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JUDGMENT.

NEW JERSEY SUPREME COURT.

MARTHA T. HANN,  
Admrx. of the estate  
of Frederick M. Hann,  
deceased,

vs.

SALEM & PENNSGROVE  
TRACTION Co.

Action at Law. On  
Postea. (Judgment  
for Defendant.) J. 10  
Forman Sinnickson,  
Attorney.

No costs.

Judgment entered this twenty-eighth day of Sep-  
tember, A. D. nineteen hundred and eighteen without  
costs in favor of the defendant and against the  
plaintiff. 20

WM. S. GUMMERE, C. J.

I, Enoch Johnson, Clerk of the Supreme Court  
of the State of New Jersey, do certify that the fore-  
going is a true copy of the judgment entered in  
above stated cause which said judgment is recorded  
in this office in Vol. 11 of Judgments, page 247. 30

In testimony whereof I have hereunto set my hand  
and the seal of said Court at Trenton, this nineteenth  
day of May, A. D. nineteen hundred and nineteen.

ENOCH L. JOHNSON,  
Clerk.

**NOTICE AND GROUNDS OF APPEAL.****NEW JERSEY SUPREME COURT.**


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10	MARTHA T. HANN, Admx., <i>Plaintiff and Appellant,</i> vs. SALEM & PENNSGROVE TRAC- TION Co., <i>Defendant &amp; Respondent.</i>	}	Action at Law. Notice and Grounds of Appeal.
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20 To J. Forman Sinnickson, Esq., Attorney of Defendant and Respondent:

Take Notice that the plaintiff, Martha T. Hann, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this case on the following ground:

That the trial Judge improperly and unlawfully directed a verdict in favor of the defendant, whereas the matters involved should have been passed upon by the jury.

WESCOTT & WEAVER,  
*Attorneys of Appellant.*

30

Due and legal service of within notice is hereby acknowledged this 15th day of July, 1919.

T. FORMAN SINNICKSON,  
*Atty. for Respondent.*

**SUMMONS AND COMPLAINT.**

The State of New Jersey to Salem & Pennsgrave  
Traction Company:

You are summoned to answer the annexed complaint of Martha T. Hann, Administratrix of the estate of Frederick M. Hann, deceased, in an action at law in the Supreme Court. And take notice that unless you file your answer with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this eighth day of February, nineteen hundred and eighteen.

WILLIAM C. GEBHARDT,  
*Clerk.*

WESCOTT & WEAVER,  
*Attorneys.*

**Complaint.**

**NEW JERSEY SUPREME COURT.**

**SALEM COUNTY.**

10

MARTHA T. HANN, adminis-  
tratrix of the estate of  
Frederick M. Hann, de-  
ceased,

*Plaintiff,*

vs.

SALEM & PENNSGROVE TRAC-  
TION COMPANY,

*Defendant.*

Action at Law.  
Complaint.

20

Martha T. Hann, administratrix of the estate of Frederick M. Hann, deceased, the plaintiff herein, of Pennsgrove, Salem County, New Jersey, says that:

1. On or about the 23d day of November, 1917, plaintiff's intestate was proceeding in an automobile over and along a road which leads from the Salem and Pennsville Road into and upon the farm occupied by Louis Stiles about one-half a mile from Pennsville, in Salem County.
2. That at said place the road upon which plaintiff's intestate was traveling crosses the trolley tracks of the defendant.

3. As the plaintiff's intestate was endeavoring to cross the tracks of the defendant at the time and place aforesaid, the defendant negligently and carelessly and without warning propelled a trolley car against and upon the automobile in which plaintiff's intestate was proceeding and killed him.

4. Letters of administration upon the estate of Frederick M. Hann were issued to the plaintiff herein by Loren E. Plummer, Surrogate of the County of Salem, on the 19th day of December, 1917, and the decedent is survived by his wife, the plaintiff herein, and eight children, to wit, Walter Hann, 28 years old; Abbie Dunn, 25 years old; Earl Hann, 23 years old; Russell Hann, 21 years old; William Hann, 19 years old; Elizabeth Hann, 18 years old; Sarah Hann, 14 years old and Charles Hann, 7 years old, his heirs at law and next of kin, for whose benefit this suit is brought.

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20

The plaintiff claims damages in the sum of \$25,000.

WESCOTT & WEAVER,  
*Attorneys of Plaintiff.*

30

## ANSWER.

NEW JERSEY SUPREME COURT.  
SALEM COUNTY.

10 MARTHA T. HANN, adminis-  
tratrix of the estate of  
Frederick M. Hann, de-  
ceased,

*Plaintiff,*

vs.

SALEM & PENNSGROVE TRAC-  
TION COMPANY,  
*Defendant.*

Action at Law.  
Answer.

20

The defendant, Salem and Pennsgrove Traction Company, a corporation organized under the laws of the State of New Jersey, and having its principal office in the City of Salem, in the County of Salem and State of New Jersey, answering the said plaintiff, says:

1. Defendant denies the first paragraph of the complaint.
- 30 2. Defendant denies the second paragraph of the complaint.
3. Defendant denies that the accident mentioned in the third paragraph of the complaint was occasioned by the negligence or carelessness of the de-

fendant or of any of its agents or servants. As to the other allegations of said paragraph defendant has no knowledge or information thereof sufficient to form a belief.

4. Defendant has no knowledge or information sufficient to form a belief as to the matters and things alleged in the fourth paragraph.

FIRST DEFENSE.

10

1. No negligence on the part of the defendant or its agents or servants at the time and place of the accident mentioned in the complaint.

SECOND DEFENSE.

1. Contributory negligence on the part of the plaintiff at the time and place of the accident mentioned in the complaint.

20

J. FORMAN SINNICKSON,  
*Attorney of Defendant.*

30

**TESTIMONY.**

NEW JERSEY SUPREME COURT.

SALEM COUNTY.

10

MARTHA T. HANN, adminis-  
tratrix,

vs.

SALEM & PENNSGROVE TRAC-  
TION Co.

} Action at Law.

20

Salem, N. J. September 18th, 1918.

**TESTIMONY.**

Before HON. HOWARD CARROW, Judge and Jury.

30

**APPEARANCES:**For Plaintiff, HON. JOHN W. WESCOTT and ETHAN  
WESCOTT, Esq., of MESSRS. WESCOTT & WEAVER.For Defendant, HON. J. FORMAN SINNICKSON; HON.  
JOSEPH H. GASKILL.

MARTHA T. HANN, the plaintiff, being called in her own behalf, first duly sworn and examined, testified as follows:

Direct examination:

By Mr. John W. Wescott:

The Court: If there is any question about the pleadings in this case, they may be regarded as amended so as to cover the cause on its merits. 10

Q. Mrs. Hann, how old are you, please?

A. In my fifty-third.

Q. And your husband's name was what?

A. Frederick M.

Q. You are his widow?

A. Yes, sir.

Q. You had how many children by him?

A. I had eight. 20

Q. Are they all living?

A. Yes, sir.

Q. How old is the youngest one?

A. Ten.

Q. And the next?

A. Fifteen.

Q. And the next?

A. Eighteen.

Q. And the next?

A. Twenty. Twenty in June. 30

Q. And the other four are upwards of twenty-one, are they?

A. Yes, they are past twenty-one.

Q. Was your husband killed on the twenty-third of November, 1917?

A. Yes, sir.

Q. What kind of health had he?

A. Good.

Q. What was his business?

A. We farmed all our life until within the last year.

Q. Very well. He was a farmer?

A. Yes, sir.

Q. A successful farmer?

A. Very.

10

The Court: What age man was he? What was his age?

A. Fifty-seven. In his fifty-seventh. That was it. He was fifty-six, but he was in his fifty-seventh year.

Q. What were his habits, good or bad?

A. Oh, good. Neither smoked, chewed or drank.

Q. Did he take good care of his family?

20

A. He did.

Q. Did he keep books?

A. No, sir, he didn't. I am sorry to say we didn't keep any.

Q. Did he buy all the food and clothing——

A. He did.

Q. ——for his family?

A. He did.

Q. About how much a year did it cost him to take care of his family?

30

A. Well, from a thousand, I suppose——

Mr. Gaskill: Unless the witness knows, I presume that any guess work or estimate on her part is immaterial.

A. That was no guess work.

By the Court:

Q. From your own knowledge, you know?

A. Yes. About from a thousand to twelve hundred dollars a year. That is correct.

Q. And that he earned?

A. That was his earnings.

By Mr. John W. Wescott:

Q. Did he earn that above his debts and expenses?

A. He was able to pay all our bills.

Q. Did he owe anything when he died or when he was killed?

A. Not a dollar, except that new property that he bought.

Q. Do you happen to know where he was going on the day he was killed?

A. Well, I didn't know exactly, no. I knew he was going out.

Q. Did he leave home in an automobile?

A. Yes, sir.

Q. What kind?

A. Ford.

Q. And what time did he leave home, about?

A. I don't know exactly. I suppose about quarter past eight. From that to twenty minutes.

The Court: In the morning?

A. Yes. I don't just exactly know.

Q. Your children are all living, are they?

A. Yes, sir.

By the Court:

Q. How many live home?

A. There is five home now.

Q. Did they all get their living home?

A. Oh, yes.

Cross-examination.

10

By Mr. Sinnickson:

Q. Mrs. Hann, you say you have eight children?

A. I have eight children.

Q. And five were living at home last November when your husband was killed?

A. Yes, we were all together. They weren't all home.

Q. Who were home?

20 A. Who were home?

Q. Yes.

A. There was Russell, William——

Q. Yes.

Q. Russell is the ten year old one?

A. No, that is Charles.

Q. The ten year old one was living home at that time?

A. Oh, yes.

Q. Is that a boy or girl?

30 A. Boy.

Q. What is his name?

A. Charles.

Q. He lived home?

A. Yes.

Q. And he didn't earn anything?

A. No.

Q. He is a small boy, ten years old?

A. Yes.

Q. And the next one was what?

A. Fourteen.

Q. What was his name?

A. Sarah.

Q. Did Sarah do anything toward earning her own living?

A. No.

Q. She didn't do any housework or anything like that? 10

A. She went to school.

Q. But morning and night she did nothing in the way of assisting in the chores around the house?

A. She didn't earn anything, no. She had her books to study.

Q. And the next was who?

A. William comes next.

Q. How old is William?

A. Eighteen now. 20

Q. He was seventeen then?

A. Seventeen then.

Q. He worked out, didn't he?

A. He worked out then.

Q. He earned his own living?

A. Well, I suppose you might say he did.

Q. Where did he work at that time?

A. Powder mill.

Q. He was making pretty big wages, wasn't he? 30

A. No, sir, not very big.

Q. He is the first person ever worked at the powder works that didn't make big wages. What did he make?

A. I can't just exactly tell you.

Q. Three or four or five dollars a day?

A. No, he made about two and a half a day and we board him.

Q. You thought two and a half a day for a boy of seventeen wasn't very big wages?

By the Court:

Q. You say you boarded him?

A. Yes, sir.

Q. Gave him his board?

10 A. I did.

By Mr. Sinnickson:

Q. You gave him his board free?

A. I don't know about that. Yes, we did. We gave him his board, because we didn't charge him any board.

Q. You didn't charge him any board?

A. No.

20 Q. And he didn't pay anything?

A. No.

Q. Not a cent?

A. No.

Q. Didn't give you any money or his father?

A. I don't know that he ever give me any money.

Q. How about his father?

A. I can't say to that.

Q. You don't know whether his father got any of his wages or not?

30 A. I do not.

Q. You know he was making probably two dollars and a half a day?

A. About that.

Q. And he is still making it?

A. Yes, sir.

Q. Making more than that now, isn't he?  
A. Yes, he makes a little more than that now, I expect.

Q. What is he, a carpenter?

A. Oh, no.

Q. What is he?

A. I don't know just what he does. He is in the dye works.

Q. Making four or five dollars a day now, isn't he?

10

A. No.

Q. Do you know what he is making?

A. Not exactly.

Q. Pretty near it?

A. No. I should think he is making about three dollars a day.

Q. He is now eighteen?

A. Yes.

Q. The other one that was home was who?

A. Russell.

20

Q. How old is Russell?

A. He is twenty-two.

Q. Then you only had three home that were under age, under twenty-one?

A. Well, I have another girl.

Q. Well, I am asking who comes next. What is her name?

A. Elizabeth.

Q. How old is she?

A. She is twenty now. She is between Russell and William.

30

Q. And Elizabeth could earn her own living, could she not?

A. She was going to school.

Q. Twenty years old?

A. Yes. She is twenty-one now.

Q. Good health?

A. Yes.

Q. Your children are all in good health, aren't they?

A. Oh, yes.

Q. Mr. Hann had not farmed for some time, had he?

A. All his life.

Q. Well, that is going a good ways.

10 A. Well, he was a farmer all his life.

Q. I know he was during the time he was big enough to farm, but hadn't he stopped farming for some time?

A. He stopped that spring. This was in the fall, November, and he stopped that spring and moved in Pennsville March second.

Q. Then during that year he had not farmed?

A. Not just that present time.

20 Q. And he had lived on what farm just before that?

A. Robert Seagraves'.

Q. Removed from Robert Seagraves' farm into Pennsville in the spring?

A. Yes.

Q. What did he do all during that year?

A. Well, he drove jitney, and he worked at that time, run the engine to unload shells for the road, but that day there wasn't any shells to be put on the road.

30 Q. He drove jitney?

A. Yes.

Q. How long had he been in the habit of driving an automobile?

A. Four or five years.

Q. He had owned an automobile four or five years?

A. Yes.

Q. And this car that he was driving was his own car?

A. His own car.

Q. A Ford car?

A. A Ford car.

Q. So he was accustomed to running an automobile?

A. Oh, yes.

By the Court:

10

Q. Was he supporting his family, that is, the family that was living home with him, from his labor, jitneying and working on this machine?

A. He did.

Q. And did you say it cost about a thousand to twelve hundred dollars a year?

A. Yes, with our rent and everything.

Q. And he was making enough for that?

A. Yes, sir. He did. He made enough to pay our bills. 20

By Mr. Sinnickson:

Q. Did your husband always enjoy good health?

A. Yes, sir, he was in pretty good health. Always worked.

Q. Didn't he have trouble sometimes with his health? 30

A. He had a little stomach trouble.

Q. Didn't he have trouble with his head or heart?

A. No, he never had that I know of.

Q. Did you ever know him to have vertigo?

A. Oh, no.

Q. Did you ever know him to have some trouble

in which he seemed to lose consciousness for a little bit?

A. No, sir.

Q. Or anything of that kind?

A. No, sir.

Q. You never knew anything of that kind?

A. No, sir.

Q. Mrs. Hann, did anyone else except your husband contribute towards the expenses of your family?

A. Oh, no. You mean help keep us?

Q. Yes. You had a lot of boys, pretty good boys.

A. I know, but Walter was married and gone, you see, and of course there was no help there, and Addie was married and gone and no help there.

Q. You have got eight, you know.

A. And Earl was married and gone and there was no help there.

Q. There was one of his sons that wasn't married, a young man, wasn't he, and good worker?

A. Well, yes, we all worked.

Q. What was the one that worked in the garage?

A. That was Walter.

Q. Was he married?

A. Yes.

Q. Walter got married, did he?

A. Yes.

Q. I didn't know that. I knew Walter very well, but I didn't know he was married. That is all. What was your maiden name?

A. Tuft.

LEWIS STILES, a witness produced on behalf of the plaintiff, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. John W. Wescott:

Q. Mr. Stiles, have you been subpoenaed by the railroad company? 10

A. I have.

Q. And you were subpoenaed by the plaintiff, too?

A. Yes, I was.

Q. What is your business?

A. Farming.

Q. Where is your farm located?

A. Well, on the State road between Salem and Pennsville, about a mile from Pennsville.

Q. Did you know Frederick E. Hann?

A. I did. 20

Q. Did you see him killed on the 23d of November, 1917?

A. I saw the trolley car when it struck the automobile.

Q. Did you see Mr. Hann after the collision?

A. I did. I helped carry him out.

Q. Did he die?

A. Not there. He did later on.

Q. From the injuries he got in that collision? 30

A. Yes.

Q. The tracks of the Salem and Pennsgrove Traction Company run in front of your property?

A. It does.

Q. Upon what road?

A. On the Salem and Pennsville Road.

Q. In the center or on the side?

A. On the side.

Q. Was that side of the tracks next to your property?

A. Yes.

Q. How do you get in and out from the Pennsville Road on to your property?

A. I turn across the trolley tracks and drive into the yard.

10 Q. Is there a road there?

A. Nothing but an entrance into my yard. A big yard. No outlet on the other end, except you go through the gates to go into the field.

Q. I haven't asked you about an outlet on the other end. I asked you whether there was a road going from the Pennsville Road into your property?

A. Just an entrance into the yard.

Q. How wide is the entrance?

20 A. Oh, I expect it is thirty feet.

Q. Are there tracks in it, wagon tracks?

A. Oh, yes.

Q. What makes them?

A. Well, we use that, going in and out.

Q. Does anyone else ever go in and out?

A. Oh, yes, anybody.

Q. And people that go in and out make those tracks?

A. I suppose they do.

30 Q. Well, it is a road, isn't it?

A. Well, it is a road into the farmyard, that is all.

Q. Then don't call it a mere entrance. It is a road into your farm, isn't it?

A. I never did call it a road. I always called it an entrance.

Q. Well, it is a space that vehicles and horses and cows and everything else use to get in and out, isn't it?

A. It is, yes.

Q. Who brought your attention to the fact that it was only an entrance?

A. Why, no one.

Q. I suppose you have talked to Mr. Sinnickson about this case?

A. I never talked to him about the case.

10

By the Court:

Q. Well, is this entrance, as you call it, your private property—

A. Yes, sir.

Q. —or is it a public highway?

A. It is my private property.

By Mr. John W. Wescott:

20

Q. How far does your private property go, to the center of the road?

A. I suppose it would if it would be surveyed.

Q. Then this entrance goes to the center of the road, doesn't it?

A. Yes, sir.

Q. And it is a well defined road, where wagons go in and out to your property?

A. Yes, anybody that wants to go there.

30

Q. It is a well defined road, isn't it?

A. If you call it a road, it is. I never did call it a road.

Q. What is the difference between a road and an entrance?

A. Well, I don't know about that. I suppose a road would lead on to some other direction.

Q. But so far as it goes from the public highway to your house, it is a road, isn't it?

A. Well, that is what you call it.

Q. Well, is it a footpath?

A. No, it is wide enough for wagons to enter in there. That is the way we get in and out.

Q. And wagons go in and out?

10 A. They do.

Q. Did you see Mr. Hann driving on the road with his Ford machine?

A. I saw him about ten yards before he turned in.

Q. Did you see Mr. Hann driving on the road with his Ford machine?

A. About ten yards on the road before he turned into my place.

Q. Did you see Mr. Hann driving on the road?

20 A. I saw the automobile.

Q. Well, you saw the automobile. Was there anybody in it?

A. Yes, there was.

Q. Who?

A. Frederick Hann.

Q. Then you saw Mr. Hann, didn't you, driving on that road in an automobile?

A. I saw him after he was killed.

30 Q. Didn't you see the automobile before he was killed?

A. I did.

Q. Then you saw Mr. Hann in that automobile before he was killed, driving on that road, didn't you?

A. I couldn't tell who was in the automobile.

Q. Well, do you imagine Mr. Hann dropped out of the clouds or off the trolley wire and got into that automobile?

A. I do not.

Q. It is pretty safe to say, isn't it, that he was in that automobile?

A. Yes, he was.

Q. And you saw the automobile?

A. Yes.

Q. Well, we have got that much out of you. Was the trolley car, before it struck the automobile, going rapidly or slowly?

A. I thought it was going pretty fast. 10

Q. Did it give signals before it struck the automobile?

A. I couldn't tell you about that.

Q. Well, did you hear any?

A. I did not.

Q. Anything the matter with your hearing?

A. No, sir, not that I know of.

Q. You can hear the signals of a trolley car when they are given, can you? 20

A. I can, yes, if I notice them.

Q. How close were you to the trolley?

A. Well, I was back in the yard, about ninety yards, eighty or ninety yards, something like that.

Q. Did you hear the crash?

A. I did.

Q. You say you didn't see Hann. I suppose we will have to stand by that. But the man that was in this automobile that you saw on the road, did he turn the automobile to come into your yard by this lane or passageway? 30

A. He did.

Q. Was he ahead of the trolley car when he turned in?

A. He was.

Q. Which did you notice first, the automobile or trolley as you stood there in your yard?

A. The automobile.

Q. Was it pointed toward your lane?

A. It was.

Q. What part of the automobile was struck by the trolley car?

A. About midway.

Q. Can you give us any idea how far the trolley car went over this road or lane after it struck the motor car, the automobile?

10 A. Why, about, I suppose maybe forty feet.

Q. Went forty feet over it before it stopped?

By the Court:

Q. Did you say that, about forty feet?

A. Forty feet.

Q. Were there many people in the trolley car?

A. Not so many.

Q. Now, what happened to the automobile?

20 A. Well, the automobile struck that pole, that the traction company uses for their purposes and it turned the automobile around and throwed it over into our chicken yard.

Q. What kind of a pole was it that it struck?

A. That was one of these poles, big poles, that they use for the trolley service.

Q. It was what you call a trolley pole?

A. Trolley pole, I should call it.

Q. About how thick?

30 A. Oh, as thick as my body.

Q. And how far was that pole from where Mr. Hann turned into your house?

A. About fifteen feet.

Q. As Mr. Hann was driving did he turn to his left or his right to go into your house?

A. To the left.

Q. And when the automobile struck the trolley pole or the telegraph pole or whatever is the proper term to use, it threw the automobile into your chicken yard?

A. Yes, sir.

Q. And how far was your chicken yard from the telegraph pole?

A. I suppose maybe that was about three or four yards by it.

Q. Did it throw it through the air over a fence? 10

A. I couldn't see that.

Q. Was there a fence in front of your—

A. Trees.

Q. Trees?

A. Yes. Low cherry trees.

Q. Did it tear up the cherry trees or do any damage to them?

A. It didn't. Didn't hit none of those.

Q. It went over them, did it?

A. No, it didn't. Just outside of the cherry trees, 20  
where it went over.

Q. If I understand you, this automobile was driven so hard that when it struck this pole it bounded over into your chicken yard?

A. Well, I couldn't see it when it struck that pole. That was behind those cherry trees, but when I run around there, it was over the fence.

Q. It did strike the pole?

A. It did.

Q. Now, did it loosen the pole in the ground? 30

A. A little bit.

Q. How long has that pole been there, do you imagine?

A. Well, it was put there when they put the rest of the poles on the line.

Q. It had been up there a year or two?

A. Oh, yes.

Q. How high was that pole?

A. I suppose maybe sixty feet

Q. Now, were there planks between the tracks in front of your property by which you entered this lane?

A. There are.

10 Q. And are those planks on each side of the railroad tracks, as well as between the tracks?

A. There are.

Q. Who put those planks there?

A. Well, the trolley company puts them there.

Q. For use in crossing the tracks into this lane?

A. Yes, sir.

Cross-examination.

20 By Mr. Sinnickson:

Q. Mr. Stiles, you were subpoenaed by both sides in this case?

A. Yes.

Q. The judge subpoenaed you and I subpoenaed you; is that right?

A. Yes, sir.

30 Q. The judge asked you if you had talked with me. You talked with the judge down there this morning in court, didn't you?

A. I did.

Q. You didn't consider you were doing anything wrong in talking with the judge, did you?

A. No.

Q. And you wouldn't consider it doing anything wrong in talking to me?

A. I would not.

Q. Now, Mr. Stiles, you have lived how many years in the Township of Lower Penn's Neck?

A. About twenty-eight years.

Q. How long have you lived there on this farm?

A. About eight years.

Q. You own the farm?

A. Yes, sir.

Q. And you are a member of the township committee of Lower Penn's Neck at the present? 10

A. I am.

Q. Chairman of the township committee?

A. I am.

Q. Succeeded Mr. Dixon, court crier here, when he moved into Salem?

A. Yes.

Q. How many entrances from the main road are there on your farm from these trolley tracks?

A. How many?

Q. Yes. 20

A. Well, there is four, that is, in the length of the farm.

Q. Your farm extends along this road for a quarter of a mile or more?

A. Yes, sir, half a mile.

Q. And you have an entrance to each one of your fields?

A. Yes.

Q. And you also have an entrance to your farmyard where you live? 30

A. I do.

Q. And this is the usual entrance, like any other farmer would have along a road that led into his farmyard, is it not?

A. Yes, sir.

Q. Now, at each one of these entrances on to your farm there is planking put by the trolley company so you can drive across the tracks, is there not?

A. Which one?

Q. At each one of them.

A. Well, yes, all but one. One they have taken up for something when they was repairing it a short time ago.

10 Q. Took it up to repair it?

A. Yes.

Q. But, as a matter of fact, the trolley, when they built their road there, whenever there was an entrance to a field or anything, they put planks along?

A. Yes.

Q. And they did that same thing in front of your farmyard?

A. They did.

20 Q. Now, what road is it that leads in front of your property? What do you call that road?

A. Penns Neck Road, I call it.

Q. That is the old main established line between Pennsgrove and Salem, is it not?

A. It is.

Q. And Pennsville? It is now a state road and has been for a number of years?

A. State Road.

Q. And the Board of chosen freeholders of the county have the jurisdiction over that road?

30 A. They do.

Q. What is that road built of?

A. Oyster shells.

Q. Now, along there in front of your property had there been any repairs made to that road just before the accident or at the time, about the time?

A. They were working on that road, putting shells

on. It was finished along my property there, just finished.

Q. In front of your property?

A. Yes.

Q. What kind of repairing had been done there? What had been done?

A. Well, hauling shells and hauling dirt and putting on those shells.

Q. Where were those shells put?

A. Well, they extended about a mile or mile and a half along that road, below my place and above it. 10

Q. But there near the scene of this accident where were they with reference to the road? In the middle of the road or on the sides or where?

A. Supposed to be in the middle of the road.

Q. They were in the middle of the road?

A. Yes.

Q. About how wide were they being put on?

A. Well, I suppose about twelve foot, probably.

Q. Was there room to drive between those shells and the trolley tracks? 20

A. There weren't.

Q. Was there room to drive on the far side—

A. There was.

Q. —of the shells, between that and the ditch or little drain there was on the other side of the road?

A. Yes, sir.

Q. And was that the beaten path, the path that the wagons and the automobiles drove along there at that time? 30

A. It was.

Q. Why didn't they drive in the center?

A. The shells wasn't broke down.

Q. You mean by that the raw shells were sticking up?

A. Raw shells just standing up there.

Q. About how thick in front of your place were those shells?

A. Anywheres from twelve to fifteen inches.

Q. Mr. Stiles, you stated in answer to Judge Westcott's question that you didn't hear any signal.

A. I did not.

Q. Do you mean by that no signal was given by the trolley company?

10 A. I didn't hear any signal given.

Q. No, but do you mean to say that no signal was given? Would you say whether or not any signal was given?

A. I would say not. I didn't hear it.

Q. The trolley goes by there very frequently?

A. It does.

Q. How often?

A. About every half hour.

20 Q. And do you notice whether they give signals?

A. I do not, not half the time.

Q. Don't pay any attention, you mean?

A. No, I do not.

Q. So you wouldn't say no signal was given, would you?

A. No, I would not.

Q. You don't pretend to say that? You don't know, do you?

A. I don't know anything about that.

30 Q. You were paying no attention?

A. No, no attention at all. I don't know anything about that, whether they did or not.

Q. You are so accustomed to hearing them go by that you don't notice that?

A. Yes, sir, that is right.

Q. Mr. Stiles, just where were you in your yard at the time of this accident?

A. Well, I was down by the barnyard fence, about seventy or eighty yards away, right in direct line of the land.

Q. And you were looking right out your entrance, were you not?

A. I was.

Q. Won't you, in your own way, just tell the gentlemen of the jury what you saw and what caused this accident?

A. Well, that morning I was working with a team, 10  
two horse wagon, and I came in out of the field and drove in the yard direct to that lane——

Mr. John W. Wescott: I object to this question because it gives the witness an opportunity to make a speech to the jury. It calls for his judgment, and the question is too general.

(Question repeated.)

20

Mr. Sinnickson: I will withdraw the part, "What caused the accident."

The Court: Yes. You are at liberty to tell the jury exactly what you saw, without placing any judgment on it.

Q. You need not give your judgment, but just exactly what you saw, describe it from beginning to end, Mr. Stiles.

30

A. I saw the trolley car turn at the entrance into my yard.

Q. Not the trolley?

A. The automobile, and before I took my eyes off of it, in a second or two the trolley car struck the

automobile and carried it down the track out of my sight, as I told you, behind those trees. That is all I did see.

Q. Which way was the automobile going?

A. Coming Salem way.

Q. That is, coming the same way the trolley car was?

A. The same way the trolley car.

Q. And when you first saw the automobile what  
10 did you notice?

A. I noticed—when I first saw it I noticed that it was going pretty fast and made a short turn to come into my lane. Those shells were up there high.

Q. Did it give a jump when it struck those shells?

A. Right up that way. Had to.

The Court: How far was the trolley car away?

A. I couldn't see the trolley car at that time, but  
20 I saw it a second afterwards.

Q. What part of the road was the automobile driving on?

A. On the river side of the road, river side of the shells.

Q. That is where the beaten track was?

A. That is where the beaten track was.

Q. That is away from the trolley track?

A. Yes.

Q. You saw it making a turn into your lane?

30 A. I did.

Q. Into your yard. Was there time to stop the trolley car without hitting the automobile?

Mr. John W. Wescott: I object. He cannot pass judgment on that. He did not see the trolley car and does not know anything about it.

Mr. Sinnickson: He saw it strike the automobile.

The Court: I think that would be for the jury. When did you first see the trolley car? You say you saw the automobile turn to come into your place. When did you see the trolley car?

A. I saw it a second or so afterwards pick the car up.

10

By the Court:

Q. How close was it to the car?

A. It wasn't ten feet of the automobile.

Q. A second or two after you saw the automobile the trolley car was within ten feet?

A. It must have been because——

Mr. John W. Wescott: I object to his reasons.

20

Q. Tell us the facts now.

A. My house hides the view only about ten feet until I could see that car.

By Mr. Sinnickson:

Q. If I understand it, from where you were standing back in your yard you can't see up the trolley tracks more than about ten feet?

A. Ten feet down that lane.

Q. And that is the reason you couldn't see the trolley car?

30

A. It was.

Q. Your house hid it?

A. It did.

Q. And as this automobile turned across the

tracks, within a second, you say the car was on it?

A. It was.

Mr. John W. Wescott: No, he didn't say a second.

A. Second or two, I said.

Q. Then we will call it two seconds. Within two seconds the car was on it; is that right?

10 A. That is right.

Q. Do you know whether or not the curtains were on the automobile?

A. They were.

Q. Side curtains?

A. Side curtains.

Q. Do you know whether or not Mr. Hann gave any signals as he was going to turn across in front of that car?

A. I do not.

20 Q. You didn't see any?

A. I did not.

The Court: Did you hear any?

A. I did not.

Q. You didn't hear the automobile horn blow?

A. I did not.

Q. Or anything?

A. No, I did not.

Re-direct examination.

30

By Mr. John W. Wescott:

Q. These shells you speak of, Mr. Stiles, were shells that are put on the road for the purpose of making what we call a shell road?

A. Yes, sir.

Q. And those shells, I suppose, have been cut up more or less, haven't they?

A. They haven't. They was in a rough state.

Q. They have since? They don't stand there just as they did?

A. Oh, no.

Q. It is a smooth road?

A. Now.

By the Court:

10

Q. How high do you say those shells were?

A. Must have been from twelve to fifteen inches, I suppose, when they were first put on.

Q. And they had been on some time, had they?

A. Just putting them on.

Q. They were in the center of the road?

A. They were.

By Mr. John W. Wescott:

20

Q. There was no way for Mr. Hann to get into your place except to drive over those shells?

A. No, sir, there weren't.

---

JOHN CURTIS, a witness produced on behalf of the plaintiff, being first duly sworn and examined, testified as follows:

Direct examination.

30

By Mr. John W. Wescott:

Q. Mr. Curtis, where do you live?

A. Lower Penn's Neck.

Q. You remember this accident, do you?

A. Yes, sir, I remember something of it.

Q. What were you doing at the time?

A. I was working on the road.

Q. On what road?

A. The shell road, above Mr. Stiles'.

Q. About what time of the day did this accident occur?

10 A. It was in the morning, I judge about somewhere after eight o'clock. I had my first load on.

Q. Somewhere after eight o'clock?

A. Yes, sir.

Q. Do you remember the crossing and the wagon-way that goes into Mr. Stiles' farm?

A. Yes, sir, I know where it is at.

Q. How far were you working from that?

A. I was two hundred yards or more above that.

Q. Did you see the accident?

20 A. No, sir, I didn't see the accident as an eye-witness. I was walking behind my wagon.

Q. Did you see the trolley car?

A. I seen the trolley car. It passed me.

Q. As it was approaching this way that went into Mr. Stiles' house?

A. Not right there, sir. I didn't see it when it got down that far, but the trolley car passed me.

Q. You saw it two hundred yards away, when it passed you?

A. Yes, sir.

30 Q. You were driving the same way the trolley car was?

A. Same way.

Q. How fast was the trolley car going?

A. Well, I couldn't say. It was going a pretty good gait, because it was down grade all the way along there. I couldn't say how fast it was going.

Q. Did it give any signal just before it struck the trolley car?

A. I don't know about that, sir. I couldn't say it didn't and couldn't say it did.

Q. Why do you put it that way? Did you hear anything?

A. Because I wasn't paying attention.

Q. Did you hear anything?

A. No, sir.

Q. You hear whistles sometimes, when you are not giving any attention to them, don't you? 10

A. Well, I hear whistles sometimes, but I wasn't paying any attention to that car.

Q. You hear them sometimes when you are not paying attention?

A. Probably so.

Q. Were you subpoenaed by the railroad company to come here?

A. Not as I know of, sir.

Q. Well, did you hear the crash? 20

A. Yes, sir, I heard that.

Q. Well, the signals, the bell on one of these trolley cars, is a little louder than a crash, isn't it?

A. I don't think it could have been louder than that.

Q. Gives a signal by a whistle, doesn't it?

A. Yes, sir.

Q. And it is a little louder than a crash ordinarily, isn't it? 30

A. I suppose so. You can hear it further.

Q. If you could hear the crash, why couldn't you hear the whistle?

A. Well, I should have, if it blowed. I don't say it blowed and don't say it didn't.

Q. But you heard the crash?

A. Yes, sir.

Q. And you were not paying any attention to that, were you?

A. After I heard it, naturally, I listened.

Q. If the whistle had blown, couldn't you have heard it after it blew?

A. Well, I suppose I could, but I wouldn't say it blowed and wouldn't say it didn't. I am not certain.

10 Q. Who told you to say that?

A. No one at all.

Q. Well, don't you know you didn't hear the whistle?

A. I am on my oath and I want to——

Q. Yes. Now how far did that trolley car go after it struck this automobile?

A. Well, sir, I didn't go down at that time.

Q. Kept away from there, did you?

A. I kept away from that end at that present time.

20 Q. Didn't you go there at all?

A. No, sir.

Q. Why not?

A. Well, I didn't think it concerned me at that time, because I didn't know who it were.

Q. Did you see the automobile at all?

A. When?

Q. At any time.

A. The automobile passed me.

Q. And the trolley passed you?

30 A. Yes, sir.

Q. Was the automobile ahead of the car?

A. Yes, sir, it was ahead when it passed me.

Q. About how much was it ahead of you when it passed you?

A. I don't know, sir, because I was walking behind my wagon and I spoke to him when he passed me.

Q. Spoke to whom?

A. Mr. Hann.

Q. You knew him, did you?

A. Not personally, but I knew him, sir. I wasn't personally acquainted with him, but I knew him.

Q. And you spoke to him?

A. Yes, sir.

Q. As one gentlemen would speak to another?

A. Why, sure, sir. Anybody will speak to each other when they are passing. 10

Cross-examination.

By Mr. Sinnickson:

Q. Was Mr. Hann going pretty fast?

A. Well, I don't suppose he was going over thirty miles. He couldn't. I don't think he could make that much.

Q. You say— 20

A. He was going ordinary, the same as the rest of them go up and down the road.

A. They go awfully fast up and down that road?

A. Some, yes, sir.

Q. And Mr. Hann, you don't think was going over thirty miles an hour?

A. He wasn't going that.

Q. I understod you to say he wasn't going over thirty. 30

Q. He wasn't going thirty.

Q. Was he going about the speed the trolley car was going?

A. I wouldn't say that.

By the Court:

Q. Were they both in the same locality?

A. No, the trolley car was behind.

Q. How far was the trolley behind?

A. I couldn't say that, because I was walking behind my wagon and wasn't paying attention only to what I was doing at the time. I was hauling dirt to put on the shells.

10

By Mr. Sinnickson:

Q. And when you say in answer to Judge Westcott's question that you don't know whether it blew a signal or not, you mean you heard them so often you didn't pay any attention? You were not paying any attention?

A. I couldn't say it blowed and I couldn't say it didn't blow. I am on my oath and couldn't say  
20 either one, because I don't know.

Q. And you don't know how fast Mr. Hann was going?

A. No, sir, I couldn't say.

Q. He was driving the same way the trolley car was going?

A. Both going the same way.

Q. And he was driving over on the part of the road off of the shells?

A. Where everybody else drives.

30 Q. On the river side?

A. Yes.

Q. And you don't know how far he was ahead of the trolley car?

A. No, I couldn't say that.

Q. You haven't talked with me about this case at all, have you?

A. No, indeed.

Q. I have never seen you before until you got on the stand here?

A. No. You are all strangers to me, sir.

Re-direct examination.

By Mr. John W. Wescott:

Q. Did anybody talk to you about this case? 10

A. Not about the case, no, sir. They have a long while ago. I have been spoken to about it. Not any more.

Q. Do you know any of the agents of this company?

A. No, sir, I don't know a one.

Q. Didn't one of them talk to you right here in the court room about it?

A. Not an agent, if I knowed it.

Q. Was he talking to you about the case, who- 20  
ever he was?

A. The owners of the road?

Q. No, an agent of the company.

A. I don't know nothing at all.

Q. Was there a man talking to you about it right here?

A. I was talking to a couple of men right outside of the door.

Q. Did they tell you to say that you didn't know whether the whistle blew or not? 30

A. No, sir.

Q. You were on your oath and couldn't say?

A. No, sir.

Q. It might have blown and it might not.

A. No, sir, nobody ain't told me that, sir.

Re-cross examination.

By Mr. Sinnickson:

Q. Who were these men that talked to you?

A. Well, now, sir, I don't know.

Q. Was this the man?

A. That man was talking to me, but I don't know who he was.

10 Q. Is he the agent of the trolley company or is he Judge Wescott's son?

A. I don't know him, sir. The conversation that we had wasn't private. The conversation that we had there was that that gentleman spoke to me and asked me was my name Curtis, so the conversation wasn't private.

By Mr. John W. Wescott:

20 Q. Who else was it that talked to you?

A. Who else was it?

Q. Yes.

A. Well, I spoke to another man out there, but it wasn't anything that concerned this case. I was sprinkling dirt on the shells. They said we was hauling shells, but we wasn't. We was hauling dirt to put on the shells.

30

JAMES McCULLOUGH, a witness produced on behalf of the defendant, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. John W. Wescott:

Q. Mr. McCullough, where do you live?

A. Upper Penn's Neck.

10

Q. What is your business, please?

A. Powder worker.

Q. Do you remember this accident in which Mr. Hann was killed on the twenty-seventh of November last?

A. Not on the twenty-second. I don't remember, not on the twenty-second.

Q. Twenty-third?

A. Yes, sir, I do.

Q. Were you in the trolley car?

20

A. Yes, sir.

Q. About where were you sitting in the trolley car?

A. Second person from the door.

Q. On which side?

A. On the upper end. On the right hand side of the trolley car.

By Mr. Sinnickson:

30

Q. Which end of the car?

A. The upper end. Second person from the motor-man.

Q. From the front of the car?

A. Yes, sir, from the front of the car, properly speaking.

By Mr. Wescott:

Q. Just before the collision between the trolley and the motor car, did you see the motorman?

A. Yes, sir.

Q. What was he doing?

A. He was apparently looking at something on the back part or the far side of the house that we was then approaching.

10 Q. How was his head turned?

A. A little to the left.

Q. A little to the left?

A. Yes, sir.

Q. Did the car give any signals by whistle before the collision?

A. I did not hear any.

Q. Did you hear the collision?

A. Yes, sir.

20 Q. Was the car in which you were seated going rapidly or slowly?

A. Well, it was going at the usual rate of speed that we travel on coming down there.

Q. Was it down grade?

A. Yes, sir, somewhat.

Q. Have you any idea how far the car went after it struck the automobile?

A. I would say, as near as I could guess at it, about fifty or sixty, about fifty feet, as near as I could come at it.

30 Q. Did you see what happened to the automobile?

A. It was pretty badly tore up.

Q. Did you see it strike a pole?

A. Yes, sir.

Q. And about how far was that pole, by your best judgment, from the crossing the automobile was on?

A. Well, about fifteen or eighteen feet, I should judge.

Q. Did you notice whether or not the blow loosened the pole?

A. I did not.

Q. You didn't notice that?

A. No, sir.

Cross-examination.

10

By Mr. Sinnickson:

Q. Mr. McCullough, you ride up and down in the trolleys every day to your work?

A. No, sir.

Q. Frequently?

A. Frequently, yes, sir.

Q. Night and day, both, or are you always on day work?

A. Oh, no. I don't live in Salem and I don't travel every day in the trolley.

Q. But you do frequently travel on the trolley?

A. Frequently, yes, sir.

Q. And between Salem and Pennsgrove, where you travel, there are many entrances to farmyards and fields, are there not?

A. There is, yes, sir.

Q. Do you or do you not always notice when they blow and when they don't blow the whistle?

A. Would you allow me to give some reference? 30

Q. No, I don't care about the reference. I don't mean what happened since this, but before that had you always noticed?

A. Not always, no.

Q. There were times when you were not paying any attention?

A. Not very often.

Q. On this particular occasion you don't know whether they blew or whether they didn't blow a whistle, do you, a trolley whistle?

A. I swore that I didn't hear.

Q. I say that is all you know, isn't it?

A. I didn't hear it blow.

Q. The trolley makes considerable noise?

A. Yes, sir.

10 Q. You were not paying any attention?

A. Yes, sir.

Q. Paying attention to what?

A. Paying attention to the motorman and the trolley car, the way it was running.

By the Court:

Q. Did you see the accident?

A. I did, sir.

20 Q. How far was the trolley car away when Mr. Hann turned in to go into Mr. Stiles' place?

A. Well, I didn't just see the automobile turn, but I seen it as it started, started to dart across the track.

Q. It darted across, did it?

A. Yes, started across the track.

Q. How was it going, fast or slow?

A. It was going at a pretty good rate of speed.

Q. Across the track?

30 A. Well, I don't suppose it was traveling as fast, because those oyster shells apparently had checked its headway.

Q. And how far was the trolley car away?

A. About ten feet, as near as I could tell you.

Q. When it was in that position?

A. Yes, sir.

PLAINTIFF RESTS.

**MOTION TO NON-SUIT.**

Mr. Gaskill: If your Honor please, we move on the plaintiff's case for a non-suit on the ground that this accident was the result of the plaintiff's decedent's own negligence.

(Motion denied.) 10

(Exception noted for defendant.)

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Recess taken until 1.10 P. M.

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AFTERNOON SESSION, 1.10 P. M.

20

Mr. John W. Wescott: If your Honor please, I suffer the misfortune not to remember some things I ought to remember and I omitted to ask one of our witnesses a vital question.

The Court: The case may be reopened and you may examine the witness further.

---

JAMES McCULLOUGH, recalled, but did not respond. 30

Mr. Sinnickson: I am perfectly willing you shall call him when he comes in.

The Court: It has been agreed between counsel that the plaintiff's case may be reopened for the purpose of further examination of a witness.

## DEFENDANT'S TESTIMONY.

Mr. Sinnickson: I want to prove the map.

The Court: Is that necessary?

Mr. John W. Wescott: No.

10

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LEWIS STILES, recalled.

Direct examination.

By Mr. Sinnickson:

Q. Mr. Stiles, on the north side of your house, the  
20 north side of this entrance to your yard, where this  
accident took place, have you an apple orchard?

A. I have.

Q. And that apple orchard begins how close to  
your yard, about?

A. Why, about—from the entrance to go into my  
yard?

Q. Yes, from the entrance where the accident took  
place?

A. I suppose that is about fifty feet to where the  
30 orchard commences.

Q. Fifty feet is where the first trees are?

A. Yes.

Q. How far up toward Pennsville does your or-  
chard extend?

A. It runs the length of five trees about fifteen feet  
apart.

The Court: In the direction of Pennsville?

Q. In the direction of Pennsville?

A. Yes.

Q. That is eighty feet?

A. Yes.

Q. Then from the entrance to where it commences, being about fifty and eighty, would be one hundred and thirty feet from your entrance to the last apple tree towards Pennsville?

10

A. Yes, sir.

Q. What is there beyond the apple orchard on your farm?

A. Open field there. It is in tomatoes now.

Q. At that time what was it in, last year, the twenty-third of November?

A. White potatoes; round potatoes.

Q. That is, it had been?

A. Yes, it had been round potatoes.

Q. There wasn't anything there in November?

20

A. No, not at that time.

Q. Mr. Stiles, when this accident occurred and you saw this automobile make this turn to come into your place, was there anything down the road towards Salem in the road, or anybody?

A. Nothing that I saw.

Q. Any children there?

A. Yes, there was children. They were right direct of the lane, just a little to the right of the lane. Five or six children just to the right of the lane, going to school; little children.

30

Q. When you say to the right of the lane—

A. I mean to the right coming out of my house.

Q. To the right of that—

A. Would be towards Pennsville.

Q. There was a bunch of those children?

A. There was.

Q. You knew them?

A. Yes.

Q. How close were they to your entrance?

A. They were between the trolley track and the shells. They seemed to be getting between the two, you know.

Q. They were between the trolley track and the  
10 shells?

A. Right close to the trolley, of course.

Q. They were close to the trolley?

A. Yes.

Q. And the automobile was on the other side of the children?

A. Yes, that is right.

Cross-examination.

20 By Mr. John W. Wescott:

Q. How much space, about, was there, Mr. Stiles, between the rail further from your house and the oyster shells?

A. The children?

Q. No. Space.

A. Space?

Q. Yes.

30 A. Well, them children was on the run, you know.

By the Court:

Q. What space between the tracks?

A. And my house?

Q. What is the space between the tracks and where the oysters shells are?

A. Well, that is about six foot, I suppose. Not over six foot.

By Mr. John W. Wescott:

Q. That is, the oyster shells are within six feet of the track?

A. Yes, sir, somewheres about, I should think.

By the Court:

Q. How wide is the road? 10

A. Well, I suppose it is a three rod road.

Mr. Sinnickson: Do you mean from fence line to fence line, Judge?

The Court: The used part, the paved part of the road is how wide?

The Witness: It is close to two rods.

Mr. Sinnickson: I suppose the map will show exactly. I think the map is drawn to a scale. 20

The Court: Let us find out what that is.

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HARRY H. SKINNER, a witness produced on behalf of the defendant, being first duly sworn and examined, testified as follows:

Direct examination. 30

By Mr. Sinnickson:

Q. In the first place, what is the fence line of the entire road?

A. Forty-nine and one-half feet.

Q. The used part of the road between—where the driveway is?

A. That is supposed to be thirty feet. Now, on that side you have got the trolley tracks,, and that is taken off of that side, and the width of the oyster shell is twenty-two feet that they use.

The Court: Does that cover the whole of the road?

A. That covers the whole of the road that is used. The trolley track on one side is about eight feet  
10 more.

By Mr. Gaskill:

Q. That is to say, it is twenty-two feet from the trolley tracks to the edge of the used road toward the river?

A. Yes.

No cross-examination.

20

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WARREN TURPIN, a witness produced on behalf of the defendant, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Sinnickson:

30

Q. Warren, where do you live?

A. Quinton.

Q. Where did you live on the twenty-third day of November last?

A. Quinton.

Q. You lived at Quinton at that time?

A. Yes, sir.

Q. Where were you at that time employed?

A. DuPont guard.

Q. You were one of the guardsmen at the DuPont Powder Plant?

A. Yes, sir.

Q. Your home being at Quinton, it was necessary for you to travel back and forth from your home to the plant?

A. Yes, sir, frequently. 10

Q. On this particular day, the day that this accident took place, and at the time of the accident, were you riding in that trolley car?

A. I was. I was on the same car that the accident occurred. Was coming home.

Q. Coming home from the plant?

A. Yes, sir.

Q. Whereabouts in the car were you?

A. I sat on the left side coming down, and the conductor stood in his little box on the left side also. 20

Q. Then you were facing the road?

A. I was.

Q. Did you or did you not see the automobile in which Mr. Hann was riding before it was struck?

A. I did.

Q. Now, will you in your own way tell the Court and jury just what you saw?

A. To the best of my knowledge, yes. 30

Q. You have never talked with me about this matter, have you?

A. I have not; to no one.

Q. I have never seen you before?

A. The only time I have ever talked about it is the time I was subpoenaed at Pennsville. I told what I knew about it at Pennsville at that time.

Q. That is the coroner's inquest?

A. Yes, sir. This is two days I have lost on account of it. Well, that morning I was coming down on the trolley car, I saw this Ford—of course I didn't know who was into it—in fact, I didn't know the man after it happened, but I have found out since it was Mr. Hann, and I have never forgot it, and coming down I didn't pay no more attention to that Ford than I would any other, because we were  
10 right side by side to that Ford at one time and the Ford run on down ahead of us, and he didn't run away from us fast or anything like that. He just took his time and moseyed on by us, which was side by side, and when we got down to this man's place, this farm house, whoever it is—I don't know that man—when he got right there he sheered right  
20 across the road, and I was looking right at the motor-man at the time it happened, and he says, "Oh, look there," that was all he said, and as soon as he said that,—he was sitting on a stool—he threwed the emergency on and he took the power off, and as soon as he hit the Ford the wheels locked on the trolley car and she slid, and the boy done all he could, and I said right then and there, I said, "You have got nerve to stick to the trolley car, boy, the way you did." I said, "If it had been me I would  
30 have been in back of it," because he could have got his throat cut just as easy as not from the glass of the trolley car where he sit, and he never said a word. He was the first one got out of the car and I was right back of him. He said, "I expect it is full of people," that was all was said, and when he saw the man he recognized him but I didn't. In fact, I didn't know who he was and didn't know until after this thing happened, and that is all I know, and as far as I have heard some of the witnesses say here—

Q. Never mind what the witnesses have said, Mr. Turpin. Did you or did you not hear any signal given?

A. I did.

Q. What signal?

A. From the trolley car, the whistle.

Q. Where was the whistle blown?

A. It was blown, I should judge, to the best of my knowledge I should judge a hundred yards from that crossing. In fact, that gentlemen—I have always made the remark he was more like a kid playing with the whistle. 10

Q. Never mind. Mr. Turpin, you saw this automobile, then, when it was driving along parallel with the car?

A. I did.

Q. And I understood you to say he was going a little faster than the car?

A. He did. He went on ahead of the car, I should say probably fifteen, maybe thirty foot at the furthest. I didn't measure it. 20

Q. Did you see him when he turned in front of the car?

A. I did.

Q. Did he give any signal he was going to turn?

A. He did not.

Q. Did he hold his hand out at the side?

A. He did not. His curtain was down and fastened. 30

Q. Was the motorman at that time paying attention to his business?

A. He certainly was or he wouldn't have hollered, "Oh, look there."

Q. You heard him halloa that before he struck?

A. Before he struck. As soon as the man started across.

Q. And you say that he threw off his power and threw on his emergency?

A. He certainly did, and as soon as the trolley car hit the Ford his wheels locked then. It kind of give a jar, you know, and when she fetched up the wheels locked on to him and slid.

Cross-examination.

10 By Mr. John W. Wescott:

Q. Were you saying anything to the motorman?

A. No, sir.

Q. Nor he to you?

A. No, sir.

Q. And you were how far from him?

A. I said a few minutes ago I set on the seat——

Q. You were how far from him?

A. I didn't measure.

20 Q. Well, judge.

A. If you will let me explain—I won't judge, because I don't know.

Q. Judge.

A. I don't judge. I don't know.

Q. Were you ten feet from him?

A. If you will allow me to measure one of those cars, I will tell you exactly where I was.

Q. Were you ten feet from him?

A. I haven't the slightest idea.

30

The Court: How many seats were you away from him?

A. I sat right alongside of where the conductor stands in the aisle there. I was right up alongside of him like I am here.

Q. How far from the motorman were you?

A. I haven't the slightest idea how far that is.

Q. You don't know whether it is five feet, ten feet or twenty?

A. You can call it as many feet as you are a mind to, but if you will allow me to measure the trolley car I will tell you exactly, and I won't say unless I know exactly.

Q. You say the man in the auto was ahead of the trolley car? 10

A. When he started across, I did.

Q. He was ahead of the trolley car?

A. When he started across, I did.

Q. Wasn't he ahead of the trolley car before he started across?

A. He certainly must have been or he couldn't have started across ahead of it.

Q. About how far were you from the crossing when you noticed the automobile was ahead of the trolley car? 20

A. About how far from the crossing?

Q. Yes.

A. I couldn't say exactly how far, but I should suppose maybe a hundred and fifty feet or a hundred and fifty yards, rather, not feet.

Q. Then one hundred and fifty yards from the crossing the automobile was ahead of the trolley car?

A. How is that?

Q. One hundred and fifty yards from the crossing the automobile was ahead of the trolley car? 30

A. Yes, at that time.

Q. Now, wait. You have answered the question. Then you kept on going and you heard the motorman say, "Oh, look at that"?

A. I heard the motorman say, "Oh, look at that," when the man started to cross in front of him.

Q. Wait. Don't talk. Just answer questions. You went on and you heard the motorman say, "Oh, look at that," didn't you?

A. Didn't hear him say, "Oh, look at that."

Q. Well, what did he say?

A. I said I heard him say, "Oh, look there."

Q. And then he immediately put on the brake?

A. He immediately put on the brake?

Q. Didn't he?

10 A. He did.

Q. And the collision immediately followed?

A. Certainly must have.

By the Court:

Q. You saw Mr. Hann when he started to turn into Mr. Stiles' place?

A. Yes, sir.

Q. He was some distance ahead?

20 A. I should say when he started to turn in, Judge, when he started to come across I should judge he was around from fifteen or twenty-five foot ahead of the trolley car when he started to turn in, and when I first noticed this Ford alongside of the trolley car, we was about at least a hundred and fifty yards from this crossing that goes into Mr. Stiles' place there, but when he started to come across in front, he was only about, well, twenty-five  
30 foot ahead of the car, anyhow, when he started to cross.

Q. Didn't I understand you to say that your car was about one hundred and fifty yards away from the crossing when he started to go over?

A. No.

Q. What is that?

A. No. That is when I first noticed this Ford. I thought it was a powder shift coming down.

Q. Now, how far do you say he was ahead of the trolley car when he started to go across?

A. I should say about twenty-five foot. Not over that.

Q. You are certain about that?

A. No, I am certain.

Q. As nearly as you can tell?

A. As nearly as I can judge, I should say it was about fifteen to twenty-five foot. Anywheres from fifteen when he started to cut across in front of us.

Q. Did the motorman put on the brakes to stop?

A. As soon as that man started to cross he tried to check his car. He did.

Q. You know he did that?

A. Yes, sir. To be a positive fact.

20

ELIZA W. WRIGHT, a witness produced on behalf of the defendant, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Sinnickson:

Q. Mrs. Wright, you live in Lower Penns Neck?

A. Yes.

Q. And you are the wife of Moses Wright?

A. Yes.

Q. You have lived there many years?

A. Twenty-seven.

Q. You know Mrs. Hann?

A. Yes, I do.

30

Q. Friend of yours?

A. Yes.

Q. Were you on the car that struck Mr. Hann?

A. I was.

Q. You occasionally ride on the cars?

A. I did twice a week at that time.

Q. Did you see the automobile before it was struck that day?

A. No, I did not.

10 Q. You were not paying any attention to the car?

A. I had my back to the car.

Q. You are acquainted with Mr. Stiles' place there?

A. Yes.

Q. Do you know whether or not any signal was given by the motorman before he arrived at that crossing that goes into Mr. Stiles'?

A. He pulled the whistle just before we got to Mr. Stiles' apple orchard.

20 Q. You didn't see the accident?

A. No.

Q. Did you see the motorman attempt to put on the brakes or put on the brakes?

A. I did.

Q. Did he do it quickly?

A. Yes.

Q. As quickly as he could?

A. Yes.

30 Q. But the car could not stop?

A. No sooner than it did.

Cross-examination.

By Mr. John W. Wescott:

Q. Did the collision occur immediately after the brakes were put on?

- A. Well, pretty soon.  
Q. Well, how long afterward?  
A. Well, that I don't just know, but very quick.  
Q. Well, about how quick?  
A. About how long?  
Q. Yes. About how quick?  
A. Well, I can't just say, for I didn't time it, but in a very few minutes.  
Q. A few minutes?  
A. It might not have been a minute. I don't know. 10

By Mr. Sinnickson:

- Q. Both occurred very near together, didn't they?  
A. Yes, in a very short time.

The Court: She didn't time it.

The Witness: I didn't time it, no.

20

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FURTHER TESTIMONY OF PLAINTIFF.

JAMES McCULLOUGH, recalled.

Direct examination.

By Mr. Wescott:

Q. Mr. McCullough, I forgot to ask you about the putting on of the brake, if you noticed it. Did you notice the motorman put on the brake? 30

A. I did, yes, sir.

Q. When did he put that on?

A. Almost the same instant he struck the car.

No cross-examination.

## FURTHER TESTIMONY OF DEFENDANT.

ELIZA S. BANGER, a witness produced on behalf of the defendant, being first duly sworn and examined, testified as follows:

Direct examination.

10 By Mr. Sinnickson:

Q. Mrs. Banger, you live in Penns Neck?

A. Pennsville.

Q. Lower Penns Neck Township?

A. I suppose so.

Q. You are a married lady?

A. Yes, sir.

Q. And you were riding on the trolley car that struck Mr. Hann?

20 A. I was.

Q. Where were you sitting, Mrs. Banger?

A. Possibly four or five feet from the front of the car, fourth or fifth passenger from the front of the car on the right hand side.

Q. Are these big cars?

A. Well, not big to what I have been used to, but they are a fair good sized car.

Q. They are a large, heavy trolley car?

30 A. Yes, sir.

Q. Not like the little cars that run here in Salem?

A. No.

Q. They are a long heavy car?

A. Yes.

Q. You were sitting with your back to the center of the road?

A. I was.

Q. Did you or did you not see Mr. Hann's automobile before it was struck?

A. No, not until it was right in front of the car.

Q. Did you or did you not hear any signal?

A. I did.

Q. What signal did you hear?

A. The whistle.

Q. What?

A. The whistle on the car.

Q. You heard the whistle on the car for that 10 crossing?

A. I did. I didn't think it was for the crossing. I thought it was for the school children.

Q. There was a bunch of school children?

A. Yes.

Q. You heard Mr. Stiles tell about those school children here awhile ago?

A. Yes.

Q. Was that the bunch of school children you meant? 20

A. Yes.

Q. You heard the signal given and you thought it was for the school children?

A. Yes, sir.

Q. But you do know a signal was given?

A. Yes, sir.

Q. Did you see Mr. Hann when he turned in front of the tracks?

A. No.

Q. You were not looking that way? 30

A. I wasn't. I was sitting with my back to that.

Q. When you saw this thing in front, what did you see the motorman do?

A. The first thing that attracted my attention was the quick motion of the motorman's arms to apply the brakes, and then I saw immediately the auto-

mobile in front of the trolley, and I think that the trolley hit the automobile on the front corner. I think the left hand wheel was knocked off. I don't think it was quite half way back.

Cross-examination.

By Mr. John W. Wescott:

10

Q. What attracted your attention was the quick motion of the motorman's arms?

A. The quick motion of the motorman's arms.

Q. Putting on the brakes?

A. Putting on the brakes.

Q. And that was followed immediately by the collision?

A. The collision followed right afterwards.

20

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FRANK MORRIS, a witness produced on behalf of the defendant, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Sinnickson:

30

Q. Frank, where do you live?

A. Salem.

Q. How long have you lived here?

A. About nine years.

Q. What is your business?

A. Work at the powder works.

Q. At Pennsgrove?

A. Yes, sir. Number two.

Q. In number two plant?

A. Yes, sir.

Q. Were you working at the powder works at the time of this accident last fall?

A. Yes, sir.

Q. Were you on this trolley car that struck Mr. Hann?

A. Yes, I was coming home. I work from twelve to eight and come home on that trolley.

Q. Where were you sitting in the car, Mr. Morris?

A. About sixth passenger from the front door on the right side.

Q. You were on the right side?

A. Yes.

Q. Did you see Mr. Hann's car, that is the automobile before it was struck?

A. Well, I seen it about—it ain't so far from the trolley, before the trolley hit him, about nine or ten yards, when he cut across the road.

Q. He cut across the road in front of the trolley?

A. In front of the trolley. That is all I seen it.

Q. Was there time for the trolley to stop?

Mr. John W. Wescott: I object.

A. The trolley was—the motorman—

Mr. Sinnickson: I withdraw that question.

Q. What happened when he turned across in front of the road?

A. The motorman just turned his power off and tried to stop, but at that time the wheels were sliding, I guess. He took the power off before he hit the car.

Q. He had the power turned off and was putting on the brakes, you say?

A. Yes.

Q. Do you or do you not remember whether you heard any signal given before you got there?

A. Didn't heard that. I can't tell.

Q. You don't remember?

A. I don't remember that.

10 Cross-examination.

By Mr. Wescott:

Q. You say that this man in driving the automobile was nine or ten yards ahead of the car when he started to cross?

A. No. That is all I seen, when he turned by the trolley car, about nine or ten yards.

Q. I understood you to say he was nine or ten yards ahead of the car when he started to cross?

A. No, when he cut across, about nine or ten yards in front of the car.

Q. Was he on the track nine or ten yards ahead of the car?

A. Well, about that. That is what I seen. I guess maybe it wouldn't be that much, but it was pretty close to the trolley when he cut across.

Q. When he started across?

A. Yes. About nine or ten yards.

30

By Mr. John W. Wescott:

Q. Do you recollect that there were some oyster shells there between the—did you see some oyster shells there between the trolley car and the motor car?

A. Well, that is all I seen, a lot of oysters.

Q. You saw some oyster shells there, did you?

A. Yes, on the road.

Q. When the man in the automobile was driving along ten or fifteen yards ahead of the car—

A. It ain't that much.

Q. When he undertook to cut across about nine or ten yards?

A. Nine or ten yards.

Q. When he undertook to cut across where was he, on which side of these oyster shells?

A. Oyster shells on the right side.

Q. The oyster shells were between him and the car when he undertook to cut across?

A. Yes.

Q. Nine or ten yards ahead of the car? That is correct, is it?

A. Yes, that is what I seen.

20

FRANK HOFFMAN, a witness produced on behalf of the defendant, being first duly sworn and examined, testified as follows:

Mr. Gaskill: Judge Wescott admits that this is a photograph of the entrance, made only a few days ago, showing the entrance to Stiles' place.

(Photograph marked Exhibit D1.)

Direct examination.

30

By Mr. Sinnickson:

Q. You are in the employ of the Salem and Pennsgrove Traction Company?

A. I am.

Q. What is your business?

A. Conductor.

Q. How long have you been a conductor on this road?

A. Considerable over a year. Year last March, I should judge, something like that. I don't know just the exact date.

Q. How long had you been a conductor at the time this accident took place?

10 A. March until November.

Q. This car that you were conductor of—you were conductor of the car that struck Mr. Hann, were you not?

A. I was.

Q. That morning?

A. I was.

Q. Is that car anything like this one that just went up the street?

A. Hardly.

20 Q. It is a very different make, isn't it?

A. Oh, yes.

Q. About twice as large?

A. Probably a little more.

Q. How many people can get in one of those cars?

A. I don't know. I have had a hundred and sixteen in one and then didn't have it full.

Q. You have rung up more than one hundred and sixteen fares, haven't you?

30 A. One hundred and sixteen was the highest that I have had on the car.

Q. Now, Mr. Hoffman, who was the motorman on that car that morning?

A. James Rickett.

Q. Was he an experienced motorman?

A. He was.

Q. Will you kindly tell the gentlemen of the jury whether or not you saw that automobile that Mr. Hann was riding in before it was struck?

A. I was standing in the conductor box in the end of the car—

Mr. John W. Wescott: Answer the question.

(Question withdrawn.)

10

Q. Just tell in your own way where you were standing about the time of this accident and what you saw.

A. That is what I started to tell.

Q. You were not answering just the question I asked you, is all.

A. I was standing in the corner of the car in the conductor's box, just a few feet, I suppose about four feet, five feet, away from the motorman, and I glanced to the rear of the car and saw an auto-  
mobile almost—well, it looked like a new Ford—  
coming. It was almost around the rear of the car  
in the road on the far side, down around the ditch,  
and later on I glanced around again and the auto-  
mobile was still coming, and it had gained and come  
up, I should judge, about middle way of the car.  
I didn't pay any attention to it, because there are  
so many cars coming down from the powder works  
at that time; it was eight-thirty in the morning,  
what they call the eight o'clock shift, and I didn't  
see any more of the car until I seen the motorman  
apply the brakes. Then came a crash.

20

30

Q. You saw the motorman apply the brakes?

A. I did.

Q. And then the crash? How soon was the crash to the time he applied the brakes?

A. Very shortly.

Q. How far did the car go between the time he applied the brakes and he struck the automobile?

A. I don't know. About ten feet at the time he struck that. He had no chance at all. He did all he could. The motorman was strictly—

Mr. John W. Wescott: Wait.

10 Q. Do you know whether or not any whistle was blown before you got to the crossing down there?

A. It was. About a hundred yards from the crossing, I should judge. I didn't measure it.

Q. When you saw this automobile, this new Ford, it was just at the rear of your car?

A. Yes.

Q. And it passed your car? When you next saw it—

A. It was about middle way of the car.

20 Q. It was gaining on your car?

A. Yes, sir.

Q. But you didn't see it when it got ahead of your car?

A. Not until the crash.

Q. About what speed, Mr. Hoffman, were you going along there that morning?

A. I don't know. Just the usual rate of speed.

Q. Well, what is your usual rate of speed along there?

30 A. Twenty to twenty-five miles an hour.

Q. Some witness testified here, or it was mentioned here about a down grade. Of course, down grade in Lower Penns Neck made me take notice. It was my home township, and I wanted to know how much down grade there was there in Lower Penns Neck. Is there any down grade along there?

A. I hardly think so. I couldn't say for sure.

Q. Practically level, isn't it?

A. I should think it was.

Mr. Sinnickson: The highest point in Penns Neck is on my farm, sixteen feet above the level of the sea.

Mr. John W. Wescott: You are not testifying. 10

Cross-examination.

By Mr. Wescott:

Q. Well, you saw the man apply the brakes, and then a crash followed immediately?

A. I certainly did.

20

JAMES RICKETT, a witness produced on behalf of the defendant, being first duly sworn and examined, testified as follows:

Direct examination.

By Mr. Sinnickson:

Q. Mr. Rickett, where do you live? 30

A. Pennsville.

Q. In Pennsville?

A. Yes, sir.

Q. And where did you live a year ago?

A. Pennsville.

Q. At the time this accident took place?

A. Pennsville.

Q. And what was your business at that time?

A. Motoring on the trolley road.

Q. What is your business now?

A. Powder mill.

Q. You don't work for the traction company any longer?

A. No.

Q. You were the motorman running this car?

10 A. Yes, sir.

Q. How long have you been away from the traction company?

A. Eight months.

Q. Now, at the time you were running this car on the twenty-third day of November, how long an experience had you had in running motor cars?

A. Eighteen months.

Q. You had had eighteen months experience? And how long on this road?

20 A. Eighteen months.

Q. All of your experience was on this particular line?

A. Yes, sir.

Q. Do you remember the accident?

A. Yes, sir.

Q. Will you in your own way kindly tell the jury just what happened there and what you did and what you saw?

30 A. Yes, sir. I was going down the road coming from Pennsgrove toward Salem, and just before I got to the farm, Mr. Stiles' farm, just before I got to the crossing I seen an automobile start across the road, so I applied the emergency brakes, and just about the time the car got there the trolley got there. Both got there at the same instant.

Q. Somebody here stated that the motorman—

Mr. John W. Wescott: No.

Q. Did you look? Were you looking away from the car and not attending to your business?

A. No, sir. I was attending to my business.

Q. Did you see that bunch of children there?

A. Yes, sir.

Q. In the road?

A. Yes, sir.

Q. Were they close to the trolley tracks? 10

A. About six feet away from the track.

Q. How many of them were there?

A. Five or six.

Q. Little tots?

A. School children, yes, sir.

Q. How close were they to Mr. Stiles' entrance?

A. They were right even with the crossing.

Q. Right by the crossing?

A. Yes, sir.

Q. And you saw them? 20

A. Yes, sir.

Q. Did you blow for them?

A. Yes, sir, I blowed the whistle there to attract their attention.

Q. About how far from the crossing were you when you blew the whistle?

A. About a hundred yards from the crossing.

Q. Mr. Rickett, as you approached the entrance to the Stiles' farm there, that entrance where the accident took place, were you looking to the left, back of or toward Mr. Stiles' house? 30

A. I probably glanced that way to see if there was anyone coming out from the crossing, but that was all. Glanced over, probably. I couldn't say. I always did glance to the right and to the left at a crossing to see if anyone was going by.

Q. Where was the automobile when you first saw it?

A. Just as it pulled to come across the shells I seen it. That is when it first attracted my attention.

Q. Do many automobiles run up and down that road?

A. Yes, sir.

10 Q. Good many that morning running up and down the road?

A. Yes, sir, powder mill shift. Just time for the powder mill shift. Several. I probably seen the automobile before but I didn't pay anything to the automobile until it started to pull across, started across the shells.

Q. You saw it as it started across?

A. The instant it started to sheer across.

Q. What did you do?

A. Threwed on the brakes immediately.

20 Q. Did you put the brakes on as quickly as you could?

A. Just as quickly as I could apply them.

Q. Was there any way you could have stopped the car quicker than you did?

A. No, sir.

Q. You struck Mr. Hann?

A. Yes, sir.

30 Q. Then you went out and did everything you could?

A. As soon as the car stopped I jumped out and ran back and picked Mr. Hann up First man to get back to him.

Q. You knew him?

A. Yes, sir.

Q. Neighbor of his?

A. Yes, sir.

- Q. You knew his wife?  
A. Yes, sir.  
Q. Neighbor of his wife?  
A. And of the family.  
Q. Friend of the family?  
A. Yes, sir.  
Q. Is there any down grade there by Mr. Stiles' place?  
A. No, sir, not that can be detected by the eye.  
No grade. 10  
Q. You never noticed it in running the trolley car, that there was any down grade there, did you?  
A. No, sir.  
Q. What speed were you going at the time, Mr. Rickett?  
A. Twenty-five miles, approximately.  
Q. That is, is that your usual speed?  
A. That is the usual speed, yes, sir.

Cross-examination.

20

By Mr. John W. Wescott:

- Q. How many passengers had you on?  
A. I don't know, sir. About thirty. Approximately thirty.  
Q. Now, if I understand you, when you got within about a hundred yards of this crossing you saw, not a crowd of children, but two children?  
A. No, sir. You didn't understand me that way. 30  
Q. How many did you see?  
A. Five or six.  
Q. Very well. Then about a hundred yards from the crossing you saw five or six children and they were on your left hand side?  
A. No, sir.

Q. Were they on your right hand side?

A. Yes, sir.

Q. And they were in Mr. Stiles' lane, were they?

A. No, sir.

Q. Well, where the they?

A. They were in the state road, even with Mr. Stiles' lane.

10 Q. Oh, they were in the road? And you blew a whistle so as to warn those little children?

A. Yes, sir.

Q. Did you think they would cross ahead of the trolley?

A. I blew the whistle to give them warning there was a trolley approaching.

Q. Did you think they might cross ahead of the trolley?

20 A. I thought they might be like any other children, and run, any way, when the car would approach them and surprise them.

Q. Might run anyway?

A. Yes, sir.

Q. What were these children doing?

A. They were walking.

Q. Walking?

A. Yes, sir.

Q. Which way were they walking?

A. Towards Pennsville.

Q. Had they anything with them?

30 A. I didn't see anything.

Q. While you were traveling the hundred yards when you first blew your signal to warn these children, did the children take the warning?

A. They apparently did, yes, sir. They didn't get on the track. They stayed up in the state road.

Q. Did they run?

A. No, sir, they stayed right in the state road.

- Q. Did they walk along?
- A. Yes, sir.
- Q. About how far beyond the point opposite Mr. Stiles' lane did they get before you got up to Stiles' lane?
- A. They was just even with the lane when I got there.
- Q. Then they hadn't got to the lane when you gave them the signal?
- A. Well, when I got there they was even with the lane, just even with this crossing. 10
- Q. Now, Mr. Hann was on the same side of the road as these children, wasn't he?
- A. He was on the right hand side of the road.
- Q. And the children were on the right hand side of the road?
- A. No, sir, they were in the center of the road, near the center.
- Q. The children were on the right hand side of the tracks, weren't they, as you were going ahead? 20
- A. Yes, sir.
- Q. And so was Mr. Hann?
- A. Yes, sir.
- Q. Why didn't you give a signal to Mr. Hann?
- A. I didn't know Mr. Hann was anywhere there.
- Q. Then through that space of a hundred yards you didn't see Mr. Hann at all, did you?
- A. No, sir.
- Q. Now, that is true? 30
- A. Yes, sir.
- Q. So that Mr. Hann—you were going twenty-five miles an hour, weren't you?
- A. Approximately.
- Q. Mr. Hann wasn't in sight, but the children were and you gave a signal for the children, didn't you?

A. Yes, sir.

Q. Now, Mr. Hann, in order to get himself killed at that crossing, had to come from behind that trolley car, which was going twenty-five miles an hour, get ahead of the trolley car, beat it for a hundred yards, and get across in front of it, didn't he?

10 Mr. Gaskill: I object to that question. It is stating a conclusion from the testimony and it is not a proper conclusion. It might be arguable to the jury, but it cannot be addressed to the witness for an answer.

The Court: That is an argumentative question.

Mr. Wescott: I know it is. It is meant to be.

(Question repeated.)

20 Mr. Gaskill: It is not only argumentative, but it misstates the facts.

The Court: Well, on cross-examination, it seems to me it would be a proper question. This gentleman can say whether it does properly state the facts or not.

(Exception noted for defendant.)

30 Q. Don't answer that question if there is anything wrong about the facts.

The Court: First consider the facts and see whether the facts are right.

(Question repeated.)

A. No, sir.

Q. Why not?

A. He was already ahead of the trolley car.

Q. I know, but at a hundred yards away from the crossing Mr. Hann wasn't in sight, was he?

A. I didn't see him.

Q. No, you didn't see him. You say you were performing your duty, you were on the lookout, you saw little children there and you gave them a signal, but you didn't see Mr. Hann, and for that reason you didn't give him any signal. Now, if Mr. Hann wasn't there, then he had to go faster than your car to get there ahead of you, didn't he?

A. I could have seen the automobile and not seen Mr. Hann.

Q. Oh, well, did you see the automobile?

A. I seen automobiles, yes, sir.

Q. Did you see the automobile that Mr. Hann was in?

A. I couldn't say if that was the automobile or not. I seen automobiles. Several automobiles along there at that time.

Q. How many automobiles were there along there at that time?

A. I couldn't say.

Q. About how many?

A. It was powder mill shift time and there was automobiles passing and trolley cars all the time.

Q. Between the time that you saw those little girls a hundred yards from that crossing, how many automobiles did you see in that space of a hundred yards?

A. I don't remember seeing but one.

Q. And that was the automobile you struck?

A. Yes, sir.

Q. Well, you didn't see that, did you, until it turned to go across the track?

A. Not until it was turned to go across. The instant it started to turn I seen it.

Q. Then is when you first saw it?

A. Yes, sir.

Q. Now, young man, you say you were looking the whole hundred yards, and you saw those children, 10 but you didn't see that automobile until it started to go across?

A. I don't remember seeing it.

DEFENDANT RESTS.

BOTH SIDES REST.

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20 **MOTION TO DIRECT VERDICT FOR DEFENDANT.**

Mr. Gaskill: I now renew the motion to non-suit the plaintiff, which I made at the close of the plaintiff's case, and ask the Court at this time to give the jury binding instructions to find for the defendant company.

30 The Court: Gentlemen of the jury, the Court is required, under the law as it views it, to direct a verdict for the defendant in this case. You will therefore, return a verdict for the defendant.

(Exception noted for plaintiff.)

# New Jersey Court of Errors and Appeals

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Martha T. Hann, Admx.,  
*Plaintiff-Appellant,*

vs.

Salem & Pennsgrove Trac-  
tion Co.,  
*Defendant-Respondent.*

Action at Law.  
On Appeal.

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## BRIEF FOR APPELLANT.

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The sole question raised by this appeal is whether or not the trial Court was mistaken in directing a verdict for the defendant.

The facts, which are not disputed, may well be stated first. The trolley tracks of the defendant are laid in a public highway in Salem County called the Salem and Pennsgrove Road. The tracks are on the side of the road, leaving the larger portion thereof open to public travel. The farm of Lewis Stiles fronts upon that side of the highway upon which the defendant's tracks are placed. Entrance to the Stiles farm is made by means of a road or way across the defendant's tracks. The defendant had put down planking between and on either side of its tracks to be used by those going to or from the

Stiles farm. The destination of the plaintiff's decedent was the Stiles farm. On the morning of the accident the plaintiff's decedent and a trolley car of the defendant's were proceeding along the public highway in the same direction. The plaintiff's decedent was driving an automobile enclosed by curtains and was ahead of the trolley car. When the plaintiff's decedent reached the entrance to the Stiles farm he turned his automobile for the purpose of running into said farm. While the automobile was crossing the trolley tracks the defendant's trolley car crashed into it. The automobile was reduced to wreckage and the plaintiff's decedent was killed.

There is testimony in the case (P. 36, L. 17 also P. 38 L. 31) to the effect that two hundred yards above the place of accident the automobile was ahead of the trolley car. It, therefore, can safely be assumed that the motorman of the trolley car saw or ought to have seen the automobile. In this connection it should be noted that Mr. Stiles, a witness called by both sides, states (P. 23, L. 27 *et seq.*) that he was looking out the entrance to his farm and saw the automobile turn from its course in the highway and start into his farm before the crash came. Mr. Stiles also states that he heard no signals (P. 23 L. 15). Both Mr. Curtis (P. 37 L. 33) and Mr. McCullough (P. 44 L. 16), plaintiff's witness, say they heard no signals. Curtis was working on the road near the accident, and McCullough was on the trolley car. These witnesses all testify that they have good hearing and ~~that~~ under the rule laid down in the *Fernetti* case (87 N. J., L. 268), the value of their testimony is for the jury to decide.

Both Mr. Stiles and Mr. Curtis testify that the trolley car was going fast (P. 23 L. 10 and P. 36 L. 33).

Mr. McCullough testified that just before the collision the motorman had his head turned to the left and was apparently looking at something on the back part of a house that the car was approaching (P. 44 L. 7 *et seq*).

The plaintiff's case is, therefore, that the decedent was driving an automobile along a public highway upon one side of which highway the defendant maintains trolley tracks; that some distance in the rear of the decedent the defendant was propelling a trolley car in the same direction in which the decedent was proceeding; that the decedent turned off said highway into a way or entrance which led to a farm; that the entrance to said farm was recognized and known to the defendant because it had put down planking for the use of those going to and from the farm, and that as the decedent was passing over the crossing the trolley car, without any warning, and running at great speed, ran into the automobile and killed the decedent.

Suppose two automobiles were running east on State Street, in Trenton, one some distance ahead of the other; further, suppose the leader of the two automobiles turns into Broad Street; further, suppose the automobile in the rear crashes into the side of the one turning into Broad Street, could or would anyone question the fault of the operator of the automobile in the rear? The situation involved in the case at bar and in the supposititious case are, we submit, identical.

The motorman of the trolley car saw or ought to have seen the automobile in front of him. The motorman was moreover bound to anticipate that the decedent might turn into the road or way into which he did turn. This being true, the motorman should not only have given signals, but should have had the

trolley car under sufficient control to have stopped should the occasion require. The motorman not only failed to give signals and failed to have his car under control, but was not even paying attention to the conditions of things in front of his rapidly moving car.

It is true that the defendant produced evidence that a signal was given some distance away, which may not have been a sufficient warning to a person in an enclosed automobile, but this merely produces a conflict in the testimony which calls for the determination of a jury.

The actual physical conditions at the place of the accident are important. In the centre of the road raw oyster shell (P. 30 L. 1) which were twelve to fifteen inches higher than the rest of the road (P. 30, L. 4), covered a width of twenty-two feet (P. 52, L. 4). The trolley tracks were six feet removed from the oyster shells (P. 51, L. 1). The automobile was running on the opposite side of the road from that upon which the trolley car was proceeding (P. 32, L. 23 *seq*). The automobile was struck in the middle (P. 24, L. 6). In this same connection it should be noted that the defendant's own testimony is that one hundred and fifty feet before the point of collision the automobile was ahead of the trolley car (P. 57, L. 30) and that the motorman put on his brakes at the instant when the collision occurred (P. 61, L. 34). It is undisputed that at the distance of one hundred and fifty feet before the trolley car reached the crossing, the automobile was in plain sight of the motorman and the testimony just quoted shows that the decedent had to turn his automobile and cover the distance from his line of travel to the oyster shells, then travel over twenty-two feet of oyster shells, then the six feet of roadway between the oyster

shells and the trolley tracks and finally a portion of the trolley tracks, to get his automobile in the place where it was struck. It necessarily follows that the motorman either did not pay any attention to the automobile or assumed that the automobile would continue on down the road instead of turning into the Stiles farm.

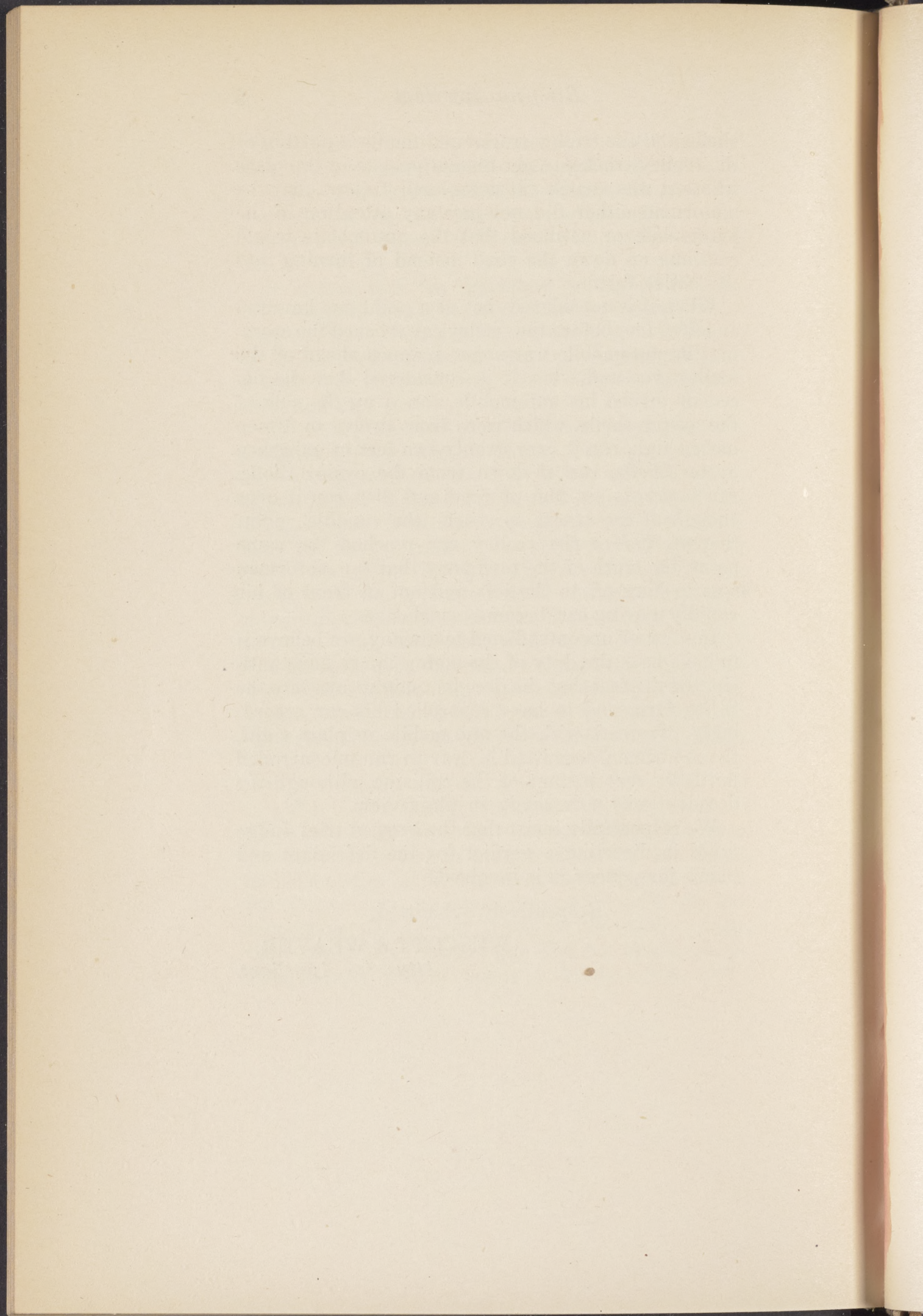
When it is considered that at a point one hundred and fifty feet before the trolley car reached the crossing the automobile was some distance ahead of the trolley car, and when it is considered that the decedent turned his automobile, ran it up the side of the oyster shells, which were from twelve to fifteen inches high, ran it over twenty-two feet of unbroken oyster shells, ran it down from the oyster shells, ran it across six feet of road and then ran it over enough of the tracks to reach the middle point thereof, before the trolley car reached the same point, the truth of the testimony that the motorman was looking off to the left and not in front of his rapidly moving car, becomes conclusive.

In view of uncontradicted testimony, we believe it to have been the duty of the motorman to have anticipated the fact that the decedent might turn into the Stiles farm and to have controlled his car accordingly. Instead, with the automobile in plain sight, the motorman permitted his car to run uncontrolled until the very instant of the collision, although the decedent was necessarily in plain view.

We respectfully insist that the learned trial Judge erred in directing a verdict for the defendant and that a jury question is involved.

Respectively submitted,

WESCOTT & WEAVER,  
*Attys. for Appellant.*



## NEW JERSEY COURT OF ERRORS AND APPEALS.

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MARTHA T. HANN, ADMX.,	}	
Plaintiff-Appellant,		
vs.		ACTION AT LAW.
SALEM & PENNSGROVE TRACTION		ON APPEAL.
Co.,		
Defendant-Respondent.		

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### BRIEF OF DEFENDANT-RESPONDENT.

The accident, resulting in the death of plaintiff's intestate, occurred at the farm entrance of Lewis Stiles, between Pennsville and Salem. The trolley car and the automobile in which the deceased was riding were both going toward Salem. In traveling from Pennsville to Salem the trolley tracks are on the left-hand side of the road on which side of the road Mr. Stiles' farm with its house and outbuildings are situated. In the center of the road a new roadway was being built of oyster shells twelve feet wide and about fifteen inches deep, and on the day of the accident were being covered with soil. On the right-hand side of the road was a wagon track used also by automobiles.

The distance from the trolley tracks to the far side of the used road was 22 feet, or about 16 feet between tracks and used roadway.

The trolley car and the automobile had been traveling almost side by side for quite a distance, a mile or more, along the road towards Salem, the automobile gradually driving ahead, and as they approached the entrance to Mr. Stiles' yard the automobile was ahead of the trolley car, and the driver, without giving any signal, either by horn or by holding out his hand, turned abruptly from the right-hand side of the road along which he was driving his auto, across the new bed of oyster shells, and was struck by the trolley car as he was crossing the trolley tracks.

The motorman of the trolley car blew his whistle just before the accident, as he approached the crossing into Mr. Stiles' yard, to warn a group of school children who were walking in a path between the trolley track and the oyster shell bed of the road; the children at this time were about opposite the crossing into Mr. Stiles' yard.

The curtains of the automobile were down; the deceased was the only occupant of the auto. The trolley car, from the description of the occupants as to the manner in which they were seated, had its seats running lengthwise of the car, so that the passengers on the right-hand side of the car had their backs to the automobile, while the passengers on the left-hand side of the car were facing the automobile. The trolley car and the auto were in full view of each other as they approached the crossing—there was nothing that blocked the view. The auto had 16 feet to go to reach the trolley tracks.

The plaintiff's first witness was the widow, who knew nothing whatever about the manner in which the accident happened.

LEWIS STILES testifies (page 19) as to his residence, and on page 20 the location of the trolley tracks and the entrance to his property. Photographs and maps submitted with this Brief. On page 22 he says he saw Mr. Hann driving along the road on the morning in question about ten yards before he turned to come in to his place. He was unable to say whether or not the motorman gave any signals. That he was back in his yard, about eighty or ninety yards from the track (page 23). On the same page he says that the auto was ahead of the trolley car when he started to turn in his yard. That Mr. Hann was obliged to turn to the left to go into his property (page 24). On cross-examination (page 27) he says he has lived on that farm for eight years, is chairman of the Township Committee. That his farm extends along the road a half mile or more and that there are entrances to each of his fields across the trolley tracks in addition to the entrance to his farm yard. On page 28, he says that the road in front of his property is built of oyster shells, and that at the time of the accident the county authorities were working on that road putting on shells and that it was finished along in front of his property. On page 29 he says that they were hauling dirt on the shells. That the shell part of the road was about twelve feet wide. That there was no room to drive between the shells and the trolley tracks but that there was a driveway on the other side of the road, and that wagons and automobiles did not drive in the center of the road because the shells were not broken down; that the raw shells were sticking up. Page 30, he says that the shells in front of his place were twelve to fifteen inches thick. Page 30, he is unable to say whether signals were given. Wouldn't say that they were not given by the motorman.

Bottom of page 31, he says that he saw the automobile turn at the entrance into his yard and in a second or two the trolley car struck it and carried it down the track. Page 32, he says that the automobile, when he first noticed it, was going pretty fast and made a short turn to come into his yard; that the shells were standing up high. That the automobile gave a jump when it struck those shells. On page 34, he says that the automobile had its side curtains on and that Mr. Hann gave no signal nor did he blow the automobile horn.

On page 35, in answer to the Court, he says that the shells must have been twelve to fifteen inches in height and that they had been just putting them on in the center of the road.

JOHN CURTISS was the next witness called for the plaintiff. He was working on the road about 200 yards or more (page 36) from the place of the accident. That the trolley car passed him when he was that distance off. That he was going in the same way as the trolley car. Was walking behind his wagon, and on page 40, he says that he was at that time engaged in hauling dirt to put on the shells. On page 38, he again speaks of the automobile and the trolley car both passing him. That the automobile was ahead of the trolley car, and that he spoke to Mr. Hann, the deceased, as he passed. On page 40, he says that Mr. Hann, as he passed him, was driving over the part of the road off from the shells. On page 36, he says that he didn't see the accident as an eye witness. He was walking behind his wagon.

JAMES McCULLOUGH was the plaintiff's next witness and says that he was in the trolley car on the right-hand

side, the second person from the motorman. On page 46, he says that he didn't see the automobile until it turned and saw it as it started to dart across the track. It was going at a good rate of speed, and at that time the trolley car was ten feet away; sitting on the right-hand side of the car he would have his back to the road, which accounts for the fact that he didn't see the automobile until it turned. On page 44, on direct examination, he says that just before the collision the motorman "was apparently looking at something on the back part or the far side of the house that we was then approaching (the Stiles house); that his head was a little to the left."

In answer to the questions by the Court, he says (page 46):

Q. Did you see the accident?

A. I did, sir.

Q. How far was the trolley car away when Mr. Hann turned in to go into Mr. Stiles' place?

A. Well, I didn't just see the automobile turn, but I seen it as it started, started to dart across the track.

Q. It darted across, did it?

A. Yes; started across the track.

Q. How was it going, fast or slow?

A. It was going at a pretty good rate of speed.

Q. Across the track?

A. Well, I don't suppose it was traveling as fast, because those oyster shells apparently had checked its headway.

Q. And how far was the trolley car away?

A. About ten feet, as near as I could tell you.

Q. When it was in that position?

A. Yes, sir.

The motorman, JAMES RICKETT, on page 73, testifies that as he approached the Stiles crossing he was attending to his business and was not looking away from the car. He says: "I probably glanced that way to see if there was anyone coming out from the crossing, but that was all. Glanced over probably. I couldn't say. I always did glance to the right and to the left at a crossing to see if anyone was going by." He blew the whistle 100 yards from the crossing.

This ended the plaintiff's testimony.

LEWIS STILES was recalled for the defendant. On pages 48 and 49, speaks of the obstructions to his view toward the direction from which the trolley car and automobile approached his place, and on page 49, he testifies to the school children being right at the end of his lane between the trolley track and the shells on the road. This space he thinks is not over six feet. (Page 51.)

HARRY H. SKINNER testifies, pages 51 and 52, that the width of the entire road from fence to fence is 49½ feet. The used part of the road including the driveway is 30 feet. On one side he says you have got the trolley tracks and the balance is 22 feet, including where Hann was driving. Outside of the trolley tracks the whole road was a shell road, worn down at the side and fresh shells in the middle.

WARREN TURPIN testifies, on page 53, that he was riding home from the powder plant, sitting on the left side of the car, facing the roadway. On page 54, in answer to a question on the previous page:

Q. Now, will you in your own way tell the Court and jury just what you saw?

And his answer was:

A. Yes, sir. This is two days I have lost on account of it. Well, that morning I was coming down on the trolley car, I saw this Ford—of course, I didn't know who was into it—in fact, I didn't know the man after it happened, but I have found out since it was Mr. Hann, and I have never forgot it, and coming down I didn't pay no more attention to that Ford that I would any other because we were right side by side to that Ford at one time and the Ford run on down ahead of us, and he didn't run away from us fast or anything like that. He just took his time and moseyed on by us, which was side by side, and when we got down to this man's place, this farm house, whoever it is—I don't know that man—when he got right there he sheered right across the road, and I was looking right at the motorman at the time it happened, and he says, "Oh, look there," that was all he said, and as soon as he says that—he was sitting on a stool—he threwed the emergency on and he took the power off, and as soon as he hit the Ford the wheels locked on the trolley car and she slid, and the boy done all he could, and I said right then and there, I said, "You have got nerve to stick to the trolley car, boy, the way you did." I said, "If it had been me I would have been in back of it," because he could have got his throat cut just as easy as not from the glass of the trolley car where he sit, and he never said a word. He was the first one out of the car and I was right back of him. He said, "I expect it is full of people," that was all was said, and when he saw the man he recognized him but I didn't. In fact, I didn't know who he was and didn't know until after this thing happened, and that is all I know, and as far as I have heard some of the witnesses say here—

On page 55, he testifies that the trolley car whistle was blown about one hundred yards from the crossing. That the automobile was driving along parallel with the trolley car. That he was going a little faster than the trolley car; "he went on ahead of the car, I should say probably 15, maybe 30 feet at the fartherest, I didn't measure it," and on the same page he says that no signal was given by the deceased that he was going to turn; that his curtains were down and fastened. That the motorman, as soon as he saw the auto turn, called out, "Oh, look there," threw off his power and threw on his emergency brake. On page 57, he says that at 150 yards from the crossing that the automobile was ahead of the trolley car. On page 58, in answer to a question from the Court, he said:

A. "I should say when he started to turn in, Judge, when he started to come across, I should judge he was around from fifteen or twenty-five foot ahead of the trolley car when he started to turn in, and when I first noticed this Ford alongside of the trolley car we was about at least a hundred and fifty yards from this crossing that goes into Mr. Stiles' place there, but when he started to come across in front, he was only about, well, twenty-five foot ahead of the car, anyhow, when he started to cross."

On page 59, he further answers to the Court. He says that the motorman put on his brakes to stop as soon as the man started to cross. That as a positive fact he knew that he tried to check his car.

ELIZA W. WRIGHT, a friend of the family of the deceased, was in the trolley car. On page 60, she says that she did not see the automobile before it was struck.

That she had her back to it. With reference to the signal, she said that the motorman pulled his whistle just before we got to Mr. Stiles' apple orchard, which Mr. Stiles testified extended from his farm entrance, some distance in the direction from which the trolley car came. She further says that she saw the motorman put on the brakes; that he did it as quickly as he could, and that the car couldn't stop sooner than it did.

· ELIZA S. BANGER says (page 62) that she was in the trolley car, the fourth or fifth passenger from the front on the right-hand side. That she was sitting with her back to the road. Page 63, she says she heard the whistle and thought it was for the bunch of school children. That she didn't see Mr. Hann turn in in front of the tracks, as she was sitting with her back to the road. "The first thing that attracted my attention was the quick motion of the motorman's arms to apply the brakes and then I saw immediately the automobile in front of the trolley, and I think that the trolley hit the automobile on the front corner. I think the left-hand wheel was knocked off. I don't think it was quite half way back."

FRANK MORRIS, on page 65, says that he was coming home from his work. Was the sixth passenger from the front on the right-hand side. He was asked if he saw the automobile before it was struck, and says: "Well, I seen it about—it ain't so far from the trolley, before the trolley hit him, about nine or ten yards when he cut across the road."

Q. He cut across the road in front of the trolley?

A. In front of the trolley. That is all I seen it.

Q. What happened when he turned across in front of the road?

A. The motorman just turned his power off and tried to stop, but at that time the wheels were sliding, I guess. He took the power off before he hit the car.

And on the next page, in answer to a question, says: "That he had the power turned off and was putting on the brakes." And on cross-examination, page 67, he says that he saw the oyster shells in the road which were between Hann and the trolley car when he undertook to get across.

FRANK HOFFMAN, the conductor of the trolley car, on page 69, was asked this question:

Q. Will you kindly tell the gentlemen of the jury whether or not you saw that automobile which Mr. Hann was riding in before it was struck?

A. I was standing in the corner of the car, in the conductor's box, just a few feet, I suppose about four feet, five feet, away from the motorman, and I glanced to the rear of the car and saw an automobile almost—well, it looked like a new Ford—coming. It was almost around the rear of the car in the road on the far side, down around the ditch, and later on I glanced around again and the automobile was still coming, and it had gained and come up, I should judge, about middle way of the car. I didn't pay any attention to it, because there are so many cars coming down from the powder works at that time; it was eight-thirty in the morning, what they call the eight o'clock shift, and I didn't see any more of the car until I seen the motorman apply the brakes. Then came a crash.

On page 70, he says that the whistle was blown before they reached the crossing.

JAMES RICKETT, the motorman, testifies on page 72 that he had eighteen months' experience as a motorman. On the day of the accident was on the road from Pennsgrove towards Salem, and just before he got to the crossing he seen an automobile start across the road. He applied the emergency brakes and just about the time the car got there (that is, the automobile) the trolley got there; both got there at the same instant. On page 73, he testifies to seeing the children ahead of him near the crossing when he was about one hundred yards away, and that he blew the whistle as a warning. On page 74, he testifies to the fact that automobiles were frequently passing along the road and that he paid no attention to this until he started to pull across the shells. That he put the brakes on as quickly as he could. That he couldn't stop the car any sooner than he did after he saw Mr. Hann's automobile.

The defendant moved for a non-suit at the close of plaintiff's case, which was denied (page 47). The motion was renewed at the close of the case, with a request for binding instructions to find for the defendant, which was allowed. (See page 80.)

It is respectfully submitted that the accident in question was entirely the fault of the deceased, and that there was no negligence whatever on the part of the defendant.

#### IN ANSWER TO PLAINTIFF'S BRIEF.

The case of two automobiles supposed on page 3 of plaintiff's brief is inapplicable because it omits the assertion of a duty on the part of the automobile turning, as required by law, in that it does not state that any signal

whatever was given by the driver of the turning automobile.

The Traffic Act, Laws of 1915, page 285, amended by Laws of 1918, page 325, is as follows:

“In turning while in motion or in starting to turn from a standing still position, signals shall be given by extending the whip or hand or by operating an adequate mechanical device indicating the direction in which the turn is to be made.”

This statutory duty was not observed by Mr. Hann in attempting to cross in front of the trolley car; there is no conflict of testimony whatever on this point.

On page 5, plaintiff had inadvertently misquoted the testimony. The newly-placed oyster shells in the middle of the road were only twelve (12) feet wide and not twenty-two (22) feet, as stated in plaintiff's brief; the twenty-two (22) feet included the distance from the edge of the trolley tracks to the farthest edge of the used road, including that portion on which the automobile was traveling.

See testimony of Engineer Skinner, pages 51 and 52.

The plaintiff's attorney seems to be misled by the fact that the whole road is a shell road, whereas the new shells had been placed only in the center of the road.

Allowing six (6) feet for the width of the used roadway, it leaves only sixteen (16) feet to the trolley tracks, and not twenty-eight feet, as supposed in plaintiff's brief.

Further, it is insisted that the situation and the place of the accident is not as is supposed in plaintiff's brief; this was not a road crossing; and as the automobile had travelled some distance alongside of the trolley car, a mile or more, there was nothing to indicate that the

driver intended to turn into the farmyard of Mr. Stiles. In turning without a signal he violated his statutory duty. Automobiles along this road, and at this time of day, were frequent objects.

It is respectfully submitted that the accident was entirely the fault of the deceased and without any negligence whatever on the part of the defendant company, and that the judgment below should be affirmed.

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JOSEPH H. GASKILL,  
Of Counsel.

November Term, 1919.

