

## New Jersey Court of Errors and Appeals.

ALBERT NIRK,  
Plaintiff Below  
and Plaintiff-in-Error,

vs.

JERSEY CITY, HOBOKEN & PATER-  
SON STREET RAILWAY COM-  
PANY,

Defendant Below  
and Defendant-in-Error.

In Tort.

### **Brief of Plaintiff in Error.**

This is an action for negligence. On the nineteenth day of February, 1905, the plaintiff was superintendent for Bobbink & Atkins, florists, with greenhouses, &c., at East Rutherford, N. J. Between five and six o'clock in the evening of that day (p. 18 l. 1) he boarded a trolley car of the defendant company near the Erie Railroad crossing, at that place, to go to Secaucus to visit a sick friend. The car was full of people (p. 8 l. 14) (p. 22 l. 28) and plaintiff took his place on the north side of the rear platform next to a parallel track (p. 8 l. 20) right in the corner by the vestibule door opposite the door then in use, and paid his fare

there (p. 8 l. 37). It was a closed car (p. 8 l. 24) with a high winter door (p. 8 l. 28) extending from the platform to the top of the car. The door was split in the middle, the two parts being hinged together and was also fastened by hinges to the body of the car. It was opened by pulling a brass handle, placed near the split, inwardly, and the two parts had to be folded together against the body of the car in order to open it fully (p. 27 l. 11) as it opened at the rear and folded toward the front of the car (p. 26 l. 23). While rounding a short curve (p. 28 l. 25) (p. 31 l. 1, &c.) as the car was running down hill, in an easterly direction, through the village of Carlstadt, at about fifteen miles an hour (p. 22 l. 21) the conductor suddenly and simultaneously rang the bell and opened the door (p. 23 ls. 6, 7 & 9) and the car gave a jerk and suddenly stopped, which threw the plaintiff headlong from the car upon the street between the tracks and injured him so severely that he was confined to the house for four weeks (p. 11 l. 39). His left hand was so severely injured that the doctor passed his probe into it for an inch and a half (p. 36 l. 16) and he was not able to use it for a long time after he was well enough to leave the house. The doctor made thirty-five calls (p. 17 l. 33) (p. 37 l. 12), and charged the plaintiff fifty dollars for his services. Although there was but little dispute as to how the plaintiff received his injuries the jury under the charge of the Court returned a verdict in favor of the defendant. Upon the Court's charge and refusal to charge as requested by the plaintiff, four errors have been assigned by the plaintiff, only the first three of which will be argued. The first two will be argued together.

**POINT I.****The Court erred in refusing to charge as requested by plaintiff and in charging as it did.**

"It is error for the Court to refuse to declare to the jury, the legal rules necessary for the proper decision of the cause upon the evidence."

Scott vs. Mitchell, 12 Vr., 346.

The plaintiff requested the Court to charge as follows: "A carrier owes to its passengers a high degree of care, and the plaintiff in preserving his equilibrium, had a right to rely upon the protection of the closed door, and it was the duty of the conductor to warn the plaintiff, before opening the door suddenly."

The plaintiff alleges that "said carriage or car and the *attachments and appliances thereto belonging* were so carelessly, negligently and unskillfully run, started, stopped, operated and managed, &c.," that the plaintiff was injured.

The conductor claimed that he had opened the door against or near to which the plaintiff was standing, so as to let off two old passengers. There are double tracks at that point. The door on the south side of the car stood open, and as it is unusual to discharge passengers between tracks, the plaintiff had a right to rely upon the protection of the closed door. The carrier owed him a high degree of care and he was entitled to a warning when the defendant intended to open the door of the car and thereby put him in danger of being thrown from the platform.

Instead of charging as plaintiff requested, the Court did charge as follows:

"As a general proposition, the law says that the defendant company, and its servants as well, were bound to use what is called a high degree of care for the safety of the passengers who entrust themselves to its conveyance. That question is somewhat modified by the fact of Mr. Nirk standing on the platform, if he could get inside the car."

How was the high degree of care that defendant owed to the plaintiff modified?

The rule of law as adopted by the highest courts of this and other States is that a carrier owes to its passengers a high degree of care. It is also laid down as the law that it is not negligence *per se* for a passenger to stand on the rear platform of an electric car.

If that be the law it was clearly error for the Court to charge as above set forth. It in effect told the jury that the plaintiff by standing on the platform relieved the defendant of a high degree of care, and that he was thereby compelled to assume the risk of defendant's negligence.

"A common carrier is negligent if it fails to take a high degree of care to protect its passengers from every danger that the exercise of reasonable foresight would anticipate."

Hausen vs. N. J. St. R'y Co., 35 Vr., 696.

Scott vs. Bergen Co. Traction Co., 34 Vr., 411.

Payanimi vs. N. J. St. R'y Co., 41 Vr., 387.

"It is not negligence *per se* for the passenger to ride upon the platform of an electric street railway car, nor to get up and go there before the car has stopped to await an opportunity to alight."

Scott vs. Bergen Co. Traction Co., 34 Vr., 408.

"In law, under certain circumstances, she had a right to ride there, and whilst so riding there, was a passenger, entitled to the exercise of the care required of a carrier to protect her from injury."

Scott vs. Bergen Co. Traction Co., 34 Vr.,  
410.

### A.

The evidence herein clearly shows that the defendant was negligent as the doctrine of *res ipsa loquitur* applies in this case.

"The occurrence of a sudden lurch or jerk of a street car of sufficient violence to throw a passenger off the platform of a car who was there preparing to alight, or awaiting the stoppage of the car to alight, justified an inference of some breach of duty, and falls within the maxium *res ipsa loquitur*."

Con. Traction Co. vs. Thalheimer, 30 Vr.,  
474.

Scott vs. Bergen Co. Traction Co., 34 Vr.,  
410.

Field vs. D. L. & W. R. R. Co., 40 Vr., 435.

Payanimi vs. N. J. St. R'y Co., 41 Vr., 385.

### B.

It was evidence of negligence to stop a car running down hill fifteen miles an hour so suddenly as to throw the plaintiff off the platform.

"It is a well known law of mechanics that the stopping of a rapidly moving car will produce a more violent jerk than that of a slow-moving one. Though the speed alone might not be negligence, still it might be an element thereof in connection with a sudden and violent application of the brake."

Murray vs. Brooklyn City R. Co., 7 N. Y.,  
Supp. 901.

## C.

That it was negligent for the conductor to open the door without first warning the plaintiff, will be argued hereafter.

**POINT II.****The Court erred in charging the jury as follows:**

"It might be a question whether the conductor would be negligent in opening the door on that side, unless it was in a place where it would be dangerous for passengers to get down; *that would be the only reason that would make it negligence to do it at all.*"

It was, under the circumstances, for the jury to say whether or not the defendant was negligent in pulling the door open suddenly. Plaintiff says he stood back of the rod running across the car. Had he known the door was to be suddenly pulled open, he would most likely have braced himself or taken hold of the rod when he felt the car swinging around curves in its flight down hill. We, therefore, maintain that he was clearly entitled to a warning before the door was opened.

But the Court went further and emphasized his meaning of the above instruction in taking the question of the conductor's negligence away from the jury. On page 87 he says: "If the evidence does not show you that the *motorman* was negligent, of course there should not be any verdict against this company."

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**A.**

Although the testimony in behalf of the plaintiff tended to show active negligence on the part of the conductor, the jury were prevented from considering it.

“Whether the gate, if closed, would reasonably have secured the plaintiff’s safety, and whether if open, he ought to have known it and used greater care, for that reason, are questions of fact, and should therefore have been submitted to the jury, &c.

“There was no law requiring defendant to maintain platform gates and keep them closed on the side next to the second track, and the omission to have such gates at all might not be negligent under any circumstance. But when maintained as a matter of precaution by the defendant, with the knowledge of the public, the failure to close them on this occasion and the probable effect of such failure as contributing to the accident were proper matters for the jury to consider and determine.”

Adams vs. Railroad Co., 9 App., D. C., 35.

“Although there may be no negligence whatever on the failure of an electric street railway company to have gates to the platform of its cars, for the purpose of guarding against accidents to its passengers by preventing them from leaving the cars on the side next to a parallel track of the company in the street, yet when a particular company has such gates to the platform of its cars, not to keep them closed may or may not be negligence in the given instance and this is a question of fact for the jury.”

Augusta R’y Co. vs. Glover, 92 Ga., 133.

“The plaintiff’s intestate, standing upon this car, whether touching the gate or not, was entitled to

assume that this gate was so fastened that it was not a trap for an unwary passenger, so that upon the slightest pressure upon it it would give way and precipitate him to the street."

Pendergast vs. Union R'y Co., 10 App.,  
D. 212 (N. Y.).

### B.

The action of the conductor tended to disarm the plaintiff of his vigilance.

"The raising of the gate was a substantial assurance to him of safety, just as significant as if the gateman had invited him to come on, and that any prudent man would not be influenced by it, is against all human experience."

Glushing vs. Sharp, 96 N. Y., 676.

"Plaintiff contended that 'the omission of the watchman to lower the gates was calculated to disarm the vigilance of the deceased.'"

Held Correct.

Baltimore &c. R. R. Co. vs. Carrington,  
3 App., D. C., 101.

We most respectfully submit that there was prejudicial error in the Court's refusal to charge the request made by plaintiff and also in the parts of the charge to which plaintiff excepted and that a new trial should be ordered.

Respectfully yours,

WELLER & LICHTENSTEIN.

February Term, 1907, No. —.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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ALBERT NIRK,	)	
Plaintiff,	)	
Plaintiff in Error,	)	10
vs.	)	
JERSEY CITY, HOBOKEN AND PATERSON STREET RAILWAY COMPANY,	)	In Tort.
Defendant,	)	On Error.
Defendant in Error.	)	20.

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BRIEF FOR DEFENDANT IN ERROR.

The above action was tried before the Hon. Chas. 30  
W. Parker, Judge of the Hudson Circuit Court, and  
a jury; it resulted in a verdict for the defendant.  
The plaintiff excepted to a certain refusal to charge  
as requested by him, and also to certain parts of the  
charge of the Court, and has assigned error there-  
upon.

The plaintiff was a passenger upon a trolley car of  
the defendant company, on the nineteenth day of  
February, 1905; he stood on the rear platform; as  
the car was coming to a stop to let some passengers 40

off, the conductor opened the gate, and in some manner the plaintiff fell off.

The story of the plaintiff is briefly as follows (page 8):

10 "Q. When you got on, where did you stand, in reference to the door? A. I was standing against that railing in there, between the brake and that iron railing, on the north side of the car. \* \* \*

"Q. Did you pay your fare on the platform? A. Yes, I did. \* \* \* (page 9).

"Q. What happened? A. Well, the conductor rang the bell and that is all I know, and all at once I fell out of the car.

(Cross-examination, page 15) \* \* \*

"Q. Then all you know is that you suddenly fell off the car? A. Yes, sir.

20 "Q. Why you fell off you don't know? A. I know because the door was open.

"Q. Because the door was open, that is the only way? A. Yes, sir.

"Q. You weren't leaning up against the door, were you? A. No, sir.

"Q. You were a foot away from the door? A. Yes, (page 16).

"Q. Did anybody shove up against you? A. No, sir, (page 18).

"Q. Was the car full on the inside? A. Yes, sir.

30 "Q. Every seat taken? A. Well, I didn't look exactly.

"Q. You didn't try to go in, did you? A. Well, because I seen right away the car was full.

"Q. Every seat taken, anybody standing up inside? A. I think there was.

"Q. Do you know there was? A. Well,—

"Q. Do you remember anything about it? A. Yes, I do.

"Q. What? A. Many times—

40 "Q. This time? A. Well I ain't sure; maybe; if

there was one seat or some standing up; that is more than I can tell."

The plaintiff's first assignment of error is to the refusal of the court to charge, upon plaintiff's request:

"A carrier owes to its passengers a high degree of care, and the plaintiff in preserving his equilibrium, had a right to rely upon the protection of the closed door, and it was the duty of the conductor to warn **10** the plaintiff before opening the door suddenly."

The evidence shows that the plaintiff was not leaning against the door, nor in such a position that the opening of the door required him to move or that he in any way obstructed the opening thereof; he needed no warning; the car was coming to a stop and in order to allow some passengers to alight, the conductor, in the performance of his duty, opened the gate. The gate was not there as a protection to **20** passengers, nor for the purpose of supporting passengers; its purpose was to allow ingress and egress to the car. The charge of the court covered all the law applicable to the question.

The second assignment of error is to the charge of the court as follows:

"As a general proposition, the law says that the defendant company, and its servants as well, were **30** bound to use what is called a high degree of care for the safety of the passengers who entrust themselves to its conveyance. That question is somewhat modified by the fact of Mr. Nirk standing on the platform, if he could not get inside the car."

While it may be true that in this State, it is not negligence per se to stand upon the platform or run-board of a moving trolley car, there can be no doubt that that degree of care which the carrier owes to a **40**

passenger is modified to some extent by the passenger assuming a position on the platform or run-board of the car.

In some States it is held to be negligence per se to assume a position on the platform of a moving car where there is room inside the car:

10 Thane vs. Scranton Trac. Co., 43 Atl. Rep. 136.

Gaffney v. Union Traction Co., 60 Atl. Rep. 488.

Mann v. Traction Co., 34 Atl. Rep. 572.

It is also generally held that one who rides upon the platform of a street car, takes upon himself the ordinary risks of the position.

20 "It is a just conclusion that a passenger who rides upon the platform of a street car takes upon himself the duty of looking out for, and of protecting himself against the usual and obvious perils attendant upon his position, such as the danger of being thrown from the platform, by the ordinary jolting and swinging of the car."

3 Thompson on Neg. (2nd Ed.) par. 3572, and cases cited.

30 "A passenger who rides on the platform of a car necessarily takes upon himself the duty of looking out for and protecting himself against the usual and obvious perils attendant upon his position, such as, for instance, the jolting or swaying of the car."

Elliott v. Ry. Co., 18 R. I., 707.

Watson v. Portland &c., E. Ry. Co., 40 Atl. Rep. 699.

40 "Now, while it is not negligence per se to stand on the platform of a street car, it is but fair and reason-

able that the person so riding should assume the risk ordinarily incident to such a position."

Dockermann v. Ry. Co., 32 App. Div. 13.

Moskowitz v. Ry. Co., 89 App. Div. 425.

Parks v. Sub. Ry. Co., 178 Mo. 108, 77 S. W. 70.

The courts of our State have also held that one who takes such a position assumes all the risks incident thereto. **10**

By taking his stand upon the outside running-board of the car, the plaintiff assumed the risks of such damages as were obviously incident to that position.

Whalen vs. Consolidated Trac. Co., 32 Vr. 608.

Lee v. City R. R. Co., 21 Vr. 435-439. **20**

N. Y. L. E. W. Ry. Co. v. Ball, 24 Vr., 283.

Watson v. Camden, &c., Ry. Co., 26 Vr., 125.

This being so, the court's charge was unquestionably correct.

The third assignment of error is as to the charge of the court as follows:

"It might be a question whether the conductor **30** would be negligent in opening the door on that side, unless it was in a place where it would be dangerous for passengers to get down; that would be the only reason that would make it negligence to do it at all."

The gate which was opened was the gate on the north side of the car; the car proceeding to the east. On the south side of the street there were banks of snow, making it exceedingly difficult for passengers **40**

to alight from that side; the north side adjacent to the car was cleared of snow, and in order to save the passengers any danger from the snow and ice, the conductor opened the gate on the north side. As above remarked, this gate was made and used for the purpose of allowing ingress and egress to the car; there was no necessity of informing the plaintiff of the opening thereof. He did not obstruct it, nor was it necessary for him to move in order that it might be opened, and further he stood on the rear platform near the gate and must have seen it being opened. This being one of the ordinary incidents to the operation of the car, the plaintiff, under the decisions above cited, assumed the risk arising therefrom by taking his position on the platform.

The court's instruction was so plainly correct, that argument is hardly worth while.

20 The fourth assignment of error is to the court's charge as follows:

"For example, a car goes around a curve at an ordinary speed, cars do that every day in this town, and passengers stand on the platform, and they are not necessarily entitled to claim damages from the company, if they should happen under those circumstances to be pitched off by the swinging of the car."

30 That this instruction is correct there can be no doubt.

See cases set forth under second assignment of error above.

The court's attention is particularly called to the following cases, where it is held that "it was not until extraordinary lurching and violence was shown, 40 that negligence could be presumed."

Burr v. Penn. R. R. Co., 35 Vr., 30.  
Faul v. North Jersey St. Ry. Co., 41 Vr.,  
791.

There was no error in the refusal to charge or in  
the charge of the court.

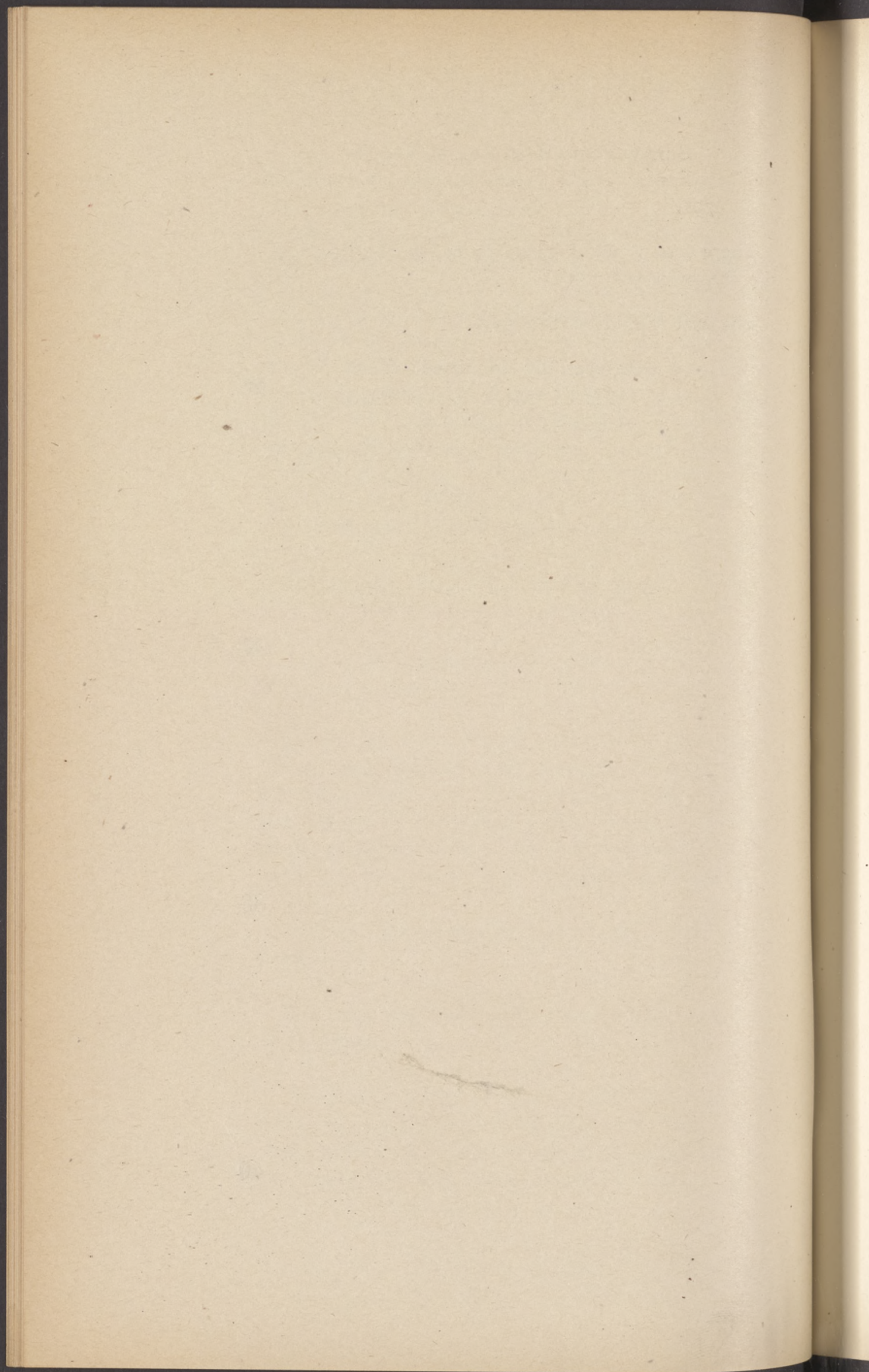
The writ should be dismissed.

Respectfully submitted, 10  
WILLIAM D. EDWARDS,  
EDWIN F. SMITH,  
Of Counsel,

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Hudson County, ss.:

The State of New Jersey, to the Sheriff of the County of Hudson, Greeting:

We command you to summon Jersey City, Hoboken and Paterson Street Railway Company, to be and appear before the Circuit Court to be held at Jersey City in and for the County of Hudson on the twenty-fourth day of August, 1905, to answer unto Albert Nirk, in an action in tort, to his damage five thousand dollars, as is said, and have you then and there this writ.

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Witness, Charles W. Parker, Esquire, Judge of our said Court at Jersey City aforesaid, the twelfth day of August, A. D. One thousand nine hundred and five.

20

JOHN ROTHERHAM,  
Clerk.

Weller & Lichtenstein,  
Attorneys.

I hereby deputize Wm. Wise to serve the within writ. Witness my hand and seal this 14 day of Aug., 1905.

JOHN ZELLER, Sheriff,  
by J. J. Heavy, Under Sheriff (L.S.).  
Sheriff's Fees, \$2.78.

30

Served within summons and declaration Aug. 14, 1905, on the defendant, Jersey City, Hoboken and Paterson Street Railway Company, by leaving a true copy thereof with J. J. McGovern, Agent of said defendant company.

JOHN ZELLER, Sheriff.  
By William Wise, S. D. S.

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State of New Jersey, }  
 Hudson County, } ss. :

Hudson County Circuit Court, of the twenty-fourth day of August, A. D. 1905, to wit,

10 Albert Nirk, the plaintiff herein, by Weller & Lichtenstein, his attorneys, complains of the Jersey City, Hoboken and Paterson Street Railroad Company (a body corporate), the defendant herein, who has been summoned to answer unto said plaintiff in an action in tort. For that heretofore, to wit, on the nineteenth day of February, 1905, to wit, at Carlstadt, in the State of New Jersey, to wit, at Jersey City, in the County of Hudson and State of New Jersey, the said defendant then was, from thence hitherto hath been and still is a common carrier of passengers, in and through the County of Bergen, in the State aforesaid, and was and is bound by law to carry as passengers all persons who might or may apply for passage over its roads and did by its officers, agents, servants and employees, on the nineteenth day of February, aforesaid, run and cause to be run certain carriages and cars over, along and upon one of its lines of road, to wit, on the Paterson Plank Road, running to and through Carlstadt, in the County of Bergen, aforesaid, for the carriage and conveyance of passengers thereon, as such common carrier, and it then and there became its duty and by law said defendant was bound to use due and proper skill, care and conduct in and about the running, starting, operating, stopping, management and operation of its said carriages and cars, and the attachments and appliances thereto belonging, over, along and upon its said street railway on Paterson Plank Road at Carlstadt, in the County of Bergen, aforesaid, without any negligence, carelessness, unskillfulness or improper conduct whatever on its part,

so that all persons who might apply for passage or transportation on said line, might be carried safely without any hurts, cuts, bruises or injuries whatsoever, caused and produced by such negligence, carelessness, unskilfulness or improper conduct on the part of said defendant, its officers, agents, servants and employees, in and about the running, management and operation of said carriages and cars, and the attachments and appliances thereto belonging, over, long and upon its line of railroad aforesaid. Yet the said defendant, its agents, servants, and employees, disregarding its duty in that behalf, did not use due and proper skill, care and conduct, in the running, operation and management of said carriages and cars and the attachments and appliances thereto belonging, over and upon said line, but took such little care and so negligently, carelessly, unskilfully and improperly conducted themselves, in and about the running, operation and management of said carriages and cars and the attachments thereto belonging over, along and upon said street railway at Carlstadt, in the County of Bergen, aforesaid, that on the nineteenth day of February, 1905, aforesaid, while the said plaintiff was a passenger on one of said carriages or cars of the said defendant, on said line of road, for hire or reward, paid by him to the said defendant, said carriage or car and the attachments and appliances thereto belonging were so carelessly, negligently, unskilfully run, started, stopped, operated and managed by the said defendant, its agents, servants and employees, that said plaintiff who was on the rear platform of said car where the said defendant had by its officers, agents, servants and employees placed him and from which place it had accepted his fare, and without any negligence, carelessness, unskilfulness or improper conduct whatever on his part, was thrown from said car to and upon the

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ground with great force and violence, by means and by reason whereof he was greatly hurt, cut, bruised, wounded and injured and so remained and continued for a long space of time, to wit, from thence hitherto, during all of which time he has suffered and undergone great pain and torment both of body and mind and has suffered injuries of a permanent and lasting nature, and he was thereby then and there hindered and prevented from carrying on and transacting his necessary affairs and business by him during that time to be done, performed and transacted, by means and by reason of which he lost divers necessary gains and advantages and profits, that were wont to accrue to him and which otherwise would have arisen and accrued to him.

And also by means and by reason of which he was forced and obliged to pay, lay out and expend divers large sums of money for medicines and doctor's bills in endeavoring to be cured and healed of said wounds and injuries amounting in all to a large sum of money, to wit, one hundred dollars, to wit, at Carlstadt, aforesaid, to wit, at Jersey City, aforesaid, in all to the damage of said plaintiff five thousand dollars, and therefore he brings his suit, &c.

WELLER & LICHTENSTEIN,  
Attorneys for Plaintiff.

And the said defendant by Bedle, Edwards & Thompson, its attorneys, comes and defends the force and injury when, &c., and says that it is not guilty of the torts above laid to its charge, or of any or either of them, or of any part thereof, as the said plaintiff hath above thereof complained against it. And of this it puts itself upon the country, &c.

BEDLE, EDWARDS & THOMPSON,  
Attorneys of Defendant.

State of New Jersey, }  
 County of Essex, } ss.:

Charles A. Sterling of full age, being duly sworn according to law, on his oath saith that he is vice-president of the Jersey City, Hoboken and Paterson Street Railway Company, the defendant in the within action named; that the foregoing plea is not filed for the purpose of delay, but that deponent verily believes that said company has a just and legal defense to said action on the merits of the case. 10

CHAS. A. STERLING.

Sworn to and subscribed this 29th day }  
 of August, 1905, before me }  
 Howard Stilmann,  
 Master in Chancery  
 of New Jersey.

Filed: Clerk's Office, Sept. 1, 1905, Hudson County, N. J. 20

JOHN ROTHERHAM,  
 Clerk.

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NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

ALBERT NIRK  
Plaintiff below and  
Plaintiff-in-Error,

vs.

JERSEY CITY. HOBOKEN & PATER-  
SON STREET RAILWAY COM-  
PANY.

Defendant below  
Defendant-in-Error,

Tort.

20

This case came on to be tried before Hon. Charles W. Parker, Judge, and a jury, on the first day of November, 1905.

WELLER & LICHTENSTEIN, Esqs. (by Mr. WELLER), for Plaintiff.

BEDLE, EDWARDS & THOMPSON, Esqs. (by Mr. Edwards), for Defendant.

30

A jury was duly impanelled and sworn.

Mr. Weller opened the case for the plaintiff.

ALBERT NIRK, the plaintiff, called and sworn as a witness in his own behalf, testified as follows:

Direct-examination by Mr. Weller:

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Q. Where did you live in February last? A. In East Rutherford.

Q. At what work were you employed at that time? A. I am a florist.

Q. What were you working at at that time? A. I had charge of a greenhouse place for Bobbink & Atkins.

Q. Were you the superintendent there? A. Yes, sir.

Q. How long had you charge of this greenhouse? A. I was in that place for five years—for Bobbink & Atkins about three and a half years; I was about fifteen or eighteen months for another firm there; I had charge of that place, and after Bobbink & Atkins took that place I had charge over it. 10

Q. What were your wages there? A. Twelve dollars a week, rent and coal free.

Q. Did you get anything else in the way of pay? A. Yes, sir, and through the season, when the season starts before Christmas, and after Easter, I had almost about six dollars extra. 20

Q. From where? A. From customers.

Q. It averaged that, did it? A. Yes, and then after Easter I always got a present from my bosses, Bobbink & Atkins; sometimes twenty-five dollars.

Q. You didn't get that this year? A. No, sir.

Q. Do you remember the 19th of February? A. Yes, sir.

Q. Where did you start to go that day? A. I wanted to go over to Secaucus. 30

Q. What time did you leave him about? A. Half past four.

Q. Whom were you going to Secaucus to see? A. A friend of mine, Mr. Alling.

Q. Did you take him anything? A. A bottle of wine.

Q. What kind of wine? A. Elderberry wine, that I make myself.

Q. Where did you take the car? A. I took the car right to Bergen short cut. 40

Q. What car was it, what road was it on? A. Jersey City, Hoboken & Paterson Street Railway Co.

Q. You took the car where? A. The short cut.

Q. What is the short cut? A. That is where the Erie Railroad crosses Paterson Avenue.

10 Q. Where the Erie Railroad, in other words, crosses the trolley tracks? What direction do the trolley tracks run there? A. It runs from west to east.

Q. And the railroad crosses at right angles there, does it? A. Yes.

Q. You got on the car near the railroad, you say? A. Yes, sir.

Q. Were there many people on the car? A. Yes, the car was full.

20 Q. When you got on the car, where did you take your place? A. On the rear platform, on the north side.

Q. On the north side of the car? A. On that corner, the north side.

Q. What kind of a car was it? A. It was a closed car.

Q. Was it a winter or a summer car? A. A winter car.

Q. What kind of doors were on the car? A. There was winter doors on, those high doors.

30 Q. When you got on, where did you stand, in reference to the doors? A. I was standing against that railing in there, between the brake and that iron railing, on the north side of the car.

Q. How near to the door? A. Well, maybe that is about one foot.

Q. Did you pay your fare? A. I did.

Q. Did you pay the fare on the platform? A. I did.

40 Q. And after you got on the car, what happened? A. Well, all at once—

Q. (Interposing :) How far did the car run? A. One block below Hackensack Street—I don't know exactly the name of that street.

Q. How far is that from where you got on? A. It is half a mile.

Q. After you had run half a mile you came to what place, what is it called there? A. Paterson Avenue. 10

Q. What township are you in? Rutherford or Carlstadt? A. It is East Rutherford.

Q. Were you going down hill or on the level? A. Down hill.

Q. What rate was the car running, fast or slow? A. Very fast.

Q. What happened? A. Well, the conductor rang the bell and that is all I know, and all at once I fell out of the car.

Q. When you got on were these doors on the right side closed? A. They were closed when I got on. 20

Q. When he rang the bell did the car slacken any? A. Oh, yes.

Mr. Edwards: He said he didn't know what happened.

Q. What is the answer? A. Well, I fell out.

Q. Fell out through what? A. The door, the open door; I fell out of the car. 30

Q. Did you see the conductor upon the car? A. No, sir.

Q. Did he say anything to you; ask you to step aside or anything? A. He didn't say anything to me; afterwards he did—

Q. When you were thrown out of the car where did you land? A. Mostly on my left side; my hand and both knees for the most part was on the left side. 40

Q. Do you know the condition there; how was it about the snow? A. On the outside there was quite some snow.

Q. How deep was it, about? A. Well, maybe about two feet; something like that.

Q. And between the tracks, how was it? A. There wasn't much snow between the tracks.

10 Q. Then you landed, you say, on your hands and your knees? A. Yes, sir.

Q. Go right on and tell all about it? A. The conductor and all the passengers came out, and the conductor, I gave him one of my handkerchiefs, and he bandaged the left hand up, and then he asked me where I want to go; I said to Se-caucus; I lived on the short cut; the conductor said, "Well you better get on the car and I will fetch you up to the drugstore, on the Transfer Station"; I got inside then, I was sitting there, and he got to the Transfer Station and he stopped the car, and some one there in the place as soon as he seen my hand bundled up and all blood, he said, you better take him down to the office; and then he fetched me down to Hoboken, in the office.

Q. Did you see a doctor there? A. Yes, sir.

Q. What doctor was that? A. I don't know; some one of the officers in the office sent for him.

30 Q. In the company's office? A. Yes; they wanted to get a doctor for me; I had to wait about half an hour, and the doctor came.

Q. What did the doctor do? A. He washed my hand out and put one stitch in my left hand.

Q. Then what did you do? A. The doctor said I shall let him see me, but I said, "I am going home now, I get my own doctor;" and then one of the officers in the company's office went over to the car and told the conductor he shall take care of me, so I got in the car, and the conductor he let me off—

Q. At your home? A. At my house.

Q. How far was your house from the trolley tracks at that time? A. Oh, about fifty feet, forty feet.

Q. After you got home what did you do? A. Well, I laid down; I didn't do much; I told my wife how it was happened; she got so excited, and I told her she better telephone for our doctor, I was not able to go out of the house. 10

Q. Who was your doctor? A. Dr. Byers.

Q. Did the doctor come? A. Next morning; I didn't have nobody else in the house except my wife, and was not able to go out of the house, and the next morning she got up early and called the doctor on the 'phone, and he came there; as soon as he received the telephone, he came down.

Q. You had no telephone in your house? A. No.

Q. What did he do for you when he came there? A. He done everything, and cleaned it all out. 20

Q. What did he clean out? A. Well, there was some dirt in it, the doctor told me it wasn't cleaned out right.

Objected to, and motion made to strike out. Granted.

Q. Just come down and show the jury where you were cut? (Witness does as requested.) 30

Q. That is your left hand? A. My left hand; that was open all the way down.

Mr. Edwards: Where?

The Witness: Right here; it was opened all the way down this way, and then the doctor took some instrument and used it.

Q. How long were you in the house; how long were you laid up with this injury? A. I was four weeks in the house. 40

Q. Why did you stay in the house? A. Because I could not go to work.

Q. How did your hand and knee affect you after this? A. I was not out for four weeks; after four weeks and longer I couldn't use my left hand, but I was in the greenhouse, because I had to put one more man on because it was in the busy season, otherwise I would not go at all out of the house.

10 Q. So you were four weeks in the house, and how much longer was it that you couldn't work? A. I got down to my work the next four weeks, but I couldn't do much work myself.

By Mr. Edwards:

Q. You could do the bossing? A. Yes; I sold the stuff and told the men what they had got to do.

20 By Mr. Weller:

Q. How often did your doctor come, do you know? A. Well, I don't know exactly; I think he made thirty-five calls.

By Mr. Edwards:

30 Q. How much? A. Thirty-five, and some days he was there twice, a couple of times in the night time.

By Mr. Weller:

Q. Why did he come in the night time? A. Because I couldn't stand it any longer, on account of the pain there.

Q. You had pain, had you? A. Yes.

40 Q. During the four weeks that you were in the house did you get any pay from Bobbink & Atkins? A. No, I did not.

Q. Did you get the six dollars a week you were used to having from outside? A. I did not.

Mr. Edwards: How could he claim that?

The Court: He said he got six dollars, gratuities.

By Mr. Edwards:

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Q. Do I understand you got tips of six dollars a week? A. Yes, sir; in the season time.

Q. When did the season begin? A. Before Christmas, and until after Easter.

By Mr. Weller:

Q. Did it last till after Easter? A. Yes, sir.

Q. Did you get your annual present this year? A. No, I did not. 20

Mr. Edwards: I object. That depends on so many questions, your Honor.

Allowed. Exception taken by Mr. Edwards.

Mr. Weller: I will withdraw it, then, if your Honor please, in that form. I will withdraw the whole thing.

Q. How long did your arm continue to hurt you? A. My hand hurts me yet, and so my knee does, too; as soon as the weather changes I get awful pain in my knee, more in my knee than I got in my hand. 30

Q. Does it interfere in any way with your walk-in? A. Yes, it does sometimes; not all the time; if the weather is clear I have not got so much pain. but as soon as the weather changes I get awful bad.

Q. As a florist do you have to do heavy lifting?

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A. Sometimes, but not the way I was there; I didn't need to do any heavy work.

Q. How is it with your wrist; can you lift as well as before? A. No, I can't.

Q. Why not? A. Because it is always weak yet.

Q. Have you paid your doctor's bill? A. I did.

Q. What was your doctor's bill? A. Fifty dollars.

Cross-examination by Mr. Edwards:

Q. What day of the week did the accident happen? A. It was Sunday.

Q. Whom did you say you were going to visit in Secaucus? A. Mr. Alling.

Q. Is he a florist, too? A. No; he is a harness maker.

Q. You said you had this bottle of Elderberry wine? A. Yes, sir.

Q. Had you been drinking any that day? A. I didn't drink anything; before I left I had one glass of wine, of my own wine, in my house, before I left.

Q. That is all? A. That is all.

Q. And when did you have your next glass of liquor—any more that day? A. No, sir.

Q. No more that day? A. No, sir.

Q. Was that a big glass you drank? A. Well, a regular wine glass.

Q. You say that you got on this car and it had been snowing before this—I mean a few days before it had snowed? A. Yes, sir.

Q. And there was quite a lot of snow piled up in bank on either side? A. Yes, sir.

Q. On what street was this? A. Paterson Avenue.

Q. And the space between the tracks was all clear, wasn't it? A. Yes, sir.

Q. The people couldn't get off where they were used to getting off, could they? A. Where a street goes through, yes.

Q. But where there was no street they couldn't, could they? A. They could—

Q. But they would have to get into the snow, wouldn't they? A. Well, the snow was frozen, anyhow.

Q. What kind of a man and woman was it that got off the car and— A. That is more than I know; I didn't know those people.

Q. You don't know who got off the car? A. No.

Q. Then all you know is that you suddenly fell off the car? A. Yes, sir.

Q. Why you fell off you don't know? A. I know, because the door was open.

Q. Because the door was open, that is the only way? A. Yes, sir.

Q. You weren't leaning up against the door, were you? A. No, sir.

Q. You were a foot away from the door? A. Yes.

Q. How did that door open, in or out? A. That is more than I know.

Q. How did the conductor open the door? A. Well, I don't know how he opened the door; I never saw the conductor; I don't know.

Q. You saw him the day you say he opened the door? A. I didn't see him before—

Q. You don't know whether he opened the door or not, do you? A. He told me afterwards—

Q. What were you doing on the car? A. I just was standing there.

Q. Talking with anybody? A. I was not talking to nobody.

Q. Didn't know anybody on the car, did you? A. No, sir.

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Q. How many other people were on the back platform? A. I think about five; four or five.

Q. Did anybody shove up against you? A. No, sir.

Q. Nobody else fell off? A. Nobody else.

Q. You say this car was going very fast? A. Yes, sir.

10 Q. What do you mean by that, how fast—four or five miles an hour? A. Well, I think it is more; I couldn't say that, I don't know how many miles the car makes.

Q. Can you tell us how fast it was going? A. Well, the car was going so fast as it could go.

Q. What do you say? A. It couldn't go any faster.

Q. How do you know? A. Well, many times I am riding on the car.

20 Q. Did you hear the conductor give the bell to stop the car? A. I heard it, yes.

Q. How far was that before you fell off that he gave the bell? A. He rang the bell—well a couple of seconds.

Q. Did the car go very much further than you when you fell off? A. About thirty-five feet.

Q. Did you see these people get off of the car? A. I didn't see them, but when I got up again they were all outside.

30 Q. You got up at once, didn't you? A. Well, certainly, I got up as soon as I could, and some people helped me.

Q. Was there any cut on your knee? A. There was no cut.

Q. No black and blue mark, was there? A. Yes, there was, I got it the next day.

Q. How long did that last, the black and blue mark? A. Well, anyhow, for about three weeks.

Q. Did you show it to the doctor? A. Certainly.

40 Q. Nothing broken? A. It wasn't broken.

Q. Whereabouts was that mark? A. Just right in the knee. On the left.

Q. You got paid after the first four weeks, when you went back to work in the greenhouse, didn't you? A. Yes, sir.

Q. How long did you stay in that place? A. In what place?

Q. Where you were working; when did you leave them? A. The 15th of July. 10

Q. You went to look for another job? A. No, sir. I wanted to go in business for myself at that place that florist place there; Bobbink & Atkins were building more greenhouses on their own property, and I wanted to take that place for myself?

Q. And now you own it? A. No.

Q. You rent it? A. No.

Q. Don't you rent it? A. No; I couldn't connect with the owner.

Q. Where are your greenhouses now? A. I got a place, but I cannot take it now; I have got to wait a couple of months. 20

By the Court:

Q. Then you are not doing anything now? A. Well, I am buying stuff and selling stuff for myself.

By Mr. Edwards: 30

Q. You left of your own accord? A. Certainly I did.

Q. How many times did you say the doctor visited you? A. I believe thirty-five.

Q. Every day? A. The first four weeks he came every day, sometimes twice, and afterwards he only came about twice a week or so.

Q. What time did you board this car? A. What is that? 40

Q. What time did you get on the car? A. Well, it was between five and six.

Q. You told us a little while ago you got on at half past four? A. When I left home, yes.

Q. When did you get to the car? A. I walked down the short cut.

Q. How far did you have to walk? A. One block.

10 Q. It couldn't take you an hour and a half to walk one block? A. I met Mr. Gardner, the superintendent of the Putnam Manufacturing Company, and we stood there; he asked me where I wanted to go; I told him I was watching for my car and wanted to go over to Secaucus and see a friend of mine.

Q. Did you have to wait an hour? A. Then he said, "Well, come on, I will show you through the mill, through the factory."

20 By the Court.

Q. Did he say it? A. Yes.

By Mr. Edwards:

Q. When did you go out to board the car? A. What?

30 Q. What place were you when you came out just before you boarded the car? A. Right there on the track.

Q. The hotel there? A. There is no hotel there at all.

Q. Didn't you come out of Weckman's Hotel? A. No, I did not; I wasn't in Weckman's.

Q. You weren't in Weckman's that day? A. No, sir.

Q. Was this car full on the inside? A. Yes, sir.

Q. Every seat taken? A. Well, I didn't look exactly.

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Q. You didn't try to go in, did you? A. Well, because I seen right away the car was full.

Q. Every seat taken—anybody standing up inside? A. I think there was.

Q. Do you know there were? A. Well—

Q. Do you remember anything about it? A. Yes, I do.

Q. What? A. Many times—

Q. This time? A. Well, I ain't sure, maybe, if there was one seat or some standing up; that is more than I can tell.

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By the Court:

Q. Which side of the car did you fall off? A. The left side.

Q. Were there two tracks there? A. There was two tracks.

Q. Did you fall between the tracks? A. Yes, sir.

Q. He didn't open the door on the right hand side at all? A. The door was open on the right hand side.

Q. It stayed open on the right side? A. Yes, sir.

Q. And in some way this door was open on the left side before you knew it? A. Yes.

Q. And when the car suddenly slackened, you fell out? A. Yes, sir:

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Redirect-examination by Mr. Weller:

Q. At the place where you fell out is the track straight or curved? A. Curved.

Q. Curved toward the north or south? A. The curve turns out.

Q. Towards which way, toward north or south? A. It turns—

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By Mr. Edwards:

Q. Does it curve toward the right or the left coming to Jersey City? A. It is right.

By Mr. Weller:

10 Q. Is it level there, or was the car running down hill at the time you fell out? A. Down hill.

Q. You have spoken about your left knee; was there anything the trouble with your right knee? A. Yes, sir.

Q. What was the trouble with that? A. It was hurt, too, but it was not so bad as the left.

Q. What about your right wrist, was that hurt? A. It was hurt, too.

20 Recross by Mr. Edwards:

Q. Show us where you were hurt on the right wrist? A. Right here (showing).

Q. Is there any mark there now? A. Only a little; you can see that little mark here.

Q. Where? A. There (pointing).

Q. No; I guess that is your life line. Take the stand a minute. Now, had the car reached the curve when you fell off? A. Yes, sir.

30 Q. And gone by it? A. Yes, the car was going then.

Q. How far beyond the curve did the car go? A. About fifteen feet.

Q. And how far beyond the curve did you fall off? A. About fifteen or twenty feet.

Q. How much? A. Fifteen or twenty feet, or twenty-five, I don't know exactly how far.

Q. Is it a big curve or a little curve? A. A big curve.

40 Q. You say you fell off after the car went around

the curve? A. I was on the curve, about fifteen feet or something like that, or ten feet, I don't know.

Q. How far around the curve did the car go when you fell off? A. You mean how far the car was on the curve when I fell off?

Q. Yes; was it on the curve at all? A. Yes, sir.

Q. And it passed the curve? A. It was right there on the curve, about five or ten feet, I don't know exactly, I didn't measure. 10

Q. You didn't feel any motion, did you? A. What motion?

Q. You didn't feel any motion of the car? A. I don't know what you mean?

Q. You didn't feel any movement of the car? A. Certainly I did.

Q. You say that car curved to the right; now, which way did you fall, to the right or to the left? A. To the left. 20

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EMIL A, EGGERS, called as a witness on behalf of the plaintiff and sworn, testified as follows:

Direct-examination by Mr. Weller:

Q. Where do you live? A. 146½ South Street, Jersey City. 30

Q. You are a married man? A. Yes, sir.

Q. Live there with your family? A. Yes, sir.

Q. Do you remember the 19th of February? A. I don't exactly remember the date, but I know it was a pretty cold day.

Q. Do you remember the accident that happened when this gentleman here was injured? A. Yes, sir.

Q. Where had you been that day? A. I was visiting my folks in Park Avenue, East Rutherford. 40

By the Court :

Q. Were you on the car? A. Yes, sir.

By Mr. Weller :

10 Q. Is it level where this accident happened, or  
down hill? A. It was down hill.

Q. How steep? A. Well, it is a pretty good  
hill.

Q. Is the road straight or curved? A. Well, there  
is a curve on top of Rutherford and down at Carl-  
stade there is another curve.

20 Q. And at which place did he fall out, down to-  
wards Carlstadt or the other? A. Where the first  
curve is, half way down—right about the center  
of the down hill grade, there is a short street, I  
don't know the name of it.

Q. At what rate of speed was the car running  
when he fell out? A. About fifteen miles.

Q. An hour? A. An hour, I guess.

Q. Where did you get on the car? A. I got on  
at Park Avenue, Rutherford; I boarded the car;  
and I noticed it was quite crowded, so I stood at  
the rear platform.

30 Q. Were there any people standing up inside?  
A. Yes, sir; I stood on the rear platform at the  
left side, toward the inside, right across from Mr.  
Nirk; as I got on I paid my fare, and as we went  
on down hill there was a gentleman and lady  
wished to get off, and the conductor rang the bell  
and with that he said "kindly step aside"—

By Mr. Edwards :

40 Q. What did you say? A. The conductor told  
me to kindly step aside, and with that he grabbed  
the handle and pulled the door open, and no more

than he had the door half open, when Mr. Nirk fell out, and with his hand out first; if he had not done that he would probably have crushed his skull.

Q. When he fell, what happened to the car? A. The motorman put on the brakes and it gave a kind of a jerk, a sudden stop.

Q. And he flew out? A. Yes, sir. 10

By the Court:

Q. Did he pull the door open first, or ring the bell? A. He rang the bell and pulled the door open.

By Mr. Weller:

Q. How near were the two acts together? A. 20  
Say a second.

Q. A few seconds? A. Yes, sir.

Q. Did he say anything to Mr. Nirk before he pulled the door open? A. No, sir.

Q. Then what happened after Mr. Nirk flew out; how far did the car go past him? A. About 25 to 30 feet; I didn't just measure.

Q. Then what was done? A. The conductor still stood on the platform, and I said to him, "Why don't you get off"— 30

Mr. Edwards: Never mind what you said.

Q. What did he do? A. The conductor jumped off, and afterwards I got off and I went over to Mr. Nirk and helped him up; there was another gentleman, I don't know his name; I know Mr. Nirk pulled out a handkerchief, or whether the conductor pulled it out of his pocket, I don't know, but he bandaged the hand up; his two hands were 40

bleeding, and they wanted to get him home; the conductor said, "No, stay in the car and I will take you to the drugstore," and he sat down.

Q. How far did Mr. Nirk remain on the car? A. He was on when I left Congress Street and Passaic Avenue; that is when I left it.

10 Q. Did you see him stop at the drug store, the Transfer Station? A. Yes, sir, and Mr. Silver, the man stationed there, he got on, and the conductor spoke to him, and Mr. Silver. He said, "Take the man right down to Hoboken and have the doctor."

Cross-examination by Mr. Edwards:

Q. How steep is this grade—as steep as Newark Avenue? A. Yes, sir, about like Newark Avenue.

20 Q. And this happened between the two curves? A. Yes, sir.

Q. About how far apart are the curves, a quarter of a mile? A. Yes, I should judge around that.

Q. This happened in the middle— A. (Interrupting:) In the middle, right about the middle; there is a kind of a factory there that has burned down since.

Q. Burned down since or at that time? A. I think it was burned, if I ain't mistaken.

30 Q. You say this car was going at about fifteen miles an hour; what do you know about the speed of a car? A. Because I happened to be a motor-man myself.

Q. When? A. A year ago.

Q. For which company? A. For the North Hudson.

Q. That is, the J. C. H. & P.? A. Yes.

Q. When were you discharged? A. I was not discharged; I resigned in the month of July.

40 Q. How long had you been working for them? A. Only about thirty days; I had worked for them previous, eight or nine years ago.

Q. Had you ever worked on this line? A. I worked on the Summit Avenue to Pavonia Ferry, and last summer on the Rutherford line.

Q. What do you do now? A. I am in the insurance business.

Q. What company? A. For the Prudential.

Q. Given up railroading? A. Yes, sir.

Q. Did you know Mr. Nirk? A. No, sir, I did not. 10

Q. Did you give him your name? A. I did, sir.

Q. When? A. On the same day, right after Mr. Nirk was hurt.

Q. Did you give the conductor of the car your name? A. I don't remember.

Q. How did this car door open, in or out? A. Inside, the doors pulled toward the inside.

Q. And you were in the way? A. Yes, sir.

Q. And he asked you to step aside? A. Yes, sir. 20

Q. He didn't touch Mr. Nirk in opening the door? A. No, because he had not said a word to Mr. Nirk.

Q. But he didn't have to touch him? A. Mr. Nirk stood in a position that was outside—

Defendant's counsel moves to strike out the answer as a conclusion. Motion granted.

Q. He didn't touch Mr. Nirk in opening the door? A. No, sir; that I didn't see. 30

Q. And the door didn't touch Mr. Nirk in opening? A. Well, probably Mr. Nirk leaned up against it, for all I know.

Q. Did you see Mr. Nirk lean up against it? A. I did, at one time.

Q. Mr. Nirk said he was a foot away; you say he was not? A. Not when I got on the car; Mr. Nirk stood on the corner. 40

Q. How much was this door open; did he open the whole of it? A. Yes, sir.

Q. How did the door open, in or out? A. Toward the inside.

Q. Is the handle toward the body of the car or toward the rear of the car? A. Toward the center of the car.

10 Q. Then you saw Mr. Nirk up behind this door when he was standing up, close against it? A. No, sir.

Q. Why not? A. He couldn't be behind the door.

Q. How could he help it? A. Because the door parts in the center, two parts to the door, and he stood in the rear, toward the brake.

Q. When the door opened did it shove by him? A. No, sir.

20 By the Court:

Q. Did it split in the middle? A. Yes, sir.

By Mr. Edwards:

Q. The door swung open? A. You see, the door swung open toward the inside, and he was on the end toward the rear.

Q. Where did these people get off? A. I don't know the street; the street between the two curves, going down hill.

30 Q. Was there snow on the other side of the car? A. Yes, sir.

Q. And the conductor was letting the people out there, to avoid getting in the snow, I suppose? A. Well, still there was room enough, I should judge, for them to get off.

Q. Suppose they had gotten off in the snow and been injured, do you think there would have been room enough then? A. The snow was pretty hard to step on.

By Mr. Weller:

Q. You spoke about the door; was it a sliding door or a swinging door? A. A kind of swinging door, it parts from the center.

By the Court:

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Q. If that was the rear end of the trolley car, and this the platform (illustrating)—then this represents the door, at the point A? A. Yes.

Q. And does it split in the middle that way and then come up against the body of the car? A. Yes.

Q. And doubles upon itself? A. Yes, sir.

By Mr. Edwards:

Q. Where is the handle they open it from? A. 20  
In the center.

By the Court:

Q. Just mark here where Mr. Nirk was standing? A. (Witness marks.)

Q. Where that X mark is, right in that corner? A. Yes, sir.

By Mr. Weller:

30

Q. Did the door open from the front and then run that way, towards the rear? A. Yes, sir.

By Mr. Edwards:

Q. Where were you standing; mark it with an E, where you were? (Witness marks.)

Q. You had to get out of the way? A. Certainly.

Q. He did not? A. No.

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EDWARD BLANCHARD, called as a witness on behalf of the plaintiff and sworn, testified as follows:

Direct-examination by Mr. Weller:

- Q. Where do you live? A. East Rutherford.
- 10 Q. What is your business? A. Driving a team.
- Q. Do you remember Sunday, the 19th of February? A. I don't just know the date; I remember the Sunday.
- Q. Where were you on that day? A. I was after coming from the barn, doing the barn work, coming home to go to my mother's in Forest Hill; I live right near the place.
- Q. That is near the place where Mr. Nirk fell off the car? A. Yes, sir.
- 20 Q. You were well acquainted with the street there, then? A. Yes, sir.
- Q. Is the road level or down hill? A. It is a little grade where the car turns the curve.
- Q. Is it curved or straight at that place? A. Curved, a short curve.
- Q. Was it at this curve that Mr. Nirk fell off? A. Yes, sir.

By Mr. Edwards:

- 30 Q. Did you see him when he fell off? A. Yes, sir.

By Mr. Weller:

- Q. How far were you from the car when he fell off? A. About the length of one telegraph pole.
- Q. That is, from one telegraph pole to another, you mean? A. Yes, sir.
- 40 Q. Just tell in your own way what you saw; tell

us all that you saw? A. This car was coming east and I was going west to Hackensack Street; I saw this gentleman, as the gentleman says, between the two telegraph poles facing the car, as he leaned out, toward the westbound track.

Q. Before he fell, did you see the motorman do anything? A. No, sir, I did not.

Q. He was not looking at that? A. No; he was expecting to see the gentleman get out in the middle of the road, out of the car— 10

Q. At what rate of speed was the car running? A. That I couldn't say; I don't know the mileage the cars run.

Q. How far past him did the car run before it came to a standstill? A. Pretty near the whole length of the burnt factory.

By Mr. Edwards: 20

Q. Tell us how many feet? A. Well, the length across this room, anyway.

By Mr. Weller:

Q. When it stopped, what happened? A. They stopped and tied the man's hands up—went back and picked the man up; the whole crowd of them got off the car right away and went back, and they tied his hands up; his hands were all bleeding all over. 30

Q. Did anybody that you know get off and stay off? A. No, sir, not that I know.

Q. Did you see any of them get off? A. There was a lot got off; I don't know whether any that got off stayed off; I couldn't swear to that.

Cross-examination by Mr. Edwards:

Q. Where were you, on a wagon? A. No, sir. 40

Q. On foot? A. Yes, sir.

Q. That was which side of Paterson Road? A. Between the cars—between the car tracks.

Q. How wide is the wagon road between the two car tracks? A. About fifteen feet.

Q. That was clear, wasn't it? A. Yes, sir.

Q. And there was snow on either side? A. Very  
10 little.

Q. How many feet deep? A. I don't suppose there was any more than a foot of snow.

Q. During that snow storm they were letting ladies off between the tracks, were they? A. No, sir.

Q. How do you know? A. They rode right down to that open place, where it was burned down.

Q. You didn't see him open the door? A. No, I don't know anything about it.

Q. Which side were you on? A. Toward Pater-  
20 son.

Q. Then the car went by you? A. The car—no, it didn't quite go by me.

Q. Then you were on the Hoboken side of the car when it stopped? A. I was on the right hand side, coming that way, as the car was coming to me.

Q. Had the car passed you when the man fell off? A. No, sir.

Q. And when the car stopped, had it passed you? A. No.

Q. Then you were looking toward it? A. Yes,  
30 sir.

Q. Did you hear any bell rung? A. No, sir.

Q. Was the car slackened up? A. It slackened up a little on the curve.

Q. Had it passed the curve? A. Yes, sir, when it stopped.

Q. But when the man fell off it had not passed the curve? A. Yes, it was on it.

Q. The other gentlemen say it was between the two curves? A. I know nothing about that.  
40

Q. You think it was on the curve? A. Yes, sir.

Q. Is that much of a curve? A. Yes, it is a sharp curve; it goes around very quick.

Q. It is a short curve? A. Yes, sir.

Q. And curves almost at right angles? A. Yes, sir.

Q. Does it curve from one street into another?

A. There is no cross roads there where this party got off; I suppose if the bell rang it was on Vreeland Avenue. 10

Q. How much of a change in direction is there in the road at that point; does it come around at a right angle? A. No; it comes right around; it comes straight again when it strikes Carlstadt Avenue.

By Mr. Edwards:

Q. Then I understand the road runs like this (illustrating). A. No, it is not as much around as that. 20

By the Court:

Q. Can you sketch for us the angle of the road?  
A. Well, I can't do that.

By Mr. Edwards:

Q. Give us a diagram of it? A. It comes down from Hackensack Street there. 30

The Court: Draw it on paper.

The Witness (showing): it comes down and strikes this curve, and goes to the left, right down.

Q. Where did this man fall off, on which curve?  
A. On the left hand curve here. 40

Q. The first curve? A. Yes.

Q. What is the difference between the curves?

A. I don't know.

Q. Is it a quarter of a mile? A. Oh, from Hackensack Street?

Q. Well, between the curves.

10 The Court: Between the first curve and second.

The Witness: About two blocks.

Q. And he fell off where? A. He fell off on the lower block.

Q. On the first curve or second curve? A. There is only one curve there where he fell off; it is no double curve, it just goes around.

Q. Is that the first curve or the second curve?

20 A. That is the first curve.

Q. Then there is another curve beyond that? A. Not until you get further down again.

Q. How did this man come out of the car, head first? A. As near as I could see, he went right on his face.

Q. Did he roll over as he struck? A. No, sir.

Q. Did he get up at once, or was he helped up? A. Well, I couldn't say that: I couldn't see any one helping him up; there was a bunch of them got around him that way.

30 Q. It took very little time to go back and go up to him, didn't it? A. Some went and got off, to go back to him.

Q. Did you go back to him? A. Yes, sir.

Q. He was up when you got there? A. He was up when I got there.

Q. Didn't he roll over when he struck the street? A. Not as I know of.

Q. Simply landed and stayed there? A. Yes.

40

MRS. AUGUSTINA NIRK, called as a witness on behalf of the plaintiff and sworn, testified as follows:

Direct-examination by Mr. Weller:

Q. You are the wife of Albert Nirk? A. Yes, sir. 10

Q. Do you remember the Sunday he was injured? A. Yes, sir.

Q. What time did he leave home, what hour? A. About four o'clock he left home.

Q. What time was he brought home? A. It was between eight and nine.

Q. What condition was he in then? A. His both hands was bandaged till the tip of his fingers, and his clothes was all full of blood, and all chafed from the falling? 20

Q. All what? A. All chafed from falling down; his whole suit of clothes was ruined; he was full of blood and he was limping.

Q. How about his pants, how were they? A. His knees—he couldn't wear his pants after that any more for good, only maybe in the house; it was a good suit of clothes.

By the Court:

Q. Were there holes in the knees? A. They was prety bad damaged. 30

By Mr. Weller:

Q. What condition was his legs in, his knees? A. When he took his clothes off his knees was bruised, the left knee was worse than the right knee, and the bruise was from the kneecap, till below the kneecap, and it was black and blue, and 40

he could not walk for over two weeks, couldn't walk at all, and I had to carry his meals upstairs day after day.

Q. How long was he in the house? A. Four weeks steady.

Q. After he got out, what condition was he in?

A. He could superintend the place, that was all; he couldn't work.

10 Q. How could he walk? A. He could walk—well, not like a regular healthy man would walk.

Q. Do you know how often the doctor was there? A. Well, the doctor was there thirty-five times, something like that.

Q. You don't know exactly? A. Yes, something like that he was there.

Q. Do you remember his coming in the night?

A. Yes, I had to telephone for him; I had to go to the office, Bobbink & Atkins' office.

20 Q. And telephone? A. They have a telephone there, and I called the doctor.

Q. When he came there the first time, what did he do? A. Well, the very first time when he came there, he opened the wound, what the doctor in the office sewed up; he said it got dirt in, and he washed it out.

Motion to strike out. Granted.

30 Q. Just say what he did? A. He opened the wound, washed it and took a lot of dirt out of it, and had to leave it open for over a week, otherwise blood poison would set in.

Q. At the end of a week did he sew it up? A. No; it never was sewed up; it had to heal from the inside, that was the danger; during the middle of the week I had to call for the doctor at night.

40 Q. Was the arm swollen or not? A. Yes, the arm was swollen; it had dirt in, and he opened it.

Q. Why did you call for the doctor at night?  
 A. He had such great pain he couldn't stand it any longer. The doctor was there through the day.

Cross-examination by Mr. Edwards:

Q. How many times did he come at night? A.  
 At night he came a couple of times. 10

Q. Whenever it pained it he came? A. Yes, he came.

Redirect-examination by Mr. Weller:

Q. What was the suit of clothes worth? A. When he had it new, it was twenty-five dollars.

Q. How long had he had it? A. A year before, still he didn't wear it very much.

Q. Sunday suit? A. Sunday suit. 20

Recross-examination by Mr. Edwards:

Q. It wasn't torn? A. He couldn't wear it for good; he couldn't have a shaved off suit for Sunday.

Q. What was the matter with it if it was not torn? A. It was all spotted with blood, shaved off, as if worn.

Q. Had he had it made to order, this suit? A. Yes, sir. 30

Q. Always has his clothes made that way, I suppose? A. Nearly always.

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DR. CLARENCE W. BYERS, called as a witness on behalf of the plaintiff, testified as follows:

Direct-examination by Mr. Weller:

Q. Where do you reside? A. Rutherford. 40

Q. What is your business? A. Physician.

Q. How long have you been a physician? A. Since 1902.

Q. Were you called to attend Albert Nirk at the time he was injured in February? A. I was called to attend him the next day.

Q. What did you find when you went there?

10 A. I found both knees were contused and scraped, and both wrists were lacerated, particularly the left one, which had a lacerated wound about the lower part of the palm, about two inches long, and it was sewed up when I got there; it had one stitch in it.

Q. How deep was that wound? A. My probe passed in for an inch and a half, going in under the skin.

Q. Did you take the stitch out? A. Yes, sir.

20 Q. What did you do for the hand? A. I took the stitch out and cleaned the wound.

Q. What did you clean out of it? A. I cleaned out considerable small particles of dirt.

Q. What did you do for his knees and his other wrist. A. I applied liniments to his knees to reduce the contusions.

Q. Were those contusions severe or not? A. The left one was; the right one did not amount to much; the left one was the more severe.

30 Q. How severe? A. He was not able to use his foot to walk on for a week and a half.

By the Court:

Q. Was there any abrasion? A. There was a slight abrasion, not to amount to much.

Q. Any blood? A. No, sir.

By Mr. Weller:

40 Q. Do you remember going there in the night? A. Yes, sir.

Q. Why did you go? A. On account of his having so much pain.

Q. From what wound was that? A. From the left hand.

Q. What was the trouble with the hand? A. The hand was swollen up considerably, and it was red almost up to his elbow, and swollen up.

Q. Is a wound of that kind very painful? A. I should think it was, yes, sir. 10

Q. How long did you treat him? A. I made about thirty-five visits to him.

Q. What did you charge him? A. Fifty dollars.

Q. Is that a reasonable price? A. Yes, sir.

Q. Has he paid you? A. Yes, sir.

Q. Have you examined the wounds lately? A. I have seen the wound on his left hand, yes.

Q. How long would a sprain of that kind last? A. He was not able to use his hand for four weeks, and then it was considerable time after that before he had the free motion of it again as he had normally. 20

Q. How long will a wound of that kind remain painful? A. You mean the sprain?

Q. Yes, the sprain? A. Well, it differs, some three weeks and some four weeks; it differs in some circumstances, in my experience.

Q. How long will the effects of that remain? A. I think over two months. 30

Cross-examination by Mr. Edwards:

Q. There is no effect of it there now? A. He claims so.

Q. I mean you found no effect? A. No, I found nothing more—

Q. None on the muscles or veins? A. No.

Q. Simply a flesh wound? A. Yes, sir.

Q. How long did the injury to the knee continue? A. About ten days. 40

Q. After that was it all right? A. Yes, sir.

Q. A little pain, I suppose, for ten days? A. Yes, sir.

Q. And you think, in the trouble in the wrist, the effect may be two months? A. Yes, sir.

Q. And after that it will be all right? A. Yes, sir.

10 Q. No weakening there, was there? A. No.

Q. Nothing to weaken was there? A. Nothing after the sprain.

Q. He can lift as well as ever, can't he? A. I should think he would.

Q. Wouldn't you believe the man if he said he couldn't lift as well as ever— A. Well, if no bones were broken—

Q. And no veins were cut? A. No.

Q. No muscles were affected? A. No, except—

20 Q. There was nothing to interfere with the use of his hand? A. No.

Q. And if the man says it interferes with him now you wouldn't believe him? A. Only for the purpose of contradicting himself—

Q. Would you believe him, as to the power of lifting? A. No.

Q. You attended him pretty often—thirty-five times? A. I don't think over that.

30 Q. You took good care of him? A. I took as good care of him as I could.

Q. And discharged him cured? A. Yes, sir.

Q. Did you notice this man's condition that night? A. He was in a sort of nervous shock.

Q. Did you notice any signs of drink about him? A. I didn't see him until the next day.

Plaintiff Rests.

Mr. Edwards: I ask, may it please the Court, for a non-suit in this case, on the

ground first, that no negligence on the part of the company or its servants has been shown; it does not appear there was anything contributed to it, that the car was brought to a standstill with any sudden motion, or anything of that kind.

Motion denied.

Defendant prays that an exception may be allowed, and it is allowed, and signed and sealed accordingly. 10

Mr. Edwards opens the case for defendant.

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#### DEFENDANT'S EVIDENCE.

GEORGE GERICKE, called as a witness on behalf of the defendant and sworn, testified as follows: 20

Direct-evidence by Mr. Edwards.

Q. Where do you live? A. 616 Syms Street, West Hoboken.

Q. What is your business? A. I am a checker in the Morgan Line.

Q. Were you formerly a conductor? A. Yes, sir. 30

Q. When did you leave the service of the company? A. It was in April.

Q. Do you remember the accident to Mr. Nirk, in February of this year? A. Yes, about the 17th or 19th, I believe.

Q. What day of the week was it? A. It was on a Sunday.

Q. Were you the conductor on that car? A. Yes, on car 1571. 40

Q. Do you remember how many passengers you had on the car? A. At the time the man was hurt, just the time the man was hurt?

Q. Yes? A. Well, I had about fifteen or twenty people, I believe.

Q. How many people can your car seat? A. There was about fifteen seated.

10 Q. How many will it seat? A. It will seat about twenty on each side.

Q. Then the car was about half full? A. About half full.

Q. Were there people on the platform? A. There was five people, as far as I recollect.

Q. Do you remember when Mr. Nirk got on? A. Yes; he got on near the short cut, about a block or a block and a half on this side of the short cut.

20 Q. Do you remember seeing him come out of any place when he got on? A. As far as I recollect Mr. Nirk came out of some hotel or restaurant, or whatever it is there.

Q. Did you notice his condition at any time? A. Well, not at that time; I didn't look everybody through when he got on the car.

30 Q. Now, then, just tell us how he happened to fall off this car? A. Well, there was an old lady wanted to get off the car as we passed Hackensack Street. The rule is this, if you open the gate on the right hand side—there ain't much room—a man can get off all right, but an old lady would take chances of falling down the hill.

Q. There is an embankment there? Was it icy or slippery on that side? A. Well, it was icy, but there was not any snow or anything like that. I did this to accommodate the old lady; I wouldn't do it for anybody else.

Q. What did you do when the old lady wanted to get out? A. I rang the bell.

Q. How fast was the car going when you rang the bell? A. About two miles an hour.

Q. I mean when you rang the bell, how fast was it going, at the ordinary rate of speed? A. Yes, ordinary speed, when I rang the bell.

Q. Then what happened, after you rang the bell, what did you do? A. Then I heard the motorman release the air, to stop the car. 10

Q. Was that the ordinary movement to stop the car? A. Yes. Then I opened the gate; there was a gentleman standing on the back of the car, and Mr. Nirk was standing with his face to the front, but both near the door, and the witness who was up to testify before, I asked him to kindly step to one side as an old lady wanted to get off; and as I opened the door the car came to a stop, and Mr. Nirk somehow or other tipped over, and said something, when he fell off. This old lady was sitting right here, and I was trying to accommodate her; she was about ninety years old, and I turned around to help her off, when I just caught a glimpse of Mr. Nirk when he fell off the car. 20

Q. How far did the car go when he fell? A. About three-quarters of a car length.

Q. And was the car coming to a stop in the usual way? Was the car moving when he fell off? A. Moving.

Q. Slowly or rapidly? A. It just came to a stop. 30

Q. In the ordinary way? A. In the ordinary way.

Q. Was there any lurch or jerk of the car? A. Well, I don't remember any.

Q. What did you do after the man fell off? A. I got off and went to this man just when he fell on his hands; I got off and went to him and said "did you get hurted?"

Q. Never-mind what you said. Did he get up himself? A. No; I helped him up, and I took a 40

handkerchief to wrap around his hands; he had a cut on the left hand, so far as I recollect, and I tied it on him, and I took him in the car and said, "I will take you down to a doctor."

Q. There has been some talk of a curve in this case; was the car on the curve or near the curve at the time he fell off? A. Well, we did not run on the curve there—there is a turn, a curve.

Q. Did the car stop before you reached the curve? A. We were just about stopping there.

Q. And when he got off you had not reached the curve? A. Yes.

Q. Where did you take this man? A. Well, as we thought, if anything should happen, we should take him to a doctor; I took this man down to the assistant superintendent standing at the Transfer Station, and said, "There is a man here who is hurt, where shall I take him?" he said "to the doctor; the first doctor I could get;" there is a drugstore there, and I spoke to the assistant, and he took care of the man, and I took him—

Q. You took him right down to the ferry, then? A. Yes, sir.

Q. Did you notice anything about this man after he fell off; did you notice what condition he was in? A. Well, you know, this man was sitting in the car afterward, and half fell asleep.

Q. What do you say? A. He half fell asleep, and I went in to him, and I said to him, "Don't go to sleep," and I put my hand on his shoulder; that is the only time I recollect speaking to him until I arrived at the Transfer Station and saw the assistant superintendent.

Q. What condition was he in; could you tell if he had been drinking or not? A. Well, I guess—

Q. (Interposing:) What makes you guess? A. Well, I dasn't say.

Q. Was it all right or all wrong? A. I wouldn't say one way or the other.

Q. What kind of a smell was it? A. Some kind of liquor or wine.

Q. Strong? A. Pretty strong, yes.

Cross-examination by Mr. Weller:

Q. He had a bottle of wine in his pocket, didn't he? A. I guess it was a bottle of wine. 10

Q. There was not any taken out of it? A. I couldn't say.

Q. You looked at it, didn't you? A. Yes.

Q. Don't you know it was full right up to the top, not a drop out of it? A. I don't think there was anything out of the bottle.

By Mr. Edwards:

Q. Was the bottle broken when he fell out of the car? A. No, the bottle was not broken. 20

By Mr. Weller:

Q. Now, half way down he fell asleep, or half asleep—that is, he closed his eyes? A. Yes.

Q. Didn't he tell you he felt bad? A. Yes.

Q. Didn't he tell you he was injured? A. Yes, that is what he said at the time I put my hand on his shoulder; he said, "I am not asleep," and I said, "Don't go to sleep on the car." 30

Q. Where did your car run from? A. From City Hall, Paterson.

Q. What was your leaving time at the City Hall? A. I guess about 5:30 or 5:50 was the leaving time.

Q. At Paterson? A. From City Hall, Paterson.

Q. How long does it take to run from Paterson to Rutherford? A. Fifty-three or fifty-four minutes.

Q. What time did this man get on the car? A. 40

Well, I guess it was about a quarter of six or half past five.

Q. Then your leaving time was not half past five? A. Well, the leaving time, is half past six, or something like that—it was something in that neighborhood—the leaving time was 5:50.

10 By the Court:

Q. Don't you mean 4:50; don't you mean ten minutes of five? A. No.

Q. You mean ten minutes of six? A. Well, it is pretty hard for me now to recollect.

Q. Was it pretty dark when you left Paterson? A. No, it wasn't dark.

By Mr. Weller:

20

Q. What was your leaving time?

Mr. Edwards: You made a report about it?

The Witness: Yes, I made a report about it; that is the best way to find out, because it is impossible for you to recollect everything.

30

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

A. About a year and a half.

Q. Do they run more cars Sunday than week days? A. Yes.

Q. Why? A. On account of the heavy traffic, I believe.

Q. There is heavy traffic almost every Sunday? A. Yes, generally of evenings.

Q. There was heavy traffic that Sunday? A. No.

40

Q. Don't you know that the car was full and that there were people standing inside? A. No; I rec-

ollect there was about fifteen or twenty people inside the car.

Q. Weren't there more than fifteen people inside the car? A. No, sir.

Q. Weren't there people hanging on to the straps? A. I don't know.

Q. You are not sure whether the car was full that time or not? A. Yes; I am sure the car wasn't full. 10

Q. You can't tell what time you left Paterson? A. 5:50.

Q. That would be half past six before you got to Rutherford; it wasn't 5:50 when this man got on the car, was it? A. Don't ask me that question; I can't answer whether it was four or five.

Q. You have been running on that line a year? A. Not on that line; it is all mixed up, one Sunday we get this and another Sunday we get that run. 20

Q. Did you only run Sundays, or every day? A. Every day.

Q. Did you have the same motorman all the time? A. No, sir, I had different motormen.

Q. And this motorman was a new man? A. No; the motorman I had on the car that day was an old hand, and if I remember right we had been working for a month or so together.

Q. And you don't know what time you left Paterson that day? A. Well, you will find it out from that statement I made. 30

Q. How much late were you when you left the Rutherford crossing? A. I suppose we were in time; I don't see any reason we would be late.

Q. Weren't you late? (No answer.)

Q. Well? A. No, sir, not as far as I remember, I will leave the motorman answer that question, because that is the man keeping the track of the time.

Q. What was your time to get to Hoboken ferry; 40

what was your time to get to Hoboken on that run?

A. Let me see—it was 6:30.

Q. 6:30? A. 7:30.

Q. How long does it take to run from Rutherford to Hoboken? A. About an hour and forty minutes.

10

The Court: You mean from Rutherford to Hoboken?

The Witness: Pardon me; I am talking about the whole run, from Rutherford to Hoboken; it takes fifty minutes—that is the running time, fifty-two minutes.

Q. Fifty-two minutes? A. From Park Avenue, Rutherford, to Hoboken Ferry.

20

Q. This man got on about half after five, didn't he? A. It was later than that.

Q. Do you know the time? A. I know we arrived in Hoboken, and it must have been about half past seven when we arrived there.

Q. Do you know what time you did arrive there? A. I can't recollect; it is impossible for me to remember.

Q. Wasn't it half after six?

30

Mr. Edwards: You have his report here; it shows he left Paterson at five o'clock; at the time of the accident it was 5:50.

A. I guess we reached the ferry at 5:50, or something like that.

Q. How long does it take to run from the City Hall in Paterson, to Rutherford? A. It takes fifty minutes.

Q. Just exactly? A. Forty-eight, I guess.

40

Q. How long does it take to run from Hoboken to Paterson? A. An hour and forty minutes is the running time, or was at that time.

Q. Then it takes fifty minutes from Hoboken to Rutherford, and fifty minutes from Hoboken to Paterson? A. Yes.

Q. What was the nearest street to where Mr. Nirk fell off? A. That was Vreeland, I guess that is the name; that is the first street after Hackensack Street.

Q. That is going toward Paterson? A. Toward Hoboken. 10

Q. You wanted to let off an old lady and gentleman at Vreeland Avenue? A. Yes, sir.

Q. How far from Vreeland Avenue was it that he fell off the car? A. Well, as far as I recollect— It is now quite some time— Vreeland Avenue runs on the left hand side, don't you know, and the other is the hill, going toward the meadows, and then the street on the left hand side is Vreeland Avenue, and this old lady wanted to get off there. 20

By Mr. Edwards:

Q. Where did the man get off before, or after he got to Vreeland Avenue? A. Where he fell off?

Q. Where he fell off—before you got to Vreeland Avenue? A. Right at the curve, before we got to the curve.

By Mr. Weller:

30

Q. Had you rung the bell when he fell off? A. Yes, sir.

Q. How long after you rang the bell did he fall off? A. Well, twenty-five or thirty feet.

Q. How long after you opened the door did he fall off? A. Do you want me to state seconds or what?

Mr. Edwards: Just tell us.

A. I should say ten or fifteen seconds.

40

Q. After you opened the door? A. Ten seconds, yes.

Q. You said when you opened the door you heard the motorman put on the brake, didn't you? A. Yes, sir, when he was about to slacken up.

Q. And when the motorman put on the brake, he (Mr. Nirk) fell? A. No; the moment after he put the brake on, the man fell.

Q. How long after the motorman put on the brake did he fall? A. How long after? What do you mean—

Mr. Edwards: The time that he started to put on the brake.

Q. How long after the motorman put on the brake did the man fall? A. Well, that is a matter of ten seconds, I believe.

Q. You don't know exactly? A. Well, ten seconds, I am saying, you can't say any more; you don't want me to tell lies, or anything like that; I am here to testify.

Q. How near was the car to a standstill, when the man fell off? A. Well, about three-quarters of a car length.

Q. You are sure the car was going around the curve when he fell off? A. Well, there is a turn.

By the Court:

Q. What do you mean by a turn? A. Well, I will explain. Here is the road, and then there is a little turn of the road like this, and then comes the curve; there is the tracks goes this way, before the curve, and it was before that curve, and this turn, or whatever you would call it, like between them two posts (pointing) that the car stopped in there, that Mr. Nirk fell off.

By Mr. Weller :

Q. You say the car was running about two miles an hour was it? A. About two miles an hour, when I gave him the bell, yes.

Q. What is your usual rate? A. Well, I will leave that question to my motorman; he knows better.

10

Q. But you have said the car was running two miles an hour— A. Yes.

Q. What was your usual speed? A. Well, I guess is about eight or ten miles?

Q. You guess it is about eight miles an hour? Now, how did it happen to be running only two miles an hour when you gave the motorman the bell? A. On account of going down the hill, she don't go so fast.

Q. They always go more slowly? A. Yes, sir.

20

Q. Don't you know they always go more rapidly down hill than up hill? A. If anything happens on my car—

Q. (Interposing:) That is not the question. Don't you know the trolleys always run faster down hill than they run up? A. No.

Q. Don't you know they always run down that hill— A. (Interrupting:) About the same up and down.

Q. How did this car happen to be running two miles an hour when you gave the bell? A. I will leave that to the motorman.

30

Q. I ask you why it was only running two miles an hour?

The Court: If you know, say so.

A. I am just telling you, I will leave it to the motorman.

40

By the Court:

Q. Don't you know yourself? A. No.

By Mr. Weller:

10 Q. Why do you say it was two miles an hour if you don't know? Do you know it was running two miles an hour? A. Because he don't go fast down the hill.

Q. And that is the only way you place it, that it is two miles an hour, is it? A. Yes.

Q. Mr. Nirk fell out of the north side of the car, did he? A. On the left hand side of the car, yes.

Q. Did you see him fall? A. I just got a glimpse—I seen him from the side.

20 Q. How did he land when he fell off, when he struck the ground? A. As I turned around I saw Mr. Nirk fall like this, about on the ground, his hands to the ground, and of course he fell and landed on his hands and knees like this (showing).

Q. You helped him up? A. I did, and another gentleman.

Q. How did you help him up? A. Well, he half raised himself, and I took the one arm you know, and another man took the other arm.

30 Q. Can you account for his being so badly hurt in falling off a car going two miles an hour? A. It all depends on how far a man falls; it is hard to tell.

Q. When you heard the motorman mave a movement to stop—when you rang the bell, what was it you heard? A. The brake, you mean, what noise it makes?

Q. Yes? A. That is the air, you can hear that.

Q. When you rang the bell, you heard the bell, did you? A. Yes, I heard the air.

40 Q. And then Mr. Nirk fell? A. Yes.

Q. You say you wanted Mr. Nirk to step to one side; you didn't tell him to step to one side? A. Pardon me; the witness who saw it is here to testify; I believe that witness will testify.

Q. How far back, when you got off the car, did you have to go to get Mr. Nirk? A. Well, about three-quarters of a car length, not even a car length.

Q. You don't remember any jerk or lurch of the car then? A. No, sir. 10

Q. Do you know what time you got to Hoboken that night? A. Well, it was dark, and it is kind of hard for me to tell.

Q. You were late when you got to Hoboken, weren't you? A. I don't think so.

Q. What was your time at Hoboken; what time should you be there? A. Well, ask the motorman. I can't recollect exactly; you will find it on my statement. 20

The Court: You have asked him several times before that same question, Mr. Weller.

By Mr. Edwards:

Q. Did you make a written statement, immediately after this accident—report? Is this your report? (Showing witness paper). A. Yes, sir.

Q. Is that your signature? A. That is my signature. 30

Q. Refreshing your memory from that report, what time did you leave Paterson that day? A. Well, the date of the accident is February 19th, and the hour 5:50 P. M.

Q. That is the time the accident happened? A. It is five o'clock from City Hall, car 1571.

Q. From this do you recall how many passengers were on the car? A. Fifteen. 40

By Mr. Weller:

Q. From the report, what time did you get to Hoboken? A. That don't say. I can answer that question; 6:40.

10 Q. I am asking you now, from the report; is there anything on the report to show? A. No, sir, there ain't anything on it.

Q. Don't you ever note, in making your report, what time you stop at certain places, and what time you get back at night? A. If I recollect, that pulls in at 2:10 in the morning.

Q. What time did you get back to Paterson? A. I believe I was back to Paterson again about nine o'clock.

Q. You do not know?

20 Mr. Edwards: He is telling you.

Q. Do you know what time exactly you got back?  
(No answer.)

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CHARLES BAUER, called as a witness on behalf of the defendant and sworn, testified as follows:

30 Direct-examination by Mr. Edwards:

Q. Where do you live? A. 3518 Boulevard.

Q. How old are you? A. Eighteen years.

Q. What is your business? A. Printing; flyboy in a printing office.

Q. Do you remember the accident to Mr. Nirk in February last? A. Yes, sir.

Q. Were you on the car? A. Yes, sir.

40 Q. Where did you board the car? A. What?

Q. Where did you get on the car? A. At Pater-  
son.

Q. Were you coming home? A. Yes, sir.

Q. Do you remember the time that Mr. Nirk fell  
off of the car? I don't mean the hour, but you re-  
member his falling off? A. Yes.

Q. You saw him? A. Yes.

Q. Where were you standing on the car? A. Sit- 10  
ting down in the back of the car.

Q. What did you notice there? A. I saw that he  
fell down, with his hands front forward.

Q. Which door did he fall out from? A. The left  
hand side.

Q. Did you see the conductor open the door? A.  
Yes, sir.

Q. Did you notice how fast the car was going  
when the man went off? A. It was not going the  
regular speed. 20

Q. Did you hear the bell rung for stopping the  
car? A. Yes, sir.

Q. After the bell rung what happened? A. I saw  
that the motorman slackened the car down.

Q. Was there any sudden jerk? A. Not that I  
know.

Q. You noticed it? A. No, sir, no sudden jerk.

Q. How far from where the man got off the car—  
after he fell off, how far did the car go? A. Fif-  
teen feet. 30

Q. Was that car in that curve when he fell off?  
A. No, sir.

Q. Had it got to the curve? A. Yes, sir, the car  
was on the curve.

Q. When he fell off, how far was the car from the  
curve? A. About three feet from the curve.

Q. Did you notice this man's condition after the  
accident? A. Yes, sir.

Q. What would call your attention to it? A.  
Well, I went off the car, and I saw he had a cut 40  
in the palm of his hand.

Q. Did you notice anything—any other thing about his condition? A. I saw his clothes were dirty.

Q. Anything else; was your attention called as to whether he was sober or not? A. Well, he smelt kind of—he was sleeping.

10 Q. Where did you notice that? A. When he was sitting down.

Q. When he got on the car? A. No—yes.

Q. Did he show any tendency to sleep or not? A. Yes, sir; he was kind of closing his eyes.

Q. What did you conclude as to his condition?

Objected to.

20 Q. What did you conclude as to his condition, as to whether he was intoxicated or not; did you come to any conclusion? A. I was sitting across the car from him.

Q. What did you think of him? A. I saw only that he fell off.

Q. What did you think as to his being intoxicated or not; did you think he was under the influence of liquor? A. Yes.

Mr. Weller: That is very leading, if your Honor please.

30

Cross-examination by Mr. Weller:

Q. Where do you live? A. 3518 Boulevard.

Q. With whom do you live there? A. My father and mother.

Q. What time did you go to Paterson that day? A. About three o'clock.

Q. Where did you go to? A. Paterson, on the same car.

40

Q. What part of Paterson did you go to? A. Where the car goes around City Hall.

Q. Whom did you go to Paterson to see? A. Nobody; just went out for a ride.

Q. Did you stay on the car all the time? A. Yes, sir.

Q. Didn't get off at all? A. No, sir.

Q. Stayed on the same car? A. Yes, sir. 10

Q. Did the car run right around City Hall and come back? A. Yes, sir, right around the curve.

Q. Sure of that? A. Yes.

Q. Was the same motorman and conductor on when you went out? A. Yes.

Q. When did you get on? A. I got on at Congress Street and Summit Avenue, when I went out to Paterson.

Q. Anybody with you? A. No.

Q. You went out to Paterson for a ride? A. Yes, sir. 20

Q. Are you in the habit of going to Paterson for a ride? A. No, sir.

Q. Had you ever been out there before? A. Yes, sir.

Q. In going out to Paterson what was the first town you came to after leaving Homestead? A. Hackensack.

Q. Did you go right through Hackensack that day? A. Yes, sir. 30

Q. Do you know any of the streets of Hackensack? A. No.

Q. Don't you know the car don't go within five miles of Hackensack? A. I couldn't say.

Q. You don't know anything about it? A. No, sir.

Q. Did you go to Hackensack that day? A. Yes, sir. I went through Secaucus, over the Hackesack bridge.

Q. Did you go to the town of Hackensack, that is what I am asking you? A. No, sir. 40

Q. What was the next place you came to after the Hackensack bridge? A. Carlstadt.

Q. What was the next place after that? A. Rutherford.

Q. And the next place after that? A. Passaic.

Q. Where was it that this man was injured? A. Paterson Avenue.

10 Q. What town? A. It was about twenty minutes to six.

Q. What town? A. It was in between Carlstadt and Rutherford.

Q. How far from the railroad there, I mean from the Northern Railroad, where the depot is?

Mr. Edwards: The short cut, you mean?

Mr. Weller: No.

20 Q. You mean the railroad? A. About four blocks.

Q. And the car was going toward Hoboken? A. Yes, sir.

Q. This was at what time? A. About half past five or twenty minutes to six.

Q. Sure of that? A. Yes.

Q. Where did Mr. Nirk get on? A. I couldn't tell you where he got on; I didn't take notice where he got on.

30 Q. You didn't notice him? A. No, sir.

Q. You didn't see him standing there holding his eyes down, before he fell, did you? A. No, sir.

Q. What kind of a car was this? A. A big winter car, a long car.

Q. What kind of doors? A. Wooden doors.

Q. And the doors were like that (showing) weren't they? A. Yes, sir.

Q. Mr. Nirk sat right here, near this door? A. Yes, sir.

40 Q. When the conductor opened the door it stood

right open? A. The door stood right open, went back.

Q. Did you see the conductor open the door? A. Yes, to let a passenger in.

Q. How long after the bell rang did he open the door? A. About five seconds.

Q. He rang the bell and then opened the door? A. He didn't open it right away. 10

Q. Only a couple of seconds after this? A. Yes.

Q. When he rang the bell, you didn't hear the motorman put the brake on, did you? A. Well, there is a kind of noise—it makes a sound; I heard it.

Q. Did you hear that as soon as he put on the brake? A. Yes, sir.

Q. Was that where Mr. Nirk fell? A. Yes.

Q. Sure? A. Yes.

Q. The car stopped pretty suddenly, then, didn't it? A. No, sir. 20

Q. Then it slackened pretty suddenly? A. No, sir, it went easy.

Q. How far did the car run after Mr. Nirk fell out? A. About fifteen feet.

Q. Wasn't he lying alongside of the car? A. No, sir.

Q. How far is fifteen feet; just show us in this room? A. Near that chair, the last chair (pointing). 30

Q. It ran about that far after he fell? A. Yes.

Q. When he got up, you saw the blood on him, did you? A. Yes, on his clothes.

Q. Who helped him up? A. It was a man and the motorman.

Q. He couldn't get up himself? A. No, he couldn't get up himself.

Q. They raised him up? A. Yes.

Q. Did they carry him to the car? A. They got him by the arm and walked to the car. 40

Q. I understood you to tell Mr. Edwards you didn't know as to whether the car jerked suddenly or not, is that so?

Mr. Edwards: He didn't say anything of the kind.

10 The Court: There is no use in quoting testimony which you think the witness has given in answer to the other counsel. You have a right to ask him whether such a thing is a fact or not.

Q. You don't know whether there was a sudden jerk or not? A. No; there wasn't no sudden jerk at all.

20 Q. I thought you said you didn't know? A. I looked out of the window, and I saw it slackening down, the car, but I know it didn't make no sudden jerk.

Q. Why did you say a little while ago that you didn't know whether it was a sudden jerk or not? A. I didn't say the car made a sudden jerk.

Q. You said you didn't know whether it did or not, didn't you? A. I said it went around—

Q. But you said a little while ago you didn't know whether it did make a sudden jerk or not, didn't you?

30 Mr. Edwards: I object to any such cross-examination as that. He did not say that.

A. No, sir.

Q. Didn't say anything of the kind, did you? A. No, sir.

40 Q. You say this gentleman sit there with his eyes closed? A. He didn't have them just closed, he was winking them kind of, just as if he was going to sleep.

Q. Did you see the conductor speak to him? A. Yes, sir.

Q. Did he ask if he felt bad? A. He asked if he was hurt very bad.

Q. What did he say? A. He didn't say anything at all.

10

THOMAS P. HALSTED, called as a witness on behalf of the plaintiff and sworn, testified as follows:

Direct-examination by Mr. Edwards:

Q. Where do you live? A. 123 Prospect Avenue, Homestead, New Jersey.

Q. What is your business? A. Motorman.

Q. Are you in the employ of the company still? A. I am.

20

Q. Were you the motorman on the car on the night of the accident to Mr. Nirk? A. I was.

Q. Who was your conductor that night? A. George Gericke.

Q. Do you know what time you left Paterson that night? A. Five o'clock.

Q. Can you tell us what time the accident happened? A. About 5:50.

Q. Were you on time? A. I was.

30

Q. What was the first intimation that you had of the accident? A. An unusual delay.

Q. Just before that delay, did you get any bell to stop? A. I received a bell directly after we left Hackensack Street, for a stop at Vreeland Avenue.

Q. That is the next street, isn't it, Vreeland Avenue? About how many feet are there between those two streets? A. It is an ordinary block, I should judge about two hundred feet.

40

By the Court:

Q. You say you got a bell after leaving Hackensack Street? A. I did.

Q. For a stop at Vreeland Avenue? A. I did.

10 Q. Isn't there a street called Eighth Street? A. There is a little street runs in there, but we never use that for a stopping place, unless a passenger notifies us there; there is no street on the left, only Vreeland Avenue; I don't know what the name of that little street is.

Q. This is in Carlstadt? A. No, sir; Carlstadt is on one side of the road and East Rutherford is on the other; there is no street in Carlstadt, after leaving Hackensack.

20 Q. The trolley line runs on Hoboken Road— A. (Interrupting:) Hoboken Road, I believe they call it—no, the trolley car doesn't run on Hoboken Road; it runs on Paterson Avenue, after leaving Carlstadt Depot, and Hoboken Road, I believe, starts at the crossing there, and it runs right straight over the hill, and we take a turn around and go up Paterson Avenue, turning to the left, going from Hoboken.

Q. Isn't it called Grove Street, part of the way through? A. No, sir, not Grove Street in there, to my knowledge.

30 Q. Well, you got off on a slant, then? A. Yes. If you will show me that map, perhaps, I could show you.

Q. There is the Carlstadt Station (pointing on map)? A. Here is the Carlstadt Station right here, here is the railroad, and we turn and come up this way. This is Hackensack Street here; we make a turn here and go up this way; there is the line of the car.

By Mr. Edwards:

Q. Where is Hackensack Street? A. Right here (pointing) where this turn is.

By the Court:

Q. Hackensack Street is marked on the map. 10  
Turn around the other way; the first street is a little street that you usually do not stop at; is that it? A. It is a street in here (pointing). There is no street in here at all, to my knowledge (pointing to another place on the map).

Q. The second street you say is not cut through?  
A. No, not to my knowledge.

Q. Where is Vreeland Avenue? A. Right here (pointing).

Q. That is marked there on the map, that street, 20  
isn't it? A. I believe it is.

Q. You call it Vreeland Avenue? A. Vreeland Avenue.

Q. That is the first street to the left, and you go down the hill? A. That is, if I am in the right place on the map; I believe I am.

By Mr. Edwards:

Q. Will your Honor let me have the map so that 30  
I can get that quite clear. (Map handed to defendant's counsel.) After you leave the railroad station, the Northern Station— A. It is the New Jersey & New York branch.

Q. You are travelling then east? A. I don't know the points of the compass down there.

Q. At what street were you to stop? A. I got the bell for Vreeland Avenue.

Q. And where were you when you got the bell?  
A. I should judge I was about midway between 40  
Hackensack Street and Vreeland Avenue.

Q. Well, about how many feet from Vreeland Avenue were you? A. That I got the bell?

Q. Yes, in round figures? A. Oh, I should judge about a hundred feet.

Q. Was there any curve between the point where you got the bell and where you finally stopped the car? A. There was not.

10 Q. None at all? A. No, sir.

Q. Was it a perfectly straight track? A. It was.

Q. Before you got the bell had you passed a curve? A. Before I got the bell?

Q. Yes? A. Well, if you want to call it a curve, there is—

Q. How far back was that? A. Right at the crossing, Hackensack Street.

Q. That is how many feet back? A. That is a hundred feet or more.

20 Q. Then you had a perfectly straight track? A. I did.

Q. Where did the next curve come? A. Just below Vreeland Avenue.

Q. On the other side of Vreeland Avenue? A. Yes, this side of it.

Q. I mean the Jersey City side? A. The Jersey City side, yes.

30 Q. When you got the bell to stop the car, what did you do? A. I applied my air, the same as any other motorman would do.

Q. And is it down grade there a little? A. A small grade, yes, not to amount to anything.

Q. What did you do about your power? A. I threw the power off before I put the brake on.

Q. Was the power on then? A. Yes. I put it on to brake it up to ordinary speed; I didn't use the emergency.

40 Q. How fast were you going when you got the bell? A. You have to stop at Hackensack Street, and only running a hundred feet you can't attain

a speed of fifteen or twenty miles. I should judge it was about six or seven miles an hour when I got the bell.

Q. Then, of course, you shut off the power and went and put on the brake? A. I did.

Q. Did you stop in the usual way? A. I did.

Q. Was there any jerk in the car? A. No, sir.

Q. How long did you stop before you knew there was any trouble? A. How long did I stop? 10

Q. Yes; how long were you standing still? A. That would be a hard matter to say; about three minutes.

Q. What did you do then? A. I opened the side door and went back to see. He was lying about fifteen feet from the rear end of the car; we call it about a car length.

Q. How was he lying, or was he standing? A. He was on his feet. 20

Q. He had just gotten on his feet? A. Yes.

Q. Did you notice his condition? A. I did; he seemed under the influence of liquor, because when he came out of Weckman's Hotel, had I not slowed down I would have hit him; we are not in the habit of speeding in the middle of a block, and I slowed up; he stepped to get on, about the middle of the car, when he fell; then he picked himself up; I walked back to him; I noticed a very strong odor of liquor on his breath, and he could not walk straight, both before and after he fell. 30

Q. Did you notice when he started to take the car, as to how he walked? A. Yes, sir; when he crossed my car in front of it, he staggered.

Q. What place did he come out of? A. Weckman's Hotel.

Cross-examination by Mr. Weller:

Q. Where did he get on the car? A. Hoboken Avenue. 40

Q. He did? A. I thought you said where did I get on. He got on at Weckman's Hotel, just this side of Garden Street.

Q. Is that this side or the other side of the Erie Railroad? A. The south side of the railroad.

Q. How many blocks this side of the Erie Railroad? A. Little over a block.

10 Q. Weckman keeps a hotel open on Sunday, does he? A. I believe he does. That is the rule in Carl-sadt? You can sell liquors at any time.

Q. You say this man was pretty drunk? A. He staggered.

Q. Well, you stopped, and took him on? A. Yes, sir.

Q. Isn't it against the rules of the company to take drunken men on a car? A. Not to my knowl-edge.

20 Q. When he got on the car, if he was drunk and there was lots of room inside, why didn't you make him go inside and sit down? A. It is not my place to leave my platform.

Q. It is the conductor's place to do it? A. I don't know what he did.

Q. You saw the man get on the car, though? A. I saw he was on the car.

Q. Did you see where he stood? A. I did not, no, sir.

30 Q. Which side of the street is Weckman's Hotel? A. The left hand side.

Q. Going out or coming in? A. Coming in.

Q. On the left hand side; that is on the north side of the street? A. I couldn't tell the points of the compass.

Q. When he came out was there any one with him? A. No, sir.

Q. He was all alone, was he? A. He was.

Q. You are positive of that? A. I am positive.

40 Q. At what rate were you running? A. When?

Q. Between Rutherford and Carlstadt, from the little spur that goes into Rutherford, down to the place where he fell? A. We have to stop at Hackensack Street, which is a crossing; we were stopping on both sides of that street, I recollect, on that day, which we usually have to do every time we go through there, to take up passengers, and it is only a block from there to Vreeland Avenue, you know; I couldn't attain speed— 10

Q. Until you got to Hackensack Street— A. That was only a block away.

Q. What is your usual rate along there? A. Well, the fastest we ever go is about nine miles.

Q. Nine miles an hour? A. Yes, sir.

Q. You have got to go about nine miles an hour, to make up time, haven't you? A. It all depends on where you are making it up.

Q. You have got to average nine miles an hour right along, haven't you? A. Well, we have got to average nine miles an hour, yes. 20

Q. What time did you leave Paterson that day? A. About five o'clock.

Q. What time did you get to Hoboken Ferry? A. 6:40.

Q. Sure of that? A. Yes, sir.

Q. Have you got a report here? A. Yes, sir.

Q. Will you refer to it? 30

(Defendant's counsel hands witness report.)

By Mr. Edwards:

Q. What time did you leave Paterson? A. 5 P. M.

By Mr. Weller:

Q. What time did you get to Hoboken Ferry? A. 6:40. 40

Q. Is it on there? A. We never put our arriving time on there; we only put our time on when we are late, and then we make out a daily slip, which goes on file.

Q. What time did you get back to Paterson? A. Nine o'clock.

10 Q. Does that show it? A. No. What has that got to do with it, the time I got back?

Q. How long have you worked for the company? A. Nearly three years.

Q. What is the distance from Hoboken to Paterson? A. About eighteen and a half miles.

Q. You would have to run over nine miles an hour then? A. We do in some places, in the meadows.

Q. You have got to average over ten miles, haven't you? A. No.

20 Q. If your time to Paterson was an hour and forty minutes, and you had to go eighteen miles—  
A. I averaged about nine miles an hour when we went in the city, and when we get to the meadows we go faster.

Q. You were approaching the meadows at the time this thing happened, weren't you? A. Well, I was approaching the meadows, yes, I was coming in.

30 Q. How far from the curve did you get the bell?  
A. About a hundred feet the other side of the curve.

Q. How far from the curve did this man fall off?  
A. About fifty feet from the curve, I should judge.

Q. Toward Hoboken or the other way? A. Toward Rutherford, before we got to the curve, fifty feet.

Q. It wasn't two feet from the curve? A. No, sir I brought my car—

40 Q. (Interposing:) And not right on the curve?  
A. No, sir.

Redirect-examination by Mr. Edwards:

Q. About what portion of your trip from Jersey City to Paterson is across the meadows and country places? A. What portion of the trip?

Q. Yes, half? A. Well, about half of it, through the country; I guess a little over half of it is through the country.

10

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DR. WILLIAM J. ARLITZ, called as a witness on behalf of the defendant, and sworn, testified as follows:

Direct-examination by Mr. Edwards:

Q. What is your occupation? A. Physician and surgeon. 20

Q. Where do you reside? A. Hoboken.

Q. Are you connected with any of the hospitals? A. I am visiting surgeon at St. Mary's Hospital; visiting neurologist.

Q. Are you in the employ of the J. C. H. & P.? A. I am, sir.

Q. And have been for some years? A. Four or five years, I think.

Q. Do you remember the accident of February 19th, to Mr. Nirk? A. I do, sir. 30

Q. At least you remember the result of it? Were you called in to look at him that day? A. At about seven o'clock in the evening of the 19th day of February, I arrived at the Jersey City, Hoboken & Paterson Street Railway Company, at 21 Hudson Place, and there saw Mr. Nirk.

Q. Were you sent for? A. I was telephoned for, from Jersey City, I believe.

Q. Just describe, very shortly, what you did? A. 40

I arrived there, and I found this man with a superficial laceration of the left hand, in which was embedded a number of particles of dirt.

10 Q. And was the laceration about as described by the other doctor who was on the stand? A. About as described, yes. I had some difficulty in dressing Mr. Nirk's hand; he was at that time decidedly under the influence of alcohol; he was crying drunk.

Q. What do you say? A. He was crying drunk; at times he was awake, and then he would sleep in the chair, and then he would awake again and commence to cry.

Q. Would such an injury as that cause him to sleep? A. No, it would not; it would keep him awake, the injury; he was sleeping, dozing, asleep in the chair, and he would get up and become boisterous, and then he would cry.

20 Q. Would this injury be such as to cause him to cry? A. To cry?

Q. Yes? A. It was a painful injury.

30 Q. Would it cause him to cry? A. No; that was not the reason he cried; he was crying drunk. I tried to dress his hand, and I had considerable difficulty in doing it; he refused any attention for a long while, and finally I said I wouldn't try it, and he said he was going home; then he became boisterous again and then he begged me to dress his hand, and finally I put in one retention suture, and cleaned out the hand, as well as I could; he wouldn't permit me to clean it out thoroughly, and I wanted him to go to the hospital, to treat him properly.

40 Q. Then you would have been able to treat it properly? A. If he had gone to the hospital, yes, sir, because the dirt would affect the wound and surrounding structures; the wound was structural; the muscular structures, of the ligaments were not injured. On the other hand, he had some superficial abrasions.

Q. What do you mean, scratches? A. Yes. I wanted to examine his knees and body generally, as I usually do in an accident, but he refused.

Q. He wouldn't let you? A. No, he wouldn't permit me, he was very very drunk, almost comatose.

Q. Do hard falls have a tendency to sober up a drunken man? A. Sometimes a drunken man will fall from a roof and won't sober up; I have seen that frequently. 10

Q. You have seen that frequently? A. Well, I have been in Police Headquarters—I was called to treat drunken men like that, and they were not sober.

Q. How long does it take a man that is drunk to get sober? A. Well, it all depends on the degree of toxicohæmia; for instance, a man might suffer or be in a condition called the first stage of alcoholism, and he might sober up within a half an hour; another man would be in the second degree, and he would not be sober the next day; again, another man might be in the third degree of alcoholism—that is, the comatose state—and he might not sober up for forty-eight hours; it all depends on the particular constitution of the individual. 20

Q. It was about seven o'clock when you saw Mr. Nirk? A. About seven o'clock.

Q. And he got on the car at five o'clock; that was over an hour and a half? A. I don't know what time he got on. 30

Q. Assuming that is so; he must have been very drunk then, when he got on at Rutherford? A. Well, I should infer he was as drunk as he was when I saw him.

Q. Would you infer he was drinking or had been an hour and a half before? A. Before he got on the car?

Q. Yes. A. He was pretty drunk. 40

Q. But would you see immediately the effects of drink, suppose he had been drinking before he got on the car? A. Not necessarily; for instance, he might have been in a warm room, and it might affect him; if the man had been in the open air, the alcoholic effect of the stimulant would not be as great as a man who was in a warm room; now, the office was very warm at that time.

By Mr. Weller:

Q. When a man gets affected from alcohol and from heat, it makes him vomit, doesn't it? A. Not necessarily, some men never vomit.

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20 JOHN J. McGOVERN, called as a witness on behalf of the defendant and sworn, testified as follows:

Direct-examination by Mr. Edwards:

Q. Where do you live? A. 553 Newark Street.

Q. What is your business? A. I am an adjuster of claims of the Jersey City, Hoboken & Paterson Railway Company.

30 Q. Did you hold that position in February last? A. Yes.

Q. Did you see Mr. Nirk then? A. Yes, sir.

Q. Where were you? A. I was telephoned for to my house to come down, that there was a man at the office who had been injured, and I went down.

Q. At what time? A. That was around seven o'clock; Dr. Arlitz was there; I met him there at the same time.

40 Q. Did you see this man? A. Yes. He was very drunk; I was in his company from seven to nearly

eight, and I took him from our office and put him on the Rutherford car and sent him home.

Q. Did he have anything to drink? A. No; he had this bottle he speaks about in his possession, but that had not been opened or touched. He was drunk when I first saw him and drunk when I put him on the car to send him home.

(No cross-examination.)

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Recess.

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DR. CLARENCE W. BYERS, recalled, in rebuttal.

By Mr. Weller:

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Q. You have testified that you are acquainted with Mr. Nirk? A. Yes.

Q. Are you acquainted in the neighborhood in which he resides? A. Yes.

Q. Are you acquainted with the people generally in that vicinity? A. Yes, sir.

Q. Are you acquainted with his friends and associates in that vicinity? A. Yes, sir.

Q. Do you know his character for sobriety?

30

Mr. Edwards: I object. How can he prove sobriety by character?

The Court: They are entitled to show his general reputation.

Mr. Edwards: I am willing to admit, your Honor, that generally this man was sober, but that this day he was drunk.

Q. You have heard the testimony of Dr. Arlitz,

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that this man had on a crying drunk, and was boisterous that night? A. Yes, sir.

Q. If a person was that much under the influence of alcohol, would it show on him the next day? A. Most certainly.

Q. What time in the next day did you see him? A. Between nine and ten o'clock the next morning.

10 Q. Did he show any sign of having been drunk the night before? A. Not the slightest.

Q. In what way would it show? A. His eyes would be bloodshot; his pulse would be depressed; and his face flushed.

Q. Had he any of those symptoms at all? A. None whatever.

Q. Are you acquainted with the railroad tracks there? A. Yes, sir; I know them fairly in that vicinity where Mr. Nirk was injured.

20 Q. Are they perfectly straight there?

Objected to.

The Court: I think we ought to have this locality stated in some way.

Mr. Edwards: I do not think this man is the one to settle it.

By Mr. Edwards:

30 Q. Men recover from the effects of drunkenness in varying degrees, don't they? A. Not as a rule, from a crying drunk; a man who has a crying drunk the next day will show it.

Q. Did you have your attention called to the fact — A. I saw Mr. Nirk and he was perfectly sober.

Q. He was perfectly sober the next morning; that was fourteen or fifteen hours afterwards? A. He did not have any signs of it at all.

40 Q. Did you look for the signs? A. I had no occasion.

Q. Was your attention called to it? A. I had no occasion—

Q. You made no specific examination for that? A. I did not, no.

Q. And your attention was not directed to it? A. No.

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GEORGE GERICKE, recalled.

By Mr. Weller:

Q. There is one question that I forgot to ask you. You said the tracks were straight there; isn't it a fact that a part of the way down the hill there the tracks run on the outside and then they run closer together again? A. They are pretty close together near Hackensack Street, and then they run this way (showing). 20

Q. How far east of Hackensack Street do they curve out that way or run to the outside? A. Well, about a hundred feet—seventy-five feet from Hackensack Street, it comes this way.

By Mr. Edwards:

Q. Had you reached that curve at the time of the accident, when the car stopped? A. No. 30

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EMIL A. EGGERS, recalled.

By Mr. Weller:

Q. How long did you say you were a motorman? A. About eight or nine years ago, for fully a year, and last summer for thirty days. 40

Q. Did you run over this same road? A. Over the Paterson line, yes, sir.

Q. Does the car, the electric car, always run down hill more slowly than it does up hill? A. The rules of the company is—

10 Mr. Edwards: I object, unless you produce the rules.

Objection sustained.

Q. Do they usually run faster down hill than up? A. Generally they do.

Q. What? A. Run faster down hill, especially when they are late.

Q. How far was it from Hackensack Street to where the man fell? A. I should judge 200 feet.

20 Q. How long does it take to get a car on a full speed, after it stops.

Objected to.

A. One to two minutes.

Q. How far would the car have to run? A. One to two minutes, to get it full speed, unless the motorman throws on the full power; sometimes he does, other times he takes it slowly; from one to two minutes.

30 Q. How far would the car have to run in feet before they could get it under full headway? A. On a level road?

Q. On a road going down hill like it was there. A. I judge about 100 or 150 feet.

By Mr. Edwards:

Q. Pretty hard to get it in full operation at that, isn't it? A. Not down hill.

40

By Mr. Weller:

Q. Was that car early or late?

Objected to.

A. I stood at the corner of Park Avenue and Paterson Road before the car came along, fully thirty minutes. 10

Q. What was the running time on that road?

A. Fifteen minutes apart.

Q. Then as a motorman would you say the car was early or late?

Objected to as a conclusion.

Q. How close to Mr. Nirk did you stand before he fell off? 20

Objected to as having been gone over.

A. Two or three feet apart.

The Court: You have gone all over that.

Q. Was Mr. Nirk drunk or sober? A. He was sober.

Q. Did you smell anything about his breath, to show he was drunk? A. I didn't smell anything, and I should think if he was drunk, I would have noticed it, because I sat right across the way from him. 30

Q. I will ask this question: I have not asked it in this form; was that car stopped suddenly or was it not?

Mr. Edwards: Objected to. You cannot try this case forever.

The Court: It has all been gone into. 40

By Mr. Edwards:

Q. Did you see this man when he went inside the car? A. I seen the gentleman when we was inside the car, yes, sir; I was standing on the platform.

Q. You stood on the platform? A. Yes, sir.

10 Q. Do you remember his sleeping in the car? A. I noticed he kind of dozed off, certainly, any man would after having a fall.

Objected to and motion to strike out granted.

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EDWARD BLANCHARD, recalled:

20 By Mr. Weller:

Q. I don't know whether you were asked this question or not. Do you remember whether there were many people in that car?

Mr. Edwards: Objected to as being part of the affirmative case.

The Court: He answered that.

30 Q. Did you go up to Mr. Nirk after he fell off the car? A. Yes, sir.

Q. Did you notice his condition? A. Yes, sir.

Q. How was it as to sobriety? A. Sober.

Q. Why do you say he was sober? A. Because I looked at the man; I served the man with ice four years ago and he never had anything but root beer in his icebox.

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By Mr. Edwards:

Q. Was he on ice that day? A. He was perfectly sober.

By Mr. Weller:

Q. You are sure of that? A. Yes, sir. 10

Q. Did you talk to him? A. Yes, sir.

Q. Was he rational? A. Yes, sir.

Q. Did you see any signs of intoxication? A. I didn't see any signs of intoxication at all.

By Mr. Edwards:

Q. Were you in the car after the accident? A. No, sir.

Q. Did you see him while he was on the ground? A. Yes, sir. 20

Q. How long did you talk to him? A. About five minutes.

Q. How near were you to him? A. Right alongside of him.

Q. And you say he was sober because he was always sober when you put ice in his ice box? A. He was sober.

Q. You did not see him get on the car? A. No, sir.

Q. You didn't see him go to sleep? A. No, sir. 30

Q. And you didn't see him when he was crying drunk down in Hoboken? A. No, sir.

Q. Why didn't you take this man home, you knew where he lived? A. He didn't want to go home then.

Q. He was injured? A. He didn't need to be taken home.

MRS. AUGUSTINA NIRK, recalled:

By Mr. Weller:

Q. What time was it when your husband left home? A. Between four and five.

10 Q. What was his condition as to sobriety? A. He was sober.

Q. Did he ever get drunk? A. He drinks a glass of beer; he never gets drunk.

Q. Never gets drunk? A. No, he never does.

Q. What was his condition when he got home, was he drunk or sober? A. Sober; he acted just the same like a man after a shock; like anybody would after such a heavy shock, that he had, that was all.

20 By Mr. Edwards:

Q. You say he left home at four o'clock? A. Between four and five.

Q. How near five, was it half past four? A. After half past four.

Q. You don't know where he went between half past four or quarter to five, and six o'clock? A. No, only what he told me.

30 Q. And you say that he don't get drunk very often? A. No, he don't; he only drinks a glass of beer like every gentleman does.

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ALBERT NIRK, recalled.

By Mr. Weller:

Q. Were you crying drunk when you were in Dr.

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Arlitz's office in Hoboken? A. I wasn't drunk at all.

Q. Did you become boisterous and tell him he could not dress your wound? A. I didn't say anything of the kind.

Q. Did you afterwards beg him to dress your wound? A. I did not.

Q. Did you beg him to dress it? A. I did not; because it hurts me I said—I asked him to give me something so I don't feel these pains. 10

Q. Did you come out of that hotel there? A. I did not.

Q. Were you in that hotel that Sunday? A. I was not.

By Mr. Edwards:

Q. You don't remember very well what happened down in Hoboken, do you? A. I remember everything. 20

Q. How long were you there? A. I was there about half an hour before the doctor came.

Q. And after the doctor came? A. Well, he dressed me up and they took me away in another half hour.

Q. Do you remember going to sleep in the car? A. In the car.

Q. Yes. A. I was not sleeping in the car. 30

Q. Who walked over to the car with you when you left the office? A. What is that?

Q. Who walked to the car with you to send you home? A. That gentleman (pointing).

Q. Mr. McGovern—was he there, and walked with you to the car? A. He brought me to the car, and we had to wait about ten minutes for the car; I started to walk up and down, I was freezing; then another thing, I met a gentleman that always bought flowers from me and I was talking 40

to him about business, and he asked me if I had some little things in bloom, I asked him what kind, and he said he didn't know, that he would let me know the things in the morning, over the telephone.

10 WILLIAM BODENSTEIN, called and sworn as a witness on behalf of the plaintiff in rebuttal, testified as follows:

Direct-examination by Mr. Weller:

Q. Where do you live? A. 409 Main Street, Paterson, New Jersey.

20 Q. Where were you employed on the 19th of last February? A. At the Short Cut crossing, Bergen County Short Cut; that is the Paterson Plank Road crossing, the Bergen County Short Cut.

Q. Of the Erie Railroad Company? A. Yes, sir.

Q. How long have you been in that position? A. Going on nine years.

Q. Are you acquainted with Mr. Nirk? A. I have known the gentleman for, I think, four or five years.

Q. Did you see him on that Sunday when he was injured? A. I did.

30 Q. What time of the day? A. Well, as near as I can recollect, it must have been somewhere about half past four.

Q. What condition was he in as to sobriety? A. He was straight as I ever seen him.

Q. How was that? A. He was perfectly straight.

Q. Then you mean he was perfectly sober? A. Yes.

Cross-examination by Mr. Edwards:

40 Q. Did you see him right after he left his house?

A. Yes, his house is only two or three blocks away.

Q. And he came right out of his house and you saw him? A. I was standing inside of my shanty, and I called to Mr. Nirk to come back, and he was talking to me.

Q. You saw him then? A. Yes, sir.

Q. That was about half past four? A. About that.

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Q. Was that the last you saw him? A. Yes, sir.

Q. He was injured, you understand, about a quarter of six; you didn't see him for the next hour?

A. No, I didn't see him.

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RUDOLPH SRHM, called and sworn as a witness on behalf of the plaintiff in rebuttal, testified as follows:

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By Mr. Weller:

Q. What is your business? A. Barber.

Q. Where is your place of business? A. Carlstadt.

Q. Do you know where the Short Cut is? A. I do, sir.

Q. How far from the Short Cut is your place? A. About twenty minutes walk.

30

Q. Are you this way or the other from that? A. Up in Carlstadt.

Q. Did you see Mr. Nirk on that day? A. I did.

Q. What time? A. About two o'clock he came in my place.

Q. How long did he stay there? A. Well, I had about four or five customers in there, and he had to wait; it was three o'clock before I was finished, and then we talked together about twenty minutes after that.

40

Q. What condition was he in? A. Sober.

Q. You didn't see him after that? A. No.

Cross-examination by Mr. Edwards:

Q. Where were you talking to him? A. In my shop.

10 Q. Did you have anything to drink there? A. No.

Q. When was the next time you saw him? A. About twenty minutes after three.

Q. Well, a man has time enough to get full between that and six o'clock, hasn't he? A. Well, I guess he has.

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20 HARRY G. GARDNER, called and sworn as a witness on behalf of the plaintiff in rebuttal, testified as follows:

Direct-examination by Mr. Weller:

Q. Where do you reside? A. 345 Montrose Avenue, Rutherford.

Q. What is your business? A. Superintendent of the Flintkote Manufacturing Company.

30 Q. How long have you held that position? A. Four years.

Q. Do you know Mr. Nirk? A. I do.

Q. Did you see him on Sunday, the 19th of February? A. I did.

Q. Where? A. I met him at the flag station, at half past four.

Q. Did you have any conversation with him? A. I took him over to the mill; I showed him through the mill.

40 Q. How long were you in going through the mill? A. Well I left the mill at five o'clock.

By the Court:

Q. Where is the mill? A. About 400 feet from the Short Cut, on Maple Street.

By Mr. Weller:

Q. What condition was Mr. Nirk in as to sobriety at that time? A. Perfectly sober when I saw him. 10

Q. Did you and he have anything to drink while you were together? A. No, sir.

Cross-examination by Mr. Edwards:

Q. Did you smell liquor on him? A. No, sir.

Q. None at all? A. No, sir.

Q. Hadn't had a glass of this wine? A. No, sir. 20

Q. Did he have a bottle in his pocket? A. I think he did.

Testimony Closed.

Mr. Edwards: I now ask, may it please the Court, for the direction of a verdict in this case on the ground of the overwhelming weight of evidence. There was no unusual shock in bringing this car to a stop, and there was nothing in the action of the motorman or conductor that contributed in the least degree to the accident, having only the testimony of one man, Mr. Eggers, and that of a very indefinite character; and there was no negligence on the part of the motorman, in bringing the car to a stop, or the conductor in opening the door. 30

The Court: I think the testimony of Mr. Eggers will require the Court to submit the matter to the jury, for examination. 40

Mr. Edwards: I ask for an exception.

Mr. Edwards sums up for the defendant, and Mr. Weller for the plaintiff.

The Court charged the jury as follows:

10 Mr. Weller: I request the Court to charge,  
"A carrier owes to its passengers a high degree of care, and the plaintiff in preserving his equilibrium had a right to rely upon the protection of the closed door; and it was the duty of the conductor to warn the plaintiff before opening the door suddenly."

PARKER, J.:

20 Gentlemen, the plaintiff in this case, Mr. Nirk, claims to have been injured by being thrown from or by falling off of a car of the defendant company, at or near Carlstadt, in the County of Bergen, while the car was on its way from Hoboken; and he claims damages from the company for his injuries.

30 In order to be entitled to damages in this suit, the plaintiff must show satisfactorily, by way of evidence, that there was some negligence on the part of the employees of the company who were in charge of that car, and that that negligence was the cause of the injury. If he has not shown that satisfactorily, and by way of evidence, he is not entitled to recover in this case.

40 Now, the plaintiff claims that the negligence in question consisted in the combined act of the conductor of the car, in opening the door near which he was standing on the platform, and of the motor-man in so operating the car as to cause such an unusual lurch or jerk of the car as to throw Mr. Nirk off of the platform, on to the ground. Our cases go so far as to say, as I understand, that in

such a case as this the occurrence of an unusual lurch or jerk, of sufficient violence to throw a passenger in such a position as the plaintiff, off of the platform and on to the street, may be considered by the jury as evidence of negligence; and if the jury do so consider, that might furnish the foundation of a verdict.

It is not a very usual, or ordinary lurch or jerk of the car, that can be considered as negligence on the part of those operating the car. The car might start somewhat suddenly, and might stop somewhat suddenly, for the comfort or convenience of a passenger, but in view of the agencies that have to be employed in the operation of these cars, for the sake of acquiring a rapid despatch of passengers from one point to another, things of that character are in general inevitable; we cannot escape them; and it must, therefore, be something out of the ordinary run that can be called negligence. For example, a car goes around a curve at an ordinary speed. Cars do that every day in this town, and passengers stand on the platform, and they are not, necessarily, entitled to claim damages from the company if they should happen, under those circumstances, to be pitched off by the swinging of the car. So, as I say, it should be something unusual and the evidence must so show.

Was this plaintiff obliged to be on the platform? He says—and he is supported by one or more of his witnesses—that the car inside was full. One of the witnesses says that there were people standing up, holding on to the straps, and another, or the same witness, says that after Mr. Nirk was injured he went inside of the car and some one had to get up and give him a seat. The testimony on the part of the defendant is that there were fifteen people in the car, and that it would hold forty, so that it was not as much as half full. However, in either case,

the fact of passengers riding on the platforms is more or less well recognized, and has been recognized by the counsel for the defence in this case; but it should be said that a passenger who voluntarily rides on the platform when there is room for him inside of the car, where seats are provided for him, should be considered to assume all the ordinary risks of riding on the platform, and among them is the risk of ordinary jerks or ordinary lurches of the car, against which, if inside of the car, he would be perfectly safe. So you see, that if it was merely one of the usual occurrences the company would not be liable.

Now, was it unusual? Here is the discrepancy in the testimony between the plaintiff and the defence. As I recollect, there is only one witness who testifies to any lurch or jerk at all, although there may be none; the one I remember more particularly is Mr. Eggers. There is also testimony tending to show, although contradicted, that at this place where the plaintiff fell or was thrown from the car, there was a curve of greater or less sharpness. If the curve was combined with the lurch there might be created such an unusual situation, perhaps, as to make it negligence for the motorman to have stopped the car in the way in which the plaintiff claims he did.

The question before you is entirely one of fact, and the question of law has to be dealt with by the Court. Was there such an unusual occurrence, out of the ordinary run, as to raise in the minds of a reasonable jury the inference that the motorman was not operating his car with the care which the law requires of him? As a general proposition, the law says that the defendant company, and its servants as well, were bound to use what is called a high degree of care for the safety of the passengers who entrust themselves to its conveyances.

That question is somewhat modified by the fact of Mr. Nirk standing on the platform, if he could get inside of the car.

So far as concerns the question of the conductor's opening the door—or of the conductor's opening of the door on an unusual side—the Court sees no reason why this defendant company should be charged with negligence, because at that time, under those circumstances (the ground being filled with snow), and the tracks being at some distance apart, as it was stated, and apparently not denied, at the time the conductor opened the door the conductor should have chosen to open the door on the left hand side at a point where it would manifestly be more convenient for these old passengers to alight. It might be a question whether the conductor would be negligent in opening the door on that side, under any circumstances, unless it was in a place where it would be dangerous for passengers to get down; that would be the only reason that would make it negligence to do it at all.

But the main question is the question of operation by the motorman. If the evidence does not satisfy you that the motorman was negligent, of course, there should not be any verdict against this company. If you find from the evidence that he was, under the rules I have laid down, then you would be entitled to ask yourselves, and ascertain, what damages this plaintiff is entitled to.

the plaintiff does not seem to be permanently injured, to any material degree, although he complains of pain in the changes of weather, in his hands and in his knees. Presumably that might pass away more or less, if not entirely, in the lapse of time. No bones were broken; the only breaking of the skin of any consequence was a cut on one of his hands, which was dressed first by Dr. Arlitz, then by his own doctor in Rutherford, and which

has apparently entirely healed, both doctors says, especially his own. He has sworn that he had to pay his own doctor \$50; if that was a reasonable charge he, of course, should be reimbursed for that. He has also sworn that he lost a suit of clothes, which his wife said was worth \$25 when new, as they were made to order, and you would be entitled

10 to reimburse him for the fair value of that; he also swears that he lost four weeks' wages at twelve dollars a week; that would be forty-eight dollars, and he should be reimbursed for that; also that he lost four weeks extra compensation that he would have had; whether it was under contract or not makes no special difference; if in the regular course of things he would have made it, he is entitled to have it back again; that would be twenty-four dol-

20 lars more. Those are all the items of expense in the testimony, that I recollect. That would be something less than \$150, you see, in all, as the expense that he has been put to. Then you should add to that such a reasonable amount as will fairly compensate him for the pain and suffering of the accident, and that is all. Now, what amount should that be? It should be, as I say, a reasonable compensation, in view of the fact that he is not permanently injured; except so far as his aches and pains are concerned he is to-day practically a well

30 man.

Counsel has reminded me, and very properly, of the claim made on the part of the defence, that this plaintiff was intoxicated at the time he got upon the car. Intoxication is not of itself negligence, but intoxication is no excuse for negligence; and that leads the Court to add this further proposition to what has already been stated, that if Mr. Nirk was in a condition of intoxication such as to make it dangerous for him to stand upon the platform of a

40 moving car—more dangerous than for a sober man

to do so—and if by reason of that condition of intoxication, in part, he was by a lurch or jerk of the car thrown from it under circumstances when a sober man would not have been thrown, in the absence of any negligence on the part of the motor-man or conductor, then he would not be entitled to recover.

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Mr. Weller: I except to all that your Honor said about when cars go around a curve at the ordinary rate of speed, that a passenger is not entitled to damages, and so forth. I cannot get the exact words, but it is in the charge.

The Court: Very well. Take your exception.

Mr. Weller: To all that your Honor said about the plaintiff not being obliged to be on the platform. 20

The Court: You may take your exception to that.

Mr. Weller: And to all your Honor said, that the duty of the defendant to use a high degree of care might be modified by the passenger standing on the platform.

The Court: I did not say exactly that, but I know what you mean. Take your exception. 30

Mr. Weller: And again, the only thing that would make it negligence at all would be the opening of the gate at some place where the plaintiff could fall, or words to that effect.

The Court: I do not think I said that—“where it would be dangerous.” You may take your exception.

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## HUDSON COUNTY CIRCUIT COURT.

10	<p style="text-align: center;">ALBERT NIRK, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JERSEY CITY, HOBOKEN AND PAT- ERSON STREET RAILWAY COM- PANY, Defendant.</p>	} In Tort. Exception.
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The Court refused to charge the following request to charge made by the plaintiff:

20 "I request the Court to charge 'a carrier owes to its passengers a high degree or care and the plaintiff in preserving his equilibrium had a right to rely upon the protection of the closed door, and it was the duty of the conductor to warn the plaintiff before opening the door suddenly.'"

To which refusal to charge the plaintiff prays that an exception may be allowed and it is allowed and signed and sealed accordingly.

C. W. PARKER, J. (Seal.)

30 By Mr. Weller: I except to that part of the charge of the Court wherein the Court said, "As a general proposition the law says that the defendant company and its servants as well were bound to use what is called a high degree of care for the safety of the passengers who entrusted themselves to its conveyance. That question is somewhat modified by the fact that Mr. Nirk standing on the platform, if he could get inside."

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To which charge the plaintiff prays that an exception may be allowed and it is allowed and signed and sealed accordingly.

C. W. PARKER, J. (Seal.)

By Mr. Weller: I also except to that part of the charge wherein the Court said:

"It might be a question whether the conductor would be negligent in opening the door on that side unless it was in a place where it would be dangerous for passengers to get down; that would be the only reason that would make it negligence to do it at all." 10

To which charge the plaintiff prays that an exception may be allowed, and it is allowed and signed and sealed accordingly.

C. W. PARKER, J. (Seal.)

By Mr. Weller: I also except to that part of the charge of the Court wherein the Court said: 20

"For example a car goes around a curve at an ordinary speed, cars do that every day in this town, and passengers stand on the platform and they are not necessarily entitled to claim damages from the company if they should happen under these circumstances to be pitched off by the swinging of the car."

To which charge the plaintiff prays that an exception may be allowed and it is allowed and signed and sealed accordingly." 30

C. W. PARKER, J. (Seal.)

Therefore to try the issue above joined let a jury come before the said Circuit Court, at Jersey City aforesaid, on the first day of November, A. D. 1905, as yet of the Term of September in the year of our Lord one thousand nine hundred and five, who, neither, &c., by whom, &c., to recognize, &c., because as well, &c., the same day is given to the parties 40

aforesaid, at which day before the said Circuit Court comes the said parties by their attorneys aforesaid, and the jurors of the jury above mentioned also come, who to speak the truth of the matters aforesaid being chosen, tried and sworn, say upon their oath that the said defendant is not guilty as the said plaintiff hath thereof above complained  
 10 against it and that they find in favor of the defendant and against the plaintiff over and above his costs and charges by the said defendant about his suit in this behalf expended.

Therefore, it is considered that the said defendant do recover against the said plaintiff his judgment, aforesaid, in manner aforesaid found, and also           dollars and           cents for his said costs and charges by the said Court now here adjudged, and which said damages, costs and charges  
 20 in the whole amount to           dollars and           cents.

And the said defendant in mercy, &c.

Judgment entered and signed this third day of November, 1905.

C. W. PARKER,  
 Judge.

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New Jersey, ss. :

(L.S.)           The State of New Jersey, to J. Franklin  
Fort, Esquire, Judge of our Cir-  
cuit Court, at Jersey City, in and  
for the County of Hudson, or  
such Justice of the Supreme  
Court of the State of New Jer-  
sey, as shall hold such Circuit  
Court. 10

Greeting: For as much as in the record and pro-  
ceedings, and also in the giving of the judgment in  
a certain plaint which was in our said Circuit  
Court, holden at Jersey City, in and for the said  
County of Hudson, between Albert Nirk, plaintiff,  
and the Jersey City, Hoboken and Paterson Street  
Railway Company, defendant, in an action in tort  
manifest error hath intervened to the great damage  
of said plaintiff, as it is said; we being willing that  
the error, if any there be, should in due manner be  
corrected and full and speedily justice done to the  
parties aforesaid in this behalf, do command you  
distinctly and openly to send, under your seal, the  
record and proceedings aforesaid, with all things  
touching and concerning the same, to our Justices  
of our Court of Errors and Appeals in the last re-  
sort in all causes, at Trenton, on the Eighth day of  
November, nineteen hundred and six, together with  
this writ, that the record and proceedings aforesaid  
being inspected we may cause to be further done  
thereupon, for correcting that error what of right  
and according to the law and custom of the State  
of New Jersey ought to be done. 20  
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Witness, our Chancellor and President Judge of  
our said Court of Errors and Appeals at Trenton

aforesaid, the nineteenth day of October, nineteen hundred and six.

S. D. DICKINSON,  
Clerk.

Weller & Lichtenstein,  
Attorneys.

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NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.

ALBERT NIRK,  
Plaintiff,

vs.

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JERSEY CITY, HOBOKEN AND PAT-  
ERSON STREET RAILWAY COM-  
PANY,  
Defendant in Error.

Assignment  
of Errors.

And now at this day the said plaintiff in error assigns the following causes of error:

30 1. Because the Court erred in refusing the following request to charge made by the plaintiff:

“A carrier owes to its passengers a high degree of care and the plaintiff in preserving his equilibrium had a right to rely upon the protection of the closed door, and it was the duty of the conductor to warn the plaintiff before opening the door suddenly.”

2. Because the Court erred in charging the jury:

“As a general proposition the law says that the defendant company, and its servants as well, were

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bound to use what is called a high decree of care for the safety of the passengers who entrust themselves to its conveyance. That question is somewhat modified by the fact of Mr. Nirk standing on the platform, if he could get inside the car."

3. Because the Court charged the jury:

"It might be a question whether the conductor would be negligent in opening the door on that side, unless it was in a place where it would be dangerous for passengers to get down; that would be the only reason that would make it negligence to do it at all."

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4. Because the Court charged the jury:

"For example, a car goes around a curve at an ordinary speed, cars do that every day in this town, and passengers stand on the platform, and they are not necessarily entitled to claim damages from the company, if they should happen under those circumstances to be pitched off by the swinging of the car."

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Dated, November 9, 1906.

WELLER & LICHTENSTEIN,  
Attorneys for Plaintiff in Error.

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**Joinder in Error in Common Form.**

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The first part of the paper is devoted to a general  
 discussion of the problem. It is shown that the  
 problem is equivalent to the problem of finding  
 the minimum of a certain function. This function  
 is defined as follows:

Let  $f(x)$  be a function defined on the interval  
 $[a, b]$ . Let  $x_1, x_2, \dots, x_n$  be a set of  
 points in the interval  $[a, b]$ . Let  $f_1, f_2, \dots, f_n$   
 be the values of the function  $f(x)$  at the points  
 $x_1, x_2, \dots, x_n$  respectively. Let  $F$  be the  
 function defined by

$$F(x) = \sum_{i=1}^n f_i(x - x_i)$$

where  $f_i(x) = \begin{cases} f(x) & \text{if } x \geq x_i \\ 0 & \text{if } x < x_i \end{cases}$

It is shown that the minimum of the function  $F(x)$   
 is attained at one of the points  $x_1, x_2, \dots, x_n$ .  
 This result is used to solve the problem of finding  
 the minimum of a certain function.

COURT OF DEBTS AND APPEALS

