell you I have a view of this, of the facts. After all facts sometimes are extremely difficult of determination, and one just has to make, where there is contradiction, the best one can out of the witnesses.

MR. BULL: I think it largely comes down to the question of the Judges—

THE COURT: As human as can be.

MR. BULL: On the other hand through experience Judges learn one should never make up one's mind on any question until all the evidence is in.

THE COURT: Quite.

MR. BULL: Because if one does that early in the case, then, of course all the later evidence is unconsciously coloured to support the view which is already arrived at.

THE COURT: I can assure you on that that I kept an open mind and I still have an open mind. I can frankly say I have a view at the moment, but it may be changed by argument of counsel.

(Argument continued by Mr. Bull)

(Argument by Mr. Nicholson)

THE COURT: Well, I find you have certainly given me a nice border line case. I do not suppose it is right for somebody to step on the gas instead of the brake. It is clearly on the border line how far the defendant is responsible for that. However—reserved.

C.A.V.

I hereby certify the foregoing to be a true and accurate report of the said proceedings.

"D. F. Christian" Deputy Official Stenographer.

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Exhibit 11

VANCOUVER WOMAN HURT IN COLLISION

PORT MOODY, Nov. 11—Mrs. A. J. Fujiwara, wife of Dr. Fujiwara, Vancouver, dentist, 2707 Forty-third Avenue West, sustained head and back injuries when their car left the road in avoiding another auto and crashed into a telegraph pole here at 9 a.m. today. Mrs. Fujiwara was taken to the Royal Columbian Hospital. Dr. Fujiwara, his son, Allan, and Miss T. Sato of Mission sustained minor cuts and bruises, and were allowed to go home.

SUPREME COURT OF B. C.
Vancouver Registry

EXHIBIT No. (11)

Fujiwara et al vs. Ogawa

PUT IN BY Ptfs. DATE 20/1/37

"A.A.C."

REGISTRAR

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Exhibit 7

Re: Fujiwara v. Ogawa

Translation of Item in "The Daily People."

Yesterday morning Dr. and Mrs. Asojiro Fujiwara, dentist, and his family, and also Miss Teruko Sato of Mission City, left for Mission Clinic in their car. At 9.30 A. M. at Port Moody, a car driven by a white man, with high speed struck Mr. Fujiwara's car at the back-end and their car hit a telephone post.

Mrs. Fujiwara was injured on head, face and chest, and was taken to New Westminster Hospital. Mrs. Fujiwara regained consciousness at 7 P.M. and there is a probability of a rib-fracture.

Miss Sato was injured at two places on her face. Noberniori, age 5, collar-bone broken; Mitsuniori (15 years) had a few scratches and felt alright but the next day he had toothache, and there seems to be he was struck at the jaw. Doctor himself was not hurt, but it was a terrible accident.

SUPREME COURT OF B. C.
Vancouver Registry

EXHIBIT No. (7)

Fujiwara et al vs. Ogawa

Put in By Deft. Date 18/1/37.

"A.A.C."

REGISTRAR.

(Nov. 12/35)

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Exhibit 3

Vancouver, B. C., Nov. 18th 1935

SOLD TO Dr. A. J. Fujiwara,
2707 West 43rd Av.,
Vancouver, B. C.

STONEHOUSE MOTORS LIMITED
Georgia at Homer Street

QUAN.	PART No.	ARTICLE	PRICE	TOTAL
		To Rental of Car 25 days @ $3.00 per day		$75.00

10 SUPREME COURT OF B. C.
Vancouver Registry

EXHIBIT No. (3)

Fujiwara et al vs. Ogawa

Put in by Pltffs. Date 18/1/37.

"A.A.C."

REGISTRAR.

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Exhibit 8

Vancouver, B. C., January 15, 1937.

SOLD TO Dr. A. J. Fujiwara
826 Granville St., Vancouver, B. C.

STONEHOUSE MOTORS LIMITED
Georgia at Homer Street

QUAN.	PART No.	ARTICLE	PRICE LABOR	PRICE PARTS	TOTAL
		Remove replace trimming	4.50		
10		Repair frame	24.50		
		Adjust brakes	2.25		
		Repair gas tank	4.75		
		Duco repaired parts	23.25		
		Overhaul steering	5.25		
		Towing	6.00		
		Align front axle	7.00		
		Repair radiator shell	4.75		
		Plate radiator shell	6.25		
		Repair L.R. wheelhouse panel	6.75		
20		Repair 2 running boards	3.25		
		Repair top quarter panel	3.50		
		Repair L. R. Door	1.10		
		" L.R. fender	6.50		
		Repair R.F. door and strikes	1.50		
		Repair radiator core	4.50		
		Repair 1 front spring	3.50		
		Repair cowl	18.50		
		Overhaul water pump	2.25		
		1 Headlight		9.00	
30		1 5.50 x 17 tire		15.75	
		1 5.50 x 17 tube		3.75	
		2 Fender guides		3.50	
		New fan blades		1.10	
		New left running board mat		3.55	
		New radiator splash guard		3.55	
		New R.F. fender		15.50	
		New L.F. fender		15.50	
		1 bumper (front)		6.50	
		New wheel		10.50	
40		New distributor cap		.90	
		New distributor brush		.25	
		1 front spring		5.00	
		New engine hood		18.00	
		New windshield		21.25	
		New door glass		4.50	
		Carried fwd.	139.85	138.10	

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Exhibit 8

	Brought fwd.	139.85	138.10	
	3 Hub caps		2.55	
	New sector		2.45	
	New shaft		2.85	
	New Pitman arm		2.20	
	2 Front fender irons		2.70	
	2 Front fender supports		1.25	
	New anti freeze		4.50	
	New oil base		5.00	
	New engine oil		1.90	
	New timing case cover		1.35	
	New spindle body		5.25	
	New tie rod		1.50	
	New shock link		.50	
	2 Brake cables		4.50	
	Gaskets and sundries		2.90	
	Rear end grease		1.00	
	True up 2 wheels	5.50		
	Overhaul rear end	9.90		
	True up banjo housing	8.25		
	True up 2 axles	3.00		
	True up drive shafts	2.75		
	True up drive shaft housing	4.50		
	Remove and replace 2 front fenders	6.60		
	Remove and replace rad. shell	4.50		
	Remove and replace 2 fr. springs	3.30		
	Remove and replace engine	10.50		
	Remove and replace body	12.75		
	Repair seat frame	4.25		
	Replace tie rod	1.50		
	Replace spindle body	2.10		
	Replace brake cables	2.40		
	Replace oil base	1.80		
	Replace timing case cover	1.50		
	Repair gear shift lever	.90		
	Repair body sill	6.75		
	True up drum	2.00		
	Replace gas tank	2.25		
	Replace rad. splash guard	1.50		
		238.35	180.50	418.85

SUPREME COURT OF B. C.
Vancouver Registry
EXHIBIT No. (8)
Fujiwara et al vs. Ogawa
PUT IN BY PLTFFS. DATE 19/1/37
"A.A.C."
REGISTRAR.

same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settld:
15 March 1938
J. F. Smellie
Registrar

Exhibit 1



Supreme Court of B. C.
Vancouver Registry
Exhibit 1
Fujiwara et al vs Ogawa
Put in by Pltffs. Date 18/1/37
A.A.C.
Registrar

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settld:
15 March 1938
J. F. Smellie
Registrar

Exhibit 2



Supreme Court of B. C.
Vancouver Registry
Exhibit 2
Fujiwara et al vs Ogawa
Put in by Pltffs. Date 18/1/37
A.A.C.
Registrar

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

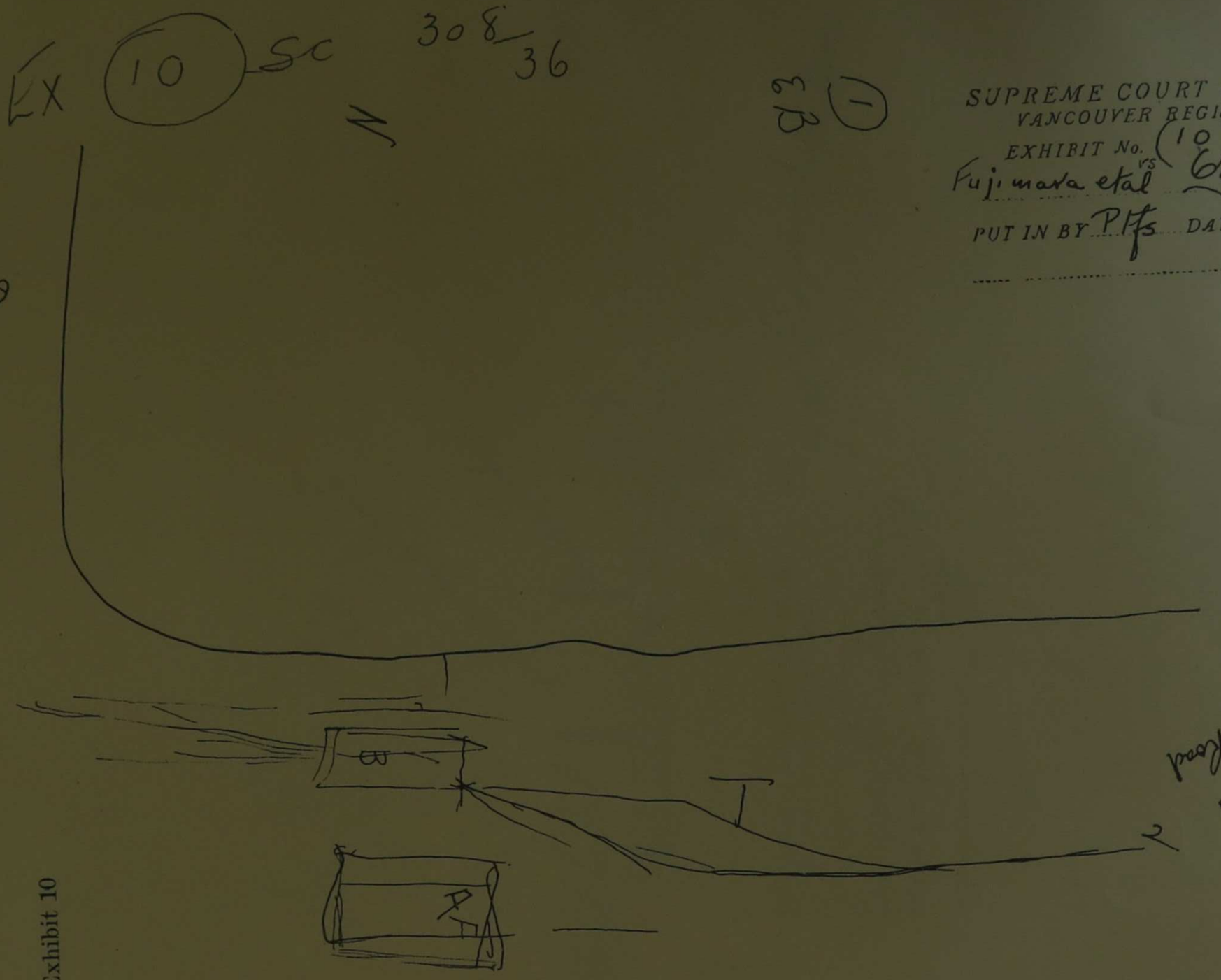
Settld:
15 March 1938
J. F. Smellie
Registrar

EX (10) SC 308/36

SUPREME COURT OF B C.
VANCOUVER REGISTRY
EXHIBIT No. (10)
Fujimura etal vs Ogawa.
PUT IN BY Plfs DATE 19.1.37
AAC
REGISTRAR

Exhibit 10

199 Westminster Hwy

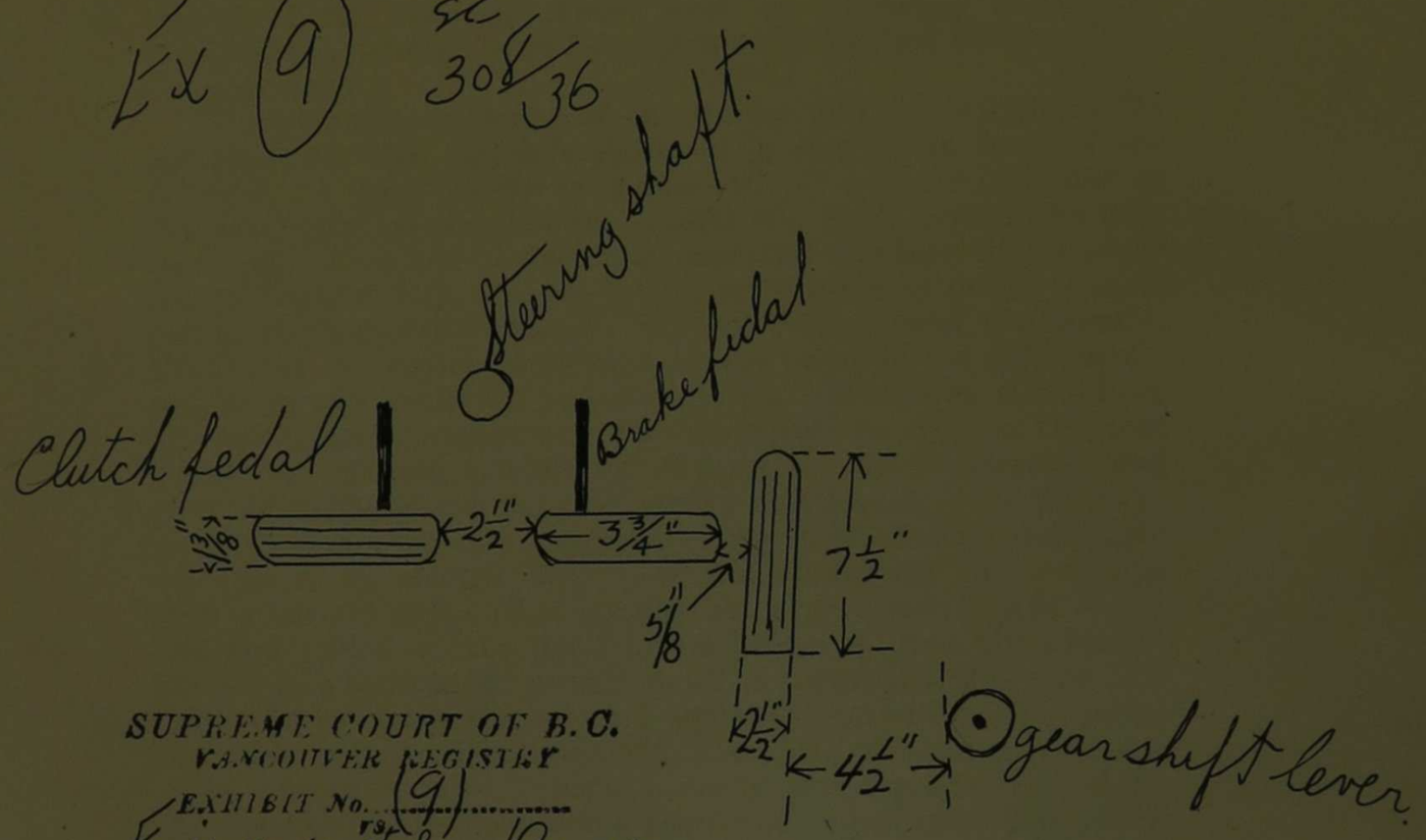


of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Bird
Registrar

Exhibit 9

Ex (9) SC 308/36



SUPREME COURT OF B.C.
VANCOUVER REGISTRY
EXHIBIT No. (9)
Fujiwara et al vs Ogawa
PUT IN BY Pks DATE 19-1-37
AAC
REGISTRAR.

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Reasons for Judgment—Manson, J.

This action arises out of an automobile accident which occurred on Sunday morning, November 10, 1935, at Port Moody in this Province. The Plaintiff, Dr. Fujiwara, and his wife, two sons and a lady passenger were travelling in the doctor's car eastward at 20—25 m.p.h. on St. John's Road. The roadway has a hard surfaced centre strip 18 feet wide and a gravel strip on each side 10' 6'' wide. The defendant with three passengers in his car overtook and passed the doctor's car on a straightaway stretch of the highway. There were no oncoming Westbound cars and the passing could have been accomplished without difficulty or danger

I accept the evidence of the doctor and the witnesses for the plaintiffs that the defendant cut in sharply in front of the doctor's car immediately he passed it. It was alleged that as the defendant passed, his car caught the front end of the doctor's car. It is not particularly material whether it did so or not (I think it did) because I have no manner of doubt that he cut in altogether too sharply, without excuse—and negligently. The doctor was upset, as he says, by the bump of the defendant's car, or in any event by imminence of a collision as a result of the defendant's negligence. He attempted to step on the foot brake but instead, seemingly, stepped on the accelerator and swerved to the South running over a small bush, over the sidewalk, part-way up on a terrace over the edge of some steps, into the side of an electric light pole and on farther into collision with a second pole. He thought his brakes must have failed him and pulled on the hand brake (when it does not appear) but too late to save the situation. The plaintiff's wife was partially thrown from the car and sustained serious head injuries and other injuries. The plaintiff, Miss Sato, sustained face cuts —one serious enough to leave a nasty scar for life. The plaintiff Alan Fujiwara sustained a fractured collarbone. The plaintiff Wesley Fujiwara also sustained some injuries but of a less serious character.

It was urged by Counsel for the defendant—First: that the defendant was not negligent. I find he was. Secondly: alternatively, that while the defendant's negligence may have been the causa sine qua non it was not the proximate or direct cause of the accident—that the proximate cause was the doctor's own negligent driving.

The doctor travelled after he swerved some 180 feet. His car was a 1933 Chevrolet Sedan with a high speed motor and a quick pick up. The question to be determined is, should the doctor have recovered his mental equilibrium after the first disturbance and not pursued the course he did — should he as a driver of a motorcar (he was a driver of 10 years experience)

aforesaid this court

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

have immediately sensed that his foot was on the accelerator and not on the brake? Had he realized that his foot was on the accelerator he would, of course, have removed it and put it on the brake and the accident and its consequences would have been avoided. While the maintenance of his foot upon the accelerator for some 180 feet or for 3 or 4 seconds does seem extraordinary and while it seems somewhat harsh to charge the defendant with the damage that ensued as a result of the doctor's error, nevertheless, one or two facts must be borne clearly in mind. A sharp cut in by a passing car on a highway is one of the most disconcerting experiences which even an experienced driver can encounter and such an experience is even more disconcerting when one has the responsibility of a car full of passengers. An experienced driver instantly senses the danger of such a manoeuver on the part of a passing car and very few drivers can maintain equanimity in such circumstances. One asks how long a defendant is to be held liable for incorrect driving by the driver whom he has upset? In this particular case should the doctor not have recovered his equilibrium in time to avoid, if not the first collision with a pole, at least the second one. Other drivers might have done so but very many drivers might not have done so. What he did was extraordinary and yet I think it unfair to say that it was not understandable and excusable in the circumstances. It can hardly be said of Dr. Fujiwara that he had time to think — the bush, the steps and the first pole all loomed in front of him one after another, giving him no time to regain his poise. The language of Mr. Justice Middleton is apt at p. 108 **in Harding vs Edwards and Tatisich, 64 O.L.R. 98** (sustained by the Supreme Court of Canada **(1931) S.C.R. 167)**. The learned Judge used this language:

> "The case emphasizes the necessity of charity in judging the conduct of one who is not, it is true, in the actual agony of collision, but upon whom, in the language I have already quoted, 'the hand of the original wrongdoer was still heavy,' before his conduct can be regarded as the act of a conscious intervening agent. If in truth such a one is 'acting on the impulse of personal peril' he may not be 'only a link in a chain of causation extending from the initial negligence to the subsequent injury' to quote again the words of Hamilton, L.J. in **Latham vs R. Johnson and Nephew Ltd.**"

As was said by Lord Dunedin in **U. S. Shipping Board v Laird Line (1924) A.C. 286** at p. 291:

> "It is not in the mouth of those who have created the danger of the situation to be minutely critical of what is done by those whom they have by their fault involved in the danger."

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Reasons for Judgment—Manson, J.

I hold the defendant liable.

I assess damages as follows:

Special damages to plaintiff Asa J. Fujiwara	$1098.00
Special damages to plaintiff Shotaro Sato	35.00
General damages to plaintiff Tsuru Fujiwara	3000.00
General damages to plaintiff Wesley Fujiwara	25.00
General damages to plaintiff Alan Fujiwara	150.00
General damages to plaintiff Asa J. Fujiwara for loss Servitium	500.00
General damages to Asa J. Fujiwara for loss Consortium	500.00

Costs to follow event.

A. M. MANSON, J.

23rd January 1937.

aforesaid this Court ...

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Formal Judgment—Manson, J.

BEFORE)
THE HONOURABLE)
MR. JUSTICE MANSON)

SATURDAY,
THE 23rd DAY OF
JANUARY A.D. 1937

This action having come on for trial before The Honourable Mr. Justice Manson without a jury on the 18th, 19th and 20th days of January, A.D. 1937, at the Court House, in the City of Vancouver, in the Province of British Columbia, in the presence of J. R. Nicholson, Esq., and K. L. Yule, Esq., of Counsel for the plaintiffs, and A. Bull, Esq., K.C., and A. H. Ray, Esq., of Counsel for the defendant; and the Statement of Claim herein having been amended at the trial, upon the application by Counsel for the plaintiffs by changing in paragraph 9 thereof the amount of the account of Dr. H. W. Shimokura from $70.00 to $125.00, the account of Dr. H. S. Saita from $57.00 to $241.00, and the amount of item for hire of another automobile from $63.00 to $75.00, by striking out the claim for depreciation of automobile, and by changing the total amount of the claim for expenses and depreciation from $847.00 to $1098.00, by changing in paragraph 12 thereof the amount of the claim for medicines, etc., from $2.50 to $ .50, and the total amount of the claim for expenses from $37.00 to $35.00, and by changing in the prayer for relief the amount of the claim of the plaintiff Asa J. Fujiwara for special damages from $847.00 to $1098.00, by inserting therein a claim on behalf of the plaintiff Asa J. Fujiwara for general damages, and by changing the amount of the claim of the plaintiff Shotaro Sato for special damages from $37.00 to $35.00; Upon Reading the pleadings and proceedings herein; Upon hearing the evidence adduced on behalf of the plaintiffs and the defendant respectively; and upon hearing Counsel aforesaid, and judgment having been reserved until this day:

THIS COURT DOTH ORDER AND ADJUDGE that the plaintiff Tsura Fujiwara do recover against the defendant C. Ogawa damages in the sum of $3,000.00;

THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the plaintiff Asa J. Fujiwara do recover against the defendant C. Ogawa special damages in the sum of $1098.00 and general damages in the sum of $1000,00;

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the infant plaintiff Alan Fujiwara do recover against the defendant C. Ogawa damages in the sum of $150.00;

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the infant plaintiff Wesley Fujiwara do recover against the defendant C. Ogawa damages in the sum of $25.00;

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the infant plaintiff Teruko Sato do recover against

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Formal Judgment—Manson, J.

the defendant C. Ogawa general damages in the sum of $500.00;

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the plaintiff Shotaro Sato do recover from the defendant C. Ogawa special damages in the sum of $35.00;

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the sum of $25.00 payable by the defendant to the infant plaintiff Wesley Fujiwara, be paid to the said infant plaintiff Wesley Fujiwara, and that the receipt of the said Wesley Fujiwara for the payment of the said sum of $25.00 shall be conclusive evidence of the proper payment thereof;

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the sum of $150.00 payable by the defendant to the infant plaintiff Alan Fujiwara, be paid to the plaintiff Asa J. Fujiwara, and that the receipt of the said Asa J. Fujiwara for payment of the said sum of $150.00 shall be conclusive evidence of the proper payment thereof.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the defendant C. Ogawa do pay to the plaintiffs their costs of this action forthwith after taxation thereof.

BY THE COURT

"J. F. MATHER"
DISTRICT REGISTRAR.

Approved
"A. Hugo Ray"
JFM DR

Checked
ALR

ENTERED Feb. 18 1937
Order Book Vol. 34, Fol. 21,
Per LJB

AMM, J.

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Notice of Appeal to Court of Appeal

NOTICE OF APPEAL

TAKE NOTICE that the above-named Defendant does now hereby appeal to the Court of Appeal from the Judgment of the Honourable Mr. Justice Manson pronounced herein the 23rd day of January, A.D. 1937, whereby it was ordered and adjudged that the Defendant do pay to the Plaintiff, Tsuru Fujiwara, damages in the sum of $3000.00, to the Plaintiff, Asa J. Fujiwara, special damages in the sum of $1,098.00 and general damages in the sum of $1,000.00, to the Infant Plaintiff, Alan Fujiwara, damages in the sum of $150.00, to the Infant Plaintiff, Wesley Fujiwara, damages in the sum of $25.00, to the Infant Plaintiff, Teruko Sato, damages in the sum of $500.00, and to the Plaintiff, Shotaro Sato, special damages in the sum of $35.00, together with the costs of this action.

AND FURTHER TAKE NOTICE that the Court of Appeal will be moved at its sittings to be held at the Law Courts in the City of Vancouver, in the Province of British Columbia, on Tuesday, the 18th day of May, 1937, at the hour of eleven o'clock in the forenoon, or so soon thereafter as Counsel may be heard, for an Order vacating and setting aside the said Judgment in favour of each of the said Plaintiffs, and directing that Judgment be entered in favour of the Defendant, or in the alternative, that the general damages awarded to the Plaintiff, Asa J. Fujiwara, be reduced.

AND FURTHER TAKE NOTICE that the following among others are the grounds for appeal:

1. That the said Judgment is contrary to law;
2. That the said Judgment is against the evidence and the weight of evidence;
3. That the learned Trial Judge should have found on the evidence that the Plaintiff, Asa J. Fujiwara, was guilty of negligence which was the only true and effective cause of the accident or collision in question, that is to say, the collision between the automobile in which the Plaintiffs were riding and a certain electric light pole with which it collided;
4. That the learned Trial Judge should have found on the evidence that the Defendant was not guilty of any negligence causing the accident, but if he were guilty of negligence, that notwithstanding such negligence, the Plaintiff, Asa J. Fujiwara, had the opportunity and last chance of avoiding the collision with the said electric light pole, and that he did not avail himself of such chance or opportunity;
5. That the learned Trial Judge should have found on the evidence that the Plaintiff, Asa J. Fujiwara, left the travelled portion of the highway without cause.

aforesaid this court ...

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Notice of Appeal to Court of Appeal

6. That the learned Trial Judge should have found on the evidence that the Plaintiff, Asa J. Fujiwara, lost control of his automobile without cause, and that he had no lawful excuse for putting his foot on the accelerator instead of the brake, or applying his brakes in such a manner as to cause the accelerator to be pressed down at the same time, thereby increasing the speed of his car instead of decreasing the same, and that this was the sole and effective cause of the collision between the automobile in which the Plaintiffs were riding, and the said electric light pole.

7. That the learned Trial Judge should have found on the evidence that the Plaintiff, Asa J. Fujiwara, made no attempt, or proper attempt, to avoid striking the electric light pole, the collision with which was the sole cause of the injury and damage alleged to have been suffered by the said Plaintiff and his co-plaintiffs, and that the said Plaintiff, Asa J. Fujiwara, without lawful excuse mismanaged the situation and failed to resume normal driving and so avoid hitting the said electric light pole as he could and should have done by steering his motor vehicle properly, or stopping the same.

8. That the learned Trial Judge should have found on the whole evidence that the Plaintiff, Asa J. Fujiwara, was not a reliable witness, and he should not have accepted any of his testimony.

9. That the learned Trial Judge should have found in the alternative that if there was any negligence on the part of the Defendant contributing to the accident, that the Plaintiff, Asa J. Fujiwara, was also guilty of negligence contributing to the accident, in that he left the travelled portion of the highway without cause; he lost control of his automobile without cause; he failed to apply his brakes properly or at all; he put his foot on the accelerator instead of the brake, or in the alternative, if he applied his brakes, he applied them in such a manner as to cause the accelerator to be pressed down at the same time; he increased the speed of his car instead of decreasing the same; he made no attempt to avoid striking the electric light pole, which collision was the sole cause of the injuries and damage alleged to be suffered by himself and his co-plaintiffs; he mismanaged the situation and failed to resume normal driving and so avoid hitting the electric light pole as he could and should have done by steering his motor vehicle properly, or stopping the same; and the damages suffered by the plaintiffs should have been apportioned under the provisions of the Contributory Negligence Act, being Chapter 8 of the Statutes of British Columbia 1925, and Amendments thereto.

aforesaid this court [illegible]

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Notice of Appeal to Court of Appeal

10. That the learned Trial Judge erred in giving no effect to the evidence of the witness, Takaichi Umezuki;
11. That the learned Trial Judge based his judgment and findings of fact, if any, not on the evidence but on inferences which he drew from the evidence, which said inferences were not justified and were contrary to the evidence;
12. That the learned Trial Judge on the evidence, awarded to the Plaintiff, Asa J. Fujiwara, general damages in excess of any which he had suffered or to which he was entitled.

AND UPON OTHER GROUNDS.

DATED at Vancouver, B. C., this 23rd day of April, 1937.

"W. W. WALSH"
Solicitor for the Defendant.

To the Plaintiffs,

And to W. S. Lane, Esq.,
Their Solicitor.

THIS NOTICE OF APPEAL is filed by Walter William Walsh, Esq., of the firm of Walsh, Bull, Housser, Tupper, Ray & Carroll, whose place of business and address for service is Suite 1500, The Royal Bank Building, Vancouver, B.C.

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Reasons for Judgment—Martin, C.J.B.C.

COURT OF APPEAL

FUJIWARA ET AL) JUDGMENT OF THE HONOURABLE
vs) THE CHIEF JUSTICE OF BRITISH
OGAWA) COLUMBIA.

MARTIN, C.J.B.C.: PER CURIAM: The appeal is dismissed, our brother McQuarrie dissenting.

So far as my brother McPhillips and myself are concerned, we take the view that the learned Judge has reached the right conclusion.

A somewhat unusual question arises, viz., that what was apparently regarded by Plaintiff below, and by my brother McPhillips and myself, as a cardinal fact of the case, i.e., the alleged impact, was, it is submitted, found in favour of the plaintiff, but Mr. Bull on behalf of the appellant presented a strong argument to the effect that the expression of opinion of the learned trial Judge in regard to that impact, which, if it occurred, was the proximate cause of the accident, was not definitely found by the learned Judge, and that all he said was "I think it did happen." Under ordinary circumstances, Mr. Bull was prepared to admit that "I think" would be a judicial finding, but he submitted in view of the fact that the learned Judge that had proceeded after that expression to deal elaborately with the rest of the case apart from impact, therefore it should be regarded as a mere passing expression of his mind and not as a judicial finding; but, on the other hand, Mr. Nicholson presented very strongly to us his submission that we should regard it as a finding. My brother McPhillips and I, in view of that, have examined this aspect of the case very carefully, and we find that even if it could be said, and there is something to support it, that perhaps it was not as definite a finding as is usual, nevertheless we feel that in giving his judgment the learned Judge ought to have found that primary fact in favour of the plaintiff, and that the expression he used "I think it did" (take place) should be regarded as being used in the same way as, for example, the House of Lords used the word "think" repeatedly in **Elder Dempster Co. Ltd. v. Paterson Zochonis & Co. Ltd.** (1924) A.C. 522. Such being the case, in our opinion the judgment can be primarily sustained upon that fact of impact, as well as upon the other facts on which the learned Judge relied.

Victoria, B. C.
Sept. 14, 1937

aforesaid this court [illegible]

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Reasons for Judgment—McPhillips, J.A.

COURT OF APPEAL

FUJIWARA et al) JUDGMENT OF
vs) THE HONOURABLE
OGAWA) MR. JUSTICE McPHILLIPS.

At the outset I have no hesitation in stating that I am in complete agreement with the judgment here under appeal, being a judgment relative to an automobile accident delivered after a trial without a jury by Manson, J. The facts may be shortly stated as follows: The plaintiff Dr. Fujiwara was driving his automobile in the Port Moody neighborhood close to the City of Vancouver and had with him his wife and other passengers—The highway was paved in the travelled way with gravel strips on each side. The defendant came along in the rear of the Doctor's automobile and proceeded to pass and in so doing greatly increased his speed and, coming up alongside the Doctor's automobile, suddenly cut in towards the Doctor's automobile in a diagonal course and at great speed which greatly startled the Doctor as there was apparent and imminent likelihood of a dire tragedy—excited as he naturally would be and in the agony of an apparent likely collision the Doctor attempted to swerve off and in the agony of the moment unfortunately put his foot on the accelerator and the car raced up a slight incline and over the sidewalk and in its course struck an electric light pole and serious injuries ensued to the passengers in the automobile for which the plaintiffs sued in this action and for which the learned trial Judge (Manson, J.) has awarded damages and against which this appeal is brought. The case is one which does not differ from many such actions of a more or less similar character occurring now so frequently. That the defendant was negligent there can be no question. There is evidence that the automobile of the defendant actually struck the Doctor's automobile although the learned trial Judge does not make a very pronounced finding to that effect, yet he did say " I think it did." Upon the facts, as I read them there was an impact but, in my view, to support the action that is not a needed finding—there need be no actual impact—the negligence really arises by the defendant putting the plaintiffs in imminent peril of their lives, a likelihood of loss of life—in truth a dire tragedy—and that was this case. I do not consider it necessary to further cite any of the surrounding facts and so completely set forth in the evidence which is at length in the Appeal Book. I will now proceed to refer to some of the decisions which in my opinion fully support in law the conclusion at which the learned trial Judge arrived and which I consider warrants the upholding of the learned

aforesaid this Court that the Judgment appealed from herein of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Reasons for Judgment—McPhillips, J.A.

trial Judge's judgment. I would refer to **Rowen v. Toronto R. Co.** (1899) 29 S.C.R.717 at 723 Sir Henry Strong—**Armand vs Carr** (1926) S.C.R.575 and at p.580—**Harding vs Edwards** (1929) 64 O.L.R.98 (affirmed by the Supreme Court of Canada in (1931) S.C.R.167) at pp.99-100—Hodgins, J. A. at 101 and Middleton, J.A. at p.104; **Canadian Pacific Ry. Co. v. Kelvin Shipping Co. Ltd.** (1927) 138 L.T.R.369; **SS. Singleton Abbey v. SS. Paludina** (1927) A.C.16 at p.26-95 L.J.P.135. It is to be noted that Davie in his work—**Common Law and Statutory Amendment in Relation to Contributory Negligence** (1936), at pp.254, 255, 256, discusses the **Harding case** above referred to, also the **SS. Singleton case** and also referred to the words of Hamilton, L. J. in **Latham v. R. Johnson & Nephew Ltd.** (1913) 1K.B.398 at p.413; 82 L.J.K.B.258—and a quotation appears at p.255 by Davie of what Middleton, J.A. said in 64 O.L.R. 98 at p.108; (1929) 4 D.L.R.598 at p.606—"The case emphasizes the necessity of charity in judging conduct of one who is not, it is true, in the actual agony of collision, but upon whom, in the language I have already quoted 'the hand of the original wrongdoer was still heavy,' before his conduct can be regarded as the act of a conscious intervening agent. If in truth such a one is 'acting on the impulse of personal peril' he may yet be 'only a link in a chain of causation extending from the initial negligence to the subsequent injury,' to quote again the words of Hamilton, L.J., in **Latham v. R. Johnson & Nephew Ltd.** (1913) 1 K.B.398 at p.413; 82 L.J.K.B.258." Davie also, at pp.255-256 of his work above referred to has this to say relative to the **Harding case** (1931) S.C.R.167—"In the Supreme Court of Canada the Chief Justice stated that the question involved was merely a question of fact on which the Court had the explicit finding of the trial judge, confirmed by the majority of the Appellate Division, that question of fact being whether Edwards had recovered sufficiently from the condition of nervous excitement, into which the rash act of Mrs. Tatisich had thrown him, to be held responsible for what subsequently occurred, or whether he should be regarded as still acting involuntarily under the influence of that condition; and the Court took the view that nothing had been shown which would entitle it to determine the questions otherwise than had been decreed by the judgments below.

"Consequently it is not necessary for a person to be actually in the physical throes of collision in order to fall within the protective principle of the agony of collision rule. If the excitement of the situation has robbed a person of conscious volition and, while labouring under this impediment he plunges into

aforesaid this Court's ...

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

danger instead of avoiding it, or as it is said, jumps from the frying pan into the fire, the principle which exonerates from liability is the same whether the victim's injurious actions occur immediately before, during, or immediately after collision became imminent. And the determination of the question as to whether a person is overwhelmed with this 'agony of doubt' is a question of fact for the jury." The following is a foot-note in Davies work at p.256—

> "33. The reader will find an able discussion by the learned jurists of the Appelate Divisional Court upon the law as declared in **Re Polemis & Furness. Withy & Co.,** (1921) 3 K.B.560, 90 L.J.K.B.1353, and followed in **Hambrook v. Stokes Bros.** (1924) W.N.296, with especial reference to the responsibility of the author of initial negligence for the probable consequences of that negligence in relation to a person who causes damage as a result of his normal state of mind having been upset by circumstances brought about by the original wrongdoer."

It is evident that the cases I have referred to amply support the judgment of Manson, J. here under appeal and I have no hesitancy in arriving at the conclusion that the judgment should be sustained. I would, therefore, dismiss the appeal.

VANCOUVER, B. C.
November, 1937.

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Reasons for Judgment—McQuarrie, J. A.

COURT OF APPEAL

FUJIWARA ET AL) JUDGMENT OF
vs) THE HONOURABLE
OGAWA) MR. JUSTICE McQUARRIE

In this case, with due deference to the learned trial Judge, I consider that the real issue involved is, whether the appellant's automobile when passing it came into contact with the automobile in which the respondents were riding. If it did not do so there was clearly no excuse for the respondent Asa J. Fujiwara running off the roadway and taking the remarkable course which eventually led to the collision with the pole on the boulevard causing the damages complained of nor was there any excuse for the said respondent putting his foot on the accelerator instead of on the brake and thereby increasing his speed when he was endeavoring to stop the car. As to contact there is no finding by the learned trail Judge who in his Reasons for Judgment says at p.301 A.B., line 12 to the first word on line 29:—

"I accept the evidence of the doctor and the witnesses for the plaintiffs that the defendant cut in sharply in front of the doctor's car immediately he passed it. It was alleged that as the defendant passed, his car caught the front end of the doctor's car. It is not particularly material whether it did so or not (I think it did) because I have no manner of doubt that he cut in altogether too sharply, without excuse—and negligently. The doctor was upset, as he says, by the bump of the defendant's car, or in any event by imminence of a collision as a result of the defendant's negligence. He attempted to step on the foot brake but instead, seemingly, stepped on the accelerator and swerved to the South running over a small bush, over the sidewalk, part-way up on a terrace over the edge of some steps, into the side of any electric light pole and on farther into collision with a second pole. He thought his brakes must have failed him and pulled on the hand brake (when it does not appear) but too late to save the situation."

If my view be correct it is essential that this Court should weigh the evidence and arrive at a conclusion as to whether there was contact or otherwise. I should also draw attention to the further statement of the learned trial Judge at p.302, line 13, to p.303 to the word "poise," as follows:

"The doctor travelled after he swerved some 180 feet. His car was a 1933 Chevrolet Sedan with a high speed motor and a quick pick up. The question to be determined is, should the

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

doctor have recovered his mental equilibrium after the first disturbance and not pursued the course he did—should he as a driver of a motorcar (he was a driver of 10 years experience) have immediately sensed that his foot was on the accelerator and not on the brake? Had he realized that his foot was on the accelerator he would, of course, have removed it and put it on the brakes and the accident and its consequences would have been avoided. While the maintenance of his foot upon the accelerator for some 180 feet or for 3 or 4 seconds does seem extraordinary and while it seems somewhat harsh to charge the defendant with the damage that ensued as a result of the doctor's error, nevertheless, one or two facts must be borne clearly in mind. A sharp cut in by a passing car on a highway is one of the most disconcerting experiences which even an experienced driver can encounter and such an experience is even more disconcerting when one has the responsibility of a car full of passengers. An experienced driver instantly senses the danger of such a manoeuvre on the part of a passing car and very few drivers can maintain equanimity in such circumstances. One asks how long a defendant is to be held liable for incorrect driving by the driver whom he has upset? In this particular case should the doctor not have recovered his equilibrium in time to avoid, if not the first collision with a pole, at least the second one. Other drivers might have done so but very many drivers might not have done so. What he did was extraordinary and yet I think it unfair to say that it was not understandable and excusable in the circumstances. It can hardly be said of Dr. Fujiwara that he had time to think—the bush, the steps and the first pole all loomed in front of him one after another, giving him no time to regain his poise."

He evidently depends on his own experience to some extent as there is apparently no evidence supporting this statement in its entirety. I refer particularly to the learned trial Judge's assertion that—

> "A sharp cut in by a passing car on a highway is one of the most disconcerting experiences which even an experienced driver can encounter and such an experience is even more disconcerting when one has the responsibility of a car full of passengers."

Whether the experience was disconcerting or not must surely depend upon the speed at which the two automobiles respectively were travelling at the time. It is here to be noted that there is no finding of excessive speed by the learned trial Judge nor would such a finding have been warranted by the evidence.

aforesaid this Court of Appeal

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Reasons for Judgment—McQuarrie, J. A.

The appellant in his Factum submits that the evidence does not support the finding of the learned trial Judge that the appellant "cut in" sharply in front of the respondent Asa J. Fujiwara's car and in substance I think that contention is worthy of consideration. By "cutting in" I presume the learned trial Judge meant that the appellant after passing the said respondent's automobile turned sharply to the right side of the road in front of the respondent's automobile thereby causing the said respondent to lose control of himself and his car. As I see it any such "cutting in" should not have produced such disastrous results under the circumstances. The respondent, Asa J. Fujiwara, in his evidence in chief, says that he noticed that the appellant's car was travelling twice as fast as his own when it passed him. —See A.B.55, line 3 to 5, reading as follows:

"MR. NICHOLSON: Q. Yes, just continue, Doctor? A. First I noticed this car passing twice faster than my car."

With only two cars involved I cannot see that there was anything to bother the said respondent. By the time the appellant's car was in front of the respondent's it would have been so far ahead as to eliminate any possible danger of the respondent's car coming into contact with it. But even if the Respondent were disconcerted by the appellant driving so close to his car or "cutting in" ahead of his car that was not responsible for the damages complained of. The respondent admits that after he went off the roadway, for which I consider there was no good reason, he put his foot on the accelerator instead of on the brake as previously mentioned and after travelling some 180 feet on the boulevard and side-walk ran into the pole on the boulevard. As I see it the respondent's negligent driving was the real cause of the damages and the appellant should not be held responsible therefor. In other words the ultimate cause of the accident was the lack of care and skill of the respondent Asa J. Fujiwara. Here I might refer to the unanimous judgment of the Court of Appeal in Alberta—

McGinitie v. Godreau (1919-21) 59 D.L.R.552.

As to the essential feature referred to by me, namely, whether the appellant's car, in passing it, came into contact with the respondent Asa J. Fujiwara's car, I am of opinion that the weight of evidence is strongly in favour of the appellant's contention that it did not do so. In that connection the undisputed fact, that after the appellant's car passed the other car the appellant's car kept to an unswerving course on his right side of the roadway until stopped by the appellant, has influenced me

aforesaid this Court

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Reasons for Judgment—McQuarrie, J. A.

to some extent as it does not seem possible that it could have done so if it had struck the respondent's motor-car. I would, therefore, allow the appeal and dismiss the action.

"W. G. McQuarrie, J.A."

VICTORIA, B. C.
14th Sept., 1937.

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Formal Judgment of Court of Appeal

COURT OF APPEAL

BETWEEN:

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

Plaintiffs (Respondents),

AND:

C. OGAWA,

Defendant (Appellant),

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF BRITISH COLUMBIA.
THE HONOURABLE MR. JUSTICE McPHILLIPS.
THE HONOURABLE MR. JUSTICE McQUARRIE.

VICTORIA, B. C., the 14th day of September, 1937.

THE APPEAL from the Judgment of the Honourable Mr. Justice Manson pronounced on the 23rd day of January, A.D. 1937, coming on for hearing on the 2nd, 3rd, 4th and 7th days of June, A.D. 1937; and UPON HEARING Mr. A. Bull, K.C. and Mr. Hugo Ray of counsel for the Appellant, and Mr. J. R. Nicholson and Mr. K. L. Yule of counsel for the Respondents; and upon reading the Appeal Book, and Judgment being reserved until this day:

THIS COURT DOTH ORDER AND ADJUGE that the said Appeal be and the same is hereby dismissed with costs to be paid by the Appellant to the Respondents forthwith after taxation.

BY THE COURT,
"J. F. MATHER"
REGISTRAR.

B.C.L.S. $1.10

Vancouver Registry
Oct. 2, 1937
ENTERED
Oct. 2, 1937.
Order Book, Vol. 10, Fol. 268
Per A. L. R.

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Mather
Registrar

Notice of Appeal to Supreme Court of Canada

COURT OF APPEAL

BETWEEN:

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

Plaintiffs (Respondents),

AND:

C. OGAWA,

Defendant (Appellant),

TAKE NOTICE that C. Ogawa, the above named Defendant (Appellant), hereby appeals to the Supreme Court of Canada from the Judgment pronounced in this cause by this Court on the 14th day of September, A.D. 1937, whereby this Court dismissed the appeal of the said C. Ogawa from the Judgment of the Honourable Mr. Justice Manson, pronounced herein the 23rd day of January, A.D. 1937, which adjudged that the Defendant do pay to the Plaintiff, Tsuru Fujiwara, damages in the sum of $3,000.00, to the Plaintiff, Asa J. Fujiwara, special damages in the sum of $1,098.00 and general damages in the sum of $1,000,00, to the Infant Plaintiff, Alan Fujiwara, damages in the sum of $25.00, to the Infant Plaintiff, Teruko Sato, damages in the sum of $500.00, and to the Plaintiff, Shotaro Sato, special damages in the sum of $35.00, together with the costs of this action.

DATED at Vancouver, B. C., this 4th day of October, A.D. 1937.

W. W. WALSH,
Solicitor for Defendant (Appellant).

To the Plaintiffs (Respondents).

And to W. S. Lane, Esq.,
Their Solicitor.

THIS NOTICE OF APPEAL is filed by Walter William Walsh, of the firm of Walsh, Bull, Housser, Tupper, Ray and Carroll, whose place of business and address for service is Suite 1500, The Royal Bank Building, Vancouver, B. C.

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Judgment on Motion

COURT OF APPEAL

BETWEEN:
TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

Plaintiffs (Respondents),

AND:
C. OGAWA,

Defendant (Appellant).

CORAM:
THE HONOURABLE THE CHIEF JUSTICE OF BRITISH COLUMBIA
THE HONOURABLE MR. JUSTICE McPHILLIPS.
THE HONOURABLE MR. JUSTICE MACDONALD.
THE HONOURABLE MR. JUSTICE McQUARRIE.
THE HONOURABLE MR. JUSTICE SLOAN.

VANCOUVER, B. C. the 2nd day of November, A.D. 1937.

UPON READING the notice of motion of the Defendant (Appellant) dated the 27th day of October, 1937, and the affidavit of Charles Cecil Ingersoll Merritt sworn the 27th day of October 1937 and papers filed, AND UPON HEARING Mr. Alfred Bull, K.C. of Counsel for the Defendant (Appellant) and Mr. J. R. Nicholson of Counsel for the Plaintiffs (Respondents).

THIS COURT DOTH ORDER AND ADJUDGE that the Defendant (Appellant) to be and he is hereby granted special leave to appeal to the Supreme Court of Canada from the Judgment pronounced herein on the 14th day of September, 1937,

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that notice of appeal from the said Judgment to the Supreme Court of Canada having been filed on the 4th day of October 1937, this Order do take effect nunc pro tunc.

AND THIS COURT DOTH FURTHER ORDER that the costs of this application be costs in the appeal.

BY THE COURT,

"J. F. MATHER"
REGISTRAR.

Entered Nov. 8, 1937
Order Book, Vol. 10, Fol. 274.
Per "A.L.R."
As minutes
A.M./CJBC

Approved
J.R.N.
"J.F.M.R."

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Registrar's Certificate

COURT OF APPEAL

BETWEEN:
TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

Plaintiffs (Respondents),

AND:
C. OGAWA,

Defendant (Appellant).

I, James Frederick Mather, Registrar of the Court of Appeal for British Columbia at Vancouver, British Columbia, DO HEREBY CERTIFY that the above-named Defendant (Appellant) did on the 8th day of November 1937 deposit in this Honourable Court the sum of Five Hundred Dollars ($500.00) as security that he will effectually prosecute his appeal to the Supreme Court of Canada from the Judgment of the Court of Appeal herein pronounced the 14th day of September 1937, and will pay such costs and damages as may be awarded against him by the Supreme Court of Canada.

DATED at Vancouver, B. C. this 8th day of November, 1937.

"J. F. Mather"
REGISTRAR.

B.C.L.S.
$1.00

VANCOUVER
NOV. 8, 1937
REGISTRY

(SEAL)
COURT OF APPEAL
(Checked A.L.R.)

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settld:
15 March 1938
J. F. Smellie
Registrar

Order Approving Security

COURT OF APPEAL

BETWEEN:
TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

Plaintiffs (Respondents),

AND:
C. OGAWA,

Defendant (Appellant).

CORAM:
THE HONOURABLE THE CHIEF JUSTICE OF BRITISH COLUMBIA,
IN CHAMBERS:

VANCOUVER, B. C., the 12th day of November, 1937.

UPON THE MOTION of the Defendant (Appellant) and upon hearing Mr. C. C. I. Merritt of Counsel for the said Defendant (Appellant) and Mr. J. R. Young, of Counsel for the Plaintiffs (Respondents), and upon reading the Notice of Motion dated the 8th day of November 1937 and papers filed,

IT IS ORDERED that the sum of five hundred ($500.00) dollars of lawful money of Canada deposited by the said Defendant (Appellant) with the Registrar of this Honourable Court as security that the said Defendant (Appellant) will effectually prosecute his appeal to the Supreme Court of Canada from the Judgment of this Honourable Court pronounced the 14th day of September, A.D. 1937 and will pay such costs and damages as may be awarded against him by the said Supreme Court, be allowed as proper security for said appeal.

AND IT IS FURTHER ORDERED that the costs of this application be costs in the appeal.

Archer Martin
C.J.B.C.

B.C.L.S.
60c

"J.F.M.R."

Approved
"J.R.Y."

Entered Nov. 16, 1937
Order Book, Vol. 10, Fol. 281
Per "A.L.R."

Vancouver,
Nov. 16, 1937
Registry

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

IN THE SUPREME COURT OF CANADA

BETWEEN:

C. OGAWA,
(Defendant) Appellant,

AND:

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,
(Plaintiffs) Respondents,

AGREEMENT AS TO CASE

We, the undersigned, Solicitors for the parties hereto, hereby agree that the case on appeal herein to the Supreme Court of Canada shall comprise the following documents:

1. Contents of the Appeal Book on appeal to the Court of Appeal for British Columbia.
2. Reasons for Judgment of the Justices of the Court of Appeal for British Columbia.
3. Judgment of the Court of Appeal for British Columbia.
4. Notice of Appeal to the Supreme Court of Canada.
5. Order of the Court of Appeal for British Columbia granting leave to appeal.
6. Certificate of the Registrar as to deposit by Defendant (Appellant) of the sum of $500.00 as security for costs of the appeal to the Supreme of Canada.
7. Order of the Chief Justice of British Columbia approving the security.
8. Agreement as to case.
9. Registrar's Certificate as to case.

DATED at Vancouver, British Columbia, this 20th day of November, 1937.

W. W. WALSH,
Solicitor for the Appellant.

W. S. LANE,
Solicitor for the Respondents.

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Registrar's Certificate

IN THE SUPREME COURT OF CANADA

BETWEEN:

C. OGAWA,

(Defendant) APPELLANT,

AND

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

(Plaintiffs) RESPONDENTS.

I, the undersigned Registrar of the Court of Appeal for British Columbia, DO HEREBY CERTIFY that the foregoing printed document from Page 1 to 221 inclusive, is the Case stated by the parties pursuant to section 68 of the Supreme Court Act and the Rules of the Supreme Court of Canada, in an appeal to the said Supreme Court of Canada, in a certain case pending in the said Court of Appeal between C. Ogawa, Appellant, and Tsuru Fujiwara, Asa J. Fujiwara, Alan Fujiwara by his next friend Asa J. Fujiwara, Wesley Fujiwara by his next friend, Asa J. Fujiwara, Shotaro Sato, and Teruko Sato by her next friend Shotaro Sato, Respondents,

AND I DO FURTHER CERTIFY that the said C. Ogawa has given proper security to the satisfaction of the Honourable the Chief Justice of British Columbia, as required by the 70th section of the Supreme Court Act, by the payment into Court of the sum of Five hundred ($500.00) dollars to the credit of this cause, and a copy of the Order of the Honourable the Chief Justice of British Columbia, approving the same may be found on page 220 of the annexed Case.

AND I DO FURTHER CERTIFY that the said case contains the Reasons for Judgment delivered by all the Justices of Appeal who were present at the hearing of this appeal.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the Seal of the said Court of Appeal for British Columbia this 11th day of December, A.D. 1937.

REGISTRAR

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Solicitor's Certificate

IN THE SUPREME COURT OF CANADA
ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA

BETWEEN:

C. OGAWA,

(Defendant) APPELLANT,

AND

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

(Plaintiffs) RESPONDENTS.

I, CHARLES CECIL INGERSOLL MERRITT, HEREBY CERTIFY that I have personally compared the annexed print of the Case on Appeal to the Supreme Court of Canada with the originals and that the same is a true and correct reproduction of such originals.

DATED at the City of Vancouver, Province of British Columbia, this 8th day of December, 1937.

C. C. I. Merritt

A Solicitor in the offices of Walsh, Bull,
Housser, Tupper, Ray & Carroll,
Solicitors for the above-named Appellants.

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

aforesaid this Court did ...

of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

EV (4) 30 30E 36

SUPREME COURT OF B.C.
REGISTRY
EXHIBIT No. (4)
PUT IN BY Fujiwara et al
DATED 18/11/37
ATTY FOR

DOUGLAS St.

Fence

Residence

Fence

St. John's Anglican Church

N

Ditch Line

ST. JOHN ST.

Surfaced Strip 18 ft. wide

99'

10·6

18

10·6

17

8

Bottom of slope

Top of sloping bank, approx. 6 ft above sidewalk

Ditch Line

Trees

Pole

Pole

Pole

Pole

Concrete Sidewalk

Wooden Steps

66'

Fence

Residence

Residence

Residence

Fence

I hereby certify that this plan has been drawn from measurements made by me on the ground

John C. Lees
Registered Professional Engineer

0 10 20 30 40 50 60 80 100

SCALE: 1 INCH TO 20 FEET

PLAN OF PORTION OF
ST. JOHN STREET
EAST OF DOUGLAS STREET
CITY OF PORT MOODY B.C.

Date Jan. 13 - 1937 | Drawn by

PLAN OF PORTION OF
St. JOHN STREET
EAST OF DOUGLAS ST.
CITY OF PORT MOODY

Date Jan 13-1937 | Drawn

SCALE: 1 INCH TO 20 FEET

0 10 20 30 40 50 60 80 100

ST. JOHN ST.

DOUGLAS ST.

Douglas Hill Park

Concrete Sidewalk

Wooden Steps

Top of sloping bank approx. 6'ft above sidewalk

Bottom of slope

Residence

Residence

Residence

Residence

Fence

Fence

Fence

Fence

Fence

Trees

Trees

Ditch Line

Ditch Line

Pole

Pole

St. Anna Anglican Church

Surfaced Strip 18ft Wide

66'

17'

18'

10'-6"

10'-6"

99'

I hereby certify that this plan has been drawn from measurements made by me on the ground

Registered Professional Engineer

SUPREME COURT OF B.C.
VANCOUVER
COMMITTY MAP
FILED IN
CANADA

Joining Lots
Dom
Hill

N

30f 36

(H)

In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

C. OGAWA,

(Defendant) APPELLANT,

AND:

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

(Plaintiffs) RESPONDENTS.

APPELLANT'S FACTUM

WALSH, BULL, HOUSSER, TUPPER, RAY & CARROLL,
Solicitors for the (Defendant) Appellant:
Vancouver, B. C.

NELLIS, THOMPSON & ELLIS,
Ottawa Agents for Appellant.

LOCKE, LANE & NICHOLSON,
Solicitors for the (Plaintiffs) Respondents:
Vancouver, B. C.

NEWCOMBE & COMPANY,
Ottawa Agents for Respondents.

ANDERSON PRINTING CO. LTD. PRINTERS, VANCOUVER

was dismissed with costs [illegible]

said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

C. OGAWA,

(Defendant) APPELLANT,

AND:

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

(Plaintiffs) RESPONDENTS.

APPELLANT'S FACTUM

WALSH, BULL, HOUSSER, TUPPER, RAY & CARROLL,
Solicitors for the (Defendant) Appellant:
Vancouver, B. C.

NELLIS, THOMPSON & ELLIS,
Ottawa Agents for Appellant.

LOCKE, LANE & NICHOLSON,
Solicitors for the (Plaintiffs) Respondents:
Vancouver, B. C.

NEWCOMBE & COMPANY,
Ottawa Agents for Respondents.

said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

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said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

C. OGAWA, (Defendant) APPELLANT,

AND:

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato, (Plaintiffs) RESPONDENTS. 10

APPELLANT'S FACTUM

PART I.

STATEMENT OF FACTS

Case p. 216. This is an appeal from a Judgment of the Court of Appeal of British Columbia affirming by a majority the Judgment of
Case p. 203. Mr. Justice Manson pronounced on the 23rd day of January 1937, whereby he awarded the Respondents damages aggregating $5,308.00, in respect of personal injuries suffered in an automobile accident which occurred in the City of Port Moody on
Case p. 208, 209 and 212. the 10th of November, 1935. Martin, C.J.B.C., and McPhillips, J.A., were in favour of affirming the said Judgment and McQuarrie, J.A., dissenting, would have dismissed the action. 20

Case p. 130, line 31 to end. The Appellant is a Commercial Traveller, but on the day of the accident, which was a Sunday, he was driving for pleasure and had with him three friends, Messrs. Hoguchi, Sakamoto and Tokunaga. He was driving through Port Moody on his way to Mission, and had just proceeded around a curve into St. John's
Case p. 131, lines 1—10. Street, when he first saw the motorcar of the Respondent, Fujiwara, which was then forty or fifty feet ahead of him. He 30

was driving

said Respondents.

Settled:
15 March 1938
J. F. Smellie
Registrar

Case p. 31, lines 25—33.

Case p. 132, line 12.

Case p. 132, line 26.

Case p. 133, lines 21—33.

Case p. 135, lines 13—19. Case p. 157, lines 32—38. Case p. 174, line 40. Case p. 181, lines 1—3.

Case p. 135, and 136.

Case p. 200, lines 13—19.

Case p. 38, lines 31—37.

Case p. 64, lines 2—37.

thought the car ahead of him was being driven in an irregular manner. After passing the intersection of Douglas Street the Appellant decided to pass the Respondent's car. He sounded his horn twice, whereupon the Respondent, who had been travelling in the centre of the road, moved a little to the right-hand side. Both cars were travelling at a moderate rate of speed, but the Appellant naturally had to accelerate in order to pass the other car, and he thinks he may have been going at from thirty-five to forty miles per hour as he passed Respondent's car. Appellant passed in a normal fashion, and he and his three passengers all say that the Appellant's car in passing did not touch Respondent's car.

The Appellant did not know that anything had happened to the Respondent's car until his attention was drawn to it by one of his passengers, when he saw it in the middle of a course which terminated at an electric light pole about 180 feet east of the point where Appellant had passed it.

The Respondent, Fujiwara, alleges that the Appellant cut in too abruptly when passing him, and struck his car on the left front side, but there is no physical evidence of any such contact, and the learned Judge made no finding on that point, although he thinks that the cars came into contact; he does not think it is material. The Respondent, Fujiwara, says that he was travelling twice as fast after he left the road as he was when on the highway, and thinks that he must have put his foot on the accelerator instead of the brake.

Case p. 63, lines 2—5.

The extraordinary course which the Respondent, Fujiwara, took is shown on the plan, Exhibit 5. After the supposed contact between the two cars, which he admits did not accelerate his speed; did not upset his car and that his four wheels were still on the road and his hands on the wheel, he went off the highway and across ten feet six inches of the gravel portion of the road, then proceeded easterly along the boulevard which is seventeen feet in width, over a tree, and then along the sidewalk for some considerable distance, avoiding one electric light pole, then across some steps leading into a house, back on to the sidewalk and into another electric light pole, a total distance of 180 feet. He struck the electric light pole with terrific force, and the passengers in the car suffered injuries of varying severity.

Case p. 208, line 28.

In the Court of Appeal the Chief Justice and McPhillips, J.A., were of the opinion that even if it could be said that the Trial Judge did not make a definite finding that the Appellant's

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car struck that of the Respondent in passing, nevertheless the Trial Judge ought to have found that fact in favour of the Respondent. McQuarrie, J.A., was of the opinion that the weight of evidence is strongly in favour of the opposite view. In the view of McQuarrie, J.A., it was the negligence of the Respondent after the alleged impact which was the sole cause of the accident: as he put it:

Case p. 214, line 36.

> "But even if the Respondent were disconcerted by the appellant driving so close to his car or 'cutting in' ahead of his car that was not responsible for the damages complained of. The respondent admits that after he went off the roadway, for which I consider there was no good reason, he put his foot on the accelerator instead of on the brake as previously mentioned and after travellng some 180 feet on the boulevard and sidewalk ran into the pole on the boulevard. As I see it the respondent's negligent driving was the real cause of the damages and the appellant should not be held responsible therefor. In other words, the ultimate cause of the accident was the lack of care and skill of the respondent Asa J. Fujiwara. Here I might refer to the unanimous judgment of the Court of Appeal in Alberta— McGINITIE V. GODREAU (1919-21) 59 D.L.R. 552."

The Chief Justice did not deal with this aspect of the case at all.

Case p. 209.

McPhillips, J.A., agreed with the Trial Judge that the doctrine of novus actus interveniens did not apply in this case.

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PART II.

POINTS IN RESPECT OF WHICH THE APPELLANT ALLEGES ERROR.

1. The majority of the Court of Appeal erred in not deciding that:

(a) The learned Trial Judge should have found on the evidence that the Respondent, Asa J. Fujiwara, was guilty of negligence which was the only true and effective cause of the accident or collision in question, that is to say, the collision between the automobile in which the Respondents were riding and a certain electric light pole with which it collided.

(b) The learned Trial Judge should have found on the evidence that the Appellant was not guilty of any negligence causing the accident, but if he were guilty of negligence, that notwithstanding such negligence the Respondent, Asa J. Fujiwara, had the opportunity and last chance of avoiding the collision with the said electric light pole, and that he did not avail himself of such chance or opportunity.

(c) The learned Trial Judge should have found on the evidence that the Respondent, Asa J. Fujiwara, left the travelled portion of the highway without cause.

(d) The learned Trial Judge should have found on the evidence that the Respondent, Asa J. Fujiwara, lost control of his automobile without cause, and that he had no lawful excuse for putting his foot on the accelerator instead of the brake, or applying his brakes in such a manner as to cause the accelerator to be pressed down at the same time, thereby increasing the speed of his car instead of decreasing the same, and that this was the sole and effective cause of the collision between the automobile in which the Respondents were riding and the said electric light pole.

(e) The learned Trial Judge should have found on the evidence that the Respondent, Asa J. Fujiwara, made no attempt, or proper attempt, to avoid striking the electric light pole, the collision with which was the sole cause of the injury and damage alleged to have been suffered by the said Respondent and his co-Respondents, and that the said Respondent, Asa J. Fujiwara, without lawful excuse, mismanaged the situation and failed to resume normal driving and so avoid hitting the said electric light pole as he could and should have done by steering his motor vehicle properly, or stopping the same.

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(f) The learned Trial Judge should have found, in the alternative, that if there was any negligence on the part of the Appellant contributing to the accident, that the Respondent, Asa J. Fujiwara, was also guilty of negligence contributing to the accident, in that he left the travelled portion of the highway without cause; he lost control of his automobile without cause; he failed to apply his brakes properly or at all; he put his foot on the accelerator instead of the brake, or in the alternative, if he applied his brakes, he applied them in such a manner as to cause the accelerator to be pressed down at the same time; he increased the speed of his car instead of decreasing the same; he made no attempt to avoid striking the electric light pole, which collision was the sole cause of the injuries and damage alleged to be suffered by himself and his co-Respondents; he mismanaged the situation and failed to resume normal driving and so avoid hitting the electric light pole as he could and should have done by steering his motor vehicle properly, or stopping the same; and the damages suffered by the Respondents should have been apportioned under the provisions of the Contributory Negligence Act, being Chapter 8 of the Statutes of British Columbia, 1925, and Amendments thereto.

2. The Chief Justice and McPhillips, J.A., in the Court of Appeal erred in their opinion that the Trial Judge ought to have found as a fact that the Appellant's car struck that of the Respondent in passing.

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PART III.

ARGUMENT

The Appellant submits that it should be found on the evidence that the Appellant's car did not touch the car of the Respondent Fujiwara when the Appellant was passing the said Respondent.

The Appellant further submits that the evidence does not support the finding of the learned Trial Judge that the Appellant cut in sharply in front of the Respondent Fujiwara's car.

The Appellant further submits that even if the learned Trial Judge's finding can be supported on the evidence, it was not any act of the Appellant which caused the damage to the Respondents, but that such damage was caused by the negligence and incompetent driving of the Respondent Fujiwara in losing control of his car and failing to recover such control in time to avoid colliding with the electric light pole. In other words, it is a case of novus actus interveniens.

The Appellant relies on McGINITIE V. GODREAU (1921) 59 D.L.R. 552, a Judgment of the Alberta Supreme Court, Appelate Division, and particularly the language of Hyndman, J.A. with whom Scott, C.J., and Beck and Clarke, J.J.A., concurred. In that case the plaintiff, while driving a motorcar, was forced to make a sudden turn or swerve on a narrow highway in order to avoid a collision, owing to the negligence of the defendant, but in doing so he lost his head, and because of unskilful handling of his car, met with another accident which could have been avoided by a competent driver. Hyndman, J.A., at page 553, says:

> "The situation then amounts to this—that the defendant was negligent and thus caused the plaintiff to swerve his car to the right but that thereafter had the plaintiff exercised ordinary care and skill he would or should have avoided the accident. The ultimate cause of the accident then seems to me to have clearly been the lack of care and skill of the plaintiff. Nor do I think the excitement of the plaintiff sufficient to excuse him, for it surely must be assumed that in driving a dangerous engine such as a motorcar one must expect emergencies, a few surprises and excitement, and be prepared for them, and losing one's head must be regarded as a weakness of the plaintiff, and not chargeable to the defendant."

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The learned Judge, after quoting the language of Lord Sumner, in B. C. ELECTRIC V. LOACH (1916) 1 A. C. 719, continues:

> "Tracing the various happenings in the case, it is quite clear that after the negligence of the defendant a period of time elapsed during which had he not lost his head, and had he handled his motor as a competent driver should have done, the plaintiff might have avoided the accident. The accident, then, was directly attributable to the plaintiff, himself, and consequently he must shoulder responsibility for the damage."

The Appellant also relies on the language of Duff, J., (as he then was) in CARTER V. VAN CAMP, (1930) S.C.R., page 156 at page 165 to page 168.

The learned Trial Judge refers to HARDING V. EDWARDS AND TATISICH, 64 O.L.R. 98, and quotes with approval the language of Mr. Justice Middleton. That case is distinguishable, and was determined on the facts as found by the Trial Judge. Magee, J.A., in a dissenting judgment, was of the opinion that the negligence of Tatisich was perhaps a causa sine qua non, but was in no sense a causa causans. Middleton, J.A., at the conclusion of his judgment, thought the case came extraordinarily close to the line, but as the Trial Judge had realized this and yet had decided in favour of the plaintiffs, concluding from the whole evidence that the chain of causation was not, in truth, broken, he was unable to say with any degree of certainty that that conclusion was wrong.

In the present case the Respondent, Fujiwara, who says he was driving at a very moderate rate of speed on the highway, even if forced off the highway by the action of the Appellant, need only have taken his foot off the accelerator and the car would have stalled and come to a stop without the application of a brake, as the photographs clearly show that after leaving the highway he was actually on an up-grade, particularly when crossing the boulevard, and that in itself would have stalled and stopped the car.

DATED at Vancouver, British Columbia, this 8th day of January, A.D. 1938.

ALFRED BULL,

COUNSEL FOR THE APPELLANT

said Respondents.

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In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA

BETWEEN:

C. OGAWA,

(Defendant) Appellant,

AND:

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

(Plaintiffs) Respondents.

RESPONDENTS' FACTUM

WALSH, BULL, HOUSSER, TUPPER, RAY & CARROLL,
Solicitors for the (Defendant) Appellant,
Vancouver, B.C.

LOCKE, LANE & NICHOLSON,
Solicitors for the (Plaintiffs) Respondents,
Vancouver, B.C.

NELLIS, THOMPSON & ELLIS,
Ottawa Agents for Appellant.

NEWCOMBE & COMPANY,
Ottawa Agents for Respondents.

MURPHY & CHAPMAN LIMITED, PRINTERS, VANCOUVER, B.C.

was dismissed with costs to be paid by [illegible]

said Respondents.

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In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA

BETWEEN:

C. OGAWA,

(Defendant) Appellant,

AND:

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

(Plaintiffs) Respondents.

RESPONDENTS' FACTUM

WALSH, BULL, HOUSSER, TUPPER, RAY & CARROLL,
Solicitors for the (Defendant) Appellant,
Vancouver, B.C.

LOCKE, LANE & NICHOLSON,
Solicitors for the (Plaintiffs) Respondents,
Vancouver, B.C.

NELLIS, THOMPSON & ELLIS,
Ottawa Agents for Appellant.

NEWCOMBE & COMPANY,
Ottawa Agents for Respondents.

was dismissed with costs to be paid by the [illegible]

said Respondents.

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was dismissed with costs to be paid by the [illegible]

said Respondents.

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In the Supreme Court of Canada

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN:

C. OGAWA,

(Defendant) Appellant,

AND:

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

(Plaintiffs) Respondents.

RESPONDENTS' FACTUM

PART I.

STATEMENT OF FACTS

This is an appeal from the judgment of the Court of Appeal for British Columbia, pronounced on the 14th day of September, 1937, dismissing an appeal from a judgment of the Supreme Court of British Columbia pronounced by the Honourable Mr. Justice Manson on the 23rd day of January, 1937. The trial was held in Vancouver, B.C., on January 18th, 19th and 20th, 1937, before Mr. Justice Manson, without a jury. The learned trial Judge gave judgment in favor of the present respondents, and awarded the respondents damages for personal injuries and property damage in the total sum of $5,808.00.

The action arises out of an automobile accident which occurred on Sunday, the 10th day of November, 1935, in the City of Port Moody, in the Province of British Columbia, as the respondent

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Asa J. Fujiwara, was driving a Chevrolet car in an easterly direction on St. Johns Road, and the appellant, Ogawa, driving a maroon-colored Ford V-8 motorcar in the same direction, on the same road, overtook and passed the Fujiwara car. There were no westbound motorcars approaching on St. Johns Road at the time of the accident.

The respondent, Asa J. Fujiwara, referred to in the evidence as Dr. Fujiwara, is a dentist, practising his profession in the City of Vancouver. The respondent, Tsuru Fujiwara, is his wife. The respondents, Alan and Wesley Fujiwara, are their minor sons; Alan is aged five years, and Wesley seventeen years. They reside in Vancouver, B.C. The respondent, Shotaro Sato, is a farmer residing at Mission, B.C., and the respondent, Teruko Sato, aged seventeen years and working in Vancouver prior to the accident, is his daughter. The appellant, Ogawa, is a commercial traveller, employed by the Pacific Importers, who sell Japanese fancy goods.

On Sundays, Dr. Fujiwara conducts free dental clinics on Lulu Island and in the Fraser Valley, under the auspices of the United Church of Canada. The Lulu Island and Fraser Valley clinics are held on alternate Sundays. On Sunday, November 10th, 1935, Dr. Fujiwara started from Vancouver in his 1933 Chevrolet sedan motorcar, for Whonnock, B.C., and Mission, B.C., where his Fraser Valley clinics are conducted. He was driving his car and was accompanied by his co-plaintiffs, his wife and children, Alan and Wesley Fujiwara, and Miss Sato. The latter was in the front seat beside the doctor, and Mrs. Fujiwara, Alan and Wesley, were in the rear seat, Wesley being on the right-hand side. The party left Vancouver about 7.30 a.m. and reached the village known as the City of Port Moody, shortly before 9 a.m. As they were passing through Port Moody and driving easterly along the main highway in the village, which is known as St. Johns Road, a maroon-colored Ford sedan, driven by the appellant, Ogawa, overtook them, and the accident, which is the subject matter of this action, occurred as the appellant, Ogawa, passed or was passing the Fujiwara car.

The occupants of the Ogawa car were also Japanese. Ogawa was accompanied by three friends, namely Akira Tokunaga, who was sitting in the front seat beside the driver, Ukon Higuchi, sitting in the rear seat on the right-hand side, and Hideo Sakamoto, sitting in the rear seat on the left-hand side.

St. Johns Road runs east and west. The travelled portion is a hard surfaced strip, eighteen feet wide. A plan of the highway was filed as Exhibit 4 at the trial, and is contained in the pocket

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at the back of the Case. On each side of the hard surface, as the plan indicates, there is a gravel strip ten feet six inches in width. This is loose gravel and sand. (*Case, page* 80, *lines* 15-26). There are cement sidewalks on each side of the highway. Between the gravel part at the south edge of the highway and the south sidewalk, there is a boulevard about seventeen feet in width, covered with coarse grass, and the surface of which is rough and uneven; there is a slight incline upwards on the boulevard, from the gravel to the heavy grass. It is, however, very slight. There are a number of small, planted trees or bushes on the south boulevard; the branches are very light. Two photographs of the scene of the accident were put in evidence at the trial by the respondents, as Exhibits 1 and 2. (*Case, page* 196; *Case, page* 197). The small trees are shown in leaf in the photographs, taken some six months after the accident occurred, but they were not in leaf on November 10th, 1935. There is a bend in the highway, to the north, one block west of Douglas Street, but this bend is not shown on the plan, Exhibit 4.

After proceeding around the bend in the highway, Dr. Fujiwara came on to St. Johns Road and proceeded east at a speed of approximately twenty-five miles per hour. He was travelling with his right wheels about two feet from the south edge of the hard surface. He heard a horn behind his car and, looking into his rear vision mirror, saw a maroon-colored Ford car approaching from behind at a very fast speed. He pulled over closer to the edge of the hard surface, and continued, and the other car proceeded to pass him.

There is a conflict of evidence as to the manner in which the Ogawa car proceeded to pass, and passed the Fujiwara car. Dr. Fujiwara stated that just as the maroon-colored car was passing him, it made a very sharp swerve to the right, and the right side of the maroon-colored car struck the left front end of his car, forcing his car off the hard surfaced portion of the roadway and causing him to lose control over it temporarily. The evidence of his son, Wesley Fujiwara, and of Miss Sato, corroborates the doctor's testimony that the Ogawa car cut in sharply in front of his car as it passed, and struck the left front of the Fujiwara car in so doing. This testimony was corroborated by certain marks found on the Ogawa car. The appellant, Ogawa, and the three passengers in his car, on the other hand, denied that their car struck the Fujiwara car or cut in sharply to the right side of the road as they passed it.

The evidence of Dr. Fujiwara was that he lost control of his car by reason of the actions of the appellant, Ogawa, which had forced his car off the hard surface of the road, across the gravel

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and on to the rough boulevard. He was disturbed and upset by what had happened, and attempted to apply the foot brake, but in the excitement he must have stepped on the accelerator instead of the brake, for the speed of his car increased and it continued in the south-easterly direction into which it had been diverted. The car ran on to the grass boulevard, over a small bush or tree (which sprang erect again) grazed an electric light pole with its left fender and running board, crossed the narrow cement sidewalk to the terrace, and struck the lower part of a flight of steps to the south of the sidewalk, turned slightly to the left, continuing in an easterly direction, and collided with a second electric light pole. The course of the Fujiwara car was marked by Dr. Fujiwara on the plan of the highway, Exhibit 5 (see folder at back of Case). The whole incident happened very quickly, and the doctor's car travelled in feet, approximately one hundred and ninety feet from the time it was struck by the appellant's car and left the hard surfaced portion of the road, until it collided with the second electric light pole.

The appellant, Ogawa, stated that he was going about thirty-five to forty miles per hour as he passed the Fujiwara car. He stated that, after he passed, someone cried out that something had happened. He saw something flash in his rear vision mirror, and then out of the right-hand side of his car saw the Fujiwara car near the steps at the point "F" on Exhibit 5. He slowed down, and stopped on the right-hand side of the road, about twenty-five to thirty feet east of the electric light pole with which the Fujiwara car collided. He saw the Fujiwara car hit this electric light pole, as his own car was moving forward slowly. He testified that after the collision he backed his car up to within ten to fifteen feet of the pole.

Mrs. Fujiwara was thrown from the car and sustained a serious brain injury. She also sustained injuries to her back and other parts of her body. Alan Fujiwara suffered a broken collar-bone and minor injuries. Wesley Fujiwara's glasses were broken, and his face was bruised. Miss Sato received several cuts about the face, one of which resulted in a disfiguring, permanent scar. Dr. Fujiwara was shaken up by the collision, but his injuries were minor. The Fujiwara car was damaged to the extent of $416.90. Following the collision, Mrs. Fujiwara, Alan Fujjiwara and Miss Sato were taken to the Royal Columbian Hospital in New Westminster, B.C., by the appellant in his car. Dr. Fujiwara and Mr. Higuchi accompanied them.

Dr. Fujiwara testified that at the hospital he and Higuchi had talked about the accident and that Higuchi had stated they had made an inspection of the Ogawa car and found no mark on it.

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This conversation was denied by Higuchi. Dr. Fujiwara, Ogawa and Higuchi returned to Port Moody. Wesley Fujiwara, who had remained at the scene of the accident, examined the right side of the Ogawa car. Dr. Fujiwara then examined the car and the party went to the police station. At the police station Dr. Fujiwara and Wesley, in the presence of Ogawa and the three passengers in his car, drew the attention of Chief Constable Mackie to two dents on the side of the right running board of the Ogawa car, and to a scraping on the rubber mat covering the running board. The running board was examined by the Chief Constable and Dr. Fujiwara. Neither Ogawa nor any of the occupants in his car examined the running board. Ogawa was charged by the police with driving to the common danger, as a result of the accident. The trial was held in police court at Port Moody on November 23rd, 1935, and during that trial the question arose as to the presence of dents on the side of the right running board. Chief Mackie examined the car again, and on his examination could not find the dents in the running board which he had felt on November 10th, 1935. About November 26th, 1935, the Ogawa car was examined at the Central Garage in Vancouver, B.C., by Roy Howard, a witness for the appellant. Mr. Howard stated that on his examination he noticed a mark or indentation in the centre of the running board, about where the running board folds over. It was pressed in, he said, and the rubber was somewhat damaged. The dent in the steel underneath the rubber matting was one and one half inches deep. (*Case, page* 126, *lines* 20-38. *Case, page* 129, *lines* 19-30).

There were no eye witnesses to the accident, other than the occupants in the two cars. The four occupants in the Ogawa car were called as witnesses. All the occupants in the Fujiwara car gave evidence at the trial, except the infant, Alan. Mrs. Fujiwara still suffered from the serious head injury which she had received, and could give no evidence as to the manner in which the accident occurred.

Evidence was given at the trial by Cliff Hygh, an expert automobile mechanic, that the Fujiwara car had a high speed motor and a quick pick-up. (*Case, page* 91, *lines* 40-42).

Evidence was also led at the trial as to the relative positions of the brake pedal and the accelerator. A sketch put in as Exhibit 9 (*Case, page* 198), shows the respective positions of the clutch pedal, the brake pedal, and the accelerator in the Fujiwara car. The distance between the right side of the brake pedal and the accelerator is only five-eighths of an inch. The evidence showed that it is not uncommon to have the foot slip from the foot brake pedal to the accelerator. (*Case, page* 90, *line* 8 *to page* 91, *line* 28).

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In the Statement of Claim the respondents pleaded that the real cause of the collision which resulted in the damages claimed in the action, was the appellant's negligent act in cutting in sharply as his car was passing the Fujiwara car. It was alleged that the sudden cutting in and the impact forced the Fujiwara car into the gravel and on to the boulevard and caused its driver to lose control of the car temporarily, and that the damages which the respondents suffered were the direct result of these initial acts of negligence on the part of the appellant.

The defence consisted of a denial of the respondents' allegations of negligence, and of a plea, in the alternative, that even though the appellant may have been negligent in the manner alleged, such negligence was not the direct cause of the damages suffered by the respondents—that the respondent, Dr. Fujiwara, was guilty of ultimate negligence in mismanaging the situation and in failing, without lawful excuse, to resume normal driving in time to avoid a collision with the second electric light pole, and a further alternative plea that the respondent, Dr. Fujiwara, was guilty of contributory negligence.

The trial occupied three days. The learned Trial Judge reserved judgment, and handed down written reasons for judgment.

The learned Trial Judge accepted the evidence of Dr. Fujiwara and the witnesses for the respondents that the appellant cut in sharply in front of the doctor's car immediately he passed it. With respect to the respondents' contention that, as the appellant passed, his car caught the front end of the doctor's car, the learned Trial Judge stated that he thought it did, but that it was not particularly material whether it did so or not, because he had no doubt that the appellant had cut in altogether too sharply, without excuse, and negligently. He further found that Dr. Fujiwara was disturbed and upset by the force of the impact or the imminence of a collision because of the appellant's negligence in cutting in, in the manner that he did, and that Dr. Fujiwara, in attempting to apply his foot brake, stepped on the accelerator and swerved his car to the south, running over a small bush, into the side of the first electric light pole, over the sidewalk, over the edge of some steps of a terrace to the south of the sidewalk, and into collision with a second electric light pole. (*Case, page* 200, *lines* 12-30). The learned Trial Judge further found that what Dr. Fujiwara did under the circumstances was quite understandable and excusable, and that everything had happened so quickly that Dr. Fujiwara had no time to think, since the bush, the electric light pole, the steps, had all loomed up in front of him one after the other, giving him no time to regain his poise. He found in effect that

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Dr. Fujiwara's conduct and handling of his car after he was forced off the road by the appellant's negligence was "only a link in a chain of causation extending from the initial negligence to the subsequent injuries," and he held the appellant liable in damages. (*Case, page* 201, *lines* 23-47).

The appellant appealed from the judgment of the Honourable Mr. Justice Manson to the Court of Appeal for British Columbia. The appeal was heard by the Chief Justice of British Columbia and by Justices McPhillips and McQuarrie.

The learned Chief Justice dealt particularly with the statement of the learned Trial Judge respecting the question of impact. He stated that in his opinion the statement in the reasons for judgment of the learned Trial Judge that "I think it did happen" was a finding of fact on the part of the learned Trial Judge that there had been an impact between the two cars, and he further stated that, after reviewing the evidence on the question of impact, Mr. Justice McPhillips and himself were of the opinion that there had been an impact between the two cars, and that the judgment could be primarily sustained upon that fact of impact, as well as upon the other facts upon which the learned Trial Judge relied. (*Case, page* 208, *lines* 8-40).

Mr. Justice McPhillips stated that in his view the facts established that there had been an impact between the two cars, but that this finding was not necessary in order to support the action. He held that there was no question about the fact that the appellant had negligently cut in towards the doctor's car in a diagonal course and in so doing, put the respondents in imminent peril. He agreed with the learned Trial Judge that the appellant, as the author of the initial negligence, was liable for the damage sustained. (*Case, page* 209, *lines* 6-40). Mr. Justice McQuarrie considered that the real issue involved in the action was whether the appellant's car came in contact with the respondents' automobile when passing it, and stated that in his opinion if it did not do so, there was no excuse for the Fujiwara car running off the roadway. He felt that the weight of evidence was in favor of the appellant's contention that his car had not come in contact with the Fujiwara car, and accordingly, he would have allowed the appeal and dismissed the action.

The present appeal is from the judgment of the Court of Appeal for British Columbia, which dismissed the appeal from the judgment of the learned Trial Judge.

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PART II.

ISSUES ARISING ON THE APPEAL

It is submitted on behalf of the respondents that, for the following reasons, the judgment of the Court of Appeal, which upheld the judgment of the learned Trial Judge, should not be disturbed:

1. That there was evidence upon which the learned Trial Judge could reasonably come to the conclusion which he did, that the Ogawa car cut in too sharply in front of the Fujiwara car in passing it and struck the Fujiwara car in so doing and that the Fujiwara car had been forced off the hard surfaced portion of the road on to the gravel and the rough boulevard by the negligent operation of the Ogawa car, and these findings of fact were the correct findings to be made on the evidence.

2. That the further findings of fact made by the learned Trial Judge that the respondent, Dr. Fujiwara, had been placed in a position of danger by the negligence of the appellant and that after the initial negligence of the appellant Ogawa in forcing the Fujiwara car off the road, Dr. Fujiwara had acted involuntarily on the impulse of peril to himself and his passengers, and was only a link in a chain of causation extending from the original negligence to the subsequent damage, and was not negligent in failing to recover control of his car under the circumstances, were findings that could reasonably be made, and were in fact the correct findings to be made on the evidence.

3. That the chain of causation which resulted in the damages claimed, was started by the initial negligence of the appellant, and the burden of showing that the chain had been broken lay on the appellant, and he failed to discharge it.

4. That no finding of contributory negligence on the part of the respondent, Dr. Fujiwara, would have been warranted on the evidence, and no such finding was made by either the learned Trial Judge or the Court of Appeal.

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PART III.

ARGUMENT

I. There was evidence upon which the learned Trial Judge could reasonably come to the conclusion which he did that the Ogawa car cut in too sharply in front of the Fujiwara car in passing it and struck the Fujiwara car in so doing and that the Fujiwara car had been forced off the hard surfaced portion of the road on to the gravel and the rough boulevard by the negligent operation of the Ogawa car, and these findings of fact were the correct findings to be made on the evidence.

The respondents submit that the chain of events which ended in such disastrous results to the respondents started with the negligence of the appellant and that the findings of the learned Trial Judge on this aspect of the case should not be disturbed.

The learned Trial Judge made the following findings of fact with respect to the negligence charged against the appellant:

(*Case, page* 200, *lines* 13-19):

> "I accept the evidence of the doctor and the witnesses for the plaintiffs that the defendant cut in sharply in front of the doctor's car immediately he passed it. It was alleged that as the defendant passed, his car caught the front end of the doctor's car. It is not particularly material whether it did so or not (I think it did) because I have no manner of doubt that he cut in altogether too sharply, without excuse —and negligently."

There was conflicting evidence at the trial as to whether the Ogawa car did cut in sharply in front of the Fujiwara car as it passed, and whether there was an actual impact between the two cars.

Dr. Fujiwara's evidence is clear and straightforward. He states that just before the Ogawa car passed, it made a very sharp curve to the right and struck his car on the left-hand side, forcing it out on to the gravel and the rough boulevard. He states he saw and felt the other car collide with his own. (*Case, page* 36, *line* 30 *to page* 38, *line* 26; *Case, page* 60, *line* 41, *to page* 62, *line* 29). His evidence is corroborated by the evidence of his co-plaintiffs, Wesley Fujiwara and Miss Sato. His son Wesley, aged seventeen years, was a very intelligent witness. His testimony was that he noticed the Ogawa car as it came abreast of his father's car, and when the front end of the other car started to pass the front end of the Fujiwara car it suddenly swerved in

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and cut right in front of the Fujiwara car. He felt and heard the impact. (*Case, page* 93, *line* 44 *to page* 95, *line* 9). In cross-examination he said the other car seemed to be passing in a normal way until "the front part of the other car was a little bit ahead of our car, and then that other car seemed suddenly to come right up towards ours." He said the doctor's car seemed to lurch and the left-hand seemed to rise up a bit. (*Case, page* 104, *line* 42, *to page* 105, *line* 38). Miss Sato, the third occupant of the Fujiwara car to give evidence as to how the accident happened, stated that "at the beginning they were passing quite all right and all of a sudden they came in right towards our side of the road. They came right in and hit the left front end of our car." (*Case, page* 112, *lines* 14-48. She thought "they were swinging in close on purpose, as a joke." (*Case, page* 116, *lines* 8-24).

It is significant that the occupants of the Ogawa car thought that they had struck the Fujiwara car in passing. This is apparent from the statement made by Higuchi to Dr. Fujiwara at the hospital when the former said, "That is what we thought. Therefore we make inspection of our car but there is no mark on our car," and when he later remarked in front of the police station, after Dr. Fujiwara pointed out certain marks on the right running board of the Ogawa car, "I wonder—I wonder if that was so after all." (*Case, page* 188, *lines* 24 *to* 42; *Case, page* 43, *line* 10 *to page* 44, *line* 39). The doctor's evidence as to what was said by Higuchi in front of the police station is corroborated by his son Wesley (*Case, page* 99, *lines* 3-29) and by Chief Mackie as to the fact of a conversation in Japanese between Dr. Fujiwara and the others following the examination of the dents and marks on the car. (*Case, page* 82, *lines* 22-28).

The evidence of the witnesses in the Fujiwara car as to the fact of an actual impact between the two cars is also strongly corroborated by the evidence of damage to the right running board of the Ogawa car. Chief Constable Mackie examined the running board on the morning of the accident, found a fresh dent in the rubber matting covering the running board, on the outside edge, and two indentations in the steel plate. (*Case, page* 81, *line* 16 *to page* 82, *line* 45; *Case, page* 84, *line* 16 *to page* 85, *line* 12). They were noticed first by Wesley Fujiwara, who states that there were two fairly deep dents on the rubber covering on the right running board. (*Case, page* 97, *line* 6 *to page* 98, *line* 41). Dr. Fujiwara felt, underneath the outside edge, the two indentations in the metal, above twelve inches apart. (*Case, page* 43, *line* 11 *to page* 44, *line* 27; *Case, page* 74, *line* 31 *to page* 76, *line* 38). Roy Howard, a witness for the appellant, testified that he examined the Ogawa car on November 26, 1935, and found a mark in the centre of the

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right running board, just about where the running board folds over. It was pressed in a fair amount, the rubber somewhat damaged, and underneath was a dent in the steel half an inch deep. (*Case, page* 126, *lines* 20-42; *Case, page* 129, *lines* 19-30). There was some variation among the witnesses in the description of the marks. but the evidence is conclusive as to their existence.

On the other hand, the testimony of the three passengers in the Ogawa car and of Ogawa himself in direct examination, is that Ogawa turned to the north side of the road to pass and gradually regained the centre of the road without coming in contact with the Fujiwara car.

The respondents' version of the accident, however, is supported by parts of the evidence of Ogawa and to some extent by the sketch. Exhibit 10 (*Case,* 199), marked by Ogawa on his examination for discovery. Ogawa admitted on discovery that he swung back to the right after passing. (*Case, page* 145, *line* 34 *to page* 148, *line* 47). He admitted further at the trial that he had hardly passed the Fujiwara car before he saw that it had left the highway and was running on the sidewalk near the steps. (*Case, page* 135, *line* 38 *to page* 136, *line* 36; *Case, page* 149, *line* 4 *to page* 150, *line* 19; *Case, page* 142, *line* 32 *to page* 143, *line* 45). He slowed down and was moving ahead slowly as the Fujiwara car hit the second pole. He actually saw this collision. (*Case, page* 137, *line* 17 *to page* 138, *line* 35).

On conflicting testimony the learned Trial Judge made the explicit finding that the Ogawa car in passing the Fujiwara car cut in altogether too sharply, without excuse, and negligently. He also came to the conclusion that as the Ogawa car passed it caught the front end of the Fujiwara car. In this connection the learned Trial Judge says in his reasons for judgment, "I think it did."

The learned Trial Judge accepted the evidence of Dr. Fujiwara and of the witnesses for the respondents as to the accident, and full weight should be given to their testimony and to his acceptance of their testimony. He saw the witnesses and noticed their demeanor when they were being examined and cross-examined. This is an important consideration, considering the character of the evidence, the nature of the defence and all the other circumstances of the case. The conclusions of the learned Trial Judge as to the manner of the passing and as to the consequences which flowed from the appellant's negligence ought to be accepted.

There is abundant evidence to establish that the respondents' version of the accident is the true one and it is submitted that the findings of fact of the learned Trial Judge that the Ogawa car

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cut in sharply as it passed and caught the front end of the Fujiwara car and forced it off the paved part of the highway could reasonably be made on the evidence, and are, in fact, the correct findings to make on the evidence. Futhermore, it will be noted that the majority of the Judges of the Court of Appeal, after carefully reviewing the evidence, reached the same conclusion as did the learned Trial Judge.

It was contended by the appellant, in the Court of Appeal, that when the learned Trial Judge, in referring to the allegation that the Ogawa car had actually come in contact with the Fujiwara car, stated in his reasons, "I think it did," he did not make a judicial finding but merely expressed an opinion. It is submitted that the learned Trial Judge made a specific finding of fact in the respondents' favour on this point. It is not expressed with the same degree of emphasis as his finding with respect to the cutting in, but it is plainly indicated that in the judgment of the Trial Court the Ogawa car did, in passing, strike the front end of the Fujiwara car. The learned Chief Justice of British Columbia and Mr. Justice McPhillips were of opinion that when he used the said words that the Trial Judge did make an express finding of fact. Mr. Justice McQuarrie disagreed with the majority of the Court of Appeal on this point.

Mr. Justice McQuarrie, in his reasons, states that he considers the real issue involved to be whether the Ogawa car, in passing, came in contact with the car in which the respondents were riding and he expresses the view that if it did not do so there was clearly no excuse for the Fujiwara car running off the roadway. (*Case, page* 212, *lines* 6-11). He is clearly of the opinion that nothing less than an actual impact will suffice to establish negligent conduct on the part of a driver of an overtaking car and it is submitted, with respect, that in this the learned Appellate Judge is in error.

It is submitted that it is the duty of the driver of an overtaking car to maintain his position to the left of the overtaken car until he is entirely clear of it, and, after passing, to exercise reasonable care in turning back to the right hand side of the road, and if he turns back to his own side of the road negligently, and forces the other car off the road, he is liable for the resulting damage.

The duty of the driver of an overtaking car, to take reasonable care and caution in passing is well expressed in two passages in *Corpus Juris, Vol.* 42, *at page* 956-7, *and page* 958. The learned author, in *paragraph* 682, *at page* 956-7, states:

"The overtaking car should in passing leave reasonable space between it and the overtaken vehicle, and it is negligent

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to drive so close to the overtaken vehicle as to strike it when such car keeps along its own course, or to force it off the road in order to avoid being struck."

As appears from their reasons for judgment the learned Trial Judge and Mr. Justice McPhillips of the Court of Appeal approve of the view expressed by the learned author in the foregoing passage and applying the standard of care which the learned author states is to be expected of the driver of an overtaking car, they came to the conclusion that the appellant Ogawa was guilty of inexcusable negligence in cutting in on the Fujiwara car in the way he did. Their view differs entirely from that of Mr. Justice McQuarrie referred to above. The passage from the judgment of the learned Trial Judge on this point is quoted above. Mr. Justice McPhillips' views are to be found in his reasons (*Case, page* 209, *lines* 31-40). He states that there need not be a finding of actual impact in order to establish liability on the appellant under the circumstances of this case and says that, even if there was no actual impact between the two cars, it is apparent from a perusal of the evidence that the Ogawa car passed the Fujiwara car in reckless disregard of the safety of the occupants of both cars and that the sharp cutting in was the direct cause of the accident.

It is submitted, however, that the preponderance of evidence supports the respondents' contention that there was an actual collision between the two cars, and the learned Trial Judge and the majority of the Court of Appeal have so held. The respondents submit, with respect, that these findings should not be disturbed.

II. The further findings of fact made by the learned Trial Judge that Dr. Fujiwara had been placed in a position of danger by the negligence of the appellant Ogawa and that after the initial negligence of the appellant in forcing the Fujiwara car off the road, Dr. Fujiwara had acted involuntarily on the impulse of peril to himself and his passengers and was only a link in a chain of causation extending from the original negligence to the subsequent damage and was not negligent in failing to recover control of his car under the circumstances, were findings that could reasonably be made, and were in fact the correct findings to be made on the evidence.

The evidence disclosed, and the Trial Judge has found as a fact, that the disturbed condition in which Dr. Fujiwara found himself when his car was forced off the paved part of the highway and he himself placed in the sudden and dangerous position of finding his car speeding up, going over the uneven surface of gravel and rough boulevard, colliding first with the pole and then with the steps, and immediately thereafter with the second pole,

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was caused by the appellant's negligence, and the respondents submit that the appellant cannot be heard to say that the accident might have been avoided had Dr. Fujiwara kept his presence of mind.

It is a well settled principle of law that where one man by his wrongful act has brought about an emergency as a result of which another acts almost involuntarily, he cannot contend at a later date that notwithstanding the emergency and notwithstanding the wrongful act on his part, the other by the exercise of more care and skill could have avoided the resulting damage.

In *Rowan* vs. *Toronto Railway Company* (1899) 29 *S.C.R.* 717 *at page* 723, Sir Henry Strong, C.J.C., said, in delivering the judgment of the Court:

> "Then it will be said that the plaintiff turned the wrong way when he became aware of the proximity of the car. What people ought to do for purposes of self-protection when in a cool and deliberate frame of mind is no standard of what they ought to do when suddenly placed as the appellant was here by the negligence of the defendants in the presence of immediate danger. *It does not lie in the mouth of those who by their wrongful conduct placed him in such a dangerous situation to say that he might have avoided the accident if he had kept his presence of mind.*"

In *Armand* vs. *Carr* (1926) *S.C.R.* 575, in delivering judgment in an appeal from the Appellate Division of the Supreme Court of Ontario, Anglin, C.J.C., at page 580, stated:

> "Having regard to what subsequently occurred, Armand would no doubt have been well advised had he tried to stop his car, even at the risk of crashing into the fence and possibly landing the car in the ditch."

and in regard to the opinion of the Appellate Divisional Court that Armand was negligent in returning to the pavement, the learned Chief Justice, at page 581, stated:

> "With the utmost respect we do not discern any negligence or fault in what Armand did. It may be that in an emergency he did not exercise the best possible judgment in returning to the pavement; but even that is at least doubtful. If there was any error on his part, it certainly amounted, at the most, to nothing more than an excusable mistake in judgment and did not involve any breach of duty owing to his passengers such as would predicate a failure to take that care which would have been 'reasonable under all the circumstances.' "

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In Harding vs. *Edwards and Tatisich* (1929) 64 O.L.R. 98, affirmed by the Supreme Court of Canada in 1931, S.C.R. 167, where the facts were that Mrs. Tatisich turned southerly out of her line of traffic to pass cars immediately in front and one Edwards, driving a car from the opposite direction, thought that a head-on collision would likely result from her conduct and to avoid this swerved his car to the south to a fifteen foot gravel strip, with the result that the cars passed without colliding, but Edwards collided with two cars proceeding westerly when he turned back on to the highway to avoid a deep ditch on the gravel strip ahead, the learned Trial Judge exonerated Edwards from negligence, saying at page 100:

> "While Edwards did not do the best thing in order to avoid the accident, he acted reasonably and the entire accident was caused by the action of the defendant in turning over to the south side of the road. I quite realise that, if Edwards had put on the brakes when he was off the pavement, he could have brought his car to a stop, but the emergency or the occasion for his doing so had not arisen, and his act in coming back to the pavement and turning sharply to the right I cannot find to be negligence under all the circumstances of the case. He did not act unreasonably in what he did and is not chargeable with any negligence causing the accident, but was virtually an involuntary agent. The accident happened while he was labouring under the effects of the negligence of the defendant Tatisich."

and again on the same page saying:

> "I am not at all sure that he, Edwards, retained the full possession of his faculties as he said he did. I think the very fact that the car was turned suddenly out in front of him would unnerve him to some extent and that he was not in a frame of mind to do the very best or skilful or proper thing in order to avoid injuring either his passenger or the automobiles that were proceeding westerly."

The judgment dismissing the action against Edwards was affirmed by the Appellate Division, Magee, J.A., dissenting. The judges comprising the majority of the Court were Mulock, C.J.C., Hodgins, J.A., and Middleton, J.A.

The observations of Middleton, J.A., at page 108, are to the following effect:

> "The case emphasises the necessity of charity in judging the conduct of one who is not, it is true, in the actual agony of collision, but upon whom, in the language I have already

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quoted, 'the hand of the original wrongdoer was still heavy,' before his conduct can be regarded as the act of a conscious intervening agent. If in truth such a one is 'acting on the impulse of personal peril' he may yet be 'only a link in a chain of causation extending from the initial negligence to the subsequent injury,' to quote again the words of Hamilton, L.J., in *Latham* vs. *R. Johnson & Nephew Ltd.*"

The appeal to the Supreme Court of Canada was dismissed, without calling on counsel for the respondent Edwards.

The language of James, L.J., at page 223, in *The Bywell Castle* (1879) 4 Probate Div. 219, is an accurate statement of the law applicable in the present case:

> "But I desire to add my opinion that a ship has no right, by its own misconduct, to put another ship into a situation of extreme peril, and then charge that other ship with misconduct. My opinion is that if, in that moment of extreme peril and difficulty, such other ship happens to do something wrong, so as be a contributory to the mischief, that would not render her liable for the damage, inasmuch as perfect presence of mind, accurate judgment, and prompitude under all circumstances are not to be expected. You have no right to expect men to be something more than ordinary men. I am therefore of opinion that the finding of the Court below, that the Bywell Castle was, for the purposes of the suit, to be considered to blame, must be overruled, and that the Princess Alice was alone to blame."

The judgment of Brett, L.J., is to the same effect, at page 226-7:

> "The next question is whether the Bywell Castle being put into that difficulty did what was wrong. It is said that she did so in two instances. But what is the wrong that the Court is bound to find she did? Not merely that she did a wrong thing, but that she was guilty of a want of that care or skill which she ought to have shewn under such difficult circumstances. I am clearly of opinion that when one ship, by her wrongful act, suddenly puts another ship into a position of difficulty of this kind, we cannot expect the same amount of skill as we should under other circumstances. The captains of ships are bound to shew such skill as persons of their position with ordinary nerve ought to shew under the circumstances. But any Court ought to make the very greatest allowance for a captain or pilot suddenly put into such difficult circumstances; and the Court ought not, in fairness and justice to him, to require perfect nerve and presence of mind, enabling him to do the best thing possible."

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The judgment in *The Bywell Castle* was cited with approval by the House of Lords in *United States ShippingBoard* vs. *Laird Line Lim.* (1924) 93 *L.J.P.C.*, 123. At page 125 Lord Dunedin said:

> "Accordingly, the Rowan is hit by a consideration analagous to that which prevailed in the well-known case of *The Bywell Castle* and many others; namely, that it is not in the mouth of those who have created the danger of the situation to be minutely critical of what is done by those whom they have, by their fault, involved in the danger."

Lord Shaw made the pertinent comment that with regard to the second and correct order, the House had to judge not so much a question of seamanship, as a question of psychology, and stated that the House was not dealing with the psychology of a superman, but simply of a ship's captain. The learned Law Lord at page 125 said:

> "I have always held *The Bywell Castle* to be a case of the highest authority, and I will conclude my own opinion by saying that I think that the language of the three great Judges, namely James, L.J., Brett, L.J., and Cotton, L.J., may be said to apply in terms to the present case."

and quoted passages from the judgments of James, L.J., and Brett, L.J., in *The Bywell Castle.*

The rule in *The Bywell Castle* has been applied by this Court in numerous cases, including:

C.P.R. vs. *S.S. "Rosecastle"* 1931 4 *D.L.R.* 141.

"Princess Adelaide" vs. *Fred Olsen and Company* 1931 *S.C.R.* 254.

and, it is submitted, is applicable in the case at bar.

The respondents submit also for consideration the following authorities:

Martin vs. *Ralph* (1921) 57 *D.L.R.* 588.

Hodge vs. *Geil* (1924) 27 *O.W.N.* 290.

Jones vs. *Boyce* (1816) 1 *Stark,* 493, *N.P.*

Scott vs. *Shepherd* (1773) 3 *Wils* 403, 96 *E.R.* 525.

Latham vs. *R. Johnson & Nephew Ltd.* (1913) 82 *L.J.K.B.* 258.

Admiralty Commissioners vs. *Owners of S.S. "Volute"* 91 *L.J.P.* 38, particularly judgment of the Lord Chancellor, Viscount Birkenhead, at page 39.

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There is no conflict of evidence as to what happened after the Fujiwara car left the paved portion of the road, and the rapidity of events. This evidence is given chiefly by Dr. Fujiwara and Wesley Fujiwara. Dr. Fujiwara says that when the Ogawa car struck his car, it forced his car out on to the gravel and the rough boulevard. He tried to put his brake on, to try to stop the car, but it seemed to go faster; his car bumped the first pole, went over the sidewalk, struck the lower part of some steps and then swung slightly to the left and collided with the second pole. He states that when his car bumped the first pole it made a big swing up and down and it was very hard to control; he couldn't stop the car, and thought the brake was broken, so he tried to apply the hand brake and get the car back to the main road. He thought of his wife and children and was trying to avoid hurting them. It happened so quickly he didn't have time to think. "It happened just like a flash—it was very fast."

Dr. Fujiwara: (*Case, page* 38, *line* 21 *to page* 40, *line* 24; *Case, page* 41, *lines* 36 *to* 42; *Case, page* 63, *line* 9 *to page* 67, *line* 8; *Case, page* 196-197).

Wesley Fujiwara: (*Case, page* 95, *line* 1 *to page* 95, *line* 34; *Case, page* 99, *lines* 30 *to* 40).

It is apparent that the doctor, in the suddenness of the accident, in attempting to apply the foot brake, put his foot on the accelerator, which is $\frac{5}{8}$ of an inch from the brake pedal, for the speed of the Fujiwara car increased after it left the road. According to Mr. Hygh, an expert mechanic, the Chevrolet car had a high speed motor, and a quick pick-up, so that the car would accelerate quickly. This witness also testified that it is not an uncommon occurrence to have the foot slip off the brake pedal on to the accelerator. It would be, it is submitted, very easy for this to happen in the present case, after the excitement and confusion of the sudden and unexpected swerve of the Ogawa car and the sudden change from a paved driving surface to the rougher gravel and boulevard. (*Case, page* 91, *lines* 22-28; *Case, page* 91, *line* 40 *to page* 92, *line* 10; *Case, page* 89, *line* 32 *to page* 90, *line* 5).

The evidence of Miss Sato is to the same effect as that of Dr. Fujiwara and Wesley: "Then right at the instant we swerved off the main road, and I wasn't sure where we went to, but I know we missed—we hit one telephone pole and then we bumped into the other pole—it all happened very quickly." (*Case, page* 112, *lines* 44-48).

The very important and significant fact that the whole incident happened quickly is confirmed by the evidence of the appellant Ogawa himself. (*Case, page* 151, *lines* 8-12).

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The learned Trial Judge accepted the evidence of Dr. Fujiwara and the respondent's witnesses. He found as a fact that Dr. Fujiwara was upset by the actions of the Ogawa car, that he had not sufficiently recovered from the condition of nervous excitement into which he was thrown by the rash act of the appellant Ogawa to be responsible for what he did during the short space of time which followed. The learned Trial Judge found as a fact that Dr. Fujiwara was acting under the impulse of personal peril to himself and his passengers and that his actions were understandable and excusable under the circumstances and exonerated Dr. Fujiwara from negligent conduct, saying at page 200, line 44 of the Case:

> "The question to be determined is, should the doctor have recovered his mental equilibrium after the first disturbance and not pursued the course he did—should he as a driver of a motorcar (he was a driver of 10 years experience) have immediately sensed that his foot was on the accelerator and not on the brake? Had he realized that his foot was on the accelerator he would, of course, have removed it and put it on the brake and the accident and its consequences would have been avoided."

and again, commencing at line 19, on page 201 of the Case:

> "In this particular case should the doctor not have recovered his equilibrium in time to avoid, if not the first collision with a pole, at least the second one. Other drivers might have done so but very many drivers might not have done so. What he did was extraordinary and yet I think it unfair to say that it was not understandable and excusable in the circumstances. It can hardly be said of Dr. Fujiwara that he had time to think—the bush, the steps and the first pole all loomed in front of him one after another, giving him no time to regain his poise."

The learned Trial Judge referred with approval to the passage from the judgment of Middleton, J.A., in the case of *Harding* vs. *Edwards and Tatisich*, quoted above. The situation which confronted the defendant Edwards in the Harding case is analagous to the situation that confronted Dr. Fujiwara, and it is submitted that the principles laid down in that case in the Appellate Court and on appeal to this Court, are the correct principles of law to be applied in the present case.

The respondents submit that the affirmative findings of fact of the learned Trial Judge in the respondents' favor on this aspect of the case could reasonably be made on the evidence and respectfully submit that the learned Trial Judge arrived at the

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right conclusion on the evidence in holding that Dr. Fujiwara was an involuntary agent, and in holding that the cause, and the only effective cause of the collision between the Fujiwara car and the second pole was the initial negligence of the appellant Ogawa.

It is submitted that the conclusion of Mr. Justice McQuarrie in the Court of Appeal that the Fujiwara car went off the roadway "for no good reason" and his view that lack of care and skill on the part of Dr. Fujiwara was the cause of the accident, cannot be substantiated on the evidence and indicates that this learned Appellate Judge failed to appreciate the realities of the situation.

Mr. Justice McQuarrie commented on the statement of the Trial Judge that a sharp cut in by a passing car on a highway is one of the most disconcerting experiences which even an experienced driver can encounter. This does not require proof for it is a matter of common experience and knowledge. Judges and juries are entitled to draw upon their own experiences in life, and cannot but realize that a sharp cutting in by an overtaking and fast moving vehicle is both disconcerting and dangerous; since it is totally unexpected by the driver of the overtaking car who has the right to expect and does expect that the other driver will give ample clearance. The Court is entitled to take judicial notice of a fact so notorious.

Counsel for the appellant Ogawa cited and placed great reliance on the case of *McGinitie* vs. *Goudreau* (1921) 59 D.L.R. 552, a decision of the Court of Appeal for Alberta, in the argument before the Court of Appeal, and Mr. Justice McQuarrie referred to this decision in his judgment. Counsel for the appellant Ogawa contrasted the distance travelled by the plaintiff in the McGinitie case. after he left the road, with the distance travelled by Dr. Fujiwara, but there is no suggestion in the former case that the speed of the car was accelerated by reason of the driver accidentally stepping on the gas instead of the brake. The driver in fact made no effort to stop his car, as Dr. Fujiwara did, and he was not confronted with a series of happenings in rapid succession as was the doctor. It is apparent that the driver in the McGinitie case attempted to regain the road and that this was the real negligence found against him. Hyndman, J.A., at the top of page 554, stated that he "did not think the excitement of the plaintiff sufficient to excuse him, for surely it must be assumed that driving a dangerous engine such as a motorcar one must expect emergencies and a few surprises and excitement and be prepared for them, and losing one's head must be regarded as a weakness in the plaintiff and not chargeable to the defendant." It is submitted that the learned Appellate Judge never intended his language to be construed as

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meaning that a motorcar driver must be able to cope successfully with every emergency that may arise on the road, and that his failure to do so constituted negligence. The decision in *McGinitie* vs. *Goudreau* is readily distinguishable on the facts and findings of the Trial Judge, from the present case.

The respondents submit that the findings of fact by the learned Trial Judge that Dr. Fujiwara was not acting as a conscious agent and that he had not sufficiently recovered from the condition of nervous excitement into which he was thrown by the rash act of the other driver to be held responsible for what subsequently occurred, confirmed by the majority of the Court of Appeal for British Columbia, the Chief Justice and Mr. Justice McPhillips, are fully warranted by the evidence and that for the reasons given by Anglin, C.J.C., in *Tatisich* vs. *Harding* (1931) *S.C.R.* 167, this appeal should be dismissed. The report of the last mentioned case, at the middle of page 168 reads:

> "*The Chief Justice stated* that the Court was of opinion that *the question involved was purely a question of fact on which the Court had the explicit finding of the Trial Judge, confirmed by the majority of the Appellate Division; that question of fact being whether Edwards had recovered sufficiently from the condition of nervous excitement, into which the rash act of the appellant Tatisich had thrown him, to be held responsible for what subsequently occurred*, or, whether he should be regarded as still acting involuntarily under the influence of that condition; the Court took the view, notwithstanding Mr. Hellmuth's very able presentation of the appeal, that *nothing* had been *shewn which would entitle it to determine the question before it otherwise than as the Appellate Division had done.*"

III. The chain of causation which resulted in the damages claimed was started by the initial negligence of the appellant and the burden of showing that that chain had been broken lay on the appellant and he failed to discharge it.

The burden of showing that there was a breach in the chain of causation initiated by the original negligence of the defendant and that the real cause of the accident was the negligence of the respondent Dr. Fujiwara is on the appellant and the appellant did not discharge this onus. On the question of onus of proof the respondents submit the following authorities:

Harding vs. *Edwards and Tatisich* (1929) 64 *O.L.R.* 98 *at page* 107.

Dominion Natural Gas Company Limited vs. *Collins* (1909) *A.C.* 640, 79 *L.J.P.C.* 13.

said Respondent.

Settled:
15 March 1938
J. F. Smellie
Registrar

Canadian Pacific Railway Company vs. *Kelvin Shipping Company Limited* (1927) 138 *L.T.R.* 369.

IV. That no finding of contributory negligence on the part of the respondent, Dr. Fujiwara, would have been warranted on the evidence, and no such finding was made by either the learned Trial Judge or the Court of Appeal.

Having regard to the evidence and to the findings of fact made by the Trial Judge, it is submitted that this is not a case in which there could be an apportionment of liability between the drivers of the two cars. On the finding of the learned Trial Judge, that Dr. Fujiwara was acting on the impulse of peril to himself and his passengers and that he was only a link in the chain of causation extending from the original negligence to the subsequent injury, there is no ground for apportionment of liability.

The cases relied on by the respondents are:

Rowan vs. *The Toronto Railway Company* (1899) 29 *S.C.R.* 717, particularly at page 732, where Gwynne, J., stated:

> "It may and frequently does happen that the state of alarm in which a person is put upon finding himself exposed to imminent danger to life or limb causes him to take a course which in the exercise of reasonable care and diligence he would not take, and by so doing to increase his risk and in fact bring about the catastrophe which he was endeavoring to avoid; but the taking in such case of a wrong course would not justify a verdict of contributory negligence."

Latham vs. *Johnson & Nephew Ltd.* (1913) 1 *K.B.* 398, particularly judgment of Hamilton, L.J., at page 413.

It is therefore submitted that this appeal should be dismissed.

All of which is respectfully submitted.

C. H. LOCKE,
of Counsel for the Respondents.

said Respon...

Settled:
15 March 1938
J. F. Smellie
Registrar

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IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Thursday, the 17th day of February, A.D. 1938.

PRESENT:

The Chief Justice of Canada.
~~THE RIGHT HONOURABLE SIR LYMAN P. DUFF, P.C., G.O.M.G., C.J.C.~~
THE ~~RIGHT~~ HONOURABLE MR. JUSTICE RINFRET
THE ~~RIGHT~~ HONOURABLE MR. JUSTICE CROCKET
THE ~~RIGHT~~ HONOURABLE MR. JUSTICE KERWIN
THE ~~RIGHT~~ HONOURABLE MR. JUSTICE HUDSON

B E T W E E N:

C. OGAWA

Defendant-Appellant

-and-

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato,

Plaintiffs-Respondents.

The appeal of the above named Appellant from the Judgment of the Court of Appeal for British Columbia pronounced in the above cause on the fourteenth day of September in the year of our Lord, one thousand nine hundred and thirty-seven, dismissing the Appellant's appeal from the Judgment of the Supreme Court for British Columbia rendered in the said cause by the Honourable Mr. Justice Manson on the twenty-third day of January in the year of our Lord one thousand nine hundred and thirty-seven, having come on to be heard this day before this Court in the presence of Counsel as well for the Appellant as for the Respondents, whereupon and upon hearing what was alleged by counsel for the Appellant CP aforesaid this Court did order and adjudge that the said Judgment of the Court of Appeal for British Columbia should be and the same was affirmed and that the said Appeal should be and the same was dismissed with costs to be paid by the said Appellant to the said Respondents.



Settled:
15 March 1938
J. F. Smellie
Registrar

IN THE SUPREME COURT OF CANADA

B E T W E E N:

C. OGAWA

Defendant-Appellant

-and-

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato.

Plaintiffs-Respondents.

J U D G M E N T

NEWCOMBE & COMPANY,
Barristers & Co.,
140 Wellington St.,
O T T A W A, Ont.

SUPREME COURT OF CANADA
MAR 28 1938

Ogawa

v.

Fujiwara

BEFORE: The Chief Justice and Rinfret, Crocket, Kerwin and Hudson JJ.

The Chief Justice (for the Court)(oral): It will not be necessary to call on you Mr. Locke.

We are disposed to think that Mr. Justice Manson really did intend to find that there was physical contact between the cars, in which case there are findings of two courts upon that question. But, however that may be, assuming that he did not, or assuming that what he says should not be regarded as a finding on that, he found negligence; and he found that what ensued in the course taken by the respondent's car was the natural and direct consequence of the appellant's negligence.

It was not seriously disputed on the argument before us that the initial act of the respondent was the direct consequence of that negligence - assuming it was negligence. What is suggested is that the respondent ought to have recovered in time to prevent some, at all events, of the damage that was done.

We see no reason to disagree with the finding of Mr. Justice Manson. The appeal, therefore, should be dismissed with costs.

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Ogawa

v.

Fujiwara

The Chief Justice
(for the Court)
(oral)

IN THE SUPREME COURT OF CANADA

BETWEEN;

C. OGAWA,

Defendant-Appellant,

-and-

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATA by her next friend Shotaro Sato,

Plaintiffs-Respondents.

Respondent's costs

Taxed off		Fees.	Dsbts.
	Attendance on giving security	$ 3.00 ✓	
	Fee on motion to allow	10.00 ✓	
	Fee on special case	25.00 ✓	
	Fee on factum	50.00 ✓	
	Fiat for increase on factum		
	Engrossing and superintending printing of factum, 120 folios at 15 cents per folio	16.50 ✓	
	Paid printer as per affidavit		91.26 ✓
	Counsel fee on argument	200.00 ✓	
	Agency fee	35.00 ✓	
	Fee on appellants application for special leave	50.00 ✓	
	Paid postage, telegrams, etc.		5.00 ✓
	Paid search for particulars		.25 ✓
	Paid taxation		1.50 ✓
	Paid entry of judgment		10.00 ✓
	Allocatur		1.00 ✓
	Paid filings		.90 ✓
	~~Paid Registrar's postage~~		~~.15~~
		$439.50	$109.91

CARRIED FORWARD

1107

	Fees.	Dsbts.
Taxed off		
BROUGHT FORWARD - Fees.	$ 439.50	$ 109.91
Dsbts.	109.91	
Taxed off	$ 549.40	
Fiat for increased counsel fee	150.00	
TAXED AT	699.40	

TAXED AND ALLOWED at the sum of $699.40

this 15th day of March, 1938.

J. F. Smellie
Registrar.

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IN THE SUPREME COURT OF CANADA

B E T W E E N:

C. OGAWA

Defendant-Appellant

-and-

TSURU FUJIWARA, ASA J. FUJIWARA, ALAN FUJIWARA by his next friend Asa J. Fujiwara, WESLEY FUJIWARA by his next friend Asa J. Fujiwara, SHOTARO SATO, and TERUKO SATO by her next friend Shotaro Sato.

Plaintiffs-Respondents.

B I L L O F C O S T S

NEWCOMBE & COMPANY,
Barristers & Co.,
140 Wellington St.,
O T T A W A, Ont.

6597

1938

~~EXHIBIT~~

OGAWA

V.

FUJIWARA

Supreme Court of Canada



Cour suprême du Canada

END OF FILE

FIN DU DOSSIER