

New Jersey Court of Errors

SAMUEL R. SAVAGE.

Appellee,

vs.

PUBLIC SERVICE RAILWAY
COMPANY,

Appellant.

Action at Law
On Appeal
from New
Jersey Su-
preme Court.

APPELLANT'S BRIEF.

Statement of the Case.

This is a negligence cause based on an accident, in which the plaintiff was involved, on April 3, 1915, on Cooper Street, Woodbury, Gloucester County, between one and two o'clock in the afternoon.

The plaintiff, during a severe snowstorm, was driving his automobile in the car track in an easterly direction at the rate of about fifteen miles an hour immediately before the accident, and came into collision, squarely head on, with the defendant's westbound car, running at the rate of about eight miles an hour immediately before the accident, injuring himself and practically demolishing his automobile.

The case was tried at the Gloucester Circuit on November 5, 1915, before Honorable Howard Carrow and a jury, and resulted in a verdict in favor of the plaintiff in the sum of \$4,400.

Grounds of Appeal upon Which Appellant Will Rely.

The grounds of appeal will be found on pages 123 and 124 of the printed book, and the only ones upon which the appellant relies to sustain its appeal are Nos. 3 and 4, which read as follows:

3. Because the trial court, although requested so to do by the attorney of the defendant below, such request being based on the ground that the whole case disclosed no negligence on the part of the defendant below, refused, at the close of the whole case, to direct a verdict in favor of the defendant below.

4. Because the trial court, although requested so to do by the attorney of the defendant below, such request being based on the ground that on the whole case the plaintiff below was clearly guilty of negligence that contributed to the happening of the said alleged accident, refused to direct a verdict in favor of the defendant below.

Argument.

The easiest way to get at the facts leading up to and causing the accident is to give a résumé of the testimony.

The plaintiff testified (p. 7) that he was a truck farmer living at a place called Fairview, and that on the day of the accident, Saturday, April 3, 1915, in returning from Philadelphia, where he had been on business, he left the train at Woodbury and started home; that (p. 8) he arrived at Woodbury about quarter to one o'clock in the

afternoon, and as it was snowing he obtained some rope for the purpose of wrapping it on the rear wheels of his automobile as a better protection from its skidding; that the car he was using was a six cylinder Studebaker; that (p. 9) about one o'clock he started home on Cooper Street; (l. 18) "Q. What was the condition of the trolley tracks or the sides of the road on each side of the trolley track as you were going out Cooper Street? A. Well, there hadn't been nobody driving anywhere but on the tracks. Snow was laying anywhere from six inches to a foot deep along until I got outside by the Country Club, then it was drifting and it was as much as two feet deep, two and a half on the side where we would drive with the wagon or automobile. Coming out there is only one side of the road has a road there, and it wasn't safe to run along there, there was a set of telephone poles and trolley poles there and a ditch combined, so I took to the track. Q. Which side of the road as you were going out is the side that there is a roadway? A. On the left hand side coming out, the left hand side to drive out. Q. Is there any roadway at the place where the collision occurred on the right hand side? A. No, sir, nothing; there is some mud, ground there, but (p. 10) it ain't safe even hardly that kind of a day for a horse to walk on. Q. Where did you go into the tracks, did you say, about? A. As soon as I left the patent pavement at the Country Club I took to the tracks. Q. And what rate of speed were you going at that time? A. Well, it was running along, as near as I can remember, I looked at my speedometer when I was half way down the hill—about twelve or fifteen miles an hour, is all I could recollect of that part. It wasn't safe to run fast at all. Q. Were you run-

ning to be safe? A. Sure, I was prepared, for I had my eyes screened looking out at the vent; I had to look out with the snow beating in my eyes at that. Q. Now, what kind of day was it? A. Well, it was a terrible stormy day. Q. And what did you do with your automobile for the purpose of giving you an opportunity to see what was ahead of you? A. I opened my rain vision before I left the garage. Q. How much space did that give you open between the two portions of your glass, rainshield? A. About three to four inches. Q. And what did you do, if anything, so that you could see out of that portion of the car, that is, out between the rain vision? Could you sit up as you ordinarily did and see? A. No, I had to stoop down just a trifle to see out. If I had opened it all the way up I could have saw out, but I was under the impression that it was letting more snow in than I could have any idea of seeing through. Could you see through as far as the rain shield was concerned or windshield—could you see through between them? A. Oh, yes, I had plenty of room to see through. Q. Now, what, if anything, did you encounter on your way out there, Mr. Savage—just tell us in your own language what you came up against and what you saw first, if anything, what you did and what happened? A. Well, I encountered a trolley car. Q. Well, tell us, won't you, in your own language what first drew your attention to it, if anything? A. Well, the first thing that drew my attention, as I was watching my way as I went down the track through the snow, a trolley car popped up, it was a yellow painted car—popped up in my sight all at once. It was just as near the color of the snowstorm as anything I ever seen to come up in front of you. Q. About how far away from you? A. Well, about twenty-five

feet, as near as I could recollect. Q. Was it running or not? A. Yes, sure. Q. Had you heard any signal of bell or whistle? A. No, sir, nothing at all. Q. Which way was the wind blowing from that day? A. Blowing from the east. Q. Was that coming toward you from the trolley car or away from you? A. Coming right toward me. Q. What did you do when you first saw this trolley car? A. I throwed my clutch out with one foot, put my footbrake on with the other and pulled back the emergency brake. Q. Did that stop the speed of your car? A. I done all I could to stop it. Q. Did it stop the speed of your car somewhat by doing that? A. Yes; seemed to; didn't stop it still"; that (p. 12) after he saw the car "it was only a snap of my finger" before the accident; that he could not tell whether the trolley car was running faster or slower than he was; that (p. 13) the first thing he saw after the accident was the motorman, at which time his automobile was still in the tracks; "Q. How far away from the car? A. Well, from seven to ten feet, as near as I can recollect; there was a rebound to it."

On cross-examination the plaintiff testified that at the time he started home from Woodbury there was about ten inches of snow on the ground but that when he started from his home in the morning it had not then started snowing; that the snow started between eight and nine o'clock in the morning.

As to his anxiety to get home he testified (p. 39), "Q. And you were in a hurry to get back home? A. Yes, I had a good deal of business out there, things that needed taking care of. There was all them tomato plants and a great, big, long sweet potato bed, and there had to be a fire kept in that, and my mind was—" He says that he did not hurry

his automobile, although he was in a hurry to get home.

It appears (p. 40) that the plaintiff did not go on the roadway outside the trolley tracks because he was afraid of his automobile skidding, and that in taking the tracks he knew that it was difficult to get out of them. Although he had used them he had not used them very often. (l. 16) "Q. But what was there about that snow that made it unsafe? A. I would like to have had you there; I would have showed you what made it unsafe, a ditch on one side and two sets of poles and ten or twelve inches of snow; two foot the snow had drifted some places on that road. Q. Were you afraid of skidding? A. Yes. Q. Wasn't that what made it unsafe on the side? A. To a certain extent, sure. I have heard and read of many a man climbing telephone poles—they had had that news in the paper about me at the time after it happened. Q. You did not go on the side road for fear your automobile would skid, isn't that correct? A. That is it. Q. Now, you did not expect any snowstorm in the morning when you started out to Philadelphia, did you? A. No. Q. And you didn't take your chains with you? A. No, sir. Q. You had chains at home that would have prevented skidding, hadn't you? A. Not altogether, no, nothing would prevent in a case like that, as bad as that. (P. 41.) Q. So there was nothing safe? A. Nothing is safe that ever I seen on an automobile. Q. When you started to take the trolley tracks, did you think you were safe from skidding then? A. Yes, you get in the tracks you can pilot your way down there, and there is no way of sliding out as easy as it would be in sliding in and out on a slippery wet snow like that was. Q. In fact, it is pretty hard to get out of wet trolley tracks after you get in them,

isn't it? A. Yes. Q. And you had often used that road before, had you not? A. Plenty of times. Q. And you had traveled in these trolley tracks before, hadn't you? A. Yes, not very often, though, only when it was necessary; if the side roads was muddy and slippery or turning out for a wagon; if I would be going into Woodbury and a wagon would be coming out, I would have to give them the right of way and have to take to the track to let them have the right of way to come out. Q. But you were familiar with the kind of trolley rails that there were on that road, weren't you? A. Yes."

He further testified that his automobile weighed 3,000 or 3,200 pounds; that (p. 43) at the time and just prior to the accident he was running his automobile down grade; that this grade was about 1,500 feet long and the accident occurred near the bottom; that the road was straight from the top of the grade to a bridge near the bottom of the grade, and beyond the bridge the trolley tracks turn from the road and run on a private right of way. And the accident occurred at a point between 200 and 300 feet westerly from the bridge.

As to the conditions leading up to the accident, he further testifies (p. 45, l. 25) "Q. I mean after the time you left Woodbury; had you been going down that road unable to see more than twenty feet all the way? A. Yes. Q. What? A. Yes, sir, and I went slow enough so I could pilot my way. Q. Well, you went fifteen miles an hour, didn't you? A. Yes. Q. When you saw the car you shut off your power and put on your brakes? A. Yes. Q. But your automobile was still moving when you hit the car, wasn't it? A. As far as I know; that is as far as I know, I couldn't say positively whether I had brought it to a standstill or not. Q. How far do you think your automobile

went after you shut off the power and put on the brakes? (P. 46) A. It brought up against the trolley car, that is how far it went. Q. How far is that? A. Well, you got me there? Q. You don't know? A. No. Q. Now, Mr. Savage, with that same car that you had that day and on that hill where the accident happened under the same conditions, within what distance could you stop that automobile if you tried? A. In a snowstorm or on a dry road? Q. In a snowstorm under those same conditions, on the same kind of tracks? A. That I couldn't tell you, never tried it, never experienced that thing to see how long it would take it to stop in a snowstorm like that, because we don't have them very often like that. Q. How long had you been going at the rate of fifteen miles an hour before meeting this car? A. After I got over the railroad down here, started on down the grade there from the railroad depot down Cooper Street, I went on about that gait, from twelve to fifteen; it wasn't all fifteen.

The signed statement which the plaintiff made is called to his attention, which he readily admits and confirms, and on examination it appears (p. 49, l. 30) that as it was snowing hard and very thick, and as he knew it was a dangerous place on the trolley tracks, he looked at his speedometer and saw that he was going fifteen miles an hour and that the time he thus looked (p. 50) was just before the accident happened.

He further testifies (p. 50, l. 21): Q. Now, did you keep a careful lookout as you were coming down this hill? A. I did; the only time I wasn't looking at that was when I cast my eyes at the speedometer, because I was aware of what— Q. You said in your statement that you knew you were in a dangerous place? A. Yes. Q. And you meant by that that you were likely to meet

a trolley car? A. Yes. Q. Coming in the opposite direction? A. Sure. Q. And up to that time, while coming down this hill, you had not been able to see more than fifteen feet ahead of you, is that true? A. No, further than that, twenty to twenty-five feet; don't make it any closer than what it was. Q. You could not see objects more than twenty feet away? A. That is as far as I could— Yes, I could see further than that, but that is as far as (p. 51) I saw that trolley, as near as I can judge ahead of me, on account of the snow and the paint on the trolley car looking near alike in color. Q. I want to call your attention to Exhibit D-3 for identification where it says, "Car and auto were still in motion when the collision occurred. The reason I did not see the car before I did was on account of the snow falling so thick which prevented me from seeing over twenty feet ahead." A. Yes; that (p. 52) there was snow on the front windows of the trolley car ahead of the motorman; that (p. 53, l. 38) the accident occurred in a very sparsely settled neighborhood; there being 'only two or three houses all the way down that fifteen hundred feet, two of them on the left, one of them, a new one, and the others on the right.' "

As to what signals the plaintiff gave, he testifies (p. 54, l. 30), "Q. Mr. Savage, at the time that this accident occurred you had a horn on your car? A. An electric horn. Q. Yes, and that was a device for giving warning? A. Yes. Q. Now, did you blow that horn before the accident? A. Before the accident? No, sir, I didn't think it was necessary to blow it to draw a trolleyman's attention in an enclosed car; if it had been a man, horse and wagon or an automobile, anything (p. 55) else, it would have come right in my mind to blow it, just that quick, but I don't notice people ever

blowing for trolley cars in automobiles. I don't think the law ever calls for that."

In answering questions by the Court (p. 55) he testifies that the motorman of the car did not signal, that he did not hear a sound from him; that (p. 56) as to the direction from which the storm was coming, in relation to the plaintiff's line of travel, he testifies (p. 56) "Q. Well, what quarter—I am speaking now as far as the street is concerned—suppose the street was straight ahead of you? A. It was off on a quarter about this way. Q. Coming crossways, was it? A. Yes, sir. Q. Partly, at least? A. Yes."

Besides the testimony given by the plaintiff himself, there was the testimony of several other witnesses, as follows:

CLAYTON EASTLACK testified (p. 60) merely that he moved the automobile off the tracks; that at the time he went to the scene of the accident to move it the front was in the track; that he was present at the scene of the accident on the following Monday morning when the photographs were taken of the automobile as it appeared immediately after the accident. Copies of these photographs will be found in the back of the printed book.

JOSEPH HUDSON testified (p. 65) that he was a passenger in the car; that the doors leading from the main part of the car to the motorman's platform were open and that the first he knew about an accident he saw a flash of light; that (p. 66) the car was running at a moderate rate of speed. As to his knowledge of the facts leading up to the accident he testifies (p. 65, l. 40), "Q. How fast was the car running, Mr. Hudson? (p.

66) A. Well, now, that I couldn't say; it was running at a moderate rate, but how fast I couldn't say. Q. Did you see the motorman before the flash? A. Yes, I seen him looking. Q. Did you see any effort on his part to stop the car before the flash? A. No, sir. Q. Did you hear any noise when the flash was made? A. Just a sound, I don't know how loud it might be. Q. Well, what did that sound indicate to you? A. Well, something came together. Q. Was the car standing still or running? A. The car was running. Q. Had there been any effort that you could see to stop the car before you heard this sound and saw this flash? A. None. Q. Had there been any bell sounded or whistle blown? A. None.

This witness further testified that after he had gotten off the car and assisted Mr. Savage from the automobile into the trolley car he went to the motorman's platform and made an effort to look in front of the car but he could see nothing. He says (p. 67, l. 22): "Q. What did you see? A. I couldn't see nothing. Q. Were the windows open or closed? A. Closed. Q. Why couldn't you see out? A. Because it was closed with snow. Q. Standing in the place that the motorman stood, was it possible to see anything in front of the car as you looked at it at that time? A. No, sir."

On cross-examination he testified (p. 69) that the first thing he saw was a flash from somewhere in front of the car; that he doesn't know where it came from, and that the flash and the collision seemed to come at one time; that (p. 71) he cannot say whether the motorman was looking ahead or not.

CHARLES SAGERS testified (p. 74) that he was a passenger, and the first his attention was called to the accident was that he heard a crash, at which time the car was running and that before the accident he did not hear any signal given; that as to what he did immediately after the accident he testifies (p. 75) "Q. After the crash you heard, what did you do? A. Walked to the front of the car. Q. What did you do when you walked to the front of the car? A. Looked out and saw it was Mr. Savage. Q. Where were you standing in the car at that time? A. When I went to look out? Q. Yes. A. Why, just on the raise, just before it steps down to where the motorman stands. Q. You were up in the car—you weren't on the platform? A. I was in the car. Q. And how high is that raise, about, from the place where the motorman stands? A. I couldn't tell you that, I don't know. Q. Well, you can tell whether it is two inches? A. I should judge it was four inches anyway. Q. And you standing in the middle of this raise, whatever it was, looked out the front and saw Mr. Savage, did you? A. Yes. Q. Do you know whether the window was open or closed? A. Why, the window was closed; that (p. 75, l. 35) when he got out of the car the automobile was six feet away from the car.

JOHN FUHLBRICK testified (p. 79) that he was a passenger and the first his attention was called to the collision was the crash; that he saw no effort on the part of the motorman to stop the car. He testified (p. 80, l. 20) "the first thing was a flash and this upper thing there he threwed that; that was after the bump"; that he had heard no bell or whistle before the accident, and at the time of the accident the car was in motion; that

(p. 81) he could not see out of the windows on the front platform as the snow was up against the windows; this was after the accident.

EDWARD R. JONES, one of the jurors on the general panel, testified (p. 88) that he was a passenger on the car and his attention was called to the accident by a crash and the car stopping all at once. He testifies (p. 89) "Q. Was the car stopped before the crash or afterward? A. No, sir. Q. No, sir, what? A. The same time, the car stopped and the crash I heard at the same time. Q. How fast, about, was the car running before the crash? A. Well, that is pretty hard to say, it wasn't running more than eight miles an hour, might have been running less; it was running slow. Q. Do you know whether or not any effort had been made to stop the car before— A. Why, I didn't feel none. Q. Did you hear the bell or gong or whistle sounded? A. No, sir. Q. What did you do afterward? A. Well, I went to the front of the car right away, and there was some people stood in front of the door—I don't know who they were, some of the men who got there before I did, and as soon as the motorman opened the door I went outside.

HERMAN KETTLER testified (p. 92) that he was a passenger; that the car was running at moderate speed; that (p. 93) the car was in motion at the time of the accident and he did not hear any bell.

On behalf of the defendant the following evidence was introduced:

LESLIE B. WOODRUFF, an engineer employed by the defendant (p. 105) made a map of the location of the accident. He testified (p. 106)

that for a distance of 150 feet west of the bridge the ground was level and then rises from that point westerly on a two per cent grade to a point at least 750 feet west of the bridge, which was the furthest point to which the survey was made, and that beyond that point westerly the grade continued to rise at the same rate; that the curve to the east of the bridge was 139 feet therefrom. It is agreed (p. 107) that the point of the accident be indicated on the map by the mark X between the rails of the track.

This witness further certified that from the north rail at about the point of the accident to the fence beside the road the distance was $11\frac{1}{2}$ feet; that (p. 109) at the point of the accident there is no driveway on the southerly side of the tracks. He also testified (p. 107) that at the place of the accident there was no ditch to the north of the road.

JOHN J. MAGEE testified that (p. 110) he visited the scene of the accident on the morning of the trial, at which time he examined the location together with the rails of the track and the roadbed; that he had driven automobiles for the last fourteen years; that he was familiar with the six cylinder Studebaker automobile; that the weight of this car (p. 111) is in the neighborhood of 3,000 pounds or more; "Q. Assuming that such a car were being driven in an easterly direction down the grade which you inspected this morning on the tracks that you inspected this morning, and that there was a snowstorm coming from the east, and that there was snow on the tracks and snow from ten inches to two feet on either side of the tracks, and this car was being driven at the rate of fifteen miles an hour, within what distance un-

der those conditions could the car be stopped? A. It would be impossible to stop that car under fifty feet." He further testified (p. 114) that it is very difficult to get an automobile out of the trolley tracks if the track is wet.

THEODORE KERN, an experienced driver of automobiles, testified (p. 115) as follows: "Q. Now, assuming that the car were equipped with those ropes as they appear in that photograph, and being driven on the grade on Cooper Street that you have mentioned in your testimony, at the rate of fifteen miles an hour on the trolley tracks, that the trolley tracks were wet, within what distance could that car be stopped? A. I don't believe it could be stopped in less than forty-five to sixty feet.

At the close of the testimony the defendant moved for a verdict in its favor, which motion the Court denied. To this ruling of the Court an exception was duly taken. We submit that the ruling was erroneous and that the Court should have directed a verdict in the defendant's favor.

We claim that on the foregoing testimony it clearly appears that the plaintiff was guilty of negligence which, if it was not the sole cause of the accident which caused the injury forming the basis of this suit, at least contributed very largely to it.

To begin with, the plaintiff was negligent in driving on the car track at all, under the conditions existing at the time of and immediately prior to the accident.

On the plaintiff's arrival at Woodbury from Philadelphia it was snowing very hard and he at once realized that if he was to go home through the storm it would be necessary for him to do something to prevent his car skidding as he drove

through the snow. He procured some rope which he tied around the tires of the rear wheels of his car with the idea that it would prevent his skidding, but which one of the automobile experts testified was entirely useless for that purpose. He ought to have had tire chains in his car, but he had left them home when he had started out in the morning. Tire chains are kept by careful automobile drivers in their cars and not left at home, for the obvious reason that the necessity for their use may arise at any time. Having equipped the two rear wheels on his car with rope the plaintiff proceeded out of Woodbury and on coming to the top of a long two per cent grade he found that part of the road which is usually used for traffic other than that of street cars covered with drifted snow, which in some places was to the depth of over two feet, and that the part of the road where his automobile would be the least likely to skid was that covered by the tracks of the defendant company, the very presence of defendant's rails affording the protection from skidding. He testifies that he knew the trolley track was a dangerous place in that he was apt to meet a car coming in the opposite direction head on. He had been driving an automobile for several years and knew perfectly well the difficulties of getting out of a car track, particularly on the side of the track where the snow was one to two feet deep. He was almost blinded by the driving snowstorm and could see an approaching car only a very few feet away, yet notwithstanding all this knowledge he deliberately enters the car track of the defendant and proceeds down the grade at a speed of fifteen miles an hour. We claim that on these facts alone the plaintiff was guilty of continuing negligence and that any reasonably careful driver of an automobile would

have avoided such a situation unless he wanted to commit suicide.

Even assuming that both the plaintiff and the motorman of the car were reasonably careful in proceeding along the track in opposite directions, it was more than likely an accident would happen.

The culpability of the plaintiff, however, is further shown by the testimony that the plaintiff's automobile, with the conditions under which he was operating it, could not be stopped in less than 50 feet. The plaintiff either knew this fact or was chargeable with knowledge of it. This being so, the plaintiff certainly did not have his automobile under such control as the law requires, as he could not stop in the range of his vision as that range was only about 25 feet. This accident would have happened even had the trolley car been standing still, because the automobile was going so fast that not only would it have covered the space between where the automobile was and where the trolley car was when the plaintiff first saw the trolley car, but it would have gone 25 feet further had not the trolley stopped it. It is no wonder then that this automobile, weighing 3,000 or 3,500 pounds, was practically demolished when it struck the trolley car and that it rebounded seven to ten feet. Although the automobile could not have stopped so as to avoid the accident, the trolley car, had it been given any chance at all, no doubt could have stopped even within 25 feet, which presumably was the range of vision of the motorman, assuming that he could see through the snowstorm as far as could the plaintiff. Immediately preceding the accident, the trolley car was going at the rate of only eight miles an hour, and was practically at a standstill when the accident occurred, at which instant it had covered but a part of the 25 feet intervening

between the trolley car and the automobile when they came within the range of vision of the plaintiff and the motorman respectively. The automobile going at the rate of fifteen miles an hour, and the trolley car going at the rate of eight miles an hour, resulted in these two vehicles approaching one another at the rate of twenty-three miles an hour, at which rate of speed it would take them about three-quarters of a second to cover this distance of 25 feet and come together in collision, but during this three-quarters of a second the trolley car would cover a distance of only about 8 feet, while the automobile would traverse about 17 feet. Certainly the trolley car ought to have at least one-half the intervening distance between the vehicles when they were in position for the drivers of each to see the approach of the other, or $12\frac{1}{2}$ feet, within which to stop. If, as the plaintiff says, when he entered the track he knew he was apt to meet a trolley car coming head on, then he should have run his automobile so slowly that he could have stopped it within one-half the distance of the range of his vision, so as to give the motorman of the car an equal distance within which to stop his trolley car.

As the trolley car was practically at a standstill at the instant of the collision, when it had covered only 8 feet of the range of vision, it is more than likely that in $4\frac{1}{2}$ feet more it could have been brought to a dead stop, and thus the accident avoided, if the plaintiff had performed his reciprocal duty of running slowly. Instead of the trolley car running into the automobile, it appears to be more in keeping with the facts to say that the automobile ran into the trolley car.

The plaintiff complains that the motorman of the car gave him no warning of the car's approach, but neither did the plaintiff give any warning to

the motorman of the automobile's approach. It will be remembered that the plaintiff was not driving on the part of the road which was usually used, and, in fact, he himself testifies that he did not travel on the tracks ordinarily, but went on the tracks occasionally when it became necessary to turn out for a team which he might meet on the road. If he wanted to use that part of the road covered by the tracks, under the conditions then existing, he could have given a signal with his electric horn, and thus warn the motorman and convey to him some knowledge of the presence of the automobile, and give him a chance to proceed with extraordinary caution, and, if need be, stop or keep the gong of his car constantly sounding until it passed the automobile which was giving the signals. The plaintiff knew if he met a car it would be on the tracks, but it did not follow that the motorman knew that he would meet an automobile on the tracks. If, however, he heard the signal of an automobile in the open country, where there were no cross streets, he might well have come to the conclusion that the automobile was on the track.

Some of the plaintiff's witnesses testified that they did not hear the gong of the car or that no gong was rung, but it does not appear within what time before the accident and within what distance from the point of the accident no gong was sounded. It may well have been that no gong was sounded on the car within several hundred feet of the place of the accident, and that nobody was paying any attention to what sounds were made on the car sometime before the accident. It may be a question for the jury as to how often, under the circumstances existing here, the motorman should have rung the gong, but certainly the motorman was not obliged to sound the gong in one

long continuous stream of strokes from one end of the route to the other. It was just as much the duty of the plaintiff to make known his presence, and that he was proceeding on the track, as it was the duty of the motorman to make known the fact that his car was approaching the place of the accident.

It may be that this accident falls within the class of what are designated as pure accidents, but if it is not of that class we submit that if the motorman was negligent so was the plaintiff. The negligence of the plaintiff was continuous from the time he entered the track until the accident became inevitable. Certainly the motorman had his car under much better control than did the plaintiff his automobile, and if the failure of the motorman to sound his gong so that the plaintiff could hear it was negligence it also was negligence in the plaintiff not to sound his horn on his automobile showing his presence in the dangerous position on the track.

It may be claimed that had the plaintiff heard the signal from the trolley car he could have driven off the track, while even though the motorman had heard a signal from the automobile he could not have gotten out of the way of the automobile as the car was confined to the rails. Under ordinary conditions this might be a good argument, but under the conditions as they existed at the time of the accident the argument can have no weight because it appears that the plaintiff would have great difficulty, if indeed it would not have been impossible for him to have gotten off the track, owing to the fact that he did not have chains on his rear tires, and it would have been necessary for him to have propelled his automobile into snowdrifts beside the track. In the event of the plaintiff having heard the signal of the car

all he could have done was to stop and to have blown his horn, and this the motorman could have done respecting the trolley car, had any signals been given by the plaintiff.

At the trial the plaintiff relied upon the case of *Consolidated Traction Company vs. Haight*, 59 N. J. L., 577, decided by the Court of Errors in 1896, in which it is laid down that "it was the duty of the defendant corporation to give timely warning—timely signals, indicating the approach of its cars—so that the persons who were using that portion of the highway covered by the tracks might have timely warning, to enable them to avoid danger from the approaching cars." This only referred to the duty of the operator of the street car but there is another rule of law laid down in the case which is as follows: "The rights of a street railway company in a public highway, and its obligations, modified by its limitations to the use of a fixed line of track, are the same as those of the driver of any other vehicle, and both of them, in approaching near to or attempting to pass the other, directly in its path, are required, in the exercise of reasonable care, to keep themselves, so far as consistent with a legitimate use of the street, under such control as will enable them, without wilful negligence on the part of others, to avoid collision and damage."

We submit that the duties of the plaintiff and motorman in this case being reciprocal if one was negligent in not giving a signal of his presence on the tracks so also it must necessarily follow that the other was negligent in that respect, and if either were negligent as to keeping the machine which they were operating under control it was the plaintiff, for he did not keep his automobile under such control as would enable him, without wilful negligence on the part of others, to avoid

collision and damage. There certainly was not wilful negligence in this case on the part of the motorman.

It will be noted in the Haight case that the basis of that case was an accident caused by a trolley car running into the rear of a wagon which was preceding on the track ahead of the car, and in the same direction the car was going. Had the situation in our present case been similar, that is, had the automobile been preceding in the track ahead of the car and in the direction the car was going, the accident would never have happened, because the motorman had his car so thoroughly under control that he would not have run into the automobile, even had it overtaken it.

It certainly would have been a curious law which would entitle the plaintiff to take advantage of the presence of the defendant's rails to prevent the danger of skidding, and then compel this defendant to pay nearly \$5,000 because the plaintiff was reckless in operating his car on the rails, which were the very things which afforded him protection from skidding.

He used the rails of the defendant's track not because that part of the road was any better than any other part of the road, but because by the passage of the cars over that particular part of the road no doubt the snow was not as deep or had been leveled off, but he particularly used the defendant's tracks so as to be safe from skidding. He testifies (p. 41, l. 3): "Q. When you started to take the trolley tracks did you think you were safe from skidding then? A. Yes, you get in the tracks you can pilot your way down there, and there is no way of sliding out as easy as it would be in sliding in and out on a slippery wet snow like that was." That he did not use the side of the road because he was afraid of skidding also appears

(p. 40, l. 26), "Q. You did not go on the side of the road for fear your automobile would skid, isn't that correct? A. That is it."

Of course, the plaintiff had a right to use any part of the street, yet it would be a peculiar interpretation of the law to allow this plaintiff to take advantage of the presence of the rail to avoid one danger, that is, the danger of skidding, and then recover for injury received on account of a danger incident to the rails, that is, the running of cars on same of which he was equally well aware, and which under all the circumstances it was quite as difficult to avoid. In taking advantage of the tracks to prevent skidding, and thus avoid the danger of using the side of the road, he assumed the risk of injury by coming into collision with a trolley car which he says he knew he was apt to meet coming head on in a blinding snowstorm.

Respectfully submitted,

LEFFERTS S. HOFFMAN,

LEONARD J. TYNAN,

JOSEPH COULT, JR.,

Attorneys of and of counsel with appellant.

New Jersey Court of Errors and Appeals

SAMUEL R. SAVAGE,

Appellee,

vs.

PUBLIC SERVICE RAILWAY
COMPANY,

Appellant.

ACTION AT LAW.
ON APPEAL FROM
NEW JERSEY SU-
PREME COURT.

APPELLEE'S BRIEF.

STATEMENT OF FACT.

The action in this case was commenced by Samuel R. Savage, appellee, against Public Service Railway Company, appellant, for damages sustained by said appellee caused by a collision between the automobile which appellee was driving, and a trolley car of the appellant company, at the City of Woodbury, on April 3, 1915. The allegations of the appellee, and the proof, show that a trolley car of appellant was proceeding along Cooper Street in a westerly direction, and that appellee was proceeding in an easterly direction along the same street, when a collision occurred, which appellee alleges was caused by the negligence of the motorman of appellant company.

By reason of the collision, the automobile of appellee was damaged beyond repair, and appellee himself sustained a broken knee cap, many contusions

and other injuries from shock, and bruises, which have permanently incapacitated him. No question arises in this case as to the amount of damages, it being practically conceded that if the appellant company is liable, the amount awarded to the appellee is reasonable.

The only matters brought before this Court on appeal go to the questions of negligence of the appellee. The appellee contends that both of these matters were jury questions, and properly submitted to the jury by the trial Judge.

ARGUMENT.

Appellant's Negligence.

The undisputed facts in the case show that the collision occurred while a heavy snow was falling, and that the motorman sounded no alarm to apprise others using the highway of the approach of the trolley car. This fact is testified to by all of the witnesses in a position to have heard the gong or whistle, if it had been sounded. (Pages 11, 55, 66, 74, 76, 89, 91 and 93.)

No testimony of any character was introduced by the appellant to attempt to show that a gong or a bell was sounded. We contend that this is conclusive evidence of negligence on the part of the appellant company. It is true that street car companies have no superior rights in the highways over which their cars run, and also true that a duty devolves on all persons using the highway, to use reasonable care.

“Such timely warning of the approach of a trolley car must be given as will enable others

using that portion of the highway covered by its tracks, to avoid danger from it.”

Consolidated Traction Company vs. Haight,
59 N. J. L. 577;

Luby vs. Morris Traction Company, 82 N.
J. L. 255.

The appellant company was not only negligent in that its motorman failed to give signal of the approach of the car, but it also conclusively appears by the testimony, which is not disputed, that the glass front of the trolley car which was between the motorman and the automobile, was closed, and so thickly covered with snow that it was impossible for the motorman to see ahead of the car. In other words, the testimony conclusively shows that the trolley car was being propelled along a public highway, and that the motorman negligently and carelessly kept said trolley car in motion, notwithstanding the fact that it was absolutely impossible for him to observe any vehicles, automobiles or foot passengers who might be in the way of the trolley car. Such a condition of affairs we claim is pure negligence, for which the appellant company should be held responsible. (See pages 67 and 81.)

The testimony as to the condition of the glass front of the trolley car was not even disputed by the motorman himself, and it appears by the testimony, which is not contradicted, that no effort was made by the motorman to stop the trolley car before the collision actually occurred, which we contend is an additional proof indicating that the motorman was running the trolley car without being able to see anything in front of the car. (Pages 66, 69, 71, 74, 80, 88, 89 and 93.)

It was the duty of the motorman to keep the snow clear from the front of his car so that he could have

an unobstructed view, to sound his gong or whistle under the peculiar conditions, and to stop his car if necessary until he was able to get a proper view of the track ahead of him.

“If there be any obstruction from dust or darkness or other cause, to the motorman’s sight of his track ahead of him, his duty requires him to use still greater care, to reduce his speed, and to stop his car if necessary, until his observation of the track ahead of him becomes clear.”

Anderson vs. Public Service Corporation,
81 N. J. L. 700.

“And it is equally a motorman’s duty, when on account of darkness he is unable to see vehicles that may be on the track, far enough ahead of him, to give them timely warning of the car’s approach, to sound continuously the gong in anticipation of their being on the track. *J. F. Conrad Grocer Co. vs. St. Louis, etc., R. Co.,* 89 Mo. App. 391.”

7 A. & E. Annotated Cases, 1129.

We think there is no doubt about the negligence of the appellant company, or at least that there was sufficient evidence of negligence to submit the case to the jury on that ground. This contention is practically admitted by counsel for the appellant, who tried the case in the court below. (Page 103, printed case.)

“Mr. Coult: I only want to say that my motion is confined to this,—I haven’t spoken about the negligence of the trolley company which might be a question of fact, but I say that as far as the contributory negligence of the plaintiff is concerned, it is perfectly clear.”

Alleged Contributory Negligence of Appellee.

The second contention of the appellant is that the testimony produced in the case demonstrated that the negligence of the appellee was so apparent that it was the duty of the Court to direct a verdict for the appellant. We contend that the question of contributory negligence was entirely for the jury to decide. The appellee left his home in the morning in his automobile, at a time when there was no snow falling, and the date, April 3, 1915, was so late in the season, that there could be no reasonable anticipation that a heavy snow storm would occur at that time. He returned to Woodbury at about one o'clock in the afternoon, after considerable snow had fallen, and procured ropes with which he wrapped the rear tires of his automobile, as appears by the pictures of the machine taken after the collision, offered in evidence and attached to the books in this case. He drove his automobile out Cooper Street at a rate of speed from twelve to fifteen miles per hour, opened his wind shield, so as to have an unobstructed view of the road in front of him, and so far as appears by the testimony, did everything that a reasonably prudent man would have done under the circumstances. At the place where the collision occurred, it appears by the testimony that there was no roadway on which the automobile could have driven to the right-hand side of the trolley tracks, and that the space on the left-hand side, between the trolley tracks and a fence erected there, was so narrow as to make it unsafe for him to drive on the roadway at the left-hand side of the trolley tracks. (Pages 9, 85, 86, 107 and 108.)

Under the State law it was his duty to keep to the right-hand side of the roadway, and he was as far

to the right as it was possible for him to get at this point. It was the duty of appellee to use that degree of care which a reasonably prudent man would have used under the same circumstances. We are unable to find anything in the case or the brief of appellant which demonstrates such a degree of negligence on the part of the appellee as to justify the Court in either granting a non-suit or directing a verdict. When appellee left home in the morning, there was no snow; it was necessary for him to return home; he procured ropes to protect his car from skidding or sliding; he was running the car at a reasonable rate of speed in the open country; had his wind shield open so that he could see ahead of him, and in every way it seems to us, used proper and reasonable care. The appellee had no reason to believe or apprehend that a motorman would run a trolley car without being able to see ahead of the car, and without sounding some alarm of the car's approach.

The testimony of John J. Magee and Theodore Kern can have no binding effect upon the Court in this case, as their testimony is given entirely from general experience, and upon reading it carefully, indicates that they never had had experience in deep snows upon which they could predicate an opinion as to just what conditions confronted the appellee. Their testimony was proper to submit to the jury, but was not conclusive as to what would happen to the automobile driven by the appellee on the day in question. It in no way indicated what a reasonably prudent man would have done under the circumstances confronting the appellee.

**Alleged Contributory Negligence of Appellee a
Jury Question.**

We contend that the alleged contributory negligence of appellee in this case was for the jury to decide. This question was properly submitted to the jury by the trial Judge, and the verdict of the jury should stand.

“Questions of dispute of matters of fact relating to the negligence of the one party and the contributory negligence of the other, are properly submitted to the jury.”

See Vol. 5, *New Jersey Digest*, Col. 9669, and cases there cited.

“Where the evidence when plaintiff rests, leaves his contributory negligence in doubt, the case is for the jury.”

McLean vs. Erie R. Co., 69 N. J. L. 57;
Aff. 70 N. J. L. 377.

“Where it is possible for the jury to draw another inference than that plaintiff had been guilty of contributory negligence, a peremptory instruction should not be given.”

Clark Thread Co. vs. Bennett, 58 N. J. L. 404;

See also *Migans vs. Jersey City, &c., Ry. Co.*, 76 N. J. L. 535;

Anderson vs. Public Service Corp., 81 N. J. L. 700.

“Whenever the question whether a pedestrian using a highway has used ordinary care to avoid a collision with a vehicle, is one about which a

difference of opinion may reasonably be entertained, the judgment of a jury thereon, must, upon error, be a finality."

Traction Co. vs. Isley, 58 N. J. L. 224;

See also *Daly vs. Case*, 95 Atl. 973;

See also *Pedrick vs. Central R. R. Co.*, 74 N. J. L. 424, 427;

See also *Fox vs. Great Atlantic & Pacific Tea Co.*, 84 N. J. L. 726.

There is a suggestion in appellant's brief that this was an inevitable accident, for which neither one of the parties was to blame. As I understand the law, that condition can only arise where there is no negligence demonstrated as to either of the parties. It is quite clear in this case that the motorman of the appellant was negligent. We contend that no negligence is shown on the part of the appellee; that the case was properly submitted to the jury, and that the judgment should be affirmed.

Respectfully submitted,

JOHN BOYD AVIS,
Attorney for Appellee.

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Judgment Record.

New Jersey Supreme Court

SAMUEL R. SAVAGE, <i>Plaintiff,</i>	}	Action at Law 10 Notice of Appeal.
<i>vs.</i>		
PUBLIC SERVICE RAILWAY COM- PANY, a corporation, <i>Defendant.</i>		

To JOHN BOYD AVIS, ESQ.,
Attorney of Plaintiff.

Sir: 20

TAKE NOTICE, that the defendant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause.

Dated, November 20th, 1915.

Yours truly,
LEFFERTS S. HOFFMAN, 30
Attorney of Defendant.

Judgment Record.

NEW JERSEY SUPREME COURT.

GLOUCESTER COUNTY.

10	SAMUEL R. SAVAGE, <i>vs.</i> PUBLIC SERVICE RAILWAY COM- PANY.	}	Judgment Record. John Boyd Avis, Attorney.
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Public Service Railway Company, the defendant in this cause, was summoned to answer unto Samuel R. Savage, the plaintiff therein, in an action at law upon the following complaint:

20 (Summons issued September 20, 1915.)

The plaintiff, Samuel R. Savage, of the township of Deptford, County of Gloucester, and State of New Jersey, says that

1. Defendant, on April 3, 1915, was and still is a corporation, and was also a carrier of passengers, operating trolley cars on rails in the City of Woodbury, New Jersey, and other places.
- 30 2. On said day, at Woodbury aforesaid, plaintiff, in a blinding snow storm, was proceeding with due care in an automobile belonging to him, in an easterly direction along Cooper Street of said City, and at a point about two hundred feet westerly of the bridge over Woodbury Creek, a trolley car proceeding in a westerly direction, crashed into the automobile in which said plaintiff was riding, breaking and mashing said automobile, and rendering it useless; that said collision was caused by the negligent and careless
- 40

Judgment Record.

operation of said car by the motorman, no bell or whistle being sounded, and said car being run at an unreasonable and reckless rate of speed, under the circumstances.

3. By reason of said collision the automobile of said plaintiff was broken and destroyed, and rendered useless, and plaintiff was badly bruised, hurt, his back injured, and knee cap broken; plaintiff was also seriously and permanently injured thereby, and prevented for a long time from following his occupation of farmer and dealer in telephone poles, and will, during his lifetime be, by reason of said injuries, seriously incapacitated from following his occupation. Plaintiff has also suffered great pain from said injury, and has been obliged to spend large sums of money and incur large expenses for doctor's bills and medicines.

Plaintiff demands \$10,000 damages.

JOHN BOYD AVIS,
Attorney for Plaintiff.

(Filed Sept. 22, 1915.)

The defendant, a corporation of New Jersey, having its principal office at the City of Newark in the said State of New Jersey, says that:

1. It admits the first paragraph of the complaint;

2. It denies the second and third paragraphs of the complaint.

FIRST DEFENSE.

1. It avers that the negligence of the plaintiff contributed to the happening of the said alleged accident.

Judgment Record.

SECOND DEFENSE.

2. It avers that the negligence of the plaintiff contributed to the happening of the said alleged accident, in that he guided the automobile in question into the pathway of an approaching trolley car when the said trolley car was so near as to
 10 endanger the safety of the said automobile and the said plaintiff.

THIRD DEFENSE.

3. It avers that the negligence of the plaintiff contributed to the happening of the said alleged accident, in that he recklessly, carelessly and negligently drove and guided the automobile in question at a speed so great that the lookout which he was able to keep in the blinding snowstorm was
 20 not efficient.

FOURTH DEFENSE.

4. It avers that the negligence of the plaintiff contributed to the happening of the said alleged accident, in that he recklessly, carelessly and negligently drove and guided the automobile in question without keeping such a lookout for approaching cars as the circumstances demanded.

LEFFERTS S. HOFFMAN,
Attorney of Defendant.

30

(Filed Oct. 11, 1915.)

The plaintiff denies every allegation contained in the four defenses stated in the answer.

JOHN BOYD AVIS,
Attorney for Plaintiff.

(Filed Oct. 18, 1915.)

40

*Judgment Record.***Damages.**

This action was tried before Circuit Court Judge Howard Carrow, to whom the said cause had been regularly referred, with a jury, in the presence of the counsel of the respective parties, at the Gloucester County Circuit Court, on November 5, 1915, and the cause having been heard and submitted to the jury, they returned their verdict in favor of the plaintiff, Samuel R. Savage, against the defendant, Public Service Railway Company, a corporation, and assessed the damages at the sum of \$4400. 10

Whereupon it is adjudged that the plaintiff recover of the defendant, the sum of Four thousand four hundred dollars and his costs, which are taxed at the sum of fifty-two dollars and thirty-eight cents, making in the whole the sum of four thousand four hundred and fifty-two dollars and thirty-eight cents. 20

Damages	\$4400.00
Costs	52.38
	<hr/>
	\$4452.38

Judgment entered November 19, 1915.

WM. S. GUMMERE, C. J. 3)

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal and also a copy of the judgment entered in the above stated cause as the same remains on file and of record in my office.

Judgment Record.

In testimony whereof I have set my
hand and the seal of said Court at Tren-
(Seal) ton, this twenty-sixth day of November,
A. D., nineteen hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

10

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY CIRCUIT.

20

SAMUEL R. SAVAGE,
vs.
PUBLIC SERVICE RAILWAY
COMPANY.

} Action at Law

October Term, 1915.

APPEARANCES :

For the Plaintiff, J. BOYD AVIS, Esq.
For the Defendant, JOSEPH COULT, JR., Esq.

30

L. S. HOFFMAN, Esq.

BEFORE CARROW, J., and a Jury.

The Case for the Plaintiff.

(Mr. Avis opens the case for the plaintiff to the
jury.)

(Mr. Coult opens the case for the defendant to
the jury.)

40

Samuel R. Savage—Direct.

SAMUEL R. SAVAGE, sworn.

By Mr. Avis:

Q. Where do you live, Mr. Savage? A. On the Westville and Glassboro stone road about six miles below Westville at a place called Fairview.

Q. What is your business? A. Farmer. 10

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

Q. How long have you been farming? A. Thirty-three years.

Q. Did you own an automobile in the early part of this year? A. Yes, sir.

Q. First tell us what is the nature of your farming operations there, Mr. Savage? What do you do—what kind of farming do you do? A. Well, this spring I had twelve or thirteen acres of scullions to start in on. 20

Q. No, tell us generally the nature of your business, say last year—what is the nature, are you a grain farmer or a truck farmer? A. No, truck.

Q. How many acres have you got? A. One hundred and twenty-two in my own farm and I run a farm adjoining of eighty-five or ninety acres, I don't just recollect; it ain't less than eighty acres, anyhow. 30

Q. On April 3rd of this year where were you at, Mr. Savage? A. Well, I came to Woodbury from home, went to Philadelphia to collect my proceeds from the marketing of scullions, came back to Woodbury and started home.

Q. What day of the week was that? A. Saturday.

Q. What time did you get back to Woodbury, about? A. Well, I came down between about—on 40

Samuel R. Savage—Direct.

the steam train that comes, that leaves shortly after twelve o'clock, comes down one of these branch railroads here.

Q. And you left shortly after twelve o'clock from Philadelphia? A. Yes, gets down here quarter of one, something like that.

10 Q. When you got to Woodbury, what did you do? A. Well, I walked to the hardware store and bought enough rope to wrap both rear tires.

Q. You wrapped the tires? A. The rear tires of the automobile; I hadn't my chains with me. When I left in the morning it wasn't snowing; I left about seven o'clock and it wasn't necessary to carry chains. I walked right across the street at Lippee's Hardware Store, walked across the street to Hutchinson's Garage and got one of his men there to help me. We cut the rope in two pieces and wrapped it on the rear wheels so I would have better protection on my way home in the shape of skidding, as I was aware of the snow.

20 Q. What kind of car did you have? A. Studebaker Six.

Q. How long had you had it? A. About nine months, bought it the year before, sometime the year before; I could recollect if I was to think back.

30 Q. What was the value of this automobile at that time, the 3rd of April?

MR. COULT: I will have to object to that, your Honor, there is no qualification.

MR. AVIS: Well, I don't care, I can prove that otherwise; I will withdraw the question, if the Court please.

Samuel R. Savage—Direct.

Q. You had this six cylinder car, six cylinder Studebaker? A. Yes.

Q. And where were you going from Woodbury? A. Going toward home, out Cooper Street.

Q. About what time did you leave Woodbury, do you recollect? A. Well, not later than at one o'clock, and no longer than it took me to get right from the depot to the garage, to the hardware store and get ready to start out and go right home. 10

Q. Was there anybody with you? A. No, sir.

Q. How did you go out of Woodbury, what way? A. Went down Curtis Avenue to the depot, from Broadway here out on Cooper Street right down Cooper Street over the railroad.

Q. What was the condition of the trolley tracks or the sides of the road on each side of the trolley track as you were going out Cooper Street? A. Well, there hadn't been nobody driving anywhere but on the tracks. Snow was laying anywhere from six inches to a foot deep along until I got outside by the Country Club, then it was drifting and it was as much as two feet deep, two and a half on the side where we would drive with the wagon or automobile. Coming out there is only one side of the road has a road there, and it wasn't safe to run along there, there was a set of telephone poles and trolley poles there and a ditch combined, so I took to the track. 20 3)

Q. Which side of the road as you were going out is the side that there is a roadway? A. On the left hand side coming out, the left hand side to drive out.

Q. Is there any roadway at the place where the collision occurred on the right hand side? A. No, sir, nothing; there is some mud, ground there, but 40

Samuel R. Savage—Direct.

it ain't safe even hardly that kind of a day for a horse to walk on.

Q. Where did you go into the tracks, did you say, about? A. As soon as I left the patent pavement at the Country Club I took to the tracks.

10 Q. And what rate of speed were you going at that time? A. Well, it was running along, as near as I can remember, I looked at my speedometer when I was half way down the hill—about twelve or fifteen miles an hour, is all I could recollect of that part. It wasn't safe to run fast at all.

Q. Were you running to be safe? A. Sure, I was prepared, for I had my eyes screened looking right out at the vent; I had to look out with the snow beating in my eyes at that.

20 Q. Now, what kind of day was it? A. Well, it was a terrible stormy day.

Q. And what did you do with your automobile for the purpose of giving you an opportunity to see what was ahead of you? A. I opened my rain vision before I left the garage.

Q. How much space did that give you open between the two portions of your glass, rainshield? A. About three to four inches.

30 Q. And what did you do, if anything, so that you could see out of that portion of the car, that is, out between the rain vision? Could you sit up as you ordinarily did and see? A. No, I had to stoop down just a trifle to see out. If I had opened it all the way up I could have saw out, but I was under the impression that it was letting more snow in than I could have any idea of seeing through.

Q. Could you see through as far as the rain shield was concerned or windshield—could you

40

Samuel R. Savage—Direct.

see through between them? A. Oh, yes, I had plenty of room to see through.

Q. Now, what, if anything, did you encounter on your way out there, Mr. Savage—just tell us in your own language what you came up against and what you saw first, if anything, what you did and what happened? A. Well, I encountered a trolley car. 10

Q. Well, tell us, won't you, in your own language what first drew your attention to it, if anything? A. Well, the first thing that drew my attention, as I was watching my way as I went down the track through the snow, a trolley car popped up, it was a yellow painted car—popped up in my sight all at once. It was just as near the color of the snowstorm as anything I ever seen to come up in front of you. 20

Q. About how far away from you? A. Well, about twenty-five feet, as near as I could recollect.

Q. Was it running or not? A. Yes, sure.

Q. Had you heard any signal of bell or whistle?

A. No, sir, nothing at all.

Q. Which way was the wind blowing from that day? A. Blowing from the east.

Q. Was that coming toward you from the trolley car or away from you? A. Coming right toward me. 30

Q. What did you do when you first saw this trolley car? A. I threwed my clutch out with one foot, put my footbrake on with the other and pulled back the emergency brake.

Q. Did that stop the speed of your car? A. I done all I could to stop it.

Q. Did it stop the speed of your car somewhat

Samuel R. Savage—Direct.

by doing that? A. Yes, seemed to; didn't stop it still.

10 Q. No, I understand that. A. The next thing I knew after I done that there, the next thing I knowed—it was only the snap of my finger, there was a bang, and that is all—that is just how long it took it to happen; that trolley car was moving faster than I was or we would never have come up together that quick.

MR. COULT: Now, if the Court please, I ask to strike out the last part of that as being a conclusion, that the trolley car was moving faster than he was or it would never have come up that quick.

20 Q. Well, was the trolley car running faster or slower than you were? A. Well, that I couldn't tell.

THE COURT: Just wait a moment; there is a motion to strike out his conclusion. It is a conclusion.

30 Q. Was the trolley car moving faster or slower than you were? A. That I couldn't say, but it was moving, it wasn't standing. I never bumped that car standing.

Q. That is enough for that now. Then what next do you recollect? A. Well, the motorman stuck his head out of the side of the car.

Q. What did he say to you?

MR. COULT: I object to that, if the Court please, unless it is proven first that the motorman is authorized to bind the company by his statements or unless it ap-

Samuel R. Savage—Direct.

pears that the motorman's explanation was a part of the *res gestæ*.

THE COURT: Are you trying to prove what the motorman said after the occurrence?

MR. AVIS: Yes, immediately, not for the purpose of binding the company, just to show the situation. 10

THE COURT: No, the objection is sustained.

Q. Now, what did you see the first thing after you were struck? Who did you see first? A. The motorman.

Q. Where was your car then, your automobile, with relation to the car? A. It was in the tracks. 20

Q. How far away from the car? A. Well, from seven to ten feet, as near as I can recollect; there was a rebound to it.

Q. What happened after that, Mr. Savage, as far as you were concerned? A. Well, after what I had to say with the motorman—

Q. After you came together and you saw the motorman? A. Well, the men in the car—they are here today, the witnesses—they came and helped me out of the car. The motorman and conductor had nothing to do with me at all, to get me in. 30

Q. Now, what was your condition in the car after the collision? A. Why, I was sitting on the chime of the seat.

Q. What do you call the chime? A. Right out on the front, that would be the chime.

Q. What kind of material was that, iron? A. Piece of metal, steel, about an eighth of an inch 40

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thick and about two inches in height. It was put there to hold the cushion in place.

Q. What portion of your body was on that?

A. The small of my back, right down in the crupper bone.

10 Q. Where was the rest of your body, your knees, for instance? A. Why, they were jammed up—there was just about room enough for them to lay between there and the front of the automobile where it was pushed in against me, there was just room for me to sit in that position, with what was shoved back of the front of the automobile.

Q. Were you injured in any way about the limbs? A. Yes.

20 Q. What was that—tell the jury. A. When I got to the doctor's office and had it examined it was a broken knee cap, split in two pieces.

Q. You did not see or know that at that time? A. I did not know what was broke, but I knew there was something terrible, the way it pained me.

Q. Whereabouts? A. On my knee.

Q. Now, where else were you injured, if anywhere? Did you have any abrasions on you? A. Yes.

30 Q. Whereabout? A. My cheek bone here had the skin all knocked off of it and it looked a sorrowful looking mess in my face where it bumped against some part of the front of the car, something, I thought the windshield frame.

MR. COULT: I object to that.

MR. AVIS: Well, strike out what you thought.

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Q. What did you then do? What was done with you after you found yourself in this position in the car, what was done with you or what did you do? A. Well, two men of the witnesses, of the men that was on the car, two or three of them helped me out of the automobile, got me out and got me into the trolley car. 10

Q. The same car that the collision occurred with? A. That bumped me, yes, the same car.

Q. What did you do after that? A. Well, I asked the motorman—

Q. No, don't tell us your conversation; what did you actually do? Did you stay in that car? A. Yes, I sat in that car until they went and got another car, came down the other way out of Woodbury and they got me out of that trolley into the other one, took me to the doctor's office. 20

Q. Dr. Clark's office? A. Yes.

MR. AVIS: Dr. Clark just advised me a few minutes ago that he has to be in the hospital at Philadelphia at 12:30. Would you object to calling him out of turn?

MR. COULT: I have no objection, Senator; you can take his testimony at any time. 30

Q. Did anybody go with you to the doctor's office? A. Yes.

Q. Who, do you recollect? A. Yes, I knew all the men that was with me, but I can't recollect but just two. There was Charlie Sagers and William Jones, if I ain't mistaken.

Q. Edward Jones, do you mean? A. Or Edward Jones. 40

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Q. Some of the people who were on the car?
A. Yes.

Q. Was any examination made of you at that time? A. In the doctor's office?

Q. Yes. A. Yes, he examined it.

10 Q. What happened in there that you recollect?
What did he do? A. Well, he told me what was the trouble.

Q. What did you see him do? What did he show you was the trouble, if anything? Did he show you? A. Yes, I laid there on a couch and I could see what he was doing, and he examined the bones in my knee and found what was—the first thing he done he cut my pants open up to the knee or a little above, then my underdrawers, and there was three pieces of bone rolled out of my
20 drawers the size of the top of my thumb nail.

Q. Did you see them? A. I did, and before that in the trolley car I saw a splinter of bone hanging to my pants that came through a cut in my pants.

Q. Do you know what it was that struck your knee and caused this inquiry? A. Not to be sure, but there was a switch there in the center of the car, and that would be about opposite to my knee, and I thought—

Q. You are not sure about that? A. I am not sure, but that would look to be the principal thing that cut a gash through my pants leg like that did.

Q. Was your pants leg cut? A. Yes, cut as clean as a knife would cut it.

Q. How big a cut? A. About an inch or an inch and a half long.

Q. What else did he dress, if anything? A. Well, he dressed my face.

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Q. Were you injured anywhere else? A. And my back; my back is injured today.

Q. Was your back cut in any way or bruised?

A. No, it wasn't cut.

Q. Were there any other cuts on you? A. Yes, there were cuts on me and bruises all over my face but not as heavy as the one on my cheek bone, and there was bruises on my legs, black and blue spots. 10

Q. After you had finished at the doctor's office, where did you go? A. Well, I had called an automobile from Tom Hutchinson's to come and take me home; he got me into that and I started and hadn't gone out Cooper Street, got out on to the country road about two or three hundred yards further than the accident happened when it got into a snowdrift and got hung up there. 20

Q. How long were you held there? A. Well, I don't know how long I would have been held there if it hadn't been for a horse and buggy coming along and a man driving, by the name of Harry Moore, lives at Almonesson, and he asked to be allowed to take me home.

Q. Did he take you home? A. He took me home with a horse and buggy.

Q. And after you got home, where did you go, I mean at the home, did you go upstairs to the bedroom or what? A. No, my wife had been let know by telephone how I was hurt and she had a bed provided right in the sitting room. 30

Q. What was the effect of this injury, as far as pain was concerned, Mr. Savage? A. Well, it was very painful for a clever while, was a week or ten days before ever I got a bit of rest at nights or any time.

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Q. You couldn't sleep? A. Couldn't sleep.

Q. Could you get out of bed by yourself? A. No, indeed, no, sir.

10 Q. For how long a period did you have to have assistance to get out of bed? A. For about four weeks before I ever could set myself on the floor; if I got up I had to have a man to hold me for four weeks when I got on the floor; then after that I could manage by holding on to the chair or the stove was near by, if the fire was out or something like that, I could put my hand on this parlor stove and steady myself, but I couldn't stand alone, couldn't stand alone for four weeks, later than that; I had to have hold of something there to steady me and hold myself.

20 Q. How about your back at that time after you were injured? A. Well, after the leg, the soreness went from the leg, then the back seemed to have more pain. I didn't notice it so bad before while the leg was paining me bad, but after the soreness left the leg, I could not stay in one position any length of time, I had to be moving around, up and down, lying down in the bed, then sitting up, propped myself different ways to release the stiffness in my back, the pain.

30 Q. How about the injuries on your face, did they get better? A. Yes, they all got better and healed up.

Q. How long was it before you were able to get back to your occupation? A. Well, I wasn't able to move around rightly until about the first of September.

40 Q. And have you any permanent injury, anything that bothers you at the present time? A. Yes, my back bothers me, and it will bother me,

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I expect, as long as I live. I can't stoop over to pick up vegetables that I grow, truck off the ground, which I had always been in the habit of trying to do as much as I could myself in sorting the truck, putting it up for market.

Q. How many people did you have working for you on the farm? A. Well, in the neighborhood of anywhere from fifteen to twenty all through the summer season, counting the women and girls what all picked the stuff for me. 10

Q. And who superintended or supervised the work of the parties that you had on the farm when you were well? A. I done that all myself.

Q. What about your knee at the present time, Mr. Savage, is that well? A. No, sir.

Q. What is the matter—does it bother you any yet? A. It bothers me so that I can't bend it to get down on my knees to do anything where it requires that kind of labor, and I can't—my back won't stand for my stooping over to pick up and pick off the ground; I can do it for a short period, say fifteen minutes or a half an hour, then it pains me so that I can't go on with it without putting myself in misery. One afternoon I tried to help out picking up late potatoes here about a week or ten days ago, and I stayed there with them and helped them, and I could not get out of bed the next morning, hardly, for the stiffness I had in my back. 20 30

Q. When did you first see your automobile after the accident? A. Well, I can't just tell when, but I saw it in Hutchinson's Garage sometime in the summer when I got able so I could go out.

Q. Did you examine it at that time?

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MR. AVIS: I understand, if the Court please, that counsel for the defendant say that they will admit that the automobile is mashed beyond repair.

MR. COULT: I don't want to use the work "mashed."

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MR. AVIS: Well, injured beyond repair; I did not mean to convey anything by that, Judge. If you do not object I will call Dr. Clark now, because he wants to get away.

(Witness withdrawn).

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DR. HENRY H. CLARK, sworn.

By Mr. Avis:

Q. Where do you live, Doctor? A. Woodbury.

Q. What is your profession? A. Physician and surgeon.

Q. How long have you been practicing? A. Twenty-four years.

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MR. COULT: I will admit the qualifications.

Q. Was Mr. Savage brought to your place on the third of April last? A. Yes.

Q. Won't you tell the Court and jury just what you found upon examination, Doctor? A. I was out at the time and was 'phoned for and came in and Mr. Savage was in my office, lying on the couch. I found his knee cap broken in three different places, split across cross-wise and a split down, making three separate breaks, three separ-

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ate pieces in the knee cap. There was a piece of bone lying out, part of the knee cap, lying out just loose, about an inch square, and there were two other pieces of the knee cap that I had to take out at that time which were loose and detached. There was a good-sized gash, possibly two inches across, where the bone had come out. He was cut about the face, superficial cuts; the cuts about the face were simply by falling glass, because I took several small pieces of glass out of his face. His hands were cut and his body was bruised pretty well all over. The main injury seemed to be to his knee cap and back; he complained quite a little of the hip. The knee cap, the three pieces of bone being taken out left a gap in the knee cap. 10

Q. Now, Doctor, after you had dressed this trouble on that day did you follow up the case? A. Yes. 20

Q. Won't you tell us what you did and what condition you found him in at your various visits, without specifying the days? A. It was necessary to put that knee cap and the leg at absolute rest and quiet so that it would be impossible for him to move that knee. The knee cap is the connecting link between the upper leg and the lower leg, and the knee cap being broken cross-wise allowed these bones to separate and putting the leg at rest —it was impossible to put it in a cast at that time because it was necessary to dress the leg every day on account of the open wound; as near as I can remember, it was necessary to dress that leg daily for about four weeks before the outer opening finally healed; a certain amount of discharge kept coming away, owing to the dirt and so forth which had been ground into the knee cap due to 30 40

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the injury. At the end of about four weeks I put the leg in a plaster of Paris cast, and during all this time it was necessary for him to be in bed with that leg absolutely straight and not allowed to bend it at any time. At the end of about four weeks I put the leg in a plaster of Paris cast, and
10 after putting it in the cast—it was put in the cast so that the cast was on a hinge and could be opened and dressed; it was necessary to dress the leg even after the cast was on for the neighborhood of a couple of weeks, on account of the large amount of sores and breaking of the skin and tissues there—at the end of five or six weeks I allowed him to get out of bed and put the foot down on the floor a little bit, but did not allow him to
20 walk on it, I think not—I think it was about the seventh week before he was allowed to bear any weight on that leg. At that time and then following for a period of about three or four weeks he was around on crutches, and at the end of I think the third or fourth week he went around on one crutch and one cane. From that time on it has simply been a case of gradual recovery up to his present stage.

30 Q. Now, Doctor, immediately after the accident, was there any pain and suffering which Mr. Savage went through? A. Yes.

Q. What have you to say about the intensity of that from what you saw and observed and what you know? A. Well, the intensity of the pain from an injury of that kind, it was necessary to keep him under an opiate, which is some form of morphine or opium; he was kept under that for a week or ten days; then unless there was some movement of that leg the pain was not severe,

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but the first week or ten days he was kept under either morphia or opium.

Q. Were any complaints made to you with relation to his back? A. Yes.

Q. While you were attending him at the house?

A. He complained continually of his back.

Q. Now, what have you to say about the present condition of the knee, Doctor? What I mean is, is it as well as it will ever get or will it improve from what it is now? A. His knee at the present time has healed and is as good a knee as he will ever have, and at the same time I will state that he has a knee at the present time better than the majority of the people that have broken knee caps. 10

Q. Won't you explain that to the jury and explain what the treatment of that character of a break is and how you treated it and why? A. There are several methods of treating a broken knee cap. One of the methods is to go in and bare all of the bones of the knee cap, drill holes through different portions of the bone and wire them together. In doing that you have got to open up the bottom part of the knee cap, which is very close to the knee joint. We had a break, a transverse break crosswise and one down. It did not seem to me good surgery to make a larger wound than that from the mere fact that he had three separate pieces. That knee was put in a perfectly straight position. The knee cap, the lower part of the bone, was drawn up by putting adhesive plasters tightly below and drawn up and the same down, and the foot put on a perfect level, that is, perfectly straight, but the heel raised a little so as to bring the bones in as near the position as you 20 30 40

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could get. The wiring of a knee cap at times is satisfactory; at other times you don't get any more than a gristle ligament between the two pieces of bone, even when they are wired. That is all that you can expect, the best result; that is the result that we had in Mr. Savage's case. We
10 have a gristle union between those pieces of bone. He has a leg which at the present time he can walk on, he can use, but he will never be able to use it as a good knee.

Q. Now, from your examination what will be the trouble with the knee, Doctor? What may he expect the rest of his life with relation to that leg?

A. The knee cap is connected above by some of the large, strong muscles and tendons which have
20 a motion back and forth and they are connected below with the lower leg; as I said before, it is the connecting link between the upper and lower leg. He has a weakened knee cap; he has also—the joint at the knee unless he wears a support is liable to go in or go out. The knee is permanently weakened by a false joint at the knee cap.

Q. How about the ability to bend the knee, getting down or raising it, what have you got to say about that? A. The breaking of the knee cap does
30 not interfere so much with the getting up and getting down or the bending of the knee as an injury to the joint which thickens the joint cartilages.

Q. What has taken place in Mr. Savage's case? A. His whole knee joint is enlarged, the cartilages are enlarged, they are stiffened, the tendons are stiffened and the muscles are stiffened. Those tendons and those muscles and the enlargement of that knee joint go back to a certain degree, but
40 never will go back to their normal condition.

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Q. In other words, what is your opinion as to the permanency today of the stiff joint? A. He is as well today as he will ever be. He will always have a stiff knee.

Q. Now, won't you show us that knee, Doctor, let the jury see what condition it is in at the present time? Just explain it, will you, Doctor, tell us, will you, about the conditions there and explain to the jury just what the present condition of the knee cap and leg is? A. The upper part of the knee cap, here is part of it (illustrating on plaintiff, who has bared his knee). The break was through here, and a break down here. Now, from this part of the bone here and this part of the knee cap here there is a ligamentous or gristle ligament between this and this; instead of this bone being down here as one piece you can lay your finger in between those two pieces of bone. A piece of bone—there is a triangular piece of bone an inch square that came out of here on the outer side of the knee cap; two smaller pieces came out from the split below. Now, the union between the upper bone and the lower bone is gristle; instead of the knee cap being in one piece which gives him this motion, instead of being in one piece and working as one piece supporting this joint he simply has a joint here which would very easily let the leg go sideways if he don't wear a support.

THE PLAINTIFF: Yes, that is one of the worst troubles I have.

MR. AVIS: Wait a minute; the doctor is testifying.

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Q. Now, Doctor, what about the scars on that leg, are those scars from that accident? A. The scar here and the scar across here are from the accident; the scars down here are from the chafing of the plaster of Paris cast. The scars down here were not due to the accident. (Indicating).

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No cross-examination.

SAMUEL R. SAVAGE, resumed.

By Mr. Avis:

Q. Mr. Savage, this accident occurred about the 3rd of April. What was the condition of your farming business at that time? A. Well, every-

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thing—we had an early spring and everything was in full bloom and looked very good for a good crop, growing, got it planted, got it growing early. Q. Where were your tomato plants at that time? A. Well, there was about 120 sash spotted, transplanted out of the hothouse into cold frames and about 104 sash were not spotted yet. They had to be spotted.

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Q. How many tomatoes as far as acreage went did you actually set out that spring? A. Twenty-five acres, but I contracted for Campbell for twenty-three, but when I came to put the plants in the field they over-ran about another acre, an acre and a half or something to that effect. I figured it at twenty-five acres.

Q. Did your tomatoes get out on time? A. No.

Q. Why? A. Because I wasn't there to look after them.

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Samuel R. Savage—Resumed—Direct.

Q. How late were they in being set out? A. A week or ten days later than they had a right to have been.

Q. And what effect did that have upon the tomatoes with relation to maturity? A. Well, it had an awful lot to do with them. One thing they got too tall in the beds, the men could not get them out fast enough. I started them to put them out as far as I knew from what the men would tell me what was looking after the bed, how big they were, and I could not get out and look after them myself, and there is no one can take care of a bunch of hotbeds better than the farmer himself. 10

Q. Did you have any loss by reason of the lateness in putting out these tomatoes? A. Yes, sir, I had as much as three— 20

MR. COULT: No, don't mention any sum. "Yes" is responsive to that.

Q. What was that loss and how did it come about?

MR. COULT: I object to that, because that presumably calls for an answer in figures of money loss which is not the way to prove loss of profits, if the Court please. In other words, it calls for an answer which is a conclusion. 30

THE COURT: Are you entitled to anything more, Senator, than to prove the loss of earning power?

MR. AVIS: I think so, if the Court please, in this: We have stated this as a part of the loss of earning power. It is not a question of the loss in dollars and cents. You 40

see, this man was a farmer, farming for himself, he did not get any salary at all, he did not get any pay, all he got was what he was able to bring out of the soil by his own efforts and the efforts of those whom he employed.

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THE COURT: Yes, but there is the rub; if his earnings were the result of his own labor that would be one thing; if his profits from the farm were derived from the labor of others that would be another. That would be a business, carrying on a business.

MR. AVIS: Yes, it seems to me we have a right—

THE COURT: I will hear you.

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MR. COULT: I was going to say the true measure of damages in a case of this kind is the money expended, if any, to procure somebody to do the work the injured man was doing. That is the measure of damages.

THE COURT: Where there has been a physical injury; you don't say that he has been incapacitated mentally?

MR. AVIS: Not at all, sir.

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THE COURT: He might direct the farm work.

MR. AVIS: From the distance only, because he was in the house. Now, my contention is this, that by reason of this accident he was laid up in the house and unable, I think, for a week or ten days or two weeks to give any directions, possibly.

THE COURT: I think you may show without going into details that he sustained

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Samuel R. Savage—Resumed—Direct.

a loss. You have no objection to that?

MR. COULT: Well, if the Court please, I have a most serious objection to any proof of loss of prospective profits at the time of the injury. The loss, the actual money loss that can be attributed to the accident, of course we have no objection to the proof of. Does your Honor wish to hear me on profits. I have looked into the question before. 10

THE COURT: Yes, I would like to hear you; so many conditions enter into profits, especially arising from farm work.

MR. AVIS: That is true. Now, if the Court please, before the Judge argues his legal situation I want to call your attention to the situation of fact. What I am asking this question on is a situation of fact, that these tomatoes did not mature at the time they ought to. Now, I want to prove the fact of what the prices were and about what crop would have matured, not what was going to mature some other time, but from actual knowledge of conditions existing that are in the past. That is my idea. 20

THE COURT: Well, couldn't he have procured somebody to go there and look after that crop? 30

MR. AVIS: I don't think it was possible; he had a man there, if the Court please, managing the proposition and doing the best he could, but he could not do what this man could do with their help, he couldn't move them, couldn't keep them going. That is the situation that we claim. 40

Samuel R. Savage—Resumed—Direct.

THE COURT: It would be very remarkable if there is only one man in all this community of farmers, excellent farmers, who could look after one tomato crop—

10 MR. AVIS: They are all working the fields and all busy at that time of year; you can't get a man off his farm to take charge of somebody else's at that time of year; they are not loose.

THE COURT: I will hear you, Judge.

20 MR. COULT: If the Court please, in all the English cases and all the early cases in this country there was never an allowance of profits as an element of damages at all, because the Court deemed it was too uncertain, that it was dependent upon too many conditions outside of the loss of the work of a single man; of course, I am dealing with profits now as being claimed as the result of a personal injury, an injury to some person. Now, there have been two exceptions to the rule, one in the case of attorneys, and the other in the case of physicians, professional men, in other words, who had a peculiar kind of work and who can make an average of their earnings, who can say, "I average so much money by my own personal efforts, not by the work of others during the year, and I was laid up so long; my average loss therefor because I personally was unable to attend to my business is so much money." But in a case—and as your Honor has very well said that is one of the distinguishing features mentioned in the cases—

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where a man is engaged in a business or enterprise and where he employs others and his own work is mingled with that of others, there is no possible way to say with certainty how much his business has suffered even if he is taken out of it; it is dependent upon market conditions, the kind of season the man had; nobody can tell with certainty how these tomatoes would have grown if they had been put out earlier, they might have all been destroyed, some sort of blight might have happened to them. It is all based upon pure speculation; it is a speculative element of damages, and as your Honor well knows, no recovery should be had for damages of that kind. If your Honor wishes to have a reference to it, there is a very neat reference to it in *Cyc.*, where the general statement is made just as I have given it here.

THE COURT: Well, I will look at that during the recess, but just for the time being, Senator, I am inclined to eliminate that, unless I change my mind.

MR. AVIS: If the Court please, if I may just say a word in reply to Judge Coult, this situation is not the situation that the Judge refers to. I am going to be able to prove conditions on an absolutely adjoining place where the same class of goods were grown. That is why I want to follow it up for the purpose of showing that if this crop had been put out a week earlier or ten days, and farmed and cared for in the manner that it was when it was put

Samuel R. Savage—Resumed—Direct.

out, that the crop would have been in the market a week earlier when the price was five times as much. I am not speculating on this to the extent of showing that if I could only have gotten my crop in—

10 THE COURT: I understand your point fully, Senator, and will consider it. I think it is too doubtful now. My personal impression is that it would probably imperil any verdict that might be obtained in the case.

Q. Were you compelled because of your illness to employ any extra men to do the work on your farm and the other businesses in which you were engaged? A. Yes.

20 Q. How many, do you know? A. I employed about four extra Italian men alone more than would have been necessary if I had been on my own feet myself.

Q. Italians were the people who were working for you to a very great extent? A. Yes.

30 Q. And they have got to have somebody to keep after them pretty lively? A. Yes, they want a boss over them, and a man that pays them is the best boss you can put over them. You hire a boss to put over them and if you ain't careful you have got to watch him; that is the size of it.

Q. Now, how much per day additional did it cost you to conduct your business because of hiring these four men? A. Why, I paid men \$1.25 a day and gave them facilities to live in. It was worth \$1.50 a day for every man I hired, considering the house they lived in and so forth.

40 Q. How long did this extra help continue—how

Samuel R. Savage—Resumed—Direct.

long was it necessary to employ this extra help?
 A. Well, until I was able to be around and go with them and stay with them; it was not that I could work with them and show them or lead them or anything like that, but just to look on.

Q. When was that? A. About the first of Sep- 10
 tember I began to slacken off on the help; dropped off two of them; the first of October two more of them dropped off, then I got back. The season was over then so I could go on with the help that I have got now.

Q. Have you suffered any pain from this injury?

A. Yes, sir, lots of it.

Q. Just tell the jury what is it, won't you, how long it bothered you? A. Well, the first couple of weeks in bed it was something awful, and ever since that, after I got out it slackened down, but 20
 occasionally I make a mis-step and stumble and strain that knee; I can't walk steady on that foot.

Q. What business are you engaged in—Pardon me, I will withdrawn that question. How about at night time; do you have any difficulty even yet at night time with pain and suffering?

A. Yes.

Q. Tell the jury. A. I have a difficulty with using my foot in bed; I have got to lift it into 30
 bed to get in; I can't drag it in, it drops down, I have got to carry the weight of it, and here this last two or three nights I just went to bed,—the nights were cold,—with that bandage on that leg and all on, just as you seen I had it stripped there.

Q. Before that time did you use the bandage or did you get in the bed without it? A. No, I took it off when I got so I could get upstairs, I took it off, but it seemed to me that in my sleep

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I drew my leg up, crouched myself up, and I woke up with an awful pain there.

Q. Does that continue down to the present time?

A. Yes, that continued on; that is one reason why I left the bandage on to draw it out. Then I can't bend my leg so far, I can't get it up so far, and
10 it don't pain me as bad.

Q. How about your back? A. Well, my back is pretty good outside of stooping; for stooping purposes it ain't no good. While I am straight I am all right.

Q. How about your head, does it bother you at all? A. It does, I get a dizziness in my head whenever I stoop down to pick up anything; I can't stay over.

Q. Now, did you have any of these troubles before this injury? A. No, sir, I always had a good
20 back and no dizziness or anything the matter with me, so I could stoop over and work all day in any position I was a mind to get in.

Q. What about going up and down stairs? A. Well, I have to drag this foot up; I go up with my good leg first and go down with the injured leg first; go up one step at a time.

Q. And down one step at a time? A. Down
30 just the same.

Q. Are you able to go up or downstairs any other way? A. No, sir.

Q. That is, I mean walking? A. No.

Q. What else have you done since you have been injured? What have you done since the first of September, for instance, about your work, the conduct of your business? A. Well, I don't just really understand you.

Samuel R. Savage—Resumed—Direct.

Q. What have you done about conducting your business since the first of September? A. Well, I have been able to be around and look after it, can't do any work, but I can go around and see how the men are getting along, which I couldn't do before.

Q. Well, how do you go around the farm? A. 10
I sometimes take the automobile if it is along the roads. I can't go no distance and walk at all; I have to either take a horse and wagon, a little light wagon,—I kind of broke that off now, but that is what I had to do all the time up until I was able to walk any length of distance.

Q. How about walking in plowed ground or farmland? A. Well, I can't do that, can't walk on any ground that wasn't solid foothold.

Q. How about now? A. I can't do it now; it 20
bothers me to walk through trashy ground where vines or grass or anything have been growing on the farm, like this time of year; I can't lift that foot over, have to drag it around, and it hooks into stuff and has throwed me.

Q. Has it ever thrown you? A. Yes, throwed me on the farm; I have been throwed on smooth ground by treading on something like a corncob or a piece of wood or anything like that, it would 30
make me go over about like a knuckled horse would go over.

Q. What other business do you conduct or did you conduct before this trouble occurred outside of the farming business? A. Before this occurred?

Q. Before and since both. A. Well, carried on the telephone pole business, and at the present time it is very heavy.

Samuel R. Savage—Resumed—Direct.

Q. Anything else beside telephone poles? A. This last winter I got in touch—I was hauling poles; I sold them to the Pennsylvania or the Western Electric I would say—

10 Q. That is, you sold poles to them? A. Sold poles to DuPont's Powder Mills; when I was down there I noticed they were using a good many small railroad ties, so I went to the head man of the purchasing department, Mr. Shackelford, asked him if there was any market for any more. He said, "Yes, later on we will need them." So it wasn't long before I got an order for 5,000; I took that and I filled it about the first week in April or something to that effect, right after I was hurt or just before I was hurt, I ain't sure which now.
20 They wanted me to take another order for 10,000 more.

Q. Did you fill the 10,000 order? A. No.

Q. Why not? A. Well, I wasn't in shape to get out and handle it; I just gave it up.

Q. Could you have arranged to have handled it without yourself being in charge of the work? A. No, sir, because I—

Q. What profit would you have made out of those 10,000 ties?

30 MR. COULT: I object to that; that calls for a conclusion.

THE COURT: The objection is sustained.

MR. AVIS: If the Court please, does your Honor understand he had already furnished five thousand, had the lumber to furnish ten thousand and had an order for them?

THE COURT: Did he cut ties himself?

MR. AVIS: The first one of 5,000.

Samuel R. Savage—Resumed—Direct—Cross.

THE COURT: Was he going to cut these himself?

MR. AVIS: No, he was going to have some help to do it, he couldn't do it alone.

THE COURT: The objection is sustained.

MR. AVIS: I presume there is no necessity for having an exception under the present rule. 10

THE COURT: I think you had better take one.

MR. AVIS: Well, I would like to have an exception, if the Court please, to that.

Q. Did you get any bill from Dr. Clark for his services? A. Yes, sir.

Q. What was the amount of that? A. \$250. 20

Q. Did you buy any medicines or anything to bathe with? A. I bought two quarts of alcohol and bathed with that.

Q. What did that cost you, do you know? A. A dollar a quart.

Cross-Examination by Mr. Coult:

Q. Have you paid Dr. Clark? A. Paid him one-half my bill.

Q. And then there is \$125 that is still coming to him? A. Yes, sir. 30

Q. On this day that you got injured, Mr. Savage, you say you got back to Woodbury about quarter of one? A. Something to that effect; I couldn't say to the minute, but any old timetable of the Pennsylvania Railroad I could point you out the train that I came on, a steam train; I had been running electric trains all the time, but this

Samuel R. Savage—Resumed—Cross.

happened to be the first train out and I was anxious to get home on account of the snow.

Q. That is just what I was coming to. Was it snowing then when you got to Woodbury? A. Yes, sir, snowing.

10 Q. And had it been snowing when you took your train at Camden? A. Yes, sir, snowing after I left Philadelphia, snowing heavy.

Q. How much snow was there on the ground when you got to Woodbury? A. Woodbury? Why, first I said—there was a man came down with me, rode down with me, got off and we walked out the street together, Elmer Clement. I said, “Elmer, why it snowed heavier here—”

20 Q. No, can you tell me just about how much snow there was? A. Yes, I can tell you, about ten inches.

Q. About ten inches of snow on the ground then? A. Yes.

30 Q. What time did this snowstorm start? A. Well, it started sometime early in the morning after I had left home to go into Woodbury, as near as I can recollect. I had started—I don’t know whether, I can’t recollect now whether it was snowing when I arrived at Philadelphia in the morning or not.

Q. You can’t give us any idea then of when that snowstorm started? A. What say?

Q. You can’t give us any idea then of when that snowstorm started? A. Well, sometime in the morning, eight or nine o’clock, as near as I can recollect.

Q. About eight or nine o’clock? A. Yes.

Q. And by quarter of twelve there was ten

Samuel R. Savage—Resumed—Cross.

inches of snow on the ground? A. Quarter of one.

Q. Quarter of one? A. Yes.

Q. And you were in a hurry to get back home?
A. Yes, I had a good deal of business out there, things that needed taking care of. There was all them tomato plants and a great big, long sweet potato bed, and there had to be a fire kept in that, and my mind was— 10

Q. And there was another thing that made you want to hurry to get home, wasn't there? A. What was that?

Q. To get home before the snow was too deep.
A. No, sir, not so bad, I wasn't afraid but what I would get home if I went right on. Sure, I didn't want the snow to overtake me. I could have stayed in Philadelphia two or three hours and then got bested on it. I didn't hurry my automobile to get home before the snow got too deep, no, indeed. 20

Q. But you were in a hurry? A. What say?

Q. I thought you said you were in a hurry to get home? A. I was, yes, but I wasn't in such a hurry but what I could get there if everything had went right.

Q. Now, when you got out on this main road, Cooper Street out here, there was so much snow on the road itself that you did not think that was a good place to travel on, did you? A. Yes, sir, there was no road broke, there was nobody else had been on it; the snow had covered it up and piled it up so that it wasn't safe. There had been wagons or autos or whatever it was broke the road right in the trolley tracks. Any other man would have took the same road I took. 30

Q. I will have to ask you to confine your answers to responses to my questions; please don't give me 40

Samuel R. Savage—Resumed—Cross.

conclusions and opinions. You took the trolley tracks because they were broken? A. Yes.

Q. Couldn't you have traveled on the dirt road?

A. No, sir.

Q. Why not? A. Well, it wasn't safe.

10 Q. Well, that is what I asked you; it wasn't safe in the dirt road? A. No.

Q. Why wasn't it safe? A. Well, there was too much snow there; there was a ditch along there.

Q. What would that do to make it unsafe? A. Well, if you had been out there—

20 Q. But what was there about that snow that made it unsafe? A. I would like to have had you there; I would have showed you what made it unsafe, a ditch on one side and two sets of poles and ten or twelve inches of snow; two foot the snow had drifted some places on that road.

Q. Were you afraid of skidding? A. Yes.

Q. Wasn't that what made it unsafe on the side? A. To a certain extent, sure. I have heard and read of many a man climbing telephone poles—they had had that news in the paper about me at the time after it happened.

30 Q. You did not go on the side road for fear your automobile would skid, isn't that correct? A. That is it.

Q. Now, you did not expect any snowstorm in the morning when you started out to Philadelphia, did you? A. No.

Q. And you didn't take your chains with you? A. No, sir.

Q. You had chains at home that would have prevented skidding, hadn't you? A. Not altogether, no, nothing would prevent in a case like that, as bad as that.

Samuel R. Savage—Resumed—Cross.

Q. So there was nothing safe? A. Nothing is safe that ever I seen on an automobile.

Q. When you started to take the trolley tracks, did you think you were safe from skidding then?

A. Yes, you get in the tracks you can pilot your way down there, and there is no way of sliding out as easy as it would be in sliding in and out on a slippery wet snow like that was. 10

Q. In fact, it is pretty hard to get out of wet trolley tracks after you get in them, isn't it? A. Yes.

Q. And you had often used that road before, had you not? A. Plenty of times.

Q. And you had traveled in these trolley tracks before, hadn't you? A. Yes, not very often, though, only when it was necessary; if the side roads was muddy and slippery or turning out for a wagon; if I would be going into Woodbury and a wagon would be coming out, I would have to give them the right of way and have to take to the track to let them have the right of way to come out. 20

Q. But you were familiar with the kind of trolley rails that there were on that road, weren't you? A. Yes.

Q. How much did this automobile of yours weigh? A. 3,000, 3,200, something like that, as near as I could recollect, what I was told by the man I bought it off of. 30

Q. And in April of this year how long had you been driving an automobile? A. Well, three years; I started in December three years ago, this makes three years, this year, and if I ain't mistaken three or four; it is my third automobile I have got now, anyhow.

Q. And how long had you been driving this particular Studebaker car? A. Before the accident? 40

Samuel R. Savage—Resumed—Cross.

Q. Yes. A. Ever since I owned it.

Q. Well, let's see; when was that again? A. Well, it was the June before, May or June. It was in the spring of the year when I bought it.

Q. That was about ten months? A. Yes.

10 Q. Did you drive it quite constantly? A. Yes, sir.

Q. Familiar with it? A. Yes, sir, familiar with every action that it had.

Q. Did you ever drive it in snow before? A. Lots of times.

Q. On the trolley tracks? A. No.

Q. Never had been on the trolley tracks when there was snow on the ground, had you? A. Well, not in front of a trolley car, no, that is the reason I was—

20 Q. I am not asking you that yet. Now, please be fair with me. A. I am, but when you come to put—

Q. I am asking you if you had ever driven that particular car on the trolley tracks when there was snow on the ground? A. Well, I could answer the question if I could recollect whether there was ever any snow fell when I happened to come to Woodbury, but there might have been snows and I wouldn't have no errand and could stay home, that was the only reason.

30 Q. Then your answer is that you don't know? A. I don't know.

Q. You may have? A. I may have, but I don't know.

Q. And you may not have? A. Yes.

Q. Were the brakes on your car in good working order at the time of the accident? A. Yes, sir.

Samuel R. Savage—Resumed—Cross.

Q. At the place where your automobile and the trolley car came together, there is a grade, isn't there? A. Yes, there is a grade there for quite a distance.

Q. And it is quite a considerable grade, isn't it?
A. Well, the grade ain't so heavy as the distance; the grade is no grade, not a heavy grade. I don't know what you would consider a heavy grade, but I wouldn't consider that a heavy grade. 10

Q. You were going down hill, though? A. Yes.

Q. You say it is a long grade? A. Yes.

Q. Could you say about how long that hill is?
A. Well, it starts to grade just a little below the Country Club and it is a grade all the way to the creek. Any one that knows the surroundings there—

Q. Could you give some idea in feet? A. Fifteen hundred feet, I should judge. 20

Q. Now, at what point on this hill did the accident occur, near the bottom or near the top? A. Yes, near the bottom, about two to three hundred feet from the lower end.

Q. And you had gone a thousand feet down the hill? A. Well, I should judge so, yes.

Q. Before you struck—before you came in contact with the trolley car? A. Yes. 30

Q. And that is a straight road there, isn't it? A. Yes.

Q. No trouble to see the bottom of the hill? A. A straight road to the bridge from Woodbury out, but that trolley comes off its own property on to this Cooper Street with a turn in the road, so that if it wasn't snowing or anything else you wouldn't see no trolley if you happened to be there at the bridge until it was right on you. There is a crook 40

Samuel R. Savage—Resumed—Cross.

there in the road; as soon as you leave the bridge, the trolley pops around the corner.

Q. How far is it from the point where the accident took place to the bridge? A. Well, I told you before, between two and three hundred feet as near as I could recollect. I guess you have got
10 men that knows just how much it is.

Q. Well, I know, but I am asking you. A. I never got out and measured it.

Q. You say it is two or three hundred feet from the bridge to the point on the hill where the accident took place? A. Yes.

Q. And a thousand feet about from that point to the top of the hill? A. I should judge so, I ain't sure.

Q. Well, that is your best recollection? A. That
20 is the best.

Q. And it is a clear view from the top of the hill to the bridge, isn't it, under ordinary conditions? A. Yes.

Q. Now, why was it you did not see this trolley until it got within twenty feet of you? A. The snow was so heavy and the trolley came around the turn there—it hadn't been in sight straight up and down that road only a couple of minutes or
30 something to that effect, maybe one minute; it had to run about three hundred feet from the time it came around the turn on to the public road where I could see it, that is how long it had to run before it hit me, three to four hundred feet, not more than four hundred feet.

Q. I know, but you didn't see the trolley car come around the turn? A. No, I did not.

Q. And the trolley car had gone about two hun-

Samuel R. Savage—Resumed—Cross.

dred feet beyond the turn before you saw it at all, hadn't it? A. Yes, I didn't see it.

Q. Now, why was that? A. The snow was so heavy I couldn't see it; I was looking for it.

Q. Now, that is what I want to know. It was snowing so hard that you could not see that trolley car until it got within twenty feet of your car? A. Yes, that is it, twenty or twenty-five feet. 10

Q. Now, what is your best judgment, twenty or twenty-five feet? A. Either one of them is good enough; there ain't much difference in spying anything when you both are moving; that ain't far for to have a chance to look.

Q. Now, for how long a time had the snow been so thick that you could not see beyond twenty feet ahead of you? A. I don't know; when I was riding down in the steam train I could see it snowing very heavy and all like that, and I wasn't in Woodbury long enough to give any demonstration of how long it was. 20

Q. I mean after the time you left Woodbury; had you been going down that road unable to see more than twenty feet all the way? A. Yes.

Q. What? A. Yes, sir, and I went slow enough so I could pilot my way.

Q. Well, you went about fifteen miles an hour, didn't you? A. Yes. 30

Q. When you saw the car you shut off your power and put on your brakes? A. Yes.

Q. But your automobile was still moving when you hit the car, wasn't it? A. As far as I know; that is as far as I know, I couldn't say positively whether I had brought it to a standstill or not.

Q. How far do you think your automobile went after you shut off the power and put on the brakes? 40

Samuel R. Savage—Resumed—Cross.

A. It brought up against the trolley car, that is how far it went.

Q. How far is that? A. Well, you got me there.

Q. You don't know? A. No.

10 Q. Now, Mr. Savage, with that same car that you had that day and on that hill where the accident happened under the same conditions, within what distance could you stop that automobile if you tried? A. In a snowstorm or on a dry road?

Q. In a snowstorm under those same conditions, on the same kind of tracks? A. That I couldn't tell you, never tried it, never experienced that thing to see how long it would take it to stop in a snowstorm like that, because we don't have them very often like that.

20 Q. How long had you been going at the rate of fifteen miles an hour before meeting this car? A. After I got over the railroad down here, started on down the grade there from the railroad depot down Cooper Street, I went on about that gait, from twelve to fifteen; it wasn't all fifteen.

Q. Well, it was fifteen miles an hour at the time the accident happened, wasn't it? A. Well, you can have it that way; you are inclined to have it that way.

30 Q. What say? A. I say, you are inclined to hold me to fifteen, so I might as well say yes; if you want to make me believe that, all right.

Q. No, I just want to know what the fact was. A. Well, I told you as near as I could recollect from twelve to fifteen miles an hour, but you seem to think fifteen, I expect, was slow enough, or something to that effect. You could make it twenty and go ahead like enough.

Samuel R. Savage—Resumed—Cross.

Q. No, I want to make it just the way you have it. You made a statement in this case? A. Yes.

Q. Signed it? A. Yes, and there might be some things there I exaggerated a little bit.

Q. You didn't exaggerate against yourself, did you? A. Well, it might be; I was worried up there that time pretty bad. The man came along the next day or two after it happened. 10

Q. Well, just look at these papers; I show you a paper which purports to be a statement made by Samuel R. Savage of Glassboro stone road, taken April 5, 1915, marked page No. 1, and call your attention to the signature at the bottom of that page. Is that your signature? A. Yes, sir.

Q. And right above your signature there is a line which reads, "I read the above and it is the truth." Whose handwriting is that in? A. Well, what I read was the truth, but what is there now and what I read might be two different things. 20

Q. Yes, but I am asking you whose handwriting is that line in—who wrote that? A. Mine.

Q. You wrote that? A. I did, yes.

Q. You wrote those words, "I read the above and it is the truth"? A. Yes.

Q. Now, I call your attention to the signature on the left hand side at the bottom opposite the word "witness." Whose signature is that? A. That is my wife's; I don't know whether it is her signature or not, I don't recollect her signature, but she can tell you so; she is present in the court room. 30

Q. Was she present when you signed this statement? A. Yes.

Q. Did she sign it as a witness? A. Yes.

Samuel R. Savage—Resumed—Cross.

Q. And this statement was also sworn to, was it not, by you? A. Yes, sir.

Q. Before a Mr. O'Connor, a Commissioner of Deeds? A. Yes.

10 MR. COULT: Now, I ask to have sheet No. 1 marked for identification.
(Said paper is marked Exhibit D-1 for identification).

Q. Now, I show you a paper purporting to be page No. 2 of a like statement and call your attention to the signature at the lower right-hand corner and ask you if that is your signature? A. Yes, it looks very much like it.

20 Q. And that is your handwriting on the line immediately above, "I read the above and it is the truth," isn't it? A. Yes.

Q. And it is witnessed by your wife? A. Yes.

Q. And it was sworn to by you, wasn't it? A. Yes.

MR. COULT: I ask to have it marked for identification.

(Said paper marked Exhibit D-2 for identification).

30 Q. I show you paper that purports to be page No. 3 of a like statement and ask if that is your signature at the bottom of that page? A. Yes.

Q. And whether you wrote the words, "I read the above and it is the truth"? A. Yes, sir.

Q. And whether that is witnessed by your wife, Mrs. Savage? A. It is.

Q. And sworn to by you? A. Yes.

Samuel R. Savage—Resumed—Cross.

(Said paper is marked Exhibit D-3 for identification).

Q. Page No. 4 of a like statement I now show you and ask if that is your signature at the lower right-hand corner? A. Yes.

Q. And you wrote a line above, "I read the above and it is the truth"? A. Yes. 10

Q. And it is witnessed by your wife? A. Yes.

Q. And sworn to by you? A. Yes.

MR. COULT: I offer it for identification.

(Said paper is marked Exhibit D-4 for identification).

Q. And page No. 5 I now show you which purports to be a like statement signed by you? A. Yes, sir. 20

Q. And you wrote the line above, "I read the above and it is the truth," it is witnessed by your wife and sworn to by you? A. Yes, sir.

(Said paper is marked Exhibit D-5 for identification).

Q. Now, I call your attention to Exhibit D-2 for identification and particularly to that part of it where it says, "As it was snowing hard and very thick I was unable to see very far ahead, and as I knew I was in a dangerous place on the trolley track, I looked at the speedometer and saw I was going at fifteen miles an hour." Is that the truth? A. That is the truth, that is all right, at just that time; I didn't say all the way down that track. 30

Q. No. A. No, I said just then when I looked at it I was going fifteen.

Samuel R. Savage—Resumed—Cross.

Q. Well, you looked at it just before the accident happened, didn't you? A. Yes.

Q. The wind was blowing toward you, wasn't it? A. Yes.

10 Q. It was a northeast storm, I suppose? A. Well, yes, northeast or south or southeast, I suppose.

Q. Coming out of the east? A. Coming out of the east.

Q. And there was snow on your windshield? A. Yes.

Q. And you could not see through your windshield at all? A. No.

Q. You had to have it turned open so that you could look out? A. Yes.

20 Q. And there was an aperture there of—I think you said about four inches? A. Yes, sir.

Q. Now, did you keep a careful lookout as you were coming down this hill? A. I did; the only time I wasn't looking at that was when I cast my eyes at the speedometer, because I was aware of what—

Q. You said in your statement that you knew you were in a dangerous place? A. Yes.

30 Q. And you meant by that that you were likely to meet a trolley car? A. Yes.

Q. Coming in the opposite direction? A. Sure.

Q. And up to that time, while coming down this hill, you had not been able to see more than fifteen feet ahead of you, is that true? A. No, further than that, twenty to twenty-five feet; don't make it any closer than what it was.

Q. You could not see objects more than twenty feet away? A. That is as far as I could— Yes, I could see further than that, but that is as far as

Samuel R. Savage—Resumed—Cross.

I saw that trolley, as near as I can judge ahead of me, on account of the snow and the paint on the trolley car looking near alike in color.

Q. I want to call your attention to Exhibit D-3 for identification where it says, "Car and auto were still in motion when the collision occurred. The reason I did not see the car before I did was on account of the snow falling so thick which prevented me from seeing over twenty feet ahead." 10

A. Yes.

Q. Is that the truth? A. That is the truth then. yes. There are lots of things that come back into my mind since then. That was sudden; that tale, that statement I made was sudden on top of all the misery that I was in, and that seems to be the trick of them people, to get a statement from a man while he is upset. 20

MR. COULT: I move that that be stricken out, if the Court please, on the ground that it is not responsive.

THE COURT: Let it be stricken out.

Q. Well, as I recall, Mr. Savage, in the testimony you gave here you said first that you could not see more than twenty feet ahead, didn't you, since you have been on the witness stand here? 30

A. All the way down the street, is that it?

Q. No, sir, at the time of the accident, didn't you say that you could not see more than twenty feet ahead? A. Well, not as I know of; I said I couldn't see that trolley car any further than that ahead of me, that is as near as I saw that, but I don't recollect saying anything else.

Q. Well, a trolley car is quite a substantial item, isn't it? A. Yes, but when it comes up about— 40

Samuel R. Savage—Resumed—Cross.

if it had been black it would have been noticeable sooner. The color of the trolley car and the snow, coming through them heavy flakes of snow, it seemed it wasn't as noticeable as though it had been a darker color.

10 Q. Well, for instance, Mr. Savage, how far could you see the trees as you approached them on either side of the street? A. I don't recollect; I wasn't looking for trees.

Q. There was snow all over everything, wasn't there, pretty much everything was white? A. Yes, but I wasn't looking for no trees; I was looking right straight down the road in front of me.

Q. This was a wet snow, wasn't it? A. Yes.

Q. It wasn't dry? A. No.

20 Q. It was clinging to everything? A. Yes.

Q. The trees were white, weren't they? A. No, not the side I was coming to them; the snow was beating on the other side. I was coming against the snow.

Q. Was there snow on the front of the trolley car? A. On the glass, yes.

Q. As it approached you? A. Yes.

Q. Did you notice that? A. Yes.

30 Q. How far away was the car when you noticed the snow on the dash? A. How far was I away from the car? When they took me out of the automobile, getting me into the trolley car.

Q. And was there snow on the windows of the automobile as it approached you, or the trolley car as it approached you, on the front windows? A. On the front ahead of the motorman?

Q. Yes. A. Yes, sir.

Q. When did you notice that? A. When the

Samuel R. Savage—Resumed—Cross.

men lifted me out of the automobile and put me into the trolley car.

Q. Do you own an automobile now, Mr. Savage?
A. Yes.

Q. How many, more than one? A. One automobile and one truck.

Q. Do you drive the truck? A. Sometimes 10
when I have occasion and it can't be helped.

Q. And you drive your automobile regularly now, don't you? A. Yes.

Q. You drove it this morning? A. Yes, met you out in the street; did you notice me?

Q. I was standing just about where this accident happened, wasn't I? A. Yes, and I blew my horn for you to get out of the road, too, didn't I? You were liable to stand there and let me 20
run into you if I didn't blow it, I expect—do you recollect that?

MR. AVIS: No, just answer the questions.

Q. Were you on the trolley track at the time?

By the Court:

Q. Did this collision occur in the City of Woodbury? A. Yes.

Q. On one of the principal highways, is it, 30
Cooper Street? A. Yes.

Q. Is it the principal highway running east and west?

MR. AVIS: Yes, it is; it is out in that portion where there are no houses, practically no houses there; it is beyond the Country Club.

THE WITNESS: There are only two or three houses all the way down that fifteen

Samuel R. Savage—Resumed—Cross.

hundred feet, two of them on the left, one of them, a new one, and the others on the right.

By Mr. Coult:

10 Q. When you passed me this morning I was standing on the street about where the accident occurred, wasn't I? A. I should judge you was, yes.

At this point a recess was taken until 1:30 P. M.

20 Trial of the cause resumed at 1:30 P. M., pursuant to adjournment, in the presence of counsel for the respective parties.

MR. COULT: I would like to ask the plaintiff one or two questions more.

SAMUEL R. SAVAGE, recalled, for further cross-examination.

By Mr. Coult:

30 Q. Mr. Savage, at the time that this accident occurred you had a horn on your car? A. An electric horn.

Q. Yes, and that was a device for giving warning? A. Yes.

Q. Now, did you blow that horn before the accident? A. Before the accident? No, sir, I didn't think it was necessary to blow it to draw a trolleyman's attention in an inclosed car; if it had been a man, horse and wagon or an automobile, any-

Samuel R. Savage—Resumed—Cross.

thing else, it would have come right in my mind to blow it, just that quick, but I don't notice people ever blowing for trolley cars in automobiles. I don't think the law ever calls for that.

By Mr. Avis:

Q. What was the first thing you did when you saw the car? A. Put on my brake, threw the clutch out and released my engine. 10

Q. Where was your left hand, what did you do with your left hand? A. The left hand I held to the wheel.

Q. What did you do with the right hand? A. The right hand I pulled on the emergency brake.

Q. You got your brakes on as quick as you could, but you didn't have time to blow your horn, did you, Mr. Savage? A. No; I didn't give it a thought anyhow, blowing the horn. 20

Q. No, your thought was to stop the car? A. Yes.

By the Court:

Q. Did the motorman signal? A. No.

Q. Did he blow his whistle or horn? A. No, sir, I didn't hear a sound, Judge.

Q. His bell, his gong, rather? A. No, I didn't hear a sound from him; for I did—that was the first words I said to him— 30

Q. Never mind; you have answered the question.

By Mr. Avis:

Q. Which direction, as you were going out Cooper Street which direction was the storm coming from? A. Northeast, as near as I could see. 40

Mrs. Katherine Savage—Direct.

Q. Well, what quarter—I am speaking now as far as the street is concerned—suppose the street was straight ahead of you? A. It was off on a quarter about this way.

Q. Coming crossways, was it? A. Yes, sir.

10 Q. Partly, at least? A. Yes.

MRS. KATHERINE SAVAGE, sworn.

By Mr. Avis:

Q. Mrs. Savage, you are the wife of Samuel Savage, the plaintiff in this suit? A. Yes, sir.

20 Q. And where were you when Mr. Savage came home on the day of this 3rd of April? A. Right in the kitchen.

Q. What was done with Mr. Savage when he came in? A. Well, they took him right in between them, the men that brought him home, and set him in the chair, and he asked right away for to lay him down, he was in such misery, so I had the bed ready right in the sitting room when he came home, and they took him and laid him in the bed, but I couldn't get his clothes off nor his coat off, and his clothes were on for a week before we got them off.

30 Q. He didn't have all his clothing off for a week, you say? A. No, couldn't get them off.

Q. What condition was he in as far as suffering pain was concerned when you got him on the bed and how long did that last? A. Well, he was all the time moaning with pain, his back and his knee.

40 Q. What attention did you have to give him?

Mrs. Katherine Savage—Direct.

A. Well, I had to sit right up there every night; I slept on a lounge there in the kitchen, for I couldn't take off my clothes; I had to jump up every five minutes to lift his foot around; it had to be lifted here and lifted there; I thought it would ease it and I had to lift the pillows under his head for to give him ease. 10

Q. How often did he complain to you about this pain and the necessary movements? A. Often enough, pretty near every minute.

Q. How long did that more or less continue in that same way? A. Well, it did pretty nearly until he got out, the whole time until he got up on his feet, until he could get around.

Q. How long was it, say, since you had to attend to him frequently? A. Well, I had for a week, I guess, maybe more, as long as I can remember, maybe longer than a week. 20

Q. How long after he was brought home before you went to bed? A. Oh, it was over a week before I went up to bed, and I would have to get up then and come downstairs if he would want anything. It was so cold I couldn't stay down; the lounge was kind of hard, couldn't bring my bed downstairs, only the one that we had down.

Q. Did anybody else look after him at night time? A. No, nobody else but myself. 3)

Q. How about afterward, did anybody care for him at night time? A. No, I was the one, if he wanted anything he would call me and I would come downstairs.

Q. Was there anybody else employed about the place who assisted him to get in and out of bed at any time? A. Yes, if I couldn't.

Mrs. Katherine Savage—Direct.

Q. Who was it? A. That gentleman sitting over there.

Q. What is his name? A. Amedia Porttizzi. He is an Italian.

10 Q. How long was it before Mr. Savage was able to go out and boss his men and look after the condition of the place? A. Well, I couldn't really tell you, but I guess about pretty nearly two months, I couldn't tell you exactly, for I didn't keep the time of it.

Q. When he first got around how did he do it? A. Well, he had to get up and put his hand on the stove or the chair or anything that way, just for to get around.

20 Q. The first he went out of doors how did he get out, did he use anything to help him? A. Yes, he had to use a stick until the doctor brought him crutches.

Q. He had crutches then afterward? A. Yes, Dr. Clark brought him crutches afterward.

Q. Do you know how long he used the crutches? A. I couldn't really tell you how long.

Q. Do you know whether or not any extra men were employed to do the work on the farm? A. Yes, he had to hire extra men.

30 Q. And how did the man who was looking after the employed men get his instructions? A. Well, he would come in to Mr. Savage and ask him.

Q. Do you know whether or not he suffers any pain now? A. Yes, at night.

Q. Tell us about that, will you? A. Well, at night when he wakes up, I guess, if he has his foot in a certain position it pains him awful.

Q. Does he complain about it? A. Yes, he does.

Q. How about his back? A. Well, he complains

Clayton Eastlack—Direct.

of his back when he is working; he don't complain of his back so much only when he is working, and if he stoops over he can't work; that is the only time he complains of his back.

Q. And in walking, in going up and downstairs, —does he go upstairs to sleep now? A. Yes.

Q. Going up and downstairs, how does he go up and downstairs? A. Well, he goes up just limping up and down, puts his hand on the banister, trying to get up the best way he can.

NO CROSS-EXAMINATION.

CLAYTON EASTLACK, sworn.

By Mr. Avis:

Q. Where do you live, Mr. Eastlack? A. Richmond.

Q. What is your occupation? A. Clerk.

Q. For whom? A. Hutchinson Motor Company.

Q. How long have you been interested more or less in the automobile or motor business? A. About three and a half years.

Q. Were you called to go out on Cooper Street on April 3rd, the day of the big snow? A. Yes.

Q. What did you find when you went out there? A. Found a car.

Q. An automobile, you mean? A. Yes.

Q. You found a trolley car—was the trolley car there then? A. Yes.

Q. Which way was the automobile headed? A. Toward the east.

MR. COULT: When was this?

Clayton Eastlack—Direct.

Q. Was it on this Saturday? A. Yes.

Q. Do you know what day, what time it was, about? A. Well, I should judge somewhere around two or a little after; I couldn't tell the time exactly.

10 Q. What did you do in relation to the automobile while you were out there? A. The only thing we did that day was move the car off the track so the trolley could get by.

Q. How did you do that? A. By tackle we had.

Q. Would the car cross the rails? A. No, had to take the rear axle out.

Q. Had to take the rear axle out? A. Had to take the rear axle out.

20 Q. And you did that before you moved it, did you? A. Before we moved it—no, not before we moved it.

Q. How did you move it? A. Why, slid it, slid everything.

Q. I show you a picture and ask you whether or not that is a picture of the car? A. That is.

Q. Were you present when that picture was taken? A. Yes, sir.

Q. This was after it had been moved off the track? A. Yes.

30 Q. Now, can you recollect when it was on the track, was it right in the middle of the track or had the front been pushed to one side of the back, pushed to one side or as near as you can recollect tell us in what position it was, will you? A. I think the front was in the track, but I can't tell about the rear; I don't know whether it was straight with the track or not.

Q. Is that picture taken of the car as it was

Clayton Eastlack—Direct.

after you had moved it off the track on Saturday?

A. Exactly.

Q. When was it taken? A. On Monday morning about eleven o'clock; I can't tell the time.

Q. Well, was it the Monday following the accident? A. Yes.

Q. And that is the position, as I understand, you say it was in when you moved it off the track on Saturday? A. Exactly, yes. 10

Q. And had anything been done to the car at the time that picture was taken, I mean except moving it off the track, to your knowledge? A. Nothing to the outside appearance of the car. We took some of the things out of the inside.

Q. That is, in the tonneau part? A. In the tonneau part that was concealed inside of the car. 20

MR. AVIS: I offer that in evidence. I understand Judge Coult has no objection to it; I will have it marked Exhibit P-1.

(Said photograph so marked).

Q. I show you another picture and ask you what that picture represents? A. The same car.

Q. Taken from a different side? A. A different angle.

Q. And had the hood been taken off of it when this picture was taken? A. We took the hood off to take a photograph of the engine so that we could get the engine. The radiator is still there, see it just pulled that down. 30

Q. Was the radiator broken? A. The radiator was all mashed to pieces.

MR. AVIS: I offer that in evidence and ask that it be marked Exhibit P-2.

(Said picture so marked).

Clayton Eastlack—Direct—Cross.

Q. What did you do with the car afterward, Mr. Eastlack, after the picture was taken? A. Why, we didn't do anything with the car. They came on in back of the car.

10 Q. Well, at the same time, but eventually what did you do with the car, I mean? A. Why, we finally put it into the garage.

Q. In whose garage? A. The Hutchinson Motor Company.

Q. Is it there now? A. It is.

Q. Have you examined it? A. Yes.

Q. Have you had any experience in buying and selling cars during the time—that is for yourself or for the firm that you are interested with? A. Yes.

20 Q. Had you ever seen that car before? A. Yes.

Q. Can you give us your opinion as to what that car was worth before the accident? A. Not exactly, I couldn't.

Q. Well, estimate it. A. I should say \$900.

Cross-Examination by Mr. Coult:

30 Q. Don't you think you are a little high on that estimate of value? A. Why, the car was in good condition; it didn't have a mark or scratch on it that I know of; everything was good.

Q. Do you know how long it had been used? A. Not exactly, I should judge six months.

Q. Assuming that it had been used ten months, if that were the case, would that lower your estimate any? A. Well, it makes a difference how a car was used.

40 Q. Yes, well, suppose it had been used pretty constantly for ten months? A. Well, I couldn't tell you about that.

Clayton Eastlack—Cross.

Q. Did you ever deal in second-hand automobiles? A. A little bit.

Q. How many have you bought and sold in the last year? A. In the last year, four anyhow.

Q. Were any of them Studebaker cars? A. No.

Q. Did you ever buy or sell a second-hand Studebaker? A. No.

10

Q. Do you know anything about the cost price of a Studebaker car of the model of this one? A. I couldn't tell exactly.

Q. Well, then, how can you give an opinion as to what it was worth second-hand? A. I imagine the car cost somewhere around \$1,200 when it was new.

Q. Well, are you basing your value of \$900 upon what you imagine the car must have cost? A. Yes, I don't think the car was hurt any as far as running; everything was good.

20

Q. You mean before the accident? A. Before the accident, yes.

Q. Well, is \$1,200 the selling price of the Studebaker, as far as you know. A. I never looked it up; I might have known at the time.

Q. Well, assuming that the car did cost about \$1,200, isn't \$300 a very small depreciation for ten months' use? A. It would be for ten months.

30

Q. Isn't there any—what did you say your business was? A. Clerk.

Q. You are not a salesman of cars? A. Not exactly, no. We did sell cars at one time.

Q. Well, don't you know that there is a generally established depreciation of forty per cent. in the value of a car in the first year? A. Well, it makes a difference—

40

Clayton Eastlack—Cross.

Q. No, but isn't that generally the case? A. I never counted it up that way.

Q. Well, you never heard of it, did you? A. Oh, yes.

Q. That that is true, that there is a forty per cent depreciation in value after one year—have you ever heard of that? A. Never heard it that way.

Q. What way did you hear it? A. Why, how the car was used and the shape it was in.

Q. You think then that the car was worth before this accident within \$300 of as much as it was when it was originally purchased, do you? A. Well, I don't say it was worth exactly \$900.

Q. Well, you want the jury to believe that that is your best estimate, don't you? A. Yes.

Q. Well, then, you are assuming for the purpose of giving your estimate that it cost \$1,200, aren't you? A. Yes.

Q. So that you are giving an estimate to the jury of the present value of that car as \$300—I mean the value of the car at the time of the accident, as \$300 less than what you assumed to be the cost price, aren't you? A. Yes.

Q. So then your opinion is based upon the assumption that there is only \$300 depreciation in the value of that car in eight months' use, is that right? A. That is right.

Q. Is that what you want to say? A. I don't know, the car had never been used very much, and the car was in good shape.

Q. Don't you think that that is a very small depreciation even if the car had not been used very much? A. No, I think that is all right.

Joseph Hudson, Sr.—Direct.

JOSEPH HUDSON, Sr., sworn.

By Mr. Avis:

Q. Where do you live, Mr. Hudson? A. On the Westville and Glassboro stone road.

Q. In what township is that? A. West Deptford, I think. 10

Q. Were you on the trolley car coming in from the stone road to Woodbury on the third day of April when this collision occurred? A. Yes.

Q. Do you remember about what time it was you got on the car? A. Why, something after two o'clock.

Q. Were you coming toward Woodbury? A. Coming toward Woodbury.

Q. And what happened on the car as you came in to Woodbury? A. What happened. 20

Q. Yes. A. Why, a collision between the trolley and an automobile.

Q. Where were you sitting in the car, Mr. Hudson? A. On the left hand side toward the rear end.

Q. That is, toward the rear of the car? A. Yes.

Q. How far from the rear? A. Well, third or fourth seat, something like that.

Q. Did you know as you were coming in whether or not the doors between the main part of the car and the place where the motorman was seated were opened or closed? A. They were open. 30

Q. What did you first know about the accident? A. A flash, just a flash.

Q. A flash of what? A. Light.

Q. Where you were sitting could you see the motorman? A. Yes.

Q. How fast was the car running, Mr. Hudson? 40

Joseph Hudson, Sr.—Direct.

A. Well, now, that I couldn't say; it was running at a moderate rate, but how fast I couldn't say.

Q. Did you see the motorman before the flash?

A. Yes, I seen him looking.

Q. Did you see any effort on his part to stop the car before the flash? A. No, sir.

10 Q. Did you hear any noise when the flash was made? A. Just a sound, I don't know how loud it might be.

Q. Well, what did that sound indicate to you?

A. Well, something came together.

Q. Was the car standing still or running? A. The car was running.

Q. Had there been any effort that you could see to stop the car before you heard this sound and saw this flash? A. None.

20 Q. Had there been any bell sounded or whistle blown? A. None.

Q. After the crash and flash, what did you do? A. Went forward to see what had happened.

Q. And when you got to the door leading into where the motorman's compartment was, where was he at? A. He was standing on the side.

Q. Did you step down to about where he had been standing? A. I had to pass through the

30 front of the car to get out.

Q. The motorman stands where in the front, about in the middle? A. As near as possible.

Q. Did you when you walked out there attempt to see what was in front of the car? A. Not at that time.

Q. Not at that time? A. No.

Q. What did you do at that time? A. Went on out.

Joseph Hudson, Sr.—Direct.

Q. What did you do on out? A. Helped Mr. Savage out of the car.

Q. What position was he in, Mr. Hudson, when you first got out there? A. Why, he was pushed up off the seat in some position, I couldn't tell you exactly how, but he wasn't on the seat, he was pushed up off of the seat. 10

Q. What did you notice with relation to his face or any other part of his body—did you see anything? A. Not until after we had got him in the car.

Q. Who took Mr. Savage into the car? A. I was one that helped.

Q. How did you get him in? A. We practically carried him in.

Q. Then after you got Mr. Savage back in the car, did you go to the motorman's place and make any effort to look in front of the car? A. Yes. 20

Q. What did you see? A. I couldn't see nothing.

Q. Were the windows open or closed? A. Closed.

Q. Why couldn't you see out? A. Because it was closed with snow.

Q. Standing in the place that the motorman stood was it possible to see anything in front of the car as you looked at it at that time? A. No, sir. 30

Q. After you got Mr. Savage in the car, did you notice anything about his condition? A. I did.

Q. What was that? A. I rolled up his pant leg personally myself and as I done that a piece of bone dropped out and I picked that up in my hand and hid it so Mr. Savage couldn't see it; I did not want him to see it, and I threw that out of the back door. 40

Joseph Hudson. Sr.—Direct—Cross.

Q. What did you notice about his face, anything? A. Oh, he had scratches, I don't know how bad they were, but his face was scratched.

Q. Was there any hole in his trousers near the knee? A. There was a cut.

10 Q. Then what did you do after that, as far as Mr. Savage was concerned? A. Why, I tried to help him as much as I could, tried to get his leg out and he couldn't stand it and I put it down again.

Q. Then what did you do after that, did you go with him to the doctor's office? A. No.

Q. You did not go to the doctor's office? A. No.

Q. After that time did you go down to his house at all to see him? A. I did, yes.

20 Q. What condition did you find him in there, Mr. Hudson? A. In bed.

Cross-Examination by Mr. Coult:

Q. You were not expecting any accident to happen before this accident occurred, were you? A. No.

Q. What were you doing just before you noticed this flash? A. Sitting in the car.

Q. Anybody with you? A. Yes.

Q. Who was with you? A. Mr. Fuhlbrick.

30 Q. Were you talking to him? A. Once in a while, I suppose.

Q. And you weren't looking toward the front of the car before this accident happened? A. Facing—just looking, as I am sitting looking at you.

Q. I know, but you weren't looking toward the motorman, were you? A. Yes.

Q. Were you? A. Yes.

Q. And that was before the accident you were

Joseph Hudson, Sr.—Cross.

looking toward the motorman? A. Looking at the front of the car, I could see the motorman.

Q. And were you noticing what the motorman was doing? A. Was I noticing?

Q. Yes. A. Well, I could see what he was doing.

Q. Well, I understood you to tell the jury that the motorman did not make any effort to stop his car, is that true? A. Before the collision? 10

Q. Yes, is that true? A. That is true, yes.

Q. And you were in a position to see what he was doing before the collision occurred? A. Yes.

Q. And you were looking at him? A. Looking at the front of the car where I could see him.

Q. The first thing you saw was a flash? A. A flash. 20

Q. That flash was over the head of the motorman, wasn't it? A. It came from somewhere in front of the car.

Q. What? A. What say?

Q. That flash was up over the head of the motorman, wasn't it, in the box? A. It was a flash; I don't know where it came from; I saw a flash.

Q. Saw a flash? A. Yes, I don't know where that came from.

Q. How long was it after that flash that you heard the collision in the front? A. How long? 30

Q. Yes. A. Why, it all seemed to come at one time, you might say. fff

Q. Well, you made a statement in this case, didn't you? A. Yes.

Q. And signed it? A. Yes.

Q. Look at this paper that I am showing you; that is your signature at the bottom of that paper, isn't it, Joseph F. Hudson? A. Yes. 40

Joseph Hudson, Sr.—Cross.

Q. I call your attention to these words, "But not expecting an accident I was not looking ahead and can't say whether he was looking ahead or not." By that "he" you meant the motorman, didn't you? A. I never heard that.

Q. What? A. I never heard that.

10 Q. Isn't this the same statement you signed?
A. Yes, but I never heard that before in my life.

Q. Let me read a little further back, "I did not see auto until after accident occurred and car had come to a stop and can't say what led up to the same. There was no one on the front platform at the time of the accident but the motorman—" A. That is right.

20 Q. "But not expecting an accident, was not looking ahead and cannot say whether he was looking ahead or not." A. I never heard of that before.

Q. Well, is that true or isn't it? A. I never heard of it; I wouldn't say it was true, because I never heard of that before.

Q. Will you say that statement is not true? A. I will say I never heard of that before, never seen that before.

30 Q. Please answer my question; is that true or not? A. I couldn't say it was true for I had never seen it before.

Q. Well, I am asking you about the fact; is that so that you weren't looking ahead and that you cannot say whether the motorman was looking ahead or not—is that true or not? A. I just told you I was looking ahead.

Q. Then is this statement not true? A. Well, I will tell you, I never, never heard that before.

40 Q. Then it is not true? A. Because it comes

Joseph Hudson, Sr.—Cross.

to me, I know everything I told the gentleman when he came to me at the hog pen.

Q. All right, I say, then the statement is not true? A. That I never heard before.

Q. Will you please answer the question: Is this statement true or not? A. Part of it is all right.

Q. Is that part where it says that you were not looking ahead, that you did not see the automobile and cannot tell what led up to the accident? A. I told the man that I did not see the automobile; that part is all right, I told that.

Q. Well, is it true that you were not looking ahead and cannot tell whether the motorman was looking ahead or not? A. What say?

Q. Is that part of it true? A. I never said that there, I don't nothing—

Q. Is that true or not? A. I don't know whether the motorman was looking ahead or not.

Q. Well, won't you say, sir, whether it is true or not? A. Oh, there—why, that is wrong.

Q. That is not true? A. That part there.

Q. Is not true? A. Is not true, no, sir.

By Mr. Avis:

Q. You say you could not say whether the motorman was looking ahead or not? A. I don't know whether he was looking ahead or not.

Q. Did you hear any unusual noise or see any commotion as far as the motorman was concerned in an effort to stop his car until you heard this noise, you say? A. None.

Q. But when you say you were looking ahead, do you mean that your eyes were constantly on the motorman? A. Well, not all the time, no.

Q. But if he had made any unusual effort or

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Joseph Hudson, Sr.—Cross.

done anything in a special effort to stop his car you would have noticed it, wouldn't you? A. Why, sure, I was sitting facing the front of the car.

Q. With relation to a bell or whistle you were in a position where you could have heard that if it had been sounded? A. Yes.

10

By Mr. Coult:

Q. Referring again to this statement that you just looked at, that statement was written down by a young man that came to see you, wasn't it? A. Yes.

Q. Do you know him if you should see him? A. Yes.

Q. Is Mr. McFarland here? A. That is him.

20 Q. I indicate Mr. McFarland standing in the court room, is that the man? A. That is the gentleman.

Q. And you didn't say anything to Mr. McFarland about this flash that you are talking about now, did you? A. Who, me?

Q. Yes. A. I don't know whether I did or not; that I couldn't say.

Q. Did you tell him anything about the motorman not ringing his bell and so forth? A. Yes.

30 Q. Did you tell him that the motorman did not do anything to stop his car? A. I don't know whether I did or not.

Q. What? A. I don't know as I did.

Q. Well, you had quite a long talk with him about the accident, didn't you? A. Well, not so very long, no; it was very cold the day he called on us.

Q. Very cold the 5th of April? A. Yes.

Q. Well, the snow was all off the ground then,

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Joseph Hudson, Sr.—Cross.

wasn't it? A. In the evening, late in the evening.

Q. I thought there was a thaw after that snow-storm. A. Well, he will tell you whether it was cold or not.

Q. Perhaps he will. Didn't he go over the matter very thoroughly with you? A. To an extent, I guess. 10

MR. COULT: I will ask to have this marked for identification. (Referring to statement previously produced).

(Said statement is marked Exhibit D-6 for identification).

Q. Just one more thing; why did you sign this statement if there is something in it that is not true? A. Why? 20

Q. Yes. A. Well, I will tell you, I never heard of that; if that is the statement, I never heard or understood that part of it.

Q. Wasn't that part of it in the statement when you signed it? A. If it was I didn't hear it.

Q. You can read, can't you? A. I can read some, yes.

Q. Didn't you read over what you signed? A. I read part of it. I just ran it over; I didn't take particular notice. 30

By Mr. Avis:

Q. You didn't expect they were going to bring it in court against you when you were talking with them, did you, Mr. Hudson? A. No, I did not, to tell the truth I did not.

Charles Sagers—Direct.

CHARLES SAGERS, sworn.

By Mr. Avis:

Q. Where do you live, Mr. Sagers? A. Almon-
esson.

10 Q. Were you on the trolley car on this day that
this collision occurred? A. Yes.

Q. Where did you get on it? A. Almonesson.

Q. What first called you attention to the fact
that there was anything like an accident, a col-
lision? A. I heard a crush.

Q. You heard— A. I heard them when they
came together.

Q. Was the car running or stopped at that
time? A. It was running.

20 Q. Where did you sit in the car, Mr. Sagers?
A. I sat on the fourth seat back of the stove.

Q. That was toward the rear of the car, I sup-
pose? A. Yes, sir.

Q. After you heard this—before you heard this
crash was any alarm given by bell or whistle by
the trolley car? A. I didn't hear any.

Q. You were in a position—you were on the
car? A. Yes.

30 Q. You would have been likely to have heard
it?

(Objected to).

A. I expect likely.

MR. COULT: I object; that is both lead-
ing and a conclusion.

THE COURT: Strike it out.

Charles Sagers—Direct.

Q. Well, were you in a position where you could have heard it if it had been sounded? A. Yes, sir.

Q. After the crash you heard, what did you do?
A. Walked up to the front of the car.

Q. What did you do when you walked to the front of the car? A. Looked out and saw it was Mr. Savage. 10

Q. Where were you standing in the car at that time? A. When I went to look out?

Q. Yes. A. Why, just on the raise, just before it steps down to where the motorman stands.

Q. You were up in the car—you weren't on the platform? A. I was in the car.

Q. And how high is that raise, about, from the place where the motorman stands? A. I couldn't tell you that, I don't know. 20

Q. Well, you can tell whether it is two inches? A. I should judge it was four inches anyway.

Q. And you standing in the middle of this raise, whatever it was, looked out the front and saw Mr. Savage, did you? A. Yes.

Q. Do you know whether the window was open or closed? A. Why, the window was closed.

Q. What did you do after that? A. Went outside of the car. 30

Q. And where did you find Mr. Savage? A. In his automobile.

Q. How far was the automobile from the car when you got out—was it tight up against it or some distance away? A. Well, I should judge it was about six feet, as near as I could tell.

Q. Six feet away from the car, was it? A. Yes.

Q. And did you assist Mr. Savage? A. Yes, sir.

Q. Into the car? A. Yes.

Charles Sagers—Direct—Cross.

Q. Did you see anything about his pant leg being rolled up? A. Yes, sir.

Q. Did you see anything drop out of it? A. Yes.

Q. What was it? A. A little piece of bone.

10 Q. Did you go to the doctor's with him? A. Yes, sir.

Q. Did you see his limb dressed there, his knee dressed? A. No, sir.

Q. You did not stay to see that? A. No.

Cross-Examination by Mr. Coult:

Q. You did not see any flash at the time of this collision, did you? A. Didn't notice any.

20 Q. Well, you were where you would have seen it if there had been any, wouldn't you? A. I should have thought so.

Q. How do you know the gong was not rung before this accident? A. I did not hear any gong.

Q. When you are sitting riding in a trolley car do you make it a point to notice where the gong is rung always? A. No, but you are most apt to hear it if it is rung.

Q. You were busy talking before this accident, weren't you? A. Off and on, not steady.

30 Q. Well, weren't you talking to your friend? A. Yes, sir.

Q. Just before this collision occurred? A. I was.

Q. And you did not notice what the motorman was doing, did you? A. Not particular, no.

Q. And the reason you did not notice what the motorman was doing was because you were busy talking, wasn't it? A. I was talking off and on.

Charles Sagers—Cross.

Q. Well, isn't that the reason that you did not notice what the motorman was doing? A. No, I didn't think it was any of my business to watch him.

Q. Well, was it your business to listen to hear whether the gong was rung or not? A. No, it wasn't my business to listen to it, but I should have heard it if it blowed. 10

Q. You could have heard it, yes, but can you say now definitely whether or not that gong was rung?

A. I say, I didn't hear it.

Q. That is all, that you didn't hear it? A. I didn't hear it.

Q. And you cannot say whether you could have remembered whether it was rung or not if it had been rung, can you? A. Well, I should think so. 20

Q. When were you last on a trolley car? A. Why, about 9:25 this morning.

Q. Where did the motorman last ring his gong before you got off? A. I didn't hear it no place from here to Almonesson.

Q. Didn't hear it at all while you were on the car this morning? A. Not from here to Almonesson, no.

Q. So from that you would say that the motorman on your car did not ring his gong this morning, wouldn't you? A. No, sir. 30

Q. You would not say that? A. No, sir, I do not.

Q. All you would say was that you did not hear it? A. I would say I did not hear it.

Q. And it is just the same way at the time of the accident, isn't it? A. Sure.

Charles Sagers—Cross.

By Mr. Avis:

Q. The accident, however, called that matter to your attention at that time, didn't it, Mr. Sagers to your attention at that time didn't it, Mr. Sagers? A. What, about the horn?

10 Q. Yes, about the bell; after this accident occurred, did you talk over with your friends who were there the question whether the bell had sounded or not or the whistle had blown?

MR. COULT: That is leading, if the Court please, and immaterial both.

MR. AVIS: No, I think that is fair to go to the jury, if the Court please, to show whether or not there was an impression fixed on his mind at that time.

20

THE COURT: I think the way you put the question it is open to the criticism counsel makes, that it is suggestive. You may ask him whether his attention was drawn to the fact without going into the details.

Q. Well, was your attention drawn to any fact at that time with relation to the sounding of the bell immediately after this accident? A. No, not just at that time, no.

30

Q. Not just at that time? A. No, sir.

Q. Did you hear anything said about anything of that kind at that time?

MR. COULT: Now, if the Court please, that is immaterial. That would be manifestly illegal evidence, because he would be testifying from hearsay.

John Fuhlbrick—Direct.

JOHN FUHLBRICK, sworn.

By Mr. Avis:

Q. Where do you live, Mr. Fuhlbrick? A. Mantua just at the present.

Q. Were you on this car the day this collision occurred? A. Yes. 10

Q. Where did you get on it? A. Stone road.

Q. What first called your attention to the collision? A. Why, the crash.

Q. Where did you sit in the car? A. About middle way, past middle way.

Q. So far as you observed or heard, was an effort made to stop the car before the accident? A. No, sir.

MR. COULT: I object to that, if the Court please, that is leading; let the witness tell what he knows. I can ask that of your Honor now, whether so far as you saw or heard the motorman make any effort to stop the car and your Honor can say no, and yet it leaves the impression that the witness knows something about it. 20

THE COURT: I think you had better ask him what was done, if anything, to stop the car. 30

MR. AVIS: Well, I had just as lief frame it that way.

Q. What was done, if anything, that you observed by the motorman to stop the car before you heard this collision? A. Nothing at all.

Q. How is that? A. Nothing.

John Fuhlbrick—Direct.

10 MR. COULT: Now, if the Court please, I move to strike that out. I should have objected to the question, I suppose; that is subject to the same objection, what was done by the motorman that you observed. The question is, What did he observe? He might have been observing out of the window about that time and he can say no just as truthfully to it.

By the Court:

Q. Well, do you know what the motorman did with reference to the management of the car? A. Yes, sir.

20 Q. What did he do? A. Why, the first thing was a flash and this upper thing there he threw that; that was after the bump.

By Mr. Avis:

Q. Before that what did he do? A. He didn't no nothing; he was running.

Q. What was the car doing when the bump took place? A. The car was running.

30 Q. Had there been any bell or whistle sounded to your knowledge prior to the bump? A. No, sir, I didn't hear any.

MR. COULT: I make the same objection; that the question is improperly framed.

MR. AVIS: Well, I will try to frame it a little differently then.

Q. Was there any warning sounded from the car by bell or whistle before this bump took place?

A. No, sir, I didn't hear any.

John Fuhlbrick—Direct.

Q. Where did you go after it took place, after it stopped there? A. I got out, walked out on the platform.

Q. Did you at any time within a few minutes of the time you got out go to the place where the motorman had been standing and look out front?

A. Yes, I was standing on the platform, trying to look out and see what it was, but I couldn't see. 10

Q. You couldn't see? A. No.

Q. Why? A. The snow was up against the window.

Q. Were the windows closed or open? A. Closed.

Q. What did you do after that? A. I got out to see what was the matter.

Q. What did you find with relation to the automobile and trolley car—were they right together or apart? A. No, apart. 20

Q. How far apart? A. I couldn't say just exactly how far apart.

Q. Can you estimate? A. No, I could not, because they were all standing around there; I couldn't see very well.

Q. Did you assist in getting Mr. Savage out? A. No, sir.

Q. You did not? A. No, sir.

Q. Were you inside after he was taken in the car? A. Yes, I was inside. 30

Q. What did you see there with relation to Mr. Savage? A. I saw Joe Hudson pull up his pant leg and a piece of bone dropped out.

Q. What did you notice in relation to his face, if anything? A. He was cut up here somewhere (indicating), had been bleeding. 40

*John Fuhlbrick—Cross.**Cross-Examination by Mr. Coult:*

Q. You made a statement in this case, Mr. Fuhlbrick, didn't you? A. Yes, sir.

Q. You can read all right, can't you? A. A little bit.

10 Q. Did you read over the statement before you signed it? A. Yes, I didn't sign it.

Q. Did you know what was in it? A. I knowed what was in it; I didn't read it all.

Q. You didn't read it all? A. No.

Q. What part of it did you read? A. I read the top part of it.

Q. Did you read the upper part of this—oh, don't look at the words—do you think you did? A. Well, I think I did.

20 Q. I will read to you from this statement which I am now showing you: "Auto driven by Mr. Savage, who lives just below me, had collided head on. Auto was smack up against the car. The motor-man had to back away from the auto." Is that true? A. Yes, he had to back away.

Q. Well, what did you mean by telling counsel that the automobile was several feet away from the car? A. Well, because I might not remember it.

30 Q. Didn't remember it right? A. Yes.

Q. Now, your memory may be faulty about other things, too, that you have testified to, don't you think so? A. No, sir.

Q. You think that is the only mistake you have made? A. That is the only one, I think.

Q. "I did not see the auto until after the crash occurred and the car had come to a stop. I cannot say how the accident occurred nor what led up to it." Is that true? A. Yes, sir, that is true.

John Fuhlbrick—Cross.

Q. You signed that statement? A. I don't think I did.

Q. What? A. I don't think I did.

Q. Well, I wonder who put this signature on— can you say? A. I don't think I signed it.

Q. Now, isn't that your signature—is it or isn't it? A. I don't think so. 10

Q. Would you mind writing your name for me two or three times? A. Yes, sure.

MR. AVIS: I object, if the Court please, because whether it is signed or not the witness has admitted every statement that counsel has suggested to him.

THE COURT: Does he doubt that it is his signature?

MR. COULT: He says he did not sign it; now, if the Court please, that goes to his credibility. 20

THE COURT: Why do you object then?

MR. AVIS: My objection is because there can be no difference about it whether he signed it or did not; I don't know who signed it, but it is taking up time. In other words, counsel from this statement has called his attention to certain things in the statement, and the witness states, "Yes, that is true; that is the fact." 30

MR. COULT: Don't you want him to write his name, Senator?

MR. AVIS: I don't care, but it is taking up time.

THE COURT: Well, let him do it then and have it over with.

(Witness signs his name on sheet of paper).

MR. COULT: All right, that will do. 40

*John Fuhlbrick—Cross.**By Mr. Avis:*

Q. Where were you at when the statement was made, Mr. Fuhlbrick? A. In the shop.

Q. In the shop where? A. And also in the house.

10 Q. Where? A. New Sharon.

Q. When was it, do you recollect? A. It was on Monday.

Q. Did the gentleman who came to you say anything about whether the bell and whistle was sounded? A. Yes, he asked me about it.

Q. What did you tell him? A. I told him I didn't hear no bell or whistle.

Q. Do you know whether or not he put that in the statement? A. I couldn't say.

20

By Mr. Coult:

Q. I call your attention to the last part of the statement: "I did not hear the motorman blow his whistle or ring any bell either." Now, can you say whether or not he put it in the statement? A. Yes, sir, it is in the statement.

Q. You knew that when you signed it, didn't you? A. No, I did not.

30

By Mr. Avis:

Q. You did not say it was not in there, you simply said you did not know whether he put it in there or not, didn't you? A. That is all.

By Mr. Coult:

Q. Mr. McFarland, stand up. I indicate Mr. McFarland standing in the court room; that is

40

Thomas Hutchinson—Direct.

the man who was present when the statement was signed, wasn't he? A. Yes.

MR. COULT: I want to have Mr. Fuhlbrick's statement and his signature marked for identification.

(Said statement is marked Exhibit 4-7 10 and sheet of paper on which the witness has written his name is marked Exhibit D-8 for identification).

THOMAS HUTCHINSON, sworn.

By Mr. Avis:

Q. Mr. Hutchinson, where do you live? A. 20 Woodbury.

Q. What is your business? A. Automobile.

Q. I show you these photographs, pictures marked Exhibit P-1 and 2. Where did you first see that car after the accident, if you saw it? A. Why, out Cooper Street.

Q. You went out there personally? A. Out Cooper Street, yes.

Q. Where was the car when you saw it? A. Off 3) to the side of the road, that is down the small hill alongside the trolley track.

Q. On that side of the road; Mr. Hutchinson, you are accustomed to driving in and out there, aren't you? A. Yes.

Q. Is there any travelled roadway on the right hand side of that trolley track going out at the point where this accident occurred? A. No.

Q. Can you tell me about how wide the road-

Thomas Hutchinson—Direct.

way is on the other side between the north trolley track and the ditch? A. Well, about—just about room to pass with a car, with the trolley car and the automobile.

Q. You mean two automobiles could pass? A. No, one trolley car and one automobile.

10 Q. And is that on the other side as you are going down—I don't mean right where the accident occurred—what kind of ditch is there on the left hand side there, is it shallow or deep, I mean? A. Well, I should say the fall is about three feet below the track level, probably, six feet away from the track; six feet to the right of the track going out your fall would be probably two and a half or three feet below the track level.

20 Q. Now, on the left hand side going out? A. The left hand side of the road is about the same level as the track.

Q. What is the depth of the ditch on that side? A. On the other side? Deeper.

Q. Can you tell me about how deep it is, that is, an average estimate? A. On the other side. Well, I should say from three to three and a half feet.

Q. There is no railing along there, is there? A. Only close to the bridge.

30 Q. Was this car taken to your shop? A. Yes.

Q. Did you make an examination of it? A. Yes.

Q. Was the car repairable? A. Beyond repair.

Q. Did you know the car before the accident, Mr. Hutchinson? A. Yes.

Q. What in your opinion was the value of the car at the time of the accident or just before? A. Well, that is rather hard to decide. I suppose the car would be worth, if you had to replace it in the open market at that time, you would probably pay

Thomas Hutchinson—Direct—Cross.

Edward R. Jones—Direct.

\$850 or \$900 for a car in the same shape this was in before the accident.

Q. Did you estimate what it would cost to repair it? A. Yes.

Q. What was that estimate? A. Better than a thousand dollars. It was simply excessive, without a question. 10

Cross-examination by Mr. Coult:

Q. It would cost more to repair the car than the car was worth? A. Yes.

Q. You said something about buying a car at the same time on the open market, what did you mean by that? A. Just what I said.

Q. You meant to go out the same day of the accident? A. At the time, of course; that car would be worth less today than it was then. 20

Q. What was the injured automobile worth as it stood? A. You mean after the accident?

Q. Yes. A. Junk.

Q. What is it worth for junk? A. Well, I never got a price on it, anywhere from \$25 to \$50, probably.

Q. Not worth any more than that? A. Nothing you could use on it worth while using. 30

Q. Tires? A. The tires? Both front tires were practically ruined and the rear tires were all right, but they were about two-thirds worn out.

EDWARD R. JONES, sworn.

By Mr. Avis:

Q. Where do you live, Mr. Jones? A. Almonesson. 40

Edward R. Jones—Direct.

Q. What is your business? A. Well, laborer; I generally have a horse and cart and work around by the day.

Q. You are one of the jurors at this term of court? A. Yes.

10 Q. Were you on this car when this collision occurred? A. Yes, sir.

Q. Where did you get on it, Mr. Jones? A. Almonesson.

Q. And where were you sitting about in the car, if you can tell me? A. Well, as near as I can tell I thought I was sitting in the second or third seat back of the boiler.

Q. By the boiler you mean the stove or the heating apparatus? A. The stove, hot water boiler.

20 Q. Where is the hot water heater in relation to the ends of the car? A. Just about four or five seats back on the left.

Q. Four or five seats back? A. Yes.

Q. From the front, you mean? A. There is kind of a long seat between the boiler and the front of the car which will seat four or five people, maybe.

Q. Could you see the front of the car from where you sat? A. No.

30 Q. You were back of the boiler? A. I was back of the boiler and I wasn't looking that way at the time.

Q. Could you have seen if you had been looking? A. Most likely I could from the third seat.

Q. What first called your attention to anything out of the ordinary? A. Well, I heard the crash and the car stopped all at once; that is all I can say.

Edward R. Jones—Direct.

Q. Was the car stopped before the crash or afterward? A. No, sir.

Q. No, sir, what? A. The same time, the car stopped and the crash I heard at the same time.

Q. How fast, about, was the car running before the crash? A. Well, that is pretty hard to say, it wasn't running more than eight miles an hour, might have been running less; it was running slow. 10

Q. Do you know whether or not any effort had been made to stop the car before— A. Why, I didn't feel none.

Q. Did you hear the bell or gong or whistle sounded? A. No, sir.

Q. What did you do afterward? A. Well, I went to the front of the car right away, and there was some people stood in front of the door—I don't know who they were, some of the men who got there before I did, and as soon as the motorman opened the door I went outside. 20

Q. While you were standing in the motorman's compartment did you make any effort to look out of the car? A. No, sir, there were some people standing in the doorway.

Q. I mean straight ahead of you? A. No, I didn't make no effort; I followed the people right out. 30

Q. Do you know whether the front of the car was opened or closed? A. The doors in between the motorman and the car was open all the way between.

Q. How about in front of the car? A. The glass, you mean?

Q. The glass in the front part? A. I think that

Edward R. Jones—Direct.

was closed, I am most sure. I couldn't see Mr. Savage.

Q. Did you try as you came out of the door, did you look? A. No, I don't think I looked at all.

10 Q. Did you look afterward at any time at that part of it? A. No, I did not.

Q. You did not see Mr. Savage until when? A. I got out of the car and the motorman says to me, he says—

Q. No, don't tell us what the motorman said, we don't want that. As you stepped off into the motorman's place to walk off the car, you did not see him until when? Where were you at when you first saw him? A. I was outside, I never
20 looked at all.

Q. Where was he at then? A. Mr. Savage?

Q. Yes. A. He was sitting in the car.

Q. Did you assist in getting him out of the car or not? A. Yes, sir.

Q. Did you see anything after you got him in the car in relation to his condition? A. Why, the man was all wedged in there, he couldn't get out.

Q. In the automobile, you mean? A. Yes, he was fast in there between the seat he was sitting
30 on and his engine, and I helped get him out of there.

Q. And after he got in the car did you see any one pull up his trousers or see what the condition was? A. Yes, I helped to do that myself.

Q. What happened then? A. I saw little pieces of something there, I don't know, it looked like a little piece of gristle or bone, I can't say what it was.

Edward R. Jones—Direct—Cross.

Q. Did you go to the doctor's with him afterward? A. Yes.

Q. Did you see the knee dressed? A. No, sir.

Cross-examination by Mr. Coult:

Q. You were not expecting an accident to happen before this accident really occurred? A. No, I wasn't. 10

Q. And you weren't paying particular attention to the motorman? A. No, I just thought of something else, just sat in a seat by myself trying to look out of the window, I thought.

Q. And you can't say whether the motorman rang any gong or not, can you? A. No, sir, I am positive he did not.

Q. You are quite sure he did not? A. Yes, I am positive that he did not ring it. 20

Q. What leads you to that conclusion when you were not paying particular attention? A. Why, I should have thought I would have heard it; I always do hear it other times.

Q. You always notice when gongs are rung on trolley cars? A. Yes, he rang the gong—I am sure he rang it at the stone road and Angeroth station both.

Q. And do you know where else he rang it on that trip? A. What say? 30

Q. Anywhere else—do you know anywhere else? A. No, I didn't take notice anywhere else, but I was looking out of the window almost all the time but I couldn't see nothing for snow.

Herman Kettler—Direct.

HERMAN KETTLER, sworn.

By Mr. Avis:

- Q. Where do you live, Mr. Kettler? A. New Sharon.
- 10 Q. What is your business? A. Tool maker.
- Q. And where are you employed? A. New York Ship Building Company.
- Q. You live at New Sharon, which is over here about how far from Woodbury? A. What is it?
- Q. About how far do you live from Woodbury? A. About four miles from Woodbury.
- Q. New Sharon is on what we call the Glassboro stone road, is it? A. On the Glassboro stone road.
- 20 Q. On the third of April last, the day of the big snowstorm, were you on the trolley car that collided with Mr. Savage? A. Yes.
- Q. Where did you get on it, Mr. Kettler? A. On the stone road, station 91.
- Q. After you got on the trolley car did you notice anything unusual at any time? A. No, the car ran at moderate speed.
- Q. Now, after you came off the right of way of the company on Cooper Street and crossed the 30 bridge, did there anything happen? A. Yes.
- Q. What was that? A. The car ran into Mr. Savage's automobile.
- Q. What first attracted your attention to that? A. I heard a shock in the car.
- Q. Where were you sitting, Mr. Kettler, in the car—can you tell me? A. I was on the fourth seat, the left hand side.
- Q. The fourth seat from the front or rear? A. From the rear.
- 40

Herman Kettler—Direct—Cross.

Q. What did the motorman do with relation to the control of the car, if anything, before you heard this shock? A. I didn't take notice of that.

Q. Did you notice him do anything? A. No.

Q. Now, was the car running or standing still when the shock took place? A. The car was running.

10

Q. How about the sounding of bell and whistle, what do you know about that? A. I didn't hear any.

Q. After the collision, the shock, where did you go? A. I went out the front door.

Q. And where did you find Mr. Savage if you found him at all? A. Found him in the automobile.

Q. What was his condition there?

20

THE COURT: Well, is there any doubt about that?

MR. AVIS: No, I think not.

Q. Did you go back in the car with him? A. Yes.

Q. Did you go to the doctor's with him? A. No.

Cross-examination by Mr. Coult:

Q. You say the car was running at the time of the accident? A. The trolley car was running at the time of the accident, yes.

30

Q. You felt the jar of the accident? A. Yes.

Q. How far did the car go after that? A. I could not give you exactly that in feet. It might have been about twenty feet.

Q. You made a statement in this case, didn't you, Mr. Kettler? A. Yes.

40

Herman Kettler—Cross.
Josiah Braddock—Direct. -----

Q. You made it on Friday, the 29th of October, didn't you? A. Yes.

Q. I am showing you a statement—is that the statement you made? A. Yes.

Q. Is that your signature? A. Yes.

10 Q. Did you read it over before you signed it?
A. Yes.

Q. Now, I will call your attention to this: "Car went about two feet and stopped." Is that correct? A. No, twenty feet and stopped; it should be twenty.

Q. That is a mistake then, is it, between two and twenty? A. I don't know, it might be.

20 Q. Didn't you tell Mr. McFarland here it was two feet? A. No.

Q. Or Mr. Geissler—Mr. Geissler, just stand up a minute—is this the gentleman that took your statement? A. Yes.

Q. Didn't you tell him the car went two feet and came to a stop? A. No, twenty.

Q. You told him twenty? A. Yes.

30 Q. And when you read this statement over, I suppose you thought maybe that two was a twenty, did you? A. No, I overlooked that. That gentleman came there when I had no time, just at dinner time, and when the whistle blows I have to do my work again.

JOSIAH BRADDOCK, sworn.

By Mr. Avis:

Q. Where do you live, Mr. Braddock? A. Near Hurffville.

Josiah Braddock—Direct.

Q. About how far from Mr. Savage's place? A. I should judge half a mile.

Q. And what is your business or occupation, Mr. Braddock? A. Farmer.

Q. Have you been farming for some years? A. That is all I ever did.

Q. Did you visit Mr. Savage after this collision? 10
A. I did.

Q. What condition did you find him in, Mr. Braddock? A. Well, I found him on his bed with his knee cap broken, he had no use of it.

Q. Could you see whether or not—when did you first go there? A. Sunday morning.

MR. COULT: We do not deny he was confined to his bed.

MR. AVIS: You are not going to deny the suffering either? 20

MR. COULT: No, no doubt he had a very painful injury.

Q. Now, Mr. Braddock, what do you know about the conduct of the farm as to whether or not there were more or less men employed by Mr. Savage after he was injured?

(After a conference between counsel for the respective parties the witness was withdrawn). 30

PLAINTIFF RESTS.

Motion to Non-Suit.

10 MR. COULT: Now, if the Court please, in this case I move for judgment of non-suit on two grounds, first that no negligence has been shown on the part of the defendant, and, second, that the contributory negligence of the plaintiff appears as an undisputed fact in the case. It seems to me that I shall not have to go further in this argument than to speak of the second ground for the judgment. Of course, that this motion should prevail it must appear as a matter of law that the plaintiff did not do what an ordinarily reasonable and prudent man would do under like conditions and circumstances. Of course, he was using the public highway just as the trolley was using the public highway, and he had the same right the trolley car had there, and likewise he owed the same duty to the trolley company that the trolley company owed to him with, of course, one well-known exception, that a trolley car cannot steer to the right and the left, a trolley car must go on the tracks, it can't get out of anybody's else way laterally. The man was using the trolley tracks just as the car was; the conditions that were present in his case were also present in the case of the man who was running the trolley, with this exception, that he was driving into the storm and the man who was running the trolley was driving away from it. He knew the locality where the accident happened, was familiar with it; he knew about the car that he was running, had run it for ten months and had

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Motion to Non-Suit.

run automobiles for a considerable length of time. He says he was on the trolley track because on the rest of the road it was dangerous because he was likely to skid. He says also, he knew, however, that when he was on the trolley track he was in a dangerous place; he admits that; that is in his statement, one of the things in his statement he has admitted. In fact, I want to say for the plaintiff that he has admitted practically everything that was in his statement when it comes right down to the point. He says he knew that he was in a dangerous place, said he knew it was hard to get out of the trolley tracks after you get in them when it was slippery, and he said that he did not know and does not know now within what distance he could stop his automobile, and he says he could not see more than twenty feet before him. Now, he says further that the automobile was not stopped when the collision occurred. The pictures which are in evidence show the force of the collision. The best testimony on this point in regard to the trolley car in favor of the plaintiff—we must take the best evidence, of course—is that the trolley car was likewise moving, but at any rate the automobile was not at a stop and apparently nowhere near a stop. Now, the car itself was moving, the trolley car was moving at a very reasonable rate of speed, various terms have been used in the plaintiff's case as to the speed at which it was running. The plaintiff himself, if you will recall, says

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10 that he does not know at what rate of speed
the trolley car was going. I can refresh
your Honor's recollection of that if your
Honor does not quite recall it by this: He
says this, "It must have been going
faster than I was or else it would not
have gotten up there so soon." That I
objected to as a conclusion; then that was
stricken out, then I asked him if he knew
and he said no, he did not know what the
speed of the trolley car was, except he
thought he knew it was moving. Other
witnesses have used the words, "moderate
rate of speed." Now, these witnesses, your
Honor, are friendly, and not one of them
20 claims that the trolley car was going fast
when the collision occurred. I think your
Honor is familiar with the cases where
wagons have turned on the track before a
moving trolley car within the distance of
twenty or thirty feet and from there up to
fifty feet, and in those cases it has been
held uniformly where the distance is so
short as not to give the motorman a reason-
able opportunity to stop his car that the
30 driver has been guilty of contributory neg-
ligence. The driver in the automobile was
going down hill; the car was going up hill
Now, all of those circumstances being ad-
mitted, they must be all taken as true on
the facts, and we have this situation: Here
is a man in an automobile in a snowstorm
where he said he could not see twenty feet
on a track where he knows a trolley car is
likely to be, on rails that he knows it is

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difficult to get out, driving his car at the
 rate of fifteen miles an hour. Now, if the
 Court please, what has he to expect in that
 situation? What can he expect? He can
 expect to meet a trolley car; he must know
 at the time, if the trolley car will only be
 twenty feet away when he is up against it,
 he knows that something has got to hap- 10
 pen; either the trolley car has got to stop
 or he has got to stop, one or the other, sud-
 denly, and he is driving his vehicle twice as
 fast as the trolley car is going. Now, your
 Honor, just think of that a moment. It is
 admitted in the case—he says he looked at
 his speedometer and saw he was going fif-
 teen miles an hour. The witnesses for the 20
 plaintiff say the trolley car was going
 eight. Now, your Honor, just reverse this
 case one moment; let us suppose that the
 plaintiff in this case had the heavier ve-
 hicle and we had the lighter one; we are
 where we can't turn, can't get out of the
 way at all; would there be the slightest
 doubt in your Honor's mind that we would
 have a case against him for the damage
 that ensued? Of course, damage did not 30
 ensue, just simply because we were fortu-
 nate enough to have the heavier car; he was
 going fifteen miles an hour and we were
 going seven; he was going down hill and
 we were going up hill; he couldn't see more
 than twenty feet ahead of his car and he
 must assume that the same conditions—if
 his testimony is true—the same conditions
 must have obtained in regard to the other 40

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10 man. Now, if the Court please, if that is not contributory negligence as a matter of law I cannot conceive of any case where contributory negligence can be a matter of law. The only possible question that I can see that could remain as a question of fact is this: The man says he does not know within what distance under these conditions his automobile could have been stopped, he using his best efforts to stop it, going at the rate of fifteen miles an hour. But even if that be true, if the Court please, let us admit that he could stop at once, stop instantaneously, without slipping or skidding or going into space, he could stop
20 instantaneously, he cannot stop until he is within twenty feet of an oncoming car. Of course, then again making a stop, you have got to assume that he must go some distance, you have got to assume that a stop cannot be made immediately; the court will take judicial notice of these things because the court assumes that when a man stops in front of a trolley car the trolley car cannot stop at once, and what is true of the trolley car is true of the automobile. I do not think there is the slightest doubt that this man was taking a great
30 chance in driving his car down the trolley track at fifteen miles an hour without giving any notice of his coming at all. He says as a matter of law he did not think he had to give any knowledge of his coming; the car was just exactly where he would expect it. Of course, if your Honor

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requires us to go on and prove as to the distance in which an automobile can be stopped under those conditions, that is a matter of proof on which we can satisfy your Honor.

MR. AVIS: It seems to me that there is no question about this being entirely a jury case as to whether or not there was or was not due care on the part of either one of these parties under the circumstances, and I think by reading abstracts of the case of *Luby v. Morris County Traction Company* your Honor can see that there is on the face of the proposition a negligence on the part of the trolley car, whereas the question of contributory negligence under all the circumstances of this case is entirely one for the jury. 10 20

THE COURT: Now, where do you say is a case of negligence against the trolley company?

MR. AVIS: "Such timely warning of the approach of a trolley car must be given as will enable others using that portion of the highway covered by its tracks to avoid danger from it." As I understand, a trolley car being only able to take one track there is a higher duty imposed upon a trolley car than there is upon an ordinary vehicle, in that it can go only in one place, and there is a duty upon the employee who is driving the trolley car to sound a warning, to let them know that he is coming. There are four propositions here which, it seems to me, settle the question: "Street 30 40

Motion to Non-Suit.

10 railway companies have no superior or pre-
dominate right to the use of the highways
in which their cars run over the rights of
other persons on foot or with vehicles, ex-
cept that, because the cars are confined to
the tracks, others using the highway must
give way to them when occasion requires.”

THE COURT: You will agree that each
of these parties are bound to observe the
same degree of care?

20 MR. AVIS: Yes, sir, but here is the
proof: The proof as it is shown now—as it
stands now by two men who came off that
car, that they tried to look out of the win-
dow where the motorman stood, and it was
covered with snow and they could not see
an automobile standing immediately in
front of the trolley car. I say there are
two points of negligence, that there was no
bell or whistle sounded, and that, I think, is
required by the case of Consolidated Traction
Company v. Haight; second, that it is
proven now that that motorman was driv-
ing that car down Cooper Street without
the slightest care, as he couldn't see where
30 he was going. On the other hand, the
proof in relation to Mr. Savage is that he
had his windshield up and was looking the
best he could through it. The proof as it
stands by the two witnesses now is that the
motorman could not look out of that win-
dow because they looked, tried to see
through it immediately after the collision;
that he sounded no gong or no warning,
which, I think, proves the case, or at least
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is a proposition to be submitted to the jury. Now, as to contributory negligence that is not shown in this case. The question is one whether or not the jury can draw an inference from it, but it certainly is not one which—

THE COURT: Do you want to say anything more, Judge Coult? 10

MR. COULT: I only want to say that my motion is confined to this—I haven't spoken about the negligence of the trolley company, which might be a question of fact, but I say that as far as the contributory negligence of the plaintiff is concerned it is perfectly clear.

THE COURT: This motion of non-suit is based upon the ground of contributory negligence on the part of the plaintiff. I am inclined to think that whether in view of the peculiar circumstances of this case the plaintiff was guilty of contributory negligence or not is a jury question. The motion to non-suit is therefore denied. 20

MR. COULT: I will pray an exception, if the Court please.

THE COURT: It is allowed. 30

The Case for the Defendant.

MR. COULT: I will offer as Exhibits D-1, D-2, D-3, D-4 and D-5 for identification, which composed the admissions of the plaintiff.

MR. AVIS: Do you offer them as Exhibits?

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MR. COULT: Yes.

MR. AVIS: I object to them.

THE COURT: The offer is what?

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MR. AVIS: The offer is now as an Exhibit the statement which is claimed to have been made and signed by Mr. Savage. Mr. Savage has been on the stand and been cross-examined, and if those statements in no way conflict with Mr. Savage's statements on the stand, which counsel on the other side has said they do not—he is kind enough to say that Mr. Savage's admissions on the stand are the same—it certainly cannot be testimony where Mr. Savage has been called and cross-examined—

THE COURT: The objection is overruled.

MR. AVIS: Will your Honor grant me an exception?

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THE COURT: It is allowed; any declaration, any statement which he made in writing or otherwise is relevant.

MR. COULT: Yes, sir, these are only the plaintiff's statements.

(Said papers are marked respectively Exhibits D-1 to D-5 inclusive).

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Leslie B. Woodruff—Direct.

LESLIE B. WOODRUFF, sworn.

By Mr. Coult:

Q. Where do you live, Mr. Woodruff? A. Camden, New Jersey.

Q. What is your occupation? A. Division engineer, Public Service Railway Company. 10

Q. Did you see this map that Senator and I are having so much difficulty with here? A. Yes.

Q. Who made it? A. I made it.

Q. Just come down here a moment, please. What did you make it from? A. From a field survey.

Q. Where did you make the field survey? A. On Cooper Street between stations 86 and 87 or trolley stations right near Woodbury Creek. 20

Q. And state whether or not this map is a correct representation of the survey made on the ground? A. It is.

Q. Please explain it to the jury. A. Well, it is plotted to scale; one inch equals ten feet. The black lines here represent the trolley track, the black dots represent the poles and the green shaded here represents where the grass is or leaves or brush, anything like that on the side. These lines here, the straight lines with the dots on the northerly side of the road indicate a fence. 30

Q. Is there any bridge there shown? A. There is a bridge up here at the easterly end of the drawing.

Q. That is at the top of the map as it stands here now? A. Yes.

Q. And that is over— A. Woodbury Creek.

Q. Woodbury Creek is marked on the map, isn't it? A. Woodbury Creek is marked on the map. 40

Leslie B. Woodruff—Direct.

Q. Is there anything on that map to indicate the grade of the trolley tracks? A. There is a line down here; the red line indicates the grade of the trolley track and the green line represents the grade of the roadway.

10 Q. And that is shown on what would be the south side of the map, the bottom? A. The bottom of the map.

Q. What is the grade of the hill to the west of the bridge? A. For a distance of about 150 feet directly west of the bridge it is practically level ground; then it rises from that point westwardly a two per cent grade or two feet vertically to every hundred feet horizontally, called a two per cent grade.

20 Q. And for how long a distance does that average two per cent grade continue? A. We had it surveyed for 750 feet west of the bridge and it was still rising at the rate of two per cent.

Q. Do you know where the curve is on the east side of the bridge? A. The curve is 139 feet—what we call the point of intersection, that is the projection of this line; the projection of the other track, the point of intersection is 139 feet eastward from that point.

Q. Indicating— A. The west side of the bridge over the creek.

Q. Can you state how much further to the west than is indicated on your map there is an approximately straight road? A. Well, I don't know the exact distance, but it is several hundred feet.

Q. Do you know where the point of this accident is located on this map? A. No, I do not.

Leslie B. Woodruff—Direct—Cross.

MR. AVIS: Is it located on the map, Judge?

MR. COULT: Well, I will have to locate it by somebody unless we can agree on it.

MR. AVIS: We can agree on that, Judge.

Q. I show you a cross marked on this map; will you just put the letter X opposite that cross right between the rails with a pencil? 10

(Witness complies).

MR. COULT: Counsel agree that where the witness has placed the letter X between the rails on the map is the point of the accident.

MR. AVIS: Approximately. 20

Cross-examination by Mr. Avis:

Q. Mr. Woodruff, how far is it from the north-bound rail of the trolley track to the rail fence?

A. At about this point, you mean?

Q. Yes. we will say a point just eastwardly, probably twenty feet from the approximate location of the place where the accident occurred. A. I have at that point eleven and five-tenths feet from the north rail to the fence. 3)

Q. Will you mark it say at that point—will you mark $11 \frac{5}{10}$ there so we can see about where it is?

(Witness complies).

Q. Have you any notes with relation to a ditch alongside of the road that runs westwardly from the end of this rail fence, so-called, leading to the bridge? A. There is no ditch in front of that fence. 40

Leslie B. Woodruff—Cross.

Q. Not in front of it, no, but I mean leading from the end of it or near the end of it westerly.

A. I have no notes on that.

Q. Did you examine such a ditch there, see such a ditch? A. I didn't see any ditch.

10 Q. You didn't see any anywhere westwardly of that fence on the side of that road? A. Not on that side.

Q. And you located all of those poles? A. Yes.

Q. What is this marked on here "Drive"? A. It looks like a dump pile.

Q. How about westwardly of that drive, did you examine for any ditch? A. I didn't notice any ditch on that side of the road.

20 Q. What is the distance on the southerly side of the roadway between the southbound rail and the cross that you have marked here? A. About three feet from this rail.

Q. From the north rail you have eight feet to the edge of the cross on the southerly side of the railroad track? A. Yes.

Q. And between the rails that is five feet, as I understand it? A. Yes.

Q. That leaves three feet between the south rail and the cross, is that correct? A. Yes.

30 Q. Did you notice when you made your examination whether or not there was any roadway there on the south side? A. There was not at that point.

Q. At that point, I mean; after you get further up beyond a house that stands here, then there is a roadway, isn't there, somewhere up here? A. Yes.

Q. But as I understand you, by the indication you say that that point where there is a roadway

Leslie B. Woodruff—Cross.

John J. Magee—Direct.

is beyond where this drawing shows? A. It starts in westerly of the drawing.

Q. So that all the way along the line of this road that this drawing shows there is no apparent roadway or driveway on the southerly side of the railroad tracks, is that true? A. That is right. 10

Q. The 139 feet that you speak of from the westerly side of this bridge going in an easterly direction is to the point where the trolley turns over on its own right of way, the trolley tracks? A. The projection of this line and the other line, called the point of intersection.

Q. Well, you mean the point of intersection, however, to where the other trolley line comes off—that is what you are referring to? A. Comes off the road. 20

Q. And you mean that a straight line drawn from where it comes off, a straight line drawn this way toward where they come together is 139 feet, is that correct? A. From the westerly side of the bridge.

JOHN J. MAGEE, sworn.

By Mr. Coult:

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Q. Where do you live, Mr. Magee? A. North Woodbury.

Q. What is your business? A. Automobile repair business.

Q. You understand this map here? A. Well, the intersection of those lines—

Q. I am indicating to you now a map which I wish to have marked for identification.

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John J. Magee—Direct.

THE COURT: For illustration.

MR. COULT: Yes, Exhibit D-6. You think you understand this Exhibit D-6?

A. Yes, sir.

10 Q. Now, have you visited the locality indicated on this map, Cooper Street, to the west of Woodbury Creek recently? A. Yes.

Q. When were you there last? A. This morning.

Q. Who were you with? A. Mr. Orser and yourself and Mr. Geissler.

20 Q. And was your attention directed to any portion of the tracks in the highway on that road indicated on that map? A. Yes, we looked over the roadbed on the left going out.

Q. And where was that locality with reference to the grade in the road? A. About right where that accident happened, this side of the bridge.

Q. What kind of rails are laid there? A. A sharp edged rail.

Q. Have you had any experience driving automobiles? A. Yes, sir.

Q. For how long? A. Been driving automobiles in this vicinity now for fourteen years.

30 Q. Any before that? A. No, not automobiles; the last fourteen years I have been driving.

Q. Do you know anything about the Studebaker automobile? A. Yes, sir.

Q. Do you know the Model Six of last year? A. Yes.

Q. You know their Six of last year's model, I should say? A. Yes.

Q. What was the weight of that car? A. In

John J. Magee—Direct—Cross.

the neighborhood of 3,000 pounds; I guess it will go a little over that.

Q. Now, assuming that a Studebaker Six— I will withdraw that question for the present. You are familiar with the apparatus on the Studebaker Six of last year's model for stopping the car? A. Yes, sir. 10

Q. Did you ever drive a Studebaker of last year's model? A. Yes, sir.

Q. Assuming that such a car were being driven in an easterly direction down the grade which you inspected this morning on the tracks that you inspected this morning, and that there was a snowstorm coming from the east, and that there was snow on the tracks and snow from ten inches to two feet on either side of the tracks, and this car was being driven at the rate of fifteen miles an hour, within what distance under those conditions could the car be stopped? A. It would be impossible to stop that car under fifty feet. 20

Cross-examination by Mr. Avis:

Q. How many times have you driven a Studebaker Six in a snowstorm ten inches or two feet deep? A. Well, I never drove a Studebaker Six in a snowstorm ten inches or two feet thick. 30

Q. Then how do you know how long it would take to stop it? Your answer is predicated upon the proposition that the snow was ten inches to two feet on the side of the tracks? A. Yes, from my experience in handling cars of that make and brakes of that size, not only on that car but on other cars.

Q. Did you ever drive a Studebaker Six in the snow? A. Yes. 40

John J. Magee—Cross.

Q. When? A. Last winter.

Q. Whose was it, yours? A. Lewis Hurff's, Swedesboro.

Q. Where did you drive it to? A. From my shop around through Woodbury, working on it.

10 Q. Did you drive it in a snowstorm? A. Not a heavy snowstorm, a light snow.

Q. How much snow? A. Very light snow.

Q. Did you ever try to stop it on a trolley track to see how far it would take to stop it? A. I tried to stop it in Philadelphia one day but didn't stop it.

Q. What is that, on wood blocks? A. Yes.

Q. There are no wood blocks out here? A. No.

20 Q. That was a wood block you were trying to stop it on in Philadelphia? A. Yes.

Q. Did you have chains on it? A. No, sir.

Q. Ropes on it? A. Yes.

Q. Did you say it would take fifty feet to stop a car running out Cooper Street in a snow running at fifteen miles an hour with those ropes as you see them there on the rear? A. Those ropes don't amount to anything.

Q. They are no good at all? A. They never served me any; I tried them.

30 Q. At the point this collision occurred it is pretty near flat, isn't it? A. No, it is quite a grade.

Q. At the point where the collision occurred? A. Yes.

Q. How much of a grade? A. Well, now, my evidence on that would be just what I heard off that gentleman before me.

Q. Then it would be a two per cent grade, you

John J. Magee—Cross.

would say? A. Yes, because he is an engineer in that line and I just follow his evidence.

Q. You never tried to stop a Studebaker Six, as I understand it, last year's model with ropes on the rear wheels at all? A. No, sir.

Q. And you never have tried to stop a Studebaker Six when there was snow on the ground running on trolley tracks, have you? A. I have tried to stop all make of cars, I have handled all makes of cars. 10

Q. I am speaking of the Studebaker Six now; did you ever specially try to stop a Studebaker Six? A. In a snowstorm on the trolley tracks?

Q. Yes. A. No, because I don't let them get in the trolley tracks if I can help it.

Q. Then you say it is impossible to stop a car under fifty feet; when you say that it is entirely a guess or an estimate from your best opinion, isn't it, and not from experience? A. Practical experience. 20

Q. With a Studebaker Six? A. With any make car that weighs in that neighborhood, about three thousand pounds.

Q. You never tried a Studebaker Six? A. I have had experience working with them, working on the brakes. 30

Q. About stopping on trolley tracks with snow on? A. No.

Q. You have never tried them with ropes on the rear of the wheel, a Studebaker Six, to see how far it will take to stop it going fifteen miles an hour on a track covered with snow? A. No.

Q. So that I say, when you say it is impossible to stop a car under fifty feet, that is your estimate

*John J. Magee—Cross.
Theodore Kern—Direct.*

from your experience with other cars? A. With other cars, yes.

Q. And without ever having tried a Studebaker Six or any other car on this grade out on Cooper Street, is that correct? A. I haven't tried any
10 car on that grade out on Cooper Street.

By Mr. Coult:

Q. When trolley car tracks of the kind that you examined out there are wet, is it or is it not difficult to get out of them when you are in them? A. It is very difficult to get out of the trolley track if the track is wet.

Q. Have you ever had any experience in stop-
20 ping other cars than the Studebaker on wet tracks? A. I have had the experience of trying to run an automobile through snow with ropes on them, but not on tracks, on roads, and I have left them and come home on the train.

MR. AVIS: Now, wait, that is not fair.

Q. That is not responsive to my question; I asked you if you ever had any experience in trying to stop other cars on wet tracks? A. No.

THEODORE KERN, sworn.

By Mr. Coult:

Q. Where do you live, Mr. Kern? A. Wood-
bury.

Q. What is your business? A. Machinist.

Q. Have you had any experience in driving au-
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Theodore Kern—Direct—Cross.

tomobiles? A. Yes, sir, about seven years.

Q. Are you familiar with the grade on Cooper Street that begins just a little west of the Woodbury Creek bridge and continues westerly for some distance toward Woodbury? A. I know where it is, yes.

Q. Do you know what kind of tracks there are out there? A. Yes. 10

Q. Do you know the plaintiff in this case? A. Yes.

Q. Did you ever have any opportunity to look over his Studebaker car that was injured in an accident last April? A. Why, I guess I have tinkered on it once, I think.

Q. What? A. Once, I think; I know it was once.

Q. You are familiar with the car? A. Yes. 20

Q. Look at Exhibit P-2; is that the car? A. It looks something like a Studebaker; I guess that is it.

Q. You see the ropes on the rear wheel that appear on Exhibit P-2? A. Yes, sir.

Q. And see them on the other rear wheel in Exhibit P-1? A. Yes, sir.

Q. Now, assuming that car were equipped with those ropes as they appear in that photograph, and being driven on the grade on Cooper Street that you have mentioned in your testimony, at the rate of fifteen miles an hour on the trolley tracks, that the trolley tracks were wet, within what distance could that car be stopped? A. I don't believe it could be stopped in less than forty-five to sixty feet. 30

Cross-examination by Mr. Avis:

Q. That is an estimate, Mr. Kern, isn't it? A. Yes. 40

Motion for Direction of Verdict.

Q. Your best opinion? A. Yes, sir.

Q. You haven't actually made any tests of that kind with a Studebaker car on that grade? A. Not on that grade, no.

DEFENDANT RESTS.

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BOTH SIDES REST.

MR. COULT: Now, if the Court please, I move for a direction of the verdict on the same ground that I mentioned in the application for a non-suit, based upon the same reason, and on the further ground that it now appears in evidence and is not contradicted that the automobile which the plaintiff was driving could not be stopped within a distance beyond which he says it was not possible for him to see anything at the speed at which he travelled.

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THE COURT: The motion is denied.
(Exception noted for the defendant).

Charge of the Court.

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CARROW, J.:

Gentlemen: This suit grows out of a collision upon a public street in this city between an automobile and a trolley car. The collision occurred on the afternoon of April 3, 1915, during a severe snowstorm. The chief peculiarity about the case is that each side charges the other with culpable negligence. I mean negligence which was the

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Charge of the Court.

proximate cause of the collision. It is your duty to ferret out the truth and put the claim exactly where it belongs, but in doing this you must apply the rules of law which the court is about to lay down for your guidance in the consideration of the case.

A law suit has two features, the law which the court pronounces and the facts which are exclusively for the jury under the law as laid down by the court. Now, this is a typical negligence case. Negligence means a wrongful act growing out of a breach of duty; if there was no breach of duty on the part of the defendant there was no negligence; if there was no negligence, no liability.

What was the duty of the defendant's agent under the circumstances? It was the duty of the motorman in charge of the defendant's car to have his car under control for any emergency which he should reasonably have anticipated in the light of all the circumstances. It was the duty of the motorman to give timely warning of the approach of the car. In other words, it was the duty of the motorman to exercise reasonable care, that is, such care under all the circumstances as might ordinarily have been expected of reasonably prudent persons in like circumstances.

The court has defined the degree of care which the defendant's agent was bound under the law to observe. If the defendant's agent exercised the degree of care which I have stated, you must decide for the defendant, because in that situation of fact the defendant was guilty of no negligence. Negligence, as I have indicated, means a want of that degree of care which the law demanded under the circumstances; therefore, if there was no want

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Charge of the Court.

of care there was no negligence, but if there was a want of care, such care as I have mentioned, reasonable care, and that was the proximate cause of the collision, that would be actionable negligence.

10 What I have thus far said about reasonable care upon the highway is the degree of care which the law requires of all persons who use the highway, whether they are using the highway with trolley cars or other vehicles. Nobody has any exclusive right to the use of the highway; it is maintained by the public for the common use of all travellers, and I might at this point read to you what was said by Mr. Justice Trenchard of the Supreme Court of this State in a case decided not very long ago: "Street railway companies have no superior
20 or predominate right to the use of the highways in which their cars run over the rights of other persons on foot or with vehicles, except that, because the cars are confined to the tracks, others using the highway must give way to them when occasion requires."

30 "A correlative duty devolves upon others using the highway to permit the passage of street railway cars when they observe or are informed that such passage is required. Such timely warning of the approach of a trolley car must be given as will enable others using that portion of the highway covered by its tracks to avoid danger from it. While it is the duty of others not to obstruct the track, yet a violation of such duty does not necessarily constitute such contributory negligence as will relieve the trolley company from responsibility for an accident which might have been
40 avoided by the exercise of due care upon the part of the company."

Charge of the Court.

Now, gentlemen, the plaintiff was charged with the knowledge that the trolley car could not turn out for him; he should, therefore, have turned out for the trolley car if he could do so by the exercise of reasonable care. You will at once see from what I have said that it was the duty of the plaintiff to exercise reasonable care, and if his conduct did not square with his duty, that is, if the collision was caused either in whole or in part by the plaintiff's own negligence, he cannot recover, no matter how negligent the defendant's motorman was. Contributory negligence, if proven in the case, is a complete bar to a recovery against the defendant but contributory negligence is a defence and must ordinarily be proven by a preponderance of evidence by the defendant, unless the plaintiff has already proven it himself in his part of the case.

Now, what I mean by contributory negligence—you have heard a good deal said about contributory negligence in this case and in other cases since you have been sitting during this term of court; it is not always properly understood—what the law means by contributory negligence is this, that if this plaintiff helped through his own carelessness either in whole or in part, it makes no difference how small a part, to bring about this collision, he cannot recover, because that would be putting a premium upon carelessness. But mere negligence on his part would not defeat his right to recover, mere negligence alone; his negligence must be shown to have been contributory, must have been a contributing factor, must have contributed proximately in the language of the law, to the collision in order to affect his right to recover.

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10 The burden of proof is upon the plaintiff to establish his case of negligence against the defendant by a preponderance of evidence. There is no presumption of negligence on the part of the defendant arising merely from the collision—bear that in mind, gentlemen—negligence must be
20 proven; it is not a matter about which you can guess. I say that because the collision might have been the result of an unavoidable accident, for which the defendant would not be responsible in law. An action will not lie for an unavoidable accident; liability only attaches for negligence which was the proximate cause of the collision, and a case of negligence must always be proved, as I have said, by the plaintiff by a preponderance of
30 evidence. There cannot be a recovery in this case unless the injuries in question are attributable to the defendant's negligence alone.

The contention of the plaintiff is that he was exercising reasonable care while riding in his automobile on the afternoon of the third of September, 1915, on Cooper Street in this city, and that he was negligently run into by one of the defendant's trolley cars, that he received no warning whatever of the approach of the car and that
30 the defendant's negligence was the proximate cause of the collision. That is the contention of the plaintiff; whether or not that contention has been sustained by a preponderance of evidence, gentlemen, is a serious jury question, which you are bound to consider impartially, with a view of getting at the truth. The defendant, upon the other hand, and you must look at both sides, insists that the motorman showed no want of reasonable care, that he had no reason to anticipate

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that plaintiff would not get out of his way. It also insists that the motorman did not have a reasonable opportunity to stop the car and avoid the collision, the distance was too short. You want to consider whether the motorman had a fair chance to stop that car and avoid that collision.

Now, you must investigate all the evidence, as I have said, on both sides, for the purpose of reaching a verdict based exclusively upon the truth of this dispute. Negligence and contributory negligence are jury questions to be settled by the proof derived from all the evidence. If you decide the question of negligence and contributory negligence against the plaintiff, you will return a verdict for the defendant, but if you decide those questions against the defendant, plaintiff would be entitled to fair and reasonable compensation, nothing more and nothing less, and in estimating the damages, consider these items: The plaintiff would be entitled to damages for pain and suffering, such pain and suffering as he has already or may endure in consequence of his injuries; he is entitled to recover the medical expenses which he has had to lay out or may have to lay out as the result of his injuries; he is entitled to be compensated for the physical disability which he has sustained as a result of this collision, and in that connection you would consider the loss of earning power. You should also consider the extent of his injuries and the period of time that you would in all reasonable probability expect his disability to continue. Of course, you must not deal in possibilities; it is only reasonable probabilities. Your verdict should be fair and reasonable. He would also be entitled to damages

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Charge of the Court.

for the destruction of the automobile—I say, fair and reasonable compensation in the light of all the testimony.

10 Now, gentlemen, you must take this case and take your time, investigate it thoroughly as impartial men desiring to do exact justice between these parties without regard to who they are or what they are.

MR. AVIS: I withdraw the requests; I think your Honor has covered them entirely.

Defendant's Exceptions.

20 MR. COULT: I pray an exception to that portion of the court's charge in which the court said it was the duty of the motorman to give timely warning of his approach.
(Exception allowed).

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Grounds of Appeal.

(Filed December 1, 1915).

NEW JERSEY COURT OF ERRORS AND APPEALS.

<p style="text-align: center;">SAMUEL R. SAVAGE, <i>Plaintiff-Appellee,</i></p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">PUBLIC SERVICE RAILWAY COMPANY, a corporation, <i>Defendant-Appellant.</i></p>	}	<p>Action at Law On Appeal from New Jersey Supreme Court. Grounds of Appeal.</p>	10
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To John Boyd Avis, Esq.,
Attorney of Plaintiff-Appellee. 20

Sir:

TAKE NOTICE that the following are the grounds of appeal which the defendant-appellant will urge in the above entitled cause:

1. Because the trial court, although requested so to do by the attorney of the defendant below, such request being based on the ground that no negligence on the part of the defendant below had been shown by the plaintiff below, refused to non-suit the plaintiff below; 30

2. Because the trial court, although requested so to do by the attorney of the defendant below, such request being based on the ground that the case of the plaintiff below disclosed negligence on the part of the plaintiff below that contributed to the happening of the said alleged accident, refused to non-suit the plaintiff below.

Grounds of Appeal.

10 3. Because the trial court, although requested so to do by the attorney of the defendant below, such request being based on the ground that the whole case disclosed no negligence on the part of the defendant below, refused, at the close of the whole case, to direct a verdict in favor of the defendant below.

4. Because the trial court, although requested so to do by the attorney of the defendant below, such request being based on the ground that on the whole case the plaintiff below was clearly guilty of negligence that contributed to the happening of the said alleged accident, refused to direct a verdict in favor of the defendant below.

20 5. Because the trial court, although objection was duly made thereto by the attorney of the defendant below, charged the jury as follows:

“It was the duty of the motorman to give timely warning of the approach of the car.”

Dated November 26, 1915.

Yours truly,

LEFFERTS S. HOFFMAN,
Attorney of Defendant-Appellant.

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