NEW JERSEY
COURT OF ERRORS AND APPEALS.

JOSEPH W. GARLANGER, et al., *Plaintiffs-Appellees,* vs. BURLINGTON COUNTY TRANSIT COMPANY, *Defendant-Appellant.*	ACTION AT LAW. ON APPEAL.

BRIEF.

FACTS OF THE CASE.

This suit is by Joseph W. Garlanger and Mary W. Garlanger, his wife, against the Burlington County Transit Company.

The plaintiffs in this case live on the public road leading from Mount Holly to Masonville, on which is laid the tracks of the defendant company over which it runs its cars between Mount Holly and Moorestown.

On the 9th day of November, A. D. 1912, Mary W. Garlanger with Susanna Strouse and a small boy, desired to go to Riverside, New Jersey, and their route was to turn to their left after leaving their house and proceed along the road aforesaid in an

easterly direction until they reached Rancocas Park, at which place a public road intersected the road from Mount Holly to Masonville and lead towards Riverside. The tracks of the defendant company, as the plaintiff proceeded on her way, were on the left hand side of the road, and it was necessary, therefore, for her to drive across the tracks of the defendant as she turned upon the Riverside road.

Before leaving their home, a car of the defendant company had just passed their house going in the direction of Mount Holly, namely, to the eastward. They then thought that it would be safe for them to proceed on their way without meeting another car. She, therefore, drove out of her yard on the public road and proceeded on the road toward Mount Holly, and on the right hand side of the road, the car tracks being on her left hand side, until she came near the Riverside road into which she intended to turn, when the plaintiff and Mrs. Strouse looked in both directions to see if a car was coming, and seeing none, turned to the left into the Riverside road, and while in the act of crossing the tracks, the wagon in which they were riding was struck by a work car of the defendant company, and Mrs. Garlanger was thrown out and severely injured.

This action was brought to recover damages on the part of the husband for loss of services of his wife, and expenses incident to his wife's injury, and for pain and suffering on the part of the wife. The cause was tried at the Burlington Circuit, and this appeal has been taken to judgments entered on verdicts for the plaintiffs.

The errors assigned consist in:

1. Refusal to direct a non-suit;

2. Refusal to direct a verdict;

3. Improper testimony.

We will take these questions up in order.

I. REFUSAL TO DIRECT A NON-SUIT.

Mrs. Garlanger testified (State of the Case, page 9, line 30, &c.), that she noticed a car going toward Mount Holly before she left her yard; that she then went down the stone road toward the park, she sitting on the right hand side and driving, and as she got near the park, and before turning, she looked in the direction of Masonville from which she came and from which the car came and saw no car nor heard any, and as she was turning over the tracks of the defendant company, the dirt car hit her, broke the buggy and threw her out; that the crossing was a public one, and that she had traveled it for thirty years; that as she drove down the Masonville road she drove on the right hand side of the road all the way down and was on the right hand side of the road when she began to turn into the Riverside road; that the dirt car which struck the wagon was coming from the direction of Masonville and in the same direction in which she was traveling; that there were curtains on the buggy,but that the view between her and the approaching car was unobstructed; that there was a slight down grade from her house to the crossing; that there was no notice or warning or whistle or bell given of the approach of the car before it ran into her. She further testified that she did not know how close she was to the track when she looked for the approaching car, but that she turned in the ordinary and accustomed way, and that she had looked up the tracks when she turned and

was pretty close to the tracks, but that she did not see the car until it had struck her.

On cross-examination, she testified that she looked up the tracks when she was about one hundred yards from the crossing, and that she could see as far as her house, and that she saw no car nor heard any whistle or warning of the approach of the car.

Susanna Strouse testified (State of the Case, page 33, line 1), that she was 85 years of age, and was riding with Mrs. Garlanger on the day of the accident; that Mrs. Garlanger was driving the horse; that Mrs. Strouse looked to see if a car was coming and that she looked upwards and I looked to see and didn't see anything. She testified (State of the Case, page 36, line 3), that she looked on the left hand side of the carriage and looked as far back as she could see and that was pretty near back to where we started from, and that she was just ready to turn when she looked back; that she saw no car coming and heard no car.

On cross-examination, she testified (State of the Case, page 37, line 28, &c.), that she looked when she was about ten or fifteen feet from the place she began to cross, and that no car was in sight.

Mrs. Garlanger on being recalled testified that the horse was walking as it passed from the house to the crossing.

This was the testimony on the part of the plaintiff as to the happening of the accident.

John Riffert testified (State of the Case, page 54, line 5, &c.), that on the day in question he was running the car; that when he was about 150 yards

away he saw the wagon in front of him; that he proceeded slow and that the horse got on a jog, and when he got within ten feet of the crossing the buggy pulled in front of him across the road; that he applied the brakes and rang the bell and holloaed, but that the car hit the wagon and shoved it from 18 inches to two feet; that it was about 1000 to 1500 feet from the Garlanger house to the scene of the accident, and that there is a clear view on the highway from Garlanger's house to the place of the accident; that he saw the wagon when he was 800 feet away from the scene of the accident.

On cross-examination he testified (State of the Case, page 61, line 4), that when he was about 100 feet away, he released the brakes and let the car drift down grade; that as he came down the hill, the wagon was up against the track (State of the Case, page 54, line 8), so that he could not pass it, and he brought his car pretty near to a stop, after which the wagon pulled out in the middle of the road and he took it for granted that they were going to leave him pass. After he rang his foot gong, he then proceeded right slow and on cross-examination testified (State of the Case, page 66, line 1), that he was expecting that they would pull back against the rails again and that finally (line 25), they caught him unawares and pulled across the track.

Stanford Haines testified that when the wagon turned across the tracks it was on the other side of the road, meaning the far side from the car (State of the Case, page 67, line 26), and that he saw the wagon when the car was at Garlanger's house (State of the Case, page 67, line 32.) He testified that one could stop the car in a shorter distance than thirty feet (State of the Case, page 73, line 31).

This was substantially the testimony as to the happening of the accident. It is contended by the plaintiffs in this case that this was a jury case at all stages of the trial. The plaintiffs were not required to look and listen as a matter of law before crossing the track,

Trenton T. Co. vs. Scott, 58 *N. J. L.* 682;

but were required "to use such precaution and care for his safety as a reasonably prudent man would under the circumstances. * * * * He must use his powers of observation to discover approaching vehicles and a reasonable judgment to avoid collision."

Glasco vs. Jersey City, etc., 81 *N. J. L.* 472.

And whether, "The plaintiff, who was traveling along an intersecting street and saw a trolley car a block distant advancing at a high rate of speed, was guilty of negligence in attempting to cross the track before the arrival of the car at the point was a jury question, and a non-suit granted under the circumstances is set aside."

Zindler vs. Public Service Co., 78 *N. J. L.* 536.

We, therefore, conclude that it cannot be said as a matter of law that the plaintiff was required to look and listen, but as a matter of fact she testified, as did Mrs. Strouse, that she did look and listen and saw no car when she was one hundred yards away from the crossing. And Mrs. Strouse testified that she saw no car when she looked ten or fifteen feet away from the crossing, there certainly, therefore, was no carelessness on the part of the plaintiff such as to warrant the direction of a non-suit.

And it has further been held that refusal to direct a non-suit for failure of proof is not error, if the

defect was supplied by evidence taken in the progress of the case.

Esler vs. Camden & Suburban Co., 71 *N. J. L.* 180;

Perth Amboy, etc., vs Conditt, Bowles, 21 *N. J. L.* 659;

D. L. & W. Ry. Co. vs. Dailey, 37 *N. J. L.* 526;

Bostwick vs. Willett, 72 *N. J. L.* 21.

The evidence of negligence on the part of the plaintiff is found in the plaintiffs' case. The plaintiff was exercising care and in a lawful place. The defendant's servants ran her down. There was evidence from which it might be inferred, indeed, of necessity must be inferred, that the car was run at an unreasonable rate of speed, because it was not in sight when the plaintiff looked when almost at the crossing.

Two witnesses for the plaintiff testified that no bell, whistle or warning was given of the approach of the car, but failure to have the car under control at the crossing of the public road where a person is traveling and it may reasonably be expected may attempt to cross the tracks is negligence.

Chancellor Pitney in *Peterpolo vs. Public Service Railway Company*, 81 *N. J. L.* 390 (392) speaking for this court said:

> "Plaintiff might reasonably suppose that the motorman was aware that he and his employer had no paramount or exclusive right in the highway, and that he must keep such a lookout on the tracks ahead of him, and must keep his car under such control, as to be able to reduce its speed, and even to bring it to a standstill, if necessary, to avoid colli-

sion with a traveler who, without negligence on his part, might happen to cross the tracks in front of the trolley car. Plaintiff had a right to assume that the motorman was aware that if plaintiff, without negligence on his part, reached the point of crossing ahead of the trolley car, he had the right of way, a that such right of way would be respected by the motorman.

"In short, plaintiff might reasonably assume that the motorman would keep a lookout, and would control and reduce the speed of the car, until plaintiff was charged, or at least until a reasonably prudent person in his position would have been charged, with notice that the car was being operated either in ignorance of his presence or in complete defiance of his rights."

The plaintiff in this case unquestionably had the right of way in crossing the tracks of the company, and the testimony of the plaintiffs is to the effect that when about fifteen feet distant from the crossing no car was in sight, and the testimony of the men in charge of the car was to the effect that the wagon reached the crossing ahead of the car, and the undisputed testimony of all parties is to the effect that the wagon had passed over the tracks except a part of the rear wheel, that only being struck.

It is, therefore, plain that the plaintiff had the right of way. Under the decision of the *Electric Railway Company vs. Miller*, 30 *Vr.* 423 (425), in which the Court laid down the rule:

"That the driver of a wagon has the right of way if, proceeding at a rate of speed which under the circumstances of the time and lo-

> cality is reasonable, he should reach the point of crossing in time to go upon the tracks in advance of the approaching trolley car, the latter being sufficiently distant to be checked, and, if need be, stopped before it should reach him."

According to the testimony of the plaintiffs, the car had ample time in which to stop if going at a reasonable rate of speed, not being in sight when they attempted to turn on the tracks, and had equally ample time from the testimony of the defendant if going at a reasonable rate of speed and under control because Stanford Haines testified (State of the Case, page 73, line 7), that the car could be stopped in a shorter distance than thirty feet, and it was testified by Riffert for the defense (State of the Case, page 61, line 6), that the wagon was about fifty feet ahead of the car and about thirty feet away from the crossing, when he (Riffert) released the brakes and let his car drift down hill.

It is, therefore, clearly beyond dispute that the car was not under control, because the brakes had been taken off a car going down grade eighty feet from a public crossing, and fifty feet from a wagon approaching the crossing and attempting to pass over in plain view. Furthermore, Riffert in charge of the car on page 66, line 25, &c., testified that he was the driver of the car and that they caught him unawares.

It is clear, therefore, that the present case is controlled by the decision in the Peterpolo case, the facts of the case being almost identical. The only difference being that the case at bar is stronger in point of fact than the Peterpolo case.

It is, therefore, equally clear that it was not error to refuse to direct a non-suit at the close of the plaintiffs' case, inasmuch, as it had been shown that the plaintiff was injured in the enjoyment of her lawful right by the defendant, and an imputation of or inference of negligence on the part of the defendant was the only reasonable inference that could be derived from the testimony. And in addition to that fact, it is likewise clear that further testimony of the defendant's negligence was supplied by the testimony of Riffert and Haines, witnesses produced by the defendant.

With the testimony at the close of the whole case in such condition that fair minded men might reach different conclusions as to the negligence of the plaintiff, and the defendant respectively, it clearly became a jury question, and the Court, therefore, did not err in refusing to direct a verdict.

Now, as to assignment No. 3, the objection is that after a leading question had been put and an objection to it sustained, that the Court permitted the question to be reframed in a legal manner and asked and answered.

In *Chambers vs. Hunt,* 22 *N. J. L.* 552, this Court held:

> "The permission of a leading question to a witness in direct examination, is in the discretion of the Court, and no ground for reversal; if improperly permitted, the remedy is a new trial."

And in *Trenton Passenger Railway Company vs. Cooper,* 60 *N. J. L.* 219, *Chambers vs. Hunt* was cited and approved and this Court by Collins, J., held:

> "The question was somewhat leading, but

> the discretion of the Judge in admitting it can not be reviewed on error."

Both of the above cases were cited with approval by this Court the opinion being delivered by Garrison, J.

In *Luckenbach vs. Sciple,* 72 *N. J. L.* 476 (478), in which the Court said:

> "The right of a trial Court in its discretion to allow leading questions to be put to a witness and to decide whether a question is leading is universally admitted." (Citing cases.)

It is also stated to be the law, 40 *Cyc.* 2429:

> "It is usual and proper for the Court in which the case is being tried to permit leading questions in conducting the examination of a witness, who is immature, ignorant, illiterate, feeble-minded, confused and agitated or embarrassed, while on the stand, lacking in comprehension of questions asked or slow to understand, etc."

And the Supreme Court of Massachusetts in *Gray vs. Kelley,* 76 *N. E.* 724 *and* 190 *Mass.,* 184, held:

> "The admission on direct examination of leading questions being put to an aged witness whose recollection appeared to have been exhausted by previous general questions was within the discretion of the Court."

Mrs. Strouse testified (State of the Case, page 33, line 1), that she was nearly 85 years of age at the time of testifying, and it may be presumed that her

mind is in the condition of the average person at that time of life, under which state of facts, it is perfectly proper to allow leading questions to be asked on direct examination.

If, therefore, the trial Court has a right in its discretion to allow a leading question to be asked a fortiori, it is within the discretion of the trial Court after sustaining an objection to a leading question to allow the question to be reframed and put in proper form, and such action ought not to be reviewable on error.

I can not find that this precise question has been ruled upon by the courts of this State, but the courts of Connecticut and Georgia have passed upon the precise question.

In *Allen vs. Hartford Life Ins. Co.*, 72 *Conn.* 693, the Court remarked:

> "A leading question was put to the plaintiff by his counsel, and when objected to as such, withdrawn, and another substituted which was unexceptionable in form. Error is assigned upon this, on the claim that the attention of the witness having been improperly directed to what was wanted from him, the point in view was gained, and the very harm done which the rule against leading questions is designed to avoid.
>
> "Justice would not less often fail if formal defects in the offer or introduction of testimony could not be corrected, than if slips in pleading were not the subject of amendment. An improper question can always be replaced by a proper one, and if impressions on witness or trier have been made which may prejudice the adverse party, this result is an incident of that imperfection attaching to all

> that man does, from which even judicial procedure cannot be kept free. The only remedy is a preventive one, and lies in the power of trial Courts to regulate the conduct of counsel at the bar."

In *Elbert Heisler vs. The State of Georgia,* 20 *Ga.* 153, Benning, J., said:

> "Whether a leading question shall be asked on the direct examination is a matter for the discretion of the Court hearing the examination.
>
> "The case, therefore, in which this Court would be bound to touch that Court's judgment, allowing or not allowing a leading question to be asked, would be an extreme one.
>
> "Upon the whole, this Court cannot say that it sees anything to justify its interfering with the refusal of the Court to prevent the witness from being examined on the point to which the leading question related."

It, therefore, clearly appears that it is not improper to allow a leading question under the circumstances, and if improper can not be reviewed on error, but must be corrected, if at all, on a rule for a new trial.

The fourth and last objection was to the allowance of the witness Haines to testify in how short a distance the car could be stopped, the objection being on the ground that the witness did not know "within how short a distance can you stop a car?".

It is insisted on the part of the plaintiff that the objection that the witness never had run the car was not a valid objection in view of the fact that the witness testified that he had worked for the defend-

ant company about two months (State of the Case, page 67, line 4). And (State of the Case, page 73, line 28), he was asked:

> "Q. You have traveled on it? In your experience when you were on this car working on it, as a matter of fact you know that the car can be stopped in less distance than thirty feet?
>
> A. I think so; yes, sir."

The witness was speaking not from his experience of running the car, but from giving his expert opinion based upon his observation and somewhat upon his experience, which clearly qualified the witness to answer the question, and especially so on cross-examination.

In *Trenton Passenger Railway Co. vs. Cooper,* 60 *N. J. L.* 219 (223), the Court said:

> "Its lawful purpose was to call for an expert opinion based on observation. The competency of such an opinion cannot be gainsaid."

To sum up:

1. It is clearly apparent from the testimony that the plaintiff, Mary Garlanger, was injured in crossing the tracks of the defendant company on a public highway; that she was first at the place of crossing; that the defendant in broad daylight while the car was beyond his control, ran into the plaintiff and injured her; and this negligence was established in the plaintiffs' case, and the learned Court was not in error in refusing to direct a non-suit.

2. The question of negligence and contributory

negligence, if any evidence of contributory negligence, was clearly for the jury and that the Court did not err in refusing to direct a verdict at the end of the whole case.

3. That it is not error to allow counsel to reframe a question after objection has been sustained to it on the grounds of its being leading, and allow the witness to answer the reframed question.

4. That no error was committed by the Court in allowing the witness, Haines, to testify to what he observed, and to what his experience had been as to his ability to stop the car within a given distance.

It is, therefore, respectfully submitted that there is no error and that the judgment of the Court below should be affirmed.

All of which is respectfully submitted.

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New Jersey Court of Errors and Appeals

JOSEPH W. GARLANGER, et al.,
Plaintiffs and Appellees,

vs.

BURLINGTON COUNTY TRANSIT COMPANY,
Defendant and Appellant.

ACTION AT LAW.

BRIEF FOR DEFENDANT.

STATEMENT OF FACTS.

This suit was brought in the New Jersey Supreme Court by Joseph W. Garlanger and Mary W. Garlanger, his wife, against the Burlington County Transit Company to recover damages alleged to have been inflicted upon the plaintiff, Mary W. Garlanger, as the result of a collision between a trolley-car of the defendant company and a horse and buggy in which Mrs. Garlanger was riding, at a crossing near Rancocas Park, Burlington County, on November 9, 1912. The case was tried at the Burlington County Circuit before Judge Carrow and a jury on November 12, 1913, and resulted in a verdict for Mrs. Garlanger of $600.00 and for Mr. Garlanger of $50.00.

The defendant company owns and operates a single-track, electric railway line running from Moorestown Eastwardly to Mount Holly, in the County of Burlington. This track at the point of the alleged accident runs practically

East and West, on the side of the road or driveway, and runs parallel thereto. At about ten o'clock on the morning of November 9, 1912, Mrs. Garlanger accompanied by her son and Mrs. Susan Strouse started from her home near Masonville to drive Eastwardly toward Mount Holly. (S. C. p. 9, l. 1—10). Her home is situated on the North of the road and also adjoins the trolley track. As she drove out of her yard she saw a trolley going Eastwardly toward Mount Holly. (S. C. p. 9, l. 33). She drove on to the highway, turned East and drove along the stone road parallel with the trolley track. (S. C. p. 9, l. 10). When she was about one hundred yards from the crossing at Rancocas Park, she says that she looked back and saw no trolley-car in sight. (S. C. p. 23, l. 24). She could see back as far as her home which she had just left, a distance of a quarter mile. (S. C. p. 23, l. 5). After looking backward at this point, one hundred yards Westward from the crossing, she did not again look to see whether any car was coming. (S. C. p. 24, l. 9). She was driving in a buggy with the top up and side curtains on. (S. C. p. 22, l. 2—10). When she had reached a point where she could just make the turn, she turned to the left to go over the trolley track, without looking (S. C. p. 26, l. 5), and her horse and buggy were nearly clear of the track when struck by the trolley-car. (S. C. p. 29, l. 20). The trolley-car struck the left, rear wheel and pushed the buggy about two feet along the track. The horse started to run when the buggy was struck and one of the wheels collapsed. The plaintiff, Mrs. Garlanger, was thrown out, as was also Mrs. Strouse.

Mrs. Strouse testified that she looked "upwards," evidently meaning Eastward, or toward Mount Holly and in front of the buggy, and that Mrs. Garlanger looked backwards. (S. C. p. 34, l. 18). Mrs. Garlanger was sitting on the right-hand side of the buggy, driving, (S. C. p. 10, l. 9), so that it would have been impossible for her to have looked out of her side of the buggy and looked

back up the track as she testified. Mrs. Strouse also testified that she looked back out of her side of the buggy just before they were ready to turn over the crossing; also that she could see back to the house next to the residence of Mrs. Garlanger, which was a quarter mile from the crossing. (S. C. p. 36, 1. 5). This she says was ten or fifteen feet from the crossing, or where they started to turn across the track. (S. C. p. 37, 1. 28).

This is the case as made by the plaintiffs, at the conclusion of which a nonsuit was moved for upon the ground of contributory negligence of the plaintiffs and failure of proof of any negligence on the part of the defendant. This motion was not decided as the Court insisted upon the case going on.

The foregoing statement of facts fails to show any negligence on the part of the defendant. There is no proof whatsoever in the plaintiffs' case of the speed at which the car was operated; no proof of any negligence on the part of the defendant.

The plaintiff, Mrs. Garlanger, was asked on cross-examination concerning a conversation on the day of the accident with Edwin C. Davis and John Smith, in which she said that she saw a car going West toward Moorestown and that she knew that no car would be coming East for ten minutes. Her answer was that she did not remember. (S. C. p. 27, 1. 30). Edwin C. Davis testified that such a conversation took place, and that Mrs. Garlanger made the statements. (S. C. p. 77, 1. 25). John Smith also testified to the same conversation. (S. C. p. 79, 1. 31).

The defendant contends that the plaintiff, Mrs. Garlanger, was negligent in crossing the trolley track without having looked back to see whether or not she could safely do so. It is true that failure to look for a trolley-car is not negligence per se, but in every case in this State wherein that principle is enunciated it will be found that the circumstances under which the plaintiffs failed to look were entirely different from what existed in this case. In this

case the plaintiff was driving along parallel with the trolley track. She says that she was to the right of the stone road, which if true would have allowed another wagon coming from the same direction to pass her on the left. That she looked back a distance of one hundred yards from the crossing and did not see any trolley-car and thereafter went on. She also testified that she had seen a car going Westward and that she knew that no other car would come Eastward for a period of ten minutes. From this it is contended that she was negligent under these circumstances in heedlessly driving on the track without making some observation to ascertain whether or not she was at a place of danger.

The case made by the defendants was that this car was going Eastwardly toward Mount Holly in charge of a motorman and conductor. It was a dirt car or a car used for carrying material, which had no passengers, and which was running four or five miles an hour. (S. C. p. 54, l. 15). That as the car came along a distance of one hundred and fifty yards from the crossing at Rancocas Park, (S. C. p. 54, l. 35), the buggy in which the plaintiff was riding was traveling along the road parallel with the trolley track and right up close to the track; (S. C. p. 54, l. 37); that the motorman rang the bell or foot-gong, and then the buggy pulled over to the right-hand side of the road; (S. C. p. 55, l. 5); that they proceeded on for a distance of one hundred and thirty yards and when within ten feet of the crossing the buggy suddenly pulled across in front of the trolley-car; (S. C. p. 55, l. 8); that the trolley-car struck the left, rear wheel of the buggy, but that it stopped right at that point; that the car only went two feet after striking the buggy; (S. C. p. 55, l. 28); that the accident occurred on a grade and that there was no power on the car; (S. C. p. 56, l. 17); that the car was under such control that it could be stopped within a very few feet. The motorman further said that when he first saw the buggy he rang his bell and brought the car nearly to a

stop, (S. C. p. 55, 1. 1); that the buggy then pulled to the right-hand side of the road, (S. C. p. 55, 1. 3), when he released his brake and the car drifted on following the buggy down the hill; that he had no indication or intimation from the buggy that they intended to cross the track at this point, (S. C. p. 58, 1. 29), until they were in front of the car.

This testimony was corroborated by the conductor of the car.

From this recital of facts it will appear that the trolley-car was under absolute control at the time of the accident; that the buggy was going down the road slowly ahead of the trolley-car and without suggestion pulled to the left across the track; that the motorman thereupon applied his brake and so far stopped the car that he barely struck the rear wheel of the buggy.

ARGUMENT.

It is contended by the defendant company that the plaintiff, Mary W. Garlanger, was guilty of contributory negligence when she drove over the track of the defendant company without looking to see whether or not she could safely cross at that time.

"The rule is perfectly well settled that a person crossing a street on foot is bound to look out for approaching vehicles and if neglecting to do so he is hurt, he will be considered to have contributed to the injury by his negligence and will be barred from a recovery against the person who inflicted it." Sheets v. Connolly Railway Compnay, 54 N. J. L. 578; North Hudson Railway Company v. Flanagan, 57 N. J. L. 698.

The case of Jewett v. Paterson Railway Company, 62 N. J. L. 424, was a case of a man walking at night near the city of Passaic towards his home where he had to cross three railroad tracks before he came to the track of the

defendant trolley company. After crossing the railroad tracks he looked and saw a car one hundred and fifty or two hundred feet from him apparently standing still. He continued to walk in a diagonal direction toward the trolley track and was struck when in the middle of the track. The Court said, "It is peculiarly true of controversies like this that the defendant's right to a non-suit depends on the precise facts of each case. An alteration in the conditions may change the result. The case of Consolidated Traction Co. v. Glynn, 30 Vr. 432, illustrates this and may be usefully compared with the case in hand. There the plaintiff assumed, after waiting two or three seconds, that he could walk from the curb across the track, a distance shown by the record to be eighteen feet and one-half, before a trolley car that he had observed approaching him should run a distance of about three hundred feet. Acting upon this asumption, he advanced again without looking toward the car and was struck by it. The trial judge refused to non-suit for contributory negligence and was sustained by this Court. From the facts disclosed in that case it was not clear that the plaintiff's assumption was unreasonable. The question therefore went to the jury. If we vary the elements of the Glynn case by progressively diminishing the distance that the car had to run and increasing the distance that the man had to walk, we first approach and cross the line that separates alleged contributory negligence that is debatable by a jury from alleged contributory negligence that is manifest to a judge. For reasons already stated, we think that the situation presented is of the latter class.....It may be said that this view of the subject puts cases like this upon a sliding scale—leaves a trial judge without any simple, convenient rule of universal application other than the general proposition that travelers on a public highway must exercise due care, and obliges him to decide a motion to non-suit upon his own judgment as to the particular facts in proof. This is true, but it is no novelty. That it

is true results from the nature of the case. Where rights are relative, as they are in a public highway, the rule that governs them must be flexible enough to fit the changes of the relation. It is not a case for a rigid formula."

"The salutary rule of duty which requires the ordinary traveler, in crossing a street railway, to use his powers of observation to discover approaching vehicles, and his judgment how and when to cross without collision is also binding upon a child that is sui juris; and if the facts are undisputed, and it appears that he has acted in entire disregard of that degree of prudence which may be reasonably expected from one of his years, and he suffers injury thereby, he cannot recover, and in that case the question of contributory negligence becomes one for the Court to determine. 3 Ell. R. R. 1261; Railway Co. v. Flanagan, 28 Vr. 696; Brady v. Traction Co., 34 Vr. 25; S. C., ante p. 373; Collins v. South Boston Railway Co., 142 Mass. 301; Hayes v. Norcross, 162 Mass. 546." Fitzhenry v. Consolidated Traction Co., 64 N. J. L. 678.

As to the rights of travelers to cross the tracks of trolley company, the law seems to be well settled in this State and the rule seems to be that their rights are mutual and reciprocal so far as the use of a regular crossing is concerned.

"Of course the trolley company can claim no superior right to that of the driver of any other vehicle in the use of the highway, regard being had, however, to the former's fixed line of travel. Each must have due regard to the rights of the other in its use. The plaintiff must be considered as having acted with a knowledge of these mutual rights and liabilities. The rules that regulate the crossing of steam railroads have little application here. It is contended that the plaintiff did not look as he should have done before crossing. But the rule is, as to crossing a roadway, that one must use his powers of observation, in respect to other passers thereon, and a reasonable judgment, to avoid collision. He is not required to extend his observation to an approaching car, however distant, but

only to the distance within which vehicles, proceeding at customary and reasonably safe speed, would threaten his safety. Newark Passenger Railway Co., v. Block, 26 Vr. 605, 612." Woodland v. North Jersey Street Railway Co., 66 N. J. L. 457. North Jersey Street Railway Co., v. Schwartz, 66 N. J. L. 437.

The rule also seems to be well settled that although a vehicle may at times have a superior right to the use of a crossing over that of the trolley company, yet drivers of vehicles must exercise reasonable care in approaching such crossings and must look to see whether or not they can safely cross. Hannon v. North Jersey Railway Co. 36 Vr. 547; Jewett v. Paterson Railway Co. 33 Vr. 425; North Jersey Ry. Co. v. Flanagan, 28 Vr. 696; Fitzhenry v. Consolidated Traction Co. 35 Vr. 674; McHugh v. North Jersey Street Railway Co. 46 Atl. 782.

In the case of McHugh v. North Jersey Street Railway Co., 46 Atl. 782, the opinion is as follows: "We think that the evidence shows that the plaintiff, who was in his wagon near the sidewalk while the car was approaching behind him, suddenly turned his wagon around without looking back and drove on the track when the car was too near him to be stopped, and that he was thereby guilty of contributory negligence. The damages we also think are excessive. Rule to show cause is made absolute."

In the case of Hannon v. North Jersey Railway Company, the opinion of the Supreme Court is as follows: "The verdict for the plaintiff in this case cannot be supported by the proofs which were offered. They entirely fail to justify the conclusion that the accident to the plaintiff, which is the cause of action in this case, resulted from any want of care on the part of the employees of the defendant company. On the contrary the testimony makes it appear more probable at least that the plaintiff's injury resulted entirely from his own carelessness in suddenly and without warning turning his horse across the track of the

defendant company, directly in front of an approaching car."

Applying the rules stated in the foregoing cases to the facts in this particular case, we have this situation: The plaintiff driving along the road and the trolley coming in the same direction. The plaintiff looks at a point one hundred yards from the crossing and where she had an uninterrupted view of the track back of her for about a quarter mile. She went on, the horse walking or on a slow trot, until she came to the crossing. Then she turned abruptly to her left without looking or without giving any signal of her intention to turn, and started to cross the track of the defendant company. As the wagon was about to clear the track it was just barely struck by the dirt-car owned and operated by the defendant company. The plaintiff knew the running schedule of cars and knew that a car had gone West just before she left her home, so that there would be no car going East for a period of ten minutes. With this knowledge, under these circumstances, she drove down the road and turned across the trolley track. Was she guilty of contributory negligence?

It is not a case of a street intersection, where the vehicle and trolley car are going at right angles to each other and where the motorman is bound to assume if he sees a vehicle approaching across that it intends to proceed on in the direction in which it is headed. It is directly the opposite of that situation as the two vehicles were going in the same direction, and the plaintiff by a sudden turn, without signal or without looking, places herself in a position of obvious danger.

In the case of Pfrom v. Public Service, 77 N. J. L. 690, the Court said, "The rule is entirely settled in this Court that a person using a public highway is bound to be observant of the presence of cars or vehicles which have the right to use the same street. While the pedestrian or drivr of a vehicle has a right to pass over or drive upon the track of a trolley road, he is nevertheless under an

obligation to exercise care to see that it is safe for him to do so. The rule laid down that one is negligent who attempts to cross a street railway track while his vision is obstructed and without waiting until the obstruction is removed or he himself attains a position where he can assure himself of safety, is based upon the implied duty to use his eyes and to use them at such time and place as will permit such use to be effective."

Now as to the case made by the defendant. The two men in charge of the car testified that they saw the buggy ahead of them a distance of three or four hundred yards from the crossing. That the buggy at that time was up close to the trolley track. That the bell was rung and the buggy pulled over to the right. That it was on a slight down grade; the car unloaded and with no power on. That after the buggy pulled away from the track the motorman released his brake and allowed the car to drift down the hill. That when he was thirty feet from the crossing the buggy slightly ahead of him on his right, it suddenly turned and drove across the track in front of him. That he applied his brake and stopped the car so quickly that it did not travel more than two feet after striking the buggy. No one from the buggy gave him any signal that they intended to cross. He had a right to assume from the fact that they had pulled away from the track when he rang his bell that they knew of his presence and would not attempt to cross in front of him. Can it be said from these facts that there was any negligence on the part of the defendant?

It is true that the motorman was bound to have his car under control. He says that it was not going more than four or five miles an hour. This is not disputed or questioned as there was no proof on the part of the plaintiff as to the speed of the car. If he had his car under such control that it could be stopped within the distance that it was stopped and did not proceed beyond the point that he says it did after striking the buggy, can it be said that

there was any negligence on the part of the defendant?

The motion to non-suit was held in abeyance by the Court until the conclusion of the case. Then a motion was made for a direction of verdict for the defendant upon the ground of contributory negligence of the plaintiff and the absence of negligence on the part of the defendant. It is submitted that this motion should have been granted.

V. CLAUDE PALMER,

ERNEST WATTS,

Attorneys for and of Counsel with
Defendant and Appellant.

NEW JERSEY SUPREME COURT.

BURLINGTON COUNTY.

JOSEPH W. GARLANGER and
MARY W. GARLANGER, his wife,
Plaintiffs,

vs.

BURLINGTON COUNTY TRANSIT
COMPANY,
Defendant.

ACTION AT LAW.

NOTICE OF APPEAL.

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To DAVIS & DAVIS,
301 Market St., Camden, N. J.,
Attorneys of Plaintiffs.

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TAKE NOTICE that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in this case upon the following grounds:

1. Because the trial Court refused to order a non-suit in this case at the conclusion of the plaintiffs' testimony upon the grounds that the testimony of the plaintiffs did not disclose any negligence on the part of the defendant, or its employees, and because the testimony of the plaintiffs did disclose contributory negligence on the part of Mary W. Garlanger, one of the plaintiffs, sufficient in law to bar recovery on the part of the plaintiffs.

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2. Because the trial Court refused to direct a verdict for the defendant at the conclusion of the whole case upon the ground that the testimony in the whole case did not show any negligence on the part of the defendant, or its

employees, and because the testimony in the whole case did disclose contributory negligence on the part of the plaintiff Mary W. Garlanger, sufficient in law to bar a recovery by the plaintiffs.

3. Because the Court permitted the witness Mrs. Susanna Strouse to testify as follows:

" Q. Did you look up the road to see whether the trolley car was coming just before you crossed?

MR. PALMER: That is objected to as leading. It is essential to the case and should not be put in a leading form.

MR. DAVIS: It doesn't seem to me it is leading, if your Honor please.

THE COURT: I think you had better change the form of the question.

Q. Before you crossed the track did you look up the road at any time to see whether the car was coming?

(Objected to. Objection sustained.)

THE COURT: You may ask her what she did, if she did anything with regard to looking.

Q. What did you do in regard to looking for a trolley car before you passed over the tracks?

MR. PALMER: I object, on the ground that a leading question having been put and an objection to it sustained the question cannot be framed in a legal manner and asked.

(Objection overruled.)

A. What did I do? I wasn't doing anything only sitting in the car.

Q. Did you look?

A. I looked. Mary looks upwards and I looked back to see and I didn't see anything. "

4. Because the trial Court permitted the witness Stanford Haines to be cross-examined as follows:

"Q. When the car is going down a high grade as it was there at Rancocas Park, with no load and with no power on, within how short a distance can you stop the car?

A. I couldn't tell you that for I don't know.

Q. You can stop it in a good bit shorter distance than 30 feet, can't you?

MR. PALMER: I object. The witness has testified that he did not know, he never had run the car.

(Objection overruled.) "

ERNEST WATTS,
V. CLAUDE PALMER,
Attorneys of Defendant and Appellant.

Filed Dec. 20th, 1913.

2. Burlington County Transit Company, a corporation, the defendant in this case, was summoned to answer unto Joseph W. Garlanger and Mary W. Garlanger, his wife, the plaintiffs herein, in an action at law, upon the following complaint:

NEW JERSEY SUPREME COURT.

JOSEPH W. GARLANGER and
MARY W. GARLANGER, his wife,
Plaintiffs,

vs.

BURLINGTON COUNTY TRANSIT
COMPANY,
Defendant.

ACTION AT LAW.

COMPLAINT.

The plaintiffs, Joseph W. Garlanger and Mary W. Garlanger, his wife, residing at Masonville, in the County of Burlington and State of New Jersey, say that:

1. That the defendant is a corporation of the State of New Jersey, owning and operating a line of electric cars upon and along the various highways of the County of Burlington, and especially a certain public road leading from Mount Holly to Moorestown.

2. That the plaintiffs are husband and wife, respectively, and that the plaintiff, Mary W. Garlanger, was riding on the 9th day of November, A. D. 1912, in a buggy along the public highway leading from Masonville to Rancocas Park, and from Rancocas Park to Bridgeboro, all in the County of Burlington aforesaid. And while proceeding along the public road as aforesaid in the direction of

Bridgeboro, it was necessary to cross the tracks of the defendant company, and while so lawfully attempting to cross the said tracks, without any carelessness or negligence on the part of the said plaintiff in broad daylight, the wagon in which she was riding was negligently and carelessly run into by a car owned by the defendant company and operated by its servants and agents, by reason of which she suffered great bodily pain and mental anguish thence hitherto.

3. The injuries of which the plaintiff, Mary W. Garlanger, complains and inflicted upon her as aforesaid, through the carelessness and negligence of the defendant, consisted in severe bruises, contusions and lacerations of head, body and limbs, and especially injuries to her hands, head and back, which said injuries are, the plaintiff, Mary W. Garlanger, believes and therefore avers, permanent in their character.

4. The negligence of which the defendant is guilty and of which the plaintiff complains consists in the fact that no bell, whistle or other warning was given to the plaintiffs of the approach of the said car. That the said car was run and operated at a high and unreasonable rate of speed under the circumstances, and that the plaintiff, Mary W. Garlanger, was run down in broad daylight without notice or warning while she was on the public highway, and that the car was not properly equipped so as to make it possible to be under proper control or to enable the servants of the defendant in control of said car to give the plaintiff proper warning of its approach.

5. And the plaintiff, Mary W. Garlanger, avers that she has suffered great bodily pain and mental anguish, thence hitherto, and she believes and therefore avers that the injuries that she has sustained due to the negligence of the defendant are permanent in their character.

And the plaintiff, Joseph W. Garlanger, avers that he has been caused to lay out and expend large sums of money in and about having his said wife treated and cured of her said injuries; that he has been deprived of the services and companionship of his said wife, thence hitherto, and will be in the future so deprived of the services and companionship of his said wife due to the negligence and carelessness of the defendant, and that he will be compelled to lay out and expend large sums of money in the future in and about having his said wife treated and cured of her said injuries.

6. The plaintiff, Joseph W. Garlanger, claims as damages the sum of $5,000.00, and the plaintiff, Mary W. Garlanger, claims as damages the sum of $5,000.00, and therefore they bring their suit.

DAVIS & DAVIS,
Attorneys of the Plaintiff.

Filed Jan. 10, 1913.

The defendant answered as follows:

NEW JERSEY SUPREME COURT.
BURLINGTON COUNTY.

JOSEPH W. GARLANGER and
MARY W. GARLANGER, his wife,
Plaintiffs,
vs.
BURLINGTON COUNTY TRANSIT
COMPANY,
Defendant.

ACTION AT LAW.

ANSWER.

Defendant, the Burlington County Transit Company, of Hainesport, Burlington County, New Jersey, says that:

1. It admits the first paragraph of the complaint.

2. It denies knowledge or information sufficient to form a belief as to each and every other of the allegations in the said complaint contained, and for the purpose of putting the plaintiffs upon their proofs, it denies each and every of the said allegations, and further it expressly denies that the plaintiff Mary W. Garlanger was in any way damaged or injured, or the plaintiff Joseph W. Garlanger in any wise damaged, through or by the negligence of this defendant, or of its servants or employees, and on the contrary alleges upon its information and belief, that the alleged accident to the plaintiff Mary W. Garlanger, and the damage, if any, sustained by the plaintiffs Mary W. Garlanger and Joseph W. Garlanger, were caused by the negligence of the plaintiff Mary W. Garlanger and her own negligence contributing thereto.

ERNEST WATTS,
Attorney of Defendant.

Filed Jan. 28th, 1913.

3. The following is a copy of the evidence presented in the case, with the objections thereto and the rulings of the Court thereon, except the testimony of physicians produced by both plaintiffs and defendant, which goes to the nature and extent of the injuries complained of, and which is omitted by consent of plaintiffs' attorneys:

MT. HOLLY, N. J., November 12, 1913.

(It is admitted by counsel for the defendant that the trolley car in question was operated by the defendant company.)

MARY W. GARLANGER, sworn for plaintiffs.

DIRECT EXAMINATION.

BY MR. DAVIS:

Q. Mrs. Garlanger, you are the wife of Joseph Garlanger?
A. Yes, sir.
Q. Who sits over there, does he not?
A. Yes, sir.
Q. And where do you live?
A. Masonville.
Q. How long have you lived there?
A. Over thirty years.
Q. And you have how many children?
A. Four.
Q. And you have been married how long?
A. Over twenty-six years.
Q. About a year ago did Susanna Strouse live with you at your house?
A. Yes.
Q. Do you remember the 9th day of last November?
A. Yes, sir.

Q. Where were you on that day?
A. Going down the road towards the Park.
Q. Where did you start from?
A. My own home.
Q. And that is between the Park and Masonville?
A. Yes, sir.
Q. Where did you intend to go?
A. Riverside.
Q. And what is the road that you traveled?
A. Down the stone road to Rancocas Park.
Q. And then what road?
A. Through Rancocas Park.
Q. Through the Park?
A. Yes, sir.
Q. What sort of a wagon were you driving or using?
A. One horse and buggy.
Q. Who was in this buggy?
A. Aunt Suse and my boy and myself.
Q. What sort of a horse did you have?
A. A white horse.
Q. Gentle or not?
A. Yes, sir; gentle.
Q. Had you driven him before?
A. Yes, sir.
Q. Now before you left the house did you notice anything with respect to the cars? You can say yes or no to that.
A. Yes, sir.
Q. What did you notice?
A. Noticed a car going one way.
Q. Which way?
A. I think it was towards Mount Holly.
Q. Towards Mount Holly?
A. Yes, sir.
Q. Then what did you do?
A. Went down the stone road to the Park.
Q. Who was driving?

A. Myself.
Q. Did this buggy have a top to it?
A. Yes, sir.
Q. Did it have curtains on?
A. Yes, sir.
Q. Side curtains or not?
A. Yes, sir.
Q. Which side of the buggy were you sitting on?
A. I was sitting on the right side to drive.
Q. And where was Mrs. Strouse sitting?
A. On this side. (Indicating.)
Q. That would be the left side?
A. Yes, sir.
Q. And where was the boy sitting?
A. In between.
Q. Now when you got near the Park, as you intended to turn across did you or did you not look to see whether the car was coming?
A. Yes, sir; I looked.
Q. Which way did you look?
A. (Witness indicates.)
Q. And that would be in what direction?
A. Towards Philadelphia.
Q. And Masonville, too?
A. Yes, sir; and Masonville.
Q. Did you see any car?
A. No, sir.
Q. Did you hear any?
A. No, sir.
Q. Then what did you do?
A. Went down the stone road and turned around over to the track.
Q. And what happened to you then?
A. Why, a dirt car hit us.
Q. What happened?
A. Why, it broke the buggy.
Q. What happened to you, if anything?

A. Throwed me out.
Q. What happened to Mrs. Strouse and the boy?
A. They stayed in.
Q. Then what became of the horse and buggy?
A. He run into a post.
Q. Now, Mrs. Garlanger, was this daytime or night?
A. Daytime.
Q. What time in the day?
A. I guess about ten o'clock.
Q. In the morning?
A. Yes, sir.

By the Court:

Q. Was it a public crossing?
A. Yes, sir.
Q. And you were in the act of crossing at a public crossing when you were struck by this car?
A. Yes, sir.

By Mr. Davis:

Q. Is the road which leads from the stone road on which the trolley car runs over towards Bridgeboro a public highway?
A. Yes, sir.
Q. You have traveled it for how many years?
A. Traveled it for over thirty.
Q. As you came down the stone road, Mrs. Garlanger, what part of the stone road did you travel on, either side or the middle?
A. On the right hand side.
Q. And did you do that all the way down?
A. Yes, sir.
Q. Were you on the right side of the road at the time you began to turn to your left to go across the trolley tracks?

A. Yes, sir.

Q. Now when you were thrown out were you injured?

A. Yes, sir.

Q. In what way, what particular?

A. I had a cut here on my head and my hand was mashed and my back was hurt and this side.

By the Court:

Q. Now which way was the trolley car going?

Mr. Davis: Yes, I will get that.

A. It was going towards Mt. Holly.

By Mr. Davis:

Q. And coming from the direction of what?

A. From Masonville.

Q. Was there any bell or whistle sounded on this car?

A. No, sir.

Q. Was there any notice or warning given you of the approach of this car?

A. No, sir.

Q. Now after you were thrown out and injured what did you then do?

A. Some man picked me up.

Q. Do you know who he was?

A. It was Johnnie Griffin, the fellow that ran into us.

Q. What was he doing on the car?

A. I guess he was hauling dirt for the company.

Q. I mean was he operating the car or not?

A. Yes, sir.

Q. This was what kind of a car that struck you, Mrs. Garlanger?

A. A dirt car.

Q. Was it loaded, do you know?

A. I don't know.

Q. You say you lived there at Masonville how long?

A. Over thirty years.

Q. And have you or have you not often traveled that road from your house down to the tracks?

A. Yes, sir.

Q. Do you know whether or not there is any grade from your house towards the track?

A. Yes, sir.

Q. Well, is there or is there not a grade? **10**

A. Yes, there is a grade.

Q. And is that grade considerable?

A. Yes, it is pretty good.

Q. A pretty good grade?

A. Good grade.

Q. Now after you were picked up by Mr. Griffin what did you do then?

A. I didn't do much for a little bit. We stood around there and then we come home.

Q. How did you get home? **20**

A. Got home the back way the best we could.

Q. Well, did you walk, ride or what?

A. We walked there as good as we could, got there somehow.

Q. Did you walk?

A. Yes, had to.

Q. Had to?

A. Yes.

Q. How far is it from that place down to your home?

A. I guess a quarter of a mile. **30**

Q. Was the buggy and horse left there?

A. Yes, sir.

Q. What was done with the horse?

A. A fellow that was on the dirt car took him and brought him home.

By the Court:

Q. Madam, how close to the trolley track were you when you went to go across the trolley track and you say you looked for the car? How close were you to the trolley track when you loked for an approaching car?

A. I couldn't just exactly say how near. We turned just the same as anybody else would turn to get over, you know, give us room to get across.

Q. Yes, but how near were you to the tracks when you looked?

A. Why, coming down the road, before we got right close to it, I looked down to see if there was anything coming.

Q. You were right close to the tracks when you looked or not?

A. Yes, sir; we were pretty close to it; yes, sir.

Q. Why didn't you see the car?

A. I guess it come so fast.

By Mr. Davis:

Q. Did you see the car at all before it struck you?

A. No, sir.

Q. Now when you looked around how far up the track could you see?

A. Why, quite a good ways.

Q. Well, how far is that, Mrs. Garlanger?

A. Why, maybe a hundred yards or something like that.

Q. And was the car within sight at the time that you looked?

A. No, sir; we couldn't see anything coming.

Q. But you did look, did you, or not?

A. Yes, sir; we did look.

Q. Now after you were taken home what did you do then?

A. Went to bed.

Q. Did the doctor come to see you?

A. We sent for the doctor first.

Q. Who sent for him?
A. My sister.
Q. And who came, do you know?
A. Dr. Prickett came first and then our own doctor came later.
Q. When did Dr. Prickett come, the same day you were injured?
A. Yes.
Q. Did you send for him?
A. No, sir; I guess the company sent for him.
Q. Then you were put to bed?
A. Yes.
Q. Did Dr. Wintersteen come the same day?
A. Yes, sir.
Q. Was he your regular family physician?
A. Yes, sir.
Q. And how long has he been your physician?
A. Eleven years.
Q. Did Dr. Prickett come more than that one day?
A. Yes, the next day.
Q. Two days?
A. Yes.
Q. Did he come after that?
A. No, sir.
Q. Who attended you?
A. Dr. Wintersteen.
Q. Do you know how long he attended you?
A. Over two weeks.
Q. How long were you in bed?
A. Over two weeks.
Q. Over two weeks in bed?
A. Yes, sir.
Q. How long was Mrs. Strouse in bed if at all?
A. The same time.
Q. And during that whole time was Dr. Wintersteen attending both of you?
A. Yes, sir.

Q. Did you have any pain?
A. Yes, sir.
Q. Where, Mrs. Garlanger?
A. In my back and my side.
Q. How about your head? Did you have any on that?
A. Yes, on my head, too.
Q. Was your head cut?
A. Yes, sir.
Q. Is there a scar there?
A. I don't know whether there is any scar or not.
Q. How long did you have this pain?
A. For over two weeks. I have it yet.
Q. You have it yet?
A. Sometimes; yes, sir.
Q. Where do you have the pain now?
A. Sometimes in my head and in my back, too.
Q. In your back, too?
A. Yes, sir.
Q. How about your hand?
A. Well, this finger hurts me a little. This I didn't make any account of.
Q. Referring to the second finger of your left hand?
A. Yes, sir.
Q. Is this finger stiff at any place?
A. Yes, sir.
Q. Where?
A. There is a pain in it once in a while.
Q. Where is it stiff, in that first joint?
A. Yes, that first joint.
Q. Was your wrist hurt or not?
A. Yes, sir.
Q. Which wrist?
A. This one. (Indicating.)
Q. The right wrist?
A. Yes, sir.
Q. Mrs. Garlanger, what is your husband's business?
A. Bricklayer.

Q. And before this accident had you been accustomed to doing anything outside of your household work, that is, for yourself and your husband?

A. Sometimes I did.

Q. What had you been doing?

A. I washed.

Q. How many washings did you do per week?

A. Why, some weeks I done four, some weeks I done five.

Q. Some four and some five?

A. Yes.

Q. What did you get for those washes?

A. Well, the longer they kept me the more I got of them; some half a dollar and some seventy-five cents.

Q. And about the average how much did you make per week?

A. Four dollars.

Q. And had you been doing that right along up to the time of this accident?

A. Yes, sir.

Q. And after this accident have you been able to do any of it?

A. Not much now; no, sir.

Q. What do you say?

A. No, sir.

Q. And while you were sick did you have any one to do your work for you?

A. Yes, my daughter.

Q. Before this accident what was your daughter doing?

A. She was working.

Q. Where?

A. In Riverside.

Q. How old is she?

A. She is sixteen.

Q. And did she give you any part of her money before this accident?

A. Yes, sir; she did.

Q. How much?
A. She gave it all to me.
Q. How much did she make?
A. She made a dollar a day.
Q. Six dollars a week?
A. Yes, sir.
Q. Is that what she gave you?
A. Yes, sir.
Q. How long did she nurse you?
A. For over three weeks.
Q. Three weeks?
A. Yes, sir.
Q. During those three weeks did she give you that six dollars?
A. No, sir.
Q. After the three weeks did she go back to work?
A. She went back but they had somebody in her place.
Q. Well, did she get a new position?
A. No, sir.
Q. How long was it before she got a position?

Mr. Palmer: That is objected to. The testimony as to the loss of position of the daughter certainly is no element of damages.

Mr. Davis: It seems to me that if the loss of the position, if by reason of this accident she has been deprived of her earnings and she had a steady position, that is an element of damage which ought to be taken into consideration.

(Objection sustained.)

Q. Now after this accident were you able to do any of these washings?
A. No, sir.
Q. Have you been able to do your household work?
A. Yes, I can do it.

Q. Well, do you have any pain when you are working around your place?

A. Yes, sir.

Q. And have you had pain from that time on up to the present time?

A. Yes, sir.

Q. And where do you have that pain?

A. Sometimes in my back and sometimes in my head.

Q. Mrs. Garlanger, did you have your regular menstrual periods up to the time of this accident?

A. Yes, sir.

Q. And what since this accident? Have you had them or not?

A. No, sir.

Q. Haven't had them?

A. No, sir.

By the Court:

Q. What is your age, Madam?

A. Forty-two, my birthday.

By Mr. Davis:

Q. Then you are forty-one at the present time?

A. Yes, sir.

Q. How long have you known Mrs. Strouse?

A. I have known her for about three years.

Q. She is related to your husband, is she not?

A. Yes, sir.

Q. Before this accident, Mrs. Garlanger, you had known Mrs. Strouse then about two years?

A. Yes, a little over.

Q. And had she lived at your place?

A. Yes, sir.

Q. And was she living there at the time of the accident?

A. Yes, sir.

By the Court:

Q. Whose horse and wagon was it?
A. My son's.
Q. Which son?
A. The oldest.
Q. Not the boy that was in it?
A. No, sir.

By Mr. Davis:

Q. You borrowed it that day?
A. Yes, of my son.

By the Court:

Q. What had Mrs. Strouse to do with the driving of the horse, if anything?
A. She didn't have anything.
Q. Did she live at your house?
A. Yes, sir.
Q. Well, who borrowed the horse and wagon from your son?
A. I did.

By Mr. Davis:

Q. You had noticed Mrs. Strouse's hearing and sight before this accident?
A. She could hear all right when she first came to my place.
Q. Could she hear all right at the time of the accident?
A. Yes, sir.
Q. And how about her sight?
A. I don't know, but she could read when she came to my place and sew.
Q. Did she complain anything about her right eye?

A. No sir.
Q. Or about her left eye?
A. No, sir.
Q. How is she now with regard to her hearing and sight?
A. She can't hear now at all hardly.
Q. And how about her sight?
A. And her sight is not very good.
Q. Is there any difference between the sight of her two eyes?
A. Yes, sir.
Q. Do you know whether she is able to do any sewing or reading now?
A. I don't think she can do any now; no, sir.
Q. Have you seen her doing any since this accident?
A. No, sir.
Q. Do you know how old she is?
A. She is eighty-five on her birthday.
Q. Mrs. Garlanger, do you know what Dr. Wintersteen's bill is for attending you?

MR. PALMER: I object. The physician is the proper one to testify as to the bill for his services.

(Objection overruled.)

A. $50.
Q. Did that include the services to Mrs. Strouse?
A. Yes, sir.
Q. $50 for both of you?
A. Yes, sir.
Q. Was this buggy injured or broken?
A. Yes, sir.

THE COURT: Is that an element of damage?

MR. DAVIS: I think so.

MR. PALMER: There is no allegation to that effect.

MR. DAVIS: Well, I will ask to amend my claim then.

THE COURT: Well, the horse and buggy, as I understood it, belonged to her son.

MR. DAVIS: Yes, but she is responsible for it, if your Honor please. If she borrows it and does not return it in the condition in which it was she is responsible for it, and any item of damages for which she is responsible goes in as an element of damages which may be given in proof in the case.

THE COURT: She undoubtedly had a qualified property in the buggy. She could maintain an action of replevin, she could maintain an action for trover and conversion; but could they hold her responsible for the acts of a third person?

MR. DAVIS: The owner of this wagon can hold Mrs. Garlanger responsible for the damage which was done to the wagon from the time that she had it, because she is a bailee not for hire.

THE COURT: No, she would not be responsible for the negligent act of a third person. Your action is based upon negligence. I think you had better keep your case within the pleadings.

CROSS-EXAMINATION.

BY MR. PALMER:

Q. Mrs. Garlanger, how far is your house from Rancocas Park?

A. Not very far.

Q. About how far?

A. Well, I couldn't exactly say how far.

Q. About a quarter of a mile, isn't it?

A. Yes, something like that.

Q. Are there any houses on the road between your house and Rancocas Park?

A. Yes, sir.

Q. About what time in the day did you leave your home with this horse and buggy?

A. About ten o'clock.

Q. You were driving east towards Hainesport, were you not?

A. Yes, sir.

Q. And how far from your house were you when you looked to see if there was a trolley car coming?

A. I was near the track.

Q. How near to the track?

A. I guess about one hundred yards or something like that.

Q. You were about one hundred yards from the track when you looked to see if there was any trolley car coming?

A. Yes, sir.

Q. You mean one hundred yards from the crossing where you crossed the trolley track?

Mr. Davis: She didn't say that. I object to putting words in her mouth.

(Objection overruled.)

A. Yes, sir.

By the Court:

Q. Now you say yes to that. What do you mean, that you were one hundred yards away from the tracks when

you attempted to cross or you were one hundred yards from the crossing? Proceed, Mr. Palmer.

By Mr. Palmer:

Q. You were one hundred yards from the crossing when you looked to see whether there was a trolley car coming or not, weren't you?

A. Yes, sir.

Q. Do you know how far you can see up the track or westward from the Rancocas Park on the tracks?

A. I don't know how far you could see.

Q. Is there any curve in the trolley track between your house and Rancocas Park?

A. I don't know.

Q. Do you know whether the track curves at all?

A. No, sir; I couldn't tell you.

Q. The roadway on which you were driving is perfectly straight, is it not, from your house to the park?

A. No, sir; it is not. It is down grade.

Q. But I mean there are no curves to the side, to either side.

A. I don't know.

Q. Don't you know?

A. No, sir.

Q. Can you see your house from the crossing at the Rancocas Park?

A. Yes, sir.

Q. Which side of the road, of the stone road, were you on as you came down this grade?

A. The right side.

Q. You mean that your right hand wheels were off of the stone road, on the dirt on the side, or were you in the middle of the stone road?

A. On the side.

Q. Then your right hand wheels, the right hand wheels

of your buggy, were off in the dirt to the side of the stone road; is that what you mean?

A. I don't know. I was on the side, that is all I know.

Q. You don't know how far you were on the side?

A. No, I couldn't tell you.

Q. Wasn't your horse going down the middle of the stone part of the road?

A. No, he was on the side, on the right.

Q. Your horse was traveling about where the wheels make a track ordinarily on the road? Is that where your horse was?

A. He was on the side.

Q. He was further over than that?

A. Yes, sir.

Q. Then your horse was away off to the right of the stone road?

A. Yes, sir; so anybody could pass on this side.

Q. You then say that your horse was entirely to the right of the stone part of the road; is that true?

A. He was on the right; that is all I know.

Q. Now was he entirely in the stone part of the road or not?

A. I don't think he was; no, sir.

Mr. Davis: I think she has answered that.

Q. Then were your right hand wheels off the stone part of the road?

A. I don't think they was.

Q. You don't think they were?

A. I couldn't tell you whether they was or not.

Q. Well, do you think the wheels were on the stone part of the road, your right hand wheels, right side wheels?

A. I don't know.

Q. How far were you from the crossing, that is, where you crossed the trolley tracks, when you started to pull to the left to go across?

A. Why, I pulled to go across the same as anybody else would.

Q. And about how far were you from the crossing?

A. I couldn't tell you; just give myself room enough to go around; the same as anybody else driving.

Q. You just gave yourself room enough to go to the left?

A. Yes, sir.

Q. To go across?

A. Yes, sir.

Q. Mrs. Garlanger, you know the motorman of this car, do you not?

A. Yes, sir.

Q. You knew him at the time of the accident?

A. Yes, sir.

Q. Do you remember his coming to you there upon the ground at the time of the accident?

A. Yes, sir; he picked me up.

Q. He picked you up?

A. Yes, sir.

Q. Did he ask you if you were hurt?

A. Yes, he knew I was hurt.

Q. Did he ask you that question?

A. Yes, sir.

Q. And what did you say to him?

A. I told him yes.

Q. Didn't you tell him that you were not hurt?

A. No, sir; I didn't.

Q. You know Mr. Smith, the superintendent of the Traction Company?

A. Yes, sir.

Q. Did you see Mr. Smith that day?

A. Yes, sir.

Q. After the accident?

A. Yes, sir.

Q. And did you tell Mr. Smith that Johnnie, meaning the motorman, couldn't help it, couldn't help the accident?

A. He told me he couldn't stop the car.

Q. Didn't you tell Mr. Smith that Johnnie, meaning the motorman, couldn't help hitting you?

A. No, I didn't. If I did I don't remember. I was awful nervous, I know that.

Q. Do you know Mr. Davis, connected with the trolley company?

A. This lawyer Davis here?

Q. No, the Mr. Davis who works for the trolley company.

A. No, sir.

(Mr. Davis requested to stand and complies.)

Q. Do you know that gentleman?

A. No, sir.

Q. Have you ever seen him before?

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

Q. Wasn't he at your house on the afternoon of this accident?

A. I don't know. I couldn't tell you.

Q. You know Mr. Smith, the superintendent of the trolley company?

A. Yes, sir; I know him.

Q. Was he at your house?

A. Yes, sir.

Q. On the night of the accident?

A. Yes, sir.

Q. Did Mr. Davis or Mr. Smith at this interview at your house ask you if you had looked for the trolley car?

A. I couldn't tell you. I don't remember.

Q. And didn't you in reply to that, to Mr. Davis' question, say that you had seen the trolley car go down from Hainesport towards Moorestown and that you knew there was no other car coming for ten minutes and that you didn't look to see if there was a car coming?

A. Yes, sir: I always look before I go over crossings, yes.

Q. Did you say that to Mr. Davis?

A. I don't know what I said to him. I don't remember.

Q. Do you say you didn't say it?

A. I don't remember whether I did or not.

Q. This was the day after the accident, wasn't it?

A. Well, I was pretty sick the day after the accident, nervous, too.

Q. You were sitting up at the time, weren't you?

A. Yes, sir.

Q. You were not in bed at that time?

A. No, I hadn't got in bed yet.

Q. Did Mr. Davis, this gentleman sitting here, at this interview at your house on the day of the accident ask you if you saw the car coming and you replied, "I didn't look"?

A. I don't remember. I always look before I go over crossings?

Q. You always do look?

A. Yes.

Q. But you don't remember what you told Mr. Davis?

A. Well, I was sick and nervous. Maybe I didn't know what I told him. I couldn't tell you.

Q. Did this buggy have the side curtains on?

A. Yes, sir.

Q. And you were sitting on the right hand side of the buggy?

A. Yes, sir.

Q. The trolley car that hit you was coming from the same direction in which you were?

A. Yes, sir.

Q. Was your husband present on the day of the accident when Mr. Smith was at your house?

A. I don't know.

Q. And didn't your husband say to Mr. Smith in your presence that he had told you not to let the boy drive the horse?

A. No, sir; I always took the horse myself.

Q. Wait just a moment, Madam. Didn't your husband say that to Mr. Smith in your presence at your house?

A. No, sir.

(Objected to.)

THE COURT: She has answered. She says no.

A. I didn't hear it.

Q. Now, Mrs. Garlanger, at the time the car hit the buggy did either of the wheels fall down at that time?

A. I don't know. I was throwed out after that. I couldn't tell you.

Q. Were you thrown out at the time the car struck the buggy?

A. I don't know that.

Q. Where were you when you were picked up, nearest the track or in the park?

A. I don't know how near I was to it. I didn't know anything.

Q. You don't remember where you were?

A. No, sir; I don't.

Q. Didn't you say in your direct examination that when the car hit the buggy that the right hand wheel broke and the buggy dropped?

A. Well, that is what they told me afterwards.

Q. Then you are testifying from what has been told you?

A. No, sir.

Q. Well, you don't know yourself, do you?

A. You wouldn't know either if you were throwed out, would you?

Q. No, I am asking what you knew. Do you know what happened to the buggy when the car hit it?

A. No, sir.

MR. PALMER: I ask that her testimony with reference to that point be stricken from the record.

MR. DAVIS: I object to that. She can see.

THE COURT: What do you want stricken out?

MR. PALMER: The part in her direct examination in which she says that when the car hit the buggy the right wheel collapsed and she was thrown out.

THE COURT: The motion to strike out is denied.

Q. Do you remember Mr. Riffert, John A. Riffert, coming to you after the accident?

A. Yes, sir.

Q. And did he ask you if you were hurt and you replied no?

A. I don't remember.

Q. Did Mrs. Strouse at this time when Mr. Riffert was standing there talking to you say to you, "I told you to take those lines and go across and not let the boy drive"?

A. No, sir; I always took—

Q. Just a moment, Mrs. Garlanger. Did Mrs. Strouse say that to you at that time?

A. I don't remember.

RE-DIRECT EXAMINATION.

BY MR. DAVIS:

Q. Mrs. Garlanger, you say that you looked when you were one hundred yards away from the crossing. Did you look just before you went across the crossing or not?

(Objected to as not re-direct examination.)

(Objection overruled.)

A. Yes, sir.

MR. PALMER: I object upon the further ground that it is leading.

THE COURT: The objection having been made after the question was answered it is overruled.

RE-CROSS-EXAMINATION.

By Mr. Palmer:

Q. Mrs. Garlanger, how close were you to the trolley track when you looked this second time just before you went over the crossing?

A. As near as I know about one hundred yards, what I said before.

RE-DIRECT EXAMINATION.

By Mr. Davis:

Q. I mean did you look just before you went across the crossing, Mrs. Garlanger?

A. Yes, sir.

Mr. Palmer: That is objected to as not being re-direct examination and being leading.

The Court: The witness had answered the question before the objection was made. The objection is therefore overruled. Avoid leading questions, Mr. Davis. Put the specific question to her.

Q. Mrs. Garlanger, how far from the crossing were you when you looked the first time?

Mr. Palmer: That is objected to as being repetition. The question has been asked three times.

(Objection overruled.)

A. About one hundred yards.

Q. And how far from the crossing were you when you looked the last time and just before you crossed?

MR. PALMER: I object.

THE COURT: The objection is overruled.

MR. PALMER: And the further objection that it is a leading question. It presupposes an answer that has not been given.

MR. DAVIS: She has testified that she looked just before she crossed, if your Honor please.

(Objection overruled.)

A. About the same, I guess.
Q. What does that mean?
A. I guess about one hundred yards.
Q. Was that the last time you looked?
A. Yes, just before we crossed a little bit.
Q. Well, how far were you away from the crossing before you looked the last time, before you went over the track?
A. Why, the last time I guess it was about a hundred yards.

MR. PALMER: I object, on the ground that the question has been answered.

MR. DAVIS: That is all.

SUSANNA STROUSE, affirmed for plaintiff.

DIRECT EXAMINATION.

BY MR. DAVIS:

Q. Mrs. Strouse, how old are you?

A. Well, if I live to see March I will be eighty-five, the 16th of March. I was born in 1829.

Q. Where were you living last November?

A. I was boarding with Mrs. Garlanger.

Q. At Masonville?

A. Yes, sir.

Q. Did you take a ride on the 9th day of November, the day when you were hurt?

A. Yes, sir.

Q. And where were you going?

A. Going over to Masonville; no, Riverside.

Q. Were you in the wagon with Mrs. Garlanger?

A. Going to Mrs. Garlanger's daughter's house.

Q. Were you in the wagon with Mrs. Garlanger?

A. I certainly was.

Q. Were you hurt there by the trolley car?

Q. I was, badly hurt.

Q. Who was in this buggy?

A. Why, Mrs. Garlanger and her son and me.

Q. Who was driving?

A. She was driving, when I looked she was driving and I can't say no more.

Q. Did you look up the road to see whether the trolley car was coming just before you crossed?

MR. PALMER: That is objected to as leading. It is essential to the case and should not be put in a leading form.

MR. DAVIS: It doesn't seem to me it is leading, if your Honor please.

THE COURT: I think you had better change the form of the question.

Q. Before you crossed the track did you look up the road at any time to see whether the car was coming?

(Objected to. Objection sustained.)

THE COURT: You may ask her what she did, if she did anything with regard to looking.

Q. What did you do in regard to looking for a trolley car before you passed over the tracks?

MR. PALMER: I object, on the ground that a leading question having been put and an objection to it sustained the question cannot be framed in a legal manner and asked.

A. What did I do? I wasn't doing anything only sitting in the car.

(Objection overruled.)

Q. Did you look?

A. I looked. Mary looks upwards and I looked back to see and I didn't see anything.

Q. Were you thrown out of the wagon?

A. No, sir; I held on to the horse and was struck against the irons of the carriage. That is where I got my injury.

Q. Now before this accident could you see?

O. Certainly I could.

Q. Out of both eyes?

A. If you would see the handsome—

Q. Answer the question. Could you see out of both eyes?

A. Both eyes; yes, sir.

Q. Now since this accident can you see out of both eyes?

A. No, sir; only out of this one.

Q. Do you see a little out of the right eye or not at all?

A. I can't see. By the light, maybe, but I can't see to do anything and it hurts me in there.

Q. Now where were you hurt in this accident?

A. I was struck first across that way and then I was struck that way. (Indicating head.) Up from my head down. I had lumps here. (Indicating forehead.)

Q. Was your eye bandaged up after this accident?

A. Oh, yes, all the time.

Q. Who was your doctor?

A. You ask me too much for the name. He promised to be here.

Q. Do you know his name?

A. No.

Q. Is it Dr. Wintersteen or not?

A. Yes, I think that is it.

Q. After this accident did you go to bed?

A. Yes, I was in bed pretty near three weeks, or two weeks steady, and then the doctor told me I could sit up.

Q. Did you have any pain?

A. Yes, sir.

Q. Do you have any pain now from it? Do you have any pain now from this accident?

A. In my head. I can't lie down on that side of my head. Oh, it is all in my head.

Q. How about your hearing before this accident? Was your hearing good or bad?

A. It was better than it is now, by far; but ever since I have been hurt I am complaining and now I am getting worse every day.

Q. Did your hearing grow worse immediately after the accident or not?

A. Yes, it got right away worse.

Q. Were you driving at the time of the accident?

A. No, I was not.

Q. Who was?

A. Mrs. Garlanger herself and—

THE COURT: Ask her how much she looked and where she looked with reference to the crossing.

Q. How much did you look and which way did you look with respect to this crossing?

A. Why, I looked on the side, on the left hand side of the carriage. I was sitting and I looked as far back as I could see and that was pretty near back to where our home, where we started from.

Q. Where was the wagon when you last looked?

A. Why, we were just ready to turn.

Q. Turn where?

A. Turn to go around that street. I don't know what street it is, but this side of the track.

Q. Is that the road over towards Riverside? Is it the road that goes over to Riverside?

A. Yes, sir.

Q. At the Park?

A. Yes, sir; at the Park.

Q. And is that where you looked?

A. I looked—

Q. Well, answer my question.

A. That is where I loked, you know, yes, when we were going down there, but we wasn't just right to that, but very nearly, ready to turn, you know.

Q. You were ready to turn and you looked in which direction, towards Masonville or towards Mt. Holly?

A. Towards Moorestown, Masonville.

Q. Did you see any car coming when you looked?

A. No, sir.

Q. Did you hear any?

A. No, sir; there wasn't any coming nor I didn't hear none.

Q. Mrs. Strouse, since this accident have you been able to do any knitting or sewing?

A. Very little of anything I could do.

Q. Before this accident could you read?

A. Oh, yes.

Q. Since this accident can you read?

A. I can't read only if I keep something over that eye

I can read with this, but it makes the eye feel weak to read much. But I haven't undertaken to sew but very little. I had some very handsome embroidery; I have done but little of that since. I won't complain of that, because I can see with that, but it is this. (Indicating.)

CROSS-EXAMINATION.

By Mr. Palmer:

Q. How far up the road could you see when you looked back to see if the car was coming?

A. I loked as far as the next house to where Mr. Garlanger's is. I don't know how far it is; a couple squares, I suppose. It is a square anyhow.

Q. How close is that house to Mr. Garlanger's house, the one that you could see?

A. Now you ask me too much, the distance. I judge about twenty feet or so.

Q. It is right alongside of it, isn't it?

A. Yes, it is right the next house.

Q. And when you looked back you looked so that you could see all the way to that house?

A. I did.

Q. And where were you when you looked? How close were you to the crossing? How close were you to the crossing when you looked back?

A. Why, it was very near. Well, I suppose maybe I might say it was ten or fifteen feet before Mrs. Garlanger turned. I don't know; of course I didn't measure the ground.

Q. That was when you looked back?

A. Yes, sir; I looked back twice, once before that.

Q. But this last time you could see all the way then to the house alongside of Garlanger's?

A. Yes, sir.

Q. And there was no car in sight anywhere?

A. No, sir.

Q. Who was driving when you looked back?

A. Mrs. Garlanger herself.

Q. When you looked back the first time?

A. Yes, sir; and she was driving, I suppose, when she was thrown out.

Q. You don't know that, do you?

A. No, sir; I stayed in the carriage and held the horse as well as I could.

By the Court:

Q. Do you know whether Mrs. Garlanger looked?

By Mr. Davis:

Q. Do you know whether Mrs. Garlanger looked at the same time or about the time you looked?

(Objected to.)

Q. Do you know whether Mrs. Garlanger looked for the car?

(Objected to.)

A. I suppose she did. I can't tell you what she done. I have only told you what I done myself.

By Mr. Palmer:

Q. Mrs. Strouse, who was driving the horse when you looked around?

A. Mrs. Garlanger.

Q. She drove all the time?

A. As far as I know. I didn't see no change.

Q. Didn't you see the boy have the lines at any time?

A. I don't think I did; no, sir.

Q. Mrs. Strouse, do you know Johnnie Riffert, the motorman on the car?

A. No, sir; I don't know him.

Q. Do you remember a man being there at the accident after you were thrown out?

A. I hallooed for somebody to help me.

Q. Did you say to him or say to Mrs. Garlanger at that time, "I told you to take those lines and go straight across"?

A. No, sir; I didn't.

Q. Wasn't your shawl caught under the wheel of the buggy?

A. Oh, yes, one of my shawls, yes.

Q. And didn't you ask Mr. Riffert to get it for you?

A. I didn't myself but I know somebody got it for me, because I came near fainting twice.

Q. You don't remember who you asked to get your shawl?

A. No, I don't mind. I think it was that there big man.

Q. Didn't you take hold of that shawl and try to pull it out and say, "Oh, my five dollar shawl"?

A. Yes, I did, and tore it. It was torn terrible.

Mr. Davis: If your Honor please, I would like to recall Mrs. Garlanger for a matter I overlooked.

Mrs. Mary W. Garlanger, recalled for plaintiffs.

Direct Examination by Mr. Davis:

Q. Mrs. Garlanger, was the horse walking or trotting when you went across the crossing?

A. He was walking.

Q. Walking slowly or fast?

A. Why, neither one.

Q. Well, how?

A. Going kind of slow.

Q. When you came down from your house towards the crossing was the horse walking or trotting?

A. Yes, sir; walking.

Q. Now, Mrs. Garlanger, you are familiar with the ground between your house and the Park on that road?

A. Yes, sir.

Q. Is it or is it not a hill between the Park and your house?

MR. PALMER: That is objected to as having been answered once by this witness.

MR. DAVIS: No, she said there was a grade, not a hill.

A. Yes, sir.

(Objection overruled.)

ANNIE V. JONES, sworn for plaintiffs.

DIRECT EXAMINATION BY MR. DAVIS:

Q. You live where, Mrs. Jones?

A. Why, I don't know what you call it, whether it is the turnpike or not. It is that main road to Masonville.

Q. How long have you lived there?

A. Since the 5th of June.

Q. Do you know Mrs. Strouse?

A. I have known her about ten weeks.

Q. Does she board at your house at the present time?

A. Boards with my daughter-in-law.
Q. Do you live there?
A. Yes, sir.
Q. Do you see her every day or not?
A. Yes, sir.
Q. She has a room at your house or your daughter-in-law's house?
A. She has a furnished room and she boards with my daughter-in-law.
Q. Now have you noticed her with regard to her sight?
A. Yes, sir.
Q. What have you seen about it?
A. Her sight is getting weaker, and it was poor when she came to our house.
Q. Is it getting worse?
A. Yes, seems to be getting worse.
Q. How about her hearing?
A. Well, her hearing is about the same, but she wasn't that hard of hearing when we first met with her before she came to our house.
Q. You met with her then before she came to your house?
A. Yes, just about a couple weeks. Well, that makes ten weeks altogether.
Q. Can she do any needlework?
A. No, sir; that is, scarcely any.
Q. And how about her ability to get around the house?
A. Well, she is failing.
Q. Does her eyesight or want of sight interfere with her getting around the house?
A. Sometimes it does.
Q. Is she able to carry on any conversation with you in which you don't have to yell at her, shout?

(Objected to as irrelevant and immaterial.

Objection sustained.)

Q. Mrs. Jones, do you have to talk louder to Mrs. Strouse than ordinary conversation or not?

(Objected to. Objection sustained.)

CROSS-EXAMINATION.

By Mr. Palmer:

Q. You say you have known this lady for a period of ten weeks?

A. About ten weeks, yes, sir.

Q. During eight of which weeks she has been boarding or living at the same place where you have?

A. I think it was five weeks this Tuesday that she came to the house.

Q. Five weeks?

A. Yes.

Q. And prior to that time when she came to your house how often have you seen her?

A. Well, I was there, as near as I can remember, about seven or eight times.

Q. During the preceding five weeks?

A. Yes, sir.

Joseph Garlanger, sworn for plaintiff.

Direct Examination by Mr. Davis:

Q. Mr. Garlanger, you live where?

A. Masonville.

Q. You are the husband of Mrs. Garlanger, the lady that sits here?

A. Yes, sir.

Q. And you have been married how many years?

A. About twenty-six years, I guess; somewheres around that neighborhood.

Q. And of course you have known your wife while in her health during that time?

A. Yes, sir.

Q. What was the condition of your wife's health before this accident?

MR. PALMER: I object. This witness is not competent to express an expert opinion upon a question of this kind.

THE COURT: So far as he could observe. The objection is overruled.

Q. What was the condition of your wife's health before this accident, as you observed it?

A. Well, she was all right then, but she ain't all right now since the accident.

Q. Was she able to do her washing since the accident?

A. Yes, sir.

Q. Did she take in washing for other people?

A. Yes, sir.

Q. Was she able to do her household work before this accident?

A. Yes, sir.

MR. PALMER: That is objected to as leading, as all this examination is.

THE COURT: The question is open to that criticism, Mr. Davis. What was she able to do, what did she appear to be able to do and what did she do?

Q. What did your wife do in the way of household work and all work generally before this accident?

A. Well, she didn't do very much only sweep around a

little. She couldn't make any beds with her hand for a good while.

Q. I am speaking of before the accident.

A. Oh, before the accident? She used to do all her work around the house.

Q. Well, what did she do? I am trying to find out.

A. Well, she done her own washings and sweeping the house and cleaning the beds and sweeping the rooms before she got hurt.

Q. Did she do any work outside?

A. Yes, she went to three washings a week.

Q. Now since the accident has she been able to do any of that work?

A. Not now she ain't.

Q. And what is the condition of her health now as compared with what it was before this accident?

A. She complains of her back every night.

Q. No, that is not what I ask you.

THE COURT: So far as he can see what does he see with his own eyes, not what she says to him?

Q. What is the condition of her health now as compared with what it was before the accident, as you can see it?

A. Why, it is very poor health now.

CROSS-EXAMINATION.

BY MR. PALMER:

Q. Prior to the accident did Mrs. Garlanger have any one to help her with her household duties?

A. Has my wife had anybody to help her?

Q. Yes.

A. Yes, my daughter.

Q. Before the accident did your wife have anybody to help her in her household duties?

A. I don't know. She done her own work.

Q. During the time that she was sick who helped her with her household duties?

A. Her sister and my daughter.

Q. Since her recovery who has helped her with her household duties?

A. Since she got hurt?

Q. Yes.

A. Why, her sister and my daughter.

Q. Yes, I know, but since the 1st of December, 1912, who has helped her with her household duties?

A. Why, my daughter is home helping her now.

Q. All the time?

A. Yes, sir.

Q. Is she home to help her mother or because she can't secure a position?

A. Why, she helps her mother right along. She gets my breakfast in the morning.

Q. I know, but is she home because it is necessary that she should be there or because she cannot secure a position?

A. Well, she went over to go to work and they had somebody else in her place.

Q. That is the reason she came back home?

A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Davis:

Q. Now when she first came home or when your wife was first injured who helped your wife in the house?

A. When she got hurt?

Q. Yes.

A. Her sister and my daughter.

Q. Now did your daughter at that time have a position or not, at the time she came to help your wife?

A. I don't hear you.

Q. At the time that your daughter came home to help to do the work in the house when your wife was hurt was she working at that time at Riverside or not?

A. Before she came home, yes.

Q. She had a job there then?

A. Yes, in the stocking mill.

RE-CROSS-EXAMINATION.

By Mr. Palmer:

Q. Mr. Garlanger, do you know Mr. Smith, of the trolley company, John Smith, who works for the trolley company?

A. Yes, sir.

Q. Did you have any conversation with him on the day of the accident?

A. I don't remember.

(Objected to as not redirect examination.)

Mr. Palmer: Well, if your Honor please, it is a matter that on my cross-examination I should have asked as laying a foundation for contradiction. I would ask permission to ask it now, having omitted or forgotten it during my cross-examination.

The Court: You want to contradict this witness?

Mr. Palmer: Yes.

The Court: Well, is that cross-examination?

Mr. Palmer: Well, to contradict this witness I must lay a foundation by asking him whether certain statements were made to him at a certain time by certain people. If he denies it I can then contradict it.

THE COURT: In regard to the circumstances of the accident?

MR. PALMER: What was said immediately after the accident.

THE COURT: He was there?

MR. PALMER: Yes.

THE COURT: He was not there.

MR. PALMER: He was there later the same day.

THE COURT: How would that bind his wife?

MR. PALMER: In the presence of the plaintiff. He was there and offered no objection to it.

THE COURT: The question is overruled.

Q. Did you have any conversation with Mr. Smith in the presence of your wife at your home on the day of the accident?

(Objected to. Objection overruled.)

A. All I said, Mr. Smith says, "It is too bad"—

MR. DAVIS: Answer yes or no.

THE COURT: You have been asked to say whether you had any conversation with Mr. Smith the day of the accident in the presence of your wife. You are simply asked to say whether you had such a conversation. Your answer will be "Yes, I had such a conversation," or "No, I did not have such a conversation." Now what is your answer?

A. Why, I told Mr. Smith—

MR. DAVIS: No, that is not what his Honor asked you.

(Question repeated.)

A. Yes, sir.

Q. And did you, Mr. Garlanger, in that conversation say, "God damn it, I told them not to let the boy drive the horse that day"?

A. No, sir. I said to Mr.—

MR. DAVIS: One minute. You have answered the question.

PLAINTIFFS REST.

MR. PALMER: If your Honor please, I would like to move for a nonsuit in each of these cases, first upon the ground that the testimony does not—

MR. DAVIS: May it be heard in chambers, in the side room, if your Honor please?

THE COURT: Yes.

(The court and counsel retire to a side room.)

MR. PALMER: I move for a nonsuit in each of these cases: first, upon the ground that the testimony does not disclose any negligence on the part of the defendant company; secondly, because the testimony clearly discloses contributory negligence on the part of both plaintiffs.

Now with reference to the first point, the charge of negligence in the complaints, both being the same as to that point, is "that there was no bell, whistle or warning given the plaintiffs of the approach of the car. The car was run and operated at a high and unreasonable rate of speed and the car was not properly equipped as to make it possible to be under proper control and to enable the servants of the defendant to control said car to give proper warning of its approach."

THE COURT: Is that all there is of that?

MR. PALMER: That is all.

THE COURT: Isn't there any charge of that?

(Mr. Palmer reads further from complaint.)

THE COURT: I will allow that complaint to be amended to say, "negligently run down."

MR. DAVIS: It does so state, if your Honor please.

(Mr. Palmer continues reading from complaint.)

MR. PALMER: As to the point and charge of there being no bell, whistle or other warning, there is no statutory requirement, so far as street railway companies are concerned, on the question of bell, whistle or other warning. There is no evidence in this case that the car was run or operated at a high or unreasonable rate of speed, nor is there any evidence that the car was not properly equipped so as to make it possible to be under proper control or to enable the servants of defendant in control of said car to give the plaintiffs proper warning of its approach. None of those things appear in the case whatsoever. Your Honor

has allowed an amendment, or there is a statement in these complaints—

THE COURT: Now what inference is to be drawn from Mrs. Strouse's testimony? Didn't Mrs. Strouse say that she looked and listened for an approaching car when the horse and buggy were about fifteen feet away from the trolley tracks and that no car was in sight and no signal given of an approaching car?

MR. PALMER: I was going to get to that point on the question of—

THE COURT: Now what is the inference to be drawn from that?

MR. PALMER: That it is palpably false, for this reason:—

THE COURT: No, on your motion the court will have to assume that everything she said was true. Now what is the inference with regard to the speed of operation of the car? If the car could not be seen for her fifteen feet away from the tracks and the car struck the wagon just as they were getting over the track, what is the inference?

MR. PALMER: The inference from her testimony alone would be speedy operation of the car.

THE COURT: Now doesn't that answer your objection?

MR. PALMER: No, because I think your Honor must take into consideration the other facts which have been testified to in the case on that same proposition and that is this: Mrs. Strouse said that she looked back and she could see two houses alongside of the Garlanger house. Mrs. Garlanger had testified that her house was a quarter of a

mile from the crossing. Mrs. Strouse says that the house which she saw when she looked was twenty feet east of the Garlanger house; so that Mrs. Strouse must have had, under the testimony of the two plaintiffs, a clear, uninterrupted view of the track for a distance of nearly a quarter of a mile. Now that shows beyond all peradventure that either she did not look—

THE COURT: Well, we have to assume for the purpose of this motion that she did look and that she had an unobstructed view for a distance, as you say, of nearly a quarter of a mile, and that no car was in sight and that a car did come up to that crossing and strike the wagon in which she was seated before the party was safely over.

MR. PALMER: Yes, but your Honor must also take into consideration upon this question the testimony of the other plaintiff.

THE COURT: Now I will hear you there. If you are going to separate the two cases you have got another situation. Now your motion is that the plaintiff should be nonsuited, first, because there is no negligence shown to have existed on the part of the defendant. Your second ground is that the plaintiff Garlanger should be nonsuited. Now what is your reason for that motion?

MR. PALMER: Her testimony is that she looked one hundred yards from the track and she did not thereafter look before attempting to cross the track.

THE COURT: Well now, for the purpose of this motion we have to assume that what Mrs. Strouse said is true.

MR. PALMER: But you must take both.

THE COURT: But she looked, you say, one hundred

yards away from the crossing. Well, now, Mrs. Strouse says that when they were fifteen feet away Mrs. Strouse looked and saw no approaching car and heard nothing that would indicate an approaching car. Now suppose Mrs. Garlanger had looked: is there any evidence, can you infer from any fact that she would have seen this car which Mrs. Strouse did not see?

MR. PALMER: Yes, from the very fact that it struck them within the period of time that they say it did after they looked while the horse was walking fifteen feet. They had an uninterrupted view of a quarter of a mile. Now the trolley car to have hit them, not being in sight in a distance of a quarter of a mile, to have hit them—

THE COURT: Now let us dispose of another question. Assuming that Mrs. Garlanger was guilty of contributory negligence, how would that affect Mrs. Strouse?

MR. PALMER: Mrs. Strouse is in the same position because she was a passenger and she is bound to exercise the same care as the driver.

THE COURT: Do you find any law for that?

MR. PALMER: I cannot tell you the case, but there is a case of the Atlantic City Railroad where two people were driving across the railroad track, and if I am not mistaken in my recollection of that case—

THE COURT: They were husband and wife, weren't they?

MR. PALMER: No, I don't think so.

MR. DAVIS: The rule does not obtain in New Jersey.

THE COURT: I supposed the rule of law was this: that a mere passenger who has no control over the operation or over the driving, the negligence of the driver cannot be imputed in such a situation. The test is whether the passenger has any control over the management of the team.

MR. PALMER: That is first, with the second proposition of whether the passenger is in a position to see and warn the party having control of the team.

THE COURT: You will have to furnish me some cases.

(Mr. Davis replies.)

THE COURT: My inclination is to hear the proofs, hear all the testimony for the defendant, but I want counsel to hand me the cases in the morning if you cannot do it today. There are two or three cases clearly in point as to whether a passenger is responsible; and then I want you to furnish me with the cases which show what duty is required, what the reciprocal duties and rights of persons using the highway and the trolley company are. I will dispose of the motion later.

DEFENDANT'S TESTIMONY.

JOHN RIFFERT, sworn for defendant.

DIRECT EXAMINATION BY MR. PALMER:

Q. Where do you reside, Mr. Riffert?
A. Hainesport.
Q. And how long have you resided there?
A. A little over seven years.
Q. By whom are you now employed?

A. Burlington County Transit Company.

Q. And how long have you been in the employ of that company?

A. Why, off and on for about eight years.

Q. Were you in the employ of that company on November 9, 1912?

A. I was.

Q. And at that time what position had you?

A. Why, general utility man, working, running cars and working on the track.

Q. And on November 9, 1912, what were you engaged in?

A. Running a car.

Q. What car?

A. Dirt car.

Q. Where abouts?

A. From between Long Crossing and the powerhouse.

Q. And did you in running the car have to pass Rancocas Park?

A. Yes, sir.

Q. Was there any one on the car with you?

A. Yes, sir.

Q. Who was on the car with you?

A. Stanford Haines.

Q. Any one else?

A. That is all.

Q. Do you recall on that date anything happening at the crossing?

A. Yes, sir.

Q. At Rancocas Park?

A. Yes, sir.

Q. What happened there?

A. Why, I was coming down, left Masonville, passed the car at Masonville and coming down to go to the powerhouse, and just before I got to the Rancocas Park, about a hundred yards or a hundred and fifty yards, say, this wagon was up against the track. I couldn't pass it, so I

brought my car to pretty near a stop. They pulls out in the middle of the stone road. I took it for granted that they were going to let me pass after I rang my foot-gong. I proceeded right slow and the horse got out on a jog and just as I got out within ten feet of the crossing they pulled right straight in front of me to go down the creek road.

Q. What did you then do?

A. I applied my brake as quick as possible and reversed my car.

Q. Did you give any warning to them? **10**

A. We rang our bell and also I hallooed and this man Stanford Haines hallooed, hallooed as loud as we could.

Q. When did you ring the bell and when did you halloo?

A. Before we ever struck them, just as soon as I saw them approaching across the crossing, for I had my eye on them when they pulled out into the main road.

Q. And when they were running up alongside of the track going down the main road did you then ring your bell or not?

20

(Objected to as leading.)

THE COURT: I think the criticism is justified.

Q. What happened after you saw them go across the track in front of you?

A. I pushed the wagon. The car slid, kind of slid to the wagon, and it shoved the wagon, I judge, from eighteen inches to two feet, just sideways.

Q. Whereabouts did you strike the wagon? **30**

A. About quartering of the hind wheel, on the off quarter of the hind wheel.

Q. Did the force of the blow break the wagon?

A. Well, it might have shoved that far hind wheel down from the force of it shoving one side; and after the horse jumped I jumped off the car and run, but the horse got to the fence before I got there and got a hold of him.

Q. When you jumped off the car had the car come to a full stop?

A. The car was stopped.

Q. How far were you past the point where you struck the wagon with the car when you stopped the car?

A. Didn't pass the wagon at all. The wagon pulled right out from in front of the car. The car was stopped.

Q. About how many feet did you go after the car struck the wagon before you stopped?

A. Hadn't gone any at all after the car had struck the wagon. She slid her about eighteen inches to two feet and stopped.

Q. Then the car stopped?

A. Yes.

Q. Now is there or not a grade at this location?

A. Yes, sir; there is.

Q. When you stand at the point where the accident took place how far can you see down towards Masonville, approximately?

A. Why, about 1,000 to 1,500 feet, or 1,000 to 1,500 yards.

Q. Can you see the house where Mrs. Garlanger lives?

A. Yes.

Q. A clear view?

A. No, not quite. You just see the front.

Q. But any one on the public highway at that point in front of her house, could they or not see down to where the accident was?

A. Yes?

Q. A clear view?

A. Yes.

Q. And how far from her house would there be a clear view on the public highway?

A. To the switch.

Q. How far is that beyond her house?

A. It is about 150 to 200 feet.

Q. Beyond her house? That is, west of her house?

A. Yes, sir.

Q. Now after the accident happened you say you jumped out of the car?

A. Yes.

Q. And went over to where Mrs. Garlanger was lying?

Mr. Davis: Suppose you don't lead the witness. I object.

Q. Tell us what happened after the accident.

A. After the car had struck I undertook to run for the wagon, but the horse had stopped when he hit this fence, and I ran and I picked Mrs. Garlanger up and I asked her was she hurt.

Mr. Davis: Never mind.

Q. What did you ask Mrs. Garlanger if anything when you picked her up?

(Objected to. Objection overruled.)

A. Why, I asked Mrs. Garlanger was she hurt. She said she was not. I says, "Yes, you are," for I seen where she had bumped her head when she struck the ground.

Q. Was there any other conversation took place there?

A. Only between her and the old lady.

Q. What did you hear between them? By the old lady you refer to Mrs. Strouse?

A. Yes.

Q. What did you hear between them?

A. After I helped Mrs. Strouse to get her—I lifted up the wagon to get her shawl from under it and she says to Mrs. Garlanger, "I told you to take the lines and go right straight across."

Q. Mr. Riffert, about where were you when you first saw this wagon?

A. Why, at the old Bull's Head property.

Q. Bull's Head what?

A. Bull's Head property there.

Q. How far is that west of this crossing where the accident occurred?

A. Well, about eight hundred feet.

Q. And what sore of a wagon was this?

A. Why, it was a buggy.

Q. Covered?

A. Covered, fall-top.

Q. Side curtains?

A. Yes, sir.

Q. At the time when you first saw it what was its location in the road? Was it then alongside of the track or on the other side?

A. It was right along the track when I first saw it.

Q. And how near to the south track was it?

A. Well, it was that near that I couldn't pass it with the car.

Q. What did you then do?

A. I brought my car pretty near a stop. I rang my bell and after I rang my bell the wagon pulled out in the middle of the road. I released my brake and left the car drift.

Q. Did you have at that time any power on?

A. No power at all.

Q. Then what happened?

A. And then this wagon went down a little piece and pulled right direct in front of me.

Q. You were looking at this buggy, were you?

(Objected to.)

THE COURT: The question is subject to criticism, Mr. Palmer.

Q. Were you or not looking at this buggy?

A. I was.

Q. Did you or not see any person look out of the buggy at any time while you were looking at it?

A. I did not.

Q. And how far were you from the crossing when you released the brakes?

A. About thirty or thirty-five feet.

Q. And was that immediately after the wagon pulled to the right?

A. Yes, that was right after the wagon pulled to the stone road.

CROSS-EXAMINATION.

By Mr. Davis:

Q. When you first saw this wagon how far behind it were you?

A. Well, about 800 feet, I suppose.

Q. You were that far behind the wagon?

A. Yes.

Q. And you say then the wagon was up against the tracks?

A. Yes, sir.

Q. Are the tracks at that point in the road?

A. They are right alongside of the stone road, yes.

Q. Well, are they in the road?

A. No.

Q. Not in the road?

A. No.

Q. There is no stone along opposite those tracks, is there?

A. I think there is right there.

Q. At this point?

A. Yes.

Q. The stone road goes clear up to the tracks?

A. Very near it.

Q. That is not what I asked you. Does it go up to it?

A. Not quite, I guess, for the ties is there a distance then.

Q. How far?

A. I think about a foot.

Q. You think that there is about a foot between the ties?

A. Between the rail and the stone road.

Q. And when you first saw it you were 800 feet away?

A. Yes.

Q. Then what did you do?

A. I throwed off my power and began to bring my car down.

Q. 800 feet away?

A. Yes, sir; because it is a very good grade right there.

Q. In other words, when cars go down there is a considerable grade and the cars increase in speed, don't they?

A. Yes, sir.

Q. Was this car loaded?

A. No, sir.

Q. Not loaded?

A. No, sir.

Q. Only you and this other man on the car?

A. That is all.

Q. Then where did you ring the bell? How far were you away from this wagon when you rang the bell?

A. Well, I rang the bell practically about where anybody else would ring it.

Q. Well, we don't know how far that is. Sometimes they don't ring it at all.

A. Well, I rang that one just the same.

Q. How far were you away?

A. Well, I suppose over a hundred feet or more.

Q. You waited until you got a hundred feet away and then began to ring the bell?

A. It was over that.

Q. Over that?

A. Yes.
Q. What did the wagon do then?
A. The wagon pulled out to the stone road.
Q. Then what did you do?
A. I released my brakes. That left my car drift.
Q. When you released your brake how far were you away from the wagon?
A. Why, fifty feet or more.
Q. How far were you from the crossing?
A. What, when I struck?
Q. No, when you released your brake.
A. Well, I was about eighty feet.
Q. Then you were about thirty feet, the wagon was about thirty feet away from the crossing?
A. Yes.
Q. When you released your brake?
A. Yes.
Q. And you were eighty feet away?
A. Yes.
Q. When the horse pulled over to the right or the wagon pulled over to the right was the horse walking or jogging?
A. The horse jumped out on a jog like.
Q. Jumped out on a jog like?
A. Yes, sir.
Q. And he was on the right hand side of the road at that time, wasn't he?
A. He pulled to the right; yes, sir.
Q. He would get to the far side of the road the furthest away from you, was he, on the right hand side of the road in regard to the direction in which he was going?
A. Yes, sir.
Q. And how fast were you going?
A. Well, I judge about five miles an hour.
Q. You didn't think at that time that you were going to hit this wagon?
A. No, sir.

Q. You didn't think at that time that this wagon was going to cross the track, did you?

A. No, sir.

Q. And that is the reason you didn't slacken in speed?

A. Oh, yes, I did slacken in speed.

Q. Didn't you just say that you released your brake?

A. Didn't I just sal I brought my car nearly to a stop?

Q. One moment. Didn't you just say you released your brake?

A. Yes, I released it after the wagon left the track.

Q. And you did that because you didn't think the wagon was going to cross the street there, did you?

A. I sounded my gong.

Q. Answer the question.

(Question repeated.)

A. Well, I didn't look to see him go across the street, no.

Q. And that is the point you were looking?

A. Certainly I was looking.

Q. What do you mean to say when you say you didn't look?

A. I didn't think he would go across, no.

Q. And that is what you mean, you didn't think they were going across the street?

A. No.

Q. And consequently you thought you could go on an even speed, didn't you?

A. No, I didn't.

Q. Why not?

A. Because I had my eye right on them and was watching them.

Q. Why did you release the brakes then?

A. For the simple reason that I had to be moving. I couldn't stand there to see where they went.

Q. Then why did you keep your eye on them if you thought that they were not going to cross this road?

A. I thought maybe they would pull up against the track, as they often do, and I have had done to me.

Q. Then this wagon was in full view eight hundred feet from this crossing?

A. No, it wasn't eight hundred feet from there.

Q. Didn't you say awhile ago that you were eight hundred feet from this crossing when you first saw this wagon?

A. I was eight hundred feet, yes, from the crossing.

Q. So that from the crossing to where the wagon was hit, eight hundred feet back towards Masonville, you had a clear, unobstructed view of this wagon, didn't you?

A. Yes.

Q. And going the same direction that you were going, was it not?

A. Yes.

Q. And you knew that this road across Rancocas Park was a public highway and was much used, didn't you?

A. Well, no, it ain't very much used.

Q. Don't you know that it is very much used at Rancocas Park?

A. Only during the summer season.

Q. And you knew that there was a public highway going right across there, didn't you?

A. Yes.

Q. Did you expect this woman to go across there?

A. No, I wasn't looking for her to go across there.

Q. Why?

A. Because the way she came out of the road.

Q. Then you turned her loose?

A. No, I just released the brake and left her drift.

Q. There is a decided grade there?

A. Yes, there is quite a grade there.

Q. How far away from the wagon were you when you released your brakes?

A. Well, that I couldn't exactly tell you, just how far it was, but I was within my stopping range.

Q. You know how far away you were from the crossing when you saw it, don't you?

A. Yes.

Q. And you know how far away from the crossing you were when you released your brakes, don't you?

A. Yes.

Q. Then why is it you can't tell how far away you were from the wagon when you released them?

A. I was far enough away so it wouldn't hit them.

Q. Can't you answer the question? If you can tell all these other things with such nicety why is it you cannot tell how far you were away from the wagon when you released your brake?

A. I think about forty or fifty feet.

Q. About forty or fifty feet? How fast was the horse going, fast or slow?

A. He was on a jog when he left the track.

Q. How fast?

A. I couldn't tell how fast the horse was going.

Q. You ought to know.

A. I had the car to watch.

Q. Had the horse gone faster than you were going?

A. Not quite, no.

Q. Was it going as fast as you were going?

A. Very near it.

Q. So that you say your car was running right along just about as fast as the horse was going, and you had done that for how long, how long a distance?

A. Well, eighty feet or more.

Q. Eighty feet?

A. Yes, sir.

Q. In other words, you had run right straight along abreast of this wagon for eighty feet and you knew that there was a public highway which these people might enter into, didn't you, and when you got within fifty feet of it you released the brakes on your car and went down hill; that is right, isn't it?

MR. PALMER: I object. It embodies three separate and distinct questions—

Q. Is that right or not?

MR. PALMER: —To which it is utterly impossible for the witness to give one answer.

(Question repeated.)

THE COURT: What is the ground of your objection.

MR. PALMER: My objection is that the question embodies three separate and distinct facts to which it may or may not be possible for the witness to give one answer.

(Objection overruled.)

Q. Is that right?

A. Yes.

Q. Now, Mr. Riffert, what was there to prevent you as you came down the hill stopping your car or passing these people and going on ahead of them?

A. Why, the reason why I thought maybe they might happen to come over against the track again, I didn't know.

Q. Well, couldn't you put your brakes on your car and stop it?

A. Yes, sir.

Q. You were expecting then that they would go right over there?

A. I was expecting—I didn't expect none of them going down that road—

Q. Just answer my question and don't argue.

(Question repeated.)

A. I was expecting maybe the chances are they would pull back against the rail again.

Q. Then why didn't you get your car under control so that you would not run into them in case they did do it?

A. I did have my car.

Q. You did run into them, didn't you?

A. Wasn't I—

Q. Just answer the question.

(Question repeated.)

A. I did have my car under control.

Q. Did you run into them?

A. I pushed them, yes.

Q. Why did you do that?

A. Because it couldn't be avoided.

Q. Then you didn't have your car under control, did you?

A. I did but it come—

Q. Well, won't you please explain this—I am sure that it is an interesting question—how you ran into them if you had your car under control?

A. I had my car under control and when they pulled across the track they got in my way.

Q. Then they caught you unbewares, didn't they? Is that right?

A. Yes, sir.

STANFORD HAINES, sworn for defendant.

DIRECT EXAMINATION BY MR. WATTS:

Q. Where do you live, Mr. Haines?

A. Vincentown.

Q. By whom are you employed?

A. Budd Jones.

Q. On November 9, 1912, by whom were you then employed?

A. Burlington County Traction Company.

Q. How long did you work for that company, about?

A. About two months, I guess.

Q. And what work were you engaged in on that day, November 9, 1912? What were you doing on that day?

A. Hauling cinders on a workcar, on the dirt car.

Q. Who was on the car with you?

A. Johnnie Riffert.

Q. Do you recall an accident happening on that day by which the car ran into a buggy?

A. Yes, sir.

Q. Just tell the jury what happened at the time of the accident as near as you can recall it.

A. Well, we was going down from Masonville, this wagon was going down the same way we was, down the hill, and it was in along the track and Johnnie pulled his car up to very near a stop and they pulled out on the other side and then we got down there right to the crossing by the Park and they just slipped right across in front of us and the car pushed the wagon over, pushed the wheels over, didn't push the wagon over.

Q. When the wagon turned around in front of you did it make a short turn or a long one?

A. Made a short turn. It was out on the other side of the road.

Q. Where were you in the car when you first saw this wagon? About where were you?

A. Somewheres by his house.

Q. By Mr. Garlanger's house?

A. Yes, I think so.

Q. And how far away then was the wagon from you, about?

A. Oh, I can't tell you just how far it was; about half way down that hill.

Q. Does the hill start up by Mr. Garlanger's house?

A. Not exactly, no.

Q. A little this side of it?

A. Just a little this side.

Q. And about how far from the crossing was the wagon when it pulled out from the track?

A. About how far?

Q. As near as you can tell.

A. Oh, I should say thirty or forty feet, somewhere along there.

Q. And when it started to pull out about how far were you behind it in the car?

A. Why, I will say ten or fifteen yards, something like that, as near as I can. I can't say for sure.

Q. Ten or fifteen yards back of it?

A. Back of it; yes, sir.

Q. Had there been any warning given in order to get this wagon to leave the side of the track, in order that you might pass?

A. Yes.

Q. What warning had been given?

A. The gong.

Q. You say the gong?

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

Q. Was it or not rung continuously?

A. Well, he was ringing it pretty well down on the hill.

Q. Any other warning given that you heard?

A. Not till we seen we was going to hit the wagon that I remember. I knew we both hallooed then.

Q. When you saw the wagon going across the track?

A. Yes.

Q. Both called out?

A. Yes.

Q. How fast were you then going, about?

A. I don't know; about four or five miles an hour, I guess, something like that.

Q. Was there any power on the car?

A. No, not that I know of. I couldn't say about that for I was on the other end.

Q. You were in the back part of the car and Mr. Riffert was driving?

A. Yes, sir.

Q. Were you looking at this wagon?

A. Yes, sir.

Q. Did you see any person looking out of the wagon?

A. No, sir.

CROSS-EXAMINATION.

By Mr. Davis:

Q. Mr. Haines, how far ahead of you was the wagon when you first saw it?

A. Why, about half way down that hill.

Q. Well, the jury perhaps don't know how far that is,

A. Well, I can't tell you exactly how far it is there.

Q. Well, can you give a guess at it? How far in your judgment? You have traveled it a good many times.

A. I should say seventy-five yards, anyhow.

Q. You think the wagon was seventy-five yards ahead of the car when you first saw it?

A. I think so.

Q. Where was it then?

A. The wagon?

Q. Yes.

A. Half way down from Joe's house to the Park.

Q. Well, I mean what part of the road was it on?

A. It was on the left hand side of the road.

Q. It was not up against the tracks?

A. I didn't say it was.

Q. You know it can't get up against those tracks, don't you, without going out of the road?

A. Sure.

Q. In other words, the roadway is off from the tracks all along down that hill, isn't it?

A. It would be about a foot, is all, into the ties.

Q. Well, you know it is further than that. You know the road is not used up next to the tracks all the way down from Masonville, don't you?

A. I don't know it, no.

Q. You have traveled that a good many times?

A. I surely have.

Q. Don't you know that they never travel up next to that track and the roadway is not up to the track at all?

A. It is right up to the ends of the ties some places along there.

Q. How many places along there?

A. I couldn't tell you.

Q. You don't know?

A. No, sir.

Q. From the top of the hill down to Rancocas Park don't you know that the track is in off the road, way away from this stone? You know that to be a fact, don't you?

A. It ain't so far away from the stones, no.

Q. You know it is away from the stones, don't you?

A. Not much over a foot.

Q. You think not?

A. No.

Q. Where was this wagon when you saw it?

A. First saw it?

Q. Yes.

A. It was right there about half way down the hill, right there by that Bull's Head property there.

Q. I mean with reference to the width of the road, what part of the road was it on?

A. On the left hand side.

Q. Was it in your way?

A. Yes, sir.

Q. And how close did you get to it before any notice or warning was given?

A. Oh, about as far as from here to the middle of the street, I guess.

Q. And that is seventy-five yards away, isn't it?

A. What?

Q. From here to the middle of the street.

A. No.

Q. Don't you think it is seventy-five yards? How long do you think it is?

A. I couldn't tell you.

Q. Don't you know?

A. Certainly not. Do you? You don't know.

Q. I am asking you.

A. I don't know.

Q. You don't know?

A. No.

Q. How far is a hundred yards, do you know?

A. How far would a hundreds yards be? No, I can't tell.

Q. How far is seventy-five yards?

A. I couldn't tell you exactly.

Q. Then what did you mean awhile ago when you said the wagon was seventy-five yards ahead of the car?

A. I said I couldn't tell you exactly.

Q. Didn't you say seventy-five yards?

A. I said about that.

Q. How far is seventy-five yards? You say you don't know, don't you?

A. I don't know exactly, no.

Q. In other words, you don't know how far this horse was ahead of the car?

A. No, not exactly, no.

Q. How far was it away from you when it pulled over to the other side of the road?

A. How far was it? I don't know exactly; I couldn't say.

Q. You were not paying very much attention, were you?

A. Me, no; for I was on the back end of the car. I couldn't say what was—

Q. You were not running the car?

A. No.

Q. And you were not assuming the responsibility of how it should be done; that was not your business, was it?

A. No.

Q. And you were not noticing ahead to see what part of the road or anything this man was in; it was the other fellow's business?

A. It was his business, certainly.

Q. That is right, isn't it?

A. Certainly.

Q. You didn't meddle in it at all, did you?

A. I didn't meddle into his business until I seen the wagon was in the way.

Q. That was when you got down to the road, wasn't it, by Rancocas Park?

A. Yes.

Q. Then is when you meddled, when you saw the wagon was going across the track; is that right?

A. Yes, sir.

Q. Now how far away were you from the wagon when you saw that?

A. When I saw what, saw the wagon?

Q. Yes, going across the tracks.

A. Why, I don't know; about thirty feet, something along there.

Q. You were about thirty feet away?

A. Something like that.

Q. When you saw the wagon going across?

A. Something like that, yes.

Q. This car was not loaded?

A. No, sir.

Q. In how short a distance can you stop the car going four miles an hour when it is not loaded?

A. I couldn't tell you that for I never ran one.

Q. How long were you working on that?

A. I wasn't on that but about a week or two is all.

Q. When the car is going down a high grade as it was there at Rancocas Park, with no load and with no power on, within how short a distance can you stop the car?

A. I couldn't tell you that for I don't know.

Q. You can stop it in a good bit shorter distance than 30 feet, can't you?

MR. PALMER: I object. The witness has testified that he did not know, he never had run the car.

(Objection overruled.)

Q. You can stop the car in a good bit shorter distance than thirty feet if there is no power and no load on it?

A. If it don't slide, yes.

Q. And if it is only going four miles an hour it won't slide ahead without any power on it and no load on it?

A. Yes, I guess they will. I have seen them slide out here.

Q. Well, that is quite wet. If the track is dry it won't slide with no load and no power, isn't that a fact, four miles an hour? Isn't that a fact? You know that is a fact, don't you?

A. I couldn't say. That is something I don't know anything about, to tell you the truth about it.

Q. You have traveled on it. In your experience when you were on this car working on it, as a matter of fact you know that the car can be stopped in less distance than thirty feet?

A. I think so; yes, sir.

Q. When there is no load and no power on it; you know that is a fact, don't you?

A. Yes.

Q. There wasn't anything between you or the motorman and this wagon as it started across the tracks, was there?

A. No.

Q. Nothing to prevent him from seeing that this wagon was going across, was there?

A. No, nothing there but the wagon.

Q. It was a dry day, wasn't it? It wasn't raining?

A. It wasn't raining, no, I don't think.

Q. The track was dry, not slippery; isn't that a fact?

A. I guess it was.

Q. What?

A. I guess it is.

EDWIN C. DAVIS, sworn for defendant.

DIRECT EXAMINATION BY MR. WATTS:

Q. Where do you reside, Mr. Davis?

A. Hainesport.

Q. What is your business?

A. With the Burlington County Transit Company.

Q. What position have you there?

A. Assistant superintendent and clerical man in the office.

Q. Were you with the company in November, 1912?

A. Yes, sir.

Q. Do you recall an accident occurring on the 9th of November, 1912, in which Mrs. Strouse and Mrs. Garlanger were injured?

A. Yes, sir.

Q. Did you or not see them on the day of that accident or the day after?

A. I saw them on the same day.

Q. Whereabouts?

A. At their home, or at the home of Mrs. Garlanger.

Q. What time in the day was it?

A. I should judge somewhere in the neighborhood of

one o'clock; might have been a little before or a little after.

Q. Did you have any conversation with them?

A. Very slight.

Q. Did you hear any conversation by them to others?

A. Nothing outside of what they said—

MR. DAVIS: You can answer that yes or no, I think.

(Question repeated.)

A. No.

Q. What conversation was there took place at that time?

(Objected to.)

THE COURT: Between whom?

Q. Between yourself and Mrs. Garlanger and Mrs. Strouse and Mr. Garlanger.

(Objected to.)

THE COURT: This witness may narrate any conversation that occurred on the day of the accident or the day afterwards between himself and Mrs. Garlanger or between him and Mr. Garlanger in Mrs. Garlanger's presence, if it related to the circumstances of the accident.

MR. WATT: That is what I am asking him.

Q. Just relate that conversation you heard that day relating to the circumstances of the accident.

A. I went in the house, which is my business to look up these cases—

MR. DAVIS: I move that be stricken out as not responsive to the question.

THE COURT: The motion will prevail.

Q. Tell us, Mr. Davis, what the conversation was.
A. That is, my questions to them and their answers?
Q. Yes.
A. I asked Mrs. Garlanger if she saw the car coming. Her answer was, "I didn't look."
Q. Was Mrs. Strouse there at that time?
A. In the bed.
Q. What did she say if anything?
A. Nothing to me.
Q. What else was said at that time?
A. That was about all.
Q. Did Mrs. Garlanger say why she didn't look for the car?

MR. DAVIS: I object. He has asked if that was all and the witness has answered it. Now he is attempting to put something else in his mouth.

THE COURT: I don't think I should sustain that objection.

MR. J. W. DAVIS: Mrs. Garlanger did not say that she did not look for the car but said she didn't see the car. Now he is putting into her mouth that she didn't look, which is a very different proposition.

THE COURT: Mrs. Garlanger said one thing; this witness is contradicting her now.

MR. J. W. DAVIS: But here is the point. He says he asked Mrs. Garlanger if she saw the car. She said no. She might have looked and then not seen the car. Now he is asking this witness another question, did Mrs. Garlanger say why she didn't look.

MR. PALMER: If your Honor will read the last question and answer of this witness you will see this question is competent.

MR. J. W. DAVIS: I object to it on the further ground that he has stated he told the whole conversation.

(Objection overruled.)

(Question repeated.)

MR. JAMES DAVIS: It seems to me that is a question that ought not to be put, as the witness has already said that he told all the conversation. And it seems to me that that question is leading in view of the statement of the winess that he has told all that was said.

(Objection overruled.)

(Question repeated.)

A. Yes.

Q. What reason did she give?

A. Because the car had passed her house westbound previous to her driving out of the lane; knowing that there was no one due there for ten minutes which would be eastbound, towards Mt. Holly, she proceeded out down the road.

NO CROSS-EXAMINATION.

JOHN SMITH, sworn for defendant.

DIRECT EXAMINATION BY MR. WATTS:

Q. Where do you reside, Mr. Smith?

A. Moorestown, New Jersey.

Q. What is your business?

A. Superintendent of the Burlington County Transit Company.

Q. How long have you occupied that position?

A. Six years.

Q. Do you recall on November 9, 1912, going to the house of Mrs. Garlanger?

A. I do.

Q. And who did you see there?

A. Why, I saw Mrs. Garlanger, Mrs. Strouse and Mr. Garlanger.

Q. And where were they when you saw them?

A. Why, Mrs. Strouse was in bed, laying on the right hand side and Mrs. Garlanger was in the corner at the south-east end of the room bathing this arm, her right arm, and she had a little scar on her forehead.

Q. Who else was there?

A. Mr. Garlanger was in the entryway, that is, at the sill of the doorway.

Q. And did you while there hear any conversation in regard to the circumstances of this case?

A. Why, I asked her how she was—

MR. DAVIS: Answer yes or no.

(Question repeated.)

A. Well, I don't quite understand, because there is two questions; that is, two questions in one. The reason why I speak thus is that there was a conversation—

Q. Can you not answer that question yes or no?

(Question repeated.)

Q. Did you hear anything said in regard to this case?
A. Only what Mr. Garlanger said to me—

By the Court:

Q. Well, was his wife present? Was Mrs. Garlanger present?
A. Mrs. Garlanger was in the southest corner of the room.

By Mr. Davis:

Q. The same room?
A. In the same room and Mr. Garlanger was in the entryway.
Q. Well, proceed and tell what was said.

By Mr. Watts:

Q. What was said, Mr. Smith?
A. Why, he said, "God damn it, I told them not to let that boy drive that horse."
Q. Did you hear any conversation between Mr. Davis and Mrs. Garlanger?
A. Yes, sir.
Q. Relate that conversation, won't you?
A. Mr. Davis asked Mrs. Garlanger how it happened and she said the car had just went to Moorestown and there wouldn't be no other car up until ten minutes, and that is how the accident happened; and she said that Johnnie didn't mean to do it.
Q. Who is Johnnie?
A. The motorman, John Riffert.

Q. And was or was not anything said at that time about Mrs. Garlanger looking?

MR. DAVIS: I object to that as being leading.

(Objection overruled.)

Q. What was it?

A. Mrs. Garlanger said that she didn't look.

Q. Did she give any reason why she did not?

A. On account of the time of the cars, the car going to Moorestown, and it would be ten minutes before another one came back.

NO CROSS-EXAMINATION.

BOTH SIDES REST.

MR. PALMER: I desire to renew my motion on the whole case, first, for the direction of a verdict, first, on the ground that the testimony has disclosed no negligence on the part of the defendant; and, secondly, the case has disclosed contributory negligence on behalf of each plaintiff.

(Motion overruled.)

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4. The Court charged the jury as follows:

CHARGE OF THE COURT

Gentlemen, you have heard the testimony in three cases. In the first suit Susanna Strouse is the plaintiff. Her suit is for damages for personal injuries which it is claimed she received on the 9th of November, 1912. In the other suit Joseph W. Garlanger and his wife, Mary W. Garlanger, are plaintiffs. Mrs. Garlanger in that suit claims damages for personal injuries which she sustained, as is contended, on November 9, 1912, and her husband also claims damages for injuries which he has received because of the loss of his wife's society, being affected by her injuries.

Now if you, after investigating all the evidence, resolve the question of negligence against the defendant and in favor of the plaintiffs, you will be required to find three separate verdicts: a verdict for Mrs. Strouse, a verdict for Mrs. Garlanger and a verdict for Mr. Garlanger. If, on the other hand, you resolve the question of negligence against the plaintiffs and in favor of the defendants, you will find a verdict for the defendants in each of these cases.

The gist of this litigation is negligence. Negligence in contemplation of law, has been defined to be a wrongful act or neglect of duty. The plaintiffs cannot recover in this case unless you are convinced by a preponderance of the evidence that the defendant was guilty of negligence and that the defendant's negligence caused the injuries complained of by these plaintiffs. If, after considering all the evidence in the case, you are satisfied that Mrs. Garlanger herself was guilty of negligence which contributed to her own injury, there can be no recovery for either herself or her husband; nor can Mrs. Garlanger or her husband recover if her injuries are the result of the joint negligence of herself and the defendant.

Now the rule of law in reference to contributory negligence is different with regard to Mrs. Strouse. Mrs. Strouse was a mere passenger in the buggy with Mrs. Garlanger. Mrs. Garlanger had control of the horse. Mrs. Strouse had no control over the team. And I charge you as a matter of law that the contributory negligence of the driver, who was Mrs. Garlanger, cannot be imputed to Mrs. Strouse, who was a mere passenger, if the evidence convinces you that Mrs. Strouse had no control over the team.

It has been well argued by counsel for the defendant that as regards the matter of negligence involved in this case the rights and duties of Mrs. Garlanger and the defendant as to the use of crossing in question were reciprocal; that is to say, Mrs. Garlanger and the defendant trolley company each had a right to use that crossing and they both owed each other a duty. Mrs. Garlanger had no right to drive over heedlessly in front of that trolley car, nor had the trolley company any right to heedlessly run Mrs. Garlanger down. They were each required to be observant of the other and avoid coming together in a collision. Persons using a crossing, whether the persons be natural or artificial persons, like a trolley company, are required to be observant of the rights of other persons using the crossing at the same time. They must be, as I have said, observant of the conditions existing at the crossing with reference to other vehicles that may be using the crossing at the same time.

Therefore they were each required to exercise due and reasonable care under all the circumstances, and have the vehicle under control sufficiently for sudden emergencies; and you are required to carefully consider all the evidence in the case and decide thereform whether the defendant was guilty of negligence, as is claimed by the plaintiffs in this case. If you find that the defendant was guilty of negligence, that is, that there was a negligent operation of the car at the time the car collided with the wagon in

which Mrs. Garlanger was seated, then you will proceed to the question of damages. If, on the other hand, you find that the defendant was not guilty of negligence, you of course will not hesitate to say so by your verdicts.

If the question of negligence is resolved against the defendant, then take up the question of damages, gentlemen, as fair and reasonable men, in the light of the evidence, in order that justice may be done between these parties. The plaintiff Mrs. Garlanger would be entitled to fair and reasonable compensation for the pain and suffering that she has endured or may endure in consequence of her injuries. She would be entitled to damages for such physical disability as she has sustained or may sustain by reason of her physical disability. You should take into consideration her age, the probable epectancy of life, and consider the question whether her injuries are likely to continue. Of course if they are she would be entitled to more damages than if her injuries were only temporary. That is a matter that you should be fair and reasonable about.

Mr. Garlanger would be entitled to damages for the medical expenses he has had to lay out in consequence of his wife's injuries and for such medical expenses as he may be required in the future to lay out in consequence of his wife's injuries, as well as damages for injuries if you find any, affecting his wife's society.

Mrs. Strouse would be entitled to damages for the pain and suffering she has endured or may endure by reason of her injuries. She would be entitled to damages for such disability as she has sustained or you may determine from the evidence she will be likely to continue to have in the future. Of course you will have to take into consideration the fact, gentlemen, that she is an old lady eighty-five years of age. The amount of the verdict in her case could not be as large as if she were a younger person. You will have to take that into consideration, because after all the value of a verdict consists in its reasonableness. It must be consistent with the proof in the case and must be found-

ed in fairness and reasonableness. You should take the case and consider all the evidence and do what you decide after considering all the evidence should be done between these parties. You may retire.

I cannot read the requests, Mr. Watts, with sufficient clearness to charge them and therefore refuse to charge any further than I have charged.

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5. The jury returned a verdict for the plaintiff Joseph W. Garlanger for Fifty Dollars, and for the plaintiff Mary W. Garlanger for Six Hundred Dollars.

ERNEST WATTS,
V. CLAUDE PALMER,
Attorneys for Appellant.