

## NEW JERSEY COURT OF ERRORS AND APPEALS

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| PHILIP J. KOONTZ,               | } |            |
| Plaintiff (Defendant in Error), |   |            |
| vs.                             |   | ON WRIT OF |
| NEW YORK MAIL COMPANY,          |   | ERROR.     |
| Defendant (Plaintiff in Error). | } |            |

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### ARGUMENT FOR NEW YORK MAIL COMPANY, PLAINTIFF IN ERROR.

The writ brings up for review a judgment of the Hudson County Circuit Court in favor of the plaintiff, in the sum of \$1,500.

Suit was brought for the alleged injuries received by the running away of a horse and wagon, due to the alleged negligence of the defendant, the New York Mail Company.

The errors of the Trial Court, assigned by the plaintiff in error (page 168), will be discussed in the following order:



## I.

The Trial Judge overruled the motion of the plaintiff in error to grant a non-suit (sixth assignment of error).

In his initial case, the plaintiff's witnesses were—himself; Reuter, the ferry station master of the Pennsylvania Railroad ferry, at Jersey City depot; Seebach, a truckman, and Dr. Bowen, as to the character of his injuries.

By the plaintiff's case, it appeared, by his own testimony, that on the day of the accident the plaintiff, who was a dentist about sixty years old, having an office in New York City, was standing in the passenger-way of the north slip of the ferry in the Pennsylvania Railroad depot at Jersey City, waiting for a ferryboat to come in from New York, so that he might take the boat. He was facing the river; a ferryboat was approaching; gates on the slip, between him and the river, were closed. While so standing, he heard a noise, turned around and saw a horse coming around the curve into the slip on the run, and, presently, a mail wagon. He didn't know which way to run. The horse and wagon came on into the slip; plaintiff endeavored to climb up the gate and was grazed by the horse and struck by the wagon (pages 53, 54, 55); the horse fell down alongside of him and he was pinned in against the gate by the wagon, the wagon remaining stationary (page 56).

By Seebach's testimony (pages 93, 94, 95), it appeared that he first saw the horse and wagon, the horse unattended and without any bit in his mouth, coming out from under a shed in the depot, on the west side of the driveway; that is, the main driveway between the land



side of the river and the ferry slips. Excepting this, the witness did not see the accident nor the plaintiff. He testified that he was attendant in the ferry house about ten times a day for the last fifteen years; that he had observed mail wagons standing under the shed where the horse and wagon came from; that he had often seen them feeding there and had never seen any of them tied; and that sometimes they had drivers or attendants and sometimes not.

By Reuter's testimony (page 11), it appeared that he was ferry station master of the Pennsylvania ferry, and had been such for eight or nine years. He described the ground floor plan of the depot and ferry slips. He was allowed to state that the main driveway running between the slips in which the ferryboats discharge passengers and vehicles, and the landward side of the station, which was occupied by vehicles waiting for goods, mail, etc., was used by vehicles propelled by horse power, electricity, etc., meaning by the latter term automobiles (page 23). That locomotives attached to the trains of the Railroad Company ran in the depot above the open space; that is, on the second floor (page 29). The witness saw the accident to this extent:

He first saw a horse, without bit or bridle, and a mail wagon, turning the corner to go down into the slip, just making the turn (page 32). Then he saw the people in the slip running; but did not see the plaintiff running. The wagon then upset. Witness did not see the plaintiff hit; did not see him pinned in by the wagon; but when he saw the wagon upset, he went down and took Dr. Koontz by the arm, the latter claiming that he was injured, and led him to his office. It also ap-



peared in his testimony that on the landward side of the driveway in the depot, the driveway running approximately north and south, there was a line of columns about fifteen or twenty feet apart, and still to the westward of this line of columns was an open space in which the mail wagons were accustomed to stand waiting for mail (page 17). Near this open space, elevator shafts were located.

There was no evidence whatever of what caused the horse to run away.

In answer to interrogatories, which answer was offered in evidence by the plaintiff (pages 90-91), defendant said that it was the owner, on the day of the accident, of a horse and wagon, which ran, walked or was driven down the Desbrosses street ferry of the Pennsylvania Railroad, in Jersey City, which it was informed the plaintiff claimed injured him.

On this proof of the plaintiff's case, defendant moved for a non-suit, on the ground that there was no proof that the horse and wagon causing the injury were owned and operated and under the control of the New York Mail Company, and that there was no proof of any negligence on the part of the New York Mail Company.

It is apparent that the plaintiff did not even attempt to prove any act of negligence on the part of the defendant. He could not even explain how the accident occurred; that is, how the horse started to run away. He produced no witness who could testify as to the occurrence which caused the running away of the horse, or any attending circumstances. There was no proof of any unusual occurrence immediately prior to the appearance of the horse running down the slip. No automobile was shown to have been passing; no elevator



was ascending or decending. In short, there was no occurrence shown likely to cause the horse to run away.

The plaintiff must, therefore, have relied upon the doctrine of *res ipsa loquitur*, to escape a non-suit.

This Court, in *Bahr vs. Lombard, &c., Co.*, 24 *Vroom*, pp. 239-241, said :

“ \* \* \* the quantum of proof which a plaintiff must give in order to draw from the defendant explanatory evidence, must, within certain limits, be dependent upon the circumstances of each case—a rule which finds current expression in the phrase *res ipsa loquitur*— \* \* it is evident that this phrase clearly imports that there must, in each case, be something in the facts that speaks of the negligence of the defendant. \* \* \* Inasmuch as the plaintiff's proofs are silent as to the conduct of the defendants personally, or through their agents, either before or during the accident, and from the further consideration that there is no proof of any of the circumstances preceding, attending or following the explosion from which its cause or location could be ascertained, it is evident that if the defendants were required to offer testimony in their defense, it was not because the proofs pointed to any unusual conduct upon their part, but because the plaintiff had presented a case in which all of the relevant facts were so exclusively within the knowledge and control of the defendants that the law imposed upon them the duty of offering explanatory, if not exculpatory, testimony. \* \* \*

In the present case it is not necessary to discuss either the existence of such a doctrine or its harmony with the accepted canons of proof, for the reason that its application, in any event, must depend upon whether the



party invoking it has adduced all of the testimony reasonably within his power, for it is in such cases only that the rule in question is applied by those who maintain its soundness. \* \* \* In any aspect of the law, therefore, it must be conceded that unless a plaintiff has presented the testimony which was reasonably within his power he can derive no benefit from the proposed doctrine."

In the case at bar, the plaintiff served interrogatories upon the defendant, and, in answer to the eighth and ninth interrogatory, the plaintiff informed the defendant, under oath, that one William Bauder was in charge of a mail wagon with horse attached, owned by the New York Mail Company, on the day of the accident, and that said Bauder resided in the city of New York. Plaintiff, with this knowledge, could have either called Bauder as a witness or have taken his testimony in New York City. (Pages 90, 91.)

Under these circumstances, the rule as above expressed in *Bahr vs. Lombard*, is invoked. Plaintiff did not offer any testimony as to the conduct of the defendants in any way relating to the accident, from which negligence could be inferred, and the plaintiff did not present the testimony, which was reasonably within his power to procure, of the one person who could have stated the facts surrounding the first occurrence from which the accident resulted.

Should the plaintiff, however, be thought to have complied with, or not to be within, the rule above referred to, and it be thought that he did present all the testimony which was reasonably within his power, the result must be either that the plaintiff had proven such circumstances as would call upon the defendant to ex-



culpate itself, *res ipsa loquitur*, and in such view the refusal to non-suit was proper; or he had shown a situation resulting in his injury, the cause of which was without his knowledge, and upon which the defendant had full information, and should therefore be called upon to speak, *reus ipse dicat*, in which event the refusal to grant a non-suit might have been properly withheld at the time; or the plaintiff had failed to carry the burden, either of making out a prima facie case without any direct proof of actionable negligence, or had failed to show circumstances outside of his knowledge and within the defendant's knowledge, which would call upon the latter to explain, and the refusal to non-suit was error.

The trial court made no comment and gave no reason for refusing to grant the motion for non-suit (page 97). He evidently did not hold the motion until after the defendant's case, so that the practice, *reus ipse dicat*, is not applicable.

The basis of refusal to non-suit seems to have been that the plaintiff had made out a case which called upon the defendant to exculpate itself.

The cases in this State upon this subject, in chronological order, are these:

*Bahr vs. Lombard*, 24 *Vroom*, 233, in which case a pipe used for conducting oil exploded, injuring the plaintiff, who could not give any explanation whatever of the causes of the accident. It was decided by the Court of Errors that the judgment of non-suit should not be disturbed.

*Sheridan vs. Foley*, 29 *Vroom*, 230, in which case it is held that proof that a brick fell from the house of



the defendant, injuring plaintiff, called upon the defendant to respond, such facts constituting a presumption of negligence.

*Newark Electric Co. vs. Ruddy*, 93 *Vroom*, 505, in which it was decided that proof that an electric light wire, controlled by the defendant and normally suspended upon poles along a street, was trailing, broken, on a sidewalk, created a presumption of negligence, and the *res ipsa loquitur* was applied. To like effect was *Trenton P. R. Co. vs. Bennett*, 31 *Vroom*, 219, cited herein.

*Bien vs. Unger*, 35 *Vroom*, 596, in which the facts were that a trip-hammer descended upon plaintiff, who was lawfully in attendance upon it. No cause whatever for the occurrence was presented. A new trial was allowed for refusal of the Trial Court to grant motion to non-suit.

It will be observed that these cases fall naturally into two classes, one in which it was held that the plaintiff's proofs were sufficient to call upon the defendant to exculpate himself, and the other in which it was held that the plaintiff's proofs did not make out a presumption of negligence on the part of the defendant.

In the case at bar, the facts presented by the plaintiff, applicable to the present discussion, are simply that a horse, with a wagon attached, was running away in a semi-public place, the horse having no bridle or bit in his mouth, to the injury of the defendant, and that the horse and wagon may have belonged to the defendant.

The bald proposition of the plaintiff is that proof that a runaway horse injured plaintiff is sufficient to make out a *prima facie* case of negligence against the possible owner of the horse.



## II.

But however the Judge's refusal to non-suit may be regarded, his refusal to direct a verdict for the defendant at the conclusion of the case was error. (See the 7th and 8th assignments, pages 154, 169).

The defendants produced as witnesses, Bauder (page 97), who drove the horse and wagon and was in charge thereof on the day of the accident; Henderson (page 120), who had driven the horse and been previously in charge of him, and Herman (or Hernans) (page 124), agent for the Mail Company, who was directed by the Railroad Company to place the mail wagons in the space where the wagon was standing on the day of the accident.

Bauder testified that the space where the mail wagons were located was to the westward or land side of a row of columns running parallel with and on the westerly side of the main driveway; that in that space was a second row of columns parallel with the driveway, about twenty-five feet from the first row of columns, parallel therewith and westerly therefrom; that the columns along the driveway are about fifteen feet from each other. This testimony was not denied. On the morning of the accident, Bauder took the horse from the stable in New York, drove to the post-office, then to the ferry, taking the boat to Jersey City, where he drove under the mail shed where the mail wagons wait; that is, in the space, above indicated. He drove his horse inside the space, to the landward side of the first row of columns in the driveway, and so arranged his wagon that a pillar in the second row of columns stood between the front and rear wheels on the same side of his wagon; that the horse and



wagon were, when so arranged, about fifteen feet from the driveway. Bauder then left the horse and wagon for some errands, and returned to the wagon, took a feed bag off the seat, stood in front of the horse, removed the bridle, and was just putting the feed bag over the horse's head when he started; witness made a grab for his nose, was shaken off and thrown aside; when he picked himself up, the horse was gone (pages 101, 102, 103). He did not see the plaintiff hurt. Witness had been in the depot with the horse and wagon about six times before the accident. He had seen the horses and wagons standing in that space, always untied (page 104). Sometimes the horses were fed there, the drivers only standing by them while putting the feed bags over their heads (page 106). This was the first time witness had driven this particular horse, Henderson having driven him theretofore. When he began to feed the horse another mail driver was near. The horse had been resting quietly (page 111). Witness did not know what caused the horse to run away. Witness left the employ of the Mail Company about a month or six weeks after the accident.

Henderson testified as follows (page 121):

Witness had driven the horse three or four months prior to the accident; no one else had charge of him during that time. He drove the horse the day before the accident. He had driven the horse to the *locus in quo* every day, a couple of times, for three or four months prior to the accident. He had handled the horse at the space indicated and had fed him there by dropping the bit out of his mouth and putting the nose bag over his head. That the horse never ran away with him and was as nice an animal as a man ever drove; a lady could drive



him. The witness was sick the day of the accident, and, therefore, Bauder drove him. That from his experience from driving the horse, he would say that he would not start up without being frightened (page 123).

Hernans (or Harman) testified (page 124) that he was agent for the Mail Company; that he had been instructed by the railroad company that the space indicated by the other witnesses was for the use of the mail wagons; that such space had been so used by the mail wagons for over three years.

On this proof defendant's counsel requested the court to direct a verdict for the defendant, which request was refused, the court saying:

"The case seems to me to rest upon the sole question whether it was an act of negligence on the part of the driver at that time and under those circumstances to remove that bridle from that horse for the purpose of feeding him."

Upon the explanation afforded by defendant's witnesses, was the defendant guilty of negligence?

There is not a particle of evidence as to what it was which caused the horse to run away. No witness in the case knew why the horse ran away; no witness attempted to account for it. Here was a horse, who, by the uncontradicted testimony, was of a quiet and gentle disposition, who had been accustomed, for months, to the place where he was standing at the time of the accident; who had been repeatedly fed at that place by the use of a nose bag after his bridle and bit had been removed. The driver had so located the wagon that a pillar, at least twenty-five feet from the driveway, was partially between the front and hind wheels of the



wagon. The horse had been resting quietly for about ten minutes; the driver was standing in immediate attendance at his horse's head, directly in front of the horse; had just removed the bridle and bit, and was in the act of dropping the nose bag over the horse's head, when the horse started forward. The driver seized his nose and was thrown aside, and the horse ran on. There was no noise other than usual; there was no automobile passing or in the neighborhood. In short, there was no other occurrence whatever in any way relating to the accident.

Wherein was the defendant guilty of negligence?

The case seems to fall in that class of cases in which neither plaintiff nor the defendant is able to account for the accident or explain its cause.

*Bien vs. Unger, supra.*

Does the behavior of the driver constitute negligence so as to fix a liability on the defendant?

In *Hoboken Land Company vs. Lally*, 48 N. J. L., 604, a passenger drove his horse and wagon into a ferry passageway, where he left the horse, unattended and untied, while he went into a closet enclosed on the side towards the horse, which was ten or twelve feet from the horse. It was so dark that plaintiff could not have seen whether a chain was up, protecting the ferry slip. While he was in the closet his horse started at a noise made by a person driving into the passageway, and ran into the river, the chain not being up. It further appeared that the plaintiff could have driven the mare up nearer the closet and held on to one of the reins.

It was held by this Court that the plaintiff was guilty of negligence, and, I think, rightly; for the plaintiff had



put it entirely out of his power, for the time being, to control his horse.

There was no proof as to the character of the horse.

In the case at bar, the driver was in immediate attendance upon his horse, standing at his head, directly in front of him. The horse did not run away unattended and beyond control, but the horse broke away from the control exercised both by the driver at his head and the action of the wheel against the post and, the influence of the food he was about to receive from the nose bag.

In *Belles vs. Kellner*, 67 N. J. L., 255, upon which defendant chiefly relies, a quiet, gentle horse was left standing, untied, in a public street, while the driver was a short distance from him engaged in his work. It was the habit not to tie or secure the horse under such circumstances, and the horse had never been known to run away or move from the place where he was left standing. The driver, at the time of the accident, was on the sidewalk, from five to seven and a half feet from the wagon, and, therefore, a still greater distance from the horse's head. At the time, there was no unusual noise or thing which could be supposed to frighten such a horse. The horse, without known cause, moved around towards the center of the street, without moving the wagon. The plaintiff, who was riding a bicycle, approaching the horse from behind, was struck by the horse as he turned around, and was thrown to the ground.

In the opinion of this court, by Judge Van Syckel, the question was said to be whether, under those circumstances, there was anything from which an inference could be drawn that a man of ordinary prudence could have reasonably believed that injury might result from



his act. It was held that there was nothing to lead a reasonably prudent man to believe that any greater care was necessary.

It is submitted that in the case at bar the driver exercised greater care, under similar circumstances, than was held to be necessary in the *Belles vs. Kellner* case. It was said in that case: "With what additional care he might have been charged if the horse had been left near a steam railroad track, where locomotives were passing, or in a place where fire engines or bands of music were approaching, is not a question in this case."

Under the circumstances of the case at bar, neither is it a question here, for while it is true that locomotives come in upon the train shed, they were not on the same floor as the place where the horse was, and there was no evidence to show any unusual noise calculated to frighten the horse was made by such locomotives. It is also proved, over objection, that automobiles sometimes used the driveway, and that the Pennsylvania Railroad was operating an automobile baggage wagon in December, 1903; but even the presence of all of these things did not impose any additional care upon the driver of this horse, because the presence of all those things was not liable to frighten this horse; he was accustomed to them; they were no more frightening to him than the ordinary passing of trolley cars in a public highway would be calculated to frighten a quiet, gentle horse accustomed to them.

The psychology of the horse must enter very largely into the question of amount of care which the law puts upon the driver. Manifestly, things which would frighten a horse wholly unaccustomed to them would have no such effect upon a horse used to them. A wild



horse, wholly untrained, is alarmed to the utmost by the mere presence of a saddle upon his back, and it is only by the exercise of the utmost skill and great patience, and after repeated trials, that a saddle can be put upon the back of such a horse; yet such a trapping put upon the same horse after he is broken in has no effect upon his nerves whatever—he is accustomed to it.

The horse in the case at bar was used to the place where he was standing and to all attendant noises which ever did happen in that place, and the driver did what the horse had been accustomed to for months in that particular place; and furthermore, the driver was in immediate attendance upon his horse; he exercised some control, but the horse broke away from the control exercised.

In the ordinary course of business it has been found to be very convenient to feed horses from nose bags, and it is a common habit for delivery wagons so to do; it aids greatly in the expedition of business.

Again, the mail service requires the greatest expedition. In the modern rush of business, even the tying and untying of a horse causes some delay which can be avoided by the method employed in the handling of the horses and the mail wagons in the place where this accident occurred. To hold such acts to be negligence *per se* is to go beyond the rules of law as at present defined by the courts.

As was said by Lord Kenyon, in *Hayman vs. Hewitt*, quoted with approval by Justice Van Syckel in the *Belles vs. Kellner* case:

“If every person who suffered a cart to remain in the street while he took goods out of it was obliged to em-



ploy another to look after his horse, it would be impossible for the business of the metropolis to go on."

How can it be successfully contended that because automobiles might have frightened this horse, a locomotive might have scared him, or the going up and down of an elevator, or some other unusual noise, might have caused him to run away; therefore, the degree of care which the driver was called upon to exercise in the absence of such events was the same as though they were present. The degree of care which the law called upon him to exercise must be measured by the events that occurred at the time. The duty of the driver was to use such ordinary care as was necessary under the circumstances existing at the time of the accident. Because the rule of law might have required the driver to look more closely to the control of his horse during the passing of a noisy automobile, it cannot be invoked by the plaintiff, when no such event was happening at the time of the occurrence which the plaintiff says resulted in his injury. The possibility of the passing of automobiles and the presence of a locomotive on the floor above, or the going up and down of an elevator, was wholly unrelated to the case, because it was not any one or all of these events which brought about the accident.

The language of Justice Garrison, in *Bien vs. Unger*, 35 *Vroom*, 599, is referred to:

"To charge the master with negligence in permitting the use of this machine because of its unaccountable tendency to behave in a dangerous fashion, something in the nature of *scienter* must be proved, or at least be fairly inferable from the testimony. Unless this be done, there is no particular in which negligence has been shown by



the greater weight even of probability. There is no such thing as negligence at large."

Again, he says:

"\* \* \* the behavior of the machine, as described by the plaintiff, does not, with any greater weight of probability, suggest negligent conduct attributable to the defendants than it does mechanical errancy unknown to them."

The degree of care which the driver might have been called upon to exercise because of the possibility that events might have happened tending to frighten his horse, the driver is not called upon to exercise in the absence of such events; yet this horse, by the uncontradicted testimony, had never been frightened, even by the happening of such events, for he had for a long time been accustomed to them and had withstood all such temptation to run away, or be even disturbed thereby.

### III.

The next errors assigned, which I desire to discuss, are the ninth and tenth, on page 170.

Defendant's attorney requested the Court to charge (pages 155-165) as follows:

"It is not negligence for the driver of a quiet, gentle horse, harnessed to a delivery wagon, to remove his horse's bridle for the purpose of feeding from a nose bag, while waiting the delivery of a load, in a place in a ferry house reserved for loading and unloading of such wagon, apart from the common passageway, the driver having first blocked the wheels of the wagon, and standing by



his horse's head while adjusting the feed bag, and the horse being accustomed to feeding in that place and manner."

The tenth request to charge, and which the Court refused, and on which error was assigned, is also found on page 170.

The request was that it was not negligent for the driver of a quiet, gentle horse, harnessed to a delivery wagon, to remove his horse's bridle for the purpose of feeding from a nose bag, while waiting the delivery of a load in a place in a ferry house reserved for the loading and unloading of such wagons, apart from the main passageway, the driver standing by his horse while adjusting the feed bag, and the horse being accustomed to feeding in that place and manner.

It is contended the Judge erred in refusing (page 165) to so charge under the rule of law established in the case of *Belles vs. Kellner, supra*.

#### IV.

The fourteenth assignment of error was in the Court's charging the jury, in commenting on the uncontradicted evidence:

"It seems odd that the horse should run away from its breakfast in any such way as that; but that is what this horse seems to have done." (Pages 158-171.)

The error complained of is that the Court should have commented to the jury upon the value of the uncontradicted testimony. The Court informed the jury that in his view the uncontradicted story told by the driver, that



the horse ran away just as he was about to receive his breakfast, was a doubtful story, because it was odd that a horse should do such a thing.

## V.

The fifteenth and sixteenth assignments of error (page 171) were based upon exceptions to the comments of the Judge in his charge upon the case of *Hoboken Land and Improvement Company vs. Lally, 19 Vroom, 604*, and the application which the judge made of that case to the facts before the jury. The exception to such remarks in the charge is found on page 166. The portion of the charge criticized is found on pages 159 and 160, and also 161.

The facts in the Lally case were, as stated on page of this brief. In commenting on the opinion, the court, in the charge on page 160, tells the jury that it amounted to this: "That, if that horse and wagon had then run somebody down, like Dr. Koontz, and that somebody had sued, why, as I understand, that was equivalent to a ruling on the part of the court that Dr. Koonz ought to recover."

This language by the trial judge was that in his opinion, if the Court of Errors were passing on the case at bar it would decide in favor of Dr. Koonz. It was equivalent to telling the jury that the trial judge thought that the Court of Errors had laid down a rule in the case of Lally which was applicable to the case at bar, and, when so applied, entitled the plaintiff to recover. These remarks certainly tended to prejudice the defendant and were almost a direction for a verdict for the plaintiff.



The distinction between the Lally case and the case at bar has been pointed out (page        of this brief).

But again, on page 161, the Court in its charge says:

"It was, perhaps, the unusual character of the place that tended much to influence the decision of the court in the Hoboken Land Company against Lally case; it was a ferry house where there were teams passing and re-passing, where the proof shows that automobiles were accustomed to go by, where the trains came in above, where the ferrboats were going into and out of the slip in full view, where the harbor whistles were being blown, and where these elevators with their loads of baggage were going up and down."

Then the Judge goes on applying the situation as so described in the Lally case to the case at bar, and says:

"Now, all these circumstances were present. Nothing appears in the case to show what, if anything, it was that made this horse run away, and the evidence is to the effect, not only that the horse had never run away before, as I understand it," &c.

Thus, the Judge told the jury that the facts in the Lally case were almost identical with the case they were to decide; that the accident occurred in the same kind of a place—in a railroad station and ferry house—where locomotives, automobiles, etc., were present; and that it was the unusual character of the place, so circumstanced, which led the Court of Errors to decide as it did.

A reading of the opinion in the Lally case discloses that the Trial Judge was greatly mistaken as to the facts. There is nothing in the opinion whatever to in-



dicating that the accident occurred in a depot. To the contrary, the opinion states that the accident occurred in a ferry house at the foot of Christopher street, New York city, owned by the defendant, the Hoboken Land and Improvement Company—not a railroad company. There is no proof whatever that locomotives were in the neighborhood—that there were locomotives or automobiles. The accident occurred in October, 1884—twenty-two years ago. At that time an automobile on the highway was as rare as a flying machine is now—that is common knowledge—but no mention of an automobile is made in the opinion.

Such a misstatement of the law and the facts in the Lally case was error and tended to injure the defendant's case in the minds of the jury. After such statements made to them of the law, they must have felt bound to find for the plaintiff.

## VI.

The first, second and third assignments of error (pages 168, 169) are for alleged errors committed in admitting testimony over objections, and which will be discussed together.

The questions were asked the witness as follows (pages 20, 23):

"Ques. What sort of vehicles use the main driveway in the ferry house, and how were these vehicles propelled?"

The witness was allowed to answer that vehicles propelled by horse power and electric power, including automobiles, used the driveway.



Again, the witness was asked:

"Was there any one ferry more than another that automobiles were accustomed to use in traveling to and from New York?" (Page 27.)

To which the witness was allowed to reply:

"Twenty-third street ferry."

The result of these questions and answers was to have it appear before the jury that automobiles were accustomed to use the driveway and had some relation to the accident. At the time when this testimony was admitted, no proof whatever of the accident had been given. At the conclusion of the case and on the whole case there was no evidence presented as to the presence at any time of any automobile or electric vehicle; so that all the testimony relating to automobiles was wholly unrelated to the accident. At the time the questions were allowed to be answered, it had not been shown that automobiles were related to the accident, nor was that error afterwards cured by subsequent testimony.

## VII.

The twelfth assignment of error (page 170), was that the Judge refused to charge the jury that the plaintiff's claim, being of record for \$1,990, and it having been shown to include \$380 for Dr. Bower's bill, proof of that item having failed, plaintiff's claim should be restricted to \$1,610 (page 156).



The proof of the doctor's bill was by Dr. Bower himself (page 83, and cross-examination, pages 85 and 86). The doctor swore, on direct examination (page 83) that his charges were \$380; that he had not sent Dr. Koontz any bill. On cross-examination he says that he treated Dr. Koontz daily for two and a half months, and then off and on; that his charges depended upon the case and on the treatment; that he had fixed charges for house attendance and office attendance; that he charged the plaintiff sometimes by time and sometimes by call. When asked which charges were by time and which by call, he replied that it depended how long he was there; that he thinks he has some memorandum of how long he was there; that he could not say how much of his charges were for time and how much for calls; that he had a day-book and ledger at his office; that he did not refresh his memory from them to come to the trial; that he only remembered the lump sum, looking over it the first of January; that he had not been over his books, and that he would not produce his books (page 86).

On this evidence there was no proof on which the jury could base a finding for any particular amount of money. No bill had been presented to the plaintiff. It was within the doctor's province to present no bill or to present a less bill than the amount he named. The plaintiff was not out a dollar by reason of the services rendered. There was no data presented to the jury on which they could fix the value of the services of the physician. All of that information was within the knowledge of and could have been produced by the doctor. He refused to produce his books; and he could not, without them, swear to the number of his visits nor the character of them, nor how his charges were made up in relation to such ser-



vices. I say, under such a situation, all the testimony of the doctor, on the subject of the value of his services, should be stricken out. There was nothing to go to the jury, and the Court erred in refusing to charge the jury as requested in this regard.

Respectfully submitted,  
GREY, McDERMOTT & ENRIGHT,  
Of Counsel with Plaintiff in Error,  
New York Mail Co.



NEW JERSEY  
Court of Errors and Appeals.

PHILIP J. KOONZ,  
*Def't. in Error,*

*vs.*

NEW YORK MAIL COMPANY,  
*Pltff. in Error.*

10

*In Error to  
Hudson Circuit*

**Brief for Defendant in Error.**

The case made by the plaintiff's witnesses is as follows: 20

(From page 11 to 31). The entrance for passengers from Jersey City to the Pennsylvania Railroad ferries was on the same grade or level as the floor of the ferry house. Passengers from Jersey City for New York crossed a main driveway for horses and passengers, sixty feet wide and about six hundred feet long running the whole length of the ferry house. On the east side of the main drive 30 way were six ferry slips for boats to New York and Brooklyn. The bridges to these slips were on the same grade as the main driveway. West of the main driveway was the ferry station master's office and north of this office was an open space one hundred feet wide (or in length), along the main driveway and on the same level, in which spaces were elevators and a stand for mail wagons, and next north of this open space was a mail room where mail was assorted and stored for arriving and departing 40



trains. This open space ran back (west) about sixty feet and at the rear of it was a stone abutment running the whole one hundred feet in width (or length), so that this open space was closed in on three sides and open only on the main driveway. Above the open space was the train shed and tracks of the railroad, and running down from the train shed to the open space below were two elevator shafts, one of which was about forty feet from the place where the mail wagons stood in the open space. The place for the mail wagons was at the extreme north end of the open space, next south of the mail room. The main driveway was for the use of passengers and all vehicles using the ferries, including automobiles. The mail wagons were accustomed to stand with the horses facing east toward the main driveway.

20 Rows of iron columns (pages 41, 42, 47, 48) supported the structure covering the main driveway, running parallel with the main driveway and about twenty feet apart, each being about eight inches square, one row being along the driveway, at the beginning of the open space. The first column was less than twenty feet south of the mail room (page 49).

30 Koonz (pages 53 and 54) entered the ferry house from Jersey City to go to New York by way of the Desbrosses street ferry. He took his stand in the passenger gangway on the ferry bridge, waiting for the boat to enter the slip. While standing there, a runaway horse hitched to a mail wagon came from between the first and second pillars of the open space (page 93), ran down the main driveway from the northerly end of the ferry house (pages 32 and 93) and turned down the passenger gangway where Koonz was standing and the injury followed. The horse had no bridle on and no

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bit in his mouth (pages 35 and 94). This horse and wagon were owned by the Mail Company.

The evidence offered by the Mail Company showed that the iron columns were fifteen feet apart (page 100). The driver who had charge of the horse on the day of the accident drove into the ferry house and stopped his horse and wagon about fifteen feet from the main driveway, the horse facing east, and so arranged his wagon that the hind wheel was behind one of the iron pillars and the front wheel nearly in front (pages 101 and 102). He then entered the waiting room where he stayed fifteen minutes or more (pages 103 and 106). The horse was not tied but he could have fastened him to one of the iron pillars (page 108). When the driver came back, he removed the bit and bridle, picked up the feed bag and was standing in front of the horse in the act of putting the bag on, when the horse, without warning or cause that he knew about, started with a jump or lurch and was off. The driver grabbed the horse's nose, was shaken off and fell down, and the horse and wagon went down the main driveway on the run (pages 110 to 114). The driver jumped up at once ran fifteen feet to the main driveway and when he got there the horse had turned down the passenger gangway of the ferry bridge (page 114).

Henderson, another driver in the employ of the Mail Company, had driven the horse daily three or four months before the accident and testifies that he was gentle and had never run away with him (page 121).

We shall consider the errors assigned in the order in which they appear in the assignment of errors (page 168).



## I. II. III.

These refer to questions and answers found on pages 20, 23 and 27 of the printed case, which questions were asked for the purpose of showing the use of the main driveway, and that among other causes that might frighten a horse, were automobiles traveling to and from New York using the  
 10 Twenty-third street ferry more than any other (that ferry being nearly opposite where the Mail Company horses stood), thus passing the place from which this horse started. The fact that the horse ran away without bridle on or bit in his mouth, makes the fact that causes existed calculated to alarm a horse, material. The questions were material because they showed a source of danger against which the Mail Company was required to  
 20 guard, and they help to determine how much care, under the peculiar circumstances existing at that place, the Mail Company should exercise to prevent its horse from running away. The questions were also material as to the liability of the defendant Pennsylvania Railroad Company, because the plaintiff was attempting to show that the railroad company allowed the Mail Company to leave its horses unattended, and that because of disturbing causes that the railroad company knew existed, one of  
 30 these horses ran away and injured a passenger whom the railroad company had contracted to protect.

## IV. V.

The record at page 90 shows that interrogatories were propounded by the plaintiff to the Mail Company and that certain of them, with their answers, were offered in evidence and admitted by the Court after the interrogatories and answers had been read  
 40 for the purpose of acquainting the jury with them.



It might also appear, though not directly, that interrogatories had been propounded, which, with their answers, were not offered in evidence by the plaintiff. Whether these were all contained in one paper or were interrogatories propounded at different times does not appear.

These interrogatories were propounded and answered under Section 140 of the Practice Act of 1903, which reads: 10

“After an action is at issue, either party may serve on the adverse party, whether such party be a natural person or body corporate, written interrogatories upon any matter material to the issue and written answers to the same under oath shall be served in ten days after service; the answers shall be strictly responsive, and in case of a body corporate shall be under the oath of such of the officers, agents or employees of the corporation as have personal knowledge of the facts or custody of the books, records or papers, a discovery of which is sought; the Court or a Judge may for the purpose of compelling an answer attach for contempt, suppress the defense or stay or dismiss the proceedings; the answers shall be evidence in the action if offered by the party proposing the interrogatories, but not otherwise; provided the Court or a Judge may, for good cause and on notice to the adverse party, order any interrogatories to be stricken out or amended, or new ones to be added or grant further time for answering or order or permit the answers to be amended.” 20 30

The answers can be made evidence only *if offered by the party proposing the interrogatories and not otherwise*. The defendant could not assume that the plaintiff would offer them, and if any of the answers contained facts that the defendant desired 40



to place before the jury, it should have been prepared with witnesses to prove them, hence the refusal of the plaintiff to offer any particular interrogatory, and its answer cannot be said to have prejudiced the defendant's case. Suppose (as was the fact in this case) that the answers were served on the plaintiff the day before the trial, and among  
 10 them were answers that were not responsive or irrelevant and harmful to the plaintiff's case. They could be stricken out only on two days' notice. Must the plaintiff lose the benefit of the interrogatories he desired to use, or postpone the trial for the term for the purpose of making his motion to strike out? Or suppose one or more of the interrogatories to have been answered untruthfully, and that the plaintiff could have proved the true facts by witnesses, must he, because he desire  
 20 the other interrogatories to make out his case, offer them as a whole and thus be bound by the untruthful answers because he cannot contradict his own witness?

## VI. VII. VIII.

These exceptions are on the refusal of the Trial Judge to non-suit (pages 95 to 97), or to direct a verdict (page 154), and on his ruling in refusing to  
 30 direct a verdict (page 154).

When the plaintiff rested, it appeared that a horse owned by the Mail Company, without a driver and without bit or bridle, had run away from the place where the mail wagons were accustomed to stand and caused injury to the plaintiff; that Seebach, a truckman who had crossed the ferry many times each day for fifteen years, had seen mail wagons with horses, standing in the shed, sometimes feeding, never tied and often without a  
 40 driver in attendance (page 94). The plaintiff's case



at this stage also showed that through the elevator openings forty feet away noises from the trains in the train shed above could be heard; that automobiles passed and repassed; that six lines of ferries arrived and departed on the opposite side of the main driveway which was sixty feet wide; that passengers and vehicles travelled up and down this main driveway and that from all these sources noises occurred likely 10 to frighten horses. This state of facts was sufficient to place on the Mail Company the burden of showing that the runaway happened through no fault or neglect on the part of its employees and therefore the refusal to non-suit was proper.

At the close of the defendant's case the question to be determined was, did the Mail Company exercise proper care and precautions to prevent its horse running away at that time and place and under the 20 circumstances proven and was the testimony of the driver to be believed, he being the only witness as to the steps taken to prevent the runaway and cause of the horse's start. In addition to the facts already mentioned, it should be noticed that the case for the Pennsylvania Railroad showed that there were eleven lines of track in the train shed above (on which the elevators opened), on which locomotives with their cars ran for receiving and discharging passengers (page 148). It was for the jury to say 30 whether the removal of the bridle and bit in a place where noises must have been constantly occurring and where the horse was subject to disturbance from passengers on the main driveway, was a careful and prudent act, even though the driver stood directly in front of the horse. By his act the driver deprived himself of the only means at his command of stopping the horse, for it is seen that his clutch on the horse's nose was insecure.

It was shown that the horse could have been tied 40



with a neck strap to one of the iron pillars; that the horse could have been faced west where he would have run into a stone abutment at the rear of the open space, instead of east on the main driveway; that gates, ropes or chains could have been stretched from the nearest pillar to the mail room, thus closing the horse in; or that the

10 wagon wheels could have been tied together and it was therefore for the jury to say, whether in this particular case the Mail Company had not been negligent. It is true the driver testified that he had arranged his wagon so that the wheels were on either side of an iron pillar, but he then left the horse for fifteen minutes while he was in the waiting room. This was a single horse wagon and the space between the wheels could have been no more than a foot, but the driver says he managed to

20 place the wheels on either side of a pillar eight inches square (page 42), the pillar being on the south side of the wagon (page 108). When the horse started to run, the driver fell to the north of the horse and wagon (page 113). It is therefore clear that while the driver was in the waiting room the horse must have moved and changed the position of the wagon so that the wheels were no longer around the pillar when the driver took the bit and bridle off, or the driver lied when he said the pillar

30 was at any time between the wheels, for the driver having fallen to the north and not being run over when the horse started (page 114), the horse must have gone to the south or straight ahead, an impossible feat with the pillar between the wheels on the south side.

What frightened the horse? The driver could not or would not tell, but he says no one struck him (page 112). Here, then, was a horse that had been

40 driven for three or four months by another driver



who described the horse as gentle and not given to running away. It is evident from his sudden start and great speed that something alarming had given him a great fright and if it was not a blow it must have been a sudden and disturbing noise to which the horse was not accustomed and that is just what it was the duty of the Mail Company to guard against in that place.

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Great importance was attached by the Mail Company to the effect of the decision of this Court in *Belles v. Kellner*, 38 Vroom, 255. The question in that case arose on the refusal of the Trial Judge to charge as requested, wherein this Court held he was in error, but it is nowhere stated in that opinion that the case should have been taken from the jury. Had the horse in that case run away, it might have appeared to the jury that the driver was not near enough to restrain him. In that case the Court said:

20

“With what additional care he (the driver) might have been charged if the horse had been left near a steam railroad track where locomotives were passing or in a place where fire engines or bands of music were approaching, is not a question in this case. It has been frequently held that leaving a horse untied and unattended in the street that is with no one near enough to control him by voice or otherwise, or to leave him in that condition in proximity to a steam railroad, or where the horse is not gentle, are circumstances from which negligence may be inferred.”

30

Reference is made to the following cases to sustain the Trial Judge's refusal to non-suit or to direct a verdict:



Dudley vs. Camden & Phila. Ferry Co., 16 Vr., 368.

Hoboken L. & I. Co. vs. Lally, 19 Vr., 604.

Watson vs. Camden, &c., R. R. Co., 26 Vr., 125.

10

**IX.****X.**

These requests to charge were substantially covered by the Judge's charge, particularly in that part found on pages 162, 164 and 166.

**XI.**

The refusal to charge covered by this exception was proper. It is submitted that the Mail Company, although a contractor engaged in carrying the government mail, owed the same duty in the ferry house to others lawfully there, as it owed in the street. Indeed, the degree of care required in the ferry house, because of the many disturbing noises and the number of persons passing, was greater than it could be held to owe in many other places.

**XII.**

The subject of this exception is found on page 86, and the charge on this point is on page 163. There was no demand made before trial for the production of the books and no notice to produce. The refusal was evidently because of the thought arising in the physician's mind of the entries his books contained concerning other patients. His refusal could only affect the credibility and not the admissibility of the evidence.

**XIII.**

We find no exception sealed covering this assignment of error, neither do we find that the Judge so



charged. On the contrary he charged (pages 157, 160, 161, 167) that the plaintiff must satisfy the jury by the weight of evidence that the Mail Company had not used reasonable care.

#### XIV.

This part of the charge (page 158) was in effect directing the jury to consider the driver's statement 10 that he was putting the feed bag on when the horse started without cause known to him and to give it what weight they believed it entitled to.

#### XV. XVI.

The Court was correct in his statement of the law to the jury as laid down in *Hoboken Land and Improvement Co. vs. Lally*, (19 Vr., 604) and explaining its effect on the case at bar. It was called to the 20 jury's attention in connection with the case of *Belles vs. Kellner* (38 Vr., 255), and the Judge particularly pointed out wherein the *Lally* case differed from the case at bar (page 160).

#### XVII.

This relates to a comment of the Trial Judge (page 162) on the plaintiff's evidence (page 55) and was immediately qualified by the words "but he seems to be fairly alive to-day and is here in Court." 30

The plaintiff could not recover for fright or his mental state, and the Judge so ruled (page 58), and as the whole question of the extent of the plaintiff's injuries was left to the jury, this statement by the Court could have no effect on the defendant's case.

With reference to the Judge's charge or refusal to charge, it may be said in conclusion, that the charge as a whole covers all the defendant's requests 40



to charge, so far as the same were applicable to the case and that the duty of the jury to decide the question of the defendant's negligence was clearly pointed out and that no material error appears.

June Term 1905.

JAMES F. FIELDER,  
Of Counsel with Defendant in Error.

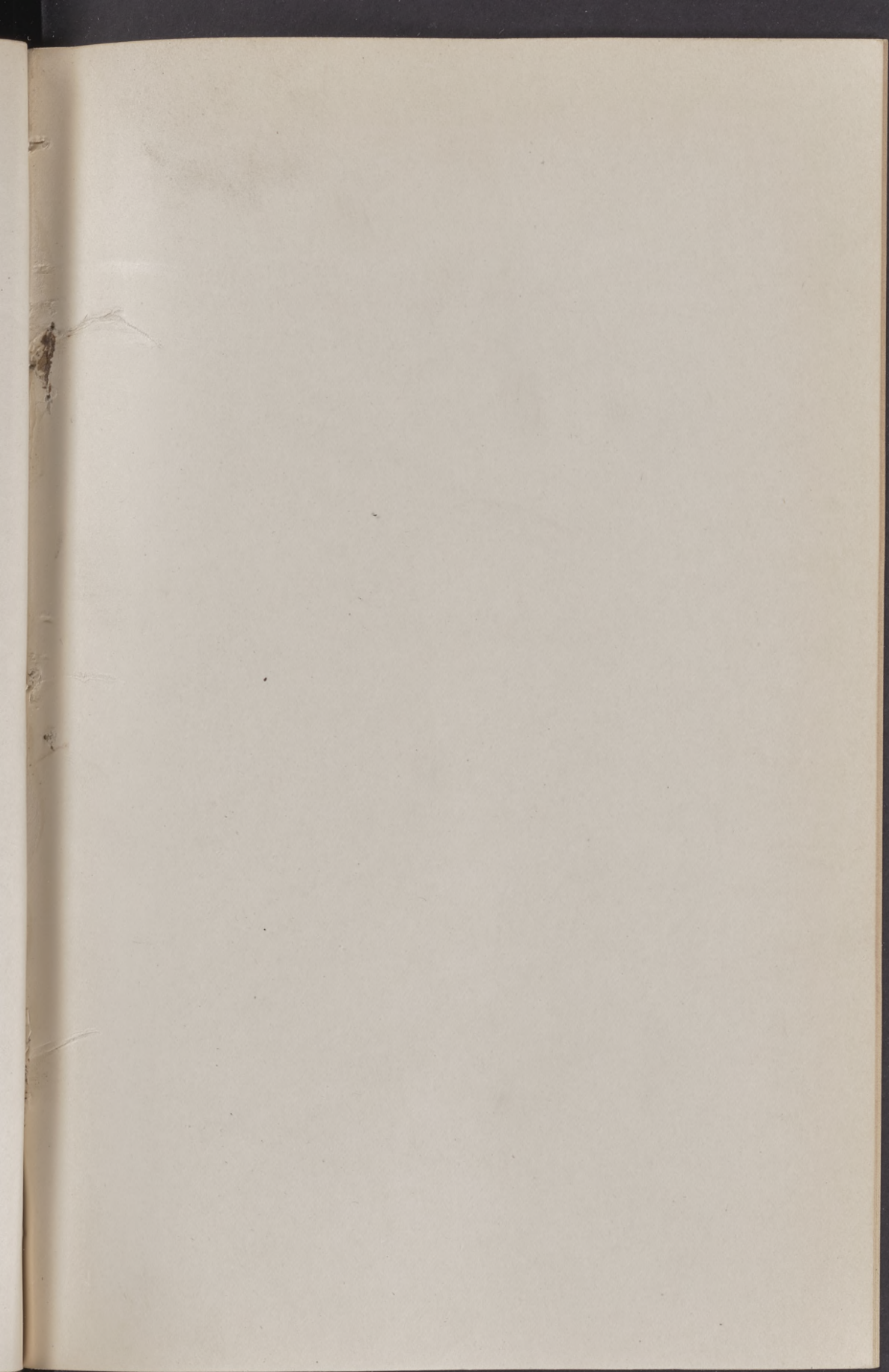
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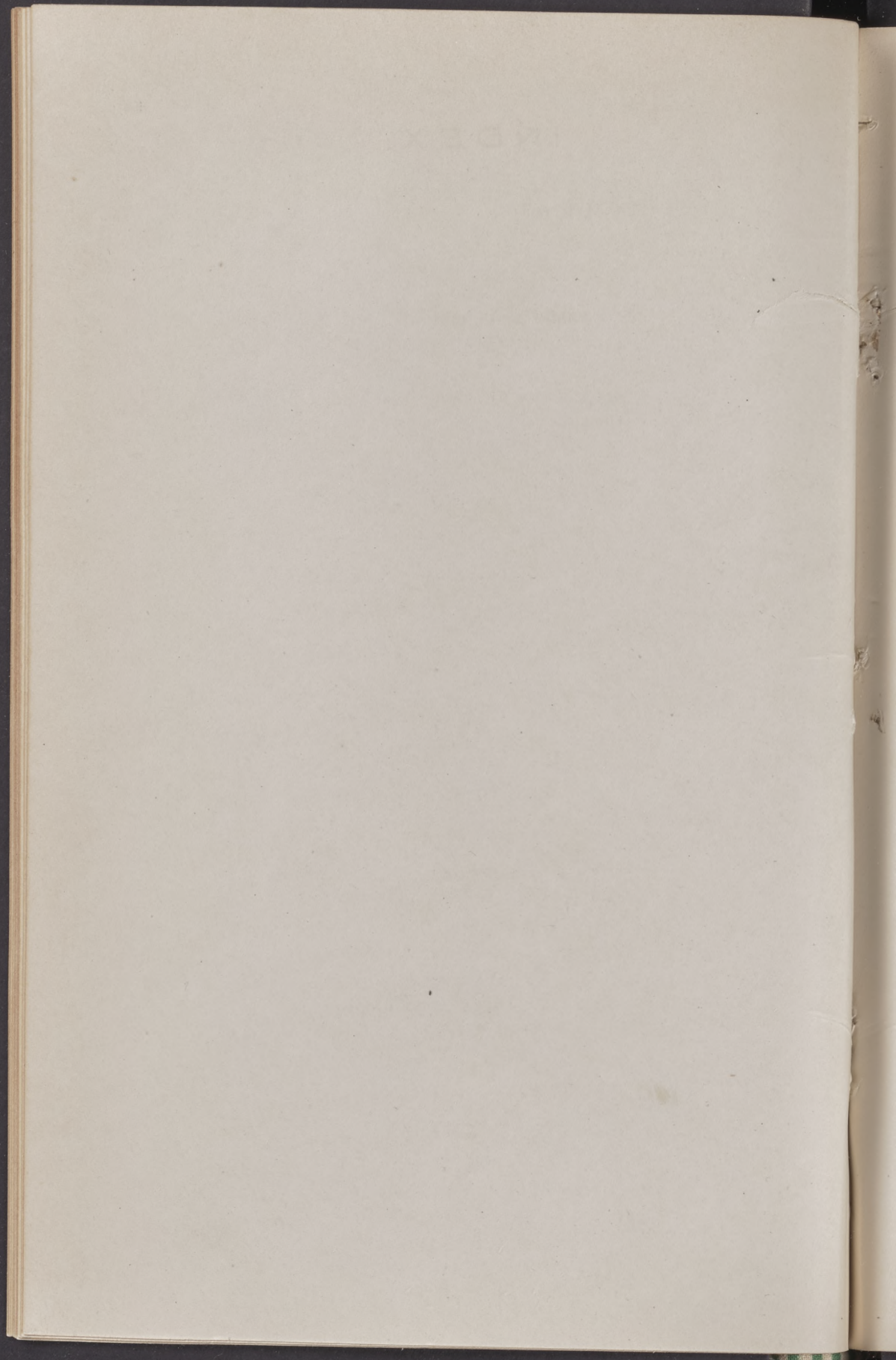
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# INDEX.

|                                                                    | PAGE. |
|--------------------------------------------------------------------|-------|
| Writ of Error .....                                                | I     |
| Assignment of Errors .....                                         | 168   |
| Declaration .....                                                  | 4     |
| Plea .....                                                         | 8     |
| Judgment .....                                                     | 10    |
| Motions for non-suit by defendants .....                           | 95-96 |
| Motion for Direction of a Verdict by Defendants .....              | 150   |
| Direction of a Verdict for Defendant Pennsylvania Railroad Co..... | 152   |
| Defendant New York Mail Co.'s Request to Charge .....              | 155   |
| Court's Charge .....                                               | 156   |
| Court's Additional Charge.....                                     | 166   |

## TESTIMONY.

### PLAINTIFF'S WITNESSES.

|                      |                               |    |
|----------------------|-------------------------------|----|
| Emil Reutter .....   | Direct Examination..          | 11 |
|                      | Cross by Mr. Grey.....        | 40 |
|                      | Cross by Mr. Vredenburgh....  | 45 |
|                      | Redirect Examination .....    | 49 |
|                      | Recross by Mr. Vredenburgh... | 51 |
| Philip J. Koonz..... | Direct Examination..          | 52 |
|                      | Cross by Mr. Grey.....        | 69 |
|                      | Cross by Mr. Vredenburgh....  | 77 |
|                      | Redirect Examination.....     | 78 |
| Dr. Horace Bowen.... | Direct Examination..          | 79 |
|                      | Cross by Mr. Grey.....        | 84 |
| Andrew Seebach ..... | Direct Examination..          | 90 |
|                      | Cross by Mr. Grey.....        | 95 |

### DEFENDANT'S WITNESSES.

|                     |                              |     |
|---------------------|------------------------------|-----|
| William Bauder..... | Direct Examination..         | 97  |
|                     | Cross by Mr. Fielder.....    | 104 |
|                     | Cross by Mr. Vredenburgh.... | 116 |



|                                           |     |
|-------------------------------------------|-----|
| Redirect Examination.....                 | 118 |
| Recross by Mr. Fielder... ..              | 118 |
| James Henderson ....Direct Examination..  | 120 |
| Cross by Mr. Fielder.....                 | 122 |
| Cross by Mr. Vredenburgh....              | 124 |
| George Hernarns.....Direct Examination    | 124 |
| Cross by Mr. Vredenburgh....              | 125 |
| Recalled .....                            | 126 |
| Cross .....                               | 127 |
| Joseph M. Rector.....Direct Examination.. | 125 |
| Recalled-direct .....                     | 128 |
| Cross by Mr. Vredenburgh....              | 132 |
| Cross by Mr. Fielder.....                 | 134 |
| Redirect Examination .....                | 141 |
| Recross Examination .....                 | 141 |

# DEFENDANT PENNSYLVANIA R. R. CO.'S WITNESSES.

|                                          |     |
|------------------------------------------|-----|
| Edward Kirke Large..Direct Examination.. | 143 |
| Cross by Mr. Fielder.....                | 148 |
| Cross by Mr. Grey.....                   | 149 |



NEW JERSEY COURT OF ERRORS AND  
APPEALS.

|                               |   |         |
|-------------------------------|---|---------|
| _____o                        | ) |         |
| PHILIP J. KOONZ,              | ) |         |
|                               | ) |         |
| Plaintiff-Defendant in Error, | ) | 10      |
|                               | ) |         |
| vs.                           | ) | WRIT OF |
|                               | ) |         |
| NEW YORK MAIL CO. et al       | ) | ERROR.  |
|                               | ) |         |
| Defendant-Plaintiff in Error. | ) |         |
| _____o                        | ) |         |

THE STATE OF NEW JER-20  
SEY to CHARLES W. PAR-  
KER, Esq., Judge of our Circuit  
o.....o Court at Jersey City, in and for the  
( SEAL. ) County of Hudson, or such Justice  
o.....o of the Supreme Court of the State  
of New Jersey as shall hold such  
Circuit Court, GREETING:

Forasmuch as in the record and proceedings, and  
also in the giving of judgment in a certain plaint, 30  
which was in our Circuit Court, holden at Jersey City,  
in and for the said County of Hudson, between Philip  
J. Koonz, plaintiff, and New York Mail Company  
and the Pennsylvania Railroad Company, defend-  
ants, in an action of tort, manifest error hath inter-  
vened, to the great damage of the said New York  
Mail Company, as it is said; we being willing that  
the error, if any there be, should, in due manner, be  
corrected, and full and speedy justice done to the  
parties aforesaid in this behalf, do command you, 40



that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the tenth day of February next, nineteen hundred and five, together with this writ, that, the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and according to the law and custom of the State of New Jersey, ought to be done.

Witness our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the twenty-fourth day of January, in the year of our Lord one thousand nine hundred and five.

GREY, McDERMOTT & ENRIGHT,

Attorneys.

S. D. DICKINSON,

Clerk.

The answer of Charles W. Parker, one of the Judges of the Hudson County Circuit Court of the State of New Jersey, within named. The record and proceedings of the plea whereof mention is within made, with all things touching and concerning the same, I hereby certify to the Court of Errors and Appeals in the last resort in all cases of said State at Trenton at the day and year within contained, in a certain schedule to this writ annexed, as within I am commanded.

CHARLES W. PARKER,

Judge.



HUDSON COUNTY, ss.:

THE STATE OF NEW JERSEY, to the Sheriff of the County of Hudson. GREETING: You  
 o.....o are hereby commanded to summon the New York Mail Company, a Corporation, and the Pennsylvania Railroad Company, a Corporation, to be and appear <sup>10</sup>  
 ( SEAL. )  
 o.....o before the Circuit Court, to be held at Jersey City in and for the County of Hudson, on the Fourth day of March next, to answer unto Philip J. Koonz in an action in tort to the plaintiff's damage, nineteen hundred and ninety dollars, and have you then there this writ.

Witness, Jonathan Dixon, Esq., Judge of our said Court at Jersey City, aforesaid, the eighteenth day of February in the year of our Lord one thousand <sup>20</sup> nine hundred and four.

MAURICE J. STACK,

Clerk.

BRINKERHOFF & FIELDER.

Attorneys.

Endorsed: Returnable March 4th, A. D. 1904. <sup>30</sup>  
 Brinkeroff & Fielder, Attorneys, 15 Exchange Place, Jersey City, N. J.

I hereby deputize F. P. Budden to serve the within writ. Witness my hand and seal this 19th day of February, 1904.

JOHN ZELLER, Sheriff.

By J. J. HEAVEY, Under Sheriff. (Seal.) <sup>40</sup>



Served within summons February 19, 1904, on the defendant, New York Mail Company, by leaving a true copy thereof with George Hernarus, agent of said company, and on the defendant, Pennsylvania Railroad Company, by leaving a true copy thereof with Harry Ross, agent of said company.

JOHN ZELLER, Sheriff.

10

By F. P. BUDDEN, S. D. S.

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DECLARATION.

HUDSON COUNTY CIRCUIT COURT.

Of the Fourth Day of March, 1904.

20 HUDSON COUNTY, ss.:

The New York Mail Company, a Corporation, and the Pennsylvania Railroad Company, a Corporation, the defendants in this suit, were summoned to answer unto PHILIP J. KOONZ, the plaintiff therein, in an action in tort, and thereupon the said plaintiff, by Brinkeroff & Fielder, his attorneys, complains for that whereas the defendant, the Pennsylvania Railroad Company, at the time of committing the

30 grievances hereinafter mentioned, was running, controlling and operating a certain ferry and ferry boats for the transportation of passengers, horses and vehicles for fare or hire, from Jersey City, in said County of Hudson, to the Borough of Manhattan, in the City and State of New York, and was also then and there in the control and management of a certain ferry house situate in Jersey City aforesaid, with passageways for embarking and disembarking passengers, horses and vehicles upon and from said

40 ferry boats.



And Whereas the defendant, the New York Mail Company, at the time of committing the grievances hereinafter mentioned, was the possessor, operator and manager of certain wagons or vehicles with horses harnessed or attached thereto, which in pursuance and furtherance of its business, were accustomed to use and travel through the said ferry house and passageways of the defendant, the Pennsylvania Railroad Company, and at the time of committing 10 the grievances hereinafter mentioned was the possessor, operator and manager of a certain wagon or vehicle with a horse harnessed or attached thereto, then and there using and occupying the ferry house and passageways aforesaid of the defendant, the Pennsylvania Railroad Company.

And Whereas, the said plaintiff, on or about the eighteenth day of December, nineteen hundred and three, at Jersey City in the County of Hudson afore- 20 said, at the instance and request of the defendant, the Pennsylvania Railroad Company, became and was a passenger of the said last named defendant, for a certain fare or hire, then and there paid by the plaintiff to said last named defendant, to be safely carried and transported by means of said ferry and ferry boats run, controlled and operated by said last named defendant, from Jersey City aforesaid to said Borough of Manhattan, whereupon said last named defendant undertook to safely carry and transport 30 the plaintiff from Jersey City aforesaid, to the Borough of Manhattan aforesaid, for the fare or hire paid as aforesaid by the plaintiff to said last named defendant.

That it then and there became and was the duty of said defendant, the Pennsylvania Railroad Company, to provide and maintain a safe and proper place or passageway or means of ingress for the plaintiff from and through its said ferry house to its 40



said ferry boats, and to take all reasonable care and precautions to protect and prevent the said plaintiff from bodily injury while in the said ferry house and on or upon said passageways for embarkin<sup>g</sup> and disembarking passengers, and to regulate and restrain all persons and corporations operating and managing wagons or vehicles with a horse attached or harnessed thereto in, on or upon said ferry house and passageways, in the careful or proper use and occupancy thereof, and especially to use and take all proper care and precaution to protect and prevent the plaintiff from sustaining bodily injury while such passenger as aforesaid, by or through any horse or vehicle using said ferry house and passageways; and it then and there became and was the duty of the defendant, the New York Mail Company, to direct, operate and manage its said wagon or vehicle, with the horse harnessed or attached thereto, in a careful and prudent manner, so as not to injure the plaintiff while traveling on or occupying said ferry house and passageways.

But the plaintiff, in fact, says that the defendant, the Pennsylvania Railroad Company, wrongfully neglected its duty in that behalf and failed and neglected to take and use all proper care and caution to provide for the safety and bodily protection of the plaintiff, while its passenger as aforesaid, and did not provide and maintain a safe and proper place, passageway or means of ingress for him, the said plaintiff, from and through its said ferry house to its said ferry boats, and did not take all reasonable care and precautions to protect and prevent the plaintiff from sustaining bodily injury while in said ferry house and on and upon said passageways for embarking and disembarking passengers, and did not regulate and restrain the defendant, the New York Mail Company, in the careful and proper use and occupancy of said ferry house and passageways; and the said defendant, the New York Mail Company, did not di-



rect, operate and manage its said wagon or vehicle,  
 with the horse attached or harnessed thereto in a  
 careful and prudent manner, so as not to injure the  
 plaintiff while in the use of said ferry house and pas-  
 sageways, but, on the contrary, the said defendant,  
 the New York Mail Company, took so little and such  
 bad care of the said wagon or vehicle and of the  
 horse attached or harnessed thereto, that the said  
 horse ran away with said wagon or vehicle, and into **10**  
 and collided with the plaintiff, who was then and  
 there standing in the passageway provided by the  
 defendant, the Pennsylvania Railroad Company, as a  
 place or way of ingress for its passengers from its  
 said ferry house to its said ferry boats, and the said  
 defendant, the Pennsylvania Railroad Company,  
 through its negligence, carelessness and mismanage-  
 ment, allowed said horse to run away with the wagon  
 or vehicle attached or harnessed thereto, and to run  
 into and collide with the said plaintiff, who was then **20**  
 and there standing in the passageway provided as  
 aforesaid, and the said horse and wagon or vehicle  
 did run into and collide with the said plaintiff and  
 strike the body of the said plaintiff with great force  
 and violence, and by reason thereof the plaintiff be-  
 came and was then and there greatly bruised, hurt,  
 wounded and injured, and became and was sick, sore,  
 lame and disabled and permanently injured, and so  
 remained for a long space of time, to wit, from  
 thence hitherto, during all which time he has suffered **30**  
 and undergone great pain and distress, and will in  
 the future suffer and undergo great pain and dis-  
 tress, and has been and will be permanently de-  
 prived of and prevented from enjoying his necessary  
 and lawful affairs, occupations and amusements, and  
 thereby also the plaintiff has been put to great ex-  
 pense for surgical services, medical attendance,  
 medicines, care and nursing, in and about endeavor-  
 ing to be cured of the said sickness, soreness, bruises  
 and injuries so received as aforesaid, to wit, at Jersey **40**  
 City aforesaid.



Attorneys of Plaintiff.

And the said defendant, the New York Mail Company, by Frank H. Somer, its attorney, comes and defends the wrong and injury, when, etc., and says, that it is not guilty of the said supposed grievances above laid to its charge, or any or either of them, or any part thereof in manner and form, as the said plaintiff hath above thereof complained against it. And of this, the said defendant, the New York Mail Company, puts itself upon the country, etc.

Attorney of Defendant.

STATE OF NEW YORK, )  
 ) ss. :  
30 COUNTY OF NEW YORK. )

A. H. Boomer, of full age, being duly sworn according to law, on his oath, says, that he is the President of the New York Mail Company, a corporation, one of the defendants in the above plea mentioned, and deponent further says that the said plea is not intended for the purpose of delay, and that he, this deponent, verily believes that the said New York Mail Company has a just and legal defence to the  
40 said action on the merits of the case.



Sworn and subscribed to before me at New York City, in the State of New York, this A. H. BOOMER.  
14th day of April, A. D., 1904.

(Seal). ALEX. D. CORNELL,  
Notary Public, Rockland Co.  
Certificate filed in N. Y. Co.

10

STATE OF NEW YORK, )  
COUNTY OF NEW YORK. ) ss.:

I, Thomas L. Hamilton, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, do hereby certify that Alex. D. Cornell has filed in the Clerk's office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Rockland, with his autograph signature, and was at the time of taking the annexed deposition duly authorized to take the same, and that I am well acquainted with the handwriting of said Notary Public, and verily believe that the signature to the annexed certificate is genuine. 20

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 14th day of April, 1904. 30

(Seal). THOS. L. HAMILTON,  
Clerk.

Endorsed: Filed April 18, 1904.

MAURICE J. STACK,  
Clerk. 40



Therefore, to try the issue above joined let a jury come before the said Circuit Court, at Jersey City aforesaid on the 10th day of January, 1905, as yet of the term of December, in the year of our Lord, one thousand nine hundred and four, who neither, &c., by whom, &c., to recognize, &c., because as well, &c., the same day is given to the parties aforesaid, at which day before the said Circuit Court come the said parties, by their attorneys aforesaid and the  
 10 jurors of the jury above mentioned also come, who to speak the truth of the matters aforesaid being chosen, tried and sworn, say upon their oath that the said defendant, the New York Mail Company, is guilty, as the said plaintiff hath thereof above complained against it, and that they find in favor of the plaintiff and against the defendant, the said the New York Mail Company, and they assess the damages of the plaintiff on occasion of the premises at fifteen hundred dollars, and above  
 20 his costs and charges by the said plaintiff above his suit in this behalf expended.

Therefore, it is considered that the said plaintiff do recover against the said defendant his damages aforesaid in manner aforesaid found, and also forty-two dollars and thirty-eight cents for his said costs and charges by the said Court now here adjudged, and which said damages, costs and charges in the whole amount to fifteen hundred and forty-two dol-  
 30 lars and thirty-eight cents.

And the said defendant in mercy, &c.

Judgment entered and signed this 12th day of January, A. D., 1905, at 9.45 A. M.

CHARLES W. PARKER,

Judge.



## TESTIMONY.

January 9, 1905.

A jury was duly drawn and sworn.

Mr. Fielder then opened the case to the jury, on behalf of the plaintiff.

EMIL REUTTER, sworn as a witness on behalf of <sup>10</sup> the plaintiff, testified as follows:

DIRECT EXAMINATION by Mr. Fielder:

I am Ferry Station Master of the Pennsylvania Ferry, Jersey City station, and have been eight or nine years; this ferry is located at the foot of Exchange Place, Jersey City; the entrance for passengers for the ferry from Jersey City, in December, 1903, there was one on each side of Exchange Place, <sup>20</sup> and that entrance was on the grade or level with the floor of the ferry house.

Q. After a passenger, or one buying a ticket, buys his ticket, what does he do to gain entrance to the ferry house?

Mr. GRAY: I object. The question was "What does a passenger, after he has bought <sup>30</sup> his ticket, do to gain entrance to the ferry house?" I don't think that that is a proper question, because the question seeks a hypothetical conclusion and opinion from the witness. What can a passenger do or what did any particular passenger do may be pertinent to the real inquiry before this Court.

Mr. FIELDER: The purpose is to show how the passenger proceeds. <sup>40</sup>



The COURT: Well, how he is expected to proceed, how the railroad expects him to proceed.

Mr. FIELDER: I will withdraw this question.

Q. After the passenger has secured his ticket what  
10 method is provided for the passenger to proceed on his journey to the ferry boat? A. I don't quite understand that question.

Q. After he has bought his ticket how does he proceed to get to the ferry boat? A. He proceeds through the waiting, passes through the gangway, 60 feet wide, which is used by both teams and passengers.

Q. In what direction does this main drive way extend? A. North and south, the whole length of the ferry house; it is close on to 600 feet long, if I  
20 recollect right.

Q. What is on the east side of the driveway? A. Ferry slips and the dividing line between the ferry slips.

Q. What ferry slips are there there? A. One Annex, two Cortlandt, two Desbrosses, and one 23rd.

Q. On what grade are these ferry slips with reference to this main driveway?

30 Mr. VREDENBURGH: I object to that, may it please your Honor, I can't understand that question—"What grade is the slip with reference to the driveway?" Of course, it is uncertain what he means by the slip.

Mr. FIELDER: The ferry master uses the word "slip."

Q. I suppose, more correctly speaking, it is bridge, is it not, Mr. Reutter? A. Well, there are bridges  
40 and slips, both.



Q. (The Court.) What do you mean by the slip?  
 A. The slip is where the boat enters between the racks.

Q. (The Court.) The portion of water enclosed by the racks, isn't it? A. Yes, sir.

Q. (The Court.) Then, there is a bridge? A. There is a bridge between them.

Q. (The Court.) And the end of the boat comes in contact with the end of the bridge and is made fast to it? A. Yes, sir. 10

Q. (The Court.) And the bridge rises and falls to some extent, with the tide, does it not? A. Yes, sir.

Q. This bridge is made fast to the main driveway? A. Yes, sir.

Q. Now, on what grade or level is the end of the bridge that is made fast to the main driveway with reference to the main driveway? A. What grade?

Q. What grade or level, is it on the same grade or level, or are there steps? A. Where it is made fast?

Q. Yes? A. It is on the level. 20

Q. What is at the north end of the ferry house? A. Part of a dock, dock property between—it is a dock on the north end.

Q. And does this main driveway lead out of the ferry house to this dock? A. Yes, sir, it does.

Q. Where is your office? A. Almost center on the west side of this driveway.

Q. Opposite what ferry slip? A. South Desbrosses street ferry slip.

Q. What is on the same side of the driveway south of your office? A. Well, there is two waiting-rooms, the team entrances and exits, the stone abutment and storeroom, and another entrance, and the elevators and gents' toilet. 30

Q. What is there north of your office? A. There is elevators, stand for mail wagons, mail room; that is all inside of the ferry house.

Q. How wide is this space north of your office bordering on the main driveway—along the main driveway? 40



Mr. VREDENBURGH: Are you giving the whole width that is north of his office, or only part of it?

Mr. FIELDER: The space that is north of his office.

Q. Including the driveway?

Q. There are no driveways north of your office  
10 and west of the driveway? A. No. I should judge about 100 feet open space.

Q. And what is next north of the open space? A. A mail room.

Q. What mail room and what for? A. Well, I believe they assort and store mail and keep their pouches and one thing and another in there that arrives and departs on some of the trains. I never took particular notice what it was for.

Q. Is there any sign or mark designating that  
20 office? A. I believe there is a small sign "U. S. Mail," on the front door; I am not positive, though.

Q. Is there a sign "Mail transfer clerk?"

Mr. GRAY: I object. It seems to me these questions as to what there is there, must be confined, to be proper, to the time at or just before the accident. The witness seems to be now speaking of the present condition.

30 The COURT: That seems to be so, Mr. Fielder.

Mr. FIELDER: Yes, sir, I suppose that is an oversight on my part. I intended these questions to apply to that particular time.

Q. Will the witness say whether the conditions that he has described are the ones that existed in  
40 December, 1903? A. If I recollect right, they are.



Q. (Mr. Vredenburg.) You refer to the United States mail, don't you? A. Yes, sir.

Q. (Mr. Vredenburg.) Post-Office Department? (No audible answer.)

Q. This open space that is north of your office runs back, how deep? A. About 60 to 65 feet.

Q. And what is there at the back? A. Stone abutment.

Q. Running along the whole width of the open space? A. With the exception of a small little closet that is in there, in the stone abutment, there is an engine room, too. 10

Q. Then, as I understand you to say, this open space is closed on three sides, and open on the main driveway? A. Yes, sir.

Q. What is over the top of this open space? A. The platform tracks or railroads in the railroad station.

Q. Are there any openings through the top or roof? A. Elevator openings. 20

Q. How many elevators? A. Two.

Q. (Mr. Vredenburg.) Do you mean two altogether, or two in that open space? A. Two elevators in that open space.

Q. (Mr. Vredenburg.) You said something about an elevator to the south of your office—was there a freight elevator to the south of your office? A. Yes, sir.

Mr. FIELDER. I am talking now of the open space north of his office, Mr. Vredenburg, he says there are two elevators in that open space. 30

The COURT: Perhaps, Mr. Vredenburg, it would save time if you would wait until your turn comes; of course, you want to clear the matter up. 40



10 Mr. VREDENBURGH: I would wait, your Honor, but a gentleman is called here who isn't shown to be accurately acquainted with distances, and these things, and he is asked about that, he is asked to describe a condition of things which can be more accurately done by some architect, or some one who knows about distances. Now, when he is dealing with that, if he is going to deal with a witness who doesn't prepare himself, and isn't a person who knows accurately about such things, why, I should think, it was permissible for me to keep the counsel and witness right, so far as I know about it.

20 Mr. FIELDER: I am not asking this witness to be accurate about measurements at all; if Mr. Vredenburg wants them accurate I suppose he can produce a surveyor or architect.

The COURT: The point with the Court is the orderly method of examining. While of course, I don't insist upon it myself, perhaps it is better to let the examination proceed in the orderly way, and if there are any corrections to be made, they can be made when counsel's turn comes.

30 Q. Are these two elevators enclosed on the sides?

A. They are.

Q. Framework built around them? A. Yes, sir.

Q. So that they are completely enclosed? A. Yes, sir.

Q. How far are they away, about, or how far were they in December, 1903, away from the place where you say the United States mail wagons stood?

40 Mr. VREDENBURGH: When you say they, what do you mean?



Mr. FIELDER: The elevators.

Mr. VREDENBURGH: These two elevators. Are you referring to both of them?

Mr. GRAY: I object to the question because it assumes a condition of fact which hasn't been shown to exist. The question refers to where the United States mail wagons stood. I don't understand he has said where they stood. 10

Q. Whereabouts in this open space was the place where the mail wagons stood in December, 1903? A. Well, I couldn't tell you exactly where that mail wagon stood.

Q. I didn't mean this mail wagon, I meant where the mail wagons—(Interrupted.) A. On the north end, extreme north end.

20

The COURT: Are you speaking of the open space near his office, or are you speaking generally of the open space.

Q. You mean the open space next north of your office and west of the driveway? A. Yes, sir.

Q. Was this place next to the mail office of which you spoke? A. Yes, sir.

Q. Directly next to it? A. Yes, sir.

30

Q. Now, how far were these elevator shafts from this place where the mail wagons stood? A. Well, the nearest one, there is an open place there, I should judge, of about 40 feet, I couldn't give you the exact distance.

Q. Now, you mean 40 feet between the elevator—(Interrupted.) A. And the mail—

Q. (Continuing.)—and the mail wagon? A. And the mail wagons, the open space that they stand in.

Q. How did the mail wagons get to the, reach this 40



space in the depot, where they were accustomed to stand? A. Drive in from the driveway, some drive in, some back in.

Q. Some coming over the ferry, and others from Jersey City, I expect? A. Some from Jersey City, yes, sir.

Q. These wagons were drawn by horses, were they not? A. Yes, sir.

10 Q. Some of them two horses, and some of them one horse wagons? A. Yes, sir.

Q. When the wagons stand there, which way do the horses face? A. East.

Q. That is toward the main driveway? A. Yes, sir.

Q. For how long a space do the mail wagons stand in this particular place, how long a space of time? A. Well, I have never timed them, I couldn't answer that question, I never paid enough attention to it.

20 Q. How long have you seen mail wagons, prior to December, 1903, standing within this space? A. I never took particular notice how long they stand there; there are mail wagons there all of the time, some going and some coming.

Q. How many foot passengers use this main driveway and the part of the ferry house on the grade of the main driveway daily? A. That I couldn't tell you.

30 Mr. GRAY: I object to that, I can't see how that is pertinent at all.

Mr. VREDENBURGH: If it were pertinent it can be seen that this witness doesn't know it.

40 Mr. FIELDER: It is very easy for the witness to say he doesn't know; it is pertinent, if the Court desires me to state, in view of the duty that the Pennsylvania Railroad Com-



pany, and that this mail company, the owner of these wagons, owed to passengers. Here was a space that I expect to show was occupied daily by tens of thousands of passengers going to and from New York, between New York and Jersey City, and the trains and New York, and the duty that the Pennsylvania Railroad Company and the New York Mail Company owed to these passengers is a material matter in this case. I am trying to find out from this witness, if he knows, about the number of passengers that travel through there.

The COURT: All you need to show, Mr. Fielder, is that the entrance and passage ways are provided there for the use of passengers, and that they were habitually used by passengers.

20

Mr. FIELDER: Yes, sir, and I think I ought to be permitted to go further than that, by showing that, with this great number of people, these two companies were expected to use, perhaps, greater care than a man driving in the street, where foot passengers use only the sidewalks and the cross walks.

Question and answer read.

30

The COURT: It has been answered, hasn't it?

Q. Can't you state about?

Mr. GRAY: I object.

A. I cannot.

40



Mr. GRAY: It seems to me if either defendant owes any duty, it owes it just as much to one passenger as it does to a million. I can't see how the number of passengers increases the duty of either defendant. Just what the duty is hasn't yet been defined, and there has been no evidence upon it. If this question is admissible, perhaps it would be better to have it come later, when the question of what the duty is can be discussed, so as to ascertain whether the number of people crossing the ferry slips is any measure of the duty.

10

The COURT: It seems to me the duty is very much the same as Mr. Gray says; when we come to the question of reasonable care possibly the number of people who are accustomed to use the foot passageway every day might be material, as tending to influence the jury on the question of reasonable care. I think the question may be allowed.

20

Defendant Pennsylvania Railroad Company excepts.

The defendant New York Mail Company prays an exception may be allowed to this ruling, and it is allowed and signed and sealed accordingly.

30

C. W. PARKER, J.

Mr. FIELDER: I won't insist on the question, I withdraw it.

Q. What sort of vehicles use the main driveway in the ferry house?

Mr. GRAY: I object to that, I don't want to be objecting all the time, but I can't see

40



how that is pertinent, and we don't want to have to meet something which isn't a proper issue in the case.

The COURT: The plaintiff is entitled to show the general uses to which that driveway is put, it seems to me, and while the question may be possibly framed from the wrong end, I think it is pertinent. If the plaintiff had asked, "What are the uses of the driveway, what are the general uses of the driveway?" I don't know as counsel would object, would they? 10

Mr. GRAY: We don't know what the plaintiff is going to show in the way of facts which will make this question of the driveway pertinent.

The COURT: You have a declaration showing it. 20

Mr. GRAY: But the declaration doesn't indicate that there was any duty on the part of the defendant which it neglected in the driveway.

Mr. FIELDER: I suppose both counsel will admit what I am trying to prove by this question, that all sorts of vehicles use this driveway, including automobiles, will they? 30

Mr. GRAY: I will admit whatever I think is pertinent, I can't admit anything that I don't think is pertinent.

Mr. FIELDER: Don't you think that is pertinent? 40



Mr. GRAY: Not in the present situation. What has an automobile got to do with it?

Mr. FIELDER: Well, an automobile may frighten a horse.

The COURT: Do you want a ruling on this question?

10

Mr. GRAY: I should like to have a ruling, yes, sir.

The COURT: It may be answered.

To which ruling the defendant, the New York Mail Company, prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

20

C. W. PARKER, J.

Q. Including automobiles?

Mr. GRAY: I object to that.

The COURT: I don't know what the automobiles have to do with the case.

30

Mr. GRAY: It is certainly a leading question.

The COURT: Do you expect to show that the horses were scared by an automobile and ran away?

Mr. FIELDER: I think that might appear.

40

The COURT: I will exclude this question.



Q. How were these vehicles propelled?

Mr. GRAY: I object.

The COURT: Answer that.

To which ruling the defendant, the New York Mail Company, prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly. 10

C. W. PARKER, J.

A. By horse power, some of them, some were electric machines of different descriptions; some are pulled by hand.

Q. When you refer to electric machines, what kind of machines are those? A. Automobiles.

Mr. GRAY: I don't want to keep on objecting on the same line. I suppose one ruling disposes of the whole question? 20

The COURT: Well, you better enter your exceptions on every point.

Mr. GRAY: Then, I ask that that last question be excluded for the same reasons before stated. 30

The COURT: It will be allowed.

To which ruling the defendant, the New York Mail Company, prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J. 40



Mr. VREDENBURGH: Your Honor, will you allow me an exception, too?

The COURT: I haven't heard your objection, Mr. Vredenburgh.

10 Mr. GRAY: I suggest this, that the plaintiff should prove what occurred; if an electric or other propelled vehicle had some relation to the issue here and caused the running away of the horse, or whatever they propose to prove, then all these questions may be absolutely pertinent, or they may be unnecessary; it isn't shown that an electric vehicle had anything to do with the case.

20 The COURT: On this broad, general proposition on the part of the plaintiff, that all kinds of vehicles are accustomed to use this driveway, I suppose the plaintiff ought not to be allowed to go too far in giving the details as to every individual kind; it seems to me that it is discretionary up to this point, and I won't shut the plaintiff out so far as he has gone.

30 Mr. FIELDER: If the Court will permit me to state further, that might settle this question, and what might follow. Let me say this, that I am going to contend, and the purpose of this question and the questions that will follow will be to bear out this contention, that it was the duty of the Pennsylvania Railroad Company to know that mail wagons with horses attached were allowed to stand on the west side of this driveway, unattended and untied, that the use to which that driveway was put was a use calculated, or  
40 within the reasonable anticipation of the



Pennsylvania Railroad Company, to frighten horses so that they would run away and injure passengers that were entrusted to their care. That is the purpose of this question, and my right to insist on that sort of a question and that sort of proposition, is based on the case of *Exton* against the Central Railroad Company.

Mr. VREDENBURGH: The motion is still before your Honor, whether you will exclude that last question or not, isn't it? <sup>10</sup>

The COURT: I have overruled Mr. Gray's objection to the last question, and permitted the answer to stand and allowed an exception. I have refused you an exception, because you didn't object.

Mr. VREDENBURGH: I move to exclude that question and answer; I did object before, I don't object at this particular time, but I ask now to exclude that question and answer. <sup>20</sup>

The COURT: I decline to entertain the objection at this time.

Mr. VREDENBURGH: Well, your Honor will overrule my motion, then? <sup>30</sup>

The COURT: That is what it amounts to.

Mr. VREDENBURGH: And your Honor will allow me an exception?

The COURT: I don't think I can allow you an exception under these circumstances. <sup>40</sup>



Q. Were the automobiles that were accustomed to use this driveway propelled by any other power than electricity?

Mr. GRAY: I object.

Mr. VREDENBURGH: I object.

10 Mr. GRAY: I object on this ground that whatever may have been said toward making these questions pertinent as to the Pennsylvania Railroad Company, doesn't make them pertinent as to the New York Mail Company.

20 THE COURT: Isn't it more pertinent as to the New York Mail Company in this aspect, that if the Mail Company was accustomed to leave their horses standing unattended where these vehicles were going by they might be held guilty of negligence also.

MR. VREDENBURGH: My objection is that it isn't relevant, I didn't state any objection, I object to this question because it has no relevancy against the railroad company.

30 THE COURT: The objections will both be overruled.

The defendant, the Pennsylvania Railroad Company, excepts.

To this ruling the defendant, the New York Mail Company, prays that an exception may be allowed, and it is allowed and signed and sealed accordingly.



A. I don't know enough about the automobiles to tell what they are propelled with.

Q. There were others than electric? A. I couldn't tell you what they are propelled with, I am not an expert on automobiles.

Q. Was there any one ferry more than another that automobiles were accustomed to use in traveling to and from New York?

Mr. VREDENBURGH: Objected to for  
the same reason. 10

Mr. GRAY: Same objection.

The COURT: Objections both overruled.

To which ruling the defendant, the New York Mail Company, prays that an exception may be allowed, and it is allowed and signed  
and sealed accordingly. 20

C. W. PARKER, J.

The defendant, the Pennsylvania Railroad Company, also excepts.

A. Twenty-third street ferry.

Q. To go to and from the 23rd street ferry, did these automobiles have to pass the place where the Mail Company's wagons were accustomed to stand? 30

A. Yes, sir.

Q. If automobiles desiring passage to New York by way of 23rd street ferry, entered the ferry house and the boat was not in the slip, whereabouts, with reference to the place where the mail wagons stood, would the automobiles stand?

Mr. GRAY: I must object to that. 40



Mr. VREDENBURGH: The question is objected to as not relevant.

The COURT: I think, Mr. Fielder, that is not relevant, because it doesn't seem to bear particularly on the circumstances at the time of the accident. I will exclude it at this point. The situation may develop so it will be competent later.

10

Plaintiff prays exception.

Q. Does the Penn. R. R. Co. operate an automobile wagon through this open space in which the mail wagons stand?

Mr. GRAY: I object to that on the part of the mail company, I can't see how what the Penn. Co. does in that particular affects this defendant.

20

The COURT: That refers to the present. I will exclude that question.

Q. In December, 1903, did the Penn. R. R. Co. operate an automobile baggage wagon from—(Interrupted.)

Mr. GRAY: I object.

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Mr. VREDENBURGH objects.

Objections overruled.

To which ruling the defendant, the New York Mail Company, prays an exception, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J.

40

The Penn. R. R. Co. also excepts.



A. I don't remember whether they had them at that time.

Q. You don't say that they didn't? A. No, I do not.

Q. Locomotives attached to the trains of the Penn. R. R. Co. run into the depot above this open space, I understand you to say? A. Yes, sir.

Q. Do the locomotives blow off steam in the depot?

10

Mr. GRAY: I object to that now, "In the depot." There is an immense depot there; they may blow off steam somewhere in the depot.

Mr. FIELDER: It may have no bearing at all in the case, if the steam can't be heard down stairs. I am going to follow it by that question.

20

The COURT: It does seem to me that a fairly proper presentation of the case would call for a description of the circumstances of the accident first, and then the charging of the negligence later, because with the case presented in this shape you can go into two hundred and fifty different reasons why this team ran away, if it did run away, whatever it was, and then, after you get through all that, 30 you go on to show that the team did run away and would have to pick out of the two hundred and fifty causes the one cause to which it was due.

Mr. FIELDER: With all due respect to the Court, it seems to me that I may show the situation of all the parties to this case as it existed just before the accident, and if I also show, as I am endeavoring to do now, cir-4c



cumstances existing that may add dangers for a passenger of the Pennsylvania Railroad Company, because of negligence on the part of either one of these defendants, and an accident follows, I think the burden of proof is then on these defendants, to show that the accident did not happen from some one of these causes calculated to make it happen and not on me to show what did cause it.

10

The COURT: You mean to say that by showing there were causes—(Interrupted.)

Mr. FIELDER: Calculated to make a horse run away, and that the horse did run away, that it is for them to show what particular cause—(Interrupted.)

20

The COURT: If you show that such a cause was in operation at the time the horses ran away.

Mr. FIELDER: Yes, sir; in other words, the mere running away of a horse in a place such as this was at that time casts the burden of proof upon these two defendants to show that it wasn't through their negligence.

30

Mr. VREDENBURGH: Well, if that be so, and if the mere running away of the horses did it, why attempt to prove these attending circumstances?

Mr. FIELDER: Well, I mean, surrounded by these circumstances.

40

The COURT: If I understand you correctly, you expect to show, for example, that automobiles are accustomed to go through there,



and that automobiles perhaps are accustomed to stop near by, or that locomotives are accustomed to blow off steam, or that the elevators are liable to go up or come down with a bang, or that the ferryboats are liable to crash into the slips with some noise, you expect to combine those customs or practices with the occurrence of the accident without showing that any one of them occurred on the date or at the time of the accident, and charge the defendants with negligence on account of it?

Mr. FIELDER: I think I can do that, yes, sir.

The COURT: I don't think you can; we may as well settle that question right now.

Mr. FIELDER: Question withdrawn. 20

Q. You have said that your office is opposite the south Desbrosses street ferry bridge? A. Yes, sir.

Q. Into how many passageways is this ferry bridge divided? A. Two. Two for passengers and one for teams.

Q. Which is in the center? A. Teams.

Q. Do you remember the day of the accident to Dr. Koonz. A. I do.

Q. Where were you at the time of the accident? A. 30  
Coming out of the door of the office.

Q. Where was Dr. Koonz? A. Standing on the bridge.

Q. What ferry slip? A. South Desbrosses street slip.

Q. In what gangway? A. At the time of the accident?

Q. Yes? A. The first I saw of Mr. Koonz was trying to go through the lattice work on the side of the bridge. 40



Mr. GRAY: I object to that answer and ask that it be struck out, it is not responsive to the question at all.

Mr. FIELDER: The witness didn't see him before the accident; it might just as well be stricken out.

10 Q. What was it you first saw of this accident? A. Mail wagon turning the corner to go down the bridge, mail horse and wagon.

Q. And whereabouts was the mail wagon and horse at the time you first saw it? A. Just making the turn.

Q. From where? A. From the north end of the building.

Q. On the main driveway? A. Yes, sir.

Q. And it was turning down, where? A. Down the passenger gangway on the north side of the bridge.

20 Q. Then, what next did you see? A. I saw these people on the bridge, running.

Q. Did you see Dr. Koonz running? A. I didn't see him running, the first I saw of him was when he was going through the slats.

Q. Then, what happened to the horse and wagon? A. It upset, as it made the turn the horse or wagon upset.

Q. And what happened to the horse? A. By the time I got there the horse was standing; I understood he had fallen, but I don't recollect positive.

30 Q. Where was the wagon by the time you got there? A. The time I got there the wagon was upset.

Q. Did you leave at once for the scene of the accident when you saw it? A. Yes, sir.

Q. Then, did you see Dr. Koonz when you got there? A. Yes, sir.

Q. Where was he? A. Beyond the dock, between the bridge and the building, the bridge shed, as we  
40 call it, bridge roof, hood.



Q. Did you see the wagon strike him? A. No, sir, I did not.

Q. Was the wagon leaning against the side of the bridge at the time you got there? A. It was right across the gangway.

Q. Was it lying over against either side? A. One end was, on one end, and the other end on the other.

Q. When did you first see Dr. Koonz? A. I first saw Dr. Koonz when he was going through from the side of the bridge on the lattice work. 10

Q. Did you see the wagon strike him? A. I did not.

Mr. GRAY: I object to that, there is no proof that the wagon did strike him.

The COURT: He says that he did not see it.

Mr. GRAY: I don't think that is a proper question. 20

Q. Where were you when you first saw Dr. Koonz? A. Well, to distinguish him, when I saw him first off, that is, when I first knew who he was, when he was outside on the dock; I saw people running and climbing there, I didn't know who he was.

Q. Did you see the wagon strike anybody? A. I did not.

Q. Did you see the horse strike anybody? A. No, sir. 30

Q. When you got down to the bridge did you find that anybody had been injured?

Mr. GRAY: I object to that; he can only testify to what he saw himself, not what he found.

The COURT: I suppose counsel means, did he see anybody, see any injury. 40



10 Mr. GRAY: Unless he saw the cause of the injury, unless he saw the man hurt, if he was hurt by the accident, found somebody hurt there, that wouldn't bring it up to the running away of this horse. Suppose he got there and found a man lying on the ground with his head hurt, unless he saw the man hurt and knows how he was hurt, the mere fact that he found a man lying on the ground with his head hurt, wouldn't entitle him to testify in answer to that question.

20 The COURT: If he went over there and found a man injured he would be entitled to testify to that—there is no question about that in my mind. Whether or not the question is a proper one to draw out such an answer is another matter. I don't think that it is fairly so. If the witness is asked what he saw when he went there, there is no reason why he shouldn't say that he saw a man lying on the ground, or whatever it may be.

Mr. FIELDER: Well, strike out the question.

Q. What did you see when you got over there? A. I saw the wagon upset on the bridge and two men standing on the side, on the outside of the bridge.

30 Q. Was either of them Dr. Koonz? A. One of them.

Q. What next happened? A. I went and got Dr. Koonz and this other gentleman out.

Q. Got them out from where? A. From this outside of the bridge on the north—south of the bridge.

Q. What was there to prevent him from getting out himself? A. Nothing.

Q. Why did you then go to get him out? A. Always do, in case of an accident, anything of that kind,  
40 assist people.



Q. Did you have to assist Dr. Koonz out? A. I took him by the arm.

Q. Why? A. He claimed he had been injured.

Q. Wasn't he at that time pinned down by the wagon?

Mr. GRAY: I object.

The COURT: That is a leading question, isn't it? Overruled as such. 10

Q. Then, where did you take Dr. Koonz? A. To my office.

Q. When you first saw the horse coming down the driveway, at what rate of speed was the horse moving?

Mr. GRAY: I object to that, because the witness already said that he didn't see anything until he saw the horse and wagon turning down the bridge of the ferry. Now he is asked what happened when he saw the horse coming down the driveway. 20

The COURT: He was in the act of turning down when he first saw him, as I remember the testimony.

Q. At what rate of speed was the horse moving when you first saw him? A. I couldn't say.

Q. Was he walking? A. Oh, no, he was running. 30

Q. Did he have a bridle on? A. He did not.

Q. Did he have a bit in his mouth? A. No, sir.

Q. What was done with the horse and wagon after the accident, if you know? A. After the accident the wagon was pulled back, the horse was unhitched, the wagon pulled back and the wagon righted and horse hitched to it again, and later was taken to New York.

Q. Where did the horse and wagon go, or where was it taken to, if you know, after the horse was re-hitched to the wagon? A. To New York. 40



Q. At once? A. In about ten minutes, I think he had the next boat, 23rd street—probably a little longer than that, maybe a little longer than that.

Q. Who took charge of the horse and wagon? A. The same driver, man that claimed he was driver.

Q. What was his name? A. Bruder, if I recollect right, his name was Bruder.

Q. Are you sure that that was the name of the man?

A. I have it here in my pocket (referring to paper),  
10 William Bruder.

Q. How do you spell it? A. B-r-u-d-e-r.

Q. Didn't you tell me that the man's name was Bowder? A. No, I did not.

Q. Are you positive about that? A. I didn't tell you anything with reference to the name; I told you they had the names in the office, I had made a statement in the office, and they had the names in there.

Q. Was George Hernarns around at the time of the accident? A. Well, I don't know whether I know  
20 him or not.

Mr. FIELDER: Mr. Hernarns, stand up, please.

A. Yes, he was there, after the accident.

Q. Who is Mr. Hernarns? A. He was a sort of a foreman over the mail drivers, that is, I understand he is; I am not positive what his position is, I see him around there.

Q. Was there anything across the passage gangway of the Desbrosses street ferry slip at the time of the accident to prevent passengers from going down to the end of the bridge? A. There is a gate in the center.  
30

Q. How was that gate operated? A. On a sort of a hinge.

Q. And what passageways does the gate close? A. It closes on both, there are two gates.

Q. Closes the passenger gangway? A. And the team gangway.

40 Q. When is that gate kept closed?



Mr. GRAY: I object to that.

Question withdrawn.

Q. On the day of this accident, when you got down to the bridge, did you see whether there was a boat in the slip or not? A. There was a boat in the slip by the time I got down there.

Q. Made fast to the bridge? A. By the time I got there, yes, sir. 10

Q. (The Court.) Coming in or going out? A. The boat was in the slip then.

Q. Were these gates open when you started for the gangway?

Mr. VREDENBURGH: Did he answer your Honor's question?

Q. (The Court.) Was it a boat with passengers from New York, or a boat ready to go to New York? 20

A. It had just arrived.

Q. When you started for the gangway after seeing the horse turn down, were the gates open or closed?

A. That is a question that is hard to decide, hard to answer.

Q. Tell us what you saw with reference to the gates? A. Why, the gates were opened and then closed, and then opened again by this runaway horse.

Q. How did the horse open the gates? A. With the shaft, struck against it. 30

Q. But when you first saw the horse turn down the gangway, how were the gates? A. Well, they were about to be opened, a man was in the act of opening them.

Q. Prior to the time of the accident had you seen horses and wagons, or mail wagons with horses attached, standing on the west side of the driveway, in this space north of your office, unattended and untied? 40



Mr. GRAY: I object, on the ground that the question is addressed to what was the condition of the horses and the mail wagons at other times than on the day of the accident. It seems to be an effort to prove a general custom. If that is so I would like to have it brought out.

10

The COURT: Are you trying to prove a custom or of this wagon?

Mr. FIELDER: No, I expect to prove what he saw was the usual custom.

The COURT: It will be admitted.

20

Mr. VREDENBURGH: I desire to object to the question as illegal, and immaterial and irrelevant.

The COURT: The objection of both defendants will be overruled.

To which ruling the defendant, the New York Mail Company, prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

30

C. W. PARKER, J.

The defendant, the Penn. R. R. Co., also excepts.

A. I never paid particular attention before that time.

40

Mr. FIELDER: That isn't an answer to the question.



Question read as follows: "Prior to the time of the accident had you seen horses and wagons, or mail wagons with horses attached, standing on the west side of the driveway in this space north of your office unattended and untied?"

A. I did not, I hadn't noticed any.

Q. Had you seen mail wagons, with horses attached, prior to the accident, standing in this space being fed? A. I hadn't noticed any. 10

Q. Had your attention prior to the accident been called to horses and wagons standing there in the manner that I have described?

Mr. VREDENBURGH: I object.

A. No, sir.

Q. How wide is this passenger gangway of the south Desbrosses street ferry, on which the accident happened? A. I should judge about eleven feet. 20

Q. Where is the entrance to this passenger gangway with reference to the main driveway, or where was it at the time of the accident? A. Why, it leads right off east from the main driveway.

Q. Is there any gate or bar, or step at the head of the entrance to the passenger gangway where it joined the main driveway? A. No bar, or step or gate. 30

Q. When the wagon tipped over on the gangway, to which side of the gangway did it tip, north or south? A. South.

Q. And then, when it fell finally, did it fall on the south side? A. On the south side.

Q. Dr. Koonz was on which side? A. On the north side of the passenger gangway.

Mr. VREDENBURGH: On the north side of the south passenger gangway? 40



Mr. FIELDER: On the north side of the north gangway of the south Desbrosses street ferry slip.

Q. Then, you mean to say that the wagon didn't strike over on the north side of the gangway, down which it ran? A. The wagon fell across the gangway, it stretched up on both sides.

10 Q. Now, let me ask you whether, from the place where the mail wagons stood, the noise of blowing off steam from the locomotives in the depot upstairs could be heard in December, 1903?

Mr. GRAY: I object.

Mr. VREDENBURGH: I object, leading, and for the reasons I have already given.

20 The COURT: I thought we had practically ruled that out at this stage?

Mr. FIELDER: I thought the Court asked me to make this proof of how the accident happened first and then renew the question?

The COURT: Well, you only proved that the accident did happen.

30 Mr. FIELDER: Oh, you desire me to recall this witness later on; very well, then, strike out the question.

CROSS-EXAMINATION by Mr. Gray:

Q. How big is this space to the north of your office? As I recollect it, you said from 60 to 70 feet over the driveway west, and a hundred feet along the driveway, making it 100 by 60 feet? A. About that,  
40 it may be a little longer.



Q. What is on the floor above that space? A. The train shed, the tracks, platforms, and board walk.

Q. Where is that space in relation to the iron railing on the second floor keeping passengers from the train shed, where they have an entrance to the trains?

Mr. FIELDER: I object to that question, it isn't shown there is any iron railing on the floor above.

10

Q. Is there an iron railing on the floor above? A. There is.

Question read as follows: "Where is that space in relation to the iron railing on the second floor keeping passengers from the train shed, where they have an entrance to the trains?"

A. Why, the railing on the second floor is the beginning of that open space on the lower floor. 20

Q. So that immediately over that open space on the lower floor there is a large space devoted exclusively to the passage of people, is there not? A. On the upper floor?

A. Yes. A. Yes.

Q. What supports the upper floor, the roof of this space on the lower floor? A. Iron columns.

Q. How many of them are there? A. Well, I think there is about five. 30

Q. How are they arranged? A. About 20 feet apart, I think.

Q. Are they all in one line? A. Well, there are some in farther back, there is one row right along there at the beginning of that open space.

Q. Which way does the row run, parallel to the driveway or at right angles to it? A. I don't understand that question.

Q. You say there are a row of five columns? A. Yes, sir. 40



Q. Does that row of five columns run parallel with the main driveway? A. Parallel with the main driveway.

Q. How far apart are these columns on the main driveway, did you say, 20 feet? A. I should judge about 20 feet.

Q. What is the diameter of these iron columns? I am speaking now wholly of the month of December, 1903—have the columns been changed since then? A. 10 They haven't been changed since then.

Q. What is the diameter of them? A. I couldn't give you the exact diameter of them, I should judge about eight inches. I should judge that, probably a little more.

Q. (The Court.) They are square, aren't they? A. Yes, sir.

Q. (The Court.) How near is your office to the north passenger entrance to the ferries, which is now, I understand, closed up? A. About 70 feet.

20 Q. (The Court.) Is it as far away as that? A. Yes, sir.

Q. (The Court.) What is in between those two? A. There is part of the slip; I am almost directly opposite the south Desbrosses street slip. You mean on the opposite side or the same side?

Q. (The Court.) No, I mean on your side—what is there right between your office and the now disused north passageway into the ferries? A. There is a toilet room, then there is a gangway that they use 30 for driving carriages in and out and the handling of the mail; that is south of my office. Then there is a brick pier used to support the train shed, and there is a small shop that they use for a machinist, and the store room, the office store room; then comes the waiting room.

Q. (Mr. Vredenburg.) Isn't there a toilet room there? A. Yes, a toilet.

Q. (The Court.) What do you mean by the waiting room? A. The entrance, the ferry entrance on the 40 north side of Exchange Place.



Q. How far away was your office then from the nearest point in this open space? A. Why, it is a part of that open space.

Q. Right against it? A. Yes, sir.

Q. How far is your office to the north of the south ferry slip of the Desbrosses street ferry? A. From the entrance of this bridge?

Q. Yes? A. About 60 feet.

Q. Could you, from your office door see the gate that you spoke of as being opened and shut? A. Yes, sir. 10

Q. Which was half way down—(Interrupted.) A. Yes, sir.

Q. (Continuing.)—the passenger way of the ferry bridge?

Q. Speaking of the east side of the driveway, what is there on the east side of the driveway, right to the north of that south Desbrosses street bridge? A. What is there north, you mean dividing the two slips? 20

Q. No, I mean when you stand on the south Desbrosses street ferry bridge and look out north to the east of the driveway, what do you see, what is right next to the slip and the bridge? A. This part of the building that separates the two slips.

Q. How near does that come to the driveway? A. It is the end of the driveway on the east side.

Q. That is, it comes right up against the driveway, doesn't it? A. Passenger way and driveway behind.

Q. Doesn't that form the corner between the passenger way and the driveway? A. Yes, sir. 30

Q. Then, how could you see from the doorway of your office around that corner, half way to that bridge? A. I wasn't around that corner, I was directly opposite that bridge.

Q. You said you could stand in your doorway and see down that bridge where the gate was? A. I am directly opposite, I could see straight.

Q. I thought you said you were 60 feet north? A. Sixty feet west. 40



The COURT: You mean what he said to me?

Mr. GRAY: Yes.

The COURT: That had reference to the ferry entrance just at the end of Exchange Place, on the south side.

10 Q. Where were you standing when you first saw the horse and wagon? A. I was coming out of the office door, the noise attracted my attention and brought me out.

Q. (Mr. Vredenburg.) What noise? A. The noise of a wagon coming down the station, through the station.

Q. (Mr. Vredenburg.) Noise of this wagon, do you mean? A. This wagon that had run away that day.

20 Q. (Mr. Vredenburg.) That noise attracted you? A. Yes, sir.

Q. What did you see Dr. Koonz do after you arrived at the bridge and helped him off of the bridge, or took hold of his arm, or whatever you did, what did he do after that time? A. Why, I led him to my office.

Q. What did he do there? A. He lost his hat; I lent him a hat and offered to send for a physician, but he was anxious to go to New York, and he continued  
30 on—brushed his clothes.

Q. What do you mean by continued? A. Continued to New York on his journey.

Q. Did he walk across the driveway to the boat? A. Yes, sir.

Q. What boat did he take? Same boat? A. No, I believe he missed a boat or two, later.

Q. You saw him walk across the driveway, did you? A. Yes, sir.

Q. Wearing your hat? A. I had lent him my hat,  
40 he had lost his.



Q. Why do you say that Mr. Hernarns had some association with the Mail Company? A. Why, judging from the figure he cuts up there.

Q. Were you subpoenaed? A. Yes, sir.

Q. By the plaintiff? A. Yes, sir.

CROSS-EXAMINATION by Mr. Vredenburgh:

Q. You have been superintendent of the ferry company, how many years, did you say? A. I am not superintendent; I am ferry station master, and was for about between eight and nine years.

Q. You are ferry station master there, and have been there eight or nine years? A. As ferry station master.

Q. And has the condition that existed there on December 13, the date of this accident, been similar with respect to the roadway and the physical conditions there to what they were ever since you have been station master? A. Since 1899, I think.

Q. Since 1899? A. The conditions have been such.

Q. What happened in 1899? A. In 1898 we had a fire, and in 1899 the place was re-constructed, and built about in this condition that it is now.

Q. How long have you been connected with the ferry in any capacity? A. Twenty years.

Q. Has there been any change that you know of in the construction of the floor of that roadway, so far as its width is concerned in those 20 years? A. You mean the driveway?

Q. Driveway? A. Not in the width.

Q. And in the approach to the ferry boats, I don't mean in the number, but in the way of approaching, that being on a level with the floor, and the entrance to the boat being used by vehicles on the same level with the northwest end of the bridge, in those respects has it been similar? A. It has been changed some since I have been there.

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Q. Has it been changed in respect to the vehicles and passengers entering the boats, and using the roadway to enter the boats, substantially as they did on December 13, the time of this accident, in 1903?

A. We have a passage way upstairs exclusively for passengers only to enter and depart from the different boats.

10 Q. There has been a change in the respect that now and in December, 1903, there was an entrance to the ferry boats on the floor above? A. Yes, sir.

Mr. FIELDER: To this ferry slip are you speaking about, or are you speaking about others?

Q. Mr. Fielder asks about this ferry slip, and I will change my question so as to refer to this slip? A. This ferry slip, yes, sir.

20 Q. And that floor above, is it of the same width and length as the floor below, that you have already described as a roadway? A. It is.

Q. And that is used for passengers on foot alone, is it? A. Passengers exclusively.

Q. And the entrance to that second floor from the street, is where? A. We have one on the north side of Exchange Place and one on the south side, entrance to the Cortlandt street waiting room.

Q. One on each side of Exchange Place? A. Yes, 30 sir.

Q. You spoke of elevators in this space between your office and this postal room, I understood you to say there were two elevators there? A. Two north of my office.

Q. And what are those elevators used for? A. To lift baggage, lift and lower baggage to and from the trains.

Q. And the baggage you refer to is the baggage brought in by the railroad trains? A. Yes, sir. 40

Q. What form is the baggage that goes up and



down on those elevators, what packages are they in, are they in carts? A. Some are in small cars, crates, as we call them, and some on baggage cars, and we have some in a machine they have there.

Q. Are these crates, any of them, pulled by horses or a horse? A. They are pulled along the platform upstairs to the elevator by a horse, lowered without the horse, and a horse then hooks to them and takes them aboard the boat after they are lowered to the lower floor. 10

Q. And how far are these elevators from this roadway, from the driveway, back, west of it? A. About 30 feet from the end of the roadway.

Q. And are they each about the same distance from the roadway, about 30 feet back from it? A. Yes, sir, they are about on a line.

Q. And is all the baggage brought down that way, or only part of it? A. All of it, that is all of the baggage arriving on passenger trains. 20

Q. Now, you said there were five posts, or supports, to the west driveway between your office and the room occupied by the postal department, are there other supports in this same open space that you spoke of west of these five posts? A. Yes, sir, there are.

Q. And are they on a line with these five posts going west? A. Yes, sir.

Q. And are they about the same size? A. Yes, sir.

Q. And about how far apart are they? A. I should judge about 20, 25 feet apart, they may be a little more than that. 30

Q. The room that you spoke of in connection with the mail, in this open space, is occupied by what, by whom? A. By the United States Government clerks, mail clerks, in there; it is a starting point, as I understand, for these messengers on the mail trains.

Q. And it is a room occupying considerable space to the west of the driveway? A. Yes, sir.

Q. Is it on a line with the driveway, or does it 40



stand some distance west of the driveway? A. It is about on a line; there is a space of about three feet back of the line of the driveway, back of these columns that run along there.

Q. How is your office in that respect, is your office also about three feet back of those columns? A. Yes, sir.

Q. And is it all open between your office and the driveway? A. Yes, sir.

10 Q. And between the postal department? A. Between the postal department.

Q. These postal wagons that you speak of are used to convey letters in bags, mail in bags? A. Yes, sir, mail pouches.

Q. These mail pouches are brought in on the trains, or is the mail only brought in on the trains? A. They are brought in, some of them, in pouches; we don't see them until they are taken out of the train; I suppose the mail clerks on the train assort it on the way  
20 in, that I don't know anything about, I don't know what system they have on the road.

Q. How do they get to the wagons? A. Well, there are two different ways; some mail cars are drilled right in the yard, and they go to the yard to get them, and some are brought in the station, and they are brought down on barrows.

Q. And those barrows are brought down from the second floor to the first floor, how, in what way? A. A man pulling them on the elevator.

30 Q. They are brought down on those two elevators that you speak of? A. Yes, sir.

Q. And after being brought down on those elevators they are loaded from the end of the barrow into the mail wagons? A. Into the mail wagons.

Q. And this particular mail wagon on this day about which you have been speaking, was a mail wagon—if you know,—was it a mail wagon that had been run in the yard to get mail from the car that  
40 you say goes around in the yard on the tracks, or



was it a mail wagon that had been there for the purpose of taking these pouches that came down from the elevator? A. That I don't know.

RE-DIRECT EXAMINATION by Mr. Fielder:

Q. You have spoken of the iron columns on the west side of the driveway being about 20 feet apart?

A. Yes, sir.

Q. How far was the first column from the mail clerks' office south? A. If I remember right there is one just north of the corner of their office, and then the next one is 20 feet inside of that, I suppose the one north—I am not positive of this, I am only judging now—probably about four or five feet north.

Q. Was it between the first column, south of the mail clerks' office and the mail clerks' office that the mail wagons stood in December, 1903?

Mr. GRAY: I object to that.

20

Mr. FIELDER: I am trying to find out where they stood definitely, now.

The COURT: He testified they were accustomed to stand anywhere.

Mr. FIELDER: Oh, yes, he said within this open space.

30

The COURT: Well, that seems to be all right, doesn't it, Mr. Gray, what is the objection?

Mr. GRAY: The objection is it hasn't been shown there were any mail wagons there that morning, that day; he said they were accustomed to stand in that open space in December, 1903, but nothing has been said about that.

40



The COURT: It is simply locating the space a little more definitely.

Mr. GRAY: Where they stood in December, 1903?

The COURT: Yes.

Mr. GRAY: I have no objection to that.

10

A. They have stood there, they stand there at times.

Q. Was there any gate or bar kept across the place where the mail wagons stood and the driveway in the ferry house in December, 1903?

Mr. VREDENBURGH: I object to the question as irrelevant, immaterial and illegal.

20

Mr. GRAY: I object as leading.

The COURT: That seems relevant enough.

Objections overruled.

To which ruling the defendant, the New York Mail Company, prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

30

C. W. PARKER, J.

The defendant Penn. R. R. Co. also prays exception.

A. No bar.

Q. Or gate? A. Or gate.

Q. You have said that a noise of a wagon first at-  
40 tracted your attention from the office?



Mr. VREDENBURGH: Mr. Fielder, before you go into an examination, I overlooked one question that I intended to ask; I would like to ask first, and you can have the benefit of examining on that now.

Mr. FIELDER: Perhaps I won't want to; I will be finished in a minute or two.

Q. You have said there was a noise of a wagon that attracted your attention from your office on the day of the accident; what was there about the noise of the wagon that attracted your attention? A. Little more than the customary noise we hear there, not being many teams in the ferry at the time, and it appeared to be coming at a pretty lively gait.

Q. Was the wagon empty? A. I think it was, I am not positive.

Q. When Dr. Koonz entered your office, or you took him to your office after the accident, did he make any physical examination of himself in your presence? A. No, sir, not that I recollect.

RE-CROSS-EXAMINATION by Mr. Vredenburg:

Q. I wanted to ask you whether the mail wagons have any preference over other wagons in going on the boats, being accommodated by the ferry company in preference to other users of the ferry? A. They have.

Mr. FIELDER: I object to the question as immaterial and irrelevant.

The COURT: I will allow the question to be answered.

A. They have.



Q. You have to yield in that respect to the demands of the Government? A. Yes, sir.

Mr. FIELDER: I object to that question that "You have to yield to the demands of the Government;" there has been no proof of any demands of the Government.

10 The COURT: I suppose counsel wants to show that United States mail wagons generally have the right of way over others?

Mr. VREDENBURGH: Yes, sir, that we can't control the Government.

Mr. FIELDER: We will admit the Penn. R. R. can't control the Government.

20 The COURT: I will let the answer stand.

RECESS.

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#### AFTERNOON SESSION.

PHILIP J. KOONZ, sworn as a witness on behalf of the plaintiff, testified as follows:

30 DIRECT EXAMINATION by Mr. Fielder:

I reside at 39 Gifford avenue, Jersey City, and have lived in Jersey City about 35 years. I am a dentist and have been in dentistry nearly 40 years, practiced in dentistry a little over 40; my office is the corner of Broadway and 8th street, New York City, and I have had an office there nearly four years, before that my office was at Great Jones street, New York City, about three blocks from the present office, and  
40 I had an office there, I think, about 33 or 34 years.



Q. On the day of the accident, how did you enter the ferry house of the Penn. ferry? A. I entered by the southern entrance from Exchange place.

Q. Did you purchase a ticket? A. I don't know whether I got a single ticket or a strip, but I went in with a ticket. I dropped the ticket in at the opening there in the ferry house to the ticket receiver.

Q. (The Court.) You went in at the entrance where the trolley cars come? A. Where the trolley cars 10  
come, yes, sir.

Q. After dropping your ticket in at the office, what course did you pursue? A. Then I walked over to the boat.

Q. What boat were you going to take? A. I was going to take the Desbrosses street.

Q. What time of the day was that? A. About eight o'clock in the morning.

Q. After you got over by the Desbrosses street slip, where did you proceed or stand? A. Well, I 20  
went down the passage way leading to the women's cabin.

Q. Do you recollect whether this was the north or south Desbrosses street slip? A. It was the one that was right opposite to the ferry master's office, and I don't know whether it was the north, I presume it is the north.

Q. You will have to talk a little louder, because I am afraid the jurymen don't hear? A. I think it was 30  
the north, I am not sure.

Q. You say it was opposite the ferry master's office? A. Right opposite the ferry master's office, I think it was the north slip, I am not sure, though.

Q. Now, on which passenger gangway of this slip did you stand, on the north or south gangway? A. On the north.

Q. What were you doing there? A. Well, I just reached there by about two minutes, and I was waiting for the boat to come in.

Q. Was there a boat in the slip when you reached 40



there? A. No boat in the slip, that is, the boat was about entering the slip, it was about 75 feet, I imagine from the dock, the edge of the dock.

Q. While standing there, which direction were you facing? A. I was facing the boat, that is, the river, facing east.

Q. Did you see any gates? A. Yes, they were closed.

10 Q. Where were the gates? A. Well, I was about midway between the dock, where it is connected with the main passageway and the gates, I would say about eight feet from the gates.

Q. You had been standing there about two minutes? A. Yes, sir.

Q. Then what happened? A. Well, then I heard a great deal of noise, confusion, crying, and I turned around, and the moment I turned around I saw this horse approach, I merely saw his head, he came around the curve.

20 Q. From what direction did the horse come? A. Northerly direction.

Q. Then what happened? A. I saw the horse coming around, I merely saw his head, that is the first I saw of the horse, and then he came around so very rapidly, the wagon—I saw it was a mail wagon—and the wagon struck the side, the dividing line, the partition between the pier I was on, or the dock I was on, and the one above; it struck this, then rebounded; the horse came in, I didn't know which way to run, as the gates were closed, and I managed to get about three feet from the gate when the gate was closed, and the horse just touched me when I made an effort—there were some little slats or boards on the side of the dock, and I managed to get up as far as I could; just as I got on the first one this wagon came over and the upper corner caught me upon my knee, and there I was.

Q. Upper corner of what? A. Of the mail wagon; 40 it wasn't the side, it was the upper corner.



Q. Where were you when it caught you? A. I stood up on these slats; my object was, if I had another moment, another instant of time, I would have got upon top of this other board and escaped this injury, that was my purpose; I had no time to think, it was only a matter of minutes or seconds.

Q. At what gait was the horse coming when you say it? A. About as fast as the horse could run. I merely saw a part of the horse, I only saw his head; if the horse came in a straight line I could have a chance to consider which way to run, but I had no idea, he pinned me in before I could think. 10

Q. What happened to the horse? A. The horse fell down right where I was, right along back of me.

Q. Then what did he do? A. Well, I was pinned in and I was in a very peculiar condition of mind; I thought that I was dying, and I heard the horse struggling, I was afraid if the horse did move he would drag the wagon along and tear me—(Interrupted.) 20

Mr. GRAY: I object, it seems to me that is a little bit outside of what happened.

The COURT: I think you better state just what happened, never mind about what you thought.

Q. What was the horse doing when he fell? A. 30 Well, he was struggling, attempting, I presume, to get up.

Q. Whereabouts did the wagon strike you, what part of your body? A. It caught me right in here, (indicating), the upper corner landed about in here (indicating left buttock), then my abdomen rested against this board, this cross board.

Q. Did the struggling horse have any effect on you while you were pinned there? A. Well, I felt very anxious, fearing—(Interrupted.) 40



Mr. GRAY: I object.

Q. Not your state of mind? A. Oh, you mean the action of the horse upon me physically?

Q. Yes? A. Oh, none at all, because he was lying down and I was raised up about a foot and a half from the dock.

Q. Had the struggles of the horse any effect on  
10 the wagon?

Mr. GRAY: I object to that.

A. I couldn't determine that, the condition of mind I was in.

Q. While the wagon had you pinned there was the wagon stationary? A. It was upon my body.

Q. Now, how did you get out of the position in which you were pinned? A. The ferry master, the gentleman that was upon the stand, I don't know his  
20 name, he came to me with one or two others than ran outside of the boat, outside of the dock proper, and they came up to me and wanted to know if I could get out. Am I to relate this story in full?

Q. No, tell us how you got out? A. These four men lifted me by lifting the wagon first; I couldn't get out, I was pinned in.

Q. (The Court.) Did they lift the wagon off of you? A. And that is the only way I could get out, couldn't move back the slats.

30 Q. (The Court.) They did it, didn't they? A. No, sir, not the slats, no, sir, they lifted the wagon off.

Q. (The Court.) They lifted the wagon off of you? A. Yes, sir. After it was lifted off, this gentleman, the ferry master, with some one else attached to the boats, they carried me into the ferry house, into this office of the ferry master.

Q. When you went into the ferry master's office, what did you **do**? A. Well, they asked me some questions as to whether I wished an examination—  
40 (Interrupted.)



Mr. GRAY: I object to what they asked you.

Q. What did you do? A. Well, I felt, when I was in this position, when I was pinned in, that my bowels were coming out.

Mr. GRAY: I object to what he thought.

WITNESS: I am reaching the point that I would like to explain, what I wanted to do. 10

The COURT: The question is not what you wanted to do, the question is what you did do.

A. I thought that I was lacerated externally; I asked these gentlemen if they wouldn't permit me to examine my body both externally, and—(Inter-  
rupted.) 20

Mr. GRAY: I object to what he said, and I ask that it be stricken out.

The COURT: Is there any real objection to it, if he went on to do it?

Mr. GRAY: Well, go on.

A. (Continuing.) I removed my drawers, that is, I removed my pants, my underclothing, to see whether I was lacerated externally, and the gentleman connected with that office, I asked him to examine me here (indicating) and see whether I was lacerated there, and finding that I was not lacerated here, I asked for my hat. My hat, they said, was under the wagon, and I would get it in about ten minutes; and the hat didn't come back, it went overboard.

Q. How long were you pinned down by the wagon? A. I couldn't tell you, in the frame of mind 40



I was in, it was minutes, I should say some minutes.

Q. Did you suffer any pain when the wagon struck you? A. Yes, sir.

Q. Whereabouts? A. Why, both in my bowels and in my hip.

Q. What was that feeling, describe it? A. Well, I felt as though my bowels were coming out, and I felt as though this part of my pelvis was torn away (indicating), it was smashed open.

10 Q. What effect did the accident have on you mentally at that time?

Mr. GRAY: I object to that.

Q. What state of mind did it throw you in? A. Do you mean immediately after?

Q. Yes, immediately on the happening of the accident?

20 The COURT: You can't recover for fright, you know.

Mr. FIELDER: No, sir, I am not trying to show any fright, I am not expecting to recover any damages for fright; I am trying to show what effect it had on his nerves, particularly on his nervous system.

30 Mr. GRAY: The question is, "What effect did it have on his state of mind?" I object to the question.

Mr. FIELDER: Strike out the whole question.

Q. When you got to the station master's office did you walk there by yourself? A. No, I was assisted there by the ferry master and one of the deckhands, I presume it was the deckhand.

40 Q. Why did they assist you?



Mr. GRAY: I object.

Q. Did you require any assistance? A. Why, I couldn't stand, I couldn't walk.

Q. After you had made this examination of yourself in the ferry master's office, what did you then do?

A. Well, then the ferry master loaned me his hat; I would have to go in detail to do that.

Q. No, I want you to tell me what you did do after you examined yourself in the ferry master's office? 10

A. I started for New York.

Q. Why? A. Well, because I thought I was seriously injured.

Q. What were you going to do in New York?

Mr. GRAY: I object to what he was going to do.

The COURT: I don't see that what he was going to do has much to do with it. 20

Mr. FIELDER: Well, strike it out.

Q. What did you do when you got to New York?  
A. I took a conveyance and went to my son's office, who is a physician; I went to New York to see my son, who is a physician.

Q. Did you see him there? A. Yes, sir.

Q. And did he make an examination of you? A. Yes, sir. 30

Q. And as a result of that examination did you do anything? A. I took his advice.

Q. And did what? A. I went home.

Q. How did you get home? A. I took a conveyance home.

Q. (The Court.) Carriage or a street car? A. I took a car.

Q. (The Court.) Across the ferry and up in another car here? A. No, I think I took a cab from the ferry on this side. 40



Q. After you got home, what did you do? A. I called, I think, Dr. Bowen.

Q. Is Dr. Bowen your physician and surgeon? A. Yes, sir.

Q. Did you suffer any that day? A. Intensely.

Q. Describe the suffering? A. Well, I couldn't lie down, couldn't lie at all, either side.

Q. Why not? A. Why, because of the pain, and  
10 the pain across between my back and my shoulder blades, and around this region in here (indicating neighborhood of abdomen), where I was hurt. It extended more up toward my spine.

Q. Were you confined to your bed? A. Yes, sir.

Q. For how long after the accident were you confined to your bed? A. Well, about four weeks.

Q. How about the pain during that four weeks? A. It was continuous.

Q. What effect, if any, did the injury or the pain  
20 have upon your sleep? A. Prevented me from sleeping.

Q. For how long were you unable to get full sleep?

A. Well, scarcely been able to get it up to the present time.

Q. Do you still suffer from any pain? A. Constantly.

Q. Whereabouts? A. In this region (indicating) in my hip.

Q. How does it affect you now? A. This constant  
30 pain, disturbs me a great deal; I can't lie down with any comfort, and I can't sit much with any comfort; especially in lying down, and in my calling, where I have to stand, it disturbs me a great deal; mentally, it has made me very despondent.

Mr. GRAY: I ask that that last be stricken out.

The COURT: I think we better keep it out at this point; I will strike it out at this point and we will look into it later.



Plaintiff excepts.

Q. How has the injury affected your ability to work in your profession, if at all?

The COURT: He has already stated that it gives him great inconvenience because he has to stand.

10

A. It does mentally also.

Q. No, mentally, the Court says you must leave out. How does it affect your ability to work? A. Well, I can't work as I used to work.

Q. How long have you been under Dr. Bowen's care?

Mr. GRAY: I object.

20

Q. As a result of the injuries? A. Since the day of the accident, the 18th of December.

Q. Are you still under his treatment for these injuries? A. Yes, sir.

Q. Are you taking any other medical treatment? A. I have been, yes, I am taking electric treatment and the baths, and massage.

Q. For how long have you been doing that? A. Ever since I left my bed in February.

Q. How often do you take the massage treatment? 30  
A. Take it once a week.

Q. How much of a day's time does that occupy? A. Well, nearly half a day.

Q. Whereabouts do you go for it? A. Well, I go to Brooklyn, Clinton street, Brooklyn, sometimes, and Lafayette place is most convenient to me; I prefer Brooklyn, though.

Q. How much do you pay for the massage treatment? A. That costs me about two dollars for one treatment, that includes the bath and the massage. 40



Q. Now, what electric treatment have you taken?

A. I took the electric treatment in Clinton street baths, also with the vapor baths connected with it, at the advice of my physician, and am now taking it from Dr. Honin, in New York.

Q. How many of these electric treatments have you taken? A. Well, with the present physician I have taken about a dozen.

Q. How much per treatment? A. Five dollars.

10 Q. Have you received Dr. Bowen's bill for his services? A. No, sir.

Q. (The Court.) How many of these five dollar treatments have you had?

Mr. FIELDER: Twelve, I think he said.

A. And then subjected myself to the X-rays also with this Dr. Honin.

20 Mr. GRAY: There is no question pending.

Q. You were stating something about X-rays, what was that? A. I submitted, according to Dr. Bowen's wish, to the examination by the X-rays, to determine whether the boney part of the pelvis was injured.

Q. In your business have you any assistants? A. Yes, sir, I have four that are operating at the chair and four or five in the laboratory.

30 Q. Prior to the accident, what were your business hours? A. They were from 8 until 6, daily, and Sundays also.

Q. Did that include holidays? A. And holidays also, excepting Christmas and New Years, and 4th of July.

Q. Did you personally go to the office Sundays and holidays prior to the accident? A. Every day.

Q. Do you keep any books of account in your business? A. No, sir.

40 Q. Why not? A. Well, because our business is principally cash business.



Q. Have you no record of your credit business? A. No, sir. I have my book, where any contract is made, but that don't include everything, it is merely when we make contracts and receive a deposit and the work is to be done in the future, that I have a book where this contract is entered, the receipt is given to the patient and the little tab remains attached to the book. Could I answer that question again?

Q. If you haven't answered it fully you may continue? A. Well, it is in regard to the amount of work which I personally would superintend; I have a book showing that for the last two years or more. 10

Q. How many patients do you handle per day in your office? A. Well, I presume at one time, when I was well, that I could handle from 50 to 75 people per day.

Q. Do you mean personally? A. Yes, sir.

Q. How many prior to the accident were handled in your office by you and your assistants together? 20

A. I presume we average 150, 175 a day.

Q. What was your lowest daily receipts for five years prior to the accident from your own work?

Mr. GRAY: I object.

A. That is hard to tell.

The COURT: Why is that?

Mr. GRAY: Here is a patient who says 30 that he hasn't kept any books, that is asked to state the lowest daily receipts for any time in five years prior to a certain date. It seems to me that is an impossible question for the witness to answer.

The COURT: If the question is possible for the witness to answer, of course he can answer it, and if it isn't possible, he will have to say he can't. 40



10

Mr. GRAY: As I understand the testimony, the witness says that he runs a general office, in which he has assistants; he hasn't kept one source of income separate from another. So that, as the situation now stands, the only income that can be testified to is the income of the whole office. The effort now is to separate in this manner what he made himself, when he has testified that he didn't separate it himself.

The COURT: If the witness knows, of course he can tell.

Mr. VREDENBURGH: Is there any allegation in the declaration, Mr. Fielder, of any loss of business?

20

Mr. FIELDER: I think so.

Mr. VREDENBURGH: If there is, I didn't notice it.

(Mr. Fielder reads from declaration.)

Mr. GRAY: I don't think that is sufficient, and I join with Mr. Vredenburg in the objection.

30

The COURT: I don't think that is a sufficient allegation of loss of business profits to put the other side on their defence.

Mr. FIELDER: If the Court so rules, I hope the Court will exercise its discretion and allow me to amend the declaration to recover for loss of profits in business.

40

The COURT: Of course, that raises the question then in that aspect, whether the other side is surprised.



Mr. FIELDER: I know that Mr. Gray isn't, because he assumed that the declaration did cover it. It certainly was my intention to include that in the declaration, and I haven't looked at the declaration since I filed it, but I thought it had been included, and I prepared my case with that idea in view, and I still think that there is enough in the declaration to at least put the defendants on their guard <sup>10</sup> as against that sort of demand.

Mr. GRAY: On the question of amendment we think that if the plaintiff is to be allowed to amend and prove loss of personal income, that should be in the declaration. If he intends to prove items of loss, we should be advised of that so we can meet it. Our understanding was that the doctor had a business conducted by him as the head of it, but <sup>20</sup> in which he had no separate earning part or capacity, that his being there or not being there did not affect the earnings of the office, and could not enter into this suit. Now this situation brings it about that Mr. Fielder desires to amend so that he may prove here now today the plaintiff's personal loss of service outside of his office which we knew he was operating in New York. We think that on that we could not be forced to go on now on <sup>30</sup> this absence of all notice.

Mr. FIELDER: If the allegation had been in the declaration that thereby the plaintiff has been deprived of profits in his business the court would undoubtedly allow me to pursue this subject of inquiry.

The COURT: I would.



10 Mr. FIELDER: Now while this suit has been pending Mr. Enright and I have had several talks about this suit, and we have discussed the amount of damage, and we have talked together of the amount of loss, of the money loss in the business sustained by Dr. Koonz because of this accident, and we both understood—or I don't think I ought to speak for Mr. Enright, he can speak for himself—but I believed, and in talking with him I showed him that I believed, and I understood that he believed from the talk with me, that the declaration did cover that; so that there can't be any question of surprise as between the other side, the Mailing Company and myself. And as for the suggestion of Mr. Gray that we are attempting to prove personal profits of the Doctor, I think it is perfectly proper for us to  
20 prove it, if we had an allegation that the court thought proper to prove such a loss.

The COURT: How much do you think you are able to prove if I should let your amendment in?

Mr. FIELDER: Well, I expect that we can prove about \$1,900.00.

30 The COURT: Here is Mr. Enright in court, I don't know what his understanding was.

Mr. ENRIGHT: Mr. Gray has expressed my understanding.

40 Mr. VREDENBURGH: There has been no talk with me about it. I don't know what these gentlemen, the Mail Company and Mr. Fielder have talked about? In fact, I rather



thought I wasn't in it at all, but I didn't pay much attention to that part of it, but if in point of fact it is thought that we are to be held responsible for any of this injury, why I think I ought to have an opportunity to develop any evidence I may have as to the loss of the Doctor from his loss of business. It isn't claimed in the declaration. I have made no preparation to meet any evidence of that kind. 10

Mr. FIELDER: As a matter of fact, Mr. Vredenburg didn't object to this question supposing that the declaration covered it.

The COURT: I don't think I can let the evidence in under that allegation, and I don't think, in view of the surprise expressed by the defendants, that an amendment ought to be allowed at this stage except on terms, which will, of course, involve another trial of the case. You may take exception to my refusal to let in the evidence. 20

Mr. FIELDER: I desire an exception and I dislike very much to take any step that will postpone the trial of this case, having waited so long, but it seems to me that that is an element of damage that ought to go to the jury, 30 and I ought to have an opportunity to put it before the jury. I am taken by surprise, too. I certainly thought that my declaration covered this point.

The COURT: That is, you mean that you would rather not go on with the trial if you are not allowed to prove that damage.

Mr. FIELDER: Yes, sir.

40



The COURT: I will consider what the other side say about that. If that is your situation, of course I am disposed to give you the chance to make your amendment.

10 Mr. VREDENBURGH: So far as I am concerned, I don't care to take any advantage of Mr. Fielder, in other respects than to do as he wants to. If he prefers the case go off for the purpose of preparing that I certainly won't interpose any objection to that.

Mr. GRAY: I don't suppose the defendants would gain anything if they attempt to make any such opposition; we don't oppose it either.

20 The COURT: The only thing you propose to do would be to assent to the amendment.

Mr. GRAY: We assent to the amendment, but not on terms that it go on this afternoon.

The COURT: You would have to withdraw a juror.

Mr. FIELDER: No, I don't think I care to do that; I don't think my client would care to do that either.

30

The COURT: Would care to do what?

40

Mr. FIELDER: Would care to have the case go off for the term. My expectation was that we might postpone the trial until tomorrow to give the other side a chance to meet this allegation, and if they want more than tomorrow that puts another phase on the matter. I will go on with the case as it stands now with your Honor's ruling.



The COURT: Have you got your exception entered?

Mr. FIELDER: Yes, sir; at least I asked for it.

Q. How much time while you were laid up in bed, or confined to the house, or engaged in taking electric and massage treatment as a result of this accident, have you taken from your business? A. Up to the present time? 10

Q. Yes, sir. A. Well, if I combined—— (Interrupted).

Q. The total I want. A. Well, I should make it about 80 or 90 days in the entire year from the time I was injured, from disability, that is I call it disability.

CROSS-EXAMINATION by Mr. Gray:—

20

Q. What time did you generally arrive at your office in New York? A. Well, I would go there about sometimes seven; within the last two or three years I got there about half-past seven or eight.

Q. That is the time you would arrive there? A. Yes, sir.

Q. Do you take any rest during the day? A. Sometimes.

Q. Didn't you go out for lunch. A. Well, once in a while when I got a real good opportunity. 30

Q. Generally work all day without eating anything? A. Well, have a sandwich brought in.

Q. Is Dr. Bowen, your attending physician, in court? A. Yes, sir.

Q. Is this Dr. Bowen (indicating)? A. Yes, sir.

Q. Why haven't you had his bill? A. He didn't present his bill, the case wasn't finished.

Q. Have you any arrangement with him not to send in a bill until the case is finished? A. No, sir, I 40



think not, but he may have other little family matters; I haven't settled yet.

Q. He has been your physician for a good many years, has he not. A. Yes, sir.

Q. How often does he generally send in a bill? A. Well, a little friendship between us, and sometimes I remit a certain amount and have him credit me with it, but I haven't done so recently; my family is  
10 large.

Q. As I understand you, you can't sit down or lie down or stand up without constant pain? A. I haven't constant pain; I have less pain, though, in standing and in walking than when sitting or lying down.

Q. You say you haven't been able to sleep; have you had any sleep at all within the last year, year and a half? A. Oh, yes. I do sleep, but not a refreshing sleep; some nights I can't sleep until three or four  
20 o'clock in the morning, and then wake up not at all comfortable for a day's work and business.

Q. Did you ever have a night like that before this accident? A. No, sir.

Q. You say you were confined to your bed for four weeks; were you in bed all the time, confined to your room and bed? A. I was confined to the room and bed; I was in bed over three weeks.

Q. Did Dr. Bowen treat you before you were hurt in this accident? A. Yes, sir.

30 Q. How often, how constantly did he treat you before this accident? A. For any purpose? Why, I wasn't ill.

Q. You said he treated you before the accident, is that true? A. Well, as a physician in case of a little bilious disorder, or a little cold.

Q. I am asking you how often he treated you before the accident?

40 The COURT: For all purposes, you mean, Mr. Gray?



Mr. GRAY: Yes, for any purpose.

A. I don't suppose Dr. Bowen has treated me more than, for all purposes, I don't think, a half a dozen times; I don't think it is half a dozen times.

Q. Referring back to the occasion of the accident, when you went down that ferry bridge or passenger way, you knew the boat hadn't come in yet, didn't you? A. The boat was about approaching the dock,<sup>10</sup> the slip.

Q. Were the people aboard of the boat about to get off? A. The boat was not connected with the dock and I didn't see them.

Q. Couldn't you see people on the bow of the boat as the boat was approaching the slip? A. I didn't observe that; my attention wasn't particularly drawn to that; I was looking in that direction, though.

Q. You didn't see anybody on the boat about to get off? A. Well, I may have seen people, but I didn't take any notice, no occasion for me to ob-<sup>20</sup>serve that.

Q. Didn't you know that people would be about to come up that passageway where you were standing, passageway to where you wanted to go? A. Coming from the boat?

Q. Yes. A. Yes, if the boat was in, but the boat was not in the dock.

Q. Were you going away from the boat or were you approaching the boat? A. I was approaching<sup>30</sup> the boat to get on, and the boat was about 75 feet from the dock, probably at the end of the slip when I first saw the boat.

Q. You were just on the land side of the gate about 7 or 8 feet, weren't you, from the gate? That is about what you said, didn't you? A. Well, about that; yes, sir.

Q. Were there other people there alongside of you? A. Well, I was only there for a minute or two; there were people.<sup>40</sup>



Q. There were people there? A. They were right up close to the gate, though, I think they were.

Q. Were they closer than you were? A. Well, I think there were one or two there; Col. Smith was there; he was the only one that I recognized and he stood there at the time.

Q. Were there other people there between you and the gate? around about you and in the passageway? A. Probably there was.

Q. How many? A. I am not sure whether there were any in front of me, I can't be positive.

Q. Was any one around you in that passageway? A. I don't think there were on the passageway.

Q. Don't think there was anybody there? A. I am not positive, but I don't think there were any one there.

Q. Where was this gentleman that you say you recognized? A. Col. Smith?

20 Q. Where was he? A. He was just approaching, I think he was just approaching the female—that is, that passageway, crossing over from the male side.

Q. And he was the only man on the passageway, was he, besides yourself? A. No, was the only man that I recognized.

Q. How about people you didn't recognize? A. Well, I don't think there were any one in the passageway at the time.

30 Q. That was the woman's side of the boat, was it? A. Yes, sir.

Q. Were there any women there? A. I am not sure, this was done so very hastily that I didn't have an opportunity of seeing, or observing, rather.

Q. The first thing you knew you heard the noise of the approaching horse and wagon, is that so? A. No, sir, I didn't hear the wagon at all; I heard the noise made by the people, I didn't hear the wagon.

Q. What people made the noise? A. Why, the 40 people that saw the horse running.



Q. Where were they? A. They were out in this open place.

Q. What open place? A. Why, where the horses runs through under the sheds.

Q. What people were there there which you looked there and saw? A. Why, the passengers, people, I presume, that were going to get on the boat, passengers going to New York.

Q. What did you do when you heard the noise—<sup>10</sup> you looked around, didn't you? A. Naturally, yes, sir, I heard the noise and I turned around quickly.

Q. You saw the horse's head, and that is all you saw? A. That is all I saw at first.

Q. Then, what did you do? A. I started to go towards the gate, I started to escape.

Q. You tried to climb the gate? A. I didn't climb the gate.

Q. Did you try to climb the gate? A. No, I couldn't climb the gate; it was so high; alongside <sup>20</sup> the gate there were some boards nailed, two or three, little spaces between them, and as the horse rushed in rapidly, the horse struck me as he was running, he fell down in front of me, then I made an attempt and as I was attempting so as to get over the upper board that was across the dock there, this wagon fell down on me and held me there.

Q. Were those boards between the passageway and the ferry boat on that ferry bridge? A. No, sir, there were no boards there; the boards were on the <sup>30</sup> extreme left side going down on either side of the passageways or gangways, these boards—I don't know what they are called, there is a name attached to them—there is a little space between them.

Q. Was anybody else hurt there but you? A. No, sir.

Q. Where did your friend, Mr. Smith, go, how did he get out of the way? A. I don't know where he was, I just saw him, he came to me and offered his assistance. 40



Q. That was afterwards—at the time of the accident, how did the other people that were on that passageway, get out of the way? A. I don't know how they got out, I was struck so soon I didn't have a chance to observe.

Q. After you were released did you walk over to the house? A. No, sir.

Q. You said first of all that you were carried, is  
10 that true? A. Yes, I was assisted over; they held me under the arms, I couldn't stand, I couldn't walk.

Q. You were not carried? A. I was, sort of, so much so that I really was carried.

Q. Did you move your legs at all? A. I think I did.

Q. Weren't you on your feet? A. Yes, sir.

Q. How long were you in the ferry house, I mean the master's house, after you were hurt? A. It is  
20 hard to tell; I was told by one of the assistants there —(Interrupted.)

Q. Never mind what you were told? A. Well, I am figuring up about the length of time. I waited five minutes for my hat, and I was in there just long enough to answer some questions and disrobe myself.

Q. What became of your hat? A. Fell over into the river.

Q. Were you standing on the edge of the dock  
30 near the river? A. No, sir, I was standing on these cross boards; I got up as far as I could. We will assume this was the board (illustrating), and another one here; this wagon came along, and her is the river, the water, and my hat fell down, the jar, I suppose, threw my hat off, and it went over there.

Q. What did you do for a hat? A. This gentleman very kindly, the ferry master, loaned me his.

Q. You returned his hat, didn't you? A. Yes.

Q. Same day? A. Same day.

40 Q. Returned it yourself? A. No, sir, I sent it over.



Q. What time did you get to your office that morning? A. It must have been around nine o'clock, nine or half past nine.

Q. And in going to your office you walked, in going from the master's office you walked before you got on the boat? A. Yes, sir.

Q. By yourself? A. Yes, sir.

Q. Without assistance? A. Yes, sir, I don't think there was any assistance. 10

Q. When you got on the New York side, did you walk off of the boat? A. Yes, sir.

Q. Without assistance? A. Yes, sir.

Q. And where did you walk to? A. Well, I looked for a cab, and there was no cab there at all, and in the frame of mind I was in—(Interrupted.)

Q. Never mind about your frame of mind. What did you do is all I am asking you? A. I took a car right at the ferry house.

Q. How near did that take you to your office? A. 20 It took me to Broadway and Spring street.

Q. And from there, did you walk to your office? A. No, sir, then I took a car there, transferred right to the corner.

Q. Did that go by your office? A. Right to the door.

Q. Then, you got out and went into your office? A. Yes, sir.

Q. Did you do any dentistry work that day? A. 30 No, sir, I couldn't.

Q. In returning, you took the street cars and crossed the river on the ferry boat and then took the cab on the Jersey City side? A. Yes, sir.

Q. Anybody go with you on your return home? A. No, sir, my son wanted to go, but he didn't.

Q. Never mind about that, I am only asking what you did. What floor is your office on in New York?

A. First floor; I have an elevator.

Q. Elevator to go up to the first floor? A. Goes up 40



in the entire building; it is in the Daniel Building where my office is.

Q. (The Court.) Do you mean the first floor above the ground? A. The first floor above the ground floor.

Q. That is where you went that day? A. Yes, sir.

Q. Didn't go any higher than that? A. No, sir.

Q. Did you take the elevator? A. I think I did  
10 take the elevator.

Q. Are you sure about that? A. Yes, sir.

Q. What is your general custom? A. Go up the other way; I have two entrances.

Q. And your general custom is to go up the steps?  
A. Well, about equally divided; a great many prefer the elevator.

Q. You can swear now that you took the elevator that day? A. Well, in the confused condition that I was in, and for some days afterwards, I wouldn't  
20 be positive as to the elevator; however, I walked, that is I walked to the car, and walked from the cars to the office, and I think I took the elevator, I won't swear to it, though.

Q. Is your son's office on the first floor of that building? A. My son is with me in my office, he spends a few hours in the office as a surgeon.

Q. Is his office on that same floor? A. In the same office, in my room.

30 Q. He was there that day, wasn't he? A. Yes, I wouldn't have gone there if he hadn't been there at that time.

Q. How did you know he was there? A. Because that is his office there; he is consulting physician in my office.

Q. These baths that you took, healthy people take those baths, don't they, healthy people, well people, take those baths, don't they? A. Yes, sir.

Q. Did you ever take them before you were hurt?  
40 A. Well, occasionally.



Q. Before the accident you have taken them occasionally? A. Oh, yes, occasionally, I have for 40 years taken turkish baths.

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

Q. When were you sixty? A. In last December, December 4, 1904.

CROSS-EXAMINATION by Mr. Vredenburg:

Q. Do you remember what kind of a day this was?  
A. Yes, sir, it was a very clear, pleasant day.

Q. When you walked to the boat did you notice whether there were any vehicles north of you? A. I didn't—you mean looking backwards?

Q. No, looking forward; you walked from the south toward the north to get to the Desbrosses street boat, and then you turned, as I understood you, towards the boat into the ladies' gangway? A. Yes, sir.

Q. Now, when you turned in there, did you notice whether there were any vehicles north of you, north of this gangway? A. I didn't observe them; I know that I have to dodge myself every time I go in now about that time, so as to get in; I couldn't tell you, I didn't observe, it didn't impress me.

Q. When you saw this horse coming, I understood you to say you saw his head and that was about all you saw of the horse; did you notice whether it had any bridle on or not? A. No, sir, I know very little about horses.

Q. I understood you to say that you had been in Great Jones street about 32 or 33 years? A. Yes, sir.

Q. And that you had been in your present place of business about four years, and that during that time you had come to your office about eight o'clock and left about six, and that you were there on holidays and Sundays, with the exception of Christmas and New Years, and that during that time your usual



custom was to eat no dinner except a sandwich that might be brought in to you? A. When I have the opportunity, or when I have a good opportunity, I go out and take lunch; probably I will do that three times a week, and I always eat something, I have milk, buttermilk, I drink that every day, and I have a sandwich.

Q. So that you had, for 36 years, been going to  
 10 New York daily, Sundays and all, and been working from eight o'clock in the morning to six o'clock at night? A. No, sir, if I may be permitted—I have even gone over earlier, gone over at six.

Q. You are sixty years of age, and you have to take Turkish baths? A. I only take them on the advice of my physician so frequently.

Q. I understood you to say you took Turkish baths before? A. I did that because I think it is a  
 good thing.

20 Q. It is one of the usual things for gentlemen who overwork themselves—(Interrupted.) A. I never took them for that purpose.

Q. (Continuing.)—and who were inclined to rheumatism—they take baths every week, don't they? A. I presume they do.

Q. Didn't you take baths over at Lafayette street weekly before the accident? A. No, sir.

Q. How often did you take them? A. Probably  
 30 take a bath once a week; I did that out of custom and habit.

#### RE-DIRECT EXAMINATION by Mr. Fielder:

Q. Had you taken electric treatment before this accident? A. I did, about three or four years ago, when I was afflicted with neuralgia in my arm and shoulder, that is in this arm (indicating right arm)  
 40 and shoulder, at the suggestion of Dr. Bowen.



Dr. HORACE BOWEN, sworn as a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION by Mr. Fielder:

I am a physician and surgeon, my office is at 2801 Boulevard, Jersey City Heights. I have been practicing medicine and surgery 15 years. I graduated from the New York Homeopathic College in New York City. Dr. Koonz, the plaintiff, is a patient of mine, and has been for about 12 or 13 years. I was called to treat him on December 18, 1903. 10

Q. Prior to that time what medical services had you rendered to him personally? A. Why, treat him personally, I don't think I have attended him more than for some little minor affair, more than once or twice in some years, cold, or something of that kind. didn't amount to much.

Q. What has been his condition of health? A. 20  
Very good.

Q. On December 18, 1903, what condition did you find him in and where did you see him? A. Prior to the accident?

Q. No, the day of the accident? A. That was the 18th of December, the day of the accident. I was called there in the afternoon, late afternoon, and I found the doctor in bed suffering intensely from shock and the result of this accident, contusions 30  
different places, in a general way; the shock was very bad, and he was suffering more intensely than all other places at the left hip.

Q. What external evidences did you find on his body, if any, of an injury? A. Why, he was black and blue on the abdomen, abdominal muscles, and he was very much swollen, with a temperature, which I laid to the hip, swollen injury there. He was also bruised on the muscles of the back over the shoulder blade, here (indicating.) 40



Q. Was there much discoloration on the back? A. There was some, but not as much as there was the next day; the next day there was quite a little, for the next two or three weeks there was quite a little.

Q. Where was that? A. Mostly on the abdominal muscles, and some on the back, with a great deal at the hip; at that time the hip was very much swollen all through the gluteal region, that is the hip joint.

10 Q. How long was it before that swelling was reduced? A. Well, the doctor was in bed three weeks, three or four weeks, and then up and around the room, I guess, for two to three weeks more, and even at that time the swelling wasn't entirely down.

Q. During the four weeks he was in bed and the three weeks he was around the house, did he suffer any pain? A. He suffered intense pain.

Q. What, in your opinion, is the cause of that pain?

A. Why, the region where the pain was the more  
20 acute, or the most acute, was this hip, and I laid it to the wagon coming against the bone here, the hip bone.

Mr. GRAY: I object to that.

Q. Mr. Gray: Did you see the wagon hit him? A. No, sir.

30 Mr. GRAY: I ask that that be stricken out.

The COURT: Strike it out.

Q. Was there any evidence which could lead you to form an opinion what injury the doctor was suffering from?

Mr. GRAY: I object: the question is, was  
40 there any evidence; that means was he told something.



Mr. FIELDER: No, I mean from the doctor's person.

Mr. GRAY: Oh, you mean on his body; I don't object to that.

A. What do you mean, my diagnosis of the trouble at the time?

Q. (The Court.) He means was there anything visible or tangible that would lead you to form an opinion? A. Why, distinctly so, yes, sir.

Q. What was your diagnosis? A. My diagnosis was an inflammation of the hip bone with resulting thickness, and from that he got a sciatic neuritis; that is my diagnosis of the doctor's condition, and from it he has been left with a sciatic neuritis.

Q. Does that condition continue? A. It does.

Q. Are you still treating him? A. I am; he has been treated by my advice by a specialist for some time.

Q. What specialist?

Mr. GRAY: I object to that.

Q. (Mr. Gray.) Were you present? A. I was present when he went over the first time.

Q. What specialist did he go to see? A. Dr. Honin, on 70th street and Broadway. 30

Q. Who is Dr. Honin? A. He is a surgeon.

Q. Connected with any hospital?

Mr. GRAY: I object. What difference does it make? The witness is now asked to describe and define the abilities possibly, certainly the occupation at that time, the place where this particular doctor did his practice. I can't see that that is pertinent to this case. 40



The COURT: I can't see the relevancy of the hospital end of it.

Q. What is Dr. Honin's specialty in medicine or surgery?

10 Mr. GRAY: I object to that. The ground of the objection is that this plaintiff consulted some one who was supposed to be able to take care of his physical injuries. This witness, being neither the plaintiff nor that person, is called to describe the abilities and reputation of that person. It seems to me that is not a subject upon which this witness can be called to testify; we can't meet what this witness may say about that. The specialist and the plaintiff may say what occurred, and the specialist may say what his qualifications are as a specialist, somebody else can't say, it seems to me, to our harm.

20

The COURT: Is it a question of the personal knowledge of this witness in any way, or simply the relevancy and materiality of the testimony?

Mr. GRAY: Both.

30 Mr. VREDENBURGH: I follow Mr. Gray in his objections, I object on the same ground; also on the additional ground, it seems to me, it is of no importance.

The COURT: The question will be allowed.

To which ruling the defendant, the New York Mail Company, prays exception, and it is allowed, and signed and sealed accordingly.



The defendant, the Penn. R. R. Co., also prays an exception.

A. He is a surgeon and a consultant, general consultant and surgeon.

Q. Is Dr. Koonz taking any other treatment under your advice? A. Not at the present time.

Q. The electric and massage treatment that he has taken is not under your advice, then? A. It was under my advice before he went to this specialist, and it is being continued now through him. 10

Q. What are your charges for your medical services to Dr. Koonz for treatment for the result of these injuries, up to the present time? A. Up to the 1st of January, I think it was \$380.

Q. You haven't sent Dr. Koonz any bills yet? A. No, I haven't.

Q. On account of this injury? A. On account of this injury, from the 18th of December, 1903. 20

Q. What, in your opinion, or will, in your opinion, Dr. Koonz suffer permanently from his injury? A. I think the affection of the hip will be permanent.

Q. What is that affection of the hip? A. I call it neuritis.

Q. What does neuritis mean? A. Inflamed nerve, inflammation.

Q. What is the sciatic nerve? A. Sciatic nerve, it comes from the hip and goes down the leg, furnishes nourishment to the leg. 30

Q. Is that the nerve you say is injured? A. It is localized on that nerve.

Q. What is the other injury, then, he is suffering now besides the trouble that is localized on the sciatic nerve? A. Why, the doctor has never gotten over the concussion sustained, that is, the shock he received at the time of the accident, he has never gotten over the effects of it.

Q. Has his nervous system sustained any injury? A. Decidedly. 40



Q. Do you consider that that injury is permanent or not? A. That is impossible to say.

Q. Will you say that he will recover from the nervous trouble he now suffers? A. Absolutely?

Q. Yes? A. No, I wouldn't say that.

CROSS-EXAMINATION by Mr. Gray:

10 Q. You say that he will never recover from that injury as to the shock and nervous difficulty? A. It is impossible for anybody to say absolutely so, but that is my opinion.

Q. How often did you treat Dr. Koonz during the year for which you rendered the bill of \$380, or rather have a bill for \$380? A. Well, four to five months, practically continually; daily for, I guess, two and a half months, and then off and on since then.

20 Q. During that two and half months, was he confined to the house all of the time? A. Why, as I remember it, he was confined to the house between six and seven weeks, and then confined to the house for another month.

Q. What time of the day did you treat him during the latter part of that period of two and a half months? A. The latter part of that period, generally afternoon.

30 Q. And after that two and a half months, how often did you treat him? A. Why, I would see the doctor twice a week.

Q. How many calls did you make altogether during that year—(Interrupted.) A. I couldn't say that.

Q. (Continuing.)—upon the doctor for the purpose of treating him for this injury—you don't know? A. I couldn't say that, the number.

Q. Did he ever come to your office any time during that period to be treated? A. Once.

Q. When was that? A. Beginning of the summer,  
40 about six months afterwards.



Q. What are your office charges? A. It depends on the case.

Q. Do you charge one fee to one in one case, then, and another in another case? A. It depends on the treatment.

Q. Then, you have no fixed fees, charge for time? A. Do you mean per hour?

Q. Yes? A. Yes, I have fixed fees, charge per hour. 10

Q. What does it amount to per hour? A. Ten dollars.

Q. Have you any charge for visiting patients at their homes, at other places than your office? A. Yes.

Q. Per time, what is that? A. Two dollars.

Q. Your charges upon Dr. Koonz, did you charge by the time, or how? A. Some by time, some by call.

Q. Which did you charge by time and which by call? A. It depended on how long I was there. 20

Q. Have you some memorandum of how long you were there? A. I think so.

Q. It is upon that that you base your total charge of \$380? A. Yes, sir.

Q. But you can't say now how much of that is per time and how much is per call? A. Not here, no, sir.

Q. How did you keep a memorandum of your charges against Dr. Koonz? A. Day book and ledger. 30

Q. Where are they? A. At my office.

Q. Did you refresh your memory from those in order to come to this trial? A. No, sir.

Q. How did you remember that your charge was exactly \$380? A. I remember the amount the first of January.

Q. Did you go over your books at that time to ascertain the amount? A. When I made my bills out. 40



Q. Did you make a bill out for Dr. Koonz? A. It was not sent, the bill was made out.

Q. Who made it? A. The person that made by bills, with whom I was associated that time in making them out, did.

Q. You did not make it out, did you? A. I didn't write it down.

Q. Did you tell him how much to put down, how  
10 much to make out the bill for? A. It was taken out from the books.

Q. Did you make it out from the books? A. Yes, sir.

Q. Go over the books yourself? A. Yes.

Q. Did you make the entries in the books yourself, from day to day? A. They were read off to somebody that wrote them down, I didn't write them down, I read them off.

Q. What did you read them off from? A. From  
20 reckoning them up in the day book, in the ledger.

Q. How did they get in the ledger and the day book? A. Make them up at night as I came in, I would transfer them from the day book into the ledger.

Q. How did they get in the day book? A. By me.

Q. You put them in there yourself, in your own handwriting? A. Yes, sir.

Q. And that is what you looked over when you  
30 made out your bills on the first day of January, 1905, is it? A. Yes, sir.

Q. Will you produce those books here at this trial?

Mr. FIELDER: I don't think that is a proper question.

A. No, sir.

The COURT: The other side is entitled  
40 to ask him whether he is willing to produce them.



WITNESS: I most positively will not.

Q. Would you have produced them if you had received notice to produce them two or three weeks ago? A. I might have.

Q. What would make the difference? A. I don't think it is necessary, I don't think it is professional.

Q. But you might have thought it was professional two or three weeks ago? A. I would have had to think it over a little bit to decide.

Q. And might have come to a different conclusion than you would now? A. I might have.

Q. Did you ever treat Dr. Koonz for rheumatism? A. No, sir, not rheumatism; he had neuralgia, breaking the nerve of his arm once; I think it come from a strain.

Q. How long ago was that? A. I couldn't tell the exact time, it was three or four years ago.

Q. Has he recovered from that injury, or that neuralgia, whatever it was? A. Why, shortly after it happened.

Q. What treatment did you give to Dr. Koonz, what did you do from day to day when you were attending him during that two months and a half? A. I did all my judgment told me to.

Q. And what was that? A. Is it necessary?

Mr. FIELDER: I suppose he is entitled to an answer? 30

The COURT: Why, certainly.

A. I treated him in a general way for the shock, and in local ways for the local injuries; for these different conditions, you would—(Interrupted.)

Q. When you treated him for shock, did you prescribe medicines, is that what you mean by treating?

A. Rest, principally, complete rest, and some medicine. 40



Q. When you prescribed locally for the other injuries, what did you prescribe there? A. Rest, and counter irritants.

Q. So that you went every day for two months and a half to prescribe rest, is that it? A. Not necessarily; it is a customary thing for a physician to see his patient every day.

10 Q. Did you examine him every day you went there? A. I did, for as long as I thought was necessary.

Q. How long was that? A. About five weeks.

Q. What counter irritant did you use? A. I think I used some antiflogestine.

Q. Was that renewed every time you prescribed it? A. Renewed by the nurse who took care of him, or myself, according to the time.

Q. Where was it applied? A. Directly over the  
20 sciatic notch on the left hip, and in the back, in the area around it also.

Q. Did you make any other physical applications to any other part of Dr. Koonz's body? A. I think some ice was applied to him.

Q. Was the skin broken there? A. No, sir.

Q. Was there any discoloration? A. Decidedly.

Q. How long did that last? A. Some weeks.

Q. Were the muscles bruised? A. Decidedly.

30 Q. Was that neuritis that you say he suffered from due to the injury to the sciatic nerve? A. As I said before, the bone was inflamed, and from this bone being inflamed there was a thickened condition, a result of this inflammation, and that, pressing on this sciatic nerve, has caused, in my opinion, this neuritis that the doctor is suffering from now, and that is what makes it localize.

Q. How much did Dr. Koonz move his limbs the first few days you saw him after the accident? A.  
40 None at all, he couldn't.



Q. Couldn't move his legs at all? A. Couldn't.

Q. How do you account for his going over to New York, and coming back, and so on? A. That was right directly after the injury, the muscles hadn't contracted at all, hadn't become so swollen; he just did it as a great many other people can.

Mr. VREDENBURGH: I move that the evidence of the doctor as to the amount of his bill be stricken out, because he tells us that he has a book in which the items are kept, he tells us that he doesn't remember those items, he remembers an amount, and he says he won't produce the books. Now, then, his evidence should be stricken out, if I understand the rules of evidence. 10

The COURT: I don't think there is any reason to strike his testimony out; it is a matter that can go to the jury as to the propriety of his charges under the circumstances. 20

Mr. VREDENBURGH: Your Honor will allow me an exception as to the refusal to strike out?

30

Mr. GRAY: I join with Mr. Vredenburgh in that motion, and ask for an exception.

Mr. FIELDER: Isn't that a little late?

The COURT: I am afraid I will have to make the same ruling as to your objection that I did with Mr. Vredenburgh a while ago. 40



ANDREW SEEBACH, sworn as a witness on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION by Mr. Fielder:

Mr. Fielder now offers in evidence the answers to certain interrogatories propounded to the New York Mail Company.

10

Mr. VREDENBURGH: I don't know that they affect the other defendant at all; if they should, I suppose I have a right to object.

Mr. FIELDER: I don't think they affect the other defendant.

The COURT: I take it, of course, that the interrogatories can only be available as evidence against the party who answers them.

20

Mr. FIELDER: These answers are made under the oath of Alexander H. Goomer, President of the New York Mail Company.

Mr. Fielder then reads interrogatories as follows:

30 "Question. Was William Bauder, or Bowder, in your employ on or about December 18, 1903, and if so, in what capacity? Answer. Deponent says he is informed that a man named Bauder was in the employ of the Company December 18, 1903, as a driver.

Question. What is the residence or post-office address of said William Bauder, or Bowder? Answer. Deponent says that he is informed that William Bauder resides in the City of New York.

Question. Were you the owner, or were you in  
40 control of a certain horse and wagon on or about



December 18, 1903, that ran, walked or was driven, down the passenger gangway of a Desbrosses street ferry slip on the Penn. R. R. ferry in Jersey City, and which the plaintiff in this suit claims struck and injured him? Answer. Deponent says that the New York Mail Company was the owner, on or about December 18, 1903, of a certain horse and wagon that ran, walked, or was driven down the passenger gangway of the Desbrosses street ferry slip of the Penn. R. R. ferry in Jersey City, and deponent is informed that the plaintiff in this suit claims that such horse and wagon struck and injured him." 10

Mr. GRAY: Mr. Fielder has said there were several interrogatories answered which he doesn't propose to offer in evidence. Unless what he did read is filed somewhere, we won't have any opportunity to know what the record is. 20

Mr. FIELDER: I will give you the numbers of them.

Mr. GRAY: I think the interrogatories you read from should be filed with the clerk.

Mr. FIELDER: I am willing to adopt any course that the Court suggests or deems proper in that connection, only I don't want to be offering a lot of papers that have immaterial and irrelevant matter in them. 30

Mr. GRAY: Another suggestion, the interrogatories are sworn to as a whole.

The COURT: I will rule in Mr. Fielder's favor, and say, that he can put in any answers he chooses at will. 40



To which ruling the defendant, the New York Mail Company, prays an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J.

10 I reside at 511 Bergen avenue, Jersey City, and am a truckman, and have been in the trucking business for at least 15 years. On the day of the accident to Dr. Koonz I was in the Penn. R. R. ferry house standing right at the boat waiting for it to come in, the same boat that Dr. Koonz was waiting for; I had a horse and truck; I wasn't on the wagon, I was standing at the horse's head.

20 Q. Was there any other truck besides yours waiting for the ferry? A. There was three or four behind me, I was the first one.

Q. Which way were you headed, in which direction? A. I was headed up at the south side of the slip. I was headed up this way (indicating), on this side of the slip, up the river, on the water side.

Q. Did you see this horse and mail wagon? A. Yes, sir.

Q. Where did you first see it?

30 Objected to.

Mr. FIELDER: Strike out the question.

The COURT: Did you see a horse and mail wagon?

40 Mr. FIELDER: No, sir, I am asking him if he saw the horse and mail wagon that ran down the passenger gangway of the south



Desbrosses street ferry slip on the 18th of December, 1903?

A. Yes, sir.

Mr. GRAY: I will still object, I can't see that that has any relation to this case.

The COURT: Objection overruled. 10

To which ruling, the defendant, the New York Mail Company, prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J.

Q. Where did you first see the horse and wagon?

A. I saw him come out from under the shed when he first started. 20

Q. Where was the horse when you first saw him?

A. He was coming out between the first and second pillars in underneath where the trains come over, the shed.

Q. On which side of the driveway, east or west side, was that? A. That I stood?

Q. No, where the horse came from? A. On the upper side, oh, what do you mean, where the horse started from? 30

Q. (The Court.) Is that the side towards the land or the side towards the river? A. The side towards the land.

Q. When you first saw the horse did you see any attendant or man near him?

Mr. GRAY: I object to that as leading. Can't we have the witness state what occurred? 40



The COURT: I think that is proper, let him answer it.

A. No.

Q. Was there anybody on the box of the wagon?

A. No, sir.

Q. Did you notice anything peculiar about the horse's harness? A. I see the horse didn't have a bit  
10 in his mouth.

Q. After you first saw the horse what did the horse do? A. Why, he started to come out there on the run, and run right across to the ferry slip. I saw him until he got into the ferry slip and the wagon upset.

Q. Did you see Dr. Koonz on the passenger gangway on that day? A. No, I did not.

Q. When the horse got opposite the Desbrosses street ferry slip, what did he do when he got opposite  
20 the ferry slip? A. When he went down the gangway, do you mean?

Q. What did he do when he got opposite? A. As I saw the horse, he come from under the shed and ran right across in front of me, and down the passenger gangway, and there I saw the wagon turn over, but I didn't dare to leave my horse, I had to stay by his head.

Q. What time of day was this? A. I can't say  
30 exactly, it was in the forenoon; I didn't pay no attention to the boat, because I come over three or four times a day, any boat, I take.

Q. Can you say whether it was nearer eight or twelve o'clock? A. I couldn't say, exactly; I had to go all the morning, go back and forth, I don't pay attention to boats.

Q. How often prior to the accident had you crossed the ferry? A. I was every day about ten times a day.

40 Q. For the last 15 years, during that time, had you



observed mail wagons with horses standing under the shed where this horse and wagon came from? A. Yes, sir.

Q. How many times? A. Oh, I sometimes might have seen teams, the express platform there, around in December, when I passed in there, may be ten or fifteen times a day, see them there.

Q. What were they doing in there prior to December, 1903? A. Oft times see them feeding when I go 10 by, standing there, I suppose they were waiting for the mails.

Q. Do you see them tied or untied? A. I never saw any of them tied.

Q. Would you see any driver or attendant with them? A. Sometimes you do and sometimes you don't. I have often come through there and there wasn't any driver near them.

CROSS-EXAMINATION by Mr. Gray:

20

Q. What were you doing there? A. I was waiting for the boat to come in.

Q. The very same boat? A. Yes, sir.

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PLAINTIFF RESTS.

30

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Mr. GRAY: I have a motion for a non-suit on three grounds.

First, that there is no proof in the plaintiff's case that the wagon which caused the injury to the plaintiff, was owned and operated and under the control of this defendant, the New York Mail Company. 40



The second ground is, that one of the items of expense which the plaintiff seeks to charge the defendant with, was the sum of \$380, Dr. Bowen's bill. The ground of this motion is, that there has been no proof of any expense, or any expenses incurred in connection with Dr. Bowen.

10

The third ground is, that there has been no proof of any negligence on the part of this defendant.

20

Mr. VREDENBURGH: I have a word to say, may it please your Honor, and it is based entirely on the case in the United States Supreme Court, of Stoddard vs. The New York, New Haven & Hartford Railroad Company. You will find it in the American and English Railroad cases, new series, Volume 27, page 312. It is 63 of the Northeastern Reporter, 927. I find it was not in the United States Supreme Court, it was in the Supreme Judicial Court of Massachusetts.

(Mr. Vredenburg reads from the opinion in this case.)

30

My motion is to non-suit the plaintiff because he has failed to show any negligence so far as the Penn. R. R. Company is concerned, so far as the Ferry Company is concerned.

40

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ADJOURNED FOR THE DAY.



January 10, 1905.

Mr. VREDENBURGH: Before your Honor decides, may I put down the formal grounds for the motion on the records?

The COURT: They are all on record, I think.

10

Mr. VREDENBURGH: I don't think they are; we discussed them last night in rather an informal way. I want to add the usual one that there is no negligence on the part of the defendant, and negligence on the part of the plaintiff, and that the cause of action is separate and not joint.

The COURT: I will deny the non-suit as to both defendants.

20

To which ruling the defendant, the New York Mail Company, prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J.

Mr. VREDENBURGH: I think I don't 30  
desire to open to the jury.

Mr. Gray then opened the case to the jury on behalf of the defendant, the New York Mail Company.

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WILLIAM BAUDER, sworn as a witness on behalf  
of the defendant, the New York Mail Company,  
testified as follows: 40



## DIRECT EXAMINATION by Mr. Gray:

I live at 351 East 56th street, and in December, 1903, worked for the New York Mail Company, and had charge of a horse and wagon of that company in that month. I collected mails from different places, not alone in one place, all over Jersey, New York, and different places. In collecting mails I  
 10 used a horse and wagon, sometimes two horses in a wagon. I came over to Jersey City on that occupation. I do not know Dr. Koonz, the plaintiff here, and never saw him until the day.

Q. Do you remember the fact, if it is a fact, of a horse and wagon which you were in charge of getting away from you in the Jersey City station, any time in December, 1903? A. Yes, sir.

20 Q. Before that day, had you been in that station with any horse and wagon for the Mail Company? A. Yes, sir.

Q. What did you do with that horse and wagon, or any horse and wagon?

Mr. FIELDER: I object to what this witness did with any horse and wagon.

30 Question admitted; plaintiff prays exception.

Q. What did you do with horses and wagons before the day of this accident, in that station? A. I drove in there, backed my horse up and left him stand there.

Q. Under whose direction, anybody's? A. No, it was a rule; everybody goes there; if the mail ain't right there, you are supposed to leave your wagon  
 40 stand there and wait until it gets there.



Q. How many times before the accident had you been there with a horse and wagon? A. I won't say for sure, at least six times, anyway.

Q. What place do you refer to? A. That is the shed, the shed there, a place only occupied by the United States mail, to wait there until the mails come in on incoming trains; of course, that is one place, there is other places in the yard.

Q. That is the place that you waited? A. Yes, sir. 10

Q. Where is that place, is it on the land side or the water side of the ferry house? A. It is on the land side.

Q. How large a place is it, would you think? A. Well, the place where the horses can stand in line is about 45 feet or so, I won't say sure.

Q. Are there any columns there, pillars? A. Yes, sir.

Q. How many? A. Well, right in that space of 45 feet there is about three. 20

Q. Is there a row of columns along the west side of the driveway in the ferry house, the place you are speaking of, was there a row of columns on the west side of the driveway? A. Yes, sir.

Q. Are they in line along the driveway or do they run inland from the driveway, or both? A. Well, the line that you are talking about was on the line with the driveway, they run this way, north and south.

Q. How many columns are there there? A. Right in front of our place there there is three, and there is more going south, north and south, there is a shed in the way there. 30

Q. Do you mean there are more columns inland towards the land side? A. Yes, sir.

Q. How many columns are there towards the land side of these you are speaking about? A. The same amount.

Q. How far inland is the second row of columns? A. Well, I should judge 25 feet from the first. 40



Q. Why do you say 25 feet? A. Well, I am pretty sure of it.

Q. Did you ever measure it? A. Yes, sir.

Q. When? A. Well, I often been there and I seen how to pass time away.

Q. Did you measure it last night? A. I went there last night.

Q. How recently have you measured that place?

10 A. Last night, before I went home.

Mr. FIELDER: He hasn't said yet he did measure it.

Q. Did you measure it? A. Yes, sir.

Q. When? A. Last night, before I went home, over 23rd street ferry.

Q. How far are the columns along the driveway apart, that is, one from the other, on the driveway  
20 side? A. Fifteen feet, maybe a little over, a couple of inches over.

Q. Did you ever measure the distance? A. Yes.

Q. When? A. Last night.

Q. What did you do previous to the date of the accident, with your horse and wagon, in that location in the Penn. R. R. station—you say you drove in there, what else did you do with your horse and wagon, anything? A. Backed it up and let it stand there.

30 Q. What else did you do in attending your horse, if anything? A. Well, I threw the blanket on him, that is all, unless I was to feed.

Q. Did you ever feed horses there? A. Yes, sir.

Q. How did you feed them? A. Took the bit out of their mouth, bridle off sometimes.

Q. You haven't got any food into the horse yet—how did you get the food—(Interrupted.) A. Took the feed bag and put it over his head for him to feed.

Q. Did you ever see any other horses of the Mail  
40 Company or other persons in that place fed in that



way? A. Yes, sir, the Mail Company always feeds that way.

Q. But the question was, did you ever see any other horses there in that place fed in that way? A. Yes, sir.

Q. On the morning of the accident, when and where did you get the horse and wagon which you were in charge of? A. 15th street, right off of Avenue A, I don't know the number.

10

Q. In what city? A. New York City, the New York Mail Company's stable.

Q. What did you do with it? A. Hitched the horse and wagon, drove out of the stable, went to the Post-office, was sent to the Penn. R. R. by the head man there in the New York Mail Company, in the office there, to catch a certain train and get the mail there.

Q. What did you do? A. Well, when I got there to the Penn. R. R., Jersey City. I found that the train was late.

20

Q. Where did you drive in the Penn. station, where did you take your horse and wagon? A. Drove up under the mail shed, where the mail wagons wait.

Q. How did you place it when you got there? A. I drove around a pillar there and turned my horse face outward, and left him stand there.

Q. Which row of pillars did you leave him next, the one on the land side, inland, or the row along the side of the driveway? A. The one inland.

30

Q. Did you arrange your wagon in reference to any particular pillar? A. Yes, sir.

Q. What pillar, and how? A. The first pillar, that is the first pillar that established any obstruction in the shed where the mail wagons stand.

Q. How did you arrange your wagon in reference to that pillar? A. Well, I remember very well that I had the hind wheel behind that pillar.

Q. When you say behind, you mean on the land side of that pillar? A. Yes, sir.

40



Q. And where was the front wheel in reference to that pillar? A. Right in front of it, on the water side, not right in front of it, but pretty near it.

Q. After you had so arranged the horse and wagon was any part of it on the driveway? A. No, sir.

Q. How far away from the driveway would you think the horse and wagon were when you so arranged them? A. About 15 feet or over.

10 Q. What did you do next? A. I went into the waiting room.

Q. Anybody tell you to? A. Yes, sir.

Q. What did you next? A. After I got warm—  
(Interrupted.)

Q. Under whose direction did you go in there? A. The man that has charge there, charge of the incoming mails, and give them to the drivers as they come in, I know his first name—I don't know if it is his last or first, anyway he goes under the name of Hermann.

20 Q. Was he in the employ of the Mail Company?  
A. Yes, sir.

Q. What did you do next?

The COURT: Mr. Gray, what waiting room is meant here?

A. Drivers' waiting-room.

Q. Is that on the north side, that is the Hoboken side, of the place where the wagons were? A. It is on the north side.

30 Q. Or is it on the south? A. The north side of where our wagons wait.

Q. How far away is that from where the wagons were? A. About 30 to 35 feet or so, I am not sure, but about that.

Q. You mean it is that distance from your wagon? A. Yes, sir.

Q. Does that office immediately adjoin the open space where the wagons were? A. Yes, sir, the door leads to that—no, not exactly, there is a little walk  
40 in before you come to that, little passageway.



Q. Were there any other horses and wagons in the place where your wagon was as so arranged as you have testified to? A. Yes, sir.

Q. How many other horses and wagons were there there? A. There was two wagons.

Q. Were there drivers or any one in attendance upon those horses and wagons?

Mr. VREDENBURGH: I object to that. 10

A. Not at the time I was in the waiting room.

Q. How long were you in the waiting room? A. About between 10 and 15 minutes.

Q. What did you do then? A. I was warm and I went out and started, I got the feed bag off the wagon, the seat of the wagon.

Q. Where did you go when you went out? A. Out to the wagon, my wagon.

Q. What did you do when you got there? A. Took 20 the feed bag off of the seat.

Q. Any feed in it? A. Yes, sir.

Q. Go ahead, what did you do with it? A. Stood right in front of the horse, removed the bridle; after I removed the bridle I was just putting the feed bag over the horse's head when he started, I made a grab for his nose. He shook me off and threw me aside. When I picked myself up he was gone.

Q. What did you do next? A. After I got up the last thing I saw of the wagon at that time was the 30 rear of the wagon going down some slip.

Q. Did you see the wagon hit anybody, or the horse? A. No, sir. I ran down the slip; as I got there they were just lifting the wagon in an upright position. There was an officer, I don't know whether there were one or two, was putting the bridle on the horse. I helped them back the wagon out on the main driveway, the horse was led up, then we fixed the harness and the broken part of the wagon, the whiffletree, with rope or wire, which I don't know 40



now. After that I got on the wagon, drove the horse to the 23rd street ferry slip, on to the ferry boat, over to New York on the ferry boat, drove him from 23rd street on the New York side to 15th street, near Avenue A, New York, and left him in the stable.

CROSS-EXAMINATION by Mr. Fielder:

10 Q. How many times had you been in the Penn. R. R. depot with your horse and wagon? A. Six times, about.

Q. When was the first time before the accident? A. I can't tell you.

Q. A month? A. It might have been a month—oh, the first time? I don't know, I couldn't say for sure.

Q. Can't you say whether it was a month or two months, or a year? A. About a month.

20 Q. About a month before the accident? A. Might have been two months, I can't say for sure.

Q. Then, after the first time you were there five other times? A. About that, yes, sir, might have been more.

Q. Did you see horses and wagons standing in this place each time? A. Yes, sir.

Q. Mail wagons? A. Yes, sir.

Q. Did you see the horses standing there untied? A. Yes, sir.

30 Q. Always? A. Yes, sir.

Q. Did you ever see them tied? A. No, sir.

Q. Did you see drivers standing at their heads? A. Once in a while.

Q. This was very seldom, however?

Mr. VREDENBURGH: That seems to me an unfair question, and I object to it as incompetent and not cross-examination.

40 Objection overruled.



The defendant, Pennsylvania R. R. Co.,  
prays exception.

Question read.

Mr. GRAY: I don't think that is a question  
at all.

Mr. FIELDER: Oh, yes, the question was <sup>10</sup>  
whether he had seen drivers standing by the  
horses' heads, and he said yes, once in a while,  
and now this question is: That is very sel-  
dom, however, that you had seen drivers?

A. Well, I can't answer that.

Mr. GRAY: I object to that as not being  
a question at all, but an answer.

<sup>20</sup>

The COURT: It is what I would call an in-  
terrogative affirmation, and it is a form in  
which questions are often put. If you insist  
upon its being put in a strictly interrogative  
form I will require Mr. Fielder to do so.

Mr. GRAY: I would rather it would be so.

Mr. FIELDER: I will let the question be  
struck out and ask instead: Is it very often <sup>30</sup>  
that you see drivers standing by their horses?

Mr. VREDENBURGH: I object to that  
as incompetent and irrelevant.

Question allowed.

Defendant, Penn. R. R. Co., prays excep-  
tion. <sup>40</sup>



A. No, not very often.

Q. On the occasions you were there in the depot or in the ferry house, did you see horses being fed? A. Some times.

Q. While feeding were they tied? A. No, sir.

Q. Were there any drivers or other attendants standing by them? A. Only while they put the feed bag over their head.

10 Q. And after that did they leave the horses? A. Yes, sir.

Q. How long had you been driving this horse? A. That was the first time I drove him.

Q. Who was the driver who had the horse before you? A. Mr. Henderson, I presume.

Q. Mr. Henderson in court? A. I guess so, I think so.

Q. How long after you drove in was it before you started to feed your horse? A. Between 10 and 15  
20 minutes, or a little over.

Q. Did you drive into the space between the mail transfer clerk's office and the first pillar south, or were you between the two pillars, the first pillar south and the pillar next to it? A. I was nearest the southern pillar, the most southern pillar, right in that space where the mail wagons stand.

Q. Is that the first pillar south of the mail clerk's office? A. No, there is more there.

Q. Yes, but is it the first pillar south? A. No.

30 Q. Then you were not next to the mail clerk's office? A. No, sir.

Q. You were between two pillars? A. Yes, between two.

Q. I am speakin<sup>g</sup> of the pillars that run along the driveway, were you between those pillars? A. No, sir.

Q. Will you please tell me where you were standing with reference to the pillars on the driveway?

40 Mr. VREDENBURGH: He or the wagon, or which?



Question amended to read as follows: Will you please tell me where you were standing with your horse and wagon with reference to the pillars on the driveway? A. I was back of the pillars, not on the driveway, the first row of pillars from the driveway, I wasn't near them; there is another row in back of them, about 25 feet in back of them, that is where I was.

Q. You have stated that you were about 15 feet from the driveway? A. Yes, sir. 10

Q. And you say the pillars are 25 feet apart? A. Yes, sir.

Q. And you were between the pillar on the driveway and the next pillar inland, is that right? A. Yes, sir.

Q. The mail clerk's office was north of your horse and wagon? A. Yes, sir.

Q. There was no pillar north of your horse and wagon? A. Yes, sir.

Q. There was? A. Yes, sir. 20

Q. Then, you were not standing in the space directly south of the mail clerk's office and next to the pillar on the driveway, were you? A. I wasn't near any pillar on the driveway.

Q. You know there is a row of pillars running along the driveway? A. They are set back from the driveway.

Q. Run the same way as the driveway? A. Yes, sir.

Q. And there is a row of pillars that run back from the driveway west, towards the station, is there not? A. No, there is no row running west, the both rows run north and south. 30

Q. Only north and south? A. Yes, sir.

Q. Now, then, I understand that you were standing between the two pillars that run along the driveway, then? A. No, sir.

Q. That run along the same way as the driveway? A. The pillars in back of those that run alongside the driveway. 40



Q. Are there more than one row of pillars that run the same way as the driveway? A. Yes, sir.

Q. Was the nearest pillar to you on the east, on the south, or the north side of your wagon? A. South side of my wagon.

Q. And that pillar, I understand you to say, was between the wheels of your wagon—you could have tied your horse to one of those pillars if you had  
10 wanted to, could you not? A. No, the horse was in front of the pillar.

Q. You couldn't back the horse to the pillar, could you? A. I couldn't have backed him, of course not.

Q. You couldn't back him? A. Sure, I could.

Q. Why not?

Mr. GRAY: He says, Sure, he could.

A. Well, I could.

20 Q. If you had backed your horse to the pillar, could you have tied your horse to the pillar? A. Of course.

Q. And the horse, I understand, was facing out toward the driveway? A. Yes, sir.

Q. And he was about 15 feet from the driveway, is that right? A. Yes, sir.

Q. Do you know that that horse had run away the day before, or a few days before? A. No, sir.

Q. Had you been told that he had? A. No, sir.

Q. Didn't you tell Mr. Reutter, the ferry master of  
30 the Penn. R. R. Co., that the horse had run away a day or two before that? A. Not to my knowledge.

Q. Do you say you didn't tell him so? A. Not to my knowledge.

Q. Do you say you didn't tell him so? A. No, not to my knowledge, I won't say I didn't, but not to my knowledge.

Q. Then, you may have told him so? A. Yes, I may.

Q. When you went out, when you took the feed  
40 bag from under the box of the wagon, were there



any other drivers or men about? A. I took it from the seat, not from under the wagon.

Q. Were there any other drivers or men in the employ of the Mail Company around the wagons? A. Yes, sir.

Q. How many? A. There was one, I am sure.

Q. What was his name? A. I can't tell his name.

Q. Had you seen him before? A. Yes, sir.

Q. And you didn't know his name? A. No. 10

Q. What was his business there? A. He was doing the same as I was, feeding.

Q. He had a wagon there? A. Yes, sir.

Q. He was a driver there? A. Yes.

Q. Was he talking to you? A. No, sir.

Q. How far away from your wagon was he? A. Well, ten feet or so.

Q. Back? A. No.

Q. Which direction? A. North.

Q. Off to the side, ten feet away—there wasn't anything between your horse and the driver, was there? A. No, sir, one pillar, pillars. 20

Q. Was the pillar in front of the horse? A. Not in front of the horse.

Q. I ask you if there was anything in front of your horse, between your horse and the driver? A. Well, I tell you there was a whole lot of pillars running along in front of there.

Q. In front of your horse? A. Well, of course, not exactly in front. 30

Q. Well, then, why not answer the question? A. No.

Q. Were you talking to this man? A. No, sir.

Q. What was he doing? A. Feeding.

Q. He was attending to his horse, was he? A. Yes, sir, he had one or two, I am not sure.

Q. Was he looking at you or at his horse? A. I didn't see what he was looking at.

Q. How do you know he was there? A. Because I saw him. 40



Q. Then, you were looking at him? A. Well, I was looking at him, but not all of the time, I don't know if he was looking at me.

Q. I ask you when you took your feed bag from off your wagon seat did you see this man? A. Yes, sir.

Q. What was he doing? A. Feeding his horse.

Q. Did he have his back or his face toward you? A. He was right in front of me.

10 Q. Did he have his back or his face toward you? A. Side.

Q. What was he doing, did he have a feed bag in his hand? A. Yes, sir.

Q. He was tying it on his horse's head? A. Yes, sir.

Q. Now, before you got your feed bag, you say you had taken the bridle and bit off the horse, is that right? A. Yes, sir.

20 Q. Now, the bridle and bit was out of the horse's mouth when you went to get the feed bag? A. Yes, sir—no, sir.

Q. You said yes a minute ago? A. No, I did not—yes, I did, yes, then, but no it wasn't.

Q. It was not? A. No, sir.

Q. When did you take the bridle and bit out of the mouth? A. After I had the feed bag.

Q. You had the feed bag in one hand? A. No, sir, I stood the feed bag down.

30 Q. And then you took the bit out of the mouth and the bridle off? A. Yes, sir.

Q. And then, what? A. I took the feed bag up, or I picked it up, and was right in front of the horse ready to put it over his head when he went off.

Q. Just as you picked up the feed bag the horse started? A. No, sir.

Q. Started after you picked it up? A. Yes, sir.

Q. What frightened him? A. I don't know.

Q. Have you any idea? A. No, sir.

40 Q. Was there any noise around there, that you heard? A. Nothing unusual, to my knowledge.



Q. Had the horse been restive before that? A. Yes, sir.

Q. Very? A. Well, no, 15 minutes or so, ten or fifteen minutes.

Q. Fifteen minutes before that he had been? A. I was there that long.

Q. Had he been restive all that time? A. Yes, sir.

Q. What did he do to make you think he was restive? A. Well, he stood still.

10

Mr. GRAY: What did you say, rested or restive?

WITNESS: I understood you to say rested.

Mr. GRAY: That is what I understood him to say.

20

Q. Before you started to put on the feed bag had the horse been restive? A. I don't know just what that means—uneasy, does that mean?

Q. Well, restless, do you know what restless means? A. Yes, uneasy, or something like that. No.

Q. Had not been? A. No, sir.

Q. Had been standing there quietly? A. Yes, sir.

Q. All of a sudden he started to run away? A. Just as I put the feed bag on.

Q. You don't know what caused him to run away? A. No, sir.

Q. He had been standing there quietly with his head down, had he? A. I don't know if his head was down.

Q. Hadn't been doing anything at all that led you to suspect he was going to run away? A. No, sir.

Q. And you heard no noise? A. No, sir.

Q. Was there any noise around there? A. I don't know, there might be wagons coming and going, if you call that noise.

40



Q. Did you strike the horse while you were busy with him and the feed bag? A. No, sir.

Q. It wasn't anything you did caused the horse to run away? A. No, sir.

Q. Did you see anybody else strike him? A. No, sir.

Q. Do you know whether anybody did strike him? A. No, sir.

10 Q. Do you say no one else did strike him? A. No, sir.

Q. You don't say so? A. I say nobody did strike him.

Q. And you can't give any reason, then, for the horse running away? A. No, sir.

Q. How far had you got with the nose bag when the horse started? A. Just putting the rope over his ears.

Q. He had his nose in the bag, then? A. No—he  
20 had his nose in then, but the rope wasn't over his head.

Q. Were you talking to the driver who was near you or any other person at that time? A. No, sir, I was just attending to the horse.

Q. Where abouts, with reference to the horse's head, were you standing at that time? A. Right in front.

Q. Directly in front of him? A. Yes, sir.

Q. Facing towards him? A. Yes, sir.

30 Q. And is it your custom to put on a nose bag standing directly in front of the horse? A. Well, just at that time I did; it isn't the custom.

Q. Isn't it easier to tie the knot for the nose bag to stand off to one side? A. Well, it might be.

Q. But you were not standing at one side at that time? A. No, sir.

Q. Then, when the horse ran, he ran directly over you? A. No, sir.

Q. How did you get out of the way? A. Well, as I  
40 said, I made a grab for his nose.



Q. It had a nose bag on it? A. He had his nose in the bag, but he didn't have the nose bag on yet.

Q. A minute ago you said that the horse had his nose in the nose bag? A. Yes, sir.

Q. And you were tying the rope over his head? A. No, sir, just about to put it over.

Q. Now, you say you grabbed his nose; how could you, with his nose in the bag? A. When he jumped I dropped the bag.

Q. Did you move when he jumped? A. I had to. 10

Q. Which direction did you move? A. Just went to the right with my left hand and made a grab for his nose.

Q. Was that north or south that you moved? A. North.

Q. Over toward the mail transfer clerk's office? A. Yes, sir.

Q. And as you moved you dropped the nose bag? A. Yes, sir.

Q. Describe the start of the horse, what did he do? 20  
A. Just gave one jump or lurch, or what you might call it, and the minute he done that he come toward me, and I could see that, and that is all; then I made the grab for his nose, jumped aside.

Q. You jumped one side, then? A. Yes, sir.

Q. And dropped the feed bag? A. Yes, sir.

Q. And you made a grab for his nose? A. Yes, sir.

Q. With what hand? A. The left hand.

Q. Are you left-handed? A. Yes, sir, not in every- 30  
thing, no.

Q. When you grab horses by the nose? A. No, no; I couldn't throw a ball or anything like that with the right hand—I might with the right hand.

Q. But before giving this sudden lurch and jump, the horse hadn't moved at all? A. No, sir.

Q. When the horse started did he strike you? A. No, didn't get a show to strike me, of course, I just jumped aside in time.

Q. What caused you to fall down, then? A. The 40



swing of the horse, the shake of his head.

Q. The horse didn't touch you? A. I had my hand on him, I made a grab for his nose.

Q. You actually did grab his nose? A. Yes, sir.

Q. And he shook his head off? A. Yes, sir.

Q. And that shake of the horse's head threw you to the ground? A. Yes, sir. I don't know if it was the shake or the push, but my feet, I suppose, got mixed  
10 and I went down, anyway, that was the main cause, the shove.

Q. After he went off and you fell to the ground on the north side of the horse and wagon, did the wagon run over you as it went out? A. No, sir.

Q. After that one jump, that quick, sudden jump, what did the horse then do? A. Well, I didn't see nothing of him until he was about going down the ferry slip then.

Q. How long were you on the ground? A. Very  
20 little while.

Q. You jumped up at once, didn't you? A. I jumped up at once.

Q. And you didn't look to see where the horse and wagon had gone? A. Well, I knew which way he had gone; after I got up I ran after him.

Q. From where you fell, could you see this ferry slip, down which he ran? A. I could see it, I couldn't see the slip, but I could see which way he went.

Q. Where did you have to go to from where you  
30 fell to see the slip? A. Well, right in front of it, you could see, you know, the sides of it, that is all.

Q. Right in the main driveway? A. Yes, sir.

Q. That is about fifteen feet from where you fell?  
A. Yes, sir, about that.

Q. By the time you got out on the main driveway the horse was going down the gangway, the ferry bridge? A. Just about turning.

Q. He must have been going pretty fast, then? A. Well, I suppose he did.

40 Q. Was the wagon broken any? A. Yes, sir.



Q. Whereabouts? A. At the top.

Q. How was it broken, I mean what was its appearance after the accident? A. Well, a piece of the front of the seat off, you know, the top of the wagon, the top of the wagon broke off, pieces of it.

Q. This was a wagon with the seat on the top of it? A. No, it is a wagon, a box wagon, like you know, all closed in, all wood.

Q. You say the top of the wagon was broken? A. <sup>10</sup> Yes.

Q. What was its appearance, the top of the wagon? A. Well, there was no front to it, only the seat; the top was off.

Q. The whole top knocked off? A. Not the whole of it, part of it; the whiffletree was snapped and part of the harness broke, pieces of the harness.

Q. Have you driven this horse since? A. No, sir.

Q. Do you know whether he is used by the Mail Company now? A. No, sir, I don't know, for a fact. <sup>20</sup>

Q. Are you still in the employ of the Mail Company? A. No, sir.

Q. When were you discharged? A. I wasn't discharged.

Q. When did you leave? A. Well, it was a month or so after.

Q. Had you seen the horse after the accident? A. No, sir.

Q. You were at the stables every day, were you not? A. Yes—not every day, no, because I was an <sup>30</sup> extra man, I didn't have to come every day.

Q. The horse was not at the stables the day you were there, then? A. I don't know nothing about that.

Q. You know Mr. Hernarn? A. Yes, sir, but I don't know if that is his full name, I only know he was called that, Herman, at the place.

Q. Let Mr. Herman show himself—here is Mr. Herman? A. That is the man.

Q. Mr. Herman connected with the New York <sup>40</sup>



Mail Company? A. Yes, sir.

Q. Whereabouts have you seen him? A. Right there where the mail wagons are in Jersey City.

Q. What does he do there?

Objected to.

A. I don't know what his duties are; as far as I  
10 understand—(Interrupted.)

The COURT: What has this witness seen him do there?

Q. What have you seen him do there? A. Well, direct the mail to the right parties, the right wagons.

Q. After this accident, did you tell Mr. Herman that the horse was standing there feeding, and you were off to one side talking to a driver, and an auto-  
20 mobile came along and frightened it? A. No, sir.

Q. You positively did not say that? A. No, sir—yes, sir, I am positive that I didn't say it.

Q. Did you tell Mr. Herman that the horse was being fed and you was standing about ten feet away at the time he started? A. I did not tell him that.

Q. You are positive about that? A. Yes, sir.

CROSS-EXAMINATION by Mr. Vredenburg:

30 Q. What is your age? A. Twenty-three years old.

Q. When will you be twenty-three? A. I am twenty-three.

Q. You are employed by this company, I want to ask you about how long had you been in the employ of this New York Mail Company before this accident? A. Well, around between two and three months.

Q. When the horses were fed did you see the drivers tie the hind wheel of the wagon? A. No, sir.

40 Q. What? A. No, sir.



Q. Didn't see them tie the hind wheel? A. No, sir.

Q. Never saw any driver tie the hind wheel? A. Not in that place.

Q. What place did you see them tie the hind wheel?

Mr. FIELDER: I object to that question.

Mr. GRAY: I rather object to that, myself. 10

The COURT: Does that go to his credibility, or to his recollection, or to his knowledge of the fact, or what?

Mr. VREDENBURGH: It goes to his credibility.

The COURT: He may answer.

To which ruling the defendant, the New York Mail, prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly. 20

C. W. PARKER, J.

Plaintiff prays exception.

A. You mean did I ever see the New York Mail Company tie their hind wheels? 30

Q. When they fed, yes? A. No, sir.

Q. What did you mean by saying that you had seen them tie their wheels?

Mr. FIELDER: He didn't say that.

The COURT: He didn't say that. He said he had never seen them tie their wheels there. 40



Q. What did you mean by saying that you had never seen them tie their wheels there? A. I didn't mean that; If I am not mistaken, you didn't ask that question, though.

Q. Do you now mean to say that you never saw them tie their wheels anywhere? A. Yes, sir, I do.

Q. Never have seen them tie their wheels? A. No, sir, I never saw them tie their wheels.

10 Q. Did you start to tie the wheels of this wagon at the time you were about to feed? A. No, sir.

Q. Sure about that, are you? A. Yes, pretty sure.

Q. Well, there was a string on the hind wheel of your wagon, wasn't there? A. I don't know, I didn't see it.

Q. You didn't see it on there? A. No, sir.

RE-DIRECT EXAMINATION by Mr. Gray:

20 Q. In reply to a question of Mr. Fielder's, you said that you might have told Mr. Reutter that the horse ran away the day before; had you charge of the horse the day before? A. No, sir.

Q. Did you drive it the day before? A. No, sir.

Q. Have you any knowledge whether this horse ran away the day before the accident at all? A. No, sir, not to my knowledge.

RE-CROSS-EXAMINATION by Mr. Fielder:

30

Q. Were you told by anybody in the employ of the New York Mail Company that the horse had run away the day before?

Mr. GRAY: I object to that. The objection is that Mr. Fielder has already asked that question and got an answer. I don't see why a question should be repeated when the answer has already been given; the witness has already said nobody told him.

40



Mr. FIELDER: No, the witness didn't say so.

Mr. GRAY: Well, whatever he did say, the question has been answered.

The COURT: I will allow him to answer that question for the purpose of clearing that up.

10

To which ruling the defendant, the New York Mail Company, prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J.

Q. Had anybody in the employ of the New York Mail Company told you that that horse had run away the day, or a few days, before? A. Not that I know of. 20

Q. Do you say positively nobody told you so? A. I don't know, not that I know of. Did anybody tell me that the horse had run away before?

Q. Do you say that nobody told you that that horse had run away before? A. Not that I remember.

Q. Will you say that nobody didn't tell you so? A. I don't remember.

Mr. GRAY: What is that question?

30

Q. Will you say that nobody did not tell you—will you say that nobody did tell you that the horse ran away? A. Not that I remember. Did anybody tell me that the horse had run away before?

Q. Why are you doubtful about it? A. Well, it is a long time ago.

Mr. GRAY: He isn't doubtful about it, I object to that comment on the testimony. 40



Q. And, yet, not knowing whether anybody told you that the horse had run away, you won't say that you didn't tell Mr. Reutter that the horse had run away? A. No.

Q. (Mr. Gray.) What do you mean by no, no what?

A. I won't say that I told Mr. Reutter that the horse had run away.

Q. The question was whether you will say that you  
10 didn't tell him?

The COURT: He answered the question correctly, as it was put.

Q. Well, the question is whether you will say that you did not tell Mr. Reutter that the horse had run away? A. I have answered that question.

Mr. FIELDER: That is all right, then.

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JAMES HENDERSON, sworn as a witness on behalf of the defendant, the New York Mail Company, testified as follows:

DIRECT EXAMINATION by Mr. Gray:

30 I live in New York. I am a mail driver, and in December, 1903, was in the employ of the Mail Drivers, or the Company, the Mail Drivers, Mail Driver Company.

Q. What were your duties for them, what did you do for them at that time? A. Drove.

Q. Do you know where the stables are? A. Yes, sir.

Q. Where? A. Fifteenth street, 525, if I remember right, New York City.

40 Q. You know the horse that Mr. Bauder had



at the time of the accident, in December, 1903? A. Yes, sir.

Q. How long had you known that horse? A. I knowed that horse driving from three to four months.

Q. Had you driven the horse yourself? A. Yes, sir.

Q. Where had you driven him? A. I drove it all over the city, all railroads through the city. 10

Q. Did you ever drive it to the Penn. R. R. Station in Jersey City? A. Yes, sir; I have driven there every day a couple of times.

Q. When did you first drive it there about? A. It must be eight or nine months, or over a year ago.

Q. Did you drive it there before the day of this accident? A. I did.

Q. How long before December, 1903, had you driven the horse there? A. I had driven it there every day a couple of times a day.

Q. How long before December, 1903? A. From three to four months. 20

Q. When you drove him to the Penn. R. R. Station, where did you drive him? A. Drove him to where all the wagons stood to receive the mail.

Q. In the station there? A. Yes, sir.

Q. How did you handle him when he was in that station? A. When I got out my mail I put the horse over there and fed him.

Q. How did you feed him? A. Just dropped the bit out of his mouth, put the bag on his head. 30

Q. How did he behave? A. Behaved right, a lady could drive the horse, as nice an animal as a man ever drove.

Q. Did he ever run away with you? A. No, sir.

Q. Do you know who drove the horse the day before the accident? A. I drove him.

Q. Did he run away with you that day. A. No, sir.

Q. Did he ever run away with you? A. No, sir. 40



## CROSS-EXAMINATION by Mr. Fielder:

Q. Had you driven this horse every day before the accident? A. Every day.

Q. And no other driver had driven him? A. No other driver had him.

Q. Why was Bauder driving him that day? A. Because I was sick from being overworked and out in the night there; I had pains in my bones.

10 Q. Did the Mail Company overwork you? A. Yes, sir, overworked me as many more men they do, and if there are too much work he would have to rest once in a while from hard work.

Q. Was Bauder a regular man in the company's employ? A. I don't know that man, only as I saw him here.

Q. Never saw him before? A. Not to my knowledge; I might have; I know all the men in the place; I don't know them by name; I got no time to watch  
20 another man or take a record of it.

Q. Now you say that this was a quiet, gentle horse that a lady could drive? A. A young lady could drive him.

Q. Can you account for the horse's suddenly starting up without any cause? A. He won't start up.

Q. There must have been some noise?

MR. GRAY: I object to that question.

30 Q. From your experience in driving that horse, will you say that he wouldn't start up without being frightened by some noise?

MR. VREDENBURGH: Objected to as illegal and irrelevant.

MR. GRAY: I object to that.

40 Question allowed.



To which ruling the defendant, the New York Mail Company, prays that an exception may be allowed, and it is allowed and signed and sealed accordingly.

C. W. PARKER, J.

Defendant, Penn. R. R. Co., prays an exception.

10

A. I am driving horses all my life.

Q. (Mr. Gray.) Do you understand the question?

A. Well, I don't understand it.

Question read as follows: "From your experience in driving that horse, will you say that he wouldn't start up without being frightened by some noise? A. No, sir, he won't start up.

Q. Will you repeat the question. Answer the question directly.

20

The COURT: He has answered it directly.

Mr. FIELDER: The question is whether he would start up without some noise to frighten him; he says, "No, sir, he won't start up."

The COURT: That is a fair answer to the question. It means he wouldn't start up without some noise, the way I construe it.

30

Mr. VREDENBURGH: How can that question be allowed? Of course, he would start up if you hit him, or he would start up if you put a fire cracker under him. There are a thousand ways you can start a horse without noise.

The COURT: There is plenty of opportunity for the other side to bring out what they

40



want in that particular when their turn comes.

CROSS-EXAMINATION by Mr. Vredenburgh:—

Q. Did you tie the wheels of your wagon when you fed your horse?

10 Mr. FIELDER: I object to that.

A. No, sir.

Mr. GRAY: I object to it.

Mr. FIELDER: It isn't proper cross-examination.

Question withdrawn.

20

GEORGE HERNARNS, sworn as a witness on behalf of the defendant, New York Mail Company, testified as follows:

DIRECT EXAMINATION by Mr. Gray:

30 I am an agent for the New York Mailing Co., and was located in December, 1903, at the Penn. R. R., Jersey City.

Q. Did you receive any directions from anybody as to where the mail wagons should stand or be located while they were waiting for the mail? A. Yes, sir; when I first took my position over there, we were instructed by the Penn. R. R. Co. that that space was designated for our mail wagons only.

Q. How long had you been in the employ of the 40 company up to December, 1903? A. I had been em-



ployed in this company ever since they took hold of the mail contract, I suppose that is twenty, twenty-five years ago.

Q. How long had you been located in the Pennsylvania station, Jersey City? A. It is going on my fourth year I have been there.

Q. How long had you known the mail wagons to occupy that place in the station? A. Ever since I have been there in that position.

10

CROSS-EXAMINATION by Mr. Vredenburg:

Q. I would like to correct you a little in that respect; I think you recall the fact that the depot—  
(Interrupted.)

Mr. FIELDER: I object to Mr. Vredenburg's making a statement to Mr. Hermann; I have no objection at all to his cross-examining him.

20

The COURT: Better ask your question, Mr. Vredenburg, hadn't you?

Q. (Continuing.)—was rebuilt about five years ago, or six years ago? A. Yes.

Q. Well, there wasn't any place there then, twelve years ago? A. I didn't say anything about twelve years ago—ever since I have been in that position.

Q. I understood you to say you had been there twelve years? A. Oh, no, I said I had been there in that position as an agent for the Mail Co. four years; I had been up to the West Shore for fourteen years, I was transferred there.

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JOSEPH M. RECTOR, sworn as a witness on behalf of the defendant, the New York Mail Co., testified as follows:

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Mr. GRAY: I want to ask Mr. Hernarns another question.

GEORGE HERNARNS, re-called as a witness on behalf of the defendant, the New York Mail Co., testified as follows:

DIRECT EXAMINATION by Mr. Gray:

10

Q. Did you ever receive any directions from any one as to the times in handling the mail and when wagons should be there and when they should go?

Mr. FIELDER: I object to the question whether he ever received any directions from anybody. The question should be confined to his employer or to the Penn. R. R. Co., the parties in this suit.

20

The COURT: It is a question for a yes or no answer; he may answer it yes or no.

A. Yes, sir.

Q. From whom did you receive such directions?

Mr. FIELDER: I object.

A. From the Post-office authorities.

30

The COURT: You object now?

Mr. FIELDER: Yes, sir, I object now, I objected before the question was answered.

The COURT: Yes, you objected in time. I will allow the question.

Q. From the Post-office authorities, what Post-office authorities? A. United States Post-office au-  
40 thorities. The orders is—(Interrupted.)



Mr. FIELDER: Now, you have answered the question.

Q. What were the wagons and horses of the Mail Company doing in the place where they were in the Penn. R. R. depot from day to day, what were they there for? A. There to receive the mails.

Q. From whom?

Mr. FIELDER: I object to this line of examination on the further ground that it is not proper re-direct examination. 10

The COURT: No, it is examinatioin which Mr. Gray, I presume, forgot on his original.

Mr. GRAY: Yes, I overlooked it.

The COURT: I will allow you to put it in now. 20

A. From the Penn. R. R. Co., brought down by their porters to our wagons.

Q. What mails were they? A. All mails.

Q. Were they private mails or Government mails, or what? A. United States Government mails, we handle nothing else but United States Government mails.

CROSS-EXAMINATION by Mr. Vredenburgh: 30

Q. Who is George Traverse in connection with the mail department?

Mr. FIELDER: I think that is an immaterial question.

The COURT: Let the question be answered. 40



A. George Traverse, I know a party by the name of George Traverse.

Q. George T. Travis? A. Well, George T. Travis, I think, has got the contract for the Jersey City mails, which don't have anything to do with us whatever.

Mr. FIELDER: I move to strike out the answer—(Interrupted.)

10

A. (Continuing)—nor New York Mailing Co.

Mr. FIELDER: (Continuing)—as not being responsive to the question, not being material and being irrelevant.

The COURT: If the answer is satisfactory to the other side, it seems to me sufficiently relevant to let it stand.

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JOHN M. RECTOR, re-called as a witness on behalf of the defendant, the New York Mail Co., testified as follows:

DIRECT EXAMINATION by Mr. Gray:

I am a physician and surgeon, and have been about  
30 twelve years; I graduated from the medical department of Columbia College, New York City, and have been practicing since in Jersey City, in general practice. I know the plaintiff in this case, Dr. Koonz. I examined him the 6th day of June, 1904, at his home in Jersey City.

Q. Where was he when you examined him, upstairs or downstairs? A. Both; in the first part of the examination he was in the room on the parlor floor;  
40 the second examination, or the concluding of the ex-



amination, was in the bath room on the second floor.

Q. Was that one examination, one day, one time?

A. Yes, sir.

Q. When he was down stairs and you went in and first saw him, how was he dressed, was he dressed or undressed? A. Yes, sir.

Q. How was he dressed? A. In his ordinary clothes.

Q. What did you find upon your examination of <sup>10</sup> him down stairs? A. There were no objective signs.

Q. What do you mean by objective signs? A. Signs which can be seen or felt or touched.

Q. Signs on the outside of the body? A. On the surface of the body, or beneath the surface of the body, which give a prominence.

Q. Which you could discover by feeling or seeing, is that it? A. Or touch, yes, sir.

Q. (The Court.) How about signs you can hear? A. There were no signs could be heard. <sup>20</sup>

Q. Would those be objective or subjective?

Q. (The Court.) Those would be objective if you did hear them? A. Yes, sir. Any existing at that time or happening at the time of this accident or as the sequel, or following this accident, as the result of the accident; there were no subjective signs.

Q. What did you do with the doctor, did you take his clothes off down stairs? A. Yes, sir.

Q. How did you examine him—I mean by that, what did you do? A. I examined all portions of his <sup>30</sup> body from his chest down to his feet.

Q. Did he direct your attention to any particular parts? A. Yes, sir.

Q. Where? A. Down his thigh, left thigh.

Q. What did you find there? A. Little tenderness over the muscles of the back portion of the thigh.

Q. Was there any discoloration? A. No, sir.

Q. Was there any swelling? A. No, sir.

Q. What was the tenderness, a bone tenderness or a muscle tenderness, or a nerve tenderness, or what? <sup>40</sup>



A. Skin and muscle.

Q. In your opinion, what you found in the way of tenderness at that place on his hip, was that tenderness a permanent tenderness? A. I didn't say that it was on his hip, it was on his thigh.

Q. Was that tenderness a permanent one, would you think? A. It would come and go.

Q. Can you tell what the cause of it was? A. Yes, 10 sir.

Q. What was it? A. It is either rheumatic or from uric acid diathesis. Uric acid diathesis, I mean a chemical deposit which occurs in men of his age, habits and occupation, at his time of life, as the result of improper assimilation, that is, improper oxidation of the blood. The functions of the blood change its conditions from one of normal alkalinity to partial acidity, that is resultant in the deposit of a chemical substance known as uric acid, which occurs, at times, 20 it may be great in the joints or the vessels, that is, the sheathes of the vessels.

Q. Did the doctor refer you to any other part of his body? A. No, sir.

Q. Did you find anything else the matter with him in his body? A. No, sir—yes.

Q. What did you find? A. In the examination conducted in the bath room.

Q. I am speaking now of the down stairs examination? A. No, sir.

30 Q. Was there anything else you discovered by any other examination you made down stairs than what you have described? A. No, sir.

Q. Then, what did you do? A. Took him upstairs to the bath room.

Q. In the bath room, was he without his clothes? A. Yes, sir. He complained of a little interference in the passage of his water. I examined the prostate gland. The prostate gland is a small round gland which surrounds the canal through which the water 40 passes going from the bladder to the outside world.



Men of his age, that gland is inclined to be enlarged, and by the enlargement of this gland there is a pressure against the canal which diminishes the calibre of the canal, causing an interference with the freedom of the passage of the water. That, I found enlarged, which would account for the interference with the passage of his urine.

Q. What, in your opinion, was the cause of the enlargement? A. Age. 10

Q. Where is that prostate gland located? A. Situated at the mouth of the bladder.

Q. Right in front of the body or back of the body? A. It is the under surface of the body.

Q. Right between the legs? A. It is above the division of the legs, it is within the pelvis, that is the lower part of the trunk of the body. The junction of the bladder and the canal which leads from the bladder, passes through this gland, which is within the internal portion of it. 20

Q. What else did you discover, if anything? A. Nothing.

Q. Did you discover anything the matter with the sciatic nerve? A. No, sir.

Q. Where is that located? A. It comes out—the sciatic nerve is the end of the spinal cord, it passes out at the extremity of the spinal column through an opening in the pelvic bone, that is the bone we sit on, going close down to the posterior, the back part of the leg, down as far as the heel, that is, the filaments, the ends of the nerve, it subdivides at places, but the nerve passes down the back of the leg almost to the knee. 30

Q. The tenderness which you discovered on the left thigh, was that near the sciatic nerve? A. Over the course of the nerve, because the nerve supplies the skin.

Q. Was that tenderness due to anything relating to the sciatic nerve at all? A. Except as to this sensitiveness from the deposit of uric acid. 40



Q. What is neuritis? A. Inflammation of nerve structure.

Q. Did you discover any symptoms of neuritis? A. No, sir. ,

Q. Did you discover anything the matter with the bone structure of the hip? A. No, sir.

Q. Either hip? A. No, sir.

10 CROSS-EXAMINATION by Mr. Vredenburg:

Q. What is this deposit that you speak of as affecting the sensation at the hip? A. I didn't mention any deposit of uric acid.

Q. What, then, was the cause of this pain that you speak of? A. The only cause is a congested condition of the muscle.

Q. You said it was caused by a rheumatic condition of the blood, as I understood you? A. Rheumatism, or uric acid diathesis.

Q. Uric acid diathesis is what, what is that, explain that word, will you? A. It is a tendency of the blood at times in a change from the normal alkaline formation of the blood to an acid one; this change is brought about—(Interrupted.)

Q. The blood is ordinarily alkaline, is it? A. Yes, sir.

Q. And it becomes acid as we grow older? A. Yes, sir, in some cases.

30 Q. Due to what? A. It is due to insufficient oxidation, that is, the insufficient carrying of oxygen by the red blood corpuscles to the tissues. And there is another cause, which is the improper assimilation of the food, due to some interference with the digestive powers. That indigestive condition may be the result of an imperfect assimilation at the stomach, or an imperfect absorption of the assimilated food by means of the lymph channels or the blood.

Q. And that manifests itself in several ways in the  
40 body, one, you say, was by a chalky deposit at the



joints of the fingers? A. Any joints, it may be great in any joints.

Q. But ordinarily in the fingers and on the hands?  
A. Feet, toes and hands, wrists.

Q. Now, that wasn't the result in the doctor's case, I understood you to say, I understood you that the result in the doctor's case manifested itself in some other way? A. Well, it hadn't gone as far as that; there is no uric acid deposit. Before we get a deposit <sup>10</sup> of this, we get what is known as the diathesis; that is the peculiar condition of the body in which there is a beginning of the change. Should this man have repeated attacks of rheumatism, or should the condition of the blood change its alkaline formation to one of acid, then it will eventually get the deposit of uric acid, or the enlargements about the joints.

Q. Is that ever the result of continuous work? A. Yes, sir, if it is a sedentary occupation, if it is an indoor occupation, if there is a lack of proper food, if <sup>20</sup> there is more of a nitrogenous than an albuminous or a carbohydrate diet. By carbohydrate, we mean the ordinary diet. Nitrogenous we mean the animal diet, meats of any kind. It happens mainly in people that follow for a long time indoor occupation, a sedentary occupation; that is, they are sitting most of the time without sufficient motion or exercise to cause the proper assimilation of the food and drink.

Q. Is one of the remedies advised by a physician— <sup>30</sup>  
(interrupted.)

Mr. FIELDER: If the Court please, I haven't made any objection to this line of examination, but Mr. Vredenburgh, it appears to me, must examine this witness as his own witness, and not cross-examine him.

The COURT: Let us hear the question.

Q. (Continuing)—for this sickness, baths, Turkish <sup>40</sup>



baths, Russian baths, steam baths? A. Yes, sir.

Q. (Mr. Gray.) Electric baths? A. Yes, sir.

CROSS-EXAMINATION by Mr. Fielder:

Q. How long did this examination occupy? A. About a half or three-quarters of an hour.

Q. And this is the only time you have examined  
10 Dr. Koonz? A. Yes, sir.

Q. You have heard the testimony as to the manner in which Dr. Koonz claims to have sustained his injury, have you not? A. Yes, sir.

Q. Do I understand you to say that the conditions you found existing on your examination were not in your opinion, a result of this injury? A. Yes, sir.

Q. You do say they were not? A. Yes, sir.

Q. Positively? A. Yes, sir, positively.

Q. The tenderness that you found existing on the  
20 thigh, was located at the point where Dr. Koonz pointed out to you as having been struck by the wagon, was it not? A. No, sir.

Q. How far from the place where he said he was struck—he said he was struck over the buttocks? A. Yes, sir, the gluteus region; the gluteus region is the part we sit on. Dr. Koonz's tenderness was located over the middle and the lower surface of the buttocks, and running down to the calf of the leg.

Q. Following the course of the sciatic nerve? A.  
30 Yes, sir, that is, over the sciatic nerve.

Q. And the sciatic nerve, however, runs under the spot where Dr. Koonz says he was struck by the wagon? A. No, sir.

Q. How far from the point of injury was the sciatic nerve located? A. The sciatic nerve comes out of the lower extremity of the back bone (indicating), the sciatic nerve comes off at the lower extremity of the lumbar region, which is right here (indicating); it then passes internally, just along the inner surface  
40 of the bone until it comes to a little opening just on



the outer side of the sitting down bone, the portion of the bone that we sit on right here (indicating). That is protected in there by the four layers of muscle, by fat, and by skin. In an erect posture, it is impossible to reach that nerve at all at its orifice from the spinal cord, or from the pelvis. Furthermore, it is protected on both sides at its exit from the pelvis by two boney prominences. It is situated at the bottom of this (indicating), the part of the bone we sit on, and the part of the bone you feel when you touch the side of the trunk of the body. So that it is impossible, in erect posture, to injure that nerve until after you first smash all of the muscles over it, muscle and boney tissue.

Question repeated and read from stenographer's notes as follows: "How far from the point of injury was the sciatic nerve located?" A. What do you mean by far? In what direction, or how deep?

Mr. GRAY: I object to the question unless the question indicates what is meant by the point of injury, or place of injury, whatever it was.

The COURT: You mean the place of injury as designated by the doctor at the time?

Mr. FIELDER: Yes, that the doctor had designated, the point of injury.

The COURT: I understand the question to mean how far in any direction from the place where Dr. Koonz indicated he had been hurt.

A. There is no sciatic nerve over the gluteal region, in which the doctor say he was injured.

Q. (The Court.) That doesn't answer it yet; how far away is it? A. I will have to ask you whether you



mean on the surface of the body? Do you mean over the direction of the nerve to the point of injury down straight through, or diagonally across, or in what direction?

Q. Down straight through? A. I didn't measure the thickness of his muscles and fat, I can't tell you that.

Q. Then you didn't make a careful examination to ascertain that? A. Yes, sir.

Q. If you made any careful examination to ascertain that, why can't you tell? A. Because there is no nerve over the part that was bruised, there is no sciatic nerve over the part that was injured.

Q. Then, as I understand it, you can't tell us how far Dr. Koonz's sciatic nerve was from the point of injury, as designated by him? A. The distance, I can answer that, the distance from the middle third of the thigh to the backbone; now, the exact number of 20 inches, I don't know.

Q. (The Court.) That would be about twelve, somewhere in that neighborhood? A. About eight to ten inches; then, the nerve doesn't show itself until it gets out on the thigh bone, and there is no record of any injury over the thigh bone at all.

Q. Did you make any examination to ascertain whether Dr. Koonz was suffering from any shock? A. Shock only lasts twenty-four to forty-eight hours; there is no shock present after that time.

30 Q. Will you answer the question?

Question read as follows: "Did you make any examination to ascertain whether Dr. Koonz was suffering from shock?" A. No, sir, because—(Interrupted.)

Q. Did you? A. Well, I have to explain the answer.

Q. No, you don't; you can answer yes or no. Did 40 you make any examination to ascertain whether Dr.



Koonz was suffering from any nervous trouble? A. Yes, sir.

Q. Give the result of that examination? A. Negative.

Q. What is negative? A. No, there was no nervous trouble referable to this accident.

Q. Was he suffering from any nervous trouble at all? A. Yes, sir.

Q. But, in your opinion, it was not referable to this accident? A. Yes, sir.

Q. And you base your opinion on your examination made six months after the injury? A. No, sir.

Q. Have you examined him more than once? A. No, sir.

Q. Did Dr. Koonz refer you to any other part of his body than the point on his thigh, where he said he suffered pains? A. Yes, sir.

Q. Did you examine his whole body then? A. I examined the points he referred to and examined the entire body from the chest down.

Q. What other points did he refer to than the point on the thigh? A. On the left side of his abdomen, or stomach, over the region of the bladder, the left side of the lower part of the stomach, speaking in general terms.

Q. What did you find there? A. Nothing.

Q. Any other part of the body that he referred you to? A. Yes, sir.

Q. What? A. The portion of the back, small of the back, as you probably know it.

Q. What did he say was the trouble there? A. He had some pain.

Q. What was the result of your examination? A. Negative, that he had no pains, as far as I could tell, from objective signs.

Q. Would you say he had no pain? A. As far as I could tell, no, sir, he has no pain.

Q. Any other part of the body? A. I examined his leg, the full extent of his leg. I examined his



prostate gland. I examined the right leg, comparing it with the left leg, through its entire extent. I examined the right buttock, as comparing it with the left buttock. I examined his kidneys, as to whether there was any trouble there. I examined his heart, examined his arteries.

Q. What injury did he complain about suffering from in his left leg? A. Soreness and tenderness.

10 Q. Did he complain of any pain at that time? A. He complained of shooting pains in his leg.

Q. And as a result of your examination, is it your opinion that he was, or was not suffering from pain in his leg? A. Why, objectively, I could find nothing to account for it. I was compelled to take the subjective signs and symptoms, which led me to believe it was muscular congestion, due to possible, or probable, uric acid condition. I say, from objective signs, he was not suffering from any pain in that leg.

20 Q. Then, as a result of your whole examination, you were satisfied that Dr. Koonz was suffering from no pain whatever? A. Objectively, no, sir. I can't account for pain without his subjective symptoms, over which an examinee has no control.

Q. You could find no objective symptoms which indicated that he suffered pain? A. No, sir.

Q. It was your opinion that he suffered from no pain? A. From an objective examination, no, sir.

30 Q. It was your opinion at that time that he suffered from no pain? A. As a result of the accident, or as not the result of the accident?

Q. From any pain at all at that time? A. You will have to make that question more definite, or I will have to explain my answer.

Q. Answer the question and explain it in your own way? A. From the examination, as far as I could find out, taking all the objective symptoms, he has no pain. From the doctor's condition, that is, from his word, I don't deny that he may have some pain.

40 Q. Then, the doctor's testimony, or evidence, that



he has some pain, is better than your examination as a physician, that he has none? A. No, sir.

Q. Do you say that he has no trouble with the sciatic nerve? A. As a result of the accident, no, sir.

Q. Do you say he has no trouble with the sciatic nerve? A. I could find none.

Q. Then, the tenderness over the course of the nerve has nothing to do—doesn't result from any injury, or improper condition of the nerve, in your opinion? A. You mean the injury of the accident? 10

Q. The injury of the accident? A. No, sir.

Q. And is there any diseased condition of the sciatic nerve? A. No, sir, not in the nerve itself.

Q. Was there none existing at the time you made the examination? A. No, sir, I could find none.

Q. To what condition do you attribute the tenderness over the course of the nerve? A. Congestion of the muscle, causing pressure against the nerve filaments, causing pain. 20

Q. Then, the nerve is affected? A. No, sir; that isn't affected condition of the nerve. You take the pressure off, the pain disappears; once the congestion of the muscles is relieved, the pain disappears.

Q. The muscles pressing on the nerve, I understand you? A. Yes, sir, at times.

Q. And then he does suffer pain, when it presses on the nerve? A. Yes, sir.

Q. Is that pain apt to be more when he sits down? A. It depends upon the congestion of the muscles. 30

Q. Depends upon the position in which he sits, too? A. No, sir, it depends upon where pressure is made.

Q. Is there any more pressure made on the muscles when sitting down, than when he stands up? A. The pressure of the muscles is over the portion of the body on which the body rests when sitting; that has nothing whatever to do with the thigh, of course, unless the thigh is brought in contact with the chair.

Q. What did you say neuritis is? A. Inflammation of nerve structure.

Q. Did you find any neuritis existing on the day of your examination? A. No, sir. 40



Q. You disagree with Dr. Bowen, then, as to any neuritis existing? A. Yes, sir.

Q. And you base your opinion on the results of your one examination as against his attendance of the patient for the past year? A. No, sir.

Q. On what, then, do you base it? A. History of the case, history of the symptoms, history of the accident, the history the doctor gave me from the time of  
10 his accident to the time of my examination.

Q. Do you know anything more about the case than you learned on that examination and from hearing the testimony in court? A. Yes, sir.

Q. What more do you know about it? A. The statement the doctor gave me at the time of the examination.

Q. I asked you if you knew anything more about the condition of Dr. Koonz than what you learned on the day of that examination and from the testimony you heard given in court? A. Then I misun-  
20 derstood the first part of your question.

Q. Now, will you answer it? A. My examination was based on what the doctor told me and what I found at the time of the examination and what I have heard in court.

Q. That is all you know about the case? A. Yes, sir.

Q. And from that you form the opinion that Dr. Bowen, who has treated the patient for the last  
30 year, is wrong in his statement? A. No, sir; I disagree with Dr. Bowen.

Q. Then, you are not both right, are you? A. I think I am right, in fact, I—(Interrupted.)

Q. Do you think Dr. Bowen is right? A. Not from examination and from what I know of the case.

Q. Then, there might be something more about this plaintiff's condition that you don't know about? A. No, sir.

Q. You know it all? A. No, sir; I have heard the  
40 testimony, I take that to be the case—and the condi-



tion of the man.

Q. Why is this tenderness that is due to the congested condition of the blood, according to your opinion, shown only in this particular spot? A. I didn't say that there was any congested condition of the blood.

Q. I understood you to say so? A. No, sir.

Q. Why is this tenderness that you discovered on the left leg or the left thigh, why does it appear there <sup>10</sup> and not elsewhere on the body? A. It has appeared in other parts of the body, the doctor said so.

Q. Whereabouts? A. On his arm, he had it on one of his arms some time ago.

Q. Before the accident? A. Yes, sir.

Q. Which he testified to as being neuralgia? A. That is what he said.

Q. And which Dr. Bowen said was neuralgia? A. Dr. Bowen said he didn't treat him for it, if I remember. 20

#### RE-DIRECT EXAMINATION by Mr. Gray:

Q. What is shock? A. It is a sudden and more or less complete cessation, that is, stopping, of the functions of the nervous system, happening as a result—  
(Interrupted.)

Q. Why didn't you examine Dr. Koonz for shock six months after this accident? A. Shock lasts from <sup>30</sup> twenty-four to thirty-six or seventy-two hours, and no longer, as the result of an accident or blow.

Q. You were asked by Mr. Fielder whether you discovered any nerve trouble; I understood you to say you did, is that so? A. No, sir, I said I didn't find any nerve trouble.

#### RE-CROSS-EXAMINATION by Mr. Fielder:

Q. How long does the result of the shock last? A. It depends upon what is injured. 40



DEFENDANT, THE NEW YORK MAIL COM-  
PANY, RESTS.

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10 Mr. VREDENBURGH: I offer in evidence  
certified copy under the seal of the Post-Mas-  
ter and the seal of the United States Post-  
office Department, of the contracts and speci-  
fications and papers, governing the rights of  
the Post-Office Department and this con-  
tractor with reference to the carrying of the  
mails from this station in Jersey City.

Papers offered are marked respectively P.  
R. R. Ex. 1 for Identification, and P. R. R.  
Ex. 2 for Identification.

20 Mr. GRAY: I object to the two papers.

Mr. FIELDER: I object also.

30 Mr. GRAY: My objection is that it hasn't  
been shown that the papers are relevant or  
material to the case; neither has it been shown  
that, if they are relevant and material, they  
are legal evidence.

40 Mr. FIELDER: I object on the further  
ground that they are not properly certified;  
that they appear to be a contract made be-  
tween the United States Government and one  
Travis, who is not a party to this suit or con-  
nected in any way, for a certain mail route that  
doesn't appear to be this one; that the papers  
offered do not appear to be contracts, but ap-  
pear to be copies of certain documents on file  
in some office, containing many blanks, ap-



pearing to be unexecuted, and no proof of their execution has been offered.

The COURT: The papers will both be excluded.

Defendant, P. R. R. Co., prays an exception.

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EDWIN KIRKE LARGE, sworn as a witness in behalf of the defendant, Penn. R. R. Co., testified as follows:

DIRECT EXAMINATION by Mr Vredenburgh:

I am an engineer connected with the Penn. R. R. Co. and have been connected with them two years and a half in the civil engineer department. 20

Q. These two maps that you produce here are what? A. They are ground plans; one is the ground floor plan and the other is the track level plan of the Pennsylvania station in Jersey City.

Q. At the end of Exchange Place? A. Foot of Exchange Place bordering on the Hudson River.

Mr. FIELDER: So far as appears to me, those seem to be the plans of the ferry and I 30  
-will admit them as such.

Mr. VREDENBURGH: They are the plans of the ferry, and my only purpose in asking the witness is to explain so that the jury may know the lines upon the paper.

Q. Looking at this plan, which you say is the floor plan, which floor is that? A. This is the street level.

Q. There are marked upon it certain lines saying "23rd street slip," "Desbrosses street slip," those are 40



the slips for the ferry boats? A. Those are the ferry slips.

Q. Running to these particular streets in New York City? A. Yes, sir, from New York City.

Q. Is the driveway marked on this plan? A. Yes, sir.

Q. What is the width if the driveway marked on this plan? A. 59 feet.

10 Q. Marked on the plan, is it? A. Yes, sir.

Q. And the length of the driveway, is that marked on the plan? A. 536 feet.

Q. Is the line of the ferry slip bridge marked on the plan? A. No, sir, that is, the bridge is enclosed in this casing, which is marked.

Q. How is the casing marked? A. By a double line. Mr. Vredenburg asked for the length of the driveway; I gave him 536 feet; that is broken; that is not one continuous driveway.

20 Q. Where is it broken? A. Down here at the Brooklyn entrance to the Penn. Annex, south end of the station; there is an iron gate, fence across there.

Q. (The Court.) What is the scale of this? A. 20 feet to the inch.

Q. Is the north and south line marked upon it in any way? A. I believe not; that can be told by the water front.

Q. (The Court.) The 23rd street slip is what you  
30 might call the north end and the Annex at the south?  
A. Yes.

Q. Put "N" on the north and "S" on the south?

(In answer to the question witness marks plans accordingly.)

Q. There are little black marks between the room marked "United States Mail Room," on the north, and "Ferry Station Master" on the south; what are those? A. Those represent iron columns to support  
40 the floor above.



(Witness marks location of columns with the word "columns.")

Q. These what purport to be rooms on this plan are rooms actually existing? A. Yes, existing there now.

Q. And were existing there on December 18, 1903? A. To the best of my knowledge.

Q. There has been no change there that you know of since that date? A. There is a change in this south end near the entrance to the Pennsylvania Annex. 10

Q. But none near this mail room? A. Not that I know of.

Q. These columns are how far apart? A. They vary, they vary from fourteen to twenty feet, roughly; you notice these two are nearer than those two (indicating).

Q. You point to two that are opposite to the north elevator, and those are, you say, not so far apart as others; how far apart are they? A. From fourteen to twenty feet; they will vary, I can't give closer than that. 20

Q. And how far are these columns apart going towards the west? A. About thirty feet from center to center of columns.

Q. (The Court.) That is, those rows are about thirty feet apart? A. About thirty feet apart.

Mr. VREDENBURGH: I offer that in evidence. 30

(Received as Exhibit 761, being so marked.)

Q. I show you another map; what does that represent? A. That shows the location of tracks, offices, sitting room, dining room and so on, on the second floor, or on the track level floor of the station.

Q. Does that show the floor above the first floor that is shown on the other map? A. The first floor directly above. 40



Q. Can you tell on the second map where the line of columns is, which is nearest the driveway? A. No, sir.

Q. No way of telling exactly—can't you mark substantially where they are on the floor above? A. Yes, sir.

Mr. FIELDER: I will object to the witness marking substantially if he says he can't do it accurately.

The COURT: I think he can do it substantially if he wants to; I see no objection to his doing it substantially.

Q. Mark it substantially?

In answer to the question, witness marks on plan accordingly.

Q. That it is about the dotted line on the second map on which you have marked "Line of Columns?" A. Yes, sir.

Q. Is there an entrance to the ferry boats from that floor? A. From the second floor?

Q. Yes? A. Yes, sir.

Q. How are they marked on here? A. Ferry slips are marked with the name "Ferry;" the entrance is marked by a straight line opening general direction toward the waiting room, toward the lobby.

Q. The waiting room is shown here to the west of the lobby, is it? A. Yes, sir.

Q. And the lobby is, what length? A. 535 feet and a fraction.

Q. Long—and 59 feet broad? A. 59 feet wide, roughly, those are center to center of the columns.

Q. Going to the first map that you spoke of; how is the waiting room shown on that map, and the Cortlandt street ferry? A. The waiting rooms are marked



Cortlandt street ferry waiting room, Desbrosses street ferry waiting room. The waiting rooms of the floor above are not shown on the street level plan.

Q. The entrance to the second floor or lobby of the second floor is shown, where—any stairs shown on this—aren't there the stairs (indicating)? A. That is one.

Q. Are the stairs shown there? A. That leads to the lobby, yes, sir.

Q. That leads from Exchange Place to the lobby? A. Yes. 10

Q. Exchange Place is shown how, here?

The COURT: Shown by a big blank?

A. Blank, that is all, I suppose.

Q. The North Jersey Street Railway Office Building, that is seen there on the south side of Exchange Place? A. Yes, sir. 20

Q. And the sidewalk is shown by two parallel black lines? A. Yes, sir.

Q. Now, the stairway you refer to, is just a little to the south of that sidewalk, is it? A. Yes, sir.

Q. And is there a stairway also to the lobby or to the second floor on the north side of Exchange Place? A. There is to the waiting room, but not to the lobby, it goes to the lobby through the waiting room. 30

Q. It is shown on this map, too? A. Yes, sir.

Q. The waiting room down stairs, has it seats in it, both waiting rooms have seats? A. I think they have.

Mr. VREDENBURGH: I offer the map in evidence.

(Received, being identified by the number 6487.) 40



## CROSS-EXAMINATION by Mr. Fielder:

Q. On the train floor there is a space marked "Train Shed?" A. Yes, sir.

Q. And in that space marked "Train Shed," are how many spaces marked "Tracks?" A. Eleven.

Q. What are those tracks? A. Those are the receiving track for passengers and outgoing, both to  
10 discharge and receive passengers.

Q. On which locomotives run? A. Yes, sir.

Q. Alongside of these tracks are two spaces marked "Elevators?" A. Yes, sir.

Q. Are these elevators the same elevators that are shown on the first floor plan, marked "Elevators?"  
A. Yes, sir.

Q. How are those elevators constructed?

Mr. GRAY: I object; I don't know whether  
20 this witness is competent to prove that.

A. I can tell you what style it is; it is a plunger elevator.

Q. (Mr. Gray.) Did you ever examine it? A. No, sir, not particularly.

Mr. GRAY: I object to this witness testifying.

30 Q. Can you tell whether the elevators are open on the sides or not?

Mr. GRAY: I object to that; that doesn't seem to me to be cross-examination.

The COURT: I think, Mr. Fielder, that you ought to make him your witness on that subject, if you wish to examine him.

Mr. FIELDER: All right, sir; the Court  
40 will allow me an exception?



The COURT: Yes, you may take your exception.

Q. How far is the most northerly elevator shown on this plan from the room marked "U. S. Mail Store Room?" A. 55 feet, roughly.

CROSS-EXAMINATION by Mr. Gray:

10

Q. The marks on map of the first floor which look like the capital letter "I" in the space between the United States Mail store-room, and the ferry station master's room, so designated on the map, what are those things? A. They are steel columns supporting the superstructure.

Q. There appear to be seven of these columns directly adjoining the driveway, the land side of the driveway, and between the United States Mail store-room and ferry station master's room; how far are the columns apart, beginning at the U. S. Mail store-room end and going southerly for four successive columns? A. I can't tell you exactly—roughly, they vary. 20

Q. Tell me roughly? A. 14 to 20 feet.

Q. Is any one of those columns as little as fourteen feet from the other? I am speaking now of the first four columns? A. (Measuring on map.) That column is about sixteen; that one is just twenty. 30

Q. The columns nearest together are sixteen feet apart, and the ones farthest apart are twenty feet apart, of those four; is that right? A. Roughly, yes, sir.

Q. I am speaking now solely of the columns along the westerly side of the driveway? A. Yes, sir.

Q. Now, how far on the landward side of the row of columns we have been speaking about is the next row of columns? A. About thirty feet.

Q. Speaking now solely of the columns in the last row, that westward row of columns, and beginning 40



at the column in that row nearest the United States Mail store-room; how far is the second column in that row from the United States Mail store-room?  
A. About thirty-one feet.

Q. What is the width of the driveway—so-called, on that map? A. Fifty-nine feet.

10 Defendant, the Pennsylvania Railroad Company, rests.

PROOFS CLOSED.

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20 Mr. VREDENBURGH: On the part of the Pennsylvania Railroad Co., I move for a direction of a verdict on the ground that, on the whole case, there has been no negligence shown in this action, for which the Pennsylvania can be held responsible; because the evidence shows that the cause of action is a separate cause of action and not a joint one; and because on the whole case, so far as the defendant whom I represent is involved, the negligence of the plaintiff contributed materially to his injury.

30 Mr. GRAY: I make a motion that a verdict be directed for the defendant, the New York Mail Company, on the ground of the contributory negligence of the plaintiff; and also on these grounds:

40 First. As has been said on the part of the railroad, there is here a divided duty. The duty which the railroad owed to the plaintiff was double. It invited the plaintiff upon its property, received compensation, permitting him to come there by invitation. It is also a



common carrier, bound by whatever duties common carriers are bound to perform towards the passengers who use their services. The Mail Company was not a common carrier, it had no contract of any kind with the plaintiff; it was upon the property of the railroad company, using that portion of that property which the railroad company designated. The railroad company may well have been negligent, although there was no negligence whatever on the part of the Mail Company. For instance, no matter how the horse and wagon might have been secured, they might have broken away without negligence on the part of the Mail Company. It may have been negligence on the part of the railroad company to supply no safe place where a horse breaking away from its immediate attendants could escape, without getting into the place provided by the railroad company for passengers. However that may be, it seems to me that the duty of the Mail Company to the plaintiff has not been defined. There are no facts in the case which will support an argument that there was any duty. If there was a duty, what was it? It could not be more than that the Mail Company should take ordinary and reasonable care of its horse and mail wagon, that it shouldn't get away from its attendants. Now, discussing it from that point of view, what is the evidence? It seems to me the evidence is undisputed that the Mail Company's attendant was at the time that the accident commenced, if we can use such language properly, that is, at the time that the first thing happened which finally resulted in the injury to Dr. Koonz, at that time the attendant of the horse was standing directly in front of him, having removed the bit from the horse's mouth, and was in the act of attaching a nose bag, which had gotten



partly over the nose of the horse; I say, at the moment when the first thing happened which finally resulted in the accident, the attendant of the horse was exercising all due care, he was standing immediately in front of the horse with the bit removed, attaching a nose bag, which was partly over the nose of the horse, to feed the horse in the same manner that the horse had been fed in that place for months, and in the same manner in which the horses there had been fed from time to time for an indefinite period. Your Honor, having in mind the facts I have already adverted to, will remember the additional fact that the driver had taken the additional precaution to put the two wheels of his wagon on the same side against the post in such a way that the post was partially between the wheels as a further precaution in case the horse should start. Now, that being the situation, without any proof in the case of any fault on anybody's part, the horse started. Why the horse started hasn't been shown in any particular, the driver being immediately in attendance upon the horse; the attendant being immediately in attendance upon his horse, was knocked aside and horse got away from him, and finally going down the platform, injured the plaintiff. Now, your Honor will remember the additional facts that the horse was, so far as the testimony of those in attendance upon him for weeks, for months, who had driven him to the same place, who had fed him in the same way, the horse was of a good disposition.

The COURT: The view that I take of this case so far as the Penn. R. R. is concerned, is, that the plaintiff bases his case against that company upon the doctrine laid down in



Exton against the Central R. R. Co., in 23 Vroom, and I understand that case rested upon the proposition that it was the continuance of certain acts dangerous to passengers which should have been within the knowledge of the railroad company, and with which knowledge the railroad company was, therefore, chargeable, that furnished the ground of liability.

It appeared in the Exton case that certain hack drivers were accustomed to indulge in horse play around the entrance of the station, where passengers were entitled to go, and that passengers had been previously inconvenienced by it, and that complaint had been made to the company of it, that is to say, the company really had knowledge of it, and it was from one of those very acts that the plaintiff's injury in the Exton case resulted.

Now, the proof, as I understand it, in this case tends to show, if anything, that the acts of which the plaintiff says the railroad company should have taken cognizance and against which it should have provided were the simple act of leaving horses unattended there, or feeding them, or allowing them to feed unattended through a period of months, and on the plaintiff's case, if it had gone to the jury in that shape, I think that I should have allowed the jury to take it in that aspect, and on the theory that the jury would be entitled to find that this horse was entirely unattended at the time. The difference at this point is that the evidence produced on the part of the defendants clears up the situation entirely with respect to the question of attendance. We have the uncontradicted testimony of this driver that he had just taken off the horse's bridle and was in the act of putting on the nose bag when the horse started from some cause unknown; and, in determining whether



or not there should be any liability of the Pennsylvania Railroad Company, it seems to me that the plaintiff's proofs should show that such acts as that had occurred before in such number and at such times and under such circumstances as that the railroad should have taken notice of the fact that that was a danger from which injury was to be apprehended. It does not appear that any horse ever ran away before that was left there unattended. It does not appear that this horse was unattended; it was an entirely different thing. The horse seems to have jumped right out of the hands of his own driver, and I do not think that, on the evidence, the Penn. R. R. is chargeable with knowledge of the continuance of such occurrences as this, if there was any such continuance, as to entitle the jury to take the case in that aspect, and that is the reason that I think there should be a verdict directed for the railroad company.

Plaintiff prays exception.

The COURT: Now, with reference to the Mail Co., the case seems to me to rest upon the sole question whether in the estimation of the jury it was an act of negligence on the part of the driver at that time and under those circumstances to remove that bridle from that horse for the purpose of feeding him.

To which ruling the defendant, the New York Mail Company, prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J.

RECESS.



## AFTERNOON SESSION.

Mr Fielder opened the case to the jury on behalf of the plaintiff.

Mr. Gray summed up on behalf of the defendant, the New York Mail Company.

Mr. Fielder summed up on behalf of the plaintiff. 10

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COUNSEL FOR DEFENDANT, THE NEW YORK MAILING COMPANY, REQUESTS THE COURT TO CHARGE THE JURY AS FOLLOWS:

It is not negligence for the driver of a quiet, gentle 20 horse, to leave him untied and otherwise unattended while the driver is awaiting the delivery of a load in a place in a ferry house set apart for that purpose, and removed from the common passageway, the driver meanwhile remaining alongside and within reach of his horse.

It is not negligence for the driver of a quiet, gentle horse, to leave him untied and otherwise unattended while the driver is preparing to receive a load in the wagon harnessed to said horse, in a place in a ferry 30 house set apart for that purpose, away from the common passageway, the driver meanwhile remaining alongside of and within reach of his horse.

It is not negligence for the driver of a quiet, gentle horse, harnessed to a delivery wagon to remove his horse's bridle for the purpose of feeding from a nose bag, while awaiting the delivery of a load, in a place in a ferry house reserved for the loading and unloading of such wagon, apart from the common passageway, the driver having first blocked the wheels of the 40



wagon, and standing by his horse's head while adjusting the feed bag, and the horse being accustomed to feeding in that place and manner.

The owner of a quiet, gentle horse, and wagon harnessed thereto, lawfully standing on the private property of a railroad company owes no duty to third persons lawfully passing over said property, except to abstain from acts of wilful injury or gross negligence.

The jury will not consider the matter of any loss of earnings or business due to the injury.

The cost of the baths can only be included to the extent that they increased over what was customary before the accident.

It is not negligence for the driver of a quiet, gentle horse, harnessed to a delivery wagon, to remove his horse's bridle for the purpose of feeding from a nose bag, while awaiting the delivery of a load, in a place in a ferry house reserved for the loading and unloading of such wagon, apart from the common passageway, the driver standing by his horse's head while adjusting the feed bag, and the horse being accustomed to feeding in that place and manner.

Plaintiff's claim being of record for \$1,990, which has been shown included \$380 for Dr. Bowen's bill, his proof of that item having wholly failed, his claim is now restricted to \$1,610.

No evidence that horse being down, struggled, and by every struggle ground the wagon into the plaintiff's hip.

No question for jury as to loss of profits.

The Court then charged the jury as follows:

Now, gentlemen, this is a comparatively simple case, as it now presents itself. The Pennsylvania Railroad Company has been discharged by the Court,



for reasons appearing to be satisfactory to the Court, and therefore, so far as you are concerned, there is no question of liability raised as to that company. The sole question remaining in this case is whether this plaintiff ought to have a verdict for damages against the New York Mail Company, and his claim for damages against that company must necessarily be based entirely on questions arising under the doctrines of negligence.

The plaintiff, Dr. Koonz, was properly in the place that he was in. He was on his way to New York; he had bought his ferry ticket, had walked across this driveway on to the ferry bridge, where there was a boat about to come in, and he was ready to take that boat, and there is no question at all in my mind but that that was the place that he should have been, in under the circumstances—at least as good as any other.

The New York Mailing Company seems to have had certain privileges or rights with reference to the locating of its wagons under what we call the train shed, a little off of this driveway. The map has been shown you, you probably all know the locality. Anyhow, whether you do or not, there is the map to show you where these wagons were located. And the plaintiff's claim is, that it was the duty of the New York Mailing Company, through its employees, to use reasonable care to see that those wagons and the horses attached to them should not do injury to persons lawfully in that neighborhood. That is about what I understand to be the situation.

Now, what would be reasonable care? This plaintiff says that the New York Mailing Company's employee did not use reasonable care. It is for the plaintiff to show that, he must satisfy you of that by weight of evidence; he must satisfy you not merely that Dr. Koonz was hurt because a horse belonging to the New York Mailing Company ran away and ran him down, but he must show you that there was some act or omission to act on the part of these em-



ployees of the New York Mailing Company, which the law calls negligence, which was not in accordance with reasonable care. And nere is where your function comes in. It is for you to say whether the driver or other of the employees connected with this company did fail in reasonable care.

When the plaintiff's evidence was put in it simply appeared that an unattended, or an apparently un-  
 10 attended, horse, loose, with no bridle on, coming at a high speed out of this place devoted to these wagons, ran the plaintiff down, and that would seem to indicate at first blush that somebody connected with the New York Mailing Company had been guilty of negligence. Then the defendant puts in its proof, and, as you remember, the driver has testified before you  
 hat this horse was under his personal management, that he was standing at the horse's head, that he had taken off the bridle, and that he was engaged in ad-  
 20 justing the nose bag for the purpose of giving the horse his breakfast, or what ever meal it might be considered at that time of day, about eight o'clock in the morning, when the horse gave a jump, threw him over, got away from him, notwithstanding that this driver grabbed his nose, which was the best thing he could do under the circumstances. Now, was that driver lacking in reasonable care under the circumstances? It seems odd that a horse should run away from his breakfast in any such way as that, but  
 30 yet that is what this horse seems to have done, and this is one of these questions for you, although our courts have pronounced in several similar cases and in apparently quite a definite manner—for example, there is the case of Belles against Kellner, where our court has said that it is not negligence for the driver of a quiet, gentle horse to leave him untied and otherwise unattended on the side of a public highway while the driver is upon the sidewalk loading goods upon the wagon. In that case the wagon was backed up to a curb back of Hahne's store in Newark, and the  
 40 horse was standing there, he had his bridle on, this



was a public street, Halsey street, and the driver was loading goods at the back of the wagon, and the horse slightly swerved around, he didn't run away, but he happened to swerve around a little as the plaintiff was going along on his bicycle, and knocked him over, and the court said that wasn't negligence, that this thing had to be done every day, one could not require people like Hahne & Company, as a matter of law, to have one man at the head of a horse 10 to hold him, while the other was at the rear of a wagon unloading goods. Now, in that case it appeared that there was nothing particular of an alarming nature in the neighborhood. There was nothing like a locomotive to blow a whistle, there was nothing like a brass band, there were none of these things that would be calculated to frighten a horse. So there the Court of Errors said that it was not negligence under those circumstances. Of course, that doctrine applies only to similar circumstances. 20

Now, on the other hand—I cite these decisions of our courts because they throw some light on this question, and you are entitled to the benefit of them—on the other hand, in the case of the Hoboken Land Company against Lally, the driver of a truck or wagon, went into the ferry house of the Hoboken ferry, and after getting inside he wanted to go to the urinal and relieve himself, and so he stopped his horse and wagon part way to the ferry slip and directly pointing toward it, right opposite this urinal, and he 30 got off his wagon, left his horse unattended, and went to this place, which was about twelve feet away, and was busy relieving himself. when some noise took place and the horse ran away and ran down the slip into the river, and the owner of the truck tried to make the Hoboken Ferry Co. pay for it, and the court said “under those circumstances, you had no business to leave that horse and wagon unattended where, by running away, he would get into the river, and you are guilty of contributory negligence, and you cannot recover.” And that amounted to this 40



that, if that horse and wagon had then run somebody down, like Dr. Koonz, and that somebody had sued, why, as I understand, that was equivalent to a ruling on the part of the court that Dr. Koonz ought to recover.

Now, you see you have those two extremes. Now, this case is something in between those two somewhere. Here, you will observe, the driver was not away from his horse. If he had been entirely away  
 10 from the horse I think that the doctrine of Hoboken Land Company against Lally would have had to apply, but he was in close attendance on his horse, and if it were not a question of removing the bridle and putting on a nose bag at that particular time and place, if he had been standing at his horse's head and the bridle on, why, I think it would have been my duty to direct a verdict for this defendant, as well as for the railroad, because there would seem to be no  
 20 negligence there. But, by taking off that bridle, you will observe, that this driver lost just that much control of the horse; a horse's head, a horse's mouth, is the one part of a horse where the control is always exercised more than any other place, and when a bit is out of a horse's mouth there is nothing left for a man to do except to stop his wind, which this driver tried to do; and yet this court can't say it was necessarily negligence for the driver to do that, this court doesn't say that it was necessarily negligence in any  
 30 sense that the horse was not tied. There are plenty of things that the driver might have done to insure the safety or security of the horse and of the wagon, but the law doesn't say that he must insure that safety.

Of course, he could have had with him a tie rope to snap around the horse's neck and tie him up to one of those columns, he could have tied his wagon wheels, as was suggested during the evidence, he could have turned the horse and wagon the other way, but it isn't for the law to say that he ought, as a  
 40 matter of law, to have done any one of these things.



The law leaves it to you to say, now, whether this driver acted in an ordinarily reasonable and prudent manner in doing what he says he did in removing the bridle and in undertaking to put the nose bag on at that time and under those circumstances, for this was not a public street, it was a place, perhaps, somewhat unusual; it was, perhaps, the unusual character of the place that tended much to influence the decision of the court in the Hoboken Land Company against Lally case; it was a ferry house where there were teams passing and repassing, where the proof shows that automobiles were accustomed to go by, where the trains came in above, where the ferry boats were going into and out of the slip in full view, where the harbor whistles were being blown, and where these elevators with their loads of baggage were going up and down. Now, all these circumstances were present. Nothing appears in the case to show what, if anything, it was that made this horse run away, and the evidence is to the effect not only that the horse had never run away before, as I understand it, but that he was a horse of remarkably gentle, quiet and peaceable disposition, and not a horse that you would expect to run away. Of course, that is a very important feature in determining whether or not the driver acted reasonably under those circumstances. If a reasonable man would have done the same thing under those circumstances, why, then, the plaintiff has not proved his case. And the plaintiff must show you that the action of the driver was such that a reasonably careful and prudent man would not under those circumstances have taken that action. Now, that is all there is to this case. If you are satisfied that the plaintiff has proved that by weight of evidence, why, then, there should be a verdict for this plaintiff. If he hasn't proved it by weight of evidence, there should be a verdict for the defendant.

I have several requests to charge, and on this branch of the case. While I do not know that the circumstances of the case are precisely appropriate



to this case, still they are good law, and I have no objection to charging them.

First, that it is not negligence for the driver of a quiet, gentle horse, to leave untied and otherwise unattended while the driver is awaiting the delivery of a load in a place set apart in a ferry house for that purpose and removed from the common passageway, the driver meanwhile remaining alongside and within  
10 reach of his horse.

I think I have substantially charged that before, and I now repeat it in that form.

Secondly, it is not negligence for the driver of a quiet, gentle horse, to leave him untied and otherwise unattended while the driver is preparing to receive a load in the wagon harnessed to said horse in a place in said ferry house set apart for that purpose away  
20 from the common passageway, the driver meanwhile remaining alongside of and within reach of his horse.

Now, gentlemen, if you find that the plaintiff is entitled to recover in this case it is for you also to fix the amount of damages that the plaintiff should recover, and that he is entitled to recover some damages, if he recovers at all, seems to be fairly evident. He was pinned down apparently by this wagon in the passageway and held there for some minutes until the wagon was lifted off of him and he was released; he  
30 evidently thought himself practically a dead man at the time, but he seems to be fairly alive to-day, and is here in court. That he suffered more or less pain is fairly evident. He says that he suffered a great deal of pain, he says that he suffers pain up to this time, and he produces his family physician before you to testify that he has suffered a permanent injury of the sciatic nerve, or something of that kind, which will last, more or less, a permanent injury which will last for some time to come. He also says that he has been prevented from going to his business. Now, as to that  
40 feature of the case, you are entitled to consider the



inconvenience of the plaintiff by being prevented from going to his business, but you will remember that the court for a technical reason ruled out the evidence as to his loss of profits, so that that is no feature of this case. His personal inconvenience in being unable to go to his work is a fair feature of the case, and you may consider it.

We have, therefore, those two elements of pain and suffering, or three elements, you may say—the pain and suffering, whatever of substantial permanent injury there may be, if any, and the inconvenience to the plaintiff in being prevented from attending to his business. Then we have the loss in money which he claims to have sustained. His doctor says that the bill is \$380. The doctor refuses to produce his books to show it. That doesn't prove, of course, that the doctor did not render those services, nor does it prove that the services were not worth that amount, but it is an element in the doctor's testimony which you are entitled to consider as affecting the accuracy of his statement, that he doesn't have his books to substantiate it and refuses to bring them here. But there is a claim of \$380, and it is for you to say whether that claim is a just and reasonable one under the circumstances, and if not, you are entitled to scale it to such sum as you consider reasonable. Then, there is the question for special treatment by way of baths, and so on, and it is testified to in this case that Dr. Koonz took these same baths before he was hurt. The defendant asks me to charge, and I do charge, that the cost of the baths can only be included to the extent that they increased over what was customary before the plaintiff had the accident. The defendant asks me also to charge that there is no evidence that the horse being down, struggled, and by every struggle ground the wagon into the plaintiff's hip. I dislike to charge you that there is no evidence as to anything, when I am not sure about it, and generally like to avoid doing so. You will remember what the accident was, and I will give you what my recollec-



tion of it is, but it is for you to say what the evidence is and what the facts were. My recollection of it is that Dr. Koonz says that the horse struggled, but that the wagon was jammed so that, although the horse struggled, it did not materially move the wagon, and, of course, any comments of counsel as to what the evidence was are no evidence before you, you are the ones to know what the evidence really  
 10 was on any of these points.

Now, that is the case. If you think the plaintiff is entitled to recover you must allow him only such reasonable sum as will fairly compensate him for his pain and suffering and his other injuries, including these damages in money. And before the plaintiff can recover at all he must satisfy you by a preponderance of proof that whatever may have been the act of this driver of this wagon, it was such an act as a reasonably prudent man would not have committed un-  
 20 der those circumstances at the time.

The counsel for the plaintiff is inclined to discredit the statements of Mr. Bauder. Mr. Bauder, of course, is not contradicted in this case. The evidence is comparatively scanty on that phase of it, how the accident occurred at all. He is to some extent an interested party, being an employee of the defendant corporation—

30 Mr. GRAY: Not now, sir. The testimony was that he left three weeks after the accident, or a month?

Mr. FIELDER: That is right.

The COURT: Then, of course, that element of criticism of his testimony is eliminated.

But you are always entitled to consider, I think, in regard to the testimony of any witness, the natural  
 40 probability of it. You are not required to believe the



testimony of a witness which shows a reasonable mind that it cannot be true, because of inconsistencies or other variations from our well understood knowledge of ordinary things. If a witness should come here on the witness stand and say that he knew how to fly, why, you would naturally be entitled to disbelieve him, and you undoubtedly would disbelieve him. And so, if there is anything that you consider reasonably impossible in Mr. Bauder's testimony, or improbable, that is not entitled to credit, why, you are entitled to take the testimony in that aspect. 10

(The jury then retired to consider of their verdict.)

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Mr. GRAY: I take a general exception to the Court's refusal to charge any request 20 which the Court did not charge as expressly requested.

Exception allowed and signed and sealed accordingly.

C. W. PARKER, J.

I also except to so much of the charge as charges that the defendant must have seen that its horse and wagon did not injure other 30 persons, or words to that effect.

Exception allowed, and signed and sealed accordingly.

C. W. PARKER, J.

To so much of the charge as commented on the evidence in saying: It seems odd that the horse should have run away from his breakfast, or some such words. 40



Exception allowed, and signed and sealed accordingly.

C. W. PARKER, J.

10 To the failure of the Court to state in discussing the views of the commencement of the runaway of the horse that the post was between the wheels of the mail wagon when the driver was trying to attach the nose bag.

To the remarks of the charge commenting on the Lally case, and the Court's conclusion therefrom as applicable to the plaintiff in this case.

Exception allowed, and signed and sealed accordingly.

C. W. PARKER, J.

20 To so much of the charge as comments that the plaintiff evidently thought himself a dead man.

Exception allowed, and signed and sealed accordingly.

C. W. PARKER, J.

The jury were then re-called, and returned again into court.

30 The COURT: Counsel has called my attention to one of the circumstances connected with the running away of the horse, or the standing there of the wagon, which I omitted to mention in the charge, and that was the statement of one or more witnesses, that the wagon was so disposed as that one of these heavy iron pillars was between the front and the rear wheels. Now, of course, that is a material circumstance that you ought to consider when you are dealing with this question

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of reasonable care. If this driver put his wagon so that, if the horse could start to run the hind wheel would catch on that post, you see that would be an important element in the situation, and would tend, of course, towards showing that reasonable care had been exercised. Whether it was, in fact, is one of these questions for you. I am sorry that I forgot it, I thought that I had put in all of the elements, but counsel called my attention to it after you had gone out, and, of course, you should consider that as one of the circumstances bearing on this question. 10

Now, counsel for the defendant also seems to understand that I charged this jury that it was the duty of the New York Mailing Company to see to it that its horses could not run away and injure people. I don't think I said that or anything of that kind, but if I did, I desire now to correct it, by saying that the duty of the New York Mailing Company, is no more than to use reasonable care to see that its horses and wagons did not run away in the manner aforesaid. 20

(The jury then retired to consider of their verdict.)



NEW JERSEY COURT OF ERRORS AND  
APPEALS.

|    |                                                           |                                                                      |
|----|-----------------------------------------------------------|----------------------------------------------------------------------|
|    | O                                                         |                                                                      |
| 10 | PHILIP J. KOONZ,<br>Defendant in Error,                   | )<br>) In Error to Hud-<br>) son County Cir-<br>) cuit Court.<br>)   |
|    | vs.                                                       |                                                                      |
|    | NEW YORK MAIL COM-<br>PANY et al.,<br>Plaintiff in Error. | ) Assignment of<br>) Errors by New<br>) York Mail Co.<br>)<br>)<br>) |
|    | O                                                         |                                                                      |

20 Afterwards, to wit, on the tenth day of February, nineteen hundred and five, before the Judges of the said Court of Errors and Appeals in the last resort in all causes at Trenton, comes the said New York Mail Company, the plaintiff in error, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, in this, to wit:—

(1) Because the said Judge before whom, etc.,  
 30 at and upon the aforesaid trial of the issue joined between the parties aforesaid, erred in directing the witness Emil Reuter to testify respecting the sort of vehicles using the common driveway in the ferry house; erred in admitting the question: "What sort of vehicles used the common driveway in the ferry house," and "how were these vehicles propelled," and in ruling thereon, "Answer that."

(2) Because the said Judge at said trial permitted the witness Emil Reuter to testify, against objection, respecting the character of the vehicles which used  
 40 the driveway in the ferry house, and overruled the



motion of plaintiff in error to exclude the question and answer: "When you refer to electric machines what kind of machines are those?" Answer: "Automobiles."

(3) Because the said Judge at said trial erred in overruling the objection of the plaintiff in error to the question: "Was there any one ferry more than another that automobiles were accustomed to use in traveling to and from New York."

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(4) Because the Judge erred in permitting the defendant in error to read in evidence extracts from certain answers made by the plaintiff in error to interrogatories proposed to it, without requiring the defendant in error to offer the written answers themselves in evidence or to file the same with the Clerk of the Court.

(5) Because the said Judge, before whom, etc., at said trial permitted the defendant in error to read some of the answers made by plaintiff in error to interrogatories proposed to it, without requiring the defendant in error to read all of the answers so made, all of said answers being in one document and sworn to as a whole, and not separate.

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(6) Because the said Judge at said trial overruled the motion of plaintiff in error to grant a non-suit at the conclusion of plaintiff's case.

(7) Because said Judge at the conclusion of said trial denied the motion of the plaintiff in error that the jury be directed to find a verdict for the plaintiff in error and against the defendant in error.

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(8) Because said Judge at said trial, etc., ruled that with respect to the Mail Company the case rested upon the question whether in the estimation of the jury it was an act of negligence on the part of the driver at that time and under those circumstances to remove the bridle from his horse for the purpose of feeding him.

(9) Because said Judge at said trial denied the request of plaintiff in error to charge the jury that it is

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not negligence for the driver of a quiet, gentle horse harnessed to a delivery wagon to remove his horse's bridle for the purpose of feeding him from a nose bag, while awaiting the delivery of a load in a place in a ferry house reserved for the loading and unloading of such wagon; apart from the main passageway, the driver having first blocked the wheels of the wagon, and standing by his horse's head while adjusting the  
 10 feed-bag; and the horse being accustomed to feeding in that place and manner.

(10) Because said Judge at said trial, etc., erred in denying the request of the plaintiff in error to charge the jury that it was not negligence for the driver of a quiet, gentle horse, harnessed to a delivery wagon, to remove his horse's bridle for the purpose of feeding from a nose-bag while awaiting the delivery of a load in a place in a ferry house reserved for the loading and unloading of such wagon, apart from the  
 20 main passageway, the driver standing by his horse while adjusting the feed-bag, and the horse being accustomed to feeding in that place and manner.

(11) Because said Judge at said trial, etc., denied the request of plaintiff in error to charge the jury that the owner of a quiet, gentle horse, and wagon harnessed thereto, lawfully standing on the private property of a railroad company, owes no duty to third persons lawfully passing over said property except to abstain from acts of wilful injury or gross negligence.

30 (12) Because said Judge at said trial refused the request of plaintiff in error to charge the jury that plaintiff's claim being of record for \$1,990, and it having been shown to include \$380 for Dr. Bowen's bill, and proof of that item having wholly failed, plaintiff's claim should be restricted to \$1,610.

(13) Because said Judge at said trial charged the jury that it was the duty of the New York Mail Company to use reasonable care to see that its horses and wagons did not run away in the manner described in the evidence.

40 (14) Because said Judge at said trial erred in



charging the jury, in commenting on the uncontradicted evidence:— “It seems odd that a horse should run away from his breakfast in any such way as that, but yet that is what this horse seems to have done, and this is one of these questions for you.”

(15) Because said Judge at said trial erred in his charge to the jury in describing to the jury the facts of another case, called the Lally case, having no relation to the suit on trial, and stating to the jury what purported to be the substance and effect of the opinion of the Court of Errors in the Lally case. 10

(16) Because said Judge at said trial charged the jury that the opinion in the Lally case amounted to this:—“That if that horse and wagon (Lally’s) had then run somebody down like Dr. Koonz, and that somebody had sued, as I understand that was equivalent to a ruling on the part of the Court, that Dr. Koonz ought to recover.”

(17) Because said Judge at said trial erred in charging the jury that the defendant in error evidently thought himself practically a dead man at the time of the accident. 20



