

New Jersey Court of Errors and Appeals.

FANNIE M. CAMERON, Administratrix
&c., Plaintiff,

Defendant in Error,

vs.

JERSEY CITY, HOBOKEN AND PATERSON
STREET RAILWAY COMPANY, De-
fendant,

Plaintiff in Error.

IN TORT.

ON WRIT OF

ERROR TO SU-

PREME COURT.

BRIEF OF DEFENDANT IN ERROR.

The testator of the defendant in error was walking along Bergenline Avenue, in the Town of Union, in the County of Hudson, toward Fort Lee, leading a horse which he had just purchased in New York City, by a halter, to which was attached about six feet of rope. A trolley car of the plaintiff in error, coming in the opposite direction, ran him down while he was endeavoring to prevent his horse from running away, and from the injuries thus sustained he died in two or three hours afterwards.

The accident was witnessed by several persons, among others by Henry Hartnett, who accompanied

decedent, whose testimony will be found on pages 8 to 18 of the printed book, and also Charles Helms, and Charles Helms, Jr., whose testimony will be found on pages 19 to 25 and 25 to 28 of the printed book. That the car was proceeding at a considerable speed will appear from the testimony of Caleb W. Cameron, on page 35 printed book, where he describes the injuries inflicted upon his brother by the car, and also by the testimony of E. H. Schmidt, who was a passenger on the car, and whose testimony will be found on pages 30 to 32 of the printed book.

I.

The motorman in charge of the car of the plaintiff in error was negligent in not exercising reasonable care under the circumstances so as to avoid colliding with the decedent. The motorman knew that decedent was on the track in front of his car, or was so close to the track that a collision was inevitable for more than two hundred feet before the collision actually took place, and it was his duty under the circumstances to keep his car under control, and to stop it if necessary in order to avoid a collision.

Camden &c. Railway Co. v. Preston, 59 N. J. L. 266.

Consolidated Traction Co. v. Glynn, 59 N. J. L. 432.

Consolidated Traction Co. v. Haight, 59 N. J. L. 577.

Zolpher v. Camden & S. Ry. Co. 55 At. Rep., 249.

The car of the plaintiff in error was running on a highway eighty feet wide, in the day time, with an unobstructed view, and if the motorman had used his powers of observation he must have seen decedent engaged in a struggle with his horse on the track in front of his car, or so close to the track that a collision was inevitable if his car proceeded, and in such a situation it was the duty of the motorman to arrest the motion of his car before striking the man, and his failure to do so is evidence of negligence which must be submitted to the jury.

Butelli v. Electric Railway Co., 59 N. J. L. 302.

Shelly v. Brunswick Traction Co., 65 N. J. L., 644.

Consolidated T. Co. v. Glynn, 59 N. J. L. 432.

The horse of decedent had become unmanageable and beyond his control, and this should have been apparent to the motorman of the plaintiff in error, and under the circumstances it was his duty to stop the car before striking decedent, and his failure to do so, and to exercise reasonable care to avoid a collision with decedent, was the proximate cause of the injury to decedent, for which the plaintiff in error is liable.

II.

A street railway company has not a paramount or exclusive right to the use of the part of the street occupied by its tracks, the public having a right to

use that portion of the highway for the purpose of ordinary travel. It is therefore not negligence per se for a person to travel or walk along a street railway company's tracks.

Butelli v. Electric Railway Co., 59 N. J. L., 302.

Woodland v. N. J. St. R. Co., 49 At. Rep. 479.

Camden Horse R. Co. v. Citizens Coach Co., 28 N. J. Eq. 145.

A foot passenger along a public highway has a right to use any part thereof, whether the use made of the part selected is prudent or not must depend upon the circumstances. Decedent was leading a horse by a halter attached to his head along a public highway, and therefore manifestly could not use the sidewalk set apart for pedestrians, and for that reason contributory negligence cannot be imputed to him for using the roadway of the street.

Butelli v. Electric Ry. Co., 59 N. J. L. 302.

Connelly v. Trenton P. Ry. Co., 56 N. J. L. 700.

Consolidated T. Co. v. Chenowith, 58 N. J. L. 416.

Newark P. Ry. Co. v. Block, 53 N. J. L. 605.

Whether decedent was guilty of contributory negligence in holding fast to the rope attached to the halter on the horse's head, and thus permitting himself to be dragged in front of the car and along the railway

track of the plaintiff in error until run down by the car was properly left to the jury.

Camden &c. Railroad Co. v. Preston, 59 N. J. L. 264.

Hughes v. Camden & S. Ry. Co., 47 At. Rep. 441.

Consolidated Traction Co. v. Lambertson, 59 N. J. L. 297.

Consolidated Traction Co. v. Scott, 58 N. J. L. 682.

Connelly v. Trenton P. Ry. Co. 56 N. J. L. 700.

Consolidated Traction Co. v. Isley, 59 N. J. L., 224.

In order to defeat recovery of damages arising from the negligence of the plaintiff in error, the negligence of the decedent must have been the proximate cause of the injury.

Oates v. Metropolitan St. Ry. Co., 58 L. R. A. 447.

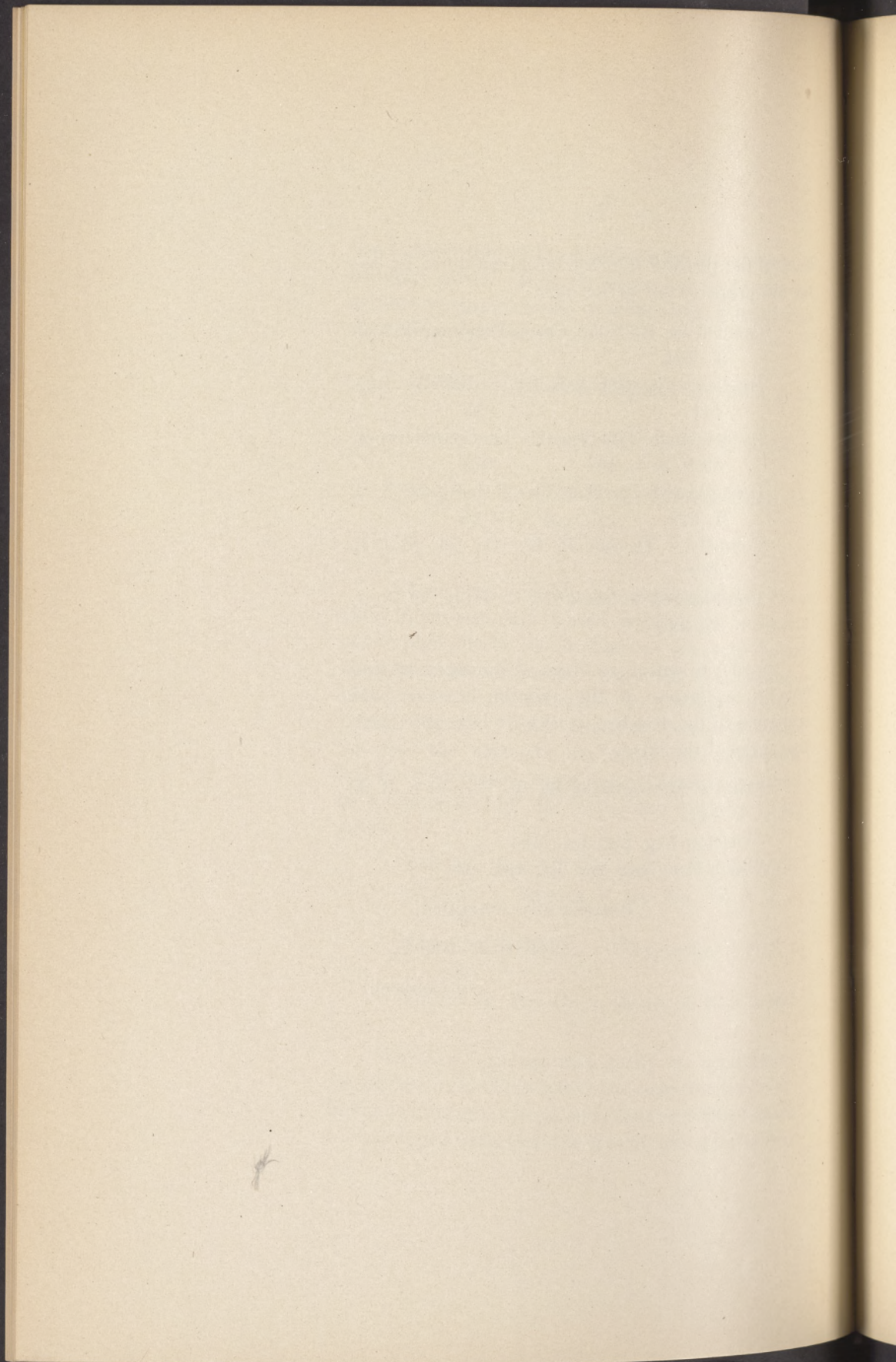
Wharton Neg. 2nd Ed., 214.

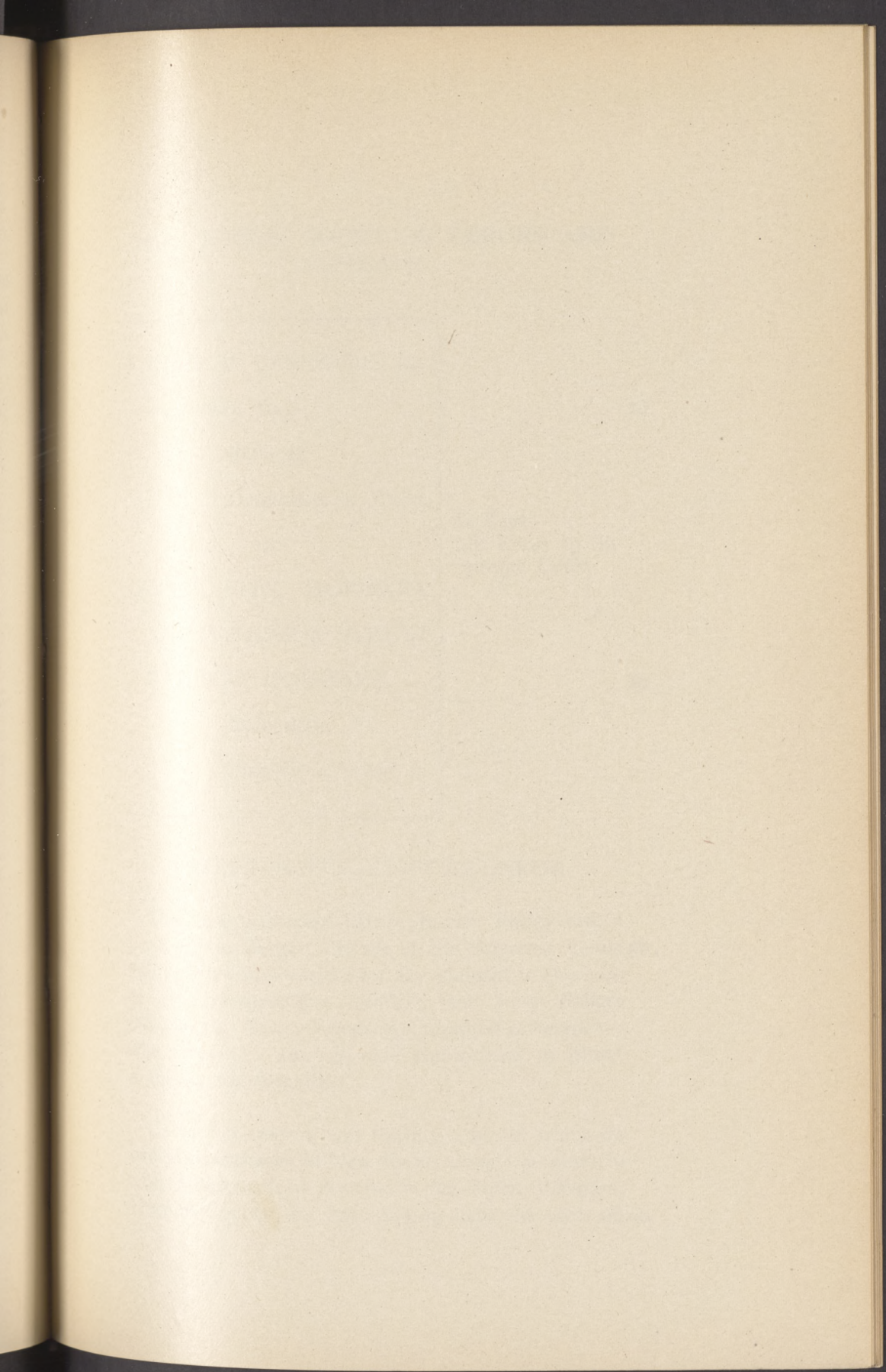
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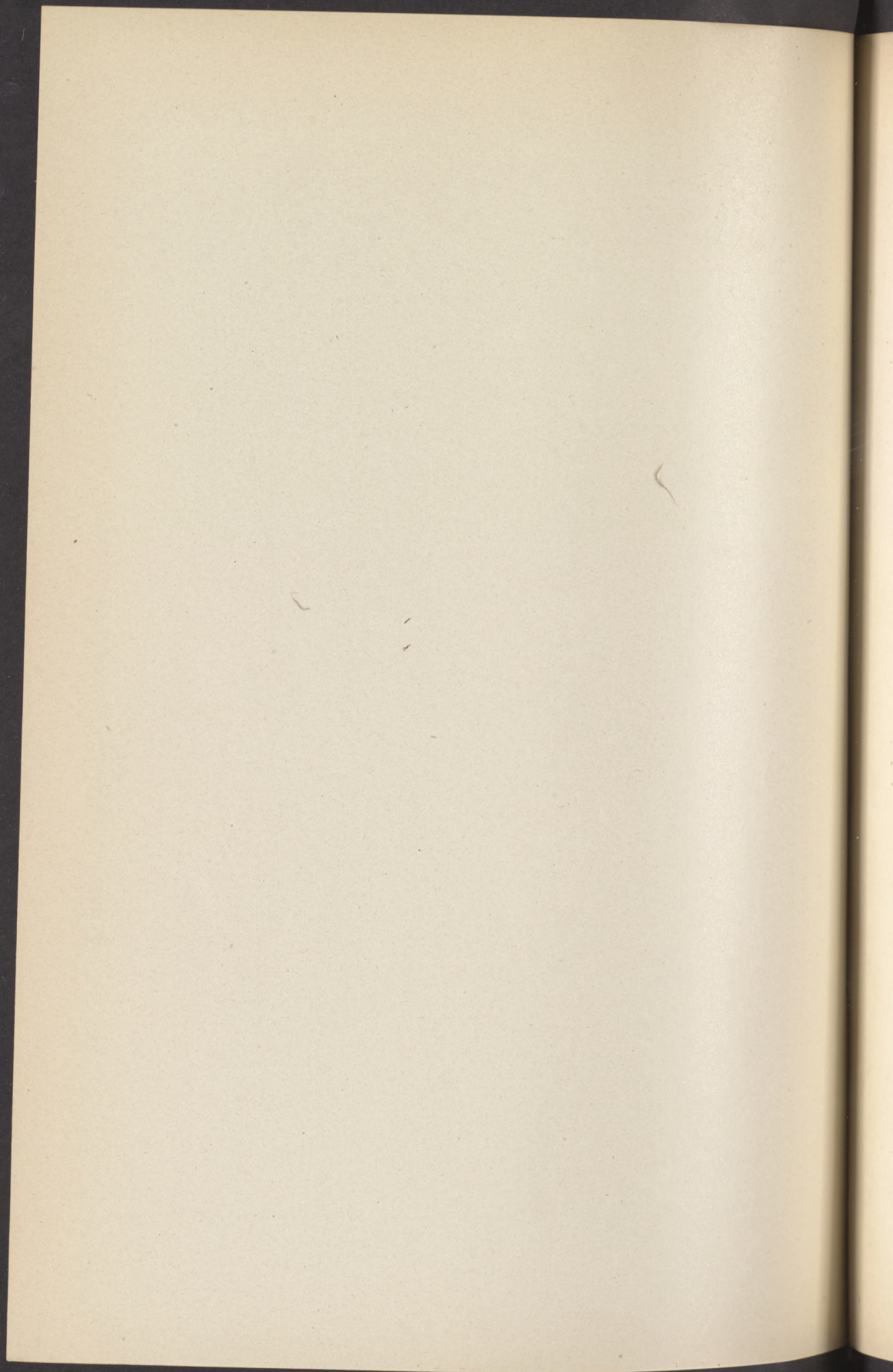
Respectfully submitted,

JOHN M. BELL,

of Counsel.







NEW JERSEY COURT OF ERRORS AND APPEALS.

_____o
FANNIE M. CAMERON, Ad-)
ministratrix, &c.,) 10
Plaintiff,)
Defendant in Error,)
vs.) In Tort.
JERSEY CITY, HOBOKEN) On Error to Su-
AND PATERSON STREET) preme Court.
RAILWAY COMPANY,) 20
Defendant,)
Plaintiff in Error,)
_____o

BRIEF FOR PLAINTIFF IN ERROR.

This case was tried before Justice Pitney and a jury, at the Bergen Circuit of the Supreme Court 30 and resulted in a verdict for the plaintiff in the sum of six thousand five hundred and forty dollars (\$6,540.00). Two grounds are assigned for error:— The refusal to non-suit and the refusal to direct a verdict for defendant.

Oscar S. Cameron was leading a horse, which he had just purchased in New York, along the westerly side of Bergen Line Avenue in the Town of Union, Hudson County; he was walking near the curb on 40

the left hand side of the street, going north. He was struck by a trolley car, going south, on the same side of the street; he was killed. Bergen Line Avenue is a wide street, paved, curbed and sidewalked. It has two lines of tracks, from the curb to the car track was over twenty-three feet. There was plenty of room. The car approached Cameron at a fair rate of speed; the horse took fright "and turned around
 10 "sideways to go south, the same direction the car
 "was going, pulling Mr. Cameron with him, and
 "pulled him sideways, the same as the car was going
 "—in front of the car." (Page 9, line 28.)

Cameron fell across the track and was struck, the horse ran away in safety.

Cameron was leading the horse by an ordinary stable halter, strapped under the chin (page 12.) The car slowed up as it approached Cameron (page
 20 14); at this time the horse was about five feet from the curb and over eighteen feet from the track (page 14, line 30). Cameron clung to the halter; the horse ran down alongside of the track, and then suddenly lurched over, pulling Cameron on the track, where the man lost his footing and fell (top page 16).

This is the story told by Henry Hartnett, who was walking with Cameron at the time. Passing by the story of Charles Helmes, Jr., (which was manifestly
 30 untrue and contradictory, see bottom of page 22,) we come to that of his father, Charles Helmes. He says that Cameron was not on the track until he fell (page 26, line 20); also, he says that at the time the man fell, the horse took a turn (page 27, line 23). The car stopped suddenly as the man fell; on this point all the witnesses agree.

On this testimony, we submit, there should have been a non-suit granted for the reasons stated on
 40 page 37 of the case.

We call especial attention to Mr. Koester's reasoning on pages 37 to 39.

The testimony produced by the defendant simply makes more clear the insistent made for the non-suit, to wit: That the horse while running down the side of the street suddenly veered and pulled Cameron on to the track in front of the car which was passing at an ordinary rate of speed. When the **10** motorman first saw Cameron he seemed to have control of his horse (top of page 44), but as he was passing the horse suddenly turned, dragging Cameron on the track (page 46, line 10). At this time the car was under control and moving slowly.

The passengers, Fritz Seibert and Mrs. Elizabeth Thane, say that the car was stopped very suddenly (page 50, line 22, and page 51, line 30).

How can it be said that in the face of this sudden danger, of the turning quickly and without warning upon the track, the motorman was guilty of negligence? **20**

If Cameron had let go of the halter he would have been safe. He knew the car was coming. How can he be relieved of contributory negligence and then the motorman held.

There was nothing unusual about the appearance of the trolley car or the speed at which it was going to frighten passing horses. This case differs entirely from that of McCann vs. Cons. Trac. Co. **30** Vroom 481, where a gentle, well broken horse was frightened by a street sprinkler operated by electricity upon a trolley road where black coats were hung on the side of the car and waved in the wind.

Nor was there any unusual obstruction in the **40**

track as in the case of *Ayars vs. Camden, &c.* 34
Vroom 416.

As we understand it the rule of law is that if a horse takes fright at an approaching car, and because the car is not stopped, or because the sounding of the gong or the ringing of the bell is not discontinued, and becomes unmanageable and runs away, injuring the driver or others, the company is not liable, unless the conduct complained of, in the management of the car, is attributable only to wanton or malicious disregard for the safety of the driver or other travellers upon the street.

Chapman vs. Zanesville St. Rway Co., 37
Ohio L. J. 70.

Coughty vs. Willamette St. Rway Co., 21
Oreg. 245.

Cornell vs. Detroit City Elec. Ry. Co., 82
Mich. 495.

Steiner vs. Phila. Trac. Co., 134 *Pa. St.* 199.

Galesburg Elec. M. & P. Co. vs. Manville
61 Ill. App. 490.

A motorman is not chargeable with negligence in failing to stop or slacken the speed of his car upon observing that a horse approaching him from the opposite direction is frightened, unless the circumstances indicate that the horse will be uncontrollable if the car approaches, and that the driver or the person with him are in imminent peril.

Terre Haute Electric R. R. Company vs. Yant, 21 *Indiana App.* 486.

E. & St. Louis & Co. v. Wachtel 63 *Ill. App.* 181.

Doster vs. Charlotte St. Ry. Co., 34 *Lra.* 481.

The motorman of an electric car is not bound to slacken his speed and stop his car at the moment a

horse upon the street within his range of vision begins to show signs of uneasiness, and an inference of negligence is not justified from his failure to stop the car upon seeing that a gentle team about 175 feet in advance, driven by a full grown man was beginning to prance, where the team was on a well travelled road at the side of the track north sixteen feet in width, and was in perfect safety, and there is no evidence that he seemed to be beyond the driver's ¹⁰ control.

Eastwood vs. La Crosse St. Railway Company 94 Wisconsin 463.
68 N. W. Rep. 651.

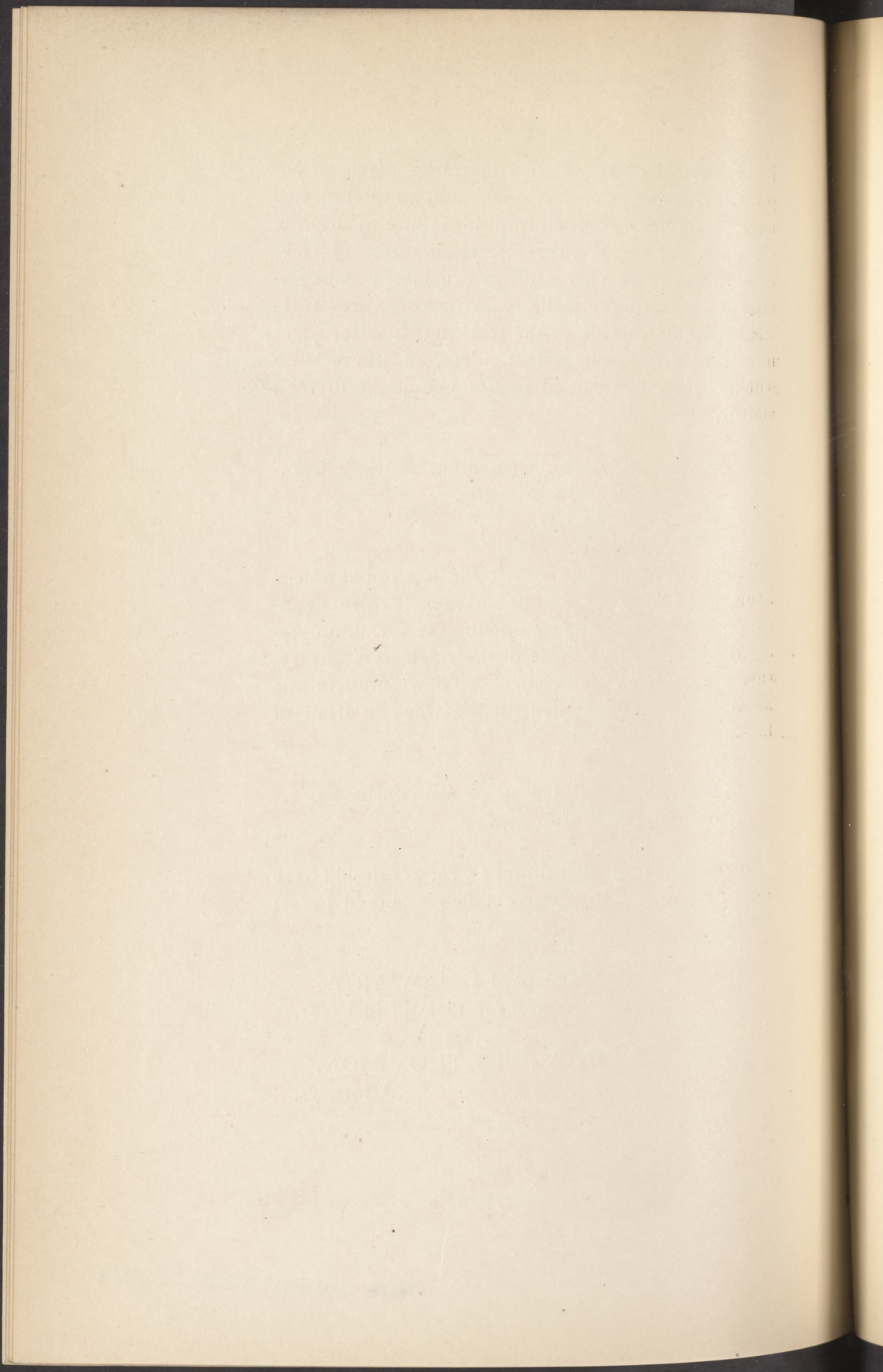
The motorman of an electric car, not run at a negligent rate of speed, is not chargeable with negligence in failing to stop or slow up the car, upon seeing that a team at the side of the track were uneasy, ²⁰ where the driver had control of them until at the instant when they dashed on the track in front of the car.

Flaherty vs. Harrison, 98 Wisconsin 589.
74 N. W. Reporter 360.

On our request a direction of a verdict should have been granted. The judgment below should be set aside. ³⁰

WILLIAM D. EDWARDS,
Counsel for Plaintiff in Error.

BEDLE, EDWARDS & THOMPSON,
Attorneys.



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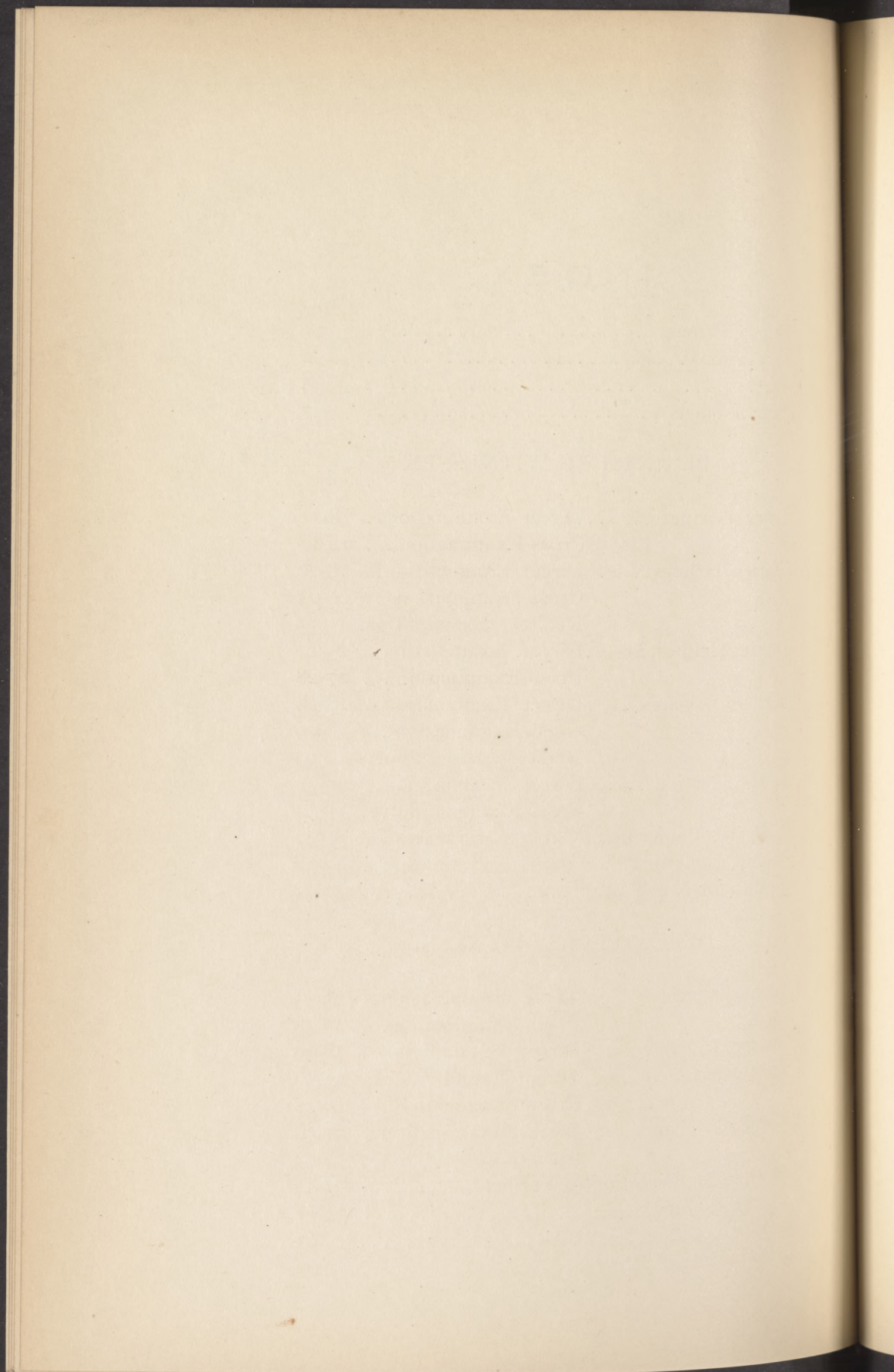
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NEW JERSEY—ss.:

The State of New Jersey to the Chief
(L.S.) Justice and other Justices of our Supreme Court of Judicature, Greeting:

For as much as in the record and proceedings, and also in the giving of judgment in a certain ¹⁰plaint, which was in our Supreme Court of Judicature before you, between Fannie M. Cameron, administratrix, plaintiff, and the Jersey City, Hoboken & Paterson Street Railway Company, defendant, in an action in tort, manifest error hath intervened to the great damage of the said the Jersey City, Hoboken & Paterson Street Railway Company, as is said, we being willing that the error if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do ²⁰command you that if judgment be thereupon given then you distinctly and openly send under your seal the record and proceedings aforesaid and all things concerning the same to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the twenty-fourth day of March, instant, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error, what of right and according to the law and ³⁰custom of the State of New Jersey ought to be done.

Witness:

WILLIAM J. MAGIE, our Chancellor.
and president Judge of our Court of Errors and Appeals at Trenton, aforesaid, the fifth day of March, nineteen hundred and four.

S. D. DICKINSON,

Clerk.

BEDLE, EDWARDS & THOMPSON,

Attorneys of Defendants. ⁴⁰

The answer of the Justices of the Supreme Court of the State of New Jersey:

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed as within we are commanded.

WM. S. GUMMERE,

C. J. (L.S.)

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NEW JERSEY SUPREME COURT,
of the Fifteenth day of October,
A. D. 1902.

BERGEN COUNTY—ss.:

The Jersey City, Hoboken and Paterson Street
20 Railway Company, a corporation of the State of
New Jersey, the defendant in this suit, was summoned to answer unto Fannie M. Cameron, administratrix with the will annexed of the estate of Oscar S. Cameron, deceased, in an action of tort, and thereupon the said plaintiff, by John M. Bell, her attorneys, complains for that, whereas the said defendant, before and at the time of the committing of the grievances hereinafter mentioned, was the
30 owner and possessor of a certain electric street railway extending along and through a certain street or avenue known as Bergenline avenue, in the Town of Union, in the County of Hudson and State of New Jersey, occupied and operated by the said defendant for the conveyance of passengers in electric motor cars to and from, and beyond the limits of the said Town of Union.

And whereas, before and at the time of committing the said grievances, to wit, on the twenty-ninth day of May, one thousand nine hundred and two,
40 said Bergenline avenue was, and still is, a common

public highway, road or street in said Town of Union, in the County of Hudson aforesaid, for all citizens of this State to travel, pass and repass safely, on foot and in carriages and other vehicles at their will at all times; and it thereby became and was the duty of the said defendant to use proper care in the use, management and control of its electric motor cars while being operated, propelled and run along said public street or highway, and upon its said electric street railway, so as to avoid colliding with and running into persons lawfully travelling along or crossing said public street or highway, and to operate, propel and run said cars at such a rate of speed as to keep the same within safe and proper control. 10

And whereas, said Oscar S. Cameron, in his lifetime, to wit, on the day and year last aforesaid, was carefully and cautiously traveling on foot on and along said public highway, road or street, called Bergenline avenue, in said Town of Union and county aforesaid, leading a horse by a strap or rope attached to a halter on said horse's head, and the said Oscar S. Cameron being then and there traveling and using said highway as he lawfully might do, nevertheless, the said defendant, not regarding its duty in that behalf, did not use due and proper care in the use, management and control of its said electric motor cars while said cars were being operated, propelled and run along said public street or highway upon the tracks of its said railway as aforesaid, so as to avoid colliding with and running into persons lawfully traveling along or crossing the said public street or highway, and did not operate, propel and run said motor cars at such rate of speed as to keep the same within safe and proper control, but wholly failed and neglected so to do; and the said defendant did on the day and year aforesaid, at the Town of Union, in the County of Hudson aforesaid, by its servants, so carelessly, negligently and improperly operate, propel and run a certain electric motor car belonging to the defendant, in, upon and along said 20 30 40

public street or highway, and upon the track of its said railway as aforesaid, at such a high rate of speed as to lose the safe and proper control of the same, and thereby then and there collided with, ran into and struck the said Oscar S. Cameron with great force and violence, and then and there violently threw and cast down the said Oscar S. Cameron to and upon the ground, and he was then and there crushed beneath the said electric motor car, and by
 10 reason thereof lost his life.

And the plaintiff further avers that afterwards, to wit, on the fifth day of July, one thousand nine hundred and two, at the County of Bergen, in this State, administration with the will annexed of all and singular the goods and chattels, rights and credits, which were of the said Oscar S. Cameron, deceased, at the time of his death, he having died testate of a will, agreeably to the provisions of said will, was granted in due form of law, by David A. Pell, Surrogate of the County of Bergen, to the said Fannie M.
 20 Cameron, the said plaintiff, and which said letters she brings here into court; and that the said Oscar S. Cameron left him surviving Fannie M. Cameron his widow, and the plaintiff herein, and James Cameron and Ruth Cameron, a son and a daughter, and the said plaintiff brings this suit for the benefit of the next of kin of the said Oscar S. Cameron under and pursuant to the provisions of an act entitled "An
 30 act to provide for the recovery of damages in cases where the death of a person is caused by a wrongful act, neglect or default," and the several supplements thereto.

And the said plaintiff further avers that she is damaged by the said wrongful acts, omissions and negligences of the said defendant in the sum of twenty thousand dollars, and therefore she brings her suit, &c.

And the said defendant by Bedle, Edwards &
 40 Lawrence, its attorneys, comes and defends the force

and injury, when, &c., and says that it is not guilty of the torts laid to its charge, or any or either of them, or of any part thereof, as the said plaintiffs have above thereof complained against it, and of this it puts itself upon the country, &c.

And the plaintiff doth the like.

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NEW JERSEY SUPREME COURT.

	_____o)	
	FANNIE M. CAMERON, Ad-)	
10	ministratrix,)	
)	
	Plaintiff,)	
	vs.)	In Tort.
	JERSEY CITY, HOBOKEN)	
	& PATERSON STREET)	
	RAILWAY COMPANY,)	
20	Defendant.)	
	_____o)	

Appearances:

JOHN M. BELL
for plaintiff, and

30 Mr. EDWARDS,
of Bedle, Edwards & Thompson,
for defendant.

Transcript of testimony taken Wednesday,
December 9, 1903, at the Hackensack Court
House, before Hon. Mahlon Pitney and a
jury.

Mr. BELL opened for the plaintiff.

Mr. BELL: May it please the Court and gentlemen of the jury, this action involves an accident that took place on May 29th, 1902, on the Bergenline avenue, in the Town of Union, in Hudson County of this State. The plaintiff's husband was on that day walking on Bergenline avenue towards Fort Lee, in company with one Henry Hartnett. They were leading a horse; Mr. Cameron was leading the horse along the street, and the car coming from Fort Lee, belonging to the defendant company, or operated by them, was coming from Fort Lee towards them, and they were going towards Fort Lee. The horse became frightened at the approach of the car and became restive, going a long distance before the car approached. The horse moved around and pulled on the halter, and Mr. Cameron pulled against him, the car in the meantime was coming on. Shortly before the car came up to where they were—probably a distance of 200 feet, the horse swung the man around upon the track, and the car came along, the horse went in the same direction as the car, backward, and pulled the man along with him, and ultimately the car ran into the man and the horse, and Mr. Cameron was thrown down beneath the car, and was injured so seriously that he died in two or three hours afterwards.

The plaintiff expects to show that the defendant company was negligent in the matter, and that they should have had their car under sufficient control so that they could have stopped the car without injuring this man, and in fact should have stopped the car, and

their failure to stop the car, to keep it under control, was the cause of his death, and hence this suit is brought.

Mr. EDWARDS: Do I understand that this man was going north on the west side of the street?

10 Mr. BELL: That I cannot say on which side of the street he was.

Mr. EDWARDS: I want to know what your opening is.

Mr. BELL: My opening is that he was on the street; I cannot say on which side of the street—I could not see.

20

HENRY HARTNETT, sworn in behalf of plaintiff,
testified as follows:

DIRECT EXAMINATION by Mr. Bell:

Q. Where do you live? A. Fort Lee, New Jersey, Bergen County.

30 Q. Were you acquainted with Oscar S. Cameron in his lifetime? A. Yes, sir; I knew him ever since he was a boy.

Q. Were you in his company on May 29, 1902? A. Yes, sir.

Q. Where? A. New York—went to New York to buy a horse, Mr. Cameron did, and I went along with him; we bought the horse, and the man we bought the horse from sent the horse to the Forty-second street ferry for us, the West Shore Ferry Company, and delivered him on the Jersey side, and
40 the reason he did that was—

The COURT: Never mind that, leave out the reasons and conversations, and get down to the facts immediately leading up to the occurrence in question.

A. So Mr. Cameron took the horse on the Jersey side and came along to where the accident happened.

Q. Where was that? A. That was on Bergenline avenue near Fourth street.

Q. Now, state the circumstances leading up— A. We came along Bergenline avenue facing north and the horse got frightened at a car that was bound south.

10

Mr. EDWARDS: Objected to as a conclusion.

The COURT: It might be a matter of observation; I suppose there is no way to tell whether a horse is frightened except by looking at him.

20

Mr. EDWARDS: He can tell what he did.

The COURT: Proceed.

Q. Proceed, Mr. Hartnett? A. The horse stood and looked at the car for a moment, a few seconds; the car kept on coming and the horse got frightened, and turned around sideways to go south, the same direction the car was going, pulling Mr. Cameron with him, and pulled him sideways, the same as the car was going—in front of the car.

30

Q. For how far? A. Well, probably, for 150 or 200 feet.

Q. How far was the car away when the horse first showed signs of fright? A. Well, about a block or three-quarters of a block.

Q. What length are the blocks there, do you know?
A. I should judge the blocks are from 250 to 300

40

feet, that is about the distance between the car and the horse at the time the horse got frightened first, when he stopped.

Q. (By the Court.) Do you mean to say that the horse pulled Mr. Cameron backwards along the track for 150 feet?

Mr. EDWARDS: He said so.

10 A. Well, I followed on behind, and I could not judge just the distance, but I know it was quite a distance, that I ran after the horse and Mr. Cameron; I have never looked at the place since where it happened, and I am not acquainted there; I only rode on the car there for a few times; but the horse pulled him along quite a distance; I could not say just exactly how far the distance was.

Q. (Further direct.) Did the car follow him up?

A. Yes, sir; and kept coming closer all the time,
20 and Mr. Cameron and the horse were going; I could not catch up to them, they were going so fast; I tried to do so, to catch the horse; so Mr. Cameron fell on the track, and the car came up and hit him; he did not have any time; he just made one kind of motion and shoved himself a little, only made one move like when the car hit him and shoved him along the track.

Q. You saw the car strike him? A. Yes, sir.

Q. And what did you do then? A. Then I believe
30 it was the motorman or some man on the car—yes, it was the motorman, jumped off, and said—

Q. (By the Court.) Wait, wait, are you trying to prove what somebody said after the accident? Strike out what the witness says concerning what was said to him after the accident.

A. He told me not to touch the man.

The COURT: Strike that out; what you want to tell is what happened, what you saw.

Q. (Further direct.) Did the car actually run upon him? A. Yes, sir; Run up on both of his legs above the knees.

Q. Did you notice whether the car slackened its speed? A. No, sir.

Mr. EDWARDS: Objected to, that is a leading question.

The COURT: He said no, so perhaps no ¹⁰ harm has been done, it has done no harm perhaps.

Q. Is there any other circumstance connected with that that you remember now, the accident? A. No, sir; I ordered the motorman's arrest.

The COURT: Never mind about that.

Q. (Further direct.) What became of the horse? A. He run down about a block and a half, and I caught ²⁰ him and brought him back to the blacksmith's shop, which was nearby there, and I left him there until I got Mr. Cameron in the ambulance, and then I brought him to Nungessi's hotel, on the same street, and left the horse there; Mr. Cameron went to the hospital in the ambulance, and I left the horse at Nungessi's hotel.

Q. You took the horse up to Nungessi's hotel? A. Yes, sir.

Q. How far is that from the place of the accident? ³⁰ A. Probably about three miles, I guess.

Q. Is there a trolley road along? A. The same road all the way along to Nungessi's, a double track.

Q. Did you lead the horse by the halter? A. Yes, sir.

The COURT: What has this to do with it?

Mr. BELL: I want to show the horse passed several trolley cars on the way up, and that the horse— 40

The COURT: What difference does that make?

Mr. BELL: I want to show the horse was not a horse that is easily frightened.

The COURT: Confine yourself to the plaintiff's case.

10

Q. In what direction was Mr. Cameron lying when the car ran on him? A. The track, as near as I can say, runs north and south, as near as I can come to it, and he was lying about sou'west, or southeast, or northeast.

Q. Which direction was his head lying? A. Southeast.

Q. Then his head was beneath the car? A. Yes, sir.

20

CROSS-EXAMINATION by Mr. Edwards:

Q. How was this horse, what kind of halter did he have on? A. A regular halter—stable halter.

Q. Just an ordinary stable halter—it was strapped under the chin? A. Just an ordinary stable halter, it was strapped under the chin.

Q. And a rope, how long was the rope? A. Five or six feet.

Q. He had hold of that rope? A. Yes, sir.

Q. Where did you start off with that horse that day? A. From Forty-second street ferry.

Q. When did you first see the horse? A. That morning.

Q. Where? A. At the New York stable.

Q. Whereabouts? A. At Lexington avenue and Twenty-fourth street.

Q. And who brought him down to the car? A. The man they bought him off, sent a man along with

40

him to the Forty-second street ferry; that was done because the day was cold, and he would put a blanket on him to keep him warm, and the boy led the horse down.

Q. There was no trouble with the horse? A. No, sir; he came down Forty-second street and we met him at Forty-second street.

Q. You led him up the hill, up the Palisades? A. Yes, sir. 10

Q. Who did the leading? A. Mr. Cameron.

Q. Did you have hold of the horse at all? A. Yes, sir; taking the blanket off him.

Q. When you got up on the Bergenline road, how far had you been going along the Bergenline road before this accident happened? A. We went along to Hudson County Park, I don't know how far that is from where we came up Fourth street.

Q. Two or three blocks? A. Probably two blocks.

Q. Which side of the street were you on? A. On the west side. 20

Q. Then you were on the wrong side of the street—you were on the lefthand side of the street? A. Yes, sir.

Q. And going north? A. Yes, sir.

Q. Now, how many tracks are there in that street? A. Four tracks, I believe.

Q. That is a macadamized street? A. Yes, sir.

Q. (By the Court.) Do you mean four rails? A. Four rails—two tracks.

Q. How wide a distance is there between the most westerly rail and the curb of the street? A. There is a space there to drive on; I don't know how much of a space. 30

Q. Can you give the size of the space—can two wagons drive there? A. Yes, sir.

Q. Who was the nearest to the track, the horse or Mr. Cameron? A. Coming north?

Q. Yes. A. The horse.

Q. How did Mr. Cameron have hold of the horse? A. By the halter. 40

Q. Just by the end of the rope? A. Close by his head.

Q. Where were you standing? A. Alongside of Mr. Cameron, walking alongside of him.

Q. You were still further inside? A. I was nearer to the curb.

Q. When did you first notice the car? A. When the horse stopped—slowed up.

10 Q. The horse suddenly stopped? A. No, sir; not suddenly; he slowed up.

Q. How far off was the car at that time? A. Three-quarters of a block.

Q. You think those blocks are about 300 feet long? A. The car was about 250 or 300 feet off when the horse started his head up.

Q. You heard the bell ring? A. Yes, sir.

Q. The bell was rung there? A. Yes, sir.

Q. And the car was coming along at an ordinary rate of speed? A. I don't think it was; it was coming
20 faster than usual.

Q. What happened after that? A. It kept on coming.

Q. Where was the horse? In the roadway? A. He was on the road, he turned around.

Q. At the time that the horse stopped and looked at the car as you say he was in the road, wasn't he?
A. Yes, sir.

Q. And how far from the curb was he—close up to the curb? A. I was close to the curb, and then
30 Mr. Cameron, and then the horse.

Q. So he was close up to the curb? A. Not very close.

Q. Within five feet of the curb? A. Yes, sir.

Q. And the car track was all on the outside of that? A. Yes, sir.

Q. Probably eight or ten feet still further out? A. May be.

Q. What did the horse do? A. He turned round gradually.

40 Q. Which way did he turn? A. Off towards the

track.

Q. Towards the right or left? A. Towards the right.

Q. And that drew Mr. Cameron with him? A. Yes, sir.

Q. And then the horse began to run down the track? A. It run down the track.

Q. How far was he from the track then? A. At that time he pretty nearly pulled him on the track ¹⁰ when he turned.

Q. Then he got off the track again? A. No, sir; he kept on going.

Q. And they kept on running down? A. Yes, sir.

Q. The horse pulling and tugging at Cameron? A. Yes, sir.

Q. How fast did they go down the street? A. Faster than I can run.

Q. And the car was coming after? A. Yes, sir.

Q. Then just as the car got to Mr. Cameron, the horse made a lurch, like that, as I understand you, ²⁰ and threw Mr. Cameron on the track? A. It did not make any more lurch.

Q. It pulled Mr. Cameron over on the track? A. Yes, sir.

Q. That is the first time Mr. Cameron was on the track? A. No, sir; he was on the track, I guess, quite a space before that.

Q. Are you sure about that? A. Yes, sir.

Q. Didn't the horse pull him over on the track? A. Yes, sir. ³⁰

Q. And that was very sudden, wasn't it? A. He run quite a distance before he fell.

Q. He was running along the side of the track then? A. Yes, sir.

Q. Not on the track? A. No, sir.

Q. But just as the car came up there was a sudden lurch that threw him on the track? A. No, sir; he fell on the track.

Q. He slipped? A. Yes, sir, or something.

Q. And fell forwards? A. Yes, sir; head first. ⁴⁰

Q. On his breast? A. Yes, sir.

Q. Then he fell over like that, southeast? A. Yes, sir.

Q. The car came over him? A. Yes, sir; and shoved him along the track, and the car stopped very sudden.

Q. The car then seemed to be under control? A. Yes, sir; at that time.

10 Q. That was all very sudden, the throwing on to the track? A. Yes, sir—I say he stopped his car very sudden.

Q. And also the throwing of Mr. Cameron on the track was very sudden? A. The car carried him quite a distance and dragged him.

Q. In other words, Mr. Cameron fell across the track? A. Yes, sir.

Q. And he had hold of the halter all the time? A. Yes, sir.

20 Q. If he had let go of the halter there would not have been any trouble? A. No, sir; I suppose not.

Q. Now, Mr. Cameron had hold of this halter all the time? A. Yes, sir; until such time as he fell.

Q. Then he let go? A. Yes, sir.

Q. Did the horse go very far afterwards? A. Yes, sir; he went about a block and a half, or two blocks, and stopped.

Q. You did not have any trouble in catching him? A. No, sir.

30 Q. Then you took the horse up to Nungessi's hotel? A. Yes, sir.

Q. Did you pass any trolley cars on the way? A. Yes, sir.

Q. Did you have any trouble with him? A. No, sir; I had a little trouble with one car, but he only stopped and looked at it.

Q. Are you used to the care of horses? A. And the motorman slowed his car down.

Q. Are you a horseman? A. Yes, sir.

40 Q. You went there to New York with Mr. Came-

ron to judge of this horse? A. Well, I have a friend there.

Q. Why did you go with Mr. Cameron? A. I have a friend with Fish & Doerr at Twenty-fourth street.

Q. You were the man who was going to judge of the horse? A. No, sir.

Q. Was Mr. Cameron a good horseman? A. Yes, sir; Mr. Cameron worked on the farm.

Q. What did he want this horse for? A. He wanted to run a grocery route; he had bought a grocery business out, and was going to have a grocery wagon. 10

Q. Did the horse back at all? A. No, sir; he went sideways a little while.

Q. (By the Court.) Was the horse struck by the car at all? A. No, sir.

Q. (Further cross.) Not injured in the least degree? A. No, sir.

Q. (By the Court.) At the time you say that Cameron was going along the track in front of the car, was the horse going ahead first? A. Yes, sir; then the horse got control. 20

Q. Who got control? A. The horse got control of Mr. Cameron and pulled him right along.

Q. (Further cross.) He was overcome—the horse got the best of Mr. Cameron? A. Yes, sir.

Q. And was pulling him right along? A. Yes, sir.

Q. Mr. Cameron was unable to stop the horse? A. Yes, sir.

Q. The horse was not on the track, as I understand it; the horse was on the side of the track; the horse never got on the track? A. Yes, sir; he crossed the track and went right across to the other side of the street, southeast; he ran along the street, and then he gradually crossed the track. 30

Q. (By the Court.) When the horse got going straight ahead, you say that he got the best of Mr. Cameron; was Mr. Cameron on the left or the right side of the horse? A. On the left side of the horse, and he had hold of the horse with his right hand. 40

Q. What was Mr. Cameron doing, if anything, with his left hand? A. I did not notice that.

Q. Can you tell whether he had hold with both hands? A. He probably did.

Q. Can you say? A. No, sir.

Q. Do you know whether he did not? A. No, sir.

Q. Where were you with reference to them, were you nearer to the sidewalk? A. I was on the same side with Mr. Cameron, but they got out of my
10 reach so quick.

Q. When you turned around you were on the opposite side of the horse? A. No, sir.

Q. (Further cross.) As you ran along there, you were off the car track, but suddenly they shot across?

A. They left me at a distance, so that I could not catch them; they probably left me 25 or 30 feet.

Q. After they left you behind 25 or 30 feet, that is when they got on the car track? A. Yes, sir.

Q. Now, this horse had a bit in his mouth? A.
20 No, sir; a halter.

Q. Did he have any rope about the lower jaw? A. Only the regular halter.

Q. He did not have the rope tied there? A. No, sir.

Q. Did he not have the rope tied there? A. No, sir.

Q. The halter lead was tied to the underside of the halter? A. Yes, sir.

Q. (By the Court.) But the rope was not twisted
30 around the jaw of the horse to get a better purchase? A. No, sir.

Q. Is this the same halter that you brought all the way from New York? A. Yes, sir.

CHARLES HELMES, a witness produced on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION by Mr. Bell:

Q. Where do you reside? A. At Saddle River, New Jersey.

Q. Where did you reside in May, 1902? A. I lived at Bloomfield street, Hoboken.

Q. Were you on Bergenline avenue on May 29? A. Yes, sir; I was.

Q. Were you a witness of an accident there? A. 10
Yes, sir.

Q. Did you know the man that was injured? A. I did not know the gentleman that was injured, but there was a gentleman injured, but I did not know his name at that time.

Q. Do you know it now? A. Just from what I have heard.

Mr. EDWARDS: It was this Mr. Cameron—we admit that.

20

Q. State now to the Court the circumstances connected with that? A. I was going to the Hoboken Cemetery, up Bergenline avenue, going north, and there was a car coming down Bergenline avenue, bound south, and I saw two gentlemen with a horse; one gentleman was leading the horse, and the other gentleman was walking alongside of him. The car was coming along at a terrific rate of speed down the avenue, and the horse took fright about 300 feet, 30
I should judge, from the car; he reared on his hind feet, and whirled around and 'round along the track for quite a distance with the gentleman hanging into him, and when he had run a hundred feet or so, he pulled this gentleman, the man leading him, on the track, and the car kept coming right along, it did not seem to slacken up its speed one bit, and after he had run along the track 300 feet or so, probably, he fell, that is, the horse dragged him along, and he tripped, and fell, and the horse broke away from 40

him, and went on towards the south of the track, and as he fell he tried to get up; he fell face downward and rolled over on his side, and he put his two hands under him, like that (indicating), and said, "Oh," but the car was on top of him so quick, and the car caught him right across the thigh; the car raised up on him, and the motorman reversed his lever and backed off.

10 Q. Where were you standing with respect to the accident, how near were you when the car struck him? A. I was almost opposite to him, then.

Q. You were on the curb? A. I was on the sidewalk, on the west side of the street.

Q. Facing north? A. Yes, sir.

Q. (By the Court.) Is it level or how? A. There is a little incline going south, a slight incline, not much to speak of, not at that place.

Q. (Further direct.) Who was with you on that occasion? A. My father and my wife.

20

CROSS-EXAMINATION by Mr. Edwards:

Q. Where were you going? A. To Hoboken Cemetery.

Q. What day of the week was this? A. I think it was on a Wednesday, I am not positive.

Q. You were not walking alone? A. Yes, sir.

Q. Where did the horse pass you? A. I passed the horse.

30 Q. Were they going slowly along when you passed them? A. Yes, sir; they were on a walk.

Q. You say you saw the car coming towards them? A. Yes, sir.

Q. What attracted your attention to the car? A. I saw it coming down so fast.

Q. Did you hear the bell ring? A. No, sir; I heard none.

Q. And you say that the horse was going north when you first noticed it? A. The horse was going
40 north.

Q. And he was on the wrong side of the street?
 A. I don't know about that; he was on the west side of the street, he was on the west side going up Bergenline avenue, north.

Q. There are two tracks in the middle, right in the middle? A. Yes, sir.

Q. It is a macadamized street? A. Yes, sir.

Q. It is a main thoroughfare through there? A. Yes, sir.

Q. Which side of the horse was the man on? A. 10
 On the west side of the horse, towards the sidewalk, towards the curb.

Q. Did the horse stop suddenly? A. Yes, sir.

Q. How far away was the car at that time? A. About 300 feet.

Q. And then what did he do? A. Then he reared on his hind feet, and plunged on down the track, and pulled this man after him, and he was going pretty fast.

Q. Where was he—between the track and the curb? A. Yes, sir; Mr. Cameron, the gentleman who had the horse—he was on the track, and the horse was on the side of the track, and Mr. Cameron was on the track. 20

Q. Are you sure that Mr. Cameron was on the track? A. Yes, sir.

Q. How long a time was he on the track? A. For 200 feet.

Q. You think he ran 200 feet? A. Yes, sir.

Q. Before he fell? A. Yes, sir. 30

Q. And the horse seemed to be beyond his control? A. Yes, sir; he tried his best to hold him, and could not do so.

Q. He did not let him go? A. When he fell.

Q. The horse had started across the street then?

A. The horse was going from the south.

Q. Where did the horse wind up? A. I don't know, but he got away from Mr. Cameron.

Q. Which way did he go then? A. He went down the track; he whirled around onto the track when 40

he first got scared, and he went right on, and Mr. Cameron had hold of him.

Q. You do not agree with Mr. Hartnett? A. Well, I am telling you just what I saw.

Q. And he ran down—did the man slip? A. I don't know, he fell across the track.

Q. Right in front of the car? A. Yes, sir; within 150 feet of the car, 100 feet of the car, probably.

10 Q. You mean to say that after he fell that the car ran 100 feet? A. Yes, sir; it was going at such a speed that he could not stop.

Q. How far do you call 100 feet? Just take the length of this courtroom as your guide? A. It is longer than that.

Q. How long is this courtroom? A. 60 or 65 feet, this courtroom is.

Q. You think he was on the track when the car was away, at the time he fell, the car was away from him almost double the length of this courthouse?

20 A. Yes, sir.

Q. Lying there, and the car coming up? A. Yes, sir.

Q. And he was trying to get up? A. Yes, sir.

Q. You testified before in this trial? A. Yes, sir.

Q. You were the Charles Helmes, Jr.? A. Yes, sir.

Q. Don't you remember testifying as follows:

“Q. You say that you did not observe that the car slowed up? A. That is right.” Did you so testify on the former trial? A. Yes, sir.

30 Q. “How far was the car away from the spot where Mr. Cameron got hurt, at the time he fell? A. Probably 10 or 12 feet” Is that what you said? A. I don't remember that; he was further than that.

Q. “Q. When he fell? A. Yes, sir.” Did you say that? A. (No answer.)

Q. Didn't you say also “That the car did not go over the man at all?” A. “As soon as he saw him fall he put his brakes on at that time.” Did you so testify? A. Yes, sir; that is all right.

40 Q. “Q. And he succeeded in stopping him in about

10 feet? A. I don't know the distance." Is that what you said on the former trial? A. I don't remember that.

Q. Then the only way you differ from the former trial is that you say that when the man fell on the track, you now say that when the man fell on the track the car was 100 to 150 feet away, and on the former trial you said probably 10 or 12 feet; how do you explain that? A. I don't remember that. 10

Q. That was much closer on the former trial than on this? A. Yes, sir.

Q. You have not had anything to refresh your memory about it since the last trial? A. No, sir.

Q. Your memory was fresher then than it is now? A. No, sir.

Q. (By the Court.) You said something about having passed the horse; I did not understand that. When was it you passed the horse? A. I just passed the horse just before he took fright, probably from here to the desk. 20

Q. You mean to say you had gone on up the street, you had passed these men with the horse, before the horse took fright? A. Yes, sir.

Q. And from that time forth the horse was going south? A. Yes, sir.

Q. And your destination was to the northward? A. Yes, sir.

Q. You say the horse carried the man along for 100 feet before the accident? A. Yes, sir. 30

Q. Well, I understood you to say that you were opposite to the man at the time he was struck by the car? A. I was almost opposite to the man, I was about from here to the desk from him.

Q. How did you get there? A. The car had not reached the man yet, and I stopped when I saw the horse take fright; I stood still.

The COURT: Proceed.

Q. (Further cross.) You stood still? A. Yes, sir. 40

Q. You did not go any nearer the accident? A. Yes, sir; I walked down towards it.

Q. After the accident happened? A. No, sir; after Mr. Cameron was struck I stayed right there.

Q. But at the time Mr. Cameron was struck, how near were you to him on the sidewalk? A. Probably ten or twelve feet from him.

Q. In other words, you went down the street as fast as the horse went? A. No, sir.

10 Q. Then how could you have been up when the car went over him? A. I could see him laying there.

Q. Then you must have been over 200 feet away from him? A. I don't know that.

Q. You stood still? A. Yes, sir.

Q. They went down the track? A. Yes, sir.

Q. And the horse? A. Yes, sir.

Q. You could see Mr. Cameron as well as you could see the horse? A. I could see Mr. Cameron, he had a rope about 6 feet long.

20 Q. And he was tugging along at the end of the rope? A. Yes, sir; he had both hands holding it.

Q. Was he pulling back? A. Yes, sir.

Q. That rope was how far from the neck of the horse? A. Five or six feet.

Q. The horse was between him and the man, wasn't he? You could see the man as well as you could the horse? A. I could see the horse better than I could see Mr. Cameron.

Q. How did you happen to fly down there if they
30 went 200 feet, how did you happen to fly down so as to be on the spot when the accident happened? A. I did not have to fly down to it.

Q. How far were you away from it? A. I could not say, but I was probably 100 feet away.

Q. Then you were not within 12 feet of it, as you said a short while ago, at the time the car ran over him? A. I don't know, maybe not.

Q. You are not very sure about these distances, are you? A. I ain't a judge of distance very much,
40 I did not measure it.

REDIRECT EXAMINATION by Mr. Bell:

Q. Did I understand you to say that you stood still? A. I stood still after the horse was frightened, to see what was the matter with the horse, to see what he was going to do.

CHARLES HELMES, Sr., sworn in behalf of the
plaintiff, testified as follows: 10

DIRECT EXAMINATION by Mr. Bell:

Q. Where do you live? A. I am stopping with my son now, at Edgewater.

Q. Were you on Bergenline avenue in company with your son on May 29, 1902? A. Yes, sir.

Q. Did you witness an accident at that time? A. I did. 20

Q. On that date? A. Yes, sir.

Q. Please recite the circumstances as you remember them? A. Well, I was going up Bergenline avenue, just about a quarter up that block where the Union Hill car comes up; I don't know what street you call it, and going along up, two men came up along with a gray horse, and I says to my son—

The COURT: Never mind that; just state what you saw. 30

A. The man was going up with the horse, and another man going along, and the next block above there was a car coming down and we got about three-quarters of the way up that block, I guess, and that car was near the upper corner, the car was coming down, and the horse reared up on his hind legs and ran down the street, and he struck into a gallop, and the man ran as fast as he could with the horse, and got down pretty nearly on the other end of the 40

block, and the horse went across the track, and the man fell about southeast across the track; the man just had time to turn himself over and shove his hands down on the ground that way, and say, "Oh," when the cow-catcher went over him bumping over him, that way, and the car was stopped just right across here, on his legs, on his thigh, and they tried to pull the man from under the car, and they could not do it, and they ordered the motorman to back the car
 10 off him.

Q. Now, how far did the horse drag the man down the street, Mr. Helmes? A. The man ran down with the horse about 200 feet, I should judge.

Q. You were not watching the struggle all the time? A. Yes, sir; and I ran down as fast as I could.

Q. Was the man on the track at any time? A. Not that I saw, until he fell across the track; the horse and man ran close to the track all the time.

Q. (By the Court.) As far as you saw the man was
 20 not on the rail until he fell? A. No, sir.

Q. Where was this car at the time the man and horse were running down the street? A. The car was just behind them coming down at a pretty good speed, full speed as I call it; I did not see the car slack up any at all.

Q. Was the car ahead of you? A. He got ahead of me about a length when the accident occurred, perhaps not a length; as quick as the horse turned I turned and ran too, and then the car was on the
 30 north side of us.

FURTHER DIRECT.

Q. Did you observe the car slacken speed? A. I could not see that he slackened speed a bit, until she was stopped all at once.

Q. Did you hear any bell ringing? A. No, sir; I didn't hear any bell.

Q. Did you see the motorman? A. I did.

40 Q. What was he doing? A. He stood up sideways,

that way, and watched the horse and man going down the track, with a half smile on to him as I call it.

Q. You followed the car up? A. Yes, sir.

CROSS-EXAMINATION by Mr. Edwards:

Q. They turned about opposite to you, didn't they, the horse? A. A little ahead of me.

Q. And he turned round and pulled Mr. Cameron around with him? A. The horse turned to the right, and that put Mr. Cameron on the left side of the horse. 10

Q. And the horse galloped down the street? A. Yes, sir.

Q. The horse ran down the macadam? A. He ran down the street, yes.

Q. And in the place reserved for wagons, between the track and the curb? A. Yes, sir.

Q. Then suddenly turned again to the left and across the track? A. Not until the man fell across the track. 20

Q. At the time the man fell the horse took a turn? A. Yes, sir.

Q. That is what caused the man to fall? A. I don't know.

Q. In other words, the man was running along with the horse down the track, and suddenly the horse turned across there? A. The horse turned across the track. 30

Q. If the horse had not sheered at that time there would not have been any trouble? A. I don't know.

Q. The car would have cleared them if it hadn't been for that; if the horse hadn't sheered at that time, there would not have been any trouble? A. Perhaps not, and perhaps there would, I could not tell.

Q. That is what caused him to fall across the track, the sheering of the horse? A. I could not say about that. 40

Q. The horse, you are quite sure, ran straight down the street for quite a distance? A. Yes, sir; the horse ran down the track quite a distance.

Q. Down the macadam you mean—and suddenly turned to the left? A. Yes, sir.

Q. And where was the car then? A. The car was not over ten feet, 8 or 10 feet from him, I should not judge.

10 Q. You don't think he was 100 feet away like your son then? A. No, sir.

Q. And the man had the brake on the car? A. I don't know about that, but I know the car stopped.

Q. It did not go over the man even? A. No, sir; only on the top of his legs.

Q. Then there must have been a quick stop? A. Yes, sir.

Q. The motorman must have put on all his muscle? A. I suppose he did.

20 Q. That was the first time there was any one on the track, wasn't it? A. As far as I saw.

Q. That was when it was necessary to put it on? A. I did not see him on the track, it might have been on there.

Q. You have good eyesight? A. Yes, sir.

The COURT: It is admitted the car in question was operated by the employees of the defendant company.

30 Mr. EDWARDS: Yes, sir; we admit that; we don't believe in technicalities today.

HERMANN B. GATES, sworn in behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION by Mr. Bell:

40 Q. Where do you live? A. At Edgewater, New Jersey.

Q. What is your business? A. Superintendent for the Valvoline Oil Company.

Q. Were you acquainted with Oscar S. Cameron in his lifetime? A. Yes, sir.

Q. Do you know where he was employed? A. Yes, sir; by the Valvoline Oil Company.

Q. For how many years? A. Close to 11.

Q. In what capacity? A. He began as laborer, and he was gradually promoted to treater, the treating department of the refined oil business. 10

Q. (By the Court.) How long had he been a treater at the time of his death? A. About 5 years.

Q. What was his compensation? A. \$3.25 a day.

Q. Was the employment steady or intermittent? A. He was steadily employed.

CROSS-EXAMINATION by Mr. Edwards:

Q. How long had he been getting \$3.25 a day?

A. His wages were advanced to \$3.25 on Dec. 21, 1900. 20

Q. Before that, what had they been? A. \$3.

Q. It takes an active young man to be a treater, doesn't it? A. Yes, sir; an intelligent one, at least.

Q. And active? A. Yes, sir; he could not be a cripple and be a treater.

Q. And he had to be an active young man? A. Yes, sir.

Q. It takes young men to do that work? A. Yes, sir. 30

REDIRECT EXAMINATION by Mr. Bell:

Q. How was Mr. Cameron regarded by his employers?

Objected to. Objection sustained.

E. H. SCHMIDT, sworn in behalf of the plaintiff,
testified as follows:

DIRECT EXAMINATION by Mr. Bell:

Q. Where do you live? A. West New York.

Q. How long have you lived there? A. 34 years.

Q. What business are you in? A. I was manufac-
10 turing.

Q. Where is your plant located? A. Well, be-
tween Bergenline avenue and the Hudson Boule-
vard.

Q. Were you on Bergenline avenue on May 29,
1902? A. I was on the rear platform of the car.

Q. Where did you board the car? A. At 11th
street.

Q. Where was your destination? A. Union Hill.

Q. You may state what you know of this accident?

20 A. Well, I went on to the car to go to Union Hill; I
was on the rear end of the car, and something drew
the attraction of the passengers to the front of the
car, and I saw the horse on the street coming up
towards the car, and then the horse reared up and
went down the street.

Q. How far away was the horse when you first
observed him? A. About 200 feet I should judge.

Q. You could not see the man, could you? A.
No, sir; I did not see the man, I saw the horse, and
30 that is about all I saw.

Q. How did you see that, Mr. Schmidt, did you
look around the car or through the car? A. I looked
through the car.

Q. (By Mr. Edwards.) Was it a closed car? A.
Yes, sir.

Q. Box car? A. Yes, sir.

Q. (Further direct.) Did you see the motorman?
A. Yes, sir.

Q. Did you notice the car slacken speed? A. No,
40 sir.

Mr. EDWARDS: Objected to.

Q. (By the Court.) Did you notice whether or not the car slackened speed? A. No, sir; I did not notice whether it did or not.

Q. (Further direct.) You were on the car when it stopped? A. Yes, sir.

Q. Have you frequently ridden on those cars?

A. Quite often.

10

Q. And what have you to say as to the speed of the car on that occasion?

Objected to. You can tell how fast it was going.

The COURT: I understood the question was asked of the witness to develop his experience in the speed of cars.

Mr. BELL: I simply asked him as to the speed of this car.

20

Q. (By the Court.) How many miles per hour was it running? A. I could not say, but it went pretty fast.

Q. (Further direct.) Did it stop sudden? A. It stopped when the man was under the car.

Q. (By the Court.) The question is whether it stopped suddenly? A. It stopped so suddenly that I fell forward towards the front of the rear platform.

30

The COURT: He was on the rear platform.

CROSS-EXAMINATION by Mr. Edwards:

Q. Did you see the horse running down the macadam? A. I did when my attention was drawn to it; at first I did, then I did not pay any more attention to it, when I saw the horse going down the street

40

I thought everything was all right, and then I saw nothing until the man was underneath the car, and then there was a sudden stop—very sudden.

Q. Were the brakes put on? A. I suppose so.

Q. Did the bell ring? A. I don't know.

Q. How fast was the car going—5 or 6 miles an hour? A. Faster than that.

Q. How fast? A. A man could almost run five or six miles an hour.

10 Q. You think it was going faster than that? A. Yes, sir.

Q. How far did the horse run before the car stopped? A. Well, I did not have my eye on to the horse all this time; I thought when the horse reared up and went down the street that the man was out of danger, it looked so to me, and the car kept on at its regular speed.

Q. And you saw the horse run on down the street, but he was away from the track, and you thought
20 there was no danger? A. That is right.

Q. You see led horses every day around there? A. Here and there you will see them.

Q. How far away from the car was he at the time he was running down the street. I mean from the side of the track? A. It might have been about that.

Q. That is the way you saw him last? A. Yes, sir.

Q. Until the catastrophe? A. Until I saw him under the car.

30 Q. The car did not go over the man? A. The car was resting on to his legs.

CALEB W. CAMERON, sworn on behalf of the plaintiff, testified as follows:

DIRECT EXAMINATION by Mr. Bell:

Q. Where do you live? A. 305 W. 111th street,
40 Borough of Manhattan.

Q. Are you a brother of Oscar S. Cameron, deceased? A. Yes, sir.

Q. Have you ever been on Bergenline avenue, Town of Union? A. Yes, sir.

(Conversation between Mr. Edwards and Mr. Bell.)

Mr. EDWARDS: We have no objections **10**
to this map, we are satisfied with the map.

The COURT: Let the map be introduced by consent as being substantially accurate, subject to correction by either party I suppose, but the important thing pointed out by Mr. Bell is that the map shows, and the truth is that the tracks were somewhat slightly swung to the easterly side of the street, more than they are to the westerly. **20**

Q. (Further direct.) What are the actual measurements?

The COURT: It shows on the map, if you are satisfied the map is right it will save time.

Mr. BELL: Is the map marked, the distances? **30**

Mr. EDWARDS: Yes.

The COURT: The brown line represents the building line, and the blue line is the curb, and the space between the brown and the blue is the sidewalk.

The WITNESS: Yes, sir.

Mr. EDWARDS: We will call in one of **40**

your witnesses and ask him to show where it was the car ran over this man.

Mr. EDWARDS: I will ask a few questions.

Q. (By Mr. Edwards.) Bergenline avenue is a separate street for many blocks at that point to the north, isn't it? A. Yes, sir.

10 Q. For miles? A. Yes, sir.

Q. I mean to the north—

The COURT: How is the grade?

A. It ascends, it keeps ascending to the north for half a mile.

Q. On an even ascent? A. There is a slight grade at this point, and four or five blocks to the north it steepens.

20 Q. (By Mr. Edwards.) How many feet north of 5th street was it that Mr. Cameron was run over? A. (No answer.)

Q. (Further direct.) Mr. Cameron, did you make any investigations as to the place of the accident? A. Yes, sir.

Q. Make a cross on this map where you understand the actual catastrophe happened? A. At or about.

30 Mr. EDWARDS: Yes.

A. I have made a cross.

Q. (Further direct.) Did you see your brother after the accident? A. Yes, sir.

Q. Where did you see him? A. At Hudson Heights Hospital.

Q. Were you present when he died? A. I was.

Q. When did he die? A. May 29th.

40 Q. (By Mr. Edwards.) The next morning, wasn't it? A. No, sir; the 29th of May.

Q. (Further direct.) How old was your brother?

A. Between 31 and 32.

Q. Over 31? A. Yes, sir.

Q. Between 31 and 32? A. Yes, sir.

Q. Did you say how long after the occurrence he died? A. May 29th.

Q. Did you see the extent of his injuries? A. Yes, sir.

Q. What did they consist of? A. Numerous cuts 10
on the scalp, and fracture of the right shoulder,
and—

Q. (By the Court.) Are you a medical man? A. I
have been in hospital work a good many years in
the New York hospitals; both his legs were broken,
and cut down into the bone; the skin was torn off
the hands, off both his hands.

Mr. BELL: The plaintiff, Mrs. Cameron,
I suppose you will admit, she is the adminis- 20
trator with the will annexed?

Mr. EDWARDS: Oh, yes.

FANNIE CAMERON, sworn in her own behalf,
testified as follows:

DIRECT EXAMINATION by Mr. Bell: 30

Q. Where do you live? A. Jersey City.

Q. Where did you reside in May, 1902? A. Grand
View, Bergen County.

Q. Oscar S. Cameron was your husband? A. Yes,
sir.

Q. When were you married? A. October 3, 1894.

Q. Where?

The COURT: That makes no difference
unless it is disputed. 40

Mr. EDWARDS: Not a bit.

Q. How many children had you? A. Two.

Q. How old are the children? A. A boy 8 years of age and a baby 2 years of age.

Q. What is the name of the boy? A. James Cameron, and the girl is Ruth Cameron.

Q. How old is Ruth? A. Two.

10 Q. (By the Court.) That is the present age of these children? A. Yes, sir.

Q. (Further direct.) The children still reside with you? A. Yes, sir.

Q. (By Mr. Edwards.) And your age is what? A. 34 last September.

Mr. BELL: Mr. Edwards, you will admit the corporate capacity of the defendant?

20 Mr. EDWARDS: I cannot deny it.

The COURT: Of course he admits that, that does not have to be proved.

Mr. EDWARDS: And I admit also that the defendant here sued in this suit was at that time owning and operating this railroad.

30 The COURT: That is already admitted.

PLAINTIFF RESTS.

MOTION FOR NON-SUIT.

Mr. KOESTER: If the Court please, the defendant moves for a non-suit upon two grounds:

First, because there has been no evidence produced showing negligence on the part of the defendant company, and

Secondly, upon the ground of contributory 10
negligence, or the negligence of the deceased.

Now, in the first place in regard to the first part of my motion I believe that all of the witnesses in this case have testified, and particularly the two Helmes, that the accident was because of the deceased coming on to the track suddenly, that the horse suddenly sheered. The car had a right on that track and on that highway, and had a right to run at an ordinary speed, and there is no evidence 20
in this case that the car was going at any undue speed. The evidence also is that the highway was some 80 or 90 feet wide; that the side of the highway between the track and the curb on the side this deceased was at the time was 23 feet 8 inches wide. It is also in evidence that there was an open view there for three or four or five hundred feet. There is no evidence in this case that 30
the gong was rung, and it is to the credit of the motorman that he did not ring the gong, because it might have frightened the horse more; so that the horse got frightened solely from the car.

Now, where is the evidence in this case by which this defendant company can be held responsible for this accident? Now, I think there is evidence in this case also that the horse started to run down the road when the 40

car was 200 feet away; that the man held on to the horse at the end of the halter, with both hands, and Mr. Gates says he was an active man, a man 34 years old, an active young man, 34 years old, and holding on to the end of this halter, and running down the road, the width of the road being 23 feet 8 inches outside of the track, with the car approaching, and then the horse suddenly sheered and he went on to the track. Now, where is there in this case, any evidence at all, by which this company can be held liable for this accident, and I take it that unless the plaintiff can show that the company is negligent, or was negligent in some particular, that we are entitled to have this motion prevail; and it has impressed me in this case—I don't know how it impressed the Court at the former trial—but where an active young man hanging on to the end of a rope with both hands and running for 200 feet along with a runaway horse, and the only means he had to stop him was the halter, he is responsible for putting the halter on the horse's head, or responsible for leading the horse along this highway, where cars were running at this time, without protecting himself against anything that might occur just like what did occur; he did not even put the rope around the horse's jaw whereby he could control him, which a reasonably careful man would do; he did not attempt to do anything at all by which he could control this horse, except simply to lead him with an ordinary halter. And it has always impressed me in this case, that a reasonable man, after he had gone 200 feet, and seen then that he could not control the horse, and knowing the car was coming, because he knew the cause of the horse's running away, and still he held on to this horse until the

horse put him in a position of danger, and suddenly sheered, and he fell across the track. Now, it is also presumable that the car was not going out of the ordinary speed; why, because, as soon as the man fell, and the car was 10 or 12 feet away from the spot where the man fell, why, the motorman stopped the car, succeeded in stopping the car without running over the man. Mr. Schmidt said it came to a sudden halt, and that the sudden stop threw him from the rear part of the rear platform against the side of the car; it was a sudden stop of course. The motorman put on the brake, but if the car had been going at a terrific rate of speed, he certainly could not have stopped it within 40 or 50 feet at least.

Now, Where is the negligence in this case that you can attribute to this company. I fail to see any, but I can observe a great deal of negligence on the part of this deceased.

The COURT: Well, I don't see in the evidence what it is that charges the defendant's employees with negligently frightening the horse. It was either the view or sight of a car coming, or the noise of it probably, but I do not see that that is negligence that proximately caused the accident. The horse then turned and went along in the same direction that the car was running and at a considerable distance, if the witnesses are to be believed, from an advancing car.

Now, if the evidence were clear and undisputed that the horse at all times, until immediately before the collision, was free and clear of the track, and that the man leading him was at all times free and clear of

danger, and that there was a sudden movement of the horse, that was not such as could reasonably be anticipated by a prudent motorman, there would be very much force in the contention that is now made. That there was no negligence evidenced, is not clear, to that extent, and on this motion, I must take most favorably the evidence of the plaintiff's witnesses. The plaintiff may contend that there is evidence from which the jury have a right to believe that for a considerable distance, perhaps not 100 feet, but for a considerable distance before this collision, the horse being beyond the decedent's control, was dragging the decedent part of the time at least upon and along the tracks, and for a sufficient length of time, and for so long a distance in front of the car as to give the motorman notice of the dangerous position in which the plaintiff was put, thereby casting on the motorman the duty of exercising reasonable care to refrain from colliding with the plaintiff; also the plaintiff will have a right to contend that a prudent motorman should have checked his car's speed and brought it down at least, if not to a stop, at least to such a moderate speed, that it could quickly be brought to a stop, if the danger persisted; and in that aspect the negligence lies. The claim is that the horse got beyond Mr. Cameron's control and carried him upon the track in front of the approaching car, and that he was there long enough to give notice to the motorman that he was in danger, and that the motorman did not use the degree of care that an ordinarily prudent man would have used, and so the car was not checked in time to avoid a collision; of course the falling of the decedent upon the track was that which brought the catastrophe to an issue.

I think there is enough evidence of the defendant's negligence to take the case to the jury.

The next question is whether the decedent himself was negligent, and I do not see that his negligence is so clear as to justify the Court in saying that no jury question is left. In fact, it seems to me that the plaintiff's case is less vulnerable, if anything, upon this point, than upon the other; evidently the horse was beyond this man's control, and, as I understand the case, unexpectedly beyond his control. I cannot say as a matter of law that it is negligence per se for a man to lead a horse along the street with a halter, if he does not take a turn round the horse's lower jaw, in order to more quickly check him. The jury may think that that was negligence, and if they do, it will be for them to say so; but I cannot say that as a matter of law. I suppose it is a matter of common experience that men do lead their horses along the street, as he did; we have all seen it.

Mr. EDWARDS: A strange horse.

The COURT: A strange horse must be led the first time by a new owner; if a man buys a horse at all he must get him home.

Undoubtedly this decedent knew this car was coming; I take it for granted he did; whether the bell was sounded or not makes no difference. There was one witness who said, at one time during the occurrence, that the decedent had this horse by the halter, close to the horse's throat, or at least close to that end of it; afterwards a witness seems to have seen him holding on to the other end

of the halter with both hands. The man evidently was trying to restrain the horse. It is suggested that he might have let go of the horse—yes, but it was his duty to extricate the horse from danger; he owed a duty to his own property, and it was his duty to protect it, and to protect the public. I don't think it is undisputed that there was negligence on his part that contributed to this occurrence. The horse was beyond the control of the man; Mr. Cameron did not intend to do anything of that character, any more than the motorman wanted him to be there. He got there without his own procurement, as far as the immediate occurrence went, and the question is this, if Cameron was not negligent, whether the motorman had noticed for a sufficient length of time the predicament of the decedent to have enabled the motorman, using reasonable care, to stop that trolley car, or get it under control, so that he would not have run the man down in the event of his falling on the tracks.

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I therefore refuse the motion to non-suit and will grant the defendant an exception.

To which ruling of the Court the defendant's counsel prays an exception. Exception allowed. Let it be sealed and it is sealed accordingly.

30

MAHLON PITNEY, (Seal.)
J. S. C.

RECESS TILL TWO O'CLOCK.

40

Mr. Edwards opened for the defendant.

MICHAEL QUELVE, sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Edwards:

Q. Where do you live? A. 302 Hackensack Plank Road, Union Hill.

Q. What's your business? A. Plastering just now, ¹⁰
that is my trade.

Q. Were you ever in the employ of the Jersey City, Hoboken and Paterson Street Railway Co.?
A. Yes, sir.

Q. In what capacity? A. As motorman.

Q. For how long? A. About a year; I left their employ just today a year.

Q. Do you remember the day of the accident to Mr. Cameron? A. I believe I do, I think it was on May 29th. ²⁰

Q. Did you know Mr. Cameron? A. No, sir; I did not.

Q. What position were you on on that car on that day? A. Plying my province.

Q. Were you the motorman? A. Yes, sir.

Q. What direction were you going? A. Coming south from Nungessi's, that is south.

Q. Was your attention attracted to Mr. Cameron and the horse? A. It was, occasionally; yes, sir.

Q. Where first? A. I must have been about half ³⁰
a block or so away from them then, and I saw Mr. Cameron coming up with the horse; I saw a man with a horse in the street, and I saw the man leading the horse up, going up what is called, coming towards me, anyhow, and he seemed to have pretty good control of his horse, and the first thing I knew, the horse got excited, and threw up his ears, and the man was directly thrown under my car.

Q. Which way did the horse run? A. Right directly across the track as I was coming down, and ⁴⁰

with that I thought the man was on the fender at first, and then I put on the brakes and stopped the car instantly, like that, and that is all I saw of the horse or anything, and I don't know in which direction the horse went, as I was excited after that and did not see any more.

Q. How far was the horse from the track when you first saw him? A. When I first saw him he was closer to the gutter than when I saw the man.

10 Q. How soon after that did he turn around? A. Right away, when I saw the man he seemed to have control; the horse threw up his ears, and he threw the man directly across the track under my car; the man was holding on this way with the end of the rope.

Q. What speed were you going at? A. At regulation speed.

Q. What is that? A. That is, I believe, five or six miles an hour.

20 Q. Did you have your car under control? A. Yes, sir; I started to brake my car when I saw the man; I put on my hand brake, that was the only brake I had.

Q. At how short a distance could you stop the car in? A. I could not say that, but as soon as I saw the man under my car I got the car under my control and stopped it instantly.

Q. How far did the car go—10 or 12 feet? A. I could not say.

30 Q. Did it go the length of this court room? A. No, sir.

Q. Tell us in feet? A. About 5 feet as near as I can guess at it.

Q. You were not going with any very great speed? A. No, sir.

The COURT: That is a matter of argument.

40 Q. Did you run over the man? A. No, sir; the

first wheel caught the man right here, and with that, as I did not know anything until I got off the car, and saw the condition the man was in, I said—

The COURT: Never mind what you said.

A. With that I moved the car back and relieved the man and after that I don't remember anything, except that we telephoned for an ambulance, and more I could not tell you, because I was all excited ¹⁰ at the time, and I did not know what I was doing; that is all I remember.

Q. Mr. Quelve, had you been ringing your bell?

A. Yes, sir; after I saw the horse I stopped ringing it; ooccasionally I would have my foot on it, until I saw the horse was scared, and after I got near the horse I did not ring the bell any more, certainly not, I was afraid of scaring the horse by ringing the bell when I saw it was scared.

Q. Are you in the employ of the company now? ²⁰

A. No, sir.

Q. How was he lying—on his breast? A. He was lying this way.

Q. Prone, flat? A. Yes, sir.

CROSS-EXAMINATION by Mr. Bell:

Q. Do I understand you to say you did not see Mr. Cameron until you were close by? A. Well, I did not exactly say that; no, sir; I said when I was ³⁰ coming down about half a block away, and the man had his horse under control; I saw the man, and as I got near the man, he had his horse under control, and I thought it was all right, and then the horse threw up his ears, and that threw the man directly under my car, and that was all I ever knowed.

Q. Where was the man and the horse when you saw him in relation to the curb first? A. I believe—

Q. How near the curb was he? A. Well, he was ⁴⁰

pretty near up against the curb when I saw him.

Q. Do you mean to say that the man was thrown from the curb on to the track? A. No, sir; the horse picked up his ears and with that threw the man directly under the car.

Q. Did you see the horse turn? A. Yes, sir; he turned directly towards the car, going across the track, and with that I started to put on the brake, and with that Mr. Cameron was thrown directly
10 under my car.

Q. Did you apply the brakes before that time? A. Yes, sir; I tried to stop the car.

Q. (By the Court.) Before what time, you were asked whether you put on your brakes before that time, and you said you did, what time did you mean?

A. When I saw Mr. Cameron with the horse I had my car under control.

Q. How did you have it under control? A. I put on one motor, and one alone.

20 Q. (By Mr. Edwards.) That is four notches? A. Yes, sir.

Q. (Further cross.) You testified in your direct examination that you saw the man and the horse, and the man had the horse under control? A. Yes, sir.

Q. Then you saw the horse turn, and the next thing you knew the man was under your car? A. Yes, sir; that is what I said.

Q. Then you applied the brake? A. I had my
30 car under control before then, and I stopped the car, put on the reverse, and Mr. Cameron was under my car.

Q. Now, you did not apply the brakes until the man went under the car? A. Yes, sir; I did and stopped the car.

Q. And stopped the car? A. I did not exactly stop it, but I had the car under control.

Q. How far from the place where the accident happened did you stop the car? A. I did not stop the
40 car, but I had it under control.

Q. 100 feet away? A. I could not say.

Q. How far can you see down Bergenline avenue?

A. What do you mean, when you are on a car?

Q. Yes. You can see quite a distance.

Q. And see two or three blocks? A. Yes, sir.

Q. But you did not see Mr. Cameron and the horse in this case until within half a block? A. That is right.

Q. How far back was this from 4th street where the accident happened? A. I believe the park is at 5th street, Hudson County Park. 10

Q. About how far up was it from the place where the trolley tracks come up? A. Within one pole of the door of the Hudson County Park.

Q. Is it one block or two blocks? A. I don't think it is a block, from where the first pole is from the gate, I don't believe it is a block.

Q. You testified that you are employed by the company for nearly a year? A. Yes, sir.

Q. Were you running regular all that time? A. 20 Yes, sir; I was.

Q. Regular motorman? A. Yes, sir.

Q. You were not an extra? A. Yes, sir; I was an extra at the time; yes, sir.

Q. How long had you been running on this line?

A. On this line I run occasionally, an extra man gets a show on every lipe, you know.

Q. Had you run on this line before? A. Yes, sir; every man has to break in when he is a motorman, of course. 30

Q. (By Mr. Edwards.) But you had been broken in before this? A. Oh, yes.

Q. (Further cross.) Up to that time did you ever have an accident of any kind?

Objected to.

The COURT: What has that to do with it?

Mr. BELL: As I understand it, we may 40

show anything that happened up to this time.

The COURT: Have you charged in your declaration that they knowingly employed an incompetent servant?

Mr. EDWARDS: No, there is nothing of that kind.

10

GEORGE L. PAMENDEL, sworn in behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Edwards:

Q. What is your name? A. George L. Pamentel.

Q. Where do you live? A. 410 Malone street, West Hoboken.

20 Q. What is your occupation? A. I am a clerk employed by the Southern Pacific Steamship Company.

Q. You are not employed by the defendant company? A. No, sir.

Q. Were you ever in their employ? A. Yes, sir.

Q. When? A. From December 26th, 1897, to November 8th of this present year.

Q. And what were you? A. Conductor.

30 Q. And were you the conductor on the car in question on which Mr. Quelve was the motorman? A. Yes, sir.

Q. Do you remember the day of the accident to Mr. Cameron? A. Yes, sir.

Q. Did you know Mr. Cameron? A. Very well indeed.

Q. Where were you at the time of the accident? A. I was on the inside of the car.

Q. And in which direction was the car going? A. The car was running south.

40 Q. What were you doing on the inside of the car?

A. I was attending to the business of the car, collecting fares.

Q. Was your attention called to the accident at all? A. It was, at first, by the clanging of the bell—

Q. What do you mean? A. The motorman had been ringing his bell; I don't know what he had been ringing it for as my back was to him, and I started to go to the rear, on the tail end of the car, and the car came to a very sudden stop.

Q. What did you see then? A. Then I looked ahead and I saw a horse, and it seemed to me the horse was directly in front of the car. 10

Q. (By the Court.) Did you see the horse? A. Yes, sir.

Q. Where was he? A. In front of the car.

Q. Running across the street? A. Running south.

Q. Over to the side of the street? A. Running directly south.

Q. This was after the accident? A. Yes, sir.

Q. (Further direct.) What did you do then? A. 20
I noticed my motorman looking over the side of the car, and I jumped off the tail end of the car, and I saw the body of Mr. Cameron, his head and shoulders and body were sticking out in the street.

Q. (By the Court.) In which direction from the car? A. The right of the car, his head and shoulders and body was on the westerly side of the car.

Q. How rapidly was the car going? A. I should judge at the regulation speed, which we figure at five or six miles an hour. 30

Q. Had it been slowed up? A. Well, it had been slowed up and started up again.

NO CROSS-EXAMINATION.

Mr. FRITZ SEIBT, sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Edwards:

Q. Where do you live? A. East New Durham, 69 Richley street.

Q. What is your business? A. Spinner.

Q. Do you remember the day of the accident to Mr. Cameron? A. Yes, sir.

Q. Where were you on that day at the time of the accident? A. I went home that day to dinner, but
10 I was working in New York—

Q. Were you in the car? A. I was in the car.

Q. Whereabouts in the car were you sitting? A. I was sitting in the middle of the car.

Q. Did you see anything of the accident? A. Well, I did not see anything of the accident.

Q. What did you see? A. Well, I heard a bell, and then I raised up in my seat, at the same time I went pretty nearly down, but I caught the seat, and I saw a horse running in front of the car across
20 the track and down the street.

Q. What did you do then? A. Then I went out and saw the man under the car.

Q. Was the car brought to a sudden stop? A. Yes, sir; a very sudden stop?.

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

Q. Very sudden? A. Yes, sir.

Q. Did it almost throw you down? A. Yes, sir; I only caught the seat, otherwise I would have gone down to the floor.

30

CROSS-EXAMINATION by Mr. Bell:

Q. Have you frequently rode on this line; on this Bergenline avenue line, on the cars? Have you ridden often on those cars? A. Every day.

Q. And did you notice the speed the car was going at? A. Well, I cannot tell about that, I did not notice about the speed.

Q. Did you notice the motorman when you
40 looked out? A. Certainly, I saw him; he made a

rush to put on his power to stop the car.

Q. You had not looked out of the car; just before it stopped you got up to look out? A. I heard the bell ring and I heard a scream, and then I raised up from my seat, and at that time the car stopped, and I pretty nearly fell down.

Q. Now, did you see the horse cross the track?
A. Yes, sir.

10

Mrs. ELIZABETH THANE, sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Edwards:

Q. Where do you reside, madam? A. 633 Van Buren place, West New York.

Q. Just north of Union Hill? A. Yes, sir.

Q. Well, now, do you remember the day of the accident to Mr. Cameron? A. Yes, sir; I do. 20

Q. Where were you on that day? A. I was going down Union Hill, in the car.

Q. The car upon which the accident happened? A. Yes, sir.

Q. Where were you sitting in the car? A. In about the centre of the car, on the west side.

Q. And it was a closed car? A. Yes, sir.

Q. And was your attention drawn to anything as you arrived? A. A sudden stop of the car, it was very sudden, and knocked me over on my side. 30

Q. What did you notice then? A. Then I looked up and I saw the horse running down the centre of the track, and it came just like this, crossing in, and then it run down.

Q. Was it galloping? A. Not galloping, just running.

Q. Did you notice what the horse had on? A. Yes, sir; it had some sort of strap around its head, and a rope was hanging down, I think there was a rope hanging down. 40

Q. No one had hold of that? A. No, sir; the horse was running away then, after the accident.

Q. What did you do then? A. I did not know then that there was an accident; I sat still and I saw the conductor, after he had stopped the car, he looked on the side of the gate, and I just sat still for quite a little while, until when I got up there were surely something the matter as there was a crowd of people standing there.

10 Q. Did you see them take him out? A. No, sir; he was out by this time, and he had been taken out by that time.

Q. Do you recognize the motorman as the man, do you recognize Mr. Quelve, who was on the witness stand as the motorman of that car? A. Yes, sir.

Q. (By the Court.) Did you recognize him when he was here on the witness stand, as being the same man who was the motorman of the car? A. Yes, 20 sir.

Q. And the conductor as the same conductor? A. Yes, sir.

Q. Did you know him? A. (No answer.)

CROSS-EXAMINATION by Mr. Bell:

Q. Have you ridden on that line before? A. Yes, sir; three or four times a week I got on that car.

Q. Did you notice the speed on this occasion that 30 the car was running at? A. No, sir; I could not tell you the speed, I did not take particular notice.

Q. When you looked out of the car and saw the horse, in which direction was he running? A. Running south.

Q. In what part of the street? A. I think it would be about the middle of the track.

40 Mr. EDWARDS: It is admitted that Mr. Roberts, the official stenographer on the former trial, if sworn, would testify as fol-

lows, that Mr. Helmes testified as follows:
 "Q. How far was the car away from the spot where Mr. Cameron got hurt at the time he fell? A. Probably 10 or 12 feet. Q. When he fell? A. Yes, sir. Q. And the car did not go over the man at all? A. No, sir; as soon as he saw him fall he put his brakes on. Q. And he succeeded in stopping in about 10 feet? A. I don't know the distance."

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The COURT: You had better embody in that admission that Charles E. Roberts, the stenographer of the Court, reported the former trial, and if called as a witness would testify that that was Mr. Helmes' evidence as taken down by him.

Mr. BELL: I think I shall let that matter go.

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The COURT: What is the page?

Mr. EDWARDS: Page 28.

MOTION FOR DIRECTION OF A VERDICT.

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Mr. KOESTER: We move that the Court direct a verdict for the defendant for the reasons stated in the motion for non-suit, and for the further reason that the evidence is in favor of the defendant, the overwhelming weight of the evidence; and on the ground that the evidence, in its present state shows that there was no negligence—I mean does not show negligence on the part of the de- 40

fendant, and clearly shows contributory negligence on the part of the deceased.

The COURT: I will refuse the motion.

To which ruling of the Court the defendant's counsel prays an exception. Exception allowed. Let it be sealed and it is sealed accordingly.

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MAHLON PITNEY, (Seal.)
J. S. C.

CHARGE TO THE JURY.

Pitney, J.

Gentlemen of the Jury:

This action is brought by the administratrix of
20 Oscar S. Cameron, deceased, to recover damages for pecuniary injury that resulted to the widow and children of Mr. Cameron by reason of his death, that took place on the 29th day of May, 1902, in a collision with one of the defendant's motor cars; that this death thus took place is admitted, the death is admitted, that it was caused by a collision with a motor car is admitted, and the fact that there was pecuniary injury accruing to the widow and next of kin by reason of that death is admitted. But all
30 this does not suffice to give the plaintiff a right to your verdict. In order that the plaintiff shall have a verdict she must first establish by a fair preponderance of the evidence, that Mr. Cameron's death was caused by some wrongful act or negligence on the part of the defendant's employee or employees; and even then she is not entitled to your verdict if it has appeared that his death was caused, in whole or in part by Mr. Cameron's own negligence.

Now, it is admitted, as I understand the argu-
40 ments on both sides, that the only one of the defend-

ant's employees, to whom negligence can be attributed, under this evidence, is the motorman who had charge of the running and controlling of this car; and so, in a sense, as has been remarked, it is the motorman who is on trial. But the attitude of the case is very different from what it would be if it were a criminal charge that you were trying against the motorman. In the first place, in a criminal case, it would be necessary, in order for his conviction to result, that his guilt be proved beyond a reasonable doubt. It is not so here. It is incumbent upon the plaintiff to sustain the case by a fair preponderance of evidence, so that from the evidence it shall be rendered more probable that the motorman was negligent than that he was free from negligence; but it is not necessary here, that his negligence should be established beyond a reasonable doubt. So, also, in a criminal case, he would be acquitted unless it appeared that he was so grossly negligent that he was practically disregarding of the safety or life of Mr. Cameron. But the question here is, was he wanting in the exercise of reasonable care under the circumstances that confronted him; that is, was the motorman lacking in the doing of that which an ordinarily careful motorman would have done under like circumstances. Now, if that is established by a fair preponderance of the evidence, the plaintiff is entitled to a verdict unless it appears that Mr. Cameron was himself negligent, in such a manner as to contribute to his own misfortune, to his own undoing; and if so, then the plaintiff is not entitled to a verdict although the motorman was negligent.

Now, there are some things in the case that have no direct bearing upon the issue that you are to determine; for instance, it has been intimated that Mr. Cameron was leading this horse along the highway, and in doing so was on the wrong side of the road; that seems to be, and indeed it was admitted that that was an immaterial circumstance here. The law of the road is that when a man in a carriage meets

another carriage coming in the opposite direction, he shall keep to the right in order to avoid collision with the other carriage, but in the case of a collision with a vehicle that cannot turn to the right or to the left, it is so far forth immaterial whether the man keeps to the right or to the left. Of course it was Mr. Cameron's duty, as it is of all persons lawfully using the highway, to be reasonably careful about his own safety, and the safety of other persons on
 10 the highway, and his administrator cannot recover if his own negligence contributed to bring about the accident that produced his death; but on the question of his carelessness, the burden of proof is on the defendant, that is, from whichever side the evidence comes, unless it satisfies you by a fair preponderance of the evidence, that Mr. Cameron was negligent, then the defendant is not to be excused on that ground.

Now, put yourselves in the position of the motor-
 20 man in order to determine the practical question whether there was or was not wanting any ordinary care.

The law does not require him to be highly skillful; the law does not require him to have any supernatural prescience to foresee an accident; the law does not hold him, or his employer, responsible for a mere accident, but the law requires that he shall exercise reasonable vigilance to foresee the ordinary dangers of the highway, and when notified of prob-
 30 able danger, that he shall exercise reasonable care in avoiding it; you must lay aside all sympathy and all prejudice for or against one side or the other; look at the evidence in the light that the situation presented itself to the motorman, as he came along lawfully using the highway for the purposes of his company, and for the purposes of the traveling public. He could not turn to the right or to the left, and he must therefore, if confronted with the probability of the danger of collision, he must exercise care in
 40 the direction of checking the speed of his motorcar.

Very much depends, as you will see in a moment, at a glance, very much depends on the question, whether this horse, and Mr. Cameron, who was in charge of the horse, were, at the critical time, so near in front of the motorcar, that there was obvious, to a reasonably prudent motorman, the danger of a collision. One witness, Mr. Hartnett, testifies, and as I remember it, another witness, Mr. Charles Helmes, Jr., testified, but you are to be the judges 10 of these questions of fact, that for some considerable time, before the very collision, Mr. Cameron was upon the tracks in front of the motorcar, and endeavoring to control his horse, but apparently unable to do so. Other witnesses, perhaps in greater number, give evidence tending to show that the horse, with some suddenness, brought Mr. Cameron upon the tracks. Mr. Helmes, Sr., who is one of these, said, as I recall the testimony, that he did not notice or that he was not sure just how long the man had been there, but whatever may be the evi- 20 dence, you should compare the testimony of one witness with another, to see what opportunities they have of observation, and what excitement they were laboring under, because, undoubtedly many of them were very much excited, as any one would naturally be in the presence of such a catastrophe. Also it is for you to judge whether any of them is influenced by an improper motive in giving testimony.

Now, what is the fact—that the motorman rang his bell a considerable time before, seems to be un- 30 controverted in the case, and it also seems to be immaterial, because if that frightened the horse, the defendant cannot be held at fault for the natural results of that which it was his duty to do; if he was properly ringing the bell to warn people off the track and accidentally frightened the horse, the defendant is not responsible for that, but it is not claimed that the motorman frightened the horse by ringing the bell. It is said that Cameron was negli- 40 gent because he ought to have had more control

over him, over the horse, by wrapping the rope around his lower jaw, that he should have taken a shorter hold of the rope, etc. Well, what is the fact, what is the care that an ordinarily prudent man, leading a horse on the highway, as Mr. Cameron was doing, would take? Was he wanting in care, in such a manner as, by reason of his want of care, this accident took place? If so, then the defendant is
10 entitled to your verdict, but if not, you come to the case of a man who, properly, lawfully, and with reasonable care, was leading a horse along the highway, and the horse took sudden fright, what ought the motorman to have done? Was Cameron and the horse, or either of them, on the rails, or so near that there was, to the view of an ordinarily prudent man, some reasonable danger that he was going to get in front of the car? If so, of course it was the motor-
20 man's duty to check his car's speed as soon as he reasonably could, and to hold it under such control that he would not necessarily or unduly injure the horse or the man in charge of the horse. The motor car, by reason of the very circumstances has, in a sense, the right of way. It cannot turn out, and it must proceed along those rails, but it has not an absolute, exclusive right of way. If any other person, lawfully using the highway, gets on the tracks, first, without negligence, in front of the motor car, that person has the right of way.

The question after all on the determination of the
30 motorman's negligence, seems to be the question whether Mr. Cameron was in truth on the rails, and near, or in danger of collision, for so long a time as to give fair notice to a reasonably prudent motorman that unless he checked the car he would run into him. If the motorman had that sort of notice, there does not seem to be much contention but that he ought to have stopped. It would not be contended that if he had fair notice that the man was on the tracks and could not get off, or could not
40 control his horse, but that the motorman must check

the speed of the trolley car. The claim is that in fact the case was otherwise, that in fact, the motorman supposed, and rightfully supposed, reasonably supposed, that the horse and the man leading the horse were in safety at the side of the track, and that the sudden movement of an uncontrolled horse brought Mr. Cameron in front of the car without adequate warning to the motorman, so that he did not have a fair opportunity to check the speed of the car. If that is true, then the defendant is entitled to your verdict, because, in that case, the death of Mr. Cameron was not due to the wrongful act or default of the motorman. But, if you find it established by a preponderance of the evidence that the motorman was negligent in such a manner as to produce the death of Mr. Cameron, and you do not find it established by a preponderance of the evidence that Mr. Cameron was negligent, then the plaintiff is entitled to a verdict that shall compensate the widow and next of kin for the pecuniary injury resulting from the death of Mr. Cameron. In case you get to this point, you treat the question of the assessment of damages as of the date of Mr. Cameron's death, the 29th of May, 1902; and you have a man at that time 31 years of age, in ordinary good health as I understand the evidence, leaving a widow, at that time, 33, and two children, a boy at that time seven, and a girl at that time, one year of age. Now the pecuniary injury that they suffered was the loss of the reasonable expectation of contributions out of the wages of the husband and father towards their maintenance, support, education and comfort. They are not entitled to a penny for injury to their feelings or affections. The loss of a father's love they are not entitled to compensation for in this action. It is pecuniary injury only, that is to be considered. The evidence is that he at that time was earning \$3.25 per day, and working steadily. He had been earning that for something over a year—15 months I think, and before that, for a

considerable time had been earning \$3 per day. It is claimed that his fair earning capacity was \$3.25 per day. If he got that, and worked every day in the year, it would amount to \$1,017.25 per annum; but of course you ought to take into consideration the question whether he worked every day in the year if he could; and also the question whether he could if he wanted to; whether the business is such as would employ him every day; whether he would
 10 work every day without a vacation, and all that sort of thing; and take into consideration whether he in the ordinary course of things would probably be earning less in the future or probably would have earned more in the future, and thereby you get a fair estimate of his earning capacity for the future; but that is not the measure of the recovery—it is only so much as he probably would have contributed to the wife and children that is to be taken into consideration here, for their support, for their edu-
 20 cation, and it is to be taken into consideration only with respect to such length of time as he probably would have lived, and with respect to such length of time as they probably would have lived, and have called upon him reasonably for, and received from him support, etc.

There is no proof as to what his expectancy of life was, or what theirs was; it is for you as reasonable men to make up your minds how long these contributions would probably have continued, and how
 30 much they would probably have amounted to. When you have arrived at that calculation, which must, of course, be a reasonable estimate, based on the evidence, you must not add those sums together and give that as the amount of your verdict, because that would give the family at present the total of what it is to be supposed they would receive in the future. You must discount that by ascertaining the present value of these future contributions, that is to say, you should arrive at such a sum of money,
 40 that if it were put at interest, at a reasonable rate,

and the interest used, and a part of the principal used each year, thereby consuming the principal year by year in part, it would be exhausted at the end of the probable contributions that would have been made by the father had he lived. It is a reasonable estimate to be made by you of what was the pecuniary injury resulting to these people by the death of Mr. Cameron on the 29th of May, 1902. Having arrived at that you add interest from that date until the present time. Of course you don't allow any damages unless you find the liability of the defendant, according to the principles I have already endeavored to enunciate.

VERDICT FOR PLAINTIFF.

DAMAGES, \$6,540.00

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

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10	FANNIE M. CAMERON, Ad-)	
	ministratrix, Plaintiff,)	
	Defendant in Error,)	
	vs.)	In Error.
	JERSEY CITY, HOBOKEN)	Assignments of
	AND PATERSON STREET)	Error.
20	RAILWAY COMPANY,)	
	Defendant,)	
	Plaintiff in Error.)	
		o	

Afterwards, that is to say on the twenty-fourth day of March in the year one thousand nine hundred and four, before the Judges of the Court of Errors and Appeals, in the last resort in all cases, at Tren-

30 ton, comes the said defendant, the Jersey City, Hoboken and Paterson Street Railway Company, by Bedle, Edwards & Thompson, its attorneys, and says, that in the matters recited and contained in the said bill of exceptions, and also in the giving of judgment aforesaid, there is manifest error in this, to wit:

(1) That at the trial of said cause, at the close of the plaintiff's case, the defendant, by its counsel, moved the Court that the plaintiff be called, and a

40 judgment of non-suit ordered against him; to grant

which motion the Court refused; which ruling was illegal and to the injury of the defendant.

(2) That at the trial of said cause, at the conclusion of the whole case, the defendant by its counsel, moved the Court that a verdict be directed in favor of the defendant; to grant which motion the Court refused; which ruling was illegal and to the injury of the defendant.

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(3) That the judgment in said cause was given in favor of the plaintiff, whereas by law it should have been given against the plaintiff and in favor of the defendant.

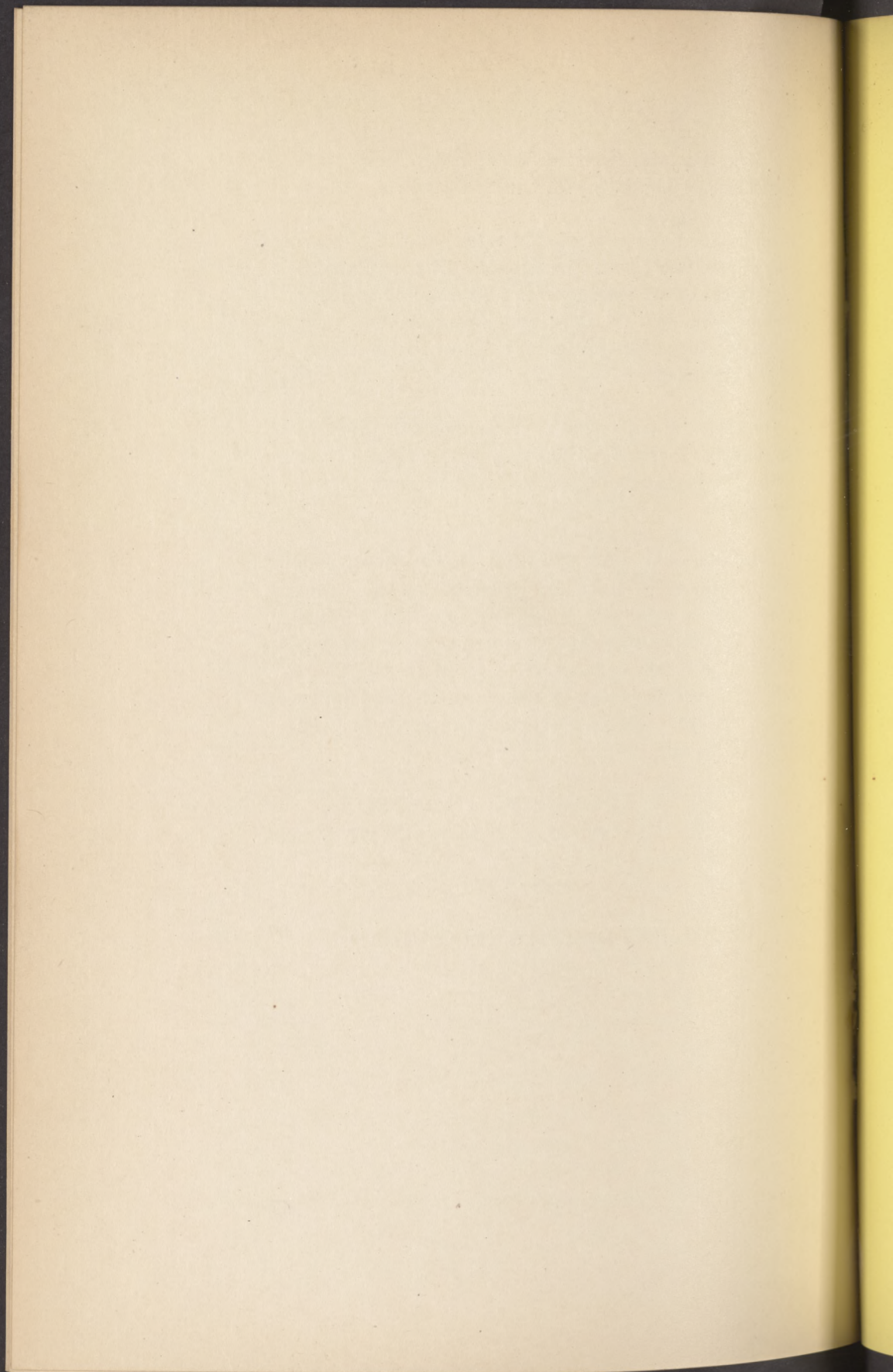
Wherefore the said plaintiff in error, the Jersey City, Hoboken and Paterson Street Railway Company, prays that the judgment aforesaid, for the errors aforesaid may be reversed, and for nothing holden, and that it may be restored in all things which it may have lost by reason of the said judgment, and that the said defendant in error may be rejoined to said errors.

BEDLE, EDWARDS & THOMPSON,
Attorneys of Plaintiff in error.

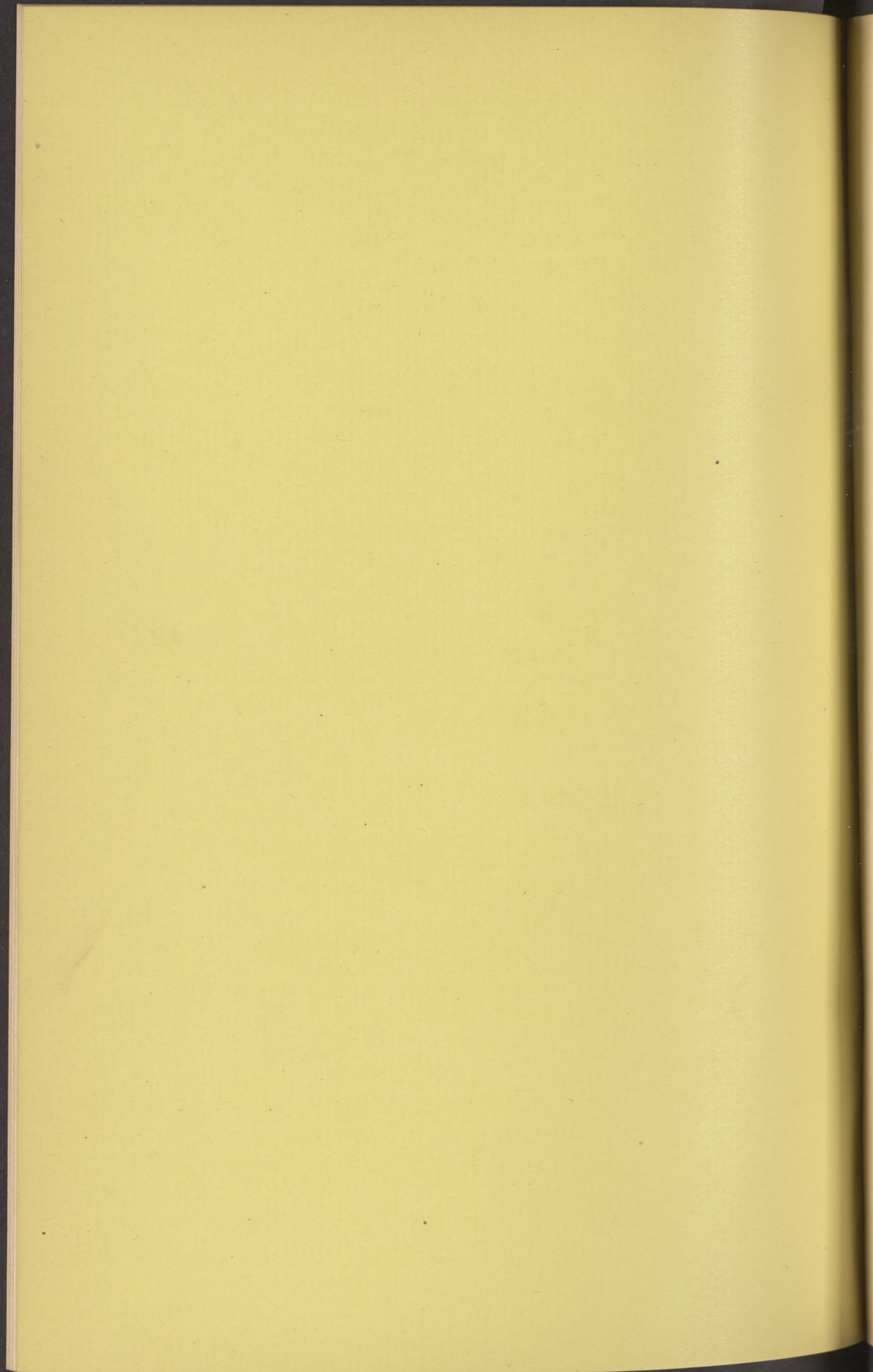
USUAL JOINDER IN ERROR FILED.

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