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SUMMONS AND COMPLAINT.

(Filed September 1, 1922.)

THE STATE OF NEW JERSEY, to Trenton and Mercer  
County Traction Corporation: 10

You are summoned to answer the annexed complaint of Leonard Baus and  
(L. S.) James Meaney, in an action at law in the  
Mercer County Court of Common Pleas.

And take notice that unless you file your answer to said complaint with the clerk of the Mercer County Court of Common Pleas, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 20

Witness, ERWIN E. MARSHALL, Judge of the Court of Common Pleas of Mercer County, at Trenton, this twenty-ninth day of August, A. D. nineteen hundred and twenty-two.

HARRY A. HARTPENCE,  
*Clerk.*

MARTIN P. DEVLIN,  
*Attorney.*

30

## COMPLAINT.

(Filed September 1, 1922.)

Plaintiff, Leonard Baus, of 115 Rusling Street, Trenton, Mercer County, New Jersey, complains and says:

10 1. That the defendant, The Trenton and Mercer County Traction Corporation, a corporation existing and acting under the laws of the State of New Jersey, is the owner and operator of a street car system, consisting of tracks, cars, wires, poles and other equipment which is located and operating in the various streets in the City of Trenton, and County of Mercer, and State of New Jersey.

20 2. That on April 29, 1922, the said defendant, by its employees, servants and agents, was operating street car known as car #168, for the carrying of passengers for hire in said city, northerly on its tracks on South Clinton Avenue, Trenton, N. J., and while so operating the said street car on South Clinton Avenue, the said plaintiff was riding in an auto delivery truck owned and operated by one James Meaney, and the said plaintiff was in said auto delivery truck and not operating the said auto delivery truck, and having no control thereof, and  
30 being lawfully in said auto delivery truck, and being lawfully on said highway, and through no fault or negligence on his part, the said defendant, by its agents, servants and employees, who were operating said car #168, did so negligently, carelessly and recklessly operate the said car #168 as to run into and collide with the auto delivery truck on which the said plaintiff was riding, and did crash into,

smash, and break the said automobile delivery truck and cause the said plaintiff to be thrown from the said truck onto the said street, and jammed in such a manner between the said delivery truck and the said street car so as to bruise, cut, break and injure the said plaintiff's body, legs, arms, and head, by reason of which the said plaintiff has been injured permanently, about the head, body and arms, and permanently in his nervous system, and his left leg has been amputated, all of which injuries are the  
10 result of the said negligence of the said defendant.

3. The negligence of the defendant consisted of its agents, servants and employees operating said street car at a rate of speed higher than was consistent with the safety of this plaintiff and other users of the highway, and that the said defendant did not give any signal or signals indicating its approach to and near the plaintiff; so as to warn said plaintiff  
20 of its being on the highway; and that the said defendant by its agents, servants and employees, did not look in front of its car when the said car was being operated along said South Clinton Avenue, so as to inform and acquaint itself with the places and positions of the plaintiff and other users of the state highway. That the said defendant, by its servants, agents and operators, was operating its car at such a high rate of speed that the said car was beyond and out of the control of the agents, servants, and employees of the said defendant.  
30

4. By reason of said action the said plaintiff was injured and bruised in the arms, body, head, legs, feet and hands, and that said plaintiff is permanently injured in that he has had his left leg amputated, and that his nervous system has been so shocked that it is permanently injured, and that he has suf-

ferred and endured great pain, and that he will be permanently disabled, and he will never again be a well person, and he will be unable to go about his affairs as usual, and that he will be deprived of the same power to earn a livelihood as heretofore, and will be unable to pursue the occupation and life of a normal and well person, and that he has been compelled to expend large sums of money on doctors, hospital, medicine and nurses, and that he has lost

10 large sums of money by being unable to pursue his calling and occupation, and that he will have to spend large sums of money for medicines, medical attention, and nursing, and that he will suffer the loss in the future of large sums of money, from being permanently injured and unable to work at his former occupation, and will never again be able to earn his living as a normal and well man and, therefore, has suffered great losses and is damaged.

20 5. Plaintiff claims for his damages the sum of \$15,000.00.

Plaintiff, James Meaney, 1017 South Clinton Avenue, Trenton, N. J., complains and says:

1. That the defendant, the Trenton and Mercer County Traction Corporation, a corporation existing and acting under the laws of the State of New Jersey, is the owner and operator of a street car system

30 consisting of tracks, cars, wires, poles and other equipment which is located and operating in the various streets in the City of Trenton, and County of Mercer, and State of New Jersey.

2. That on April 29, 1922, the said defendant, by its employees, servants and agents, was operating street car known as car #168, for the carrying of

passengers for hire in said city, northerly on its tracks on said South Clinton Avenue, Trenton, N. J., and while so operating the said street car on South Clinton Avenue, the said plaintiff was operating an auto delivery truck owned and operated by him, and while so operating said auto delivery truck in a careful and lawful manner in a northeasterly direction on said South Clinton Avenue, Trenton, N. J., and without any fault on the part of the said plaintiff, the said defendant, by its servants, em- 10 ployees and agents, was operating car #168 in a northerly direction on said South Clinton Avenue, and while so operating said car negligently, carelessly and recklessly, ran into and collided with the said defendant's automobile delivery truck, thereby throwing the said plaintiff to the street and smashing and breaking to pieces, and damaging generally, the said auto delivery truck of the said plaintiff, thereby causing great damage to the said auto delivery truck. 20

3. The negligence of the defendant consisted of its agents, servants and employees operating said street car at a rate of speed higher than was consistent with the safety of this plaintiff and other users of the highway, and that the said defendant did not give any signal or signals indicating its approach to and near the plaintiff, so as to warn said plaintiff of its being on the highway; and that the said defendant by its agents, servants and employees, did not 30 look in front of its car when the said car was being operated along said South Clinton Avenue, so as to inform and acquaint itself with the places and positions of the plaintiff and other users of the state highway. That the said defendant, by its servants, agents and operators, was operating its car at such a high rate of speed that the said car was beyond and

out of the control of the agents, servants and employees of the said defendant.

4. By means whereof the auto delivery truck of said plaintiff was broken and smashed in various parts, thereby causing the said plaintiff to spend a large sum of money, to wit; \$300.00, for the repairs of the said auto delivery truck, and also to cause the said plaintiff to expend sums of money to employ and hire another truck to perform the work of the said plaintiff, for which the said plaintiff expended the said sum for hire about \$100.00.

5. Plaintiff demands damages in the sum of \$500.00.

6. Plaintiff, Leonard Baus, demands damages in the sum of \$15,000.00.

7. Plaintiff, James Meaney, demands damages in the sum of \$500.00.

MARTIN P. DEVLIN,  
Attorney of Plaintiffs.

[ENDORSED]

I hereby deputize and appoint Frank Conard, of Trenton, N. J., a Special Deputy to Serve the within writ.

Witness my hand and seal this 29th day of August, A. D. 1922.

Walter Firth (L. S.)  
Sheriff of Mercer County.

Served within Summons and Complaint, August 29, A. D. 1922, upon

Trenton and Mercer County Traction Corporation, def't., by giving and delivering a true copy thereof to Rankin Johnson, President of said corp., personally, at the office of said corp. Room 701 Broad St. Bank Bldg., Trenton, N. J.

Walter Firth, Sheriff by  
Frank Conard,  
Spec. Dep.

ANSWER.

(Filed January 3, 1923.)

MERCER COUNTY COURT OF COMMON PLEAS.

LEONARD BAUS and JAMES MEANY,  
Plaintiffs,  
v.  
TRENTON & MERCER COUNTY TRACTION CORPORATION,  
Defendant.

Action at Law.  
Answer.

ANSWER TO FIRST COUNT.

- 1. Paragraph one is admitted.
- 2. Paragraph 2 is denied.

3. Paragraph three is denied.

4. Paragraph four is denied.

Defendant denies that the plaintiff, Leonard Baus, is entitled to damages from it in the sum mentioned in the complaint, or in any other sum.

10

FIRST DEFENSE TO FIRST COUNT.

The defendant was not, nor were any of its servants or agents, guilty of negligence resulting in injury to the plaintiff, Leonard Baus.

SECOND DEFENSE TO FIRST COUNT.

The injury to the plaintiff, Leonard Baus, alleged in the complaint, if suffered at all, was caused solely by the negligence of the plaintiff, James Meany, in driving his automobile upon the tracks of the defendant when the defendant's trolley car was so close that the operator thereof could not bring the same to a stop in time to avoid a collision with the automobile truck of the said James Meany, though the operator of defendant's trolley car had the same in proper control and was in every respect exercising due care and diligence for the safety of other persons and vehicles using the highway.

30

THIRD DEFENSE TO FIRST COUNT.

The plaintiff, Leonard Baus, was guilty of negligence contributing to the injury alleged in the complaint, if suffered at all, in that while he was riding

in the automobile truck of the plaintiff, James Meany, toward and upon the tracks of the defendant company, he did not observe due care for his own safety and did not see the trolley car of the defendant, although said trolley car was so close that the operator thereof, in the proper exercise of his duties, could not bring said trolley car to a stop in time to avoid a collision, though the said operator was exercising due care and diligence for the safety of other persons and vehicles upon the highway. Said Leonard Baus should have observed the approach of said trolley car and should have warned the said James Meany thereof. The said Leonard Baus was further guilty of contributory negligence in that at the time of the accident mentioned in the complaint, he was engaging the said James Meany in conversation and otherwise distracting his attention from the proper operation of the motor vehicle of said James Meany.

10

The said Leonard Baus was further guilty of contributory negligence to his injury in that at the time and place of the accident alleged in the complaint, he was riding either upon the running board of the automobile of the plaintiff, James Meany, directly in front of the approaching car of the defendant, or he was sitting in the said automobile truck with his foot and other portions of his body extending outside of the body of the said automobile truck.

20

The said Leonard Baus is not entitled to recover in this action because of his contributory negligence.

30

ANSWER TO SECOND COUNT.

1. Paragraph one is admitted.

2. Paragraph two is denied.

3. Paragraph three is denied.

4. Paragraph four is denied.

Defendant denies that the plaintiff, James Meany, is entitled to damages from it in the sum mentioned in the complaint, or in any other sum.

FIRST DEFENSE TO SECOND COUNT.

The damages of the plaintiff, James Meany, as alleged in the complaint, if suffered at all, resulted solely from his negligence in that at the time and place mentioned in the complaint, he drove his automobile delivery truck upon the trolley tracks of the defendant without observing due care for his own safety and the safety of passengers using the trolley car and the operator thereof in that he did not take proper measures to observe the approach of said trolley car though the same was so close that the operator thereof, in the exercise of due care and diligence and having his car in proper control, could not stop the same in time to avoid a collision with the plaintiff's automobile.

The said James Meany is further guilty of negligence in that at the time of said accident and immediately prior thereto, he was engaging in conversation with the said Leonard Baus and was not giving proper attention to the operation of his automobile.

SECOND DEFENSE TO SECOND COUNT.

If the negligence of the plaintiff, James Meany, alleged in the first defense of the second count was

not the sole cause of said accident, then the said negligence contributed thereto and the said plaintiff is not entitled to recover in this action.

KATZENBACH & HUNT,  
Attorneys for Defendant.

NOTICE TO AMEND COMPLAINT.

(Filed December 22, 1924.)

MERCER COUNTY COURT OF COMMON PLEAS.

LEONARD BAUS, <i>Plaintiff,</i>	}	v.	Action at Law. Notice to Amend Complaint.
TRENTON AND MERCER COUNTY TRACTION COR- PORATION, <i>Defendant.</i>		20	

To Katzenbach & Hunt, Esqs., Attorneys of Defendant:

Sirs: Take Notice that I will apply to his Honor, Erwin E. Marshall, Judge of the Court of Common Pleas of Mercer County, at the Court House in Trenton, Mercer County, on Friday, the 26th day of December, 1924, at 10.00 o'clock in the forenoon, or as soon thereafter as counsel can be heard on the same, for an order to amend the damage clause of

On motion of  
MARTIN P. DEVLIN,  
*Attorney of Plaintiff.*  
Dated January 2nd, 1925.

AMENDED COMPLAINT.

10

MERCER COUNTY COURT OF COMMON  
PLEAS.

	LEONARD BAUS,	} Action at Law.
	<i>Plaintiff,</i>	
	v.	} Amended Complaint.
20	TRENTON AND MERCER	
	COUNTY TRACTION COR-	
	PORATION,	
	<i>Defendant.</i>	

Plaintiff, Leonard Baus, of 115 Rusling Street, Trenton, Mercer County, New Jersey, complains and says:

30 1. That the defendant, The Trenton and Mercer County Traction Corporation, a corporation existing and acting under the laws of the State of New Jersey, is the owner and operator of a street car system, consisting of tracks, cars, wires, poles and other equipment which is located and operating in the various streets in the City of Trenton, and County of Mercer, and State of New Jersey.

2. That on April 29, 1922, the said defendant, by its employees, servants and agents, was operating street car known as car No. 168, for the carrying of passengers for hire in said city, northerly on its tracks on South Clinton Avenue, Trenton, N. J., and while so operating the said street car on South Clinton Avenue, the said plaintiff was riding in an auto delivery truck owned and operated by one James Meaney, and the said plaintiff was in said auto delivery truck and not operating the said delivery truck, and having no control thereof, and being lawfully in said auto truck, and being lawfully on said highway, and through no fault or negligence on his part the said defendant, by its agents, servants and employees, who were operating said car No. 168, did so negligently, carelessly and recklessly operate the said car No. 168 as to run into and collide with the auto delivery truck in which the said plaintiff was riding, and did crash into, smash and break the said automobile delivery truck and cause the said plaintiff to be thrown from the said truck onto the said street, and jammed in such a manner between the said delivery truck and the said street car so as to bruise, cut, break and injure the said plaintiff's body, legs, arms and head, by reason of which the said plaintiff has been injured permanently, about the head, body and arms, and permanently in his nervous system, and his left leg has been amputated, all of which injuries are the result of the said negligence of the said defendant. 20

3. The negligence of the defendant consisted of its agents, servants and employees operating said street car at a rate of speed higher than was consistent with the safety of this plaintiff and other users of the highway, and that the said defendant did not give any signal or signals indicating its approach 30

to and near the plaintiff; so as to warn said plaintiff of its being on the highway; and that the said defendant, by its agents, servants and employees, did not look in front of its car when the said car was being operated along said South Clinton Avenue, so as to inform and acquaint itself with the places and positions of the plaintiff and other users of the state highway. That the said defendant, by its servants, agents and operators, was operating its car at such a high rate of speed that the said car was beyond and out of the control of the agents, servants and employees of the said defendant.

4. By reason of said action the said plaintiff was injured and bruised in the arms, body, head, legs, feet and hands, and that the said plaintiff is permanently injured in that he has had his left leg amputated, and that his nervous system has been so shocked that it is permanently injured, and that he has suffered and endured great pain, and that he will be permanently disabled, and he will never again be a well person, and he will be unable to go about his affairs as usual, and that he will be deprived of the same power to earn a livelihood as heretofore, and will be unable to pursue the occupation and life of a normal and well person, and that he has been compelled to expend large sums of money on doctors, hospital, medicine and nurses, and that he has lost large sums of money by being unable to pursue his calling and occupation, and that he will have to spend large sums of money for medicines, medical attention, and nursing, and that he will suffer the loss in the future of large sums of money, from being permanently injured and unable to work at his former occupation, and will never again be able to earn his living as a normal and well man and, therefore, has suffered great losses and is damaged.

Plaintiff claims for his damages the sum of twenty-five thousand (\$25,000.00) dollars.

MARTIN P. DEVLIN,  
*Attorney of Plaintiff.*

DOCKET.

MERCER COUNTY COURT OF COMMON PLEAS, met on Friday, December 26, 1924, at 10.45 o'clock A. M. Present HON. ERWIN E. MARSHALL. 10

LEONARD BAUS,  
*Plaintiff,*  
v.  
TRENTON AND MERCER  
COUNTY TRACTION COR-  
PORATION,  
*Defendant.* } Common Pleas Issue.  
At Law. 20

MARTIN P. DEVLIN, attorney for plaintiff.  
MESSRS. KATZENBACH AND HUNT, attorneys for defendant.

After an argument of counsel for plaintiff and defendant on a motion to amend declaration from fifteen thousand dollars to twenty-five thousand dollars damages and the Court having heard respective counsel on said motion, announced that he would take the case under advisement and announce his decision in the near future and would also give date for trial of said issue at same time. 30

MERCER COUNTY COURT OF COMMON PLEAS met on Friday, Jan. 2, 1925, at 10.40 o'clock A. M. Present HON. ERWIN E. MARSHALL.

LEONARD BAUS,  
*Plaintiff,*  
 v.  
 TRENTON AND MERCER  
 COUNTY TRACTION COR-  
 PORATION,  
*Defendant.*

Common Pleas Issue.  
 At Law.

10 The Court announced in the above entitled cause that the motion to amend pleadings from fifteen thousand dollars to twenty-five thousand dollars is allowed. Also announced that the date for trial of said issue is set down for Jan. 26, 1925.

20 MERCER COUNTY COURT OF COMMON PLEAS met on Monday, January 26, 1925, at 10.00 o'clock A. M. Present HON. ERWIN E. MARSHALL.

LEONARD BAUS,  
*Plaintiff,*  
 v.  
 TRENTON AND MERCER  
 COUNTY TRACTION COR-  
 PORATION,  
*Defendant.*

Common Pleas Issue.  
 Action at Law.

30 MARTIN P. DEVLIN, attorney for plaintiff.  
 MESSRS. KATZENBACH AND HUNT, for defendant.  
 Ordered that the sheriff return a panel whereupon the following jurors were called and severally sworn:

1. Loretta Billings,
2. Frank Martin,
3. Alfred Foden,

4. Charles McTighe,
5. Nan Bertels,
6. Howard E. Broker,
7. Thomas Hammett,
8. Walter E. Bozarth,
9. Clarence Branson,
10. Bernard Tohill,
11. George A. Hutchinson, Jr.
12. J. Forman Rose.

John F. Trainer sworn as stenographer. 10

Mr. Devlin, for plaintiff, called: Offers map and instead of calling Abram Swan, Jr., civil engineer, to testify, reads the testimony given by him in the former trial. Mr. Devlin, for plaintiff, called James Meany, S. Madaline Spicer, S. Mrs. Jennie Martin, S. Stella Billingham, S. John Oswald, S. Alexander Kaemer, S. Morris Frey, S. Joseph Lauderkin, S. Mrs. Winifred Murphy, S.

Case adjourned.

20 MERCER COUNTY COURT OF COMMON PLEAS met on Tuesday, Jan. 27, 1925, at 10.00 o'clock A. M. Present HON. ERWIN E. MARSHALL.

LEONARD BAUS,  
*Plaintiff,*  
 v.  
 TRENTON AND MERCER  
 COUNTY TRACTION COR-  
 PORATION,  
*Defendant.*

Common Pleas Issue.  
 Action at Law. 30

Case continued.

Mr. Devlin, for plaintiff, called Leonard Baus, S. Frank Naylor, S. William Redden, S. Mrs. Mary

Vanderbeck, S. Walter Adams, S. James Meany, S. Dr. Houghton Smith, S. Dr. Martin W. Reddan, S. Mrs. Sue Henry, S. Mrs. Nettie Baus, S.

Rest

Mr. Hunt, for defendant, asked leave to make a motion for non-suit, which was denied and an exception allowed. Motion also made to take jury to scene of accident which was denied and an exception allowed.

10 Mr. Hunt, for defendant, called Cecilia Hamilton, S. Jos. Knoble, S. Teresa Knoble, S. Edward MacSweeney, S. Catherine MacSweeney, S. Karl J. Scheaff, S. W. Earl Rochford, S. Sylvester Sherry, S.

Case adjourned.

MERCER COUNTY COURT OF COMMON PLEAS met on Wednesday, Jan. 28, 1925, at 10.00 o'clock A. M. Present HON. ERWIN E. MARSHALL.

LEONARD BAUS, Plaintiff, v. TRENTON AND MERCER COUNTY TRACTION CORPORATION, Defendant. Common Pleas Issue. Action at Law.

Case continued.

Mr. Hunt, for defendant, made a motion for a mistrial on account of an article appearing in the Sun-

day Times Advertiser of Jan. 25, 1925, which motion was denied and an exception allowed.

Mr. Hunt, for the defendant, offers the article in evidence and objected to by Mr. Devlin, for the plaintiff, which objection was overruled and the article marked Exhibit D1, and an exception taken by the plaintiff and allowed by the Court.

Mr. Hunt, for the defendant, called Joseph Plumeri, S. Donald R. Bryant, S. Hervey S. Moore, S. Edward J. Peartree, S.

While waiting for the defendant's doctors, Mr. Devlin, for the plaintiff, offered rebuttal evidence and recalled Leonard Baus, Mrs. Nettie Baus.

Mr. Hunt, for the defendant, recalled Dr. Reddan for cross-examination and to show hospital records and called Dr. Edgar B. Funkhauser, S.

Rest.

After an argument of counsel and a charge by the Court, the jury retired with Frank Fair and Katherine Haines, court attendants duly sworn to attend them to consider their verdict and having agreed upon their verdict, come again into court and by their foreman say they find in favor of the plaintiff and against the defendant in the sum of sixteen thousand dollars damages, and so say they all.

Whereupon, it is ordered that judgment final be entered in favor of the above named plaintiff and against the above named defendant for the sum of sixteen thousand dollars, besides costs of suit to be taxed.

## TESTIMONY.

MERCER COUNTY COURT OF COMMON  
PLEAS.

10 LEONARD BAUS,  
Plaintiff, }  
v. }  
TRENTON AND MERCER }  
COUNTY TRACTION COR- }  
PORATION, }

20 Before MARSHALL, J., and a jury.

## APPEARANCES:

MARTIN P. DEVLIN, Esq., for the plaintiff.  
KATZENBACH & HUNT, EDGAR W. HUNT, Esq.,  
GEORGE GILDEA, Esq., for the defendant.

John F. Trainer was sworn as reporter.

30 The jury was duly impanelled, accepted and sworn. Mr. Devlin on behalf of the plaintiffs, and Mr. Hunt, on behalf of the defendant, opened the case to the jury.

Mr. Devlin: It is admitted that the defendant company owned and operated the car that had this collision.

Mr. Hunt: And the man who was driving it is dead. He dropped dead shortly after the accident with heart disease.

Mr. Devlin: Mr. Swan, City Engineer, could not be here and it has been consented that the map be admitted and Mr. Swan's testimony read. I will read the testimony and perhaps illustrate it to the jury.

By the Court: The stenographer need not take this down as he can get it from the book. 10

“ABRAM SWAN, JR., sworn for the plaintiffs.

Direct examination.

By Mr. Devlin:

Q. Mr. Swan, you are the city engineer of the City of Trenton, are you not? 20

A. Yes, sir.

Q. And you have been so for a long while?

A. Yes, sir.

Q. You are familiar with the streets of the city?

A. Yes, sir.

Q. This map (indicating) you drew for this cause at my request, didn't you?

A. Yes, sir.

Q. Will you make known to the jury what this map and all the things on it represent? 30

A. The map shows a portion of South Clinton Avenue between Beatty Street and Division Street. It is drawn to a scale of one inch equals 40 feet. In other words, every inch on this map represents 40 feet distance on the ground. The arrow denotes

the points of the compass, north, south, east and west, and is designated by the letters N. E. W. S. The various streets are designated by their names, such as Beatty Street, Whittaker Avenue, Rusling, Chestnut, Woodland and Division Streets, which are the intersecting streets, South Clinton Avenue being designated by the words "South Clinton Avenue" through here. (Indicating.) The outside parallel lines, heavy lines, are the extreme outside of the street, or the building line. The pink is the sidewalk. The parallel dotted lines are the curb lines on the various streets. The red or orange lines, through the middle of the street, are the tracks of the Trenton and Mercer County Traction Corporation and are designated as northbound track and southbound track, in orange ink. The word "Vitrified" brick pavement in the center of the map designates the pavement that exists on the entire street, both between the car tracks and on either side. The several red figures shown on the bottom of the map, or to the south of it, are distances, showing 1, 2, 3, 4, 5, and so on, up to 13, each number being 100 feet apart, or 2½ inches apart, making 100 feet between each number. The various red objects shown here is first "Truck No. 2," in red, Meaney's property, occupied by hot houses, is designated in green with the word "Meaney" and then there is a blank space, shown in red here, with two brick houses, and adjacent to that is the Liederkrantz Hall. The several red objects enclosed in black circles are arc lights. The black dotted lines adjacent are the lines with the pole suspending the lights here. (Indicating.) All of these are regular arc lights with the exception of the one at Whitaker Avenue which is incandescent and is so designated with "Inc." The rest "Arc." That, I think, explains everything.

Q. You say "Truck No. 2"—is that the fire engine house?

A. Yes, sir; that is the fire engine house, and is so designated.

Q. Will you tell me the width of Clinton Street in front of Meaney's place?

A. The curb is all straight, all throughout, and varies in width very little, that is, throughout the entire length. It is between 39 and 40 feet; about 39½ feet throughout will be the average. 10

Q. Between curb lines?

A. Between curb lines. The street is 66 feet wide, and it is a little over 12 feet from the curb to the track on either side, and the tracks are 14 and 7-tenths, or, in other words, 14 feet, 9 inches, from gauge line to gauge line.

Q. And what distance is there between the curb line and the trolley track?

A. The distance is about 12 to 12 and a half feet, it varying on account of the curbs weaving slightly. 20

Q. And this space here (indicating) you say, means 100 feet?

A. Between each figure is 100 feet. I did that for the purpose of showing the distance between the various streets. In other words, from Beatty Street to Division Street is about 1,320 feet, at the curb line.

Q. Your map is scaled —

A. One inch equals 40 feet.

Q. Did you indicate on this map the stops made by the trolley cars? 30

A. The stops made by the trolley cars, no, I did not; I am familiar with a few of them, but not all of them.

Mr. Hunt: I have a map which shows the stops exactly, if you want to use it.

Mr. Devlin: No, I will use this.

A. (Continuing.) There is a stop—you mean in going in a northerly direction?

Q. Northerly direction.

A. Well, there is a stop at this corner, at the northeast corner,— designated Beatty and South Clinton, near the drug store, there is a stop to the northbound track, and directly opposite, at the intersection of Whittaker and Rusling, right about  
10 midway between the curbs; there is another stop at the Bijou Theatre at this point opposite Chestnut Avenue, and there is one at Division Street, opposite the drug store on the northeast corner, on Division and South Clinton.

Q. Are there any other stops there?

A. None that I am familiar with. I took a car at these other places on several occasions that I was down there.

20

Mr. Devlin: Cross-examine.

Cross-examination.

By Mr. Hunt:

Q. What is the grade of South Clinton Avenue as depicted on this map?

30 A. Any particular location?

Q. Well, just an example.

A. Well, there is a crown at about this point, indicated by the word—at the end of the word “Vitri-fied.” There is a crown there so that water runs over the tracks, descends towards Beatty Street, about 6 inches in a hundred feet, or a little less, and then it runs back the other way.

Q. Coming from Division Street they ascend on the grade, about how much to a hundred feet?

A. About the same thing. It is a very slight grade, and in fact we have a minimum grade there of between 4 and 5, 6 inches on that entire street between these points.

Q. You mean that is the minimum grade that you establish on the city streets?

A. That is the minimum grade that we establish in that section of the city, yes, sir. 10

Q. That is considered just a sufficient grade to make the water run to the curb?

A. That is the least grade that we find practicable to carry the water away.

Q. Yes. And so you call it a very slight grade.

A. Very nearly level. It is only about that much in a hundred feet. (Indicating.)

Q. Really a made grade, I suppose, in laying the pavement?

A. No, it follows the contour—established years 20 ago.

Q. Now did you indicate any trees on this map?

A. No, sir.

Q. Did you observe whether or not any trees were growing along the side of South Clinton Avenue westerly from Mr. Meaney's place of business?

A. I believe ther are several trees throughout the street, and telegraph poles.

Mr. Hunt: That is all.

30

Re-direct examination.

By Mr. Devlin:

Q. Just one question. Did I understand you to say that this grade reached its peak at the words "vitrified?"

A. The summit is about right there, at the word  
10 —at the southeast end of the word "vitrified."

Q. And it slopes each way?

A. It slopes toward Chestnut Avenue; the other way it slopes towards Beatty Street. It is a very slight incline.

Mr. Devlin: That is all.

20 JAMES MEANEY, sworn for the plaintiff.

Direct examination.

By Mr. Devlin:

Q. Mr. Meaney, what is your business?

A. Florist.

Q. How long have you lived in Trenton?

A. All my life except for about a year and a half.

30 Q. Where is your place of business at?

A. 1017 South Clinton.

Q. Do you know Mr. Baus, the plaintiff in this case?

A. I do.

Q. How long have you known him?

A. About twenty-five years; somewhere about there.

Q. You owned an automobile truck at that time?

A. Yes, I did.

Q. Do you remember the Saturday evening of April 29, 1922?

A. I do.

Q. Do you remember being with Mr. Baus at your place of business that day?

A. I do.

Q. And do you remember doing anything with your automobile truck that day? 10

A. I was in the store and I said, "I will go and put Lizzie to bed" and he said, "I will ride around with you" and I said, "Come on" and I cranked the machine and looked up and down from Chestnut Avenue to Dye Street and then started to turn and when I got about twelve inches, as near as I could tell, from the inside rail of the northbound track I saw a trolley car at Whittaker Avenue.

Q. At Whittaker Avenue? 20

A. Yes.

Q. Go ahead.

A. Which was about 225 feet away and before I had got to the middle of the northbound track he was down and hit me and turned me right around and knocked me where I was coming from. Instead of the truck standing north and south it was east and west. I put my hand down to get my emergency brake and one wheel was twelve inches from the curb and the other seventeen and a half. 30

Q. Where did the street car go that hit you?

A. It went not quite to the corner, about four feet from the corner.

Q. To the corner of what?

A. Beatty and Clinton; the front of it was about four feet past the pole with white paint on it.

Q. Where was your garage?

A. In the rear of the store.

Q. You were turning to go around to Beatty Street?

A. Beatty Street.

Q. As you looked up and down and saw no car did you see any other vehicle or wagon on the street?

A. No.

Q. Did you hear any signals?

10 A. No.

Q. From the trolley car?

A. No.

Q. Now, about what time in the evening was it?

A. Somewhere between seven and half-past; I should judge about twenty minutes after seven.

Q. How about lights on the street?

A. I didn't notice any lights on the street, but the trolley was lit.

Q. How about the lights on your car?

20 A. They were lit.

Q. The lights on your own truck. Now, what have you to say about the speed of the car that hit you; do you know anything about it?

A. I don't know, only he run about 225 feet while I was running about five to six feet; I was about two-thirds of the way turned when he hit me.

Q. What was the result of the street car striking your machine; what was the result, what happened?

30 A. It knocked both wheels flat, knocked the body off the chassis over 6 inches until it touched the wheels, it tore one side out.

Q. What kind of a Ford was it?

A. A Ford truck.

Q. Will you describe the front of it, where you sit, what kind of a front was it?

A. It was a regular Ford truck.

Q. Was it open or closed?

A. No, it had a windshield on and one side was closed about up to your knees.

Q. What side was that?

A. The side I would sit on.

Q. Right or left side?

A. Left.

Q. How about the right side?

A. That is all open.

Q. As you got into the machine what side did you sit on? 10

A. Left.

Q. And Baus sat beside you?

A. He sat on the right.

Q. What damage or injury was done to your machine?

A. Counting the time I was off \$255.00.

Q. What parts of the machine were injured?

A. Both tires were knocked off the front and the wheels were in about that shape (indicating) where it knocked it around the body was broken at the step where you would get it, the mudguard was turned up, the windshield broken out and the side he was sitting on in the body there was a hole punched in the side, I suppose, about a foot in diameter. 20

Q. I understood you to say the front of the machine was thrown facing your own store?

A. Yes, the axle was bent in a bow shape; we couldn't push the car ahead or anything and some of the trolley men got hold of the rear and carried it around on the side so that street car could get by. 30

Q. Did you see Baus after the accident?

A. I didn't see him until I had got out of the car and somebody come up and said "Jim, are you hurt?" I said "No." He said "Sure?" I said

“not a particle only the machine” and I saw him looking at the pavement.

Q. Saw who?

A. This man that asked me, but I don't know who the man is and I looked down and I saw two pools of blood and Baus said “my leg is broke” just in a quiet way.

Q. Where was Baus when he said that?

A. Seemingly, he stood right besides me, two or  
10 three feet, but he hadn't said a word to me or anybody that I heard outside “my leg is broke.”

Q. What happened to Baus after that; did you see what happened him?

A. Two or three of the firemen came out and carried him into the truck house and laid him on the table and I believe there were some doctors that happened to be across the street in the drug store and they gave him first aid treatment and took him to the hospital.

20 Q. Yes, was this a one-man or two-man car?

A. One-man.

Q. You say it run quite some distance after it struck you?

A. About 140 feet.

Q. And then after it ran —

A. I have never measured that, only as I counted the houses along there, but that is what I should judge it would be.

30 Q. You had counted them at the time of the accident?

A. Yes.

Q. After that car was standing there did another car come up there?

A. Three of them come up there together.

Q. How soon after the first one struck you?

A. I don't think over eight minutes before the third one came up and he said to me —

Q. Don't say what he said to you. What time did the second one come up there?

Q. Right after the first one; a couple of minutes, something like that.

Q. How long have you known Baus?

A. About twenty-five or twenty-seven years.

Q. Do you know what work he does or what business he was in?

A. He was in the produce business all of the time I knowed him. 10

Q. Did you know anything about—so far as you could see the condition of his health?

A. No, all I knowed about him was that he worked every day, he run to Philadelphia three times a week and around Trenton the other three days.

Q. Did you see him very often in that time?

A. Pretty near every night he was in the store.

Q. Is your store near him or not?

A. Pretty near.

Q. You have noticed since this—have you noticed 20 since this accident any change in him besides his leg being injured?

A. Yes.

Q. What is it?

A. He has got, the last time I saw him his hand going this way (indicating) all the time and if you ask him a question maybe he will give you an entirely different answer from what you asked him.

Q. How about the head, have you noticed anything about the head or arms shaking? 30

A. It is the arm that I referred to a moment ago; the whole right side is that way.

Q. Did you observe anything like that before this accident?

A. No, that is since this accident; before the accident I never saw anything.

Q. Have you noticed anything about his memory since this accident?

A. Only if you will sometime talk to him and you ask him a question he will give you a different answer from what you are speaking of, like he wasn't listening to what you were saying.

Q. He was an automobile driver, wasn't he; he drove a machine before this accident?

A. Long before I did.

10 Q. And you say he drove to Philadelphia several times a week to your knowledge?

A. Three times a week; I know I went down there several times with him.

Q. He was a healthy robust man before this accident?

A. So far as you could see.

Q. You saw him at his duties every day?

A. Every day.

20 Q. Just one moment, while you were getting in your car to turn it around, did Baus say anything to you?

A. While I got in?

Q. Yes.

A. He said nothing to me that I can remember or that I heard from the time he said "I will ride around with you" up until the time he said his leg was broke.

Q. How long have you driven a truck?

30 A. Since August of 1917.

Q. The position this truck was in that evening, how was it facing?

A. It stood north and south on Clinton Avenue, facing south.

Q. Had you often made that turn before?

A. Hundreds of times.

Q. And did you make it in one complete turn?

A. One complete turn, and I had three or four feet from the curb to make it in.

Mr. Devlin: I see; cross-examine.

Cross-examination.

By Mr. Hunt:

10

Q. Mr. Meaney, you said both front tires of your truck were knocked off?

A. Right; that is, they weren't entirely off the wheels, they were off the bottom and bursted, they stood about half-way on and half-way off.

Q. Were the hind tires injured?

A. Hind tires?

Q. Yes.

A. Only one, I don't know how that happened 20 but that was flat.

Q. Which one was that?

A. Left.

Q. You said you had a mudguard damaged, which mudguard was that?

A. Right.

Q. Front or rear?

A. Front, it was the step that you stand on that was flat up against the side of the car and the mudguard was up against the side of the hood.

Q. The front wheel on the right-hand side was 30 considerably damaged, wasn't it?

A. They were both about the same.

Q. And the uprights that lead from the running board to the top of the truck on the right-hand side?

A. That was all splintered and the base or sill was splintered.

- Q. The back of your truck was not splintered, was it?
- A. Only the window knocked out of the side.
- Q. That was the side, the right-hand side?
- A. Right-hand side.
- Q. You said you had a bent axle?
- A. The axle was in a bow shape.
- Q. Which axle, front or rear?
- A. Front.
- 10 Q. Just step down to the map, won't you? You see this block here marked in green with "Meaney" printed in it; do you know what that is?
- A. My store.
- Q. Your automobile was standing in front of that store starting to turn around?
- A. Standing in front of that.
- Q. It was facing toward the south?
- A. That is turned around, this here block over here and I was standing here. (Indicating.)
- 20 Q. Then you say your car was standing in front of your store?
- A. In front of the store, yes.
- Q. You say this block marked green and with your name printed in it is your store?
- A. Yes.
- Q. Do you know the directions on this map?
- A. Yes, I can see them.
- Q. Your automobile stood here in front of your store, it was on the same side of the street as your
- 30 store, wasn't it?
- A. Yes.
- Q. Right up against the curb?
- A. Against the curb.
- Q. And it was facing down toward Chestnut and Division Streets, wasn't it?
- A. Yes.

- Q. Now, you got in it and started to turn around, to pull to the left, didn't you?
- A. Pull to the left?
- Q. Your movement as you went around was to the left?
- A. To the left.
- Q. Do you see these two red lines out in the middle of the street, on the side nearest to your store marked "southbound track?"
- A. Yes. 10
- Q. You recognize those two lines as representing the southbound trolley tracks?
- A. Yes.
- Q. These two lines on the other side represent the northbound tracks?
- A. They do.
- Q. And the trolley car that struck you was coming north on the northbound track, wasn't it?
- A. Yes.
- Q. Before you saw that trolley car you had the front of your truck entirely over the southbound tracks and almost to the northbound tracks, had you? 20
- A. Yes, the wheels were about twelve inches from the northbound track; the front of the car, that is, the mudguard was over the track.
- Q. What time, when do you mean?
- A. When I saw the trolley.
- Q. When you saw the trolley. You mean to say that when you saw the trolley car the right front wheel of your truck was within about twelve inches of the nearer rail of the northbound track? 30
- A. I do.
- Q. That would mean that the extreme front of your truck was already out over the track, doesn't it?
- A. It does.

Q. Now, take the pointer and show the jury where the trolley car was when you first saw it?

A. I saw it in about here; I saw this trolley here at Whittaker Avenue.

Q. That is, you say, about 225 feet from where you were?

A. Yes.

Q. Did you keep your automobile moving all the time from the time you left the curb until the moment of the collision?

A. It was.

Q. When you saw this trolley car down here at Whittaker Avenue, you continued to move?

A. I continued to move.

Q. How fast were you driving that automobile?

A. I don't know; it was on a turn, I can't say.

Q. You say you have turned around there several hundred times, how fast?

A. I couldn't tell you how fast I was driving, but I turned there many times.

Q. When you are turning there do you run your car as fast as a man walks?

A. Yes, I do.

Q. The trolley car hit your automobile right about at and directly above the right front wheel, didn't it?

A. No, right in front of the door.

Q. Right in front of the door, on which side?

A. On the right.

Q. A little forward of the right-hand front wheel?

A. A little to the rear.

Q. That is right. Then the trolley car hit the automobile just about at the front seat where Mr. Baus was sitting, is that right?

A. The seat would be inside the body and the middle of the door I suppose would be about six feet, where the trolley car hit, it is about the middle

of the door and it is entirely open, no door on there at all, it struck right in the middle and split that sill and throwing the body over about six inches from that iron sill.

Q. Threw it over where?

A. Broke the side out that he was sitting on.

Q. It threw the body from its proper place, centered on the chassis, to the left of the chassis?

A. To the left.

Q. Yes, you have turned around in this street 10 hundreds of times?

A. I have.

Q. I suppose on this occasion you were turning around in the same fashion as you do ordinarily?

A. Yes.

Q. Do you observe, I point to the right-hand or outside rail of the northbound tracks, that is, of these four trolley rails in the street—I mean the one which is farthest across the street away from your place of business?

A. Yes.

Q. These turns that you made in that street, did the front wheels of your truck get across that farthest rail before you got turned completely?

A. Before I turned to go up the street?

Q. Before you got your turn completed?

A. I would be going up the street and I would have about four feet from the curb.

Q. I point to a dotted line on the opposite side of the street from your place of business and I ask you if you understand that to be the curb on the opposite side of the street?

A. Yes.

Q. You mean, in making these turns at this point as you had frequently done before when you got turned around, the wheels of your automobile came within about four feet of that curb?

A. Right, when I was hit the front of it was only in the middle of the northbound track, I was about two-thirds turned when I got hit.

Q. What part of your automobile was in the middle of the northbound track at the moment the trolley car hit you?

A. It must have been about the door, that is where he hit me.

Q. Your automobile truck then, not having completed its turn, was slanted in a cross-wise direction, still slanted?

A. What do you mean?

Q. Let us suppose that the top rail of the jury box represent the entire width of the street, from curb to curb, the side nearest us is the side of the street on which your truck was standing; your truck was facing, of course, the door of the jury room, the northbound track toward that side of this jury box rail, which is farthest from us,—now, just take this match and show the jury in about what shape your truck was, with reference to the side lines of the street. I will lay these matches now as the two rails of the northbound tracks of the trolley company. I lay these now as the two rails of the southbound tracks. Now, Mr. Meaney, this small piece of match is your truck, the match trolley track nearest to you is the southbound one, the farthest, the northbound one; the two sides of the top of this rail of the jury box represent the two parallel lines of the street; you lay that piece of match that represents your automobile truck down here at the angle that your truck stood in, in the street, at the moment the trolley car struck it.

A. (Witness puts match in position.)

Q. Lay this short piece of match down at the point at which your car stood before you started to make the turn?

A. (Witness puts match in position.)

Q. Understand, this is the curb line back here; you were over against the curb?

A. Right in front of the store, yes.

Q. And to get from the point where you started, indicated by the one piece, to the point indicated by the other piece of match, you went in a curve caused by cramping your wheel to the left about as fast as you could reasonably cramp it, is that right?

A. Yes.

Q. Do you think that at the moment the collision occurred the front of your truck, I mean the extreme front of your truck—most forward part, had reached a position quite near but not quite to the right-hand rail of the northbound track; that is the further rail of the northbound track?

A. The mudguard had entirely reached the outside rail of the northbound track.

Q. Will you change the match so as to make the dip end of the match represent the point that the most forward—represent the place that the most forward part of your automobile had reached?

A. That is it where it is now.

Q. Just about there?

A. Yes.

Q. Then the other end of the match stick would represent the position of the automobile?

A. Yes.

Q. And you think that the door of the automobile was just about over the near rail of the northbound track at the moment of the collision?

A. Yes.

Q. When you first saw the trolley car it was down at Whittaker Avenue, about 225 feet away?

A. Yes.

Q. And the extreme part of your automobile was

where with reference to the nearest rail of the north-bound track?

A. The wheel as near as I could judge was about one foot from the rail, and the mudguard would be about a foot over the rail, when I saw the car.

Q. The distance between the rails is how many feet?

A. I don't know.

10 Q. Five feet two and a quarter inches, isn't it?

Mr. Devlin: There is the map, that is drawn to scale, I don't know what it is exactly.

Mr. Hunt: Have you got a scale, Mr. Devlin?

By the Court: Do you want to know that distance between the rails?

Mr. Hunt: Yes.

20 By the Court: I think Mr. Peartree could tell you. What is the gauge of the trolley track?

Mr. Peartree: Five feet, two inches. The opening at that point is four feet, one inch, that is between the two tracks. The dummy is four foot six inches, but it varies.

30 Q. Your automobile was traveling about as fast as a man could walk, that is the best you can give?

A. I wasn't driving any faster than ordinarily, the way I always turn there.

Q. How fast do you drive when you turn there, this would indicate you drive very slowly.

A. I was driving slow.

Q. What do you mean by slow?

A. I couldn't tell you how fast.

Q. You weren't going faster than a man walks when he goes along the street?

A. No.

Q. You didn't stop anywhere on these trolley tracks?

A. No, I kept moving.

Q. Did Mr. Baus say anything to you about the approach of this trolley car?

A. I heard nothing from Mr. Baus from the time he got in the car until he said his leg was broke. 10

Q. When did you look for a trolley car before you turned in this street?

A. When I got ready to turn I looked from Dye Street to Chestnut Avenue.

Q. What do you mean by when you got ready to turn?

A. When I got in the —

Q. Your machine was one of those old-time crankers, it didn't have a starter?

A. Yes. 20

Q. You looked up and down the street, is that right?

A. Yes.

Q. You didn't see any trolley car in either direction?

A. No.

Q. Then you got in your machine?

A. Yes.

Q. Settled yourself in the driver's place?

A. Yes. 30

Q. Took off the brake?

A. Yes.

Q. Put your foot on the clutch?

A. Yes.

Mr. Devlin: I would suggest that the witness take the stand.

By the Court: Yes, he can come back now.

Q. Pushed the clutch out?

A. Yes.

Q. Released your hand brake?

A. Yes.

Q. Took hold of the steering wheel?

A. I did.

Q. Adjust your gas and spark a little?

10 A. I did.

Q. Held out your hand?

A. I did.

Q. Mr. Baus climbed in beside you?

A. He was there, I don't know how he got in.

Q. You got in first, didn't you?

A. Yes.

Q. You got in from the side nearest the curb?

A. Yes.

Q. And he got in from the side nearest the curb?

20 A. Yes.

Q. And he got in after you, didn't he?

A. Yes.

Q. And then after doing all these things we have described, you started to turn around?

A. Only to throw my hand out.

Q. You mean your left hand?

A. Yes.

30 Q. That is for the purpose of giving any person coming up from back of you a signal you are going to start?

A. Yes.

Q. From Beatty Street?

A. Yes.

Q. But the trolley car came in this direction, didn't it? (Indicating.)

A. Yes.

Q. When you started from the curb you were looking at it?

A. I couldn't see it when I got in there.

Q. When you sat down in your car to start it, you were facing toward Chestnut Street?

A. Chestnut Avenue.

Q. That is the direction from which the trolley car came?

A. Yes.

Q. This is a straight street for several blocks be- 10 low Division?

A. All the way to Stanton.

Q. That is three-quarters of a mile, isn't it?

A. Pretty close to it.

Q. That street is level throughout the distance?

A. Yes.

Q. This trolley car, you say, was lighted?

A. It was lighted.

Q. But you didn't see it?

A. I didn't see it until it got to the corner. 20

Mr. Devlin: Let him finish his answer.

By the Court: Mr. Hunt didn't finish his question.

Q. You didn't see it until it got here to the corner at Whittaker Avenue?

A. No.

Q. And you were at that time out here with the front part of your truck already encroaching upon 30 the northbound track on which that car was coming?

A. I was.

Q. And then when you had gone about two feet further the trolley car and you came together?

A. No, about six feet further.

Q. The distance between these rails is only five feet, two inches?

A. I was running straight across and I was a foot from the inside rail of the northbound track and when I was hit I was up in the middle of the track.

Q. It was your right-hand front wheel that was a foot from this near rail of the northbound track when you first saw the trolley car, wasn't it?

10 A. Yes.

Q. And that right-hand front wheel had not yet crossed over the outside northbound rail when the collision occurred, had it?

A. No.

Q. How close was it to the outside northbound rail at the moment of the collision?

A. I don't know, the collision knocked it all out of my head where it was.

20 Q. Then you wish the jury to understand that when your automobile which you say you were driving about as fast as a man walks, as near as you can tell, was going from a point, say, one foot from the inside rail of the northbound track to a point, not so far as the outside rail of the northbound track, this trolley car came up here a distance of two hundred and twenty-five feet?

A. As near as I could tell, I never measured it.

30 Q. This trolley car came from the inlet up to the point of collision in that space of time, you say that to the jury, do you?

A. Yes.

Mr. Hunt: May I leave the track here as an exhibit in the case while the trial is going on?

By the Court: I am very much afraid it will be disturbed; it may be left there until it is disturbed.

Mr. Hunt: You might delegate an officer to watch it.

(Here an adjournment was taken to 2 P. M.)

Trenton, N. J., January 26, 1925, 2 P. M.

MADELINE N. SPICER, SWORN for the plaintiff. 10

Direct examination.

By Mr. Devlin:

Q. Mrs. Spicer, you are married, aren't you?

A. Yes, sir.

Q. Where do you live?

A. 1015 Revere Avenue.

Q. Where did you live in April, 1922? 20

A. 228 Rusling Street.

Q. Do you remember an accident happening near Beatty Street and Clinton Avenue on a Saturday evening?

A. Yes.

Q. Tell us where you were on that evening?

A. I was on Clinton Avenue going north about across from Mantel's—

Q. From where? 30

A. Mantel's Butcher Shop.

Q. Where is Mantel's Butcher?

A. The other side of Whittaker Avenue.

Q. On the north or south side of the street?

A. On the north side.

Q. What side of the street were you on?

A. I was on the other side.

- Q. The same side as Meaney's Flower Store?  
 A. Yes.  
 Q. Do you know where Meaney's Flower Store is?  
 A. Yes.  
 Q. Do you know Mr. Baus?  
 A. Yes.  
 Q. And Mr. Meaney?  
 A. Yes.  
 Q. What did you see?  
 10 A. I didn't see the accident; I only seen the trolley car coming fast.  
 Q. I didn't hear the last.  
 A. I didn't see the accident, I only seen the trolley car coming fast.  
 Q. What point was the car at when you first saw it?  
 A. The other side of Whittaker Avenue.  
 Q. Do you mean, south or north?  
 A. South side.  
 20 Q. Did you hear any signals from that car?  
 A. No.  
 Q. When you saw the car coming was it going fast or slow?  
 A. Fast.  
 Q. Did you see the car at Whittaker Avenue?  
 A. Yes.  
 Q. Did it stop?  
 A. No.  
 Q. What attracted your attention to the car?  
 30 A. The noise it was making coming down the street so fast.  
 Q. What did you see happen?  
 A. I didn't see anything happen.  
 Q. What was the next thing; did you hear anything?  
 A. I heard a crash.  
 Q. When you heard the crash, what did you see?

- A. When we got up to the accident I saw Mr. Baus.  
 Q. Where was he?  
 A. On the outside of the automobile.  
 Q. Where was he standing, on the curbstone or street?  
 A. In the street near the automobile.  
 Q. Was this light or dark?  
 A. Just beginning to get dark.  
 Q. Did you notice whether the lights were lit in 10 the car?  
 A. Yes.  
 Q. How about street lights?  
 A. I just couldn't say.  
 Q. It was just getting dark?  
 A. Yes.  
 Q. Daylight saving time at that time, wasn't it?  
 A. Yes.  
 Q. And did you see the car after it struck the 20 automobile?  
 A. No, I did not.  
 Q. Did you notice it?  
 A. No.  
 Q. Did you notice where the car was?  
 A. No, I didn't.  
 Q. Can you tell if this was a one-man car or a two-man car?  
 A. I couldn't tell.

Cross-examination.

30

By Mr. Hunt:

Q. Will you just step down to the map a minute, please, Mrs. Spicer; I will explain the map a little before I ask any questions. This long street here is South Clinton Avenue; this intersecting street at

the south is Division Street, and next is Chestnut Street and then Rusling and Whittaker come into South Clinton and you see this block marked in green with the description "Meaney?"

A. Yes.

Q. You know that that is Mr. Meaney's place?

A. Yes.

Q. Just take the pointer and show the jury where you were standing?

10

Mr. Devlin: Pardon me, will you give that girl some idea of the distances on that map?

Q. Each inch on this map represents forty feet on the ground. Look at South Clinton Avenue and Whittaker Avenue, the intersecting point, and put the pointer on the spot that represents Mantel's store that you spoke of?

A. Right there. (Indicating.)

20 Q. Is Mantel's store on the same side of the street as Meaney's floral business?

A. No, that would be over here.

Q. I want you to put it on the store.

A. Right here. (Indicating.)

Q. The pink lines on this map, longitudinal lines, are the sidewalks. Get right back in on the store?

A. Here?

Q. Right there.

A. Yes.

30 Q. (Indicating a space immediately adjoining to the north the pencil letter M which is noted on the map in black pencil.) Is Mantel's store the nearest business place to the point where Whittaker Avenue comes into South Clinton Avenue?

A. Yes.

Q. Is there any vacant lot and then the store?

A. No.

Q. So the store must be right here where the letter M is written?

A. Yes.

Q. How wide is the front of Mantel's store, do you suppose?

A. I just couldn't say.

Q. Can you look about the room and tell us it is about as much as some distance you see here?

A. From here to the other side of the room.

Q. (Indicating the north side of plaintiff's counsel table.) You say it is from that point to the south side of the room?

10

A. Yes.

Q. When you saw this trolley car by Mantel's store, you were on the opposite side of the street from Mantel's store?

A. Yes.

Q. With the pointer show the jury, as near as you can, where you were when you first saw the car?

20

A. I was right opposite.

Q. You were right opposite Mantel's store?

A. Yes, that is what I thought you were asking me.

Q. Which direction were you walking in?

A. North.

Q. That is, toward Meaney's?

A. Yes.

Q. This car came up from behind you, didn't it?

A. Yes.

Q. Take the witness stand again. When you first saw the trolley car was it still behind you or was it abreast of you or had it gone past you?

30

A. It was still behind.

Q. So in order to see it you had to look around?

A. Yes.

Q. Was there anybody with you at the time?

A. Yes.

Q. Just come back to the map once more, I am sorry to disturb you but I forgot something. You didn't stop walking at any time before the collision, did you?

A. No.

Q. Show the jury where you were on the map at the moment that you heard the sound of the collision, remembering that this map is forty foot to one inch, so that one inch on this map means forty feet  
10 of distance. I want you to tell the jury where you were at the moment you heard the crash?

A. I hadn't gone more than fifteen feet, twenty feet.

Q. You think you hadn't gone more than fifteen feet or twenty feet?

A. No more than fifteen feet.

Mr. Devlin: She said she hadn't gone more than  
20 15 feet.

Mr. Hunt: I ask the stenographer to read what she said.

(Three previous questions and answers read.)

Q. Now you can take the stand again. You testified at a former trial of this accident, didn't you, Mrs. Spicer?

30 A. Yes.

Mr. Devlin: What page are you reading from?

Mr. Hunt: I have page 68 and page 75 open before me. I haven't read anything yet and I don't know that I am going to.

Q. You told the truth at that former trial as near as you knew it and recollected it?

Mr. Devlin: I object to that.

Mr. Hunt: I assume she did.

A. Yes.

Q. The former trial was some time ago, was it  
not? 10

A. Yes.

Q. If I tell you, according to the record, it was January 3, 1923, would that fit in with your recollection?

A. Yes.

Q. More than two years ago?

A. Yes.

Q. Do you recall the date of the accident?

A. I just can't say now, I do forget.

Q. The complaint says it was April 29, 1922; does  
that seem about right to you? 20

A. No.

Mr. Devlin: I ask the Court's permission to read into the record that the accident happened on April 29, 1922.

Mr. Hunt: There is no dispute about that, Mr. Devlin, none whatever. 30

By the Court: That was in accordance with counsels' opening.

Q. That is less than nine months after the accident, isn't it, April, 1922, to January, 1923?

A. Yes.

Q. Mrs. Spicer, do you think your recollection of what you saw and heard was a little keener and better at that time, less than nine months after the accident, than it is today, more than two years later?

A. I just can't say; I guess it was.

Q. Have you done anything meanwhile to refresh your recollection?

A. No.

Q. Have you read over what you testified to at the  
10 former trial?

A. No, I have not.

Q. Have you talked it over with Mr. Devlin or anybody else?

A. No, I haven't.

Q. The record at the former trial shows that Mr. Devlin asked you this question, page 68, line 17, Question: "How long did that speed continue?" and that you answered, "Why, it only seemd half  
20 gone a couple house lengths and it had crashed."

Did you give that answer at the former trial?

A. I just can't say, I guess I did.

Q. Now, page 75, Mr. Devlin, line 12. Again Mr. Devlin asked you the question: "Now, where were you when the trolley car went past you?" Your answer: "I hadn't only gone about two house lengths." Question: "You had gone about two house lengths?" Answer: "Yes." Question: "What is the width of the house fronts down  
30 there?" Answer: "Well——" Question: "Are the houses laid out on 25-foot lots, do you know?" Answer: "Well, there is a barber shop there and——" Question: "Well, Liederkrantz Hall is quite a wide-fronted building, isn't it?" Answer: "Yes." Question: "And between the time when you first saw the trolley car and the time when it passed you, had you walked past Liederkrantz Hall?"

Answer: "I was just about there, to the end of Liederkrantz Hall." Question: "At which end? The north end of it, up near Beatty Street?"

Answer: "Yes." Question: "Now, when the trolley car passed you—right about at the north end of Liederkrantz Hall, is that right?" Answer: "Yes." Did you so testify at the former trial, Mrs. Spicer?

A. Yes, I guess I did, it sounds——

Q. Will you step out to the map and show the 10 jury where Liederkrantz Hall is?

A. (Indicating on map.)

Q. It is marked on the map, outlined in deep red, is that right?

A. Yes.

Q. The north end of Liederkrantz Hall is the end nearer Beatty Street, isn't it?

A. Yes.

Re-direct examination. 20

By Mr. Devlin:

Q. Mrs. Spicer, you testified here that when you first saw the trolley car it was at Whittaker Avenue, I think that was your testimony?

A. Yes.

Q. The last trial, at the foot of page 75——  
30

Mr. Hunt: Just a moment, this is your witness. I object to counsel using the record of the former trial.

Mr. Devlin: He has used the former record to refresh her memory.

Mr. Hunt: No, I haven't used it to refresh her memory.

Mr. Devlin: And I offer this question for the same purpose.

Mr. Hunt: I object to the reading by counsel for the plaintiff of anything from the record of the former trial concerning examination of this witness  
10 on the ground that she is his own witness and he has no right to refresh her recollection in that manner. I did not examine her to refresh her memory. I offered it to contradict her last statement.

By the Court: I shall sustain the objection.

Mr. Devlin: I ask an exception.

By the Court: You may have an exception.  
20

Q. Coming back to the first question, do you remember where it was first that you saw the trolley car?

Mr. Hunt: Objected to on the ground that it has been asked and answered.

By the Court: I will permit the question.

30

A. Where I first saw the trolley?

Q. Yes.

A. The other side of Whittaker Avenue.

Q. North or south side?

A. South.

Q. What attracted your attention?

A. The noise of the trolley car.

Mr. Devlin: That is all.

Mr. Hunt: That is all; just a moment, Mrs. Spicer.

Re-cross examination.

By Mr. Hunt:

Q. Mrs. Spicer, I will read to you from page 68  
10 of the record of the former trial, a question put to you by Mr. Devlin. Question: "Where was it (that is, the trolley car)——"

Mr. Devlin: What is the line?

Q. Line 8, Question: "Where was it when you first saw it? What cross street was it near?"  
Answer: "Why, it was about at Mantel's butcher shop. That is at Whittaker Avenue." Question: 20  
"It was at that point?" Answer: "Yes." Did you so testify at the former trial?

A. You have it down there you know better than I do, I forget since then.

Q. You suppose whatever you testified to at the former trial was according to the best of the recollection you then possessed?

A. Yes.

Q. You intended it to be?

A. Yes.

30

Mr. Hunt: You admit I read it correctly.

Mr. Devlin: I am not admitting anything.

Q. What you said at the former trial was true?

Mr. Devlin: I object, I don't think you have any right to ask the witness any such question.

By the Court: She has said that she testified at the former case.

Mr. Hunt: You see, she testified two ways and we would like to know which of these two ways is the truth.

10

By the Court: You may ask her that question.

Q. Which is the truth of the matter, with respect to the position of the trolley car at the instant you first saw it, what you testified to at the former trial as I have just read it or what you have testified to today?

A. What I said today. It was the other side of Whittaker Avenue, going south.

20

Q. Then what you said at the former trial was not the truth.

A. Yes, it was the truth but I didn't get it right where it was at.

By the Court: You say south, what was going south?

A. I meant the car, it was on the south side of Whittaker Avenue, coming north.

30

Q. You mean north?

A. Yes.

Q. The car was coming north and you were going north?

A. Yes.

Mr. Hunt: That is all.

MRS. JENNIE MARTIN, sworn for the plaintiff.

Direct examination.

By Mr. Devlin:

Q. Mrs. Martin, where do you live?

A. 222 Rusling Street.

Q. Did you live there in 1922?

10

A. Going on three years

Q. You are the mother of the lady who was just on the witness stand?

A. I am.

Q. Do you remember being with her on Clinton Street, South Clinton Avenue—

A. I do.

Q. Saturday evening of the accident to Mr. Baus?

A. Yes.

Q. You know Mr. Meaney and Mr. Baus?

20

A. Yes.

Q. You were with your daughter on that evening?

A. I was.

Q. Walking toward the city on South Clinton Avenue?

A. I was.

Q. What did you see, did you see an accident there?

A. I did.

Q. What was the first thing called your attention to it?

30

A. The noise of the car was the only thing.

Q. Did you see a street car?

A. I did.

Q. Where was that street car when you saw it?

A. As far as I could remember it would be the other side of Whittaker Avenue.

Q. When you say other side, do you mean south or north?

A. South.

Q. What attracted your attention to the car?

A. The noise of the car.

Q. Did you hear any signal from that car?

A. No, I didn't.

Q. Was that car going fast or slow?

A. Very fast, very fast.

10 Q. Did that car stop at Whittaker Avenue?

A. No, sir.

Q. You were walking the same way the car was going?

A. I was.

Q. What did you see happen?

A. I didn't see it, only we heard the noise of the crash.

Q. What kind of noise?

A. I could just say what but it was the noise.

20 Q. Crash?

A. Crash.

Q. And after you heard the noise what did you see?

A. The first thing I saw was Mr. Meaney in the car.

Q. Who?

A. Mr. Baus.

Q. Where did you see him?

A. Standing alongside of the machine.

30 Q. Where was the machine?

A. Near Mr. Meaney's place of business.

Q. Where was it facing?

A. It was facing Meaney's store.

Q. Where was the back of it?

A. Across the street.

Q. Did you see the car after it struck the automobile truck?

A. Yes.

Q. Where was it?

A. The best I could say would be near the fire engine house.

Q. Fire engine house?

A. Yes.

Q. That is north of where the accident happened?

A. North, yes.

Q. How was the weather, wet or dry?

A. I don't remember that.

Q. Were the lights lit on the trolley car?

A. They were.

Q. How about the lights on the street?

A. I couldn't say about that.

Q. Was it dark or just growing dark?

A. Just growing dark.

Q. Daylight saving time at that time?

A. Yes.

Q. And the houses are close together, less than a hundred feet apart?

A. Yes.

Q. In other words, it is built up on each side of Clinton Street?

A. Yes.

Q. Did you notice the condition of the automobile, anything wrong with it?

A. No, I didn't.

Q. You didn't notice that?

A. No, I didn't.

Q. Was it a one-man or a two-man trolley car? 30

A. It was a one-man trolley car.

Q. You know it was a one-man trolley car?

A. I do.

Q. After that car, did you see another one come up soon after it?

A. I didn't notice it.

Mr. Devlin: Cross-examine.

Cross-examination.

By Mr. Hunt:

Q. Will you step down to the map, Mrs. Martin? The long streak shown on the map is South Clinton Avenue?

A. Yes.

10 Q. The cross street at the southern end is Division Street and the north end is Beatty Street; here is Chestnut and Rusling and Whittaker coming into South Clinton, here is Liederkrantz Hall, here is Meaney's place and across this street at the intersection of Whittaker and Rusling Streets, is where your daughter says Mantel's store is?

A. Yes.

Q. Show the jury with the pencil where you were at the time you first saw the trolley car?

20 Mr. Devlin: I would suggest you tell her the distances on that map first.

Q. Every inch on the map represents forty feet on the ground.

A. I will say here. (Indicating.)

Q. Where were you when you first saw this trolley car, first saw it?

A. Is this Mantel's place here?

30 Q. That is what your daughter said and you agreed a minute ago.

A. Yes, that is where we were.

Q. Were you on that side of the street?

A. No, we were on the opposite side of the street.

Q. Do you see a little pencil circle drawn on the map, can't see that?

A. No.

Q. You say to the best of your recollection you

were on the south side of South Clinton Avenue, opposite Mantel's store?

A. Yes.

Q. Where was the trolley car at that time, when you first saw it?

A. When we first saw it coming it was from Division Street.

Q. It was then back at Division Street?

A. Around Division Street.

Q. I am not trying to confuse you, Mrs. Martin, but only to get things straight. So we all understand, you say you were on the south side of South Clinton Avenue about opposite Mantel's store? 10

A. Yes.

Q. And it was then that you saw the trolley car, and it was down about Division Street?

A. We heard the noise.

Q. I haven't asked you a word about noise, I asked you when you first saw the car?

A. It was near Division Street.

Q. You were near Mantel's store? 20

A. Yes.

Q. You were walking north?

A. We were.

Q. So the trolley car was behind you?

A. It was behind us.

Q. How far up the street towards Beatty Street did you get before this trolley car passed you?

A. Well, I don't believe we were walking very fast at the time; we couldn't have been very far, we were walking. 30

Q. You might go back on the stand again, Mrs. Martin. You testified when this case was tried before in January, 1923?

A. I did.

Q. Have you, since that time, read over the testimony that you then gave?

A. No.

Q. Or talked it over with anybody?

A. Nobody.

Q. Do you suppose that your recollection of that accident is as good today as it was when you testified before, more than two years ago?

A. I think it is the same.

Q. I am going to read some of your testimony from the former trial, page 79, Mr. Devlin —

10

Mr. Devlin: What line?

Q. I will read from page 80, when I read. When you first saw the trolley car you had to turn around and look backwards in order to do it?

A. I did, yes.

Q. Now, I will read from the former trial, question by Mr. Devlin, "Where was the car then, when you looked around?" Answer, "Well, it was almost to Chestnut Avenue." Question, "At Chestnut Avenue?" Answer, "At Chestnut Avenue." Which is true, Chestnut Avenue as you testified more than two years ago, or Division Street as you testified today?

20

A. That was my mistake; I was taking Chestnut Avenue for Division Street.

Q. When?

A. Just now.

Q. Then you really mean that the car was here at Chestnut Avenue when you first saw it?

30

A. Yes, as well as Chestnut Avenue is next to Whittaker Avenue.

Q. How far up the street had you walked before that car, which was at Chestnut Avenue when you first saw it, when it passed you?

A. Not very far, not very far.

Q. I asked you how far. You see, Mrs. Martin,

the jury can't tell what you mean and I can't tell what you mean?

Mr. Devlin: The jurors can't hear this lady's testimony.

By the Court: Are the jurors having any trouble in hearing. The jurors say they are able to hear.

Q. Now, Mrs. Martin, in some senses, a mile is not very far and in other senses a hundred feet is a great ways, won't you try to put in terms of feet or terms of houses, the distance you had walked? How far had you gone between the time when you were directly across the street from Mantel's store and saw this car for the first time at Chestnut Avenue before that trolley car went passed you?

10

A. How many houses?

Q. How many houses had you walked past?

A. It wouldn't be over three.

20

Q. Now, I point to this spot on the map, colored light red and outlined with deep red, you see it?

A. Yes.

Q. It is marked Liederkrantz Hall?

A. Yes.

Q. Had you got up in front of Liederkrantz Hall or somewhere near when the trolley car went by you?

A. Somewheres, yes.

Q. To the north end of Liederkrantz Hall?

30

A. Yes.

Q. To the best of your recollection?

A. To the best of my recollection, yes.

Mr. Hunt: That is all.

Mr. Devlin: That is all.

STELLA BILLINGHAM, sworn for the plaintiff.

Direct examination.

By Mr. Devlin:

- Q. Mrs. Billingham ———  
 10 A. Miss Billingham, if you please.  
 Q. I beg your pardon. Where do you live?  
 A. 1238 South Clinton Avenue.  
 Q. Where did you live on April 29, 1922?  
 A. Same place.  
 Q. And do you remember the Saturday evening  
 in April, an accident happening?  
 A. I do.  
 Q. On Clinton Street near Beatty?  
 A. I do.  
 20 Q. Do you remember that evening being at any  
 point on Clinton Avenue?  
 A. I stood at the corner of Clinton Avenue and  
 Anderson Street.  
 Q. About what hour was that?  
 A. To the best of my knowledge, between seven  
 and seven thirty.  
 Q. Anderson Street is south of Division?  
 A. It is.  
 Q. South of Division Street?  
 A. One block.  
 30 Q. Did you do anything there?  
 A. I stood there waiting for a trolley and the  
 first trolley passed me and the second one stopped.  
 Q. Did you notice that that trolley car stopped at  
 Division Street?  
 A. To the best of my knowledge, it didn't make  
 any stop going up Clinton.

Q. How far did your eye follow it, do you remember?

A. The trolley that I was on came directly in back of it so I stepped on that car.

Q. I mean, before you got on the car, I refer to the car that didn't stop for you, did you hail that car to stop?

A. Yes.

Q. It didn't stop?

A. It didn't stop.

Q. Did you notice if that car stopped at Division Street? 10

A. It did not.

Q. Were there people at that corner, too?

A. I couldn't say.

Q. How much further did you follow that car?

A. I didn't follow that car any further than Division.

Q. You got on the next car that followed it?

A. I did.

Q. When you got on that car, how far did you ride before that car stopped? 20

A. That car stopped at Division Street, the next corner.

Q. Did you go right on up until what point?

A. Until the place where the accident had happened and we had to stop there.

Q. What time was between the two cars?

A. I should imagine not more than one or two minutes before the first car had turned Stanton and 30 the second one was right in back of it.

Q. And you think that the car you got was one or two minutes behind the one that didn't stop for you?

A. About that.

Q. Can you tell about what speed that car was going.

Mr. Hunt: Objected to. It is too far from the scene of the accident, it would have no bearing on the speed at the time of the accident.

By the Court: She can testify if that speed was continued at the same rate.

Mr. Hunt: The testimony is that she didn't watch the car any further than Division Street and Division Street is three blocks below the scene of the accident.

Mr. Devlin: The foundation is that the noise of the car and the speed of it attracted attention.

By the Court: Of the other witnesses.

Mr. Devlin: This is the car in question. I have identified the car. This lady has said that this was the car that went ahead of the car she got.

By the Court: I think she is competent to testify whether it was going fast or slow when it passed that point?

Mr. Hunt: May I have an exception?

By the Court: You may have an exception.

Q. Was the car going fast or slow at the point of Anderson Street and Clinton Avenue, where you were standing?

Mr. Hunt: Our objection goes to this question.

By the Court: I didn't think the other question had been answered.

Mr. Hunt: And we object upon the further ground that the car that passed this witness is not the car that was involved in the collision.

By the Court: Of course, if that is not established later on, I will strike this out.

Mr. Hunt: The Court overrules our objection at this time?

By the Court: Yes.

Mr. Hunt: May I have an exception?

By the Court: Yes.

Q. (Question repeated by stenographer.) Was the car going fast or slow at the point of Anderson Street and Clinton Avenue, where you were standing?

A. Fast.

Q. When you got up to Clinton and Beatty Street, tell us, besides the car you were on, what other car was there?

A. There was one car in front and another car coming up in the rear.

Q. Behind you?

A. Yes.

Q. Did you see any automobile there?

A. No, there was just a confusion, quite a crowd of people around, but I didn't see anything. I remained in my seat in the trolley.

Q. There was quite a confusion you say there, a crowd?

A. Yes.

Q. Did you see any automobile there?

- A. No.
- Q. Did you see an ambulance there?
- A. I saw an ambulance in front of the truck house.
- Q. The car that passed you and the one you were on were on the same track?
- A. Yes.
- Q. And were going in what direction?
- A. North.
- Q. The car behind you, what track was it on?
- 10 A. Northbound track.
- Q. The same as you were on?
- A. Yes.
- Q. How long, what time passed before the car behind you came up, how much time?
- A. I couldn't say.
- Q. Would you say it was minutes?
- A. I would judge either four or five minutes.
- Q. Four or five minutes?
- A. Yes.
- 20 Q. When you got there, you saw three cars on the same track?
- A. No, one ahead and one pulled up in back of the one I was on.
- Q. Three cars altogether?
- A. Three cars altogether, yes.
- Q. At that point. Do you admit that at this point on Clinton Street the houses are less than one hundred feet apart?
- 30 Mr. Hunt: Is that true?
- Mr. Devlin: Yes, that is true.
- Mr. Hunt: Both sides of the street.
- Mr. Devlin: Do you admit that?

Mr. Hunt: Yes, we will admit that the houses are less than one hundred feet apart.

- Q. Were the lights in the car lit?
- A. Yes.
- Q. Do you know whether the street lights were lit?
- A. I couldn't say.
- Q. Was it dark or just growing dark?
- A. About twilight. 10
- Q. Do you remember whether it was wet or dry, the evening?
- A. I couldn't say.

Mr. Devlin: Cross-examine.

Cross-examination.

By Mr. Hunt:

- Q. Now, Miss Billingham, you didn't see this collision, did you? 20
- A. I did not.
- Q. You weren't on the car that was in the collision?
- A. No.
- Q. When you got there, I think you said there was an ambulance to take the injured man away?
- A. Yes.
- Q. Just come out here and show the jury where the ambulance stood when you got there? 30
- A. The ambulance stood right in the driveway to the truck house, right about here.
- Q. The ambulance stood on South Clinton Avenue in front of the engine house marked on this map "Truck number two?"
- A. Yes.

Q. Does the lady's hat get in the view of the map? Now, Miss Billingham, when the trolley car you were on stopped, there was another trolley car already stopped in front of it, wasn't there?

A. Yes.

Q. Both the one that you were on and the other one in front were south of Beatty Street, weren't they?

A. Yes.

10 Q. Just show the jury where the one you were on stood?

Mr. Devlin: Explain to that lady the scale of that map.

Q. This map shows South Clinton Avenue, with double trolley tracks on it, the street at the lower end is Division Street and the intersecting street at the north end is Beatty, and here are marked certain plots, "Truck No. 2," "Meaney's place," and  
20 Liederkrantz Hall," and every inch on this map represents forty feet on the ground, do you understand it all right?

A. Yes.

Q. Will you show the jury, please, where the trolley car that you were on stopped when it got up to this scene?

A. Is this the northbound track?

Q. Yes, that is the northbound track.

30 A. Right about at the point indicated by the top curve of the letter "S" in the name "South Clinton Avenue" on the map.

Q. One other trolley car stood between that one and Beatty Street, did it not?

A. Yes.

Q. And directly across the street was the ambulance that you spoke of?

A. Yes.

Q. The third trolley car that came up behind stopped behind the one that you were in, of course, didn't it?

A. Yes.

Q. How close to Beatty Street was the trolley car that was ahead of the one that you came up in? Show it here on the map.

A. The one that was ahead of us?

Q. Yes.

A. Right along here. (Indicating the area immediately north of the northernmost part of the black letter "S" in the name South Clinton Avenue on the map.)

Q. Is that correct?

A. Yes.

Q. And you say it was in such position that the car you were in was brought up as close as possible to the tail end of the car in front of it?

A. Yes.

Q. You may go back to the chair again, Miss Billingham. Do you know a lady named Theresa Noble?

A. I do.

Q. Or her husband, whose name is Joseph Noble?

A. I do not.

Q. Where did you say you stood when a certain trolley car went past you?

A. Clinton and Anderson.

Q. Do you know a gentleman named Karl Schaeff?

A. I do not.

Q. Did you say they were putting Mr. Baus in the ambulance while you were there?

A. No, I didn't say that.

Q. Did you see Mr. Baus?

A. I did not.

Q. He wasn't out in the street at that time?

A. Not to my knowledge.

Mr. Hunt: That is all.

By the Court: Can you tell, Miss Billingham, how long you remained there before your car moved on?

A. I imagine about three or four minutes.

Q. Three to four minutes?

A. Yes.

10 Re-direct examination.

By Mr. Devlin:

Q. Can't you tell, about, in feet, how far the car in front of you was from the corner of Beatty and Clinton Street, how far it was from that corner?

A. Well, I couldn't say exactly; I would imagine about twenty-five or thirty-five feet.

20 Q. From the corner of Clinton and Beatty?

A. Yes.

Q. How long did you wait at Anderson and Clinton before you got a car?

A. I couldn't say how long I stood out there waiting.

Q. Was it a short time?

A. No, it was several minutes to my knowledge.

Q. I mean before the first car, before any car came along?

30 A. I had been waiting several minutes for a car, yes.

Q. You can't say how many, can you?

A. No.

Mr. Devlin: That is all.

Mr. Hunt: That is all.

JOHN OSWALD, sworn for the plaintiff.

Direct examination.

By Mr. Devlin:

Q. Mr. Oswald, where did you live —

A. I had a store on 1014 South Clinton Avenue when the accident happened.

Q. At what number? 10

A. 1014.

Q. Do you remember the evening of this accident?

A. Yes.

Q. Where is your place of business now?

A. Tailor business again on Morris Avenue.

Q. Do you know Mr. Baus and Mr. Meaney?

A. Yes.

Q. Do you know where Mr. Meaney's store is?

A. Yes, sir.

Q. Did you see Mr. Meaney and Mr. Baus get in 20 the truck?

A. Yes, sir.

Q. That evening?

A. Yes.

Q. At the time they got in the truck, what did you see them do?

A. Well, Mr. Meaney cranked the machine before he went in he looked up and down the street, and he went in and started out, I wanted to use the phone and it was busy, before he started out, the 30 trolley car was at Chestnut Avenue and when he started going on the first rail the car was at Mantel's butcher store, as soon as he got to the second track, the trolley car hit him, I seen it.

Q. Do you know where it hit him at, what part of the truck did the car hit?

A. From the right side, the door, toward the front.

Q. Go ahead, the right side, door, that is where the driver sits?

A. No, the driver sits on the left side.

Q. You say it hit on the right side of that seat?

A. Right side, Mr. Baus' seat.

Q. When the car hit the auto truck, what happened?

A. The car, the automobile and the car slid around and hit again on the car.

10 Q. You say the car, you mean automobile, you say it slid around?

A. Yes, and it came around and the trolley car hit the automobile and the automobile swing around and was hit again, the rear again, and the car came against the curbstone and I jumped on the side and the automobile came right against me.

Q. Did I understand you to say that the street car hit the automobile twice?

A. Yes, rear end and front end.

20 Q. What part hit the second time?

A. The rear end.

Q. Where did the automobile go?

A. Come right close to me and I jumped aside.

Q. Where was the front facing of the automobile?

A. Straight, facing Meaney's store.

Q. Where was the back?

A. Center of the street.

Q. Was it a dry or wet evening?

A. Dry.

30 Q. When you first saw that trolley car, did you hear any signal given by it?

A. No signal at all.

Q. Was it a one-man car or a two-man car?

A. One-man trolley.

Q. What was the speed of that car?

A. Fast as I ever rode in, fastest speed I ever saw for a one-man car.

By the Court: Read that answer.

(Stenographer reads answer to the Court.)

Mr. Hunt: I move that answer be stricken out as a conclusion?

Mr. Devlin: What do you mean?

Mr. Hunt: The last answer.

10

Mr. Devlin: What was the last answer?

(Stenographer reads answer.)

By the Court: Do you object to its being stricken out?

Mr. Devlin: Yes.

By the Court: I will deny the motion.

20

Mr. Hunt: May I have an exception?

By the Court: Yes.

Q. When the automobile, or after the automobile was struck, did you notice where the car went, the street car?

A. The car went at least 120 or 130 feet.

Q. Then what did it do?

30

A. It stopped.

Q. How near was it to the corner of Beatty and South Clinton Avenue when it stopped?

A. I believe about ten foot.

Q. What was the condition of the automobile after it was hit?

A. She was very smashed down.

- Q. What parts were smashed down?  
 A. Most, the front.  
 Q. Front?  
 A. Yes.  
 Q. What side of the front?  
 A. Right side.

Mr. Devlin: Cross-examine.

10 Cross-examination.

By Mr. Hunt:

- Q. Now, you said that the trolley car hit the automobile in the right-hand front wheel, didn't you?  
 A. Right door, more to the front than rear.  
 Q. On the right-hand side from the door, toward the front of the car, is that right?  
 20 A. Yes.  
 Q. The effect was to knock the automobile around this way, turn the front part towards Meaney's store again, wasn't it?  
 A. Yes.  
 Q. Then this second blow that you say the trolley car dealt the automobile struck it in the rear wheel on the left-hand side, that is correct, isn't it?  
 A. I only say when the car fly around and the second crash the automobile was straightened out right across the street.  
 30 Q. At the time of the second crash the automobile had been turned around so it was right straight across the street?  
 A. Yes.  
 Q. And where was the front part facing, toward Meaney's store?  
 A. Yes.

Q. And where was the back part, right out here in the trolley track?

A. Yes.

Q. And the trolley car hit it a second time?

A. It was all one shot.

Q. Just a little light blow on the left-hand side toward the rear, wasn't that the second one?

A. You have one crash, yes, here another crash (indicating) and the automobile was straightened out to the store, that is all I seen. 10

Q. You saw Mr. Meaney crank this automobile?

A. Yes, sir.

Q. Didn't you?

A. Yes, sir.

Q. Right?

A. Yes, sir.

Q. And then you saw him get into it?

A. Yes.

Q. Didn't you? Then you saw him settle himself down in his seat, take hold of his wheel, fix his feet 20 and fix his spark and his gas, and take his brake off and get ready to go, you saw all that?

A. I didn't see all he did; I know what he did.

Q. After he got in you saw Mr. Baus get in and sit down beside him?

A. Yes.

Q. You stood on the sidewalk right near the front of Meaney's store?

A. Yes.

Q. You heard Mr. Meaney and Mr. Baus talking 30 together while this was going on?

A. I didn't hear what they said.

Q. You heard them conversing together?

A. They had a talk together, yes.

Q. They were looking at each other while they were talking?

A. Outside of the machine, yes.

Q. They seemed to be good friends—they were looking into each other's faces?

A. Yes.

Q. Having a nice, pleasant talk?

A. I can't answer that.

Q. They were looking, smiling pleasantly, at each other and talking together, isn't that so?

A. I seen no laughing and no great time about it; I seen Mr. Meaney crank the machine and Mr. Baus  
10 followed him in.

Q. When Mr. Meaney ran towards the middle of the street you ran out and hollered, "James, stop?"

A. I didn't run, I seen what was coming.

Q. Why did you holler out, "James, stop?"

A. Because I seen danger.

Q. What was the danger?

A. I seen the trolley car coming thirty or thirty-five miles an hour.

Q. Where was the trolley?

20 A. On the southbound rail.

Q. On the southbound rail?

A. On the northbound rail.

Q. Come out here and show the jury where it was. I will explain this map to you. This is South Clinton Avenue, this is the northbound track, this is the southbound track on this side, this pink line is the sidewalk and this pink line is the sidewalk on the other side of the street, this green plot is Meaney's place, this red place is Liederkrantz Hall, here is  
30 where Whittaker Avenue and Rusling Street come into South Clinton Avenue. Now, show the jury where you stood at the time you called to Meaney to stop. Where was the trolley car?

A. Passing Mantel's butcher shop.

Q. Going past Mantel's?

A. It was passed.

Q. It was passed there?

A. Yes, this side toward Meaney's.

Q. How many feet this side, toward Meaney's?

A. At least a hundred feet.

Q. I point to the pencil letter marked "M" on the map and ask you whether that is what you mean by Mantel's store, is that the place?

A. Yes, that is Mantel's store, yes.

Q. These marks in red ink at the foot of the map each represent a distance of one hundred feet, from 0 to 1 is one hundred feet, 1 to 2, one hundred feet, 10  
2 to 3, and so forth, figure 4 is in line with Mantel's butcher shop, isn't it?

A. Yes.

Q. You say when you called to Meaney to stop, the trolley car was one hundred feet north of Mantel's store?

A. Yes.

Q. Then the trolley car was right there in line above the figure 3 where I am holding the pencil  
now? 20

A. Yes, that is right.

Q. That makes it only one hundred feet south of the side line of Meaney's property, doesn't it?

A. Yes.

Q. Three back to two, that is one hundred feet?

A. Yes.

Q. When you called to Meaney to stop, whereabouts was the front part of Meaney's automobile?

A. Right ready to go on the second rail.

Q. On which track? 30

A. Northbound track.

Q. You mean then, ready to go on the rail of the northbound track which is nearest to Meaney's property.

Mr. Devlin: I object to that.

Mr. Hunt: I am examining the witness, if the Court please.

Mr. Devlin: The man said the second rail of the northbound track.

Q. Take the pencil, these two red lines are the northbound track?

A. I see that.

10 Q. Put the pencil on the map there and make a mark at the point where the front part of Meaney's truck was at the moment when you first called to him to stop?

A. The automobile was ready to go on the second rail.

Q. I want you to put the pencil on the map and make a mark where the auto was?

20 Mr. Hunt: The witness makes a cross in the northerly line of the southbound track, at a point several feet south of the south line of Liederkrantz Hall, the cross being a short distance from the arc light marked on the map.

Q. Now, you mean that the front part of Meaney's automobile was there where you made that cross, do you?

A. Yes.

30 Q. Meaney says that the collision took place directly in front of his own property. You mean to tell the jury that the collision took place at a point south of Liederkrantz Hall?

Mr. Devlin: No, he was questioned how far the car was when he called James Meaney, he answered a hundred feet.

Q. The question I asked you was this: At the moment when you called out to Meaney to stop, whereabouts in that street was the front of Meaney's automobile? If the place that you have marked is the wrong place then correct it, put your mark in the right place.

A. It was right here when I was about there. (Indicating.)

Q. You mean you were right in front of Meaney's store? 10

A. I was right there.

Q. You say Meaney's car was down here where you made this mark?

Mr. Devlin: I object to that; he did say that Meaney's car was in front of his store.

Q. Mr. Oswald, I tell you again, what I asked you to do was to mark on this map the place where the front of Meaney's automobile was just at the time 20 when you called out to him to stop; don't you understand my question?

A. Right close to Liederkrantz, that is where my mark is.

Q. Whereabouts was the trolley car when you called out, "James, stop!"

A. Right there where I have that mark.

Q. You mean that when you called out to Meaney to stop, Meaney's automobile and the trolley car were already almost together, don't you? 30

A. About 125 feet difference.

Q. Look at the map again, Mr. Oswald, what I am trying to get you to tell us about is this: When you hollered out to Meaney to stop, whereabouts was the front part of Meaney's automobile?

A. Where?

Q. Show us where it was?

A. Here, here was the trolley car. (Indicating.)

Q. Whereabouts was the automobile, make a mark?

A. Here, a little past his store on the northbound track. (Indicating.)

10 Mr. Hunt: (Witness marks a mark on the northerly line of the southbound track in the letter I in the word "Clinton.")

Mr. Devlin: If you will read the previous answer you will find that that man said northbound track. The witness is confused as to the north or southbound track. The witness is confused in his answer between the north and the southbound track.

By the Court: If there is any doubt about it, he may be asked the question again.

20 Q. Now, Mr. Oswald, take the pencil again and make a mark on the map at the place where the front end of the automobile stood before Meaney had started to drive away from the curb?

A. Which is the gutter, is that it here? (Indicating.)

Q. Yes.

A. A little on the north side of the door.

30 Q. (He makes a mark (x) just outside of the curb line near the south line of Meaney's property.) The automobile was facing, when it stood there, in the direction of Chestnut Street?

A. Yes.

Q. Wasn't it?

A. Yes.

Q. You tell the jury how Mr. Meaney got that automobile from this place where you say it was

standing out to this point where you say the collision happened?

A. Mr. Meaney started out and before he turned around he was a little off his property, until he turned around more, he was hit.

Q. Why did you think it was necessary for you to holler to him to stop?

A. I wanted to save the trouble.

Q. Why did you think there was going to be any trouble? 10

A. I saw the car conductor didn't reduce his speed at all, he just kept on going.

Q. Why didn't you suppose Mr. Meaney saw that and would stop his automobile?

A. He was on the left-hand side and the other man on the right side.

Q. Who was the other man on the right side?

A. Mr. Baus.

Q. Do you recollect Mr. Baus sitting in such a position that Mr. Meaney couldn't see to the right? 20

A. Maybe, I don't know.

Q. Do you think it is so?

Mr. Devlin: I object.

Q. Mr. Oswald, you saw these two men sitting in that automobile, didn't you?

A. I seen them when they went in.

Q. And Mr. Baus was sitting alongside of Mr. Meaney on the same seat? 30

A. Yes.

Q. Mr. Baus was a pretty big, stout man at that time, wasn't he?

A. Yes, he was.

Q. Perhaps he had an overcoat on, did he?

A. No, he didn't.

Q. Now, Mr. Oswald, when you see automobiles in

the street and trolley cars one hundred feet or more away from them, you don't generally call out to the man in the automobile, say, "Stop, stop," do you?

Mr. Devlin: I object to that. What is the idea?

By the Court: I can't see the purpose of that question.

10 Mr. Hunt: The idea, your Honor, is to show something special about these circumstances. I want to see what the something special is.

By the Court: I think he has already given his reason. You may ask him again.

(Question repeated.)

A. No.

20 Q. Why did you call out this time to stop?

A. I stood there and watched the telephone and I don't know myself how it happened; I noticed it so plain something was coming.

Q. You noticed that Meaney and Baus weren't paying any attention at all to this trolley car and didn't know it was coming?

A. Mr. Meaney looked up and down the street, but the car was pretty far away when he looked up and down.

30 Q. That was before he got in the car?

A. Yes.

Q. And from that time on you didn't see him look at all?

A. No.

Q. You had your eyes on him?

A. I can't see through the back of an automobile.

Q. You thought that Meaney and Baus didn't see

this trolley car coming, didn't you, isn't that why you hollered?

Mr. Devlin: I object to what he thought. The facts are there for him to argue for and against what was the real inference of these facts. He is asking his opinion of the facts of this case, instead of allowing the opinion of the facts to go to the Court and jury.

By the Court: He may answer the question. 10

(Question repeated.)

A. No.

Q. Then why did you holler?

Mr. Devlin: I submit that has been asked and answered. 20

By the Court: He may answer the question.

A. I seen the trolley car coming so fast and I don't want to see no trouble.

Q. Was the automobile moving all the time?

A. It was going nice and slow around.

Q. How fast was it moving?

A. I don't know the speed.

Q. As fast as a man can walk?

A. Maybe about a little faster, not a whole lot. 30

Q. Well, Meaney and Baus did not stop when you called to them to stop?

A. They didn't hear me.

Q. How do you know they didn't hear you?

A. They couldn't hear.

Q. If they couldn't hear, why did you holler?

A. I didn't thought they didn't hear me.

Q. I suppose the engine of their automobile was making a good bit of noise, wasn't it?

A. (No answer.)

Q. Wasn't the engine of the automobile making a noise?

A. The engine made a little and the trolley car made a whole lot.

Q. The trolley car made a whole lot?

A. Yes.

10 Q. Did it make a whole lot more than the engine of the automobile?

A. Yes.

Q. I suppose it made so much noise you couldn't hear the automobile?

A. I heard more of the trolley car than the automobile.

Q. Don't you think the noise of the trolley car was loud enough for the man in the trolley car to hear?

20 A. I don't know.

Mr. Devlin: I object to that.

By the Court: He said I don't know.

Q. The noise of the trolley car was so loud that you couldn't hear the automobile engine, is that correct?

A. I don't know.

30 Q. Did you hear the automobile engine?

A. I don't know.

Mr. Hunt: That is all.

Re-direct examination.

By Mr. Devlin:

Q. Mr. Oswald, one moment, these two lines, these red lines are the two rails of the northbound track?

A. Yes.

Q. These other two lines are the two rails of the southbound trolley tracks?

A. Yes.

10

Q. You said that the wheels or front of Meaney's automobile was over the second rail of the northbound track? Which rail do you mean when you say that?

A. Mr. Meaney passed the first rail, then he started on the second, it was the northbound, coming toward the city.

Q. That is the track coming up this way? (Indicating.)

A. Yes.

20

Q. That was in front of his store?

A. Right in front where the machine turned out.

Re-cross examination.

By Mr. Hunt:

Q. Pointing to the cross the witness made in the capital letter "I" in the word "Clinton," tell us what spot that cross marks? 30

A. That means where the automobile was going when the trolley car was about here; when the trolley car came to this spot the machine was in the middle of the northbound track, then he got turned around and was in the center of the street in front of the store.

Mr. Hunt: Will the Court permit me, for the purpose of the record. When the witness used the word "here" he put his finger on the first cross that he made on the map directly under the capital letter "N" of northbound track, between that letter and the arc light beyond on the map. That is a fair explanation, isn't it, Mr. Devlin?

Mr. Devlin: That is where the street car was.

10 By the Court: He said that several times and marked an X there, as I understand it.

Mr. Hunt: Yes, the X in the capital letter "I" in the word Clinton. That is all, Mr. Oswald.

ALEXANDER KRAMER, sworn for the plaintiff.

20

Direct examination.

By Mr. Devlin:

Q. Mr. Kramer, where do you live?

A. I live 40 West Street.

Q. Do you know Leonard Baus?

A. I know him since 1905; I was his next neighbor at that time for quite some time.

30 Q. How long did you live next door to him?

A. I lived next door between two and three years and he moved up the street.

Q. How often have you seen him since 1905?

A. Every week, twice at least.

Q. What business are you in?

A. Night foreman in John A. Roebling's Company.

Q. And you know Baus very well?

A. I know him since 1905.

Q. Did you know him up to the time of the accident?

A. Yes, since 1905.

Q. What, so far as you know, was the condition of his health up to the time of this accident?

Mr. Hunt: Objected to; it doesn't appear that the witness noticed what it was. 10

By the Court: I think he can testify to what he observed.

Mr. Hunt: It hasn't appeared that he observed anything.

Q. Have you noticed before this accident, the condition of his health?

A. So far as I know, he always was in good health. 20

Q. Have you or have you not noticed the condition of his health before this accident?

A. Yes, sir.

Q. Was it good or bad?

A. Good to my knowledge.

Q. Was he a big, strong man?

A. Always was.

Q. Did his work every day?

A. I seen him twice a week.

Mr. Hunt: Please don't lead quite so much, Mr. Devlin. 30

Q. Have you seen him since the accident?

A. I seen him then and when.

Q. Have you noticed any change in his health since the accident?

A. I noticed the shaking of him.

Q. Did you ever see that before the accident?

A. Not that I know of.

Q. Have you been close to him, meet him and speak to him?

A. I pass his house every morning when I go home from work.

Q. Do you see him?

A. Then and when.

10 Q. Talk to him?

A. Then and when.

Q. Have you noticed any change in his speech since the accident?

A. I can't say that.

Q. You can't say that?

A. No.

Q. Did you ever see his hand or head tremble, I mean before the accident?

A. No, sir, not before the accident, no, sir.

20 Q. You have known him how many years?

A. Since 1905.

Cross-examination.

By Mr. Gildea:

Q. How long did you live next door to Mr. Baus?

A. I built a house next to him in 1905, and I lived next to him for two or three years.

30 Q. So you haven't been his neighbor since 1907?

A. Close neighbor, yes.

Q. You haven't lived next to him since 1907?

A. No.

Q. Did you ever call at his house?

A. No, never in my life.

Q. Did he ever call at your house?

A. No, sir.

Q. He has never been inside of your house?

A. No, sir.

Q. How many times a week have you seen him since 1907?

A. I said twice a week. He comes through our street with the huckster wagon.

Q. Do you have a place of business there?

A. No, I got a private home.

Q. What time of day would he come to your house?

A. He would knock at the door and ask the woman 10 if she wants something.

Q. Were you always there?

A. I am a steady night man.

Q. You stay up all day?

A. Ten o'clock, that is my time to go to bed.

Q. Ordinarily, he came when you were supposed to be in bed? Do you mean to say he came twice a week and you saw him?

A. I only work five nights.

Q. You say he came to your house twice a week, 20 and I want to know how you saw him twice a week if you were in bed when he came?

A. Sometimes I was up and sometimes I was in bed.

Q. It was only when you weren't in bed that you saw him?

A. Yes.

Q. How many times during those years did you happen to be up when he came with this huckster wagon? 30

A. I can't say that.

Q. It wasn't twice a week, was it?

A. He came twice a week, I didn't mean I saw him twice a week; I know he came through the street twice a week.

Q. How do you know he came through the street twice a week?

A. I heard him knock.

Q. How do you know it was he that knocked?

A. My wife told me "Baus was here." All I know is that he was around twice a week.

Q. How many times during 1921, did you see Mr. Baus?

A. 1921?

Q. Yes.

A. Before the accident that was his regular  
10 route; after the accident, I can't say.

Q. How many times during the year 1921, did you see Mr. Baus?

A. I wouldn't say I seen him twice a week, but I saw him once a week, that is on Saturday.

Q. You saw him every Saturday during 1921?

A. Yes, Saturday he usually came around ten or eleven o'clock.

Q. Did you always buy something from him?

A. When my wife need something she would buy  
20 it.

Q. Did you go to the door or your wife go to the door?

A. Sometimes me and sometimes her.

Q. Did you ever buy anything?

A. I left that to my wife.

Q. When he would come to your home and you went to the door, he would ask if you wanted anything and you would call your wife?

A. Yes.

30 Q. Did you ever pay any particular attention to his health, ever examine him?

A. No, I know he would always be by the wagon and was a very careful driver.

Q. Is there a huckster still going through your street?

A. Yes.

Q. Do you buy anything from any of them?

A. I don't know, yes, my wife, she do.

Q. Do you know anything about the health of the man your wife buys vegetables from now?

Mr. Devlin: I object.

By the Court: I can't see it, Mr. Gildea:

Mr. Gildea: We will withdraw it.

Mr. Devlin: If it is satisfactory to the other side,  
10 we will have all the doctors to testify together. I don't want to hold my doctors here. I am going to ask the Court to make a ruling that all doctors testify at the same time.

By the Court: At the same time or following each other?

Mr. Devlin: One after another. My men are busy  
20 and I assume the doctors on the other side are busy.

By the Court: I have no doubt that that can be arranged.

Mr. Hunt: No, I don't think we can do that. He is going to put a number of doctors on the stand and by resting his case compel our doctors to go on the stand at his will and pleasure. I don't think he has a right to do that.  
30

Mr. Devlin: I am only offering the suggestion to relieve the doctors.

By the Court: Proceed with the witnesses you have here and we will meet that question when we come to it.

MORRIS FREY, sworn for the plaintiff.

Direct examination.

By Mr. Devlin:

Q. Mr. Frey, where do you live?

A. I live at 12 Oakland Street.

10 Q. Do you know Leonard Baus?

A. Yes, I know him for about 21 years.

Q. How often have you met him in 1921?

A. I can't tell, maybe I met him a couple times, after 1918, I moved up on Oakland Street. From 1901 to 1918, I lived on West Street.

Q. After you went to live on West Street, did you meet him very often?

A. He was my neighbor.

20 By the Court: No, after you left West Street?

A. No, once a month, maybe twice.

Q. Have you met him once a month, do you think, in 1921?

A. I can't tell.

Q. Have you seen him at any time before the accident?

A. Before?

Q. Before this accident, a year before this accident, had you seen him at any time?

30 A. Yes, sometimes I stop at the house.

Q. Have you ever stopped and talked to him?

A. Yes.

Q. Have you noticed before this accident, what his health seemed to be to you?

Mr. Hunt: That is objected to.

By the Court: I think that question in that form is objectionable.

Q. Have you observed anything, so far as you observation goes, wrong with his health during the year 1921?

Mr. Hunt: That is objected to, the witness is a lay witness and he hasn't sufficient knowledge, doesn't know how often he saw him, no foundation 10 for it, at all.

By the Court: I don't think yet he has shown much of an opportunity to observe for one thing.

Mr. Devlin: He said he met him once a month.

By the Court: Fix the time.

Q. During the year 1921, did you meet him many 20 times?

A. Not so many, maybe four or five times a year.

Q. Did you meet him in the remaining part of 1921?

Mr. Gildea: What is the remaining part of 1921?

Mr. Devlin: You ought to know.

Mr. Gildea: I don't understand that question. 30

Mr. Devlin: If you don't understand it, then you have something to learn.

Mr. Gildea: Teach me.

Mr. Devlin: Look at any calendar.

By the Court: Let us not argue about that. This accident took place April 29, 1922, as I understand it. During the year 1921, and the first three months of 1922, have you seen him?

Q. Did you see him at any time in the three months in 1922, or the last three months of 1921?

A. I couldn't tell.

Q. When you did know him before that, what did  
10 you observe the condition of his health to be?

Mr. Gildea: That is objected to.

By the Court: He left in 1918, when he ceased being a neighbor to him on West Street. I think the period is too remote to testify to that.

Mr. Devlin: I will withdraw the witness, then.

20

JOSEPH LANDERKIN, sworn for the plaintiff.

Direct examination.

By Mr. Devlin:

Q. Mr. Landerkin, you are a member of the fire department?

A. Yes, sir.

30 Q. Were you a member in April, 1922?

A. Yes, sir.

Q. Do you remember the evening of an accident there on the street?

A. Yes.

Q. You didn't see the accident, did you?

A. No, sir.

Q. Did you hear any crash?

A. I did.

Q. Where were you?

A. I was on watch.

Q. On what?

A. Watch.

Q. In that firehouse?

A. I was about five feet from the front door and the rest was back playing cards and I said, "Did you hear that, fellows?"

10

Q. You heard the crash?

A. Yes.

Q. Did you come outside after the crash?

A. Yes.

Q. What did you see?

A. I saw the trolley coming by and the motorman was trying to stop it.

Q. Then what?

A. The motorman was trying to stop it.

Q. When you saw the trolley, what have you to  
20 say about its speed?

A. Well, he was going at a pretty good rate.

Q. Pretty good rate?

A. Yes.

Q. It was after the crash that you saw him?

A. Yes.

Q. How near did he go to the corner of Beatty and Clinton before he stopped his trolley?

A. Right on up even with the building line.

Q. He come to the corner before he stopped?

30

A. Yes.

Q. Did you see Meaney's automobile?

A. I did.

Q. What was its position in the street?

A. Pointing right in towards Meaney's store.

Q. That is, the front part, what about the rear part?

A. The rear part was just over the first car track.

Q. Did you notice what damage was done to Meaney's automobile?

A. I couldn't leave the front of the firehouse, I had to stay and listen to the phone and I went down there a half hour later and it was in pretty bad condition. The wheels was busted, lights was busted, one light.

Q. What would you say about the condition of the  
10 automobile?

A. The door was busted, where the mudguard was was busted, the running board was busted, two wheels all caved in underneath.

Q. Anything wrong with the rear?

A. I didn't notice anything wrong with the rear.

Q. Did you notice a car coming up after the car that hit him?

A. I did.

Q. How soon after the car that hit him did the  
20 other car come up?

A. I should judge between two and four minutes, five minutes.

Cross-examination.

By Mr. Hunt:

Q. The right front wheel of the automobile was  
30 broken, wasn't it, smashed pretty well, and the right front mudguard?

A. The mudguard was busted, yes.

Q. The right front mudguard?

A. Yes.

Q. The right headlight was busted, right?

A. Yes, sir.

Q. You said that the operator was trying to stop the car, what do you mean by that?

A. He was going at a good rate.

Q. What was he doing?

A. Trying to put his brakes on.

Q. He was putting his brakes on, wasn't he?

A. I should judge he was, he ought to.

Q. The car was slowing down?

A. I couldn't say that.

Q. Did you see the trolley car go past the truck  
house?

A. I did.

Q. It stopped before it got to Beatty Street, didn't  
it? 10

A. Before it hit Beatty Street, about ten feet before it got to Beatty Street.

Q. It is only fifty feet from the north end of the firehouse to South Clinton and Beatty Streets, isn't it?

A. I don't know; I never measured it.

Q. Come out here and measure it, got a rule?

A. No.

Q. The scale is—forty feet equals one inch; just  
20 tell us how far it is from the north side of the truck house to the south side of Beatty Street?

A. The trolley car stopped right here.

Q. You mean the front of the trolley car was almost up to the building line?

A. Yes, which one of these tracks is north?

Q. This one. (Indicating.)

A. The trolley stopped right here.

Q. Just take a pencil and mark a mark where the  
30 trolley car stopped?

A. That is, on the trolley track.

Q. Just measure there and see how far that is from the building line on the south side of Beatty Street?

A. Is this the building line?

Q. Yes. On this map, one inch equals forty feet;

this rule is laid out to eighths so one-eighth on this rule would be one-eighth of forty or five feet. There is where you say the trolley car stopped, that is about one-sixteenth from the building line of the south side of Beatty Street, isn't it?

A. Yes, sir.

Q. That would be about two and one-half feet?

A. Is that what it is on that rule?

Q. Yes.

10 A. I don't know anything about that.

Mr. Hunt: Mr. Devlin, will you check me up on that?

Mr. Devlin: I am not going to bother with your problems.

By the Court: It doesn't seem to me, Mr. Hunt, that this witness is competent to measure off distance according to the scale there.

20

Mr. Hunt: He is telling now where the trolley car stopped.

Mr. Devlin: That is a matter that is so self-evident. The map is in.

By the Court: Point out the place and the jury can do the figuring.

30

Q. Well, officer, will you tell how far back of the building line from Beatty Street was the trolley car?

A. It went on past the building line.

Q. Is that out in Beatty Street?

A. Yes, two or three feet.

Q. Then, I think the mark you put on here was not in the right place.

A. No, it was not in the right place.

Q. Between the north end of your firehouse and the building line on the south side of Beatty Street, the witness says is only fifty feet, isn't it?

A. I don't know.

Q. The trolley car had stopped before it had gone any further than through that fifty feet, hadn't it?

A. I don't know whether it was fifty feet or not. 10

Q. The trolley car stopped at the corner of Beatty and South Clinton?

A. Corner of Beatty and Clinton.

Q. When you were inside, you heard the crash?

A. I did.

Q. What do you mean by inside, how far back in the building were you?

A. Five foot from the door.

Q. Was the door opened or closed?

A. The door was closed. 20

Q. Is the door in the middle front of the building or side?

A. There is a big door in the middle and a little door on the side.

Q. How did you come out, the big door or the small door?

A. The small door.

Q. Were you on the same side of the building as that small door or the big door?

A. Same side.

Q. What were you doing in the building at the time the crash came? 30

A. I was on watch.

Q. What does that mean, sitting on a chair?

A. No.

Q. Were you sitting in a chair?

A. No.

- Q. What were you doing?  
 A. Standing right in front of the house.  
 Q. You were inside of the house?  
 A. Certainly, I said so.  
 Q. Weren't you reading or talking?  
 A. I wasn't talking to anybody; I was the only one  
 in the front of the house.  
 Q. Were you thinking?  
 A. We all do a little of that.  
 10 Q. When you heard the crash, what did you do?  
 A. Hollered to the people.  
 Q. After that, what did you do?  
 A. Run to the front door.  
 Q. Open the door?  
 A. I didn't know it was a trolley car —  
 Q. I asked you if you opened the door?  
 A. Sure, I had to get out.  
 Q. What did you see when you got out?  
 A. The trolley car.  
 20 Q. Going by the firehouse?  
 A. Going by the firehouse.  
 Q. Right in front of the firehouse?  
 A. When I seen it?  
 Q. Yes.  
 A. It was about an angle like that. (Indicating.)  
 Q. Then it was still going toward the firehouse  
 or passed it?  
 A. It was, I should judge, about two foot out of  
 my view and he passed right on.  
 30 Q. He had gone part way before you got out of  
 the door, is that right?  
 A. Yes, sir.  
 Q. Just come down here and show the jury where  
 the automobile stood, won't you, after the collision?  
 A. Where is Meaney's store?  
 Q. Here is Meaney's store marked in green, here

is the north end of it and here is the south side of  
 it.

Mr. Devlin: I want to ask that the map be ex-  
 plained to the fireman.

Q. This map shows here in green, Meaney's store?

A. Yes.

Q. Shows here in red your truck house?

A. Yes.

Q. One inch on the map equals forty feet on the  
 ground. Now, please show the jury whereabouts  
 Meaney's truck stood in front of his lot after the  
 collision happened?

A. Where does the store door lay in front of  
 Meaney's; that is where the truck was stopped, fac-  
 ing Mr. Meaney's door.

Mr. Hunt: May Mr. Meaney be asked?

20

Mr. Devlin: One witness at a time.

Q. Was the truck near the north end or south end  
 or near the center?

A. I think it is near the center of Meaney's lot.

Q. Would you say that was a fair place to put it,  
 in the center?

A. I would.

Q. From the center of Meaney's lot to the south  
 side of the firehouse is two and one-half inches, isn't  
 it?

A. Yes.

Q. Two and one-half inches on the map is 100 feet,  
 so that by the time that you heard this crash and  
 the time you came out on the street and looked, the  
 trolley car had gone about one hundred feet?

A. When I seen the trolley car first?

30

Q. Yes.

A. No, he hadn't gone one hundred feet yet; he went about one hundred and twenty-five feet after the accident, altogether.

Q. The accident was down here where the truck was left standing?

A. Yes.

Q. From the place of the accident to the firehouse is only one hundred feet, that is so, you measured it  
10 on the map?

Mr. Devlin: That is self-evident.

By the Court: The witness having indicated the point where he says this machine stopped and the other points he has testified to, I think that is sufficient.

20 Q. Another trolley car came up very shortly after this trolley car in the collision?

A. Yes, it did.

Q. And then another?

A. Another.

Q. And then another?

A. I don't know about that.

Q. You recall only three altogether?

A. That is all.

30 Q. Did you telephone to get an ambulance for Mr. Baus?

A. No, sir, the lieutenant did.

Q. I suppose that telephone message was not sent for a few minutes after the collision? Do you know when the telephone call for the ambulance was sent?

A. I do, but I don't know how long.

Q. How long a time was it after the collision until the ambulance got there?

A. Oh! I guess it was about twenty or twenty-five minutes.

Q. What ambulance was it?

A. Police ambulance.

By the Court: That came from where?

A. We called up headquarters.

Q. Where is that ambulance kept, do you know?

A. Hanover Street. 10

Q. The brakes of this car were working all right?

Mr. Devlin: I object.

A. I don't know anything about that.

Q. Following this crash the trolley car and automobile were entirely free from each other and there was no reason why the trolley car should not go up to the corner before stopping?

A. I think it should have stopped before he hit the  
20 corner.

Mr. Hunt: I ask that that be stricken out as not responsive.

By the Court: You may repeat the question.

(Question repeated.)

A. Yes. 30

Q. What was the reason?

A. He ought to have had the car more under control?

Q. How do you know it was not under control?

A. He couldn't have had it under control.

Q. You were inside, you didn't see the collision?

A. I saw the car after the collision.

Q. The car stopped when it got to the corner, which is the regular stop,—that is a regular stop, isn't it?

A. Yes.

Q. This automobile and trolley car were not fast together?

A. No.

Q. The trolley car was not dragging the automobile as a result of the collision?

10 A. No.

Q. There was no reason why it should have not come up to the corner.

A. If you run over a man—

Q. Nobody knew a man had been hit.

A. He had hit an automobile.

Q. That is not running over a man.

By the Court: That is purely argumentative.

20 Q. Would it have been proper for the trolley car to stop in front of the fire house?

A. They often do.

Mr. Hunt: I ask that that be stricken out as not responsive.

By the Court: It is responsive.

Q. Do you consider it a proper thing?

30 A. I don't.

Q. It blocks the fire apparatus getting out?

A. They would block us anyhow.

Q. That isn't proper, is it?

A. No.

Mr. Hunt: That is all.

Re-direct examination.

By Mr. Devlin:

Q. You are a member of the fire department, Mr. Landerkin?

A. Yes, sir.

Q. And how long have you been a member?

A. Twelve years and two months.

10

Re-cross examination.

By Mr. Hunt:

Q. Did you know Mr. Baus?

A. I do.

Q. How long before the accident?

A. I should judge about five years; that isn't before the accident, I have known him five or six years altogether.

20

Q. Did you testify at the last trial of this case?

A. I did not.

Q. Mr. Baus was about the firehouse considerably before the accident?

A. I have only seen Mr. Baus at the fire house once in my life.

Mr. Hunt: That is all.

Mr. Gildea: May we know what time adjournment will be taken? 30

By the Court: Four-thirty is the adjournment hour.

MRS. WINIFRED MURPHY, sworn for the plaintiff.

Direct examination.

By Mr. Devlin:

Q. Mrs. Murphy, where do you live?

A. 453 Emory Avenue.

10 Q. Do you know Mr. Baus?

A. Yes, sir.

Q. How long have you known him?

A. About thirty-five years, since he was a boy.

Q. Before he was injured had you seen him very often?

A. I used to see him about three times a week regular because he served us truck and vegetables.

Q. Right up to the remaining part of 1921 and before he was injured several months?

20 A. He was to our house the morning he was hurt.

Q. Have you had a chance—how long has he served you with goods?

A. Anywheres from twelve to fifteen years.

Q. And you saw him how many times a week in that time?

A. Three times a week, he very seldom missed.

Q. Have you had a chance to observe the physical condition of his health?

30 Mr. Gildea: I object, it is calling for a conclusion. Whether or not she has had an opportunity to determine his physical condition.

By the Court: I think she may answer.

Mr. Gildea: May I have an exception?

By the Court: Yes.

(Question repeated.)

A. Just through meeting him at his machine out front.

Q. You bought goods from him?

A. Always.

Q. And talked to him?

A. I couldn't buy without talking to him, he came 10 three times a week regular and he never missed.

Q. From his manner of speech and conduct did you observe anything unusual about him?

A. No, sir.

Q. He seemed in usual health to you?

Mr. Gildea: Objected to as leading.

By the Court: It is a little leading.

Q. Have you seen him since the accident? 20

A. Yes, sir; the first I saw him after the accident would be when he would be going and coming from the hospital for treatment.

Q. At the times you saw him did you notice any trembling of the arm and of his head?

A. Lately I have.

Q. I mean, before this accident?

A. No.

Q. Did you ever see any trembling of the hand 30 and head?

A. No.

Q. Have you spoken to him since the accident?

A. Yes, sir.

Q. And you spoke to him before the accident many times?

A. Yes.

Q. Have you noticed any change in his speech since the accident?

A. I seen an awful difference in him.

Q. In what manner did you see a difference in his speech?

A. His voice trembles.

Q. Did you notice his speech, is it thicker or thinner?

A. Thicker.

10 Q. Have you had any chance to observe his memory before the accident?

A. No.

Q. Since the accident have you talked to him many times?

A. Not so many, no, sir.

Q. Have you had any chance to observe his memory since the accident?

A. No, I have not.

Q. He was a man who sold you produce?

20 A. Yes.

Q. And every day—

A. We always depended on him.

Cross-examination.

By Mr. Hunt:

Q. Mrs. Murphy, how many times have you seen Mr. Baus since the accident?

30 A. I couldn't tell you exactly, maybe four or five times, coming and going to the hospital.

Q. Did you stop him and speak to him?

A. If he would be out front.

Q. Can you remember how many times you have spoken to him?

A. Not exactly.

Q. Three or four?

A. All of that.

Q. Have you spoken to him since he has stopped going to the hospital?

A. No, unless I happen to go by his street in the summer time and he would be on the porch.

Q. Before Mr. Baus had this unfortunate accident, I understood you to say you saw him?

A. He was supposed to come to us Thursday and Saturday and he very seldom missed.

Q. And when he did come you would go out to his truck and look at his produce and purchase such produce as you wanted? 10

A. Yes.

Q. Do you know how old he is?

A. I think I saw it in the paper, fifty-three or fifty-five.

Q. How long have you known him?

A. About thirty-five, and the whole family.

Q. You have known him and the whole family thirty-five years? 20

A. Yes.

Q. Did I understand you to say, Mrs. Murphy, at no time before this accident you noticed Mr. Baus' right hand tremble?

A. No, sir.

Q. Would you want to say under oath that it did not tremble?

A. No, I didn't notice anything.

Q. You say you didn't notice it. Are you sufficiently satisfied with your knowledge to say under oath that before this accident Mr. Baus' hand never trembled? 30

A. Yes, not that I noticed.

Q. Are you satisfied that you know?

A. Yes.

Q. And you are willing to say that at no time

before this accident did Mr. Baus' right hand ever tremble?

A. Not that I noticed.

Q. Did you ever make any particular attempt to see whether or not his hand trembled?

A. No.

Q. Did you ever look at his hand for the purpose of seeing if it trembled?

A. No.

10 Q. You never thought of it as a matter of fact?

A. Sure not.

Q. When you had your dealings with Mr. Baus he would be pretty much engrossed in going around the truck and showing you things?

A. Yes.

Q. Under those circumstances, with his whole body in motion, you didn't notice his hand or head tremble, did you?

A. No.

20 Q. I understood you to say, Mrs. Murphy, that when you had your dealings he was busy, attended to his goods, and there were usually several around the wagon?

A. Yes.

Q. And you and the other customers were busy inspecting the vegetables; that is true, isn't it?

A. That is true.

30 Q. Now, I say, isn't it possible that Mr. Baus' hand might have trembled slightly without your noticing it; that is possible, isn't it?

By the Court: Will you answer that question?

A. Yes, sir.

Re-direct examination.

By Mr. Devlin:

Q. Mrs. Murphy, in your dealings with Mr. Baus he would hand you articles, wouldn't he?

A. Yes, sir.

Q. And you would give him money in payment?

A. Yes.

Q. And he would make change?

10

A. Yes.

Q. He would use his hands regularly in those things, wouldn't he?

A. Yes.

Q. If that hand or hands shook then as you have seen it shake since the accident would you have observed it?

A. Surely.

Q. Did you ever observe it shaking as you have seen it shake since the accident?

20

A. No.

Q. Did you ever observe the head shake as you have seen it shaking since the accident?

A. No.

By the Court: We will take a recess at this time until tomorrow morning at ten o'clock.

30

Trenton, N. J., Tuesday, January 27, 1925,  
10 o'clock A. M.

(Case resumed pursuant to adjournment.)

(Appearances as before noted.)

10

LEONARD BAUS, the plaintiff, sworn.

Direct examination.

By Mr. Devlin:

Q. Your name is Leonard Baus?

A. Yes, sir.

20 Q. Try and speak loud enough for the jury to hear. Where do you live?

A. 115 Rusling Street, Trenton.

Q. How long have you lived there?

A. Around about fourteen, sixteen years.

Q. How long have you lived in Trenton?

A. Twenty-seven years.

Q. What was your business when you were working?

A. Fruit and produce.

Q. And did you sell it?

30 A. Wholesale and retail.

Q. Do you remember April 29, 1922?

A. Yes, sir.

Q. Where were you that evening?

A. Down to Mr. Meaney's.

Q. What did you do there that evening?

A. Just talked a little bit.

Q. Was the auto truck in the front of the store?

A. Right in front of the store, yes.

Q. How did you come to get into the auto truck?

A. He invited me in. He said, "Come on, take a ride around."

Q. To where?

A. The garage.

Q. When you got in the auto truck what did you do?

A. What did I do?

Q. Yes.

10

A. I just sat on the seat.

Q. Was he in the truck?

A. Yes.

Q. Then what was done?

A. Meaney threwed his hand out and started to turn.

Q. And then what did he do?

A. He started to turn around to the north.

Q. What happened after that?

A. I don't remember very good everything. 20

Q. When you got in the truck did you see him do anything?

A. I seen him put his hand out and look down the street toward Chestnut Avenue.

Q. And then what did he do?

A. He kept right on turning.

Q. He kept on turning?

A. Yes.

Q. When he turned what happened?

A. The street car hit him when he got about two-thirds way around. 30

Q. How near, can you say, to the other side of the street?

A. North side?

Q. Yes.

A. I didn't look down at the rails; he was about two-thirds of the way turned.

- Q. What happened?  
 A. The street car hit us.  
 Q. Where did the street car hit you, do you remember?  
 A. Right in front of Meaney's store.  
 Q. What part of the auto truck did the street car hit?  
 A. I didn't have a chance to look, I did not see where it hit, I had my feet down this way and it  
 10 seemed to be middle way of the door.  
 Q. Were you sitting inside of the door?  
 A. My feet were inside, yes.  
 Q. When the car hit you what part of the auto truck did the car hit?  
 A. Right back where I was sitting.  
 Q. Then what happened?  
 A. It knocked me right off the seat and I went down on the floor and I took a header and went down to the floor right.  
 20 Q. Then what happened?  
 A. I tried to get up and it bumped again and I kind of went down on the floor again.  
 Q. Then what do you remember happened?  
 A. I remember the firemen coming out and carrying me in.  
 Q. From the time you got in the auto truck until you were hit, who was driving that auto truck?  
 A. Mr. Meaney.  
 30 Q. Did you say anything to Meaney?  
 A. No, I did not.  
 Q. When did you first see the street car?  
 A. The street car was at Whittaker Avenue and South Clinton Avenue.  
 Q. And then when you saw the street car whereabouts was the automobile in the street?  
 A. A little over halfway across.

- Q. Did you hear any signal before you saw the street car?  
 A. No signal whatever.  
 Q. Can you state whether the car was going fast or slow?  
 A. When I looked out, I hadn't more than peeped out of the window when I spied the car down at South Clinton Avenue by the pole.  
 By the Court: Where is the pole located? 10  
 A. The pole is right there by Dube's poultry house.  
 Q. Where is that at?  
 A. South Clinton Avenue just below Whittaker Avenue.  
 Q. South of Whittaker, or north?  
 A. South of Whittaker.  
 Q. Do you know what part of the car—you say that the car was two-thirds across the street, do  
 you know was it near the uptown track or not? 20  
 A. It was on the northbound track.  
 Q. It was on the northbound track?  
 A. Yes.  
 Q. Are you able to tell how far it was on that track?  
 A. No, I am not.  
 Q. You are not?  
 A. No.  
 Q. Do you know how far the trolley car went  
 after it hit you? 30  
 A. I don't know only by what somebody told me.  
 Q. I mean yourself?  
 A. No.  
 Q. Any part of you hurt besides your leg?  
 A. I was hurt on this arm all the way down, and

this shoulder and across the left toe and these two fingers were knocked out and cut back here, I don't know whether it was glass, the blood was running pretty fast and I was bumped up in here. (Indicating different parts of the body.)

Q. You were taken to the hospital?

A. Yes.

Q. How long were you in the hospital?

A. I was there the first time six weeks and three  
10 days.

Q. While you were in the hospital how many operations were performed on your leg?

A. Three.

Q. What was the three?

A. Three operations, I can't explain what they was done for.

Q. They finally took your leg off?

A. They took my leg off, sure.

Q. Below the knee?

20 A. Below the knee.

Q. After you came out of the hospital did you go back again?

A. I had to go back for treatment until November 13, and I went back and had another operation.

Q. How long were you there at that time?

A. Three weeks.

Q. Since the operation did you go to the hospital again?

A. I went backward and forward every day for  
30 sixteen or eighteen months.

Q. When did your leg heal?

A. It didn't heal altogether until about the twenty-fifth or twenty-sixth of this last November.

Q. Last November?

A. Yes.

Q. That is November of 1924?

A. 1924.

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

A. Very good.

Q. Did you work every day?

A. I worked every day and part of the night.

Q. What kind of work did you do?

A. Sold fruit and produce, peddled it out and wholesaled it out, three days a week I went to Philadelphia, and the other three days in the streets  
10 of Trenton.

Q. Did you drive a car at that time?

A. Yes.

Q. How long had you been driving?

A. Since 1915.

Q. In your work did you go to Philadelphia to get your goods?

A. Three times a week.

Q. Up until the time of this accident had you ever had any ailment that kept you from your work?

A. I never had any that I know of, I was always  
20 on the job.

Q. What was your earnings at your work after your expenses were paid?

A. Clear, I should judge about forty dollars, clear of expenses.

Q. Was it between thirty-five and forty?

A. Thirty-five and forty.

Q. Since this accident have you been able to do any work at all?

A. Not a bit.  
30

Q. Are you able to work now?

A. No, I am not.

Q. You have got an artificial leg?

A. Yes.

Q. When did you get that leg?

A. I got it in November, 1923, 1924, somewhere

around there, I can't tell you, but it was about two weeks after Armistice Day.

Q. Are you able to use that leg for a full day at any time?

A. No, sir.

Q. When you use that leg what do you have to do?

A. It makes me so nervous I have got to lay down.

10 Q. And you have to use your crutches?

A. I have to use one all the time; I haven't walked without one at no time; I might be able to take 4, 5 or 6 steps, and if I don't have the crutch I have to go down.

Q. Have you been able to keep it on you for a day at a time?

A. Not if I can't lay down.

Q. When you have it on, does it pain you?

20 A. It is sort of pain and hurt together, I can't keep it on steady all day long.

Q. Since this accident have you suffered much pain?

A. When do you mean, from the first beginning?

Q. From the beginning right on up.

A. I suffered between fifteen and eighteen months.

Q. How about your sleep?

A. Sometimes I can sleep, sometimes I can't.

30 Q. I notice your hand trembling, was that condition present, I mean your right hand, before this accident?

A. As far as I know it was just as good as this one, I could handle it just as good as this one, I didn't find no trouble handling this one than I did that one.

Q. How about your speech before this accident?

A. I think I had a good speech, I could make a whole lot of noise. I had to talk a whole lot.

Q. Was your speech clear?

A. My speech was clear, sure.

Q. Is it clear now?

A. No, it is not.

Q. How about the condition of your memory before this accident, so far as you know?

A. As far as I know I had a good memory because I was buying stuff—

10

Q. You did your own business?

A. I did my own business all the way through.

Q. Anyone help you in your business?

A. No, sir.

Q. Since this accident what has been the condition of your memory?

A. Very poor, I can't remember nothing.

Q. The shaking of your head, did you have that before this accident?

20

A. I did not.

Q. You did not?

A. No, sir.

Q. Since the accident have you been able to dress and undress yourself and take care of yourself?

A. Not altogether.

Q. Who has assisted you?

A. My wife.

Q. How about eating after the accident?

A. Well, I do better now than I did a few months back.

30

Q. I mean at the time of the accident.

A. Do you mean appetite?

Q. Did you have any assistance with your food?

A. No.

Q. Who assisted you?

A. Nobody.

Q. You could eat alone?

A. I could move my hand.

Q. The doctor bills from April 29, 1922, one bill for one hundred and sixty-five dollars, Saint Francis Hospital, these are the same bills that were offered at the former trial?

A. Yes.

Q. \$165.00. From April 29, 1922, to November 11, 1922?

A. Yes.

10

Mr. Devlin: I offer that.

(Marked Exhibit P1.)

Q. From November 12 to December 30, 1922, \$105.00?

A. Yes.

20

Mr. Devlin: I offer that.

(Marked Exhibit P2.)

Q. Doctor Reddan's bill, \$175.00, up to the date of the last trial, now, I think there will be added to that, when the doctor comes in, some more.

(Marked Exhibit P3.)

30

Q. What did your artificial leg cost you?

A. The leg cost me one hundred and fifty dollars.

Q. And how about the expenses going up and down?

A. Four times, \$25.00, for the four trips.

By the Court: Where was that, to what place?

A. Philadelphia, just twenty-five dollars for the four trips.

Q. Did you have anyone assist you going up and down with you?

A. My brother.

Q. Who paid the two fares?

A. He took me in his automobile.

Q. And you think the expenses going up and down was twenty-five dollars for four trips?

A. Twenty-five dollars for four trips, yes. 10

Q. How about the drug bills?

A. I didn't buy so much, a little bit.

Q. You didn't keep track of that?

A. No, the hospital took care of that, they furnished pretty near all of that.

Q. How long were you going to the hospital from the time you were injured, how long had you been going to the hospital?

A. As near as I could tell, about eighteen months.

Q. For treatment? 20

A. I could tell if I had my cards here, they gave me little cards and when one got filled up, I got another.

Q. You went over there every day?

A. Not every day, sometimes every other day and then I would miss and then again I would have to go every day.

Q. Did you ever have any ailment before this accident?

A. I don't think I ever had anything to speak of except a little cold for a day or two. 30

Q. Did you ever have any ailment?

A. Never had any that I know of.

Q. What was your age at the time of the accident?

A. Fifty-two years old.

Q. Fifty-two years old at the time of the accident?

A. Yes.

Q. At the present time are you able to do any kind of work?

A. I can't do anything.

Q. Who lives at home with you?

A. I got three boys home at the present time.

Q. How about your wife?

10 A. She lives there.

Q. She lives at home with you, too?

A. Yes.

Q. Do you have to have any assistance going up and down stairs?

A. I can go up and down stairs but I have to pull myself with the banister and one crutch.

Q. Your business of produce dealer, you are not able to work at that now?

20 A. I can't think of it; I can't get clear of my hand.

Q. Have you any calling that you can work at?

A. I don't know who would give me a job.

Q. Did you ever work at any other work except produce?

A. Only produce.

Q. How long had you worked at that?

A. Twenty-two or twenty-three years.

Q. That is what you worked at principally?

A. Yes.

30 Q. Have you worked at the produce business longer than twenty-two years?

A. I think I have; I thought about it and it is twenty-seven years or more.

Q. You knew Mr. Meaney's mother, didn't you?

A. Yes, sir.

Q. She bought produce from you?

A. Yes.

Q. She is dead twenty-two years?

A. I can't remember just exactly, another thing, I didn't keep account of it because I did all the work myself.

Mr. Devlin: Cross-examine.

Cross-examination.

By Mr. Hunt:

10

Q. Mr. Baus, on these three days a week when you went to Philadelphia to get your produce you would drive down to Philadelphia with your automobile, I suppose?

A. Yes, sir.

Q. What time of day would you leave Trenton to start to Philadelphia?

A. Sometimes two o'clock, sometimes five o'clock, 20 six, it would just depend on the season.

Q. I suppose you went down into Dock Street and Water Street and Delaware Avenue, where those commission houses are and bought your stuff there?

A. It is hard to tell where I went.

Q. On a day when you would start down to Philadelphia at two o'clock in the morning, what time would you get through with your work and wind up for the day?

A. That is all, I would make the trip and occasionally, if I had some perishable stuff, I would 30 work it off that afternoon, sometimes we would get it off at noon and sometimes after, sometimes a little before noon, I couldn't say just exactly.

Q. Then you would go on in the afternoon and sell your load?

A. No, if I had some perishable goods, not all of it.

Q. On a day when you would start down to Philadelphia at five o'clock or seven o'clock in the morning, what time would you be all through with your work in the afternoon?

A. Practically the same time.

Q. You mean that you could leave Trenton at seven o'clock and go down to Philadelphia and get  
10 your load and come back here to Trenton and sell it out and be all through by twelve o'clock or one o'clock?

A. It would depend on how much stuff was there, if I could buy quick I could make better time, when the season got further along I didn't have to go so early.

Q. You were selling retail a good bit here in Trenton?

A. Three days a week.

20 Q. Yes, those days were long days?

A. Yes, long days.

Q. What time did you start in the morning?

A. I started half-past five and maybe wouldn't finish until way after dark.

Q. The business made you put in a good many hard, long days, didn't it?

A. Yes, it did.

Q. And of course your customers depended on you so you had to be on the job no matter what  
30 the weather was?

A. No matter what the weather was, I was on the job.

Q. It wasn't an easy job at all, it was hard, solid work?

A. It was hard laboring work, yes, sir.

Q. Now, Mr. Baus, when you first saw this trol-

ley car you said it was a little south of Whittaker Avenue, is that right?

A. I don't know what I said but the trolley car was on South Clinton Avenue below the pole.

Q. When you say below the pole, what do you mean?

A. There is a telegraph pole there by Dube's poultry house and there is a pole further down.

Q. That would be somewhere about the place where Whittaker Avenue and Rusling Street both  
10 come together into South Clinton?

A. Further down south than that.

Q. Further down south?

A. Yes, sir.

Q. At that time, I think you said the automobile was a little more than halfway across the street, wasn't it?

A. When I seen the trolley car down there?

Q. Yes.

A. Yes.

Q. The automobile kept moving all the time, didn't it?

A. Yes.

Q. It didn't stall or stop?

A. No, it didn't stall.

Q. And you were sitting on the side nearest to the trolley car?

A. Yes.

Q. Did you keep watching the trolley car?

A. I did.

Q. Why didn't you tell Mr. Meaney to stop his automobile so that it didn't get on the track in front of the trolley car?

A. Mr. Meaney was making the turn and making it careful, I didn't think it best to interrupt him.

Q. Mr. Meaney didn't see the trolley car, did he?

A. He saw it down to Mantel's.

Q. Why didn't you tell him to stop before he got on that track?

A. I didn't think it was necessary for me to do any hollering because he had good judgment, if I hollered maybe he wouldn't do as good, I think it is bad to interfere with people at a time like that.

10 Q. Mr. Baus, didn't you know he was running his own life and your life and the life of the passengers into danger through bringing this automobile right on the track in front of the trolley car?

A. I know it was dangerous, yes.

Q. Why didn't you tell him to stop?

A. I didn't see why I should, he was the biggest way around and if he had three seconds longer time he would have been around out of the way, just three seconds, maybe four, and he would have been all the way around.

Q. Mr. Baus, your left hand trembles some now?

20 A. My left hand does not tremble a particle.

Q. It doesn't tremble a particle?

A. No, sir, and that one don't tremble much, either?

Q. Does either of your legs tremble?

A. The one that is cut off does all the way down and all the way up.

Q. The other one does not?

A. No, sir.

30 Re-direct examination.

By Mr. Devlin:

Q. Just one moment, when you saw the car and the auto truck was cross the street, did, in your judgment, the automobile have sufficient room and time to cross in safety?

Mr. Hunt: That is objected to on the ground that he says the operation of the car was solely in the hands of the other man and he was relying on the other man. The statement would be a conclusion and there is no apparent basis in the testimony for the expression of it.

Mr. Devlin: The reason I put the question is that because Mr. Hunt put the question to him on cross-examination why he didn't tell Meaney about 10 the car and about the danger, and he replied saying it was wise not to interrupt him. That is the only reason why I put the question, because his cross-examination led to a point that this man should have warned Meaney, that is my object in asking the question, your Honor.

By the Court: I think I will sustain the objection.

20

Mr. Devlin: I ask an exception.

By the Court: All right.

By the Court: Mr. Baus, from the time you saw that car up until the time that it hit the automobile were you watching it all the time?

A. I had my eyes on it all the time.

Q. Did you observe any change in the speed of 30 the car?

A. I didn't observe any change in the speed, if anything, he came faster.

Q. Did it stop at Whittaker Avenue?

A. It did not.

Q. Is your memory better today or any date, part of the day than it is at another part of the day?

A. Mornings I am better.

Q. How do you sleep now?

A. I do not sleep very good for the last ten days.

Q. How have you been sleeping before that?

A. Before I was hurt I could sleep on a piece of wood or any other place.

Q. Since this accident how have you been sleeping?

A. Some weeks a little better and some weeks  
10 a little worse.

Q. Do you suffer pain now?

A. Every night I get a pain in this leg mostly, and the nerves shoot through and sometimes the leg goes dead on me; if I ain't got the crutch I have got to drop.

Mr. Devlin: That is all.

Mr. Hunt: That is all, Mr. Baus.

20

FRANK NAYLOR, sworn for the plaintiff.

Direct examination.

By Mr. Devlin:

Q. Mr. Naylor, where do you live?

A. 131 Hewitt Street.

Q. How long have you known Mr. Baus?

A. About twelve years.

Q. In that time have you had much opportunity to meet him?

A. Before he was hurt I met him three times a week, Tuesday, Thursday and Saturday.

Q. Where did you meet him at?

30

A. At my house.

Q. Talk to him?

A. Yes, sir.

Q. Do business with him?

A. Yes, sir.

Q. Before that time, before this accident, did you observe anything wrong with his outward appearances or health that you could see?

A. Not that I could see, no, sir.

Q. Did you observe anything wrong with his  
10 speech?

A. No, sir, not then I didn't.

Q. I mean before the accident, did you observe any shaking in his hand or arm that you see now?

A. Not at all.

Q. What kind of dealings did you have with him?

A. I bought stuff off of him and he bought stuff off me, I have a cigar, cigarettes and candy store and I sell ice cream.

Q. Did you buy from each other?

20

A. We bought off him and he came and bought off us.

Q. How did you find his memory before this accident?

A. All right as far as I know.

Q. Ever see anything about it defective?

A. No.

Q. You have seen him since the accident?

A. Yes.

Q. Did you ever see this shaking that you see in  
30 his hand now?

A. Not before.

Q. How about the shaking of the head, did you ever see that before the accident?

A. Not before the accident.

Q. Did you notice any change in his speech since the accident?

A. He don't talk so plain, I don't think.

Q. You haven't done any business with him since the accident?

A. Once or twice he has been around and got some tobacco.

Q. Have you noticed any change in his memory since the accident?

A. Not so much, a little, you have got to ask him sometimes a couple of times, before, you would  
10 only ask him once and he would answer you right back.

Mr. Devlin: Cross-examine.

Cross-examination.

By Mr. Gildea:

Q. Were your dealings with Mr. Baus done on  
20 a cash basis or credit basis?

A. Cash.

Q. On a cash basis?

A. Yes, sir.

Q. Then there would be nothing about your dealings that would require him to remember any amount that he owed you or that you owed him?

A. He never owed us nothing or we never owed him nothing.

Q. How would these dealings that you and Mr.  
30 Baus had enable you to determine whether or not his memory was good?

A. I used to go out to his truck when he would come—

Q. How would going out to his truck or him come into your store enable you to determine what kind of a memory he had?

A. He would sit around there and talk and I

would tell him what we wanted and he would go out and bring it in.

Q. Since the accident he hasn't been around there with his truck?

A. He can't come.

Q. And you don't know now if he could remember from the time he was in the store until he got out to the wagon?

A. No.

Q. As a matter of fact, you don't know now  
10 whether his memory is as good or not, do you?

A. When you talk to him he doesn't understand so good.

Q. You think the fact that he doesn't understand you when you speak shows there is something the matter with his memory?

A. If I am talking to you just as I am and you didn't answer me—

Q. Did you use the same tone of voice as you  
20 are using now?

A. Same as I am using just now.

Q. Before this accident was Mr. Baus' voice any more distinct than yours?

A. He always had a pretty strong voice, he had a stronger voice than I did.

Q. He had a stronger voice than you?

A. Yes, he did.

Q. His voice is still stronger than yours?

A. I don't think it is now.

Q. Didn't you hear him on the witness stand a  
30 few minutes ago?

A. I don't think it is as strong as mine is now.

Q. You don't think it is as strong as yours is now?

A. Not quite.

Mr. Gildea: That is all.

A. When I wasn't home or when I was working or asleep.

Q. Usually you were either sleeping or working when he was there, that is right, isn't it?

A. Yes.

Q. As a matter of fact, it was very rarely you saw him?

A. I didn't see him very often, as I told you I didn't have the time.

10 Q. Sometimes you wouldn't see him for several months, isn't that so?

A. Oh, yes, he would be around sometimes.

Q. Can you say you saw him every month during 1921?

A. I wouldn't say I saw him every month but I happened to see him——

Q. Occasionally?

A. Occasionally.

20 Q. Did you buy the produce or did your wife buy it?

A. My housekeeper or my sons went out and bought it.

Q. So the only time you would see Mr. Baus would be when he came to your door?

A. Only sometime I would see him when he come around there, I would be generally in bed or at work; I didn't lose much time around there.

MRS. MARY VANDERBECK, sworn for the plaintiff.

Direct examination.

By Mr. Devlin:

Q. Mrs. Vanderbeck, do you know Mr. Baus?

A. Yes, sir.

Q. How long have you known him? 10

A. I have known him in the neighborhood of ten years, I can't exactly tell how long.

Q. Did you know him before the accident?

A. Oh, yes, I knew him well.

Q. Where do you live?

A. At present I live at 303 Cummings Avenue.

Q. Did you meet Mr. Baus often?

A. Yes, sir, because he lived alongside of me.

Q. Did you live alongside of him in 1921?

A. No, sir, I had moved away from there. 20

Q. After you moved away did you see him very often?

A. Yes, sir, three times a week.

Q. How did you come to meet him, buying goods from him?

A. I lived alongside of him before that and, of course, you know how neighbors are, the last years I bought goods off him three times a week.

Q. Down to the time he was injured?

A. Right to the day he was hurt. 30

Q. In that time had you a chance to examine the condition of his health?

A. I certainly did.

Q. What was it?

A. He was like every other working man, working hard, busy and seemed to be in apparent good health to me.

- Q. You have seen him since the accident?  
 A. Yes.  
 Q. You have observed the condition of his hand shaking since the accident?  
 A. Yes.  
 Q. Did you ever see that before this accident?  
 A. No, sir.  
 Q. You observed his head shaking?  
 A. Yes, sir.  
 10 Q. Have you ever seen that before this accident?  
 A. No, sir.  
 Q. Have you observed his speech since this accident?  
 A. I have noticed he has talked thicker; I haven't seen him so much since the accident as I did before.  
 Q. You noticed he talked thicker?  
 A. Yes, but I laid it to his trouble.  
 Q. You haven't had a chance to talk to him since the accident?  
 20 A. I visit there once in a while.  
 Q. Had you any opportunity to observe his memory before the accident or since the accident?  
 A. In ordinary conversation you don't always tax the memory.  
 Q. Before the accident did you observe his memory, was it all right?  
 A. Yes, sir, sometimes he would trust me for some little things in his mind, I would put it on paper and he would always tell me right.  
 30 Q. You haven't had any chance to test it since the accident?  
 A. No, I haven't had no chance to test it since the accident.

Mr. Devlin: Cross-examine.

Cross-examination.

By Mr. Hunt:

- Q. What time was it that you were living next door to Mr. Baus?  
 A. Well, I couldn't tell you without counting up; I couldn't tell you the exact year when I moved alongside of him but it is between eight and nine years ago. 10  
 Q. Then you don't remember when you moved away?  
 A. I lived in the next house to him a year and a half and I moved across the street and I lived there for three and a half years and altogether it made my total of five years I was a neighbor, I saw him every day, sometimes three or four times a day.  
 Q. Have you been looking at me since I have been standing here, Mrs. Vanderbeck? 20  
 A. Yes, I have.  
 Q. Did you notice anything?  
 A. I noticed when you got up you commenced shaking your hand.  
 Q. When did I stop shaking it?  
 A. You stopped when you commenced talking to me, you stopped when you had asked me one or two questions, I noticed you stopped after you got talking.  
 Q. When you were buying goods of Mr. Baus' wagon or truck you were busy looking what he had and he was busy showing what he had to you and other people, while waiting on you and other customers at the same time? 30  
 A. Very seldom, because I caught him before he started out or when he was coming in, the last

year of his carting he used to come to my house, then there were other customers around.

Q. I suppose when you were buying you were looking at his stuff?

A. Yes, probably talking to him.

Q. He was showing you the stuff?

A. Yes.

Q. You were looking at me and you weren't looking at the stuff I had to sell and my trick didn't  
10 work at all, did it?

A. No.

---

WALTER ADAMS, SWORN for the plaintiff.

Direct examination.

By Mr. Devlin:

20

Q. Mr. Adams, where do you live?

A. 112 Rusling Street.

Q. How long have you lived there?

A. Four years and a half.

Q. Do you know Leonard Baus?

A. Yes, sir.

Q. How long have you known him?

A. Ever since I lived there, four years and a half.

Q. Do you live next to him?

30 A. I live opposite across the street, opposite to Mr. Baus.

Q. Did you know him before this accident happened?

A. About a year and a half.

Q. Did you see him very often during the day or during the week?

A. Pretty much every morning.

Q. Did you speak with him?

A. Yes, I bought truck off him.

Q. You bought truck from him?

A. Yes.

Q. Right up to the time of this accident did you buy truck?

A. Yes.

Q. What, so far as you could see, did his health appear to be all right?

A. All right so far as I could see.

10

Q. In buying truck from him did you pay him money and he give you change?

A. Yes.

Q. Have you seen him since the accident?

A. Yes, sir.

Q. That trembling of the hand, did you ever see it before the accident?

A. I didn't notice it.

Q. I say, did you see it?

A. No.

20

Q. How about the shaking of the head, did you ever see that before the accident?

A. No, I have never seen his head shake before the accident.

Q. Have you noticed any change in his speech since the accident?

A. Yes, quite a bit.

Q. And what did you notice?

A. You can't hardly understand him sometimes.

Q. Since the accident?

30

A. Yes.

Q. Could you understand him quite well before the accident?

A. Yes.

Mr. Devlin: Cross-examine.

Cross-examination.

By Mr. Gildea:

Q. Mr. Adams, you have a little trouble with your hearing?

A. Yes.

Q. Did you have that trouble before Mr. Baus was hurt?

10 A. No, I didn't have that, this come on last fall, I had the "flu," and that affected my hearing so I can't hardly hear.

Q. Your hearing was all right when Mr. Baus used to sell you vegetables, was it?

A. Yes.

Q. You never paid any particular attention to Mr. Baus, did you?

A. No, I didn't have any occasion to pay particular attention to his health.

20 Q. You never paid any particular attention to see whether or not he looked healthy, did you?

A. No.

Q. And you had just the ordinary dealings that a man purchasing produce from a huckster would have?

A. Yes.

Q. And that was the only dealing you had with him?

30 A. That is the only dealings we had, buying truck off him.

Mr. Devlin: That is all, I will recall Mr. Meaney.

JAMES MEANEY, recalled for the plaintiff.

Re-direct examination.

By Mr. Devlin:

Q. From the time you got into the automobile and Baus got in, what space of time did it take you to start that machine, to the best of your ability?

A. Four or five seconds. 10

Q. Your car was a Ford truck, wasn't it?

A. It was.

Q. You said as you started you held your hand out?

A. I did.

Q. Was it your left hand you held out?

A. The left hand.

Q. As you held that hand out where were you looking as you held your hand out?

A. When I got in the car I looked both ways 20 and as I throwed one hand out I kept my right hand on the wheel and I looked down and saw nothing that would interfere with my turning.

Mr. Devlin: That is all.

Re-cross examination.

By Mr. Hunt:

Q. Mr. Meaney, you testified at the former trial 30 of this accident, didn't you?

A. I did.

Q. And I suppose that your purpose at that time was to tell the facts of this accident just as near true as you could state them, is that correct?

A. That is.

Q. The first trial was less than nine months after the accident, this trial is more than two years and nine months after the accident; that is true, isn't it?

A. I guess it is.

Q. When do you think your recollection as to what took place was most distinct, at this trial or at the former trial?

A. I don't know, I think I would remember the  
10 same ten years from now.

Q. Suppose that you testified one way today in regard to certain incidental matters and you testified in quite a different way at the earlier trial more than two years ago, not intending in either case to state anything falsely, on having the discrepancy called to your attention, which story would you consider more likely to be correct, the one you gave two years ago or the one you gave now?

20 Mr. Devlin: I object to that, if he has any other testimony this witness gave he may ask him; he makes an argument with the witness and asks the witness' opinion.

By the Court: It seems to me, Mr. Hunt, that the proper way, you have his testimony at this trial and if he testified differently before you can show that fact and it becomes a question for the jury.

30 Mr. Hunt: I am going to show that fact in due course. I think I have the right before showing it to ask him what his opinion is as to which narrative is more likely to be correct, the one given eight and a half months after the accident or the one given now almost two years and nine months after the accident.

Mr. Devlin: I submit that can be done after he has put the questions to the witness, you give the witness a chance to answer them in some way, this long request for his opinion, what he thinks of certain testimony, is totally a matter for the jury. I think the proper way is to ask him if he testified at a certain time and place and quote from the record.

By the Court: I think that is what I said should  
10 be done, Mr. Devlin, I think I will permit you to do as I suggested.

Mr. Hunt: Then you overrule my question?

By the Court: Yes.

Mr. Hunt: May I have an exception?

20

By the Court: Yes.

Q. I am going to read from page 37, line 11, of the record of the former trial.

Mr. Devlin: Page what?

Q. Page 37, line 11, question put to Mr. Meaney on cross-examination: "Well now, you think no  
30 more than thirty seconds elapsed from the time you had taken this look until the time when you had set your car actually in motion, right?"  
Answer: "I don't think so, because the car was running—" Did you say that?

A. No more than thirty seconds? I know it was no more than thirty seconds.

By the Court: The question is, did you so testify at the former trial?

A. I couldn't tell you what I testified to at the former trial.

Mr. Hunt: I offer the printed record of the former trial, page 37, lines 11, 12, 13, 14 and 15.

10 By the Court: That has been read into the record.

Mr. Hunt: I don't know whether I understood your answer or not, I don't want it repeated but I would like the stenographer to read it.

By the Court: Yes, the stenographer may read that.

20 (Last question and answer read by stenographer.)

Q. The question is, Mr. Meaney, did you give this answer which I have read from the record of the former trial?

A. I couldn't tell you what that answer was at the present time, but if I understand your question right now—

30 Q. Never mind, I don't want any comment. Now, Mr. Meaney, I will read you from page 33 of the record of the former trial, beginning with line 8.

Mr. Devlin: What page, 33?

Q. Page 33, line 8, a question put to you on cross-examination. Question: "You don't know how much time intervened between the moment when

you got in and the moment when you actually put your car under way, do you?" Answer: "I don't think it was a half a minute." Question: "You don't think it was a half a minute?" Answer: "No, sir. Because I had it running and all I had to do was put the clutch down and release it and turn." Question: "Well, do you think it was perhaps about half a minute?" Answer: "I don't think it was—I don't know. I wouldn't want to swear to the exact time, but it wasn't over that, I don't think." Question: "By half a minute you mean thirty seconds?" Answer: "Yes, I was ready to go as soon as I got in the car." Did you give these answers that I have read in response to these questions I have read at the former trial?

A. I don't remember the questions or answers now.

Mr. Hunt: I offer in evidence record of the former trial, page 33, beginning with line 8 and continuing to line 22, inclusive. 20

By the Court: It has already been read into the record.

Mr. Devlin: The record is in, you have already read it in.

30 Q. If this record of the former trial was correct, you were then talking about one-half minute by which you said you meant thirty seconds, as to the time that elapsed between the moment when you got in your car and the moment when you actually put your car under way, do you mean to say now, as you did say a few minutes ago, that instead of being a half-minute or thirty seconds, that

time was three seconds or four seconds, as you said a second ago?

A. I said five or six seconds, it would only take me that long to release the clutch to start.

Q. I ask you entirely independent of any answer you gave at the former trial, how much time intervened between the moment that you looked up and down that street for approaching trolley cars, which which was before you had got into your automobile, and the moment when you started to pull away from the curb with your automobile to make the turn?

A. I didn't have a stop watch, I looked up and down the street, got in the car, released the clutch and started.

Q. You said yesterday that after you got in the car you released the emergency brake.

A. I would have to do that to start the car.

Q. You said also that you adjusted your gas and spark?

A. That is already adjusted when I turn that crank.

Q. Didn't you say yesterday that when you got in that car you adjusted your gas and spark?

A. I adjust that when I start the machine.

Q. You adjusted it again when you got in the car?

A. Maybe I did.

Q. You testified truthfully when we went over that yesterday?

By Mr. Devlin: I object to this arguing with the witness. Let him ask questions.

Mr. Hunt: All this ground was gone over yesterday and I am surprised to have the witness speak today in such contradictory terms.

Q. You couldn't possibly stand in front of a Ford truck that you had just cranked and set the engine running, turn around and look down the street in this direction, up the street in this direction, come around and get in that seat, have another man get in and sit down beside you and get that car from the curb and actually in motion in four seconds.

A. From the time I released the clutch until I was ready to go I said was four or five seconds. 10

Q. How much time was it from the moment when you stood out on the street in front of your car and looked for trolley cars to the time when you released this clutch, after you and Baus both climbed into that car and you had made the necessary releases to get started?

A. I couldn't tell you how quick I moved from the time I got off the pavement until I got in the car, I looked up and down and there was nothing in sight. 20

Q. You weren't on the curb when you looked up and down, were you?

A. I was on the curb after I had started the engine ready to go, then I got in and he got in right after me.

Q. And then you moved?

A. Yes.

Q. Without looking again?

A. I was looking down and I threw my hand out to the left. 30

Q. When you were looking down which way does that make you look?

A. South.

Q. The same direction this car came in?

A. Yes.

Q. You told us yesterday you could see on that street for three-quarters of a mile?

- A. Yes.  
 Q. You told us this car had lights lighted?  
 A. Yes.  
 Q. You hadn't lighted your automobile lights until you got in?  
 A. No, because it runs with the engine.  
 Q. You mean to say you were looking down South Clinton Avenue as you pulled away from this curb and you didn't see this trolley car coming?  
 10 A. I do.

DR. HOUGHTON SMITH, sworn for the plaintiff.

Direct examination.

By Mr. Devlin:

- 20 Q. Doctor, how long have you been a practicing physician?  
 A. Since 1903.  
 Q. What school did you come from?  
 A. University of Maryland.  
 Q. Where have you practiced since 1903?  
 A. I have practiced in Trenton for twenty years.  
 Q. Do you know Mr. Baus?  
 A. I know him, yes, sir.  
 Q. How long have you known him?  
 30 A. The first record I have of treating anyone in his family was 1907.  
 Q. Have you treated the family since that?  
 A. Yes, sir.  
 Q. Did you ever treat him?  
 A. I have a record of treating him once in 1920.  
 Q. What for?  
 A. He had a cold.

- Q. Did you see him often since 1920 and 1921?  
 A. Yes, sir.  
 Q. How often did you see him?  
 A. His truck was in my way almost every day on the street.  
 Q. Have you talked to him often in 1920?  
 A. Yes.  
 Q. Have you had a chance to observe him physically?  
 A. Yes. 10  
 Q. Have you seen him since the accident?  
 A. Yes.  
 Q. Before the accident were you frequently in his home attending his family?  
 A. Yes, sir.  
 Q. You noticed him in the home?  
 A. Yes, sir.  
 Q. You have talked with him?  
 A. Yes, sir.  
 Q. Did you ever observe this trembling condition 20 of the arm before the accident?  
 A. No, sir.  
 Q. If he had it, you have seen him since the accident?  
 A. Yes, sir.  
 Q. If he had that would you have observed it?  
 A. I think it is very likely that I would.  
 Q. Did you notice the trembling of the head before the accident?  
 A. No, sir. 30  
 Q. Since the accident?  
 A. Yes.  
 Q. If that had been there before this accident would you have been likely to observe it?  
 A. Yes, sir.  
 Q. Have you noticed any change in his speech before and since the accident?

- A. Yes.
- Q. What has been that change?
- A. That hesitancy and trembling.
- Q. How about thickness?
- A. Thickness, too.
- Q. What other things have you observed about him since the accident that you didn't observe before the accident?
- A. I don't understand the question.
- 10 Q. Have you observed anything since the accident other than I have told, more than I have suggested to you that wasn't existing before the accident, generally his outward condition?
- A. There has been quite a change I think.
- Q. In what way do you mark that change?
- A. He hasn't been as alert.
- Q. You didn't attend him for this accident, did you?
- A. No, sir.
- 20 Q. But you have been the family physician?
- A. I have attended members of the family.
- Q. You have had a chance to talk to him?
- A. Yes, he has been in the sick room when members of his family have been sick.

Cross-examination.

By Mr. Hunt:

- 30 Q. Doctor, you said you had a record of treating Baus in 1920, have you got that record with you?
- A. Yes, sir.
- Q. May I see it, please?

(Witness produces record.)

- Q. Is that the original record?
- A. Yes, sir.
- Q. Only one you have of the case?
- A. That is the only one I have.
- Q. Is this your day card or is this the entry transferred from a day card?
- A. I only take a notebook that is only good for one day and these cards are entered from that.
- Q. Have you got the notebook with you?
- A. No, not for 1920. 10
- Q. This is transferred from a notebook then?
- A. Yes.
- Q. The entry is December 28, 1920?
- A. I think so.
- Q. Can you tell at this date whether what is set down here on this entry is all that you set down in the notebook at the time you examined Mr. Baus on this occasion?
- A. That is all the record I have.
- Q. Can you tell at this date whether what is set down here on this entry is all that you set down in the notebook at the time you examined Mr. Baus on this occasion? 20
- A. Yes.
- Q. You are quite sure that your notebook wouldn't contain any other memoranda relating to the man's condition at that time?
- A. I am certain of that.
- Q. You wouldn't have asked him about his appetite or his bowel functions or take his pulse or 30 take his temperature and made an entry of the data of that kind in your notebook?
- A. No, sir, that tells it all to me, that is all the record I need.
- Q. You don't make any record of your examination of the patient?
- A. Not beyond the cause.

Q. In this case you set it down that this man had a cold in the head?

A. That is all.

Q. How often did you see Mr. Baus in the year 1921, just let me see the card once more, will you?

A. Well, he was on the street, I used to see him very often I should say.

Q. Very often on the street, when you would see him on the street perhaps you would be driving by  
10 in your automobile?

A. Yes, sir.

Q. And he was driving by in his truck?

A. Yes, sir.

Q. You lived in the same neighborhood or nearby to each other?

A. Yes, sir.

Q. And most of the time that would be the case, wouldn't it, that you would pass or he pass you in the automobile?

20 A. Yes, sir.

Q. Were you ever in his house during the year 1921?

A. I couldn't say positively without looking at the card but his wife has been sick considerable and I probably have.

Q. I ask you to look at the card and see whether you have ever been in his house during the year 1921?

A. May 20, 1921.

30 Q. How do you know you were in his house, the card doesn't say so, the card simply sets down the treatment to his wife?

A. Acute indigestion and the price is a house call so I take it it was a house call.

Q. Were you in his house on any other occasion in 1921?

A. I can't say I was.

Q. The card doesn't show it?

A. No.

Q. Your calls to his house were simply professional calls?

A. Yes, sir.

Q. If you had made a call your card would show it?

A. Yes.

Q. If your card doesn't show it you haven't been at his house at any time other than that in 1921? 10

A. I wouldn't likely be there?

Q. Were you in his house during the year 1921, until April 29, 1922?

A. June 2.

Q. That isn't before April 29, then you were not?

A. No.

Q. On this occasion in 1921 you were treating his wife, weren't you?

A. I believe so, his brother was sick nearly two months too. 20

Q. The card says you were there to treat his wife?

A. Yes, sir.

Q. Did you see him there?

A. I think I did.

Q. On that occasion?

A. He was usually there when she had these sick spells and he was usually the man that called me up.

Q. And that is the reason you say you think you did? 30

A. That is the reason.

Q. He didn't consult you about his condition at that time?

A. No, sir.

Q. You had no particular occasion to look at him, is that right?

A. That is right.

Q. You see the man sitting here, don't you?

A. Yes, sir.

Q. You observe the character of the trembling?

A. Yes, sir.

Q. Is trembling of that character a disease or a symptom of a disease.

A. Well, I should judge it was a symptom of a disease.

10 Q. It is a symptom of a disease, isn't it, and the disease of which it is a symptom is an actual lesion of a certain part of the brain, that is correct, isn't it?

Mr. Devlin: I didn't offer this man as an expert in any way, I offered him to state what he found in his observation, now, I think that if he is going to be examined along the expert line he ought to be the witness of the other side. I haven't examined this man along the expert line at all.

20

Mr. Hunt: The witness claims to be the family physician and he knew this man before the accident and since the accident. That he did not have this tremor before the accident that he now has.

By the Court: That was as far as his testimony went.

30 Mr. Hunt: That was as far as his testimony went, yes, but the reflection which the plaintiff's counsel will draw from that testimony is that there is a connection between the accident and the tremor. The witness on the stand knows perfectly well there is not and I think we have a right to show that he knows there is not.

Mr. Devlin: What justification is there for Mr.

Hunt making that assertion? The witness knows perfectly well there is not. Does he suppose I brought a witness here to say deliberately that that wasn't true? I can't understand such a reflection being brought in here. You seem to impute that this case has been tried on a basis of perjury. That has been his talk from the very first day this case was tried.

By the Court: I don't think that is the situation. 10

Mr. Devlin: I will withdraw my objection.

Q. (Question repeated.) It is a symptom of a disease, isn't it, and the disease of which it is a symptom is an actual lesion of a certain part of the brain, that is correct, isn't it?

A. I don't consider him a patient of mine. I didn't make any examination of him since the accident. 20

Mr. Hunt: I ask that that be stricken out. I am asking a general question about this disease.

By the Court: I don't think the answer is responsive.

Q. (Question repeated.) It is a symptom of a disease, isn't it, and the disease of which it is a symptom is an actual lesion of a certain part of the brain, that is correct, isn't it? 30

A. Brain or nervous system.

Q. The lesion takes place in the brain, doesn't it?

A. I think that is the understanding of it.

Q. This word "lesion" to put it in simple lan-

guage means a breaking down of the brain tissue, a pathological condition of the tissue?

A. Some pathological conditions, yes, sir.

Q. The part of the brain in which this disease exists when a tremor of this kind will manifest itself, is the part known as the cerebellum, is it not?

A. Generally considered that.

Q. Where is the cerebellum? Put your hand on it.

A. (Indicating.)

10 Q. Down at the base of the brain on the neck?

A. The lower part of the brain.

Q. What is the name of the disease with lesions of that part of the brain with symptoms of the kind this man displays?

A. It is called Parkinson's disease.

Q. Parkinson's disease, is it not? P-a-r-k-i-n-s-o-n?

A. Yes, sir.

20 Q. This Parkinson's disease is one name. The disease is also known by another name also, isn't it?

A. Sometimes called shaking palsy.

Q. And sometimes called a third name, paralysis agitans, is it not?

A. Yes, sir.

Q. What is the cause of that disease?

A. I wish I knew.

Q. Medical science does know, doesn't it?

A. It is given as worry and fright and pain.

30 Q. A moment ago you said you wished you knew what the cause was, you do know what the cause is, don't you?

Mr. Devlin: I object, that isn't fair to the witness, the witness said he didn't know.

Mr. Hunt: You are not going to murder this

record. If you will address the Court, we will get on faster.

Mr. Devlin: The witness said he didn't know.

By the Court: He said he wish he knew.

Mr. Devlin: Indicating, he didn't. I am addressing the Court, if you please. Now the attorney says medical science says so and so ——— 10

Mr. Hunt: No, I didn't say that.

By the Court: Read the question.

(Question read by the stenographer.)

Mr. Devlin: Why should this witness who has not been an expert, not offered by me as one, be handled in this manner, he is asked his opinion, he gives it. This examination isn't fair to this witness because I haven't offered him as an expert and he has never made a diagnosis since this injury. I offered him really as a physician who found him as a layman would, the method of examination is absolutely unfair. 20

Q. Now, Doctor, worry, fright and pain are what in medical parlance would be called the exciting causes for this disease, are they not? 30

A. They are given as causes usually.

Q. Exciting causes, is that correct, will you answer, please?

A. They are given as causes, I won't say exciting causes.

Q. There is a distinction in medicine between exciting causes and underlying causes, is there not?

A. Yes, sir.

Q. What medical men call underlying causes is the thing that really causes a condition, really is responsible for its existence, isn't it?

A. Do you mean susceptibility?

Q. Just read the question. I think you will understand it.

(Question repeated.)

10

A. I don't just distinguish the idea.

Q. Let me apply it in the case of this particular disease. The underlying cause of that disease is hardening of the arteries, isn't it, one of the underlying causes, at least?

A. I would say that it was a cause. A great many people have hardening of the arteries without having paralysis agitans.

20

Q. Now, Doctor, you say a good many people have hardening of the arteries without having paralysis agitans?

A. Yes.

Q. Now, I ask you, Doctor, does anybody have paralysis agitans without previously having hardening of the arteries?

A. I don't know.

Q. You don't know?

A. No, sir.

30

By the Court: That is his answer; there is no use repeating it.

Q. Hardening of the arteries is induced many times by severe exposure to all kinds of labor, all kinds of weather, accompanied by excessive labor, isn't it?

A. I wouldn't say it always was.

Q. Commonly, when it is so called, you speak of it as premature age, don't you?

A. They say a man is as old as his arteries, if that is what you mean.

Q. It is also produced by various indiscretions in the way of living, isn't it?

A. It may be, sometimes.

Q. Worry and fright and pain don't produce a hardening of the arteries but only bring on, excite the outward manifestations that flow from the hardening of the arteries that is already there, don't they, that is the sense of it that much fright or worry or pain is responsible for shaking palsy?

10

A. I don't know.

Q. You don't know. Now, Doctor, how long was it after Mr. Baus received this injury that you first saw him?

A. I couldn't say, he has been around the street.

Q. I mean, how many times have you seen him in such a way as to notice his condition?

20

A. I haven't treated him at all; I have only seen him on the street.

Q. Do you know when he first began to suffer from these tremors?

A. No.

Q. Do you know when, I mean, from your own knowledge, from your own observation, on what part of the body did the tremor first appear?

A. The first I noticed was the hand.

30

Q. Which hand?

A. The right hand.

Q. What do you notice now?

A. I notice that his jaw and head and voice and hand tremble.

Q. His jaw, head and voice and what else?

By the Court: Hand.

A. Hand, jaw and head.

Q. Which hand?

A. His right hand.

Q. Will you come and look at Mr. Baus, please? Mr. Baus, would you mind putting both hands on the table? Is the left hand affected now, Doctor?

A. Yes, sir.

10 Q. Now, the progress of the disease known as paralysis agitans or Parkinson's disease or shaking palsy, is that it, attacks first the right hand, does it not?

A. No, sir, it attacks the left first.

Q. Usually it attacks the right first?

A. No, sir.

Q. Then after it begins no matter where or how it begins, what is its progress?

A. It is gradual.

20 Q. And gradually it comes to affect more parts of the body, doesn't it?

A. Yes, sir.

Q. If it starts in one hand, after awhile it affects both hands?

A. That is sometimes the case.

Q. And after awhile it affects the head?

A. Yes, sir.

Q. And after awhile it affects the lower limbs, is that right?

30 A. It does in some cases.

Q. It affects the voice after awhile?

A. Yes, sometimes it doesn't.

Q. Usually it does?

A. Usually it progresses to that stage.

Q. In fact it affects the throat so that swallowing is difficult?

A. Sometimes.

Q. That is a later stage?

A. Yes.

DR. MARTIN W. REDDAN, SWORN for the plaintiff.

Direct examination.

By Mr. Devlin:

10

Q. Dr. Reddan, you are a graduate of Jefferson School, are you?

A. Jefferson Medical College.

Q. Of Philadelphia?

A. Yes.

Q. How long have you been practicing medicine?

A. Since 1900.

Q. And surgery also?

A. Yes.

20

Q. Do you know Leonard Baus?

A. Yes.

Q. You attended him after this accident?

A. Yes, sir.

Q. The end of April, 1922?

A. Whatever the date was.

Q. What did you find, what did you have to do for his leg?

A. He had a compound fracture of the leg as I recall it about half-way between the knee and the foot. We tried to save the leg, tried to restore the union in the bone and tried to heal the soft parts of the leg up. We were unsuccessful in that, it was so badly infected that we couldn't clean it up and we amputated it and I believe sometime later I attempted to hurry the healing by closing it in still more, that is my recollection.

30

Q. That was how many operations?

A. Three.

Q. After all, I show you a bill, possibly it can refresh your memory as to the time. He was in the hospital most of this time, wasn't he?

A. I think he was in the hospital during the entire time.

Q. And during that period did this injury induce pain and suffering?

10 A. Yes, sir.

Q. You attended him during that time, didn't you?

A. Yes, sir.

Q. And you have examined him lately?

A. Yes, sir.

Q. And you examined him before the last trial also?

A. I think so.

20 Q. That wound remained open, do you know how long?

A. No, sir, I don't.

Q. He says that wound didn't close until November, 1924. Now, you have observed this man's condition, the trembling and the thickness of speech, what have you to say about that?

A. That would indicate some severe involvement of the nervous system.

Q. Will you try and make that plain to the jury, reduce it to language less technical?

30 A. Well, is simply means that some part of the brain or spinal cord has been injured or become diseased.

Q. This shaking that he has of the head and defect of speech and severe trembling of the hand, assuming that this man was, so far as he knew, in good health before the time of this accident, didn't have any of these conditions so far as he could see,

and that since this accident this wound didn't heal until November, 1924, and that he is trembling in his hand, head and his speech is thickened or defective and his memory is poor, it isn't as good as it was before this accident, and he is unable to do any work of any kind, what do you attribute this condition to?

A. To his accident, to his injury.

Q. You spoke of this leg being infected, I think you said it became infected or you feared infection 10 or something?

A. It was infected at the time of his admission to the hospital from the injury.

Q. It was infected from the injury?

A. Yes, sir.

Q. He was there about six weeks in the hospital and you were trying to cure the infection before you amputated?

A. I think that was about the time.

Q. I take it from the bills of the hospital, try to 20 refresh your memory from the hospital bills, from April 29 to November 11.

A. It was a long period of time before we took the leg off because we always try to save all we can.

Q. What kind of a break was that, Doctor?

A. It was a break in which the bones were crushed into small pieces and some of those pieces pushed out through the muscle and skin.

Q. Then he was back in the hospital again on No- 30 vember 12, 1922, to December 30, 1922?

A. I don't remember the dates.

Q. But he was back there again. Now this infection that he received from the injury, did that infection have anything to do, as being a cause, of his present condition in speech, in voice, in trembling and injury to memory?

A. It would probably be a very large contributing cause with other things.

Q. What would you say the other things were?

A. Well, the pain.

Q. Pain?

A. Loss of sleep, the fright resulting from being in an accident, the worry about his finances, all originating in the original injury.

Q. This man was a large man when you saw him?

10 A. Yes, he was.

Q. And looked like a well nourished man?

A. Very well nourished.

Q. Vigorous?

A. Yes, sir.

Q. What have you to say of whether or not he will recover or become normal in this shaking and memory and shaking of the hand and head and speech?

A. I do not believe he will.

20 Q. Do you think that from your observation since the last trial or before the last trial, was this man going to suffer any more pain?

A. I don't think he should suffer more, more pain unless some other organs that are at present affected would become affected, I don't think he will suffer much more pain.

Q. What do you think of the wound staying healed, will it likely stay healed?

A. Yes, I think it will.

30 Q. When you testified before I think you said it would heal anywhere from two weeks and five years, I think you said that.

A. That would be true, it is an indefinite time.

Q. Have you had an opportunity to observe his memory?

A. Not particularly, I haven't tested it in any particular way.

Q. Have you had any opportunity to observe it in the time you attended him?

A. I do not believe I ever paid much attention to his memory.

Q. You haven't paid much attention to it?

A. No, sir.

Q. Assuming that this man was a man that worked, selling truck, drove an automobile to Philadelphia three times a week, sometimes during the night to get his goods, worked every day, had not 10 been ill except for a cold, but no serious illness in many years up to the time of this accident, what do you attribute the present condition of his health to?

Mr. Hunt: The question is objected to. It can't stand as a hypothetical question because it does not include all the elements that should enter into the hypothesis. If the Court wants me to suggest some, I will do it.

20

Mr. Devlin: All right, go ahead.

Mr. Hunt: There must be included also the fact testified to by the man that this work which you described was very laborious, that it involved very long hard days, that it had to be done in all kinds of weather, and he had to do it in all kinds of weather.

Mr. Devlin: Anything else you want to add? 30

Mr. Hunt: I am content that it should be answered with this addition.

Mr. Devlin: I think we all work hard, to attach any importance over his hard work, over mine, over yours, or any other person, it is a joke to me.

Q. Assuming this man is a man of good health, following the produce business, involving going to Philadelphia two and three times a week, sometimes at midnight and through the night —

By the Court: Two o'clock in the morning was the earliest time.

Q. (Continuing.) Working the next day, buying  
10 and selling his goods, in all kinds of weather, and he has good health with the exception of a cold, and he follows that for a period of over twenty years, up to the time he has this accident on April 29, 1922, the nature of this accident is such as you have described, as you attended him for, what do you attribute his present condition to?

Mr. Gildea: That is objected to if the Court please.

20 Mr. Devlin: I would like to know which of you two is the attorney, who is going to do the objecting?

Mr. Gildea: We both are.

Mr. Hunt: Mr. Gildea is associated with me —

By the Court: Mr. Hunt made the last objection  
30 and suggested the form in which the question should be put, if it is not in the form suggested by Mr. Hunt, you may call it to Mr. Devlin's attention.

Mr. Devlin: I suppose Mr. Peartree will make the next objection.

By the Court: Do you object to the question?

Mr. Hunt: No, I do not object to the question.

Q. Assuming this man is a man of good health, following the produce business, involving going to Philadelphia two and three times a week, sometimes at two o'clock in the morning, working the next day, buying and selling his goods, in all kinds of weather, and he has good health with the exception of a cold and he follows that for a period of over twenty years, up to the time he has this accident on April 29, 1922, the nature of this accident is such as you have described, as you attended him for, what do you attribute his present condition to? 10

Mr. Hunt: He hasn't got in there what the man said about the laborious work.

Mr. Devlin: All work is laborious.

By the Court: The testimony of the witness was 20 that his work was laborious.

A. A man doing that work today, meeting with an injury tomorrow and very shortly thereafter or almost immediately developing these nervous symptoms I would say that his nervous symptoms were due to his injury.

Q. That is, his condition today is due to this injury, is that what you mean?

A. Yes, sir. 30

Mr. Devlin: Cross-examine.

By the Court: We will take an adjournment at this time and come back at two o'clock.

Mr. Devlin: Before adjourning, I was going to

ask the Court, I will want Doctor Reddan here when their doctors take the stand and I would ask the Court to set a time when their doctors shall take the stand. I don't care when it is, I think Doctor Reddan will try to make his appointments to suit me.

Doctor Reddan: If possible, today, I have other engagements for tomorrow.

10

By the Court: I hope counsel will arrange their case to accommodate the physicians.

Mr. Hunt: My only difficulty, your Honor, is this, that I can't put our medical witnesses on the stand until after they have heard the testimony that will be given by three or four lay persons concerning what they observed of this trembling before the accident, therefore, I shall have to hold my doctors back until last.

20

By the Court: The Court can't attempt to regulate what your procedure is going to be.

Mr. Devlin: The only reason I asked the Court to control or set an hour, it is immaterial to me, but I don't want this busy man —

30

By the Court: May I ask you this, will it take over an hour to put in the testimony of those witnesses?

Mr. Hunt: I think an hour would be sufficient.

By the Court: I am perfectly willing, if counsel should prefer, to go on with Dr. Reddan's testimony

now and finish his cross-examination at one o'clock; which would be most satisfactory to you.

Dr. Reddan: Today, I am free, I can accommodate you at most any time.

By the Court: We will take a recess now and come back at two o'clock.

Mr. Hunt: We have a doctor here that has not been present, and I would like to have the Court's permission to have him examine the plaintiff.

By the Court: With Doctor Reddan being present.

Trenton, N. J., Tuesday, Jan. 27, 1925. 2.00  
o'clock, P. M. 20

DR. MARTIN W. REDDAN, on witness stand.

Direct examination.

Resumed by Mr. Devlin:

Q. Doctor, before you start, this man got struck on the head from which he had some lumps or cuts, would they, added to the other conditions that I have given you, bring about the present condition? 30

Mr. Hunt: I object to that question on the ground that the question does not indicate the severity or location of the blow on the head, and on the further ground that it is unnecessary to put a hypothesis to a witness of this kind because this witness attended

the man in the hospital and is in a position to know just what the head injuries were.

By the Court: The doctor might be questioned as to whether he observed the condition of the head or not.

Q. Did you find a condition of the head?

A. Yes, sir, he had a scalp wound and brush burn  
10 of the scalp.

Q. Would the condition you found in the head, added to the hypothesis that I put to you, the other conditions, result in the condition of this man today, would it be a contributing cause?

A. I would think it would be a contributing cause.

Q. With the others?

A. Yes, sir.

Q. I think you have said, I am not sure, answer if you didn't answer it, in your judgment, will this  
20 man be able to work again?

A. I do not believe he will.

Mr. Devlin: Cross-examine.

Cross-examination.

By Mr. Hunt:

Q. Doctor, in what year did you get your degree  
30 of medical doctor?

A. 1900, in June, 1900.

Q. And I think you immediately entered upon a course of special study and practice in surgery?

A. No, I was in general practice for eleven or twelve years, doing everything from corns to itches of the scalp.

Q. The removal of corns involves a surgical operation, doesn't it?

A. Yes, sir.

Q. And in all those eleven or twelve years you were turning toward surgical operations, weren't you?

A. I was physician in over a thousand obstetrical cases at the same time.

Q. During the past 9 or 10 years you have been devoting your attention very closely to surgery, 10 haven't you?

A. Yes, sir.

Q. You have been practicing surgery and studying surgery?

A. Yes, sir.

Q. And I think I wouldn't do you any injustice by saying that in that time you have mastered the art of general surgery as well as any man in this state, isn't that true?

A. Modesty prohibits. 20

Q. It is a very exacting position. You have to work to attain the position you have attained as a surgeon?

A. Yes, sir.

Q. Neurology is another distinct branch of the medical branch aside from surgery?

A. There is neurological surgery as well as eye surgery or ear surgery.

Q. You have not been following neurological surgery as I understand it. 30

A. I was detailed by the war department to the School for Neurological Surgery during the war, at the University of Pennsylvania, under Doctor Frazer.

Q. How long were you there?

A. About three months.

Q. Do you know Doctor Funkhouser at the State Hospital for the Insane?

A. Yes, sir.

Q. Neurology is the study and treatment of nervous diseases, isn't it?

A. Yes, sir.

Q. Paralysis agitans is a disease which follows within the province of a neurologist rather than within the province of the surgeon?

10 A. It falls within his special province, it falls within the realm of any medical man.

Q. You don't operate to effect a cure for paralysis agitans, do you, Doctor?

A. No, sir.

Q. The main business of a surgeon, of course, is operations?

A. Yes, sir.

20 Q. Now, Doctor, before lunch, in answer to a hypothetical question which Mr. Devlin put to you, you expressed the opinion that the trembling condition of Mr. Baus was caused by this injury sustained in the accident which has been testified to today, is that correct?

A. Yes, sir.

Q. Now, I ask you to suppose that a number of credible persons, say three or four, should state under oath that Mr. Baus had this trembling of the hands before the accident took place and while he still had both his legs, would that affect your opinion at all?

30 A. It might or it might not, it would have if it was a doctor who had observed those things.

Q. If you assume it to be true that the man did have this trembling of the hands to such an extent that it was visible to the eye of a lay observer before the accident, then you wouldn't say that the accident caused the tremor of the hand, would you?

A. Not if it were present before, no, sir.

Q. You would say in such a case that the trembling of the hand came from some cause which existed prior to the accident?

A. If it were present before, yes.

Q. If the Court will bear with me just a moment, it is necessary to look at something here. Now, if you should assume that Mr. Baus had this trembling of the hand and also had a trembling voice in the month of October and in the month of November, 1921, is his condition today different from what you would expect it to be on the basis of such a supposition? 10

A. In October, 1921, his trembling of his voice and hand might have been due to a dozen different causes.

Q. If he had it then you would expect to see him have it today still and progress to about the extent it is today?

A. Not at all, it might have been due to some transient thing which might have cleared up. 20

Q. Suppose he had it in November, 1921, and it was due to paralysis agitans, then you would expect to see today about the same condition you do see in a man of his physical make-up?

A. Paralysis agitans is a progressive disease. If he had paralysis agitans in 1921, he would naturally have more symptoms at the present time than were present then because as it progresses it gets worse.

Q. Doctor, I will read a question which was put to you at the former trial — 30

Mr. Devlin: What page?

Q. Page 140, line 19: "Doctor, you knew before this morning that you were coming here today to testify in this case, did you not?" Answer, "Yes,

10 sir.” Question, “Now, if this man had sustained, in this accident, any serious injury to his head, you would not fail to remember that, would you?” Answer, “I don’t think I would.” Question, “You have no recollection of having done anything to effect a cure of an injury to the head, have you?” Answer, “Beyond the treatment of the scalp wound, that is all, sir.” Question, “And that injury on the head that you did treat, had to you the appearance of a scalp wound?” Answer, “Yes.” Question, “That is an abrasion or laceration of the flesh?” Answer, “Yes, sir.” Doctor, you gave, at the former trial, the answers that I have just read to you?

A. I believe I did.

Q. You don’t mean to tell the Court and jury today that this man sustained any serious injury to his head through that collision?

A. I don’t think it was a serious injury.

20 Q. Have you got here the record of this man’s case at the time you treated him?

A. No, sir.

Q. You have such a record?

A. There is a hospital record.

Q. If there was such an injury the record would show it, wouldn’t it?

A. If we thought it serious it would show it.

Q. Won’t you please bring that record here tomorrow so we can see what it does show?

A. Yes, sir.

30 Q. An injury to the cerebellum sufficient to produce paralysis agitans would be a much more serious injury than any you noticed about this man’s head, wouldn’t it?

A. Well, I don’t know that the injury to his head produced anything, or any paralysis agitans.

Q. Do you claim that the injury to his head pro-

duced the shaking condition that you observe in him now?

A. Not alone, no, sir.

Q. Do you claim the injury to his head and injury to the leg did it?

A. If he had none of it before, yes, sir.

Q. You don’t know whether he had any of it before or not, do you?

A. I never saw him before.

Q. If he didn’t have it before, then the injury to the head and leg caused it, is that right? 10

A. That might essentially aggravate what was present.

Q. You couldn’t produce what was not already present?

A. No, sir.

Q. Without anything to aggravate, paralysis agitans is a progressive disease, is it not?

A. Usually, once it starts, it is.

Q. It is an incurable disease, isn’t it? 20

A. Once established, it is.

Q. How many cases of paralysis agitans have you treated since April, 1922?

A. I don’t treat any of them, I have seen four.

Q. How have you seen them, casually?

A. In the hospital wards.

Q. Does that include Mr. Baus, those four?

A. No, sir.

Q. You have seen them in the hospital wards as you passed through? 30

A. Yes, and being interested in that type of thing, I have stopped and examined them, I haven’t taken any history or examined them, but I have observed them.

Q. Why do you say Mr. Baus wasn’t suffering from paralysis agitans?

A. I do not say he was not suffering from paralysis agitans.

Q. You say he is suffering from paralysis agitans?

A. He has a good many symptoms of paralysis agitans.

Q. Do you think he has got paralysis agitans?

A. A good many symptoms are lacking.

Q. Tell us what prominent symptoms are lacking?

A. One symptom present in paralysis agitans 10 which is called "pill rolling," as though the patient were making a pill with his fingers. Another is what is called "festinating gait," or running gait, when a man has the paralysis agitans, he is usually propelled forward, his body is bent forward, and he has almost a running gait.

Q. What you have just described are the symptoms of a pronounced case, are they not?

A. Pretty well advanced, yes, sir.

Q. As far as the pill rolling is concerned, that 20 is only an alternative symptom, and there frequently occurs in the place of it what is called tom-tom beating?

A. In all those neurological cases you may have any symptom under the sun.

Q. The tom-tom symptom is the shaking of the hand which this man has, isn't it?

A. I don't think I have heard it in that vernacular, but that is what I would call it.

Q. In some cases that is the manifestation, where 30 in other cases, the pill rolling is the manifestation, is that right?

A. Yes, sir.

Q. You never saw the two together?

A. I couldn't say whether I have or not.

Q. You have never seen the two together, have you?

A. I can't say that I have.

Q. What kind of a gait did you call it?

A. Festinating, that means fast.

Q. That means going fast and leaning forward as you go, for a man to pull forward?

A. His feet try to get under the center of gravity.

Q. A man on one foot and going on crutches doesn't get in that position because he has the outspreading support on each side, he has the crutch and the other good leg, isn't that so?

A. I think he would be in much more danger of 10 falling with the crutch than he would with his own two legs.

Q. It is impossible for you to say that this man would have that gait if he had both feet?

A. I don't think so, he doesn't show it in the remaining foot.

Q. He couldn't show it, could he?

A. No.

Q. It is impossible to run ahead on crutches, isn't 20 it?

A. Yes, but you are also stepping on it.

Q. A man can't run with one limb, can he?

A. Very rapidly, with a crutch, he can play baseball.

Q. Now, Doctor, in any event, this festinating gait is symptomatic of one of the most advanced stages of the disease, isn't it?

A. I have seen it occur two years after the onset of the first symptom in a young man.

Q. That was a greatly aggravated case, wasn't it? 30

A. No, this man is caring for himself and is attending to his business today.

Q. Wasn't that an exceptional case?

A. In my experience it was, yes, sir.

Q. Many victims of paralysis agitans have the disease for ten years before the festinating gait symptom appears, don't they?

A. I believe they might, yes, sir.

Q. What other symptoms are absent?

A. They are the most prominent that I think of now.

Q. Did you testify that in your opinion this man's memory was impaired?

A. No, I said I had not tested his memory, as I recall it this morning.

10 Q. Doctor, this man had a compound fracture of the leg?

A. Yes, sir.

Q. That means that the bones were broken and the end of the bone protruded through the skin?

A. Yes, sir.

Q. That is not an uncommon kind of fracture?

A. No, it is very common.

Q. You have attended a great many such fractures in your time?

A. Yes, sir.

20 Q. The great majority of them you set the bone, giving the tissue such treatment as it requires and save the leg, do you not?

A. In a majority

A. In a great majority, yes, sir.

Q. Why couldn't a skillful surgeon, like yourself, save the leg in this case?

A. There was too much infection in it.

Q. How did the infection get there?

30 A. Coming from his clothing, contact with the ground, the bone being exposed to the air, the skin being broken, a general break will admit infection.

Q. It was infection then, that compelled you finally to amputate the limb?

A. Yes, sir.

Q. After the amputation the stump failed to heal, didn't it?

A. It was a good while healing.

Q. It required a second operation before it healed?

A. That was to try and hurry the healing.

Q. In that second operation, did you amputate anything further, amputate any more?

A. I don't think I did, I wouldn't be sure about that.

Q. What did you do at the second operation?

A. Cleaned it up and drew the two edges of the wound together.

Q. In perhaps 98% of all cases of fractures that 10 require an operation and amputation, similar to this, the healing of the stump takes place without any further operation, does it not?

A. Yes, if you give it long enough.

Q. Why didn't it take place in this case?

A. The tissues at the time of amputation were thoroughly saturated with the blood poison or infection.

Q. Then there was a prolonged infection, wasn't 20 there?

A. Yes, sir, of six weeks' duration.

Q. Then it was this prolonged infection that necessitated this second operation.

A. No, the second operation was not a necessity. The second operation was done to shorten his illness. If we had let it drag along —

Q. It didn't shorten it, however, did it?

A. Yes, I think it did shorten it.

Q. It was the prolonged infection that rendered 30 the second operation advisable, was it not?

A. No, not prolonged infection, it was the delayed healing, long continued duration of the infection which I tried to shorten and bring them edges together.

Q. There wasn't any necrosis of the bone, was there?

A. I don't think so.

Q. If there had been, you would have removed more bone in the second operation?

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

Q. Will the Court indulge just a moment? You joined with Doctor Funkhouser and Dr. Mitchell in examining Mr. Baus during the noon recess of court, didn't you?

A. Yes.

10 Q. Since that time, have you formed any opinion in regard to the man's memory?

A. He seemed to answer questions fairly well in there.

Q. You mean by that, that his memory was fairly good?

A. I would think it was fairly good, yes, sir.

Q. Mr. Baus does tremble, doesn't he?

A. Yes, sir.

20 Q. If he hasn't got paralysis agitans, what has he got which causes him to tremble?

A. Well, he might have what is known as analogous shell shock, he might have a form of Huntington's Corea, many nervous diseases might give you these manifestations.

Q. Doctor, in your experience as a physician and surgeon, I suppose you have treated or had within your observation some hundreds of cases of compound fractures?

30 A. I would believe I had, yes, sir, I know I have had fifty at a time.

Q. And perhaps a smaller number of one hundred cases of compound fracture which involved amputation?

A. Yes, unless the parts are very, very badly lacerated, the blood supply and nerve supply cut off, we save a fair number of legs or number of arms.

Q. In what proportion of compound fractures, fol-

lowed by amputation, do you find, almost three years after the occurrence, such a condition as this of Mr. Baus,—that you call analogous to shell shock?

A. I don't remember.

Q. It is a fraction of one per cent, isn't it?

A. I don't remember seeing any others.

Q. It stands isolated and alone in your experience?

A. To the best of my memory, I haven't seen it in any other case. 10

Q. Corea, that you mentioned, is a disease, isn't it?

A. Parkinson's disease, Huntington's Corea and a number of others. I have very grave doubt about their being distinct diseases.

Q. By that you mean to imply that in your opinion they may be the same disease under the different names?

A. Or different diseases with similar symptoms.

Q. Doctor, in your experience, have you seen other 20 people showing the same symptoms, which Mr. Baus shows here today, who never have undergone any accident or injury?

A. I have seen people suffer from those symptoms that, as far as I know, never had any accident or injury.

Q. As a matter of fact, in most cases, majority of cases, that you have seen that showed symptoms of this kind, have been in persons, so far as you know, who had never suffered any injury or acci- 30 dent, is that right?

A. Yes, sir.

Mr. Hunt: That is all.

Re-direct examination.

By Mr. Devlin:

Q. If this man had paralysis agitans, but it had not shown itself, what would have been the effect of the accident on him or on that disease?

A. If he had paralysis agitans which had not shown itself —

10 Q. Which had not gone to a point of showing its symptoms?

A. I believe that occurrence soon after the injury would be the manifestation, showing up of the disease, would have been entirely due to the accident.

Q. If he had a light case of paralysis agitans, that had not yet come to seriously affect his health, what would have been the effect of this injury on that disease?

20 A. I think it would have made it very much worse and rapidly grow worse.

Q. Would it have brought it forward to the point of giving these symptoms, in other words, aggravate it?

A. Studying this case as I know it, I believe it has.

Q. If he had any other physical defect, either in his nervous system or kidneys or anything else, what would be the effect of this injury on such a condition?

30 Mr. Hunt: I object to that on the ground, first, that there is no evidence of any diseased condition of his kidneys or anything of that sort, and in the second place, that it would not be a material inquiry in any event.

By the Court: I don't recall any evidence with respect to kidneys.

Mr. Devlin: The reason I asked the question is that Doctor Reddan has been asked on cross-examination if he ever seen a case of this kind after an operation and he said, "No," and there seems to be a dispute as to whether or not this man had paralysis agitans, the purpose in my question is to show that if he had any disease that was latent, what the effect of the injury would be to bring it forward to the surface. I think Doctor Reddan said at the last trial that the reason the leg failed to heal — 10

Mr. Hunt: I object to counsel undertaking to state what Doctor Reddan said at the last trial.

Mr. Devlin: You have said so.

Mr. Hunt: I suppose I haven't that right.

By the Court: Let us not argue over that. 20

Mr. Devlin: What is the ruling on the question?

By the Court: The question propounded by Mr. Hunt, I mean, your question to which he objected, I think I will sustain the objection.

Q. Now, Doctor, if he had paralysis agitans that was sleeping or had not developed to a point not to affect his conduct or his work, what would the effect of this accident be on him, on that disease? 30

Mr. Hunt: That is objected to unless the question is put in a different form.

By the Court: I think the question may be answered.

Mr. Hunt: May I have an exception?

By the Court: Yes.

Q. What is your opinion about it, the effect of this accident on it?

A. That it would very likely result in the wakening or stirring up of a disease which was sleeping, which might not have developed beyond that stage except for the occurrence of the accident.

Q. In your opinion, if he had a slight case of paralysis agitans and this accident occurred, is it your opinion that it may not have ever got to the point of being a serious matter?

A. I think it is entirely probable.

Q. Paralysis agitans, as they call it, in your opinion, can it come from an accident of this kind?

A. The symptoms that are called paralysis agitans can be developed or brought forth by an accident and sickness such as Mr. Baus had.

Q. You spoke of infection, can infection, in your opinion, induce a case of paralysis agitans or develop a case that is undeveloped?

A. I believe it can, yes, sir.

Q. You spoke of shell shock on cross-examination, could you describe how this case of Mr. Baus is akin to shell shock?

A. I have seen cases of shell shock almost duplicate of Mr. Baus' condition, and imitative, they will assume the appearance of various diseases, I have seen his case duplicated in shell shocked soldiers.

Q. And how are the conditions of shell shock produced, what will cause shell shock?

A. Sometimes injury, sometimes great fright, exposure, poor feeling and I believe I mentioned great mental tension and anxiety.

Q. During the war, of course, there were many men in the war that had shell shock?

A. Yes, sir.

Q. And it is produced by various means, you have said?

A. Yes, sir.

Q. Then, in your opinion, would this accident that he had with its attendant pain and suffering, is that akin to the conditions that produce shell shock in war times?

A. Practically identical, except for the long exposures that the soldier was under.

Q. It is now almost three years since this injury and taking that into account, is it your opinion that this condition is permanent?

A. I believe it is in his case, yes, sir.

Mr. Devlin: That is all.

Re-cross examination.

By Mr. Hunt:

Q. Doctor, paralysis agitans has well defined symptoms, hasn't it?

A. There is a group of symptoms which are called paralysis agitans.

Q. And they are well defined?

A. Not well defined, no, sir.

Q. It produces a nervous tremor of some part of the body?

A. That, I guess, is constant, I have never known that to be absent.

Q. It always includes a gradual impairment of the speech or voice, doesn't it, eventually, sooner or later?

A. I don't know that that is a part of it.

Q. It is quite customary?

A. It is fairly common in paralysis agitans.

Q. The symptoms of shell shock are as variable as the flowers of the field, aren't they?

A. As related to the nervous manifestations, yes, sir.

Q. In one man they are one thing, in another man they are something diametrically opposite and in still another man they might be anywhere in the  
10 circle that you might derive out of these two poles at opposite ends?

A. The symptoms vary very much.

Q. Those symptoms of shell shock are as variable as the tremor of some part of the body in paralysis agitans is invariable, aren't they?

A. I don't know that you could make that comparison. I will say the best way I know how, that the symptoms of shell shock may be manifested in most any way, that in paralysis agitans the tremor  
20 in every case I have seen, has been present.

Q. Now, Doctor, suppose that in every other respect a man is as sound as a man can be, and he is of the age that Mr. Baus was at the time of this accident, but he has got paralysis agitans, and he has got it to such an extent that it has produced a slight, but noticeable, tremor of the hands, can medical science cure that man or prevent the progress of that disease?

A. I don't think so.

Q. If this gentleman had had paralysis agitans before this accident happened and it had progressed to such a point that a tremor of the hands had developed, that disease would have progressed through its course and to its end whether the man had had any accident, met with any accidental injury or not, wouldn't it?

A. As far as the progress of the disease, yes, as

far as its rate of progress, it might be very greatly hurried by the injury.

Q. Now, I ask you to suppose that Mr. Baus was suffering from paralysis agitans in October, 1921, to such an extent that a tremor of the hand was noticeable, if that were the case, then observing his condition today would you say that the progress of the disease since October, 1921, had been abnormally rapid?

A. It has advanced more than any other case that  
10 I have seen in that length of time.

Mr. Hunt: That is all.

Re-direct examination.

By Mr. Devlin:

Q. And that advance you attribute to this injury  
20 and the pain and suffering he endured?

Mr. Hunt: That is objected to as leading.

By the Court: It is rather leading.

Mr. Hunt: I will withdraw my objection.

A. Yes, sir.

Mr. Devlin: We are through with the medical  
30 testimony at present, and I would like to know if the other side is going to put on their medical testimony now.

Mr. Hunt: If opposing counsel and the Court will permit me to ask of the medical men certain ques-

tions with respect to this condition before the accident —

By the Court: You may proceed to place the witnesses on the stand in the best order you see fit to best serve your case.

Mr. Devlin: I understand what you want to do is put hypothetical questions to your doctors on the ground that this man had this disease before the accident.

Mr. Hunt: No, I don't think I can do it.

By the Court: Proceed with your witnesses.

Mr. Hunt: Has Mr. Devlin rested?

By the Court: Yes.

Mr. Devlin: No, I am not resting.

By the Court: Are you through?

Mr. Devlin: No.

By the Court: Proceed.

Mr. Devlin: I would like to know if you are going to put any medical men on today?

Mr. Hunt: I don't know, if the Court sits late enough, I will do it.

MRS. SUE HENRY, sworn for the plaintiff.

Direct examination.

By Mr. Devlin:

Q. Where do you live, Mrs. Henry?

A. 119 Rusling Street.

Q. Do you know, are you a married woman? 10

A. Yes, sir.

Q. Do you know Mr. Baus?

A. Yes, sir.

Q. How long have you known him?

A. I had seen him quite some time before I was acquainted with him; I have known him about four or five years.

Q. How did you meet him?

A. Through selling truck.

Q. Selling his goods, how often did you meet him every week? 20

A. I lived across from him and I spoke to him every day.

Q. Did you meet him in 1920 and 1921, and the beginning of 1922, before this accident?

A. Yes, sir.

Q. Have you had a chance to observe the outward condition of his health?

A. Yes, I have.

Q. Have you ever noticed anything unusual about his health? 30

A. I noticed he was very healthy, a man that worked every day as far as I knew.

Q. Have you noticed him since this accident?

A. Yes.

Q. What difference do you see in him aside from his leg being off?

A. I notice he is nervous.

Q. In what way does the nervousness show itself?

A. With the trembling.

Q. Of what?

A. His hand.

Q. Any other part, how about the head?

A. Well, yes.

Q. How about the voice, did you notice any difference in that?

10 A. Yes.

Q. How about the speech, did you notice anything in that?

A. Somewhat.

Q. Before this accident, were any of those things present in his condition that you observed?

A. I never noticed it.

Q. You say you saw him every day, what would you be doing, talking to him or buying things?

20 A. Buying things, and I would see him standing across the street there, by his house.

Q. If those conditions existing since the accident had been there, do you think you would have seen them?

Mr. Gildea: Objected to as calling for a conclusion.

By the Court: I think that question is permissible.

30 Mr. Gildea: May I have an exception?

By the Court: Yes.

Q. If those conditions that you have seen since the accident, if they had existed before the accident, do you think you would have observed them?

Mr. Gildea: I object, same reason.

A. I think I would have noticed them.

Cross-examination.

By Mr. Gildea:

Q. How frequently did you purchase produce from Mr. Baus? 10

A. Several times, maybe once a week.

Q. You mean you purchased produce from him several times altogether?

A. Yes, quite often.

Q. During the period of the accident or months before, did you purchase produce several times from Mr. Baus?

A. I don't just recollect.

Q. How long did you live across the street from him? 20

A. I lived there three years and four years two doors from him, when I lived across the street, I didn't know him, but now, since I live two doors away from him, I know him personally.

Q. You visit at his house?

A. Yes.

Q. You are on friendly terms with him?

A. Yes.

Q. You weren't so intimately acquainted with him before his accident? 30

A. No.

Q. Before the accident, that is, when you lived across the street?

A. No, I moved two doors from him before the accident.

Q. You said, I think, that he appeared to be in good health?

A. Very good health, he used to run about the house, in good health, he was well and seemed to be working all the time.

Q. You don't pretend to say that you can tell by looking at a person whether he is in good health or not?

A. Yes.

Q. Do you think I am in good health?

A. I wouldn't say extra.

10 Q. You are able to tell by looking at a person whether he is in good health or not?

A. I don't profess to be a physician.

Q. You never heard that Mr. Baus wasn't healthy, did you?

A. No.

Q. Nothing like that was ever called to your attention?

A. No.

20 Q. Any observation you had was the same observation you had of other men in the neighborhood that lived as near to you as Mr. Baus?

A. Yes, he worked so continually, I thought he had good health.

Q. Then, the reason you think he has good health is because he works continuously?

A. Yes.

Q. Without knowing whether or not I work continuously you think I haven't got good health, is that so?

30 A. I don't know how to answer that.

Mr. Gildea: That is all.

MRS. NETTIE BAUS, sworn for the plaintiff.

Direct examination.

By Mr. Devlin:

Q. Mrs. Baus, you are the wife of the plaintiff, Mr. Baus, in this case? 10

A. Yes.

Q. And you live with your husband on Rusling Street?

A. Certainly.

Q. For a good while?

A. 19 years.

Q. Your husband has been in the produce business?

A. Yes, sir.

20 Q. At the time of your husband's injury and before the time of his injury, what was the condition of your husband's health as you observed it?

A. Fine, as far as I know, I never heard a complaint.

Q. Did he work steady at his business?

A. Six days out of the week, usually.

Q. And the shaking of the hand and the head and speech —

A. Never; no.

30 Q. Had you ever seen that before this injury?

A. No, sir.

Q. Have you had any opportunity to test his memory since this injury?

A. Oh, yes, lots of times.

Q. What have you to say about the condition of his memory since this injury?

A. It is very poor.

Q. What have you to say about his speech since this injury?

A. It is different, very much different.

Q. From the time he was injured on up until the present time, so far as you know, how does he rest?

A. As a general thing, very poor, some parts of the night he might rest good or once in a while of a night he might rest good.

Q. From the time of this injury, did he suffer  
10 much pain from this injury?

A. I don't think he has ever been free from pain.

Q. Who attended to him when he was outside of the hospital and at home?

A. I did.

Q. Did that attention require you to dress him at times?

A. I help him dress.

Q. Was he able to take his own food?

A. The most of the time, but I have helped him.

20 Q. Sometimes you helped him?

A. Yes, sir.

Q. He hasn't done any work since this injury, has he?

A. Not any.

Q. Before this injury, did you ever know him to be confined to his bed for any length of time?

A. No.

Q. He had good health?

A. Yes.

30 Q. How long has he been in the produce business?

A. I couldn't tell you that; we were married nineteen years ago and he was in that business before that.

Q. He was in that business before you were married?

A. Yes.

Q. And was he a steady worker in it?

A. Always was working. He went to Philadelphia three times a week and worked the other three in Trenton.

Q. Did you ever know him to have anything beyond a cold?

A. Not to my knowledge.

Q. And you have lived with him continuously during all that time?

A. 19 years.

10

Cross-examination.

By Mr. Gildea:

Q. Is Mr. Baus' brother, Rudolph, in the court room?

A. I don't see him.

Q. Has he been here today?

A. Yes, he has been here today.

Q. He is the gentleman that you were sitting with? 20

A. No.

Q. He was in back of where you were sitting?

A. He was in back somewhere.

Q. Did he ever live in the house with you and Mr. Baus?

A. Yes, sir, he boarded with us at one time.

Mr. Gildea: That is all.

Mr. Devlin: That is all. We will offer the map  
and I think I offered these bills. 30

By the Court: They were marked this morning. Now, you want to offer them.

Mr. Devlin: Yes, and we will rest.

(Papers above referred to received in evidence and marked as follows: Bill for \$175, P1; bill for \$165, P2, and bill for \$105, P3. Map, P4.)

PLAINTIFF RESTS.

(A motion for a non-suit was made in chambers.  
10 This motion was denied by the Court and exception allowed Mr. Hunt.)

MOTION FOR NON-SUIT.

Mr. Hunt: If the Court please, I should like to make a motion. There is a chance that the Court  
20 will sit somewhat later than usual and this will be an opportunity for the jury to have a five-minute recess and I can make the motion in chambers.

By the Court: I can hear you inside.

Mr. Hunt: Your Honor undoubtedly knows the motion I wish to make and I appreciate being able to make it here. My motion is for a non-suit and I needn't refer in extenso to the record, but will refer to the questions put to the plaintiff by the Court.  
30 "Had you your eyes on this car all the time?" That is, all the time it was coming from Wittaker Avenue to the point of collision. He said, "Yes," and then you asked him, "Did you observe any change in the speed?" And he answered, "No, unless it came a little faster." So far as the driver is concerned, I don't believe it is in evidence that he saw the car

at all for a longer period than it took his automobile to proceed from a point one foot this side of the near rail to one foot this side of the far rail. These men ran into danger. I know of no rule unusually exempting the passenger from the driver's negligence, especially since the automobile has become such a common means of transportation. A man must look out and do his duty especially if the driver is not doing his duty. He must make that danger known. Here is a case in which one word from Baus  
10 would have resulted in the stopping of that truck in time to avoid the collision. He didn't speak it and, therefore, he is suffering as a result of his own failure to speak for himself. There is not any evidence anywhere that anything prevented him from speaking that word. There is not the slightest contention that he did the best he could in an emergency. He sat there nonchalantly and saw it come. He was sitting there,—and he didn't say a word to Meaney "Because Meaney was making the  
20 turn and minding his own business." One word from Baus and one thrust of Meaney's right foot,—you can make both at one time,—and that car is at an instantaneous, dead stop.

I can speak of my own experience. I have a little Essex coupe and a year ago last fall, I was driving away from my house very slowly, and my little boy was sitting on the seat beside me and he fell out. He just scraped the running board as he fell and I jumped on the brake. I feared that the wheels would  
30 have gone over him, but I stopped it. I felt terribly for the moment, you know, expecting to find that the wheels had come on him, but they didn't come on him. After the car was stopped, I looked at my tracks and found that the car stopped in six or seven inches—the wheels dug right into the macadam.

A word from Mr. Baus would have produced that result in this case and nobody would have been hurt.

I am awfully sorry for the man's condition. It would wring anybody's heart; but, we are not dealing on that basis, but on the basis of legal liability, and that involves the contributory negligence of this plaintiff. Now, it is not only true that the active contributory negligence of this plaintiff would bar recovery, but also that a failure on his part to do  
10 that which he should have done would bar recovery, now that he has rested his case.

The proof of negligence on the part of the plaintiff must result in a non-suit, and even if the doctrine of the passenger's exemption from liability for the driver's act were applied to the fullest extent, this case is absolutely barren of any proof of negligence on the part of the defendant. There is nothing from which any inference could be drawn that the defendant was negligent excepting the fact that this trolley car progressed 140 feet—as the witness, Landerkin, who put it the farthest, has said—from the point  
20 of collision before it stopped. There was no particular reason for it to stop, it shouldn't stop in front of the firehouse —

By the Court: Don't you think the motorman in charge of that trolley car was charged with some duty to see this man crossing the street?

30 Mr. Hunt: I don't think he was charged with knowledge that a man would drive directly on the track that he was coming on and drive in front of him; no, sir, this was in the middle of the block.

By the Court: The man was turning and necessarily in order to make that turn he would have to go over on that track.

Mr. Hunt: Mr. Gildea was about to say that the motorman had no reason to suppose that that man would come out in front of the trolley car. He had every reason to suppose that the man would stop before he got to the track because, if every trolley car, at a distance of two hundred and twenty-five feet, were compelled to stop because they see automobiles crossing the track, you couldn't operate a trolley system. There is always an automobile on the track within two hundred and twenty-five feet  
10 and in the city less than twenty-five feet.

By the Court: If the evidence in this case is to be accepted, he must have been going at a very rapid rate of speed to cover that distance in the time he did.

Mr. Hunt: Not at all. Those two ladies,—one says she walked two house fronts and the other three house fronts, that would be fifty or seventy-five feet  
20 —before the car which was at Whittaker Avenue had gone by. They walked, according to one of them, fifty feet and according to the other, seventy-five feet, while the car was coming, approximately, not as much as three times that far. Impossible. They stress noise. Well, noise isn't speed. There is no proof of negligence of the defendant. There is no proof there from which negligence can be inferred. The plaintiff has failed to show negligence or facts  
30 from which negligence can reasonably be inferred and he has shown affirmatively his own contributory negligence. Mr. Gildea suggests that if it was true that the trolley car was going at such a fast rate of speed it was contributory negligence on the part of these people to drive in front of it. These two men were going at four miles an hour, if we believe the testimony of Mr. Meaney, and the trolley car

must have been going 190 miles an hour, I think that is what it figures out if you take the speed of the trolley by the plaintiff's witnesses. Now, of course, the trolley car wasn't going 190 miles an hour. The Supreme Court of Colorado, recently said, in reversing a judgment in a case of this character, that a trial Judge is not required to lay aside his intelligence, to believe that to be true which is manifestly untrue, merely because some one says so.

10

By the Court: Have you anything to say, Mr. Devlin?

Mr. Devlin: The question, I think, of contributory negligence, Mr. Baus, in his testimony, handles all right. He said he believed that to interfere with Meaney was to create danger or words to that effect and if the car hadn't been coming as fast as it was, he wouldn't have been hit, because there was plenty of time and room. The speed of the trolley car is testified to by nearly everybody in the case as being very fast. The testimony of the witnesses is that the speed was high. As you charged below in this case, a street railway has no superior rights in the street. It has got to use the street and give and take. If the motorman had been looking, he would have seen that car making the circuit around in the street. The place where it shows he got on the track, before he reached that track quite some part of the car must have been on that track, because the door was mashed and the step up where they got in was smashed. The Court of Errors said there was no error in refusing the non-suit and that is now the conclusion in this case. They settled it for the very reason urged in argument in this case. The Court of Errors said in the case there was no evidence upon which a motion for a non-suit could be

20

30

granted and it is well settled I think by these facts that the evidence shows in this case that the speed of the car was high, no signals were given, that the distance he looked to Chestnut Avenue was a reasonable distance, this is as to Meaney. Baus is not bound by any negligence of Meaney. This man could drive a car. He saw him turn out, he had reasonable chance to get across but it was the excessive speed of the car. I submit there should be no non-suit. It is a question for the jury.

10

Mr. Hunt: I clearly understood he said he had his eye on this car all the time from the moment when it was at a point below Whittaker Avenue until the moment of collision. Both of these vehicles arrived at the piece of track where the collision took place at the same time; otherwise the trolley car couldn't have come into contact with the automobile where it did. It came in contact with the automobile, according to the evidence, at the running board on the right-hand side directly by the seat —

20

By the Court: About opposite the post.

Mr. Hunt: If the automobile had been almost across the track the point of contact couldn't have been there. The automobile must have just arrived on the track —

30

By the Court: The car was running at that time at an angle.

Mr. Hunt: (Illustrating) Here were the trolley tracks and here was the car, on an angle about so. This was a curve instead of a tangent. This front wheel of the Ford truck was up just even with the

nose of the truck, up with the radiator, the seat is back here, the distance from the hub of the wheel back to this post that lies back of the seat I should say is roughly three and one-half feet; so here are the rails and here are the sides of the street and the truck was being turned around, Mr. Meaney said he kept his turn within about four feet of the other curb, and the space here is about 12 feet, according to the map, so he must have been almost at a right  
10 angle at the time, his front wheel was a little in advance or he would have been struck square instead of at this rising post at the seat.

By the Court: The Court will deny your motion for a non-suit.

Mr. Hunt: May we have an exception to your Honor's ruling?

20

By the Court: Yes.

Mr. Hunt: If your Honor please, we should like to have the jury view the scene of this accident so that the matter will be made clear to them. We will have motor coaches here at any time your Honor suggests to take the Court and jury and counsel to the scene of the accident. I understand there are several of the jurors from out of town, and I think  
30 they should see just where the accident took place.

By the Court: I think most of the jurors know about where it is and there have been offered maps to help them. I am inclined to deny your motion.

Mr. Hunt: May we have an exception?

By the Court: Yes.

(A motion to have the jury view the scene of the accident in motor coaches to be furnished by the defendant was denied and exception allowed Mr. Hunt.)

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THE CASE FOR THE DEFENDANT. 10

MRS. CECELIA HAMILTON, sworn for the defendant.

Direct examination.

By Mr. Hunt:

Q. Mrs. Hamilton, you live here in Trenton?

A. I do.

Q. How long have you lived here?

A. Eight years. 20

Q. Do you know Mr. Baus?

A. I have known him since 1921.

Q. Your daughter married his son, did she not?

A. Yes.

Q. That was in 1921?

A. August, 1921, that was, and I knew him from May. I was at his house at a rehearsal in May.

Q. You were at Mr. Baus' house in May, 1921?

A. May, 1921.

Q. Were you there at any other time during 1921? 30

A. No, not until after my daughter was married.

Q. After your daughter was married, were you there?

A. I was there once with her and had lunch there.

Q. And at other times, were you there?

A. That is only twice that I was there.

Q. Was Mr. Baus there on both of those occasions?

A. He was.

Q. Did you notice anything about his right hand and arm while you were there?

A. I did.

Q. Describe what you noticed.

A. I noticed the first night I was there, there was a rehearsal there, he sat down most of the time and  
10 his hand was shaking, and at that time, I went to have lunch with them and when he was eating, his fork hit his plate like that. (Indicating.)

Cross-examination.

By Mr. Devlin:

Q. What hand was that, do you know?

A. His right hand.

20 Q. You are the mother of his daughter-in-law.

A. Yes.

Q. His son married your daughter?

A. Yes.

Q. You have had trouble with him?

A. Not with him.

Q. You are not on the best of terms with the family, are you?

A. Why, if they were to speak to me, I would speak.

30 Q. There has been trouble between his son and your daughter?

A. Yes.

Q. And that has been the cause of the trouble between you and him?

A. Not in the least.

Q. You didn't testify at the last trial, did you?

A. I was only at Mr. Hunt's office.

Q. You were called after the last verdict was recovered?

A. Yes.

Q. Who got you to come, a detective?

A. I don't know his name.

Q. They went after you because they knew there was friction between your family and Mr. Baus?

A. They knew nothing of the kind.

Q. How many other times have you seen Mr. Baus?

10

A. I couldn't say.

Q. Does his hand shake as bad as it did when you saw it?

A. I don't see much difference in it.

Q. Did his head shake?

A. I couldn't tell you about his head.

Q. If his hand shook, didn't his head also shake?

A. He had a slight bobbing of his head.

Q. How was it bobbing?

A. I don't see, to me there is no difference in it  
20 now than when I saw him before.

Q. You don't see any difference at all?

A. I do not.

Q. You came up here to help overthrow, if you could, his verdict, isn't that right?

A. I have no grudge against him.

Q. You came up to help overthrow his verdict?

Mr. Hunt: I object to that.

Q. Isn't that right? That is all.

30

(The witness did not answer the question.)

Re-direct examination.

By Mr. Hunt:

Q. Why was it that you came to my office, Mrs. Hamilton?

A. I was subpoenaed to your office, Mr. Hunt.

Q. On these occasions that you have spoken of, when you were at Mr. Baus' house and he was at  
10 your house, he had both legs, that was before this accident?

A. Yes.

Re-cross examination.

By Mr. Devlin:

Q. Your daughter and his son have been living  
20 apart?

A. They have.

Q. For quite awhile?

A. Yes.

Q. And the times you went to see him, some of those times were about the trouble between your daughter and his son?

A. I went with my daughter the second time.

Q. And the interview you had on those occasions was naturally exciting?

A. Not exactly, I had dinner there and I don't  
30 think there was any trouble when I sat there and ate dinner with them.

Q. You say you ate dinner in his house?

A. I did.

Q. Isn't it true that you never ate dinner at his house?

A. Yes, I had lunch one noon at his house, my

son-in-law had been away for a week and Mrs. Baus sent for my daughter to come down there.

Q. You mean to say you had lunch there?

A. I did.

Q. What year was that in?

A. 1922, after my daughter was married.

Q. Was it 1922?

A. I won't be certain.

Q. You don't know whether it was 1922 or 1923,  
do you? 10

A. Not exactly, no, I don't.

Re-direct examination.

By Mr. Hunt:

Q. This time when you had lunch at Mr. Baus' house, he had both his legs, didn't he?

A. He did.

Q. On the occasion when a subpoena was served  
20 on you to come to my office, you came in obedience to the subpoena, and you found a stenographer there taking down the testimony that you gave?

A. Yes.

Q. Mr. Devlin was there?

A. Yes.

Q. And he asked you a great many more questions than I did?

A. He did. 30

Re-cross examination.

By Mr. Devlin:

Q. Isn't it true that the only time you had lunch was one evening and there was music there, years ago?

A. Years ago?

10 Q. Yes.

A. I didn't know him until 1921, my daughter didn't start going with his son until April, 1921.

Q. Wasn't it evening that you had lunch there and there was music?

A. No.

Q. Isn't it so that Mr. Baus was never in your house?

A. He came up once, his wife would come up and he would stand out by the machine.

20 Q. He never was in the house?

A. Once.

Q. What part of the house was he in?

A. In the parlor, once.

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JOSEPH NOBLE, sworn for the defendant.

Direct examination.

30 By Mr. Gildea:

Q. Mr. Noble, where do you live?

A. 252 Cummings Avenue.

Q. Speak up so the jury can hear you, where do you live?

A. 252 Cummings Avenue.

Q. And on April 29, 1922, were you on a trolley car that was in an accident between Whittaker Avenue and Beatty Street on South Clinton Avenue?

A. Yes, sir.

Q. That was the accident in which Mr. Baus was hurt?

A. Yes.

Q. Where did you get aboard the trolley car?

A. At Anderson Street.

Q. And how many—is Anderson Street below Division Street? 10

By the Court: Is it farther out than Division?

A. No.

Q. When you come up town, do you come to Anderson before you come to Division?

A. No, Anderson, and north of that is Division.

Q. Division Street is to the north of Anderson, is that right? 20

A. Yes.

Q. Did you see the accident?

A. No.

Q. Where were you sitting in the trolley car?

A. Third seat.

Q. You found out that there was an accident somehow?

A. Yes, I got out of the car.

Q. Was there a crash, could you tell that the trolley car had collided with something? 30

A. I don't know.

Q. When you got out of the trolley car, what did you see?

A. I seen the car, machine, standing right after the car.

Q. Right near the car?

A. Yes.

- Q. How far away from the automobile was the trolley car when you got out?  
 A. I don't know.  
 Q. Was it a short distance or long distance?  
 A. Short distance.  
 Q. And the two vehicles were close together, were they?  
 A. Yes.  
 Q. Just before the accident, was there anybody  
 10 on the platform of the trolley car besides the motor-  
 man?  
 A. No.  
 Q. No one there at all?  
 A. No.  
 Q. What about the speed of the trolley car just before the accident?  
 A. I don't know what kind of speed it had.  
 Q. Would you say it was fast or slow or what would you call it?  
 20 A. Well, I don't know, it wasn't too fast and it wasn't too slow.  
 Q. Could you tell us by pointing to some object in the court room, how close the back of the trolley car was to the back of the automobile when you got out of the trolley car?  
 A. I couldn't tell you that.  
 Q. You couldn't give us any idea?  
 A. No.  
 Q. Was it as far as from you to me?  
 30 A. Not that much.  
 Q. The back of the trolley car wasn't as far away from the automobile as you are from me?  
 A. I don't think so.  
 Q. You don't think so?  
 A. No.  
 Q. That is not more than ten feet.  
 A. No.

Mr. Gildea: I suppose we can stipulate that is not more than ten feet.

Mr. Devlin: About that, yes.

Mr. Gildea: Cross-examine.

Cross-examination.

By Mr. Devlin:

10

Q. You testified in the last trial, two years ago?

A. Yes.

Q. Have you talked over the case since that time?

A. I couldn't understand what that means.

Q. Have you talked to anybody about your evidence?

A. No.

Q. (Continuing) in this case, since that time?

A. No.

Q. Have you read your evidence since then?

20

A. No, sir.

Q. How long had you lived in that part of the city at the time of the accident?

A. Four years.

Q. Do you know the names of the streets along there?

A. Yes, sir.

Q. What is the name of the street this side of Anderson Street, north of Anderson Street? What is  
 30 the next street you come to?

A. Division.

Q. What is the next street after Division?

A. Chestnut Avenue.

Q. What is the next street after that?

A. Whittaker Avenue.

Q. What is the street below Anderson?

- A. Beatty Street.
- Q. South of Anderson, what is the street south of Anderson Street?
- A. Liberty Street.
- Q. Did you ride in the trolleys at that time?
- A. Yes, sir.
- Q. Did you see a young lady at the same street with you, waiting on the corner?
- A. I couldn't remember.
- 10 Q. What got on the car with you?
- A. My wife.
- Q. Did any one else besides you and your wife get in that car?
- A. I don't know.
- Q. Did the car make any stops after it lifted you before it hit this automobile?
- A. Yes, sir.
- Q. Where?
- A. Division Street.
- 20 Q. Did it make any other stop?
- A. I couldn't remember any other stop.
- Q. Why can't you remember that?
- A. We were talking together.
- Q. But you seem to remember that it stopped to let you on at Anderson Street?
- A. Yes, sir.
- Q. You say it stopped at Division Street?
- A. Yes.
- Q. Did it make any other stop before it hit this
- 30 motor car?
- A. I couldn't remember.
- Q. Will you tell me why it is that you remember it stopping at Division Street, and don't remember any other stop until the time of the accident?
- A. I was looking outside at the stores.
- Q. Weren't you looking outside when it stopped at Division Street?

- A. Yes.
- Q. Do you think it stopped between Division Street and the time it hit the auto truck?
- A. I couldn't remember that.
- Q. What do you work at, what is your occupation?
- A. Tailor.
- Q. A tailor?
- A. Yes, sir.
- Q. Didn't the car run faster out that way than it did in the city? 10
- A. Well, I don't understand it.
- Q. Don't understand it?
- A. Not these questions, I couldn't understand everything.
- Q. You can't understand everything?
- A. No.
- Mr. Hunt: This witness testified at the former trial through an interpreter. 20
- Mr. Devlin: I don't think he did.
- Mr. Hunt: Line 27 on page 170, shows that he did.
- Q. Isn't it true the car went faster out that way along Clinton Street at that point than it does in the center of town?
- Mr. Hunt: That is objected to unless it refers to this particular trolley car at that particular time. 30
- Q. Have you ridden on the trolley cars very much?
- A. If I was riding very much?
- Q. At that time, did you ride very much?
- A. Yes, sir, every day.
- Q. Can you tell how fast that car was going that you were on?

A. At the time when I was in the car, at the time of the accident?

Q. Yes.

A. Sometimes before?

Q. That car, I mean?

A. That car?

Q. Yes.

A. It wasn't so fast.

Q. It was a one-man car, wasn't it?

10 A. Yes.

Q. Didn't that one-man car go pretty fast?

A. Yes.

Re-direct examination.

By Mr. Gildea:

Q. Did you say the one-man car could go fast or not?

20 A. I think they can go as fast as the big ones.

Q. At this particular time, just before this accident, the trolley car wasn't going fast, was it?

Mr. Devlin: I object to that as leading.

By the Court: It is a little bit leading.

Q. I understood you to say in your direct examination, Mr. Knoble, that the trolley car wasn't going fast and it wasn't going slow?

30 A. Yes, sir.

Q. You mean, then, it was going at a moderate rate of speed?

Mr. Devlin: I object again.

Mr. Gildea: That is all.

Mr. Devlin: That is all.

MRS. THERESA KNOBLE, sworn for the defendant.

Direct examination.

By Mr. Hunt:

Q. Mrs. Knoble, I will ask you to keep your voice up, as loud as you can. Were you with your husband on the night of April 29, 1922, in a trolley car that was in an accident on South Clinton Avenue? 10

A. Yes, sir.

Q. Did you get on the trolley car with your husband?

A. Yes, sir.

Q. The accident that happened to that trolley car happened between Whittaker Avenue and Beatty Street?

A. Yes, sir.

Q. Where did you and your husband get on the trolley car? 20

A. Anderson Street.

Q. Is that below Division Street?

A. Yes, sir.

Q. How many blocks below Division Street?

A. One block.

Q. One block below Division. Do you recall whether or not the trolley car stopped at any more streets after you got on until it got to the place of the accident? 30

A. I know it stopped at Division.

Q. Do you know whether it stopped at Whittaker Avenue or not?

A. I don't remember.

Q. In other words, you don't know whether it did or did not?

A. Yes, sir.

Q. You remember that an accident happened that night?

A. Yes, sir.

Q. What can you tell us about the speed of the trolley car just before the accident?

A. I don't know about speed, I think it was just going like trolley cars go, not too fast and not too slow.

10 Q. Was there anything unusual about the speed?

A. No.

Q. It was just about the speed that they usually maintain there?

A. Yes.

Q. Do you know where the trolley car was, with reference to the automobile that it struck, after the collision?

A. The front of the trolley car was right in front of the fire engine house.

Q. Did you get out of the trolley car?

20 A. Yes.

Q. How far was the back end of the trolley car from the back of the automobile truck?

A. I don't know just how many feet, it wasn't so far apart.

Q. Can't you give us any idea of the distance?

A. It was about from here not even up to there.

30 Q. From where you sit in the witness chair to the near rail in front of the jury box, it wasn't that far away, the back end of the trolley car from the automobile?

A. Yes.

Q. Did you actually see the accident?

A. No.

Q. Was there anybody on the front platform with the motorman at the time of the accident?

A. No.

Mr. Hunt: Cross-examine.

Cross-examination.

By Mr. Devlin:

Q. Was there anybody at the corner of Anderson Street besides you and your husband that got on that car?

A. No.

Q. Was there anyone standing waiting for the car? 10

A. No, just me and my husband.

Q. When you got on the car, you say it stopped at Division Street?

A. Yes, sir.

Q. Did it make any other stop before it struck there?

A. I don't know.

Q. Is there any reason why you don't know?

A. I was looking outside.

Q. Yes, but you remember stopping at Division Street? 20

A. Yes.

Q. Don't you think if there was another stop between Division Street and the time it hit the auto truck you would remember it?

A. No.

Q. Can you give me any reason why your memory isn't clear on that?

A. I was looking at the stores.

Q. If you remember the Division Street stop, don't you think you would remember the stop if it were made at Whittaker Avenue or Rusling Street? 30

Mr. Hunt: I think that question is open to objection and that is that it is a matter of argument.

Mr. Devlin: I don't think it is; I am testing her memory.

Mr. Hunt: She said she didn't remember.

Mr. Devlin: Let the Court rule on the question.

By the Court: I will permit the question to be answered.

Mr. Hunt: May I have an exception?

10 By the Court Yes.

Q. If you remember the stop at Division Street, if it stopped at Whittaker Avenue or Rusling Street, don't you think you would remember that, too?

A. I was talking to my husband just then.

Q. Is that the only reason you can give for not remembering?

A. Yes.

Q. When those cars stop, they jolt you, don't they?

20 A. I don't remember that.

Q. Do you ride on street cars very often?

A. No.

Q. How fast do you think this car was going?

A. Just as it usually goes.

Q. You have said no one was talking to the motorman, how do you know that? Is there any way that you would know that, is there?

A. I don't ride street cars very much, and I don't know whether it was going fast or not.

30 Q. You say no one was talking to the motorman?

A. No.

Q. How do you know no one was talking to the motorman?

A. I know there was nobody there.

Q. You say the reason you couldn't tell whether it stopped at Whittaker Avenue was because you were talking to your husband, if you were talking to

your husband, might it not be possible that someone was talking to the motorman and you not see it, because you were talking to your husband, isn't that true?

A. I was talking to him, but I didn't see nobody there.

Q. You weren't looking, were you?

A. No.

Q. You said this car stopped, you said, in front of the fire engine house? 10

A. Yes.

Q. Where was the truck that was hit?

A. Right back of the trolley car.

Q. Then the trolley car was a length ahead, this is the firehouse, this red marked here on the map, that is the firehouse, you say that the trolley car stopped in front of the firehouse, that is right, isn't it?

A. Yes.

Q. And the truck was behind the trolley car?

A. Yes. 20

Q. Wasn't it quite some distance behind it?

A. No.

Q. How many feet was it?

A. I don't know how many feet.

Q. Was it standing across the street from the firehouse?

A. What, the truck?

Q. Yes.

A. The back of the truck was right in back of the trolley car. 30

Q. And behind the trolley car?

A. Yes.

Q. And the front of the truck was facing the firehouse?

A. Yes, sir.

Q. Was the truck near the firehouse?

A. No, sir.

Q. Was it near any other building that you could name, you don't know the buildings, do you?

A. No.

Q. How far away from the firehouse was the truck?

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

Q. Take this room, was it as far as from here to the door? (Indicating.)

A. I don't know.

10 Q. Was it as far as from here to the wall across there from the firehouse? (Indicating.)

A. I don't know.

Q. You don't know.

A. No.

Q. Your memory is not very clear on that, is it?

A. No.

Q. What street is below Anderson Street that goes into Clinton?

A. Liberty.

20 Q. What street is below that?

A. I don't know.

Q. At that time, where did you live?

A. 332 Cummings Avenue.

Q. How long did you live there?

A. I lived there for seven years.

Q. You don't ride much in the trolley cars, do you?

A. No.

30 Mr. Devlin: That is all.

Re-direct examination.

By Mr. Gildea:

Q. Mrs. Knoble, what part of the trolley car was in front of the firehouse?

A. The front part.

Mr. Gildea: That is all.

EDWARD MACSWEENEY, SWORN for the defendant.

Direct examination.

By Mr. Gildea:

Q. Mr. MacSweeney, on the night of April 29, 1922, were you on a trolley car that was involved in an accident on South Clinton Avenue, between Whit- 10  
taker Avenue and Beatty Street?

A. Yes, sir.

Q. Where did you get aboard that trolley car?

A. Dayton and William, I don't know where.

By the Court: That is out toward Stanton Street?

A. Yes.

Q. That was a considerable distance from where the accident happened? 20

A. The last stop, I think.

Q. Where did you sit in the trolley car?

A. Second seat from the conductor.

Q. On which side?

A. Left-hand side.

Q. That is the same side that the operator is on?

A. Yes.

Q. Who was with you?

A. My wife and two children.

Q. Were you sitting with your wife? 30

A. No, she was in the front seat.

Q. She was in the front seat with one child and you were in back of her with the other child?

A. Yes.

Q. Do you recall whether or not that trolley car stopped at Whittaker Avenue, which is the stop just below the place where the accident happened?

Mr. Devlin: I object to that as leading.

By the Court: It is a little leading.

Mr. Devlin: Let the witness tell the stops if he knows them.

By the Court: Yes.

10 Q. Suppose I ask him this. Do you know where Beatty Street is?

A. No.

Q. You don't know where Beatty Street is?

A. No, sir.

Q. Do you know where Whittaker Avenue is?

A. No, sir.

Q. Do you live down there now?

A. No, sir.

20 Q. Did you live down there then?

A. No, sir.

Q. Oh, you didn't live in that part of the city?

A. No, sir.

Q. Tell us about the operation of the trolley car, from the time you got on, with reference to its stops, as it passed along its route?

30 A. What I saw was seven different people get on the trolley car and made different stops, of course, I don't know anything about South Clinton Avenue, seven people got on and he couldn't have been going very fast.

Q. Did the trolley car stop, after you got on, before the accident?

A. Yes, it stopped several times.

Q. Do you know whether it stopped at the street immediately before the accident?

A. Yes, it stopped several times.

Q. Do you know whether it stopped at the street immediately before the accident or not?

A. No, I couldn't say.

Q. You don't know?

A. No.

Q. But it did make several stops?

A. Several stops.

Q. Were any of those stops up in the neighborhood where the accident occurred?

A. No, sir.

Q. Were they within—any of the stops that the trolley car made, were they within a block or two blocks of the accident?

A. I think two men was the last that got on; of course, I know nothing about South Clinton.

Q. What can you tell us about the speed of the trolley car just before the accident?

A. I don't know much about them but that wasn't going any faster than they go by the court house.

Q. Was he going fast?

A. No, normal speed.

Q. Can you give us any idea in miles per hour?

A. No, sir.

Q. Did you see an automobile before the accident?

A. No, sir.

Q. Did you get out of the trolley car after the accident?

A. Yes, sir.

Q. Tell us, if you can, Mr. MacSweeney, how far the back of the trolley car was from the automobile when the trolley car had come to a stop and you had gotten out?

A. Ten feet.

Q. You say the back of the trolley car was ten feet from the automobile?

A. Yes.

By the Court: Where was the automobile when you saw it?

A. On the trolley track.

Q. On the southbound track?

A. On the southbound track.

Q. Facing which direction?

A. I am not sure, but whether the fire house was there, it was on a slant like that. (Indicating.)

10 Q. Was it on the trolley track your car was on?

A. No, sir.

Q. And it was pointed on an angle, the front of it was toward the fire house?

A. No, the back of it was toward the fire house.

Cross-examination.

By Mr. Devlin:

20 Q. The trolley car was up at the fire house, wasn't it?

A. I don't know anything about the fire house.

Q. You don't know anything about the place, do you?

A. No, nothing at all.

Q. You say the car was going at a normal rate of speed; what do you mean by normal speed?

A. Judging what I see on the street.

30 Q. On some streets you see them going faster, don't you?

A. You couldn't go very fast from block to block.

Q. Is that your idea of it?

A. I think so.

Q. Is that the reason you say it wasn't going very fast, because it couldn't go fast from block to block?

A. Yes, that is my reason.

Mr. Devlin: That is all.

Mr. Gildea: That is all. Mrs. MacSweeney.

MRS. CATHERINE MACSWEENEY, SWORN for the defendant.

Direct examination. 10

By Mr. Gildea:

Q. Mrs. MacSweeney, were you on a trolley car with your husband on April 29, 1922, in the evening?

A. Yes.

Q. The trolley car was in an accident on South Clinton Avenue? 20

A. Yes.

Q. And you got on the trolley car with your husband?

A. Yes, we got on at Dayton Street.

Q. Are you familiar with that part of the city?

A. No, that was my first visit down there.

Q. That was your first visit down there?

A. Yes.

Q. You do recall the trolley car you were on was in an accident? 30

A. Oh, yes.

Q. Did you get out of the trolley car after the accident?

A. No, I kept my seat all the time.

Q. Did you look around and see the automobile?

A. No, I couldn't see the automobile, there was too many people there.

Q. You staid in the trolley car with your children, while your husband got out?

A. Yes.

Q. Can you tell us anything about the speed of the trolley car before the accident?

A. No, I thought it was going at the speed that cars go at.

Q. Is that all you can tell us about the speed?

A. That is all because I wasn't outside the car  
10 or entrance.

Q. You didn't see the accident?

A. I just caught the glass when it was broken.

Mr. Gildea: Cross-examine.

Mr. Devlin: No questions.

20 CARL J. SCHAEFF, SWORN for the defendant.

Direct examination.

By Mr. Gildea:

Q. Mr. Schaeff, were you or were you not on a trolley car on South Clinton Avenue on the night of April 29, 1922, at the time an accident happened near Beatty Street?

30 A. I was.

Q. Will you raise your voice so all the jurors can hear you without straining their ears?

A. I was.

Q. Where did you get on that trolley car?

A. Whittaker Avenue.

Q. Do you know where Mr. Meaney's flower store is on South Clinton Avenue?

A. Yes.

Q. Where is Whittaker Avenue with reference to Mr. Meaney's store?

A. Last stop before you get there.

Q. That would make it the first stop going south from Meaney's store, wouldn't it?

A. Yes, sir.

Q. That would be the next corner to the south of Meaney's store?

A. Yes, sir. 10

Q. Is that where you got on the trolley car?

A. Yes, sir.

Q. Where did you live then, Mr. Schaeff?

A. 27 Hewitt Street.

Q. Did you always get on the car at this corner?

Mr. Devlin: I object to that.

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

A. Yes, sir. 20

Q. Where did you sit?

A. Right-hand side of the car.

Q. Do you know about what part of the car?

A. I think it was next to the last seat.

Q. Did you see the automobile of Mr. Meaney before the accident?

A. No, sir.

Q. Did you know or was there anything to indicate that something unusual was about to happen before the accident occurred? 30

A. I was riding down there and I wasn't paying no attention and I heard the operator holler and throw his head to one side, that was the first I knowed it and the next thing I knowed I heard a crash.

Q. Do you know whether or not he applied the brakes?

A. Yes, when he threw his hand around he put on the brakes, put on the air.

Q. What can you tell us about the speed of the trolley car just before the accident?

A. Normal, just the same as they always run.

Q. How is that?

A. Fair rate of speed, I don't know how you would say it.

Q. Did I understand you to say it was running  
10 at an average speed?

A. Yes.

Q. Do you ride on trolley cars very much?

A. Not just now, I did at that time.

Q. To and from your work?

A. Not to and from work, but I used to go up town quite a bit.

Q. After the accident, did you get out of the trolley car?

A. Yes, sir.

20 Q. Did you see Mr. Baus standing there?

A. I believe Mr. Baus was standing to the side of the truck when I got out.

Q. Where was the back part of the trolley car with reference to the automobile, how far away was the back part of the trolley car from the automobile?

A. I judge about ten or twelve foot.

Q. Do you know where the engine house is there?

A. Yes.

30 Q. Had the front part of the trolley car reached the engine house, if you know, if you noticed?

A. Maybe he did, I won't say for sure.

Q. Did you pay particular attention to that?

A. No, sir.

Mr. Gildea: Cross-examine.

Cross-examination.

By Mr. Devlin:

Q. Where do you live, Mr. Schaeff?

A. 27 Hewitt Street.

Q. At that time, did you live there?

A. Yes, sir.

Q. Where did you say you got on the car?

A. At Whittaker Avenue.

Q. Is the stop at Whittaker Avenue or Rusling  
Street? 10

A. At that time this stop was right where the two streets come together, they have changed it since that ime.

Q. Was it by Dube's or Mantel's?

A. Neither, it was right in between the two streets.

Q. Now, when you got in the car were there many  
people in the car? 20

A. That I couldn't tell you.

Q. You couldn't remember that?

A. No, sir.

Q. Who took your fare?

A. Operator.

Q. It was a one-man car?

A. Yes, sir.

Q. Do you remember if he had to make change  
for you?

A. No, sir, I do not.

Q. You don't remember that? 30

A. No, sir.

Q. Then you went down to the back of the car?

A. Yes.

Q. And when you got to the back of the car how long were you seated before this collision took place?

A. I couldn't say; it wasn't very long, I had just about got seated.

Q. Then did you see anything?

A. Only just before the accident.

Q. What did you see?

A. I saw the operator turn his head to one side and he was sitting—

Q. He was sitting?

A. Yes, I believe he was, I won't say for sure, 10 because they sit when they are down there to Hamilton Avenue.

Q. How about this case?

A. I can't say for sure.

Q. I mean this case, was he sitting or not on this car?

A. I couldn't say for sure.

Q. Did he have a seat to sit on if he so desired?

A. Yes.

Q. The first thing you noticed you heard the 20 operator scream?

A. Yes.

Q. And then he turned around?

A. Yes.

Q. What way did he turn, right or left?

A. Right.

Q. He is on the left side of the car?

A. Yes, sir.

Q. As he turned around what did you see him do?

A. As he turned he throwed his air off with his 30 left hand.

Q. You say glass was broken, what part of the car was that?

A. I didn't say glass was broken.

Q. Don't you remember whether it was or not?

A. I didn't look at the front of the car.

Q. You did not?

A. No, sir.

Q. Was it after he threw the brake on and you heard him scream that you heard the crash?

A. Yes, sir.

Q. That the crash happened?

A. Yes, sir.

Q. Do you know where Meaney's store is?

A. Yes, sir.

Q. Did that take place in front of Meaney's store? 10

A. Yes, sir.

Q. After the accident where was Meaney's truck?

A. Turned right around in front of his place.

Q. Did you notice how far the car traveled after it hit?

A. I judged about ten or twelve feet.

Q. Can you point where the car stopped?

A. No, sir, I cannot.

Q. Do you know where the fire house is there?

A. Yes, sir.

Q. Was it near the fire house? 20

A. The front end of it might have been.

Q. The front end?

A. Yes.

Q. At the fire house?

A. Yes.

Q. According to the map the distance from the fire house to the near end of Meaney's building is between eighty and a hundred feet?

Mr. Gildea: I object to that, that isn't true. This 30 map drawn to scale, doesn't show it.

Q. Will you say that it was at the front of the fire house, the front of the car?

A. No, I won't say for sure.

Q. Was it near there?

A. It was near there, yes.

Q. Was Meaney's car in front of his store, midway or what position, can you tell?

A. On a slant.

Q. Did the front of the auto truck face the middle of the store or the end of it?

A. It was facing more toward that lot alongside of the store.

10 Q. Then the front of it was about the south end of Meaney's store?

A. Yes.

Q. Or the north end?

A. The end this way, the north end.

Q. And the front of the trolley car was north or south of the fire house?

A. At the south end.

Q. How far distant was the trolley car and Meaney's truck, how much distance divided them?

A. About ten or twelve feet.

20 Q. The truck was at the rear of the street car ten or twelve feet?

A. Yes.

Q. You said it was going at an average speed, the car was, that one-man car got up speed quick, didn't it?

A. They always do, yes.

30 Q. Yes, they get up speed quick, you say average speed, have you any idea how many miles an hour you think is average speed?

A. No, sir.

Q. Do you gauge this speed by trolley car speed?

A. Yes.

Q. You have seen trolley cars going at various speeds, haven't you, from three miles up?

A. Yes.

Q. Have you struck any average, you say, average?

A. I couldn't say, I am no judge, I drive no car.

Mr. Devlin: That is all.

Re-direct examination.

By Mr. Gildea:

10

Q. Mr. Schaeff, you take this blue pencil and go down to the map and make a nice, big mark that everybody can see, where you got on that trolley car.

Mr. Hunt: The witness makes a blue X immediately below the point of intersection of the easterly line of Whittaker Avenue and the westerly line of Rusling Street.

20

Mr. Gildea: That is all, Mr. Schaeff.

Re-cross examination.

By Mr. Devlin:

Q. Have you any idea of how many feet it is from where you got on the car to where the accident happened?

30

Mr. Gildea: Objected to, there is a map there drawn to scale; and, therefore, guesses or ideas as to the number of feet are incompetent.

Q. Will you come down to the map, Mr. Schaeff? May I ask you what your business is?

A. Machinist helper.

Q. You know something about maps; this map was drawn to a scale of forty feet to every inch. This is the top track, northbound track, bottom tracks are the southbound tracks, this green place is Meaney's store, this red place place is the fire house, this place with red and pink is Liederkrantz Hall, this red spot. Where you have marked you got on the car, these lines, 1, 2, 3, 4, 5, 6, between each of those spaces is one hundred feet. I am  
10 calling your attention to where you got on, do you understand?

A. Yes.

Q. Where you say you got in the car and Meaney's store, calling your attention to Meaney's store?

A. Yes.

Q. Would you be able to tell me how many hundred feet you think it is between the point you got on the car and the point where the collision hap-  
20 pened?

Mr. Hunt: That is objected to. The witness is testifying from the map and the map speaks for itself.

Q. I have informed this witness of certain facts; he said he got on the car at a certain point, didn't you?

30 By the Court: Perhaps with the rule, the witness can give you the exact number of feet.

Mr. Hunt: Our next witness will be an engineer.

By the Court: I understood him to say he was a machinist and used to reading plans.

Q. Do you understand the map?

A. Yes, but not the rule.

Q. I called your attention to these figures, every red figure is one hundred feet, place this end on it as straight as you can hold it where you say you got on the car and, taking it midway of Meaney's store, now observe that. In your judgment, how many hundred feet had it traveled after you got in and where it hit Meaney's truck?

Q. Did the car start to go before you paid your  
10 fare, or after?

A. About after I paid my fare, I won't say for sure.

Q. Was there anyone standing on that platform?

A. No, sir.

Q. Did anyone get on with you?

A. No, sir.

Q. Was anyone at all standing in the car?

A. Standing?

Q. Yes.

20

A. No, sir.

Q. Do you remember if he had to make any change for you?

A. No, sir.

Re-direct examination.

By Mr. Gildea:

Q. You are not employed by the trolley com-  
pany? 30

A. No, sir.

Q. Never been employed by them?

A. No, sir.

Mr. Gildea: That is all.

W. EARL ROCHFORD, SWORN for the defendant.

Direct examination.

By Mr. Hunt:

Mr. Hunt: I would like to offer another map to show us a little more in detail.

- 10 Q. Mr. Rochford, you live in Trenton?  
 A. Yes, sir.  
 Q. And you are a civil engineer by profession?  
 A. Yes, sir.  
 Q. And you are a member of the firm known as the Trenton Engineering Company?  
 A. Yes, sir.  
 Q. You have been engaged in the practice of engineering for about twelve years?  
 A. Fourteen.  
 20 Q. Did you make this map of the neighborhood of South Clinton Avenue, in the neighborhood of Beatty Street and on south for several blocks?  
 A. Yes, sir.  
 Q. To what scale is that map drawn?  
 A. 1 inch equals 10 feet.  
 Q. And that scale is adhered to throughout the whole drawing?  
 A. Yes, sir.  
 Q. The map shows the northbound and southbound tracks on South Clinton Avenue?  
 30 A. Yes, sir.  
 Q. And it shows Meaney's store marked "J. Meaney, Florist?"  
 A. Yes, sir.  
 Q. There are two dotted red lines extending across the street, what are they for?  
 A. They were placed on the map for side lines, sides of Mr. Meaney's property.

By the Court: Projected across the street?

A. For termination purposes, yes.

Q. On the two sides of the street there are numbered plots, aren't there?

A. Yes, sir.

Q. And the numbers are the house numbers, aren't they?

A. Yes, sir.

Q. Does the map show the curb line of South Clinton Avenue? 10

A. Yes.

Q. Does it show electric lights, poles and trees?

A. Yes, sir.

Q. Just point out a few of them so the jury can see.

A. Marked "tree," "tree," "public service pole," "tree," "public service pole." (Indicating on map.)

Q. Are there any physical conditions on South Clinton Avenue which this map does not show? 20

A. I believe not.

Q. Are the trolley stops marked in anyway; they were marked at that time?

A. They were indicated by crossings.

Q. Mr. Rochford, I point to a plot on the north side of South Clinton Avenue, just west of Whittaker Avenue, which is marked "Mantel," and ask you whether that is not Mantel's store?

A. Yes.

Q. Now, I point to a blue dotted line across on the right-hand side of Whittaker Avenue, back from the street line of the south line of South Clinton Avenue, and ask you if that indicates a trolley stop? 30

A. That pole was marked for a trolley stop.

Mr. Hunt: That is all. Cross-examine.

Cross-examination.

By Mr. Devlin:

Q. How many feet is it from that trolley stop to Meaney's store?

A. Assuming that the trolley stop is right opposite the pole?

Q. You say it is.

10 A. The pole was marked for a trolley stop. Do you want to know how far it is from that pole to Meaney's store?

Q. That indicates the trolley stop, from there on to Meaney's store, can you tell me how many feet it is to the center of Meaney's store?

A. To the center of Meaney's store?

Q. Yes.

A. 284 feet or 285 feet.

Q. 285 feet?

20 A. Yes.

Q. When did you make this map?

A. In December, 1922, December, 1923.

Q. 1922?

A. About two years ago, a little over two years ago.

Q. You made it for the last trial?

A. Yes, sir.

Q. It was used in the last trial?

A. Yes, sir.

30 Q. What is your scale?

A. 1 inch equals 10 feet.

Q. How wide is the street from curb line to curb line at Meaney's store?

A. 39 and one-half feet.

Q. It varies as you go along the street?

A. It varies between Beatty and Whittaker Avenue only four-tenths of a foot.

Q. Very little?

A. Very little.

Q. How far is it from building line to building line?

A. 66 feet.

Q. The sidewalks are about fifteen feet?

A. No, a little over thirteen feet.

Q. A little over thirteen feet, yes?

A. Yes.

10

Re-direct examination.

By Mr. Hunt:

Q. You are in independent practice as an engineer—you are not employed by the traction company?

A. No.

Q. Except on a special occasion like this when you are employed to draw a map?

A. Yes.

Q. The four parallel lines on South Clinton Avenue are the northbound and southbound tracks?

A. Yes.

Q. Just inform the jury the distance between the trolley tracks in front of Meaney's store?

A. In the dummy, you mean?

Q. In the dummy, yes.

A. Just about five feet.

20

Mr. Hunt: That is all.

30

Mr. Devlin: That is all.

SYLVESTER SHERRY, sworn for the defendant.

Direct examination.

By Mr. Gildea:

Q. Mr. Sherry, where were you employed on April 29, 1922?

10 A. With the Trenton Traction, Mercer County Corporation.

Q. What was your business, motorman?

A. Operator and motorman.

Q. Were you operating a car that night?

A. Yes, sir.

Q. On South Clinton Avenue?

A. Yes, sir.

20 Q. Early in the evening, just as it was getting dark, and as you were operating your trolley car south on Clinton Avenue, did you notice anything unusual in the street a little distance below Beatty Street?

A. Yes, sir, I was at Roebing Avenue at that time, a block away from where it happened.

Q. Did you see the accident?

A. No, sir.

Q. You were going south, but you didn't see the accident?

A. No, sir.

30 Q. When you got there, was there anything to obstruct your track?

A. Yes, sir.

Q. What was it?

A. An auto truck.

Q. So you had to stop there?

A. Yes.

Q. Did you stop?

A. I stopped north of the firehouse, north of Beatty Street.

Q. What did you do?

A. I got out of the car.

Q. And walked down to where this automobile was?

A. Yes, sir.

Q. Did you see another trolley car there?

A. Yes, sir.

Q. And how many trolley cars did you see there? 10

A. One on the northbound and mine on the southbound track.

Q. Where was the trolley car on the northbound track with reference to the automobile, in other words, how much distance was there between the automobile on the southbound track and the trolley car on the northbound track?

A. A short distance.

Q. How many feet, if you can tell us?

A. The back of the car was almost even with the 20 truck, a short distance.

Q. How much distance in feet actually separated the two vehicles, if you can tell us?

A. The little track separated them, about five feet apart.

Q. Was the trolley car that was on the northbound track south of the firehouse?

A. The front of the car was even with the south end of the firehouse, it didn't like block the middle door where the truck would come out, it was even 30 with the south side of the firehouse.

Q. What part of the trolley was?

A. The front.

Q. Where are you employed now?

A. In New York.

Q. You no longer work for the Trenton and Mercer County Traction Corporation?

A. No, sir.

Q. And you didn't see the accident, did you?

A. No, sir.

Cross-examination.

By Mr. Devlin:

Q. Did you testify in the last trial?

10 A. Yes, sir.

Q. Did you travel the same route as the car that had the collision with the auto traveled?

A. On the same line, but I was going south and the other car was going north.

Q. But you both made the same route?

A. Right, the same route.

Q. You both went to the same terminals?

A. Exactly.

20 Q. Where was the beginning of your terminal and the end of it?

A. At Stanton Street and Cadwalader Park.

Q. Do you know how many miles that is?

A. No, sir.

Q. What time did you have to make that route in?

30 Mr. Gildea: That is objected to as not being proper cross-examination. I haven't asked this witness anything about speed or anything in relation to speed. I submit that the only thing this witness was called for was to show the relative positions of these two vehicles when he arrived on the scene after the accident; there is no question of speed or time that enters into it.

Mr. Devlin: The rule of the Court that was applicable to me is applicable to him. In this case

there is a question of speed that enters into it. Here is a man that operated a car over the same route as the operator of that car did. It is admitted that the operator of the car is dead. I want to prove the time that the operators are given on that route to make it from Cadwalader Park to Stanton Street.

Mr. Gildea: Our objection is that it is not proper cross-examination.

10 By the Court: I will permit the question to be answered.

Mr. Gildea: Exception?

By the Court: Yes. What is the schedule time from one end of the route to the other?

A. I really forget the schedule time, but I think it is about thirty-six minutes each way. 20

Mr. Devlin: I would ask that the answer be put out as not responsive. If the man doesn't know —

By the Court: He says he forgets.

Mr. Devlin: I wouldn't want him to guess at it. I don't think it is fair to guess at it. If he knows it, all right.

30 By the Court: All right, I think we will leave the answer stand just as he gave it.

Q. Where did you stop your car, north of Beatty Street, or south of Beatty Street?

A. North side of Beatty.

Q. Then you walked across?

A. Yes.

Q. To see what the difficulty was?

A. Yes.

Q. The last time this case was tried, you worked for the car company?

A. Yes, sir.

Q. You were in their employ?

A. Yes, sir.

10 Mr. Devlin: That is all.

Mr. Hunt: We have used all the witnesses we have on hand. We will have some more in the morning.

Mr. Devlin: I would ask the Court to ask the defendant if they can tell me about the time their doctors will testify.

20 By the Court: I presume that will be the first thing in the morning.

Mr. Devlin: Doctor Reddan said tomorrow is his operating day. He will likely be operating all morning and I would like to have him here when the doctors go on, it is essential to the safety of my case, that I have him here.

30 Mr. Hunt: We have two or three witnesses for a very brief examination tomorrow, then we have three witnesses to the physical condition of Mr. Baus before the accident. I would estimate that the examination of those three witnesses would take an hour, therefore, I told my doctors to be here at eleven o'clock, and I told Doctor Reddan and he said, "That gives me a little more time."

Mr. Devlin: Did he say eleven o'clock was all right?

Mr. Hunt: He said, "I am glad of that, it will give me a little more time." We have gotten along faster with our case than I expected to. I don't believe these witnesses will occupy a full hour, so I sent word to our doctors to be here at 10.30 instead of 11 o'clock. If the Court doesn't mind a slight delay, we can wait for Doctor Reddan. 10

By the Court: I want to conclude this case tomorrow as I have explained. Let us say quarter to eleven.

Mr. Devlin: I will see him as soon as I can after court adjourns today.

Mr. Hunt: If Doctor Reddan cannot be here, we will wait as long as Mr. Devlin wants. 20

(An adjournment was taken to Wednesday, January 28, 1925, at 10 A. M.)

Trenton, N. J., Wednesday, January 28, 1925,  
10.00 o'clock, A. M.

(Case resumed pursuant to adjournment.)

Appearances as before noted.

10

(The following motion was made in chambers.)

Mr. Hunt: Your Honor, here is a copy of the  
Trenton Sunday Times-Advertiser of January 25,  
1925, containing the heading "Fine Legal Point Re-  
verses Verdict for Trentonian Against Trolley Co."  
This has just been brought to my attention and I  
haven't had time yet to read by the first paragraph,  
but I am told it is very damaging and that its style  
and contents indicate that it cannot be from the pen  
of a layman; it must have been written by somebody  
familiar with the intricacies of law and legal pro-  
cedure.

By the Court: Let me see it.

Mr. Hunt: It states that at the previous trial the  
plaintiff recovered a verdict of fifteen thousand dol-  
lars which was reversed solely upon a legal techni-  
cality. It states that the other plaintiff, Meaney,  
recovered for damages to his auto truck. It states  
that a single question of Doctor Reddan and an-  
swered by him is the basis of the reversal of the  
jury award and the granting of the new trial. The  
article says Meaney's judgment was sustained. It  
points out that a dissenting opinion was filed by  
Justice Kalisch, in which he declared that the ruling

of the majority of the Court of Errors on the ques-  
tion asked of Dr. Reddan appeared to him to subvert  
a well settled legal rule of evidence. He commented  
that to adopt such a rule as laid down, is to strike  
a blow at the orderly administration of the trial of  
causes between litigants. It says that the Baus  
judgment was affirmed by the Supreme Court. Al-  
though this publication is issued the day before this  
trial started, no reason is stated for publishing it,  
nothing is said about the approaching new trial.

By the Court: Is it your idea that that article  
was published deliberately for the purpose of affect-  
ing the verdict of this jury?

Mr. Hunt: I should say that I would have that  
opinion. Of course, I could only infer, I have no  
knowledge. Perhaps we might ask Mr. Devlin if  
he knows anything about the article.

Mr. Devlin: The Times published twice, the  
wrong statement of this case, the Times pub-  
lished —

Mr. Hunt: You had this article inserted, then?

Mr. Devlin: Let me state my case, you stated  
yours.

Mr. Devlin: They wanted the correct story and  
I handed them the papers in the case and there is  
the story and there is nothing untrue about it. Since  
this trial started you have been published in the  
State Gazette "motorman is dead" there is nothing  
in that article that isn't true in this case. I gave  
them the papers, the opinions and facts of the case,  
there is the true story.

Mr. Hunt: May I ask you if you saw the story before it was written?

Mr. Devlin: No.

Mr. Hunt: Do you know who wrote it?

Mr. Devlin: Don't ask me anything about who wrote it.

10

Mr. Hunt: May I ask if you saw this article before it was published?

Mr. Devlin: You saw it before I did, Sunday morning.

Mr. Gildea: May I ask you a question, Mr. Devlin? How long ago it was that the incorrect account of this reversal was published?

20

Mr. Devlin: It was published twice. It was published the date that the case was reversed and it was published on the date I made an application to amend. Who did it, I don't know, I told them it was an incorrect statement.

By the Court: Of course, I don't know whether any of the jurors have seen that publication, it may be that none of them have.

30

Mr. Gildea: The cases hold that it makes no difference whether they did or not. I didn't make this motion, but Mr. Hunt and I are associated on this case. The fact is that those mis-statements were published over a month ago and Mr. Devlin wanted the mis-statements corrected, the reasonable thing would have been to have replied immediately, but he waited

until the day before the trial started so it would be fresh in the minds of the jurors. If anyone of those statements had been made in open court by Mr. Devlin your Honor would have granted a mistrial immediately. I recall a case, McKibbin against the Philadelphia and Reading Railroad Company, tried in the Federal Court, counsel for the plaintiff arose and said, "This case has been passed upon before by 3 juries and all decided for plaintiff." Judge Katzenbach made a motion for a mistrial. Judge Davis refused the motion and instructed the jury to disregard the statement. It was taken to the Circuit Court of Appeals and was reversed on the ground that the jury had no right to know what happened at the former trial. It seems to me there couldn't be a plainer case for a mistrial. Mr. Hunt didn't know of it until this morning, I didn't know of it. We had somebody get the newspaper yesterday. If we had known about it before we would have called your Honor's attention to it before.

10

20

By the Court: Of course, it is unfortunate these things should appear in the papers. The situation today, however, so far as the newspapers are concerned, if you waited until there would be no publication of the pending trial in the newspapers, you wouldn't get anywhere.

Mr. Hunt: The remedy is to tell the newspapers not to publish.

30

Mr. Devlin: The newspapers like to publish, that has nothing to do with it. The case is tried on different facts here and you have gone on to the third day of the trial. Any newspaper has a right to publish the truth. There is nothing in that statement that isn't true. I gave them the facts, there is the

story. You didn't object when a false story was circulated about this three different times.

Mr. Hunt: I didn't know it was.

Mr. Devlin: You didn't know that, either. You didn't object to the story being published that the motorman was dead.

10 By the Court: So far as that is concerned, that is admitted in open court.

Mr. Devlin: But your Honor, it was further added that the motorman said that the auto truck ran into the trolley car.

Mr. Hunt: We had nothing to do with it.

20 Mr. Devlin: It is there, I am not saying you had anything to do with it.

Mr. Hunt: Are you making that a ground for a new trial?

Mr. Devlin: No, I want to finish the trial. I come out of a sick bed to try this case.

30 Mr. Hunt: What chance have we before this jury when they know what this other jury has done, when they have been told by the newspaper what the other jury has done?

Mr. Devlin: Isn't that true, what right have you got to —

Mr. Hunt: I would ask Mr. Devlin not to speak quite so loud. The jury will hear him.

By the Court: Yes, of course, so far as the knowledge of the jury is concerned at the time this case was tried, although it was two years ago, undoubtedly there appeared the amount of the verdict at that time. That appeared, I recall it very distinctly, probably some of the jurors do.

Mr. Devlin: If there is any doubt about whether the jury has or not, ask them.

10 Mr. Hunt: I don't think that is material. There is a presumption that they read it.

Mr. Devlin: Mr. Hunt and Mr. Gildea said they didn't see it until today.

By the Court: I didn't see it, either.

Mr. Devlin: If you've got a legal reason, upset it again. If it is a ground for reversal, take it and 20 we will go ahead.

Mr. Gildea: You said it isn't.

Mr. Devlin: I don't know whether I will be able to try this case again this term —

Mr. Hunt: If this motion is granted, we will object to its being tried before this panel. We want a fair trial. 30

By the Court: I don't think you can say there hasn't been a fair trial.

Mr. Hunt: That remark refers solely to this and not to the conduct of the Court, because I say

frankly, with regard to the conduct of the Court, that we have had a fair trial, frankly and honestly.

By the Court: I will deny your motion, gentlemen.

Mr. Hunt: May we have the article marked as an exhibit and enter an exception to your Honor's ruling?

10 By the Court: I would be very glad to see this matter passed upon by the higher court.

Mr. Hunt: I will ask to enter my objection and exception.

By the Court: You may have your exception.

(Marked D1 for identification.)

20

JOSEPH PLUMERI, sworn for the defendant.

Direct examination.

By Mr. Hunt:

Q. Mr. Plumeri, you live in Trenton?

A. Yes, sir.

30 Q. How long have you lived here?

A. About thirty-two or thirty-three years.

Q. Where is your present residence?

A. 115 Miller Street.

Q. Are you in business here?

A. I am.

Q. What is your business?

A. Realtor.

Q. Do you know Leonard Baus, the defendant in this case?

A. I do.

Q. Did you know him in October, 1921?

A. I did.

Q. Did you see him in those months?

A. I did.

Q. Whereabouts?

A. At his home.

Q. What did you go there for?

10

A. Looking for his son.

Q. Did you observe anything about his physical condition on these two occasions?

A. I did.

Q. Just tell the jury what you observed?

A. I observed that he had a trembling voice and very, very nervous.

Q. Did you observe anything about his hands?

A. He was shaky.

Q. Did you see him walk?

20

A. I did.

Q. Did you observe anything about the manner in which he walked?

A. He walked very, very slow, he dragged like.

Q. What do you mean by drag?

A. He couldn't pick up his feet fast.

Q. What was the position of his head and shoulders?

A. Bent over.

Q. Bent over forward?

30

A. Forward.

Q. At that time, did he have both legs or only one?

A. He had both legs.

Q. These conditions that you have described existed both in October and November, 1921?

A. They existed upon both times that I went there.

Mr. Hunt: Cross-examine.

Q. Was he ever in your office prior to the accident and the loss of the limb?

A. Several times, yes.

Q. Did you, on those occasions, notice anything in regard to his physical condition?

A. I noticed that his right hand trembled somewhat.

Q. What was the time that you noticed this, as near as you can tell?

10 A. It was during the summer of 1921, I believe, and early in 1922. He had been a client of mine for sometime and called at the office six or eight times, I guess. It was in the afternoon as near as I can recall it now, the time that I speak of.

Q. On that occasion, did you take notice that the hand in some positions trembled more or less than it did in other positions?

Mr. Devlin: Objected to as leading.

20

By the Court: You may answer the question.

A. I couldn't say, it has been so long ago, I couldn't swear that it did. I know his hand trembled on every occasion that I saw him.

Q. You said that he had two legs at that time?

A. Oh, yes.

Q. You gave evidence before an officer of the court under a rule to show cause that was issued in this court, did you not?

30

A. I gave evidence in your office and I presume I was subpoenaed, I can't recall now, I think I was.

Cross-examination.

By Mr. Devlin:

Q. He was your client and you were doing business for him?

A. That is right.

Q. Was that business of a nature to excite him?

A. I can tell you what the nature of the business was, but I couldn't tell you whether it would excite 10 him or not.

Q. Is it your experience that when clients come to your office they are nervous?

A. Sometimes extremely so, sometimes not a bit.

Q. In signing papers, some of them are nervous?

A. I have known some that couldn't sign their name at all.

Q. And their hands trembled?

A. Yes, they did.

20

Mr. Devlin: That is all.

Re-direct examination.

By Mr. Hunt:

Q. Just a minute. By the way, Mr. Bryant, you are not connected with the traction company in any way?

A. No, sir.

Q. Never have been?

A. No, sir.

30

Mr. Hunt: That is all.

Mr. Devlin: That is all.

HERVEY STUDDIFORD MOORE, sworn for the defendant.

Direct examination.

By Mr. Hunt:

- Q. Mr. Moore, you live in Trenton?  
 10 A. Yes, sir.  
 Q. Have all your life?  
 A. Yes, to date.  
 Q. You are practicing law in Trenton?  
 A. Yes, sir.  
 Q. You have been a lawyer how many years?  
 A. Seventeen years.  
 Q. Are you acquainted with Mr. Baus, the plaintiff in this case?  
 A. I met him once.  
 20 Q. When was the occasion that you met him?  
 A. I have seen him frequently, but met him once.  
 Q. When was it that you met him?  
 A. Early in the year 1922.  
 Q. Did he have both legs at this time?  
 A. He did.  
 Q. That was before the accident?  
 A. Apparently so.  
 Q. Where was it you met him on this occasion?  
 A. Mr. Bryant's office in the Broad Street Bank  
 30 Building.  
 Q. How did you happen to be there?  
 A. Mr. Bryant and I have a suite of offices there. We are not associated in any way, not partners, and he called me in the office on a matter of law and Mr. Baus was in his office.  
 Q. Did you observe anything about Mr. Baus, about his physical condition?

A. I noticed his hands were moving violently, so violently, in fact, that I mentioned that to Mr. Bryant when he went out.

Q. You might illustrate with your hands how his hands were moving?

A. (Indicating) Just about like an aspen leaf in a good strong breeze and it was continuous.

Q. (Witness illustrates by causing his own hand to tremble.)

A. There was no question about it. 10

Q. Are you connected with the Trenton and Mercer County Traction Company, or any of its affiliated companies?

A. I am not.

Q. Have you ever been?

A. I never have been.

Q. You gave evidence under a rule to show cause and appeared at my office for that purpose in response to a subpoena, did you not?

A. I did. 20

Q. Mr. Devlin was there during the whole time you were under examination?

A. That is my recollection.

Q. And he cross-examined you?

A. That is my recollection, yes.

Cross-examination.

By Mr. Devlin: 30

Q. You saw him but once?

A. I met him once and saw him frequently.

Q. Was he signing any papers or anything?

A. No.

Q. You saw one hand or two hands shake?

A. My recollection is that it was one hand.

Q. Is it your experience that people signing papers in law offices are nervous?

A. Sometimes. It depends upon the person. This man wasn't signing a paper.

Mr. Devlin: That is all.

10 EDWARD J. PEARTREE, SWORN for the defendant.

Direct examination.

By Mr. Hunt:

Q. Mr. Peartree, you are general manager of the Trenton and Mercer County Traction Corporation?

A. Yes, sir.

20 Q. You have been connected with the company how long?

A. Ten years, this coming September.

Q. You knew the operator of the trolley car that figured in this collision?

A. Yes.

Q. What was his name?

A. Moses Young or Hill, Moses Hill.

Q. Is he living or dead?

A. He is dead.

Q. When did he die?

30 A. My records show August 15, 1922.

Q. Did he die suddenly or not?

Mr. Devlin: That is objected to.

Q. What was the manner of his death?

Mr. Devlin: Objected to. His death is of no im-

portance. Why should we go into the causes or diseases of a man dead in this case?

Mr. Hunt: For the purpose of correcting this theory: That we might have assumed that this man was going to die and taken his deposition. The evidence will show that this man died suddenly and we had no chance to take any depositions.

By the Court: With that purpose in view, I will 10 permit it.

Q. What was the manner of his death?

A. He died suddenly. I got a report in the afternoon of that day that Mr. Hill had died and in talking with some of the other members of my organization I said he had been down the street that morning —

Q. And he died in the afternoon?

A. I got the information in the afternoon. 20

Q. Before that time he had not been sick, he had been working?

A. No, he had been working right along.

Cross-examination.

By Mr. Devlin:

Q. How long after this accident, did he die?

A. It was August 15, my records show. 30

Q. Of the same year?

A. Yes, sir.

Q. And the accident happened April 29, 1922?

A. Yes, sir.

Q. Can you tell me what the schedule is for the car that was in this accident at that time from one end of the route to the other?

A. In 1922, I could tell from the records. It was 63 or 70 minutes. I wouldn't be positive, but my records would show what the schedule was.

Q. I mean on the trip. What point did that car stop at?

A. Stanton and South Broad Streets.

Q. To what point did it go?

A. Cadwalader Park.

Q. How many miles is that?

10 A. I would say approximately between three and a quarter, probably, and four miles.

Q. Between three and one-quarter and four miles?

A. Yes.

Q. Let me call your attention to the fact that it is two miles from the Cadwalader Park to the old City Hall.

A. I said between three and a quarter and four miles.

20 Q. From State and Broad, out along Clinton to Stanton Street, how many miles do you think that is?

A. Around two, I would say it is between three and a half and four miles.

Q. And the schedule was what?

A. 63 or 70 minutes, it was one or the other at that time.

Q. You had a motorman testify yesterday that he thought it was about thirty-six minutes?

30 A. That was one way.

Q. I mean one way, Mr. Peartree.

A. You are talking about a trip; this is a whole round trip.

Q. No, I don't mean that.

A. It would be half of sixty-three or half of seventy, it would be thirty-five minutes if we had a seventy-minute schedule on.

Q. It is about four miles of roadway, you think?

A. I would say three and a half or four miles, along in there.

Mr. Hunt: Will the Court permit me to ask a question of Mr. Meaney that was overlooked yesterday?

By the Court: I will permit it.

10

JAMES MEANEY, recalled for cross-examination.

Cross-examination.

By Mr. Hunt:

Q. Will you turn your attention to the map? I point to the vacant lot north of the lot which is depicted here in green; do you own that vacant lot? 20

A. Yes.

Q. Was your automobile, before you started to turn it around, standing in front of the vacant lot, or in front of the store?

A. In front of the door in front of the store.

Q. And the door of the store is at the north side of the store?

A. It is ten feet from the north side of the building. 30

Q. When it was brought back against the curb again, facing the curb following the collision, was it in exactly the same position that it had been in before, or was it farther north?

A. It was in the same position, that is, as far as the store is concerned, that is, right in front of the

door, instead of facing south, it was facing east, facing west, but standing east and west.

Mr. Hunt: If the Court please, we have finished our evidence except for the doctors' evidence. Dr. Reddan is not here, he said he would produce the hospital records. I would like to refer to them before I proceed. The doctors were told to come at quarter to eleven.

10 By the Court: Doubtless they will be along within a few minutes. We can take a five-minute recess.

Mr. Devlin: I was going to offer a little rebuttal evidence.

By the Court: Dealing with the medical testimony. Any objection to that rebuttal?

20 Mr. Hunt: No.

LEONARD BAUS, recalled.

Questions by Mr. Devlin:

Q. Mr. Baus, were you ever in Cecelia Hamilton's house?

30 A. Never, no further than the curb of the walk.

Q. Did Cecelia Hamilton ever have lunch at your house?

A. My wife says she had a little bit of lunch in the evening.

Q. Were you present?

A. I don't think I was, I am not positively sure, I wasn't. I don't remember seeing her anywhere

around. She might have been around there, but I don't remember seeing her at all.

Q. She is the mother-in-law of your son?

A. She used to be, she ain't now.

Q. She isn't on good terms with your family?

A. No, she never was on good terms.

By the Court: Any cross-examination?

Mr. Hunt: No cross-examination.

10

NETTIE BAUS, recalled in rebuttal.

Questions by Mr. Devlin:

Q. Cecelia Hamilton, mother-in-law of your son, who has testified, did she ever have lunch in your house at any time?

20

A. No, sir, never.

Q. Did she ever have lunch in your house at all?

A. One evening we had a musical recital, that was the only time.

Q. How long was that before this accident?

A. I can't just tell, but I could if I was home.

Q. Was it a year or so, or more?

A. Before the accident?

Q. Yes.

A. It was a year anyway, or more.

30

Mr. Devlin: Cross-examine.

Mr. Hunt: No questions. If the Court please, Doctor Reddan is here now and he said he would produce the hospital records showing injuries to Mr. Baus' head. Just take the stand, Doctor?

DR. MARTIN W. REDDAN, recalled for cross-examination.

Re-cross examination.

By Mr. Hunt:

10 Q. Are these records that you have the full and complete records of the hospital with regard to Mr. Baus' case during the time that he was there as a patient?

A. They are the official records of Saint Francis' Hospital of this case.

Q. May I look at it first, Doctor?

A. That is the first time. (Witness produces record.)

Q. Doctor, does this official record of this case of Saint Francis Hospital contain any reference to any head injury?

20 A. I don't know, it often —

Q. Just a moment, Doctor, I asked a question, I would like to have it answered rather than some general comment made, the nature of which I don't know.

A. Yes, sir, I don't find any reference to any head injury here.

Q. If there had been any head injury of any consequence at all, would it have appeared in the record?

30 A. If we had considered it of any consequence it would have appeared in the record.

Q. I show you this other record and ask you what that is?

A. That is a record of where we tried to close the wound up.

Q. That is the record of the second admission to

the hospital for the purpose of closing this wound up, what is the date of that.

A. Eleventh day, twelfth month, 1922.

Q. The first entry shown in the first record you referred to was April 29, 1922, was it not?

A. He has it April 28th here, I don't know whether that is correct or not.

Q. From the second entry will you read please the professional diagnosis and final diagnosis?

A. Atrophic ulcer of amputated extremity was 10 the professional diagnosis.

Q. And the final diagnosis was the same, was it not?

A. Yes, sir.

Q. That means, to put it in simple language that this stump, point of amputation, had an ulcer on it and was wasting away?

A. Well, slight wasting, yes, sir.

Q. Atrophic means waste?

A. In its strict sense, yes, sir. 20

Q. And here was a wasting ulcer?

A. Not so much that, it was ulcer which failed to heal. It wasn't destroyed to any great extent, that was the best description you could give it.

Q. That second record contains no reference to any head injury sustained in the accident, does it?

A. I don't see that it does because this only deals with the leg.

Q. And the first one only deals with the leg?

A. As far as the history goes — 30

Q. Will you look through and see unless you are ready to tell the jury there was no head injury of any consequence, then I will save you the trouble?

A. I am now ready to say the head injury was not of any consequence.

Mr. Hunt: I am content with that, cross-examine.

Re-direct examination.

By Mr. Devlin:

Q. Doctor, the head injury may apparently not have been of any consequence at that time and it may have been of consequence and the physician didn't observe it?

10

Mr. Hunt: He is Mr. Devlin's own witness in the first place, so this is re-direct examination. This examination would have taken place yesterday if the doctor had these records here, it is leading.

Mr. Devlin: He is an expert on the stand.

By the Court: I will permit the question to be answered.

20

Mr. Hunt: Exception?

By the Court: Yes.

A. That is entirely possible.

Q. What?

A. Entirely possible.

Mr. Devlin: That is all.

30

Re-cross examination.

By Mr. Hunt:

Q. The physician referred to in that question and answer is yourself?

A. Yes, sir.

Q. Do you tell the jury that you neglected to make a proper examination of this man?

A. No, sir, I will not.

Q. To the best of your judgment did you give this man a proper and thorough examination?

A. Yes, sir.

Q. If that examination had disclosed any head injury of any consequence you would have noted it in this report?

A. Yes, sir.

10

Q. That man was under your care in the hospital for approximately six weeks following this first examination?

A. Yes, sir.

Q. If any head injury manifested itself during that time it would have been your business to discover it?

A. Yes, sir.

Q. You would have discovered it?

A. I hope so.

20

Q. Your examination was not so slight that you would have failed to find them?

A. No, even in spite of a thorough examination you may not find all those things that may be present.

Q. From the man's first discharge from the hospital which was approximately six weeks after the accident up to the time of his re-entry he was coming to the hospital about every other day for treatment?

30

A. Yes, sir.

Q. And during that time you were observing him?

A. Yes, sir.

Q. If there had been any injury to his head, you would have discovered it, isn't that right?

A. There was an injury to his head.

Q. Of any consequence?

A. No, sir.

Q. He didn't complain of any injury to the head of any consequence?

A. No.

Q. You didn't have to take a stitch in his head anywhere?

A. I don't know whether —

Q. You told Doctor Funkhouser and Dr. Mitchell that no stitches had been taken.

10 A. To the best of my knowledge and recollection there was not; I think it was just a slight scalp injury.

Q. Of course, there was no fractured skull?

A. None was ever found.

Q. There was no sign of concussion of the brain?

A. No.

Q. The hospital record shows that the head injury did not, at any time, produce unconsciousness, doesn't it?

20 A. Yes, sir.

Q. During the man's second stay in the hospital, in November, 1922, you were attending him there?

A. Yes, sir.

Q. And after the second discharge from the hospital he continued to come back at frequent intervals for examination?

A. He came to the dispensary for further treatment, yes, sir.

30 Q. And no head injury of any consequence was disclosed during any of those visits?

A. No, sir.

Q. And in your opinion, Doctor, and to the best of your knowledge and belief, there was no head injury of any consequence, was there?

A. To the best of my knowledge and belief there was no serious head injury.

Q. Neither in anything that you saw in the man,

nor in anything that the man told you, nor in anything that you found in either of those records, do you find any ground for supposing that there was any head injury of any consequence at all, isn't that correct?

A. Yes, sir.

Mr. Hunt: Cross-examine.

Mr. Devlin: Cross-examination again, is he your 10 witness or mine.

DR. EDGAR B. FUNKHOUSER, SWORN for the defendant.

Direct examination.

By Mr. Hunt:

20

Q. Where do you live, please, Doctor?

A. I live in Trenton.

Q. How long have you lived here?

A. About 20 years.

Q. You are a medical doctor by profession?

A. Yes, sir.

Q. And a graduate of what college or university?

A. Jefferson Medical College, Philadelphia.

Q. You have been in active practice ever since 30 you graduated from that institution?

A. Yes, sir.

Q. Have you pursued any specialty?

A. Nervous and mental diseases.

Q. Do you hold any official position?

A. I am at the State Hospital.

- Q. You mean the State Hospital for the insane here on the outskirts of Trenton?
- A. Yes, sir.
- Q. What is your position there?
- A. First Assistant Physician.
- Q. How long have you been there?
- A. I have been there about twenty years.
- Q. During that twenty years have all the cases of paralysis agitans which entered that institution  
10 come under your observation and care?
- A. Directly or indirectly, not all directly.
- Q. You have either directly cared for or have indirectly observed and supervised all of them?
- A. I have, yes, sir.
- Q. Did you make an examination of the plaintiff, Mr. Baus, yesterday?
- A. I did.
- Q. Doctor Reddan and Doctor Mitchell were also present at the time of the examination?
- 20 A. Yes, sir.
- Q. Did you find him to be suffering from any disease?
- A. I did.
- Q. What disease?
- A. It seems to me he is suffering from a well known disease, paralysis agitans.
- Q. What are the symptoms of that disease. I mean to say the symptoms that manifest themselves outwardly, to the lay observer?
- 30 A. Usually the most attractive symptoms are the tremors, tremor of the head, tremor of the extremities and probably a noticeable defect in walking, probably a noticeable defect in speech.
- Q. Does he have those tremors?
- A. He did when I examined him, he still has them.
- Q. You were in the court room most of the day?
- A. Yes, sir.

- Q. Did you observe him while in the court room?
- A. I did.
- Q. And he had those tremors then?
- A. Yes, sir.
- Q. Doctor Reddan said yesterday something about the pill rolling movement as being a symptom of paralysis agitans, is there any other movement that is likewise a symptom and that exists in some cases whereas the pill rolling movement exists in  
10 other cases?
- A. There are. There is quite a variation. You don't always get detectable picture of every case of paralysis agitans. Some will show prominent picture in one field and probably another group of muscles, and generally you will find the entire muscle system involved, showing some defect of the nervous lesion. They don't all have that pill rolling motion of the fingers.
- Q. Is the tremor that this man has typical?
- A. It seems to me so, yes, sir. 20
- Q. Is impairment of memory associated with paralysis agitans?
- A. Not conspicuous, especially in the early stage of the disease; of course, as you know, perhaps, and perhaps the jury knows this is a long, chronic disease, starts gradually and may last for years, so memory may not be disturbed in the beginning of the disease, and if it runs along a certain time and we see the case at a later period you will find some memory defect. 30
- Q. How long may the disease run before it terminates?
- A. It varies considerably, you may have cases for 5, 10, 15 and sometimes even longer.
- Q. Is it curable and incurable?
- A. It isn't considered curable by good authorities.

Q. Did you subject Mr. Baus to any memory tests yesterday?

A. I did, a few.

Q. Was that done in the presence of Doctor Reddan and Doctor Mitchell?

A. It was.

Q. Based on those tests what is your opinion concerning the character of his memory?

A. I believe his memory is pretty fair.

10 Q. Will you state to the jury some of the tests by which you tried his memory?

A. I ask him when he was injured, about how long, and briefly what happened, how he got to the hospital, what was done to him at the hospital. I didn't go into it in great detail but I asked enough questions that would seem to me that his memory was very good.

Q. Did you ask him any question on any other subject?

20 A. I asked him something about real recent events, the President of the United States, Representative in Congress in this district.

Q. Did he tell you who the President was?

A. He did.

Q. Did he tell you who the representative was?

A. I don't think he knew that, perhaps, it took him by surprise, perhaps, those are ordinary questions. We usually ask people to get a line on current events or recent events, it does not necessarily mean a man's mind is impaired because he fails on the spur of the moment to answer those questions.

30 Q. Did you ask him who he saw at the hospital at the time he was taken there?

A. Yes.

Q. Did he tell you?

A. Yes, we didn't go into great detail and it seemed to me that it didn't indicate he was uncon-

scious and he retained the impressions that he received at that time.

Q. Where is the seat of this disease, paralysis agitans?

A. That is quite a difficult question. Even the best authorities discuss that and differ among themselves. In a general way you can say it is of the center of the nervous system, the center of the nervous system, of course, is made up of the brain and spinal cord, but it is one of those diseases that hasn't been clearly defined as the other organic diseases of the brain and center of the nervous system. 10

Q. Such an injury as a compound fracture of a bone in the leg is called in medical parlance, trauma, is it not?

A. It is.

Q. Just tell the jury what is meant by trauma.

A. Trauma is another word for injury, it is a medical term and usually means some laceration of the flesh or something of that sort. In this case, I suppose you would think of the trauma of the leg, the injury done to the leg because of the accident necessitating the amputation that followed. 20

Q. If there were, in this case, lacerations of the scalp, that would be called trauma, too?

A. You could. There is a great degree of trauma, for instance a small injury to the head and a severe injury to the leg.

Q. Both fall into the general term of trauma? 30

A. Yes, sir.

Q. Tell the jury whether or not traumatic injuries cause paralysis agitans?

A. We don't think so. We don't look upon trauma as a cause of paralysis agitans. In fact, causes of paralysis agitans are not clear, just as you have causes of all kinds of mental diseases. You

can't put your finger on any one thing and say "This is the cause of paralysis agitans."

Q. Is it or is it not commonly the case that paralysis agitans follows after a traumatic injury. For instance, you were run over by a trolley car and sustained the same kind of injuries Mr. Baus did and would have to undergo the amputation as he did, is it probable or improbable that he would afterwards develop paralysis agitans?

10 A. I think it would be very improbable in your case.

Q. Now, not considering the underlying causes of paralysis agitans but considering the traumatic injuries as possibly contributing to the coming out or manifesting of a condition whose underlying cause is already there, in what percentage of cases does the best medical science consider trauma to be a contributory element.

A. It may vary to some degree but some recent 20 authorities that I have looked over gave 2%, 2% as probably contributing causes.

Q. In the cases in which trauma is a contributing cause, bringing into activity, by bringing into activity a paralysis agitans condition that already exists, inform us of the nature, manner and duration of the contribution that the trauma makes, how does it take place.

A. It is very difficult to determine that, it is very 30 difficult to determine, in the first place, you have to take into consideration the entire anatomy of the body, a trauma to one part of the body might not have the same effect upon the central nervous system as a trauma to another part of the body, also, the amount of infection you would find with this trauma.

Q. I ask you to suppose a case of paralysis agitans already existing and then the victim re-

ceives precisely the injury Mr. Baus received in this case, what contribution is that injury likely to make to the progress of the disease?

A. It perhaps would aggravate the disease to some degree.

Q. Would the aggravation of the disease be permanent in duration?

A. Well, it is not apt to be permanent. You may find a case something like this. You might find that the severe trauma followed by severe pain may intensify his symptom with the other disease with the removal of that pathological condition as well as the infection. In other words, restore it to a reasonably healthy condition that may contribute to the improvement of his nervous condition. 10

Q. Did Mr. Baus tell you anything yesterday, during the course of your examination of him regarding his present condition as compared with his condition some months ago?

A. I went into that with him and he seemed to 20 feel that he was better.

Q. He said so, did he?

A. Yes, he did.

Q. Meaning, in reference to these tremors and other manifestations of paralysis agitans?

A. Yes, this nervousness, yes.

Q. Now, Doctor, I ask you to assume that three years ago, October and November, 1922 and January, 1922, this gentleman manifested a pretty susceptible shaking of the hands. in view of the examination you have made of the man, what would such a shaking of the hand at the times named indicate to you regarding his state of health at that time as to whether he then had or did not have paralysis agitans? 30

A. Considering his condition at the present time and the duration, the manifestation at the time men-

tioned, it seems to me that that was the beginning of his trouble. It is well defined also in these cases that what others see is not always the beginning of the trouble. It is possible that he was conscious of something going on even before these manifestations were noticeable to the outward observer. It is a very slowly progressing disease and its onset is also very, very slow, gradual.

10 Q. If in October or November, 1921 and January, 1922, this man had paralysis agitans to such an extent that there was a perceptible tremor of his hand, would it have been possible for medical science and skill to stay the progress of that disease and give the man, regardless of whether he suffered any traumatic injury or not —

A. It is considered possible, possible at times to arrest the process, arrest the advance of the process, but cases are not known.

20 Q. By arresting the advance you mean delaying the progress of the disease?

A. Delaying the progress of the disease.

Q. Making it develop and work on to its end more slowly than it otherwise would have done?

A. Yes, sir.

Q. What is the medicine or treatment considered best to effect that slowing of the progress of the disease?

30 A. As a rule, medicines aren't resorted to, except to keep the cause of the physical condition best possible. It is usually advised that giving up of activity, hard laboring people taking it easy, more rest, more sleep. In other words, the treatment is along those lines. If it is a banker, he is supposed to ease up on his work and take such medicine only as seems best for his physical condition. If he needs something for his appetite take it, bowels, take it.

Q. There isn't any specific medicine for paralysis agitans?

A. No medicine.

Q. The treatment for that is rest?

A. Principally.

Q. Now, assuming that Mr. Baus had perceptible tremors of the hand in October, 1921, what do you say, based on your observation of him in the court room and examination yesterday, as to whether the progress of the disease has been normal or rapid 10 or delayed since October, 1921?

A. Based upon my experience I have seen quite a number of cases, I would consider it making about a normal progress.

Q. Suppose that the man's condition in October, 1921, were as I have stated and he had not sustained any traumatic injury or had to go under any operation, what would you expect to find his condition today, as compared with what you do find it to be?

A. It seems to me that I would expect to find just 20 about what I did find. The duration of the case, and the symptoms as we all notice them today, just about as near normal progress as I could determine.

Q. Now, Doctor, suppose the case of a man who is a produce dealer or huckster, in part wholesale and in part retail, he works for six days in the week, three nights in the week he drives down to Philadelphia leaving Trenton sometimes at three o'clock in the morning to bring a load up here to sell and he does this in all kinds of weather. He states that 30 the days are long and the work is laborious, does or does not such a course on the part of a man render him more than ordinarily susceptible to this disease, paralysis agitans?

A. The conditions as you have mentioned them are also mentioned in the texts as contributing to the cause of paralysis agitans. Over-work, unusu-

ally long hours of work, irregular meals, irregular rest, stress and strain are given as contributing causes to this condition.

Q. Doctor Funkhouser, you are not in the regular employ of the Trenton and Mercer County Traction Corporation, are you?

A. No, sir.

Q. And as a matter of fact you never have been retained by that company in any capacity before,  
10 have you?

A. No, never.

Mr. Hunt: Cross-examine.

Cross-examination.

By Mr. Devlin:

Q. You were obtained by them now as an expert  
20 to testify?

A. Yes, sir.

Q. How many cases of paralysis agitans, have you seen?

A. Well, that is a little difficult. I have never kept an accurate account of the number. I think I have seen all that ever came to the State Hospital at Trenton and some outside.

Q. Approximately how many, can you tell us?

A. 75 or 100 cases.

30 Q. Have you any definition of this disease, what is it?

A. Well, that isn't so easy as definitions of some other diseases for the simple reason we do not know much about it; it is considered a disease of the central nervous system.

Q. What does that mean?

A. The writer usually follows it up saying char-

acterized, characterized by certain group or groups of symptoms.

Q. What are the characteristics these writers give?

A. Some usually give tremor, as you notice in the gentleman here, those tremors are divided and subdivided, some are close, some are in certain parts of the anatomy, sometimes the hands, sometimes the head, involving the extremities. The definition is a very long one. 10

Q. When did you examine this man, morning or afternoon?

A. Forenoon.

Q. His memory is better in the morning than in the afternoon, isn't it?

A. It may be, often one's memory is a little sharper.

Q. The exertion of the day dulls the memory somewhat. Do you say this man has paralysis agitans?

A. I think so, yes, sir. 20

Q. That is your opinion?

A. Yes, sir.

Q. Give me some of the symptoms besides tremor?

A. One of the most conspicuous is muscle rigidity.

Q. That is stiffness?

A. It may be, not as you have it.

Q. Will you illustrate your definition of it, please, for us?

A. In the first place, the patient himself may be  
30 conscious that he is not quite as supple as he used to be; he might not be able to climb in and out of his wagon as fast as usually, he may think it rheumatism, he can't understand it, he may not be able to run quite as active. In other words, his muscles are becoming quite a little bit stiff or less active. He may not be able to get out of the way

of a street car, not able to get up and down steps, it is a progressive condition.

Q. Isn't that symptom that you have given for paralysis agitans, a symptom that you have given for a man at the age of 52?

A. I don't know that it is a symptom of age 52.

Q. You don't run as well at 52 as you did at 32?

A. Not quite so well.

Q. There is a slowing up?

10 A. It will hardly progress in age, in disability, due to age, not quite as rapid in their progression as paralysis agitans.

Q. What other symptoms besides rigidity have you got for paralysis agitans?

A. You might have letting up in his activities, he may not feel mentally alert as before, he might have a masked expression of the face.

Q. You said he was alert, memory pretty good?

A. Yes, he is.

20 Q. Doesn't that take away one of your symptoms?

A. As I said before at the beginning paralysis agitans does not necessarily show any defect of memory.

Q. He has had it for three years according to the contention here, or more?

A. You wouldn't expect much memory defect in three years.

Q. Can you give me any other symptom besides what you named?

30 A. Yes, you might have the symptom of lack of interest in his work. I don't know whether this is one of his symptoms or not.

Q. What symptoms has he got, name what you found?

A. A good deal of symptoms of paralysis agitans, muscle rigidity, tremor of his extremities, including his head.

Q. Is that all?

A. That is the principal symptoms of paralysis agitans.

Q. How about the masked like face, has he got that?

A. Yes, that is included.

Q. Has he got that?

A. I think you will notice it, not so marked in his case, but I think there is a tendency to progress along that line. Perhaps several years from now 10 it will be more noticeable.

Q. How about his walk?

A. It is very difficult to gauge by his walk as he has only one leg and a crutch.

Q. Didn't he stand on only one leg before you in the room, yesterday?

A. That is not inconsistent with paralysis agitans.

Q. Did he stand on one leg before you in the room yesterday?

A. If you want erect position, I will say no. He 20 was standing, however, on one leg with the aid of his crutch.

Q. Didn't he stand in the room with you yesterday and Doctor Mitchell and Doctor Reddan without the aid of his crutch, on one leg?

A. If he did, he did it momentarily and using his hand on a chair.

Q. I am asking you if you recall that he did?

A. No, I don't recall that he did.

Q. While standing did he show any tendency to 30 pitch forward or backward?

A. I think he would have fallen if he hadn't had his crutch or hand to support him.

Q. Did he show any tendency to fall backward or forward?

A. I would have to answer that in the affirmative because he could not balance himself on one leg,

even a man without paralysis agitans couldn't do it, I will have to say he did show a tendency to fall.

Q. Did he do any different than any other man would do with one leg?

A. I think he did.

Q. What was the difference?

A. He helped himself in every move that he made, either with his hand or crutch, to get about.

Q. Doesn't every one-legged man do that?

10 A. I have seen a one-legged man go as far as the door without a crutch.

Q. Your practice has been confined to the State Hospital?

A. Yes, sir.

Q. You don't do any general practice?

A. No.

Q. Does paralysis agitans ever follow an injury to this kind?

20 A. It is not considered as the only cause of paralysis agitans.

Q. How about after it is infected, the wound is infected?

A. Probably contributing to the condition.

Q. Is paralysis agitans caused by infection?

A. Not of itself.

Q. Not of itself?

A. It is not considered the only cause.

30 Q. How about if a man be wounded or injured and his system is infected, does paralysis agitans ever grow out of it?

A. I said before it will contribute. I think the best authorities will say that it might contribute to the condition. They might even go so far as to say that 2% of paralysis agitans, trauma contributes. It is not considered the specific cause.

Q. Do you recognize—who do you recognize as authorities on this disease?

A. There are quite a number of good men. We have Baten, we have Gaus, Dann.

Q. Jeliffie and White a good authority?

A. Yes, sir.

Q. White and Jeliffie, they are good?

A. Very good, yes, sir.

Q. Are you familiar with their last treatise on the subject?

A. I don't know whether I have seen their last edition or not. 10

Q. I am reading from the book of Jeliffie and White, 1923 edition, on the question of paralysis agitans and its causes.

Mr. Hunt: Just a moment. I object upon the ground that the witness has not said he is familiar with this book. The only use to which the book could be put would be to impeach the witness if the witness had made a statement from the book, then the book could be used to show that the state- 20 ment was not in the book, but to have counsel to read from the book —

Mr. Devlin: He has recognized this work as one of the authorities on this subject.

By the Court: I think I will permit that question to be answered.

Mr. Hunt: Isn't it one method of reading into 30 the record the opinion of one writer on this subject without offering the writer for cross-examination. If the word of this man is to be put before the jury we want this man to be put before the jury. He has no right to put anything before the jury that we are not permitted to cross-examine on.

Mr. Devlin: I want to put a question to the witness and let him answer from this book, if he says this is authority, all right.

Mr. Hunt: He can put all the questions that he wants to framing the questions in such a manner as he sees fit from what he learns from this book, but he can't read extracts from this book to the jury.

10 By the Court: I think that would be the better practice, Mr. Devlin, to frame the question you desire.

Mr. Devlin: I am framing this question from the book.

By the Court: Frame the question, if you desire, from the paragraphs that you refer to in the book.

20 Mr. Devlin: He has stated that this is among the authorities. I have, I think, the right to ask him if he agrees or disagrees with this authority, that is all that can be in the question. If he agrees or disagrees with this authority? It doesn't make any difference if he reads the book, he says this is an authority.

By the Court: I think it is permissible for you to frame questions based upon the book.

30 Mr. Hunt: I understand the Court instructed counsel that he is not to read an abstract from this book. I should like the Court to instruct him.

By the Court: That is my ruling. He may frame his question.

Mr. Devlin: I will frame my question and he can object to it.

Q. Trauma is an injury, isn't it?

A. It is.

Q. Do you agree with the statement that trauma may be sufficient existing cause —

Mr. Hunt: I object to what counsel says.

10 Mr. Devlin: He has brought medical men here who have testified from theory, not on their own knowledge. This man has said repeatedly the text writers and he has named this one as one. I am taking the statement of the text writer that he names and ask him if he agrees or disagrees and he can do it. That is all there is to it. I am not a physician. I submit I have a right to ask this question to this doctor.

20 Mr. Hunt: The witness did not name these authorities among the authorities that he named. After he had named a few, counsel said, "Jeliffie and White," and he said, "Yes." Counsel said, "Are they good authorities?" And he said, "Yes." He wants to read from the book of Jeliffie and White. He wants to show the jury what Jeliffie and White say about this. I submit if Jeliffie and White are to be brought in this case, it should be in person so that we might cross-examine them.

30 Mr. Devlin: If this is irregular, let the upper Court go ahead and reverse it. He has said he seen about 75 cases, his information about this ailment comes from experience with this 75, he is asked if Jeliffie and White are authorities on this question and he said yes, I want to read one statement about

the disease he is speaking of, if he disagrees with it, all right, and if he doesn't, all right, that is the only question. The only way this man can be cross-examined, I submit, is for this question to be put to him and I be allowed to cross-examine him in my own way.

Mr. Hunt: May I point out to the Court what that would result in? It would permit counsel to take  
10 such sentences or phrases as he wanted out of this book, separate them from their context, separate them from everything that explains, qualifies and moderates them and read them to the jury as words of Jeliffie and White on this subject, Jeliffie and White not being here. Doctor, this statement just read is modified and qualified by so and so and for him to say yes. He cannot put these words of Jeliffie and White in evidence without giving us an  
20 opportunity to cross-examine them.

Mr. Devlin: If this is an authority on this disease and I state anything that is not so, he can readily say so. He has appeared here as an expert and no matter what I read, if it is not authority he can comment on it right there. I am talking to the man about something I don't know nothing about myself. He knows all about it in comparison to me. If I make any statement that isn't so, this witness, who appears as an expert, can tell me that is not so  
30 and that ends it. I submit I have the right to —

By the Court: I have stated, Mr. Devlin, that I will give you permission to examine this witness, to put questions to the witness that you may desire, based upon things that appear in the book.

Mr. Hunt: May we have an exception to his reading anything from the book?

By the Court: You may have an exception, yes.

Q. Do you agree with the statement made from Jeliffie and White, an authority, that trauma may be a cause of paralysis agitans?

Mr. Gildea: Just a moment, I don't think that is fair. I read the book and it doesn't say that.

Mr. Devlin: They object to my reading from 10 the book and they object to my not reading from the book.

Mr. Hunt: I think you ought to be fair with the witness.

Mr. Devlin: If I do anything with this witness that is not fair, yet the witness say so. You leave my books alone. If I do anything with this witness, I want not only the doctor, this witness, but the  
20 Court to stop me. I think the Court has allowed me to frame my questions as I please.

By the Court: The question may be repeated and the witness may answer. Exception may be allowed.

(Question repeated.)

Mr. Hunt: I object. 30

By the Court: Objection overruled and have an exception.

Mr. Hunt: May I also offer another objection? What page of the book is he reading from?

By the Court: I didn't understand he was reading from the book.

Mr. Hunt: What page of the book was open before him when he was framing the question?

Mr. Devlin: I don't think that is a matter he has a right to know.

10 By the Court: Your objection is overruled.

Mr. Hunt: May I have an exception?

By the Court: Yes.

(Question repeated.)

Mr. Devlin: The page I am reading from is 618. I will withdraw that question and re-frame it.

20 Q. Trauma or an injury may be a cause of exciting the symptoms of paralysis agitans, if they exist in the body?

A. It may aggravate them.

Q: That is right?

A. Yes.

Q. And also, if it is a mild case of paralysis agitans, an injury may bring it to the surface, that is true?

30 A. It may attract the attention of it first. It may not attract the attention of the laity or others —

By the Court: Wait until he finishes; what else were you going to say?

A. (Continuing) I was going to say that the man might or he might not realize he wasn't quite so well

as he had generally been. His neighbors might have noticed something or they might not have noticed something. Symptoms brought out before he had the trauma just now, they are conspicuous because of the trauma.

Q. (Question repeated.) And also, if it is a mild case of paralysis agitans an injury may bring it to the surface, that is true? Answer that yes or no?

A. Yes.

Q. That is true? 10

A. Yes.

Q. You say physical stress may bring on paralysis agitans?

A. It contributes, yes, sir.

Q. Toxic factors or pus may be another reason?

A. It may contribute, yes, sir.

Q. In this man's case his leg was infected?

A. So I heard testified.

Q. That infection may have been the cause? 20

A. No, I wouldn't accept it that way.

Q. Or one of the causes?

A. I wouldn't accept it even that way.

Q. What would you say it is?

A. I would say it may have contributed to the aggravation of the trouble.

Q. Isn't it true that it may light up a smaller condition of the disease that wouldn't mean anything?

A. I don't think you could put it that way, that paralysis agitans doesn't mean anything; it does mean a great deal. 30

Q. I mean paralysis agitans wouldn't give a person any trouble. An infection, or pus, would that bring it to a vigorous place?

A. It is a question of how much inconvenience the gentleman suffered before the trauma. I am not able to say that as I have already said the pus

condition would aggravate the condition of paralysis agitans.

Q. If a man is injured seriously, as this man was, and his leg becomes infected and there is a condition existing in him that hasn't developed, a light case of paralysis, would the injury and pus and infection combined be likely to develop that?

A. It would bring out the symptoms. It would aggravate the condition.

10 Q. But doesn't it aggravate the condition?

A. I think I said yes.

By the Court: That is just what he said.

Q. If he didn't know he had it before, and then these conditions appeared, that would appear that the injury had aggravated them?

A. Aggravated them, yes.

20 Q. Sure, the majority of patients in this kind of disease is generally between fifty and seventy, is that right?

A. 45 and 60.

Q. It is seldom found in people of 10, 12, 15, 20 years old?

A. Right.

Q. Do you know the cause of it?

A. I do not; I know contributing causes.

Q. I mean, do you know the cause?

30 By the Court: Did you finish your answer, Doctor?

A. I thought I had. Exact causes are not known.

Q. Does a disease in a case of this kind usually start at the point of injury?

A. I don't know of any case like that.

Q. You don't know of any case?

A. No.

Q. Have you ever seen a case that followed an injury?

A. I never have.

Q. Then, of course, you are not able to give us much of an opinion on that, when you have never seen one?

A. I can only follow up my theory with text book information.

Q. Does the tremor, as a rule, start in the member 10 that is injured?

A. Not at all, no.

Q. Are you acquainted with Bailey as an authority on this question?

A. Pierce Bailey?

Q. Bailey?

A. There may be others.

Q. Yes.

A. I have read his work.

Q. Do you consider him an authority? 20

A. Pierce Bailey is a fine man, good man, competent man.

Q. He is an authority on this question?

A. Yes, I would say he is authority.

Q. Doesn't he state that tremor starts —

Mr. Hunt: I object to what Mr. Bailey states. Mr. Bailey must be here to be cross-examined.

Q. If Bailey says that this disease starts at the 30 point of injury, what have you to say about it?

A. I don't understand what you mean. Shall I answer that?

Q. Does the tremor start at the injured member?

A. Not necessarily, it might be, of course.

Q. If Bailey says the tremor starts with the injured member, what have you to say about that?

A. I wouldn't have anything at all to say, sir, it might be coincident with it.

Q. Would you disapprove it?

A. I wouldn't disapprove. I recognize it as a possibility.

Q. Would you say Bailey was wrong?

A. Not at all.

Q. Would you say he was right?

A. I would say he was good authority.

10 Q. That means you would take his word?

A. I see no reason to doubt it on that question at all.

Q. Now, Doctor, assuming that this man has worked hard for a number of years, over twenty, and attends to his work every day, is healthy, his friends don't see any tremors or bobbing of the head, the family physician who attended him in 1920, found no evidence of it, the family physician had a chance to observe him as he passed by every day and would talk with him, then an accident happens and this condition appears, would you say that paralysis agitans came from the accident or did he have it before?

Mr. Hunt: I object to that question. It unfairly implies that the family physician examined the man in 1920.

30 By the Court: I don't think that was intended. It may be made clear that the family physician examined him for a cold in the head.

Q. (Continuing) And made no examination for paralysis agitans?

A. No. No, I can't say that I would attribute his present condition to the trauma. As I said before, this disease is so gradual at the onset that even the

family physician might treat him for a cold and not see that paralysis agitans. It is not a reflection on the family physician. It is one of those things that come on so slowly.

Q. He could have it and not know it before this accident?

A. Sure he could.

Q. If he had it and didn't know it and he is injured in 1921 —

10

By the Court: 1922.

Q. (Continuing) And this condition that you say develops, what effect would you say the injury had on him?

A. As I said before, the injury may aggravate the trouble and as I have also said before, I have seen cases of this duration that show no more pronounced symptoms that the gentleman shows today?

Q. I would like to have my question repeated. 20

(Question repeated.)

Q. Answer that.

A. In addition to my other answer?

Q. I would like to have you answer that question.

A. I can honestly say it may have aggravated the disease.

Q. You said it may?

A. Yes.

Q. I will ask you, does it or does it not? 30

A. It is unfair for me to answer that question. Does or does not, for the man's progress seems to be a normal progress. If I had examined him two years ago, I might be able to give you a better answer.

Q. I am asking you. I put a hypothesis to you

and I will put them again. Assuming that this man had the disease and did not know it, at the time of his injury in 1922, and these things have developed since that injury, will you say whether or not that injury did or did not produce these conditions that you see now with this disease, these symptoms?

A. I would say they did not, the injury did not produce symptoms as I see them today.

10 Q. But the injury and the infection that this man had and the stress and worry for months, did that have anything to do with developing this condition of paralysis agitans that you see existing, or bring it to the surface?

A. I will take the man's own statement that it aggravated his trouble. He tells me he was worse six months ago than he is at the present time. The injury would light up this condition and aggravate it to such a degree until it was beyond a normal course, then, as the stump gets well, he settles back to what 20 seems to be the normal position of a man having the disease four or five years. He tells me he is better today. He didn't set the exact time when he was worse; but, I take it, that it was some period from the time he was injured until the present time.

Q. Now, are you able to tell what progress this disease has made or not made?

A. Judging from his own statement.

Q. Did he tell you how long it has gone on?

A. No.

30 Q. You didn't have that factor, did you?

A. No, I only surmised.

Q. As I understand you, paralysis agitans is a disease that is progressive?

A. Yes.

Q. It never gets well?

A. Yes, sir, it never gets well.

Q. He is destined to go right on?

A. I am sorry to say so.

Q. Finally he becomes a wreck, helpless?

A. Yes.

Q. Before dissolution, that is right?

A. Yes, it will be 10, 15, 20 or more years.

Q. If this man did a good, hard day's work every day for a period of over twenty years, maintained himself and since this accident has been unable to do anything, unable to get well enough to do anything, what have you to say whether this accident 10 caused any of this condition beyond the leg or not?

A. I think it did not. It is a difficult case to determine, because of the loss of his leg. He may be able to do some work yet, considering only paralysis agitans, but with the loss of his leg, he is doubly crippled.

Q. Now, if he had not been injured and no tremor had existed, no symptoms that we could say were observable, I mean that he could observe or laymen could observe, and he had not been injured, would 20 he have been able to continue his work, do you think?

A. I should think so.

Q. And you think he would be able to continue his work for a good while?

A. That is pretty hard to say, he does it at his own risk.

Q. We all do that, don't we?

A. He would do it at a greater risk than you or I.

Q. But if he had not been injured, he would have stood a good chance of continuing for a period, you 30 don't know how long?

A. That is true.

Q. To follow his work?

A. Yes.

Q. You said if he had been examined by a person, physician I presume, and his attention had been called to these conditions sometime, long ago, and

he had got treatment consisting of rest, that the disease would have been arrested?

A. Some cases are arrested.

Q. Of course, if he were a poor man, that couldn't afford rest, he would have to take the disease, is that right?

A. He is more apt to continue at his work because of the necessity of earning his living.

Q. Aren't there known in this disease in the books, 10 that there are certain stationary cases, non-progressing, for twenty-five years and never move after that?

A. I haven't had any under my treatment.

Q. I mean authorities.

A. I should think that was a very unusual case; I wouldn't doubt it.

Q. Such cases exist?

A. I wouldn't doubt that such cases exist.

20 Mr. Devlin: That is all.

Re-direct examination.

By Mr. Hunt:

Q. Now, Doctor, would a case which had progressed to the point where the layman could observe a marked tremor of the hand have been arrested and remained stationary for twenty-five years?

A. It seems a most unusual case, most remarkable case, by arresting, I would have to qualify considerably. You could hardly imagine a case standing absolutely quiet for twenty-five years. 30

Q. The progress might be very slow, but there would be some progress?

A. That is the history of the disease.

Q. The rapidity or slowness of the disease would

probably depend upon the man's constitutional strength and his mode of living?

A. Yes.

Q. Now, Doctor, to the observation of the ordinary layman, what is the first outward sign or manifestation that man he is looking at has got this disease?

A. Very commonly the first manifestation is of the hand. It may be in the handwriting, it may be in the effort of the man to do something in the presence of the observer. It might be by stumbling. 10 He has fallen where other people ought not to fall, sometimes it is in the foot.

Q. Most commonly it is in shaking the hands?

A. That is the thing most often mentioned because it is much easier for a casual observer to see his hand shake rather than his foot.

Q. Now, Doctor, suppose that the man had this disease and it had made such progress that there was a visible tremor of the hands and he continued to do work of the character that the plaintiff here 20 has been said to do, what would be the result of the progress of the disease, of his continuing to do that work?

A. It would tend to hasten the disease. Tend to progress more rapidly than if he would rest, give up his work.

Q. What would be the effect of the progress of the disease on the ability of the man to continue indefinitely such hard and laborious work?

A. If I understand you clearly, I would have to say that it would certainly retard his progress, certainly retard his work. 30

Q. It would impair his ability to do that kind of work?

A. It would, unquestionably.

Re-cross examination.

By Mr. Devlin:

Q. Do you mean by tremor of the hand, shaking of the hand, is that what you mean?

A. Yes.

Q. Do you mean to say that shaking of the hand alone indicates paralysis agitans?

10 A. No, I do not.

Q. If a man had a nervous shock or was up late, drunk the night before, his hand might shake, that is true, isn't it?

A. Yes.

Mr. Devlin: That is all.

Mr. Hunt: That is all.

20 (An adjournment was taken to 2.15 P. M.)

Thursday, January 28, 1925, 2.15 P. M.

Mr. Hunt: I hand up some requests to charge and the defendant rests.

DEFENDANT RESTS.

Mr. Devlin: Did you want to offer this hospital report in evidence?

Mr. Hunt: No.

By the Court: Do you offer that map?

Mr. Hunt: We offer the map, yes, sir.

(Marked Exhibit D2.)

10

Mr. Hunt: I think Mr. Devlin admitted yesterday that the record of the former trial from which certain extracts were read was the correct record of the former trial.

By the Court: The testimony of Mr. Swan was read from that.

Mr. Devlin: Any questions that were asked from 20 that record are all right.

BOTH SIDES REST.

## CHARGE OF COURT.

The Court (MARSHALL, J.): Ladies and gentlemen of the jury: The matter which has been engaging your attention for the past three days is an action brought by Leonard Baus, the plaintiff in this case, against the Trenton and Mercer County Traction Corporation.

The plaintiff claims damages from the defendant for injuries suffered as the result of a collision between a trolley car owned and operated by the defendant, through its servant, and an automobile or automobile truck owned and operated by Mr. Meaney.

The action is based upon the alleged negligence of the defendant in the operation and control of the trolley car in question. As I have said in all cases of this character, the foundation of the claim is negligence, and negligence may be briefly defined as the failure to do what a reasonable and prudent person would ordinarily do under like circumstances and in similar conditions, or what a reasonable and prudent person would ordinarily omit to do under the same circumstances.

Before there can be a recovery in this case by the plaintiff, the duty rests upon him to show that the defendant was, at the time of the injury complained of, negligent in the operation of this car, either that he did something which a reasonable and prudent person would not ordinarily have done under the circumstances, or that he failed or omitted the doing of something that a reasonable and prudent person would have done under the same or similar circumstances.

Even though it should appear in this case that the

defendant was negligent, if it should likewise appear that the plaintiff also was negligent, and that the negligence of the plaintiff contributed to the injury complained of, then the plaintiff is not entitled to recover. This is what is known in law as the rule of contributory negligence. I may add in this connection another rule which applies in the case of contributory negligence, and that is that where, in cases such as this, the plaintiff, Baus, was merely a passenger in an automobile owned by Mr. Meaney, who was operating the car, in such cases the negligence of the operator of the automobile, being Mr. Meaney, in this case, cannot be imputed to the plaintiff, Baus.

To allude briefly to the facts in this case. The injury complained of occurred on the 29th day of April, 1922, at about 7 or 7.30 o'clock in the afternoon or early evening, according to the testimony of all the witnesses, as I recollect their testimony, it was at that time not dark, but growing dusk. The lights on the trolley car were lighted as well as was the lights on Mr. Meaney's car. At that time, Mr. Meaney, who is a florist, having his place of business on South Clinton Avenue, just below Beatty, Street, had his car standing in front of his place of business, facing south, in the direction of Chestnut Avenue. He intended to take it to his garage which was around on Beatty Street. He invited Mr. Baus to ride with him. Mr. Meaney says that he then went to the front of his car and cranked it for the purpose of starting the engine and then, as he stood on the curb, he looked down Clinton Street in a northerly direction as far as Dye Street, I think, he was able to see, but observed no trolley cars or other vehicles approaching that would interfere with his making the turn there in crossing the street and making the turn. He then said he looked in the opposite direction as

far as Chestnut Avenue, seeing nothing that would interfere with his movements, he got into the car and seated himself behind the wheel, Mr. Baus got in the other seat by his side, he then started to put the car in motion and began turning it across the street, with the intention of turning the car around and going down Beatty Street. Mr. Meaney says that at that time when he was looking down the street toward Chestnut Avenue, as he stood on the

10 curb, he saw no cars approaching, although the street is straight and without any grade. When he had crossed the southbound track and was within, as I recall his testimony, about a foot of the inner rail of the northbound track, he says he observed a trolley car at a point about Whittaker Avenue, and he proceeded on his way across the northbound track, going at, he says, a moderate rate of speed, about as fast as a man would walk. When the car or the

20 truck had crossed over the inner rail of the northbound track, and also within a short distance of the outer rail of the northbound track, the approaching trolley car struck Mr. Meaney's automobile on the right-hand side, at a point about where the post or upright which supports the top is located, near the seat. The result of the impact was that the car was turned completely around, according to the evidence of some of the witnesses, so that it faced directly towards Meaney's store on the opposite side of the street from which he had been moving.

30 With this impact or collision between the trolley car and the automobile, Mr. Baus, who was seated on the right-hand side of the car, was knocked from the seat and sustained a compound fracture of the right leg. He was, after the accident or collision, taken first into the firehouse, which is near the Meaney store, and later taken to the hospital, Saint Francis Hospital, where he remained for a period of six

weeks, under the treatment of Doctor Reddan and attendance of the nurses of that institution.

At first, efforts were made to save the limb from amputation, but infection having developed, it was found that it was advisable to remove the leg, which was done at a point between the knee and the ankle. I don't know as it appears just what portion of the limb the amputation took place. After a portion of the limb had been amputated, it was found that the wound was not healing as rapidly as desirable and

10 a third operation was performed, after which the infection seemed to have disappeared and the wound gradually healed up, not becoming finally healed, however, until, according to the testimony of Mr. Baus, about the month of November, 1924.

It has been testified to by Mr. Baus, that since this injury was sustained by him, he has been unable to pursue his former occupation, that of a huckster, or wholesale and retail dealer in fruits and produce, nor has he been able to follow any other

20 occupation. He testified that at the time of the injury he was earning about from thirty-five to forty dollars a week, clear. As counsel for the defendant stated, in summing up this case before the jury, it is the province of the jury to determine questions of fact and it is for you to take the evidence that has been produced in this case and from that evidence and all the surrounding circumstances, to arrive at a verdict, which to you seems to be a proper one under all the circumstances.

30 It is not the province of the Court, in any way, to intimate what your judgment should be, what your verdict should be. I have already stated that the first question for you to determine is whether or not the defendant in this case was negligent. If it appears to you from the evidence in this case that there was no negligence on the part of the defen-

dant, that ends this case, and your verdict should be one of no cause of action. Likewise, should it appear, even though it should appear that the defendant was negligent, if it should appear to you from all the facts and circumstances in the case that the defendant likewise was negligent and that his neglect contributed to the injury complained of, then he is not entitled to recover and your verdict should be one of no cause of action.

- 10 Having resolved the question of negligence in favor of the plaintiff, if you should so resolve it and determine that the plaintiff is entitled to recover, then the next question for you to determine would be what would be the proper amount or sum to compensate the plaintiff for the injuries which he has sustained. In arriving at that amount or sum, what is called the measure of damages, you should take into consideration several different elements. One of these elements would be the amount of money
- 20 which the plaintiff has been obliged to lay out and expend in and about an effort on his part to be cured of the injury. Doctor bills, hospital bills and artificial support or artificial limb. Anything of that kind which he is called upon to pay, you should take into account in fixing the measure of damages. He would also be entitled to recover for the moneys which he has lost by reason of his failure or inability to follow his usual or other occupation. You should also take into consideration the future diminution of
- 30 his earning power, whether that be total incapacity or otherwise, as it may appear from the evidence. There should also be an allowance made to the plaintiff for the pain and suffering which he has endured up to this time and which, in the future, he may be called upon to suffer, if you find there is any likelihood of such pain and suffering in the future.

There has been considerable testimony in this case

with reference to a condition of the plaintiff which existed at this time referred to in this case, existing tremor or trembling of the hand, shaking of the head and so forth, which some of the testimony in the case indicates are symptoms of a disease known as paralysis agitans. It is contended on the part of the defendant in this case that the plaintiff was suffering from this disease at the time of the accident and had been subject thereto for some period of months prior thereto. On the other hand, the plaintiff contends that prior to the collision in this case, the plaintiff had been a man of strong, robust realth and that no symptoms of the disease had been discernible. There are witnesses, of course, who have testified in having observed these conditions before the accident, and there are witnesses in this case that did not observe them. The plaintiff, himself, says that he never was subject to these tremors before the accident. Should you find the defendant responsible for the injuries in this case, of course, you will limit those injuries, the compensation to the injuries actually arising from this collision, or the injury caused by the defendant.

If you find from the evidence in the case that the condition as has been described here as paralysis agitans, was caused by this collision or as a result of this collision, then that fact should be taken into consideration by you in fixing the compensation which you will allow to the plaintiff.

On the other hand, should you find that it was a pre-existing condition and that the injury sustained at the hands of the defendant did not cause the disease or did not aggravate the disease, then no compensation should be allowed for that condition.

Another matter to which I wish to call your attention is the fact that during the course of this trial mention has been made of a previous trial had in

this same cause between the same plaintiff and the same defendant. I desire at this time to admonish the jurors that in your determination of this case you are to be governed and controlled solely by the evidence produced from the witness stand in this court room at this trial. You are not to be swayed or influenced by anything that you may have read in any newspaper or newspapers nor by anything that you may have heard on the outside with  
10 reference to a former trial. This is a trial *de novo*, and should be decided solely by the evidence produced here.

Some requests to charge have been handed up. One by the plaintiff and a number by the defendant.

The plaintiff's request to charge is as follows, and I do charge it as requested:

20 "The general principle governing the relation of the street railway to the traveling public is that their respective rights in the public street must be exercised by each of them with due regard to the rights of others in a reasonable and duly careful manner."

With respect to the defendant's requests. There are thirteen requests in all.

30 The first request, I charge: "If you find that the plaintiff is entitled to damages, you are not to be governed in fixing the damages by the amount the plaintiff has sued or asked for, but you are to fix a sum which in your judgment will reasonably compensate the plaintiff."

"2. Unless you find that the greater weight of the evidence shows that this accident was caused by the negligence of the operator of defendant's car, you must find a verdict of no cause of action." I charge that.

"3. In determining how the greater weight of the evidence lies, you may consider the interest of the witnesses in the result of the suit and their opportunity to observe the facts concerning which they testify." I charge that.

"4. The plaintiff must sustain the burden of showing by a preponderance of the evidence that the operator of defendant's trolley car was guilty of negligence causing the accident, and if he does not  
10 do so, you must find in favor of defendant."

"5. Your sympathies are not in any manner to enter into your decision of this case. You are to decide the case according to the evidence and the law."

"6. The rulings of the Court on questions of evidence and law are not to be taken as indicating that the Court takes any particular view of the facts. You are the judges of the facts." 20

"7. The order in which the different branches of the case were discussed in this charge has no significance. The fact that the Court discussed the question of damages after the question of liability does not mean that the Court believes the plaintiff is entitled to damages. The Court expresses no opinion on the right of the plaintiff to damages." I think I have told you that already, in substance.

30 "8. You are not obliged to give any credit to any testimony which you do not believe to be true." That is another way of saying that the jurors are the sole judges of the credit to be given to the testimony of any witness.

"9. You are not obliged to believe a thing to be

true merely because someone has testified to it, if your common sense and reason tell you that such a thing cannot be true or is probably untrue."

Mr. Hunt: We will withdraw number ten.

By the Court: I had it marked for denial. Number ten is withdrawn.

10 11. I charge. "Your verdict must be based wholly upon the evidence presented in the court room, and not upon anything said to any of you or read by any of you or observed by any of you outside of the courtroom."

12. Number twelve I deny to charge in the manner in which it is requested.

20 13. Number thirteen is as follows: "The Traffic Act of this state provides that 'street cars shall have the right of way between cross-roads or cross-streets over all other vehicles.' That is the law as laid down in the Motor Vehicle Act. That act further expressly provides that vehicles traveling in the same direction must move out of the way to enable trolley cars to pass."

30 I was going to call the attention of the jurors to the two maps which were offered in evidence in this case and will be allowed to go with you into the jury room. I want to call your attention also, that while they cover the same territory, they are drawn to a different scale. The smaller map, which is offered by the plaintiff, is drawn to a scale of one inch equals forty feet, and the other one inch equals ten feet. There is that distinction between the two maps.

Mr. Hunt: We take a general exception to the charge of the Court. We take exception to the refusal of the Court to charge the defendant's twelfth request. We take exception to leaving to the jury the question of whether or not paralysis agitans was caused by the injuries received in the accident to Mr. Baus, there being no testimony in the case that paralysis agitans can be caused by such injuries, the testimony being that injuries of such character cannot, in themselves, cause paralysis agitans. 10

We take exception to your Honor's charging that where, as in cases of this kind the plaintiff was merely a passenger in the automobile of Mr. Meaney, in such cases the negligence of the operator of the automobile cannot be imputed to the plaintiff. Our objection to that is that instead of being a statement of the general rule of law, it is a statement that, in the circumstances of the particular case, the negligence of Meaney couldn't be imputed and we believe that the circumstances of this case are such, 20 particularly with reference to the situation of the two men, Meaney and Baus, Baus having the better opportunity to see than Meaney, that they were acting jointly, or that because of the knowledge of Baus of Meaney's negligence that the negligence of Meaney was Baus' negligence.

We take exception to the charging of the plaintiff's one request.

We take exception to your Honor's definition of negligence, wherein it was said that negligence is 30 the failure to do that which a reasonable and prudent person would do under similar circumstances or the doing of something which a reasonable and prudent person would not do, or omit to do.

We take exception to your Honor's charge on the ground that it permits the jury, in case they find that the injuries sustained in the accident aggra-

vated an already existing case of paralysis agitans, or other disease, to allow the plaintiff such damages as they estimate will compensate him for the injuries he suffers from that disease. Whereas, such damages should be limited strictly to such aggravation of the disease, if any, as the injuries caused.

10

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PLAINTIFF'S REQUEST TO CHARGE.

1. The general principle governing the relation of the street railway to the traveling public is that their respective rights in the public street must be exercised by each of them with due regard to the rights of others in a reasonable and duly careful manner.

20

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DEFENDANT'S REQUESTS TO CHARGE.

1. If you find that the plaintiff is entitled to damages, you are not to be governed in fixing the damages by the amount the plaintiff has sued or asked for, but you are to fix a sum which in your judgment will reasonably compensate the plaintiff.

30 2. Unless you find that the greater weight of the evidence shows that this accident was caused by the negligence of the operator of defendant's car, you must find a verdict of no cause of action.

3. In determining how the greater weight of the evidence lies, you may consider the interest of the

witnesses in the result of the suit and their opportunity to observe the facts concerning which they testify.

4. The plaintiff must sustain the burden of showing by a preponderance of the evidence that the operator of defendant's trolley car was guilty of negligence causing the accident, and if he does not do so, you must find in favor of the defendant.

10

5. Your sympathies are not in any manner to enter into your decision of this case. You are to decide the case according to the evidence and the law.

6. The rules of the Court on questions of evidence and law are not to be taken as indicating that the Court takes any particular view of the facts. You are the judges of the facts.

7. The order in which the different branches of the case were discussed in this charge has no significance. The fact that the Court discussed the question of damages after the question of liability does not mean that the Court believes the plaintiff is entitled to damages. The Court expresses no opinion on the right of the plaintiff to damages.

20

8. You are not obliged to give any credit to any testimony which you do not believe to be true.

30

9. You are not obliged to believe a thing to be true merely because someone has testified to it, if your common sense and reason tell you that such a thing cannot be true or is probably untrue.

10. Withdrawn.

11. Your verdict must be based wholly upon the evidence presented in the court room, and not upon anything said to any of you or read by any of you or observed by any of you outside of the court room.

10 12. If Mr. Baus saw this trolley car approaching without reducing its speed, as he said he did, and saw that Mr. Meaney was not going to stop, and observing these things in time to enable Mr. Meaney to avoid a collision by stopping if told to do so, then it was the duty of Mr. Baus to tell Mr. Meaney to stop and his failure to do so amounts to contributory negligence and requires you to bring in a verdict in favor of the defendant.

13. The Traffic Act of this state provides that "Street cars shall have the right of way between cross-roads or cross-streets over all other vehicles."

20

30

## Fine Legal Point Reverses Verdict For Trentonian Against Trolley Co.

Basing its decision upon an extremely technical legal rule, the Court of Errors and Appeals has granted a new trial to the Trenton and Mercer County Traction Corporation in the case in which Leonard Baus, of this city, recovered a judgment of \$15,000 in Mercer Court for the loss of a leg and other injuries. The Court of Errors holds that a question put to a witness on cross-examination, so long as the question relates to an issue in the case, though no foundation was laid for asking the question on direct examination, is a matter of right.

The Baus case and that of James Meaney were tried together in Mercer Court and were appealed to the Supreme Court and to the Court of Errors together. In the Meaney case, the trial jury allowed a verdict of \$255 to Meaney for damage to his auto truck, in which he and Baus were riding at the time of the collision, and this is sustained by the Court of Errors. Retrial of the Baus case will open before Judge Marshall tomorrow. Martin P. Devlin is counsel for Baus, while Katzenbach and Hunt represent the trolley company.

A single question asked of Dr. Martin W. Reddan and answered by him at the trial in Mercer Court in January, 1923, is the basis of the reversal of the jury award to Baus and the granting of a new trial. He was asked on cross-examination:

"Now, doctor, what marked and familiar symptom of paralysis agitans is there which does not exist in Mr. Baus' case?"

This question was overruled by Judge Marshall on the ground that it was not cross-examination, with which opinion the Court of Errors differs, holding that, while no foundation was laid for it on direct examination, it relates to an issue in the case and is, therefore, a matter of right.

In the Supreme Court, the decision of Judge Marshall in the Baus case was sustained and the \$15,000 judgment affirmed, together with an affirmance of the Meaney verdict. The accident which resulted in the suit happened the evening of April 29, 1922, when, Meaney, with Baus sitting on the seat beside him, was driving his truck on South Clinton Avenue. A trolley car collided with the truck and Baus' leg was so crushed that amputation was necessary.

A dissenting opinion was filed by Justice Kalisch in the Baus case, in which he declared that the ruling of the majority of the Court of Errors on the question asked of Dr. Reddan appeared to him to subvert a well settled legal rule of evidence. He commented that to adopt such a rule as laid down is to strike a blow at the orderly administration of the trial of causes between litigants.

322 *Notice of Argument of Application for  
Rule to Show Cause*

NOTICE OF ARGUMENT OF APPLICATION  
FOR RULE TO SHOW CAUSE.

(Filed February 9, 1925.)

10 MERCER COUNTY COURT OF COMMON  
PLEAS.

LEONARD BAUS,  
*Plaintiff,*  
v.  
TRENTON AND MERCER  
COUNTY TRACTION COR-  
PORATION,  
*Defendant.*

Action at Law.  
Notice.

*To the Above Named Plaintiff and Martin P. Devlin,  
Esq., His Attorney:*

30 Take Notice that we have this day applied to the  
Hon. Erwin E. Marshall, Judge of the above named  
court, for a rule to show cause why the verdict in  
favor of the plaintiff in the above entitled action  
should not be set aside, reserving exceptions, and  
that Friday, February 13, 1925, at ten o'clock in  
the forenoon, at the Court House, in Trenton, has  
been fixed by the said Court as the time and place  
for hearing argument of counsel for the defendant

*Notice of Argument of Application for* 323  
*Rule to Show Cause*

for the granting of such a rule and of counsel for  
the plaintiff against the granting thereof.

Respectfully yours,

KATZENBACH & HUNT,  
*Attorneys of Defendant.*

Dated February 3, 1925.

[ENDORSED]

Service of the within Notice is here-  
by acknowledged this day of Feb-  
ruary, 1925.

Attorney for Plaintiff.

10

20

30

## APPLICATION FOR RULE.

MERCER COUNTY COURT OF COMMON PLEAS met on Friday, Feb. 27, 1925, at 10.45 o'clock, A. M. Present HON. ERWIN E. MARSHALL,

10

LEONARD BAUS, <i>Plaintiff,</i>	}	Common Pleas Issue. Application for Rule.
v. TRENTON AND MERCER CORPORATION, COUNTY TRACTION COR- <i>Defendant.</i>		

20

Mr. Hunt, for the defendant, made application for rule to show cause with reserved exceptions.

After an argument by Mr. Devlin, attorney for plaintiff, against the allowance of the rule and an argument by Mr. Gildea, of the firm of Katzenbach and Hunt, for the allowance of the rule, the Court denied the rule to show cause with exceptions reserved and announced that if defendant wants an order without exceptions reserved it will be allowed.

30

Counsel for defendant asked time to consider same and the Court allowed until next Friday, March 6, 1925.

On Friday, March 6, 1925, counsel for defendant, having advised the Court that they had decided not to take the rule without exceptions reserved the, Court thereupon ordered the rule to show cause discharged.

## NOTICE OF APPEAL.

(Filed March 31, 1925.)

MERCER COUNTY COURT OF COMMON PLEAS.

10

LEONARD BAUS, <i>Plaintiff,</i>	}	Action at Law. Notice of Appeal.
v. TRENTON AND MERCER COUNTY TRACTION COR- PORATION, <i>Defendant.</i>		

To Martin P. Devlin, Attorney of Plaintiff, Leonard Baus: 20

Take Notice that the defendant appeals to the New Jersey Supreme Court from the whole of the judgment entered in this cause in favor of the plaintiff, Leonard Baus.

KATZENBACH & HUNT,  
*Attorneys of Defendant.*

Dated March 26, 1925.

30

[ENDORSED]

Service of the within Notice is hereby acknowledged this 28th day of March, 1925.

Martin P. Devlin,  
Attorney of Plaintiff, Leonard  
Baus.

10 GROUND<sup>S</sup> OF APPEAL.

(Filed April 24, 1925.)

NEW JERSEY SUPREME COURT.

10

LEONARD BAUS, <i>Plaintiff,</i>	}	v.	} On Appeal. Grounds of Appeal.
TRENTON AND MERCER COUNTY TRACTION COR- PORATION, <i>Defendant.</i>			

20

Defendant, Trenton and Mercer County Traction Corporation, assigns the following grounds of appeal from the judgment of the Mercer County Court of Common Pleas in favor of the plaintiff in the above case:

30

1. The trial Court erred in permitting the witness, Stella Billingham to testify concerning the speed of a trolley car which was claimed to be the trolley car involved in the accident, when it appeared that, at the time concerning which the witness testified, the trolley car was almost four blocks from the scene of the accident.

2. The trial Court erred in refusing to strike out the answer of the witness, John Oswald, to the question, "What was the speed of that car?" The an-

swer being, "Fast as I ever rode in, fastest speed I ever saw for a one-man car."

3. The trial Court erred in denying defendant's motion for a non-suit, although the contributory negligence of the plaintiff was so clearly shown by the testimony of the plaintiff and his other witnesses that a non-suit should have been granted.

4. The trial Court erred in not withdrawing a juror, though the defendant moved the Court so to do, when it appeared that plaintiff's counsel had caused the publication in a newspaper published in the City of Trenton, on the day prior to the commencement of the trial of a statement highly prejudicial to the defendant, in that, among other things, it stated that at a former trial plaintiff had recovered a verdict against the defendant, and the amount of the verdict; that the judgment had been reversed by the Court of Errors and Appeals because the trial Court overruled a certain question relating only to plaintiff's injuries; that the driver of the automobile in which the plaintiff was riding had recovered a verdict against the defendant, and that his verdict had been sustained; and other prejudicial facts, and the plaintiff's counsel having admitted that he caused said article to be published for the purpose of informing the jury of the facts therein stated.

5. The trial Court erred in charging the jury as follows: "Negligence may be briefly defined as a failure to do what a reasonable and prudent person would ordinarily do under like circumstances and in similar conditions, or what a reasonable and prudent person would ordinarily omit to do under the same circumstances;" and in charging the jury as

follows: "Before there can be a recovery in this case by the plaintiff, the duty rests upon him to show that the defendant was, at the time of the injury complained of, negligent in the operation of this car, either that he did something a reasonable and prudent person would not ordinarily have done under the circumstances, or that he failed or omitted the doing of something that a reasonable and prudent person would have done under the same or similar circumstances."

6. The trial Court erred in refusing to charge the defendant's twelfth request, which was as follows: "If Mr. Baus saw this trolley car approaching without reducing its speed, as he said he did, and saw that Mr. Meaney was not going to stop, and observed these things in time to enable Mr. Meaney to avoid a collision by stopping if told to do so, then it was the duty of Mr. Baus to tell Mr. Meaney to stop, and his failure to do so amounts to contributory negligence and requires you to bring in a verdict in favor of the defendant."

Dated April 23rd, 1925.

KATZENBACH & HUNT,  
*Attorneys for Defendant.*

30

[ENDORSED]

Service of the within Grounds of Appeal is hereby acknowledged this 23rd day of April, 1925.

Martin P. Devlin,  
Atty. of Pl.

## OPINION.

(Filed Dec. 3, 1925.)

NEW JERSEY SUPREME COURT.

No. 69, May Term, 1925.

LEONARD BAUS,  
v.  
TRENTON AND MERCER  
COUNTY TRACTION CORP.

Appeal from Mercer Common Pleas.  
Argued before GUMMERE, Chief Justice, and  
Justices KALISCH and CAMPBELL.

For the appellant, KATZENBACH & HUNT.

For the respondent, MARTIN P. DEVLIN.

The opinion of the Court was delivered by  
GUMMERE, C. J.:

This action was brought by the plaintiff to recover compensation for injuries received by him in a collision between a trolley car of the defendant corporation and a truck upon which he was riding, the owner and driver thereof being one Meany. The collision occurred on Clinton Avenue, in the City of Trenton, while Meany was in the act of turning his truck around for the purpose of going back to the garage in which he kept it when not in use. The trial of the cause resulted in a verdict for the plaintiff; and from the judgment entered thereon the defendant corporation has appealed.

The first ground upon which we are asked to reverse the judgment is that the trial Court erred in permitting a witness who was called by the plaintiff to testify concerning the speed of the trolley car when it passed her, some three and a half blocks north of the point where the collision occurred. The contention is that the speed of the car at that point was no indication of its speed at the time when it ran into the plaintiff's truck.

- 10 The witness was standing at a street corner intending to board the car at that point. She signalled it to stop for her, but her signal was disregarded. She watched it after it had passed her, and observed that it ran by the next intersecting street without stopping. Whether it stopped after that and before the collision occurred she did not notice, as she then entered a car which was following the one which had passed her, and which came to a standstill to take her on. In the absence of proof  
20 that the colliding car stopped between the point at which the witness made her observation and the place of the collision (and there was no such proof in the case at the time the witness gave her testimony), we think that the testimony was not inadmissible for the reason advanced by counsel, the fact appealed to merely going to the weight to be given to the evidence and not to its competency.

- 30 The next ground of reversal argued is that the Court committed error in refusing to strike out the answer of a witness called by the plaintiff, named Oswald, who saw the trolley car just before the collision, to the following question: "What was the speed of the trolley car?" The answer was, "Fast as I ever rode in, fastest speed I ever saw for a one-man car." Thereupon counsel moved that the answer be stricken out "as a conclusion." The trial Court refused to strike it out upon this ground,

and we think the refusal was proper, for all testimony as to speed given by a witness who has been observing the movement of a car or any other vehicle is necessarily a conclusion by him, based upon his observation.

The next ground upon which we are asked to reverse is that the trial Court ought to have granted a non-suit on the ground that plaintiff was guilty of contributory negligence. The plaintiff admitted on the witness stand that he observed the trolley car  
10 as it was approaching, and as the driver of the truck was making his turn, and before he had begun to cross the trolley track, and that he said nothing to him about the approaching car. The argument is that he ought to have insisted that the driver stop his truck until after the car had passed. Whether a person riding on a truck is under this obligation, or whether he is negligent for failing to insist on the stopping of the vehicle, under the conditions  
20 named, is not a question of law, but a question of fact, and the Court properly refused to non-suit upon the ground stated.

Next, it is contended that the Court erred in refusing the motion of defendant to withdraw a juror and direct a mistrial, just before the case was concluded, because of the fact that a newspaper article, the publication of which was said to have been instigated by plaintiff's counsel, had been printed a day or two before the trial began, reciting the occurrences at a previous trial of the case, and on the  
30 review thereof in the higher court. We think it is clear that this fact standing alone afforded no ground for directing a mistrial. If it had been shown that the article had been read by the members of the jury, or some of them, the situation would have called for the exercise of judicial discretion by the trial Court in dealing with the motion. There was, how-

ever, nothing before the Court to indicate that such was the case, and the motion was properly denied.

10 The next ground of reversal urged by counsel is that the trial Court erred in its charge to the jury in defining "negligence," by stating that the plaintiff was bound to show that the driver of the trolley car did something that a reasonable and prudent person would not have done under the circumstances; or that he failed to do or omitted the doing of something that a reasonable and prudent person would have done under the same or similar circumstances. The error, it is said, appears in the statement that the motorman must not only do what a reasonable person would have done or omitted, but also what a prudent person would have done or omitted. If it be conceded that the definition was not accurate, certainly it was not harmful to the defendant, but, on the contrary, was beneficial to it, for it required a double test in order to justify a finding of the motorman's negligence.

20 The last ground of reversal is that the trial Court failed to instruct the jury, as requested by the defendant, that, if the plaintiff saw the car approaching without reducing its speed, and saw that Meany, the driver of the truck, was not going to stop, and observed these things in time to enable Meany to avoid the collision by stopping, if told to do so, then it was the duty of the plaintiff to tell Meany to stop, and his failure to do this amounted to contributory negligence. What we have already stated in discussing the motion to non-suit disposes of this point also; namely, that whether the plaintiff was negligent under the conditions recited in the request was a question of fact, to be determined by the jury, and not a matter of law, to be disposed of by the trial Court.

30 The judgment under review will be affirmed.

## RULE ON AFFIRMANCE.

June Term, 1925.

## NEW JERSEY SUPREME COURT.

10	LEONARD BAUS, <i>Plaintiff-Appellee,</i>	}	10
	v.		
	TRENTON AND MERCER COUNTY TRACTION COM- PANY, <i>Defendant-Appellant.</i>		On Appeal from the Mercer County Court of Common Pleas. Rule On Affirmance.

This cause having been duly argued at the June 20 Term, 1925, of this court, by Messrs. Katzenbach and Hunt, attorneys for defendant-appellant, in error, and Martin P. Devlin, attorney for plaintiff-appellee in error, and the Court having considered the same, and finding no error in the record of proceedings in the Mercer County Court of Common Pleas.

It is, thereupon, ordered and adjudged, that the judgment of the Mercer County Court of Common Pleas, removed by appeal in this cause, be affirmed 30 with costs; and the record be remitted to the Court of Common Pleas to be proceeded with in accordance with the judgment and practice of said court.

Entered the 4th day of December, 1925.

On motion of

MARTIN P. DEVLIN,  
*Attorney of Plaintiff-Appellee.*

NOTICE OF APPEAL.  
NEW JERSEY SUPREME COURT.

LEONARD BAUS,  
*Plaintiff-Respondent,*

v.

10 TRENTON AND MERCER  
COUNTY TRACTION COR-  
PORATION,  
*Defendant-Appellant.*

Action at Law.  
Notice of Appeal.

To Martin P. Devlin, Esq., attorney for Leonard  
Baus, plaintiff-respondent:

20 Take notice that the defendant-appellant appeals  
to the Court of Errors and Appeals of the State of  
New Jersey from the whole of the judgment in the  
above entitled cause upon the following grounds:

The Supreme Court erred in affirming the judg-  
ment under review.

Respectfully yours,

EDWARD L. KATZENBACH,  
*Attorney for Defendant-Appellant.*

Dated December 8, 1925.

30

[ENDORSED]

Service of the within Notice of Ap-  
peal is hereby acknowledged this 8th  
day of December, 1925.

Martin P. Devlin,  
*Attorney for Plaintiff-Respondent.*

Court of Errors and Appeals of  
New Jersey

LEONARD BAUS,  
*Plaintiff-Respondent,*

vs.

TRENTON AND MERCER COUNTY  
TRACTION CORPORATION,  
*Defendant-Appellant.*

On Appeal  
from the  
Supreme  
Court.

10

APPELLANT'S BRIEF

The plaintiff recovered a judgment of \$16,000.00  
against the defendant in the Mercer County Court  
of Common Pleas in an action for personal injur-  
ies received in an accident which occurred on South  
Clinton Avenue, in the City of Trenton, James  
Meaney, with whom plaintiff was riding in a Ford  
truck, was turning it around in a continuous move-  
ment (without stopping or backing), and in so  
doing drove directly in front of a trolley car of  
the defendant which was approaching from the  
south. The truck was being turned from a posi-  
tion in which it faced south to one in which it  
faced north. The motorman of the trolley car  
died before the suit was instituted.

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30

The defendant advances six grounds of appeal  
which appear on pages 326, 327 and 328 of the  
state of the case.

40

## I

10 "1. The Trial Court erred in permitting the witness Stella Billingham to testify concerning the speed of a trolley car which was claimed to be the trolley car involved in the accident, when it appeared that, at the time concerning which the witness testified, the trolley car was almost four blocks from the scene of the accident."

20 This witness was called by the plaintiff to show the speed of the trolley car, alleged to have been negligently operated, at a point several blocks from the place of the accident, and that it did not stop for the witness who desired to board it. She rode to the scene of the accident in another trolley car which she said followed immediately behind the car involved in the collision. She was asked by plaintiff's counsel (p. 67, l. 27), "What time was between the two cars?" and answered, "A. I should imagine not more than one or two minutes before the first car had turned Stanton and the second one was right in back of it." "Q. And you think the car you were on was one or two minutes behind the one that did not stop for you?" "A. About that."

30 On cross-examination she testified as follows:

"Q. When you got there I think you said there was an ambulance to take the injured man away?

"A. Yes."

40 It is absurd to say that in the short time that elapsed between the arrival of the two cars at the

point of collision an ambulance could have been procured as the testimony shows this one was procured (p. 106, l. 29; p. 107, l. 1), but our objection, of course, is limited to the fact that Anderson Street, the place at which the witness fixed the speed of the car, was several blocks from the place of the accident. The plaintiff's map shows a longer portion of South Clinton Avenue than the defendant's map and neither map shows the location of Anderson Street which is one block south of Division Street (p.66, l. 28). The latter street appears at the south of plaintiff's map and is about 1200 feet from the place of the accident. Anderson Street was, therefore, 1200 feet plus one block from the point of the collision. 10

At the trial objection was made upon the ground that the point at which the witness gave the speed of the trolley car was too far from the place of the accident for its speed then to be material (p. 68). Furthermore, there was no testimony in the case that the car maintained a uniform rate of speed and did not stop from Division Street to the place where the accident occurred. 20

Other witnesses testified that they were in the trolley car involved in the accident and got aboard the same at Anderson Street where Miss Billingham said it did not stop, but if the testimony of Miss Billingham be taken as true it was irrelevant. 30

It is common knowledge that the speed of trolley cars and other vehicles may well be faster and is faster at some points in streets and highways than others. The speed of a car several blocks from a given point is absolutely no indication of its speed at or approaching that point. 40

The Supreme Court took the view that because, at the time this testimony was offered, there was no proof that the car stopped between the place where the witness was standing (and it was the speed of the car at this point which she gave, p. 69, l. 18) and the place of the accident, the fact that the witness was several blocks from the place of the accident did not go to the admissibility of the testimony but only to its weight. Unless it can be said that the speed of a trolley car or other vehicle at one point furnishes a basis for an inference of its speed at another point several blocks distant, the testimony in question was irrelevant, legally and logically. We feel that there is no such connection between the two facts as to render the existence of one probable because of the existence of the other, and instead of a showing that the car stopped between the point in question and the place of the accident being necessary to render the testimony inadmissible, we think that it was incumbent upon the plaintiff to introduce testimony that the car did not stop or change its speed between those two points in order to make the testimony admissible. The plaintiff offered the testimony and if its relevancy depended upon the existence of another fact, it would seem that the plaintiff had the burden of proving that other fact. It is also to be noted that, though the witness said she saw the car for at least one block after it passed her, she did not testify concerning its speed when she last saw it, but only as to its speed when it passed her. For some reason counsel for the plaintiff did not want this testimony.

We respectfully submit that the admission of this testimony was harmful error.

## II

“2. The Trial Court erred in refusing to strike out the answer of the witness John Oswald to the question, ‘What was the speed of that car?’ the answer being, ‘Fast as I ever rode in, fastest speed I ever saw for a one-man car.’”

The testimony which is the subject of this ground of appeal appears on page 76 of the record, and the motion to strike out the answer, the denial thereof, and the exception thereto are on page 77.

The general rule that conclusions, characterizations and comparisons cannot be given by witnesses is well settled.

The Supreme Court said that defendant’s motion to strike out the answer as a conclusion was properly overruled because all the testimony as to speed given by a witness is necessarily a conclusion based upon the witness’ observation. We cannot agree with this statement if we take the word “conclusion” as meaning inference or reasoned judgment. The impression we get of the speed of a vehicle which is traveling fast is not the result of reasoned judgment, and it requires no reasoning to tell us that it is going fast. When we attempt to give the speed in miles per hour we get even beyond conclusion and get in the field of opinion. However that may be, and conceding that certain conclusions as to speed are admissible, does this make all conclusions admissible? We think it does not. And if a statement is objected to as a conclusion the objection should not be over-

ruled because some other conclusion would be admissible. Otherwise, for example, an objection to a question upon the ground that it called for a hearsay answer would not be a good objection unless counsel said that the matter did not fall within any of the exceptions to the hearsay rule.

10 It is respectfully submitted that this objection was well taken unless the conclusion given was an admissible one. Was it such a conclusion?

If the witness had been asked "How did the speed of this car compare to that of other one-man cars you have seen in operation," we have no doubt that an objection would have been sustained. But the answer complained of would be responsive to such a question. The question "Did you ever see another one-man car travel as fast as this one traveled?" would be equally objectionable.

The difference between the speed of the car in question and the speed of other cars the witness had seen was not given, nor was the speed of the other cars. Was this difference slight or great? Did the other cars travel very slowly, slowly, fast or very fast or neither fast nor slowly? These facts, without which the conclusion expressed by the witness can have no real significance, are not given. And the danger is that jurors would interpret such an answer in the light of their own experience, and would take the statement as meaning that the car involved in the accident traveled faster than any car they had ever seen.

40

## III

"3. The Trial Court erred in denying defendant's motion for a non-suit, although the contributory negligence of the plaintiff was so clearly shown by the testimony of the plaintiff and his other witnesses that a non-suit should have been granted." 10

To show conclusively that plaintiff was negligent we need only refer to his testimony and to the circumstances under which the truck was driven in front of the trolley car.

The plaintiff and the driver, James Meaney, got into the truck when it was facing south on the right-hand side of the street looking south (p. 36, l. 16). The trolley car was travelling north on the northbound track (p. 37, l. 17). Meaney in turning did not stop his truck (p. 35, l. 2). That was not necessary. There was room to make a continuous turn. Baus, the plaintiff, sat on the right side of the truck (p. 31, l. 13). The collision occurred when the front wheels of the truck were about halfway over the northbound track (p. 29, l. 23). The lights on the trolley car were lighted (p. 30, l. 17). 20 30

The plaintiff briefly described the accident in the following words (p. 117):

"Q. When he (meaning Meaney) got in the truck, did you see him do anything?

"A. I seen him put his hand out and look down the street toward Chestnut Avenue. (The trolley was coming up the street and had to pass Chestnut Avenue to reach the place of the accident.) 40

“Q. Then what did he do?

“A. He kept right on turning.

“Q. He kept on turning?

“A. Yes.

“Q. When he turned what happened?

“A. The street car hit him when he got about two-thirds way around.”

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Speaking of seeing the street car for the first time, the plaintiff said (p. 118):

“Q. When did you first see the street car?

“A. The street car was at Whittaker Avenue and South Clinton Avenue (about 225 feet from the point of collision” (p. 29, l. 20, *et seq.*).

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On cross-examination the plaintiff said (pp. 128, 129, 130):

“Q. Now, Mr. Baus, when you first saw this trolley car you said it was a little south of Whittaker Avenue, is that right?

“A. I don't know what I said but the trolley car was on South Clinton Avenue below the pole.

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“Q. When you say below the pole, what do you mean?

“A. There is a telegraph pole there by Dube's poultry house and there is a pole further down.

“Q. That would be somewhere about the place where Whittaker Avenue and Rusling Street both come together into South Clinton?

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“A. Further down south than that.

“Q. Further down south?

“A. Yes, sir.

\* \* \* \* \*

“Q. The automobile kept moving all the time, didn't it?

“A. Yes.

“Q. It didn't stall or stop?

“A. No, it didn't stall.

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“Q. And you were sitting on the side nearest to the trolley car?

“A. Yes.

“Q. Did you keep watching the trolley car?

“A. I did.

“Q. Why didn't you tell Mr. Meaney to stop his automobile so that it didn't get on the track in front of the trolley car?

“A. Mr. Meaney was making the turn and making it careful, I didn't think it best to interrupt him.

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“Q. Mr. Meaney didn't see the trolley car, did he?

“A. He saw it down to Mantel's.

“Q. Why didn't you tell him to stop before he got on that track?

“A. I didn't think it was necessary for me to do any hollering because he had good judgment, if I hollered maybe he wouldn't do as good, I think it is bad to interfere with people at a time like that.

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“Q. Mr. Baus, didn't you know he was running his own life and your life and the life of the passengers into danger through bringing this automobile right on the track in front of the trolley car?

“A. *I know it was dangerous, yes.*

“Q. Why didn't you tell him to stop?

“A. I didn't see why I should, he was the

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biggest way around and *if he had three seconds longer time he would have been around out of the way*, just three seconds, maybe four, and he would have been all the way around."

10 The plaintiff had previously testified concerning his own experience as an automobile driver (p. 121):

"Q. Did you drive a car at that time?

"A. Yes.

"Q. How long had you been driving?

"A. Since 1915."

20 And again, with reference to observing the trolley car, and in response to a question by the Court, he said:

"The Court: Mr. Baus, from the time you saw that car up and until the time that it hit the automobile, were you watching it all the time?

"A. *I had my eyes on it all the time.*"

30 While the negligence of a driver of a vehicle is not imputed to an occupant, if the occupant be also negligent, he cannot recover damages.

*Schroeder v. Pub. Ser. Co.*, 118 Atl. 337 (not officially rep.);

*Mittelsdorfer v. West Jersey, &c., R. Co.*, 77 N. J. L. 698, 73 Atl. 538;

*Doney v. Morris Co. Tr. Co.*, 99 Atl. 118, 89 N. J. L. 651;

*Pyle v. Clark*, 75 Fed. 644, 648;

*Dean v. R. R. Co.*, 129 Pa. St. 514, 18 Atl. 718.

40

In the case last cited, a guest riding with a driver was held precluded from recovering for injury received at a railroad crossing. The driver approached the crossing at a trot, did not stop or check his horses. The plaintiff was familiar with the crossing, but failed to warn the driver of the danger. The Court held that, after becoming conscious of the driver's negligence, it was but reasonable that he should at least have given some warning of the danger, or be held to have voluntarily incurred the risk of the driver's recklessness. (*Bernhardt v. City R. Co.*, 263 Fed. 1010.)

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The Circuit Court of Appeals for the Eighth Circuit held, in the case of *Bradley v. Missouri Pacific R. R. Co.*, 288 Fed. 484, that a person riding in an automobile, with another, who was driving, when struck and killed at a railroad crossing, with which he was familiar, was under the same duty as the driver to look and listen for an approaching train, and while negligence of the driver was not imputable to him, he was himself chargeable with contributory negligence where, by looking, he could have seen the train in time to have prevented the accident.

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In this case, the case of *Mittelsdorfer v. West Jersey & Seashore R. R.*, *supra*, is cited as authority for the proposition that because the plaintiff in the *Mittelsdorfer* case was a guest, did not relieve her from exercising ordinary care.

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Suppose, for a moment, that Baus were suing Meaney instead of the Traction Company, and that he testified as he did in the quotations given above. Could it be said that he, an experienced automobile driver, did not exercise his independ-

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ent judgment as to the propriety of what was done by Meaney and approved it without remonstrance? And if that be true, was he not a party to Meaney's acts and as negligent as Meaney? He admits that he knew of the danger and says that if Meaney had had three or four seconds more, he could have turned around safely. Can a man experienced in driving sit supinely in an automobile and calculate to the second his chances of life or death, safety or injury, and then collect damages if he makes a miscalculation? We hope that the Court, in the interests of justice, and for the protection of life and limb, will not put its stamp of approval upon such practice.

There are important differences between the testimony given by the plaintiff at this trial and that given at the former trial. These of course are not important here, but are mentioned so that the Court may know that the questions presented upon this appeal are not those which were before the Court on the former appeal.

It is probably true that instances where an occupant of a motor vehicle can be said to be negligent, as a matter of law, are very rare. It is equally true that every case must stand upon its own facts, and we contend that in this case the plaintiff's own testimony shows that he was as mistaken and as negligent as the driver as to the propriety of what the driver was doing, and that his own negligence entitled the defendant to a non-suit.

Upon this subject the Supreme Court said this was a question for the jury and the Court properly refused to non-suit.

There was no dispute as to the facts under discussion since they are found in the plaintiff's testimony and were not controverted by any other witness. Certainly the plaintiff cannot complain if his own statements are taken as true. No disputed question of fact being involved, the question submitted to the jury was whether or not upon the facts as stated by the plaintiff he was guilty of contributory negligence. Unless these facts were such as to admit of more than one inference in the minds of reasonable men, the question was a court question.

We believe that only one inference is possible, namely, that the plaintiff was guilty of contributory negligence, and that the Court should have granted a non-suit. Unless the plaintiff's conduct in this case amounted to contributory negligence the cases holding that a passenger in an automobile must use due care for his own safety mean nothing. He saw the danger. It is not a case where a passenger is charged with failing to look out for something which might be dangerous, as for instance at a grade crossing. The plaintiff in this case permitted someone to take him into a place of known danger without remonstrance or warning to the driver. We do not think reasonable men can differ as to the meaning of such conduct.

## IV

10 The fourth ground of appeal is that the Trial Court should have granted defendant's motion for the withdrawal of a juror when it appeared that plaintiff's counsel had caused to be published on the day prior to the trial the newspaper article marked Exhibit D1, and appearing on page 321 of the record.

Responsibility for the publication of this article is admitted by plaintiff's counsel (pp. 251, 252, 253, 254, 255). The Trial Court was apparently in doubt as to his ruling because he said on page 256:

20 "I would be very glad to see this matter passed upon by the higher Court."

30 In substance, the position of the plaintiff's counsel as stated by him was that he had the newspaper article inserted because the papers had stated that the former judgment was reversed because it was excessive. The Court's attention was called to the fact that this mis-statement was published over a month before the trial, and that plaintiff's counsel waited until the day before the trial before causing the publication of the facts that he wanted published (pp. 252, 253). It is to be noted also that plaintiff's counsel did not deny authorship of the article. When asked, "Do you know who wrote it?" (p. 252) he replied to defendant's counsel: "Don't ask me anything about who wrote it."

40 It requires but a reading of the newspaper ar-

ticle to convince one that it was written by a lawyer, and by a lawyer who was extremely anxious to publish only those facts which would be helpful to the plaintiff and injurious to the defendant. Every detail that could help the plaintiff is stated, while not a word that could be of assistance to the defendant appears. The description of the accident is in seven words, namely, "A trolley car collided with the truck." If, as plaintiff's counsel irrelevantly claims, the article states nothing but the truth, it certainly could not be said to state the whole truth. 10

In any event, plaintiff's counsel admits that he sponsored the article, and that he did it for the purpose of correcting any misapprehension as to the cause of the reversal of the former judgment which might have arisen from previous articles, the last of which was published more than a month before the trial. And to do this he waited until the day before the trial so that the matter would be fresh in the minds of those whom he wished to inform. This suggests the question, "To whom did counsel wish to convey the information contained in the article?" There can, of course, be but one answer, for the only persons with whom he was concerned were the jurors who might and did sit in the case. In other words, the plaintiff's counsel admits that he published the newspaper article so that the jurors in the present case might have no misapprehension as to the cause of the reversal of the former judgment. 20 30

We all know that it is difficult to procure a fair trial in view of what newspapers of their own volition publish, but when counsel for one party or the other instigates news items designed to convey particular information to the minds of jurors, 40

and so framed as to state only those facts which are of assistance to his client, a gross injustice is done. The credence given by the general public to newspaper accounts is as great, if not greater, than that given to sworn testimony. The curiosity of jurors, many of whom perhaps would be sitting for the first time, and all of whom had been summoned for jury duty and knew that they were to appear on Monday, the day after the article was published, would give them an unusual interest in an article of the kind published. The possibility known to them that they might be required to sit on that very case would cause them to read the article to the last word.

Every litigant should have a trial before jurors who are informed only of facts which jurors are entitled to know. In this case, they should not have known anything about the former trial, or that Meaney, who drove the automobile, had recovered a judgment which had been affirmed by the highest court in the state, or the cause of the reversal of the judgment of the present plaintiff.

In the opinion of the Supreme Court the fact that it was not shown that this newspaper article had been read by any of the members of the jury justified the Trial Court in overruling the defendant's motion for a mistrial.

While there are, so far as we have been able to find, no New Jersey cases upon the subject, good authority outside of the state is to the effect that where a newspaper publishes, at the instigation of a party or counsel, during or immediately prior to a trial, an article prejudicial to the other party, the Court will presume that the article has been read by the jury.

*Griffin v. United States* (Cir. Ct. of App., 3rd Cir., 295 Fed. 437);  
*Meyer v. Cadwalader*, Circuit Judge Acheson, 49 Fed. 32;  
*People v. Stokes*, 103 Cal. 193;  
*W. Chicago St. Ry. v. Grenell*, 90 Ill. App. 30.

In the case of *McKibben v. Philadelphia & Reading Ry. Co.*, 251 Fed. 577, the Circuit Court of Appeals, for the Third Circuit, held that a statement of counsel for a plaintiff in his argument to the jury of what had been done by juries in former trials of the same case was so grossly improper as to entitle defendant to a new trial.

In the case of *Telegram Newspaper Company v. Commonwealth*, 52 N. E. 445, the Supreme Court of Massachusetts held:

"It is not necessary that matter published in a newspaper during the trial of a case, calculated to prevent a fair trial, should be shown to have been read by members of the jury, in order that the publisher should be guilty of contempt; but it is sufficient that it was published and circulated in the place where the trial was had and might have been read."

In this case the conviction of the newspaper for contempt of Court for publishing the newspaper article was upheld, though the Court held that there was no specific intent to prejudice either party.

The rule that articles published in a newspaper circulated in the place of the trial are presumed

to have been read by jurors is certainly supported by justice and reason when the articles are instigated by a party to the suit or his counsel, and especially where, as in this case, the article was deliberately published for the purpose of informing the jury of facts they should not know. The situation would surely be anomalous if plaintiff's counsel, after saying in effect, "I had the article inserted so that the jury would read it," could then come into court and say there is no proof that the jury did read the article. The situation is entirely different from one where the articles are voluntarily printed by a newspaper without solicitation by either party or counsel.

It would be most unjust to require that the defendant must have the jury interrogated as to whether or not they read the article. If they had not read it, the probability is that they would procure it and read it immediately after court adjourned, and even if they had not read it, and would never read it, they would think that there was something about the case that defendant wanted concealed, and all this assumes that the jurors would answer truthfully when asked if they had read the article.

If the right of a party to withdraw a juror because of the misconduct of counsel for the opposing party, is never a legal question, but always rests in the discretion of the Trial Court, then we are compelled to take the position that in this case the Trial Judge abused his discretion. That he was in doubt as to the course he should take and desires that this Court pass upon the matter is indicated by his remarks at the time of overruling defendant's motion.

Certainly plaintiff could hardly complain of a reversal of his judgment which may have been procured in part by his counsel's misconduct. If there is the remotest possibility that the newspaper story may have played any part in the verdict, justice and fairness require that the verdict be set aside. That there is a possibility, and a strong likelihood, that such was the case is self-evident.

## V

"5. The Trial Court erred in charging the jury as follows: 'Negligence may be briefly defined as a failure to do what a reasonable and *prudent person* would ordinarily do under like circumstances and in similar conditions, or what a reasonable and *prudent person* would ordinarily omit to do under the same circumstances'; and in charging the jury as follows: 'Before there can be a recovery in this case by the plaintiff, the duty rests upon him to show that the defendant was, at the time of the injury complained of, negligent in the operation of this car, either that he did something a reasonable and *prudent person* would not ordinarily have done under the circumstances, or that he failed or omitted the doing of something that a reasonable and *prudent person* would have done under the same or similar circumstances.'"

The objection here presented is that while negligence is defined by the Court as doing or failing to do what "a reasonable and *prudent person*"

would do or omit to do, negligence is truly defined as the failure to do what a person of ordinary prudence would do under the circumstances, or doing what such a person would not do.

10 The words "reasonable and prudent person" appeared four times in the language used by the Court in defining negligence. In effect, the jury was told that unless defendant's motorman acted as a prudent person, under the circumstances, the defendant was liable.

In the case of *Pesin v. Jugovich*, 88 Atl. 1101, 85 N. J. L. 256, reasonable care was defined as meaning such care as an *ordinarily prudent* man would exercise under the existing conditions.

20 The Supreme Court said of this ground of appeal:

"If it be conceded that the definition was not accurate, certainly it was not harmful to the defendant, but on the contrary, was beneficial to it, for it required a double test in order to justify a finding of the motorman's negligence."

30 As a practical matter we do not believe the construction placed upon the charge by the Supreme Court is sound. We do not object to the use of the word reasonable. Our objection is to the use of the word prudent, which we believe set the standard of care to be required of the motorman as that would be exercised by a prudent man instead of a man of ordinary prudence. The word prudent includes but implies more than the word reasonable. To be prudent a motorman would  
40 necessarily have to be reasonable, and would, we

believe, be obliged to exhibit more than ordinary prudence.

To the minds of jurors, to whom, of course, the Court's remarks were addressed, the suggestion that a trolley motorman is required to be prudent is harmful to a defendant trolley company. The jury naturally is anxious to learn from the Court what is necessary upon the part of the motorman, and how he must conduct himself in using the highway. By a plain inference, the Court in this case told the jury that unless the motorman's conduct was prudent he was negligent, and this was error, for which the judgment should be reversed.

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## VI

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"6. The Trial Court erred in refusing to charge the defendant's twelfth request, which was as follows: 'If Mr. Baus saw this trolley car approaching without reducing its speed, as he said he did, and saw that Mr. Meaney was not going to stop, and observed these things in time to enable Mr. Meaney to avoid a collision by stopping if told to do so, then it was the duty of Mr. Baus to tell Mr. Meaney to stop, and his failure to do so amounts to contributory negligence and requires you to bring in a verdict in favor of the defendant.'"

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The Supreme Court approved the Trial Court's refusal to charge this request, saying that the question covered by the request was for the jury.

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Under the peculiar circumstances of this case, and particularly in view of plaintiff's testimony as to his experience as an automobile driver, his position in the automobile truck, and his observation of the circumstances preceding the accident, we believe that the defendant was entitled to have the jury charged in the manner requested.

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There was no suggestion in this case that the failure of the plaintiff to do anything to protect himself arose from sudden panic born of an emergency. His testimony eliminates such a possibility.

Denying this request to charge was to refuse to say to the jury that an experienced automobile driver, sitting in the seat of a Ford truck with another driver who was driving, and seeing that the truck was about to be driven in front of a trolley car which was approaching without reducing its speed, and observing all these facts in time for the driver of the truck to avoid a collision by stopping if told to do so, should, for his own protection, tell the driver to stop. The plaintiff did not know what the driver intended doing or in which way he was looking.

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In the case of *Mittelsdorfer v. West Jersey, &c., R. R. Co., supra*, this Court held that a person riding in a vehicle though not driving the same is bound to exercise ordinary care for his own safety. In that case it was contended that the plaintiff, who was simply riding in a carriage as a guest, was guilty of negligence contributing to her injury at a railroad crossing. In overruling this contention this Court said, "*The plaintiff did not see the train and therefore no fault can be attrib-*

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*uted to her in failing to apprise the driver of the impending danger.* She says that she did not attempt to make any observations as to whether a train was coming. We think the irresistible inference from the testimony is that she did not look because she had observed that the driver appeared to be looking."

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Baus did see the trolley car approaching and knew of the impending danger. If the jury found that after Baus observed the danger there was time for the driver to avoid the accident by stopping if warned, then if Baus (an experienced automobile driver) was not guilty of negligence in keeping silent, how could he be negligent? What else could he do? If under these circumstances a person is not obliged to do anything, then the question of his negligence should not be left to the jury. But in the case of *Schroeder v. Public Service Ry. Co., supra*, where an automobile was driven into an excavation in a street, and the Court charged the jury that if the driver was not negligent he and the passengers could recover their damages, the Supreme Court said that the charge was erroneous because it implied that the passengers owed no duty of care for their own safety.

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We respectfully submit that this request expressed the irreducible minimum of the plaintiff's duty for his own protection and therefore should have been charged.

Respectfully submitted,

EDWARD L. KATZENBACH,  
Attorney for and of Counsel with  
Defendant-Appellant.

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## New Jersey Court of Errors and Appeals

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LEONARD BAUS,  
*Plaintiff-Respondent,*  
vs.  
TRENTON AND MERCER  
COUNTY TRACTION  
CORPORATION,  
*Defendant-Appellant.*

On Appeal from 10  
Supreme Court.

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### BRIEF.

The date of the accident involved in this case was April 29, 1922. 20

This case and the case of James Meaney v. Trenton and Mercer County Traction Corporation, were tried in the Court of Common Pleas of Mercer County on January 4, 1923, and a verdict was given for James Meaney, the driver of the car, for property damage, for the sum of \$255.00, and a verdict was given to the plaintiff-respondent, Leonard Baus, for the loss of his leg and other injuries, in the sum of \$15,000.00.

On February 5, 1923, the defendants took a rule to show cause in both cases, on the grounds of newly discovered evidence, and that the damages were excessive, and that the verdict was against the weight of evidence. On March 2d, 1923, the rule to show cause was argued. On April 21st, 1923, the Court, after considering the respective arguments in the rule to show cause dismissed the rule. An appeal was taken to the Supreme Court on the reserved exceptions. 21

On November 8, 1923, the case was argued in the Supreme Court. On March 4, 1924, the Supreme Court dismissed the appeal and affirmed the judgment of the Mercer County Court of Common Pleas, in both cases.

Both cases were taken to the Court of Errors and Appeals and argued on May 28th, 1924. Both were decided on October 20th, 1924. The case of James Meaney, driver of the truck, was affirmed by the Court of Errors and Appeals, and the case of Leonard Baus was reversed on an error of the Court below, overruling a question put to Dr. Reddan, and the case of the plaintiff, Leonard Baus, was sent back for a new trial. See Opinion Advance Reports, Vol. 2, No. 45, p. 1669, date Nov. 8, 1924.

On the 26th day of December, 1924, the plaintiff made an application to file an amended Complaint, increasing the damage clause from \$15,000.00 to \$25,000.00. On the 2d day of January the Court of Common Pleas made an order that the Complaint be amended to increase the damage clause to \$25,000.00 and the case was set down for trial on the 26th day of January, 1925. Accordingly this case was tried and the trial lasted three days, the 26th, 27th and 28th days of January, 1925. The case was appealed to the Supreme Court on the 26th day of March, 1925, and argued in the May Term, 1925. Opinion filed December 3, 1925, affirming the judgment below. (State of Case, p. 239).

The plaintiff, Leonard Baus and James Meaney, on April 29, 1922, were run down by a car of the defendant company on South Clinton Avenue. James Meaney, the owner of the auto truck, owns a florist store at 1017 South Clinton Avenue, Trenton, New Jersey. In the evening between seven and seven-thirty o'clock his car was standing in front of his store, South Clinton Avenue, on which the defendant operates two tracks of street railway (south bound and north bound). The street is about forty feet wide from curb to curb. The auto truck of James Meaney was standing in front of his

door, facing south. He got into the truck and invited Leonard Baus to accompany him, and proceeded to take the truck around to the garage. To do so he had to make a turn in the street and go north of Beatty Street into an alley behind Beatty Street. The truck was open on each side of the driver's seat. He got the truck ready to start, looked north and south, saw no street cars or vehicles coming and the street being wide enough to make a full turn, he proceeded to make the turn, and as he was in the act of doing so and got on the north bound track the street car of the defendant company came along and hit him on the front right-hand side of the auto truck, knocked him and Leonard Baus, plaintiff, out of the truck and turned the truck clean around facing the point it started from. The street car traveled a distance of 139 feet before it stopped. From the collision the auto truck of James Meaney was damaged, and the plaintiff, Leonard Baus, was so injured that his leg had to be amputated below the knee. The jury rendered a verdict to plaintiff, Leonard Baus, for the loss of leg and other permanent injuries in the sum of \$16,000.00.

#### DEFENDANT'S GROUNDS OF APPEAL.

Defendant, Trenton and Mercer County Traction Corporation, assigns the following grounds of appeal from the judgment of the Mercer County Court of Common Pleas in favor of plaintiff in the above case:

1. The trial Court erred in permitting the witness, Stella Billingham, to testify concerning the speed of a trolley car which was claimed to be the trolley car involved in the accident, when it appeared that, at the car was almost four blocks from the scene of the accident.

2. The trial Court erred in refusing to strike out the answer of the witness, John Oswald, to the question, "What was the speed of that car?", the answer being,

"Fast as I ever rode in, fastest speed I ever saw for a one man car."

3. The trial Court erred in denying defendant's motion for a non-suit, although the contributory negligence of the plaintiff was so clearly shown by the testimony of the plaintiff and his other witnesses that a non-suit should have been granted.

4. The trial Court erred in not withdrawing a juror, though the defendant moved the Court so to do, when it appeared that plaintiff's counsel had caused the publication in a newspaper published in the City of Trenton, on the day prior to the commencement of the trial, of a statement highly prejudicial to the defendant, in that, among other things, it stated that at a former trial plaintiff had recovered a verdict against the defendant, and the amount of the verdict that the judgment had been reversed by the Court of Errors and Appeals because the trial Court overruled a certain question relating only to plaintiff's injuries that the driver of the automobile in which the plaintiff was riding had recovered a verdict against the defendant, and that his verdict had been sustained and other prejudicial facts, and the plaintiff's counsel having admitted that he caused said articles to be published for the purpose of informing the jury of the facts therein stated.

5. The trial Court erred in charging the jury as follows: "Negligence may be briefly defined as a failure to do what a reasonable and prudent person would ordinarily do under like circumstances and in similar conditions, or what a reasonable and prudent person would ordinarily omit to do under the same circumstances"; and in charging the jury as follows: "Before there can be a recovery in this case by the plaintiff, the duty rests upon him to show that the defendant was, at the time of the injury complained of, negligent in the operation of this car, either that he did something a reasonable and prudent person would not ordinarily have done under the circumstances, or that he failed or omitted the doing

of something that a reasonable and prudent person would have done under the same or similar circumstances."

6. The trial Court erred in refusing to charge the defendant's twelfth request, which was as follows: "If Mr. Baus saw this trolley car approaching without reducing its speed, as he said he did, and saw that Mr. Meaney was not going to stop, and observed these things in time to enable Mr. Meaney to avoid a collision by stopping if told to do so, then it was the duty of Mr. Baus to tell Mr. Meaney to stop, and his failure to do so amounts to contributory negligence and requires you to bring in a verdict in favor of the defendant."

#### ANSWER TO REASONS 1 AND 2.

1. The trial Court erred in permitting the witness Stella Billingham to testify concerning the speed of a trolley car which was claimed to be the trolley car involved in the accident, when it appeared that, at the time concerning which the witness testified, the trolley car was almost four blocks from the scene of the accident.

2. The trial Court erred in refusing to strike out the answer of the witness John Oswald to the question, "What was the speed of that Car?" the answer being, "Fast as I ever rode in, fastest speed I ever saw for a one-man car"

The facts relating to these reasons are as follows: p. 66, State of the Case, Stella Billingham testified that she stood at the corner of Clinton Avenue and Anderson Street, waiting for a car, at about 7:30 in the evening; that she hailed the street car and it did not stop; that the next car followed it about two minutes after, and this car stopped and took her on as a passenger. She testified that the car that passed her and did not stop was going fast, that when she reached the point at Beatty Street where the accident occurred the car that had not stopped was there, and also an ambulance. A car came up behind the one in which she was riding, making in all three cars.

The testimony of the witness as to the speed of the car was competent. The fact that the car in front of her did not stop, and the car that she boarded came about two minutes afterward, and another car followed after she reached the point of the accident, would raise the inference that the car was behind time and was speeding up to make up the lost time.

We submit that the testimony of Stella Billingham as to the speed of the car was relevant, because it supported the fact that the operator of the car was driving faster than was safe for the other users of the highway. And the further fact that James Meaney, the driver of the automobile, testified that the street car ran about 140 feet after he was hit, before it stopped; and in the plaintiff's case up to the time it rested, there was no proof that the car had stopped at any time from the time it passed Stella Billingham until after it struck the automobile in which plaintiff was riding and the fact that in the defendant's case there was testimony to the effect that the car did stop between those points, only affects the weight or credibility of the testimony, but does not in any way impair its competency. Combining this with the fact that Mrs. Madeline Spicer (p. 48, State of the Case), Mrs. Jennie Martin (p. 60, State of the Case), and John Oswald (p. 76, State of the Case), testified that the car was going fast before and at the point of accident, raises the inference that the car was going fast all the way and was behind time, which makes the testimony of Stella Billingham relevant.

In answer to Reason 2, the question was asked Mr. Oswald, at p. 76, State of the Case, line 36:

"What was the speed of that car?"

Answer: "Fast as I ever rode in, fastest speed I ever saw for a one-man car."

We submit this question and answer were perfectly proper. The witness was not asked if the car was going fast or slow. He was asked what was the speed of the car. The speed may have been fast, slow or medium. It

was left to the witness to tell what speed the car was going at. The answer he gave was "Fast as I ever rode in, fastest speed I ever saw for a one-man car." The answer did not measure in miles, nor was he asked to measure in miles the speed of the car. He was asked to tell the speed and he told it. We submit the question and answer were perfectly proper.

We submit that the testimony as to speed given by any witness necessarily has to be a conclusion based on what he sees, and from his knowledge of seeing vehicles moving at various grades of speed.

We submit that the objection should have been made to the question, and not to the answer. It is a well-settled practice that a person shall not wait for an answer to a question, and if it be unfavorable then move to strike it out. The following cases are in point:

*Maagget v. A. Brawer Silk Co.*, 95 N. J. L. 72, New Jersey Supreme Court. Opinion by J. Katzenbach:

1. "Objections must be timely and made to the question. It is too late to enter an objection after the question has been answered."

*Willett v. Morse*, 71 N. J. L. 104, New Jersey Supreme Court. Opinion by J. Fort:

"1. It is too late to object to a question after the answer has been given. Objections must be time, and must be made to the question.

2. A party cannot take chances as to the answer and accept or reject it, as may appear advisable, after it is in."

*Delaney v. Erie Railroad Co.*, 97 N. J. L. 434, New Jersey Supreme Court. Opinion by J. Black:

"6. It is too late to make an objection to the admission of testimony after the answer has been given."

*U. S. Transfer Advertising Co. v. Young*, 80 N. J. L. 151, New Jersey Supreme Court. Opinion by J. Trenchard:

"A judgment of the District Court will not be

reversed because of the admission of illegal testimony at the trial, when it appears that no objection was made to its admission at the time it was offered and received."

*Collins v. Tansey*, Vol. 2, No. 45 New Jersey Advance Reports, November 8, 1924, p. 1679, Court of Errors and Appeals:

(P. 1680):—"Ground of appeal number 7. This deals with the question asked plaintiff by his counsel as follows: 'Q. Dr., you know, do you not, that in the public press there has been from time to time considerable written about certain doctors giving promiscuously permits for strong alcoholic beverages? A. Yes, sir.' This was then objected to. While the objection came too late, the relevancy of the question is not apparent, but, nevertheless, there was no objection until after it was answered."

20

#### ANSWER TO REASON 3.

"3. The trial Court erred in denying defendant's motion for a non-suit, although the contributory negligence of the plaintiff was so clearly shown by the testimony of the plaintiff and his other witnesses that a non-suit should have been granted."

The motion for the non-suit should have been denied as there was no negligence or contributory negligence on the part of the plaintiff, Leonard Baus.

The facts are as follows: James Meaney testified on page 29, State of the Case, that the truck was in front of his store between seven and seven-thirty o'clock in the evening. He got in to drive the truck around to the garage and invited Leonard Baus inside to drive with him. After he prepared to start his auto truck he looked up and down and did not see a car on South Clinton Avenue between Chestnut Avenue and Dye Street, which is the direction of north and south. He immediately

started to turn his machine. Before he got to the middle of the north bound track, when the front wheels were between 12 and 17 inches from the easterly curb, he was struck about the door of his car. When the street car stopped it was 139 feet past the place from where he was hit.

The front wheels of his auto truck were broken. On page 38 he said that when he first saw the street car after he started he thought he had lots of time to make the turn as he had done it many times before. He said he had his hand out when he was making the turn, and there was no car or automobile in sight. He said he was sure there was no car between him and Chestnut Avenue and he knew he had lots of room to turn. He said he spoke to no one while he was operating the car nor did Baus speak to him. James Meaney said he heard no signals given by the car, and that after the car hit him two cars more came up behind the car that hit him, within a period of less than eight minutes.

On page 37, on cross-examination he said he was two-thirds across the street when he first saw the street car at Whittaker Avenue, and he considered that he had plenty of time to make the turn as the space permits turning the car without any backing.

Mrs. Spicer, on page 47, witness for the plaintiff, testified that she was on South Clinton Avenue walking south between Whittaker and Beatty Streets and she saw the accident. She said the trolley car was going north on South Clinton Avenue at a fast speed. When she looked at the car it was at Whittaker Avenue and made no stop at that point, and it only seemed a short time until she heard the crash. She saw the automobile after it was struck and it was facing the store of James Meaney. At page 48 she said the speed of the car was what attracted her attention. She heard no signals given by the car.

Jennie Martin, on page 59, witness for the plaintiff, said she was on South Clinton Avenue, near Whittaker

Avenue on the same side of the street as Mr. Meaney's store. She said the noise of the wheels of the car attracted her attention. She looked around and saw the car coming and it was going at a very fast speed. On page 60 she said the car made no stop at Whittaker Avenue, and the next thing she knew she heard the crash, and the auto truck was standing across the track, facing Meaney's store, and the street car, that hit it, had traveled more than 100 feet after it struck the auto truck. She said the speed of the car caused her to watch it all the way until the crash came.

Mrs. Stella Billingham, on page 66, witness for the plaintiff, said she stood at the corner of Clinton and Anderson Streets waiting for the trolley car. Clinton and Anderson Streets is one block below Division, and the trolley car came along and did not stop to take her on. She looked at Division Street and the car went past there and left passengers standing and made no stop. Then she took the trolley car following this one, and when that trolley car reached Meaney's store on South Clinton Avenue she saw the crowd and an ambulance, and the car that did not stop for her was the car at the point of the accident, and she was in the car behind. She said the car that hit Meaney passed her at the corner of Anderson Street, and was going very fast.

John Oswald, on page 75, witness for the plaintiff, said he saw Meaney's machine standing there before the accident, when Meaney cranked it up and started across the street, the trolley was on the south side of Chestnut Avenue. No signals were given by the trolley car and the speed was very fast. That the car hit the front right wheel of the auto truck and knocked it around until the hind end of the truck hit on the trolley car again. Then it slid off the car, turned right around, facing toward Meaney's store. The street car went right on past, and he thinks it ran about 130 feet after it hit the auto truck. He said that the auto truck was on the north bound rail when it was hit. Said he saw Meaney

looking up and down the street after he, Meaney, got into the truck, and then he started across the street. Said Meaney turned his truck around slow and did not stop anywhere nor his engine did not stall. On page 80 he said he hollered to Meaney when he saw the car coming so fast but Meaney could not hear him because the trolley car made so much noise.

Leonard Baus, plaintiff, testified that he was at Mr. Meaney's store that evening and the auto truck was in front of the store and Mr. Meaney asked him to get in. After he got in the machine Mr. Meaney started to turn it. He said he had nothing to do with the operation of the machine and said nothing at any time from the start to Mr. Meaney. He saw the street car at Whittaker Avenue when they reached the north bound track. He did not see the street car before it reached Whittaker Avenue, and the car gave no signal, and the street car was going very fast. He said the auto truck was knocked clean around until it faced the point it came from. After the street car struck the auto truck it traveled on to Beatty Street. He sat on the right-hand side of Meaney, and had nothing to do with the control or operation of the auto truck. He said his leg was smashed and he remained there until he was taken away in the ambulance. He was in the hospital six weeks. Had an operation on his leg trying to save it from amputation, which failed. Then he had a second operation when the leg was amputated, and then he had another operation on November 13, 1922, with the prospect of another operation facing him at that time. He had a cut in the back of the head and a bump, he was hurt in the shoulder, and was cut across the foot, and for a time his toes seemed paralyzed, but they became alright. He said he had headaches and suffered from sleeplessness, required assistance in dressing himself. Is unable to follow his business of produce merchant. Before the accident he had good health so far as he knew. Said as he sat with Meaney he was watching the trolley car and expected

it to stop. He did not say a word to Meaney, because Meaney was minding his own business and making the turn just the same as any man should turn. The trolley car was going very fast and he was surprised that it did not stop. Asked why he did not say something to Mr. Meaney he said he expected the trolley car to stop as it had lots of time, and that he never realized the danger he was going to be in.

10 There was no contributory negligence on the part of Leonard Baus. At p. 117, State of the Case, he said that the auto truck was about two-thirds of the way around the turn when the street car hit it. On cross-examination, p. 129, State of the Case:

"Why didn't you tell Mr. Meaney to stop his automobile so that it didn't get on the track in front of the trolley car?"

A. "Mr. Meaney was making the turn and making it careful. I didn't think it best to interrupt him."

20 Q. Mr. Meaney didn't see the trolley car, did he?"

A. He saw it down to Mantell's."

Q. "Why didn't you tell him to stop before he got on that track?"

A. "I didn't think it was necessary for me to do any hollering because he had good judgment if I hollered maybe he wouldn't do as good. I think it is bad to interfere with people at a time like that."

30 Q. "Mr. Baus, didn't you know he was running his own life and your life and the life of the passengers into danger through bringing this automobile right on the track in front of the trolley car?"

A. "I know it was dangerous, yes."

Q. "Why didn't you tell him to stop?"

A. "I didn't see why I should, he was the biggest way around and if he had three seconds longer time he would have been around out of the way, just three seconds, maybe four, and he would have been all the way around."

Combine this with the fact that Baus himself was an

experienced driver and so was Meaney; it could not be said that he was guilty of negligence or guilty of contributory negligence.

From the evidence as it stood at the close of the plaintiff's case there was a fair inference that the defendant was negligent. The fact that there were cars following close behind the one that struck the auto truck, and the fact that the car did not stop at several intersecting streets where passengers were waiting, and the fact that no signal was given by the trolley car, and the further fact that the car was traveling at a fast rate of speed would indicate that the car was late and making up time by speeding. 10

The defendant was negligent in that it was going at a higher rate of speed than was safe for other users of the highway.

That no signals were given. These facts infer negligence and it should go to the jury. The further fact, that James Meaney looked both north and south before he started to make the turn.

That the street was wide enough for him to make the turn without stopping. 20

That the lights were lit on the auto truck and it had reached the north bound track before the street car.

That the street car traveled between 135 and 140 feet after it hit the auto truck.

That the auto truck was spun clear around in the direction from which it came, are facts that infer negligence of the operator of the street car.

A motion to non-suit could not prevail as there was no evidence of contributory negligence, and there was evidence of the negligence of the defendant, and the question of the contributory negligence of the plaintiff, and the question of the negligence of the defendant were properly submitted to the jury, especially when it is remembered that the plaintiff was a passenger in the automobile, and not the owner nor operator of the same, nor is plaintiff liable for the negligence of the driver, and the further fact that he was in a position of imminent peril, and the 30

peril was from no fault on his part. *Chipparine v. Public Service Railway Company*, C. E. & A. 91 N. J. L. 581.

This question of negligence and contributory negligence was raised in the course of the previous trial, and the Court of Errors and Appeals affirmed the ruling of the Trial Court, which will be found in *Advanced Reports*, Vol. 2, No. 45, dated November 8, 1924, at p. 1669, where the Court said:

10 The one ground of appeal urged in the Meaney case is that the trial Court denied appellant's motion for a non-suit, whereas it should have granted the motion, because there was no evidence of negligence on the part of appellant and the negligence or contributory negligence of the plaintiff-respondent clearly appeared.

20 "We are satisfied, as was the Supreme Court, that the trial Court was clearly right in denying this motion. There was testimony from which negligence of appellant could be found, and the question of contributory negligence in this case was one that also should have been submitted to the jury, as was done.

"There being no error, the judgment below is affirmed.

"In the Baus case there are three grounds of appeal urged and argued here.

30 "The one is the refusal to non-suit as urged in the Meaney case, and which has already been disposed of herein. That disposition was that there was no error in refusing to non-suit, and that is also our conclusion in the Baus Case."

The facts in this case being identical with the previous case the Court was correct in refusing to non-suit.

*Kehoe v. Rutherford*, 76 N. J. L. 824, Court of Errors and Appeals:

"The only assignment of error challenges the propriety of the action of the trial Court in refusing to direct a verdict for the defendant at its

request. Such a direction would have been, in the face of our opinion, rendered in an earlier stage of this litigation, and reported in 45 *Vroom* 659. There was no error in its refusal."

*Baker v. Fogg*, 95 N. J. L. 230, C. E. & A.

2. "Contributory negligence is a matter of defence under our present Practice Act and not a ground for taking the case away from the jury upon the plaintiff's proofs."

If, under the proofs there are inferences for and against 10 the plaintiff and defendant they must go to the jury.

*Bauer v. N. Jersey Street Railway Co.*, 74 N. J. L. 624, C. E. & A.

1. "If, under the proof, reasonable minds may differ as to whether a person who is injured upon a crosswalk while in the act of crossing a trolley track in front of an approaching car is guilty of contributory negligence, the question is for the jury."

The following cases are in point: 20

*N. Jersey Street Railway Co. v. Schwartz*, 66 N. J. L. 437.

1. "The general principle governing the relation of the street railway to the traveling public is that their respective rights in the public street must be exercised by each of them, with due regard to the rights of the other, in a reasonable and duly careful manner.

2. "Where a traveler in a carriage at a public crossing was about to drive over the tracks of a street railway, and saw a trolley car bound towards him, but, which, at the time, was standing still about forty feet away, taking on or letting off passengers, and thereupon he proceeded to drive over the tracks without further looking towards the car, which struck his horse while crossing, throwing the driver out and injuring him, in an action for the injury, a motion to non-suit for 30

contributory negligence was denied. HELD, on review, that the ruling was correct."

*Glasco v. Jersey City Street Railway Co., C. E. & A., 81 N. J. L. 469.*

1. "The general principle governing the relation of the street railway to the traveling public is that their respective rights in the public streets must be exercised by each of them, with due regard to the rights of the other, in a reasonable and duly careful manner."

2. "When the evidence warrants the inference that the motorman drove the defendant's street car rapidly, without slacking speed, across a street crossing where it usually stopped, either without looking ahead, or, if he looked when one hundred and fifty feet away, seeing the plaintiff about to cross the track, the question of the defendant's negligence is for the jury."

4. "The proofs justifying the finding that, when the plaintiff started to walk across the defendant's street car track at a street crossing where the cars usually stopped, she looked and saw a car 'coming fast' one hundred and fifty feet away, it was a question of fact for the jury whether the plaintiff, in the exercise of reasonable prudence and caution, should have apprehended that the car was approaching her at so high a rate of speed that it would reach her before she could pass the track, and to determine whether a reasonably prudent person, with the right to presume that the company would exercise due care on its part, would have proceeded to cross under the circumstances."

*Chipparine v. Public Service Railway Company, C. E. & A., 91 N. J. L. 581.*

1. "In an action to recover for injuries sustained in a collision between defendant's trolley car and the plaintiff's automobile at a street cross-

ing, it is not erroneous for the judge, when evidence warrants it, to charge that the motorman must use reasonable care, i. e., such care as a reasonably prudent man would use in the circumstances presented to him, calling attention to the provision of the traffic act (Pamph. L. 1915, p. 292, p. 8, subd. 3), requiring the motorman to sound his signal bell on approaching street crossings, and expressly stating that it was for the jury to determine whether or not he was negligent 'under the rule stated and the provision of the statute.'"

2. "In an action to recover for injuries sustained in a collision between the defendant's trolley car and the plaintiff's automobile at a street crossing, the fact that the motorman failed to sound his signal bell as required by the traffic act (Pamph. L. 1915, p. 292, p. 8, subd. 3) is a circumstance to be considered in deciding whether or not the motorman operated his car with reasonable care in the circumstances presented to him, but it is not controlling as to his negligence."

The traffic act, Pamph. L. 1915, p. 291, par. 8, sub-division 1:—It shall be the duty of the motorman and drivers of cars to give ample notice to drivers of other cars and pedestrians of their approach, and to afford all reasonable opportunity for them to avoid collision or accident; and nothing in this section relieves the motorman from any duty or care now due or owing to the other users of the highway; and by the same act, p. 296, section 11, subdivision 27, it provides that no street car shall be operated at a speed higher than 15 miles an hour, where houses are less than an average of 100 feet apart, provided the tracks on which such street car is operated are laid upon any public street such as in this case.

3. "An instruction that 'if the plaintiff, with-

out any fault on his part, was placed in a position of imminent peril at a crossing, by reason of the negligent manner in which the defendant's motorman operated its car, the law will not hold the plaintiff guilty of such negligence as to defeat his recovery because, by an honest mistake, he chose one course when another course might have been better,' is proper in an action for injuries sustained in a crossing collision when the plaintiff's contributory negligence was in issue and the evidence tended to show that he was put in sudden danger by the negligence of the defendant and without any fault on his part."

Wescoat v. Decker, C. E. & A., 85 N. J. L. 716.

"Where there was evidence that what plaintiff's deceased did in a moment and position of imminent peril, resulting from defendant's automobile negligently charging down upon her at great speed while she was crossing a public street, was not in fact the best thing she could have done if there had been time for more mature deliberation, but that it was, nevertheless, the results of her natural uncertainty as to what was best to do in order to escape, her conduct cannot, as a court question, be held to constitute contributory negligence on her part."

Vrooman v. N. Jersey Street Railway Co., C. E. & A., 70 N. J. L. 818.

1. "The driver of a truck is not guilty of negligence, as a matter of law, in attempting to cross a street railway track in front of a trolley car five hundred and fifty feet away, which is approaching him at a very great rate of speed; he has the right to assume that the car is furnished with appliances to reduce speed and to stop, and with a motorman to make use of such appliances, and that the car will not continue to run in violation of the law limiting the speed of vehicles in

public streets to that which is compatible with a safe use thereof by other vehicles."

2. "In an action for damages resulting from an injury caused by negligence, it is the duty of the trial judge, when requested to non-suit or direct a verdict, to determine whether any facts have been established by evidence from which negligence may be reasonably inferred; if the real facts have not been established by the evidence he must submit them to the jury."

81 N. J. L. 390, Court of Errors and Appeals, Peterpolo v. Public Service Railway Co.:

"Plaintiff, while driving a team of horses and wagon on a city street, came to the junction of an intersecting street upon which defendant operated a line of electric street railway cars. He looked up the latter street and saw a car, then about fifty or seventy-five yards distant, coming towards him at a very high rate of speed. He was then fifteen or twenty feet from the car track, and his horses were walking. He proceeded across the track without materially accelerating his speed, and the oncoming street car collided with the rear wheel of his wagon, throwing him out upon the ground. HELD, that the question of his contributory negligence was for the jury."

82 N. J. L. 436, Court of Errors and Appeals, Fred Kraut v. Public Service Railway Co.:

1. "The general principle governing the relation of the street railway to the traveling public is that their respective rights in the public highway must be exercised by each of them with due regard to the rights of the other, in a reasonable and duly careful manner."

2. "It is the duty of the motorman of a street railway car, when approaching a crosswalk, to have his car so far under control that he will not endanger the safety of pedestrians engaged in the lawful and customary use of such crosswalk."

3. "Where the plaintiff, who was walking upon a crosswalk of a public highway, was struck by a street railway car, running at a "pretty fair rate of speed," as he was passing over the last rail of the track, and the evidence tended to show that the motorman, when fifty feet away, ought to have seen the plaintiff when he was five feet from the track, it was open to the jury to find either that the motorman did not make proper effort to prevent the collision, or that the inability to stop the car was due to its excessive and unlawful rate of speed, and the question of the negligence of the defendant company was, therefore, properly submitted to the jury."

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74 N. J. L. 624, Court of Errors and Appeals, Bauer v. North Jersey Street Railway Co.:

"If, under the proof, reasonable minds may differ as to whether a person who is injured upon a crosswalk while in the act of crossing a trolley track in front of an approaching car is guilty of contributory negligence, the question is for the jury."

20

4. "A pedestrian upon a crosswalk where he might reasonably assume that the motorman of a street railway car would expect pedestrians to cross and would have the car under proper control accordingly, had a right to expect that the motorman would respect his right to cross the street if he was in position to justify such crossing under a reasonable belief that he could safely do so if both he and the motorman exercised reasonable care."

30

5. "Where, from testimony, the jury could legitimately find that when the plaintiff, after looking when five feet away from the defendant's trolley track laid in a public highway, started to cross the track, it was apparently safe for him to do so under the conditions within his observa-

tion, one of which was a trolley car, running at a "pretty fair rate of speed," and sufficiently distant to be checked, or, if need be, stopped before it reached him, the question of the plaintiff's contributory negligence was for the jury."

84 N. J. L. 726; Court of Errors and Appeals, Fox v. Great Atlantic & Pacific Tea Co.:

1. "A motion for a non-suit admits the truth of the plaintiff's evidence and of every inference of fact that can be legitimately drawn therefrom, but denies its sufficiency in law." 10

2. "Unless it is established by the evidence beyond fair debate that the plaintiff was negligent and that the negligence directly contributed to the injury complained of, the motion to non-suit or direct a verdict will be denied."

3. "A pedestrian has a right to cross a street at a point not a crosswalk and in doing so is bound only to use reasonable care for his safety."

There were no words or conduct on the part of Leonard Baus that in any manner would indicate negligence, as he said himself in his testimony previously quoted: "Mr. Meaney was making the turn and making it careful, I didn't think it best to interrupt him." He thought he had good judgment and he said on p. 130, State of the Case, "If I hollered maybe he wouldn't do as good. I think it is bad to interfere with people at a time like that." It seems to me his keeping quiet under the circumstances was reasonable care, and undoubtedly his negligence was a question for the jury." 20

Leonard Baus, plaintiff, was an invited guest. He had no control of the auto truck, nor did he attempt or assert any control, and under the facts of the case it would have been dangerous for him to have done so, to say anything to Meaney at the point of danger would be more likely to add more danger to the situation. So far as he was concerned the case was bound to go to the jury." 30

We submit that the case was correctly put to the jury. The following citations are in point:

N. Y. Lake Erie & W. R. R. Co. v. William Steinbrenner, 47 N. J. L. 161.

10 1. "A hired a coach and horses, with a driver, from B, to take his family on a particular journey. In the course of the journey, in crossing the track of a railroad, the coach was struck by a passing train and A was injured. In an action by A against the railroad company for damages: HELD, that the relation of master and servant did not exist between the plaintiff and the driver, and that the negligence of the driver, co-operating with that of the persons in charge of the train which caused the accident, was not imputable to the plaintiff as contributory negligence to bar his action."

20 2. "A passenger in a hired coach may, by words or conduct at the time so sanction or encourage a special act of rash or careless driving as to commit an act of negligence which will debar him from a suit against a third person for an injury resulting from the co-operating negligence of both parties. But for whatever purpose the negligence is invoked, whether as a cause of action for an injury done by the driver, or as contributory negligence to bar an action by the passenger against a third person for an injury sustained, the negligence, to be imputed to the passenger, must be such as arises in some manner from his own conduct. The negligence of the driver without some co-operating negligence on his part, cannot be imputed to the passenger in virtue of the simple act of hiring."

30 Noonan v. Consolidated Traction Co., 64 N. J. L. 579.

"When a person receives injury by collision with a car while riding by invitation and without

hire, in a carriage driven and owned by another, the negligence of the driver is not imputable to him."

Mittelsdorfer v. W. Jersey and Seashore R. R. Co., 77 N. J. L. 698.

1. "One who, while riding in the private conveyance of another, is injured by the negligence of a third party, may recover against the latter, notwithstanding that the negligence of the driver of the conveyance in driving his team contributes to the injury, where the person injured is without fault and has no authority over the driver." 10

2. "The plaintiff, a woman, was riding in a wagon owned and driven by another, at the invitation of the owner. She had no control over the driver. The relation of master and servant or principal and agent, or mutual responsibility in a common enterprise did not exist between them. There was no evidence that the plaintiff knew that the driver was incompetent, and nothing about his driving to indicate that he was careless. The evidence showed that on approaching the railroad crossing the plaintiff did not look for the train because observed that the driver was looking for it, and that in fact she did not see nor hear the train. HELD, that the plaintiff's negligence was a question for the jury, notwithstanding the fact that it appeared that if the driver had exercised the degree of vigilance in looking required of him by law he would have discovered the approaching train in time to have avoided the collision." 20 30

Horandt v. Central Railroad Company, 78 N. J. L. 190-196.

"The other plaintiffs, including his wife, were mere passengers, exercising no control over his actions, and, as the trial judge correctly states, unless there was something that they individually

should have done in the exercise of due care to avoid injury (and of this there is no claim), they are not chargeable with contributory negligence, as negligence of the deceased cannot be imputed to them. *New York, etc., Railroad Company v. Steinbrenner*, 18 Vr. 161; *Consolidated Traction Company v. Hoimark*, 31 Id. 456; *Noonan v. Consolidated Traction Company*, 35 Id. 579.

10 *Harandt v. Central Railroad Company on Appeal*, 81 N. J. L. 488, on page 489.

Mr. Justice Parker, speaking for the Court of Errors, said: "These plaintiffs were passengers in the automobile and, consequently, as pointed out in the Supreme Court opinion, not chargeable with contributory negligence of the driver."

*Lange v. N. Y. S. & W. R. R. Co.*, 89 N. J. L., p. 604, Court of Errors and Appeals:

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1. "One who, while riding in the private automobile of another, is injured by the negligence of a third party, may recover against the latter, notwithstanding that the negligence of the driver of the automobile contributes to the injury, where the person injured is without fault and had no authority over the driver.

2. "If one injured by the negligence of a third party had no authority over the driver with whom he was riding, and was not negligent himself, and the relation of master and servant, or principal and agent, or mutual responsibility in a common enterprise did not exist, then the negligence of the driver cannot be imputed to him."

30

The defendant in his brief says there are important differences between the testimony given by the plaintiff at this trial, and that given at the former trial. Defendant fails to point out where there is any difference in the substantial facts, and the inference is to be drawn therefrom. They are, if anything, clearer in the present trial than they

were in the former. Baus' testimony will be found at p. 101, of the State of the Case, in the previous trial, and can be found as to the present trial, State of the Case, on p. 129, of the present State of the Case, and the facts being the same the case had to go to the jury, as this Court held at the last trial that the question of the contributory negligence of Baus, as well as Meaney, was a question for the jury.

## ANSWER TO REASON 4.

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"4. The trial Court erred in not withdrawing a juror, though the defendant moved the Court so to do, when it appeared that plaintiff's counsel had caused the publication in a newspaper published in the City of Trenton, on the day prior to the commencement of the trial, of a statement highly prejudicial to the defendant, in that, among other things, it stated that at a former trial plaintiff has recovered a verdict against the defendant, and the amount of the verdict that the judgment had been reversed by the Court of Errors and Appeals because the trial Court overruled a certain question relating only to plaintiff's injuries; that the driver of the automobile in which the plaintiff was riding had recovered a verdict against the defendant, and that his verdict had been sustained; and other prejudicial facts, and the plaintiff's counsel having admitted that he caused said article to be published for the purpose of informing the jury of the facts therein stated."

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In answer to Reason No. 4, plaintiff's attorney states that it is not true that he caused the publication in the newspapers of an article at any time, relating to this case. The facts relating to what was said at the time of the motion in Chambers, are found from p. 250 to p. 256, State of the Case.

30

Under Section 27 of the Practice Act, P. L. 1912, p. 382, the Court can take by affidavit or deposition the evidence of a matter that is capable of proof by incontrovertible evidence. Hence I submit an affidavit as to

newspaper publications, which follow, and which would have been presented to the Court below had it gone into the question.

STATE OF NEW JERSEY, }  
COUNTY OF MERCER, } ss.

I, Marjorie E. Orr, being duly sworn according to law, upon my oath do depose and say: That the copies of  
10 newspaper articles contained in the within Brief are true and correct copies of the original newspaper articles published in the respective newspapers on the respective dates; and that the aforesaid newspapers, to wit: *Trenton Evening Times* and the *State Gazette*, are papers published in the City of Trenton, having a circulation in the said City, and in the vicinity thereof; and that I have been reliably informed that the said circulation of the said  
20 *Trenton Evening Times* is 38,000 per day, and was such during the circulation of the aforesaid articles, and that the circulation of the said *State Gazette* is 12,000 per day, and was such during the circulation of the above mentioned articles.

MARJORIE E. ORR.

Sworn and subscribed to before me this 21st day of May, 1925.

FRANK I. CASEY,  
M. C. C. of N. J.

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The newspapers of this City, at the instigation of some person, or persons, from the day the <sup>first</sup> opinion was ~~held~~ filed down to the date of trial, have persisted in publishing stories that the Baus case was reversed because of excessive damages. On the date the opinion was filed the *Trenton Evening Times*, a publication with 38,000 circulation, of this City, published the following story:

Trenton Evening Times, Monday, October 27, 1924.

10

"MAN DENIED \$15,000 FOR LOSS OF  
LEG BUT AUTO OWNER  
COLLECTS"

"An award of \$15,000 made by the Supreme Court to Leonard Baus of this city against the Trenton and Mercer County Traction Corporation for the loss of his leg, in a trolley mishap was today reversed by the Court of Errors and Appeals. The court at the same time upheld a verdict of \$225 in favor of James Meaney, also  
20 of this city, for damages to his automobile in the same accident. The crash occurred on South Clinton Avenue in April, 1922, when the two men were riding in the automobile.

"The case was originally tried in Mercer Court, where the damages were allowed. The verdict was appealed by the trolley company on the ground that the damages allowed were excessive and the verdict was against the weight of the evidence. Martin P. Devlin was counsel for the defendants while Katzenbach & Hunt appeared  
30 for the traction corporation."

On December 26th, 1924, I made an application to the Court of Common Pleas to have the damage clause amended from \$15,000.00 to \$25,000.00. On the following day the *Trenton Evening Times* published the following story:

Trenton Evening Times, Saturday, December 27, 1924.

10 "RESERVES DECISION ON NEW  
BAUS TRIAL"

"Decision on the application for a new trial of the civil suit of Leonard Baus, of 115 Rusling Street, against the Trenton & Mercer County Traction Corporation was reserved by Judge Marshall after hearing argument yesterday. Baus was allowed damages of \$15,000 by a Mercer Court jury in January, 1923, and that verdict has been set aside as excessive by the Supreme Court.

"Counselor Martin P. Devlin, attorney for Baus, appeared yesterday asking for a new trial and for permission to raise the sum sued for from \$15,000 to \$25,000. Katzenbach & Hunt represent the traction company. James Meaney, in whose auto Baus was riding at the time of the accident, was given damages of \$255 for his smashed automobile."

On the same day the *State Gazette* published the following story:

30 The State Gazette, Trenton, N. J., Saturday Morning,  
December 27, 1924.

"TO DECIDE DAMAGES FOR  
LOSS OF LEG"

"Seek \$25,000 in New Trial for Baus Though  
Supreme Court Held \$15,000 Too High"

"Appeal for a new trial at an early date to decide the amount of damages to be awarded Leonard Baus, of 115 Rusling Street, for the loss of his right leg below the knee as the result of an auto-trolley crash in April, 1922, on South Clinton Avenue, was made before Judge Marshall in Mercer Court yesterday morning. As counsel for Baus, Martin P. Devlin also asked authority to increase the award extent from \$15,000 to \$25,000. The Court will announce a decision in a few days, it was declared. 10

"Baus was riding with James Meaney in the latter's auto when it was hit by a Trenton & Mercer County Traction Company trolley car in front of Meaney's home on South Clinton Avenue. After debating one hour a Mercer court jury on January 5th, 1923, granted Baus \$15,000 and Meaney, who was not injured in the mishap, \$255 for damages to his auto. The traction firm appealed and the superior court a short time ago decided that the Baus award was too high. A new trial to determine only the amount to be awarded was ordered, the superior court eliminating the matter of responsibility for the crash from the new hearing. 10

"The superior court having already decided that the \$15,000 jury award to Baus to be too high, Mr. Devlin yesterday asked permission to raise the possible sum to \$25,000. Katzenbach & Hunt law firm represents the trolley concern."

The reading of the articles of both newspapers would indicate that some person was deliberately misrepresenting the result of this case, the effect of which was to affect the amount of damages. The article published by the *State Gazette* made my motion to increase the damages from \$15,000 to \$25,000 look ridiculous. I went to the newspaper offices after the last publication and asked them why they insisted on misrepresenting the truth about this case. They stated they published the facts as they had received them, and told me if I would give them the correct facts they would see that they published them. 10

I procured a copy of the opinion filed by the Court of Errors on October 26, 1924, and gave it to them as the true facts of the case. I only requested that when they speak of the case they speak of it truthfully, and they now have all the facts. I did this to prevent what I consider deliberate misrepresentation by some person with intent to influence a reduction of the amount of damages recoverable by Baus. I did not request the publication of any kind of newspaper article except that I requested that if they published anything they publish the truth. The defendant in his brief, says that I did not deny authorship of the newspaper article, because my answer to their question "Do you know who wrote it?" was "Don't ask me anything about who wrote it." This perhaps was a denial framed in unhappy diction, but by reference to the discussion on p. 251 of the State of the Case, it will be seen that the answer was intended as a denial and I now deny it. My object was that if the newspaper spoke of the case it should speak of it truthfully.

20 *On the first day of the trial:*  
Trenton Evening Times, Monday, January 26, 1925

### "BAUS DAMAGE SUIT IS BEING RETRIED"

30 "Re-trial of the suit of Leonard Baus of Rusling Street, against the Trenton & Mercer County Traction Corporation, for injuries he is alleged to have received in a crash between his automobile and a trolley car on South Clinton Avenue April 29, 1922, is being heard today by Judge Marshall and a jury in Mercer Common Pleas Court.

"At a trial several months ago, a jury granted Baus \$15,000 damages for the loss of a leg in the crash. The traction corporation appealed this verdict to the Court of Errors and Appeals and a new trial was granted. Recently, on the motion of Counselor Martin P. Devlin, representing the complainant, Judge Marshall raised the

damages asked from \$15,000 to \$25,000 and the latter sum is now being sued for.

"A report made by Moses E. Hill, motorman, through the traction corporation officials, was that Baus' machine had run directly into his trolley car. Hill later died and his testimony could not be used in the first trial, however. Katzenbach & Hunt represent the traction corporation."

10 The last paragraph of this article shows that some person with information that knew the facts of the last trial deliberately injected into this article a report of the motorman who was deceased, and whose evidence was attempted to be offered in the first trial and was overruled. These articles show that some person was interested in trying to injure the plaintiff's cause before the Court.

The Trenton Sunday Times-Advertiser, which is the Sunday edition of the Trenton Times, on Sunday, January 25th, 1923, published the article marked Exhibit 20 D-1, p. 321, State of the Case.

On the third day of the trial Mr. Hunt in Chambers made the motion for a mistrial. There is nothing in this article that is not true. I offered at p. 255, State of the Case, to ask the jury whether they had or had not read it, because the Judge had not seen it, I had not seen it myself, nor had either counsel for the defendant until it was called to their attention in the third day of the trial.

This article was offered in evidence in Chambers. I 30 objected to its being put in evidence, and my objection was overruled. I fail to see if it was put in evidence why it should not have gone to the jury.

There is nothing in this case to show that any member of the jury read any of the newspaper articles in question. I offered while in Chambers to ask the jury that question, and counsel for the other side objected to its being

asked, but the Court in charging the jury, p. 313, State of the Case, said:

10 "Another matter to which I wish to call your attention is the fact that during the course of this trial mention has been made of a previous trial had in this same cause between the same plaintiff and the same defendant. I desire at this time to admonish the jurors that in your determination of this cause you are to be governed and controlled solely by the evidence produced from the witness stand and in this court room at this trial. You are not to be swayed or influenced by anything that you may have read in any newspaper or newspapers nor by anything that you may have heard on the outside with reference to a former trial. This is a trial de novo, and should be decided solely by the evidence produced here."

20 It seems to me that no injury was done and that with the charge of the Court any possibility of injury was eliminated.

In the case of *United States v. Ogden*, 105 Fed. 371, the Court held:

30 "A defendant convicted of a criminal case is entitled to a new trial where it is shown that some of the jurors read an article published in a newspaper before the case was submitted to the jury, which declared defendant guilty, and contained many prejudicial statements and charges against him which would not have been admissible in evidence, besides commenting upon his failure to testify in his own behalf."

In this case it was shown that the jurors had read the articles and the articles were of a highly sensational order. In the case at bar it was not shown that the jurors had read the article, notwithstanding that plaintiff's attorney offered to ask them.

All of the decisions hold that the jurors must have known of the article already, and even in those cases the

court refuses to grant a new trial, as in the case of *Sherwood v. Chicago & West Michigan Ry. Co.*, 88 Mich. 108, which was a negligence case being tried a second time, the Court held:

10 "During the second trial of a negligence case newspapers in the city where the trial was being held published an item stating the amount of the verdict recovered by the plaintiff on the first trial, which was read by a member of the jury, whereupon the defendant's counsel requested the Court to arrest the progress of the trial and grant a new trial. The application was denied, and error is assigned upon the ruling as prejudicial, and especially so in view of the fact that the second verdict was larger than the first, and it is held that this rule if established would render incompetent every juror who knew the amount of the former verdict; that intelligent men who are the most competent jurors, are usually readers of newspapers which have the right to publish verdicts and judgments rendered in the Courts, and that reading of such reports will not render jurors incompetent." 20

In this case the newspaper articles in question were published during the course of trial.

In the case of *Fuller v. Fletcher*, 44 Fed. 34 (R. I.) the Court held:

31 "The fact that two of the jurors during the trial of a cause read the opinion of the Supreme Court, rendered on appeal from a former judgment of the cause is not ground for a new trial, where it clearly appears that the opinion was not furnished by or at the instigation of the successful party, and that the opinion was not taken into the jury box or laid before the jury."

In the case of *Colt v. United States*, 109 Fed. 310, a criminal case, the Court in denying the motion for a new trial for alleged misconduct on the part of the jury in

requesting and receiving from the bailiff in charge of the jury during their deliberations, a copy of the United States Federal Reports, said:

10 "We are of the opinion that before a verdict can be rightly disturbed because of misconduct of the jury in reading papers or books not in evidence, it must be made to appear that the jury was influenced in arriving at a verdict by what they read, or it was such that it would be presumed to have influenced the verdict. It is not shown in this case, and such presumption cannot rightly be indulged from the facts shown. There was no error, therefore, in denying a new trial."

In the case of *Colt v. United States*, *Supra*, 190 Fed. 310:

20 "The granting of denial of a motion for a new trial rests very largely in judicial discretion of the Court, and it is not ordinarily reviewable upon a writ of error. *Newcomb v. Wood*, 97 Fed. 581, and *Mattox v. United States*, 146 U. S. 140-146."

*Fields v. Dewitt*, 71 Kansas 676:

1. "Practice Supreme Court—Misconduct of Jury. Presumption."

30 1. "Where articles discussing the merits of a case are shown to have been published during the trial in newspapers in general circulation in the community, it cannot be presumed upon review against the finding of the Trial Court, that they were read by the jury, there being no direct evidence to that effect."

2. "Jury and Jurors New Trial. Reading Newspaper Comment."

"To support an application for a new trial upon the ground of misconduct of jurors, it is not sufficient to show that during the trial they read newspaper comments relating to the case, without showing that the comments were of such a charac-

ter that they might have resulted in prejudice to the losing party."

"The plaintiff claims that there is a presumption that the jurymen did read them, and cites in support of the contention *Meyer v. Cadwalader*, 49 Fed. 32, and *Morse v. Montana Ore Purchasing Co.*, 115 Fed. 337."

10 "The opinion in each of these cases was the announcement by the trial Court of the reasoning by which it was impelled to grant a new trial, in the course of which it was in effect that under the circumstances, there present, the Court might be satisfied that certain newspaper articles published during the trial were seen and read by the jury, although there was no direct evidence to that effect."

20 "What is spoken of as a presumption in this connection is merely an inference based upon the unreasonableness of any other conclusion. In a given case the Trial Court may be justified in believing that certain newspaper publications had been read by the jury, although there is no direct evidence of the fact, and in acting upon that belief, but it does not follow, that its failure to take that view, may be held by a reviewing Court to constitute error."

In re *Thompson*, 157 Michigan 670:

30 "It is not ground for a new trial that the jurors read incorrect accounts of the case in the newspapers."

In the case of *Copeland v. Wabash Ry. Co.*, 175 Mo. 650, a case in which a motion was made for a reversal of a verdict on the ground of certain newspaper publications, the Court held:

"Former trial, reading newspaper account."

"After the jury had retired to consider of their verdict, a juror secured a newspaper which said: 'Copeland is suing Wabash Railroad for \$35,-

000.00 for injuries received in the wreck at Missouri City where eight men were killed. A coffin was bought for Copeland but he recovered. A trial last term of Court resulting in a hung jury. One of the jurors was for nothing and hung to the last, while one of the others was for \$20,000.00, two for \$15,000.00 and eight for \$10,000.00. There is much interest in the case.'"

10 "Held that some of the jurors pending the trial read this article furnished no ground for reversal of a verdict of \$15,000.00."

The article in question in the case at bar, known as Exhibit D-1, State of the Case, stated nothing but what was true, and it stated only the legal question. The law on any question can be read ~~by~~<sup>to</sup> a juror by the Court or counsel on either side, but the Court's opinion of facts cannot be read.

Chief Justice Beasley said in the case of *Allaire v. Allaire*, 39 N. J. L. 113, speaking for the Court of Errors and Appeals:

"It is now argued as a ground for reversal in this court, that on the second trial of this cause, this opinion of the Supreme Court, on the law as well as the facts, was permitted to be read to the jury by the counsel of the defendant as a part of his argument in the opening and summing up of the case. The point is presented on an exception taken at the time."

30 "This course thus alleged to have been taken at the trial, is now attempted to be justified, it being insisted that it is in accordance with the ordinary tenor of practice. But this is a mistake. The customary mode has been to suppress all reference to the former trial, with regard both to the action of the jury and the court, except as to the decision of points of law. As to matters of law embraced in an opinion given on a motion for a new trial, the opinion can be referred to and used

in the same way and for the same purposes as judicial decisions contained in the books of reports can be. Plainly, counsel, in his address to the jury, can, for the purpose of presenting his views of the law of his case, call to his aid and quote the language delivered from the bench. The reports are the repositories of the law, and can be put to use as such; but they are not the repositories of the opinions of judges on matters of fact. With regard to questions of law, they are precedents; 10 as they touch questions of fact, they have no such capacity."

The jury knew there had been another trial and counsel on both sides quoted to the witnesses testimony which they had given in the former trial, and the Judge in his charge noted that there had been another trial.

A motion was made in Chambers and addressed to the discretion of the Court for a mistrial, and that question in this State has been decided it is not appealable.

#### NEW JERSEY CASES ON THIS POINT. 20

In the case of *Smith v. Brunswick Laundry Co.*, 93 N. J. L. 436, J. Black:

3. "A refusal by the trial court to withdraw a juror or grant a non-suit for improper remarks by counsel is discretionary on the part of the trial judge and cannot be reviewed on appeal."

*Price v. New York Central R. R. Co.* 94 N. J. L. 10, Chief Justice Gummere: 30

"Whether the trial court will order the withdrawal of a juror and direct a mistrial for alleged misconduct on the part of counsel in addressing the jury, is a matter addressed to the discretion of the trial court, and a refusal to take such action affords no basis for the reversal of a judgment on review."

"In this State the rulings of trial courts upon matters that are committed to their discretion do

not as a class constitute grounds for reversal upon error. *West v. State*, 22 N. J. L. 212; *Donnelly v. State*, 26 N. J. L. 601; *Haase v. State*, 63 N. J. L. 34."

"Such rulings are sometimes spoken of by the test writers as "not constituting grounds for error," or as "not reversible upon error," or as even described as the "infallible discretion of trial courts." *Pow. App. Proc.* 405. *Luckenbach v. Sciple*, 72 N. J. L. 478."

10 In discussing the cases in the Brief of Defendant on this question, they are all inapplicable and distinguishable from the present case. In the first case cited, *Griffen v. United States* (Cir. Ct. of App., 3d Cir., 295 Fed. 437), the syllable quoted below shows that the jurors read the newspapers:

20 2. "In the prosecution for conspiracy to defraud the U. S. the Court erred in not withdrawing a juror and granting a new trial where there fell into the hands of the jury newspapers stating that the prosecuting attorney said that five of the defendants had offered to make a clean breast of their part in the conspiracy and turn State's evidence, and held a written confession of three of the defendants in addition to two who had pleaded guilty."

30 3. "Where it is admitted that the articles concerning the case appeared on the front page of newspapers and there is no denial of statement made by counsel in motion for the withdrawal of a juror that members of the jury were seen reading the newspaper, it cannot be urged that there was no direct evidence that the jury read the newspaper reports."

*Meyer v. Cadwalader*, Circuit Judge Acheson, 49 Fed. 32, is not an authority to the effect that there is a presumption that jurors have read or have seen newspaper articles printed during the course of the trial, as

the Court in *Fields v. DeWitt*, 71 Kansas 676, clearly sets forth the distinction, to wit: That in a given case the trial Court may be justified in presuming from the nature and extent of the publicity, that the jurors have seen and read the articles.

*People v. Stokes*, 103 Cal. 193, is a criminal case, and it was shown that the jurors in that case had read articles which were highly prejudicial to the defendant, and rendered a fair trial of him impossible:

"Where, upon a motion for a mis-trial in a 10 criminal case, it is shown by the evidence of the officer in charge of the jury, that the jurors after retiring to deliberate upon this verdict, read an article in a local newspaper containing a report of the evidence in the case, including certain evidence which the court had ruled to be inadmissible, and also containing intimation that two of the jurors had been corrupted, and no contrary showing is made by affidavits or otherwise, a new 20 trial should be granted."

In the case of *W. Chicago St. Ry. v. Grenell*, 90 Ill. App. 30, is an authority merely for the statement that the reading by jurors of articles prejudicial to one of the parties is cause for a new trial.

"It is well settled that the reading by jurors of newspaper articles prejudicial to one of the parties litigant, is cause for a new trial."

The case of *U. S. v. McKee*, 3 Century Law Journal, 258, is authority for the fact that there is no presumption that the jury read the newspaper articles. 30

#### ANSWER TO REASON 5.

"5. The trial Court erred in charging the jury as follows: 'Negligence may be briefly defined as a failure to do what a reasonable and prudent person would ordinarily do under like circumstances and in similar conditions, or what a reasonable and prudent person would ordinarily omit to do under the same circumstances'; and in charg-

ing the jury as follows: 'Before there can be a recovery in this case by the plaintiff, the duty rests upon him to show that the defendant was, at the time of the injury complained of, negligent in the operation of this car, either that he did something a reasonable and prudent person would not ordinarily have done under the circumstances, or that he failed or omitted the doing of something that a reasonable and prudent person would have done under the same or similar circumstances.' "

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We submit that the Court's definition of negligence was proper under the case of *Kowalski v. Newark Passenger R. Co.*, 15 N. J. L. J. 50 (b) 1892:

"Reasonable care means, not extraordinary care, but such care as a reasonable man would exercise in view of all the circumstances presented to him. Such care as an ordinary prudent person would exercise under the conditions existing at the time he is called upon to act."

20 There is a definition of negligence given by the Court of Errors and Appeals in *New Jersey Express Co. v. Nichols*, 33 N. J. L. 440:

"Negligence as a relative term, depending upon the circumstances under which the injury was received, and the obligation which rests on the party injured to care for his personal safety. A person crossing a railroad track, though rightfully there, must be on the alert, to avoid injury from trains that may happen to be passing; so one walking along the carriageway of a public street, must exercise caution to escape being run over by vehicles; but a person walking along the sidewalk, which is appropriated exclusively to pedestrians, need not observe the same care as would be required of him in crossing the track of a railroad, or walking along the carriageway of a crowded street. If he observes as much care and circumspection as would serve to protect him from such

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dangers as are usually incident to walking on the sidewalks, he cannot be said to have omitted such precautions as would preclude him from maintaining an action for injuries he may receive from wagons wrongfully there, unless it appear, that being aware of the extraordinary risks to which he is exposed, he rashly places himself in the way of danger."

*Thomas v. Consolidated Traction Co.*, 62 N. J. L. 36, New Jersey Supreme Court:

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"1. Whilst a street car company has the right to place a pile of car track rails upon the street, temporarily, for its use in reconstructing or repairing its car track, YET IT IS BOUND TO THE DUTY TO EXERCISE REASONABLE CARE TO GUARD THE PUBLIC, USING THE STREET, AGAINST THE DANGER ARISING FROM THE RAILS SO PLACED UPON THE STREET, and in the night-time to place a guard or signal of warning to persons using the street, and this duty exists whether the pile of rails be placed in the gutter of the street or in some other portion thereof."

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*Fox v. Wharton*, 64 N. J. L. 453, New Jersey Supreme Court:

"1. When the work of the construction, repair or alteration of a street railway track in the streets of a city is authorized by law, and excavations are made in such work, which are to be kept open at night, the duty is incumbent upon those in the performance of the work, under a contract with the street railway company, TO EXERCISE REASONABLE CARE TO GUARD SUCH EXCAVATION TO PROTECT THOSE IN THE USE OF THE STREETS FROM INJURY FROM SUCH EXCAVATIONS."

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*Sebeck v. Plattdeutsche Volkfest Verein*, 64 N. J. L. 624, Court of Errors and Appeals:

"The owner of a private park who invites the

public to it for the purpose of looking on at an exhibition of fireworks is not relieved from all responsibility for the safety of his guests by reason of the fact that the exhibition is to be given not by himself but by an independent contractor. HE IS BOUND TO USE REASONABLE CARE TO PROVIDE THEM WITH A SAFE PLACE FROM WHICH TO VIEW THE EXHIBITION. HE IS FURTHER BOUND, IN MAKING HIS CONTRACT, TO USE CARE TO SELECT A SKILLFUL AND COMPETENT PERSON TO GIVE THE EXHIBITION."

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Danbeck v. New Jersey Traction Co., 57 N. J. L. 462, New Jersey Supreme Court: The charge of the court below (p. 464) is as follows:

"TO EXERCISE ALL REASONABLE CARE TO PREVENT INJURY COMING TO THE PLAINTIFF IN CONSEQUENCE of the position of danger he had been invited to assume; and secondly, to abstain from doing any act which might increase the danger necessarily incident to the position he was induced to assume."

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The Court affirmed this language of the Court below. Kaufman v. Bush, 69 N. J. L. 645, Court of Errors and Appeals:

"2. Where there is testimony competent to prove that a child five years of age, who had strated to cross a highway at a public crossing in full daylight, was run down after going only four or five feet from the sidewalk by a horse which, when the plaintiff left the sidewalk, was seen approaching the crossing at a high rate of speed from a point somewhere about the middle of the block, there was no error in the trial court in refusing to non-suit the plaintiff (the child) OR IN LEAVING TO THE JURY THE QUESTION WHETHER OR NOT THE DRIVER, WHEN HE APPROACHED THE CROSSING, WAS USING REASONABLE CARE TO OBSERVE ITS CONDITION AND

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TO HAVE HIS HORSE UNDER SUCH SPEED AND CONTROL AS THE CONDITIONS OBSERVABLE BY HIM REQUIRED OF A PRUDENT DRIVER.

Sutphen v. Hedden, 67 N. J. L. 324, Court of Errors and Appeals:

"1. Where the abutting owner or those under him find it necessary in the improvement of the abutting property to make excavations in or along a city street, IT BECOMES THEIR DUTY TO EXERCISE REASONABLE CARE TO PROPERLY GUARD THE EXCAVATION TO PREVENT ACCIDENT."

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Burns v. Lehigh Valley R. R. Co., 74 N. J. L. 120, New Jersey Supreme Court:

"There being evidence tending to show that plaintiff, while upon a public bridge that was being repaired by defendant's employes, stepped upon a plank which (unknown to him) had been loosened by them in the course of such repairs, and that the plank turned under his weight and caused him to fall, sustaining personal injuries, to recover for which action was brought—HELD, not erroneous to charge the jury that if the danger which occasioned plaintiff's injury was a hidden danger, caused by the action of the defendant, it was incumbent upon defendant to guard against such hidden danger by giving warning to or protecting a passerby who was lawfully upon the bridge."

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The Court charged (p. 123) as follows:

".....it was incumbent upon the defendant to guard against a hidden danger of that kind by giving warning or protecting a passerby who was lawfully upon the bridge."

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Counsel raised the point that that language made the defendant an insurer, and the legal duty of the defendant was limited to the exercise of reasonable care to prevent injury to others. The Court said that the instruction is to be considered as the jury must be taken to have con-

sidered it, that is to say, as applied to the concrete facts which were in evidence before them. This case went to the Court of Errors and Appeals, and was affirmed in 75 N. J. L. 940.

Blumenfeld v. Hudson, &c., R. R. Co., 89 N. J. L. 580, Court of Errors and Appeals:

10 "In an action for damages against a railroad company for injuries sustained by the plaintiff because of the agent of the defendant closing the entrance doors of its train before the plaintiff was fully within the train, a charge by the trial court to the jury that 'THE DUTY OF THE DEFENDANT COMPANY THROUGH ITS AGENTS AND SERVANTS WAS AND IS TO USE REASONABLE CARE FOR THE SAFETY OF ITS PASSENGERS upon its station platform and as they enter and leave their cars' is not, per se, erroneous; an objection to such charge does not raise the question whether or not the plaintiff was entitled to have the jury instructed that under the circumstances 20 reasonable care was a high degree of care."

We submit the definition of reasonable care was correct, but to quote the language of the affirming opinion of the Supreme Court, at p. 332, State of the Case:—  
30 "That the motorman must not only do what a reasonable person would have done or omitted, but also what a prudent person would have done or omitted. If it be conceded that the definition was not accurate, certainly it was not harmful to the defendant, but, on the contrary, was beneficial to it, for it required a double test in order to justify a finding of the motorman's negligence."

The following cases sustain the Supreme Court on this point:

Rogers v. Colt, 21 N. J. L. 704, Court of Errors and Appeals: The error in the charge of the court below in favor of the appealing party cannot be taken advantage of by him to reverse the judgment.

Dodge v. State, 24 N. J. L. 455, New Jersey Supreme Court.

29 Cyc. 417: "Negligence consists in doing something or omitting to do something which a person of ordinary prudence and care would not have done, or would not have omitted to do, under like or similar circumstances. Louisville, etc., R. Vo., v. Carmon (Ind. App. 1898), 48 N. E. 1047, 1049; Missouri, etc., R. Co. v. Milam, 20 Tex. Civ. App. 688, 690, 50 S. W. 417, and other cases there cited." 10

In the case of Kargman v. Carlo, 85 N. J. L. 632, Court of Errors and Appeals:

7. "So long as the law is stated correctly and intelligently, the ultimate test of the soundness of instructions to the jury is, not what the ingenuity of counsel can, at leisure, work out the instructions to mean, but how and in what sense, under the evidence before them and the circumstances of the trial, would ordinary men and jurors understand the instructions as a whole." 10

#### ANSWER TO REASON 6.

"6. The trial Court erred in refusing to charge the defendant's twelfth request, which was as follows 'If Mr. Baus saw the trolley car approaching without reducing its speed, as he said he did, and saw that Mr Meaney was not going to stop, and observed these things in time to enable Mr. Meaney to avoid a collision by stopping if 30 told to do so, then it was the duty of Mr. Baus to tell Mr. Meaney to stop, and his failure to do so amounts to contributory negligence and requires you to bring in a verdict in favor of the defendant.'"

We submit the Court did not err in denying the above request of the defendant, for the reasons set forth in Mr. Baus' testimony:

Q. Why didn't you tell Mr. Meaney to stop

his automobile so that it didn't get on the track in front of the trolley car?

A. Mr. Meaney was making the turn and making it careful, I didn't think it best to interrupt him.

Q. Mr. Meaney didn't see the trolley, did he?

A. He saw it down to Mantel's.

Q. Why didn't you tell him to stop before he got on that track?

10 A. I didn't think it was necessary for me to do any hollering because he had good judgment, if I hollered maybe he wouldn't do as good, I think it is bad to interfere with people at a time like that.

Q. Mr. Baus, didn't you know he was running his own life and your life and the life of the passengers into danger through bringing this automobile right on the track in front of the trolley car?

20 A. I know it was dangerous, yes.

Q. Why didn't you tell him to stop?

A. I didn't see why I should, he was the biggest way around and if he had three seconds longer time he would have been around out of the way, just three seconds, maybe four, and he would have been all the way around.

30 This quotation from the testimony shows that the effect of the request would have been to direct a verdict in favor of the defendant. Under the facts in the case this could not be done. I refer to my argument and cases cited under my Answer to Reason No. 3. The court was bound to deny the request for to have granted it the Court would have decided the conduct of the plaintiff as a question of law, when it was a question where his negligence or contributory negligence, and the facts and circumstances of his conduct at the time were questions for the jury to determine whether or not he was guilty of negligence or contributory negligence, and the Court

properly denied the request of the defendant, and properly submitted the question of the plaintiff's negligence and contributory negligence and the negligence of the defendant to the jury, and this Court so decided in its opinion in previous argument of this case. Vol. 2, Adv. Rep. No. 45, Nov. 8, 1924, p. 1669, found under cases cited under Reason No. 3 of the Brief, page 14.

### CONCLUSION.

10 This accident occurred on October 29th, 1922. The plaintiff has lost his leg and received injuries so serious that his earning capacity has been ended. He has a condition that will grow worse instead of better. His case was tried on January 3d, 1923, and rule to show cause was taken and argued. Appeal was made to the Supreme Court on Error and then to the Court of Errors and Appeals, where it was reversed, on the question of the ruling of evidence. The case was tried again on January 26th, 27th and 28th, 1925, and is now on appeal.

0 We submit that this case has received a fair and a meritorious trial, and no substantial error has been made that could in any manner have affected the merit of the case either on the question of liability, or on the question of damages.

Under Pamphlet Laws, 1912, p. 382, section 27:

27. "Reversal or new trial on merits. No judgment shall be reversed, or new trial granted on the ground of miscretion, or the improper admission or exclusion of evidence, or for error as to matter of pleading or procedure, unless, after examination of the whole case, it shall appear that the error injuriously affected the substantial rights of a party."

30 I quote some New Jersey cases where this section is applied: Wicks Bros. v. Lamp Co., 85 N. J. L. 322; Murphy v. Marrone, 86 N. J. L. 663; Connolly v. Public Service Railway Co., 94 N. J. L. 157; Maagget v. A. Brawer Silk Co., 95 N. J. L. 72, New Jersey Supreme

Court; Bussy v. Hatch, 95 N. J. L. 56, New Jersey Supreme Court.

Plaintiff-respondent respectfully submits that the judgment of the Supreme Court affirming the decision of the Mercer County Court of Common Pleas ~~of the Court~~ below should be in all matters affirmed, and the appeal of the defendant-appellant be dismissed.

MARTIN P. DEVLIN,

*Attorney and Counsel for  
Plaintiff-Respondent.*

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