
New Jersey Court of Errors and Appeals

FREDERICK QUELLMALZ, EXECUTOR
OF EDITH M. QUELLMALZ,
Plaintiff-Respondent,
vs.
ATLANTIC COAST ELECTRIC RAIL-
WAY COMPANY, BODY CORPORATE,
Defendant-Appellant.

Action at Law.
On Appeal from
Supreme Court.

STATE OF CASE

APPEARANCES

DURAND, IVINS & CARTON
Attorneys for Appellant

ROBERT H. McCARTER
of Counsel

CHARLES E. COOK
Attorney of Respondent

Schuyler Press,  Asbury Park, N. J.

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INDEX

Judgment Record				3-7
State of Case				7
	Direct	Cross	Re-Direct	Re-Cross
Bert Layton	7-11	12-16		
Re-Called	154-155	155	58-60	60
Miss Edith Louis Grant	16-30	30-46	46-51	51-58
Re-Called	156			
Frederick Quellmalz ...	60-69	69-72		
Joshua L. Smith	72-78	78-95	95-96	
Robert Leland	97-104	104-116	117	
N. G. Trimmer	117-122	123-131		
George B. Cade	131-133			
Leroy Stetzer	133-135	136-140		
Arthur J. Manson	140-148	148-153		
Charge of the Court				157-167
Defendant's Requests to Charge				167-169
Judgment				170
Opinion				171-172
Grounds of Appeal				173-175
Answer				176

Judgment Record

MONMOUTH COUNTY COMMON PLEAS COURT

FREDERICK QUELLMALZ, EXECUTOR
OF EDITH M. QUELLMALZ,
Plaintiff,

vs.

ATLANTIC COAST ELECTRIC RAILWAY
COMPANY,
Defendant.

Judgment.
Record.

10

Plaintiff, Executor as aforesaid, residing in the City of Baltimore, in the State of Maryland, says:

1. Defendant is now, and was at the time hereinafter mentioned, a corporation of the State of New Jersey.

20

2. On June 18, 1917, defendant operated a certain electric street railroad, for the transportation of passengers for hire, over and upon a certain highway leading from Asbury Park southerly through the boroughs of Bradley Beach, Avon-by-the-Sea, Belmar and other places in the county of Monmouth, State of New Jersey, aforesaid.

3. On June 18, 1917, Edith M. Quellmalz, the wife of plaintiff, Frederick Quellmalz, at the invitation and request of defendant through its servants, became and was a passenger on a certain trolley car of said company, at the corner of Main Street and Cookman Avenue, Asbury Park, aforesaid, with the intention of being carried and transported to Garfield Avenue in the Borough of Avon-by-the-Sea aforesaid, and had paid her fare to said destination.

30

4. As defendant car on which she was riding approached Garfield Avenue at Avon-by-the-Sea aforesaid, on the day and year stated, said Edith M. Quellmalz notified the conductor of said car that she desired to alight at Gar-

40

Judgment Record

field Avenue, and then arose and stood by her seat as the car approached said avenue; while standing in this position in said car, suddenly without warning, a series of loud explosions arose from said car, caused by some unknown agency causing the car to jar and jerk, blowing out said controller or other part of the car or its equipment near said Edith M. Quellmalz, and flames and smoke therefrom were
10 projected and blown over, upon, toward and against her, enveloping the forward part of the car, whereupon in great fright and terror thereat said Edith M. Quellmalz fell, was precipitated or was thrown in her efforts to escape from the danger then present or appearing to be present from said car, to and upon the ground, with great force and violence whereby she sustained a fractured skull, and other injuries from which she did, on the same day and year die.

5. It became the duty of defendant to safely carry
20 and transport said Edith M. Quellmalz to her destination; yet the defendant carelessly and recklessly managed and ran said car and did not exercise due and proper control of the same; its equipment was improperly constructed, so that the fuses or other parts of the car were blown out, and it and said equipment caused large quantities of flames and smoke to shoot out and blown upon, toward, around and about her, and loud explosions occurred simultaneously, putting her in great terror and fear, and causing the injuries aforesaid.

30 6. Plaintiff further shows that the said Edith M. Quellmalz left a last will and testament wherein she appointed this plaintiff as sole executor; that said last will and testament has been duly admitted to probate in the office of the Surrogate of the County of Monmouth; that this plaintiff has duly qualified as such executor and is qualified under the laws of this state to institute and maintain this suit in behalf of himself as the surviving husband and next of kin of the said Edith M. Quellmalz, which letters so issued to him by said Surrogate he now brings into court ready to be
40 produced as this court may direct.

Judgment Record

7. Edith M. Quellmalz left her surviving this plaintiff her husband, who has suffered great pecuniary injury, loss and damages by her death, and also the following children next of kin, to wit: Frederick K. Quellmalz, Jr., aged five years, Henry Quellmalz, aged two years, who have also suffered pecuniary injury and damages by reason of her death as aforesaid.

8. Plaintiff's action against defendant was commenced within twenty-four calendar months from the day of death of Edith M. Quellmalz. 10

9. Plaintiff demands as damages \$10,000.00.

CHARLES E. COOK,
Attorney of Plaintiff.

The Defendant answered as follows: 20

Defendant, a body corporate of the State of New Jersey, with its principal office at Allenhurst, Monmouth County, New Jersey, says that:

1. Defendant admits that on June 18, 1917, it was a corporation operating an electric street railway from Asbury Park southerly and through the Borough of Avon-by-the-Sea, and defendant admits plaintiff's appointment as executor and qualification as such, but defendant denies the truth of the other matters contained in the complaint. 30

FIRST DEFENSE:

1. Defendant says that said alleged accident was not caused by or the result of any carelessness, negligence or want of care or caution of or on the part of the defendant or any of its servants or agents in the management and operation of said street railway or of said car on which it is alleged plaintiff's testate was then riding. 40

Judgment Record

SECOND DEFENSE:

2. The accident to plaintiff's testator and the injuries sustained by her were due to and the result of her own carelessness, negligence and want of care.

DURAND, IVINS & CARTON,
Attorneys of Defendant.

10

The Plaintiff replied as follows:

The Plaintiff denies the allegations contained in the Defendant's answer.

CHARLES E. COOK,
Attorney of Plaintiff.

20

This action was tried before Rulif V. Lawrence, Judge of said Court, with a jury on November 13 and 14, 1918. Judgment in the above entitled cause was rendered on this 14th day of November, 1918, in favor of the Plaintiff, Frederick Quellmalz, Executor of Edith Quellmalz, and against the Defendant, Atlantic Coast Electric Railway Company. Action at law by verdict for the sum of \$3,728.40 damages and \$46.03 costs of suit.

30

40

Bert Layton — Direct

MONMOUTH COUNTY COMMON PLEAS COURT

FREDERICK QUEELMALZ, EXECUTOR
OF EDITH M. QUEELMALZ,
Plaintiff,

vs.

ATLANTIC COAST ELECTRIC RAILWAY
COMPANY,
Defendant.

Action at Law.

10

Freehold, N. J., November 13, 1918.

BERT LAYTON, Sworn for plaintiff.

20

DIRECT EXAMINATION BY MR. COOK:—

Q. Where do you live, Mr. Layton?

A. Avon.

Q. And what was your business in 1917, in June?

A. Police duty.

Q. And were you on duty in the Borough of Avon
that day?

A. I was; yes, sir.

Q. How long have you lived in the Borough of Avon? 30

A. About twenty-two years.

Q. How long have you been on the police force?

A. Why, twelve years and two weeks.

Q. And have you worked for the borough in other
capacities?

A. Yes, sir; several times.

Q. And you have been a resident twenty-two years of
that borough?

A. Yes, sir.

Q. And were you a regular policeman on this day in 40

Bert Layton — Direct

question, on the 18th day of June, 1917?

A. Yes, sir.

Q. And the cars of the Atlantic Coast Electric Railway run through that street, do they not?

A. Yes, sir.

Q. Did you see this accident in which Mrs. Quellmalz met her death?

10 A. I didn't see it when it occurred.

Q. How long after it occurred did you see it?

A. I suppose about three minutes.

Q. And how was your attention attracted to the fact of an accident there?

A. I was in the drug store at the next corner south from where the accident occurred.

Q. South of Garfield avenue?

A. South of Garfield avenue and there was a lady standing in the door—

20 Q. And she told you something about it?

A. She said, "Oh, there is an accident," and ran out of the drug store and I saw it then.

Q. You went up to the car?

A. I went up to where the car was. The car had gone south and where the lady lay, she lay two and a half feet from the track.

Q. And how far was the car in advance of her, south?

A. Well, the car was in front of Snyder's house, one hundred and fifty feet, about, from Garfield avenue.

30 Q. How many feet?

A. One hundred and fifty feet from Garfield avenue, and she was twenty-five or thirty feet from the car.

Q. The car had passed over Garfield avenue from the north and was about one hundred and fifty feet—

A. It was about one hundred and fifty feet from Garfield avenue.

Q. Toward Belmar?

A. Yes, sir.

40 Q. And how far was Mrs. Quellmalz's body from the car when you saw it?

Bert Layton — Direct

A. I couldn't say for sure, about twenty-five feet.

Q. And the car had passed on?

A. The car had passed on.

Q. And what did you do, Mr. Layton, when you got to her?

A. The first thing I did, I looked at the lady. I looked at the lady and I saw she was hurt bad and quite a crowd collected and Dr. Kinmonth came and he said she was to be taken to the hospital right away. He didn't examine her, he just looked at her. And we got a car as soon as we could and put her in the car and sent her to Spring Lake.

10

Q. And was there any lady with her that day?

A. A lady by the name of Mrs. Edwards. I am not positive.

Q. Do you see the lady present in court today?

A. I think it is that lady back there. (Indicating.) This lady looked stouter.

Q. You don't say this was the lady who was present?

20

A. I don't say so; no, sir.

Q. You haven't seen her since, have you?

A. I haven't seen her since; no, sir.

Q. Was Mrs. Quellmalz living when you picked her up?

A. I wouldn't like to say. I couldn't say. When I first saw her she had concussion of the brain or something. The blood was flowing out of her nose and mouth.

Q. What other physical marks did you see on her?

A. A mark across the left eye.

30

Q. A cut?

A. More of a heavy bruise than a cut and there was a scratch on it.

Q. Was there any swelling over the eye?

A. It was a swelling as thick as my finger across the nose.

Q. You say she was bleeding from the nose?

A. From the nose; yes, sir.

Q. And did you examine the car after this accident, the controller box?

40

Bert Layton — Direct

A. I looked at the controller box. It had a hole about three inches in diameter with rough edges on it.

Q. Where was that hole in the controller box?

A. It was on the side and just about the bend. It was in the heavy bend on it.

Q. Near the top?

A. About six or eight inches from the top.

10

Q. And what was the general character of that hole?

A. Well, it looked as though there had been—or all the steel had just been torn right out from the controller box. It looked as though the steel was tore apart and it was rough, the edges.

Q. Were the rough edges outward?

A. No, sir; they didn't seem to be out so far.

Q. And did it indicate that the force had come from inward or outward, from the inside or the outside?

A. Well, yes, it did look that way.

20

Q. I wish you would describe the hole, about what size?

A. I should judge like that. (Indicating.)

Q. That is about two or three inches?

A. About three inches, I should say.

Q. And did it appear to be a flash?

A. I took it it was from the inside of this controller box was all flashing and smoking.

Q. And that was still there when you examined it?

A. Yes, sir.

30

Q. And you examined it after you had left Mrs. Quellmalz in the automobile?

A. Yes, sir.

Q. And that was some two or three minutes?

A. Oh, I judge six or eight minutes.

Q. And you figure it was about two or three minutes from the time you were notified of the accident until you got up to the car?

A. From the time the accident happened till we took her to Spring Lake.

40

Q. You mean two or three minutes from the time the

Bert Layton — Direct

accident happened, according to your direct testimony, when the lady made the remark and told you to go up to the car?

A. Yes, sir.

Q. And you were five or six minutes getting her in the car?

A. Yes, sir.

Q. And a fair estimate would be ten minutes afterward you were looking in this controller box?

10

A. Yes, sir.

Q. And there you saw this condition you have described?

A. Yes, sir.

Q. Did you talk to the motorman about it?

A. No, sir; I asked the motorman his name and the conductor's name.

Q. And didn't you talk to the conductor?

A. I didn't say anything to him at all.

20

Q. I assume there was some excitement?

A. That is the reason I didn't say anything. He was busy getting the names and he was excited.

Q. And did you see other passengers around the car?

A. I saw one man, he was a Syrian.

Q. And was he hurt on that car?

A. He had his clothes torn a little.

Q. And he came in the drug store?

A. He had his pants torn and kind of a gravel rash on his leg where he struck in the street and his hat was broke a little.

30

Q. Did you see any other passengers?

A. I think not.

Q. And did you make any inquiry to see whether there were any other passengers on the car?

A. I did not, because I didn't see any one around.

40

Bert Layton — Cross
CROSS-EXAMINATION.

BY MR. McCARTER:—

10 Q. Mr. Layton, I am going to try to ascertain if I can a little more clearly where the body of this lady lay with reference to the rear platform of the car at the time you got out there from the drug store. Was it about twenty-five feet away?

A. I should judge about twenty or twenty-five feet.

Q. And that point where she lay twenty-five feet or so behind the car was what distance in your judgment from the south side of Garfield avenue?

A. Why, I should judge about seventy-five feet.

Q. And about how far from the west rail of the south-bound track did she lay?

A. How far from it?

20 Q. Yes, sir.

A. Why, I should say about two feet or two and a half feet, something like that.

Q. Had her body been moved at all before you reached there?

A. I don't think so. I won't say positively, but I don't think so.

Q. Was her clothing disturbed in any way, torn?

A. Well, it didn't seem to be. I don't know what they were underneath where she lay.

30 Q. Which way was her head lying?

A. Why, it lay north.

Q. North?

A. North.

Q. And how did her body lay, parallel with the rail?

A. Well, I don't remember.

Q. You don't remember that?

A. No, sir; I wouldn't say.

Q. Was her face toward the ground?

A. No, sir; she was lying on her back.

40 Q. On her back?

Bert Layton — Cross

A. Yes, sir.

Q. Now you have told us that after you had gotten her safely into the automobile and sent her to the hospital you went out on the front platform and looked at this controller box. This controller box is black?

A. The black thing where that controller works around on.

Q. Now, so that we may get, if we can, in our mind's eye a picture of what you have undertaken to describe; about how large around was the circumference of this controller box at the top? 10

A. Well—

Q. Well, call it the diameter across.

A. Well, across the top would be fourteen or fifteen inches possibly.

Q. The diameter?

A. Yes, sir.

Q. A line drawn from one side to the other? 20

A. Yes, sir.

Q. And how near to this top, the top of the controller box, which I suppose had on it a handle which he turns the electric juice on with as he calls it—

A. Yes, sir.

Q. Now, about how far from the top where this handle is located was this hole in the controller box?

A. Well, I will say about six or eight inches from the top of the controller box. It was on the opposite side from the controller. The controller is on this side (indicating) and this hole was on the point, the hole was. 30

Q. Now what is the shape of the controller box?

A. Well, I should say it was one-half round. It is like that. (Indicating.)

Q. Now, assuming that the side of the car is toward the jury as you are sitting there, where was the hole with reference to the side of the car?

A. As this thing comes up and over it like that (indicating) it was about on this point, on the left-hand point of the controller box. (Indicating.) 40

Bert Layton — Cross

Q. Well, was it inside or outside?

A. You mean the hole?

Q. Yes.

A. It looked to me to be right on to it, right in the point.

Q. Well, you have described it as a diameter of about three inches, I understood you to say?

10 A. This hole.

Q. That didn't cover the entire controller box. I am asking you whereabouts in that controller box that hole was located.

A. It was on this point where the controller box runs around like that. (Indicating.)

THE COURT:—Unless it will disturb your line of examination I think I will have to ask him to indicate on paper.

20

MR. McCARTER:—I will be very glad indeed to have him do so.

BY THE COURT:—

Q. Suppose you make a rough draft of that controller box. Please stand up. I do not know how good a draftsman you are. I hope you are better than I am. But you draw that and then show where the hole was.

30

(Witness draws as requested by the Court.)

THE COURT:—Now show it to the jury and let Mr. McCarter see it.

(Sketch handed jury.)

BY MR. McCARTER:—

40 Q. Now I think if you will resume the stand we will get at this. I think you have done this very well. Now the

Bert Layton — Cross

car was going south just as you were looking, wasn't it?

A. Yes, sir; going south.

Q. And she had gone out on the right hand side of the car?

A. She went from the right hand side of the car.

Q. Now the controller box was on the platform and consists of something of the kind which you have indicated here? (Showing sketch to witness.)

A. This controller was on another handle, over on this side down here was the side where the hole was. (Indicating.) 10

Q. Where you have marked?

A. Yes, sir; somewhere right in here on that point.

Q. Just mark with an X where you think it was.

(Witness marks on sketch as requested.)

Q. The hole, then, was on the side of the controller next to which the motorman would naturally stand?

A. No, the motorman is on the right of it. 20

Q. The motorman is on the right of the hole, is that right?

A. Yes, sir. The hole was on the left hand side of the controller and the motorman is on the right hand side of it.

Q. Then the controller was located on the left hand side of the platform, wasn't it?

A. Yes, sir.

Q. And the hole was on the left side of the controller?

A. Yes, sir. 30

Q. Did you measure this hole or was that your recollection?

A. Yes, my recollection.

Q. It was your recollection?

A. Yes, sir; it was my recollection.

Q. And what time of day was this?

A. It was between five and six, if I remember right. I don't think it was earlier than that.

Q. And did you talk with this Syrian? 40

Miss Edith Louise Grant — Direct

A. I asked him if he was hurt and he showed me where his pants were torn.

Q. Did he tell you that he jumped off?

A. He was excited.

Q. Answer my question.

A. He said he didn't know whether he jumped off or fell off.

10 Q. He said he didn't know whether he had jumped off or had fallen off?

A. Yes, sir; that is what he told me.

Q. Now you have never been a motorman, Mr. Layton?

A. No, sir; I was never a motorman.

Q. And you do not have any familiarity other than that you acquired on that occasion with the so-called controller?

A. None whatever; no, sir.

20

MISS EDITH LOUISE GRANT, sworn for plaintiff.

DIRECT EXAMINATION BY MR. COOK:—

Q. Miss Grant, where do you live?

A. At present I live at 306 Suffolk street, Baltimore, Maryland.

Q. That is the residence of Mr. Quellmalz?

A. Yes, sir.

30

Q. You are a native of Baltimore?

A. No, sir; I am a native of Brooklyn, New York.

Q. And did you know Mrs. Quellmalz in her lifetime?

A. Yes, sir.

Q. And how many years were you acquainted with her up until the time of her death?

A. We were children together and lived in the same neighborhood and went to school together.

Q. In Brooklyn?

40 A. In Brooklyn, and continued the acquaintance throughout our lives.

Miss Edith Louise Grant — Direct

Q. And do you remember her marriage to Mr. Quellmalz?

A. Yes, sir; I was there.

Q. And you know that two children were born of that marriage?

A. Yes, I was there at the time that the little one came, the first one.

Q. And will you name the two children of the marriage of Mr. Quellmalz, the executor in this case, or the plaintiff, and his wife? 10

A. The oldest one is Frederick Quellmalz.

Q. Now the age?

A. Now aged six and one-half the middle of this month.

Q. And the other?

A. The younger one is Henry Quellmalz, aged three and one-half the middle of this month; one the 18th and the other the 24th of May, their birthdays. 20

Q. And those are the two little children over there?

A. Those are the two children; yes, sir.

Q. And were you with Mrs. Quellmalz at Avon during the early spring of 1917?

A. I had gone down there to visit her and had been there about a week before the accident occurred.

Q. And where were they living, the Quellmalzs?

A. They were living on Garfield street, just the second block from the ocean, in a cottage just opposite that hotel.

Q. I understood you to say you were stopping with them at that time? 30

A. Yes, sir.

Q. And Mr. Quellmalz's home all the time—is he here the greater part of the time?

A. He is here the greater part of the time.

Q. He is in business in Baltimore, isn't he?

A. Yes, sir.

Q. And you were a companion of Mrs. Quellmalz?

A. Yes, sir. 40

Miss Edith Louise Grant — Direct

Q. On the 18th day of June, 1917, did you accompany Mrs. Quellmalz to Asbury Park?

A. Yes.

Q. And how did you go up?

A. We went up in a 'bus, that little jitney 'bus that runs from Avon to Asbury Park.

Q. Did you go shopping on that day?

A. Yes.

10

Q. And what time did you start on your return journey to Garfield avenue, Avon?

A. It must have been some time between five and six. I was at the hospital at Spring Lake at six o'clock.

Q. On the evening of June the 18th?

A. Yes, sir.

Q. And where did you take the car to go to Avon?

A. On our return?

Q. Yes.

20

A. We boarded the car just where it stands there at the corner. Is it Cookman and Main?

Q. Cookman and Main?

A. Yes, sir.

Q. And what was the name of the trolley car?

MR. McCARTER:—It was operated by the defendant company; we will admit that.

30 THE COURT:—He said it was car 69 belonging to the defendant company.

MR. McCARTER:—There is no doubt about that at all.

Q. And you proceeded on your way to Avon. Where was Mrs. Quellmalz seated in the car and where were you seated?

40 A. She was seated on the outside, the end, what you would call the end seat of the car. It was an open car and the seats ran this way. There was a seat facing you, you know, that one right behind the motorman. There were two

Miss Edith Louise Grant — Direct

seats facing the front of the car and we were seated in the second seat, she on the end and I next to her.

Q. And I understand you that during that run Mrs. Quellmalz was on the right hand side of the car?

A. Yes, sir; right next to me.

Q. And you were to the east of her, right next to her?

A. Yes, sir.

Q. The children weren't with you?

A. No, sir; for the time being he was up on Main street with his grandfather, Mr. Quellmalz's father. We had expected to meet there together that day on our return and we had gone on and finished up our shopping.

10

Q. As the car approached Garfield avenue what was done there by yourself or Mrs. Quellmalz in relation to alighting?

A. Do you want me to start where, in the car now?

Q. Yes.

A. As we approached Garfield avenue Mrs. Quellmalz arose to signal the conductor. Of course there is no other way of signalling except by getting up, there is no bell or any convenience of that sort.

20

Q. No button?

A. No button or anything of that sort, and during those hours the cars are crowded.

Q. One moment. Was the car crowded?

A. Why, yes. And Mrs. Quellmalz, I turned myself when she turned to signal the conductor and I noticed a number of people behind us—

30

Q. Go ahead.

A. She arose, and as she arose to signal that way (indicating) to the rear, there was an explosion, rather a sharp explosion, and somebody said to sit down, and she sat down and turned toward me and we looked at each other. The car perceptibly increased its speed, and as we were then right approaching Garfield avenue and were desirous of getting home to get the children and take them to the train to meet Mr. Quellmalz—

40

Miss Edith Louise Grant — Direct

MR. McCARTER:—Please don't go into all these details. We don't care about the children.

10 THE WITNESS:—She arose to signal the conductor a second time, and just as she stood up there was an explosion, a loud explosion, a terrific explosion, in fact, as it sounded to me, and the whole front of the car was enveloped in a lurid flame and there was smoke and probably Mrs. Quellmalz, having left that partition and standing to attract the conductor's attention, was pitched forward out of the car. I turned toward her and made an effort to grasp her as she pitched, but she was heavy and I couldn't hold her in the car and she pitched out head first.

20 Q. Let me ask you in that connection, was there anything outside of the explosion and the smoke that occurred at that time that would have caused this? Was there anything that occurred?

30 A. You mean when this explosion occurred? There was a great deal of excitement and people jumping up and screaming and calling out, and then the car just simply in my idea of it—of course you know it happened very quickly, it was almost instantaneous—the car lurched and we were thrown this way and that way as it lurched—it seemed not to leave the track, but to spring, and then race right on. Then I, of course, as soon as she was thrown out my idea was to—

MR. McCARTER:—That is objected to, your idea.

THE COURT:—Never mind your idea. What did you do?

40 THE WITNESS:—I arose and tried to call to the conductor to stop, but the motorman had thrown up his hands that way (indicating) and had no control of the box whatever, of that thing that goes around.

Miss Edith Louise Grant — Direct

BY THE COURT:—

Q. Mrs. Quellmalz had fallen from the car?

A. She had gone out at that jerk and of course the car then raced and it went down one block before I could get out to get to her and we went to the other corner when I was enabled to alight and return to her.

10

BY MR. COOK:—

Q. When you turned, as you have stated, to give the conductor the signal to stop at Garfield avenue, do you know whether you had his attention or not?

A. You mean—

Q. To stop.

A. When I—

Q. Or Mrs. Quellmalz, either one.

A. When Mrs. Quellmalz raised up, as she did that she had to wait quite some time. I believe he was facing this way (indicating), his eyes turned this way, and his hand stretched out—he must have been facing toward the motor-man on the platform and I know she signaled a couple of times with her hand in that way. (Indicating.)

20

Q. Do you know whether she reached his attention or not?

A. I believe there was a bell run.

Q. Before you reached Garfield avenue?

A. I think it came simultaneous with that first explosion.

30

Q. And are you capable of estimating the seconds between the first and second explosion?

A. It was long enough for Mrs. Quellmalz to sit looking at him and to look at the car and to stand up again and signal the conductor, and as she stood the second time the second explosion came.

Q. And how long after she arose the second time did that explosion take place?

40

Miss Edith Louise Grant — Direct

A. Almost as she arose and turned toward the conductor.

Q. She was inside of the car proper?

A. Oh, yes.

Q. She wasn't on the side of the platform or the seat or anything of that kind?

A. No, sir; she was standing up by the stanchion that goes up.

10 Q. And what was there on the right hand side in the nature of a support that she could have reached?

A. The arm of the car comes out like this (indicating) and there is a piece of wood out here.

BY THE COURT:—

Q. An upright?

A. Yes, sir; a piece of wood.

20 BY MR. COOK:—

Q. And the car was an open car?

A. Yes.

Q. How about the windows in front, which of the windows were open? Were they open?

A. My recollection is the one in front was open and I cannot vouch for the other, but the smoke and flame was carried towards me and I was trying to attract the attention of the conductor to stop the car. I thought perhaps he could do something like pulling off the trolley or something in that way to stop the car.

30 Q. And do you say that the car was going very swiftly at that time?

A. Oh, very swiftly. I had to hold to the seat and to the man opposite me. I don't know, but he grasped my arm.

Q. And what effect did this sudden lurching and jerking have upon you?

40 A. Well, of course I was seated and I turned this way

Miss Edith Louise Grant — Direct

and of course as it went ahead I went back this way and then forward, naturally.

Q. And was that voluntary or involuntary on your part?

A. It was involuntary. It was due to the car jerking.

Q. And can you give us a better description of the force of that jerk?

A. I know it was great enough to move me back against the seat as far as I could get, and then forwards, as it lurched, against the front of the car, and probably being in a position like that— 10

Q. And when you were lurching, was that when Mrs. Quellmalz went out of the car?

A. Why, it seemed as though almost as soon as the explosion came, as we went forward she went forward and I went forward. We both seemed to go at the same time, both of us.

Q. Did she make any outcry? 20

A. No, sir; it was too sudden.

Q. And did you succeed in reaching her for the purpose of saving her from falling?

A. Yes, sir.

Q. And to what extent—

A. Her dress hooked up in the back and I remember speaking to the doctor that her dress was torn—

Q. Never mind what you said to the doctor.

A. In reaching for her I had unfortunately caught her dress and she lurched out of my grasp. 30

Q. And of what weight was Mrs. Quellmalz?

A. At that time she weighed 172 pounds.

Q. Now she fell out of the car—was it this side of Garfield avenue (indicating), or was it the south side of Garfield avenue?

A. It was just past Garfield avenue, as I recollect. I can point the house out. I remember distinctly the house.

Q. And how far from Garfield avenue to the south was it that she left the car to the best of your knowledge?

A. To the best of my knowledge I imagine it was just

Miss Edith Louise Grant — Direct

—well, I couldn't tell you how far it was from Garfield avenue. When I got out of the car it seems to me—I ran so fast—it was over at the other end of Garfield past the middle of the block and towards the other side.

Q. And how far was Mrs. Quellmalz's body from the car when you approached her?

10 A. Why, it seems to me a distance of from there to there. (Indicating.)

Q. Indicating five or six feet?

A. No, sir. I don't know just about that, I imagine.

Q. From the rear of the car or do you mean the side of the car?

A. The side of the car, the rails being about to there. About like that, to there. (Indicating.)

Q. About five feet or four and a half feet?

A. Yes.

Q. Was she in the rear of this car?

20 A. Yes, sir.

BY THE COURT:—

Q. And that would be indicating the width of the platform on which you are now sitting?

A. Yes, sir. The car wasn't there when I got back to her. The car had gone.

30 BY MR. COOK:—

Q. My idea is to get her position from the position of the track. Now from the westerly rail, that is the right hand rail.

A. Yes, sir.

Q. And how far, may I ask you again, was the body of Mrs. Quellmalz from the rear of the trolley car?

40 A. When I got out of the car the car was very nearly to the other street corner, so of course it was past the middle of the block.

Miss Edith Louise Grant — Direct

Q. Garfield avenue, you mean?

A. She was past Garfield avenue—I forget the name of the street, the streets I don't know—when I came back, and past the middle of the block going towards Garfield street. She was nearer the corner of Garfield than she was to the other corner where I had gotten out of the car. The car had gone a block before I was enabled to alight.

Q. Then tell what happened as you observed Mrs. Quellmalz on the street? What did you do? What was done? 10

A. As I got out of the car and ran towards her—I don't think it was a very misty day, as the gentleman stated before, and we both had our coats with us and we didn't have them on—but she had been raised by by the man who had run from the opposite side of the street and she was in a position—her feet were on the ground and he had her under the arms this way (indicating) and she was leaning in a position like that, you know, in the street up there (indicating) and her head was bent so far over on her chest, and her arms were dropped down and her face towards the ground. 20

Q. When he had her lifting her up?

A. Yes, sir; he had her lifting her up underneath the arms.

Q. And what was her position on the ground as indicated by what you saw, on her back or on her face?

A. By that and by the injury sustained it was her face. (Objected to as a conclusion.) 30

Q. You say a man was talking to her?

A. Yes, sir.

Q. And had his hands in back of her arms?

A. Right under her arms. He was talking to her. She was leaning forward this way (indicating) and he was standing back as though he had picked her up with her face to the ground.

Q. And what injury did you observe on the body of Mrs. Quellmalz at that time?

A. She had over the top portion of her brow, or rather 40

Miss Edith Louise Grant — Direct

the side, it was very black and this eye was almost closed.
(Indicating.)

Q. Indicating the left side of the face and eye?

A. Yes, sir.

Q. Was there much blood?

A. Oh, yes, she was covered with it.

Q. She spoke to you?

10

A. No.

Q. Did she ever speak to you again?

A. No.

Q. Do you know whether she was alive at that time
or not?

20

A. Yes, sir—this is just what I know about, in the way of nursing them—when I arrived there this man had picked her up and was holding her that way. I said to him—she was bleeding profusely, and I told him to lay her down straight. I considered it was a hemorrhage and she must not be in a perpendicular position. I then procured water and washed her face and tried to stanch the flow of blood, and this naturally disturbed her and I lifted her up and spoke to her. I do know that she was conscious. As I lifted her she had a kind of a second hemorrhage and the blood gushed from her nose and eyes and mouth all over me and her. And again I washed her face and then I laid her down. She never spoke after that and I considered that was the time she died, when she had the second hemorrhage.

30

Q. And then she was placed in a wagon, you say, an automobile or a wagon of some kind?

A. Yes, sir; it was a motor truck that somebody procured for me.

Q. And did you take her to the hospital?

A. Yes, sir; took her to Spring Lake.

Q. And when you arrived there I suppose you saw some doctor?

A. Yes, sir.

Q. And was Mrs. Quellmalz living then?

40

A. He told me not and I told him I didn't believe it. I asked him and he told some one else the same story. He

Miss Edith Louise Grant — Direct

told me he tried strychnine, an injection, and he also told me—

(Objected to.)

Q. Did the doctor pronounce her dead?

MR. McCARTER:—Oh, she was dead.

10

Q. Did you see or observe any passengers upon that car at the time of this occurrence?

A. I know at least one person went out of the car. There was so much confusion and of course I was interested mainly in Mrs. Quellmalz, but it seemed to me as though everybody was standing up and screaming and calling—but that one—I couldn't really say what any one else did, only that one was—

Q. What did you see or ascertain on that car? Did you observe one? 20

A. I didn't observe one. What I did observe was a man on his knees in the road as I looked back. Who he was I couldn't say.

Q. And did you see Mr. Layton here, this officer that has been on the stand today?

A. I have no recollection of seeing him, I saw so many.

Q. And you couldn't distinguish him?

A. I couldn't identify him.

30

Q. And this flame and smoke from the controller, was there much of it?

A. Yes, quite a lot. It seemed as though the whole front of the car composed of three windows was enveloped. I know the motorman was enveloped in flame.

Q. And did any of that smoke or fire from that controller come inward and near yourself and Mrs. Quellmalz?

A. It seems to me, as I now recall it, it came through the window directly in front of us and towards us. It seemed as though the draft brought it back towards us.

40

Miss Edith Louise Grant — Direct

Q. Was it close to you?

A. Yes, sir; we were only separated one seat from the front of the car.

Q. And after Mrs. Quellmalz was dead did you observe any other injury upon her person other than you have described?

A. Yes, the undertaker told me—

10

(Objected to.)

Q. No, not what he told you, but what you saw yourself.

A. He did tell me of this. I asked him—

Q. What did you observe? What did you see yourself?

A. As she was lying in the coffin it came to me that her hair wasn't arranged as it should be and I made inquiry as to why. He told me he had to arrange her hair that way because she was so badly bruised and her face was in such shape, and he didn't wish her mother and father to see her in that condition.

20

BY MR. McCARTER:—

Q. Tell what you observed. Was there anything about the head that you observed?

A. Her hair wasn't fixed in the right manner and I asked why it was fixed that way.

30

BY THE COURT:—

Q. Did she have a fractured skull?

A. Yes, sir.

Q. Did you see that?

A. Yes, sir.

BY MR. COOK:—

40

Q. Tell us what you saw.

Miss Edith Louise Grant — Direct

A. The undertaker showed me the back part of her head was caved in, the whole back part of her head, as he lifted her head out of the coffin when she was in the coffin at the church.

Q. You have stated that you had known Mrs. Quellmalz for many years past, were her friend, and I understand present at the marriage and present at the birth of one of these children afterwards?

10

A. Yes, sir.

Q. And did you observe her conduct as a mother towards these children?

A. It was remarked on by anybody who knew her.

Q. Just what you observed yourself.

A. I observed it frequently.

Q. Now will you tell us what duty she performed as a mother to these children as you observed it?

A. She took entire charge of the children and employed no maid or anyone to assist her in any way, took entire charge of their training and wouldn't allow anyone to do anything except herself. Her whole interest was in her home, her children and her husband.

20

Q. Did you ever see her teaching these children?

A. Yes, sir; many a time; she taught them all they knew.

Q. And by what method did she teach them? How would she teach them?

A. She was educated herself and was able to employ a great deal of the Montessori system in the way of A, B, C's—they were very young—and she gave them their religious training. She was their teacher and their nurse and everything.

30

Q. And the Montessori system is an educational system?

A. It is a kindergarten.

Q. A kindergarten system?

A. Yes, sir.

Q. And that comprised their education on account of their tender years?

40

Miss Edith Louise Grant — Cross

A. Yes, sir.

Q. And was Mrs. Quellmalz a Christian woman?

A. Yes.

Q. And was there any extraordinary fondness for her children that was observable by you?

A. Oh, yes, indeed.

Q. And was Mrs. Quellmalz an educated woman?

10 A. Yes, sir; she had a high school education and a business education.

Q. And she was trained for business, had a business education?

A. Yes, sir.

Q. And did she keep house at 306 Suffolk street for her husband and children?

A. Yes.

Q. Did she do the work all herself?

A. She had the assistance of one maid.

20 Q. And who did the household duties?

A. She done the upstairs duties herself and left the lower part of the house to the maid. She did practically all the buying and the incidental things and all that sort of upstairs work herself.

Q. And did she make anything for her children with her own hands?

A. Oh, yes, little things for them, not the larger things, but many little things that are necessary for children to have.

30

CROSS-EXAMINATION.

BY MR. McCARTER:—

Q. Miss Grant, your home at the time of this accident was in Brooklyn?

A. It was.

Q. Well, have you since the accident resided with the children and with Mr. Quellmalz, or is that only so just now?

40 A. Why, I remained with him after he had returned

Miss Edith Louise Grant — Cross

to Brooklyn and then returned to Avon again. My time was divided between my own home in Brooklyn and Avon until we returned to Belmar the latter part of September

Q. In 1917?

A. Yes, sir.

Q. And you have lived there with them since then?

A. I have remained with him since then.

Q. And I understand you to say you are now living in the house there? 10

A. Yes, yes.

Q. Did you return this summer to Avon?

A. Not this summer; no, sir; I had no desire to.

Q. I didn't ask you about your desire. Please answer my question. I understand there was a great deal of confusion at the time this thing occurred?

A. Naturally.

Q. How many passengers were there on the car?

A. I couldn't estimate, but I know in turning that there seemed to be about every seat full in the back of the car. 20

Q. And you sat next but one to the right side of the car, did you not?

A. There was one seat in front of us facing towards the motorman.

(Question repeated.)

A. Oh, yes, that way. (Indicating.)

Q. Please pay attention to my questions. And was there a young man sitting next to you? 30

A. There was a man.

Q. And a lady?

A. A lady with a baby.

Q. On the same seat?

A. Yes, sir.

Q. They were to your left?

A. Yes.

Q. And it was that young man that you said grabbed you or took hold of you in a certain stage of the game?

A. He didn't grab hold of me, but as I stood— 40

Miss Edith Louise Grant — Cross

Q. Didn't you say somebody took hold of you?

A. Somebody took hold of my arm as I stood up.

Q. That was the young man that grabbed you?

A. I said he didn't grab me. You said did he grab hold of me and I said he didn't grab me.

Q. Now you were getting off, naturally, at Garfield avenue, because that was where the relatives' house was?

10 A. Yes, sir.

Q. And you say that Mrs. Quellmalz arose and notified the conductor by signal or otherwise to stop the car at the next street; is that right?

A. Yes, sir.

Q. Now up to that time nothing had happened on the car, had it?

A. No.

Q. And then you heard the bell, didn't you?

20 A. Almost simultaneously with the explosion it seemed to me I heard the bell.

Q. And which at that time you believed to be the bell giving the motorman the signal to stop; that was your desire, by way of motioning to the conductor?

A. I imagine so.

Q. And at that time she was seated, wasn't she?

A. Do you mean when the bell rang?

Q. Yes.

A. She had arisen and the explosion came and then she had sat down.

30 Q. I say at the time the bell was rung to stop the car she was seated?

A. She was seated.

Q. And of course it is very difficult to get the sequence of events that follow so rapidly and instantly, like that (illustrating by clapping hands), but as I understand your story—and I am only trying to understand it—the next thing in the order of these very quick events that you recall is that she arose and then the explosion took place, and then, as you express it, she fell out?

40 A. She was thrown out.

Miss Edith Louise Grant — Cross

Q. Now are you able to tell us whether or not the car backed after the accident?

A. Do you mean after I alighted from the car?

Q. At any time.

A. They said—

BY THE COURT:—

Q. Would you know? 10

A. No, I couldn't say that.

BY MR. McCARTER:—

Q. Well, don't you know it didn't back? Don't you know that the car remained still and that the motorman and conductor and a crowd were back there with the body?

A. After I left the car my whole attention was given to Mrs. Quellmalz. I had no further thought of the car, just to attend to her. 20

Q. Well, Mr. Layton said that the car was about twenty-five feet from where she lay, beyond that, and you said you went a full block.

A. Not a full block from where she lay, no. She lay towards Garfield, or past Garfield. By Garfield I mean the street in front of the white house there. This side of the middle of the block to my recollection. It was this side of the middle of the block, because I remember that.

Q. Never mind that. I am trying to reconcile your evidence. I am not disputing you. It is very natural that you should not be able to carry the exact distances in your mind. Now, in view of the fact that Mr. Layton says, as I understand his evidence, that when he ran out from this drug store this car had stopped and this lady lay there on the ground; if the car was about twenty-five feet from where the lady lay, do you still think that you went a block, or had to come back a block before you got to her body? 30

A. No, sir; I didn't say I came back a block. It was a little over half a block. We went past Garfield street. It 40

Miss Edith Louise Grant — Cross

was just this side of the middle of the block she was thrown out. So it seemed to me I went back a little over half a block.

Q. Where did the car stop?

A. The car stopped very near that other corner. It didn't cross that street.

10 Q. Now where was it on your body, if you can recall, that this gentleman who sat next to you took hold of you?

A. He held his hand out and I was standing up and I was swaying. It was right here. (Indicating.) It was right there.

Q. Just held his hand on you?

A. Yes, his hand on me there.

Q. He was sitting next to you and you were both facing the way you were facing. Do you mean he held his hand on you?

A. He held his hand on me like that. (Indicating.)

20 Q. He didn't assist you?

A. No, sir; there was no need of that.

Q. And was that while you, as you have tried to describe it, moved back and forth in this motion that you have described?

A. The car was going so rapidly—

30 Q. I want you to answer my question, if you will. I am asking you if at the time he put his hand on your left arm, he was sitting at your left; was the time that you were, as you have described it, swaying back and forth. Your answer is yes?

A. Yes, sir.

Q. You weren't trying to get up?

Q. Were you standing?

A. I was standing.

Q. You were both standing?

A. Yes, sir; we were both standing.

Q. And you weren't trying to jump out?

A. Oh, no.

40 Q. And how far from the right side or edge of the car was it that you were standing at that time?

Miss Edith Louise Grant — Cross

A. I arose right in my seat, the second seat in the car.

MR. COOK:—Is this the first or the second time?

MR. McCARTER:—When she was swaying back and forth.

THE WITNESS:—That was the second explosion. 10

Q. Which arm was it that this young man touched?

A. He was on the left hand side, the left arm.

Q. Then you were standing facing the south?

A. I was facing the front of the car.

Q. Now can you recall enough about the car to definitely state the arrangements? In the first place, there was the front platform where the motorman stood, wasn't there?

A. Yes, sir.

Q. And then there is a kind of a partition or place for windows. I understand you to say there are three windows there, naturally, and you feel certain that one of these windows was up and you think the other two were down? 20

A. Yes, sir; I think one was down. I couldn't vouch for the other two.

Q. Which one was down?

A. The one in front of us would be the one to attract my attention.

Q. I am not asking you for an argument. I am asking you which one you think was down. 30

A. The one in front of us.

Q. Are you sure that was the one you saw down?

A. I am not quite sure.

Q. Well, now, the seat immediately inside of that window frame of which we have been speaking, is that a seat that goes backwards? I mean do people ride backwards on that seat?

A. Yes, sir.

Q. Then is there another seat between that seat and your seat? 40

Miss Edith Louise Grant — Cross

A. Yes, sir.

Q. Yes, so that if I have that right then here is the partition with the windows there, up and down, separating the platform from the car, and right up against that partition is the seat the passengers who sit on which face the rest of the passengers in the car, and they ride backwards?

A. Yes, sir.

10 Q. Then next behind that was another seat and then next came the seat on which you and Mrs. Quellmalz sat; was that right?

A. Yes, sir.

Q. So that counting the seat upon which those who sit ride backwards, you were on the third seat?

A. Yes, sir.

Q. Any passengers in front of you?

A. Yes.

Q. Did you see the Syrian in the car?

20 A. He was in the back.

Q. I ask you if you saw him.

A. No, sir; not in the car.

Q. Well, you don't know where he was in the car if you didn't see him, do you?

A. He wasn't in front of me, I know. I don't know where he was in the car.

30 Q. Now, I understand that after you had heard this bell, which was practically simultaneous with what you call the first explosion, you saw this flame and smoke on the platform; is that right?

A. No, sir; that came after the second explosion.

Q. And I understand that again Mrs. Quellmalz arose, and, as you express it, gave the signal the second time to stop; am I right?

A. Yes, sir.

Q. Notwithstanding the fact that the bell had rung?

A. Yes, because—

40 Q. You can't say because. You don't know what was in her mind. The bell had rung and she arose the second time you say for the purpose of giving the signal—of

Miss Edith Louise Grant — Cross

course you don't know what was in her mind, do you? You aren't a mindreader, are you?

A. No, sir.

Q. And as she stood up the second time after the bell had rung, what you call the second explosion occurred, and while she was still standing you say she was thrown out; is that the history of it?

A. Yes.

Q. Well, she was thrown against the seat in front of her, the back of the seat in front of her?

A. Do you mean— Just please explain that what you mean.

Q. Well, the seat in front of you had a back to it, didn't it?

A. Yes.

Q. And you talked about a jerk that the car gave?

A. Yes.

Q. And you have said she was standing?

A. Yes.

Q. And nobody, I suppose, between your seat and the back of the seat in front?

A. No, sir.

Q. The car gave a jerk?

A. Yes, sir.

Q. And she was thrown either backwards or forwards?

A. According as I judge how I was thrown.

Q. No, if you don't know say so. I am asking you what you saw. Now, she having arisen this second time and there being what you call this jerk, which you say interfered with the locomotion of the car, I ask you whether she was thrown either backwards or forwards?

A. I couldn't testify she was thrown either way, but I know she was thrown out.

Q. Oh, she went out, there is no question about that, but I am asking whether this jerk threw her forwards or back?

A. I was occupied with what occurred myself.

10

20

30

Miss Edith Louise Grant — Cross

- Q. In other words, you don't know?
- A. No, sir.
- Q. You were right by her?
- A. Yes, sir.
- Q. Right next to her?
- A. Yes.
- Q. And you seized her dress?
- 10 A. As she lurched forward I seized her.
- Q. You seized her dress?
- A. Yes.
- Q. When she was standing was she facing south or facing—
- A. Was she facing when she stood up first?
- Q. I mean the second time, because she was sitting down first.
- A. Yes, she rose up and turned to the back first.
- Q. Turned to the back?
- 20 A. Turned back again, because the car hadn't stopped.
- Q. Then how did she face?
- A. Like this, holding on to the front. I don't know, facing like this. (Indicating.) I imagine—
- Q. Don't let us indulge in imagination. You started to say she was holding on.
- A. I think I can say that truthfully.
- Q. She had her back to you, didn't she?
- A. Yes.
- Q. Did you watch the motorman at all during this
- 30 excitement?
- A. Why, I didn't exactly watch him; I glanced towards him.
- Q. And did you see him put his hand up to the ceiling?
- A. My idea was that he had both hands up.
- Q. I didn't ask you what your idea was. I asked you if you saw him put his hand up to the ceiling?
- A. I didn't see him do that. I saw him put both hands up.
- 40 Q. Miss Grant, I understood you to say on your direct

Miss Edith Louise Grant — Cross

examination, and my associate and friend Mr. Carton has the same understanding, that during this time when you were, as you said, pushed forward and back by this jerk, that you had your back on the seat?

A. No, I didn't have my back on the seat. I moved back this way, as one would, until I couldn't move any further. (Indicating.)

BY MR. COOK:—

10

Q. And then what happened?

A. I then lurched forward. I remember being in that position.

BY MR. McCARTER:—

Q. Well, at that time you went back as far as you could?

A. Yes, sir.

20

Q. And what prevented your going further?

A. The back of the seat. I was seated in this position, rather sideways, and expecting to arise and go out.

Q. Please answer my question and do not do anything more. Were you sitting or standing at that time?

A. I was sitting at the first explosion.

Q. I am speaking of the time when you moved backwards and then forwards.

A. I was sitting.

Q. And this jerk that caused you to go back and forth was at the time of the first explosion?

30

A. No, I was seated at the second explosion and I think that was the time I moved back and forth, at the second explosion.

Q. Then you weren't standing up, were you?

A. No, sir; I arose as soon as I had grasped Mrs. Quellmalz, I arose and that was when I got up.

Q. Then the jerk had stopped which occurred and caused you to go forward and back and you were able to arise and try to assist Mrs. Quellmalz?

40

Miss Edith Louise Grant — Cross

A. No, sir; you are mistaken. I had hold of her as she was seated, and I didn't arise until after she had gone out.

Q. Didn't you tell me in the early part of your cross-examination that this jerk occurred while you were standing?

10 A. No, sir; while I was sitting. I told you I went back against the seat as I was sitting.

Q. That was what you said on your direct and that was what struck me as inconsistent and that was why I asked you on cross if you didn't tell me this jerk happened after you arose?

A. What I mean to convey to you was, when I was standing the car was going at such a rapid speed I had to hold the front of the car. It was after Mrs. Quellmalz had gone out of the car I arose.

20 Q. How far do you say the car went after Mrs. Quellmalz went out of the car?

A. I say, as I recollect it, she was thrown out this side of the centre of that block between Garfield and the next street, and the car went from there, went to the next corner. Those blocks aren't so very long, you know. I don't know just exactly how long they are.

Q. No, no. Now Mrs. Quellmalz had just started to get out, and as you assisted her or attempted to assist her down she fell?

A. As she lurched I went to assist her.

30 Q. Were you standing at that time?

A. No, sir; I was seated at that time.

Q. Seated?

A. Yes, sir.

Q. And this movement back and forth that you describe that occurred with you had ceased, hadn't it?

A. When I grasped her; yes, sir.

Q. Never mind. You have answered my question. You said yes?

A. Yes.

40 Q. And the car was going regularly at that time?

Miss Edith Louise Grant — Cross

A. No, sir; the car never went regularly after she was pitched out.

MR. McCARTER:—I object to that and ask to strike it out.

THE COURT:—The no may stand. The rest may be stricken out. You may ask her of course—

MR. McCARTER:—I am simply anxious to have her answer the questions and not argue the case with me. 10

Q. How far apart do you want to tell this jury in time those two, what you call explosions, occurred, if you are able to estimate at all? Now I am going to take my watch out and the jury can watch me to see if I do it right, and I am going to give you the seconds. You know we sometimes say five minutes when we mean five seconds. Now just watch me as I am going to—

A. Well, if you will let me speak one minute. You know it was a very exciting time and I couldn't estimate it. 20

Q. Were they very close together?

A. Very close together. I have described what happened between the two explosions, if you could estimate the time by what happened.

Q. Did you see the flame and smoke after both explosions?

A. No, sir; it was after the second explosion that the flame came. It was a sharp report at the first explosion.

Q. You heard a sharp report. Do you call it an explosion? 30

A. It was a sharp report at first.

Q. I beg pardon.

A. The first was a sharp explosion and the second was a terrific noise.

Q. You heard a noise which you call an explosion?

A. Yes, sir.

Q. And you say you saw no smoke or fire or flame?

A. Not the first, the second time.

Q. I understand that. Then there was a more terrific 40

Miss Edith Louise Grant — Cross

noise, which you call an explosion, and that was accompanied by smoke and flame; is that right?

A. Yes.

Q. And you are not able to estimate the distance in time between the two, but you think, as you recall the situation, that what you have described occurred between the two?

10 A. There wasn't much time elapsed.

Q. There was a great deal of excitement and confusion, wasn't there?

A. Yes, sir; the people were excited.

Q. Yes.

A. These people were screaming and hallooing.

Q. And you were excited?

A. Yes, sir; as Mrs. Quellmalz—

Q. I am asking you if you were excited.

A. I wasn't nervous and didn't lose my mind.

20 Q. Did I ask you if you were nervous? I ask you if in the turmoil when everybody else in the car was jumping up and screaming and hallooing if you were excited.

A. To a certain extent.

Q. Well, were you or weren't you?

A. I was to a certain extent.

Q. When did you become excited?

A. As I saw Mrs. Quellmalz pitch out.

Q. And before that you weren't a bit excited?

30 A. No, sir; I don't remember it. I know we looked at each other.

Q. What?

A. I know we turned and looked at each other after the first explosion. Neither one of us seemed to be excited.

Q. Now this was broad daylight, wasn't it?

A. Between five and six.

Q. It was in June?

A. Daylight, not broad daylight, not like the middle of the day.

40 Q. And five o'clock in June, or between five and six in June, is that very dark?

Miss Edith Louise Grant — Cross

A. What I would term was broad daylight was the middle of the day.

Q. You were within three days of the longest day in the year, weren't you?

A. Yes.

Q. You say you reached the Spring Lake Hospital about six?

A. As I was preparing to leave I saw the clock just at the point of six. 10

Q. What time did you leave Cookman avenue?

A. I have no way of estimating. I think it was some time after five o'clock.

Q. And how long have you been a warm personal friend of Mrs. Quellmalz?

A. Why, during—

Q. Ever since you were girls together?

A. We had grown up together.

Q. And gone to school together? 20

A. Yes.

Q. And where was it she received this business education you spoke about?

A. She was in business about seven years before she was married.

Q. Well, that is a thing to her credit. She was a bread winner before she was married?

A. Yes, sir.

Q. And her husband's circumstances were such that after her marriage she wasn't compelled to do it? 30

A. No.

Q. They had a comfortable home?

A. Yes.

Q. And kept one maid?

A. Yes.

Q. Now I understood you what work was necessary upstairs she did, she made the beds, etc., because the maid was busy downstairs?

A. Yes, sir.

Q. She kept no nurse for the children? 40

Miss Edith Louise Grant — Cross

A. No.

Q. And what education did the boy that will be three and a half next month receive?

A. Why, he had learned to build little things with blocks and had learned his colors and had learned all the small jingles that are necessary.

Q. What do you mean by that?

10 A. Nursery rhymes he could recite, and he knew his name and his address and his telephone number.

Q. That is what you mean by his education?

A. And then he also knew the kindergarten system, building little things. She had taken him through the first stages of the kindergarten system and many things in life that we all learn to do.

Q. How long had you been down there?

A. Two weeks.

20 Q. And what education did she give this child who will be three and a half next month while you were there?

A. The oldest one will be five and a half. He was three and a half when Mrs. Quellmalz died.

Q. I am speaking of the youngest child. I understood you to say—

A. The younger one was a baby. He was only just two when she died.

Q. You say she had educated him. I am asking you what education he required.

A. I was talking of the oldest one.

30 Q. You said she educated him.

A. The youngest one could scarcely speak.

Q. I thought myself it was rather a precocious child to receive a large education at two years of age. How old was the oldest child at that time?

A. He was three in May and she was killed in June.

Q. He was three years old that May?

A. I believe that is right.

40 Q. If you don't know don't pretend to know. I am only asking you, because you have been sworn to tell the truth. You know a witness who tells the truth is supposed

Miss Edith Louise Grant — Cross

to tell the truth and not what someone else tells them.

A. You must remember that my work is very tiring and I have to have a little time, you know.

Q. I will give you all the time you want. I want to know—you have given us the ages of these children, as I understand you?

A. The older one was five years old and the younger one was two. The younger one was three in May and the older one was five in May; that is right. 10

Q. Now, then, the younger child, being two years old at that time, did not have very much of what you and I as semi-intelligent people would consider was much in the way of an education?

A. Only the fundamental training, the fundamental training that is necessary to start them right.

Q. And what fundamental training did this two-year-old child receive?

A. He hadn't had a bit, but he knew the difference between right and wrong and when he disobeyed his mother. 20

Q. And probably they didn't spare the rod now and then.

A. Well, Mrs. Quellmalz's training was such that he didn't need it very often.

Q. He didn't need it?

A. No, sir.

Q. Now we have the two-year-old taken care of and now we will come to the five-year-old. Was that a boy or girl? 30

A. It was a boy.

Q. And it was that one you had in mind when you described what he was able to do?

A. Yes, sir; that is the one. I thought I made a mistake. The younger one is the one I had the training of, I presume.

Q. I do not want to confuse your training with the mother's training. Now did Mrs. Quellmalz do any war work? 40

Miss Edith Louise Grant — Re-Direct

A. She hadn't been able to get out very much, because the younger boy—

Q. I didn't ask you for any speech—

THE COURT:—Well, the answer is no. The rest may go out.

10

(Adjourned till November 14, 1918, at 9.30 A. M.)

SECOND DAY.

November 14, 1918.

MISS EDITH L. GRANT resumed the stand.

RE-DIRECT EXAMINATION BY MR. COOK:—

20

Q. Miss Grant, do you know whether or not Mrs. Quellmalz on the day she met her death was a woman in good health?

A. She was positively in good health.

Q. I understood you to say her weight was about 175 pounds.

A. About 172.

Q. 173?

A. 172.

30

Q. Was she a stout woman or not?

A. Yes, she was stout for her height.

Q. How tall was she?

A. About an inch taller than I.

Q. That would be what, would you say?

A. I believe I am five feet four and one-half.

Q. Was she about an inch taller than you?

A. About five feet five and one-half.

Q. What was her age at the time of her death?

A. Thirty-nine years old.

40

Q. You mentioned on your cross-examination that you

Miss Edith Louise Grant — Re-Direct

did something when Mrs. Quellmalz pitched forward or was thrown?

A. I reached for her.

Q. Will you tell the Court and jury where you grabbed her, if you did grab her?

A. I reached for her and caught hold of her skirt just below the belt line. I remember the skirt was ripped from the belt.

10

Q. You saw that afterward?

A. As she lay on the table in the hospital.

Q. That was on her left side, your right?

A. Yes, my right, her left.

THE COURT:—What was she doing at the moment you reached for her belt?

THE WITNESS:—She was lurching forward.

20

Q. Why was she lurching forward?

MR. McCARTER:—I object.

Q. What caused her to lurch forward?

MR. McCARTER:—I object.

THE COURT:—Describe what you did.

30

THE WITNESS:—You mean at the time I reached for her?

THE COURT:—Yes.

THE WITNESS:—She seemed to be pitching forward. My idea was to reach forward to save her. It was just upon the impulse of the moment.

Q. Was she apparently in control of herself and her movements at that time?

40

Miss Edith Louise Grant — Re-Direct

A. She had been when she was facing me.

Q. At the moment of this lurch?

A. As far as I am able to testify she was.

Q. Was she in control of her movements?

A. I thought you meant in control of her mind.

Q. Was she in control of her movements by this lurching?

10 A. I believe not. She could not have been.

MR. McCARTER:—I object to the conclusion.

THE COURT:—Strike it out.

Q. Was she or not?

MR. McCARTER:—I object. How can she tell whether she was in control of her movements?

20 THE COURT:—The objection is sustained. She may describe exactly what she did. I think she has done that practically.

Q. Was she possessed apparently of her faculties?

MR. McCARTER:—I object. I not only object specifically to that, but I object because I do not think counsel has the right to go over the story and repeat it and enlarge upon it and cover up any defects that might exist in it. His
30 rebuttal, of course, is limited in range. He is simply repeating the whole story.

THE COURT:—The province of redirect examination contemplates omitted questions only.

MR. COOK:—I don't want to repeat the testimony.

Q. I don't know whether you testified to this previously or not, but at the time you reached for Mrs. Quellmalz when you say she was lurching in this car as you
40 described, were you standing or seated?

Miss Edith Louise Grant — Re-Direct

A. I was seated at that time.

Q. Mr. McCarter has asked you if a young man was seated at your left in this car upon the same seat.

A. There was a man.

Q. And Mr. McCarter further asked you on cross-examination if he put his hand on any part of your body at any time while in this car and you answered that he did.

A. After Mrs. Quellmalz had lurched out of the car and I had stood up. 10

Q. When did it occur—you say it occurred after she had lurched out of the car?

A. Yes.

Q. Have you been employed by Mr. Quellmalz since the death of his wife in any capacity in his household?

A. Yes.

Q. What is that capacity?

A. I went to assume control of the house and take charge of the children, trying to fill in a measure Mrs. Quellmalz's place. 20

Q. When did you enter upon those duties?

A. The agreement was made about the latter part of September or the first of September when we went to Baltimore. That was when my duties—I assumed my duties. I think that was the latter part of September.

Q. 1917?

A. 1917?

Q. Have you continued in the duties of caring for these children in his household since? 30

A. Yes.

Q. Are you still so engaged?

A. Yes.

Q. Have you received any compensation therefor from Mr. Quellmalz?

A. Yes.

Q. How much?

A. Twenty-five dollars a week.

Q. Has that continued intermittently during this period? 40

Miss Edith Louise Grant — Re-Direct

A. Yes.

Q. Does it still continue?

A. Yes.

MR. McCARTER:—Did you say intermittently?

MR. COOK:—I meant constantly. I will correct that.

10 Q. You received \$25 a week constantly and still receive it?

A. Yes.

Q. Was your contract for any particular period?

A. Well, no, not for any particular period. As long as I remained I was to receive that amount.

Q. Do you intend to remain?

A. Yes, I intend to remain.

20 Q. You spoke yesterday on your examination about this car proceeding in the direction it was going after Mrs. Quellmalz was thrown by the lurch from the car a distance of a block. Do you know the physical makeup of that locality in regard to the streets?

A. I couldn't say. Of course, I hadn't been there very long, but it seemed to me there was a corner there, that is, there was a passage-way or something of that sort.

Q. A passage-way in between the regular defined blocks?

30 A. I couldn't testify whether it was a regularly defined block, but it seems to me there was a corner there in some way.

Q. You were quite unfamiliar with the topography of the situation?

A. Yes, I hadn't been there long enough to locate it definitely in my mind.

40 Q. When you returned—I don't want to repeat this, but it is for my information—you say you found Mrs. Quellmalz's body to the north of the car in the rear of the trolley car?

Miss Edith Louise Grant — Re-Cross

MR. McCARTER:—I object. This has all been gone over.

THE COURT:—She testified to that.

MR. COOK:—Has she testified to the distance?

THE COURT:—She described it using the block as a measure, at least her conception of a block. 10

RE-CROSS-EXAMINATION BY MR. McCARTER:—

Q. Where do you say there was a corner?

A. Where the car had approximately stopped.

Q. You spoke yesterday of some Montesorri system of education?

A. Yes.

Q. Are you a pupil of that system? 20

A. No, I am not.

Q. Does the system of which you are a pupil give you an idea as to what is meant by "approximately stopped?"

A. Why, I should say that when I made that statement "approximately stopped" I meant that the car stopped very near what I call a corner.

Q. Do you mean the corner of Lincoln avenue?

A. I couldn't say what the street was called. I know Garfield street was the street we lived upon, and that was the street we intended to stop at. 30

Q. You have visited there several times?

A. I have been there a week.

Q. And you stayed there some time afterwards?

A. Yes, back and forth.

Q. Then you returned there?

A. Yes.

Q. Do you know the name of the first street south of Garfield avenue? 40

A. I never cared to approach that place any more afterwards.

Miss Edith Louise Grant — Re-Cross

MR. McCARTER:—I move that that be stricken out.

THE COURT:—Strike it out.

Q. I asked you if you knew the name of the street south of Garfield avenue?

A. I never learned it, no.

10 Q. Do you say there is a street between Garfield avenue and the next regular street?

A. Garfield avenue crosses. There is a station right down there.

Q. I am not asking about a station. Is there an alleyway or a private way or any kind of a so-called street between the two main streets, namely Garfield avenue and the one below?

A. I believe there is an opening, to the best of my belief.

20 Q. You think you stopped approximately near that?

A. I believe we stopped near that, yes.

Q. Were you in any occupation or business previous to this accident?

A. You mean was I at business?

Q. (Question repeated.)

A. I had never been in business, no.

Q. Do you live in Brooklyn?

30 A. Yes.

Q. With your family?

A. With my father.

Q. You had had no training as a nurse, had you?

A. Not any special training as a nurse, no, only what I had learned.

Q. And you suddenly concluded that you would stop living with your father and would live in the family of Mr. Quellmalz at \$25 a week?

40 A. I didn't suddenly conclude. I didn't conclude until I had been asked.

Miss Edith Louise Grant — Re-Cross

Q. When were you asked?

A. I was asked to continue this in September. I think the agreement was made then, after repeated urging on the part of Mr. Quellmalz.

MR. McCARTER:—I move that “after repeated urging” be stricken out.

THE COURT:—Yes, strike it out.

10

Q. Is it Miss or Mrs. Grant?

A. Miss.

Q. Have you ever had a contract that involved the payment to you of a hundred dollars a month besides your board before that?

A. No, I—

Q. Yet you cannot tell us when you made that contract?

20

A. Yes, I told you it was in the latter part of September.

Q. The latter part of September?

A. Yes.

Q. How long between the date of the accident, which I think was the 18th of June, and the latter part of September, had you been at Belmar?

A. At Avon?

Q. At Avon.

A. I remained a week during the time of Mrs. Quellmalz's funeral, when that was taking place, and the following Sunday I returned again to Brooklyn, and I was there until the eighth, I think I returned on the eighth of July when I heard that the older—

30

Q. Never mind when you heard. You returned on the eighth of July. All right; go on.

A. I thought you wished to know why I returned.

Q. I didn't ask you that. When you returned on the eighth of July, how long did you remain?

A. I remained there until the third of August.

Q. Then what happened?

40

Miss Edith Louise Grant — Re-Cross

A. Then I again returned to Brooklyn.

Q. Then when did you return?

A. I came back again either the 17th or 18th of August.

Q. And remained?

A. And remained and fixed up the house to return to Baltimore.

10 Q. At the time that you returned on the 12th of August—

A. The 8th.

Q. —and commenced—

A. It was later than the 12th of August. It was about the 17th or 18th.

Q. Had you then determined to go to Baltimore?

A. No, I had not determined.

Q. When did you go to Baltimore?

20 A. The latter part, around the latter part of September or the 1st of October. I think Mr. Quellmalz could give you the date.

Q. So that you were about six weeks fixing up the house preparatory to going to Baltimore?

A. Packing and fixing up.

Q. Six weeks?

A. No, I didn't do that all that time, oh, no; the children had been sick.

Q. I am only taking your story that you remained there six weeks preparatory to going to Baltimore.

30 A. That was some of the duties. It didn't take all that time. That was some of the duties I performed.

Q. Can you recall when you first commenced to receive this \$25 a week?

A. I believe it started the first week in October, when we went to Baltimore.

Q. Are you sure about that?

A. Yes, quite sure about that.

Q. Can you tell us when you made the bargain?

40 A. We discussed the subject after my return, and it

Miss Edith Louise Grant — Re-Cross

was about the latter part of September when I decided to remain.

Q. The latter part of September, what do you mean by that?

A. Well, my salary, if you wish to call it so—

Q. You can call it anything you want, wages, salary, honorarium, blood money, anything you want.

A. I believe my services are worth a salary. 10

Q. I am asking you when the arrangement was made.

A. The wages started from the first week in October.

Q. When was the arrangement made?

A. Just before that, the latter part of September, and probably we discussed it between the last week of September, but the wages, the remuneration, did not start until the first of October, the first week, when I took up my duties.

Q. You said in reply to the question of my friend, Mr. Cook, that you had intermittently received that ever since.

MR. COOK:—I corrected that. 20

A. I didn't say—

Q. You had replied yes before the correction was made. Did you understand the question?

A. Mr. Cook corrected that.

Q. I asked you if you understood the question?

A. I didn't mean to say yes to intermittently.

Q. You didn't understand the question then?

A. Evidently not. 30

Q. You gave the answer before you comprehended what you were answering?

A. Well, perhaps I had in mind what he meant. I perhaps thought quickly and answered. That might excuse it.

Q. Among your other accomplishments are you a mind reader?

A. I think I answered that question that you put yesterday. I believe I answered you then.

Q. That you were a mind reader? 40

Miss Edith Louise Grant — Re-Cross

A. I have never claimed to be. Of course I might have a gift unknown to myself.

Q. Whether you answered right or wrong about intermittently receiving this money, you now wish the jury to understand you that in fact you have received \$25 a week ever since the first of October?

A. I have never been away, so I must have received it.

10 Q. Then you have received it?

A. I have received it.

Q. What day of the week do you get it?

A. Usually Saturdays.

Q. In cash or check?

A. I cash, I prefer.

THE COURT:—Bear in mind that we are wasting time. I may say that counsel is wasting time on the subject. You are paid either by cash or check, are you?

20

THE WITNESS:—I have never received a check. I have always received cash.

THE COURT:—On Saturdays?

THE WITNESS:—On Saturdays.

Q. Regularly every Saturday?

A. Yes.

30 Q. Every Saturday?

A. Every Saturday. That is when I receive all the money to run the house and pay the bills.

Q. Who pays you this money?

A. Mr. Quellmalz.

Q. Personally?

A. Yes.

Q. Does he come home every Saturday?

40 A. If he is not home, yes, he is home without doubt on Saturdays, now that I recollect. He spends from Monday until Thursday night in New York.

Miss Edith Louise Grant — Re-Cross

Q. You started to say something differently and then Mr. Quellmalz looked at you and you changed it.

A. If he looked at me I was looking at you.

THE COURT:—It is a very simple question and I think we have been very patient in trying to have responsive answers from you. Listen to the question and give a responsive answer. Is he home every Saturday?

10

THE WITNESS:—Yes, as far as I can recollect he has been home every Saturday.

Q. Isn't he a traveling man?

A. Yes.

Q. For whom does he travel?

A. He is employed by the Baltimore Bargain House, of Baltimore.

Q. I think you testified yesterday that he was away a great deal and you were accustomed to visit Mrs. Quellmalz because you would be a companion with her during his absence.

20

A. Yes, but I am not testifying to anything—I was not a member of his household during that time. I couldn't testify anything during that time.

Q. You testified in explanation of the fact that you were accustomed to visit her before this accident occurred.

A. No, I was not accustomed.

Q. That he was away a great deal, he was a traveling man and away a great deal?

30

A. I said he was a traveling man and away a good deal.

Q. So you would stay with her. Will you swear he is home every Saturday?

A. No, I can't swear he is home every Saturday, but to the best of my recollection he has been since I have been with him.

Q. You think then because he had you there he came back Saturdays when he wouldn't be there before?

A. He thought it was necessary for him to be in the

40

Bert Layton.— Re-Called — Re-Direct

home more when I was there than when his wife was there because his wife was more used to the regulations of the household and assumed the responsibility necessary to the wife, whereas I am in the position of a housekeeper and governess.

Q. Do you employ the Montessori system with those children?

10

A. I have no particular knowledge of it. I have never had training in that system.

RE-DIRECT EXAMINATION BY MR. COOK:—

Q. Does the compensation of \$25 a week include your board?

A. I don't pay any board.

BERT LAYTON RECALLED.

20

RE-DIRECT EXAMINATION BY MR. COOK:—

Q. Mr. Layton, what is the name of the street immediately south of Garfield avenue running parallel to it?

A. Of Garfield?

Q. Yes.

30

A. Well, it is on the east side of Main street, it is Lincoln avenue. On the west side of Main street there is a new street cut through. They closed up Lincoln avenue and cut through two streets.

Q. Between Garfield and Lincoln two streets have been cut through?

A. No, Lincoln was closed by placing the depot between Lincoln and Garfield. There is one cut through between Lincoln and Washington. There is one cut there.

THE COURT:—On the east side of the street Lincoln avenue is still there?

40

THE WITNESS:—Yes.

Bert Layton — Re-Called — Re-Direct

THE COURT:—On the west side it has been closed and two streets have been opened in that same block?

THE WITNESS:—In two blocks.

Q. Is this street what you would call a blind street ending on the west side of Main, this new street that was cut in?

10

A. It runs into the depot grounds.

Q. It doesn't extend across to the east?

A. It doesn't extend across Main street.

Q. It stops at Main street?

A. On the west side of Main street.

Q. The street you are now referring to is between Garfield and Lincoln avenue on the west?

A. Half-way.

Q. What is the size of the block between Garfield and Lincoln avenues as it was? I don't mean the blind street. I mean the length of the block?

20

A. I think it is about 500 feet on Main street. I think the blocks on Main street are about 500 feet.

Q. The ordinary block such as you see in that locality?

A. Yes.

Q. In reference to the two streets, this street that you refer to that is intermediate between what was Lincoln and Garfield avenue is what distance south of Garfield avenue where it begins?

A. I don't know whether it is 150 or 200.

30

Q. On the day of the accident in reference to this new street that was cut through on the west side, where did the trolley car stand when it came to a stop?

A. As near as I can remember it was about approaching the intersection of this street on the west of Main street.

Q. You mean the new one cut there?

A. The new one cut there.

Q. That would be a distance, in your judgment, of how far?

A. I won't say sure whether it is 150 or 200 feet.

40

Bert Layton — Re-Called — Re-Cross
 Frederick Quellmalz — Direct

Q. No more than 200 feet?

A. No more than 200 feet.

MR. McCARTER:—South of what?

MR. COOK:—200 feet south of Garfield avenue.

10

Q. I understand there is where this car stopped?

A. That is where the car stopped on the corner of this intersection.

Q. The intersection of this new street?

A. The new street, the 40 or 50-foot street cut through.

RE-CROSS-EXAMINATION BY MR. McCARTER:—

20

Q. The drug store you said you were in, is that south of this new street or north?

A. South, on the east side of Main street, corner of Lincoln and Main.

Q. On the east side?

A. On the east side of Main street where I was.

Q. How far from that street, this new street that you say runs into the depot grounds, did Mrs. Quellmalz's body lie?

A. I should judge about half-way from Garfield to this new street.

30

Q. Half-way between them?

A. About half-way between them, I should judge.

FREDERICK QUELLMALZ, a witness, being duly sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION BY MR. COOK:—

Q. Mr. Quellmalz, you are the executor of the last will and testament of Edith M. Quellmalz, your wife?

40

Frederick Quellmalz — Direct

A. Yes.

MR. COOK:—Do you desire the letters of administration? I think it is admitted by the answer.

MR. McCARTER:—Have you the will here?

MR. COOK:—It is in the Surrogate's office.

10

Q. Were you granted letters testamentary by the Surrogate of the County of Monmouth?

A. Yes.

Q. Is this your authority as given you by the Surrogate (handing paper to witness)?

A. Yes.

MR. COOK:—I offer it in evidence and the record in the Surrogate's office.

20

THE COURT:—The paragraph under the answer. Paper and record above referred to received and considered in evidence as Exhibit P-1.

Q. What is your age?

A. Thirty-eight.

Q. Where is your residence?

A. 306 Suffolk street, Baltimore, Maryland.

Q. How long have you lived there?

A. About four years.

30

Q. Where was your residence previous to that?

A. 4007 Fernhill avenue, Baltimore.

Q. How long have you lived in Baltimore?

A. Since February 1, 1913.

Q. Prior to that where did you live?

A. I lived in Brooklyn.

Q. Were you the husband of Edith M. Quellmalz?

A. I am.

40

Frederick Quellmalz — Direct

THE COURT:—Were you, is the question.

THE WITNESS:—I was.

- Q. When were you married?
 A. August 20, 1910.
- 10 Q. What was her maiden name?
 A. Edith M. Shaw.
- Q. Where was she a resident?
 A. Brooklyn, N. Y.
- Q. Were any children born of this marriage?
 A. Yes.
- Q. How many?
 A. Two.
- Q. Please give their names and their ages at this time.
 A. Frederick Quellmalz, Jr., age six and one-half;
 Henry Quellmalz, age three and one-half.
- 20 Q. Are these the two children that are in court?
 A. These are the two children that are in court.
- Q. What is your business, Mr. Quellmalz?
 A. I am manager and buyer of the dry goods department of the Baltimore Bargain Store, Baltimore.
- Q. You have enjoyed that position for how long?
 A. Since February 1, 1913.
- Q. Did you maintain a home in Baltimore?
 A. I did.
- Q. You lived with your wife?
 A. Yes.
- 30 Q. And your children?
 A. Yes.
- Q. What was the age of Mrs. Quellmalz?
 A. Thirty-nine.
- Q. Were you at Avon-by-the-Sea in the summer of 1917?
 A. Yes.
- Q. Spring and summer?
 A. We had a cottage there.
- 40 Q. Did you move your family to this cottage?

Frederick Quellmalz — Direct

A. I moved my family to this cottage and also previous to that.

Q. The year previous to that?

A. Yes, and the year previous to that.

Q. The same cottage?

A. No, in 1916 we had the same cottage. In 1915 we had another one.

Q. You have been there how many years?

A. In Avon three years. 10

Q. What was the number of the street on Garfield avenue in Avon in 1917?

A. 136.

Q. With reference to the main street, how far is that from the ocean?

A. Well, it is, our cottage is about two blocks from the ocean.

Q. Who comprised your household during the summer of 1917?

A. My wife and two children and one maid. 20

Q. Who comprised your household when your wife was living in Baltimore?

A. The same.

Q. You didn't see this occurrence?

A. I did not.

Q. Were you home at the time?

A. No.

Q. How soon after did you arrive at home?

A. About half an hour. I was on my way from New York at the time. 30

Q. What day of the week did this occur?

A. Monday.

Q. You had no knowledge that an accident had happened?

A. None until I got to the station at Avon.

Q. Then what did you do?

A. The doctor was at the station with an automobile and informed me there had been an accident. 40

Frederick Quellmalz — Direct

MR. McCARTER:—One moment. This is immaterial and improper.

THE COURT:—Not what the doctor said. Strike out that.

- Q. What did you do?
 A. Went to the Spring Lake Hospital.
- 10 Q. Whom did you find there; I mean did you find your wife there?
 A. Found the body of my wife there.
 Q. Was she dead at that time?
 A. She was.
 Q. Did you see her, look at her?
 A. Not at that time.
 Q. Did you see her afterwards?
 A. Saw her in the coffin.
- 20 Q. Did you notice any bruises or abrasions upon her body or face?
 A. One bruise right on the forehead. (Indicating.)
 Q. Indicating the left side of the forehead?
 A. Of the forehead, yes.
 Q. At the time of Mrs. Quellmalz's death was she a woman in good health?
 A. She was in perfect health.
 Q. Had she ever been sick except the confinements of her children?
- 30 A. Not at all.
 Q. What was her weight?
 A. About 172 pounds.
 Q. And her height?
 A. I should say about five feet six, five feet five to six.
 Q. Her build?
 A. Stout.
- 40 Q. In your household, Mr. Quellmalz, at the time of her death what did your wife do in relation to her duties towards her children?

Frederick Quellmalz — Direct

A. She took sole care of the children. She would not employ any maid to look after them, but wanted to take sole care of them herself, so she did.

Q. Was she fond of them?

A. Very.

Q. Were the children fond of her?

A. Very.

Q. Was there any particular devotion between the children and her save as ordinarily noticed between mother and children?

10

A. Why, there was simply the mother love that always exists in those circumstances.

Q. Was she devoted to the care of her children?

A. Absolutely, gave them all her time and attention.

Q. Do you know whether she instructed them?

A. I do.

Q. In what way?

A. The older boy she gave his preliminary education right up to the time of her death. The younger boy was too young to give any education to, he was only a baby. She should only instruct him to obey and things of that sort.

20

Q. Was your wife an intelligent woman?

A. Yes.

Q. Was she religious?

A. Yes.

Q. Did she impart religious training to these children?

A. She did.

Q. Since the death of your wife, has there been any change in your household in its makeup?

30

A. There is. I have been compelled to employ somebody, a housekeeper, to look after the house, and additional servants.

Q. Whom did you employ to look after the house and children?

A. Miss Grant.

Q. The witness preceding you?

A. The witness preceding me.

Q. Had she been a friend of your wife?

40

Frederick Quellmalz— Direct

A. She had.

Q. Where does she live?

A. She lived in Brooklyn.

Q. Did she visit you frequently prior to this?

A. She did.

Q. When did you make any arrangement, if you made any with her, regarding her entering your household and taking care of the children?

A. I spoke to her at various times after she came back to Avon, and at first she didn't seem to be inclined to accept my—

MR. McCARTER:—I object.

MR. COOK:—I think it should be stricken out.

THE COURT:—The question is withdrawn. Strike it out.

Q. State when you did enter into any agreement, if you did, with her relating to the care of the children and the management of your household.

A. I made the final agreement with her in September.

Q. When did the agreement start?

A. October 1, 1917.

Q. Did you agree to pay her any compensation?

A. I agreed to pay her \$1300.00 a year, \$25 a week.

Q. Did that include board?

A. No, her board was to be extra, that is—

Q. The board is included?

A. Yes, I was to give her her board.

Q. Did she enter upon the discharge of those duties as agreed?

A. She did.

Q. Has she continued in the discharge of those duties?

A. Yes.

Q. Is she still at the house?

A. Yes.

Frederick Quellmalz — Direct

Q. Taking care of the children?

A. Yes.

Q. Are you paying her?

A. Yes.

Q. Is there any agreement when this service would terminate?

A. None.

Q. What were her duties in the house?

A. She was to take general charge of the house and take the care and training of the children. 10

Q. Did she do so?

A. Yes.

Q. Were you obliged to employ any extra help by reason of her death?

MR. McCARTER:—I object to “oblige.”

A. Yes. 20

Q. Did you do it?

A. Yes.

Q. Whom did you employ?

A. I employ another servant to come in three days a week to do cleaning.

Q. Who did the cleaning prior to that?

A. My wife attended to that.

Q. What do you pay this servant?

A. \$1.60 a day.

Q. Has that continued since the death of your wife? 30

A. Yes.

Q. Is it still continuing?

A. Yes.

Q. What other expenses have you been put to by reason of this accident?

A. I was put to the funeral expenses.

MR. McCARTER:—One moment, I object.

MR. COOK:—I think that is not allowable, funeral expenses. 40

Frederick Quellmalz — Direct

THE COURT:—No.

Q. What else outside of that?

A. The additional expenses I have enumerated in connection with the house.

Q. And inconvenience?

10 MR. McCARTER:—I object.

Q. The inconvenience, I repeat, occasioned you by the loss of your wife, was there any inconvenience?

MR. McCARTER:—I object, it is not an element of damage.

20 THE COURT:—No, the loss of service is the element of damage. The loss of service may be translated perhaps into inconvenience, but that is merely the shell of the real ground.

Q. Were you and your wife living happily together?

A. Very.

Q. Was there any great companionship existing between you?

A. Very much so.

Q. Her duties to you, were they rendered?

A. Absolutely.

30 Q. Kept up?

A. Absolutely.

Q. You were away a part of the time, Mr. Quellmalz?

A. Yes.

Q. That is so, during the life of your wife?

A. Yes.

Q. What was the period which you would be away from home?

A. Usually the first half of each week.

Q. Since the death of your wife?

40 A. Approximately the same.

Frederick Quellmalz — Cross

- Q. Are you home in any particular period of the week?
 A. I am always home Saturdays and Sundays.
 Q. When do you pay Miss Grant?
 A. Saturday.
 Q. How do you pay her?
 A. In cash.
 Q. Do you give her any other money besides the \$25 a week? 10
 A. I do.
 Q. What for?
 A. Give her the money to pay the servants and the incidental household expenses.

CROSS-EXAMINATION BY MR. McCARTER:—

- Q. How much younger than your wife were you?
 A. Two years.
 Q. Your boy Fred was born in May? 20
 A. Yes.
 Q. When you give his age as six and one-half you are speaking of the present time, are you not?
 A. Yes, sir.
 Q. At the time of the accident, which was in June, 1917, he was five years old?
 A. Yes, sir.
 Q. What education, as such, had he at that time received?
 A. He had received about the same education as a child would receive in these open-air playgrounds of a kindergarten. 30
 Q. I am not asking you to compare it with something else.
 A. That is about the best way I can explain it.
 Q. I don't know, and perhaps some of the jury don't know, about the open-air kindergartens, what the education is there.
 A. For instance, he could count say from 1 to 10, he could tell various letters, he could tell the nursery rhymes, 40

Frederick Quellmalz—Cross

he knew his prayers, which he said every night, he knew the difference between right and wrong, he knew he had to obey.

Q. In other words he had received a good home training?

A. Exactly.

10 Q. That is what you mean by education, don't you, there?

A. Exactly, he had received a perfect home training.

Q. You have not a copy of your wife's will with you?

A. No, I have not. It is on file here, however.

Q. Your complaint asserts that it was admitted to probate in this county?

A. Yes, sir.

20 Q. I observe that by the first clause of what purports to be a copy of this will in the book in the Surrogate's office, namely Book 66 of Wills of Monmouth County, Page 327, it is provided that "after the payment of all my just debts I give, devise and bequeath all my property and estate of every kind, nature and description, whether real, personal or mixed, and wherever the same may be situate, unto my husband, Frederick Quellmalz, absolutely." You are that Frederick Quellmalz?

A. I am.

Q. Who is Carl Quellmalz?

A. My brother.

30 Q. I see by this will he is made guardian of the children.

A. In case of my death. You probably have not read the second clause there.

Q. The second clause does not seem to have anything to do with it. Did your wife leave any real estate?

A. No, sir.

Q. Now, you were married, I think you said—

A. August 20, 1910.

40 Q. And had been sufficiently prosperous to enjoy the sea breezes of Avon for three summers, including the summer in question?

Frederick Quellmalz — Cross

A. Yes, and previous to that we enjoyed them a
Asbury.

Q. You kept house in Baltimore as well as at the
shore?

A. Yes, sir.

Q. During this time?

A. Closed our house for the summer in Baltimore
and came to the shore and kept house there.

10

Q. You say that the cleaning that this hired girl does
at \$1.60 a day, three days a week, during Mrs. Quellmalz's
life was done by her?

A. It was.

Q. Miss Grant was too dainty for that?

A. Yes, her health did not permit her to do it.

Q. Which was it, too dainty or health?

A. Health.

Q. Is she ill?

A. Why, she has been off and on, she has been under
the care of a physician.

20

Q. During this time that you have been paying her
\$25 a week?

A. Yes.

Q. What is her trouble?

A. Principally shock caused by the death of my wife,
as far as I can find out.

Q. How much do you pay her for incidental house-
hold expenses a week?

A. It varies. It will generally amount anywheres from
\$10 to \$25.

30

Q. What does that include, the provisions for the
house?

A. No, the grocery bill I pay by check, but that in-
cludes, for instance—the butter and egg man comes around
and the ice bills, laundry bills and things of that sort.

Q. Has this that you call bad health of Miss Grant's
interfered with the performance of her duties?

A. Some times it has, yes.

Q. You paid her all the same?

40

Joshua L. Smith — Direct

A. Absolutely.

Q. Why is it that your business requires you to go away from home?

A. Because I have to purchase goods.

Q. Where do you go?

A. Most of the time to New York, sometimes to mills, but the greater part of the time to New York city.

10 Q. Where are the mills located?

A. Various parts of the south and New England.

Q. How far south?

A. The furthest south I have been has been in Alamanz county, North Carolina.

Q. Where in New England?

A. Boston and Lowell and Lawrence.

MR. COOK:—We rest.

20

DEFENDANT'S CASE.

JOSHUA L. SMITH, a witness being duly sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. McCARTER:—

Q. Mr. Smith, were you connected with the car in which Mrs. Quellmalz was a passenger on the 18th of June last?

30 A. Yes, sir.

Q. When she was killed?

A. Yes, sir.

Q. In what capacity?

A. Conductor.

Q. Are you still employed by the Atlantic Coast Electric Railway Company?

A. No, sir.

Q. When did you leave their employ?

A. The end of last summer.

40 Q. The end of the last summer?

Joshua L. Smith — Direct

A. This past summer.

Q. Where are you living at the present time?

A. Asbury Park.

Q. By whom are you employed at the present time?

A. T. A. Gillespie, in Morgan.

Q. Do you remember what car you were running the night of this occurrence?

A. 69. 10

Q. What style of car was this?

A. An open or summer car, single truck.

Q. Do you remember receiving a signal or notice from a lady to stop the car in Avon?

A. Yes, sir.

Q. Can you tell us about where the car was, so far as your recollection goes, when you first noticed that that lady wanted to alight?

A. She stood up just as we were crossing Garfield avenue. 20

Q. What did she do?

A. She turned facing the car and turned around and nodded to me.

Q. You were then crossing Garfield avenue?

A. Yes, sir.

Q. What is the practice of that road of stopping between blocks?

MR. COOK:—Objected to, not what his custom might be, but what did he do then. 30

THE COURT:—It must necessarily appear what he actually did on this occasion.

Q. Did you give the signal to stop?

A. Yes, sir.

Q. Does a signal given when you are crossing a street, as you say you were just crossing Garfield avenue, in the customary practice bring the car to an immediate stop or do you go way to the next block? 40

Joshua L. Smith — Direct

A. Yes.

MR. COOK:—Objected to on the ground it is entirely within the control of the motorman. This man is the conductor.

MR. McCARTER:—I want the practice.

10

MR. COOK:—I object to the practice.

THE COURT:—I will permit it. Mr. Cook, the objection is overruled and you may have an exception.

EXCEPTION NOTED.

Q. What was your habit or practice as to stopping your car between streets?

20

A. Never to make any stops between blocks.

THE COURT:—Why was that a habit or practice?

THE WITNESS:—Supposed to stop on the near side crossing, not between the block; it is a State law.

THE COURT:—A State law?

THE WITNESS:—I think so.

30

Q. You have the near side stop habit, anyway, that is, your company did when you were with it?

A. Yes.

Q. Did you observe something happen on the front platform?

A. Yes, sir.

Q. Of the car?

A. Yes, sir.

Q. Describe what you saw.

40

A. We had gone about 25 feet, I guess, or 50 feet the

Joshua L. Smith — Direct

other side of Garfield avenue when there was a sort of a puff like, a little flame, not very much smoke.

Q. One witness has testified, Miss Grant, that there were two loud explosions. Did you hear any such thing?

A. No explosions at all.

Q. Were there two noises?

A. No, sir.

Q. One?

A. Yes, sir. 10

Q. Whatever there was was one, you say?

A. Yes, sir.

Q. Do you recall whether or not the windows separating the front platform from the body of the car were open or closed?

A. They were up, closed.

Q. Where do the windows rest when they are down, when they are not up, as you call it?

A. They drop down in back of the seat. 20

Q. Upon receiving the signal to get out, that she wanted to alight, you say you rang the bell?

A. Yes, sir.

Q. Were you watching her after that?

A. Yes, sir; she started up towards me.

Q. Where?

A. On the running board.

Q. On her side of the car?

A. Yes.

Q. What did you observe her do? 30

A. She, just about the time the flash came, she just seemed to leap right out of the car.

MR. COOK:—I object to “seemed to leap out of the car.”

THE COURT:—Not what she seemed to do, what you saw her do.

THE WITNESS:—She jumped out of the car. 40

Joshua L. Smith — Direct

THE COURT:—You saw her do that, did you?

THE WITNESS:—Yes, sir.

THE COURT:—You say she was standing on the running board at that time?

10 THE WITNESS:—She was standing inside the car.

THE COURT:—You were on the running board?

THE WITNESS:—Yes.

Q. About how far were you, Mr. Smith, from the position between the seats that she occupied?

20 A. Well, I was standing right by the back seats on the running board. She was the third seat from the front. When I saw her stand up I started towards her.

Q. Do you recall about how far below the corner the car in fact stopped after this blowout?

A. It stopped just north of Lincoln avenue, about 50 feet north of Lincoln avenue it stopped.

Q. Did you go back to the place where this lady lay?

A. Yes, sir.

Q. Had a crowd congregated before you got there?

A. Not very many, just one or two.

Q. How did she lie at that time?

30 A. She laid a little on one side, with her head down, with this side laying on the ground.

Q. Her head on the ground?

A. Yes.

Q. Face down?

A. Kind of, partly, she lay a little on her side.

Q. Some testimony has been given with reference to a bruise over her left eye; do you remember seeing that?

A. Yes, on one side of her face.

Q. Was that the side she was down on the ground?

40 A. Yes.

Joshua L. Smith — Direct

Q. Her left side?

A. Yes.

Q. Were there many passengers on that car?

A. I can't remember the exact amount, but there was a pretty good load. It will tell there on the report the exact amount.

Q. About how fast do you think the car was going at the time the signal was given to stop?

A. About 18 or 20 miles an hour. 10

Q. What did you do towards getting help for this person, this lady?

A. Got a car as soon as I could to take her to the hospital.

Q. Did you see anybody else jump off the car beside this lady?

A. Yes, there were several after they saw her go jumped off, mostly fellows. All of them were fellows.

Q. It has been testified to by Miss Grant that the car jerked two or three times. Did you notice any jerk? 20

A. No, sir.

Q. If you were riding on a street car as a conductor can you tell instinctively whether the power is on or off?

A. Yes, sir.

MR. COOK:—Objected to.

THE COURT:—Objection overruled. I will allow the answer. 30

Q. I don't know whether you know whether at the time or immediately after the appearance of this flash you have described, this noise, the motorman did anything. I don't know whether you saw him do anything or not.

A. He threw the overhead off.

Q. Did you see him do that?

A. Yes.

Q. Where is the overhead? 40

Joshua L. Smith — Cross

A. That is a safety valve at the top right up over the control.

Q. In the roof of the platform?

A. Yes.

Q. Throwing the overhead off, would that cut off the power?

10 A. Yes, sir. The reason I noticed that I would have pulled the pole off if he hadn't thrown it.

MR. COOK: Objected to.

THE COURT: Strike it out. Objection sustained.

Q. You have already told us, I think, that Mrs. Quellmalz was sitting in the third seat?

A. Yes, sir.

Q. At which side of the seat was she sitting?

20 A. On the right-hand side.

Q. Did you see anybody with her?

A. Well, I can't say there was anybody with her but Miss Grant. I got her name after the accident. She said she was with her.

Q. How long were you employed by this company?

A. That was the second summer.

CROSS EXAMINATION.

30 BY MR. COOK:

Q. Mr. Smith, can you give us the number of people that were on the car that day, or about?

A. I can't say the exact amount.

Q. What was the capacity of car 69?

A. Well, there is generally—if it is crowded they ride five on a side.

Q. Well, how many seats are there?

40 A. There is nine, I think, counting the one on the front and the one on the back.

Joshua L. Smith — Cross

Q. What would that amount to in numbers if the car was filled with people seated?

A. Forty or forty-five, I suppose; I don't know exactly whether that is the right number of seats or not.

Q. Well, it would be about that?

A. Yes.

Q. Were there any people standing in the car on this occasion?

A. No, sir. 10

Q. Are you sure about that?

A. Pretty positive, unless there might have been a fellow standing on the back. There are a lot of fellows ride on the back.

Q. Was there actually anybody standing up in the car proper?

A. No, sir.

Q. You are sure about that?

A. Not as I know of. 20

Q. We will assume there were forty or forty-five people that were passengers on this car at the time of this accident.

A. I can't say.

Q. What is your judgment about it?

A. It was pretty well crowded, but I can't say whether there was that many or not.

Q. Did these people get on at various places along the line?

A. At that time of day they all get on at Cookman. 30

THE COURT: Not what they do.

THE WITNESS: That is where they all got on.

Q. Did you pick up a passenger between Cookman Avenue and Garfield?

A. Two at Sylvania Avenue.

Q. Any more?

A. One, I think, got on at Bradley Beach; that is all. 40

Joshua L. Smith — Cross

- Q. How many did you let off on the way down?
 A. I can't say.
 Q. Don't remember?
 A. Don't remember.
 Q. You are the conductor on the car?
 A. Yes.
 Q. Your duties to collect the fares?
 A. Yes, sir.
 10 Q. From the different passengers?
 A. Yes, sir.
 Q. And see that passengers alight and that passengers depart from the car?
 A. Yes, sir.
 Q. And you give the signal, do you not, to the motor-man?
 A. Yes, sir.
 Q. And you did so upon this occasion?
 A. Yes, sir.
 20 Q. How many stops did you make between Asbury Park and Garfield Avenue?
 A. We always stop—
 Q. How many did you make that day, if you know.
 A. I can't say.
 Q. You can't say?
 A. No, sir.
 Q. You collected the fares?
 A. Yes, sir.
 30 Q. That took you on different parts of the car, did it not; on the right-hand side?
 A. Yes, sir.
 Q. You collect them generally from the running board on the right-hand side?
 A. Yes, sir.
 Q. That is the side on which passengers south bound on your car alight at the streets they desire to alight at?
 A. Yes, sir.
 Q. Was 69 an old or new car?
 40 A. I can't say; I don't know.

Joshua L. Smith — Cross

Q. You don't know?

A. No, sir.

Q. You have been with this railroad company for two years in the summer?

A. Three, counting last summer.

Q. And in the capacity of a conductor?

A. Yes, sir.

Q. Have you run this same car for three years? 10

A. Oh, no.

Q. You have been on this same line for three years?

A. Yes, sir.

Q. Between Belmar and Asbury Park?

A. I was over on Long Branch the first summer I was there.

THE COURT: What was the apparatus providing for stopping the car, if you know?

20

THE WITNESS: The bell cord and the bell.

THE COURT: What other machinery was provided for stopping the car in the way of brakes?

THE WITNESS: Hand brakes.

THE COURT: A hand brake?

THE WITNESS: Yes, sir. 30

THE COURT: Was there any air brake?

THE WITNESS: No, sir; none of the cars have air brakes.

THE COURT: None of the cars?

THE WITNESS: No, sir. 40

Joshua L. Smith — Cross

Q. What is the distance between seats where passengers sit in your judgment, or if you know the exact measurements give them to us.

A. About four or five feet, I should judge.

Q. Four feet between seats?

A. Room enough for somebody to walk through with another person sitting down.

10 Q. If they had to pass somebody that would limit their space getting out?

A. Yes.

Q. Where is this bell cord you speak about on the car?

A. Up near the top.

Q. How high is it from the floor of the car?

A. Well, you can very near reach it sitting down.

Q. Isn't it about five and one-half feet from the floor of the car?

20 A. No, sir.

Q. How far is it?

A. I can't say exactly. You can reach it from the running board and the running board is two or three feet below the main body of the car.

Q. You can reach up and get this bell cord hanging by reaching inside the car?

A. Yes, sir.

Q. Could you do it?

A. Yes, sir.

30 Q. How tall are you?

A. Five feet nine and one-half.

Q. Was there any other device whereby a passenger could signal for the stopping of a car on that car?

A. The only way is to signal the conductor or either pull his cord; that is all.

Q. There were no buttons connected with the signal device?

A. No, sir.

40 Q. And it was a common occurrence, was it not, for

Joshua L. Smith — Cross

people to arise in the car and turn to you to get your attention to stop the car?

A. Some people did; some just turned around in their seat.

Q. Women generally do that, don't they?

A. Yes, sir.

Q. Men also?

A. Yes, sir. 10

Q. So it is not an uncommon thing?

A. No, sir.

Q. And if you get their nod you ring this bell?

A. Yes, sir.

Q. To the motorman to stop?

A. Yes, sir.

Q. You don't remember Mrs. Quellmalz and Miss Grant getting on this car at Cookland Avenue that day?

A. No, sir.

Q. The only recollection you have of the matter is what occurred afterwards, directing your mind to the accident that did happen? 20

A. Yes, sir.

Q. And that happened over a year ago?

A. Yes, sir.

Q. This accident?

A. Yes, sir.

Q. You had never seen this lady on your car before?

A. Not as I know of.

Q. You mentioned that the car was an open summer car? 30

A. Yes, sir.

Q. Single truck?

A. Yes, sir.

Q. What supports the roof; are there uprights on each side?

A. Go right up by the seats.

Q. There is an upright at the end of each seat at the west side of the car?

A. Yes, sir. 40

Joshua L. Smith — Cross

Q. How high is it from the floor to the first cross beam of this car as the passenger would go under to step down?

A. About four feet, four and one-half.

Q. What is necessitating a passenger stooping to get on to this running board?

A. Yes, sir.

10 Q. What do you mean by a single truck car?

A. Well, just a truck in the middle; there is no double trucks to it.

Q. That is an old pattern of a car, isn't it?

A. I don't know about that.

Q. That is not a modern trolley car, is it?

MR. McCARTER: I object. There is no complaint that this was not a proper trolley car; there is no suggestion of such a thing.

20

THE COURT: Objection sustained.

Q. Isn't it a fact that a single truck car running along the tracks would cause more jolting and vibration than one of a double truck?

A. I suppose it would.

Q. How are the tracks and roadbed immediately approaching Garfield Avenue; how were they in 1917?

30

MR. McCARTER: Objected to upon the ground there is no suggestion the roadbed was not in good shape.

THE COURT: It goes beyond that, Mr. McCarter. The objection is overruled. You may answer.

Q. (Question repeated).

A. I can't say exactly, but all the track down there was in very good condition.

40

Q. Isn't it a fact that in that time, 1917, when this ac-

Joshua L. Smith — Cross

cident happened, these tracks were uneven so as to cause the car to jolt and sway?

A. Not as I know of.

Q. Do you say they were not?

A. They were not.

Q. Positive about that?

A. Yes, sir.

Q. Isn't that a condition generally true in 1917 of all the tracks of the Electric Coast Railway Company on that section? 10

A. No, sir.

Q. Do you know of a car jumping the track by reason of the unevenness or improper placing of the rails in 1917?

A. Not as I know of.

Q. On that division?

A. No, sir.

Q. You know that has occurred? 20

A. It has occurred, but not that cause, as I know of; bad flanges or something like that.

Q. You say there was only one explosion from this car?

A. There wasn't no explosion to it.

Q. Blowout?

A. It was just a puff of flame, that is all.

Q. Therewas only one?

A. That is all.

Q. There was only one? 30

A. No, sir.

Q. I understand you to say that didn't occur until after your car had crossed the intersection of Main Street and Garfield Avenue?

A. Just a little the other side.

Q. When did you receive the bell or some signal from Mrs. Quellmalz, or somebody in that car in relation to Garfield Avenue?

A. She stood up just as we were going across Garfield Avenue. 40

Joshua L. Smith — Cross

Q. Had she not given you a signal before she reached Garfield Avenue?

A. No, sir; that was the first time.

Q. That was the first time.

A. Yes.

Q. Do you know why she should give you a signal after you had crossed the avenue she desired to alight at?

10 A. I can't say about that.

Q. You say she didn't give you this signal prior to the time you reached Garfield Avenue?

A. No, sir; she didn't.

Q. You were in the back of this car?

A. I was on the running board.

Q. In the rear of the car on the running board?

A. On the inside of the car on the running board.

Q. Where were you in relation to the front and back of this car?

20 A. I was, you know, where the last three seats are. I always stand right there.

Q. There is where your duties demanded you to be when you were not otherwise engaged?

A. Yes, sir.

Q. How were you facing?

A. Facing the front of the car.

Q. Do you always do that?

A. Yes, sir.

30 Q. Your attention was not attracted by any talking with anybody, was it?

A. No, sir.

Q. Did you have any conversation with anyone around you on the car?

A. No, sir.

Q. Did you know anybody on the car?

A. Not as I know of.

Q. Were you talking to anybody just prior to that?

A. No, sir.

40 Q. Isn't it a fact you were paying no attention at all

Joshua L. Smith—Cross

to this matter until this car stopped; this explosion happened?

A. No, sir.

Q. When this signal was given you say this lady arose from the seat?

A. Yes, sir; she stood right up, kind of turned her head toward me.

Q. And then instantly this blowing of the fuse, or whatever it might be, this flame you described, took place; is that right? 10

A. No, sir.

Q. When did it take place?

A. A little after.

Q. How long after?

A. I can't just say how long; just a couple of seconds, maybe.

Q. Very quickly afterwards? 20

A. Not so very quickly. We had gone quite a ways across the street.

Q. Wasn't it just about the same time that this happened that Mrs. Quallmalz went out of the car; immediately after this explosion?

A. No; she was standing up quite a while, because I started towards her.

Q. You were going 18 to 20 miles an hour?

A. About that. 30

Q. Is that a fair speed in the Borough of Avon?

MR. McCARTER: Objected to as immaterial and not cross examination. The rate they were going is not alleged as a ground of negligence.

THE COURT: As a matter of fact, in the complaint there is a mere charge of failure to observe due care; there is no specific ground upon which the alleged negligence is based, as I recall. The question is withdrawn. 40

Joshua L. Smith — Cross

Q. Did anybody else stand up at Garfield Avenue to get out?

A. No, sir.

A. Not so very quickly. We had gone quite a way across the street.

10 Q. Wasn't it just about the same time that this happened that Mrs. Quellmalz went out of the car, immediately after this explosion?

A. No, she was standing up quite a while because I started towards her.

Q. You were going 18 to 20 miles an hour?

A. About that.

Q. Is that a fair speed in the Borough of Avon?

MR. McCARTER: Objected to as immaterial and not cross examination. The rate they were going is not alleged as a ground of negligence.

20

THE COURT: I think under your general allegation of due care and the moving of this car, the regulation and control of it, your question, if you desire to answer to it, as to whether that was an unreasonable rate of speed may be permissible. I am going to permit that question and your objection will be overruled. (Questions repeated.)

THE COURT: You will have to re-form your question.

30

Q. Is that an unusual speed going through the Borough of Avon at that time of the year?

A. No, sir.

MR. McCARTER: I object.

Q. Do you have rules on the question of speed?

40 MR. McCARTER: I object to it and pray an exception to this.

Joshua L. Smith — Cross

THE COURT: Objection sustained.

Q. Did anybody else stand up at Garfield Avenue to get out?

A. No, sir.

Q. Isn't it a fact that you knew nothing about Mrs. Quellmalz or this accident until she was out of the car?

A. No, sir; saw her standing.

Q. Why did you say in answer to Mr. McCarter's question on direct examination that she seemed to fall or jump out of this car?

10

MR. McCARTER: That is out of the case.

(After argument.)

MR. McCARTER: My objection to it is this, that after the question was answered counsel interjected an objection. I asked another question and then he said she jumped out. Counsel cannot object to a question and on his motion have it stricken out and then ask a witness what he meant by what is already stricken out. It has either got to stay in and be subject to cross examination or else not be the subject of cross examination.

20

THE COURT: Ask him whether he gave his impression or what he actually saw.

30

Q. When you used the word that Mrs. Quellmalz seemed to jump or leap out of the car, were you testifying from a mere impression or from a fact?

MR. McCARTER: I object.

THE COURT: Strike it out. I have not allowed you to do that. Suppose I do it.

Did you see this woman leave the car?

40

Joshua L. Smith — Cross

THE WITNESS: Yes, sir.

THE COURT: How did she leave the car?

THE WITNESS: Just jumped right out, that is all; she stood there. She just jumped right out.

10 THE COURT: Did you actually see her jump?

THE WITNESS: Yes.

THE COURT: Positive about that?

THE WITNESS: Yes, sir.

THE COURT: It was not an impression?

20 THE WITNESS: No, sir.

THE COURT: You say you saw her?

THE WITNESS: Yes, sir.

Q. Didn't you use the words, "I thought," just a moment ago?

A. Not as I know of.

30 Q. You are thinking all the time in giving your testimony here, aren't you; you are merely thinking you know. That is not a fact that this woman jumped out of that car?

A. I certainly saw her.

Q. You are subpoenaed here by the Railroad Company, are you not?

A. Yes.

Q. Expenses paid?

A. Not as I know of.

Q. Not even your car fare?

40 A. No, sir.

Joshua L. Smith — Cross

MR. McCARTER: He will be paid for his time and expenses.

Q. Are you being paid to come here and testify?

A. I suppose I get my car fare.

THE COURT: Have you been promised any sum by the company?

10

THE WITNESS: No sir.

Q. Have you been promised any position next summer driving these cars?

A. No, sir.

Q. Have you any expectation of going back next summer?

A. I don't think so.

Q. Where are you working now?

20

A. Morgan.

Q. How long have you been working there?

A. I left there the end of last summer.

Q. Did you make a written report of this accident at the time or shortly after the time and submit it to your company?

A. Not as I know of.

Q. Didn't you make a report of this accident?

A. That is the way I always do after every accident.

Q. Didn't you after this accident?

30

A. Certainly.

Q. Whom did you hand it to?

A. Into the office the next day.

Q. What did that report consist of?

MR. McCARTER: I will give you the report if you want to offer it.

THE COURT: He only asked whether he made a report. He may answer the last question.

40

Joshua L. Smith — Cross

MR. COOK: I will withdraw it and ask him if the report was in writing.

THE WITNESS: Yes, sir.

10 Q. Isn't it a fact that immediately after you found out this accident happened that your attention was directed to getting the names of the witnesses that were there?

A. I got that after she was on her way to the hospital.

Q. You didn't gather the names of the witnesses during the time she was lying upon the ground?

A. No, sir.

Q. Speaking of this explosion you say there was a puff and flames?

A. That is all.

Q. And smoke, was there not?

A. Very little.

20

THE COURT: You say there was no noise?

THE WITNESS: No, sir, just kind of a puff like.

Q. Where did that puff come from?

A. Out of the controller box.

Q. There was only one?

A. That is all.

An adjournment was here taken until 1 o'clock.

30

AFTER RECESS.

JOSHUA L. SMITH resumes the stand.

Continuation of cross examination by MR. COOK:

Q. Mr. Smith, you stated you did take the names of passengers on the car?

A. Yes, sir.

40

Q. When did you get Miss Grant's name?

Joshua L. Smith — Cross

A. Well, she was—I was there; I went back to this lady and she came up and I don't believe she knew just what she was doing. She said her name was Miss Grant and that she lived at 136 Garfield Avenue, if I remember right; she was with this lady on the car.

Q. This is the lady you saw? (indicating).

A. Yes.

Q. Didn't you go up to Miss Grant while she was standing by the body of Mrs. Quellmalz and ask her name? 10

A. While she was—

Q. Yes or no, did you? (Question repeated.)

A. Yes, I did.

Q. Why did you say Miss Grant came to you and gave her name?

A. Well, she was leaning over the body.

Q. When you came up?

A. No, I was up there first; then she came up. I was looking for a car and when I came back—I asked a couple of fellows, but they didn't seem to want to use their car, and I got another fellow. 20

Q. You were the only one there?

A. I was the first one back.

Q. Who was second?

A. I can't say.

Q. Wasn't Miss Grant there?

A. She came along afterwards.

Q. Was she there before anyone else?

A. I was the first one back. 30

Q. Didn't you see Bert Layton there that day?

A. I saw him afterwards.

Q. He was not there while you were at the body?

A. Yes, sir; he came up afterwards.

Q. He lifted her up, didn't he?

A. I don't remember.

Q. And assisted her in the wagon?

A. Two or three helped to do that.

Q. He was doing it too, wasn't he? 40

Joshua L. Smith — Cross

A. Certainly.

Q. You noticed this scar over her left eye?

A. Yes, sir.

Q. Didn't notice the whole back of her head was crushed in?

A. No, I didn't. Her head was kind of down on the ground.

10 Q. You didn't look for that?

A. No.

Q. Was there any blood coming from her head; the whole back of her head was crushed in?

A. There was blood coming from her head. I thought it was from the bruise over her eye.

Q. Did you examine the car afterwards at the place where she went out of this car?

A. Yes; we went on with the car.

20 Q. Did you examine the car, the particular spot, to see if there was any blood on the car?

A. No, sir.

Q. Did you examine the upright which is attached to the seat ahead on her side to see whether her head had struck against that upright that caused that abrasion over the left eye?

A. No, sir.

Q. Did you see a Syrian there?

A. Yes, sir.

Q. Did you notice his pants were all torn?

30 A. Yes, sir.

Q. Didn't he tell you he had been thrown out of this car?

A. He jumped out.

Q. Didn't he tell you he had been thrown out of this car?

A. Yes, sir.

Q. Did you see another man on his hands and knees in the road?

40 A. No, sir.

Joshua L. Smith — Re-Direct

Q. Who had also been thrown out by the lurching of this car?

A. No, sir.

Q. You don't know who he was?

A. No, sir.

Q. Did you hear about him?

A. No, sir.

MR. McCARTER: I object.

10

Q. Do you know whether such an occurrence happened as to this man?

THE COURT: That question is withdrawn, I suppose. "Did you hear about it" of course would not be evidence.

MR. COOK: He says he does not know about that, so I won't interrogate him further.

20

RE-DIRECT EXAMINATION.

BY MR. McCARTER:

Q. You have been interrogated by Mr. Cook with reference to your report. I show you a document (handing paper to witness). Please look at it and see if that is the report that you turned in of this accident.

30

A. Yes, sir.

Q. When did you turn that in?

A. The day after the accident.

Q. Have you seen it since?

A. No, sir.

Q. Is that your writing?

A. Yes, sir.

MR. McCARTER: I would like to offer it in evidence.

40

Joshua L. Smith — Re-Direct

MR. COOK: Objected to.

10 THE COURT: The examination merely went to the extent of whether or not he made a report, and the final question was whether it was in writing. He said it was. The contents of the report, of course, cannot go in. He has not examined as to that. I think the objection must be sustained. You may have an exception.

EXCEPTION NOTED.

MR. McCARTER: I would like to have it marked for identification.

THE COURT: It may be marked for identification.

20 Paper above referred to marked Exhibit D-1 for identification.

Q. Is it your recollection that a person alighting from car 69 has to stoop to get out, that the rail or whatever it is that goes along the side is sufficiently low not to enable people of ordinary size to get out of the car without stooping?

MR. COOK: I submit that is not proper re-direct examination.

30 THE COURT: It may be asked.

A. It would depend on the height of the person. An extraordinary tall person would not be able to get down.

THE COURT: You mean without stooping?

THE WITNESS: Yes, sir.

40

Robert Leland — Direct

ROBERT LELAND, a witness being duly sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. McCARTER:

Q. Where do you live, Mr. Leland?

A. Dunnellen, New Jersey.

Q. By whom are you at the present time employed. 10

A. Public Service Railway Company.

Q. In what capacity?

A. Motorman.

Q. Were you formerly employed by the Atlantic Coast Company, the defendant here?

A. I was.

Q. When?

A. Why, I worked for them three or four summers and worked for them in the summer of 1917.

Q. Were you working for them in the summer of 1917? 20

A. I was.

Q. What experience as a motorman had you had previous to the month of June, 1917?

A. Well, I had had about six or eight years altogether, more or less, ever since 1906.

Q. When did you leave the employ of the Atlantic Coast Company?

A. Well, in the fall of the each summer; I worked for them three or four summers, just the summer season. 30

Q. You left their employ in the fall of 1917 after this accident?

A. Come to think of it, I think I left earlier in 1917 on account of not feeling well. I went home before the season was over.

Q. Then did you work for them in 1918?

A. No, sir; I didn't.

Q. What time did you go home, as you say, not feeling well? 40

Robert Leland — Direct

A. I think it was either the latter part of June or the early part of July.

Q. You were motorman on the car in question, were you?

A. Yes, sir.

Q. And that was car 69?

A. Yes, sir.

10 Q. How long have you personally operated that car?

A. You mean this car 69?

Q. Yes; that season.

A. During the season?

Q. That season before the accident.

A. Well, I couldn't say for sure how many times I had had the car. You see we have a different car almost every different time we go out. We don't run the same car every day.

20 Q. How long before the accident had you taken that car on that date?

A. I think it was about eight minutes since I left the corner of Cookland Avenue.

Q. You started on that trip from Cookman Avenue, did you? ...

A. Yes, sir.

Q. In Asbury Park?

A. Yes, sir.

30 Q. About what rate were you running your car as you approached in Avon, Lincoln Avenue and Garfield Avenue?

A. I should say about eighteen or twenty miles an hour.

Q. Did you in the neighborhood of Garfield Avenue receive a bell?

A. Just as I passed Garfield Avenue I received a bell.

Q. When in the normal course of events would you stop the car if you received a signal to stop at the corner of Garfield Avenue?

40 MR. COOK: Objected to.

Robert Leland — Direct

THE COURT: Objection overruled.

MR. COOK: Exception.

THE COURT: You may have it.

EXCEPTIONS NOTED.

10

Q. (Question repeated).

A. From where I got the bell I would stop at the next street.

Q. You don't stop between blocks

A. No, sir.

Q. Did anything happen shortly after that; if so, tell us what it was.

A. Almost immediately after I got the bell the controller blew up just before I was to shut the power off.

Q. What happened?

20

A. Well, there was a small explosion and some flame and smoke toward the roof.

Q. What did you do in the emergency?

A. I reached up and threw the overhead off with my left hand and used my right hand on the hand brake.

Q. Throwing the overhead off does what with the power?

A. Disconnects the power.

Q. How soon after the blowout, as you call it, occurred was it that you put your hand up?

30

A. Immediately.

Q. After that occurred did you put the power on again?

A. No, sir.

Q. So that if the car proceeded after that it went on its own momentum?

A. Yes, sir.

Q. Where were you, if you can recall, when the car stopped with your hand brake?

40

Robert Leland — Direct

A. I might have been, I think it was 50 feet this side of the next street.

Q. What kind of brake did you have on that car?

A. Hand brake.

Q. Was there any jerk or jolt of this car from the time you got the signal until the time you stopped?

A. None I took notice of; no, sir.

10 Q. You didn't see, I suppose, the plaintiff's wife, Mrs. Quellmalz, go from the car; you didn't see that?

A. No, sir; I didn't, because I had my back to her.

Q. When was the first you knew anything had happened to her?

A. I had almost got the car stopped. People were all getting out and rushing back and they said a woman had jumped off the car.

MR. COOK: I object to that.

20

THE COURT: Strike it out.

Q. What kind of a controller did you have on that car?

A. Well, I think it was a K something; I don't remember the number now.

Q. A K controller?

A. A K controller.

Q. Were you injured at all; burned?

30

A. No, sir.

Q. In no way?

A. No, sir.

Q. You stood right there and continued until the car stopped?

A. Yes.

Q. What have you to say as to whether or not the windows separating the body of the car from the front platform were open or closed?

40 A. I couldn't say positively, but I think they were closed.

Robert Leland — Direct

MR. COOK: Objected to.

THE COURT: Strike it out. What he thinks is not evidence.

Q. What is your recollection with reference to the windows?

10

MR. COOK: Objected to.

THE COURT: Have you any recollection at all, what is your best recollection? Were the windows open?

THE WITNESS: I said to my best knowledge they were closed, but I couldn't swear to it.

MR. COOK: I ask to have it stricken out.

20

THE COURT: Yes; I think that must go out. He says he can't swear to it, even to his recollection.

Q. Now, after the accident was over did you make any examination of the controller?

A. Yes, sir; I did.

Q. What did you discover?

A. Well, it was all black inside and there was a small hole in the opening in the cover in the front.

30

THE COURT: In the what?

THE WITNESS: In the cover; that piece that we open.

THE COURT: Where was that hole?

THE WITNESS: About six inches down from the top.

40

Robert Leland — Direct

MR. McCARTER: We will have it here in a moment, your Honor. We have sent for it.

Q. Did you ever work for a trolley company up in Worcester, Mass.?

A. Yes, sir; worked there about three years.

Q. As a motorman?

10

A. Yes, sir.

Q. Before or after this—of course it was before?

A. Yes.

Q. Did you have one of those blowouts up there?

A. Yes, sir; I did.

Q. Look at this iron cover here and tell us whether you recognize that as being the hole that you found. Does that look like the hole (indicating cover)?

A. Yes.

20

MR. McCARTER: We will prove that this is the identical one.

Q. The hole that you see in the piece of iron, which is obviously a part of the controller, looks like the size of the hole and the condition of the hole that night?

A. Yes, sir.

Q. Was there anything protruding out, or were there ends sticking, or anything of that kind?

A. No, sir.

30

Q. Just as it is there?

A. Yes, sir.

Q. Did your controller that night look like that?

A. The cover did, yes.

Q. I mean the cover.

A. Yes.

Q. Was your car No. 69?

A. Yes.

40 Q. How close in operating your car, assuming that is the cover of the controller, do you stand to it as you operate your car?

Robert Leland — Direct

A. I always stand very close to it.

Q. Just give an illustration. Here is the place where you are standing, the platform, and here is your controller. You stand about there?

A. About like this (indicating).

Q. Was that where you were at the time of this, what you call blowout?

A. Yes, sir.

10

Q. And the thing that you turned off in the ceiling was where?

A. Right up here (indicating).

Q. And your brake is?

A. To the right.

Q. What was there in the way of a blaze or smoke surrounding you there?

A. Well, the flame shot from the controller here up to the roof, but they went straight up. The flames were right straight up.

20

Q. Did you see any sign of any blaze or smoke going back into the car?

A. No, sir; I didn't.

Q. Were your clothes burned anywhere?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Was there more than one noise or explosion?

A. There was only one.

Q. Was that the first thing that happened before the blaze or the smoke came? 30

A. Just as the blaze shot up.

Q. All one?

A. All at once, yes.

Q. After the accident what did you do with the car?

A. We took it back. We took it down to the end of just this side of the Shark River bridge where we could cross over and come back on the other rail to the corner of Cookland and Main and get another car.

40

Robert Leland — Cross

Q. Was there anybody sitting on the platform?

A. Just one man.

Q. What became of him; did he stay there?

A. He moved from the left side to the right side behind me as I was stopping the car, but he didn't get off until the car had come to a stop.

10 Q. Then when he sat, where was he sitting with reference to the controller?

A. He was sitting almost behind it just to my left.

Q. While you were shutting off and stopping your car he moved along the seat and remained sitting there until the car stopped, did he?

A. I couldn't say whether he remained sitting or stood up, but he hung on and stayed there.

Q. He was not off the car?

A. He didn't get off until the car stopped.

20

CROSS EXAMINATION.

BY MR. COOK:

Q. You say you have had some experience, as indicated, as a motorman?

A. Yes, sir.

Q. When did you come down to work for the Atlantic Coast Railroad Company?

A. In 1917; I don't remember the exact date.

30 Q. As near as you can recollect.

A. I should think it was some time in the latter part of May.

Q. Did you go to work immediately at that time?

A. Yes, sir; a day or two.

Q. This accident happened on what day; do you recall?

A. June 18, I think.

Q. With reference to June 18, when did you go away again?

40 A. I don't remember that exact date either, but it was,

Robert Leland — Cross

I think, either the latter part of June or the early part of July.

Q. How long after this accident did you work for the Railroad Company?

A. Well, that would be about two weeks.

Q. Did you work two weeks actually?

A. Yes, sir.

Q. On the same division?

A. I should say so. Of course, it was not the same division every day. I was only a spare man, sometimes on one line and sometimes on another.

Q. You were not in good health at the time?

A. No, sir.

Q. What seemed to trouble you?

A. The climate didn't seem to agree with me.

Q. Did you have trouble with your eyes then?

A. With my throat.

Q. You didn't have trouble with your eyes on the 18th of June?

A. No, sir.

Q. But you did have afterwards, didn't you?

A. Not until just recently.

Q. Isn't the result of the trouble with your eyes the effect of that explosion?

A. No, sir.

Q. Did you wear glasses upon that occasion?

A. No, sir.

Q. Did you burn your hands upon that occasion?

A. No, sir.

Q. Or your clothing?

A. No, sir.

Q. Or any part of your body?

A. No, sir.

Q. When this explosion took place you say the flames leaped from that controller box to the roof?

A. Just about; yes.

Q. What is on top of this controller box?

Robert Leland — Cross

A. There is a brass plate sets across there.

Q. Sets tight?

A. Yes, with the notches for the controller handle.

Q. That sets tight on this (indicating)?

A. It overlaps this.

Q. And that is fastened as a permanent part of the equipment?

10 A. There is bolts and nuts right through.

Q. You say that is the hole from that blowout (indicating)?

A. Yes, sir.

Q. There is a series of holes there. They are the ones you mentioned, aren't they, in there?

A. Yes.

Q. How wide a space did the flames and smoke occupy when they leaped up?

A. About the width of the controller.

20 Q. How, if the controller was fastened on there where you have indicated, could the flames and smoke come up in that way?

A. Come out underneath the brass plate. On the top the brass plate merely overlaps this. There is a little space in between there, so when you want to open this you can.

Q. Does the brass plate go over the top of this?

A. On the top.

Q. Does it set inside of this support, on the inside?

A. No; just flush with the top.

30 Q. Right like this and fastened here (indicating)?

A. Yes.

Q. And yet flames and smoke the width of the top of this went from the controller box to the ceiling?

A. Yes.

Q. There was considerable smoke there, was there not?

A. Not so very much smoke; of course, there would naturally be some.

40 Q. There was more flame than smoke?

Robert Leland — Cross

- A. There was, but it seemed to go right to the roof.
- Q. You didn't notice that, you were pretty busily engaged at the time?
- A. Of course I couldn't help take notice of it. I was standing at the side.
- Q. What became of the smoke and flames from here (indicating)?
- A. Very likely that is where some flame came out from. 10
- Q. That would shoot it parallel with the floor, wouldn't it?
- A. Oftentimes it comes out on the side.
- Q. There was considerable force back of it, wasn't there, to shoot it out parallel with the floor?
- A. I couldn't say, but if there was, it would shoot out towards the street.
- Q. Did it shoot out in a parallel course to the floor of the car? 20
- A. I couldn't say about that.
- Q. What made you throw up both your hands when this explosion took place?
- A. I didn't throw both up.
- Q. What hand did you throw up?
- A. I threw up my left hand to shut the circuit breaker overhead off and put my right hand on the handbrake.
- Q. What effect did that have then upon the car?
- A. That cuts the current.
- Q. And she ran on her own momentum? 30
- A. Yes, sir.
- Q. And ran the distance you have indicated to the next block, Lincoln Avenue?
- A. About 50 feet this side.
- Q. How many feet did it run from the time of this explosion?
- A. Something like 125 or 150.
- Q. You couldn't stop it within that time?
- A. Not full speed with the handbrake. 40

Robert Leland — Cross

- Q. You couldn't stop it within that distance?
 A. No, sir.
 Q. You were running pretty fast, weren't you?
 A. I said I was going eighteen or twenty miles an hour.
 Q. Right through the centre of the Borough of Avon?
 A. That is nothing unusual.
 Q. You had no control of this car after this explosion?
 10 A. I did. If I—
 Q. By your brake?
 A. I had it under control all the time.
 Q. I mean by your brake alone. That is the only control you have. Did you put that brake on immediately?
 A. I did.
 Q. It took you 150 feet to stop it?
 A. I said 125 to 150. I didn't measure the distance.
 Q. You don't identify this as being the box, do you?
 A. I do; yes.
 20 Q. You say this is the box?
 A. Yes.
 Q. When did you see it last?
 A. I haven't seen it since the accident until today.
 Q. Is there any mark on it that causes you to identify it?
 A. The hole in the controller.
 Q. Outside of that?
 A. No, sir.
 Q. There is no memorandum or number on it?
 30 A. No, sir—there might be a number on it, but not that I know of.
 Q. Does that represent the inside of the controller box which is facing you?
 A. That covers the front.
 Q. What are all these patches on here, do you know?
 A. I couldn't say.
 Q. You are an expert motorman; what are they?
 40 MR. McCARTER: He is not an expert mechanic.

Robert Leland — Cross

A. I suppose it is from some recent trouble.

MR. McCARTER: I object to his supposing.

THE COURT: The objection is sustained. If you don't know, say so. Do you know what they are there for; why they were put there?

THE WITNESS: I couldn't state positively; no. 10

Q. Doesn't that indicate the fact that there were blow-outs, or damage caused there by a blowout, if you know?

MR. McCARTER: I object.

THE COURT: He may answer if he knows.

A. I couldn't say. 20

Q. Do you know what the cause of this blowout was?

A. Well, it could come from an overload.

Q. Overload of what?

A. Of electricity through the wires.

MR. McCARTER: I object, and move the answer be stricken out; he is not an expert.

THE COURT: He may only answer if he knows. Do you know what was the cause of the explosion? 30

THE WITNESS: Only what I said.

THE COURT: Do you know what it was; what is your answer?

THE WITNESS: I attempted to tell him what I supposed it was. 40

Robert Leland — Cross

THE COURT: Not what you supposed. The question involves your answer on your own knowledge as to the cause of the explosion.

Do you know what was the cause of the explosion positively?

THE WITNESS: I couldn't say positively, no.

10 Q. It was caused by electricity, wasn't it?

A. Yes.

Q. Do you know what causes explosions in the controller boxes?

MR. McCARTER: I object and pray an exception.

THE COURT: He may answer that.

20 MR. McCARTER: Exception.

EXCEPTION NOTED.

A. Well, it is due to wire trouble, or as I said, a sudden overload of electricity.

MR. McCARTER: I think this is very improper. I pray an exception to the allowance of the evidence.

30 EXCEPTION NOTED.

THE COURT: How do you know an overload of electricity could cause an explosion?

THE WITNESS: For the simple reason—

THE COURT: Have you had any experience?

40 THE WITNESS: It takes about so much to run a car and if there are lots of cars on a line and several of the cars

III

Robert Leland — Cross

stop all at once, it would throw an overload on one car all of a sudden.

THE COURT: How do you know it?

THE WITNESS: From experience.

THE COURT: You have been a motorman how long? 10
you have to have, or do you have?

THE WITNESS: Off and on since 1906.

THE COURT: What does your knowledge consist of with reference to going as a motorman; what training do

THE WITNESS: Supposed to know about the fuses and the cutouts, the fuses, etc.

THE COURT:—And the effect of the passing of the current through such machinery? 20

THE WITNESS:—Yes, sir.

THE COURT:—Proceed; he has answered the question.

MR. McCARTER:—I move his answer to that question be stricken out on the ground that the witness has not been asked any question with reference to the cause of the accident, nor does he profess to know nor is he an expert. Therefore it is improper either with respect to the Court or counsel to ask him questions to go to this jury indicating the cause of this accident or the cause of explosions generally in apparatus of this kind. 30

THE COURT:—I am inclined to think in view of his testimony he is qualified to answer the question. Perhaps, Mr. Cook, for the purpose of your record, and you don't 40

Robert Leland — Cross

desire any record that would be subject to error, that portion of the testimony relating to his general answer as to the cause of explosions may be stricken out, but your question as to what was the cause of the explosion in this particular instance may stand.

MR. COOK:—If he knows.

10 MR. McCARTER:—I pray an exception.

THE COURT:—You may have an exception.

EXCEPTION NOTED.

THE COURT:—Of course the subsequent testimony as to his practical experience will stand.

20 Q. Do you know what caused this explosion on June 18, 1917?

MR. McCARTER:—I pray an exception.

THE COURT:—You may have it.

EXCEPTION NOTED.

A. Nothing excepting what I have already said.

30 THE COURT:—What is that?

THE WITNESS:—The answer I gave you about the overhead and the wire trouble and so on.

Q. Where was the wire trouble on this particular day, if you know?

A. I don't know exactly where it was.

40 Q. Did you make an examination of this controller box afterward?

Robert Leland — Cross

A. I simply just looked in the box and saw it was beyond running the car from that end and ran it down to the Shark River bridge and came back running it from the other end. We got another car and this was taken in the barn.

Q. Were you able to run this car afterwards?

A. From the other end.

Q. This end was entirely out of business?

A. This was dead.

10

THE COURT:—You say you looked at that end and found it was dead?

THE WITNESS:—Yes, sir.

THE COURT:—How could you tell?

THE WITNESS:—From the looks. It was all black inside. I tried it and couldn't work it.

20

Q. What did you find outside the fact that it was black inside of the controller, anything else?

A. Nothing, only that hole there.

Q. Did you examine the wires?

A. No, I did not. I just simply closed it up again and tried to run it and there was nothing doing. I had to go to the other end and back the car down and come back on the other track.

30

Q. Did you notice whether any of the metal inside of the car was burned?

A. Only the top finger.

Q. What do you mean by that?

A. The top finger here. These are called trolley fingers; there are several fingers on the controller. This top controller finger was burned.

Q. Was burning?

A. Was burned.

Q. What was that made of, the trolley finger?

40

Robert Leland — Cross

A. Copper, I think.

Q. How much was it burned?

A. I don't remember now just exactly.

Q. Well, it was fused, wasn't it, or melted?

A. It is copper.

Q. I say it was melted, wasn't it?

A. Yes.

10 Q. By this flame?

A. Yes, sir.

Q. Coming from this explosion?

A. Yes.

Q. You say the explosion was not a particularly loud one?

A. No, sir, it was not.

Q. Is it possible according to your observation to have loud explosions coming from controller boxes?

20 MR. McCARTER:—I object.

A. Not very loud.

THE COURT:—One moment. Mr. Cook, the witness has already testified what did occur. Why pursue it further?

MR. COOK:—I will withdraw it.

30 THE COURT:—He said there was but one explosion, as I understand it.

There was an explosion which made a noise wasn't there?

THE WITNESS:—A small explosion, yes, sir.

Q. Did you notice whether the flames were projected back into the car or not?

A. Not to my knowledge, I didn't see any.

40 Q. You didn't look to see about that, did you?

Robert Leland — Cross

A. I naturally would be looking at the control and stopping of the car. I had all I could do to attend to my own business.

Q. You had all you could attend to right then and there, didn't you?

A. Yes, sir.

Q. You say there was a man on the front of the car?

A. Just one man.

Q. About opposite the point of this controller box? 10

A. He was sitting just back of it, to my left.

Q. He moved pretty lively?

A. He jumped up behind me as I was stopping the car, to the other side.

Q. And he moved to the other side of the car?

A. Yes, sir.

Q. Was he not thrown by the jerk of that car?

A. No, sir, he was not.

Q. Did the fact that this controller blew out and stopped the mechanism of this car cause any jerk? 20

A. No, sir, because I couldn't stop quick enough for that. All I had was a handbrake to stop it with.

Q. You were not able to restore the current after this explosion?

A. Not on that end, no, sir.

Q. You didn't watch this man very intently, did you, who moved so quickly or jumped, as you say?

A. I was watching the car.

Q. That is merely an impression, not an absolute fact? 30

A. If you were standing there and the man was sitting to your left, you would know whether or not he jumped up behind you or stayed where he was sitting?

Q. Your back was toward him, you were busily engaged in taking care of this controller box?

A. I was, yes, sir.

Q. Where did he go?

A. Stayed on the front end of the car until the car pretty near stopped. 40

Robert Leland — Cross

Q. When did you observe him next, immediately afterward?

A. He got off and went back with the rest.

Q. Do you know who he is?

A. I don't know his name. He gave us his name, he said he is a Philadelphia police officer.

Q. Is he here today?

10

A. He is not.

Q. You were not towed into the shop?

A. No, sir, we ran the car from the other end down to the corner of Cookman and Main, and another car was sent out and this car was taken in the carbarn by a barn man.

Q. You can operate a car by working a controller from the other end?

A. Yes.

Q. Although this one would be dead?

A. Yes, sir.

20

Q. What kind of a car was it, a single or double truck car?

A. Single truck open car.

Q. When were you asked to appear here as a witness with reference to the accident?

A. Last Tuesday was the first I knew.

Q. You hadn't discussed this matter with anybody in the interim, have you?

A. No, sir.

Q. It had gone entirely out of your mind, practically?

30

A. You always in a way remember the accident, but of course I hadn't been refreshed on it.

Q. You stated you were in poor health at the time you were driving this trolley car?

A. Yes, sir.

Q. And you worked about two weeks afterwards?

A. Yes, sir.

Q. Did you leave on account of your health, or were you discharged?

40

A. I left on account of my health.

Robert Leland — Re-Direct N. G. Trimmer — Direct
 RE-DIRECT EXAMINATION BY MR. McCARTER:

Q. You were not discharged, were you?
 A. No.

N. G. TRIMMER, a witness, being duly sworn on behalf
 of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. McCARTER:

10

Q. Mr. Trimmer, where do you live?

A. Asbury Park.

Q. By whom are you employed?

A. By the Atlantic Coast.

Q. How long have you been employed by that com-
 pany?

A. Twenty-five years.

Q. What work do you do?

20

A. Controller and motors and wiring, and like that.

Q. You are located in their barn or shop?

A. In the shop barn.

Q. What do you do in this barn or shop with these
 controllers and other things?

A. Well, I go over them every season when they are
 put up in the summer and in the spring I go over them the
 same. They are changed from one car to another.

Q. Do you keep a record of some of the work that
 you do?

30

A. Nothing only what is new.

Q. What is new?

A. Yes, sir.

Q. What do you mean by that, nothing only what
 is new?

A. Well, fingers or a cardboard, or something like
 that in the controller, you know, but if we just put a patch
 on we don't make no statement of that.

Q. When you have an open car you don't use that
 in the winter, do you?

40

N. G. Trimmer — Direct

A. No, sir.

Q. When an open car is brought in for the winter, do you leave the motor on or take it off?

A. Take it off.

Q. When you propose to start an open car in the summer season you get the motor from one of the closed cars and put it on the open car?

10

A. Yes, sir.

Q. I show you a card dated June 10, 1917 (handing card to witness). Look at it and see if you recognize that as made by yourself.

A. Yes, sir.

Q. Was it made at that time?

A. Yes, sir.

Q. Is it a memorandum of what you did that day?

A. Yes, sir.

20 Q. Refreshing your recollection by looking at that memorandum tell us what you did with reference to a motor that was formerly on car No. 15.

A. Yes, sir.

Q. Tell us.

A. We generally go—

Q. No, no. I asked you what you did with regard to a motor that was on car No. 15.

A. We changed it from one car to another.

Q. What car did you put it on?

A. Car 69, 59.

30

MR. COOK:—What number?

THE WITNESS:—69.

Q. What day was that done?

A. On the 10th.

Q. Of what month?

A. Of June?

40 Q. So that on the 10th of June car No. 69 was equipped with a motor so that it could operate, is that right?

N. G. Trimmer — Direct

A. Yes, sir.

Q. Without that motor it could not operate?

A. No, sir.

MR. COOK:—I think you are leading him.

THE COURT:—Your objection came late.

It was a leading question.

10

Q. When you took that motor out of car 15 and put it onto car 69 what examination or inspection did you make of car 69 when it was thus fully equipped? Explain it to the jury.

A. Go over the controllers and look at the armatures and see if the bearings were all right.

Q. Did you make any further examination, do you test the car by operating it?

A. Yes, operating.

20

Q. Was it all right or all wrong?

A. All right.

Q. All right?

A. Yes, sir.

Q. Now, I show you on June 11 another card, cor 69, look at that and refresh your recollection and tell us what you did on June 11, which will be seven days before this accident, on car 69.

A. Put in two new armature bearings and two axle bearings and a gear wheel on No. 2 motor.

30

Q. On car 69?

A. Yes, sir.

Q. With that work done on car 69, what was its condition?

A. Well, the condition by changing one motor to another—it wanted axle bearings and there was a gear wheel gone.

Q. After you had done all that what condition did that leave car 69 in?

A. All right.

40

N. G. Trimmer — Direct

Q. All right?

A. Yes, sir.

Q. Do you remember that an accident occurred to car 69?

A. No, sir.

Q. Do you remember car 69 being brought in?

A. Yes, sir.

10 Q. That is what I meant, I knew you were not at the scene of the accident. Do you personally know where this piece of sheet iron which is part of a controller, came from?

A. Yes, sir.

Q. Where did it come from?

A. From off of 69 car.

Q. Is that the controller or the side of the controller of car 69 that had this trouble in June, 1917?

A. Well, I couldn't say that. I know that is one I repaired.

20 Q. This is the controller that you repaired?

A. Yes, sir.

Q. In June, 1917?

A. Yes, sir.

Q. And what condition was the controller shell, or whatever you call this thing, in when it was brought to you with reference to the hole?

A. Just had that hole in there and also a finger burned off and also a contact.

30 Q. Is the outside of the hole where it shows there different or the same as it was when the car was brought to you for repair after the accident?

A. Yes, sir.

Q. What is it the answer, is it the same or different?

A. Different—it is the same thing, it is the same as it is now.

Q. You have not in any way touched the outside of the place where the hole is?

A. No, sir.

Q. That is exactly the same?

40 A. That is exactly the same.

N. G. Trimmer — Direct

Q. What did you do on the inside where the hole is?

A. Put that patch on there. That is put on with shellac and asbestos.

Q. I see below here another kind of a paste, when did you put that on, if you did?

A. At the same time, but that comes from a wrench. It sticks up the partition in the controller and fingers and that sometimes will fly open, it will come out that far and push it so, and it catches this and tears it out. 10

Q. Had this ever been a hole through here below?

A. No, sir.

Q. There had never been any hole through here?

A. No, sir.

Q. But at the same time you found this hole and repaired it in this way you have indicated? You found what had happened down below here from this wrench?

A. It scraped it up so I plastered it down and put this little piece over it. 20

Q. There was no hole there?

A. No, sir.

Q. Never was a hole there?

A. No, sir.

Q. In addition to pasting up behind that hole in the manner indicated, and in addition to putting up this little patch on the inside where the lining had scraped, as you say, from that movable thing, look at this card which I show you of June 19, car 69, and tell us what else you did in the way of restoration. 30

A. I put a cardboard in the back of it between the cylinder and the controller which it protects, between the cylinder and the back about one-eighth of an inch thick. The cardboard is in there now and I put this finger in.

Q. You say you put a finger where?

A. The finger in the controller and the segment on the cylinder which was burned off.

Q. What kind of a looking thing is a finger? It is made of what metal.

A. Made of copper. 40

N. G. Trimmer — Direct

Q. And what had happened to it?

A. It had burned off.

Q. How much?

A. Pretty near all of it; that is the finger part (indicating).

Q. About how long would that be?

A. I should judge, I wouldn't be positive about it, I think about five-eighths of an inch.

10 Q. What had happened to the segment which is on the opposite side of the finger?

A. It burned the same. I had to put another on with a screw.

Q. The end of the segment and the end of the finger when they are normal come together?

A. Yes, sir.

Q. And the current passes from one to another?

A. That is where it comes in on the trolley.

20 Q. Something had happened there which had caused the end of each to fuse about one-eighth of an inch?

A. Yes, sir.

Q. And inasmuch as it was necessary to have them come close together, you took the old finger, the old segment out and inserted a new finger and new segment, is that right?

A. Yes, sir.

Q. Did you do anything else than that?

A. No, sir.

30 Q. Anything outside the cardboard that you spoke of and the fixing of the hole in the manner you have indicated?

A. No, sir.

Q. That was the extent of it?

A. Yes, sir.

Q. After that, did it work?

A. Yes, sir.

Q. Did you test it?

40 A. Yes.

N. G. Trimmer — Cross

CROSS-EXAMINATION BY MR. COOK:

- Q. Did you make these memorandums?
 A. Yes, sir.
 Q. They are all in your handwriting?
 A. Yes, sir.
 Q. And that is a report you make every night to the company of what you do on the cars? 10
 A. Yes, sir.
 Q. You took an old equipment off a car No. 15 on June 10 and installed it on No. 69, didn't you?
 A. Yes, sir.
 Q. How long had car No. 15 been running to your knowledge on that road with that equipment?
 A. All winter.
 Q. How long had that equipment been on car No. 15 that you took off and put on 69 on June 10?
 A. How long had it been running? 20
 Q. Yes.
 A. Well, I couldn't tell you about the armature bearings, but the motors and armature had been there all winter.
 Q. And how much longer?
 A. No longer than the winter.
 Q. No longer than the winter?
 A. No, sir.
 Q. Was it a new car the year before?
 A. No, sir.
 Q. How old was the car? 30
 A. About 20 years old.
 Q. And the equipment was about 20 years old?
 A. Yes, sir.
 Q. The old equipment?
 A. Yes, sir.
 Q. You took the old 20-year-old equipment from car 15 on June 10 and installed it on car 69 to run on this Belmar division, that is right, isn't it?
 A. Well, to run on any on the roads.
 Q. I mean on the road. 40

N. G. Trimmer — Cross

A. Yes, sir.

Q. That accounts for this blowout, doesn't it?

MR. McCARTER:—I object.

THE COURT:—Yes, the objection must be sustained.
You may ask him if he knows.

10

Q. Do you know how this explosion occurred that caused that controller box to be as indicated?

A. No, sir.

Q. Do you know?

A. No, sir.

Q. You can give us no reason why it did so?

A. No, sir.

Q. You know the condition of the controller shield, do you not?

20

A. Yes, sir.

Q. You heard the testimony of Mr. Leland, who said the flame shot from the top of the controller box to the ceiling of the car, didn't you?

A. Yes, sir.

Q. You are a very practical man, are you not, in this line of business?

A. I don't claim to be, no, sir.

Q. You have been at it many years, haven't you?

A. Yes, sir.

30

Q. And gained vast experience in the 20 years, haven't you?

A. I don't know.

Q. You don't think you have, do you?

A. No, sir.

Q. Do you know what causes explosions?

A. No, sir.

Q. In controller boxes?

A. No, sir.

Q. You have no idea?

40

A. No, sir.

N. G. Trimmer — Cross

Q. You don't pretend to know anything about the science of electricity?

A. No, sir.

Q. All you know is to put a pasteboard patch on a controller box, that is about all, isn't it?

THE COURT:—You should address the jury on that subject.

10

MR. COOK:—Maybe so. I will withdraw it.

Q. You don't know when this motor or the part you took out of car 15 on June 10 had been inspected or looked over before June 10, do you?

A. No, sir.

Q. You can't tell whether it had ever been looked at in 20 years?

A. Yes, sir.

20

Q. How many years before had you looked at it?

MR. McCARTER:—I object. What difference does it make? It was inspected on June 10 or 11 and the accident was on June 18.

THE COURT:—I will permit the question.

MR. McCARTER:—Exception.

30

EXCEPTION NOTED.

Q. You may answer it.

A. About a week, two weeks.

Q. Before that time?

A. Yes, sir.

Q. Where was it then?

A. Under car 15.

Q. On car 15?

40

N. G. Trimmer — Cross

A. Now, I wouldn't say certain, but we generally look over them pretty often.

MR. COOK:—I ask to have it stricken out.

THE COURT:—All right.

10 Q. As a matter of fact, you don't know when you inspected car 15 or the equipment that we referred to before June 10?

A. No, sir.

Q. You handle a great many cars, do you not?

A. Yes, sir.

Q. You have made many repairs before this, have you not?

A. Yes, sir.

20 Q. On the controller boxes where an explosion has occurred?

A. Yes, sir.

Q. Have you had blowouts like that before come under your observation?

A. Yes, sir.

Q. Have you repaired them?

A. Yes, sir.

Q. Have they been frequent?

A. No.

Q. Occasional?

30 A. Yes, sir.

Q. Have you had blowouts bigger in space than that which appears on the lefthand side of the controller box?

A. Yes, sir.

Q. How big have you observed them in working for the Atlantic Coast Electric Railway Company, how big in diameter have the holes been?

A. I have seen them as big as four inches in diameter.

Q. Whereabouts in position on the controller box have you observed them?

40 A. In the same place.

N. G. Trimmer — Cross

Q. Always on the lefthand side?

A. Yes, sir.

THE COURT:—How many years have you been in the employ of the Atlantic Coast Railway Company?

THE WITNESS:—Twenty-five years.

THE COURT:—In what capacity?

10

THE WITNESS:—Working on motors, controllers and wiring the cars.

THE COURT:—A repairman?

THE WITNESS:—Yes, sir.

Q. You have testified to what you did in regard to taking this motor out and putting it in 69 on June 10? 20

A. Yes, sir.

Q. You have testified to that?

A. Yes, sir, taking it out.

Q. Whatever you did on June 10 you took out a motor and put it from car 15 to car 69?

A. Yes.

Q. After you installed this motor all you did was to see whether or not it ran?

A. No, sir.

30

Q. What did you do?

A. Tried my lights on them.

Q. To see whether the current passed through?

A. No, sir.

Q. What for?

A. To see whether I found grounds in the controller.

Q. You found no grounds in the controller?

A. No, sir.

Q. You had no blowout while you were testing it?

A. No, sir.

40

N. G. Trimmer — Cross

Q. So long as it showed there were no grounds in the wires and it worked apparently that was the end of your inspection, wasn't it?

A. Yes, sir, after testing it.

Q. You didn't make any other examination of the wires outside the throwing of the current on to see whether there were any grounds?

10 A. Yes, sir.

Q. What else did you do?

A. I tried the lights.

Q. Those are the only two things?

A. The only two things.

Q. And the car ran?

A. Yes, sir.

Q. You ran the car on the track?

A. Up and down and outside the shop.

Q. That you thought sufficient and passed it over
20 for use?

A. Yes, sir.

Q. How many coutrroller boxes did you repair in the month of June, 1917?

A. Couldn't tell you.

Q. How many did you repair in the month of July, 1917?

A. I don't know that either.

Q. Can you tell us how many you repaired in any given month in 1917?

30 A. No, sir.

Q. Were there many or few?

A. I don't know of any.

Q. You don't know of any?

A. Only this one.

Q. Will you swear there were no more?

A. No, sir.

Q. Isn't it a fact there were lots of blowouts during the summertime of 1917?

A. No, sir.

40 Q. Do you call this an unusual occurrence?

N. G. Trimmer — Cross

A. Yes, sir, it is now.

Q. It is an unusual occurrence in electricity where the equipment is properly kept up, is it not?

MR. McCARTER:—I object.

THE COURT:—Aren't you able to tell us what was the cause of this explosion?

10

THE WITNESS:—No, sir.

Q. You have been employed by the Atlantic Coast Railway Company 25 years?

A. Yes, sir.

Q. I ask you in the last three years has the Atlantic Coast Railway Company had any rolling stock equipment, any new?

20

MR. McCARTER:—I object.

THE COURT:—I will admit the question.

MR. McCARTER:—Exception.

EXCEPTION NOTED.

A. No, sir.

Q. Isn't it a fact that it is known to you that the equipment of the road has been allowed to deteriorate?

30

MR. McCARTER:—I object and ask for the withdrawal of a juror. I think this is most improper evidence and tends to prejudice this case.

MR. COOK:—I withdraw the question and apply it to the equipment in question, the controller box and equipment.

THE COURT:—Mr. McCarter's request to withdraw a juror is refused. Note an exception.

40

N. G. Trimmer — Cross
EXCEPTION NOTED.

Q. Isn't it a fact that in the last three years there has been no new equipment relating to controller boxes and controller equipment purchased and used by the Atlantic Coast Electric Railway Company?

10 MR. McCARTER:—I respectfully object to the question as immaterial and irrelevant.

THE COURT:—The objection is overruled. You may have an exception.

EXCEPTION NOTED.

A. No, sir.

20 Q. There have been no new equipment or controller boxes purchased?

A. No, sir.

THE COURT:—You may strike from the record and the jury are now directed to pay no attention to the testimony with respect to renewal of equipment generally of this road. The testimony with respect to controller boxes that has just been placed on the record may stand.

30 MR. McCARTER:—I pray an exception to the last ruling.

THE COURT:—You may have it.

EXCEPTION NOTED.

Q. How extensive was that hole, as we see it from the exterior?

A. Yes, sir, just as you see it here.

Q. What is that there (indicating)?

40 A. That is a burn.

George B. Cade — Direct

- Q. Is there any other burn indicated here?
 A. No, sir, none at all whatever.
 Q. Is there any burn indication on the inside?
 A. Nothing except here.
 Q. Doesn't that indicate a burn on here (indicating)?
 A. Not through here.
 Q. Just here (indicating)?
 A. Yes, sir, that was shellacked over there. 10
 Q. Why did you do that?
 A. Always do that.
 Q. Why do you do it?
 A. In order to hold this plaster on there.
 Q. This is part of the method of repairing the damage?
 A. Yes, sir.

GEORGE B. CADE, a witness, being duly sworn on behalf
 of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. McCARTER: 20

- Q. You live at Asbury Park or Allenhurst?
 A. Allenhurst.
 Q. Do you hold any position in the Atlantic Coast
 Railway Company?
 A. Secretary and treasurer and have partial charge
 of operation.
 Q. Do you know anything about whether or not the
 piece of the controller that has been exhibited to the pre- 30
 vious witness and is now shown to you came from car 69
 that was in use on that car in the season of 1917?
 A. It did.
 Q. That is the shell of the controller that was in use
 at that time?
 A. Yes, sir.
 Q. You say you are secretary and treasurer of the
 company?
 A. Have charge of claims and the operation. We
 have no superintendent. 40

George B. Cade — Direct

Q. Do you keep a record of the mileage done by each car?

A. There is a record kept in the office.

Q. Have you prepared under your direction and checked up by you yourself the record of the mileage of this particular car on June 11 or 12, 1917, down until a few days afterwards?

10 A. I have.

MR. McCARTER:—Now, Mr. Cook, we have not the original book here, but Mr. Cade will tell you that was taken right from the book.

MR. COOK:—Your question is directed since 1917.

MR. McCARTER:—Since June 11, 1917.

20 MR. COOK:—I prefer to have the original record.

THE WITNESS:—I have not the original record here. I have a record taken off and checked by myself. I can swear to the figures being correct.

MR. COOK:—I don't doubt that. I object to it on general grounds. This record is taken from the observation of others.

30 THE COURT:—The original record is the best evidence.

Q. Do you know, of your own knowledge, that the memorandum you hold in your lap or hand correctly transcribes from the original book the mileage this car 69 had run after it was equipped with a motor on June 10 and 11, 1917?

40 MR. COOK:—Objected to. It is necessarily and manifestly it must be a compilation of figures taken from the observation of others, probably of many others.

Leroy Stetzer — Direct

MR. McCARTER: If counsel insists upon his objection we will have to pass that.

THE COURT:—Yes.

Q. Was the car run constantly from June 11, when it seems to have been put into operation, until the occurrence in question?

10

MR. COOK:—If he knows.

A. Yes, sir, with the exception of three days up to the 17th.

MR. COOK:—I object to it. I ask him what he is basing that on.

THE WITNESS:—A memorandum. I can't swear the car was run every day.

20

MR. COOK:—I object to the testimony.

MR. McCARTER:—All right.

Q. How long is car 69?

A. About 31 feet 8 inches.

NO CROSS-EXAMINATION.

30

LEROY STETZER, a witness, being duly sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. McCARTER:

Q. Where do you live?

A. Belmar.

Q. What is your business?

A. Carpenter.

40

Leroy Stetzer — Direct

Q. Do you work for the Atlantic Coast Electric Railway Company?

A. No, sir.

Q. Were you a passenger on this car?

A. I was.

Q. On what seat were you sitting?

A. The third one from the front.

10 Q. Who sat on the seat with you?

A. My wife sat to my left and a lady sat to my right, and then the lady that left the car sat at the end of the seat.

Q. You are the gentleman who laid your hand flatly on the plaintiff's arm here?

A. Yes, sir.

Q. Do you remember approaching in Avon Garfield street, or that neighborhood?

A. Yes.

Q. Did you notice any jerk or jolt of the car?

20 A. No, sir.

Q. Was there any?

A. No, sir.

Q. What occurred on the front platform?

30 A. Just after we passed Garfield avenue or right on the avenue, about in the middle of the street, there was a sudden noise and then a gush of flame and at that the lady at the end of the seat where I was sitting, I seen her leave the car, and the lady next to me attempted to grabber and I grabbed her and pulled her down in the seat, and the car drifted on to I should judge about 50 feet this side of Lincoln avenue.

Q. And then stopped?

A. Stopped.

Q. Do you know, are you able to tell from your recollection, whether the windows separating the front platform from the body of the car were open or closed?

A. The one ahead of us was closed, that is, was up, but as far as the one on this side goes I couldn't swear to it, I don't know.

40 Q. Did you find any flame or smoke around yourself?

Leroy Stetzer — Direct

A. No, sir.

Q. Did you see any in the front of the car back of the platform?

A. The partition?

Q. No. Smoke or fire?

A. No, sir.

Q. Your wife remained seated by yourself?

A. Yes, sir.

Q. Was there a baby there?

A. Yes, sir.

Q. She remained?

A. Yes.

Q. What was the position of the lady sitting next to you, what was she evidently doing, or what did you try to prevent her from doing when you grabbed her arm?

10

MR. COOK:—I object to the form of the question, what was she evidently doing.

20

Q. What was she doing when you grabbed her arm?

A. She was in a rising position to grab the woman that left the car.

Q. If I may modestly represent the lady to your left for a moment, just illustrate to the jury how you took hold of her.

A. I grabbed right hold of her and sat her down. She had left the seat like this after the lady to the right. I grabbed her with my right hand and sat her down. I grabbed her left (illustrating).

30

Q. With your right?

A. Yes.

Q. I suppose all this occurred in a short time?

A. Yes, sir, about ten seconds.

Q. Were there one or two explosions or noises?

A. One.

Q. One?

A. Yes.

40

Leroy Stetzer — Cross

CROSS-EXAMINATION BY MR. COOK:

Q. You live at Belmar?

A. Yes, sir.

Q. You have lived there some time, haven't you?

A. Yes, sir.

Q. How many years?

A. About three years.

10

Q. Do you work there or have business around Belmar?

A. I am a carpenter.

Q. You were going back home this night?

A. Yes, sir.

Q. Your wife and your baby had been up town shopping and were coming back with you?

A. She came back with me on the car.

Q. You got on at Cookman avenue?

20

A. Yes, sir.

Q. You didn't see Mrs. Quellmalz get on the car?

A. No, sir.

Q. You didn't know her, did you?

A. No.

Q. Your attention was not particularly directed to anybody save your wife and your baby?

A. That is it.

30

Q. On the car. And that continued so until your attention was arrested by a something that happened on this car at some point in Avon?

A. That is it.

Q. Something attracted your attention?

A. Yes.

Q. From that moment your observation began. You paid no particular attention until that moment? There was nothing to attract your attention, was there?

A. No.

Q. The car was fairly well filled with people?

40

A. Yes.

Leroy Stetzer — Cross

Q. It was the ordinary open car of the Atlantic Coast Electric Railway Company?

A. Yes.

Q. You recognize this lady, Miss Grant, do you not?

A. I couldn't swear.

Q. As being the lady on whose arm you placed your hand?

A. I couldn't swear it was her; I didn't pay that much attention to her. 10

Q. That was really about the first time you had awakened powers of attention; that is, you were not noticing anything before that time. This flash came and this explosion—there was an explosion?

A. Yes.

Q. And that awakened your attention?

A. Yes, sir.

Q. Before that time you remember nothing of moment or in regard to this case except the fact that you were on the trolley? 20

A. What?

Q. Before this explosion you remember nothing except the fact that you were on the trolley and your wife was there and you were talking to each other?

A. That is all.

Q. There was a lady next to you on your right?

A. Yes.

Q. And still another lady on the other side of her next to the rail? 30

A. Yes.

Q. The last lady I mentioned was the one who went out of this car?

A. Yes.

Q. Did she go out about the time of this explosion?

A. After, I think.

Q. Just very quickly afterwards?

A. Yes.

Q. A fraction of a second?

A. Yes. 40

Leroy Stetzer — Cross

Q. And up to that time you hadn't noticed her, whether she was standing or sitting, had you?

A. No.

Q. All you know is you saw her suddenly leaving this car?

A. Yes.

10 Q. Did you see her go through the space leaving the car?

A. I seen her leaving the car.

Q. Pitching forward?

A. Well, I don't know whether she was on that motion or not, but she was leaving the car.

Q. Were her hands out that way (indicating)?

A. I really don't know.

Q. You can't tell?

A. No.

20 Q. I suppose it was all in a flash in your mind that a body was projecting out of this car so suddenly?

A. Yes.

Q. Then this lady, who is, you say—

A. Miss Grant.

Q. This is the lady in question?

A. Yes.

Q. You have no doubt after hearing her testimony that she is the lady?

A. No.

30 Q. She arose to grab or to try to get hold of Mrs. Quellmalz, that is the lady who died?

A. Yes.

Q. You arose to put your hand on her to prevent her from what, from falling?

A. I thought she was going to follow her.

Q. You mean you thought she would fall too?

A. I thought she would go right out after her.

Q. You put your hand on her arm to restrain her?

A. I grabbed her.

40 Q. She made no effort to go out of the car?

Leroy Stetzer — Cross

A. She was on the impulse of making an effort; she was leaving her seat.

Q. That is a pretty close calculation.

A. It was all close.

Q. You thought she might go out of the car too?

A. Yes.

Q. She might fall out or jump out or something else. You didn't think she was going to jump out?

10

A. That is my thought.

Q. She didn't move out from the seat?

A. Yes, she got up.

Q. Her feet didn't move out from under the seat?

A. I don't know about her feet.

Q. That was the effort she made to grab Mrs. Quellmalz. Did you notice whether or not she got hold of her?

A. No, I didn't.

Q. Did you notice she grabbed hold of her by the skirt pocket or part of the skirt?

20

A. No.

Q. Was there much excitement in the car when this explosion took place?

A. Well, not very much when the explosion took place, no.

Q. After?

A. After.

Q. Did you see a Syrian there?

A. No.

Q. Did you notice a Syrian had been thrown out too?

30

A. No.

Q. Did you see another man there who was out on his hands and knees alongside the car?

A. No.

Q. Was there any protecting rail on that side of the car to prevent persons from going out?

A. Just like this.

Q. There was no long rail that goes from one end of the car to the other?

A. No.

40

Arthur J. Manson — Direct

Q. That is on the other side of the car, isn't it?

A. Yes.

THE COURT:—You refer to the seat arm?

THE WITNESS:—Yes.

10 Q. That was the only thing, the seat arm, on the car?

A. Yes.

ARTHUR J. MANSON, a witness, being duly sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. McCARTER:

Q. Mr. Manson, what is your business?

A. I am an electrical engineer for the Westinghouse
20 Electric and Manufacturing Company.

Q. What training and education have you had in electrical engineering?

A. I graduated from the Massachusetts Institute of
30 Technology, called Boston Tech, in 1905, with the degree of electrical engineering. I then went to the engineering course of the Westinghouse Company at Pittsburgh and worked a year and a half in the shops on railway and power apparatus, controllers, motors, switches, all the various apparatus that go to make up the electrical equipment. I then
40 came down with the Westinghouse Company to instruct and break in the steam engineers on the New Haven Railroad when they first put in the electric locomotives there to operate into the Grand Central Station. The latter part of that time I had examined the steam engineers for their qualifications as motormen for the operation of these locomotives. I then went in connection with the New York office of the Westinghouse Company, and during the past six or seven years have followed the engineering and sales work out of the New York office.

40 Q. It has been testified in this case that this was one

of what is known as the K controllers. Have you seen or had pointed out to you the controller in question as being the controller that was on car 69 on the day in question?

A. I did.

Q. Is the K controller a standard controller in use generally?

A. Throughout the country, yes.

Q. Won't you, without being too technical, just have a little school with the jury and explain to them in the way that you explained last night to me going up to town, the function and operation of the controller which will lead up to the occurrence that created this unfortunate accident. We have, of course, the trolley line, or wire conveying electric current from the central power house. We have the car on the track in progress and we have the pole sticking up from the roof of the car connecting the wire overhead with the car. That, we all know, is the means of getting the juice or electric current from the wire which goes to the power house into the car. Just from that point take it up and explain, without being too technical, what the current does and what function the controller plays in the matter.

A. The power from the power house comes along the trolley wire and is picked up by the car by the trolley wheel. It is then led down and goes through a piece of apparatus called a circuit breaker, which, in common terms, is called a safety valve.

Q. Where is that located?

A. It is generally, and in this particular road, as is the custom with most equipments, above the motorman's head underneath the front roof of the car.

Q. What is the purpose and object of the circuit breaker?

A. That circuit breaker is to serve as a safety valve and to open up the circuit or interrupt the current from the controllers, motors or other piece of apparatus which may be connected in with that circuit breaker. The current after it goes through the circuit breaker is led to this controller. Now, we will assume there is a car standing still. We can't put the whole power into that car to those motors at once;

Arthur J. Manson — Direct

we must insert resistance so that the flow of current, of power, to these motors will be gradual, will be step by step.

Q. One moment. By motors you mean what?

A. I mean the electrical motor mounted on the trucks which transforms the electrical energy into mechanical rotation and which by gearing produces the action in the wheels and propels the car along the track. We cannot put this
 10 power to these motors right in one connection. We insert steps of resistance to choke back so that the street car will slowly increase its speed. Now, those connections are made by this controller. There are a number or series, we will call it, of rings, segments, one above the other, and a series of fingers. These fingers, as the motorman turns this around, come in contact at different spaces, different notches. Some may come on and drop off and then make a contact again as the drum is rotated so as to give the proper connection to the motors and so as to cut out these resistances
 20 I have mentioned and allow the car to speed up. This is a function of this controller. That is where the connections are made and broken.

Q. After the current goes down then through this controller which is made up of these impediments that they overcome by pushing the handle a little further around—

A. That is it.

Q. —the current goes down to the motor, transmutes itself into mechanical energy, and what becomes of it ultimately?

A. It comes back to the controller and then passes off
 30 through what we call the ground wire to the body or trucks to the rail and back to the power house.

Q. Making the circuit?

A. Making the circuit.

Q. These fingers and segments normally stand how to one another in the controller?

A. Not in contact. All fingers are broken, there is no
 40 finger in contact with this segment when the controller is in the off position. In other words, this K controller breaks

Arthur J. Manson — Direct

the circuit to the motors; it interrupts the current or opens up the circuit so no current flows to the motors.

Q. When the handle is moved around from notch to notch, what effect does that have upon bringing the segment and fingers together?

A. That starts and certain fingers come in contact.

Q. And when they come in contact what happens?

A. We have a flow of current down through off to the motor and back again. 10

Q. Assuming that a car is in good condition and has been inspected a period of five or six days previous to what I, for short, will call a blowout in the controller, and assume that a blowout occurs and that contemporaneous therewith the motorman turns off the power from the place above in the ceiling of the platform to which you have referred, how can you account for the fact of the blowout?

A. That blowout can occur from a good many causes. There can be lead trouble. 20

Q. What does that mean?

A. Wire trouble. There can be motor trouble and there can be a momentary interruption of the magnetic blowout effect which is in the controller. Those are the three—they would be classified under those three headings.

Q. Suppose you find none of those trouble to have existed upon investigation, is there anything else that could happen in the line that would cause such an occurrence when there is no defect in any of the apparatus?

A. At times on an electric system that is fed with several miles of wire there occurs what we would call surges. To explain that surge, there may be a wave of a sort of electrical increase in pressure which may pass over this trolley wire. Now, a motor at its best is subject to sudden changes in voltage. That could cause a flash over of the motor. A surge could cause a flash over of the motor if the controller is on. If it is off there is no current to the motor, it has no effect on the motor. If the controller is on this motor is subject and will receive any surge or abnormal increase in voltage from some cause or another, 30 40

Arthur J. Manson — Direct

we don't know what, which may pass over this line.

Q. Would a sudden decrease in load upon the line or current by one reason or another occasion such a surge which would in turn be apt to produce a, what do you call this, blowout?

10 A. Blowout, a flash over of the motor. Yes, that could do it. You could get it also from the exact reverse. You could have a ground on your system somewhere, which, on its interruption, would return a surge to your circuit.

Q. In other words, as I understand you, a sudden and unexpected increase of the quantity of current will produce one of these flashes or blowouts when the mechanical apparatus could be in perfectly good condition and yet not be able to resist this sort of a phenomenon, is that right?

20 A. That is right, it is characteristic of electric apparatus which is subject to a condition of this kind irrespective of its condition as far as maintenance is concerned.

Q. Is there any way particularly to avoid that thing?

A. It can be done with a great expense of copper and one thing another, but it cannot be eliminated.

Q. Are these flashes of quite frequent occurrence?

A. In my experience, yes.

Q. What creates the explosion, as it has been spoken of?

A. An explosion, an electric explosion is the result of a disrupting of the electric arc which forms—

30 Q. When you speak of electric arc what do you mean?

A. I think all the jurors have no doubt seen a trolley wheel draw out a big arc. There is no explosion, no noise. Why? Because that arc was not blown out or interrupted. You get your explosion from a sudden interruption. You take, for instance, a circuit breaker which opens under an overload. That is designed to blow out this arc, it blows it out in an instant. It blows it out with an explosion because it is interrupted in an instant of time.

40 Q. In other words, this surge or excessive current comes along which must be prevented and the circuit breaker

Arthur J. Manson — Direct

either automatically or by the action of the motorman in changing the lever takes care of it all by what?

A. By blowing out. It is designed for that and does that so as to interrupt that circuit immediately.

Q. And that act of blowing it out is the cause of the noise or explosion?

A. Is the explosion.

Q. Now, provided there be no return of the overhead apparatus, can there be more than one explosion? 10

A. No.

Q. Why not?

A. Because the circuit has been opened. All flow of power has been stopped by the circuit breaker, which stays open, or it stops at the circuit breaker, the electric current stops there.

Q. There is nothing to explode or nothing to happen?

A. Nothing to happen.

Q. Will there be flame or smoke? 20

A. From this?

Q. At this instant of time this flash occurs?

A. Yes, there will be a good deal of flame, a good deal of flame.

Q. Now, the evidence in this case is that on the return of this car to the car barn the foreman, or car repairer, found the finger and segment, the top of each of them, what shall I say, burned at the end, and he had to replace them and that that was all except the hole there that you see in the side which he fixed up and also covered a little abrasion on the inside which came, he said, from another cause. What would you say as to the bearing of the burning of the end of the top segment and finger upon the time when the greatest part of the burning at the flash occurred? 30

A. Why, that showed that the controller was in the off position because when in the off position there is a space between the end of a finger and the end of a segment of about one inch or one and one-half inches. The end of this finger was burned here, the end of this segment was burned, so that the burning occurred in the controller when it was 40

Arthur J. Manson — Direct

in the off position. If it had occurred with the controller on position the burning would have been entirely different. It would no doubt have resulted in the welding of the finger to the plate and it would not have burned at the end of this segment.

Q. That indicates that the overhead circuit breaker had been thrown off?

10 A. Yes, if it had not this burning would keep continuing under the conditions if the breaker hadn't been opened—or been opened.

BY THE COURT:—

Q. I understand you to say that circuit breakers was off before the explosion happened, is that right?

A. No, I don't say that.

Q. What do you say?

20 A. I don't know what you mean.

Q. I am trying to find out what you mean.

A. All right.

Q. I understand you to say that the circuit breaker was on during the operation of the car?

A. Exactly.

Q. The current passed through the circuit breaker at the top of the car?

A. Exactly.

30 Q. Now, to avoid a continuance of the current it was necessary, as the motorman in this case did, he put up his hand and turned it off?

A. Not necessary.

Q. How do you account for his testimony that he put his hand up and turned off that circuit breaker in connection with your present testimony that the circuit breaker must have been off?

A. The circuit breaker—

Q. Remembering that he put up his hand after the explosion?

40 A. The circuit breaker is adjusted to automatically

Arthur J. Manson — Direct

open above. It can be adjusted by the power house men. If that breaker is set for 200 amperes, for all use of current below 200 amperes the breaker stays in. If it exceeds that the breaker automatically opens.

Q. When did this explosion occur, after the circuit breaker was off?

A. It could not occur when the circuit breaker was open because the current would stop at the breaker. It must have occurred before. 10

Q. If the explosion occurs while the circuit breaker is on how do you account for the explosion?

A. It can occur from a flash on the motor, from a lead trouble.

Q. Overhead?

A. Overhead.

Q. Overload of current?

A. Yes, overload of current.

Q. What would account for an overload of current? 20

A. Flash over of a motor or ground on the wiring anywhere on the car.

Q. You say it indicates to you from the testimony in this case that the controller was off at the time of the explosion?

A. That is the controller, but this burning in the controller occurred with the controller in the off position.

Q. How do you account for that?

A. I can't account for that.

Q. For the overload? 30

A. No, your short circuit, your burnin, occurred with the controller in the off position.

Q. You say you cannot account for that?

A. I cannot. The motors might have flashed as the

A. No, your short circuit, your burning, occurred with the shutting off of the controller.

Q. Did the character of the equipment have anything to do with that explosion in your opinion?

A. Nothing more than that all electrical apparatus is subject to a failure some time and somewhere. It cannot be 40

Arthur J. Manson — Cross

100 per cent. efficient any more than any machine.

Q. What is the average percentage of efficiency in such apparatus as that?

A. It is very high. The cases of failure are few, but they will exist in the best of roads. It is a failure which does occur with K controllers.

10 Q. How often is it necessary to renew such apparatus in your opinion?

A. You mean new, you mean renewing in its entirety or parts?

Q. Yes, the parts?

20 A. Controllers run 1500, 2000 miles without any particular adjustments. I have known fingers and segments to run for a year and a year and a half. It is something which must be looked at, we say, on a 1500-mile basis. As far as the entirety is concerned, if it is maintained their controller is good for 50 years if they put in new bearings or fingers, just maintain it.

Q. The fingers and so on?

A. Yes, they are good for probably a year.

CROSS-EXAMINATION BY MR. COOK:—

Q. The sum, substance and final analysis of your testimony is as an expert you cannot account for this particular explosion under the given facts of this case? Yes or no?

30 A. I cannot give you a specific cause of failure.

Q. (Question repeated.)

A. I will have to qualify that, your Honor.

THE COURT:—Then you can't answer yes or no? You may answer it in your own way.

THE WITNESS:—It was put in such a way I can't answer yes or no.

40 Q. (Question repeated.)

Arthur J. Manson — Cross

THE WITNESS:—Yes, I can account for it.

Q. Didn't you say a moment ago in reply to a question of his Honor's that you could not account for the explosion?

A. I said I didn't know the cause of it.

Q. Will you say you didn't make use of the words, "I cannot account for this explosion?"

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A. I will not say I didn't.

Q. If you said it did you mean it?

A. I meant I didn't know the particular cause of this explosion.

Q. Did you not say in reply to a question either by Mr. McCarter or by his Honor that this trouble could be avoided, there could be such steps taken as would avoid an accident of this kind?

A. I didn't say so.

Q. Didn't you say it can be done, referring to a question of whether a system could not be made safe to prevent explosions?

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A. I didn't say so.

Q. You say it can or cannot be done?

A. It cannot be prevented one hundred per cent.

Q. You mean to say you cannot stop the occurrence of an explosion of this kind?

A. Yes.

Q. Can you do that?

A. No, you can't.

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Q. Did I understand you to say by the use of certain devices, steps, what did you call that?

A. Steps of resistance.

Q. Steps of resistance, that this could be so controlled that an explosion would not occur?

A. I didn't say so. I said the resistance was to regulate the current to the motors and give smooth, easy, acceleration to the car.

THE COURT:—He said he couldn't tell the cause of 40

Arthur J. Manson — Cross

this explosion in view of the testimony that the controller was off at the time, or appears to have been off.

Q. The circuit breaker is what you call a safety valve?

A. Exactly.

Q. That is something that is regulated to throw, by a certain force of voltage or amperage, or whatever it may be, this switch off to disconnect the current from the car?

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A. Automatically, yes.

Q. That is what causes the flame, and so forth, temporarily until after it is thrown off?

A. It all occurs instantaneously and there will be a certain amount of flame with the interruption and explosion of this arc.

Q. That occurs up underneath the hood of the car?

A. It would occur out of the circuit breaker, it would be thrown out of the circuit breaker, it would be at the roof of the car.

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Q. The roof of the car?

A. Yes.

Q. Tell me, then, how a hole could be blown in the side of a thick piece of metal like that.

A. This was the cause of your breaker blowing.

Q. That was the first thing. The explosion took place in that box.

A. I wouldn't call it an explosion.

Q. What do you call it?

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A. A short circuit occurred in the controller.

Q. What is the hole in the side of this controller box?

A. The result of a short circuit.

Q. Do you mean to say it is not a force from inside to the out that caused it?

A. Absolutely not.

Q. What is it?

A. It is the ground side of a short circuit. The electric current has gone from the finger, establishing a circuit to this cover, to the rail, and it is simply heated up and

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Arthur J. Manson — Cross

melted out without any explosion or anything of that kind at all.

Q. It is done very quickly, isn't it?

A. Yes, the whole thing is very quick.

Q. Almost instantaneously?

A. Almost instantaneously.

Q. Then there is an intense heat that emanates from this?

A. There is heat; the intensity depends on the size of your burning and the amount of copper that has been burned in the fingers and segments. 10

Q. You heard about one of the fingers being melted, five-eighths of it?

A. Yes.

Q. Brass is pretty hard to melt, or copper?

A. Not very hard under electric current.

Q. It takes an intense heat to melt it?

A. Electricity is pretty hot. 20

Q. You think it is an entirely reasonable story, the story of the motorman and the passengers on this car that the flame shot up from the top of this box?

A. I don't.

Q. Then he lies?

A. Not intentionally, I don't believe he does.

Q. He did it somehow, but not intentionally; he says it did.

A. I think he is mistaken.

Q. You don't believe your own witness' testimony? 30

A. He is not my motorman.

Q. You don't think any flame shot up to the ceiling?

A. I don't.

Q. Then you contradict each other?

A. I don't know. It came from the circuit breaker.

Q. He said it came from the box and went up under the roof.

A. I think he is mistaken.

Q. You have pointed out three or four things that 40

Arthur J. Manson — Cross

may cause this explosion, or whatever you may call it. One is wire trouble?

A. Yes.

Q. Disconnected wire, crossed wire?

A. Grounded or crossed wire.

Q. Motor trouble is the second division; what do you mean by that?

10 A. A grounded armature.

Q. In the motor itself?

A. In the motor itself; grounded fields in the motor itself and flash over of the motor.

Q. And the third was quite technical, but I think I almost got it, momentary interruption of the magnetic current?

20 A. Blowout in the controller. This controller is designed so that when the motorman throws off and these fingers break away from the contacts there is bound to be a little arc there. It is designed so that that arc will be interrupted, not so that it will stay there and burn, but be interrupted. If that magnetic circuit, for some reason or other, does not work 100 per cent. efficient, which nobody knows whether or not it does, that arc may hold on sufficient so that it might get to this copper. The minute it gets here you have a short circuit and it establishes a circuit to this copper which almost instantaneously heats up this metal.

30 Q. And the sum and substance is that there is considerable flame and some smoke that arises from this situation?

A. It all depends on the amount of metal in the finger and segment that is burned.

Q. Another cause you gave was that along the wire system of railways there is a surge or increase of current that causes a flash to come over the motor, or connected up from the motor, is that right, an abnormal increase of current?

40 A. There can be a surge which will affect the motor if the controller is on.

Arthur J. Manson — Cross

Q. You mean to say there is no way to regulate that surge?

A. No, it is a condition of generating apparatus, the trolley feeder. It is the same thing as the rap that you get in a water pipe system; you turn on your water and turn it off suddenly and you will hear it crack in some other part of the building due to the sudden surge that is transmitted. It is the same condition.

Q. You have now told the traveling public, who don't know anything about them, the horrible dangers you have pointed out that may occur in the conduct of a trolley car. Can you name anything else that may cause that?

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MR. McCARTER:—I object.

Q. Have you any other causes?

A. I object to the horrible dangers which I have inferred.

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Q. Cut out the horrible dangers then.

THE COURT:—Withdraw your question and reframe it. You may ask him whether there are still any other causes than those mentioned by him.

THE WITNESS:—No; they come under the three headings I have mentioned.

Q. And in different ways through the same main sources that you have mentioned? 30

A. What do you refer to as the main sources?

Q. Wire trouble, motor trouble and the other?

A. Yes.

Q. They are the basic causes of trouble?

A. They may be, yes.

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Bert Layton — Re-Called — Direct
REBUTTAL.

BERT LAYTON RECALLED.

DIRECT EXAMINATION BY MR. COOK:—

10 Q. You have inspected, at my direction, the exhibit before you?

A. Yes, sir.

Q. You testified that there was a certain hole in the left hand side, I believe, of this motor box as you examined it on the very day of the accident?

A. Yes, sir.

Q. And within a few minutes after the accident?

A. Yes.

20 Q. I ask you, looking at this exhibit, if this is the same motor shield, or whatever it may be, that you saw that day in the front and representing the controller box.

A. The one I saw only had one hole, and it was a little larger than that.

Q. How much larger, just tell the jury?

A. It was more round, it was not long like this. This hole (indicating) was not into it.

Q. Was the other hole smaller or larger or about that size?

A. The other hole was a little larger, but about the same height.

30 Q. Looking at that, I ask you to tell this court and jury whether, in your opinion, this is the same controller shield as the one you examined on June 28th, 1917?

A. I couldn't say about the controller shield, but the hole don't look to me to be the same one; it was a bigger hole than this, the one I saw.

Q. Can you say whether or not that is the shield and hole as represented on that occasion?

A. I should say that is not the hole, because there is only the one. This little one was not there at all.

40 Q. That other hole you point at you say was larger?

Bert Layton — Re-Called — Cross

A. Yes, sir.

Q. Can you tell us now whether or not that is the shield?

A. I can tell you that is not the hole that was in the other shield.

CROSS-EXAMINATION BY MR. McCARTER:—

Q. How soon after you looked at this lady's body lying there did you go up and examine this? 10

A. Just as soon as we got her in the car to send to the hospital.

Q. You went up on the platform and what did you do?

A. Went up on the platform and looked at that.

Q. What time was this?

A. It was about, well, six or eight minutes after the accident.

Q. What time was that? 20

A. Between five and six o'clock.

Q. Do I understand you to say that in the face of the direct examination of Mr. Trimmer, who says that that was the particular piece that was brought in on car 69 after this occurrence? You will take your recollection of the size of the hole and say that is not the hole?

A. I will say my recollection of the hole is bigger.

Q. I suppose you have been sometimes mistaken in the recollection of the size of a hole from June, 1917, to November, 1918, that is a year and seven months. 30

A. That is quite a while.

Q. It is not impossible that your recollection may be wrong, is it?

A. I won't say that because I looked at the hole in this shield that was on the car that day.

Q. Is it impossible for your recollection to be wrong as to the size of the hole?

A. It is not impossible. 40

Miss Edith L. Grant — Re-Called — Direct
MISS EDITH L. GRANT RECALLED.

DIRECT EXAMINATION BY MR. COOK:—

Q. Miss Grant, the conductor of this car has testified that Mrs. Quellmalz leaped from this car; did she leap from this car or not?

10 MR. McCARTER:—I object.

THE COURT:—She has already testified on the subject; this is not rebuttal.

MR. COOK:—That may be so. I have another question.

20 Q. Miss Grant, Mr. Stetzer, a witness here just a few moments ago, said that you were standing up apparently moving to go out of this car when he put his hand upon you and restrained you.

MR. McCARTER:—I object. He didn't so testify. She went all over this in her direct trial.

THE COURT:—The objection is well taken.

MR. COOK:—I withdraw it.

30 BOTH SIDES REST.

MR. McCARTER:—I respectfully move your Honor for a direction of the verdict on part of the defendant on the ground that there has been no proof of negligence on the part of the defendant.

THE COURT:—Motion is denied.

MR. McCARTER:—Exception.

40 EXCEPTION NOTED.

Charge of the Court

FREDERICK QUELLMALZ, <i>Exr.</i> , EDITH M. QUELLMALZ, <i>Ptf.</i> , vs. ATLANTIC COAST ELECTRIC RAILWAY COMPANY, <i>Defendant.</i>	CHARGE OF COURT, LAWRENCE, J. No. 14, 1918.
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THE COURT:—Gentlemen of the jury, the Court desires to say, as a preliminary subject of observation with respect to this case, that through the process which we have of ascertaining the relative rights—and protecting them—between litigants, such as are here involved, counsel—necessarily in a very natural desire to impress upon jurors the aspect of the case which appealed to him, or I may say to each, as favorable to the conception which counsel has of those rights—may inject into his argument observations of the testimony of witnesses and criticisms which really have no bearing upon the case as facts. Therefore, it is my duty to say to you that it is not the recollection of counsel which you will accept as a finality with respect to the testimony of the several witnesses produced, but by your own recollection of the testimony of the witnesses. You very naturally in your function as jurors will endeavor to arrive at a verdict in this case in accordance with the evidence offered, and the weight and credence to be given to the several witnesses rests entirely with you.

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The plaintiff in this case is the executor under the last will and testament of Mrs. Quellmalz, who, it appears, died as a result of an accident while a passenger on a trolley car admittedly owned and operated at the time by the defendant corporation. By reason of her death and the circumstances alleged, the executor, as is his legal right under our law, brings this suit to recover damages in behalf of the next of kin of Mrs. Quellmalz, who are the husband and two children.

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Charge of the Court

I may say to you that it is a fact, as referred to by one of the counsel, that prior to our legislative act there was no right of recovery in behalf of the next of kin in such circumstances, and it is only made so by the legislative act which permits a recovery not in the right of the decedent—here Mrs. Quellmalz—but a recovery of a sum which will compensate the next of kin for the damages occasioned by the deprivation of the reasonable expectation of pecuniary advantage which would have resulted by the continuance of the wife and mother's life.

There is a primary inquiry, however, gentlemen, that you must make in this case, and it is the important inquiry, I may say to you: the burden is upon the plaintiff to show by evidence which satisfies you that the defendant corporation was guilty of negligence in the operation of the car in question at the time of the accident. It appears that this was a trolley car, and the duty cast upon the defendant corporation under our law is to exercise a high degree of care toward the passenger in its charge. The rule supported by authority is that when a passenger shows that he was injured through some defect in the appliances of the carrier, or through some act or omission of the carrier's servant which might have been prevented by due care, then the jury have the right to infer negligence unless the carrier proves that due care was exercised, and due care is translated by the authority in respect to the particular circumstances here involved, as I have said, into a high degree of care for the safety of the passengers. Therefore, gentlemen, you must first find negligence on the part of this defendant company before you can pass to the consideration of damages.

It appears that there was an explosion at the moment of this accident in connection with that part of the machinery of the car known as the controller and the attachments connected therewith. Applying it concretely, therefore, it was the duty of this defendant corporation to exercise a high degree of care to see that that apparatus was proper for the propelling of that car in the interest of the safety of

Charge of the Court

the passengers. The company says that they did exercise the degree of care required under the law, that they caused an inspection of this car to be made eight days before the accident. They produced the employee who was in charge apparently of such inspection and you have heard his testimony. I may say to you, gentlemen, that in my conception of this case it is peculiarly one of fact for you gentlemen, because the fact of negligence must be found by you coupled with the other question that I shall shortly present to you which is claimed in this case, namely, that of contributory negligence on the part of the deceased. Therefore, if you should find that this company, through its inspection, had done all that a reasonably prudent person could be expected to have done under the circumstances, then you would not be justified in inferring negligence on the part of the company and there could be no recovery. But it is suggested on the part of the plaintiff in reply that the company did not, in fact, exercise the care which the law requires, namely, that high degree of care contemplated in the rule I have just read to you. For example, it is suggested that the apparatus was old, that it had not been renewed, that the inspector was not a competent inspector; that is to say, if I understand the claim of counsel for the plaintiff correctly, and it is for you to say whether that inspection was the sort of inspection required in the circumstances. Now, of course, gentlemen, if you believe the testimony of at least one witness in this case, namely the expert, you may infer that the company did all it possibly could and that this was an unforeseen occurrence that could not have been avoided. In other words, if you should find that the plaintiff has proven negligence, that is to say, a prima facie case of negligence, and the company has explained satisfactorily not in exculpation of the occurrence, but as accounting for the situation, and there is, consequently, not a fair preponderance of proof of negligence on the part of the defendant corporation, there can be no recovery. On the other hand, as I said, if you find that that duty has not been met and was not met by the company

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Charge of the Court

under its evidence then the company is liable.

10 I ought to say to you further and impress upon you gentlemen, too, that the mere occurrence of the accident does not justify a verdict in this case. In other words, the mere happening of this explosion, if you find the death of Mrs. Quellmalz was the result of the explosion and the circumstances connected with it, the mere occurrence would not justify a verdict against the defendant corporation, because, under the law, you must go further and find there was negligence on the part of the corporation. If, for example, Mrs. Quellmalz, as is claimed by the defendant corporation, in fright jumped off the car and there was no negligence on the part of the company, there can still be no recovery. Therefore, you must give close attention to the evidence in the case in order to ascertain whether the plaintiff has established by a fair preponderance of the proof the negligence of the company, and if you so find, then whether
20 the company has satisfied you that the accident that occurred was an unavoidable and unforeseeable happening and no prudent person could possibly anticipate it. There is a diversity of testimony in this case, which is perhaps to be expected.

If you adopt the theory of the plaintiff, and before you can do so you must find it supported by the evidence and that the burden has been carried by the plaintiff, that Mrs. Quellmalz was thrown from this car by a jerk or jolt resulting from the explosion, and if you find that that explosion was due to the negligent conduct of the defendant company, then the plaintiff is entitled to recover. I desire to impress upon you gentlemen this essential thing that you first must inquire about, namely, the omission on the part of the defendant company to perform the duty with respect to the high degree of care toward Mrs. Quellmalz in the circumstances unless you found, of course, that such result was not due to the act of omission of the company. Negligence, therefore, is predicated by this suit on the part of
30 the plaintiff. It is denied by the defendant, and it is for you
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Charge of the Court

first to determine whether such negligence existed before you pass on to the question of damages.

There is another feature of the case that I desire to call your attention to. We have in the law what is known as the principle of contributory negligence, and that is a feature of this case that you must consider. It is claimed by the defendant corporation that if Mrs. Quellmalz had remained seated she would not have been injured. If you found that she arose from her seat and jumped from the car and by reason of that act of hers her death resulted and you found that there was no reason for her doing that—that a reasonably prudent person would not have done it—then you might infer that she contributed to her own injury by her own negligence, and if you so found, there could be no recovery in the case against the defendant corporation.

Of course, the plaintiff's theory is an entirely different one. If I understand it correctly, it is that she did not arise at all, but was thrown from the car at the time of the explosion. I might say to you it has been held by the Appellate Court in this State that the mere rising from the seat by a passenger in a car is not per se negligence on the part of such passenger. It has been so held. So there can be no recovery if you find that there was negligence on the part of the defendant company and contributory negligence on the part of Mrs. Quellmalz, that is to say parenthetically, if you find there was negligence on the part of the company but Mrs. Quellmalz contributed to her death by her own negligence, in other words, if you believe she should not have risen from her seat, if you find she did, and jumped off the car, it is for you to say, it is not for the Court or counsel to say, that is entirely in your province, whether she did the thing which they say was contributory negligence, and whether in fact it was contributory negligence for her, if you find she did, to jump off the car at the time it is claimed she did. Therefore, I add, if there was contributory negligence on the part of plaintiff—or rather the plaintiff's decedent, notwithstanding the negligence of the company, there can be no recovery. That is the rule of law.

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Charge of the Court

10 However, gentlemen, if you conclude from all the evidence in the case, the plaintiff having satisfied you by a fair preponderance of the proof that such negligence existed, and find that there was no contributory negligence on the part of Mrs. Quellmalz, you would pass on to the question of damages, and as to that you will bear in mind, gentlemen, that you are not to consider the damages which Mrs. Quellmalz, had she not been killed and had brought this action herself, might have recovered such as for pain and suffering, for example, or some physical injury to her. Such damages are not recoverable, of course, in an action of this kind. This is purely a statutory question, and the only recovery that can be had, assuming you find negligence to exist and no contributory negligence involved, is, as I said at the outset, that which will compensate the next of kin for the pecuniary loss occasioned by the deprivation of the reasonable expectation of such pecuniary advantage as would have resulted by a continuance of Mrs. Quellmalz's life.

20 Now, you will bear in mind, gentlemen, that these damages are not to be considered from the standpoint of sentiment, from the fact that this family circle has been broken into in the way that it has, the husband deprived of his wife and the children of their mother. Only such sum can be allowed, assuming negligence is found and no contributory negligence, as will compensate the husband and children in the manner I have just indicated to you. You will consider what sum, in your judgment, will represent compensation for the loss of the pecuniary advantage which could reasonably have been expected to have accrued to these next of kin from a continuance of the mother's life. There is some indication in the testimony of what Mr. Quellmalz has suffered in connection with the necessity of his employing a housekeeper at a sum which you have heard testified to, if you believe the testimony, and some additional help in his household. If you reach the question of damages, you have a right to consider such expenditures by him as an element, assuming you find that they are connected

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Charge of the Court

with the services that the wife would have rendered in the household, or I may say in substitution of the services that the wife would have rendered in the household had she continued to live.

With respect to the children I desire to read to you gentlemen a short citation from an authority in the Court of Appeals of this State: "Where children are supported in a home maintained with the earnings of the father and the mother performs the ordinary household duties, including such care of the children as a mother usually takes, and the mother loses her life through the wrongful act of a third party, the law permits an action to be maintained by the administrator of the mother" (or the executor, as in this case) "to recover for the benefit of the children the damages occasioned by the deprivation of the expectation of pecuniary advantage which would have resulted by a continuance of the mother's life." In that connection the Court quotes with approval this language: "It looks to prospective advantages of a pecuniary nature, which have been cut off by the premature death of the person from whom they would have proceeded; and the word 'pecuniary' is used in distinction to those injuries to the affections and sentiments which arise from the death of relatives, and which, though most painful and grievous to be borne, cannot be measured or recompensed by money. It excludes also those losses which result from the deprivation of the society and companionship of relatives, which are equally incapable of being defined by any recognized measure of value. But infant children sustain a loss from the death of their parents, and especially of their mother, of a different kind. She owes them the duty of nurture and of intellectual, moral and physical training, and of such instruction as can only proceed from a mother. It is argued by the defendant's counsel that there should be no recovery on these grounds, because the father is obliged to provide what the children have been deprived of by the loss of their mother. But this is not an adequate answer. The children have been deprived of that which they were entitled to receive by the wrongful act of

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Charge of the Court

the defendants. Their loss may or may not be made up to them from another source, but in the meantime they are entitled to a fair and just compensation from the wrongdoers by the provisions of this statute."

10 Now, gentlemen, I am obliged further to say to you that you must distinguish between the damages, if any, which you allow to Mr. Quellmalz, the father, and to the children. In other words, if you found that the duties from Mr. Quellmalz to the children and from the mother in her lifetime to the children overlapped you would not take those into consideration in allowing damages, because you must bear in mind that the father still lives to render the parental duties which he is under obligation to render, but it will be those for the loss of the pecuniary advantage reasonably to have been expected from the mother herself to these children. So that, gentlemen, as a general statement with respect to damages, bearing in mind the rules of law I have
20 endeavored to give to you, it is left with you to consider what is a fair and reasonable sum in compensation under the circumstances here alleged, assuming you find there was negligence on the part of the defendant company and no contributory negligence on the part of Mrs. Quellmalz.

The fact that the defendant is a corporation, I take it, will not create any prejudice in your minds. It ought not to. You would have no right, speaking figuratively and for the moment, for want of a better expression, to put your hands in the treasury of this corporation simply because it is a
30 corporation and because of sentiment aroused, I may say, by the circumstances involving the death of Mrs. Quellmalz. In doing that you would give to this executor a sum of money based upon such sentiment and prejudice and not upon law and justice. On the other hand, I want to impress upon you that in arriving at the verdict in this case, if you reach the question of damages, you are to be just and fair, just as you would between individuals, whether it be an artificial person, as in this case, or a natural person. You are supposed to balance the rights between the litigants here
40 involved. If, as I have repeated a number of times, you

Charge of the Court

find negligence and no contributory negligence, then be fair and just, but do not exorbitantly and unfairly and unjustly mulct the defendant corporation merely because it is a corporation and the accident happened. I never want to have it said in this Court that any litigant will go out of here feeling that a jury as a result of pure prejudice passed upon his rights without due consideration. If you find there are rights here, under the rules of law which I have laid down, which the plaintiff is entitled to have translated into a sum of money in compensation, do not hesitate to give it to him, but do it only under the rules of law and the evidence in accordance with your oath.

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MR. McCARTER:—I would like to enter an exception to your failure to charge specifically as requested requests Nos. 3, 4 and 5, except as you have charged them.

THE COURT:—Gentlemen, I desire to add in connection with the charge already delivered that during the progress of this trial some evidence was offered or some interrogations of one or more witnesses were propounded with respect to the company's renewing its equipment as a whole. You will recall that counsel for the defendant at the time objected and then I struck from the record that testimony with the exception of testimony respecting renewal of equipment relating to that part of the car where it is said the alleged explosion occurred. I desire you now to bear in mind that you will have no right to consider in your deliberation any testimony in this case concerning the failure of the company to renew its equipment as a whole. You will have a right to consider, however, gentlemen, and give such weight and credence to the testimony offered as you feel it deserves with reference to that involving the claim of a failure to renew or relating to the renewal of the equipment in the respect which is indicated, namely, that concerning the controller.

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I also desire to say to you that where I have had occasion to refer to the testimony of witnesses at all you are not to accept that as final. Your recollection of what the witnesses testified to must prevail, and therefore whether Mrs.

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Charge of the Court

Quellmalz arose or what she did must be considered by you from your recollection of what the witnesses testified to in that respect.

10 I should say, moreover, that I did not intend in referring in my charge to the inspection of this controller and the repair, to which reference has been made, to limit you in that regard. Should you find as an element of the negligence, or that there was negligence on the part of this company through the operation of this car at the instance of the motorman or employees, you would have a right to consider such testimony in arriving at a conclusion as to whether or not there was actionable negligence involved.

20 Finally, gentlemen, I am requested by counsel for the defendant to charge as follows: "The fact that there was trouble with the controller does not necessarily denote that the company had been neglectful. If the jury believe that diligent inspection had been made of the car, which had disclosed no defect, and that the car was being carefully operated, and that through some agency over which the defendant had no control the electric current in some way came in contact with the controller, causing smoke and fire, and that the motorman acted with diligence and care in shutting off the current, and in otherwise operating the car, and as a result of fright thereat the decedent jumped from the car, thereby producing her death, there can be no recovery." I so charge.

30 "If the accident was due to fright or alarm of the deceased at an occurrence that arose through no fault or negligence of the defendant, then there can be no recovery." I so charge you.

40 "Even if the jury should believe that the defendant was guilty of negligence in the management and operation of its car; yet the plaintiff cannot recover if the jury believe that the deceased was herself guilty of negligence; that she did not exercise due care in the emergency that confronted her, but by reason of fright or nervousness negligently and unnecessarily put herself in a position which resulted in her death, that would not have occurred had she not so acted,

Defendant's Request to Charge

then there can be no recovery." In other words, gentlemen, that request is in connection with the charge which I have already given you with respect to contributory negligence on the part of Mrs. Quellmalz, if you find any to have existed under the evidence in the case or to have been established. In that respect this request is charged.

MR. McCARTER:—I would like to except to your Honor's statement made at the introduction of your last remarks in which you said for the jury to pay no attention to that part of the evidence about the general equipment, that it would be impossible to find negligence from the general failure to have renewed the controller within the given time, or whatever you said on that point. 10

THE COURT:—You may have an exception.

EXCEPTION NOTED. 20

DEFENDANT'S REQUESTS TO CHARGE.

1. The right of the plaintiff to recover in this case depends upon the plaintiff having shown, by the preponderance of the evidence, that the accident was the result of the negligence of the defendant, in the maintenance or operation of the car. The mere fact that the accident occurred, resulting in the deceased being thrown upon the ground, does not establish a right to recover. There must be some proof that the defendant was negligent in a manner that caused or produced the injury. 30

2. The defendant in accepting Mrs. Quellmalz as a passenger did not guarantee her safe passage. All that it did undertake was to use a high degree of care in transporting her; and if an accident occurred whereby the passenger was killed, notwithstanding this measure of care by the carrier, then the defendant is not responsible.

3. The fact that there was trouble with the controller does not necessarily denote that the company had been 40

Defendant's Request to Charge

neglectful. If the jury believe that diligent inspection had been made of the car, which had disclosed no defect, and that the car was being carefully operated, and that through some agency over which the defendant had no control, the electric current in some way came in contact with the controller, causing smoke and fire, and that the motorman acted with diligence and care in shutting off the current, and in otherwise operating the car, and as a result of fright thereat the decedent jumped from the car, thereby producing her death, there can be no recovery.

4. If the accident was due to fright or alarm of the deceased at an occurrence that arose through no fault or negligence of the defendant, then there can be no recovery.

5. Even if the jury should believe that the defendant was guilty of negligence in the management and operation of its car; yet the plaintiff cannot recover if the jury believe that the deceased was herself guilty of negligence; that she did not exercise due care in the emergency that confronted her, but by reason of fright or nervousness negligently and unnecessarily put herself in a position which resulted in her death, that would not have occurred, had she not so acted, then there can be no recovery.

5. Should the jury find the defendant to have been guilty of negligence, and the decedent free therefrom, then the next question is the measure of damages to be awarded. In cases of this kind there is no room for vindictive damages or smart money, all that in any event can be recovered are such fair and just damages with reference to the pecuniary injury that the husband and children have suffered, as the jury shall deem fair.

6. There can be no damages for the grief caused by the accident; nothing for sentiment; all, if anything that can be recovered either for the husband or the children, are the damages they have suffered by the deprivation of the expectation of pecuniary advantage which would have resulted by a continuance of Mrs. Quellmalz's life.

7. Mrs. Quellmalz owed a domestic duty to her husband; she also owed a maternal duty to her children; neither

Defendant's Request to Charge

can claim compensation for more than the pecuniary value of what was due to each, and so far, if at all they overlap, and the duty to the husband involves the manifestation of conduct, that is, at the same time beneficial to the children, then there can be no compensation to the children, for the pecuniary loss due to the deprivation of the incidental advantage they would derive from the observance of her duties to her husband.

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Judgment of Affirmance.

NEW JERSEY SUPREME COURT.

FREDERICK QUELLMALZ, EXECUTOR
OF EDITH M. QUELLMALZ,
Plaintiff-Respondent,

vs.

ATLANTIC COAST ELECTRIC RAIL-
WAY COMPANY, BODY CORPORATE,
Defendant-Appellant.

On Appeal from
Monmouth Pleas.
Judgment of Af-
firmance.

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This case was heard before our Supreme Court at the
June Term 1919 and judgment of affirmance was rendered
in favor of the plaintiff-respondent on November 5, 1919.

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Whereupon it is adjudged that the said plaintiff-
respondent, Frederick Quellmalz, Executor of Edith M.
Quellmalz, deceased, recovered of the defendant-appellant
Atlantic Coast Electric Railway Company, body corporate,
the sum of \$3,728.40 damages and costs below with interest
thereon from November 14, 1918 and the costs below
amounting to \$46.03, and also the sum of

dollars and cents,

costs in the Supreme Court. Judgment entered March
, 1920

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Opinion.

NEW JERSEY SUPREME COURT.

June term, 1919.

FREDERICK QUELLMALZ, EXECUTOR
OF EDITH M. QUELLMALZ,
Plaintiff-Respondent,

vs.

ATLANTIC COAST ELECTRIC RAIL-
WAY COMPANY, BODY CORPORATE,
Defendant-Appellant.

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Argued June 4, 1919

Decided November 5, 1919.

On appeal from the Monmouth County Common Pleas
Court.

Before Justices Trenchard, Bergen and Kalisch.

For the appellant, Durand, Ivins & Carton and Robert H. McCarter. 20

For the respondent, Charles E. Cook.

PER CURIAM:

This is an appeal from a judgment entered upon the verdict of a jury in the Monmouth Common Pleas in favor of the plaintiff in an action to recover for the death of a woman passenger upon the defendant's trolley car.

The complaint alleged, among other things, that the defendant carelessly managed the car and failed to exercise due care and proper control of the same; that its equipment was improperly constructed so that the fuses, or other parts of the car, were blown out causing large quantities of flame and smoke to issue out and blow upon and towards the decedent, and that large explosions occurred simultaneously. 30

It is undisputed that explosions occurred resulting in flame and smoke, and that as a result thereof, or the excitement incident thereto, the decedent jumped or was thrown from the car and killed. 40

Opinion.

10 It is first argued that the judge erred in permitting the motorman, Lelland, a witness called by the defendant, to be cross-examined with reference to the causes of the blow-out in the controller. We think there was no error in that. The witness was the motorman in charge of the car. Counsel for the defendant proved that he was a motorman of experience; that the controller blew off just before he shut off the power; that there was a small explosion; and that "the throwing the overhead off disconnects the power."

20 On cross-examination, which was objected to he testified that he had observed blow-outs before; that he was a motorman of experience. He was then asked: "Q. Do you know what causes explosions in the controller box?" A. "Well, it can come from an over-load." Q. "Over-load of what?" A. "Electricity through the wires." He was then asked by the Court: Q. "How do you know that?" A. "From experience."

We think that the admission of this testimony on cross-examination was not an abuse of discretion.

30 It is lastly argued that the judge erred in permitting the witness Trimmer, a repairman in the defendant's shops and inspector of equipment, to be cross-examined by the plaintiff in reference to the length of time the equipment of the defendant's cars had been in service. But as we read the record the Court struck out all such cross-examination with respect to the length of time the "equipment generally" had been in service, and instructed the jury to disregard it, allowing, however, the testimony respecting the controller boxes of car 69 to stand. As we understand it, car 69 was the car upon which the decedent was riding. The witness who as we have said, was an inspector, testified to an inspection of the equipment of the car, and we think, therefore, it was proper to cross examine him with respect to the length of time that car and its equipment had been in service.

40 The judgment will be affirmed, with costs.

Grounds of Appeal.

NEW JERSEY COURT OF ERRORS & APPEALS.

FREDERICK QUELLMALZ, EXECUTOR
OF EDITH M. QUELLMALZ,
Plaintiff-Respondent,

vs.

ATLANTIC COAST ELECTRIC RAIL-
WAY COMPANY, BODY CORPORATE,
Defendant-Appellant.

Action at Law.

Grounds of Appeal. 10

The appellant states the following grounds of appeal:

1. The Supreme Court erred in affirming the decision of the Monmouth Common Pleas.
2. The trial judge excluded from the evidence over defendant's objection the conductor's report of the accident. 20
3. The trial judge admitted over defendant's objection the question to the motorman, "Do you know what cause explosions in the controller boxes?" and the following answer to the question, "A. Well, it is due to wire trouble, or as I said, a sudden overload of electricity."
4. The trial judge allowed the motorman over defendant's objection to answer the question "Do you know what caused this explosion on June 18, 1917?"
5. The trial judge allowed the motorman witness to answer the question over defendant's objection "How do you know an overload of electricity could cause an explosion?" 30
6. The trial judge admitted over defendant's objection the question "How many years before had you looked at it?"
7. The trial judge admitted over defendant's objection the question "How many years before had you looked at it?"
8. The trial judge admitted the question over defendant's objection "I ask you in the last three years has 40

Grounds of Appeal.

the Atlantic Coast Railway Company had any rolling stock equipment, any new?"

9. Because upon the asking of the question "Isn't it a fact that it is known to you that the equipment of the road has been allowed to deteriorate?" The court refused defendant's motion for the withdrawal of a juror because such question was most improper evidence and tended to prejudice the case.

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10. The trial judge admitted over defendant's objection, the question "Isn't it a fact that in the last three years there has been no new equipment relating to controller boxes and controller equipment purchased and used by the Atlantic Coast Electric Railway Company?"

11. The trial judge admitted over defendant's objection the question, "There have been no new equipment or controller boxes purchased?"

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12. Because the trial judge directed the jury that they should pay attention to the testimony with respect to controller boxes, that there had been no new controller boxes purchased by the company.

13. The evidence in the case shows that the death of plaintiff's decedent was due to her negligence and want of care and defendant's motion for direction of verdict for the defendant should have been granted.

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14. There was no proof of negligence on the part of defendant and defendant's motion for direction of verdict for the defendant should have been granted.

15. The trial judge charged the jury, "You will have a right to consider and give such weight and credence to the testimony offered as you feel it deserves with reference to that involving the claim of a failure to renew or relating to the renewal of the equipment in the respect which is indicated, namely, that concerning the controller," which portion of said charge was erroneous.

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16. Because the trial judge failed and refused to charge the following requests of defendant:

The fact that there was trouble with the controller does

Grounds of Appeal.

not necessarily denote that the company had been neglectful. If the jury believe that diligent inspection had been made of the car, which had disclosed no defect, and that the car was being carefully operated, and that through some agency over which the defendant had no control, the electrical current in some way came in contact with the controller, causing smoke and fire, and that the motorman acted with diligence and care, in shutting off the current, and in otherwise operating the car, and as a result of fright thereat, the decedent jumped from the car, thereby producing her death, there can be no recovery.

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If the accident was due to fright or alarm of the deceased at an occurrence that arose through no fault or negligence of the defendant, then there can be no recovery.

Even if the jury should believe that the defendant was guilty of negligence in the management and operation of its car; yet the plaintiff cannot recover if the jury believe that the deceased was herself guilty of negligence; that she did not exercise due care in the emergency that confronted her, but by reason of fright or nervousness negligently and unnecessarily put herself in a position which resulted in her death, that would not have occurred, had she not so acted, then there can be no recovery.

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Should the jury find the defendant to have been guilty of negligence, and the decedent free therefrom, then the next question is the measure of damages to be awarded. In cases of this kind there is no room for vindictive damages or smart money, all that in any event can be recovered are such fair and just damages with reference to the pecuniary injury that the husband and children have suffered, as the jury shall deem fair.

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DURAND, IVINS & CARTON,
Attorneys of Defendant-Appellant.

ROBERT H. McCARTON,
Of Counsel.

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Answer.

NEW JERSEY COURT OF ERRORS AND APPEALS

10	FREDERICK QUELLMALZ, EXECUTOR OF EDITH M. QUELLMALZ, Plaintiff-Respondent, vs. ATLANTIC COAST ELECTRIC RAIL- WAY COMPANY, BODY CORPORATE, Defendant-Appellant.	On Appeal. Answer to Petition of Appeal.
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The answer of the above Plaintiff-Appellee to the Petition of Appeal of the above named Defendant-Appellant.

This Plaintiff-Appellee in acknowledging all or any of the matters which in said petition of appeal are contained, to be true, for answer thereto nevertheless says and admits that a judgment was on the _____ day of _____ 1919, made and entered in the New Jersey Supreme Court in the action for that purpose mentioned in said Petition as is therein stated; but as to the substance and form thereof this Plaintiff-Appellee prays to refer thereto when the same shall be produced; and this Plaintiff-Appellee is advised and believes that said judgment is agreeable to law, and he prays that the same may be affirmed with cost to be adjudged to this Plaintiff-Appellee.

CHARLES E. COOK,
 Attorney and of Counsel with
 Plaintiff-Appellee.

Court of Errors and Appeals

FREDERICK QUELLMALZ, Executor of
Edith M. Quellmalz, Deceased,
Plaintiff-Appellee,

vs.

ATLANTIC COAST ELECTRIC R.R. Co.,
(Body Corporate),
Defendant-Appellant.

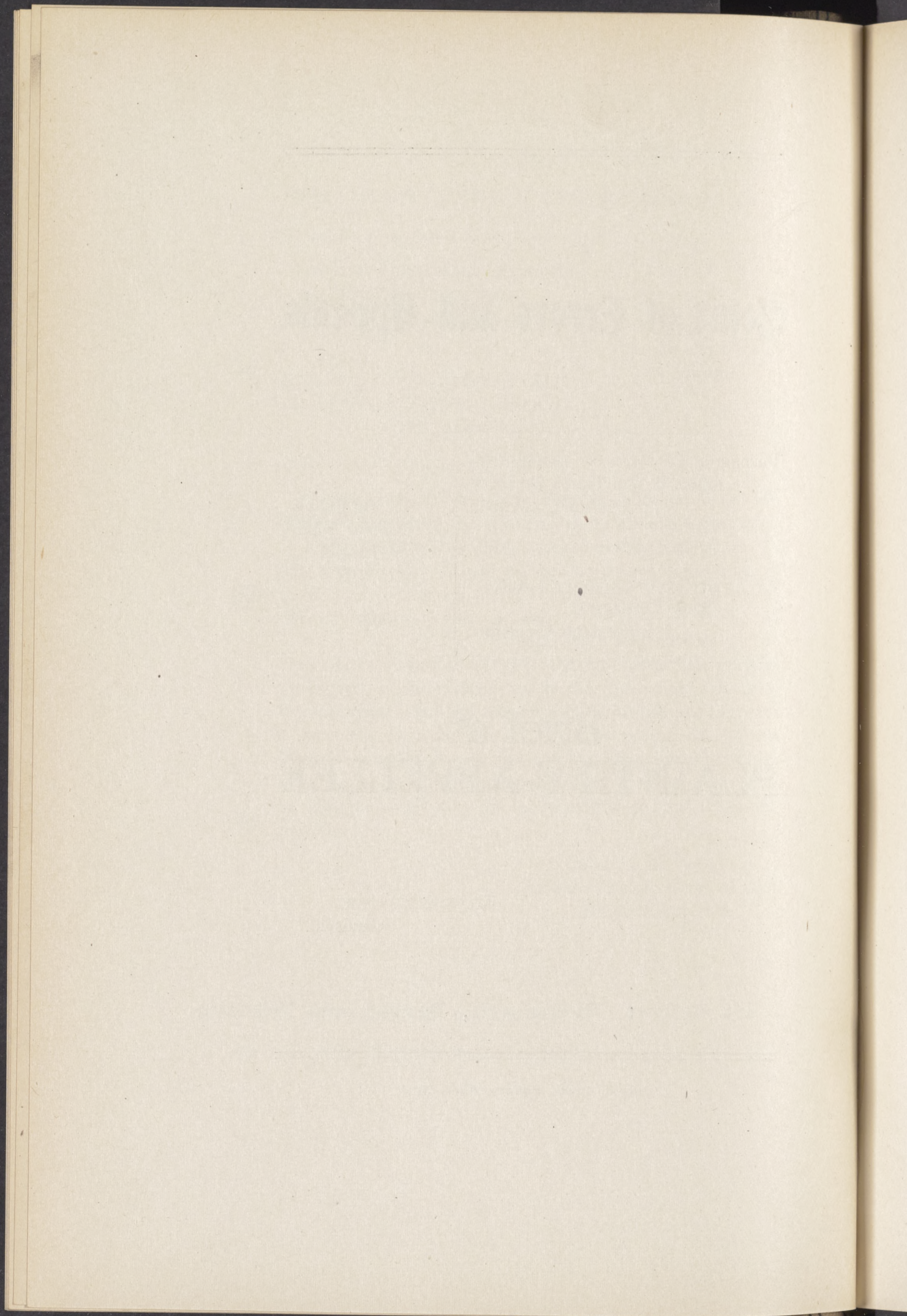
ON APPEAL
FROM THE
SUPREME
COURT.

Brief of PLAINTIFF-APPELLEE

CHARLES E. COOK,
Counsel.

Sat below: Trenchard, Bergan and Kalisch

Schuyler Press, Asbury Park, N. J.



COURT OF ERRORS AND APPEALS

FREDERICK QUELLMALZ, Executor of
Edith M. Quellmalz, Deceased,
Plaintiff-Appellee,

vs.

ATLANTIC COAST ELECTRIC R.R. Co.,
(Body Corporate),
Defendant-Appellant.

ON APPEAL
FROM THE
SUPREME
COURT.

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BRIEF OF PLAINTIFF-APPELLEE

Plaintiff-Appellee recovered judgment in the Monmouth Common Pleas, for \$3,728.40 damages, beside costs, against defendant appellant, for causing the death of Edith M. Quellmalz, wife of Frederick Quellmalz, while a passenger on the trolley-car of defendant, June 18, 1917, at Avon-by-the-Sea, New Jersey. From this verdict Defendant appeals. The Supreme Court (Nov. 5, 1919) sustained the verdict.

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The defendant very properly admits that the question of negligence and defendant's liability has been settled by that verdict and we are not obliged to discuss those features of the case.

Among the number of exceptions taken, only two are urged for reversal:

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(1) BECAUSE THE COURT ERRED IN PERMITTING THE MOTORMAN LELLAND TO BE CROSS-EXAMINED WITH REFERENCE TO THE CAUSE OF THE BLOW-OUT IN THE CONTROLLER.

(2) BECAUSE THERE WAS ERROR IN THE COURT PERMITTING THE WITNESS

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TRIMMER (A REPAIR MAN IN DEFENDANT'S SHOPS) AND INSPECTOR OF EQUIPMENT TO BE EXAMINED IN REFERENCE TO THE AGE AND LENGTH OF TIME THE EQUIPMENT IN CAR 69 HAD BEEN IN SERVICE.

10 The direct examination of witness, Robert Leland, appears on page 97 to 104. The testimony complained of is set up in part in defendant's brief. It claims this witness did not say anything in his direct examination with refer-
 20 ence to the cause of the accident, and did not profess to have the slightest knowledge what the cause of it was; that he ventured opinions for which he had absolutely no training or experience sufficient to testify - - - that he was embarrassed in his efforts to give an explanation of the reasons why the blow-out occurred in the controller. For this the defendant claims (a) the cross-examination ventured beyond the scope of the direct testimony, and (b) the
 30 court permitted a non-expert witness to testify upon a subject upon which he was not qualified to speak or to give an opinion.

30 The cause of the accident, according to plaintiff's theory was "*that while the deceased was standing in the car, suddenly, without warning, a series of loud explosions arose from said car caused by some unknown agency, causing the car to jar and jerk, blowing out the controller or other parts of the car or its equipment near said Edith M. Quellmalz.*" The fifth paragraph of complaint alleges that the defendant "*Carelessly and recklessly managed and ran said car and did not exercise due and proper control of the same; its equipment was improperly constructed, so that the fuses or other parts of the car were blown out, and said equipment caused large quantities of flame and smoke to shoot out and blow upon, toward, around and about her, and loud explosions occurred simultaneously.*"

40 Leland was the motorman in charge of the car. We claim it was proper to ask him the questions objected to.

The first questions asked him on direct by defendant's counsel were:

Q. What experience as a motorman had you previous to the month of June 1917? A. Well, I had about six or eight years altogether, more or less, ever since 1906. Page 97, lines 16, &c.

Q. You were motorman on the car in question, were you? A. Yes, sir.

Q. That was car 69? A. Yes, sir.

Q. How long have you personally operated that car? A. Well, I cannot say for sure how many times I had the car, you see we had a different car almost every time we went out. - - - 10

Q. Did anything happen after that, if so, tell us what it was. A. Almost immediately after I got the bell *the controller blew up just before I was to shut off the power.*

Q. What happened then? A. Well, there was a *small explosion* and some flame and smoke from the roof. 20

Q. What did you do in the emergency? A. I reached up and threw the overhead off with my left hand and used my right hand on the hand brake.

Q. *Throwing the overhead off does what with the motor?* A. *Disconnects the power.* Page 99, &c.

The questions objected to as improper cross-examination are:

Q. You say you have had some experience as a motorman? A. Yes, sir. Page 104. 30

Q. Do you know what causes explosions in the controller boxes? A. Well, it could come from an overload.

Q. Overload of what? A. Electricity through the wires. Page 109.

This witness further testified on direct examination that he had worked in other places as motorman, and had observed blow outs. Page 102.

Q. Have you had any experience? A. It takes about so much to run a car and if there are lots of cars on a line 40

and several of the cars stop all at once, it would throw an overload on one car all of a sudden.

Q. By the Court: How do you know it? A. *From experience.*

Q. What does your knowledge consist of with reference to going as a motorman; *what training do you have or have to have?* A. Supposed to know about the fuses and the cutouts, the fuses, etc.

10 Q. *And the effect of the passing of the current through such machinery?* A. *Yes, sir.*

It will be observed that this man had *practical experience, had observed blow outs and said he knew their cause, and he gave the reason therefor.* In this he agreed with the defendant's witness, Arthur J. Manson, electrical expert, who was afterwards sworn and testified.

ARGUMENT

20 Such questions on cross-examination in any event are more or less within the sound discretion of the trial court as to the admission thereof. This witness was not giving an opinion, he was testifying from an experience of 11 years, and had perforce acquired special knowledge qualifying him to testify: he had seen and observed other blow outs prior to his employment with defendant company.

30 The second objection relates to the cross-examination of witness Trimmer. Here is a man who had entire charge of the controllers and equipment. He took a controller from car No. 15 (which controller by the way was about 20 years old), and on June 10, 1917, installed it in car 69. He had been such repair shop man and inspector for defendant for 25 years. It had previously been inspected by him. Page 125, lines 10-20; page 126, lines 10, &c. Explosions of this kind were not infrequent. Page 126. There had been no new controller boxes procured and used by defendant railway for three years past. Page 130. The test he made of this particular car was trying out the lights to see if there was any ground interference, and running
40 the car a short distance in front of the shop. Page 128.

The court confined the examination of controller boxes to this one in particular, and struck out the rest of the evidence, directing the jury to pay no attention to it. Page 130.

On direct examination the questions of counsel related to the controller and the condition of car No. 69. It brought out what examination and inspection this witness made, when it was made, what witness did toward the installation of this particular controller, the condition of the car when brought in after the accident, his length of employment, and what were his duties and qualifications; that he repaired the controller box and shield, which was produced and identified. Pages 117-122.

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It is respectfully submitted the cross-examination in no way violated the rules; the inquiry was pertinent to the issues raised. The court in its charges to the jury (pages 157-169) took care to enlighten it regarding the matters complained of, so that no prejudicial errors could creep in. The requests to charge in these particulars were fully observed, covered and explained by the court. On page 166, lines 12-29, the court specifically charged the jury on the law of negligence and inspection, all of which was quite favorable to defendant.

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As bearing on the proposition of due inspection of the equipment, we claim such questions were pertinent and proper. A careful reading of the evidence will sustain this claim.

It will be observed further that the court interrogated both Lelland and Trimmer. The court desired to know, and the jury were entitled to learn from the mouths of these witnesses the cause of this sad accident, in which human life was sacrificed. Under the rule that the court has discretion to permit this line of examination, even though it may depart from the strict rules of cross-examination, is another reason that the questions and answers cannot be objected to, although plaintiff's counsel claims that it was proper examination as a whole.

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There was no substantial variance between the allega-

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tions in the complaint and the proofs, such as indicated in *Jordan v. Reed*, 77 N. J. L. 584; the questions and answers were properly correlated to the issues raised in the pleadings. This distinguishes it from *Bearman v. Stifel*, 82 N. J. L. p. 658. The rule that a party may not be cross-examined except on matters brought out in the examination-in-chief has no application here. The rule might apply where a witness was subpoenaed merely to produce a document, or in order to be identified, and, of course, if no further questions were asked, the door would not be open to any question by way of cross-examination, outside these matters. The cross-examination must relate to facts in issue or relevant, or admitted to be relevant thereto, but the cross-examination in all cases need not be confined merely to facts to which witness testified on his examination-in-chief. *Donnelly v. State*, 26 N. J. L., p. 463, does not hold to the contrary. The scope of cross-examination is largely in the discretion of the court. In this case it was directed solely to the accident and its causes, and not to collateral matters; it was justified in each instance by the direct examination.

“Where a railroad company was sued for injuries caused by a defective handle bar on a hand car and introduced testimony that the car was found to be safe, for it was examined that very morning, it was not error to allow testimony to contradict such testimony of the railroad.” *Greenfield v. Lake Shore and M. C. R. R.*, 117 Mich. 307; nor was this cross-examination objectionable in *Dennis v. VanRoy*, 31 N. J. L., p. 39, in that counsel for plaintiff did not seek to establish his case substantively by cross-examination or opponent’s witness. When a witness has testified to certain acts he may be cross-examined as to the surrounding circumstances. *Dutera v. Babylon*, 83 Md., p. 536, and a witness may be cross-examined on all relevant matters. *Guy v. State*, 90 Md. 29. A cross-examination may extend to matters collateral to the examination-in-chief if they are connected with and related to the matters to which he testified. *Black v. Bank*, 96 Md. 399. And it was held, notwithstanding the rule, that the range of cross-examin-

ation must, to a very great extent, be left to the sound discretion of the trial judge. *Glenn v. Traction Co.*, 206 Pa., p. 137.

The cross-examination complained of was not an attempt to introduce plaintiff's own cause to the jury by cross-examination of defendant's witness. It was confined solely to matters within, or which ought to have been within, the knowledge of the party offering himself as a witness and to which he referred directly or indirectly, or which were pertinent to the matters brought out in the examination-in-chief. The modern rule seems to be that cross-examinations are largely within the discretion and control of the court even though it permits counsel to go beyond the limits of strict cross-examination.

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"The direction of the manner of cross-examination is in the discretion of the court." *West v. State*, 22 N. J. L., 212.

"It is in the discretion of the court to allow a witness offered in his own behalf, to be cross-examined upon the whole case as to pertinent facts not touched upon in the direct examination, and the exercise of such authority is not reversible on error."

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Disque v. State, 49, N. J. Law, 249.

Day v. Donohue, 62 N. J. L., 639.

Fries v. Brugler, 12 N. J. L., 72.

"Questions not directly relevant to the issue on cross-examination are within the discretion of the court to prevent an undue expansion of the case by collateral facts."

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Jones v. Mechanic's Ins. Co., 36 N. J. L., 29.

"Cross-examination on matters, either directly in issue or directly relevant to the issue is a matter of right."

Prout v. Bernards, 32 N. J. L., 336

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"It is within the discretion of the court to permit the cross-examination of a witness who is also a party as to a matter aside from the scope of the examination-in-chief.

Risley v. City &c., 75 Law 840.

"The arresting of the cross-examination of witnesses as to collateral matters was within the discretion of the trial judge.

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Record v. P. R. R., 75 N. J. L. 311.

"If a party on cross-examination inquires into new matter, he makes the witness his own."

Donnelly v. State, 266 N. J. L., 463, &c.

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It is respectfully submitted, upon a reading of the entire testimony of Lelland and Trimmer, the charge of the trial judge and his rulings, that no prejudicial error has crept into the case; it was fairly tried, and the verdict should stand. The defendant is a corporation, acting through its officers, agents and servants; such servants are practically a part of the corporate machinery, and they are to be treated in effect as the party itself in cross-examinations.

There was a fair trial and a reasonable verdict.

CHAS. E. COOK,

Attorney of Plaintiff-Appellee.

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Brief for Appellant

FREDERICK QUELLMALZ, EXR. &C.,
Plaintiff-Respondent

vs.

ATLANTIC COAST ELECTRIC RAIL-
WAY COMPANY,
Defendant-Appellant.

On Appeal from
Supreme Court.
Brief for Appel- 10
lant.

This is an appeal from the judgment of the Supreme Court, based upon a *per curiam* opinion, affirming a judgment of the Monmouth County Court of Common Pleas in favor of the plaintiff for \$3,728.40 damages besides costs.

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On the 18th of June, 1917, the decedent, Edith M. Quellmalz, wife of the plaintiff, with her friend, Miss Grant—a leading witness in this case—was a passenger on a trolley car of the defendant company going south from Asbury Park, and intending to alight at or near Garfield Avenue in Avon-by-the-Sea. She was riding at the extreme right of the third seat from the front of a single truck open trolley car. Miss Grant sat next to her on the left; the conductor stood on the running board on the right hand side of the car, near its rear, and observed Mrs. Quellmalz arise and signal him to stop the car. She resumed her seat, after indicating in that manner her desire to alight. Just about that time, and before the car stopped, the controller, being the apparatus on the front platform which the motorman operates to move his car “blew out,” causing some noise, flame and smoke, and in the excitement that immediately followed Mrs. Quellmalz fell prostrate to the ground and was killed. She left a husband who is a successful business man, living in the winter in Baltimore, and having had for several seasons a cottage for the summer at

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Avon-by-the-Sea, and two children, aged at the time of the accident about two years and three and one-half years respectively (p. 44, l. 22). The plaintiff's sole witness who testifies with reference to the accident itself is Miss Grant, who, since the death of Mrs. Quellmalz, has lived in the family, and claims to have been in receipt of \$25 a week as compensation for looking after the children, and keeping house for the widower. She is a bright, over-zealous witness and told quite a contradictory story, and were it material

10 considerable criticism could be directed to it, and considerable doubt would, we believe, arise as to its credibility. We recognize, however, that discrepant as is her evidence, with that adduced on behalf of the defendants, a conflict exists which made several of the matters a jury question which this court on this application, will not undertake to disturb. It seems to be uncontradicted, that just about as the front platform of the car reached Garfield Avenue, the signal was given by Mrs. Quellmalz to stop the car; that the bell

20 was immediately rung, but by that time (the company having adopted the near side stop) it was too late to stop at Garfield Avenue, and so the motorman proceeded to the next street before stopping his car. Meantime, while the car was going about twenty miles an hour the controller blew out, and the accident happened. On p. 32 Miss Grant describes how her friend arose, and notified the conductor to stop the car. She states that Mrs. Quellmalz had resumed her seat, when the bell rang and the blow out or explosion occurred. She claims the car lurched backward

30 and forward, and that Mrs. Quellmalz was thereby thrown from her seat to the sidewalk. Later (p. 34, l. 28) she claims that she and Mrs. Quellmalz were both standing, although, on page 40, at l. 30, she again insists they were sitting. The theory of the defense, and this is borne out by the evidence of Mr. Stetzer, a passenger who sat next to Miss Grant, was that both Miss Grant and Mrs. Quellmalz became frightened at the blowout and jumped out of the car. Stetzer expressly says (p. 134) there was no jolt, and that he seized Miss Grant by the arm and prevented her from jumping out, (p. 139).

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Assuming this to have been a jury question, we will, without further description, proceed to a discussion of the legal errors that crept into the case.

I.

THE COURT ERRED IN PERMITTING THE MOTORMAN TO BE CROSS-EXAMINED WITH REFERENCE TO THE CAUSE OF THE BLOWOUT IN THE CONTROLLER.

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The motorman's name was Leland. At the time he testified he was not employed by the defendant, having left its employ in the fall of 1917. His direct evidence is found on pp. 97 to 104, and is wholly confined to a description of what occurred, showing that almost immediately after the bell rang the controller "blew out"; that there was a small explosion and some flame and smoke on the front platform where he stood, and that he reached up with his left hand and threw off the overhead switch, which has the effect of turning off the power, and then applied the brakes with his right hand and stopped the car; that he noticed no jolt or jerk, and did not know that Mrs. Quellmartz had gone out of the car until after he stopped. He did not even know the name of the controller (it was an A. K. controller); that he was not burned or injured in any way himself, although he stood right at the controller, neither was a passenger who sat on the front platform during the whole occurrence. He then describes what he did with the car after the occurrence and that completed his testimony. On pages 110-112 a series of questions were, against the defendant's objection, permitted to be asked of and answered by this witness, with reference to the cause of the blowout. For example (p. 110, l. 12).

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"Q. Do you know what causes explosions in the controller boxes?"

Mr. McCarter: I object and pray an exception.

The Court: He may answer that.

Mr. McCarter: Exception.

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EXCEPTION NOTED.

A. Well, it is due to wire trouble, or as I said, a sudden overload of electricity.

Mr. McCarter: I think this is very improper. I pray an exception to the allowance of the evidence.

EXCEPTION NOTED.

The Court: How do you know an overload of electricity could cause an explosion?

10 The Witness: For the simple reason—

The Court: Have you had any experience?

The Witness: It takes about so much to run a car and if there are lots of cars on a line and several of the cars stop all at once, it would throw an overload on the one car all of a sudden.

The Court: How do you know it?

The Witness: From experience.

The Court: You have been a motorman how long?

20 The Witness: Off and on since 1906.

The Court: What does your knowledge consist of with reference to going as a motorman; what training do you have to have, or do you have?

The Witness: Supposed to know about the fuses and the cutouts, the fingers, etc.

The Court: And the effect of the passing of the current through such machinery?

The Witness: Yes, sir.

The Court: Proceed; he has answered the question.

30 Mr. McCarter: I move his answer to that question be stricken out on the ground that the witness has not been asked any question with reference to the cause of the accident, nor does he profess to know nor is he an expert. Therefore it is improper either with respect to the Court or counsel to ask him questions to go to this jury indicating the cause of this accident or the cause of explosions generally in apparatus of this kind.

40 The Court: I am inclined to think in view of his testimony he is qualified to answer the question. Perhaps, Mr. Cook, for the purpose of your record, and you don't desire

any record that would be subject to error, that portion of the testimony relating to his general answer as to the cause of explosion may be stricken out, but your question as to what was the cause of the explosion in this particular instance may stand.

Mr. Cook: If he knows.

Mr. McCarter: I pray an exception.

The Court: You may have an exception.

EXCEPTION NOTED.

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The Court: Of course, the subsequent testimony as to his practical experience will stand.

Q. Do you know what caused this explosion on June 18, 1917?

Mr. McCarter: I pray an exception.

The Court: You may have it.

EXCEPTION NOTED.

A. Nothing excepting what I have already said.

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The Court: What is that?

The Witness: The answer I gave you about the overhead and the wire trouble and so on.

Q. Where was the wire trouble on this particular day, if you know?

A. I don't know exactly where it was.

Q. Did you make an examination of this controller box afterward?

A. I simply just looked in the box and saw it was beyond running the car from that end and ran it down to the Shark River Bridge and came back running it from the other end. We got another car and this was taken in the barn.

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Q. Were you able to run this car afterwards?

A. From the other end.

Q. This end was entirely out of business?

A. This was dead."

We submit that this whole line of cross-examination of this witness was improper. He had not said in his direct evidence a word with reference to the cause of the

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accident, and did not profess to have the slightest knowledge of what was the cause of it. When pressed by the court and counsel, over objection, he ventured opinions with reference to wire trouble and overload of electricity, for which he had absolutely no training, or experience sufficient to testify. He did not pretend to be an expert, and had given no opinions whatever as to the cause of the blow out.

10 We suppose nothing is more mysterious than the doings of electricity, and the evidence given by the expert Mr. Manson, called by the defendant, who had received a special electrical training, both in the Boston Institute of Technology, and in the factory of the Westinghouse Company, indicates (pp. 140-148) how technical the whole matter is. For the Court, and plaintiff's counsel, to grill the motorman upon the causes of the blow out in the controller was more improper than to have permitted a similar line of inquiry of an ignorant coachman as to the anatomical cause of physical lameness in a horse that he was driving, when he had only in his evidence undertaken to describe the fact
20 of lameness. The witness was, of course, greatly embarrassed by the inquiries; he made a sorry spectacle in his efforts to give an explanation of the reasons why a blow out will occur in the controller, and thereby the defendant was greatly prejudiced.

Of course, the mere occurrence of the blow out of itself proved no negligence, and the plaintiff sought to elicit from the lips of this ignorant motorman some scientific explanation of what had occurred so as to bolster up his case.
30 He could have called an expert and shown, as Mr. Manson did, how a short circuit will produce a break in the arc, which in turn will fuse the nearby metal, and cause smoke, flame and apparent explosion, all of which, while very annoying, are really harmless, as shown by the fact that neither the motorman himself, nor the passenger on the front platform was at all injured. The motorman, however, even if he had been called by the plaintiff, could not have qualified as an expert, and would not properly have been permitted to give his opinion upon that complicated
40 subject. *Afortiori* it was the more improper to permit the

plaintiff's counsel, and to have the Court, itself, subject him to this severe technical examination upon scientific oppics under the guise of cross-examination, when his direct evidence had been confined to wholly physical phenomena.

This error is referred to in the third, fourth and fifth grounds of appeal.

The situation is almost identical with that which obtained in *Laurer vs. Gould*, 69 Atl. Rep. 28, affirmed upon opinion below, 72 N. J. L. 614.

There an action was brought by an employee to recover from the defendant compensation for injuries received by him while at work upon a planing machine in the defendant's shop. The alleged ground of liability was the failure of the defendant to use proper care to keep and maintain the planing machine in safe condition. Among the rulings of the trial judge, on the admission of testimony, which were challenged, was—

“the overruling of a question asked by the plaintiff in error during the cross-examination of a medical witness called by the defendant in error. The witness had stated on his direct examination that he had removed one of the kidneys of the plaintiff, and that this had been necessary, in his judgment, to save the plaintiff's life. The question which was overruled sought to obtain from the witness his opinion as to the cause of the degeneration of the kidney. This question was properly overruled, because it was not justified by anything which had been asked of the witness in his direct examination. He was called by the plaintiff merely to prove the fact that he had removed the kidney. He was not examined as to the causes which produced the degenerate condition of that organ.”

It was, therefore, held that the question was properly overruled, and we insist the same fate should have met the line of questions here complained of.

A dual legal error arose in permitting the questions to be answered:

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(a) On cross examination they went beyond the scope of the direct testimony, and

(b) They permitted a non-expert witness to testify upon a subject on which he was not qualified to speak, and to give an opinion under circumstances when opinion evidence was not competent.

10 The familiar rule that the cross-examination must relate to matters brought out on the examination in chief (*Donnelly v. State*, 2 Dutch, 601-610; *Dennis v. Van Voy*, 2 Vr. 38-40) received due sanction by the Court of Errors & Appeals in *Crosby v. Wells*, 44 Vr. 790-796). Again the authorities are unanimous to the effect that in order to permit opinion evidence to be introduced, the subject of inquiry must be one requiring special knowledge, and the witness must be shown to possess such.

20 The Court of Errors in *Riley v. Camden & Trenton Ry. Co.*, 70 N. J. L. 289, held that it was error to allow a witness to express his opinion where there is no evidence to show that he is an expert upon the subject under inquiry.

The same court in *New Jersey Traction Co. v. Brabbon*, 57 N. J. L. 691, held, that to justify the admission of expert evidence, the subject must be one not within common knowledge, and the witness offered must appear to be possessed of special knowledge concerning the subject.

Laing v. United New Jersey R. R. & Co., 54 N. J. L. 576.

30 The Supreme Court without apparently having really examined the facts or referred to the authorities cited, satisfied itself with the bare conclusion:

“We think that the admission of this testimony on cross-examinaion was not an abuse of discretion.”

It is respectfully contended that no justification whatever exists or can be shown for this extraordinary cross-examination by which really the plaintiff was enabled, from an ignorant motorman, illegally to gain sufficient technical evidence to justify submitting the case to the jury.

40 THERE WAS ALSO ERROR IN THE COURT'S PERMITTING THE WITNESS TRIMMER TO BE INTERROGATED WITH REFERENCE TO THE

AGE AND LENGTH OF TIME THAT THE EQUIPMENT OF THE DEFENDANT'S CARS HAD BEEN IN THE SERVICE.

Trimmer was the shop man and produced certain work cards which indicated what he had done in the way of inspection of and work upon the controller early in June, 1917, when the motor apparatus was removed from a closed car and put in the open car No. 69 in which Mrs. Quellmalz was a passenger. (See pp. 118-129). His memorandum and evidence were to the effect that the inspection he made at that time indicated the controller and its component parts were in good shape. On p. 125, upon cross-examination, he was permitted, against the defendant's objection, to be asked:

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"Q. You don't know when this motor or the part you took out of car 15 on June 10 had been inspected or looked over before June 10, do you?"

A. No, sir.

Q. You can't tell whether it had ever been looked at in twenty years?

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A. Yes, sir.

Q. How many years before had you looked at it?"

Objection was made, and the witness was permitted to answer the question.

"A. About two weeks."

On p. 129 the witness was, against our objection, permitted to be asked:

"Q. I ask you in the last three years has the Atlantic Coast Railway Company had any rolling stock equipment, any new?"

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Mr. McCarter: I object.

The Court: I will admit the question.

Mr. McCarter: Exception.

EXCEPTION NOTED

A. No, sir.

Q. Isn't it a fact that it is known to you that the equipment of the road has been allowed to deteriorate?"

After noting exception the question was repeated:

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"Q. Isn't it a fact that in the last three years there has been no new equipment relating to controller equipment purchased and used by the Atlantic Coast Electric Railway Company?"

After noting the objection and exception, the witness was permitted to answer the question, and was further asked:

"Q. There have been no new equipment or controller boxes purchased?"

10 A. No, sir." (see p. 130).

The Court, evidently feeling the stress of the objection, then added:

"You may strike from the record and the jury are now directed to pay no attention to the testimony with respect to renewal of equipment generally of this road. The testimony with respect to controller boxes that has just been placed on the record may stand.

Mr. McCarter: I pray an exception to the last ruling.

20 The Court: You may have it.

EXCEPTION NOTED."

30 The complaint against this defendant averred that the defendant "carelessly and recklessly managed and ran the car, and did not exercise due and proper control of the same; its equipment was *improperly constructed* so that the fuses or other parts of the car were blown out." This is all there is and it in no way supports the contention that the defendant had permitted its rolling stock generally or (under the limitation of the Court's later ruling) its technical apparatus on *all* its cars to deteriorate.

40 There was not in the case the slightest claim based on the idea of deterioration of apparatus or rolling stock, extending over a period of years, and the sole object of the testimony to which objection was made was to prejudice the jury by the claim that the company had failed in keeping its equipment in proper condition. Notwithstanding the liberal modern rule with reference to *allegata* and *probata*, nevertheless the Court of Errors has twice recently

put a restraint upon instances that were less marked than in the case at bar. *Jordan vs. Moore*, 77 N. J. L. 584; *Bierman vs. Stiefel*, 88 Id. 658

The defendant in the instance case went to trial prepared to meet the complaint of careless and reckless operation of the car, and improper construction of its equipment. The ruling complained of at first permitted evidence with reference to an alleged general deterioration (nothing about original construction) of the Company's rolling stock generally (not even confining it to the particular car), but later limited this to deterioration of the electrical apparatus generally, and with more particular reference to the controllers. We submit that there was no ground whatever for permitting this line of inquiry, and that it was plainly injurious to the defendant. He was not in any way competent to show that the company had not in the past three years purchased any new electrical controllers or equipment. What had the alleged failure for three years to purchase controllers for other cars to do with this case? Even if the inquiry had been limited to the age of the controller on car No. 69, the question would have been incompetent, both because there was no complaint of worn out or deteriorated equipment, and no proof that a three year old controller was in any way subject to criticism, or liable to produce trouble. It is submitted that even under the court's limitation, which at the best was somewhat confusing and difficult for the jury to apply, there was a manifest impropriety and error in permitting the witness to be examined, and the company to be prejudiced by these questions with reference to the condition of its controllers generally, and whether or not they had been generally renewed within three years, which was harmful. See the grounds of appeal from No. 8 to 11 inclusive.

The Supreme Court inaccurately read the testimony saying,

"But as we read the record the court struck out all such cross-examination with respect to the length of the time the 'equipment generally' had been in service and instructed the jury to disregard it *allowing, however, the*

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testimony respecting the controller boxes of car 69 to stand. As we understand it car 69 was the car upon which the decedent was riding."

This is a gross misunderstanding of the evidence as appears from the quotations already given, which is here repeated. On page 130, line 1, the witness was permitted to be asked,

10 "Q. Isn't it a fact that in the last three years there has been no new equipment relating to controller boxes and controller equipment purchased and used by the Atlantic Coast Electric Railway Company?"

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

The Court: The objection is overruled. You may have an exception.

EXCEPTION NOTED

20 A. No, sir.

Q. There have been no new equipment or controller boxes purchased?

A. No, sir.

The Court: You may strike from the record and the jury are now directed to pay no attention to the testimony with respect to renewal of equipment generally of this road. The testimony with respect to the controller boxes that has just been placed on the record may stand.

30 Mr. McCarter: I pray an exception to the last ruling. The Court: You may have it."

It is therefore, respectfully contended that the court below was in error in the conclusion that the cross-examination was, by the court's ruling, limited to the controller box of car 69.

The judgment is erroneous and should be reversed.

DURAND, IVINS & CARTON,
ROBERT H. McCARTER,
Counsel for Defendant-Appellant.

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