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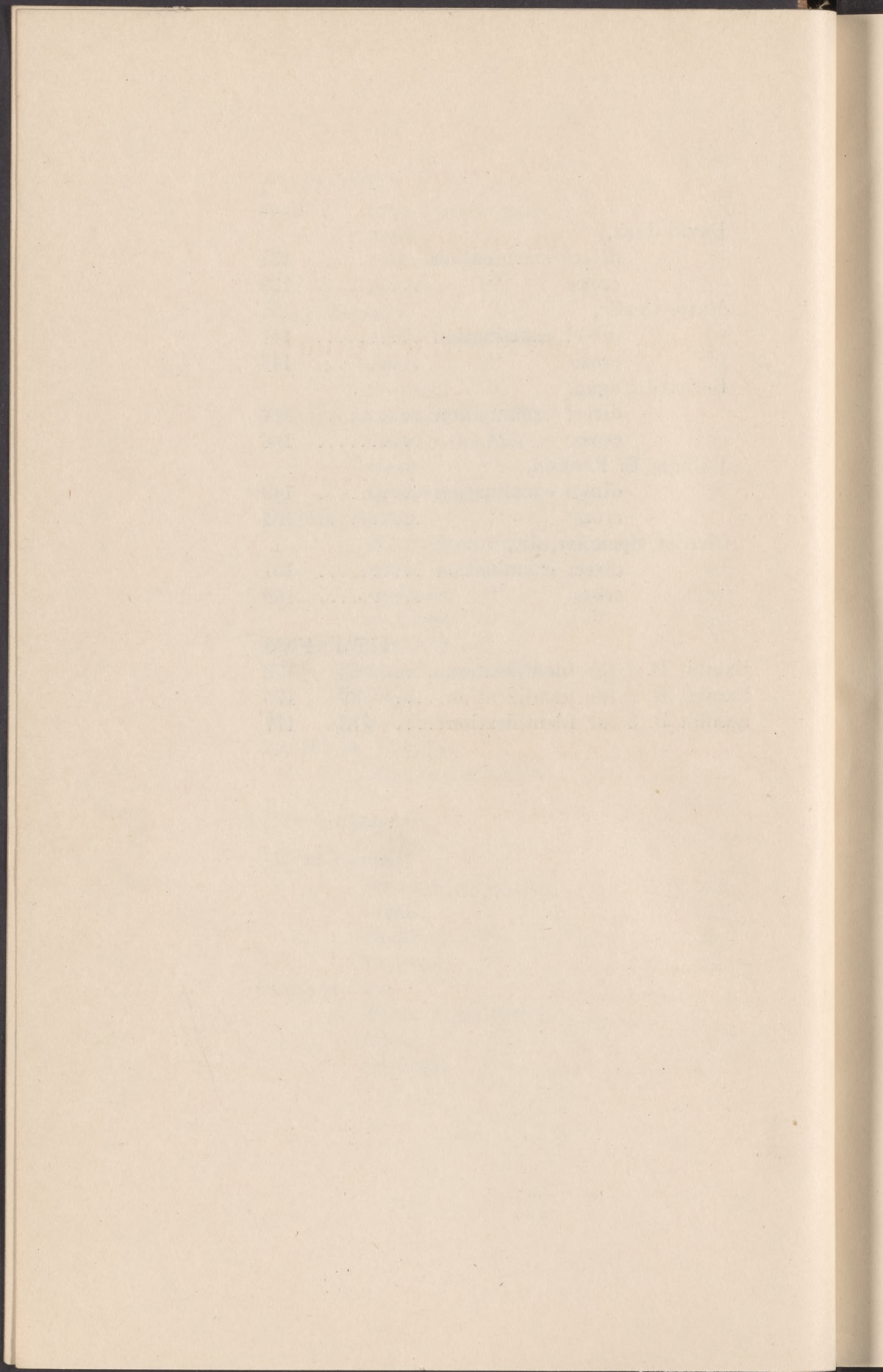
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Notice of Appeal.

NOTICE OF APPEAL.

Filed February 27, 1925.

Essex County Circuit Court

CATHERINE SMITH, <i>Plaintiff,</i> <i>vs.</i> PUBLIC SERVICE RAILWAY COM- PANY, <i>Defendant.</i>	}	10 <i>Action at Law.</i>
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To Henry P. Bedford, Esq., attorney of plaintiff.

Sir: 20

Take notice that the defendant in the above-entitled cause appeals to the New Jersey Supreme Court from the whole of the judgment entered in the said cause.

Dated February 25, 1925.

Yours truly,

LEONARD J. TYNAN,
Attorney of Defendant. 30

Endorsed. "Service of notice of appeal within is hereby acknowledged this 25th day of February, 1925.

HENRY P. BEDFORD,
Attorney of Plaintiff."

40

Complaint.

Summons.

The defendant was duly summoned.

COMPLAINT.

10

ESSEX COUNTY CIRCUIT COURT.

CATHERINE SMITH,

Plaintiff,

vs.

PUBLIC SERVICE RAILWAY COM-
PANY, a corporation,

Defendant.

*Action at
Law.*

20

Plaintiff, residing in the City of East Orange, in the County of Essex and State of New Jersey, says that:

1. Defendant, on or about March 12, 1923, was and still is a corporation, and was at such time also a common carrier of passengers by means of street railways managed, operated and controlled by it in the City of Orange in said county, and then and there also had the possession, use, management and control of certain trolley cars and tracks and then and there, by its servants, propelled, operated and run trolley cars upon said tracks in a westerly direction along Main street, a public highway in said City of Orange, near the intersection of North Center street, also a public highway.

2. On the day and year aforesaid, plaintiff was a passenger in a certain automobile bus

40

Complaint.

then and there lawfully being propelled and run from said Main street toward North Center street aforesaid.

3. It was then and there the duty of the defendant to use due and proper care in the use, management and control of its said trolley cars while being operated, propelled and run along and over and across the said public highways upon said tracks, so as to avoid colliding with and running into and injuring persons or vehicles lawfully driving along, upon or crossing said public highways, and to give due and timely warning of its approach to the intersection of said Main street with said North Center street, and to operate, propel and run the said car at such rate of speed as to keep the same within safe control.

4. Said defendant, not regarding its duty as aforesaid, did not use due and proper care in the use, management and control of the said trolley car while being operated, propelled and run along said Main street, and did not use due and proper care to avoid colliding with and running into and injuring persons or vehicles lawfully being upon, driving along or crossing said public highways, and did not give due or timely warning of the approach of said trolley car to the said intersection of Main street with said North Center street; and did not operate, propel and run the said car at such a rate of speed as to keep the same within safe control, but wholly failed and neglected so to do; and did, on the day and year aforesaid, at Orange in said County of Essex, by its servants, so carelessly, negligently and improperly operate, propel and run the said trolley car in a westerly

Complaint.

direction along said Main street as aforesaid, as
to lose control of the same, and thereby the said
trolley car then and there collided with and run
into the said passenger bus in which plaintiff
was a passenger as aforesaid, being lawfully
driven in a northerly direction from and upon
10 said Main street toward said North Center
street, and plaintiff was thereby then and there
violently thrown to the floor of said bus and
received and sustained a great and severe blow
upon her head, body, arms, legs, face and back,
and her legs, face, head, arms, hands and back
were greatly lacerated, wrenched, sprained, hurt,
bruised and wounded, and her nervous system
was shocked and shattered, and she thereby
suffered and sustained divers other painful in-
20 juries, by means whereof, the plaintiff became
and was sick, sore, lame, weak, incapacitated,
disordered and disabled, and so remained and
continued for a long space of time, to wit, from
thence hitherto, and will in the future so remain
and continue, and during all that time suffered
and underwent and will in the future suffer and
undergo great physical and mental pain and
suffering, and was hindered, incapacitated and
30 prevented, and will in the future be hindered, in-
capacitated and prevented from carrying on,
transacting and attending to her necessary and
lawful business affairs, by her to be performed,
transacted and attended to, and lost and was
deprived of, and will in the future lose and be
deprived of, divers great gains, profits and ad-
vantages, which she might and otherwise would
have derived, acquired and gained; and the
clothing of plaintiff was greatly damaged, soiled,
torn and destroyed to the value of \$50; and by
40 means of the premises plaintiff was obliged to

Answer.

and has laid out and expended divers sums of money, to wit, \$100 in and about endeavoring to be cured of her said injuries; and said plaintiff has been and is by means of the premises otherwise greatly injured and damnified, to wit, at Orange in said County of Essex.

Plaintiff demands fifteen thousand dollars 10
damages.

HENRY P. BEDFORD,
Attorney for Plaintiff.

ANSWER.

Filed November 8, 1923.

The defendant, a corporation of New Jersey, 20
having its principal office at the City of Newark, in the said State of New Jersey, in answer to the plaintiff's complaint, says that:

1. It admits the allegations contained in paragraph one of the complaint.
2. It denies the allegations contained in the remaining paragraphs of the complaint.

30

FIRST DEFENSE.

1. It avers that the negligence of the plaintiff, or the servant or agent of such plaintiff, contributed to the happening of the said alleged accident, in that she endeavored to drive the automobile bus in question across a track upon which a trolley car was being operated, when the said trolley car was in such a position as to endanger her safety.

40

Answer.

SECOND DEFENSE.

1. It avers that the plaintiff was engaged in a common enterprise with the operator of the automobile bus in which she was riding, and that the negligence of the said operator contributed to the happening of the said alleged accident, in that he endeavored to drive the said automobile bus across a track upon which a trolley car was being operated, when the said trolley car was in such a position as to endanger the safety of the said plaintiff.

THIRD DEFENSE.

1. It avers that the negligence of the plaintiff contributed to the happening of the said alleged accident, in that she failed to keep a proper lookout and to warn the operator of the automobile bus in question of the approach of the trolley car in question.

JOSEPH COULT, JR.,
Attorney of Defendant.

30

40

*Reply.***REPLY.**

Filed November 14, 1923.

ESSEX COUNTY CIRCUIT COURT.

CATHERINE SMITH,

*Plaintiff,**vs.*PUBLIC SERVICE RAILWAY COM-
PANY, a corporation,*Defendant.*

10

*Action at
Law.*

Plaintiff replying says:

1. She denies the allegations contained in the first and second defenses of the answer. 20

HENRY P. BEDFORD,
Attorney for Plaintiff.

30

40

Order Amending Reply.

ORDER AMENDING REPLY.

Filed January 30, 1925.

ESSEX COUNTY CIRCUIT COURT.

10

CATHERINE SMITH,

Plaintiff,

vs.

PUBLIC SERVICE RAILWAY Co.,

Defendant.

*Action at
Law.*

Application being made to the Court therefor,
by the attorney for the plaintiff,

20

It is, on this 28th day of January, 1925,
ORDERED, that the reply filed by the plaintiff in
the above-entitled cause, be and stand amended
to read as follows:

“Plaintiff, replying says:

1. She denies the allegations contained in the
first, second and third defenses of the answer.”

WORRALL F. MOUNTAIN,
Judge.

30

SUBSTITUTION OF ATTORNEY.

By a substitution dated February 24, 1925,
filed February 25, 1925, Leonard J. Tynan was
substituted as attorney of defendant, in place of
Joseph Coult, Jr.

40

Certificate of Clerk.

Judgment entered and signed February 2,
1925.

WILLIAM S. GUMMERE,
Judge.

JOHN H. SCOTT,
Clerk.

10

Book 99 Circuit Court Judgments, page 511.

Certificate.

The certificate of John H. Scott, Clerk of the
Essex County Circuit Court, is annexed to the
record as sent to the Supreme Court for the
purpose of this appeal.

20

30

40

ESSEX COUNTY CIRCUIT COURT.

Thursday, January 29, 1925.

CATHERINE SMITH,	}	<i>Action at</i>	10
<i>vs.</i>			
PUBLIC SERVICE RAILWAY COM- PANY, a corporation of New Jersey.			

Before Hon. Worrall F. Mountain, *J.*, and a jury.

For the plaintiff appears Henry P. Bedford, Esq.

For the defendant appears Joseph Coult, Jr., Esq. 20

(A jury is called and sworn.)

Adjourned until Friday, January 30, 1925.

30

40

Catherine Smith, direct.

SECOND DAY.

Friday, January 30, 1925.

Continued pursuant to adjournment.

Counsel, present as before stated.

- 10 Mr. Bedford opens for the plaintiff.
Mr. Coult opens for the defendant.

CATHERINE SMITH, plaintiff, sworn in her own behalf.

Direct examination by Mr. Bedford.

Q Mrs. Smith, on March, 1923, where were you employed? A At the Nevins Church Press.

20 Q What were your duties? A I was working on a machine until March 12th, and then I was supposed to be forelady.

Q How much were you getting? A Thirteen dollars a week.

Q How long had you been employed there? A From August until March.

Q Steady? A Yes, sir.

30 Q On March 12th, did you start for work? A I left the house to go to work and got on a bus at the corner of Main and Center streets.

Q What did the bus do while you were on it? A When we all got on the bus on North Center street the bus turned up Main street and backed about twenty-five feet to back out to Main street and turn into North Center street again.

Q Where were you sitting in the bus? A I was sitting on the left-hand side in the middle of the bus, in back of the driver.

40 Q Did the bus back? A The bus backed to the trolley tracks.

Catherine Smith, direct.

Q Did you see the trolley car or know that the trolley car was there at the time? A Yes, I did.

Q Where was the trolley car when you first saw it? A The trolley car was below Canfield street.

Q Where is that? A The next block to Center street, I should say. Seventy-five feet or something like that. 10

Q Toward Newark? A Towards Newark.

Q When you saw the trolley car below Canfield street, where was the bus in which you were sitting at that time? A It was backing out toward the trolley tracks.

Q How was it with regard to the tracks or the curb of Main street? A How far?

Q Yes, at that time? A It was backing into the tracks. 20

Q Was it on the tracks?

Mr. Coult: I object to that question as leading.

The Court: I sustain the objection.

By Mr. Bedford.

Q Where was it? A It was backing on to the tracks. 30

Q Where was it with relation to the tracks—the part of the bus that you were sitting in? A Where I was sitting in the bus?

Q Yes. A Well, I should judge where I was sitting was on the first rail.

Q What did the bus do from that time on? A When the bus stopped on the track, the driver reversed the brakes—if that is what you call it—he reversed the brakes—as I will call it—to go into North Center street again. Just 40

Catherine Smith, direct.

about when he was going to get off the tracks, the trolley car hit the bus. Of course, that is all I know about the bus.

Q How was the bus on the track? A How was it?

Q You say that when you saw the trolley car
10 the bus was on the first rail?

Mr. Coult: I don't think she said that. I think that is objectionable.

By Mr. Bedford.

Q Where was the bus when you saw the trolley car down at Canfield street? A Going on the tracks; backing on the tracks.

Q And where was it with relation to the
20 tracks? A It was on the two first rails of the westbound track.

Q How did it go? Tell us how far it went in either direction? A On the tracks? It did not go past the two westbound tracks. It did not cross the westbound tracks.

Q How was it with relation to the track at the time the car hit it? A It was on a slant.

Q How was it with relation to the track?
30 A Was it straight on the track or was it slanting? Is that what you mean?

Q I am not permitted— A When the car came up and hit us, it hit the right end of the bus where the bus was going that way into North Center street.

Q On which end? A The right end.

Q The front or the rear end? A The back end.

Q Where was that back end at that time? A
40 It was one the track—just coming off the track.

Catherine Smith, direct.

Q Where had the bus been from the time that you said it was backing on to the track until the time that you say now it was going off the track? A It was just on the track long enough for the man to reverse the brakes, when the car hit him.

Q Did you see the car after you saw it at Canfield street? A I saw it. It was coming quite fast. 10

Q Did it change its speed? A I don't know whether it changed its speed or not. I thought it was coming full speed.

Q Did it stop or did it keep moving all the time? A It kept right on coming.

Q Did it stop at the safety isle? A No.

Q Where is the safety isle? A On the corner of Main and Center streets, on the east side of Main. 20

Q On the east side? A No, on the north side.

Q Where is it with relation to North Center street? A I should judge it is only a few feet, I guess.

Q On the east side or west side? A On the north side.

Q On the east or west side? A Oh, on the east side. 30

Q When the trolley car hit the bus, what happened? A I was thrown this way (indicating) and I don't remember anything else.

Q When was the next time that you knew anything? A The next thing I knew I was out on Main street. I don't remember anything then. The next thing I do remember I was sitting back in the bus again. I was still sitting in the bus when the ambulance came. 40

Catherine Smith, direct.

Q What, if anything, was the matter with you? A My head was cut.

Q Where? A On my forehead.

Q Show us where the cut started. A There is one cut there (indicating). This cut (indicating) goes up into there, where my finger is.

10

By the Court.

Q There were two cuts, were there? A Two cuts.

By Mr. Bedford.

Q Are they still apparent on your forehead? A Yes, they are.

Q What was done with you from that time on? A I was put in the ambulance.

20

Q Who was in the ambulance with you? A Two other girls and the motorman.

Q Where were you taken? A To the Orange Memorial Hospital.

Q What was done in the hospital? A I was put on the table and the doctor put twenty-one stitches in my head; at least he sewed my head up. I asked the doctor how many stitches he put in and he started to count them and said twenty-one.

30

Q Who was the doctor? A Dr. Bailey.

Q Who else was there? A Four nurses were there.

Q Was that the only injury you had? A No, I had a fractured wrist.

Q When did you realize that you had a fracture? A When I was talking with Mr. Evans.

Q When was that? A I discovered my hand was hurt and I said, "My hand is hurt."

40

Q Was it examined in the hospital? A Yes.

Catherine Smith, direct.

Q What was done with it there? A An X-ray picture was taken and it was put in splints.

Q Did you have any other injuries? A My ankle was bruised and my shoulder and my knee.

Q What was done with you after the stitches were put into your head at the hospital? A I had X-rays taken of my head and wrist and after that I was made to stay there and go to bed. 10

Q How long were you in bed in the hospital? A Three days. In three days I got up and didn't go back.

Q After the three days in the hospital, where did you go? A A friend of mine came after me to take me home.

Q Did you go home? A I went down to my house. 20

Q What was the situation at your house? A I was in bed for two weeks.

Q Why were you in bed? A Because I could not stand the pain in my head.

Q How was this pain in your head during the three days that you were in the hospital? A It continued to pain all the time.

Q Was it little or large? A It was considerable. I could not sleep or rest with it. 30

Q How long could you sleep? A I didn't sleep any while I was in the hospital for those three days. After I came home I could not sleep for over a week. I used to have to take pills to put me to sleep.

Q Who gave you the pills? A The doctor gave them to me. Dr. Lane gave them to me.

Q Was Dr. Lane your doctor from the time you went to the hospital? A Yes. 40

Catherine Smith, direct.

Q After the three weeks that you were in bed, what were you able to do then? A I wasn't in bed three weeks, Judge; I was in bed two weeks.

10 Q What were you able to do then? A Well, I would get up and sit around for a while. I couldn't stay up very long.

Q When were the stitches taken out of your head? A I guess in the third week after coming home; something like that.

Q When were you first able to go out? A I used to go out for a walk about the fourth week.

Q Were you well then? A Considerably not.

Q When did you go back to work? A The 14th of May.

20 Q Up to the 14th of May, when you went back to work, what was your condition? What did you do? A I didn't do anything. I could only just go from Mrs. Parsons house to my own house. Of course, I wasn't able to stay there. She had no work for me because my hand was still done up.

Q What was it done up in? A In splints.

30 Q How was your head? What is its condition? A There was a bandage on my head up until about four weeks after the accident.

Q You went back to work on May 14, 1923? A Yes.

Q What position did you go back to? A I went back to work at the Nevins Church Press. I couldn't get the foreladyship. They had one in my place.

40 Q What wage did you get when you went back? A I got \$15. I told them I could not work for \$13 and they advanced me.

Catherine Smith, direct.

Q What wages were you to get as forelady?
A Eighteen dollars to start.

Q How long did you stay there and work after you went back? A I was there from then until December.

Q Where was this that you were working?
A The Nevins Church Press. 10

Q When you went back, did you work all the time from then until December? A No, Judge, I didn't. I wasn't able to. Maybe some weeks I would stay home a couple of days. I wasn't able to do the heavy work. I could not go back on the machines. When I did go on the machines I couldn't stand the noise.

Q You say you didn't go back on the machines the first two weeks? A I wasn't able.

Q Was it on account of your hand or your head? A Both my hand and my head. 20

Q During the last two weeks, did you go back to work on the machine? A No, I didn't do any heavy work. I went back to sorting work downstairs. I didn't go to work on the machines.

Q When did you go to work on the machines? A I guess I was back there about a month before I went to work on the machines.

Q You say you could not work steady? A Well, Judge, my head bothered me so that I had to stay home sometimes. I didn't get any sleep of any kind and I really had to have some sleep. 30

Q How many days a week did you lose? A Some weeks I would lose one day and some weeks I would lose two.

Q Up to December, 1922, how many days a week did you lose? A Then of course, when I could not stay, then of course, I was laid off. 40

Catherine Smith, direct.

Q Were you paid for the days that you had to take off during the week? A No, Judge.

Q You say you were laid off in December?

A I don't just remember the date when I was laid off.

10 Q What did you do after that? A I got a position at Caldwell.

Q What kind of work? A Housework—just helping around.

Q What did you get for that? A Four dollars a day and my carfare.

Q How many days a week did you work? A Four days a week.

Q How long did you keep that position? A I was there five weeks.

Q After that, what did you do? A Then I went back to the Nevins Church Press.

20 Q How long did you remain with them that time? A I was there until August.

Q Did you do full weeks' work at that time? A No, I didn't do full weeks.

Q What were you able to do? A Some weeks I wasn't working at all. I just don't know how many weeks—

Q That was until August 24th? A Yes.

30 Q Why didn't you stay there? A Because I was laid off again.

Q Were you able to continue your work? A Judge, I couldn't.

Q Why not? A Because my head bothered me and the noise of the machines.

Q How did it bother you? A Continuous aching pains. Not exactly aching pains. On my head there was a scar.

Q What sort of pains? A Twitching pains all the time.

40 Q From the scar? A From the scar.

Catherine Smith, direct.

Q Could you see the cut before it was fixed? A No, I didn't.

Q You don't know how deep it was? A No, Judge.

Q Does it affect you now? A Yes, it does.

Q How? A The nerves in my head bother me.

Q How do they bother you? A There is a sort of ache there. 10

Q Where? A In the scar over my forehead back there. It affects my eye also—a twitching of my face.

Q How long did Dr. Lane attend you at your home? A He saw me about two weeks.

Q How often during those two weeks? A I should say about every other day; about that.

Q After the two weeks, how often did he attend you? A He came sometimes twice a week and sometimes oftener. 20

Q For how long? A For about two weeks, I should judge.

Q And after that? A After I was able to go out I went to his office.

Q How long did you continue to go to his office? A Until about a year ago.

Q Do you know what his bill is for the services he rendered? 30

Mr. Coult: I think that is improper. I think the doctor should state how much his bill is.

Mr. Bedford: Yes. We will put the doctor on.

By the Court.

Q Mrs. Smith, can you tell us how long a time intervened between the time when you first 40

Catherine Smith, direct.

saw the trolley car at Canfield street and the time it struck the bus? A About how long?

Q Yes, how long a space of time? Have you any idea or recollection? A I should think about three or four minutes. It wasn't that long.

Q It wasn't longer than that, you think? A
10 No, I don't think it was. Before the bus got on the westbound track to turn into Center street, the trolley car was before Canfield street.

Q How long a time do you think elapsed between the time when you first saw the trolley car and the time when it hit the bus? A I haven't the least idea about that.

Q You can't remember? A No, I can't remember.

20 *By Mr. Bedford.*

Q How far did the bus go from the time you first saw the trolley car? A How far?

Q How far did it go from the time you first saw the trolley car until the bus was hit? A I saw the trolley car when the bus was after backing down from Main street over to the tracks. I saw the trolley car then. It was at Canfield street. It was just a little below or a little
30 above.

Q What was the bus doing then? A The bus backed out to the track to turn into North Center street.

Q How far did it go? A On the westbound track.

Q You mean that it went in a backward motion on to the westbound track? A Yes.

Q Did it go forward at all before it backed? A It was reversing the brake but I couldn't exactly say.
40

Catherine Smith, direct.

Q Can you tell us where the trolley car was when he reversed? A It was still on the tracks.

Q No. The trolley car. A It was coming up Main street.

Q How close had it come when the bus started to reverse? A It was below the safety isle.

10

Q What kind of day was it? A It was a rainy morning.

Q What kind of work are you doing, Mrs. Smith? What work are you doing? A I am not doing anything now except on part time work.

Q What kind of part time work? A Such as going out and helping people to get dinners or doing a little dusting around for different people.

Q Domestic work? A Yes, Judge.

20

Q Do you work every day in the week? A I cannot do washing or heavy sweeping or anything like that because people are not going to let you stand around. If you can't do it—

Q Have you the bill from the hospital? A I don't think I have. I don't know where it is.

Q How much is it?

Mr. Coult: I object. That is not the way to prove it.

30

By Mr. Bedford.

Q How much did you say? A It was twelve dollars.

Q Where did you get your medicine? A The doctors supplied me with medicine.

Q How is your wrist coming along? Is it all right now? A At times it is and at time it isn't. I cannot lift anything heavy with it.

40

Catherine Smith, cross.

Q At what times isn't it all right? A Such as damp days or stormy weather.

Q What happened to your clothing, if anything? A It got all soiled with blood and got torn. I lost my hat.

10 *Cross examination by Mr. Coult.*

Q You were known as Kate M. Smith as well as Catherine? A Yes.

Q Do you remember giving a statement? A Yes.

Q Do you remember where it was? A I guess it was while I was in the hospital, because it was while I was in East Orange.

Q It was at 15 Hollywood avenue, East Orange? A Yes.

20 Q Do you remember who was present when you made the statement? A Yes.

Q I indicate to you Mr. Spengler and ask you whether that was the gentleman who was present? A That is him.

Q There was also a Miss May D. Anderson? A Yes.

Q Is she here? A No.

Q Where is she? A Still in East Orange.

30 Q Who is she? A She is a lady whom I used to work for, and that I do work for yet.

Q Were you working for her at the time? A No, I wasn't. Oh, I beg your pardon. I worked for her on Saturdays.

Q Was it at her home that this statement was taken? A Well, yes; that the written statement was, yes.

Q There was a written statement? A The one that you have in your hand and your name is on it.

40

Catherine Smith, cross.

Q Did you sign it? A I couldn't sign it because my hand was laid up.

Q You made your mark? A Yes.

Q You can read? A I guess so.

Q Did you read this before you signed it?
A I looked it over.

Q Did you read it? A I didn't read it. I 10
started to read it, but my eyes bothered me so—

Q Did she read it aloud to you? A I have
just forgotten whether she did.

Q Do you mean to say that Mrs. Anderson
read it to herself and then you signed it? A She
told me what it was and I signed it.

Q Did she read it aloud? A I don't remem-
ber.

Q The statement was taken by this gentleman
in his handwriting, wasn't it? A He done the 20
writing, yes.

Q And he wrote down as you and he talked
about this accident? A Yes.

Q He asked you questions and you answered?
A Yes.

Q And he wrote it down on paper? A Yes.

Q And you signed it by your mark because
your hand was laid up? A Yes.

Q And Mrs. Anderson signed the paper also? 30
A I believe she did.

Q You took this bus before it had turned
the corner into Main street? A Yes.

Q Did other passengers get on? A Several
girls got on at the same corner that I did.

Q Where did it stop with reference to the
corner? How near to the corner? A On this
corner. This is the drug store—

Q On what would be the northwest corner?
A The northwest corner.

Catherine Smith, cross.

Q Were any employees of the Nevins Church Press in the bus before you got in? A Oh, yes.

Q How many did you see get on there? A I don't know just exactly. I didn't count them.

10 Q Give us your best judgment as to the number of them? A There were always about five or six, maybe eight; I don't know.

Q You say this bus then continued around the corner, making a right-hand turn, and turned west? A Yes.

Q How far did the bus go around that corner? A I should think about fifty feet.

Q Fifty feet beyond the corner? A About that.

20 Q After you got on with these other girls the bus made a right-hand turn and went about fifty feet west on Main street? A Well, now, I should judge about fifty.

Q I want your best judgment. A Yes.

Q About fifty feet west and then stopped? A Yes.

Q When it stopped was it facing west or northwest? A West.

Q Was it parallel with the curb? A Yes.

30 Q How near to the curb was it? A Not too close to the curb.

Q About how close to the curb? A I should judge, well, about two feet.

Q You were in the back of the bus? A No, I was in the middle of the bus.

Q Was there anybody between you and the driver? A I believe there was. I am not quite sure.

40 Q Were there people standing in the bus?
A No, all sitting.

Catherine Smith, cross.

Q Were any people standing between you and the rear of the bus? A No.

Q On which side of the bus were you sitting?

A On the left-hand side.

Q With your back to the trolley car? A No.

Q As it stood there on Orange street— A Main street.

10

Q On Main street. You were sitting with your back to the trolley car, weren't you? A Let us see. No, I was facing the trolley car.

Q Were you on the right-hand side of the bus? A I was on the left side.

Q You said that you were facing the center of the bus. A Yes.

Q What do you mean when you say that you were on the left-hand side? Do you mean as you look forward toward the driver? A Yes.

20

Q Was he on the right-hand side or toward the left? A Going out, he was toward the left.

Q If I understand you, then, the trolley track would be behind you? A No, I was facing the trolley car all the time I sat on the bus, and as the bus went through Center street the trolley car was on this side (indicating).

Q I am talking about after the bus turned on Main street and started. You were going in the same direction as the trolley car? A Certainly, but I was facing the trolley car all the time.

30

Q You must have been on the left side of the bus. A Yes, I was right in back of the driver. That is the left side of the bus.

Q How long did the bus stand facing west on Main street? A Just long enough to back out into Main and turn into Center.

Q Did it take on any passengers when it stopped? A No.

40

Catherine Smith, cross.

Q Are you sure that nobody got on when it stood there on Main street? A Positive.

Q And then it started to back? A Yes.

Q When it backed, in what direction did it go? A It came out this way (indicating).

Q What do you mean—diagonally? A Yes.

10 Q Can you say how near the right-hand side of your bus was to the curbstone when it first started to back? A Of course, I was in the bus, but I cannot say just how far it was from the curb. I don't know.

Q Was it close to the curb? A I can't tell you how far or how close it was. Maybe two feet, maybe five feet; I don't know.

Q You say that because you were in the car you could not see how near he was to the curb? A No.

20 Q Why not? A I never thought an accident was going to happen or anything like that.

Q Then he started to go in a backward direction toward the tracks? A Toward the tracks, yes.

Q How far did he go? A He went on the westbound track.

30 Q How far is that? How many feet did that bus move? A From the center of Main street out to the tracks.

Q From the time he was standing still on Main street until he got hit how far did the bus go? A I just don't know how far that is. I don't know the width of Main street.

Q Without knowing the width of Main street, give us your recollection as to how far the bus traveled. A Maybe 75 feet. It may have been 50. I haven't the least idea.

40 Q How long would you say this room is? A Oh, I don't know.

Catherine Smith, cross.

Q Can't you give us some idea? A No.

Q Two hundred feet or 600 feet? A I couldn't tell you.

Q Do you think it is as much as 200 feet? A I haven't the slightest idea.

Q Is it less than 20 feet? A I don't know.

Q It might be less and it might be more? A I haven't the least idea. 10

Q Is it more than 10 feet wide? A I don't know.

Q You are not a very good judge of distance? A Nothing at all, because I never have to.

Q You say that the bus came out on the trolley tracks? A Yes.

Q Why is it that you know that? A Because I was watching out for the trolley car.

Q Why is it that you know the position of the bus on the trolley track if you cannot say how far it went? A Because I saw the trolley car coming up Main street. 20

Q But it was so far that you didn't think there was any danger of an accident? A Yes.

Q That didn't attract your attention? A Yes it always did.

Q Was there anything about the position of that trolley car that frightened you? A Yes; it was coming up quite fast. 30

Q How close was it to you? A It was down a block when I first saw the trolley car.

Q You would not have any fear of a trolley car a block away? A Yes, when I saw it coming fast.

Q How long is that block? A I should judge it is about 275 feet; maybe 300 feet; maybe a little more or a little less. I am not sure.

Q You knew there was a safety isle there? A Yes. 40

Catherine Smith, cross.

Q One safety isle to the east of Center street?

A Yes.

Q When the bus was struck by the trolley car how far was the bus from that safety isle? A I should judge, I guess, about 20 feet or so.

10 Q Was that when the bus was struck? According to your recollection, it was east of the corner where the drug store is? A It was on the corner of the drug store.

Q Was it on this side of the drug store corner? A Yes.

Q You said that when it stopped at Main street it was 50 feet this side of the corner? A It stopped in front of the drug store. It was right in front of the drug store corner at Main and Center street.

20 Q Did you say that it backed from that point to a point east of the corner before it got hit?

A To a point east of the corner?

Q Yes. It was down near the safety isle?

A Yes. Not near the safety isle.

Q It didn't turn out toward the tracks? A It didn't turn out; it backed out.

Q Do you remember that it then didn't turn out on the tracks? A Positively not.

30 Q When this statement was taken did you tell the gentleman who took the statement that on March 12th at about 6:52 o'clock you were in a bus which was southbound on Center street, Orange? A Yes.

Q Did you tell him that you boarded the bus together with several other young ladies? A Yes.

Q At Center street, near Main street? A Yes.

40 Q You said that you sat in the center of the bus on the left side? A Yes.

Catherine Smith, cross.

Q That the bus then started up. Did you tell him that? A Yes.

Q Did you tell him that you paid no particular attention to which direction the bus was going because you were talking to several young ladies in the bus and you were not looking out? A No, I couldn't say that.

10

Q Did you tell him that you did not know whether the bus had turned around the northwest corner of Main street and started to back up to the westbound track or whether it continued straight on south across Main street? A No, I didn't.

Q Did you tell him that you remembered seeing this westbound car about ten feet away from the bus, and coming at a fast rate of speed? A No, I didn't tell him that.

20

Q Did you tell him that you yelled, "Girls, we are going to be killed?" A Yes.

Q Did you yell that? A Yes.

Q Where was the trolley car when you yelled that? A The trolley car was on its way to Main street.

Q How near was it? A Between Canfield and Center street.

Q How near was it to your bus when you yelled, "Girls, we are going to be killed"? A I couldn't exactly say. It was the other side of the safety isle.

30

Q Haven't you any recollection of that? A No, I just don't know just the depth of Main street. I couldn't tell you that.

Q Had you seen the trolley car before that? A Yes, I did. I saw the trolley car when the bus first started to back out. It was below Canfield street then.

40

Catherine Smith, cross.

Q Did you watch it? A Yes, I did.

Q When it got close enough you yelled, "Girls, we are going to be killed"? A Yes.

Q In the meantime you watched it approach? A Yes.

10 Q How close was it when you yelled, "Girls, we are going to be killed"? A It was below the safety isle.

Q Can you point out in this room and show us how near it was? A Deeper than this room.

Q Further away than this room? A Yes.

Q You thought when you saw it that far away that you were going to be killed? A Yes.

Q Was the bus moving or standing still? A He was about to reverse his brakes.

20 Q Was the bus moving or standing still? A I don't understand about reversing. He was about to start the bus.

Q With the bus further away than the length of this room he didn't get off the track in time? A He didn't have time to.

Q I call your attention to this statement in which you have said that it was about ten feet away. You didn't mean that? A No.

30 Q Isn't it a fact that you told the gentleman that took the statement that when you saw this car you could not say whether the bus was on the track or whether it was standing or whether it had started? Did you tell him that? A I told him that I didn't know whether it had started.

Q Did you tell him you didn't know whether it had just started, and had not as yet reached the westbound track? A No, I didn't tell him that.

40 Q Did you tell him that just as you saw this car there was a crash, and the front end of the

Catherine Smith, cross.

car struck the bus at the right rear corner? Did you tell him that? A Yes.

Q Did you mean that, that just as you saw this car there was a crash? A No, I saw the car before it crashed.

Q Then this is not a fact? A No, part of that is not, no. 10

Q You were thrown from your seat to the floor of the car, weren't you? A Yes.

Q You told him that? A Yes.

Q Did you tell him you had an injury to your right wrist which was fractured; did you tell him that? A Yes.

Q And that you had cut your forehead and scalp, and that the injury to your forehead required twenty-one stitches? A Yes.

Q And that you heard no gong on the car sounded? A No gong at all. 20

Q Did you tell him that? A Yes.

Q "It was raining and all the windows in the bus were up." Did you tell him that? A Were up? I didn't say they were up.

Q Well, shut. A Closed.

Q In fact, they go up? A No, they go down.

Q Did you tell him you didn't remember what happened after that until the ambulance came? A Yes. 30

Q Did you tell him that you and two other young ladies were taken to the hospital? A Yes.

Q Did you tell him that on your way to the hospital you asked the motorman if he was the one that was operating the car and he answered that he was? A I didn't say it in that way.

Q Confine yourself to answers, please. Did you tell him that your salary at the time of the 40

Catherine Smith, re-direct.

collision was \$13 a week as a machine hand? A Yes.

Q Did you tell him that you were just starting as a forelady on the day of the accident, and your salary was to be \$18 a week? A Yes.

10 Q Did you tell him that since leaving the hospital you had called in Dr. Frank B. Lane, 528 Main street, Orange? A Yes.

Q And that he had called on you three times so far? A Yes.

Q That you didn't know what he charges per visit? A Yes.

Q Did you tell him that you were making claim for your injury, doctor expense, and lost time? A No, I didn't.

Q You didn't tell him that? A No.

20 Q Did you tell him that you didn't know what damage was done either to the bus or car? A Yes.

Q Did you tell him that you couldn't see what position the bus stood in with relation to the trolley car after the collision? A Yes.

Q Of all these things that I have indicated to you, some of them you did say and some you did not? A Some I did and some I did not.

30 Q Before you worked at the Nevins Church Press where did you work? A I went out at service.

Q For how long? A All my life.

Q You never had had a position like this before? A No.

Q What had you earned out at service? A I earned \$3.80 and \$4.00 a day.

Re-direct examination by Mr. Bedford.

40 Q You say the bus stopped at Main street at the drug store? A Yes.

Carlo D. Martinetti, direct.

Q Is that the drug store on the corner? A Right on the corner.

Q Where were you at the time this gentleman called on you and wrote down this statement, A 15 Hollywood avenue, East Orange.

Q How long was it after you had come back from the hospital? A That he came there? 10

Q Yes. A I guess it was the following week. I don't just exactly know.

Q Were you up or not? A I had just got up and the doctor said I could sit up.

Q You had been sitting up for a little while and he came and wrote down something? A Yes.

Q And asked you questions? A Yes.

20

CARLO D. MARTINETTI, sworn in behalf of the plaintiff.

Direct examination by Mr. Bedford.

Q You are a regularly licensed and practicing physician for the County of Essex? A Yes.

Q On March 12, 1923, were you located in any institution? A I was working in the Orange Memorial Hospital doing X-ray work. 30

Q You have seen the plaintiff on the stand here? A Yes, sir.

Q Do you recognize her? A No.

Q I show you an envelope with certain memoranda on it and ask you what that is? A The memorandum of the X-ray examination of the right wrist of Kate Smith, Ward 4.

Q Did you make the X-ray? A I presume I did. I did them all at that time.

40

Frank B. Lane, direct.

Q Can you tell us what the X-rays show? There are four X-rays there. A Yes.

Q Can you tell us what they show regarding the wrist? A There are two fractures here. One is what we call a Colles fracture; that is to say, a separation of the lower end of the large
10 bone at the wrist. There is also a separation of the styloid process—a little piece of the small bone—a very slight displacement. The X-rays were taken in two directions, as is customary. The position of the bone is very satisfactory.

Q Can you tell us whether the fracture shown on that X-ray of March 13 was a recent fracture or when it was done? A As far as one can see, it is recent. There is no evidence of any old fracture there.

20 Q What would that mean? A You might—

Q With relation to time, I mean. A You might see changes in the outline of the bone. That is what it would show.

FRANK B. LANE, sworn in behalf of plaintiff.

Direct examination by Mr. Bedford.

30

Q You are a regularly licensed and practicing physician for the County of Essex? A Yes.

Q How long have you been such? A Twenty-seven years.

Q Is your practice general or do you specialize? A General practice.

Q How soon after March 12, 1923, did you see Mrs. Smith? A I saw her on the 16th or 17th of March.

40

Frank B. Lane, direct.

Q What was her condition then? A She had a lacerated wrist. I treated that. She had a lacerated wound, a large cut, on her head.

Q Who removed the stitches? A I did.

Q When did you remove them? A I took part of them out, I think, in about ten days, because she had some spots that did not heal perfectly. There was some suppuration. 10

Q What parts did not heal perfectly? A There was one part on the scalp where the wound had been badly torn. There was a slight pus discharge in two or three places where it had to be dressed after that.

Q How long did that continue to have to be dressed? A In the neighborhood of three weeks.

Q Could you tell how deep the cuts were? A Through the scalp. 20

Q To the bone? A Yes, torn right up.

Q Do you know how many stitches there were in there? A There were a number of them.

Q Can you recall how many you removed the first time? A No, I cannot. I took out over five or six the first time.

Q What if anything was the matter with her other than this head injury? A She had a fracture of the right wrist.

Q Could you do anything for that? A That had been properly set at the hospital and splints put on. I simply took care of it—re-bandaged it at the proper time. 30

Q Did you re-bandage the head or what did you— A I re-bandaged that every day for a time.

Q How long did you attend her every day? A I think I saw her every day for nearly two weeks. 40

Frank B. Lane, direct.

Q Was she in bed or was she up and around?

A She was in bed and sitting up some. Sitting in bed most of the time.

Q After the two weeks how often did you see her? A Every other day for a time and then at regular intervals she came to my office to have her arm dressed.

10 Q About when was it taken down? A I think the arm was taken down in about four weeks—between four and five weeks.

Q How about the head? A I took the bandage off her head after three or four weeks.

Q Can you tell about when she was in condition to return to work? A I would not be able to make a positive statement on that.

Q About when? A I know the wrist was pretty painful—a swollen and sore wrist. I don't think she could have any use of it for practically three months.

20 Q How about the head? A The head condition had healed, of course. At the time she complained of a great deal of pain in her head, of course.

Q Did this swollen condition cause pain when it was being dressed? A The dressing was not so painful, but she complained about a great deal of pain in her head.

30 Q What had the cuts done with regard to the head and scalp? How had they affected it? A They gave her what she said was neuralgia—pain in the side of the head—shooting pains and at times quite severe pains.

Q How long ago was it that you saw her last? A I don't think I have seen her since last summer at all.

Q Did you see her last summer? A I saw her last summer.

40

Frank B. Lane, direct.

Q What did you do for her then? A She came in, I think, then complaining of pain in her shoulder and her neck, if I recall rightly.

Q Did she have any trouble there at the time of or after the accident when you treated her?

A No.

Q Was there anything else that you treated her for besides the head and wrist? A She was bruised on the shoulder and she was bruised on the side and a little on the hip and ankle; but nothing very badly. She complained that the shoulder was quite painfully bruised. 10

Q Do you know whether she slept at night for a while?

Mr. Coult: If the Court please, I don't think that is a proper question. That depends entirely upon what the patient told him. 20

By Mr. Bedford.

Q Did you treat her for such a condition? A Of course, I gave her medicine for her pain and for sleeping.

Q Why? A She complained of not sleeping and she complained of pain.

Q When was the last time that you saw her during your regular treatment of her? You said that you saw her every day for two weeks and then you saw her two or three times a week and after that she came to your office. A She came to the office I should think for six or nine months. 30

Q During those six or nine months was she as well as she could be under your treatment? You could not give her any more treatment than you were giving her? A No, I don't think I could do very much more for her. 40

Frank B. Lane, direct.

Q Was she entirely cured of everything that she had received at the time of the accident in the way of injuries? A She was cured as far as the bone work was concerned and as far as the headwork was concerned. As far as her general condition as to her nerves is concerned that is a question.

10 Q What was her general condition as regards her nerves? A Her history was—

Mr. Coult: I object to that.

By Mr. Bedford.

Q What you could discover. A Just nervous condition.

Q How about the places where these cuts had been? Was anything there remaining to be seen?
20 A Only the scars.

Q Are the scars still there? A The scars are still there.

Q What would you say as to whether the scars will continue there? A They will continue.

Q Are they permanent? A I think they are permanent, yes.

Q As to the nerves in that part of the forehead that control the skin; what would you say as regard to that? Should they become perfect again or what is their condition? A All scar tissue is not like normal tissue. It cannot be. There must be some effect there from the injury to the skin.

Q What would the effect be? A The effect would be always a little drawing feeling on the scalp—a little drawing feeling at times.

Q Will that be permanent? A It might wear out in time.

40

Frank B. Lane, direct.

Q How long would you say it would take? A I would not want to make a statement.

Q Do you know anything of her condition before the accident? A Yes, I knew her through working for Mrs. Parsons.

Q Was there anything the matter with her before the accident? A I never saw anything. I think she came to my office once or twice, being sent there by Mrs. Parsons for minor disturbances. 10

Q What was her general constitution or condition before the accident? A As far as I know, very good.

Q What is the amount of your bill for treating her? A About \$75.

Q At what rate did you charge her? A I charged at the house \$3. 20

Q How much did you charge at the office? A \$2.

Q Are those charges, totalling \$75, reasonable charges for the service you rendered? A Very reasonable.

Q Is that the usual charge in the medical profession? A Very reasonable. She was a poor woman.

Q As to her wrist. Did that clear up entirely or are there any results still remaining? A She has a pretty good wrist, I would say, now—a pretty good wrist after a fracture. 30

Q What would you say as to whether it is absolutely normal? A I don't think it is absolutely normal. No one who has had a fracture can have an absolutely normal wrist.

Q What would be the difference between a normal wrist and her wrist? A There would never be just as perfect motion. She would always have a little feeling that something had 40

Frank B. Lane, cross.

happened to her wrist. You know you have a broken wrist.

Cross examination by Mr. Coult.

10 Q You got a good result out of this Colles fracture? A Very good.

Q The fragments are in good position? A Very good shape.

Q I suppose you don't consider any limb normal that has had a bone broken in it? A No.

Q But it is just as serviceable nine times out of ten? A Yes, they get service out of it.

Q After a bone has been fractured it is stronger than it was before? A It might be in the line of fracture.

20 Q There is a little increase in the size of the bone due to the formation of callus? A Yes.

Q That callus in the course of time dissolves? A Yes.

Q How long would it take for the callus to dissolve in an injury of this kind? A I would not want to make a statement.

Q At that time it had pretty well cleared up? A There might be some there.

30 Q Callus is not a disease? A Not a real disease.

Q It is nature's way of mending a bone? A Yes.

Q And that process proceeded normally in her case, as far as you know? A Yes.

Q And the healing of the wound on her head was normal, too, wasn't it? A Well, what do you mean?

40 Q There was no infection? A There were two or three spots there where the tissue was bruised and there was some suppuration.

Frank B. Lane, re-direct.

Q How long did it take for that to heal up?

A About three weeks.

Q How long did it take for the wrist to heal so that it was serviceable? A It wasn't very serviceable for three months.

Q How long would you say it was before she got the use of her wrist? A I would say six months. 10

Q Did she have any splints on it or not? A Yes.

Q Do they take the splints off and manipulate the wrist in the case of those fractures or do they leave the splints on? A That is just a matter of treatment. Some manipulate the wrist and some do not.

Q What did you do? A I left the splints on there.

Q How long was it before the splints were taken off? A Between four and five weeks before any was taken off. I think one was taken off and the lower one left on. There was a great deal of swelling. 20

Q How long was it before the bruises cleared up? A I think the bruises cleared up all right. She complained of a little pain in her shoulder. I don't think it was very long.

Q How long did it take? A I think the bruises cleared up in three weeks. 30

Re-direct examination by Mr. Bedford.

Q I didn't get the last word when Mr. Coult was asking you about taking off the splints. You said there was a great deal of what? A Swelling.

Charles Davis, direct.

CHARLES DAVIS, sworn in behalf of plaintiff.

Direct examination by Mr. Bedford.

Q Where were you working on March 12, 1923? A At the Watchung Coal Company.

10 Q Where is the Watchung Coal Company?
A In West Orange.

Q Did you go to work on that day? A Yes, I went to work on that day.

Q Where did that take you? A To Main street to take the car there to go to East Orange.

Q What time did you go to Main street to catch the car? A Sometimes I would go at seven, sometimes earlier.

20 Q I mean this morning. A I can't remember just what time.

Q What was your regular time? A Most any time so I got there at seven o'clock.

Q Where were you waiting to take the car on that morning? A On the westbound safety isle.

Q On what street? A On Main street.

Q And what other street? A At Center street.

30 Q Were you there that morning on the safety isle? A Yes, I was.

Q Tell us what happened that morning while you were on the safety isle? A Well, I was there. I was waiting for a car. The car didn't stop. I haven't the slightest idea why it didn't. I saw it hit the rear end of the bus. That is all I know about it.

By the Court.

40 Q The car didn't stop? A As I turned to look, I seen the car hit the rear end of the bus.

Charles Davis, direct.

By Mr. Bedford.

Q Where were you on the safety isle; on the part of it toward the mountains or toward Newark? A As far as I can remember, it was toward the mountains.

Q Was this car that hit the bus the one that you were to board? A I was to board that one if it stopped. 10

Q What did you do when it came along? A I turned around and looked to see why it didn't stop.

Q Before it passed you what did you do? A I didn't do anything at the time but look at it.

Q Were you the only one on the safety isle? A As far as I remember I was the onliest one there. Maybe there was somebody else.

Q After it hit the bus what did you do? A I went over to the sidewalk and walked to my work. 20

Q What did the car do to the bus when it hit it? A I couldn't tell you. I didn't go over to it.

Q Can you tell us whether that was a regular stopping place at the safety isle? A The car didn't stop there.

Q Did the car stop there at any part of the safety isle? A No, sir; no car. 30

Q How was it going when it got to the safety isle? A I don't know.

Q Was it going slowly or fast? A I don't remember. I don't think it was going very fast.

Q When you looked around how far from the safety isle was it that the car hit the bus? A The rear end of the car was right about at the end of the safety isle, the west end of the safety isle. 40

Charles Davis, cross.

Q Where was the bus? A Right in front. All I could see I seen the car hit the bus. I just seen it; that is all.

Q When the trolley car hit the bus how was the bus then? A It happened so quickly I could not tell you just what position it was in.

10 Q When it was still, after the accident happened, where was the front of the bus? A I don't remember now just how it was.

Q You say you walked to work then? A Yes.

Q Why?

Mr. Coult: I object to that.

The Court: I sustain the objection. That is immaterial.

20 *By Mr. Bedford.*

Q When you went to your work where was the trolley car? A Standing at the safety isle. It went back to the safety isle and was standing there.

Q It backed up? A It must have backed. It came back down there.

Q Did you get on it? A I didn't get on to no car.

30 Q How was the weather at that time? A I don't remember. I think it might have been raining or had rained.

Q Did you see anything of the motorman as the car came along? A I didn't see him at all. I was afraid I would be late and I didn't wait.

Cross examination by Mr. Coult.

40 Q Where are you working now? A I was working with the Watchung Coal Company then.

Charles Davis, cross.

Q How long were you working for them? A Since 1917.

Q Where is their place of business? A Valley Road, West Orange.

Q Where on Valley Road in West Orange? A 300 Valley Road, West Orange.

Q What is the nearest cross street? A To where that is? 10

Q What is the nearest cross street on Valley Road to their place of business? A None crosses it. They run to it, but none crosses it there.

Q What time were you supposed to be on the job that morning? A I was supposed to be on the job at seven o'clock.

Q And this accident happened about eight minutes to seven? A I couldn't tell you what time it was. I don't just remember what time it was. 20

Q Where did you live then? A On North Center street.

Q You were going from your house to the office in West Orange, were you? A I came off North Center to Main street.

Q Then you would take a car to West Orange? A Yes.

Q You had about ten minutes to make the run? A Yes. 30

Q Is that your regular car? A I don't know if it is the regular one. I catch the one that is there at the time.

Q After this accident you walked up to your work? A Yes.

Q What time did you get there? A About seven o'clock or a little after.

Q Do you mean to tell us that you walked from the corner of Main street and Center street 40

Charles Davis, cross.

in Orange to Valley Road in West Orange in ten minutes? A Yes.

Q You can walk as fast as a trolley car? A I don't know, but I can walk it in ten minutes. I usually come down to Main street for my lunch.

10 Q When you first went out there you intended to take the trolley car? A Certainly.

Q You were going to take it at that safety isle? A Yes.

Q What changed your mind? A Because it ran into the bus.

Q That frightened you, so you decided to walk? A Certainly.

Q You decided to walk? A Certainly.

Q Ordinarily you took trolley cars? A Yes, sir.

20 Q When this accident happened you just walked right away? A Just walked away.

Q You didn't have enough curiosity to find out what had taken place? A There were so many people there, there was no use for me to be late.

Q There weren't a lot of people when you saw this thing happen, were there? You were about the nearest person to it? A No, sir.

30 Q You were standing on the west side of the safety isle? A I was on the safety isle. I don't think I was the nearest one to it.

Q How far away from this bus were you when the accident happened? A I don't know.

Q About 35 feet? A I don't know.

Q Who was any nearer than you were? A I could not say.

Q As far as you know, you were as near to it as anybody? A I might have been.

40 Q You can step five feet in about two steps, can't you? A I guess so.

Charles Davis, cross.

Q Do you mean to tell us that you were only about four steps from where this thing happened and didn't even go over to look at it? A Yes.

Q How did you avoid it? A I went up Main street.

Q But this bus was right in your line of travel. A I seen the bus, but I didn't go to examine it. 10

Q Did you walk around it? A I walked over to the Main street sidewalk.

Q You were on the west end of the safety isle and the accident happened a car's length in front of you in the direction you were going and yet you turned to the right and walked over to the sidewalk and walked away? A Yes.

Q You don't know whether anybody was hurt? A I don't know. 20

Q You don't know whether the bus was smashed? A No.

Q You don't know whether the trolley car was injured or not? A No.

Q You say that the trolley car back up? A I think it did.

Q Didn't you say it backed up? A I don't know whether it backed up or not. I don't remember whether it backed up or whether it ran back itself. 30

Q Did it get back? A It came back some distance.

Q How do you know it did? A I seen it.

Q Where were you? A I was standing there.

Q Why didn't you get on it then? A Because the trolley car was standing there.

Q What? A I was late.

Q The trolley car backed up to where you wanted to take it? A Yes. 40

Charles Davis, cross.

Q Why didn't you get on the car and go to work? A Because the car was standing there.

Q What was to prevent your getting right on that car after it backed up and going into West Orange just as you had intended to? A Because the car was injured, as I thought. I didn't take time to look at it. I didn't wait there for it.

10 Q Were you the only one on the safety isle before the accident happened? A As far as I know. I am not sure. It has been so long that I have forgotten all about it.

Q You were standing right where the motor-man could see you, weren't you? A I was standing there. I don't know whether he saw me.

Q Did you signal for the car to stop? A Yes.

20 Q What did you do to signal for the car to stop? Did you put up your hand and did this motorman go right by you and smash into the jitney bus and then come back to the safety isle? A I think it did.

Q Do you know whether it did or didn't? A I am not sure.

30 Q When you were asked on direct examination by Mr. Bedford you said that it backed up to the safety isle. Why did you so testify to that if you were not sure about it? A I don't remember saying that. I don't think I said that.

Q You don't think you did? Let me ask you this: Do you think this car backed up afterward or didn't it? A I am not sure.

Q Anyway, you didn't make any attempt to get on the car? A No.

Q Or to go to West Orange by car? A No.

Q Or go and look at the accident? A No.

Q You turned to the right and walked over to the sidewalk? You walked around this bus

George Evans, direct.

and on up to West Orange to your job; is that right? A I didn't walk around it. I walked to the sidewalk.

Q You walked past it, didn't you? A I had to pass it.

Q You were going to West Orange? A Yes.

Q You got there at seven o'clock? A I don't know whether I got there exactly at seven. It may have been a little after that. 10

Re-direct examination by Mr. Bedford.

Q Do you know anything about what happened to the motorman at the time of the accident? A No, sir.

Q Do you know how long the trolley car stood there? A No, sir; because I went on to work. 20

GEORGE EVANS, sworn in behalf of plaintiff.

Direct examination by Mr. Bedford.

Q Where are you employed? A At the Nevins Church Press.

Q How long have you been there? A 21 years. 30

Q What is your position there? A I am employment manager and timekeeper there.

Q You are the manager? A I am the employment manager.

Q Did you know Mrs. Catherine Smith at the time she was employed there? A Yes, sir.

Q Did you employ her? A Yes, I think I did.

Q Do you remember the morning of March 12, 1923? A Yes. 40

George Evans, direct.

Q Did anything special happen on that morning? A Only the bus accident.

Q Where was the bus accident? A On the corner of Center street and Main.

Q Where were you when the accident happened? A Standing on the corner.

10 Q Where were you at the corner? A Waiting for the girls to get on the bus.

Q Had you been on the bus? A I had been on the bus.

Q Is that the regular thing—for you to be waiting for the bus? A Yes.

Q Which corner were you standing on at the time the accident happened? A The first corner you come to as you turn into Main street.

Q The drug store corner or the other corner?
20 A The drug store corner.

Q Tell us what the bus did just before the accident. A He pulled up Main street about a foot and a half or two feet from the curb and backed across on to both trolley tracks. Then he was going to start ahead, and he had started ahead and went about 10 or 12 feet when this trolley hit him.

Q Where did the passengers board the bus—
30 on Center street or Main street? A On Center street.

Q And after the passengers boarded it, tell us how it went? A Turned right around and went right up Main street.

Q How far on Main street toward the west curb of Center street did the bus go? A 20 or 25 feet.

Q What did it do then? A Then it backed.

Q Did it go anything else? Were any passengers taken on? A No, sir.

George Evans, direct.

Q When did you first see the trolley car? A
When it was about at Canfield street.

Q At the time when the trolley car was at
Canfield street where was the bus? A On the
two tracks.

Q Was it moving forward or backward or
standing still? A It was still at that time. 10

Q How did it get onto the track? What sort
of a backing movement did it make? A It pulled
right straight up Main street and backed diag-
onally across facing Center street.

Q When he got back as far as he went where
were the rear wheels? A On the track coming
towards me.

Q Where were the front wheels? A Just
straddling them; going toward West Orange.

Q From the time he got on the westbound 20
track until the time when the trolley car hit him
was he off that track at any time? A No, sir.

Q And you say you were on the westerly cor-
ner? A I don't know whether it is the westerly
corner. It is the corner at the drug store.

Q Where was the safety isle? A Just catty-
corner, right over from me.

Q On the same side of the street as you were
on? A No, on the opposite side. 30

Q As to Main street, was it on the north side
or the south side? A I don't know just which
is south or north there. On this side (indicat-
ing).

Q The side toward Bloomfield? A The side
toward Bloomfield.

Q Are there two safety isles there? A Yes.

Q Where are the safety isles located? A
One is on the side where I was standing and one
is on the other corner. 40

George Evans, direct.

Q On which side of Center street was the safety isle on which you were standing? A On the left side.

Q Which would be facing which way? A Facing Main street.

10 Q Was the safety isle on the side of Center street toward Newark or toward West Orange?
A Towards Newark.

Q Do you know whether there was anyone on the safety isle? A There was one man standing there—a colored man.

Q Can you tell us what the trolley car did from the time you saw it at Canfield street until it struck the bus? A I don't know. It just kept coming; that is all I know. The bus had just started when it was hit.

20 Q Did it stop at the safety isle? A No.

Q Are you sure of that? A Positive.

Q Were there any changes in speed as you observed the car? A I could not say that as to changes.

Q What is that? A I don't know as there was any change. It was coming very fast when it hit it.

30 Q As it got to the west end of the safety isle was there any change in the progress of the car?
A Not as I noticed.

Q When it hit the bus what happened? A It just turned it catty-corner, so that it was almost facing Newark.

Q What part of the bus did it hit? A Between the middle and the rear.

Q What was done to the bus, if anything? A She was all knocked crooked.

Q What was done to the car, if you know?
A The front was all smashed up.

40

George Evans, direct.

Q What was done with the car and bus after that? A I could not say after that.

Q What did you do? A I took a couple of the girls in the bus—

Q Then what did you do? A I took a couple of girls in the bus—

Q What did you do then? A Went around to police headquarters and reported the accident. 10

Q What next? A From there I went over to the shop.

Q How soon after the accident did you get away from there? A I should judge fifteen or twenty minutes.

Q Where was the trolley car? A I am not sure whether it was standing right there or not.

Q Did it move backwards or forwards right after the accident? A That I could not say.

Q Was it still standing when you left? A Yes. 20

Q Did you see anything of the motorman? A No, sir.

Q Did you see anything of Mrs. Smith, the plaintiff? A Yes.

Q Where was she? A She was on the sidewalk on Main street and also on Center street.

Q What was her condition? A She had a handkerchief up to her head. She was bleeding. 30

Q Do you know what was done with her or who attended to her? A No, sir; I do not.

Q As the trolley car came along there just before the accident what was the condition of the weather? A Raining—drizzling rain.

Q Had it just started or had it been going on for some time? A I think it had been raining for quite some time.

Q Were the pavements and the tracks wet or dry? A Wet.

George Evans, direct.

Q What if any sound was there at the time the trolley car approached North Center street?

A What sound?

Q Were any signals given or any sound?

A I heard our man blowing his horn before he ever got out there. He blowed it once or twice; I am not sure which.

10 Q What about the trolley car? A That I can't say.

Q Could you see the motorman as he came along? A No, sir.

Q You don't know what he did as he approached North Center street? A No, sir.

Q Do you know how far it is from the north curb, where you were standing, on Main street to the trolley rail that was nearest to you? A The nearest one to me would be about twenty feet; not quite twenty feet.

20 Q Direct from where you were standing to the rail? A Yes.

Q How close to the curb were you standing?

A Right on the curb.

Q When the trolley car hit the bus where was the bus with relation to the east and west curbs of North Center street? A It stood directly on the cross track just as if it were going right back.

30 Q Back where? A To where it came.

Q Where was the bus when the trolley car hit it with relation to the east and west curbs of North Center street? A Right in the middle.

Q Where was the safety isle? A Just about ten feet away.

Q Ten feet away from which end of the safety isle? A The one coming up towards Orange.

Q What was the condition of the light at that time in the morning? A Fairly light.

40

George Evans, cross.

Just a very little dismal; kind of dark; not really dark.

Q By what means could you distinguish the trolley car down at Canfield street? A By looking at it. It wasn't as dark as that.

Q Were there any street lights, trolley lights, or any other lights? A Not as I can remember. 10

Q Did you see anything more of the man on the safety isle? A No, sir.

Q Was there more than one person on the safety isle? A That is all I seen.

Cross examination by Mr. Coult.

Q It is fairly strong daylight at seven o'clock in the morning on the 12th of March, isn't it?

A Not so awful strong. 20

Q It is good broad daylight at seven o'clock?

A Dusk. It wasn't real dark.

Q You go before seven o'clock, don't you?

A Yes.

Q It is daylight at seven o'clock, isn't it? A Yes.

Q Daylight becomes earlier and earlier as the year progresses? A Yes.

Q Having that in mind, wouldn't you say that you would have no difficulty in seeing at seven o'clock? A I would have no difficulty in seeing a car. 30

Q Where was this trolley car when you first saw it? A At Canfield street.

Q Why did you notice it at Canfield street?

A It wasn't exactly at Canfield street. It was around Canfield street.

Q Was it below Canfield street or nearer to you? A If it was anything it was this side of Canfield street. 40

George Evans, cross.

Q How many feet away? A I should judge 200 or 250 feet.

Q How fast was it going? A It was going at a pretty good rate of speed. Of course, I don't know the speed of trolley cars.

10 Q Can you give us some idea? A I could not.

Q Two hundred and fifty feet away and going pretty fast. When you saw that trolley car there where was the bus? A On the track.

Q That is, standing on the trolley track? A Yes.

Q How do you know the bus was there then? A I seen it standing there.

Q You saw the bus go on there before you looked at the trolley car? A No.

20 Q You just happened to see the bus before you happened to see the trolley car? A Right.

Q This stands out very clear in your recollection? A Yes.

Q The bus on the track? A Yes.

Q And the trolley car 250 feet away? A Yes.

Q Was the bus standing or moving? A The bus was standing.

30 Q You say that the bus had pulled ahead a little bit by the time the trolley hit it? A Yes, it had started.

Q How long did that bus stay on the trolley tracks? A I could not say. Not quite a minute, I should judge.

Q That is, you say that it stayed a full minute of sixty seconds? A No, sir; I didn't.

Q I will put it this way: You understand what a minute of sixty seconds is, don't you? A Yes.

40 Q Have you a watch? A Yes.

George Evans, cross.

Q Has it a second hand? A Yes.

Q Then look at your watch and figure out how long you think that jitney bus stayed on the tracks? A A minute, I guess.

Q Just look at it. A (Witness looks at watch.) Nearly a minute.

Q What was it doing? Standing there all that time? A Shifting gears, and getting ready to start. 10

Q Did it take about a minute to get ready to back? A That I could not say. I did not look at him.

Q Why is it that your recollection is so much more acute as to what happened when he was starting to go than when he was standing there? A Because I was watching for the girls to come both directions. 20

Q When? A That moment.

Q Did the bus take on any girls after it turned the corner? A No.

Q It just turned the corner for the purpose of backing? A Yes.

Q You knew that? A Yes.

Q You were not looking for girls then? Were you still looking for girls when the bus was out on the track? A Yes.

Q Why? A I don't know. 30

Q Can you say how long it stood when it was at the curb when the chauffeur was shifting gears getting ready to back? A No, sir, I could not say.

Q You had been down there on this bus at this corner before? A Yes.

Q Frequently? A Yes.

Q Every morning? A Yes.

Q Did it strike you at the time that this chauffeur was lingering on the trolley track a 40

George Evans, cross.

good while—longer than just to shift his gears and go forward? A No, sir; it did not.

Q You didn't think anything about it? A No, sir.

Q Yet while the jitney bus was standing there, the trolley car was all the time approaching, wasn't it? A Yes, sir.

10 Q It was going pretty fast? A Going fast. I don't know how fast.

Q How long did it take it to cover the 250 feet and strike the jitney bus? A I don't know.

Q How is it you can tell us how long the jitney stayed there and cannot tell us how long it took the trolley car to get there? A I cannot tell exactly.

20 Q How long did it take the trolley car to cover the 250 feet? A I could not say.

Q Can you give us an approximation of it, to the best of your ability? A No, sir.

Q How many feet do you think it would make in a second? A I don't know.

Q How long did the jitney bus stand on the track after you saw the trolley car coming? A I should judge about a minute.

30 Q The jitney bus had stopped preparatory to shifting gears just before the time when you saw the trolley car? A Yes.

Q There was nothing between the jitney bus and the motorman of this car to obstruct the view of either chauffeur or motorman? A Not as I seen.

Q The trolley car came up the street at the same rate of speed? A I could not tell you how fast it was going.

Q Did it increase its speed or diminish it? A I don't know. It didn't slow down any.

40

George Evans, cross.

Q It didn't go any slower? A It didn't go any slower.

Q Without any diminution of speed it came up the street, passed this safety isle where there was a colored gentleman standing waiting to get on. Do you remember that? A Yes.

Q Without any diminution of speed while this bus was standing on the track in full sight it kept on past the safety isle and struck the bus? A Yes. 10

Q How far did it go after it hit the bus? A It stopped right away.

Q How fast was it going when it stopped— at the instant of striking the bus? A I don't know.

Q Was it going just as fast as it was when you saw it 250 feet away? A I could not say. 20

Q Do you think that it had diminished speed? A It didn't when it got near me.

Q It didn't go a foot after colliding with the bus? A Yes.

Q Did it go as much as a foot? A A little more.

Q How far did it go? A It knocked the bus maybe about eight feet.

Q After hitting the bus? A Yes. 30

Q Was it still going at that time just as fast as it had been? A Yes.

Q After the accident you say you took two of the girls— A Took the girls home.

Q To their homes? A Yes.

Q Weren't you connected with the employment department of the Nevins Church Press? A Yes.

Q You had nothing to do with the hiring of the girls? A Yes. 40

George Evans, re-direct.

Q Do you have anything to do with the compensating of employees in injuries? A No, sir.

Q That doesn't come within your department? A No, sir.

Q Have you any interest in the outcome of this case? A Not at all.

10 Q Just so as to see justice and truth prevail, I suppose? A That is all.

Q How long have you been with the Nevins Church Press? A Between twenty and twenty-one years.

Q You don't care whether the plaintiff wins or loses in this case? A No.

Re-direct examination by Mr. Bedford.

20 Q Your name is Evans, not Nevins? A Yes.

Q Are you anything but a foreman? Have you any interest in the concern except that? A None whatever.

Q What was the weight of this bus that you say was knocked eight or ten feet? A I don't know the weight.

Q Was it a heavy bus or a light one? A A heavy bus.

30 Q What kind of chassis? What is the make of it? A A Garry bus.

Q I believe you said that you didn't know what happened to the motorman? A No, sir; I don't.

Q About this Mrs. Smith: Do you know what her position was to be? A Forelady.

Q When was she to be advanced to that position? A That morning.

Q How much was she to get as forelady? A I could not say.

40

Norma Dolan, direct.

NORMA DOLAN, sworn in behalf of plaintiff.

Direct examination by Mr. Bedford.

Q Are you employed anywhere or are you at home? A I am at home.

Q On March 12, 1923, were you working at the Nevins Church Press? A Yes. 10

Q Since then you have changed and you are not working for them any more? A No, sir.

Q You are married now? A Married.

Q Were you in this bus that was struck by the trolley car? A Yes.

Q Where did you board it? A At Main and Center streets.

Q On what side was it when you got on? A On Center street.

Q After the bus was boarded by you what did it do? A Everybody got on and it turned out Center street to go up Main, and it backed up Main up to the westbound track. I think it was just starting off, as I thought it was, when the crash came. 20

Q When it turned into Main street, before it backed out to the track, did anybody get on there? A No.

Q Did it stop for any appreciable time after it started up from North Center street? A No. 30

Q Where were you in the bus when the crash came? A I was the second one from the front, right in back of the driver.

Q What was the driver doing at the time of the crash? A I noticed him starting off, putting his brakes in gear to start off.

Q You say he was putting his brakes in gear. Do you mean that he was shifting gears?

A I don't know. 40

Norma Dolan, direct.

Q Don't you know what the difference is between putting on the brakes and shifting the gears? A No.

Q What was he doing with his hand at that time? A Moving—

10 Q Moving the lever? A The lever or something to start off.

Q Where was the bus then? Where was the back end or the front end? A Backed on a slant toward the westbound track.

Q Where was the front of the car? A On Main street facing towards Center.

Q Facing North Center? A Yes.

Q Do you know where it was with relation to the safety isle? A No, I don't.

20 Q When the crash came what happened to the bus? A I could not tell you. I was knocked unconscious.

Q Do you know how you were knocked unconscious? A Somebody's head hit my head.

Q What was the next thing that you knew when you came to? A I was at home.

Q Did you see the trolley car at any time after the accident? A No.

30 Q After you were rendered unconscious what was the next thing you knew or where were you when you realized anything? A I was at home.

Q You don't know where the bus went or where the trolley went? A No.

Q Within your knowledge or recollection did you see Mrs. Smith after the crash? A No.

Q Did you see her before the crash? A Yes.

Q Where was she then? A She was sitting about four or five feet up from me.

40 Q What kind of day was it? A A rainy day.

Norma Dolan, cross.

Cross examination by Mr. Coult.

Q You signed a paper, Mrs. Dolan? A Yes.

Q Your name was formerly Norma Roberts?

A Yes.

Q I show you a paper which purports to be a statement of Norma Roberts, dated March 14, 1923, and I call your attention to the signature at the bottom of the two sheets. A That is my signature. 10

Mr. Coult: I ask that that be marked for identification.

(The paper referred to was marked D. 1 for identification.)

Adjourned until Monday, February 2, 1925, at ten o'clock A. M. 20

Monday, February 2, 1925.

Continued pursuant to adjournment.

Present, counsel as before stated.

NORMA DOLAN, resumes the stand. 30

Cross examination (continued) by Mr. Coult.

Q I think I had just called your attention to the statement bearing your signature at the time of adjournment on Friday. Do you recall that?

A Yes.

Q I don't know whether I asked you whether this signature is yours or not? A Yes.

Q Do you recall just where you got on this bus? A At North Center street. 40

Norma Dolan, cross.

Q Where was the bus when you got on it?

A On the right-hand side of Center street—the drug store side.

Q Facing toward the south? A Facing to Main street.

10 Q That would be south. Did you say something about its being on the west side when you got on? A On the right-hand side of Center street.

Q Which way was the bus facing when you got on—downtown or uptown? A It was facing from Center street towards Main street.

Q Facing Main street? A Facing Main street.

Q That would be south? A I don't know whether it would be or not.

20 Q Where did the bus go from there? A Up west Main street.

Q It made a right-hand turn? A A right-hand turn.

Q And pulled around the corner? How far did it go around the corner? A Just about the length of the bus, I guess.

Q Then what did it do? A It backed up.

Q Did it stop there? A It stopped there.

30 Q How long did it stop? A I didn't just count how long it stopped.

Q After stopping there which way did it go? A It backed out the westbound track.

Q When it was standing on Main street did it stand parallel with the curb or was it pointing out toward the center of Main street? A I could not say.

Q Do you know how far it went after it started to back? A Out to the tracks, the first rail.

40

Norma Dolan, cross.

Q Did it go directly out? A It turned up Center, went up Main, and backed out to the car tracks.

Q After it had stopped on Main street when it started to back, did it go directly out into the middle of Main street or did it go out diagonally?

A In a diagonal line.

10

Q Did it stop? A It didn't stop. It got on the track to go to Center street.

Q Did it stop there? A Yes, to go into Center street.

Q Was it moving or standing when it was struck by the trolley car? A Standing.

Q How long had it been standing? A That is something I could not say.

Q How do you know it was standing? A Because I know I seen the driver was just going to start off.

20

Q How far was that bus on the track then? A Just across the first rail there.

Q In this statement that you have signed there appears the following: "On March 12, 1923, about 6:52 A. M. I was an occupant of a jitney bus which was southbound on North Center street, Orange, New Jersey." Is that correct? A Yes.

Q "I boarded the bus at North Center street together with several other young ladies." Is that true? A Yes.

30

Q "There was about a seated load of employees on the bus." Is that correct? A Yes.

Q "When I boarded the bus I took a seat near the door on the right side of the bus." Is that right? A Yes.

Q "The bus then started and I do not know whether it turned west on Main street or not." That is incorrect? A Yes.

40

Norma Dolan, cross.

Q "I do not know whether it backed up or continued straight on over the car tracks"?

A No.

Q "I was busy talking to other girls at the time in the bus." Is that true? A Well, I was watching the bus back up.

10 Q "The bus was crossing the westbound track when all of a sudden I felt a bump and a crash, the jar throwing someone opposite me over against me, and I was thrown to the floor of the bus." Is that true? A Yes.

Q "I don't know whether the bus was backing at the time and I don't know what direction we were moving, but I know we were struck in the rear by a westbound Orange car." Is that true? A Some of that I don't know is true.

20 Q Is it true that you don't know whether the bus was backing? A I know the bus was backing.

Q That is not true? A Yes.

Q When you said you didn't know what direction the bus was moving, that wasn't true? A No, that is not true.

30 Q "I don't know whether at the left-rear or right-rear side." Is that true? A I didn't know which side was struck.

Q Do you know now? A Yes.

Q Where did you find out? A Because I seen the bus afterwards.

Q "I didn't see the westbound car before or after the collision." Is that true? A I didn't.

Q That is true, then? A Yes.

40 Q "The first I knew that the car had struck the bus was after I was taken home." That is not true, is it? A Yes. I didn't find out the car hit it until afterwards.

Norma Dolan, cross.

Q There are a number of things in this statement which I have brought to your attention which you say are not true, are there not? A Yes.

Q For instance, that you didn't know which way you were going—you didn't know whether you were backing or going forward? A Yes. 10

Q That, you say now, is not true. A No.

Q Did you read that statement before you signed it? A I read it but I didn't pay any particular attention to it because I wasn't injured.

Q Did you know what was in it when you signed it? A I looked it over but I didn't pay much attention to it.

Q At the time you signed it did you realize that there were any things in it that were not true? A No, I didn't. 20

Q Did you read those portions of this statement— A I didn't take particular notice at any time. I didn't read it very carefully.

Q You read it through? A Yes, but I didn't pay much attention to it.

Q Didn't you tell the gentleman who took this statement how the accident happened? A I told him, but there is something else I didn't tell him that is in there. 30

Q Did you tell him what you told us here on the witness stand? A I told him different things that you read, and different things I didn't tell him.

Q Did you tell him what you told us on the witness stand? A What do you mean?

Q That this bus went up Main street and stopped and then started to back? A He asked me what direction the bus was going. I told 40

Norma Dolan, cross.

him, up Main, because that is the way we always went. It backed out on the westbound track.

Q Did you tell him that the bus was standing when it was hit? A Yes, I did.

Q Then you did tell him that? How did you come to sign that paper that said you didn't know anything about the accident? A I didn't
10 take particular notice of that at the time when I signed because I wasn't hurt. It didn't bother me.

Q Did you think when you signed the paper that it told the story that you told here? A What do you mean?

Q Did you think that this paper included the matter that is in it—the history of this accident such as you have given us, and such as you say you had given this man? Did you think that? A
20 At the time I read that paper—he came in the afternoon—it was the first day I was out of bed—one of my eyes was tied up from the knock in the head that I got. That is why I didn't pay particular attention to what I was reading.

Q Is that the reason? A Why, yes.

Q Did you think when you signed it that it was different from what it is? A Why, surely.

Q So that your explanation is that when you signed it you signed something that you thought
30 contained a version of this case such as you have given us? A Yes.

Q Didn't you know that this writing was likely to be put to some use? A No.

Q What did you think it was for? A I thought he just came to me to find out how the accident happened and that that was all.

Q Didn't you think it was important to see whether the thing you signed was really the
40 truth? A Well, yes.

Norma Dolan, re-direct.

Q But you didn't do it. A I don't remember reading it over at the time and reading some of the things in it that are in there now.

Q Do you think it has been changed? A I don't know, but I don't remember seeing some of those things there.

Q Can you look at it and point out the things that you say were not there when you signed it (handing paper to witness)? A It seems just as I told you. Different things I don't remember reading here. I don't remember seeing them. 10

Re-direct examination by Mr. Bedford.

Q From anything that occurred at the time that he was at your house, can you tell us whether you were the first one he had been to see after the happening of this accident? A No, I could not say. 20

Q Did you tell him all about the accident or did you tell him something about the accident? A He asked me different questions and then there was one came in the afternoon. There was two came that night.

Q Were there four of them altogether? A No, only one in the afternoon and two came that night. 30

Q Three altogether? A Three.

Q They all asked questions? A They told me not to sign anything at home.

Q Who wrote down the statement that you signed? A The man down there (indicating).

Q Did you say you had one eye bandaged at the time? A One eye bandaged.

Q How soon was this after the accident? A The day after the accident. 40

Mary Toresky, direct.

Q You say you didn't think anything was going to come of this? A No, I didn't. I didn't think what I told him would have anything to do with anybody else.

Re-cross examination by Mr. Coult.

10 Q Who were the other two men? A Public Service men.

Q They told you not to sign any paper? A They asked me if I signed anything and I said I signed one this afternoon. They said, "You should not have signed that."

Q They were from the Public Service? A From the Public Service.

Q Are you sure about that? A Positive.

20 Q They told you not to sign anything? A They told me I should not have.

MARY TORESKY, sworn in behalf of plaintiff.

Direct examination by Mr. Bedford.

30 Q Miss Toresky, were you in the bus on March 12, 1923, at the time of the accident near Center and Main street? A Yes.

Q Where did you board the bus? A On North Center street.

Q Where was the bus when you boarded it? A On the right-hand side of Center street.

Q From the time that you got into the bus where did the bus go? A It turned to the right up Main street and then I think it backed out. At the time I was talking to a girl and I didn't see the trolley car coming. The first thing I

40

Mary Toresky, direct.

knew I was on the floor of the bus and then I knew I was out alongside Mrs. Smith with her head cut open and then they took her to the hospital in the ambulance and then I was taken home.

Q You said that you were talking to some girl? A Yes.

10

Q Did you make a statement regarding this accident? A I made a statement but I don't remember putting anything down on the statement.

Q At the time that you were knocked on the floor do you know whether the bus was moving or standing still? A Why, I could feel the bus sliding.

Q Which way was it sliding? A Towards up West Orange way.

20

Q Do you know whether it was sliding forward or backward or sidewise? A I think sidewise.

Q Which side of the bus were you sitting on? A I really could not tell you, but I think I had my back toward the trolley car.

Q Just before you were thrown to the floor do you know whether the bus was moving or standing still? A I really could not tell you.

Q How did you know from anything except from being thrown to the floor what had occurred? A I could not tell you.

30

Q In other words, what was the first thing, if anything, that you knew of an accident? A I heard a crash when I was on the floor.

Q How much of a crash was it? A I really could not tell you.

Q You say you felt the bus moving sidewise. How far did it move, if you can tell us? A I really could not tell you.

40

Mary Toresky, cross.

Q You say the next thing you knew you were out of the bus beside Mrs. Smith? A Yes, sir.

Q Tell us what her appearance was—what the condition of her clothes was? A Her head was cut open so that you could see the skull of her head. The girls alongside of her gave her some handkerchiefs to put on her head to prevent the blood running down on her clothes.

10

Q Did the blood run down on her clothes? A Yes, sir.

Q Did you say you were taken home or went home? A Well, I went home.

Q You didn't go to the hospital? A No, sir, I wasn't hurt enough.

Cross examination by Mr. Coult.

20

Q Was this bus moving or standing when it was hit? A I really couldn't tell you.

Q Can't you remember? A No, sir.

Q You made a statement in this case? A Yes, sir.

Q I show you three pages of what purports to be a statement by you and I call your attention to the signature on the statement. A That is my signature.

30 Q You knew what was in that when you signed it? A I really could not tell you.

Q You read it over? A I just read it over and signed it.

Q Let me call your attention to this portion of the statement: "The bus then started up and made a turn around the northwest corner and stopped in the westbound roadway near the curb headed west on Main street and then started to back up toward the westbound track at an angle headed northwest, as the driver intended

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Mary Toresky, re-direct.

to go north on North Center street." Do you remember it now? A Yes.

Q "There were about twelve or thirteen girls in the bus at the time. The bus was backing up slowly and when the rear wheels of the bus got between the rails of the westbound track I heard a crash and felt a bump." A Yes. 10

Q Is that the way that thing happened? A I could not really tell you.

Q Doesn't it help to refresh your memory? A No, sir, it was so long ago.

Q Was your memory fresh when you gave this statement? A It was two days afterward. I was excited.

Q Don't you think that you remembered it better then than you do now? A Yes.

Q Realizing that your memory was better at that time and seeing this, can you say that this is the way that accident happened? A Well, there is my signature. 20

Q I am not trying to force you to say anything, but looking at this statement and realizing at that time your memory was fresh aren't you willing to say now that that story as this gentleman took it down tells pretty nearly how the accident happened? A Yes, sir. 30

Re-direct examination by Mr. Bedford.

Q Where was the bus when it was hit? A Really I could not tell you.

Q If your back was to the trolley car at the time you were thrown to the floor do you know where the trolley car—

Mr. Coult: I object to that. It is argumentative. 40

Mary Toresky, re-direct.

Mr. Bedford: He asked her about a statement in which he claims she said—

The Court: I will admit it.

Mr. Coult: I didn't use the statement except to refresh her memory.

10 *By Mr. Bedford.*

Q Do you know where the trolley car was when the bus was hit? A My back was to the trolley car.

Q Do you know where the bus was when the trolley hit it? A No, I was talking to a girl at the time.

Q Then do you know whether the statement in that writing that when the rear wheels of the bus were between the rails it was struck is true or not?

20

Mr. Coult: I object to that as leading.

The Court: I don't know whether that is in the writing or not.

Mr. Bedford: It was read to her by Mr. Coult.

The Court: If it was read to her it is admissible.

Mr. Coult: I am objecting to the form of the question.

30

The Court: Read the question, please.

(The stenographer read the last question.)

The Court: What is the matter with the form of that question?

Mr. Coult: It is leading.

The Court: I will admit it.

Mr. Coult prays an exception to this ruling of the Court.

40 Exception noted as ground of appeal.

Mary Toresky, re-direct.

By Mr. Bedford.

Q Answer the question. A I really could not tell you.

Q You could not tell? A No.

Q At the time the man wrote down this statement that you have been asked about do you know whether you were the first one he had asked about it or not— 10

Mr. Coult: I object to that.

By Mr. Bedford.

Q —from anything that occurred at the time—

Mr. Coult: It appears that a man wrote it down. I have shown her the statement which is signed by her for the purpose of refreshing her memory only. I didn't use it for the purpose of contradiction because it does not contradict. She says she does not remember. I showed her a document signed by her and made when her memory was fresh and she said that looking at that refreshed her recollection. This is based upon the presumption that somebody was there and wrote down a lot of things not in that at all. 20 30

The Court: I will admit it.

Mr. Coult prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Court: Read the question, please.

(The stenographer read the last question as follows: "Question: At the time the man wrote down this statement—") 40

Mary Toresky, re-direct.

The Court: I won't admit that—any testimony that any man wrote it down.

By Mr. Bedford.

Q To whom did you make the statement that you signed? A To a man from the Public Service.

10 Q Did he write it down as you talked? A No, he wrote it down first and then I read it and then I signed it.

Q Where did he get the information that he wrote down in the paper? Did he get it from you or did he ask you questions, or how was this statement obtained?

Mr. Coult: I object to that.

20 The Court: I will sustain that objection.

By Mr. Bedford.

Q That part of the statement regarding where the bus was and regarding the trolley car—where did you get that information?

Mr. Coult: I object to that on the ground that it is not relevant.

30 The Court: I sustain the objection. You may ask her how that statement was taken. I am willing that that should be asked.

By Mr. Bedford.

Q Tell us how the statement was taken by this man from the Public Service.

Mr. Coult: May I object to this question? It is not material. She has not repudiated any of this statement. She has not said that

40

Dorothy Lennon, direct.

the things are wrong. She says that it does refresh her memory.

The Court: I will admit it.

Mr. Coult prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

10

By Mr. Bedford.

Q Tell us how this statement was taken. A He came into the house and sat down, and then he wrote it and then he let me read it, and then I read this statement in a hurry, and then I signed my name.

Q What time was it? A I really could not tell you what time it was.

Q Don't you recall what time of the day it was—morning, night or noon? A I think it was in the morning.

20

Q Were you employed at that time? A Yes, sir.

Q Was it before work or after work? A Oh, no, I was not employed. I was at home.

DOROTHY LENNON, sworn in behalf of plaintiff.

30

Direct examination by Mr. Bedford.

Q Where do you live? A 18 New street, Montclair.

Q Were you in the bus that had an accident on March 12, 1923? A Yes.

Q Where did you board the bus? A On the side of Mosler's drug store near Center street.

40

Dorothy Lennon, direct.

The Court: You will have to speak up a little louder. I cannot hear you. I cannot hear the witness.

By Mr. Bedford.

Q Tell us what you just said? A I boarded
10 the bus on North Center street.

Q Where on North Center street? A On the side of Mosler's drug store.

Q What did the bus do after you got into it?
A It started and went up Main street and backed across the tracks.

Q About how far did it go up Main street?
A Not very far.

Q Give us some idea of the number of feet or
20 tell us where it went to. A It went up in front of Mosler's drug store. I could not tell you how many feet.

Q Where is Mosler's drug store? A On the corner of Main and Center street.

Q Is it on the side toward West Orange or on the side toward Newark? A The drug store; it is on the side toward West Orange.

Q You say it backed. Where did it back to?
A It backed on the trolley tracks.

Q How far on the tracks did it get? A It
30 didn't go off the westbound trolley track.

Q It didn't go off? A No.

Q Where were you sitting when it was on the trolley track? A On the opposite side toward the trolley from the end that was hit.

Q What was it hit with? A A trolley car.

Q When did you see the trolley car that hit the bus? A It had just about hit Canfield street when I saw it.

Q Where was the bus when the trolley car
40 had just about left Canfield street? A It was

Dorothy Lennon, direct.

on the tracks. It was just about to reverse his brakes and go over to North Center street again.

Q Did you see the trolley car again after that? A No.

Q Can you tell us whether at the time the trolley car struck the bus the bus was moving or standing still? A I just could not remember. 10

Q I mean the bus. Can you tell us whether the bus was moving or standing still? A I don't remember.

Q You say he was about to reverse the levers? A Yes.

Q What, if anything, occurred from the time he was reversing his levers until the bus was struck? A The trolley car came up in full speed before he had a chance to get off the tracks. If he had stopped at the safety isle the driver would have had a chance to get off the tracks. 20

Mr. Coult: I move to strike that out.

The Court: Strike that out.

By the Court.

Q Just tell us what happened as you saw it.

By Mr. Bedford.

30

Q Tell us what happened from the time you saw the car leaving Canfield street until the bus was struck. A The bus backed up on the tracks. As it was backing up I turned my head that way and I saw the trolley coming. I didn't think any more about the trolley car. Just as he got to the last track and went to reverse his brakes and he was just ready to start when the crash came.

40

Dorothy Lennon, direct.

Q Where was the crash with relation to where you were sitting? A It hit the corner that I was in.

Q What corner? A The one opposite to the driver.

10 Q What side was the driver sitting on? A I think he was on the left side.

Q Then it wasn't the right? A Yes, the right-hand side.

Q What corner was hit? A The end corner.

Q The front corner or the rear? A The back corner.

Q Where was that back corner with relation to the westbound track at the time it was hit. A It had not got off the tracks.

20 Q Can you tell us whether it had moved at all from the point where you said he was reversing his brakes to the point where it was struck or were they the same points? A I don't remember.

Q What happened to you when the bus was struck? A My leg was hurt and I got a scratch in the face.

Q How did you get this injury? Were you sitting in the bus? A I was sitting in the bus and it knocked me off my feet.

30 Q What happened to the bus itself when it was struck? I don't mean damage to the bus; I mean did it stand still? A No, it didn't. It hit that end and turned it around.

Q Where was the front end of the bus before it was hit? A What way was it pointing? A Toward North Center street.

Q What way was it pointing after it was hit? A Not quite to Newark; not quite facing Newark.

40

Dorothy Lennon, direct.

Q When the trolley car hit the bus on the rear end how far did it move it? A I could not tell you.

Q Do you know where the bus was after the accident was over with relation to the curb of Center street and to the drug store, and so on?

A Well, it was facing toward through North Center street then, after it was hit. 10

Q Where was it located? A On Main street, facing that way (indicating).

Q Was there a safety isle at the easterly side of North Center street? A Yes.

Q Where was the bus with relation to the safety isle after the accident—after it stopped moving when the trolley car had hit it? How far was it from the safety isle? A I could not tell you. 20

Q Did you see Mrs. Smith at the time? A Not until she got into the ambulance.

Q Were you in the ambulance? A Yes.

Q Who else was in the ambulance? A Miss Ellison, the motorman, Miss Smith and myself.

Q Did you notice where the trolley car was after it had struck the bus? A No, I didn't notice then, but after I was going in the ambulance—there was two men put me in the ambulance—I turned my head—I don't know whether it was to the right side, and I saw the front of the trolley car all smashed. 30

Q What part of the front? I want you to describe it a little more particularly. A I sat on the left. I don't remember exactly. I can remember the trolley car being all smashed at the front.

Dorothy Lennon, cross.

Cross examination by Mr. Coult.

Q Were you before your marriage Miss Dorothy Knell? A Yes.

Q Before you were married I think you signed a statement with reference to this accident, didn't you? A Yes.

10 Q I show you three sheet which all bear the signature "Dorothy Knell" and ask you if this is your signature (handing paper to the witness)? A Yes, sir.

Q That statement was taken two days after the accident? A I don't think it was that long after the accident.

Q It seems to bear date March 14, 1922, 12:30 P. M. A I didn't think it was that late. I could not tell you. There were so many callers.

20 Q Was it taken at your home? A Yes.

Q There were a lot of people bothering you about this accident? A Yes.

Q This was the only man you saw from the Public Service? A I think it is.

Q The others were from somebody else? A I think so.

Q You told the gentleman who took this statement how the accident happened? A Yes, sir.

30 Q As you told him he wrote down, I suppose, on these sheets what was said? A Yes, sir.

Q And then afterwards you were asked to read these statements, weren't you? A He didn't say nothing to me about reading it; just handed it to me and told me to sign my name.

Q Did you read it? A No, I didn't. I was in too much pain in my leg.

Q Do you mean that you signed these papers without looking at them? A Yes, sir.

40 Q You didn't know what was in it? A No.

Dorothy Lennon, cross.

The Court: Did she say that he read that paper to her?

The Witness: He handed it—

Mr. Coult: He handed it to her.

By the Court.

Q Did he read that to you? A No, he didn't read it to me. 10

By Mr. Coult.

Q He just handed them to you? A Yes.

Q And told you to sign them? A Yes.

Q Without his reading them? A He didn't read them, either.

Q It is a fact that you took this bus on North Center street? A Yes. 20

Q It is a fact that the bus turned around a corner into Main street and stopped on the west side in the westbound roadway of Main street? A Yes.

Q And that is in front of Mosler's drug store on the corner? A Yes.

Q And it is a fact that the bus stopped long enough here to be put into reverse? A Yes.

Q I notice it says here that the driver intended to back up and then proceed on Center street. Was that your idea of it? A Yes. 30

Q Is it a fact that the bus was standing closer to the north curb than to the trolley tracks, but that you could not just say how close? Do you remember telling this gentleman that? A Yes.

Q That is all correct? A Yes, that is all correct.

Q Is it a fact that when the bus started to back, the driver swung the bus to the right so 40

Dorothy Lennon, cross.

that it backed over toward the westbound track at an angle headed northwest? A Yes.

Q That is true? A Yes.

Q "It was backing up slowly, and just as the rear wheels of the bus got on the westbound track I heard a cash and felt a bump which threw
10 me forward to the floor of the bus." Was that true? A Yes.

Q Is that true? Is it a fact that the bus was backing when it was hit? A I don't remember exactly whether it was moving or whether it had stopped.

Q Can you say it was going backward or had it stopped when it was hit? A I could not remember.

Q You don't know? A No, I don't know
20 whether it was going or stopped.

Q Do you know that in the statement it says here that the bus was going backward? Does the fact that that is in the statement qualify your recollection at all? A I don't remember that.

Q Is this a fact: that the first you saw of the trolley car was when the bus turned into Main street? A No, sir.

Q That is not a fact? A No.

Q Is this a fact: that you happened to turn
30 around and saw the car about to pass into the safety isle east of Center street? A No; it had just about left Center street.

Q That is all wrong? A Yes, that is wrong.

Q "The car seemed to be slowing up. I cannot say whether it had stopped." Is that a fact? A No, I don't remember it.

Q Is this a fact: that you didn't see the car after that again until after the bus was hit? Is that a fact? A Yes.

40

Dorothy Lennon, cross.

Q You see, what the statement says is this: that as your bus was turning into Main street you looked back and saw the car near the safety isle slowing down and didn't see it again until after the accident. A No, that is not true.

Q You didn't know that that statement contained any such matter as that? A No, I didn't know what was in it. 10

Q You were taken away in an ambulance? A Yes, sir.

Q With the motorman? A Yes, sir.

Q And with Miss Smith and Miss Ellison, who were also injured? A Yes.

Q That you were employed by the Nevins Church Press for four years at \$15.30 a week? A Yes.

Q It is also true that you heard no gong on this car sounded? A I don't remember any noise at all. 20

Q If that is here, that is a fact? A Yes.

Q It is true that the driver of the bus blew his horn when he started to back up? Do you remember that? A Yes.

Q It is true that this bus was used to transport female employees only? A Yes.

Q It is true that you didn't know what damage was done to the bus? A Yes. 30

Q Of all the things that I have brought to your attention in connection with this statement the only ones that may be incorrect are those which state the time when you saw this trolley car and the way the car was moving? A Yes.

Q And as far as the bus is concerned you don't know whether it was backing or not at the time of the collision? A No, sir; I do not. 40

Dorothy Lennon, re-direct.

Re-direct examination by Mr. Bedford.

Q Where was it at the time of the collision?

A It was on the tracks.

Q On which track? A The westbound track.

10 Q Do you know that? A Yes.

Q Are you sure of that? A Yes.

Q Do you know how much of it was on the westbound track? A No, I could not say exactly how much, but it did not go off the westbound track.

Q Was it moving when the driver was shifting his gears? A I don't remember.

Q You don't remember whether it was moving when the driver was shifting his gears? A
20 No.

Q When was it struck with relation to the driver shifting his gears? Was it before he shifted or after he shifted gears, or at the time he was shifting his gears? A That I could not say.

Q You could not say whether he shifted his gears before it was struck or after, or at the time it was struck? A No, I could not say exactly.

30 Q Did you see him start to shift gears? A I just saw him put his hand down. I didn't pay any more attention to it.

Q Did he do that after you were injured or before? A Before.

Q Where was the bus then? A On the westbound track.

Q Have you told us everything that you told this man who came to take your statement? A No, there was one remark that the motorman passed.
40

Howard Farley, direct.

Mr. Coult: I object to that.

By Mr. Bedford.

Q Did you tell him about the remark that the motorman passed? A I don't remember whether I did or not.

Q Do you know whether it is in the statement or not? A I could not say. 10

Mr. Coult: I neglected to mark this statement so I will ask to have it marked for identification—the statement of Dorothy Knell.

(The paper referred to was marked D. 2 for identification.)

20

HOWARD FARLEY, sworn in behalf of plaintiff.

Direct examination by Mr. Bedford.

Q Mr. Farley, you are the driver of the bus that was in the accident on March 12, 1923? A Yes.

Q By whom were you employed? A The Nevins Church Press. 30

Q On that morning just before the accident where did you take on any passengers? A North Center and Main.

Q On what part of the corner of these streets was the bus when you took on the passengers? A On the side that Mosler's drug store is on.

Q On what street? A Center.

Q Where did it go after it took on these passengers? A Drove west on Main street. 40

Howard Farley, direct.

Q How far? A About twenty feet.

Q Then what did you do? A I backed up.

Q How much did you back up? A I backed up—pulled up to my right and backed up across to the westbound track, and was on the track long enough to change gears—a few seconds.

10 Q What direction did you go when you backed? A Across.

Q Across, I know; but were you headed toward the Orange Mountains on Main street when you went that twenty feet? A Yes.

Q What did you do with your wheels? How did you turn your wheels to back out? A I pulled my wheels to the left.

Q What did that do with the back of your truck? A That threw my back to the south on
20 Center street.

Q How far back on to the tracks did you get before you started to change gears? A I got back with my rear wheels to the center of the westbound track.

Q Did you change gears? A I was about to change gears.

Q What were you doing when you were about to change gears? A Threw it into reverse and changed from reverse into first and started up.

30 Q Threw from reverse to first and started up? A As I started up I was hit.

Q Where? What part of your bus was hit? A The right-hand side.

Q What was it hit by? A By a Public Service trolley car.

Q Where was the bus with relation to the two curbs of Center street when you started up just before you were hit? A I don't just understand you.
40

Howard Farley, direct.

Q You know North Center street. Were you going north into North Center street? A Yes.

Q There are two curbs; one toward the Orange Mountains and one toward Newark on Center street? A Yes.

Q Where were you in relation to those curbs? Were you over on the side toward the mountains or the side toward Newark or the middle, or where were you when you started to go forward? 10

A I wouldn't just make a statement as to what the distance was, because I don't know exactly.

Q Where were you with relation to the safety isle at the northeast corner of Main and North Center streets? A I would say about twelve feet or something like that.

Q When the trolley car hit your bus what happened to it? A Hit the bus; then shoved it after it hit it off the tracks. 20

Q How far did it shove the rear of the bus off the track, if you know? A I should say about ten or twelve feet.

Q After you took on your passengers and turned around there and backed, when did you first see the trolley car? A Before I started to back up.

Q Where was the trolley car then? A Just approaching Canfield street. 30

Q Approaching Canfield street? A Yes, just coming into Canfield street.

Q What did you do? A I blew my horn and started to back.

Q When did you see the trolley car next? A The next time I saw the trolley car was when I was about to start up. I was just entering the safety isle.

Q When you were about ready to start up? A To start up. 40

Howard Farley, direct.

Q Where was the bus then? A The bus was in the center of the westbound track.

Q Where were you going to start? In what direction? A To go north on Center street.

Q Your bus has a left-hand drive? A A left-hand drive.

10 Q How heavy a truck or jitney bus body was it? A Three and a half ton.

Q What kind of body was it—glass or all wood? A Only the windows are glass.

Q How about the door of the bus? Has that windows or is it all wood? A Partly.

Q Where was the door? A The door is on the right-hand side.

Q Opposite you? A Yes.

20 Q Has it a glass top or a wood top? A A glass top.

Q You say the trolley was entering the safety isle. Did it stop at the safety isle? A No, it didn't.

Q When it hit the bus was it a light tap or not? A There was quite a crash; hard enough to turn the bus around.

Q What kind of day was it? A Drizzly and rainy.

30 Q Had the pavement become entirely wet or was it partly dry or all dry? A Wet.

Q How about the tracks? A The tracks were wet.

Q Do you know how the trolley car was going from the time that you say it was about to enter the safety isle up to the time it hit your bus? A It had not changed its speed.

40 Q Did you see anything of the motorman? A He was standing in the front of the trolley driving it.

Howard Farley, direct.

Q What do you mean by just about to enter the safety isle? A I mean just approaching the safety isle.

Q About how long was that safety isle; do you know? A I could not tell you exactly.

Q How long was the trolley car? A I could not tell you that. 10

Q How long is your bus? A The bus is twenty feet.

Q Was the safety isle as long as your bus? A About twice as long.

Q Did you get your gears into first speed? A I did, yes, and was pulling out.

Q Doing what? A Starting up just then.

Q After the accident, after the car had struck the bus, can you tell us where the back of your bus was with relation to Mosler's drug store? A Why, it was right in front of Mosler's drug store after it was struck. It was turned around. 20

Q Who were these girls that were in the bus? What relation did they have to you? How did you pick them up? A They were employed by the Nevins Church Press.

Q What happened to you at the time of the accident? A I was thrown from the seat.

Q Where did the trolley car go with relation to the bus after it had struck it? A Came as far as—after it shoved the bus off, it seemed to have come to a stop. 30

Q Did you tell us how this bus was headed after the trolley car had hit it? A Yes. The front of the bus was headed toward Newark.

Q Where was the right rear corner with relation to the trolley tracks after the trolley car had stopped? A Shoved completely clear of the tracks. 40

Howard Farley, cross.

Q Where was the trolley car? A The trolley car was standing beside the bus.

Q Did you back into that trolley car? A I did not.

Q What part of the bus was hit by the trolley car? A The right-hand side.

10 *Cross examination by Mr. Coult.*

Q Where do you live? A Center Place, Orange.

Q How long have you lived there? A Five years.

Q Are you still employed by the Nevins Church Press? A Yes.

Q How long have you been with them? A Five years.

20 Q How long have you driven an automobile? A Ten years.

Q How long have you driven for the Nevins Church Press? A Four years.

Q So that for a year you worked for them without driving for them? A No, starting to drive.

Q You were starting? A I wasn't driving steady. I wasn't driving steady when I started for them.

30 Q At the time of the accident were you driving any bus except this one? A I was not.

Q Were you driving any other vehicle except the bus? A I was driving a tractor.

Q A what? A Tractor.

Q How frequently did you drive the bus? A Night and morning.

Q Twice a day? A Twice a day.

40 Q How far was the place where this accident happened from the Nevins Church Press? A I don't know exactly.

Howard Farley, cross.

Q Had you been down there before? A Yes.

Q Haven't you any odometer on your bus?

A No, I haven't.

Q You didn't know what the distance was?

A No, I didn't.

Q How many blocks is it or how long did it take you to run? A Fifteen minutes.

Q Where is the Nevins Church Press? A 10
Midland avenue.

Q They are makers of books? A They print labels.

Q In going from the place where the accident happened to the factory of the Nevins Church Press, you were going out North Center street, were you? A Yes.

Q You intended to go there on this day? A Yes.

Q You knew that there were trolley tracks on Main street? A I do. 20

Q You knew that the trolley tracks were wet? A I do.

Q Did you know that that makes some difference in the distance within which a trolley car can stop? A I didn't.

Q Did you suppose that a trolley car could stop just as quickly on a wet rail as on a dry rail? A I don't know anything about trolley cars. 30

Q You didn't take that into calculation when you stopped on that track? A No.

Q You went out on the track on a wet day just the same as you would on a dry day, didn't you? A Certainly.

Q Did you look for trolley cars or anything when you started your bus? A Yes.

Q Which way did you look? A I looked down toward Newark. 40

Howard Farley, cross.

Q Did you look to the right? A Up toward Day street.

Q You say this is a left-hand drive? A Yes.

Q How many people were in the bus? A I should imagine eighteen.

10 Q Could you look back through the bus from your seat? A Yes.

Q Through the bus? A Yes.

Q Were any of the girls standing? A No.

Q Were they all seated? A They were all seated.

Q Which way did you look? A Both ways—down and up.

Q What did you do in order to look? A Looked through my glass.

Q Which glass? A Through my glass in the door.

20 Q Which door? The side door? A In my door of the entrance.

Q You were headed west when you started? A Headed west?

Q Yes. A This is when I was coming back.

Q I mean when you started to back. A I am looking straight down Main street.

Q I mean before you started to back you were headed west? A Headed west, yes.

30 Q Parallel with the curb? A No.

Q How were you? A Yes, parallel. What do you mean?

Q Were your back wheels as near the curb as your front wheels? A No, they were not.

Q How much farther away were they? A Away about in the center of the street, the center of Main street. I should say about four feet from the curb.

40 Q Both of your wheels were four feet from the curb or were the front wheels nearer than

Howard Farley, cross.

the rear? A Both the same; headed straight out down Main street.

Q Where? A West.

Q But if you were coming down you had to look back? A I looked straight back through the bus.

Q What do you mean by looking through the back? A I mean looking through the door. I mean when I was on the track about to start up. 10

Q Before you started did you look out? A I looked straight back.

Q What did you see? A I saw the trolley car approaching Center street.

Q Where was it? A Approaching Center street.

Q How far away? A I don't know the distance of the block. 20

Q Was it as far as a block away? A It was more than a block away. It was just entering Canfield street.

Q You said Center street. You didn't mean that? A Canfield street.

Q You mean Canfield street? A Just entering, that is, getting to Canfield street.

Q Was it going fast or slow? A I don't know. 30

Q You didn't take that into your calculation when you started to back out on this track? A I didn't.

Q Now, you were parallel with the curb and you were about twenty feet beyond the corner, were you not? A Yes.

Q How near the safety isle did the accident happen? A To the safety isle? I should judge about twelve feet. 40

Howard Farley, cross.

Q So that you backed from a point twenty feet beyond the corner to a point twelve feet west of the safety isle? A Yes.

Q And the safety isle is on the east side of Center street? A The east side?

Q Yes. That is, going west, going out
10 toward West Orange, you come to the safety isle before you come to Center street. A Before you get to Center street?

Q Yes. A One way you do and one way you don't.

Q Which way do you? A Coming up Main street from the direction of Newark you hit the safety isle before you hit Center street. Coming down you do not.

Q Coming up from Newark you come to the
20 safety isle before you come to Center street? A Yes.

Q You backed from a point twenty feet beyond Center street down to a point twelve feet beyond that safety isle? A Yes.

Q So that you went twenty feet to get to Center street? A Yes, about fifteen feet or something like that.

Q What? A About fifteen feet. I am only
30 imagining that. I don't know the exact distance.

Q You said twenty feet. A I would not say, because I don't know the distance.

Q Whatever it was, you had to cover that before you got to the safety isle? A Yes.

Q Then you had to back out to the track? A No, across the track.

Q You didn't get on to the track before the point where you were hit, did you? A Yes.

Q You were backing out on the track all the
40 time? A Yes.

Howard Farley, cross.

Q In order to do that you had to turn your wheel to the left as you came around? A Yes.

Q You made an arc, a circle, from the place where it was standing and went out into Center street? A Into the line of Center street.

Q Yes, and came out from the west line of Center street and went partly across Center street to get down to that safety isle? A On Main street. 10

Q You went across the line of Center street and made a curve? A Something like that.

Q Backed to a point about twelve feet from the safety isle? A Yes.

Q While you were doing that did you look at this trolley car at all? A I am looking at the trolley car all the time.

Q What were you looking through? A I was looking through the rear until the rear of my bus was headed across Center street; then I looked through my door. 20

Q Were you watching anything else? A Watching both ways.

Q Part of the time you were looking one way and part of the time you were looking the other way? In fact, you were looking all the way around? A First one way and then the other way. 30

Q There was no officer on that corner? A No, there wasn't.

Q You had to look out for vehicles coming south on Center street and north on Center street and west on Main street? A No, I didn't have to look out for them—just coming in on Center street—because Mr. Evans did that for me.

Q You had to watch Mr. Evans? A Mr. Evans helped me by calling to me. 40

Howard Farley, cross.

Q So that you were looking for traffic on Main street and he was looking for it on Center street? A Yes.

Q It can't be that you have made a mistake and that you were looking for them on Center street and the other gentleman was looking for them on Main street? A No.

10 Q When did you make that arrangement? A Always. He was the guard on the bus.

Q What? A He was lookout man on the bus.

Q Did you have to look out for one street or both? A He is my lookout man.

Q As a matter of fact he is the man you depend on? A Sometimes; when it was impossible for me to see in both directions, why, yes.

20 Q Was it impossible for you to see in both directions this time? A I could not see through Center street. I was watching Main street.

Q Why? A I am backing down Main street.

Q You were coming back and your bus was between you and the trolley. You can look out on Center street easily? A No.

Q What was to prevent you from looking through the window out on Center street? A I was watching my trolley car come.

30 Q So it was watching the trolley car that kept you from looking on Center street? A Yes.

Q As you came down in the curve your bus was most of the time between you and the trolley car? A The bus between me and the trolley car?

Q As you backed around you swung the body of the bus between you and the trolley car? A No, I backed it toward the tracks.

40 Q Before you started you were going the same way as the trolley car was going, weren't

Howard Farley, cross.

you? You were standing facing the same way as the trolley car was going? A Facing the same way? Yes.

Q And you have a left-hand drive? A Yes.

Q Just as soon as you turned your bus so as to place the body of the bus between you and the trolley car you said you looked through the bus? A I would have to look through my door to see the trolley car if I had made my turn. 10

Q Isn't it a fact that while you were backing you were depending on this other gentleman to look for you? A No. As far as the trolley car is concerned, I am watching the trolley car myself.

Q You were depending on him to look out for everything else? A Yes, everything that came on Center street. 20

Q As you backed from the position where you had been by the curb to the point from which you were going to swing into Center street did you keep on watching this car? A Yes.

Q Between the time you started to back and the time when you got on the track did you have any chance to look to see whether the trolley car was coming slow or fast? A I didn't notice.

Q You were not interested? A I didn't notice. 30

Q I thought you said that you had your undivided attention on this trolley car; looking at it so attentively that you could not look anywhere else? A The trolley car wasn't near enough and it wasn't going at any rate of speed such as to make me expect to hit it. If it had stopped at the safety isle to take on passengers it would not have hit me. 40

Howard Farley, cross.

Mr. Coult: I move that that be stricken out.

Mr. Bedford: I object to striking it out.

The Court: Strike it out.

Mr. Coult: Will you please repeat the last question?

10 (The stenographer read the last question.)

By Mr. Coult.

Q Is that so? A I was watching my trolley car all the time I am backing.

Q You were not watching anything else at all? A Anything that might be coming.

20 Q I thought you said a little while ago that you depended on the other gentleman to look out? A Anything that might be coming up Main street.

Q Isn't it a fact that as you were backing you were not only looking for the traffic on Main street but also for that on Center street? A No, sir.

Q That is not a fact? You were interested only in traffic on Main street? A On Main street.

30 Q Then your interest was only in the west-bound traffic? A That was the only thing I was interested in.

Q You were not intending to go into the east-bound track? A No.

Q Then the westbound track was the only thing you were interested in? A Yes.

Q You were watching this trolley car all the time? A Yes.

40 Q You didn't notice the rate of speed at which it was going at any time before it hit—

Howard Farley, cross.

whether it was going fast or slow? A I don't know.

Q You don't know now whether it was going fast or slow? A No, but it must have been going at some gait to turn the bus around.

Q You know that it must have been going fast because you are judging cause from effect? 10
A I don't understand you.

Q I will withdraw it. You continued to watch the trolley car as you passed, did you? A Yes.

Q When you started to go on to the track after having backed from the position down by the drug store, how far was the trolley car away then? A The trolley car then was twelve feet away from the safety isle.

Q Twelve feet which side of the safety isle?
A On the opposite side of the safety isle. 20

Q When you were on the track you were twelve feet on one side of the safety isle, and the trolley car was twelve feet on the other side of the safety isle? A Yes.

Q Were you backing fast or slow? A Slow.

Q Did you have your car under control?
A I did.

Q Have you any idea how fast you were going—in miles per hour? A I haven't. 30

Q Can you give us any idea? Tell us whether it was five, eight, or ten. A I cannot.

Q Was it as fast as ten miles an hour? A I don't know. I think not.

Q You think it was slower than that? A Yes.

Q Do you think it was as fast as five miles an hour? A I don't know.

Q Within what distance, traveling backward as you were approaching that track, could you 40

Howard Farley, cross.

have stopped that bus if you had done your best?

A In case of accident, do you mean?

Q Yes. A I could stop it right on the dot. I have good brakes.

Q You could stop just as soon as you put on your brakes? A Certainly.

10 Q When you went on to the track was the trolley car going as fast as it had been going before or had it slowed down? A I don't know.

Q Do you mean to say that you drove on that track without determining whether it was going fast or slow? A It wasn't within a distance to hit me if it was going—

Q You were twelve feet on one side of the safety isle and he was twelve feet on the other side? A Yes.

20 Q That is, when you went on the track? A Yes.

Q You could stop your bus instantly, if you wanted? A Yes.

Q You say that you made no observation to determine whether this car was going fast or slow? A I depended upon the trolley car picking up its passengers. I had already backed on to the tracks, and the trolley car had not yet reached the safety isle.

30 Q I am talking about the time when you went on the tracks. You told me that the trolley car, when you went on the track, was about twelve feet from the safety isle? A As near as I can say. I don't know the distance.

Q At that moment when you were going into danger backwards you didn't observe whether that trolley car was— A There was no danger when I started to back up.

40

Howard Farley, cross.

Q When you were going into the path of the trolley car and it was that distance away, you didn't observe whether it was going fast or slow? A I imagine it was that distance; I don't know.

Q You are giving us your best judgment? A As near as I say it now. It has been quite a while ago since the accident. 10

Q How long is this block between Center street and the next street? A It is more than an ordinary block, because on this side is an alley, and that has taken up that space here (indicating).

Q You say then that you went on to the tracks and stopped; is that right? A That is, a few seconds—long enough to change gears.

Q When you stopped, how close was that trolley car? A Just about coming into the safety isle. 20

Q How near to you? A Coming into the safety isle.

Q What do you mean by that? How far was it away at the time that you got on to the tracks? A I say it was twelve feet away from the safety isle.

Q How far away was this trolley car when you went on the track? A When I went on the track? 30

Q Yes. A I don't know exactly.

Q So you went on the track without knowing how far away the car was? A It was at a distance for me to make my turn and get away.

Mr. Coult: I move that that be stricken out as a conclusion.

The Court: Strike it out. 40

Howard Farley, re-direct.

By Mr. Coult.

Q Is it a fact that when you went on the track you didn't know how far the car was? A When I went on the track?

10 Q Yes. A Not exactly. I could not say exactly how far it was. I know it was quite a way from the safety isle.

Q How far away would you say it was from the safety isle? A I don't know.

Q A little while ago you told me it was twelve feet. A I thought about that distance; I don't know.

Q Is that still your best judgment? A It has been quite a long time since the accident. I could not say definitely.

20 Q The gentlemen of the jury are interested in getting your best knowledge of it. Is that your best judgment? A As near as I can remember just now, yes.

Q When you got on the track and stopped your bus, where was the trolley car? A The trolley was pretty near to the safety isle.

Q How close was it then? A Just coming into the safety isle.

30 Q How near to you? A The distance of the safety isle.

Q Can you measure it in this room? A No, sir.

Q No? A The safety isle is longer than this room.

Q How much further than this room? A I could not say.

Q How long did you stand there before you shifted? A A few seconds.

40 Q What did you have to do? A Simply to go into reverse and come back into first.

Howard Farley, re-direct.

Q You had to release your clutch? A Yes.

Q That didn't take very long? A No, sir; a few seconds.

Q Were you standing or moving when you were hit? A Just starting up.

Q Were you moving or standing? A Just starting up; just moving. 10

Q You were moving? A Yes.

Q Were you moving forward or backward? A Forward.

Q You went back on the track, shifted gears, started, and were hit? A Yes.

Q Do you know Mr. Davis, the gentleman who was produced here Friday? A I have seen him. I don't know him personally.

Q How long have you known him by sight? A Just to see him. He drives for a coal company. 20

Q How long have you known him? A I should say about a year or two.

Q What kind of acquaintance have you with him? A I know him only to pass and speak to.

The Court: Is that cross examination?

Mr. Coult: I will withdraw it.

Re-direct examination by Mr. Bedford. 30

Q Counsel for the Public Service has asked you about your being 20 feet beyond the corner of Center street. What was 20 feet beyond the westerly curb of Center street—you as you sat in the bus or some part of that bus or what? A I figure that was my distance being away from it myself.

Q You said your bus was 20 feet long? A Yes. 40

Howard Farley, re-direct.

Q Where was the rear of your bus with regard to the corner? A The rear of my bus was just at Center street; just right in front of Mosler's drug store.

Q About how wide was it between the curb and the rail of the trolley track that you were backing up to? A Do you mean—

10 Q How wide a space? A I should say about four feet.

Q Between what? A Between the bus and the rail.

Q When you were parallel with the rail or at some other time? A Parallel.

Q How far did you have to back the rear of your bus to get onto the trolley tracks? A About six feet.

20 Q Is that with reference to the time when you started to back? A Yes.

Q Where was the trolley car at that time—when you had six feet to back the rear of your bus on to the tracks? A At Center street.

Q That is where you were— A I mean Canfield street. Pardon me.

30 Q You said to counsel, "I had already backened and was about to start up. The trolley car had not reached the safety isle and there was no danger." Is that true? A Absolutely.

Mr. Coult: I object to that as leading I don't think counsel has any right to take the statements of his own witness and repeat them and ask him if they are true.

The Court: I will admit it.

By Mr. Bedford.

40 Q When the trolley car was twelve feet away from the safety isle where were you then?

Howard Farley, re-direct.

Mr. Coult: I object to that. It has been answered.

The Court: I will admit it.

A Threw into neutral and going into first speed.

By Mr. Bedford.

10

Q What did you mean when you told counsel for the Public Service that when you were backing on the track the trolley car was twelve feet away from the safety isle?

Mr. Coult: I object to that as not being proper re-direct examination.

The Court: I will admit it.

Mr. Coult prays an exception to this ruling of the Court.

20

Exception noted as ground of appeal.

A Explain it, please.

Mr. Bedford: Read the question, please.

(The stenographer read the last question.)

A I meant that the car was about that distance when I started up. I had already backed.

30

By Mr. Bedford.

Q When you were backing to the turn—not when you were on the tracks backing, but when you were backing to the tracks and before you had come to the tracks—how far away was the trolley car? A Just entering Center street.

Q Center street? A Canfield street. I get these two mixed.

40

Howard Farley, re-cross.

Re-cross examination by Mr. Coult.

10 Q What did you mean when you told counsel in answer to his question as to what you meant when you said that the car was twelve feet away from the safety isle when you were getting on the track, that that was the time when you had got on the track and were starting to go ahead?
A I meant that that is the truth.

Q Let me ask you this question so that we will have no misunderstanding: It was not true when you told me that the car was twelve feet from the safety isle when you went on the track?

Mr. Bedford: I object to that. That is not what he told you.

20 Counsel asked when he was backing on the track.

By Mr. Coult.

Q Did you tell me the car was twelve feet the other side of the safety isle when you went on the track? Do you remember telling me that?
A No, I don't.

30 Q You don't remember our going over that two or three times? A (No answer.)

Q Let me ask you this: How far away was the trolley car when you started to back on the tracks? A At Canfield street.

Q Was it standing or moving between the time that you started to back on to the tracks and the time that you got on there? A Yes, it was coming all the time.

40 Q I thought you said you saw it at Canfield street when you started to back? A It was coming into Canfield street.

Marguerite Westervelt, direct.

Q By the time you got to the tracks it had only come to the safety isle? A At the time I got to the tracks it had reached almost to the safety isle.

Q I am asking you this: At the time you backed into this track—when you went into the path of that car—where was the car? A It was approaching the safety isle. 10

Q How far from the safety isle? A I couldn't say.

Q Have you talked this case over with Mr. Davis? A Davis? I don't know him.

Q The gentleman who was called in Friday. A The man on the safety isle?

Q Yes. A No, I didn't.

20

MARGUERITE WESTERVELT, sworn in behalf of plaintiff.

Direct examination by Mr. Bedford.

Q Miss Westervelt, were you in this bus that was in a collision with a trolley car on March 12, 1923? A Yes, sir.

Q Where did you get into the bus? A On Washington street. 30

Q Did it go to Center and Main streets? A They went right straight there.

Q Did it stop there? A On Center and Main.

Q Did it stop to let off or take on passengers? A To take on passengers.

Q When the girls got on at Center street tell us what the bus did from that time on. A It had to go up North Center street to get to West 40

Marguerite Westervelt, direct.

Orange. It turned to the westbound tracks and stayed there enough time to reverse brakes to go back to North Center street.

Q Did it take on any passengers after it turned around into Main street? A No.

10 Q When he was reversing his levers there what happened, if anything? A Well, a trolley car had come from Canfield street and had hit the bus.

Q Where were you sitting in the bus? A On the left-hand side next to Miss Smith.

Q How near to the driver were you? A I couldn't really tell you.

Q When did you first see the trolley car? A About a block away.

20 Q Where was the bus then? A On the westbound tracks, just reversing his brakes.

Q Did you see the trolley car as it came along? A Yes, I did.

Q What did the trolley car do? A It was coming full speed.

Q Did it stop anywhere? A No, it didn't.

Q Do you know whether there were any people on the safety isle? A I don't know.

30 Q As it came along there to the safety isle, tell us how it was going, as nearly as you can describe it? A I could not just exactly say, but I know it was coming fast.

Q How long did the bus stop on the westbound trolley tracks? A Just enough time to reverse brakes.

Q Had it been hit at that time by the trolley car? A I couldn't just exactly tell you.

40 Q When did the trolley car hit it with relation to the changing of the levers? A I don't know.

Marguerite Westervelt, cross.

Q What happened when the trolley car hit the bus? A Well, we all went over to Mosler's drug store.

Q What happened to you? A I had fell to the floor.

Q You fell to the floor? A Yes.

Q Was the driver fixing the brakes or levers before you fell to the floor or not? A I don't know. 10

Q What? A I don't remember.

Q When did you see him fixing the levers— before or after you fell to the floor? A Before.

Q Was the bus moving or standing still when he was fixing the levers? A Standing still.

Q Had the trolley car hit it then or not? A I don't know.

Q What made you fall to the floor? A Of course, when the crash came and the bus had turned. 20

Q How far did it turn? A I couldn't tell you.

Q How much of a blow was it that the trolley car hit the bus? A I don't remember.

Q What did you say to Mrs. Smith right after the accident? A Her forehead was bleeding. It was all cut open.

Q What? A Her forehead was cut open. 30

Cross examination by Mr. Coult.

Q You talked this matter over with other people before you came here, didn't you? A Yes, sir.

Q How many times have you gone over the history of this case before you went on this witness stand? A I don't know.

Q Several times? A No. 40

Marguerite Westervelt, cross.

Q With how many people have you talked?

A Just with Mr. Spengler of the Public Service.

Q Didn't you talk with anybody else before going on the witness stand here? A Just to the lawyers.

10 Q How many times have you talked to the lawyers? A Once.

Q With which lawyers? A With Mrs. Smith's lawyers.

Q What? A With Mrs. Smith's lawyer.

Q The gentleman at the table? A Yes.

Q With both of them? A Yes.

Q How many times? A Once.

Q Not more than once? A Maybe twice. I don't know.

20 Q Where? A Once at my house and once here.

Q At the Court House? A Yes.

Q How many people were present when you talked it over in the Court House? A I don't know.

Q Weren't all of you girls together or a number of you? A Not all of us.

Q Well, how many? A I don't know.

Q Half a dozen? A About that.

30 Q Where was it that you talked this over—out in the corridor? A Just out here.

Q In the corridor? A I don't know.

Q Some place outside the Court House? When was that? A The first day I had come here. It was on Tuesday.

Q How many times since you have been here have you talked it over? A Only once.

Q Have you talked it over with the other witnesses—the girls? A I had a conversation with them.

40

Marguerite Westervelt, cross.

Q Have you talked about what you were going to testify to? A No, I just expected to say the truth and nothing else.

Q Have you heard anybody say anything about the car standing on the track just long enough to shift brakes? A It was just about to reverse the brake and go to North Center street. 10

Q Has that been talked about outside this court room? A No.

Q You made a statement in this case? A Yes.

Q Here are two pages with a signature "Marguerite Westervelt." Is that your signature (handing papers to the witness)? A Yes, sir.

Q Did you sign these sheets after reading them or without reading them or how? A No, I didn't read them. 20

Q You signed it without knowing what was in it? A I don't remember.

Q Is that your best recollection? Isn't it a fact that you signed it without knowing what was in it? A I was just talking to the Public Service man about it.

Q Is it a fact that you signed it without knowing what was in it? A Just what I have said. That is all. 30

Q You don't answer my question. I am asking you if it is a fact that you signed it without knowing what was in it? Do you know now whether you knew what was in it or whether you didn't know? A I don't know.

Q You signed it without knowing what was in it? A Yes.

Q It is a fact that you were an occupant of this jitney bus? A Yes. 40

Marguerite Westervelt, cross.

Q And that it was southbound on North Center street? A Yes.

Q And that your sister and you along with several other girls boarded the bus at Day and Alden streets? That is true, isn't it? A Yes.

Q You told that to this man, didn't you?
10 A Yes, I told it to him.

Q That the bus made a stop on North Center street near Main street, where it picked up several other girls? A Yes.

Q It was running at the time? A Yes.

Q And that there were thirteen girls in the bus? A Yes.

Q That the bus then started up and made a turn around the northwest corner of Center and Main street and stopped in the westbound roadway of Main street near the curb in front of
20 Mosler's drug store right at this corner? Is that a fact? A Yes.

Q That you didn't then know the exact position of the bus when it stopped? That is a fact? A Yes.

Q "The bus just stopped long enough to be put in reverse and then started to back." Is that a fact? A Yes.

Q "The driver at the same time swinging
30 to the right so that it backed up toward the westbound track at an angle headed northwest." All that is true? A Yes, sir.

Q "Just as the rear wheels of the bus got over on the westbound track I heard a crash and a jar right near the corner of the bus, which threw me out of my seat to the floor of the bus." That is not true, is it? A It did throw me out of my seat.

Q It is a fact that just when the bus was
40 backing it was hit? A No.

Marguerite Westervelt, cross.

Q If you had known that that was in there you would not have signed it? A No, I would not.

Q "All the girls in the bus was thrown from their seats." That is true? A Yes.

Q Listen. "I did not see this westbound trolley car until after I got out of the bus, and never saw it before the collision." That is not so? A I did see the car. 10

Q I say, that is not true? A No.

Q If you had known that was in there you would not have signed it? A No.

Q "I heard no gong on the car sounded." That is true? A Yes.

Q "The driver of the bus tooted horn on the bus when it started to back." That is true? A Yes. 20

Q You told that to this man and he wrote it down? A Yes.

Q "I do not know the position of the car or bus was in after the collision." Is that true? A I don't remember.

Q "I felt pains in my back, head, and side after the collision." A I did.

Q Is that right? A Yes.

Q "My injury was slight. I had no doctor." Is that all true? A Yes. 30

Q "I lost one and one-half days from work." Is that true? A Yes.

Q "I earn \$13 a week." A Yes.

Q "I make claim for my injury and lost time." That is true? You are making a claim? A Yes.

Q "The front left-end of the car was smashed in." Is that true? A Of the car?

Q Yes. A I don't know anything about that. 40

Marguerite Westervelt, cross.

Q You don't remember? Is that it? You don't recall? A No.

Q "Most of the girls in the bus were cut and bruised." That is true? A Yes.

Q "Three of them and the motorman were taken to the hospital in an ambulance." A
10 Yes, sir.

Q So that of all the things in this statement, except some matters that you say you do not remember, everything is true except that portion which states that the bus was struck just as the rear wheel got on the track, and that portion which states that you never saw this trolley car until after the accident? Is that a fact? A I had seen the trolley car about a block away.

20 Q What I am asking you is this: All of the statement is true except those portions that deal with those two things? A I don't know about that.

Q I don't like to press you, but as I recall it you said that most of the statement is substantially true except two things? A Yes.

Q And those two things are that the bus was going backward when it was hit, and that
30 you didn't see the trolley car until after the collision? A Yes.

Q How do you explain that? Can you explain it? A No, I don't know about it.

Mr. Coult: May I have this paper marked for identification?

(The paper referred to was marked D. 3 for identification.)

Marguerite Westervelt, re-direct.

Re-direct examination by Mr. Bedford.

Q You were asked whether it was true that you had made a claim against the Public Service? A Yes, I did.

Q Have you any claim or are you making any claim against the Public Service now? A No, I am not. 10

Q Did you make a claim against them then?

A For the days I had been out; that is all.

Q Has that claim been satisfied?

Mr. Coult: I object to that.

The Court: I sustain the objection.

Mr. Bedford: He introduces this—

The Court: Take the objection and have your exception. 20

Mr. Bedford prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Court: It is irrelevant.

Mr. Bedford: May I just state to your Honor that I was attempting to show her interest. I want to show that her interest is not as he would indicate. That is my only purpose. I think it is relevant for that purpose. 30

The Court: Call your next witness.

Isabelle A. Parsons, direct.

ISABELLE A. PARSONS, sworn in behalf of
plaintiff.

Direct examination by Mr. Bedford.

Q Mrs. Parsons, you didn't see the accident?

10 A No, sir.

Q How long have you known Mrs. Smith?

A Since about 1906.

Q Did she work for you before the accident?

A She was employed in my house at that time
and worked for me.

Q Has she worked for you since the acci-
dent? A Yes.

20 Q When? A Since she severed her connec-
tion with the Nevins Church Press she has
worked for me when she could, one day at a
time.

Q How much did you pay her? A I have
paid her \$3.50 and her carfare.

30 Q Have you observed her ability to work or
any difference in her before the accident and
afterwards? A Yes. She was an unusual
worker before the accident—an excellent house-
cleaner—and could do things that other women
could not do. Since then I have not been able
to ask her to do heavy work.

Mr. Bedford: That is all.

Mr. Coult: No questions.

Mr. Bedford: That is our case.

PLAINTIFF RESTS.

Mr. Bedford: May I be excused for a
moment?

40 The Court: Yes.

Alfred Conner, direct.

A Juror: May I be excused, too?

The Court: Any of you gentlemen who wish to be excused for a moment may—

(Eight jurors retired for a few moments and returned.)

10

ALFRED CONNER, sworn in behalf of defendant.

Direct examination by Mr. Coult.

Q Where do you live? A 45 Bank street, Newark.

Q What is your business? A Chauffeur.

Q How long have you worked for your present employer? A Pretty near six years. 20

Q Did you ever work for the Public Service Railway? A Yes, about six months on the cars.

Q When was that? A That was in 1923.

Q In what capacity did you work? What did you do? A I was a motorman.

Q How long were you a motorman? A About six months.

Q Were you the motorman who was in charge of the car that was concerned in this accident? A Yes. 30

Q At that time how long had you been a motorman? A About six months approximately.

Q On what line were you working? A On the Orange line.

Q Which way were you going? A Towards West Orange.

Q Where did the accident happen? A At the corner of Center street and Main street. 40

Alfred Conner, direct.

Q Which street were you running on? A
On Main street.

Q At what point near that intersection did
this accident happen? Can you place it? A
Right on Center street.

10 Q That is a large crossing. At what point
in the crossing did it happen? A What do you
mean?

Q Was it to the west of the safety isle? A
West.

Q About how far beyond the safety isle? A
About 15 feet.

Q Where was this bus which was concerned
in this accident when you first noticed it? A It
was coming out of Center street.

20 Q Where were you then? A Standing right
in front of the safety isle towards West Orange.

Q Had you stopped? A Stopped and left
two passengers off the front.

Q Which end did the passengers get off? A
The front end.

Q When you stopped at the safety isle at
what part of the safety isle did you stop—near
the rear or near the front? A Near the front.

30 Q How far was the front of your car from
the front end of the safety isle? A About 15
feet from the front end of the safety isle.

Q How long did you stop there? A Only
just to let the passengers off.

Q Then what did you do? A I started up.
I got the bell to go ahead and I may have gone
about 15 feet. Then I happened to see him com-
ing back fast.

40 Q Where was he? You say you saw him com-
ing back fast? A Yes.

Alfred Conner, direct.

Q Previously to that where had he been? A He was about ten feet from the center of the street when he was coming back.

Q Had you seen him on the right-hand side of the street after he had turned out of Center street? A Yes, I seen him there.

Q Where was he then? A Right in the center of Main and Center streets. 10

Q Was he standing or moving? A He was coming back.

Q Had you seen him while he was standing still? A No.

Q How far had your car moved when you noticed him coming back? A Coming back.

Q How far had your car gone forward when you noticed him coming back? A I was moving at the time.

Q How far had you gone? A I was going about fifteen feet—just above the safety isle. 20

Q What did you do when you saw him coming? A I sounded the gong and didn't get any answer from him so I started to reverse the car in the oposite way but it being a wet morning, and slippery rails—

Q What was the condition of the rails? A A Pretty greasy.

Q What happened after you reversed the car? A Before I knew it he was right into me. Of course, he knocked me right to the floor and knocked me unconscious. 30

Q What part of the car and what part of the bus came together? A The front end of the car hit the bus at the rear—the rear end.

Q The right front corner? A The right-hand corner.

Q The front part of the bus? A Right.

Q The right rear corner of the bus? 40

Alfred Conner, direct.

Mr. Bedford: I object to this as leading.

By Mr. Coult.

Q Was it the front of the bus or the back?

A The back of the bus.

10 Q I understood you to say that it was the rear right corner of the bus. Is that right? A Yes.

Q How far did you go after the collision? A I went about ten feet.

Q What happened to the bus? A It was already inside the car.

Q What happened to the bus? A All I can say is that the corner of the bus was damaged a little.

20 Q Which way did the bus move? A I know I started to go back. The brakes started to give way. I realized that the brakes were slipping and started to slide back.

Q Did you get any injury? A I had a big bruise under my thigh.

Q Were you hurt anywhere else? A No.

Q What happened to you at the time of the collision? A It knocked me to the floor. All I remember is a man picking me up and putting me on the seat.

30 Q When you saw this bus coming back did you get any warning? A I didn't get any warning at all.

Q Did you see the chauffeur of the bus do anything? A No, sir, I didn't even see the chauffeur.

Q Could you see the chauffeur? A No.

Q Were you here when this colored witness, Mr. Davis, was sworn? A Yes.

40 Q Did you see that man around there? A No, sir, I never even saw another one.

Alfred Conner, cross.

Cross examination by Mr. Bedford.

Q This was the next to your last trip? A
It was.

Q You were in the ambulance with the plain-
tiff, Mrs. Smith, and with Mrs. Lennon? A
Yes, sir.

Q As you were going to the hospital you and
they talked about this accident? A Yes, sir.

Q That was a rainy, wet morning? A It
was.

Q Did you have sand in your car? A Yes,
sir.

Q Before the accident happened—that is, be-
fore you saw this bus, as you claim, backing into
you—did you drop any sand? A Yes, sir.

Q At the time you were at the safety isle, ac-
cording to your recollection, you didn't know
there was going to be any accident? A Of
course not.

Q When you stopped at that safety isle it was
nothing different from stops you had made dur-
ing the six months at that and many other safety
isles? A Yes.

Q Was there anything different? A Noth-
ing different at all.

Q Was there anything to fix on your mind
at that time that you stopped and let off a couple
of passengers? A I think not.

Q Did you stop at Canfield street? A No,
sir.

Q Are you sure of that? A No, sir.

Q You saw this bus when you were at Can-
field street? A I didn't see it at all.

Q You saw this bus coming out of Center
street into Main street? A Yes, and I left
Main street. I didn't see it at Canfield street.

Alfred Conner, cross.

Q Where were you when the bus was coming out of Center street into Main street? A Close to the safety isle.

Q You stopped there until you let off two passengers? A I did.

Q And then started up? A I did.

10 Q You got only fifteen feet, is that right? A Fifteen feet above the safety isle.

Q And you were going so fast at that time that you had to reverse your levers and put on your brakes and put sand on the tracks and yet you reached that bus, did you? A I wasn't going at a terrific speed at all.

Q You reached this bus, didn't you? A I reached the bus.

Q And you crashed into the bus, didn't you? A He crashed into me.

20 Q There was a crash? A There was a crash.

Q And the front of your trolley car was smashed? A It surely was.

Q And some of the bus was smashed? A Just about the corner of the bus.

Q And you went ten feet? A About ten feet, sure.

30 Q Center street is only about thirty feet wide, isn't it? A It may be a little longer than that.

Q You said that this collision occurred at the center of Center and Main streets when you first got on the stand. A Yes.

Q You sounded the gong and didn't get any signal back from him so you went on; is that right? A I sounded the gong, sure.

Q You said you didn't get any answer from him. A I didn't.

40

Alfred Conner, cross.

Q So that that was all right. A I had enough room to clear him.

Q You had enough room to clear him? Did you think so? A Surely.

Q When you came riding along there you thought you had enough room to clear that bus?

A I did.

Q You were on a slippery and sliding rail? 10

A I was.

Q You did all you could to stop the car? A I did.

Q And yet you slid into the bus? A Yes.

Q And that is how the accident happened?

A I suppose so.

Q You said in the bus to Mrs. Smith that you could not help it, that you could not stop the car; didn't you? 20

Mr. Coult: Just a minute. I object to that. I think counsel knows better than to ask such a question as that. The only thing he can interrogate this witness on is what he said that was really a contradiction. He would have to deny something first that had been specifically called to his attention.

Mr. Bedford: That is what I am doing.

Mr. Coult: Oh, no. You were asking 30 whether at a certain time and a certain place he didn't say a certain thing.

By Mr. Bedford.

Q Immediately after the accident as you were in the ambulance going to the hospital and Mrs. Smith was alongside you and Mrs. Lennon, who was on the stand here yesterday, didn't you say to her, "It was my fault, I couldn't stop the car, it slid?" 40

Alfred Conner, cross.

10 Mr. Coult: I object to that on the ground
that no basis has been laid for it. He has
not denied that the car slid and that he could
not stop it. That is all true. I didn't ask
whether this man said it was his fault.
That would be a conclusion. You see, before
a witness can be asked whether he has not
made a certain remark to a certain person,
the substance of that remark must first be
propounded to him and he must deny it.
Then he can be asked whether at a certain
time and a certain place he did not say
something in contradiction of that. He has
never denied here that that car slid. He
has never denied he could not prevent this
collision, because those are the facts. This
20 is all for the purpose of dragging in by the
ears this supposed statement which this wit-
ness could not testify to because that is a
conclusion which the jury must draw. He
should be asked first, "Isn't it a fact that
your car slid?" If he said "No," then
he could be asked whether he had said some-
thing to the contrary; and he should be asked
whether he was unable to stop the car and
if he said "No," then he could be asked
30 whether he said something to the contrary.
It is all as I say—for the purpose of preju-
dicing this case by dragging in by the ears
a so-called admission by the witness of a
conclusion that it was his fault, which is
something he could not testify to—could not
either affirm or deny.

Mr. Bedford: To save time I will with-
draw the question.

40

Alfred Conner, cross.

By Mr. Bedford.

Q You said that this bus came out of Center street and turned west into Main street, didn't you? A Yes.

Q And you saw it there in Main street? A Yes.

Q You saw it backing toward the trolley tracks? A Yes. 10

Q At that time it was in full view, wasn't it? A Yes.

Q And then before you knew it he was right into you; is that right? A Yes.

Q You were late, were you not? A No, sir.

Q Are you sure of that? A No, I was on time.

Q Was it raining? A It was raining.

Q How many people did you have in the trolley car? A I didn't notice. 20

Q You had a conductor there? A I had one conductor in the rear.

Q Did you have a trolley car full at that time in the morning going to work? A I don't know. I had a curtain on and I couldn't see.

Q Didn't you have any idea how many people you had in your trolley car? A I had no idea how many people there was in the car. There must have been some. 30

Q Do you know how many people were on the safety isle? A Nobody on the safety isle.

Q Nobody at all? Are you sure of that? A Yes.

Q You said that you didn't see anybody around there? A That is what I said, yes.

Q Isn't it a fact, Mr. Conner, that you came from Canfield street and as you got to the safety isle you couldn't stop on account of the slippery 40

Alfred Conner, re-direct.

rails and you went right on into this bus without making any stop at that safety isle? A I made a stop. I had to let two people out through the front. I had to stop.

10 Q That you remember distinctly, but you don't remember how many people you had in the car. Nothing had occurred then. You didn't appreciate that there was going to be an accident? A I did not.

Q And yet you think that something occurred to fix it upon your mind now that two passengers got off the car at a time when there was nothing unusual about it and you didn't know that anything was going to happen; is that right? A Right.

20 *Re-direct examination by Mr. Coult.*

Q Did you have anything to do with the passengers in the car? A No.

Q This wasn't a one-man car? A No, sir, it was a two-man car.

Q Who was your conductor? A He is sitting in the back.

30 *By the Court.*

Q When you stopped at that safety isle, as I understand it, you were fifteen feet west of the westerly end of the safety isle? A Yes.

Q And accordingly your car had stopped east of Center street, hadn't it? That is, it had stopped on the Newark side of Center street? A I was going towards West Orange.

40 Q Before you started that car did you make any observations? A I sounded the bell.

Alfred Conner, re-cross.

Q I know, but I am asking you whether you made any observations. Did you look around?

A Why, certainly, I looked around.

Q What did you see? A I saw the bus in the center of Center street.

Q You saw the bus in the center of what street? A Sir?

Q How was the bus facing? A At an angle
—just like the grade of a hill. 10

Q Was the back of that bus facing you? A Yes.

Q At that time your car was not moving? A No, sir.

Q Was the bus moving? A It was coming back.

Q The bus was coming back? A Yes.

Re-cross examination by Mr. Bedford. 20

Q Do you think that when the two people got off they both got off the front end of the car?

A They went out the front exit.

Q As you opened the front exit door you turned and looked to see whether they got out all right? A Certainly.

Q To see whether the space was clear and the passengers got out all right? A Yes, sir.

Q And then you closed the door? A Closed
the door; then I started the car. 30

Q That is what you do every time? A That is what I always do; yes, sir.

Leonard Lux, direct.

LEONARD LUX, sworn in behalf of the defendant.

Direct examination by Mr. Coult.

Q Where do you live, Mr. Lux? A West Orange.

10 Q What is your business? A Chauffeur; bus driver now.

Q By whom are you employed? A By the Public Service.

Q Do you recall this accident? A Yes.

Q How were you employed then? A A conductor.

Q Were you the conductor of the car that was in this accident? A Yes.

20 Q Who was your motorman? A That fellow that was on the stand—Mr. Conner.

Q Where were you at the time the accident happened? A In the rear end of the car.

Q Did you see the collision? A I did not.

Q Where did that collision happen? A At Main and Center streets, Orange.

30 Q Where with relation to the safety isles there? A It happened by one of them. I know that as it hit and the car stopped I opened the rear door and got out of the car and I didn't have to step on to the safety isle, so it was almost a car's length beyond that.

Q That is, almost a car's length beyond where? A Beyond the safety isle.

Q Where the car finally stopped? A The car was stopped when I got off, yes.

40 Q You say you didn't see the collision. Did you know when it happened? A The only time that I knew was this way: I knew when it happened when I heard the crash.

Leonard Lux, direct.

Q How far did the car go after the crash?

A I don't think it went very far.

Q How many feet? A I should judge it didn't go very far.

Q How many feet? I want to get some idea of that distance. A Probably five or six feet; something like that. Maybe it didn't go that far. I am not sure, because it happened so quick. 10

Q After it stopped, you say you got off the rear? A Yes.

Q I understood you to say that you got off on the safety isle—or didn't you? A It was just by the post. The rear door was just by the safety isle post where the light is on the top.

Q What did you do after you got off? A Right away I didn't do anything, because the car started to move backward, and I jammed the hand brake on. When I got up to the front I saw that the car was standing this way (indicating), and the bus was standing catty-corner with the car, and I saw that it had been hit in the left corner of the trolley car, because everything on the left-hand corner of the trolley car was cleaned off. There was nothing left on the left corner. 20

Q The left corner of the trolley car? A Yes. 30

Q The left front corner? A Yes, I am sure.

Q What corner of the bus was hit? A The left corner of the bus, I am sure.

Q The left rear corner? A The left rear corner. It was standing this way (indicating). By the first window—the bus was hit by the first window. I am sure that the trolley car was this way (indicating) when I got up there. 40

Leonard Lux, direct.

Of course, that bus was still standing this way (indicating), not straight with the trolley car, but just like this (indicating).

Q What do you mean? You are making a motion. A The trolley was like this here (indicating), and the bus was like that (indicating).

10 Q You are indicating that the bus was on an angle of about 45 degrees to the trolley car. Is that what you mean? A I don't know how much of an angle it was standing.

Q You know the points of the compass there, don't you? A Yes.

Q Which way was the trolley car facing? A This way (indicating).

Q Is that west? A That is west.

20 Q The trolley car was facing west. Which way was the bus facing? A It was facing this way (indicating), whatever direction that was.

Q Do you mean by that northeast? A Northeast?

Q Toward which corner was the bus facing after the accident? A I just told you how much it was swung and what direction it was facing.

Q Was the car pointing toward any— A I know the bus was southwest.

30 Q The bus was facing northeast and southwest; is that correct?

Mr. Bedford: I object. He didn't say anything about northeast.

By Mr. Coult.

Q Southwest. A Whatever direction it was. That is southwest (indicating) and that is southwest, isn't it?

40

Leonard Lux, cross.

Q Yes. A Then it was standing southwest.

Q Which end was pointing toward the southwest—the rear or the front? A The front.

Q The front of the bus was facing toward the southwest? A The front was.

Q You were here Friday in the court room?

A Yes.

10

Q Do you remember the colored witness, Davis? A I saw the man.

Q Did you see him here? A Yes.

Q Did you see him around there at the time this accident happened? A I didn't see anybody there.

Q Do you recall whether or not any passengers got off or on your car at the time you stopped at the safety isle? A No one got off the back.

20

Q Do you know whether anybody got on the back? A Nobody got on the back, no.

Q How rapidly was this car moving at the time this accident occurred? A After he stopped at the safety isle I gave him the bell to go ahead and he started, and he must have went at least a car's length and then I heard the crash, so he wasn't going very fast—as fast as a car picks up in a car's length.

30

Cross examination by Mr. Bedford.

Q The first thing you knew about the accident was the crash? A That is it.

Q And the next thing you did was to put on the wheel brake at the rear of the car? A Yes.

Q And then you stopped it and you were at the other end of the safety isle at that time?

A Yes.

40

Leonard Lux, cross.

Q Do you think the car started to back up?

A I saw it. It didn't back up; it just rolled back.

Q It just rolled back? A That is it.

Q And yet you didn't see anything of Mr. Davis there? A I didn't see Mr. Davis, no.

10 Q Because you were in the car stopping it from rolling at that time? A I saw it roll back when I was out on the ground.

Q But if Mr. Davis was on the safety isle he could have seen it come back because it came back. Isn't that a fact? A Yes, it started to come back.

Q Before the accident there was nothing unusual about that trip of the car, was there? A Nothing at all.

20 Q How long had you been a conductor before the accident? A A year; probably more.

Q During that time you had rung bells to start at various corners? A Yes.

Q And there was nothing unusual about this time up to the time you heard the crash, was there? A Nothing unusual.

30 Q There was nothing to make you recollect particularly now—a year and a half or more afterwards—whether that trolley car stopped at the safety isle or not; was there? A I couldn't tell you that, but I know that it stopped; that is all.

Q But nothing unusual happened? Nothing marked it different from any one of a hundred other or a thousand other times that the trolley had stopped at these corners? A I know it stopped, because it stopped at Park and didn't stop at Canfield street.

40

David Jack, direct.

Q That is how you know? In other words, you are looking back—reasoning backwards that it must have stopped there? A Yes, sir.

Re-direct examination by Mr. Coult.

Q Do you know what happened to the brakes of this car? A They were cleaned off in the front. He couldn't stop the car in the front. That is why I put the brake on in the back. 10

Q Do you know whether there was any grade on that street? A There is just a slight grade.

Q Do you know the action of reversing the wheels of a car? A Yes.

Q What does it do? A It helps to stop the car.

Q What does reversing do to the wheels of the car? A I don't know just what you mean. Sometimes it might make them run backwards; sometimes it might just slide. You can't tell. Mostly they run backwards. 20

DAVID JACK, sworn in behalf of plaintiff.

Direct examination by Mr. Coult. 30

Q Where do you live? A 61 Napoleon street.

Q Have you any interest in this case? A I have not.

Q Are you connected with the Public Service in any way? A No.

Q Where were you on March 12, 1923? A On a trolley car. 40

David Jack, direct.

Q In what part of the car were you sitting?

A On the west side of the car going toward Orange.

Q Do you know whether the trolley made any stops before this accident? A It stopped at Center street.

10 Q Do you remember what happened there?

A I remember one passenger got off.

Q Where did you take the car? A At the train depot.

Q Where were you going? A To Lincoln avenue, Orange.

Q Where was this bus when you first noticed it? A The bus crossed the track into Center street, and came to a stop there about seven feet from the tracks.

20 Q Where did it stop? A I think it stopped about the middle of the street—the middle of Center street.

Q Facing which way? A Facing south.

Q Where was the trolley car then? A The trolley car was then starting up from the safety isle.

Q How long did that bus stand there? A Not very long. Just about—I should say about fifty seconds.

30 Q What happened after the trolley car started? A The trolley car started and the bus backed into the trolley car.

Q Where was the trolley car when the bus backed into it? A The trolley car was almost on it.

Q I didn't hear that answer. A The trolley car was almost up to the bus.

40 Q At the time the bus was standing and after the trolley car started, what clearance was there

David Jack, cross.

between the standing bus and the trolley car?

A When the car started from the safety isle?

Q Yes. A The bus was seven feet clear off the track.

Q How near was the trolley car when the bus started to back? A About two feet.

Q Did the bus come rapidly or slowly after it started to back? A Well, medium. 10

Q What part of these two cars came together? A The right corner of the bus hit the fore part of the trolley car.

Q How far did the trolley car go after the collision? A It didn't travel forward at all. In fact, it rolled back.

Q Do you know what happened to the motor-man? A He was knocked out.

Cross examination by Mr. Bedford. 20

Q Where did you go after the accident? A I went to my work.

Q Where was that? A Lincoln avenue, Orange.

Q Did you leave immediately? A No. I stopped to pick the motorman up and put him on the seat.

Q How many people were there in the car? A Several. 30

Q Where did you sit? A The seventh from the front—the seventh passenger from the front.

Q Were you sitting facing the front? A Side seats.

Q Which side of the car were you sitting on? A On the right-hand side going towards Orange.

Q What were you doing just before the accident? A I was looking through the front of the car. 40

David Jack, cross.

Q A curtain was up in back of the motor-man? A Yes.

Q Your back was toward the right hand or northerly side of Main street? A I was sitting catty-corner looking up Main street.

10 Q You were the seventh passenger? A No, I said I was the third passenger.

Q When I asked you I thought you said you were the seventh? A No, sir.

Q How far from the front were you sitting?

A About five yards—five feet, rather.

Q Which is it—five yards or five feet? A Five feet.

Q Did you think anything was going to happen? A No, sir.

20 Q Nothing occurred there at that time to make you think that anything was going to happen? A No, sir.

Q Not a thing? A Not a thing.

Q And yet you watched this bus from the time it was headed south, didn't you? A I watched this bus from the time it crossed the track into Center street.

Q It came across the track? A Into Center street.

30 Q Which way did it come across the track? A It cut right across the track.

Q Which way was it headed when it was struck? A It backed in when the collision occurred.

Q We know that. You have told us that several times. Which way was the bus headed when it came into collision with the car? A It was headed through Center street.

Q Was it headed into Center street? A Yes.

40 Q That is, when they came together? A When they came together.

Marie Curtis, direct.

Q Did you see it going ahead toward Center street a little bit before they came together? A It stopped at Center street. It didn't go ahead at all.

Q It didn't go ahead at all? A No, because the truck came to a stop seven feet ahead of the track.

10

Q It crossed the track and came to a dead stop? A Yes.

Q That is just before the accident happened? A Yes, sir.

MARIE CURTIS, sworn in behalf of the defendant.

Direct examination by Mr. Coult.

20

Q Where do you live? A 603 Springfield avenue, Newark.

Q You are an employee of the Public Service? A Yes.

Q Where are you employed? A At the corner of Center and Main streets, Orange.

Q In what capacity? A Telephone operator.

30

Q Where is the telephone exchange there? A It faces Center street.

Q Where with relation to the drug store on the northwest corner? A It is either on the northwest or on the southeast corner.

Q Diagonally across from the drug store? A Yes, sir.

Q Do you recall this accident? A Yes, I do.

Q Did you see it? A No, not the accident. I didn't see it.

40

Marie Curtis, direct.

Q What did you see? A Well, I just saw the two cars standing there after the accident.

Q Had you seen either the trolley car or the bus after the accident happened? A Yes, I saw the bus.

10 Q Where did you see the bus? A Standing in front of Mosler's drug store.

Q Which way was it facing when you saw it? A Facing west.

Q How long did you see it facing there? A Only just a second because I didn't remain there to watch it.

Q What had taken you to the window? A I went to the window to close the window. There is a noise there in the morning. I went to the window and when I got there there were a couple of children out on the street—

20 Q Never mind that. You went to the window and saw this bus standing in front of the drug store? A Yes, I saw the bus standing there.

30 Q Did you see it start away from there? A No, I went back to my board. I no more than got to my board when I heard the motorman ringing his bell just as hard as he could ring it. I thought, "That youngster has got in the way of that trolley car." I ran back to the window and looked out and this bus was standing in front of the car. The right-hand part—about the second window from the back on the right-hand side of the bus—had hit—

Q How was that bus facing? A The bus was facing southeast. No, northeast.

Q How was the trolley car facing? A That was facing west.

40 Q In what part of the street were they then? A I should say they were half-way between the two safety isles; that is, the front of the trolley

Marie Curtis, cross.

would be about half-way between the two safety isles.

Q As they were standing there how much of the trolley car, in feet, was past the bus? A There wasn't any of it past the bus. It was up against the bus.

Cross examination by Mr. Bedford.

10

Q The back of the bus, then, was headed southwest at the time you saw it after the accident? A Yes, the left-hand side of it.

Q It was up against the trolley car at that time? A The two of them were just together.

Q At the second window from the back of the bus? A I would say about the second. It might be in between.

Q It might have been what? A It might have been more than that. It might have been the middle of the bus. 20

Q So that the bus and the trolley car, as I understand it, were something like these two sheets of paper now (indicating)? A Well, I can explain.

Q Show us with these two sheets. A Here is the trolley car (indicating) and here is the bus like that (indicating). 30

Q The bus was facing northeast? A That would be facing northeast.

Q So the back of the bus was about as you have indicated? A I think so, yes.

Q You work for whom? A For the Public Service Electric.

40

Bernard Fagan, direct.

BERNARD FAGAN, sworn in behalf of defendant.

Direct examination by Mr. Coult.

- Q Where do you live? A McKinley avenue, West Orange.
- 10 Q What is your business? A Bus operator.
- Q You are employed by the Public Service Transportation Company? A Yes.
- Q Do you recall this accident? A Yes.
- Q At that time did you have any employment with the Public Service? A No.
- Q Were you connected with it in any way? A No.
- Q Where were you at the time? A On the southeast corner of Main and Center streets.
- 20 Q Where were you going? A I was going to Main and Day streets.
- Q Which way were you walking? A I was walking to the southwest at the southeast corner of Main and Day streets to the center of Main.
- Q You were going across the corner diagonally? A Yes.
- Q Did you see this bus before the accident happened? A Yes.
- 30 Q Where was it? A It stopped at Main and Center streets.
- Q Which way was it standing? A Facing south.
- Q On what part of the streets? A On the right-hand side of the street.
- Q On which street—Main or Center? A Center.
- Q Where did it go from there? A Came out Center street and went west on the westbound track and stopped about eight feet from the
- 40 track.

Bernard Fagan, direct.

Q In making this turn out of Center street did that bus swing close to the curb? A It went out to the westbound track.

Q Yes, swung back. Now, when it came back into Main street how was it headed? A The bus was headed northwest.

Q Did it come to a standstill or not after that? A It came to a standstill after it left the tracks. 10

Q How was it facing when it came to a standstill? A Northwest.

Q How near was the front wheels of this bus to the curb? That would be the north curb of Main street. A Between 12 and 15 feet away from the curb.

Q How far were the rear wheels from the trolley track? A About eight feet.

Q Did you notice this westbound trolley car? A Yes, sir. 20

Q Where did that come from? A From Newark.

Q Did you notice whether or not it made any stop at Center street? A Yes, sir.

Q Where did it stop? A At the safety isle.

Q Do you know how long it stood there? A Just to discharge two men.

Q Then what happened? A Started off again. 30

Q At the time that it started off where was this jitney bus? A Standing on the other side of the tracks.

Q What happened after the trolley car started? A The trolley car started from there at least a length or a length and a half away from the westbound safety isle when the jitney bus backed into the front end of the trolley car.

Q Was there any warning of that backing by the jitney bus? A Not that I could hear. 40

Bernard Fagan, cross.

Q Was the bus moving or standing still when the collision occurred? A The bus was moving.

Q How far did the trolley car go after the collision? A It didn't go. It backed up.

Q Could you see what made it back? A The air pipe was broken from the bang of the bus.

10

Cross examination by Mr. Bedford.

Q Let us get a few of these things straight. You were on the southeast corner of Main and Center streets, were you? A I was walking towards the southeast corner and I saw the bus—

Q Wait a minute. You were walking toward the southeast corner from where? A I was coming out of Center street south and the bus was—

20

Q Wait a minute. You were coming out of Center street south? A Yes.

Q Walking toward the southeast corner? A Yes.

Q On which side of the trolley tracks were you? A On the south side.

Q How far had you gone on the south side of the trolley rails before the accident happened? A In the middle of the road.

30

Q Were you still going toward the southeast corner? A No, sir; I was going northwest.

Q You were going toward the southwest and were in the middle of the road when the accident happened? A Yes.

Q And you were on the southeast side of the trolley car? A Yes.

Q You are now an operator of a Public Service jitney bus, are you? A Yes.

40

Bernard Fagan, cross.

Q You were on the south side of the trolley car before the trolley car started. Was there anything there that called your attention to the possibility of an accident? A The bus standing on the west side of the tracks.

Q Right on the westbound tracks? A In the track about eight feet north of that. 10

Q Are there any trolley tracks on Center street? A No, sir.

Q The bus had crossed the tracks before it was standing eight feet from the tracks? A No, the bus pulled up on the tracks.

Q It was headed north into Center street at that time that it was eight feet from them? A No.

Q Where was it? A It was headed in between the drug store and the store above it. 20

Q What direction would you say it was headed? A North.

Q Being on the south side of the trolley car you saw it stop and saw two passengers get off? A Yes. I was south in front of the car.

Q You were what? A I was crossing the street.

Q Yes, but when the accident happened you were south of the trolley car, weren't you? A Yes. 30

Q And when the passengers got off you were south of the trolley car? A Yes.

Q Could you see them get off? A Yes.

Q You saw that trolley car stop there? A Yes.

Q And you saw it move a length and a half before the accident happened? A Yes.

Q And then you say the bus backed into the trolley car? A Yes, sir. 40

Bernard Fagan, cross.

Q I thought the trolley car and the bus were both north of you at the time? A No, not exactly north—about ten feet difference between myself and the accident.

Q Did you get over on the other side of the trolley car before the accident? A Not before because I expected it.

10 Q You expected to see the accident happen?
A Yes.

Q You were watching for it? A Yes, sir.

Q On the south side of the trolley car with the bus on the other side of the trolley car you were watching for it? You didn't see the motor-man watching for it, did you? A No, sir.

Q Why were you watching for an accident?
A The bus did that every morning at that time.

20 Q Every morning the bus did that? A Yes.
Q That is all.

Mr. Coult: I have another witness who has been subpoenaed to another court. I have been trying to get him and I think I can get him here about two o'clock. It is now three minutes to one.

The Court: We will wait until two o'clock.

30 Mr. Coult: I don't think I have any more witnesses.

The Court: We will take a recess until two o'clock.

Recess was taken from 11:57 to 2 o'clock.

William B. Preston, direct.

AFTER RECESS.

WILLIAM B. PRESTON, sworn in behalf of defendant.

Direct examination by Mr. Coult.

Q Where do you live? A In Maplewood. 10

Q What is your business? A I am an engineer.

Q How many years' experience have you had? A Thirty-seven.

Q Are you employed by the Public Service Railway? A Yes.

Q How long have you been employed by them? A Thirteen years.

Q You have made maps in accident cases? A Yes, sir. 20

Q What experience have you had in making surveys and maps? How many do you make in a year? A Approximately eighty or ninety surveys and fifty or sixty maps.

Q Have you a map here with you? A Yes.

Q Is that it behind you? A Yes.

Q Did you make that map? A Yes.

Q From what? A From surveys.

Q Who made the surveys? A I did. 30

Q When did you make them? A The survey immediately at the corner of Main and Center street was made on the 27th of April, 1923, and it was extended to meet a survey coming from each end on April 21, 1924.

Q Can you say whether or not conditions at that corner, as disclosed by the map, are the same as they were on the 12th day of March, 1923? A The conditions around there are the same. 40

William B. Preston, direct.

Q Is the map made in accordance with that survey? A Yes.

Q Is it correctly made? A It surely is.

Q The map has been placed on the board behind you. Will you explain it briefly to the jury?

A The four parallel black lines running through
10 the center are the four rails of the two tracks. The two lines that are not parallel are the two curb lines of Main street. The buildings are outlined, the brick buildings in red, the frame in yellow. The streets are as named. The scale is: one inch equals ten feet. The small circles represent trolley poles and telephone poles. The circles with rays represent lights.

Q What is the distance from Canfield street to Center street as shown on that map? A
20 372.3 feet.

Q What is the width of Center street at the junction of Main street at the north side? A 23.6 feet right near Main street. About 100 feet up the street it is 25.4 feet wide.

Q I see by the arrow that Main street runs a little more northerly and southerly than it does east and west. For your information I will tell you that during this trial we have considered Main street as running east and west and Center
30 street as running north and south. Having that information, what is the distance between the north rail of the westbound track, and the north curb of Main street at the west building line of Center street? A About $28\frac{1}{2}$ feet.

Mr. Bedford: Which building line?

Mr. Coult: When I referred to the building line I meant of course the west building line, as I understand it.

Charles Spengler, Jr., direct.

The Witness: The west building line of Center street?

By Mr. Coult.

Q Taking the west building line. What is the width? A Practically 28½ feet.

Q What is the distance between the rails of the tracks? A 4 feet 8½ inches. 10

Q What is the length of the safety isles? A Between 60 and 61 feet.

Q What is the distance between the west end of the westerly or westbound safety isle and the prolongation of the westerly building line along Center street on the north side? A 43½ feet.

Cross examination by Mr. Bedford.

Q How long is the safety isle on the easterly side of Center street? A Exactly 60.9 feet. 20

Q How does that compare with the length of a trolley car? A What class of car?

Q On the Orange line. A 54.10 on this line.

Q What is the distance from the westerly end of that safety isle to the westerly curb of Center street? A In this direction (indicating)?

Q No, taking the prolongation. A About 34½ feet. 30

CHARLES SPENGLER, JR., sworn in behalf of defendant.

Direct examination by Mr. Coult.

Q Where do you live? A In Irvington. 40

Charles Spengler, Jr., direct.

Q How old are you? A Forty-two.

Q How long have you lived in Irvington? A About five and a half years.

Q Before that where did you live? A All my life in the City of Newark.

Q Are you married? A Yes, sir.

10 Q Where did you live in Newark? A On South Ninth street.

Q Have you ever held any official position in Newark? A Yes.

Q When was that? A About seven years ago.

Q What was it? A Commissioner of Police.

Q Under whom? A Mayor Gillen.

Q Who were the other commissioners?

20 Mr. Bedford: I object to that as immaterial and irrelevant.

Mr. Coult: I will withdraw it.

By Mr. Coult.

Q You are employed by the Public Service Railway? A Yes.

Q As an investigator? A I am.

Q In connection with the claim department?

30 A Yes.

Q Under whom? A Under Mr. Cushing.

Q It is your duty among other things to investigate cases which come up for trial? A Yes, sir.

Q Did you investigate this case? A I did.

Q When? A Around March 12; after the accident happened. Probably the next day or a couple of days after.

40 Q Whom did you see in connection with this case? A I saw the complainant in this case

Charles Spengler, Jr., direct.

and every one of the other occupants of the bus, some of them being present in court here today.

Q Did you interview any of them? A I did.

Q Did you interview the plaintiff? A I did.

Q Do you remember where? A Yes, sir.

Q Where? A At the home of the lady she was stopping with on Hollywood avenue—Mrs. Anderson, I think it was. 10

Q Who was present when you interviewed Mrs. Smith? A Mrs. Smith and Mrs. Anderson.

Q What did you talk about when you talked with Mrs. Smith? A I got a history of the occurrence of this case.

Q What did you do when you got the history? A After getting the details of the information as to how it occurred I wrote it up in statement form and presented it to Mrs. Smith for her to read and for her signature. 20

Q Did she read it? A She read it.

Q Did anybody else read it? A She handed it over to Mrs. Anderson and Mrs. Anderson read it.

Q Did Mrs. Anderson in the presence of Mrs. Smith say anything with reference to it? A She said that she did not see anything that she could not sign. Everything she told me was in it. 30

Q Did Mrs. Smith sign it? A Mrs. Smith signed it by making a cross, due to the injury to her right hand.

Q Did Mrs. Anderson sign it? A Yes, as a witness.

Q I show you a statement of Kate M. Smith, dated March 22, 1923, and ask you if that was the statement (handing paper to witness). A Yes, sir. 40

Charles Spengler, Jr., direct.

Mr. Coult: I will offer it in evidence.

Mr. Bedford: I object on the ground that it is not evidential.

The Court: I will admit it.

Mr. Coult: I withdraw it.

The Court: Do you withdraw it?

10

Mr. Coult: Yes.

By Mr. Coult.

Q Did you interview Norma Roberts? A I did.

Q When and where? A At her home.

Q Where? A On Essex avenue, somewhere west of Center street, where she lived.

20 Q Do you remember who was present when you examined her? A If I am not mistaken, some gentleman friend at that time was sitting in the parlor of her home when I interview her.

Q Did you write down what she had to say? A I wrote down identically the statement she had given.

Q In whose language—hers or yours? A I wrote it down just as well in her language as I possibly could.

30 Q Did she sign it? A She signed it.

Q Is this the statement, D. 1 for identification, which I now show you? A Yes, sir.

Mr. Coult: I will offer D. 1 for identification in evidence.

Mr. Bedford: I object on the ground that it is not evidential.

40 Mr. Coult: It contains contradictory statements to which attention was specifically drawn. They were pointed out to her.

Charles Spengler, Jr., direct.

That makes it evidence in contradiction as affecting her credibility.

The Court: It also contains a lot of other statements. Why deviate from the ordinary rule and attempt to put these statements in in this way? Why not ask this man these things she denies she said? 10

Mr. Coult: I am going to do that, but that does not make this statement any better or any worse.

The Court: I don't think that is the proper way to take the statement of one who is not a party to this suit. I will let you take out those parts of the statement which she alleges she didn't say to this man and have this man contradict them. 20

Mr. Coult: I want to ask leave to read to the jury so much as serves to contradict her story.

The Court: Yes, you may do that.

Mr. Coult: It always seemed to me that the whole statement should go in. That portion which is admitted serves to explain the whole. That portion which is admitted has a bearing on that portion which is contradicted. It has considerable weight, it seems to me, if all of a certain statement is true except certain vital parts. 30

The Court: At the same time, there are irrelevant parts in this statement. If you establish a principle, it must work. If it works in this case it should work in another case tomorrow. It cannot work where a witness is not a party. I think you had better ask this witness, "Did she say this to you" 40

Charles Spengler, Jr., direct.

and then quote from that statement what she said she did not say to him and then have him contradict her. I don't know any better way at the present time.

By Mr. Coult.

10 Q Did Miss Roberts at that time and place tell you that she didn't know whether the bus turned west on Main street or not, that she didn't know whether it backed up or continued straight on the car tracks, and that she was busy talking to other girls at the time in the bus? A That is the identical statement she had made.

20 Q Did she or did she not tell you that the bus was crossing the westbound track when all of a sudden she felt a bump and a crash, the jar throwing someone opposite her over against her and that then she was thrown to the floor of the bus? A That is also her identical statement.

30 Q Did she tell you that she didn't know whether the bus was backing at the time and didn't know what direction they were moving but knew they were struck in the rear by a westbound Orange car and didn't know whether at the left rear or right rear? A That she also told to me.

Q Did she also tell you that she didn't see this westbound car before or after the collision and that the first she knew that the car had struck the bus was after she was taken home? A She did tell me that.

Q Did you interview Dorothy Knell of 400 Valley street, Orange, with reference to this case? A Yes, sir.

40

Charles Spengler, Jr., direct.

Q Where? A At her home at that time where she was boarding.

Q Do you remember where it was? A On New street or on Valley street.

Q Who was present when she was interviewed? A She and I.

Q Did she tell you how this accident occurred? A She did. 10

Q Did you put it in writing? A I did.

Q Did she sign it? A She did.

Q I show you D. 2 for identification and ask you whether that is the paper that she signed?

A That is the paper.

Q Did she or did she not at that time and place tell you that when the bus started to back, the driver swung the bus to the right so that it backed over toward the westbound track at an angle headed northwest and was backing up slowly and that just as the rear wheels of the bus got on the westbound track she heard a crash and felt a bump which threw her forward to the floor of the bus? A She did. 20

Q Did she or did she not tell you that the first she saw of this trolley car was when her bus turned into Main street and she just happened to turn around and saw this car just about to pass into the safety isle east of Center street and that the car seemed to be slowing up but she could not say whether it had stopped at the isle? A She did. 30

Q Did she say that she did not see the car after that again until after the bus was hit? A She did.

Q Did you interview Margaret Westervelt? A I did.

Q Where? A I don't know whether it was on East Day street or somewhere on Washing- 40

Charles Spengler, Jr., direct.

ton—somewhere over in that section north of Main street on the cross-town line—at her home.

Q Who was present? A Her mother and I believe her sister, too.

Q Did you take from her a history of this accident? A I did.

10 Q What did you do? A She gave me that data and I wrote it up and she signed it.

Q I forgot to ask you: Was the last witness given an opportunity to read her statement? A Yes.

Q What did you ask her to do? A After I had written it I asked her to read it to see if it was correct and to see if it coincided with her story.

20 Q Did Miss Knell read hers? A She read hers.

Q And Miss Westervelt—did she read hers? A She did.

Q At that time did Miss Westervelt tell you that the bus made a stop on North Center street in Main street where it picked up several other girls and that it was raining at the time and that there were thirteen girls in the bus? Did she tell you that? A Yes.

30 Q And that the bus then started up and made a turn around the northwest corner of Center and Main streets and stopped in the westbound roadway of Main street near the curb in front of Mosler's drug store right at this corner? Did she tell you that? A Yes.

Q That she didn't know the exact position of the bus when it was stopped? A Yes, sir.

40 Q That the bus just stopped long enough to be put in reverse and then started to back, the driver at the same time swinging to the right so that it backed up toward the westbound track

Charles Spengler, Jr., cross.

at an angle headed northwest? Did she tell you that? A Yes.

Q That just as the rear wheels of the bus got over on the westbound track she heard a crash and a jar at the right rear corner of the bus which threw her out of her seat to the floor of the bus? A Yes.

10

Q "All of the girls in the bus were thrown from their seats." Did she say that she didn't see this westbound trolley car until after she got out of the bus? A Yes.

Q Did she say that she never saw it before the collision? A Yes.

Mr. Coult: Now, I will make an offer of all four of these—this one here (indicating), D. 1 for identification, D. 2 for identification and D. 3 for identification—on the ground that they are relevant and competent.

20

The Court: Whose statements are those?

Mr. Coult: Of the witnesses. None of them was a party.

The Court: I will deny your offer.

Mr. Coult: Your Honor will allow me an exception.

30

The Court: You may have an exception.

Mr. Coult prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Cross examination by Mr. Bedford.

Q How long did you say you have been an investigator for the Public Service? A I have been an investigator for about five years.

40

Charles Spengler, Jr., cross.

Q Did you go right from the employ of the city into the employ of the Public Service? A No, sir; I have been 20 years with the Public Service in another branch—in the commercial end of the game—and I held my executive office at the City Hall at the same time.

10 Q During five years you have been making these investigations? A Yes.

Q Have you any idea how many investigations you have made during that time? A Probably a thousand.

Q Did you look over these papers recently? A I haven't seen them from the time I worked up the case and turned them in.

20 Q And yet having made a thousand investigations and taken statements, you can tell a year and a half after the accident without having looked at the statement from the day that they were made, when Mr. Coult reads off certain things you can say, "Yes, she said that"? A Yes, sir.

Q You can do that? A Yes. That case is clear in my memory.

Q You saw every occupant of that bus? A I practically saw everyone that I knew was an occupant.

30 Q Which one did you see first? A I believe I saw Mrs. Smith first.

Q Which one did you see second? A The names of the people that were reported injured—there were three of them—Miss Ellison, Dorothy Knell and Mrs. Kate Smith—just those three.

Q Can you tell which one you saw second? A I don't know whether I saw Miss Knell or Miss Ellison first or second.

40

Charles Spengler, Jr., cross.

Q After you had seen Mrs. Smith you knew in a general way how this accident had happened, didn't you? A Yes.

Q How long did you spend with each one of these people? A Just about long enough to get there, make an interview and write it up.

Q How many of them were there? A I believe there were about 14 or 15—possibly 13. 10

Q From the knowledge that you gained from one of them you were able to ask the other one certain questions? A Well, the questions were all stated practically on the same line.

Q They were all stated on the same line? A Yes. My questions were practically all along the same line.

Q After they got through answering your questions you put it in your own language? A Not exactly. I got a history of the accident from each one and got their explanations. It was part in their own language. If it didn't bring it out clear enough I would ask a question about it. Then I would write the thing as close as I could to their own language. 20

Q You made it up as close to their language as you could and then you asked them to read it over and sign it and then you got away? A Yes.

Q How long a time were you in getting all those statements? How long were you getting each individual statement? A Well, Mrs. Smith was the last one that I saw. 30

Q You say that she was the last one that you saw? A Yes.

Q And there were three of them? A Yes, positively. That is, after she had left the hospital.

The Court: I wish to state on the record my reasons for refusing to allow those state- 40

Charles Spengler, Jr., cross.

ments to go into evidence, because I think that the practice should be understood.

10 In order to contradict a witness who is a party to the action an attorney who has in his possession a statement signed by the witness may show the statement to the witness for the purpose of identifying the signature, whereupon the attorney should put the statement aside and introduce the entire statement on his case.

20 The rule for contradicting a witness who is not a party to the action is different. The witness must have his attention directed to the time when he signed the paper and to the circumstances under which he signed. If the statement was prepared by some person other than the witness, inquiry should be made as to how the data contained in the statement were obtained by that person, and the signature to the statement should be identified; then the attorney should read to the witness only such parts of the statement as are competent for the purpose of contradicting him. If the witness denies that he made certain admissions which have been read to him from the statement he may be
30 contradicted, when the time comes for presenting the case of the attorney having the statement, by the attorney's placing upon the stand the person who took or prepared the statement and asking him whether the witness did not make the admissions to him.

BOTH SIDES REST.

Mr. Bedford sums up for plaintiff.

40 Mr. Coult sums up for defendant.

*Charge to Jury.***CHARGE.**

The Court charges the jury as follows:

MOUNTAIN, J.

Gentlemen of the Jury: This is an action brought by the plaintiff against the defendant for the alleged negligence of the defendant. 10

The accident complained of took place on the 12th day of March, 1923. The site was the corner of Center and Main streets, in the City of Orange. It apparently happened nearer to the northwest corner than to the other corners. We have been told that on that day at or near the intersection of those two streets there was a safety isle, convenient for passengers alighting from westbound cars of the defendant company. The safety isle, we have been told, was located on the northerly side of the westbound car track and to the east of Center street, so that if a car going in a westerly direction stopped at the safety isle, it would stop before it crossed Center street. 20

You may find as a matter of fact that on the day in question the plaintiff in this case was in the employ of the Nevins Press Company and that it was the custom that day observed of the company to pick up some of its employees and convey them to work by means of an auto bus, which was being driven by a Mr. Howard Farley. The plaintiff alleges that she boarded the bus expecting that it would take her to work, as well as the other girls who were co-passengers. 30

It would appear from the testimony that the bus, as it comes into the picture that has been painted for us, stopped first on the westerly side of Center street facing Main street; that is, at 40

Charge to Jury.

the northwest corner. It has been narrated that the bus turned that corner toward the west on Main street, whereupon it apparently became necessary to turn the bus around so that it could make its trip again in a northerly direction on Center street. That maneuver was not executed by turning the bus with a wide swing across Main street and back into Center street. We have had it described as a backing of the bus from its position near the curb of Main street until it came to rest on the westerly car track, at just about which time it came into contact with the trolley car of the defendant.

Now as to the manner in which the accident happened: Catherine Smith is the plaintiff. She testified that the trolley car which came into contact with the bus of the Nevins Press Company was below Canfield street when she first saw it and that then the auto was backing out toward the tracks. If my memory serves me right—and you must not take my memory of the facts, but your own—there was testimony by Mr. Preston indicating that the distance from Canfield street to Center street is about 370 feet. Mrs. Smith said that when the bus stopped on the tracks and was just about to get off them, it was hit by the trolley car; that the bus when it was hit was on the first two rails of the westbound track; and that the car as it approached the bus was coming quite fast, and kept right on coming.

On the safety isle which I have particularly mentioned, a colored man, Charles Davis, said that he was standing on the day in question expecting to take the car which was involved in the accident. I quote with pleasure his own words, "He was the onliest one on the safety

Charge to Jury.

isle." He said that he saw this car come and that it was coming very fast. He alleged with grief that it did not stop, but went right ahead and then hit the bus.

George Evans was called as a witness on behalf of the plaintiff. He was an employee of the Nevins Press Company. He said he was standing on the corner of Main and Center streets and made these observations: that the bus backed onto both trolley tracks, that the driver started ahead, and that the bus was then hit by the trolley car. He said that when the trolley car was at Canfield street the bus was on the two tracks and had stopped. He testified, too, that there was on this safety isle a colored man—to whom I have referred—and he further asseverated that the trolley car did not stop at the safety isle. Among other things, he intimated that when the bus was on the tracks the trolley car was 250 feet away and going pretty fast.

Of course, the testimony of the driver of the bus is interesting because he was in control of its mechanism. He said that he backed out toward the track, brought his rear wheels upon the center of the westbound track, stopped there long enough to change his gears, threw from reverse into first gear, started ahead, and was hit. He testified that before he started to back onto the tracks the trolley was just approaching Canfield street. Among other things, he said that he watched that trolley car, but that he could not tell whether it was going fast or slow. One of the witnesses, Miss Westervelt, called on behalf of the plaintiff, said that the trolley car was coming full speed and made no stop at this safety isle.

Charge to Jury.

The foregoing facts, as you will have observed, relate mostly to the case of the plaintiff. Now let us turn to the defendant's case.

10 The motorman who drove the car alleged that he did stop at this safety isle and that that stop was made, as I recall his testimony, in such a manner that the front of his car was about fifteen feet from the westerly side of the safety isle. I think that is a correct statement of his testimony. If it is not, you should take your own recollections. He then said he made an observation and that as the result of that observation, whatever the observation brought to his mind, he started his car. At some time or other, either when he made that observation—as might have been indicated by his answer to my question—or after that time, he saw this auto bus.
20 We know that he saw it because he stated, prior to any question of mine, that the auto bus was coming backward when he saw it just above the safety isle and started to reverse his car.

It appears from the testimony that the rails were greasy. The motorman said that he rang his bell and dropped sand, that the bus came backward and came into collision with the right-hand front of his car, and that the car continued
30 for ten feet before it stopped. Then, as I understand the testimony, inasmuch as the motorman had put the car into reverse, it started backward and the conductor put on the brakes and stopped it. The motorman testified, among other things, that he thought he had room enough to clear the bus.

There was a passenger on this trolley car, who was seated, I think, about three feet from the front of the car. He testified that the trolley car did stop at the safety isle, and that one
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Charge to Jury.

passenger alighted, that the trolley car started, that this auto bus backed into the trolley car, and that as a matter of fact the trolley was two feet from it when the bus started back.

Mr. Fagan, called on behalf of the defendant, said that he was on the southeast corner of Main and Center streets at the time of the accident. He testified that the trolley car stopped at the safety isle. 10

What is the law in this case? The burden of proof is upon the plaintiff to prove by the greater weight of the evidence that the defendant was negligent. The operators of both the trolley car and the auto bus had a right upon the highway at the point where these two streets intersected. Of course, with that right they had certain duties to one another as respective operators of vehicles on the public highway. It was their duty to operate and control their respective vehicles with such care as reasonably careful and prudent men would have exercised under similar circumstances. 20

If Mrs. Smith, the plaintiff, took a seat or a place in the bus, the property of the Nevins Press Company, at the express or implied invitation of that company to take her to work, she was in law an invitee. If you find that she exercised no control over the driver, then unless there was something that she individually should have done in the exercise of due care to avoid injury, she is not chargeable with any negligence of the driver of the bus. Yet, while the negligence of the driver of the bus under these circumstances cannot be imputed to her, of course, if the motorman of the trolley car was not negligent, and you find that the violation of some 30

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Charge to Jury.

provision of the traffic act by the bus driver was the sole proximate cause of the accident, and that that violation amounted to negligence, the plaintiff would not under those circumstances be entitled to your verdict.

10 Farley, the driver of the automobile bus, had a right to rely upon the duty imposed by law upon the defendant company and upon the motorman in its employ in charge of the car in question; namely, to exercise care in operating the car in respect to its speed and its control so as not to endanger the safety of other travelers using the highway. Farley had a right to suppose that the motorman was aware that the trolley car had no paramount or exclusive right on the highway, but that he, the motorman,
20 must keep a look-out on the tracks ahead of him, and must keep his car under such control as to be able to reduce its speed, and even bring it to a standstill if necessary, to avoid collision with anyone driving an auto bus, which without negligence on the part of its operator, might happen to have come upon the tracks in front of the trolley car.

30 The motorman of the trolley car, on the other hand, was not bound to presume, anticipate, or suspect that the driver of the automobile bus involved in this case would violate any of the provisions of the traffic act.

I have been asked by the defendant to charge two of the provisions of the Traffic Act and I will charge them here. The first: "No vehicle shall pass or make a turn in any street if by so doing it interferes with other vehicles, but shall go around a block or to a street sufficiently wide to turn in without backing." The second is:
40

Charge to Jury.

“Before backing, ample warning should be given, and while backing, unceasing vigilance shall be exercised not to injure those behind.”

Let us assume that under the circumstances you find that Mrs. Smith is entitled to recover. These are the elements of her damages: she would be entitled to recover for her pain and suffering, and for the bodily injury which she has sustained. We are told that her head was cut, and that the lacerations, as some of the witnesses described them, exposed the skull. I think that was the testimony. At any rate, these lacerations required twenty-one stitches. And then it has been said that she had a bad fracture of the wrist, and that during a period of six months she was unable to use it. You may consider the effect of these injuries upon her health both as to degree and probable duration. It has been said that the scars are permanent. She has indicated in her testimony, I think, the character of the pain she has suffered and its effect upon her work.

And now as to her work: if you find for the plaintiff, she would be entitled to recover, as another element of damages, for any pecuniary loss that she has sustained by reason of any inability to attend to her business or occupation. As I understood her testimony, at the time of this accident she was getting \$13 a week, but expected a raise. The accident took place on the 12th of March, 1923. I think she said she did not return to work until May 14, 1923, and that then she received \$15 a week, but had anticipated before the accident a salary of \$18 a week. I think she testified that she returned in May, 1923, to the Nevins Press Company and was with the company until December, when she was laid

Exceptions to Charge.

off. She then obtained a position in Caldwell at housework, for which she received \$4.00 a day and carfare and worked four days a week. She had that position five weeks, she said. Then she returned to the Nevins Press, and was there until August 4, when she was again laid off.

10 There is a further element of damages which you would consider if you find the plaintiff to be entitled to your verdict. She would be entitled to recover such reasonable amounts as she has expended or is obligated to expend to cure or alleviate her injuries. As to those items, my recollection is that Dr. Lane charged her \$75 and that there was a hospital bill of \$12.

Except as I have charged, I will deny the other requests made by the defendant.

20 I will deny the first request to charge made by the plaintiff. I will charge the second request. "If the defendant's motorman was in any way negligent, even though the bus driver contributed to the accident, your verdict should be for the plaintiff.

(The jury retires.)

30 Mr. Coult: I wish to take exception to your Honor's charging the second request of the plaintiff that "If the defendant's motorman was in any way negligent, even though the bus driver contributed to the accident, your verdict should be for the plaintiff," because it eliminates the contributory negligence of the plaintiff and is not the legal rule.

I also want an exception to the refusal of the Court to charge the fourth and fifth requests of the defendant, and to the refusal of the Court

Exceptions to Charge.

specifically to charge the first, second and third requests of the defendant.

The Court: I think you are right about that second request.

(The jury was recalled.)

The Court: Gentlemen of the jury, I made a slip. The request that I charged you on behalf of the plaintiff was a legal error. I said to you that if the defendant's motorman was in any way negligent, even though the bus driver contributed to the accident, your verdict should be for the plaintiff. The difficulty with that request, standing alone, is that it overlooks any negligent act on the part of the plaintiff by which she may have contributed to her injury. Instead of that I repeat to you what I said in the charge, that if Mrs. Smith took a seat or place in this bus, the property of the Nevins Press Company, at the express or implied invitation of that company to take her to her business or work on that morning, she was an invitee; and if you find that she exercised no control over the driver, Howard Farley, then, unless there was something that she individually should have done in the exercise of due care to have avoided the injury, she is not chargeable with any negligence of Howard Farley in the operation of that bus. That is all.

(The jury retires again.)

Mr. Coult: I want an exception to the last charge of the Court on the ground that it disregards contributory negligence of the plaintiff.

I also want an exception to that portion of the charge wherein the body of the charge the

Exceptions to Charge.

10 Court adverts to the imputation of the driver's negligence to the plaintiff, but permits recovery by the plaintiff against the defendant if the jury find that the defendant was negligent, and says that the driver's negligence could not be imputed to the plaintiff without permitting the jury to find that there might have been contributory negligence on the part of the plaintiff herself without regard to imputation of the negligence of the driver.

20 I also want an exception to that portion of the Court's charge in which the Court adverts to those matters which might have been anticipated by Farley, the driver of the bus, in determining his conduct toward other users of the highway, on the ground that Farley's negligence is not relevant to the examination of the case except in so far as relates to the duty of the motorman—what the motorman might have been required to anticipate.

30 I want an exception to that portion of the charge in which the Court said that Farley might anticipate that the motorman should have his car so far under control that he might reduce the speed of the car, and if necessary bring it to a standstill to avoid collision with other users of the highway who were themselves in the exercise of reasonable care at the time, because that creates too great a duty. Under the law the exercise of reasonable care in that regard is all that is required.

Exhibit D. 1 for Identification.

EXHIBIT D. 1 FOR IDENTIFICATION.

In re Norma Roberts Case No. 123134

Norma Roberts.

Residence 9 No. Essex Av. Orange.

Where employed, Nevins Church Press, Glen Ridge.

If married Husband's name Michael Roberts. 10

Where Employed 74 Green St., Newark.

Occupation Machine Operator.

Apparent Age 23 years.

Nationality U. S. A.

Date 3/14/23, Time 2:45 P. M.

States to C. Spengler, Jr. at her home, as follows:—

On 3/12/23 about 6:52 A. M. I was an occupant of a Jitney buss which was south bound on No. Center St. Orange, N. J. I boarded the buss on No Center St. together with several other young ladies. There was about a seated load of employees on buss. When I boarded the buss I took a seat near door on right side of the buss. The buss then started and I do not know whether it turned west on Main St or not, and do not know whether it backed up or continued straight on over car tracks. I was busy talking to other girls at time in buss. The buss was crossing west bound track, when all of a sudden I felt a bump and a crash the jar throwing some one opposite me over against me, and I was thrown to the floor of buss. I do not know whether buss was backing at time and do not know what direction we were moving, 20 30

Signed Norma Roberts.

Exhibit D. 1 for Identification.

-2-

but I know we were struck in rear by a west bound Orange Car, do not know whether at left rear or right rear side. I did not see this west bound car before or after collision and the first I knew that car had struck buss was after I was
10 taken home. I was either rendered unconscious or fainted after car struck the buss, and was brought home in buss. I bruised my right shoulder left shoulder black, and my head is numb and stomach feels sore. I called in Dr. Dodge of Cleveland St. Orange who is still attending me. He has made 2 calls on me so far. He charges \$2.00 per visit. I earn \$16.00 per week. Make claim for my injury, doctor bill, and for lost time. I heard no gong on car sounded.
20 It was raining at the time of collision.

Signed Norma Roberts.

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*Exhibit D. 2 for Identification.***EXHIBIT D. 2 FOR IDENTIFICATION.**

In Re Dorothy Knell Car No. 123134.

Dorothy Knell

Residence 400 Valley St. Orange

c/o Mr. Woyski

Where employed Nevins-Church Press, Glen Ridge, N. J. 10

If a minor Parent or Guardian's name Wm. Knell.

Where employed 577 Christopher St. Orange.

Occupation Assorter

Apparent Age 20 years.

Nationality U. S. A.

Date 3/14/22, Time 12.30 P. M.

States to C. Spengler, Jr. at her home, as follows:—

On 3/12/23 about 6:52 A. M. I was an occupant of a buss which was south bound on No. Center St. The buss is the property of my employers, and is used to transport employees to and from work. I and several other girls boarded the buss on No. Center St. near Main St. I took a seat in the right rear corner of the buss. The buss then started up and made turn around north west cor. of Main and Center Sts. and stopped in west bound roadway of Main St. headed west, in front of Moslers Drug Store at this corner. Buss just stopped long enough here to be put in reverse, as driver intended to back up and then proceed north on No. Center St. The buss was standing closer to the north curb than trolley track, but I cannot say how close. When the buss started to back, driver swung buss to the right so that it backed over toward west bound track at an angle headed north west, and was backing up slowly and just as the rear wheels of the 20

Signed Dorothy Knell. 40

Exhibit D. 2 for Identification.

-2-

buss, got on the west bound track, I heard a crash and felt a bump which threw me forward to the floor of the buss and strained muscle in my left leg and bruised my skin, and hurt elbow of my right arm, and then saw that this west bound

10 Orange car struck buss the front part of car hitting buss at right rear corner just where I sat. The first I saw of this trolley car was when our buss turned into Main St. I just happened to turn around and saw this car just about to pass into the safety aisle east of Center St. The car seemed to be slowing up but I cannot say whether it had stopped in the aisle. I did not see the car after that again, until after the buss was hit. There were about 12 or 15 girls in the

20 buss at the time. I do not know what happened after car hit buss as I fainted. I was taken in an ambulance to Orange Mem. Hospital along with motorman. Miss Smith and

Signed Dorothy Knell.

-2-

Miss Ellison who were also injured. I am employed with Nevins Church Press for past 4

30 years and earn \$15.30 per week. I have not called in a doctor since I left the hospital. Make claim for my injury and time I am losing from work. I heard no gong on car sounded. The driver of our buss, blew horn as he started to back up. The buss is used to transport female employees only. I did not notice what damage was done to buss. The left front side of trolley car was crushed in.

Signed Dorothy Knell.

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Exhibit D. 3 for Identification.

EXHIBIT D. 3 FOR IDENTIFICATION.

In Re. Margaret Westervelt. Case No. 123134.

Miss Margaret Westervelt.

Residence 243 E. Day St. Orange, N. J.

Where employed Nevins Church Press, Glen Ridge, N. J.

Occupation Assorter

10

Apparent Age 19 Years

Nationality U. S. A.

Date 3/18/23, Time 10:10 A. M.

States to C. Spengler, Jr. at her home, as follows:—

On 3/12/23 about 6:52 A. M. I was an occupant of a Jitney buss, which was south bound on No Center St. Orange. My sister and I along with several other girls boarded the buss at Day and Alden Sts. I took a seat on left side of the buss in about center. The buss made a stop on No. Center St. near Main St. where it picked up several other girls. It was raining at time. There were 13 girls in the buss. The buss then started up and made a turn around the north west corner of Center & Main Streets and stopped in west bound roadway of Main St near curb in front of Mosler's Drug Store right at this corner. I do not know exact position of the buss when it stopped. The buss just stopped long enough to be put in reverse and then started to back, the driver at same time swinging to right so that it backed up toward west bound track at an angle headed north west. Just as the rear wheels of the buss got over on the west bound track I heard a

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Signed Marguerite Westervelt.

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Plaintiff's Requests to Charge.

-2-

crash and a jar at right rear corner of buss which threw me out of my seat to floor of buss. All the girls in buss were thrown from their seats. I did not see this west bound trolley car until after I got out of the buss, and never saw it before collision. I heard no gong on car sounded. Driver of buss tooted horn on buss when it started to back. I do not know position of car or buss was in after collision. I felt pains in my back, head and side after collision. My injury was slight. I had no doctor. I lost 1½ days from work. I earn \$13.00 per week. Make claim for my injury and lost time. The front left end of car was smashed in. Most of girls in buss were cut and bruised. Three of them, and motor-
 20 man were taken to Hospital in Ambulance.

Signed Marguerite Westervelt.

PLAINTIFF'S REQUESTS TO CHARGE.

1. That plaintiff cannot be held liable for any negligence of the bus driver or the defendant's motorman.
- 30 2. That if the defendant's motorman was in any way negligent, even though the bus driver contributed to the accident, your verdict should be for the plaintiff.

*Defendant's Requests to Charge.***DEFENDANT'S REQUESTS TO CHARGE.**

1. The Traffic Act of New Jersey provides among other things that:

“No vehicle shall back or make a turn in any street if by so doing it interferes with other vehicles, but shall go around a block or to a street sufficiently wide to turn in without backing.” 10

2. Said Traffic Act also provides among other things that:

“Before backing, ample warning should be given, and while backing unceasing vigilance, shall be exercised not to injure those behind.”

3. The motorman of the trolley car involved in this accident was not bound to presume, anticipate or suspect that the driver of the automobile bus involved in said accident would violate any of the provisions of the Traffic Act. 20

4. While the negligence of the driver of the bus cannot be imputed to the plaintiff, nevertheless, if the jury find that the said driver was guilty of negligence, and that his negligence was the sole proximate cause of the accident, the plaintiff cannot recover. 30

5. If the violation of any provision of the Traffic Act by the bus driver was the sole proximate cause of the plaintiff's injury, plaintiff cannot recover.

*Grounds of Appeal.***GROUNDS OF APPEAL.**

Filed April 1, 1925.

NEW JERSEY SUPREME COURT.

10	CATHERINE SMITH, <i>Plaintiff-Appellee,</i>	}	<i>Action</i>
	<i>vs.</i>		<i>at Law.</i>
	PUBLIC SERVICE RAILWAY COM- PANY, <i>Defendant-Appellant.</i>	}	<i>On Appeal</i>
			<i>from the</i>
			<i>Essex</i>
			<i>County</i>
			<i>Circuit Court.</i>

To Henry P. Bedford, Esq., attorney of plaintiff-appellee.

20 SIR:

TAKE NOTICE, that the following are the grounds of appeal which the defendant-appellant will urge why the judgment heretofore rendered against it in the above-entitled cause should be reversed, set aside and for nothing holden:

1. The Court, despite the objection of the attorney of the defendant-appellant, refused to admit in evidence, when offered by the attorney of the defendant-appellant, a statement in writing, signed by Norma Roberts (now Norma Dolan), a witness called by the plaintiff-appellee, which signed statement related to the subject-matter of the suit, and contained averments which were in direct contradiction of testimony given by the said witness, concerning important matters, at the trial of the cause.

2. The Court, despite the objection of the attorney of the defendant-appellant, refused to

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Grounds of Appeal.

admit in evidence, when offered by the attorney of the defendant-appellant, a statement in writing, signed by Dorothy Knell (now Dorothy Lennon), a witness called by the plaintiff-appellee, which signed statement related to the subject-matter of the suit, and contained averments which were in direct contradiction of testimony given by the said witness, concerning important matters, at the trial of the cause. 10

3. The Court, despite the objection of the attorney of the defendant-appellant, refused to admit in evidence, when offered by the attorney of the defendant-appellant, a statement in writing, signed by Marguerite Westervelt, a witness called by the plaintiff-appellee, which signed statement related to the subject-matter of the suit, and contained averments which were in direct contradiction of testimony given by the said witness, concerning important matters, at the trial of the cause. 20

4. The Court, despite the objection of the attorney of the defendant-appellant, charged the jury as follows:

“If the defendant’s motorman was in any way negligent, even though the bus driver contributed to the accident, your verdict should be for the plaintiff.” 30

5. The Court, despite the objection of the attorney of the defendant-appellant, charged the jury as follows:

“The Court: Gentlemen of the jury, I made a slip. The request that I charged you on behalf of the plaintiff was a legal error. I said to you that if the defendant’s motorman was in any way negligent, even though the bus driver contributed to the ac- 40

Grounds of Appeal.

10 cident, your verdict should be for the plaintiff. The difficulty with that request, standing alone, is that it overlooks any negligent act on the part of the plaintiff by which she may have contributed to her injury. Instead of that I repeat to you what I said in the charge, that if Mrs. Smith took a seat or

20 place in this bus, the property of the Nevins Press Company, at the express or implied invitation of that company to take her to her business or work on that morning, she was an invitee; and if you find that she exercised no control over the driver, Howard Farley, then, unless there was something that she individually should have done in the exercise of due care to have avoided the injury, she is not chargeable with any negligence of Howard Farley in the operation of that bus. That is all."

6. The Court, despite the objection of the attorney of the defendant-appellant, charged the jury as follows:

30 "If you find that she exercised no control over the driver, then, unless there was something that she individually should have done in the exercise of due care to avoid injury, she is not chargeable with any negligence of the driver of the bus. Yet, while the negligence of the driver of the bus under these circumstances cannot be imputed to her, of course, if the motorman of the trolley car was not negligent and you find that the violation of some provision of the traffic act by the bus driver was the sole proximate cause of the accident and that that violation amounted to negligence, the plaintiff would

Grounds of Appeal.

not under those circumstances be entitled to your verdict.”

7. The Court, despite the objection of the attorney of the defendant-appellant, charged the jury as follows:

“Farley, the driver of the automobile bus, had a right to rely upon the duty imposed by law upon the defendant company and upon the motorman in its employ in charge of the car in question; namely, to exercise care in operating the car in respect to its speed and its control so as not to endanger the safety of other travelers using the highway. Farley had a right to suppose that the motorman was aware that the trolley car had no paramount or exclusive right on the highway, but that he, the motorman, must keep a look-out on the tracks ahead of him and must keep his car under such control as to be able to reduce its speed, and even bring it to a standstill if necessary, to avoid collision with anyone driving an auto bus, which without negligence on the part of its operator might happen to have come upon the tracks in front of the trolley car.”

(The Court, despite the objection of the attorney of the defendant-appellant, charged the jury as aforesaid, despite the fact that under the evidence the negligence or lack of negligence of Farley, the driver of the auto, was not relevant to the issue.)

8. The Court, despite the objection of the attorney of the defendant-appellant, charged the jury as follows:

“Farley, the driver of the automobile bus, had a right to rely upon the duty imposed

Grounds of Appeal.

10 by law upon the defendant company and upon the motorman in its employ in charge of the car in question; namely, to exercise care in operating the car in respect to its speed and its control so as not to endanger the safety of other travelers using the highway. Farley had a right to suppose that the motorman was aware that the trolley car had no paramount or exclusive right on the highway, but that he, the motorman, must keep a look-out on the tracks ahead of him and must keep his car under such control as to be able to reduce its speed, and even bring it to a standstill if necessary to avoid collision with anyone driving an auto bus, which without negligence on the part of its operator might happen to have come upon the tracks in front of the trolley car.”

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(The Court, despite the objection of the attorney of the defendant-appellant, charged the jury as aforesaid despite the fact that such charge of the Court imposed upon the motorman of the trolley car a duty exceeding the exercise of reasonable care and therefore a duty greater than the law in fact imposes.)

30 9. The Court, although requested so to do by the attorney of the defendant-appellant, refused to charge the jury as follows:

“While the negligence of the driver of the bus cannot be imputed to the plaintiff, nevertheless, if the jury find that the said driver was guilty of negligence, and that his negligence was the sole proximate cause of the accident, the plaintiff cannot recover.”

Grounds of Appeal.

10. The Court, although requested so to do by the attorney of the defendant-appellant, refused to charge the jury as follows:

“If the violation of any provision of the Traffic Act by the bus driver was the sole proximate cause of the plaintiff’s injury, plaintiff cannot recover.”

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Yours truly,

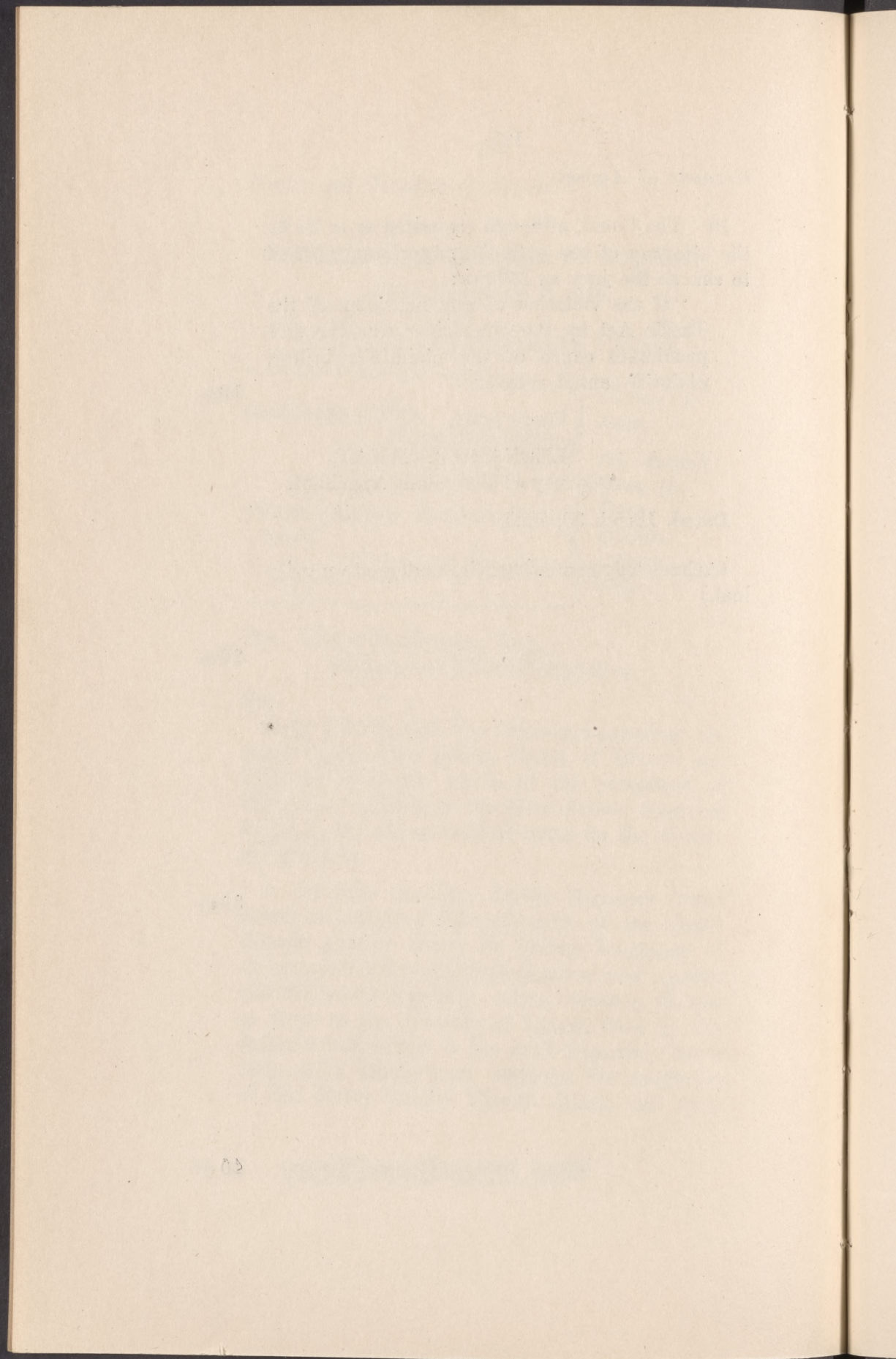
LEONARD J. TYNAN,
Attorney of Defendant-Appellant.

Dated, March 30, 1925.

(Acknowledgment of service endorsed on original.)

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Opinion of Supreme Court.

SUPREME COURT OPINION.

Filed October 6, 1925.

NEW JERSEY SUPREME COURT.

No. 23, May Term, 1925.

CATHERINE SMITH,
Plaintiff-Respondent,

vs.

PUBLIC SERVICE RAILWAY Co.,
Defendant-Appellant.

10

On Appeal.

Submitted, May Term, 1925; decided October 6, 1925.

Before Justices Parker, Minturn and Black.

20

For the appellant, Leonard J. Tynan, Esq.

For the respondent, Henry P. Bedford, Esq.

PER CURIAM.

This suit was brought to recover compensation for personal injuries. The plaintiff was the occupant of a bus that was in collision with a trolley car on March 12, 1923. The injuries complained of were the result of the collision. The trial resulted in a verdict for the plaintiff for \$3,000. The defendant files ten grounds of appeal. These are argued under six heads in the defendant's brief. Nos. 1, 2 and 3. Refusal by the Trial Court to admit in evidence a statement in writing signed by each of three witnesses called by the plaintiff, Norma Roberts or Norma Dolan, Dorothy Knell and Marguerite Westervelt. These statements were marked Ex. D. 1, D. 2 and D. 3 for identification. At page 155 of the rec-

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Opinion of Supreme Court.

ord this appears: "Mr. Coult: I want to ask leave to read to the jury so much as serves to contradict her story." The Court: "Yes, you may do that." The record shows that the defendant had no restrictions placed by the Trial Court about inquiring concerning these statements by the witness. We find no error here.

10 No. 4; error in the charge. This was corrected by the Trial Court, by calling the jury back and saying: "Gentlemen of the jury, I made a slip. The request that I charged you on behalf of the plaintiff was a legal error." Then, the Court proceeds to point out the correct rule of law applicable to the facts. No. 5 is an exception to what the Court said in correcting the error in the charge. This was not error. No. 6: Error in the charge. We find no error here.

20 No. 7, is abandoned in the brief of the appellant. No. 8: Error in the charge. We find no error here. Nos 9 and 10: Refusal to charge the fourth and fifth requests of the defendant. These were covered by the trial judge in his charge so far as they were pertinent to the facts. The Court of Errors and Appeals, in the case of *Eustice v. Courtright*, 61 N. J. L. 656, said, the exclusion of testimony because irrelevant is at discretion, and that harmless and immaterial

30 error in a charge affords no ground of reversal. Finding no error in the record, the judgment of the Essex Circuit Court is affirmed.

*Affirmance and Remittitur.***SUPREME COURT JUDGMENT.**

NEW JERSEY SUPREME COURT.

CATHERINE SMITH, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div> <div style="text-align: center; padding: 5px 0;"><i>vs.</i></div> PUBLIC SERVICE RAILWAY Co., <div style="text-align: right; padding-right: 20px;"><i>Defendant.</i></div>	}	<i>Action at Law.</i>	10
		<i>Affirmance and Remittitur.</i>	

The Court having inspected the record and proceedings in the Essex County Circuit Court in this case and heard argument of counsel therein and having duly considered the same and finding no error in the record and proceedings, it is hereby ordered that the judgment of the Essex County Circuit Court be and hereby is in all things affirmed, with costs, and it is further ordered that the record be remitted to the Essex County Circuit Court to be proceeded with in accordance with this judgment and the proceedings of said Court. 20

Dated October 16, 1925.

On the motion of Henry P. Bedford, attorney for plaintiff-appellee. 30

*Notice and Grounds of Appeal.***NOTICE AND GROUNDS OF APPEAL.**

Filed November 6, 1925.

NEW JERSEY SUPREME COURT.

10

 CATHERINE SMITH,
Plaintiff-Appellee,
vs.
 PUBLIC SERVICE RAILWAY COM-
 PANY,
Defendant-Appellant.

*Action at
Law.**On Appeal
from the**Essex
County
Circuit
Court.*

20

 To: HENRY P. BEDFORD, Esq.,
 Attorney of Plaintiff-Appellee.

SIR:

TAKE NOTICE, that the defendant-appellant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment of affirmance entered in the New Jersey Supreme Court in the above-entitled cause on the following grounds:

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1. Because the New Jersey Supreme Court erred in affirming the judgment of the Essex County Circuit Court in giving judgment of affirmance for the plaintiff-appellee, and against the defendant-appellant, when, because of one or more of the grounds of appeal, filed by the defendant-appellant in the said Supreme Court, such court should have reversed the judgment of the Essex County Circuit Court, and have

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Notice and Grounds of Appeal.

given judgment for the defendant-appellant instead of for the plaintiff-appellee.

Dated: October 27, 1925.

Yours truly,

LEONARD J. TYNAN,
Attorney of Defendant-Appellant. 10

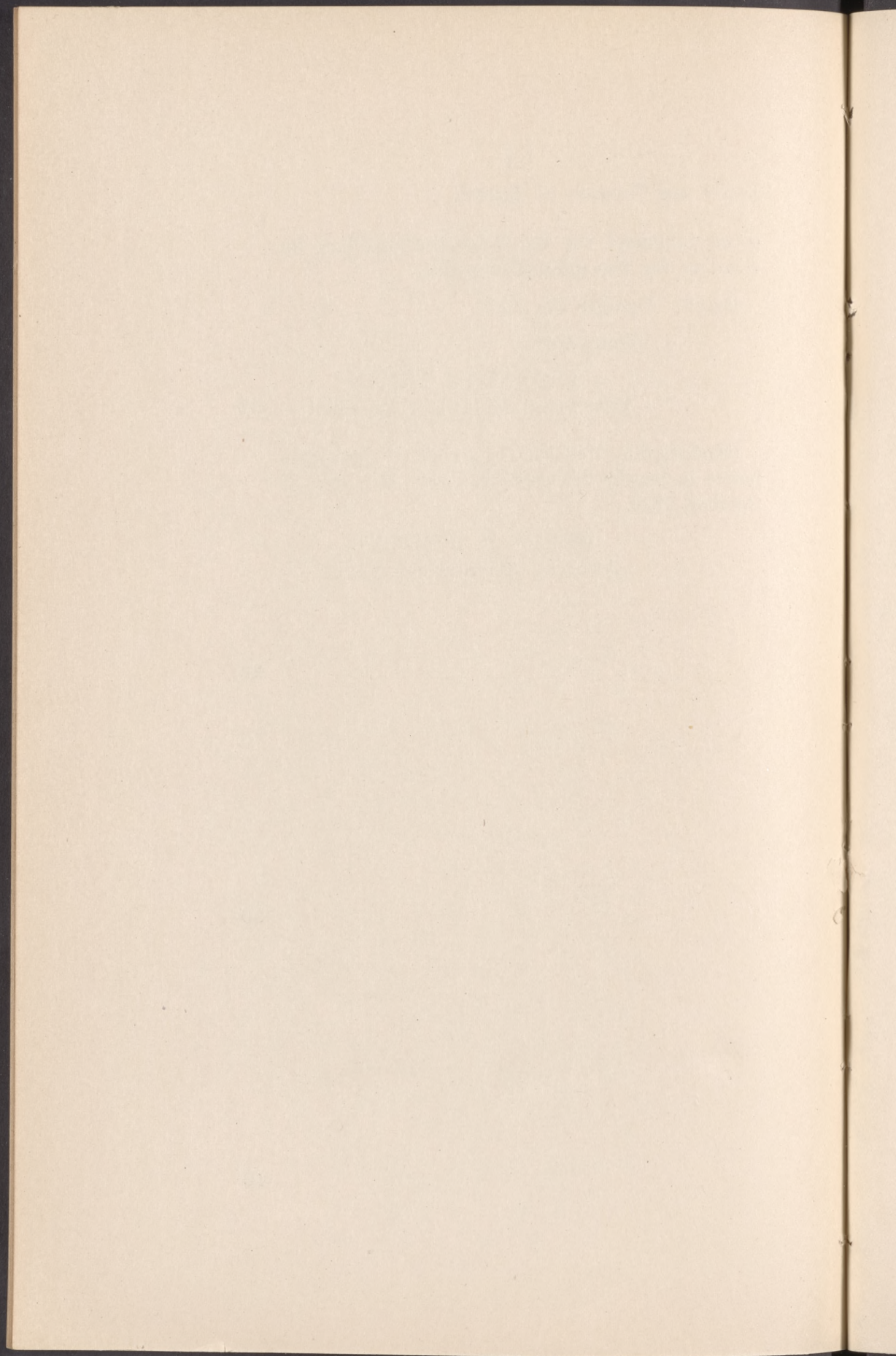
(Endorsed.) "Service of a copy of the within notice is hereby acknowledged this 27th day of October, 1925.

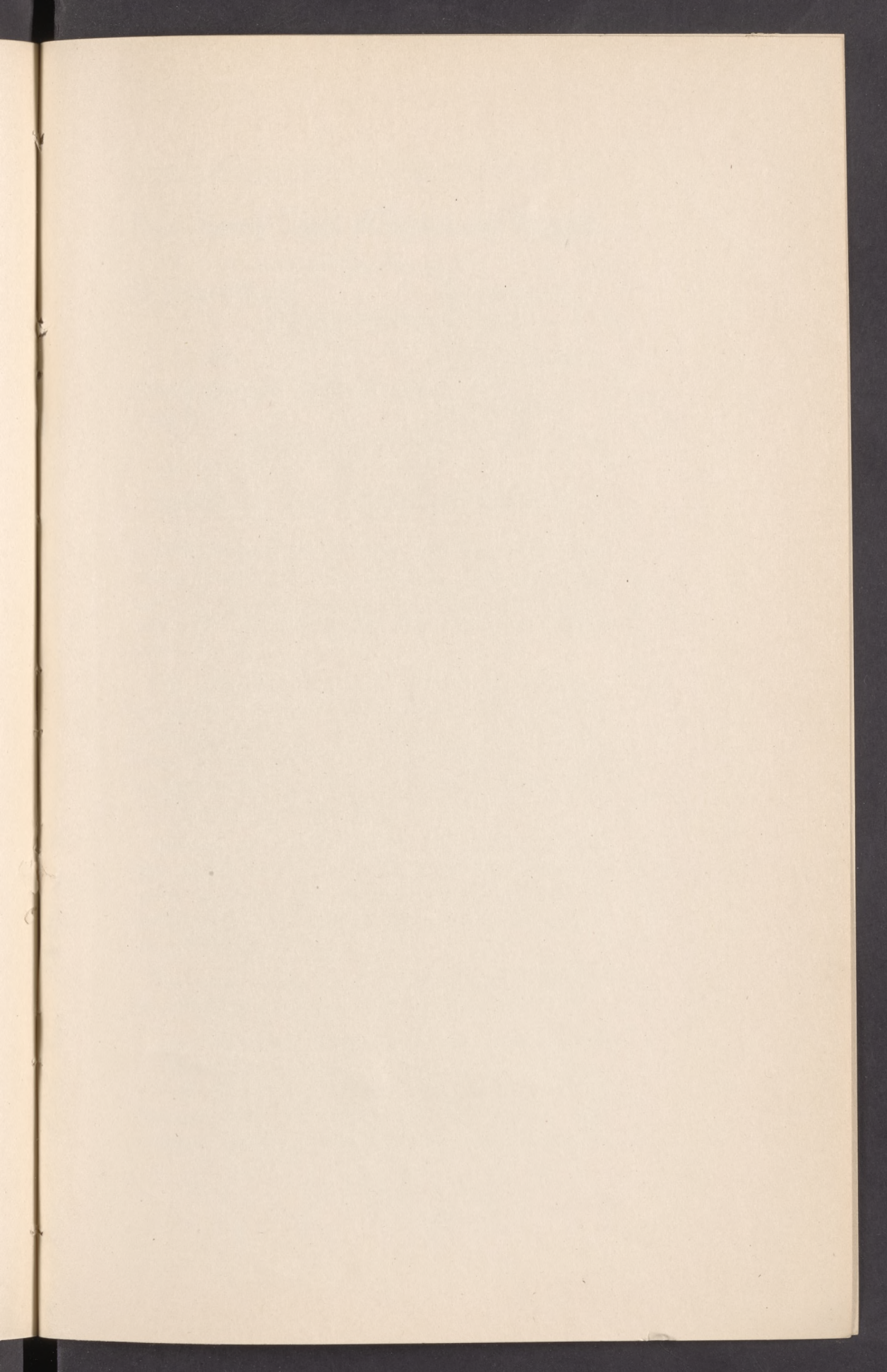
HENRY P. BEDFORD,
Attorney of Plaintiff-Appellee."

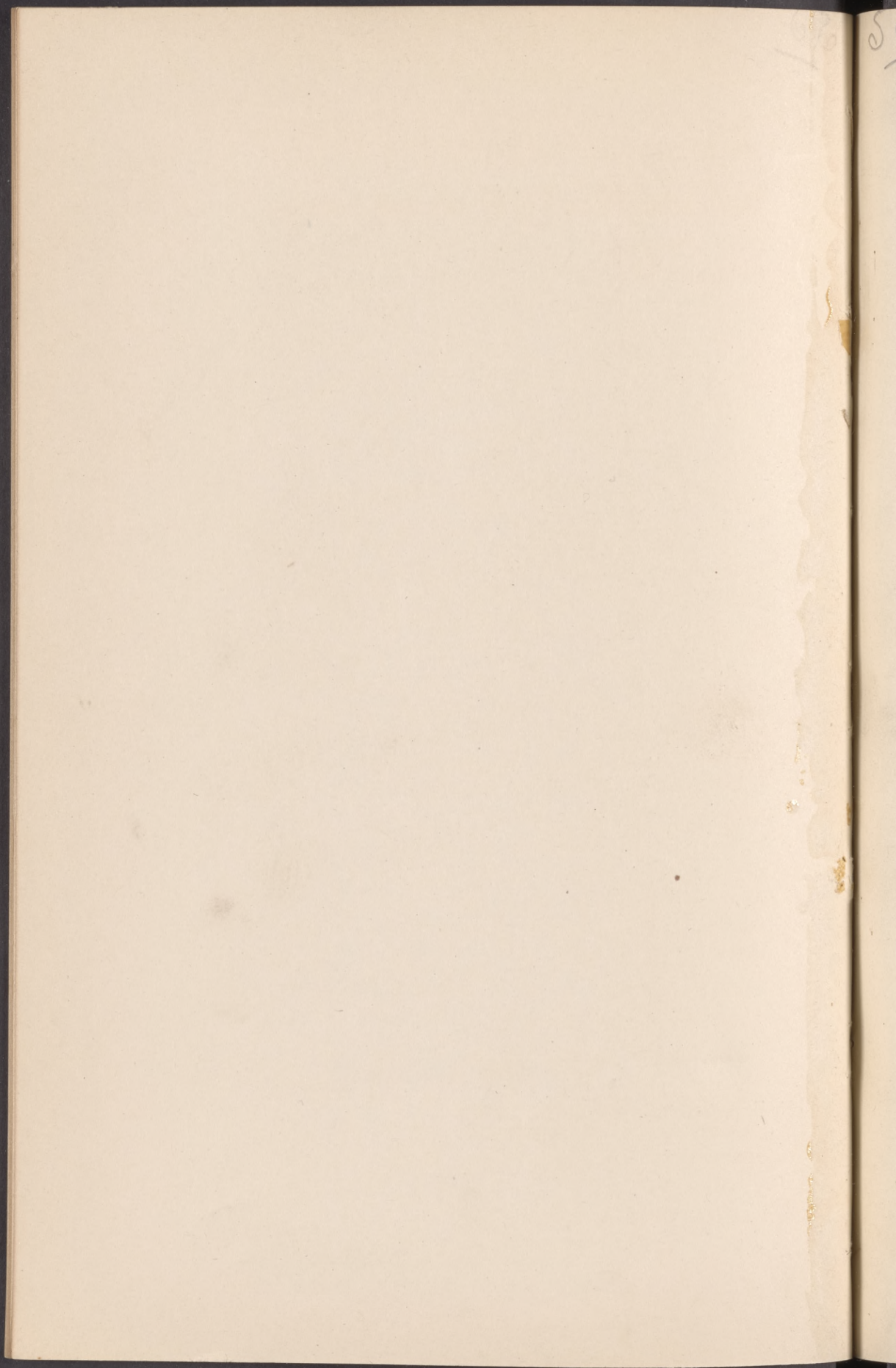
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New Jersey Court of Errors and Appeals

CATHERINE SMITH, <i>Plaintiff-Appellee,</i>	} <i>Action at Law.</i>
<i>vs.</i>	
PUBLIC SERVICE RAILWAY COM- PANY, <i>Defendant-Appellant.</i>	} <i>On Appeal from Supreme Court.</i>

BRIEF OF DEFENDANT-APPELLANT.

This is an appeal from a judgment of the Supreme Court (p. 189) affirming a judgment in favor of the above plaintiff-appellee (hereinafter called the plaintiff) in the Essex County Circuit Court (p. 9).

The grounds of appeal (p. 190) bring before this Court nine grounds of appeal argued in the Supreme Court (p. 180), Nos. 1, 2, 3, 4, 5, 6, 8, 9 and 10. Ground No. 7 was abandoned by the defendant-appellant (hereinafter called the defendant) in the Supreme Court.

Grounds of appeal Nos. 4, 5 and 6, (pp. 181-182) relate to errors in the charge of the trial court touching the contributory negligence of the plaintiff and will be argued together under the following subject:

The trial court erred in charging plaintiff's contributory negligence out of the case.

The happening which forms the basis of the suit took place March 12, 1923, at the intersection of Main and Centre streets, in the City of Orange, when an automobile bus, owned and operated by the Nevins-Church Press Company,

came into collision with a trolley car of the defendant.

The plaintiff was one of several employees of the Nevins-Church Press Company who were being taken to work.

The omnibus, in the control of a chauffeur of the Nevins-Church Press Company, had come into Main street from Centre street and was in the process of making a complete turn by backing and pulling ahead on Main street before entering Centre street again when the collision occurred.

The plaintiff sustained physical injuries for which she asks compensation.

She presented her case upon the theory that the bus in turning had been backed upon the trolley tracks in Main street and had stood there for some time and was either still standing or just starting to move forward when it was struck at the rear right corner by the trolley car which had borne down upon it from a block away at a high rate of speed.

It was the theory of the defendant that the bus had been backed from the right-hand roadway on Main street directly into the path of a westbound trolley car without warning and when the car was so near that collision was unavoidable.

Contributory negligence on the part of the plaintiff had been set up as a defense in the answer (p. 6) as follows:

“THIRD DEFENSE.”

“1. It avers that the negligence of the plaintiff contributed to the happening of the said alleged accident, in that she failed to keep a proper lookout and to warn the

operator of the automobile bus in question of the approach of the trolley car in question.”

Issue was joined on this defense by the Reply (p. 7).

Nowhere in the charge as originally delivered did the court speak of contributory negligence. In fact, the conduct of the plaintiff herself was not touched upon at all except where the court dealt with the imputability to the plaintiff of the negligence of the driver of the omnibus. On this subject the court said (p. 167, l. 25),

“If Mrs. Smith, the plaintiff, took a seat or a place in the bus, the property of the Nevins Press Company, at the express or implied invitation of that company to take her to work, she was in law an invitee. If you find that she exercised no control over the driver, then unless there was something that she individually should have done in the exercise of due care to avoid injury, she is not chargeable with any negligence of the driver of the bus.”

Exception was taken to the above portion of the charge and to what was said in connection with it, not on the ground that the court omitted to charge contributory negligence but on the ground that the charge as delivered permitted recovery if the jury found that the defendant was negligent and that the bus driver's negligence could not be imputed to the plaintiff (which of course was obvious) without permitting the jury to find that there might have been contributory negligence on the part of the plaintiff herself (pp. 171-172).

The foregoing exception is the basis of ground of appeal No. 6 in the Supreme Court.

The court also charged the following request of the plaintiff (p. 170, l. 31):

“If the defendant’s motorman was in any way negligent, even though the bus driver contributed to the accident, your verdict should be for the plaintiff.”

To the charging of this request defendant excepted on the ground that it eliminated the contributory negligence of the plaintiff. This exception is the basis for ground of appeal No. 5 in the Supreme Court (p. 170, l. 30). The court afterward recalled the jury and charged it as follows (p. 171, l. 10):

“The Court: Gentlemen of the jury, I made a slip. The request that I charged you on behalf of the plaintiff was a legal error. I said to you that if the defendant’s motorman was in any way negligent, even though the bus driver contributed to the accident, your verdict should be for the plaintiff. The difficulty with that request, standing alone, is that it overlooks any negligent act of the part of the plaintiff by which she may have contributed to her injury. Instead of that I repeat to you what I said in the charge, that if Mrs. Smith took a seat or place in this bus, the property of the Nevins Press Company, at the express or implied invitation of that company to take her to her business or work on that morning, she was an invitee; and if you find that she exercised no control over the driver, Howard Farley, then, unless there was something that she individually should have done in the exercise of due care to have avoided the injury, she is not chargeable with any negligence of Howard Farley in the operation of that bus. That is all.”

To this portion of the charge the defendant excepted on the ground that it also disregarded the contributory negligence of the plaintiff (p.

171, l. 35). This exception was the basis for the ground of appeal No. 4 in the Supreme Court.

By the foregoing charge, request and attempted correction of the request as charged, the court clearly directed the jury to find against the defendant if they found the motorman negligent, and if they found the omnibus driver free from negligence without considering the negligence of the plaintiff herself at all; or to find against the defendant if both the motorman and the bus driver were negligent if the bus driver's negligence was not imputable to the plaintiff without considering the negligence of the plaintiff herself at all. These charges also directed the jury to find against the defendant if the motorman was guilty of negligence and if the bus driver was free from negligence without consideration of the *conduct* of the plaintiff at all, since the *conduct* of the plaintiff was only to be considered by the jury, under the charge of the court, if there was negligence of the driver which might be charged to her.

The distinction between the contributory negligence of the plaintiff herself and the imputable negligence of the bus driver is obvious, since contributory negligence of the plaintiff herself would depend upon her conduct alone, while imputable negligence would depend upon a question of agency, which would render the plaintiff responsible for the conduct of the driver.

The court might well have instructed the jury that the plaintiff was not responsible for the driver's negligence at all, but the court failed to so instruct, and the court's erroneous charge to the jury that the agency might be created by lack of care on the part of the plaintiff, or avoided by care on her part, did not throw any

light at all upon the consequences which ought to result if the plaintiff herself, by her negligence, contributed to her own injury. The court said that if the plaintiff failed to use due care to avoid the injury she should, as a consequence, be charged with the negligence, if any, of the bus driver. The court should have said that under such circumstances the plaintiff ought to lose her case.

To put a concrete illustration—the jury might say “We find the motorman did not have his car under proper control and that he was, therefore, negligent.” “We find that the bus driver was not negligent in the handling of his bus.” “We believe that the plaintiff was negligent because she did not give warning when she saw this trolley car and we believe that if she had given warning the accident would not have happened, but we must find in her favor nevertheless, under the charge of the court because there was no negligence of the bus driver to be imputed to her.”

As the charge stood originally, it merely *allowed* the jury to find for the plaintiff without consideration of the plaintiff's contributory negligence. By charging the plaintiff's request, the court *directed* the jury to find for the plaintiff if they found the motorman negligent; thus completely foreclosing the defendant from the benefit of its third defense. In attempting to correct the error the court said, first, that the request “standing alone” was bad. That it was bad because “it overlooks any negligent act on the part of the plaintiff by which she may have contributed to her injury.” The court did not then *correct* the error by telling the jury what contributory negligence is, and how it would affect the plaintiff's right of recovery but continued

immediately,—“Instead of that I repeat to you what I said in the charge”—. Then followed a repetition of that portion of the charge which related to *imputable negligence only*, and which commented on the conduct of the plaintiff herself only in these terms,—“Then, unless there was something which she individually should have done in the exercise of due care to have avoided the injury, *she is not chargeable with any negligence of Howard Farley in the operation of the bus.* That is all.”

The exceptions to all of the errors complained of in connection with this subject were taken by the trial attorney after this attempted correction of the flagrantly erroneous conclusion contained in the plaintiff's request. The grounds upon which the exceptions were based explicitly called the court's attention to the fact that contributory negligence had still been charged out of the case (pp. 171-172).

If there was evidence of the plaintiff's contributory negligence to be passed on by the jury those portions of the charge excepted to constituted harmful error.

In *Migliaccio v. Public Service Railway Company*, 1 N. J. Misc. 119, the Supreme Court, in dealing with a charge delivered in a death action, in which the decedent had been an occupant of an automobile which came into collision with a trolley car, said,—

“In this instruction we consider there was harmful error; for it left out of consideration entirely the question whether or not the decedent, by his own want of care, contributed to any extent to the happening of the accident, and there was direct evidence in the case upon which contributory negligence on his part might have been predicated.”

It is true that the elimination of the element of contributory negligence is not hurtful unless there is some evidence from which the jury could have found that the plaintiff, by her own want of care, contributed to some extent to the happening of the accident. (*Clark v. P. S. Ry. Co.*, 85 Atlantic 189; *Stilwell v. P. S. Ry. Co.*, 1 N. J. Misc. 560.)

The contributory negligence averred in the answer was a failure to keep a lookout and to warn the operator of the omnibus of the approach of the trolley car.

It is at least for a jury to say whether such failure, if a contributing cause to injury, is sufficient to bar recovery. *Mittlesdorfer v. West Jersey & S. S. Ry. Co.*, 77 N. J. L. 698, 73 Atlantic 538; *Buchman v. Reynolds*, 127 Atlantic 330; *Martin v. Penn. R. Co.*, (Supreme Court, Penna. 1919) 108 Atlantic 631; *Dansky v. Kotimaki*, (Maine) 130 Atlantic 871; *Baus v. Trenton & Mercer County Traction Co.*, 4 A. R., 44.

In the case of *Schroeder, et al., v. Public Service Railway Company*, (118 Atlantic 337), the trial court charged,—

“If the man who drove the car was not contributorily negligent and the defendant was negligent under the rules which I have given you, then all the plaintiffs are entitled to a verdict, the driver included.”

The Supreme Court said,—

“The infirmity of this instruction is that it necessarily implies that the passengers owed no duty of care for their own safety in any situation wherein the driver was not himself negligent. To this we cannot agree. Even if he were free from blame, there may still well have been some thing which they or one or more of them should have seen or heard, said or done, which would have avoided the accident.”

In the case at bar the plaintiff testified as follows (p. 29, l. 15): "Q You say that the bus came out on the trolley tracks? A Yes. Q Why is it that you know that? A Because I was watching out for the trolley car. Q Why is it that you know the position of the bus on the trolley track if you cannot say how far it went? A Because I saw the trolley car coming up Main street. Q But it was so far that you didn't think there was any danger of an accident? A Yes. Q That didn't attract your attention? A Yes, it always did. Q Was there anything about the position of that trolley car that frightened you? A Yes; it was coming up quite fast. Q How close was it to you? A It was down a block when I first saw the trolley car. Q You would not have any fear of a trolley car a block away? A Yes, when I saw it coming fast."

When cross examined concerning her statement to the defendant's investigator, the plaintiff testified (p. 31, l. 20): "Q Did you tell him that you yelled, 'Girls, we are going to be killed?' A Yes. Q Did you yell that? A Yes. Q Where was the trolley car when you yelled that? A The trolley car was on its way to Main street. Q How near was it? A Between Canfield and Center street. Q How near was it to your bus when you yelled, 'Girls, we are going to be killed'? A I couldn't exactly say. It was the other side of the safety isle. Q Haven't you any recollection of that? A No, I just don't know just the depth of Main street. I couldn't tell you that. Q Had you seen the trolley car before that? A Yes, I did. I saw the trolley car when the bus first started to back out. It was below Canfield street then. (p. 32) Q Did you watch it? A Yes, I did. Q When it got close

enough you yelled, 'Girls, we are going to be killed'? A Yes. Q In the meantime you watched it approach? A Yes. Q How close was it when you yelled, 'Girls, we are going to be killed'? A It was below the safety isle. Q Can you point out in this room and show us how near it was? A Deeper than this room. Q Further away than this room? A Yes. Q You thought when you saw it that far away that you were going to be killed? A Yes. Q Was the bus moving or standing still? A He was about to reverse his brakes. Q Was the bus moving or standing still? A I don't understand about reversing. He was about to start the bus. Q With the bus further away than the length of this room he didn't get off the track in time? A He didn't have time to."

It is evident from the foregoing testimony that the plaintiff first saw the trolley when it was below Canfield street, 372.3 feet away from the intersection of Centre street' (Testimony of William B. Preston, p. 150, l. 20). She watched it approach and gave no warning until it was so near that the chauffeur did not have time to get off the track. She knew that there was danger of an accident from the time that the bus first went on the tracks. There was evidence in the case that the bus was on the tracks when the trolley car was at Canfield street, more than 370 feet away; (Testimony of George Evans, p. 53, l. 3); that the bus stood on the track a full minute by the watch (p. 58, l. 35; p. 59, ll. 1-10; p. 60, l. 25); that it was standing when struck by the trolley car (p. 57, l. 15).

Farley, the chauffeur of the omnibus, testified on direct examination that he first saw the trolley car when he started to back up (p. 91, l. 23); it was then approaching Canfield street (l. 32).

That would be more than 370 feet away. He saw it next when he was about to start up; it was then entering the safety isle (l. 35); the bus was then in the center of the westbound track, and only 12 feet from the safety isle (p. 99, l. 15).

It is true that on cross examination the bus driver testified that he had watched the trolley car at various times during its approach and even said in answer to one question that he was 12 feet on one side of the safety isle when the trolley car was 12 feet on the other side (p. 104, l. 20) and later retracted it (p. 109), but it does stand clearly on the record in direct examination, as we have pointed out, that he testified he saw this car first when it was below Canfield street and did not see it again until it entered the safety isle at Centre street just as he was ready to move off the tracks. Taking that testimony, together with the testimony of the witness already referred to, who, by looking at his watch while on the witness stand, estimated that the omnibus had stood still on the track for a full minute, it was surely for the jury to say whether some warning by this plaintiff that a trolley car was coming would not have moved the chauffeur to drive off the track in safety instead of standing there doing nothing while the trolley came a full block without any diminution of speed and crashed into the rear of his omnibus.

The court erred in charging the degree of care required of the motorman.

The court, in commenting upon the respective rights and duties of the motorman and the bus driver, said (p. 168, l. 15),—

“Farley had a right to suppose that the motorman was aware that the trolley car had no paramount or exclusive right on the highway but that he, the motorman, must keep

a lookout on the tracks ahead of him and must keep his car under such control as to be able to reduce its speed and even bring it to a standstill if necessary to avoid collision with anyone driving an auto bus which without negligence on the part of its operator might happen to have come upon the tracks in front of the trolley car.”

To this portion of the charge exception was taken (p. 172, l. 25) on the ground that the court had misstated the duty of the motorman, because reasonable care in the operation of his car was all that was required of him under the circumstances mentioned in the charge. This exception forms the basis of ground of appeal No. 8 in the Supreme Court.

When the above paragraph was delivered, the court was discussing the rights and relative duties of the motorman and the bus driver and commenting upon what might be anticipated by each. What Farley might be bound to anticipate was not important, so far as plaintiff's responsibility for the accident was concerned, since Farley's negligence, if there was any, could not be imputed to her. But what Farley was bound to anticipate was important in determining what the motorman was bound to anticipate since the motorman's rights and duties with regard to other users of the highway depended upon their conduct as well as his own. It was, in fact, in this very connection that the court brought into the case the discussion of Farley's conduct, as will be clearly apparent when one reads that portion of the charge which immediately preceded the above excerpt.

The judge undertook to define the motorman's duties in connection with Farley's conduct and

it was incumbent upon him to define them correctly, otherwise the jury was bound to be misled into a false conception of what care would be required of the motorman in the case which they were about to receive for determination. The rule enunciated by the court utterly excluded pure accident. It assumed that if Farley was not negligent the motorman must have been. It was a conceded fact in the case that the trolley car had collided with a bus which happened to have come upon the tracks in front of it. The motorman admittedly did not keep his car under such control as to bring it to a standstill to avoid collision.

If the jury found that Farley was free from negligence in driving on the track then the charge as delivered automatically convicted the motorman of a breach of duty whether he exercised reasonable care or not.

The jury may have found that the defendant's theory of this happening was correct; that the bus did come into the path of the trolley car when collision was inevitable. But they may have found also that Farley was not negligent in backing on the tracks in those circumstances, if he was depending upon warnings to be given by others, which they failed to give. It is in evidence that he depended to some extent upon a lookout man who was supposed to watch some of the traffic at this intersection (pp. 99 & 100).

The jury may have decided that the chauffeur, backing on to the tracks, making observations only through the body of his car and having a lookout man on the street, as well as many passengers in the bus who had a clear view, had done the best that he reasonably could be expected to do under the circumstances, and that, therefore,

the auto bus happened on the tracks without negligence on the part of the operator. Having reached that conclusion, the jury would be bound to find a breach of duty by the motorman without considering his conduct beyond determining the conceded fact that he did not so control his car as to prevent the collision with the omnibus.

In *Searles v. Public Service Railway Company*, 126 Atlantic 465, Justice Parker, speaking for the Supreme Court, said,—

“(2) The other ground of appeal is the fifth, and brings up the charges by the court of the plaintiff’s first request:

‘If you find that the motorman of defendant’s trolley car saw this automobile in which plaintiff was a passenger on or near the track, and that the motorman could have arrested the movement of the trolley car before striking the automobile, the motorman’s failure to do so is his negligence, and the defendant company is responsible.’

This is likewise erroneous, because the test is not whether the motorman could possibly have stopped the car, but whether, in the exercise of reasonable care, he ought to have stopped it and could have stopped it.”

The trial court erred in excluding three written statements offered to contradict the testimony of plaintiff witnesses.

Witness Norma Dolan (formerly Norma Roberts), Dorothy Lennon (formerly Dorothy Knell) and Marguerite Westervelt had, previous to the trial, each signed a written statement containing a narrative account of the manner in which the collision occurred. In testifying each of these witnesses repudiated some important matter contained in the statement which was relevant to the issue at trial. The attorney for the defendant called the attention of each of these

witness to the contradicted matter contained in her statement and obtained from each an admission of her signature.

The statements were marked for identification (Dolan, "D. 1", p. 65, Lennon "D. 2", p. 89, Westervelt "D. 3"). Charles Spengler, Jr., investigator in the employ of the Public Service Railway Company, testified that he witnessed the signatures of each of these statements (pp. 154, 157, 158). The trial attorney offered D. 1, D. 2, and D. 3 in evidence. The court excluded them and an exception was noted on the record as a ground of appeal (p. 159). The trial court stated the ground for his ruling (pp. 161-162) as follows:

"The court:—I wish to state on the record my reason for refusing to allow those statements to go into evidence, because I think that the practice should be understood.

In order to contradict a witness who is a party to the action an attorney who has in his possession a statement signed by the witness may show the statement to the witness for the purpose of identifying the signature, whereupon the attorney should put the statement aside and introduce the entire statement on his case.

The rule for contradicting a witness who is not a party to the action is different. The witness must have his attention directed to the time when he signed the paper and to the circumstances under which he signed. If the statement was prepared by some person other than the witness, inquiry should be made as to how the data contained in the statement were obtained by that person, and the signature to the statement should be identified; then the attorney should read to the witness only such parts of the statement as are competent for the purpose of contradicting him. If the witness denies that he made certain admissions which have been

read to him from the statement he may be contradicted, when the time comes for presenting the case of the attorney having the statement, by the attorney's placing upon the stand the person who took or prepared the statement and asking him whether the witness did not make the admissions to him."

The exception taken to this ruling of the court constitutes the basis for grounds of appeal Nos. 1, 2 and 3 in the Supreme Court.

In *Lugosch v. Public Service Railway Company*, 2 A. R., 1409, the first section of the syllabus is as follows:

"1. A written document, containing matter only incidentally or collaterally involved in the controversy, is admissible in evidence to contradict a witness or to affect his credibility, if the statements contained therein are inconsistent with the testimony of the witness at the trial."

In that case, Justice Minturn, speaking for the Supreme Court said:

"The theory upon which such documents are admissible, is that they may serve to contradict the witness, or, at least, affect his credibility, if the statements therein contained be inconsistent with his testimony upon the trial of the cause."

In *Jones on Evidence*, Vol. 5, paragraph 847, it is said

"*A fortiori*, if his statements have been reduced to writing, he has laid himself open to an attack for having sworn to given facts after having put in writing statements which cast doubt upon his sworn version of them, and which, if susceptible of explanation, he should explain, or else the weight of his testimony diminishes in proportion to the extent of the variation. Hence, witnesses may be impeached by producing their written statements, for example, their letters, affidavits, depositions or the like, which are in-

consistent with the testimony given at the trial. By written statements is meant not only statements written by the witness, but such as may have been written by others and signed by him. * * * The difference in the mode of laying the foundation is, that in case the statements are oral, the warning is given by asking the witness in substance and effect, if he did not at a given time and place in the presence of or to a person or persons specified make the alleged contradictory statements. In case the statements are in writing and unsubscribed, the paper must be shown or read to the witness and marked for identification, and, if subscribed, the signature, and, in case he so demands, the paper must be shown to him. The attention of a witness having been thus called to the contradictory statements, *they may be proven and introduced in evidence in the regular course of the trial.*"

In the case of *Shreve v. Crosby*, 72 N. J. L. 491, (New Jersey Supreme Court, 1906) one question determined was the right of the plaintiff to rebut a document used to discredit the husband of the plaintiff by showing what was said at the time it was signed. Justice Pitney, there said (p. 502),—

"So far as appears, the only pertinency of the document was to impeach the credibility of Shreve by showing that its contents were inconsistent with his present testimony. * * * This paper was not evidential against the plaintiff upon the main issue in the case, but only upon the collateral issue whether Mr. Shreve was a trustworthy witness. The fact that it was in writing was of no special significance, save as it rendered it more convincing as evidence of the witness' former statement. Testimony of what transpired at the time the paper was signed, explanatory of its purpose, was admissible."

It is submitted that the statements in this case were evidential to discredit the three witnesses who made them and that the exclusion of them by the trial court was not justified. The Supreme Court, in the present case, however, held that the action of the trial court was not erroneous in view of the fact that permission had been conceded to the trial attorney representing the defendant to read to the jury those portions of D. 1 for Identification (statement of Norma Roberts) which served to contradict her testimony. This action by the trial court took place during the examination of Charles Spengler when he had proved the signature to the statement D. 1 for Identification. The statement was offered in evidence and objected to on the ground that it was not evidential. The following colloquy took place (p. 155, l. 14):—

“Mr. Coult: It contains contradictory statements to which attention was specifically drawn. They were pointed out to her. That makes it evidence in contradiction as affecting her credibility.

The Court: It also contains a lot of other statements. Why deviate from the ordinary rule and attempt to put these statements in in this way? Why not ask this man these things she denies she said?

Mr. Coult: I am going to do that, but that does not make this statement any better or any worse.

The Court: I don't think that is the proper way to take the statement of one who is not a party to this suit. I will let you take out those parts of the statement which she alleges she didn't say to this man and have this man contradict them.

Mr. Coult: I want to ask leave to read to the jury so much as serves to contradict her story.

The Court: Yes, you may do that.

Mr. Coult: It always seemed to me that the whole statement should go in. That portion which is admitted serves to explain the whole. That portion which is admitted has a bearing on that portion which is contradicted. It has considerable weight, it seems to me, if all of a certain statement is true except certain vital parts.

The Court: At the same time, there are irrelevant parts in this statement. If you establish a principle, it must work. If it works in this case it should work in another case tomorrow. It cannot work where a witness is not a party. I think you had better ask this witness, 'Did she say this to you' and then quote from that statement what she said she did not say to him and then have him contradict her. I don't know any better way at the present time."

The defendant's attorney took no action whatever upon this ruling of the court but later (p. 159) he offered all three statements, D. 1, D. 2 and D. 3 for identification, in their entirety. The offer was denied and an exception noted as a ground of appeal.

The leave of the court to read certain portions of the statement of Norma Roberts, which, on the face of that statement, were contradictory to her testimony, applied to that statement alone, and was not pursued by the defendant. But assuming that the court's ruling then applied to all of the statements, and that the inconsistent parts of them had been read, still the action of the court in excluding the statements themselves was harmful error.

The pivotal point in the case was whether the bus had gotten upon the tracks and was standing when struck, or whether it was backing into the path of the trolley car when the collision occurred.

Norma Dolan testified that after the bus had stopped on Main street it backed diagonally onto the tracks; that it was standing when struck by the trolley car; that she knew it was standing because she had seen that the driver was just going to start (p. 67).

The statement of this witness (p. 173) contained, among other things, the following: "I do not know whether buss was backing at time and do not know what direction we were moving, but I know we were struck in rear by a west-bound Orange car, do not know whether at left rear or right rear side."

Dorothy Lennon testified that she saw the trolley car about at Canfield street; that the bus was then on the tracks and that the trolley car came at full speed before the driver had a chance to get off the tracks (pp. 80-81).

In the statement D. 2 for Identification (p. 175), this same witness said: "When the buss started to back, driver swung buss to the right so that it backed over toward west bound track at an angle headed north west, and was backing up slowly and just as the rear wheels of the buss, got on the west bound track, I heard a crash and felt a bump * * *. The first I saw of this trolley car was when our buss turned into Main St. I just happened to turn around and saw this car just about to pass into the safety aisle east of Centre St. The car seemed to be slowing up but I cannot say whether it had stopped in the aisle."

Margaret Westervelt testified (p. 112) that the bus turned on the westbound tracks and stood there long enough "to reverse brakes" to come back to Center street; that the trolley car came from Canfield street and hit it; that she saw the

trolley car coming at full speed; it did not stop anywhere; that the bus was standing still while the chauffeur was "fixing the levers" (p. 113).

In her statement D. 3 for Identification (p. 177) she said,—

"The buss just stopped long enough to be put in reverse and then started to back, the driver at the same time swinging to right so that it backed up toward west bound track at an angle headed north west. Just as the rear wheels of the buss got over on the west bound track I heard a crash and a jar at right rear corner of buss which threw me out of my seat to floor of buss. All the girls in buss were thrown from their seats. I did not see this west bound trolley car until after I got out of the buss, and never saw it before collision."

The matters repudiated in these three statements all bear upon the crux of the case. If it could be demonstrated to the jury that the statements contained contradictory matter, that they were legible, did not bear evidences of alteration, were such, in fact, that a person signing them must certainly have been aware of the contents, then the explanations made by these various witnesses, that they were not aware of the contents of the documents that they signed, ought to have been seriously impeached.

Taking Norma Dolan as an example; she testified (p. 69) that she did not read the statement carefully and did not know that contradictory matter was contained in it; that she did not know whether the statement had been changed but did not remember seeing some of "those things there"; she did not remember reading some of the things that were "in the statement now." Being asked (p. 71) "Can you look at it and

point out the things that you say were not there when you signed it (handing paper to witness)? She answered: It seems just as I told you. Different things I don't remember reading here. I don't remember seeing them."

This testimony we urge creates an inference, at least, in her case that the statement which she signed had been altered and that, therefore, the jury should have an opportunity to examine the paper and see whether there had been alterations. Particularly is that true of her statement for the following reason. It will be noted that the document consisted of two pages, each of which was signed. The signature of Norma Dolan (then Norma Roberts) happened to come at the bottom of the first page in the very midst of the most significant matter which she denied in her testimony. The statement ran thus: (pp. 173-174) "The buss was crossing west bound track, when all of a sudden I felt a bump and a crash the jar throwing some one opposite me over against me, and I was thrown to the floor of buss. I do not know whether buss was backing at time and do not know what direction we were moving," *Signed Norma Roberts.* "but I know we were struck in rear by a west bound Orange Car, do not know whether at left rear or right rear side."

The defendant surely ought not to be prevented from exhibiting this statement to the jury and from calling the jury's attention to the fact that Norma Dolan's signature interrupted the continuity of the very sentences which in her proof she said she did not remember seeing in the document and the substance of which she categorically denied.

The statements having been drawn in the same general form, it happens that the signature of the first page of each of the other statements

also lies in the midst of the most important matter contained in them and which each of these two other witnesses had repudiated at the trial.

If the plan adopted by the court had been followed and certain disjointed sections of each statement had been read in evidence, the jury would have no information of the *form* in which the writings were executed and no assurance that the supposed quotations from them were genuine.

Charles Spengler, the investigator, testified as to what had been said to him by these three witnesses at the time the statements were taken. He was flatly contradicted by each of them. The jury might very readily have disposed of this attempt at impeachment by concluding that they would not believe a hired investigator against the denial of the three young ladies. And they might conclude that they would not take very much stock in what the defendant's attorney might mendaciously allege was contained in some of the documents that he used in cross examining the witnesses and which the jury were not allowed to scrutinize. Whether the submission of the statements themselves to the jury, with the signatures appended to the first page of each lying fairly in the midst of a clear, unaltered written narrative of the very essence of the case, would have served to discredit these witnesses, is a matter at least open to conjecture, and we, therefore, submit that it was harmful error to deny the defendant the right to strengthen its oral proof by the exhibition to the jury of this documentary evidence which would speak for itself so convincingly.

Respectfully submitted,

JOSEPH COULT,
Attorney of and of Counsel
with Defendant-Appellant.

The first of these is the fact that the
 government has been successful in
 securing the cooperation of the
 various states in the
 formation of a national
 system of highways.
 This system is now being
 constructed and will
 be completed within
 a few years.
 The second of these is the
 fact that the government
 has been successful in
 securing the cooperation
 of the various states
 in the formation of a
 national system of
 highways.
 This system is now
 being constructed and
 will be completed
 within a few years.
 The third of these is the
 fact that the government
 has been successful in
 securing the cooperation
 of the various states
 in the formation of a
 national system of
 highways.
 This system is now
 being constructed and
 will be completed
 within a few years.
 The fourth of these is the
 fact that the government
 has been successful in
 securing the cooperation
 of the various states
 in the formation of a
 national system of
 highways.
 This system is now
 being constructed and
 will be completed
 within a few years.
 The fifth of these is the
 fact that the government
 has been successful in
 securing the cooperation
 of the various states
 in the formation of a
 national system of
 highways.
 This system is now
 being constructed and
 will be completed
 within a few years.
 The sixth of these is the
 fact that the government
 has been successful in
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 of the various states
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 national system of
 highways.
 This system is now
 being constructed and
 will be completed
 within a few years.
 The seventh of these is the
 fact that the government
 has been successful in
 securing the cooperation
 of the various states
 in the formation of a
 national system of
 highways.
 This system is now
 being constructed and
 will be completed
 within a few years.
 The eighth of these is the
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 within a few years.
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 highways.
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 within a few years.
 The tenth of these is the
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 national system of
 highways.
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 being constructed and
 will be completed
 within a few years.

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New Jersey Court of Errors and Appeals

CATHERINE SMITH,

Plaintiff-Appellee,

vs.

PUBLIC SERVICE RAILWAY COM-
PANY,

Defendant-Appellant.

*Action at
Law.*

*On Appeal
from Supreme
Court.*

BRIEF OF PLAINTIFF-APPELLEE

The plaintiff with others was a passenger on a motor passenger bus which was driven on the tracks of the defendant on Main Street, Orange, N. J., at about the center line of Center Street where it crosses Main Street. The driver of the motor passenger bus was in the employ of a third party. The bus was on the westbound track about fifteen (15) feet west of a safety aisle on which a passenger was waiting for a car. A westbound trolley car struck the bus resulting in the plaintiff's being injured so that she still suffers and carries a disfigurement. Plaintiff obtained a verdict of three thousand (\$3,000) dollars and defendant appeals.

Defendant appears to rely on seven grounds of appeal, having abandoned 7, 9 and 10. The first three grounds refer to the exclusion of written statements on only parts of which witnesses were interrogated.

POINT I.

All the evidence as to contradictory statements made by witnesses offered by defendant was admitted and placed before the jury.

The FIRST GROUND OF APPEAL (Case, page 180) relates to statements of Norma Roberts. At page 65, l. 10, this witness admitted she signed the

paper. There was no contradiction as to that. At page 67, l. 20 to 68, l. 40, defendant's counsel read to the witness before the jury all the statements in the paper consistent or inconsistent that at any time were asked about and therefore all that was admissible was before the jury.

The statement itself was admittedly not the statement of the witness but the writing of defendant's agent of his construction of what the witness had told him (C., p. 161, l. 20), and there was no dispute as to its having been written and signed. It was not in itself contradictory of, but was in fact in agreement with, the statement of the witness that she had signed it.

All that was favorable to the defendant, or that was asked about by counsel, that appears in the writing Exhibit D. 1 (C., p. 173) was placed before the jury as above shown. There were some irrelevant matters about the witnesses earnings, her own doctor bill, her husband's name and the line "States to C. Spengler, Jr., at her home as follows:—" which the witness was not asked about but all counsel asked about, was before the jury, was stated by him to be in the writing, and this was not disputed. Nothing offered that was evidential on the issues was rejected. Defendant's counsel asked and received permission to read to the jury "so much as serves to contradict her story" (C., p. 155, l. 20). Counsel had already read once in the examination of the witness all that was admitted and all that might be said to be contradicted (C., p. 67, l. 20), and the only part not before the jury was what he had not asked about which was also irrelevant matter. Notwithstanding this defendant's counsel repeated all the statements, those that had been admitted by the witness and any that had not been in conformity to her evidence (C., p. 156, l. 10).

Dorothy Knell (now Dorothy Lennon): The

SECOND objection or ground of appeal is the same as the first except that it is applied to the witness Dorothy Knell. The foregoing statement regarding the attempt to contradict Norma Roberts, and the placing of all the evidence in the statement before the jury applies as forcefully to this witness.

She did not dispute she had signed the writing (C., p. 84, l. 10). Counsel for defendant then proceeded to ask the witness word for word as they appear in the statement whether certain things were true and witness says "yes," to all (C., p. 85, l. 20 to 86, l. 10 and Exhibit D. 2, p. 175). Counsel leaves the statement and asks the witness's present recollection as to some facts and returns to the reading of the writing (C., p. 86, l. 20). He reads from the statement and gets the witness to state a different *recollection* as to one or two facts but she does not deny the statement he read was signed by her; she has on the contrary admitted it at C., p. 84, l. 10, and counsel read the statements alleged by defendant to be inconsistent to the witness before the jury C., p. 85, l. 30 to 87, l. 10, and all that witness stated was correct (C., p. 87, l. 30). And again on examination of his own witness at p. 157, l. 20, counsel for defendant read before the jury all in the writing that in any way differed from the testimony and a lot more that he thought would help him although it had not been contradicted by the witness. At page 155, l. 20, counsel for defendant had selected the method he would pursue by asking the court to permit him "*to read to the jury so much as serves to contradict her story*" and had received the court's permission.

Marguerite Westervelt: The THIRD objection is the same as the first and second, except that it is applied to the witness Marguerite Westervelt (C., p. 81, l. 20).

She admits signature to the paper (C., p. 115, l. 10).

There follows (C., p. 115, l. 40 to C., p. 116, l. 40) the questions framed in the language of the writing Exhibit D. 3, page 177, as counsel read from it with the interrogation "is it a fact" or "is it true" to which the witness answers in the affirmative until counsel asks a question (C., p. 116, l. 40), *that does not appear at all in the writing*, and gets a negative reply.

"Is it a fact that just when the bus was backing it was hit? A No."

This is not in the witness's statement (Ex. D. 3, C., p. 177). Counsel puts his own construction on words that have been constructed by defendant's agent in an interview with the witness, and the negative reply is not a denial of any statement in the writing. It nowhere appears in the statement that "just when the bus was backing it was hit." The nearest thing to the words embraced in counsel's questions is "just as the rear wheels of the bus got over on the west bound tract I heard a crash." (C., p. 177, l. 40). The words in the statement are entirely consistent with witness's statement on direct examination that the bus was standing still. (C., p. 113, l. 15).

Again at C., p. 117, l. 10, counsel, instead of getting a denial that witness had made a certain statement, or that a certain statement was in writing, simply asks the witness whether a statement, that she did not see the car, is true, and gets a denial of the fact, not a denial that the statement was made or that it appears in the writing. She had fully admitted her signature to the statement.

It is significant that every time counsel used the exact words of the statement he got an affirmative answer, and it was only when a question not in the

words of the statement was involved, that he received what he terms an inconsistent answer.

Where the witness admits the prior inconsistent statement no further evidence thereof is necessary, or even admissible, and this rule applies to written as well as oral statements.

“Where on cross examination it is sought to impeach a witness by reading from her evidence as preserved in the bill of exceptions taken on a former trial, it is proper to permit only such part of the written evidence to be read as the witness denies having testified to on the former trial, *and to exclude such part as she admits having testified to thereon.*”

State *vs.* Cooper, 83 Mo., 698.

This certainly applies more strongly to a statement not under oath taken by an agent of the defendant in which he puts other irrelevant matter. It fully appears, as above shown, that counsel read all that he would be permitted to read under this rule, and everything else with it that he desired to read, and as above stated, he had full permission of the court to read those parts to the jury (C., p. 115, l. 20).

“Although a writing, which the witness admits having signed, contains statements contradictory to his testimony, it is improper to admit in evidence another part of the writing containing statements prejudicial to the party calling the witness, but concerning which the witness was not interrogated.”

Manchester Fire Assur. Co. *vs.* State Ins. Co., 91 Ill., 609.

“Reading part of instrument. If the writing as a whole is contradictory, the whole should be *read* to the jury; but where the writing by which it is sought to impeach the wit-

ness contains matter which is irrelevant and incompetent, only such parts of the writing as are contradictory to, or inconsistent with, the testimony of the witness should be *read* to the jury by the impeaching party."

40 Cyc., p. 2747, par. L.

In the case of *Union Square Nat. Bank vs. Simmons*, Pitney, V. C., admitted only that part of stenographic testimony at a former trial to which the witness's attention had been previously called. In the present case counsel called attention only to such parts of the written statement as he quoted in his questions to the witnesses, and in no case did he call the entire contents of the statement to the attention of the witness.

Union Square Nat. Bank vs. Simmons, 42 Atl., 489, at 497 (N. J.).

The situation is not as it was in the Daum case, for in the present case the witness admitted her signature to the statement and it therefore could not be offered for the purpose of contradicting anything to the effect that she had not signed it.

Daum vs. N. J. Street Rly. Co., 69 N. J. L., 1 at 5. Affirmed 70, N. J. L., 338, E. & A.

In *State vs. Pulley*, the court said, referring to a similar question:

"The ground upon which the objection to this evidence was rested, and upon which its illegality is asserted before us, is that there was no denial by the defendant on the witness stand that he had made such a statement, and that it is a settled rule of evidence that such a denial is necessary in order to render the testimony competent. *The rule appealed to prevails only where the witness is not a party to the litigation.*"

State vs. Pulley, 82 N. J. L., 579, at 585 E. & A., 1911.

There is no denial in this case by the witnesses that they signed the statements in question. There is only in some instances a denial of the truth of some of counsels questions as to whether certain things are true, some of which things are not in the statements. In this situation only the parts deemed to be inconsistent with the witnesses testimony at the trial could be read to the jury for the purpose solely of impeachment. The whole statement was not admissible as affirmative evidence of the facts therein.

POINT II.

IN EXCLUDING THE WRITING, AND PERMITTING TO BE READ WHAT COUNSEL CLAIMED WAS INCONSISTENT, THE COURT PROPERLY EXERCISED ITS DISCRETION.

The court (C., p. 155, l. 10 and 35) refused to admit the statements on the ground that they contained irrelevant matter, but exercised its discretion in permitting the reading of so much as served to contradict the witness's story (C., p. 155, l. 20), and in letting defendant's witness testify to those parts of the statements the witnesses alleged they did not say, if any.

This course was approved in *Enstice vs. Courtright* by the Court of Errors and Appeals. "The exclusion of testimony because irrelevant, is at discretion. A leading case on the subject in this court is *Schenk vs. Griffin*, 9 Vr., 462."

Enstice vs. Courtright, 61 N. J. L., 653.

The questions really asked by counsel for defendant were whether or not parts of the statements are true and not whether the witness had made certain statements. In fact it is conceded that the writing is not the language of the witness, but that of defendant's agent, and the question of admissi-

bility therefore belonged to the class mentioned in *Lackenauer vs. Lyons & Sons*.

“The question belongs to a class of inquiries arising in almost every trial which may not be directly relevant to the issue, yet are and must be left to the discretion of the trial judge and will not be deemed of sufficient importance to set aside the trial unless it clearly appears that injury has been done by the admission. ‘*Discretio est discernere per legam quid sit justum.*’”

Lackenauer vs. Lyons & Sons, 67 N. J. L., 678.

Certainly there should be no reversal for this exercise of discretion in this case where the defendant got all of the admissible evidence before the jury and seems only to have desired to put the court “in a hole” so as to have something laid by for an attempt at reversal if the verdict went against it. At C., p. 154, l. 10, this clearly appears. “Mr. Coult. I will offer it in evidence. The Court. I will admit it. Mr. Coult. I withdraw it. The Court. Do you withdraw it? Mr. Coult. Yes.” And at C., p. 155, l. 20. “Mr. Coult. I want to ask leave to read to the jury so much as serves to contradict her story. The Court. Yes, you may do that.”

In *State vs. Black*, 70 N. J. L., 398, where defendant wished to show that electric bills were usual in amount to discredit the testimony of a witness that the meter had been tampered with the court said (p. 401) :

“It may be that if the books showed the charge in August was up to the other months, that would tend to discredit the testimony of Middleton” * * * “It is a settled rule ‘that the evidence offered must correspond with the al-

legations and be confined to the point in issue' and under it 'all evidence of collateral facts or those which are incapable of affording any reasonable presumption or inference as to the principal fact or matter in dispute, should be excluded.' 1 Greenleaf Evid., pp. 5152. And it was held in the Court of Errors that the admission or rejection of evidence of this character, though bearing remotely on the issues involved or upon the credibility of witnesses, is within the discretion of the judge, and its admission or rejection is no ground for reversal on error. *Schenck vs. Griffin.*"

State vs. Black, 70 N. J. L., 398 at 401.

The case of *Lugosch vs. Public Service Rly. Co.* is not in point. In that case the alleged contradictory statement was never shown or placed before the court or jury in any way because of an erroneous ruling by the trial judge that it must first be proved by a subscribing witness. The court held that this was error.

If the court in the *Lugosch* case had permitted the evidence which was contrary to the direct testimony of the witness to be shown and read, and to be questioned upon, and considered, and had only ruled out such portions as were irrelevant and immaterial, thereby exercising the discretion which the law requires, this court would undoubtedly have sustained the admission of part and the exclusion of the irrelevant.

Lugosch vs. Pub. Service Rly. Co., 126 Atl., 170.

In the present case, as above stated, all that counsel urged that was relevant or material, was presented to the jury, and he did not attempt to prove the balance of the written statements which contained immaterial and irrelevant matter. The whole of the statements were never proved in any shape or manner.

Each of the exhibits contains matters of record of the trolley company as to the age, marriage state, *nationality*, husband, occupation, *apparent age*, and the affirmation by the agent that "states to C. Spengler, Jr., at her home as follows:" all of which does not purport to be any part of the statement by the witness to Spengler. Defendant certainly could not be permitted to bring these alleged statements of fact of apparent age, nationality, etc., before the jury, with the force of evidence when they had nowhere been proved to be the statements of the witness. Mr. Coult never asked anything regarding these portions of the exhibit and yet wished to place them before the jury *with other statements in the writing which he had not asked about or proved*, with the effect of affirmative evidence as it certainly was not impeaching.

Just as the court said, these things were immaterial and irrelevant as to some of them, *and in addition counsel did not prove them to be either statements or contradictions of the witness.*

They serve to prove the reasonableness of the rule that will not permit of an omnibus statement going in before the jury carrying irrelevant and immaterial matter simply because some one or more parts of the statement may be alleged to be inconsistent.

As Lord Langdale said: "We have too much experience of the great infirmity of affidavit evidence. When the witness is illiterate and ignorant, the language presented to the court is not his; it is and must be the language of the person who prepared the affidavit; and it may be, and too often is, the expression of that person's erroneous inference as to the meaning of the language used by the witness himself" * * * "and testimony not intended by him is brought before the court as his." It "is almost always

incomplete, and often inaccurate, sometimes from partial suggestions and sometimes from the want of suggestions and inquiry, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory."

1 Greenleaf on Evidence, 15th Ed., note page 614.

POINT III.

THE COURT'S CHARGE TO THE JURY WAS NOT ERRONEOUS.

The 4th, 5th, 6th and 7th grounds of appeal can only be aimed at the possible imputing of the negligence of the driver of the bus to the plaintiff or the doing or failure to do something on the part of the plaintiff that constituted contributory negligence.

There is no evidence of any contributory negligence on the part of plaintiff, and defendant itself says (C., p. 183, l. 30): "Under the evidence the negligence or lack of negligence of Farley, the driver of the auto, was not relevant to the issue."

We cannot see how the defendant can complain of a charge so favorable to it that in spite of this statement, it permitted the jury to consider the possible contributory negligence of the plaintiff.

The court charged (C., p. 167, l. 20, "Of course," * * * "they had certain duties to one another as respected operators of vehicles on the public highway. *It was their duty to operate and control their respective vehicles with such care as reasonably careful and prudent men would have exercised under similar circumstances.*"

Middledorfer vs. West Jersey, 77 N. J. L., 698.

Lange vs. New York S. & W., 89 N. J. L., 605.

Under the above cases it seems quite clear that the contributory negligence of the plaintiff was non-existent in this case, and yet the court made a statement very favorable to the defendant when it left this field of contributory negligence open to the jury by saying "unless there was something that she individually should have done in the exercise of due care to avoid the injury, she is not chargeable with any negligence of the driver of the bus." Of course, it could not have been her direct negligence that caused the injury and it would only be by connecting up some alleged neglect of the driver of the bus which she had the opportunity to correct, with some act or failure to act on her part, that she might be charged with contributory negligence. Defendant seems to think that plaintiff might have avoided the results of some action of the driver or motorman or both by some act of hers and yet they say in the printed case, p. 183, l. 30, "that under the evidence the negligence or lack of negligence of Farley, the driver of the auto, was not relevant to the issue."

Furthermore, the plaintiff did all that could be expected of one under the circumstances, when she yelled at the time she saw the oncoming trolley nearing the bus as it stood on the track. She had a right to assume that the motorman saw the bus and had his car under control and would respect the right of the bus driver and the occupants of the bus to be on the tracks and to drive off of them safely. This bus was beyond the safety aisle at which a passenger was waiting to board this very car. (C., p. 44, l. 30.)

"The deceased, driving his milk wagon, had equal rights with the operator of the trolley car in the public highway. They were, therefore, bound to respect each others exercise of such right. The deceased had the right to as-

sume that the motorman saw the horse and wagon emerging from the intersecting street and had his car under control and would respect the right of the deceased to cross the tracks safely."

Wilhelm *vs.* Public Service, 113 Atl., 239, E. & A., 1921.

"It was the duty of the motorman approaching a street intersection where he struck an intending passenger crossing to board his car, to keep a lookout for and use reasonable care to have his car under such control as not to endanger persons crossing such point, particularly where a white pole apparently constituted notice to the public that the car stopped there for passengers."

Courtney *vs.* Public Service, 115 Atl., 740, Sup., 1921, affirmed 117 Atl., 925, E. & A.

"It was the duty of the motorman to have the car under such control as not to endanger the lives of persons waiting at the stopping place to take the car" * * * "In this situation she exercised her judgment and concluded to cross in front of the car. In the exercise of that judgment she was entitled to consider that the car usually stopped at that crossing. Moreover she had a right to assume that the motorman would keep a reasonably careful lookout ahead and that he would use the appliances of the car to keep it under reasonable control and to check or stop it if need be, before it reached her."

Bergman *vs.* Public Service, 120 Atl., 192, E. & A., 1923.

"That was in accordance with the true rule, which is that it is the duty of the motorman of

the trolley car, in approaching a street intersection, to have his car so far under control that he will not endanger the safety of a vehicle driven with reasonable care, which may happen to cross the tracks in front of the trolley car." Citing *Peterpole vs. Public Service*.

Geyer vs. Public Service, 120 Atl., 186; E. & A., 1923.

Under the above cases, in view of the evidence that plaintiff saw the trolley and yelled before the collision, the question of contributory negligence does not arise. Since there is no evidence of contributory negligence, any supposed omission in the charge is not harmful. (*Stillwell vs. Public Service*, N. J. Misc. Rep., Vol. 1, p. 560).

GROUND OF APPEAL No. 8 is aimed at the use of language by the trial court found in the above cases and particularly in *Geyer vs. Public Service, supra*, where the court uses almost the identical language of the judge. "That was in accordance with the true rule which is that it is the duty of the motorman of the trolley car approaching a street intersection, *to have his car so far under control that he will not endanger the safety of a vehicle driven with reasonable care which may happen to cross the tracks in front of the trolley car.*" The Court of Errors thus speaking does not seem to use the words "reasonable care" before every noun, verb or adjective, as defendant seems to think necessary. The court in the part of the charge referred to (C., p. 168, l. 10), says in this very paragraph referring to the duty of the motorman "namely to exercise care in operating the car," and at C., p. 167, l. 20, "it was their duty to operate and control their respective vehicles *with such care as reasonably care-*

ful and prudent men would have exercised under similar circumstances."

Wilhelm *vs.* Public Service, 113 Atl., 239.

Courtney *vs.* Public Service, 115 Atl., 740;
117 Atl., 925.

Bergmann *vs.* Public Service, 120 Atl., 192.

Geyer *vs.* Public Service, 120 Atl., 186.

"That one portion of the charge must be read in connection with the balance of the charge and the language employed must be interpreted with respect thereto," see *Heckel vs. Ford Motor Co.*, 128 Atl., 242 at 244, E. & A., 1925.

Appellants complaint that the court omitted the duty of the other party to look out for his own safety is negatived in the very paragraph complained of where the court says (C., p. 168, l. 20), "to avoid collision with any one driving an auto bus, which *without negligence on the part of its operator* might happen to come upon the tracks in front of the trolley car."

PLAINTIFF WAS A PASSENGER AND INVITEE AND THE DOCTRINE OF CONTRIBUTORY NEGLIGENCE DID NOT APPLY TO HER.

In addition to what is said on pages 11, 12 and 13 of this brief regarding Grounds 4, 5 and 6, the following is pertinent on this branch of the case.

The defendant submitted no request to the court to charge the jury regarding contributory negligence, and indeed it is not surprising that it did not do so in this case for no case has been found where the defendant went so far as to attempt to charge the plaintiff with contributory negligence under like circumstances. In every case where the question has arisen, the possibility of contributory

negligence of the plaintiff has been predicated on a probability of the plaintiff being able to do something in connection with the driver of the conveyance in which she was a passenger where such driver might have been chargeable with negligence, hence the charge of the judge in this case coupling up the possible negligence on the part of the driver being chargeable to the plaintiff if she were in any way at fault.

The Supreme Court has decided in the present case that there was no error, yet the defendant cites only Supreme Court decisions with the single exception of the Mittlesdorfer case decided in this court in 77 N. J. L., 698. The effect of the Mittlesdorfer case is to justify the charge of the trial court in saying to the jury that unless plaintiff was at fault in some respect herself, she would not be chargeable with the negligence of the driver. This was held to be a jury question in the Mittlesdorfer case, but nowhere does it appear that this court or any other court has held that an invitee in a bus carrying numerous passengers could be chargeable with contributory negligence *separate and distinct* from the physical control of the vehicle by the driver. There was nothing practical that plaintiff could have done to move the bus from the position that the driver was not already doing. (C., p. 107, l. 10.)

How the charge of contributory negligence separate and distinct from the physical control by the driver of the bus could be predicated on facts like those in the present case is beyond our imagination. The plaintiff had the right to assume that the motorman would not continue past the white pole and safety isle and crash into the standing bus. It was not determinable that he would not stop at the safety isle until too late for the plaintiff to do

anything for her own safety. She gave warning in as capable a manner as was possible in the second of time available to her. She did the natural thing a prudent person would do—yelled, "We will all be killed." (C., p. 31, l. 30.) This was not a case where she had an opportunity to observe the driver of her own vehicle drive into a place of danger and to warn him. The bus had been on the track for almost a minute before the crash and when the trolley car was not an apparent source of danger. It would only have been by knowing that the driver would not be capable of driving the bus off, as he was in the act of doing, in time, that anything could have been done to avoid the accident. What she could have done the omission of which contributed to the accident does not appear. Any fault of hers must have been predicated on the action of the driver in getting into the place of danger and remaining in danger negligently, as to which the court correctly charged the jury.

The Middlesdorfer case supports the plaintiff's position in this respect and is not in point for the defendant.

Middlesdorfer *vs.* West Jersey, 77 N. J. L., 698.

Referring to the request "If the defendant's motorman was in any way negligent, even though the bus driver contributed to the accident, the verdict should be for the plaintiff," the court told the jury at C., p. 171, l. 10, "The request that I charged you on behalf of the plaintiff was legal error. I said to you that if the defendant's motorman was in any way negligent, even though the bus driver contributed to the accident, your verdict should be for the plaintiff. The difficulty with that request standing alone, is that it overlooks any negligent act

on the part of the plaintiff by which she may have contributed to her injury."

This part of the charge is very favorable to the defendant inasmuch as it leaves open to the jury the consideration of any possible negligence of the plaintiff, although there is no direct evidence in the case upon which contributory negligence might be predicated.

The conduct of the plaintiff referred to by the appellant in its brief certainly was not a contributing cause to the injury. The plaintiff had no control over the bus driver and in the midst of 20 or 30 other occupants of the bus, had neither power nor opportunity to direct or control the driver. She was not required in the emergency to make a cool calculation as to what the motorman would do in disregarding his duty; in passing the stopping place and ignoring the bus standing on the tracks. She gave all the warning that any person in a like situation would do when she saw the car continue to come on and pass its regular stopping place where a passenger waited, and she had no more than time to cry out "We will all be killed" before the car struck the bus.

In the case of *Tronto, admr. vs. Reo Motor Co.* the Court of Errors says the trial court left it to the jury to determine whether the deceased was riding as a passenger, "*and charged, that if he was (a passenger), the doctrine of contributory negligence did not apply to him.*" This Court affirmed the judgment and stated that the inquiry as to negligence, and the status of the deceased in the car, as well as the alleged contributory negligence of the driver presented a jury question *and was properly submitted to them.* "The law is too well settled at this time to be seriously controverted, that the status of the occupant of the car being established

as that of a passenger, the contributory negligence of the driver of the vehicle cannot be attributed to him, whatever posture that character of negligence of the driver may assume."

Tronto, Admr. *vs.* Reo Motor Car Co., 92 Law 595, E. & A., 1918.

Here is a direct statement by this court that when the trial court charged that if the decedent was an invitee or passenger "the doctrine of contributory negligence did not apply to him." Yet the defendant here complains, though the trial court in the present case did not leave the doctrine of contributory negligence out of the case. The Court left it to the jury to find that although she exercised no control over the driver, yet she might be chargeable with the negligence of the driver if there was something that she individually should have done in the exercise of due care to have avoided the injury. It is a far cry from the decision of the Court of Errors and Appeals in the Tronto case approving the exclusion of the doctrine of contributory negligence from the case where the deceased was riding as invitee or passenger, to the claim of the defendant in this case that the charge of the court in effect that they must not overlook any negligent act on the part of the plaintiff by which she may have contributed to her injury (C., p. 171, l. 10), is not sufficiently favorable to them. It should have been accompanied by a charge concerning contributory negligence contrary to the holding in the Tronto case.

Tronto, Admr. *vs.* Reo Motor Co., 92 L., 595, E. & A., 1918.

The case is one in which a thorough reading of all the evidence and the entire charge of the court

will convince any one that substantial justice was done and that both admission and rejection of evidence and the charge of the court were based on rulings most favorable to the defendant.

P. L. 1912, p. 382, sec. 27, &c., 2 N. J. Cum. Supp. 162-303.

The judgment of the trial court and the Supreme Court should be affirmed.

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