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Notice of Appeal.

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Filed June 30th, 1913.

New Jersey Supreme Court

EUGENE RUGGIERI, Plaintiff-Appellee, vs. PUBLIC SERVICE RAILWAY COM- PANY, Defendant-Appellant.	}	In Tort.	20
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To Edwards & Smith, Esqs.,
Attorneys for Defendant-Appellant:

TAKE NOTICE that the defendant appeals to the Court of Errors and Appeals from the judgment entered in this cause on the following grounds: 30

That the decision of the Supreme Court reversing the judgment of the Hudson Circuit Court is erroneous in law because it is founded upon the decision that the conduct of the plaintiff, at the time of the accident, when the injuries were received for which recovery was sought to be obtained, was negligent, and that thereby the plain- 40

Opinion.

tiff was guilty of contributory negligence, and was barred from recovery against the defendant, whereas in law the conduct of the plaintiff aforesaid as to whether it was negligent or not was properly submitted to the jury at the trial of the said action.

10

Yours, &c.,

ALEX SIMPSON,
Attorney of Plaintiff-Appellee.

Dated, June 7, 1913.

Opinion.

20

Filed June 3, 1913.

NEW JERSEY SUPREME COURT.

EUGENE RUGGIERI,
Plaintiff-Appellee,
vs.

PUBLIC SERVICE RAILWAY COM-
PANY,
Defendant-Appellant.

30

ALEXANDER SIMPSON, for Plaintiff-Appellee.

EDWARDS & SMITH, for Defendant-Appellant.

Argued at February Term, 1913, before Chief Justice Gummere, and Justices Bergen and Kalisch.

40

Per Curiam:

The plaintiff was crossing a public highway in West New York, Hudson County, and was struck by a trolley car of the defendant. For the injuries he received he brought suit and recovered a judgment of \$1,500.

10

The defendant appeals because the court refused to non-suit, which motion it claims should have prevailed, because no negligence on the part of the defendant was shown and also that the plaintiff was guilty of contributory negligence. There was no motion for a direction at the close of the case, nor was the motion for non-suit then renewed, so all we have to deal with is the plaintiff's case as it stood when the motion to non-suit was made.

20

The plaintiff testified that he started to cross Bergen Line Avenue at the corner of Seventh Street or Fisher Avenue as it was sometimes called; that he saw a car going to Union Hill and he stopped on the corner until the car had passed about 75 or 80 yards and he watched it that distance and saw no other car and then started to cross; that as soon as he got on the north bound track, he was struck by the car on the south bound track; that no bell was rung nor any warning given.

30

On cross-examination he testified that he stood on the side-walk at the corner and let the south bound car pass, which was on the track nearest to him; then he started to walk; that he did not look in the direction from which the north bound car would come before the south bound car passed; that when the passing car had gone about 75 or 80 yards, he looked and did not see any north

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bound car coming; that if there was nothing to obstruct his view he could see for two blocks, but on this morning when he looked he did not see the car coming; that the distance from the curb to the track was about ten feet; that after he left the curb, he looked south to see if a car was coming; that he looked as he walked and did not see it. He subsequently said that when he looked he was right at the corner, and in response to a question put by the Court whether he did not know that the south bound car was apt to be between him and the other car coming in the opposite direction, he said, "Well, I see this car was pretty far away from me, your Honor, and I see there was about 75 or 80 yards, and I started to walk across." Again he was asked on cross-examination, how far he was from the curb stone when he looked the second time, and he replied, "About two steps," and saw no car.

There was nothing in the defendant's case which aided that of the plaintiff.

So we have this situation; the plaintiff standing on the side-walk about fifteen feet from where he was struck; a car passing about ten feet away which the plaintiff watched until it had gone 75 or 80 yards and then started to cross the street, and after taking two steps, which would be about five feet, he looked again and while seeing the south bound car about 80 yards away, saw no car going north approaching, yet when he had walked only ten feet, about four steps, he was struck by a car which was at least more than 80 yards away, and must have covered that distance while plaintiff took four steps. This is so unreasonable as to be incredible, for if the plaintiff had looked when only ten feet from the track, as he said he did, he

would have seen the car, and the only inference is that he did not look, or if he did, that he would have seen the car so near as to surely strike him, if he continued to walk toward it. But he says he did not see the car, so he is not within the line of cases, where the pedestrian seeing an approaching car, exercises his judgment as to his ability to cross safely. In this case the car must have been within his vision if he had looked, and the fact that he did not see it is a demonstration that he did not look with reasonable effectiveness such as was required of him under the circumstances, and he was therefore guilty of such contributory negligence as required a nonsuit, the refusal of which was error. In the case of *Brown vs. Railroad Co.*, 39 Vr., 618, Chancellor Magie, speaking for the Court of Errors and Appeals, said, "When he says that, at that time, he could see no trolley car in sight, he conclusively establishes that he did not then make the observation which duly required of him, because, if he had done so, he would undoubtedly have discovered the approaching car, and have been able to avoid the collision." It seems to us that this case controls the one under review. This result makes it unnecessary to deal with the question of defendant's negligence. 10 20 30

The judgment will be reversed.

Notice of Appeal.

HUDSON COUNTY CIRCUIT COURT.

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EUGENE RUGGIERI, Plaintiff-Appellee, vs. PUBLIC SERVICE RAILWAY COM- PANY, Defendant-Appellant.	}
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In Tort.

20 To Alexander Simpson, Esquire,
 Attorney of the above named Plaintiff-Appellee.

TAKE NOTICE that the defendant appeals to the New Jersey Supreme Court from the whole of the judgment entered in this cause.

Dated, October 24th, 1912.

EDWARDS & SMITH,
 Attorneys of Defendant-Appellant.

30

Declaration.

Hudson County, ss.:

40 The defendant in this suit, the Public Service Railway Company, having been duly summoned to answer unto Eugene Ruggieri, in an action of tort, to his damage Fifteen thousand dollars, and thereupon the said plaintiff by Alex. Simpson, his attorney, complains:

Declaration.

For that the defendant by its servants and agents on the nineteenth day of December, nineteen hundred and eleven, by reason of the negligence of the said defendant, by its servants and agents ran against and upon the plaintiff while the plaintiff was walking along a public highway known as Bergenline Avenue, with an electric street railway car, which the defendant, by its servants and agents, was propelling at the said time and place along the said public highway, and the negligence of the defendant, by its servants and agents aforesaid, consisted in this, that the defendant by its servants and agents at the same time and place did not use reasonable care to give a warning of the approach of the said car, and did not use reasonable care to keep a lookout for persons upon the said highway, who were in the vicinity of the said car, and did not use reasonable care to keep and maintain control of the said car so that the same might be stopped, if necessary, to avoid injury to persons upon the said highway, and by reason of the collision so caused by the negligence of the defendant, by its servants and agents, between the said car and the body of the plaintiff, the plaintiff was permanently injured in and about both his legs, his head and his back, and suffered great pain, to wit, from thence hitherto, to his damage, and the plaintiff at the said time was in business as the owner of a meatmarket, and by reason of his injury, he has suffered loss in his said business to the amount of Twenty-five hundred Dollars, and the plaintiff was caused to expend in obtaining medical treatment about the said injuries the sum of Five hundred dollars, all of which is to his damage.

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Plea and Return.

WHEREFORE, the plaintiff saith that he is injured to his damage Fifteen thousand dollars, and therefore he brings his suit.

ALEX SIMPSON,
Attorney of Plaintiff.

10

Plea.

(Filed April 20, 1912.)

And the said defendant, by Edwards & Smith, its attorneys, comes and defends the wrong and injury, when, &c., and says that it is not guilty of the said supposed grievances above laid to its charge, or any or either of them, in manner and form as the said plaintiff hath above thereof complained against it and of this it, the said defendant, puts itself upon the country, &c.

20

EDWARDS & SMITH,
Attorneys of Defendant.

Return.

The answer of William H. Speer, Esquire Judge of the Circuit Court holden in and for the County of Hudson and within named, and entire record of the cause and all orders, proceedings and documents made, taken or filed therein, I send to the Justices of the Supreme Court of Judicature at Trenton, at the day and year within contained, in a certain schedule to this appeal annexed as within I am commanded.

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WM. H. SPEER,
Judge.

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Rule for Judgment.

NEW JERSEY SUPREME COURT.

EUGENE RUGGIERI, Plaintiff-Appellee, vs. PUBLIC SERVICE RAILWAY COM- PANY, Defendant-Appellant.	}	In Tort. 10 On Appeal.
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This cause being regularly upon the calendar of the Term of this Court, and counsel for the respective parties having consented and agreed to waive oral argument upon the same, and the cause having been submitted upon briefs, and the Court having inspected the record and judgment below and considered the causes assigned for error; 20

It is therefore, ORDERED, that the judgment of the Hudson County Circuit Court be in all things reversed, set aside and for nothing holden, with costs of this Court to be taxed; and that the said plaintiff-in-error do recover his costs in the Hudson County Circuit Court to be taxed; and that the record and proceedings be remitted to the Hudson County Circuit Court to be proceeded with in accordance with this judgment and the practice of said Court. 30

Entered June 14, 1913.

On motion of

EDWARDS & SMITH,
 Attorneys of Defendant-Appellant.

I, Wm. C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above stated cause.

10 (L. S.) IN TESTIMONY WHEREOF, I have set my hand and the seal of said Court at Trenton, this thirty-first day of July, A. D. Nineteen hundred and thirteen.

WM. C. GEBHARDT,
Clerk.

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Testimony.

HUDSON COUNTY CIRCUIT COURT.

EUGENE RUGGIERI, vs. PUBLIC SERVICE RAILWAY COM- PANY,	}	10
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BE IT REMEMBERED, that on the second day of October, Nineteen hundred and twelve, at a Circuit Court holden at Jersey City in and for the County of Hudson, before his Honor, William H. Speer, Judge of the Circuit Court, the issue joined between the parties (pro ut the pleadings) came on to be tried by a jury for that purpose duly empanelled and sworn, whereupon the said Alfred J. Woods, the plaintiff in said suit, to maintain the issue on his part to be maintained offers the following witnesses in evidence: 20

APPEARANCES:

ALEXANDER SIMPSON, for the Plaintiff;	30
EDWARD & SMITH, (Edwin F. Smith), for the Defendant.	

EUGENE RUGGIERI, called and sworn on behalf of the plaintiff, testified as follows:

Direct-examination by Mr. Simpson:

Q. Where do you live? A. 422 Bergenline Ave- nue.	40
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Eugene Ruggieri—Direct Examination.

Q. How old are you? A. Thirty-four years old.

Q. Married? A. Yes, sir.

Q. How long have you lived in Union Hill? A. About two years.

10 Q. And on the 19th day of December, 1911, about between six and seven o'clock in the morning where were you? A. I was crossing the street.

Q. What street? A. Bergenline Avenue.

Q. Where did you come from? A. I wanted to buy a paper and I—

Q. Where did you come from? A. I wanted to go across the street.

20 Q. Where did you come from? You had not come out of a balloon had you? Where did you come from? Had you come from the house or your store or where? A. No; I was going to my house.

Q. Where did you come from? A. I was to the saloon across the street and I was coming to my home.

Q. Whose saloon? A. Mr. Cade's.

Q. And where is that? A. He is across the way from my place.

Q. Where is Cade's saloon, on the corner of Bergenline Avenue and what? A. Seventh Street.

Q. In Union Hill? A. No, West New York.

30 Q. You came out of his place to go to your own store? A. Yes.

Q. Where did you start to cross Bergenline Avenue? A. Right at the corner of Seventh Street.

Q. And what? A. Bergenline Avenue and Seventh Street.

Q. Was it dark or light when you started to cross? A. It was dark yet. They call it Fisher Avenue. They call it Seventh Street, but it was Fisher Avenue.

Eugene Ruggieri—Direct Examination.

Q. Fisher Avenue. You started to cross the street, did you? A. Yes.

Q. As you started to cross the street did you see any trolley car? A. Yes; when I was at the corner of Seventh Street I see the car coming down.

Q. Where was the car going that you saw? A. 10
Going to Union Hill, down.

Q. Did you let the car pass you? A. I stopped at the corner and that car stopped about 75 to 80 feet down.

Q. 80 feet or 80 yards? A. 75 to 80 yards down.

Q. And did you look after it? A. I did, and I did not see any other cars, and I started to pass.

Q. As you started to pass what happened to you? A. As soon as I got on the southbound track another car jumped, hit me right in front. 20

Q. Where did it knock you? Do you know anything after it hit you? Do you remember anything? A. I do not know anything about it after I got hit.

Q. Before it hit you did you hear any bell from that direction, or any warning? A. No, none at all.

Q. Where were you when you came to? A. In the hospital.

Q. In what hospital? A. In the North Hudson 30
Hospital.

Q. How long did you stay there? A. Until— from the Tuesday until the Monday following.

Q. When you came to yourself what was the condition of your body and your head? A. I came to myself on Sunday and the Doctor told me not to talk and not to eat—and pain.

Q. Where was your pain? A. All over my body, special around the back and head (indicating).

Eugene Ruggieri—Direct Examination.

Q. Was your head in bandages? A. All bandaged up, yes, sir.

Q. Where? A. Around here (indicating).

Q. Around the back of your head? A. Yes. Of course the bandages went around front, all around the head.

10

Q. And you had pain, you say? A. Yes.

Q. Where? A. All in my back there.

Q. Back, and your head?

Mr. Smith: I object. He said "back."

A. Back and my head and my legs also.

Q. Your legs and your back and your head? A. Yes.

20

Q. You were in the hospital until when; how long were you in the hospital? A. From Tuesday morning when I got hurt until Monday.

Q. The following Monday? A. Yes.

Q. Then where were you taken? A. They took me down to the Old Man down in Hoboken, down to my father-in-law's.

Q. How long were you in your father's house?

A. The father the day after took a coach and I got up to my house.

30

Q. How long were you at your own house? A. It was until the middle way of February, it is always I cannot go out and was laid up.

Q. When did you first go out in the street? A. Around the month of February.

Q. And what doctor did you have after you came out of the hospital? A. Dr. D'Acierno. He is in Hoboken.

Q. Then did any other doctor attend you beside Dr. D'Acierno? A. Not at that time.

40

Q. At any time? A. After, yes, around the

Eugene Ruggieri—Direct Examination.

middle way of February, Dr. Campbell from New York.

Q. Where is his office? A. His office is 206 West 86th Street.

Q. New York City? A. Yes, sir.

Q. How did you feel when you began to walk around, when you got out of the house; did you feel just like you did before the accident? A. More like dizzy. I feel pains in my face if I go down stairs especially, it is easy to go upstairs, but to go downstairs always hurt me; and headaches, I suffered headaches. 10

Q. What business were you in when you were struck? A. Butcher business.

Q. And were you selling meat for retail or for wholesale? A. Retail. 20

Q. Did you sell for cash or on credit? A. Cash.

Q. At the time that you were hurt how large a business were you doing a day or a week? A. Well, the cash forty-five dollars, fifty dollars, fifty-five dollars a day.

Q. And how much of that was profit? A. On Saturday a hundred and eighty dollars or a hundred and seventy-five dollars or more or less. It was a profit we figure on which is twelve per cent. It is fifty to sixty dollars a week profit. 30

Q. Fifty to sixty dollars a week profit? A. Yes, sir.

Q. After you were hurt were you able to attend to your business yourself? A. No.

Q. Who did attend to your business? A. I had mans working.

Q. Who did you have working for you? A. I had Joseph Pelluco and Michael Ruggieri.

Q. What did they do in your business? A. They told me—they told me the first month— 40

Eugene Ruggieri—Direct Examination.

Q. No; what did they do, buy or sell, or what?

A. Sell meat.

Q. Sell in your store? A. Yes, sir.

Q. And how much did you pay them? A. Seventeen dollars to one and eighteen dollars to another.

10 Q. Which one did you pay seventeen and which one did you pay eighteen? A. Joseph Pelluco I paid eighteen and Michael Ruggieri seventeen dollars a week.

Q. And did you have anybody to buy the meat for you in New York? A. Yes, sir.

Q. Who bought the meat? A. Antonio Pelluco.

Q. Is he the same one you spoke of before, or is he another man? A. He is another man.

20 Q. How much did you pay him for buying the meat? A. Twenty-five dollars a week.

Q. Did you do this buying before you were hurt? A. Yes.

Q. Does it require any skill to buy, or can anybody buy? A. No, you have to have a man of experience in the business.

Q. Who knows what kind of meat he is buying? A. Yes.

Q. Have you been able to buy up to the present time in your business? A. No.

30 Q. Why? A. Sometimes, at the present time sometimes, a day I will take to walk around.

Q. Why haven't you been able to buy; why can't you go over to New York to buy, why do you hire these men to buy? A. Since this accident I have the pains and I forget everything quick, and I cannot sleep well. I cannot attend to the business well.

Q. Do you still own the business? A. Yes, sir.

40 Q. And before you were hurt how much material did you buy from Swift & Company a week? A. From Swift & Company?

Eugene Ruggieri—Direct Examination.

Q. Yes; about how much did you buy from them? A. A hundred and fifty dollars or more; two hundred dollars.

Q. How much did you buy from Morris & Company? A. About the same, one hundred and fifty dollars to two hundred and fifty dollars a week.

Q. And how much from Armour? A. About one hundred to one hundred and fifty dollars a week. 10

Q. And what kind of stuff was it you bought? A. Well, of course lamb and beef, pork and hams.

Q. Since you were hurt how much have you bought from them a week; from Swift & Company how much have your purchases been? A. All my wares—they come down gradually, the way business is coming they come less.

Q. Less and less you say? A. Yes.

Q. How much are you buying now there? A. Buying no more than one hundred dollars to one hundred and twenty-five dollars a week. 20

Q. Have you had to pay any doctor's bills? A. I did not.

Q. You have not paid them yet? A. No.

Q. Haven't got them yet?

Mr. Smith: He did not say that. I object to that.

30

Q. Have you paid any doctor's bills yet? A. No, I did not pay them; I did not.

Q. Have you paid anything for medicines? A. Yes, for medicines.

Q. How much? A. I do not know. I paid right along for medicines as I need it. I ain't got no bills.

40

Cross-examination by Mr. Smith:

Q. Who is Pelluco? A. A relative of yours? A. My father-in-law.

Q. He is your father-in-law? A. Yes.

Q. And who is Ruggieri? A. My brother.

10 Q. And Pelluco is the man who bought your meat, wasn't he? A. Yes.

Q. And he bought the meat before this accident, didn't he? A. No, sir.

Q. Didn't he buy the meat before this accident and charge you so much percentage for it? A. No, sir.

Q. Is he here? A. Yes, sir.

Q. Is Ruggieri here, your brother? A. Yes, sir.

Q. He is here? A. Yes, sir.

20 Q. And did not both of them buy the meat for you before this accident? A. No, sir.

Q. And didn't they buy it from Armour & Company and charge you for it? A. No.

Q. Didn't your father-in-law charge you twenty per cent. for buying that meat? A. No, sir.

Q. Did you personally go and buy the meat? A. Yes, sir.

Q. Where did you go? A. New York.

Q. Where? A. Armour, Swift, Morris.

30 Q. Who did you see over there? A. I see the salesmen.

Q. Who were they? A. I do not know the names.

Q. Don't you know the names? (No answer).

Q. How long had you been buying meat of Swift before the accident? A. For the last twelve or fifteen years.

Q. Who do you buy from there, one man or a dozen men? A. Oh, all of the salesmen there.

Eugene Ruggieri—Cross Examination.

Q. How many did you buy from? A. In each market is a manager; each market has a man to sell sheep and to sell pork. Every man has charge of different departments.

Q. Did you see a different man every day? A. I did not.

Q. How many times did you see the man who sold sheep?

10

Mr. Simpson: Where? I object to that.

Mr. Smith: Over at Swift's.

A. I cannot remember how many times I saw him.

Q. Did you see him a hundred times? A. I cannot remember that.

Q. Did you see him two hundred times? A. I cannot remember that; I know I saw him and I bought stuff from him. I cannot remember that.

20

Q. What place was Swift & Company's at where you bought the meat,—where you bought the meat,—in what street? A. In West 35th Street, down town 14th Street, anywhere.

Q. How long had you been buying meat there before the accident? A. Before the accident, Swift & Company, I have been buying for the last twelve or fifteen years.

30

Q. How often did you buy from Morris before the accident? A. Well, about the same.

Q. Huh? A. I buy them of everybody the same way; where I can buy cheap I bought.

Q. Where was Morris' place where you bought? A. In each place where they sell stuff they have got the offices.

Q. Where were those two offices? A. In the same house where they sell the beef.

40

Eugene Ruggieri—Cross Examination.

Q. Where is that? A. It is West 10th Avenue, —45th Street and West 35th Street.

Q. Where did you deal? A. Deal uptown and downtown.

Q. Did you deal at each place? A. Yes.

10 Q. How often did you go uptown? A. Uptown, well, it all depended on how the price. If I can make a quarter cent uptown I bought uptown; otherwise I bought downtown,—where I could get it cheaper—

Q. Did the same man have different prices uptown and downtown? A. Sometimes.

Q. How often did you go uptown to Morris' place? A. Well, about every week I have been there.

20 Q. Buy from the same man up there? A. They change the man; there used to be a different man.

Q. Sometimes they change the men? How often did you go to the downtown place? A. Downtown I go very often when I can get it.

Q. How often, once a week, twice a week? A. Sometimes twice a week; sometimes I used to buy my stuff uptown before this time.

Q. Where is the downtown place? A. West 10th Avenue.

30 Q. West 9th or 10th Avenue? A. West 10th Avenue.

Q. Where was the Armour place you went to? A. It is uptown.

Q. What street? A. West 35th Street.

Q. How often did you go there? A. Every week.

Q. Did you see the same man, the salesman? A. Well, generally the same man, yes, was there, and sometimes they change men. I cannot remember that.

Eugene Ruggieri—Cross Examination.

Q. Don't you know whether you bought from the same man or not? A. Yes, I bought it from the same mans, but the sheep department has been changed.

Q. What is his name? A. I do not know the name.

Q. How often had you been buying from Armour, ten or fifteen years? A. Not uptown. Uptown i have been buying—

10

Q. Well, how long? A. I do not know—about two years I have been buying stuff up there. Of course I ain't buying all the time from Armour. Sometimes I get cheap from Swift, and I buy from Swift. Where I can get it cheaper I buy them.

Q. And did you go up there for this purpose, to buy? A. Yes, before the accident, yes.

20

Q. Have you got your books showing your sales made before the accident? A. I never had any books.

Q. Sold all cash, did you? A. Yes, sir.

Q. How big a store did you have up there, one house or two houses? A. No, it is one house.

Q. How wide? A. It is about, I don't know, 12 or 14 feet wide; I did not measure it.

Q. How long? A. Long is about 35 feet deep.

Q. How many men did you employ before the accident? A. I was working myself.

30

Q. All alone? A. There was a young fellow to deliver orders, and the help in the shop also.

Q. Who was the helper in the shop, what was his name? A. Well, he was German fellow; his name was Charlie. I do not know his second name.

Q. Was he working for you at the time? A. Yes, sir.

Q. Did you keep him after the accident? A. No; he was after the accident I guess a month,

40

Eugene Ruggieri—Cross Examination.

it might be a month or more, because he left his job.

Q. Who did you get in his place? A. Then come a different boy there.

10 Q. Who was he? A. His name was Dominick, but I do not know his second name.

Q. Was he a butcher? A. Order boy, deliver orders, and of course sweep the store and wash the windows.

Q. Did you have any helpers, butchers? A. Yes, sir.

Q. Who were they,—before the accident? A. Oh, before the accident?

Q. None at all? A. No.

20 Q. You were the only man, butcher in the place? A. Yes.

Q. How many wagons did you have? A. No wagons.

Q. Who delivered, the boy? A. Yes, sir.

Q. How many boys did you have? A. One boy; and around the Holidays I had a boy special for the orders, and a boy to help me in the shop,—a little boy.

Q. Before the accident how many people worked in your shop? A. I was working myself.

30 Q. You alone and the order boy? A. Yes, sir.

Q. In other words you did the work together with the order boy?: A. Yes, sir.

Q. You did the selling, you did the buying? A. Yes, sir.

Q. You did the butchering? A. Yes, sir.

Q. The cutting of the meat? A. Yes, sir.

Q. And the order boy did the deliveries? A. Yes, sir.

Q. That is all you had? A. That is all.

Eugene Ruggieri—Cross Examination.

Q. Where was your butcher shop? A. 422 Bergenline Avenue.

Q. How did you pay for your meats to Swift and Armour and Morris, by check or in cash? A. Cash.

Q. All cash; you haven't anything that keeps a record of any part of your business, have you? A. I paid cash. 10

Q. You did not use checks; you did not keep any bank account, did you? A. I pay in cash.

Q. Everything in cash? A. Yes.

Q. Now let us see, Mr. Ruggieri. While you were in the hospital or while you were in the house who did you have in your store doing your business? A. Michael Ruggieri and Joseph Pelluco. 20

Q. When did they first start in your store? A. The way they told me that the same morning I got hurt.

Q. The same morning you got hurt? A. Joseph Pelluco, my wife called him up to go to work, to take charge of the store.

Q. And they went in the store, both of them? A. I do not know that. I know Joseph Pelluco was called by telephone the same morning, and I do not remember my brother; I guess he came up the same day, or the day following. 30

Q. Is Joseph Pelluco a butcher? A. Yes.

Q. How long has he been a butcher? A. Since he was a boy. He is old in the business.

Q. An experienced man? A. Yes.

Q. Knows how to cut meat? A. Yes.

Q. Did he ever keep a store? A. Well, he is working for his own father.

Q. Working for his own father; well, he was your father-in-law, wasn't he? A. Antonio is my 40

Eugene Ruggieri—Cross Examination.

father-in-law. Joseph Pelluco is my brother-in-law.

Q. And Joseph was working for his father? A. In his own store, yes, sir.

10 Q. Who bought the meat for you, Antonio or Joseph? A. Antonio.

Q. And Antonio bought his own meat, didn't he, before? A. Well, I guess so; I don't know that.

Q. And didn't he buy yours with his? A. I don't know nothing about that. He bought my meat.

20 Q. And he bought your meat before you were sick, didn't he? A. No, sir. I don't want anybody. I have got experience enough to buy my meat.

Q. What was your brother, was he a butcher? A. Yes, sir.

Q. An experienced butcher? A. Yes.

Q. Why did it take two experienced butchers in your shop to do the work that you did alone before you were sick? A. Because they need it.

Q. What? A. They need it to sell the meat.

Q. They needed it to sell the meat? A. Yes.

30 Q. They needed two of them to do the work you had been doing alone? A. Yes, sir.

Q. You are sure of that? A. Yes, I am sure.

Q. And how long did you keep them there? A. They working one—my brother-in-law—the business is fell down, that there was not much to do—I do not remember exactly, around March, he leave the place, and Joseph Pelluco keep it up. I do not know; around until May, until I got around.

Q. When did you go back to the butcher shop? A. I am in the butcher shop all day.

Eugene Ruggieri—Cross Examination.

Q. You are in there all the time? A. I live in the back.

Q. When did you go back to do the work? A. I did not done any work yet. I tried to but it ain't possible for me.

Q. When did you go back into the store to do the work? A. I pass in the store from morning to night to go home. I have to go in the store. 10

Q. Haven't you been in the store practically every day since the time you came back? A. No, sir.

Q. Haven't you been in there with your brother, not to do work? A. No, sir; I tried to start it but I give up. I have always got a man.

Q. When you went back to the store you were able to walk around, weren't you, the same as you are now? A. I can walk around now better than before. 20

Q. And your memory was just as good as it is to-day? A. No, sir.

Q. It was not just as good; it has been getting better, has it? A. I feel better, but if I want to crack a bone I cannot.

Q. Why can't you crack a bone? A. They bother my head; they hurt my head.

Q. The bones hurt your head? A. The cleaver. 30

Q. How does the cleaver hurt your head? A. Pounding on top of the bones.

Q. Pounding on the bones hurt your head? A. Yes, sir.

Q. Why did you keep your father-in-law and your brother-in-law and your brother in the butcher shop doing the work you had to do, if before that you could do it alone? A. Well, because they need to sell the meat.

Q. Because you needed both of them to sell the meat? A. Of course— 40

Eugene Ruggieri—Cross Examination.

Q. What time did they come to work? A. Seven o'clock.

Q. In the morning, both of them? A. Yes, sir.

Q. What time did they leave? A. Seven o'clock at night.

10 Q. Busy all the time? A. First time, yes; then the business failed and they were not so busy.

Q. Then you mean to say before the accident you were doing as much work as those two experienced butchers could do just as soon as you got hurt? A. Yes, sir.

Q. All alone? A. Yes, sir.

Q. Who did you have to deliver your meat after you were injured? A. Deliver?

Q. Yes. A. What delivery do you mean.

20 Q. Didn't you have an order boy? A. Yes.

Q. And he went out just the same as he did before you were injured? A. Yes, sir.

Q. So then, as I understand you, Mr. Ruggieri, those two men until your brother left, kept on doing the work that you had been doing before, is that right? A. They doing the same work what I been doing before, but the business failed and my brother left.

Q. The business failed? A. Failed; they did not have much to do when my brother left the place.

30 Q. Wasn't your brother able to do the work there? A. I do not know, it is up to the trade, the people. They cannot satisfy the customer just as well as I could.

Q. Couldn't your brother cut meat just as well as you could? A. Yes, he could cut meat.

Q. Couldn't your brother-in-law cut meat just as well as you could? A. Yes, sir.

Q. And they could each cut meat for the customers just as well as you could, couldn't they?

Eugene Ruggieri—Cross Examination.

Sure they could cut meat just as well as I did, but they must have acted different.

Q. How did they act different? A. The customers, the way they told me, they claim they were not treated right by them peoples, that is why they left.

Q. Why didn't you get rid of your brother and get some one who would treat your customers right? A. I could not get anybody that was good enough for me. 10

Q. You could not find a butcher to take care of your store, could you? A. The butcher to take care of my store should be myself, that I can attend to my business.

Q. When you were told by your customers that your brother-in-law— A. Not my brother-in-law—that is Pelluco and Michael Ruggieri, they told me, they claim that they cannot wait—they claim—the prices different, the meat is different, all that stuff. 20

Q. The price is different, the meat is different? A. They ain't giving satisfaction to their customers.

Q. I thought you said they were experienced butchers? A. Yes.

Q. And they told you themselves, being experienced butchers, they told you that they could not cut the meat to satisfy the customers? A. Yes, sir—they ain't told me; they told me that the customers claim that. 30

Q. And they could not give as good prices? A. They say that the customers claim that they charge more on the prices; they claim that them butchers charge more on the price.

Q. The customers claimed that your brother and your brother-in-law charged them more for the meat, is that it? A. Yes. 40

Eugene Ruggieri—Cross Examination.

Q. That is the reason you say your business fell off? A. No, that ain't the reason; the boss is always the boss in a business.

Q. When did they tell you that the customers said they were charging more for the meat? A. I do not remember that.

10 Q. Right after you came home? A. Oh, I do not remember it. I know a long time after I got home.

Q. And that is the first you knew of it, isn't it? A. No, I see the business is falling off all the time.

Q. Didn't you ask them why it was falling off? A. I asked them, but they say the customers was not satisfied by themselves.

20 Q. Then you asked your brother and your brother-in-law why the business was falling off and they told you that the customers were not satisfied? A. Well, that might be the reason.

Q. Then why didn't you get a butcher who would satisfy the customers? A. I could not get any better butcher. They know the business well enough.

30 Q. Then you were satisfied with them as butchers and they cut well enough? A. It is really the business of the owner to keep up the business. By changing mens all at once the business fail.

Q. Then you mean that they were not as good butchers as you were? A. They were just as good butchers as I am.

Q. Mr. Ruggieri, you were injured some time before this accident, weren't you? A. No, sir.

Q. Weren't you? A. No, sir.

Q. Where did you get that on the side of your head there? A. This here (indicating)?

40 Q. Yes. A. I got this when I was about eleven years old, a schoolboy in Italy.

Eugene Ruggieri—Cross Examination.

Q. Then you were injured before the accident?

A. Yes; this was about twenty-two or twenty-three years ago.

Q. And that is where you got this mark on the front side of your face? A. Yes.

Q. And where did you say the injury was that you got in this accident? A. Over here (indicating). 10

Q. Over towards the back? A. Yes.

Q. And how far? Right here (indicating)? A. Right over here.

Q. And were there any marks on your back? A. I don't know; I can't see; it takes somebody else to look better than I can see if there is a mark there.

Q. You do not know if there was any mark there? A. Sure, there was a big mark. 20

Q. I thought you said you could not see? A. I thought you meant now, if there is a mark now. (Witness indicates back of his head.)

Q. On the back, I said on your back? A. On my back?

Q. Now, Mr. Ruggieri, this morning you say you had been over to some saloon? A. Who said so?

Q. You, didn't you? A. I did not.

Q. Didn't you say a few minutes ago you had been in some saloon? A. When this accident happened? 30

Q. Yes. A. At the time the accident happened I was across the street and take my order, that is in the saloon.

Q. Well, that is just what I am asking you. You had been in the saloon, hadn't you? A. Yes.

Q. And you came out? A. Yes.

Q. Where is the saloon, what corner? A. It is across the street from my shop.

Eugene Ruggieri—Cross Examination.

Q. Across the street from your shop? A. Yes.

Q. On the west side or the east side? A. On the west side of the street.

Q. On the northwest side? A. The northwest side.

10 Q. And you were going across the street to your store, were you? A. Yes, sir.

Q. And you say when you came out of the saloon you got to the sidewalk; did you see a car there? A. I got out of the saloon and I walked to the corner, and I see a car coming down full speed. This car—

Q. Coming which way? A. Toward Union Hill.

Q. That is, coming south? A. From North Bergen coming down towards Union Hill.

20 Q. Coming this way (indicating)? A. Yes, coming this way to Union Hill.

Q. And you saw that car, that was on the track nearest to you? A. Well, I waited on the corner till this car passed.

Q. That car was on the track nearest you? A. Yes.

Q. Where was the car when you first saw it, up towards West New York or towards Union Hill? A. Towards West New York.

30 Q. Now, you walked out to the street, did you? A. I was up to the—all ready to cross the street, when the car come down.

Q. Where did you go, did you stand on the sidewalk till that car went by? A. Well, he passed right away.

Q. Did you stand on the sidewalk? A. Right on the corner, yes.

Q. Didn't you go out into the street? A. No, I stand on the corner.

46 Q. What did you stand on the corner for? A. To let the car pass.

Eugene Ruggieri—Cross Examination.

Q. Well, you were going over to your house; why did you stand on the corner? Didn't you go off the gutter into the street toward the car track? A. I stand on the corner till the car pass, and then I started to walk.

Q. In other words you, wanting to cross the street to your house, walked to the gutter and stayed there looking at that car coming down? 10

A. I was standing on the corner till the car passed, when I started to walk.

Q. Didn't you step off the gutter before that southbound car passed you? A. The car going to Union Hill?

Q. Yes. A. No, sir; I stood on the corner.

Q. Then you stood on the corner? A. Yes, until the car passed by me.

Q. Before; before the southbound car passed you, didn't you look north to see if a car was coming, or south to see if a car was coming? A. After the car went down about seventy-five— 20

Q. Before, I said; before the southbound car passed you did you look south to see if a northbound car was coming? A. No; I looked at the car coming down.

Q. You did not look south, did you, to see if a car was coming up? A. I looked on both sides and did not see a car coming up. 30

Q. After this car, southbound car, went by you did you then start out? A. After the car went down I started out to cross.

Q. How far did you wait for that car to go before you started off? A. It was down about seventy-five to eighty yards.

Q. Show me in the room here how far? A. Well, seventy-five to eighty yards.

Q. Show me in the room how far you let that car go by you before you left the gutter? A. 40

Eugene Ruggieri—Cross Examination.

I cannot say in the room. It was about seventy-five to eighty yards it was passed away.

Q. Was it as far as from you to the corner there?

A. A little further than that.

Q. Well, about? A. I cannot tell you how far.

10 Mr. Simpson: He said he could not show in this room.

Q. H'm? A. About seventy-five to eighty yards.

Q. Well, what is seventy-five to eighty yards?

A. Well, that is my experience. It is about further down than seventy-five to eighty yards.

Q. Is seventy-five to eighty yards as long as this room and half as long as this room? A. I think it is more than that.

20 Q. Well, about how much? A. I can't—

Q. How many feet? A. It is about 150 feet, isn't it,—75 yards?

Q. Well, is that right? Seventy-five yards is one hundred and fifty feet? A. It is—every yard is three feet, isn't it?

Q. I am asking you. A. Seventy-five to eighty yards, that is what I say.

30 Q. How did you come to measure seventy-five to eighty yards? A. I did not measure it. It is a guess. I judge by myself. To measure—I did not have a rule to measure it.

Q. You judge it was seventy-five to eighty yards? A. Yes.

Q. Then when the car had passed seventy-five to eighty yards beyond you you looked down the street to the north or to the south? A. I looked and I did not see any car coming.

Q. That street is straight, isn't it? A. Yes, it is straight.

Eugene Ruggieri—Cross Examination.

Q. How far can you see if there is nothing on the street to obstruct your view, how far down the street can you see?

Mr. Simpson: When, day or night?

Mr. Smith: I am asking him. If he does not understand me let him ask. 10

A. You can see; you can see further than Fourth Street.

Q. How many blocks is that? A. Two blocks.

Q. How many blocks could you see that morning?

A. When I looked I did not see no car coming up.

Q. How far could you see that morning? A. How far can I see that morning?

Q. Yes. A. Just so far as I can see now. 20

Q. So you did not see any car? A. I did not see any car coming.

Q. Then you started across the street? A. Yes, and I started to walk from the west to the east.

Q. From west to east? A. Yes.

Q. How far is it from where you stood to the car track? A. What is that?

Q. How far was it from where you stood to the car track? A. It is from the corner stone up to the car track. 30

Q. How far is that, five feet, ten feet? A. It is about ten feet; I did not measure that; five, ten, I don't know that.

Q. How many tracks are there? A. Two sets of tracks.

Q. One going north and one south? A. Yes.

Q. You got past the southbound track, did you?

A. As soon as I got on the northbound car I got hit. 40

Eugene Ruggieri—Cross Examination.

Q. That was just as soon as you stepped on the track? A. That is right. I don't know nothing about after I got hurt.

Q. You never saw the northbound car at all? A. I looked and I did not see any car.

10 Q. You did not see it before it hit you? A. No.

Q. And you were hit just as soon as you stepped on the track? A. I was hit, that is all.

Q. Is that right? A. I was hit when I was crossing, and I do not know anything else.

Q. You were hit just as soon as you stepped on the track? A. I got hit just as soon as I—

Q. Well, now— A.—stepped on the street; the car hit me.

20 Mr. Simpson: I object to Mr. Smith interrupting him.

Q. Did you at any time after stepping from the gutter, from the curbstone, look south to see if a car was coming? A. I did.

Q. When? A. After the car passed on, after the southbound car went down, I looked and seen no car.

Q. Where were you then when you looked? A. I just started to walk from the corner on.

30 Q. Had you just stepped from the gutter? A. I started to walk.

Q. Well, of course, but had you just stepped from the sidewalk? A. I suppose so; I cannot fly away; I had to step on the sidewalk to walk.

Q. You cannot fly; you had to start to walk. When you started to walk did you step from the curbstone like that to the street and start to walk across? A. Yes.

Eugene Ruggieri—Cross Examination.

Q. Was it just as you stepped down that you looked to see if a car was coming? A. I looked when I was walked, and I looked and do not see no car going up, and I walk.

Q. Where were you when you last looked? A. I cannot remember; I was on the corner; I see no cars and I started to walk. 10

Q. You have told me that a million times. Where were you when you last looked; had you reached the first car track? A. I was the corner of Seventh Street, that is where I was.

Q. Had you reached the first car track? A. I know I was walking, and I see no car coming up, that is all I can remember.

Q. Were you looking all the time down the street, looking for a car? A. No, I looked at it and I see no car coming up. 20

Q. Where were you when you looked? A. Just right on the corner.

Q. That is on the sidewalk? A. Yes, when I start to stepping I see no car coming up.

Q. And then you walked out? A. Yes.

By the Court:

Q. Where was the car going down when you looked? A. The car going down? 30

Q. Where was the car going southward when you looked up the street? A. It was about 75 to 80 yards down.

Q. Well, didn't you know then that that car was apt to be between you and another car that was coming in the opposite direction? A. Well, I see this car was pretty far away from me, your Honor, and I see there was about 75 or 80 yards, and I started to walk across. 40

Eugene Ruggieri—Cross Examination.

Q. Didn't you know that that car was apt to be between you and any car that would be coming down? A. That was pretty far away from me, this car.

10 Q. Did you look again after you made that look when the car was 75 feet down the street? A. Yes; I looked and I see no car coming up.

Q. Did you look again after that? A. That was the time I started to walk, when I looked.

Q. Did you look again after the car that was going down was 75 feet away from you, did you look again after that? A. That was the time I looked.

Q. Did you look again after that? A. I looked, yes.

20 Q. You looked when? A. When I started to cross, and I looked again and this car was away, this car was further down, and I did not see no car coming up.

Q. You mean you looked once when you were on the curb and the car was then 75 feet away, and you did not see any car in the opposite direction, and then you say you looked again and the car going down was further away, and still you saw no car; is that it? A. Yes.

30 By Mr. Smith:

Q. How far were you from the curbstone when you looked the second time? A. I just walked about two steps; I just started to walk when I looked, and I did not see no car.

Q. You did not see any car then? A. No, sir.

Q. How far down the street was this southbound car when you looked the second time? A. Well, he got further away than—

40 Q. About how far, down to the next corner? A.

Eugene Ruggieri—Re-direct Examination.

It was about the same time as I was looking. It might be 90 yards the car was down and I just stepped across.

The Court: No, no.

Q. Was he down to the next corner? A. What is that? 10

Q. Was the car down to the next corner, south? A. No, he was not as far as that.

Q. About how far was he? A. A little further than 80 yards; it might be 90 yards, because as soon as the car was down I started across.

Q. Had not reached the next corner? A. No, sir.

Q. How near was it to the next corner? A. I don't know.

Q. Well, about? A. I was—I looking—when I started to cross it was about 75 to 80 yards, and it might be a little more; then I started to walk. 20

Q. Don't you know anything about it? A. That is all I know.

Q. That is all you know about it? A. I see there was no car coming up and I see this car was about 75 to 80 yards down.

Mr. Simpson: Oh, answer his questions. Don't talk so much.

Re-direct Examination by Mr. Simpson: 30

Q. What is the amount of profit of your business now; how much does your business bring in now, profit? A. Nothing. Payable money out—paying for men—paying for men and lose money.

Re-cross Examination by Mr. Smith:

Q. Just carries itself? A. That is all.

Q. In other words, you are keeping your busi-

Patrick J. Fallon—Direct Examination.

ness going and you are losing money all the time?
A. Yes.

Q. How many men do you still keep? Your brother-in-law and your father-in-law and your brother? A. One man I got.

10 Q. And every week after you pay your men you have lost money? A. Yes, sir.

Q. And how long has that been going on? A. I lost money since I was hurt.

Q. All the time? A. Yes; I lose money, yes.

Q. All the time? A. Yes, all the time; every week I lose money.

20 PATRICK J. FALLON, called and sworn on behalf of the plaintiff, testified as follows:

Direct-examination by Mr. Simpson:

Q. Where do you live? A. 436 Seventh Street, West New York.

Q. Were you on Bergenline Avenue on the morning of December 19th, 1911? A. Yes.

Q. Did you see this plaintiff, Ruggieri, struck by the trolley car? A. I did.

30 Q. Will you describe what you saw? A. I was coming up from my uncle's shop—it was not my uncle's then; he was dead; my aunt was running it—and I was coming up towards about—I was 25 feet away, you might as well say, from him, when I seen him. I seen him going down first, down past the shop.

40 Q. Talk to the jury. A. I was coming down past the shop—he come down past the shop, and he got a paper, and he generally always went over to Mr. Cade's, for his order—

Patrick J. Fallon—Cross Examination.

Mr. Smith: I object.

The Court: That will be stricken out.

Q. Just tell us what you saw that morning, not what he did. He may have played the flute; we don't care anything about that. A. Well, passed the shop, he passed by the shop, and he went over to Mr. Cade's, and I was going over to the horse-shoeing shop, to the Aunt's, at about 6.35 or 6.30. The downtown car had passed him, going south, because I seen it pass him—the shop— I was coming up, I was twenty-five feet away from him at a place where they call the Hippodrome or the Airodrome, and I seen him hit by the uptown car and hit by the fender, and the body of the car, what you call the vestibule of the car, hit him and threw him more towards the curb about ten feet.

Q. What kind of a morning was it, dark or light? A. It was dark and very misty.

Q. And did you do anything after he was hit; did you run to pick him up or anything? A. No, sir; I walked back again; I did not want to get in trouble.

Q. Did you hear any bell of this car that hit him before it struck him? A. That I cannot tell you; I did not hear any bell, I believe.

Q. Then you can tell me that you didn't, can't you? A. Well, that's it. No, I didn't.

Cross-examination by Mr. Smith:

Q. Mr. Fallon, what is your business? A. Well, I was working for the uncle at the time.

Q. Well, what was your business? A. Well, it was running out horses.

Q. Running out horses? A. And running the shop for the aunt.

Q. What do you mean by running out horses?
A. Running out from the blacksmith shop.

Q. Taking them from one place to the other?
10 A. No; taking them to the blacksmith shop and getting them shod.

Q. You say you saw Ruggieri pass your house, was that it? A. No; I seen him pass the shop first.

Q. And which street is that shop on? A. Right on the west side of Bergenline Avenue.

Q. And how far from the corner of Seventh Street? A. How far from the corner of Seventh Street? Well, you know Fisher Avenue there, it
20 runs more of a catecorner than any way. Fisher Avenue, they call it Fisher Avenue—Seventh Street runs here and then about 200 yards away from the other is the continuation of Seventh Street going toward the east.

Q. Well, how far were you from the corner? That is what I asked you. A. I was only 25 feet—I was not 25 feet.

Q. Twenty-five feet from the corner? A. Yes.

Q. Were you twenty-five feet from the southerly
30 corner or the northerly corner? A. The southerly corner, walking north.

Q. Were you walking on the sidewalk? A. I am walking on the sidewalk, yes.

Q. And you saw Mr. Riggieri, did you? A. Yes.

Q. Where was he when you saw him after you came out of the shop? A. Why, he, when I was coming up from the shop, the 25 feet, he was coming out of Cade's saloon.

Patrick J. Fallon—Cross Examination.

Q. That is across the street? A. No, it is on the same side as I was walking on.

Q. But still on the northerly side of Seventh Street, isn't it? A. Yes, on the northerly side of Seventh Street.

Q. Then he was across the street from you? A. He was right across the street from the corner from me. 10

Q. And you saw him walking out toward the curb? A. I saw him walking out toward the curb.

Q. When you saw him walking toward the curb where was that southbound car? A. The southbound car passed the shop.

Q. Passed your shop? A. Yes, sir, past that shop, sir. 20

Q. The southbound car passed the shop? A. Yes, sir, the southbound car passed the shop.

Q. I thought you said the shop was on the southerly side of Seventh Street. A. I said it, yes, it was on the southerly side, on the side going south.

Q. Where is your shop? A. I told you where the shop is, right in Hudson County Park.

Q. Is it south of Seventh Street or north of Seventh Street? A. It is south of Seventh Street, and I was walking north. 30

Q. When you first saw Mr. Riggieri after you came out of the shop he was coming out of the saloon on to the sidewalk, wasn't he? A. No, I did not say that; I just said there the first time I seen Mr. Riggieri he was going down for a paper, down to Fourth Street, and he passed the shop while we was in it.

Q. He passed your shop? A. Passed our shop, and then he walked up. 40

Q. Did you see him walk up? A. I seen him walk up, yes.

Q. Did you go out to watch him? A. No, sir, I did not.

10 Q. Did you know he went in the saloon? A. No, I did not know that.

Q. After you came out of your shop where was Ruggieri when you first saw him? A. When I first saw him I was right on the corner of Seventh Street, what they call Fisher Avenue, and I seen him there.

Q. Where was Ruggieri? A. Ruggieri was coming right out of—out of the saloon there, but—

Q. That was just what I asked you five minutes ago. A. I am trying to answer you.

20 Q. You saw him coming out of the saloon? A. I saw him coming out, yes.

Q. And you saw him walk towards the gutter? A. Walk towards the gutter.

Q. Where was the southbound car at that time? A. Past my shop.

Q. Past your shop, A. Yes.

Q. Is that right? A. That is right.

Q. Past your shop? A. Past my shop.

30 Q. Did you see him stand on the corner? A. No, I did not see him stand, but I seen him half way when he walked out—

Q. I did not ask you that.

Mr. Simpson: I object to cutting off the answer until we get it. If it is not responsive you can strike it out.

The Court: It is perfectly manifest that answer was not going to be responsive. The question was, "Did you see him stand on the corner?" and the answer was, "No, but I saw him walk."

Patrick J. Fallon—Cross Examination.

Q. Did you see Mr. Ruggieri stand on the corner at any time? A. Well, yes; well, I seen him standing on the corner for—no, I did not.

Q. Well, what do you mean? A. Now, I tell you—

Q. Yes or no. A. I seen Mr. Ruggieri at the time I was passing there. I seen him hit by the car. 10

Q. That is all you saw? A. That is all I saw.

Q. Are you sure of that? A. Sure of it.

Q. If you are sure of that, what do you mean by saying you saw him pass your store—? A. Sure I did.

Q. Wait a minute—and come out of the saloon?—A. Yes, sir.

Q. —if all you saw was when you saw him at the corner? A. I did, but I did not see him sitting on the corner—did not see him standing on the corner. 20

Q. Didn't you just say you saw him standing on the corner? A. I said I saw him coming out of the place—I was 25 feet away from him. I did not see him standing.

Q. When he came out of the place did you at any time see him standing on the corner? A. No. 30

Q. Then you kept watching him, did you, as he walked from the saloon to the curb? A. Yes.

Q. And at that time when he walked— A. I did not watch him.

Q. You did not watch him? What do you mean? A. I only said I did not watch him.

Q. You said you did not watch him? A. No, I only said I was walking towards him when he was coming out of the saloon. 40

Patrick J. Fallon—Cross Examination.

Q. When he was coming out of the saloon, going to the gutter? A. Going to the gutter.

Q. Did you see him? A. Yes.

Q. What did he do when he reached the gutter?

A. When he reached the gutter he kept right on walking.

10

Q. Kept right on walking? A. No; he let that car pass him.

Q. Didn't you say he kept on walking? A. He kept on walking, yes, sir.

Q. And didn't you tell me a minute ago when he came out of the saloon the car was already past your shop, the southbound car? A. Did I say that?

20

Q. Did you? A. Yes, that is what I say. The southbound car was past the shop.

Q. Past your shop? A. Past the shop.

Q. Past your shop? A. It was not my shop; the shop I work in.

Q. Then you say he walked off the gutter out to the car track? A. Yes.

Q. Did you see the northbound car at any time before it hit him? A. No.

Q. Not at all? A. No.

Q. You are sure of that? A. Sure.

30

Q. Where were you at the time he and the car came together? A. About 25 feet away from him.

Q. From him? A. From him and the car. I was making a catecorner to go across to the house. I lived on 136 Seventh Street.

Q. And you did not see the car pass you, did you? A. See the car pass me right there, and only what—I believe it was misty—it was—I couldn't tell you—I couldn't swear to it, that it had a bell or not, that it rang a bell.

40

Q. Did you see that northbound car pass you?

A. Yes, I guess I seen that northbound car—

Q. Why did you say a minute ago you did not see the northbound car until it struck him? A. That is what I said, that the car was passing when it hit him, then I seen him.

Q. Didn't you just say you never saw the northbound car until it struck Ruggieri? Didn't you say that? A. Yes.

Q. And you did not see it pass you, did you?

Mr. Simpson: He says that now.

Mr. Smith: Will you stop?

Q. You did not see it pass you, did you? A. No. I seen it pass me all right.

Q. "No. You saw it pass you all right?" A. Yes, I seen it pass me.

Q. Now, you saw the fender hit him, did it? A. Yes.

Q. Which part of the fender? A. The west part of the fender there, what you call it.

Q. The west part of the fender? A. Yes.

Q. When he came in contact with the car it was just as he was stepping on the northbound track, wasn't it? A. Well, it seems that way, the way it says there, he was hit there, I don't know.

Q. Who says he was hit there? A. Well, look at this; in the—

Q. Don't you know, my dear man, if you saw— A. Yes, I saw it.

Q. Then was he hit just as he stepped on the car track? A. He must have been hit just as he stepped on the track there.

Q. And when you say he was struck was he thrown to the west? A. He was thrown to the west.

George Miller—Direct Examination.

Q. How long had you known Ruggieri? A. Oh, I guess it must be two years.

Q. Did you know it was he that was hurt at the time he was hurt? A. No.

Q. You did not know it? A. No.

10 Q. Young man, didn't you know that it was Ruggieri that came out of the saloon? A. I know it was Ruggieri that came out of the saloon.

Q. Did you? A. Yes, after they tell me.

Q. After they told you. A. Yes.

GEORGE MILLER, called and sworn on behalf of the plaintiff, testified as follows:

20 Direct-examination by Mr. Simpson;

Q. Where do you live? A. 601 Fifteenth Street.

Q. Fifteenth Street what? A. West New York.

Q. What is your business? A. Wet washer.

Q. In a laundry? A. Yes.

Q. Did you see anything happen to Ruggieri on this morning in December, 1911? A. Well, all I seen was I struck—

30 Q. Don't tell me what you saw—did you see anything happen to him? Yes, or no. A. Yes; I seen something happen to him. I struck—

Q. Just tell us what you saw happen to him. A. Just as I struck the corner of Seventh Street and Bergenline Avenue I heard the crash of the car, heard the crash of a man being hit there; I didn't know who it was, but I waited until the car stopped and the motorman got off the car, and he says—

40

Mr. Smith: I object.

George Miller—Direct Examination.

Q. How far did the car go after it hit him? A. I judge about ten feet.

Q. Was it going fast when it hit him? A. That I could not say, because I was not looking in that direction.

Q. Did you hear the bell sounded before it hit him? A. I did not hear no bell nowhere. 10

Q. Where was he standing when the car hit him—

Mr. Smith: I object.

Q. —with reference to the intersection of Seventh Street and Bergenline Avenue?

Mr. Smith: I object.

A. Well, that I could not say— 20

The Court: One moment.

Mr. Smith: I object on the ground it contains an unwarranted assumption of fact. The man has said he did not see him when he was standing and heard the crash, that was all he knew.

The Court: If that is all he said, I sustain the objection. 30

Q. Just tell us exactly what you saw? You have told us the aural pleasures that you had, now tell us what you saw. A. The only thing I saw, the men coming over and picking him up and taking him into the saloon.

Q. Then you did not see the car hit him? A. I did not see the car hit him but I heard the crash.

Q. Where was he when you saw the men pick him up? A. Between the two tracks. 40

George Miller—Cross Examination.

Q. Between the southbound and the northbound track? A. The car coming north—

Q. How far away from the car? A. Well, I could not just say how far away from the car. He lay between the two tracks.

10 Q. What kind of a morning was this? A. This was kind of a misty morning, a dark, misty morning.

Cross-examination by Mr. Smith:

Q. What did you say your business was? A. Wet washer.

Q. Wet washer? A. Wet washer.

20 Q. When you say that the car went about ten feet, he was lying alongside of the car, wasn't he? A. Yes; he was laying alongside of the car.

Q. And about what part of the car? A. The back part of the car.

Q. About how far from the middle? A. What do you mean between the—

Q. How far from the middle of the car? A. Well, at the back entrance.

30 Q. Was he lying at the back entrance? A. Very near the back entrance as I could see. Of course I was all excited for the minute and everything, and I—

Q. The fact is, could he have been up toward the center of the car? A. Well, he may have been. Of course through excitement I could not exactly say where he was lying.

By the Court:

40 Q. Did you see the car that struck him? A. After the car had stopped, yes.

Pelegriuo D'Acieruo—Direct Examination.

Q. Was it lighted? A. I did not look if the front part was lighted; I cannot say.

Q. I didn't ask you if it was lighted in the front part; I asked you if it was lighted? A. I cannot say.

Q. Do you mean to say that you looked at the car and cannot say if it was lighted or not? A. I did not look at the front part. 10

Q. I did not ask you about the front part; was the car lighted? A. I do not know; it may have been.

Q. You did not know then? A. No.

Q. All right.

PELEGRINO D'ACIERNO, called and sworn on behalf of the plaintiff, testified as follows; 20

Direct-examination by Mr. Simpson:

Q. Doctor, you are a practicing physician and surgeon in this county? A. Yes, sir.

Q. Where is your office? A. Down in Hoboken, Seventh Street, 262 Seventh Street.

Q. How long have you been practicing in Hoboken? A. About four years. 30

Q. Did you see this plaintiff, Ruggieri, in the North Hudson Hospital? A. Yes.

Q. What was the date that you saw him? A. December 19th.

Q. Did you examine him and his condition? A. I did not examine him in the hospital, but I got the word from the house doctor, but I attend him only a week after in the house. 40

Pelegrino D'Acierno—Direct Examination.

10 Q. And what was his condition when you first saw him? A. When I first saw him he was in very bad mental condition; he had like a brain concussion; he was completely unconscious; he could not recognize me, and his father-in-law, too, that was with me; and I went in the hospital several times, three or four times, and only after the third day he recognized me, that is all; that was in the hospital.

20 Q. What about his physical—the back of his head—his physical condition? A. Well, now, about his physical condition I could see in his house that he had a lacerated contusion wound of the parieto-occipital region (indicating). The wound was about four inches or more long. It was very deep, to the bone, and also the bone was partially fractured; it was only partially, that means only the external layer was speckled—splintered—divided.

Q. Any other symptoms you found—objective symptoms? A. He had also contusion in the left knee.

Q. Did you treat him then? A. Certainly I did treat him.

30 Q. For how long? A. I treat him about two months continuously, and then for another month going—

Q. Intermittently? A. —every other day.

Q. And did you take into consultation Dr. Campbell? A. I had a consultation with Dr. Campbell, yes, I think so.

Q. What in your opinion is his present condition as to health? A. Latterly I treated him for a kind of mental tiredness.

40 Q. Tiredness? A. Tiredness, you know. I remember that before he got hurt he was more

Pelegriano D'Acerno—Cross Examination.

alive, he was more—but now after the shock he has got some mental tiredness. No more than that, you know.

Q. And what would you call that, what name would you give that? A. A kind of psychosthenic condition.

10

Mr. Smith? What is that?

A. Psychosthenia.

Q. What effect would this condition have on his health; how would it make him feel? A. You know I could not tell all the effects it could bring, because as is not serious condition.

Q. What do you think caused it? Do you think this accident caused this condition that you are treating him for? A. I think the accident may cause that because before the accident he was much better, you know.

20

Q. When was the last time you examined him? A. The last time I examined him was about two weeks ago. I think he was in my office; and he is taking tonic treatment. I think he will be better after a while.

Q. What is your bill? A. I had two bills. The first bill I had one, fifty-nine dollars, for the treatment; and after, I have another bill to send him yet, for the after treatment.

30

Q. How much is that? A. He is yet under my treatment, and you cannot—

Cross-examination by Mr. Smith:

Q. What did you say that condition was? A. Psychosthenic.

Q. Psychosthenic condition? A. Yes.

40

Pelegrino D'Acerno—Cross Examination.

Q. Well, what do you mean by a psychosthenic condition? A. I mean some kind of a weakness of mind.

Q. Well, what is it? A. A cerebral weakness, don't you understand.

10 Q. A cerebral weakness? A. Yes.

Q. Does that affect his memory at all? A. Certainly it will affect it.

Q. Well, did you see him on the stand there this morning? A. Yes.

Q. Did you see how he answered every question I asked? A. He is prepared for that.

Q. Maybe he is prepared for that? A. Maybe he is prepared.

Q. Is that what you say? A. Maybe.

20 Q. Maybe he is prepared on that? A. Because in the questions I asked him when he came to me when he was sick, you know, he did not answer as a normal person, you know.

Q. Well, you heard him this morning? A. He is improved now.

Q. Didn't he answer as a normal person then, this morning? A. That is the reason; he has improved after the treatment, you know.

30 Q. Has he so improved that he now knows everything that happened at the time of that accident? A. Certainly, now he is improved.

Q. How much has he improved? A. Oh, he has improved almost as far as normal—almost.

Q. Almost as far as normal? A. Certainly. It is about ten months, you know.

40 Q. Well, as a matter of fact, isn't he practically a normal man to-day? A. It may be. Sometimes you cannot tell. We have some old scars in the brain that after some years they give trouble. You cannot forsee.

Pelegrino D'Acerno—Cross Examination.

Q. He has had an old scar in the brain for years? A. I do not know about an old scar. I only see a scar in the right front side.

Q. Can't you see that that old scar was the result of a fracture there? A. I do not know, because I never—

Q. Didn't you examine it? A. I examined it externally only. 10

Q. Externally only; and couldn't you tell by manipulation— A. You could not tell absolutely there.

Q. —that that was an old fracture? A. No doctor could tell without X-ray photographs.

Q. Couldn't you tell? A. I could not tell by external manipulation.

Q. Why didn't you examine him by X-ray? A. I did not know that he would want to spend money for that. 20

Q. Well, that would tell you whether it was this old thing? A. That is not my interest. If he would tell me he would pay for that I would do.

Q. Wouldn't an examination by the X-ray tell you whether it was this old thing, this old fracture, if there had been one that was causing his trouble? A. It may be that an X-ray examination would clear up that. 30

Q. Did you tell him to have one? A. No.

Q. You cannot tell whether it was the old thing that was bothering— A. I didn't—

Q. Wait a minute. You cannot tell whether it was the old thing that was the trouble or the fact that he was hit by the trolley car? A. No—

Q. Can you tell? A. I cannot tell that.

Q. You can tell? A. I cannot tell that, but I can tell that before the accident he was better. 40

Pelegriano D'Acerno—Cross Examination.

Q. Do you say that you can or you cannot? A. I cannot.

Q. Now, Doctor, assuming that some years ago he had had that fracture of the skull here (indicating) wouldn't that account for the symptoms that you found? A. Maybe in the past time.

10

Q. Do you say yes or no? A. No.

Q. It would not? A. Not in present. I say in past time.

Q. Then if he had had a fracture of the skull here some years ago, wouldn't that account for the mental symptoms that you found? A. But I say that could happen just after the first accident.

Q. And long after the first accident, couldn't it?

20

A. And sometimes also long.

Q. "Sometimes also long." When did you examine his head? A. I examined it seven days after he was in the hospital. He was hurt December 19th, and that is December 26th.

Q. And you examined him in the hospital? A. No, home.

Q. Home? A. In the hospital I saw him only externally.

30

Q. What doctors were in the hospital then? A. I think it was Dr. Sweeny, but I could not tell you perfectly.

Q. Do you know? A. I could not tell.

Q. You say that in this accident with the trolley car he had a partial fracture? A. Yes, partial fracture.

Q. And that was of the outer table of the skull? A. Yes.

Q. It was not of the inner table at all? A. No.

40

Q. So the skull as I understand it has two tables? A. Yes.

Pelegriuo D'Acieruo—Cross Examination.

Q. And there is something between the two tables? A. The spongy portion, yes.

Q. And it was the outer table you say was partially fractured? A. With the probe I found—

Q. It was very small? A. It was not very large.

10

Q. And it did not go through to the inner table at all? A. No, no.

Q. So that it had not disturbed the bone around the brain, had it? A. No, no.

Q. And the only way you are judging that he has anything the matter with his brain is from symptoms you found after he came from the hospital, isn't it? A. Yes.

Q. How long have you been practicing, Doctor?
A. I am practicing in the United States these five years.

20

Q. Well, Doctor, there is nothing the matter with him physically, is there? A. Physically?

Q. Yes. A. No, only the scar now.

Q. And that is all there is as the result of the accident, isn't it—physically? A. Physically, yes.

Q. And mentally he is almost normal at the present time? A. Almost normal, but he—

Q. And how soon do you expect him to be normal? A. Pretty soon.

30

Q. How soon? A. Pretty soon?

Q. H'm? A. Will that be enough?

Q. How soon? A. Pretty soon.

Q. Pretty soon? A. Yes.

Q. How soon? Do you mean within a month?

A. It may be within a month, that is all.

Q. And then he will be normal? A. Yes.

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George P. Campbell—Direct Examination.

GEORGE P. CAMPBELL, called and sworn on behalf of the plaintiff, testified as follows:

Direct-examination by Mr. Simpson:

10 Q. Doctor, you are a practising physician and surgeon in New York? A. Yes.

Q. And your office is where? A. 206 West 86th Street.

Q. And have you examined the plaintiff Ruggieri? A. I have.

Q. When was the first examination? A. About the middle of February, of this year.

Q. And how many times have you seen him since? A. Why, I should say twelve or fifteen times.

20 Q. And did you examine him recently in company with Dr. Arlitz, who sits over there, or was there—oh, here he is now. Dr. Arlitz? A. Yes, sir.

Q. What did you find his condition to be; taking all your examinations and the result of them, what did you find his condition to be and what is your opinion as to his present condition?

30 A. The man came to me about the middle of February, with the history of an injury to his head—

Q. I do not want to put that in. Can you tell me what his condition is, as a result of your examinations of him in company with Dr. Arlitz, and knowledge of his symptoms? If not, I will put it in the form of a hypothetical question for you. A. He is suffering from a nervous condition, and inability to carry on his business, and inability to sleep, loss of—

George P. Campbell—Direct Examination.

Mr. Smith: I object to the doctor testifying—I understand he is testifying as an expert, isn't that so?

A. Yes, sir.

The Court: All right; the objection to the fact that he is unable to sleep will be sustained unless the Doctor was there and saw that he could not. 10

Q. What I want to know is, can you tell what he is suffering with?

Mr. Smith: From the objective manifestations.

Mr. Simpson: Don't modify my questions. 20

Q. Can you tell what he is suffering with, if he is suffering with anything? A. He is suffering from the effect of trauma to the brain.

Q. Producing what? A. Producing insomnia, various fears, and—

Mr. Smith: I object, and ask that that be stricken out. It can only be the result of subjective symptoms or information that has been given to the Doctor. 30

The Court: I do not know that to be the fact. It may very well be that a man can testify as an expert that a certain trauma of the brain that he can testify to from objective symptoms will produce phobia.

Q. Go on. A. Of an inability to transact his business, of becoming easily confused; and various 40

subjective complaints of pain and vertigo, or dizziness.

Q. Did you treat him, too? You treated him, didn't you? A. I have kept him under observation; I did not—

10 Q. Have you tried to cure his disease? A. I have, yes.

Q. Now, Doctor, suppose this man prior to the 19th of December was in a retail butcher business and was in an ordinary condition of health, not subject to pains in the head, not subject to loss of memory, and that on that morning he was struck by a trolley car, taken to the hospital, and it was found that he had a lacerated wound in the back of the head, and that after that he had a loss of
20 memory, that he found difficulty in going downstairs, but no difficulty in going upstairs, that he found that when he attempted to use a cleaver and chop bones that that would produce pains in the head—would you say that the condition which you have heard testified to was due to the violence received in his being struck and so wounded as I have described? A. Yes.

Q. What does it indicate to you, the fact that he is able to go upstairs but not to go downstairs, and that he suffers with loss of memory, and that
30 the using a cleaver on bones produces a shock in his head—what does that indicate to you? A. Why, it would indicate some irritative condition of the brain.

Q. And in your opinion is that condition in this case permanent or not permanent? A. It would be very difficult for me to say definitely. The man has improved since I first saw him. His physical symptoms have improved. When I first saw him
40 he showed some symptoms that would indicate that

there was some considerable irritation; that is, if he stood with his eyes closed his station was unsteady, he would wave to and fro. His pupils were unequally dilated and the reflexes were unequal and exaggerated on one side, and this has cleared up very slowly, although this psychic, or mental, condition apparently has not improved as he still complains of his inability to carry on his business, and loss of sleep, and pain on sudden jarring of the body.

10

Q. This dilation of the pupils that you testify to, has that disappeared, or is it still present? A. It is present to a very slight extent.

Q. But not as much as it was? A. No, sir.

Q. Has his standing up and falling, with his eyes closed—has that disappeared? A. Not entirely, but to a great—

20

Q. To a great extent? A. Yes.

Q. So that the only thing that remains is what you call the psychic disturbance, which I think is the brain injury, and for that you depend entirely on what he says? A. Quite true.

Q. If he is not telling the truth then you cannot tell anything about that? A. Quite true.

Cross-examination by Mr. Smith:

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Q. In other words, Doctor, as far as your knowledge goes of any injury to the brain, from what you have just said to Mr. Simpson, you must depend entirely on what he says to you? A. And in conjunction with the physical symptoms which were present at the time I made my various examinations.

Q. Well, take at the present time to-day? A. At the present time it is dependent on what he tells me.

40

George P. Campbell—Cross Examination.

Q. Doctor, did you hear him on the stand this morning? A. No, sir.

10 Q. Well, assuming that a man on the stand remembered definitely, almost minutely, every phase of the accident of which he complained, so that he can tell how he came out of the store, where he stood, how he put his foot down to the street, when he looked, when he looked again, where he saw the car, how far the car was away from him, whether he looked for a second car, and all of the details relative to this accident—would you claim then that his memory was good or bad?

20 Mr. Simpson: I object to that. The Doctor is not claiming anything. I think that is an improper question to ask the Doctor what he claims.

Q. In your opinion would his memory be good or bad? A. Well, those partic—

Q. Sir? A. I would have to qualify my answer. For those particular events of course his memory would be good.

Q. Would be good? A. But that would not eliminate memory defects of other occurrences.

30 Q. Well, assuming he could tell how much meat he used to buy, from whom he bought it, how much he had bought for years, how much a week he had bought before the accident and after the accident, how much his business had fallen off; assuming he could tell the names and addresses of all his people, his brother-in-law, his father-in-law, as to whether or not his father-in-law bought meat for him before and after the accident; and assuming he could answer every question that could be put to him, that I could put to him on

40

George P. Campbell—Cross Examination.

the stand—would you then say that his memory was good or bad? A. I have not brought out the fact that his memory is defective now. His memory has improved, but he is a man that is easily confused, according to his story, in transacting his business. He may have a good memory, but still he may be easily mixed up and confused and show an inability to go on with his present work. 10

Q. You mean he says to you— A. He tells me those things.

Q. He says, "When I am trying to transact business I get confused?" A. Yes.

Q. He says to you, "When I cut with a cleaver it hurts my head"? A. Yes.

Q. You know, Doctor, he has a suit pending here? A. Oh, yes. 20

Q. Wouldn't that fact, knowing that he is coming to you and for you to testify in his case—wouldn't that fact have a bearing in your mind as to whether or not the things he says to you may be true or not? A. Why, of course I have to make certain deductions; every person has. And the things I depend on are the actual physical symptoms, which are in harmony with his story.

Q. Well, at the present time they have cleared up, haven't they? A. To a certain extent, yes. 30

Q. Almost all, haven't they, Doctor? A. I couldn't say almost all, for he still presents definite physical symptoms to-day.

Q. Did you hear Dr.—this gentleman—D'Arciarno—testify? A. Possibly Dr. D'Arciarno is not competent to testify in a neurological case.

Q. Do you mean that, Doctor, that he is not competent? A. In a neurological— He is a general practitioner.

Q. Well, Doctor, the fact that he sways when he stands up is a nervous symptom, isn't it; it comes from the nerves? A. It is due to certain conditions in the—of the brain.

10 Q. Now, Doctor, assuming that this man many years ago—some years ago—had received a fracture of the skull, could not all of the symptoms that you find at the present time be accounted for by the injury then received? A. Not from my understanding of his particular case—

Q. Excuse me, Doctor, I did not ask you that. I say, assuming that this man had received a fracture of the skull some years ago, couldn't the symptoms that you find now, which you allege indicate mental trouble, have been produced by that accident, by that fracture? A. No.

20 Q. Wouldn't the injury to the head at that time cause just as much a swaying as you saw? A. It would at that time, but Nature accommodates itself to those conditions, especially in injuries to the head of the young? We—

Q. Why do you say—

Mr. Simpson: I object to your cutting him off until he finishes his answer.

30 Mr. Smith. There has not been any testimony that I know of—

Mr. Simpson: You cut him off before he finishes his answer.

Mr. Smith: He says something about injuries to the young.

Mr. Simpson: You said "eleven years old."

Mr. Smith: I did not.

40 A. I must have misunderstood you.

Q. I said, assuming a man some years ago—

George P. Campbell—Re-direct Examination.

Mr. Simpson: Oh! excuse me.

Q. —had received a fracture to the skull, couldn't the symptoms that you find now indicating mental trouble have arisen from that accident?

A. Possibly so.

Q. Doctor, did you examine his head? A. Yes, I made an examination. 10

Q. When did you examine him? A. When he first presented himself at my office, November 15th.

Q. That was in February? A. In February.

Q. And the bone at that time had healed? A. Yes.

Q. The wound in the back had all healed? A. Yes. 20

Q. You saw this old injury on the front? A. Yes.

Q. And of course you could not examine underneath the scalp at that time, could you? A. No, sir.

Re-direct Examination by Mr. Simpson:

Mr. Simpson: You do not object to my asking him what experience he has had? I did not qualify him. 30

Q. You made a specialty of neurology? A. Of nervous and mental diseases.

Q. How long have you made a specialty of it? A. Since 1892.

Q. Are you connected with any institutions that make the treatment of this kind of cases a specialty? A. I am connected with the State Hospitals for the Insane, and as Chief Medical Examiner for 40

George P. Campbell—Re-cross Examination.

the State Hospital Commission I examine patients at Bellevue Hospital, Kings County Hospital, and various other State hospitals.

10 Q. And what is your opinion, in your experience, as to the curativeness of brain disorders; do a great percentage pass away, or are a great percentage of them permanent?

Mr. Smith: I object on the ground that the Doctor must confine himself to this case, the injuries to this man.

Mr. Simpson: I want to show his experience as to the likeability of this trouble passing away, because he has given an opinion on it.

20 The Court: I suppose if he did give an opinion on diseases of this character to the brain it would not be at all illuminative by him to talk about different kinds.

Q. Of this character in a great majority of cases do they pass away or are they permanent?

A. Where there is an absolute psychosis or insanity?

30 Q. No; I mean in this kind of a case that you find this man suffering with, in this kind of a disease, would it be more likely to remain or pass away? A. More likely to remain, these conditions.

Re-cross Examination by Mr. Smith:

Q. You have said, Doctor, that he had been improving right along, hadn't you? A. Yes, sir.

40 Q. And right up to the present time? A. Yes, sir; he has remained quite stationary for the last month or so, his condition.

Cato Kolmowski—Direct Examination.

Q. Quite stationary? A. His physical condition is gradually clearing up.

Q. And so is his mental, isn't it? A. To a certain extent.

Q. That extent you cannot tell? A. No.

10

CATO KOLMOWSKI, called and sworn on behalf of the plaintiff, testified through an interpreter, as follows:

Direct-examination by Mr. Simpson:

Q. Where do you live? A. (In English) Down in New York.

Q. And what is your business? A. Work in the piano factories. 20

Q. Do you talk English or do you talk Polish?

Mr. Smith: I submit that if the witness can talk English he should testify in English.

A. I talk only Polish.

Q. Certainly. Do you talk English or Polish?

A. (Through interpreter) I talk Polish, Russian or a little English. I cannot talk good. 30

Q. Let's hear how much you can talk English. You told me you could not talk at all. Did you see this man hit by the trolley car? A. Yes.

Q. Where was he when he was hit by the trolley car? A. Right on the tracks.

Q. What did you do? A. I am come down to work.

40

Cato Kolmowski—Cross Examination.

Q. When you saw him hit what did you do? A. I am running to him and pick her up.

Q. Where did the car stop after it hit him? A. About—the other past one?

10 Q. No; the car that hit him? A. Oh! It went about 50 yards, about like that, after Seventh Street.

Q. After it hit him? A. Yes.

Q. That is, it went 150 yards after it hit him? A. Yes.

(Mr. Smiths laughs.)

Mr. Simpson: Well, you wanted him examined in English. Ask him that in Polish, how far the car went after it hit him.

20 A. (Through interpreter.) A. About 150 feet—it reached 150 feet the other side of the street.

Q. After it struck him? A. Yes.

Q. Did you see it when it struck him? A. Yes.

Q. What part of the car struck him? A. With the iron.

Cross-examination by Mr. Smith:

Q. What do you work at? A. New York.

30 Q. What do you do? A. I work in piano factory—Schubert company.

Q. How long have you been in this country? A. Six years.

Q. Do you make pianos yourself, or parts of them? A. No; I work in the boring machines, lathes.

Q. And who do you work for? A. (Through interpreter). Schubert Company.

40 Q. Were you on the car this morning; were you

Cato Kolmowski—Cross Examination.

on the car that hit this man? A. I walked to work.

Q. Where do you live? A. I live before in Guttenberg.

Q. And what street were you on? A. Twenty-fourth Street.

Q. What street were you on at the time you saw you saw this accident? A. On the west side.

Q. West side of what street? A. Twenty-fourth Street.

Q. When you saw the accident? A. Yes.

Q. You were on Twenty-fourth Street when you saw the accident, were you? (No answer.)

Mr. Smith: Ask him that in Polish.

A. I lived on Twenty-fourth Street.

Q. Where did the accident happen? A. At Sixth Street. They say it is called Sixth Street, and Fisher Avenue.

Q. Which Street were you on, Fisher Avenue or Bergenline Avenue? A. I walked on Bergenline Avenue just to come down to the corner of Fisher.

Q. And which side of the street were you walking on Bergenline Avenue, west? A. West side.

Q. That is toward Newark, over that way (indicating)? A. Yes.

Q. And did you see Mr. Ruggieri? A. Yes.

Q. Where was he when you first saw him? A. He stay on the corner, on the side.

Q. Standing on the corner? A. Yes.

Q. How near were you to him? A. I come down to the street, to Sixth Street.

Q. How near to him were you? A. About 25 or 30 feet.

10

20

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40

Cato Kolmowski—Cross Examination.

Q. And did you see a trolley car going south?

A. I did.

Q. And did that pass you? A. He passed me.

Q. Did it pass him, too? A. He passed him.

Q. Then what did he do? A. He started to walk across the street.

10 Q. And did you see the other car? A. No, I did not see the other car.

Q. Did you see any car hit him?

Mr. Simpson: Ask him in Polish.

A. I saw him when he was already—when he was struck.

Q. And where was he when you saw him? A. He fell between the tracks.

20 Q. And did the car stop right alongside of him?

A. No, sir, they went far away to the next street.

Q. Well, which way did it go, south or north?

A. It came from Union Hill.

Q. And went where? A. Down toward North Bergen.

Q. Is that the one that hit him? A. Yes.

Q. After the car hit him where did he lay? A. With the feet nearing the tracks.

30 Q. Right between the two tracks? A. Between the tracks.

Q. And did you see the car that hit him before it hit him? A. No; I only saw at the time he was hit.

Q. Well, you saw him after he was hit, didn't you? A. No.

Mr. Simpson: Ask him in Polish.

The Interpreter: What did he see after he was hit,—the man?

40

Mr. Smith: Certainly.

Cato Kolmowski—Cross Examination.

A. When the car struck him I run toward him and pick him up.

Q. Did you see the car that struck him before it struck him? A. No, sir.

Q. Now, when he walked out from the gutter he walked behind a car, didn't he? A. One car already passed. 10

Q. And he walked behind that? A. Yes.

Q. And then when he stepped on the other track he was hit, wasn't he; isn't that right? A. And the other car came fast behind him; it did not ring.

Q. How far was the car that he walked behind away when he went behind it? A. About 75 feet.

Q. About 75 feet? A. Or 80; I cannot tell; around— 20

Q. And it was just as he stepped on the other track that he was hit; just that minute that he stepped on the track? A. I did not see, but I saw him struck. It run very fast.

Q. Well, he was struck just as he stepped over the other track, wasn't he? A. Yes.

Plaintiff rests.

Mr. Smith: I move for a non-suit on the ground that there has been no negligence shown on the part of the defendant, and that the plaintiff has been guilty of contributory negligence. 30

The Court: I will deny that motion. I will deny it, I will say right now, on the ground of the case of Barese against the Traction Company, 49 Vroom, and particularly upon the ground of Higgins against 40

W. J. Arlitz—Direct Examination.

the Public Service Railway Company, a case you will find in 50 Vroom, 71, and also upon the case of Consolidated Traction Company against Glynn, 30 Vroom, 432.

10 Mr. Smith: I know the case.

W. J. ARLITZ, called and sworn on behalf of the defendant, testified as follows:

Direct Examination by Mr. Smith:

- Q. You are a practising physician and surgeon of Hudson County? A. I am.
- 20 Q. How long? A. Twenty-two years.
- Q. Connected with any hospital? A. St. Mary's Hospital and the North Hudson Hospital.
- Q. Have you made any specialty of nervous and mental diseases? A. I have.
- Q. And are you connected with any institution in the capacity of neurologist? A. I am; St. Mary's, Hoboken, and the North Hudson Hospital.
- 30 Q. Do you make any examinations for the defendant company? A. I have, for a number of years.
- Q. Did you examine the plaintiff in this case? A. I did, on the 17th day of September, 1912, at the office of Dr. Campbell, West 86th Street, New York City.
- Q. Will you kindly tell the court and jury what you found on that examination? A. I found that his deep reflexes were over active; I found that he had a Babinsky on the right side, that is a reflex

that is ascertained by stroking the sole of the foot. Ordinarily and normally the toes under such circumstances should contract, and they extend in his case on the right side. I found that he had a scar seven inches long commencing on the right side of his scalp anteriorly and extending backwards, semi-circular in character, and beneath this scar I found a fracture of the skull. 10

Q. Where was that? A. On the right side.

Q. Front? A. Front, commencing at his forehead on the right side and extending backwards.

Q. Was that a recent or an old wound? A. That is an old affair. It probably has existed a number of years, just how many years I cannot say. I found a recent scar of the scalp in the lower occipital area, which is about three inches long and is not adherent, and there is no apparent injury to the bone underneath. Those were the symptoms I found in the case. 20

Q. Doctor, from your examination of the man what would you say was his condition to-day? A. I would say that he had a cerebral irritation which is due to trauma, the trauma in the anterior part of the head.

Q. What do you mean by trauma to the anterior part of the head? A. I mean that his symptoms are due to an injury to the right side of the head, an old injury. 30

Q. The injury that you can see on the front of the side of his head, is that right? A. Yes, sir.

Q. How do you arrive at that conclusion? A. I arrived at in this way: The scar on the back of the head is not adherent; there is no indication—no objective indication—that the bone was injured or that the skull was fractured, and there is a positive indication that the skull on the other 40

side was injured, was fractured,—quite an extensive fracture.

Q. That is the front part? A. That fracture is over the intellectual area and would account—

10 Q. Would the condition that you found on the front of the head indicate such an injury at some time as would account for the symptoms that he presents? A. All of the symptoms that he presents could be due to that injury on the right side of the head.

20 Q. Did you see anything, any injury on the back part of the head that could in any way account for the symptoms that he now presents? A. I could not ascribe the symptoms that he has at this time to the injury on the posterior part of the head and eliminate the injury on the right side.

Cross-examination by Mr. Simpson:

Q. Of the twenty-two years and a half that you have been practicing, how many years have you been testifying for the trolley company? A. Since 1898, I think, about fourteen years.

30 Q. And in those fourteen years you have never testified against them, have you, in a court? A. I do not recall; I may have; I do not recall it.

Q. Well, you would be apt to recall such a deviation from your known custom, if it existed, wouldn't you? A. I was not in the employ of the Public Service Corporation in that period of time. I testified in cases against the North Hudson—

Q. Oh, answer the question. A. I am telling you, the North—

Q. The North Hudson? A. The North Jersey Street Railway Company.

40 Q. When did you ever testify against the North

Jersey Street Railway Company? A. Prior to the time the—

Q. Prior to the time that they retained you?

A. They never retained me.

Q. Now, you did not see this man on the 19th of December when he had the mark on the back of his head, did you? A. No, I saw him ten months after that. 10

Q. Please answer my question. You did or did not see him on the 19th of December when he had the mark on the back of his head? A. I said I did not.

Q. You did not see him when the mark, whatever it was, of the injury was there, so to find out whether the condition he was in was from this eleven year old injury or from the mark on the back of his head, you tickled his feet, did you? A. I did not say so. 20

Q. Why, you told us that you were tickling his feet to find out what was the matter with him, didn't you? A. I did not say anything of the kind.

Q. What did you mean when you said, stroking the soles of his feet? A. I said I elicited a Babinsky reflex, which can only be elicited by tickling, or stroking, the sole of his foot. That was one of the symptoms I found, but I did not tickle his feet to determine his injury. 30

Q. You tickled his feet to get a symptom? A. To get one symptom, surely. I would not be stupid enough to tickle a man's foot to find out what was the matter with him.

Q. You tickled his feet some ten months after the injury, and it is fact, isn't it, that you did not see him at the time he was hurt? A. I did not. 40

Q. Now, this ticking of his feet, did you do anything besides tickling his feet? A. Yes, sir.

Q. Did you take an X-ray of his head? A. I did not.

10 Q. And you found that this mark on the side of his head was not adhesive, is that it, that is that the skin did not stick to his skull or did stick to his skull? A. On the back, it did not.

Q. No; I am talking about the front, this long thing? A. Yes.

Q. That this stuck to his skull? A. Not its entire length.

Q. How much of it? A. I can show you if you wish it?

Q. Why, yes.

20

Mr. Simpson: Come up here, Mr. Rugieri.

Q. I have no objection to your using your demonstrative powers. Let the jury see it. A. Now, here is where he had his fracture, along here (indicating). You can feel it.

Mr. Simpson: I object to that statement and ask that it be stricken out.

30

Q. I asked you to show the jury, without any eloquence, where this sticks. A. Here, at this point here. The entire scar is adherent to the skull. You cannot move it at all.

Q. Of course, you cannot move his skull. A. I cannot move the scalp.

Q. But what I want to find out is, how much of this you say sticks into his skull? A. Well, that (indicating).

40

Mr. Smith: Turn it around this way so the jury can see it.

Q. How long is it? That is where you put your finger? A. Yes, right at that point, from there to there.

Q. Now, from here to here don't stick, and from here to here does stick; is that it? A. Approximately. 10

Q. Now, if a child eleven years of age did receive an injury such as to produce a scar of that kind, the natural tendency would be for the skin to stick to the skull, wouldn't it? It is a period of growth then? A. Injuries involving the bony structure—I want to—I will qualify it—I will explain it—any injury of the bony structure of this type, the result is an adherence of the soft structures to the bone. 20

Q. Well, is that true whether there is or is not a fracture? A. I said where there is an injury to the bony structure. We assume then that there is a fracture of the skull.

Q. Can there be any injury to the bony structure without an injury? A. There can be a necrosis from trauma, which is the same thing practically.

Q. Can there be an injury to the skull without a fractured skull? A. Yes, sir. 30

Q. In other words, when you say an injury to the skull, do you always mean fractured skull? A. No; I mean sometimes a simple blow on the skull may produce a necrosis, a death of the bone.

Q. Now, is there any of the brain located back here (indicating)? A. Quite a good deal.

Q. Is there more of it than is located up here (indicating)? A. At that particular point, no. There is more of it located in the back. 40

Q. Aren't the important faculties of the brain in the back of the brain? A. At the back, no.

Q. Where is memory? A. Those are located in the intellectual lobes, in the front.

10 Q. Whereabouts in the front? Point out on yourself the seat of memory? A. Any part of the forehead, anything beneath the forehead, we call that the intellectual part of the brain.

Q. What part of the brain is here (indicating)? A. Passing through and running down on both sides we would say would be the motor area.

20 Q. Then it would be impossible for a man if he struck the ground in a serious fall to in any way injure the brain so that his memory would be affected? A. Why couldn't he? Surely he could. He may have a very severe concussion of the brain and he might become insane after it.

Q. You did not see this man, of course, when he was eleven years old? A. I did not.

Q. You do not know how he acted after he was eleven years old, do you? A. Not after he was eleven, I have known him for—

Q. When I say after eleven, I mean immediately after eleven. A. I have known him, I have seen him for a number of years.

30 Q. You did not see him at the time he was hurt? A. I did not.

Q. And you did not see him until the month of September? A. I did not.

40 Q. And then from an examination of him you made up your mind that if he had these cerebral disturbances, or psychic disorders, that they were due to an injury that he obtained when he was eleven years old? A. I made up my mind—at the time of this examination I had the history of the case, and I had the history of the case that was

given to me by the doctor who had him in charge, Dr. Campbell.

Q. Yes. A. And the diagnosis at that time was based on my findings and by what Dr. Campbell told me.

Q. That is, by the history of the case that he gave you? A. That Dr. Campbell gave me. 10

Q. As a matter of fact, it is impossible to make up a diagnosis, isn't it, without a history of the case? You have to have something more than the objective symptoms in a case of this kind? A. I would not need any subjective manifestations to know that his knee jerks were over active.

Q. But you did rely on the history of the case; you took it into consideration? A. I took it into consideration. 20

Mr. Simpson: Then I move to strike out his testimony on the ground that he was testifying as an expert and that he is relying upon the history of the case as well as what he found himself.

The Court: Well, gotten from whom?

Mr. Simpson: From Dr. Campbell.

The Court: Well, I think all that he has testified that rests upon what he learned from Dr. Campbell may be stricken out. 30

By Mr. Smith:

Q. Did you have any talk with the plaintiff himself? A. I did.

Q. At that same time? A. I did.

Mr. Simpson: Wait a minute.

The Court: I have stricken out all that rests on what Dr. Campbell told him. 40

W. J. Arlitz—Re-direct Examination.

Mr. Simpson: You can get him again on re-direct examination.

By Mr. Simpson:

10 Q. This man you say you have known,—Ruggeri? A. I did.

Q. Never bought porterhouse steaks from him? A. Never.

Q. How long have you known him? Did you see him in Union Hill? A. No.

Q. Where did you see him? A. He was up to a very short time ago a resident of Hoboken, and I had occasion to see him very often.

20 Q. Was he in the butcher business in Hoboken? A. 307 or 309 Clinton Street—may have been 311 or 313.

Q. Did you see him as you passed by the shop? A. Yes, conversed with him.

Q. Was he surrounded by his steaks and chops and so on? A. Yes; saw him standing outside as butchers very frequently do.

30 Q. But he was not a friend of yours, you did not know him intimately at all; you simply knew him as a butcher, as you know many another butcher in Hoboken? (No answer.)

Re-direct Examination by Mr. Smith:

Q. Talk to him? A. I have talked to him.

Q. Before the accident? A. Yes.

40 Q. Doctor, from your knowledge of him before the accident, your conversations with him and the conversations you had with him after, what has been his condition as compared with his condition before the accident? A. You mean his general appearance?

Q. Yes. A. His general appearance appears about the same now as it always has appeared. I never examined him prior to September 17th.

Q. And in his conversations with you, how did they appear before and after? A. I never had a lengthy conversation with him, except to say "How do you do?" to him, and he would say, "How do you do, Doctor?" 10

Q. Now, Doctor, at the time of your examination over in New York, in September, did you have any talk with him relative to how he received his injury that he complained of? A. Yes.

Q. Did he tell you at that time? A. He did. He told me that—both he and Dr. Campbell told me that this fractured skull on the right side of the head was due to this particular injury, and I said I knew better, because I had known him and I knew that he had that scar there. 20

Q. He told you that the injury on the front of his head came from this accident? A. Yes; and he had told Dr. Campbell so, and then he admitted afterwards in my presence that he got that, had that scar for a long time.

Q. Now, taking what he told you as to how he received his injuries, and from your examination, would you say whether or not the condition you found the man in came from the injury he received in this accident or from the injury to the forehead? A. It is my opinion that it is—that the symptoms that he presents are due to that old compound fracture of the skull. 30

Q. Now, Doctor, this tickling of the feet that Mr. Simpson speaks about, is that a recognized test— A. It is.

Q. — as you administered it to this man? A. It is. All neurologists use it. 40

W. J. Arlitz—Re-direct Examination.

Q. Why do you call it the Babinsky test? A. Because Dr. Babinsky, a very celebrated Italian neurologist and psychiatrist, was the first one to employ the test in neurological conditions.

10 Q. And that is a test to discover certain symptoms of nervous disorders? A Yes; it determines this, that there is some cerebral irritation which interferes with that part of the brain which controls the impulses running down to the toe.

Q. Now, Doctor, what I want to know, to satisfy Mr. Sympson, whether you were tickling the man's feet for pleasure or whether you were tickling his feet as a scientific test?

20 Mr. Simpson: I object to that, because it assumes as a fact something that is unwarranted. It is not for my information that he wants to know whether the doctor was tickling his feet for pleasure or science. Nothing in my examination indicated that, so that I do not think Mr. Smith has a right to incorporate in his question that I have the slightest professional or personal concern as to why the doctor tickled the man's feet.

30 The Court: I think the mistake was pardonable on his part. You seemed to be interested in the tickling of his feet. But at any rate, I will strike that question out, Mr. Smith.

Mr. Smith: I just wanted to satisfy Mr. Simpson.

Alfred John Peter Meisner—Direct Examination.

ALFRED JOHN PETER MEISNER, called and sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Smith:

Q. What is your business? A. Motorman. 10

Q. Were you the motorman of this car? A. Yes.

Q. How long have you been a motorman? A. Two years.

Q. Do you remember this accident? A. Yes.

Q. Will you just tell the jury what you know of the accident, what you saw and what happened?

A. Well, gentlemen of the jury, I was coming along Bergenline Avenue, going north, the 19th day of September, 1911, and going a pretty good speed between Sixth and Seventh Street, I seen a car standing in the middle of Seventh Street picking up a passenger. When I seen the car standing there I shut off my power and slowed down the speed to about six or seven miles an hour, and before I got to Seventh Street this car started off, and from behind that car a man walked out. I saw this man about ten or fifteen feet before I stopped—he walked right into the side of the car. He had both hands in his pockets, head down. Of course I sounded the gong, as I always do, in passing a car, going slow. I thought the man was going to stop. He walked right into the side of the car, and as soon as the man struck I stopped the car. 20

Q. And when he was struck, how did he fall, to the west or to the east? A. To the eastward.

Q. Did he fall toward the— A. Yes, he hit this side of the head, the right side of the head. 40

Alfred John Peter Meisner—Cross Examination.

Q. And where did he lie? A. Right between the tracks, between the south and north tracks.

Q. Right between the south and north track?

A. Yes.

10 Q. Where did he lie relative to your car, where was your car? A. Right—he was lying right alongside the front platform of the car.

Q. Right alongside the front platform? A. Yes.

Q. Now, you say that when he came out from behind this car he had his hands behind him? A. No, he had his hands in his pockets.

Q. And what was he doing, looking or not? A. No—yes—looking down.

20 Q. Before you reached this car which you say had been standing there, did you or did you not sound your bell? A. I sounded my bell.

Q. When your car stopped, what did you do? A. Jumped off the car and picked up the man. A couple of fellows helped me and we carried him in a saloon on the corner of Seventh Street, and by the time we got him in there the Inspector came up from the office and took charge of the man, and, of course, I went on my way.

Q. You went away. Cross-examine.

30 Cross-examination by Mr. Simpson:

Q. You say you were going at a pretty good speed between Sixth and Seventh Street; is that right? A. I said between ten and fifteen miles an hour.

Q. You used the words yourself.

Mr. Simpson: Just read what he said.
(Former answer repeated.)

Alfred John Peter Meisner—Cross Examination.

Q. You used those words yourself: "I was going at a pretty good speed, between Sixth and Seventh Street." A. Oh, yes.

Q. Now, it was dark, of course, wasn't it? A. No, sir.

Q. Not dark in December between six and seven in the morning? A. It was a nice, clear morning. 10

Q. What time was it? A. Around quarter to seven or ten minutes to seven.

Q. Where did you leave; what place did you leave? A. I left the West New York car house.

Q. What time did you leave? A. Around—

Q. Not around. A. 6.40.

Q. You know what the leaving time was. A. 6:40. 20

Q. How far was this place away from the barns that you left? A. From 18th Street carbarns, West New York, we go down to Fourth Street, through Fourth Street to Bergenline, and through Bergenline Avenue to North Bergen,—north.

Q. How far was this place from your carbarns,—where this accident happened? A. I imagine about four—seven minutes.

Q. Was the headlight of your car lit? A. No.

Q. You had no headlight lit? A. I never have a headlight lit in daylight. 30

Q. Well, did you have it lit? You say it was daylight. Other people say it was dark. Did you have it lit? A. No, sir.

Q. Now, you saw another car coming towards you? A. Yes.

Q. Now, was that other car standing still when you first saw it? A. Yes.

Q. Where was it standing still? A. At Seventh Street. 40

Alfred John Peter Meisner—Cross Examination.

Q. How far were you away from it when you saw it standing still? A. One hundred feet away when I saw it standing.

Q. How near were you to it when it began to move? A. About twenty-five feet.

10 Q. When it began to move? A. Yes, sir.

Q. You had reason to believe then that there might be some passengers on that car that would come around behind the car, right in front of your car, didn't you? A. That is the reason I slacked up my car and sounded my bell.

Q. I do not care about that. You had reason to believe that? A. Yes, sir.

Q. Then you had such control of your car that you could stop it instantly, didn't you? A. Yes.

20 Q. Now, when you saw this man walk with his hands in his pockets and his head down, why didn't you stop your car? A. Didn't I stop it? The man walked into the side of the car.

Q. You did not stop your car before it got to him, because according to you he walked into it. A. Yes, he walked into it.

Q. And it looked to you as though you were going to hit him with your car if he did not look up or get out of the way? A. I did not know the man was sleeping.

30 Q. That is just it; you saw him walking along with his hands in his pockets and his head down, paying no attention to anything. You say you had such control of your car you could stop it instantly? A. Instantly, yes.

Q. Now, why didn't you stop your car before you hit him? A. I stopped as quick as I could.

40 Q. But not quick enough so that the accident did not happen. The accident did happen, didn't it? A. It did.

William Bubelbeiss—Direct Examination.

Q. They did take the man to the hospital, didn't they? A. Oh, yes.

Q. So it is not true, as you say, as this Polish witness testifies, that you went one hundred to one hundred and fifty feet before you stopped the car? We want to get the facts, that is all. A. That man was laying right where he was hit, right alongside the front platform of the car. 10

Q. Then your car did not go one hundred to one hundred and fifty feet after you hit him, did it? That is what I want to know. A. Never, never, never.

Q. Where was this man lying when he was picked up, with reference to the crosswalk; was he near Seventh Street—or Fisher Avenue—or where was he? A. He was at Seventh Street, right at the crosswalk. 20

Q. At the crosswalk? A. Yes, sir.

WILLIAM BUBELBEISS, called and sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Smith:

Q. Where do you live? A. 207 Fourth Street, Union Hill. 30

Q. What is your business? A. Inspector.

Q. For the trolley company? A. Yes, sir.

Q. Do you remember this accident? A. Yes, sir.

Q. Where were you at the time? A. I was standing at Fifth Street and Bergenline Avenue.

Q. Did you see this accident? A. Well, I did not see the man hit; I did not see the accident. 40

William Bubelbeiss—Direct Examination.

10 Q. Tell us what you saw. A. I was standing at Fifth Street and Bergenline Avenue. We were standing there talking together, and this car came around the corner, this Bergenline Avenue car, and the motorman, Meisner, going up Bergenline Avenue on his first trip, I should say he was going about six or seven miles. We were standing there talking. He had passed us, and me and Officer Klem was talking together, and we looked up Bergenline Avenue, and I see Meisner coming up and there was another car coming down. I see a man walking across the street—

20 Q. From which side. A. —from the west side of Bergenline Avenue. He walked off the sidewalk across the street. He had his hands in his pocket and his head down, and it seemed—I thought he wanted to board this southbound car coming down, but he let the car pass. The car had—this southbound car had passed. It seemed the both cars just met there together. The southbound car passed and that took the view away from me seeing the man cross the street.

30 Q. I see. A. Well, the first thing you know I seen some people running off the sidewalk on the east and the west side of Bergenline Avenue towards this car, and the car had stopped, so I says to—

Q. Never mind what you said; what did you do? A. I went across the street, looked up, went up on the northbound track, and I saw this man laying there in the street.

Q. Where was the car then? A. Standing right at the crossing on Seventh Street and Bergenline Avenue.

40 Q. How did he lie relative to the car? A. The man was lying on this side of the car (indicating),

William Babelbeiss—Cross Examination.

between the tracks, on the west side, between the north and the south bound track.

Q. Where was the car? A. The car was standing about at the crossing of Seventh and Bergenline Avenue.

Q. Was the car past him or did he lie alongside of the car? A. He lay alongside of the car, what I should judge right at the front platform. 10

Q. Then what did you do? A. Well, I tried to get some witnesses, and I seen who the motor-man was, took his badge number and took his car number, and with that we carried the man in the saloon, and with that I called up for an ambulance.

Q. Then what did the car do? A. The car went up the line on his regular trip. 20

Q. What was the condition there as to light or darkness? A. Why, it was light. It was a clear morning. It was light. It was about 7:45—I ain't sure was it seven or six forty-five or six fifty, but it was light. We do not have lights burning at that time in the morning.

Q. And on this day was it clear or misty? A. No, it was clear; it was just clear, a fine day.

Cross-examination by Mr. Simpson: 30

Q. You were two blocks away from this accident when it happened? A. Yes, sir.

Q. So that you do not know anything about the actual happening of the accident, unless you can see two blocks? A. Well, you could see two blocks, because they are very short blocks; there is two blocks of the west side of Bergenline Avenue and only one block on the west side; the street does not come through. 40

William Bubelbeiss—Cross Examination.

Q. How far is it from the point you were at? As I understand it, it would be Fifth Street—and Seventh Street where this accident happened. A. How far?

10 Q. Not in the room; just give it to me in feet. How far do you say it was from the corner where you were standing? A. I judge about 200 or 250 feet.

Q. 250 feet? A. About; they are only very short blocks.

Q. Where is it, West New York? A. Yes.

Q. You were looking in which direction, north or south? A. North, up Bergenline Avenue. We were talking.

20 Q. You saw a man get off the corner with his hands in his pockets, and then the car coming south cut off your view of what was happening, didn't it? A. Yes; I thought he wanted to board that car.

Q. I don't care what you thought. A. M-m-m m-m-m.

Q. And I don't think anybody else does. You saw him cross the street and then the car cut off your view? A. I saw him go across the street.

30 Q. And then you could not see anything more because the southbound car came between you and him? A. Yes, sir.

Q. The next thing you saw was a lot of people running? A. Yes.

Q. Now, where was this southbound car when you saw the people running? A. The southbound car?

40 Q. Where was the southbound car when you saw the people running? A. It was about sixty or seventy-five feet down Bergenline Avenue from where this other car stood.

William Bubelbeiss—Cross Examination.

Q. It had not got to you at all? A. Oh, yes; it was coming towards me.

Q. It had not got up to you; how far away were you? A. About fifty feet.

Q. If it is about 200 feet from you to Seventh Street and the other car was at Seventh Street and this car was only fifty feet away from you, how was it only sixty or seventy-five feet away from the other car? A. You asked me how far it was away from me. 10

Q. Yes; and a minute before that you said it was about fifty feet from the other car. A. I am just judging that. I am not very good on measuring.

Q. Did you walk or did you ride from the point where you saw the people running until you got up to this car? A. I run. 20

Q. And what was the first thing that attracted your attention, this body lying on the street? A. The car standing there and the body lying on the street.

Q. The car was the first thing you thought about? A. Yes, seeing the car standing there and the people.

Q. Then the car was the first thing you thought about; it was not the body? A. No, it was not the car; it was the people around the car. 30

Q. As you went up to this body and found the man lying, you say, between the two tracks? A. Yes, between the north and south.

Q. Are you quite sure that the car had not backed up— A. No, sir.

Q. —from the time you saw it until you got there? A. No, sir; I could have saw it if it had backed up.

William Bubelbeiss—Cross Examination.

Q. You watched it all the time, coming from Fifth Street? A. Yes, sir.

Q. Why did you watch it; did you want to see whether it would back down or not? A. No; I did not have any idea it would back down.

10 Q. Why, were you not more concerned about the man than you were about the car? A. I did not know it was a man till I got there. I did not know what happened until I got there.

Q. You knew something had happened? A. I knew something had happened.

Q. But you were more interested in watching this car to see whether it backed down or not than you were to see what happened? A. No.

20 Q. Is it a fact or not that you did watch the car all the time you were walking from Fifth Street down to Seventh Street? A. Watched the car and watched the people.

Q. Did you watch the car all the time? A. No.

Q. Keep it in your eye? A. No, no.

Q. You did not? A. No.

Q. Did you help carry this man into the saloon? A. I guess I did.

30 Q. Was he conscious or unconscious? A. Well, I don't know. The only thing I could tell you, if it was up to me to tell you, I think he was under the influence of liquor. I put a pillow under his head at the time.

Q. Of course! Was he unconscious at the time? A. I do not know. He moaned, that is all I know.

Q. You cannot tell whether he was unconscious or not? A. No.

40 Q. You helped carry the man into the saloon and cannot tell whether he was conscious or not? A. I cannot. I just helped put a pillow under his head.

Louis Poole—Direct Examination.

Q. And from that you think he was under the influence of liquor? A. Sure. I got a whiff of him and the saloonkeeper told me he had just left the saloon.

Q. And did you take him into a saloon? A. The saloon he just came out of.

Q. Did you take him into a saloon? A. Yes. 10

Q. And because you got a whiff of liquor in a saloon you thought this man was under the influence of liquor? A. We took him in there.

Q. What did you expect to smell in a saloon, American Beauty roses? (No answer.)

Q. Are you still working for the company? A. Yes, sir.

Q. Have you given your statement before you came here? A. No, sir.

Q. Haven't spoken to a soul? A. No, sir. 20

Q. Nobody knew what you were going to swear to? A. It had not concerned anybody.

Q. You never said a word to anyone? A. No, sir.

(Recess.)

LOUIS POOLE, called and sworn on behalf of the defendant, testified as follows: 30

Direct-examination by Mr. Smith:

Q. You are a practising physician and surgeon in Hudson County? A. Yes.

Q. Been practising for how long? A. About twenty-one years.

Q. And where do you practise; where is your office? A. My office is in West Hoboken. 40

Q. Did you examine the plaintiff in this case?

Q. Where? A. The first time at the North Hudson Hospital.

A. Yes, twice.

10 Q. Will you just state what examination you made and what you found? A. I saw him two days after the accident and he was in bed in the hospital ward. He was fully conscious and able to answer any questions; and I found upon examination of the head that he had a laceration of the scalp in the back of the head (indicating), over the occipital bone. This laceration measured about between two and two and one-half inches long. There were three stitches in it, put in rather loose, because there was a drain in it. In examining
20 this wound, it having been dressed while I was there, I had an opportunity to observe the extent of it, and found that it went through the scalp, through the soft parts, only, and that the wound did not injure the periosteum, or the covering of the skull. There was no evidence at all of anything else except the laceration of the scalp itself.

Q. From your examination of that wound at that time, Doctor, can you tell whether or not there was any fracture of either table of the skull?

30 A. There was no fracture of the skull. It could not—we always make a test for fracture in all scalp wounds, and the result of the examination did not respond as we find it in fracture, and the man had no constitutional symptoms indicating fracture.

Q. When did you next see him? A. I saw him again in January at his house in conjunction with Dr. D'Acerno, and at that time the wound had healed to about seventy per cent. of the original
40 size, the wound then being only a trifle over an

Louis Poole—Cross Examination.

inch long and very superficial; it was being dressed at that time when I saw it with gauze compress.

Q. Did you find any evidences of a wound or injury to the front of the head, Doctor? A. At the hospital when I examined him I noticed this long scar on the right side of the head, and in palpating that I asked him about it and he answered it was an old injury. From the feeling under my fingers I could estimate an irregularity in the skull underneath which presumably came from an old injury with a fracture of possibly one or two tables, but it was a very old injury and had nothing to do with the accident. 10

Cross-examination by Mr. Simpson:

Q. What was the date you first saw this wound on the back of his head? A. On the 21st. 20

Q. And was it a clean wound or did it have branches? A. It was what we call a—it was not a clean incised wound; it was a wound that was produced by the tearing of the tissues, not as though it was made with a knife but as though it was made with some rough—

Q. By a smash rather than by a cut? A. It was more like a rip.

Q. But it was a blunt wound, not a sharp wound? A. It was a blunt wound. 30

Q. And how wide was it? A. Well, the wound, at that time, they had three loose stitches in there with a drain, and the width of the wound at the lower part was about—Oh, you could separate the tissues three-eighths of an inch.

Q. And how at the higher part of the wound? A. The same way all along between stitches.

Q. And how at the centre of the wound? The same way. 40

Ephriam Hellstern—Direct Examination.

Q. And it had these loose stitches in for the purpose of draining, you say? A. There was a drain underneath. That drain was removed and a new one applied.

10 Q. To let out the bad blood? A. It is for drainage.

Q. What was it it drained? A. It is a precaution that is always taken in dressing a wound, to prevent infection, to keep any possible infection that might occur—keep it draining out.

Q. What was the time of day that you saw this wound, you say? A. It was, I think it was about noontime, between eleven and one.

Q. Then you were not in the hospital when the man was brought in? A. No.

20 Q. You did not see him before the wound was cleaned up and stitched up? A. No; it was two days after the accident when I saw him first.

Q. But you say there was no fracture of the skull in back here (indicating)? A. No; there was not.

Q. There wasn't any fracture? A. No fracture—no symptoms of fracture.

30 EPHRIAM HELLSTERN, called and sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a practising physician and surgeon of Hudson County? A. Yes, sir.

Q. And for how long? A. Eight years.

40 Q. Were you connected with the North Hudson Hospital in December, 1911? A. Yes, sir.

Ephriam Hellstern—Direct Examination.

Q. Did you see the plaintiff, Mr. Ruggieri, at the hospital? A. Yes, sir.

Q. Did you have occasion to examine him there? A. Yes, sir.

Q. Will you tell us what you found the matter with him upon that examination? A. I called there on my monthly service, and the telephone call came in, and told me it was an accident. I got down there around ten o'clock and I found the man lying in bed with bandages around his head, and I had Dr. Sweeney, the house doctor, remove the bandage so that I could examine the man, and I found a laceration about two and one-half inches long with a drain in. 10

Q. Where? A. Right in the back, on the occipital portion; and I removed the drain and probed and I could find nothing but just a plain laceration. 20

Q. Did you find upon probing there at the hospital any evidence of there having been a fracture of the bone at the back of the head? A. No, sir.

Q. Did you find any other injury on him? A. I found that scar on the right side.

Q. Was that a recent or an old injury at that time? A. It was an old scar.

Q. And did you examine that scar any way? A. Just casual examination. I found that it was an adherent scar. 30

Q. What do you mean by an adherent scar? A. The scalp was adherent to the skull.

Q. Did that indicate anything to your mind as to whether there had been a fracture there or not? A. I should judge it would, yes.

Q. Did you find any other recent injury save this one to the back of the head? A. None. He did not complain of any either. 40

Ephriam Hellstern—Cross Examination.

Q. How often did you see him at the hospital?

A. I saw him every day until he was discharged.

Cross-examination by Mr. Simpson :

10 Q. How many days was that before he left the hospital? A. I think a week.

Q. Were you there when he was taken away?

A. No; I do not believe I was.

Q. You do not know whether he was taken away in a coach or ambulance or how he was taken away? A. No.

Q. And this wound had already been dressed by Dr. Sweeney when you saw it? A. Yes.

20 Q. You were not at the hospital when the man first came in so that you could see his condition before anybody washed him or dressed his wound, were you? A. No, sir.

Q. And you say that you found this wound about how long? A. About two and one-half inches.

Q. And how wide? A. Well, with the sutures in it was closed; undoubtedly closed, on account of the bandages.

30 Q. Well, they were loose stitches, Doctor Poole says? A. Loose stitches, yes.

Q. Couldn't you tell with the loose stitches how wide the wound was? A. After taking out the packing and probing, it opened up about three-eighths of an inch.

Q. And the skull itself was not fractured? A. No, sir.

Q. But the wound was through the skull, wasn't it? A. No, sir.

40 Q. Where was the bottom of the wound, what was that on? A. Right through the tissue; it had

John Klem—Direct Examination.

not gone down to the connective tissue, to the periosteum.

Q. It had gotten in through some part of the tissue? A. Yes, through the skin portion.

Q. But not to the skull? A. No, sir.

Q. You did not open up the skull so that you could see the substance of the skull? A. No, sir. 10

Q. Now what part of the brain is there resting against the skull where this wound was? A. What part of the brain? The base of the brain.

Q. I know it is the base of the brain, but what do you call it? What functions are in there? A. Why, the function of equilibrium.

Q. What other function? A. That is about the main function there.

Q. Are you a brain specialist? A. No, sir. 20

Q. General practitioner? A. General practitioner.

Q. And you have not devoted any special study to the brain? A. No, no more than a general practitioner.

JOHN KLEM, called and sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Smith: (30

Q. What is your business? A. Police officer, Town of Union.

Q. Police officer? A. Yes, sir.

Q. Do you remember this accident? A. Yes, sir.

Q. Did you see any part of it? A. Well, no, just simply put the man in the ambulance.

Q. Where were you? A. I was standing on the 40

John Klem—Cross Examination.

southwest corner of Fifth Street and Bergenline Avenue.

Q. Were you the man with Mr. Dubelbeiss? A. Yes.

10 Q. What first called your attention to anything unusual up the street? A. Why, I was standing with my back towards the telegraph pole, and I seen a man standing apparently as if he was going to board a car. The car stopped on the north corner of Bergenline Avenue. That car passed and I seen him cross the street, and I knew no more of it until the car got about opposite me, the south-bound car, and a man hollered there, "There is a fellow hurt"; and I ran down, and by that time the motorman and inspector had taken him into the saloon.

20 Q. The inspector had gone on? A. Yes, sir; the inspector ran up.

Q. What was the condition as to lightness or darkness, was it light or dark? A. Why, it was light; it was about 6:45.

Q. And could you see from where you were up to Seventh Street? A. Yes, sir.

Cross-examination by Mr. Simpson:

30 Q. What time of day was this? A. About 6:45 A. M.

Q. And it was bright daylight, wasn't it? A. It was not bright daylight; it was pretty light.

Q. Don't you know the sun did not rise until nearly half past seven on the 19th of December, 1911? A. Well, this was a bright, a nice day.

Q. A beautiful day, without the sun? A. Yes, sir; a nice, bright day.

Q. That is all. A. All right.

James H. Scarr—Direct Examination.

JAMES H. SCARR, called and sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Smith:

Q. Mr. Scarr, what is your business? A. I am in charge of the local office of the United States Weather Bureau in New York City. 10

Q. And how long have you been there? A. Three years.

Q. Does your office keep a record of the weather conditions and also as to light and darkness? A. Yes, sir.

Q. And have you charge of those records? A. I have.

Q. Are those records kept according to law, or by law? A. They are. 20

Mr. Simpson: I object to that. That is a conclusion of the witness.

The Court: There is a law covering that, and I will conclude if necessary that there is such a law providing for it, because the United States statute provides distinctly for it, and I will notice that law as a matter of general observation by the Court. 30

Mr. Simpson: I object to the question on the ground it calls for a conclusion.

The Court: You may strike it out, and we will judicially notice that it is done according to law. Whether these reports are kept or not you may prove.

Q. Have you the official record there of the weather reports for December 19, 1911? A. I have.

Q. Can you turn to them, please? A. I have it. 40

James H. Scarr—Direct Examination.

Q. Can you tell from those records what was the condition of the weather on that day about, well, between six and seven o'clock in the morning?
A. Yes.

10 Mr. Simpson: I object to that unless you fix a place for the weather. What do you mean, in New York?

Mr. Smith: I do not mean in New Orleans. Say up here at Union Hill, New Jersey.

A. Yes, sir.

20 Q. Can you tell me from your records what was the condition of the weather, as to whether it was clear or misty at that time? A. It was clear.

Q. And can you tell me whether it was light or dark between 6:30 and 7 o'clock on that morning? A. Yes.

Q. What was it? A. It was light.

Q. And was the light in such condition as to permit a person with ordinary eyesight to see three or four blocks? A. Yes, sir.

30 Q. And at that time, say at six o'clock in the morning, did that condition of light exist so as to enable a person with ordinary eyesight to see some blocks away? A. Yes.

Q. Does your record there show what time the sun rose on that day? A. Yes.

Q. Will you kindly tell us what time? A. 7:17.

Q. Now, Mr. Scarr, before 7:17 can you tell me for how long a period the light was in such condition as to enable a man with ordinary eyesight to see three or four or half a dozen blocks?

40 A. At that time of year, under clear skies, twi-

James H. Scarr—Cross Examination.

light begins a little more than two hours before sunlight, and within an hour or an hour and a quarter before sunrise, under clear skies, a person could see, oh, from a quarter to half a mile, I should think, and distinguish most any object.

Q. What was the temperature on that day? A. Just about freezing, thirty to thirty-three degrees during that morning. 10

Q. And how was the wind? A. The wind was strong from the north, ranging from twenty to thirty miles an hour.

Q. Can you tell from your record on that day whether there was any mist or fog within, say at Union Hill or West New York? A. Why, I was not personally there. There was no fog or mist within the horizon as observed from lower New York, which would include the point in question. 20

Cross-examination by Mr. Simpson :

Q. Do you keep the records yourself? This one you have been reading from? A. The record was not made by my hand, no.

Q. Did you make the observations that are jotted down in this record? A. No.

Q. And you are testifying then solely from this record kept by someone else? A. I am testifying from this record made by someone else. 30

Q. Who is the man that made it? A. The figures were written down in the record here by Mr. O'Connor.

Q. Where is Mr. O'Connor? A. He is in my office, I think, at 17 Battery Place, New York City.

Q. And what is your official position, you say? A. I am District Forecaster in charge of that office. 40

Q. For the Government? A. Yes.

Q. And you say that for an hour and a quarter before the sun rose in West New York it was light enough to see an object for a mile on this winter morning? A. No, I do not think I said that.

10 Q. Well, didn't you say that twilight commenced about two hours before sunrise? A. Yes.

Q. And didn't you say that within an hour after that time it was light enough to see an object a mile away? A. I do not recall that I said that.

20 Q. Well, what would you say, with your knowledge of weather conditions, as to how long before the sun would rise it would be light enough on December 19th, under these conditions of wind and weather, to see an object a mile away, a half a mile or a quarter of a mile? A. I think I have already stated, and I state now, that for an hour to an hour and a quarter before sunrise the light would be sufficient to see and distinguish objects within a quarter to half a mile, at least.

Q. Then I understood you correctly that for an hour and a quarter before sunrise there is light enough to distinguish objects on the morning of December 19th, that is on a winter morning.

30 The Court: That is not what you asked him. You asked him whether he could distinguish those objects a mile away. He said he did not say that and does not say that.

Q. Half a mile, do you say?

The Court: He said from a quarter to half a mile.

Q. And how far can a man of ordinary eyesight distinguish an object as large as a trolley car?

A. Well, under clear conditions I should think an ordinary man with ordinary eyesight could distinguish a trolley car two, three, perhaps four miles.

Q. And are you an expert on optics? Have you made a special study of optics? A. No. 10

Q. You are testifying then from ordinary observation as to the ability of a man to see? A. Yes.

Q. You are not an expert on vision? A. No.

Q. You are an expert on the weather. Now, these observations that you have used were made by someone in lower New York, weren't they? A. Yes.

Q. Well, in West New York and Union Hill they are considerably higher up than you are in lower New York, aren't they, in altitude? A. Possibly. 20
If you are on the Palisade ridge, yes, you are. When I say higher up, not higher than this point of observation.

Q. We are higher up than lower New York, aren't we? A. You are higher up than the ground in lower New York, yes.

Q. And would it be possible for a mist to be in lower New York that was not in Union Hill? A. On this occasion, no. 30

Q. Not on this occasion; on any occasion? A. Yes, certainly.

Q. Over what is the smallest area that a mist extends? A. Well, that depends on what you mean by a mist. I suppose you refer to a sort of foggy condition, do you?

Q. Yes; by a mist I mean a mist. If that does not indicate anything to you, why, tell me that a mist does not indicate anything to you. The word 40

James H. Scarr—Re-cross Examination.

mist does not indicate anything to you? A. I am trying to find out in what sense you use it. If you use it in a nautical sense, it has an entirely different meaning from—

10 Q. No; I use it in a colloquial sense. A. If you refer to a mist as falling—precipitation—it might occur over a very small area. If you refer to it as a fog, it might also occur over a very, very small area.

Q. How far is your point where this chart was made from Seventh Street and Bergenline Avenue, West New York? A. I do not know exactly.

Q. Were you up and about at half-past six on this morning of December 19, 1911? A. I have no recollection of whether I was or not.

20

Re-direct Examination by Mr. Smith:

Q. Mr. Scarr, do those records include the region including West New York and New York City? A. The facts as testified to by me include that region. This observation was made at 17 Battery Place, but the point in question is well within the horizon line visible from that point, and hence the statement of the clear weather applies to the point in question.

30

Q. That locality. That is all, Doctor.

Re-cross Examination by Mr. Simpson:

Q. Is this the original chart that you brought, or only a copy of it? A. It is a duplicate.

Q. Well, you mean—is it an original document or is it a copy of an original document? When you say “duplicate,” is it a two-original or a duplicate? A. It is a twin-original. You have fur-

40

Thomas E. Morris—Direct Examination.

nished me with a term I never used before, but that fits the case.

By Mr. Smith:

Q. It is an original document just the same?

A. Yes.

10

Defendant rests.

Rebuttal.

THOMAS E. MORRIS, called and sworn on behalf of the plaintiff, testified in rebuttal as follows:

20

Direct-examination by Mr. Simpson:

Q. Where do you live? A. West Hoboken.

Q. Are you familiar with West New York? A. I am.

Q. Have you lived in the north part of the County practically all your life? A. Thirty-six years.

Q. Do you know Bergenline Avenue from Fifth Street to Seventh Street? A. I do.

30

Q. What is the distance from Fifth Street to Seventh Street? A. The lots on Fifth to Sixth face Fifth and face Sixth, and on Fifth they face, and on Seventh; it runs about 200 feet to a block; about 450 feet, taking Sixth Street, included.

Q. Taking in Sixth Street, the distance is about 450 feet? A. About 450 feet.

40

Cross-examination by Mr. Smith:

Q. When did you make that measurement? A. I did not make that measurement, but pass there quite often.

10 Q. You mean to say, passing that place, you know it is 450 feet from Fifth Street to Seventh Street? A. Counting the lots—a friend of mine bought a lot in Fifth Street and it runs to Sixth; it is one hundred feet deep.

Q. A friend of yours bought a lot? A. It is in Fifth.

Q. Did you examine that lot? A. Yes; we had a surveyor.

Q. Did you measure it? A. He had a surveyor.

20 Q. Did you survey it? A. No, sir.

Q. Are all the lots one hundred feet deep there? A. Yes, sir.

Q. All of them? A. Facing Sixth and Fifth.

Q. How about Bergenline Avenue? A. The hundred feet butts in from Fifth Street. It butts in one hundred feet.

Q. Don't the houses face on Bergenline Avenue? A. Yes, sir.

30 Q. How did you figure it out, then? A. On the width of the lots.

Q. Did you measure it on Bergenline or on Fifth and Sixth? A. I don't have to, when it runs two hundred feet to a block.

Q. Have you measured that? A. I took from his observation.

Q. From whose observation? A. From his deeds.

Q. From whose deeds? A. From the deed of the property.

40

Q. Does that deed of the property show all the lots there? A. At the time they were sold they were sold that way, 100 feet deep facing on each street.

Q. How do you know; did you sell any? A. No, but a friend of mine bought one.

Q. What is your business? A. Me? Livery. 10

Q. Livery stableman? A. Yes, sir.

Q. And were you here as a witness to-day? A. No; I was called on later on. I did not come here as a witness. I came here to do business.

Q. When? A. This afternoon.

Q. And had you gone up to West New York to measure these lots? A. No, sir; I didn't.

Q. What called your attention to the fact— A. Mr. Simpson asked me if I was acquainted with that property, and I told him I was. 20

Q. If you were what? A. If I was acquainted with that location.

Q. And you had not measured the distance at all? A. No, sir.

Q. Isn't it a fact that you went out here and looked at a map? A. No, sir; not at all.

Q. Not this afternoon? A. No, sir.

Q. And you just came here this afternoon— A. No, sir; I was here all the morning. I came here to see Mr. Simpson unaware of anything of that kind. 30

Q. So, being here— A. I was asked that question.

Q. —you were asked that question, how long it was from Fifth to Sixth Street? A. No; he asked me if I was acquainted with that locality and I told him I was.

Q. What is the width of Fifth Street? A. Fifth Street I judged, I figured, about 450 feet 40

including Fifth Street—including Sixth Street.

Q. What is the width of Fifth Street? A. Why, Fifth Street I think runs pretty near the same.

Q. Pretty near the same as what? What is the width? A. As the ordinary street up there; about fifty feet.

10 Q. What is the width of Fifth Street? A. I do not know the exact width.

Q. What is the width of Sixth Street? A. I say about fifty feet.

Q. Well, do you know? A. No; I say it runs about 450 feet including Sixth Street, from Fifth to Seventh.

Q. Just how much is Sixth? A. I said, about fifty feet.

20 Q. And you are giving Sixth Street about fifty feet width? A. Yes, sir.

Q. Do you know whether it is fifty or thirty-five? A. I estimate about fifty feet.

Q. Don't you know at all? A. Not positive, no, but I know about the block.

Q. You know about the block because one of your friends bought a lot there? A. I know the lots butt in about 100 feet each way.

Q. That is all.

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EUGENE RUGGIERI, recalled, testified in rebuttal as follows:

Direct-examination by Mr. Simpson:

Q. Dr. Arlitz, you saw him over at your doc-sir.

Q. And he examined you? A. Yes, sir.

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Eugene Ruggieri—Recalled, direct.

Q. At that time, or at any other time, did you tell him that this scar on the front of your face you had received in this trolley accident of the 19th of December? A. No; I told him this is from Italy when I was eleven years old.

Q. When you were crossing the street at this accident, at the time of the accident, did you walk with your hands in your pocket and your head down without looking? A. No, no, sir. 10

Cross-examination by Mr. Smith:

Q. How did you walk? A. Walked the same as I am now, with the head up.

Q. With your head up? A. Yes, sir.

Q. Looking which way? A. The way I am now looking, out this way.

Q. As you are now? A. Yes.

Q. Are you sure of that? A. Yes. 20

Q. All the time? A. Yes.

Q. All the time from the time you stood on the gutter till you got hit with the car you walked with your head that way? A. Yes.

Q. Sure of that? A. I walked out, yes.

Q. Sure of that? A. Yes.

Q. Looked straight ahead? A. Yes.

(Testimony closed.) 30

Charge.

Gentlemen of the Jury:

This suit is brought by Eugene Ruggieri against the Public Service Railway Company and is to recover damages for an injury which the plaintiff

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claims was inflicted upon him by the negligence of the defendant company on the 19th of December, 1911, at or near the intersection of 7th Street with Bergenline Avenue, in the town of West New York, in this County.

10 First of all, the action is one which is known in the law as an action of damages for negligence. The plaintiff claims that the defendant, through its motorman in charge of its car, was negligent and that that negligence is the proximate cause of the injury.

Now, first of all it will be necessary for me to indicate to you what this negligence is of which you hear so much. The law has defined negligence to be

20 "The omission or neglect to use that degree of care which a reasonably prudent and cautious man would have used under the circumstances."

Therefore, to make the thing perfectly plain to you, the first question which you will ask yourselves is: Did the motorman in charge of the defendant's car use that degree of care in the operation, management and control of the car that

30 a reasonably prudent and cautious man would have used under the circumstances? If the plaintiff has made out by the greater weight of the evidence—and the burden rests upon the plaintiff so to make it out—that the motorman did not use that degree of care, and that his neglect to use it was the proximate cause of the plaintiff's injury, then you would be entitled to say that the plaintiff is entitled to your verdict, unless the

40 defendant shall have made out by the greater

Charge.

weight of the evidence—and the burden rests on the trolley company so to make it out—that the plaintiff himself was negligent and that his negligence contributed, either in whole or in part, to the production of the injury of which he complains.

Now, that is what the two questions in this case are—First, did the motorman use due care in the control, operation and management of his car? If he did not, did his neglect to use that care produce the plaintiff's injury? If it did, then plaintiff gets your verdict, unless it shall appear by the preponderance of the evidence that the plaintiff himself was to blame, either in whole or in part, for the injury of which he complains. If the plaintiff was to blame, either in whole or in part, for that injury, then the plaintiff cannot recover, no matter how negligent the defendant may have been.

Now, that is all there is in this case with respect to the rules of law which apply to these two parties under the circumstances? Now, those rules have been stated by our highest court in different language but meaning exactly the same thing, from what I have stated them; and in order to make it clear to you—for I think it does clarify it to look at the same thing from different angles—I will read to you what the court has said with respect to the situation in which these two parties stood, the plaintiff and the motorman of the car, at the time and under the circumstances of the happening of this accident. The law says:

“The rule of law pertinent to these issues is based upon the plainest dictates of good sense and common humanity. It is simply

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Charge.

10 that in crossing a highway a person must exercise reasonable care not to go in front of an approaching car which, despite reasonable care in its operation, may strike him, and that a car using a public highway must not be allowed to strike a person so crossing its tracks if reasonable circumspection and control on the part of the motorman will suffice to prevent it."

20 Now, you see how plain that situation is. It reduces itself to this situation, that both parties at this point of crossing were under the obligation to exercise reasonable care; and your inquiry is: Did they do it? Did the motorman do it? If not, he was negligent. Did the plaintiff do it? If not, he was negligent. Now that, it seems to me, expresses the situation as clearly as it can be expressed. Another Justice, in delivering the opinion of the highest court in the State, has said this:

30 "The duty of a person crossing the road-bed of a public highway used by such vehicle has been declared in this court to require him to use his powers of observation to observe approaching vehicles, and to exercise a reasonable judgment when and how to cross without collision. It has been here asserted that when obstacles temporarily intervene to prevent observation, reasonable prudence would require delay until the required observation can be made."

40 You see, that is just an application of the rule that the plaintiff is under the duty to use reason-

able care, for if when he attempted to look down the street some huge obstacle should prevent effective observation on his part, and that obstacle were one which would pass by soon, his duty would require him to wait until the obstruction should have been removed and then to make the required observation. Now, in this case it does not necessarily appear that because, for instance, a trolley car had just passed, going south, that he was obliged to wait until that car had gotten half a mile below, or some great distance below. His testimony is that he waited until the car had gotten, I think he said, 75 or 80 yards. That would be something like 225 to 240 feet. Now, if he were standing on the curbstone and making an observation when this car was that distance away from where he stood, it might well be that you would conclude that a man using ordinary observation and caution would deem that he was safe in crossing, having waited until the car got that far and made his observation. You may deem that that would be just what a reasonably prudent and cautious man would do under the circumstances and that he was not contributorily negligent in doing as he did, or as he claims he did. On the other hand, if you believe that the trolley car had not gotten so far past but that the trolley was an obstacle to effective observation on his part, and that having attempted to observe while the obstruction was in front of his eyes, no reasonably prudent and cautious man would have attempted to make that crossing, why then, of course, you would be justified in saying, and would be required to say, that he was contributorily negligent and that that contributory negligence defeated his recovery.

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Charge.

Now, those are the rules, gentlemen, that I think should guide you in the determination of the respective questions of the negligence of the defendant and that of the plaintiff in this case.

I have been requested by the defendant to charge that

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“If the jury believe that the plaintiff misstated the fact in stating that it was dark and misty, then they might believe that the plaintiff misstated other matters.”

I will state to you that that does not state the rule of law in respect to these situations, because it omits a very important element in that rule. There is a rule which is expressed in Latin in these words: “*Falsus in uno, falsus in omnibus.*” That, translated, means that if a man testified falsely in one thing he may be believed to have testified falsely in all; but the qualification put into that rule by the law is that if he shall knowingly have testified falsely in one thing he may be believed to have testified falsely in all. In other words, a man may very well make a mistake about one thing, and it would not at all follow that because he was mistaken in respect to that fact that he was to be disbelieved with respect to all the facts; but if a man consciously and knowingly misrepresents a fact, why, you would be justified in believing that he would knowingly and consciously misrepresent and falsify all. So with that qualification with respect to the rule I charge it to you.

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Now then, if you shall find in this case, gentlemen, and only if you shall find, that the defendant was negligent in the manner in which I have

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Charge.

pointed out, and that the plaintiff was not negligent, under the rules which I have given you, then you would come to the question of the assessment of damages. If you come to that question you assess them under these rules:

The plaintiff is entitled, as the general rule under which damages shall be admeasured, to recover compensation, or payment, for all the injuries which proximately resulted to him from the accident. Now, entering into this motion of compensation are, first of all, payment for the pain and suffering which he has undergone in the past, due proximately to the accident, and for such as he will probably undergo in the future, due to the same cause. 10

Secondly, he would be entitled to recover for the loss of time, or what is the same thing in other words, for the loss of earnings in his business, which were proximately brought about and caused by this injury to him. If, for instance, he lost a certain sum each month and that loss has been proven by the plaintiff by the greater weight of the evidence to have been proximately caused by this injury, why then the injury being the cause of it he would be entitled to be paid for it by the defendant, if the defendant was responsible for causing the injury. And if he will lose anything in the future, due to this injury, in his business he would be entitled to be compensated for that. The burden of establishing how much injury he suffered, both physically and mentally as well as in his business, rests upon him and he must make the extent of his injury in each of those particulars manifest to you by the greater weight of the evidence. All that he has not thus established he is not entitled to recover for. 20 30 40

10 Now, there is a contention in this case, gentlemen, that the injuries to the brain which it is claimed by him he is suffering from and which he alleges were caused by the collision with the trolley car, were not caused by such collision at all. The defendant's contention is that they were the result of a previous accident, the scar of which they have pointed to on his forehead, and which the plaintiff admits he suffered, I believe in his own words, when he was a boy eleven years of age. Now, as bearing on that situation and as a matter which tends to settle those conflicting claims, our court has laid down this rule:

20 "When it is claimed that the fall produced or excited disease, it should appear, in order to recover damages for the results of the disease, not only that the fall was a possible cause of the disease, but other causes should be so excluded and the circumstances should be such as to leave a reasonable inference that the fall was the actual cause."

30 The general principle which underlies that rule which I have just read you from one of our reports is this, that no defendant shall be held responsible for and compelled to pay for that which it did not proximately cause. Whatever it caused by its negligence it ought to pay for, but if there be something which the man is suffering from, of which the defendant is not the proximate cause, why, of course, the defendant ought not to pay for it. In other words, you trace the cause of the injury, and if that cause proximately is the defendant, by its negligence, the defendant pays for it. If he should be suffering for instance, from
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Charge.

two diseases, one of which was caused by the collision with the trolley car and the other one by a fall from a cherry tree, if you please, the second one a matter with which the defendant had no connection, why manifestly you would have to divide the respective ill physical consequences between that which was caused by the collision with the car and that which was caused by the fall from the cherry tree, and only assess that against the defendant which was caused by the collision with the car. 10

Now, I think that is all I need to say to you in order to enable you to satisfactorily settle the case, and you will take the case and decide it.

(Mr. Simpson hands the Court a paper). 20

The Court: I am requested by the plaintiff to charge this proposition, and I do charge it to you as being the law of this State.

“The law requires one crossing the roadway on foot to extend his observation only to the distance within which vehicles proceeding at customary and reasonably safe speed would threaten his safety.”

That is undoubtedly the rule. In other words, if a man is about to cross a highway upon which a trolley car is apt to be running, he is not obliged to look ten miles down the street to see whether a car is coming and to delay his crossing in order to determine whether one is within that distance of him. His duty in the exercise of that reasonable care which the law casts upon him is to extend his observation only to that distance at which a trolley car being run at customary and 40

Judgment.

usual speed would threaten his safety. If this man in this case so extended his observation and conducted himself under the circumstances as a reasonably prudent and cautious man, he would not be contributorily negligent. If he did not so extend his observation he would. So you will apply that rule in settling the case.

Verdict \$1,500.

Judgment.

Entered, October 4, 1912.

20 Wherefore to try the issue above joined before the Circuit Court, at Jersey City aforesaid, on the fourth day of October, A. D., One thousand nine hundred and twelve, as yet of the term of September, in the year of our Lord, One thousand nine hundred and twelve, who neither, etc., by whom, etc., to recognize, etc., because as well, etc., the same day is given to the parties aforesaid at which day before the said Court, come the said parties by their attorneys aforesaid, and the jurors
30 of the jury above mentioned also come, who to speak the truth of the matter aforesaid being chosen, tried and sworn, they say that they find the defendant guilty as in the plaintiff's declaration is above charged against him, and they also say they find in favor of the plaintiff and against the defendant and they assess the damages of the plaintiff on occasion of the premises, at One thousand five hundred Dollars over and above his costs and charges of the said plaintiff about his
40 suit in this behalf expended.

Judgment.

Wherefore it is considered that the said plaintiff do recover against the said defendant his damages aforesaid, in manner aforesaid found, and also Fifty-nine Dollars and Seventy-six 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 One thousand five hundred and fifty-nine Dollars and Seventy-six Cents and the said defendant in mercy, etc. 10

Judgment entered and signed this fourth day of October, A. D., 1912.

WILLIAM H. SPEER,
Judge.

Attest:

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JOHN F. CROSBY,
Clerk.
(Seal.)

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Grounds of Appeal.

HUDSON COUNTY CIRCUIT COURT.

10	<p style="text-align: center;">EUGENE RUGGIERI, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">PUBLIC SERVICE RAILWAY COM- PANY, Defendant.</p>	}
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TAKE NOTICE that the following are the grounds of appeal upon which the defendant rests in the above entitled matter:

- 20 1. Because the Court refused to non-suit the plaintiff when requested so to do by the defendant upon the grounds:
- a. That no negligence on the part of the defendant or its agents or servants had been proven.
 - b. That it clearly appeared that the plaintiff had been guilty of contributory negligence.

30 EDWARDS & SMITH,
Attorneys for Defendant-Appellant.

New Jersey Court of Errors and Appeals.

EUGENE RUGGIERI,
Plaintiff-Appellant,
vs.
PUBLIC SERVICE RAILWAY COM-
PANY,
Defendant-Appellee.

On Appeal. 10

BRIEF FOR APPELLANT.

This is an appeal from a judgment of the Supreme Court reversing a judgment of the Circuit Court of the County of Hudson, in a suit by Ruggieri for injuries received while crossing a street railway at a street crossing. The appeal brings up the following facts: 20

The plaintiff was attempting to cross a public highway at Bergenline Avenue and Fisher Avenue, West New York, early on a Winter morning. He allowed a south bound car to pass seventy-five or eighty yards, then crossed the street. He looked south and north but did not see any car approaching and was struck just as he stepped on the north bound track. Under these circumstances the trial Court submitted the case to the jury to ascertain whether the plaintiff was guilty of contributory negligence. The Supreme Court held as a matter of law that the plaintiff was guilty of contributory negligence. The only question involved is the decision of the Supreme Court reversing the Circuit judgment and holding that, on the facts, the plaintiff was, as a matter of law, guilty of contributory negligence. 30 40

Specification of Grounds of Appeal.

The only ground of appeal is that it was erroneous for the Supreme Court to hold as a matter of law, that the plaintiff was on the facts, guilty of contributory negligence, and that the trial court should have directed a verdict.

Argument.

10 In the opinion of the Supreme Court which is found at page 3 of the printed case, the meat of the opinion is found on page 4, l. 25, to page 5, l. 30.

In order that the reasoning of the Supreme Court be good, it was necessary for them to find as an uncontroverted fact, that the plaintiff if he had looked, must have seen the approaching car. But, this is a sheer begging of the question, on the evidence. The plaintiff testified that this accident
 20 happened early on a Winter morning, between six and seven o'clock. It was still dark when the accident happened (p. 10, l. 38). When the plaintiff was at the corner of Seventh Street, he saw a car coming south. He stopped at the corner and let the car pass until it got seventy-five or eighty yards down the street and looked after it. He did not see any other car and started to cross. Therefore, had an uninterrupted observation for about two hundred and fifty feet (p. 11).
 30 He was only bound to make such observation as would disclose cars coming toward him, which would within a reasonable distance imperil his safety. He certainly had a right to assume that if he did not see a car within two hundred and fifty feet, that it was safe for him to cross, because he could assume that the motorman in the exercise of reasonable care, would have his car under such control approaching a street crossing on a public highway, that he could cross without injury.
 40 There was no bell or other warning given (p. 11, l. 27).

The Supreme Court says, that when he testified that after taking two steps from the corner, when he car which had passed was eighty yards away, he looked again and saw the south bound car eighty yards away, but he testified he saw no car going north. "Yet, when he had walked about ten feet, about four steps, he was struck by a car, which was at least more than eighty yards away and must have covered that distance while the plaintiff took four steps. This is so unreasonable as to be incredible, for if the plaintiff had looked when only ten feet from the track as he said he did he would have seen the car, and the only inference is that he did not look, or if he did, that he would have seen the car so near him as to surely strike him if he continued to walk toward it."

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Why is it incredible that the plaintiff did not see the car when he looked after he had stepped five feet from the sidewalk and still saw the disappearing car eighty yards from him? What is there incredible in the fact that between him and the approaching car might have been the disappearing car? The Supreme Court says that he must have seen the car. Why must he have seen the car if between his vision and the approaching car was the disappearing car? Why is the only inference that he did not look? It is perfectly reasonable, if between him and the approaching car was the disappearing car, that at the time he made his observation when he was ten feet from the track and five feet from the sidewalk, the disappearing car obstructed his vision and if he continued to look without making another observation he clearly had a right to do so because within a distance of two hundred and fifty feet from where he stood he saw no car. He was not bound to wait until the disappearing car had gone a block away, so that he would have a clear vision for a block away, he was only bound to make an observation which would cover such a distance within which cars coming at a reasonable speed would endanger

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his safety. The Supreme Court evades the question when it says that if he did look that he would have seen the car so near as to surely strike him if he continued to walk toward it. Everything said by the plaintiff is perfectly credible, if there was between him and the approaching car an obstacle or obstructions to the vision, which there was in this case; if there was anything to prevent him seeing it (and there was the disappearing car) which was within his line of vision, the car must not necessarily have been within his line of vision when he looked. Therefore, it is not good reasoning to say that the fact that he did not see it is a demonstration that he did not look with reasonable effectiveness, such as was required of him under the circumstances. What his duties were is set down in the case of *Block v. Traction Co.*, 26 Vr., 605, point 2 of the syllabus.

The Supreme Court would hold the plaintiff to the duty of making an observation indefinite in extent, to discover any car approaching at a lawful or unlawful rate of speed which would put him in danger, but the Court of Appeals in *Devine v. Public Service Railway*, 81 L. R., 88 Atl., 1080, point 4 of the syllabus, said, his observation need not extend beyond a distance within which vehicles moving at a lawful speed would endanger him. If obstacles intervene to prevent such an observation, that is an observation which would disclose a vehicle approaching at lawful speed and in a distance which at lawful speed would injure him. then he should wait before he makes his observation until the obstruction is removed, but he certainly is compelled by no case to wait until all obstacles are removed which disclose vehicles at any distance, coming at an unlawful rate of speed which may endanger his safety. In the *Devine* case the plaintiff made only an observation of seventy or seventy-five feet. In the case at bar, the plaintiff made an observation of two hundred and fifty feet. In the *Devine* case it was held a

question for the jury, whether he was guilty of contributory negligence.

The case of *Brown v. R. R. Co.*, 39 Vr., 618, cited by the Supreme Court as a justification for its opinion is an entirely different state of facts. In that case there was nothing to prevent the plaintiff from seeing the car. In fact the plaintiff testified he did see a light but did not know what it was, a long distance away. In the *Brown* case the plaintiff admitted as he started to cross the tracks he saw lights away up on a hill, but did not know what it was and did not wait but went on without making another observation. In the *Brown* case the plaintiff had a clear unobstructed view. In the case at bar, the plaintiff did not have a clear and unobstructed view of the whole distance, but had only a clear and unobstructed view of a distance within which a car coming at lawful speed would imperil him. Seeing no such car, he had a right to assume it was safe to cross. The facts in the *Brown* case present no parallel with the facts in the case under discussion.

The plaintiff says (p. 31, ll. 9 to 29) that he did not look after he stepped down from the curb when he started to walk and when the car was further away he did not see any car coming down.

On page 31, l. 30, the plaintiff testified he walked about two steps from the curb when he made an observation and did not see any car. The obstructing car was then ninety yards away and he just went across.

The Supreme Court says this is incredible; that he must have seen it. But, to make it incredible the speed of the car must be known and the manner in which it was operated. There is nothing incredible in the fact that when he looked, between him and the approaching car, was another car. It would only be incredible because of cir-

cumstances, of the speed of the car or because of the position of the approaching car, but there is nothing in the case to make it incredible as a fact in the absence of this evidence. It may be that the Supreme Court thinks that the incredibility was that the car would go two hundred and fifty or two hundred and seventy feet while the plaintiff was walking ten feet, but this is not at all incredible if the space travelled by cars going at different rates of speed is figured up. There is nothing in the evidence to show how fast the plaintiff was walking. Therefore it cannot be figured out how fast the car was going. In the Supreme Court the defendant's brief argued the plaintiff was walking four miles an hour and that therefore the car must have been going eighty-five miles an hour as it went two hundred and seventy feet while he went ten feet. But this is an argument with only one leg to support it, as it only has the distance and not the time the plaintiff walked and no facts can be established on such reasoning.

The morning was a dark and misty morning (p. 37, ll. 20 to 30). This is another element that would make it not at all incredible that the plaintiff did not see the car.

There was evidence in the case on which the jury could have found the car was going fast. On page 64, one witness said the car went about fifty yards after it hit the plaintiff, and it has been held in the Court of Appeals that the greater the distance the car went after it struck him, the greater the reasonableness of the inference of speed *Zolpher v. Camden R. R.*, 40 Vr., 419. The jury therefore might have found the following facts:

That the plaintiff started to cross the street; that he made an observation when ten feet away from the track; that between him and the approaching car there was a car disappearing about

ninety yards away, which would give him an unobstructed view of two hundred and seventy feet; that he then, the day being dark and misty, and seeing no car and hearing no bell, proceeded across the street and was struck just as he stepped on the track. If they found these facts, was it incredible that he did not see the car when he looked? The night was dark and misty and there was something between him and the approaching car. If he did not see any car within two hundred and seventy feet, then he had made the observation which he was obliged to make under the Block case and the Devine case, supra. If he was struck under these circumstances, it was not as a matter of law, contributory negligence on his part not to have seen the car. It was for the jury to say whether the plaintiff did not see the car when he looked. *Farese v. North Jersey Street Rwy.*, 78 N. J. L., 499.

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In the case of *Higgins v. Public Service*, 79 N. J. L., the Court says:

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“In the case before us, the jury might reasonably infer that the plaintiff, before leaving the west bound track, made an observation by looking up the east bound track; that at the time she thus looked the west bound car had proceeded far enough on its way to give her a view for a very considerable distance along the east bound track, far enough indeed to have made it safe for her to cross except for the very high speed of the east bound car, and that she, having no notice of that excessive speed went forward in reliance upon the observation thus made.”

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Upon that state of facts it was the decision of this Court that the principle in the case of *North Jersey Street Rwy. v. Block*, 55 N. J. L., 605, applied.

In the Ruggieri case the plaintiff made an observation after the obstructing car had passed along and given him a view of two hundred and fifty feet up the north bound track and assumed

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that then it was safe for him to cross, and it would have been, except for, as the jury might have found, the very high speed of the car which struck him. Therefore it is reasonable to say that when he looked he must have seen it, if he had looked with reasonable care. When the plaintiff testified (p. 31) that he could see two blocks, it was not testimony that in that condition of the atmosphere, dark and misty, he could see two blocks, but under ordinary circumstances of the day time

10 he could see two blocks. There was no proof that at the time of the accident he could see two blocks.

Being asked (p. 32, l. 20):

“Q. Did you at any time after stepping from the gutter, from the curbstone, look south to see if a car was coming?” he answered: “I did.”

Being asked, “When? A. After the car passed on, after the south bound car went down, I looked and seen no car.”

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“Q. Where were you when you looked? A. I just started to walk from the corner on.

“Q. Had you stepped from the gutter? A. I started to walk.”

If the plaintiff made an observation extending over the distance within which vehicles moving at a lawful speed would endanger him, that was enough. (See *Devine v. R. R.*, 88 Atl., 1082.)

In addition to the observation which he made,

30 the plaintiff also had a right to assume that the motorman of any car which might be approaching would expect pedestrians to be crossing and would have the car under control accordingly, and would respect his rights to cross if he was in a position to justify such crossing, under reasonable belief that he could safely do so, if both he and the motorman exercised reasonable care. (*Devine v. R. R. Co.*, 88 Atl., 1082; citing *Kraut v. Public Service*, 82 N. J. L., 437; 81 Atl., 751.)

40 If, therefore, the jury could have found from the facts that the plaintiff made such observation as

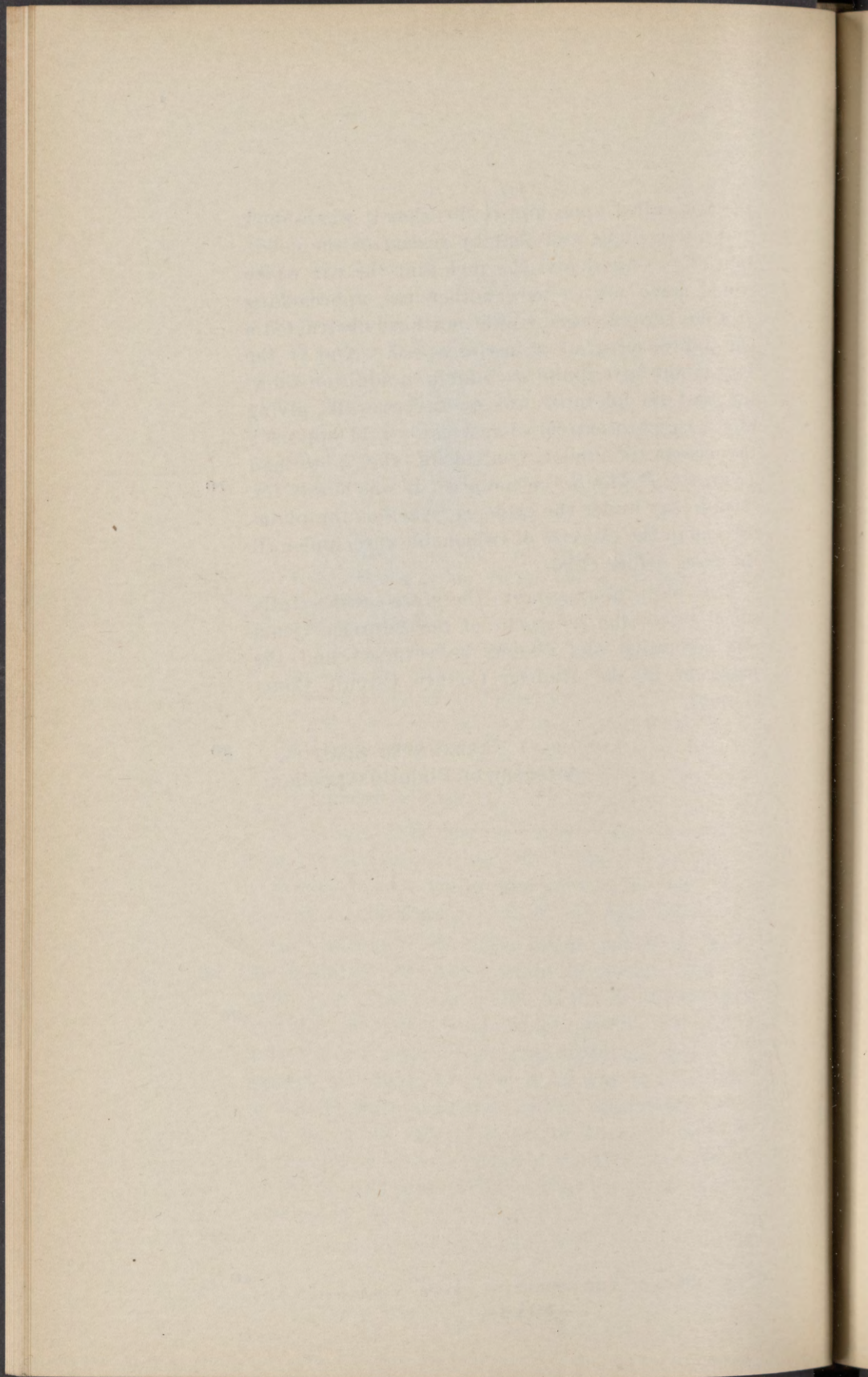
the law called upon him to do; that it was a dark and misty night and that by reason of the condition of the night and the fact that the car which would have obstructed another car approaching at a dangerous speed, would not have obstructed a car approaching at a lawful speed. And if the jury might have found such facts in addition showing that the plaintiff was on a crosswalk, giving him a right to assume that a car would approach the crosswalk under control of the motorman (*Kraut v. Public Service supra*), it was surely for them to say under the evidence, whether the plaintiff was in the exercise of reasonable care, under all the cases before cited. 10

The plaintiff-appellant therefore respectfully submits that the judgment of the Supreme Court was erroneous and should be reversed and the judgment of the Hudson County Circuit Court affirmed.

ALEXANDER SIMPSON, 20
Attorney of Plaintiff-Appellant.

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New Jersey Court of Errors and Appeals.

EUGENE RUGGIERI, <i>Plaintiff-Appellant,</i>	} On Appeal.	10
<i>vs.</i>		
PUBLIC SERVICE RAILWAY COM- PANY, <i>Defendant-Appellee.</i>		

**BRIEF FOR DEFENDANT-APPEL-
LEE.**

This case was tried in the Hudson County Circuit Court before the Honorable William H. Speer, Judge, and a jury. It resulted in a verdict for plaintiff in the sum of Fifteen Hundred Dollars (\$1500). Defendant appealed therefrom to the Supreme Court. The case was argued at the February Term, 1913, before the Chief Justice, and Justices Bergen and Kalisch, and an opinion rendered as follows:

PER CURIAM:

The plaintiff was crossing a public highway in West New York, Hudson County, and was struck by a trolley car of the defendant. For the injuries he received he brought suit and recovered judgment for \$1,500.

The defendant appeals because the Court refused to non-suit, which motion it claims should have prevailed, because no negligence on the part of the defendant was shown and also that the plaintiff was guilty of contributory negligence. There was no motion for a direction at the close

of the case, nor was the motion for non-suit then renewed, so all we have to deal with is the plaintiff's case as it stood when the motion to non-suit was made.

10 The plaintiff testified that he started to cross Bergen Line Avenue at the corner of Seventh Street or Fisher Avenue as it was sometimes called; that he saw a car going to Union Hill and he stopped on the corner until the car had passed about 75 or 80 yards and he watched it that distance and saw no other car and then started to cross; that as soon as he got on the southbound track, the other car having passed on the northbound track, he was struck by the car on the southbound track; that no bell was rung nor any warning given.

20 On cross examination he testified that he stood on the sidewalk at the corner and let the southbound car pass, which was on the track nearest to him; then he started to walk; that he did not look in the direction from which the northbound car would come before the southbound car passed; that when the passing car had gone about 75 or 80 yards, he looked and did not see any northbound car coming; that if there was nothing to obstruct his view he could see for two blocks, but on this morning when he looked he did not see the car coming; that the distance from the curb to the track was about 10 feet; that after he left the curb he looked south to see if a car was coming; that he looked as he walked and did not see it. He subsequently said that when he looked he was right at the corner, and in response to a question put by the court whether he did not know that the southbound car was apt to be between him and the other car coming in the opposite direction, he said, "Well, I see this car was pretty far away from me, your Honor, and I see there was about 75 or 80 yards, and I started to walk across." Again he was asked on cross-examination how far he was from the curb stone when he

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looked the second time, and he replied, "About "two steps," and saw no car.

There was nothing in the defendant's case which aided that of the plaintiff.

So we have this situation: The plaintiff standing on the sidewalk about 15 feet from where he was struck; a car passing about 10 feet away which the plaintiff watched until it had gone 75 or 80 yards, and then started to cross the street, and after taking two steps, which would be about five feet. he looked again and while seeing the southbound car about 80 yards away, saw no car going north approaching, yet when he had walked only 10 feet, about four steps, he was struck by a car which was at least more than 80 yards away, and must have covered that distance while plaintiff took four steps. This is so unreasonable as to be incredible, for if the plaintiff had looked when only 10 feet from the track, as he said he did, he would have seen the car, and the only inference is that he did not look, or if he did, that he would have seen the car so near as to surely strike him, if he continued to walk toward it. But he says he did not see the car, so he is not within the line of cases, where the pedestrian seeing an approaching car, exercises his judgment as to his ability to cross safely. In this case, the car must have been within his vision if he had looked, and the fact that he did not see it is a demonstration that he did not look with reasonable effectiveness such as was required of him under the circumstances, and he was therefore guilty of such contributory negligence as required a non-suit, the refusal of which was error. In the case of *Brown v. Railroad Co.*, 39 Vr., 618, Chancellor Magie, speaking for the Court of Errors and Appeals said,

"When he says that, at that time he could see no trolley car in sight, he conclusively establishes that he did not then make the observation which duty required of him, because, if he had done so, he would undoubtedly

ly have discovered the approaching car, and have been able to avoid the collision."

It seems to us that this case controls the one under review. This result makes it unnecessary to deal with the question of defendant's negligence.

The judgment will be reversed.

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Judgment was entered in accordance with the opinion, reversing the judgment entered in the Hudson Circuit on the verdict, and from that judgment plaintiff now appeals to this Court.

POINT I.

20 The facts governing the happening of the accident were so fully discussed in the brief submitted to the Supreme Court that we will submit to this Court, practically the same brief, reserving only a few points for further argument.

Statement.

30 Defendant operates a street railway in Hudson County and elsewhere, and particularly in the Town of West New York in said County. Bergenline Avenue in said Town runs North and South. Seventh Street runs East and West. Defendant operates cars North and South on said Bergenline Avenue, there being therein two sets of tracks.

Facts.

40 Plaintiff owns and operates a butcher shop on Bergenline Avenue, on the Northeast corner of Seventh Street. On the morning of December 19, 1911, between six and seven o'clock he had been across the street to a saloon to get an order, and coming back he endeavored to cross the street, passing behind a moving south-bound car, and being hit by a north-bound car.

Plaintiff's Evidence.

Plaintiff alleges that between six and seven o'clock A. M. he had gone into the saloon for an order, came out and intended to cross the street from west to east to his store; that it was still dark; when he was at the corner he saw a car coming to Union Hill; that he stopped at the corner and the car passed seventy-five (75) to eighty (80) feet down; then he changed this distance to seventy-five (75) to eighty (80) yards; that during this time he remained on the curb. He continues (page 11):

"Q. And did you look after it? A. I did, and I did not see any other cars, and I started to pass.

"Q. And as you started to pass what happened to you? A. As soon as I got on the south-bound track another car jumped, hit me right in front."

That he heard no bell or warning.

On cross examination he states (p. 28) that he came out of the saloon; that he walked to the corner and saw a car coming south on the track nearest him, the car being then north of him; that he waited on the corner and waited for the car to pass; that he did not look to see if any north-bound car was coming (p. 29), but confined his attention to the south-bound car; that he stayed on the corner until the south-bound car had gone seventy-five (75) to eighty (80) yards beyond him, and then keeping sight of it he stepped from the curb; that the street is straight and that morning he could see as far as he could see when testifying (pp. 30-31); that he saw no north-bound car and started to walk from west to east; that the distance between the curb and the first car track is about ten feet. He continues (pp. 31-32):

"Q. How many tracks are there? A. Two sets of tracks.

"Q. One going north and one south? A. Yes.

"Q. You got past the south-bound track, did you? A. As soon as I got on the north-bound car (track) I got hit.

"Q. That was just as soon as you stepped on the track? A. That is right. I don't know nothing about after I got hurt.

"Q. You never saw the north-bound car at all? A. I looked and I did not see any car.

"Q. You did not see it before it hit you? A. No."

10 He continues that he stepped from the sidewalk and took two steps and looked again; the south-bound car was still further away—it might be ninety (90) yards—and he saw no car and started to cross and just as he stepped on the north-bound track he was hit.

In rebuttal, being recalled, he states that from the time he stood on the gutter until he was hit he walked with his head up, looking *straight ahead* (p. 107).

20 Patrick J. Fallon states (p. 36-37) that he was on Bergenline Avenue and saw plaintiff struck; that it was a dark, misty morning; that he heard no bell. On cross examination (p. 38) he states that he was twenty-five feet south of the southwest corner of Bergenline Avenue and Fisher Avenue walking north; that he saw plaintiff come out of the saloon and walk toward the curb; that at that time the south-bound car had passed his shop, which was some distance south of Seventh
30 Street; that plaintiff did not stop and stand on the corner (p. 41) but he kept right on walking; that witness did not see the north-bound car until it hit plaintiff (pp. 42-43) and that plaintiff was struck just as he stepped on the north-bound track and was thrown to the west; laying between the north and south-bound tracks.

George Miller states (p. 44) that he heard a crash and after the car stopped he saw a man had been hit; that he heard no bell; he cannot tell if
40 the car was going fast or slow; he heard no bell and that the car went about 10 feet after it hit

plaintiff; that he was picked up between the two tracks (pp. 45-46) alongside of the car; the morning was dark and misty.

On cross examination he states that although he saw the car he cannot tell whether it was lighted or not.

Cato Kolmowski states (p. 64) that he saw the car hit plaintiff and it ran one hundred and fifty (150) feet after it hit him.

On cross examination he states that he was walking on the west side of Bergenline Avenue just coming to Fisher Avenue; that he saw plaintiff standing on the corner and was about twenty-five (25) or thirty (30) feet away; that he saw a south-bound car pass plaintiff, saw plaintiff start to walk across the street (p. 66); that he did not see the north-bound car before it struck plaintiff; that when plaintiff started from the gutter he walked behind the south-bound car and was hit just as he stepped on the north-bound track. 10 20

Defendant's Evidence.

A. J. P. Meisner, motorman, states (p. 79) that when he reached a point between Sixth and Seventh Streets, proceeding north, he saw a car standing on Seventh Street picking up a passenger; that he slowed to a speed of about six or seven miles an hour; that the standing car started off and this plaintiff walked out from behind it; that he saw the man about ten or fifteen feet before he stopped; that plaintiff had his head down, hands in his pockets and walked right into the side of the car (p. 79); that he lay right between the south and north-bound tracks and right alongside the front platform; that he sounded his bell. 30

On cross examination he states it was a nice, clear morning, daylight; that when he saw the standing car at Seventh Street he was one hundred feet away and when it began to move he was about twenty-five feet away; that he slackened his 40

speed and rang his bell; that he had his car so under control that he could stop it instantly; that he stopped his car as soon as he could and that plaintiff walked into it (p. 82).

10 William Dubelbeiss states (pp. 83-84) that he is employed by the defendant and is an inspector; was standing at Fifth Street; that he saw the car going north at about six or seven miles an hour; that he saw a car coming south, and saw a man walk from west to east crossing Bergenline Avenue with his hands in his pockets and his head down; that the cars started to pass each other and cut off his view; that he then saw some people running, went across the street, and then ran up; saw a man lying between the north and south-bound tracks just at the front platform (p. 85); that it was a light, clear morning, no mist.

20 On cross examination he says he was about two hundred to two hundred and fifty feet away (p. 86), and then repeats his evidence on direct examination.

30 John Klein, police officer, states (p. 96) that he was standing on the corner of Fifth Street; saw a man standing as if he were going to board a south-bound car; saw the car pass and the man start to cross the street; did not notice anything else until the south-bound car reached him and he was informed that a man had been hurt; that it was light and he could see up to Seventh Street.

On cross examination he says it was a bright, nice day.

40 James H. Scarr states (p. 97) that he has charge of the office of the United States Weather Bureau in New York City; that he keeps records of weather conditions and also as to light and darkness; he produces his records for December 19, 1911, and that the weather (at Town of Union and scene of accident) was clear and that it was light (p. 98) and a person could see three or four blocks.

POINT II.

No negligence upon the part of defendant was shown.

We submit that there was no evidence offered by plaintiff establishing negligence of the defendant. A careful examination of the evidences of the witnesses will disclose it to be a mass of contradictions with a plain indication of an endeavor to assist the plaintiff's case by speculation, conjecture, theories and deductions of their own without regard to the actual facts. Even with all this, no witness testifies as to the speed of the car for none of them saw it before the actual moment of contact (Fallon, pp. 42-43); Miller, p. 44; Kolmowski, pp. 66-67). Miller states that the car went only ten feet after the contact (p. 46). It is true that the witness Kolmowski, through an interpreter, says the north-bound car went "very fast" and that after the contact it went one hundred and fifty feet, but an examination of his evidence shows that the only sight of the car he had was at the actual moment of contact, and that his opportunity for observation was very limited. It has been held that the designation "very fast" and similar characterizations are not indicative of negligence. *McGrath v. North Jersey St. Ry.*, 66 N. J. L., p. 312, 318. Nor are the mere statements of the witness Kolmowski that the car went one hundred and fifty feet after the contact, opposed as it is by the evidence of the other witnesses, and whose unreliability will be disclosed by even a casual reading of the evidence, sufficient to warrant a finding of negligence. We realize that under some circumstances evidence of the distance a car traveled after a collision might have some *bearing* in connection with other facts upon the question of negligence, but upon *that fact alone* negligence cannot be imputed to the defendant. Many things may have intervened; the

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motorman may not have seen plaintiff until the actual moment of contact, or having seen him the brakes may not have acted promptly or effectually because of the insufficient application by the motorman, or the motorman may have become excited and confused under the sudden appearance of plaintiff in close proximity to the car, and many other reasons for the failure to stop the car sooner may have existed.

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POINT III.

Plaintiff was guilty of contributory negligence.

We submit that even though we assume that under the evidence negligence on the part of defendant might be inferred, the evidence plainly indicates contributory negligence upon the part of the plaintiff.

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Assuming the truth of his own evidence we find that when he stopped at the curb to permit the southbound car to pass he at that instant had a clear, uninterrupted view of the northbound track for three or four blocks (p. 31, the witness said "two blocks", but he was standing at Seventh Street and he said in answer to the immediately preceding question that he could see beyond Fourth Street). He, however, made no observation at that time (p. 31). He then waited until the south-bound car had proceeded seventy

30 five or eighty yards, or from two hundred and twenty-five to two hundred and forty feet to the south before he stepped from the curb and that at that time he looked to the south but saw no car (pp. 29-30; 33-34). He then stepped from the curb and took two steps when he again looked, the south-bound car being then about 90 yards away, and then he saw no northbound car he then having an uninterrupted view for at least 270

40 feet; the distance between the curb and the first rail of the southbound track is ten feet—from

this rail to the first rail of the northbound track is not over nine feet (the standard distance being four and one-half ($4\frac{1}{2}$) feet between rails and four and one-half ($4\frac{1}{2}$) feet between tracks). The two steps taken by plaintiff according to the distance covered by an ordinary pace, would be six feet (the ordinary pace being three feet [see Standard Dictionary]), which would leave the distance between his position when he last looked and the first rail of the north bound track not more than thirteen feet. At this time the northbound car, if we believe plaintiff, was more than two hundred and seventy (270) feet distant. Plaintiff states that he walked at the usual pace in crossing the street and we may assume that was at least four miles an hour, at which pace a man would travel five and eighty hundredths (5.80) feet per second, or thirteen (13) feet approximately in two and twenty-four hundredths (2.24) seconds. It therefore follows that for the car to reach him just as he reached the track on which it ran, it must have traversed the two hundred and seventy (270) or more feet within this two and twenty-four hundredths (2.24) seconds. In order to do this it must have been proceeding at a speed of at least eighty-five and ninety-one hundredths (85.91) miles an hour.

Now, it is manifestly absurd to hold that a trolley car running through the streets of a city was proceeding at any such speed. We realize that in general a seeming improbability affords no justification for entirely discrediting the evidence of a man, but any such absurdity that a trolley car was proceeding at the rate of 85.91 miles an hour through the streets is not merely an improbability, but a physical impossibility. It must, therefore, necessarily follow that the northbound car must have been within less than the two hundred and seventy (270) feet (or 90 yds.) mentioned by plaintiff as the distance he looked south. If this be so, considering plaintiff's evi-

dence that he observed at least a distance of 270 feet and saw no northbound car, then in logic, assuming *his statement to be true* it must be concluded that his observation was ineffectually and carelessly made.

It is well settled in this state that a person in crossing a highway must use his powers of observation to discover approaching vehicles, and to avoid collision therewith, if possible.

10 In the leading case of *Newark Passenger Railway Co. v. Block*, 26 Vroom, 605 the Court of Errors said:

20 “We must recur to the general rule which requires one, in exercising his lawful rights in a place where the exercise of like rights by others may put him in peril, to use such precaution and care for his safety as a reasonably prudent man would use under the circumstances. From this rule it may be said in general that one who passes on foot along a sidewalk or path of a highway must use his powers of observation in respect to other passers thereon and a reasonable judgment to avoid collision. In crossing the roadway a foot passenger must likewise use his powers of observation to discover approaching vehicles, and a like judgment when and how to cross without collision. In the latter case doubtless the degree of care required exceeds that required in the former case, not because the right of the foot passenger and the right of the driver of a vehicle differ, but because
30 of the circumstances. The vehicle usually travels at a greater speed—it cannot be so quickly stopped or diverted from its course; a street car cannot deviate from its tracks; while the passer on foot may quickly stop, turn aside or even retrace his steps.”

This rule has been sustained by a long line of cases and is so firmly established as not to require citations.

40 Of course we realize that it is held in the same case that the observation required need not extend beyond the distance within which vehicles

moving at lawful speed would endanger him. This rule, however, does not avail plaintiff because *he admits he extended his observation for the full 270 feet.*

Nor can he invoke the doctrine which absolves from negligence one who perceives a car approaching at a distance, when the exercise of reasonable care would justify an attempt to cross in front thereof, relying upon the car being run at lawful speed and the motorman using the appliances at his command to so control the car as not to endanger one's safety (*Peterpolo v. P. S. Ry. Co.*, 81 N. J. L., 390 and similar cases);—for it must be borne in mind that he distinctly and positively states that *he did not at any time observe the northbound car* (pp. 32, 33, 34, 35). 10

That the car was in plain view for at least this distance of 270 feet is firmly established, although an attempt is made to bring the case within the decision of *Farese vs. North Jersey St. Ry. Co.*, 78 N. J. L., 499, by the introduction of testimony that the night was *kind of misty* (Fallon, p. 37—Miller, p. 46)—yet no evidence is offered that the alleged “mist” in any way prevented plaintiff from observing the northbound car, but on the contrary the proof is positive that it did not *because he swears he saw the southbound car for at least 270 feet distant.* 20

We come, therefore, to the conclusion that the plaintiff, had he looked, must have observed the northbound car, and it also follows that if he says he looked and did not see what was plain to be seen, he only establishes that he did not look (*Brady vs. Consolidated Trac. Co.*, 64 N. J. L., 375), or looking did not heed what he saw. Wharton on Neg. § 382, cited in *Pennsylvania R. Co. vs. Righter*, 13 Vr., 187. The first hypothesis (that he did not look) establishes his contributory negligence. *Brady vs. Consolidated Traction Co.*, supra: The second hypothesis also 30 40

establishes his negligence in attempting to cross a track directly in advance of a rapidly moving car without heeding the same. We then have the query. How near to him then was the northbound car when he left the curb? No evidence is offered by the plaintiff on this point, save his own testimony which must be held by any reasoning mind to be unbelievable. None of his witnesses saw the car until it struck him, nor give evidence of its distance at any time before the moment of actual contact.

The fact that plaintiff was struck at the very moment that he reached the first rail of the northbound track and by the corner of the fender, indicates that the car must have been in plain sight, had he looked at any time while traversing the distance between the curb and the track, and must bear against him, (*Shuler vs. North Jersey St. Ry. Co.*, 75 N. J. L., 825), and necessarily leads to the conclusion that he did not look, or if he looked, as he says he did, that he looked heedlessly. Either hypothesis bespeaks the negligence of the plaintiff.

Even though negligence of the defendant may be predicated upon the speed of the car (assuming such had been proved), this in no way can relieve the plaintiff of the charge of contributory negligence for not looking, or having looked for not heeding what he saw. As was said by Mr. Justice Swayze in the *Shuler* case, supra, "the speed of the car in no way prevented him from seeing its approach, and the faster it was going the less excuse he had for advancing in a direction across its track. If it were going so fast that the motorman obviously did not intend to respect his right, he would have been guilty of negligence in attempting to cross. *Earle vs. Consolidated Trac. Co.*, 35 Vr., 573." *Schwanwede vs. North Hudson Ry. Co.*, 38 Vr., 449. That the true fact is that plaintiff walked from the curb to the car track without looking is borne out by

his own testimony on rebuttal, for he distinctly and positively states that from the time he stood upon the curb until he was struck he walked with his head up and *looked straight ahead* (p. 107). His face would then be to the *east* while the car approached from the *south*.

There was nothing in the defendant's evidence which helped the case of the plaintiff and even though the court were right in calling upon the defendant for its evidence, at the close of the defendant's case, the great weight of the evidence was clearly to the effect that plaintiff's injuries were occasioned by his own carelessness. 10

The evidence of the witnesses for the defendant establishes beyond question that when the car stopped plaintiff lay between the north and south-bound track and at or near the front platform (Meisner, p. 80—Dubelbeiss, p. 85). This is corroborated by plaintiff's witnesses (Fallon, p. 44 and Miller, pp. 45-46). All the witnesses of both plaintiff and defendant including plaintiff himself testify that he was struck just as he reached the first rail of the northbound track. In fact all the evidence plainly indicates that had the plaintiff been paying the least attention to his surroundings he would not have been injured. 20

The Court then at the close of the whole testimony even though defendant did not renew its motion should have non-suited the plaintiff. 30

POINT IV.

The appellant now alleges that the Supreme Court erred in holding that the plaintiff was guilty of contributory negligence. This point was thoroughly argued under Point I above. We desire, however, to call attention to the matter of light and darkness at the time of the accident. Plaintiff lays great stress upon this point in an endeavor to bring the case within *Farese vs. North Jersey Street Railway Company*, 78 N. J. 40

L., 499. He insists that the morning was dark and misty and because of that fact plaintiff might have been unable to see the northbound car—but the evidence of plaintiff is that from the sidewalk *he could see at least a distance of two blocks on that morning* (page 31, ll. 1 to 20), *and he many times positively and distinctly admits he could see at least two hundred and seventy feet because he swears he saw the southbound car at that distance.*

10 It is plainly evident then that the condition of mist or darkness bore no relation to the accident.

Plaintiff also endeavors to bring the case within the lines of the *Block* case supra, and *Devine vs. Public Service Railway Company*, 88 At. Rep., 1082, wherein it is laid down that one must use his powers of observation to discover approaching vehicles and a reasonable judgment as to when and how to cross in order to avoid collision but that such observation need not extend beyond a

20 distance within which vehicles approaching at lawful speed would endanger him.

However true may be the rules above mentioned the present case does not come within the rules so laid down. In this case plaintiff swears he extended his view for at least *two hundred and seventy feet* and *saw no car*, he then being in a place of safety, and yet after taking only four steps (or walking ten feet) he was struck by a car.

30 Nor can the theory of plaintiff that his view of the northbound car might have been obstructed avail him, for, on the contrary, the proof is that *it was not*, because *he saw for a distance of 270 feet*; the southbound car being then *270 feet away*.

It is undisputed, then, that plaintiff had an unobstructed view for at least 270 feet, and that he says he saw no northbound car within that distance, (at a time when he could have seen a car had one been there for he admits he did see

40 the southbound car at 270 feet away), and yet he

insists that a car which must have been more than 270 feet away struck him before he could, walking steadily, cover a distance not exceeding 10 feet.

That it is incredible that the car which struck him could have covered the distance of 270 feet while he was taking four steps is indisputable, and the only inferences which could reasonably be drawn are those drawn by the Supreme Court, to wit, either that he did not look or that he looked ineffectively. 10

We submit that the judgment of the Supreme Court was correct and should be affirmed, and the appeal dismissed.

EDWARDS & SMITH,
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WILLIAM D. EDWARDS,
EDWIN F. SMITH,
Of Counsel. 20

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