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CASE COMMENTS

CONTRIBUTORY NEGLIGENCE—INSTRUCTIONS.—*A*, a jaywalking pedestrian, was struck and injured by an automobile operated by *B*. In the ensuing trial, *A* offered the following instruction:

> "The court instructs you that contributory negligence is the doing of a negligent act by a plaintiff which proximately contributes to causing the damages of which she complains. Therefore, you are instructed that if you find from the evidence that the plaintiff was guilty of committing any act of negligence, however slight, which proximately contributed to causing the injuries of which she complains, then you are not permitted to weigh the degree or amount of negligence of each of the parties, but you must return a verdict for the defendant."

The trial judge amended it by striking out the word "must" and substituting the word "may". The jury found for *A*. *Held*, that the instruction as offered was a binding instruction and should have stated the negligent acts or conduct allegedly committed by the plaintiff as constituting contributory negligence, and there was no error in amending the instruction to make it permissive. Two judges dissented. *Walker v. Robertson*, 91 S.E.2d 468 (W. Va. 1956).

There is some feeling among West Virginia attorneys that this case is a step in the direction of discarding the doctrine of contributory negligence in favor of a doctrine of comparative negligence. On its face, it does not appear to go that far. It is, however, a definite departure from the rule, well established in this state, that contributory negligence on the part of a plaintiff is an absolute bar to re-