

COURT OF ERRORS AND APPEALS.

EDWARD A. WALTON,

Plaintiff in Error,

AGAINST

GARRET G. ACKERMAN,

Defendant in Error.

On Error.

Brief.

The writ of error brings up a judgment of the Bergen Circuit Court in an action of tort, for the recovery of the value of a horse owned by the defendant in error, which was driven into and killed by the servant of the plaintiff in error on the night of the fourth day of November, eighteen hundred and eighty-five.

The first error assigned is that the Justice before whom the issue was tried denied the motion of counsel for Edward A. Walton, upon Garret G. Ackerman resting his case, to nonsuit Garret G. Ackerman on the ground that he had failed to show negligence on the part of Mr. Walton's driver, and that it had not even been shown that he drove the horse that ran into the plaintiff's horse.

We claim that the evidence up to the close of the case as made by the plaintiff in the trial below clearly indicates that William Washington, the servant of Walton, was exceedingly negligent as appears by the printed evidence, as follows:

Page 20, line 17 to 26 inclusive.

Page 21, line 21 to 27 inclusive.

There are many statements made in the case clearly showing Washington's carelessness and recklessness brought out after the opening of the case on the part of Walton, to which reference will be made, but we refer to the above testimony to show that Washington was driving at a high rate of speed upon a public highway (page 48, lines 20 and 21 inclusive) on a dark night, which in itself is an act of such a character as to make him careless—negligent.

The balance of the first motion is answered on page 12, lines 31 to 36 inclusive; so that at this stage of the case it must be admitted that Mr. Ackerman's horse and the horse of Mr. Walton, driven by his servant, came into collision on a public highway, whereby Mr. Ackerman's horse was killed, and that the collision was the result of the fast driving of the servant of Mr. Walton on a dark night, which in itself was sufficient to put the defendant below upon his defence, and the nonsuit was properly denied. The evidence adduced on the part of the defendant below intensifies the carelessness and negligence of his coachman Washington.

Page 20, lines 17 to 27 inclusive.

Page 51, lines 24 to bottom, and page 52, lines 1 to 3 inclusive.

Page 54, lines 17 to 36 inclusive.

There was occasion for hurrying—he had started to the depot, stopped at the post-office and left the post office just as the train upon which he expected Mr. Walton, started from the depot.

Page 58, lines 20 to 31 inclusive.

Page 25, lines 10 to bottom.

Page 30, lines 30 to bottom, and page 31, lines 1 and 2.

Page 34, lines 10 to 15 inclusive.

Page 41, lines 3 to 11 inclusive.

Page 45, last line, and page 46 to line 13 inclusive.

Page 67, lines 15 to 18 inclusive.

Page 68, lines 11 to 20.

Page 69, lines 19 to 23 inclusive.

Washington's position in the road to enable him to get to the depot, was such as would render an accident most liable.

Page 55, lines 6 to 28 inclusive, and page 56, lines 13 to 23 inclusive.

Washington is a fast driver.

Page 76, lines 24 to 34 inclusive.

There was no carelessness on the part of the boy on horseback, as clearly appears by the gait at which he drove, and the position of the horse he rode after it was struck, and died, and his effort to avoid the collision.

Page 17, lines 21 to 27 inclusive.

Page 13, lines 15 to bottom, and page 14, lines 1 to 22 inclusive.

Page 19, lines 5 to bottom.

Page 20, lines 27 to 33 inclusive.

Page 26, lines 2 to bottom, and page 27, lines 1 to 4 inclusive.

Page 27, lines 23 to bottom, and page 28, lines 1 to 2 inclusive.

Page 29, lines 29 to 36 inclusive, and lines 16 to 24 inclusive.

Page 31, lines 8 to 27 inclusive.

Page 32, lines 9 to 16 inclusive, and page 33, lines 1 to 7 inclusive.

Page 38, lines 19 to 36 inclusive, and page 39, lines 1 to 6 inclusive.

Page 40, lines 6 to 9 inclusive.

Page 41, lines 3 to 11 inclusive.

Page 46, lines 14 to 16 inclusive.

Page 63, lines 24 to 29 inclusive.

Page 64, lines 11 to 29 inclusive.

Although dark the boy knew by familiarity with the surroundings of the spot at which he was at the time of the collision, and to which he went as a precaution.

Page 22, lines 12 to 21 inclusive.

Page 23, lines 5 to bottom.

Value of Mr. Ackerman's horse.

Page 13, lines 9 and 10.

Page 45, lines 32 to 35 inclusive.

Page 46, lines 20 to 24 inclusive.

Page 48, lines 4 to 7 inclusive.

Page 49, lines 27 and 58.

The only other assignment of error is the refusal of the Court to direct a verdict for the defendant.

We feel convinced in view of the testimony that Mr. Ackerman's horse was killed by the carelessness of the coachman of Mr. Walton, without contributory negligence or carelessness on the part of the son of Mr. Ackerman, but by the want of care and precaution incumbent upon the coachman of Walton. All the circumstances and surroundings required the utmost care and precaution, which clearly appears to have been sacrificed to hurry to reach the destination of a belated servant, on a dark night and under circumstances that required of a reasonable person the fullest decree of care.

Every principal of law applying to cases of the character of this, demanded the utmost care. The coachman certainly knew it was dark; that he was driving in the immediate neighborhood of a place in which many persons and

vehicles were at that very moment, as he has testified The coachman must have known the circumstances surrounding him, and as a man supposed to be reasonable, must have understood that there was danger, that which did occur was likely to occur, and that the exercise of care and caution beyond that degree necessary under other circumstances was incumbent upon him—that the greater the danger the greater the liability to accident, and the greater the degree of care required.

To drive in broad daylight at the rate of about a mile in six minutes through a crowded thoroughfare, at a railroad depot just after the arrival of a train, would be condemned by any reasonable person, yet the coachman has testified that he has been guilty of such carelessness, on a night so dark that he could not see a boy on horseback until he had run them down—run them down as appears by a preponderance of testimony, after they had retreated from that part of the highway in which they had a right to be, to the very gutter—to the end of the planking forming the roadway across the switch-track, next to which are the uncovered cross ties and beyond which the boy with any reasonable degree of safety could not go.

On the other hand, giving to the coachman the broadest benefit, we have failed to find anything but care and precaution on the part of the boy. Upon coming up to the crossing of the main railroad track, just as a train started from the depot, he did not fly across, but waited to hear whether a train he expected from an opposite direction was approaching, and not hearing it, with care and caution impressed upon his mind he slowly drove across and was met on the switch-track by the horse of Mr. Walton driven by the person who was in the very act of violating every degree of caution which he undertakes to excuse by saying that after the injury was done he turned his horse to the southerly side of the road where he found plenty room to turn.

It will be found that the average estimate of the value of Ackerman's horse is \$190, so that the amount of the verdict is apparently fair, and should be allowed to stand.

Respectfully submitted,

CAMPBELL & DEBAUN,

Attorneys of Defendant in Error.

N. J. COURT OF ERRORS & APPEALS

IN THE LAST RESORT IN ALL CAUSES.

EDWARD A. WALTON,

(Def'd't), Pl'tff in Error,

vs.

GARRET G. ACKERMAN,

(Pl'tff), Def'd't in Error.

In Error to Bergen
Circuit.

Brief for Plaintiff in Error.

The suit was for the value of plaintiff's horse killed by a collision on the highway with a horse and wagon driven by defendant's servant.

The errors assigned (case, p. 84) are the refusal of the trial Judge to non-suit, and his refusal to direct a verdict for the defendant below.

I.

A non-suit should have been ordered.

Stating the case as strongly as possible for the plaintiff below it was this: His son, Demarest Ackerman, a lad of fifteen years, was riding his mare from the homestead farm to the village of Ridgewood on a family errand. He was riding east. He approached the track of the Erie Railway at Ridgewood Station just as a train going north crossed the highway and stopped at the station,

which lay north of the road and east of the railroad. He waited until the train was about starting and then proceeded across the track. As he was crossing a switch track some distance down the road from the main track, he heard the noise of a horse and wagon coming up the road. He says he could see nothing, but he pulled the mare to the right, and almost as he did so he came in contact with something which knocked off his hat and bruised his lip. The mare wheeled around to the south, sank to her knees, and he stepped off. She fell; he saw blood coming from her breast, and feeling faint went into a shop. He did not know with what he collided, but it otherwise appears that it was with a mare attached to a buggy driven by Wm. Washington, a colored coachman, who was going to the station for his employer, the defendant below, who was on the train above mentioned. The plaintiff's mare was killed by the end of the right shaft of the buggy piercing her right breast. The hour was 6.10 p. m., on November 4, 1885. It was dark and there was no moon. The boy was riding out of complete darkness towards lights on both sides of a village street behind Washington. He was familiar with the locality. He does not know why he did not see the approaching horse and wagon (case, p. 30). He does not say he was on the lookout. It is a fair presumption, considering the position of the lights, that he was inattentive, probably looking at the departing train, or over to the north side of the road, where his errand lay, and did not see or hear the approaching wagon until it was right upon him, and then both were in darkness. As to speed, he says he was walking slowly on a kind of rack (case, p. 19). On cross-examination he says that he does not know how fast he was going; the mare traveled as she always did when she was going slow, and was not going at her full speed (case, p. 27). He was going for things for that night's supper (p. 28); it was after 6 o'clock, and he lived a mile away, yet he says he was not in a hurry. Defendant's witnesses say he was riding rapidly, but the most we can urge, on error, is that his testimony leaves his pace uncertain. All that the plaintiff's case showed of Washington's speed

is the boy's impression from the sound he heard that the wagon seemed to be moving very fast (case, p. 20). Washington himself testified (on the defence, but we presume that the plaintiff, even on review of a refusal to non-suit, is entitled to the testimony), that he might have been going at a six-minute gait (case p. 50), explaining afterward that he meant not to exceed that pace, probably not that (case, p. 54), as the mare he was driving was heavy with foal (p. 50). As to position on the road, it was claimed on the part of the plaintiff that the boy, Demarest, was well over to the right hand (south) side of the road, because: 1. Although he could not see his immediate position, he could judge by the lights on the north side of the road farther down the village street. (NOTE.—Does not this show, as claimed above, that he was looking in that direction, and not ahead of him.) 2. When the mare was struck she only wheeled her length to the right and fell, and a number of witnesses swear that when dead her body lay near the extreme southern margin of the road.

To this claim we have to say that the right or north shaft of the buggy pierced the right breast of the mare, though the boy pulled the mare some to the right before the collision. She could not wheel directly to the right. She or the other mare must have backed away somewhat. It is impossible to tell by the position of the dead body just where the collision occurred. The boy's errand was in the village, on the north side of the road, and the more natural course for him after crossing the main railroad track was diagonally northeast toward the grocery.

The plaintiff's evidence certainly left the exact place of the collision in doubt. But conceding that Washington was driving on the left hand side of the road, and at the outside limit of speed mentioned by him, and that Demarest was riding slowly, I ask, what in the facts above stated justified the learned Judge in submitting the case to the jury. In his charge he said that the jury might find carelessness in Washington's position on the left-hand side of the road or in his rate of speed. Was he right? It seems to me that this was not a case where the speed caused the accident, though of course it might have made

the wound more severe. So far as the *collision* is concerned, it would have occurred had Washington's horse and buggy been standing still. As to position, the plaintiff's case was silent as to Washington's reason for being on the left-hand side of the road (if he was there). It will not be presumed that he was there wantonly. On the contrary, it will be presumed that he was there lawfully. Therefore, unless negligence is to be presumed *prima facie* from the mere being on the left-hand side of the road in case of a collision (and no court has gone that far), the plaintiff failed to make a case.

I submit also that the facts above stated show that Demarest was guilty of contributory negligence. He could not have looked ahead or he would have seen. Others of the plaintiff's witnesses saw the collision, and their means of vision was no better than his. They did not see either horse until just at the very moment of contact, but that was because they were not looking.

If the boy was not negligent, the collision was pure accident.

II.

A verdict for the defendant should have been directed.

The plaintiff's case left the position of the two horses uncertain. The uncontradicted evidence for the defendant made this clear, and showed that Washington was without question where he had a right to be and why he was there. If, therefore, there was any presumption against him from the mere fact of his possibly being on the left-hand side of the road, it was removed, and there was no dispute on the point to go to the jury. The uncontradicted evidence also showed that he did not and could not see Demarest, and that he exercised due care.

The judgment below should be reversed.

GILBERT COLLINS,
Of Counsel with Plaintiff in Error.

COURT OF ERRORS AND APPEALS.

EDWARD A. WALTON,

Plaintiff in Error,

against

GARRET G. ACKERMAN,

Defendant in Error.

} *On*
Error.

Writ of Error.

[Filed May 5th, 1886.]

New Jersey, ss.—The State of New Jersey to our judge of our Bergen county Circuit Court, greeting:
[L. s.] For as much as in the record and proceedings, and also in the giving of judgment in a certain plaint which was in our said Circuit Court before you, between Garret G. Ackerman, plaintiff, and Edward A. Walton, defendant, in a plea of tort, manifest error hath intervened, to the great damage of the said Edward A. 10 Walton, as it is said: We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you that if judgment be thereupon

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

10 Witness Theodore Runyon, our Chancellor and president judge of our said Court of Errors and Appeals, at Trenton aforesaid, the sixteenth day of April, A. D. eighteen hundred and eighty-six.

HENRY C. KELSEY,
Clerk.

DAVID D. ZABRISKIE,
Attorney.

Writ presented. The clerk will please make return April 20th, 1886.

20

JONATHAN DIXON,
Judge.

Judgment Record.

The record and proceedings within named, with all things concerning the same, to the Court of Errors and Appeals in the last resort in all causes within specified, is hereby certified, at the day and year within contained, in a certain schedule to this writ annexed, as directed by the judge of said Circuit Court.

[L. s.]

SAMUEL TAYLOR,
Clerk.

30

Bergen county Circuit Court. Garret G. Ackerman against Edward A. Walton. In tort. Summons. Returnable January 5th, 1886. Campbell and Debaun, attorneys. Served. James D. Brinkerhoff, sheriff.

Bergen county, ss.—The State of New Jersey to the Sheriff of the county of Bergen, greeting:
 [L. s.] We command you to summon Edward A. Walton to be and appear before the Circuit Court to be held at New Barbadoes, in and for the county of Bergen, on the second fifth day of January next, to answer 10 unto Garret G. Ackerman of a plea of tort to his damage, five hundred dollars, as is said, and have you then and there this writ.

Witness, Jonathan Dixon, Esq., judge of our said court, at New Barbadoes aforesaid, the twenty-fourth day of December, A. D. one thousand eight hundred and eighty-five.

SAMUEL TAYLOR,
Clerk.

CAMPBELL & DEBAUN,
Attorneys.

20

Returned into court January 5th, 1886.

WM. S. DOREMUS,
Deputy Clerk.

Bergen Circuit Court. Garret G. Ackerman against Edward A. Walton. In tort. Narr. Campbell & Debaun, attorneys. Filed January 11th, 1886. W. S. Doremus, deputy clerk.

Bergen county Circuit Court of the second day of January, in the year of our Lord one thousand eight hundred and eighty-six. 30

Bergen county, to wit: Edward A. Walton, the defendant in this suit, was summoned to answer unto Garret G. Ackerman, the plaintiff therein, of a plea of tort, and thereupon the said plaintiff complains against the said

defendant. For that, whereas, the said plaintiff, before and at the time of the committing by the defendant of the grievances hereinafter mentioned, to wit, on the fourth day of November, in the year eighteen hundred and eighty-five, at Ridgewood, to wit, at New Barbadoes, in the county of Bergen, was lawfully possessed of a certain horse then and there being driven in and upon a certain public and common highway in the township of Ridgewood aforesaid, under the care, control and guidance of
10 the son of the plaintiff, and the defendant was then and there possessed of a certain carriage, to wit, a large, heavy carriage, and of a certain horse drawing the same, which said heavy carriage and horse were under the care, government and direction of a certain then servant of the defendant in and along the said highway; nevertheless, the said defendant, by his servant then and there so carelessly, unskillfully and improperly drove, governed and directed his said heavy carriage and horse, that, by and through the carelessness, negligence, unskillfulness and
20 improper conduct of the defendant by his said servant, the said heavy carriage and horse of the defendant then and there ran and struck, with great force and violence, upon and against the said horse of the plaintiff and thereby hurt and wounded the same so that the said horse of the plaintiff then and there instantly died, to the damage of the plaintiff five hundred dollars, and, thereupon, he brings his suit.

CAMPBELL & DEBAUN,
Attorneys of Plaintiff.

30 To the defendant: Take notice that unless you appear and file a plea or demurrer to the within declaration within thirty days from the date of service hereof upon you, judgment will be entered against you.

CAMPBELL & DEBAUN,
Plaintiff's Attorneys.

Bergen Circuit Court. Garret G. Ackerman against Edward A. Walton. In tort. Affidavit of service of narr. Campbell & Debaun, attorneys. Filed January 14th, 1886. W. S. Doremus, deputy clerk.

New Jersey, Bergen county, *ss.*—Abram Debaun, of full age, being duly sworn, on his oath says that on the eleventh day of January, A. D. eighteen hundred and eighty-six, he served a full, true and correct copy of the declaration, as filed in the above-stated cause, and notice thereon endorsed, on the defendant, Edward A. Walton, personally, by handing the same to him. 10

A. DEBAUN.

Sworn and subscribed to before me January 13th, 1886, at Hackensack, N. J.

MILTON DEMAREST,
Master in Chancery of New Jersey.

Bergen county Circuit Court. Edward A. Walton *ads.* Garret G. Ackerman. In tort. Plea. David D. Zabriskie, defendant's attorney. Filed February 10th, 1886. Samuel Taylor, clerk. 20

And the said defendant, by David D. Zabriskie, his attorney, comes and defends the wrong and injury when, &c., and says that he is not guilty of the said several supposed grievances above laid to his charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him, and of this he, the said defendant, puts himself upon the country, &c.

DAVID D. ZABRISKIE,
Defendant's Attorney. 30

State of New York, city and county of New York, *ss.*—Edward A. Walton, of Ridgewood, Bergen county and

6 COURT OF ERRORS AND APPEALS.

State of New Jersey, being duly sworn according to law, upon his oath says that he is the defendant in the above plea mentioned, and deponent further says that the said plea is not intended for the purpose of delay, and he, this deponent, verily believes that he has a just and legal defence to said action on the merits of the case.

E. A. WALTON.

Sworn and subscribed this 10th day of February, 1886.

[L. S.]

EDWARD H. SCHELL,

10

Commissioner for the State of New Jersey.

Bergen Circuit Court, April 7th, 1886. Garret G. Ackerman against Edward A. Walton. Tort.

Jurors :

- | | |
|----------------------------|-------------------------|
| 1. Jacob S. Bogert. | 7. Augustus Van Saun. |
| 2. John G. Zabriskie. | 8. Alexander McGowen. |
| 3. Frederick Heine. | 9. Thomas Hope. |
| 4. Andrew H. Ackerman. | 10. Schuyler Banta. |
| 5. William H. Brinkerhoff. | 11. Ernst Lindemann. |
| 6. Daniel O'Mara. | 12. James V. Joralemon. |

20 Campbell & Debaun, counsel for plaintiff.

David D. Zabriskie, counsel for defendant.

Witnesses for Plaintiff :

1. Garret G. Ackerman.
2. Demarest Ackerman.
3. John E. Post.
4. Irving Bogert.
5. Cornelius P. Crouter.
6. John H. DeGraw.

Witnesses for Defendant :

1. William Washington.
2. Jacob Amos.
3. Henry Amos.
4. Edward A. Walton.

Court adjourned until to-morrow morning at half past ten o'clock.

Court met April 8th, 1886, at half-past ten A. M., according to adjournment.

Recalled: Garret G. Ackerman, Demarest Ackerman.

The evidence being closed and the cause summed up by counsel and submitted upon charge of the court, the jury retired to consider upon their verdict, having a constable sworn to attend them. The jury came into court, and, being called, all appeared and say they have agreed 10 upon their verdict, and say they find for the plaintiff and against the defendant, and assess the damages at one hundred and seventy-five dollars, and so say they all.

Verdict, April 8th, 1886.

Bergen county Circuit Court. Garret G. Ackerman against Edward A. Walton. Tort.

This cause being regularly on the list for trial at the April Term, A. D. 1886, of this court, and being called and both parties appearing, and the cause being moved by the plaintiff and a jury being empaneled and sworn and the 20 evidence offered by the parties submitted, and the respective parties by their counsel being heard, and the judge having charged the jury, and the jury having retired to consider of their verdict, come again into court and say they find in favor of the plaintiff and against the defendant and assess the plaintiff's damage at the sum of one hundred and seventy-five dollars.

It is thereupon ordered, on this eighth day of April, A. D. one thousand eight hundred and eighty-six, that judgment final be entered against said defendant and in favor 30

of said plaintiff for the said sum of one hundred and seventy-five dollars, besides costs of suit to be taxed.

Rule entered April 8th, 1886, on motion of

CAMPBELL & DEBAUN,
Plaintiff's Attorneys.

Damages, \$175; costs, \$45.34; total, \$220.34.

Garret G. Ackerman against Edward A. Walton. In tort.

Narr. Bergen county Circuit Court of the second day of January, in the year of our Lord one thousand eight
10 hundred and eighty-six.

Bergen county, to wit: Edward A. Walton, the defendant in this suit, was summoned to answer unto Garret G. Ackerman, the plaintiff therein, of a plea of tort, and, thereupon, the said plaintiff complains against the said defendant: For that, whereas, the said plaintiff, before and at the time of the committing by the defendant of the grievances hereinafter mentioned, to wit, on the fourth day of November, in the year eighteen hundred and eighty-five, at Ridgewood, to wit, at New Barbadoes, in
20 the county of Bergen, was lawfully possessed of a certain horse then and there being driven in and upon a certain public and common highway in the township of Ridgewood aforesaid, under the care, control and guidance of the son of the plaintiff, and the defendant was then and there possessed of a certain carriage, to wit, a large, heavy carriage and of a certain horse drawing the same, which said heavy carriage and horse were under the care, government and direction of a certain then servant of the defendant, in and along the said highway; nevertheless, the
30 said defendant, by his servant, then and there so carelessly, unskillfully and improperly drove, governed and directed his said heavy carriage and horse, that by and through the carelessness, negligence, unskillfulness and improper con-

duct of the defendant by his said servant, the said heavy carriage and horse of the defendant then and there ran and struck, with great force and violence, upon and against the said horse of the plaintiff, and thereby hurt and wounded the same so that the said horse of the plaintiff then and there instantly died, to the damage of the plaintiff five hundred dollars, and thereupon he brings his suit.

The summons in this cause having been duly served and returned by the sheriff of the county of Bergen, and the plaintiff having filed his declaration within the time re- 10
quired by law, and the said defendant, Edward A. Walton, by David D. Zabriskie, his attorney, comes and defends the wrong and injury when, &c., and says that he is not guilty of the said several supposed grievances above laid to his charge, or any or either of them or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him, and of this he, the said defendant, puts himself upon the country, &c.

And the said plaintiff comes and says, as to the plea of the defendant by him above pleaded and whereof he hath 20
put himself upon the country, that the plaintiff doth the like, &c.

The above-stated cause being at issue, and being regularly on the list for trial at this April Term of said court, for the year one thousand eight hundred and eighty-six; and at this date, to wit, the eighth day of April, one thousand eight hundred and eighty-six, come the plaintiff and also the defendant, by their several attorneys aforesaid, and a jury being empaneled and sworn, the evidence taken and the same submitted to them upon the charge of the 30
court, the jury retired to consider upon their verdict. The jury came again into court and say they have agreed upon their verdict, and say they find for the plaintiff and against the defendant, and assess the plaintiff's damages at the sum of one hundred and seventy-five dollars. It is thereupon ordered that on this eighth day of April, A. D. eighteen hundred and eighty-six, that judgment final be

entered against the said defendant and in favor of the plaintiff for the sum of one hundred and seventy-five dollars, besides costs of suit to be taxed.

Therefore, it is considered that Garret G. Ackerman, the plaintiff, do recover against Edward A. Walton, the defendant, one hundred and seventy-five dollars for his damages aforesaid, and, also, forty-five dollars and thirty-four cents costs, by the clerk now here taxed in favor of said plaintiff and with his assent, which said damages and
10 costs and charges, in the whole, amount to the sum of two hundred and twenty dollars and thirty-four cents.

Bill of Exceptions.

[Filed May 11, 1886.]

Be it remembered that on the seventh day of April, A. D. eighteen hundred and eighty-six, at a Circuit Court holden in Hackensack, in and for the county of Bergen, before his Honor, Jonathan Dixon, Esq., judge of said Circuit Court, the issue joined in the above-stated cause between the said parties (*pro ut* the pleadings) came on to
20 be tried by a jury for that purpose duly empaneled and sworn, and thereupon the trial of said cause proceeded as follows, Messrs. Campbell & De Baun appearing for the plaintiff, and Mr. Gilbert Collins and David D. Zabriskie appearing for the defendant.

Mr. Campbell opened the case for the plaintiff.

Garret G. Ackerman, plaintiff, being sworn, testified as follows :

Q. Where do you live?

A. Ridgewood.

30 Q. What is your business?

A. Farming.

Q. Do you live in the village of Ridgewood ?

A. Just outside the village, near Ridgewood Junction.

Q. Did you lose a horse last fall or last winter ?

A. Yes.

Q. When ?

A. It was on the evening of November 4th.

Q. Without stating what may have been said to you, tell us what you know about it ?

A. I sent my boy to Ridgewood that evening, after 10
being through my day's work, with this colt to go to the
store; after that I got word of this—of course I was not
there, but shortly after that I got word——

Q. That induced you to go where ?

A. To Ridgewood.

Q. Where ?

A. At the switch-crossing, southeast from the station.

Q. What did you see there ?

A. I saw my colt lying on the switch-track, dead.

Q. Did you send your son with the colt ? 20

A. Yes.

Q. How old was he ?

A. Sixteen next July.

Q. Where was he ?

A. I inquired where the boy was—if he was hurt—and
they said he was in Crouter's office, and I left the switch-
track and went to Mr. Crouter's office and found him
there.

Q. Do you know Mr. Walton's coachman ?

A. Yes. 30

Q. William Washington ?

A. Yes.

Q. Did you see him ?

A. No.

Q. The horse was dead when you found him ?

A. Yes.

Q. How long had you owned that horse ?

A. I had owned her about a year or a little over a year ; I couldn't say exactly how long ; maybe thirteen or fourteen months.

Q. Did you make any measurements, or aid in making measurements, for the purpose of making a diagram of the surroundings ?

A. Yes.

Q. Look at that and tell me if that is it ? [Showing the witness paper.]

10 A. Yes.

Q. When was that made ?

A. That was made the latter part of last week—last Thursday.

Q. Have any changes been made in the location of the railroad track or tracks and the buildings in that neighborhood since this occurrence and before the making of that map ?

A. Not to my recollection.

Q. You would know it if there had ?

20 A. Yes.

Q. How often do you go in that neighborhood ?

A. I am there very nearly every day ; once in a while I skip over a day or maybe two days ; very seldom that I skip a day.

Q. When, after that, did you first see William Washington and Mr. Walton ?

A. The next morning.

Q. Whom did you see then ?

A. I saw Mr. Washington and I went to Mr. Walton's
30 house and called on him there.

Q. Did you say anything to Washington about the loss of your horse ?

A. Yes.

Q. What did you say about it and what did he say ?

A. I asked Mr. Washington if he had run into my colt and he said he had, or the colt ran into him ; I said

“How were you driving——” [Objected to; objection sustained.]

Q. You saw Mr. Walton?

A. Yes.

Q. What did you say to Mr. Washington about your horse? [Objected to; objection sustained.]

Q. You have bought and sold horses?

A. Yes.

Q. What was the fair value of that horse?

A. I refused \$250 for that colt about a month and a 10 half before she was killed.

Q. Was she in as good condition when she was killed as at the time that offer was made you?

A. Yes.

Q. Describe to us that diagram as far as you can?

A. This is Ridgewood avenue; that is north and here is the shed, and this is the dwelling where a tavern used to be kept.

Q. Where did you find your colt?

A. About here; here is a little ditch that runs under 20 the track to lead the water from this park; this is Rock avenue and this is Ridgewood avenue; this is a seventy-five feet board crossing; this is the road that leads up to Wortendyke, and here is the road that leads up to Midland Park; that is a part in front of Mr. Crouter's.

Q. Is that diagram made according to measurements?

A. Yes.

Q. How wide is it here when you get up to the switch track?

A. It is seventy-five feet from this end of the plank to 30 that end of the planking, the curb and the track is on that side of the seventy-five feet, and this track is fifteen feet; I measured this track, but didn't measure that one.

Q. What is this space between the red line and the blue line?

A. That is the sidewalk.

Q. And also here?

A. Yes.

Q. Upon both sides?

A. Yes.

Q. How long did you say that planking was on the switch track?

A. Seventy-five feet.

Q. On that side of that planking, what is the condition of the ground, what is there upon this track, how are the ties—are they exposed or covered?

10 By the court—

Q. Is that planking made for a wagon way across the track?

A. Yes.

Q. And your horse was lying right on that planking?

A. Right on the southerly end of the planking.

By Mr. Campbell—

Q. How is the line of the southerly end of the depot with reference to the sidewalk on the northerly side of Ridgewood avenue?

20 A. The end of the depot stands along the line of the track, and there is a little park at the northerly end of the depot, and a narrow walk along that.

Q. What time of day was it when you found your horse lying dead?

A. I can't say the exact time; I think it must have been about seven o'clock.

Q. In the evening?

A. Yes.

Q. After dark?

30 A. Yes.

By the court—

Q. How was he hurt?

A. He had a hole in the chest and bled to death from that.

Q. Which side of the chest?

A. I couldn't say; I didn't look at that; of course I was excited when I got there.

By Mr. Campbell—

Q. Did you examine the wounds to ascertain what it appeared like, or what could have made it?

A. No, I did not.

Q. You know William Washington?

A. Yes.

Q. In whose employ was he at that time so far as you know?

A. Mr. Walton's.

Q. In what capacity was he working for him? 10

A. Working as coachman.

Q. Did you frequently see him on the road, driving Mr. Walton's horse?

A. I generally met him every morning on the road.

The court—Is there any question about his being Mr. Walton's coachman?

Mr. Collins—No, sir; he was on the way to get him at the station.

Cross-examination by Mr. Collins.

Q. Is not Ridgewood avenue wider than Rock avenue? 20

A. Ridgewood avenue here is a great deal wider.

Q. From whom did you buy that colt?

A. Demarest Hopper.

Q. What did you pay for him?

A. \$125 cash.

Q. How old was she?

Q. Four years old last May.

Q. You had bought her about a year before?

A. Yes.

Q. Who broke her? 30

A. I handled her a few days myself and then I got John H. De Graw; when she died she was broke every way.

Q. Your son was riding her on this occasion?

A. Yes.

Q. With a saddle?

A. Yes.

Q. And stirrups?

A. Yes.

Q. And bridle?

A. Yes.

Q. Was this \$250 offer a cash offer?

A. That was cash.

Q. Who made the offer?

A. A gentleman in Englewood.

10 Q. What was his name?

A. I can't tell you his name; he came around with Mr. Hopper to my place to see the colt; my father told him I had a colt and thought I would sell it.

Q. And he offered you \$250 for it?

A. Yes.

Q. He had not seen her before?

A. I don't know.

Q. How long did he look at her?

A. I don't know; I suppose he was there likely half an
20 hour.

Q. You refused it because you did not want to part with her?

A. No, sir; I did not.

Q. You say you have bought and sold horses?

A. For my own use.

Q. Only for your own use?

A. Yes.

Q. How many?

A. Well, I can't say; I suppose two or three, maybe
30 three or four.

Q. Then you have not great familiarity with the value of horses?

A. I know what a horse is worth to me.

Q. You judge of the value of a horse because of your own preference in respect to it?

A. Yes.

By Mr. Campbell—

Q. Which one of your sons was it that went out with this horse?

A. Demarest.

Q. If this map were drawn on a scale, this building should be further south?

A. Yes.

Q. There should be more space than is indicated on this?

A. Yes.

Demarest Ackerman, sworn for plaintiff, testified as follows: 10

By Mr. Campbell—

Q. How old are you?

A. Sixteen the 3d of July next.

Q. You are the son of Garret G. Ackerman?

A. Yes.

Q. Are you the person who was on the back of this horse at the time it was killed?

A. Yes.

Q. Go on and state, in your own way, just what happened, so far as you know? 20

A. The six o'clock train came along, and I stopped for that; it stopped at the Ridgewood station; I went across and got on the switch-track; before I got to the switch-track, I heard something coming up the avenue, a wagon or something, and I pulled to the right; just as I pulled to my right, something struck me as I got on the Ridgewood crossing, knocked my hat off and bruised my lip.

Q. You were on the horse's back?

A. Yes.

Q. Did you have a saddle? 30

A. Yes.

Q. Something knocked your hat off and bruised your lip?

A. Yes.

Q. Did you fall from the horse?

A. No.

Q. Did your horse fall then?

A. She wheeled her own length around and she got down on her knees, and I stepped off her.

Q. That was after something had struck you?

A. Yes.

Q. How quickly after?

A. I guess it was inside of a minute that she dropped.

Q. Did she drop in the same place in which you were when you were struck?

10 A. No, sir; she wheeled her own length around—a half moon.

Q. Which way did she wheel?

A. Towards the brick building.

Q. Have you seen that diagram?

A. Yes.

Q. Do you understand it?

A. I guess I do.

Q. You have studied geography and drawn maps?

A. Yes.

20 Q. Show us, as nearly as you can, where you were when you were struck?

A. I was right about there.

Q. You mean near the end of the planking that is across the switch-track?

A. Yes.

Q. After you were struck and you got off your horse, what did you see?

A. I saw the blood rush out of her breast, and I stayed around there; there was a crowd around there right away,
30 and I took the bridle out of her mouth.

Q. Did you take the bridle out?

A. Yes.

Q. Did you see a horse and wagon there?

A. No, sir.

Q. Did you see William Washington there?

A. No.

Q. After you got off where did you go?

A. I was around there, and I kind of fainted away, and somebody took me into Mr. Crouter's.

Q. Mr. Crouter's butcher shop?

A. Yes.

Q. How were you driving when this occurred?

A. She was walking slowly—a kind of a rack.

Q. Were you driving fast or slow?

A. Slow.

Q. How had you driven from the house down there?

A. On a little trot. 10

Q. Were you driving slower there at the switch-track or at the railroad than you were before you reached the track?

A. Yes.

Q. Why?

A. Well, I stopped her on the other side of the track; then I came across the track, and I was close by the store.

By the court—

Q. The store was the place where you were going?

A. Yes. 20

Q. Which building?

A. Mr. Westervelt's.

Q. On the north side of Ridgewood avenue?

A. Yes.

By Mr. Campbell—

Q. You had stopped at the other side of the railroad crossing, had you not?

A. Yes.

Q. Why did you stop there?

A. For the train, the six ten, I think it was. 30

Q. Did that train stop at Ridgewood depot?

A. Yes.

Q. Had it gone from the depot when you crossed the track?

A. Well, she was standing there; I guess she was just about starting when I went across.

Q. Was the horse that you were riding frightened?

A. No.

Q. Afraid of the train ?

A. No.

Q. Was that horse afraid of a train ?

A. No, sir ; you could drive her right up by a train.

Q. Which way from the railroad does your father live ?

A. I think on the west side—the southwest.

Q. Towards Midland Park or towards Wortendyke ?

A. Towards Midland Park.

10 Q. Then, to go from your house to the store to which you had been, you would drive easterly, and across the railroad, and go into Ridgewood ?

A. Yes.

By the court—

Q. Did you not see what struck you ?

A. No, sir.

By Mr. Campbell—

Q. I understood you to say that just as you got near the switch-track, or across the railroad, you heard something coming ?

20 A. Yes.

Q. What did you hear ?

A. It went like a wagon ; it sounded like it, coming over the road.

Q. Where did it appear to be moving, from the sound—how did it appear to be moving ?

A. It seemed to be moving very fast, the way the wagon sounded.

Q. When you noticed that what did you do ?

A. I pulled to the right-hand side.

30 Q. Why didn't you go further still to the right than you were ?

A. I was on the end of the planks, and I would have got in by the ties if I had pulled much further.

Q. Had you been in the habit of driving this colt ?

A. Yes, whenever I was sent anywheres with the horse.

Q. For how long had you done that ?

A. Ever since they got her broke so they thought she was safe for me to drive.

Q. How long have you been in the habit of driving or handling your father's horses?

A. Ever since I used to go down to the manger and put the bridles on, when I first commenced driving.

Q. Have you driven with a wagon?

A. Yes.

Q. How long have you done that?

A. I don't know exactly.

Cross-examination by Mr. Collins.

Q. How often had you ridden this colt? 10

A. I couldn't say how often; maybe once a week, sometimes not as often.

Q. How many weeks—how many times, adding them all together, do you suppose you have ever ridden her?

A. I suppose, likely, twenty-five times.

Q. Was she high spirited?

A. I don't know; she was not high spirited; she was a very gay driver.

Q. Sometimes difficult to manage?

A. No, sir; never had any trouble with her. 20

Q. You said it was dark, and you couldn't see this vehicle that was making the noise?

A. I couldn't see it; no, sir.

Q. Do you mean you couldn't or didn't?

A. I didn't see it; I was right in the shadow of that brick building; it was kind of dark in front of there, and I didn't see anything.

Q. Were there lights from this brick building?

A. No.

Q. What was it occupied for? 30

A. I don't know; there has been a saloon kept there.

Q. You think there was no tenant there at all?

A. No, sir; there was somebody living in the back end of it, I think.

Q. There is a lamp-post in front of it?

A. I don't know.

Q. Was that lamp-post lighted?

A. No.

Q. If there was a lamp-post in front of that brick building, was it lighted?

A. No.

Q. It was on your right as you came along?

A. Yes.

Q. Were there lights over at the barber shop?

A. I believe there were.

10 *Q.* And the grocery store?

A. Yes.

Q. Mr. Campbell asked you why you didn't go still further to your right than you were going, and you said because the cross-walk would come to an end; how would you know if you couldn't see?

A. I could judge by the brick building, because it was right even with the edge of this crossing.

Q. Could you see the brick building?

A. Yes.

20 *Q.* In the dark?

A. Yes.

Q. Why couldn't you see the carriage?

A. I don't know; it was further away than that brick building was when I heard it.

Q. It couldn't have been any further away, nor so far, when it struck you.

A. When I heard it, I say.

Q. You said you didn't see it at all?

A. No, sir.

30 *Q.* Not even when it struck you?

A. No.

Q. How could you see the brick building; you said the brick building cast a shadow—there couldn't be any shadow in the dark?

A. It was between daylight and dark.

Q. It was quite dark?

A. Yes.

Q. There was no moon?

A. No, sir; I don't think there was.

Q. You couldn't even see whatever it was hit you?

A. No.

Q. How could you see the brick building—didn't you simply judge where the brick building was, in your mind?

A. I knew just exactly where it was, because I went past it often enough.

Q. You knew where it ought to be.

A. Yes.

10

Q. In the night, when it was dark, you could not see that brick building if there was no light in it and nobody living in it, could you? Could you see that any more than you could see any other object?

A. I don't know; I saw it that night—the glass.

Q. What made the glass show?

A. I don't know; glass shows more in the night.

Q. Glass shows in the dark?

A. Yes.

Q. What I want to know is how you think that you 20 were near that south end of the crossing, what fixes it in your mind that at the time of the collision you were near the south end of that crossing?

A. I drove near that end of the crossing.

Q. You came down across this road?

A. Yes.

Q. Between the south side of the road and this little park here, which is west of the main railroad track?

A. Yes.

Q. After you crossed the main track you went to the 30 north of the little park?

A. Yes.

Q. Having done that, you had to get across this crossing somewhere, and go over to the grocery store on the north side of the Ridgewood avenue, didn't you?

A. Yes.

Q. Wouldn't you naturally, after crossing the main track, go to your left over to the grocery store?

A. I kept on the right-hand side there because the side where the barber shop is was full of wagons waiting for the train.

Q. You could go across and through the middle of the street to the grocery store; you would not necessarily keep on the south side of the street all the way going across to the grocery store, would you?

10 A. I drove over from the right-hand side of the road.

Q. You did not cross the switch crossing at all?

A. No.

Q. After you got across the switch crossing you would not necessarily go along the south—

A. I did not go across.

Q. Did you frequently go to the grocery store?

A. I go there mornings.

Q. How did you go?

A. When I run the milk route.

20 Q. Did you go right straight to it from the Midland Park road?

A. I might go from some other way.

Q. You had no habit, no regular habit, of going down this road straight to the grocery store?

A. I have, but not regular.

By the court—

Q. You say there were wagons standing on the north side of the road on Ridgewood avenue?

A. Yes.

30 Q. A single line of wagons?

A. Yes, a single line, and others driving along the side of them up to the station.

By Mr. Collins—

Q. Do you mean that they were there that night, or generally?

A. That night.

Q. Did you see them?

A. Yes, when I was going to Ridgewood.

Q. When you were going there on this horse?

A. Yes.

Q. Before the accident?

A. I saw them there from the crossing, because that side of the street was all lighted up.

By the court—

Q. Which way was the train coming, north or south?

A. North.

Q. Did you pass behind the train? 10

A. Yes.

Q. While it was still standing on the station?

A. It was about starting when I went across.

Q. How far behind the rear car did you cross the track?

A. The car was in front of the station.

Q. How close up to the platform of the station did you cross?

A. I was not near the platform of the station.

Q. Is there a regular road-crossing over the planks?

A. Yes. 20

Q. You had to stop for the train to pass the crossing and come up to the station?

A. Yes.

Q. Before you went over?

A. Yes.

Q. Did you go over the track as soon as the train got by?

A. I stayed there and waited, and just as the train started off from the station I went on.

Q. Why did you wait till the train started? 30

A. I thought there might be one going down; there is one that goes down about that time.

Q. For that reason you stopped after the train had gone by in order to hear whether there was any other coming?

A. Yes.

Q. And you think you crossed here—[referring to map]—just about as the train was starting from the station?

A. Yes.

Q. When your horse fell did he fall on the switch-track?

A. Yes.

Q. Did you see him after you had been in the butcher shop?

A. Yes.

Q. You came out after he lay dead?

A. I stood by her till she died.

10 Q. Were you there when your father came?

A. I was in the grocer's.

Q. Your horse was still where it had fallen?

A. Yes.

By Mr. Collins—

Q. I want to get at why you think you were pretty near the south end of that crossing when you were struck. We know the horse lay there when your father saw it, but aside from that, in your own mind, why do you think you were near the south end of that crossing if it was a dark
20 night and if you were driving there—what leads you to fix the place where you were when you were struck?

A. I thought if I was on the right hand there was no danger of anybody running into me.

Q. How did you know you were on the right hand?

A. By the lights on the other side of the street.

Q. The lights on Ridgewood avenue?

A. Yes.

Q. You could not see the ground underneath—you could not see anything looking down?

30 A. I didn't look down.

Q. You were guided by the lights on these buildings along the right-hand side, and estimated where you would be by them?

A. Yes.

Q. How much of a space did you intend to leave from those lights?

A. I am sure I left more than half the road ; I thought if I had left half the road I would be all right.

Q. Do you think you were anywhere near the middle of that crossing ?

A. No.

Q. Was the lamp lighted in the little park in front of the butcher shop ?

A. No.

Q. Do you think you saw the brick building ?

A. Yes.

10

Q. You say you saw the shine of the glass ?

A. Yes.

Q. You don't think that the reason you could not see the wagon was on account of any shadow of the brick building ?

A. There was a shadow in front of the building.

Q. Where did it come from ?

A. From the building ?

Q. What would cast the shadow—the sun or moon or lights cast a shadow—can you think of anything that would make the building cast a shadow across the road ?

[No answer.]

Q. Did the horse scamper around a little after that train went by ?

A. No.

Q. It was not skittish ?

A. No.

Q. It went right along ?

A. Yes.

Q. As you started up, how fast did you go ?

30

A. I don't know ; the way she always traveled when she was going slow.

Q. She was not going at her full speed ?

A. No.

Q. After the train went by, didn't you start up to go rapidly ?

A. No, sir.

Q. Were you in a hurry?

A. No, sir.

Q. What were you going to the grocery store for?

A. Butter and smoked beef.

Q. For supper the same night?

A. Yes.

Q. How far did you live from the station?

A. Not far; it is not a mile.

Q. You say there were lights at the grocer's?

10 A. Yes.

Q. Where did you go and wait for your father?

A. Mr. Crouter's, the butcher shop.

Q. Did you send anybody up to your father?

A. No, sir.

Q. Do you know whether the colt was moved after she fell?

A. No, sir; she was not moved.

Q. You say after you felt this blow and your hat fell off, and the horse turned around in a half moon, as you
20 say, or her own length, and fell down—what did you think it was knocked your hat off?

A. It looked like a horse's head hit me in the face.

Q. You thought so then?

A. Yes.

Q. Which side did it strike you?

A. It struck me square in the face.

Q. On the right or left side of your horse?

A. I couldn't say.

Q. Did you look at the wound on that horse?

30 A. I saw the blood squirt out of her breast.

Q. Which breast?

A. I can't say.

Q. This horse's head, that struck you in the face, did that come from the right or left side?

A. It came right in front; the other horse's head hit me right in the face.

Q. It would have to go past your horse's head to hit your face?

A. I don't know about that.

Q. You don't know on which side of your horse it was?

A. No.

Q. You can't tell whether your horse's head was to the left when you were riding?

A. I don't know on which side it came on.

Q. You can't tell which breast of the horse was hurt?

A. No.

10

Q. You must have been a little excited—you thought something had happened; did you think it was yourself that was hurt?

A. I did not know; the horse wheeled around so suddenly.

Q. Which way did she wheel?

A. Around towards the brick building.

Q. Which way did she go to get that way?

A. She did not turn clear around—only about a half moon.

20

Q. Did she walk some distance?

A. No, sir.

Q. Do you mean to say she did nothing but just turn around so?

A. Yes, and she came down on her knees and I jumped off her.

Q. Did she make any noise?

A. No.

Q. Was there much shock?

A. Yes.

30

Q. Did you think that the horse had run into something, or simply that something had hit you?

A. Simply that something had hit me.

By the court—

Q. Your horse's head went around to the right?

A. Yes.

By Mr. Collins—

Q. You say you heard a noise, but did not see what it was that hit you?

A. No, sir.

Q. When your horse went on her knees, and you slipped off, what did you do?

A. There was a man came there and got the bridle out of her mouth as soon as she dropped down?

Q. You didn't see any horse or wagon there?

A. No.

10 Q. Was there a light in the depot?

A. Yes, in front of the station, towards the railroad.

Q. Not at the end?

A. No, sir, I don't think there was.

Q. How did people come out of the station?

A. In the front and on the side.

Q. Which side?

A. Towards the switch-track.

Q. Front and rear?

A. Yes.

20 Q. No doors on these ends [referring to map]?

A. No.

Q. With the lights on the north side of Ridgewood avenue, why couldn't you see that wagon?

A. I don't know; I didn't see it.

Q. Don't you suppose, on any ordinary evening, anybody crossing that switch-track, with lights on both sides of Ridgewood avenue, could see a wagon, if one came there?

A. I don't know.

By Mr. Campbell—

30 Q. There was a light in Crouter's butcher shop?

A. Yes.

Q. You had to pass that before you came to where you were struck?

A. Yes.

Q. Does Mr. Crouter's shop stand on a line with the brick building or further back?

A. Further back.

Q. There was a light there?

A. Yes.

John E. Post, sworn on behalf of the plaintiff, testified as follows:

By Mr. Campbell—

Q. Where do you live?

A. Ridgewood.

Q. Do you know the boy, Demarest Ackerman, who has just left the stand?

A. Yes.

10

Q. Did you see him on the evening of November 4th?

A. Yes.

Q. Where?

A. I saw him somewhere on the end of the platform; I saw him on the horse in the first place.

Q. Where had you been?

A. I had been to the city of New York.

Q. Did you come up with the train?

A. Yes; if that is the six ten train the boy waited for, that is the one I was on; I came up on that train.

20

Q. Tell us what you saw with reference to this matter?

A. As I got off the train I was walking down to the grocery store where this boy says he was going, and I got down as far as Prospect street, and I got probably opposite the barber shop—

Q. How far was that from the depot?

A. Probably fifteen or twenty feet.

Q. On which side of the street?

A. On the north side.

Q. On the same side of the depot?

30

A. Yes; it is just across the switch; as I was going along there—of course, there is always a number of wagons standing there, perhaps a dozen, and I was glancing around, as I generally do, to see who was standing there; I was looking cat-a-cornered across the street, and the first thing I heard was a shock, and I looked over to see what it

meant; I saw the horses; I can't say they were right together, but they were not five feet apart.

Q. What horses?

A. The horses that struck; the boy's horse and the horse driven by Mr. Washington, I suppose it was.

Q. Did you go over there then?

A. I stood a moment, and turned and walked right over.

Q. What did you see?

10 A. Before I got over there the horse fell; the horse turned right around, and probably got as far as where his hind feet were, wheeled right around and fell.

Q. Did you see the boy before the horse went down?

A. I saw him on his back; the moment I heard the shock I turned around and looked over there, and saw them.

Q. Did the boy fall?

A. I can't say whether he fell off or jumped off; I know I was surprised the boy did not get under the horse.

20 Q. Did you see where the horse was injured?

A. No, sir; I can't say that I did; because I think the horse lay on the side where it was injured.

Q. Which side was that?

A. I should judge it was the right side, because he lay on his right side; I think he lay with his feet towards Mr. Crouter's butcher shop; that would be on the right side.

Q. It would be lying on its left side, then.

30 A. No; the head was turned towards the west; he lay right on the end of the switch-crossing, with his feet down that way, and his head this way; that would bring him on his right side.

Q. Where was he lying with reference to the end of the planking, on the switch-track?

A. If his head did not lie just over the track it lay just against the edge, because I noticed some of the blood had run off the edge of the planking.

Q. Off the end, down upon the ground?

A. Yes; in the ties.

Q. Did it remain lying in the same position?

A. I might have been there five or ten minutes, and it lay there when I went away.

Q. The same position as when she fell, I mean?

A. Yes; and she died immediately.

By the court—

Q. Which way was the horse heading when you heard the collision, and turned around. 10

A. She was heading to the east—down Ridgewood avenue.

Q. And the other horse was heading in an opposite direction?

A. Yes.

Q. The horse that Washington was driving was on which side of the horse that carried the boy?

A. I could not tell; it was between daylight and dark; it looked to be as though they were standing in a straight line, head to head; they may have been three or four feet 20 apart, or close together; I couldn't say.

Q. Did you notice the horse that Washington was driving before the horses came together?

A. No, sir; I may have seen it, but I paid no attention to it; I took a general look at the road.

Q. What lights were there in that neighborhood?

A. Mr. Crouter's butcher shop was lighted up, and the barber shop; Mr. Cruse's was, I suppose, I don't know whether I noticed it or not; that is further down; the lights at Crouter's would throw the light, I suppose, any- 30 where from thirty to forty-five feet back of the front platform; they would nearly throw the light out as far as the brick building; the brick building is east of the switch-track.

Q. You are familiar with the premises?

A. Yes.

Q. Would the light from Crouter's butcher shop cast

its rays upon the horse upon which the boy was, at the point at which the collision occurred ?

A. I am not prepared to say that, because I could not say ; I can say that it would show the brick building to a certain extent ; it would probably cast a shadow out in front of the brick building.

Q. By the front of the brick building, you mean the northerly side ?

A. Fronting on Ridgewood avenue.

10 Q. You are sure the light would strike the brick building ?

A. I don't see why it shouldn't ; there are two large windows in there, and I think it would shine on a person coming from Midland Park.

Q. Did you see anything of the rate at which the boy was moving on horseback ?

A. No, sir.

Q. You did not see either horse ?

A. I can't say that I saw either horse.

20 Q. You have no memory of either horse prior to the collision ?

A. No, sir ; I don't know whether they were going fast or slow, or in what condition they were.

Q. What persons did you see there ; did you see Mr. Crouter ?

A. There were so many people, I couldn't say ; I saw several people there ; I think I saw Mr. Crouter.

Q. Did you see William Washington ?

A. For a moment, yes.

30 Q. Where did he go ?

A. He was looking at his horse.

Q. Did he remain there ?

A. I was looking at the horse to see if the boy got off all right, and when I turned I didn't see him ; I don't know where he went.

Q. You say he was looking at his horse, then he got out of his wagon ?

A. Yes; I think it was a buggy; I don't whether it was a side-bar or not; I should judge he was examining it to see whether it was hurt.

Q. Was the top up?

A. I think not.

Q. You don't remember how that was?

A. I think not; I couldn't say for certain.

Q. Was there any obstruction in Ridgewood avenue in the neighborhood of the depot—anything to prevent a person driving up from the depot to the other side? 10

A. Nothing but the carriages standing there.

Q. Were there so many that another carriage could not conveniently get in?

A. I should say not; they could accommodate from twenty-five to forty carriages there; I wouldn't like to say positively how many carriages they could accommodate.

Q. You had seen this boy before?

A. Yes, he passes my place every morning.

By the court—

Q. Can you say whether the carriages that stood on the 20 north side of the street were standing in a single line against the curb or not?

A. I should say not, because it would be something altogether new from they generally do; they drive in anywhere and stand anywhere; some of them stand on the side in front of the barber shop and some by the depot, and some stand between the two parks; there is a little park on the other end of the depot and in front of Mr. Crouter's; they stand anywhere all through there; there were a great many of them. 30

Q. Do they stand in more than a single line?

A. Down there, I should say so; they stand all in here [referring to map]; this is on the outside, and is merely for slipping in cars that don't go down any further than that; they can use all that space.

Q. Have you any memory as to whether they stood along here in more than one line?

A. I can't say, but I think not.

Cross-examination by Mr. Collins.

Q. If any shadow was cast by the brick building, it would throw it diagonally to the northeast?

A. Yes, I should say it would throw it down to the front of the building.

Q. Any light striking that building would throw a shadow to the northeast?

10 A. Yes, but a person getting in front would see this building, and if there was any shadow running diagonally across there they would see it.

Q. If the carriage struck him at that crossing or just before it, it would not be in any shadow?

A. It seems to me this does not lie in here far enough [referring to map]; if my idea is correct, and I think it is, for I have lived there a long time, there is a little junction right here, and you can see all the way down that avenue; I don't think you can go in across the track here; you have got to turn this way.

20 Q. The light from the butcher shop striking the brick building and casting a shadow, the shadow would be down here?

A. Yes.

Q. You say it was between daylight and dark, do you remember how dark it was?

A. I don't think I could see you across the way and know who you were if I was well acquainted with you.

Q. The almanac says that the sun set at four fifty-two on that day, and this was ten minutes past six?

30 A. I think the boy was fifteen minutes out of the way; it used to be five fifty-six.

Q. It would be dark, wouldn't it?

A. I should say that with the lights here and there you could discern a carriage across the way.

Q. You think this boy ought to have seen the carriage?

A. I told you my idea was that there was an angle

there, and he couldn't see it till he got around that building; I may be wrong; I don't think the park lies far enough back.

Q. From this barber shop you could see the two horses out there?

A. I could see the horses, but I couldn't tell whose they were; when I got there I found one was black and the other was a bay, I think.

Q. Could you see that one was a horse with a boy on his back and the other a horse and buggy? 10

A. Yes, I could see that.

Q. When you looked did you know it was Washington?

A. No.

Q. Are you acquainted with him?

A. I see him go up my way every day.

Q. You knew him as Mr. Walton's driver?

A. Yes, he has done a little business for me.

Q. How did you know the horse and buggy standing there was driven by Washington?

A. I am not positive, but I think I saw him jump out 20 of the wagon; I think I saw him at the horse's head.

Q. All you know about it is you saw the horse and buggy?

A. I recognized the horse; it looked like the horse he was used to driving.

Q. And you saw him standing around there?

A. I live nearer Ridgewood depot than Mr. Walton, and I see his teams and carriages go past my place four or five times, if I am home, during the day.

Q. While you did not see the wagon or horse before- 30 hand or see anybody driving it, yet when you walked over you saw a horse walking and you thought you recognized the horse as Walton's, and you saw Washington standing by?

A. Yes.

Q. You can't say how the horses lapped each other when they came together?

A. No.

Q. But they looked as if right together?

A. I should say after striking they had rebounded.

Q. You can't tell which one rebounded?

A. No.

Q. Did the horse the boy was on wheel around?

A. Yes.

Q. Which way?

10 A. I should say she wheeled around to the right, from
the way she fell.

Q. You can't tell which way she fell?

A. I saw her from the time she wheeled to the time she
dropped; I might say I am positive she turned to the
right.

Q. She was going east when you first saw her?

A. Yes.

Q. And as she lay on her side she was going west?

A. Yes.

Q. Do you mean that she turned clear around?

20 A. She turned half way around, and when she got
around she fell.

Q. Can you tell how far to the southward she went when
she was turned around; how far south did she go before
she turned to the west and dropped?

A. I should say she was right up against the curb; she
could not have gone any distance; the whole thing took
place against that side near the sidewalk; I don't think it
was ten feet from the curb towards the middle of the
road; I am quite sure it was not as far as that; I think
30 they were, perhaps, four or five feet over the crossing when
they struck; it was so near by it was hard to tell.

Q. Could you see where they were?

A. Yes; because I stood in front of the barber shop
and the light was shining that way.

Q. Were there any carriages in front of you—did you
have a clear, unintercepted view?

A. I think I did, because the carriages had all driven up around the platform.

By Mr. Campbell—

Q. Do you know anything about the gutter near this brick building, running along the northern side?

A. There is a sort of gully.

Q. Is there a curb at the sidewalk?

A. I don't think there is.

Q. Is there anything to mark it—any flagging?

A. No flagging.

10

Irving Bogart, sworn on behalf of the plaintiff, testified as follows:

By Mr. Campbell—

Q. Where do you live?

A. Ridgewood.

Q. Do you know Mr. Ackerman's son Demarest?

A. Yes.

Q. Do you know William Washington?

A. Yes.

Q. Did you see them on the night of this occurrence? 20

A. Yes.

Q. Where were you?

A. I was in the butcher's shop; somebody came running in and said Garry Ackerman's horse was hurt; I run out, and the horse was just about dying when I got there.

Q. In what butcher shop were you?

A. In Mr. Crouter's; I worked there; when I got out there I saw this horse lying on the crossing and the boy standing by; he seemed to be very badly scared; then I inquired of two or three that stood there who done it and they said—[objected to]; I found out who I supposed done it and I walked down to Mr. Crouter's and Washington was fixing something about the horses—Mr. Walton's horses—and I said to him, "Billy, is your horse hurt?" 30

Q. Tell us what you saw?

A. I saw him fixing something on the side of the horse there, and after that I had a conversation with him and after that I walked back to the shop, and then Mr. Ackerman came up and we took his horse out of the way for him.

Q. Was the horse dead when you saw it?

A. Not quite.

Q. Where was she lying?

A. Near the end of the plank, on the crossing.

10 Q. Was Washington there then?

A. No.

Q. How far did you have to go from the butcher shop to get up where the horse that had been hurt was lying?

A. I think about forty-five feet—thirty to forty feet.

Q. When you got up there you saw nothing of Washington?

A. No, sir.

Q. Nor the horse and wagon?

A. No.

20 Q. In what position was this horse of Ackerman's lying?

A. With his head towards the west.

Q. And feet which way?

A. Towards the south.

Q. Did you see where it was hurt?

A. I saw the blood coming out of its breast when I first went up there.

Q. Did you see which side?

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

20 Q. Did it move from the position in which you first saw it?

A. It just lay and trembled, and died in a few moments.

Q. How about the light from this butcher shop of Mr. Crouter's?

A. We have two large show-windows in front.

Q. When you went from the shop to the place where

you found this injured horse lying, did the light from the butcher shop shine upon it?

A. I think it was not so dark but what I could see if there had not been any light; I didn't take any notice of the light from our show-windows; I could see there were a lot of people and I saw the horse lying there when I went up there; I think I saw the horse from the shop as I came from the door.

Q. How was she lying with reference to the end of the plank on the switch-track? 10

A. Very near the end of it.

Q. You had seen the horse before?

A. Oh, yes, several times; ever since Mr. Ackerman owned it; in fact, before.

Q. Did you see how the top of this wagon was that Washington had?

A. I saw his wagon before that; I saw him drive out of his own yard when I came from Paterson; then the top was just half down.

Q. How long was that before this occurrence? 20

A. Not very many minutes.

Q. You had been to Paterson?

A. Yes; I was just taking the horse into the barn.

Q. Were you there when the train came up?

A. When I came back from the barn the train came up; I gave the horse there to the other man and he took him to put into the barn, and I came up just as the train came up.

Q. When was the train due there?

A. Five fifty-six. 30

Q. How long before this happened was it that you first saw Washington that evening?

A. That I can't say—how many minutes that was.

Q. Give us some idea?

The court—More or less than half an hour?

A. Inside of half an hour.

Q. You don't know how the top of the wagon was when you saw the wagon under the shed?

A. No, sir; I can't say that.

Q. Did Washington say anything to you at that time about his harness being broken? [Objected to as irrelevant and that it cannot in any way bind Mr. Walton.]

Q. How far is this shed under which you saw Washington with Mr. Walton's horse and wagon from the place where you saw the injured horse?

10 *A.* I should think about one hundred and fifty feet—the avenue and two buildings.

Q. Which shed was that?

A. The hotel shed of the Ridgewood House.

Q. Where is the Ridgewood House?

A. [Referring to map.] Here is the shed at this point; I saw the horse right under this shed here.

Q. Did he turn around?

A. I didn't see him turn around.

Q. Afterwards you found him there?

20 *A.* Yes.

Q. You went there and saw him?

A. Yes.

Q. What did you see him do?

A. I saw him fixing something on the shaft on the side of the horse.

Q. Which shaft?

A. I think he was on the left side of the horse; I think so; that is as near as I remember.

Q. Did you say anything to him about what he was
30 fixing?

A. I think he told me that voluntarily.

The court—You better reserve that till a later stage in the case.

Q. Could you see what he was fixing?

A. No, sir.

Q. What part of the shaft?

A. He was fixing something at the tug, about the centre

of the horse; he was fixing something there; tying something; that is what holds the shaft up.

Q. Was he tying something?

A. That I can't say, but he was busy there; I can't say that he was tying because I didn't walk all around the horse at all; I just asked the question.

By Mr. Collins—

Q. You are not sure which side of the horse it was?

A. I am pretty certain it was on the left side.

Q. As this horse of Mr. Ackerman's lay upon the track 10
bed, was any wound visible, or was it under, out of sight?

A. The blood came out of its breast.

Q. From the under side?

A. I can't say.

Q. Wouldn't you have seen the hole if there had been
one in the upper side?

A. No, sir; not any flesh wound like that.

Q. You can't tell which side of the horse it was?

A. No.

Q. What was the color of these horses? 20

A. One was a black horse—coal black—and the other
one very nearly a cream color.

Q. Which was the cream color?

A. Mr. Ackerman's.

Q. Was there any mark upon the face or forehead of
this horse of Mr. Ackerman's?

A. That I can't say.

Cornelius P. Crouter, sworn on behalf of plaintiff, testi-
fied as follows:

By Mr. Campbell—

Q. Do you live at Ridgewood? 30

A. Yes.

Q. What is your business?

A. Butcher.

Q. You are the proprietor of the butcher shop that has
been referred to here as Crouter's shop?

A. Yes.

Q. Were you at your shop on the night of this occurrence?

A. Yes.

Q. Tell us what you saw, if anything?

A. Well, all that I saw of it—I was waiting at my meat bench, and somebody called my attention to something at the switch; I looked out the window and saw a crowd gathering there; I came out and found a horse lying there
 10 bleeding; I also found Ackerman's boy very much worried; he said his horse had been struck; I asked him who struck it.

Q. Never mind that?

A. He said his horse was killed; as soon as I saw the blood flow from the chest I closed the wound with my hand, to stop the blood, not knowing how severely he was wounded; as soon as I did that the horse made an effort to rise up.

Q. When you went over to Ackerman's horse, was she
 20 lying or standing?

A. Lying on the switch crossing; after I began to close the wound the horse died almost instantly.

Q. What first attracted your attention to what occurred?

A. Some customers said something was the matter.

Q. How long from that time to the time the horse died was it?

A. I don't think it lasted five minutes.

Q. Did you see William Washington that night?

A. I did not.

30 Q. Was he there when you went out?

A. I think he was; I did not see him.

Q. You know Mr. Washington's horse and wagon?

A. Yes.

Q. Did you see his horse and wagon there?

A. I did not.

Q. You would have seen it, would you not, if it had been there?

A. I think possibly I would.

Q. How was the horse lying when you went out?

A. Upon his right side, with his head to the west.

Q. Upon which side of the chest was the wound?

A. The right side, right under the right shoulder blade.

Q. What kind of a wound was it?

A. That is more than I can say; there was a wound under there, from all appearance, probably an inch and a half in diameter.

Q. Would the shaft of a wagon make such a wound? 10

A. Yes, sir; I presume so, or some instrument like it.

Q. You knew this horse of Mr. Ackerman, did you?

A. Yes.

Q. Did you ever drive this horse?

A. No.

Q. Have you bought and sold horses?

A. I have bought and sold some of my own; I have bought for myself.

Q. Do you know anything about the qualities of speed of this horse? 20

A. She seemed to be a very nice, showy driver.

Q. How many horses have you bought and sold in your time?

A. Oh, I suppose twenty-five.

Q. You have bought for others?

A. No.

Q. In your judgment, what was the fair value of that horse—you say you have not driven it?

A. I can't tell exactly; of course, there is a wide variance; some horses have speed that makes them more 30 valuable.

Q. Tell us, first, whether you think you know enough about that horse to form an opinion of its value?

A. I would consider that horse was worth about \$175, knowing what I know of him.

Q. Did you notice, when you went out, whether the

light from your butcher shop shone upon this place where the horse was lying?

A. Not particularly that evening, no, sir; I didn't pay any attention as to how the light was shining then.

Q. What is the fact as to that; does the light from your butcher shop shine upon the shop where you saw this horse lying?

A. Yes, it does reflect; the whole front of my shop is glass for twenty feet in space.

10 Q. You have large show-windows?

A. The whole front of my shop is glass, twenty feet wide, except the panel of the doors, and a lamp in each window.

Q. Did the horse struggle away from the place at all in which you first saw it when you went out?

A. No.

Cross-examination by Mr. Collins.

Q. How large a horse was this?

A. About fifteen hands, maybe a trifle taller.

20 Q. I think you told Washington you wouldn't want to give over \$140 or \$125 for it?

A. I have no use for a horse of that kind myself; I have seen plenty of horses of that kind sell for \$150 or \$175.

Q. What was it you said to William Washington about \$125 or \$140.

A. I don't recollect.

John H. DeGraw, sworn for plaintiff, testified as follows:

30 By Mr. Campbell—

Q. Where do you live?

A. Ridgewood.

Q. Do you know this horse that Mr. Ackerman had?

A. Yes.

Q. Did you ever own it?

- A. No, sir.
- Q. What do you know about it?
- A. I know she was a good young colt, good free driver, toppy, ropy built.
- Q. What do you mean by that?
- A. Well, that is, a nice round build, nice round body.
- Q. What do you mean by toppy?
- A. Good heady driver, head right up, don't need no check.
- Q. Did you train that horse? 10
- A. Yes.
- Q. How long since?
- A. That was in the fall of 1884.
- Q. Who owned her when you trained her?
- A. Mr. Ackerman.
- Q. What is your business?
- A. Veterinary surgeon.
- Q. Do you make a business of training horses?
- A. Yes.
- Q. Any other business that you attend to? 20
- A. Not particularly; no.
- Q. Your business is that of a veterinary surgeon and training horses?
- A. Yes.
- Q. Have you bought and sold horses?
- A. Yes.
- Q. How many?
- A. Quite a number.
- Q. About how many?
- A. Probably twenty-five or thirty, somewhere around 30 that, maybe more or less.
- Q. How many have you handled?
- A. Altogether I might have handled four or five hundred, never kept any particular account of that.
- Q. What, in your judgment, was the value of that horse?

Mr. Collins—Do you think you know the value of horses?

The witness—I think I ought to know pretty near.

Q. What, in your judgment, was the value of that horse?

A. In my judgment, for all kinds of ordinary work, road work and farming, I would think she was worth \$225 of any man's money.

Q. You saw nothing of this accident?

A. No; I was in New York at the time.

10 Q. Did this horse of Mr. Ackerman's have any mark upon the face or forehead?

A. I don't remember.

Cross-examination by Mr. Collins.

Q. Did you ever speed her?

A. Nothing more than in a coltish way; her speed was improving right along.

Q. Have you a diploma as veterinary surgeon?

A. No; I am still a student

20 It is admitted that the accident happened upon the public highway.

Defendant's counsel moves to nonsuit the plaintiff on the ground that the plaintiff has failed to show negligence on the part of Mr. Walton's driver, and it has not even been shown that he drove the horse which ran into the plaintiff's horse.

Motion denied; whereupon the defendant, by his counsel, excepted to such denial, and prayed that this his bill of exception might be sealed, and it is sealed accordingly.

30

JONATHAN DIXON, [L. S.]

Judge.

Mr. Collins opened the case for the defendant.

William Washington, sworn for the defendant, testified as follows:

By Mr. Collins—

Q. How old are you?

- A. I am thirty-four the 25th of this month.
- Q. What have you followed for a business?
- A. Driving and coaching.
- Q. How long have you been in it?
- A. About fifteen years.
- Q. Do you drive single and double?
- A. Yes.
- Q. Are you thoroughly familiar with the driving and care of horses?
- A. Yes. 10
- Q. Have you bought and sold horses for yourself or anybody else?
- A. No.
- Q. Have you ever been conversant with the transaction of sales of horses so as to get any idea of the value of horses?
- A. Yes; I have worked for a man that bought and sold, and Mr. M. B. Wilson.
- Q. Did you know this mare of Mr. Ackerman's?
- A. Yes. 20
- Q. Seen her drive?
- A. Yes.
- Q. On the road?
- A. I think I saw her drove once, but I most always seen the boy on her back.
- Q. Are you competent to give a value?
- A. If a man wants a horse like that I suppose he would pay about \$125 for it, perhaps more.
- Q. How much more?
- A. It would be altogether how his fancy was. 30
- Q. How large was she?
- A. About fourteen and a half hands; that is my judgment.
- Q. How old was she?
- A. I don't know.
- Q. On this evening that this accident occurred had you been down to the station to meet Mr. Walton?

A. Yes; I went for the four o'clock train and he didn't come, and then I went for the five fifty-six.

Q. Where did you go?

A. I went to the post-office; it was on the north side then.

Q. This map does not show it?

A. No, sir; it is further down here.

Q. Did you go to the post-office?

A. Yes.

10 Q. Did you get out?

Q. Yes.

Q. What did you go there for?

A. For the mail; the mail came on the five twenty-four.

Q. Did you get it?

A. Yes.

Q. And got into the buggy again?

A. Yes.

Q. Was it an open buggy?

20 A. A top buggy.

Q. The top part was down?

A. About half way.

Q. You were in the buggy alone?

A. Yes.

Q. Which side did you sit on?

A. The right-hand side of the seat.

Q. You drove to meet Mr. Walton?

A. Yes.

Q. How fast did you drive?

30 A. The horse I was driving was very heavy, and I didn't drive her very fast; probably I would drive her at the rate of five or six minutes.

Q. Why was she so heavy?

A. Because she was in foal.

Q. Were you going fast?

A. As near as I can get at it, she was going at a six-minute gait.

Q. Where did you go in the street?

A. About the centre of the road past Mr. Westervelt's store, and the train was just leaving the depot before I got to the switch-track.

Q. Which is Westervelt's store?

A. On the right-hand side.

Q. At that point you were in the middle of the street?

A. Yes.

Q. Just before you got to the switch-track, you say you saw the train leaving the depot? 10

A. Yes.

Q. When you got to the switch-track, where were you as regards the street?

A. About the centre.

Q. What happened?

A. The first thing I noticed a collision came, and I saw the tug was broke on the right-hand side of the harness, and I got out and turned around and went under the shed, and borrowed reins of Mr. Crouter to tie up and drive over to the depot again, but the boss came up on that train 20 and was gone home; I waited till the six twenty-two, and the waiter man came down and said the boss was home, and I stated the case to him about the horse.

Q. Did you see this horse that you struck—did you see it coming?

A. No, sir.

Q. Why?

A. It was so dark I couldn't see.

Q. Ahead of you was dark?

A. Yes. 30

Q. Where were the lights at the depot?

A. They were not lighted that night.

Q. In that little park they were not lighted?

A. No.

Q. Ahead of you you could see nothing?

A. No.

Q. How dark was it?

A. It was so dark I couldn't see this boy coming.

Q. Nor his horse?

A. No.

Q. He struck you on the right side?

A. Yes, sir, on the right side of the shaft; I saw Mr. Ackerman the next morning and was speaking with him, and he said that he learned that I drove round the other way; I told him I did not because I stopped at the post-office; he said his boy had pulled up to the brick building as close
10 as he could get, and I pulled right into him, and that I did not give him a show; I told him the boy must be wrong, because I showed him I hit him with the right shaft and showed him the blood so he saw it himself, and I supposed that he was satisfied afterwards.

Q. At the time you had the collision did you know the boy ran into you?

A. Yes, I knew some one did.

Q. Did you know it was a boy on horseback?

A. When I got out of the wagon I saw him; the horse
20 was staggering around.

Q. How far did he move before he fell?

A. As far back as from here to that door [door in court room].

Q. Before he fell down?

A. Yes, from where we had the collision.

Q. Where did you say you were on the crossing—where were you as regards the crossing?

A. Well, it was far enough from about the centre of the crossing; three wagons could pass me on the left side.

30 Q. That is, on the boy's right?

A. Yes.

Q. Did the thing happen right on the crossing?

A. Yes, as near as I could judge, about three or four feet—not over four feet—from the switch-track where we came together.

Q. Which side of the switch crossing—the east or west

side—had the boy got across the crossing or had you got across?

A. I think it was just about the switch crossing, that is, just a few feet.

Q. Which way?

A. I had to go right straight across.

Q. Had you got across the switch crossing when you were struck?

A. Yes.

Q. Were there any wagons between you and the south 10 side of Ridgewood avenue?

A. Yes.

Q. How many?

A. Two.

Q. When you turned around, which way did you turn?

A. To the left.

Q. To your left?

A. Yes.

Q. You then went towards the brick building?

A. Yes.

20

Q. And went down Ridgewood avenue?

A. Yes.

Q. Was there room enough for you to turn?

A. Yes.

Q. And these wagons still there?

A. Yes.

Q. On which side were the wagons?

A. Two wagons on the left, waiting for the same train.

Q. They were standing on the left-hand side of Ridgewood avenue?

30

A. Yes.

Q. Right by the brick building?

A. Yes.

Q. There was still room for you to turn with your carriage with them standing there?

A. Yes.

By the court—

Q. Were they standing along side of each other, or one behind the other?

A. Just behind one another.

Q. Up against the curb?

A. Rock avenue enters right out there by the brick building, and these two carriages were behind one another right in front of Rock avenue.

By Mr. Collins—

10 Q. I think you said you showed Mr. Ackerman the bloody end of the shaft the next morning?

A. Yes.

Q. The right-hand shaft?

A. Yes.

Cross-examination.

By Mr. Campbell—

Q. You started from the post-office to go to the depot?

A. Yes.

20 Q. As soon as you started from the post-office towards the depot, you struck this six-minute gait, did you?

A. No; I said I didn't think I was going faster than that, but to give the limit I was not going faster than that any way.

Q. Were you going a good gait?

A. No, on account of the horse, what I was telling you about.

Q. Don't you drive fast?

A. I don't call a six-minute gait fast.

Q. You don't call it fast?

A. I leave it to you.

30 Q. It was pretty dark?

A. Yes.

Q. And yet, as dark as it was, you drove perhaps a six-minute gait?

A. I wouldn't swear I did drive a six-minute gait; I don't think I was driving faster than that; I don't think I was driving that fast.

Q. Where did you generally drive up to the depot?

A. To this platform that runs around.

Q. Which side of the depot platform?

A. The depot is on the right side, and the platform is on the right side.

Q. And there is a platform at the end of the depot towards Ridgewood avenue, is there not?

A. Yes.

Q. And there is a little park, or flower-bed or something, enclosed at the southerly end of the depot, isn't there—between the depot and Ridgewood avenue?

A. Yes.

Q. Which way do you drive, in coming up to the depot?

A. You drive right up to the park, on account of getting into the wagon across the platform.

Q. You sit on the right-hand side?

A. Yes.

Q. You drive up in such a way that Mr. Walton gets in on the left-hand side?

A. Yes. 20

Q. So that to get up to the depot you swing off to the other side of Ridgewood avenue and come around this way?

A. Generally, after I get over there, I suppose I drive up and swing around, as you say, for him to get on.

Q. You have to go far enough on the other side of the street to get around?

A. You don't need to go far to get around.

Q. What kind of a buggy was it?

A. Side-bar. 30

Q. Regular size?

A. Yes.

Q. It takes about half the width, or more than that, to turn with that, doesn't it, without backing?

A. No, sir.

Q. How much of it does it take?

A. A man ought to be able to turn a buggy right around that table, pretty near.

Q. The fact of it is, that night you started away from the post-office and drove to the southerly side of the street to turn around to come up to the depot so that the left-hand side would be towards the depot, so Mr. Walton could get in there?

A. I did not go to the depot.

Q. You started to go there?

10 A. Yes.

Q. You meant to go there?

A. Yes.

Q. After leaving the post-office, you say you shaped your course, or you went in that direction so that you could drive around and bring the left side of the wagon up to the depot?

A. If I got there, that was the way I was going; there was this thing on the other side of the track, as I stated to Mr. Ackerman the next morning; he said his son had
20 pulled in to the brick building, and I came around by Crouter's place, and I stated to him that was wrong, that the boy must be excited, that I did not see the boy and I didn't think he saw me.

Q. You don't think the boy saw you?

A. No, I didn't see him; I am certain of it.

Q. How long after you struck was it before you got your horse away from the horse that had been injured?

A. I got off and turned around to the left and went under Mr. Crouter's shed and borrowed his rein to tie the
30 shafts up so I could go for the six twenty train.

Q. The harness was broken?

A. Yes.

Q. What else was broken about your wagon?

A. Nothing.

Q. How about the dash-board?

A. There was nothing the matter with that.

Q. Didn't you tell Mr. Ackerman, the next morning,

when he came there to see you, that you were jerked entirely off your seat, or words to that effect?

A. No.

Q. Sure of that?

A. Yes.

Q. What part of your harness was broken?

A. The right-hand side.

Q. Was the belly-band broken, too?

A. Yes, the belly-band that holds the shafts down; not the belly-band of the harness. 10

Q. What we call the loose belly-band?

A. Yes.

Q. Your harness before that was in pretty good condition?

A. Yes.

Q. Good and strong?

A. Yes.

Q. Mr. Walton is very particular about his harness?

A. As far as I know, he is.

Q. You had taken care of it? 20

A. Yes.

Q. You say the tug of the harness was broken.

A. You know where it goes, right up here.

Q. Was the tug itself broken, or was the strap that runs over the saddle and holds the tug—was that broken?

A. You know where it is fastened on the saddle.

Q. Where was the belly-band broken?

A. In the centre; it was a light harness; I didn't have a heavy harness.

Q. A new harness? 30

A. Pretty near as good as new.

Q. You didn't stay there long?

A. Yes, sir; I went into the shed.

Q. Right where this happened?

A. I stayed there long enough to pick the shafts off the ground; I had to look for my shafts; the shafts went to

the ground, that is, on the one side; the other side of the harness, of course, was all right.

Q. Did you go back to see about the matter after you got your harness fixed?

A. When Bogart came into the shed he said it was Ackerman's horse that got killed; I walked over by the switch-track again and I saw the horse lying there; I didn't see Mr. Ackerman; after I went home I stated the case to Mr. Walton, after he sent down to tell me he was
10 home; the next morning I had a talk with Mr. Ackerman.

Q. The down train had already left the depot when you were there?

A. I was at the depot to catch the five twenty-four.

Q. But you were going for the train that left about six?

A. Yes.

Q. After you found he didn't come on the five twenty-four you went home?

A. Yes.

20 *Q.* And you started for the six o'clock train and stopped at the post-office?

A. Yes.

Q. And you went from the post-office to meet this six o'clock train?

A. Yes.

Q. Weren't you late for that train?

A. No.

Q. Was the train there when you got there?

30 *A.* It was up to the depot when I got up by the post-office; he generally waits for the crowd to get away; I didn't see him.

Q. There was quite a crowd around there, wasn't there, after this trouble?

A. There was from five to six or seven wagons there.

Q. I mean people—after the accident, weren't there several people around the horse that was injured?

A. There might have been at that time; when I was

there there were not many around ; I think there were one or two standing there ; I got the harness and things fixed ; of course I was quite a little while.

Q. The fact was, Mr. Walton did come on this train due about six o'clock, and you were too late to meet him ?

A. No, sir ; I was standing there ; I had plenty of time.

Q. He had gone home ?

A. He went by when this collision took place, but he didn't know what was up.

Q. Is he here to-day ?

10

A. No.

Q. You saw these wagons standing on the southerly side of the street, near the brick buildings ?

A. Yes.

Q. That was out of the way of the wagons ?

A. Yes, sir ; I was out of the way of any one.

Q. The fact of it is, you didn't know exactly where you were when you struck this horse ?

A. I know, any way, I was more to the right than to the left ; when I turned around to the left there was plenty of room for any one to pass me. 20

Q. You were pretty well frightened too, weren't you ?

A. Of course when I saw the collision coming—it would make any man feel sorry ; I know I turned to the left.

Q. Did you usually turn to the left ?

A. I did that night.

Q. Did you usually turn to the left ?

A. Sometimes, yes.

Q. Isn't it a fact that drivers generally turn to the right ?

A. That is according to what way you have got to turn. 30

Q. Why did you turn to the left ?

A. I don't know ; I just happened to.

Q. How did you hold your horse when you turned her ?

A. I held the right shaft on my left hand, caught the horse like that by his head, and turned him right around.

Q. Did you go around backwards, did you walk backwards, or did you walk by the side of the horse ?

A. By the side of the horse; I had the horse by the right hand, and the shaft in my left, and I turned around between the wagon of Mr. Chapman; had plenty of room to turn.

Q. Did you back your horse away from the horse that was injured?

A. There was no back-up about it; the horse backed up; I guess they were not together when I got out of the wagon.

10 Q. What had you been doing that afternoon?

A. I helped clip a horse that day.

Q. Where?

A. Over at Mr. Godwin's place—that is, Mr. Fitch, he rents the barn.

Q. Who was there with you?

A. Walter Green; he works for Mr. Fitch.

Q. He helped you?

A. I was helping him.

Q. You had been drinking some that afternoon?

20 A. No, sir.

Q. What, not at all?

A. I may have had a drink in the forenoon, but I don't know about drinking in the afternoon.

Q. Did you clip horses in the forenoon?

A. As near as I can tell you the truth, it was between half-past two and a quarter of three that I got there.

Q. You drank while clipping those horses?

A. No, sir; we didn't have anything there in the barn at all that day.

30 Q. Did you generally have it there?

A. Well, sometimes we clipped a man's horse and he would treat after we got through.

Q. This gentleman didn't treat you?

A. He was not there; his man was there.

Q. Didn't his man treat you?

A. No.

Q. After you had finished clipping the horse, where did you go?

A. I went home.

Q. You didn't drink any at all that afternoon?

A. I am pretty certain I did not; Mr. Ackerman had an idea I had been clipping horses, and that I was a little full, so he said; I told him he was altogether wrong, because I could show I was not full, and that I can prove by two different parties in Ridgewood, and Mr. Hopper, who is down here now; he seen me that night, and if he says I 10 was full then of course I will have to acknowledge it.

Q. If he says you were full then you know you were mistaken?

A. I know I was not full; I don't see how a man can make out a man is full when he has not had anything to drink.

Q. Did you have anything to drink in the forenoon?

A. I can't say no, and I can't say yes, because I can't say exactly, but I know I was not the way you were talking about, and nothing near it.

Q. How long have you driven for Mr. Walton? 20

A. I went to Mr. Walton's the 18th of last October, and I have been with him ever since up till now.

Q. Who did you drive for before that?

A. Mr. Yereance, the man that drives Mr. Stokes' race horses.

Q. You have been in the habit of driving fast horses?

A. No, sir; I was only hired for grooming and rubbing. By Mr. Collins—

Q. Did you work for Mr. Walton before that?

A. The first time I took the team down to the beach, 20 ten or twelve years ago.

Q. Did Mr. Ackerman have an idea that you came out of Rock avenue?

A. Yes.

Q. Suppose you cross this railway crossing over the switch-track sufficiently to the right-hand side of the middle, would there be room enough, after you crossed, to turn

around and come up with the left hand of the buggy to the station ?

A. Yes, you can if you want to.

Q. You can do it ?

A. Yes.

Q. There is room enough ?

A. Yes.

Q. You would not have to go to the right-hand side of the avenue to turn around ?

10 A. No.

Q. Mr. Ackerman intimated that when you came to the station, your custom was to go away over to the south side towards the brick building ?

A. No, sir, you don't need to do that ; you can drive right in—in here.

Q. Did you, in driving down there, go over onto the south side of the avenue, or did you keep on the right-hand side of it ?

A. Pretty near to the right.

20 Q. I understand just before you got to the crossing you saw the train leaving ?

A. Yes.

Q. So that, in a quarter of a minute, you could have been at the station ?

A. Yes.

Q. Before all of the passengers had left the platform ?

A. Yes.

Re-cross-examination.

30 Q. Didn't you tell Mr. Ackerman, on the next morning, that you came out of Rock avenue when this happened, and in swinging around by the building you came across this horse before you saw it ?

A. No, sir.

Q. Didn't you tell him something to that effect ?

A. No, sir ; I said this—that when he said I came around by Mr. Godwin's, in Rock avenue, and his boy

had pulled into the brick building, I said if I had pulled into the brick building, I would have hit the boy with the left shaft; if he was close into the brick building, I would hit him the other way; I said, to make things straight, "There is the right shaft and there is blood on it, and there is the harness broken on the right-hand side;" I stated to him I came from the post-office because I had the papers in my pocket.

Jacob Amos, sworn on behalf of the defendant, testified as follows: 10

By Mr. Collins—

Q. Where do you live?

A. Ridgewood.

Q. What is your business?

A. I do every kind of thing; I shovel coal the whole winter.

Q. How old a man are you?

A. Forty-three years.

Q. Did you see the collision between the mare that this boy was riding and the horse that Washington was driving on November 4th?

A. Yes.

Q. Where were you standing?

A. I saw the boy coming up; he was sitting on horse-back, and then comes Bill Washington, and just over the crossing one run across the other.

Q. The switch crossing?

A. Yes; and after that the boy's horse turned around a little, and he came close to me and he fell back.

Q. You were standing by the brick building? 30

A. Yes, on the sidewalk, on the end of the brick building.

Q. Right in front of the building, on the sidewalk?

A. Yes.

Q. Is there a lamp-post there?

A. Yes, but there was no light in it; there were some

folks living in the brick building, I believe, because there was a light strip.

Q. There were people living in the brick building?

A. Yes; after that the horse lay down, and a fellow came out with a lantern out of the brick building.

Q. Where do those people live?

A. Down stairs.

Q. A light shone out?

A. Yes.

10 Q. Where did they come together?

A. Right on the crossing—no, it was a little over the crossing.

Q. A little east?

A. On the side towards Mr. Walton's house.

Q. You say the horse came very close to you?

A. Yes, after he was hurt.

Q. And then went back again?

A. Yes, and fell down.

20 Q. Where was it in regard to the width of the street that they came together?

A. I can say no way particular; there was plenty of room for the boy to get away.

Q. How far did the horse go after he came over towards you?

A. He turned around a little—it was not far this way—and then he turned around a little and came close to me, not further than from here up to that table—not so far; he was pretty close—about from here to that man to me [the stenographer].

30 Q. How far did he travel before he got to the place you spoke of?

A. I don't know so particular about that; it was quite dark.

Q. How near the middle of the road were they?

A. I can't say; I know there was plenty of room on two sides to get away.

Q. Can you tell which side of the middle of the road they were?

A. No, I couldn't say; I stood on the sidewalk; it was quite dark; there was plenty of room for to get away.

Q. For the carriage to pass?

A. Yes; or carriage or horse.

Q. Were the carriages drawn up there, as William says, along the brick building?

A. Well, I see Bill coming out from Ridgewood.

Q. William says he walked the horse around to the left 10 and turned him around after the accident; did you see him do that?

A. I was not looking; I was only looking at the other horse.

Q. He took the horse by the bits and led him around?

A. I didn't know who it was.

Q. Were there some carriages standing along the curb by the brick building?

A. I don't know; I was looking at the horse; that was all. 20

Q. Whose fault did you think the accident was at the time? [Objected to.]

Q. Did you see the wagon that Washington was driving as he drove up?

A. Yes.

Q. Did you see the boy coming along on his horse before?

A. Yes.

Q. You saw the boy cross the main railroad track?

A. Yes. 30

Q. And how was he going?

A. He was a little jumping.

Q. Which of the two was going the fastest, Washington or the boy?

A. I don't know; the two of them were driving pretty fast.

Q Did you think they were going to come together before they did?

A. I never thought they would catch each other.

Q. Which side of the carriage did you think the boy was going?

A. I didn't look so particularly; I didn't think they would run against each other.

Q. Can you give any idea how much the distance was from the curbstone in front of the brick building up to
10 where they came together?

A. No, I couldn't say so particularly; but I know there was plenty of room; that is all what I see; it was in the middle of the road.

Q. How much room was there?

A. There was plenty of room to get away.

Q. Could two carriages go in there?

A. I don't know about two; one could, easily enough; plenty of room to get it away.

Cross-examination.

20 By Mr. Campbell—

Q. You saw two horses come together, didn't you?

A. Yes.

Q. You saw the horse of Mr. Ackerman fall, didn't
you?

A. Yes.

Q. And it fell almost right away, didn't it?

A. No, it turned around.

Q. Which way?

A. That way and then came this way, close to me, and
30 then backed up a little and fell down.

Q. It didn't go far?

A. No, not so far.

Q. She dropped about the same place where she was struck?

A. Oh, no.

Q. Which way from the place she was struck?

A. He turned around that way and this way, and backed up a little towards the switch and fell down.

Q. Did you see the blood afterwards—the next morning?

A. No; I didn't look; I had to go to work the next morning.

Q. On which side were you?

A. By the brick building.

Q. Did you say anything to Mr. Ackerman about this matter, afterwards? 10

A. No.

Q. Never talked to him about it?

A. No, I said nothing.

Q. Did he ever say anything to you about it?

A. Yes; he asked me once how Washington drove and I said pretty fast.

Q. He did drive fast?

A. Pretty fast, yes.

Q. Nothing else?

A. No. 20

Q. When was this that he asked you that?

A. He was over in the coal-yard for some coal.

Q. How long after this happened?

A. Not long.

Q. How many days, about?

A. I can't tell you.

Q. Right after?

A. No, not right away, I suppose.

Q. Did you talk with Mr. Ackerman about this thing in any other place than the coal-yard? 30

A. No, he was once up in the office, too.

Q. You and he talked up there?

A. Yes.

Q. In the coal office?

A. Yes.

Q. Did you say anything to him then about William Washington driving fast?

A. I don't believe I said anything, no.

Q. Have you talked with Mr. Ackerman more than these two times?

A. I talked with Mr. Ackerman about the thing—

Q. Didn't you tell Mr. Ackerman, at the time of one of the talks that you had with him, that you were standing on the other side of the street—on the side towards the depot?

A. No.

Q. Sure of that?

10 A. No, I never said that; I couldn't say that.

Q. Didn't you tell Mr. Ackerman, upon one occasion, that you and he talked about this thing, that the boy was driving slow, and that Washington was driving fast?

A. No; Mr. Ackerman never asked me about the boy, and I had nothing to say about the boy; he never asked me; he asked me about Bill, and I told him Bill drove pretty fast; if he asked me how the boy drove I would have told him.

Q. He didn't ask you that?

20 A. No.

Q. Didn't you tell Mr. Ackerman on one occasion that the horse was struck right at the end of these planks by the railroad, on the switch?

A. I don't believe it.

Q. Did you?

A. Nothing about that.

Q. Whose wagons were standing by the brick building when this happened?

A. I don't know.

30 Q. If there had been wagons there you would have seen them?

A. I suppose I could see them; it was quite dark; I saw the boy sitting on horseback, and I saw the horse was jumping on the track, and after the horse was dead I went home.

Q. If there had been wagons by the brick building you would have seen them?

A. Of course there might be a good many wagons; I never looked at them.

Q. You saw the boy on horseback?

A. Yes.

Q. How does it happen you didn't notice whether there were any wagons by the sidewalk?

A. I don't know; I never looked at the wagons at all.

Q. How many times have you and William Washington talked about this thing?

A. I don't know; not much; I said just all that I saw 10 and that is all.

Q. When did you first talk with William Washington about it?

A. They asked me if I saw it, and I said yes; I heard the next morning at the depot; I was standing close by, there was nobody so close as me; I saw the whole; I wouldn't lie, not a word.

Re-direct examination.

Q. You told Mr. Ackerman all you knew about it, did you? 20

A. Yes; what I say now; he never asked me much.

Q. When you told him that, what did he say?

A. He asked me how Bill drove, and I said pretty fast.

Q. What did he say to you about what you knew?

A. He never asked me what I knew.

Q. Is that all you told Mr. Ackerman?

A. I said if I knew there was so much trouble about that I would keep still, I wouldn't say nothing.

Q. Did you ever tell Mr. Ackerman what you saw there that night? 30

A. No.

Q. Were you subpoenaed by him?

Mr. Campbell—Yes, we admit that.

Henry Amos, sworn for defendant, testified as follows:

By Mr. Collins—

Q. How old are you?

A. Sixteen this March.

Q. Are you the son of the last witness?

A. Yes.

Q. Were you with your father that night?

A. Yes.

Q. Were you standing right in front of the brick building?

A. I saw the boy coming across the track, and I saw
10 William come out of Ridgewood.

Q. He didn't come around Rock avenue?

A. No.

Q. When you saw the boy on horseback, how was he going?

A. The horse was going on a jump, going pretty fast; Will was driving a good gait, and just as the boy got across the switch they struck; the horse backed right up a little, went around that way, and came up pretty close to us, and then he backed up and struck the switch-cross-
20 ing, and fell down—kicked a little.

Q. How far did he travel, after he was struck, to come up to you?

A. Maybe to that post, and so around. [Indicating post of railing in court.]

Q. As regards that street, how far out were they?

A. I thought it was about in the middle of the street.

Q. Did you think they were going to strike before they did strike?

A. No, sir; I did not.

30 Q. Which way did you think they were going to pass?

A. I didn't know; I couldn't say.

Q. Which way was the boy going on his horse?

A. Walked straight, I guess, as near as I could see—right straight down.

Q. Going straight on Ridgewood avenue?

A. Yes.

Q. But I mean along the south side of the street, or slanting on the north side?

A. I couldn't tell.

Q. You couldn't tell, by the way he was heading his horse, which way he was heading for?

Cross-examination.

By Mr. Campbell—

Q. If you couldn't tell which way he was going, how could you tell where he was?

A. I could see him.

10

Q. Couldn't you see which way he was going?

A. Yes, I could see he was going down the avenue.

Q. He had already crossed the switch-track?

A. Yes.

Q. You are sure of that?

A. Yes.

Q. How far had he gone over it?

A. Just over it.

Q. Horse entirely over it?

A. I guess it was.

20

Q. Do you know?

A. As near as I could see.

Q. After the horse was struck, it swung around and fell down, didn't it?

A. Just went around that way, and walked up to us, and walked over to the brick building, and backed up and fell down on the switch.

Q. Was the boy in the saddle yet on the horse?

A. Yes, sir; and when the horse backed up.

Q. How many times did the horse turn around before it fell down?

A. Only once; just turned around that way, and came up to us, and backed up, and fell down; that is all.

Q. Was the boy on it when it came up to you?

A. Yes.

Q. Did you help the boy?

- A. No.
- Q. Didn't you take hold of the horse?
- A. No.
- Q. How was William driving?
- A. Driving a good gait.
- Q. Pretty fast, wasn't he?
- A. Only an ordinary gait.
- Q. How was the boy driving?
- A. Pretty fast.
- 10 Q. He was going fast, too?
- A. Yes.
- Q. What were you and your father doing there?
- A. We were just standing, going home—had locked up—
from the coal yard.
- Q. The coal yard is on the other side of the street?
- A. Yes, but we had crossed the road.
- Q. Where did you live?
- A. On the Rock road.
- Q. You didn't need to go by the brick building to get
20 from the coal-yard to the Rock road?
- A. Yes, go right past it.
- Q. Weren't you and your father standing by the brick
building, on the Rock road?
- A. Standing right in front where the lamp-post stands.
- Q. You know William well?
- A. Yes.
- Q. He has talked to you about this?
- A. No, sir; never talked to me about it.
- Q. Not at all?
- 30 A. No.
- Q. Whom did you first tell what you had seen?
- A. I don't know who it was.
- Q. William never asked you what you knew about it?
- A. No.
- Q. Nor anybody else?
- A. Mr. Zabriskie asked me.
- Mr. Collins—The lawyer in the case?

The witness—Yes.

Adjourned.

April 8th, 1886.

Edward A. Wallen, defendant, being sworn, testified as follows:

By Mr. Collins—

Q. You were not here in court yesterday?

A. No, I was detained in New York by reason of business—I had to be present from eleven to two o'clock to give an account of my stewardship in the company with which I am connected. 10

Q. You are the defendant?

A. Yes.

Q. William Washington was in your employ at the time of the accident?

A. Yes.

Q. What sort of a man is he as to care and sobriety, and as to the management of horses—driving?

A. I always regarded him as a good horseman; I don't know a great deal about horsemen myself, but I always regarded him as a good horseman. 20

Q. And a sober man?

A. Yes.

Q. You came on the train from New York that arrived at Ridgewood at six o'clock?

A. Yes, sir; about four minutes of six.

Q. You had intended to come on an earlier train?

A. I usually take the train before that; I came home on that train that night.

Q. You were not looking for William that night? 30

A. No.

Q. Didn't wait for him?

A. No.

Q. As soon as you got to the station, did you leave the train and go right away?

A. Yes.

Q. Did you hear or know anything about the accident— if so, what was it?

A. Within three-quarters of a minute after leaving the station I just heard a noise as if some one was trying to stay a horse, saying "Whoa, whoa;" I didn't recognize the horse at all; It was so dark I couldn't distinguish the horse, and I don't know now whether it was my horse or not; I went home at once.

10 Q. This place where the driver was saying "whoa" to his horse, was it near the switch-crossing?

A. Yes, by the switch-crossing; I should say it was from one-half to three-quarters of a minute after leaving the station.

Q. You didn't recognize that as your horse?

A. No.

Q. William came home and reported to you?

A. He came to the back door and called me and told me what had happened.

20 Q. Did Mr. Ackerman come to see you the next morning?

A. Yes; he told me about the accident, and I told him I was glad to see him; I was in a hurry to get the train, and I said after that, if he called on me, and if there was any blame attached to my man, I would be glad to do what was right about it.

Q. He never called?

A. No.

Q. The next thing you knew was a summons?

30 A. Yes; ten or fifteen days from that; I thought, as a neighborly matter, he would come in and talk to me about it in a friendly way, as I wished to have him.

Cross-examination.

By Mr. Campbell—

Q. Washington has had mishaps with your horses prior to this, has he not?

A. I can't recollect the horse.

Q. Don't you know of his having mishaps with horses belonging to others in that neighborhood?

A. I do not.

Q. Do you know Mr. M. B. Wilson?

A. I do.

Q. Do you know that Washington worked for him at one time?

A. Yes.

Q. Do you remember of an occasion when he had a 10 mishap with one of Mr. Wilson's horses?

A. No recollection of it at all.

Q. You have seen Washington under the influence of liquor, have you not?

A. I have seen him when I supposed he had been drinking something.

Q. You concluded he had been drinking something from his appearance?

A. I couldn't say from his appearance; I only smelt liquor upon him; I can't tell that particularly; he had 20 only been in my employ about a week; it was simply a temporary employment.

Q. You leave home early in the morning?

A. Yes; usually at half-past eight, and I get home about half-past five; sometimes I leave half an hour later or get home half an hour or an hour later.

Q. You didn't call upon Mr. Ackerman after you heard William's account of it?

A. No; because I asked him to come and see me, and I supposed he would; when he didn't call I supposed he 30 felt, after investigating the case, that he had no case against me; he referred me to two men, Mr. Crouter and Mr. Bogart; I said I would see them, and I would cheerfully take their opinion; I saw them, and they said they saw nothing, except that the horse was dead.

Defendant rests.

Garret G. Ackerman, recalled, further testified, as follows:

By Mr. Campbell—

Q. You went and saw Mr. Walton in reference to this matter?

A. Yes.

Q. Was any arrangement made between you and him as to who should call or what should be done about it?

A. I called on Mr. Walton; the waiter let me in; Mr.
10 Walton came out of another room; we said good morning and spoke of the accident; he said he had Billy's story and that was all he had; I spoke of Mr. Bogart and Mr. Crouter—that I knew Crouter had seen it; I said I would not like to lose the value of that colt; he said "No, it is rather a bad job," or something to that effect; he said, "I will investigate and let you know;" I said, "In a few days?" he said "Yes;" after that he said "Good morning;" I waited a couple of weeks and he did not come near me; I would meet him on the street and he would
20 just pass by; I met him one morning on Crouter's stoop; he didn't look at me; he walked right past me and didn't say a word; of course I thought he had made up his mind he was not in fault.

Q. How long have you known William Washington?

A. Ever since he has been in Ridgewood.

Q. How long is that?

A. It must be something like fifteen years.

Q. Have you seen him driving out frequently?

A. I have.

30 Q. What kind of a driver is he?

A. He always let himself go as fast as he could; that is the general way he drives when I see him.

Q. You mean he is a fast driver?

A. Yes, sir.

Q. How about his character as to sobriety?

A. Well, I have seen him under the influence of liquor more than once—different times.

Q. Frequently, or otherwise?

A. Yes; there is not a day that goes over his head but that he has liquor into him.

By Mr. Collins—

Q. You are not in his company every day?

A. No; but I see him every day; I have seen him turn from Mr. Hopper's, drove under the shed, took his glass of liquor; I have been in the bar-room when he has done it; I have seen it at night.

Q. Have you seen him drink?

10

A. Yes.

Q. How frequently—frequently, or otherwise?

A. It was not a great while ago, one Saturday night.

Q. Have you seen him drink frequently or not?

A. Yes.

Q. On the morning after this occurrence I understand you went to the place where the accident was said to have occurred?

A. Yes.

Q. Did you make any examination for the purpose of finding blood?

A. I did. [Objected to as not rebuttal.]

Mr. Campbell remarked: I propose to show where the blood was as indicating the place of collision.

The court—Unless you ask it as a favor because it was overlooked, it is not proper. Do you offer it now as an additional circumstance to prove the point of collision?

Mr. Campbell—Yes, sir.

The court—That was part of your original case. If counsel says it was by inadvertence that he did not ask the question before, or because he was not apprised of the circumstance, I shall be inclined to let him ask it now unless it appears that the other side would be prejudiced.

Mr. Collins—Our witnesses are all gone. I object to it. [Objection sustained.]

Q. Did William Washington say to you that he drove out of Rock avenue on his way to the depot, and in swing-

30

ing around the brick building he ran against your horse before he saw it, or words to that effect?

A. He did.

Q. Did he say to you that he was thrown on the dashboard by the horses coming together?

A. He did.

Q. Do you know Jacob Amos?

A. Yes.

Q. Did Jacob Amos tell you that he was on the other
 10 side of the street when the collision occurred—that is, on the northerly side of the street, or words to that effect?

A. Yes.

Q. Did Jacob Amos tell you that the horse on which the boy was was going slow in going across the railroad, or words to that effect?

A. He said that the colt that the boy was on was on a little prance; I said, "Was she going fast?" he said, "No, not at all, she was on a little prance."

Demarest Ackerman, recalled.

20 By Mr. Campbell.—

Q. The question I now propose to ask you was something that was overlooked. What is your weight?

A. I got weighed the latter part of the winter, and I weighed one hundred and five.

Q. Did the horse upon which you were that night jump in going across the railroad or anywhere near there?

A. No, sir.

Testimony closed.

30 Defendant's counsel asks the court to direct a verdict for defendant.

Motion denied; whereupon the defendant, by his counsel, excepted to such denial, and prayed that this his bill of exception might be sealed, and it is sealed accordingly.

JONATHAN DIXON, [L. S.]

Judge.

Whereupon the court charged the jury as follows :

Gentlemen of the jury, this suit is brought for the purpose of recovering compensation for the loss of plaintiff's horse, claimed by the plaintiff to have been killed by the carelessness of the defendant's servant. In order to entitle him to recover, he must establish that his horse was killed by the carelessness of the defendant's servant, without any contributory negligence or carelessness on the part of his own servant. Carelessness, in a legal sense, is not only want of care, but it is the want of ordinary care ; the want of such care as prudent people ordinarily give to their concerns. Some men may be excessively careful, and some may be quite careless, but the rule of law is that every man is bound to bring up his conduct to that degree of care which a prudent man would ordinarily exercise under the existing circumstances. Of course, the circumstances are important to be taken into consideration. It is true, as Mr. Campbell said, the greater the danger the greater the liability to accident, and the greater the degree of care required, because the greater the degree of care which a prudent man would exercise under such circumstances. If you are driving along a road in broad daylight, you exercise one degree of care, and if you are driving along at night, when it is dark, you exercise another degree of care, because in the one case you can see at a glance what is ahead of you, and in the other you can see only a short distance before you. If you are driving along a highway on which very rarely vehicles pass, you would not exercise so great a degree of care as you would if you were driving along a crowded thoroughfare at night.

You see, you are first to ask yourselves what degree of care is to be expected under the circumstances. It is the liability of accident under the existing circumstances which

helps you to determine what measure of care you are to require.

It is admitted that neither of these two persons designed the killing of the horse. Nobody pretends that Washington intended to run the shaft of his carriage into the horse of Mr. Ackerman, or that Demarest intended to run his horse upon the shaft of the carriage. It was an accident. An accident might happen without any carelessness upon the part of anybody, and, if you think this accident hap-
10 pened in that way, you will find your verdict for the defendant, because, of course, if nobody was careless the defendant is not responsible, and the loss would remain just where it fell, on the plaintiff.

Perhaps the accident happened through the carelessness of both. Perhaps, if they had exercised due care—if either had exercised due care—the accident would have been avoided. In that case you would find your verdict for the defendant, because the law is, if the plaintiff, or the plain-
20 tiff's servant, by reason of carelessness on his part, helps to bring about the injury, then the loss remains just where it fell. A man can only shift his loss by accident to somebody else by showing that he himself or his servants were free from carelessness. So, if you find that this accident happened from the carelessness of both, you find your verdict for the defendant. Perhaps, in your judgment, the accident happened from the carelessness of Demarest. If it did, then your verdict will also be for the defendant, because, to make out the plaintiff's case, he must show that the accident resulted from the carelessness
30 of Washington, without the carelessness of Demarest.

If the accident resulted from the carelessness of Washington, without any carelessness on the part of Demarest, your verdict would be for the plaintiff.

Therefore, in considering the four ways in which the accident may have happened—through the carelessness of neither, the carelessness of both, the carelessness of Demarest, the carelessness of Washington—you are to render a

verdict for the plaintiff only in case you conclude it happened by reason of the last-named method—the carelessness of Washington alone.

Now, there are two considerations with reference to the point in which the carelessness may be said to have been shown. One is the position in the road in which the accident happened. It is claimed by the plaintiff that Washington was upon the left side of the road. That circumstance alone would not necessarily constitute carelessness. A man has a right to be upon whatever part of the road 10 his business calls him. Ordinarily, a man should not take the left-hand side of the road, without some occasion for so doing. Ordinarily, he should travel upon the right-hand side of the road, because, by that means, the probability of collision is lessened. But if he has occasion to go to the left-hand side of the road for any legitimate purpose, the law recognizes his right to go there. Whether he shall, when he goes there, use more care than he would have been required to use if he had stayed upon the right-hand 20 side, may be a question; because, when he is upon the right-hand side, the probability of his meeting anybody else upon that side of the road is diminished. When he comes upon the left-hand side, the probability of his meeting others on that side is increased. Upon the principle that the more the danger the greater the degree of care required, it may be that when a man goes upon the left side of a road he should be a little more careful than when he goes upon the right side of the road. But the mere fact that he is upon the left-hand side of the road, if he has any occasion for going there in traveling, does not constitute 30 carelessness. Whether, in this case, Washington was upon the left-hand side of the road is a disputed question of fact. If you think he was not, then of course there was no negligence to be attributed to him because of his position. If he was on the left-hand side of the road, then the question is whether he went there for the purpose of turning his horse the other way to the station. If it was fair and

reasonable for him to go to the left-hand side of the road in order to make a detour so as to bring his wagon around to the station, he had, no doubt, a right to make that detour. Whether he should take more care in doing it, is another question. The mere fact that he was there, if he was there for that purpose, would not constitute negligence or carelessness. If he was there wantonly and without any occasion for being there, that might be a circumstance that the jury should consider.

10 On the other hand, if the boy on horseback had got beyond the side of the road, or was over towards his left, and was there because he was going to the store, which was upon that side of the road, he had a perfect right to be there, and that would not constitute any carelessness in him.

So you see, this question of position is probably of trifling importance, except as it may bear upon the degree of care which each should have exercised in driving. On the idea which I have just now suggested, that when a
20 man is driving on the left-hand side of the road he ought to bear in mind that the probability of collision is somewhat increased, and, therefore, perhaps he ought to be required to use a little more care.

Now, the other point which bears upon the question of negligence is speed—general conduct in driving along the road. It is said, on one side, that the boy was going too fast, and, on the other side, that Washington was going too fast. If both were going too fast, then you have carelessness in both, and the plaintiff cannot recover. If the boy
30 was going at a proper gait and using proper care and having a proper lookout, and if Washington was going too fast, in view of the darkness of the night or in view of his position on the road—going faster than a prudent man ought to go under those circumstances—that might be carelessness. If that was carelessness, of course he and his employer are responsible for the accident. It is a question for you, gentlemen, and to which you should apply

your good, common sense as reasonable men. You are supposed to be twelve prudent men, who represent the prudent men of the county; you are to say what, in your judgment, is due care under the circumstances. If you think Washington did not exercise proper care, the care of a prudent man under the circumstances, and that the boy did exercise proper care, such as a prudent man would exercise under the circumstances, and the accident sprang from Washington's want of due care, then your verdict should be against Mr. Walton; otherwise, you do not find 10 against him.

If you do not find against the defendant, your verdict is simply for the defendant. If you do find against him, then your verdict must be for the value of the horse. On that point, you have the estimates of these various witnesses—running from one hundred and twenty-five dollars to two hundred and fifty dollars; you should say what the horse is worth; it is a matter entirely for your good judgment.

The jury returned a verdict for the plaintiff in the sum 20 of one hundred and seventy-five dollars.

Assignment of Errors.

Afterwards, to wit, on the fifth day of May, A. D. eighteen hundred and eighty-six, in the Court of Errors and Appeals, in the last resort in all causes, of the State of New Jersey, comes the said Edward A. Walton, by D. D. Zabriskie, his attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is
10 manifest error in this, to wit, that the said justice before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused to nonsuit the said Garret G. Ackerman when thereunto moved by the said Edward A. Walton, but denied said motion to nonsuit, whereas, by the law of the land, he should have granted such motion.

There is also error in this that the said justice before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused to direct a
20 verdict for the said Edward A. Walton as requested by him.

Therefore, the said Edward A. Walton prays that the judgment aforesaid, by reason of the aforesaid errors and by reason of other errors appearing in the record and proceedings aforesaid, be reversed, annulled and for nothing holden, and that the said Edward A. Walton may be restored to all things he has lost by occasion of the said judgment, &c.

D. D. ZABRISKIE,
Attorney of Plaintiff in Error.