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NEW JERSEY  
Court of Errors and Appeals

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Writ of Error

*(Filed, July 6, 1911.)*

NEW JERSEY COURT OF ERRORS AND  
APPEALS

20

NEW JERSEY, SS:  
(L. S.)

The State of New Jersey to our Justices of our  
Supreme Court, Greeting:

Because in the record and proceedings, and also  
in the giving of judgment in a plaint, which was  
in our said Supreme Court before you, between  
Mildred Lynch, by Freda Lynch her next friend,  
plaintiff, and Public Service Railway Company,  
defendant, manifest error hath intervened to the  
great damage of the said Mildred Lynch, as is  
said, we being willing that the error, if any there  
be, should in due manner be corrected and full and  
speedy justice be done to the parties aforesaid  
in this behalf. do command you that if the judg-  
ment be therefore given, then you send distinctly

30

## Return

and openly, under your seal the record and proceedings aforesaid with all things touching and concerning the same to our Court of Errors and Appeals, in the last resort of all causes, before the judges thereof on the tenth day of July, Nineteen hundred and Eleven, together with this writ, that the record and proceedings aforesaid, being  
 10 inspected, we may cause to be further done for correcting that error what of right and according to law ought to be done.

Witness, Mahlon Pitney, our Chancellor and Presiding Judge of said Court of Errors and Appeals, at Trenton, the Twentieth day of June, Nineteen hundred and Eleven.

S. D. DICKINSON,  
 Clerk.

Benjamin M. Weinberg,  
 20 Attorney of Plaintiff in Error.

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 Return

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concern-  
 30 ing the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,  
 C. J.

## Judgment of Nonsuit

## NEW JERSEY SUPREME COURT

MILDRED LYNCH, by FRED LYNCH, her next friend, vs. PUBLIC SERVICE RAILWAY COM- PANY.	}	In tort. On postea.	10
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Lefferts S. Hoffman, attorney.

As yet of the fifteenth day of August, A. D.,  
nineteen hundred and ten.

Witness, William S. Gummere, Esquire, Chief  
Justice. 20

William Riker, Jr., Clerk.

Essex County, ss:

Public Service Railway Company, a corpora-  
tion, the defendant in this suit, was summoned to  
answer unto Mildred Lynch, the plaintiff therein  
in an action in tort, and thereupon the said plain-  
tiff, by Charles Lynch, who is admitted by order  
of the Court, to prosecute as the next friend of  
the said Mildred Lynch, she being an infant un- 30  
der the age of fourteen years, by Benjamin M.  
Weinberg, her attorney, complains; for that  
whereas the said defendant, before and at the  
time of committing the grievances hereinafter  
mentioned was the owner and possessor of a cer-  
tain passenger car which was propelled and run  
along by electric power in and upon certain  
tracks of the said defendant, said tracks being  
situate upon and extending along Mt. Prospect  
avenue, a public street or highway in the City 40

## Judgment of Nonsuit

of Newark, in the County of Essex aforesaid. And the plaintiff avers that it thereby became and was the duty of the said defendant to use due and proper care in the management and control of said passenger car, while being operated and run along said street or highway and upon said tracks as aforesaid, so as to avoid colliding  
10 with and running into persons lawfully riding along said public street, and crossing the said tracks thereon, with sleds and other vehicles; and to operate, propel and run said car so as to keep the same within safe control. Yet the said defendant not regarding its duty in that behalf did not use due and proper care in the use, management and control of said car, while said car was being operated, propelled and run along said street or highway upon said tracks; and did not  
20 use due and proper care to avoid colliding with and running into persons lawfully riding along said public street, and crossing the said tracks thereon, with sleds and other vehicles, and did not operate and run said car at such rate of speed so as to keep the same within safe control; but wholly failed and neglected to do so; and did on the seventh day of January, nineteen hundred and ten, on Mt. Prospect Avenue in the said City of Newark,  
30 in the County of Essex aforesaid, by its servants, so carelessly, negligently and improperly propel, operate and run said car in, upon and along said street or highway and upon said tracks, so as to lose the safe control of the same and thereby collided with and ran into a certain bobsled upon which said plaintiff was then and there seated, and which said bobsled was then and there lawfully crossing said Mt. Prospect avenue and the  
40 said tracks thereon at the intersection of the said

## Judgment of Nonsuit

Mt. Prospect avenue and Montclair avenue, public streets in the City of Newark, in the County of Essex aforesaid, with such force and violence as to hurl the said plaintiff to the ground, and to then and there severely, permanently and painfully injure the said plaintiff in and about her head and body, causing her leg to be fractured and splintered and to otherwise bruise, wound and injure the said plaintiff. 10

And also by means of the premises the said plaintiff became sick, sore, lame and disordered and so remained and continued for a long space of time, to wit, from thence hitherto, during all which time the said plaintiff suffered and underwent great pain, and in the future will suffer and undergo great pain, and was hindered and prevented, and in the future will be hindered and prevented from transacting and attending to her necessary and lawful affairs by her during all that time to be performed and transacted; and lost and was deprived of, and in the future will lose and be deprived of, divers great gains, profits and advantages which might and otherwise would have derived and acquired, to wit, at Newark, in the County of Essex aforesaid, wherefore the said plaintiff says that she is injured and has sustained damages to the amount of twenty thousand dollars, and therefore she brings her suit, etc. 20 30

And the said defendant, by Lefferts S. Hoffman, its attorney, comes and defends the wrong and injury, when, etc., and says that it is not guilty of the said supposed grievances above laid to its charge, or any or either of them in manner and form as the said plaintiff hath above thereof complained against it and of this it, the said defendant, puts itself upon the country, etc. 40

## Judgment of Nonsuit

Therefore let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Newark, in and for the County of Essex, on the second Tuesday of December, in the year of our Lord, one thousand nine hundred and ten, by whom, etc., and the  
10 same day is given in the parties aforesaid there etc.

And now at this day, to wit, before our said Supreme Court at Trenton, come the said parties by their attorneys aforesaid, and the Judge before whom, etc. having first sent hither his record had before him in these words, to wit:

Afterwards, that is to say, on the ninth day of March, nineteen hundred and eleven, at the Circuit of the Supreme Court held at Newark, in  
20 and for the County of Essex, before his Honor, Frederic Adams, a Circuit Court Judge, to whom the said cause was duly referred for trial according to the form of the statute in such case made and provided, come as well the within named plaintiff as the within named defendant, by their respective attorneys within mentioned; and the jurors of the jury whereof mention is within made being summoned also come, who, to speak the truth of the matters within contained,  
30 were chosen, tried and sworn; and the evidence of the plaintiff being given to them, thereupon for certain causes moving the said Judge having determined from the said evidence that the plaintiff hath not made out a case for the consideration of the jury, and the said plaintiff being called upon to produce further evidence and coming not, discharged the said jury from giving any verdict of and upon the premises within  
40 mentioned

## Judgment of Nonsuit

Dated March 13, 1911.

Therefore it is considered that the said plaintiff, Mildred Lynch, by Freda Lynch, her next friend, take nothing by her said writ, and that the said defendant Public Service Railway Company, do go thereof without day, etc.

And it is further considered that the said defendant, Public Service Railway Company, do recover against the said plaintiff, Mildred Lynch, by Freda Lynch, her next friend, the sum of thirty-nine dollars and ten cents, for its costs and charges by it about its defense in this behalf laid out and expended by the Court now here adjudged to the said defendant, Public Service Railway Company, and with its assent, according to the form of the statute in such case made and provided, and that the said defendant, Public Service Railway Company, have execution thereof, etc. 10 20

Judgment signed this sixth day of June, A. D., nineteen hundred and eleven.

WM. S. GUMMERE, C. J.

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office. 30

In testimony whereof I have set my hand and the seal of said Court at  
(I. S.) Trenton, this third day of July,  
A. D., nineteen hundred and eleven.

WM. RIKER, JR.,  
Clerk.



## Testimony

## NEW JERSEY SUPREME COURT

## ESSEX CIRCUIT

Tuesday, March 7, 1911.

MILDRED LYNCH, by next friend, vs. PUBLIC SERVICE RAILWAY COM- PANY.
---

10

In Tort

Before Hon. Frederic Adams, J., and a Jury.

For plaintiff appears Benjamin M. Weinberg.

For defendant appears Howard MacSherry.

Plaintiff's counsel asks that the transcript be amended so as to show the next friend of the plaintiff to be Freda Lynch, instead of Charles Lynch, who died after the beginning of the suit.

20

Motion granted.

A jury is called and sworn.

Mr. Weinberg opens for plaintiff.

MILDRED LYNCH, sworn in behalf of plaintiff.

Direct-examination by Mr. Weinberg:

30

Q. Mildred, how old are you? A. Thirteen.

Q. And when were you thirteen? A. Last April.

Q. Your father's name was—? A. Charles Robert Lynch.

Q. Is he living? A. No, sir.

Q. Your mother's name is—? A. Freda Lynch.

Q. You live at home? A. Yes, sir.

40

## Mildred Lynch—Direct

Q. Where do you live? A. 773 Mt. Prospect avenue.

Q. And where did you live in January, 1910?  
A. The same address.

Q. Do you recollect the day of January 7th? A. Yes, sir.

Q. Where were you on that day? A. I was on  
10 the hill.

Q. What hill? A. Montclair avenue.

Q. How far is Montclair avenue from your home? A. Half a block.

Q. Montclair avenue crosses Mt. Prospect avenue, does it not? A. Yes, sir.

Q. Had you been to school that day? A. Yes, sir.

Q. What school did you attend? A. Elliott street school.

20 Q. What time did you come out of school? A. Three o'clock.

Q. What did you do after that? A. I stayed on the corner.

Q. On the corner of what? A. Montclair and Mt. Prospect.

Q. Avenue? A. Avenue.

Q. What were you doing on the corner? A. I was watching them sleigh-riding.

Q. Were there many persons sleigh-riding? A.  
30 Yes, sir.

Q. What time was this? A. That was right after school.

Q. I understand you to say that you came out of school about three o'clock? A. Yes, sir.

Q. And from there you went home, did you, first? A. Yes, sir.

Q. And then you went to this corner? A. Yes, sir.

Q. And you arrived there about what time? A.  
40 About half-past three.

## Mildred Lynch—Direct

Q. How long did you remain on the corner? A. Until after the accident.

Q. I mean until you went sleigh-riding yourself, how long did you stand there? A. Quite a long while.

Q. Well, about how long? A. About an hour and a half.

Q. You stood there about an hour and a half? 10  
A. Yes, sir.

Q. And during that time was there sleigh-riding on the hill? A. Yes, sir.

Q. Much of it? A. Yes, sir.

Q. During that time did you notice the trolley-cars? A. Yes, sir.

Q. What did the trolley-cars do that went north, towards Forest Hill? A. They stopped on the south side.

Q. On the south side? A. Yes, sir. 20

Q. That would be the first crossing they would come to? A. Yes, sir.

Q. And the trolley cars that came south, coming from Forest Hill, where would they stop? A. On the north side.

Q. On the north side? A. Yes, sir.

Q. How many cars did you see do that? A. Quite a few, mostly all.

Q. What is it? A. Mostly all.

Q. After that, after about an hour and a half, 30  
what did you do? A. I went on the sled.

Q. On whose sled? A. Walter Winterbottom's.

Q. What sort of a sled was this? A. The bob-sled.

Q. Long? A. Quite long.

Mr. MacSherry: I should prefer that she would describe it without leading.

Q. How long was this sled, if you can tell us? 40  
A. I can't tell you.

## Mildred Lynch—Direct

Q. About how many persons could be seated on it? A. About five.

Q. And where did you start to ride from? A. Ridge street.

Q. How many blocks is that from Mt. Prospect avenue? A. Two blocks.

By the Court: Q. That is, two blocks above?  
10 A. Yes.

By Mr. Weinberg: Q. How far would your ride carry you? A. Down to Summer avenue; that is, two blocks below Mt. Prospect.

By the Court: Q. What point did you mention?  
A. Summer avenue.

By Mr. Weinberg: Q. Was this bobsled fitted with anything? A. I don't understand you.

Q. Did it have any attachment to it? A. We had a bell on it.

20 Q. What kind of a bell did it have? A. Oh, a big bell.

Q. Where was that bell attached, to what part of the sled? A. That I couldn't tell you.

Q. I mean where was it, the front or back of the sled? A. Towards the front.

Q. What was the bell used for? A. Well, we were ringing it all the way down, in case we saw anybody in the road.

30 Q. What is that? A. In case we saw anybody in the road.

Q. What would happen? A. We would ring the bell.

Q. You were hurt that afternoon, were you? A. Yes, sir.

Q. How long had you been riding before you were hurt? A. Two times.

Q. You mean you made two trips? A. This was my third trip coming down.

40 Q. It was the third trip coming down? A. Yes.

## Mildred Lynch—Direct

Q. And what time was it? A. About half-past five.

Q. How light was it? A. Just beginning to get dusk.

Q. Were the electric lamps lit? A. Yes, sir.

Q. And was it light or dark? A. Light.

Q. At that point? A. Yes, sir.

By the Court: Q. You said it was light, did you? A. Yes, sir .

By Mr. Weinberg: Q. Now, on this trip where you met with your injury, you left at the corner of Ridge street, did you? A. Yes, sir.

Q. The same as before? A. Yes, sir.

Q. You left on that trip from the corner of Ridge and Montclair avenue? A. Yes, sir.

Q. Now, during that trip what can you say about the gong on the sled? A. We were ringing it all the way down. 20

Q. Do you recollect that distinctly? A. Yes, sir.

Q. Now, what happened to you as you came down that hill? A. Well, I don't just remember.

Q. What do you remember? You came down the hill on the bob? A. Yes, sir.

Q. Do you recollect the streets as you come to Mt. Prospect avenue from Ridge street? A. Yes, sir.

Q. What are they? A. Ridge, Clifton and Mt. Prospect. 30

By the Court: Q. Clifton avenue, I suppose? A. Yes, sir.

By Mr. Weinberg: Q. Now, during your coast down from Ridge street to Mt. Prospect avenue did you or not see a trolley car? A. When I got below Clifton avenue I saw the light of the car.

Q. Where did you see the light of the car? A. Quite a distance from the corner. 40

## Mildred Lynch—Direct

Q. Quite a distance which way from the corner? A. Going up, this way (indicating).

Q. You mean towards your home? A. Yes, sir.

Q. That would be south? A. Yes, sir.

Q. And when you say quite a distance from the corner, how far would you indicate? A. About forty-five feet, forty feet.

10 By the Court: Q. You saw the light of the car quite a distance towards your home. That was south, was it? A. Yes, sir.

Q. And you mentioned some distance, forty-five or forty feet? A. Yes, sir.

Q. From what? A. From the corner.

Q. That is, the corner— A. Of Mt. Prospect and Montclair.

Q. —of Montclair avenue? A. Yes, sir.

20 A map produced by the defendant is, by consent, placed upon the wall.

By Mr. Weinberg: Q. At that time, Mildred, how fast was your sled going? Do you understand that map? A. No, I don't quite.

The Court: Take a little time to look at it.

Mr. MacSherry: There is a laundry place and there is a grocery (indicating on map).

30 Mr. Weinberg: (Indicating on map.) As I understand the map, this points generally toward the north; Forest Hill is in that direction; this is north and this is south; this is up Montclair avenue; Ridge street would be up here, Clifton avenue here, and Ridge street up higher.

Mr. MacSherry: Yes.

Mr. Weinberg: That is correct?

Mr. MacSherry: Yes.

40 Q. You would coast in this direction, towards

## Mildred Lynch—Direct

Mt. Prospect avenue (indicating). Your home, then, would be where? A. Somewheres around there (indicating).

Q. Somewheres in here (indicating)? A. Yes, sir.

By the Court: Q. On which side of the street was your home. east or west? A. East.

By Mr. Weinberg: Q. East or west? A. East 10 (indicating).

Mr. Weinberg: That is the west side.

Mr. MacSherry: Which way is the car coming?

By the Court: Q. Which way was the car coming, if you know?

Mr. Weinberg: Look at the map and see if you can indicate.

A. I think the car was going this way (indicating). 20

By Mr. Weinberg: Q. Do not think. This is absolute. Which direction was it, according to this map, which direction was the car going? A. This way (indicating).

Mr. Weinberg: Yes.

The Court: If it is clear to you without the map, say nothing about the map. You can say which way the car was going.

Witness: It was going north.

Q. When you said that the car was some distance from the corner when you saw it as you left Clifton avenue, which direction did you mean, some distance where? A. Going that way (indicating). 30

Q. Take the pointer. A. Going up this way (indicating).

Q. And the car was coming which direction? A. Coming north.

Q. And you saw it some distance up this way (indicating) ? A. Yes. 40

## Mildred Lynch—Direct

By the Court: Q. That is, to the south of the crossing? A. Yes.

By Mr. Weinberg: Q. And you place the distance at something like forty or forty-five feet south of the crossing? A. Yes.

Q. At that time can you tell me about how far from Clifton avenue you were? A. That I  
10 couldn't tell.

Q. You could not tell? A. No.

Q. But you know you had passed Clifton avenue? A. Yes.

Q. Now, on this corner, on the southwest corner, what is there there? A. There is a vacant lot there.

Q. And on the southeast corner? A. There is a lot there, too.

Q. A vacant lot there? A. Yes, sir.

20 Q. And this is a house marked here (indicating). I presume that means the first house on the street. Now, after passing Clifton avenue and seeing the car where you put it, do you recollect seeing the car again? A. No, sir.

Q. Did I ask you whether the bell of the sled was ringing at that time? A. Yes, sir.

Q. I asked you that? A. Yes, sir.

Q. And what was your answer? A. Yes, sir.

30 Q. Do you recollect how long that gong was kept ringing? How long was the bell kept ringing, if you can recollect? A. No, I don't.

Q. You do not remember that? A. No.

Q. Now, you say that was the last your recollect seeing the car? A. Yes, sir.

Q. What is the next you know that something happened? A. I was in my brother's arms.

Q. Do you recollect how your sled and the car came together? A. No, sir.

40 Q. You do not know anything after that point?  
A. No, sir.

## Mildred Lynch—Direct

Q. Now, at the time when you saw this trolley car coming, Mildred, was there anything you could have done yourself? A. No, sir.

Q. Could you have left that sled? A. That I can't—

Q. I say could you have gotten off of the sled? A. No, sir.

Q. You were going pretty fast at that time, I 10 suppose? A. Yes, sir.

Q. Now, after you found yourself in your brother's arms, what did you find was the matter with you? A. My leg was hanging down; I had a broken leg.

Q. And where were you taken? A. To my father's office.

Q. Were you there long? A. Until the doctor set my leg.

Q. And then where were you taken? A. Home. 20

Q. And about what time did you get home? A. About half-past seven or seven o'clock, around there.

Q. Just before I proceed with that. When you say you saw this car, did you say anything to the person in charge of the sled at all? A. Yes, sir.

Q. Did you call his attention to it? A. Yes, sir.

Mr. MacSherry: That is very leading.

Mr. Weinberg: Well, strike it out. 30

The Court: Strike it out.

Q. What did you say? A. I said, "Walter, there is a car." He said, "Never mind, it is going to stop, like the rest of the cars do.

Mr. MacSherry: I ask that the reply go as irrelevant. We are not bound by what he said.

Mr. Weinberg: (After argument.)  
Now, if counsel is serious in this objection, 40

## Mildred Lynch—Direct

I am satisfied to have the latter half of the answer go out, leaving merely what she said to him: "The car is coming."

Mr. MacSherry: That I do not object to.

Mr. Weinberg: Perhaps we had better let the other half go out.

10 The Court: Strike it out.

Q. Now, I was at the point after you got home, which, you say, was about half-past seven. Did you have a physician? A. Yes, sir.

Q. Any doctor? A. Yes, sir.

Q. Who? A. Dr. Holler.

Q. Any other doctor? A. Not that night.

Q. Was anything else done that night to you?  
A. He set my leg.

Q. Dr. Holler set it? A. Yes, sir.

20 Q. At home or in the office? A. At home.

Q. Was that the second time it was set? A. Yes, sir.

By the Court: Q. Was the leg set the first time by the same physician? A. Yes, sir.

Q. He set it both times? A. Yes, sir.

By Mr. Weinberg: Q. Now, the next day whom did you have, what physician called upon you? A. I had Dr. Holler.

Q. Well, now, you had other physicians, did  
30 you? A. Yes, sir.

Q. Just name the physicians. A. Dr. Ill, Dr. Hawkes and Dr. Wilson.

Q. And Dr. Hawkes? A. Yes, sir.

By the Court: Q. Dr. Ill? A. Yes, sir.

Q. Dr. Hawkes? A. Yes, sir.

Q. And Dr.—

Mr. Weinberg: Dr. Holler and Dr. Wilson.

40 Q. Wilson? A. Wilson.

## Mildred Lynch—Direct

By Mr. Weinberg: Q. You say you had an operation on your leg? A. Yes, sir.

Q. How long after the accident, as near as you can recollect it? A. About a week.

Q. Who performed that operation? A. Dr. Ill and Dr. Holler.

Q. Do you know what they did? A. No, sir.

Q. Did you have any other operations? A. 10  
Yes, sir.

Q. Who performed them? A. Dr. Holler and Dr. Hawkes and Dr. Wilson.

Q. How many operations did they perform? A. Two.

Q. So that you had all together— A. Three operations.

Q. Three operations. Do you know what was done at either of those three operations? A. No, 20  
sir.

Q. Do you know if anything was removed? A. Well, the last operation bone was removed.

Q. Did you see it? A. Yes, sir.

Q. How much bone did you see removed? A. About three pieces, I think.

By the Court: Q. Three pieces? A. Three pieces big (indicating).

Q. Three pieces that length? A. Yes, sir.

Q. Show me again what you think the length is. A. (Witness indicates.) 30

Q. All together? A. Yes, sir.

Q. Or each piece? A. Each piece.

The Court: The witness thinks that there were three pieces removed of the length of three inches.

By Mr. Weinberg: Q. Did you suffer any pain? A. Yes, sir.

Q. During the period of your severe injury? A. 40  
Yes, sir.

## Mildred Lynch—Direct

Q. The severe part of the trouble? A. Yes, sir.

Q. How long were you kept in bed? A. Four months.

Q. And after four months did you get out of bed? A. I only sat on a chair.

Q. What kind of a chair? A. An arm-chair.

10 Q. How long before you got out of the house? A. That I couldn't say.

Q. About? A. I used to be carried up and down for quite a long while.

By the Court: Q. Up and downstairs? A. Yes, sir.

By Mr. Weinberg: Q. Do you recollect going about in a wheeled chair? A. Yes, sir.

Q. How long were you in a wheeled chair? A. Oh, till after September.

20 Q. After September of 1910? A. Yes, sir.

Q. When were you first able to leave the house without a wheeled chair? A. About October.

Q. And then how did you get out? A. On crutches.

Q. One or two? A. Two.

Q. How long was it before you could drop the one crutch and go along on one? A. I couldn't say that.

30 Q. Well, in other words, how long have you been walking with one crutch? A. Just had it a little bit.

Q. What is that? A. I couldn't say.

Q. Are you able to walk without a crutch? A. In the house, just hobble around a little bit, that is all.

Q. Do you go out in the street without a crutch? A. No, sir.

40 Q. Have you started back to school? A. This February.

## Mildred Lynch—Direct

Q. This last month? A. Yes, sir.

Q. And how do you go to school, what do you use to aid you? A. Well, the girls come around, and my crutch.

Q. Can you walk far? A. Not so very far.

Q. So far as you can see, Mildred, is that leg cured? A. No, sir.

Q. So far as you can see, tell us what is the matter with it. A. Well, it hasn't all healed up yet. 10

Q. What is the trouble with it? A. Well, there is no skin on it.

Q. No skin there? A. No, sir.

Q. And how is it with regard to thickness, comparing it with the other one? A. I don't know.

Q. I say is it stouter or thicker than the other leg, or thinner, or what? A. Stouter.

Q. Much? A. Quite a bit. 20

By the Court: Q. Stouter, you say? A. Yes, sir.

By Mr. Weinberg: Q. Is there any difference in the length of the two legs? A. Yes, sir.

Q. How can you tell? A. I was measured.

Q. Well, aside from measuring, how do you know? A. Oh, I go down on that side.

Q. You go down on that? A. Yes.

Q. What do you mean by going down? A. That foot goes down on me. 30

Q. Do you limp? A. Yes, sir.

Q. How were you before the accident? A. I was healthy.

Q. Was anything the matter with any of your legs then? A. No, sir.

Q. Had you had any accident before this one? A. No, sir.

Q. Have you any pain in that limb? A. Yes, sir. 40

## Mildred Lynch—Cross

Q. Does the limb require any attention now?

A. Yes, sir.

Q. And who attends to it? A. My mother.

Q. What does she do? A. Has to dress it every day.

Q. By dressing you mean what, what does she do? A. Well, she has to bathe it with salt water  
10 and put a dressing on.

Q. And bandage it up? A. Yes, sir.

Q. When did you last have a doctor treat you?

A. I have one coming yet.

Q. Who is it? A. Dr. Hawkes.

Q. He still comes? A. And Wilson sometimes.

## CROSS-EXAMINATION by Mr. MacSherry:

Q. Have you any brothers and sisters, Miss Lynch? A. I have a brother.

20 Q. How old is he? A. Nineteen.

Q. Now, where did you live at the time of the accident? A. 773 Mt. Prospect avenue.

Q. What was your father's business? A. Superintendent of the Benfield & Milne Company.

Q. What business was that? A. Enameling.

Q. Where was their place of business? A. Montclair avenue.

Q. And you went to what school? A. Elliott street school.

30 Q. Did your brother go there, too? A. He graduated from it.

Q. Was this a clear day that you got hurt? A. Yes, sir.

Q. And that hill was very icy, was it not? A. Yes, sir.

Q. Slippery? A. Yes, sir.

Q. It was good coasting? A. Yes, sir.

Q. But a good deal of ice? A. Yes, sir.

40 Q. And you got out of school about half after

## Mildred Lynch—Cross

three, eh? A. Three o'clock we get out of school.

Q. And where did you go after you got out of school? A. Right home.

Q. And then you went over to the hill? A. Yes, sir.

Q. Were there children, boys and girls, coasting down there? A. Yes, sir.

Q. And that was in the afternoon? A. Yes, sir. 10

Q. Well, after awhile it got dark, did it not? A. It got dusk.

Q. And by the time you started to coast it was dusk? A. Yes, sir.

Q. The lights were lit? A. Yes, sir.

Q. The lights in the street? A. Yes, sir.

Q. The lights in the trolley cars? A. Yes, sir.

Q. (Indicating on map.) Here at this corner—I am pointing here to the southwest corner of Mt. Prospect avenue and Montclair avenue—there is a rise in the ground there, is there not? Are there not some woods there and a rise in the ground? (No response.) As you reach Mt. Prospect avenue is there not on the right, the first corner you come to, a woods and some rise in the ground? A. Yes, sir. 20

Q. And that would be there (indicating)? A. Yes, sir.

Q. That shuts off your view of the trolley car, does it not? A. No, sir. 30

Q. At that point? A. No, sir.

Q. Does it not a little bit? A. No, sir.

Q. You can see the trolley car coming all the way along, then, can you? A. Yes, sir.

Q. To Montclair avenue? A. Yes, sir.

Q. That hill is pretty steep as you come down Mt. Prospect avenue, is it not? A. Not so very steep.

Q. Well, you run down two blocks before you stop below it, do you not? A. Yes, sir. 40

## Mildred Lynch—Cross

Q. Now, when you started with your friends, when you went on the bobsled, how many other sleighs were on that hill at that time, do you think? A. Quite a lot.

Q. Most of them had gone home, though, had they not? A. No, sir.

Q. Still sleigh-riding in the dark, eh? A. Yes,  
10 sir.

Mr. Weinberg: She did not say it was dark. I object.

Mr. MacSherry: Well, it was dusk and the lights were lit in the street.

Mr. Weinberg: That is right, but you said "riding in the dark." There is no evidence of that.

Q. Where did you start from? A. From Ridge street.

20 Q. About how long do you think your bobsled was? A. I couldn't tell.

Q. From where you are sitting, pointing out towards Mr. Weinberg here. A. I couldn't tell.

Q. Well, was it as long as that, as between where you are sitting and where Mr. Weinberg is sitting? A. I never noticed it.

Q. Had you ever been on the sled before? A. Yes, sir.

Q. How many times? A. Two times before.

30 The Court: Do you now refer to the two trips you took that day or on two other days?

The Witness: That day.

Q. Can't you tell us about how long it was? A. No, sir.

Q. You had been on it before? A. I know I had.

Q. Haven't you any idea how long it was? A. No, sir.

Q. Well, was it as long as your crutch? A.  
40 Longer, I guess.

## Mildred Lynch—Cross

Q. How much longer do you think? A. Oh, I don't know.

Q. You can not help us at all on that, eh? A. No, sir.

Q. Was it as long, do you think, as from where you are sitting to the second juryman here (indicating)? A. I never noticed it; I can't tell you.

Q. How many people would it carry? A. I 10 don't know.

Q. About how high from the ground was it? A. That I never noticed.

Q. What was it made of? A. Wood.

Q. Do you know what kind? A. No, sir.

Q. Did you ever notice the runners? A. No, sir.

Q. Have you ever seen other people on it? A. Yes, sir.

Q. What is the least number you have ever seen 20 on it? A. Oh, I couldn't say.

Q. Well, give us some idea. I only want to know; I am not trying to catch you; I just want to know what you know, that is all. A. I never noticed it; I never noticed how many people.

Q. Have you seen five people on it? A. Yes, sir.

Q. Have you seen six? A. That I couldn't say.

Q. Have you seen more than five, do you think? A. I couldn't say. 30

Q. Whom have you seen ride on it before you did? A. I saw my brother.

Q. When? A. That afternoon.

Q. Well, how many people were on it then? A. I couldn't say.

Q. Who was riding with him? A. The boy that owned the bob.

Q. Who else? A. I never noticed.

Q. Well, you know the boys there, do you not? A. Not all of them. 40

## Mildred Lynch—Cross

Q. Well, do you know some of them? A. Why, I never noticed.

Q. Can't you tell me who else you saw ride on that hill? A. No, sir.

Q. On that sled? A. No, sir.

Q. You can not give me the names of anyone except your brother, eh? A. I can't just remember now.

Q. Who asked you to ride? A. My brother told me I could go down.

Q. Where were you when he told you? A. I was on the corner.

Q. The corner where? A. Montclair and Mt. Prospect.

Q. Had the bobsled been down before? A. Yes, sir.

Q. How many times? A. That I couldn't say.

20 Q. Was there any policeman there on the corner? A. Yes, sir.

Q. What was he doing there? A. Well, he stopped the cars.

Q. Stopping the cars? A. Yes.

Q. That is right? A. Well he looked out that the cars didn't—

Q. He was there to stop the cars? A. Well, and anything that came up.

Q. Or any wagons? A. Yes, sir.

30 Q. Now, was the policeman there when your brother told you you could ride? A. Yes, sir.

Q. And was he there when you went up the hill to ride? A. I don't remember.

Q. Or had he gone away? A. I don't remember that.

Q. As you came down the hill you did not see any policeman there, did you? A. I don't remember.

Q. He had gone away, had he not? A. I don't  
40 remember.

## Mildred Lynch—Cross

Q. When you came down the hill there was not anybody to stop the cars, was there? A. Yes, sir.

Q. Who? A. There was a boy that flagged.

Q. Whom was he working for, do you know?

A. I don't think he was working then.

Q. He was not working for anybody, was he?

A. I don't know.

Q. Well, when you came down on the bobsled 10 did you see the boy there? A. Yes, sir.

Q. Did he have a flag? A. Yes, sir.

Q. Did he flag the car? A. Yes, sir.

Q. You are sure of that, eh? A. Yes, sir.

Q. You could see that, could you? A. Yes, sir.

Q. How could you see that at that time of the afternoon? A. Well, it was plain enough for me to see.

Q. Who was this boy? A. Raymond Martin.

Q. What is his name? A. Raymond Martin. 20

Q. How old is he? A. I don't know.

Q. Is he in court today? A. Yes, sir.

Q. Where is he? A. In the back of the room.

Mr. MacSherry: Will you stand up, please?

A boy arises.

Q. Is that the young man? A. Yes, sir.

Q. Who put him there at the corner with a flag? A. I couldn't say.

Q. Well, if you saw this young man with a flag 30 there to flag the cars, why did you say to your friend, "Why, there is the car"? A. Well, I just saw the light of the car.

Q. You saw some cars pass there without stopping before that, did you not? A. No, sir.

Q. What did you mean by saying, Miss Lynch, that some of the cars stopped? A. Well, all of them stopped.

Q. What do you say? A. All of them stopped. 40

## Mildred Lynch—Cross

Q. What made them stop? A. Well, I don't know what made them stop, but they all stopped.

Q. The policeman was there to make them stop, was he not?

Objected to as incompetent.

Q. Did you not see the policeman signal the car to stop?

10 The Court: The form of the question is objectionable. The witness is not expected to speak as to the purpose the policeman was there for, but merely as to what he did.

Mr. MacSherry: I do not press that.

Q. Did you see the policeman stop the car? A. Well, I don't just remember now.

Q. Well, what did you mean by saying, Miss Lynch, that the policeman was there to stop the car? A. Well, in case any didn't stop.

20 Q. What do you say? A. In case any of the cars didn't stop; but they all stopped.

Q. Well, you do not know what he was there for, do you? A. No, sir.

Q. And he was not there when you started up to take your seat? A. That I don't remember.

Q. You got on this sled where? A. At Ridge street.

Q. Who took the first seat? A. Walter Winterbottom.

30 Q. Was there anything to steer this sled with? A. Yes, sir.

Q. He was the steersman? A. Yes, sir.

Q. Who was next to him? A. Alzada Husk.

Q. Who came next? A. I did.

Q. Who after you? A. That I don't remember.

Q. Don't you remember that? A. No, sir.

Q. You went down twice? A. I know I did.

Q. This is not the time you got hurt; this is the 40 first time? A. I don't remember.

## Mildred Lynch—Cross

The Court: You are not speaking of the time she got hurt?

Mr. MacSherry: No.

By the Court: Q. Understand that in answering the question, that Mr. MacSherry is asking you not as to the time you were hurt, but as to the first time you went down. Who took the first seat the first time you went down? A. Walter. 10

Q. And who sat nearest to him? A. Alzada.

Q. And then you? A. Yes, sir.

Q. The order was the same, then, the first time? A. Yes, sir.

By Mr. MacSherry: Q. And who after you? A. That I can't remember.

Q. And who last? A. That I can't remember.

Q. How many were on the sled the first time?

A. I never counted them.

Q. Did you know them all? A. That I can't remember. 20

Q. Did you start from the centre of the street? A. Yes, sir.

Q. And you went straight down? A. Yes, sir.

Q. Did you meet any car coming down the first time? A. Yes, sir.

Q. Where was it? A. That stopped on the south side.

Q. The south side? A. Yes, sir; going north.

Q. Going north? A. Yes, sir. 30

Q. That is the first corner? A. Yes, sir.

Q. And that is the first time you came down? A. Yes, sir.

Q. Was there any policeman there then? A. That I can't remember.

Q. Was there any boy there with a flag then? A. Yes, sir.

Q. That is the first time. Then when you came down the second time did you occupy the same positions on the sled? A. Yes, sir. 40

## Mildred Lynch—Cross

Q. You say you saw the car about forty feet from the corner, the car was? A. Forty-five feet from the corner.

Q. Well, what is your idea of forty-five feet? How long do you think this room is? A. I couldn't say.

Q. Well, haven't you any idea? A. No, sir.

10 Q. Well, how did you get the idea that it was forty-five feet that you saw the car from the corner? A. Well, I measured it.

Q. You measured it? A. Yes, sir.

Q. How could you measure it? A. By my feet.

Q. What? A. By my feet.

Q. When did you measure it, about when? A. That I couldn't say.

Q. Well, about how long ago, how many months ago was it that you measured it? A. I couldn't  
20 say.

Q. Oh, yes, you can say about. A. I can't remember.

Q. Was it six months ago? A. I can't remember.

Q. Was it in the spring? A. In the spring I was in the invalid's chair.

Q. Well, I know, but I only want to know, my young lady, about the time, that is all; I just want to get the information you have, that is all. A.  
30 I can't remember.

Q. Well, can't you tell us whether it was in the spring, summer, autumn or winter? A. About in the winter.

Q. What? A. In the winter.

Q. Which winter? A. This winter.

Q. This winter? A. Yes, sir.

Q. Who was with you? A. A girl friend of mine.

40 Q. What is her name? A. Catherine Ghirlanda.

## Mildred Lynch—Cross

Q. What day of the week was it that you measured it? A. Oh, I don't know.

Q. Did you have a tape measure? A. No, sir.

Q. How did you measure it, then? A. By my foot.

Q. Well, did you call one of your feet a foot?

A. Yes, sir.

Q. Well, your foot is not twelve inches long, 10 is it? (No response.)

Q. Well, it was forty-five of your feet, was it?

A. Yes, sir.

Q. And how long are your feet, if you will pardon me? A. I don't know.

Q. Won't you tell me about how long your foot is? A. I never measured it.

Q. What size shoe do you wear? A. Fours.

Q. Fours? A. Yes, sir.

Mr. MacSherry: I would like the young 20 lady to take that foot rule and tell me how long her foot is, if you will, please.

Q. Won't you just take this and measure it?

Defendant's counsel measures the witness's shoe.

Q. Is that about right? A. I guess so.

Q. Well, that is about ten inches, your shoe there, you see. Is that about right? A. Yes, sir.

Q. Where did you measure from that day? A. The corner. 30

Q. Which corner? A. The south corner.

Q. This corner (indicating on map)? A. Yes, sir.

Q. And where did you start, what position did you take in the street to measure from? A. Straight.

Q. Did you go down to the car track? A. No, sir.

Q. Did you measure from the corner here (indicating)? A. Yes, sir. 40

## Mildred Lynch—Cross

Q. Along this way (indicating)? A. Yes, sir.

Q. And how did you measure, by putting one foot in front of the other, going that way (illustrating)? A. Yes.

Q. Who told you to do that? A. I told myself.

Q. Did not somebody else tell you? A. No, sir.

Q. And nobody suggested your making that  
10 measurement, eh? A. No, sir.

Q. Just did it yourself? A. Yes, sir.

Q. And you made the measurement from the corner to the point that you recollected that night that you saw the car? A. Yes, sir.

Q. You were hurt on the 7th day of January, 1910, and did you make the measurement before this last Christmas or after? A. After.

Q. Did you make it this year, after New Year's?  
A. Yes, sir.

20 Q. Do not answer this unless you follow it clearly. Then a year after you were hurt you remember about where the car was when you first saw it? A. Yes, sir.

Q. And you made the measurement from that point? A. Yes, sir.

Q. Did you measure it in the daytime or night?  
A. Just beginning to get dusk.

Q. About the same time as when you were hurt?  
A. Yes, sir.

30 Q. And you mean to say that you did that without a suggestion from anybody? A. Yes, sir.

Q. Did you tell your mother you were going to do it? A. No, sir.

Q. Or did you tell your lawyer you intended to do it? A. No, sir.

Q. You did not tell anybody? A. No, sir.

Q. Now, how long did it take you? A. That I couldn't say.

40 Q. About how long? A. That I couldn't say.

## Mildred Lynch—Cross

Q. Did it take you an hour? A. I don't know; I couldn't say.

Q. Did you see any cars running at the time?  
A. That I couldn't say.

Q. Now, did you put it down on a piece of paper—the measurement? A. No, sir.

Q. Just kept it in your mind, eh? A. Yes, sir.

Q. Who kept the tally as you stepped it off, 10  
you or your friend, or both? A. Myself.

Q. Did she step it off, too? A. No, sir.

Q. Where did she stand? A. That I couldn't say.

Q. Did she follow along with you? A. Yes, sir.

Q. Was there snow on the ground? A. No, sir.

Q. Ice? A. No, sir.

Q. Were the lights lit in the street? A. No, sir.

Q. Lights in the trolley cars? A. I didn't notice. 20

Q. What time of the day was it? A. I couldn't tell you.

Q. About? A. I couldn't say.

Q. Was it four? A. Around that.

Q. Was it after four? A. I couldn't say.

Q. Was it as late as five? A. I don't think so.

Q. What do you say? A. No, sir.

Q. Was it dusk? A. It was beginning to get dusk.

Q. And the lights were not lit? A. Not as I re- 30  
member.

Q. Wouldn't you remember, don't you think? It is only about two months ago, you know. Don't you remember whether the lights were lit when you made the measurement? A. No, sir.

Q. You do not remember? A. No, sir.

Q. Do you remember whether the lights were lit in the trolley cars? A. No, sir.

Q. You do not remember that? A. No, sir. 40

## Mildred Lynch—Cross

Q. What is the name of the girl who was with you? A. Catherine Ghirlanda.

Q. How do you spell the last name? A. G-h-i-r-l-a-n-d-a.

Q. Where does she live? A. 769 Mt. Prospect avenue.

Q. Is she in court today? A. No, sir.

10 Q. Have you seen her lately? A. Yes, sir.

Q. Have you subpoenaed her here, do you know? A. What do say?

Q. Have you subpoenaed her here? A. No, sir.

Q. How old is she? A. I don't know her age.

Q. About? A. I couldn't say.

Q. Is she as old as you, do you think? A. A little older, I think.

Q. How long have you known her? A. Oh, for twelve years.

20 Q. Does she go to the same school with you? A. No, sir.

Q. Is she in business anywheres? A. No, sir.

Q. Does she live with her parents? A. Yes, sir.

Q. Now, the night of the accident where was your bobsled when you saw the trolley car coming? A. A little below Clifton avenue.

Q. How much below? A. That I couldn't say.

Q. Can't you point out some object across this room? A. No, sir.

30 Q. You can not tell us at all? A. No, sir.

Q. Well, Clifton avenue is one block away from— A. Mt. Prospect avenue.

Q. Mt. Prospect avenue? A. Yes, sir.

Q. And your bobsled ran that block, or, rather, from where you were, near Clifton avenue, and met the car right at the corner of Montclair avenue and Mt. Prospect avenue; is that so? A. I couldn't say; I was unconscious.

40 Q. Well, don't you remember going into the side of the car? A. No, sir.

## Mildred Lynch—Cross

Q. Your bobsled? A. No, sir.

Q. Now, let us see. You were coming down, and when you saw this car coming, was it coming fast or slow? A. I don't just remember.

Q. Did you notice who was on the corner of Montclair avenue and Mt. Prospect avenue at that time? A. No, sir.

Q. You did not see anybody, because you were looking at the car; isn't that so? A. Yes, sir. 10

Q. So with your bobsled leaving Clifton avenue, you saw the car, as you say, forty-five of your feet, which would be about thirty-seven feet, away from the corner. You do not recollect anything after that, do you? A. No, sir.

Q. And you are sure of that? A. No, sir.

Q. Well, now, aren't you mistaken about that? (No response.)

Q. You do recollect something after that, do you not? A. No, sir. 20

Q. Don't you recollect saying to the man who was steering the sled, "There is a trolley car"? A. Well, I said that as soon as I saw the car, that is all.

Q. Yes, I know you did. Well, you were going very fast then, were you not? A. I couldn't say.

Q. Why not? A. I can't just remember.

Q. Can't you remember when you saw the trolley car whether your bobsled was going fast or slow? A. I don't remember. 30

Q. It was going as fast as an express, was it not, at that time? A. I couldn't say.

Mr. Weinberg: I object to that. Expresses run at various speeds.

Q. Is it not so that at the time you said, "There is a trolley car," that your bobsled was coming down that hill at a very fast rate? A. I couldn't say. 40

## Mildred Lynch—Cross

Q. Well, was it going slow? A. No, not slow.

Q. You could not have got off of it, could you?  
A. I don't believe I tried.

Q. Wait a minute. At the time you saw the trolley car do you think you could have gotten off the sled? A. I couldn't say.

Q. How were you seated on the sled? A. I was  
10 the third one.

Q. Well, how were you seated, down as I am seated now (illustrating), that way? A. I can't remember.

Q. Oh, tell us, please. A. I can't remember.

Q. Well, were you lying out flat, one lapping over the other? A. We were sitting up.

Q. Sitting up? A. Yes, sir.

Q. And you were facing the back of the second person in front of you? A. Yes, sir.

20 Q. Now, I ask you again, do you think you could have gotten off of that sled when you first saw the trolley car? A. I can't remember.

Q. You can't remember what? A. I don't remember if I could have got off.

Q. Did you try? A. No, sir.

Q. Why not? A. I never thought of it.

Q. Didn't you think you were in any danger?  
A. No, sir.

Q. Why did you tell the boy steering the boy,  
30 then, that there was a trolley car? A. I just told him there was a car.

Q. Could you make yourself heard, going down so fast, with the gong ringing? A. Yes, sir.

Q. Did you shout it to him? A. We rang the bell.

Q. But the gong was ringing at the time and you were going fast. How could you get that word to him? A. Why, just spoke to him.

40 Q. How loud? A. Not so very loud.

## Mildred Lynch—Cross

Q. Who was ringing the gong? A. That I can't remember.

Q. What part of the bobsled was the gong on?  
A. I don't remember.

Q. Did you see it? A. No, sir.

Q. How do you know it was there? A. Because I heard it ringing.

Q. What do you say? A. I heard it ringing. 10

Q. How could you ring the gong on that bobsled, do you know? A. No, sir.

Q. Was there any light on your sled? A. I don't remember.

Q. Don't you remember whether there was a lantern on the sled or not? A. No, sir.

Q. Were there any brakes on your sled? A. I can't remember that.

Q. Do you know how that sled could be stopped?  
A. No, I don't. 20

Q. You do not know that, eh? A. No.

Q. You were up there nearly a block away when you saw the trolley car, were you not? A. Yes, sir.

Q. Now, as you came on towards the trolley tracks did you still see the car? A. I don't remember.

Q. Why not? A. I was unconscious.

Q. Well, you were within three-quarters of a block and not hit yet. A. Well, I don't remember 30 anything.

Q. You did not get hit up near Clifton avenue, did you? A. No, sir.

Q. Nothing happened to you until you got down to Mt. Prospect avenue; isn't that so? A. Yes, sir.

Q. Now, just follow me, please. There is the bobsled up here at Clifton avenue (indicating on map). While you were going down this hill what 40

## Mildred Lynch—Cross

was going on on that sled? A. The bell was ringing.

Q. What else? A. I can't remember.

Q. Was anything being said? A. I can't remember.

Q. Didn't you see the trolley car at that time coming nearer the corner? A. Yes, sir.

10 Q. You saw it coming nearer? A. Yes.

Q. Then you were quite mistaken when you said you did not remember anything after you said "There is the trolley car"? You saw the trolley car nearer than forty-five of your feet from the corner; did you not? A. No, sir.

Q. Well, have you not just said, if you will pardon me, young lady, that you did see the trolley car after that? (No response.)

20 Q. Didn't you? (No response.) You saw the trolley car near the corner, did you not? A. No, sir.

Q. Where was the trolley car when you got down to the corner before you went on the track? A. I was unconscious.

Q. Oh, you have not been struck yet? A. Well, I was unconscious; I don't remember anything.

Q. You did not get unconscious until you got struck, did you? A. I don't know. I don't remember anything.

30 Q. Well, just let us see again. You said to the boy in front, "There is a trolley car"; is that all you said? A. Yes, sir.

Q. What else did you say? A. That is all I said.

Q. And you said it about in the tone of voice that you are talking in now, or louder? A. About the tone of voice I am saying it now.

Q. And the gong was ringing? A. Yes, sir.

40 Q. And you were coming down on that bobsled? A. Yes, sir.

## Mildred Lynch—Cross

Q. And the car was moving towards the corner? A. Yes, sir.

Q. Now, can't you tell us what happened after that? A. No, sir.

Q. What did the young man do—not what he said—what did the young man do when you said “There is a trolley car”? A. I can't remember.

Q. You can not remember that? A. No, sir. 10

Q. You can not remember a single thing, you can not tell us anything that happened after you said “There is a trolley car”? A. No, sir.

Q. And you do not recollect anything until you found yourself in your brother's arms? A. No, sir.

Q. You do not remember seeing the trolley car after that? A. No, sir.

Q. You do not remember what efforts, if any, the boy made to stop the sled? A. No, sir. 20

Q. None at all? A. No, sir.

Q. When was the last you heard the gong ring? A. Until I was unconscious.

Q. Well, that was when you left Clifton avenue; that was at the time you first saw the trolley car. Did you hear the gong ring after that? A. After I said that to the boy.

Q. Did you hear it ring after that? A. Yes, sir.

Q. How could you hear it if you were unconscious? A. Well, I heard it until I said that to the boy. 30

Q. You heard it until you said that to the boy? A. Yes, sir.

Q. And you did not hear it after? A. No, sir.

Q. And you said that to the boy just after you left Clifton avenue? A. A little after; yes, sir.

Q. Then, so far as you know, the gong was not ringing after that? A. So far as I know.

Q. So far as you know, yes? A. So, far as I know, no. 40

## Mildred Lynch—Cross

Q. You did not hear it? A. No, sir.

Q. You did not hear any bell on the trolley car?  
A. No, sir.

Q. And you did not hear any warning from anybody? A. No, sir.

Q. And you did not see anybody at the corner?  
A. I saw the boy that flagged.

10 Q. When? A. After—just before I said that to the boy.

Q. But after you said that to the boy you did not see anybody? A. I can't remember anything else.

Q. Where were you looking? A. That I can't remember.

Q. Were you frightened? A. No, sir.

Q. Well, why is that you can not tell us a single thing you saw or heard after that? A. I don't  
20 know.

Q. You can not explain, can you? A. No, sir.

Q. Can't you give us some idea with your hand about how high the sled was from the ground? A. No, sir.

Q. Oh, yes, you can, come. A. No, sir.

Q. Was it as high as this counsel table here (indicating)? A. I couldn't say.

Q. Was it as high as that? A. I don't remember.

30 Q. Was it as low as a foot from the ground? A. I don't remember.

Q. Was it as wide as this table, the counsel table, that we are sitting at? A. I don't remember.

Q. Was it twice as wide as that table (indicating)? A. I don't remember.

Q. What was the color of it, have you any idea?  
A. No, sir.

40 Q. Was there anybody going down that hill at

## Mildred Lynch—Cross

the time you were going? A. What do you mean by that?

Q. Anybody coasting down the hill at the time that you were coasting? A. Yes, sir.

Q. Ahead of you or behind you? A. Ahead of us.

Q. Ahead of you. How far ahead of you? A. Oh, I couldn't say. 10

Q. About? A. I couldn't say.

Q. Who were they? A. I don't remember.

Q. Bobsleds or small sleds? A. That I couldn't say.

Q. Girls or boys? A. Boys, I think.

Q. Well, about how far ahead of you? A. I couldn't say.

Q. Well, how do you know they were ahead of you? A. Well, they started off ahead of us.

Q. How many minutes or seconds ahead of you, about? A. I couldn't say. 20

Q. How many on a sled? A. I don't just remember.

Q. Did they have any light on their sled? A. I don't remember that.

Q. Was there anybody on that hill at dusk that night having a light on the sled, that you know of? A. I don't remember.

Q. Did you see anybody with a lantern on the sled that night? A. I don't remember. 30

Q. Did you see anybody carrying a light of any kind? A. I don't remember.

Q. How were you dressed? A. I had a red coat on.

Q. Sweater? A. No, sir.

Q. Did you have a sweater hat? A. No, sir.

Q. Gloves? A. Yes, sir.

Q. How was the boy in the front of the sled dressed, I mean as to color? A. I couldn't say.

Q. Don't you remember? A. No, sir. 40

## Mildred Lynch—Cross

Q. Whether he had a red or a white sweater or coat on? A. I couldn't say.

Q. Did he have any cap on at all? A. I couldn't say.

Q. Did he have anything on his head? A. I couldn't say.

Q. How was the person in front of you dressed?  
10 A. I couldn't say.

Q. Did he have a sweater on? A. I don't just remember.

Q. Was it a girl or boy in front of you? A. A girl.

Q. Anything on her head? A. Yes, sir.

Q. What? A. A hat.

Q. What kind of a hat? It is pretty hard to describe ladies' hats in these days, but was it a round hat or a stiff hat or a thick hat? A. I  
20 couldn't say.

Adjourned until tomorrow, March 8, 1911, at ten o'clock, a. m.

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 SECOND DAY

Wednesday, March 8, 1911.

30

Met pursuant to adjournment.

Present: Counsel as before stated.

MILDRED LYNCH, resumes the stand in behalf of plaintiff:

Cross-examination (continued) by Mr. MacSherry:

40 Q. When you were on the sled at the time you

## Mildred Lynch—Cross

say you called the attention of the steerer of the sled to the fact that you saw a trolley car, did you see anybody down there at that corner? A. I saw the boy that flagged.

Q. What was his name? A. Raymond Martin.

Q. Did he have anything in his hand? A. He was signalling with his hand.

Q. What do you say? A. He was putting his 10 hand up.

Q. He did not have any flag in his hand, did he?

A. That I don't remember.

Q. What was his name? A. Raymond Martin.

Q. He was not the boy that had been there during the afternoon flagging the cars and the sleds, was he? That boy had gone away, had he not? A. He flagged the car—there were two cars he flagged.

Q. But the boy that had been there in the after- 20 noon, he had gone away, had he not, and this other boy had taken his place? A. Yes, sir.

Q. The boy that had been flagging the cars and the bobsleds, he was sliding himself, isn't that so? A. I couldn't remember.

Q. You keep saying that you do not remember. Why do you say that? Don't you remember? A. Well, I don't know who was on the hill.

Q. But you do know the boy that had been flag- 30 ging the cars and the sleds had gone away, and a new boy had taken his place; isn't that so? A. Yes, sir.

Q. And this new boy was whom? A. Raymond Martin.

Q. How long had he been there? A. He had been there two cars.

By the Court: Q. What do you mean by "two cars?" A. Two times up and down.

By Mr. MacSherry: Q. Two trips up and down? 40 A. Yes, sir.

## Mildred Lynch—Cross

Q. Not two cars, but your two trips? A. Yes, sir.

Q. And you did not see him signal the cars; he signalled the sleds, isn't that so? A. Yes, sir.

Q. How would he signal the sleds? A. Why, I don't just remember now.

Q. Well, you are telling us that he signalled  
10 the sleds; can't you tell us how he did it? A. He put one hand up and two hands up sometimes; I don't just remember how they stand.

Q. On the trip that you got hurt, did he signal your sled? A. That I can't remember.

Q. At the time you were coming down the hill, at the time you got hurt, you did not see him signal any car in any way, did you—any street car? A. I didn't take that much notice.

Q. Did he signal your sled in any way? A.  
20 That I didn't take any notice.

Q. Then so far as you know, as the sled was coming down that hill that night, or late in the afternoon, there was not any signal made by anybody at the corner either to the car or to your sled; isn't that so? A. Well, I saw him run up to the car.

Q. What do you say? A. I saw him run up to the car.

Q. What do you mean by, "I saw him run up to  
30 the car?" A. I saw him signal the car.

Q. Well, you just said that you did not remember. Why do you say over and over again that you do not remember, and then finally say that he did so and so, Miss Lynch? (No response.)

Mr. Weinberg: Well, what is the question?

Q. What do you say, did he signal the car or not?

Objected to as repetition.

40

The Court: The witness previously

## Mildred Lynch—Cross

made a statement that she did not know whether he signalled the car or not. That raises an apparent inconsistency and counsel has a right to pursue it.

Q. Why do you say now that he ran up and signalled the car, after you have said several times that you do not remember whether he did or not? (No response.) 10

Q. an you answer that question? (No response.)

Mr. MacSherry: Of course, if I can not get a reply—

By the Court: Q. What is your recollection about it? (No response.)

Q. Are you able to answer the question? Do you remember what the question was? A. No, sir.

Q. (Question read.) (No response.)

Q. The question is whether you can explain 20 that? A. Well, I remember now I see him signal the car.

By Mr. MacSherry: Q. How? A. He went up to the car.

Q. Where was the car when he ran up to it? A. That I couldn't say.

Q. Why not? A. I don't know why I can't say it.

Q. Well, it was after you saw it about 45 feet 30 away, as you say, was it not? A. What was the question again?

Q. (Question read.) A. No sir.

Q. Did he run up to the car before you saw the car? A. Before I saw the car?

Q. Yes. (No response.)

Q. Can you answer that question? A. No, sir.

Q. You do not remember much about this accident, do you? A. No, sir.

Q. Where did he run to? A. What was your 40 question?

## Mildred Lynch—Cross

Q. Where did this boy run to?

The Court: Run to or from?

Mr. MacSherry: Where did he run to?

The Court: To?

Mr. MacSherry: Yes, sir.

By the Court: Q. Where did the boy run to?

A. He ran up this direction (indicating).

10 Mr. MacSherry: What direction?

Q. Which direction is that? A. South.

By Mr. MacSherry: Q. Did he pass out of your sight? A. Well, I didn't notice that.

Q. Where was your bobsled then, when you saw the boy run away? A. A little below Clifton avenue.

Q. That was the time you saw the car, was it not? (No response.)

By the Court: Q. Can you answer that, whether  
20 that was the time when you saw the car? A. No, I believe I can't answer it.

Q. You can or can not? A. I can't.

By Mr. MacSherry: Q. How near to the corner was the car when the boy ran up to it? A. That I couldn't say.

Q. Did the boy make any signal to your bobsled? A. I didn't notice.

Q. Had he made any signal to you on the other trip? A. What do you mean by that?

30 Q. In what way did he signal your bobsled at any time—your bobsled? A. With his hands.

Q. How? A. One up.

Q. Show me. A. This way (illustrating).

Q. What did he mean by that? A. Well, I don't remember just what the signals were.

Q. You did not understand them? A. I did at that time but I don't now.

Q. In any event on this trip that you got hurt you did not receive any signal from that boy, did  
40 you? A. When we started off we did.

## Mildred Lynch—Cross

Q. Why, could you see from the point that you started off? A. Yes, sir.

Q. In the dusk that night? A. It wasn't very dark.

Q. The lights were lit? A. Well, it wasn't dark.

Q. What was the signal? A. As I told you, two hands or one hand. 10

Q. What was it, to come ahead? A. Yes.

Q. Then when you boys and girls started down that hill you received from this boy down on the corner of Mt. Prospect avenue and Montclair avenue—

The Court: Let us be a little more definite. The witness will want to know which trip you are speaking of.

Q. The trip that you got hurt on. Now, on the trip that you got hurt on, before you started off, you got a signal from a boy. What is his name? A. Raymond Martin 20

Q. You got a signal from Raymond Martin, from the corner of Mt. Prospect avenue and Montclair avenue, to come ahead; is that right? A. Yes, sir

Q. And after getting that signal you started; is that right? A. Yes, sir.

Q. Now at the time you started you did not see any car, did you? A. What do you mean by that? 30

Q. You did not see any trolley car? A. The time I started?

Q. Yes, from the beginning of the hill, the top of the hill.

The Court: Ridge street.

Mr. MacSherry: Ridge street.

A. No, sir.

Q. You did not see a trolley car until after you passed Clifton avenue; isnt that so? A. Yes, sir. 40

## Mildred Lynch—Cross

Q. And you did not receive any signal from this boy to stop, did you? A. I couldn't say.

Q. You do not remember receiving any signal except the one that you received at Ridge street to come ahead; isn't that so? A. I didn't notice any other signal.

Q. You told that boy to be down there at the 10 corner, do you know?

Objected to.

Mr. MacSherry: If you know.

Mr. Weinberg: One moment. I do not see how that is immaterial, who told him. He might volunteer. It would be just as valid as a signal.

The Court: You may answer the question yes or no, as to whether you know who told him. Say either yes or no to that question.

20 By the Court: Q. Do you know who told him?

A. No, sir.

By Mr. MacSherry: Q. Was it one of your party?

Mr. Weinberg: Who?

Mr. MacSherry: This boy.

Mr. Weinberg: The one who was signalling?

Mr. MacSherry: Yes.

30 Q. Was he one of your party? A. What do you mean by that?

Q. Well, one of your friends, one of your playmates there sledding on the hill? A. No, sir.

Q. How long had you known him at that time?

A. Oh, I couldn't tell.

Q. Well, several years? A. Not that long.

Q. Did he go to your school? A. I couldn't tell.

Q. Did he live near there? A. Yes, sir.

40 Q. He was one of the boys sleighing on that

## Mildred Lynch—Cross

hill that afternoon, was he not? A. I couldn't say that.

Q. Do you remember a policeman being there that afternoon? A. Yes, sir.

Q. Do you remember when he went away? A. No, sir.

Q. Do you remember him warning anybody there not to sled on the hill? 10

Objected to as irrelevant and immaterial.

Objection overruled.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

Circuit Court Judge.

(Question read.) 20

By the Court: Q. That is, did you hear it? A. No, sir.

By Mr. MacSherry: Q. Did you see him do anything while he was there? A. No, sir.

By the Court: Q. Can you tell us, Miss Lynch, the names of the boys who had been there before Raymond came? A. No, sir.

Q. You said he took the place of another boy? A. Yes, sir.

Q. But you do not know the name of the other boy? A. No, sir. 30

By Mr. MacSherry: Q. Do you see him here in court? A. What do you say?

Q. Do you see the boy in court that the Judge spoke about, the boy that was first signalling? Do you see him here anywhere? A. Yes, sir.

Q. Where is he? A. There (indicating).

Q. Is that the boy? A. Yes, sir. 40

Florence M. Mawer—Direct

(Dr. W. Stockton Wilson and Dr. Henry G. Holler are sworn and testify as to the physical injuries of the plaintiff.)

FLORENCE M. MAWER, sworn in behalf of  
of plaintiff:

10 Direct-examination by Mr. Weinberg.

Q. Miss Mawer, what is your profession? A. Trained nurse.

Q. You are a graduate— A. From the Newark City Hospital.

Q. Do you know Miss Lynch? A. Yes, I do.

Q. Did you act as a nurse for her at any time for an injury sustained by her? A. Yes, on January 16th.

Q. When did you start to attend her? A. On  
20 January 16th.

Q. January 16th of what year? A. Last year.

Q. January 16, 1910? A. Yes.

Q. And how long did you continue in attendance? A. Up until April, and then on until July.

Q. During the period you were there what services did you perform for the child? A. Why, I took care of her.

Q. What did that consist of? A. Well, I assisted at the operations of the doctors, two opera-  
30 tions but not the first.

Q. Did you have anything to do about dressing the wound? A. I assisted at the dressing.

Q. Up to the time you left what was Miss Lynch's condition with regard to her ability to get around? A. Why, had to carry her down to the wheeling chair. Of course, she wasn't able to walk around.

Q. She was not able to walk at the time you left her in July? A. No.

40 Cross-examination waived.

## Alzada M. Husk—Direct

ALZADA M. HUSK, sworn in behalf of plaintiff's.

Direct-examination by Mr. Weinberg:

Q. Miss Husk, where do you reside? A. Mt. Prospect avenue.

Q. What number? A. 764.

Q. Near what street is that? A. It is between Montclair and Grafton avenue. 10

Q. Are you acquainted with Mildred Lynch? A. I am.

Q. What is your age? A. Seventeen.

Q. Do you recollect the 7th of January, 1910? A. I do.

Q. What sort of weather was prevailing at that time? A. Why, we just had had a terrible storm of sleet, and everything was covered with ice.

Q. Snow on the ground, too? A. Yes, sir.

Q. Was there any sled riding on Montclair 20  
avenue? A. Yes, there was

Q. On the 7th of January? A. Yes. j

Q. During what period during the day do you know that there was sled riding? A. Why, after school, after three o'clock.

Q. During the school hours, of course, you do not know what was going on? A. No.

Q. Was there much sled riding or little? A. Yes, there was quite a good deal.

Q. Were you sled riding that afternoon? A. 30  
A little.

Q. Before sled riding, before you actually went sled riding, did you observe any of the sled riding that was going on? A. Yes, I did.

Q. For how long did you notice sled riding going on there? A. Oh, I couldn't say that.

Q. About what time did you go to Montclair avenue after school that day? A. I think it was around four o'clock. 40

## Alzada M. Husk—Direct

Q. Did you immediately start to go sled riding?

A. No, sir; I didn't.

Q. How long did you wait before starting out?

A. I don't know that.

Q. Well, approximately about? A. Well, it may have been three-quarters of an hour, perhaps an hour.

10 Q. During that time did you observe if there was sled riding going on? Yes, sir; there was.

Q. Was there? A. Yes.

Q. Now, during the time that you were there, Miss Husk, did you observe the action and movement of the trolley cars on Mt. Prospect avenue?

A. I did.

Q. What did the trolley cars do with reference to that point, Montclair avenue and Mt. Prospect avenue, when they reached that point? A. You  
20 mean with regard to stopping.

Q. Yes. A. Why, the cars stopped on the first crossing.

Q. Going which way? A. Why, the north car stopped on the south crossing and the south car stopped on the north crossing.

Q. All of them? A. All that I noticed.

Q. All that you saw, I mean? A. Yes.

Q. And do you know how they came to stop there on these crossings? A. Why, they were  
30 supposed to stop when there was sliding on the hill.

Mr. MacSherry: I ask that go out.

Mr. Weinberg: Not what they were supposed to do.

The Court: Strike it out.

Mr. Weinberg: That is out by consent.

Q. Did you know what caused them to stop? A. No, I didn't.

40 Q. But you did see them stop? A. Yes, sir.

Alzada M. Husk—Direct

Q. Did you see any cars go by without having first stopped at the first crossing? A. No, sir.

Q. Did you observe anybody at the crossing at any time? A. Why, yes, there was a boy there to signal.

The Court: During that afternoon, you mean?

Q. During that afternoon? A. Yes, there was 10  
a boy there to flag for us.

Q. And when the boy flagged, did you notice what the cars would do? A. Well, the cars stopped anyway.

Q. And did they then stop, when they were flagged? A. Yes, sir.

Q. And when you say they stopped anyway, do you mean that they stopped even if they were not flagged? A. I think they did.

Q. So that all the cars stopped whether flagged 20  
or not? A. Yes, sir.

Mr. MacSherry: That she saw.

Q. Yes, those cars that you saw? A. Yes.

Q. Now, I believe you were on this sled at the time when it came in collision with the trolley cars, were you not? A. Yes, sir.

Q. Whose sled was this? A. Why, I believe it belongs to Walter Winterbottom.

Q. A young man that you were acquainted with? A. Yes, sir. 30

Q. What kind of a sled was it? A. Well, it was a bob, but I don't know anything about the make of bobs.

Q. You know it was a bobsled? A. Yes, sir.

Q. About how big a bobsled was it, would you say? A. I don't know anything about the size of it.

Q. Well, can you give us any notion of it? Can you point to anything in the courtroom that would 40

Alzada M. Husk—Direct

give us an idea of the length of it? A. No, sir; I can't.

Q. Well, it was not as long as the courtroom itself, was it? A. No, sir.

Q. Well, now, that is some notion. Was it as long as from where you are sitting to where I am sitting? A. Perhaps.

10 Q. You think it might have been that long? A. Yes.

Mr. MacSherry: Well, that is how long?

Mr. Weinberg: About 12 or 14 feet. We will get it exactly after awhile.

Q. On this occasion when the collision occurred where were you seated on the bob? A. I was second one on the bob.

Q. And where was Mildred Lynch if you know? A. She was right in back of me.

20 Q. So that she was the third person? A. Yes, sir.

Q. First Winterbottom, the steersman then yourself and then the plaintiff? A. Yes, sir.

Q. Do you know who else was on the sled at that time? A. I know there were boys on, but I don't know the names of them.

Q. There were some boys on there? A. Yes, sir.

Q. About how many were on there altogether? 30 A. I haven't the least idea.

Q. How many trips had you made on this bob that afternoon? A. I had made two before the one we hit the car.

Q. This was the third trip you made, then? A. Yes.

Q. Did you start sled riding at the same time that Mildred did? A. Yes, sir.

Q. Both made the first trip together? A. Yes, 40 sir.

Alzada M. Husk—Direct

Q. Now on your previous trips before this accident did you observe any trolley cars at the corner of Montclair and Mt. Prospect avenues in passing at any time? A. I don't understand your question.

Q. I say on the other two trips that you made before the accident, as your sled came down or as you went up the hill, did you notice any trolley cars that came to this corner? A. I didn't notice any, no. 10

Q. You did not notice any before? A. No, sir.

Q. Now, on this occasion did you notice a trolley car when you came down the hill, on this fatal trip on this trip where the injury took place? A. Well, I didn't notice it until the accident almost happened.

Q. And where was the car when you first saw it? A. It was almost to the crossing. 20

Q. Almost to what crossing? A. To the first crossing.

Q. That would be the crossing on the south side? A. Yes, sir.

Q. And at that time where would you think your sled was? A. Well, I think we were almost to Mt. Prospect avenue from Clifton.

Q. You think you were almost to Mt. Prospect avenue at that time? A. Yes, sir.

Q. How was your sled going with regard to speed at that time? A. I couldn't say anything about the speed. 30

Q. Well, were you going pretty fast or otherwise, or can't you recollect? A. I didn't notice.

Q. Do you know anything about the collision between the bob and the car? A. No, sir; I don't remember very much of it.

Q. Were you hurt at the time? A. Well, I received a terrible shock and one of my legs was bruised. 40

Alzada M. Husk—Direct

Q. Were you rendered unconscious, I mean?

A. I think I was unconscious for a few minutes.

Q. Can you tell us anything more about this accident after you saw this car approaching the corner? Can you tell us what happened after that? A. No, I don't believe I can.

Q. Can you tell us what direction your sled  
10 took as it came down the street A. Why, Walter turned it so that we would go out of the way of the car.

Q. And which way did he turn? A. Why, turned off the same way that the car was going, in that direction.

Q. He turned north, then? A. Yes, sir.

Q. And can you tell about where the sled was when it started to turn, whereabouts in the street was the sled, near what place was it when he  
20 started to turn? A. I think we were near the corner.

Q. Can you tell what direction your sled was running in when it met the car, or the car met it, when it came in collision with the car? A. Why, the same way that the car was going.

Q. It was running about the same way that the car was going? A. Yes, sir.

Q. Can you tell us about what part of the car and the sled came in collision with each other? A.  
30 Why, that top—the front part of the car and the front part of the bob locked.

Q. They what? A. They locked.

Q. What was their position, one with regard to the other? A. Why, one was alongside of the other.

Q. Parallel to each other? A. Yes, sir.

Q. Have you any recollection of the shock at the time of the actual collision, have you any  
40 recollection of it? A. Very little.

## Alzada M. Husk—Cross

Q. Do you know how far either the bob or the car went after they came in contact with each other? A. No, I do not.

Q. After the accident what did you do, did you go home? A. I was assisted home.

Q. Did you see what became of Mildred? A. Mildred's brother took care of her.

Q. Do you know a young man by the name of Raymond Martin? A. I know of him. 10

Q. Did you see him that afternoon of this accident? A. Yes, sir.

Q. Where was he? A. Why, he was flagging at the time of the accident.

Q. When did you first notice him that afternoon? A. I think I noticed him the trip before the accident.

Q. And what was he doing there? A. He was flagging at the foot of the hill. 20

Q. Flagging whom? A. Why, he would tell us whether the coast was clear.

Q. Could you see him from your starting point on the hill? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. On this last ride, you mean? A. Yes, sir.

Q. Did you get a signal from him to come down? A. Yes, sir.

Q. Do you know whether he made any signal to the oncoming car or not? 30

The Court: Just what you saw.

Mr. Weinberg: Yes.

A. I really didn't notice whether he made any signal to the car or not.

CROSS-EXAMINATION by Mr. MacSherry:

Q. You got on the hill, that neighborhood there, about what time? A. Well, I think it was a little after four when I went on. 40

## Alzada M. Husk—Cross

Q. Was Miss Lynch there at the time? A. Yes, sir.

Q. About how many people were around there, how many young boys and girls? A. Oh, there was quite a few.

Q. Was there a policeman there? A. There was a policeman there before the accident.

10 Q. What was he doing? A. Why, he was just standing there on the corner.

Q. Well, did he pay any attention to the cars or to the sleds? A. Well, he stopped vehicles from going in that way.

Q. Did he stop the cars? A. I didn't notice.

Q. Well, was there any boy doing any signalling work there while the policeman was there? A. Yes, the boy was doing some work.

Q. Do you know who told the boy to stand  
20 there? A. No, I do not.

Q. Did you see him sledding any? A. No, sir; I didn't notice.

Q. Well, the policeman went away after awhile, did he not? A. Yes, sir.

Q. Well, did the same boy do the signalling all the time you were there? A. Well, I wasn't on the hill very long.

Q. How long were you on the hill? A. Oh, I don't think I was on the hill any more than an  
30 hour, between an hour and an hour and a half.

Q. Well, you were there from four o'clock, about, to quarter to six, were you not? A. Well, I wasn't sliding all the time.

Q. You got hurt about quarter to six, did you not? A. Yes, sir.

Q. And it was getting pretty dark then, was it not? A. It wasn't dark.

Q. Well, it was pretty dark, was it not—Jan-  
40 uary 7th? A. No, sir; it wasn't dark.

## Alzada M. Husk—Cross

Q. The lights were lit in the street? A. Yes, sir, I believe they were.

Q. And the cars were lit? A. Yes, sir.

Q. How long before you were hurt were the lights lit in the street, do you think? A. I didn't notice.

Q. Well, half an hour?

Mr. Weinberg: I object to your suggesting to witness, putting the words in her mouth. 10

Q. Were the lights lit about half an hour before you got hurt? A. Perhaps they were.

Q. Now, you made two trips in safety before you made the third trip? A. Yes, sir.

Q. And the hill was covered with ice, was it not? A. Yes, sir.

Q. And as you came down on that bobsled it went two blocks beyond Mt. Prospect avenue before it stopped? A. Very nearly two blocks. 20

Q. Went down to what street? A. Summer avenue.

Q. Now, can't you tell us how many people were on the sled? A. No.

Q. Now, when you came back from Summer avenue to make this last trip, the trip on which you were hurt, was there a boy on the corner? A. Yes, sir.

Q. He had a flag in his hand? A. I don't think he had a flag. 30

Q. When you use the word "flag" you mean making signals with his hands? A. With his hands and occasionally with a handkerchief.

Q. What kind of signals did he make? A. Why I believe one hand meant that it was all right and two hands meant—no, I believe I have that twisted; two hands meant it was all right and one hand meant to stay up. 40

## Alzada M. Husk—Cross

Q. That was to the people on the bob? A. Yes, sir.

Q. Now, in what way would he signal a car? A. I didn't know anything about his signals to the car.

Q. Now, was there a policeman there when you started up the hill the last time? A. Not the  
10 last trip.

Q. He had gone? A. Yes, sir.

Q. While he was there did you see him stop anyone from running the bobsled on the hill? A. No, sir.

Q. Now, you got up to the top of the hill and you got your positions on the sled? A. Yes, sir.

Q. Now, can't you tell us how many people were on that sled? A. No, sir; because I sat down among the first; Mildred and I sat down, and I  
20 don't know how many got on afterwards.

Q. How many would the sled hold, do you know? A. No, I don't.

Q. Well, I know, but about? A. Perhaps it would hold eight and perhaps more.

Q. Was it full? A. I don't know; I never looked back.

Q. Well, how many were up there getting on the sled? You can tell us that, certainly, young lady. A. Well, there were a good many that  
30 were leaving; that were going home, because it was supper time.

Q. I have not ask you that, now, have I? How many were getting on that sled? You are a bright young girl; you certainly ought to be able to tell us about how many people were getting on a bobsled. A. No, I can't; I don't know how many were getting on.

Q. Were there seven? A. Well, there weren't  
40 any more than seven.

## Alzada M. Husk—Cross

Q. But there may have seven and there may have been six? A. There may have been.

Q. Now, you got all ready and you were ready to start. Now, that is about two blocks away, at the top of the hill, from Mt. Prospect avenue? A. Yes, sir.

Q. Now, from that point could you see down to the corner of Mt. Prospect avenue at that time? A. Yes, sir. 10

Q. Could you see people there? A. Yes, sir.

Q. Could you see the little boy there? A. Yes, sir.

Q. Pretty small, is he not? A. Well, I think he was then.

Q. Who was the boy that you could see down there at that corner? A. I believe his name was Martin; I don't know the boy.

Q. Do you see him in court today? A. Yes, sir. 20

Mr. MacSherry: Just stand up, will you?

(A boy arises.)

Q. Is that the young man? A. Yes, sir; I believe it is.

Q. Is he the one that had been signalling all the time you were there? A. Well, he was signalling at the time of the accident.

Q. Now, you could see him down at that corner? A. Yes, sir. 30

Q. Where was he standing? A. Well, I believe he was standing in the centre of the car tracks.

Q. Well, do you know? A. I think that was where he was.

Q. And which way was he looking? A. Why, he was watching both directions for cars.

Q. Well, did he signal your sled? A. Yes, sir.

Q. How? A. He told us to come on. 40

## Alzada M. Husk—Cross

Q. What did he do? A. Why, he put up both hands.

Q. Just show us, please. A. (Witness illustrates.)

Q. And on that signal you started? A. Yes, sir.

Q. Was he an acquaintance of yours? A. No, 10 sir.

Q. Was he an acquaintance of the young man that was steering the sled? A. I don't know whether he was or not.

Q. Do you know who told him to stand there? A. No, sir.

Q. Anyhow, he gave the signal for you to come on? A. Yes, sir.

Q. And you started off? A. Yes, sir.

Q. Now, it is downhill all the way, is it not? 20 A. Yes, sir.

Q. Did you start from the middle of the road or the side of the road? A. The middle, I think.

Q. Do you remember when your sled crossed Clifton avenue? A. No, sir.

Q. Do you remember just after you crossed Clifton avenue hearing Miss Lynch say, "Oh, Walter, there is a trolley car"? A. Yes, sir.

Q. Where was your sled then? A. Why, it was between Mt. Prospect avenue and Clifton 30 avenue.

Q. Was it nearer Mt. Prospect avenue than it was Clifton avenue, or the other way? A. Nearer Mt. Prospect.

Q. Nearer Mt. Prospect? A. Yes, sir.

Q. Then she said that at the time your sled was near Mt. Prospect avenue? A. Yes, sir.

The Court: She said nearer to Mt. Prospect avenue than to Clifton avenue.

Q. Well, how far from Mt. Prospect avenue 40 was it? A. Why, I couldn't say that.

## Alzada M. Husk—Cross

Q. Well, is that the time you said—did you say, "Here comes a trolley car," too? A. Yes, I believe we both made a remark.

Q. What did he say, if anything, to you? A. Well, he made some remark, that the car would stop, as the others had done.

Q. But did he not say to you, "Sit still and hold on"? A. I don't remember. 10

Q. Do you remember giving a statement to this gentleman here, Mr. Bodecker, on the 8th day of January, 1910, at your house, as to how you got hurt? A. I believe I did.

Q. And did you say in that conversation that as the bobsled was near Mt. Prospect avenue, "I said, 'Oh, Walter, there is a car.' He replied, 'Sit still and hold on;' and then he steered the bob to the left." Did you say that to him? A. I think I did. 20

Q. What is that? A. I did.

Q. Is that so? A. Yes, sir.

Q. Now, where was the car when you first saw it? A. Why, it was almost to Montclair avenue.

Q. How far away from Montclair avenue? A. Oh, I couldn't say anything about the distance.

Q. And when you saw the car where was the boy that had signalled you? A. I don't know.

Q. Did you see him? A. I didn't notice.

Q. You did not see him. As you came down the hill did you see him? A. I don't remember. 30

Q. Do you remember seeing that boy at all after he signalled you to come on by putting up his hands? A. I didn't take any notice of him.

Q. I say do you remember seeing him? A. I do.

Q. You were looking straight ahead, were you not? A. Yes, sir.

Q. Looking right down in the direction where he stood when he signalled you? A. Yes, sir. 40

## Alzada M. Husk—Cross

Q. Your bobsled ran into the side of the car, did it not? A. No, sir.

Q. What part of the car did it run into? A. The front.

Q. What do you mean by "the front"? A. Well, right a short distance from the fender.

Q. Did it strike the fender or back of the fender? A. In back of the fender.

Q. Well, that is the side of the car, is it not? A. (No response.)

Q. It struck the car about the front of the step, did it not? A. I believe so.

Q. The car was nearly to a standstill when it struck you, was it not? A. No, sir.

Q. Well, was it moving? A. I don't remember that, because I was so frightened that I couldn't remember it.

20 Q. Did anybody after you said to Walter, "There is the car," get off the sled? A. Not that I noticed.

Q. Do you remember saying, or did you say, rather, to Mr. Bodecker at the conversation I referred to, January 8, 1910, these words: "I am quite sure at least nine or ten were on the sled when it started, but some of them on the rear slid off when they saw the danger of the collision." Did you say that? A. I don't know  
30 whether I said that or not.

Q. Well, is there any doubt in your mind about it? A. I don't remember.

Q. What is that? A. I don't know.

Q. Well, your statement was written out in your presence, was it not? A. I believe so.

Q. Did you read it over? A. I don't remember whether I did or not.

Q. Did you sign it? A. I believe so.

40 Q. I am showing you two pieces of paper and

## Alzada M. Husk—Cross

ask you if you signed those (shown to witness)?

A. Yes, sir; that is my signature.

Q. Well, you did not sign them without reading them, did you? A. Well, I don't remember whether I read it or not. It is some time ago.

Q. Well, you just said that you did. Just look at it, won't you please?

The Court: The only question now is whether 10 those are your signatures?

Witness: Yes, sir; those are my signatures.

Q. Well, you signed your name voluntarily to those papers, did you not? That is, no one forced you to sign your name? A. No, sir.

Q. And in whose presence was this conversation between you and Mr. Bodecker? A. My father's.

Q. And was your father present when you signed the papers? A. I think he was. 20

Q. And was the statement written down in the presence of you and your father? A. Yes, sir.

Q. Did you say in this conversation to Mr. Bodecker, "The hill was covered with ice, and the bodsled skidded along as he tried to steer to the left"? Did you say that? A. Yes, sir.

Q. And did you say, "Just a moment or two before the car came to a stop the sled crashed into the front left step of the car a little north of the north crossing"? Did you say that? A. I believe I did. 30

Q. Did you say, "I did not see anyone standing near the car track waving at the approaching car as we came down the hill"? Did you say that? A. I don't remember.

Q. Well, this is in the statement that you signed, is it not? A. Yes, sir.

Q. Now, on the other two trips that you made coming down the hill that night previous to the 40

## Alzada M. Husk—Re-direct

one that you got hurt on did you have a signal to come on from the same boy?

The Court: That is, did you observe it?

Mr. MacSherry: Did you observe it, yes.

A. No, sir; I didn't observe it.

Q. What do you say? A. No, sir; I didn't ob-  
10 serve it.

RE-DIRECT-EXAMINATION by Mr. Weinberg:

Q. Now, Miss Husk, I neglected to ask you where on the street did the car and the bob come in collision with each other, near what point? A. Why, on the farthest crossing.

Q. On the farthest crossing? A. Yes, sir.

Q. By "the farthest" you mean the north  
20 crosswalk? A. Yes, sir.

Q. And was it north of the crosswalk or on the crosswalk or south of the crosswalk? A. I don't remember that, because I was stunned.

Q. But you know it was near the crosswalk? A. Yes, sir.

Q. You said also that the sled would go to Summer avenue. Is there a grade on Montclair avenue between Mt. Prospect avenue and Summer avenue? A. I don't know what you mean  
30 by that.

Q. Does the street decline, does it go down towards Summer avenue, or not? A. It is but very slight, if it does.

Q. Could your sled go from Mt. Prospect avenue to Summer avenue even without a start from Ridge street or Clifton? A. No, I don't think it would.

Q. Now, Miss Husk, regarding this statement.  
40 In answer to counsel's question, you said in an-

## Alzada M. Husk—Re-cross

swer to one question that he, Walter, said the car would stop at the other side; you also said in the statement, which apparently has been signed by you, "He said, 'Sit still and hold on tight.'" Now, what did he say, one or both or either or neither? A. Yes, I believe he made both remarks.

Q. So that they are both true, are they? A. 10  
Yes, sir.

Q. And when was this statement signed? A.  
I don't remember the date.

Q. Well, the date has been given, January 8th. How soon after the accident would that be? A.  
That would be the next day.

Q. And where were you at the time when you signed this statement? A. I was at home.

Q. Whereabouts at home were you? A. In the kitchen. 20

Q. Where did Mr. Bodecker take your statement? Where were you when he took the statement? A. In the kitchen.

Q. And what did you do, answer questions or tell your story and then have him write it down afterwards? How was it done? A. Why, I believe he took it down as I told it to him.

Q. And then when it was all through what did he say to you? A. He had me sign it. I don't remember whether I read it or not. 30

RE-CROSS-EXAMINATION by Mr. MacSherry:

Q. Did the bodsled skid as he steered it to the left? A. I don't remember.

By Mr. Weinberg: Q. Do you know what he means by skidding? A. Well, I think he means to go over ice very easily.

Mr. MacSherry: No, slide. 40

## Walter Ghirlanda—Direct

By the Court: Q. Slide sideways. A. I don't remember that.

Q. Let me ask you, Miss Husk, a question as to what you meant by an expression you used. You said that the boy would stand at the foot of the hill and signal when to come on. What did you mean by "the foot of the hill"? A. At Mt.  
10 Prospect avenue.

Q. Now, you have told us the name of the boy who was signalling on your last trip, Raymond Martin. Was Raymond Martin also engaged in signalling, say, between four and five o'clock, before you began to coast, or was that another boy? A. I don't know anything about that.

(Dr. Edward Zeh Hawkes is sworn in behalf of plaintiff and testifies as to plaintiff's physical injuries.)

20

WALTER GHIRLANDA, sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. Where do you live, Mr. Ghirlanda? A. 769 Mt. Prospect avenue.

Q. What is your occupation? A. Engineer.

Q. For whom? A. Benfield & Milne.

Q. And where are they located? A. Montclair  
30 and Woodside avenues.

Q. Where is that with relation to the corner of Mt. Prospect avenue and Montclair avenue?

A. Well, the boiler room and engine house is about 150 feet in from Mt. Prospect avenue.

Q. What do you mean by that, east? A. East of Mt. Prospect avenue.

Q. From there have you any view of the corner of Mt. Prospect avenue and Montclair avenue? A. I have from a window in the fire room;  
40

## Walter Ghirlanda—Direct

I can stand on the engine-room floor and look straight out at the corner of Mt. Prospect and Montclair avenues.

Q. How many men attend that engine? A. Two, myself and an assistant.

Q. Do you recollect the 7th of January, 1910? A. I do.

Q. Do you know whether there was any sled riding on Montclair avenue that afternoon? A. Well, there was quite a few children sleigh riding there. 10

Q. Did you observe any of them? A. None outside of Miss Lynch.

Q. I mean did you notice sleds on the street? A. Yes.

Q. Well, what hours do you recollect having seen sled riding? A. Well, it was after school.

Q. In the afternoon? A. Yes, sir. 20

Q. Do you recollect noticing the movements of the trolley cars in those times when you were looking out? A. Yes, sir.

Q. What was the movement with regard to trolley cars as they approached the corner of Montclair and Mt. Prospect avenues? A. Well, they stopped; the cars going north stopped on the south side, and the cars going south stopped on the north side.

Q. Was that so with regard to the cars that you saw? A. While I stood there the cars had stopped. 30

Q. Can you tell me what caused the cars to stop there? A. That I don't know.

Q. Did you see anything at those times? A. I did not; that is, I don't remember seeing anybody.

Q. You simply saw the cars come to those corners and stop there? A. Yes, sir. 40

## Walter Ghirlanda—Cross

Q. Did you see any car that failed to do that?  
A. Not while I was there.

Q. And you were there what hours? A. Well, about fifteen or twenty minutes, around four o'clock or after; I couldn't say the time that I would be looking out of the window there, because it would be uncertain.

10 Q. Well, you recollect about the time when this accident occurred. Do you know about what time that occurred? A. No, I didn't know of the accident happening until after I shut down.

Q. How late in the afternoon do you suppose you saw cars that came to these corners and stopped? A. Well, about half-past four.

Q. Anything later than that? A. No, sir.

Q. After that— A. I don't remember seeing any more.

20 Q. You were not paying any attention after that? A. No.

Q. What time did you shut down? A. Six o'clock.

Q. You do not know anything about this accident? A. No, sir.

## CROSS-EXAMINATION by Mr. MacSherry:

Q. You were there about fifteen or twenty minutes, Mr. Ghirlanda? A. Yes, sir.

30 Q. On the corner? A. No, I was in the shop.

Q. Oh, in the shop? A. Yes, sir.

Q. Now, that is how far away? A. I should judge about 150 feet.

Q. What were you doing standing there at the window? A. Well, there is a doorway leading from the fire room to the engine room, and I would take up my time between those two rooms.

Q. Just looking out? A. Just looking out.

Q. Well, about how many cars do you think you saw? A. Well, I couldn't tell you the number  
40 of cars.

## Walter Ghirlanda—Cross

Q. It could not have been many, could it? A. Well, several.

Q. Within fifteen or twenty minutes? A. I couldn't tell you the exact number.

Q. Did you see any policeman there? A. No, sir; I did not.

Q. Did you see any boy standing in the middle of the tracks? A. No, sir. 10

Q. Did you see any boy making any signals at all? A. No, sir.

Q. Did you see any sleds coming down the hill? A. Yes, sir.

Q. Any bobsleds? A. I couldn't tell you bobsleds, but there was sleigh riding on that hill.

Q. While there was coasting on there did you see anybody make any signal at all? A. No, sir; I did not.

Q. Either to a car or to a sled? A. I did not. 20

Q. What time did it get dark that afternoon? A. That I couldn't say.

Q. Was it dark at half-past five? A. Well, I sir.

Q. Was it dark at half-past five? A. Well, I couldn't say if it was or not.

Q. Well, you were there, you know? A. Well, I wasn't looking out of the window at that time.

Q. Was it dark when you went home at six o'clock? A. It was dusk; it wasn't dark. 30

Q. The lights were lit? A. Yes, sir.

Q. Were the lights lit in any of these cars that you saw? A. No, sir.

Q. And you were there for fifteen to twenty minutes? A. In the engine room; yes, sir.

Q. Do you know on what headway those cars ran? A. No, I do not.

Q. Don't you know that they only ran on about ten minutes headway? A. No, sir; I do not. 40

## Raymond W. Martin—Direct

RAYMOND W. MARTIN, sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. Martin, how old are you? A. Seventeen; I will be eighteen on August 25th.

Q. Where do you live? A. 804 Mt. Prospect avenue.

10 Q. What is your occupation? A. Learning finishing.

Q. With whom? A. Tiffany & Company.

Q. Were you employed in January, 1910? A. I was, but I happened to be home that day.

Q. Home all day? A. Yes, sir.

Q. What did you do during the day on January 7th? A. Well, in the morning I helped my mother do some work around the house, and then in the afternoon I was out watching them coast a little while, and then I started coasting myself.

20 Q. When did you start to watch them coasting? A. Well, right after school, about three o'clock.

Q. You didn't go to school that day? A. No, sir; I wasn't going to school; I was working.

Q. You had already quit school? A. Yes, sir.

Q. So that you went out about three o'clock. Where did you go to? A. On the corner of Montclair and Mt. Prospect avenue.

30 Q. What did you do when you first got there? A. I watched them coasting for a while.

Q. How long did you watch them coasting? A. For about half an hour.

Q. And were there many coasting at that time? A. Quite a few.

Q. During the half hour that you were standing there did you notice the movement of trolley cars along Mt. Prospect avenue? A. Yes, sir.

40

## Raymond W. Martin—Direct

Q. What would they do when they got to Montclair avenue? A. Every car I saw would stop.

Q. Stopped where and how? A. On the first crossing they come to.

Q. Both sides, from both directions? A. Yes, sir.

Q. How many cars do you suppose you saw do that? A. I saw about five or six before I went coasting. 10

Q. Do you know how they came to stop on that corner, or at those crossings? A. I don't remember.

By Mr. MacSherry: Q. You do not remember? A. No, sir.

By Mr. Weinberg: Q. I mean during the half hour that you say you had been standing there, do you know what brought them to a stop? A. Well, they stopped there whether they were flagged or not, as far as I could see. 20

Q. When you saw them stop, did you see them stop at any time when they were not flagged? A. I didn't take any particular notice to that part.

Q. Well, did you see them stop when they were flagged? A. Yes, sir.

By the Court: Q. What do you mean by "flagged"? A. Why, flagged is when a fellow stands there and flags a car—flags the bobsleds.

Q. I wanted to know what meaning you attached to the word "flagged." A. Signalled. 30

Q. Can't you be a little more particular? A. Signalled.

By Mr. Weinberg: Q. What kind of signals do you refer to? A. One hand danger and two hands mean all right.

Q. Whose signal was that? A. That was the coasters' signal.

Q. Who was giving those signals then, I mean? 40

## Raymond W. Martin—Direct

A. I wasn't there when the first boy started to signal.

Q. You do not know what his signals were, then, do you? A. No, sir.

Q. Can you fasten your mind on any of these stoppings of the cars during that first half hour, and tell me whether any signals were given by  
10 anyone on the street to those cars to have them stopped? A. I didn't see anybody signal those cars. All I see was a boy standing down at the bottom of the hill and signal for the bobsleds to come ahead, and the smaller sleds.

Q. But you did not see anybody signal the cars to stop? A. No, sir.

Q. But they did stop at those crossings?

Objected to as leading.

A. Yes, sir.

20 Q. Well, you say the boys were signalling to the sled riders? A. Yes, sir.

Q. The cars that came along at that time did what? A. All stopped.

Q. Now, after observing the sled riding and the movements of the cars for half an hour, what did you do? A. I started coasting.

Q. And how long did you coast? A. Until about fifteen minutes before the accident.

Q. How many trips did you make coasting,  
30 about? A. I have no idea.

Q. Well, do you mean that you have no idea or that you can not tell us exactly? A. I can't tell you exactly.

Q. On your trips as you came down, did you come down at any time when there were cars approaching the crossing? A. Yes, sir.

Q. What did those cars do? A. They stopped and let the bobsers go by.

40 Q. Do you know if anybody was signalling at

## Raymond W. Martin—Direct

that time? A. I didn't take any particular notice.

Q. You do not know whether they were signalled or not? A. No.

Q. Now, after sled riding what did you do? A. I volunteered to flag.

Q. You volunteered to flag? A. Yes, sir.

Q. And by flagging what do you mean? A. I 10  
was signalling the coasters.

Q. Signalling to the coasters? A. Yes, sir.

Q. Could they see you from your stand?

Mr. MacSherry: How can he tell that?

The Court: He can say whether he could see them and he can say whether there was any obstruction. He could not exactly say whether they saw him.

Q. Could you see the coasters starting? A.  
Yes, sir. 20

Q. At the top of the hill? A. Yes, sir.

Q. Where would you stand? A. In the middle of the car track.

Q. And where did these sleds come from? A. From Ridge street.

Q. And what would you do to start them? A. Raise two hands.

Q. And then what would the sled or the sled riders do? A. They would start to come down the hill. 30

Q. How long had you been doing this before the accident? A. About fifteen minutes.

Q. During that time did any cars come up to Montclair avenue? A. Yes, sir.

Q. What did they do? A. Stopped.

Q. Which direction did they come from? A. One came north and one came south.

Q. They stopped at what crossing? A. Why, 40

Raymond W. Martin—Direct

the north car stopped at the south crossing and the south car stopped at the north crossing.

Q. Did you or not do anything to cause them to stop on those two trips? A. Well, perhaps they might have seen me there, but I didn't raise no hands to them.

10 Q. No, but they stopped without you doing that? A. Yes, sir.

Q. Now, do you recollect the trip when the collision occurred—the trip of the sled? A. No, sir.

Q. I say do you remember the trip? A. I remember it; yes, sir.

Q. Where were you at that time? A. I was in the middle of the car tracks on Mt. Prospect avenue.

Q. And Montclair? A. Montclair.

20 Q. Now, tell us what happened. A. Well, I was standing in the middle, and after I had signalled, the smaller sleds came first, and I didn't particularly take any notice of the car, because it was under the grade there; you couldn't see it—

Q. One moment. At the time when you signalled the sled where was the car on Mt. Prospect avenue? A. Below the grade.

Q. There is a grade going south from that point, is there? A. Yes, sir.

30 Q. And when the car is beyond that point can you see it or not? A. No, sir.

Q. How far away is that from the corner? A. That is one block.

Q. One block? A. Yes.

Q. So that at the time when you signalled you did not see any car coming? A. No, sir.

Q. Now, when did you see that car coming, where was it when you first saw it coming? A.

40 Corner of Grafton avenue and Mt. Prospect.

Raymond W. Martin—Direct

Q. And what did that car do? A. That car came right straight down.

By the Court: Q. Is Grafton avenue the next avenue south from Montclair avenue? A. South—north.

Mr. Weinberg: South.

Q. Which way was the car going? A. North.

Q. And when you first saw it it was— A. 10  
South, at the corner of Grafton and Mt. Prospect.

Q. Now, I asked you if Grafton avenue is the first avenue south of Montclair avenue? A. Yes, sir; it is.

By Mr. Weinberg: Q. Now, what did that car do after you saw it? A. Why. that car came quite speedily down.

Q. What did you do when you saw that? A. I saw the car, and the bob was already down, and so I run up the track; I couldn't exactly tell the right distance of it, but, anyhow, the car seemed to slow up to me, and when I jumped off the track he put on a burst of speed again. 20

Q. You say you ran up the street. You ran from where to where?

The Court: He said he ran up the track.

Q. Up the track, on what street? A. On Mt. Prospect.

Q. Where did you run from? A. From the 30  
corner of Montclair.

Q. Montclair avenue? A. Yes, sir.

Q. To what point, as nearly as you can remember, on Mt. Prospect avenue? A. The end of the lot.

Q. To where? A. The end of the lot.

By the Court: Q. You ran from the end of the lot: is that right? A. Yes, sir.

Q. The end of what lot? 40

Raymond W. Martin—Direct

Mr. Weinberg: Where is the lot that you refer to?

A. On the southeast corner.

By Mr. Weinberg: Q. (Indicating on map.) This lot here? This is Montclair avenue, coming down, Clifton avenue, and this is Mt. Prospect avenue, going north. A. On this corner (indicating).

10

Q. This not (indicating)? A. Yes, sir.

Q. You ran about to the end of that lot? A. Yes, sir.

Mr. MacSherry: Which lot.

The Court: The southeast corner.

Q. When you got to the end of the lot, how far away was the car at that time from you? A. I should think, by looking at it, it was about fifty or fifty-five feet away from me.

20 Q. And how was it coming at that time? A. It was coming quite speedily.

Q. And where did you take your position? A. Right in the middle of the car track.

Q. In the same track the car was running on? A. Yes, sir.

Q. What did you do to the motorman? A. I flagged him to go back; I flagged for him to stop his car.

By the Court: Q. Just tell us with what you made your signal? A. My hand.

30 Q. Just repeat your signal with your hand. A. I signalled with my hand like that; that is, going back (illustrating).

Q. That is, you waved your right hand? A. Yes, sir.

Q. In the direction of the car? A. Yes, sir.

By Mr. Weinberg: Q. And at that time, I understand you to say, you were standing in the car track? A. Yes, sir.

40

Raymond W. Martin—Direct

Q. How far away from the corner at that time was the car, do you think? A. I have no idea how far away that was; it must have been somewhere over a hundred feet away from the corner.

Q. You were about the end of the lot and the car was about fifty feet further south from you?

A. Yes, sir.

10

The Court: The witness has not told us what the end of the lot was. Perhaps we had better not assume anything upon that subject. I think we had better strike out this question, because it contains an assumption as to the depth of the lot that is not yet in the evidence.

(Question read.)

The Court: I thought that contained an assumption that is not yet in evidence as to the depth of the lot.

20

Mr. Weinberg: Is this answer in now?

The Court: I think the question was a leading question, so I think the answer is not in. If you want the witness to state how deep the lot was, he can tell you what he knows about that.

Q. I will ask this question. How far from the end of the lot south was this car at the time when you signalled to it? A. About—I have no idea about how far a distance it was, but when I first started to signal—

30

Q. No, just answer my question. When you say you ran up about the end of the lot and waved to the car, how far away from you to the south was the car at that time? A. About fifty-five feet.

Q. How do you fix that? A. I can't explain how I fix it, but I ain't got the exact measurement.

40

Raymond W. Martin—Direct

Q. Is there anything in this room that you can point to to indicate that distance? A. No, sir; I have no idea of the distance.

Q. Then why do you fix fifty-five feet? A. It is about from me to the end of this room or more.

Q. That is about your notion of it? A. Yes.

10 Mr. Weinberg: How much is that, your Honor, the distance of this court room?

The Court: This room is about fifty feet long.

Q. So that you have a pretty good notion of fifty feet. You say you stood in the middle of the track at that time. How long did you continue to stand in that position? A. I continued to stand there until I seen that he wasn't going to pay any attention to me, so I jumped aside.

20 Q. And what did the car do about that time? You started to say before. A. Well, after I had jumped aside he put on a burst of speed.

Q. Before you jumped aside what did he do? A. He kind of slowed up.

Q. And then what did the car proceed to do? A. It slowed up, and after I jumped aside off the tracks he proceeded to go ahead again.

Q. And did you see how far he went? A. Well, he went clear across the tracks.

30 By the Court: Q. Clear across what? A. Montclair avenue.

By Mr. Weinberg: Q. You change from saying that he went across the tracks to "He went across Montclair avenue"? A. Yes, sir.

Q. Did you hear the sled coming down the street? A. Yes, sir.

Q. How did you hear it? A. I heard the bell ringing.

40 Q. Do you know that sled? A. No, sir; I can't remember the sound of the bell; I had never seen the sled before until that day.

Raymond W. Martin—Direct

Q. Well, on that day did you see any bell on it? A. No, sir; I heard the bell.

Q. What sort of a bell was it; that is, the sound? A. Kind of a loud bell.

Q. Do you remember hearing that? A. No, sir.

Mr. MacSherry: When?

Witness: I remember hearing it, I know, but I don't remember of how the sound of it is. 10

Mr. MacSherry: When did he hear it ring?

Q. When did you hear the bell ring? A. On the three trips coming down.

Q. How about the trip when the accident occurred, did you hear it? A. Yes, sir.

Q. Where was the sled from you when you heard the gong ringing—the bell ringing? A. I heard the bell ringing all the way down the hill. 20

Q. Was it distinct from the point where you were? A. Yes, sir.

Q. Is that a noisy neighborhood or not? A. Why, I don't see where it is so noisy.

Q. What is it? A. I don't see where it is so noisy.

Q. Well, it is a residential neighborhood mostly, is it not? A. Yes, sir.

Q. Did you hear a signal on the car? A. No, sir. 30

Q. Was there any? A. I didn't pay any attention; I didn't hear any.

Mr. MacSherry: If he did not pay any attention, how can he say whether there was any, your Honor?

The Court: He was asked if he heard it, and he said no. Isn't that it?

Mr. Weinberg: Yes.

(Last two questions and answers read.)

The Court: He first said he did not hear anything, and then he said he was not paying attention. 40

## Raymond W. Martin—Cross

Q. Did you see the actual collision between the car and the bobsled? A. No, sir.

Q. How did you miss that? A. I was up the track.

Q. Did you see the bobsled and the car after the collision? A. Yes, sir.

Q. What were their positions? A. Well, I  
10 didn't take any notice of the way they were seated on, but, as far as I could see, the way the bob and the car met together, they came like a triangle.

Q. Now, before you were flagging, Raymond, did you see anybody else on the corner, or signalling, we will say? A. I don't remember; no, sir.

Q. You do not remember seeing anybody at all? A. No, sir.

20 The Court: That is, at the time when you were signalling? Is that the question?

Mr. MacSherry: No, before.

Mr. Weinberg: Before he started.

Q. How was it with regard to being able to see at that hour? A. Well, it was just beginning dusk. I don't see why they couldn't see; I could see plainly.

Q. Is that corner well lighted? A. Well, it is a well lighted line there.

30 CROSS-EXAMINATION by Mr. MacSherry:

Q. Raymond, whom have you been talking with about this accident since it happened, do you think? A. Why, I haven't been talking to anybody, only one man.

Q. Only who? A. Mr. Weinberg.

Q. No one else? A. No one else.

Q. Well, you talked to your parents at home, did you not? A. No, sir.

40 Q. Not a word? A. Not a word.

## Raymond W. Martin—Cross

Q. You saw a young lady seriously hurt on the hill when you were coasting and you never said a word at home about it, did you? A. No, sir.

Q. Why not? A. Because I didn't think it was right for my mother to know; she is very nervous.

Q. Is your father living? A. Yes, sir.

Q. Did you speak to your father about it? A. 10  
No, sir.

Q. Why not? A. Because I didn't think it was right for anyone to know; I didn't want them to know, anyhow.

Q. Have you spoken to any of your play fellows about it, any of your friends? A. No, sir.

Q. Do you mean to say you are a young man seventeen years of age there at the time this girl got hurt, and you did not say anything about it to any of the boys that you were playing with? 20  
A. No, sir.

Q. Or any of the girls? A. No, sir.

Q. And no one of your shop? A. No, sir.

Q. And have not talked to anybody about it except Mr. Weinberg? A. No, sir.

Q. You do not mean that, do you? A. No, sir.

Q. Why, you were talking about it in the toilet room of this court house yesterday, were you not? A. No, sir.

Q. While you and your friends were in there? 30  
A. No, sir.

Q. Did you not talk with this young man who is standing up yesterday in the toilet room at the court house (indicating)? A. No, sir.

Q. And did you not come out of the toilet room with him through the hallway? A. Yes, sir.

Q. And did you not hear this gentleman here to my right, Mr. Orsor, upbraid your friend for talking with you? A. No, sir. 40

## Raymond W. Martin—Cross

Q. You did not hear that? A. I heard that, but he wasn't upbraiding him for talking to me; he was upbraiding him for talking to another boy.

Q. But you were there talking, too, were you not? A. No, sir; not on that subject.

Q. When did you first talk to Mr. Weinberg?

10 A. I just don't remember the first time I started to talk to him.

Q. Were you alone when you talked to him?

A. Yes, sir.

Q. You had not talked to anybody else? A. No, sir.

Q. Then you have been with these boys in the court room here all day yesterday and this morning and never said a word about this case? A. Yes.

20 Q. And never said a word to any of the young ladies here? A. No, sir.

Q. Well, you got to the hill about three o'clock.

A. Yes, sir.

Q. And it was glassy, was it not, covered with ice? A. I don't know as it was so glassy.

Q. Well, that hill was very slippery, was it not? There had been a sleet storm before and it had frozen? A. Well, I don't think it was so slippery there.

30 Q. Isn't it true that the hill was covered with ice? A. Yes, sir.

Q. Well, ice is slippery, is it not? A. Well, coming down, you know, there may be some snow or something put on it to make it slippery.

Q. Did you have a sled? A. No, sir.

Q. What sled did you have when you were coasting? A. I was coasting with a friend of mine.

40 Q. What is his name? A. Soffel.

## Raymond W. Martin—Cross

Q. How many bobsleds were there on the hill when you came there? A. I didn't take any notice.

Q. Why not? A. Because I was so busy sleigh riding.

Q. How many bobs were there at any time in the afternoon? A. I only seen one.

Q. How long was that? A. I couldn't tell you 10  
how long it was.

Q. About, from where you are sitting? A. About from here to Mr. Weinberg's desk there, if not longer.

Q. How was it built, do you know? A. Built of wood.

Q. How high from the ground was the platform? A. I haven't any idea.

Q. Not as high as this room, was it? A. No, sir. 20

Q. Then you have an idea, have you not? A. I have no idea as to the perfect size of it.

Q. Well, it was a foot and a half from the ground, was it not? A. A foot and a half, if not more.

Q. Did it have a steering apparatus? A. Yes, sir.

Q. Did it have a brake? A. Yes, sir.

Q. What? A. No, sir.

Q. It did not have a brake, did it? A. No, sir. 30  
I didn't examine it to find out what it had.

Q. Did it have a bell? A. Yes, sir.

By the Court: Q. Which bob are you speaking of now?

Mr. MacSherry: The bob in the accident.

Q. I am asking the witness, which bob are you speaking of? A. The accident bob.

By Mr. MacSherry: Q. Where was the bell?  
A. I couldn't tell you. 40

## Raymond W. Martin—Cross

Q. Why not? A. I didn't examine it to find out where it was.

Q. How many would the sled hold? A. I should say it would hold about six or seven or eight; I don't know how many it would hold.

Q. Would it hold ten? A. I don't think so.

Q. When you got there did you see a policeman at the corner? A. Yes, sir.

Q. What was he doing? A. He was talking.

Q. What was he doing? A. He was talking to another policeman.

Q. What was the other policeman doing who he was talking to? A. They were both talking together.

Q. Were they stopping trolley cars? A. No, sir.

Q. Where they signalling sled riders? A. No, sir.

Q. Just standing there? A. Yes, sir.

Q. How long did they stay there? A. I couldn't tell you.

Q. Did you see him stop anybody from sliding down the hill? A. No, sir.

Q. Did you see him stop the owner of the bobsled? A. No, sir.

Q. Was anybody signalling the sled riders when you got there? A. Yes, sir.

Q. Who? A. I don't know the boy's name.

Q. Do you see him in court? A. No, sir.

(By request of defendant's counsel, a

young man arises.)

Q. Is that the young man? A. No, sir.

Q. Did you see him there? A. I seen him there just before I started to signal, but you said the first—when I first went there. There was eight or nine of them signalled before this young

man and me.

## Raymond W. Martin—Cross

Q. Did you not see this young man that stood up standing there in the road making signals for the sleds? A. Not when I first went there.

Q. No, afterwards? A. Yes, sir; before me.

Q. And did he not say to you, "I am going to take a slide," and you said, "Go on and I will signal the sleds"? A. No, sir.

Q. And isn't that the way you got in that road doing that? A. No, sir. 10

Q. Did you not have such a conversation with this boy? A. No, sir.

Q. How did you come to take up the task of signalling the sleds? A. Well, I didn't see anybody there, and so I signalled myself.

Q. How long was the sledding going on without anybody signalling? A. I can't remember just how long it was.

Q. Well, about? A. About five minutes or so. 20

Q. Did the bobsled come down during that time? A. No, sir.

Q. Did the other sleds come down? A. Yes, sir.

Q. Without anybody being there at all? A. Yes, sir.

Q. What had become of the other boy that was signalling? A. He must have went home.

Q. He went away? A. Yes, sir.

Q. Well, the cars were stopping on the corners, were they not? A. Yes, sir. 30

Q. What was the idea of signalling the sleds? It was always safe if the cars were stopping at the corners? A. The use of signalling was in case the cars didn't stop.

Q. Then you thought maybe the cars would not stop? A. Yes, sir.

Q. And that is the reason you signalled? A. Yes, sir. 40

## Raymond W. Martin—Cross

Q. Did you go down on this sled? A. Not the bob.

Q. On the bob? A. No, sir.

Q. How long do you think it took the bobsled to leave the starting place and get to Montclair avenue? A. I have no idea of the time.

Q. Well, what do you say? A. I couldn't ex-  
10 actly tell you how long it took; I didn't have no watch and I didn't time it.

Q. It didn't take many seconds, did it? A. I couldn't tell you how many seconds it took and how many it didn't take.

Q. Can't you give us an idea? You were there when you saw this bob coming down? A. Well, I can't give you no idea of the time.

Q. Now, you signalled this bob to come down without seeing any car, did you not? A. Well,  
20 I signalled the small sleds first, and then they came down—

Q. What is that? A. I signalled the small sleds, and the small sleds came down, and as they started down, they were most of them down, and when I discovered the car coming the bob had already started.

Q. Then had the bob started down the hill without a signal from you? A. Well, I gave the signal to the small sleds; that meant all of them.

30 Q. That meant all of them? A. Yes, sir.

Q. That meant the bob, too? A. Yes, sir.

Q. And at that time had you seen the car? A. After the bob started.

Q. Won't you answer my question? When you gave the signal for these sleds, including the bobsled, to come down, had you seen any car? A. No, sir.

Q. But after the little sleds had started you did see the car? A. No, sir, not until the bob had  
40 started.

## Raymond W. Martin—Cross

Q. Did you do anything to stop the bob? A. How could I stop the bob?

Q. Just answer my question, will you? A. No, sir.

Q. Did you make any signal to stop the bob? A. No, sir.

Q. Where was the bob when you saw the trolley car? A. The bob had just started from the hill 10 when I seen the trolley car.

Q. And it made that two blocks by the time the trolley car got to the corner, did it not? A. Yes, sir.

Q. Then the bobsled went two blocks while the trolley car was going one? A. Yes, sir.

Q. Why did you not make an effort to stop the bobsled, to give them a chance to steer to left or right? A. Well, that there hill is pretty icy; I don't see how he could steer over in the gutter 20 or anywhere else.

Q. He could not have stoped it, could he? A. No, sir.

Q. Why not? A. He was going so fast.

Q. And the hill was so slippery and so steep? A. Yes, sir.

Q. Isn't that so? A. Yes, sir.

Q. And it is a fact that as you saw that hill, with the ice on it, on that day, that after the bobsled once got started, it could not stop until it got to the end of its ride? A. Yes, sir. 30

Q. That is nearly two blocks beyond Mt. Prospect avenue; isn't that so? A. Yes.

Q. Could you see the car at Grafton avenue, a block away? A. Yes, sir.

Q. Did it stop there? A. I don't remember.

Q. Why not? A. When I first seen the car, I don't remember whether it was stoped there or not.

Q. Why not? A. Well, I don't know. 40

## Raymond W. Martin—Cross

Q. Now, is it not true that you were excited just then, Raymond? I would be myself, possibly. A. I don't remember seeing the car stop there.

Q. Isn't that the reason that you thought there might be a collision, and that you got excited? A. Yes, sir.

10 Q. And you started up to meet the car? A. Yes, sir.

Q. And you met the car about how far, do you suppose, from the corner of Montclair and Mt. Prospect avenues? A. Well, a hundred feet or more.

Q. Well, it was more than that, was it not? It was the end of the lot, and fifty feet beyond the end? A. Well, I don't think the lot measures a hundred feet, not over a hundred feet.

20 Q. Well, you rushed up there to stop the car, did you not? A. Yes, sir.

Q. And when you motioned to the motorman he seemed to slow up? A. Well, he didn't slow up until he seen I wasn't going to move, and then as soon as I moved out of the way he put more speed on.

Q. Did you say anything to him? A. I hollered to him to stay back.

30 Q. At that time you could not there hear any bells from the bobsled, could you? A. Yes, sir.

Q. Up there? A. Yes, sir.

Q. How could you? A. That bell is a loud sounding bell.

Q. What is that? A. That bell is a loud sounding bell.

Q. Were there any other sleds with bells there? A. No, sir.

40 Q. The motorman was in the vestibule, was he not? A. Yes, sir.

## Raymond W. Martin—Cross

Q. And the vestibule was closed, was it not?

A. Yes, sir.

Q. And the car was moving? A. Yes, sir.

Q. And moving pretty fast? A. Yes, sir.

Q. When you started up to meet this car where was the bobsled then? A. On its way down the hill.

Q. How far down had it got? A. A little below 10 Clifton avenue.

Q. A little below Clifton avenue? A. Yes.

Q. Well, was it nearer Mt. Prospect avenue than it was Clifton or nearer Clifton than Mt. Prospect?

A. It had just passed Clifton.

Q. How far did you run before you met the car?

A. To the end of the lot.

Q. Well, by that time your bobsled must have been down near Mt. Prospect avenue, was it not?

A. Not as I can remember. 20

Q. Why not? A. Well, I don't know why, but it wasn't there. The car can go faster than the bob, can't it?

Q. You think that car went faster than that bob? A. Yes, sir.

Q. How was that, if the bob went two blocks while the car was going one? A. Well, the bob was going two blocks while the car was going one. Two blocks is longer than one block.

Q. Well, this is downhill. A. Well, that doesn't 30 make any difference. The electricity is behind the car.

Q. That is true, but this bobsled had left Clifton avenue? A. I can't say just where it was. I said it just left Ridge street when I seen it.

Q. You say when you started to run for this car the bobsled had left Clifton avenue? A. I said about that; I didn't say exactly.

Q. That is one block, is it not? A. Yes, sir. 40

## Raymond W. Martin—Cross

Q. The car when you started to run for it was one block away? A. No, sir.

Q. Well, pretty near it, was it not? A. No, sir; about half a block.

Q. Have you not stated that when the bobsled left Ridge street the car was at Grafton avenue?

A. Yes, sir.

10 Q. Have you not testified to that? A. Yes, sir.

Q. And you do not know whether it was standing still or not? A. No, sir.

Q. And when you started to run for the trolley car the car then was about at Clifton avenue?

A. No, sir.

The Court: The bob, you mean.

Q. The bob was at Clifton avenue? A. I couldn't exactly tell you where the bob was; I am only just guessing where it was.

20 Q. Well, wherever it was, it had passed Clifton avenue, had it not? A. I didn't take any notice where it was; I am telling you I am only surmising it was there.

Q. Then it went the distance from about Clifton avenue down to the corner while the trolley car was passing from the point where you saw it when you rushed for it to the corner; isn't that so? A. Yes, sir.

30 Q. Where did the trolley car stop? A. On the north side of Montclair avenue.

Q. Which part of the car went to the north side, the front or rear? A. Both.

Q. Well, this trolley car blocked the street when it stopped, did it not? A. No, sir.

Q. Did it get all the way across? A. Yes, sir.

Q. All the way across? A. Yes, sir.

Q. And where did the bob run into it, do you know? A. No, sir; I didn't see the collision at all.

40 Q. Do you say that there were no bells rung on

## Raymond W. Martin—Cross

that trolley car as it approached that street? A. Yes, sir.

Q. Or that you don't remember? A. There were no bells; I didn't hear no bell.

Q. Were you not thoroughly excited by that time? A. No, sir; I had my head about me.

Q. What do you say? A. I had my head with me. 10

Q. Have you got it with you today? A. Yes, sir.

Q. How far from the corner of Mt. Prospect avenue and Montclair avenue was it that the car passed you? A. When the car passed me?

Q. Yes. A. How far the car was or the bob?

Q. No, how far were you? A. When the car passed me?

Q. Yes? A. About the end of the lot.

Q. If the cars all stopped at the first corner, 20 why did you when the car was nearly a block away run up to stop it? A. Well, I didn't say the car was a block away when I first stopped—

Q. Nearly a block away?

Mr. Weinberg: He did not say that; he said half a block.

Q. Well, if the car was half a block away, why did you run up to stop it? A. Because it didn't stop at the signal. Most cars stopped at the signal. I ran up that way to see if it wasn't going to stop, and I was there in case the car didn't stop. 30

Q. But you say the cars were all stopping? A. All I saw, yes.

Q. Now, I say, if you were relying on these cars stopping, why did you run up the track to stop the car when it was over half a block away? A. Because I seen it was coming quite swift.

Q. Is that the reason? A. Yes, sir. 40

## Raymond W. Martin—Cross

Q. There is no other reason, now? A. No, sir.

Q. Over half a block away? A. Yes, sir.

Q. And how many feet is that, about? A. I have no idea.

Q. Oh, you have some idea, have you not? A. No, sir.

Q. Now, I understood you to say, but I want to  
10 be right about it, that there was no one signalling  
the cars? A. Yes, sir.

Q. The only signalling done was to the sleds?  
A. Yes, sir.

By the Court: Q. Raymond, as you stood where I understand you to say you did stand, in the centre of the tracks at Montclair avenue and Mt. Prospect avenue I suppose you mean about in the middle of Montclair avenue? A. Yes, sir.

Q. And looked south? A. Yes, sir; looked  
20 south.

Q. You say you saw the car at Grafton avenue?  
A. Yes, sir.

Q. Did you see the whole of the car? A. No, sir; just the front, just the light as it came up over the hill.

Q. How much of the front? In other words, did the hill cut off the lower part of the front, or did you see the whole of the front? A. I could see almost all the front.

Q. What do you say? A. I could see about  
30 half way at least.

Q. About the upper half of the front? A. Yes, sir.

Q. Are you able to say when standing at that point you could see in that direction that the car was coming; that is, where standing at that point the car would be when you first saw any part of it, say the roof of it? A. Oh, I could see the roof  
40 of it. I couldn't say the bob—

## Raymond W. Martin—Cross

Q. I am speaking of the car? A. I didn't take any notice until the car came up over the hill.

Q. I am asking for information. Can you tell us where the car would be as it came along up the hill when you, standing in the middle of the track there at the centre of Montclair avenue, would first see it or see some part of it, if you did not see the whole of it? You would naturally see the roof first, I suppose? A. Yes, sir. 10

Q. Where would the car be when you would see some part of it? A. Right near Grafton avenue.

Q. Somewhat beyond it? A. Yes, sir.

Q. You say you saw about the whole of it at Grafton avenue? A. At Grafton avenue.

Q. And you would see some part of it near Grafton avenue, but beyond Grafton avenue; is that it? A. Yes, sir.

Q. But you did not, in fact, notice it until it was at Grafton avenue? A. Yes, sir. 20

Q. That is right, is it? A. Yes, sir.

Q. And you did not start to go and meet it until it had gone about half a block? A. Yes, sir.

Q. Am I right about that? A. Yes, sir.

Q. Now, you gave the signal for the bob to start? A. I didn't signal the bob; I signalled the smaller sleds that came first.

Q. Well, if I understood you, your signal was intended for— A. All. 30

Q. For all of them? A. Yes, sir.

Q. Was there more than one bob on the hill? A. Not as I can remember.

Q. And standing as you did and looking up towards Ridge street, up the hill, what could you see when you gave the signal, immediately after you gave the signal? Did you see anything? A. No, sir.

Q. When did you first see that any sleighs were 40

## Raymond W. Martin—Cross

coming or that the bob was coming? A. I didn't see the bob coming until I seen the car. I was looking up the hill, and then when the smaller sleds all went by the bob started, and then I looked up that way and I seen the car at Grafton avenue.

Q. Had the small sleds got by? A. Yes, sir.

10 Q. Before you saw the car? A. Not all of them.

Q. Was there anything to obstruct your eyesight of the bob when the bob started? A. No, sir; I don't remember anything about that.

Q. I mean to say was there anything in the way, taking into consideration the time of night and everything? Was the bob visible to you when it started? A. I could see the bob pretty plainly at the top of the hill.

Q. You could see the bob up there? A. Yes, sir.

20 Q. And if you did not see it until it got down part of the way down the hill it was because you did not pay attention to it? A. I didn't pay attention to it.

Q. Where do you think it was then you first saw it? A. At the top of the hill.

Q. I mean after it started? A. I haven't any idea; I wasn't paying attention; after the bob started I was watching the car.

30 Q. At the time you turned to meet the car you were aware that the bob had started? A. Yes, sir.

Q. What gave you that idea? A. I heard the bell ringing.

Q. And when you heard the bell ring did you look? A. No, sir.

Q. Did you see where it was? A. No, sir; my attention was drawn to the car.

By Mr. MacSherry: Q. How many sleds were there ahead of this bobsled? A. I couldn't tell  
40 you; I didn't count them.

## Raymond W. Martin—Cross

Q. I know you did not count them, but about how many? A. Well, there was a continuous string there all the time.

Q. Were there twenty? A. I couldn't tell you.

Q. Was there fifty? A. I don't think there was that many.

Q. Well, were there thirty? A. I couldn't tell you what there was or how many. 10

Q. Had they all passed Mt. Prospect avenue before the bobsled passed? A. No, sir.

Q. Then when you left to stop the car there were some of these sleds ahead of the bobsled coming down the hill? A. Yes, sir.

Q. They got over safely, did they not? A. Yes, sir.

Q. Then several crossed right ahead of the trolley car, did they not? A. No, sir.

Q. They did not cross behind it, did they? A. 20 No, sir; they crossed before the trolley car got down to the corner.

Q. How long before? A. I guess about three seconds.

Q. Then the trolley car could not have been very far off when the sleds went ahead of it, could it? A. The car was about the end of the lot.

Q. When all the sleds went by? A. Not all of them.

Q. When the trolley car got to the first corner 30 were there any sleds going over? A. No, sir.

Q. Had they all passed? A. Yes, sir.

Q. The last sled that passed before the bobsled came down, how near was the trolley car to the corner, do you think? A. About the end of the lot.

Q. You just said a moment ago that they nearly all had passed when the car got to the end of the lot. What do you mean by that? A. I said all passed. 40

## Raymond W. Martin—Cross

Q. All had passed by the time the trolley car had got to the end of the lot? A. Yes, sir.

Q. All had passed except the bobsled? A. Yes, sir.

Q. Well, were you looking towards the corner? A. No, sir.

10 Q. Well, if you were not looking, how do you know all this? A. I could only see the bob; I was looking at the car; I didn't see any of the sleds go by.

Q. Then why do you keep testifying under oath and answering my questions as to what the sleds were doing when the trolley car was getting near the corner? A. All I am testifying to is that I flagged the car.

Q. That is all you remember. You do not know if any other sleds went by, do you? A. Yes, sir.

20 Q. Do you know where the trolley car was when these other sleds went by, most of them? A. No, sir.

Q. Then why do you say so? You are on record here as saying that the trolley car was at the end of the lot. Now, you do not know whether it was or not when the other sleds went by, do you? A. I haven't said it was there when all of them went by.

30 Q. I said you said most of them. A. No, sir; I didn't say most all of them; I said most all by.

Q. Now, I will ask you again: Do you know of your knowledge from what you saw there that day that all the sleds were down with the exception of the bobsled, when the trolley car got to the first corner of Montclair avenue? A. Yes, sir; they were all past.

Q. You saw them pass? A. Yes, sir.

40 Q. When the last one passed whereabouts was the trolley car? A. I don't remember.

## Harold Winterbottom—Direct

HAROLD WINTERBOTTOM, sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. Harold, how old are you? A. Fifteen.

Q. When were you fifteen? A. January 28th.

Q. Where do you live? A. 807 Ridge street.

Q. You are a brother of Walter Winterbottom?

A. Yes, sir. 10

Q. You are familiar with the corner of Montclair avenue and Mt. Prospect avenue? A. Yes, sir.

Q. Were you in that neighborhood on the 7th of January, 1910? A. Yes, sir.

Q. What were you doing there? A. I was coasting on the hill.

Q. Coasting on what hill? A. Montclair avenue.

Q. When did you start to coast on that day? A. About half-past three.

Q. You were to school that day? A. Yes, sir. 20

Q. Were you on or near the hill before you started to coast? A. No, sir.

Q. As soon as you got there you started to coast, did you? A. Yes, sir.

Q. And what sort of a sled were you riding on? A. Flexible flyer.

Q. How big a sled were you riding on, how long?

A. I don't know how long it was; it is a No. 4.

Q. That is about three or four feet long, is it not? A. I guess so. There was somebody else on with me. 30

Q. How many would it hold? A. Two.

Q. Now, whom did you have on the sled with you? A. Dick Hetherton.

Q. You were riding with Dick Hetherton? A. Yes, sir.

Q. Now, you started to ride about what time, did you say? A. Half-past three. 40

## Harold Winterbottom—Direct

Q. How long did you continue sled riding that afternoon? A. Until the accident happened.

Q. Have you any notion as to how many trips you made down that hill? A. No, sir.

Q. Did you make a great many? A. Quite a few.

Q. Now, during the time that you sled riding, Harold—that was about two hours or so, was it?

10 A. Yes, sir.

Q. Well, you began at half-past three and kept on until the accident happened. We know when that was. Do you know about what time the accident occurred? A. About quarter of six.

Q. During that time did you notice the movement of the trolley cars on Mt. Prospect avenue? A. Yes, sir.

Q. At Montclair avenue? A. Yes, sir.

20 Q. What did they do when they got to the corner? A. The cars going south stopped on the north crossing and the cars going north stopped on the south crossing.

Q. How many cars did you see do that, do you suppose? A. All that I saw.

Q. And how many do you suppose you saw? A. I don't know how many.

Q. Well, many or few? A. Quite a good many.

30 Q. Do you know how the cars came to stop on those crossings? A. They stopped of their own accord.

Q. Why do you say they stopped on their own accord? A. Well,—

Q. Why do they say they stopped on their own accord? A. Because there was somebody to flag them if they didn't stop.

Mr. Weinberg: That is not responsive. I ask that that go out.

40 Q. What do you mean by stopping on their own accord? A. Well, they knew that they were coasting there, and so they stopped.

## Harold Winterbottom—Direct

Q. That is what you think, because they knew there was coasting they stopped? A. Yes, sir.

Q. At this time you say they stopped of their own accord did you see anybody in the street stop them? A. No, sir.

Q. Did you see at any time anybody on the street signalling to the sled riders or to the cars or to anybody? A. Signalled for them to come on, 10  
come on and stay back.

Q. Signalled for whom to come on? A. The sleigh-riders.

Q. You recollect the accident, do you not? A. Yes, sir.

Q. How soon before the accident did you last come down the hill? A. Just before the bob.

Q. How much in advance of the bob do you think your sled was? A. Oh, about four minutes, four or five minutes. 20

Q. Well, how far in front of the bob were you?  
A. We got down to the—we got in a rut and were thrown in the curb, and were coming back just as they come down.

Q. You got caught in a rut and ran into the curb?  
A. Yes, sir.

Q. Where was that? A. Below Mt. Prospect avenue.

Q. How far below Mt. Prospect avenue? A. The second telephone pole. 30

Q. Was that a block or two blocks or over? A. About half a block.

Q. And I suppose you got off your sled? A. Yes, sir.

Q. And turned around and started to go up towards Mt. Prospect avenue? A. Yes, sir.

Q. Well, when you got there where was the bob?  
A. Coming down the hill.

Q. When you got to Mt. Prospect avenue about how far from you was the bob, if you know? 40

## Harold Winterbottom—Direct

Mr. MacSherry: Coming up or going down?

The Court: No, as they were going back, as they were walking back up the hill and reached Mt. Prospect avenue, where then was the bob?

A. Well, it was coming down hill.

10 Q. Whereabouts on the hill, did you notice? A. Below Clifton.

Q. Now, did you see a car at or near that time?

A. I didn't see a car, but I saw Raymond run up the track.

Q. You mean Martin? A. Yes, sir.

Q. How far did you see him run up the track, how far did he run that you saw? A. Well, he was about two car lengths, or the width of that vacant lot.

20 Q. That is how far Raymond ran? A. Yes, sir.

Q. Did you see what he was doing? A. He tried to stop the car.

Q. What did he do?

The Court: What was he doing?

A. He put up his hand.

Q. Anything else? A. That is all I know.

Q. At that time did you see the trolley car? A. Yes, sir.

30 Q. Where was it at that time when you saw him put up his hands? A. It was coming, coming north.

Q. It was coming north? A. Yes, sir.

Q. How far away from Raymond was it at that time, when you saw him put up his hand? A. I don't know how far it was.

Q. Well, about how far away was it to the south of him? A. It was pretty near up to that signal. There is a signal in the middle of the block.

40 Q. There is a signal in the middle of the block? A. Yes, sir.

## Harold Winterbottom—Direct

Q. And you think it was pretty near up to that?

A. Yes, sir.

By the Court: Q. What do you mean by "signal"? A. A trolley station.

By Mr. Weinberg: Q. You mean those signs that hang over the street? A. Yes, sir.

Q. Denoting a stopping place? A. Yes, sir.

Q. What did you notice the car do as it came 10  
towards Raymond? A. Well, it kind of slacked  
up until it got to him; then when he got out of the  
way it started up again.

Q. Where was he standing? A. In the middle  
of the track.

Q. And what do you mean by "when he got out  
of the way"? What did he do? A. He got out of  
the way so that the car wouldn't run over him.

Q. What did he do? A. Stepped to one side.

Q. And then how did the car pass him? A. 20  
What do you mean, the speed?

Q. Yes? A. It was going quite fast.

Q. Where were you at that time? A. I was up  
there—run up on the track, too.

Q. You were on the track, too, at what point?  
A. That was on the corner of Mt. Prospect avenue  
and Montclair avenue, on the corner.

Q. And what did you do? A. After it came to  
me I got out of the way, too.

Q. And how was the car coming when it go to 30  
where you were? A. Going quite fast.

Q. And you were in the middle of the street, the  
middle of Montclair avenue? A. Yes, sir.

Q. Now, did you notice the bobsled at that time?  
(No response.)

At one o'clock p. m., the court takes a  
recess of one hour.

Harold Winterbottom—Direct

After recess.

HAROLD WINTERBOTTOM, resumes the stand in behalf of the plaintiff:

Direct-examination (continued) by Mr. Weinberg:

Q. Harold, did you notice whether or not there  
10 wer many sleds on the street— A. Yes, sir.

Q.—at that time when you were sliding there in the afternoon? A. Yes, sir.

Q. What would you call many, how many, how many would you think? A. Between twenty-five and fifty.

Q. Now, I think when we took recess I had asked you the question whether you had noticed the bobsled at the time when you saw Raymond jump out of the way of that trolley car. Did you notice  
20 where the bobsled was at that time? A. Well, it was on its way down from Clifton avenue.

Q. And how was it coming? A. Good speed.

Q. Did I ask you or did you testify before as to how the car was going just before Raymond stepped off the tracks? A. It slowed down and then started up again.

The Court: He said it kind of slacked up and when he got out of the way it started up again.

30 Mr. Weinberg: Then I have been over that.

The Court: That is what he said.

Q. About what point in the street were you when the car slacked down? A. About—up above where Raymond was standing.

Q. Can you tell me whether there was any appliance on this sled? A. Any what?

Q. Any appliance to give warning, or anything of that sort? A. Yes, sir.

40 Q. What was there? A. A bell.

## Harold Winterbottom—Direct

Q. Did you hear the bell? A Yes, sir.

Q. When did you hear the bell? A. When I was coming back.

Q. Perhaps that is confusing. Where was the sled when you heard the bell? A. The bobsled, you mean?

Q. Where was the bobsled when you heard the bell ringing? A. Just heard it ever since they 10 started.

Q. How long did it keep on ringing, that you heard? A. It was ringing yet when it went to make the turn.

Q. What was the tone of the gong?

Mr. MacSherry: What turn does he mean?

Mr. Weinberg: There is only one turn testified to, and that is just before it was struck.

20

Q. What turn do you refer to? A. Turn around the corner to the left.

Q. What corner? A. Mt. Prospect avenue and Montclair.

Q. When he turned around to the left. Where was the bob when you last heard the bell ring? A. It was making the turn.

Q. Do you know where the car was at the time the bob was making the turn? A. It was just about ready to cross Montclair avenue.

30

Q. And by that you mean what, that it was ready to cross? Whereabouts was it? A. That was below the second crossing going north when they came together.

Q. No, I didn't ask you where it was they came together. I said when the bobsled started to make the turn about where was the trolley car? A. About in the middle of Montclair avenue.

Q. And they came together about where? A. Past the north crossing.

40

## Harold Winterbottom—Cross

Q. How much past the north crossing? A. It hit it in the front part of the car.

Q. It hit what? A. The bob hit—

Mr. MacSherry: Hit the front part of the car, he said.

Mr. Weinberg: That is not an answer to my question. I ask that that be stricken out.

10

The Court: You asked him how far past, did you not?

Mr. Weinberg: Yes, sir.

By the Court: Q. How far past the north crossing did they get before they struck? A. About the length of a car.

By Mr. Weinberg: Q. And what part of the car and what part of the sled came together, if you know? A. The front part of the bob and the front part of the car.

20

Q. And what were their positions when they came together? A. They were parallel.

CROSS-EXAMINATION by Mr. MacSherry:

Q. Why, Harold, when they started to make the turn on the bobsled the car was right in front of them, was it not? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Do you understand this map? The bobsled was coming down this hill, you see (indicating on map)? A. Yes, sir.

30

Q. Here is your car coming along there, and when they made the turn to go to the left the car was in front of them—trying to get out of the way of the car, were they not (indicating)? A. Yes, sir; but they came together past the corner.

40

Q. How far past the corner? Had all the car passed the corner, had all the trolley car passed

## Harold Winterbottom—Cross

this south corner, or the front part of it (indicating)?

Mr. Weinberg: That is the north corner.

Q. I mean this north corner (indicating). The car is coming this way, you understand? A. Yes, sir.

Q. And your bobsled is coming down there (indicating). Had all the trolley cars passed this corner? A. Well, they stopped on the other side, all the rest of them but this one. 10

Mr. MacSherry: I have not asked you that, have I? I ask that that go out, because that is not responsive.

The Court: Strike it out.

By the Court: Q. The question is—whether you can answer it or not I do not know; if you can, do so—had the whole of the car passed the north corner of Montclair avenue when the car and bob came together? A. Yes, sir. 20

By Mr. MacSherry: Q. All of it passed? A. Yes, sir.

Q. Then the rear end of this car was at the corner, then (indicating)? A. A little past that.

Q. A little past that corner? A. Yes, sir.

Q. And the bobsled ran into the car at the front of the car; do you mean that? A. I don't know. They was both coming down the hill together, and the car pulled in front of the bob. 30

Q. Why, how is that? Have you not said already that the car was in front of the bobsled when the bobsled made the turn? A. Yes, but they were both going.

Q. Yes, I know that, of course they were both going. Whom have you talked with about this case since the accident? A. Mr. Weinberg.

Q. Whom else? A. I have spoken some about it, not much. 40

## Harold Winterbottom—Cross

Q. Who else? A. My parents.

Q. You have stated upon your examination this morning, to Mr. Weinberg, that there was someone there to stop the cars if they did not stop. who was it? A. There was different ones there.

Q. Who? A. Norman Becker and Martin; that is all I seen that is all I remember.

10 Q. Then they would stop the trolley cars if they did not stop at the corner? A. Yes, sir.

Q. Now, you are sure of that? A. If they didn't stop at the south crossing.

Q. If they did not stop at the first corner, there was someone there to stop them? A. Yes, sir.

Q. And how would they stop them? A. They would put their hand up.

Q. Just show me. A. (Witness illustrates.)

20 Q. Then it is not true that the cars stopped there without being stopped, is it?

Mr. Weinberg: I object to that. That is a conclusion of the counsel asked of this witness.

The Court: It is a question.

Mr. Weinberg: Well, I object to the form of that question.

30 The Court: Well, I think myself that the question is rather better when it is asked in the form of a question than when it is asked in the form of an assertion. It is very common to ask it either way. It is a question, of course. I will not interfere with it; I will allow it.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

## Harold Winterbottom—Cross

(Question read.)

Q. What do you say? Do you understand the question? A. No, sir.

Q. You do not understand it? A. I don't know what he said.

Q. (Question read.) A. Yes, sir; they stopped without being stopped, all but this one.

Q. What do you say? A. They stopped without 10 being stopped, all but this one.

Q. Have you not already said that there were men there to stop the cars, and that they stopped them by holding up their hands? A. That is what I said, if they didn't stop.

Q. But have you not already said that they did it? A. I said they did it if they didn't stop, they put up their hands if they didn't stop.

Q. How many cars did they stop in that way, by holding up their hands? A. All of them stopped 20 but this one; they didn't have to put up their hands.

Q. But have you not already stated that there were men there to stop the cars and they signalled them if they didn't stop by holding up their hands? Did not say that? A. I said it.

Q. And that was true, was it not? A. Yes, sir.

Q. Well, this boy did not stop this car that came in collision with the bobsled by standing at the corner and holding up his hands; he ran up 30 to meet the car, did he not? A. Yes, sir.

Q. This boy did not run up the track to meet this car until the bobsled had passed Clifton avenue, did he? A. I don't know when he ran up.

Q. Did you not say this morning that Raymond Martin had run up the track to stop the trolley car and that when he did the bobsled had passed Clifton avenue? A. Yes, sir.

Q. What do you say? A. I said that.

## Harold Winterbottom—Cross

Q. That is right, is it not? A. Yes, sir.

Q. And that when he stood in the track to wave at the trolley car the bobsled at that time had got very near the corner of Mt. Prospect avenue; isn't that so? (No response.)

Q. Do you understand that question? A. No, sir.

10 Q. Why not? When the boy ran up the track and met the trolley car where was the bobsled then? A. About half way down Clifton avenue.

Q. When the trolley car got to the first corner of Montclair avenue, the first corner, where was the bobsled then? A. About ready to make the turn.

Q. Now, let me see. Then when the trolley car had got to the one corner of the avenue and bobsled had about reached the avenue, ready to make  
20 the turn? They both came to the corner about the same time, did they not?

Mr. Weinberg: I object to the question as being double.

Mr. MacSherry: Well, I will eliminate the last part of it. Read the first of it.

(Question read as follows: "Now, let me see. Then when the trolley car had got to the one corner of the avenue the bobsled had about reached the avenue, ready to  
30 make the turn?")

Q. Is that right? A. I don't understand what you mean.

Q. Why don't you understand. What is there about that that you do not understand? (No response.)

Q. Now, I ask you again, when the trolley car got to the first corner of Montclair avenue was not the bobsled ready to make the turn? A. Yes, sir.

40 Q. And it was in the middle of Montclair avenue

## Harold Winterbottom—Cross

—the bobsled—was it not? A. The middle of Mt. Prospect avenue and Clifton avenue.

Q. What? A. The middle of Mt. Prospect avenue and Clifton avenue.

Q. When the bobsled made the turn was it toward the side of the street or the middle of the street? A. It was in the middle of the street.

Q. When it made the turn did it skid any? A. 10 Yes, sir.

Q. Slip any? A. Yes, sir.

Q. Which way did it slip, towards the car or away from it? A. Towards the car.

Q. What do you mean by slipping, sliding? A. Yes, sir; sideways.

Q. What do you say? A. Skidding.

Q. How far did it skid? A. I don't know how many feet.

Q. Did it skid until it struck the car? A. No, 20 sir.

Q. How near the car did it get? A. I couldn't tell you.

Q. What made it skid, do you know? A. He tried to turn, and it was so slippery it couldn't turn, it slid.

Q. And going so fast? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Did you see any people get off the bob before it got down to Mt. Prospect avenue? A. One boy. 30

Q. What? A. You mean off the bobsled?

Q. Yes? A. One boy.

Q. What part of the bobsled did he get off of? A. The back end.

Q. How did he get off? A. I don't know.

Q. Where was the bobsled when he got off? A. About half-way down, when he first saw the car.

By the Court: Q. Is that your answer, about half way down when you saw the car? A. No, 40 when the boy saw it.

## Harold Winterbottom—Cross

The Court: Do you know what the boy saw. Strike that out.

Q. Try to tell us where on the road the bob was when the boy got off, as nearly as you can.

Mr. Weinberg: Do you know what the question is? A. I don't know exactly where he got off.

Q. Can you come anywhere near it? A. No,  
10 sir, all I know is he got off.

By Mr. MacSherry: Q. Now, did you see the bobsled when it started from the top? A. Yes, sir.

Q. You could see from where you were, eh? A. Yes, sir.

Q. You were ahead of it, were you not? A. Yes, sir.

Q. You had come down ahead of it? A. Yes, sir.

20 Q. And gone by this corner and gone near the telegraph pole and stopped? A. Yes, sir.

Q. Now, was there anybody to give a signal for that bobsled to come down? A. Yes, sir.

Q. Who was it? A. Raymond Martin.

Q. Did he give the signal? A. He had already given it.

Q. Did you see him give it? A. Yes, sir.

Q. What kind of a signal did he give? A. Two hands.

30 Q. Just show us. A. (Witness illustrates.)

Q. Then the bobsled started? A. Yes, sir.

Q. Did you see it come down? A. Yes, sir.

Q. Did you see any car when the signal was given? A. No, sir.

Q. What did that signal mean, do you know? What did you understand it to be? A. What he gave?

Q. Yes. A. To come on.

40 Q. Where was he standing when he gave the signal? A. In the middle of the car tracks.

## Harold Winterbottom—Cross

Q. About in the middle of the corner there, was he not? A. About in the middle of all the street.

Q. How long did the bobsled take from the time it started until they got down to that corner, until the time of the collision? How long did it take, do you know? A. No, sir.

Q. Have you any idea? A. Anywher from half a minute to five minutes. 10

Q. What do you say? A. Anywhere from half a minute to five minutes.

Q. Anywhere from half a minute to five minutes, eh? A. Yes, sir.

Q. It was going pretty slow, then, was it not—the bobsled? A. No, sir.

Q. What do you say? A. No, sir.

Q. Was it going fast? A. Quite fast.

Q. Well, it only had to go two blocks, did it not? A. Yes, sir. 20

Q. I am going to call the start of that bobsled, and you tell me when you think it has got down to the corner, will you? Just follow me. Now, I am going to start that bobsled for you, and I want you to tell me when it has got down to the corner of Mt. Prospect avenue and Montclair avenue. (With watch in hand.) Now.

Objected to.

The Court: The witness has disclaimed any exact knowledge of the time. He gives 30 himself a very wide margin; he says it took anywhere from half a minute to five minutes. Now, it seems to me hardly fair to ask him, in view of that very general statement, to make so definite a statement as he is now called upon to make.

Mr. MacSherry: Well, now, I would like to ask this witness what he considers half a 40 minute.

## D. Walter Winterbottom—Direct

The Court: You may ask that question.

Q. I will start you. When I tap my hand, that is the beginning, and I want you to tell me when I have made half a minute, according to your idea. (Rapping on desk.) Now, tell me when half a minute is up. A. (After a pause.) Now.

Mr. MacSherry: That is twenty seconds.

10

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D. WALTER WINTERBOTTOM, sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. Mr. Winterbottom, how old are you? A. Twenty.

Q. When were you twenty? A. Last October.

Q. Where do you live? A. 807 Ridge street.

20 Q. Where do you spend most of your time now?  
A. Out in the country.

Q. Where is that? A. Near Newfoundland.

Q. You came down from Newfoundland to attend this trial? A. This morning.

Q. When did you move up to Newfoundland?  
A. Last June.

Q. In January, 1900, you lived on Ridge street?  
A. Yes, sir.

Q. With your brother, the young man who was  
30 just on the stand? A. Yes, sir.

Q. What was your occupation, if any, in January of last year? A. I was to high school.

Q. So that you have no occupation? A. No.

Q. Were you the owner of a bobsled, Walter?  
A. Yes, sir.

Q. The bobsled that was used on the 7th of January? A. Yes, sir.

Q. Can you tell us about the bobsled? How  
40 long a sled was it? A. Well, I don't exactly

## D. Walter Winterbottom—Direct

know how long it is, but I took a twelve foot board, and it was split at both ends, and I sawed it at both ends so as to take the split out, so that it was between ten and twelve feet.

Q. And composed of one or more sleds? A. Two sleds.

Q. What sort of sleds did you have for runners? A. Low sleds, iron runners. 10

Q. The old-fashioned flat coaster?

Mr. MacSherry: Do not lead.

Q. What sort of a sled was it that the boards were attached to, or what sort of sleds were they? A. It was a low oak sled, made of oak, and the side of the sled was about three inches wide—a piece of wood; those were placed upright, like that (illustrating); and I had some cross-pieces across, and they were braced well, and for runners I had this—I don't know what kind of iron you call it; 20 you use it for hoops.

Q. Round iron? A. No, it was flat. And then on top of this sled I had a block, and on the front I had a T on the bottom, with a rod through the T, and on top of this I had an upright coming up in the middle of the wheel, and on top of this I had a freight car wheel to steer with, and then I had an oak board across the front of the sled besides this to steer with, so that in case either one broke I could use the other to steer with; I could steer 30 with either one without any assistance of the other; for instance, I could steer with the wheel alone or with my feet alone.

Q. Was the sled fitted up with anything else besides the steering gear? A. Yes, sir, the sled was on rockers, and then I had a good bell to ring in case anyone was in the way, to tell them that I was coming.

Q. Where was the bell kept? A. Under the board. 40

## D. Walter Winterbottom—Direct

Q. What portion of the sled? A. Well, between the front and the rear sled.

Q. Is that bell here in court? A. Yes, sir; it is right there in my coat. (A package is handed to witness, from which he produces a gong.) Shall I ring it?

Q. Not yet; just place it down on the desk in  
10 front of you. Tell me, where did you get that bell from? A. It was a present to me.

Q. What did you say, it was made a present to you? A. It was a present to me.

Q. What did you do with it? A. I put it on the bob.

Q. How long was that bell on the bob? A. Ever since it was made.

Q. And when was it taken off of the bob? A. About—let us see. Last Tuesday night; not yesterday; a week ago Tuesday.  
20

Q. And where was it when it was taken off of the bob, where was the bob? A. Where was the bob?

Q. Yes? A. Out near Newfoundland.

Q. You had the bob up there with you? A. Yes, sir.

Q. Is that the same bell that you had on the sled on the 7th of January? A. Yes, sir.

Q. Did you have more than one bell? A. No,  
30 sir.

Q. What did you use the bell for on the sleigh? A. To ring in case anyone was in the way, to ring to let them know we were coming, so that they would get out of the way.

Q. On the 7th of January was that bell in use? A. Yes, sir.

Q. How long had you been riding on the 7th of January? A. You mean how long that after-  
40 noon.

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Q. Yes. A. We started about four o'clock and we rode until the accident.

Q. And how many people did you carry with you on your various trips? A. Well, that was according to the size of them.

Q. Sometimes you did better business than others?

The Court: No, the size of the people. Is that 10 what you meant?

Witness: Yes, sir.

Mr. Weinberg: Oh, I thought you meant the size of the crowd.

Q. What did you carry there, grownups as well as young folks? A. Well, anyone that wanted to ride down.

Q. Anybody that wanted to ride down? A. Yes, sir.

Q. On that afternoon what were you carrying, 20 grownups or school children? A. Well, there was a mixed crowd; some were grown up, some were high school fellows and some went to grammar school.

Q. Where would you start to ride from? A. Ridge street.

Q. Ridge and what? A. Ridge and Montclair.

Q. And you would coast down how far? A. To Summer avenue.

Q. Summer avenue is the second street below 30 Mt. Prospect, is it? A. Yes, sir.

Q. Woodside avenue first and then Summer avenue. What, in your judgment, was the weight of the sled? A. About a hundred pounds.

Q. Now, during the various times that you arrived at the corner of Mt. Prospect and Montclair avenue did you notice any trolley cars? A. Yes, sir.

Q. What were the movements of the trolley 40

D. Walter Winterbottom—Direct

cars as they reached that corner? A. The north-bound cars stopped at the south crossing before they crossed the street, and the cars going downtown—that is, the south-bound cars—stopped at the north crossing before they crossed the street.

Q. Do you know how they came to stop at those crossings? A. No, but I heard that—

10           Objected to.

Q. No, not what you heard. What did you see there to indicate to you how they came to stop there? A. Well, the winter before different streets had been—

Q. No, not the winter before, but on that particular day. A. Well, you want to know why they stopped?

Mr. Weinberg: Yes.

The Court: Only what you know about it, not  
20 what somebody told you, but what you saw.

Witness: Well, they knew we were coasting; that was why they stopped.

Mr. MacSherry: I ask that that go out.

The Court: Strike it out.

Q. Tell us what you saw the cars do? A. They stopped before they crossed the street.

Q. When they did that was there anything that you could see to cause them to stop? A. They would stop of their own accord.

30   Q. Did you see boys on the corner? A. Yes, sir.

Q. What did those boys do? A. They told us whether there was any car coming or not.

Q. And how did they tell you? They would raise one arm or two arms; one arm was "All right," and two "Danger, stay back" and wait until the car went past.

Q. How many cars do you suppose you saw come up to that corner and stop?

40           The Court: That afternoon.

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Mr. Weinberg: That afternoon.

The Court: While you were there.

A. Oh, nine or ten.

Q. Both directions? A. Yes, sir. Oh, there would be more than that, counting both directions.

Q. And at those different times, so far as you could see, what was the occasion for their stopping there? A. What? 10

Q. What was the occasion for their stopping there? A. They knew we were coasting and they stopped before they crossed the street.

Q. How long had this coasting been going on that afternoon? A. Well, it was going on when I brought my bob out; I think since half-past three. I didn't come out until about four o'clock.

Q. Now, you know the plaintiff in this case, Mildred Lynch? A. Yes, sir.

Q. She rode on your bobsled? A. Yes, sir. 20

Q. Do you know how many trips you made with her as a passenger? A. No, sir.

Q. Do you recollect the particular trip when there was an accident? A. Yes, sir.

Q. Do you know how many you had on your sled on that trip? A. No, sir.

Q. Do you know about how many? A. Well, there was more than five and less than ten.

Q. More than five and less than ten? A. Yes, sir. 30

Q. How did you come down that hill, as to the speed? A. Well, I am no judge of speed; I can't tell.

Q. Did you come slow or fast? A. Well, we came quite fast.

Q. Came pretty fast? A. Yes, sir.

Q. In coming down the hill there did you make any use of that bell? A. It was ringing all the way down.

Q. On this particular trip? A. Yes, sir. 40

## D. Walter Winterbottom—Direct

Q. When you say "ringing all the way down," what do you mean, how far, from what point to what point? A. It was ringing—started to ring when we left Ridge street and rang until we struck the car.

Q. Who did the ringing? A. One of the boys on the bob.

10 Q. How was it rung, by what means? A. By a chain, one of these little sash chains.

Q. And how often was it kept ringing? A. Well, as fast as he could ring it.

Q. Well, will you just pull on that thing once or twice and let us see what it sounds like? A. (Witness rings gong several times.) Is that enough?

Q. That will do. Is that the way it was kept ringing? A. Yes, sir. It was faster than that; 20 they had a chain and they could ring it quicker than you can holding it in your hands this way.

Q. Did you see Raymond Martin that afternoon? Do you know who he is? A. Yes, sir.

Q. What was he doing that afternoon, or part of the afternoon? A. When I saw him he was standing there in the middle of Montclair avenue on Mt. Prospect avenue.

Q. When did you first see him there? When that afternoon did you first notice him there? A. 30 One or two trips before this trip.

Q. Now, what was he doing? A. Flagging.

Q. Flagging whom? A. Sleds, telling whether there was a car coming or not.

Q. Now, on this trip where the accident occurred did he signal to you? A. Yes, sir.

Q. What did he do? A. Held up one hand.

Q. And then what did you do? A. I left Ridge street.

40 Q. Could you see him distinctly? A. Yes, sir.

## D. Walter Winterbottom—Direct

Q. How was it with regard to being light or dark? A. Well, it was about dusk; but he stood right—there is an electric light on the corner, and you could see him plainly.

Q. It was quite light where he was standing?  
A. Yes, sir.

Q. After he raised his hand what did you do?  
A. I left Ridge street. 10

Q. Did any sled start ahead of you? A. Yes, sir.

Q. How many? A. A whole string of them.

Q. How far behind the last small sled was your bob? A. Well, the last sled before my bob was just a little above Clifton avenue when we left Ridge street.

Q. About a block ahead of you? A. Yes, sir.

Q. Now, in coming down that hill did you see anything of a trolley car coming from the south? 20  
A. Yes, sir.

Q. Where did you see that car? A. You mean where was I or where was the car?

Q. I will split that question. Where was the car when you first saw it after leaving Ridge street? A. It was nearing the south crossing of Montclair avenue.

Q. When you say "nearing the south crossing," what do you mean, about how far away, about how far? A. I should judge between thirty and fifty 30 feet south of the south crossing, coming on.

Q. Where was your bob at that time? A. We were leaving Clifton avenue.

Q. How was the gong working at that time? A. Working well.

Q. Was it being rung? A. Yes, sir.

Q. How was the sled going at that time? A. You mean how fast?

Q. Yes. A. I don't know; I am no judge of speed. 40

## D. Walter Winterbottom—Direct

Q. Going pretty fast? A. Yes, sir.

Q. What part of the road were you in? A. In the middle of the road.

Q. And how fast, if you know, was this car coming when you saw it approaching the north crossing? A. You mean how many miles an hour?

Q. Well, if you can give it all right. A. No, 10 sir. I should say it was going at a moderate rate of speed.

By the Court: Q. What was going at a moderate rate, the car? A. The car.

By Mr. Weinberg: Q. Can you tell whether it continued at one speed or not? A. Well—

Q. If you know?

The Court: While you saw it within your own observation.

Mr. Weinberg: What is your answer.

20 The Court: The question is, Can you tell? You can answer that either yes or no. A. Yes.

Q. Yes what? A. I think I can tell about the way the car was going.

Q. Well, how was it going? Well, when the boy ran up to the car I saw the car, and the girls said at the same time I saw the car, "There is a car"—

Mr. MacSherry: That is not answering the question at all.

30 Q. (Question read.) A. It was going north.

By the Court: Q. How as to the rate, whether the rate was uniform or not uniform? A. Where do you mean, where do you mean the car was when it was going this speed?

Q. When it was within your observation. A. It was going at a moderate rate of speed.

By Mr. Weinberg: Q. Then I ask you whether you know if it changed its speed from the time your first saw it? A. It slowed down and went 40 up again and went down again.

## D. Walter Winterbottom—Direct

Q. Did you notice that? A. Yes, sir.

Q. Where was your bob when it started up again, about? A. About in the middle of the block between Clifton avenue and Mt. Prospect avenue.

Q. What did you do with your bobsled as to guiding it? A. Well, if I had went on straight I would hit the car right in the middle, so that I tried to make the corner; that is, turn up Mt. Prospect avenue. 10

Q. Turn to your left? A. Yes, sir. And I would have made the turn, but the car—when he saw the bobsled he put on another burst of speed, and that brought him right on into us.

Q. How far away was he from your bobsled when he put on the other burst of speed? A. Right in the middle of the block—I mean right in the middle of Montclair avenue. 20

Q. And how far away from your bob was that at that time? A. Oh, as far as from here to the end of the room.

Q. Were you at any time in making this turn ahead of the car, I mean further north? A. I don't know.

Q. You do not know? A. I can't say to that; I wouldn't want to say one way or the other.

Q. How did the sled and the car come together, in what position? A. Like a figure A; we were coming this way and the car was coming this way, and we came right on this way together (indicating.) 30

Q. What part of the car did you strike? A. The step, the front platform. I had the steering wheel here, like this, and the front step hit the board right like that of the bob (indicating.)

Q. The front step hit the board of the bob? A. Yes, of the bob. 40

## D. Walter Winterbottom—Direct

Q. What part of the bob? A. Right where I sat.

Q. Where you sat or behind where you sat? A. Where I sat, hit right where this leg was (indicating.)

Q. How did you have your legs on that bob?

A. I had one foot on each side of the sled, like  
10 that, and my hands on the wheel (indicating.)

Q. Whereabouts on Mt. Prospect avenue with regard to the north crossing was it where the bob and the car hit? A. What is that.

Q. Where on Mt. Prospect avenue with regard to the north crossing of Montclair avenue—that is, this far crossing here (indicating on map)—was it when the bob and the car hit? A. It was north of the north crossing.

Q. How much north of the north crossing? A.  
20 About the length of the bob.

Q. Well what do you mean, the front or the rear of the car was north that much? A. The front. I think the rear of the car was right at the crossing, right about.

Q. You think the rear of the car was right about on the north crossing? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. What was the position, you say, of the sled and the bob as they came together? A. A figure  
30 A.

Q. Not quite right angles? A. No, sir. You see, when the bob came around it skidded a little. If we came on straight it would bring us at right angles, but it skidded a little, so that it came in in the form of an A.

Q. Was there anything the matter with your steering gear after the accident? A. After the accident?

Q. Yes. A. You mean after I made the turn  
40 and hit the car or before?

## D. Walter Winterbottom—Direct

Q. No, after the bob struck was there anything the matter with the steering bar, was it affected?

A. It was bent.

Q. Now, you were the first person seated on the sled? A. Yes.

Q. And behind you was whom? A. Miss Husk.

Q. And behind her was— A. Miss Lynch.

Q. And who was behind her? A. I don't know. 10

Q. Do you know who all got hurt on that sled?  
A. I got hurt and Miss Lynch got hurt and Walter Hatch got hurt.

Q. How were you hurt? That is, I do not mean what injuries did you sustain, but how did you meet with your injuries? A. The step hit the board right where my leg was.

Q. The step of the car hit the board? A. Yes, sir.

Q. Where your leg was? A. Yes, sir. 20

Q. Well, then what occurred? A. I became unconscious.

Q. Do you know what struck you? A. No, sir.

Q. Did you know if you hit the car? A. Yes, sir.

Q. Did you? A. Well, the car and the bob came together, because there was a nick in the board of my bob right where I sat, and that shows where the car hit the bob, because if we had run straight on into it the front—you see what I 30 mean; if the car had been ahead of us the front sled would have been smashed.

Mr. MacSherry: I ask that all that go out, all that argument and conclusion, beyond the nick on the bobsled.

The Court: I think the nick is the fact and the resa is reasoning. Strike out the reasoning and leave the fact.

Q. How far from the front of the bob was the nick? A. Oh, about between two and three feet. 40

## D. Walter Winterbottom—Cross

Q. And after you came together did the sled and the car proceed any distance, or don't you know? A. I don't know.

Q. Were you knocked out? A. Yes, sir.

Q. Unconscious? A. Yes.

Q. And you were unconscious for some days, were you not? A. Nine days.

10 Q. So that after the collision you do not know what occurred there? A. No, sir.

Q. How far the car or the bob went, or anything else? A. No, sir.

## CROSS-EXAMINATION by Mr. MacSherry:

Q. You were about nineteen years of age when this accident happened, Mr. Winterbottom? A. Yes, sir.

20 Q. Did you know the young lady, the plaintiff in this case, at the time? A. Yes, sir.

Q. How long had you known her? A. Oh, I don't know; more than three years.

Q. Had you been sliding on that hill before? A. Yes, sir.

Q. Had you ever been stopped by a policeman? A. No, sir.

Q. Had you ever been spoken to by a policeman? A. Yes, sir.

Q. When? A. That same day.

30 Q. What time of the day? A. About half-past four.

Q. In reference to what? A. I don't understand your question.

Q. What did he speak to you about? A. He said it was all right to sleigh ride.

Q. What officer was that? A. Niblo.

Q. What is his first name? A. I don't know.

Q. Was he there at that time?

The Court: What time?

40 A. What time?

## D. Walter Winterbottom—Cross

Q. That he spoke to you. He was at the hill? That is what I mean. A. Was he there at the time the accident happened?

Q. He was with you when he spoke to you, but was he there at the hill, did he speak to you at the hill? A. Yes, sir.

Q. How long did he stay there? A. A few minutes. 10

Q. And then did he go away? A. Yes, sir.

Q. What did he do while he was there? A. Just rode down the hill on his horse.

Q. What? A. We were going up with the bob and he was riding down the hill with his horse.

Q. Did he give any signals? A. What do you mean by "signals?"

Q. To anybody on the sled? A. No, sir.

Q. Was there anybody at the time you were there giving signals to the sled? A. Where do you mean? 20

Q. Why, I am talking about the hill. I want to know at the time the officer was there at the hill, at this junction of Montclair avenue and Mt. Prospect avenue, whether there was anybody there at that time while the officer was there giving signals to the sleds? A. Yes, sir.

Q. Who was it? A. One of the boys.

Q. What was his name? A. I don't know whether it was Norman Becker or not. There was one boy there all the time. 30

Q. How did the officer come to speak to you? Did you speak to him first? A. No. One of the kids riding on my bob asked him if it was all right to ride, and he said yes.

Q. Were you there with him at the time? A. I was going up with the bob.

Q. And you heard him say that, did you? A. Yes, sir. 40

## D. Walter Winterbottom—Cross

Q. And had you been there the day before? A. I don't remember.

Q. Had you been there two days before? A. I don't know whether I was there two days before or not.

Q. Had you ever ridden on the hill before with that bob? A. Yes, sir.

10 Q. How long before? A. All that winter.

Q. Had you ridden there at night? A. On that hill?

Q. Yes. A. I don't know.

Q. Or after dusk, or about dusk, I should say, after the lights were lit? A. I don't know about that hill.

Q. Now, that trip started from Ridge street, did it not? A. Yes, sir.

20 Q. What was the condition of the hill as to whether or not it was slippery? A. Well, it rained and froze on the cobblestones.

Q. It was icy, was it not? A. Yes, sir.

Q. Was this a cold or warm night? A. Well, it was cold enough to freeze.

Q. Then the hill was icy and slippery, was it not? A. Yes, sir.

Q. It was good coasting? A. Yes, sir.

Q. Very good coasting, was it not? A. Well, it was good coasting.

30 Q. It was faster than it would be if it was just snow? A. Yes, sir.

Q. Did you make the sled? A. Yes, sir.

Q. How long have you had it? A. Up to that time?

Q. How long had you had the sleigh? A. I don't know; three or four months, I guess.

Q. Did you have the bell that length of time, too? A. No, sir.

40 Q. At the time of this accident how long had you had this bell? A. About a month.

## D. Walter Winterbottom—Cross

Q. Where did you get it from? A. One of the fellows gave it to me.

Q. What is his name? A. Gray Cuttriss.

Q. Have you got the package that you had it in? A. Yes, sir (producing paper.)

Q. Now, will you tell me briefly how this sled was constructed again? A. Well, there were two sleds made about that long (indicating); the front sled was about two feet long and the rear sled was about three feet long; and the side was built of inch oak, about three or four inches high, and then on the sides I had crosspieces of oak, and on top of this crosspiece I had two blocks, with an iron bar across, and then this block that was on the board was on this iron bar, so that it would rock when it went over bumps. 10

Q. What was the platform of the sled, if I may use that expression? A. Inch and a half spruce, 20 light.

Q. And the whole thing weighed about a hundred pounds? A. Yes, sir.

Q. Did you ever weigh it? A. No, sir.

Q. About how long were these two blocks, do you think? A. I don't know.

Q. These blocks in the street, as you went down? From Ridge street you went to Clifton, and then down to Mt. Prospect. I want to know about how far it is from Ridge street down to Mt. Prospect avenue? A. About 200 or 250 yards. 30

Q. Now where was your gong on this sled? A. Between the front sled and the rear sled; one chain went to the front and one to the back.

Q. Who operated it? A. Anyone on the bob could operate it.

Q. Who operated it this night? A. I don't remember.

Q. Why not? A. Well, I didn't know who was ringing it; it was ringing. 40

## D. Walter Winterbottom—Cross

Q. You did not ring it? A. No, sir.

Q. You had to steer your sled? A. Yes, sir.

Q. How was it operated? A. The chain was fastened to this end of this, and then they would pull on it and ring it (indicating on gong.)

Q. Was one of the girls operating that? A. I don't think so.

10 Q. Well, don't you know whether the second or third or the fourth or fifth person behind you was attending to that gong? A. Well, the one next to the last was ringing it, I think.

Q. Who was that? A. I don't know.

Q. A girl or boy? A. I don't know.

Q. You have not any idea? A. No, sir.

Q. A stranger to you? A. No, sir.

Q. Do you know how old the person was who was ringing that gong? A. Anywhere from fif-  
20 teen to seventeen.

Q. How do you know? A. Well, most everyone on the bob was that age, except two, and I knew they didn't ring it.

Q. What two? A. Walter Hatch and George Beck.

Q. This young lady in this case was only twelve. A. Well, I didn't know her age; I thought she was older than that.

Q. What kind of a steering gear did you have?  
30 A. Had a freight car wheel to steer with; that is what I took hold of. You mean how was that fastened on the sled?

Q. Yes. A. Well, that is set on top of an inch iron bar, this wheel, and this bar went down and fastened in a T down in the bottom of the sled, the bottom of this—you see, this iron bar fastens in the T this way (indicating), and the bar that went across the rocker of the sled went through this T,  
40 so that it couldn't come loose.

## D. Walter Winterbottom—Cross

Q. What kind of metal runners did you have?

A. Iron, a sixteenth of an inch thick.

Q. Where did you get those? A. McElroy's garage.

Q. Had they been worn any? A. No, sir.

Q. Well, you had used them for how long here?  
A. Three or four months.

Q. Well, I mean to say, they were smooth, were they not? Your sled was in good condition? A. Well, it wasn't used much, so it couldn't have been—there was a little rust on the runners. 10

Q. Well, your sled was in good condition to make good speed that day, was it not? A. Yes, sir.

Q. That sled was built for speed, was it not?

A. Well, I built it to ride down hill with.

Q. Going down such a hill as you went down that night, you went down at what rate of speed, do you think? A. I don't know; I am not a judge of speed. 20

Q. Well, you are a judge of speed, are you not? A. No, sir; I can't tell whether a thing is going thirty miles an hour or fifty miles an hour.

Q. When you started you had how many people on? A. More than five and less than ten. I told you a little while ago, didn't I?

Q. What with your sled and the people on it, how many pounds do you think you carried all together before you started? How many pounds do you think you had on that sled; nearly a thousand, did you not? A. I don't know. You could add it up. 30

Q. There were about eight of them on the sled, were there not? A. No, sir.

Q. Were there seven? A. Six or seven.

Q. Did you have any break on the sled? A. No, sir. 40

## D. Walter Winterbottom—Cross

Q. After you got started at the top of the hill that night how could you stop your sled? A. Couldn't stop it.

Q. Could not stop it? A. No.

Q. There was not any way to stop it at all? A. No, sir.

10 Q. If a pedestrian had been crossing at Clifton avenue or a wagon was crossing at Clifton avenue as you came down there— A. Clifton avenue or Mt. Prospect?

Q. Clifton; that is half way down. —you could not have stopped for them, could you?

Objected to as irrelevant and immaterial.

The Court: It does not make any difference whether it was Clifton avenue or any other avenue. The question is whether the apparatus was susceptible of being brought  
20 to a halt.

Mr. MacSherry: Yes, sir.

Mr. Weinberg: I object to it on the ground that he stated that when he started away his sled could not stop. Anything else, I think, is irrelevant.

The Court: I think the question is already answered. If you want to ask it again, you may do so.

Mr. MacSherry: All right.

30 Q. Did you have any light on the sled? A. No, sir.

Q. Did you start from the middle or the side of the road? A. From the middle.

Q. Was there any way of turning that sled into the side of the road to stop it? A. How would you get up the curb?

40 Mr. MacSherry: I don't know; I am asking you.

## D. Walter Winterbottom—Cross

Mr. Weinberg: Just answer the question, if there was a way of turning it.

Witness: Turning the sled?

Q. Suppose you saw a wagon or a trolley car or a pedestrian down at Mt. Prospect avenue, a block away, could you get into the side of the road? A. Yes, sir.

Q. How? A. Steer there.

Q. Did you do that that night? No, sir. 10

Q. Why not? A. There wasn't anyone in the way. Clifton avenue—there is woods on one side there, and it is very seldom there is anyone crosses the street there.

The Court: I think the question related to Mt. Prospect avenue.

Mr. MacSherry: Mt. Prospect avenue.

Witness: Well, they would look before they crossed.

Q. What do you say? A. People looked up the hill before they crossed. 20

Q. Then when you started off with this bobsled you are depending on what people will do, are you?

Objected to as incompetent.

Objection overruled.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly. 30

Circuit Court Judge.

Q. You are dependent upon what other people will do in crossing the street?

Objected to as irrelevant.

The Court: The question relates to the character of the mechanism and what the operator could do it, what was the limita- 40

## D. Walter Winterbottom—Cross

tion of his capacity. You may answer the question.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

10

Circuit Court Judge.

A. Not altogether; I could steer out of the way, too.

Q. What do you say? A. I could steer out of the way, too.

Q. When you saw this trolley car, then, why did you not steer to the side of the street, out of the way? A. What is the use of steering right on into the trolley car?

20

Q. Oh, no, you were half a block away from the trolley car when you saw it—more than that; you were just leaving Clifton avenue when you saw this trolley car coming. Why did you not steer your sled into the side of the street? A. I thought the best way was to try to turn the corner.

30

Q. Now, when you came down and you saw this trolley car was going across the street, why did you not turn to the right instead of the left and go around the rear of the car? A. Two seconds is a long time to think of all these things. I thought I had better chance to go in front of the car than I did the rear; that is why I went that way.

Q. You were fifty feet away from the corner of Mt. Prospect avenue when this trolley car was blocking the way in front of you and moving, were you not? A. About fifty feet.

40 Q. Why did you not go around the rear of the car, then, instead of trying to go around the front

## D. Walter Winterbottom—Cross

of it? A. It seemed more natural to turn to the left.

Q. You were a little excited? A. A little.

Q. Were the people on the sled excited with you? A. Yes, sir.

Q. Did one of them tell you there was a trolley car? A. Yes, sir.

Q. Which one? A. Both of the girls. 10

Q. They were right behind you? A. Yes, sir.

Q. Now, I understood you to say that before you started you got a signal of the hand up that way (illustrating), to come down? A. Yes, sir.

Q. That was the signal to stay back, was it not? A. No, sir.

Q. Was not the signal to stay back one hand and the signal to go ahead, "All right," two hands? A. Let us see. Two hands to go ahead and one to stay back. But when I started at the top of the hill he waved a clear road; he put up two hands. 20

Q. Have you not already stated, and is it not a fact, that you started off from the top of that hill on the signal of one hand? A. No, sir.

Q. Have you not already said so twice—three times? A. No, sir. I said it, but it was a clear road, two hands, when I left the top of the hill.

Q. You admit that you did say that you got a signal first of one hand when you started? A. No, sir. 30

Q. Have you not said that? A. That ain't right.

Q. Why did you say it, then? (No response.)

The Court: You may answer.

A. I said it before I thought.

Q. Have you not already stated just a minute ago that you first got a signal of one hand, and after that two hands? A. He didn't change his signal; it was two hands. 40

## D. Walter Winterbottom—Cross

Q. Did you not state to me about three or four questions back that you first got a signal of one hand and you started off, and then you got a signal of two hands? A. That aint right.

Q. Well, why did you say it? Don't you realize that this is an important case— A. Yes, sir.

Q. —to this girl and to this company? A. Yes,  
10 sir.

Q. Don't you realize that you are under oath?  
A. Yes, sir.

Q. Now, pray, tell me again why you have been stating to us from the time that you were on the stand that you started off on a signal of one hand, if it was not so? A. You have been asking the questions so fast that I didn't have a chance to think.

Q. Did you not say that you started off on the  
20 one hand signal in response to Mr. Weinberg's question?

Mr. Weinberg: I do not think as a matter of fact, I asked him at all; I didn't ask him what signal he got.

Mr. MacSherry: Oh, yes, we have got it here: "Starting off on the signal of one hand."

Q. Do you say that you did not in answer to Mr. Weinberg's question say— A. I did answer  
30 it, but it was wrong.

Q. It was wrong? A. Yes, sir; we started at the signal of two hands, signifying a clear road.

Q. Then he never gave you a one-hand signal at all? A. He never did?

Q. He did not, did he? A. I don't remember it.

Q. Could your sled go down that hill faster than the smaller sleighs? A. Yes, sir.

40 Q. Faster? A. Yes, sir.

## D. Walter Winterbottom—Cross

Q. And these little sleighs, one of them denominated some kind of a flyer, a flexible flyer, number something or other, these little sleighs started ahead of you? A. Yes, sir.

Q. Did you pass them on the way down? A. No, sir.

Q. Did they get down ahead of you? A. What do you mean by "down"? 10

Q. I mean did they get to Mt. Prospect avenue ahead of you? A. Yes, sir.

Q. All of them? A. All ahead of me.

Q. All ahead of you? A. Yes, sir.

Q. So when you got down to Mt. Prospect avenue you were the last of the bunch; is that right? A. Yes, sir.

Q. Well, now, how long do you suppose it took you that night, the trip you got hurt on, from the time that you started at Ridge street until you got to Mt. Prospect avenue? How long did it take you? A. I don't know. 20

Q. Haven't you any idea? A. No, sir; I am no judge of speed, I don't know.

Q. Do you remember having a conversation with Mr. Bodecker, this gentleman here (indicating), on the 17th day of March, 1910, at 7 Central avenue, the trolley office, respecting this accident? A. Yes, sir.

Q. You came there voluntarily, did you not? 30  
A. My father told me to go.

Q. Well, you did go down alone, did you not? A. With my father.

Q. You went down with your father? A. Yes, sir.

Q. And did you make a statement to Mr. Bodecker, in the presence of your father? A. Yes, sir. 40

## D. Walter Winterbottom—Cross

Q. And did you sign the statement? A. Yes, sir.

Q. Did you read it before you signed it? A. Yes, sir.

Q. Was it written out in your presence? A. Yes, sir.

Q. Did you tell Mr. Bodecker at the time and  
10 place I have mentioned that your bobsled was  
about 12 feet long and weighed about a hundred  
pounds? A. No, sir; I said it was 10 or 12—  
about 10 or 12 feet long.

Q. Did you tell Mr. Bodecker that at Mt. Pros-  
pect avenue crossing there was a lad who would  
hold up one hand if everything was all right, and  
two hands up indicated danger? Did you say  
that? A. Well, it has been so long since that ac-  
cident and now—it is over a year ago—<sup>1</sup> at I  
20 don't remember just which way the signal was,  
whether it was one hand up "All right" or not;  
but that is right.

Q. That is right, is it? A. Yes, sir.

By the Court: Q. What is right? A. That  
statement.

By Mr. MacSherry: That statement? A. Yes,  
sir.

Q. Just look at it, will you (paper shown to  
witness)? Just look at the four pages here.  
30 (Witness examines paper.) That is your signa-  
ture, is it not (indicating)? A. Yes, sir.

Q. This statement to Mr. Bodecker, at 7 Cen-  
tral avenue, on March 17th, was made voluntarily  
by you down there, was it not—that is, no one  
compelled you to make it? A. Only my father.

Q. And the statement that you did make was  
correct, and you signed it, did you not? A. Yes,  
sir.

40 Q. Then you did say to Mr. Bodecker down

## D. Walter Winterbottom—Cross

there that the boy was signalling at the Mt. Prospect avenue crossing; "I don't know his name or where he lives; and the lad would hold one hand up if everything was all right, and two hands up indicating danger"? That is right, is it not? That is what you said? A. That is what I said.

Q. And this statement is right? A. Well, that was made so near after I was hurt—I don't remember just how those signals were. I was unconscious for nine days, so that you can't bring me right down to the scratch like that. 10

Q. I know, but haven't you already stated that this statement was correct? Do you want to change that or do you want to stand by that? A. Well, whatever the signal was, I don't just remember now, but he gave us a signal for a clear road, whether it was one hand or two. 20

Q. And whatever this statement that you made here and signed say you believed it to be correct at the time you made it, or you would not have signed it? A. I thought it was correct, yes.

Q. Did you say to Mr. Bodecker at the time and place I mentioned: "It was not quite dark when I started down on my last ride, and the boy at the foot of the hill had one hand up, indicating that everything was clear"? Did you say that? A. I said that. 30

Q. "He was standing at the car track, at the centre of Montclair avenue crossing;" did you say that? A. Yes.

Q. "And I could see him plainly, although it was quite dark;" did you say that? A. Yes, sir.

Q. "When I started there were about seven or eight children on the bob;" did you say that? A. Yes, sir. 40

## D. Walter Winterbottom—Cross

Q. "I started to ring my gong, and continued all the way down, with a loud gong;" did you say that? A. I said that, but I didn't ring it; someone else on the bob rang it; I said it.

Q. "Everything went along O. K. until we reached a point about one-third of a block east of Clifton avenue when I saw the front end of a north-bound car come in view;" did you say that?  
10 A. Yes, sir.

Q. "The car was approaching within a few yards of the southerly crossing of Montclair avenue;" did you say that? A. Yes, sir.

Q. "The car at that moment was travelling at a medium rate of speed;" did you say that? A. Yes, sir.

Q. "The motorman made no attempt to stop the car;" did you say that? A. Yes, sir.

20 Q. "And as the car crossed Montclair avenue my bob was going down this hill at the average express train speed, I should judge thirty to forty miles an hour;" did you say that? A. Yes, but I never rode on any express trains, only the Erie.

Q. I am asking you if you said it? A. If you have been on a farm all your life you are no judge of speed.

30 Q. No, I know. Did you say: "I realized at once that I must steer to the left to avoid crashing head on into the side of this car"? Did you say that? A. Yes, sir.

Q. "And I partially succeeded in turning north into Mt. Prospect avenue, when the front of my bob crashed into the front left side of the car;" did you say that? A. Yes, sir.

40 Q. "I was bobbing down this hill the day before this happened;" did you say that? A. I must have said it if he wrote it down.

## D. Walter Winterbottom—Cross

Q. "But I do not recall that any officer warned me to keep off;" did you say that? A. Yes, sir.

Q. Now, when you were within 50 feet of Mt. Prospect avenue and this car was in front of you, you turned to your right— A. No, I turned to my left.

Q. You turned to your left, I should say. Excuse me! Why, if you know, did your sled skid? 10  
A. Because it was icy.

Q. And because of the speed it was going, too, was it not? A. Well, that would make some difference.

Q. What part of the car did you go into or did you come in contact with? A. The front part.

Q. Was the car moving when you came together? A. Yes, sir.

Q. How, fast or slow? A. Coming to a stop.

Q. Just coming to a stop? A. Yes. 20

Q. On the north corner of Montclair avenue?  
A. Beyond the north corner.

Q. Well, it was just about beyond, was it not, as I understand? A. Well, according to what you mean by "about."

Q. Well, a few feet, I mean. A. A few feet—a car length, I should judge, beyond the north crossing; I should think the rear of the trolley car was right even with the crosswalk when we struck the front end of the car. 30

Q. The rear of the car had just about reached the crossing, the north crossing? A. Yes, sir.

Q. You had got around the corner, then? A. Yes, sir.

Q. And skidded? A. Skidded before we got around.

Q. Oh, did you? A. Yes, sir.

Q. I did not know that. You skidded before you got around? A. As soon as you begin to turn your bob is going to skid. 40

## D. Walter Winterbottom—Cross

Q. I am not asking you that. You skidded. Which way did your bob skid, to your left or right? A. Down the hill.

Q. Down the hill? A. Yes, sir.

Q. Straight towards the car—or not straight towards, but in the direction of the car? A. Yes, sir.

10 Q. Did you make any move to steer your sled before you got to the corner? A. Yes, sir; I was turning the corner.

Q. I say before you got to the corner did you make any move to steer your sled?

The Court: Did you change your direction?

Q. Did you change your direction any? A. Yes, sir.

Q. In what way? A. So as to turn up Mt.  
20 Prospect avenue.

Q. And then you started to skid there as soon as you changed your direction? A. Where do I change my direction?

Q. I am asking you. I was not there; you were there, you know. A. Well, when I came down the hill I changed my direction so as to turn around the corner, and after that I didn't change it.

Q. How far away from the corner were you  
30 when you started to change your direction? A. About fifty feet.

Q. Fifty feet? A. Yes.

Q. Did your sled begin to skid then? A. As soon as I turned.

Q. Turned where? A. To go up Mt. Prospect avenue.

Q. But you said you started to skid before you got to that corner, when you started to change your direction, did you not? A. Say that again  
40 will you, please?

D. Walter Winterbottom—Cross

Mr. MacSherry: I am not trying to catch you. You think I am. That is the trouble.

Mr. Weinberg: What do you mean by the corner, the line of Mt. Prospect avenue?

Mr. MacSherry Yes.

Witness: The bob didn't skid as long as I was going straight ahead, but as soon as I turned it began to skid. 10

Q. But did it skid before you got to the corner? A. Yes, sir.

Q. Did it skid? A. Yes, sir.

Q. How many feet away from the corner did it start to skid? A. Oh, about 50 feet from the middle of Mt. Prospect avenue.

Q. Well, then, at that time you people on that sled were pretty well excited, were you not? A. Yes, sir. 20

Q. Was there any ringing of the gong then? A. Yes, sir.

By Mr. Weinberg: Q. Which gong? A. This one (indicating the gong produced by witness).

By Mr. MacSherry: Q. Any ringing of the gong on your sled or bob? A. You mean this one?

Q. Yes, A. Yes, sir.

Q. With the trolley car right in front of you? A. Yes, sir. 30

Q. Did anybody get off your sled coming down the hill? A. I don't know.

Q. Now, I would like to ask you once more, if you please, if you can not give us some idea as to how long it took that bobsled to make that trip from Ridge street to Mt. Prospect avenue? A. I can't tell; but Mr. Bodecker timed them; I expect he ought to know.

Q. Were you present? A. No, sir; I was unconscious. 40

Richard T. Hetherton—Direct

Q. Timed who? A. Timed their sleds coming down the hill.

Q. Bobsleds? A. I don't know.

Q. Were they sleds that went slower than yours? A. A little.

RE-DIRECT-EXAMINATION by Mr. Wein-  
10 berg:

Q. Just a question or two, Walter. I do not know whether you were asked in all this maze of questions when you started to turn your bob where the trolley car was. Where was the trolley car when you started to turn your bobsled at a point 50 feet away from Mt. Prospect avenue?  
A. The rear of the trolley car was at the south crosswalk.

Q. At the time when you started to turn? A.  
20 Yes, sir.

Q. Now, with regard to all this talk about signals, one hand or two hands. Whatever the signal was at that time, do you remember whether you got the signal which meant to come ahead?  
A. Yes, sir.

Q. That you recollect without knowing now whether it was one or two hands? A. Yes, sir.

Mr. Weinberg: I offer this bell in evidence at this time (the gong produced by  
30 witness). Marked Exhibit P-1.

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RICHARD T. HETHERTON sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. How old are you? A. Sixteen.

Q. Where do you live? A. 779 Mt. Prospect  
40 avenue.

## Richard T. Hetherton—Direct

Q. That is near Montclair avenue? A. Yes, sr.

Q. How long have you been living there? A. Sixteen years.

Q. You were born there, then, apparently?  
A. Yes, sir.

Q. Do you work? A. No, sir.

Q. Go to school? A. Yes, sir.

10

Q. High school? A. No, sir.

Q. What school? A. Newark Business College.

Q. In January, 1910, Richard, you lived on Mt. Prospect avenue? A. Yes, sir.

Q. Do you recollect any coasting on Montclair avenue? A. Yes, sir.

Q. On the 7th of January? A. Yes, sir.

Q. Were you coasting? A. Yes, sir.

Q. With whom? A. I was with Harold Winterbottom.

Q. That is the younger Winterbottom boy?  
A. Yes, sir.

Q. When did you start to sled ride? A. I started about five o'clock.

Q. About five o'clock? A. Yes, sir.

Q. Before you started to sled ride were you in that neighborhood? A. Yes, sir.

Q. What were you doing? A. I was standing on the corner.

30

Q. What were you doing on the corner? A. We were watching them sleigh-ride.

Q. How long had you been standing there watching them sled riding before you started in?  
A. I guess from about half-past three.

Q. Half-past three in the afternoon? A. Yes, sr.

Q. And you stood there how long, did you say?  
A. Until five o'clock.

40

Richard T. Hetherton—Direct

Q. Before you started to ride? A. Yes, sir.

Q. Did you observe anything on Mt. Prospect avenue as to the cars during that period? A. Yes, sir.

Q. Coming and going? A. Yes, sir.

Q. North and south? A. Yes, sir.

Q. Will you tell me what they did when they  
10 got to the corner of Montclair avenue? A. The cars coming north stopped on the south side and the cars going south stopped on the north side.

Q. And what occasioned their stopping, do you know? A. Because we were coasting there.

Q. And how many cars do you think you saw stop that way? A. Oh, about twelve.

Q. About what headway were they running on, do you remember? A. You mean as to speed?

Q. No, how frequently did they run?

20 The Court: The period between the cars.

A. Every ten minutes.

Q. Every ten minutes? A. Yes, sir.

Q. Each way? A. Yes, sir.

Q. Did you see any boys on the crosswalk also?  
A. Yes, sir.

Q. What were they doing? A. Where do you mean?

Q. What were the boys doing that you saw on the corner? A. With me.

30 Q. What? A. Standing with me.

Q. Did you see any boys doing anything, special on the corner? A. Oh, signalling.

Q. Signalling for whom? A. The people up on the hill.

Q. Do you know what boys there were doing that? A. Norman Becker.

Q. Who else? A. And Martin.

Q. Anybody else? A. No, sir.

Q. Did you start to coast there? A. At five  
40 o'clock.

## Richard T. Hetherton—Direct

Q. How many trips did you make? A. I guess I made about four.

Q. And you were riding, you said, with young Harold? A. Yes, sir.

Q. When did you make your last trip? A. Right before the bob.

Q. Were you on this sled that got in a rut and struck the curb, with Harold? A. Yes, sir. 10

Q. Is that the one? A. Yes, sir.

Q. Now, after you struck the curb what did you do? A. Well, we got up and starting walking up the hill, walking up Montclair avenue towards Mt. Prospect.

Q. And what did you do as you walked up? A. We saw the bob coming down and we saw the car.

Q. Where was the bob when you saw it? A. When we were walking up it was around Clifton avenue. 20

Q. And did you see the car at that time? A. Yes, sir.

Q. And where do you think the car was at that time, when you saw the bob? A. It was right by the lot about the end of the lot.

Q. Did you see Raymond Martin? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. What did you see him do? Where was he? A. Well, he was standing, there until he saw the car, and then he ran up and signalled the car. 30

Q. How far did you see him run up? A. Ran up to the end of the lot; I couldn't see him any more.

Q. What? A. I just saw him standing up at the end of the lot, and then, I guess, he went up further.

Q. Something cut off your view above the end of the lot? A. Yes, sir. 40

Richard T. Hetherton—Direct

Q. And then you could not see the car? A.  
A. No, sir.

Q. He ran up to about the end of the lot. Did you see the car at that time? A. The top of it; yes, sir.

Q. What? A. Yes, sir; I saw part of it.

Q. Where was that, how far from Raymond, at  
10 that time? A. It was right near him.

Q. And what did you see Raymond do? A. He put up his hand like that (illustrating).

Q. To whom? A. To the mortorman.

Q. Waving towards the car? A. Yes, sir.

Q. Which way was he facing when he went like that? A. He was facing the motorman.

Q. Did he say anything, did you hear? A. No, I didn't hear him.

Q. Could you hear the bob coming down? A.  
20 Yes, sir.

Q. How did you hear it? A. I heard the bell.

Q. Was it loud? A. It was ringing all the way. All the way down you could hear it plainly.

Q. What did you see Raymond do aside from waving to the car? A. Well, then he got out of the way.

Q. How did he get out of the way? A. He stepped aside.

Q. What did the car do at that time? A. Well,  
30 the car stopped—sort of stopped; I heard the air brakes; and then it started up again.

Q. What is that? A. The car sort of stopped and then started up again.

Q. What do you mean by "sort of stopped"?  
A. Slowed down.

Q. How far from the corner was it when it slowed down? A. It was right there by the end of the lot.

Q. The end of the lot on Mt. Prospect avenue?  
40 A. Yes, sir.

## Richard T. Hetherton—Cross

Q. Which lot are you speaking about? A. On the southeast corner.

Q. That is where the car was when it started to slow down? A. Yes, sir.

Q. And that is where it was when Raymond stepped out of the way? A. Yes, sir.

Q. And what did it do after it slowed down?  
A. Put on speed again. 10

Q. And what then did it do? A. It started across.

Q. Did you see the collision? A. I didn't see the bob hit; I was on this side of the car.

Q. You were on Montclair avenue? A. Yes, sir.

Q. On the other side of Montclair avenue? A. Yes, sir.

## CROSS-EXAMINATION by Mr. MacSherry: 20

Q. Is your memory now as good as it was on the 8th day of January, 1910, do you think? A. Just as good.

Q. What do you say? A. I can remember things.

Q. You had been coasting there for some time, had you? A. Five o'clock.

Q. When you got there was there any policeman there? A. There was one standing over on the corner. 30

Q. Were the lights lit? A. When?

Q. When you got there, at five o'clock? A. Well, I was there before, but I started to sleigh-ride at five o'clock.

Q. When you started to sleigh-ride were the lights lit in the street? A. I don't believe they were then.

Q. Were they lit at half-past five? A. Yes, I guess they was. 40

Richard T. Hetherton—Cross

Q. Were the lights lit in the car? A. I didn't notice.

Q. Was there anybody to signal cars? A. Yes, sir.

Q. Who? A. When I was sleigh-riding Martin was signalling them.

Q. And would they stop on his signal? A. Well, most of them—they stopped anyway.

Mr. MacSherry: I ask that that go out. It is not responsive.

Q. Would they stop on his signal?

The Court: The question is not answered. Answer it directly.

Q. Would they stop on his signal? A. They would stop on his signal.

Q. Who was the man who was signalling the cars? A. Martin.

20 Q. What is his first name? A. Raymond.

Q. Is this the young man (indicating)? A. Yes, sir.

Q. Then he was there signalling the cars and signalling bobsleds, too? A. Yes, sir.

Q. Have you been in court while the others have testified today? A. Yes, sir.

Q. You do not agree with them, do you? A. What? I don't know what you mean.

Q. About agreeing?

30 Mr. Weinberg: I submit that that question is improper. Agree on what, on all the testimony in the case?

The Court: The question is rather broad.

Q. You saw twelve or fourteen cars come up there and stop under the conditions that you have stated? A. Yes, sir.

40 Objected to as too broad.

Richard T. Hetherton—Cross

Mr. MacSherry: Of course, I refer to the condition of the man standing there signalling.

The Court: Perhaps you had better point the conditions out.

Q. You saw twelve or fourteen cars come up and stop there while Martin was there signalling?

A. No, sir; not while Martin was there; I didn't 10 say that.

Q. Well, who was there? A. During the whole afternoon.

Q. And while Martin was there, too? A. Oh, I saw some of them then.

Q. What signal was given to this bobsled before it started? A. I don't know what signal was given to the bobsled.

Q. Didn't you see that? A. Our sled, it gave 20 the same signal.

Q. What do you say? A. I am not sure the signal was given.

Q. Where were you when the bobsled started? A. Why, I guess I was on my way down the hill.

Q. Well, do not guess about it. Where were you? A. On my way down the hill.

Q. Riding down? A. Yes, sir.

Q. Going in the direction of Mt. Prospect avenue? A. Yes, sir.

Q. Didn't you see a signal given to the bobsled to start? A. Well, it didn't start at the 30 same time I did.

Q. Won't you answer my question? Didn't you see a boy standing in the middle of the road giving a signal for the bobsled to start? A. Yes, he gave it to us all.

Q. While you were going down the hill? A. Well, we all went after each other. 40

Richard T. Hetherton—Cross

Q. Won't you answer my question? Did you see any signal given after you started down the hill? A. No.

Q. Was the bobsled the one right after you, do you know? A. Yes, sir.

Q. How long did it take you to go down from Ridge street to Mt. Prospect avenue? A. I  
10 don't know.

Q. About? A. It might take a minute or more.

Q. Well, it would not take you a minute, would it? A. I don't know.

Q. You haven't any idea? A. No, sir.

Q. Did you see this accident? A. No, sir.

Q. You did not see it at all? A. I didn't see the bob hit; I was on the other side of the car.

Q. Did you see the car as you came down the hill? A. No, sir.

20 Q. You did not see it? A. No, sir.

Q. When you crossed the tracks you did not see the car? A. No, sir.

Q. How far ahead of the bob were you? A. I don't know.

Q. You do not know where the bob was. When you crossed there was not a car in sight, so far as you saw? A. We didn't have time to see whether there was a car in sight when we crossed.

Q. You did not see any, did you? A. No, sir.

30 Q. Did you see any boy there when you crossed the tracks? A. I didn't have time—

Q. Did you? A. I didn't see any boy when we crossed the tracks.

Adjourned until tomorrow, Thursday,  
March 9, 1911, at ten o'clock, a.m.

Charles R. Lynch—Direct

THIRD DAY

Thursday, March 9, 1911.

Met pursuant to adjournment.

Present: Counsel as before stated.

CHARLES R. LYNCH, sworn in behalf of 10  
plaintiff:

Direct-examination by Mr. Weinberg:

Q. Charles, where do you live? A. 773 Mt.  
Prospect avenue.

Q. What is your occupation? A. Surveyor.

Q. You are not a graduate surveyor yet, are  
you? A. No, sir.

Q. You are employed by whom? A. Borrie &  
Kreiner.

Q. You are a brother of Mildred Lynch? A. I 20  
am.

Q. Did you make, at my request, a measure-  
ment of the lot on the southeast corner of Mt.  
Prospect avenue and Montclair avenue? A. I  
did.

Q. What is the length of that lot? A. The  
length of that lot—to the house there is about 85,  
more or less, feet.

Q. Did you scale it also to this map? Did you  
make a measurement on this map? A. I scaled 30  
it off.

Q. Does that agree with measurements on  
this map? A. It does.

By the Court: Q. That is, you mean, to the line  
of the house prolonged? A. Yes, sir. I scaled  
it to the house with my own scale.

Q. About 85 feet? A. About 85 feet, a little  
less or a little more. 40

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By Mr. Weinberg: Q. Did you make a measurement of the width of Monclair avenue? A. I did, from curb to curb.

Q. And what is the distance from curb to curb? A. Forty-seven and one-half feet.

Q. And did you make a measurement of the width of Mt. Prospect avenue from curb to curb?  
10 A. From curb to curb, 60 feet; it is a one hundred foot street, 60 feet between the curbs.

Q. Did you also, at my request, ascertain how far south of the south crosswalk on Mt. Prospect avenue you could see a boy crouching on Montclair avenue at Clifton avenue? A. I did.

Objected to as irrelevant and as not embracing the conditions that existed at the time of the accident.

The Court: You may ask your next  
20 question. Do not answer this question.

Witness: No, sir.

Q. When was it that you made this observation, when did you make the observation?

The Court: You may answer that.

A. I made that observation on January 16th.

Q. Of what year? A. This year.

Q. At what hour of the day or night? A. I made this observation about half-past five, twenty-five minutes to six, around there.

30 Q. In the evening? A. Yes, sir.

Q. And what kind of weather was it? A. Well, the weather was—

Q. Was it clear or stormy? A. It wasn't stormy; it was good weather, dry weather.

Q. Was the condition of the lot on the southwest corner of Mt. Prospect avenue and Montclair avenue the same as to rise and shrubbery as it was on the 7th day of January, 1910? A. Yes,  
40 sir; there wouldn't be much difference in the

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shrubbery, a couple of days difference in the time.

Q. A difference of ten days in the season? A. Yes, sir.

By the Court: Q. What lot have you in mind? A. This lot here (indicating on map).

Q. That is the southeast lot? A. No, the southwest.

By Mr. Weinberg: Q. You were familiar with 10 that lot in 1910? A. Yes, sir.

Q. I asked you if there had been any change in that lot, in the grading of it or anything else? A. No, sir.

Q. Or any trees planted since that time? A. No, sir.

Q. Or taken off since that time? A. No, sir.

Q. What is the nature of that lot, what is it used for? A. Why, it is just a vacant lot; it isn't used for anything. It runs up to a slope. 20

Q. It is unoccupied land? A. No, sir; never used.

Q. Where did you place the boy? A. Placed him on the centre of Montclair avenue and Clifton avenue.

Q. And who was the boy? A. Walter Winterbottom.

Q. What position did he take? A. Why, he crouched down; I asked him to crouch down—

Objected to as not embracing the conditions that existed at the time of the accident and as immaterial and irrelevant. 30

Objection overruled.

Defendant's Counsel prays an exception, and the same is allowed.

(Question read.)

Witness: What is that question?

By the Court: Q. What position did the boy take? A. On the hill? 40

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Q. You say he was crouching? A. Yes, sir.

Q. What position did he take? A. Do you mean the looks of him?

By Mr. Weinberg: Q. What position did he take as he was crouching, what was his physical position? A. He got down low, crouching (illustrating), lower than I am now.

10 By the Court: Q. Standing and stooping? A. Yes, sir. I will show you.

Mr. MacSherry: You are not asked to show. Just state, please.

Q. Show us. A. Shall I show?

Q. Yes. A. Like that (illustrating).

By Mr. Weinberg: Q. Had you seen him on the bobsled on the day of the accident? A. Yes, sir.

20 Q. What would you say was his height the day that he crouched for you with regard to his height as he was on the bobsled? A. I tried to make both the same; that was my idea.

Q. According to your idea, was it about the same? A. Yes, sir.

Defendant's Counsel objects to all this line of testimony, and asks for a general exception, which is allowed.

Q. What were the conditions with regard to light in the street if any? A. When?

30 Q. When you made your observation, on the 16th of January, this year? A. You mean in the way of artificial light?

Q. In the way of artificial light, yes.

The Court: Artificial and natural, both.

A. I don't just remember; I didn't take quite notice whether the lights were lit or not; but I know it was getting dusk; that is all I can say. I can't say any more than I know.

40 Mr. MacSherry: Now, I object to any-

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thing further on the subject, if your Honor please.

The Court: I was thinking whether it went to the value or to the competency of the evidence.

Mr. MacSherry: It strikes me it is a very great hardship if this company has got to be held by an observation made before the lights were lit, comparing the situation with the situation of an accident that happened after the lights were lit in the street. 10

The Court: I think that is so important a feature of the case that it goes to the competency rather than to the weight of the evidence.

Mr. MacSherry: Then I ask that all this evidence up to this point be stricken out, if your Honor please. 20

The Court: Strike it out.

Plaintiff's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

Circuit Court Judge.

Q. Do you know how much of the lot on the southwest corner is on a level with the street? A. You mean the height of the curb? 30

Q. Yes. A. In the beginning it is a trifle higher in inches, if you want to get down to inches.

Q. I ask you whether if you were standing on the north-bound track of the Public Service Railway Company's tracks on Mt. Prospect avenue, at a distance of about 110 feet south of the south crossing at Montclair avenue, you could see an object 40

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on Montclair avenue near Clifton avenue at dusk, about half-past five or quarter to six, on the 16th of January, 1911, the condition of the premises at the corner of Montclair avenue and Mt. Prospect avenue being the same as it was on the 7th of January, 1910, and the object which was viewed being of the same size and character as the one  
10 on January 7, 1910?

Objected to.

The Court: The answer must, of course, be founded on observation made at a time when the conditions were all the same, and it ought first to appear that there was an observation made when the conditions were all the same.

20 Mr. MacSherry: Another thing about it is that it is the case that when this bob-sled was about at Clifton avenue this trolley car then was about 37 feet from the corner.

The Court: All I am considering now is the legality of this question.

30 Mr. Weinberg: I have embodied, so far as I can understand, all the conditions that existed on the 7th day of January, 1910, except that he says that he does not know whether the lights were lighted. I do not think that has anything to do with it.

The Court: That is so important a feature that, I think, it is incompetent.

Mr. Weinberg: That must go to the weight of the evidence, if your Honor please.

40 The Court: I have already considered the subject, and I have reached this conclusion. Perhaps I am wrong. I sustain the objection.

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Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

Circuit Court Judge.

Q. Can you tell me, if you made an observation 10  
from the track of the Public Service Railway  
Company on Mt. Prospect avenue, whether you  
can see any part of Montclair avenue at any dis-  
tance, south of the south crosswalk—is there any-  
thing to prevent a view anywhere on the street?

Objected to on the same ground.

Mr. Weinberg: I will add to that: Is  
there anything to prevent a view of Mont-  
clair avenue for any distance west of Mt.  
Prospect avenue? 20

The Court: If you want to ask whether  
there is a grade, or anything of that kind,  
that is proper enough, or whether there  
is any curve in the street or any obstruc-  
tion in the street. If the question relates  
to permanent conditions, it is unobjection-  
able; but it is not clear. If it relates to  
transient conditions, the possibility of  
seeing at particular times, why then you  
meet the same difficulty we just had: that 30  
the comparison must be made under the  
same conditions that existed at the time  
of the accident. You had better reframe  
your question.

Q. I will ask this question generally now. I  
want to know whether generally and under the  
conditions which prevail now and which prevailed  
on the 7th of January the general conditions,  
whether there was anything about the nature of 40

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the lot on the southwest corner of Mt. Prospect avenue and Montclair avenue—

The Court: That is this (indicating map)?

Mr. Weinberg: No, sir; that is that one (indicating).

Q. —to prevent a view up Montclair avenue—

10 The Court: Consider this to be north (indicating).

Witness: Yes, sir.

Q. —from a position taken by you on the north-bound track, we will say 10 feet south of the south crossing of Montclair avenue and Mt. Prospect avenue?

Objected to.

The Court: You want to know whether there were any obstructions to view on this  
20 lot?

Mr. Weinberg: Yes, sir; whether there was anything on that lot.

Mr. MacSherry: Then I would like the question put that way.

The Court: All I have to consider is whether the question is proper. I think it is. Mr. Weinberg wants to know whether there are any obstructions to view on that  
30 lot.

Mr. MacSherry: The word "obstructions" is not in his question.

Mr. Weinberg: No, sir; anything in the nature of the lot.

Mr. MacSherry: All right, put it in.

Q. Can you answer that question? A. I would like to have it more plain.

By Mr. MacSherry: Q. Do you want it more plain? A. Yes, sir.

40 By Mr. Weinberg: Q. If you were to take a

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position on the tracks of the trolley company, we will say 10 feet south of the south crossing of Montclair avenue, is there anything on this lot that would obstruct your view of a portion of Montclair avenue?

The Court: Was there anything at that time, on the night of the accident, on the 7th of January. 10

Q. Was there anything on the 7th of January?

A. You could see any portion of Montclair avenue.

Q. Up to where? A. At any time of the year, all the way up. I have lived there all my life.

Q. At 10 feet? A. Yes, sir.

Q. Now, if it were 20 feet south of this crossing, how far could you see?

Objected to.

The Court: The question relates to any 20 permanent obstruction standing on that lot. That is perfectly proper, in my opinion, if so understood.

Mr. MacSherry: It seems to me it is immaterial and irrelevant, because it is already in the case and admitted substantially by everybody that you could see nearly down from Clifton avenue a trolley car 50 feet away from the corner.

The Court: Mr. Weinberg may wish to 30 prove it.

(Question read.)

Q. How far up Montclair avenue could you see? A. Twenty feet, I could see all the way up.

Q. If you were fifty feet? I am now speaking with regard to any obstruction on that lot, if there was any obstruction—

The Court: The question is not how far you could see, but whether there was any 40

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obstruction on that lot that would prevent you from seeing. That is a very different question.

A. At fifty feet I could see up a little above Clifton avenue.

10 Mr. MacSherry: I want to get an objection in there. My objection is that the situation should be the same as on the night of the accident. Could he, fifty feet away, from twenty minutes to six to quarter to six on that night of the accident, see all the way up that avenue after the lights were lit?

20 The Court: No, that is not the question. The question is whether there were on that night of the accident any obstructions standing on that corner lot which would prevent a person standing 50 feet away from seeing up the avenue. Whether he could see or not would be dependent on the condition of the light. At midnight he could not see at all probably. The question is as to the permanent obstructions, that is all.

Mr. MacSherry: If the question were put that way I would not object to it.

30 Q. Now, what obstructions were there on the lot at the southwest corner of Montclair avenue and Mt. Prospect avenue on the 7th of January, 1910, what were they? A. You will have to say how many feet I was standing—

40 Q. I am asking you what permanent obstructions were there on the lot at the southwest corner of Mt. Prospect and Montclair avenues on the 7th day of January, 1910? A. Why, there is a slight grade; it is a slight grade for a distance,

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and then it goes up; but it is according to how many feet I stand back.

Mr. Weinberg: Now, you are getting at what I want.

By the Court: Q. Tell us where the grade is.  
A. This is a scale of ten feet to the inch on this map. I think the grade is about 23 feet, about 23 feet; not on a level, but a slight grade; it is 10  
away below the average.

By Mr. Weinberg: Q. Twenty-three feet to what? A. In.

By the Court: Q. Rising? A. Rising.

By Mr. Weinberg: You mean it rises twenty-three feet? A. No, sir; I say there is a hill in here, in here is a hill (indicating).

The Court: Pointing to the interior of the southwest lot.

Witness: This hill doesn't start to go up until 20  
it is in further.

Q. How far in? A. I should say, a rough guess, about twenty-three feet.

Q. Did you measure it to find out? A. I did not.

Q. And for the twenty-three feet about what is the level of that lot above the street level? A. Well, I should say at the beginning of that twenty-three feet it isn't any more than two inches above the curb level, the top of the curb. 30

Q. And how does it continue? A. Of course, it is little ripples, like that (illustrating), but the average, I wouldn't say it was any more than six inches.

Q. Until it strikes what? A. Until it strikes this kind of a hill; what I mean, I would call it a hill.

Q. And then what? A. And then it goes up the hill, just like Montclair avenue would. 40

Charles R. Lynch—Direct

Q. Sort of a little bluff there? A. Yes, sir; the bluff keeps going up, you know, this way (indicating).

By the Court: Q. How is it with reference to the rising line of Montclair avenue? The lot rises and the avenue rises, too. What is their relative height as you go up? A. This hill goes  
10 up this way, and along here it goes in before it raises; the hill kind of sweeps towards this way (indicating).

Q. Towards the west? A. Towards the southwest, I would say.

By Mr. Weinberg: Q. Then for twenty-three feet south of the corner of Montclair avenue on Mt. Prospect avenue what is the nature of that lot with relation to grade? A. Twenty-three feet long there (indicating)?

20 Q. Yes. A. Twenty-three feet right along there is practically level, I say.

Q. After you pass the 23 feet? A. It keeps on level all along there until it hits the grade. In here there is no obstruction whatever (indicating).

The Court: Pointing to the portion of the lot nearest to Mt. Prospect avenue.

Witness: What we call a lot, it is the lot right along.

30 Q. How long is that? A. That lot continues half-way up the block before it strikes a house, over half-way up the block.

By the Court: Q. What is, to the south or west? A. Half-way up the block— I would like to explain.

Q. Towards Grafton avenue? A. Grafton avenue is up quite a distance, I would like to explain.

Q. Well, in that direction? A. Yes, sir.

40 By Mr. Weinberg: Q. Is there anything on that

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lot to obstruct the view of a person on the north-bound track a hundred feet from Montclair avenue?

Objected to on the grounds before stated.

The Court: No, this relates to a permanent obstruction. You may answer the question.

Objected to as immaterial and irrelevant. 10  
Objection overruled.

(Defendant's counsel prays an exception, and the same is allowed.)

(Question read.)

A. You mean how far I could see up?

Q. Is there anything on that lot?

The Court: Is there anything to cut off the view?

Mr. Weinberg: Up Montclair avenue?

A. A hundred feet in— 20

Q. To a person standing a hundred feet in on the north-bound track?

Objected to on the same grounds.

Objection overruled.

Defendant's counsel prays an exception, and the same is allowed.

A. I can see most of Montclair avenue.

Q. Is there any obstruction that would prevent your seeing Montclair avenue? A. No, sir.

By the Court: In other words, does the hill cut 30 the view off? A. No, the hill don't cut my view off.

By Mr. Weinberg: Until you go how far south of the south crossing of Montclair avenue?

Same objection.

Same ruling.

Defendant's counsel prays an exception, and the same is allowed. 40

## Charles R. Lynch—Direct

A. About 112 feet; then your view is cut off as far as Clifton avenue.

By the Court: Q. By what? A. By the hill.

By Mr. Weinberg: Q. Then you can not see above Clifton avenue? A. Well, a little bit, not much.

Q. Were you out on the street the day your sister was injured? A. Yes sir.

Q. Where were you at the time? A. At the time of the accident?

Q. Yes. A. I was a little below Mt. Prospect avenue on Montclair avenue.

Q. A little below; that is, east? A. That is, east of Mt. Prospect.

Q. Tell me what you saw of this affair. Did you see the bobsled? A. I did.

Q. Where was it when you saw it? A. The first time I seen it?

Q. Yes. A. I seen it before it started and I seen it—the next time I looked it was pretty near Clifton avenue.

Q. Where was it, what part of the street was it in? A. Well, about the centre.

Q. Could you hear it coming? A. Yes, sir.

Q. How could you tell it was coming? A. By the bell.

Q. Did you hear the bell? A. Yes, sir.

30 Q. And you were at that time on Montclair avenue how far from Mt. Prospect avenue? A. A few feet.

Q. Did you see anything of the trolley car before the accident? A. Not when I first saw the bob, I didn't see the trolley car; I didn't notice it; I was looking up the hill.

Q. Did you see Raymond Martin there that day? A. I did.

Q. What was he doing when you saw him? A. 40 When I saw the bob?

## Charles R. Lynch—Direct

Q. What was Raymond doing when you saw him? A. The first time I seen him he was standing in the car track. That wasn't the time of the accident, though; that was before the accident.

Q. I did not ask you that, did I? A. No.

Q. Just listen to what I am asking you. He was standing on the car tracks where, whereabouts? A. Can't I get this a little clear, please? 10

Q. You are getting a little excited and nervous? A. No, I am not nervous at all. Do you mean the time this particular—

Q. When you saw Raymond Martin—I don't know when you saw him, but you said you did see him. A. I did.

Q. That is plain English. When you saw Raymond Martin where was he? A. He was running up the tracks.

Q. And how far from Montclair avenue was he 20 when you saw him running up the tracks? A. 45 or 50 feet, somewheres around there; it was about the lot—

Q. Did you see how far he ran to? A. It was to that first house, about to the first house there.

Q. Did you see him stop or didn't you? A. I didn't notice him stop.

Q. Did you see a car at that time? A. I did.

Q. Where was the car? A. Well, you mean the number of feet? 30

Q. There you are again, a young man studying surveying and asking that question. A. Forty or fifty feet away from him.

Q. What direction away from him? A. South of him.

Q. And he was near the end of the lot? A. Yes, sir.

Q. What else did you see? Did you see the car coming on or didn't you see it? A. I did. 40

Charles R. Lynch—Direct

Q. Well, tell us what happened. What did you see the car do, if anything? A. I saw the car come along; I saw the boy try to wave the car back.

Q. What did he do? A. He waved his hands.

Q. What do you say? A. He ran up the track that way (illustrating).

10 Q. He did not run up the track that way; he waved that way. A. He waved that way. Of course, he, naturally, ran up the track, as I said before.

By the Court: Q. Waving his hands in what direction? A. Towards the car, south. The car was coming north.

Q. You see, your gestures do not go down on the record, and so we have to describe them. A. That is all right. Ask me what you want; I am here  
20 to tell what I know.

By Mr. Weinberg: Q. What did you see the car do from that point on? A. I seen the car come and slow up.

Q. Whereabouts did it slow up, near what point was it when it slowed up? A. The car slowed up practically about pretty near the south crossing.

Q. And then what did the car do? A. The car kind of added on speed again.

30 Q. And then what did you see happen? Did you see the car and the bob come together, or didn't you? A. No, sir.

Q. You were on what corner? A. I was on this corner (indicating).

Q. Was the car between you and the bob then, at the time of the collision? A. Yes, sir; I only could see the east side of the car.

Q. Did you see the car stop, come to a stop, or after it was stopped? A. I seen it after it was  
40 stopped.

## Charles R. Lynch—Cross

Q. Where was it after it stopped? A. The end of the car was about, I will say, 8 or 10 feet past the crossing, and maybe more.

Q. Past what crossing? A. Past the north crossing.

By the Court: Q. You mean the rear end? A. The rear end was 8 or 10 feet or more; it wasn't any less than that, I am sure of that. 10

By Mr. Weinberg: Q. Where was the sled when it stopped? What was the position of the sled and the car? A. Oh, they were practically parallel.

Q. How far from each other? A. When I seen them after the accident?

Q. Yes. A. I didn't quite notice that.

Q. You found your sister injured, did you? A. Yes, sir.

Q. What did you do with her? A. I picked her up and took her down to my father's office. 20

Q. And then she went home? A. Then they carried her home.

Q. Then she was taken home? A. Yes, after they fixed the leg.

## CROSS-EXAMINATION by Mr. MacSherry:

Q. How far is it from Clifton avenue to Mt. Prospect avenue? A. Oh, about 280 feet more or less.

Q. You are not sick this morning, are you? A. 30  
No, sir.

Q. You are in good health, are you? A. I think so.

Q. Where was the bobsled when this little boy, Raymond Martin, ran up after the car? A. I should say it was pretty near Clifton avenue. That is what I told Mr. Weinberg.

Q. Had it reached Clifton avenue? A. I don't think so. 40

## Charles R. Lynch—Cross

Q. This boy ran about 45 feet up the road? A. Well, I say to the first house, about to the first house.

Q. And when he got up there the car was about 45 feet away? A. About 45 or 50 feet, I would judge.

Q. From him? A. From him.

10 Q. And how was the car coming? A. In the way of speed?

Q. Yes.

The Court: The trolley car.

A. I should think the car was coming quite speedy.

Q. Well, when it got near the boy it began to slow up, did it not? A. Yes.

Q. It began to slow up 45 feet away from the south corner of Mt. Prospect avenue and Montclair avenue, the end of the lot? A. Well, around the end of the lot there.

Q. And when the car was slowing up about that distance, 45 feet from the corner, where was the bobsled then? A. I can't answer that question.

Q. Why not? A. Because I don't recollect clear enough to answer the question.

Q. Why, didn't you see the bobsled coming? A. I did.

30 Q. Where was the bobsled? Didn't you see it leave Clifton avenue? A. I saw it about Clifton avenue; I didn't see it—

Q. When the trolley car got to the south corner of Montclair avenue and Mt. Prospect avenue where was the bobsled then? A. The bobsled was making the turn then.

Q. Well, that is right, is it? A. I think so.

Q. Are you sure of that? A. As far as I can recollect.

40 Q. Did you see it? A. I did.

Charles R. Lynch—Cross

Q. Was it skidding? A. I don't recollect.

Q. Then while the trolley car was running about 90 feet and slowing up within that distance, the bobsled only ran the length of that block, 280 feet?

A. The car wasn't slowing up that distance.

Q. I didn't say that, did I? I said within that distance at one time it was slowing up. A. Well, it only slowed up for that minute; it only slowed 10 up for that time; it didn't for any distance whatever.

Q. Then while the trolley car was going 90 feet the bobsled was going 280 feet? A. I told you I didn't notice the bob—

Q. Won't you answer my question. A. Well, I want to make clear; I want to answer what I know; I don't want to answer what I don't know.

Q. Haven't you said that the trolley car was about 45 feet from the end of the lot, which would 20 make it about 90 feet from the corner—

Mr. Weinberg: That is wrong, in the first place. That would make it 135 feet from the corner.

Mr. MacSherry: He has testified that the boy ran up 45 feet to the end of the lot and waved to the trolley car, which was then about 45 feet away from him.

The Court: I thought the testimony was that the witness ran up to the end of the 30 lot, which was 85 feet deep.

Q. Did you say he ran up to the end of the lot or ran up 45 feet along the lot? A. Well, he ran up around the end of the lot. It isn't exact; I don't know the exact step.

Q. Did you not say he ran up about to the house? A. About to the end of that lot, about.

Q. About to that house? A. About to the end 40 of the lot.

## Charles R. Lynch—Cross

Q. And when he got to the end of that lot the car was 45 feet away? A. About.

Mr. Weinberg: From him.

Mr. MacSherry: From him.

Mr. Weinberg: You do not say that.

Witness: That is understood.

Q. And when he started to run the bobsled was  
10 above Clifton avenue? A. When he started to run?

Q. Yes. A. Just about around Clifton avenue.

Q. And it ran down that distance of 280 some feet while the trolley car was coming from the point where you say it was when the boy waved his hand? A. What is that?

(Question read.)

Q. Do you mean to say that? A. I mean to say this—

20 Q. Just answer that question.

Mr. Weinberg: Yes or no.

A. Yes.

Q. How long did it take the boy to run this 45 feet, do you think? A. I haven't any idea.

Q. How long did it take the bobsled to run from Clifton avenue down to Mt. Prospect avenue? A. I didn't time it.

Q. What do you think? You are a surveyor.

30 A. Well, if I had noticed it I might have told you, but I didn't notice it.

Q. About how long? A. Well, I should say it would take about—

Objected to as not cross-examination.

Objection overruled.

Q. About how long did it take that bobsled to run from Clifton avenue to Mt. Prospect avenue.

A. I should say about a minute or a minute and a half, as near as I can remember; I don't know exactly; a minute or a minute and a half, I should

40 judge.

## Charles R. Lynch—Cross

Q. Ninety seconds? A. I should judge so.

Q. That bobsled? A. I should think so.

Q. How long did it take this trolley car to run this 90 feet, do you think? A. I couldn't see both of them at the same time; I don't know what time it made.

Q. It does not take that long to run from the top of Ridge street, does it—your bobsled? A. 10  
You are asking about the trolley car aren't you?

Q. I am asking about the bobsled. Don't you know that that bobsled ran down from Ridge street to Mt. Prospect avenue in about twelve or thirteen seconds? A. I certainly do not.

Q. How long do you think it took to run down there? A. The bob?

Q. Yes.

Mr. Weinberg: One moment. Is that at all competent, how long he thinks it takes 20  
a bob?

The Court: Not unless his thinking is founded on observation of this particular bob.

Q. Have you seen that bob start down from Ridge street? A. I have.

Q. How long does it take to run down from Ridge street to Mt. Prospect avenue? A. A minute or a minute and a half, I should judge.

Q. You have already said it took a min- 30  
ute or a minute and a half to run from Clifton avenue? A. I beg your pardon! I meant from Ridge street.

Q. How long did it take at the time of the accident to run down from Clifton avenue to Mt. Prospect avenue? A. About three-quarters of a minute.

Q. Don't you know that the trolley car was across Montclair avenue when the bobsled was 50 40

## Charles R. Lynch—Re-direct

feet from the corner and was skidding? A. I do not.

Q. You do not know that, do you? (No response.) That is all.

By the Court: Q. You gave us your estimate of the distance from Clifton avenue to Mt. Prospect avenue. Have you any knowledge as to the  
10 distance from Ridge street to Clifton avenue? A. Yes, sir; I understand the lots—the lots there are a hundred feet deep; that would make it about say, 200 or 200 odd feet.

RE-DIRECT-EXAMINATION by Mr. Weinberg:

Q. Have you any idea as to the distance from Montclair avenue to Grafton avenue; that is, the street south? A. Why, the distance between  
20 Montclair to Grafton avenue is as much if not more than the distance from Mt. Prospect to Ridge street.

Q. About as big as those two blocks? A. Oh, yes; it is an extra long block.

By the Court: Q. Say 500 feet? A. Over 500 feet.

By Juror No. 5: Q. I did not quite understand that. Is it 500 feet from Mt. Prospect avenue to  
30 the lower point?

Mr. Weinberg: No, sir; from Montclair avenue to the street first south.

Juror No. 5: I would like to be enlightened on that. Is it over 500 feet from Mt. Prospect avenue, coming down, where there are no street car tracks?

The Court: Do you refer to the answer to the last question?

40 Juror No. 5: Yes, sir.

Charles R. Lynch—Re-direct

The Court: The 500 foot measurement?

Juror No. 5: Yes, sir.

The Court: It was a measurement, not on Montclair avenue, but on Mt. Prospect avenue, in the direction from which the car came, down to the next street; that was the 500 foot measurement.

Juror No. 5: Oh, I see now. If your 10  
Honor please, let us find out what the distance is from the street car tracks coming down this way down the hill. I don't know the names of those streets.

The Court: East of Mt. Prospect avenue?

Juror No. 5: Yes.

By the Court: Q. What comes next? A. First comes Mt. Prospect, Woodside avenue, then Summer avenue.

Q. How far is it to Woodside avenue from Mt. 20  
Prospect avenue, do you know? A. I can tell you about; I should say about 275 or 280 feet, about.

Q. Now let us have the next street, from Woodside avenue to Summer avenue.

Juror No. 5: The distance I would like to know is the incline, how much of the street inclines from the street car tracks at Mt. Prospect avenue to that end of the hill, where the sleds stopped when they were coasting. 30

Q. You may tell us what you know about that grade. A. It is a grade from Mt. Prospect avenue to Woodside avenue, so that a sled—

By Juror No. 5: Q. I don't care how many streets it is. I would like to know about where your sleds stopped when they got a good start. Where did they stop at the foot of the hill? A. They stopped around Summer avenue.

Q. Well, I don't know anything about the streets. A. Well, first comes Woodside— 40

Charles R. Lynch—Re-direct

Q. But I would like to know how many feet. You have given us the distance from Ridge street to Mt. Prospect avenue. Now we would like to know when you pass Mt. Prospect avenue how far your sled—how many feet do you go down? How much coasting is there there? A. This next grade coming here (indicating on map), that is about 275  
10 feet; that is a block long.

Q. Now, you go to another street, do you not?  
A. Between Woodside avenue and Summer avenue it is practically level.

By Mr. MacSherry: Q. What is the length of it? A. Do you mean about?

Juror No. 5: Yes, that is my idea, and I believe it is very essential to know it.

Witness. 225, more or less, feet.

By Juror No. 5: Q. From Mt. Prospect avenue?  
20 A. From Woodside avenue to Summer avenue.

The Court: Let me make a suggestion. Your question is already answered. As you go down that hill below Mt. Prospect avenue you first come to Woodside avenue and then you come to Summer avenue. The witness has already said that from Mt. Prospect avenue to Woodside avenue is about 275 or 280 feet and from Woodside avenue to Summer avenue is 225 feet, more  
30 or less, which makes somewhere about 500 feet which the bob would run before it stopped after crossing Mt. Prospect avenue. That is your point, is it not?

Juror No. 5: That is my point. I simply wanted to say, when he mentioned the streets I haven't been in that neighborhood; I am not familiar with it.

Charles R. Lynch—Direct

RE-CROSS-EXAMINATION by Mr. Mac-Sherry:

Q. About what is the width of Clifton avenue?

A. I can't say that; I never took a good look at Clifton avenue.

Q. Well, about? A. No, I wouldn't say.

Q. Well, is it as wide as Mt. Prospect avenue?

A. No, sir. 10

Q. Is it as wide as Montclair avenue? A. Well, that—I never took—

Q. Well, is it 50 feet wide? A. I never took a good look at Clifton avenue to say.

FURTHER DIRECT-EXAMINATION by Mr. Weinberg:

Q. Is there any grade between Mt. Prospect avenue and Woodside avenue, which is the street east of Mt. Prospect avenue? A. There is. 20

Q. So that, I think you started to say, a sled would go itself if it started at Mt. Prospect avenue and went down toward the bottom of the map, say, east, did you not?

Objected to.

A. Yes, sir.

The Court: The question is whether a sled would run. That question is too vague to be answered. Strike out both the question and the answer. It depends on the sled and on the weather, and on lots of things. If you can get the physical facts, as to the grade, as to the weather this bob would run, the conditions being the same. 30

Q. Do you know whether on that afternoon a sled or a bob would go from Mt. Prospect avenue to Woodside avenue without a start above?

Objected to. 40

Charles R. Lynch—Direct

The Court: Well, that is hypothetical. If the witness saw this bob started from Mt. Prospect avenue, coming down towards the east, he can answer what he saw; but I think the question is too hypothetical. I sustain the objection.

Q. Well, what was the condition of Montclair  
10 avenue east of Mt. Prospect avenue—that is down  
towards Woodside avenue—with regard to ice  
and snow that evening? A. The same thing as  
above.

Q. The same as above? A. Yes.

Q. And what, in your judgment, was the grade  
of Montclair avenue from Mt. Prospect avenue  
to Woodside avenue? A. Well, you mean the  
drop?

Q. Yes, the drop, the grade. A. Well, I just  
20 couldn't say that.

Q. You mean you can not state it in inches and  
feet? A. No, I can't state it, because I have  
never—

By the Court: Q. Well, was it more or less feet  
than up above? A. Oh, it is less in steepness, in  
grade, but there is a grade there.

Q. There is a grade? A. Yes, sir.

Q. But it is not so steep a grade as up above?  
A. Not so steep, but there is a grade.

30 Q. Now, the next block, from Woodside avenue  
to Summer avenue. A. It gradually slopes down  
until it gets to Summer avenue.

Q. Is the grade from Woodside avenue to Sum-  
mer avenue about the same or does it differ from  
the grade between Mt. Prospect avenue and Wood-  
side avenue? A. It is a good deal less.

Q. Not so much? A. No, it slopes right down;  
it isn't as much.

Q. It is not as much? A. No, sir; it isn't as  
40 much.

## Jeannette Farrell—Direct

JEANNETTE FARRELL sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. Miss Farrell, where do you reside? A. 357 Woodside avenue.

Q. Newark? A. Yes, Newark.

Q. And you have resided in Newark how long? A. About ten years. 10

Q. How far do you live from the corner of Mt. Prospect and Montclair avenues? A. One block east, and about half a block south on Woodside avenue.

Q. Are you familiar with the corner of Montclair avenue and Mt. Prospect avenue? A. I am.

Q. Do you recollect the 7th of January, 1910? A. I do.

Q. Were you in the vicinity of Montclair and Mt. Prospect avenues on that day? A. I was. 20

Q. At what hours? A. Between four and four-thirty and again between five-thirty and quarter of six, or, I should state, between six o'clock, because I was there between five-thirty and six.

Q. Between four and four-thirty what were you doing there? A. I was watching the coasters on the hill.

Q. And where were you standing? A. On the southeast corner of Montclair and Mt. Prospect avenues. 30

Q. Were there many coasters at that time? A. I should judge about between thirty and fifty.

Q. And what kind of appliances were used? A. Single sleds and a bobsled.

Q. How many bobs? A. Only one, that I noticed.

Q. Do you know whose bob that was? A. I do not. 40

## Jeannette Farrell—Direct

Q. Between four and four-thirty o'clock did you observe the movements of the trolley cars on Mt. Prospect avenue? A. I did.

Q. What did you observe as to their stopping places? A. They stopped at both crossings, the near and the far crossing.

Q. Just explain that a little more. Cars that  
10 were going north would stop where? A. On the south crossing.

Q. And then, you mean to say, they would stop again when they reached the other side? A. Yes.

Q. And cars going south would stop where? A. On the north crossing first, and again—well, they don't often stop on the other crossing, because they—

Q. Cars going south would stop on the north crossing? A. Yes, sir.

20 Q. Now, between four and four-thirty o'clock how many cars do you think you saw do that? A. Approximately five or six, four or five.

Q. And those cars that you saw stop at that hour, can you tell us what caused them to stop at those crossings as they did, as you relate? A. The motorman stopped of his own accord.

Q. The cars that you saw stopping on those corners, were they stopped by reason of anything that you could see occurring in the street? A. No,  
30 sir.

Q. By the act of any person on the street? A. No, sir.

Q. Was there anything to prevent you from seeing if anybody would cause these cars to stop on the streets? A. No, sir.

Q. Now, you went away at half-past four? A. As nearly as I can judge.

40 Q. And you came back again at what time? A.

## Jeannette Farrell—Direct

Between five-thirty and six, quarter of six, about twenty-five minutes of six, I should say.

Q. What was your intention when you came back to the corner at that time? A. I beg your pardon.

Q. What brought you back to the corner at that time A. To take a south-bound trolley car to the Delaware, Lackawanna station. 10

Q. And where did you take your position at that time? A. On the northwest crosswalk, on the street corner.

Q. On the northwest crosswalk. Will you point to it on the map, if you can show us? A. Let me see. Here (indicating on map).

Q. Right about where that little station box is? A. Yes.

Q. There is a sort of a station passenger box there? A. Not now; there was. 20

Q. There was? A. Yes, sir.

By the Court: Q. The northwest crossing? A. Yes, sir.

Q. You said the crosswalk. Is there a crosswalk there? A. Well, there is a crosswalk there. I was part of the time on the crosswalk and part of the time right there (indicating).

By Mr. Weinberg: Q. You say you were waiting for a car going south? A. South.

Q. And you stood on the first crosswalk? A. 30 I did.

Q. Now, during the time you stood there did you see any trolley cars come in either direction, coming from either direction? A. One car came down, came southbound, filled with passengers; I couldn't get a seat, and I didn't board it.

By Mr. MacSherry: Q. Could not get a seat? A. No, sir; or, rather, I thought that I couldn't. The car was crowded with workmen. 40

## Jeannette Farrell—Direct

By Mr. Weinberg: Q. Did that car stop, Miss Farrell? A. It did.

Q. And it stopped on what crossing? A. On the northwest crossing.

Q. On the north crossing? A. Yes sir.

Q. That is the first crossing? A. Yes, that is the first crossing.

10 Q. Did it stop again across the street? A. No, I think the passengers all boarded it there.

By the Court: Q. That was the car you did not take? A. That is the car I did not take.

By Mr. Weinberg: Q. Did you notice any car coming north while you were waiting there at that time? A. Only the one in question, of the accident.

Q. Did you see any other; that is, before the car that came in collision? A. No, sir, North-bound?

20 Q. North-bound? A. No, sir.

Q. This was the first car that came from the south? A. As I remember it.

Q. At that particular time? A. Yes.

Q. Did you at that time see anybody in the street, any boy, that you had your attention attracted to? A. I saw a boy who was stationed there signalling.

Q. Which way was he signalling? A. Signalling up the hill to the coasters.

30 Q. Did you observe this car in question coming from the south? A. I did.

Q. Where was this car when you first saw it? A. Well, I think it was just past the signal station in the middle of the block, south, south of the signal station.

Q. In the middle of the block between Montclair and Grafton avenues? A. Yes, sir.

40 Q. Do you know about how far that is from the corner of Montclair avenue? A. I have no idea.

## Jeannette Farrell—Direct

Q. Quite some distance, is it not? A. Yes, sir.

Q. How was the car going at that time? A. Quite rapidly.

Q. Now, you say you saw this young man who was signalling the sleds? A. I did.

Q. Do you know who it was? A. I didn't at the time; I have since learned in court.

Q. The boy who was in court, Raymond Martin? A. Yes. 10

Q. What did you see him do? A. I saw him stand there and signal the coasters to come down the hill. As the car approached and gave no evidence of stopping at the south crosswalk, he ran down and signalled with his hand to the motorman, this way (illustrating), to stop. The car slowed slightly, put on a burst of speed as if to pass the sledders and came on.

Q. And at the time when Raymond made his motion to the car, about how far south of Montclair avenue was he at that time? A. I can't say the distance. I saw him run beyond the south-bound crosswalk. I can't approximate distances, but he ran below that south-bound crosswalk. 20

Q. And how far he ran you do not know? A. How far he ran I do not know.

Q. Was there anything on the street that you could fix the distance by? A. No.

Q. Any object there? A. No. 30

Q. You did not notice how far down he ran? A. No, I did not notice how far down he ran.

Q. As the car came over Montclair avenue what was its speed? A. It was going quite rapidly.

Q. Do you remember whether it rang any gong or sounded any bell? A. It did.

Q. The car? A. It did.

Q. And do you know if the bob rang a bell? A. It did. 40

## Jeannette Farrell—Direct

Q. Where did the car start to ring the bell, where did the car sound the bell? A. Well, I noticed the bell ringing at it approached Montclair avenue.

Q. How far? A. Between the signal station and Montclair.

Q. Did you notice it after that? A. No, because the gong on the bobsled was so much closer to me that it prevented my hearing the gong on the car.

Q. Which was the louder? A. Well, as the bobsled neared me the gong on the sled was loudest in my ears.

Q. Where was the bob when you saw it? A. I can't say exactly; I think about at Clifton avenue.

Q. Did you keep your eye on it as it came down? A. Not entirely, no.

20 Q. You did not? A. I did not.

Q. Did you notice the bob turning? A. I did.

Q. Where, in your opinion, was the bob when it started to turn? A. Along about the sidewalk line of Montclair avenue and Mt. Prospect.

Q. That would be that first blue mark on the map there (indicating)? A. Yes.

Q. The blue line at the upper part of the map? A. Yes.

Q. At that time can you tell me about where the car was? A. I can't tell you the exact position of the car; it was somewhere between the signal and Montclair avenue. Oh—

Q. I do not think you understand my question. A. No.

Q. At the time the bob started to turn into Mt. Prospect avenue where was the trolley car? A. As near as I can judge, about the forward end of the car—they were about at the end of the south cross-  
40 walk.

## Jeannette Farrell—Direct

Q. The forward end of the car was about at the south crosswalk? A. As nearly as I can remember.

Q. Did you see the bob and the car come together? A. I did.

Q. How did they come together? A. The bobsled turned north, crossing the south-bound track, and the car and the bobsled came together this way, locking (illustrating). 10

Q. V-shaped? A. Yes, sir; locking; the forward end of the car and the forward end of the bob locked; and they rode in that position until the sudden application of the brakes by the motor-man, and they were carried about a car's length distance beyond the crossing, as near as I can approximate, almost opposite the house there.

By the Court: Q. Opposite what, opposite the house? A. Right next to the shed there (indicating on map.) 20

By Mr. Weinberg: Q. At what point was it that the bob and the car locked? A. At about the northwest crossing, the north crossing.

Q. You mean when the front of the car got to the north crossing, about that? A. Yes.

Q. And they went along in that position for about a car length? A. As nearly as I can remember.

Q. Of course you saw the children injured? A. 30 I certainly did.

Q. Did you see the car when it came to a stop? A. I did.

Q. Did you notice the position of the bob at that time? A. I did.

Q. What were their positions? A. Close together. The application of the brakes shoved the bobsled back, removed the contact—

Objected to.

40

## Jeannette Farrell—Cross

The Court: We have the cause of it. You may state the result, the situation that resulted, from whatever the cause was.

By the Court: Q. They were unlocked? A. They became unlocked; yes, sir.

CROSS-EXAMINATION by Mr. MacSherry:

10 Q. Where did you live at the time of this accident, Miss Farrell, please? A. 357 Woodside avenue, Newark.

Q. You are an actress by profession, I believe?

A. I am.

Q. What line, tragedy, comedy or farce?

Objected to as immaterial.

The Court: Inquiries of this kind are always permissible.

Mr. MacSherry: I wanted to know what  
20 line of acting it was.

A. I have followed both comedy and dramatic.

Q. Are you engaged in any company now? A. I am not.

Objected to as immaterial.

The Court: Why, all these questions are quite within the usual practice.

Q. (Question read.) A. I am not.

Q. How long since you have been engaged by any company? A. Last November.

30 Q. What company was that, please? A. Thomas Jefferson.

Q. Playing in what? A. The Other Fellow, a farce-comedy, at the Bijou Theatre, New York City.

Q. At the time of this accident, were you engaged in any company then? A. I was.

Q. What company? A. His name on the door.

40 Q. Playing where? A. Brooklyn, New York.

## Jeannette Farrell—Cross

Q. You were not playing this day, though, were you? A. Not during the day; no, sir.

Q. Playing at night? Yes.

Q. And did you at the time know this young lady, Miss Lynch? A. Not personally.

Q. Did you know her people? A. Not personally.

Q. Have you become acquainted with them since? A. I have. 10

Q. Have you talked with them about this case? A. Yes, sir.

Q. Have you talked with other people? A. Only my own family.

Q. Well, you have talked with somebody else, have you not? A. I may have; I can't recollect.

Q. Did you talk with anybody that came up to see you from the traction company? A. Oh, yes, with your traction representative; yes, sir. 20

Q. He was a young man, was he not? A. I can't state his age.

Q. Well, I know you can not state his age, but you can remember whether he was a young man. A. I don't think he was very young.

Q. He was not aged, like the rest of us here, was he? A. I don't know about that.

Q. Well, you gave a statement to a representative of the traction company? A. I did; yes, sir. 30

Q. Do you remember his name? A. I think it is Bodecker. I didn't remember it until I heard it here.

Q. You have seen him in court here, have you not? A. I think I saw him in the hall.

Q. Did you see him in court yesterday? A. I saw him outside.

Q. Well, you made a statement to him as to how this accident happened? A. I did.

Q. What you saw? A. Yes, sir. 40

## Jeannette Farrell—Cross

Q. And did he reduce your statement to writing? A. I believe he did.

Q. In your presence? A. Yes, sir.

Q. Was anybody else with you? A. Not in the room; my father and mother were there.

Q. Did you sign it? A. I did.

Q. And did you read it over before you signed  
10 it? A. Yes, sir—he read it to me, I believe. I am not certain about that.

Q. Don't you think you read it before you signed it? A. I am not certain about that.

Q. You would, naturally, would you not? A. I think I would.

Q. Now, this was at your home, was it not? A. Yes, sir.

Q. On the 14th day of February, 1910? A. I couldn't tell you the date.

20 Q. This is the young man, is it not (indicating)? A. Mr. Bodecker; yes, sir.

Q. Do you remember telling him that on the 7th day of January, 1910, about quarter of six, you were standing at the north-west crossing of Montclair avenue and Mt. Prospect avenue? A. Yes, sir.

Q. Do you remember telling him you noticed a number of children coasting down the Montclair avenue hill? A. Yes, sir.

30 Q. Do you remember telling him it was dark at the time? A. I told him it was dusk at the time.

Q. Did you tell him it was dark at the time? A. I don't think I said "dark."

Q. Did you say you took particular notice of a boy of about sixteen who was stationed at the crossing and making signals? A. Yes, sir.

Q. Did you tell him that you noticed his code of signals was that one hand raised high meant  
40 danger, or "stay back," and when he held up two

## Jeannette Farrell—Cross

hands it was a signal to come on, that everything was clear? A. I remember I gave him the signals, but I don't remember those signals now.

Q. Do you remember saying to Mr. Bodecker in this interview: "Just before this accident happened I noticed this boy hold up one hand, and I saw a north-bound car approaching then about at Grafton avenue, one block away"? A. 10  
I gave him some statement, but I don't remember what it was there—exactly those words.

Q. Do you remember telling him: "The bobsled was then at the top of the hill and it had not yet started"? A. I must have told him so.

Q. Do you remember telling him: "Then, regardless of the signal denoting danger, however, I was very much surprised to see this bobsled coming down the hill like a streak of lightning"? A. I must have told him so if it is there. 20

Q. Do you remember this: "When the bob was about midway between Clifton and Mt. Prospect avenue this north-bound car had then reached the south crossing of Montclair avenue and going along at a moderate rate of speed"? A. If it is there I must have said so; I don't know. I would like to read it myself, however.

Q. I am going to give you the pleasure, but I wouldn't read it if it was not here. Do you remember this: "I then realized that an accident would happen, and I screamed"? A. I know I told him I screamed at the motorman. 30

Q. "I screamed at the motorman to stop, but the combined noise of the car and the bob and the ringing of gongs, which I can't say came from the bob or car, served to deaden my screams at the motorman;" do you remember that? A. No.

Q. Do you remember saying: "The next in- 40

## Jeannette Farrell—Cross

stant, as the front of the car was within eight or ten feet of the north crossing the bob crashed into the forward left trucks of the car, striking the trucks diagonally"? Do you remember telling him that? A. I remember making the statement. I can't remember all these things individually, Mr. MacSherry.

10 Q. Do you remember this: "As the boy tried to steer the bob to the left when he saw his danger, and the front of the bob seemed to lock in with the front trucks"? Do you remember telling him that? A. Yes.

Q. "And the sleigh was dragged along parallel with the car for a distance of about twenty feet;" do you remember that? A. Yes.

Q. Do you remember telling him that you did not know the boy who was acting as signal man?

20 A. I did.

Q. Do you remember saying that the car appeared to be lighted up as it came along? A. Yes, sir.

Q. Do you remember saying this: "I am sure it was impossible for the boy steering the bob to observe the signal man at the foot of the hill before he, the boy, started down the hill"? Do you remember saying that? A. I must have said it; I don't remember it.

30 Q. Do you remember saying: "It was dark and the starting point was over two blocks away"? A. That is right.

Q. Do you remember saying: "I know the bell on the bob was ringing as it was coming down the hill, and I can not say whether or not the motorman rang his gong"? A. I don't remember that exactly.

Q. I will just show you the three sheets of paper and ask you if you recollect that—if that  
40 is your signature to that statement (shown to

## Jeannette Farrell—Re-direct

witness)? A. That is my statement; yes, sir; I think that is my statement.

Q. Is it right, is it correct? A. As nearly as I can remember. Fourteen months have elapsed; it is hard to remember.

Q. Then you thought at that time that the boy had given the wrong signal? A. I don't know.

Mr. Weinberg: It does not appear that this witness knows what those signals were. 10

The Court: No, the question is what she then thought.

Q. You thought at the time that the boy had given the wrong signal, that the track was clear, when it was not, did you not? A. I must have thought so.

Q. Because you so stated? A. Yes.

Q. And signed the statement? A. Yes. 20

Q. Your recollection of what occurred that night was better, naturally, then, when you made this statement, on the 14th day of February, than it is today, after this length of time? A. My recollection of it is very vivid; it was a very horrible affair; it is very vivid.

Q. But you say your recollection in February, 1910, must have been much clearer than it is today, do you not? A. It may have; I couldn't say. 30

Q. You now say, on reflection, that the gong of the street car was ringing as it approached Montclair avenue? A. I think it was.

RE-DIRECT-EXAMINATION by Mr. Weinberg:

Q. Your statements this morning, as you have given them in court, Miss Farrell, are they statements of fact and are they true? A. They 40

## Jeannette Farrell—Re-direct

are as nearly as I can remember the facts of the case, Mr. Weinberg.

Q. This statement from which extracts have been read—

Mr. MacSherry: I read all the statement.

Mr. Weinberg: When was it made?

10 Mr. MacSherry: February 10th.

Q. Those statements were made where? A. At my home.

Q. I presume Mr. Bodecker asked you questions? A. He did.

Q. And you gave answers? A. I did.

Q. They are not so stated in this statement, are they? A. No.

Q. In the form of question and answer? A. No.

20 Q. And he was doing the writing? A. Yes.

Q. And he formed this phraseology himself, did he? A. A portion of it; I don't know how much of my answer he took down, but a portion of it was his question.

Q. And after the statement was completed you signed it? A. I did.

Q. Do you know whether you read it all over? A. I don't remember whether I read it all through or not. My time was limited when Mr.  
30 Bodecker was there, and I don't remember whether I read it all or not.

Q. You said in there that you screamed at the motorman? A. I did.

Q. How far away was the car at that time? A. Well, it was either on the south crosswalk—I know that I was waiting, expecting him to stop, and he didn't, and when I saw that he didn't stop  
40 I screamed.

## Jeannette Farrell—Re-cross

Q. And he was then on the south crosswalk?

A. I think so.

Q. What portion of the car? A. I don't know; I think about the forward part of the car, the trucks, was at the south crosswalk.

Q. When you saw that he was not going to stop you screamed? A. Yes, when I saw he was not going to stop. 10

Q. Did you do anything besides scream? A. I didn't do anything; I couldn't.

Q. Did you show yourself there in the street? A. I was standing there; anybody could see me.

RE-CROSS-EXAMINATION by Mr. MacSherry:

Q. In order that there can be no discussion about it, Miss Farrell, will you be good enough to look at these three pages signed by you and tell me if there is anything there that is not correct (shown to witness)? 20

Mr. Weinberg: What do you mean by "not correct"?

Mr. MacSherry: Not true.

Mr. Weinberg: I do not understand that the purpose of these statements is to show anything else but contradictions here. To verify this statement and put it in would be putting in so much evidence in writing of a witness. 30

A. I think the word "dark" is used here where I used "dusk."

Q. Anything else?

The Court: There is nothing now before the Court. Therefore I do not rule on anything.

Mr. Weinberg: I object to it.

The Court: I did not catch your objec- 40

## Freda Lynch—Direct

tion; I did not know you made an objection.

Mr. Weinberg: Yes, sir; I did. I object to the witness examining the statement in answering this question—verifying this statement.

The Court: I overrule the objection. Of  
10 course, the statement is not evidential.

Q. Well, is that correct? A. The main incidents of it are correct, Mr. MacSherry.

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FREDA LYNCH, sworn in behalf of plaintiff:  
Direct-examination by Mr. Weinberg:

Q. Mrs. Lynch, you are the mother of Mildred Lynch? A. I am.

Q. And have been appointed as next friend  
20 of Mildred Lynch? A. I am.

Q. In place of your husband, Charles Lynch, deceased? A. I am.

Q. And Mildred is how old? A. Thirteen.

Q. When was she thirteen? A. The 25th of April.

Q. Of last year? A. Yes.

Cross-examination waived.

Plaintiff rests.

30

Defendant's counsel moves that plaintiff be nonsuited on the following grounds:

(1) That there is no proof of negligence on the part of the defendant company.

(2) That there is proof of contributory negligence on the part of the plaintiff.

(3) That the bobsled in question was a public nuisance and that the plaintiff participated in the nuisance, and so was injured.

40 (Counsel argue.)

## Charge

ADAMS, J.

The motion is to nonsuit.

The declaration alleges that the plaintiff while seated upon a bobsled, which was lawfully crossing Mt. Prospect avenue at its intersection with Montclair avenue, in the City of Newark, was injured by a collision of the bobsled with a car of the defendant company, and that the collision was caused by the negligent operation of the car. 10

On a motion to nonsuit two questions arise in this case. First, is there evidence tending to show that there was want of due care in the operation of the car which was a cause of the accident? Secondly, does it appear that the plaintiff by her own fault contributed to her injury? In this question the word "fault" is used, not in a popular sense, but in a legal sense. There is evidence to go to the jury on the question whether the car was operated with due care. I pass at once to the other question, which is this: Does it appear from the plaintiff's own case that her own fault was a proximate, direct and immediate contributing cause of the injury? The declaration alleges that the bobsled was lawfully crossing Mt. Prospect avenue. If this be true, the plaintiff was not at fault. Is it true? The decision of the motion to nonsuit turns on the answer to this question. 20 30

An act which seriously interferes with the legitimate use of a public highway and endangers the safety of travellers upon it is a public nuisance. One who voluntarily and intelligently participates in such an act is, in a legal sense, a wrongdoer. A person incapable of legal discretion, for example, of immature years, such as a 40

## Charge

baby, would not be within the rule. Another definition of a nuisance is quoted in the case of *Mayor, &c., of Wilmington vs. Vandergrift*, Court of Errors and Appeals of the State of Delaware, decided in 1893, and to be found in 29 *Atlantic Reporter*, page 1047. The opinion contains this statement: "A learned writer on the  
10 subject defines a common or public nuisance 'to be an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of a right common to all.' "

The evidence shows that the bobsled on which the plaintiff, a girl not quite twelve years old, with several other persons, was seated was between ten and twelve feet long, constructed of  
20 oak and spruce, with some metal, and weighed about 100 pounds. The sled and its load together at the time of the accident probably weighed about 800 pounds, more or less. It was equipped with no apparatus with which it could be stopped or its speed diminished. It had a bell to give notice of its coming; and this was in use. The direction of its course could be controlled and changed by the use of a steering wheel, although the liability to skid at high speed made this a  
30 somewhat uncertain reliance.

On January 7, 1910, this bob, thus loaded, was in use by its owner, a young man by the name of Walter Winterbottom, who took successive parties down the hill for pleasure. The plaintiff at the time of the accident, which occurred at dusk, was on her third trip that afternoon upon the bobsled. She was familiar with the hill and with coasting upon it. The course over which the  
40 bobsled ran was on Montclair avenue, a straight

## Charge

public highway, crossed by other streets at right angles, which descends rapidly toward the east from Ridge street to Clifton avenue, and then to Mt. Prospect avenue—a total distance estimated by one of the witnesses at from 200 to 250 yards and by another witness at about 500 feet. The grade then flattens. This bobsled, starting at Ridge street, would, under the conditions existing at the time of the accident, about reach Summer avenue, which is two blocks east of Mt. Prospect avenue and about 500 feet below it, thus covering four blocks in all, about a total of 1000 feet. There had been a heavy sleet storm just before the day of the accident, which had given to the hill an icy coating, favorable to high speed in coasting. It is apparent that the speed attained by the bob at Mt. Prospect avenue, which was a half-way point, was very great. The collision occurred at Mt. Prospect avenue, where a double track road of the defendant company crossed Montclair avenue. The collision was between the bobsled and a north-bound car. Several of the parties on the bob was injured, among them the plaintiff.

The cases which I have consulted (and I have read all that I could find) do not say that coasting on a public highway is always and necessarily a public nuisance. Some cases say, and I agree with them, that it depends on circumstances. I refer to three cases in which this view is taken: *Hutchinson vs. Concord*, 41 *Vermont*, 272; *Faulkner vs. City of Aurora*, 85 *Indiana*, 130; *Burford vs. Grand Rapids* (a Michigan case), 18 *N. W. Rep.* 571—each case decided by the Supreme Court of its state.

The streets are as open to sleighs as to wheeled vehicles. Nobody thinks that it is a public nuisance to coast downhill on a bicycle, which is

## Charge

- a wheeled vehicle, if the bicycle is absolutely under control, and I see no reason why it should be thought a public nuisance to coast downhill upon runners, provided it is in the power of the person who guides the vehicle to check and to stop it if occasion requires; but it seems to me plain that it is an example of an improper, and therefore
- 10 an illegal, use of a public highway in a great city to launch upon it a travelling body of great weight, which attains under the law of gravity very high speed, and which is incapable of control as to its speed, and capable only of somewhat imperfect control as to its direction. It is inherently and essentially a wrongful act; and the quality of the act is not altered by giving notice of it or by improvising some partial provision at some point for the protection of persons rightfully on the public highway. Such
- 20 notice may cast upon a traveller the obligation of special care for his own safety; it can have no further legal effect. The case, therefore, does not present, to my mind, the question whether the plaintiff was negligent, in the ordinary and proper sense of that word, but whether she voluntarily, intelligently, and most unfortunately for herself, participated in an act in itself unlawful.
- 30 In *Joyce on Nuisances*, at Section 44, it is said that "Negligence is not ordinarily an essential element where the subject-matter under consideration is a nuisance. The essential feature of the act is its wrongful character in creating or maintaining a nuisance, and negligence, except in such cases, is not material. No degree of care will excuse the creator of a nuisance." I have looked at the case cited by the learned counsel
- 40 for the plaintiff, the case of *Chicago & Rock Is.*

## Charge

*land vs. Still*, 19 *Illinois*, 449, which does not, as I see, apply to this case. I have also looked at the *Trautwein* case, upon the question of the plaintiff's liability for participation. I think there is a distinction between the *Trautwein* case and the case of *White vs. Long*, there cited, and this case. The *Trautwein* case involved an injury received while traveling on Sunday, and it was objected to the plaintiff's right to recover that it was unlawful to travel on Sunday, and therefore he could not recover—the Court very properly saying that, while it was true that if the plaintiff had not travelled on Sunday he would not have been hurt, nevertheless the act of travelling was a condition and not a cause of the injury. But in this case the act of travelling was a proximate, direct and immediate cause of the injury; and that fact, in my opinion, distinguishes this case from the case of *Delaware, Lackawanna & Western Railroad Company vs. Trautwein*, 23 *Vroom*, 169, and the case of *White vs. Long*, there cited.

My conclusion, then, is that the illegal quality of the act, in the performance of which the plaintiff participated, and the doing of which was one of the proximate causes of her injury, disentitles her to recover in this case. The motion to nonsuit is therefore granted.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,  
Circuit Court Judge.  
(Seal)

## Charge

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## Charge

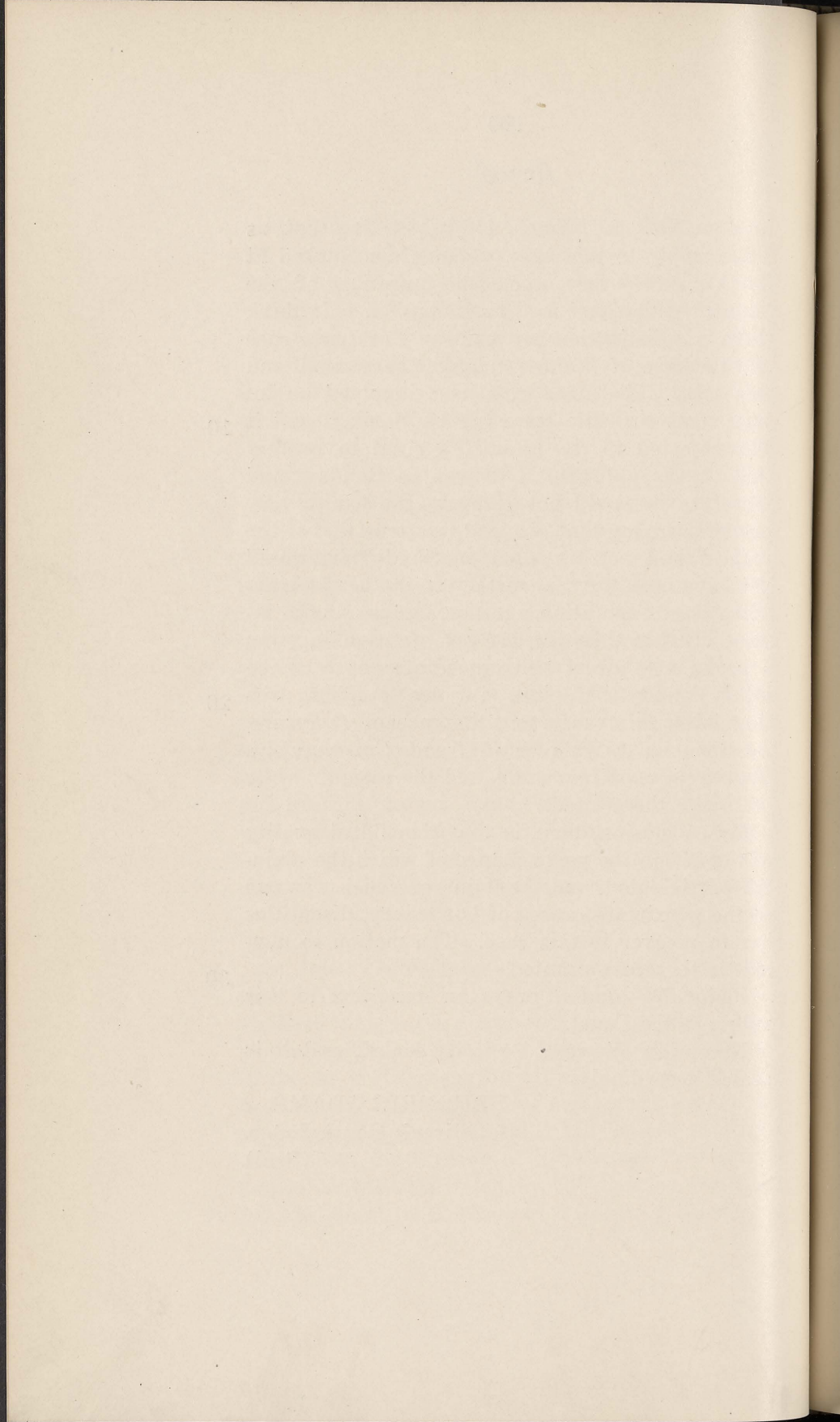
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Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,  
Circuit Court Judge.  
(Seal)



## New Jersey Court of Errors and Appeals

MILDRED LYNCH, BY NEXT  
FRIEND,

*Plaintiff in Error,* } *In Tort.*

*vs.*

PUBLIC SERVICE RAILWAY COM-  
PANY,

*Defendant in Error.* } *On Writ of Error.*

### ***Brief for Defendant in Error***

The accident upon which the above cause is based occurred at about 5:30 o'clock in the afternoon of January 7, 1910, in the City of Newark, at the corner of Montclair and Mt. Prospect Avenues. Mt. Prospect Avenue, one of the principal residential streets of the city, runs north and south, and is intersected by Montclair Avenue running east and west. The plaintiff, who was in her thirteenth year, was one of a number of persons riding on a bobsled which slid down hill from west to east and came into collision with a northbound Mt. Prospect trolley car on Mt. Prospect Avenue. The cause was tried at the Essex Circuit on March 7, 1911, before Mr. Justice Adams and a jury, and at the end of the plaintiff's case a nonsuit was entered by direction of the trial judge. The opinion of Judge Adams granting the nonsuit is to be found on pages 195 to 199 of the printed book. The trial judge refused to grant the motion for a nonsuit on the ground that there was no evidence of negligence on the part of the defendant, but did grant the motion on the ground that plaintiff did not sustain that part of

her declaration which alleged that she was legally on the highway. The allegation of duty contained in the declaration is that the defendant should so run its cars "as to avoid colliding with and running into persons lawfully riding along said public street, and crossing the said tracks thereon, with sleds and other vehicles," etc., and that the defendant was negligent in running "into a certain bobsled upon which said plaintiff was then and there seated, and which bobsled was then and there *lawfully* crossing said Mt. Prospect Avenue."

We claim that the nonsuit should be sustained not only for the reason given by the trial judge, but also because the defendant was free from negligence, as urged at the trial, and for other reasons as set forth in this brief.

### STATEMENT OF THE CASE.

Mt. Prospect Avenue, on which the accident occurred, is one of the principal residential streets of the City of Newark, is 100 feet wide (p. 154), has two electric car tracks, upon both tracks of which electric cars were running at the time of the accident under ten minutes headway (p. 146), so that a car crossed Montclair Avenue, at the intersection of it with Mt. Prospect Avenue where the accident occurred, on an average of every five minutes.

Montclair Avenue is not so much built up as Mt. Prospect Avenue, and on the southwest corner of the intersection of these two avenues there is a vacant lot, and in this lot there is a hill or rise in the ground (p. 163) which, to some extent, interferes with a view of Montclair Avenue.

A day or two before the accident occurred there had been a sleet storm so that Montclair Avenue was in a very slippery condition. The coasters started from Ridge Street (p. 12) two blocks west of Mt. Prospect

Avenue, and ended their ride at a street two blocks east of Mt. Prospect Avenue.

The bobsled upon which the plaintiff was riding was 10 to 12 feet long (p. 115) and weighed 100 pounds (p. 117), had no light (p. 132), had no brake (p. 131); it was fitted with a steering apparatus but could not be turned to any extent without skidding (p. 141); and on the sled there were five to ten persons, ranging in age from 12 to 20 years (p. 119).

On the day of the accident, January 7, 1910, the sun set at 4:49 in the afternoon. This does not appear in the testimony, but we presume that the court will take judicial notice of such fact.

#### I.

#### The Bobsled and its occupants were unlawfully on the street.

We claim that at the time of the accident the bobsled and its occupants were, under the conditions above recited, unlawfully upon the street, and that to launch a vehicle such as this bobsled, the total weight of which with its occupants being in the neighborhood of 800 pounds, (allowing about 100 pounds for each occupant) three-quarters of an hour after sunset, without a light or brake or adequate steering facilities, was a nuisance and unlawful, as it endangered the lives, safety, health and comfort of the traveling public, and obstructed the public "in the exercise or enjoyment of a right common to all."

In support of this contention defendant submits the following authorities:

*City of Wilmington vs. Vandegrift*, 29 Atl., 1047. This was a case decided by the Supreme Court of Delaware in 1893, wherein the plaintiff sought to hold the City of Wilmington liable on account of his being injured by being struck by a coaster in the City of

Wilmington, the contention of the plaintiff being that the city owed the plaintiff the duty to prevent coasting. In relation to whether or not coasting was a nuisance the court said: "We have no doubt that it was, for it answers to and contains all the elements necessary to constitute a nuisance indictable at common law and punishable under the law of this state. A learned writer on the subject defines a common or public nuisance 'to be an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of a right common to all.' Seventh street is a well-known public highway in the city of Wilmington, and for the purpose of travel the people had a right to the free and uninterrupted use thereof. The occupation of said street by persons indulging in the sport of coasting, as described in the declaration, was unlawful, independently of any ordinance; and certainly endangered the lives and safety of the people and constituted a serious obstruction to the public in the exercise and enjoyment of a common right."

This case held that the city had done all that it was required to do in passing an ordinance providing for penalties for commissions of nuisances.

Rensch vs. Licking Rolling Mill Co., 80 S. W., 1168, 118 Ky., 369, decided in 1904 by the Court of Appeals of Kentucky. It appeared that the plaintiff, coasting with others on a large sled, ran into a wagon negligently left standing on the street by the defendant. The accident occurred about 8:30 in the evening of January 5th, at Covington, Kentucky. The street had been used for coasting many evenings prior to the night of the accident. There was a demurrer to the petition and the court in sustaining the demurrer said: "The said street is constructed for public travel. Any use of the street which rendered it unsafe to the traveling

public is a nuisance, for the traveling public have a right to pass back and forth upon it and have a right to presume that it will be reasonably safe for this purpose. The large sled loaded with several persons, rushing rapidly over the ice down the declivity in the dark endangered the safety of other travelers upon the highway in its course. The purposes for which the street was made and for which it was used were inconsistent with said use. The sled loaded as it was, and run over the ice down the declivity gathering momentum as it went was *per se* a nuisance. *One who creates a nuisance and is himself injured thereby cannot recover.*"

Weller vs. City of Burlington, 12 Atl., 215, decided by the Supreme Court of Vermont in 1888, was a case where it was held that the city was not liable on account of an injury received by one run into by a sled. But the court has this to say in relation to coasting: "On the evening the plaintiff was injured several persons other than those whose sled injured him were coasting down Main Street and the street had been similarly used by many persons, mostly residents of the city, for three or more evenings within the last ten days; and the practice of coasting on the street had become and was a dangerous public nuisance."

Taylor vs. City of Cumberland, 20 Atl., 1027, decided in 1885 by the Maryland Court of Appeals, was a case in which the city was held liable on account of injuries sustained by reason of being run into by a coaster, on the ground of the city not using reasonable care to prevent coasting. It appeared that the street where the accident occurred had been used for coasting with bobs, etc., and that some fifty or sixty people would be coasting at the same time. In relation to this condition the court said: "This sport as described was a nuisance of a very serious character."

*Schultz vs. Milwaukee*, 49 Wis., 254, 39 Am. Rep., 799. In this case the Court has this to say in relation to coasting: "The coasting or sliding down Poplar street to the extent charged in the complaint was, while being indulged in, a grievous public nuisance which the city authorities ought to have prevented or suppressed."

*Faulkner vs. City of Aurora*, 85 Ind., 130. This case was decided in 1882 on a judgment on demurrer, where the plaintiff attempted to hold the city liable for injuries received by being struck by a coaster, the plaintiff claiming that coasting amounted to a defect in the highway. In relation to this claim the Court said (p. 139): "It is obvious that in the case before us the injury did not result from any defect in the highway. It was produced by the act of those *improperly and unlawfully* using the highway, which was at the time and but for the *unlawful* acts of those improperly using the street, in a reasonably safe and convenient condition for public travel." It will be noticed in this Faulkner case that the Court characterized coasting as "the act of those *improperly and unlawfully* using the highway."

*Sheppard vs. Chelsea*, 4 Allen, 113. In this case the plaintiff sought to hold the City of Chelsea because of being struck by a coaster. A verdict was directed for the defendant, and in sustaining this direction of a verdict Chief Justice Bigelow, speaking for the Court said: "It does not appear that the injury \* \* \* was occasioned by the alleged defect in the way but, taking the view most favorable to the plaintiff, it is very clear that the accident happened in part from the *unlawful* or careless act of a third person." It will be noted that the Court used the word "unlawful" in connection with coasting.

The plaintiff in his brief on pages 12 and 13 cites several cases in support of his contention that the question as to whether or not sled riding in public streets

is a nuisance has been decided in several jurisdictions in the negative. These cases are as follows:

Burford vs. Grand Rapids, 56 Mich., 98,  
18 N. W., 571.

Hutchinson vs. Concord, 41 Vt., 272.

Faulkner vs. City of Aurora, 85 Ind.,  
130.

Jackson vs. Castle, 80 Me., 119, 13 Atl.,  
49.

In the Burford case, decided in 1884, it appears that the City had authorized coasting on a certain street, and that one of the coasters ran into and injured the plaintiff's horse. Plaintiff contended that the authorizing by the city of a nuisance made it liable as though the injury was caused by its agents. On demurrer to the declaration the court held that it did not state a cause of action. It does not appear in the case what kind of a street it was on which the coasting took place, and it may well have been a street which was not being used as such, because the court says: "Streets are dedicated to the public which there may for many years be no occasion to improve for travel and may become for sometime mere open spaces for the sports and recreation of those who may see fit to use them." The court also says it seems eminently proper, if the street *is not put to other public use* that this diversion be allowed, if not expressly sanctioned.

Evidently the reason why the court sustained the demurrer in the Burford case appears to be, therefore, that in some instances coasting on the streets may not be a nuisance, as for instance where the street is not put to other public use, and we submit that had such facts been before that court as appear in our present case the judgment, very likely, would have been different, as the court recognized the fact that coasting may be a nuisance, and said that if it was a nuisance there would be much plausibility in the contention of the plaintiff, and perhaps, it should be accepted as sound.

It may be said in passing that in New Jersey a municipality cannot authorize the creation of a nuisance in the highway. *Opdycke vs. Public Service Railway Co.*, 76 Atl., 1032.

In the *Hutchinson* case the only thing that was decided was that towns are not liable on account of injuries received by travelers on the highway being run into by coasters under statutes making towns liable for injuries received on account of defects in the highways, and the verdict directed for the defendant was affirmed; but as to the opinion of the Supreme Court of Vermont in relation to coasting, see the case of *Weller vs. Burlington*, cited above.

The *Faulkner* case was also an action against a city, based on an injury received by a traveler being run into by a coaster, the action being based on the statutes making towns liable for injuries received on account of defects in the highway. There a judgment for the defendant on demurrer was sustained by the upper court, and, in giving its opinion sustaining the demurrer, the court, as stated above in this brief, characterized coasting as "the act of those improperly and unlawfully using the highway." This *Faulkner* case also cites the *Schultz* case heretofore referred to, in which the court characterized coasting as "A grievous public nuisance."

The *Jackson* case is based on damage resulting from a horse running away, due to fright occasioned by coasters. The declaration alleged merely the fact that defendant was sliding down the street and making a loud noise by outeries and hallooing. The court said: "Sliding in a city accompanied with boisterous conduct calculated to frighten horses lawfully traveling therein may be a public nuisance; but there is no such averment in the declaration. \* \* \* If the plaintiff would recover he must show negligence or unlawful conduct to be the proximate cause of his injury."

We, therefore, submit that none of the cases cited by the plaintiff supports his contention that the courts deciding the cases referred to decided that sled sliding in a public street was not a nuisance. Thompson in his *Commentaries on the Law of Negligence*, Volume 5, Section 5867, discusses the question of the liability of the municipality for damages resulting from collisions of coasters with persons using the public highways, due to the municipality's authorizing, or permitting, or failing to prevent the use of the highways for coasting purposes. In the treatment of the topic, coasting is spoken of as a nuisance, and no suggestion to the contrary appears.

## II.

**The plaintiff being unlawfully on the street, is not entitled to recover.**

In the case of *Guinn vs. B. & A. Telephone Co.*, 43 Vr., 276, the telephone company sought to set up the defense to an action involving an injury to the plaintiff by coming in contact with a telephone wire on private property by saying that the plaintiff was a trespasser on the land of a third person on whose land the wire was strung; the wire had become loosened from its fastenings and swung loose. It was held that the fact that the plaintiff may be a trespasser against the land owner involved no wrong to the defendant, but the court says on page 278: "The right to maintain the pole and wire did not involve the right to have the wire swing loose or occupy another portion of the field. Whoever interfered with the pole and wire in place might be a trespasser, but he would not be a trespasser upon the defendant's rights if he came in contact with the wire elsewhere."

We contend in the present case that the plaintiff interfered with our rights upon the public street, and, therefore, as against us she was a trespasser, and the

defendant's duty to the plaintiff was such as is due to any trespasser, to wit, merely to refrain from willfully injuring her.

It might be added that the sled containing the plaintiff actually crossed two metal rails, comprising one track, property of the defendant, that was lawfully in the street, and that the collision occurred only through the sled entering, or attempting to enter, the zone of travel of the defendant's car at a time when that zone of travel was occupied and belonged exclusively to the defendant. It might be argued that although at the moment of such actual private trespass no duty of care was owed by the defendant to the plaintiff, still a duty of care might have arisen before such actual private trespass took place; but under a principle similar to that in the doctrine of trespass ab initio, we submit that this was not so.

If a man who lawfully enters a building becomes a trespasser from the time he has entered, by reason of a subsequent unlawful act, then certainly a man who casts a missile at our property would be a trespasser as to us, not merely from the time the missile touched our property but from the time the missile was launched.

In the case of *Dudley vs. Northampton Street Ry. Co.*, 23 LRA (NS) 561, (202 Mass., 443, 89 N. E., 25,) decided by the Supreme Court of Massachusetts in 1909, it appears that the unlicensed automobile of the plaintiff came into collision with the street car of the defendant. There was a direction for the defendant by the trial court, which direction was sustained by the Supreme Court. In this case there is a discussion of the distinction between an unlawful act of the plaintiff which would contribute to the accident and an unlawful act of the plaintiff which was merely a condition and not the cause of the accident. In our present case we submit that the unlawful act in which the plaintiff participated was one of the moving and vital causes of

the accident, and appears to be to us a much stronger instance of where the unlawful act is the cause of the accident than the case where an unlicensed automobile is being operated upon the highway.

As between the relative rights of travelers lawfully using the highway and travelers unlawfully using the highway, the court in the Dudley case has this to say (p. 563):

“The plaintiff as a mere trespasser upon the highway was there not only against the owner of the soil and so liable to an action by him but also against the rights of all other persons who were lawfully using the highway. He was violating a law made for their protection against him; accordingly he was a trespasser as to them. It follows that the defendant, which was lawfully using the highway with its case, owed to the plaintiff no other or further duty than which it would owe to any trespassers upon its property.”

In the case of *Chase vs. New York Central R. Co.*, and *Hancock vs. same*, reported in 94 N. E., 377, decided by the Supreme Court of Massachusetts, March, 1911, it appeared that an unlicensed automobile was damaged by a train of the defendant at a crossing, and also the occupants of the automobile were injured. The court, by Chief Justice Knowlton, after discussing as to whether or not the unlawful act of running an automobile without a license contributed to the injury says: “While in the cases just supposed it might be held that the unlawful part of the conduct taken by itself was not a cause of the injury \* \* \* , it is not so in the present case. Under the decisions, the operating of an unregistered automobile is decided to be unlawful in every feature and aspect of it. Everything in the conduct of the operator that enters into the propulsion of the vehicle is under the ban of the

law. In going along the way and entering upon the crossing the machine is an outlaw. The operator in running it there and thus bringing it into collision with the locomotive engine is guilty of conduct which is permeated in every part by his disobedience of the law, and which directly contributes to the injury by bringing the machine into collision with the engine."

The case of *Bourne vs. Whitman*, 95 N. E., 404, is a later case than the Chase case, decided by the Massachusetts Supreme Court in May, 1911, in which the trial judge instructed the jury that the defendant, who was running an unlicensed automobile, was a trespasser upon the highway and that the plaintiff owed him no duty of care. Chief Justice Knowlton in speaking of an unlicensed automobile upon the highway, and the relation of its owners and occupants to other travelers upon the highway says: "That the having of such a machine in operation on a street without a license was the very essence of the illegality and that the illegality was inseparable from the movement of the automobile upon the street at any time, for a single foot; that in such movement the machine was an outlaw and any person on the street, as an occupant of the automobile, participating in the movement of it was, for the time being, a trespasser."

In the case of *Menger vs. Laur*, 26 Vr., 206, decided by our Supreme Court in 1893, it appeared that the plaintiff set up a surveyor's instrument in the roadway of a public street and that the defendant ran into and injured it as he was driving along that street. It also appeared that at the time of the accident the defendant's attention was taken up by some houses on the side of the street, for the roofing of which he had contracted. The street was unobstructed except for the plaintiff's instrument. It was held that the instrument standing in the traveled way of a public street was a nuisance and that it was an act of negligence on the part of the employe of the plaintiff to leave the in-

strument in the street, and that no recovery could be had for injury to it.

In the case of *Brown vs. De Groff*, 21 Vr., 409, decided by our Court of Errors and Appeals in 1888, it appears that the plaintiffs planted oysters in natural clam beds and that the defendants in taking clams as they had a right to do, injured some of the plaintiffs' oysters. It was held there could be no recovery on the part of the plaintiff. The Court said page 411: "The planting of these oysters constituted a public nuisance and unless it could be abated by the defendants so far as was necessary to enable them to enjoy their right of fishing, that right will be subordinated to and swept away by a claim which has its foundation in a trespass upon the public domain"; and again: "The individual citizen may not lawfully abate every public nuisance; his right to abate arises only when the nuisance becomes an obstruction to the exercise of his private right. It makes no difference that the right is one which all other citizens may enjoy in common with himself; otherwise the traveler on the public highway could not remove the barrier which hindered his further progress."

The rule is well stated by Chief Justice Shaw, in *Brown vs. Perkins*, 12 Gray 100: "The true theory of abatement of nuisances is that an individual citizen may abate a private nuisance injurious to him when he could also bring an action; and also when a common nuisance obstructs his individual right, he may remove it to enable him to enjoy that right, and he cannot be called in question for so doing."

Again page 412 in the *Brown* case the Court says: "If a carriage is left in a highway so as to constitute a public nuisance, an injury unnecessarily done to it by the carelessness of one in driving along the public way would be actionable, but if the injury is unavoidably done in the reasonable use of the right of passage, there could be no recovery."

Page 413: "If the traveller, in the public highway, found it necessary, in the pursuit of property, which he might lawfully take and remove, to drive where the carriage was unlawfully left, he would not be responsible for damage unavoidably done."

The expression "unavoidably done" must mean any damage not willfully done by the traveler merely for the purpose of doing injury and that the traveler would not be liable for any injury necessarily done if done "in the pursuit of property which he might lawfully take and remove."

According to the doctrine laid down in this Brown case, we submit that the nuisance participated in by the plaintiff had become, as to this defendant, a private nuisance in so far as it interfered with the running of its cars over its tracks, and that defendant, under such circumstances, would have a right to abate it. We do not claim that we would have a right to deliberately abate it by causing grievous bodily injury to those who participate in the nuisance, but that in the absence of actual knowledge of the presence of the bobsled this defendant ought not be held liable for the personal injuries which unintentionally resulted in the defendant's pursuing its right of passage along its tracks.

### III.

**The nonsuit was proper as plaintiff could not maintain an action to which she must trace her right to recover through her own breach of the law.**

In order to prove her case it was necessary for the plaintiff, of course, to show how the accident occurred, and the conditions and circumstances surrounding it, and in showing these things it appears that she herself was committing a breach of the law which would prevent her recovery.

In the case of Gregg vs. Wyman, 58 Mass., 322, de-

ided in 1849, it appeared that defendant injured the plaintiff's horse while driving it for pleasure on Sunday. It was held there could be no recovery on account of the illegality of the defendant's act, and while we do not contend that the mere driving of a horse on Sunday contrary to a statute would prevent a recovery, the general principle laid down in that case is applicable to our present case and is as follows: "It is also a well settled principle of law that if the plaintiff cannot make out his claim without showing an illegal act on his own part he cannot maintain his action. If the plaintiff's own illegal act forms one of the links in the chain of title, that is a defective link, which cannot hold the chain together and the whole must fall." The court in the Gregg case quotes from the case of Wheeler vs. Russell, 17 Mass., 258, as follows: "No principle of law is better settled than that no action will lie upon a contract made in violation of a statute or of a principle of the common law."

In the case of Way vs. Foster, 83 Mass., 408, is also one where the plaintiff sought to recover for the injury to his horse, which he had rented to the defendant on Sunday, in which the court has this to say in relation to the law that one cannot recover in an action where it is necessary to prove his case by proving his own illegal act: "But the general doctrine that courts of law will not permit a party to prove his own illegal acts in order to establish his case is well established. They cannot listen to such proof consistently with the respect which they owe to the law and to themselves as its officers. Nor has the party who acts in defiance of law any just claim to its agency in obtaining redress for the damage he may have sustained in the course of his illegal transactions."

"It is said the doctrine is harsh in its application in this case but it is no more harsh than in the common case of the conveyance of property made without consideration and for the purpose of hindering creditors in

the collection of their debts. In such cases the vendor often loses his whole estate because the law will not aid him to recover it."

Whether or not this doctrine was properly applied in these cases, involving driving on Sunday (these cases have been overruled in Massachusetts) undoubtedly the doctrine as stated is correct, and has been applied in our own state in relation to fraudulent conveyances of property. *Eyre vs. Eyre*, 19 N. J. Eq., 42; *Walker vs. Hill*, 22 N. J. Eq., 513; *Ruckman vs. Conover*, 37 N. J. Eq., 583.

And the doctrine is applicable as well to suits in law as to suits in equity: *Church vs. Muir*, 33 N. J. L., 318; *Eisner vs. Heileman*, 52 N. J. L., 378.

In our state the doctrine that the violation of the Sunday law will prevent the recovery of damages sustained by one traveling for a purpose other than that of necessity or charity, for injuries received while so traveling, on account of the negligence of another, has been considered and expressly repudiated in the cases of *D., L. & W. R. R. Co. vs. Trautwein*, 23 Vr., 169, decided by this court in 1889, and in the case of *Newbury vs. Luke*, 39 Vr., 189, decided by the Supreme Court in 1902.

The reason given in both these cases why the fact of the plaintiff's violation of the Sunday law was no defense was because such violation was not a cause of the injury. In the *Trautwein* case Mr. Justice Depue, speaking for the court, says in relation to the violation of the Sunday law that "It was only the occasion for an injury by the defendant's wrongful act, and hence her wrongdoing did not contribute to the injury in such a sense as to deprive her of her right of action; it was merely a condition and not a contributory cause of the injury." And the court quotes with approval from the case of *White vs. Lang*, 128 Mass., 598, as follows: "If a person, who is at the time acting in violation of law, receives an injury caused by the wrong-doing or neg-

ligent duty of another, he may recover therefor if his own illegal act was merely a condition and not a contributory cause of the injury." And in the Luke case Mr. Justice Pitney, speaking for the court, says: "The Sunday hiring and the Sunday driving happened to furnish the conditions under which the death of the horse was occasioned. But its death was the direct and natural result of the overdriving and abuse, and of these alone. These causes would have produced the same result if they had occurred on any other day of the week, just as they would have produced it had they occurred without any contract of bailment whatsoever."

Now, we insist in our present case that the illegal act of running the bobsled down the hill at express train speed across the intersecting streets, without a light and without any means of stopping it or checking its speed, was one of the vital and proximate causes of the accident.

The distinction between a cause and condition is well illustrated by the charge to the jury by Mr. Justice Depue in the case of Dickey vs. Kurzenberger, 8 N. J. L. J., 306, in which it appeared that the plaintiff's wagon while standing on the wrong side of the road for the purpose of delivering goods was negligently run into and struck by another person driving on that side of the street, and it was sought to defeat the action by showing that plaintiff's team was on the wrong side of the street. Mr. Justice Depue said: "The law of the road is that where two persons are engaged in traveling on the highway and meet, each must turn to the right in order to allow the other to pass; and if an accident happens because of a person being on the wrong side of the road he is without redress." So that it would appear that a person traveling on the wrong side of the road cannot recover for being run into by a person traveling on the proper side of the road. When the team was merely standing on the wrong side of the road it formed only a condition of the accident, but when it was in motion on the

wrong side of the road it was a cause of the accident, for which no recovery should be allowed even though the defendant was negligent.

#### IV.

#### The defendant was not guilty of negligence.

In the first place it is claimed by the plaintiff that for several hours before the accident occurred, the defendant had stopped its cars before crossing Montclair Avenue in order to give the coasters the right of way. There is no evidence, however, that this was done with the knowledge or by the instructions of the defendant company, and so far as appears the stopping of cars was the individual act of the motormen.

The acts of the motormen in stopping cars before crossing the street previous to the accident could no more make this defendant liable because the particular car involved in the accident did not stop, than the act of the conductors in holding trains for persons using a path leading to the track near a station, involved the liability of the railroad company for injuries received by a person desiring to become a passenger, while crossing the track.

Deickman vs. D., L. & W. R. R. Co.,  
79 Atl., 310, decided by this Court in  
1911.

In any event, the stopping of the cars was not an act of the company upon which the coasters depended, because it appears to be the claim of the plaintiff that "A policeman for a short time and a number of boys during the balance of the time signalled the cars to stop." And it seems that Martin, one of those who had been coasting but who was signalling the sleds at the time of the accident, ran south some distance from the corner of the two streets for the purpose of signalling the car which figured in the accident.

The very fact that the motorman of the car which was in the accident did not stop his car as it is claimed other motormen did, would as well indicate that the cars were being stopped by the individual act of the motormen and not through instructions from the defendant, as it would indicate that the particular motorman of the car which figured in the accident was disobeying orders in not stopping. It is fair to assume that if he did not stop he had received no instructions to stop, and that the company had promulgated no rule in relation to stopping. Of course, it would be unreasonable to expect the defendant company to stop its cars before crossing every street where coasting might be going on, as otherwise cars would have had to stop at every street crossing Mt. Prospect Avenue on which there was a grade sloping toward that avenue. Certainly if there was no actual knowledge on the part of the motorman that there was danger ahead, he was not obliged to anticipate the illegal act of the plaintiff.

When the sled was one-third of the way east of Clifton avenue between that avenue and Mt. Prospect avenue, the front of the car was within a few yards of the southerly crossing of Mt. Prospect avenue (p. 140) and as it appears (p. 169) that the distance between these two avenues is 280 feet, the sled was about 187 feet from Mt. Pleasant avenue when the car was a few yards from the southerly crossing (p. 140). It also appears that Mt. Prospect avenue is 100 feet wide (p. 154) and as the tracks are in the middle of the street, at the time the car had practically reached Montclair avenue the sled was distant from the track on which the car was running, at least 187 feet plus 50 feet or 237 feet.

Again, when the rear of the car was at the southerly crossing, thus blocking Montclair avenue, the sled was 50 feet from Mt. Prospect avenue, or about 100 feet from the car track; see testimony of Winterbottom (p. 134) the owner and operator of the sled as follows:  
"Q. Now, when you came down and you saw this trol-

ley car was going across the street, why did you not turn to the right instead of the left and go around the rear of the car? A. Two seconds is a long (short) time to think of all these things. I thought I had better chance to go in front of the car than I did the rear; that is why I went that way. Q. You were fifty feet away from the corner of Mt. Prospect avenue when this trolley car was blocking the way in front of you and moving, were you not? A. About fifty feet. \* \* \* (p. 144) (Re-Direct Examination.) Q. Just a question or two, Walter. I do not know whether you were asked in all this maze of questions when you started to turn your bob where the trolley car was. Where was the trolley car when you started to turn your bobsled at a point 50 feet away from Mt. Prospect avenue? A. The rear of the trolley car was at the south crosswalk. Q. At the time you started to turn? A. Yes, sir."

Certainly under the rule laid down in the case of *Knox vs. N. J. St. Ry. Co.*, 70 N. J. L., 348, the defendant was not negligent in our present case. In the *Knox* case the plaintiff was the driver of a fire truck and in attempting to avoid a trolley car which, traveling at a reasonable speed had first reached the crossing, the truck, in attempting to turn into the street on which the car was running, struck the car and the plaintiff was injured. The court held a nonsuit was proper, and Chief Justice Gummere, speaking for the court, says: "The rule of the road with relation to vehicles approaching a street crossing, is that the first to reach the crossing traveling at a reasonable rate of speed, has the right to pass over first \* \* \* this rule is a part of the common law of the state and applies to vehicles of every character."

Whatever may have been the speed of the car when it was a block or more away from Montclair avenue, when it approached that avenue it was proceeding at a reasonable rate of speed. Martin says (p. 77) that when it was some distance from Montclair avenue it slowed up

for him to get off the track and then started up again. Winterbottom, who was steering the bobsled, testified (p. 122) that the car approached the crossing at a moderate rate of speed.

It also appears that the motorman was ringing his gong as the car approached Montclair avenue (p. 183-184).

So far as any warning to the motorman is concerned that there was danger ahead, because of the signal given by Martin, this signal only served to distract the attention of the motorman from the bobsled; Martin says that the car slowed up as he stood on the track raising his arms and that after he got off the track the car continued on its way. Under these circumstances, it would appear as though the motorman had a right, having a clear track ahead, to proceed. It was the duty of the motorman to use care in not striking Martin who was on the track, just as it was the duty of the motorman in the case of Perkins vs. Trenton St. Ry. Co., 78 Atl., 666, decided by our Supreme Court in 1911, where it appeared that a flock of hens crossed a track in front of the car, to look over the side of the car to see if any of the hens had got into the running gear of the car. The court held that it was strictly within the line of his duty to do this, and he was not negligent in not seeing an obstruction ahead.

Even if Martin's signal, given when the car was some little distance from Montclair Avenue, should have put the motorman on his guard, can it be said that the motorman would have no right to proceed with his car if looking ahead and a reasonable distance on each side of the track, he found everything clear? Even when the head of the car got to Montclair Avenue was it the duty of the motorman to look up Montclair Avenue a distance of 237 feet from the car track in order to ascertain what travelers were on that street traveling toward the track? If such is the law then the rule heretofore so well settled, that the rights of the defendant and the rights of others of the traveling

public in the streets are equal and reciprocal, is no longer law.

Whatever the motorman's duty may have been regarding ordinary vehicles, was it his duty to observe this dark, low-lying object in the cross-street in the dusk at such a distance from his track?

The "last clear chance" doctrine does not enter into this controversy unless the motorman actually knew of the presence of the bobsled, and that it could not be stopped, and the mere fact that he might have discovered the plaintiff's predicament is not sufficient to charge him with the duty of trying to avoid the consequences of the plaintiff's wrongful act any more than it was the duty of the motorman in the case of *Young vs. Camden, &c. Ry. Co.*, 60 N. J. L., 193, to avoid running into the plaintiff with his car; the plaintiff at the time of the accident was crossing a trestle belonging to the railway company, and it was held that no duty arose from the defendant toward the plaintiff until the motorman actually knew of the presence of the plaintiff in his dangerous position. As the plaintiff in this case was unlawfully on the street, and subsequently came into contact with our car, and committed a trespass as against us, she was a trespasser against us from the minute the sled started from the top of the hill, and, therefore, the doctrine of the "last clear chance" could have no application until we actually knew of her dangerous position.

In the case of *Rensch vs. Licking Valley Rolling Mill Co.*, (*supra*) where the plaintiff on a bobsled was injured by the sled running into a wagon negligently left standing in the street, in which the plaintiff claimed "that the defendant by exercising ordinary care would have known of the danger of leaving the wagon in the street," it was held that "actual knowledge must be shown."

See also the case of *Thompson vs. Bridgewater*, 27 Mass., 187, in which it appeared that the plaintiff's

horse was drowned by being swept off a causeway which was covered with water, and it appeared that from an eminence some distance from the causeway the condition of the causeway could have been seen by the traveler. In relation to this fact the court said: "The carelessness supposed to be sufficient to defeat the right of action is in not having seen from the eminence on the approach to the causeway that it was not possible without hazard; but surely travelers are not required to be constantly on the lookout for difficulties which they have a right to presume will not occur." And we insist in our present case that the motorman of the car which figured in the accident was not obliged to be "constantly on the lookout" for the unlawful acts of others.

Referring again to the case of Menger vs. Laur, where the defendant ran into the plaintiff's surveying instrument left standing in the street, in which it was held that the instrument left standing in the public street was a nuisance, we beg to call attention to that part of the opinion found on page 216, as follows: "Nor was there any evidence of negligence on the part of the defendant. \* \* \* The only evidence tending to show carelessness by the defendant was that at the time of the collision he was looking at some houses on the side of the street to see how the slaters in his employ were getting on with the work. He was driving slowly; the street was unobstructed except by the plaintiff's instrument. The defendant did not see the instrument and he *had no reason to expect to encounter an obstacle of that or any other character.*"

Under the principles of the Menger case, we submit that in our present case the motorman of the car was not only not negligent but also that he was not bound to anticipate the presence of a nuisance in the street, and the mere fact that a boy ran up the track waving his arms was not notice of the presence of such a nuisance. As we said above, the act of the boy intended to give warning of the nuisance was more apt to distract

the attention of the motorman from the actual danger of the sledriders than to serve any other purpose, and unless it is shown that the motorman actually knew of the presence of the bobsled and its flight, and the dangerous condition surrounding its flight, there can be no application of the doctrine of the "last clear chance," nor did any duty arise whereby the defendant was obliged to avoid the negligence and unlawful acts of the sledriders.

## V.

### The plaintiff was guilty of negligence.

During the afternoon of the day on which the accident occurred, the plaintiff had stood at the corner of Montclair and Mt. Prospect Avenues, and watched the coasters for more than an hour (p. 11). She knew that one of their party stood at the corner for the purpose of signaling sleds, and, as she says, signaling the cars when they did not stop; and that (p. 44) she paid no attention to any signals given for the sled to start on the trip on which it collided with the car. She testified that mostly all the cars stopped (p. 11), which would indicate that there was a question, in her mind at any rate, as to whether or not the cars all stopped, although she says later in her testimony that all the cars she saw did stop before crossing Montclair Avenue, but she says she did not know why they stopped (p. 28). She had ridden on the bobsled on its two trips immediately preceding the accident, and, therefore, is chargeable with a knowledge of its equipment and the absence of a light on it and of any means of stopping it in case of danger. The knowledge of these facts on her part, we submit, charges her with negligence or assumption of the risk of injury, and precludes her recovery.

Were not the persons on the sled negligent in relying on a signal from the boy below them that no cars

were coming, when the boy's view to the south (pp. 76 and 94) was so restricted that, considering the distance that the sled would have to travel, the boy apparently could not see cars approaching from the south in time to make his signal that no cars were approaching a signal that could safely be relied upon?

Were not the persons on the bobsled negligent in waiting, after the boy's signal was given, until the small sleds had gone ahead? As to these small sleds, the signal of the boy that no cars were approaching was effective, as they all crossed the track safely before the car reached Montclair Avenue (pp. 96, 97, 98). If the bobsled had started at the same time as these smaller sleds did, the accident would not have occurred. But the bobsled waited so long before starting that the boy's signal was no longer one on which the coasters on the bobsled had any right to rely.

## VI.

### Comments on plaintiff's brief.

It is, unfortunately, necessary to accept very guardedly the statements of alleged fact contained in the brief of the counsel of plaintiff in error. On pages 2 and 3 of his brief no less than six misstatements of the evidence appear. He says (p. 2) speaking of the existence of the coasting "that the trolley company was aware of this fact and that it caused all of its cars at that time \* \* \* to stop" before crossing Montclair Avenue. He refers to a number of pages of the printed book at which this alleged fact is supposed to appear, but the court will find on those pages no evidence that the company itself knew of the coasting or that it caused its cars to stop, as the testimony referred to the acts of individual motormen. And on page 3 of his brief he says that the sled "was fitted with a brake and gong, and could be steered." The evidence on the subject of the brake appears at page

85 of the case, as follows: "Q. Did it have a brake? A. Yes, sir. Q. What? A. No, sir. Q. It didn't have a brake, did it? A. No, sir; I didn't examine it to find out what it had." P. 131, l. 39. "Q. Did you have any brake on the sled? A. No, sir." At p. 132: "Q. After you got started at the top of the hill that night how could you stop your sled? A. Couldn't stop it. Q. Could not stop it? A. No. Q. There was not any way to stop it at all? A. No, sir."

On the subject of the allegation that the sled could be steered, note testimony p. 141, l. 37. "Q. I did not know that. You skidded before you got around? A. As soon as you begin to turn your bob is going to skid." This testimony shows that whatever evidence there may be about the possibility of steering the sled, the fact remains that it could not be steered effectively to turn this corner as was attempted because it skidded as soon as it began to make so extensive a turn.

On page 3 of his brief he says, speaking of the attention of Winterbottom having been called to the car "and on that account he did not start to turn into Mt. Prospect Avenue sooner than he did." This is clearly a wrong inference to be drawn from the facts, because it appears on page 142 that he did start to turn about as far back from the corner as was in any way practicable, so that even though he had known that the car was not going to stop he could not, to any purpose, have started to turn sooner. The following appears on page 142 of the book: "Q. How far away from the corner were you when you started to change your direction? A. About fifty feet. Q. Fifty feet? A. Yes. Q. Did your sled begin to skid then? A. As soon as I turned. Q. Turned where? A. To go up Mt. Prospect Avenue." As Mt. Prospect Avenue is 100 feet wide he, in making this turn, had 100 feet to go before reaching the center of Mt. Prospect Avenue and the zone of danger of the approaching car.

On page 3 of his brief the plaintiff in error says "that at the time he started to turn into Mt. Prospect

Avenue the car was somewhere about at the first or south crosswalk." If it is meant by this that the rear end of the car was about at the south crosswalk it is a correct statement, but if he means that the head of the car was at the south crosswalk it is incorrect, because it appears at page 134, "Q. You were fifty feet away from the corner of Mt. Prospect Avenue when this trolley car was blocking the way in front of you and moving, were you not? A. About fifty feet," and it appears again at page 144: "Q. Just a question or two, Walter. I do not know whether you were asked in all this maze of questions when you started to turn your bob where the trolley car was. Where was the trolley car when you started to turn your bobsled at a point 50 feet away from Mt. Prospect Avenue? A. The rear of the trolley car was at the south crosswalk. Q. At the time when you started to turn? A. Yes, sir."

On page 3 of his brief the plaintiff in error says "and that after the small sleds started the bob followed and that it didn't go any faster than the smaller sleds, (as it did not catch up with them)." This statement on the part of the plaintiff in error is only a surmise, because it appears (p. 136): "Q. Could your sled go down that hill faster than the small sleighs? A. Yes, sir. Q. Faster? A. Yes, sir." It is true, as the plaintiff in error says, that the bob did not overtake the smaller sleds, but that was so because the bob evidently delayed so long in starting, after the signal of the boy had been given, that it could not overtake the smaller sleds which started on the signal.

The plaintiff in error in his brief, on page 5, attempts to develop a theory that the action of the motorman constituted a "willful and wanton act." Of course, we have no right, in the absence of proof, to assume that the motorman was guilty of criminal conduct, particularly where other and more reasonable inferences arise. It seems more fair to assume that he did not understand the boy's warning and that when

he had slowed up for the boy to get out of the way, he believed that he had done all that was necessary. It is more fair to assume that he considered the boy's warning a false alarm, for on looking ahead he could see "all clear" even a greater distance up the cross street than there was any reasonable need for his looking. The premises upon which the counsel for plaintiff in error bases his argument, therefore, largely falls, and there is no need of any detailed criticism of this argument thus based upon false premises.

The statement on page 6 of his brief, that the motorman "forced his car into the sled on which the plaintiff was riding," is absurd, and needs no comment in view of the evidence of the distance that the sled was up the cross-street when the car reached the crosswalk, and in view of the evidence of the distance the sled was up the cross-street even when the car was directly in the cross-street.

The failure on the part of the motorman to understand what the boy meant could not at most be more than negligence; and the defendant claims in view of the status of the plaintiff that negligence in this case is not actionable.

As one of the justices stated at the argument of this case, there could be no claim based on willfulness, as the declaration contains no such charge, and in any event the doctrine of respondent superior would not apply to a willful act of the motorman.

Under point 2 the plaintiff in error on page 11 said: "While the fact does not directly appear in the evidence that Montclair Avenue was such a street, yet there is sufficient evidence \* \* \* from which a jury could find that Montclair Avenue was an unfrequented street for travel, and that it would not be a nuisance to use the street in question for the purpose which the children put it to." We submit that in view of the fact that Mt. Prospect Avenue with its two car tracks and frequent cars, its important character as a thoroughfare, etc., was the scene of this accident, the

counsel of plaintiff in error in his attempt to direct attention to the character of Montclair Avenue is making an unfair departure from the facts of the case, or loses sight of the fact that the street whose character is to be taken into consideration is Mt. Prospect Avenue, where the accident occurred, and not Montclair Avenue.

In relation to point 3, as already pointed out, there was no acquiescence on the part of this defendant in the acts of the coasters, and it is assuming entirely too much from any facts proved for the plaintiff's counsel to state that the defendant "publicly gave them notice \* \* \* that the coasters could depend upon the assistance of the company" in maintaining a public nuisance. A mere glance at the case of Chaffee vs. Tel. Co. cited on page 15 of the plaintiff in error's brief will show that it has no application to the conditions existing in this case.

Referring to the Dimes case, cited in point 4 of the plaintiff's brief, it has no application to our present case, for the Dimes case merely decided that a traveler cannot abate a public nuisance if he can go around it, but, of course, in our present case the trolley car was confined to its rails, and, in fact, the Dimes case decides that a traveler may abate a nuisance if necessary in order that he may proceed, and if "necessary to exercise his right of passing along the highway."

Counsel of plaintiff in error cites several cases such as Steele vs. Burkhardt and Spofford vs. Harlow, in which the unlawful act of the plaintiff created a *condition*, and was not a contributing cause of the accident. Such cases, of course, are inapplicable.

As to point 5 of the brief of the plaintiff in error, we submit that it is not *imputable* negligence with which we charge the plaintiff. We do not claim that because the steersman was clearly negligent such negligence should be imputed to this girl. We claim that the girl herself was negligent as a participator in this nuisance, and that she assumed the risk of the injury

which she received. The paragraph at the bottom of page 20 of the brief of plaintiff in error contains several misstatements, and several unfair inferences from the evidence. The sled was not, as there stated, "capable of being steered" without skidding; it was not "equipped with a brake"; it is not true that its flight "was protected" by any regulation of the company made public as alleged. Furthermore, as has already been referred to in our brief, if the boys were posted at the corner to signal the cars, that very fact is a refutation of the proposition that the company had a regulation, upon which the riders could depend, that the cars should stop at the first crossing.

Furthermore, instead of it being a regulation of the company to stop the cars, the counsel of the plaintiff in error himself appears to arrive at a contrary conclusion on page 2 of his brief when he says "that a policeman for a short time and a number of boys during the balance of the time stood on the corner of Montclair and Mt. Prospect Avenues and signalled to the sleds *and also to the cars.*" A number of pages are referred to in this connection. We call attention merely to the first one, at page 26, where the plaintiff herself said: "Q. Was there any policeman there on the corner? A. Yes, sir. Q. What was he doing there? A. Well, he stopped the cars. Q. Stopping the cars? A. Yes. Q. That is right? A. Well, he looked out that the cars didn't— Q. He was there to stop the cars? A. Well, and anything that came up."

Miss Husk, one of the coasters on the bob, at p. 60 states that when they started up the hill the last time the policeman had gone.

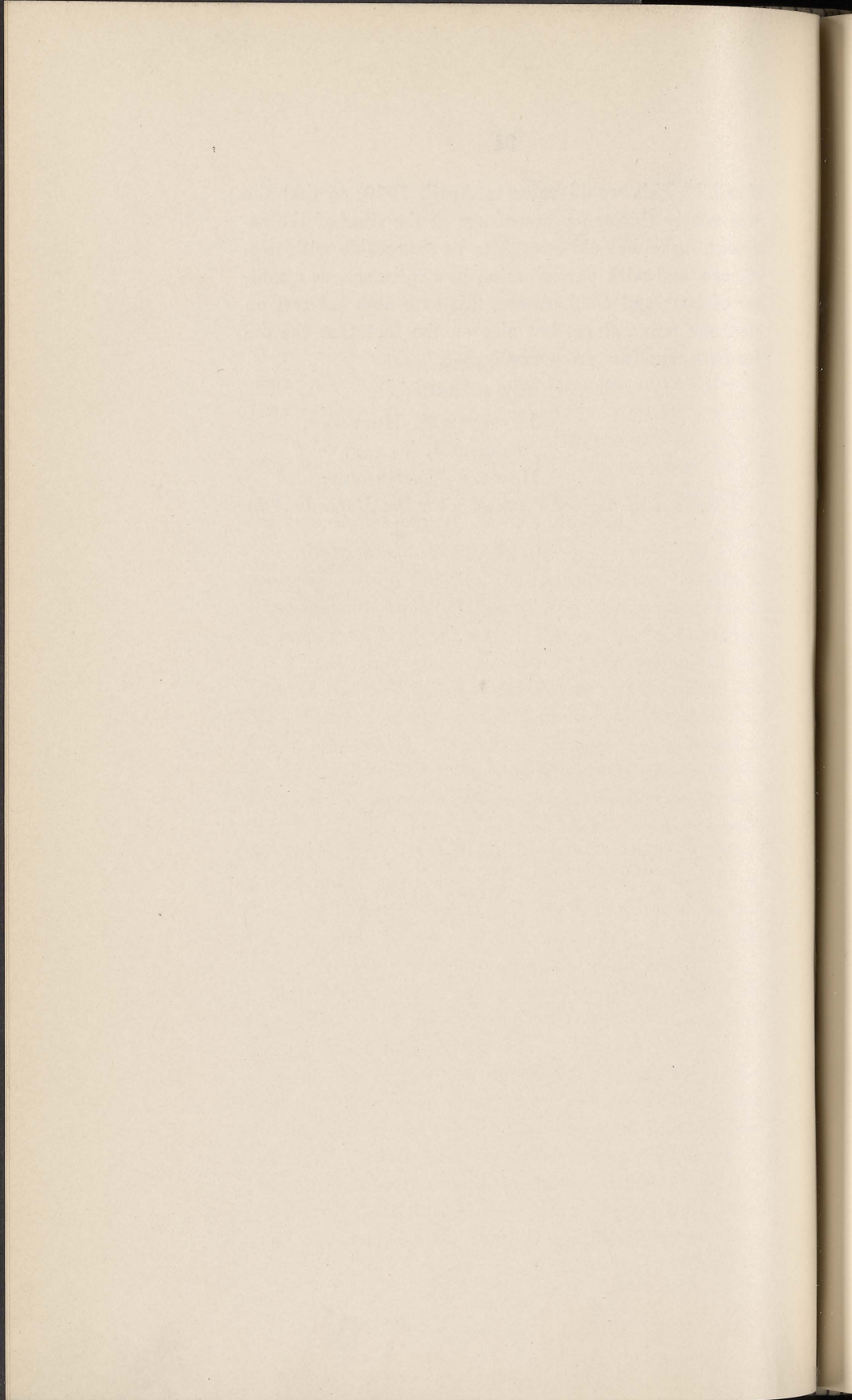
As to the proposition advanced on page 21, of the brief of plaintiff in error, that "we are dealing with children," etc., we submit that the accident happened January 7, 1910, that the trial took place March 7, 1911, and that the plaintiff then testified as follows (p. 9): "Q. Mildred, how old are you? A. Thirteen. Q. And when were you thirteen? A. Last

April." This would refer to April, 1910, so that she was nearly thirteen years of age at the time of the accident. She was old enough to be chargeable with negligence, and with participation in a nuisance, as a matter of law; and furthermore, this case does not rest on that one point alone, but also on the fact that the defendant was free from negligence.

Respectfully submitted,

LEFFERTS S. HOFFMAN,  
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*Attorneys of and of Counsel with the Defendant in  
Error.*



New Jersey  
Court of Errors and Appeals

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MILDRED LYNCH, by next friend, Plaintiff, Plaintiff-in-Error,	} In tort. On Writ of Error to Su- preme Court.
vs.	
PUBLIC SERVICE RAILWAY COM- PANY, Defendant, Defendant-in-Error.	

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**BRIEF OF BENJAMIN M. WEIN-  
BERG, FOR PLAINTIFF IN ERROR**

**Statement of the Case**

On the seventh day of January, nineteen hundred and ten, the plaintiff, then a child thirteen years of age, was sled riding on Montclair avenue in the city of Newark. Montclair avenue is a street which intersects Mt. Prospect avenue, upon which the defendant company runs and operates trolley cars. On the day in question about 5:30, in the afternoon, the plaintiff with other children while riding down Montclair avenue on a bobsled, belonging to one Winterbottom, a young man twenty years of age, was injured by reason of the bobsled and trolley car coming into col-

lision on Mt. Prospect avenue about a car's length north of the north crossing of Montclair and Mt. Prospect avenues.

It appears that Montclair avenue was a street used by children for coasting, and that a large number had been taking advantage of the sport on the afternoon in question (pages 24, 51, 69, 72); that the trolley company was aware of this fact and that it caused all of its cars at that time which were going north, to stop on the first or southerly crossing, and all cars which went south to stop on the first or northerly crossing, (pages 11, 12, 52, 69, 73, 75, 100, 118, 119, 146, 180 etc.); that a policeman for a short time and a number of boys during the balance of the time, stood on the corner of Montclair and Mt. Prospect avenues and signalled to the sleds and also to the cars (pages 26, 27, 28, 53, 57, 75-80, 108, 118, 146 etc.); that the plaintiff had made two trips down on the bobsled in question and was on her third trip about half past five (page 12); that the sled was equipped with a bell which was kept ringing all the way down the hill; (pages 12, 96, 105, 118).

It further appeared that on the trip in question when the accident occurred, a young man, by the name of Martin stood on the corner of the avenues in question flagging or signalling to the sleds; that he was standing in the middle of Mt. Prospect avenue and, gave the signal to the sleds, of which there were many, to come down the hill; that a short time after he did so, he observed a car coming along Mt. Prospect avenue from the south, which was at that time about a block away from him; that he feared the car was not going to stop, so ran toward it the length of a lot, (size given on page 153, as 85 feet) at which time the car was then about fifty-five feet further south of him; that he signalled it to stop and that

the car slowed up as it got to him and as he jumped from the track, the motorman put on a "burst of speed" and ran his car across Montclair avenue (given on page 154 as  $47\frac{1}{2}$  feet wide) and collided with the sled (page 75-80 etc.) at a point about a car's length north of the north crossing of Montclair avenue; the motorman thereby running the distance of fifty-five feet to the boy, 85 feet (the length of the lot) to the corner,  $47\frac{1}{2}$  feet, the width of Montclair avenue and about forty feet the length of the car, or a total of over 225 feet, from the time he received the signal to stop until he crashed into the sled.

It further appears from the evidence, that the sled, while a long one (12 feet) was fitted with a brake and gong, and could be steered; that the steersman, from the fact that the cars had hitherto stopped on the first crossing, believed that this car which came along would also stop there and so informed the plaintiff and another girl when his attention was called to the car (page 63) and that on that account he did not start to turn into Mt. Prospect avenue sooner than he did; that at the time he started to turn into Mt. Prospect avenue the car was somewhere about at the first or south crosswalk; that his gong was kept constantly ringing all the way down the hill (pages 12, 96, 108, 118); that the steersman saw the car slow up and then start again, and that he started to turn his sled to the left up Mt. Prospect avenue and would have made the turn, but the car put on another "burst of speed" which brought it right into the sled (pages 122-123).

It does not appear that there was any other bob on the hill in the afternoon in question, and that after the small sleds started, the bob followed, and that it did not go any faster than the small sleds, (as it did not catch up with them) and that

it did not get down ahead of the other sleds (page 137).

The plaintiff received severe and permanent injuries as a result of the collision, for which suit was brought in the Supreme Court.

Upon the conclusion of the plaintiff's case, the evidence in which is substantially set forth, the defendant moved for a nonsuit, which was granted by the Court and judgment entered thereon. The plaintiff thereupon sued out a writ of error, which brings the matter before this Court for review.

The learned Court found that there was evidence of defendant's negligence, but decided as a matter of law, that the plaintiff at the time of meeting with her injury, was engaged in an unlawful act, which was the proximate cause of the accident. It is respectfully submitted that this was error, and that the judgment of nonsuit should be reversed for the following reasons:

First: The defendant was guilty of a willful and wanton act, and could not therefore raise the question of plaintiff's contributory negligence.

Second: The Court erroneously found the plaintiff guilty of being a wrong-doer.

Third: Even if the plaintiff was engaged in an act of nuisance, the defendant by reason of its acquiescence, can not now take advantage of the situation.

Fourth: The defendant can not excuse its negligence by showing that the plaintiff, at the time of the injury was in the commission of a nuisance.

Fifth: The defendant being guilty of negligence, the question of plaintiff's contributory negligence was for the jury.

## POINT I

**The defendant was guilty of a willful and wanton act, and could not therefore raise the question of the plaintiff's contributory negligence.**

From the opinion of the learned Court (page 193) it appears that he was satisfied that there was evidence to go to the jury on the question of the defendant's negligence. The plaintiff however insists that the conduct of the defendant amounted to willfulness in law.

A public street in the outskirts of the city, was used for sled-riding all the afternoon of the day of the accident. Coasters in large numbers were taking advantage of the weather conditions and enjoying the sport. The trolley company knew this, and adapted itself to the situation by publicly regulating the stoppage of its cars at the intersecting corner, thereby creating a situation where sled-riders were safe from collision. To have proceeded to run its cars, thereafter, in violation of this custom would have constituted negligence.

In *Hayward vs. N. J. Street Ry. Co.*, 45 Vr., 678, the plaintiff was struck by a trolley car while crossing a public street at a point where there was a sign placed over the tracks by the defendant, requiring cars to "run slow." This Court held that this requirement adopted by the defendant corporation previous to the accident for the guidance of its servants in matters relating to the safety of the public and made public created a duty as to such persons as would be likely to be injured by a failure to observe the

precautions prescribed, and that proof of a violation of such requirements by the motorman directly resulting in injury to the plaintiff, was evidence, although not conclusive, from which the jury would be warranted in finding the motorman negligent and the defendant therefore liable.

In *Buttelli vs. J. C. H. & R. Ry. Co.*, 30 Vr., 302, it appeared that the plaintiff was walking along the path over a car track, and was struck by a trolley car. Magee, J. said, "If the motorman deliberately, in broad daylight with full opportunity to perceive that the plaintiff did not heed any signals of the gong, if it was rung, or any notice derived from the rumbling of the car, ran the plaintiff down and did him an injury, it can not be contended that such conduct was not negligent."

In the present case not only did the motorman fail to perceive the plaintiff on her sled, but he failed and refused to govern and control his car, after having received special notice that someone was in danger if he persisted in running his car. As pointed out, one of the witnesses rushed up the street a considerable distance waving at the car and signalling the motorman to slow up or stop, but that the motorman only temporarily slackened the speed of the car, in order no doubt to avoid hitting the boy, then put on a "burst of speed," and forced his car into the sled on which the plaintiff was riding. He must have known that his failure to heed the boy's warning would have been productive of injury or death; for in addition to the particular warning which he received, he saw, or ought to have seen, the continuous line of sleds which just preceded the appearance of the bobsled. Such recklessness and heedlessness, in my opinion, is converted from mere negligence, or neglect—and rises to the degree of willfulness, and wantonness.

*Thompson on Negligence, Vol. 1, Sec. 20*, in defining willful conduct says:

“It may consist of a degree of carelessness and inattention which proceeds in gross disregard of the rights of others, without involving any willful or intentional purpose of injuring them. ‘The true conception of willful negligence involves a deliberate purpose not to discharge some duty necessary to the safety of the person or property of another, which duty the person owing it, has assumed by contract, or which is imposed upon the person by operation of law.’ ”

The same author in *Sec. 21 same vol.* says:

“In a given situation, slight care might suffice to ward off an injury to a third person, and if we adhere to the division of negligence into ordinary and gross, the failure to exercise the slight care would be gross negligence; but this failure might arise either from carelessness, or inadvertence or from wilfulness. In both cases the degree of care required to ward off the injury, and hence the degree of negligence involved in failing to exercise such care, would be the same. But the quality of the neglect would be essentially different: the one would proceed from mere neglect or inadvertence, the other would proceed from a willful determination not to perform a known duty,”

and in *Vol. 2, Sec. 1596*, in commenting on a particular case said:

“The sound doctrine is, that if the railroad company in the keeping of that vigi-

lant and constant look-out which is demanded by the principle of the common law, and imposed in so many cases by the statute law, might have discovered the traveller in time by the exercise of such care, as his perilous situation demanded, in checking the speed of the train or otherwise to avoid injury to him, and failed to do so, the railroad company is liable in damages. Under this rule where the servants of the railroad company driving the train could have seen the perilous position of the traveller, the liability of the railroad company will be practically the same as though they had seen it and had nevertheless negligently run over him. It is an apt illustration of the doctrine arising everywhere in the law of negligence, that negligent ignorance operates for judicial purpose, the same as actual knowledge—”

My contention is, that the motorman's failure to look after being warned, is tantamount in law, to his actually seeing, (which he must have because of the numerous sleds) and recklessly proceeding, unmindful and indifferent of the consequences, which must have appeared imminent and dire, thus not permitting his conduct to escape from the characterization of willful and malicious.

Mr. Thompson, on this branch of the law (Vol. 1, Sec. 207) states that:

“The books justify the conclusion that mere carelessness or heedlessness may be so gross and reckless as to rise to the grade of willfulness or wantonness such as will exclude the defense of contributory negligence. This will often happen where the engineer driving a railway train sees a person on the track in front of him exposed

to imminent danger, under circumstance where he could easily prevent injury to him by the usual precautions of sounding the steam whistle or checking the speed of the train of both, and utterly fails so to do—such conduct, it has been well held, accruing after the engineer becomes aware of the danger to which the person is exposed, rises to the grade of wanton or reckless conduct, and renders immaterial the inquiry as to the contributory negligence of the person exposing himself.”

Taking what is said here in connection with what the learned writer says in Vol. 1, Sec. 20,—*supra*, the recklessness and willfulness of the motorman is made out from his inattention which proceeded:

“in gross disregard of the rights of others without involving any willful or intentional purpose of injuring them.”

In the case of *Bittle vs. Camden & Atl. Rlrd. Co.*, 26 *Vr.*, 615, the plaintiff charged that the defendant’s engineer wantonly blew his whistle while passing him while he was leading his horse near the railroad track. In passing upon the question of the defendant’s negligence, Lippincott, J. speaking for this Court said (page 621):

“The question here is whether this whistle was so negligently, needlessly or wantonly blown as to have caused injury to the plaintiff. Abstractly this question in any given case where an inference of this character may be reasonably drawn from the evidence, should be committed to the jury for its decision and not assumed by the Court.”

It is therefore respectfully insisted that the Court erred in refusing to send the case to the jury on the question of the defendant's wantonness, there being sufficient evidence from which such an inference could reasonably be drawn.

## POINT II

### **The Court erroneously found the plaintiff guilty of being a wrongdoer.**

The learned Court, while declaring that the plaintiff was guilty of negligence which directly contributed to the accident, did not base its decision on that point, but directed the nonsuit because the plaintiff was engaged in an unlawful act—in riding upon a sled—that such an act was a nuisance, and that “the quality of the act is not altered by giving notice of it, or by improvising some partial provision at some point for the protection of persons rightfully on the public highway. *Such notice may cast upon a traveller the obligation of special care for his own safety; it can have no further legal effect,*” p. 198. (Italics mine.)

Fortunately there is no such harsh doctrine in the law. The plain effect of such a principle would be to permit one, who observes another in the commission of an unlawful act, to conduct himself in such a criminally reckless manner as to injure or even kill him. I quote the following:

In *Chic. & R. I. R. Co. vs. Still*, 19 Ill., 499 p. 508, the Court said:

“Neither has one the right, because the other has omitted to use due care, to cease the efforts on his part to avoid occasioning injury to the other. That would be to permit the party guilty of the first negligence

to be wantonly killed by the other. The parties must be held on both sides to the use of every reasonable effort to avoid such a result."

In our own State, the law is well settled that even wrongdoers—trespassers—can not be willfully injured.

*Phillips vs. Library Ass'n.*, 26 Vr., 307.

*Fitzpatrick vs. Glass Co.*, 32, Vr., 378.

*D. L. & W. vs. Reich*, 32 Vr., 635.

This subject will be pursued further under Point 4.

Coming back to the finding of the Court that the plaintiff was in the commission of an act of nuisance and therefore a wrongdoer, I submit that there is no such thing in law as a nuisance *per se* generally. Circumstances are required to make it so. Thus it is a nuisance *per se* to discharge fireworks in a public street, (*Jenne vs. Sutton*, 14 Vr., 257) but obviously would not be so in some isolated field.

While it would be a nuisance *per se* to ride a sled on a busy thoroughfare, would it be a nuisance to do so on a not frequented street in the suburbs of a city? While the fact does not directly appear in the evidence that Montclair avenue was such a street, yet there is sufficient evidence, such as the number of vacant lots, the consent to indulge in sled riding by a police officer (page 126) their knowledge of local topography and other facts, from which a jury could find that Montclair avenue was an unfrequented street for travel, and that it would not be a nuisance to use the street in question for the purpose which the children put it to.

The question of nuisance, except nuisance *per se*, is for the jury who must determine whether

or not the particular thing, act, omission, or use of property complained of, is in fact a nuisance. *Am. & Eng. Ency. Vol. 21, p. 691.* The precise question however, of whether sled riding in a public street is a nuisance, has been decided in several jurisdictions in the negative. The opinion, which, to my mind, is the most logical and which seeks to grant and preserve to children, some rights in the highways of our cities, is that of the learned Justice Cooley, in the case of *Burford vs. Grand Rapids, 53 Mich., 98, (18 N. W., 571)* in part as follows:

“Coasting does not necessarily interfere with the customary use of the street, and might be indulged in with no serious inconvenience to any one, not only in many places in the country towns, but even within the limits of incorporated cities and villages. We are accustomed to make our public ways four rods in width, but it is not expected that the whole four rods will be occupied for travel and it is possible to make use of parts of the public highways without encroaching at all upon the portions kept in repair and used for passage. It is also true throughout the interior and Western States, if not in all those bordering on the Atlantic, that in laying out towns, streets are dedicated to the public which there may for many years, be no occasion to improve for travel, and they become for some time mere open spaces for the sports and recreation of those who may see fit to make use of them. It could not be seriously contended that, for the municipal authorities to permit coasting upon such a street, would be to license a public nuisance. On the contrary as the

sport itself is healthful and exhilarating, it seems eminently proper, if the street is not put to other public use, that this diversion be allowed, if not expressly sanctioned. The sport itself is not entirely foreign to the purposes for which public ways are established, for the use of these ways for pleasure riding is perfectly legitimate, and coasting is only pleasure riding in a series of short trips repeated over the same road, not differing essentially from the riding in sleighs of which so much is seen on some of the streets of Northern cities, when suitable weather and proper conditions invite to this enjoyment."

See also *Hutchison vs. Concord*, 41 Vermont, 272; *Faulkner vs. City of Aurora*, 85 Ind., 130.

In *Jackson vs. Castle*, 80 Me., 119, (13 Atl., 49) which was a suit for damages, it appeared that defendant and a number of others were sliding and coasting with a contrivance in the nature of a bob, which was composed of two or more sleds connected together, upon and down the sidewalk of a public street, and that the coasters then and there made loud noises and hallooing and frightened plaintiff's horses which ran away and were injured etc. In passing upon the question of negligence, the Court said "sliding in a street, accompanied with boisterous conduct, is not necessarily unlawful. Nor is it necessarily a public nuisance."

The only case that I can find which seems to differ in principle from the cases cited is that of Mayor etc. of *Wilmington vs. Vandergrift*, 29 Atl. page 1047, (Delaware). The question whether sled riding generally was a nuisance or not, was not what interested the Court, for it appeared that the sliding was done on a street in

Wilmington which the Court characterized as "a well-known public highway." It is this fact no doubt which caused the Court to agree with counsel on both sides that sled riding was a nuisance. The question therein considered was not combatted, and even if it should be found that the question was settled by the Court, it seems to me that the propriety of the decision is open to considerable doubt.

It is therefore respectfully insisted that the Court erred in finding as a matter of law, that the plaintiff, because of having ridden a few times on a sled was a wrongdoer and without the pale of protection from persons either ordinarily or criminally negligent.

### POINT III

**Even if the plaintiff was engaged in an act of nuisance, the defendant by reason of its acquiescence, can not take advantage of the situation.**

The defendant knew that children were using Montclair avenue for coasting. It knew that the sleds crossed Mt. Prospect avenue upon which its cars were run. Instead of objecting to the interference with the running of its cars at that point by the coasters, if there was such interference, it, on the contrary, acquiesced in the sport of the children, and publicly gave them notice, by means of stopping its cars on the first crossing that they came to, that they were not only aware of the coasting, but that the coasters could depend upon the assistance of the company, thereby lulling the children into a belief that there was no danger. To now permit this defendant to take advantage of that situation, after being guilty of a negligent act, would be to allow them to create a

trap for the children. By consenting to the wrongful acts of the children, if they were such, the defendant could not raise the point, that they suffered damage from such acts.

*Chaffee vs. Tel. Co.*, 43 N. W., 1064  
(Mich).

#### POINT IV

**The defendant can not excuse its negligence, by showing that the plaintiff, at the time of the injury, was in the commission of a nuisance.**

*Thompson on Negligence Vol. 1, p. 254*, lays down the rule that "although a person places his property in the public highway, or in a navigable stream so that it constitutes a nuisance, yet this does not warrant its destruction by one to whom the nuisance occasioned no special damages."

In the case of *Dimes vs. Petley*, 15 Q. B., 275, the plaintiff constructed and maintained a wharf, from which projected a jetty, a part of which extended into the Thames a considerable distance, so that persons navigating vessels up the river would be interfered with. The defendant's vessel was going up the river under tow, and as she passed by the wharf, the defendant's vessel in some manner struck the jetty and tore it away, doing much damage, to recover for which, the plaintiff brought suit.

The defendant entered four pleas, the fourth plea of which alleged that the plaintiff wrongfully constructed the wharf and jetty, which obstructed and prevented navigation over that part of the river and was a common nuisance. That the plaintiff had notice of the premises and willfully continued the nuisance. That defendant had occasion to pass with the vessels over the

said part of the bed and course of the river, and in so passing did the acts complained of; and that he managed the vessels with all the skill and care which would have been due and proper for the navigation, had not the said part and course of the river been so obstructed; and that he did no unnecessary damage.

The decision was by Campbell C. J., who in the course of his opinion said:

“We think it (the plea) bad in not alleging that there was a necessity for the defendant to navigate the ship over that part of the river where the nuisance was, nor even that this part of the river was his course and that it would have been inconvenient and difficult to have taken any other course by which the nuisance might have been avoided. \* \* \* If there be a nuisance in a public highway, a private individual can not of his own authority abate it, unless it does him a special injury, and he can only interfere with it as far as is only necessary to exercise his right of passing along the highway; and, without considering whether he must show that the abatement of a nuisance was absolutely necessary to enable him to pass, we clearly think that he can not justify doing any damage to the property of the person, who has improperly placed the nuisance in the highway, if, avoiding it, he might have passed on with reasonable convenience.”

Assuming, but not admitting, that riding on the bobsled was a public nuisance, nothing appears in the case to show that any special damages resulted to the defendant or that it could not run its trolley cars without necessarily coming into contact with the sleds, thereby justifying it-

self in removing it from its path. The sled riding gave rise to no injury to the defendant, and in no wise interfered with the running of the trolley cars; all that was necessary in order to enable the trolley car to pass along the highway with safety to itself and without causing injury to the sledriders, was to have observe such care as the law calls upon the user of a highway such as a street railroad company, when approaching a street intersection, to observe, and in this particular case to continue with the careful system which is adopted, without inconvenience to itself and with safety to the children.

In the case above cited, the learned Court held that it was not shown that the accident could not have been avoided, therefore, the defendant could not excuse his negligent act on the ground that the nuisance was the direct cause of the plaintiff's damage.

In *Steele vs. Burkhardt*, 104 Mass., 59, the facts of the case were that plaintiff left his horse and wagon standing across a public street in the City of Boston, instead of parallel with the sidewalk, which was in violation of a city ordinance, and that while it was in that position, it was carelessly run into by a team belonging to the defendant which was carelessly driven by his servant. On an attempted defense that plaintiff could not recover or account of his having been in violation of the law at the time of sustaining the injury and damage, Chapman C. J., said:

“It is true generally that while no person can maintain an action to which he must trace his title through his own breach of the law, yet the fact that he is breaking the law, does not leave him remediless for injuries wilfully or carelessly done to him, and to which his own conduct has not contributed.”

In *Spofford vs. Harlow, 3 Allen, 176*, it was held that though plaintiff's sleigh was on the wrong side of the street, in violation of law, the defendant was liable if his servant ran into the plaintiff carelessly and recklessly, the plaintiff's injury not contributing to the injury, and in *Brown vs. Lynn, 31 Pa. St., 510* it was said that "A defendant by whose negligence the property of another has been injured, can not excuse his negligence by showing that plaintiff's property was placed where it received the injury by an act of trespass on the part of the plaintiff."

In *Cyc. Vol. 29, p. 443*, the rule is stated thus "A person can not escape liability from negligence merely because the person injured was a trespasser, where before the commissions of the negligent act, the presence of the trespasser was known to him, or ought to have been known, and where, by the use of ordinary care, defendant might have avoided the injury." See also *Elliott on Rys. Vol. 3 (2nd Ed.) Sec. 1253* and notes to same: *Oleary vs. El. Co., 75 N. W.* and cases therein cited and discussed.

A rather interesting proposition is involved in the thought which was expressed by the learned trial Court to the effect that "There is evidence to go to the jury on the question whether the car was operated with due care," and then "The declaration alleges that the bobsled was lawfully crossing Mt. Prospect avenue. If this be true, the plaintiff was not at fault. Is it true? *The decision of the motion to nonsuit turns on the answer to this question*" (page 195). Then the Court goes on to characterize the plaintiff's action in sled riding as a wrongful one and says of the warning given the motorman, that "such notice may cast upon a traveller the obligation of special care for his own safety; *it can have no further legal effect*" (p. 198). If this be true.

then, what process of reasoning did the learned Court indulge in when he found that there was evidence of negligence on the part of the defendant. Negligence implies neglect to perform a duty. What duty did the defendant owe the plaintiff? If there was negligence on the part of the defendant, then it admittedly owed the plaintiff some duty.—As was said in *D. L. & W. vs. Reich* (*supra*, p. 637) by the present Chief Justice:

“If there was no duty in the case, there can be no negligence; there can not be such a thing as the negligent performance of a non-existent duty.”

The evidence showed negligence. It was therefore the duty of the Court to submit the matters discussed under this point to the jury.

#### POINT V

**If the defendant was guilty of negligence, the question of plaintiff's contributory negligence was for the jury.**

It is first submitted however, that inasmuch as the owner and steersman of the bobsled was neither the agent nor under the control of the plaintiff, the question of the plaintiff's contributory negligence was out of the case entirely.

*Shearman and Redfield, Vol. I, Sec. 65 (5th Ed.)* say:

“It is only the contributory fault of the injured party, or of some one whose fault is imputable to him, that can excuse the defendant. The fault of a mere stranger, however, much it may contribute to the injury, is no defense for one whose negligence was its proximate cause.”

The plaintiff having received her injury while riding by invitation on a sled managed and owned by another, the negligence of the steersman is not imputable to her.

*Consol. Tr. Co. vs. Hoimark*, 31 Vr., 456.

*Same vs. Noonan*, 35 Vr., 579.

The question of the plaintiff's contributory negligence was not considered by the trial Court, although the contrary might seem to appear from some of the language employed by it. It might be a fact *de hors* the record, but it is nevertheless true, that the learned Court did not listen to argument upon that subject by either counsel, but passed at once to what the court considered the only question aside from defendant's negligence, to wit, whether the plaintiff's riding on the bobsled was lawful or not (p. 195).

Assuming that the negligence of the defendant was not willful or wanton (the contrary of which is insisted upon under Point 1) and that it could defend on the ground of contributory negligence, and that the negligence of the owner of the sled who was managing it, could be imputed to the plaintiff, the inquiry now arises as to whether the conduct of the steersman was such as to become a matter for the consideration of the Court or for the jury.

Here was a sled admittedly a fast runner, capable of being steered and equipped with a brake and gong, which was kept ringing all the time, the flight of which was protected; first by the regulation of the company, made public, in stopping all of its cars on the first crossing to which they came, and secondly, by the added care of the riders in having boys posted at the corner of the avenues to signal both the riders and cars, which regulation and signal had been up to the time

of the accident, observed and recognized by the men in charge of the defendant's cars.

In this case we are dealing with children who are not held by the courts, to regulate their conduct by the same standard as is observed by adults; but even if they should be so held, it is at least a question for the jury whether a reasonable man in the observance of due care would not have placed himself upon a sled, if he were so inclined, knowing that the defendant had notice of its flight, and was so controlling and regulating its cars, as to protect the riders from collision with the same.

It seems to me, that a person who, under such circumstances, would fear to risk enjoying so exhilarating and healthful a pastime, is more discreet than he whom the law has created and styled "a reasonable man."

A case was presented, which under the decisions in our State, should have been submitted to the jury, for its consideration.

*Newark Pass. Ry. vs. Block*, 26 Vr., 605.

*Tr. Co. vs. Glynn*, 30 Vr., 432.

*Zolpher vs. Camden Ry. Co.*, 40 Vr., 417.

*Conrad vs. Eliz. Ry. Co.*, 41 Vr., 676.

*Bauer vs. N. J. St. Ry. Co.*, 45 Vr., 624.

*Hayward vs. N. J. St. Ry. Co.*, 45 Vr., 678.

*Zindler vs. P. S. Ry. Co.*, 49 Vr., 536.

It is there fully respectfully submitted for the reasons above set forth, that the judgment of nonsuit should be reversed.

Respectfully submitted,

BENJAMIN M. WEINBERG,

Atty. for and of counsel with  
Plaintiff, Plaintiff-in-Error.



BRITISH MUSEUM  
LONDON

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