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# New Jersey Supreme Court

MONMOUTH COUNTY

CALEB T. HUBBARD,

Plaintiff,

vs.

ATLANTIC COAST ELECTRIC RAIL-  
WAY COMPANY,

Defendant.

Action  
at Law.

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## STATE OF CASE

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### APPEARANCES

For Plaintiff,  
STEWART FARRELL and LEON W. TAYLOR, ESQS.

For Defendant,  
MESSRS. DURAND, IVINS & CARTON

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## INDEX

Judgment Record .....			3
	DIRECT	CROSS REDIRECT	
Edward Megill .....	6	14	
E. Everett Throckmorton.....	22, 27, 72	31, 75	
Caleb T. Hubbard.....	32	42	
Dr. Ferdinand G. Angeny.....	62	66	
Motion for Nonsuit.....			69
Herman Stickler .....	76	83	
George W. Irons.....	83	90	105
James E. Stillaway.....	108	112	
Michael Lavin .....	114	117	
Hugh Finnegan .....	118	121	
Alexander Brewer .....	123	129	
Alexander Mullen .....	24, 134	25, 137	
Emelius M. Beutell.....	140	142	
Edwin M. Bowles.....	143	145	
Motion for Direction.....			146
Charge of the Court.....			148
Notice of Appeal.....			155
Grounds of Appeal.....			156

## Judgment Record

## New Jersey Supreme Court

CALEB T. HUBBARD,

Plaintiff,

vs.

ATLANTIC COAST ELECTRIC RAIL-  
WAY COMPANY, BODY CORPORATE,  
Defendant.Judgment  
Record.

10

Atlantic Coast Electric Railway Company, body corporate, the defendant in this cause, was summoned to answer unto Caleb T. Hubbard, the plaintiff therein, in an action at law, upon the following complaint:

20

“Plaintiff who resides at Bradley Park, Monmouth County, State of New Jersey, says that:

1. Defendant is a domestic corporation and at the time hereinafter mentioned owned and operated a trolley railroad in the Borough of Avon, Monmouth County, State of New Jersey, by running cars, propelled by electricity, over rails laid upon public streets of said Borough.

30

2. On the twenty-fifth day of March, 1916, said Caleb T. Hubbard, while crossing Main Street directly north of the Shark River bridge in the Borough of Avon, Monmouth County, New Jersey, was run down by a trolley car owned and operated by said defendant, and then and there carelessly and negligently operated by a servant of said defendant in and about its business, in that said defendant, through its servants and employees, heedlessly and without signal or warning of any kind ran into and knocked down said plaintiff, at which time said defendant was recklessly operating

40

## Judgment Record

said car and in that said defendant failed to stop said car before the same struck plaintiff. That at the time hereinbefore mentioned, plaintiff was a pedestrian and was lawfully crossing the said street and railroad tracks.

10 3. As a result of the negligence of said defendant, said plaintiff received a fracture of one shoulder and a compound fracture of one leg together with other bodily injuries, underwent great pain and suffering, and has been permanently injured.

4. As a result of said injuries, said plaintiff has been forced to pay out large sums of money for medical attendance and other expenses incident to his injuries.

Plaintiff demands Ten Thousand Dollars (\$10,000) damages.

STEWART A. FARRELL,  
Attorney for Plaintiff."

20

The defendant answered as follows:

"Defendant, a corporation of the State of New Jersey, with its principal office in Allenhurst, Monmouth County, New Jersey, says that,

1. It denies paragraphs 1, 2, 3 and 4.

2. The accident set forth in the complaint was due to the negligence and want of care on the part of the plaintiff, and was not due to, or the result of any negligence or want of care on the part of the defendant.

30

DURAND, IVINS & CARTON,  
Attorneys of Defendant."

The plaintiff replied as follows:

"Plaintiff denies each and every allegation in paragraph marked two of the answer herein.

40

STEWART A. FARRELL,  
Attorney for Plaintiff."

## Judgment Record

This action was tried before Judge Willard W. Cutler, with a jury, at the Monmouth County Circuit, on January 23rd and 24th, 1918.

The cause having been heard and submitted to the jury, they returned their verdict as follows:

The jury rendered a general verdict against the defendant and in favor of the plaintiff, for \$2500.

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of \$2500, and his costs, which are taxed at the sum of \$ , making in the whole the sum of \$

Judgment entered February 15, 1918.

20

30

40

Edward Megill — Direct

NEW JERSEY SUPREME COURT

MONMOUTH COUNTY

10	<p>CALEB T. HUBBARD,  <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">vs.</div> ATLANTIC COAST ELECTRIC RAIL-  WAY COMPANY,  <div style="text-align: right;">Defendant.</div> </p>	} Action at Law.
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Freehold, N. J., January 23, 1918.

EDWARD MEGILL sworn for plaintiff.

DIRECT EXAMINATION BY MR. FARRELL:

- Q. Mr. Megill, where do you reside?  
A. Bradley Beach at present, 212 Fifth Avenue.  
Q. Do you remember the 25th of March, 1916?  
A. Yes, sir.  
30 Q. Will you state what you did that morning prior to  
the time of the accident?  
A. Well, I was down to the market, as usual, and Mr.  
Hubbard called up and says — he generally would when he  
would have some clams for us — I guess he called up around  
noon or perhaps a little after; and I told him I would be  
there in half an hour or three-quarters; I would stop on  
my way and get my lunch. So I went on down to the river.  
He was there, had two bushels of clams, I think.  
40 Q. How did you go down to the river, Mr. Megill?

## Edward Megill — Direct

A. In an automobile.

Q. Where did you park your automobile with reference to the bridge and the railing?

A. Well, at the north end of the bridge, about half way between the north end of the railing and the bridge. You see the railing is about twenty-five or thirty feet long, and I would be about half way, right close to the right hand side of the railing.

Q. How long is this railing and where does it extend from? Just describe briefly. 10

A. Well, it is about twenty-five to thirty feet, I should judge, from the bridge. It is coming on down.

Q. Running north and south?

A. North and south.

Q. Now with reference to that railing how far east did you park your automobile?

A. About two feet, maybe — a foot and a half or two feet; just as close as I could drive. 20

Q. Now just state what you did at that time with reference to the clams. 20

A. Well, we got the clams and put a bushel in each bag and fastened them on each side of the car, on the running-board, and — oh, I don't know — I guess we talked around there perhaps ten or fifteen minutes, I couldn't say, maybe twenty minutes, I might have been there before I left.

Q. Where is the trolley track with reference to this railing? 30

A. It is about two feet west, a foot and a half to two feet west of the railing.

Q. Are they single tracks or double tracks at that point?

A. Single.

Q. You are familiar with that locality, are you?

A. Yes, sir.

Q. You have lived in that vicinity how long?

A. Twenty-five or thirty years. 40

## Edward Megill -- Direct

Q. Have you had occasion during that time to go across the bridge and be about that particular point?

A. Many times; yes, sir.

Q. Just describe briefly the condition of the bridge itself with reference to any upstanding spans or anything of that kind.

10 A. Well, I know those spans -- I don't know just how high they are.

Q. Approximately.

A. I should judge maybe ten or fifteen feet. I wouldn't want to say, because I don't know, you know, how the bridge would be.

Q. How high is this railing you speak of?

A. It is around four feet, maybe.

Q. What is its construction?

A. Well, it is just made out of wire with a piece on top and another piece down here and just posts up like that.

20 Q. At the end of the railing is there any pole?

A. A telegraph pole, I think.

Q. Now what did you see Mr. Hubbard do when you had finished putting the clams on the automobile?

30 A. Well, after we were there I sat in the car talking to him -- I don't know -- a few minutes. I had already cranked the car. I had to use a crank to crank it and I had started the car and was inside, sitting in the car, waiting for my son. He was playing around there somewhere, somewhere over there in some old boats. There is some old boats across the road there and I was looking around for him, and Mr. Hubbard was walking to the north, and I don't know just what I saw him do, but he went off that way.

Q. What direction did he take?

A. He went north. He had to go north about ten or fifteen feet before he came to the place where he could cross the track.

Q. To cross around the railing?

40 A. Yes, to get over to get down back to the bridge, because his partner was down there yet; and I saw him stop and look around; he looked both ways, but I don't know

## Edward Megill — Direct

what he — that was before he started across the track, you know.

Q. About how far from the track was he when he looked both ways?

A. Well, probably two or three feet.

Q. Two or three feet?

A. As near as I can judge. But I don't know that I could see him, you know, after he turned down behind this pole.

10

Q. But he looked, you say, when he stopped?

A. Both ways, I guess, because there was a car at the switch.

Q. Now at the place where he crossed have you ever seen any one else cross there?

A. Oh, yes. That is a crossing for anybody and everybody that goes to the boathouse. There used to be other business there years ago.

Q. Is there any other way of getting across to the boathouse for a person going across the bridge from the southerly approach?

20

A. No, that is a regular opening there in the railing.

Q. Now what happened to Mr. Hubbard after he proceeded to cross the track?

A. Well, the trolley just run him down, that is all.

Q. The car struck him?

A. Yes, sir.

Q. About how far was he on the tracks when he was struck?

30

A. Well, I should say he was nearer to the east side than the west side; I don't know just how far.

Q. Nearer to the east than the west?

A. Because he was hanging out, you see, on the east side of the car, under the car.

Q. And after he was struck what did you see?

A. Well, I got right out and went back there and helped get him out from under the car.

Q. Where was he when you first got to the trolley car?

40

Edward Megill — Direct

A. Well, he hadn't got out from under it entirely. I helped raise him up, took hold of his shoulder and pulled him out.

Q. What did you do there then?

A. Well, we talked there a few minutes in regard to how we were going to get him to the hospital and I finally put him in my car and took him down.

10 Q. Did you observe the car coming from the south prior to the time it struck Mr. Hubbard?

A. Yes, sir.

Q. How far distant was it from you in the automobile when you first observed the car coming across the bridge?

A. Well, I should say sixty to seventy-five feet.

Q. Sixty to seventy-five feet? About how fast was the car going at that time when you first saw it?

A. Well, when I first saw it, maybe around twenty-five miles an hour.

20 Q. Twenty-five miles an hour?

A. As near as I could tell; yes, sir.

Q. Prior to the time that the trolley car struck Mr. Hubbard did you hear any bell or other signal?

A. No, sir.

Q. Or any gong?

A. No, didn't hear anything.

Q. Or any shouting?

A. No, sir.

30 Q. How was your attention attracted to the trolley car?

A. How was it?

Q. Yes.

A. Well, I was looking around, you see, that way, and I just happened to look, I suppose, south. I saw the car coming. I was looking all around there at that time. But I could plainly see it, you know. I was sitting right up there and it was right in my —

Q. Did this car have the name of the defendant on it, the defendant company?

40

Edward Megill — Direct

MR. CARTON: There is no question about that.

THE COURT: Do you admit the car?

MR. CARTON: Oh, yes.

THE COURT: Then it is admitted on the record that the car was operated by the defendant.

10

MR. CARTON: The answer admits it.

THE COURT: Well, that is what I thought, glancing over it.

Q. You have already stated that the track is a single track across the bridge and past the railing?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

20

Q. How far is the switch north of the bridge, or approximately?

A. Well, fifty or sixty feet — fifty feet.

Q. What direction does the trolley car take from the bridge to the switch? Is it straight or otherwise?

A. No, it is not straight.

Q. Just state how it is.

A. Well, I should say it goes a little to the northeast. You see it has to go off the bridge. It is on the west side of the bridge and when it comes off it has got to get over to the right side of the road, going north. You see that makes it go on a little slant there. I don't know just how you would — but it doesn't go straight off.

30

Q. When the car went past you, when you were in the automobile, how far was that from you?

A. Well, three or four feet.

Q. On the bridge itself are there any railings or spans other than the one you have testified to?

A. Not that I know of. I know there is spans on the

40

Edward Megill — Direct

bridge and I know this railing is there. I don't know just what else would be there.

Q. Are there any perpendicular poles on the bridge itself supporting those spans?

A. Trolley wires and spans?

Q. Yes.

A. Yes, there is.

10 Q. Do they run parallel with the trolley tracks?

A. I should say so, yes; have to.

Q. Close to the trolley tracks?

A. Well, I don't know; maybe a foot and a half or two feet.

Q. Where does the car stop ordinarily on this side of the bridge to take on and let off passengers?

(Objected to as immaterial.)

20 THE COURT: What difference does it make?

MR. FARRELL: Well, only to establish that this is a crossing, a customary place, where the accident occurred, for taking on or letting off passengers.

THE COURT: What difference does that make?

30 MR. FARRELL: Well, we want to clearly establish that this accident occurred at a crossing. If your Honor please, there was no grading there in such a way as to — in other words, the streets do not converge there at all. That place where the accident occurred is a crossing for the purpose of getting down to the river and has been used by the trolley company for years, where they let off and take on passengers. We would like to bring that within the ruling that it is a crossing and has been used as such. For that purpose I would like to ask the witness if he has seen people get on and off trolley cars there and seen people cross there. He states that he has lived there for a long  
40 period of time and is familiar with that locality.

Edward Megill — Direct

THE COURT: I will hear counsel on the other side.

MR. CARTON: My objection is this: it seems to me the question is what happened, what the car did at this particular time, not what the custom or practice was. I suppose in outlying districts cars will stop most anywhere, and I suppose if there are persons at either end of Shark River bridge who want to get on the car, that the car will stop for them. I don't think it is contended by any one that there is a crossing there, because it would go from no place to no place. It is simply along the highway. I suppose if a passenger there wanted to get on the car it would stop, there is no question about that. But it seems to me we are not accomplishing anything by having this question answered as to whether this was a crossing.

10

THE COURT: Repeat the question, please.

(Question repeated.)

20

THE COURT: I will allow that question, ordinarily.

Q. You may answer.

A. Well, there is a sort of landing there where they get on and off and can get down to the boat-house. You take it in the summer time there are a number of people, you know, that get on and off there, and there is a sort of platform where they can do that.

30

Q. Do they stop at the point where Mr. Hubbard was struck?

A. Yes, that is the only place you can go down, because there is a railing each side of it.

Q. Just a little louder.

A. It is a regular passageway. There is a railing and a step on each side, and go right down to the boat-house. That is what it is at present, a boat-house.

40

Edward Megill — Cross  
CROSS EXAMINATION

BY MR. CARTON:

Q. Mr. Megill, you say your automobile was located along the guard-rail at the north end of the Shark River bridge?

10 A. Yes, sir.

Q. And on the east side of the guard-rail?

A. Yes, sir.

Q. Would that position make your car face the foot-walk over that bridge?

A. About; yes, sir.

Q. About facing the foot-walk?

A. Yes, sir.

Q. Will you give us approximately the length of the rail from the end of the bridge northerly to the pole?

20 A. Well, as near as I can judge, twenty-five or thirty feet. I never measured it.

Q. And it is your judgment that you parked your car at a point about midway between the end of the rail and the bridge?

A. That is what I think; yes, sir.

Q. And your car was facing south, facing towards Belmar?

A. Yes, sir.

30 Q. You have referred to some spans on the bridge itself being ten or fifteen feet high. You have reference, I presume, to the spans or trusses on the wagon-bridge proper?

A. Well, I sat right there and looked at them and see them. I can't say what they are on. But you can drive right up there and look and you can see those spans right there where I looked that day.

Q. But you can't say where they are located? Tell us that.

40 A. Well, I don't know just where they are located.

## Edward Megill — Cross

They are right in front of you when you look across this way.

Q. They are south, on the east side of the foot-path over the bridge, aren't they?

A. Well, I think they are both sides, for that matter.

Q. You mean both sides of the foot-path or both sides of the wagon road?

A. Both sides of the foot-path. I couldn't remember that. I wouldn't want to say. 10

Q. You say you are well acquainted with the situation?

A. Well, I am.

Q. You don't recall whether those spans are on the east side of the foot-path or not?

A. No, I don't. I couldn't say.

Q. You do know that there is a guard-rail on the east side of the foot-path, do you not?

A. Yes. 20

Q. And do you know the height of the guard-rail?

A. I should say around four feet.

Q. And don't you know that the guard-rail runs across the Shark River bridge west of the foot-path at that same height?

A. No, I don't know whether it does or not. I should think it would. yes.

Q. And you know those spans you refer to, or those trusses, are east of the foot-path?

A. I suppose — I don't know. I know there are spans there, but whether there is any more outside of that or not I don't know. 30

Q. Let me ask you this: there is a wagon bridge over the river, is there not?

A. Yes, sir.

Q. That is on the most easterly side?

A. Yes, sir.

Q. Now there are spans or trusses enclosing that wagon bridge, are there not, both the east and west side?

A. Yes, sir. 40

## Edward Megill — Cross

Q. Then next west comes the foot-path?

A. Yes, sir.

Q. And beyond that again, west of that, the trolley track?

A. The trolley track.

Q. Now these spans you refer to are on both sides of the wagon bridge, are they not?

10 A. Well, I guess they are. I don't know whether there is any on the trolley track or not.

Q. You couldn't tell about that?

A. No, I couldn't tell you.

Q. The trolley track is on a separate bridge entirely from the wagon bridge?

A. Oh, yes.

Q. What was the type of automobile you had there?

A. A Cole runabout.

Q. With a top?

20 A. Yes, sir.

Q. Was the top up and the curtains on?

A. I don't think all the curtains were on it. I don't just remember. I hardly ever would have them on, because they are in the way getting in and out. The bows came down.

Q. You met Mr. Hubbard there on the day in question by appointment to buy clams of him; that is a fact, is it?

A. Yes, sir.

30 Q. And after you had transacted your business you started up your car and Mr. Hubbard started north; is that right?

A. Yes, sir.

Q. Did you bid him good day? Was he leaving you then for the day?

A. Well, I was talking to him after I started the car, because I couldn't go just yet, I was waiting for my son, and I was looking around for him, and I don't know, maybe I started right away, I don't know just how quick I started, but I know the car was running maybe five minutes before

40 I left.

## Edward Megill — Cross

Q. From which side of your car did he leave you to go north after he started?

A. He was on the east side of me.

Q. That is, on the wagon road side?

A. Yes, sir.

Q. And he proceeded northerly?

A. Yes, sir.

Q. And did you see him as he went —

A. Well, I might not have seen him the whole time he was walking, but I saw him before he reached the car track, because he was looking around.

10

Q. You were sitting in the car at the time?

A. Yes, sir.

Q. Facing in the opposite direction, of course?

A. Yes, sir.

Q. And were waiting for your boy?

A. Yes, sir.

Q. When after he left your car did you next see Mr. Hubbard?

20

A. Well, I guess maybe — just before he got to the opening, perhaps.

Q. What do you mean by the opening?

A. Well, where you go across.

Q. And about how many feet north of your car do you say that was?

A. Well, I should say twelve — ten or twelve feet, maybe fifteen; I don't know just exactly.

30

Q. He had to proceed northerly to get around the guard-rail where he crossed the track?

A. About that far; yes, sir.

Q. Where was he when you first looked around?

A. Where was I?

Q. Where was Hubbard?

A. Well, I was talking to him as he was walking away and then after that I looked around for my boy. He was about two or three feet, maybe, from this opening, maybe two feet.

40

## Edward Megill — Cross

Q. North of it?

A. No, right opposite it.

Q. Right opposite it?

A. Yes, he stood there for about maybe a half a minute looking.

Q. Where was he standing?

A. Well, it is just about two feet east of the trolley track, maybe three feet.

10 Q. And west of the guard-rail?

A. No, he is east of the guard-rail.

Q. East of the guard-rail?

A. Yes, he had not started to go across yet.

Q. And east of the pole also?

A. I couldn't say whether he was east of the pole or not.

Q. Was he as far north as the pole?

A. I don't remember. I couldn't tell, you see, just  
20 where he stood. I didn't pay any particular attention, you know. I wasn't thinking anything like that.

Q. How did you observe him, look out through the back window of your car?

A. The curtain, the back curtain.

Q. The back curtain?

A. Yes, I was getting ready to turn around, you see, and I would have to look, and I was waiting for my son and I had to look maybe five minutes before I found him at all.

30 Q. What did you look back for, to see whether there was anybody coming?

A. Anybody coming so I could turn around, sure.

Q. And as you took this casual glance you saw Hubbard standing there?

A. Yes, sir.

Q. What was he doing when you saw him standing there?

A. Well, I seen him looking around, and I couldn't just tell you what he did do exactly.

40 Q. Can you tell us anything further than what you have said?

## Edward Megill — Cross

A. No, sir.

Q. He was just looking around?

A. Yes, just saw him stop there and look, that is all. I didn't pay any particular attention, because there wasn't anything to look for.

Q. Did you see him after that again before he was struck?

A. No, I don't think I did, no.

Q. And you say where he stood at that time when he was looking around was east of the guard-rail and east of the pole; is that the fact? 10

A. Yes, if he was —

Q. About two feet?

A. I should say about that.

Q. About two feet?

A. I couldn't see him if he was further behind me, you know. If he was behind the pole I couldn't see him.

Q. When he was behind the pole you couldn't see him, but if he was a couple feet away from the pole you could see him, couldn't you? 20

A. Yes. It might have been two feet, it might have been a foot and a half or two feet. I am not saying the exact distance.

Q. Did you then observe the car coming across the bridge or did you at any time observe the car coming across the bridge? 30

A. Yes, I saw the car coming, couldn't help from seeing it.

Q. Where did you see the car first?

A. Well, probably just a little this side — do you know where the boat-house is?

A. What boat-house?

Q. Riggs'.

A. I should say it is fifty to seventy-five feet. I couldn't just tell you.

Q. Fifty to seventy-five feet? What do you mean by that?

A. Well, when I saw the car it was about that far 40

## Edward Megill — Cross

down.

Q. From you?

A. Yes, sir.

Q. Down near Riggs' boat-house?

A. Down somewhere between the two boat-houses there.

10 Q. You had no difficulty in seeing the car from where you sat in your automobile?

A. No, sir.

Q. From that point you think it was going about twenty-five miles an hour, do you?

A. Well, that is as near as I can judge; yes, sir.

Q. How long did you continue to observe it after you first saw it?

A. Well, I don't suppose I looked right at it. I could see it all the time.

Q. The car was going ahead and towards you almost?

20 A. Yes, sir.

Q. Did it continue that pace all along, or slow up?

A. No, I think it slowed up. Went it went by me it was going very slow, maybe ten miles an hour. I was about three or four feet from it.

Q. This car slowed down as it came down towards the end of the bridge, did it?

A. Oh, yes; wasn't going fast by me.

Q. Of course you were a considerable number of feet south of where Mr. Hubbard was.

30 A. I was about maybe twelve feet, ten to twelve feet, fifteen feet. I was right in the middle of the road and the rail was about twenty-five or thirty feet long, and I was sitting right by the middle of it, right alongside of it.

Q. The car went right by you?

A. Went within about four feet of me, yes, about four feet.

Q. How fast do you say it was going then?

40 A. Well, as near as I can say, I believe around eight or ten miles an hour, I don't know. That is what I should say, eight to ten miles an hour.

## Edward Megill — Cross

Q. Would you say it was going fast or slow?

A. Slow.

Q. Very slow or not?

A. Eight or ten miles an hour. You can judge pretty near what that is.

Q. Well, I want to know what your idea is about speed. Do you think it was going eight or ten miles an hour?

A. That is near as I could judge; yes, sir. 10

Q. You testified in this case at the last trial, did you not?

A. Yes, sir.

Q. And you testified then as to the speed this car was going, didn't you?

A. Yes, sir.

MR. FARRELL: I object. If the witness is to be examined as to testimony in the prior trial that is not the proper method of asking him the question. 20

THE COURT: He has not asked any question yet; he is only finding out whether he testified in that trial.

Q. Do you remember testifying in regard to the speed the car was going?

A. Well, I think I remember you asking me; yes, sir.

Q. Do you remember being asked this question: "About how fast was the car going when it went by you?" and making this answer: "It was not going very fast."? 30

A. I reckon I do, because I don't think it was.

Q. And this question, "About how fast? A. Well, I don't know; I should judge five or eight miles an hour."

A. That might be it. That is just what I say, I couldn't judge within two miles the speed of any trolley car.

Q. And a further question: "When it struck Mr. Hubbard how fast was it going? Had it slowed down any?" and your answer, "Well, really I don't know. I 40

E. Everett Throckmorton — Direct

couldn't say whether it went any slower. Yes, I reckon it would be at that time." Do you remember making that answer?

A. I don't know as I just remember it; no, sir.

Q. Do you remember these questions: "Going about five miles an hour? A. I should say that. I know the car was going slow."?

A. Yes, sir.

10

Q. "About how many feet was Mr. Hubbard from the track when he looked for the car from the south? A. I should say he was about four feet, somewhere around there." That is on another question. Do you remember about how long after the accident it was when you testified before?

A. How long after the accident?

Q. Yes.

A. No, sir; I don't know. I didn't pay any attention. I don't know when it was.

20

Q. Well, your recollection was just as good then as it would be now, I suppose?

A. It should be.

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(On account of the absence of the plaintiff and the physician, by consent of counsel the surveyor was sworn out of order on the part of the defendant, reserving all rights that the defendant would have had if he had not put the testimony in at this point, waiving no rights of motion.)

30

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E. EVERETT THROCKMORTON sworn for defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Mr. Throckmorton, what is your business?

A. Surveyor.

Q. In business in this county?

40

A. Yes, sir.

E. Everett Throckmorton — Direct

Q. How long have you been engaged in that occupation?

A. Over twenty years.

Q. Have you at the defendant's request made a map of the location where this accident happened?

A. I have.

Q. Have you the map with you?

A. I have.

Q. Will you put it up on the board? 10

MR. TAYLOR: I object to it as not sufficiently proven to put up yet.

THE COURT: Yes, proceed to prove it.

MR. CARTON: Well, I suppose that is so.

Q. When did you make this map, Mr. Throckmorton? 20

A. In January, 1917.

Q. And did you make it from actual measurements taken on the ground?

A. I did.

Q. Taken by you?

A. Yes.

Q. Have you reduced your map to a scale?

A. I have.

Q. What is the scale?

A. 10 feet to an inch. 30

Q. Does the map that you have now show the situation as it exists at the north end of Shark River bridge?

A. It does.

MR. CARTON: I offer the map.

MR. TAYLOR: I object to it yet. This map was made in January, 1917, and the accident happened in March, 1916. 40

Alexander Mullen — Direct

THE COURT: The question is whether it shows the condition of affairs at that time, at the time of the accident.

MR. CARTON: I put this witness on hurriedly to fill in the gap. I have a witness here. I think I will be obliged to withdraw this witness and put another witness on and show that there has been no change in the situation.

10 THE COURT: Yes, you may do that.

(Witness temporarily withdrawn.)

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ALEXANDER MULLEN sworn for defendant.

DIRECT EXAMINATION BY MR. CARTON:

20 Q. Mr. Mullen, where do you live?

A. Avon.

Q. What is your occupation?

A. Street Commissioner.

Q. In the Borough of Avon?

A. Yes, sir.

Q. How long have you been acting in that capacity, as Street Commissioner?

A. Well, three years steady, for the last three years back, but quite some previous to that too.

30 Q. How long have you lived in Avon?

A. About thirty-five years.

Q. Are you familiar with the location at the main street, the north end of Shark River bridge?

A. Yes, sir.

Q. How long have you known that situation down there?

A. Well, ever since I have lived there.

Q. Have you examined the location down there recently?

40 A. Yes, sir; just a day or two ago.

## Alexander Mullen — Cross

Q. Were you there some time ago with Mr. Throckmorton, the surveyor?

A. Yes, sir.

Q. Do you know where the guard-rail is located and where the trolley tracks are located and the roadway down there?

A. Yes, sir.

Q. Is there any difference in the situation that exists there now from that that existed a year and a half ago, or March, 1916? 10

A. Not to my knowledge; no, sir.

Q. And you are the Street Superintendent, you say?

A. Yes, sir.

Q. And have you had occasion to observe that situation down there?

A. Well, there would be no alteration in the street without my knowledge, but possibly the guard-rail. I don't think there has been any to that. 20

## CROSS EXAMINATION

BY MR. TAYLOR:

Q. Do you know whether that guard-rail has been changed, Mr. Mullen?

A. I don't think it has.

Q. Do you know whether or not? 80

A. I don't know it; no, sir.

Q. Do you know whether or not any telegraph poles have been taken out of there since March 25, 1916?

A. Not to my knowledge; no, sir.

Q. I am not asking you of your knowledge. Do you know whether or not there have been?

A. I do not; no, sir.

MR. TAYLOR: No further questions. I still submit — I don't know what your offer is. 40

## Alexander Mullen — Cross

MR. CARTON: Well, I propose now to offer the map. It seems to me this gentleman, the Street Superintendent, if there had been any change, he would be the man who would know it better than any one else. The situation is the same as it has been all along.

10 THE COURT: Why isn't it under the proof as it now stands competent to tell what the condition was when this man made his map? You are not debarred from showing anything. If there has been any change that would make a difference in your map; but as it stands now you have a gentleman that should know, and as far as he is concerned, as far as his knowledge goes, there has been no change.

20 MR. TAYLOR: He says this: he says he doesn't know whether there has been a change in the guard-rail. He says he doesn't know whether there have been any telegraph poles taken out; he does know about the street, and that is all he does know. Now under those conditions I submit that does not show, under that testimony, that the conditions where this accident happened were the same at the time the map was made, which was in January, 1917, as they were in March, 1916.

30 THE COURT: This gentleman doesn't say that. He says there has been no change made to his knowledge, and he has been there all the time. I will allow it.

MR. TAYLOR: I ask an exception.

THE COURT: Take an exception.

(Objection noted for plaintiff as ground of appeal.)

E. Everett Throckmorton Resumed — Direct  
E. EVERETT THROCKMORTON resumed.

(The map was placed on the board.)

DIRECT EXAMINATION BY MR. CARTON:

Q. Now, Mr. Throckmorton, will you explain your map? What is the heavy line at the bottom of the map, shown on the map? 10

A. The east side of the highway bridge.

Q. First let me ask you what does your map show generally, what situation or location?

A. Shows the location of the tracks of the Atlantic Coast Railway and other erections to the north side of Shark River bridge, north end, north side of Shark River.

Q. Does it show the approach to the Shark River bridge?

A. Yes.

Q. The wagon bridge? 20

A. Yes.

Q. Show the foot-way?

A. Yes.

Q. And show the trolley tracks across Shark River?

A. Yes.

Q. This is the north. Is this Asbury Park on the north side and Belmar on the south side?

A. Yes.

Q. Is there a span or are there spans on this fence, the first line you have shown at the bottom of your map? 30

A. Pratt truss.

MR. TAYLOR: May our objection go to this line of questions without making constant objection?

THE COURT: Yes. If you have any particular objections, any more than —

MR. TAYLOR: We object to this question on the 40

## E. Everett Throckmorton Resumed — Direct

ground that it has not been shown that the spans of the railing were the same on March 25, 1916, as they were at the time the map was made.

THE COURT: That objection may stand to all this line of testimony. If there is any other objection, to anything else, you want to make it.

10

Q. You say there is a Pratt truss?

A. Yes.

Q. Describe it generally, Mr. Throckmorton.

A. It is open trusswork to a certain extent, with an upper chord which carries all the weight of the bridge, the span and the entire iron structure, the construction, the upper chord.

Q. What is its height?

A. 6.3 feet above the sidewalk.

20

Q. What is the width of the roadway?

A. 20.7 feet.

Q. The roadway is where you have marked "Highway Bridge," is it not?

A. Yes.

Q. That is 20.7 feet?

A. Yes.

Q. Then what is the next line immediately west of the roadway? What does that line indicate?

A. Foot-walk. The west side of the roadway?

30

Q. Yes.

A. That is the west side of the Pratt truss highway bridge.

Q. That is the west side of the highway bridge?

A. Yes.

Q. Similar to the truss on the east side?

A. The same.

Q. And the same dimensions and height?

A. The same.

Q. What comes next? You have it marked "Foot-  
40 path."

## E. Everett Throckmorton Resumed — Direct

A. Footpath.

Q. What is the width of that footpath?

A. 7 feet.

Q. What is the next line immediately west of the footpath? What does that indicate?

A. East edge of the trolley bridge.

Q. Well, the next line, or the line bounding the footpath on the west, what is that?

A. The line bounding the footpath on the west? **10**

Q. Yes.

A. That is an open railing on the west line of the footpath.

Q. And what is its height?

A. 3.5 feet — 3 feet 6 inches.

Q. What is its construction?

A. Open mesh, lattice work, diamond mesh, 8 inch opening, parallel bars.

Q. What is the distance from this guard-rail on the west side of the foot-path to the next line, which I take it is the east line of the trolley bridge? **20**

A. Yes.

Q. Is that right?

A. 5.5 feet.

Q. Is the bridge used by the trolley company a separate bridge from the wagon bridge?

A. Yes.

Q. Will you indicate on the map, point out, Mr. Throckmorton, the end of the fenders of the guard-rail, the north end? **30**

A. The end of the fence where the telegraph pole is you have been speaking about?

Q. Yes.

A. Right there. (Indicating on map.)

Q. What is the distance from that telegraph pole to the north end of the footpath, the bridge?

A. 41 feet.

Q. And have you in mind when you give that distance **40**

## E. Everett Throckmorton Resumed — Direct

the point from the telegraph pole to this point marked 8?

A. Yes.

Q. What is the situation shown on the north end of your map? Is that the switch or trolley tracks or what?

A. Switch and cross-over.

Q. Double or single line of tracks crossing over the bridge?

10 A. Single line.

Q. A double line north of the bridge?

A. North of the switch.

Q. What is the building that you have shown on your map, at the top of the map?

A. Kling's pavilion or boat-house.

Q. Is that the boat-house that has been referred to?

A. Yes.

Q. And that is immediately west of the trolley track?

A. Yes.

20 Q. You have two places marked as "Platform." Will you describe these platforms? In the first place, are they on a level with the roadway and trolley tracks?

A. This one is on a level with the trolley tracks; the other one is four steps to go down to get on the platform or the porch of the pavilion, in fact.

Q. Are there steps those shown on your map, the parallel lines? What are these parallel lines shown on the south side of the pavilion?

30 A. Another course of steps to go down on a lower platform.

Q. This space is Shark River that you have shown out there?

A. Yes, sir.

Q. You have marked "Fence," one of the lines "Fence" on your map, the north end of the map. What is the height of that fence?

A. I didn't take any measurement of it.

Q. What is there beyond the fence west, the river?

A. Open space and meadowland.

40 Q. Will you tell us the distance from the pole, so-

E. Everett Throckmorton — Cross

called, at the end of the guard-rail to the most easterly track of the trolley road?

A. From this point up to the point of the switch?

Q. No, from the pole to the east rail of the trolley track.

A. 3.5 feet.

BY THE COURT:

10

Q. What is the scale of your map?

A. 10 feet to the inch.

BY MR. CARTON:

Q. Do you show Riggs' boat-house on your map?

A. No.

Q. Is that boat-house, if you know, further south?

A. Farther south.

20

#### CROSS EXAMINATION

BY MR. TAYLOR:

Q. Mr. Throckmorton, you know that is a true map of the situation, etc., as of January, 1917?

A. Yes.

Q. But you don't know that it is a true map of the locality and situation, etc., as of March 25, 1916?

30

A. As far as the trolley tracks are concerned.

Q. Only as far as the trolley tracks?

A. And the footpath and the wagon bridge, there have been no changes there.

Q. But there was nothing else?

A. No.

MR. CARTON: I offer the map and ask to have it marked.

40

Caleb T. Hubbard — Direct

THE COURT: It may be marked.

(Map marked Exhibit D i.)

RECESS TILL 1.15 P. M.

10 (Trial of the cause resumed at 1.15 P. M.)

CALEB T. HUBBARD sworn for plaintiff.

DIRECT EXAMINATION BY MR. FARRELL:

Q. Mr. Hubbard, you are the plaintiff in this action?

A. Yes, sir.

Q. Where do you live, Mr. Hubbard?

A. I live in Neptune City.

20 Q. Do you remember the 25th of March, 1916?

A. Yes, sir.

Q. Will you state to the court and jury what you did directly prior to the time you were injured?

A. Well, I was in the clam business at the time and I took some clams that morning, got up early in the morning and took some clams, and I took them down to the wagon bridge to dispose of them.

Q. What bridge do you refer to?

A. The bridge across Shark River.

30 Q. Go ahead.

A. I landed at Kling's dock, the boathouse there, and I disposed of part of the clams by the hundred to people that were going by, and I had two bushel left, and I went across the river to the Casino and telephoned to Mr. Megill to come up and get two bushel of them; and by the time I got back, why he was there with his car, the automobile, and we loaded them up.

40 Q. Now where did you take the clams from, that is, which side of the river? From which side of the river did you carry them?

Caleb T. Hubbard — Direct

A. From the bridge or the track, do you mean?

Q. Well, the track.

A. I landed at the boat-house dock, came up those steps and on up on the platform and across the trolley tracks to the wagon bridge. His car was right alongside the bridge fender, facing south.

Q. You are familiar with that bridge and that railroad, aren't you?

A. Yes, sir. 10

Q. How long have you lived around there?

A. Well off and on I have lived around there for the last twenty years.

Q. Is there a railing running from the bridge into the road itself?

A. There is a fender, a bridge fender, running from the main bridge, from the bridge out to a telegraph pole.

Q. About how long is that railing?

A. Well, as near as I can tell it must be about twenty-five feet, I imagine, somewheres near that. I don't say positive, but somewhere around that. 20

Q. Where was the automobile with reference to the railing?

A. The automobile was right up close to the railing. He had to get up close to the railing in order not to interrupt traffic across the bridge; and the back part of the automobile was very near back to the telegraph pole, and the fender runs up to the telegraph pole, the bridge fender. 30

Q. Where is the telegraph pole that you have spoken of?

A. Well, about three feet, I judge, from the trolley track, right at the end of the bridge fender, a big pole, it is.

Q. State just what you did after you carried the clams across to the automobile.

A. Well, I carried them across the track, was back and forth across the track three or four times, and loaded them and he paid me for them, and we stood there talking for a few minutes, and he started up his engine, but he hadn't started the car yet; and I started back around the 40

Caleb T. Hubbard — Direct

automobile to go back across the track and go down to my boat.

Q. What direction did you go from the automobile?

A. Well, from the automobile I had to go about —

Q. What direction did you go?

A. Northwesterly, about.

Q. Now state what you did.

10 A. Well, after I left the automobile I looked up and I saw a car coming from the north or — yes, from the north, coming south; and it was still moving and I walked on until within I judge about four or five feet from the track, I stopped.

Q. Now where did you stop with reference to the telegraph pole?

A. Well, I judge it was within ten feet or such a matter past the end of the telegraph pole?

Q. North of the telegraph pole?

20 A. North, yes.

Q. State what you did then?

A. Well, I looked north — I saw this car, and I wanted to make sure that the car had stopped there, you know, before I crossed; and then I looked south, and as I looked south I looked back again and I saw that car has stopped on the switch, and I went on across and was hit.

Q. How far down the track could you see when you looked north?

A. Well, as near as I can tell, about 40 or 50 feet.

30 Q. Did you see any car coming from the south?

A. No, sir.

Q. Did you hear any bell or signal of any kind of the approach of a car?

A. No, sir.

Q. Did you hear any shouting?

A. No, sir.

Q. Now how far across the track had you gotten when you were struck by the trolley car?

A. Well, I must have been very near across.

40 Q. Were you between the two rails?

Caleb T. Hubbard — Direct

A. Yes, sir.

Q. Now with reference to the two rails, which rail were you nearer?

A. Well, the way I fell, the direction I fell when the car hit me, I must have been nearer the west rail.

MR. CARTON: I object to that as not responsive and as a conclusion, what it must have been.

10

THE COURT: If he knows he can say.

(Question withdrawn.)

A. Well, I saw from the way I fell.

Q. What direction did you fall when the car struck you?

A. I fell northeast, about.

Q. You fell in a northeasterly direction?

20

A. Away from the car, yes.

Q. Away from the car?

A. Yes.

Q. The car was coming from the south?

A. Yes.

Q. What happened then, Mr. Hubbard?

A. Well, I was knocked down and the car passed over me and when they got the car stopped, of course when I fell the gear of the car rolled me over and over and kept me in front of the wheels; the wheels didn't run over me; and when they got the car stopped I was very near back to the wheels, and my head was clear of the running-board; the rest part of me was under the car.

30

Q. Just state what you did then or what they did with you?

A. Well, they helped me out of there and found out I was hurt pretty bad and Mr. Megill took me in his automobile to the Spring Lake Hospital.

Q. How long were you at the Spring Lake Hospital?

A. Well, I was there a little over seven weeks — a

40

## Caleb T. Hubbard — Direct

few days within — a few days of eight weeks in the hospital.

Q. What were your injuries at that time?

A. Had my collarbone broken.

Q. Which collar bone?

A. Here. (Indicating right.)

Q. The right?

10 A. The right and my right shoulder, and my leg, as I understand it, was broken in two places, here and here (indicating); and in between the bone was all mashed.

Q. What course of treatment did they give you at the hospital?

20 A. Well, when I first went there they set my leg, put it in a box. Of course they couldn't put a cast on it on account of the swelling. And after two or three days' time they had to set it over again. I must have jerked or something and put it out of place again, and they set it over and then when the swelling went down they put a plaster cast on it.

Q. How long did you have that cast on?

A. Oh, I had that on till away long after I came home from the hospital?

Q. How long was that?

A. I judge the last of June, I guess, I still had the cast on.

Q. Did you use crutches after you left the hospital?

30 A. Yes, sir; I used crutches.

Q. For how long a time?

A. Up till the middle of September.

Q. What did you use after that if anything?

A. A cane.

Q. How long did you use a cane?

A. Oh, I guess a month or so.

Q. Did you suffer any pain at that time from these injuries?

A. Yes, and I do yet.

Q. What?

40 A. I do yet at times.

Caleb T. Hubbard — Direct

Q. At the present time do you suffer any pain?

A. Yes.

Q. State what pain you suffer from your leg.

A. Well, sometimes my leg, according to the weather, if the weather is damp, stormy weather, sometimes I can't hardly walk; I have to hobble along. And then when the weather clears up I can walk better, but I will be always lame, because my leg is shorter than the other one?

Q. How much shorter is it than the other one? 10

A. I think they said about three-quarters of an inch. And the leg is crooked.

Q. The leg is crooked?

A. Yes, sir. You can see the shape of it. (Exhibits leg.)

Q. Do you suffer any pain from your shoulder?

A. Well, at times I feel kind of like rheumatism, you know, in stormy weather or something like that, it burns something like rheumatic pains in the shoulder. The shoulder don't bother me as much as the leg does. 20

Q. Is your left leg as strong now as it was before the accident?

A. No, sir.

Q. Have you ever suffered any other injuries at any time in your leg or shoulder?

A. No, sir.

Q. Now what else as to your physical condition now or after the accident?

A. Well, I have a hernia since the accident which I never had before. 30

Q. On which side of the body is the hernia?

A. On the left side.

Q. You still have that?

A. Yes, sir.

Q. Does that cause you any pain?

A. Yes, sir; at times; and I can't lift anything heavy on account of it.

Q. When did you first observe or feel any pain in that part of your body where the rupture is? 40

Caleb T. Hubbard — Direct

A. After I got out of the hospital and commenced to walk on crutches, I noticed I had a hernia then. That is the first I noticed it.

Q. Now, Mr. Hubbard, after you left the hospital did you return to the hospital for treatment?

A. Yes, once a day for about I judge two or three weeks.

10 Q. Once a day every day?

A. Every day; yes, sir.

Q. For two or three weeks?

A. For two or three weeks, I guess about a couple weeks.

Q. And then after that?

A. After that once a week.

Q. For how many weeks?

A. For away long the latter part of summer, in August I guess it was.

20 Q. Now at the point where you were struck by the trolley car have you ever seen people crossing at that particular place?

A. Oh, yes, there is thousands of people cross there in the summer time.

Q. During the summer months and spring and fall months you have occasion to be there in that vicinity very often, don't you?

A. Yes, sir.

30 Q. Have you seen people get off and on trolley cars there?

A. Yes, sir.

Q. Have you used it yourself for that purpose?

A. Yes, sir.

Q. Have you seen people cross at that point to go down to the river?

A. Yes, that is the only place they have got to get down to the river. They have got to cross the track there to get down there.

40 Q. Have you seen people get off trolley cars and go down to the river?

Caleb T. Hubbard — Direct

- A. Yes, sir.
- Q. Where did they cross at that place?
- A. Where did they cross?
- Q. Yes, to get down to the river, on the north side of the bridge.
- A. You mean on the east side of the bridge to go across to the west side?
- Q. Yes.
- A. They crossed right where I crossed. **10**
- Q. How many feet north of this trolley pole did you cross?
- A. How many feet north?
- Q. North.
- A. I judge about, as near as I can think, about ten feet, eight to ten feet.
- Q. What kind of a day was the day on which the accident occurred?
- A. It was a very blustery, windy day. **20**
- Q. What is your business or what was your business prior to the time of the accident?
- A. Well, I dealt in clams; I dug clams and bought and sold clams. I dug what I could myself and bought some and sold wholesale and retail.
- Q. Now in the summer of 1915, which was the summer prior to the March when you were hurt, what were your average earnings per week during the period of June 15th to September 15th?
- A. Well, from \$20 to \$25 a week. **30**
- Q. That is your busy season, isn't it, Mr. Hubbard?
- A. Yes, sir.
- Q. What are your average earnings from September 15th on?
- A. Well, this winter I make all the way —
- Q. No, this summer, the time before the accident.
- A. Oh, the time before the accident?
- Q. Yes.
- A. Oh, fifteen or eighteen dollars a week.
- Q. What have you been working at since the accident? **40**

## Caleb T. Hubbard — Direct

A. I have been working, when I could work — of course a good deal of the time I couldn't work — I have been working at the same business.

Q. And what have been your average earnings since that time, during the summer months?

A. Well, the summer after the accident, right away, I didn't make anything all summer.

10 Q. Now last summer how much did you average, about?

A. Well, I had a poor summer last summer. I didn't do much last summer. I imagine —

Q. Well, approximately, Mr. Hubbard.

A. Well, I didn't make over, last summer — I didn't make over \$15 a week, I don't believe, if I did that. I don't believe I made that.

Q. Does your leg interfere with your business?

20 A. Yes. Some days I can't hardly do anything at all, and then other days it is pretty good.

Q. Do you have to be in the water while you are digging clams?

A. In the summer time, yes. In the winter time, of course, we wear rubber boots, you know, but in the summer time I have to be in the water, quite deep in the water.

Q. Do you ever experience any pain in your leg while working?

A. Well, not from the water I don't think I do. But I do when I am working on my leg, you know.

30 Q. Just explain to the jury how it affects you at different times.

A. Well, my leg gets sort of — right in one side, right in there (indicating), it bends when I put any strain or anything on to it; and I daren't jump or anything on to it or put any heavy weight on to it, because the doctor told me it was weak and always would be weak. That is Dr. Garrison at the hospital.

40 Q. I show you a paper and ask you if you received that from the hospital.

Caleb T. Hubbard — Direct

A. Yes, sir.

Q. Is that the bill covering the time you were at the hospital?

A. That is the bill for board; yes, sir.

Q. Just for board?

A. Just for board, and \$2.50 dispensary bill. Of course the doctor didn't make any charge, Garrison; at least I never got any bill from him.

10

MR. FARRELL: I offer this in evidence.

BY THE COURT:

Q. Did you pay that bill?

A. Have I paid this?

Q. Yes.

A. No, sir.

(Bill marked Exhibit P 1.)

20

THE COURT: What is the amount of the bill?

MR. FARRELL: \$59.50.

BY MR. FARRELL:

Q. At what point, how many feet from the track, did you stop when you looked south?

A. Well, I should judge about four or five feet I was from the track.

30

Q. After you were struck by the trolley car state which track you were nearer, that is, the easterly or the westerly rail.

A. I was on the east side of the car. My head was just clear of the running-board on the east track.

BY THE COURT:

Q. You mean by east track the east rail?

40

Caleb T. Hubbard — Cross

A. The east rail; yes, sir.

BY MR. FARRELL:

Q. At the time you were struck where were you, to the best of your recollection?

A. Why, nearest the west rail.

Q. Nearest the west rail?

10 A. Yes, sir.

CROSS EXAMINATION

BY MR. CARTON:

Q. Mr. Hubbard, I understood you to say that on the day of the accident you came down the river with clams and landed at Kling's dock?

A. Yes, sir.

20 Q. And came up on the roadway, on the steps of Kling's dock?

A. Yes, sir.

Q. Will you look at the map behind your head there a while and see if you can find Kling's dock and the steps that you came up? It has been said that this is Kling's boat-house; this has been described as the wagon bridge and this is the footpath and this is the fender and this the pole and this the trolley track across the river. Here is the platform.

30 A. This is the trolley track here?

Q. Those two lines.

A. Here is the platform. Well, they haven't got the steps that comes up to Kling's dock. They haven't got the steps there.

Q. Is this Kling's boat-house?

A. Yes, here.

Q. They say these are the steps.

A. Yes, these here.

40 Q. You came down the river and came up those steps?  
A. Came up these steps.

## Caleb T. Hubbard — Cross

Q. On to the bridge and up these steps and on to the platform; and then did you proceed from there around to where Mr. Megill was?

A. Right across the track. When I got on this platform I crossed over.

Q. What course did you take after you came up the steps to get around to where Mr. Megill was?

A. I tied the boat and went across, come up these steps and then across this platform to these steps — two sets of steps. 10

Q. Describe your course till you got around.

A. Then I came up on this platform — and here you say is the pole?

Q. Yes.

A. Well, I crossed somewhere about here.

Q. Will you indicate on the map now about where Mr. Megill's automobile was, as you recall? The surveyor has said that this is the end of the fender at the bridge, the north end, and this is the end of the guard-rail and the pole. 20

A. This is the guard-rail and the pole?

Q. Yes.

A. This is the bridge coming across here? You have got me turned around.

Q. Well, take your time. The map may not be clear to you. Get your locations.

MR. TAYLOR: There is the fence and there is the telegraph pole and this is the westerly side of the road. 30

THE WITNESS: This is the west side?

MR. TAYLOR: Yes.

Q. The top of the map is west and the bottom of it is towards the ocean, Mr. Hubbard.

A. Well, this —

Caleb T. Hubbard — Cross

BY THE COURT:

Q. Let me ask you one question. What mixes you up? If it was changed in any other position would you understand it better?

A. It seems to me right backwards. It seems to me it ought to go this way.

10 BY MR. CARTON:

Q. Asbury Park is up this way, north, and Belmar is that way. This is the river and this is the ocean down this way.

A. I get you now.

20 MR. FARRELL: If your Honor please, I would like to interpose an objection. This map is not in evidence except as part of the defendant's case. I do not know what the purpose is of examining Mr. Hubbard with reference to the map.

MR. CARTON: The purpose is helping —

THE COURT: He is cross-examining and making the evidence as clear as he can before the jury. There is no objection to it.

MR. CARTON: That is my purpose, your Honor.

30 A. Well, about here is where his car stood, if this is the pole here.

Q. That is the pole.

A. This is the fender?

Q. Yes.

A. Well, the back part of his car was very near back to that pole, on the east side of the fender, and the roadway on the side.

40 Q. How near do you say the pole was to the rear end of his car now?

Caleb T. Hubbard — Cross

A. Well, I couldn't tell exactly. I imagine it must have been two or three feet, I imagine, as near as I can tell.

Q. That is where you place the car, right within two or three feet of that pole?

A. Right close to the fender.

Q. Right close to the fender?

A. Yes.

Q. As a matter of fact wasn't the car about midway between the pole and the end of the bridge? 10

A. No.

Q. Don't you know that is where it was?

A. No, sir; it wasn't.

Q. Isn't that where you stated it was the last time we tried this case?

(Objected to.)

THE COURT: He may refer him to his testimony if he desires. 20

Q. You placed this car in a different location the last time, Mr. Hubbard, didn't you?

(Objected to.)

THE COURT: That question is proper.

Q. Let me direct your attention to this. I am reading from page 7 of the printed book in the case of the former trial, examination by Mr. Farrell, your present counsel: "Q. One moment, Mr. Hubbard; where was the automobile with reference to the trolley tracks? A. The automobile was headed south, about half way between the end of the bridge fender and the bridge." Do you remember making that answer in the former trial? 30

A. No, sir. If I did —

Q. Do you say you didn't make that answer? 40

## Caleb T. Hubbard — Cross

A. I don't say I didn't, but I say if I did it was a mistake.

Q. As a matter of fact, isn't that where the car was?

A. No, sir; it was not.

10 Q. Well, I will continue further and ask you another question: "By Mr. Farrell: Q. You mean half way between the end — A. As near as I can tell about half way between the end of the fender and the bridge." Do you remember being asked that question and making that answer?

A. I don't remember; no, sir.

Q. Well, you remember testifying in the other trial, don't you?

A. I remember testifying. I don't remember the exact words that were used, and I don't remember the answer that I made at that time; but if I did make that it was a mistake. I don't say that I didn't.

20 Q. You say that if that is what the record says you made a mistake; you answered wrong the other time; is that right?

A. Yes, sir.

Q. And you wish your present testimony to stand as to where the car was located?

A. Yes, sir.

Q. In preference to the other testimony?

A. Yes, sir.

30 Q. Is your recollection any better now than it was a year ago?

A. I don't know as it is; no, sir.

Q. Wouldn't the probabilities be that your testimony would be better shortly after the trial than a year and a half later, shortly after the accident?

(Objected to.)

A. I don't know anything about that.

40 Q. Well, now, you know the car stood about half way

## Caleb T. Hubbard — Cross

between that fender, the same as Mr. Megill says it stood, don't you?

A. I don't know. I don't think it did, no.

Q. When did you come to the conclusion that the car stood away down near the end of the fender at the pole?

A. When did I come to the conclusion?

Q. Yes.

A. Well, I don't know. I couldn't tell you that, when I came to the conclusion, but that is where it was. 10

Q. Well, you came to that conclusion since you tried your case before, didn't you?

A. I never studied the thing up. As I remember, that is where the car stood. Now at the present time that is all I can tell you.

Q. And when did you first remember that is where it was? How recently did you come to that conclusion?

A. I don't know anything about that. I can't —

Q. You mean to say that your recollection was not good when you testified at the former trial as to where the car was located? 20

A. I might have been confused at the time I testified before. I don't say that I didn't say that, but if I did say it I say it was wrong.

Q. And why do you say it was wrong?

A. Well, because, as I recollect, that is where the car was, where I told you it was today.

Q. How long were you there transacting business with Mr. Megill? 30

A. Oh, I was there about half an hour, something like that. I couldn't say exactly.

Q. Well, you sold him two bushels of clams, didn't you?

A. Yes, sir.

Q. Put one of them —

A. Long enough to put them in bags and lay them on the running-board; it didn't take long.

Q. Where were your clams located on the ground while you were there talking with Mr. Megill? 40

## Caleb T. Hubbard — Cross

A. Well, we filled the bags up on the west side of the track, on the platform, and then he and I carried them across to the east side and put them on his car.

Q. After you had concluded your dealings with Mr. Megill what did you do then?

10 A. I started around back of the car and started to go back across the track to go down the steps to go back to my boat and go home.

Q. Were you on the east or west side of the car when you left Mr. Megill to go back?

A. I was on the east side of his car.

Q. Did you have anything with you, bags, baskets or anything of that kind, when you went back?

A. No.

Q. When you left there was it your purpose to go back to the steps here to get in your boat to go up the river again?

20 A. Yes.

Q. That was where you intended to go, wasn't it?

A. Yes.

Q. How far did you travel after you left Mr. Megill's car before you came to the end of the rail?

A. Well, I traveled far enough to get beyond the car and the pole about ten feet. I went in a northwesterly direction towards the track.

Q. You went about ten feet?

A. I judge about eight or ten feet.

30 Q. North of what?

A. North of the pole.

Q. North of the pole?

A. Yes.

Q. What did you go down there for?

A. To cross the track to get to the platform.

Q. Well, you were going down the steps at Kling's dock, weren't you?

A. Yes.

40 Q. What were you walking up about ten feet for if you wanted to —

## Caleb T. Hubbard — Cross

A. I walked across the track and jumped down — I had to go across here (indicating on map). Let's see. That is the west side?

Q. You are indicating the platform now, you say, across here?

A. Had to go across here to strike this platform and then go down these steps.

Q. And then you were going to this point over here on the south side of Kling's dock, marked "Steps" when you left Megill's car? When you left Megill's car why did you walk ten feet north to get to that point? 10

A. Because I had to strike this platform here.

Q. Isn't this a solid filling down to the roadway and over to the platform?

A. It is from the pole, yes.

Q. Why didn't you cross over here below the pole?

A. I don't know why I didn't, but I didn't do it, that is all. 20

Q. You mean to say leaving Megill's car and starting to arrive at a point over here south of the dock, Kling's dock, you would walk up here ten feet beyond that pole?

A. I don't know why I did it. I might have had some baskets or something sitting here.

Q. Did you have some baskets?

A. They were in that direction. I don't know whether I had any baskets sitting there or not, to get, but I walked in that direction, that is all. 30

Q. You were going south; will you tell me why you walked north ten feet to go south?

A. I can't tell you, no, but I did, that is all.

Q. Couldn't you have crossed the track immediately north of the pole, the end of the fender?

A. That end, yes; right straight across.

Q. Why didn't you do it?

A. I didn't do it, that is all. I don't know why. I can't tell you that.

Q. Were you absent minded at the time and didn't know what you were doing? 40

## Caleb T. Hubbard — Cross

A. No, sir.

Q. You knew you were going to reach this point over here and were walking directly away from it.

A. That is all right. That is where I walked. I can't account for why I did it or anything of the kind.

Q. You just did it?

10 A. I just did it. I say I may have had some baskets sitting on that end of the platform that I wanted to get.

Q. Do you say you had baskets there?

A. I don't remember. I don't know. I was hit and hurt pretty bad and I don't remember everything that transpired right away then.

Q. Do you say you had baskets over there?

A. I say I don't know whether I did or not. I say I might have had.

Q. That is the only reason you can ascribe why you took that course?

20 A. That is the only reason; yes, sir.

Q. You don't know whether you had baskets there or not?

A. No, sir.

Q. Tell us where, after you left Mr. Megill's car and proceeded north, where you stopped to look for the trolley car, as you said in your direct testimony.

A. I walked, as I say, in a northwesterly direction. When I was within four or five feet of the tracks I stopped and I saw this car —

30 Q. Now won't you indicate on the map just where you were when you were within four or five feet of the track and when you stopped?

MR. FARRELL: I object to that on the ground that the map is not in evidence as part of the plaintiff's case, therefore the counsel has no right to ask the witness a question with reference to the map.

40 THE COURT: Do you object to his using the map?

Caleb T. Hubbard — Cross

MR. FARRELL: I do. This witness knows nothing about the map. I mean it is drawn up by other men and there is no reason why he should be bound by it. We do not admit the map is correct, in the first place.

THE COURT: I must hold you to it. I will have to enforce it.

MR. CARTON: It is a very unusual situation. If we can get some help from this witness — 10

THE COURT: Counsel seems to object to it.

MR. CARTON: Your Honor —

THE COURT: Oh, I can't help myself. If in cross-examination they object to your using the map of course they have that right. 20

MR. FARRELL: We would have no objection if we conceded that the map was correct. But we do not concede it is correct.

MR. CARTON: We will take your map and concede your map is correct.

MR. FARRELL: We haven't any maps. 30

THE COURT: Proceed.

Q. Mr. Hubbard, will you tell us where you were when you stopped and looked south, as you described?

A. As I say, I was within about four or five feet of the track, as near as I can tell.

Q. And at a point about ten feet north of the pole?

A. Somewhere around that, yes.

Q. And were you then east or west of the pole?

A. Well, I must have been — I was pretty near on a line with the pole. 40

## Caleb T. Hubbard — Cross

Q. Pretty near on a line with the pole?

A. The pole is about three feet from the track, as near as I can tell.

Q. Is that your recollection, that that pole is about three feet from the track?

A. Yes.

10 Q. And you were then a foot east of that, as you recall?

A. Must have been somewhere around there.

Q. Now what did you do? Did you stop there?

A. I stopped.

Q. Stood still?

A. Stood still there; yes, sir.

Q. What did you stand for?

A. I just stopped, hesitated, you know, and I looked north, I saw this car coming. I didn't know whether it was going to stop or not on the switch.

20 Q. Did you first look north or look south?

A. I looked north and saw this car coming.

Q. Looked north before you looked south?

A. Yes, sir.

Q. What did you see?

A. I saw this car coming and it was running, slowing up, and I knew it was going to stop at the switch.

Q. What car are you referring to?

A. The car going south.

Q. From Asbury Park?

30 A. Yes, sir. Then after I seen that car was stopped or about stopped, I looked south. I didn't see any car.

Q. Were you yet standing when you looked south?

A. Yes, sir; about three or four feet from the track, I judge, or maybe five feet. I looked south. I didn't see any car coming and I walked on across and was hit.

Q. Why didn't you see a car coming if you looked south?

A. Well, I didn't see it, that is all. I don't know why I didn't.

40 Q. There was a car coming up there, wasn't there?

## Caleb T. Hubbard — Cross

A. There must have been.

Q. You could have seen all the way down to Belmar, down that track if you looked south, couldn't you?

A. No, sir; only I could see about fifty feet down the track, I judge.

Q. You could see about fifty feet down the track?

A. Yes, sir.

Q. Where would that take you, down past Kling's boat-house? 10

A. Well, fifty wouldn't. I don't know. It would take you down maybe to the edge of the water.

Q. Down where?

A. To the edge of the water, about on a line with the end of the boat-house.

Q. About on a line with the end of the boat-house?

A. Somewhere around that. I don't say exactly.

Q. And you could see that far down at any rate at that time?

A. I could see that far, yes. 20

Q. And you did see that far?

A. Yes, seen about forty or fifty feet, I imagine, somewhere around that.

Q. You saw no car coming within that distance?

A. Saw no car, and I started across.

Q. And that is a fact, you didn't see any car?

A. I didn't see any car. I wouldn't walk in front of a car if I saw it.

Q. You were then about four feet from the track? 30

A. When I stopped, yes.

Q. When you made this observation south and didn't see any car?

A. Yes, sir.

Q. That is a fact, is it?

A. Yes, sure.

Q. Then what did you do, proceed directly westward across the track?

A. Well, yes, I guess I must have went pretty near straight across the track. 40

Caleb T. Hubbard — Cross

Q. Don't you know how you went?

A. I say I went straight across the track. I must have.

Q. Now after making that observation four feet east of the track did you make any other observation south before you went to cross the track?

10 A. I looked north first and I saw this car had stopped, or about stopped, and then looked south.

MR. CARTON: That is not responsive.

(Question repeated.)

THE COURT: Do you understand the question?

MR. FARRELL: What observation do you refer to?

20 MR. CARTON: Do you object to the question?

MR. FARRELL: No.

A. As I told you, I looked north first —

THE COURT: You had better change the form of the question.

30 Q. Mr. Hubbard, you have stated that when you were proceeding from Mr. Megill's car going north about ten feet from the pole and when at a point some four feet east of the track you looked south and saw about fifty feet —

A. No, I didn't say that.

Q. Let me finish my question — saw about fifty feet, down to Kling's boat-dock, and didn't see anything; you say you then proceeded directly west across the track.

A. No, I didn't say that.

40 Q. Now I ask you after you made this observation at this time if you made another observation south before you went across the track.

## Caleb T. Hubbard — Cross

A. You —

Q. Did you or didn't you?

A. I won't answer it. I can't answer it.

Q. What is there about the question you can't understand?

A. If you will let me — you understand what I said in the first place, don't you?

Q. I think so.

A. I said — if Mr. Kelly will read it —

10

Q. Didn't you say that when you got within about four feet from the east rail of the trolley track and after having looked north you stopped there and looked south and from that point you got a view down the track southward about fifty feet?

A. Yes, sir.

Q. Did you state that?

A. Yes, sir.

Q. Now I ask you if you didn't then proceed to go across the track westerly.

20

A. Yes, sir; I did.

Q. Now I ask you further if you made another observation south after you made this first observation south before you crossed the track.

A. I started immediately across the track.

Q. And didn't make any further observation south?

A. I looked south. The first time I looked I looked south. I looked north first and looked south the last time, but when I looked south I started right across.

30

Q. The last time you looked south was when you made this observation fifty feet and didn't see any car?

A. No, and after I looked I started across.

Q. And didn't look any further?

A. Yes, I did look; looked before I started; looked south, I told you.

Q. You were then four feet away from the track?

A. Yes, about four feet.

Q. And you then started to cross the track?

A. Yes.

40

Caleb T. Hubbard — Cross

Q. You didn't look south after that, did you?

MR. TAYLOR: That has been answered three or four times.

THE COURT: Well, he is trying to get it clear. I think it is perfectly proper.

10 MR. CARTON: I am trying to make it clear, but he doesn't seem to understand it.

THE COURT: If you don't understand the question say so and the court will try and see that a question is asked that you do understand.

20 Q. Mr. Hubbard, no one is trying to trip you or anything of the kind. I understood you to say, and we have asked the question a good many times, as Mr. Taylor has suggested, but I understood you to say when you were within three or four feet of the track at that point you stopped and looked south. Now I ask you if you made another observation south after you started from that point.

A. You don't say anything about as I answered the question. I tell you when I got there I looked north first.

Q. But we are by that. You told us that.

A. And then I looked south. I didn't see any car and I started straight across.

30 Q. Without making any further look?

A. Yes. I wouldn't stand there all day and look.

Q. Why didn't you look when you got up within three feet of the track to see if there was anything coming?

A. Well, I didn't think it was necessary.

Q. Well, a car came along and struck you, didn't it?

A. Yes.

Q. Why didn't you look when you got within two feet of the track?

40 A. I don't know why I didn't, but I didn't.

## Caleb T. Hubbard — Cross

Q. If you had looked you would have seen this car, wouldn't you?

A. If I was within four feet of the track it wouldn't take long — it is a single track — it wouldn't take me long to cross there, would it? Why should I stand there and wait till a car came along to hit me?

Q. Well, a car did hit you; that is a fact, isn't it?

A. Yes, sir.

Q. Why didn't you look when you got within two feet of the track, say? 10

A. That is one step, isn't it? How long does it take you to take one step?

Q. I don't know. I ask you why you didn't take another observation.

A. I don't know why I didn't, but I didn't that is all.

Q. Why didn't you take an observation when you got within one foot of the track before you stepped on it?

A. It don't take long for a man to take a step. 20

MR. FARRELL: Just answer the question.

Q. Why didn't you?

A. I don't know why I didn't.

Q. If you had you would have seen the car, wouldn't you?

A. No, I don't know as I would.

Q. You would have seen the car when you got right on the track? 30

A. If I didn't see when I first looked, I didn't see it the second time, then I wouldn't have seen it; why would I?

Q. Do you mean to say that within a wink of your eye from the time you first looked this car was upon you?

A. No, I was nearly across the track when the car hit me. You say why didn't I stop when I was within a foot.

Q. You didn't stop, did you?

A. I might as well have been on it as within a foot of it. 40

Caleb T. Hubbard — Cross

Q. You say you were pretty near across the track when you were struck?

A. Yes, nearer the west rail than the east.

Q. When you were picked up you were on the east side of the rail or track, weren't you?

A. Yes, that is, my head was.

Q. You were underneath, your body was?

10 A. No, I was underneath, my body was, had that foot out. But I fell in an easterly direction, in a northeasterly direction. That brought me on the east side of the track.

Q. That rolled you all the way back?

A. That threw me back after the car hit me and after it rolled me.

Q. Do you remember exactly what happened after the car struck you?

A. No, not right away I didn't.

Q. Then what you say now is simply guess, isn't it?

20 A. I know which way I fell when the car hit me.

Q. You do recall that?

A. Yes.

Q. Were you going very fast at the time?

A. Was the car going fast?

Q. Were you going fast.

A. I was in a hurry to get across to that house, because it was a cold, blustery day and I wanted to get home as soon as possible.

30 Q. You had gotten your money from Mr. Megill and were in a hurry to get back to your boat?

A. Yes, I was in a hurry that day, and it was a cold, blustery day and I wanted to get back home. I was up early that morning.

Q. Do you recall what you testified to on the former trial as to making observations before you went upon the track?

40 MR. FARRELL: I object, on the ground that it is not proper cross-examination.

Caleb T. Hubbard — Cross

MR. CARTON: I ask him if he recalls.

THE COURT: That is a preliminary question. He may ask it, whether he remembers.

Q. Do you? You remember testifying at the other trial, don't you?

A. I remember testifying, yes.

Q. And you testified at the other trial that you went up and you first looked south and then you looked north, didn't you? 10

MR. FARRELL: I object to that as not proper cross-examination.

THE COURT: He may ask him whether he answered so and so.

Q. Let me direct your attention to the printed case, at page 9, Mr. Hubbard, of the former trial: "Q. (By Mr. Farrell) Which way did you look? I looked south first." Do you remember that question being asked and that answer being given by you? 20

A. I don't remember.

Q. That is just the opposite from what you testify to now, isn't it?

A. Yes, it is.

Q. Have you read the opinion of the Supreme Court in this case and the Court of Errors and Appeals? 30

A. Yes, I had it read to me.

Q. Have you changed your mind since you read that opinion?

A. No.

Q. Why do you come here now and tell a story directly opposite from what you told on the former trial?

A. I don't remember what I told on the former trial, but if I did —

Q. You don't deny that you made that answer, do you? 40

Caleb T. Hubbard — Cross

A. I don't deny it, no; but if I did make it I must have made a mistake; I must have been confused and made a mistake.

Q. That is several mistakes you have made?

A. Well, I can't help it.

Q. You made a mistake in the location of Mr. Megill's car the other time, didn't you?

10 MR. FARRELL: I object to counsel characterizing the statement. Whether he made a statement or not is a conclusion.

THE COURT: It is only cross-examination. Proceed.

20 Q. Do you remember being asked this question, continuing after the last answer I read: "Q. Did you see any car? A. I didn't see anything. And then I looked north and I saw a car approaching the switch." Did you make that answer?

A. I don't remember just how I testified. It has been quite a while ago, a year ago. I don't remember just how I testified.

30 Q. And this question: "Q. Now how far do you think was the switch from the bridge there?" and this answer: "I should say about one hundred or one hundred and twenty-five feet. Q. You saw the car coming from the north towards the switch? A. Yes, sir. Q. Had it stopped at that time at the switch? A. I halted until it did stop. I didn't know whether it was going on over or whether it was going on stop on the switch." Do you remember those questions and those answers?

A. I don't remember just exactly how I testified.

Q. Why do you change around now and say that what happened was that you first looked north on the day of the accident and then you looked south, when on the former trial you stated just the opposite?

40 A. I say I might have been confused before and made

## Caleb T. Hubbard — Cross

that admission, made that statement; but I say if I did make it, as I recollect it now, it was a mistake.

Q. You might be confused now, might you not?

A. No, sir.

Q. You think your recollection now as to what happened in 1916 is better than it was a year ago when the case was tried before, do you?

A. Well, I don't know whether it is any better or not, but as I remember it that is the way it happened, at the present. 10

Q. Let me read this and see if this will refresh your recollection as to what you testified to before, Mr. Hubbard, on page 18, your cross-examination: "Q. Did you see any car coming? A. No, sir. Q. Just describe how you looked when you were within five feet of the track. A. Well, I looked south, I didn't see any car. I just turned and looked north and I saw a car approaching the switch; and I kept my eye on that car." Do you remember making that statement in the former trial? 20

A. No, I don't remember.

Q. Do you say you didn't make that statement in the former trial?

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

Q. Do you say that statement was wrong if you did state that in the former trial?

A. I say it yes, it is a mistake; if I did say it it was a mistake. I have told you that three or four times now.

Q. The next question. You were asked the last part and your answer was no. "I just turned and looked north and I saw a car approaching the switch; and I kept my eye on that car. Q. Until it stopped? A. Until it stopped and then I proceeded across the track." Did you make that statement? 30

A. I don't remember, I told you before. I don't remember it.

Q. "Q. Then you went across the track? A. Yes, sir." And the next question is: "How near the end of the switch was this car north that you were looking at, how 40

Dr. Ferdinand G. Angeny — Direct

far was it from the point where it stopped when you first saw it?" and your answer, "A. Well, I couldn't say. It wasn't long in motion, I know, before I seen it stop. I couldn't tell just how far it was from the switch when I saw it coming from the bridge, and it wasn't in motion long before it stopped. As soon as it stopped I started to go across. I seen it wasn't coming on." Do you remember making that statement before?

10 A. I told you I didn't remember what statements I made before. I don't remember.

Q. But whatever you said that is inconsistent with your statement now was wrong at that time, and what you state now is right; is that your position?

A. Yes.

Q. And that is because your recollection is better now, I suppose, a year later?

A. I don't know what is the cause of it.

20 Q. Did reading the opinion of the Court of Errors and Appeals change your mind on this situation?

A. No, sir.

Q. Didn't influence you at all?

A. No, sir.

Q. Why do you now tell a story directly opposite what you told before?

30 A. I don't know why, but as I recollect it that is the way it happened, that is all. I come here to tell the truth and I am here to tell just as near as I can tell how the accident happened to the best of my knowledge, and that is what I am telling you.

---

DR. FERDINAND G. ANGENY sworn for plaintiff.

DIRECT EXAMINATION BY MR. FARRELL:

Q. Where do you reside, Doctor?

A. Avon-by-the-Sea, New Jersey.

Q. Are you a licensed physician?

40 A. Yes, sir.

Dr. Ferdinand G. Angeny — Direct

Q. Duly admitted to practice in this state?

A. Yes, sir.

Q. How long have you been a practicing physician?

A. Twenty-five years.

Q. Do you know the plaintiff, Mr. Hubbard?

A. Yes, sir.

Q. Did you examine him on January 29, 1917?

A. Yes, sir; I did.

Q. Will you state to the court and jury his condition at that time? 10

A. Well, he had the effect of these injuries: he had a fractured clavicle on his left side, which showed some slight deformity; he had a hernia of his left inguinal region; and he had an injury to his leg which showed that he had had a fracture of both bones of the leg. His leg was crooked; there was a shortening, three-quarters of an inch, of his left leg, which was permanently deformed; and there were some alterations of his ankle joint whereby he walked lame, prevented him from walking normally. All those injuries are of a permanent character. 20

Q. Now, Doctor, is his left leg straight.

A. No, it is crooked. He has an outward bend of his leg.

Q. Did you see Mr. Hubbard again?

A. I examined him again today.

Q. What condition did you find on your examination today, Doctor?

A. Well, I see that his leg is even more deformed than what it was on January 29, 1917. 30

Q. In what respect?

A. It is bent more. There is apparently a little increase in the shortening, which would necessarily be as times goes on, because an injury where you have a fracture, as the patient gets older there is a certain amount of absorption of the bone product, and the leg necessarily becomes a little more deformed. And I see his hernia is more marked; in other words, it protrudes more than what it did January 29th last year. 40

Dr. Ferdinand G. Angeny — Direct

Q. In your opinion are those injuries of a permanent nature?

10 A. All of a permanent nature and have a tendency to grow worse, every one of them. He is liable to have pain in his injured leg as well as in his hernia. But his hernia is a condition that is liable to become strangulated at any time. But that I mean liable to come down whereby he cannot get it back, and endanger his life. He would have to be operated on and then the chances of radical cure are not as favorable, particularly on account of his age and condition.

Q. You heard Mr. Hubbard testify as to his injuries; you were in the court-room when Mr. Hubbard testified?

A. I heard him.

20 Q. You heard him testify that he was confined to the Spring Lake Hospital for a period of a little less than eight weeks, during which time he was confined to his bed; that subsequently he used crutches for a period of about three months. Now a man of his age, Doctor, in your opinion is that hernia a direct result of those injuries which he received?

30 A. Well, the hernia, the kind of hernia he has, a direct inguinal herna, is almost invariably an acquired hernia; that is to say, due to some accident or injury or some pressure from within. If it had been congenital or he had been born with it it would have been a different type of hernia; he would have had what is called an indirect or oblique hernia. But this has come directly through the abdominal wall and of the kind, as I say, that is almost invariably acquired.

Q. In your opinion is the hernia the direct result of these injuries?

A. In my opinion it is liable to have occurred from them. I did not examine the man before he was hurt.

40 Q. In the absence of any prior injury to that part of his body, is it in your opinion that that injury was caused by the accident?

Dr. Ferdinand G. Angeny — Direct

(Objected to.)

THE COURT: I think the form of the question is objectionable. Put it in another form.

Q. Have you known of cases, Doctor, where hernia has resulted from a fall similar in character to the injuries received here?

10

MR. CARTON: That is clearly objectionable, your Honor. Such questions might have enabled him to form an opinion, but it seems to me there ought not to be any conclusions because it happened in another case that that was — —

THE COURT: Yes, the objection is sustained. This witness is here on the stand. You can prove he is an expert on that line. You may find out what would cause an injury of this kind, his opinion.

20

Q. Well, in your investigation and examination of the plaintiff is it your opinion that the hernia is the result of those injuries which he received?

(Objected to as leading.)

30

THE COURT: Yes, it is leading.

Q. What in your opinion, Doctor, caused this hernia?

A. The most likely thing is the accident he had; because hernia of this kind, as I said, is an acquired hernia, the type of hernia that is usually the result of an accident. It is a direct inguinal hernia, as I said, really occasioned by some violent force, pressure.

Q. Now you heard Mr. Hubbard testify as to the accident, when it occurred and when he first felt this hernia, didn't you, Doctor?

40

Dr. Ferdinand G. Angeny — Direct

A. Yes, I did.

Q. Can't you state then in your opinion whether or not those injuries caused this hernia?

A. It is my opinion that the injuries did cause his hernia, because he had no hernia before this accident, and it is the most likely thing that could have caused it.

CROSS EXAMINATION

10 BY MR. CARTON:

Q. You don't know whether he had a hernia before or not, I don't suppose, do you, Doctor?

A. I do not.

Q. A hernia could be caused from any one of a number of different things, couldn't it?

A. Injury is the most likely thing.

Q. Do you know when the hernia developed?

A. Do I know when?

20 Q. When the hernia developed in this case.

A. I know that it was present on January 29th, when I examined him previously, and I know —

Q. January, 1917?

A. January 29, 1917.

Q. Some ten months after the accident. Do you know when the hernia developed or asserted itself in this case?

A. It is the kind of hernia that would develop, looked as if it did develop —

30 Q. Do you know when the hernia developed in this case?

A. I don't know except of its presence at that time.

Q. Were you informed whether it happened immediately after the accident or weeks or months after?

A. I was informed that this hernia was noticeable after he got out of bed.

Q. And when did you understand that was?

A. About eight weeks, or when he left the hospital.

Q. In your judgment would the hernia have asserted itself or made its presence known prior to that time?

40 A. No.

Dr. Ferdinand G. Angeny — Direct

Q. If it had been caused by the accident?

A. No, he might not have noticed it until he got out of bed and began to move about.

Q. Hernia may be caused by a sudden jolt or strain or knock or anything of that kind, may it not, Doctor?

A. It might.

Q. You say it is your opinion that it resulted from this accident, because you don't know of any other thing that it might have resulted from. 10

A. Well, the history of the case almost determines that.

Q. When did you first examine Mr. Hubbard?

A. Examined him January 29, 1917.

Q. You didn't attend him at the time he was hurt?

A. No, I was just called to examine him and determined this.

Q. And you come here as an expert and testify?

A. Yes, sir. 20

Q. Did you observe then that he had had a fracture of the leg?

A. I examined him all over but saw he had a fracture of his left leg.

Q. What sort of a result did he get?

A. Fair, under the circumstances.

Q. Do you say the leg is crooked?

A. The leg is crooked, yes. 30

Q. Is that a fair result in your judgment?

A. Yes, I call it a fair result.

Q. So crooked that it has become more pronounced as time has gone on?

A. Yes, it is more crooked today than it was a year ago.

Q. And you say that is a good result?

A. Well, it has a tendency to increase as time goes on.

Q. Isn't that quite the opposite from an ordinary result?

A. No, sir. 40

Dr. Ferdinand G. Angeny — Direct

Q. It is not?

A. Not of a fracture involving both bones.

Q. What else did you find that was the matter with him? You say he had a broken shoulder?

A. Yes, I found he had a fracture of the clavicle on his left side — right side, it was.

Q. The clavicle, what is that, the collarbone?

A. That is his collarbone.

10 Q. You of course took the statement that Mr. Hubbard gave you as to what had happened?

A. We do in all cases.

Q. What do you say?

A. We have to get the history of the case, certainly.

Q. You were not called upon to prescribe or anything of that kind?

A. No, sir.

20 BY THE COURT:

Q. Doctor, could you tell by an examination of this rupture how long it had been?

A. It looked like a recent formation.

Q. What do you mean by a recent formation?

A. Well, within a year at least. If it had been longer it would have been out a great deal further.

Q. How far was it out?

30 A. Well, I imagine about an inch, protruding about an inch.

Q. How big around was it?

A. Oh, about an inch and a half across, in its greatest diameter.

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PLAINTIFF RESTS

Motion for Nonsuit  
MOTION FOR NONSUIT

MR. CARTON: Your Honor, I wish to apply for a nonsuit and my reasons are these: that no negligence has been shown —

MR. FARRELL: Pardon me. I would like to reopen my case for just one purpose. I want to put in just one interrogatory. Interrogatories were served. 10

THE COURT: I will allow you.

MR. FARRELL: Any objection, Mr. Carton?

MR. CARTON: You might read them all.

MR. FARRELL: I simply want to put in this one question, that is all. 20

THE COURT: Read it.

MR. FARRELL: (Reads) "How far distant from the plaintiff was the motorman when he first saw the plaintiff?" The defendant's answer is: "About ninety feet." That is all.

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MR. CARTON: Now to proceed, my reason for the motion in question is because there has not been shown any negligence on the part of the defendant company nor a situation from which negligence can be fairly imputed. There is nothing in the case to show that this car was not operated on this bridge and on this roadway in a careful and proper manner. Mr. Megill testified that the car when it went by him was going anywhere between five and eight miles an hour, and he testifies also that he saw it down the track a considerable distance. I do not think there is anything in the case, your Honor, which shows that the defendant was in any way negligent. 30  
40

## Motion for Nonsuit

And my other ground, and it seems to me the ground that must be controlling, your Honor, is the fact that the plaintiff has himself clearly proven out a case of contributory negligence. Entirely outside of the changed story we have here — and this case was tried before, your Honor, on this record and went to the Court of Errors and was reversed because the court held it was a court case and not a jury case. I have the case here and the opinion here.

10 Now Mr. Hubbard testifies in this case, your Honor, that he went from Mr. Megill's car and proceeded some ten feet north till he got to a point some four feet east of the east rail of the trolley track, after he had first looked north and saw a car coming into the switch, and when he looked south and saw some distance east, as he puts it, probably one hundred feet, according to the map, down to Kling's boat-house, and he didn't see any car. Now at that point, your Honor, there is absolutely no obstruction; there is

20 nothing to prevent him from having seen that car the full length of that bridge, clearly down to where he was. The plaintiff cannot go on the stand and say he took a mere casual look. If he looked down there and ought to have seen that car, he has the ability, he is obliged to look, and as the court holds, in such a way as to make looking proper, make it effective. Here is an entirely open way, nothing other than a four foot railing that would obstruct his view. This railing is some four feet high. He was down here. This car, he says, he saw some fifty feet, as he puts it, down in front of this place. There is an entirely open

30 way, your Honor, and if this man had looked in any effective way, as the law obliges him to look, in an effective way, he would have seen this car and would not have gone across and the accident would never have happened.

Now this man cannot absolve himself from negligence in this case, as I view it, on his own testimony; because he proceeded — he is entirely in the air as to why he went up that far or why he changed his story or anything of that kind. But I do not raise that question at all; but he says

40 he got up within four feet of this and looked down and

## Motion for Nonsuit

didn't see that car. If he could see fifty feet down the track he ought to have seen it, by his own statement. The only conclusion is that he did not look or that he looked — he says he was in a hurry to get away, it was a windy day and he had done his chores, his business, and wanted to get back home; and he has brought himself clearly within that class of cases, your Honor, where the plaintiff precludes himself from recovery. I do not think it is necessary to discuss that point, because I think it is a clear case of contributory negligence, as clear as any case ever was. 10

There is an entirely free opening where he could have seen, he could have taken another view if there was any question about it. Of course I am not going to argue at this time that when he looked down he saw fifty feet and did not know any further and this car came in at five miles an hour, I am not arguing that. I am simply saying he could have seen that car, should have seen it; there cannot be any other conclusion. 20

THE COURT: I understand the case is the same as presented to the jury before and went to the Court of Errors and they said it was a court case? I am asking whether the case now presented is the same as it was before.

MR. CARTON: It is the same, except Mr. Hubbard changed his testimony, but substantially the same. The opinion is very short. It gives the story completely. 30

THE COURT: Now I will hear counsel on the other side.

(Mr. Farrell and Mr. Taylor reply.)

THE COURT: I think it is a jury question. I am going to leave it to the jury. I think there is a great difference between the situation presented in the former case and this.

(Objection noted for defendant as ground of appeal.) 40

E. Everett Throckmorton Recalled — Direct  
DEFENDANT'S TESTIMONY

E. EVERETT THROCKMORTON recalled for defendant.

DIRECT EXAMINATION BY MR. CARTON:

- 10 Q. Mr. Throckmorton, tell us the length of the bridge across Shark River, the trolley, railroad and wagon bridge.  
A. 881 feet.
- Q. That is from the north end of the bridge shown on your map to the south end of the bridge in Belmar?  
A. Yes.
- Q. Did you take the measurement also from what was described by Mr. Megill I think as Riggs' boat-house to the end of the bridge?  
A. 292 feet from the north end of the bridge to the north end of the walk that crosses over to Riggs' boat-house.
- 20 Q. Riggs' boat-house is south of Kling's boat-house?  
A. About one-third of the way across the bridge.
- Q. Mr. Throckmorton, have you been in the employ of the defendant company for some time?  
A. Yes.
- Q. As its engineer?  
A. Yes.
- Q. How long?  
A. Since 1907, individually.
- 30 Q. And were you connected with it prior to that time, associated with some one else?  
A. Yes.
- Q. Is there any change in the location of the bridges, the railroad bridge and the trolley bridge, or has there been any change made in the last two or three years?  
A. No.
- Q. Fenders, bridges, rails, etc., are the same as they were prior to 1916?  
A. Yes.
- 40

## E. Everett Throckmorton Recalled — Direct

Q. Is there a decline or is there any difference in the elevation at the point that has been referred to as the pole at the end of the guard-rail and the point at the north end of the bridge?

A. The sidewalk?

Q. Yes.

A. The surface of the ground at the north end of the guard-rail here is 1.4 feet below the surface of the walk.

10

Q. Have you been on the ground recently?

A. Last Monday.

Q. Were you there with the photographer when some pictures were taken of the situation there?

A. I was.

Q. Did you take measurements of locations where the photographer took his pictures from?

A. Yes.

Q. Will you tell us the point of the camera when the first picture was taken, where it was located on your map?

20

(Witness refers to memoranda.)

A. 3.5 feet east of the east rail and 3.5 feet north of the post that shows at the end of the fence or rail.

Q. Will you indicate on the map about where that was to the court and jury?

A. Where that small dot is just north of the pole.

Q. Where was the next photograph taken from?

A. 10 feet east of the east rail and 2 feet north of the pole, where this other small dot is.

30

Q. And was there still another picture taken by the photographer?

A. Yes, he set the camera up on the center of the track on the south line of the pavilion.

Q. Taking a view northward?

A. Taking a view northward.

Q. And how many feet —

THE COURT: You don't mean directly northward. 40

E. Everett Throckmorton Recalled — Direct

A. Right up the track, directly up the track.

Q. That would be northeast, wouldn't it?

A. Practically north.

BY MR. CARTON :

Q. How far is that from the pole?

10

A. 90 feet.

BY THE COURT :

Q. That is the south side of the pavilion?

A. Yes.

BY MR. CARTON :

20

Q. Indicate on the map just where that was. If there is not a mark make a mark similar to this.

A. Here is where he set the camera up. (Indicating.)

Q. Make a little dot like you did for these two.

(Witness marks on map.)

Q. Mr. Throckmorton, did you make any observations from the north end of the bridge across the bridge southward?

30

A. I didn't pay any particular attention as to the observations, no.

Q. There were observations made by other gentlemen?

A. Other people that were there, and I took measurements.

Q. You didn't take particular notice for the purpose of testifying?

A. No, I did not.

Q. Is that the day, that same morning, that Mr. Beutell and Mr. Bowes were there?

40

A. Yes.

E. Everett Throckmorton Recalled — Cross  
CROSS EXAMINATION

BY MR. TAYLOR:

Q. Mr. Throckmorton, do you know whether this fence along here was there the same as it is today, three years ago?

A. Three years ago?

Q. Yes, this fence right here. (Indicating on map.) 10

A. To the best of my judgment, yes.

Q. Do you know whether it was or not?

A. Not to a certainty, no.

Q. And if that fence were different at the time of the happening of this accident, if it were higher or lower, these photographs would not show the situation, would they?

A. If it was different, no.

Q. Don't you know as a matter of fact that that bridge was repaired and there were changes made in the summer of 1916 by the Board of Freeholders? 20

A. The highway bridge?

Q. Yes.

A. Just merely the bridge was traveling a little east, but as far as the elevation is concerned and the trusses and like that there has been no change in it.

BY THE COURT:

Q. What changes were made? 30

A. The east side of the bridge was settling down a little, just merely shimmed up and raised up and put in a level position.

Q. That is, the flooring?

A. The flooring.

BY MR. TAYLOR:

Q. And don't you know that the fence which was 40

Herman Stickler — Direct

there at the time of the accident was old and rotten and was torn down.

A. No, I don't know about that.

Q. And don't you know that that fence which is there now was put there in 1916?

A. No, I don't.

Q. You don't know whether it was or not?

10 A. No.

---

HERMAN STICKLER sworn for defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Mr. Stickler, what is your business?

A. Photographer.

Q. Associated with the Cole Company, Asbury Park?

A. Yes, sir.

20 Q. How long have you been a photographer?

A. Twelve years.

Q. Did you recently take some photographs showing the situation at the north end of Belmar bridge?

A. Yes, sir.

Q. When were they taken?

A. On January 21, 1918.

Q. Taken the day that Mr. Throckmorton, the surveyor, was there, the last witness sworn?

A. Yes, sir.

30 Q. Where did you take the first picture from, what location?

A. Why, the first picture was taken from the east side of the rail looking south.

Q. Will you refer to the map and indicate on the map where you placed your camera when you took the first picture?

THE COURT: Show him where the rail is.

40 Q. This is the rail here and this is the telegraph pole.

## Herman Stickler — Direct

A. Just about this position. (Indicating.)

Q. East of the rail?

A. East of the rail.

Q. Which of these is the picture?

(Witness indicates.)

A. As a matter of fact there were two pictures taken from that same position.

Q. Two pictures taken from east of the rail?

10

A. Yes.

Q. This was taken from the east of the rail, was it not? (Indicating.)

A. Yes, sir.

Q. What view did you cover in taking that picture from that point? What do you show in it generally?

A. Why, it shows the full length of the foot-path, as well as the other side, the south side of the bridge, as far as Belmar.

Q. Does it show the trolley track and bridge over to Belmar?

20

A. Yes, sir.

Q. Over the Shark River?

A. Yes, sir.

Q. Most of those pictures were taken from the east side of the rail, were they?

A. Yes, sir.

Q. What does the other picture show, about the same situation, the same location?

A. The same location.

30

## BY THE COURT:

Q. They are both the same picture, are they not?

A. With the difference of the trolley. One shows a trolley, closer than the other.

## BY MR. CARTON:

Q. One of these pictures shows a trolley car approaching north, does it not?

40

Herman Stickler — Direct

A. Yes, sir.

MR. CARTON: I offer these pictures, your Honor.

MR. TAYLOR: I am sorry, but we will object to them. Neither of those pictures show where the man was standing.

10

MR. CARTON: Well, we have pictures to show where he was standing and to show the bridge, but we are not confining ourselves to where the man was standing.

MR. TAYLOR: I don't object to them, but I just want to call your attention to that fact, that neither of them show.

20

MR. CARTON: We have additional ones.

THE COURT: I think those are objectionable for another reason. There is evidence that there was an automobile there, and this shows an automobile, which would very naturally tend to interfere.

MR. CARTON: Both of them show an automobile?

THE COURT: Yes, both.

30

MR. CARTON: The purpose of it —

THE COURT: I understand, but it will go to mix the question up, and I won't do that.

MR. CARTON: Well, your Honor, may we offer it with the cutting off of this portion of the picture showing the automobile? Just cut it off. I will do it now, your Honor.

40

Herman Stickler — Direct

(Mr. Carton cuts off part of photograph.)

THE COURT: That one may go in, but cutting off that end of the picture. Let the witness say where that one is. State where it is now.

Q. Tell us where your instrument was placed when you took that photograph.

A. It was placed on the east side of the railing, I should imagine about three and a half feet from the railing.

10

BY THE COURT:

Q. And looking which direction?

A. Looking south.

BY MR. CARTON:

Q. And near the pole?

A. Why, it is very near the pole.

20

MR. CARTON: I offer this.

(Photograph marked Exhibit D 2.)

Q. Where were you when you took this picture that I now show you?

A. The camera was placed north of the pole.

30

Q. Will you indicate on the map — this is the pole and this is the trolley track — indicate on the map where your instrument was located?

A. This is the trolley track?

Q. Yes.

A. About there. (Indicating.)

Q. And that was a view south?

A. A view south.

MR. CARTON: I offer this picture.

40

Herman Stickler — Direct

MR. TAYLOR: We must object to this picture.

THE COURT: Why?

10 MR. TAYLOR: For this reason: that this shows the railing as it is here and it has not been established yet whether this railing is the same that was there at the time the accident happened or not. You will remember that Mr. Throckmorton could not say at the time it was repaired the old one had been torn down or not. There is no one yet that has shown — the bridge is the same, the rails are the same, but not this. I recall Mr. Throckmorton's testimony is the same that you got from other witnesses. Of course he won't testify that some one didn't go down there at night and tear that rail down. He says he knows of no change. Mr. Megill fixes the rail at the same height and Mr. Throck-  
20 morton says, and Mr. Mullen, the superintendent of streets, there have been no changes in their knowledge.

THE COURT: I shall allow it to go in as it stands now.

(Photograph marked Exhibit D 3.)

THE COURT: Where is that telephone pole shown?

30 MR. CARTON: In this picture?

THE COURT: I am speaking of this, (indicating). You didn't take it in your picture?

THE WITNESS: It is not in the picture.

THE COURT: Why not?

40 THE WITNESS: Just skipped.

Herman Stickler — Direct

THE COURT: Just skipped?

THE WITNESS: Just skipped.

BY MR. CARTON:

Q. That was taken just west of the range of the telegraph pole?

10

A. Yes.

Q. Now where was your instrument located when you took that picture?

A. Right in the center of the trolley track.

Q. At what point?

A. I forget whether that is the houseboat there or not.

Q. Well, do you recognize this platform and this pavilion?

A. Yes.

20

Q. Where do you say it was with reference to that pavilion?

A. About somewhere along here; just about that end of the platform, the south end of the platform. (Indicating on map.)

Q. That is a view northward, is it?

A. A view northward.

Q. And that does show the pole that you referred to as the point where the instrument was located when you took the other pictures?

30

A. Yes, sir.

MR. CARTON: I offer it in evidence.

THE COURT: Do you object to that?

MR. TAYLOR: The automobile is still there, your Honor.

THE COURT: Yes, I think that is objectionable. It 40

Herman Stickler — Direct

would not throw any light on it. It has got something in there that you have no business to have.

MR. CARTON: Well, your Honor, can I take it out of that? It seems to me that is the most helpful picture of the lot, because it is a view the other way and shows the locus in quo completely.

10

THE COURT: No, I am afraid you can't very well cut it off without cutting out part of your view and I don't think it had better go in. I think it would be misleading.

MR. CARTON: Can I substitute this one for it?

THE COURT: What objection is there to that one, if he shows where it was taken?

20

MR. TAYLOR: Only as to the fence, if your Honor please.

THE COURT: Oh, I will allow that.

Q. Now just tell where this was taken. That is in the same location, isn't it?

A. The same location; yes, sir.

30

(Photograph marked Exhibit D 4.)

THE WITNESS: And this one is objectionable for the same reason.

(Another photograph shown.)

THE COURT: Now you have three photographs, two looking south and one looking north.

40

MR. CARTON: Yes, sir.

Herman Stickler — Cross      George W. Irons — Direct

CROSS EXAMINATION

BY MR. TAYLOR:

Q. Who placed you for the taking of these pictures?

A. Why, Mr. Cade.

Q. Who is Mr. Cade?

A. I imagine he is with the Atlantic Coast Railway Company. 10

Q. Mr. Cade told you to get as favorable a picture as possible, didn't he?

A. No, sir.

BY MR. CARTON:

Q. These pictures portray the situation down there, do they not, the actual situation existing down there?

A. The actual situation; yes, sir. 20

---

GEORGE W. IRONS sworn for defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Mr. Irons, what is your business?

A. Trolley car conductor, or motorman, I should say. 30

Q. How long have you been in the employ of the trolley company?

A. Fifteen years; since 1902.

Q. As a motorman?

A. Yes, sir.

Q. You have been employed by the defendant company during the whole of that period?

A. Yes, sir; never worked for any one else.

Q. Continuously?

A. Yes, sir.

Q. What position have you been running during your period of service for the company? 40

## George W. Irons — Direct

A. Well, biggest part of the time from Asbury Park to Sea Girt.

Q. And that takes in —

A. That is since they have run through.

Q. And that takes in Belmar and over the Shark River bridge?

10 A. Yes, somewheres about thirteen years, I think, I have run there.

Q. Were you the motorman in charge of the car that had this accident to Mr. Hubbard?

A. I was; yes, sir.

Q. Do you remember the situation, Mr. Irons?

A. Yes, sir.

Q. Do you remember the day of the accident and the happening?

A. Yes, sir.

20 Q. In what direction was your car proceeding prior to the accident?

A. Proceeding north.

Q. You were going from Belmar towards Asbury Park?

A. Yes, sir.

Q. Is there a double or single track over the Belmar bridge?

A. Single.

Q. Do you remember how you were going over the bridge the time, the trip that this accident happened?

30 A. Yes, sir.

Q. How were you going, what rate of speed and what did you do?

A. Running about eight, maybe ten miles an hour.

Q. How much?

A. Probably eight or ten miles an hour.

Q. Where were you going eight or ten miles an hour?

A. Well, until I got within about ninety or a hundred feet of the end of the bridge.

Q. And what did you do then?

40 A. Slacked down for the switch.

## George W. Irons — Direct

Q. What do you mean by slacking down for the switch?

A. Slacked the car down to go into the switch, the same as we always do.

Q. Is there a switch just north of the Shark River bridge?

A. Yes, sir.

Q. Well, when you were at Riggs' boat-house, which is 290 feet south of the end of the bridge, I believe, how fast were you going then? 10

A. Well, I suppose eight miles an hour, not over that.

Q. And when you reach a point opposite Kling's boat-house, near the end of the bridge?

A. Well, not over five, if that, because I was ——

Q. Were you under power or coasting at that time?

A. Coasting at that time.

Q. And is there a slight decline from the point of the bridge to the point of the switch? 20

A. Yes, sir.

Q. How fast were you going from Kling's boat-house and from there to the point where the collision occurred?

A. I suppose four or five miles an hour, probably less than that.

Q. What did you do if anything as you proceeded northward across the bridge to give an alarm?

A. Rang the foot-gong.

Q. Is that the gong that you jam your foot on? 30

A. Yes, sir.

Q. Where did you ring that, at what point?

A. About 90 feet away at first, I should judge.

Q. 90 feet away from where?

A. From the bridge.

Q. Where would that be, south of Kling's boat-house?

A. Yes, sir.

Q. Did you ring it after that?

A. Yes, sir; about 50 feet away.

Q. Is that a sharp — did you give a sharp ring? 40

George W. Irons — Direct

A. Well, not so very, only ordinary, that was all.

Q. Well, the ordinary clang?

A. Yes, sir;

Q. Of the trolley bell?

A. Yes, sir;

Q. Do you remember your car colliding with Mr. Hubbard?

10 A. Yes, sir.

Q. Will you indicate on the map back of you just where you struck Mr. Hubbard, where on the track he was when you struck him? I don't know whether you are familiar with the map. This is across the bridge and this is Kling's boat-house and this is the end of the foot-walk and this is the fence rail, the telegraph pole, and this is the switch down here.

A. Right here. Is this the pole?

Q. This is the pole.

20 A. Right here, about two feet, probably three, I judge, from that pole.

Q. About two or three feet north of the pole?

A. Yes, sir.

Q. You mean projected westerly across your track?

A. Yes, sir.

Q. Will you put a mark on there with your initial just where you say?

THE COURT: Put a cross.

30 Q. A cross just where on the track. This is the track and this is the pole, these the rails; this is the east rail and that is the west rail.

A. He was right here, about two feet — this is the pole?

Q. Yes.

A. About two feet from the pole, right here.

Q. Are you figuring two feet from the scale or what you consider two feet?

40 A. No, I just guessed at it.

George W. Irons — Direct

Q. Without any scale?

A. I don't know anything about the scale.

Q. It has been testified that this pole is about, I think, five feet from the track.

A. Well, four, I should judge, maybe five. I don't know how far it would measure.

Q. At any rate you say that the point on the track where he was located was about two feet north of the telegraph pole?

10

A. Yes, he was probably.

BY THE COURT:

Q. How much does your car overhang the track, overhang the wheels?

A. I don't know about that, couldn't say. I never have measured it. I never heard any one say.

20

BY MR. CARTON:

Q. What is the length of your car?

A. I think Mr. Cade told me 28 feet. I never measured the car.

Q. In your judgment is that about what it is?

A. That is my judgment, yes.

Q. How high is it from the rail to the top of the car?

A. Oh, probably 10 feet, 12 feet, probably.

30

BY THE COURT:

Q. What is the width of it?

A. I couldn't say about that. There is room — there is an aisle in the center and then two seats on each side; a seat for two on each side. There is a whole row all the way down each side.

Q. That is the type of car that you were driving on that day?

40

George W. Irons — Direct

A. Yes, sir.

BY MR. CARTON:

Q. When did you first see Mr. Hubbard as you were proceeding down there that day, Mr. Irons?

A. I should judge about 90 feet away.

10 Q. You were about 90 feet away?

A. Yes, sir.

Q. You were about 90 feet south of the pole?

A. Yes, sir.

Q. Where would that bring you with regard to Kling's boat-house?

A. Well, about, probably, 40 feet.

Q. About what?

A. From 30 to 40 feet the other side, to the south of Kling's boat-house. I don't know just exactly, of course. That is as near as I can tell.

20 Q. Well, now, when you were at that point, proceeding with your car, where was Mr. Hubbard? Where did you see him?

A. Standing by the automobile.

Q. And where was the automobile?

A. About half way between the pole and the end of the bridge.

Q. That is, half way between the —

A. Where the pole stands and the north end of the bridge.

30 Q. The north end of the rail of the foot-bridge and the pole at the end of the guard-rail?

A. Yes, sir.

Q. And east of it, of course?

A. Yes, sir.

Q. Was he on the east or west side of the automobile?

A. He was on the east side.

Q. What was he doing?

40 A. I couldn't tell you that; probably talking, I don't know.

George W. Irons — Direct

Q. Talking to Mr. Megill?

A. He just stood there.

Q. Then you proceeded on north, I suppose?

A. Yes, sir.

Q. And you say you gave a warning when you got about to Kling's boat-house?

A. Yes, sir; and before it.

Q. When did you next see Mr. Hubbard?

A. I saw him all the time from the time he left the machine until he was hit, when he walked around the pole.

Q. When he left the machine what course did he take?

A. He walked right straight down along this railing, probably within three or four feet of it, and turned right around the pole like that, right in front of the car, about four or five feet.

Q. Did he make any observation or look towards your car to see whether —

A. No, sir; never looked up and never stopped.

Q. You are sure about that, are you?

A. Yes, sir.

Q. Mr. Hubbard has testified that Mr. Megill's automobile was almost down to the end of the rail here and that he was some 10 feet north of that. Is that a fact?

A. No, sir.

Q. You say you saw —

(Objected to as leading.)

Q. You say you saw Hubbard proceeding northward along the rail back of Megill's car?

A. Yes, sir.

(Objected to as leading.)

THE COURT: Well, he has testified to that. He is asking what he has testified to already. The question before, that you didn't object to, was very leading.

## George W. Irons — Cross

Q. It has been testified to that there was a car coming from the north towards the south.

A. It was standing there. It wasn't coming, it was standing there when I came on the south end of the bridge.

Q. You saw this car?

A. Yes, when I come on the bridge.

10

MR. TAYLOR: I object to this form of examination as leading.

Q. You saw the car there?

A. Yes, when I came on the south end of the bridge it was standing on the switch, waiting for me to come across.

Q. The car was there at that time?

A. Yes, sir.

20

Q. In fact, the cars are obliged to wait for each other?

A. Yes, sir.

(Objected to.)

THE COURT: That is objectionable. The question is where the car was, however, on that day.

Q. Who was your conductor on that car?

A. James Stillaway.

30

## CROSS EXAMINATION

BY MR. TAYLOR:

Q. Mr. Irons, you are at the present time employed by the company, aren't you?

A. Yes, sir.

Q. You were running across this bridge at about the usual rate, I suppose?

40

A. Yes, sir.

## George W. Irons — Cross

Q. And in fact, that is about the rate that you run from Sixteenth Avenue, Belmar, to Asbury Park, isn't it?

A. Yes, sir.

Q. Will you be good enough to tell me what is your time between Cookman Avenue and Main Street, Asbury Park, to Belmar, Sixteenth Avenue?

A. Twenty minutes.

Q. And the mileage is about two miles and a half, is it? 10

A. I don't know about that, I couldn't say.

Q. Well, what do you think? Do you think it is about two and a half?

A. I ain't got any idea.

Q. You have often discussed that, haven't you?

A. No, sir; never discussed it. I don't know anything of it. It might be five miles for all I know.

Q. Well, it is not less than two and a half, is it?

A. No, I won't know that it is; probably more. 20

Q. Now between Cookman Avenue, Asbury Park, where you start, and Sixteenth Avenue, Belmar, how many stops will you make on an average?

A. Well, I don't know about that; sometimes more than others. It is just according to how many people you have on the car.

Q. That is true. You will average, probably, ten or twelve stops?

A. Yes, maybe more than that.

Q. You will average fifteen? 30

A. Yes, probably twenty sometimes.

Q. But you will probably average about fifteen, won't you?

A. No, not all the time. Sometimes you will go all the way through there and not make a stop.

Q. But your average is about fifteen, isn't it?

A. I couldn't say about that.

Q. You always stop at Sylvan Avenue?

A. Yes.

Q. Lincoln Avenue? 40

## George W. Irons — Cross

A. Yes.

Q. And so your average stops will be about fifteen between the two places, won't they?

A. I don't know about that; might be ten; I couldn't say.

Q. Will they be ten?

A. I don't know how many they will be.

10

MR. CARTON: I object. I don't see the purpose.

(Objection overruled. Exception noted for defendant as ground of appeal.)

MR. CARTON: My reason, your Honor, is because it is what happened in other cases. How many times he stopped in this case on this trip is the only pertinent question.

20

THE COURT: The witness testified he was going at the same average rate of speed that he usually went. He is probably testing out that.

Q. Now how many stops will you make on an average between —

A. I don't know; probably ten, probably twelve. I don't know how many.

30

Q. Now for one to slow down, for a motorman to slow down to take on a passenger and let one off, or the average slowing down, taking on the average number of people and starting up again to get your eight miles an hour, will take thirty or forty seconds each time, will it not?

A. Well, I don't know about that either. I never timed myself how long it takes to make a stop; sometimes longer than others. Sometimes people will be a good while getting off, sometimes a good while getting on; sometimes take a minute or two.

40

Q. That is absolutely right, Mr. Irons?

A. I don't know about that.

## George W. Irons — Cross

Q. Certainly you don't, but it will average twenty or thirty to a stop, won't it?

A. Probably it will.

Q. Probably average about forty seconds?

A. I wouldn't say. I don't know about that.

Q. Well, it will average thirty seconds, won't it?

A. Yes; sometimes not over ten or twenty, sometimes more; just slack down and people get on.

Q. When you leave Cookman Avenue and Main Street you are usually about three minutes late leaving there, aren't you? 10

MR. CARTON: I object. I can't see any point.

THE COURT: No, I don't think it makes any difference, the running time.

MR. TAYLOR: My only object is this. He has testified they were running about their usual speed that day. 20

THE COURT: I will allow that question. You may show what his schedule is and what he usually does. Now whether he is late is another matter.

MR. TAYLOR: I want to show what their custom is, to get in Belmar about three minutes ahead of time and leave Asbury Park about three minutes late, and if they made this number of stops. 30

THE COURT: Find out whether he did that day, whether he was late that day.

Q. Do you remember the time you left Sixteenth Avenue, Belmar.

A. No, sir; I don't know what time it was that day.

Q. Do you know whether you were late or not?

A. No, sir; I wasn't late. I was on time.

Q. You were on time? 40

## George W. Irons — Cross

A. I don't know what time I left, whether it was late when I left Sixteenth Avenue or not, but I know I was on time at the south end of the bridge.

Q. But had you left there about three minutes, as you usually did, Sixteenth Avenue?

A. I don't know about that. We don't usually leave there late.

10 Q. The Sixteenth Avenue cars don't?

A. This was a through car. There are four cars goes through.

Q. Now you say that your time is twenty minutes?

A. Yes, sir.

Q. You average about a dozen stops, each one of which takes thirty seconds?

A. I don't know how long it takes. I never timed myself.

20 Q. Which brings you down to fourteen minutes, the time between the two places. Now will you kindly tell me how you could have been running at an average speed of eight or ten miles an hour and made your time if those things are so?

A. Well, it is only about one-fourth of the way to Asbury Park, from Sixteenth Avenue to the north end of Shark River bridge.

Q. That is absolutely so; but you said you were running the same speed there that you averaged.

30 A. Those cars won't run only just so fast. They won't run over eight or ten miles an hour, the best you can.

Q. I asked you your average time. You can't explain it, can you?

A. No, I can't tell you something I don't know.

Q. You say that you saw Mr. Hubbard when he was about 90 feet away, didn't you?

A. I judge that; yes, sir.

Q. And you saw the automobile what, clear the other side of the bridge?

A. No, I didn't see the automobile.

40 Q. Am I mistaken?

## George W. Irons — Cross

A. Yes.

Q. What did you say?

A. I said the trolley car on the opposite side of the switch. I didn't say anything about an automobile.

Q. And you continued to see Mr. Hubbard until the time he was struck?

A. Yes, sir.

Q. And you saw that if he continued in the direction that he was going and you continued without stopping that there would be an accident, didn't you? 10

A. Well, I know, but he didn't keep on going the direction he was going.

Q. Answer the question only.

A. I think that is answering it. He didn't go straight ahead. He turned around this way.

Q. All right, Mr. Irons. You saw Mr. Hubbard when he stopped?

A. He didn't stop. 20

Q. All right, then. We will take that back. You saw Mr. Hubbard when he started directly west across the tracks, didn't you?

A. Yes, sir.

Q. You saw Mr. Hubbard when he turned west to cross the tracks, didn't you?

A. Yes, sir.

Q. And when he turned west he was about five feet from the track?

A. Yes, sir. 30

Q. And you realized that if he continued across that track without stopping and you continued this car straight ahead there would be an accident, didn't you?

A. I didn't think anything about it. I didn't have time to think. When your car is five feet away you ain't got time to think. You know, Mr. Taylor, these cars are 28 feet long and weigh about ten tons. You can't stop one of them in four or five feet.

Q. Those brakes on that car were a bad brake, weren't they? 40

## George W. Irons — Cross

A. No, sir; the car was working good that day.

Q. The car was working good that day?

A. Yes, sir.

Q. Had a good rail too, didn't you?

A. Yes, sir.

Q. Did you make any signal to Mr. Hubbard when you saw him going in the direction of the track?

10 A. Why, sure. I rang the bell with my heel.

## BY THE COURT:

Q. Have you any idea how far your bell can be heard?

A. No, I don't know about that. I couldn't say. I suppose——

Q. Never mind if you don't know. I only asked you.

A. No, I don't know.

20

## BY MR. TAYLOR:

Q. Now after Mr. Hubbard was struck how far did you carry him before stopping?

A. 18 feet.

Q. About 18 feet?

A. Yes, sir.

Q. And then how did you stop your car, with the hand brake or the reverse?

30 A. With the reverse.

Q. And do you mean to tell us that you can't stop the car with the reverse on in less than 18 feet distance, going five miles an hour?

A. Well, I don't know. I can't. Maybe there is other people that can take a heavy car. They will slide eight or ten feet before they will stop with the reverse, even if you have got a dry rail.

40 Q. Mr. Irons, do you remember testifying in the former trial?

## George W. Irons — Cross

A. Yes, sir.

Q. I want to call your attention to some of this testimony: "Q. When you saw this man going in a direction where he would have to cross the track why didn't you stop the car before? A. Because I didn't think there was any use." Did you testify to that before?

A. I think I did.

Q. "Q. You thought he was probably going to stop and get on the car?" 10

A. That is just what I thought.

Q. That is just what you thought?

A. Yes.

Q. That is just what I am getting at. "A. Sure, that is exactly what I did think."

A. Yes, you would think so too.

Q. You testified to that, didn't you?

A. Yes.

Q. Now if you had anticipated that Mr. Hubbard was going to cross the track would have stopped, wouldn't you? 20

A. If I could.

Q. Well, you would, wouldn't you?

A. Well, I did stop.

Q. Well, you would have stopped before hitting him?

A. I couldn't have stopped any quicker than I did stop. 30

Q. You saw him all this distance going in that direction?

A. Yes. I didn't know whether he was going to cross the track or stop and get on the car.

Q. But if he continued going to the north he would have to cross the track, wouldn't he?

A. If he kept on going straight ahead, yes, but he didn't.

Q. A very short distance?

A. He would have to get 25 feet to the switch before he crossed the track. 40

## George W. Irons — Cross

- Q. No, about 10 feet, isn't it, if he had been in a northwesterly direction?
- A. No, it is 25 feet to that switch, easy.
- Q. As a matter of fact what you thought was he was going to get on your car?
- A. Yes.
- Q. That is a regular stop to let off passengers?
- 10 A. Yes, and take on.
- Q. And the railroad company discharges passengers there to go across and down to the river?
- A. Yes, sir.
- Q. And where Mr. Hubbard was here is where passengers do go, where they leave the cars to go down to the river?
- A. Yes, sir.
- Q. Cross right over there?
- A. Yes, sir.
- 20 Q. You knew it is for that, that is a crossing for passengers there?
- A. Sure; stop and pick them up every day, and do since, just yesterday and the day before.
- Q. And in the summer time there are thousands of people get off there and that cross down there, aren't there?
- A. I don't know about that.
- Q. From your car?
- A. From my car.
- Q. You have seen lots of them get off?
- 30 A. Yes, in the summer time and in the winter as well.
- Q. And they get off down there?
- A. Yes, sir.
- Q. Cross there where Mr. Hubbard was here?
- A. Yes, sir.
- Q. Now you said that you thought he was going to get on the car, didn't you?
- A. Yes, sir.
- 40 Q. Now had you anticipated that he was not going

George W. Irons — Cross

to get on the car but was going to cross the track you could have stopped, couldn't you?

A. No, sir; I couldn't stop any quicker than I did stop.

Q. If you had supposed ——

A. I didn't have time to suppose.

THE COURT: Wait till the question is asked.

10

A. Anything that comes out in front of you four or five feet from the car, you ain't got time to think.

THE COURT: Just wait till the question is asked.

Q. When you were 20 feet away from Mr. Hubbard and saw him going in this direction, if you had then supposed that Mr. Hubbard was going to cross the track you could have stopped without hitting him, couldn't you?

20

A. Yes, 20 feet away.

Q. Did Hubbard make any signal as though he was going to get on the car?

A. No, sir.

Q. But you supposed Hubbard was going to get on the car?

A. Yes, sir.

Q. Therefore when you were 20 feet away you didn't try to stop, did you?

30

A. Of course I slacked up to make a stop for him to get on.

Q. If you had seen him 18 feet away and had supposed he was going to cross the track you could have stopped, couldn't you?

A. No, I didn't have time to think.

Q. You didn't have time to think?

A. No, sir.

Q. And that is just as a matter of fact how this accident happened, you didn't think, did you?

A. Of course I didn't think. I didn't suppose he was

40

## George W. Irons — Cross

going to cross the track, nor you wouldn't either.

Q. But if you had supposed he was going to cross the track you could have stopped?

A. I could have stopped back in the middle of the bridge, of course.

Q. And you could have stopped much nearer the accident than the middle of the bridge, couldn't you?

10 A. No, sir.

Q. You testified in the former trial that you took a chance, didn't you?

A. I think I said so.

Q. And as a matter of fact that is what did happen, you took a chance; isn't it?

A. Well, I don't know whether you would call it a chance or not.

Q. What do you call it?

20 A. I thought of that thing since. I think he is the one that took a chance, to cross the rail without looking.

Q. You took a chance of his getting on your car, didn't you?

A. Yes.

Q. And you said if you hadn't taken any chance the accident wouldn't have happened?

A. No, I don't think I said that.

Q. What did you say?

A. I don't know just what I said.

30 Q. I call your attention to this testimony: "Q. Did this man give you a signal that he was going to stop? A. No, sir. Q. You saw him running in that direction and guessed he was going to stop? A. Yes. Q. You guessed wrong, didn't you?"

A. He was not running. That is not right.

Q. "Q. You guessed wrong, didn't you? A. Yes.

Q. And it resulted in the crippling of this man, didn't it?

A. Yes, sir." Is that former testimony true or not? Did you testify that way in the former trial?

40 A. That is just what I said, yes.

## George W. Irons — Cross

Q. And as a matter of fact that is just how the thing happened, isn't it, just as this came there?

A. Why, sure, that is the way it happened. I ain't up here to tell no lies about it.

Q. I don't think you have. That is the reason I am trying to get at it. But sometimes we don't understand one another.

BY THE COURT:

10

Q. I would like to know where you usually stopped at this place. Where did your car stop when it made the stop?

A. Right by the pole.

Q. Was the car beyond the pole, to the north or south?

A. To the north. There was one standing about 30 feet up the track. You see there are two tracks comes into the single track into the switch, and here is the track about 35 or 40 feet from the switch, here, and this car stood about here on the southbound rail.

20

Q. Won't you turn to the map and tell us where your car usually stopped to take on passengers?

A. Here is where we stopped, right here by this pole. The front part of the car goes down here towards this switch, and as near as we can we stop the rear end by that pole, for people most always stand by the pole to go out. We pull the front part down below the pole.

30

BY MR. TAYLOR:

Q. And that is right where Hubbard was hit?

A. Yes, sir.

Q. Now when you came to the bridge, came to the south side of the bridge, you saw the car coming from the north standing on the switch waiting for you?

A. Yes, sir.

Q. And that car was on time?

40

## George W. Irons — Cross

A. I don't know about that.

Q. You were a little behind time, weren't you?

A. No, sir; I was right on my time. I was due at Lincoln Avenue, Avon, eight minutes past one, and this was about seven, because I looked at my watch.

Q. When did you look at your watch, just about the time of the accident?

10 A. No, sir; just about came on the bridge.

Q. Now as a matter of fact didn't you hasten the rate of speed of this car in order to make that meeting and not hold the other?

A. No, sir; no faster than I always did.

Q. You didn't anticipate that there was going to be any accident, did you?

A. No, sir.

Q. And you remember distinctly, though, having rung that bell 90 feet away from the trestle, do you?

20 A. Sure.

Q. And you also remember having rung it 40 feet away?

A. No, about 50, I think.

Q. And you are very certain of it that when you first rang the bell that you were about 90 feet away from that car?

30 A. I rang the bell where I saw them. I have certain places to throw off for them things, for the switches and curves; and when I saw them then is when I rang the bell; that is for the south end of that abutment on the bridge. I don't know how far it is.

Q. You are very certain that you were 90 feet away?

A. No, I am not certain that it was 90 feet.

Q. You testified so in your direct examination.

A. Well, I say it might be 90 feet, it might be more.

Q. It might be 150 feet?

A. I never measured it.

Q. It might be 150 feet?

A. No, I don't think it is that far.

40 Q. It might be 50 feet?

## George W. Irons — Cross

- A. Yes, it might be 50.
- Q. But do you remember distinctly ringing that bell?
- A. Yes, sir.
- Q. How many times did you ring it, Mr. Irons?
- A. Oh, I suppose four or five.
- Q. Four or five then at 90 feet?
- A. Yes.
- Q. You didn't anticipate any danger?
- A. No, sir. 10
- Q. There wasn't any unusual reason why you should ring it?
- A. No, sir.
- Q. Do you remember the day before the happening of this accident when you crossed the bridge?
- A. No, I don't remember anything about that.
- Q. You don't remember the day before?
- A. No.
- Q. Did you cross the bridge the day before?
- A. I sure did. 20
- Q. Do you remember crossing the bridge at about the same time the day before that you did the day that the accident happened?
- A. Yes, sir.
- Q. You remember that?
- A. Yes, crossed there every day at that time.
- Q. Will you please tell us where you first rang the bell the day before?
- A. I don't know that I rang it at all. I don't ring any only as I see somebody on the track or between the tracks. I don't stand there and pound the bell all the time. 30
- Q. You don't remember?
- A. No, I don't remember.
- Q. Whether you did ring it the day before.
- A. No, I couldn't tell you. I might not have rung it at all at that point.
- Q. But you didn't anticipate any danger this day and yet you rang it?
- A. Well, I saw people standing there and that is why 40

## George W. Irons — Cross

I rang it; just the same as if you were standing along the track or a woman or anything else.

Q. Do you remember testifying in the previous trial that the only reason why you remembered that you did ring it this day was that you always rang the bell?

A. No, I don't know about that.

Q. Well, did you testify to it?

10 A. I don't know whether I did or not. That has been too long ago. I can't remember those things, Mr. Taylor, not all of those things. Some of them I can recall and some of them I can't.

Q. Now, Mr. Irons, you passed several people and vehicles in Belmar close to the track, didn't you?

A. Yes, sir.

Q. Do you remember where you passed any there?

A. No, sir.

20 Q. Do you remember whether or not you rang the bell there when you passed those people?

A. Why, sure, I always ring the bell.

Q. Do you remember distinctly?

A. Yes, sir.

Q. You remember that you did pass people?

A. Yes, sir.

Q. You don't know where you passed them?

A. No.

Q. But you remember that you rang the bell?

A. Yes, sir.

30 Q. How many times did you ring it?

A. Oh, two or three, probably a dozen.

Q. Get down to how many times.

A. I can't tell you, Mr. Taylor, those things.

Q. You can remember distinctly ringing this bell but you can't remember the number of times?

A. I can't tell the number of times. I may be going along the street and you in an automobile, or a woman, I hit the bell two or three times, I don't know how many times.

40 Q. As a matter of fact isn't this it: that neither you

## George W. Irons — Redirect

nor I nor any one else can remember whether you rang the bell that day or not?

A. I could remember it, sure, because people was standing along the track there. That is the reason I remember it.

Q. You remember the people?

A. Sure, I remember the people standing there, and seeing Mr. Hubbard walking down. I didn't know who the man was at that time. 10

Q. You remember ringing that bell because those people were there?

A. Yes.

Q. That is the reason you say it?

A. Yes.

Q. Not that you remember the bell ringing yourself?

A. Sure, I remember the bell. I wouldn't say those things if I didn't remember them. If I didn't remember I would tell you so. 20

## REDIRECT EXAMINATION

BY MR. CARTON:

Q. Mr. Irons, how near was the front of your car to Hubbard when he turned to go across the track?

A. The front of the car was about, I suppose five feet, four or five feet. But you see the fender extends out there about three feet, and that would put him about two feet from the fender. 30

Q. And what effort did you make to stop the car when he was going west across the track?

A. Put on the brakes to slow up for him to get on. I supposed he was going to get on the car.

Q. Was there anything you could have done other than you did do to assist in stopping the car?

A. No, sir; there is not a man in the world could have stopped that car before hitting Mr. Hubbard, or any- 40

## George W. Irons — Redirect

thing else, because I was too close to him when he stepped on the rail. Everything was done in my power to stop the car.

BY THE COURT:

10 Q. How far did he get on the track, did he get over the rail?

A. He just got over the rail like that when the car hit him. (Indicating.)

Q. On the eastbound rail?

A. Yes, just stepped over the eastbound rail when the end of the fender struck him.

BY MR. CARTON:

Q. Did he fall eastward?

20 A. He fell eastward, and that throwed him on the east side, the eastbound rail of it; and the car coming along, the step caught his clothing in some way until the car stopped, I think 18 feet. We measured it. Mr. Hampton measured it with a rule. Then just as soon as the car stopped I jumped out and saw him under the step and we picked him up, me and the conductor, and I think Mr. Megill stood him on his feet and asked him if he was hurt and he said he was, he thought his leg was broken; and he said the best place for him to go was to the hospital. I asked Mr. Megill  
30 if he wouldn't take him and he said he would. And there was another fellow come down there from the other car — he lives in Seventeenth or Eighteenth Avenue, Belmar — anyhow I asked him if he wouldn't go with Mr. Megill to the hospital and he said he would. And they took him to the hospital in Mr. Megill's machine. That was the only thing that I did. I didn't know what to do with the man. Of course if his leg was broke I thought that was the place for him.

40 Q. In your cross-examination, describing the course of the car crossing the bridge and the sound of the gong,

## George W. Irons — Redirect

you made some reference to when you threw off. What did you mean by that?

A. Why, I threw the power off the car. You see we have a certain — or I do on all the curves and switches, certain places there and when you come to them when you are running nights it is a good thing to have. Some places on the road have a white ring on a pole probably 75 yards from the switch. That points to a man at night where your switches are. 10

Q. On this day how far south did you throw off?

A. I judge about 90 feet, maybe 100.

Q. And then coasted from there on in?

A. Yes, sir; coasted from there on in.

MR. TAYLOR: I object to this form of question.

THE COURT: That was not leading.

MR. TAYLOR: He says, "You coasted from there on in?" 20

THE COURT: That was leading.

Q. Did you turn your power on again before the accident or not?

A. No, sir; it just drifted right on it until she hit Mr. Hubbard.

Q. You say when passengers are standing along here you stop to let them on? 30

A. Yes, sir.

Q. You stop the front of your car there or the rear of the car?

A. The rear of the car. The passengers generally stand right by the pole.

Q. Is that where passengers get on your car, at the rear end?

A. Yes, sir; pull down so the rear end comes about opposite east of the pole. 40

James E. Stillaway — Direct

JAMES E. STILLAWAY sworn for defendant.

DIRECT EXAMINATION BY MR. CARTON :

Q. Mr. Stillaway, what is your business?

A. Why, at present I work for the telephone company.

10 Q. You were formerly a conductor on the trolley, were you not?

A. Yes, sir; at that time.

Q. Were you the conductor of the car on the day of this accident of Mr. Hubbard?

A. Yes, sir.

Q. Of which Mr. Irons was the motorman?

A. Yes, sir.

Q. How long had you been up to that time a conductor?

20 A. Why, about eleven years.

Q. Do you remember the date of the accident?

A. Why, I think March 25th.

Q. Do you remember when the accident happened?

A. As near as I can remember I think it was about March 25th.

Q. Well, you remember when you had this accident with Mr. Hubbard?

A. Yes, sir.

Q. You know there was an accident?

30 A. Yes, sir.

Q. Do you remember the progress of the car over the bridge prior to the accident that day, as to its speed?

A. Well, about — where do you mean, right at the place where the accident was, or close to it or how far away?

Q. No, what was your speed coming across the bridge, say, from Belmar up as far as the boat-house?

A. About eight miles an hour, I judge.

40 Q. Do you remember the speed of the car from that point on into the end of the pole, whether it went faster or slower?

James E. Stillaway — Direct

A. He reduced it down, I should imagine, to about five.

Q. And what speed do you say the car was going when it got to the end of the pole, the point of this accident?

A. Well, it was slowing down very slow then, where he always does, on account of that switch, to take the switch; have to go careful, you know, on the switch there.

Q. Is the switch but a short distance north?

A. Well, not very far; no, sir; it isn't.

Q. What have you to say about the sounding of any signal or anything as the car went over the bridge that day?

A. Well, he rang quite a number of bells, and one or two of them very sharp, as though he was trying to warn something.

Q. Where were those sharp bells given?

A. Right at the end of the bridge.

Q. Right at the end of the bridge?

A. Yes, sir.

Q. Do you know where he was prior to the ringing of this sharp bell, where he was when he gave a bell before that?

A. No, I didn't notice particularly before that. I couldn't go back much further.

Q. Where were you in the car?

A. The back platform.

Q. Standing on the back platform?

A. Yes, sir.

Q. Did you see Mr. Hubbard before the accident?

A. No, sir; I couldn't from there, because the platform is lower down than the ordinary floor of the car.

Q. Did you notice the putting on of the brakes suddenly after that?

A. No.

(Objected to as leading.)

THE COURT: Yes, it is very leading.

James E. Stillaway — Direct

MR. TAYLOR: I don't want to make myself obnoxious.

(Question withdrawn.)

Q. Do you remember the point where the accident happened?

A. Yes, sir; I remember that.

10 Q. Do you remember what Mr. Irons did with his car to stop it?

(Objected to as leading.)

THE COURT: Well, that is right.

MR. CARTON: There is only one thing he could do to stop it.

Q. Do you remember anything unusual?

20

THE COURT: What he did to stop it.

A. He did two things to stop it.

Q. What were they?

A. He put on the brakes and reversed.

Q. You know that, do you?

A. Yes, sir.

Q. Do you know how far the car went after that before it did stop?

30 A. Well, not over ten feet I judge. It would slide that far. Of course the car couldn't help it. He done all he could to stop the car, I vouch for that.

Q. Did you get out when the car stopped?

A. Yes, sir; just as soon as it stopped, I noticed it fetch up with a jerk and run up to see what the trouble was, and here was Mr. Hubbard laying under the step on the right of the rails here, and his feet —

Q. Where was he when you got out?

40 A. He laid under the steps and the bolts that went through the steps had kind of caught his shoulder and that

James E. Stillaway — Direct

kind of twisted him over like and I pulled him out.

Q. Was he on the east side of the rail?

A. Laying with his head towards the east, yes.

Q. The east side of the rail, was he?

A. The east side of the rail, that is right.

MR. TAYLOR: I have to make myself obnoxious, but every one of these questions is leading. 10

THE COURT: Yes, counsel will please not be leading. The questions have been leading.

Q. Tell me just where Mr. Hubbard was lying under the car with reference to the east rail of the trolley track when you got out.

A. Why, just like in under the front steps, with his head towards the east, and his feet in under the car like lengthways. 20

Q. Was he east or west of the west rail?

A. East of the west rail, yes, that is right.

Q. East or west of the east rail?

A. East; lying parallel with the rail, like, with his feet part over in between the two rails this way I described to you.

Q. And his body part where?

A. His body part on the east side of the east rail. 30

Q. Did you help get Mr. Hubbard out?

A. Yes, sir; that is what I did, help raise him up.

Q. And he was then taken to the hospital?

A. Yes. Mr. Irons didn't want — I asked how bad he was hurt, and then we kind of figured on the automobile taking him in and getting this other party to help and assist him to the automobile and then take him there.

James E. Stillaway — Cross  
CROSS EXAMINATION

BY MR. TAYLOR:

Q. Mr. Stillaway, do you remember whether or not the bell rang between Murphy's pavilion and Riggs' pavilion?

10

A. No, I don't.

Q. You don't remember whether it did or not?

A. No.

Q. And the first bell you heard, as I understand, was when you were quite close to the north end of the bridge? Here is the bridge in here and here is the trolley track. (Indicating on map.)

A. Yes.

Q. You were quite close to the north end of the bridge, is that so?

20

A. Yes, pretty close.

Q. Do you remember testifying in the former trial?

A. Oh, yes, part of it. Maybe I can refer to it. I don't know as I can go over every word for word.

Q. Do you remember what your testimony was concerning how the bell was rung and when it was rung?

A. Well, partly. Probably I could if I heard it again, I could refer to it; yes, sir.

30

Q. Do you remember this testimony, referring to page 114: "Q. Now how many times do you say the bell did ring between Murphy's pavilion and Riggs'? A. I wouldn't give you the exact count of time, but the bell when he rang it quite fast, you couldn't count them." Do you remember that?

A. Well, I don't remember saying that way, so fast, but I remember saying that I heard the bell ring along there, yes.

Q. Do you remember saying then that the bell did ring between Murphy's and Riggs'?

40

A. I remember saying something about that on the previous trial.

## James E. Stillaway — Cross

Q. Do you remember having said something about that?

A. Yes, he rang a bell somewhere along there.

Q. That is not what I asked you. I want an answer yes or no. Do you remember having testified in the previous trial that the bell rang between Murphy's and Riggs'?

A. I think I did something like that, yes.

Q. Now you remember having testified to that?

A. Yes.

10

Q. But you don't remember today whether it did or not?

A. That is quite a while back to remember. I don't remember word for word.

Q. You don't remember whether it did or not? Won't you then answer yes or no.

A. What is your question?

Q. Do you remember today whether the motorman rang the bell between Riggs' and Murphy's?

20

A. I imagine he rang it along there, yes.

Q. I don't want imagination.

A. I will say yes then.

Q. You do say yes now?

A. I imagine he did, as near as I can remember. I am telling you. It is quite a while ago.

Q. But you can't positively say yes then?

A. I can't positively recall every word I made in my other statement.

30

Q. You can't positively say yes or no; is that it?

A. I can't positively all that happened. Of course the point is where the man got hit, and the bolts were caught on the right shoulder. I remember that distinctly. But where the bells are given ordinarily, for ordinary signals, I couldn't say.

Q. Now you testified a moment ago that you didn't hear a bell rung until you were nearly off the bridge, didn't you?

A. What?

Q. You testified a moment ago that you didn't hear 40

James E. Stillaway — Cross      Michael Lavin — Direct  
the bell ring until you were nearly off the bridge.

A. That was the question put to me. I said yes, I did answer that way.

Q. You did testify to that?

A. Yes.

Q. Now you say that he rang between Riggs' and Murphy's, don't you?

10      A. I think I recall making the statement that way before. You were speaking about it.

Q. Is there any reason to change it today?

A. What?

Q. Is there any reason why you should not make the same statement you did before?

A. I didn't change it exactly, but I think it is in there. When you made that statement it came to me.

Q. Where were you standing on that day?

A. On the back platform.

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(Adjourned till January 24, 1918, at 9.30 A. M.)

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Freehold, N. J., January 24, 1918.

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(Trial of the cause resumed at 9.30 A. M.)

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MICHAEL LAVIN sworn for defendant.

30      DIRECT EXAMINATION BY MR. CARTON:

Q. Mr. Lavin, what is your business?

A. I am conductor now for the Atlantic Coast Electric Company.

Q. For the defendant company?

A. Yes, sir.

Q. How long have you been acting as motorman?

A. As conductor?

Q. As conductor.

40

A. About four months.

## Michael Lavin — Direct

- Q. Prior to that time were you a motorman?  
 A. Yes, sir.
- Q. Were you in the employ of the company as motorman in March, 1916, at the time of the Hubbard accident?  
 A. Yes, sir.
- Q. On the Belmar division?  
 A. Yes, sir.
- Q. Where were you that day? 10  
 A. I was about 75 feet from the switch, going south.
- Q. In a car?  
 A. Yes, sir.
- Q. Did you have charge of the so-called southbound car that was waiting at the switch?  
 A. Yes, sir.
- Q. Were you motorman on that car at that time?  
 A. Yes, sir.
- Q. What were you waiting there for?  
 A. Waiting for the northbound car to come on. 20
- Q. That was the car in charge of Mr. Irons?  
 A. Yes, sir.
- Q. When did you first see the northbound car that morning?  
 A. I seen him coming over when I came to the switch there waiting, about at Riggs' boat-house.
- Q. It was about at Riggs' boat-house.  
 A. Yes, sir. 30
- Q. Could you see it about at Riggs' boat-house where you were in your car?  
 A. Yes, sir; plain.
- Q. Where were you standing, right in front of your car, I suppose?  
 A. Yes, sir.
- Q. Did you observe the speed of the Irons' car, the northbound car, as it came over the bridge?  
 A. He was coming very slow.
- Q. How fast do you say it was coming towards you?  
 A. Oh, it might have been coming about ten miles an hour or eight miles. 40

## Michael Lavin — Direct

Q. About ten miles an hour, that is, at Riggs' boat-house?

A. Yes, sir.

Q. And did you observe whether any gong was sounded or not?

A. Yes, sir.

Q. Was a gong sounded?

10

A. Yes, sir.

Q. Where did you first hear the gong sounded?

A. I looked up and seen him coming.

Q. What do you say?

A. I looked up when he was coming, when he was ringing his bell, and I turned around and was talking to the conductor.

Q. When you heard that were you further north than where Mr. Hubbard met with the accident?

20

A. I was about seventy-five feet away from Hubbard, I should imagine.

Q. Did you observe the car as it proceeded further north, the Irons car?

A. I didn't bother paying any more attention to it.

Q. Didn't pay any more attention to it?

A. No, sir.

Q. Did you hear any further gong after it left Riggs' boat-house?

30

A. I heard a short gong. That is the one I turned around, and they were taking this man Hubbard out from underneath the fender.

Q. Heard a sharp gong just at the time of the accident?

A. At the time of the accident.

Q. You then didn't observe the car after it left Riggs' boat-house to the time of the accident?

A. No, sir.

Q. You say you were talking to the conductor?

A. Talking to the conductor about the time.

40

Q. You saw Mr. Hubbard after he was struck by the car?

## Michael Lavin — Cross

- A. Yes, sir.  
 Q. You didn't see him before he was struck?  
 A. No, sir.  
 Q. You didn't observe him at all?  
 A. No, sir.

## CROSS EXAMINATION

BY MR. TAYLOR: 10

Q. Mr. Lavin, where was the car when you heard the first gong sounded?

A. Why, it was about at Riggs' boat-house.

Q. How about that gong, is it very loud?

A. It is an iron gong, as I told you before.

Q. Well, is it very loud?

A. Loud enough.

Q. Loud enough? Do you remember what you did tell me before? 20

A. I do.

Q. Will you tell me what you said about the gong before, as to its power to be heard?

A. Why, I told you that a deaf man could hear it, it was an iron gong.

Q. You told me, I think, that a deaf man half a mile away could hear the gong.

A. I think I said a quarter of a mile, I ain't sure.

Q. You said then that a deaf man a quarter of a mile away could hear the gong? 30

A. Yes, sir.

Q. You don't believe that is really so, do you?

A. Well, you had me kind of excited when I made that.

Q. And you wanted to help the company out, didn't you, naturally?

A. No, I didn't want to help the company out one bit.

Q. Did you want to hurt them?

A. I just wanted to tell the truth. 40

## Hugh Finnegan — Direct

Q. Then you don't believe that the testimony you gave before was true, do you, so far as hearing this gong, a deaf man half a mile away hearing this gong?

A. Well, I exaggerated, I suppose.

Q. You exaggerated, yes, or else you were excited and made a misstatement; is that right?

A. I couldn't say.

10 Q. But at the present time you don't believe for one moment that this gong could be heard by a deaf man either a half or a quarter of a mile away, in spite of the fact that you so testified before, do you? You don't, Mr. Lavin, do you?

A. No, a deaf man couldn't hear it.

Q. Now, Mr. Lavin, the bell was rung at Riggs' boat-house?

A. As far as I can remember.

20 Q. And the next time you heard it was where the sharp clangs, which were evidently sounded immediately preceding the accident; is that so?

A. Yes, at the time he was — when they picked him up.

Q. Yes, immediately preceding the accident. And you didn't hear any other bells except those, the two occasions you have mentioned?

A. What I told you, yes; the same statement I made before.

30 HUGH FINNEGAN sworn for defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Mr. Finnegan, where do you live?

A. Long Branch.

Q. What is your occupation?

A. Lineman.

Q. Where are you employed?

40 A. I am working for Hedding & Company, over at Little Silver, now.

## Hugh Finnegan — Direct

- Q. Where were you on the 25th day of March, 1916?  
 A. On the trolley car.  
 Q. Were you on the trolley car that met with this accident of Mr. Hubbard?  
 A. Yes, sir.  
 Q. Proceeding from Belmar to Asbury Park?  
 A. Yes, sir.  
 Q. Where were you sitting in that car, if you were sitting? 10  
 A. Sitting on the right hand side of it.  
 Q. What is the arrangements of seats? Are they cross-seats or seats running lengthwise of the car?  
 A. They are cross-seats with an aisle in the center.  
 Q. Short two-passenger seats?  
 A. Yes, sir.  
 Q. And were you sitting on the east or west side of the car?  
 A. On the east side. 20  
 Q. That is the side nearer the wagon bridge?  
 A. Yes, sir.  
 Q. Do you remember the occasion of being on the car that day prior to the accident?  
 A. Yes, sir.  
 Q. Do you remember the course as it proceeded across the Shark River bridge, as to its speed?  
 A. It was going slow.  
 Q. What is your idea about slow? Would you wish to fix it in miles per hour, your estimate of its speed? 30  
 A. No, I don't think I can.  
 Q. All you can tell us it was going slow?  
 A. Going slow, yes, sir.  
 Q. Do you know whether any bells were sounded or not, any gongs?  
 A. Yes, sir.  
 Q. Do you know where the gongs were sounded, if they were sounded?  
 A. Well, between the boat-house and the end of the trolley bridge, when I first noticed the bell. 40

## Hugh Finnegan — Direct

Q. That is where you first noticed the bell?

A. Yes, sir.

Q. Did you notice any difference in the speed from the time it left the boat-house as it proceeded north?

A. Going slower.

Q. From where you were sitting in the car did you have a view forward outside of the car? Could you see outside of the car ahead?

10

A. Yes, sir.

Q. Did you see Mr. Hubbard before the accident?

A. Seen him standing by a pole.

Q. Was he standing by the pole?

A. Yes, sir.

Q. Where was the car when you first saw Mr. Hubbard standing by the pole?

A. Well, the car wasn't over thirty feet, when I first noticed him there.

20

Q. What did Mr. Hubbard do after he was standing there?

A. He walked towards the car.

Q. Did you notice whether he looked towards the car before he walked across or not?

A. No, I didn't.

Q. Did he look towards the car?

A. I didn't notice whether he looked towards the car or not.

Q. You didn't see it?

30

A. No, sir.

Q. You did see him start across in front of the car?

A. Yes, sir.

Q. When you saw him how far away from him were you? About thirty feet, did you say?

A. About thirty feet, with the car all together.

Q. And you had a clear view of him from where you were?

A. I was about four seats back on the car, sitting in the front.

40

Q. You could see him through the car windows?

## Hugh Finnegan — Cross

A. Yes, sir.

Q. Did you observe any change in the movement of the car?

A. Yes, sir.

Q. At about the time the accident happened?

A. Yes, sir.

Q. What was it?

A. Sort of a jar; fetched up quick.

Q. What did that indicate to you? 10

A. Well, bringing the car up quick, kind of jerked it.

Q. Was the car brought up suddenly?

A. Yes, sir.

Q. And stopped?

A. He pulled on the reverse and it kind of jarred the car and gradually rolled along until it came to a standstill. It was going slow.

## CROSS EXAMINATION 20

BY MR. TAYLOR:

Q. Were you sitting in the car, Mr. Finnegan?

A. On the right hand side.

Q. How far back?

A. About four seats.

Q. Do you remember the testimony you gave in the former trial? 30

A. Some of it; yes, sir.

Q. Do you remember saying that you were seven seats back at the former time? Yes or no, Mr. Finnegan.

A. I was just thinking. I don't remember whether I said four or seven.

Q. You may have been seven seats back, thought; that is so, isn't it?

A. Well, between four and seven.

Q. Yes, between four and seven. Now you say you first saw Mr. Hubbard about thirty feet away? 40

## Hugh Finnegan — Cross

A. Yes, sir.

Q. And also, I believe, that when you were thirty feet away Mr. Hubbard started to walk across the track?

A. Yes, sir.

Q. Started in a westerly direction across the track?

A. Yes, sir.

Q. When you were thirty feet away?

A. Yes, sir.

10 Q. Now where was Mr. Hubbard hit by the car?

A. Where was he hit?

Q. Yes, please.

A. In the front of the car.

Q. The car ran into him, did it?

A. Yes, sir.

Q. The car ran into him? Do you remember the testimony you gave in the former trial as to where he was hit?

20 A. He was hit by the side of the car.

Q. Do you remember testifying in a former trial that Mr. Hubbard ran into the side of the car? Do you?

A. No. He couldn't run into the side of the car.

Q. I refer to page 123. "Q. No, how far was the car away from the man when he stepped out? A. He was right in front. Q. The car was in front of him? A. Yes.

Q. Then you mean to say that he ran into the side of this car? A. Yes, sir. Q. In other words, Mr. Hubbard ran into the side of the car? A. Yes, sir. Q. That is quite

30 enough." Do you remember giving that testimony?

A. Well, the corner of the car would be at one side of the front of the car also.

Q. You remember giving that testimony?

A. On the side of the car, but not in the middle of the car.

Q. You say he ran into the side of the car, do you not, in this testimony?

A. On the side of the front.

40 Q. No, you don't say on the side of the front, you say on the side of the car, don't you? Isn't that the fact?

## Alexander Brewer — Direct

A. Yes, sir.

Q. That he ran into the side of the car?

A. Yes, sir.

Q. Now you testify that the car ran into him, don't you?

A. Well, they both was met in the accident, both met together.

Q. Naturally two things have to meet for an accident. Do you think you were mistaken now in that former testimony and that what really happened was that the car ran into him when he was in front of the car, as you have just testified?

10

A. The way you put it to me.

Q. Isn't that the way it really happened?

A. The way you put it to me.

Q. Well, as it really happened?

A. He ran in front of the car.

Q. And the car ran into him, didn't it?

20

A. Yes, sir.

Q. And you were mistaken or confused or something when you said he ran into the side of the car in the former trial?

A. Yes, sir.

---

ALEXANDER BREWER sworn for defendant.

DIRECT EXAMINATION BY MR. CARTON:

30

Q. Mr. Brewer, where do you reside and what is your business?

A. Avon-by-the-Sea. Business?

Q. Yes.

A. At present Standard Oil Company.

Q. Employed by the Standard Oil Company now?

A. Yes, sir.

Q. How long have you lived in the Avon vicinity?

A. Pretty near three years now.

40

## Alexander Brewer — Direct

Q. Are you familiar with the location of where this accident happened at the north end of the Shark River bridge?

A. Pretty well; yes, sir.

Q. Familiar with the situation of Shark River?

A. Yes, sir.

Q. Been clamming and fishing down there, have you?

10 A. Been clamming, yes, sir.

Q. Were you on the scene of this accident the day the accident happened?

A. Near it, yes, sir.

Q. Where were you?

A. At the north end of the bridge.

Q. The wagon bridge?

A. The wagon and walk bridge combined, you know.

Q. What were you doing or what had you been doing that day?

20 A. I came from up to the house to go down — I am not sure where I was going — I was going over towards Belmar somewhere. I am not sure where I was going or what I was going for.

Q. Did you see Mr. Hubbard there?

A. Yes, sir.

Q. Did you see Mr. Megill's automobile there?

A. Yes, sir.

Q. Where was Mr. Megill's automobile located?

30 A. At the north end of the foot-bridge and wagon bridge near the pole at the end there.

Q. Do you know where the rail is located that runs from the end of the foot-bridge to the pole?

A. That guards the foot —

Q. The guard-rail.

A. That guards the foot-path?

Q. Yes.

A. Yes, sir.

Q. And about at what point along that guard-rail was his automobile placed, as you recall?

40 A. Well, there was only the —

## Alexander Brewer — Direct

Q. If the map will help you any you may look at it.

A. Well, I don't know as I understand it.

Q. Well, this is the street here, that is the wagon bridge and that is the foot-bridge; this is the north end of the rail, of this guard rail that comes down to the pole here.

A. The automobile stood facing this pole here, I don't know how many feet from it, I didn't really notice.

Q. Facing the pole at the south end of the guard-rail, the north end of the bridge? 10

A. Between the drive bridge and the walk bridge, this pole here.

Q. And it was on this side of the roadway, I suppose-

A. On the west side?

Q. The west side of the roadway?

A. Yes, sir.

Q. Where were you located?

A. About northeast of the back of the automobile.

Q. About northeast of that? 20

A. I should imagine about northeast.

Q. Did you see Mr. Hubbard there? Mr. Hubbard, the gentleman that was hurt, you saw him, did you?

A. Yes, I saw Mr. Hubbard.

Q. And before he was hurt?

A. Yes, sir.

Q. Did you see him proceed anywhere from Mr. Megill's car?

A. I did; yes, sir.

Q. Tell us what you did see him do. 30

A. He passed on the east side of me, starting about north, I imagine.

Q. Starting from Megill's car?

A. Yes, sir.

Q. And what course did he pursue?

A. I think about north.

Q. Did he proceed along the guard-rail?

A. Well, at that time he wasn't very close to the guard-rail, because he had to kind of go around.

Q. He was out in the street from the guard-rail? 40

## Alexander Brewer — Direct

- A. Yes, sir.
- Q. Did he start to leave the Megill car from the east side of the car?
- A. Yes, sir.
- Q. And did you observe him as he went towards the track?
- A. Not after he passed me at that point.
- 10 Q. When he passed you was he north of Megill's car?
- A. About northeast of Megill's car, I should think.
- Q. Northeast?
- A. Yes, sir.
- Q. And had he yet reached the north end of the guard-rail or the pole?
- A. No, sir.
- Q. And you were proceeding towards Belmar, I suppose?
- 20 A. I was standing still.
- Q. And you didn't see him after he went to cross the track?
- A. I did not, no, sir.
- Q. Now did you observe this car as it came up from Belmar?
- A. Yes, sir.
- Q. Where did you first see it?
- A. Well, I don't know what the distance was, but it was just about passing Riggs' boat-house or a little bit
- 30 past.
- Q. Passing Riggs' boat-house?
- A. Yes. I don't know how far that might be.
- Q. Could you see the car coming up on the bridge down as far as Riggs' boat-house from where you stood in the street?
- A. Yes, sir.
- Q. What attracted your attention to the car as it approached?
- A. The bell, the gong.
- 40 Q. Did you hear a bell sounded?

Alexander Brewer — Direct

A. Yes, sir.

MR. TAYLOR: I object to that as leading. He said, "Did you hear a bell?"

MR. CARTON: I said what attracted his attention to the car.

(Testimony repeated.)

10

THE COURT: The first question is all right. The second question may be stricken out.

Q. Well, after your attention was directed to this car by the sounding of the bell did you observe it after that?

A. Not until it got up nearly opposite me.

Q. Now when your attention was directed to the car by the sounding of the bell when it was down about opposite Riggs' boat-house, at what speed was it going, in your judgment?

20

A. About eight to ten miles an hour, not over that, possibly less.

Q. When did you next observe the car, either see it or hear it?

A. When it was very near opposite where the automobile stood, the end of the wagon bridge.

Q. When it was about at the end of the wagon bridge?

30

A. Yes, sir.

Q. That is the north end of the wagon bridge?

A. Yes, sir.

Q. What have you to say concerning its speed when it passed the point, whether it was running faster or slower than it was down at Riggs' boat-house?

A. It was going slower.

Q. How fast do you say it was going at that point?

A. I suppose about four or five miles an hour, not over that.

40

Alexander Brewer — Direct

Q. Did you hear the bell, any further bell?

A. Not just at that time, but a trifle later.

Q. Where was the car when you heard the bell later?

A. Well, I didn't see the car, I heard the bell. I suppose it was near the end of the guard-rail.

10 THE COURT: Never mind what you suppose.

Q. Well, it had then gone by you north, I suppose?

A. Yes, sir.

MR. TAYLOR: If your Honor please, now I don't want to be —

THE COURT: Yes, the question is leading.

20 Q. Was the car north or south of you when you heard the bell?

MR. TAYLOR: I object. I think that question should be where was the car, on the north or south?

THE COURT: It had to be either one or the other, didn't it?

30 MR. TAYLOR: Yes, but where was the car in relation to you?

MR. CARTON: If my question is not objectionable I prefer putting it my way.

THE COURT: The question may stand.

A. A little bit north.

Q. What did you do after you heard this bell, anything?

40 A. No, I simply turned around, that is all.

## Alexander Brewer — Cross

Q. What did you see if anything when you turned around?

A. The car was stopped.

Q. You saw the car stopped, you say?

A. The car had stopped.

Q. Had the accident happened then?

A. Yes, sir.

Q. Did you go to the scene of the accident?

10

A. Shortly afterwards, walked over that way.

Q. Did you see Mr. Hubbard?

A. Yes, sir.

Q. Did you help to relieve him?

A. No, sir; I didn't, because there were several others had hold of him.

Q. Where was he when you got to the scene of the accident?

A. A little in front of the front trucks, under the side steps of the running-board.

20

Q. On the east side of the car or the west side of the car?

(Objected to.)

THE COURT: Yes, which side of the car?

Q. Which side of the car was he?

30

A. The west side of the car, or the east side of the car, I should say.

## CROSS EXAMINATION

BY MR. TAYLOR:

Q. Mr. Brewer, here is the fence. The street extends from here to here. (Indicating on map.) Will you please point out on that map — here is the highway bridge. Will you point out on that map where you were standing when you first saw the car, please?

40

## Alexander Brewer — Cross

A. The automobile was standing faced to this pole.

Q. Faced to that pole? All right.

A. I was standing in this direction.

Q. You were standing in that direction?

A. Yes, sir.

Q. Where was Mr. Hubbard?

A. Mr. Hubbard was standing up here and turned  
10 around.

Q. Here is where they cross, you say?

A. Yes, but Mr. Hubbard, the last I saw of him,  
passed around here and over that way.

Q. Turned over this way?

A. Yes, sir.

Q. Where did you last see him? Where was he with  
relation to that map? Point out here.

A. A little bit northeast of me.

Q. I am not asking you northeast of you nor south-  
20 west of you; I am asking where he was on that map.

A. That is a pretty hard question to ask me, where he  
was on that map.

Q. Well, you say he was northeast of you or you  
northeast of him?

A. Yes, sir.

Q. Right then about —

THE COURT: Does the witness know the scale of the  
map?

30

Q. The scale is 10 feet to an inch.

A. I can't tell you the distance. I can only —

Q. Can you point out relatively where he was there?

A. No, I can't.

Q. Can you point out where you were?

A. Not exactly.

Q. Well, can you point out nearly where you were?

A. Well, I can tell you —

Q. Were you over here? (Indicating on map.)

40 A. No, certainly not.

## Alexander Brewer — Cross

- Q. Where were you then?
- A. If I was over here I couldn't be over here.
- Q. That is just what I want, where you were. Point out where you were about.
- A. About?
- Q. Yes.
- A. Well, if I get out of the way — I was about here.
- Q. About there? 10
- A. That is ten feet to the inch?
- Q. Ten feet to the inch.
- A. Well, I will say about there. (Indicating.)
- Q. And you were facing Belmar?
- A. Yes, sir.
- Q. Going towards Belmar?
- A. Yes, sir.
- Q. And Mr. Hubbard was northeast of you, you testified, didn't you?
- A. At the one time when he passed me. 20
- Q. When he passed you?
- A. Yes, sir.
- Q. And then after he passed you where did he go?
- A. He went up north, I suppose.
- Q. You don't know?
- A. He was headed that way.
- Q. You didn't see him?
- A. No, sir. 30
- Q. All you know is he was headed north when he passed you?
- A. Yes, sir.
- Q. That is all?
- A. Yes, sir.
- Q. Where was the car when you first heard a bell?
- A. Opposite Riggs' boat-house.
- Q. About opposite Riggs' boat-house?
- A. Yes, sir.
- Q. Where was it when you next heard a bell?
- A. Well, I can't say certain; at the end of the guard-rail, but I wasn't looking that way at that time. 40

## Alexander Brewer — Cross

- Q. But you don't know as a matter of fact?  
 A. No, sir.
- Q. What experience have you had in judging the speed of cars, etc.?  
 A. Well, more from the time it takes to go from one town to another.
- Q. That is your method of judging the time it takes?  
 10 A. From walking alongside of a car, gives an idea how fast it is.
- Q. How fast does a man walk on an average?  
 A. About three or four miles an hour.
- Q. Now the fact is that there are high spans between the foot-path and the highway bridge, are there not?  
 A. Yes, sir.
- Q. And those spans are all iron or steel?  
 A. Iron, I suppose.
- Q. And they are so high as a matter of fact that a  
 20 man standing over here can't see over them?  
 A. He can see through them, though.
- Q. Can see through them?  
 A. Yes, sir.
- Q. What means have they of supporting those spans?  
 A. What means?  
 Q. Yes.  
 A. There is nothing but an iron railing that supports them and holds them.
- Q. An iron railing?  
 30 A. Yes, sir.
- Q. And the end of the span runs down to the street, doesn't it?  
 A. The end of the span; yes, sir.
- Q. And there are positions from the main street here in which you couldn't see the car from the position; you could have got in such a position?  
 A. I doubt but what I could have seen it from one position to the other.
- 40 Q. You could see through the steel span?

## Alexander Brewer — Cross

A. You could see around them from one end to the other.

Q. If you happened to be in a position, that is what I am saying, you can see around them; but there are positions you couldn't see them. I don't say you stood in such a position, but there are, aren't there?

A. I hardly think that there could be.

Q. Mr. Hubbard's head when he was under the car was in what direction? 10

A. He was nearly taken out, of course, when I saw him. It was east.

Q. His head was east?

A. It was east when I saw him.

Q. He was nearly taken out at that time?

A. Yes, he was nearly out.

Q. What had you done, gone on towards Belmar?

A. No, sir; turned around. 20

Q. Then you mean to say that this gong had sounded, the car had stopped and they had nearly taken him out by the time you saw him?

A. Yes, sir.

Q. And yet you were then how many feet back of him?

A. I didn't measure the distance.

Q. Well, you seem to know distances at times. Were you twenty feet away from him? 30

A. Might be twenty feet, might be thirty feet.

Q. It may be twenty or thirty feet, not over thirty; is that so?

A. Well, it could be over, but I don't think so.

Q. All this happened, people got off the car, the gong sounded loudly and the man nearly taken out from under the car before you saw it; was that so?

A. Yes, sir. 40

Alexander Mullen Recalled — Direct  
ALEXANDER MULLEN recalled for defendant.

DIRECT EXAMINATION BY MR. CARTON:

- Q. Mr. Mullen, you live in Avon?  
A. Yes, sir.
- 10 Q. I think you said yesterday you lived there for a number of years?  
A. Yes, sir.
- Q. And you are familiar with the location where this accident happened?  
A. Yes, sir.
- Q. How long have you been familiar with that situation there?  
A. Well, a long while; ever since there has been a road there, pretty near, the trolley road.
- 20 Q. Do you hold any official position in Avon?  
A. Yes, sir.  
Q. What is it?  
A. Superintendent of the Borough, Street Superintendent.
- Q. And have your duties as Superintendent of Streets brought you to this point frequently?  
A. Frequently; yes, sir.
- Q. Has there been any change in the contour of the street and the bridges or roadway there in the past three years?  
30 A. No, sir.
- Q. Did you at my request some days ago go to the scene of this accident with a view of examining the situation and making certain observations?  
A. Yes, sir; Monday.  
Q. Monday, two days ago?  
A. Yes, sir.
- 40 Q. Are you familiar with the map back of you, Mr. Mullen? Look it over. Did you make any observations or views from any point shown on this map?

## Alexander Mullen Recalled — Direct

A. Well, here where Mr. Hubbard — I was informed Mr. Hubbard went on the track, an observation we made

(Objected to.)

Q. No, not that.

THE COURT: Just tell us in reference to that map where you stood to make an observation. 10

A. Right here at this pole.

Q. Which side of the pole?

A. I stood both sides of the pole.

Q. Where did you make the first observation from?

A. On the east side.

Q. On the east side of the pole, about how far east from the pole?

A. About four or five feet. 20

Q. And the pole you have reference to now is the pole at the northerly end of the guard-rail, isn't it?

A. Yes, sir.

Q. When you made an observation at this point you have now indicated what vision did you get from there?

A. Well, I could see the car the length of the bridge and further.

Q. Looking south?

A. Looking south.

Q. How far across the bridge could you see it? 30

A. Well, I could see a car clear from Sixth Avenue, before it came on the bridge.

Q. You mean Sixth Avenue in Belmar?

A. Yes, sir.

Q. Standing at that point?

A. Yes, sir.

BY THE COURT:

Q. How far is that away? 40

Alexander Mullen Recalled — Direct

A. One block from the bridge.

BY MR. CARTON:

Q. That is one block in Belmar?

A. South of the bridge.

Q. I think Mr. Throckmorton said the bridge was  
10 820 feet long.

THE COURT: There is no evidence now.

MR. CARTON: No, I think Mr. Throckmorton did. I think the jury may recall I put him back and I think he gave the distance of Kling's boat-house and the length of the bridge. I think the record will show about 800 odd feet.

20 THE COURT: All right.

Q. What is there from this point, what did your vision meet with from the point where you were southward when you saw this car down toward Belmar? Tell us what the rails are or what the barriers there are if anything.

A. Well, there is nothing there on the west side of the guard-rail, which is about from four to four and a half feet, I think — I never measured it — but I imagine it is about that.

30 Q. How far does the guard-rail extend southerly across the bridge at that height?

A. It goes the length of the bridge.

Q. Where are the trusses that have been referred to on the wagon bridge?

A. The trusses are on the east side of the foot-walk.

Q. The east side of the foot-walk?

A. Yes, sir.

Q. Is that on this line? This is the wagon bridge.  
40 (Indicating on map.)

## Alexander Mullen Recalled — Cross

A. Well, the trusses are on the east side and the guard-rail is on the west side.

Q. Did you make an observation from any other point on this map?

A. Just on the inside of that pole.

Q. The pole on the extreme north end of the guard-rail?

A. Yes, sir.

Q. What do you mean by the inside, the east or west side of it?

A. The west of the pole, between the pole and the track.

Q. How near to the pole were you?

A. Well, about a foot of the pole. The pole, as I remember it, was about four feet from the track.

Q. Did you take a view southward from that point?

A. Yes, sir.

Q. And what did you see from that point?

A. Straight down the track.

Q. How far over the bridge did you see?

A. Clear over.

Q. Anything from that point to obstruct your view?

A. No, sir.

10

20

## CROSS EXAMINATION

BY MR. TAYLOR:

30

Q. You said that you are Street Superintendent of Avon?

A. Yes, sir.

Q. Do you thoroughly understand that map and the positions you pointed out?

A. Yes, sir.

Q. And in its relation to the street?

A. Yes, sir.

40

## Alexander Mullen Recalled — Cross

Q. As a matter of fact this is Belmar on this side, isn't it?

A. No, sir.

Q. What is that there?

A. That is Avon.

Q. Where is Main Street in Avon? Point it out on that map.

10 (Witness indicates.)

Q. Point it out again, please. Here is the fence, Kling's boat-house and there is Kling's platform, etc.

A. Well, this makes a little curve here, and the tracks go in the middle of the street here.

Q. Are they on the street here?

A. Well, you might call it on the street. I think it is not used for a street now, but it is really the street.

Q. It is really the street?

20 A. Yes, the street goes in a straight line and the track makes a curve, goes out in the middle of the street.

Q. That fence is the west boundary of the street, isn't it?

A. No, sir.

Q. What is the west boundary of the street?

A. The west boundary of the street is over here.

Q. It is west of that fence even?

A. West of that fence.

Q. Then Kling's boat-house really is in a part of the street?

30 A. Part of it; yes, sir.

Q. And the trolley tracks are on the street?

A. Oh, yes.

Q. Let me ask you, do you remember when Mr. Brower repaired and replanked the bridge?

A. Yes, sir.

Q. In the summer of 1916?

A. Yes, sir.

Q. Was that subsequent to the happening of this accident?

40 A. That I don't know.

## Alexander Mullen Recalled — Cross

Q. Wasn't it in July or August that Mr. Brower repaired it?

A. No, sir.

Q. When was it?

A. If I remember right it was in March.

Q. Or April?

A. March or April, in the spring.

Q. And do you remember whether this part marked "Fence" ever had been decayed and that he put in a new fence at that time? 10

A. No, sir.

Q. Don't remember?

A. No, sir; no fence put in there.

Q. Were you down there frequently at that time?

A. From the time of that, because I figured in opposition to Mr. Brower on the contract.

Q. And you say there was no new fence put in there because you didn't figure for a new fence; is that so? 20

A. Well, there was no — you readily see there was no fence there and there hasn't been.

Q. Do you know what view you could have obtained on the day of the happening of this accident to the south had there been an automobile as close to that fence?

A. The automobile was here this day. (Indicating on map.)

Q. No, I ask you if this automobile had been close to this fence, down near the pole, do you know what view you could have obtained on the day of the accident? 30

A. I still saw outside of the automobile, not standing out here, but standing on the line of the pole.

Q. If you had been in the next track you could have seen?

A. That wouldn't have been in the way. Standing out here it would.

Emelius M. Beutell — Direct

EMELIUS M. BEUTELL sworn for defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Mr. Beutell, what is your business?

A. I am Collector for the Borough of Neptune City at the present time.

10 Q. Do you live in the Borough of Neptune City?

A. Yes, sir.

Q. Do you hold any other official position there?

A. Not that I know of just now, that I can recall.

Q. Where is Neptune City with relation to Avon, the place of your residence?

A. Why, it is west of the New York and Long Branch Railroad, right opposite Avon.

Q. And on the north side of Shark River?

A. Yes, sir.

20 Q. How long have you lived in that vicinity, Mr. Beutell?

A. I guess I have lived there twelve years anyhow, ten or twelve years.

Q. Are you familiar with the street and bridge, trolley tracks, at the north end of the Shark River bridge?

A. Yes, as I have seen them going back and forth to Belmar.

Q. And have you been back and forth by there a number of times in the past twelve years?

30 A. Yes, sir.

Q. Did you recently with Mr. Mullen and Mr. Bowles examine the location there?

A. Yes, sir; Monday before, last Monday.

Q. What was the purpose of your examination? What views did you take if anything?

A. Why, we viewed the trolley bridge south from the north end of Shark River bridge, or from the north end of the trolley bridge looking south.

40 Q. Refer to the map, Mr. Beutell, and see if you recognize the lay of the land there.

## Emelius M. Beutell — Direct

A. Yes, sir; I do.

Q. Explain from what point you made observations.

A. Made one observation right to the west of that pole, stood there.

Q. That is the pole at the north end of the guard-rail?

A. Yes, sir; and made an observation off here to the east side of it; made those two observations.

Q. The observation to the east side of the pole, about how many feet east was it? 10

A. Why, that was about ten feet from the east rail of the trolley company to that pole.

Q. About how many feet east of the pole would that make it?

A. Make it about four to five feet.

Q. Will you indicate on the map there as near as you can the point that you stood from which you made your observation? 20

A. Well, we made two.

Q. The one now east of the pole.

A. Well, it was about say ten feet from that pole out here, right about there. (Indicating on map.)

Q. And did you take a view therefrom?

A. Yes, sir.

Q. What could you see?

A. I could see right over across the top of this guard-rail and right south towards Riggs' boat-house out here.

Q. And how high is the rail that you refer to? 30

A. Why, as near as I could judge about four feet.

Q. Anything to obstruct your view, or did anything obstruct your view there?

A. No, sir; there is nothing to obstruct the view outside of that there guard-rail that was along the west of the foot-track.

Q. And that guard rail, you say, in your judgment, was about four feet high?

A. Yes, sir.

Q. And did that obstruct your view? 40

## Emelius M. Beutell — Cross

A. It did not obstruct my view to see the trolley car coming.

Q. Could you see the trolley car coming over the bridge at that point?

A. Yes, sir.

Q. How far down?

A. I could see from that point all the way to Belmar.

10 Q. You could?

A. Yes, you could see it.

Q. Did you take an observation from another point?

A. Just east of that point — or not east, west of it.

Q. East of the pole?

A. Yes, about one foot from the trolley track.

Q. And what view did you get from that point?

A. From there I could get a clear view of the full trolley track right into Belmar.

20

## CROSS EXAMINATION

BY MR. TAYLOR:

Q. Mr. Beutell, the first observation, I understand you were about ten feet east of this pole?

A. No, sir.

Q. What did you say?

30 A. I said ten feet east of the track, the trolley rail.

Q. Ten feet east of the track?

A. The east rail; yes, sir.

Q. How tall are you, Mr. Beutell?

A. I don't know now. I used to be five feet ten.

Q. About five feet ten?

A. Yes, sir.

40

Edwin W. Bowles — Direct

EDWIN W. BOWLES sworn for defendant.

DIRECT EXAMINATION BY MR. CARTON:

Q. Mr. Bowles, where do you reside and what is your business?

A. Asbury Park.

Q. What is your business?

10

A. Real estate.

Q. How long have you lived in the vicinity of Asbury Park?

A. Since 1875.

Q. Did you have anything to do with any work in the vicinity of the north end of Shark River bridge for the past two or three years?

A. Yes, sir.

Q. What was it?

A. Laying electric conduits from Bradley Beach to Shark River bridge. 20

Q. Are you familiar with the location of the streets and the railroad tracks?

A. Yes, sir.

Q. The sidewalk on the bridge there?

A. Yes, sir.

Q. When did you do that work?

A. The fall of 1916.

Q. Have you been there since to make any observations of the situation there? 30

A. Last Monday.

Q. Were you there two days ago with the last two witnesses?

A. Yes, sir; last Monday.

Q. And did you examine the situation and take views?

A. Yes, sir.

Q. Where did you take a view from, your first view?

A. Well, you mean the position I was in?

Q. Yes. You may refer to the map if you can and indicate where you stood. 40

## Edwin W. Bowles — Direct

A. Well, the first view I was fifteen feet from the trolley track.

Q. East or west?

A. East. The second view —

Q. And with regard to the pole at the end of the rail where were you?

A. I was a little north of that, just slightly north.

10 Q. Will you look upon the map and see if you can indicate about where that was? This is the rail and this is the pole.

A. Fifteen feet from this track here, east.

Q. Fifteen feet east?

A. Yes, sir.

Q. And did you take a view south from that point?

A. From that point; yes, sir.

Q. What could you see upon the trolley track?

A. Entirely across the bridge.

20 Q. Across the bridge?

A. Yes, sir.

Q. Did you observe this rail, the rail on the west side of the foot-path?

A. Yes, sir.

Q. What sort of a rail is that?

A. Why, it is a rail made of plank, and then a top railing on top of it a little over three feet high.

Q. In your judgment about how high?

A. About three feet six, I think.

30 Q. Did you take a view from any other point?

A. Yes, sir.

Q. Where were you then?

A. A point here ten feet from the track also.

Q. The second view was ten feet from the track?

A. Yes, sir.

Q. Would that get you east of the pole?

A. Yes, sir; practically opposite the pole.

Q. What view could you get from there?

A. The same view, across the bridge.

40 Q. Did you take another view

## Edwin W. Bowles — Cross

- A. Down here at the track.
- Q. How far east of the track?
- A. Two feet, I think it was.
- Q. And you took a view south towards Belmar from there?
- A. Yes, sir.
- Q. And what could you see?
- A. Across the bridge here to Fifth Avenue, one block south. **10**
- Q. Anything to obstruct your view at all?
- A. No, sir; clear view.

## CROSS EXAMINATION

BY MR. TAYLOR :

- Q. You say that you are a real estate operator? **20**
- A. Yes, sir.
- Q. Have you an office in Asbury Park?
- A. I have my headquarters in Mr. Burroughs' office.
- Q. Are you in attendance every day, Mr. Bowles?
- A. Practically every day, when in town.
- Q. You say that you were laying conduits there at this point in 1916?
- A. I was foreman for Mr. Giberson, Harry Giberson. **30**
- Q. That was subsequent to the time of the happening of the accident?
- A. Yes, sir.
- Q. And you don't know anything about that fence, etc., at the time of the happening of this accident, do you?
- A. No, I was not there.
- Q. How tall are you, Mr. Bowles?
- A. Five feet ten or eleven.
- Q. You have seen Mr. Hubbard here?
- A. Yes, sir.
- Q. Stand opposite him or close to him?
- A. Yes, sir. **40**

## Motion For Direction

Q. You are taller than Mr. Hubbard by three or four or five inches, aren't you?

A. Well, I should judge I was some taller than him.

Q. Well, how much, some four or five inches, probably?

A. Probably that. I wouldn't say how much.

10 Q. You didn't testify as to laying those conduits the last time, Mr. Bowles, did you?

A. I was not asked that question.

Q. You were not asked that?

A. I didn't volunteer anything.

Q. But you were asked what means you had of knowing the situation and location down there, weren't you?

A. Possibly. But then I would know that situation on account of the number of times I have crossed that bridge.

Q. But you didn't mention this particular fact?

20 A. No, sir.

Q. That was an oversight or something of that kind?

A. Oversight of the lawyer.

---

BOTH SIDES REST

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## MOTION FOR DIRECTION

30 MR. CARTON: Your Honor, I want to make an application for a direction. I want to base my ground for the direction of a verdict for the defendant at this time on the same grounds I advanced for the motion for nonsuit at the end of the plaintiff's case and suggest that in addition to that there is now the further ground for a direction in view of the evidence of the defendant's witnesses: that there is not open a mooted or disputed question as to the negligence of the defendant company. There is no question, as I view the evidence, from which his negligence can be

40 imputed to the defendant company. And if the negligence

## Motion For Direction

has not been shown on the part of the defendant company there could be no-recovery.

Further, on the question of contributory negligence, if there were any question about it at the time of the resting of the plaintiff's case it seems to me that it has been entirely cleared up now and there cannot be any other legal conclusion drawn than that this plaintiff was guilty of contributory negligence. With the map in evidence and with these photographs which your Honor has seen it does not seem to me that any other argument, your Honor, should be necessary other than the producing of this photograph which shows the locus in quo and shows it clearly; and if it can be said that a pedestrian going from Main Street in the Borough of Avon west across the track could be struck by a trolley car without being guilty of contributory negligence I do not think such contention could be made. 10

Now in addition to that there is the evidence of these three men who have gone there, who have examined this situation, and on both the east and west sides of this telegraph pole, at the north end of the rail, they have told that a view can be had all the way across the Shark River bridge; and of course that is entirely obvious. There is no other conclusion; because this is but a four foot rail, and any one standing here anywhere here at this point, within ten or fifteen feet from it, fifteen feet, as Mr. Bowles says, you can see all the way over into Belmar. 20 30

I am not going to take up any time in discussing the evidence, your Honor. I submit that this is a court case; this is a case in which the question of contributory negligence is not in dispute. No other legal conclusion can be drawn other than this defendant from his own testimony, all the testimony in the case, is guilty of contributory negligence, and that there should be a direction of a verdict.

THE COURT: Doesn't he say that he only saw seventy feet down the track when he looked?

MR. CARTON: When Mr. Hubbard looked I think he said he looked fifty or seventy feet. 40

## Charge of the Court

THE COURT: Isn't that a question of fact for the jury?

10 MR. CARTON: I don't think so, your honor. With all the evidence in this case I don't think so. Because my answer to that is, if he could not have seen further he should have seen further, and if he did not see further he did not look further, he did not look at all.

THE COURT: Isn't that a question for the jury?

20 MR. CARTON: I don't think so, your Honor, not in view of all the evidence in the case, and I do not think so, when he was some four or five feet from the track, when he went upon this place of known danger without ever looking further, which he says is the fact, I think he is clearly guilty of contributory negligence on that point, after he took his view down the track fifty or seventy feet, or whatever it was.

THE COURT: I will refuse your application. It seems to me there is a jury question presented here.

(Objection noted for defendant as ground of appeal.)

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 CHARGE OF THE COURT:

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Gentlemen of the jury: On March 25, 1916, the plaintiff brought some clams by boat to a point on the Shark River near the Shark River bridge, in the Borough of Avon. He delivered these clams to a person who had an automobile standing on Main Street, near a railing which extended in a northerly direction from the north end of the bridge over the river. In order to reach this auto he had to cross the track of the defendant company near the north end of the bridge over which the trolley track crosses Shark

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River. The bridge on which the trolley crosses the river

## Charge of the Court

is a separate structure from the bridge used by vehicles and pedestrians, although they are side by side and less than six feet apart.

After the plaintiff had delivered the clams and had stood by the automobile talking with the purchaser a short time he started across the trolley track for the purpose of returning to his boat. He says that he walked along Main Street in a northerly direction east of the railing and then continued for a distance of about ten feet beyond a telegraph or telephone pole which was the end of the rail. He then stopped and looked to the north and saw a car come to a stop on a switch; he then looked to the south; he could see, he says, some distance — as I recall, he thought about seventy feet; but you will remember his evidence and will take what he said on that subject and not my remembrance of the testimony. He then started to cross the track, seeing no car, but before he was fully over he was struck by a car going north operated by the defendant company and injured.

The plaintiff claims that about the place where the accident occurred persons were in the habit of crossing the trolley track for the purpose of going to and coming from a boat-house and that the defendant company was in the custom of stopping its cars at this point to receive and discharge passengers.

The defendant does not deny that an accident occurred on the day in question or that the plaintiff was injured, but it claims that the accident was not caused by its negligence and also claims that even if the accident was caused by its negligence the plaintiff was guilty of what the law terms contributory negligence and therefore cannot recover for any injuries which he received.

The mere fact that the plaintiff was struck by a trolley car operated by the defendant and injured will not of itself entitle the plaintiff to recover, even if the injuries sustained by him were of a serious character. In order to entitle this plaintiff to recover it must appear by the evidence that the accident was caused by the negligence of

## Charge of the Court

10 employee of the defendant company who was operating the car, or that it was due to some defective condition of the car which was or should have been known to the defendant, and that the plaintiff was not guilty of contributory negligence. There is no evidence in this case that the accident was due to any defect in the car. So unless the employee of the defendant who operated this car was negligent and the accident was caused by such negligence there could be no recovery by the plaintiff. Was there such negligence, is the question for you to determine.

20 This accident occurred on a public street. The defendant had the right to operate this car upon its tracks laid for that purpose, and the plaintiff had the right to cross the trolley track to the place where his boat was located. It is a general principle governing the relation of a trolley company to the traveling public that their respective rights in a public highway must be exercised by each of them with due regard to the rights of the other in a reasonable and duly careful manner. A trolley has no supreme right to the use of a public street, and its cars cannot be run at a rate of speed incompatible with a lawful and customary use of the highway by others with reasonable safety. It was the duty of the defendant company, through its servants in control of this car, to use reasonable care to avoid colliding with persons crossing its tracks. If it did that it would not be liable.

30 You have heard the evidence as to how the car was operated and what notice if any was given of the approach of the car, and what the motorman did when he saw the plaintiff. It is important for you to decide where the car was when the plaintiff started to cross the track, how far away from that place, and whether the motorman could have stopped the car in time to have avoided the collision after the plaintiff started to cross the track.

40 If you find that the accident was not due to the negligence of the defendant's employee in operating this car your duties are ended and your verdict should be for the defendant; for the liability of the defendant in this case

## Charge of the Court

rests entirely on the negligent operation of the car; and if the car was not operated negligently there should be no recovery.

But if you find that the accident was caused by the negligent operation of this car you must go a step further and determine whether the plaintiff was guilty of what is known in law as contributory negligence; that is, did the plaintiff by his own act contribute to the accident? If he did he cannot recover, even if the defendant was also negligent. In considering this question you will have to determine from the evidence just what the plaintiff did before he started to cross the track. The plaintiff was bound to use reasonable care in crossing this track to avoid being struck by a car, such precaution and care as a reasonably prudent man would use under like circumstances. The plaintiff was about to cross a place of danger and it was his duty to use his power of observation before crossing the track. If he did not do so and was struck while crossing the track he cannot recover, even if you find the accident was caused by the negligence of the defendant.

The plaintiff says he looked and did not see any car approaching. You should consider where he was when he looked, whether there was any rail, poles or other parts of the bridge or structure that would have prevented the plaintiff from seeing a trolley car if he had looked in the manner he said he did. Did he act as a reasonably prudent man would have done under like circumstances?

Justice Hendrickson, in delivering the opinion of the Court of Errors and Appeals in the case of Fitzhenry vs. Consolidated Traction Company, said in reference to an accident which occurred to a person in crossing a trolley track, among other things, as follows: "When the plaintiff attempted to cross defendants' tracks at a quick pace, as she did, either in front of the car which she saw or by rushing heedlessly into danger without looking, acted in such entire disregard of her duty that there is room but for one opinion, and that is that she was guilty of contributory negligence."

The evidence in this case, gentlemen, is conflicting,

## Charge of the Court

and you are the sole judges of the testimony. It is not what counsel may remember the witnesses have sworn to; it is not what the court may recall the testimony has been; but what you, the gentlemen of the jury, sworn to try this case, remember what the witnesses have said on the stand. You are the sole judges of the credibility of the witnesses. You may consider in that connection whether they are interested or disinterested, whether they have told a different story on some other occasion, and all the other circumstances of the case; and from all the facts presented determine what credence you will give to the story told by the different witnesses.

10 If you find the plaintiff is not entitled to a verdict it will not be necessary for you to consider the question of damages. But if your decision is that the plaintiff is entitled to a verdict, then you will have to decide the amount of such verdict. The plaintiff is entitled, if entitled to any sum, to an amount which will compensate him for the damages he has sustained by reason of this accident — nothing more, nothing less. He can recover no greater sum because the defendant is a corporation than he could if the defendant was an individual. He cannot recover exemplary damages, only such sum as will compensate him for the damages sustained by this accident. That is your duty to decide, if you allow him anything. But the law determines the elements which enter into the damages you may award. The plaintiff, if entitled to anything, should receive compensation for the pain and suffering he has undergone and may still be obliged to undergo by reason of this accident. There is no rule which I can lay down by which you can fix this sum at so much per day or so much per week; but you as reasonable men, selected from the County of Monmouth to try this case, after considering all the evidence on the subject and the probabilities of the plaintiff's future condition, should determine what would be a reasonable sum to compensate him for the pain and suffering. He is also entitled, if entitled to anything, to be compensated for any money he has expended or become liable to pay out in endeavoring

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## Charge of the Court

to be cured of his injuries; and for all wages and profits he may have lost and may lose in the future by reason of the injuries he has received in the accident. You cannot guess at the amount, but must be governed by the evidence presented to you in this case. He is also entitled, if entitled to anything, to be compensated for any permanent physical disability which he may have suffered as the result of this accident; not any permanent physical disability which may have resulted from some other cause, but from such physical disability as is the direct result of this accident. The sum of these items should be the amount of your verdict if you find for the plaintiff.

10

There has been a motion to nonsuit the plaintiff and a motion to direct a verdict, which have been decided against the defendant. But that does not indicate in any way how you should decide the case. The decision of those motions was simply the decision of the court that in this case there are questions of fact to be left to you, and that this was a case which you should determine, not how you should determine the case. That is solely your province, to decide and determine from the evidence.

20

I have been requested by plaintiff to charge you on certain principles of law, which I will dispose of.

1. That the jury shall take into consideration that the tracks at this crossing are single tracks and it is a question for the jury to consider whether or not the plaintiff acted as a prudent man should act, in observing as he did.

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I so charge you, gentlemen.

The second I charge as modified.

2. It was the duty of the motorman, in view of his testimony that he saw the plaintiff, to ring his bell before reaching the crossing in time to put the plaintiff on notice of the approach of the car, if he had reason to believe the plaintiff was about to cross the track.

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## Charge of the Court

3. That the weight of testimony does not mean the greatest number of witnesses, but a preponderance of evidence of witnesses who actually saw the accident.

I so charge you.

The fourth request I refuse to charge except as I have charged.

10 Now, gentlemen, after considering all the evidence, if you find that the accident was due to the negligence of the defendant's employee in operating this car, and that the plaintiff was not guilty of contributory negligence, your verdict should be for the plaintiff for a sum computed in the way and manner which I have indicated. If, however, you find the plaintiff has failed to establish his case by a preponderance of the evidence — and the law is that the plaintiff must establish his case by a preponderance of the testimony — that the accident was not due to the negligence of the defendant, or if you find the plaintiff contributed  
20 to the accident by his own negligence, even if the defendant was also negligent, then your verdict should be for the defendant. Consider the case carefully, gentlemen, and then render such verdict as you find the evidence will warrant you, applying the rules of law which I have laid down for your guidance.

(The request of the plaintiff which was refused by the court was as follows:)

30 4. That the proximity of the railing to the tracks and the trolley poles on the bridge are to be taken into consideration as to whether or not the plaintiff acted prudently.

Notice of Appeal

NEW JERSEY SUPREME COURT

CALEB T. HUBBARD,

vs.

ATLANTIC COAST ELECTRIC RAIL-  
WAY COMPANY

Action at Law.  
Notice of Appeal.

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TO STEWART A. FARRELL, Attorney of Plaintiff.

Dear Sir:

TAKE NOTICE that the Atlantic Coast Electric Rail-  
way Company, body corporate, defendant, appeals to the  
Court of Errors and Appeals in the last resort in all causes,  
from the whole of the judgment entered in this cause,  
February 15, 1918.

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DURAND, IVINS & CARTON,

Attorneys of Atlantic Coast Electric Railway Company,  
Defendant-Appellant.

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## Grounds of Appeal

## NEW JERSEY COURT OF ERRORS AND APPEALS

10	<p style="text-align: center;">CALEB T. HUBBARD, Plaintiff-Respondent,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">ATLANTIC COAST ELECTRIC RAIL- WAY COMPANY, Defendant-Appellant.</p>	} Action at Law. Grounds of Appeal.
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The following are the grounds of defendant's appeal in the above stated cause :

- 20           1. Plaintiff's evidence showed that the accident complained of was due to the negligence and want of care of plaintiff, that he was negligent, and his own negligence contributed to the injury, and defendant's motion for nonsuit should have been granted.
- 30           2. Plaintiff's evidence showed that he did not use such precaution and care for his safety as a reasonably prudent man would use under the circumstances, in attempting to cross the defendant's track, and defendant's motion for nonsuit should have been granted.
3. Plaintiff's evidence showed that he did not use his powers of observation to discover whether there was a car or cars approaching on defendant's track at the point where he was about to cross, but was careless and negligent and omitted his duty in this respect, and defendant's motion for nonsuit should have been granted.
- 40           4. Plaintiff's evidence showed that he did not make any proper or effective observation of plaintiff's tracks, for the purpose of discovering whether there was a car or cars

## Grounds of Appeal

approaching the point at which he was about to cross defendant's tracks, but was negligent in this respect, and defendant's motion for nonsuit should have been granted.

5. Plaintiff's evidence failed to show that the accident was the result of negligence or want of care on the part of the defendant, or defendant's agents or employees, and defendant's motion for nonsuit should have been granted.

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6. The evidence in the case shows that the accident complained of was due to the negligence and want of care of the plaintiff, to the contributory negligence of plaintiff and defendant's motion for direction of verdict for the defendant should have been granted.

7. The evidence in the case shows that the accident complained of was not due to or the result of any negligence or want of care on the part of the defendant or any of its agents or employees, and defendant's motion for direction of verdict for the defendant should have been granted.

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8. The evidence in the case shows that at the point of collision there is a clear and unobstructed view of defendant's track for over eight hundred feet, and that if plaintiff had used his powers of observation he would have discovered defendant's approaching car and avoided the accident, and defendant's motion for direction of verdict for the defendant should have been granted.

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9. The evidence in the case shows that if the plaintiff had made any proper observation before attempting to cross defendant's track, he would necessarily have seen the approaching car on defendant's track, and thus avoided the accident, and defendant's motion for direction of verdict for the defendant should have been granted.

10. The evidence in the case shows that the plaintiff did not use such precaution and care for his safety in attempting to cross defendant's tracks as a reasonably prudent man would use under the circumstances, and defend-

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## Grounds of Appeal

ant's motion for direction of verdict for defendant should have been granted.

II. The evidence in the case shows that the plaintiff did not make any proper or reasonable observation before attempting to cross defendant's track, and defendant's motion for direction of verdict for the defendant should have been granted.

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Dated March 14, 1918.

DURAND, IVINS & CARTON,

Attorneys of Defendant-Appellant.

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# New Jersey Court of Errors and Appeals

## ~~New Jersey Supreme Court~~

### ~~MONMOUTH COUNTY~~

CALEB T. HUBBARD,  
Plaintiff-Respondent,

~~Plaintiff~~

vs.

ATLANTIC COAST ELECTRIC RAIL-  
WAY COMPANY,

Defendant-Appellant. ~~Defendant~~

Action at Law.

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### BRIEF FOR APPELLANT

This action was twice tried in the Monmouth County Circuit Court, first in January Term, 1917, resulting in a verdict for plaintiff, which was set aside by this court on the ground that the plaintiff was guilty of contributory negligence, and that it was error for the trial court not to have granted defendant's motion to non-suit the plaintiff, or direct a verdict for defendant, (Hubbard v. Atlantic Coast Electric Railway Company, 102 Atl., 632); and it was again tried in January Term, 1918, when the plaintiff again had a verdict, which is now before this court on defendant's appeal.

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The action was brought to recover for personal injuries sustained in an accident, which occurred March 25, 1916, while plaintiff was crossing Main Street, directly north of the Shark River bridge, in which he was struck by a trolley car operated by defendant company.

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The bridge over Shark River, and between Belmar on the south and Avon on the north, is a wagon bridge 881 feet long, with a roadway 20 feet wide on the east side and a foot path 7 feet wide on the west, with an open railing on the extreme west of the bridge, 3 feet 5 inches in height; 5 feet 5 inches west of this bridge is the separate bridge

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used by the Trolley Company, which is an open bridge without any railing.

At the north end of the guard rail of the foot path of the wagon bridge a fence extends to a telegraph pole, a distance of 41 feet. The accident happened just north of this fence and telegraph pole.

10 The grounds for reversal are: That the accident was due to plaintiff's negligence and want of care, that his conduct was not that of a reasonably prudent man concerned for his personal safety, (Case, p. 156), and that the evidence failed to show any negligence or want of care on the part of the defendant company or its employees.

Plaintiff was a clammer, and had engaged to sell some clams to a Mr. Megill, who came for them in his automobile. His statement of the occurrence is:

20 "I landed at the boat house dock, came up the steps and on the platform and across the trolley tracks and the wagon bridge. His car was right along the bridge fender, facing south. I was familiar with the bridge and railroad, had lived around there for the last 20 years. There is a fender running from the bridge out to a telegraph pole, a distance of about 25 feet. The automobile was right up close to the railing, and the back part of the automobile was very near back to the telegraph pole, which is about 3 feet from the trolley track.

30 I carried the clams across the track, three or four times, and loaded them. He started up his engine, but he didn't start the car yet, and I started back around the automobile to go back across the track and get down to my boat, northwesterly. After I left the automobile I looked up and I saw a car coming from the north, and it was still moving, and I walked on until within, I judge, about 4 or 5 feet from the track, I stopped, I judge it was 10 feet or such a matter past the end of the telegraph pole.

40 Well, I looked north, I saw this car, and I

waited to make sure that the car had stopped there, you know, before I crossed, and then I looked south, and as I looked south I looked back again, and I saw that car had stopped on the switch, and I went on across and was hit."

And he said further, that when he looked south he could see, as near as he could tell, 40 or 50 feet. (Case, p. 33-34.)

On cross-examination he testified that he traveled far enough to get beyond the car and the pole, about 10 feet. He said:

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"I went in a northwesterly direction toward the track. I walked in a northwesterly direction. When I was within 4 or 5 feet of the tracks I stopped, and I saw this car. I just stopped and hesitated, you know, and I looked north and I saw this car coming. I didn't know whether it was going to stop or not on the switch." He said: "I looked north and saw this car coming — I saw this car coming, it was running slowing up, and I knew it was going to stop at the switch, the car going south. Just then I seen that car was stopped, or about stopped. I looked south, I didn't see any car — I didn't see any car coming, and I walked on across and was hit." (Case, p. 52.)

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We quote from page 56:

Q. Mr. Hubbard, no one is trying to trip you or anything of the kind. I understood you to say, and we have asked the question a good many times, as Mr. Taylor has suggested, but I understood you to say when you were within three or four feet of the track at that point you stopped and looked south. Now I ask you if you made another observation south after you started from that point.

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A. You don't say anything about as I answered the question. I tell you when I got there I looked north first.

Q. But we are by that. You told us that.

40

A. And then I looked south. I didn't see any car and I started straight across.

Q. Without making any further look?

A. Yes. I wouldn't stand there all day and look.

Q. Why didn't you look when you got up within three feet of the track to see if there was anything coming?

A. Well, I didn't think it was necessary.

10

Q. Well, a car came along and struck you, didn't it?

A. Yes.

Q. Why didn't you look when you got within two feet of the track?

A. I don't know why I didn't, but I didn't."

Plaintiff's testimony on the second trial varies considerably from his evidence given on the first trial.

He there testified, on his direct examination:

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"I looked south first, I didn't see anything. I then looked north and I saw a car approaching the switch. I saw the car coming from the north toward the switch. I didn't know whether it was going on over or whether it was going to stop on the switch, but as soon as the car stopped I then proceeded to cross the tracks from the east to the west; they usually do stop at the switch, but as soon as the car stopped I then proceeded to cross the tracks from the east to the west." (Case, p. 60.)

30

And on cross-examination testified as follows:

"Q. Then you started to go around the back of the car to go north?

A. I started north around the car.

Q. On the east side of this automobile, and then you approached the trolley track?

A. Yes, sir.

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Q. And I understood you to say you were only about five feet from the track and you looked south?

A. Yes, sir.

Q. Did you see any car coming?

A. No, sir.

Q. Just describe how you looked when you were within five feet of the track.

A. Well, I looked south, I didn't see any car. I just turned and looked north and I saw a car approaching the switch, and I kept my eye on that car.

Q. Until it stopped? 10

A. Until it stopped, and then I proceeded across the track.

Q. Then you went across the track?

A. Yes, sir.

Q. How near the end of the switch was this car north that you were looking at, how far was it from the point where it stopped when you first saw it?

A. Well, I couldn't say. It wasn't long in motion, I know, before I seen it stop. I couldn't tell just how far it was from the switch when I saw it coming towards the switch, and it wasn't in motion long before it stopped. As soon as it stopped I started to go across. I seen it wasn't coming on." (Case, p. 61-62.) 20

and attempted to explain the change in his statements, by the statement that he must have been mistaken when he testified in the first case.

The plaintiff in testifying in this case has endeavored to avoid the charge of lack of precaution for his safety, apparent in his evidence on the first trial, but notwithstanding his entire change of front and effort to change his testimony to avoid the charge of negligence, he still fails to show that at the time of the accident he used such precaution and care for his safety, as a reasonably prudent man would use under the circumstances. 30

The plaintiff was very familiar with the location of the street, the bridge, trolley tracks, and surroundings, and of 40

the movements and frequency of the trolley cars. He had been around the locality for over 20 years.

Both the highway and trolley bridges are open, affording an open view their entire length of over 800 feet, and into Belmar.

10 From plaintiff's statements, he walked north, and when he got to a point within about 4 or 5 feet of the trolley tracks, about ten feet north of the pole, and near on a line with the pole (Case, p. 51), he says: "I looked north first, and then south, and could see south about 40 or 50 feet." If, when he looked south he could see but 40 or 50 feet down the track, his view was obstructed by the telegraph pole he was behind and on a line with, or his glance was so casual or indifferent that he did not get a view of the track. There was no crowd, he was alone, upon familiar ground, knew of the frequency of the trolley cars, of the practice of passing at that point, was well acquainted with all the surrounding conditions. The approach and stopping of the south-bound car at the switch was notice and warning to 20 him of the near approach of the north-bound car, and his failure to see when he looked south, beyond 40 or 50 feet down the track, demonstrates that he did not look so as to make his looking and observation effective. His attention was diverted or his mind absorbed by some other object or purpose than watching for an approaching trolley car, or looking to see if there was any object that would interfere with his safe passage over the track. His statement, that when he looked south he saw a distance of but 40 or 50 feet, shows that his look was the merest casual glance in a 30 westerly direction, and not in a southerly direction down across the bridge.

This court, in commenting upon plaintiff's testimony in the former case, said:

40 "The plaintiff was familiar with the location of the streets, the Shark River bridge, and the line of the trolley tracks; he had lived in the neighborhood for the last 22 or 23 years; the track was comparatively straight at that point for a consid-

erable distance. We think his conduct was not that of a reasonably prudent man concerned for his personal safety and that is the measure of his duty. He must use his powers of observation before crossing a trolley track which is a place of danger. The observation required before crossing the tracks of a street railway has been under discussion in many cases in this court, and in the Supreme Court, of which the following are illustrative: *North Hudson County Ry. Co. v. Flanagan*, 57 N. J. Law, 698, 32 Atl. 216; *Jewett v. Paterson Ry. Co.*, 62 N. J. Law, 424, 41 Atl. 707; *Gilliland v. Middlesex, etc., Tract. Co.*, 67 N. J. Law, 542, 52 Atl., 693; *Harrison v. Camden, etc., R. R. Co.*, 74 N. J. Law, 252, 65 Atl., 868."

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The testimony of defendant's witnesses, Mullen, Beuttell and Bolles (case, p. 134, 140, 143), which is uncontradicted, and is corroborated by the photographs offered by defendant, proves conclusively that from a point at either side, or anywhere in the immediately locality of the telegraph pole, looking south, they could see the entire length of the bridge, and could see a car clear from 6th Avenue, Belmar, before it came on the bridge, that is one block south of the bridge in Belmar; that the only obstruction of any kind is the guard rail along the west of the foot path, about four feet high, and this does not obstruct a view of the trolley cars coming across the trolley bridge, and that at the point they could get a clear view of the full trolley track right into Belmar.

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The plaintiff, reversing his testimony given on the first trial, testifies that he looked first north and then south, and when he looked south he saw a distance of about 40 or 50 feet, not quite down to Kling's dock, but upon cross-examination it appears that when he looked south he was behind the telegraph pole, and did not take such an observation as he could have taken with proper precaution, so as to have given him a full view of the trolley track. He saw fit to take a mere casual or indifferent glance, which gave

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him a view only of about 40 or 50 feet of the track, and then without taking another look, or continuing to look south, to proceed to cross the defendant's tracks. If he had looked south, after going out of the range of the telegraph pole, or had taken a proper observation in that direction before attempting to cross the track, the approaching car would necessarily have come within his range of observation. His conduct was not that of a prudent man, concerned for his personal safety. It shows gross carelessness on his part. Without a proper observation to the south he proceeded to cross the track, and the accident resulted from his own want of care.

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The question is, could he by looking south, that is by taking such an observation of the track as a reasonably prudent man would take concerned for his personal safety, just before proceeding to cross the track, have seen or observed the car approaching from the south and avoided the danger.

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No one reading the testimony of the plaintiff on the two trials, can come to any other conclusion than that the danger could have been avoided, and this is the test:

If, by the exercise of care and caution he could have avoided the danger, which because of his failure to exercise he ran into, he cannot recover.

The measure of the plaintiff's duty in the situation presented in this case, has been well defined by the courts of our State.

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This court, in *Newark Passenger Railway Company v. Block*, 26 Vr., 605, said:

"The measure of duty for one who crosses a public highway on foot is to use such precaution and care for his safety as a reasonably prudent man would use under the circumstances. He must use his powers of observation to discover approaching vehicles, and his judgment how and when to cross without collision. If obstacles temporarily intervene to prevent observation he should wait until observation can be made."

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And in *Jewett v. Paterson Railway Co.*, 33 Vr., page 430, said:

“If by the exercise of reasonable care the plaintiff could have seen the approaching car, and ought to have apprehended the danger of the situation, he was chargeable with negligence, for he was not at liberty to take even doubtful chances of the consequence of crossing the track in the face of danger, or in reliance upon the successful attempt of the driver to slack the speed of his horses.”

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See also, *Hagerman v. North Jersey Street Railway Co.*, 45 Vr., at page 281; *Harbison v. Camden & S. Ry. Co.*, 45 Vr., 254; *Cantrell v. Ere Railroad Company*, 35 Vr., 277; *Brady v. Consolidated Traction Co.*, 63 N. J. L., 25, same case 64 N. J. L., 373; *Schwaneuwede v. North Hudson Ry. Co.*, 38 Vr., 449; and *Gilliland v. Mid. & Somerset Trac. Co.*, 38 Vr., 542.

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We do not discuss the evidence as to the question of the negligence of defendant, because we do not regard that as an element in the case. Although we believe plaintiff's evidence failed to show any negligence of defendant causing the accident.

The place of accident was at the north end of Shark River bridge, a place where people stood to take the cars of defendant company, an established point to take on and let off passengers, and as the motorman Irons testified, he supposed plaintiff was going to stop there to get on the car.

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The remarks of Chief Justice Gummere, in *Harbison v. Camden & S. Ry. Co.*, 74 N. J. L., at page 253, are pertinent on this question.

The plaintiff must first be free of negligence in order to recover, and in view of the evidence it is manifest that the accident resulted from the plaintiff's negligence to make proper observation before proceeding to cross the track, and he is not entitled to recover, and the defendant's motion for non-suit should have been granted. But if there was

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any doubt about plaintiff's negligence at the close of his case, that doubt was entirely removed by the evidence produced by defendant.

10 The photographs, and the testimony of the witnesses Mullen, Beutell and Bolles, proved that a person at the place of the accident has a clear open view over the entire length of defendant's trolley track on its bridge and beyond into Belmar, and a car approaching from Belmar, to one looking south from the immediate locality of that point, down the track, would necessarily come within their range of vision before it entered on the bridge, and so continue until it reached that point, and there should at the close of the case have been a direction for defendant.

It is respectfully submitted that the trial court erred in refusing defendant's motions for non-suit and for a direction, and the judgment should be reversed.

DURAND, IVINS & CARTON,

Counsel for Appellant.

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# New Jersey Court of Errors and Appeals

CALEB T. HUBBARD,  
 Plaintiff-Respondent,  
 against  
 ATLANTIC COAST ELECTRIC RAIL-  
 WAY COMPANY,  
 Defendant-Appellant.

Action at Law.

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## BRIEF FOR RESPONDENT

At the outset the Court's attention is respectfully called to the fact that the accident occurred at a crossing and therefore the rule of law governing such cases is applicable in the case now before the Court.

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Upon this trial certain evidence was adduced which was not brought out upon the first trial and several questions of fact were presented which, because of their nature, had to be submitted to the jury. Furthermore, the facts upon this trial clearly take the case out of the rule as laid down in the decision of this Court upon the former appeal.

It is a fundamental principle of law that for the purpose of determining whether or not the plaintiff was guilty of contributory negligence as a matter of law, the evidence at the close of the plaintiff's case must be considered as true. This being so, it was shown by the plaintiff's witnesses that the plaintiff was struck by a car coming over the bridge from the South at a point, distant 10 feet from the end of the guard rail, from which point there is a curve in the track toward the South and an elevation in the same in the same direction.

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The witness Megill testified that his automobile was parked close to the guard rail; that he first observed the car, which struck the plaintiff, when it was 60 to 75 feet

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away (P. C. 10, L. 15) and that at that time the car was going about 25 miles an hour (P. C. 10, L. 29) and slowed down to ten miles an hour when it passed him (P. C. 20, L. 23).

10 The plaintiff testified that at the time he made his observation South he stopped and could see down the track 40 to 50 feet (P. C. 34, L. 28) and did not see any car approaching (P. C. 34, L. 14); and no bell or other signal was given of the approach of the car. The Court's attention is further called to the fact that the record is absolutely void of any evidence that the plaintiff stood behind the telegraph pole when he made his observation, and the statement in the appellant's brief to that effect is absolutely incorrect.

20 This evidence at the close of the plaintiff's case presented questions of fact for the jury and it was for the jury to decide whether or not the plaintiff acted as a reasonably prudent man should have acted under the circumstances; whether or not his observation for 40 or 50 feet was effective and the observation of a reasonably prudent man; whether or not the car was recklessly operated at such a rate of speed and whether or not the motorman could have avoided the accident by the exercise of reasonable care.

*The plaintiff stopped when he looked* and certainly such an observation cannot be characterized as casual or indifferent. What kind of an observation could be more effective when made at a distance of five feet from the track?

30 If the car was proceeding at the rate of twenty-five miles an hour, reduced to figures, it would then travel 37 feet per second and at the rate of ten miles an hour, it would travel 15 feet per second. The testimony shows that the car was 75 feet distant from Megill when he first observed it and Megill was less than twenty-five feet from the place of accident, making a maximum total distance of 100 feet. An average of the two rates of speed above stated would be 26 feet per second and at this rate it would take the car less than four seconds to travel the distance of 100 feet. The plaintiff made his observation when five feet from the track and was struck near the farther or Westerly  
40 rail (P. C. 35, L. 5).

It is a matter of common knowledge that it would take a person more than four seconds to walk seven or eight feet. Hence it was conclusively established that the car in question was not within the line of vision of the plaintiff at the time he looked South, but on the contrary was at least 100 feet away. This calculation is based on the evidence most favorable to the defendant and yet only one conclusion can be reached, namely that the plaintiff's observation was a careful and effective one and of such a character that the plaintiff had every reason to believe that it was safe for him to proceed across the track. 10

The evidence regarding the speed of the car is later corroborated by the testimony of the witness Irons, the motorman of the car which struck the plaintiff, who testified that the plaintiff was carried a distance of eighteen feet after he was struck by the car. (P. C. 96, L. 22.)

These facts presented jury questions and the Court's attention is called to the case of *Napodensky vs. West Jersey and S. R. Co.*, 88 Atl., 1033, where the facts were similar, in which this Court laid down the following rule: 20

"A true and practical solution of such a situation and the legal characterization of the acts of a man so jeopardized necessarily presents a jury question, under proper instructions from the Court, defining the legal responsibility of the parties concerned. This rule of substantive law has been the subject of frequent reiterations by this Court to the effect that *where the plaintiff has rested his case and the evidence leaves a question of his contributory negligence in doubt, the determination of the question of the negligence of the defendant, presents an issue of fact, which must be submitted to the jury.*" 39

In the case of *Kraut vs. Public R. R. Co.*, 81, Atl. 751, plaintiff, who was the only witness for himself, testified that he was crossing a certain street and that when he was five or six feet distant from the North bound track, he 40

looked and saw a car forty-five or fifty feet away coming at a pretty fair rate of speed toward him on the track; that he proceeded to cross and as he was stepping over the last rail, his foot was struck by the car and he was injured. The Court of Errors and Appeals held that the Supreme Court erred in ruling that a verdict should have been directed for the defendant on the ground of contributory negligence on the part of the plaintiff, and ruled that the case was properly submitted to the jury. The Court held in part as follows:

10                   “ From the testimony of the plaintiff, the jury was justified in concluding that the motorman when fifty feet away ought to have seen the plaintiff within five feet of the track crossing upon the crosswalk. It was undisputed that the motorman was then driving the car at a pretty fair rate of speed. It traveled fifty feet where the plaintiff traveled about ten feet. It was therefore up to  
20                   the jury to find that either *that the motorman did not make proper efforts to prevent the collision,* or that the inability to stop the car was due to its excessive and unlawful rate of speed.”

                  In the Kraut case just cited this Court held that the plaintiff used the necessary precaution in crossing when he observed a car forty-five or fifty feet away and under this authority, the respondent respectfully contends, the plaintiff  
30                   in the case at bar, had even more reason to believe that a safe crossing could be made.

                  Little, if any, weight can be attached to the testimony of the defendant's witnesses, Mullen, Beutell and Bowles, for the reason that their observations were made a year and a half after the accident and not within 15 feet of the place of accident. Mullen testified (P. C. 135, L. 20) that he was four or five feet east of the pole whereas the plaintiff was 10 feet north of the pole. Bowles testified (P. C. 144, L. 5) that he looked when four or five feet east of the pole.  
40                   Each witness also testified that he did not know whether or

not there had been any change of condition in this locality. Their testimony at the most, only raised an issue of fact for the jury and evolves itself into a question of credibility of witnesses.

The same principle applies to the map made in January, 1917, and the photographs taken at various points from the point of crossing by the plaintiff and a long time after the accident. The real factors on the question of observation were the position of the automobile, the trusses on the bridge, the curve in the track and the elevation in the road bed. It is evident from the verdict of the jury that these were carefully considered.

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The appellant has attacked the testimony of the plaintiff on the ground that he changed his testimony but a casual examination of the testimony of the defendant's three most material witnesses will disclose a most remarkable lack of memory on their part. The motorman Irons testified as follows (P. C. 104, L. 3):

Q. Do you remember testifying in the previous trial that the only reason why you remembered that you did ring it this day was that you always rang the bell?

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A. No, I don't know about that.

Q. Well, did you testify to it?

A. I don't know whether I did or not. That has been too long ago. I can't remember those things, Mr. Taylor, not all of these things. Some of them I can recall and some of them I can't.

In fact his entire testimony is full of discrepancies and forgetfulness.

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The conductor Stillaway testified as follows (P. C. 112, L. 5):

Q. Mr. Stillaway, do you remember whether or not the bell rang between Murphy's Pavilion and Riggs' Pavilion?

A. No, I don't.

Later on he testified (P. C. 112, L. 28):

Q. Do you remember this testimony, referring to page 114: "Q. Now, how many times do you say the bell did ring between Murphy's Pavilion and Riggs'? A. I

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wouldn't give you the exact count of times but the bell when he rang it quite fast, you couldn't count them."

The defendant's witness Lavin testified (P. C. 117, L. 30):

Q. You said then that a deaf man a quarter of a mile away could hear the gong?

A. Yes, sir.

Q. You don't believe that is really so, do you?

10 A. Well, you had me kind of excited when I made that.

The negligence of the defendant was so gross and apparent that the appellant has purposely avoided this question.

The motorman Irons testified that he first saw the plaintiff when the latter was 90 feet or 150 feet away (P. C. 102, L. 32) and continued to see him until he was struck (P. C. 95, L. 5); that the plaintiff did not make any signal as though he was going to get on the car (P. C. 99, L. 22) and was apparently heedless of the approach of the car.

20 In addition he testified (P. C. 99, L. 38):

Q. And that is just as a matter of fact how this accident happened, *you didn't think*, did you?

A. Of course, I didn't think.

Q. You took a chance of his getting on your car didn't you?

A. Yes.

"Q. You guessed wrong, didn't you? A. Yes.

30 Q. And it resulted in the crippling of this man, didn't it? A. Yes, sir."

Q. And as a matter of fact that is just how the thing happened, isn't it?

A. Why sure, that is the way it happened.

From such evidence the negligence of the defendant was clearly shown and the sole cause of the accident was that the motorman took a chance and did not think and because of this the plaintiff was crippled for life.

40 Hugh Finnegan, a witness for the defendant, who was a passenger in the car, testified that when he was 30 feet away, the plaintiff started to walk westerly across the track

(P. C. 122, L. 5). If this be true, it is clear that the motorman, who testified that he saw the plaintiff continuously, should have stopped the car in time to have avoided the accident, or that he was unable to do so on account of its excessive rate of speed.

All the evidence in the case taken together presented a jury question and the authorities for this proposition are innumerable.

Newark Passenger Ry. Co. vs. Block, 55 N. J. L. 605,  
27 Atl. 1067. 10

Conrad vs. Elizabeth P. N. C. Ry. Co., 58 Atl. 376.

Heckman vs. Cohen, 100 Atl. 695.

Devine vs. Public Service R. R. Co., 88 Atl. 1080.

The Court's attention is again called to the case of Kraut vs. Public Service R. R. Co., 81 Atl. 75, in which the facts were very similar and respondent respectfully contends that the case now before the Court falls clearly under the authority just cited and asks that the judgment be affirmed.

Respectfully submitted, 20

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