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A

Affirmance of Judgment.

NEW JERSEY SUPREME COURT

CHARLES PRICE, *Plaintiff-Appellee,* *vs.* NEW YORK CENTRAL RAILROAD, *Appellant-Defendant.*	On Appeal

The above appeal having been duly argued in the November Term, 1919, by Vredenburgh, Wall & Carey for Appellant, and Alexander Simpson for Appellee, and the Court finding no error in the record, it is thereupon on this, the twelfth day of April, 1920, Ordered that the judgment of the Hudson County Circuit Court be in all things affirmed with costs, and the record remitted to the Court below to be proceeded with according to law and the practice of said Court.

Entered April 12, 1920.

On motion of

ALEX. SIMPSON,
Attorney for Plaintiff-Appellee.

A true copy.

ENOCH L. JOHNSON,
Clerk.

New Jersey State Library

B

Notice of Appeal.

NEW JERSEY SUPREME COURT.

CHARLES PRICE, by next friend, etc. *Plaintiff-Respondent,* *vs.* NEW YORK CENTRAL RAILROAD COMPANY, *Defendant-Appellant.*	Action at Law.

PLEASE TAKE NOTICE That the defendant appeals from the whole of the judgment entered in this court in the cause affirming the judgment of the Circuit Court of Hudson County herein, to the Court of Errors and Appeals of the State of New Jersey.

Dated, April 16, 1920.
Served, April 17, 1920.

VREDENBURGH, WALL & CAREY,
Attorneys of Defendant-Appellant.

Filed, April 19, 1920.

C

Ground of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

CHARLES PRICE, by next friend, etc. *Plaintiff-Respondent,* *vs.* NEW YORK CENTRAL RAILROAD COMPANY, *Defendant-Appellant.*	Action at Law.

The appellant states the following ground of appeal:

The Supreme Court erred in affirming the judgment of the Hudson County Circuit Court.

VREDENBURGH, WALL & CAREY,
Attorneys for Appellant.

Served, May 15, 1920.
Filed, May 17, 1920.

Opinion of Affirmance.

NEW JERSEY SUPREME COURT.

No. 64 Nov. T., 1919.

CHARLES PRICE,

vs.

NEW YORK CENTRAL RAILROAD COMPANY.

Appeal from Hudson Circuit Court.

Argued before Gummere, Chief Justice and Justice Minturn.

For the Appellant, Vredenburgh, Wall & Carey.

For the Respondent, Alexander Simpson.

The opinion of the Court was delivered by Gummere, C. J.

This action is based upon the Federal Employers' Liability Act. The plaintiff sued to recover for injuries received while acting as fireman on an interstate passenger train of the defendant company, claiming that his injury was caused by his being struck on the head by a fire hook carried on an engine which passed the plaintiff's engine going in an opposite direction. The accident occurred a short distance west of the westerly portal of the Weehawken tunnnel. The trial resulted in a verdict in favor of the plaintiff, and on the application of the defendant company a rule to show cause why that verdict should not be set aside and a new trial granted, was allowed. The rule contained the following reservations; first, whether the trial court erred in refusing to order a nonsuit; second, whether it erred in refusing to direct a verdict in favor of the defendant; and, third, the objections noted to the refusal of the trial

court to withdraw a juror and declare a mistrial. The rule to show cause having been disposed of the defendant brought its appeal for the purpose of reviewing the matters reserved.

It is contended that the trial court erred in refusing to nonsuit and to direct a verdict, because there was nothing in the proofs to justify the conclusion that there was any negligence upon the part of the crew, or any of its members, on the passing engine, in the manner of the placing of the fire hook upon that engine. The testimony of the plaintiff himself showed that the end of this fire hook was so close to the side of the engine upon which he, the plaintiff, was riding at the time of the accident, that it struck him on the head while he was leaning out on the side of the cab for the purpose of observing whether the signal at the westerly portal of the tunnel was properly set for his train, and it does not appear that in doing this he was performing the duty which rested upon him in a negligent manner. Under these circumstances it was clearly a question for the jury to say whether there was negligence in so placing this fire hook that it was a menace to a fireman on a passing train. The motions to nonsuit and to direct a verdict were, therefore, properly refused.

The only other matter reserved in the rule to show cause was the objection noted to the refusal of the trial court to withdraw a juror and declare a mistrial upon the ground that the address of plaintiff's counsel to the jury was highly improper and clearly illegal. For the purpose of disposing of this phase of the appellant's case, it may be conceded that the address of plaintiff's counsel to the jury was such as to justify the adverse criticisms made upon it by his adversary. But whether the trial court will order the with-

drawal of a juror and direct a mistrial for such misconduct, is a matter addressed to the discretion of the court, and a refusal to take such action affords no basis for the reversal of a judgment on review. It was so expressly held by the Court of Errors and Appeals in the case of Smith vs. Brunswick Laundry Company 108 At. p. 184. The argument of counsel is largely directed at what he considers the failure of the trial court to properly admonish plaintiff's counsel, and to impress upon the jury the necessity of entirely disregarding his objectionable remarks. But, assuming (although not conceding) that the criticism upon the action of the court is justified by the fact, this non-performance of duty on the part of the judge cannot now avail the appellant, for there is nothing in the reservations of the rule which entitles it to present such matter before us as a ground for reversal.

The judgment under review will be affirmed.

Filed April 9, 1920.

I

Order

Hudson County Circuit Court.

In the Matter of the Appointment of a Next Friend, for CHARLES PRICE, an adjudged lunatic.	Action at Law Order.

Upon reading the petition of Margaret Price, in the above matter, it is on this 5th day of January, 1917,

ORDERED, that Margaret Price be appointed next friend of Charles Price, an adjudged lunatic, to prosecute for him a cause of action in the Hudson County Circuit Court against the New York Central & Hudson River Railroad Company, a corporation, or New York Central Railroad Company, a corporation.

LUTHER A. CAMPBELL,
Judge.

Petition.

HUDSON COUNTY CIRCUIT COURT.

To Honorable Luther A. Campbell,
Judge of the Hudson Circuit Court:

The petition of Margaret Price, of the Town of New Durham, in the County of Hudson, respectfully shows:

1. That she has been appointed guardian of her husband, Charles Price, who is insane and now confined in the New Jersey State Hospital for the Insane at Morris Plains, New Jersey.

2. That the said Charles Price has a cause of action against the New York Central & Hudson River Railroad Company, a corporation, or New York Central Railroad Company, a corporation.

3. That suit has been commenced in the Hudson County Circuit Court in the name of said Charles Price.

Your petitioner therefore prays that she may be appointed next friend of said Charles Price to prosecute said suit.

Your petitioner will ever pray, etc.

MARGARET PRICE,
Petitioner.

III

Petition

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss:

MARGARET PRICE, being duly sworn according to law, upon her oath deposes and says:

I am the petitioner above named and the matters and things therein set forth are true.

MARGARET PRICE.

Subscribed and sworn to before me,
this 30th day of December, 1916,
at Jersey City.

CHAS. NEWKIRK,
Commissioner of Deeds,
for New Jersey.

I, Margaret Price, the wife of Charles Price, named in the foregoing petition, HEREBY CONSENT to act as his next friend.

Dated December 30, 1916.

MARGARET PRICE.

IV

Amended Complaint

Filed Jan. 11, 1917.

HUDSON CIRCUIT COURT.

CHARLES PRICE, by Margaret Price, his next friend, *Plaintiff*, vs NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, a corporation, or NEW YORK CENTRAL RAILROAD COMPANY, a corporation, *Defendant*.	Action at Law

The plaintiff Charles Price, a lunatic who sues by Margaret Price, his next friend who resides at No. 927 Main Street, in the Town of New Durham, in the County of Hudson, says that:

1. The defendant is a common carrier by railroad engaged in transporting freight and passengers from the State of New Jersey into other states and territories of the United States, and was at all times hereinafter mentioned.

2. The plaintiff was an employee of the said defendant engaged as a locomotive fireman, and at all times hereinafter mentioned, fired a locomotive attached to a train of cars carrying freight and passengers from the State of New York into the State of New Jersey.

3. That on the 16th day of February, 1915, at Weehawken, in the County of Hudson, while the plaintiff was so employed as an employee of the defendant in operating a locomotive pulling a

train transporting freight and passengers from the State of New York into the State of New Jersey, and while he was in the State of New Jersey, on a line of the defendant railroad, at Weehawken, in the County of Hudson, in the State of New Jersey, he was injured by reason of the negligence of the employees of the defendant, in that he was by reason of the negligence aforesaid, struck upon the head with a certain iron bar.

4. The negligence of the defendant consisted in this:

That the employees of the said defendant upon another locomotive, in passing the locomotive upon which the plaintiff was, had a certain iron bar of the length of about 12 feet, which said iron bar was left by the employees of the defendant on the locomotive upon which they were projecting out beyond the said locomotive in such a manner that a locomotive passing said locomotive would strike the said iron bar or the said iron bar would strike the said locomotive or person theron, and while the plaintiff's locomotive was passing the said locomotive upon which the said iron bar was so carelessly exposed, the said iron bar, without fault on the part of the plaintiff, came in contact with the head of the plaintiff and severely and permanently injured the plaintiff in and about his head.

5. The plaintiff was at all times in the exercise of due care for his safety.

6. By reason of said accident, plaintiff was compelled to expend money in endeavoring to obtain a cure, $1,000 and he has lost wages to the amount of $3,000 and will lose wages to the amount of $10,000, and the plaintiff was otherwise injured.

The plaintiff demands $50,000.

ALEX. SIMPSON,

Attorney of Plaintiff.

Answer

Filed Jan. 26, 1917.

HUDSON COUNTY CIRCUIT COURT.

CHARLES PRICE, by Margaret Price, his next friend, *Plaintiff*, *vs* NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, a corporation, or NEW YORK CENTRAL RAILROAD COMPANY, a corporation, *Defendant*.	Action at Law

The defendant, New York Central Railroad Company (created by the merger of the New York Central & Hudson River Railroad Company and other railroad corporations), the defendant herein, answering the complaint of the plaintiff, says that:

FIRST DEFENCE:

(1) It admits the first paragraph and says that at said times it was also a common carrier by railroad engaged in intrastate commerce within the State of New Jersey.

(2) It admits that on the 16th of February, 1915, plaintiff was in the employ of the defendant as a locomotive fireman, and that during a part of said day he was acting as fireman on a locomotive attached to a train of cars carrying passengers from the State of New York into the State of New

Jersey, and also carrying passengers between points within the State of New Jersey.

(3) It denies the third paragraph.

(4) It denies the fourth paragraph, and says that neither the defendant nor its employees were negligent in the premises.

(5) It denies the fifth paragraph.

(6) It denies the sixth paragraph.

SECOND DEFENCE:

(1) The proximate and efficient cause of any injury sustained by the plaintiff was the plaintiff's negligence.

(2) Any injury sustained by the plaintiff arose out of the risks incident to his employment, which risks were assumed by the plaintiff.

THIRD DEFENCE:

(1) On the 22nd day of September, 1915, plaintiff by Margaret Price, his guardian, filed his petition in the Court of Common Pleas of the County of Hudson under the provisions of Chapter 95 of the Laws of 1911, and amendments thereof and supplements thereto, and in and by said petition he demanded compensation of this defendant under and pursuant to the provisions of said statute, for the same causes and the same injuries set out in the complaint herein; and thereupon such proceedings were had upon said petition and the answer of this defendant thereto, that the same was brought to trial in said Court before Honorable George G. Tennant, one of the Judges thereof, who after hearing the proofs produced by the parties, and considering the argument of counsel, found and determined that the relations between said Charles Price and this defendant at the time

of said alleged injuries were governed by the provisions of said statute; and that said plaintiff Charles Price was entitled to recover compensation pursuant to the provisions thereof. The proceedings on said petition for compensation are still pending, and the findings and conclusions of said Judge therein still remain in full force and effect, as by the record therof appears, by reason whereof the plaintiff is barred from a recovery herein.

VREDENBURGH, WALL & CAREY,
Defendant's Attorneys.

Grounds of Appeal

NEW JERSEY SUPREME COURT.

CHARLES PRICE, by next friend, *Plaintiff-Respondent,* *vs* NEW YORK CENTRAL RAILROAD COMPANY, *Defendant-Appellant.*	On Appeal

The appellant states the following grounds of appeal:

1. The Court denied defendant's motion for a judgment of non-suit.

2. The Court denied defendant's motion to direct a verdict for the defendant.

3. The court denied defendant's motion to withdraw a juror and to declare a mis-trial, because of improper, and illegal remarks and statements made by plaintiff's attorney to the jury in summing up the case, as follows:

A.—(Speaking of the outcome of the former trial) "He was taken to the hospital and he became insane, and the doctors diagnosed it as traumatic insanity; and the jury thought that was enough and found a verdict in our favor, probably the largest ever found in our Court House—

Mr. Carey: I object to stating the amount

Mr. Simpson: You referred to the case. I have not stated the amount. You referred to the case. I do not think you had any right to. I state, the largest ever given in this Court House—

Mr. Carey: I object to that.

Mr. Simpson: Well, the trouble begins with him, with his "fairness"—

B.—"Hinckley is the man we say caused this accident—no matter how you decide this case, we are trying a case involving the future of a woman and three children of a lunatic—he walks as if he was a clown at a circus. He thought it was funny."

C. "He is insane now in the hospital. His wife and three children are practically living on charity."

D. "Now, then, as to the amount of recovery in this case. Of course, I heard a man in New York, where they sometimes have bigger ideas than we have—I wish we had them sometimes—say to a jury: 'Are you afraid to give a verdict?' when he was examining them. He said, 'Are you gentlemen afraid of figures? If you are, sit down with a pencil and figure out what this man's damages are. Are you afraid?' And every one of them said, no, they were not afraid to give a verdict if on his conscience he believed it was right that it ought to be given."

E. "I do not like to feel I am neglecting the case, because I feel I have got the interst of this woman and the three children and this man in my hands."

F. "Mr. Carey has endeavored to mislead you. He said the complaint was that they had placed the hook, which was, of course, about as correct as anything he said."

Dated September 12th, 1919.

VREDENBURGH, WALL & CAREY,
Attys. for Defendant-Appellant.

XI

Grounds of Appeal

Service of a true copy of within Grounds of Appeal is acknowledged this 13th day of Sept. 1919.

ALEX. SIMPSON,
Atty. for Pltff-Resp.

Reasons

Dated April 28, 1919.

HUDSON COUNTY CIRCUIT COURT

CHARLES PRICE by next friend, *Plaintiff*, vs NEW YORK CENTRAL RAILROAD COMPANY, *Defendant.*	Action at Law. On rule to Show Cause

The defendant assigns the following reasons why the verdict should be set aside and a new trial granted in the above case.

(1) The court admitted illegal evidence against the objection of the defendant.

(2) The court erred in charging the jury with respect to the assumption of risk by the plaintiff.

(3) The verdict is against the evidence.

(4) The verdict is against the clear weight of the evidence.

(5) The verdict is excessive.

Dated April 28, 1919.

Yours respectfully,
VREDENBURGH, WALL & CAREY,
Defendant's Attorneys.

TO: Alexander Simpson, Esq.,
Plaintiff's Attorney.

Rule to Show Cause

Served April 14, 1919.

HUDSON COUNTY CIRCUIT COURT

CHARLES PRICE by next friend, *Plaintiff,* vs NEW YORK CENTRAL RAILROAD COMPANY, *Defendant.*	Action at Law

Application for this Rule having been made within six days ofter rendering the verdict herein,

IT IS, on this Fourteenth day of April, 1919,

ORDERED, that plaintiff show cause before this Court on the Ninth day of May, 1919, at the Court House in Jersey City, at 10 o'clock in the forenoon, why the verdict herein should not be set aside and a new trial granted, for the reason that said verdict is contrary to the evidence and to the clear weight of the evidence, and is excessive.

AND IT IS FURTHER ORDERED that the objections noted by the defendant to the refusal of the court to order a non-suit, the refusal of the court to direct a verdict in favor of the defendant, and the objections noted to the refusal of the court to withdraw a juror and declare a mis-trial, be and the same are hereby expressly reserved to the defendant as grounds for appeal.

LUTHER A. CAMPBELL,
Circuit Court Judge.

A true copy.
John J. McGovern,
Clerk.

XIV

Rule to Show Cause

Service of certified copy of the within Rule to Show Cause is acknowledged this 14th day of April 1919.

ALEX. SIMPSON,
Plaintiff's Atty.

XV.

Rule

Entered Aug. 1, 1919.

HUDSON COUNTY CIRCUIT COURT

CHARLES PRICE, who sues by next friend,
Plaintiff,

and

NEW YORK CENTRAL RAILROAD COMPANY,
Defendant.

The rule to show cause for a new trial herein is dismissed.

On motion of

ALEXANDER SIMPSON,
Atty. for Plaintiff.

Rule actually entered August 1, 1919.

Rule

Entered Aug. 11, 1919.

HUDSON COUNTY CIRCUIT COURT

CHARLES PRICE, who sues by next friend, *and* NEW YORK CENTRAL RAILROAD COMPANY, *Defendant.*	Action at Law

The Plaintiff above named recovered a verdict on the 12th day of April 1919 and thereafter a rule to show cause why a new trial should not be granted was allowed and the said rule having been argued and the Court having considered the same.

It is on motion of Alex. Simpson attorney of Plaintiff ordered that the said rule to show cause be discharged and a new trial be denied.

LUTHER A. CAMPBELL,
Judge.

On motion of
Alex. Simpson,
Atty. Plaintiff.

Rule actually entered August 11, 1919.

XVII

Judgment

This action was tried before Judge Luther A. Campbell with a jury at the Hudson County Circuit Court April 2nd to 10th 1919.

The cause having been heard and submitted to the jury they returned their verdict as follows:

They say that they find for the plaintiff, and against the defendant, and they assess the damages of the plaintiff on occasion of the premises at the sum of ($35,000.00) Thirty-Five Thousand Dollars.

Whereupon, it is adjudged that the plaintiff recover of the defendant the sum of Thirty Five Thousand ($35,000.00) Dollars damages, and his costs which are taxed at the sum of Ninety Eight ($98.50) Dollars and fifty cents, making in the whole the sum of Thirty five Thousand and ninety eight Dollars and fifty cents. ($35,098.50).

Judgement entered this 11th, day of April, 1919.

Judge.

Notice of Appeal

Filed Aug. 15, 1919.

HUDSON COUNTY CIRCUIT COURT

CHARLES PRICE, by Margaret Price, his next friend, *Plaintiff-Respondent,* *vs* THE NEW YORK CENTRAL RAIL-ROAD COMPANY, a corporation, *Defendant-Appellant.*	Action at Law On Appeal.

TO:
Alexander Simpson, Esquire,
Attorney for Plaintiff-Respondent.

TAKE NOTICE: That the defendant appeals to the Supreme Court of the State of New Jersey from the whole of the judgment entered in this cause.

Dated August 14, 1919.

VREDENBURGH, WALL & CAREY,
Attorneys for Defendant-Appellant.

Service of within notice of appeal acknowledged this 14th day of August, A. D. 1919.
ALEX. SIMPSON,
Atty. for Pltff-Respondent.

Filed August 15th,1919.

XIX

Order for Time

Filed Aug. 16, 1919.

HUDSON COUNTY CIRCUIT COURT.

CHARLES PRICE, by Margaret Price, his next friend, *Plaintiff-Respondent,* *vs* THE NEW YORK CENTRAL RAILROAD COMPANY, *Defendant-Appellant.*	Action at Law. On Appeal to Supreme Court of New Jersey.

It appearing that defendant has taken an appeal in above case to the Supreme Court of the State of New Jersey, and good cause being shown for this order,—

IT IS ORDERED that defendant have fifteen days further time from the date hereof, in which to file recognizance on appeal in the said cause.

Dated August 14, 1919.

LUTHER A. CAMPBELL,
Judge.

Entered August 16, 1919,
On motion of
VREDENBURGH, WALL & CAREY,
Attorneys for Defendant Appellant.

A true copy
John J. McGovern,
Clerk.

Filed August 16, 1919.

Recognizance

Filed Aug. 29, 1919.

HUDSON COUNTY CIRCUIT COURT.

CHARLES PRICE, by Margaret Price, his next friend, *Plaintiff*, vs THE NEW YORK CENTRAL RAILROAD COMPANY, *Defendant.*	Action at Law. On Appeal to Supreme Court.

STATE OF NEW JERSEY
COUNTY OF HUDSON ss:

BE IT REMEMBERED, That on this 25th day of August, A. D. 1919, personally appeared before me, George W. Flaacke, one of the Supreme Court Commissioners of the State of New Jersey, at Jersey City, in the County of Hudson, in said State of New Jersey, THE NEW YORK CENTRAL RAILROAD COMPANY, a corporation of the State of New York, by Albert C. Wall, its Attorney-in-Fact, on its behalf as principal, and the NATIONAL SURETY COMPANY, a corporation of the State of New York, by P. E. Wiles its Resident Vice President on its behalf as surety, who jointly and severally did acknowledge said corporations respectively to be indebted to CHARLES PRICE, by Margaret Price, his next friend, in the sum of Seventy thousand five hundred Dollars ($70,500.), to be made and levied of their respective goods and chattels, lands and tenements, and real estate, if default be made in the following conditions:

WHEREAS, Charles Price, by Margaret Price,

his next friend, lately recovered judgment against The New York Central Railroad Company, in an action at Law, in the Hudson County Circuit Court, for the sum of thirty-five thousand dollars, damages, besides costs of suit, as by the record thereof will appear; and

WHEREAS, said The New York Central Railroad Company has taken an appeal from said judgment to the Supreme Court of the State of New Jersey;

NOW, THEREFORE, if the said The New York Central Railroad Company shall prosecute the said appeal with effect, and also pay and satisfy, if the said judgment be affirmed, all damages and costs to be awarded for delay of execution, then this recognizance to be void, else to be and remain in full force.

THE NEW YORK CENTRAL RAILROAD COMPANY
By ALBERT C. WALL
Its Attorney-in-Fact

Taken and acknowledged this 25th day of August, A. D. 1919

GEORGE W. FLAACKE,
Supreme Court Commissioner

NATIONAL SURETY COMPANY
By P. E. WILES
Its Resident Vice-President

ATTEST:
R. HANLON,
Resident Ass't Secretary

Approved as to form and sufficiency of sureties.
GEORGE W. FLAACKE
Supreme Court Commissioner.

August 25, 1919.

Testimony.

HUDSON COUNTY CIRCUIT COURT.

CHARLES PRICE, by next friend, *vs.* NEW YORK CENTRAL RAILROAD COMPANY.	Action at Law.

Tried April 2, 1919, at 10:00 A. M., and succeeding days, before Hon. LUTHER A. CAMPBELL, Judge, and a Jury.

APPEARANCES:

HON. ALEXANDER SIMPSON, appearing for the Plaintiff;

VREDENBURGH, WALL & CAREY, (by Mr. Carey) appearing for the Defendant.

Jury sworn.

Mr. Simpson opened the case to the Jury on behalf of the Plaintiff.

Mr. Carey opened the case to the Jury on behalf of the Defendant.

JACOB FOSTER, sworn.

Direct Examination by Mr. Simpson:

Q. Where do you live, Mr. Foster? A. 537 Thirty-second street, Woodcliff, New Jersey.

Q. What is your business? A. Locomotive engineer.

Q. Were you a locomotive engineer on the 17th of February, 1915? A. Yes, sir.

Q. And where were you working on that day? A. Working on the West Shore.

Q. Were you on the 16th of February working on the West Shore? A. Yes, sir.

Q. Were you on an engine coming in, approaching the tunnel on that day? A. Yes, sir.

Q. What time? A. About 7:25 or :26.

Q. P. M. or A. M. A. P. M.

Q. Who was your fireman? A. Charles Price.

Q. What kind of a train were you driving? A. Passenger train.

Q. Coming from where? A. From Haverstraw to Weehawken.

Q. Haverstraw, in the State of New York? A. Yes, sir.

Q. Carrying passengers, were you? A. Yes, sir.

Q. Now, as you approached the tunnel——

Mr. Carey: For the purpose of shortening this, I would say that we admit that this man, on the day in question, was engaged in interstate commerce.

The Court: That is, the plaintiff, Price?

Mr. Carey: The Plaintiff Price on the day of—on the day when this incident occurred.

The Court: At the time of the happening was engaged in——

Mr. Carey: He was, during that entire run, which he was on, on that day, engaged in interstate commerce.

The Court: I see, so the question of whether or not this was an action which might be brought under that statute is practically not in dispute; is that the situation?

Mr. Carey: He has it under the federal statute.

The Court: All right.

Q. As you approached the tunnel, did Price give you any signal? A. Called off the signal, the last signal approaching the tunnel.

Q. What side of the cab was he on—right or left

hand side? A. Left.

Q. How far is that signal from the tunnel? A. About—about two or three thousand feet.

Q. Are you sure of that? Didn't you testify at the last trial that it was four or five hundred feet?

Mr. Carey: Mr. Simpson, I will stipulate the distance.

Mr. Simpson: Go ahead; what is it?

Mr. Carey: It is 1387 feet, I think it is; a little less than 1400 to the tunnel.

Q. After he called that signal, did you enter the tunnel? A. Yes, sir.

Q. Before entering the tunnel, did you pass a train going west? A. Yes, sir.

Q. Where did you pass that train? A. About the same distance that the signal is from the tunnel.

Q. What kind of a train was it? A. Freight train.

Q. Who was the engineer and fireman on it? A. On the freight train?

Q. Yes.

Mr. Carey: Mr. Hinkley and Mr. Lee, if I may be permitted to shorten it by stating the fact.

Mr. Simpson: Surely.

Q. Now, then, after Price called out the block, when did you next see him? A. Arriving at Weehawken.

Q. What attracted your attention to him? A. Why, he did not perform his duty as usual.

Q. What was his duty that he was to perform? A. To light the lights for returning.

Q. Then, what did you do? A. I simply turned to him and asked him what was the matter that he didn't light the lights.

Q. What did he say?

Mr. Carey: Object to what he said.

Q. Well, did you get any response from him? A. Yes.

Q. You got a response? A. Yes.

Q. What did you do subsequent to that response? A. Why, I got down to see what caused him to not light the lights.

Q. What did you do with reference to him? A. Why, he claimed that he—wanted to know if he had been injured on the side of his head.

Mr. Carey: Now, I move to strike out what he said?

Q. What did you do, I asked you?

The Court: That may be struck out.

By the Court:

Q. What did you do? Not what you asked him or what he said. In other words ,for instance, did you go over to him? A. Yes, sir.

Q. All right, that is the answer? A. Yes, sir.

By Mr. Simpson:

Q. When you got over to him, what did you do? A. Assisted him off the engine.

Q. Why was it necessary—how did you come to think it necessary for you to assist him? A. Why, he seemed to act in a sort of a bewildered state.

Q. Did he have a cap on? A. Well, I am not really positive whether he had a cap on; I know he generally wore a cap.

Q. Did you see that cap? A. Yes, sir.

Q. What was its condition with reference to a tear on the side of it? A. It had a tear on the left side of it.

Q. You don't remember you say, whether he was

wearing it when you took him down off the cab or not? A. Well, I am not really positive whether he had it on his head or whether he had it in his hand.

Q. He had a tear on the left side of it? A. Yes, sir; he had a tear on the cap.

Q. Where did you see the cap—when you took him down off the engine or into the station master's office? A. I took it down to the station master's office.

Q. You had seen him wearing a cap before that? A. Yes, sir.

Q. How did he usually wear it—peak forward or peak back? A. Peak forward.

Q. With the peak forward, that tear would be on the left side, wouldn't it? A. Yes, sir.

Q. Now, about where would that tear be when he had the cap on, with reference to his head? A. Near the top portion of his head.

Q. Did anybody help you take him into the station master's office? A. Yes, sir.

Q. Who helped you? A. As I remember, it was Trainman Riker.

Q. How did you get there; was he resting on you and resting on the trainman? A. Yes, sir.

Q. When you got into the station master's office, what did you do with him. A. Left him in charge of the station master.

Q. Was he put on a chair or was he lying down, or how? A. No, I think they rested him on a cushion on the floor.

Q. Now, what did he—describe how he acted with reference to his condition—did his body sag down or not? A. Yes, sir.

Q. You and one trainman assisted him into the office A. Yes, sir; there was one on each side of him.

Q. Beside yourself, or just you and one of the trainmen? A. Me and the trainman.

Q. Did you have any difficulty in getting him into the office? A. No.

Q. How did you assist him; did he walk or did he move his leg? A. Yes, he walked down.

Q. Resting on your shoulder? A. Yes, sir.

Q. Did he have his arms around you, or how did he rest on you? A. Well, we assisted him; I don't remember just whether he had his arms around us or whether we had our arms around him.

Q. How far is the terminal, about, from the east side of the tunnel, that is, the terminal where that train stopped? A. Why, I should judge, nearly a quarter of a mile or about an eighth of a mile.

Q. As the result——

By Mr. Carey:

Q. How far? A. About a quarter or an eighth of a mile; I am not positive.

By Mr. Simpson:

Q. As the result of what he said to you, did you examine his head in the cab? A. Yes, sir.

Q. What part of his head did you examine? A. Left side of his head.

Mr. Simpson: Cross-examine.

Cross-examination by Mr. Carey:

Q. Did you find any mark on the head? A. No, sir.

Q. Or any indication of his having been struck by anything? A. I couldn't see anything.

Q. Any scratch or bruise of any kind? A. I couldn't notice any.

Q. Was there any blood on his face? A. I didn't see any.

Q. Didn't see any at all? A. No.

Q. When you went with him to the station master's office, did he walk all of the way? A. Yes, sir.

Q. You and Mr. Riker supporting him? A. Yes, sir.

Q. One on each side? A. One on each side.

Q. About how far was that from the place where you got off of the engine? A. About 250 feet.

Q. How long were you with him after he was taken into the station master's office? A. Why, I had to leave there to return to the engine on account of no one there to take charge of it.

Q. How long were you there? A. At the station master's office?

Q. Yes. A. I don't believe I was there over two or three minutes at the most.

Q. You had to get back to take charge of the engine? A. Yes.

Q. About what time did your train reach the terminal? A. About 7:34.

Q. You were a little late that night, were you? A. Yes, sir.

Q. What was your due-time? A. 7:30.

Q. Now, about what speed was your train moving as it approached the tunnel? A. Between twenty to twenty-five mile per hour.

Q. What kind of material was this cap made of? I mean, was it heavy material or was it light material, thick or thin? A. It appeared to be somewhat thin, that is, the ordinary locomotive cap that the men wear on the engines; of course, I am no judge of material.

Q. Well, do you know what the material was? A. Black.

Q. That was the color. What was it made of—cotton or wool—do you know? A. I don't think it was no wool cap; cotton cap, what they usually wear.

Q. You think it was cotton,—pretty thin material, wasn't it? A. Yes, rather light material.

Q. About the thickness of a sheet of paper? A.

Well, probably about that; probably it might have been a little heavier; I am not positive about that.

Q. Now, from the time that Price called the signal until that engine was alongside of the platform, and you were just about to stop it, you say you didn't notice Mr. Price at all? A. No.

Q. Was there anything unusual took place in the engine cab between the time when he called the signal and the time when you reached the station, that you observed? A. No, not that I observed.

Q. Nothing at all; you didn't hear any unusual noise? A. No.

Q. Or any unusual movements at all of any kind? A. No.

Q. What kind of a train was this that passed you on the opposite track? A. Freight train.

Q. You were going east and the other train was going west? A. Going west.

Q. This signal that you speak of was the last signal before you enter into the tunnel, was it not? A. Yes, sir.

Q. Was there any signal on that side of the track——

Mr. Carey: Strike that out, please.

Q. Was there any signal on the left hand side of the track; the fireman's side,—after you passed this signal which was on the right hand side of the track and just before you entered the tunnel? A. No, sir.

Q. I show you a photograph which appears to be a photograph of the track approaching the tunnel (handing photograph to the witness); is that what that photograph represents? A. Yes, sir.

Q. There is a signal shown on that photograph? A. Yes, sir.

Q. Is that the signal which Mr. Price called?

A. That is the last signal approaching the tunnel that was called off.

Q. Now, as you approached this signal, is that track straight or on a curve? A. On a curve.

Q. And the curve is toward what—the right or the left as you are— A. The left.

Q. So that the fireman would note that signal before you could see it? A. Yes, sir.

Q. He, looking across the curve? A. Yes, sir.

Mr. Carey: If there is no objection, Mr. Simpson, I will offer this in evidence now.

Mr. Simpson: I have no objection.

(Photograph marked D-1.)

Mr. Carey: (Exhibiting D-1 to the Jury) The photograph which has just been testified to. Excuse me, just a minute, gentlemen; I would like to ask one question that I intended.

Q. I notice an arrow on one of these tracks; will you state whether this track is the track on which your train was moving? A. Yes, sir.

Q. It was going toward the tunnel? A. Going toward the tunnel.

Q. What engine did you have that night? A. My—engine No. 907.

Q. You had run that engine frequently before, had you? A. Yes, sir.

Q. Mr. Price had been your fireman for some time? A. Yes, sir.

Q. Had he worked with you on that engine? A. Yes, sir.

A Juror: May I be privileged to ask a question?

The Court: Let me hear what your question is, Mr. Juror.

The Juror: I wish to know the distance between the east and west bound track at this point.

Mr. Carey: I don't think this witness knows.

The Court: That will probably come out later, Mr. Juror.

Q. I show you what purports to be a photograph of the Engine 907, and ask you if that is a photograph of your engine? A. Yes, sir.

Q. That was the engine which you had that night? A. That was the engine I had that night.

Q. Of course it was, you say, about 7:34 or 7:35 P. M., in the month of February? A. Yes, sir.

Q. It was dark at the time? A. Yes, sir.

Mr. Carey: I offer this photograph in evidence. (Photograph marked D-2.)

Q. You notice in that photograph a picture of the firehook used on your engine, or the handle of it. A. Yes, sir.

Q. Suppose you indicate what that is, and let the stenographer mark it. A. That is the handle of it, right there (indicating).

Q. Right up there (indicating)? A. Yes, that round projection, right there (indicating).

Mr. Carey: (To the stenographer) Suppose you mark that with an "H" to indicate the handle of that firehook.

(Marked, as designated, by the stenographer.)

The Foreman of the Jury: Tell me, where does the rod hang on that engine; I see the mark there?

Mr. Carey: There is the handle (indicating); it goes across.

The Foreman: I see.

Q. I show you another picture of Engine 907, on—at least what it appears to be—a little nearer view; is that a picture of the engine you had that night? A. Yes, sir.

Q. Which side of the engine is shown in this photograph? A. The left side.

Q. That is the fireman's side? A. Yes, sir.

Q. There are two windows shown there on the side of the cab. A. Yes, sir.

Q. One ahead of the other. Now, the fireman, has a seat or a seat box inside of the cab, has he not? A. Yes, sir.

Q. And that seat box is opposite which of these windows—the front window or the back window? A. The rear window—the back one.

Mr. Simpson: I am going to object; it takes too much time, and I will object to your putting it in now. Put it in on your own case. I object to his offering any more in evidence; it takes too long.

The Court: Suppose you mark it for identification.

Mr. Carey: I offer it for identification.

(Photograph marked D-3 for Identification.)

Q. I call your attention to this Exhibit, D-2, which the Jury has just looked at. Which side of the engine is shown there, the fireman's or the engineer's side? A. Fireman's side.

Q. In the front of the cab there appears to be an opening; what is that? A. Front cab door.

Q. Is that a solid door or is it wood and glass? A. Wood and glass.

Q. Which part of it is glass? A. Top.

Q. And that window is directly in front of the fireman's seat? A. Yes, sir.

Q. As he looks straight ahead through that window? A. Yes, sir.

Q. Now, on this night in question, after Mr. Price called that signal, did he say anything from that time until you had stopped your engine at the station? A. No, sir.

Q. He didn't cry out or make any noise of any kind? A. I didn't hear none.

Q. While he was going through the tunnel, had he shoveled any coal or did any work, so far as you know? A. No, sir.

Q. Is it customary to attend to the fire or shovel coal on the fire while you were passing through the tunnel east bound? A. Not east bound.

Q. Had he done anything at all, so far as you know? A. Not to my recollection.

Q. I show you another photograph which appears to be the inside of the engine cab, and ask you if that is a correct picture of the inside? A. Yes, sir.

Q. Of the engine cab? And the side shown in that photograph is what? A. That is the fireman's side, the left side; that is the seat box (indicating).

Q. Seat box under the window? A. Yes, sir.

Q. What is this which is shown across nearly the whole front of the picture? A. That is the boiler head.

Q. Boiler head? A. And firebox doors.

Mr. Carey: I ask that this be marked for identification.

(Photograph marked D-4 for Identification).

Q. On D-3 for Identification, I notice a projection right about the rear window on the fireman's side, about even with the sill of the window; what is that? A. That is the arm rest.

Q. Arm rest? A. Yes, sir.

Q. And it projects over the side of the cab somewhat? A. About two inches.

Q. About two inches. Now, Mr. Price spoke to you while he was still on the engine, after you reached the station? A. Yes, sir.

Q. And as you were going down to the station, did he say anything more to you? A. I have no recollection of him saying anything then.

Q. Did you hear him say anything after he got into the—from the time you left the engine cab until you left him in the station master's office? A. I didn't stay there long enough to hear him; of course, I had to return to the engine.

Q. You say that he appeared dazed? A. Yes, sir.

Q. Was he unconscious at any time that you saw him? A. No, he didn't appear to be unconscious.

Q. What kind of build was this man—slender or—— A. No—stout built man.

Q. Was he a full blooded man? A. Well, as far as I can tell you that.

Q. His complexion; how was that? A. What is that?

Q. How was his complexion,—ruddy or pale? A. Rather light—pale.

Q. How about the temperature in the cab of the engine; is it warm or cold there? A. Oh, it is just moderate hot in cold weather.

Q. As you were going through the tunnel, how is the heat? A. Well, it is a little warmer, that is, after another train has passed through the tunnel in the opposite direction.

Q. He was right next to the head of the boiler, wasn't he? A. Yes, sir.

Q. It is pretty hot at the head of the boiler? A. Yes, sir; quite warm.

Q. If you were to touch the head of the boiler, does it burn you? A. Oh, yes.

Q. You have to keep away from that? A. Yes, sir.

Mr. Carey: That is all.

Redirect Examination by Mr. Simpson:

Q. What position was he in when you first saw him?

The Court: You mean after going through the tunnel, Mr. Simpson?

Mr. Simpson: Yes.

Q. When you got out of the tunnel, what position was he in? A. He had his back toward me, resting on the seat.

Q. Well, was he resting over, bent over, or how was he resting? A. Hanging over his seat box.

Q. Hanging over his seat box. A. Yes, sir; facing——

The Court: Let's see; facing what?

The Witness: Facing the window.

Q. About this arm rest on his side, that was the place where the fireman could put his arm and lean out and look out of the engine, wasn't it? A. Yes.

Q. When this train passed you—I don't know whether I asked you this—the train going west passed you—did it pass going on your side or his side? A. On his side.

Q. There were no permanent obstructions between that signal you have described on his side? A. No, sir.

Q. There was a clear way right from that signal into the tunnel? A. Yes, sir.

Q. Now, you said to Mr. Carey that he didn't say anything to you, as I understood you, on the way into the station master's office. Didn't he tell you that he had been struck by the hook on the engine and ask you to look for blood on his face? A. No.

Q. What made you look for anything on his face or on his head, if this man didn't tell you

something had happened to him; what made you look for something on his head? A. Oh, he asked me to look at the side of his head.

Q. And to look for what? A. To look to see if he had been injured.

Q. To look for an injury; in response to that, you looked, did you? A. Yes, sir.

Q. What side of his head did he point out to you? A. To the left side.

Q. Now, this hook that you have described, is that the hook on your engine or is that the hook on a passing engine that was pointed out to you by Mr. Carey? A. On mine.

Q. On your own. Those hooks—what are they made of, steel or iron? A. Iron.

Q. What are they used for? A. For hooking the fire.

Q. How long are they? Different lengths, aren't they? A. Well, I am not really positive about the lengths.

Q. You didn't have the use of that; the fireman used that? A. Yes, the fireman used that.

Q. Some of them fourteen feet long, are they? A. No, I don't think so; usually about ten feet.

Q. Ten feet. Didn't you testify at the last trial about the length of this hook? A. I don't remember that I did.

Q. I don't remember whether you did or not.

Mr. Carey: I don't think he did.

Mr. Simpson: I think that is all.

The Court: Anything further?

Recross Examination by Mr. Carey:

Q. You say you looked at Mr. Price's head because he asked you to? A. He asked me to.

Q. Did he ask you if there was any blood on the head? A. It seems to me that he did.

Q. But he didn't say anything about any fire-

hook having struck him? A. No, he didn't say anything—nothing—I have no recollection of him saying anything about a hook.

Mr. Carey: That is all.

Redirect Examination by Mr. Simpson:

Q. But when he said this to you about his injury that you have just described to Mr. Carey, didn't he tell you how he thought he had been injured, or did he simply say he had been injured?

Mr. Carey: He has not said——

A. He simply asked me to look at the side of his head to see if there was any blood and find out where he was injured; and I looked at his head and I saw nothing.

Q. But he didn't tell you, in this conversation—he said nothing about the cause of the injury, according to you? A. No.

Q. Now, there was nothing for him to do after he called you the signal until the time for him to light these lights, was there? A. Nothing.

Q. That was the first thing that called your attention to him? A. Yes, sir.

Q. Was the failure to light the lights? A. Yes.

Mr. Simpson: That is all:

Recross Examination by Mr. Carey:

Q. No signals for him at all? A. No signals; tunnel signals were all on my side.

Q. Nothing to cause him to look out of the engine cab.

Mr. Carey: That is all.

Redirect Examination by Mr. Simpson:

Q. Well, it was the witness's—wasn't it his business to look out to see if there was anything on his side? A. He couldn't see in the tunnel.

Q. No, but after he got out of the tunnel or before you entered the tunnel, you had the signal at thirteen hundred feet—— A. Eh?

Q. Listen to me, wont you? Before you entered the tunnel, you had the signal at thirteen hundred feet from the west end of the tunnel,—he had called it before he reached it, of course? A. Yes, sir.

Q. Now, then, after he called it, wouldn't it be proper for him to look out to see if there were any obstructions in his way, or wouldn't he pay any attention to his side at all? A. He could look out approaching the tunnel.

Q. But it is his business to see that the way is clear on this side, isn't it? A. Yes.

Mr. Simpson: That is all.

Recross Examination by Mr. Carey:

Q. At the time that he called the signal and just after it, he was rounding a curve, wasn't he? A. Yes.

Q. So that he could see the track all of the way to the tunnel, without putting his head out of the window? A. He could see the track all of the way, clear to the tunnel.

Mr. Carey: That is all.

The Court: Is that all?

Mr. Simpson: That is all.

(Witness excused.)

CHARLES W. FOLK, sworn.

Direct Examination by Mr. Simpson:

Q. Where do you live, Mr. Folk? A. Hudson Heights, New Jersey.

Q. On the 16th of February, 1915, were you

working as an ambulance driver for Mr. Quinn, an undertaker? A. Yes.

Q. Did you go with your ambulance to the West Shore station on that night in response to a call? A. I did.

Q. And did you get this man Price and take him to the hospital? A. Yes, sir.

The Court: What is that?

(Question and answer read.)

Q. When you went there, did you have a pillow in your ambulance? A. I had the stretcher, everything went in it.

Q. The pillow is all that I am interested in. A. Yes, I had a pillow.

Q. Was it clean or soiled? A. Clean pillow.

Q. You got Price and put him in, with his head on the pillow, didn't you? A. Yes, sir.

Q. When you took him out—where did you take him out, at the hospital? A. At the hospital.

Q. What was the condition of the pillow then, after you had taken him out? A. Very bloody.

Q. About how much blood; did it completely cover it or half cover it or what? A. No, it was not completely covered.

Q. Well, about how much would you say? A. Well, I should judge about the whole center of the pillow.

Q. Do you remember, when you put him in, whether you put him on his—on the side of his head, or on his back, or how did you put him in? A. Put him on the back of his head.

Q. Put him on the back? A. Yes.

Q. Do you remember whether this blood was on his left side or on his right side as he was laying——

Mr. Carey: If the Court please, the blood was on the pillow.

Mr. Simpson: I know, but he was on the pillow.

The Court: On his back.

Mr. Simpson: Yes, and his head was on the pillow.

Q. Was it on the left side or the right, as you remember? A. Well, he could have turned on either side.

Mr. Simpson: I see; cross examine.

Cross Examination by Mr. Carey:

Q. Where was Mr. Price when you first saw him? A. They were bringing him from the station master's office.

Q. Bringing him? A. Bringing him; yes, sir.

Q. How were they bringing him? A. They were carrying him on a stretcher, if I remember right.

Q. They had the stretcher there? A. Yes, sir; I think so.

Q. Don't you recall whether they had it or not? A. Well, I couldn't be positive of it.

Q. How many men were bringing him? A. Well, there were about ten or twelve trying to bring him; I don't know how many had hold of him.

Q. Ten or twelve? A. Well, possibly eight or nine.

Q. How far had they gotten out with him when you saw him? A. Very near the gate.

Q. Your ambulance is right down by the gate? A. Well, I backed up to the gate as near as I could get.

Q. You had a stretcher in your ambulance? A. Yes, sir.

Q. This pillow on the stretcher? A. Yes, sir.

Q. When he was put into the ambulance, did you assist in putting him in? A. Yes, sir.

Q. Now, how many men, according to your recollection, had hold of this stretcher that you think he was on? A. When they brought him to the ambulance?

Q. When you first saw him? A. Well, there were several men; I couldn't just say how many at the stretcher.

Q. Huh-huh, and who lifted the foot of that stretcher to put him onto the stretcher that you had? A. Well, I assisted, and two or three others there.

Q. You and two or three others? A. Two others, yes.

Q. Now, where did you stand with reference to Mr. Price's head, when you were assisting him? A. I stood at one shoulder, right shoulder.

Q. On the right shoulder—at the right shoulder? A. At the right shoulder.

Q. Was he lying on his back at that time? A. He was on his back.

Q. You were right over his head, were you not? A. I was right by his head, yes.

Q. And your eyes were not more than a foot or two from his head? A. About three foot.

Q. What did you do—lift his shoulders? A. I lifted him by one shoulder, and he pulled on the other side, lifted the other shoulder.

Q. And in that way he was placed onto the stretcher which you had? A. Yes, sir.

Q. Where was the stretcher which you brought at the time that Mr. Price was laid on it—outside or inside of your ambulance? A. Well, when I got there I took it out.

Q. So it was outside when Mr. Price was placed on it? A. Yes, sir.

Q. There—was he placed on his back on your stretcher? A. On his back.

Q. There was a pillow under his head? A. Pillow under his head.

Q. All of this time when you were assisting him, you were right by his head, were you not? A. Yes, sir.

Q. During that time did you see any blood on his face or forehead or anywhere about him? A. No, sir.

Q. Not a bit. Did you see any mark of any kind on his head or forehead or face? A. I didn't look.

Q. Did you see any? A. No. sir.

Q. You were right where you could see, weren't you? A. If I looked.

Q. Well, you looked at his face, didn't you? A. Not exactly; I just looked to see to get him on the stretcher.

Q. And you would not have seen blood if it had been on his face?

Mr. Simpson: I object; that is for the Jury to say whether he would or would not.

The Court: Aren't you allowed a question of that kind?

Mr. Carey: Assuredly.

Mr. Simpson: I will withdraw the objection; go ahead.

Mr. Carey: Read the question.

Q. (As read by the stenographer) You would not have seen blood if it had been on his face? A. If I had looked.

Q. So, with the observation which you made, you would not have seen blood, if there had been blood on his face; is that right? A. I didn't pay any attention to his face, I couldn't see nothing.

Q. How much of the surface of the pillow case was covered with blood? A. Well, the center of it was pretty well covered.

Q. How large a space would you say? A. Well, I couldn't exactly say now.

Q. Well, in inches or feet, what would you say? A. Well, it was all of eight or nine inches.

Q. What was the shape of the blood spot? A. Well, it had no exact shape on account of the head had probably turned or something like that —had spattered it all up different shapes.

Q. Was there blood sufficient to soak through the pillow case? A. Yes, sir.

Q. It was all covered with blood? A. No, just the center of it, center soaked.

Q. I mean where the blood spot was, was it completely covered and soaked with blood? A. Yes.

Q. Now, where did you—you took him to the hospital, didn't you? A. Yes, sir.

Q. And you helped to take him to— A. Yes, sir.

Q. —of the ambulance? When you—who else helped you take him out of the ambulance? A. I am not exactly sure who it was; I cannot just remember.

Q. How many helped you? A. I believe there was one.

Q. Were you at his head when he was taken out of the ambulance? A. I am not sure about that.

Q. Did he have anything on his head when he was brought out from the station? A. No, sir.

Q. When you took him out of the ambulance, was he still lying on his back? A. Still on his back.

Q. At that time did you see any mark or any blood or anything on his face or anywheres about his head? A. No, sir.

Q. At that time did you see any mark or any face or forehead or temple? A. You mean, did I look or see?

Q. No, did you see any? A. Well, I wasn't noticing his face at all.

Q. Then, you didn't see any mark of any blood of any kind on his face or anywheres about his head? A. No, sir.

Q. Did you help to take him into the hospital? A. I believe I did that day.

Q. When did you first see this blood on the pillow? A. As soon as I took him out.

Q. As soon as you took him out at the hospital? A. Yes, sir.

Q. Did you say anything to anybody about him? A. No, sir.

Q. You testified in this case when it was tried before Judge Tennant as a compensation case, did you not? A. I believe I did.

Q. Now, the owner of the ambulance is your father-in-law, isn't he? A. Yes, sir.

Q. When you testified before Judge Tennant, did you not testify that you first saw the blood on the pillow when your father-in-law called your attention to it, after you had returned to his place?

Mr. Simpson: I object to that unless he reads——

A. No, sir.

Mr. Carey: I didn't quite get that?

A. I don't think——

Mr. Simpson: —the testimony to this witness; we are entitled to know his answer that time.

The Court: He has answered it; he said "No."

Q. You are not sure as to that, are you? A. I am not positive, but I don't think so.

Q. Is it not a fact that you did not notice the blood until after you got back to the place you had started from, that is, your father-in-law's place? A. If I remember right, I believe I told the father-in-law when I got back.

By the Court:

Q. That is not what the question put to you was.

The question is—is it not a fact that you did not notice the blood which was on the pillow until you got back to the place where you started from with the ambulance? A. Your Honor, I cannot exactly remember.

The Court: Cannot exactly remember, he said.

By Mr. Carey:

Q. On the former occasion when you were examined in this case, were you asked this question: "Q. When did you first notice that?" (Referring to the blood.) "A. As soon as I got over to the house." Were you asked that question and did you answer it in that way? A. I probably did.

Q. "Q. When you— A. Over to the store." Were you asked that question and did you answer it in that way? A. I believe I did.

Q. Now, "store" meant your father-in-law's place, did it not? A. Yes, sir.

Q. That was the place where you started out with the ambulance, is it not? A. Yes, sir; that is right.

Q. Were you asked this question: "Q. You didn't notice it at the hospital? A. No." Did you so testify? A. I probably did.

Q. This testimony which you gave on the former occasion was in December, 1915, wasn't it? A. Not exactly know—I don't know when.

Q. Well, you remember that it was in the year 1915, don't you? A. I guess it was.

Q. And this accident happened on February 16, 1915? A. Yes.

Q. Now, you testified to the truth when you testified before Judge Tennant, did you not? A. I guess I was.

Q. And your recollection was better at that

time, four years ago, nearly—or three and a half years ago—than it is now, wasn't it? A. Yes, sir.

Q. So, as a matter of fact, having your recollection refreshed in this way, was it not at the store after you got back to your father-in-law's place before you noticed any blood on the pillow? A. Yes, sir.

Mr. Carey: That is all.

(Witness excused.)

MARGARET PRICE, sworn.

Direct Examination by Mr. Simpson:

Q. You are the wife of the plaintiff, aren't you? A. Yes, sir.

Q. When did you first learn of the accident? A. The 16th day of February, 1915.

Q. At what time? A. About seven o'clock, in the morning.

Q. What did you do? A. I went immediately to the North Hudson Hospital.

Q. Was your husband in the North Hudson Hospital? A. Yes, sir.

Q. Did you see him there? A. Yes, sir.

Q. What was his condition when you saw him? A. He was on the bed, unconscious.

Q. Was his head covered? A. Yes, sir.

Q. With what? A. With an ice cap.

Q. Was he able to talk to you? A. No, sir.

Q. Did you have any one with you? A. No, sir; I was alone.

Q. At that time in the morning, were you able to see his head? A. No, sir.

Q. When did you first see his head uncovered? A. The next day.

Q. About what time? A. About eleven o'clock in the morning.

Q. When you saw him at eleven o'clock in the morning, that would be on the 17th, wouldn't it? A. Yes, sir.

Q. What did you see, if any mark, on his head? A. I saw quite a large bruise.

Q Now, are you sure what the day was—I mean the time you saw the bruise—whether it was one day or two days? A. It was one day after, the 17th.

Q. Where was this bruise on his head? A. On the left side.

Q. How large was it, about? A. Well, about as large as half of a peach.

Q. Was he able to talk to you then? A. No, sir.

Q. Who was with you when you saw his head? A. Mrs. Masterson.

Q. Was his head shaved or not? A. Half of the head was shaved.

Q. Which half? A. Left.

Q. Left half of the head was shaved? A. Yes, sir.

Q. Who was the doctor attending him? A. Dr. Fendrich.

Q. He is a railroad doctor? A. Yes, sir.

Q. How long did you see him that day? A. Dr. Fendrick?

Q. No; your husband. A I was there from eight o'clock in the morning until eight o'clock at night.

Q. Did you see the doctor do anything to him on the morning of the———when you saw him? A. Just came in and looked at him; that was about all.

Q. Did you talk to your husband that day? A. No, sir.

Mr. Carey: Which day are you referring to now?

The Court: 17th, the day after.

Q. Did you talk to him that day? A. No, sir.

Q. How did you come to see his head? Did he have an ice cap on the day you saw his head, the day you saw the bruise that you described? A. Yes, sir.

Q. How did you come to see the bruise then? A. I noticed his lips were parched and I went to get a drink of water for him and I brought to him a glass of water; he was laid out in the bed and I lifted him and so I motioned for Mrs. Masterson to come, and she put her hands under his head and raised him up; as she raised him up the cap fell back.

Q. You saw this bruise which you have described? A. Yes, sir.

Q. Was it on the line of his hair, or where? A. About half in.

Q. About half-way down? A. Yes, sir; about there (indicating).

Q. About an inch and a half above his hair? A. Yes, sir.

Q. What was its color? A. It was red and blue.

Q. And how long was he kept at the hospital? A. Five weeks.

Q. Did you see him there—— A. Yes, sir; every day from eight o'clock——

Q. How did he talk; what was the manner of his conversation; did he seem to be rational or not? A. No, he was not rational for a long time.

Q. Did you see him when he was brought to the County Jail? A. Yes, sir.

Q. How long was he at the County Jail? A. He was there two nights and a day.

Q. Was he examined there by Dr. King? A. Yes, sir.

Q. And what happened after Dr. King examined him? A. Well, I decided to take him home after Dr. King examined him.

Q. How long did you keep him home? A. Five weeks.

Q. Then, what happened? A. Well, I couldn't keep him home.

Q. Why couldn't you keep him home? A. Because he was very restless, very disagreeable, very quarrelsome, and I got afraid of him.

Q. Was he finally taken to the Morris Plains Insane Asylum? A. Yes, sir.

Q. Is he there now? A. Yes, sir.

Q. How long had you been married to him? A. About twelve years.

Q. Have you any children? A. Yes, sir; I have three children.

Q. What are their ages? A. I have a boy, thirteen and a half; a little girl, ten and a half; and Baby, three and a half.

Q. What money did your husband earn? A. Well, as near as I can remember, he earned about sixty-nine dollars every two weeks.

Q. How old was he? A. He is now thirty-six years old.

Q. Thirty-six? A. Yes, sir.

Q. So that the accident, which happened in February, 1915, he was—— A. Yes, sir; he was about thirty-two.

Q. —about thirty-one then? A. Yes, sir.

Q. Thirty-one, you say, or—— A. Yes, sir.

Q. —thirty-two, then? A. Yes, sir.

Q. Now, did you try to get this cap from the railroad company that he was wearing that night? A. Yes, sir.

Q. What effort did you make to get this cap? A. I went to the Claim Agent to find out whether I could get it, and when I described it to them, he said he knew nothing at all about it.

Q. I don't care what his conversation was in the matter; all I want to show to the Jury is that you tried to get this cap. A. Yes, sir.

Q. What else did you do? A. I have asked Mr. Foster about it.

Q. Did you ask the division superintendent about it or station master? A. No, sir.

Q. You haven't been able to get it? A. No, sir; I haven't been able to get it.

Q. Although you went down to the West Shore Terminal to get it? A. Yes, sir.

Q. How soon after he was hurt did you go to get the cap? A. About five—about ten days, I guess, afterwards.

Mr. Simpson: Cross examine.

Cross Examination by Mr. Carey:

Q. You saw Mr. Price first on the 16th? A. Yes, sir.

Q. The accident was on the 16th? A. The accident was on the 15th. Yes, that is right, on the 16th, not the 15th; yes, I saw him on the 17th first, the day after.

Q. You saw him first, you say, on the 17th? A. Yes, sir.

Q. You were alone at that time? A. Yes, sir.

Q. Whom did you see there at the hospital? A. When I went in that morning, did you mean?

Q. Yes. A. I met Dr. Fendricks.

Q. Anybody else? A. No, I met Dr. Fendricks going up the steps; he went up the steps with me at eight o'clock in the morning

Q. Was there anybody in the room with Mr. Price? A. No, not when I went in.

Q. Nobody there on this day that you visited him? A. Well, the nurse went in there with us.

Q. Nobody else? A. No, that was all that I noticed.

Q. On the 18th, you were there? A. Yes, sir.

Q. Now, on the 17th, I understood you to say, he was unconscious? A. Yes, sir.

Q. Was he talking? A. No, sir; not at all.

Q. All that day? A. All that day.

Q. Sure about that, Mrs. Price? A. I am sure about that; yes, sir.

Q. On the following day, the 18th, Mrs. Masterson went with you? A. Yes, sir.

Q. What time did you get there that day? A. Eight o'clock in the morning.

Q. Did she go with you at eight o'clock in the morning? A. Yes, sir.

Q. Where did she come from that morning? A. She came in——

Mr. Simpson: I object to that as not proper cross examination; I haven't asked her a word about Mrs. Masterson.

Mr. Carey: I know that, you asked her whether Mrs. Masterson was with her—went there with her.

Mr. Simpson: I will object; I don't think it is important.

The Court: All right; answer the question.

A. She came from Haverstraw that morning from home and got there about six o'clock in the morning.

Q. Now, about what time of the day was it that you undertook to give him a drink of water and the time the cap fell off? A. Well, as near as I can remember, it must have been about eleven o'clock.

Q. Did he talk that day? A. No, sir.

Q. Not say anything at all? A. No, sir.

Q. During all of the time you were there, he didn't say anything? A. No, sir.

Q. When did he first begin to talk? A. Well,

about three or four days afterwards he started to rave.

Q. Yes. A. I don't remember him talking—I don't remember him saying anything for—well, probably eight or nine days.

Q. Now, when you first saw him, the hair had been clipped all over his head, had it not? A. No, sir; the hair was shaved on the left side.

Q. Wasn't it clipped on the right side? A. No, sir; it was not touched.

Q. On the right side, it was shaved entirely? A. No, on the left side.

Q. I beg your pardon, the left side. A. Yes, sir.

Q. Left side, shaved clean, was it, with the razor? A. Yes, sir.

Q. Now, you say that you saw a bruise; what color was that bruise? A. It was red and blue.

Q. Yes. Was it puffed out or depressed? A. It was puffed out.

Q. Was it smooth or rough? A. It was smooth.

Q. Entirely smooth. A. Yes, sir.

Q. The skin was not broken at all? A. No, sir.

Q. Did you see it after that at all? A. Yes, sir; every morning.

Q. How long did it remain? A. About nine days.

Q. Then disappeared entirely? A. Yes, gradually it went down, day by day.

Q. Now, you testified on the former trial of this case, in this court room, did you not, Mrs. Price? A. Yes, sir.

Q. When the case was tried before Judge Campbell and a Jury? A. Yes, sir.

Q. On that occasion, you were asked how long this bruise remained, were you not? A. Yes, I guess I was.

Q. Were you asked this question, "You say that

this bruise disappeared? A. Yes, sir."? A. Yes, sir; I say it disappeared; it did disappear.

Q. Were you asked then this question: "In about how long? A. About three or four days." A. Well, I just don't remember if it was three or four days, but it seemed to me a long time; it might have been.

Q. Did you testify in that way? A. Yes, sir; I might have done that.

Q. I am reading from the record of your testimony. A. Yes.

Mr. Simpson: I object——

Mr. Carey: If you want to object——

Q. Did you testify to that effect?

Mr. Simpson: I object to that statement; it is apparent that he is reading from the record; I don't think he has any right to make any such statement as that.

The Court: The real question before the witness is, did she at a previous trial, have put to her a certain question, and did she answer that question in that manner.

Mr. Simpson: I have no objection to that, of course, but my objection is to his statement that he was reading from the record.

The Court: Now, suppose you read the question, Mr. Carey, and the answer. (To the witness) The thing before you, madam, is this: Did you at the previous trial, in this court room, have asked of you a certain question which Mr. Carey is about reading, and then did you answer the question as he is about to read it. You say yes or no.

Mr. Carey: I will read two questions and two answers.

The Court: All right.

Q. "You saw that this bruise disappeared? A. Yes, sir. Q. In about how long? A. About three or four days?" Did you so testify on the former trial? A. Why, I don't remember just how many days I said.

The Court: No, that is not the question. Did you so testify at the previous trial in this court room, as has been read to you?

The Witness: Well, I might have, if it is there.

Q. Now, your recollection was better at that time than it is at this time, was it not? A. No, I don't think it was any better.

Q. You were a year and a half nearer the time of the occurrence than you are now, so you would be likely to have a more vivid recollection, would you not? A. I don't know; maybe I was excited.

Q. Do you say now that it was eight or nine days before the bruise disappeared? A. As near as I can remember, yes; I just didn't take the time and the days, but as near as I can remember, I think that is about right.

Q. The bruise was the only thing that you noticed about his head or face that was unnatural? A. No, his eyes were blood-shot; his face was swollen.

Q. When did you notice the swollen face? A. Well, the about the same time as I noticed the bruise.

Q. Up to that time you had not noticed any swelling of the face? A. Only I noticed his eyes was blood-shot.

Q. When did you notice that? A. Almost as soon as I got in the hospital.

Q. That was on the morning of the 17th? A. Yes, sir.

Q. Both eyes blood-shot? A. Yes, sir.

Q. Face swollen on both sides? A. Yes, the face seemed to be all swollen.

Q. How long had Mr. Price been working on this run that he was on when he—— A. He worked on that run from the beginning of October until the day he was injured.

Q. And was he running with Mr. Foster, do you know, the engineer? A. Yes, sir.

Q. All of that time? A. Yes, sir.

Q. His run was a seven day run, was it not? A. Yes, sir.

Q. What had he worked at before he went onto this run? A. Well, he worked on a freight all of the time.

Q. Prior to that time? A. Yes, sir.

Q. And was Mr. Lee his engineer at one time? A. Yes, sir.

Q. At the time he was running on a freight train? A. Yes, Mr. Lee was one of the engineers that he run on the freight with.

Q. What other engineer, if you recall, did he work with on freight trains? A. He worked with Harry Richards.

Q. Anybody else? A. Yes, he worked with Mr. Keating.

Q. Mr. Keating? A. Yes, sir.

Q. You never say any blood on his face or anywheres around him, did you? A. No, sir.

Q. Now, you say that his wages were about sixty-nine dollars, I understood you, every two weeks; was that right? A. Yes, sir.

Q. How did you find out about his wages? A. Well, he always gave me his wages.

Q. He had some expenses himself, did he not? A. Well, he didn't have very much expenses, only a room in Haverstraw.

Q. He stopped over night in Haverstraw, did he? A. Yes, sir.

Q. On account of the run that he was on? A. Yes, sir.

Q. He got meals up there? A. Well, just a cup of coffee in the morning, early.

Q. About what time did he leave for his run in the afternoon? A. He left my house at two o'clock in the afternoon for his run.

Q. Went to Haverstraw and just came back? A. Yes, I think that was the way he run.

Q. And then went back to Haverstraw for the night? A. Yes, sir; stopped there for the night.

Q. So that he made two trips—one round trip and another trip back to Haverstraw on the same day, on this run that he was on? A. Well, I don't know how many trips he made. I know he came into my house at nine o'clock in the morning and stayed home from nine until two, and at two he left; and I just don't know how many trips he made after two o'clock.

Q. Did he not get his breakfast at Haverstraw? A. No, sir; he just got a cup of coffee at Haverstraw; he got his breakfast at nine o'clock at our home.

Q. On the former trial, were you asked this question: "Q. And what other expenses did he pay himself out of his earnings? A. There were no expenses that he paid, only if he wanted a cup of coffee, perhaps, at either end. He came home at nine and got his breakfast. I think he did get his breakfast at Haverstraw—yes, he got his breakfast there in the morning; then he came home to me and got his breakfast about nine, and at two he got his dinner, and I packed a pail." Did you testify to that effect? A. By his breakfast up there I mean that he got a cup of coffee at five o'clock in the morning.

Q. Did you testify to that effect? A. Yes, but what I mean by that was that he had a cup of coffee; he didn't get any meals in Haverstraw at all.

Q. Was Mr. Price well when he left your home on the afternoon of the 16th of that day in February? A. Yes, sir; Mr. Price always was in excellent health.

Q. Always? A. Yes, sir.

Q. Never had any sickness? A. Never had any sickness.

Q. Was he at one time an inmate of a hospital in New York? A. No, sir.

Q. Never? A. Yes, he was; he was an inmate—not an inmate, I wouldn't call it.

Q. Well, he was there, was he? A. Yes.

Q. For treatment and observation? A. No, not for observation.

Q. What was he there for? A. Why, he had, when he first went firing, he had blood poisoning in his left hand and he went to the hospital for that.

Q. Was that the only thing that he went for? A. I don't remember of anything else.

Q. Now, just give careful thought to that, and see if you do not recall something else. A. I don't remember—I don't remember of him ever going to the hospital, although when any of the children are sick or when any of us were sick we always go to the hospital.

Q. You do? A. Yes, sir; that is, we would go back and forth to the hospital for treatment.

Q. What hospital was he in in New York? A. Bellevue Hospital.

Q. And when? A. Well, I just don't know when; that was right—that was about right after I was married, 1905.

Q. You testified in this compensation case before Judge Tennant in December, 1915, did you not? A. Yes, sir.

Q. And were you on that examination asked: "Was—he was in the hospital, wasn't he? A.

Yes, he was in a hospital. Q. Where? A. He was in Bellevue Hospital. Q. Bellevue Hospital? A. Yes. Q. That is in New York, I suppose? A. Yes. Q. After your marriage to him? A. Yes, after my marriage. Q. How long ago was that? A. Why, as near as I can remember, it must be about four years ago." Did you so testify? A. Yes, sir.

Q. And is that probably correct, that that was about four years before the day you testified? A. Yes; whenever there was anything wrong with us, why, we would go to take——

By The Court:

Q. No, what he has asked you is: Was that probably correct that that was about four years previous to the time you were testifying? A. Yes, sir.

By Mr. Carey:

Q. How long did Mr. Price stay in the hospital?

The Court: At that time, you mean?

Mr. Carey: At that time.

A. At that time, about three days, as near as I can remember.

Q. Now, you say that it was simply a matter of blood poison? A. No, not that time.

Q. Oh, now tell us what it was at that time? A. Well, he was on a very hard job and I noticed he was taking night sweats and he had a slight cough, and he was afraid that he might have some lung trouble, so we decided to go over to Bellevue Hospital and take the examination.

Q. You say that he had a slight cough? A. Yes, sir.

Q. Was it very slight? A. Well, yes; it was in the winter time and it was a cough; yes, sir.

Q. On this occasion when you testified before

Judge Tennant, were you asked this question: "Do you know what he was suffering from when he went to the hospital? A. At the time he was taking night sweats he had a very bad cough. He suggested he would go to the hospital to see what was the trouble. I thought he was developing tuberculosis; he was on a very hard job for that run, firing an engine." A. Yes, sir.

Q. Did you so testify? A. Yes, sir.

Q. And he had a very bad cough, had he? A. Well, it was bad enough for him to go to the hospital; yes, sir.

Q. Did he have a very bad cough? A. Yes, sir.

Q. You say that he was entirely unconscious on the first day that you saw him? A. Yes, sir.

Q. In this trial before Judge Tennant, were you asked this question: "With reference to the 17th of February, when you got to the hospital, did you find Mr. Price there? A. Yes. Q. What was his condition? A. He was in semi-coma condition to my knowledge; he seemed to be unconscious." Did you so testify? A. Well, he was unconscious; yes, sir.

Q. Did you testify that he was in semi-coma? A. Well, I don't know; I don't remember testifying to that.

Q. You don't recall that? A. No, sir.

Q. If you used the word "semi-coma", what did you mean by it? A. Well, I would say that he was conscious at times, if semi-coma.

Q. Semi-coma? A. Yes, sir.

Q. You know the meaning of the word "coma," don't you? A. Why, I don't know whether I do or not.

Q. You have had some training as a nurse? A. Yes, sir.

Q. Graduate nurse? A. Yes, sir.

Q. What claim agent did you call upon in refer-

ence to Mr. Price's cap? A. I don't know his name, but I know he called on me and he was a claim agent at the time that Mr. Price was injured.

Q. You don't recall his name? A. I don't know his name; no, sir.

Q. Did you ever know his name? A. I think I did know his name; if I heard it, I would know it.

Q. Was it Mr. Davis? A. I don't believe it was that name.

Q. Mr. Freeman? A. Yes, it seems to me it was Mr. Freeman; he was a tall, stout gentleman, blond.

Q. Florid complexion? A. Yes.

Q. Now, you say that Mr. Price was in good health at the time he left on the day of the accident? A. Yes, sir.

Q. Was he at times troubled with lack of appetite? A. No, sir.

Q. Never? A. Never.

Q. Hearty eater? A. Yes, sir.

Q. Was he strong, robust? A. Very strong, robust.

Q. Did he have the appearance of a man, full-blooded and vigorous? A. Yes, sir; he was.

Q. Always? A. Always.

Q. How was his complexion? A. Fine.

Q. And clear? A. Beautiful.

Q. Well, that is a very nice, natural way for a lady to describe it, but what was it—ruddy? A. Ruddy and white.

Mr. Simpson: I object to this; I think it is improper cross examination. I haven't asked this woman anything about those things.

Mr. Carey: You have asked her about health.

Mr. Simpson: No, I didn't; I asked her what she saw on that day; that is all I remember.

Q. Well, he was always that way? A. Yes, sir.

Q. Even when he went to the hospital in New York? A. Yes, sir.

Q. Full-blooded? A. Yes, sir.

Q. And how did you get the idea that he was liable to get tuberculosis? A. Well, I knew that night sweats were not very good.

Q. And the cough? A. I didn't pay so much attention to the cough as the night sweats.

Q. It wasn't his general appearance that worried you at all? A. No, sir.

Q. Because he was always full-blooded, florid? A. Yes, sir.

Q. Looked like a well nourished—— A. Always, well nourished.

Q. —man? A. Yes, sir; and a hard worker.

Mr. Carey: That is all.

Mr. Simpson: That is all.

(Witness excused.)

Mr. Simpson: Pardon me, Your Honor; I want to recall Mrs. Price.

MARGARET PRICE, recalled.

Direct Examination by Mr. Simpson:

Q. Take the stand, Mrs. Price. The only hospital your husband ever was in was in Bellevue, wasn't it? A. Yes, sir.

Q. For those two things—one, you say, was blood-poison? A. A small place on his hand; yes, sir.

Q. His hand, that he got at work? A. Yes, sir; he was using a shovel.

Q. That he got at work? A. Yes, sir.

Q. And the other for this cough which you were

afraid might develop into tuberculosis? A. Yes, sir.

Q. Same hospital on both occasions? A. Yes, sir.

Q. And for these two diseases only? A. Yes, sir.

Mr. Simpson: That is all. (To Mr. Carey) What was the name of that man that you said —that your engineer said helped him in with Price?

Mr. Carey: Riker.

Mr. Simpson: Riker, yes.

Cross Examination by Mr. Carey:

Q. Just one moment, Mrs. Price. Are you sure, Mrs. Price, that on the day that Mrs. Masterson went with you to the hospital that Mr. Price didn't say anything at all? A. The day Mrs. Masterson went along?

Q. Yes, the day she first went with you to the hospital? A. Not that I remember of; no, sir.

Q. You don't remember a thing? A. I didn't hear him say anything that day.

Q. Was there anybody there among his associates, railroad employees? A. Mr. Foster was there.

Q. When did you first see Mr. Foster there? A. I saw him the first morning that I went there.

Q. And did you see him the first day that Mrs. Masterson went there with you? A. Yes, sir.

Q. He was there then with him? A. Yes, sir.

Q. In Mr. Price's room? A. Yes, sir.

Mr. Carey: That is all.

(Witness excused.)

RICHARD RIKER, sworn.

Direct Examination by Mr. Simpson:

Q. Where do you work, Mr. Riker? A. West Shore Railroad.

Q. Did you work for them on the 15th and 16th of February, 1915? A. Yes, sir.

Q. What was your position; what did you work at? A. Train brakeman.

Q. What train? A. Train 72.

Q. That is Train 72, the one on which Charles Price was fireman? A. Yes, sir.

Q. What do you know anything about—anything connected with this accident to Mr. Price? A. The only thing I know is that I helped him from the engine to the depot.

Q. You did what? A. I helped him.

Q. Who called you? A. Sir?

Q. Who called you to help him? A. It was a switchman in the yard that told me first.

Q. He called you? A. Switchman.

Q. What was his name? A. I don't know.

Q. Is he here? A. No, I wouldn't know the fellow at all.

Q. Well, as the result of what was told you, what did you do? A. I went down to the engine.

Q. What did you find when you got down there? A. I found Mr. Foster and Mr. Price standing up alongside of the train.

Q. What was Price's condition? A. He was standing there with his head in his hand, like that (illustrating).

Q. And his cap on? A. No, sir.

Q. Did he have his cap in his hand? A. No, sir.

Q. You didn't see his cap? A. Yes, sir.

Q. Where was it? A. In Mr. Foster's hands.

Q. What was its condition? Did you notice any

tear in it? That is what I want to know? A. Oh, a tear.

Q. Yes. A. Slight tear over the left temple.

Q. What did you do after you got there? A. I got on the left side of him, took hold of his arm and under the left hand.

Q. What was his condition; how was he acting? A. Well——

Q. Standing upright or bowed down or how? A. Well, he was standing upright but his head was leaned over like that (illustrating).

Q. Did you help him into the station master's office? A. Yes, sir; I took hold of his arm like that until I reached inside of the station master's room.

Q. What did you do—did Price sag down? A. Sat him down in the chair.

Q. I said, did he sag down? A. No, sir; we sat him down.

Q. All right, you had to help—— A. Yes, he walked in.

Q. Why did you help him? A. I just had hold of his arm like that pushing (illustrating).

Q. When you got him in there and put him on a chair, you left him there? A. Put him on a chair —broad chair in the office.

Q. Did you stay in there after Mr. Foster went out? A. No, sir; I returned to the train at once.

Q. Did you go out before Mr. Foster? A. I left there after Mr. Foster.

Q. When you last saw the cap, it was in Mr. Foster's hand? A. Yes, sir.

Q. Did Price say anything to you about his head? A. Never opened his mouth while I was in his company.

Mr. Simpson: Cross examine.

Cross Examination by Mr. Carey:

Q. About how far did he walk from the station to the station master's office? A. Well, between two and three hundred feet from where the engine stood, whatever that is, to the station master's office.

Q. Did he walk all the way? A. Yes, sir.

Q. Mr. Foster was on one side, you were on the other? A. Yes, sir.

Q. You say that you had hold of his arm? A. Yes, sir; I had hold of his arm.

Q. How, in what way? A. I just caught hold with my hand.

Q. Did you have to support him to any extent? A. No, sir.

Q. When you went out, he was sitting in the chair, was he? A. Yes, sir; there is where I left him.

Q. What was his position in the chair? A. Well, he sat down with his head in his hand this way (illustrating).

Q. Just won't you show us just about how he sat? A. Just like that (illustrating).

Q. He was sitting that way—— A. When I left.

Q. —when you left. Did you see him after that day? A. No, sir.

Q. Did you ever see his cap after that time? A. No, sir.

Q. What material was this cap? A. Well, the same as firemen; I should think it was a black muslin cap that firemen generally wear.

Q. Thin or thick material? A. Thin.

Q. In thickness, how did it compare with a sheet of ordinary foolscap paper? A. I couldn't say because I never wore one of them; I didn't have the cap in my hand; only from what I saw in Mr. Foster's hand.

Q. Where were you, in the train, as you were passing this signal to the west of the tunnel? A. Second car from the engine.

Q. Did you notice anything unusual from the time you passed the signal until you got into the station? A. No, sir.

Q. Any unusual sound or noise of any kind? A. No, sir.

Mr. Carey: That is all.

Redirect Examination by Mr. Simpson:

Q. Well, your train made considerable noise, didn't it, the train you were on? A. Sir? It always makes a noise going down through there.

Q. That is a general thing? A. That is the usual case.

Q. It made noise enough to drown the ordinary noise of an iron bar hitting a man's head, that train? A. I should think it would, from where I stood.

Mr. Simpson: That is all.

(Witness excused.)

GRANT HINCKLEY, sworn.

Direct Examination by Mr. Simpson:

Q. What is your business, Mr. Hinckley? A. Why, I am a yard brakeman at present.

Q. Were you a fireman for the New York Central on the 16th of February, '15? A. Yes, sir.

Q. What time did you leave—did you leave on that day on a train going west? A. On what day?

Q. On the 15th? A. No, not leaving.

Q. Leaving on the—— A. Leaving where?

Q. Leaving the terminal? A. Which terminal —Weehawken or Granton?

Q. I don't mean Chicago, down where the Forty-second street boats come in; do you know where they come in, the Forty-second street boats? A. Yes.

Q. When did you leave there? A. On the 15th?

Q. Yes.

Mr. Carey: You are asking about the wrong date, Mr. Simpson.

The Witness: I think that date is——

Q. Did you leave there on the 16th? A. I believe we did.

Mr. Carey: Did you?

Q. Did you? A. Yes, sir.

Q. What kind of a train were you firing on? A. Freight train.

Q. Were you the fireman or the engineer? A. Fireman.

Q. What time of the day did you leave the Weehawken Terminal? A. As near as I can remember, it was 7:20 P. M.

Q. Did you pass this train upon which Foster was the engineer west of the tunnel? A. Yes, sir.

Q. About how far west of the tunnel did you pass him?

Mr. Carey: In order to shorten this examination, Mr. Simpson, I am willing to concede that the two engines passed each other about in the neighborhood of the last signal west of the tunnel.

Mr. Simpson: That is not what he testified at the last examination.

Mr. Carey: Well, between that and the mouth of the tunnel, if I can shorten the case by that admission.

Mr. Simpson: Will you also admit that it was his engine and that there was a firehook on it when it passed on his engine?

Mr. Carey: What was the first part?

Mr. Simpson: Will you admit that it was this witness' engine which passed Price's engine, that had passed it on Price's side, and that this gentleman—this witness' engine had a firehook on it when it passed?

Mr. Carey: I will admit that the engine on which Mr. Hinckley was fireman passed the engine on which Mr. Price was fireman; that they passed on the——that Mr. Price was on the side of the engine—of his engine—which was next to the side of Mr. Hinckley's engine.

Mr. Simpson: That is not quite complete enough for me.

Q. Where did you pass Price's engine; how far west of the mouth of the tunnel? A. Well, I cannot tell, but it was after we left the tunnel; it was somewhere between the tunnel and this last signal.

Q. When you passed his engine? A. Yes, sir.

Q. Now, which side were you on when you passed, do you remember? A. On the left side.

Q. That is, you passed on his side? A. I passed him on this side, side by side.

Q. That is, you were nearest to Price? A. I was the nearest to Price.

Q. You were watching for what, this signal? A. Signals.

Q. As you went through? A. Yes, sir, as we came out; I never stick my head out coming through the tunnel, after we leave——

Q. Oh, you never put your head out in the tunnel? A. No.

Q. What type of engine was it, do you remember, that he was on? A. Why, it was 900——

Mr. Carey: That Price was on?

Mr. Simpson: Yes.

A. 900 class, 907, I believe.

Q. What was the number of yours? A. 3189.

Q. Was it about the same size, do you know? A. No, it was a much larger engine than Price's.

Q. It is a much bigger engine? A. Yes, sir.

Mr. Simpson: I think that is all.

The Court: Cross examine.

Cross Examination by Mr. Carey:

Q. About how fast was your train moving when you passed Price's engine? A. About fifteen or twenty miles.

Q. What was that? A. About fifteen or twenty miles per hour.

Q. You were hauling a freight train? A. Yes, sir.

Q. Long train? A. Yes, sir.

Q. About how many cars? A. Why, if I remember right, there was fifty cars—fifty loads and one empty—fifty-one cars, I believe.

Q. And—— A. It was a long train, I know.

Q. That made quite a heavy train? A. It depends on what they are loaded with.

Q. Yes. A. I couldn't say whether it was a heavy train or not.

Q. Did you see Mr. Price that night? A. No, sir.

Q Did you see him after that night? A. No, sir.

Q. Did you know him? A. Yes, sir.

Q. How long had you known him? A. Why, three or four years at that time; I had known him that long.

Mr. Carey: That is all.

Redirect Examination by Mr. Simpson:

Q. One question I did want to ask you. You had a firehook on your engine that night, didn't you? A. Yes, sir.

Q. Well, how long was that firehook? A. Well, approximately ten feet. I cannot say just the exact length.

Q. What is the length of it? A. That is about the regular standard length.

Q. About ten feet? A. Yes, sir.

Q. Are there any that come twelve feet? A. Well, I never saw any that was as long as that. Well, they do have different sizes, I mean, on those big engines—they have different sizes. A. No, it was a short size, like Price had on.

Q. About ten feet. Usually, they carry them across the tank, isn't it, on the coal? A. Always, not on the coal.

Q. Across the top? A. Across—you see, there is a little projection out on the tank, what they call the deck of the tank, and this here hook is carried cross-wise from one deck to the other.

Q. What was under it? I mean, is it just the surface of the tank that is under it, or is there anything? A. Why, there are two square decks like on the side, well, the same like this is the tank and it comes around here and then it goes back in here for coal space and this is all up around here and there is a little wing comes around the end and turns about here on each side (illustrating).

Mr. Simpson: Which of these did you offer?

Mr. Carey: Here is one that I haven't offered (referring to photographs).

Mr. Simpson: I don't want one that you haven't offered; I want the ones you have offered, please. Did you offer that (indicating)?

Mr. Carey: That is one.

Mr. Simpson: All right.

Q. Can you show on this where that bar is usually carried? A. Yes, I can show here, but this is a better one (indicating) you see, right down in like this (illustrating).

Q. Yes. A. There is a flat piece of iron comes right across which forms the top of the water space in here.

Q. Huh-huh. A. And then on up like that (indicating). There is a flat space in there on both sides and that hook lays from over on that side to over here (indicating).

Q. Now, mark that, unless Mr. Carey objects. A. That is a pencil; I cannot do it with that because this is close paper.

Q. If you would, mark "H" where this hook— A. (Witness does so on D-3 for Identification).

Q. Does it cross like that? A. Yes, the same like I drew it there——

Q. Now, nothing else—— A. —cross wise.

Q. Now, on that night, there was nothing else moveable on your engine, was there, excepting this hook? A. Why, not that I know of.

Q. How thick is the hook? A. Approximately half an inch in diameter, that is the thickness of the iron or material it is made of.

Q. What is it used for? A. For levelling off the fire to make the fire burn even.

Q. Is it a poker-like—like a poker would be, is that right? A. No, rake fashion.

Q. To break it up? A. I use the hook as a rake.

Q. Teeth at the side of it? A. Two teeth.

Q. Put that in and pull it around? A. Pull it back and forth to break up the coke and fill up any holes that have come in the fire-bed.

Mr. Simpson: Cross-examine.

Recross Examination by Mr. Carey:

Q. Is the firehook which you had on the engine

that night just the ordinary firehook? A. As near as I could remember, yes.

Q. You also had on the engine shovels, didn't you? A. Yes, sir.

Q. And some other tools? A. Shaking lever, yes.

Q. And the engineer had some tools? A. They are not my tools; they are his.

Q. I am not asking you whose they were? A. Yes, he had his supply too.

Q. Those were all moveable things? A. Yes, sir.

Q. Now, where did you take your engine that night? A. Where did I take it from?

Q. Yes. A. From Granton enginehouse.

Q. Granton enginehouse is west of the tunnel, is it not? A. Yes, sir.

Q. There is where you go to get your engine? A. Yes, sir.

Q. There is a roundhouse there? A. Yes, sir.

Q. Your tools were put on before you reached the engine? A. Yes, sir; before we report for duty.

Q. After you and the engineer took the engine, what is the first point you took it to? A. First point we got the engine?

Q. First point you took it to, after you got it at the roundhouse? A. The New Durham Coal Pocket.

Q. Which side of the tunnel is that? A. The west side.

Q. What did you do there? A. Got coal, water and sand. First, got a supply of hard coal and get that into your firebox.

Q. Put your hand down, so I can hear what you have to say. A. We first get a supply of hard coal, and that is the time that I use the firehook or fire-rake to level off the fire-bed to get it burn-

ing bright, and then I put this supply of hard coal in the firebox to eliminate black smoke in Weehawken, and then after——

Q. When you were out on the road, you used soft coal? A. Used soft coal out on the road.

Q. But when you started out you had a hard coal fire? A. Yes, sir.

Q. Go ahead. A. Then after we get that in the firebox, take a supply of soft coal, sand and water. In the meantime, the engineer has been oiling his engine around,—take the sand—and as soon as we get the signal we go through the hill—through the tunnel.

Q. You say through the hill—you mean the tunnel? A. Tunnel.

Q. Back through? A. Yes, sir.

Q. That is what you did on the night in question? A. Yes, sir.

Q. You hooked onto your train after you backed through the tunnel? A. First, we backed through the tunnel,—the train wasn't ready.

Q. Ultimately, you do hook to a full train, don't you? A. Yes, sir.

Q. That is what you did that night? A. Yes, sir; we first pulled it together.

Q. Then, when everything is ready you pulled out? A. Yes, sir.

Q. Going on the westbound track? A. Yes, sir.

Q. Now, you were asked the correct position of the firehook. On the engine that is the correct place for carrying it? A. Yes, sir.

Q. I show you a photograph which appears to represent the position of the firehook on the engine? A. That is the proper place.

Q. Now, were you present when that photograph was taken? A. Yes, sir.

Q. And what engine was that on? A. On this engine—I think so.

Q. What engine did you have that night? A. The night of the accident we had 3189.

Q. Yes; wasn't it this same engine? A. I think this was the same engine—it was.

Q. It was the same engine? A. Yes, sir.

Q. Now, does that picture show the proper position of the firehook, across the front of the tender? A. Yes, sir.

Q. And the proper position of the handle of the firehook is on what side? A. Left-hand side.

Q. And that is whose side—engineer's or fireman's? A. Fireman's side.

Q. Fireman's side. Now, you were speaking of what you call the deck of the tank? A. Yes, sir.

Q. Will you indicate on this picture what is the deck of the tank? A. Why, this space right there—through there on both sides (indicating).

Q. Yes. Suppose you mark that—over that place the letter "D" for deck of the tank.

Mr. Simpson: If you want to put it in, put it in; I have no objection to putting them all.

Mr. Carey: I offer this in evidence, then.

The Court: Suppose you mark it right away.

Q. Suppose we have that marked in evidence first; then we will have it marked.

(Photograph marked D-5.)

Q. Now, will you mark on this, Exhibit D-5, a letter "D" above what you call the deck of the tank? A. (The witness does so).

Q. Now, Mr. Hinckley, that photograph represents the front of the tender of the engine, does it not? A. Yes, sir; the engine that we were on that night in question.

Q. And these doors which you see here are the coal doors? A. Yes, sir.

Q. And back of these coal doors is the coal? A. Yes, sir.

Q. Now, this photograph was taken, was it not, after uncoupling the engine? A. Uncoupling the engine from the tender.

Q. Uncoupling the locomotive part from the tender? A. Yes, sir.

Q. So as to get the front view of the tender? A. Yes, sir.

Q. Now, that shows the firehook there in position, does it? A. In its proper position; yes, sir.

Q. The hook end of the firehook is on whose side? A. Engineer's side.

Q. Can you see the hook on this side (indicating)? A. No, sir.

Q. That is behind the wing of the tank— A. Wing of the deck.

Q. ——is it not? But this loop showing here on the right of the picture is the handle of the firehook (indicating)? A. It is on the left side of the engine.

Q. And the rod which we see extending across to the other deck is the rod of the firehook? A. Right.

Mr. Carey: (Passing Exhibit D-5 to the Jury) This, perhaps, will give the Jury a pretty good idea of the firehook and its proper location.

Q. Now, Mr. Hinckley, you say that you used the firehook on the engine at the New Durham Coal Pocket? A. Yes, sir.

Q. When you placed it back on the engine, in what position did you place it? A. In the same position as you see it there in the picture.

Q. Which end was toward the Price engine when you passed? A. Handle end.

Q. The handle end. What was—about what was

the projection of the handle over the side plate of the tank? A. Three to four inches.

Q. What was the position of the hook end on the other side? A. Why, it was flush against the wing of the tank.

Q. Right up against that side? A. Wing.

Q. Right up against the wing of the tank on the other side, was it? A. Yes, sir.

Q. Now, which end is higher when the hook is in that position? A. The handle end.

Q. Handle end or hook end? A. Handle end.

Q. About how much higher is it than the hook end? A. About twelve or thirteen inches—eleven or twelve.

Q. So that it slants downward toward the hook end? A. Yes, sir.

Q. And the difference in slope is some twelve or thirteen inches, is it? A. Yes, sir.

Q. Now, which is the heavier end—the hook end or the handle end? A. The hook end.

Q. Now, from the time you used this firehook at the New Durham Coal Pockets, did you make any use of it at all between that time and the time when the two engines passed? A. No, sir.

Q. Did you make any use of that firehook between that time and the time when your train stopped at Dumont? A. No, sir.

Q. You say that you put in a hard coal fire? A. Yes, sir.

Q. How far do you usually run before you have to do anything to your hard coal fire after starting out from the Weehawken yards? A. Well, if you don't have much delay in Weehawken, you can go from fifteen to twenty-five miles.

Q. Now, where did you hook onto your train in the Weehawken yards? A. Where?

Q. Yes, how near to the tunnel? A. I should say about six hundred feet.

Q. Six hundred feet from the tunnel? A. Huh-huh.

Q. You had from the time that you passed out of the Weehawken yards to the time that you met the Price engine—— A. No, further than that; I should say a thousand feet away from the tunnel.

Q. A thousand feet? A. Yes.

Q. And you passed over that thousand feet and through the tunnel and somewheres from six hundred to a thousand feet outside of the tunnel before you met the Price engine—— A. Yes, sir.

Q. —is that right? A. Yes, sir.

Q. Now, did you notice the position of that firehook when you left the Weehawken yards? A. Yes, sir.

Q. As you started out with your train? A. Yes, sir.

Q. You go over the engine and make an inspection to see that everything is all right, just before you go out, don't you? A. Yes, sir. Well, we make that inspection at the Granton roundhouse and if everything is in proper condition—of course, when we use any tool, why, we put it back where it belongs.

Q. You would look over the engine just before you pulled out with the train, wouldn't you? A. That, the engineer does.

Q. The engineer does that? A. Yes, sir.

Q. Now, do you know what the position of that firehook was at the time your train pulled out? A. Yes, sir.

Q. What was it? A. Just that position (indicating).

Q. And a projection not over three or four inches? A. No, sir.

Q. Now, I call your attention to this firedoor here and a little projection there on which the

handle seems to rest; will you state whether the handle does rest there on that or not? A. You mean the coal door, not the firedoor.

Q. The coal door, yes. A. Now, what was that question, please?

Q. Does the handle rest on that projection there? A. Yes.

Q. Part of the hinge, is it? A. It isn't a part of the hinge; it is a kind of prong-like that; when your doors are wide open, you see your prong drops down on top of this to hold the doors open.

Q. Will you say your coal doors were in that position when you went out of the Weehawken yards? A. Yes, sir.

Q. Now, what else does the rod of the firehook bear against when it is in that position? A. Pipes you see there on the left side of the tender, where the handle of the hook runs—they will understand that better.

Q. Near where the handle of the hook is, is it? A. Yes.

Q. Then, at the handle, does it bear on the side wing on the tank? A. Yes, sir.

The Court: You are getting into some other subject; you had better stop at this point, Mr. Carey. We will adjourn now until two o'clock, gentlemen; be back promptly.

(NOON RECESS)

(AFTER RECESS)

The Court: Mr. Hinckley is on the stand, I believe.

Mr. Simpson: Yes, sir.

The Court: Mr. Hinckley.

GRANT HINCKLEY, resuming:

Recross Examination by Mr. Carey (Continued):

Q. Then, this hook has a firm position by reason of its bearing on the tank and on this pipe? A. Yes, sir.

Q. And on the deck of the—— A. Tank.

Q. —tank? Now, the train was stopped at Dumont, was it not? A. Yes, sir.

Q. And an inspection made by you of the engine? A. Yes, sir.

Q. And in connection with that inspection, did you notice the position of the hook? A. Yes, sir.

Q. Will you state whether or not the hook had moved at all from the position you placed it in when you took coal at the New Durham Coal Pockets? A. It had not; it was in the same position as it was when I placed it.

Q. In the same position as to projecting over the side of the engine? A. Yes, sir.

Q. Now, is there any other place for carrying the firehook on an engine of this type? A. No, sir.

Q. Is that the case—the place where the firehook is carried by all firemen when they are not using it? A. Yes, sir.

Q. You have had an experience of how many years as a fireman? A. Over six years.

Q. That is the position you always carry your firehook when not in use? A. On this type of engine; yes, sir.

Q. And other firemen place it in the same position? A. Same position.

Q. Is that the position provided for the carrying of the firehook? A. Yes, sir; it is the only place to carry it.

Q. I notice the handle of the firehook on this engine, 907, is in the same position on the front

of the tank (referring to photograph)? A. Yes, sir.

Q. And extending over just about the same as the handle of this firehook (indicating). A. Yes, sir.

Q. And in this picture of 907——

Mr. Carey: D-3 for Identification.

Q. ——the firehook was in the same position? A. Yes, sir.

Q. And extending over just about the same length? A. It is; yes, sir.

Q. Were you present, in November of 1915, when some photographs were taken of engines standing on adjacent tracks? A. Yes, sir; at Weehawken.

Q. Do you recall what engines were used? A. 992, 904, 3195.

Q. Now, the engine you had that night was 3189. A. Yes, sir.

Q. And the engine you had in making the photograph was 3195? A. Yes, sir.

Q. Those two engines—3189 and 3195—belong to what class of engines? A. 3100 Class.

Q. Are they the same type? A. Yes, sir.

Q. And dimensions? A. As far as my knowledge.

Q. Have you run both of them? A. Fired both of them.

Q. Are you familiar—to what class of engines do Nos. 707, 704——

Mr. Carey: Strike that out.

The Witness: 907——

Q. 907, 904, 972, belong? A. All of the same class.

Q. —and—— A. That is all, all of the 900 class.

Q. Same type of engine, are they? A. Yes, the three are of the same type.

Q. Do you recall whether you were——

Mr. Carey: Strike that out.

Q. I show you a photograph of two engines standing on adjacent tracks, one of them having the handle of the firehook extending over the side a short distance, and ask you if you were present when that engine was taken—when that photograph was taken? A. Yes, sir.

Q. Do you know the place of the firehook on the engine on the right of the picture? A. Yes, sir; right here (indicating).

Q. Will you state whether or not you placed the firehook in the same position that you placed the firehook on Engine 3189 on the night in question? A. This firehook is placed, as near as possible, to the point that other one was that I could possibly place it.

Q. And the position shown by the firehook on this photograph which I have just shown you was the position of the firehook on Engine 3189 as you went out of the Weehawken yard and as you examined it at Dumont? A. Yes, sir.

Mr. Carey: I offer this for identification. Mr. Simpson, any objection to that going in evidence?

Mr. Simpson: Yes, sir; I object to that going on this phase of the case; it takes an awful lot of time.

(Photograph Marked D-6 for Identification.)

Q. I show you another photograph of engines on adjacent tracks, with a person looking out of one of the cab windows. Were you present when this photograph was made or that photograph, rather (indicating)? A. Yes, sir.

Q. Who is the person looking out of the cab window? A. That is myself.

Q. Those engines were the same ones that you have just spoken of, 3195 and 972? A. Yes, sir.

Q. And those being the same type of engines that 907 and 3189 are? A. Yes, sir.

Q. Did you place the firehook on the engine or tank on the right of the picture? A. I did.

Q. How does that compare with the position of the firehook as you placed it at the New Durham Coal Pockets on the night in question? A. It is the same as near as I could place it.

Q. Was that the same position as it was in when you examined it at the Weehawken yards? A. Yes, sir.

Q. And when you examined it at Dumont— A. Same position.

Q. ——after you had passed the engine on which Mr. Price was? A. Same position.

Mr. Carey: I ask that it be marked for identification.

(Photograph Marked D-7 for Identification)

Q. I show you another photograph; is that a photograph of the same series of engines? A. Yes, sir.

Q. And taken on the same date? A. Yes, sir.

Q. The firehook is turned up in that position so that the loop of the handle shows a little better. A. I remember turning it so it would show better.

Q. And the position as it is in this picture to which I have just called your attention was the same as it was after you had placed it in at the coal pockets at New Durham, and when you inspected it at the Weehawken yard, and when you inspected it at Dumont? A. Projection is the same.

Mr. Carey: Let that be marked.

(Photograph marked D-8 for Identification)

Q. Mr. Hinckley, did you ordinarily meet Train 72 as you—when you were on your trip yourself on this train? A. I met him ordinarily in the yard.

Q. Yes. A. We did.

Q. What was the train number that you were on? A. W-D-3.

Q. And the train number of the passenger train was what? A. 72.

Q. Ordinarily you met him—the two trains met, did they? A. Passed, yes, sir.

Mr. Carey: That is all.

Redirect Examination by Mr. Simpson:

Q. There was nothing projecting from your engine on the side toward Price except this hook, was there? There was no shovel or engineer's tools? A. Nothing that I saw.

Q. When you say three or four inches projects, that is an approximation by you, as you looked at it, and that is your judgment, isn't it? A. The width of this handle—this loop there for holding—for putting your hand through—that is approximately three or four inches long, and just that loop is all that projected over the side of the tank.

Q. You were an extra man on this train weren't you; you had never run this train previous, had you? A. I was on that trip for practically two weeks, I think it was; it was vacant at the time.

Q. It was not proper for the hook to project at all, was it? A. Well, I had a hook of my own that did not project, but I did not have that on the engine that trip, and the fire builders that had built the fire the engine had burned the hook off, so I got a different hook.

Q. Did you say at the last trial: "Q. And if it was in its proper place how much does it project on each side of the tank?" and did you answer, "Why, it should not project any, but this night it projected three or four inches." Did you so swear at the last trial? A. I did.

Q. Then, it wasn't right for it to project at all? A. If I had the hook that I always used.

Q. Then, it wasn't proper for it to project any? A. I wouldn't say whether it was or not.

Q. However, you did say on the last trial that it should not.

Mr. Carey: I object to the controversy.

Mr. Simpson: It is no controversy.

Q. Do you say now that it is or is not proper for it to project from the side of the tank? A. Have I said that last?

By the Court:

Q. Do you say now, the question is, that it is or it is not proper for the handle to project beyond the tank? A. I cannot say that it is not proper or is proper; I could not go further than what I have got a right to say, because I don't know the standard length of the hook.

By Mr. Simpson:

Q. Well, if—you say now it is proper to project, to have your hook project— A. Well, it doesn't project no further than three or four inches.

Q. No, but answer the question. Do you say it is proper or it is not proper for it to project? A. I would not say one way or the other,——

Q. You wouldn't—then, there is no standard at all to them? A. ——except, I don't know the standard length of the hook; if I knew it I would tell you.

Q. You don't know the length of this hook? A. Not the exact length, no, sir; as I told you before, it was approximately ten feet long.

Q. What I want to get from you is: There was nothing projecting beyond over that side, except this hook, was there? A. Nothing that I know about.

Q. Now, then, you were stopped at Dumont, they told you that you had killed a man——

Mr. Carey: I object.

Q. Well you were stopped——

Mr. Simpson: Withdraw the question.

Q. You were stopped at Dumont? A. Yes, sir.

Q. And you were stopped in response to a telegram? A. We were.

Q. And what did you do after you stopped at Dumont? A. Backed in the middle to allow a couple of passenger trains pass and inspect our train.

Q. What did you do, inspect the whole train or just the engine? A. Just the engine.

Q. What were you looking for? A. Anything that was out of place or missing or had been lost.

Q. You say now that the hook was in the same position you had put it in? A. Yes, sir.

Q. Went about how far over, you say? A. Three or four inches.

Q. Three or four inches? A. Yes, sir.

Q. Where was the shovel? A. It was in the coal.

Q. It wasn't projecting at all? A. No, sir.

Q. Did you examine the hook or the handle of the hook for any marks at all, to see whether it had blood or hair or anything like that lodged on it? A. I think I did, but I am not sure.

Q. You are not sure about that. About how

far were you stopped from the point where you passed by this other engine? A. About twelve or thirteen mile—about twelve mile.

Q. How long did you stay there? A. Well, I couldn't exactly say; I should think about thirty minutes.

Q. Now, the placing of the hook was something that you have done all of the time you had worked as a fireman, wasn't it? A. Yes, sir.

Q. Matter of routine with you? A. Yes, sir.

Q. Why do you say then that you are sure you placed it this night any different than any other night? A. I don't know as I do say that.

Q. Didn't you say if you had your own hook it would not be projecting at all? A. It would not, but I didn't place it in any different position.

Q. You placed it projecting, didn't you? A. What are you going to do if you have got an instrument that is a couple of inches longer than you are accustomed to use? You can't cut it off.

Q. That was the reason it was projecting? A. Yes, but I don't know which was standard or which was not.

Q. Do you remember what you were doing at the time your locomotive passed the locomotive on which Mr. Price was? A. Yes, sir.

Q. What were you doing? A. Sitting on the seat box, watching the passenger train pass.

Q. Were you leaning out or looking out through your window? A. I was looking out.

Q. I mean, were you leaning out and looking, or were you—— A. I stood inside, upright.

Q. Where did you first tend your fire after you hooked onto your train at Weehawken? A. After leaving Weehawken?

Q. Do you remember where you first tended to your fire after you hooked onto your train at Weehawken? A. Yes, sir; at West Nyack.

Q. Didn't you answer that question at the last trial: "Why, at Weehawken we did—I did nothing further except to put the blower on."? A. Put the blower on—that isn't doing anything to the fire.

Q. Did you use the firehook at all? A. No, sir; didn't use any tools at all.

Q. Where was your locomotive, in reference to place, when you put this firehook on your locomotive? A. I didn't put it on the locomotive at all; the men at the roundhouse puts those tools on the locomotive.

Q. Then, you had not occasion to go and look at it, did you? A. When?

Q. When you left Weehawken? A. I say, I didn't put it on the locomotive.

Q. Did you have any occasion to go and look at it when you were at Weehawken up to the time that your train passed by his? A. Yes, sir.

Q. What occasion did you have? A. Our train wasn't ready when we were at Weehawken, and I had the dinner pail on the tank, and I took the dinner pail down and got two sandwiches.

Q. Getting the dinner pail made you look at the firehook. A. The dinner pail was setting right by the side of the firehook.

Mr. Carey: Counsel is leading the witness.

Mr. Simpson: I will withdraw that.

Q. Do you remember being at the last trial—do you remember when you first attended your fire after hooking onto your train——

Mr. Simpson: I will withdraw that.

Q. "Did you use that firehook from the time you left the Weehawkn yards until you arrived at West Nyack? West Nyack was the first place I used it after putting it in place at New Durham." Is that a fact? A. Yes, sir.

Q. Then, you had put it in this place at New Durham? A. Yes, sir.

Q. Did you have it after you were at Granton? A. Yes, sir.

Q. Where did you take it up? A. Yes, sir; at New Durham Coal Pockets.

Q. What did you do with it? A. Leveled off my fire and got my fire burning bright so I could use the hard coal.

Q. Was your train in motion then? A. Standing still.

Q. Standing still; was it in motion when you put the firehook back? A. No, sir.

Q. It was still, is that right? A. Engine was standing still.

Q. How long after you put the firehook back did your train stand there? A. We only had the engine then; we didn't have any train.

Q. You had to go somewhere to get the train? A. We had to back through the tunnel.

Q. You didn't use the firehook, as I understand you, from the time you were at New Durham, which was before you hooked on your train, until you were at West Nyack? A. That is the idea, exactly.

Q. Was there any force when you hooked onto your train; was there any force in hooking on at all? A. Just made the coupling.

Q. Would that be enough to shake your hook out of place? A. No, sir.

Q. Why not?

Mr. Carey: I object to that; we have not been charged with that.

The Court: Why is that relevant?

Mr. Simpson: You might put it in an improper place—I don't say you did it—but if it could be put into an improper place, in that way, by striking the engine—jarring the engine—I think it is material to get that —to put that in.

The Court: I see you are charging negligence—that is the situation, Mr. Simpson,—and the negligence consists in this: (Reading.) That the employees of the said defendant upon another locomotive, in passing the locomotive upon which the plaintiff was, had a certain iron bar of the length of about twelve feet, which said iron bar was left by the employees of the defendant on the locomotive upon which they were projecting out beyond the said locomotive, in such a manner that a locomotive passing said locomotive would strike the said iron bar or the said iron bar would strike the said locomotive or person thereon, and while the plaintiff's locomotive was passing the said locomotive upon which the said iron bar was so carelessly exposed, the said iron bar, without fault on the part of the plaintiff, came in contact with the head of the plaintiff and severely and permanently injured the plaintiff in and about his head."

Mr. Simpson: Why isn't this perfectly relevant, if by backing in the train they shifted the position of the hook and by so doing left it in an improper position. If they leave it there, their action was the possible cause, and this man is testifying that it was put in a proper place. * * * Now, if I can show that they backed the locomotive into the train of freight cars with such force as to shift it out of its position——

The Court: Then, suppose, you may go further, Mr. Simpson, on that same theory, and say that each foot or each inch that that locomotive passed from the time it takes its train at Weehawken until the time of this alleged happening, that that bar might have shifted or gotten out of place——

Mr. Simpson: That is argument for the Jury, as I see it.

The Court: What is the question?

Mr. Simpson: My charge is that they left it in an improper position. Now, it certainly becomes relevant to find out how it got into the improper position in which it was left because they are trying to show that it was always in a proper position. That is what they are trying to show.

The Court: What is the question? I do not think you can go too far toward showing that that bar being in an improper position from the start of this train until the time of the happening.

(Question and answer read, as follows: "Q. Would that be enough to shake your hook out of place? A. No, sir. Q. Why not? Objection."

The Court: Do you still want to urge your objection?

Mr. Carey: The question has been answered apparently; of course.

Q. So that no matter how much force your locomotive used in backing into the train of cars, that would not affect the position of this hook at all?

Mr. Carey: I object to that question; first, because it is leading, and, second, that there is nothing in the case——

The Court: I am going to sustain your objection to that,—

Mr. Simpson: I ask an exception.

The Court: —upon the ground that the allegation of negligence does not go to that extent.

Mr. Simpson: I ask for an objection and an exception.

The Court: all right.

Q. This hook, you say, was placed with one end raised against the wing or some—— A. Raised on the wing, on the side of the tank.

Q. Well, if it had been jarred,—that is, if it had been the same jar as ordinarily occurs, it would not have moved at all? A. No.

Q. It would not have moved it? A. No, sir.

Q. If it had been in the position, as you placed it? A. Yes, sir.

Q. How long had you had the private hook? A. I would say six months.

Q. And the two weeks that you passed Price's train, during the two weeks, in that time, you had always used your private hook, had you not? A. Yes, sir.

Q. This was the first night you were using this hook? A. Yes, sir.

Q. You are a fireman, are you, now? A. No, sir.

Q. Are you an engineer? A. No, sir.

Q. What—— A. I am a brakeman.

Q. What were you this night? A. Fireman.

Q. A fireman, just the same as Price was? A. Yes, sir.

Q. Do you know what firemen are paid now on the New York Central? A. No, sir.

Q. Now, who was with you when you examined your train at this place that you speak of, Dumont? A. Well, when we examined the engine, the engineer, James Lee, Harry Vaughn was brakeman, and myself.

Q. Mr. and yourself? A. Lee, Vaughn and myself.

Q. Vaughn? A. Lee, Vaughn and myself.

Q. Did the engineer examine the same side that you did? A. Why, I believe the engineer looked over the whole engine.

Q. And who examined Price's? A. The trainman and the conductor.

Q. Which was higher when you examined this

hook at Dumont—the handle end or the other end? A. The handle end was the higher.

Q. About how much higher than the other? A. About twelve inches—twelve or thirteen inches.

Q. Do you know how much the engine that you were on projected over the track's side? A. That is out of my line; I cannot answer that.

Q. You don't know that? A. No, sir.

Q. What type of engine were you on? A. 3100 Class, Type K-11.

Mr. Simpson: I think that is all.

The Court: Anything further, Mr. Carey, with this witness?

Recross-examination by Mr. Carey:

Q. As to the hook end of this hook, you said, I think, that it pressed right up against the wing of the tank on the left side, is that right? A. Yes, sir.

Q. Now, as you passed out of the yard and through the tunnel your speed was comparatively slow, was it not? A. Gradually increasing.

Q. Yes, slowly? A. Yes, sir.

Mr. Carey: That is all.

Mr Simpson: Now, I am ready to take up that question; I want to call the plaintiff, Your Honor.

The jury being excused, witnesses were examined as to the capacity of plaintiff to testify. The plaintiff was also examined by the Court.

(After argument.

I will admit the proposed witness.

Monday, April 7, 1919, 10 A. M., trial resumed pursuant to adjournment.

Dr. John Nevin, sworn.

Direct-examination by Mr. Simpson:

Q. Doctor, you are a practising physician and surgeon? A. Yes, sir.

Q. And do you hold any position in the state? A. I am a member of the State Board of Charities and Correction.

Q. How long have you been a practising physician?

Mr. Carey: The Doctor is qualified.

Q. Now, did you, Doctor, have a conversation with Mr. Price—I think it was last Wednesday or Thursday? A. Thursday morning.

Q. Thursday morning? A. Yes.

Q. How did you find his powers of recollection? A. Very good.

Q. Will you state what the conversation was? A. I asked him if he knew me. I asked him where he saw me before and he told me on the Boulevard where he lived, in the upper part of the county. I asked him the occasion of my seeing him and he told me that I examined him for life insurance.

Q. And those responses were correct, were they? A. Yes.

Q. And did he seem to have an intelligent comprehension of your questions and to be able to answer them intelligently? A. He did answer them, at once.

Mr. Simpson: Cross examine.

Cross Examination by Mr. Carey:

Q. Where did you see him, Doctor? A. In the court room, in this room.

Q. Speak a little louder, Doctor? A. I saw him in that room, off the court room.

Q. Was he in the room when you went to the room? A. Yes, sir.

Q. And what was the first thing that was said to him when you went in the room? A. I shook hands with him and asked him if he knew me and he said he did.

Q. Had anybody said anything to him prior to that time? A. Not that I know of.

Q. After you got in the room? A. No, not after I got in.

Q. The first question was a question by you, was it? A. Yes, sir; all of the questions were by me.

Q. And you asked him if he knew you? A. Yes.

Q. And what was his reply? A. He said he did. He said, "You are Dr. Nevin—Kevins, he called it.

Q. Had you seen him before that time? A. I had not seen him since the time I examined him four or five years ago.

Q. And had you been around the Court House prior to the time you went in the room on that day? A. No, I was in this room.

Q. You were in this room? A. Yes.

Q. And you— your question to him was, "Do you know me?" A. Yes.

Q. And his answer was what? A. He said, yes, he did.

Q. And what did you ask him then? A. I asked him when he saw me before.

Q. Yes, and then? A. And he said four or five years ago. I said, "Where did you see me?" He says, "At my home on the Boulevard."

Q. Yes. A. I also asked him what was the occasion of my seeing him there and he said, "You examined me for life insurance."

Q. Yes. What else? A. That is all.

Q. And how long a time did you see him, Doctor? A. I beg your pardon.

Q. How long a time did you see him? A. Oh, just for a few minutes; two or three minutes.

Q. Just long enough for this conversation? A. Yes; that was all.

Q. And that was all that was said? A. That was all.

Q. Who was with him at the time? A. His wife, and there was some one else in there; I don't know who it was.

Q. Anybody else in the room at the time? A. Some man in there. As I say, I don't know them.

Q. Two ladies? A. One lady, his wife.

Q. Oh, I thought you said—— A. There was some man in there, I don't know who it was, with him and his wife.

Q. And his wife was there? A. Yes.

Q. And some man was there? A. Yes.

Q. Whom you did not know? A. I did not know him.

Q. You were there two or three minutes? A. Not longer than that, I say.

Q. What is that? Not longer than that, I think.

Q. That is all the conversation you had? A. Yes.

Q. And he didn't say anything except in answer to your question? A. No, nothing.

Q. No offer of any remark or any information on his part at all? A. No.

Mr. Carey: That is all.

Mr. Simpson: That is all.

(Witness excused.)

CHARLES PRICE, sworn.

Direct Examination by Mr. Simpson:

The Court: Now, Mr. Price, if any question that is put to you you do not understand tell me at once that you do not understand it and we will have it put so that you will understand it.

The Witness: Thank you.

The Court: Or if there is any part about any question or any word or any number of words that you do not understand, tell me that again, and we will see that it is put so that you do understand it.

The Witness: Thank you.

Q. Mr. Price, on the 16th of February, 1915, who were you working for? A. New York Central Railroad.

Q. And what were you doing? What kind of work? A. Working as a fireman.

Q. Now, on that night's run, as you came toward the tunnel do you remember whether any accident happened to you? A. Yes, sir.

Q. Will you tell us what happened to you? A. On our runs east, on passenger trains, we have to observe all the block signals from Granton to New Durham. Between Granton and New Durham they are in very bad position; the blocks are located on the outside between Granton and New Durham tower, and the engineer, to get that block, if he had to make it, he would have to come pretty near to a stop and lose a lot of time; so his fireman gets that block by watching out carefully, tell him it is all right when we get a certain distance from the block. We got by all the blocks from New Durham tower, but after we went under this bridge I seen this other engine come, but didn't pay any attention to him, just watching the block; just as that headlight passed me I seen that projecting hook, but it was too quick for me.

Q. And the next thing you remember you woke up in the State Hospital at Morris Plains? A. Yes, sir.

Q. You are there now? A. I am there now, yes, sir.

Q. Do you remember about where this engine passed you? Was it near the curve or where was it? A. Well, there is a big curve right under that bridge where it goes into the tunnel.

Q. Well, when you saw the headlight, when you were looking out, were you looking out to get that bridge or get something nearer New York than the bridge? A. To get the block.

Q. Where is the block with reference to the curve? Is the block on the curve or do you come to the curve before you come to the block? A. There may be a little curve there where the block is.

Mr. Simpson: Cross examine.

Cross Examination by Mr. Carey:

Q. Where were you living at this time, Mr. Price? A. Hudson Boulevard.

Q. What number? A. It is in the fifty-threes; I cannot just tell—53 something.

Q. 5300 something? A. Yes, sir; it was in the fifty-threes.

Q. Was that in Jersey City? A. No, sir; no, sir; North Bergen.

Q. In North Bergen? How long had you lived there? A. I would say about four or five months that I think now; I couldn't recollect.

Q. What? A. I say about four or five months that I can recollect of.

Q. That is four or five months before this day when you say you were hurt? A. It may be three or four months before I was hurt.

Q. And where had you lived before that time? A. I lived in Guttenberg on the Hudson Boulevard, right near Guttenberg, near Old Tower Hill Avenue. I don't remember the name of the street.

Q. You don't recall the name of the street? A. It is—twenty—twenty-three—twenty-fifth to twen-

ty-sixth street, something—Guttenberg. We only lived there a short time.

Q. And where did you live prior to that? A. New Durham.

Q. When were you married? A. About 1905.

Q. And where did you—where were you living at the time you were married? A. In 13th Street, West New York.

Q. 13th Street, West New York? A. Yes, sir.

Q. How old are you, Mr. Price? A. Thirty-six.

Q. What year were you born? A. About 1882; about 1882.

Q. And you were born where? A. New Durham—East New Durham.

Q. Were you living with your family on this 16th of February, 1915? A. My wife and two children.

Q. Now as you recall the circumstances of that day, how many runs had you made? A. Come down in the morning, went back in the afternoon and come down in the evening.

Q. You were acting as what, engineer or fireman? A. Fireman.

Q. Now, as you approach the New Durham station you are around quite a curve, are you not? A. Yes, sir.

Q. And which way is the curve, to the right or to the left? A. To the left.

Q. And that curve extends down a little below or a little east of the New Durham station? A. It does.

Q. And you say you were looking for a block or blocks after you passed Granton. Which did you pass first, Granton or New Durham, when you are coming east? A. Granton.

Q. And what blocks do you have which the fireman calls out to the engineer between Granton and New Durham? A. Why, there is one right be-

tween—about half way between Granton and New Durham tower; then there is one right at the tower, tower block; then there is one right at the tunnel, tunnel block.

Q. Is that—how far is that from the tunnel? A. I just guess about four or five hundred feet.

Q. Is that the last block that you come to? A. Yes, sir, before entering the tunnel.

Q. Before entering the tunnel. Now, you say the curve hides that block from the engineer? A. Yes, sir; yes, sir.

Q. And you are coming down—coming in an easterly direction, the curve in the railroad hides the block from the engineer? A. The block.

Q. Is that right? A. Yes, sir—not the curve don't hide the block; the boiler.

Q. Well, the boiler on the curve comes between the block and the engineer; is that right? A. The boiler and the curve; yes, sir. The engineer is sitting on the engine; the engine will go off like that, and he cannot see through the boiler; but you are leaning on the other side and everything is clean to you, right out on that curve.

Q. Yes. Now, as you come down you can look across the curve and see the block, can't you? A. Yes, sir; yes, sir.

Q. You can see the block without moving from your seat, can't you? A. Yes, sir.

Q. You can see the block without bending out of your window? A. Oh, you couldn't—you couldn't stay in the cab and see the block; it is impossible.

Q. Can't you look right across the curve there and see the block? A. There is only a window about that big in front of the cab. If you were to sit straight like that you might just as well turn your back to it.

Q. You couldn't see if you were sitting in the cab? A. You might just as well turn your back to it.

Q. Well, when you go around the curve like that, for example—suppose you were coming down—— A. I will show you in just a second.

Q. Just a minute. Let me ask the question, won't you, Mr. Price? You were coming around the curve. As your engine came down here and the block would be—— A. About here.

Q. About here? A. Yes.

Q. All right. Now, as you came down on that curve, you say that is quite a sharp curve? Yes, sir, right around here.

Q. Now as you came down you would be on that side, and on that train you lean out there, don't you? A. Yes, sir.

Q. Now, as you come along there you can look right across that curve? A. You couldn't see that tunnel block.

Q. What is that? A. No, sir; you can't look through the bridge, or through that station; the station is there and the bridge.

Q. After you get under the bridge? A. As soon as you get under the bridge it is observable to the fireman but not to the engineer; as you get under the bridge.

Q. But you could see it from the bridge, because you were on the curve there? A. Exactly; there is the curve; there is a curve all the way around; there is a tower here and there is a curve, and the curve runs around almost to that tunnel block.

Q. Almost to the block? A. Yes, sir.

Q. Then when you were on that curve you could look right across that block without putting your head out of the window to see that signal? A. No, sir.

Q. Sure about that? A. There ain't a man can do that.

Q. Now, is it true, Mr. Price, that the curve in the road extends right down to the block? A. I say very close to it.

Q. I show you a picture, D-1, and ask you if you can tell me what that is a picture of? A. Yes; that is the block right there that I am talking about; there is the curve—I see there is almost a curve—there is a curve right to this block.

Q. There is a curve right to that block and just below the block? A. Just a little bit, yes.

Q. Now, what kind of a train was it that you met? A. It had extra signals on.

Q. Extra signals? A. Yes.

Q. You mean it was an extra train? A. Freight train. Passenger trains don't have extra signals. It was a freight train at that time, I suppose, because they were all fast freights at that time.

Q. You knew there was a freight train that went out about that time? A. No, sir; there is no telling what time they go out. The fast train may be about an hour late or two hours late. They run extra. There is no schedule attached to it.

Q. Didn't you usually meet a fast train—— A. Any place.

Q. —when you were coming near to the tunnel? A. No, sir; any place.

Q. What? A. Any place.

Q. Wasn't there a fast freight that went out at about the time that you reached New Durham? A. They were supposed to go out about that time, but they hardly ever did it; always fifteen or twenty minutes late. It was late; I have fired on these trains seven or eight years.

Q. You fired on freight trains? A. Freight trains. There is no telling when they are going to leave. They are extra.

Q. But now just recall. Isn't this the fact that there was a freight, an extra freight, called W-D-3 which went out from Weehawken ordinarily, so that you met it when you came in on number 72? A. Well, we passed that train; we never paid

strict attention to it because it was a freight train. We were on a passenger train. My mind was on something else. We passed hundreds of trains on the road and we never gave it any attention. We just kept our same position and watched out ahead.

Q. I understand that, but don't you recall that you usually did pass this extra freight W-D-3, when your train—— A. Well, you couldn't tell—

Q. —when your train was approaching or in the neighborhood of New Durham? A. I couldn't tell whether it was W-D-3 or some other freight train. There may be a train that is supposed to go ahead of W-D-3. If W-D-3 goes through there and it has some trains to it, they hold the train and let the other train go ahead of it. Now, I don't know whether that is W-D-3 or not——

The Court: Take your time and do not start to answer a question until the whole question has been asked, until you are sure Mr. Carey has finished the whole question. If you do not, then your answer to the question as finished may not be a complete answer. So take your time and let him ask his whole question first before you start with the answer.

Q. Have you an extra freight that is called W-D-3? A. Yes, sir.

Q. Did you ever fire on that train? A. Yes, sir.

Q. And who was the engineer when you fired on it? A. Dan Shea was on there a while.

Q. Any other engineer that was on that train when you fired on it? A. The regular engineer might lay off one day, two days, and come to work a couple of days and lay off again; maybe they might get a lot of young engineers—Frank Dooley I guess run that train; several of them run that train.

Q. How long did you fire on that? A. Oh, I might have fired on that train in the months; I don't believe it was a year; it is in the months; I would not say now how long I fired on it; I never kept very much track of the months I fired on it?

Q. Do you know an engineer named Lee? A. Mr. James Lee?

Q. James Lee? A. Yes, sir.

Q. Did you fire on that train for him? A. I fired for Mr. Lee, yes, sir.

Q. Do you recall how long you fired for Mr. Lee? A. Maybe a few months; I don't know just how long.

Q. And do you think it was on this train W-D-3 that you fired for him? A. I fired on different trains for Mr. Lee. I fired on passenger trains, on 79 and on W-D-3.

Q. Now, where were you—where was your engine when you first saw this engine on the freight train approaching? A. Just going under the bridge; I couldn't see it before that; I saw that train coming just as we went under the bridge; but my mind was on the block, not on the engine.

Q. Never mind that, Mr. Price. I just want to get your attention to this one thing now. Where your engine was at the time when you first saw the engine on the freight train? A. Under the bridge.

Q. You were then under the bridge? A. Yes, sir.

Q. Still on the curve? A. Well, it is—you can see the train coming around the tunnel at the bridge.

Q. Where were you when you first saw this signal which is shown on this picture that I just showed you? A. Where was our engine?

Q. Yes. A. Coming under the bridge.

Q. You saw this engine on the freight train approaching? A. Approaching that block, west.

Q. At the same time that you saw the block? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Now, when you saw this block which is shown in this picture D-1, what did you do or say? A. Always as soon as you see "A clear block."

Q. And you said that, did you? A. Yes, sir; must have.

Q. Well, do you recall whether you did? A. Yes, always. As soon as I see the block, always, "Clear block."

Q. But this night I am speaking about? A. Yes, sir, "Clear block."

Q. What did you say? A. "Clear block."

Q. To whom did you say it? A. Or "Green eye." "Green eye" or "Clear block."

Q. That means the same thing, does it? A. Yes, sir.

Q. And to whom did you say that? A. To Mr. Foster.

Q. And did Mr. Foster hear what you said? A. Sometimes he will answer, sometimes he won't.

Q. Did he answer that night? A. No, sir, he did not, no, sir.

Q. Now, that was the last block that you had to call, wasn't it? A. The last block.

Q. Didn't have any other blocks between there and the tunnel? A. Not between there and the tunnel, no, sir.

Q. And nothing that you needed to call out from that time until you finished your run to the station? A. Well, it is—it is—all the way a man thinks—what a man thinks of his job. If a man thinks enough of his job——

Q. No, please don't——

Mr. Simpson: I object. Let him finish.

Q. (Repeated by the stenographer.) Didn't have

any other block between there and the tunnel? A. Not between there and the tunnel, no, sir.

Q. And nothing that you needed to call out from that time until you had finished your run to the station? A. (Repeated by the stenographer.) Well, it is—it is always the way a man thinks—what a man thinks of his job. If a man thinks enough of his job——

Mr. Simpson: It is a perfectly responsive answer; he is going on to say why he hung out, looked out of his cab.

The Court: Let me hear that last question again.

Mr. Carey: I will withdraw that question and reframe it.

The Court: All right.

Q. Now, after you had called this signal which is seen in D-1 then as I understand you there are no other signals between there and the westerly end of the tunnel? A. That is what I am trying to tell you. There is a little jack just as you approach the east end of the tunnel, and when you are around with an old man and you have passengers behind you——

Q. Just a moment. Show me where that is? A. You can't see it there, no, sir.

Q. Is that a signal? A. It is a jack, a drawf signal that governs the track outside of the tunnel, the east end.

Q. And which track does that govern? A. Well, if that jack is against you are not supposed to pass it. The track is not set for you.

Q. That is right close to the tunnel, isn't it? A. It is a foot long.

Q. And the engineer can see that on his seat, because he will be straight then? A. Not very easy. He has to go slow a few miles or so, very slow, creeping.

Q. And he could see it just as well as you could? A. Well, you could help him.

Q. He could see it just as soon as you could?

Mr. Simpson: I object to that; he cannot say what the engineers can see. He is on the fireman's side, and I object to that as calling for a conclusion on his part.

The Court: I will permit it.

Q. (Repeated by the stenographer.) He could see it just as soon as you could? A. I would not say he could.

Q. He could see it just as soon as you could? A. No, I would not say he could.

Q. Why could you see it just as soon as he when it was on his side of the track? A. That little jack signal sets right close to the wall of that tunnel, and there is a kind of stone projecting out before you arrive there. That engineer has to go by. You could go a great deal faster. He knows if the fireman was anxious to see it——

Q. How close to the track was that signal, that jack signal? A. The jack? It is close to the wall.

Q. How high is it? A. About a foot high, a little over a foot.

Q. It is on what? A. A little arm, semaphore arm, and works up and down on the principle of the big block.

Q. Now, then, when this signal which you see here on D-1, shows clear then the engineer has a clear track through the tunnel, hasn't he? A. Well, you can go in the tunnel on that block, you still got to observe that other signal and slow down to such a speed that you might not be able to stop at that little jack.

Q. And the engineer, if he sees the little jack can slow down? A. He is always slowing down,

because he can't hardly see it. That is what I say, the fireman can see much better than he can if he wants to look for it.

Q. What is the speed through the tunnel? A. Fifteen miles an hour, fifteen or twenty mile.

Q. And the engineer always slows down as he approaches the tunnel, doesn't he? A. Always; that is the rule.

Q. Now, the two engines passed each other, didn't they? A. They had to, yes, sir.

Q. And the engine which you saw on the other track was going in what direction? A. West.

Q. Do you know the men who were on that engine? A. I couldn't see them. I never bothered with the freight men when I was on passenger.

Q. You don't know who was on? A. I knew that Mr. Lee had run old W-D-3 at that time, but we never had much occasion to bother about him.

Q. Did you know who was the fireman on the engine then? A. Hinkley was firing for Mr. Lee at that time. A fireman by the name of Hinkley.

Q. You knew him? A. I don't know his first name now, but I just know him as Hinkley.

Q. Well, about where did these two engines pass? A. Right at the block, right around.

Q. Right at the block which you see here? A. Yes, sir.

Q. What time of day was it they passed there? A. In the evening on our trips east on 72, about 7.20 and 7.30; between that time.

Q. Do you know what time your train was due at Weehawken station? A. About 7.31— 28 or 30; something around that.

Q. And this was in what month? A. February.

Q. And was it daylight or dark at that time? A. Kind of a misty night; just a little fog; that is what made me more observing.

Q. Was it daylight or dark? A. Just—February—just going dark.

Q. Just getting dark? A. Yes, quite dark.

Q. Was it dark when you left Haverstraw? A. Well, it was quite dark, yes, sir.

Q. How long does it take you to go from West Haverstraw to Weehawken? A. Hour and a half on those runs.

Q. So it had been dark some time before you got to this signal which you see in this picture? A. Yes, sir.

Q. And it was quite a dark night? A. Yes, sir; rather cloudy; that is what made me more observing.

Q. Now, did you know what engine you had? A. 907.

Q. I show you picture D-2? A. Yes, sir—I know that engine.

Q. What engine is that? A. 907.

Q. That is 907? A. Yes, sir.

Q. The engine you had that night, is it? A. Yes, sir. That is the old engine I worked on.

Q. And do you see the window in the front of the cab? A. Yes, sir.

Q. Which side of the engine is shown you now? A. Which side? The left side.

Q. And which side were you on? A. My side, this side.

Q. And were you standing or sitting? A. Couldn't stand. You have to sit. When you are sitting up there looking out for a signal you have got to sit.

Q. You were sitting, then? A. Always, when you are working that side.

Q. You see that window in front of the cab? A. Yes, sir.

Q. And you see two windows in the side of the cab, do you not? A. Yes, sir.

Q. Which of those windows did you sit opposite to? A. Which of what?

Q. Which of these two windows in the side did you sit opposite to? A. I didn't sit opposite; I just sat at that window looking out.

Q. Which one? A. This one right here, the back one; you can't look in front; it is immovable, the front window, immovable.

Q. The window is immovable? A. Yes, sir.

Q. The front window is a door, isn't it? A. Yes, sir, the side front is stationary.

Q. Oh, I beg your pardon. I think I understand you now. You mean that this—— A. There is one sliding——

Q. Two windows on the side of the engine; is that right, Mr. Price? A. Yes, sir.

Q. And you speak of one of those windows as the front window on the side, and the other as the back window on the side; that is what you mean? A. Yes, sir.

Q. Now, I am calling your attention to the window on the front of the cab? A. Yes, sir.

Q. That is a door, isn't it? A. Yes, sir.

Q. And how does that door open? A. Inward.

Q. Yes. And the upper part of that door is what? A. Small glass.

Q. Glass? A. It is not any use.

Q. Now, I show you another picture, D-3 for identification? A. That is 907.

Q. That is 907? A. I know tht engine, yes, sir.

Q. Well, you see the two side windows there in that picture, don't you? A. Yes, sir.

Q. You were at the back one of those two side windows? A. Yes, sir; right here, at my seat.

Q. And do you see that little arm rest there? A. Yes, sir.

Q. Yes. And do you know how far that arm rest extends out on the side of the cab? A. Oh, about an inch.

Q. About an inch? A. Maybe a little more.

Q. About. Well, it is probably two or three inches, isn't it? A. I would not say three inches; it might be an inch and a half or two inches.

Q. That is for you to put your arm on? A. Yes, sir.

Q. You say your train which you went out on in the afternoon was what number? A. 69.

Q. And who was your engineer when you went out in the afternoon? A. Jacob Foster.

Q. And who was the engineer with you when came down in the morning? A. Jacob Foster.

Q. How long had you been running as firemen for Mr. Foster? A. About three or four months.

Q. Who was the conductor on your train? I mean 72, as you came down? A. A little conductor by the name of Tommy Hicks.

Q. And do you know Mr. Hicks? A. Yes, sir.

Q. Have you seen Mr. Lee in the court room? A. No, sir.

Q. Have you seen Mr. Lee in the court room? A. (Looking around the room.) Yes, sir.

Q. Do you see Mr. Hicks in the court room? A. Yes, sir.

Q. Do you see Mr. Hinkley in the court room? A. Yes, sir.

Q. This freight train, W-D-3, was going pretty slowly, wasn't it? A. Well, there is not any freight train goes pretty fast when they start out from the tunnel; it takes a good while to get a run; there is a little grade in the tunnel and it is quite a while before we get a run in our train; we don't get any run until we get over Granton hill.

Q. Was W-D-3, the freight train, moving slowly? A. Slowly, yes, sir.

Q. And about where was the engine of W-D-3 when you first saw it? You say you passed, as I understand you, just about at the signal? A. Yes, sir.

Q. Now where was the engine on W-D-3 as you saw it? A. Just leaving the tunnel.

Q. I think you have told me—I am not quite sure, though—where your engine was when you called the signal. A. Under the bridge.

Q. You were then under the bridge? A. Yes, sir.

Q. What kind of lights were on that freight engine? A. White lights, white lights.

Q. And how many? A. Three.

Q. Where were they? A. One headlight set like on the front end of the smoke stack, and there is two classification signals above, either side.

Q. And the one in the middle is the headlight? A. The middle headlight.

Q. Is that lighted? A. It is lower than the classification signal.

Q. Yes. Was that lighted? A. Yes, sir.

Q. Now you say you remember being questioned by two doctors a few days ago up at the hospital? A. I remember seeing them.

Q. Yes. Do you remember the names of the doctors? A. I didn't pay any attention; I didn't feel extra well that day and I didn't pay any attention to them at all.

Q. Well, do you know—do you remember their names? A. No, sir.

Q. You were told that two doctors were coming to examine you and that they were coming at the request of the railroad company? A. Yes, sir.

Q. Did anybody tell you what their names were? A. I didn't ask them, no, sir.

Q. Now, was there any doctor with them whom you recollect having seen before? A. No, sir—Dr. McMurray—Dr. Evans.

Q. Dr. McMurray and Dr. Evans? A. Yes, sir.

Q. Are they here to-day? A. Yes, sir; Dr. Evans and Dr. McMurray.

Q. Were they both there when you were being questioned by these other doctors? A. Dr. McMurray wasn't, but I seen Dr. McMurray passing the door; and Dr. Evans.

Q. Was Dr. Evans there? A. Dr. Evans, yes, sir.

Q. Was he there all the time while you were being questioned by these other doctors? A. Yes, sir.

Q. Now, do you know Dr. King? A. I do now, yes, sir; I was introduced to him.

Q. When were you introduced to him? A. The day these doctors came up.

Q. And was he there- A. Yes, sir.

Q. And did Dr. King ask you questions? A. I don't remember.

Q. You had seen Dr. King before, hadn't you? A. No, sir.

Q. Never saw him before? A. No, sir.

Q. Now, when you came—when these—when you came in the room where these doctors were, were you told what they were there for? A. My wife seen me just previous to that and asked me how I felt—well, I told her I didn't feel extra well that day. "Well," she said, "you are going to be examined by two doctors for the railroad company." I said, "Again?" She said, "Yes," and she said, "Well, if you don't feel well, Charlie, yon don't need to answer; because you are going to court in a couple of days, and you might just as well tell your troubles to the court," and I said, "That is just what I am going to do, and I won't bother telling my troubles to anybody; and I don't feel extra well," and I stood the way I felt.

Q. Your wife said you didn't need to answer any questions? A. She said I didn't, because I would have to tell it to the judge.

Q. You what? A. I would have to tell it to the judge in court.

Q. And you told your wife if you didn't have to answer them you weren't going to? A. I told her I didn't feel like answering them, and I didn't believe I would. I don't believe I answered her very much.

Q. When you were first told that these doctors were coming to examine you, a few minutes before the doctors—— A. I had to go before the doctors.

Q. And was that the first you had been told about it? A. Yes.

Q. And when they were examining you——

Mr. Carey: Strike that out.

Q. Had anybody else told you about these doctors coming to examine you? A. No, sir.

Q. Or what they were coming for? A. No, sir.

Q. Nobody but your wife said anything to you about it? A. My wife.

Q. And while you were being examined by these doctors one of them was Dr. Kirby—do you remember the name now? A. I would not say.

Q. You don't? A. No, sir.

Q. Well, did one of the doctors ask you if you understood what was said when he came into the room; that is, when the doctors came into the room; do you remember that question? A. They said a whole lot of things; I didn't feel well—I told them in the beginning I didn't want to be bothered with them.

Q. You are feeling better to-day? A. Sir?

Q. You are feeling better? A. Little better, yes. I still have that ringing, steam whistling in the ear, and still the jump, throbbing pain in my head here.

Q. Do you recall whether you were asked this question: "Who was that gentleman who came in with us?" A. I don't remember that.

Q. Don't remember. Do you remember who the gentlemen was that came in with the doctors? A. Dr. Evans.

Q. And did you make this answer to the doctors: "I don't know anybody around"? A. I may have; I wasn't looking at anybody.

Q. Now, when you did make answers to them you made truthful answers, didn't you? A. As far as I can remember, yes.

Q. You didnt want to deceive them, did you? A. I didn't want to be bothered with them; that is just the way I felt; I didn't want to be bothered with them.

Q. I understand that. But you didn't want to deceive them, did you? A. No, just the way I felt I acted. I didn't want to be bothered with them. I told her before that day and she said, "Please go." So I went up.

Q. So you did the best you could? A. I done the best I could the way I felt.

Q. Do you see Dr. King in the court to-day? A. Yes, sir.

Q. And were you asked this question: "Do you know Dr. Evans?" A. I may have.

Q. And did you answer: "No, sir"? A. I don't remember that.

Q. You don't remember about that? A. I didn't pay any attention to what they were saying.

Q. But you did know Dr. Evans, didn't you? A. Very well, yes, sir.

Q. And you know him every time you see him, don't you? A. Yes, sir.

Q. And you have known him for how long? A. Well, ever since I remember being in that hospital, say about a year.

Q. Now, when did you first realize that you were in that hospital, about how long ago? A. It may have been about a year.

Q. About a year ago? A. Yes, sir.

Q. Before that time you didn't know that you were there? A. I didn't realize where I was; I didn't care much.

Q. Then you realize a good deal more now than you did a year ago? A. Yes, sir; I realize I would like to get better. I always tell the doctor I always pray nights that God will help me, and I am thankful to Him—the doctors in the hospital for what they done for me. I know I did get better.

Q. And you are feeling better? A. I feel better.

Q. Now, when you were asked by the doctors on that day to repeat names or questions, did you do the best you could to do what they asked you to? A. I don't know whether I did or not. I didn't feel good that day and I just simply told them I didn't want to be bothered. Maybe I said that at that time. I told them I didn't want to be bothered by them in the first place.

Q. Do you remember one of them saying to you: "My name is Dr. Kirby, and please say Dr. Kirby"? A. I can't remember that.

Q. Do you remember about it? A. No, sir, I didn't pay any attention.

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

Q. Now one of the doctors asked you to say where you were born, didn't he? A. He may have.

Q. Don't you recall that he did? A. As I say, I didn't pay any attention to what they said—they were speaking——

Q. I am asking you just what you can recall. Do you recall that one of the doctors asked you where you were born? A. I would not say I don't.

Q. Do you remember being asked that question and saying: "Cannot just think now"? A. May have.

Q. You went to school, didn't you, Mr. Price? A. Yes, sir.

Q. Up to what grade did you reach in school? A. About the sixth grade.

Q. Yes. Did one of the doctors ask you where you were on that day when you were examined by them? A. I don't remember—those just simply went out of my mind about them men, because at that day I didn't feel good and I didn't bother with anybody that day; they didn't interest me at all; I wasn't interested; I didn't care where they come from at all that day. I didn't want to be bothered. I told them when I went in there. Dr. McMurray knows that there is days when I feel that way. He can tell you that. I feel as though I don't want nobody near me at all, and Dr. Evans knows that.

Q. Now, do you remember being asked this question: "Where were you injured in the locomotive——

Mr. Carey: No, strike that out.

Q. "Were you injured in the locomotive when you were at your work"? A. In the locomotive.

Q. By the doctor? A. In the locomotive?

Q. Let me read the question to you again: "Were you injured in the locomotive when you were at your work?" Did one of the doctors ask you that question? A. Did the doctors ask me? I don't remember. Now, I couldn't say that truthfully, I couldn't say. I don't want to make a mistake. I don't want to tell a lie. Them men was blank to me. I didn't want to be bothered with them. I would not say one word that day because I don't believe I knew what they said, because I told them in the beginning I didn't want to be bothered, because I didn't feel good. I pretty near went to sleep, I guess, and anyhow, I didn't want to be bothered. Nobody can speak to me.

Q. Just listen to this, Mr. Price: One of the doctors said this to you: "Were you injured in the locomotive when you were at your work?" And did you answer: "Somebody hit me on the head"? Do you recall that? A. Up at the hospital?

Q. Yes. A. No, sir, I don't.

Q. You don't recall that? And did Dr. King say to you: "Was one of your children born while you were here?" and did you answer: "I don't know"? A. He may have. Was that up at the hospital?

Q. Yes. A. He may have.

Q. And did you answer that way: "I don't know"? A. I don't know. I don't remember that.

Q. You don't know. You don't remember that? A. No, sir.

Mr. Carey: Dr. Beling, will you stand up, please?

Q. Can you tell me whether this gentleman who is standing over here was one of the doctors who examined you up at the hospital? A. I didn't pay any attention to his looks at all.

Q. Do you mean that you cannot tell me whether he was one of the men? A. I was not interested in them doctors that day. I was not interested in anybody. I couldn't tell you if my boy was there.

Q. Just look at him now? A. No; I would not say truthfully.

Q. You could not say? A. I would not say truthfully.

Q. Now, did one of the doctors ask you this question: "Mr. Price, do you remember what happened to you, about how you were injured?" A. They may have.

Q. Well, don't you recall that that was asked you? A. No, sir.

Q. And did you answer to that question: "No, sir"? A. I don't know what I answered.

Q. Do you recall this question being asked you: "Do you remember anything about the time before you were injured?" (A.) "No, sir." Do you remember that? A. No, sir.

Q. Besides asking you questions on that day did they do anything else in the way of examining you? A. I was pulled around a good deal; I don't know what they didn't do to me.

Q. What did they ask you to do? A. Why, they had me strip and everything else, but I didn't pay any attention as long as I got in position to rest myself. I felt as though I wanted to rest that day, and I don't think I acted mean. I suppose they went on and examined me, but I don't know what they did and I was not interested.

Q. Whenever you did answer them, however, you told the truth, didn't you? A. I don't know whether I did answer.

Q. Well, I mean you did make some answers to them, didn't you? A. I might say anything that day.

Q. Do you mean to say you didn't try to tell them the truth when you made answers to them? A. I didn't know what I had to do with them at all, anyhow. I heard I had to go to court and I thought the court was good enough to tell my troubles to without answering every Tom, Dick and Harry.

Q. And how long before that time had you been told that you would have to go to court? A. Sir?

Q. How long before the doctors examined you had you been told that you would have to go to court? A. How long before?

Q. Yes. A. In the morning, right a few minutes before the doctors came the wife told me.

Q. That was the first that you had been told? A. Yes, sir.

Q. That you would have to go to court? Had you at any other time been told that you might have to go to court? A. No, sir.

Q. Had you been asked if you wanted to go to court? A. No, sir.

Q. Do you know when this case was tried before? A. I didn't know anything about it; no, sir.

Q. You never have been in court before, have you, in this case? A. Not as I know of, no, sir.

Q. Now, you have thought a good deal about this accident, Mr. Price? A. I know what happened to me, and I naturally would think of it when I felt good. When I don't feel good I don't care for nothing.

Q. Are you feeling much better now than you did two years ago? A. Two years ago?

Q. Yes. A. I don't remember two years ago.

Q. About how long is it since you have been feeling better? A. Well, as I say, some days I feel bad, some days I feel good, I couldn't say just how often I feel good; and in some days I feel better than other days.

Q. Have you talked to the doctors about the accident? A. I always tell Dr. McMurray when he speaks to me how it happened, and how my head feels, and how I feel. He always asks me almost every day how I feel; always has.

Q. Did you talk to Dr. Evans about the accident? A. Dr. Evans spoke to me and I explained to him.

Q. Do you remember when you first explained to him about the accident? A. Well, I could not just say; I would not say the date; I don't know that.

Q. Was it a year ago or two years ago? A. No, sir, it is not as long as that.

Q. Not as long as that? A. No, sir.

Q. Not as long as a year ago? A. It is not as long as a year ago, no, sir.

Q. Six months ago, do you think? A. Well, I would not just say because I may incriminate myself.

Q. I know, but I want to get it as near as I can. Can't you try to tell as near as you can? A. Dr. Evans, every time he sees us patients tells us—asks us how we were getting along, all of us patients. He always talks to us.

Q. He comes in and talks to you? A. Even in the dance hall he comes and talks to us.

Q. Yes. And he is always trying to find out how you feel and whether you feel any better or not, isn't he? A. Yes; he always tries to find out.

Q. And he always tries to find out what happened to you and how you came to be sent there? A. Yes, sir.

Q. And Dr. McMurray does also? A. Yes, sir.

Q. And just as soon as you recalled anything about it, why you told Dr. McMurray and Dr. Evans just how the thing happened, did you? A. I may have told them if they asked me.

Q. You always tell them just as nearly as you can, don't you? A. Yes, sir.

Q. The whole thing; never keep anything from them, do you? A. Tell them everything just how I feel, yes, sir.

Q. And you told them how the accident happened just as clearly as you could? A. Yes, sir.

Q. And have always done so? A. Yes, sir.

Q. Ever since you have been there? A. Yes, sir.

Q. And did you tell your wife how the accident happened? A. I don't believe she ever spoke about the accident. I may have. I may have told her, but I don't recall her bothering me about

the accident. She always paid a nice visit and brought me little candy and oranges and went away; never bothered me much.

Q. And you don't recall that you ever told her how the accident happened? A. Oh, I must have. She must have asked me lots of times; but I never thought of that thing in the hospital. I thought of my troubles.

Q. What were your troubles? A. Why, my pains, when I didn't feel well. I was trying to get better. I wasn't thinking of those things.

Q. Some days when she visited you you were feeling pretty well, weren't you? A. Yes, sir.

Q. And didn't you tell her on those days how the accident happened? A. No, sir; I would always ask and speak about the children. I was interested in my children.

Q. Never told her how the accident happened? A. If she has asked me I told her how I come around New Durham, and told everybody that has asked me.

Q. Did you tell her what hit you? A. Yes, sir.

Q. And when did you first know what hit you? A. When did I tell her? I couldn't remember that.

Q. I know you cannot remember the day. I don't want you to try to remember as closely as that. But about how long ago did you first tell her that you were hit on the head by a hook? A. Well, that I never was interestered in keeping the time when I told her those things; I might have told her any time. I don't say I did and I don't say I did not. See?

Q. Now, on your——

Mr. Carey: Strike that out.

Q. Now, do you know how long you have been in the hospital at Morris Plains? A. About four years.

Q. How do you know that you have been there that long? A. Because it was in February, 1915, until 1919; that is four years—1915.

Q. Is that the way you found out about it? A. No, sir; I know when I was working; I know it was 1915, February, 1915, to 1919 is four years.

Q. What was the first thing that you remembered about in connection with the Morris Plains Hospital? A. What is the first thing?

Q. Yes. A. Will you please explain that?

Mr. Simpson: I wish you would explain it, too. What do you mean? The stones or the trees or what do you mean? I object to that question. It is ambiguous. He says, "What is the first thing you remember about Morris Plains?" That doesn't mean anything.

Q. Do you remember when you were taken there? A. No; no, sir, I don't remember that, no, sir.

Q. You don't remember that? A. No, sir.

Q. Now, there was a time when you realized that you were in a hospital and that that hospital was Morris Plains? A. Yes, sir; yes, sir.

Q. Now who told you what the hospital was? A. I suppose I must have asked; I don't know.

Q. You don't recall? A. I don't recall that.

Q. And you can't recall when you first learned that the hospital where you were was the Morris Plains hospital? A. I can't, no, sir.

Q. Do you remember——

Mr. Carey: Strike that out.

Q. What was the first person that you remember talking to at Morris Plains Hospital? A. There are so many men there I might have spoken to anybody.

Q. Well, I am asking for your recollection?

There was a time when you didn't know where you were, wasn't there? A. Yes, sir.

Q. But that time has passed? A. I might say "Good morning." I might say "Hello." I might say that to anybody.

Q. Just fix your mind on this: there was a time when you didn't know that you were in Morris Plains Hospital, didn't know where you were? A. Yes, sir.

Q. But that time has passed away and you realized that you were in a hospital? A. Yes, sir.

Q. And finally you came to know that you were in the Morris Plains Hospital? A. Yes, sir.

Q. Now somebody must have told you that you were in the Morris Plains Hospital? A. If it was anybody it was Dr. McMurray.

Q. You can't recollect clearly who it was? A. I could not say. I might have spoken to anybody.

Q. Now, can you recall that you ever told anybody besides Dr. McMurray and Dr. Evans how this accident happened to you? A. I may have told my wife. She is the only one comes to see me. I may have told her.

Q. Do you know Mrs. Masterson? A. Mrs. Masterson?

Q. Yes. A. Yes, sir.

Q. Has she been up there to see you? A. Yes, sir.

Q. Does she come frequently to see you? A. Well, I could not say—once in a while.

Q. How many times has she been there to see you since you found out that you were in Morris Plains Hospital? A. I can remember about a few times.

Q. And did you tell her how the accident happened to you? A. Maybe I did.

Q. Can't you recall now whether you did or not? A. I would not say that. I don't want to say anything that I don't know is true.

Q. I see. You are being very careful? A. Yes, sir.

Q. And that is right—that is very right and proper. Do you know Mr. Simpson? A. I met Mr. Simpson this morning and yesterday.

Q. When did you first meet Mr. Simpson? A. Why, the first day I came down here.

Q. And had you ever seen him before? A. No, sir.

Q. Did you tell him how the accident happened? A. I explained, yes, sir.

Q. And that was the first day that you came down here, was it? A. Yes, sir.

Q. And you explained to him the same as you have stated to the court and jury? A. Yes, sir. I just explained—he just asked me what I knew about it and I told him.

Q. Do you know Dr. Fendrich? A. No, sir.

Q. Do you know about being in the North Hudson Hospital? A. I was—no, sir; no, sir.

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

Q. You never knew Dr. Fendrich? A. No, sir.

Q. Did you tell your wife that somebody hit you on the head with a hammer? A. I don't recall that.

Q. You don't recall anything about that? A. I may have, but I don't recall it; I can't remember saying it.

Q. Did you ever tell her that since you have begun to feet better? A. No, sir.

Q. Did you tell Mrs. Masterson that somebody hit you on the head with a hammer? A. Since I am in this hospital.

Q. Yes. A. No, sir.

Q. Did anybody ever ask you if you were hit on the head by the hook? A. They never just asked me about the hook. Nobody knew it but me.

Q. Nobody knew it but you? A. No, sir.

Q. And they didn't ask you about it? A. No, sir; I don't believe anybody knew it but me. I don't see why they should say get hit with a hook. I knew it. I know it.

Q. And the first person you told about it was Dr. McMurray? A. As near as I can remember, yes, sir.

Q. And the next one was Dr. Evans? A. Dr. Evans, yes sir.

Q. Did you say anything to Mr. Foster that night after you got to the Weehawken staion A. I don't remember if I ever got there. I didn't see no Weehawken tunnel that night or Weehawken station. Somebody did tell me I went in an ambulance, but I don't think I would care about going into an ambulance if I knew it.

Q. When was that told you? A. The wife has told me, of course. She asked me did I remember the North Hudson——

Q. How long ago? A. Oh, she has asked me that many times. I don't remember how long ago, but I know she has asked me can't I remember the other hospital. I said I can't remember it. If I could I would do it. Do you think I would go into an ambhlance if I knew it? That is what I wanted to know of her.

Q. Didn't feel like going into an ambulance? A. No sir. I always worked; I worked hard and I had a nice family.

Q. Do you remember what day it was when you first came down to Jersey City? A. Last Wednesday.

Q. And had you been away from the hospital before that time? A. No, sir.

Q. Not that time—you have never been away from the hospital in that time? A. No sir.

Q. What do you do in the hospital? A. Why, do a little sweeping in the morning and help clean and make up beds; do little things when I am able to do it.

Q. Well, you say for some time past you have been feeling better than you did before? A. Yes sir.

Q. And your mind is clearer? A. Well, I would not say it is clear. My brain ain't the way it used to be. It is these pains and the whistling, steaming; it is going now; just this jumping when I am bothered; or excited or bothered.

Q. Since you have learned that you have been in the Morris Plains Hospital you feel a good deal better than you did before you knew where you were; is that right? A. Well, I don't know how I felt before.

Q. You don't know how you felt before. Did you have pains in your head? A. I knew I had pains, always pains; but I didn't realize that I was in the Morris Plains Hospital.

Q. And you had pains where? A. Right in my head here, the side.

Q. And you can think better now than you could before you found out—before you realized where you were? A. I feel that all the treatment that I got in that hospital that they have helped me; I know that; yes sir.

Q. And do you feel that you are improving right along, day after day? A. Well, some days I feel better than other days.

Q. But generally speaking are you growing better, do you think? A. I must be, because I know where I am. I like to get home.

Q. And you feel well and strong? A. Well, I could feel a good deal better at times. Some days I feel pretty strong. It is the head makes me feel tired all over. It makes me feel sometimes I don't care for anything; I just go off by myself. I just feel that way.

Q. Those are the bad days that you have? A. Yes sir; yes sir.

Q. Now on the good days you feel pretty well,

do you? A. Why, I feel like talking to somebody, yes sir.

Q. Now, to-day is one of the best days you have had, isn't it? A. Well, I feel a good deal better.

Q. A good deal better? A. Yes sir.

Q. Your mind was clearer and you felt better— A. Well, I would not say clearer; no sir; I don't know anything about how clear I am; I would have to ask the doctor that.

Q. Yes. Well, you realize things better some days than you do other days? A. I know I am not the man I used to be. I never had this trouble before.

Q. I say some days you realize a good deal better than you do on other days? A. Yes, sir.

Q. And give better attention? A. Yes, sir.

Q. And think better? A. Yes, sir.

Q Now, do you have any pains besides the pains in your head? A No sir.

Q. And this throbbing in your head, do you have that? A. It is just thinking, when I try to think hard and put myself to any exertion; it is this—it is just a sort of raising, just enough to make you feel bad.

Q. It is a sort of throbbing, isn't it? A. Yes, sir.

Q. And you have that feelng when you try to think? A. Yes, sir; and excitement, any bother, anybody bothers me.

Q. When you are not under excitement then you don't have that feeling? A. When I am alone I am all right, yes, sir.

Q. Well, you spoke about a whistling sound in your ear. Does that come only when you are being bothered, when you feel excited? A. In the morning when I get up—every morning when I get up I have to sit still for a while. I notice some mornings when I get up, I just go right over. Some nights I have trouble, nights, with this pain.

Q. I show you a picture, D-4 for identification. Will you tell me what—— A. That is 907.

Q. That is? A. I can tell that engine; I used to be on that engine quite a while.

Q. Can you point out the seat box? A. Yes, sir; there it is, the high seat box; that is a little higher than the other one.

Q. Whose seat box is that, the fireman or the engineer? A. It used to be my seat box.

Q. Can you see the engineer's seat box in that picture? A. No sir, that is over on this side.

Q. That does not show far enough over, does it? A. No sir.

Q. What is this big thing that we see in the middle of the picture here? A. The boiler.

Q. Yes. And what are those things below the boiler? A. Fire doors. I used to work them to keep steam.

Q. You worked the fire doors? A. Yes sir.

Q. In what way? A. Opening; you have to pull them open. There is a chain there and you pull them open and throw coal in.

Q. Did either of these doctors who examined you ask you to stand up on your feet the day that you were there? A I was in all positions. I don't know what way they had me. They had me down and had me up, and all over. I didn't pay any attention to what they were doing because I didn't feel like paying any attention to them at all.

Q. On that day were you asked to walk forward? A. I may have.

Q. Along a line? A. I may have, yes.

Q. Do you recall it? A. The doctors ask me that.

Q. And the doctors asked you that? Dr. McMurray and Dr. Evans? A. Dr. McMurray has put me through all tests and Dr. Evans.

Q. Same kind of tests that these other doctors did? A. Yes, and maybe more.

Q. Do you remember of falling or starting to fall on one side the day these two doctors were there? A. There is two of them had hold of me; I don't know which way I was going.

Q. You don't remember about falling or starting to fall? A. No, sir, I don't remember whether I did or not.

Q. Did you continue to sit on the seat of the fireman's seat—seat box, after you were hurt? A. I felt that crash and I don't know—It was just like fire before my eyes for a second. You can maybe imagine for a second anybody hits you, for a second, but I don't know which way I went or what took me. If I could tell you that I would be glad to tell you.

Q. Won't you describe the handle to this hook? A. They are all the same standard.

Q. Just describe them? A. They are long; I could not describe the size because we have them there—used to stick them out on both ends to keep them from hitting one side——

Q. Just a moment.

Mr. Carey: I ask to have that stricken out.

Th Court: I do not think it is responsive. Describe the handle of this hook. What sort of handle it is.

Q. Is it a wooden handle or iron handle, or what shape is it? A. They are all steel, iron handles.

Q. What shape is it? A. They are round like that. Then they go down straight and then there is two prongs on the end.

Q. Yes. Now, as you were coming down on the train that night, being dark and a little misty, it was pretty difficult to see things, wasn't it? A. Not between the trains it isn't.

Q. Not between the trains? A. There is always a light. You see if you were looking against a

train you wouldn't see that; but if you are looking between a train there is always enough light to see anything like that.

Q. Now, at the time when this engine passed you you couldn't see the signal, could you? A. At the time the train passed?

Q. Yes, at the time the two engines passed you couldn't see the signal which had called out? A. You always can if you want to see it.

Q. Perhaps—but you say, as I understand you, that those two engines passed right at the signal? A. Yes, sir.

Q. Now if that was the case you couldn't see the signal just at the time when these two engines passed you, could you? A. When that engine passed me I didn't see nothing.

Q. No, at the time, just the instant before you were struck you couldn't see the signal, could you? A Well, I couldn't say that because the time was so short there that I wouldn't be able to tell you that.

Q. And there were no lights on the side of this freight engine, were there? A. They are always in the front, side and front and top, on both sides of the boiler; then the headlight comes down in the center here.

Q. The headlight throws the light ahead on the track? A. Yes, sir.

Q. And there are sides to the headlight so as to collect the light and throw it forward on the track? A. Reflectors, yes.

Q. Yes. And the object of the reflector is to carry all the light ahead to light up the track? A. Yes, sir.

Q. Is that it? A. Yes sir.

Q. They don't want the light on the sides of the engine, do they, but they want it ahead? A. Yes sir.

Q. Now, these two other lights you speak of, these classification lights, what color are they? A. They are white.

Q. And they are small lights, aren't they? A. Yes sir.

Q. Any they don't give out much light? A. No sir.

Q. Couldn't see anything from the light given out by those two classification lights, could you? A. No sir.

Q. Now, do you recall saying to Mr. Foster after you got into the station, "Is there any blood on my head?" A. I told you two or three times I couldn't remember anything. If I could have said that I would have went home; would have went home. If I could have helped myself would not go to any one of them fellows. Nobody could help me. I always have been able to take care of myself.

Q. You don't remember saying: "Is there any blood on my head"? A. If I could have said that I would not have gone in the ambulance.

Q. You don't remember saying anything to anybody you passed this freight engine? A. No sir.

Q. Until you were up in the Morris Plains Hospital? A. That is the only hospital I know of. They must have taken me there if they took me any place.

Q. You can't remember anything you said between that time—— A. No sir.

Q. And the time that you realized that you were in the Morris Plains Hospital? A. No sir.

Q. Your engine was running all right that night, was it, Mr. Price? A. Same as usual, yes, sir.

Q. And you had a fire hood on your engine? A. All—all carry fire hooks.

Mr. Carey: That is all.

Re-direct Examination by Mr. Simpson:

Q. Now, did you have a cap on that night? A. Yes, sir.

Q. What kind was it? Thick or thin cap? A. Regular winter cap, sides, little bow on the front, and sides. If it got too severe—we never pulled it down on account of paying attention to the whistles.

Q. But you could pull it down? A. You could pull it down.

Q. So it was not any little slimpsy thing? A. Regular overcoat stuff, wool overcoat stuff.

Q. What was the effect of that high seat box on you? Does it put you out of the window more? A. It does——

Mr. Carey. I object to the question. It is suggestive.

Mr. Simpson: It is not suggestive.

Mr. Carey: It is leading.

Mr. Simpson: Well, it may be leading.

Mr. Carey. And it is leading because it is suggestive.

Mr. Simpson: It is not leading. I said, what was the effect of the high seat? Did it put you out of the window more or less? A. Well, I will withdraw it.

Q. Just tell us what the effect of the high seat was, of the position of your—— A. When you are on a high seat box like that and the arm rest is low you have got to hold leaning out of that window—just got to really hold yourself on the side for not to go out, if you want to get that signal; because you are so high if you don't hold on to the arm rest you are liable to fall out.

The Court: Can you show us, Mr. Price, by what is in front of you, being the arm rest—

The Witness: Yes. I can pretty near show

you it. The seat is like here, and there is your arm rest. Now, the frame of the cab, of the window, is right like that. You got to really hold on all you can to get that signal; and the rule is to hold the signal until you are by it.

Q. Until you are by it? A. Yes.

Q. That is, you cannot make it and go in? A. No.

Q. The rule is you have got to hold to the signal until the front is by? A. Until the front end is by.

Q. You had a headlight on your engine that night, didn't you? A. Yes, sir.

Q. And that threw the light ahead? A. Yes, sir.

Mr. Simpson: That is all.

Recross-examination by Mr. Carey:

Q. You say that you had a cap that day? A. Yes, sir.

Q. When did you first remember about that cap? A. A man by the name of Mr. Keating lived in Harvestraw. I had a cap similar to that some time before. So he said to me one day: "Would you like to have that cap, Charlie? It is brand new. I just bought it." He only wore it once or twice, and he said, "You can have it if you want to take it," and he gave it to me and I used it.

Q. How long had you worn it? A. Oh, I might have that hat a month or a month and a half.

Q. You say it was of what kind of material? A. I don't know much about material. It was a heavy winter cap. Engineers always wear them; regular bow in the front and side laps to it.

Q. What on the front? A. A bow, little black bow over the peak.

Q. Was there a peak on it? A. Peak on it, yes, sir.

Q. What was the peak made out of? A. They are made out of cloth; I don't know what is inside; I never looked.

Q. Something stiff? A. Well, rather stiff, yes, sir.

Mr. Carey: That is all.

By Mr. Simpson:

Q. Can you say whether it is a common thing in your experience for these pokers to jostle off the engine and be lost? A. Yes, sir; we all know that.

Mr. Carey: I object to that.

Mr. Simpson: I will withdraw it.

(Q. Repeated by the stenographer.) "Will you tell us what happened to you? A. On our runs east, on passenger trains, we have to observe all the block signals from Granton to New Durham. Between Granton and New Durham they are in very bad position; the blocks are located on the outside between Granton and New Durham tower, and the engineer, to get that block, if he had to make it, he would have to come pretty near to a stop and lose a lot of time; so his fireman gets that block by watching out carefully, tell him it is all right when we get a certain distance from the block. We got by all the blocks from New Durham tower, but after we went under this bridge I seen this other engine come, but didn't pay any attention to him, just watching the block; just as that headlight passed me I seen that projecting hook, but it was too quick for me."

The Court: Now, you heard what was read? A. Yes.

The Court: What did you mean when you said, "It was too quick for me"?

The Witness: I couldn't regain that position; I couldn't get myself away from that object.

The Court. What happened?

The Witness: I felt that smash at the instant I saw it.

The Court: After that which you have just told us, what happened?

The Witness: I couldn't tell. I don't remember what happened after that.

The Court: That is all.

Mr. Simpson: That is all.

The Court: Anything further, Mr. Carey?

Mr. Carey: No; that is all.

(Witness excused.)

KATHERINE MASTERSON, sworn.

Direct-examination by Mr. Simpson:

Q. Where do you live, Mrs. Masterson? A. 677 Hackensack Plankroad, North Bergen.

Q. And do you know Charles Price? A. Yes, sir.

Q. And did you see him in the hospital a short time after he was injured? A. No; I saw him about two months ago in the hospital.

Q. I am talking about the North Hudson Hospital. A. Oh, North Hudson Hospital?

Q. Yes A. Yes sir; I saw him about forty-eight hours after the accident.

Q. Now, at that time state whether or not you saw any marks on his head that day that you saw him? A. Yes sir; there was a bruise on the left side of his head.

Q. About where? Can you point out to the jury? A. Right here; right along here.

Q. Pointing above the ear? A. Right here. (Indicating left side of the head above the ear.)

Q. State whether it was discolored or not? A. Yes, it was red and purple.

Q. Was there any swelling? A. Yes.

Q. About how much? A. Well, it was puffed up quite high.

Q. And what was his condition? Was he raving or was he quiet or what? A. The first morning I saw him he was unconscious, perfectly quiet.

Q. The next time when you saw that mark was he raving? A. Yes, he was raving.

Q. And do you know anything about this cap that he had, where he got that cap? A. I gave him the cap.

Q. You got it—— A. I got the cap from Mr. Keating to give to him.

Q. Mr. Keating gave you the cap? A. Yes.

Q. And you gave him the cap? A. Yes, sir.

Q. Now, do you remember how long that was before he was hurt? A. I guess about a month.

Q. And what kind of a cap was it? A. A heavy woolen winter material, very heavy; it had a peak and laps that would come down over the ears. It was bound with black braid.

Q. How many times did you see him at the North Hudson Hospital? A. Well, I saw him for three days.

Q. And what was his condition so far as you could see all that time? Was he irrational or rational, or what? He was unconscious.

Q. Well, at the time that you say he was raving how did he act? A. He was lying perfectly rigid with his eyes closed.

Q. Well, would he talk? A. No.

Q. What do you mean by saying "raving"? You told me he was raving? A. Well, he was raving.

Q. Well, what was he doing? A. What do you mean? A. Why, he said he lived some place down in New York. He wanted to get home. He repeated the same thing constantly; that is all he said.

Q. He wanted to get home, he lived near New York? A. Yes.

Mr. Simpson. I think that is all.

The Court: Cross examine.

Cross-examination by Mr. Carey:

Q.How many times have you testified in this case, Mrs. Masterson? A. Three, Mr. Carey.

Q. And this is the fourth time? A. No, sir; twice before Judge Tennant and Judge Campbell, and now.

Q. That is, you were examined as a witness before Judge Tennant when the case was tried as a compensation case? A. Yes, sir.

Q. And you testified again in the case when it was formerly tried before Judge Campbell? A. Yes.

Q. At any other time did you testify in this matter? A. No, sir.

Q. Do you remember one occasion when proceeding were taken to determine whether Mr. Price was insane and testimony was taken before Judge Carrick? A. Oh, yes, for guardianship papers for Mrs. Price.

Q. Yes A. Yes.

Q. You remember that, do you? A. Yes sir.

Q Now in which case did you first testify? A Well, before—I can't really say whether it was Judge Tennant or Judge Carrick. I can't remember.

Q. Well—— A. I can't remember that truthfully, but it seems to me it was Judge Tennant.

Q. Well, I don't wonder that you are a little

confused. Perhaps I can help you out on it? A. It was for guardianship papers. She applied for guardianship papers.

Q. The trial before Judge Carrick was. according to the transcript and testimony I have here, December 2nd, 1915, and this accident occurred in February, 1915, did it not? A. Well, I cannot say truthfully, Mr. Carey, for I don't remember.

Q. Well, you can tell the date when Mr. Price was taken to the North Hudson Hospital, can't you? A. Yes, on February 16th, I believe—on the evening of February 16th, 1915.

Q. According to the transcript which the stenographer furnished of the testimony taken before Judge Tennant, that was taken December 2nd, 1915; that was about ten months after? A. After.

Q. Yes. Now, the proceeding which was before Judge Carrick was in a Chancery proceeding? A. Yes.

Q. And I have procured a certified copy of the record from the Court of Chancery, and according to that record that testimony was taken in October. 1915? A. Well, then, I testified before Judge Carrick.

Q. Now, does that help you to clear it up in your mind, Mrs. Masterson, as to the order in which this testimony was given? A. Well, then, Judge Carrick was the first testimony, if the dates are right.

Q. Well, do you recall whether it was in the fall of the year?

Mr. Simpson: Oh, well, state the dates and I will stipulate the facts. What is the use of wasting time? I will stipulate any date you say.

Mr. Carey: The 16th of October, 1915.

The Witness: Yes.

Mr. Simpson: That is the stipulation. I will

stipulate as a fact that she testified on that day.

Q. Now, when did you first go to the hospital to see Mr. Price? A. On Thursday morning, February 18th.

Q. Yes. And with whom did you go? A. Mrs. Price.

Q. What time did you arrive at the hospital? A. Maybe around eight o'clock in the morning.

Q. As early as that? A. Yes, sir.

Q. And in what condition did you find Mr. Price at that time? A. He was unconscious.

Q. Unconscious? A. Unconscious.

Q. Was he talking at all? A. No sir.

Q. Was there anybody in the room with him? A. When we entered? No.

Q. Did anybody come into the room while you were there? A. Yes, sir.

Q. Who was it? A. Mr. Foster.

Q. Mr. Foster? A. Yes.

Q. Now, are you sure that Mr. Price didn't say anything on that day? A. No, he didn't say anything on that day.

Q. You are very confident of that? A. I am positive.

Q. In your testimony before Judge Carrick were you asked this question: "When did you see him after the accident?" Did you answer in this way: "I saw him—the accident happened on Tuesday. Mr. Keating came home Wednesday evening and told me about the accident and I left Thursday morning on the early train and saw him about eleven o'clock in the North Hudson Hospital." A. That was a mistake as to time, Mr. Carey, because I saw him at eight o'clock in the morning. I got down at six.

Q. But the question is, Mrs. Masterson, did you

testify to that effect before Judge Carrick? A. Well, I made a mistake about the hour if I testified it was eleven o'clock.

Q. I am not asking you about the mistake, I am asking you whether or not you testified? A. I testified, but if I said eleven o'clock I said a mistake.

Q. Now, I read further from this transcript. "Q. Just tell us how he acted at that time, what you saw." "A. He was in bed and seemed to be in a rigid condition, perfectly straight, and Mr. Foster, the engineer that was on the train at the time of the accident, was sitting in the room, and Mrs. Price and I, and he kept saying, 'Get away, get away.'" Did you so testify? A. Not the first day; that didn't happen.

Q. Well, did you so testify? A. I may have, but it——

Q. Well, this was in October, 1915; that was the first time that you had testified in this case, was it not? A. Yes sir, I guess it was.

Q. Now at that time your recollection would likely have been clearer than it is to-day, wouldn't it? A. Well, Mr. Carey, I am telling the truth as far as I can see in my memory now.

Q. You are not answering my question, Mrs. Masterson. Wasn't your recollection clearer at that time than it is to-day? A. Maybe.

Q. Now as I understand it you admit that you did testify that way before Judge Carrick; is that right? A. Well, I don't know. I may have been excited at the time. I really couldn't think to-day. I had forgotten all about the accident.

Q. Well, do you admit that you did so testify? A. Yes, I testified.

Q. Did you testify to that effect? A. Yes.

Mr. Simpson: She does not understand.

Q. Now, did you sign the testimony which you

gave before Judge Carrick? A. I don't remember.

Mr. Simpson: Show her her signature.

The Witness: I don't remember, Mr. Simpson.

Mr. Carey: I haven't the original paper; I have a certified copy.

Mr. Simpson: Well, do you say she signed it? Have you a certified copy? If so I will admit she signed it. Yes, it is certified as having been signed by you and unquestionably you signed. So I will admit that you signed the paper.

Q. And you did that before Judge Carrick, did you not? A. Yes sir.

Q. And did he on that day say to Mr. Foster: "Get away, get away"? A. In the first day?

Q. Yes. A. No, sir.

Q. Well, why did you so testify before Judge Carrick? A. No, sir.

Q. Why did you so testify before Judge Carrick? A. Well, I don't remember testifying to that.

Q. But you have said a little while ago you did? A. Well, your statement is there that I have done it, but I don't remember, Mr. Carey.

Q. Now, after you said these words; "And he kept saying: 'Get away, get away' ", did Judge Carrick, the Master, ask you: "Who?" and did you answer. "Mr. Price"? A. Well, was it specified which day I said that?

Q. Yes. A. On the first day?

Q. I will show it to you. (Handing paper to witness.) Now, if you will read from there on, reading every word that was said to be your testimony. A. (After examining paper.) But it does not specify which day.

Q. Look at this, Mrs. Masterson: "When did you see him after the accident?" "I saw him—the accident happened on Tuesday. Mr. Keating came home Wednesday evening and told me about the accident and I left Thursday morning on the early train and saw him about eleven o'clock in the North Hudson Hospital." "Q. Just tell us how he acted at that time." Now, you are speaking about the first time you saw him, aren't you? Aren't you, Mrs. Masterson? A. Yes, but I didn't realize at that time that I was speaking about the first day I saw him, because there was only a few questions asked.

Q. Now, are you sure you didn't understand what day you were talking about? A. No sir, I did not; because if I did I made an awful mistake Mr. Carey. I am telling the truth, I made an awful mistake if I said he was raving the first day, because he was not.

Q. Did you not read over the testimony and sign it after you read it? A. I didn't read it; no sir; I did not; and I don't remember really now——

Q. Was it taken down by a stenographer or by the master,—or did the master, Judge Carrick, write it out? A. Oh, there was a stenographer there, I believe.

Q. A stenographer there? A. Yes.

Q. And consequently you couldn't sign it until he had written it out, could you? A. No, I don't think so.

Q. Now, after you had stated that you saw him about eleven o'clock on Thursday morning you were asked this question: "Just tell us how he acted at that time, what you saw?" And then you testified: "He was in bed, he seemed to be in a rigid condition, perfectly straight, and Mr. Foster, the engineer that was on the train at the time of

the accident, was sitting in the room, and Mrs. Price and I; and he kept saying, 'Get away; get away.'" And the master—"Q. Who?" that is you. "Mr. Price." A. The first morning Mr. Foster was not in the room, but the second morning he was.

Q. The second morning he was? A. Yes, but not the first morning.

Q. Answer continuing: (This purports to be your continuation of the answer:) "And get away." Did he say "Get away" that morning? A. He may have, Mr. Carey—not the first morning, no.

Q. The first morning? A. No, no, no.

Q. And did he say on that morning that somebody bit him on the head with a hammer? A. No, he didn't speak.

Q. And did he ever tell you that somebody hit him on the head with a hammer? A. Yes, in the hospital he said that.

Q. Repeatedly?

Mr. Simpson: What hospital?

The Witness: North Hudson Hospital.

Q. Repeatedly? A. No; I remember him saying it once.

Q. Once? A.Yes, that was the third morning, I think; the morning that Dr. ——

Q. That was the only time you heard him say that statement? A. Yes, sir.

Q. Now, (Answer continuing.) "And get away. He hit me, he hit me with a hammer, and you know he hit me with a hammer. He says, 'What am I here for?' Mr. Foster says: 'Where are you, Charlie.' 'Oh, get away,' he says,' I am up here; I don't know where I am; I don't belong up here; I belong down in New York. My father lives in New York. Why don't you take me home

to my father? I don't belong here.' That is the only thing he said about take me home to my father, and a fellow hit me with a hammer." Did you so testify before Judge Carrick? A. I must have, if it is there.

Q. And did you tell the truth when you were before Judge Carrick? A. Yes, sir; I am telling the truth this morning.

Q. And when they disagree which time were you telling the truth?

Mr. Simpson. I object. He is asking for a conclusion.

The Court: Wouldn't it be for the jury to say?

Mr. Simpson: It is very evident from that she didn't pay any attention to the questions asked her. She is not very attentive here to questions.

Q. Do you mean to say that you took an oath to tell the truth, the whole truth, and nothing but the truth, and then didn't pay much attention to the questions that were asked you before Judge Carrick? A. Well, I may have been excited that day.

Q. (Repeated by the stenographer.) Do you mean to say that you took an oath to tell the truth, the whole truth and nothing but the truth, and then didn't pay much attention to the questions that were asked you before Judge Carrick? A. Why, I told the truth if I took an oath. I would tell the truth without taking an oath.

Q. You didn't—well, didn't you tell the truth before Judge Carrick? A. I will tell the truth without taking an oath.

Q. Yes. And then were you asked questions and did you make answers as follows: "'Did he speak of his wife?'' ''No, only of his father.'' ''Did he speak of his children?'' ''No.'' ''Did

he recognize you." "No, he didn't recognize the engineer, Mr. Foster." "Did he recognize his wife?" "No." Did you so testify? A. I may have. If it is there I suppose I have testified that way.

Q. Now, were you asked this further question: "But he did talk to everybody, did he?" "No, he was not talking to everybody. He simply repeated that one thing, that he was hit with a hammer, and knew that he was in some place he did not belong in and wanted to go home and where he lived down in New York." Did you so testify? A. I said the impression was he was hit and he wanted to go home.

Q. Well, you testified the way I have read to you, did you? A. In my mind it was the—what went on during the day when I was in the hospital. I am positive in my mind when I testified at that time it was what had happened in the hospital on days I had been there.

Q. And you didn't pay enough attention then to realize that you were being asked about the first day that you were there; is that right? 'A. Well, Mr. Carey, I think that is unjust. I tried to do the best I could.

Q. You didn't realize that you were testifying about the first day that he was there? A. I didn't realize; I thought it was about the time he entered the hospital, the three days I had seen him.

Q. How many days did you see him in the North Hudson? A. Three days.

Q. Were you asked this question: "Did he address his conversation to anybody?" "Mr. Foster spoke to him and asked him, "Charlie, where are you?' he didn't answer except: 'Take me out of here. I don't want to stay here. Take me to my father. My father lives down near New York.'" Did you so testify? A. Certainly.

Q. Then were you asked this question: "When did you next see him?" "The next morning." "What was his condition?" "Much weaker." Did you so testify? A. I must have been awfully confused when I made that testimony. In my mind at the time it must have been that I was testifying for days I had seen him, and became confused. Mr. Carey, he was unconscious, positively unconscious the first day I saw him.

Q. Well, you are not easily confused, are you, Mrs. Masterson? A. Yes, I am.

Q. You seem to be quite ready and have a very good control of yourself. Now, you say the first time you saw this bruise was on the first day you saw him? A. Yes sir.

Q. Are you sure about that? A. I am positive.

Q. Now, after you were asked the question: "When did you next see him?" And answered. "The next morning," following that you were asked this question: "What was his condition?" And you answered, "Much weaker." Did you continue: "Mr. Price and I entered and Mr. Foster was in the room, and Mr. Foster stayed a little while and then Mr. Foster left." A. Yes.

Q. Now, that is true? A. The second morning.

Q. The second morning that you saw him Mr. Foster was in the room when you got there, wasn't he? A. Yes.

Q. And very soon after you got there he left? A. Yes, sir.

Q. That is so, isn't it? A. Yes—well——

Q. Is that so? A. Well, no; he was there some time; he left before we did, though.

Q. Now, did he say anything to Mr. Foster on that second day? A. I can't remember.

Q. Did he say to Mr. Foster on that second day, "Get away, get away"? A. He may have; I don't remember that.

Q. You don't remember? A. I don't remember.

Q. You don't remember a thing he said on the second day; is that right? A. No, I don't remember very distinctly what he did say on the second day, if he spoke at all. I remember him lying there perfectly rigidly with his eyes closed.

Q. Second day? A. Yes.

Q. All the time? A. Yes. He never moved.

Q. Didn't say a word on the second day? A. It seems to me that he did; he muttered something, but I can't remember; I can't bring to my mind what he did say; but he did mutter something, but he was lying perfectly rigid.

Q. On the second day? A. On the second day.

Q. Well, that is the same as he was lying on the first day? A. Yes; but he didn't open his mouth.

Q. And the only difference is that he muttered on the second day and he didn't say anything at all on the first day? A. No, sir.

Q. Now, Mr. Foster did go away before you left, didn't he? A. Yes.

Q. How long were you there that day? A. Oh, I cannot remember; I was there a long time with Mrs. Price.

Q. How long did Mr. Foster stay after you left? A. Why, Mr. Foster left——

Q. Excuse me.

Mr. Carey: Strike that out.

Q. How long did Mr. Foster stay after you arrived? A. Maybe an hour.

Q. Did he say anything to him while he was there? A. Yes.

Q. Did he get any answers from him? A. Did Mr. Foster?

Q. Did Mr. Foster get any answer? A. From Mr. Price?

The Court: Yes.

A. No, no.

Q. After you had stated that Mr. Foster was in the room and Mr. Foster stayed a little while and Mr. Foster left, did you continue your answer in this language: "And before Mr. Foster leaving Mrs. Price said to me 'Kate, I think he is weak; I think he wants a drink.' She went into another room and brought a glass of water and she tried to get him to drink the water, but he didn't seem to be able to lift his head, and we went to the side of the bed and lifted him up. Mrs. Price put the glass to his mouth and he had an ice cap on his head, and the ice cap fell off and I saw a bruise or a mark, a deep red mark on the left side of his head, and I called Mrs. Price's attention to it at the time; but he didn't know it was me that was handling him." Did you so testify before Judge Carrick? A. Yes.

Q. Is that the truth? A. Yes; that is the truth, Mr. Carey.

Q. Now, that is on the second morning that you were there that you are speaking of? A. If so I got the testimony all mixed up. That happened on the first morning we had been in the hospital—oh, it must have been around ten o'clock that that happened. We went in around eight; it must have been—it must have happened around ten o'clock on the first morning.

Q. Then when you were testifying before Judge Carrick you were testifying to a wrong date? A. I did. I am awfully confused in it.

Q. Well, this hearing before Judge Carrick was in his office, wasn't it? A. I think so, yes.

Q. And everything was quiet around there? A. Yes, sir.

Q. And there was no cross examining counsel there at all? A. But I had——

Q. Was there? A. No, sir; but I had been ill before that.

Q. Everybody who was there was friendly to Mrs. Price and to Mr. Price and to you? A. Yes, but I had been ill, Mr. Carey, about that time.

Q. Never mind that. I just want to find what the situation is.

(Recess to 2 o'clock P. M.)

AFTER RECESS.

MRS. MASTERSON, recalled.

Cross Examination by Mr. Carey continued:

Q. Mrs. Masterson, when was the first you heard Mr. Price say that somebody hit him on the head with a hammer? A. I think it was Saturday morning, the Saturday morning after the accident; that was the last morning I saw him.

Q. You are sure you didn't hear him say it on the first morning? A. No, sir.

Q. Nor on the second morning? A. No, sir.

Q. Which would be Friday morning. And you did hear him say that frequently after that? A. I didn't see him after that.

Q. Never? A. Dr. Fendrich forbade me to enter the room.

Q. I didn't ask you what Fendrich said, I asked you if you ever saw him after that? A. Yes, I saw him about two weeks after than in the hospital.

Q. In the North Hudson Hospital? A. Yes, sir.

Q. And what was his condition then? A. He was up walking around the room.

Q. And talking? A. Yes, sir.

Q. And did he say somebody hit him on the head with a hammer? A. Yes.

Q. And when did you next see him after that? A. Well, I saw him the next day, I guess, on and off about a week or so; I saw him almost every day.

Q. You saw him almost every day from that time on for how long? A. Until he was taken to the Hudson County jail.

Q. You were in the room with him frequently? A. Yes.

Q. And Mrs. Price was there with you, was she? A. Yes.

Q. Did you visit him at the New Jersey State Hospital at Morris Plains? A. Yes.

Q. How many times? A. Once.

Q. When was that? A. About two months ago.

Q. That was the first time you had seen him since he was taken to the New Jersey State Hospital? A. Yes, sir.

Q. When was the last time you heard him say that he was hit on the head with a hammer? A. In the North Hudson Hospital.

Q. When you first saw him, was there anything abnormal about his face or any part of his body? A. Yes.

Q. Except the spot that you speak of on his head? A. His face was swollen.

Q. His face was swollen? A. Yes, and his neck.

Q. On both sides? A. Yes, his face looked very much swollen, his features.

Q. That swelling was on both sides, was it? A. Yes.

Q. Was it? A. Yes, his face.

Q. How about his neck? A. Yes, his neck was swollen.

Q. On both sides? A. Well, I saw the front of the neck.

Q. Well, I mean—— A. Yes, yes.

Q. On both sides of the front of the neck? A. Yes, yes.

Q. His eyes bloodshot? A. Yes.

Q. Both of them? A. Yes.

Q. Head swollen? A. Well, I quess it was. His face was swollen I guess his head was swollen.

Q. Well, do you remember whether there was any swelling on the head aside from this spot that you speak of? A. No; his whole head and face was swollen. His features were distorted because his face was so swollen.

Q. And his whole head was swollen? A. Well, his face. The expression of his face had changed.

Q. How about his head? A. Well, it may have been but I didn't notice it.

Q. When you saw him had the side of his head been shaved? A. Yes, sir; the left side was shaved.

Q. And what was the condition of the other side? A. The hair was not cut.

Q. Not at all? Was there any difference in size between the right side of the head and the left side of the head? A. I cannot say?

Q. Now, this spot which you saw on the head, was that spot where the hair had been shaved? Had it not? A. Yes.

Q. Did you ever see it after the first occasion that you saw it? A. I saw the first and second day.

Q. Never saw it after that? A. No, sir.

Q. Now, how did it look on the second day compared with the way it looked on the first day? A. Well, to me at the time it seemed about the same. It may have been as much swollen.

Q. How did you come to see it on the second day? A. I showed it to Mr. Keating.

Q. What? A. I showed it to Mr. Keating and Mr. Foster.

Q. You lifted up the ice cap? A. The first day it fell off. The second day I——

Q. The second day did he still wear the ice cap? A. Yes.

Q. Who lifted up the ice cap? A. I did.

Q. Was the skin broken where you saw this mark? A. No, sir.

Q. Perfectly smooth? A. Yes, sir.

Q. No indication of its having been scraped by anything or anything of that kind? A. I didn't notice.

Q. So far as you saw? A. No, sir.

Q. Did you see any blood around him anywhere? A. No, sir.

Q. He was lying in bed, wasn't he? A. Yes.

Q. Did you see any blood on the bed clothing? A. No, sir.

Q. No marks of blood? A. No, sir.

Q. Whatever. Never saw any blood marks, did you? A. No, sir.

Q. When was the first time that you saw him out of bed? A. Well, it may have been about three weeks after the accident.

Q. What was he doing at that time? A. Walking around the room, walking back and forth.

Q. Who was with him? A. When I entered he was alone. Mrs. Price and I were together.

Q. Any covering on his head at that time? A. No, sir.

Q. Did you notice the mark at that time? A. No, sir.

Q. No indication of it left at all? A. I didn't examine it.

Q. Hair still short? A. Yes, sir.

Q. You spoke about a cap in your direct examination. You say that you gave that cap to Mr. Price? A. Yes, sir.

Q. Where was he when you gave it to him? A. In West Haverstraw.

Q. In whose house? A. Mr. Keating's.

Q. Do you know where Mr. Keating is now? A. He is in the room here.

Q. What? A. Mr. Keating is right here in the court room.

Q. He is in the court room? A. Yes, sir.

Q. Has he been here every day during the trial? A. Yes, sir.

Q. Of what material was it? A. Heavy wool material.

Q. What? A. A heavy winter cap, heavy woolen material, dark blue, almost black.

Q. Did you ever see it after the time you gave it to Mr. Price? A. No, sir.

Q. And that was, say, three weeks before the accident? A. That was in January.

Q. January? A. Yes, sir.

Q. What part of January? A. Well, right after the holidays.

Q. The early part of January? A. Yes. I can't exactly say the date, I don't know.

Q. Have you ever testified to anything about this cap on previous occasions? A. No, sir.

Q. You were in court and heard the testimony about a cap? A. Yes, sir.

Q. Which was found in connection with Mr. Price? A. Yes, sir.

Q. And you heard the testimony to the effect that there was a tear in the cap? A. Yes, sir.

Q. And testimony to the effect that the cap in which the tear was, was of very light material? A. Yes, sir.

Q. And this cap of which you speak was heavy wool material? A. Yes, sir.

Q. And you never said anything about the cap in your testimony? A. No.

Q. On either of the three occasions when you testified about this? A. No.

Q. You knew that the cap which was described

by the witness was not the kind of cap which you had given to Mr. Price? A. No.

Q. What? A. No, I didn't know.

Q. Didn't you hear them state? A. I knew the cap I had given him.

Mr. Simpson: She didn't know what kind of cap he was wearing when he was on the engine.

The Witness: I knew the kind of cap I had given him.

Q. You heard Mr. Foster and Mr. Hinckley and some of the other witnesses testify to the kind of cap which they found with a tear in it, didn't you? A. Yes, sir.

Q. And you heard them testify that was a cap of light material? A. Yes, sir.

Q. Very thin? A. Yes.

Q. About like—about as thick as a sheet of foolscap paper? A. Yes.

Q. You knew that that cap concerning which they testified was not the same kind of cap as you had given to Mr. Price? A. Yes.

Q. When did you first mention to any one the fact that you had given this cap to Mr. Price? A. Well, I don't know. Mrs. Price had known it. Mr. Price had known it. Mr. Keating had known it. I didn't give it a thought.

Q. Well, you have told somebody about your giving it to him at some time, haven't you? A. Yes.

Q. And you have already testified to it this morning? A. Yes, sir.

Q. Now, when did you first mention the fact to any one that you had given this cap to Mr. Price? A. (No answer.)

Q. Well, did you mention that fact before you testified in the compensation case? A. Why, I

didn't know that the two caps—I didn't know what kind of cap he wore on his engine.

Q. You are not answerin my question, Mrs. Masterson. My question is, did you tell anybody about you giving this cap to Mr. Price of which you have spoken in your testimony to-day, prior to the time when you were examined in the compensation case? A. Mrs. Price.

Q. You told Mrs. Price about it, did you? A. And I think I spoke to Mr. Foster.

Q. What did you tell Mr. Foster about it? A. That I had given him a cap.

Q. Told him the kind of cap you had given him? A. No, I didn't.

Q. You didn't describe it at all? A. No.

Q. And was that before you testified in the compensation case? A. I cannot say.

Q. Well, did you tell any one else about it before you testified in the compensation case?

The Court: She may not understand what you mean by "Compensation case." If you mention the name of the Judge——

Q. The one before Judge Tennant? A. Yes. Why, Mr. Keating knew, because I spoke to him about it.

Q. When did you speak to him about it? A. Oh, a couple of years ago.

Q. Did you tell Mr. Keating what kind of a cap Mr. Foster and Mr. Hinckley testified they had seen in connection with this accident? A. I don't remember telling him that.

Q. Did you tell anybody about that? A. I don't remember.

Q. Well, you were quite impressed with the fact that this cap which Mr. Foster and Mr. Hinckley and some other witnesses described at the other trial was not at all such a cap as you had given

to Mr. Price, weren't you? A. It didn't make any impression on me, because I didn't know that was the kind of a cap he wore.

Q. It didn't make any impression? A. No, because I didn't know whether he had another cap in his engine.

Q. Well, when did it begin to impress you? A. I don't know. The other day I——

Q. When did you first inquire as to the difference between this cap which you say you gave to Mr. Price and the cap which Mr. Foster and Mr. Hinckley and other witnesses described on the former trial? A. Oh, I cannot say, Mr. Carey.

Q. Well, when did you first refer to it to anybody? A. Well, I don't know as I was in the habit of talking about it.

Q. You don't remember having talked to anybody about it? A. I don't remember having talked to anybody about it.

Q. Haven't talked to anybody about it? A. No.

Q. Within a few days preceding this trial? A. No.

Q. And you didn't know you were going to be asked about it? A. No; I didn't know anything about it.

Q. And yet you recall very readily the whole matter about the cap? A. Yes, sir.

Q. Have you spoken to anybody about it within two months prior to this date, to this day? A. No, sir.

Q. The first you said anything to anybody about it was when you were asked about it on the stand? A. Yes.

Q. Within the past two months? A. Yes, that I know of.

Q. Or within the past year? A. No, I have not been talking about it because I gave it away and I didn't want to talk about it.

Q. I think Mr. Foster and Mr. Hinckley described a cap which they referred to in their testimoney before Judge Tennant, did they not? A. Yes, sir.

Q. You recall that, do you? A. Yes, sir.

Q. Now, what is your recollection of the way they described the cap which they saw that night? A. They said it was made of light material.

Q. And the color? A. Black, I believe.

Q. And about how thick did they say the material was? A. The last I remember, about the thickness of a sheet of paper.

Q. And do you recall them saying that there was nothing on the side to draw down over the ears? A. No, I can't remember that.

Q. When you saw Mr. Price at the State Hospital did you talk with him? A. Yes, sir.

Q. How long were you there? A. About two hours.

Q. And at that time you had not seen him for how long? A. From the time he left his home in North Bergen.

Q. Left his home? A. Yes. That was the 15th of April, 1915.

Q. Did Mr. Price tell you at one time that he felt as if there was something dripping? A. Dripping? No.

Q. What? A. No.

Q. As if he could feel something dripping? A. No.

Q. Never told you that? A. No.

Q. In your testimony before Judge Carrick were you asked this question: "For instance, Mrs. Masterson, tell us of one subject you started on and from which he drifted, and from what subject he drifted?" "On that particular day, yes, I said to him: 'Charlie, do you remember being in my house before the accident?' He said 'What acci-

dent?' Well, I says, "You know you have been injured' "Oh, yes, Kate, a fellow hit me on the head with a hammer' 'Yes, Charlie. Now, listen, do you remember being in my house?" He says 'Where do you live?' I says, 'At the time I was up in West Haverstraw. Do you remember?' 'No,' he says, 'I don't know the place.' " Do you remember a conversation of that kind? Do you remember that question or that answer as having been given before Judge Carrick? A. It may have happened.

Q. Do you remember? A. No, I don't remember.

Q. Do you say that you did not give an answer of that kind? A. No; I don't say that.

Q. And was that followed with this question: "He would shake his head no, and say no?" "Yes." "And then he would say: "Don't ask me such questions. I have got such pains in my head, right here, on the left side. I have always got that dull pain in my head. Some times, Kate, I can feel it drip, just as if something was dripping, and then that ptin." "What is it?" "I don't know". he says, "I couldn't bring his mind to anything that day." A. Well, I guess that happened after he was walking around the hospital.

Q. Well, was that question—— A. Yes.

Q. ——asked you and that answer given? A. Yes.

Q. Well, what did he indicate by his statement: "I can feel a dripping just as if something was dripping"? A. I don't know.

Q. You don't know what he meant? Did he refer to his head? A. Why, yes, he constantly spoke of his head, he spoke of his head, always spoke of his head.

Q. Were you at the North Hudson Hospital on the day that Mr. Hurd was there? A. Yes.

Q. About when was that, do you know? A. About a week before he left the hospital.

Q. About four weeks after he came there? A. Yes.

Mr. Carey: That is all.

Re-direct Examination by Mr. Simpson:

Q. You didn't know anything about the cap that he wore when you heard this other testimony? A. No, sir.

Q. You were not in the engine cab; you didn't see him hit; you didn't know what cap he had on? A. No; I didn't know what cap he wore.

Q. And did it appear to you to be important, anything about this cap, until you heard his testimony? A. No, not until I heard his testimony this morning.

Q. Now, one other thing. This testimony you gave before Judge Carrick, you simply described a different time, didn't you? A. Yes.

Mr. Carey: I object to the question. That is telling the witness what to testify to. I ask that the answer be stricken out.

Mr. Simpson: All right. I consent to have it stricken out.

Q. Was or was not your testimony to-day, as to the events, the facts, the same as you gave before Judge Carrick and before Judge Tennant? Was it practically the same as to facts? A. Yes.

Mr. Carey: I object to the question.

Mr. Simpson: All right. If he objects to it I will withdraw it. That is all.

(Witness excused.)

Michael Keating, for Plaintiff—Direct

MICHAEL KEATING, sworn.

Direct-examination by Mr. Simpson:

Q. Where do you live, Mr. Keating? A. 600½ Grove Street, Jersey City.

Q. Jersey City? A. Yes, sir.

Q. And did you live in Haverstraw? A. Yes, sir.

Q. And do you remember about February, 1915, whether or not you gave Price a cap through Mrs. Masterson? A. Why, I had a cap that was too big for me. I told Mrs. Masterson she could give it to Price if she wanted to.

Q. What kind of a cap was it? A. As near as I can remember it was a heavy blue cap.

Q. Winter cap? A. Winter cap.

Q. Of what material was it made? A. It was common cloth like.

Q. But it was not a fine linen cap? A. No, it was not.

Q. Did it have laps, which you could pull down over your ears? A. Fur laps on the side, and turned up on the inside of the cap.

Q. Turned up on the inside so that you could pull it down? A. Pull it down.

Mr. Simpson: That is all.

Cross-examination by Mr. Carey:

Q. When did you give that to Mrs. Masterson? A. I guess I got the cap sometime in the fore part of January, about a month before she gave it to Mr. Price.

Q. Did you ever wear it yourself? A. Well, I tried to wear it but it was too big for me.

Q. You were living where at that time? A. West Haverstraw.

Q. And you say you live now where? A. 600½ Grove Street, Jersey City.

Q. Have you ever seen the cap since? A. No, sir.

Mr. Carey: That is all.

(Witness excused.)

JOHN BOSTWICK, sworn.

Direct-examination by Mr. Simpson:

Q. What is your position at the office of the New York Central Railroad Company? A. Time keeper.

Q. Do you know what kind of work Price did, fire work, as a fireman?

Mr. Carey: Did he know what?

Mr. Simpson: What kind of work Price did?

A. He was a fireman.

Q. Do you know what kind of run he had, passenger run, he had from Haverstraw to New York? A. Yes.

Q. Do you know what a fireman is paid for that kind of run?

Mr. Carey: I object to that question of what a fireman is paid for that kind of run now. It is a question of what he was being paid—

Mr. Simpson: Well, it is not a question. That is exactly what I want to show. It is common knowledge that the railroad men have had great increases in salaries since he was hurt, since the government took the railroads over, and I want to show to the jury if this accident didn't happen what in probability he would be earning now. For instance, he earned seventy dollars in two weeks then. I suppose they earn a hundred

and fifty in two weeks now. Perhaps I would better qualify him now.

Q. What is your position in the railroad? A. Timekeeper.

Mr. Carey: If he will answer the question that you put to him I will be willing to admit that he is qualified.

Mr. Simpson: You say he is qualified to give me the information?

Mr. Carey: He is qualified to give such information as he will answer to you, and he would not answer anything that he is not qualified to answer. I am satisfied of that.

Mr. Simpson: I mean you do not object to me qualifying him.

Mr. Carey: No.

The Court: Do I understand you are objecting to this question?

Mr. Carey: Then that question has been withdrawn, as I understand it.

Mr. Simpson: Until I qualify him.

Q. Have you the record showing what Price earned at the time he was working? A. Yes, sir.

Q. Well, will you tell me what he earned the year before he was hurt, that is up to the 15th of February, 1915? A. For years?

Q. Yes, if you have it by the year. A. I have 1913 and 14.

Q. Well, that is all right. Give me that. A. In 1913, it is $1,335.28; 1914, $1,352.91.

Q. Have you got it for January, his earnings for January? A. Yes, sir.

Q. What are they? A. $138.38.

Q. That is for the month of January? A. Yes, sir.

Mr. Simpson: I think that is all. The other

question is all right, but I do not propose to take any chance.

Cross-examination by Mr. Carey:

Q. Now, have you a statement showing the pay per month for these two years that you have testified to, Mr. Bostwick? A. Yes, sir.

Q. Won't you—from the beginning of the year 1913, as I understand it, this man was paid twice a month? A. Yes, sir.

Q. Now, will you give the first half of the month first and the second half of the month secondly, and go through the different months? A. First half of January, 1913, $56.74.

Q. Second half? A. $33.80.

Q. Go on. First half of February? A. $33.85. Second half of February, $52.66; First half of March, $58.24; second half $44.35. First half of April, $44.35; second half, $60.19. First half of May, $56.62; second half, $57.28. June, $65.47; $57.28. July, $65.47; $61.38. August, $53.25; $65.47. September, $61.53; $53.38. October, $45.01; $67.58. November, $63.56; $59.13. December, $59.34; $59.55; 1914, January, $63.61; $67.84; February, $50.68; $55.10. March, $54.91; $67.36, April, $54.91; $55.26. May, $54.91; $47.76. June, $50.68; $50.68. July, $46.44; $59.13. August, $48.90; $55.47. September, $46.18; $51.00. October, $60.22; $52.09. November, $61.45; $70.95. December, $68.54; $68.84. January, 1915, $65.79; $72.59.

Q. Do your records show when Price began to fire for the New York Central? A. July 6, 1905.

Mr. Carey: That is all.

Mr. Simpson: That is all.

DR. GEORGE W. KING, sworn.

Direct-Examination by Mr. Simpson:

Q. Doctor, you are a practising physician? A. I am.

Q. And you are now in charge of the Hudson County Hospital for the Insane? A. I am.

Q. And how long have you been in charge of that and County Physician? A. I have been medical superintendent of the Hudson County Hospital for the Insane for thirty-two years. For nearly five years I was county physician. The duties of the county physician—one of the principal duties of the county physician was to examine and dispose of the indigent insane of Hudson County.

Q. How many insane do you think have passed under your observation in your practice? A.——

Mr. Carey: I am willing that the Doctor should testify without going into his qualifications.

Mr. Simpson: Well, I will do that, providing you do the same thing. I want to save time, but that didn't happen in the inquiry before the judge. You admitted the qualifications of my doctors, but when I wanted to admit yours you said no, you wanted it on the record. Now, if you are going ahead to show all the "D.S.F.R.S." of yours, and all that sort of thing, I want to put in my qualifications.

Mr. Carey: If the court please, counsel states what is not accurate. In reference to one doctor who was called I did say that I wanted the court to understand his qualifications, because he was not——

The Court: Well, I won't spend any time on it. Mr. Simpson, go ahead if you want to.

Mr. Simpson: I will stop at that. I want to get through, of course, too.

Q. How many thousand persons have passed under your observation? A. Oh, several thousand patients; I should not like to make conjectures.

Q. Well, tens of thousands, have they, passed under your observation? A. Yes, at least.

Q. Now, did you see this Mr. Price on the 22nd of March, up at the North Hudson Hospital? A. I did.

Q. And where did you see him? A. Then he was in bed in the North Hudson Hospital.

The Court: I presume this has reference to March 22nd, 1915?

The Witness: March 22nd, 1915.

Q. And what was his condition? A. He was dazed, bewildered, irritable, irrational, complained of intense pain in his head. One side of his head was shaved and he had given those usual symptoms of a person suffering from a severe injury to his brain.

Q. In your opinion was he then suffering from a head injury to his brain? A. He was.

Q. Then what did you do after the 22nd of March? A. The patient left the hospital. He was sent to the County Jail for observation. I had him under observation at the County Jail, for a few days, we tried to do what we could for him, and he was then sent home, and I treated the man.

Q. Where did you send him—why did you send him home instead of to a hospital? I mean a hospital for the insane? A. Well, usually when a man receives an injury to the brain like that and his mind shows evidences of being wrong to some people—to most people, to all people, the fear

of going to an insane asylum is something they don't like, and it was my effort to do all I could in treating him privately at home before it would be necessary—not to send him to the insane asylum until it was absolutely necessary.

Q. Well, what did the home treatment do? Was there any improvement? A. There was no improvement.

Q. Then what happened? A. Then he was committed by myself and Dr. Hasking, who was then the Assistant County Physician, to the State Hospital at Morris Plains.

Q. As what? What was he suffering with in your opinion? A. He was suffering—the diagnosis that I made at that time—with traumatic insanity.

Q. And in your opinion if he had been in his usual health on the 15th of February and received a blow with some hard instrument and was thereafter unconscious, would that accident account for his condition? A. It would.

Mr. Carey: If the court please, I object to the inclusion in that question that he was thereafter unconscious.

Mr. Simpson: I said if he was thereafter unscious. I didn't say he was.

Mr. Carey: There should be something in the evidence to base the supposition on.

Mr. Simpson: Well, I will withdraw "If he was thereafter unconscious."

Q. If in your opinion on the 15th of February he was in a locomotive cab and in leaning out of the window he was struck on the head with an iron instrument would that account in your opinion for his condition? A. It would.

The Court: The other question and answer are both withdrawn then?

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Mr. Simpson: Yes.

Q. Now, how long did you have him under your observation before you committed him, Doctor? A. Three weeks.

Q. And you, I understand, were one of the attending physicians who committeed him to the Morris Plains Hospital? A. I was.

Q. And were you present at the examination made by Dr. Kirby and Dr. Beling on last Friday for the defendant company? A. A week ago last Friday, yes, I was.

Q. Now, a man suffering, as you say,—this man has traumatic insanity—does he have periods of time in which his mind is clearer than others? A. That happens very frequently.

Q. Have you ever seen him when he was in a condition worse then he was this morning? A. When I had seen him in the hospital he was a great deal worse than he was this morning.

Q. That is last Friday? A. Yes.

Q. And in your opinion is this insanity of his—

Q. (Repeated by the stenographer.) Have you ever seen him when he was in a condition worse than he was this morning? A. (Repeated by the stenographer.) When I had seen him in the hospital he was a great deal worse than he was this morning.

Mr. Carey: I ask you what hospital he refers to?

The Witness. The North Hudson Hospital.

Q. When you saw him at the Morris Plains Hospital last Friday was he in worse condition than he was this morning? A. Yes, he was.

Q. Now, will you describe what this disease is to the jury so that they can have some comprehension of what he is suffering from? A. Well, trau-

matic insanity is due to violence or a blow of some kind which affects the brain tissue, and this discordant conduct which he has manifested at my several examinations was an evidence that it would not come from anything else than an injury, a blow of some kind.

Q. Well, how does that affect the brain? I mean how in your opinion would a blow on the head produce a condition of insanity? A. It produces a condition called concussion of the brain; that is violence applied to the brain, where the small nerve cells of the brain are interfered with, and they are injured, and the man's train of thought, mental operations, are affected because these nerve cells do not convey these nervous impulses. This injury produced by the violence to the brain substance renders these nerve cells entirely unable to perform their function.

Q. Well, does that unfit him entirely for his ordinary duties of life? A. It does.

Q. In your opinion is that condition transient or is it permanent? A. It has not shown any evidences of being transient. A man afflicted with a mental disease for fourteen years, it is very evident that there must be some deterioration of the brain substance, brain cells.

Q. Well, in your opinion will this man recover his mentality, his reason? A. It is hard to say. I don't think the man will get well. Yet his conduct and deportment on the stand here to-day—he went through quite an ordeal for a man of his mental make-up. I would prefer to see how he would stand this ordeal that he went through to-day. It may be the cause of breaking him up again, and if he holds his mentality for a few days or a week longer after going through this—

Q. I didn't ask you that. I asked you your opinion whether this man would get well or not. That is all I want to know.

Mr. Carey: Well, now, the witness ought to be permitted to answer the question.

Mr. Simpson: You will get all you want out of him. You take time to examine him. I want to close my examination of him.

Q. I want to ask, in your opinion will this man get well—as a matter of your opinion? A. I don't think so.

Mr. Simpson: That is all. Cross examine.

Mr. Carey: If the court please, I ask that the witness be permitted to finish his answer.

Mr. Simpson. I withdrew that question and answer, and asked hi manother.

The Witness: Oh, you can get that out of me.

Mr. Carey: What was the last question?

Q. (Repeated by the stenographer.) I want to ask, in your opinion will this man get well—as a matter of your opinion? A. (Repeated by the stenographer.) I don't think so.

Cross-examination by Mr. Carey:

Q. In 1915, you saw Mr. Price on quite a number of occasions, did you not. Doctor? A. I did.

Q. And you observed him carefully? A. I did.

Q. And you had him down here under your personal observation for a time? A. I did.

Q. For how long a time A. Two or three days.

Q. And subsequent to that time you saw him at his home, did you not? A. I visited him daily at his home two or three weeks.

Q. And his condition then was that of continuous bewilderment, disorientation, inability to concentrate, was it not? A. Yes.

Q. Will you describe his actions and conduct a little more in detail? A. Well, the man would not

reply to interrogations. He was irresponsive. He was unable to give any information about his condition other than complaining that he was—had a severe pain in his head and neck. He was irrational—

Q. You speak about his neck, Doctor. Was his neck swollen when you saw him? A. I don't recall. I don't—I haven't made any notes on that, but I know he had pain in his head extending down into his neck.

Q. Were there any external marks on his person at that time? A. None that I discovered.

Q. And at that time was he able to give any connected statement as to what caused his condition? A. He was not.

Q. And that was true over the period during which you had him under observation in 1915, was it not? A. To the best of my recollection that is true.

Q. At that time his orientation was very bad? A. Was very bad.

Q. And by orientation you mean what, Doctor? A. Well, he didn't know the day of the week, or the month, or the year. He didn't know where he was.

Q. Did he know where he was? A. He did not.

Q. When you saw him at his house? A. Yes, he did know; he knew he was home. Said he was glad to get home.

Q. When you saw him at the hospital did he know where he was? A. No.

Q. Did you get from him the day of the week, or— A. Couldn't get that. I tried.

Q. Or month? A. Couldn't get that.

Q. And you tried to find out from him how he had been injured, did you not? A. I did.

Q. And you were unable to do so? A. Unable to obtain it from him.

Q. And this condition also continued during the whole time that you saw him at the hospital and at his house? A. It did.

Q. During any part of that period did he ever manifest any ability to concentrate his mind upon any subject? A. He was entirely unable to do that.

Q. When did you next see him after he went to the Morris Plains Hospital? A. I am trying to think. You asked me that question the other day. I remember seeing him—he may have been in the institution a year or less. I remember visiting the institution and I remember seeing him down at the hospital. It may have been in the early summer or late spring of 1916. This last trial was about 1917, was it not? A. November, 1917, Doctor? A. Well, I had seen him, I should think about six or eight months before that.

Q. At that time did you make any special examination of him? A. I just went over him, talked to him.

Q. About how long a period did you spend with him? A. Well, I guess I was in there about three quarters of an hour.

Q. Make physical and mental examination of him? A. Yes.

Q. Thorough? A. I would not say it was thorough.

Q. Well, a casual one, was it not? A. It was not casual. I wanted to satisfy myself of certain conditions.

Q. Did you go there on purpose to see him or did you have other business there? A. I had other business there and while I was there I happened to think of his name and inquire about him and I was permitted to see him.

Q. And after that time when did you next see him? A. I saw him last week on the 28th of March, I think it was the 28th of March.

Q. The 28th of March? A. It was a week ago last Friday, whatever date that was.

Q. Yes. That was the 28th. And prior to the 28th of March last you had seen him but on one occasion after he went to the hospital at Morris Plains? A. That is right.

Q. Were you present during the whole time that Dr. Kirby and Dr. Beling were examining Mr. Price? A. I was.

Q. And you took part in the examination? A. I did.

Q. And he was in quite different condition on that day from what he is to-day? A. Very much so.

Q. Did you know at the time that you were there on the 28th of March that Mr. Price had been told that if he didn't want to ask questions or answer questions asked by these doctors that he need not do it? A. I didn't know that.

Q. You didn't know that? A. I had no means of knowing that.

Q. You heard him testify that to-day, didn't you? A. I did.

Q. And in your judgment was his attitude on the day of the examination, on the 28th of March, due to any extent to what his wife had said to him, that he didn't have to answer questions—that if he didn't want to answer questions he need not? A. I don't know; it might or might not.

Q. Well, what is your opinion about it? A. Well, I take my opinion from what the patient said himself on the witness stand. He thought that he was going to get the worst of it by letting the other physicians examine him and he showed common sense so far as protecting his own case was concerned by keeping his mouth shut and not answering the questions put to him.

Q. Well, in your judgment he was not endeavor-

ing to answer questions? A. The man said he was not feeling well that day.

Q. In your judgment was he not endeavoring to answer questions that day? A. Well, he was determined not to answer any questions. He proved it.

Q. That was brought about by the exercise of his will, was it not? A Exactly.

Q. During that examination did you ask him if he had ever seen you before? A. I did.

Q. What was his answer? A. To the best of my knowledge and belief he said no.

Q. And was he asked, "Do you know Dr. Evans?" A. I believe he was asked that question.

Q. And what did he say to that? A. I cannot recall his answer to that.

Q. You have a transcript of the examination, haven't you? A. Yes; but there is over a thousand questions and I got tired wading through.

Q. Page 2, and immediately following the words, "Dr. Kirby resuming"— A. Yes, I have it here.

Mr. Carey: Page 2, "Dr. Kirby resuming."

The Witness. Yes, right here.

Mr. Carey: Let me see if these pages are not the same.

The Witness: Yes.

Mr. Carey: Turn over to page 3, see whether that ends with the same word or not.

The Witness: Yes.

Mr. Carey: And 4.

The Witness: Yes.

Mr. Carey. It looks as if the pages are not the same.

The Witness: Yes.

The Court: Well, aren't they both the

same except one is bound and the other is not?

Mr. Simpson: Well, one of them had four lines left out.

Mr. Evans: This one I have is sworn to and certified by the stenographer.

Q. Now, Doctor, was the plaintiff asked on that occasion: "Do you know Dr. Evans?" A. This is probably correct.

Q. And his answer was what? A. "No, sir."

Q. Now, will you turn to page 3, just above the middle of the page: "Were you born in the city or country or village, or what?" Have you found that place, just above the middle? A. Above the middle.

Q. Yes. A. "What is your occupation? What work did you follow? What trade?" Do you mean that.

Q. No. "Were you born in the city?" A. Yes.

Q. And what was his answer? A. "Yes."

Q. And was he then asked what city or part of the state? A. He was.

Q. And did he answer: "Can't just think now," and down toward the bottom of the page. "How far in school did you go?" A. "I don't know," was his answer.

Q. And was he asked: "Are you married or sigle?" A. No answer to that question.

Q. And was the question repeated? A. Yes, sir.

Q. And did he answer it? A. "Married." He answered, "Married."

Q. But did he ask that the second time it was asked or the third time? A. The third time.

Q. And was he asked after Dr. Kirby resuming: "Do you know what place this is?" A. No answer.

Q. Was he then asked: "Put your mind on this and answer to the best of your ability." A. His answer was: "Hospital."

Q. And then the question: "Where is it?" A. "I don't know."

Q. Were those questions and answers asked, and given? A. They were.

Q. Now, on the bottom of page 10, by Dr. Beling, was he asked by Dr. Beling: "Mr. Price, do you remember what happened to you, about how you were injured?" A. His reply was, "No, sir."

Q. Well, that question was asked, was it? A. It was.

Q. And then was the question asked, "Do you remember anything about the time before you were injured?" A. His reply was. "No, sir."

Q. And then was the question asked Mr. Price: "Do you remember anything a few days before you were injured?" A. No answer to that question.

Q. Now, Dr. King, you made quite an effort to get some information from him on that day did you not? A. Tried very hard.

Q. And with what success? A. Very poor success.

Q. When did you next see Mr. Price after the 28th of March? A. Last Wednesday; Wednesday, I believe.

Q. And talked with him on that day? A. I did; Wednesday or Thursday; I will qualify that.

Q. Wednesday was the first day of the trial. Was it the first day of the trial? A. Maybe the second day; may have been the second day; Wednesday or Thursday; I am not sure.

Q. Well, what did you—you talked with him on that day? A. I did.

Q. Was he responsive on that day? A. Very much so.

Q. Equally as responsive as he was on the stand to-day? A. He behaved just as well with me that day as he did on the stand to-day.

Q. Better? A. No, I don't think he did any better; he could not do much better.

The Court: I don't know but Mr. Carey meant by his question whether he didn't act better on the stand than you did. I don't think he meant that.

Q. Now, beginning at the bottom of page 6, you began to ask Mr. Price questions, did you not? A. I did.

Q. And you continued your questioning through page 7 to nearly the bottom of page 8, did you not? A. I did.

Q. You asked quite a number of questions right in a succession there without getting any answer from him at all, didn't you? A. I did.

Q. About one-third of the way down the page, of page 7, one third of the way down from the top, you asked this question, did you not: "Were you injured?" "Did you receive any injury when you were driving the locomotive?" A. There was no answer to that question.

Q. Then did you ask him: "Did you get hurt in any way?" A. And his reply was, "Yes."

Q. Then did you ask him, "Can you tell us how that happened?" A. There was no answer to that question.

Q. And what question did you then ask? A. "Do you know when it happened, or can you tell us how you were hurt?" There was no answer to that question.

Q. Then what question did you ask? A. "Did you fall when you got the injury?" No answer. He continued to stare in the same vacant way.

Q. Then what did you ask him? A. "Were you struck by anything?" No answer.

Q. Then what did you say to him? A. I said to him: "I don't think you are paying attention to us. You do not seem to concentrate your mind on what we are here for. What we want now is an account of your injury. The doctors here would like to find out how you were injured. They would like to find out. Can you tell us?" The reply to that question was no answer.

Q. The next question? A. "Were you injured in the locomotive when you were at work?" His answer was, "Somebody hit me on the head."

Q. What is the next question? A. "Was it an accident or somebody that had a grudge against you?" No answer. He gazes vacantly.

Q. Then what did you say to him? A. "Pay attention. If you listen you may be able to answer." There was no answer to that question. Dr. Beling took his pulse at that time. It was 76.

Q. 76. And is that about a normal pulse? A. Normal.

Q. Assuming that Dr. Beling took it correctl? A. Yes.

Q. And would that indicate any physical or mental disturbance? A. You find that condition in normal people, that pulse rate.

Q. Would that indicate any physical or mental disturbance, that pulse rate? A. No; that would indicate nothing.

Q. On the contrary it would indicate an absence of mental and physical disturbance, wouldn't it? A. It would not indicate an absence of mental disturbance; it would indicate an absence of physical disturbance.

Q. And since hearing Mr. Price testify here today you have reached the conclusion, as I understand it, that his failure to answer was due to his resolution not to answer? A. Exactly.

Q. And what would you attribute his answer,

"Somebody hit me on the head" to? A. Where does he make that answer?

Q. You just read it a few minutes ago. A. Well, I don't get your question.

Q. Will you turn to page 7, just a little below the middle, after that long statement you made to him, telling him the doctor would like to find out about how he was injured—you find the question there: "Were you injured in the locomotive while you were at your work?" A. Yes.

Q. His answer: "Somebody hit me on the head"? A. That is on page 6.

Q. Now, recalling what he testified to here to-day what would you say that answer: "Somebody hit me on the head" is to be attributed to? A. Well, he has a constant pain in his head, has that pain in the head since the injury, and he can't get that off his mind, and that headache is there all the time and it has made such an impression on his mind that that will stay there as long as he lives.

Q. And that answer was quite different from the answer he gave on the stand to-day? A. Well, that is self-evident; that is wasting time.

Q. So it is. You say that you saw Mr. Price on Friday of last week? A. Not Friday; Wednesday or Thursday.

Q. Oh, I beg your pardon; that is right, Wednesday or Thursday of last week. Did you see him on two different days last week? A. Yes; I don't think—I don't think—I seen him but one day last week.

Q. You remember being in court here yourself on two different days last week, do you not? A. Yes.

Q. Now, refreshing your recollection from your own presence here can you state whether or not you saw Mr. Price on both of those days? A. I

don't think I had seen him on both days. I think the day I had seen him was Thursday. Yet I am not positive about that. I may have seen him twice but I don't recollect the second time.

Q. Then you saw him this morning before he went on the witness stand? A. I did.

Q. And his attitude when you saw him this morning was very different than it had been on the occassions when Dr. Kirby and Dr. Beling saw him at the hospital? A. It was very much different.

Q. Now you say that in your judgment he is suffering from traumatic insanity? A. That is my opinion.

Q. And the principal symptoms upon which you base this diagnosis are what? A. Pain in the head, neck, his irrational conduct, peculiar behavior, his hallucination of hearing; that is, he hears steam in his ear and hears sounds in his ears, with his disorientation and the other conditions, days when he was bewildered as he was when I first saw him. Your question is from the date of the injury?

Q. Yes. A. Or is it his present condition? Do you mean you want me to give my reason for my diagnosis of traumatic insanity from now——

Q. Just a moment, please. I want you to give the principal symptons upon which you base your diagnosis of traumatic insanity? A. Well, he was dazed, bewildered, disoriented, pains in his head, and his conduct and behavior showed every evidence that his condition could come from no other cause but a traumatism, an injury which he received to his brain. I take into consideration there—if you permit me to go on—that he was in perfect physical and mental health until that parıcular time. Just as he describes it on the stand this morning, he went out, and after that is a

blank to him, until he work up in the hospital, some time afterwards and he told some one of the attendants there—he found where he was and he told them that he was struck on the head by something.

Q. Now, do you mean to say that he testified to that to-day? A. I understood him to say—his Honor asked him a question when he went to the hospital, how long was he there before he discovered where he was, and he asked him then who he told it to, and he said Mr. Gilbert. I understood those questions put by Judge Campbell to the patient this morning and I understood the patient to make those replies.

Q. Now, do you understand that took place at the North Hudson Hospital or at the State Hospital? A. He was interrogated by the Judge this morning, by Judge Campbell this morning.

Q. But do you understand that he was testifying as to a situation at the Norh Hudson Hospital or at the State Hospital? A. When?

Mr. Simpson When? I object unless you make that specific.

The Witness: That does not connect with your previous question.

Q. You have just testified that in answer to Judge Campbell's question he testified that something happened and he didn't remember anything after that? A. Yes.

Q. Until in the hospital? A. No; he didn't remember anything in the hospital.

Q. What? A. He didn't remember anything in the hospital. I mean the North Hudson Hospital.

Mr. Simpson: He is talking about the Morris Plains Hospital and you are talking about the North Hudson Hospital, and then you go back to the Morris Plains Hospital.

The Witness: He had no recollection of

what happened when he was in the North Hudson Hospital.

Q. Now, you speak of these symptoms as being exhibited at what time, Doctor? A. Well, March 22nd, when I had just visited him he had all of these symptoms.

Q. Yes? A. And he continued that way, but he got to be dangerous; he had some suicidal tendencies, thought he better die, thought he would be better off if he were dead, that life was unbearable for him, and he told me he would take his own life, he would end all and he would be better off.

Q. My question was, Doctor, when he exhibited these symptoms that you have been testifying to? A. While he was under my private treatment at his home he manifested those suicidal tendencies.

Q. Now, you see nothing of that kind in him now, do you? A. Nothing whatsoever.

Q. And do you say his condition as far as you saw him today, and as you saw him on Thursday of last week, was better or worse than when you last saw him before he was taken to the State Hospital? A. Oh, he was worse when he was taken to the State Hospital than he was on March 28th. He was worse at that time.

Q. He was worse? A. A great deal worse than he was on March 28th of this year.

Q. And he was very much worse on March——

Mr. Carey: Strike that out.

Q. And his condition disclosed by his examination on March 28th, was very much worse than his condition as you saw him here on last Thursday and as you saw him to-day? A. It was.

Q. Then there has been a good deal of improvement in the man than when you saw him last be-

fore he was taken to the State Hospital, and as you have seen him during the past ten days? A. A great improvement.

Q. Now, you saw nothing of that peculiar behavior in him at the present time, do you? A. None.

Q. And you see nothing that indicates any tendency toward suicide? A. He has not manifested it.

Q. And he does not complain nearly as much of pain as he did when you last saw him before going to the State Hospital? A. He acted to-day as though he suffered from pain——

Q. I am asking about his complaining, Doctor? A. I didn't hear him; I didn't have a chance to hear him complain, because that question wasn't brought out. I am speaking about his manerisms.

Q. Before he went to the State Hospital he was complaining continually of pains in the head, wasn't he? A. He was.

Q. And the only reason he gave for it was that somebody hit him on the head with a hammer? A. Yes, I believe that is right.

Q. And you heard him state it repeatedly? A. I heard him say that; something like that.

Q. A great many times, haven't you? A. That he was struck on the head with a hammer; I heard him say that.

Q. A great many times, haven't you? A. That he was struck on the head with a hammer; I heard him say that.

Q. A great many times? A. I don't know whether he said it a great many times, but he said it.

Q. Doctor, in traumatic insanity is there a hemorrhage inside of the skull? A. Some times.

Q. Usually or not? A. It depends on the severity of the injury whether there is a hemorrhage or not.

Q. Doctor, you said on your direct examination—you spoke on your direct examination about hemorrhage of the brain, I understood; is that correct?

Mr. Simpson: No.

A. I don't remember that I said anything about hemorrhage of the brain.

Q. Didn't you speak about hemorrhage? A. No; I don't remember mentioning hemorrhage.

Q. What do you mean by concussion of the brain, Doctor? A. Concussion of the brain is that mixing up, shaking up the brain gets from a blow, a force.

Q. May not insanity be caused by a rupture of a blood vessel within the cranium or within the skull, which is not caused by trauma? A. That is possible; certain forms of insanity come from that.

Q. And would there be any difference in the symptoms between insanity caused by the rupture of a blood vessel in the absence of trauma and insanity caused by a trauma which resulted in the rupture of blood vessels within the skull? A. Yes, there would be a great difference.

Q. What is the reason for this difference that you speak of, Doctor? A. Well, if there was a hemorrhage spontaneously arising from the rupture of a blood vessel in the cranial cavity you would go on and a condition of paralysis would take place, and if that would come from an injury, why, you might have paralysis also, but you would have more mental symptoms from an injury than you would from an ordinary rupture of a blood vessel in the brain; because those ruptures take place, diseased conditions—if the man's circulatory system is diseased and a vessel ruptures a hemorrhage from that source would be more ex-

tensive, do more damage to the skull, to the brain; there would be paralysis.

Q. Do you mean to say there would always be paralysis if there was rupture of the blood vessel within the skull which was not caused by a trauma? A. A spontaneous rupture of the blood vessels of the brain—I cannot see how one could escape that attack without having paralysis.

Q. And in your judgment paralysis would always result from rupture of a blood vessel within the skull? A. It depends on the degree of hemorrhage, of course.

Q. Oh, yes. Now, then, will you state whether or not insanity might be caused by spontaneous rupture of blood vessel within the skull when the hemorrhage was non-sufficient to cause paralysis? A. That might happen in some persons, delicate persons.

Q. Now, there are frequently ruptures of blood vessels within the skull which are not caused by trauma, are there not? A. Oh, yes; there is a diseased condition of the circulatory system where that thing does take place. It happens in older people. You don't get spontaneous rupture of blood vessel in a man of his age. That is a rare thing. You don't get that. He is physically——

Q. Never? A. Well, I have seen a few cases.

Q. You have seen a few cases? A. Yes; I think I have seen a few cases in my life.

Q. So it is possible for such a thing to occur? A. I would say it is possible but not probable.

Q. Now, then, if there was a rupture of the blood vessel—a spontaneous rupture of the blood vessel within the cranium, and that rupture of the blood vessel caused pressure upon the brain would there not be as a result disorientation? A. There would.

Q. And forgetfulness? A. There would.

Q. And inability to concentrate the mind? A. All those conditions would take place.

Q. All those things which you observed in Mr. Price would take place, would come from hemorrhage? A. It depends on the location of that hemorrhage, where it was located, what functions of the brain are disturbed.

Q. Now, there has been a great improvement in Mr. Price's condition between the time you saw him about a year or so ago at the hospital and the present time, has there not? A. No doubt about it.

Q. And would you or would you not say that at the time when Dr. Kirby and Dr. Beling and you examined Mr. Price at the hospital, assuming that he was doing the best he could, that he was then in condition to give testimony? A. I am to assume he was doing the best he could?

Q. Yes. A. Your question tells me to assume that?

Q. Yes. A. Repeat that question.

Q. (Repeated by the stenographer.) And would you or would you not say that at the time when Dr Kirby and Dr. Beling and you examined Mr. Price at the hospital, assuming that he was doing the best he could, that he was then in condition to give testimony? A. I would not think he was at that time in condition to give testimony. No, he was not in condition to give testimony on March 28th, 1919.

Q. But taking into account the testimony which he has given to-day and his appearance on March 28th you are of the opinion that it was not because he was not able to give correct statements, but because he had determined he would not answer the questions? A. It might be one of his reasons. You cannot tell what an insane man is thinking of all the time. My opinion is only a matter of con-

jecture there. I look at the man, listen to his replies, and form my own opinion.

Q. Have you any idea how long it is since this improvement commenced? A. I have not. This improvement, that would be rapid, because he was not so well on the 28th of March, and here around the 2nd or 3rd of April he was better. That condition I know takes place in mental diseases very often.

Q. Now, you have not——

Mr. Carey: Strike that out.

Q. Do you think he was attempting to deceive on the 28th of March? A. Well, if you ask me what I think, he might have tried to do that; he might have tried to put something over on us—that is possible—that day.

Q. What is your opinion about it? A. My opinion is he would not let us know anything at all about his condition, wouldn't tell us, made up his mind he wouldn't.

Q. Was he attempting to deceive on that occasion according to the best of your judgment? A. The best of my judgment the man tried to put something over on the experts.

Q. In other words, you think he was trying to deceive? A. Yes, I think so.

Q. Did you think so on that day? A. I did—No, I did not; I did not think so on that day.

Q. And he put one over on you also, did he? A. I guess he did.

Mr. Carey: That is all.

Mr. Simpson: That is all.

(Witness excused.)

GEORGE B. MCMURRAY, sworn.

Direct-examination by Mr. Simpson:

Q. Now, Doctor, you are a practising physician? A. Yes, sir.

Q. And you are connected with the medical staff of the Morris Plains Hospital for the Insane, aren't you? A. Yes, sir.

Q. And how long have you been a member of that staff? A. Since June, 1911.

Q. Have you a patient under your direct care known as Charles Price? A. Yes, sir.

Q. And under your personal observation? A. Yes, sir.

Q. And how long has he been under your medical care and personal observation? A. Since the time of his admission to the institution.

Q. And how often do you in the custom of the institution, see him? A. About twice a day, sometimes more, except for summer vacations that I take; maybe a week or two.

Q. In your opinion is he sane or insane? A. He is insane.

Q. And with what form of insanity is he suffering? A. He is suffering from a form of insanity known as traumatic insanity, due to an external violence.

Q. What part of the body in your opinion was the external violence applied to? A. The external violence to the left side of his head.

Q. And in your opinion is that condition permanent? A. Yes, sir.

Q. You have seen him on the stand to-day? A. Yes, sir.

Q. Does his condition—what is his condition? Is it at all times as it was this morning or is it a difference in his condition? A. I have seen him days when he was like he was this morning; I

have seen him the very next day when he was stupid, morbid, almost bitter towards me, when he would not talk, when he did not care to have you around, when he had an expression of fear; his whole demeanor and makeup was one of fear and antagonism to anybody who would question him; in fact, at those times, although he did not exhibit any evidences of violence, his whole demeanor and actions would lead one to believe that he would get excited and hurt you.

Q. And how often do those conditions occur? That is, when he was, as you say, morbid and dazed and violent and bitter—how often would he have those intervals? Or is there any way of telling when they would come on? A. There is no way of telling. He might have had one here this morning or afternoon; there is no way that I can tell.

Q. Now, in your opinion, suppose he was in his usual health on the 16th of February, 1915, and on that day while in the cab of a locomotive leaning out he received a blow on the head from an iron hook, would that in your opinion account for his condition? A. Yes, sir.

Q. And in your opinion is that the cause of his condition? A. Yes, sir.

Mr. Simpson: Cross examine.

Cross-examination by Mr. Carey:

Q. You testified in the former trial of this case before Judge Campbell, did you not? A. Yes, sir.

Q. And that was the first time you had testified in the case? A. I testified about that in the matter of appointing a guardianship for Mr. Price.

Q. That was before whom?

Mr. Simpson: I will admit it was before Judge Carrick. There is no question about it.

Mr. Carey Judge Carrick?

Mr. Simpson: Yes.

Q. You say that in your opinion this condition was caused by external violence? A. Yes, sir.

Q. What in this case that you have seen in Mr. Price would not be produced by a spontaneous hemorrahge inside the cranium? A. The man is—has periods when he is fairly good, fairly comfortable mentally. Now, a man that has a cerebral hemorrhage, he is irritable most of the time; in fact, most of the time. The hemorrhage hasn't cleared, it is there all the time. His condition day in and day out is practically the same. In other words he is not as comfortable at periods as Mr. Price is at times.

Q. Is that the only thing in your judgment distinguishes Mr. Price's condition from a condition arising from cerebral hemorrhage not caused by external violence? A. No, sir; he has no physical signs of cerebral hemorrhage.

Q. No hemorrhage on the dura? A. No, sir.

Q. You would say then, that this external violence did not cause hemorrhage in Mr. Price's case? A. I don't know.

Q. You don't know. Well, what would be the difference in the effect of the hemorrhage if it were caused by external violence and if it were a spontaneous bursting of a blood vessel? A. There would not be much difference.

Q. There would not be much difference? A. No.

Q. There would not be any difference, would there? A. I don't believe so.

Q. Yet you can't tell whether Mr. Price has had hemorrhage or not? A. I say I don't think he has because he has no physical signs of it. A man with a cerebral hemorrhage and spontaneous cerebral hemorrhage would show evidences of paralysis of one side.

Q. Always? A. Practically always.

Q. Well, would he always? A. The hemorrhage might be so minute that he wouldn't.

Q. And yet he would show lack of orientation? A. Very apt to, yes.

Q. And lack of memory? A. Yes.

Q. And lack of ability to concentrate? A. Yes.

Q. And lack of ability to express himself? A. Yes.

Q. Forgetfulness of time? A. Yes.

Q. Forgetfulness of names of his friends? A. Yes.

Q. And forgetting things that had been recently stated to him, and an effort been made to impress those things on his mind? A. If he didn't concentrate.

Q. If at that time he didn't concentrate. If you saw a man exhibiting those symptomes would you be able to say whether that condition was caused by spontaneous hemorrhage or by a hemorrhage caused by extrnal violence? A. If I had no other evidence I would say so.

Q. You say that you couldn't tell— didn't you? A. I said if I had no other evidence.

Q. Now, do you mean to testify, Doctor, that persons who are suffering from a spontaneous cerebral hemorrhage of any kind do not show differences in their condition? A. Very seldom.

Q. Very seldom? Have you seen many cases of that kind? A. Yes, sir.

Q. And have you seen any or none of those cases which did exhibit differences of condition? A. No, sir.

Q. Not one? A. No, sir.

Q. Not one? A. No, sir.

Q. Do not people suffering from spontaneous hemorrhage improve in condition? A. Yes, sir.

Q. And then get worse again? A. If they have another hemorrhage.

Q. Yes, of course. A. That is another hemorrhage. That is not the primary hemorrhage that you are talking of. If a man has a hemorrhage and that hemorrhage is not absorbed his condition is continuous day in and day out. If the hemorrhage is absorbed he is liable to get better. But before he gets worse he has another hemorrhage, which is another distinct rupture.

Q. Suppose a man had a rupture due to external violence might it not be that that hemorrhage would be repeated, that there would be a new hemorrhage? A. If he was struck again?

Q. Well, if he were not struck again? A. It is possible in a man of elderly years; but in a man who has not yet reached the age of forty it is very improbable.

Q. It is very improbable? A. That he would have a hemorrhage of the vessels; in other words, unless he has a diseased condition of the vessels there it would be improbable that he would have a hemorrhage.

Q. My question is this, Doctor: Assume that a man has had a trauma which caused cerebral hemorrhage, is he not likely to have a second hemorrhage in the same place? A. If the walls of the vessel have been broken by the blow he is liable to have another hemorrhage.

Q. Now, if he is suffering from a trauma resulting in cerebral hemorrhage, and he gets better and then there is a second cerebral hemorrhage due to the trauma, then he will become worse again, will he not? A. Yes.

Q. And that is just as true as it is in the case of a spontaneous hemorrhage? A. No. Hemorrhage due to the trauma—this man Price gets better in twenty-four hours. In a cerebral hemorrhage if the hemorrhage is being absorbed his improvement is gradual, slow; but in this case of

Price he will get better in twenty-four hours, clear up, and the very next day be worse; so you cannot have a hemorrhage to-day and none to-morrow, and another hemorrhage the next day.

Q. Do those conditions occur after two years, say? A. What conditions?

Mr. Simpson: What condition?

Q. The conditions you have just been describing? A. This has been a continuous affair since he has been in, four years.

Q. Does this man show any evidence of intracranial pressure? A. Not that I could find.

Q. None whatever? A. No, sir.

Q. Never has shown any, has he? A. No, sir.

Q. Have you made an examination of the optic disks? A. Yes, sir.

Q. And what does that disclose? A. I found the vessels normal.

Q. Don't they show any indication of anything —of any cranial pressure, intracranial pressure? A. No, sir.

Q. Never at any time? A. No, sir.

Q. What is the condition of the brain of Mr. Price that has produced this injury which you think he is suffering from?

Mr. Simpson: Will you read that question?

Q. (Repeated by the stenographer.) What is the condition of the brain of Mr. Price that has produced this injury which you think he is suffering from?

Mr. Simpson: He wants to know the condition of the brain.

Mr. Carey: I will put it a little differently.

Q. First, what was the condition of Mr. Price's brain which was produced by the injury from

which you think he suffered? A. I believe when Mr. Price was struck on the head that he got a cerebral commotion, a commotion of not only the molecules or brain cells, but of the brain and the mass, the whole brain; in other words, it got a general shaking up and that brain has not been able to right itself since.

Q. And is it your belief that there was no hemorrhage accompanying that? A. I had no evidence of any hemorrhage; therefore it is my belief that there was none.

Q. How do you explain the variability of his condition? A. His actions day in and day out.

Q. Yes. A. The man is insane.

Q. But the brain was shaken up, you say? A. Yes.

Q. And injured? A. Yes.

Q. And does he get over that injury for a day and then that injury from the old trauma come back again? A. I don't believe so.

Q. What then accounts for the variation in his condition? A. I suppose there are times when he holds himself and tries hard that he is able to be more comfortable—when he tries and tries hard; but the effect of trying will throw him back the next day, and throw him back sometimes further than he was before he tried. Mr. Price makes an effort to get well, tries his hardest, does everything that we ask him in the line of treatment—surely tries.

Q. And yet when these different conditions prevail there is no difference in the condition of the brain. Is that your theory? A. Oh, the brain is more active on its comfortable days. His brain is functioning. His brain is working.

Q. You say the brain has been shaken up and injured? A. Yes.

Q. Well, that injury continues all the time, does it, to the same extent? A. Not to the same extent.

Q. Well, what is the change? How does it become better? A. Why, these molecules or brain cells sometimes work, function.

Q. Settle down, don't they? A. Yes.

Q. From the shake-up? A. Oh, no, don't settle down; but for the time being they function.

Q. Well, do they function in their shaken out condition? A. They function but not normally.

Q. There are times when you say they function pretty normally? A. Yes, yes.

Q. Is that so? A. Yes.

Q. Then do they shake down from a settled up condition? A. To a certain extent. But the effort on his part to appear normal and be normal spoils the effect of the molecules again; brings it on again, in other words.

Q. You saw Mr. Price on the day that Dr. Beling and Dr. Kirby examined him? A. For about a minute.

Q. You saw him before he was examined? A. When I made my rounds in the morning.

Q. Was he at that time competent to give reliable testimony do you think? A. I don't think so.

Q. He was very much better to-day, was he? A. He had a comfortable day to-day.

Q. Very much better? A. Not better. His general condition is not better. His improvement to-day is but temporary. He is having one of his comfortable days. If you want me to say he is better or let you think that I think he has improved mentally I cannot answer it that way. It is a temporary remission.

Q. Do you think his mind is under his voluntary control? A. No, sir.

Q. Was it on April 2nd? A. What is that?

Q. Was it on April 2nd—when you saw him here on April 2nd? A. I remember riding over with him; I didn't see him around here.

Q. Was it to-day? A. Somewhat under his will to-day; not fully, though.

Q. Was it on the day of the examination by Dr. Kirby and Dr. Beling? A. I was not present at the examination.

Q. Well, as you saw him on that day? A. In the morning before the doctors appeared?

Q. Yes. A. No, sir.

Q. Did you ever hear Mr. Price say that he had been struck on the head with a hammer? A. No, sir.

Q. Never heard that? A. I did hear him say it was as if he had been hit with a hammer.

Q. When did you hear him say that? A. On some of my numerous examinations.

Q. Before or after you testified on the last trial? A. What is that?

Q. Before or after you testified on the last trial? A. It would be impossible for me to say. I have seen him hundreds of times, Mr. Carey. You see, it would be impossible for me to put a day on it. He has said to me that this pain in the side of his head, this rising up——

Q. Never mind that.

Mr. Simpson: That is something he does not want.

Mr. Carey: Very well. We will let the doctor tell if he has something interesting.

The Court: The door is open now, doctor. Go through.

The Witness: He has said at times when this pain is severe in his head that there is a rising up almost of his bones. He feels as if there was a rising up of almost his bones, as if he was being struck with a hammer.

Q. And isn't that a pulsation of a localized hemorrhage? A. I don't believe so.

Q. You do not believe so. A. No.

Q. What is it? A. I think it is due to the pain in his head.

Q. You think that is real, don't you? A. Yes, sir.

Q. That he has those feelings? A. Yes, sir.

Q. And those very feelings could arise from a localized hemorrhage, could they not? A. They might.

Q. Haven't you known patients to complain of symptoms of that kind who did have localized hemorrhage? A. Yes.

Q. Frequently? A. No, sir.

Q. Now, Doctor, when did you first hear Mr. Price give a rational account of the way he was injured? A. It was perhaps about a month or two after he was admitted to the institution.

Q. And frequently after that time? A. He would talk about it any time practically, when he was having one of his comfortable days.

Q. And after that first occasion which you say was a month or two after he came there, did he frequently talk to you in the same way about his accident? A. Yes.

Q. You heard Dr. Evans testify on the former trial, did you not, Dr. McMurray? A. Yes, sir.

Q. And you heard him testify to Mr. Price being brought into his room just a day or so before Dr. Evans came down here to testify, did you not? A. Yes, sir.

Q. Were you present at that time? A. No, sir; that occurred about nine o'clock in the evening, I think.

Q. Yes. You didn't hear that? A. I heard him testify to that. I was not present at the time——

Q. You didn't hear the conversation between Dr. Evans and Mr. Price? A. No.

Q. Now at that time had Mr. Price given as lucid an account of his injury as he has given of it —I am referring now to the time when he first spoke to you—give you a clear statement of how he was injured? A. I don't know what he said to Dr. Evans. I wasn't there.

Q. You do not understand my question. A. At that time about——

Q. You spoke of the time when Mr. Price gave to you a lucid account of his injury; the first time? A. About a month or two after he came in.

Q. On that occasion did he speak as clearly and as rationally as he has since that time? A. He did, yes.

Q. And did he go into details as fully as he has to you since that first occasion? A. He varies very, very little.

Q. And on how many different occasions between that time and the time when you testified here before had he given you that clear statement of his condition—of his injury? A. No way of telling.

Q. What is it? A. There is no way of telling. On a number of occasions.

Q. On a number of occasions? A. Yes.

Q. And he had before you testified here on the former occasion? A. Yes, to my best recollection.

(Recess to 10 o'clock A. M. April 8, 1919.)

April 8, 1919, 10 A. M., Trial resumed.

DR. MCMURRAY, recalled.

Cross Examination by Mr. Carey, (continued):

Q. Doctor, you say that a lucid account of the

events leading up to the meeting of these two engines was given by the plaintiff to you within about two months after he came to the hospital? A. About three or four months.

Q. About three or four months? A. Yes.

Q. And did you enter that in the records of the hospital? A. I am not sure.

Q. You are not sure about it. Was that an important thing? A. Yes.

Q. It is one of the things which you strive to learn as soon as possible, is it not—what has caused the condition of the patient? A. Yes.

Q. And in order to learn that you find out the history of the patient? A. Yes, sir.

Q. And find out from him as promptly as you can all the information he can give you about it? A. Yes, sir.

Q. And when you get anything definite along those lines you regard that as a very important thing? A. Yes, sir.

Q. Did you report it to Dr. Evans? A. I believe I did.

Q. As soon as it occurred? A. I cannot say as to that.

Q. Don't you know whether you did or not report it to him? A. I think I reported it to him but when I reported it to him I cannot say; I have three or four hundred cases that I examine day in and day out. It would be impossible for me to say when I told Dr. Evans a certain thing.

Q. Isn't it your custom to report important matters of that kind relative to patients in your charge—— A. Yes, sir.

Q. ——to the director of the hospital? A. Yes, sir; and I have already told you I did report it; but for you to ask me when I did report it——

Q. Well, would you say within a month of the time when it first came to your knowledge? A. I cannot say.

Q. Can you give us any idea at all? A. I cannot say. I know I reported it. When, I do not know.

Q. Did you report it within a year of the time? A. Yes, sir.

Q. Less than a year? A. I cannot say positively.

Q. Were you present on any occasions when Dr. Evans was under examination? A. Not to my recollection.

Q. Have you ever seen Mr. Price clearer in mind than he was when he was under examination yesterday in court? A. No, sir.

Q. Have you seen him when he had any better recollection? A. No, sir.

Q. Have you ever seen him when he had any better concentration? A. I have seen him when he had as good concentration.

Q. Have you ever seen him when he had any better than yesterday? A. No.

Q. Have you frequently seen him when he had as good concentration? A. I would not say frequently. I have seen him when he could concentrate.

Q. And was he in a condition on Wednesday—was he in good condition on Wednesday of last week? A. I could not say positively.

Q. You saw him, didn't you? A. Yes; he came to court——

Q. Yes. A. I think he was fairly good. He acted fairly good coming over in the car.

Q. And on Thursday also? A. Why, on Thursday he was somewhat confused. Somewhat excited and restless. I think he was extremely apprehensive; he didn't seem to know what was going to happen to him after he got here, not having been in a court room in some time, in fact, not having been far from the institution, he was rather unnerved for a while.

Q. Yes. And still he remained in fairly good condition on Thursday, did he? A. With the exception of——

Q. Yes, and the unnerving was no more than what might be expected? A. In this man.

Q. Is that so? A. In this man, in an insane man.

Q. And you have known people who are not insane to be unnerved when they faced an examination in court, have you not? A. Very often, sir.

Q. Never had any experience of that kind, did you? A. I may have. I do not care for the courts myself, Mr. Carey. I do not seek it.

Q. During the examination was Mr. Price practically normal on the stand? A. No, sir.

Q. What? A. No, sir.

Q. Was he normal as to recollection? A. As to past events.

Q. What is it? A. As to past events.

Q. Well, by past events you refer to what events, before or after his—— A. Before his accident.

Q. Before his accident? A. Yes.

Q. And was he oriented properly? A. He was oriented as to the year. He was unable to tell the day, if I remember correctly.

Q. Did you notice anything else in his orientation that was not normal except that one incident that you speak of? A. That is the only thing I can remember.

Q. Otherwise his orientation was normal? A. For the place it was normal, because he had been coming here two or three days. The first day I don't believe he knew where he was going, and I don't believe he knew what the trouble was.

Q. (Repeated by the stenographer.) Otherwise his orientation was normal?

Mr. Carey: That can be answered by "Yes"

or "No". I move that the witness' former answer be stricken out as not responsive.

The Court: It may be stricken out.

Q. Now, will you answer the question, Doctor? A. Do you want "Yes" or "No"?

Q. Yes. A. I cannot say a man is oriented if he does not know the day or the week.

Q. The question is, with the exception of that one thing which you have mentioned, his orientation was normal? A. Yes, on the stand.

Q. While he was on the stand, yes. In 1917—in November, 1917, did you hear Dr. Evans testify that his orientation was always bad? A. I have no recollection of it.

Q. You have no recollection? A. I have heard him testify. I do not remember exactly what he said.

Q. The condition of the witness was good yesterday on the stand? A. Fairly good.

Q. And his memory such as to enable him to answer questions freely? A. For past events.

Q. And accurately? A. For past events.

Q. Now, to retain question and answer the mind must be alert? A. Yes.

Mr. Carey: That is all.

Re-direct Examination by Mr. Simpson:

Q. Doctor, what are the symptoms—Mr. Carey asked you to give certain symptoms—what are the symptoms of this traumatic insanity?

Mr. Carey. The doctor gave that on his direction examination, didn't he?

The Court: I have no recollection. I do not know whether he did or not.

Mr. Carey. Haven't you been over that, Mr. Simpson?

Mr. Simpson: No, you asked him about cer-

tain things on your cross. I have not asked him about the symptoms.

Mr. Carey: All right.

Q. What are the symptoms of this traumatic insanity? A. This man complains of severe pain in his head, queer feeling. He has hallucinations which are auditory in character. He hears the whistles of engines; he hears steam from the engines. He has great fear at times. He has a special aversion and fear for an engine. He was formerly a railroad man. You would naturally think that if a train came along that he would be interested in it. Now, only a week ago we had a wreck upon one of our switches that goes into the institution and Mr. Price instead of going over and looking for—

Mr. Carey: Well, if the court please, it seems to me this is going outside of the redirect examination.

Mr. Simpson: What is the condition?

The Court: It is not redirect, I should say.

Mr. Simpson: Well, that is in the discretion of the court. I say it is redirect because he asked him on cross examination.

The Court: Go ahead.

The Witness: I was watching Mr. Price at the time. Now, the normal thing, it seems to me, for a railroad man—an old railroad man—would have been to go down and watch this wreckage, especially as he had been away from the railroad for two or three years—four years.

Mr. Carey: If the court please, this is more or less an argument.

The Witness: It is not an argument. Now—

The Court: Very well, Mr. Carey. Take your exception to it.

Mr. Simpson: I do not care what you think

about it. Tell the court and jury what you saw him do, that, the symptoms.

The Witness: He ran across the yard in great fear and I followed him into the ward, and he had gone into the room and shut his door. He was in there trembling, perspiring, fear written all over his face.

Q. How long ago is that? A. That was only a few days ago. A week ago.

Q. And this railroad is right on the hospital grounds? A. The track comes in on the hospital grounds.

Q. Now, you were present with Dr. Kirby, you said, and Dr. Beling, when this examination on the 28th of March, of Price, was made, weren't you? A. No, sir.

Q. Didn't you go in and out at all? A. I went in once.

Q. Have you experience with eyes? Have you studied deseases of the eye? A. I have studied the eye fields of most of the patients that have come under me.

Q. Now, they said something to you yesterday, asked you if this man had choked disks. You are familiar enough with the eye to know whether he had a choked disk. A. Yes.

Q. And did he have a choked disk? A. The man had normal eyes.

Q. This case of hemorrhage, spontaneous hemorrhage that they are talking about, have you ever known it to occur in a man of Price's age and a man of normal condition of health? A. No, sir. It is preposterous, almost, to think.

Q. What? A. It is preposterous, almost, to think that a man in perfect health would have a spontaneous rupture of a blood vessel in his brain.

Q. And if he did have a spontaneous rupture of

his brain, it would not tear his hat, would it? A. Not very well.

Mr. Simpson: That is all.

Recross-examination by Mr. Carey:

Q. Haven't you had experience with a person who appeared to be in good health having a spontaneous hemorrhage of a blood vessel in the head?

Mr. Simpson: Well, I object to that unless he makes that clear—"A person appearing to be in good health"—unless he makes it appear that the doctor has made an examination or casual examination. It seems to me that is ambiguous. He does not say what he means by a person appearing to be in good health.

Mr. Carey: Good general health to a physician or a layman.

The Court: I suppose the physician would take it as appearing to be in good health to a physician, one skilled. Now, read the question.

Q. (Repeated by the stenographer.) Haven't you had experience with a person who appeared to be in good health having a spontaneous hemorrhage of a blood vessel in the head? A. Not under the age of forty.

Q. Never under the age of forty? A. No, sir.

Q. Have you had any experience or connection with a case in which the history of the person was that of good health and in which there was a spontaneous rupture of a blood vessel in the head when the patient was under the age of forty? A. No, sir.

Q. You have had such cases where the patient was over the age of forty? A. Not without an underlying disease. I mean by that that the man over the age of forty must have had an arterior sclerosis, must have had some condition of his

kidneys; he must have had some condition of his heart which would affect the arteries of the brain and weaken them so as to bring on a spontaneous hemorrhage; or he must have had syphilis.

Q. Now, is it not a fact that there are cases frequently of spontaneous rupture of a blood vessel where the patient had not exhibited any symptoms of these various things which you have just mentioned? A. Not to my knowledge.

Q. Not to your knowledge; not within your experience? A. No, sir.

Q. And in all cases in which you have had any experience there have been evidences of some condition preceding a spontaneous rupture of a blood vessel? A. Yes, sir.

Q. Now, when did you say the examination of the eye was which you had made? A. When did I say.

The Court: What?

The Witness: I found both eyes perfectly normal both as to vision. I found the field normal.

Q. The what? A. The field. I found the vessels normal.

Q. When did you last make an examination of them? A. Last evening.

Mr. Carey: That is all.

By Mr. Simpson:

Q. Do you know whether Price's kidneys are normal? A. Yes, sir.

Q. And his circulating system is normal? A. Yes, sir.

Q. And I understand you to say that if his kidneys are normal and his circulatory system is normal at his age a spontaneous hemorrhage in your opinion would be impossible? A. That does not quite cover it, Mr. Simpson.

Q. Well, what else does it cover? A. A man might have had syphilis.

Q. You had a Wassermann made of it? A. Yes. He might have a heart condition, a condition of calcareous——

Q. Has he heart trouble? A. No; there is absolutely nothing in this man's case that would account for spontaneous hemorrhage. This man at the time of his accident was in perfect physical health, absolutely, a big, strong, muscular man. You saw him here. There is no evidence of arterio scleosis. There is no evidence of kidney condition. There is no evidence of heart condition. There is absolutely no evidence of syphilis. We had numerous Wassermans made. There is absolutely no evidence of syphilis. We have had the spinal fluid tested time and time again. Now, then, knowing those facts a man cannot conscientiously say that this man has had a spontaneous rupture of a vessel. It is preposterous—well, it is beyond my understanding.

Q. I know, but what I want to know is, in your opinion it is not in any case a spontaneous hemorrhage? A. No.

Mr. Simpson: That is all.

By Mr. Carey:

Q. Would unusual strain produce a spontaneous bursting of a blood vessel in the head? A. Not in a normal man.

Q. Never? A. No, sir.

Q. And exposure to gas and heat in a tunnel? A. If he stayed there for hours and hours and hours he might become asphyxiated, and he might have a rupture of the vessel. I would say no.

Q. You don't know anything about the physicial condition of this man at the time of this occurrence, do you? A. No, sir.

Q. And you didn't see him until months afterwards? A. I saw him—the accident, I believe, happened in February. I saw him in April.

Q. Two months afterwards?

Mr. Carey: That is all.

Mr. Simpson: That is all, doctor.

(Witness excused.)

BRITTON D. EVANS, sworn.

Direct Examination by Mr. Simpson:

Q. Doctor, you are head of the Morris Plains Hospital for the Insane? A. I am.

Q. And how many patients are there in that hospital now? A. About twenty-seven hundred.

Q. And how long have you been head of that hospital? A. Since June, 1892.

Q. How many people have passed through your hands, that is under your administration—insane people—in your career?

Mr. Carey: I am willing to admit Dr. Evan's qualifications.

A. I have never figured that out definitely. There are from day to day approximately two thousand there; an average of that since I went there.

Q. Now, is Charles Price now confined in your hospital? A. He is.

Q. What is his mental condition? A. He is a man of unsound mind.

Q. And in your opinion what kind of insanity is he suffering from? A. Traumatic psychosis.

Q. And what are the symptoms of that?

The Court: You put that question the same

now as you did to Dr. McMurray. I was in doubt whether you meant what are the symptoms of Mr. Price, or what are the symptoms generally of that?

Mr. Simpson: Well, I will add the symptoms evidenced by Mr. Price.

Q. What are they? A. I may say that Mr. Price's case is a fairly typical one. Which way is it? Of Mr. Price?

The Court: Yes. What are the symptoms evidenced by Mr. Price of that class of insanity?

The Witness: Mr. Price's mental disorder is evidenced by a continuous complaint of pain in the head, particularly on the left side of the head, where he contends the injury was sustained. He is apprehensive, highly nervous and emotional. He breaks out into perspiration without any outward apparent cause. He has the history of traumatism. He has no evidence of having any serious systemic disease before the traumatism or accident. He cries at one time and is depressed, and at other times he seems to be fairly cheerful, with the exception of his pain, and slight apprehension and disorientation. He is very much more cheerful. His conversation is coherent—more coherent and he is more companionable. You can talk to him and he will in a fair measure be responsive. Maybe the next day he is sullen, inclined to be even pugnacious. The noises of a locomotive are repugnant to him; in fact, the whistle or sound of a locomotive or of a train puts him in a state of apprehension as if something was about to happen. He complains of something like steam pumping up in

his head. He has hallucinations of an audial or of a hearing character. These sounds that come into his head he describes as pumping, beating, throbbing, hammering; and when they are intensive he gets very nervous, very much upset, and shakes all over like an aspen leaf. Now, these symptoms in the absence of any history or any evidence of disease of the arterial systems, any disease of the blood vessels, from any source whatever that we have been able to determine, with a clear history of an accident, and with this symptomatology, makes to my mind a clear diagnosis of an insanity or psychosis due to injury of the brain.

Q. Now, you have excluded this hypothesis of spontaneous hemorrhage from your diagnosis, haven't you? You exclude that? A. I have. I do not think it is within the range of possibility hardly.

Q. Now, will you explain to the jury why you exclude this theory of spontaneous hemorrhage from his case? A. A spontaneous hemorrhage must exist because the blood vessel at some point —if it is within the brain or within the cranium it is called intercranial—but wherever a blood vessel breaks, and particularly in the brain which is encased by a bony skull—whenever it breaks in there it must be due to violence or to a diseased weakness of the blood vessel, or the vessel which is carrying the blood. It may be due to syphilitic disease. Now, our hemorrhages and the organic dementias that follow are in great evidence in syphilitic trouble. In old people where you have an arterio sclerosis—that is, a hardening, a patholigical hardening of the blood vessels; it is brittle—if the heart pumps strong the brittle ves-

sel or canal through which the blood goes breaks; but there is a diseased condition, and that rarely happens—rarely happens (that is, arterior sclerosis) except in people of more or less advanced age. We have what is known as a sort of chalky or calcareous degeneration of the arteries, and many people have felt them, the beady arteries of the old people; you can feel a regular row of beads down the radial artery, the artery here in the wrist. The arteries are weak under those conditions and may break. There are diseases which suggest a weakness of the arteries or diseased condition of the arteries. I have spoken of syphilis. I have spoken of the two principle degenerative processes in their general way. Now, next comes direct or indirect violence, which causes it, and that is not due to the condition of the vessels. Of course, a diseased vessel would break much more readily under violence than a healthy vessel. Those degenerative processes generally take place in advanced age.

Q. Will these conditions you have described, such as syphilis and arterio sclerosis and these other conditions—if they existed in Price before the 16th of February, 1915, would you find them in him when you examined him in your hospital? Would they persist? A. They would still be present, yes.

Q. Now, are there any such conditions present in him—syphilis or hardening of the arteries, any of those conditions? A. Absolutely none.

Q. And that is the reason that you exclude spontaneous hemorrhage from your diagnosis? A. Yes; I exclude it from another standpoint; if there were a spontaneous hemorrhage or a hemorrhage of any considerable magnitude you would find it most likely in evidences of the blood in the cerebro-spinal fluid. We have examined the fluid a num-

ber of times and we have not found any bloody content.

Q. Is that a recognized test for discovering these? A. It is a very reliable test.

Q. Now, in your opinion is this man curable? That is, will he ever completely regain his reason? A. In my opinion he never will.

Q. And why is it necessary to confine him in your hospital or asylum? A. It is especially necessary because in his outbursts of temper he is a dangerous man, and he has on several occasions spoken of ending it all by suicide. It is a matter of protection to himself, of protection to his family and society at large that he is held in the institution.

Q. And do you think then that as long as he lives he will have to be confined in some place for the insane? A. In my opinion he will.

Q. Is it uncommon for a man who is suffering with this disease to have intervals in which his mind is not as good as at other times? A. From the standpoint of the laity it is; and the outward exhibitions, as far as we are able to analyze them, are to the effect that the individual gives a better and clearer or sounder manifestation of mind presentation. The pathological conditions are possibly not (I would say in most cases and especially in a case like this) positively not materially changed. Surroundings, temperamental conditions, mental impressions and bodily conditions—all of those enter into a man's temperamental exhibitions, just as it does into a sane man's. An insane man is upset by an over-meal, or by hearing something that is depressing or disturbing, just as a sane man is, and my brain may functionate very clearly to-day, but under some special strain or stress of conditions that I had not looked for, functionate very poorly for me, for what is my

limited standpoint. And so it is with insane people of every form of mental derangement or aberration, and you cannot take one case and isolate it and say that you know of eight or ten other cases that are exactly alike. You can in some particulars, but as a whole not. There is a personal equation that enters into all of them.

Q. I noticed yesterday when he was on the stand he was continually mopping his forehead. What did that indicate? A. Well, he breaks out into those perspirations. These prespiratory glands are largely under the control of the sympathetic nervous system, and his smypathetic nervous system is certainly greatly deranged. If it is correct for me to say this, so as not to talk about something that the jury is not supposed to understand —the sympathetic nervous system as the layman knows about it is something that presides over the emotions. It does more than that, but it enters into our emotions. We see evidences of it when people are blanched by fear, and when they blush with shame, and so on; so that it controls the lumen of the blood vessels and the various portions of the apparatus of the body of great importance. But, at any rate, temperamentally we are largely under the influence of the nervous system, and the shaking up that he got and the injury that he sustained I believe have materially disarranged his sympathetic nervous system as well as his cerebro-spinal system, more particularly his——

Q. What would you say about his ability to go out even as an insane man—could he go out and earn his living? A. He could not.

Q. Why not? A. Why, he is unable to concentrate, and if his business called him anywhere—if he attempted business and something unpleasant happened, he would go all to pieces. He cannot orient himself as to dates and incidents as to

their relation to dates, the length of time that he is occupied here or there. He does not know one morning after another what day of the month it is until he looks at the newspaper or gets somebody to tell him and puts it in his pocket so as to remind him to be reminded of it. He gets excited and shows evidence of a violent disposition. He couldn't work and earn a living with that. He couldn't hold a position. He cannot concentrate his mind any length of time if left alone unstimulated by questions, the initiative being provided for him. He cannot concentrate himself any length of time or long enough to produce anything that would mean a value in making for his livelihood or sustenance.

Q. Well, in your opinion, if on the 16th of February, 1915, he was a fireman in a locomotive and leaned out of the window and was struck by an iron bar in passing in the opposite direction, in your opinion would that cause his condition? A. I do believe that that caused his condition, or something of that form.

Q. Force. Cross examine.

Cross Examination by Mr. Carey:

Q. You spoke about Mr. Price perspiring on the stand yesterday and stated that that was due to the condition of his smypathetic nervous system? A. Yes, the mental impressions in turn acting through the sympathetic nervous system I think had largely to do with it; but he perspires when there are no evidences of his being under strain at all. He gets clammy hands at the same time, and cold forehead, cold feet.

Q. He didn't perspire excessively yesterday on the stand? A. No, not near so much as I have seen him. He perspired. He kept mopping his face. I kept watching him very closely.

Q. Not as much as an ordinary person would under cross examination? A. I don't know about an ordinary person. I cannot testify as to an ordinary person. I can testify that some persons testify and perspire quite freely, and that others do not perspire at all. There is no standard in perspiration on the witness stand.

Q. Now, did you notice another indication yesterday of affection of the sympathetic nervous system while he was under cross examination? A. Yes; he was emotional. His hand up to his head; and at times he was looking right before him. On one occasion when you were talking to him he didn't know—you walked over and he jumped that way.

Q. I didn't notice that. A. I did.

Q. He knew where he was yesterday? A. He said he did.

Q. And he said correctly, did he not? A. Well, what he said was true as to where he was.

Q. He said he was in the Jersey City Court House? A. Yes.

Q. And that he came down here to testify in this case? A. Yes, that is right.

Q. He came down in an automobile? A. That was correct.

Q. And he told the truth? A. Yes.

Q. And he told the month? A. Yes.

Q. The only thing he failed on was the day of the week, was it not? A. No, sir; he failed——

Q. In his orientation? A. He failed a dozen times, more than a dozen times on the stand, and not as to the day of the week at all. That was not the one instance in which he failed.

Q. What does orientation mean, doctor? A. The power of a person to adjust himself normally in his relation to things, person, place, and to surroundings, environment.

Q. As to time it means ability to tell the day and the month and the year, and the time of day? A. Yes, relation to things; not involved, abstract things.

Q. And place means a recognition of the place where he is and his surroundings? A. Yes; it does so far as it relates to the particular incident at the time you are speaking. But that does not cover a man's life, nor his morbid condition at other times.

Q. As to person what does orientation include? A. His failure to recognize normally persons about him whom he is supposed to—whom a normal person would be supposed to recognize.

Q. Well, that is disorientation, isn't it, when he fails? A. When he fails, yes.

Q. Orientation is a proper recognition of a person with whom he is acquainted and who appears before him? A. Yes, generally that.

Q. And yesterday he recognized you? A. I believe he did.

Q. And Dr. McMurray? A. Yes.

Q. And he recognized Mr. Lee? A. Yes.

Q. One of the engineers of the New York Central Railroad? A. Yes, I think he did. I cannot verify it. He said he did. I don't know Mr. Lee.

Q. He said that the man who was conductor was a little fellow named Tommy Hicks? A. Yes. That didn't mean anything to me without you brought Tommy Hicks before him and he said, "This is Tommy Hicks."

Q. Well——

Mr. Carey: Will Tommy Hicks please stand up?

The Witness: Now, then you want Mr. Price here to recognize him, before you make your argument complete. Mr. Price is not here.

Q. Well, I was not going to that phase of the case. But when I asked him if he saw Mr. Hicks in the court room he said that he did, didn't he? A. He did, according to my recollection.

Q. He said he was a little fellow? A. I think so.

Q. And Tommy is rather a small man, isn't he? A. A pretty stocky little fellow.

Q. Not tall? A. No.

Mr. Simpson: Well, isn't that self evident whether he is or not? You put him on exhibition before the jury. They can tell whether he is big or not.

Q. So far as he described Mr. Hicks, he described him correctly? A. Well, I don't consider that a description to simply say a little man.

Q. Just a moment, please. So far as he did describe him he described him correctly? A. Oh, in common conversation, yes. There is nothing accurate about it and it does not show any mental grasp or mental power.

Q. He was not giving a detailed description of the man; I don't mean that; but so far as he expressed himself he expressed himself correctly? A. Well, in a general way, yes; I don't see anything to it.

Q. And he recognized Mr. Hinckley? A. How is that?

Q. He recognized Mr. Hinckley, the fireman? A. He said he did, yes.

Q. And have you any doubt he was telling the truth? A. I don't know whether his identification was correct or not.

Q. Well, have you any doubt but what he was telling the truth. A. I don't know. It is a matter of not knowing. It is not a matter of doubting his veracity.

Q. He knew who was on the engine with him? A. I know he said somebody was on the engine with him.

Q. Yes, and he called the name Mr. Foster? A. Yes, I remember distinctly that he called the name Mr. Foster.

Q. And Mr. Foster you heard testify on the stand, and he testified that he was on the engine with Mr. Price? A. I don't know whether I heard Mr. Foster testify or not, whether I was in the room when he testified or not; I don't recall that.

Q. During his examination yesterday, both direct and cross, did he have good attention? A. A part of the time, not all of the time.

Q. Not all of the time? A. The time when he jumped, when he was asked the question the second time, or when he recovered himself that he was being talked to, he was not certainly exhibiting normal attention at that time.

Q. Any other time that you noticed? A. Well, the way he looked around. It was quite an effort on his part, according to my judgment and from my observation, for him to grasp the number of the questions that were simply in all their details. He seemed to struggle to get hold of them.

Q. You didn't think that he seemed to answer promply; is that it? A. There was some retardation at times, yes.

Q. Not all of the time? A. Much of the time he answered promply, and his answers were responsive.

Q. Much of the time he showed good attention? A. Yes, fairly good attention, I should say.

Q. And much of the time he showed good concentration of mind? A. I don't think that I could say that he exhibited anything like normal concentration of mind, no.

Q. You call his concentration yesterday bad?

A. I don't call it good. It was good for him, very good for him.

Q. Do you call it bad? A. I don't call it normal, and when anything is not normal mentally it is bad.

Q. Well, why don't you say yesterday it was bad? A. Because I want it distinctly understood.

Q. Well, was it bad? A. It was bad from the standpoint of a normal——

Q. All through the examination? A. Well, you cannot positively weigh concentration, or measure it. You judge by the outward signs. The word expression——

Q. Just a moment, please.

Mr. Simpson: I object to this "Just a moment, please."

The Witness: I have to qualify answers. Without the court forces me I will not be led into a series of conclusions which I do not want to subscribe to and which are not in accord with my knowledge or conscience.

Mr. Carey: If the court please, when an objection is raised the witness should cease speaking.

The Court: What is the objection?

Mr. Carey: The objection is it was not responsive to the question.

The Court: In what respect?

Mr. Carey: Because I asked him whether his concentration was bad throughout the examination.

The Court: Do you think the question should be answered.

Mr. Carey: I think the question should be answered.

The Court: Can you answer it, doctor, truthfully, completely?

The Witness: Not and express myself properly.

The Court: And give a complete and truthful answer?

The Witness: No, sir.

The Court: I will overrule the objection.

Mr. Carey: The doctor continues by saying it is impossible to weigh concentration. In other words, he apparently is testifying that he cannot tell whether there was concentration or not.

(Question repeated by the stenographer.) Well, why don't you say yesterday it was bad? A. Because I want it distinctly understood.

Q. Well, was it bad? A. It was bad from the standpoint of a normal——

Q. All through the examination? A. Well, you can't positively weigh concentration or measure it. You judge by the outward signs. The word expression——

Mr. Carey: Just a moment, please.

Mr. Simpson: I object to this "Just a moment, please."

The Court: If he is to be stopped there it means nothing to me. I don't know whether it does to you or the jury or not.

Mr. Carey: The point I raise is this: I am directing his attention to his ability to concentrate his mind.

The Court: Yes, and you ask him a question which you say you want answered yes or no, and the witness says he cannot answer it yes or no.

Mr. Carey: He says in substance that the concentration was bad.

The Court: Yes.

Mr. Carey: Now, with that answer in mind I ask him if it was bad all through the examination.

The Court: Yes, and to that question you say you want a yes or no answer?

Mr. Carey: Yes.

The Court: He says he cannot give you that and give you a truthful and complete answer.

Mr. Carey: If he has answered that it was bad it seems to me there is no reason in the world why he should not answer whether it was bad through part of the examination or bad through the whole of the examination.

The Court: I will have to take what the witness tells me. I do not know what his mind is.

Mr. Simpson: We are not getting anywhere, your Honor.

The Court: I will let the doctor answer it the way he wants to. If you wish your exception you may have it.

Mr. Carey: Exception noted.

The Court: I am doing this on what the witness tells me, that he cannot answer your question yes or no, and give you a complete, truthful, understandable answer. Am I correct in what I understand you to say, doctor?

The Witness: That is what I intended to say and what I think I did say.

The Court: Of course, that leaves you in the position, Mr. Carey, where you may withdraw your question if you want to, or otherwise the privilege is extended to the witness to make his explanatory answer.

Mr. Carey: I do not care to withdraw the question, your Honor.

The Court: All right. Then you wish your exception?

Mr. Simpson: Well, there isn't anything excepted yet. He has asked him a question

which has not been eliminated.

The Court: And Mr. Carey stopped him and placed this objection before the court—that it was not a responsive answer.

Mr. Simpson: Well, must he wait until the question is answered, and then move to strike it out and take an exception to it? He can't make these lame objections.

The Court: Well, he has it on the record. Go ahead, doctor, and answer it.

A. There is no way of telling or weighing the amount of concentration that a person has. You weigh the evidences as given to you at the time the matter of concentration is in question. And part of the time he apparently concentrated fairly well for him, or for an insane person; at other times he did not, and I can give you a number of instances if you ask for them. Of course you have not asked for them.

Mr. Carey: Now, if the court please, I ask to have that stricken out as not responsive.

The Court: No, I will decline to strike it out for the reason I have already given, and that reason is based entirely upon what the witness said, and that is the only guide I can possibly have, it seems to me, and I will repeat, as I understood, what he said—that he could not answer that question yes or no, and give a truthful, correct, comprehensive answer.

Mr. Carey: Objection noted.

The Court: You may have it.

Q. Now, you spoke of hallucination, and among them you mentioned the hearing of a whistle—supposed hearing of the whistle, and hearing of the steam sounds—sounds of steam in the head.

Were those the ones you had in mind, doctor? A. Those are the ones I had in mind. They are not well defined hallucinations, however, and no explanation of it has been asked, and that is one instance where I didn't volunteer it.

Q. You say that there was a history of accident in this case? A. Yes; we take the history of every case.

Q. From whom did you get the history? A. We receive the history from several sources; from the physicians—the certifying physicians who gave the history, somewhat in detail, and from Mrs. Price. Those were the chief sources from which the history came.

Q. And you knew at the time, did you not, that the certifying physicians did not see Mr. Price until some four or five weeks after the occurrence? A. No; I didn't know that particular. Those are particulars I do not inquire into—I mean at the time of admission.

Q. You heard Dr. King testify yesterday to the effect that he had not seen Mr. Price until I think it was the 16th of March, following the occurrence? A. I heard him testify yesterday as to the time he saw him. I am not sure as to the exact date.

Q. And who was the other certifying physician? A. Dr. Arthur P. Hasking, I believe.

Q. He has not been examined as a witness? A. Not to my knowledge.

Q. And none of those people who gave you a history of the accident were present at the time of the accident? A. The history as given by them is sworn—in the form of sworn certificates which they give, and which are required by law before a patient may be admitted.

Mr. Carey: Will you repeat the question, please?

Q. (Repeated by the stenographer.) And none of those people who gave you the history of the accident were present at the time of the accident? A. I don't know anything about that.

Mr. Simpson: How can he know that?

Q. They made no claim——

Mr. Simpson: Dr. Evans was not in the railroad pay when this accident occurred.

Q. (Repeated by the stenographer.) They made no claim—— (Mr. Carey, continuing.) When they gave you the history of the accident none of them made any claim that they were present at the time of the alleged accident, did they? A. Now, I cannot answer that with yes or no. In the first place, I didn't have any interview with reference to the history with them, and they didn't give it to me except through a certificate, which I have stated. That is the way I got it—a sworn certificate.

Q. You are speaking now of the certificate of the committing physicians? A. Yes.

Q. Referring now to Mrs. Price, did you have an interview with her? A. Yes, I had several interviews with her.

Q. She did not at any time claim that she was present or saw the accident, did she? A. Not to my knowledge.

Q. No. So that the history of the accident which you have does not show on its face, so far as it is a certificate, that the parties who made the certificate had personal knowledge of an accident? A. I don't remember—I don't believe that they have any such item in them, or statement.

Q. Now, at the time of receiving a trauma producing concussion what is the usual condition of the skin of a person who has suffered a trauma? Is there any symptom of concussion which is manifested by the condition of the skin?

Mr. Simpson: I object to that unless he makes it definite. Do you mean invariably or occasionally?

Mr. Carey: Generally.

A. If there is a special skin symptom I am not familiar with it.

Q. You don't know of any condition of the skin which is indicative of the symptoms of concussion of the brain? A. No; I do not know of a pathognomonic or typical skin symptom. That has not come to my notice. I have seen some evidence of the goose-flesh condition, but I don't know anything about that feature.

Q. Is there a skin symptom in connection with a severe trauma? A. I have answered that that I am not familiar with a skin symptom in trauma, twice.

Q. Nor in a concussion which is produced by trauma? A. I don't remember the skin symptom, I am perfectly frank to say.

Q. What is the condition of the pulse usually in the case of a concussion produced by trauma? A. Is this to have a bearing in Mr. Price's case? I didn't see him in the acute state. I didn't see him until April, two or three months afterwards. None of these symptoms has come before my attention. Or is it a qualifying question? I thought you admitted my qualifications.

Q. Is there usually a pulse system——

Mr. Simpson: Symptom, you mean, don't you?

Q. —pulse symptom manifested following a trauma? A. There is nearly always a weakened pulse followed by a fuller pulse.

Q. And the weakened pulse—just describe that. A. There is no description to be given to it.

Q. What is it? A. I don't know any description to it. It may be intermittent or it may be regular; but it is usually very weak in concussion, in those cases I have seen of it, at one stage. Afterwards it becomes more or less full depending upon the degree.

Q. And when it is weakened it is small in volume isn't it? A. Yes; weakened, small, threadlike.

Q. And what about its rapidity? A. It depends upon the weakness of it as to its rapidity, as a rule.

Q. And it is rapid in inverse proportion to the weakness, is it? A. As a rule, yes, except the weakness or the shock is intense.

Q. Are there any muscle symptoms of trauma? A. There may or may not be.

Q. Ordinarily is there? A. It depends on where the trauma is.

Q. On the head? A. Well, I know; yes, there are symptoms, very decided.

Q. What are they? A. Maybe paralysis.

Q. Relaxation? A. Depends upon the degree of the shock or the intensity of the effect.

Q. Well, if it is a severe trauma? A. How?

Q. If it is a severe trauma? A. Then what?

Q. Are the muscles relaxed, limp? A. Yes, if it is a severe trauma, very frequently they are.

Q. And are there any eye-pupil manifestations? A. Sometimes very relaxed pupil. It depends on where the trauma is. There is no general eye symptom characteristic of trauma that I know of. I have seen traumatic conditions in which there was a dilated pupil. I have seen them in which there was a contracted pupil. I have seen them when there was sluggish eye reflexes and retinal (I mean the eye-ball. That is a plain word and the jury understand it) and the eye moved because of the intensity of it.

Q. In the case of trauma to the head what condition of the pupils would you expect to find? A. I could not tell until I saw the patient.

Q. It might be one or another of different kinds, over the other day; may I ask that?

Q. And temperature following a trauma on the head? A. Usually following—the lower temperature immediately after severe trauma.

Q. If after this alleged trauma in the case of Mr. Price the skin were normal and the pulse normal and the pupil normal and the temperature normal, and all of that was observed within a half hour after the alleged trauma, would that indicate to your mind that there was or was not a trauma in Mr. Price's case? A. That would be no proof to me that there had not been trauma.

Q. Well, would it be any indication? A. In the absence of any symptoms or any account of anything you have nothing upon which to predicate anything. In other words,——

Q. In other words—— A. If I had never seen a clock or couldn't hear a clock tick I couldn't tell whether it was ticking.

Mr. Carey: I object to the clock.

Mr. Simpson: I object to the objection to the clock.

The Witness: I submit you are giving me propositions in which there is nothing to predicate anything.

The Court: Then we would better stop at that, Doctor, until we hear another question.

The Witness: Yes, sir.

Q. Then if you were to examine a person and found that his skin was normal, his pulse normal, his temperature normal, his eye pupils normal, would that mean anything to you at all? A. It is very hard to answer that yes or no. It is a ques-

tion that misrepresents the witness. That is the reason I don't like it. It does not mean that there has not been trauma. It does not mean that there has been trauma. It is a negative proposition.

Q. And so far as those symptoms go they would indicate a normal condition of the person, would they not? A. So far as those symptoms are concerned you present normal symptoms; you indicate nothing abnormal.

Q. And those symptoms you would not expect to find; that is, those normal conditions of these various matters I called your attention to, if the person had received a severe trauma, would you? A. It would not indicate that they had not received a severe trauma. I have seen a man who died in five hours, who had nothing, was playing billiards before and after he got a blow on the head. So those negative symptoms have no value in the case only to mislead.

Q. None whatever? A. None only to mislead; they are not clarifying at all. It is not a clarifying question.

Q. Doctor, you testified in this case in November, 1917, did you not? A. I believe I did.

Q. Is this the same examination that was gone over the other day? A. May I see that?

Q. Yes. A. And this is—it is the same one that I had in my hand before?

Q. You had in your hand something that appeared like these same sheets that you have in your hand now. A. Well, this is the only one I had.

Mr. Simpson: That is the testimony taken at the last trial before your Honor.

Q. Now, referring just for a moment to the examination of Mr. Price yesterday, that examination was rather prolonged, was it not? A. Yes,

I thought it was, unnecessarily prolonged.

Q. Yes, no doubt. And it was an ordeal which would be likely to upset a man if he were inclined, —rather it was an ordeal likely to manifest itself in the man if he were likely to be disturbed by being questioned in that way? A. No. It was a prolonged one. I would like to say——

Q. Careful—— A. ——It hardly deserved the dignity of an ordeal.

Q. Careful, was it? A. The examination?

Q. Yes. A. Oh, I thought it was very careful.

Q. In detail? A. In every particular. I am willing to subscribe to that.

Mr. Simpson What do you want, a certificate of character? Why waste a lot of time with such matters as that.

Q. But if a man had little control over himself emotionally an examination, even careful as that was, would be likely to have its effect upon him, would it not? A. It depends on other conditions along with that. A man will be upset emotionally one day and not another under the same order of trial or ordeal or experience.

Q. Now, in your examination of November, 1917, did you make this statement on page 171, line 15— I will read the question: "In what degree is he unsound mentally now? Is he sufficiently unsound to require his being kept in the hospital, and sufficiently unsound in mind to prevent him from following the normal occupation to make his livelihood?" "He is sufficient unsound mentally to be under care and treatment in some institution where his safety will be guarded, and where the safety of the public will be properly considered and protected, and—well, you did not ask me for what reason." "Well, for what reasons do you say that?" "He has no control over himself emo-

tionally. Much of the time he is very much depressed, at other times he is excited to the point that he would do bodily injury even to his own family, that is in my judgment and is based upon what I have seen of others suffering from a similar form of insanity, and from my personal observation. He is at times very much confused, and emotionally,—the emotional aspect of the man—and I do not mean simply the ordinary emotions, but I mean the emotions as they are allied with mental disorder and the intensity of emotions are such that he is confused, one time crying, and the other time he is worried about the noise he hears, and the noise and sound of a locomotive upsets him. For instance, there is a switch that comes into the back of the institution. Whenever a locomotive or branch engine comes up there, or engine bringing freight, he becomes greatly agitated, and it takes some time before you can get him over this period of agitation; at other times he becomes agitated without that, and says that he can feel part of his head go up and down. I have asked him—I don't want to get beyond——"

"The Court: As I understand, Doctor, you are describing the symptoms."

"The Witness: Yes."

"A. (Continuing.) At other times I would go to and speak to him and he would speak fairly calmly, but as soon as I get into conversation with him, even while he appears calm, he will not be oriented, will not seem to understand where he is, the time of the day, or his environment; and after he has been told emphatically certain propositions and facts, even recently, he does not have an appreciation of their bearings."

A. That I can answer this way: That is a fact as far as it goes, but it is like all other testimony;

it does not make the whole picture; that on frequent occasions that was the fact; but that it was a continuous fact, picture, I didn't mean to say that; and there is where there is a little defect in my manner of expressing myself on that particular occasion.

Q. So that you should have qualified your testimony? A. There should be a little qualification in there, and I would like the privilege of stating the qualification.

Mr. Carey. Well, not just at present.

Mr. Simpson: He does not want that. He will get it.

Q. Now, did you continue your testimony in that instance as follows: "For instance, last night I asked for an interview with him about nine o'clock and had him brought to the reception room so that he would be free from the surroundings of other patients, and be free from any excitement; and he was terribly agitated and he didn't know what was the trouble. 'Well,' I said, 'there is no trouble, my dear man. I just wanted to talk to you?' 'Well,' he said, 'one of the doctors had told him he might have to come to court.' I had not directed any of the doctors to tell him so, but somebody, knowing of it, had told him so; and he said, 'I only want to do good; I am a good man;' and without anything like the inquiry that anybody approaching such a subject,—saying, 'Well, if I have to go to court, why do I have to go to court? What is the issue?' it was not that; he was terribly agitated, and he didn't seem to appreciate the fact, and I told him if I came to court I wanted to know 'whether you want to go along with me?' He said, 'I want to keep as far away from the courts as I can, I have troubles enough.' At some times he sleeps fairly well—"

Mr. Simpson: "At some periods."

"Q. (Continuing.) At some periods he sleeps fairly well; at others he has his sleepless nights and agitation. At no time has he seemed in the last year and a half to be anything like normal."

Q. Did you so testify on that occasion? A. I believe I did, according to my best memory.

Q. He was a good deal better than that on the stand yesterday, was he not? A. No. That was one of his better periods, and he had periods just like that since he has been there; and that is where the misleading in this testimony is, and why I should have stated that.

Q. Ever since he has been there he has had those conditions? A. He has had these conditions where he was clearer than on other days, and about like he was yesterday; it was not clear, but it was an approaching—

Q. Were you on this occasion asked this question by Mr. Simpson: "Have you when you talked to him—has he any hallucinations or impressions about being hit on the head with a sledge hammer or anything of that kind?" "I do not remember his using the term 'sledge hammer.' He has on numerous occasions, not once by any means, but on numerous occasions, when I led up to it—I used to ask him why he is there, which is a very frequent question to ask almost all the patients. He would say: 'Well, when I was on that engine something happened, and, Doctor, I don't remember anything since; I cannot remember anything right since then.' He says that repeatedly, but he has said nothing about any particular sort of instrument being used or coming in contact with a particular instrument."

Q. Did you so testify? A. Yes, I testified he didn't say a particular instrument, but he did say

he came in contact with something, something struck him. I don't remember the—

Q. You didn't say that in your testimony? A. I did. I said he didn't say sledge hammer, but something that he didn't remember; that he came in contact or was struck.

Q. Now, let us see just what you said at that time: "He would say, 'Well, when I was on that engine something happened; and, Doctor, I don't remember anything since; I cannot remember anything since then.'" Now, that is all that you said that he said to you on that occasion.

Mr. Simpson: I object. That is not a fair quotation—

The Witness: That may be all I said, but it is not all he said by a good deal.

Mr. Simpson: There are three lines there that he does not read.

Q. As a matter of fact, he never up to that time said that he had been struck by any particular instrument, did he? A. I don't think—according to my best memory—that he described a particular instrument; nor did I ever try to draw from him what the collision was with or anything of the kind. I don't know why I didn't, but I thought it was a foregone conclusion that he had received an injury to the head—

Q. Yes. A. —and everything that I saw in the way of symptoms confirmed it; so that I didn't care whether it was a stone or a sandbag or a hammer or what it was.

Q. And you didn't care to find out what his recollection was of the matter? A. Oh, I tested his memory. I was quite well posted as to his order of memory.

Q. Did you care to find out what his recollection was in this particular? A. As to the particular

issue between the railroad company and him? No, not at all; that was not a part of my clinical work.

Q. No, no; you didn't think there was an issue between him and the railroad? A. I have been in enough cases to rather surmise such a thing might occur.

Q. Well, wasn't it a matter of interest to you to know what his recollection was of the incidents that led up to his condition? A. It was a matter of interest to me to learn all of the practical phases of the situation. Now, as to the situation between him and the railroad, what that was from an insane man I didn't take the trouble to try to find out. That was the situation.

Q. Well, what do you mean when you asked him why he was there? What did you mean to find out? A. Well, there is something which we call insight. The patient realizes that he is in an institution; that there is something the matter with him; that he is not mentally right. Now, "Why are you here?" I ask a man. Well, some of them have delusions of persecution, that they were unjustly put there. You want to get the order of their mind in one instance, you want to get something about their memory. "If you are here, who brought you here?'. And they tell you whether it is a relative or friend, or whether they were railroaded or not. He evidently had some railroad ideas, but he didn't claim that he was railroaded to the institution. He probably might mean that from one interpretation.

Q. So, is it true, Doctor, that you didn't care to get his recollection of the incidents that led up to what he supposed was his injury? A. I did care, but that was not the phase upon which I concentrated the most of my efforts. I care about all the morbid symptoms which will throw light upon a person's condition who is under my care

and under the care of my staff physicians.

Q. But isn't it very important to find out from the patient in cases of traumatic insanity, all that he knows about the trauma? A. Why, it is important to get all the definite and reliable information you can. The patient frequently knows nothing about the actual trauma except something that led right up to it, especially where the concussion is serious.

Q. Do you mean to say, Doctor, that where a person is afflicted with traumatic insanity that he usually does not know of the actual stroke which caused the trauma? A. Oh, no; that is exactly what I did not say. If I said it I withdraw it.

Q. (Repeated by the stenographer.) But isn't it very important to find out from the patient in cases of traumatic insanity all that he knows about the trauma? A. (Repeated by the stenographer.) Why, it is important to get all definite and reliable information you can. The patient frequently knows nothing about the actual trauma except something that led right up to it, especially where the concussion is serious.

Q. Then you did say, Doctor, that the patient frequently does not know anything about the actual trauma? A. The degree of the wound or anything subsequent to the collision. Now, whatever I said, this is what I say and subscribe to, exactly, and not to anything that conflicts with it.

Q. And when you say that he does not know anything about the actual trauma, you didn't mean that; is that right?

Mr. Simpson: I object to that. He has explained. The actual trauma is the wound. The Doctor says he does not know anything about the wound.

The Witness: He does not know anything about the degree of the wound and subse-

quent to the collision, whatever the collision was; I don't know what it was; I wasn't there. It was a serious collision; there is no question in my mind about that; but he does not remember after he got struck, anything about the situation. He does know about before that. He made that clear on the stand.

Q. Now, trauma is a blow, isn't it, Doctor? A. That is violence.

Q. And in case of something hitting a person it is the blow which you call the trauma, isn't it? A. Oh, no—well, the trauma is the substance of the violence; well, yes; you may call that the trauma, yes. Go ahead.

Q. And in your opinion a patient suffering from traumatic insanity knows the blow and what struck him? A. Sometimes he does; sometimes he does not. Many a man is hit from behind and robbed, and he does not know who struck him, nor what he was struck with; but he was hit and he was robbed. He knows the substantial results of it afterwards.

Q. Doctor, in your testimony of November 9, 1917, were you also asked,—page 174, line 14,—were you asked this question immediately following what I have read before, namely: "He says that repeatedly, but he has said nothing about any particular sort of instrument being used or coming in contact with a particular instrument." Immediately following that answer were you asked this question: "What does that statement indicate to you medically as to his condition? I don't mean whether it is trut or untrue. What does it indicate to you as to his condition, his being unable to remember anything since?" "Well, it is simply a loss of memory dating from a particular occasion. He cannot readjust him-

self, and when he tries to he becomes depressed or agitated, and is emotionally out of adjustment, more out of adjustment than he is in a general way. It is not uncommon in traumatic insanity." Did you so testify? A. I believe I did.

Q. Now, there was no limitation as to time or times in that answer, was there? A. I don't see any evidence; I don't see it there; I don't know; I don't think there was. My memory is not good on that; I don't know how it was limited or assisted.

Q. And at that time when he attempted to readjust himself and to recover or recollect and express himself, he did become emotionally out of adjustment, and more out of adjustment than he was in a general way? A. Where is that?

Mr. Simpson: That is on page 174.

The Witness: I do not see that. That is an independent question. You are not quoting.

Mr. Carey: Yes, from the record.

Mr. Simpson: You didn't read from the record. You began to put your construction on the record. You asked if there was any time limitation. Then you went on to——

The Witness: I do not see that there, Mr. Carey.

Q. Well, let us see if it is not there.

The Witness: There may be something like it.

Q. "He cannot readjust himself, and when he tries to, he becomes depressed and agitated, and is emotionally out of adjustment, more out of adjustment than he is in a general way." A. Yes, that is here.

Q. Now, at that time, when he attempted to readjust himself, to recollect and to express himself, it was true that he became more out of adjustment

than he was in a eneral way? A. Yes, but anything that makes him try to concentrate, and not only on that particular thing; but he does on that.

Q. Did you think that yesterday during his examination he had to make an effort to readjust himself? A. I think it was an effort to him a good part of the time.

Q. He didn't then become more out of adjustment than ordinarily, did he? A. He did, and at times I was very apprehensive of what the consequences would be while he was here.

Q. Doctor, can traumatic insanity be caused by a trauma which does not produce concussion of the brain? A. It is generally admitted that it can be.

Q. That it can be? A Yes, sir

Mr. Carey: That is all.

By Mr. Simpson:

Q. Doctor, what is that billiard case that you were talking about? A. I mentioned that in connection with a question as to a man having a normal temperature and his eye condition seeming to be normal, and his general condition, pulse rate, apparently all right, and as to whether the person could be said to have received traumatism, or have sustained injury, or if that was the basis of a conclusion that he had or had not. I saw a man who had been hit on the head with a billiard cue and continued to play billiards for half an hour and then was taken home, went home. got a little bit dizzy, and in two hours was dead; nothing noticeable about his skin or his eyes. I talked with him and he was on his feet when I talked to him. So that a blow may come and the injury may be of such a sort that its grave or serious results do not manifest themselves immediately. On the other hand, you frequently have an injury, as

everybody has seen, and it is not required that I should say so,—a blow, the concussion is there, the shock is there, the unconsciousness is there, and there is no question as to the immediate effect. In other cases the serious or grave results are postponed.

Q. Now, Doctor, in a fracture of the skull does it frequently happen that there is a hemorrhage of the ear, a bleeding out of the ear? A. It is quite frequent.

Mr. Carey: I object, if the court please, there is nothing in this case to indicate in the remotest way that there was a fracture of the skull.

Mr. Simpson: No, but we have got to prove this. How are you going to do it but by evidence? I have proved that there was blood in this ambulance, that the man was put into, that he was bleeding from the head, and I want to show that when a man's head is struck frequently a hemorrhage from the ear takes place.

The Court: That may not establish a fracture of the skull.

Mr. Simpson: I can take that out.

Q. But a blow upon the head, is it not an effect that sometimes it produces a hemorrhage from the ear? A. A blow upon the head, yes, or the head coming violently in contact with a resisting object, you will have rupture of the ear drum, and hemorrhage from the internal ear, middle ear, disturbance of the semicircular canals which may in this particular case represent those ear disturbances, some of them.

Q. Now, you said of the man on the stand yesterday, that you at times toward the end of the examination by Mr. Carey, became a little bit

apprehensive. What were the signs that he manifested to you that would not be visible to a layman? A. He looked at Mr. Carey and looked at the glass. I was fearful that he would grab the glass and hit him. He shows those violent dispositions at times.

Q. And you saw him do that while he was on the stand? A. I did. I am fairly familiar with his facial expression, when he is inclined to violence.

Q. Did you see the attendant remove the glass after Price had drunk water, at the request of Dr. McMurray? A. I saw him remove it, but I didn't know that Dr. McMurray had made any request for that.

Q. Now, this testimony that you have been referred to, this was testimony of his condition then, around November, 1917, wasn't it? A. Yes.

Q. That is when you testified. And was this condition that you saw manifest on the stand yestesday by this man—were there any signs that were obvious to you that would not be obvious to a layman as to what mental process he was going through?

Mr. Carey: Of course, we will concede that an alienist may discover signs that a layman won't. For example, I thought that Mr. Price and I were getting along——

Q. Have you a number of evidences of his true adjustment to the situation? A. The record will show that—— "He may not," "it may not," about direct questions time and time again, and they were passed over as answers, showing that he didnt know whether it was or was not; and when it came to his adjustment of his memory as to space, or time, length of time, in connection with the conductor with whom he was working, he

said, "It may have been five months, it may have been three months," or, "It may have been two months. I know I was with him." But he couldn't adjust himself all the way along. That was not soundness of mind.

Q. Now, then, another thing I want to ask you: "You spoke of memory in cases of this kind; that they have a memory up to the time of the accident. Is that a fact that they can remember up to the time they were struck and have difficulty in remembering things that happen afterwards? In other words—— A. Memory defects are particularly shown as to the recent events; that is, subsequent to the accident. I do not mean to be understood that a person with traumatic insanity has a perfect memory of all things that happen previous to the accident. A sane person—you can pick out any one period—but I mean that the incidents which happen when the man's mind was commonly spoken of as sound, when he was all right, when he was normal, that then that receptive sphere, whatever you may call it, or that part of the brain which receives impressions in the form of experiences and of dates, of persons and of doings,—that those things are received into a healthy brain, or into a healthy registration department. Now, then, it is put there when the brain or mind is all right, when it is clear. It is, therefore, reproduced in better form, in more reliable form than the things that come about and are made impressions after the brain has become diseased, whatever may be in a general way because of the mental defect. There are few forms of mental disorder in which the memory seems to remain intact, and the power of reproducing impressions seems to be intact; but not in traumatic insanity so much.

Q. And is that a type of traumatic insanity? Is

each case exactly alike? Is each case exactly like another case, or do they vary? A. Oh, they vary, as everybody who has seen traumatic insanity knows they vary. There are certain symptoms which seem to be always associated with them; but the individuality, or individual makeup—there is a personal equation that enters into it just as it does in other diseases, diseases of the body. You see a man with typhoid fever here and another one there, and it is a very different proposition with many of the symptoms, and even in the head symptoms.

Q. If this man was struck on the head by this iron bar, can you put it in simple language how it would produce these conditions? A. In my opinion it produced it just as shock produces unconsciousness, or dazes a man and he becomes unable to apply facts to reason, to understand his surroundings, to adjust himself to his environment and to adjust his conduct in harmony with his environment. A man hit on the head with a slight shock gets up dazed, and looks around, and instead of treating the people with whom he is in contact reasonably, saying, "Good morning, Mr. Jones," why, he looks around and stares, just as a shocked person coming down a spiral fire escape. I have seen them come down those fire escapes and one run up to another and grab him and kiss him, which he would not have done if he had not suffered that order of shock.

Q. Now, then, when you have a concussion which shakes up the microscopical elements of the brain—and I used that, the little nerve cells we talk about here on the witness stand, and which people talk about in the clinical laboratories or anywhere else, are something that I realize the jury does not comprehend, and when I talk about shaking up and disturbing the molecular integrity

of the brain I do not imagine that I am telling the jury something; but I will try to tell you it is a shaking up and disarrangement of those things which cannot be seen by the naked eye as a rule. You may have grosser findings in the brain, and I have seen them as a result of accident, but it shakes it up so (indicating) and I have seen it time and time again when you could not locate even after death a clot; you could not show that there was any clot on the brain, which is a common expression, but that there had been serious injury, so that the very minute, nicely adjusted mechanism of the brain had been disturbed permanently, so that the person didn't think right, didn't feel right, and didn't act right, and was transformed from a normal person into a person of unsound mind, very different from what he was before the accident or concussion. Now, I simply mention the ordinary shock, because this is concussion with consequent mental derangement, and it means only further degrees of severity; and that is what I believe, in my opinion, this man sustained, and a form of mental disorder from which he will never recover.

Q. And that traumatic insanity, have you many cases of it? A. I have had quite a number there, and I had them under my observation at other places—traumatic insanity.

Mr. Simpson: That is all.

By Mr. Carey:

Q. Doctor, you think that Mr. Price's expression, "It may have been" when he was speaking of the time he had served with Mr. Foster as fireman—"It may have been two months," or "It may have been three months," indicated an abnormal condition of the mind? A. It showed he had not the power of concentration so as to recall those facts normally, yes.

Q. Well, would you think that a person who was in a sound state of mind would not be likely to use that same form of expression when he was speaking of events which had occurred four or five years before? A. I think not.

Q. You think not? A. I think not. Mr. Price, if he had a proper appreciation—if he had a proper appreciation of the reason he was on the stand and the reason he was testifying, which a normal man would have if he were brought here, would have been able to concentrate better than that on facts.

Q. You heard Dr. McMurray state this morning that he was unable to state at what time he told you about Prices clear and lucid description of his accident? A. That was a mere incident. This is the man's chief interest of life—to get home to his wife and family, and that they should be properly cared; and that was a mere incident. You can name hundreds of little incidents in a man's life, and it does not require my testimony to verify that.

Q. Now, Doctor, won't you listen to the question while it is read to you?

Q. (Repeated by the stenographer.) You heard Dr. McMurray state this morning that he was unable to state at what time he told you about Price's clear and lucid description of his accident?

Mr. Simpson: Is that a question?

Q. Did you hear him testify? A. That arises—

Mr. Simpson: You get hundreds of reports a week?

The Witness: Hundreds of reports come, and I don't think that is a parallel question. I heard it, but I don't think it has any bearing on this situation.

Q. The question is simply, did you hear Dr. Mc-

Murray's testimony this morning? A. I heard it.

Q. Now, did you hear him state that it may have been a few months, or it may have been more than a few months? A. I don't think you have it quite right. I think your memory is bad on that.

Q. Did you hear him say it may have been a few months? A. I heard this. Now, my memory is equally poor—

Q. Don't tell me what you heard. Did you hear him say that? A. I didn't hear him say it in that way. You asked him a number—

The Court: That answers the question, Doctor.

The Witness: Then I am through.

Q. Do you know that—do you think that there was a rupture of blood vessels in Mr. Price's head? A. I didn't see any— I have not seen evidence of it, and the spinal cord examination showed that there was no blood in the sub-dural space or circulating in the ventricles of the brain, and it would likely be there.

Q. So that you have reached the conclusion that there was no hemorrhage of any of the arteries inside of the skull? A. The minute—very minute arteries going through the brain may have been disturbed and slightly damaged, but there were no large hemorrhages like coming from the middle cerebral and its branches.

Q. If there was no skin broken—and that is all the testimony in the case—no skin broken on Mr. Price's head—

Mr. Simpson: I object to that statement.

The Court: Is there any testimony that shows there was an abrasion?

Mr. Simpson. Mrs. Price and Mrs. Masterson have both testified that the skin was discolored and swollen. One said a lump

about the size of an egg on the left side of his head. So that is not a fair comment on the testimony— "That is all the testimony in the case."

The Court: I do not remember any testimony here which said there was any skin broken.

Mr. Carey: And both of those ladies testified that the skin was not broken, and that it was not even roughed up; that it was entirely smooth.

Q. (Repeated by the stenographer.) If there was no skin broken—and that is all the testimony in the case—no skin broken on Mr. Price's head—

Q. (Continuing.) Then there would not have been any blood from an external hemorrhage, would there, or external wound? A. If there was a hemorrhage from the ear or from the nose or from the eye, I do not know. If the skin was not broken at the point where the skin was not broken it is not likely that there would be a hemorrhage. That is the best I can put it.

Q. And if there was blood on the pillow and the skin on the head was not broken, then the blood would come from where, in your judgment? A. I don't know where it would come from. If it was a heavy blood it might come from the ear. But I was not there, I can only take your proposition as you present it.

Q. Assuming the blood came from the ear, would that come from an internal hemorrhage? A. Sometimes yes, sometimes no.

Q. I have seen it from very slight trouble in the ear, and I have seen it where there has been a fracture at the base of the skull.

Q. And if it came from the nose would you say that it came from an internal hemorrhage? A. It might; it might not; most likely not.

Q. If the blood within the skull was on the dura or the outside covering of the brain, would there be blood in the spinal fluid? A. Not so likely; not likely.

Q. What? A. It does not get down in the spinal canal there very well.

Q. If it is outside? A. If it is sub-dural there generally does. An injury to the dura itself, it very frequently and generally does—oh, yes, gets outside.

Q. (Repeated by the stenographer.)

"Q. If there was no skin broken—and that is all the testimony in the case—no skin broken on Mr. Price's head, then there would not have been any blood from an external hemorrhage, would there, or external wound?"

"A. (Repeated by the stenographer.) If there was a hemorrhage from the ear or from the nose, or from the eye, I do not know. If the skin was not broken at the point where the skin was not broken it is not likely that there would be a hemorrhage. That is the best I can put it."

"Q. (Repeated by the stenographer.) If it is outside."

A. Outside where?

Q. Outside of the dura? A. Well, I would not expect to find it there.

Q. And the dura is the outside covering of the brain? A. That is my understanding of it.

Q. The first— A. The first membrane after you get through the skull.

Q. Now, if there was a hemorrhage on the outside covering you would not expect to find blood in the spinal fluid? A. No, I would not.

Q. If blood came from the ear as the result of a

fracture of the base of the skull, would there be evidences of blood in the spinal fluid? A. Not necessarily, no; not likely.

Q. Did you take an X-ray of Mr. Price's head? A. I do not remember; I am not certain; but I think that an X-ray was taken of his head.

Q. Will the records of the hospital show when Mr. Price gave a lucid and clear statement of his accident? A. No, not that I know of. He has not given a perfectly clear and lucid account of his accident because he has not been a man of sound mind since I have known him.

Q. And you do not agree with Dr. McMurray that he has given a clear and lucid statement? A. I think he has from a layman's standpoint. I think Dr. McMurray was quite correct. But not from my standpoint. I do not want to make a standard for anybody, but—

By Mr. Simpson:

Q. I just want to clear this up. When you spoke of the hemorrhage from the ear, that is not the same thing as the cerebral hemorrhage they are talking about? A. Oh, no, the hemorrhage from the ear may be from internal injuries frequently, and a fracture or a rupture of the drum of the ear, the membrane there, and your blood come in from a very serious condition.

Q. What is the contre-coups that you speak of, a blow on the head on one side producing injury on the other? A. Well, that is simply a term used, I guess by surgeons pretty generally, but particularly by the French; it is a French term, meaning that the blow shows its injury on the other side. The most apt explanation of it is, when you drop a melon down, a water melon, it breaks on the top, not the point where it comes in contact with the earth, where the violence is; or you drop it on the

floor; it does not break, as a rule, there, but it breaks on the other side; so that a blow on one side of the head damages more seriously the brain on the other side, on the opposite side.

Mr. Simpson: That is all, Doctor.

By Mr. Carey:

Q. Is there hemorrhage in these cases of contre-coups? A. Oh, there may or may not be.

Q. May not that injury on the opposite side of the brain be without any hemorrhage? A. It may be without hemorrhage, yes.

Mr. Carey: That is all.

Mr. Simpson: That is all.

(Witness excused.)

DR. KING, recalled.

By Mr. Simpson:

Q. Doctor, have you performed any postmortems or autopsies? A. A great number.

Q. How many do you suppose you have performed? A. Between twenty or twenty-five hundred and three thousand, I should judge.

Q. Now, have you performed autopsies on persons who have received injuries to the head? A. A great many.

Q. Is it invariable that an injury to the head received through violence will make an outside manifestation? A. Very often there is no mark of external violence whatever, with severe injuries resulting in hemorrhages of the brain substance.

Q. And is it a fact that the pulse may be normal, there be no outward mark on the head, and

the eyes be normal, and yet the head has received an injury by violence? A. That is possible. It is probable.

Q. It is not an impossible thing? A. It is not.

Mr. Simpson: Cross examine.

Cross Examination by Mr. Carey:

Q. After an injury to the head you expect to find the pulse normal, do you? A. I do not expect to find it. It depends on the severity of the injury. I would not be surprised to find it normal.

Q. Your belief is that Mr. Price had received a severe injury to the head, is it not? A. I should judge a man who has been mentally deranged for four years must have been severely injured.

Q. Just answer me yes or no? A. I have answered it. I said it must have been a severe injury.

Q. And after an injury as severe as that which you believe Mr. Price suffered you would expect to find his pulse normal, would you? A. It might be normal.

Q. It might be. Would you expect to find it normal? A. I found it normal a short time after when I saw him at the hospital; I found his pulse normal.

Q. You saw him five weeks after the accident of February 16th, didn't you? A. About five weeks.

Q. Now, a sand bag is an instrument which is likely to produce a serious injury to the head without causing external marks, is it not? A. It would. The soft part of the hand hit on top of the head like that will give a man concussion of the brain and no mark.

Mr. Carey: That is all.

Mr. Simpson: That is all.

(Witness excused.)

WILLIAM G. QUINN, sworn.

Direct-examination by Mr. Simpson:

Q. You live at 99 Clinton Terrace, Weehawken, Mr. Quinn? A. I do.

Q. And you are in the business of an undertaker? A. Yes, sir.

Q. On the 16th of February, 1915, were you in that business? A. I was.

Q. Did you have an ambulance that you sent out on that day? A. I did.

Q. Or night. Now, did your ambulance convey Charles Price to the hospital? A. It did.

Q. And did you see the interior of the ambulance after he had been taken out? A. I did.

Q. Was there any blood in there? A. There was.

Q. Where was it? A. On the pillow.

Q. And had there been any blood on that pillow when you sent your ambulance out to receive his body? A. Not any.

Mr. Simpson: Cross examine.

Cross-examination by Mr. Carey:

Q. Where were you when you saw the blood? A. I was in through the ward when they were taking the man off the cot.

Q. Was he taken into the ward on the cot? A. Yes, sir.

Q. Who took him in? A. My son-in-law, I believe.

Q. Who is your son-in-law? A. Charles Volk.

Q. The man who testified here the other day? A. I think so, now, if I am not mistaken.

Q. Who assisted him in taking him into the hospital? A. I did.

Q. Pardon me? A. I did. I was one of them.

Q. And where were you with reference to Mr.

Price's head? A. Where was I? Why, I lifted him off of my cot, put my hand under his shoulder and the other under his head.

Q. Lifted him off the cot in the ambulance? A. Off of my cot, yes.

Q. And what did you put him on to? A. On to the tray, whatever they call it there, the wheel—whatever they have to convey them there in the hospital with; sometimes they have a table; more times they have a wheel chair.

Q. Where was the cot? A. In the hall.

Q. At the time you lifted him off the cot? A. In the hall.

Q. In the hall of the hospital? A. Hall of the hospital.

Q. Who helped you and Mr. Volk carry Mr. Price in the hospital? A. Not anybody that I remember, although there was a nurse there at the time.

Q. Anybody else go in the hospital with him besides you and your son-in-law? A. Go in the hospital with him?

Q.Go in the hospital, yes. A. Not that I saw. Now, I mean the man. That is it. I wasn't down the ambulance at the time.

Q. On your former examination were you asked this question: "Who went in with him?" speaking of going in the hospital? A. I don't think that——

Q. "Why, my man went in there with him. There was one or two other gentlemen from the West Shore, as I presume; I don't know who they were." A. That may be all true. I didn't know who they were.

Q. And yet you say now that you went in? A. I did go in.

Q. You carried him in on the cot? A. Yes, sir; on my cot.

Q. When he got into the hospital he was lifted on to an appliance which they have for moving patients? A. Yes.

Q. And that was the first time that you noticed any blood? A. That was.

Q. There was no blood on his face, was there? A. Not that I saw; no sir.

Q. Or forehead? A. No, sir.

Q. Or anywhere about his head? A. About his head?

Q. Yes. A. Yes.

Q. Where? A. My hand come in contact with blood on the back of his head, my finger did.

Q. Did you testify to that when you testified before? A. I couldn't say, but I believe I did. If I was asked the question I believe I testified to it.

Q. Did you observe the blood then before he was taken off the cot? A. I did not, sir. My hand come in contact with it when I was lifting him off the cot.

Q. But you didn't know what it was? A. What the blood was?

Q. Yes. A. Yes, I did.

Q. When did you first realize there was blood on your hand? A. When I lifted him off the cot.

Q. On your former examination were you asked this question: Q. "And where was Mr. Price when you saw the blood on the pillow?" "On the cot." "He was still on the cot?" "He was. He had not got in the hospital yet when I saw him.' Did you so testify? A. I really don't think I did say it in that words; I don't think I did on that former occasion.

Q. Do you remember being questioned about when you first saw the blood on the pillow? A. I remember being questioned, yes, sir.

Q. And do you remember that this question was

asked you, which I read: "Where was Mr. Price when you saw the blood on the pillow?" A. I do not.

Q. Don't remember that? A. Don't remember that.

Q. And do you say that you did not say that he was on the cot when you first saw the blood on the pillow? A. Do I say that?

Q. Do you say that you did not say that? A. I say I don't remember it. The first that I detected blood was when I put my hand under his head, lifting him; then I found it on my hands—on my two fingers; then I looked on to the pillow, which was new, clean, the pillow and the pillow case. There I found blood on both of them, and I believe that was my testimony before as near as I can remember.

Q. Then if you were asked this question: Where was Mr. Price when you saw the blood on the pillow?" And if you answered. "On the cot", your answer was incorrect, was it? A. Well, it would be on the pillow, naturally, on the pillow case.

Q. Well, the question is, "Where was Mr. Price when you saw the blood on the pillow?" And your answer, according to the record, was: "On the cot." A. When I saw the blood? Is that right?

Q. Was Mr. Price on the cot when you saw the blood on the pillow? A. No, I had lifted him off.

Q. Then if you testified that he was on the cot when you first saw the blood on the pillow, that was incorrect, was it?

Mr. Simpson: I submit he did not——

A. I really don't understand you now, just exactly what you mean by that. I don't understand. I am trying to tell it as near as I possibly can. I don't understand what you mean by it.

The Court: Well, Mr. Carey, Mr. Quinn is

referring to what purports to be your testimony at the last trial in which it is said that a certain question which he just read to you was asked you, and you gave a certain answer, and his real inquiry is, if that question was asked of you and you did answer as he reads to you, then that answer which you made at the last trial was not a correct answer? Now, read the question again, Mr. Carey. This purports to be a question asked you at the last trial and he will follow it with what purports to be the answer to that question.

Q. "And where was Mr. Price when you saw the blood on the pillow?" "On the cot." A. Yes, of the hospital, not on mine; because I had taken him off of there. He was on the cot or the wheel chair, whichever you would call it, belonging to the hospital, not of mine.

Q. But you didn't call the hospital wheel chair a cot, did you? A. Well, I would, because they use it both ways. I would call it that.

Q. "He was still on the cot?" A. "He was, he had not got in the hospital yet when I saw him." A. That would be very wrong, because I don't think I made that. I might have made it, but if I did it is a grand mistake; because I certainly saw the blood after he was taken off of it. He could not have been on my cot when I saw it.

Mr. Carey: That is all.

Mr. Simpson: That is all, Mr. Quinn.

(Witness excused.)

LOUIS A. SEAMAN, sworn.

Direct-examination by Mr. Simpson:

Q. You are station master down at the West Shore yards? A. I was.

Q. You were on the day Price was taken in the station master's office, weren't you? A. Yes, sir.

Q. And did you have a grip, and jumper belonging to Price? A. I didn't have it; it was in the office.

Q. Well, it was in your offire? A. Yes.

Q. And you gave those to Mrs. Price, didn't you? A. No, I didn't give them to her.

Q. What? A. I didn't give them to her.

Q. What did you do with them? A. Why, they were taken out of the office by the travelling firemen.

Q. By the travelling fireman? A. Yes.

Q. And the cap, you didn't give the travelling fireman, did you? A. I did not.

Q. At the last trial I subpoenaed to produce that cap, didn't I? A. Yes, sir.

Q. And you didn't produce it, did you? A. No, sir.

Q. And you have not produced it to-day? A. No, sir.

Q. Now, where is this office into which he was taken? A. Why, it is located at the foot of the hill there, where the trains come in.

Q. And you were in there when he was brought in, weren't you? A. Yes, sir.

Q. How was he brought in? A. Why, he was brought in by two men.

Q. And what was his condition? Was he conscious or unconscious? A. Well, I couldn't say; he didn't speak.

Q. He didn't speak? A. He was leaning on two men that came in.

Q. And what did you do with him? A. Why, I had a chair brought out of my inner office and sat him into it, a chair something similar to those, and I got some water, put it on his head to relieve him —first aid to the injured, as they call it. I saw no injury. And then I had the cushion brought in and I had him lie down on the cushion.

Q. What was the first aid you gave to his head? A. Put cold water and towel on his head, cold water and towel on the front of his head.

Q. On the front of his head you put it? A. Yes.

Q. Then he was taken subsequently from your office? A. To the hospital.

Q. By the ambulance? A. Yes.

Q. And you were there from the time he came in till he want out? A. Yes.

Mr. Simpson: Cross examine.

Cross-examination by Mr. Carey:

Q. How long was he in the station master's office? A. I should judge about half an hour; probably it may have been an hour; I couldn't say just how long.

Q. Now, Mr. Seeman, won't you tell us everything you know about this cap? A. I couldn't tell you one thing about the cap, because I was not interested in the cap. I was doing what I could, first aid to the injured, for this man; and whoever took the cap I don't know. I don't know what became of the cap. I never saw the cap.

Q. You never saw it? A. No, sir; I never saw the cap in any form, shape or manner. I might have seen it on his head when he was on the engine, but I didn't pay any attention to it. But I was trying to relieve the man from his suffering, what any man would naturally do.

Q. And during all the time he was in the office you didn't see anything of his cap? A. No, sir;

I was working with him all the while.

Q. Did you at any time see anything of this cap from the time he was brought in until the present day? A. No, sir.

Q. Were you subpoenaed by the plaintiff to come here to-day? A. No, sir; not to-day.

Q. Have you been subpoenaed to produce this cap at this trial? A. They didn't say anything about the cap. They subpoenaed me here last month, March, yes, March.

Q. Do you know directly or indirectly what became of this cap? A. No, sir; I do not.

Q. Did you ever see it around your office? A. No, sir.

Q. Now, have you made a search for it? A. Yes, sir.

Q. At whose request? A. My own request.

Q. And when did you search for it? A. I looked around the office there for it, couldn't find it.

Q. When? A. Oh, it is about a year ago.

Q. Do you know any place where the cap might be? A. No, sir, I do not.

Q. When Mr. Price was brought into the office you say he was first sat down in a chair? A. Yes, sir.

Q. And how long did he sit there? A. Ih, I should judge he sat there about two or three minutes.

Q. And following that he was placed where? A. We took him into the inner office and laid him down on this cushion where he would be more comfortable.

Q. And you were doing all that you could to relieve the man? A. Yes, sir.

Q. Now you say that you didn't see any evidence of injury around his head? A. None whatever.

Q. Will you tell us what examination you made, if any? A. I went all over his head with my hand, back through his hair here, all around to the front, to the sides, and I saw nothing at all on him.

Q. Did you part the hair? A. I did.

Q. And this was in the evening, was it not? A. Yes, sir.

Q. Do you remember about what time? A. About half past seven.

Q. And did you have any light in there? A. Yes, sir; electric light.

Q. And how near was the electric light to the head of Mr. Price when you were examining him? A. About five feet.

Q. Was it brought any nearer than that, do you recall? A. No, sir; we couldn't get it any nearer.

Q. Will you state whether the light was good or not? A. Yes, sir.

Q. Did you feel anything with your hands? A. No, sir.

Q. That indicated an injury? A. Felt no injury of any kind.

Q. Was there any blood on his head? A. No, sir.

Q. Did you see any blood about him anywhere? A. No, sir.

Q. Did you find any depression or bruise in the feeling of the head? A. No, sir.

Q. Was there anything at all which showed an indication of his having been struck? A. No, sir.

Q. Around his head anywhere? A. None whatever.

Q. Have you seen him since that time? A. Well, I saw him here last Wednesday.

Q. Did you see him after that until you saw him—— A. No, sir.

Q. —in this court room?

Mr. Carey: That is all.

Re-direct Examination by Mr. Simpson:

Q. You said you were trying to relieve his suffering, to Mr. Carey. What do you mean by that? How was he suffering? A. Well, I don't know any more than that he was lying there and that was all.

Q. Well, how was he suffering? You said, "I was trying to relieve this man?" A. Well, his head. He was throwing his head around like this. That is the way he was throwing his head, and I thought probably he was overcome by the gas or something in the tunnel, which occurs——

Q. I didn't ask you what you thought. I asked you of his suffering. What he was doing that you call suffering? A. Well, he was throwing his head around this way.

Q. The engineer was not throwing his head around that way? A. Oh, no.

Q. He came through the same tunnel, didn't he? A. Oh, yes.

Q. And you put a towel on his head, did you? A. Yes, sir.

Q. Well, you examined his head to see if he was injured, you say? A. Yes.

Q. Why did you do that? A. Because I wanted to see if there was anything on to his head to cause him to throw his head that way.

Q. Well, have you sufficient experience to be able to feel the skull and tell whether it is hurt or not? A. Oh, no.

Q. You are not a physician, are you? A. Oh, no.

Q. Because you didn't find a hen's egg on the side of his head, there was no mark of injury, according to you? A. No.

Q. Did you put the towel all around his head? A. No; I just laid it here in the front.

Q. On the front? A. Yes.

Q. Was he saying anything as he turned his head from side to side? A. No.

Q. What? A. Mumbling to himself, but I couldn't tell what he said.

Q. Well, did you examine his head as the result of something that the engineer said to you? A. No, what the conductor said.

Q. And what was it the conductor said? A. The conductor said he said. "He hit me on the head with a hammer, and I will get him?" A. Yes.

Q. You say he was mumbling? A. Yes.

Q. And you said the conductor told you that Price had said "He hit me on the head with a hammer, and I will get him?"

Q. So then you were looking to see if he had been hit? A. Yes, sir.

Mr. Simpson: That is all.

Mr. Carey: That is all.

(Witness excused.)

Mr. Simpson: With the exception of calling Dr. Nevin, and another physician that I have, that is my case. I want to show by him what I did at the last trial, unless you will let me read his testimony.

Mr. Carey: Dr. Nevin's testimony?

Mr. Simpson: Yes. You have got it there.

Mr. Carey: What page is it?

Mr. Simpson: I will tell you in a minute, Mr. Carey. Page 77.

Mr. Carey: Go ahead and read it.

Mr. Simpson. All right.

Testimony of Dr. Nevin given at the last trial. But I want to save time, so Mr. Carey has consented that I can read it:

"Direct-examination by Mr. Simpson:

Q. Doctor, you are a practising physician and surgeon in Jersey City? A. Yes, sir.

Q. How long have you been in practice? A. About thirty years.

Q. And you have done a great deal of work in the way of examining persons who desire life insurance, to see whether they were good risks or not; that is a part of your professional work? A. Yes, sir.

Q. Doctor, do you remember examining Charles Price at 5383 Hudson Boulevard, in January, 1915, for the purpose of passing him for a life insurance risk for the Connecticut General Life Insurance Company? A. I remember that, yes, sir.

Q. Now, what was his condition then? A. Did you pass him or not? A. First class risk.

Q. And as far as you could see his physical and mental health were good, weren't they? A. Yes, sir.

Cross-examination by Mr. Carey:

Q. What was the date, Doctor? A. I don't remember the date, Mr. Carey; it is two or three years ago.

Q. Do you remember the year? A. I think it was in 1915.

Q. And what part of the year? A. In winter; I don't remember exactly that; I see so many cases; the early part of the year."

And then I said we would fix the time.

MARGARET PRICE, recalled.

Direct-examination by Mr. Simpson:

Q. What time was it that Doctor Nevin made the examination of your husband? A. January 27th.

Q. What year? A. 1915.

Q. That is in the January before he was hurt? A. It was one month before he was injured.

Q. And that was for a policy in the Connecticut General Life Insurance Company? A. Yes, sir.

Mr. Simpson: That is all.

Cross-examination by Mr. Carey:

Q. How do you fix the date, Mrs. Price? A. How do I fix the date?

Q. Yes. A. Because I remember so well. I remember it very well.

Q. Have you the policy that was issued? A. No; we didn't get that policy.

Q. Now, Mrs. Price——

Mr. Carey: I may be permitted to ask a question which I should have asked when I was cross examining Mr. Price?

The Court: Any objection?

Mr. Simpson: No. I have no objection to any cross examination on this subject, but I don't want to open the whole case.

Mr. Carey: I just wanted to ask a question or two in regard to Mr. Price's wages?

Mr. Simpson: Oh, well, that is all right; I have no objection.

By Mr. Carey:

Q. What was your testimony, Mrs. Price, as to Mr. Price's wages? How much each half month? A. Why, about sixty-nine to seventy-one dollars every two weeks.

Q. And for how long a period—oh, just a moment; that is every two weeks? A. Yes, sir.

Q. You mean twice a month? A. Yes, sir.

Q. Well, that would not be every two weeks? A. Well, that was the way we figured, about every two weeks.

Q. It would be twenty-four payments in the course of the year? A. Yes, sir.

Q. Twice a month? A. Yes, sir.

Q. Ordinarily we say that is every two weeks? A. Yes, sir.

Q. But it does not figure out just exactly two weeks. Now, you say that his wages were from sixty-nine to seventy-one dollars, and those were wages which he got from the New York Central? A. Yes, sir.

Q. And he had no other employment? A. No other.

Q. Are you sure about those amounts, Mrs. Price? A. Yes, I am almost sure, Mr. Carey.

Q. Now, on the former trial do you remember what you testified to as to his wages? A. I do not.

Mr. Simpson: Page 55.

Q. Were you asked this question: "How much do you say he earned a month?" "A. About a hundred and fifty dollars a month." "Q. That his average wages?" "Yes sir." Did you so testify?

Mr. Simpson: I think you ought to read the next question and answer.

Mr. Carey: All right; yes, that is very true.

Q. "But on this particular job he was only earning thirty-three dollars a week, wasn't he?" A. "Yes."

Q. "You said about seventy-five dollars every two weeks?" "Every two weeks." Did you so testify on the former trial? A. Yes, I think I did.

Q. How did you come to vary your testimony now from what you gave on the former trial. A. Well, you cannot vary, you cannot be sure of a railroad man's pay, sometime it goes from sixty-nine to seventy, sometimes seventy-five, he

brought in, I just can't tell. But it never was under sixty-nine.

Q. Never on any half months? A. No, sir, not that I remember of. Mr. Price always held down a seven day job.

Q. For how long a period has that continued? A. Why, before he was on this passenger run he was on seventy-nine, and that is a seven day job and he was on that for years.

Q. Is it true that for a number of years his wages had not been less than sixty-nine dollars for the half month? A. It seems to me that he always brought in that much, Mr. Carey.

Mr. Carey: That is all.

(Witness excused.)

Mr. Simpson: Now, there is one physician I want to reserve and that is my case.

The Court: Well, what do you say, Mr. Carey, that he call that witness?

Mr. Carey: Oh, yes, I am willing that he should call the witness any time he comes.

Mr. Simpson: Two o'clock.

The Court: Two o'clock?

Mr. Simpson: Yes.

The Court: As long as he is called before your medical witnesses go on the stand.

Mr. Carey: Yes.

Mr. Simpson Two o'clock, he will be here at two.

(Plaintiff rests.)

Mr. Carey: Now, if the court please, I have one or two motions to make.

The Court: Very well, the jury may go until two o'clock.

DEFENDANT'S MOTION FOR A NON SUIT.

Mr. Carey: I move for a non suit on the ground that the evidence does not establish any negligence on the part of the defendant; that the negligence alleged in the complaint has not been established; that the evidence does not show—is not sufficient to go to the jury on the question of an external injury or an injury by a blow to Mr. Price, that if any injury was received by Mr. Price, it was received not because of negligence on the part of the railroad company, but because of his negligencein extending his head an unreasonable distance outside of the cab window at a time when there was no occasion for him to have his head out of the cab window at all; and that if any injury was received by Mr. Price, it arose and was received out of risk of his employment which were assumed by him and well known to him and were appreciated by him.

The Court: Those are all the reasons?

Mr. Carey: Those are all the reasons upon which I move for a non suit.

(After argument.)

The Court: I will decline the motion to non-suit upon all the grounds.

Mr. Carey: Note my exception.

RECESS UNTIL TWO O'CLOCK P. M.

DEFENDANT'S CASE.

JACOB FOSTER, recalled.

Direct Examination by Mr. Carey:

Q. There was testimony by the plaintiff yesterday to the effect, that there was what he called a jack signal down near the westerly end of the tunnel. Is there any such signal there? A. No, sir.

The Court: I am not sure that he said the Westerly end of the tunnel, as I remember he said the easterly end of the tunnel, and up against the side wall. Now, I do not depend on that recollection.

Mr. Carey. My understanding was that he was testifying about a signal that was at the Westerly enud of the tunnel.

The Court: I am only bringing it to your attention on because I have that doubt. I prefer to go back in the testimony to find that out. I assumed that was what he meant, but afterwards came to the conclusion that he said it was towards the easterly end of the tunnel.

Q. Is there any signal whatever between the signal shown on this photograph D. 1, and the westerly portal of the tunnel? A. There is not.

Q. I mean governing the east bound track? A. No, sir.

Q. How long have you been in the employ of the New York Central on this Division? A. Thirty-four years.

Q. How long? A. Thirty-four.

Q. And in what capacity? A. Four years as a fireman and thirty years as a locomotive engineer.

Q. Now, was there at any time, during the time

of your service and up to the present day a jack signal at or near the westerly end of the tunnel? A. No, sir.

Q. Has there been any signal during that period between the signal which you see on that photograph and the Westerly end of the tunnel? A. No, sir.

Q. You testified to a cap which Mr. Price wore. I show you a cap and ask you whether or not the material of which the cap of Mr. Price was made and concerning which you testified was or was not substantially of that character? A. Just about the same kind of goods.

Q. Is that the only cap you saw him have that day? A. That is the only one, only one I ever saw him have.

Mr. Carey: I offer that in evidence.

(Marked D. 8 in evidence.)

Q. Is the cap concerning which you testified—did it have a peak of this description? A. Yes, sir.

Q. And the material about the same weight and thickness? A. Just about the same as near as I can describe it.

Q. Did you see him on that day have any wool cap? A. No, sir; never saw him with a wool cap.

Q. With ear laps? A. No, sir.

Q. Ever see him with any such cap as that? A. Never saw him with any.

Cross-examination by Mr. Carey:

Q. Where are the jack signals, at least where were they on the day of this accident? A. None whatever, where he mentioned.

Q. Are there any jack signals around the tunnel? A. No, sir.

Q. There are no jack signals on the road from

Haverstraw End? A. On the easterly side of the tunnel.

Q. On the easterly side of the tunnel? A. Yes.

Q. Where are they on the easterly side of the tunnel? A. One at the track governing the west bound track, nothing for the east bound.

Q. Then there is a jack in the tunnel? A. Not in the tunnel.

Q. On the easterly end of the tunnel? A. Yes.

Q. A jack. How far from the tunnel? A. Probably thirty or forty feet.

Q. And what side was it on, to the right or left as you went in the tunnel? A. It was on the right hand side.

Q. On the fireman's side? A. Yes, sir. That governs the west bound track, nothing for the easterly.

Mr. Simpson. I ask that that be stricken out as not responsive.

(To the Witness:) You do not have to argue this case, just answer my questions.

Q. This jack signal was on his side, the way your train was moving wasn't it? A. Yes.

Q. And it was on the easterly side of the tunnel? A. Yes sir.

Q. And that jack signal, just describe it, what is it? A. For west bound movement.

Q. Describe it.

The Court: What sort of looking thing is it, Mr. Foster?

A. Why, it is on the—it is about two foot off the ground, and the arms probably a foot and a half long.

Q. Where does it work from? A. It works from the tower.

Q. Who is the man who would work it, had

charge of it? A. I don't know.

Q. You don't know that. And was it on the next track to the one you were running on? A. Yes, sir.

Q. That is between your track and the next one. A. Yes, sir.

Q. This cap, where did you get this cap? Or did you get it or didn't you get it. Did you get this cap and produce it? A. I got it to show what style of cap he wore.

Mr. Simpson: I ask to have that stricken out as not responsive.

Q. I didn't ask you what you got it for. I asked you if you got it. Do you understand the question? A. Yes.

Q. Where did you get it? A. In the store.

Q. What store? A. Up here on the avenue.

Q. Went up the avenue and just got the lightest cap you could find didn't you? A. I don't know as I did, I don't know whether they had any lighter, I didn't ask.

Q. This was light enough for your purpose, was it. A. Yes.

Q. Now, when did you buy this cap up the Avenue? A. This forenoon.

Q. Anybody give you any instructions to buy it? A. No.

Q. You went of your own volution and brought the cap? A. Yes, sir.

Q. Without any instructions from Mr. Carey, and you came back and presented it to him as a thoughtful prize, did you? A. Yes, sir.

Q. Now, show us where on this cap was this tear that you saw when he had it on his head? A. On the left side here.

Q. How much of a tear was it? A. Well, I should judge about four inches, three or four inches.

Q. And was it a smooth tear or a rough tear? A. No, it was a rough tear.

Q. As if it had been done with a blunt object of some kind? A. No, I don't think a blunt article could do it.

Q. You don't think a blunt steel could make a tear on a cap? A. No.

Q. Why not? Why don't you think a blunt steel could make a tear on a cap? A. I don't think there would be anything on it to grab hold of the goods.

Q. You think that if this was given a violent blow with a steel instrument passed over it, that could tear it if it had something holding it? A. If it had something holding it.

Q. That is what you think? A. It may possibly if it had something holding it.

Q. Now, have you got a cap of your own like this? A. Well, I have a black cap that I wear in the summer time, but not now.

Q. Well, in the winter time what kind of a cap do you wear? A. Wear one a grade heavier than that.

Q. Heavier than that? A. Yes, sir.

Q. Well, why didn't you produce that cap you were wearing on this day or one like it, instead of this summer cap? A. I don't know where it is now.

Q. Well, this accident happened on the 15th of February which is in the winter? A. Yes.

Q. And you, as you say were wearing a heavier cap, a winter cap. Why did you produce this summer cap? Because he was wearing a summer cap and you were wearing a winter cap? A. A fireman usually wears a lighter cap than the engineer.

Q. He doesn't get cold as quick as the engineer? A. Not in front of the fire door.

Q. No, and he wears a lighter cap? A. Wore this cap.

Q. When you last saw it? A. Station master's office.

Q. Where in the station master's office? A. Weehawken.

Q. But where in the office was it, on the chair or on the shelf, or where? A. I could not tell that now.

Q. Well, had he worn it in or had he it in his hand? A. That I could not tell you.

Q. Did you see it in the station master's office? A. Yes, sir.

Q. And it was there when you went out? A. Yes, sir.

Q. Now, at the last trial you didn't take interest enough to go for your own volition and buy a summer cap, did you? A. No, sir.

Q. How much did you pay for it?

Witness: Do I have to go into that detail?

The Court: Yes, answer it.

Mr. Simpson: Of course.

A. Twenty-five cents.

By Mr. Carey:

Q. You spoke of a jack signal near the easterly end of the tunnel, where is that? Where is your engine at the time when you can first see that jack signal? A. You have got to be right alongside the signal before anyone can see it; it is just outside of the tunnel.

Q. Couldn't see it from the position where Price was before the train entered the tunnel? A. No.

Q. Dark, all the way through the tunnel isn't it? A. Dark all the way through.

Q. And do you know how long that tunnel is?

A. About seven eighths of a mile.

Q. Now, this jack signal you say governs the west bound track? A. Yes, sir.

Q. Has nothing to do with the East bound track? A. Nothing whatever.

Q. So that a person on an east bound train wouldn't be watching out for that signal? A. They have no occasion to look for signals there.

Q. Where is the engine when the fireman is able to see this signal first west of the tunnel? A. He has to be just about opposite the station, after we go past, but they were talking about the Overhead bridge, the New Durham station.

Q. And the fireman sings that out to the engineer, does he? A. Yes.

Q. Because he sees it first? And at what point does the fireman usually call out that signal to you? A. Half way past, underneath the bridge, when he comes in sight.

Q. About in front of the station there? A. About fifty feet beyond the bridge.

Q. And was that about where Mr. Price called it that night? A. Yes, sir.

Q. Now, as you are approaching that signal, when the fireman first catches sight of it your train is on the curve is it not? A. Yes, sir.

Q. Can the fireman see that without putting his head out of the cab window? A. He can if he looks through the front cab door, the glass.

Q. Do you look through the front cab window? A. Yes, sir, I certainly do.

Q. It is sufficient for you to see the signal is it? A. (No answer)

Mr. Carey: That is all?

By Mr. Simpson:

Q. You speak about calling out this signal that Mr. Price called out. On the last trial you swore

that the signal was about five hundred feet west of the tunnel didn't you? A. I don't just exactly know the number of feet, I just gave that as an estimate.

Q. Well, where do you say this signal is with reference to the tunnel. Had you reached the signal before you passed the freight train or was it after you passed the freight train that he gave you the signal. A. He called out the signal and then we passed the signal and then we met the freight train.

Q. Right at the signal? A. No, but just beyond the signal.

Q. Just beyond the signal. A. Yes, sir.

Q. After he called the signal out you reached the signal and then just beyond it you passed this freight train? A. Yes, sir.

Mr. Simpson: That is all.

By Mr. Carey:

Q. When you passed the freight train can you state which you were nearer to, the signal or the tunnel? A. Nearer the tunnel.

Q. And what was the relative position between the signal and the tunnel as nearly as you can state it? A. Well approximately two hundred feet east of the signal.

(WITNESS EXCUSED.)

JOHN B. DONNET, sworn.

Direct Examination by Mr. Simpson:

Q. Doctor, you are a practicing physician? A. No, I am not a practicing physician.

Q. You are, a pathologist? A. Pathologist in the New York State hospital.

Q. Where did you study neurology? A. University of Paris, University of Geneva and in Berlin.

Q. And how long have you been connected with the staff of Morris Plains? A. A little over two years now.

Q. And did you make any lumbar punctures of this man, Charles Price? A. Yes, I did.

Q. And how many did you make? A. I could not tell you exactly the number, but several.

Q. And did you examine the spinal fluid? A. Yes, I did.

Q. And did you find anything in the fluid which would indicate to you that he had had a spontaneous cerebral hemorrhage, any blood in the spinal fluid? A. No, I didn't find anything which could lead to the diagnosis.

Q. You found the spinal fluid was normal? A. Yes.

Cross Examination by Mr. Carey:

Q. Did you find anything to indicate Mr. Price had had a cerebral hemorrhage of any kind? A. No, I didn't find anything like that.

Q. Did you find anything to indicate whether he had a hemorrhage on the outer surface of the dura or outside covering of the brain? A. No. The liquid of the spinal fluid was normal in every respect.

Q. Well, what would that indicate with reference to a hemorrhage on the outer surface of the covering of the brain, covering the membrane.

Mr. Simpson: That question is not very clear as far as the findings are concerned.

Mr. Carey: I withdraw the question.

Q. If there had been a hemorrhage on the outside surface of the outside covering of the brain

would your examination have disclosed that fact? A. Probably.

Q. In what way? A. Some derivative of blood would be present in the spinal fluid.

Q. Even though the hemorrhage was on the outside of the dura? A. Even outside of the dura it would be possible.

Q. It would be possible? A. Yes.

Q. But it would not be probable would it? A. Even probable.

Q. Have you ever had an occasion in which that condition existed? A. Yes, I have seen a case.

Q. How long ago? A. It was 1915.

Q. And where was that case? A. It was in the Hospice Potrousse, in Paris.

Q. That is the only one you ever saw? A. The only one I ever saw?

Q. That is the only one you ever saw? A. It is the only one for which I had to make an analysis of the spinal fluid of such a case.

Q. And did you make an autopsy? A. Yes.

Q. Yourself? A. Myself.

Q. And, how long after you examined the spinal fluid? A. Six or eight hours after.

Q. Did you find a hemorrhage? A. Yes.

Q. Where was the hemorrhage located? A. Outside of the dura.

Q. Where? A. Do you know the future which joins the frontal bone with the paretal?

Q. Well, will you indicate on your head where you found this hemorrhage? A. If you want to have roughly the lesion, it was about here (indicating the left side over the ear).

Q. Will you state what the character of that hemorrhage was? A. It was a small hemorrhage which had diffused between the bone and the dura.

Q. Caused by what? A. Caused by a traumatism. He was a soldier. He was blown off by an explosion.

Q. And is that the only case that you found hemorrhage? A. It was.

Q. No other place where there had been any bleeding at all? A. No, couldn't find any other bleeding.

Q. Did you examine the brain? A. Yes.

Q. You say this soldier had been killed by an explosion? A. Not killed as he was brought in the hospital living.

Q. Yes, and died afterwards? A. Died afterwards.

Q. What was the character of the explosion that injured the man do you know? A. I couldn't tell you exactly the character of the explosion because I was not present, but from what I learned and ascertained about the case he was a gunner—I think you call it the gunner—the man who is busy with the heavy guns, and one shell exploded directly into the gun and one fragment of that gun hit the soldier on the head. That was all we could make out from that kind of traumatism that he had.

Q. And where was the place of contact on the head where this fragment of shell hit this man? A. As I told you he had a lesion at this part of the head (indicating the left side of the head above the ear).

Q. There was something to indicate there that the piece of shell had struck him?

The Court: External indication.

Mr. Carey: External indication, yes.

A. Yes, there was an external indication of injury, of a traumatism.

Q. Just describe that wound, will you? A. It was a result——

The Court: Do you understand the question asked you, to describe, as I undersand it, the

external or outward——

Mr. Simpson: He does not seem to understand English very well.

The Court: ——mark of this wound made by this fragment of shell hitting this soldier. That is what you want?

Mr. Carey: Yes.

The Court: That is, was there a cut there or what was on the outside?

Mr. Simpson: He is a Frenchman and I do not think he understands very well. He started a scientific description:

The Court: Was there any external, outside indication of a wound where the fragment of this shell hit the head of this soldier?

The Witness: Oh, yes.

The Court: Now, describe that. That is what we want. Describe that.

The Witness: It is pretty far from the present time.

The Court: Well, the best you can.

The Witness: The best I can remember the skin was slightly broken, a large quantity of blood was found among the hair when he was brought into the hospital. And I do not think that the lesion—the external lesion was not more than two or three inches in length.

Q. Did it go through to the skull, did this cut reach the skull? A. The skull was broken, yes, sir.

Q. The skull was broken was it? A. Yes, sir.

Q. And was the dura punctured? A. No, it was not punctured.

Q. Well, the dura forms a closed sac, doesn't it? A. Yes, very closed.

Q. Now, how does the blood get from the outside of the dura into the spinal fluid? A. Very

easily.

Q. Tell us how? A. You know what is diffusion?

Q. What?

The Court: He asked you if you know what diffusion is?

Mr. Carey: I have a general idea.

The Witness: Well, through that physical phenomenon you will have some derivative of the blood diffusion through the dura.

Q. That is, it seeps through the dura? A. Yes, it may; that is one way. Another way it may be carried through the lymphatic spaces.

Q. And what is the connection with the spinal fluid? If it seeps through the dura, how does it get into the spinal fluid? A. Well, as soon as it has diffused through the lymphatic spaces it reaches the spinal fluid—I should say cerebro-spinal fluid; you will have a more complete word.

Q. Where did you take the spinal fluid?

Mr. Simpson: What do you mean, Price or the soldier?

Q. At what point in this soldier's body did you take the spinal fluid? A. At the usual place, where the lumbar puncture is made.

Q. Yes. All right. So that you say that this blood reached the spinal fluid by working its way through the dura? A. Yes; it was the only explanation we found.

Q. Have you had very much experience in France in connection with traumatic wounds? A. Yes.

Q. And traumatism? A. I was in the special service, in the neurological service, so we didn't have but traumatism on the nervous system.

Q. And, I understand you, this is the only case

coming within your experience in which hemorrhage on the outside of the dura resulted in traces of blood being found in the spinal fluid? A. I would say the only case for which I have a demonstration.

Q. And the only case in which you have had a demonstration? A. Yes. If you have no autopsy following the case you have no demonstration; consequently your supposition is not worth a great deal.

Q. In what form or condition was the blood you found in the spinal fluid? A. I don't understand the question.

Mr. Simpson: I want to object to that on the ground that he does not make it clear whether he means Price's spinal fluid or the spinal fluid of the soldier.

The Court: I understand he said he found no blood in the spinal fluid of Price.

Mr. Simpson: But that may be his purpose to get him to say he did.

Mr. Carey: I am talking about the soldier.

The Court: Read the question again.

Q. (Repeated by the stenographer.) In what form or condition was the blood you found in the spinal fluid?

The Court: Of this soldier in France of which you have spoken.

A. Blood has—you are not looking for a form or condition of the blood.

Q. Well, was it pure blood or was it—was it pure blood? A. It would not be possible to find pure blood in the spinal fluid. As soon as the blood reaches the spinal fluid it would not be pure blood.

Mr. Simpson: It mixes right away, I suppose?

Q. What elements of the blood did you find in the spinal fluid? A. You want to know what kind of tests, probably, have been made, and how the demonstration of blood was made? Is that what you mean? I do not understand exactly your question, sir.

Q. I want to know what element of blood. Did you find pure blood there? You can separate blood from the spinal fluid, can't you? A. Very easily.

Q. Now, did—if you separate the blood from the spinal fluid, would you get pure blood? A. No, sir.

Q. Would get that which contained all the elements of blood? A. Not necessarily.

Q. Well, what would it contain? A. It may contain some part of the blood.

Q. What? It may contain some part of the blood.

Q. Some part of the blood, but not all of the elements which go to make up the blood? A. No.

Q. Did you examine the spinal cord in this case of the soldier? A. The spinal cord was examined, yes.

Q. And what did you find? A. As far as I can remember there were no pathological findings in the spinal cord of the soldier.

Q. You don't remember any—— A. No.

Q. ——pathological findings? A. No, if there were any I would remember.

Q. An explosion, the kind you have described would be likely to produce bleeding of the spinal cord, wouldn't it? A. It would. It depends often on the strength and power of the explosion.

Q. And you say a shell, you call it, exploded right at the gun where this man was operating, is that right? A. That is what I understood.

Q. That was an explosion pretty close to the

man, wasn't it? A. I couldn't tell you, I don't know how far the man was from the——

Q. Well, you understand from the information you had after this explosion, that the explosion was pretty close to this soldier? A. I couldn't tell you at all.

Q. You don't know about that? A. I don't know about that.

Q. An explosion of a shell up close to a soldier would be likely to cause bleeding of the spinal cord, wouldn't it? A. Not necessarily. It is a usual——

Q. If it was a heavy——

Mr. Simpson: Let him finish the answer.

A. (continuing) It is a usual finding.

Q. That is all.

The Witness: But my answer is not finished. May I have the right to finish it?

The Court: Yes, sir.

A. (continuing) I just say it is a usual finding, blood in the spinal cord. In cases of explosion; but it is not always.

Q. It depends on the intensity of the explosion does it not? A. Yes.

By Mr. Simpson:

Q. Now, what I want to ask you—Mr. Carey has gone into this so elaborately perhaps you can in a minute or two tell us what the test is to take the blood out of the spine and examine it. You take the blood out of the spine and examine it, do you? A. Yes. You examine it. And you have to be very careful and make sure you have not drawn some blood—some fresh blood when you are performing your test; but if you find some derivative of the blood, some haemoglobin, this

shows that the blood was in the spinal fluid for some time and has already undergone a chemical process.

Q. What do you do when you get this fluid out of the spine, do you examine it under a microscope or what do you do? A. Well, you are performing several chemical tests, to demonstrate the presence of the blood or absence, you are examining under the microscope to find out the number of cells which are contained in the spinal fluid; you are looking for the quantity of globulin or the quantity of albumin which is contained in this spinal fluid; and you performing several other tests. You make a Wasserman or any other test.

Q. Wasserman to show whether or not a man has syphilis? A. Yes.

Q. Well, in this case you made some Wasserman test of Price? A. Yes.

Q. And what did that show, that he did or did not have syphilis? A. Did not have, very undoubtedly negative.

Q. You made other tests besides Wasserman for syphilis? A. Yes.

Q. Noguchi—what is that, named after some Japanese? A. Yes, he is a man pretty well known in pathology.

Q. And you made one of his tests? A. Yes, Noguchi has two kinds of tests. He has a modification of the Wasserman test and beside some are called the Noguchi test, for demonstration of globulin which is a kind of albumin.

Q. Did you make any other test for syphilis beside this Noguchi test, and the Wasserman? A. I made a gold-colloidal reaction.

Q. What did that show, did that show the absence of syphilis? A. It showed absence of syphilis.

Q. And these tests were all made on the patient up at the hospital. A. Yes, first one was made—this test was made by Dr. Fallon who was the pathologist of the State Hospital. He is present pathologist in the army.

Q. You took him to Dr. Fallon? A. Yes.

Q. And then you made a test? When was the last test you made? Do you know how long? A. If I am not mistaken, perhaps six or seven months ago.

Mr. Simpson: That is all.

JAMES M. HART, sworn.

Mr. Carey: I think, your Honor, I will withdraw this witness.

(witness withdrawn for the present)

LEONIDAS L. MIAL, sworn.

Direct-examination by Mr. Simpson:

Q. Doctor you are a practicing physician? A. Yes, sir.

Q. Where do you practice? A. Morristown, N. J.

Q. Have you made a specialty of the eye? A. Yes, sir.

Q. How long have you made a specialty of the eye? A. Since 1891.

Q. Are you connected with any institution, of pathogeny or eye and ear places? A. Manhattan Eye and Ear Hospital in New York.

Q. And what position do you hold there? A. I have not been actively connected there for the

last few years, but I was assistant surgeon there for a great many years.

Q. And did you examine the eyes of Charles Price who is now confined in the Morris Plains Asylum last night? A. Yes, sir.

Q. And will you tell the jury what preparation you made to make a proper examination of his eye? A. I first tested how good his vision was, and then in order to see his eye ground properly, his fundae as we say, I used midriatic. That is a drug to dilate the pupil.

Q. That is necessary to make a proper inspection? A. It is necessary to make a thorough inspection.

Q. And when you did dilate the eye and examine the ground—that is the name of it, where the blood vessels are? A. That means the retina and the head of the optic nerve, and so forth.

Q. When you examined that did you find it normal? A. As far as I could see it was perfectly normal.

Q. And you think, your experience, a correct diagnosis of an abnormal pathological condition of the eye ball using a ophthalmoscope cannot be made without using midriatic? A. I don't think so, I would not consider that I had made a thorough examination unless I had dilated the pupil.

Q. What did you find the condition of this man to be as regards his eye ground? A. Normal, so far as I could tell.

Q. Normal? Now, in a case of cerebral hemorrhage sufficient to cause insanity would you not expect to evidence of pressure manifested by abnormal changes in the eye ball? A. I am afraid I cannot answer that question. I am not an expert on insanity. I can simply say that I did not find any swelling or any abnormality in this man's eye-ground.

Q. And was there any evidence of choked disc? A. No, sir.

Q. What does that mean choke? A. That means a swelling of the head of the optic nerve, commonly due to pressure.

Q. Was there any evidence of pulsation in the nerves of the eye? A. None whatever.

Q. Were there any changes in the eye field that you could not find in a man of normal eyes and normal vision? A. No, sir.

Q. Was there any difference in his eyes? I mean the power of his right and left eye? A. They are practically the same.

Q. And what is his vision? How is his vision? A. Twenty twentieths, or a little better. That is considered normal.

Q. Twenty twentieths? A. Yes.

Mr. Simpson: Cross Examine.

Cross-examination by Mr. Carey:

Q. Did you notice any difference in the discs of the eyes? A. Well there was a slight difference in the matter of pigmentation around the optic disc there was a little more pigmentation in his left eye than in his right.

Q. What do you mean yhen you speak of pigmentation? A. I mean you could see the pigmentation, the coroid in the eye, around the optic disc. You always see that more or less. That does not mean that the eye is ab-normal at all.

Q. Eyes may be perfectly normal with those differences in the discs? A. Yes, sir.

Q. Did you notice any tortuosity of the blood vessels? A. None at all.

Q. Of fundae? A. None at all, the blood vessels of the eye never run exactly straight you know, anyway. They are never the same in any two individuals.

Q. But did you notice any abnormal tortuosity of the blood vessels of the fundae? A. No.

Q. An examination of the eye will often disclose abnormal conditions of the eye, will it not? A. Yes, sir.

Mr. Carey: That is all.

Mr. Simpson: That is all, doctor.

Witness Excused.

JAMES B. NEARPASS, sworn.

Direct Examination by Mr. Carey:

Q. Mr. Nearpass, you are in the employ of the Central Railroad Company? A. Yes, sir.

Q. And were in the month of February, 1915? A. I was.

Q. In what capacity? A. Rear brakeman and flagman.

Q. What train were you on in the month of February, 1915. A. Train known as 72.

Q. Is that the train on which Mr. Price was fireman? A. Yes.

Q. And were you on the run that night? A. I was.

Q. Do you know Mr. Price? A. Yes, sir.

Q. How long had you known him? A. Oh, perhaps six months.

Q. Had you been on this run 72 during the six months preceding this injury? A. I think so.

Q. How long had Mr. Price been on that run? A. Well, I could not just recall.

Q. Several months? A. Months, I should judge, yes.

Q. When did you first learn that anything had happened to Mr. Price? A. Not until we had arrived at Weehawken and we—walked down the

station; about ten minutes after the train arrived there.

Q. Was Mr. Price on the engine when you passed the engine? A. He was not.

Q. You were on your way to what place? A. Down to the station master's office.

Q. Did you go down there? A. I did.

Q. When you got there was Mr. Price there? A. He was lying on a cushion in the office.

Q. Did you, he left the engine and before he got to the station master's office? A. I did not.

Q. Do you recall who was there when you got there? A. Why the engineer was in there and Mr. Higgins and Mr. Seaman and maybe some others, I don't recall.

Q. He was lying on a cushion at the time? A. Yes, sir.

Q. Did you notice the condition he was in? A. He seemed to be in an unconscious condition.

Q. Did he say anything? A. No, not to my knowledge.

Q. Did not so far as you remember? A. Not so far as I remember.

Q. Was he lying still or moving? A. Well he seemed to have his hands this way.

Q. Both hands on his head. A. Yes.

Q. And he laid there. How long did he continue to hold his hands on each side of his head in that way, just as you have indicated? A. Well, I was in there only a very few minutes, probably less than five minutes.

Q. Did you make any examination of his head to see if there were any evidence of injuries? A. Yes.

Q. Tell us what you did. A. Well, we parted his hair—Mr. Seaman was there—and looked over it thoroughly, couldn't see anything.

Q. Did you feel of his head? A. I did not.

Q. Any blood anywhere about it? A. I didn't see any.

Q. Any bruise or scratch or anything of that kind? A. No, sir.

Q. Did you see anything of a cap there? A. No, sir; I did not.

Q. The cap which belonged to Mr. Price? A. I did not.

Q. You didn't see it at all? A. No, sir.

Q. Did you see Mr. Seamon when he made the examination of Mr. Price's head? A. Well Mr. Seaman was in there, we were looking over it together. Of course he might have made a previous examination; I don't know.

Q. But after you got there you and Mr. Seaman both looked over the head? A. Yes, sir.

Q. Doing it at the same time? A. Yes, sir.

Q. Did you make any pressure on the head? A. Well, not particularly not.

Q. When you put your hand on his head, had he taken his hands down? A. Why he had his hands up and down you know.

Mr. Carey: Cross examine.

Cross Examination by Mr. Simpson:

Q. You testified at the last trial? A. I did.

Q. And were you asked this question "Do you say now as a fact that all you did was simply to look at his head to see if you could find any bruises?" Were you asked that, and did you answer "Yes sir"? A. If it is there I must have said so.

Q. What is that? A. I must have said it if it is there.

Q. Well, is that all you did do, just to see if you could find bruises? A. Well, to see if there was anything the matter with his head.

Q. Is that all you did? A. Yes, sir.

Q. To find bruises. Now, why did you examine his head? A. Why, he seemed to be in distress and holding his head, seemed to be something the matter with his head.

Q. He was unconscious, you told Mr. Carey and you tried to get him to recognize you. You said, "Do you know me, Charlie?" "No answer." A. Well, I don't know just what I said.

Q. Well, do you remember doing that at the examination? A. I think so, I don't just remember.

Q. You don't remember that. You remember what kind of an examination you made, but you don't remember whether you asked him that. Now, have you known him a long time, worked with him? A. Well, only when I was on that run particularly.

Q. Well, how was he in the runs, did he always attend to his duties all right? A. As far as I know.

Q. He was a good worker as far as you know? Yes, he was a man in normal health. A. Seemed to be.

Q. Like everybody else working on the road, as healthy as anybody? A. Seemed to be.

Q. You never noticed anything peculiar about him? A. I did not.

Q. Now, show the jury—will you tell us how he had his hands on his head? A. Something like this (putting both hands to his head, one hand over each ear).

Q. Was he throwing it around or moving it back and forth? A. Well, kind of up and down.

Q. And when you examined him and he had his hands this way, did you take them off or what did you do? A. Well, he put his hands to one side, and we parted his hair and looked over his head.

Q. Did you find any swelling on his head? A. I did not.

Q. No bruises? Now, did you see his cap in the office? A. I did not.

Q. Who was in the office when you went in? A. Well, I know Mr. Seaman was there and the conductor; Mr. Foster and Mr. Reilly—I don't know whether he was there or not; that is all I remember.

Q. How did you come to go in the office? A. Well, I always go down, we have an hour or two to wait before we go out. I always walk down to the office.

Q. Well, there was no one called you in? A. Well, we generally go down there to consult the bulletin board, any notice or anything.

Q. This was a passenger run, was it? A. It was a passenger run, yes, sir.

Q. How long had you and he been on this run? A. Well, now, I can't recall just how long, but I judge two months.

Q. Were you there when he was taken out of the station master's office? A. I was not.

Mr. Simpson: That is all.

Redirect Examination by Mr. Carey:

Q. Your attention has been called to some testimony which you gave on your former trial. Now, immediately after the questions which have been read to you were you asked this question: "Is that all you did? A. We went—is that the question, 'Is that all you did?' I don't remember, I don't know? Did you so testify at the former trial? A. Yes, sir.

Q. So you were not certain at that time whether you had done anything beyond looking for injuries? A. No, sir.

(Witness excused.)

Mr. Simpson: May I recall Dr. Mail for just one question? Dr. Evans called my attention to something I omitted.

The Court: All right.

DR. MAIL, recalled.

By Mr. Simpson:

Q. In your examination of Mr. Price's eye ground was there any evidence present of what is called intercranial pressure? A. None that I could see.

Q. Was there any symptoms of the blood or excessive fluid of any kind present to affect his eye grounds? A. None at all.

Cross Examination by Mr. Carey:

Q. Would conditions of the eye ground vary within a period of ten days? A. Oh, I have seen them vary within a couple of days.

Q. They do vary then within a comparatively short time? A. Sometimes, it depends on the condition.

Mr. Carey: That is all.

By Mr. Simpson:

Q. Well, if there is pressure you can see the blood pulsate in the blood vessels. A. You can see that very often in the vessels themselves.

Q. And there was nothing of that kind in this case? A. No.

Q. Now, as to variance, these symptoms that you have described as being absent, in your opinion could they have been present ten or fifteen days ago in this man's eyes—any of the symptoms? A. I don't think so.

By Mr. Carey:

Q. Speaking of a moderate degree of pressure as distinquished from a marked degree of pressure would there not be a change within that period of time? A. I don't think so.

Q. Not even a small degree of interial pressure?

A. I am speaking now from the picture, from the mental picture I have of this particular man's eye ground when I examined it. It was so absolutely normal I think it would have been impossible for there to have been fifteen days or thirty days any marked symptoms of intercranial pressure in his eye ground.

Q. In your belief, was the condition fifteen days ago the same as when you saw it? A. I do think it was just the same as when I saw it.

Q. Now, then, intercranial pressure would change with the change of blood pressure, wouldn't it? A. Yes, to a certain extent but not much.

By Mr. Simpson:

Q. Assuming that his blood pressure was normal on the 20th of March and had been for a year before that, would you say that his eyes could have presented any of these symptoms, ten days ago of a normal blood pressure—in your opinion this is? A. I don't think so.

Q. And his eyes, as I understand you, are the eyes of a normal man? A. Exactly.

Q. And that is what you base your opinion on? A. Yes.

By Mr. Carey:

Q. Would the condition of the eyes vary with vaso motor condition, an emotional condition? A. I have had no experience in emotional work.

Q. You could not answer that question? A. I could not answer that question.

Q. What is it? A. I could not answer that question.

By Mr. Simpson:

Q. You are just a specialist of the eye; you do not assume to be a specialist like these doctors of both the eyes and the mind, do you? A. No.

By Mr. Carey:

Q. Doctor, you neurologists examine eyes in connection with diagnosing cases? A. Do they?

Q. Yes. A. Why, I should think they ought to have the opinion of an expert.

(Witness excused.)

THOMAS W. HICKS, sworn.

Direct Examination by Mr. Carey:

Q. Mr. Hicks, you are in the employ of the New York Central Railroad Company? A. Yes, sir.

Q. And have been for how long? A. Twenty-seven years.

Q. Running on what division? A. River.

Q. That division extending from what points? A. Jersey City to Albany.

Q. On the night of February 16th, 1915, were you on train 76—or 72? A. Yes, sir.

Q. That was the train on which Mr. Price was fireman? A. Yes, sir.

Q. What time did you arrive in Jersey City that night, I would say Weehawken? A. Why, about seven twenty-eight.

Q. What were you on that train? A. Conductor.

Q. You knew Mr. Price? A. Yes, sir.

Q. Did you see him that evening? A. I did.

Q. Where did you first see him after leaving the train? A. I saw him at the engine.

Q. Who was with him? A. Riker, and Mr. Foster; Mr. Riker and Mr. Foster.

Q. Was he on the engine or off the engine? A. Off the engine.

Q. What was he doing and what were Mr. Foster and Mr. Riker doing? A. They were assisting him to the station.

Q. And where did they take him? A. Station master's office.

Q. And about how far would you say that was from the engine. A. Well, two hundred feet, possibly three.

Q. Did you go into the station master's office? A. Yes, sir.

Q. And will you tell us now what you saw of Mr. Price and what you did? A. Mr. Price was taken into the station master's office and sat on a chair, until they got a cushion, when he was laid on the cushion. I didn't do anything myself, I guess, only look on.

Q. And in what way did you look on, what did you look at? A. Why, I looked at Mr. Price.

Q. Yes, and how near to him were you? A. Oh, probably four or five feet.

Q. What did he do after he was laid on the cushion? A. He held his head all the while like this (putting the left hand over the left side of the head, over the ear).

Q. Was he holding his head as he walked down the platform? A. I couldn't say.

Q. Did you look to see whether there was any bruise or wound around his head? A. I looked at his head and saw no mark.

Q. Did you see any blood? A. No, sir.

Q. Anywhere on his person? A. None at all.

Q. Did you hear him say anything? A. "Some one hit me with a hammer," he kept repeating.

Q. Where was he when he said that? A. On the cushion in the station master's office.

Q. Did you see anything of a cap which was said to belong to him? A. I did.

Q. Do you know whether it belonged to him or not? A. Why, no; I don't know. It looked like the same cap he always wore.

Q. And you had seen him wearing a cap of that description? A. I had.

Q. Describe the cap? A. Well, it was a cap with a peak.

Q. What is it? A. A hat with a peak, quite thin material.

Q. I show you this cap marked D-8 and ask you whether the cap which you saw that night was something of that description? A. Well, yes, only the cap that night was of much better material.

Q. Better material. A. Yes, sir.

Q. Could you see whether it was thicker or thinner? A. Well, it was a little thicker than that.

Q. What is that? A. Thicker, I should say, the same style only a better cap.

Q. Did the cap which you saw have a tear in it? A. It did.

Q. Will you show the jury where the tear was? A. Let's see, about here (indicating left side of the cap).

Q. Where was the cap when you last saw it? A. I saw it put in Mr. Price's bag in the station master's office.

Q. Do you recall who put it in the bag? A. I think Mr. Foster.

Q. Have you a clear recollection in regard to it? A. Not in regard to who put it in, I have a very clear recollection about the cap.

Q. There has been testimony in the case about a wool cap with ear laps on it. Was the cap that you saw put in Mr. Price's bag a wool cap? A. No, sir.

Q. You saw the material was heavier than this? A. I don't think it was wool; it was some sort of stuff like that, like a coat lining.

Q. Did you take the cap into your hands that night? A. I don't think so.

Q. Did you ever see the cap after that night? A. No, sir.

Q. Know what became of it at all? A. I do not.

Q. Who brought the bag into the office which you saw there? A. I couldn't say, I don't know.

Q. Do you recall who was there while you were in the office? A. Mr. Raymond, Mr. Nearpass and Mr. Riker was there part of the time; that is all I know.

Q. How long did you remain there? A. How long did I?

Q. Yes. A. Oh, possibly ten minutes.

Q. Did you see Mr. Price after that night? A. I did not.

Q. Never see him from that time until you saw him the other day? A. No.

Q. You are familiar with this signal which is shown in Exhibit D-1, west of the tunnel? A. Yes, sir.

Q. Do you know whether there is another signal between that signal and the westerly end of the tunnel? A. There is not, not on the easterly track.

Q. Not for the east bound track? A. No.

Q. Was there any signal between this signal in D-1 and the westerly end of the tunnel on the night of February 16, 1916? A. No.

Q. Has there ever been since you have been working on the River Division of the West Shore Railroad Company? A. I think there has.

Q. How long ago? A. Oh, possibly twenty years.

Q. But not since then as far as you know? A. Not to my knowledge.

Q. And what kind of a signal was that that you speak of? A. That was a manual signal.

Q. What? A. A manual signal, worked from the tower.

Q. Worked from the tower? A. Yes.

Q. Like this signal which you see in the picture?

A. Yes, like that only one-arm signal.

Q. And at the time the signal was there that you speak of, was that signal here which is now shown in the picture? A. No, sir.

Q. And this signal which appears in the picture took the place of the signal which you speak of? A. Yes, sir.

Q. Did you see any other cap that night there, so far as you know which belonged to Mr. Price? A. I did not.

Q. Did you ever see him wear a dark blue cap with ear laps? A. Not to my knowlegde.

Mr. Carey: Cross examine.

Cross Examination by Mr. Simpson:

Q. How long have you known Mr. Price? A. Why, about the time he worked on that run; I should judge about five months.

Q. Five months. And did he always do his work well? A. Seemed to.

Q. Seemed to be a sober, efficient work man, didn't he? A. Yes, sir.

Q. A man of ordinary intelligence and health so far as you could see? A. Yes, sir.

Q. Never saw anything peculiar about him, did you? A. Nothing wrong.

Q. Never knew of his having collapsed or fainted or anything of that kind? A. No.

Q. Now, when you saw him that night, will you tell these gentlemen what he looked like? A. Why, he seemed dazed, weak and the engine man and the train man were assisting him.

Q. He seemed dazed and was being assisted by the engine man and the train man.

Q. Did he seem to know his surroundings, what was going on around him? A. He didn't appear to know anything.

Q. And this cap, where did you first see the cap,

in the station master's office? A. Yes, sir.

Q. Did you take it up in your hands and examine it or was it lying on the chair or where was it, do you remember? A. I don't think I had it in my hands.

Q. So whatever you saw of it was some distance away? A. No, right close by.

Q. Who had it? A. I think Mr. Foster had it.

Q. In his hands? A. Yes, sir.

Q. And you say it was a different cap from this? A. Yes, it was a better material than this; I should say a little thicker.

Q. Was it thicker and heavier? A. Yes, I should say so.

Q. And in the winter time the engineers do wear heavier caps, don't they, than in the summer time? A. Well, I don't know much about it.

Q. I see. You were not up in the front end of the engine, on the engine I mean? A. On the engine?

Q. Yes. A. No, sir.

Q. You would not be apt to see what the men were wearing in the engine; and when you made these observations of Price's cap it was just a casual one as you were around? A. I saw him when he held it up for inspection——

Q. No, I don't mean that time. But you have testified to never having seen him wearing a winter cap? A. No.

Q. Well, you never paid much attention, did you? A. No.

Q. You were not interested in whether he got his caps at Dunlap's or whether be got them elsewhere, were you? A. No, sir.

Q. I mean there was nothing to call your attention especially to the cap, was there? A. No, sir.

Q. There was nothing especial to call your attention to his head gear? A. No, there was not.

Q. Did you say you made an examination of his head? A. No, sir.

Q. You were the conductor of the train? A. Yes, sir.

Q. And where was it you say he said "Some one hit me with a hammer?" A. In the station master's office.

Q. When they got him in the office? A. He said it before he got in there, he kept repeating it.

Q. "Somebody hit me on the head with a hammer? A. Yes, sir.

Mr. Simpson: I think that is all.

Redirect Examination by Mr. Carey:

Q. You say he repeated a number of times? A. Yes.

Q. Now, have you anything before you, Mr. Hicks that would be a fair representation of the material of which this cap was made? You spoke about a coat lining. A. Well, coat lining is something on that order. (Referring to the lining in his own coat.)

Q. Your recollection is that his cap was of about that material? A. I should say just about.

Q. Show that to the jury. Now, as you were going through the tunnel that night was there anything unusual that occured so far as noise or anything of that kind? A. No, sir.

Q. Were Mr. Price's eyes open when you saw him in the station master's office? A. Why, I think so. I am not positive; I think they were part of the time, anyway.

Q. Did you see his face before he got into the station master's office? A. I did.

Q. Where did you walk, ahead of him or behind him?

Mr. Simpson: I submit that is not redirect. He examined this witness and I cross ex-

amined him and now he opens the whole thing on redirect. It is a waste of time.

The Court: What is the question.

Q. (Repeated by stenographer.) Where did you walk, ahead of him or behind him?

Mr. Simpson: I submit that has already been gone into on direct, absolutely.

The Court: I do not think he went into this. Of course, if it has been gone into I do not want to go into it again.

Mr. Carey: I do not believe——

The Court: What is the question?

Q. (Repeated by stenographer.) Where did you walk, ahead of him or behind him? A. I walked along by their sides; right along with them; I can't say that I walked behind him or ahead of him.

Q. You said that Foster put the cap in Price's bag in the station master's office; you saw that done? A. I say I think it was Mr. Foster.

Q. Well, you saw the cap go in the bag? A. Yes, sir.

Q. Although you do not remember who put it yet you saw the cap go in the bag? A. Yes, I did.

Q. And your best recollection is that it was Mr. Foster who did it? A. Yes, sir.

Mr. Simpson: That is all.

(Witness excused.)

RICHARD RIKER sworn.

Direct Examination by Mr. Carey:

Q. Mr. Riker, you saw the cap which Mr. Foster has testified about? A. Yes, sir.

Q. I show you this Exhibit D-8 and ask you whether or not that is a cap like that one? A. It is the same in appearance but I think it was a silkoline cap.

Q. Silkoline material, heavier or lighter than that. A. A little heavier.

Q. A little heavier? Did you see what became of the cap? A. No, sir.

Q. What was the last you saw of it? A. In Mr. Foster's hands.

Q. Before or after he reached the station master's office? A. From the engine to the station master's. Carried it down.

Q. Did you see it after it was in the station master's office? A. That was the last I saw of it.

Q. It was in Mr. Foster's hands the last you saw it? A. That was the last I saw the cap.

Q. You went in the station master's office, did you? A. Yes, sir.

Q. And how long did you stay there? A. Just long enough to put Mr. Price in the chair and come on out.

Q. Just long enough what? A. To set him down in the chair and I left the office and went back to my train.

Q. Did you go out before or after Mr. Foster? A. Went out first.

Q. Did you see Mr. Price after that night? A. Never saw him until I saw him in the court here.

Mr. Carey: Cross examine.

Cross Examination by Mr. Simpson:

Q. Was there a tear in the cap you saw? A. Yes, sir.

Q. Right over the left temple as nearly as you could judge? A. Yes, sir.

Mr. Simpson: That is all.

(Witness excused.)

ADAM B. FENDRICH, sworn.

Direct Examination by Mr. Carey:

Q. Doctor, you are a practicing physician? A. Yes, sir.

Q. Graduate of what institution? A. Columbia University, New York, 1900.

Q. What experience have you had as a physician hospital experience and practice? A. Well, I have been the attending physician at the North Hudson Hospital for the last—oh, I judge between twelve and fourteen years. I have had surgical experience both in Bellevue and Roosevelt Clinic, for a few years at a time, besides my personal experience.

Q. And your practice is what line of practice, general or special. A. General practice.

Q. Your office is located where? A. At the present time at the First National Bank of Union Hill.

Q. You examine patients for the New York Central Railroad Company? A. Yes, sir.

Q. You have done so for about how many years? A. About twelve years.

Q. And you are now the examining surgeon for their patients? A. Yes, sir.

Q. At the North Hudson Hospital? A. Yes, sir.

Q. And you were in February, 1915, were you not? A. I was.

Q. Were you called to the West Shore Weehawken Station on the night of February 15th, 1915? A. I was.

Q. For what reason? A. I was called down to see a man who was brought down to the station supposedly hurt.

Q. Who was the man? A. That telephoned to me?

Q. No, who was the man you saw when you got there? A. Well, now I know who it was. At that time I did not. It was Mr. Price.

Q. Mr. Price. What time did you get there? A. In the evening somewhere around eight o'clock.

Q. Where did you find Mr. Price and what was his condition? A. When I entered the station master's office, I saw this man lying on the floor, the covering over the floor, but lying down, and I walked over to him, saw that he had his eyes closed and paying no attention to anything that was going on around him; and then I examined him and during the examination asked him to open his eyes which he did. I examined the reflexes of his eyes to light, asked him to follow me this way and that way with his eyes which he did; and he all this time having nothing to say. I looked over his head and body as best I could under the circumstances, and not seeing anything that would indicate that he had been injured I ordered his removal to the hospital in order that I could give him a more thorough examination to determine what his condition was. He was then removed to the North Hudson Hospital.

Q. Did you see him that night. A. I saw him, in fact I waited for him to be brought in, and upon his being brought in the ward he was placed in bed and his clothing removed. His hair was cut, and partly shaved, and then I examined him thoroughly, from his head, and his entire body; and throughout, there was not anything, as I said before, upon examining him at the office, that I could discover, upon examining him at the hospital so far as an external injury was concerned, or an indication of an injury having inflicted upon him. He was in—not a clear state of mind at all. He was dull and did not seem to realize anything that was going on about him. I then realizing that he was not—or did not demand any surgical interference at that time left orders for his care that evening and night.

Q. Now, at the station did you examine his pulse? A. I examined his pulse and respiration, carefully noted that, in fact.

Q. And note the condition and feel of his skin? A. The skin appeared to be perfectly normal.

Q. How about the pulse and respiration? A. Pulse and respiration—the pulse was of good quality and time, and his respiration was apparently normal.

Q. Did you notice his eyes? A. Yes, his eyes appeared to be normal in re-action—although to some extent rather sluggish in re-action.

Q. Now, what were the conditions as to pulse and respiration and temperature, and eyes, when you examined him at the hospital? A. The pulse and respiration I took myself at the hospital and counted carefully, and they were perfectly normal. His eyes, were still in the same condition as they were in the station, re-acted rather sluggishly. His temperature, which was taken by the nurse and recorded on the chart, was perfectly normal.

Q. Now, you say that his hair was clipped? A. Yes.

Q. Was that all over his head? A. Yes, his hair was clipped all off his head, the left side of his head was shaved.

Q. And after that was done, what examination did you make of his head A. Well, we looked for any signs of an injury that may have been inflicted upon the head, by palpating and feeling around the head to see if there was any abrasion or cut of the skin, to see whether there was any depression in the head, for depressed fracture of the skull, to see whether you could find any indication of a fracture of the skull. That you do by palpating, and, of course, to see if there was any cut you examine the head carefully by looking at it, doing that as extremely careful as I did that that night,

there was nothing about the appearance of the outside of his head that would indicate to me that the man had been injured at all, there was not a sign of an abrasion, bruise or cut anywhere about him, or any indication of having blood either from his nose or ear, no sign of bleeding, or a trace of any fluid whatsoever to indicate a possible fracture of the skull.

Mr. Carey: Now, if the court please, I have a witness here who comes from one of the camps and she tells me she has to go back to-night. I would like to interrupt this examination to put her on, if I may.

The Court: I see no objection to it myself.

Mr. Simpson: Whatever your Honor says.

(Witness withdrawn for the present.)

SADIE SUTCLIFF, sworn.

Direct Examination by Mr. Carey:

Q. Miss Sutcliff, you are a trained nurse? A. Yes.

Q. Graduate? A. Yes.

Q. How long have you been a graduate nurse? A. Going on four years.

Q. Where are you now located? A. U. S. Army Hospital #38.

Q. Speak a little louder. A. U. S. Army Hospital #38, East View, New York.

Q. Were you in the North Hudson Hospital at the time Price was brought there? A. I was.

Q. On February 15th, 1915? A. I was.

Q. What duty were you on at that time? A. Night duty.

Q. You were then a graduate nurse? A. No, a pupil nurse.

Q. Pupil nurse? A. Yes, sir.

Q. Graduated soon after? A. Three months later.

Q. Do you know Mr. Price? A. I do.

Q. And do you remember when he was brought into the hospital? A. I do, yes, sir.

Q. What did you have to do with him immediately after he was brought into the hospital, if anything? A. Why, I assisted in undressing him and clipped his hair.

Q. Clipping it with what? Scissor.

Q. What part of the head did you clip? A. The entire hair on the head.

Q. And after the hair was clipped, what was done? A. The interne shaved one side of his head.

Q. Who was the interne? A. Dr. Cooperman.

Q. Which side of the head did he shave? A. The left side, I believe.

Q. Who were present at that time? A. Dr. Fendrich—I think Dr. Phezy and Dr. Cooperman and myself.

Q. And yourself? A. Yes, sir.

Q. Now, when you were clipping the hair on Mr. Price, will you state whether or not he was unconscious? A. I don't believe so.

Q. Do you recall whether he was talking, said anything? A. Not at that time.

Q. Did he later on? A. Yes, sir.

Q. What did he say? A. That somebody was hitting him on the side of the head with a hammer.

Q. Just a little louder, please. A. Somebody was hitting him on the side of the head with a hammer.

Q. That somebody was hitting him? A. Yes.

Q. Now, at that time when you saw him that night did you see any blood on him anywhere? A. No, sir.

Q. When you clipped his hair did you find any blood on the hair? A. No, sir.

Q. Was there any blood about his face or head that night? A. No, sir.

Q. Or any other time while he was in the hospital? A. No, sir.

Q. What was the temperature that night if you know? A. I believe it was normal.

Q. And do you have any recollection about respiration? A. I fully believe I charted it as being normal.

Q. How long did you have anything to do with Mr. Price? A. About seven or eight nights.

Q. Seven or eight nights in sucession? A. Yes, sir.

Q. And then did you go on a different kind of duty? A. I believe I did.

Q. Now, during the night, during that night, after his hair was clipped you say that he did say someone hit him on the head with a hammer? A. Yes, sir.

Q. Or was hitting him on the head with a hammer. And will you say whether he said that frequently or only once? A. Well, during the time I took care of him he always said that to me, every time I would ask him anything.

Q. At any time while you were taking care of him was there any material length of time, that is, several hours together when he did not talk? A. He never talked to me except when I talked to him.

Q. He never talked unless you talked to him? A. No, he never talked to me unless I spoke to him.

Q. He did not talk unless you spoke to him? A. No, he would never speak unless you talked to him.

Q. Did you attend to him during the night? A. Yes, sir.

Q. Did he call you at all? A. Why, he used to ring his bell.

Q. Used to ring his bell? A. Yes, sir.

Q. Bell right at the bed? A. Yes, sir.

Q. And did he ring the bell the first night, do you recall? A. I do not recall the first night but I know later on.

Q. And when he would ring his bell, who would attend him, that is when you were on duty? A. Myself, or the nurse that was under me.

Q. Did you attend to him yourself? A. Most always tried to.

Q. And what did he ask for when you got to him after ringing the bell? A. Why, he seldom asked for anything; he didn't know what he rang his bell for.

Q. Now, on this night after his head was shaved, did these doctors make any examination of his head? A. Yes, sir.

Q. And how did they examine it? How did they make an examination? What did they do to examine it? A. Well, as far as I can remember they examined all over his head and body.

Q. Well, with their hands, or how? A. With their hands and with the assistance of a light.

Q. Did you look at his head? A. Yes.

Q. Do you recall whether you held his head that night? A. Yes, I did.

Q. Did you see on his head any mark of any kind? A. No, sir.

Q. Was there any mark on his head that night? A. No, sir.

Q. When you felt of his head did you feel any bruise or any swelling? A. No, sir.

Q. Or anything of that kind? While he was in the hospital?

Mr. Carey: Strike that out.

Q. While you were taking care of him at the hospital was there any time when any bruise ap-

peared on his head? A. No, sir.

Q. Or any mark to indicate that he had been struck with anything? A. No, sir.

Q. Was there blood at any time about his head anywhere? A. No, sir.

Q. Did you see any indication of bleeding from the nose or from the ear? A. No, sir.

Q. What was the condition of his head before you clipped it? Was it heavy or light? A. I think he had a straight heavy set of hair; I don't just recall.

Q. Straight and thick? A. I think so.

Q. Did anybody assist you in clipping his hair? A. No; I did the clipping.

Q. All yourself? A. Yes, sir.

Q. And I think you said you found no blood on his hair at all? A. No, sir.

Q. Now, on the night following the first night was he more talkative? A. He was never very talkative, never——

Q. Did you see him up around the hospital at all? A. I did.

Q. What time did you go on duty at night? A. Seven o'clock.

Q. And what time did you go off duty in the morning? A. Seven o'clock in the morning.

Q. And did you see him up out of bed very much while he was under your care? A. I saw him up once or twice.

Q. Now, as you recall the condition on the night he first came there, was there any evidence of shock? A. Well, I really don't know, I could not diagnose anything about shock, I am testifying as a nurse.

Mr. Carey: All right, all right.

Cross Examination by Mr. Simpson:

Q. Was it a uniform rule to clip the hair of

every man that came into the hospital and shave the left side of his head? A. If the doctor ordered, yes.

Q. No, did you do it to every man that came in? A. No, we don't do anything until the doctor ordered it.

Q. Well, the doctor ordered the left side of this man shaved, did he? A. Yes, sir.

Q. And his hair clipped? A. Yes, sir.

Q. And his head was tender, wasn't it? A. His head felt like any other man.

Q. I mean he complained when you touched his head and winced with pain? A. No, but he just said it was tender.

Q. He said it was tender? A. Yes.

Q. Well, did he pull away from you when you touched the left side of his head? A. No, just said it felt tender.

Q. Felt tender on the left side. A. All over.

Q. And when he came into the hospital was he conscious or unconscious? A. Well, he was conscious.

Q. I don't wish your belief? A. Yes, he was conscious.

Q. Then he knew where he was? A. Why, he didn't give any explanation of it.

Q. Well, if he was conscious he seemed to take in and understand where he was, didn't he? A. Well, I don't say—I don't know if he knew where he was.

Q. He talked rational, didn't he? A. He was not talking.

Q. Well, when he was talking, he talked rationally, didn't he? He talked like you would? A. Surely.

Q. Rationally? Why, you have just said a minute ago he complained as if somebody was pounding him on the head with a hammer while he was

in the hospital, was somebody pounding him on the head? A. No, somebody hitting him on the head with a hammer.

Q. Well, do you consider that rational when a man says somebody is hitting him on the head with a hammer and nobody is doing it? A. I don't say he was doing that in the hospital. When I asked him what happened to him he said somebody hit him on the head with a hammer.

Q. No, you said, "Somebody is beating him on the head with a hammer." A. Well, that is my mistake.

Q. He didn't say that in the hospital? A. No, not "is hitting me." I meant to say somebody had hit him on the head with a hammer.

Q. But you swore to Mr. Carey that not one but many times he said, "Somebody is beating me on the head with a hammer." A. Well, that is my mistake.

Q. He didn't say that? A. Not "is beating me."

Q. Whose head—you mean that somebody had done it, is that what you meant? A. Yes, somebody had hit him with a hammer.

Q. And you considered that quite rational, for a man in the hospital to ring a bell to get you and not know what he called you? You consider that quite rational? A. (No answer.)

Q. And how long did you keep the ice bags on the left side of his head? A. I don't remember.

Q. What color hair did he have? A. I think it was light brown if I am not mistaken; I don't remember.

Q. Quite light brown? A. What is that?

Q. Quite light brown? A. I think so.

Q. Almost blond? A. No.

Q. And what time of the day or night did he come into the hospital? A. Eight o'clock, I be-

lieve or a little later; I don't know.

Q. Did you examine him for the purpose of finding a bruise or a mark on his head? Did you make an examination to find a bruise or a mark? A. No, but just curiosity caused me to examine him.

Q. Curiosity? A. Yes.

Q. Do you examine every patient that goes in there through curiosity? A. If I can.

Q. That is why you are so curious about them? A. Yes.

Mr. Simpson: That is all.

DR. FENDRICH recalled.

(Last question and answer on previous examination repeated by the stenographer.)

Q. Anything left to indicate—I mean external to indicate he had been struck by anything? A. Nothing that I could find.

Q. How long did you continue to attend Mr. Price? A. Well, I attended him, I believe his entire length or stay at the hospital, North Hudson Hospital.

Q. That was about how long? A. That would be impossible for me to say just now, Mr. Carey, it is so long ago.

Q. Several weeks? A. Several weeks, yes, sir.

Q. How long did you see him during his stay at the hospital? A. Why, I saw him every day.

Q. And will you state whether or not you made subsequent examination of the man? A. Yes, I believe I examined him pretty near every day.

Q. And of what did your examination consist, from time to time? A. Why, observation, observ-

ing to see what symptom would develop which would lead me to a conclusion as to what his condition was, examining his head by palpating, looking at it every day to see if anything would develop; of course, asking him all the time various questions which might give light to his condition.

Q. And you kept that up during your entire treatment of him? A. I kept that up, I believe, until the time when I asked for a consultation with reference to his case.

Q. You are not a specialist in nervous or mental disorders? A. Oh, no.

Q. Don't make any pretence of that? A. No, don't pretend to be.

Q. Were you able to diagnose his case? A. No, I was unable to make a positive diagnosis of what ailed the man.

Q. During all the time he was under your care, was there any appearance at any time of a bruise or scratch or anything to indicate a blow on the head? A. No, there was not.

Q. In all your treatment of him, was there any bleeding of any part of his head, or from the ear or nose? A. No.

Q. Did you at any time either the first night or afterwards see any evidence of shock? A. No, he suffered at no time from shock, from any indication from shock at any time.

Q. Did you at any time see anything in the man which indicated that he had concussion of the brain? A. No; the only thing that would make one think about it was the peculiar state of mind that the man exhibited.

Q. Now, at the time you saw him at the station, what was his condition, state of mind? A. Why, I could form no conclusion as to the state of mind in the station for the simple reason that he said nothing to me at that time, but he seemed to un-

derstand what I asked him so far as to opening his eyes and to follow my direction with his eye but as far as saying anything was concerned he had not said a word to me.

Q. And when did he begin to talk to you? A. Why, when we first examined him the first night at the hospital I asked him naturally how he was hurt, supposing that he was, one feature that seemed to stand in his mind was that he was hit on the head with a hammer.

Q. How do you know that was in his mind? A. That is what he kept saying to me, that "I was hit on the head with a hammer."

Q. Did he say that in the hospital? A. Yes, he said that that first night and for several nights afterwards—several days after that.

Q. Who was present at the time you made the examination in the hospital the first time? A. The superintendent, Dr. Beling; the interne, Dr. Cooperman, and a nurse. And I don't know whether there was one or more nurses, but there were nurses there.

Q. Was Miss Sutcliffe, who has testified, a nurse there at that time? A. Yes, she was there.

Q. And do you know whether or not she clipped the hair from his head? A. No, I could not say that, I was not present at the time the hair was clipped.

Q. You went from the station up to the hospital, did you? A. Yes.

Q. Did you get there before or after Mr. Price was brought in? A. Well, I could not say, after I waited for him upstairs. They usually bring in my patients in down stairs in the emergency room and then from there bring them upstairs on the elevator.

Q. You were there when he came up? A. Yes, I was there when they brought him up.

Q. And his hair had been clipped at the time? A. Now, I could not say whether it was clipped when I came in or later, that is when I first saw him brought up there or later; I am not sure. It must have been later because I asked the hair to be clipped, anyway. It must have been after he was brought up stairs.

Q. Now, do you know anything about Dr. Besing at the present time? A. Why, I do know that Dr. Besing died in France.

Q. In the service? A. In the service, yes.

Q. Did you talk much with Mr. Price while he was in the hospital? A. Yes, I did talk to him quite often.

Q. Did you ever see him when he was lying rigid in bed and not saying? A. Well, he was never rigid at any time. Lots of times he would say nothing, but never at any time was he rigid.

Q. Was there any time when he failed to answer when you asked him a question? A. No, I don't remember whether he ever failed to answer or not.

Q. Do you remember when he was taken from the station to the hospital he was unconscious? A. Well, I didn't go with him from the station to the hospital.

Q. Well, I say after he reached the hospital? A. He never was unconscious at any time.

Q. At any time when you saw him? A. No, not at any time.

Q. Was he wholly unconscious at the station? A. He was not totally unconscious, no, sir.

Q. How do you know he was not wholly unconscious? A. Why, he understood me when I asked him to open his eyes, he simply opened them. Then I said, "Look to your right and left," which he did. A man unconscious certainly will not do that.

Dr. Fendrich, (recalled) for Defendant—Direct

Q. Did you see him up and walking around after he was in the hospital? A. Yes, sir.

Q. About how long after he was taken there? A. Well, I don't remember how long he was in bed, just did get up but I saw him after he was up and saw him every day after he was up.

Q. And while he was there did he get so he sat up most of the day? A. Yes, there were times when he was up most of the day.

Q. Did he talk or carry on conversation of his own volition when he was under your observation? A. Yes, some times.

Q. And would he carry on a conversation without being prompted by questions? A. Well, that is hard for me to say. I would come in and say to him "Good morning, how do you feel this morning" and he would tell me. Then he would carry on a conversation after that of his own volition.

Q. Did he initiate conversation himself? A. Not that I remember at any time.

Q. But after you had started him? A. After I had started him.

Q. Then he would? A. Yes, he would a great many times after I had started the conversation.

(Recess to ten o'clock, April 9th, 1919.)

April 9th, 1919, 10 A. M.

Trial resumed pursuant to adjournment.

DR. FENDRICH, recalled.

Direct Examination by Mr. Carey, continued:

Q. Doctor, did Mr. Price while you were in attendance upon him state anything about how he felt what sensations he had? A. Yes, he did.

Q. Will you state what he said to you? A. Why, in asking him how he had been hurt he kept repeating that he had been hit on the head with a hammer and also complained—asked several times whether there was any blood running down the side of his face, also complaining about pains in his head.

Q. How long a period did his statement in regard to being hit on the head with a hammer continue? A. I believe that they continued practically his entire length of stay at the hospital.

Q. Will you state whether or not you heard him say that frequently? A. Oh, yes, I heard him say it quite frequently.

Q. And did you hear him ask frequently about blood running down his face? A. Yes, he asked about that rather often.

Q. During any of the time you were in attendance upon him, doctor, will you state whether or not he had anything above normal temperature? A. Yes, he did have at one time a slight rise in temperature. That was due to an infection he had on one of his fingers, an accumulation of puss there, which I opened and drained and immediately, of course, the temperature went back to normal.

Q. Otherwise was his temperature normal during the time you were treating him? A. Otherwise, his temperature remained normal all the time.

Q. And his respiration? A. Respiration was always normal.

Q. And pulse? A. Pulse was normal also.

Q. The surface of his skin? A. There was not anything unusual about the skin, nothing about his appearance or feel of the skin.

Cross Examination by Mr. Simpson:

Q. You are the physician for the New York

Central Railroad? A. Yes, sir.

Q. And have been how long? A. Oh, quite a number of years.

Q. And still are? A. Yes, sir.

Mr. Carey: He has testified to all that.

Mr. Simpson: Thank you for the little chorus.

Q. And you realize that this suit is to take money away from the New York Central, don't you? A. Well, that is so——

Q. Of course, that doesn't affect your testimony? A. Absolutely not.

Q. But you realize that is a fact, don't you? A. I realize Mrs. Price is suing to recover for something.

Q. All right. We have got that far. Now, you, when you went to the hospital—to the waiting room, was this man lying apparently unconscious there or not? A. He was lying there apparently without moving and with his eyes closed.

Q. Well, was he lying apparently unconscious? A. From the appearance of him as I take it he was apparently unconscious.

Q. And is unconsciousness a symptom of shock? A. Unconsciousness is a symptom of shock.

Q. What? A. It is, concussion of the brain, not always shock.

Q. Well, it is a symptom of concussion of the brain? A. Yes.

Q. And you didn't make any careful examination of his head at the station master's office, did you? A. Yes. I made a careful examination.

Q. You made a careful examination? A. As careful as I could under the circumstances.

Q. Now, what do you mean by that, you qualify that. A. Well, I mean with the hair on his head, I could not have made as careful an examination as

I could with the hair off his head.

Q. What did you testify at the last trial before Judge Campbell about the kind of an examination you gave him in the station master's office?

Mr. Carey: I submit if he is to be interrogate about his former testimony the testimony should be read.

The Court: That is correct.

Mr. Simpson: That is probably true; I will find that afterwards.

Q. Now, you did order him taken to the hospital, didn't you? A. I did.

Q. He had been brought on a train hadn't he, before you? A. I presume so.

Q. And was his face all covered with soft coal dust? A. I don't believe his face was all covered with soft coal dust.

Q. Well, was it dirty? A. I believe it was dirty; I believe it was dirty.

Q. You have often seen firemen? A. I don't believe it was clean.

Q. Well, was it washed before you examined him at the hospital? A. Do you mean at the station?

Q. No, at the hospital. A. Well, in the hospital.

Q. When you came back to the hospital had it been washed and examined? A. I don't believe it was washed at that time.

Q. What? A. I don't believe his face was washed when I examined him at the hospital.

Q. So that you examined him without his having his face washed? A. To the best of my knowledge and belief.

Q. Are you positive about that? A. To the best of my knowledge and belief.

Q. Well, how long was he in the hospital when you got there? A. Why, I was waiting for him.

Dr. Fendrich, (recalled) for Defendant—Cross

Q. When he came in there? A. When he came in.

Q. And your recollection is his face was not washed? A. My recollection is such.

Q. And you wanted the left side of his face shaved, didn't you? A. I ordered the entire hair shaved off his head.

Q. Didn't you order the left side of his head shaved? A. Well, now, I am not positive as to whether I ordered it shaved or not.

Q. It was shaved, wasn't it? A. Yes, it was shaved.

Q. And the left side was shaved? A. The left side was shaved.

Q. Not both sides? A. I believe so.

Q. Now, let us get that clear. The left side was shaved as you recollect it now and not the right side? A. I believe so.

Q. You put ice bags on his head? A. I believe so.

Q. Why was that? A. Well, that is a routine treatment in any head condition, more to relieve the pain which he complained of.

Q. Well, do you say now you have special knowledge now in head injuries. Do you claim to be an alienist or a man that has knowledge of head injuries? A. I have a knowledge of head injuries, yes, of course, I have; but I am not an alienist.

Q. Do you make a specialty? You are a general practitioner. A. I do most of my work in surgery.

Q. Do you made a specialty of them? You are simply a general practitioner? A. I do most of my work in surgery.

Q. You are a sugeon? A. Yes, sir.

Q. And do you now say that every injury to the head or violence leaves an external sign? A. Not every injury, no; it all depends on the objects

coming in contact with the head.

Q. Do you say that a blow upon the head with sufficient violence to injure the brain must necessarily leave an external mark? A. If the blow is produced by some soft substances, it does not necessarily have to leave a mark.

Q. Well, suppose a man had on a thick woolen cap and that cap was struck with a hard object—— A. I believe it——

Q. —the blow being deadened with the woolen cap, do you think that would invariably leave an external on the head? A. That is my belief.

Q. What is that based on? A. Based on two hard objects coming in contact with a soft object in between. Something must give way.

Q. And you think there must be an external sign? A. The head being struck with a hard instrument, I believe so.

Q. What external sign would you look for? A. Why, contusion, swelling, laceration.

Q. Were all those present or any of them? A. Oh, any one of them.

Q. That is the swelling would be sufficient? A. Swelling would be sufficient.

Q. Supposing this man was in the condition that you saw him in, was brought to the hospital, and two days afterwards on the left side of his head where it had been shaved there was a swelling, dis-colored swelling, would that indicate he had been struck with any instrument? A. If that swelling and discoloration were there at the time he was brought to the hospital, yes, it would.

Q. Well, it would have to develop immediately would it? A. Yes, it would have to develop immediately.

Q. How soon after? A. Well, I should judge anywhere from a few minutes to one hour or so.

Q. And would it have to develop in its full size?

A. Not necessarily to its full size, no.

Q. Did you feel the left side of his head? A. Oh, yes.

Q. What was that for? A. Well, not only the left side, but the entire head.

Q. Did you feel the left side of his head? A. Yes, I felt the left side of his head.

Q. What was that for? A. It was so I could determine whether he was injured or any swelling or any depression about his head that would lead me to believe that the man had been hit on the head.

Q. Was his head tender on the left side when you saw it? A. It was tender all over.

Mr. Simpson: I ask to have that stricken out as not responsive.

A. It was tender on the left side. All right.

Mr. Simpson: If you will just answer the question. We do not have to argue this case.

The Witness: I will.

Q. Was it tender on the left side of the head? A. It was tender on the left side of the head.

Q. Would that tenderness indicate—or his tenderness—a symptom of a blow on the head? A. Tenderness is a symptom of a blow on the head.

Q. All right. And, after you found that he was tender on the left side of the head did you order these ice bags? A. After I was through examining him entirely I ordered the ice bags.

Q. Now, how long did you order the ice bags kept on his head? A. I didn't specify any definite period.

Q. Was his conversation rational or irrational while he was in the hospital? A. Irrational.

Q. Indicating that there was something the matter with his mind? A. Yes, sir.

Q. When was it he asked you if there was blood trickling down the side of his head? A. I know it was the first day that his injury, but I am not sure whether it was that same night that he was brought in.

Q. Now, at the last trial were you asked this question, page 226, line 30: "What did you find the condition of his head to be?" A. "At the time of the examination I didn't examine his head thoroughly at the Weehawken Station." Did you so testify at the last trial? A. I did.

Q. What? A. Yes, I did.

Q. Well, what do you mean by swearing now that you did thoroughly examine him? A. I didn't say thoroughly, I said carefully.

Q. What is the distinction between thoroughly and carefully? A. The distinction is you can't examine a head thoroughly when there is hair obstructing your view of the entire scalp; but you can examine it carefully, and, that you separate the hair and palpate it between the hair as carefully as you can. That is the idea exactly.

Q. When you testified you didn't examine his head thoroughly you meant to give the impression that you examined it carefully, did you? A. Oh. yes, I examined it carefully.

Q. But you didn't make that distinction at the last trial did you? A. I don't think I was asked to make a distinction between them.

Q. Do you remember seeing Mrs. Price at the Hospital with Mrs. Masterson, and Mr. Foster, the morning after the accident? A. Yes, I did.

Q. Do you remember whether you said to Mrs. Price or Mrs. Masterson, or Mr. Foster, that Price had a fracture of the skull? A. No——

Q. And that you would not permit anybody to see him except Mrs. Price, not even his father? A. I remember saying I would not allow anybody

to see him, but I do not remember saying he had a fracture of the skull.

Q. What did you tell him about the head? If you didn't tell him a fractured skull, what did you tell him an injury to the head was that would prevent his father seeing him? A. For me to say just what my words were at that time, it is an impossibility.

Q. I don't want you to do that, I want to be perfectly fair with you, I want you to give us your best recollection as to what you said about the injury to his head which would prevent even his father seeing him? A. The impression I have as to what I conveyed to them was that while I was undecided as to just the character of the man's condition, I didn't want anybody—as it might have been any one of the numerous things that I mentioned to them—making any sort of an explanation for them to give their friends and relatives to stay away from that room—that I didn't want him to be disturbed by outsiders. That is the impression I wished to convey to them; but I am sure I never mentioned any positive thing about it.

Q. You carefully omitted what I asked you, and that is what did you say about an injury to the head? A. Well, I am telling you I cannot remember just what I said at that time.

Q. How long was he under your observation? A. For his entire stay at the hospital.

Q. How long was that? A. Just a few weeks, or so. I am not sure.

Q. Why was he removed from the hospital—— A. At the order,—of the order of the superintendent.

Q. Dr. Besing? A. Dr. Besing.

Q. And why, do you know? A. For being an insane man.

Q. Didn't want him at the hospital? A. They

have no accommodation for insane men.

Q. No accommodations for insane people? A. No accommodations for insane people.

Q. Were you there when Dr. Besing made this examination to determine—— A. No, I was not.

Q. Have you got any history of him at the hospital? A. Well, I suppose there might be one there, I don't know.

Q. Now, doctor, as I understand it, you do not profess to be able to diagnose his case at all, do you? A. No, I am not able to diagnose his condition.

Q. You testified, as I remember it, that you were not able to make a diagnosis, is that right? A. That is it exactly.

Mr. Simpson: That is all, doctor.

Re-direct Examination by Mr. Carey:

Q. You say that consciousness or unconsciousness or semi-consciousness is a sympton of concussion? A. Yes, sir.

Q. That is, it is present in concussion, is it? A. Yes, sir.

Q. Are there other characteristic symptoms of concussion? A. What?

Q. Are there other characteristic symptoms of concussion? A. Oh, yes, yes.

Q. And what are they? A. Well, the characteristic symptoms of concussion are those—a typical case: unconsciousness followed by sypmtoms of shock, such as cold, clamy perspiration, pale skin, slow pulse, respiration slow and shallow, at times vomiting.

Q. Did you, in your experience ever know of a concussion of the brain of which the only symptom was unconsciousness or semi-consciousness? A. That as a sole symptom?

Q. Yes. A. No, I never had any such as that.

Q. These other symptoms are usually present? A. Usually present to a more or less degree.

Q. Were any of those symptoms present in the case of Mr. Price? A. There were no symptoms present.

Q. At any time? A. At any time.

Q. You know what the handle of a fire hook is like, don't you? A. I believe I do, Mr. Carey.

Q. I show you Exhibit D-5 which is a picture of a fire hook? A. Yes, I see.

Q. Will you state whether or not in your opinion it would be possible that a blow should be received on the head, inflicted by the handle of a fire hook, when the passing speed of the two trains was at least thirty-five miles per hour, that the blow should be sufficiently severe to cause the condition in which you saw Mr. Price and yet leave no external evidence? A. My opinion is that it is not possible.

The Court: We are not treating with possibilities Mr. Carey. That is not exactly correct.

Mr. Carey: I grant that, your Honor in the question, but the witness' answer was that he considered it impossible.

The Court: Well, I have that in mind, too. It excludes the probability of it by that answer.

Q. You say that his head was tender on the left side? A. Yes, it was.

Q. Was it tender in any other place? A. I believe it was tender on the entire scalp but mostly on the left side.

Q. You were asked if tenderness was a symptom of a blow and you answered that it was. Is it a symptom of other things also than a blow? A. Oh, yes.

Dr. Hendrich, (recalled) for Defendant—Recross
Jacob Foster, (recalled) for Plaintiff—Direct

Mr. Simpson: I object to that as a leading question. This is his own witness. He is prancing along here testifying himself all the time. I object to that as a leading question.

The Court: Well, I will not overrule it, I will let it stand.

Q. And of what other thing may it be a symptom, some of the other things? You need not try to name them all. A. Well, it may be a symptom of bone disease, it may be due to neurologic conditions.

Mr. Carey: That is all.

Re-cross Examination by Mr. Simpson:

Q. Do you know the name of the man who shaved the left side of his head? A. I believe the interne.

Q. Is he here? Do you know him or do you not know him? A. Yes, I know him.

Q. Is he here? A. No, I don't see him—oh, yes, there he is. Yes, he is here. I see him now.

Mr. Simpson: All right, that is all Doctor.

(Witness excused.)

Mr. Carey: Mr. Simpson, I think you mentioned you would like to recall Mr. Foster.

Mr. Simpson: Yes, I would like to recall Mr. Foster.

The Court: All right.

JACOB FOSTER, recalled.

Direct Examination by Mr. Simpson:

Q. Mr. Foster, you testified yesterday about the duty of a fireman to look out? At the last trial

was the following question asked you and did you answer this:

Mr. Carey: I object to reading that question now unless it is for the purpose of contradicting something the witness has already testified.

Mr. Simpson: Well, that is its purpose. He testified——

The Court: You need not go any further, if you say so.

Mr. Simpson: That is the purpose, to contradict him.

The Court: You are referring to that part of his testimony where he said he looked through the cab window,—forward door, I suppose rather than through the side windows?

Mr. Simpson: Yes.

Q. "I am not talking about signals. I am talking about look-out. Suppose there was something de-railed on his side of the engine. Suppose there was a freight engine derailed which would side swipe his car, isn't he under a duty to look out and see" and your answer was "Yes, he would certainly be under duty."

Q. Did you so testify at the other trial? A. I do not recollect.

Q. You don't recollect testifying? A. I don't recollect making that remark.

Q. All right. Well, we will try and refresh your memory.

Q. Did you also testify this—bottom of the page "Isn't it a general custom, and haven't you seen lots of firemen leaning out of the cab and looking ahead? Isn't that the general custom?" And you answered: "Firemen and engineers both do it." Didn't you so testify? A. I may have testified to that.

Q. And weren't you asked this question, page 240, line 25, "Don't they do it as a general custom" and you answered "They lean out, certainly." Didn't you so testify? A. If it is there, I must have testified to that.

Q. Well, if it is there, don't you remember what you swore when you were under oath at the last trial. Doesn't an oath mean anything to you? A. Certainly.

Q. Well, then don't you remember what you testified to in the last trial about this very important matter, about a fireman leaning out of the cab? Don't you remember that. A. They lean out of the cab but it is not really necessary for them to do so.

Mr. Simpson: I ask to have that last part stricken out. The whole answer is not responsive.

Q. I am asking you don't you remember when you were called to testify in a case in which a man is insane, don't you remember what you testified to, under oath?

Mr. Carey: If the court please, I think that is an improper question.

Mr. Simpson: Well, I will withdraw that question.

Q. I will simply ask you this simple question: Do you now say under oath, that you do not remember what you testified to at the last trial.

Mr. Carey. I do not think that is material either. Of course, the witness——

The Court: The real question is, Mr. Foster——

Mr. Simpson: I will withdraw that and I will stand on the record.

The Court: I wanted to be sure he understood it, that is all.

Mr. Simpson: I will put the record in, that is all.

By Mr. Carey:

Q. Mr. Foster, the engineer and firemen do sometimes put their head out of the window do they not? A. They do, but it is not really necessary, for to do so, because they have a glass front door for to look through.

Mr. Simpson: Your Honor I ask to have the last stricken out as a matter of opinion.

Q. (Repeated by the stenographer.) Mr. Foster, the engineer and firemen do sometimes put their head out of the window do they not? A. (Repeated by the stenographer.) They do, but it is not really necessary for to do so because they have a glass front door for to look through.

The Court: The portion "they do" is proper.

Mr. Simpson: Yes, to that part I do not object.

Q. Do they have windows to look out in front of the cab? A. Yes, sir, the entire front door is glass.

Q. And does that door open also? A. Yes, sir.

Q. And is the door frequently left open? A. It is two compartments, and one part of it is on hinges so that you can set it at any opening that you want to, so that you have a clear view right through it.

Q. It is not customary for firemen nor for engineers to put their head out of the window when they are passing other trains is it? A. No, sir.

Q. Where did Mr. Price carry the fire hook on the engine that he was on when he fired for you? A. Usually across, the front portion of the tank.

Q. In the position shown by D.5? A. Yes, sir.

Q. And did you notice the handle of the fire hook on this picture, D.5? A. Yes, sir.

Q. And is that fire hook in the same position as the other fire hook on D. 5, where you have the front view of the tender of the engineer? A. That is in a little different position than where that mark is on here.

Q. Is it, across the front of the engine? A. It is across the front part of the tank.

Q. Now, during the time that Mr. Price fired for you was that or was it not the customary place for him to carry the fire hook when not in use? A. Always.

Q. Now, you have been a fireman have you not, Mr. Foster? A. Yes, sir.

Q. When meeting a train on an adjacent track after dark, and the head light is lighted, what effect has the head light or the light of the head light on the eyes of the fireman that is next to the passing engine?

Mr. Simpson: I object to that unless it is limited to the effect on his eyes.

Q. Well, that is the effect on your eyes?

The Court. What was the effect on your eyes in that position?

The Witness: Why, it would affect you so that you would not be able to see for a few seconds.

Q. Can you say whether or not the light would shine into your eyes as you were approaching the engine? A. Yes, sir.

Q. And after the head light had passed what was your ability to see for a short time? A. You could not see for a few seconds.

Q. Did you pass this engine 3189 before or after dark? A. After dark.

Q. And will you state whether or not the night was very dark, or moderately dark or how? A. Well, it was like about the usual dark night.

Q. The handle of the fire hook is that smoothed off at all or not? A. It is perfectly smooth, where it is bent around.

Q. Is there any difference from the rest of the fire hook—that is the rod, has the handle been smoothed off in any way? A. Only just as it is turned around.

Q. Just as it is turned? A. Yes, sir.

Q. And in regard to roughness is there any difference between the handle of the fire hook and the rod of the fire hook? A. Yes, sir.

Q. Well, what is the difference? A. Well, the handle is smooth and this end of it has prongs on it to rake the fire with.

Q. I am not talking about that, I am talking about the condition of the handle as to smoothness and the condition of the rod, not the end of the rod. A. Oh, that is all perfectly smooth.

Q. Well, is there any difference between the handle and the rest of the rod as to roughness? A. No sir.

Q. Now, you say it is perfectly smooth, what do you mean by that? Has it been smoothed off by a machine or is it in its natural condition? A. In its natural.

Mr. Carey: That is all.

By Mr. Simpson:

Q. Did Mr. Price ever carry his hook projecting so far over the side of his tender that he hit somebody on a passing train? A. Never seen him have one long enough for that.

Q. How long were the ones he had? A. About the usual size.

Q. What is the usual size? A. About ten feet.

Q. Ten feet. And this night, was it a cold night? A. I dare say it ought to have been a cold night in the month of February.

Q. Now, here is a picture of Price's engine. Do you say that he could look out of this front cab window and that this window would not interfere with his sight at all? A. I meant where the curve was.

Mr. Simpson: I ask that be stricken out.

Q. Do you say that Price could look out of that window and this boiler would not inferfere, that he could get sight at any angle.

Mr. Carey: If the court please, I think that is immaterial. I think he ought to fix the time.

The Court: I think so, myself, Mr. Simpson.

Mr. Simpson. No, I think I am entitled first, to get his statement of the construction of the engine. He says that without being limited to any date he was always able to look out of the front cab window; his sight was never interfered with.

Mr. Carey: No, he did not say that.

Mr. Simpson: I want to find out at any angle whether the sight of the man would be interfered with looking out of this window. I think I am entitled to that. He has been qualified as to that.

The Court: What is the question?

Mr. Simpson: I will withdraw it.

Q. What do you say is the effect of this boiler upon the sight of anyone looking out of the window? A. No effect at all.

Mr. Carey: I object to that unless it is limited to the time and place when this incident occurred.

Mr. Simpson: Nobody knows the time and place when this incident occurred.

The Court. Approximately, Mr. Simpson, they do. Somewhere between bridge, and the westerly portal of the tunnel, or just about passing the signal post.

Q. Well, do you say somewhere approximately between the bridge and the west end of the tunnel, in that distance, that a man looking out of the front cab window would not have his sight interferred with at all by this front end of the locomotive which was in front of that window? A. He can always see through that cab door to see almost any obstruction that he wants to and it is not necessary for the man to put his head out or to see.

Mr. Simpson: I ask to have that last stricken out as not responsive. (To the witness.) You also seem to want to argue this case.

Mr. Carey: Is that stricken out?

The Court: Yes, sir; the last portion.

Q. I only asked you that—my previous question—whether or not at this place I have described the front part of this engine would have any effect upon the sight of anyone looking out of the front cab window? That is all I asked you. A. That would be on certain portions of the road, on curve or on straight lines——

The Court: The question goes, as I understand it, to the point at or about which you passed this other train and from there to the westerly end or portal of the tunnel. That is what I understand the question to be as far as place is concerned. Now, read the question again.

Q. (Repeated by the stenographer.) Well, do

you say somewhere approximately between the bridge and the west end of the tunnel, in that distance, that a man looking out of his front cab window, would not have his sight interfered with at all, by the front part of the locomotive which was in front of that window?

Mr. Carey: Do you understand the question, Mr. Foster?

The Witness: Not very distinctly.

Q. Well, then, did you understand Mr. Carey's question when he asked you about the front cab window that you answered without any difficulty? A. It would not.

Mr. Simpson. That is all.

(Witness excused.)

Mr. Carey: If the court please, I want to call Mr. Chase who is not at all well this morning. I am calling him a little out of order so as to excuse him.

CHARLES E. CHASE, sworn.

Direct Examination by Mr. Carey:

Q. Mr. Chase, you are assistant superintendent of the New York Central Railroad? A. Yes, sir; I am.

Q. With office at Weehawken, N. J.? A. At Weehawken.

Q. And you have been in that position for how long a time? A. From nine to ten years.

Q. On the 6th of October, 1917, did you make some measurements to take the clearance between engine 3189 and engine 904? A. I did.

Q. And where were those measurements taken and how were the engines located? A. The en-

gines were located side by side on tracks about the same elevation, thirteen feet and four inches centre.

Q. Thirteen feet and four inches centre. And at time you made those measurements, had Mr. Hinckley placed on engine 3189 any fire hook in a certain position? A. I noted that fire hook and took measurements of it.

Q. Have you your notes with you? A. I have.

Q. Can you tell me how far that fire hook projected over the side of the tank of engine 3189? A. Four inches.

Mr. Simpson: When was that, when he took the measurements?

Mr. Carey: When he took the measurements.

The Witness: Four inches.

Q. Now, what was the clear distance between the end of that fire hook and the arm rest on Engine 904? A. Two feet nine inches.

Q. And that was when the tracks were thirteen feet four inches centre? A. Correct.

Q. It was? If the tracks had been thirteen feet three inches centre, the distance from the fire hook to the outside of the arm rest on 904 would have been how much? A. Two feet eight inches.

Q. And how much did the arm rest on 904 project beyond the side of the cab? A. Three inches.

Q. Then what was the distance between the end of the fire hook as placed by Mr. Hinckley and the side of the cab? A. Thirteen feet and four inches centre.

Q. And with thirteen feet three inches it would be—— A. Two feet, eleven inches.

Q. Now, at that time Mr. Hinckley take the position in 904, on the fireman's side, sitting on the seat box? A. He did.

Q. And looking out of the window? A. Yes, sir.

Q. And will you state whether or not his position was as shown in this picture D. 8 for identification? A. Similar to that.

Q. And did you take the difference in elevation between Mr. Hinckley's forehead and the end of the fire hook projecting four inches over the tank of 3189? A. I took that measurement, the difference in evelations.

Q. What was the difference in elevation? A. Mr. Hinckley's forehead was fifteen inches above the hook.

Q. Actual measurements? A. Actual measurements.

Q. And did you determine what the difference in elevation would be between Mr. Hinckley's forehead and the end of the fire hook if the fire hook had been pushed along so as to cover the clearance between the two engines? A. The difference in elevation would have been nine inches from Mr. Hinckley's forehead——

Q. Under those circumstances? A. Under those circumstances, Mr. Hinckley's forehead nine inches above the hook.

Q. And how far would the hook be required to be moved out over the side of the engine in order to cover the clearance? A. Two feet and eight inches.

Q. On thirteen feet and three inches centre? A. Thirteen feet, three to four inches centres, thirteen feet, four inches centres, I believe, no thirteen feet, three.

Q. Thirteen, three it would have extended—— A. To hit him—thirteen feet, three inches centres, two feet eight inches extension to hit the arm rest.

Q. Now, have you taken measurements of the width of what has been called the deck of the tank on 3189? A. I have taken that.

Q. And that deck of the tank is shown in this picture here, with a "D" over it, is it? A. It is.

Q. And what is the width of the Deck of the tank? A. Two feet four inches.

Q. And if the hook was moved out two feet four inches, what position would the hook assume then? A. It would fall two feet six inches at the hook end.

Q. Down to the bottom of this projection here? A. To the bottom, the base of the floor.

The Court: To the floor of the tank?

The Witness. To the floor of the tank.

Mr. Carey: (Showing photograph to the jury.) This is it here, this is the hook and this is what the witness has just testified to. (Indicating.)

Q. Did you make a diagram to show?

Mr. Carey: Strike that out.

Q. After the hook had fallen the distance which you have just testified to, what would be the elevation of the hook, above, or with reference to Mr. Hinckley's forehead? A. The hook would then be fifteen inches I believe; it is best shown by this sketch I made, and the scale from sketch which is drawn to scale.

Q. I show you this sketch. A. Fourteen inches is the distance.

Q. Fourteen inches above or below? A. Above, the hook above.

Q. And what would be the distance of the end of the fire hook in that position, handle of the fire hook to the side of the cab? A. Two feet from it horizontally.

Q. (repeated by the stenographer) Fourteen inches above or below? A. Above, the hook above.

Q. (Repeated by the stenographer.) And what would be the distance of the fire hook in that position, the handle of the fire hook to the side of the cab? A. Two feet from it horizontally.

The Court: Above or below what?

Mr. Carey: Above the level of Mr. Hinckley's forehead as he sat in the engine opposite.

The Court: Does he mean by that that if the hook had dropped from the place where it is shown in the photograph to the floor of the tank——

Mr. Carey: That is, if the hook end.

The Court: That is the rake end of the hook?

Mr. Carey. That is it.

The Court: —rested upon the floor instead of upon the deck that then the hook—handle would be fourteen inches above the forehead of Mr. Hinckley.

The Witness: Correct .

The Court: Above?

The Witness: It is best shown——

Q. Have you on this diagram shown the hook in two positions? A. I have.

Q. One the hook end resting on the deck of the tank and the other on the floor of the tank? A. Correct.

Q. And showing the direction the fire hook would take? A. Yes, sir.

Q. If the hook end dropped to the floor of the tank? A. Correct.

Q. Now on the right of this sketch is a perpendicular line, and a horizontal line. What do these two lines represent? A. The horizontal represents the elevation, height of Mr. Hinckley's forehead?

Q. Yes. A. The verticle line represents the side of the cab, the iron plate side.

Q. And what is the scale of that sketch? A. One inch equals one foot.

The Court: It is so marked on the scale?

The Witness: It is.

Q. Now, when the fire hook was raised on the deck of the tank as shown in this position where it is held horizontally what bearing places were there on the handle of the hook end in the direction of the fireman's side. On what did it rest? A. A hinge on the door of the coal bin, or whatever that thing is called.

Q. Yes.

Mr. Carey: I offer this sketch in evidence.

Mr. Simpson: No objection to it.

(Marked D. 9 in evidence.)

Q. Now, won't you speak to the jury and show them what represents a fire hook? Describe the different positions.

The Court: Wouldn't it be much better if it were put right on the easel and let him describe it from there, I think it is more convenient for the jurors to see it.

Mr. Carey: Yes.

Q. I just want you to explain that sketch to the jury so they will understand it when they get it.

Mr. Simpson: Of course, I might object that there is no proof that Mr. Hinckley is the same size as Mr. Price. I don't object to this but there is no proof that Mr. Hinckley was the same size and that he was in the same position.

The Court: Oh, No. I presume he will show on this chart of his,—presumably show that the forehead of this subject who was used——

Mr. Simpson: If there is any question I

would like to clear it up before cross examination. Were these pictures made at the same point west of the tunnel where the accident is supposed to have occurred, or made in the terminal?

Mr. Carey: No, this sketch is made from measurements of the engine.

Mr. Simpson. Yes, but where were the engines when he made the sketch? Were they east of the tunnel or west of the tunnel?

Mr. Carey: I don't know.

Mr. Simpson: Oh! All right.

Mr. Carey: It doesn't make an difference so far as that is concerned.

Mr. Simpson: It doesn't, well you have a wild idea of this case.

Mr. Carey: Do you think so?

Mr. Simpson: I should say so, saying that.

The Witness: This sketch represents in outline the appearance of the deck, two sides, and the floor of the tank or tender of an engine looking from the cab toward the tender. We have the coal pile upon the floor and the deck of the tank is shown here. I am not wholly familiar with the details of the construction of the tank, but this is the outline surfaces. From plate to plate of tank, crosswise of the tank is ten feet.

Q. That is by actual measurement of that tank? A. Actual measurement. Distance of ten feet four inches long by actual measurements. Therefore, when the rake end is put against the inside plate of the tank, of the deck of the tank on that side the handle end projects four inches over the plate on this side. It is on this handle end side that Mr. Hinckley sat in the locomotive on the adjoining track. That verticle line is the side of the cab of

that locomotive. The short horizontal dotted line is the elevation or height of Mr. Hinckley's forehead as he sat in that cab. When this hook is in that normal position as testified to by the fireman, the distance between the handle end of the hook and Mr. Hinckley's forehead is three feet on track centres of thirteen feet four inches. The track centres here are thirteen feet three inches. The distance then here would be two feet eleven inches, that is to the side of the cab. Just as to where Mr. Hinckley's forehead was with reference to the side of the cab I have not noticed and don't recall measuring it. He was leaning a distance out of the window probably what he does on his runs up and down the road. If this hook is jolted or mishandled two feet four inches, the rake end drops and the hook resting upon a hingle of the coal hinge door would still maintain that elevation at that point, but the handle end would rise, and would rise to a point shown there which I testified is fourteen inches above the elevation of Mr. Hinckley's forehead.

Juror Number Two: May the Jury ask a question?

The Court: Yes, sir.

Juror Number Two: Is it possible for this hook or this handle to rest on here instead of up here, and in falling would—if this was reversed would this end be lower, and had it fallen down here would this be lower at that time?

The Witness: Yes, it is likely that it would. I didn't try it. The hinge there supports that handle.

Juror Number Two: It is presumed that that would have fallen on the hook if it had been jostled?

The Witness: Well this hinge supports this

hook as well as this point.

Juror Number Two: Yes, but it is presumed that jostling off would have struck the hook that held the other end on the deck; it could not possibly have fallen on the deck and then have been lowered in placing the locomotive?

The Witness: No; it might have been bounced off the hinge, perhaps.

Mr. Carey: If the court please, the question which the juror is asking is not involved in this case?

Mr. Simpson: Of course it is involved in this case. A position of the hook is involved in this case. The juror wants to know. You put a man up with a picture and when the juror asks a question about the position of the hook, of course the position of the hook is involved in this case.

The Court: You are both right. The juror may have selected as the language of his question, improper language. The charge of negligence is not that it would go to that point; that it might change its position.

Mr. Simpson: The juror didn't ask a thing about negligence. Here is a man demonstrating a position of a hook and tells what the hook can do, and how the hook was put and all that. Now the juror wants to know how about this position of the hook, that position? That goes to his truthfulness. The juror isn't asking anything about negligence.

The Court: Just one moment, Mr. Simpson, you will get that whole thing from me. The juror did use the word "jostled" as I remember. I say he probably incorrectly selected the word. If he had asked if the hook was in this position then what would be the result as to the handle which overhung, he would have

been perfectly within the lines of the pleadings in this case. He used the word "jostled" and that is what Mr. Carey is objecting to.

Mr. Simpson: But the juror is not following the pleadings. Here is a man put up as a witness, he is put up to demonstrate about a hook. Now, it is certainly proper to ask him any question about the position of the hook— jostled the handle, whatever the hook did. He is put up to testify about the hook. I am not concerned about the pleadings now.

The Court: Well, the court is.

Mr. Simpson: I know, but I think we are limited to the testimony of this man; he cannot put a witness on the stand and stop him being cross examined.

The Court: He is not being cross examined. What is your objection? I do not think it is of any great importance, Mr. Carey, because it is a juror's question, and if he has misselected his language——

Mr. Carey: I only suggested that to the court because we ought not to take testimony which relates to an irrelevant issue under the pleadings.

The Court: I think that will be well taken care of by the Court. I think it is a rambling selection of language by the juror in putting the question.

Mr. Carey: I will withdraw my objection, if the Court please.

The Court: After all, it seems to me it comes back to the position of the bar or of the rake. Have you anything further, Mr. Juror, or any juror?

Juror Number Six: I have a question, your Honor. When he says the end of the hook was three feet from the floor does he mean

elevation, or straight lines? That is one thing I would like, or horizontal?

The Witness: Horizontal.

Juror Number Ten: The end of the hook after it dropped is, from the cab line of the engine on which the man was hurt—do you say that was two feet across from the end, to the top there—two feet across there?

Mr. Carey: Suppose you mark that after you have measured it.

The Witness: Two inches hook to side of cab on the sketch, that is two feet.

Juror Number Ten: That is to the arm rest?

The Witness: That is one foot nine inches to the arm rest.

Juror Number Ten: If, as Juror Number two, has asked—if the hook had fell down not being on that hook—where would that poker land? Where would it land?

The Witness: I did not try it in this position at all. I don't think any fireman would have laid it that way.

The Court: That is not the question. The question is if it were in that position. Where would it——

Juror Number Eight: What is the difference in the elevation?

The Witness: Sixteen inches horizontally.

Juror Number Eight: Is that an indication as to where the man's head was?

The Witness: Three inches below it.

Juror Number Eight: Assuming that he is sitting up straight, just assuming that he is sitting there, straight.

The Witness: Yes.

Juror Number Eight: And the size of the man——

The Witness: The size of a man——

Juror Number Two: Judge, the question I asked—he has the position of this hook with the prongs turned up. If the position was reversed of the top of the poker, as you might call it, where the point now is of that hook, it would materially affect the distance, because the fulcrum is up here,— —

Juror Number Twelve: Well, that would bring the end of the hook further in.

The Court: Well, of course, I can say to you this, gentlemen, this sketch is now in evidence and it has marked on it the scale of one inch to one foot. You will have it with you if you are to deliberate on this case and you will be able yourselves, I take it, with the assistance of rules and so on, to measure many of these distances yourselves. Of course, you are entitled to whatever assistance the witness can give you. I am not attempting to exclude now any further question you may have, but I thought it was well you should understand you will have this sketch and you will be able to examine it yourselves. The real question now is, and one of the main purposes is to explain the sketch to you so that you will be able to use it intelligently, and so you will understand it. Do not misunderstand me, now gentlemen. I am not attempting to exclude any question you may have that is a proper question, but I thought you ought to understand what use you will make of it.

Juror Number Seven: What would be the relative position of that handle providing that rake was reversed there? If that was up and this end were down, what would be the drop?

The Witness: I don't believe the hook would stand.

Mr. Simpson: He didn't ask for your belief. Nobody cares what you believe. You are working for the New York Central.

Mr. Carey: I object to a remark like that.

The Court: That may be stricken out. And I will say to the jury they are not to pay any attention to it. It is entirely improper.

Mr. Simpson: Then I object to his belief. Is that proper?

The Court: Yes. They may be stricken out.

Juror Number Seven: What would that difference be?

The Witness: Four inches.

Juror Number Seven: That would make quite a difference.

The Witness: A difference between the forehead of the fireman and the hook handle in that position eight and one half inches.

Juror Number Ten: I assume that the relative distance of that poker dropping down there it probably would not lay on the point of it, or even lay as it is, because the weight of the hook would make it flat. The tendency of the hook would seem to me to be flat, unless it was held in some place at the other end, so that the difference there as affecting the end of the poker is not more than three or four inches. So far as the hook is concerned it would not make very much difference on the left of that poker one way or the other.

The Witness No.

The Court: Of course, gentlemen, my preference would be, and I think I ought to so state it, that you should not ask the witness for his opinion as to whether a thing could be such and so or not. It is perfectly proper for you to suggest a position the poker might be in and ask him to give the relative dis-

tances and so forth.

Juror Number Six: I believe when we deliberate on this—we will require to know on what engines those laid and on what centres the tracks are taken, and I think that information should be on there.

The Court: Is there any objection to having that marked and the numbers of the engine?

Mr. Carey: No.

The Court: The number of the engine as shown there is number thirty-one something.

Mr. Simpson: I object to having any track centres marked on there unless the engines were at the point of the accident because there is no proof in this case that when the measurements were taken they were taken from engines at the point of the accident. Now, if you are going to mark on this map, where they evidently made it, the best for themselves, down in the terminal, the track measurements you would entirely mis-lead this jury. They should have the track measurements at the point of the accident if you are going to mark any measurements on there.

The Court: Unless the positions at which the measurements were made, Mr. Simpson, were the same as the position where the happening is said to have taken place.

Mr. Simpson: Well, that is my objection.

The Court: I do not think it would be at all misleading to the jury to have the track measurements put on here. On the contrary, I think it would be quite edifying for them to have them there, because if there is future testimony, as there probably will be as to where these measurements were taken and that place and the situation and the measurements there do not correspond with the meas-

urements for which this sketch was made, I think the jury will immediately see the difference and make use of it.

Juror Number Ten: Well, Judge Campbell, is it permissible to ask the witness what would happen to that poker if it was laid lengthwise of the cab. Way back in the olden days they used to run the other way. Of course, a cab is constructed differently. Of course, with this engine it might be possible, with the condition of a coal pile or something, for a fireman to lay his poker lengthwise. Is it permissible to ask him what would happen? What might happen to that poker if it laid lengthwise or in some other position?

The Court: I do not think I could permit that question because I do not think this witness would be qualified to speak to that extent.

Mr. Simpson: Foster could tell that, or any of the railroad men could tell that.

The Court: Now, the immediate question before us was to have indicated upon this sketch the different engines—to that I understand there cannot be any possible objection.

Mr. Simpson: I haven't any objection to doing anything to the map as long as it appears whether or not these measurements were taken under the same conditions under which the accident happened.

The Court: In the first place the juror has asked to have indicated upon the map what these respective engines are. I suppose there is no objection to that.

Mr. Simpson: There is no objection to that.

The Court: Which engine represents the one Mr. Price was on?

Mr. Simpson: And I have no objection to

putting the measurements of the tracks upon which these measurements were taken providing it is made clear to the jury that they are not the same as the measurements at the point of the accident.

The Court: The jury will understand that when the track centre markings are put upon this sketch they are the track centre distances at the point where these measurements shown on this sketch were taken. I am assuming, now gentlemen of the jury, that there would be some further testimony as to the exact place where these measurements were taken, and how it corresponds how it measures up with the location of the track or track centres and so on at the point where it was said this accident happened. I do not think there can be any objection to that.

Mr. Carey: As I explained to the court when I asked to put Mr. Chase on to let him get away, it is out of order, because naturally I would have had this testimony as to the track centres at the place where this accident happened in evidence before this witness testified.

The Court: All right. I think the jury understands it.

Mr. Carey: Now, we will show exactly the track centre where measurements were made and the difference between track centres there, if any, and the place where the accident happened.

The Court All right. Make your markings now Mr. Chase.

Mr. Carey: If there is any difference between track centres where the measurements were made and the track centres where the accident happened, well, that difference will be plain to the jury.

The Court: This is the transverse diagram of the tender is it not?

The Witness: It is.

The Court: And that is the engine number what?

The Witness: 3189.

The Court: Mark it on there. Engine 3189. Mark it right in there.

(Witness marks)

Now, this is the side of the cab of engine Number 904.

(Witness marks it)

Is that the engine Price was on, or is that one of the same type?

Mr. Carey: One of the same type. We will have that shown.

The Court: And engine 3189 is not the engine that was drawing the other train, but one of the same type.

Mr. Carey: 3189 is the exact engine that was on the freight train. 907 was not available when these measurements were taken.

The Court: You might mark on here track centres between where these measurements were taken was thirteen feet three inches, is that correct?

Witness: Yes. (marks it)

The Court: Is there any further information that you want about the sketch?

Juror Number Six: That was my idea in getting that thoroughly identified. The elevation comes into that at the same time. The track elevation.

The Court: You mean the relative elevations one as to the other?

Juror Number Six: The relative elevations of the track.

The Witness: They are about the same.

The Court: At the point where you made the measurements, here, from which you made this sketch you say the track elevations are the same? I mean the elevation of the two sets of track upon which these two locomotives were? Were the same?

Witness: The same.

The Court: You understand that, Mr. Jurors?

A Juror: Yes.

Juror Number Four: If this was taken on a curve or taken on a straight track it would make a difference?

The Court: Where were your measurements taken where the parallel tracks were straight, or where they were upon a curve?

Witness: Straight.

The Court: Straight. Anything further you want to know about this diagram, gentlemen, or where the measurements were taken?

Juror Number Four: The accident happened on a curve.

The Court: We will get to that.

Q. Do you know whether there is a curve at the point opposite that last signal before you enter the tunnel?

The Court: Westerly portal.

Q. Westerly portal? A. The last signal is the one thirteen hundred and twenty-two feet from the tunnel?

Q. Yes. A. I think the curve ends about there.

Q. Have you anything that shows here? A. My map shows I think.

Witness: Have you a copy of the plans?

Mr. Carey: No.

The Witness: It is a very small sketch.

Mr. Carey: I haven't a copy of the map.

The Court: Well, I understand you to say, Mr. Carey, if I understood you correctly, that you were going to probably present a map or testimony which would show the location of the point about where this thing is alleged to have happened.

Mr. Carey: Yes.

The Court: Whether it is a curve or whether it is straight-away or what not.

Mr. Carey: Yes.

The Court: Well, that will all be supplied.

The Witness: I have that map on the seat over there.

The Court: Will you get it Mr. Chase?

(Witness produces paper)

Mr. Carey: May I have this put on the easel?

(It is done)

Q. Now, Mr. Chase will you point out on this map which has just been put on the easel, the location of that last signal? A. East bound semaphore.

Q. And that is the last one before you enter the tunnel is it? A. I believe so.

Q. Well, are you sure about that or not? A. Reasonably certain.

Q. I show you this photograph Exhibit D. 1, and ask you if the semaphore which you have shown on the map and which you have just put on the easel——

Mr. Carey: By the way, we better have that marked, I think.

The Court. Which?

Mr. Carey: The map which has just been put on the easel.

Mr. Simpson: No objection.

(Marked D. 10.)

Q. I call your attention to Exhibit D. 1, photograph and ask you if the signal shown on that photograph is the same as the signal which you have shown on this Map D. 10 and which you have marked "East Bound Semiphor"? A. That is the same one.

Q. Now what is the distance of that signal from the westerly portal of the tunnel? A. 1322 feet.

Q. And will you state whether or not that semaphore is on the curve? A. It is just at the beginning of the curve, I believe. The curve is to the right, west.

Q. To the right going west? A. It is to the right going west, and it is also to the right.

The Court: Do I understand the curve is to the right going west or is to the right going east?

Mr. Carey: To the right going west and to the left going east. They are two different curves if the court please.

The Court: Yes.

Q. And what is the length of the tunnel, Mr. Chase? A. The tunnel is about four thousand feet long.

Q. Have you that measurement on your map there? A. Three quarters of a mile there.

Q. Three quarters of a mile? A. Three quarters of a mile because it is not drawn to scale all the way.

Q. And have you the distance from the semaphore to the New Durham Tower? A. The distance from the semaphore to the tower I have—1029 feet.

Q. And have you the distance from the semaphore to the over head bridge? A. Seven hundred and forty six feet.

Q. And that overhead bridge is near the New Durham station is it? A. It is.

Q. Now, Mr. Chase if you will take your seat (witness does so) If one of the trains would move twenty miles an hour and the other fifteen miles an hour making the passing speed thirty-five miles an hour, what would be the distance the train would move or the engine would move per second. A. At thirty-five miles an hour it is fifty-one feet per second, within a couple of inches, two or three inches.

Q. Now, if the trains were moving, one of them twenty-five miles an hour and the other twenty miles an hour making the passing speed forty-five miles an hour, what would be the passing speed per second?

The Court: The passing speed you mean?

A. Yes, the passing speed, sixty-six feet per second.

Cross-examination by Mr. Simpson:

Q. Where were these measurements and maps taken? A. Where did you take them? A. The blue prints were taken on the ground at the points shown on the blue prints.

The track centre measurements were taken in Weehawken yard east of the tunnel.

Q. East of the tunnel? A. East of the tunnel.

Q. How far east of the tunnel? A. Well, they lay in the yard several hundred feet east, south east.

Q. Now, these engines when you took the measurement of the hook, were on adjacent tracks in the Weehawken yard, which is east of the tunnel? A. True.

Q. They were not west of the tunnel? A. They were not, except I took a few measurements at Granton engine house which is a mile west.

Q. But you took no measurements at the last

semaphore did you? A. Not on engines.

Q. Not on engines and not with reference to this hook? A. Not with reference to that hook.

Q. And all the measurements you took with reference to this hook were in the Weehawken yard, east of the tunnel is that right? A. Or at Granton Round House.

Q. Or at Granton. Do you know which measurements you took at Granton yard? A. I have a record.

Q. Well, which measurements did you take at Granton Yard and which at Weehawken yards? A. I took measurements on engine 904—907—measurements on engine 907 at Granton Engine House. I took measurements on Engine 904 at that location in the Weehawken Yard.

Q. But you have not testified to any measurements on 907 have you? You have only testified as I recall it to measurements on Engine 904 and these other engines.

Mr. Carey: 3189.

Q. ——3189, on adjacent tracks. You have not given any measurements to us on 907, have you? A. It is the same type. I was interested in it and took it.

Q. But you have not given us any measurements of it to-day? A. I have not given anything.

Q. Now, this curve you were talking about, what is that? Does it come out of the tunnel, or where is this curve that you describe? Is it as it comes out of a tunnel going west? A. The track coming out of the tunnel going west is straight for about a quarter of a mile—just about.

Q. Well, where is the curve? That is what I want to find out. A. Then the curve on that track running to the west is to the right beginning at about that point, beginning about a quarter of a mile west of the tunnel.

Q. And going which way, which direction? A. To the right.

Q. The curve to the right? A. Curve to the right.

Q. Where does the curve to the left go? A. The curve to the left is the same curve in the other direction.

Q. Well, where does it end? Where is this easterly end of the curve, where is the easterly end of that curve? A. About—somewhere about sixty feet east of the semaphore in question.

Q. East? I see. So that a man would not be on the curve until he cleared that semaphore by about sixty feet if he were going east? A. I should say so.

Q. And what is the radius of that curve? A. Well, the radius of that curve I would be obliged to give from memory.

Q. Well, give us it as near as you can remember? A. I don't think I could say with certainty. I worked on that curve a number of times, but the degree of the curve—that curve I don't recall.

Q. But it is quite a pronounced curve? A. It is quite a pronounced curve.

Q. And none of these measurements were taken by you with engines on tracks which were adjacent where there was a curve or where the engine was in motion? None of these measurements were taken under those conditions, were they? A. None.

Q. This man Hinckley, where you took the measurements with him did he sit upright in the cab window or how did he sit? Just describe how he sat? Have you got a picture of him?

The Court: I think he said he sat as approximately it is shown in one of the exhibits.

Q. This shows in Hinckley in D. 7. That is how he was when you took the measurements? A. Yes.

Q. He was not up in the cab window and holding his body out and holding himself so he would not fall out was he? A. No, I don't think he was.

Q. Now, you said the measurements you have on that hook is ten feet four inches. It has been testified by Hinckley that the hook he had on the 1239 was twelve feet long. Would that make any difference in your testimony?

Mr. Carey: I object.

Mr. Simpson: Well, I will withdraw that.

Q. I asked you if the hook you experimented with was twelve feet long would it make any difference from that ten feet four inches? A. I don't think they used them.

Mr. Carey: I think that is self-evident. The Jury can understand it as well as the witness.

Q. Did you make any measurements of Hinckley's head? A. No, I did not.

Q. Do you know the height of Price? A. No, I do not.

Q. How much he weighs? A. No, I do not.

Q. Do you know what his heighth was on the 15th of February, 1915? A. No, I do not.

Q. You testified as to the speed of the trains, the passing speed on a curve, at that speed would the train vibrate and change their proximity to each other as they vibrated? A. They are likely to.

Mr. Simpson: That is all.

By Mr. Carey:

Q. Now, Mr. Chase, will you get for us the radius of that curve? A. Yes.

Q. And can you bring it up this afternoon? A. Yes, sir.

Mr. Simpson: Well, he can send it; if he does not feel well he can send it up and I will admit it in evidence.

Q. Is the radius of the curve the same through out the curve or does it change? A. I believe it is the same throughout the curve except at the end, but are eased off as most main line curves are.

The Court: And, Mr. Chase, have you a map or diagram anywhere in your office which will show that curve and its radius or radii, if there be any.

The Witness: I have.

The Court: Mr. Simpson, I take it then from your offer that you have already made, that if such a blue print were made you would accept it.

Mr. Simpson: Yes, I don't want him to come back just for that.

The Court: If you will send it over here, I think Mr. Simpson will agree to it.

Mr. Simpson: I will agree to admit it. I make that offer now.

That is all Mr. Chase.

(Witness excused.)

BARNETT KOOPERMAN, sworn.

Direct Examination by Mr. Carey:

Q. Doctor Kooperman, you are a practising physician? A. Yes, sir.

Q. Located where? A. West New York.

Q. How long have you been in practice? A. Six years.

Q. And your practice is a general practice? A. General.

Q. Were you connected with the North Hudson Hospital on February 16th, 1916? A. Yes, I was.

Q. How long had you been there at that time? A. You mean from the beginning? About eight months.

Q. Were you on duty at the time Mr. Price was brought into the hospital on February 16th, 1915? A. I was.

Q. Did you receive him as he came into the hospital? A. Yes.

Q. And what did you do? A. Dr. Fendrich was there at the same time he brought him in. Dr. Fendrich ordered me to shave his head.

Q. Did you shave his head? A. Yes.

Q. All over? A. No, if I remember right it was only the left side.

Q. Do you recall what Mr. Price's condition was while he was shaving his head? A. He was unconscious.

Q. Was he entirely unconscious? A. Why, I would not say cert,—I thing it was rather a semi-conscious condition.

Q. And what was done with him after you had shaved the left side of his head? A. Why, I left it with Dr. Fendrich and he ordered an ice cap to his head, and gave orders to take him upstairs.

Q. And was anything done with the right side of his head? A. It was only cut close but not shaved.

Q. Cut close and shaved on the left side? A. Yes.

Q. And how close was it cut on the right side? A. Oh, as close as you can cut it with a scissor.

Q. The man was then taken upstairs? A. Yes, sir.

Q. What was done with him after he was taken

upstairs? Did you see him after he was taken upstairs? A. I came in occasionally to see him, yes.

Q. So, on that night was any examination made of Mr. Price after he was taken upstairs? A. Why, Dr. Fendrich examined him, it was a private case when he came in and the internes do not usually interefere with the private cases, you see?

Q. Yes. A. Unless the doctor gives him order to do so.

Q. Were you present when Dr. Fendrich was making the examination? A. I was, yes.

Q. And who else beside Dr. Fendrich was present? A. Dr. Besing was there, if I remember right.

Q. And Dr. Besing died recently in France? A. He did.

Q. Now, what kind of an examination did Dr. Fendrich and Dr. Besing make of Mr. Price that night in your presence? A. Why they looked over his head, and then they palpatated it to see if there was any palpable deformity or injury of some kind.

Q. Did you look at his head also? A. I did.

Q. Did you palpate his head? A. Yes, sir.

Q. Press the head? A. Yes, sir.

Q. Now, will you state whether you found at any time on Mr. Price's head or face or anywhere about his body that night, any blood? A. No; I could not say that I did, I did not.

Q. In his hair or anywhere else? A. No.

Q. Was there any mark of any kind on Mr. Price's head? A. Not noticeable.

Q. Did you look to see if there was? A. I did.

Q. With what result? A. I couldn't find any.

Q. Did the other doctors look for marks on the head? A. They did.

Q. Do you know anything about the tempera-

ture of Mr. Price that night? A. His temperature was normal.

Q. And his respiration? A. Apparently normal.

Q. And his pulse? A. Pulse was rather slow if I remember right from the history.

Q. Did anything special develop in Mr. Price that night? A. No, I don't think so.

Q. Do you recall how long Mr. Price was in the hospital? A. He was there for a number of weeks, but I don't remember how long.

Q. During the time that he was there what did you have to do with him if anything? A. Why, we used to go to see him occasionally.

Q. Did you make any examination of his head after the first night that he was brought in? A. No, not after that.

Q. Did you see his head? A. I did.

Q. Did you do anything in connection with his head at all, about putting ice caps on or taking it off? A. The only thing I remember was that he was very tender on the left side. He always complained of head aches, and also the pain on the left side.

Q. During the time he was in the hospital will you state whether or not his respiration was normal? A. Yes.

Q. Was there any unconsciousness at any time or semi-consciousness other than on the first night he was brought there? A. He was semi-conscious for the first day. I don't remember how long it was, but I know it was a couple—maybe three or five or six, I don't remember exactly, but I know he was semi-conscious before—after he was brought in.

Q. During that time did he talk? A. Very little, he just mumbled a few words here and there and he did say occasionally somebody hit him on the head or something like that; but he always complained of his head.

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Q. Did he say anything about his head bleeding? A. No, he never said that.

Q. You didn't hear him say anything like that? A. No.

Q. At any time he was in the hospital was there any bruise,—or—— A. Not that I could see.

Q. ——or any marks whatever on his head? A. No.

Mr. Carey: Cross examine.

Cross Examination by Mr. Simpson:

Q. What do you mean by "being a private case"? Do you mean it was Dr. Fendrich's case? A. Dr. Fendrich's case.

Q. For the Central Railroad Company? A. Yes.

Q. And their cases go in your hospital? A. They go in the hospital, but they would be put under Dr. Fendrich's service.

Q. The nurse yesterday swore she clipped his hair off? A. I did. We might have been working both together, we usually do.

Q. One on one side and one on the other? A. No, I don't remember exactly.

Q. Anyhow you know as a matter of fact you clipped his hair off? A. I do, yes.

Q. Didn't you so testify at the last trial? A. Yes.

Q. And she had nothing to do with cutting his hair? A. No, but they always help you, hand you scissors.

Q. But she didn't clip that hair? A. No, sir.

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

Q. Now, let us get this straight. You testified at the last trial didn't you that you saw symptoms from which you would diagnose concussion of the brain? The first night? A. I did, yes.

Q. And you did see indicating from which you would diagnose concussion of the brain that night, didn't you? A. Yes.

Q. That is a fact?

Mr. Simpson: That is all, doctor.

Re-direct Examination by Mr. Carey:

Q. What was the condition that indicated to your mind concussion of the brain? A. Well, of course, I haven't got the history; it is quite a long time ago. I remember he was brought in in semi-conscious condition and his urine was taken if I remember right and we examined the urine and couldn't find anything there. We thought possibly it was urocomea or possibly diabetic, but there was nothing found in the urine at that time.

Q. Do you remember examining him? A. I remember examining him.

Q. (repeated by the stenographer) What was the condition that indicated to your mind concussion of the brain? A. (repeated by the stenographer)

Q. (repeated by stenographer) What was the condition that indicated to your mind concussion of the brain?

The Court: Now, have you finished the answer to that question in full?

Witness: Yes.

Q. Was there anything indicating concussion to your mind except the semi-conscious condition? A. Well, it was the semi-conscious condition that indicated it.

Q. Was there anything that indicated it but that? A. I really don't remember but I think his pulse was a little slower than usual.

Q. A little slower? A. Yes, I don't remember exactly, I would not make a positive statement at present, because it is quite a number of years ago. I never went over it.

Q. Calling your attention to your testimony—

Mr. Simpson: Oh wait. This is your witness. I object to calling his attention to his testimony at a former trial. He cannot contradict his own witness.

Mr. Carey: I am not contradicting him. I just want to call his attention——

Mr. Simpson: I object to calling his attention unless there is some legal purpose in it.

The Court: For what purpose are you going to call his attention to his former testimony?

Mr. Carey: I want to call his attention specifically to what took place that night.

The Court: But, for what purpose?

Mr. Carey: In regard to the condition of the man's pulse.

The Court: You do not get my question. Is it for the purpose of contradicting him or what?

Mr. Carey: No, it is simply for the purpose of refreshing his recollection.

The Court: If you said that before we would have been over it long ago. I did not make myself plain perhaps.

Mr. Simpson: If he wants to show the witness does not remember, it is all right. I guess he remembers all right.

Q. (repeated by the stenographer) Calling your attention to your testimony—— Then you haven't any definite recollection that his pulse was slower? A. I would not make a positive statement, no.

Q. What is your recollection as to the rate? You say a little slower? A. Well, it might have been, instead of seventy-five, it might have been seventy or sixty-nine or something like that.

Mr. Carey: That is all.

By Mr. Simpson:

Q. You diagnosed it concussion of the brain because when he was brought in he was either unconscious or semi-conscious? A. Yes, sir.

Q. And you excluded urecomea by an analysis of his urine and your recollection is his pulse was slower and he had a tenderness on the left side of his head? A. Yes.

Q. And that would be enough, wouldn't it in medical practice to diagnose a concussion of the brain, if other things were eliminated, that would be enough, wouldn't it? A. Yes.

Mr. Simpson: That is all.

By Mr. Carey:

Q. You would expect to find his pulse quite a good deal from normal in concussion of the brain? A. The majority of cases are that way. It depends on the amount of concussion the brain received.

Q. And the respiration would be quite abnormal would it not? A. Usually, yes.

Q. But his respiration was normal in this case? A. In this case it was normal.

Q. And his temperature would be abnormal, wouldn't it? A. It would, yes.

Q. But in this case it was normal? A. Yes.

Q. So, as a matter of fact, the only thing which indicated a concussion of the brain was the semi-conscious condition at the time? A. Yes, sir.

Q. Nothing else.

By Mr. Simpson:

Q. When you say semi-conscious condition, you told me a slow pulse. You meant that didn't you? A. Beg pardon.

Q. You said to Mr. Carey just now the only thing that made you diagnose the case as con-

cussion of the brain was the unconscious condition. Now, as a matter of fact, it was the unconscious condition, the slowness of the pulse and the tenderness on the left side of the head? A. Yes.

Q. There were three things you took in. You analyzed the urine and eliminated that? A. Excluded that, yes.

Mr. Simpson: Yes, that is all.

(Witness excused)

GRANT HINCKLEY, recalled.

Direct Examination by Mr. Carey:

Q. You know Mr. Price? A. Yes, sir.

Q. You had known him for some little time before February 15th, 1915? A. Yes, sir.

Q. What would you say is the comparative height of yourself and Mr. Price? A. There might be a few inches difference; two or three inches one way or the other I would not just say.

Q. Well, you saw Mr. Price here the other day didn't you? A. I wasn't standing at his side to compare heights.

Q. Well, stand down there so the jury can see you and compare heights. They probably recall the height of Mr. Price. A. (Witness does so.)

Mr. Carey: Now, if the court please, I offer in evidence these photographs which were marked for identification when Mr. Hinckley was on the stand the other day.

The Court: If there is no objection, let them be marked.

(D. 3, D. 4, D. 5, 7 and 8 for identification received in evidence.)

Q. Calling your attention to D. 5 Mr. Hinckley that is the photograph on which the fire hook is shown across the front of the tender—— A. Yes

Q. —your testimony was to the effect that that was the proper and only place for carrying a fire hook on an engine of that type? A. Yes, sir.

Q. Now, the photograph does not show the hook end; that is, it does not show the hook, or rather the rake and we will say? A. No, sir.

Q. That is hidden by—— The wing of the tank.

Q. The wing of the tank. Now as you placed that fire hook in position of the engine on that night, will you state what was the position of the prongs on the rake end? A. Pointing toward.

Q. And with repsect to the side of the tank. A. Pardon me, to the—you mean which way were the prongs when this photo was taken? A. No, I don't mean that, I mean which way were the prongs when you placed the hook on the engine that night? A. February 16th, 1915?

Q. Yes. A. Upward.

Q. And were the prongs placed in the same position for this photograph? A. Yes.

Q. Now, when you reached——

Mr. Carey: Strike that out, please.

Q. Had you made any use of the fire hook at the time you placed it at the New Durham Coal pockets until after these two engines passed? A. No.

The Court: I think Mr. Carey, that has all been gone over.

Mr. Carey: I think it was, but I just wanted to ask that one question to make sure of it.

The Witness: It was. I had no use for it.

Q. Now, when you reached DuMont will you

state whether the prongs on the rake end were against the side of tank? A. They were.

Q. On which side? A. The right side.

Q. That is whose side? A. The engineer's.

Q. And will you state whether or not the prongs were still up? A. They were.

Q. Now, in this picture, D. 6 for identification, were you present when that photograph was taken? A. I was.

Q. What engines were you using at that time? A. 3195 on the right of the picture, here and the 992 on the left.

Q. And 3195 how does that compare with 3189 the engine you had? A. Same type.

Q. And 992 how does that compare with 907? A. Same type.

Q. Now, when you placed the fire hook as shown on this photograph will you state whether or not you placed it in the same position as nearly as you were able to that the fire hook was on the night of February 16th? A. I did place it as near the same position as I could.

Q. Did it extend any further over on the night of February 16th, 1915, than is shown in the photograph? A. No further.

Q. Was it any further over when it arrived at DuMont? A. It was in the same position as when I placed it at the New Durham coal pocket.

Q. Now, when you took this position as shown in photograph Exhibit D. 7 in the cab of engine 992 will you state whether or not that is the normal position for you when you are looking out of a cab window for any purpose on the locomotive? A. It is.

Q. And about how far does the fireman place his head out of the cab window ordinarily when he does that in looking ahead? A. As far as he customarily projects?

Q. Yes. A. Why I should say six or seven inches, eight inches possibly.

Q. Now, in the position you were sitting and shown in this photograph D. 7? A. Yes.

Q. Will you state whether or not you could see plainly ahead on a straight track? A. Very distinct.

Q. And if the tracks were curved to our left would you need to have your head further out or—— A. Not so much out as it is here.

Q. Not so much? A. Now, as to the handle of the fire hook, is that rough or smooth on the fire hook used on the New York Central? A. Why, it is—would say it is rough, and it lacks a lot of being smooth, it is generally in between roughness and smoothness.

Q. The same as the rod of the fire hook? A. Yes, sir.

Q. It is not smoothed off at all is it? A. It is not machined or emeried off, or sand papered off or anything like that. It is in the iron rough state; that is about the best you can say.

Q. Now as you left the Weehawken yards that night, was anybody in the cab of the engine with you? A. Yes, sir.

Q. Who? A. Engineer James Lee and the brakeman Harry Vaughn.

Q. And what was Mr. Vaughn's position? A. You mean his position in the cab?

Q. Yes. A. He was sitting on the front seat box at the seat box in front of me.

Q. Will you state whether or not that is a proper position for the head brakeman when not out on the train at work? A. It is.

Q. Is there any requirement as to the head brakeman when not out on the traian at work and when the train is in motion? A. Yes, sir.

Q. What is that? A. There is a printed rule

stating they shall be in this proper position on the train and there is another clause stating that they shall be in the position that they can observe and indicate signals to one another, and communicate signals to one another as to their positions and the color and indications, and he is in the least way of anyone by being on that seat box.

Q. That is the proper position? A. Yes.

Q. Is that the customary way for him to ride when not working the train? A. It is the only place he can ride conveniently.

Q. Well, is it a customary place when he does ride as a matter of fact? A. Yes, sir.

Q. And was he in that position until after these two engines passed? A. He was.

Q. And what was he doing there? A. Why observing the signals and communicating these and looking back over the train to see that everything was in proper position, to see that there was no fire flying that would indicate, brakes sticking or any boxes running hot; see that nothing was projecting, no doors of the cars open—anything that was out of order that could be observed from the engine, why, he is there for to notify the engineer if he is unsafe, and stop and remedy the same.

Q. And the head-brakeman regularly does that from that position in the cab? A. They always do it.

Q. And that position gives him a good opportunity particularly when the train is rounding a curve? A. Yes, sir; very good.

Q. Now, what is the condition of the tunnel with respect to smoke and gas? A. Well, that varied according to the weather and as to the traffic. If the weather is misty and foggy or just before a rain where the air is what we call muggy, why, cinders and smoke doesn't rise so quickly and if

there are many trains passing through the tunnel, why, and the tunnel has not time to clear up it makes more gas and stuff and smoke in the tunnel than at other times.

Q. And is there any difference in the direction in which the train is going as to the amount of gas? A. Oh, yes.

Q. —which they suffer from? A. There has been so much trouble in regard to black smoke in Weehawken that they put a fan on the westerly portal of the tunnel to fan that smoke out of the tunnel, that it didn't go up through the air shaft in the street, and at the same time it condenses the steam and settles the smoke about it, gets out the easterly portal; so that it does away with a good deal of smoke in Weehawken. So that as a west bound train is coming through it blows that steam and smoke away from it. An east bound train, it blows that steam and gas right in the cab.

Q. In what direction, then, is the most gas and smoke? A. More, in the east.

Q. Now, what time of the day, if any, is the gas and smoke most prominent? A. During commission hour.

Q. What do you mean by "commission hours"? A. Why, when commuters are traveling back and forth in the morning and at night, after work which means from five to about eight P. M. and from about six to seven thirty, A. M.

Q. How about the amount of gas and smoke given off by this train like that one you were on that night? A. Why I should say it would be about two times as much as what would be given off on a passenger train on account of being a long train.

Q. A large amount or small amount? A. Large amount.

Q. What effect does the gas and smoke have on

a person who is in a tunnel? A. Well, some people it doesn't affect at all other people it makes them dizzy. Some peopele it makes them feel faint, and it might have an effect on them and make them vomit. Some—I have known cases where the engineer and fireman both had to be relieved by another, engineer and fireman on account of the gas.

Q. Have you ever had it affect you? A. Why, so that it made me sneeze and cough, but never made me give up the position.

Q. Did you do anything to avoid it? A. Yes.

Q. What? A. Why, a fireman is more at liberty than an engineer is, so that he can leave his post for a few minutes that way and get down between the engine and the tender and you get the fresh air as it comes up between the engine and tank, and then at other times you can wet a handkerchief and put it over your nose so that it condenses the gases kind of.

Q. Have you done either of those things? A. I have done both.

Q. Now, when you are acting as fireman, and are approaching a train on the opposite track after dark when the head light is lighted what effect does the head light have on your eyes? A. Well, I can't say, when I see a train coming, I always take a look at it, and if it is a train that we have been expecting to pass why, I call it to the engineer, "there comes train so and so" and keep my head inside of the cab so that I don't get no direct glare from the light.

Q. Well, does the head light have any effect on your eyes at all? A. Why, it may and it would have if you have your head out.

Q. What effect would it have? A. Why you might call it fire blinding for a couple of seconds.

Q. And after the light passes, what is the result as to your ability to see clearly? A. Why, for a

couple of seconds, I say, as it is passing you you can't see so plain. The thing will kind of blur before your eyes.

Q. These two trains passed after dark that night? A. They did.

Q. Do you recall anything in regard to whether the night was a light night, light evening or dark evening, or medium or what? A. Well, I can't just bring that to my memory, I can't state.

Q. Do you know anything about ice forming in the tunnel, on the roof of the tunnel? A. It does.

Q. During the winter time? A. Yes.

Q. And have you seen ice hanging from the roofs of the tunnel? A. I have.

Q. And have you known of ice falling from the roof of the tunnel to—— A. I do know of its falling.

Q. Do you know whether anything is done in the way of attempting to keep the roof of the tunnel clear from ice? A. I do not.

Q. You do not know about that? A. No, sir.

Mr. Carey: Cross examine.

Cross-examination by Mr. Simpson:

Q. Do you know whether you sneezed this night when you came through this tunnel? A. I don't believe I did, Mr. Simpson.

Q. Don't think you sneezed that night. All right. Now you say to Mr. Carey that this hook was in its proper place, is that right? A. Yes, sir.

Q. Quite sure about that? A. Positively.

Q. Did you swear in the last trial, page 101, of the case "That is the proper place for it" "That is the proper place for it" "And if it is in its proper place how much does it project on each side of the tank? "Why it should not project any, but this night it projected about three or four inches." Did you swear that at the former trial A. I believe I did.

Q. And it should not project any should it? A. Well, I won't say that, Mr. Carey.

Mr. Simpson: Oh, now, don't do that. I haven't done anything to you.

Q. Will you state it was in its proper place and projected over the tank. A. Is that in the question.

Q. Will you state it is in its proper place if it projected over the side of the tank? A. I say it is in its proper pocation, yes.

Q. Then why did you swear at the first trial in answer to that question. "Why, it should not project any," but this night it projected about three or four inches." Why did you say it should not project any? A. Why, as I have testified here before I had not been using the regular hook for sometime past, and I had my private hook which did not extend, and that might have been the reason why I said they should not project.

Q. Because you had a longer hook than your private hook? A. Yes, sir.

Q. You were asked on the same page "I did not ask anything about this night. If it is in its proper place, how much would it project on each side of the tank" and you answered "Not any". Did you? A. I might have said that.

Q. And that was true? A. It was.

Q. You were under oath then as you are now? Now, what did you say to Mr. Carey about the forks that they were standing up straight? A. Yes, sir.

Q. You are sure about that? A. Pretty sure.

Q. Do you remember at the last trial you were asked by Mr. Carey "And the forks, how did they stand, did they lie parallel with the face of this little shelf on which the fire hook was resting or sticking up in the air? How? "A. How?"

"Well, I could not say to that which way they were pointing." Did you swear that at the first trial? A. Well, I testified before—I believe.

Q. Did you say that? A. That they what?

Q. Did you say that that I have read to you? A. Why I might have said it yes.

Q. All right. Then it was not true was it? A. Well, I just told you I believed they were stand up, did I not?

Q. No, you told Mr. Carey they were standing up and you swore at the other trial that you could not tell. Now, if you cannot tell now, you did not tell the truth at the other trial did you when you said you didn't know?

Mr. Carey: Let him answer.

Mr. Simpson: I am asking him. He does not need your rescue. Let him alone.

Q. It was not true then was it at the last trial when you said you didn't know how they were? A. Well, I might have said I didn't know, I could not recall it to my mind.

Q. No, you said what I read to you. Now is that true? A. All right. If I said that what you read I don't recall it to my mind.

Q. Well you didn't know? Well, it doesn't say I didn't know I couldn't remember it.

Q. What did you mean by this language "Q. And the forks, how did they stand, did they lie parallel with the face of the little shelf on which the fire hook was resting or sticking up in the air? How? and you answered "I couldn't say about that which way they were pointed" what did you mean by that? Did you mean it. A. I surely did.

Q. Very well. What do you mean by swearing to day you do know how they were pointing? A. Well if you are as to one thing it does not necessarily say in this case there is any question now.

Anything that comes out and you are not sure just sure about it—it might be among men that you were with at the time of said happening. It does not refresh your mind.

Q. That is the best answer you want to make? A. Yes.

Q. And that is your explanation? A. And it brings it back to your memory and you remember it. Yes, sir.

Q. Now, you say that when a fireman sees another train approaching, he pulls his head in the cab? A. No, I didn't say that.

Q. Well, tell me what you did say about that? A. I said that I did.

Q. You did? A. Yes, sir.

Q. Is it the rule of the company that the fireman has to call out red signals? A. Call out all signals.

Q. Is it the rule of the company that he must hold to the signal until he has passed it. A. He must observe the signals.

Q. Until he has passed it? A. Until he has passed it.

Q. That is until he is to it? A. Yes.

Q. Well, suppose you are confronted by this situation, that you were approaching a signal and another train was passing you, how could you observe that signal without putting your head out of the cab? A. It does not necessarily say you must keep that signal right in front of your eyes—well, you observe a signal, if you are sitting on the left hand side of an engine and you observe a signal until such a time as it goes out of your view from the boiler or any other obstruction, permanent obstruction, why, that covers you that you observed it until you passed it.

Q. How does the boiler keep it out of your vision? A. Well, if you are sitting on the side of the engine a man's head is lower than the boiler, and

consequently as you approach the signal, why you are looking up over the boiler and it will obscure your view when you are getting close on to the thing.

Q. I see. As you come to it, your head, of course, is going down in the line of vision all the time. I see. A. Your boiler being above you, it does not say your head is going down.

Q. No, but the boiler is going up to your view as you come near it? A. Yes, a couple of car lengths——

Q. That is the fact. A. I would say approximately a couple of car lengths.

Q. When the car cuts off your signal how do you observe the signal? A. Well you are covered when you get up as close as that, if you are going at a speed of twenty miles an hour—and that would be about—well you would go probably twenty five feet in a second, and if you get up within a couple of car lengths, and for only two or three seconds you didn't have that signal under observation, that would be covered.

Q. Well, why the necessity of having your head out of the cab window as you were showing us in that picture? A. Convenience in riding, more comfort.

Q. Is that the way you ride with your head out? A. Yes.

Q. Then you do not always look through this little cab window in front of you? A. Not always, no, sir.

Q. Now, you said something about this engine Mr. Price was working on being of the same type as the one you were in when the measurements were taken. You never measured the arm rest or the overhang of this engine upon which Mr. Price was working, did you? A. No, sir; that is out of my line, as a fireman.

Q. I just want to get that fact, that you just simply are stating generally that it is the same type of engine? A. Yes, sir.

Q. You were stopped at Dumont the night of this accident? A. We were.

Q. How were you stopped? A. By messenger.

Q. Telegraph message? A. Yes, sir.

Q. And what were you stopped for? A. Why, we were stopped to clear, to let a couple of passenger trains by and inspect our engine if there was anything out of place, or anything loose or lost, anything unusual.

Q. Anything unusual. A. Yes.

Q. You speak of this hook that you have, not being your hook. What had become of your hook? A. Why, the trip previous to this trip I had left it on the engine—well, I always left it on the engine, but the fuel boy had forgot to take it off. The engine was dumped that day and we had a new fire. They had been doing some work on the engine that day. The fire builders at the Round House had used my hook building the fire and they had burned the prongs off, so consequently I had to have another hook. That is how I got that hook.

Q. Where did you get this hook? A. At the round house. The fuel boy placed it on the engine.

Q. And why didn't you put it lengthwise on the train instead of crosswise? A. Well, it is not customary.

Q. Well, it was just as convenient to put it lengthwise as crosswise? A. No.

Q. Why not? A. Well, if you were using a hook—say that you were standing somewhere and using the hook, a train in moving—you put it lengthwise from the boiler butt, on the tank, why, the engineer and brakeman wanted to go across one side of the engine to the other, they would be climbing over that red hot hook, they would be

liable to burn themselves, injure themselves.

Q. Wouldn't you have to climb over the red hot hook if they were crosswise? A. Not on the tank.

Q. Why? A. Because it is out of the way.

Q. Couldn't you put it lengthwise on the tank? A. If you want to run a chance of loosing your hook, have it roll off.

Q. Don't you happen to lose them when they are lying crosswise? A. I never know of one to be lost.

Q. You never lost one? A. No.

Q. There were three men with you in the cab that night? A. Yes.

Q. A fireman, a brakeman, and yourself? A. I was the fireman myself, the brakeman and the engineer.

Q. Now, when you say this hook was only three or four inches over the side that is merely an estimate of yours isn't it? A. It is a measurement by the eye.

Q. That is by your eye. Now, you didn't take any rule and measure it? A. I did not.

Q. You just looked at it and made your estimate of it? That is right? A. Yes, sir.

Q. And you say Mr. Price is as small a man as you do you? A. Well, in the neighborhood of my height, there might be a variation of a couple of inches. one way or the other.

Q. Well, which way is it, is he a shorter man than you or a taller man? A. I would not take that responsibility on myself to state.

Mr. Simpson: All right. I guess that is all.

By Mr. Carey:

Q. Mr. Hinckley, what is the width of the handle of the fire hook? A. About three or four inches, about three inches.

Q. What part of the fire hook was over the side of the cab? A. The handle end.

Q. Anything more than just the handle? A. No, sir.

Q. You were asked why you didn't place this hook lengthwise of the tender. Is it customary on the New York Central to carry hooks lengthwise of the cab, I would say of the tender? On this type of engine? A. No, sir.

Q. Did you ever know of that being done on this type of engine? A. Why, I don't know as I ever did.

Q. Is there any place to carry them? A. No place provided at all.

Q. To carry them lengthwise? A. No place provided at all to carry it lengthwise.

Q. On this Exhibit D. 5 the fire hook appeared to be back of some pipes that stand up vertically? A. Yes, sir.

Q. And resting on the projection of one of the coal doors? A. Yes, sir.

Q. And that is the proper place for the fire hook to rest? A. It is.

Q. And is that the place where the firemen carry their fire hook resting on that place? A. Yes, sir.

Mr. Carey. That is all.

By Mr. Simpson:

Q. What is your height? A. I believe it is five foot ten?

Q. Five foot ten, all right.

(Witness excused.)

FRANK A. DOOLEY, sworn.

Direct Examination by Mr. Carey:

Q. Mr. Dooley, you are in the employ of the New York Central? A. Yes, sir.

Q. In what capacity A. Road foreman for engines.

Q. How long have you been such? A. Oh, for the past year.

Q. And you are now located where? A. Ravina, New York.

Q. Are you familiar with engines, 3189 and 3195? A. I am.

Q. What can you say as to the class which those engines belong? A. Class K. 11, dimensions and specifications the same.

Q. From the specifications? A. Yes, sir.

Q. Constructions the same throughout? A. Yes, sir.

Q. With overhang—— A. Yes, sir.

Q. And everything of that kind. Is the deck of the tank the same? A. Yes, sir.

Q. When you speak of engine you include the tender? A. Yes, sir; complete.

Q. Have you ever been a fireman? A. Yes, sir.

Q. And an engineer? A. Yes, sir.

Q. How long did you serve as fireman? A. Six years.

Q. And how long as an engineer? A. About five.

Q. Do you know the proper place for carrying the fire hook on engine 3189 and engines of that type? A. Yes, sir.

Q. Where should it be kept? A. Cross wise of the tank.

Q. Front or rear of the tank? A. Front.

Q. I show you Exhibit D. 5 and call your attention to the fire hook on that tender. Will you state whether or not that fire hook is in its proper position? A. That is in its proper position.

Q. Speak a little louder, will you? A. Proper position.

Q. Is there any provision on that engine for

carrying the fire hook? A. Down in the gang-way which is an improper position.

Q. Well, is there any proper position? A. No, there is not.

Q. If in the gang-way it lies how? A. It lies cross wise—perpendicular, more perpendicular.

Q. And is the position shown in D.5, the position in which firemen customarily carry the fire hook on this type of engine? A. Yes, sir.

Q. And do they also carry the fire hook in the same relative position on the 907 class of engine? A. Yes, sir.

Q. Now, calling your attention to engines 907, 904 and 992, to what class do they belong? A. Class I. engine and the same specifications and dimensions.

Q. Same throughout? A. Yes, sir.

Q. With overhang and accessories, and everything. A. Yes, sir.

Q. Everything? A. Yes, sir.

Q. Do you know the length of engine 3189 and engine of that class from the head light to the front end of the tender where the fire hook is kept? A. Forty-five feet.

Mr. Carey: Cross examine.

Cross-examination by Mr. Simpson:

Q. It is improper to carry the hook in the gangway? A. Why, it is liable to fall over; if the hook is hot it is liable to burn somebody.

Q. Is it liable to project over the side of the tank? A. No, it will clear perpendicular.

Q. What do you mean by "perpendicular"? A. Up and down, slanting down from the gangway up to the top of the tank.

Q. Let us see what you mean by the gangway. Just show us what you mean by the gangway. The same as this? Is that what you mean by the

gangway (indicating)? A. There is the gangway right there.

Q. You mean this floor part? A. This floor here, and this is the gangway through here.

Q. Now, where would the hook be in this gangway? A. In this corner directly on this flange.

Q. And that is up here? A. Yes, sir.

Q. And the more it was moved over, the more it would hang over. A. It could not get away. There is generally a hook furnished here.

Q. What do you mean by a hook? A. This latch.

Q. Suppose that it was over? Would it go nearer? A. It would fall down here.

Q. You mean it would fall off? A. Fall off entirely.

Q. Why? If this was a diagonal, if it rested in such a position that this prong end was down, to the left, and the handle up here, as you moved your bottom over that would shove that handle up high, wouldn't it? A. The bottom wouldn't set.

Q. If it did set, wouldn't it bring it up here? A. No, I don't think it would.

Q. You don't think it would put it in that position up where it would not—— A. I mean up here.

Q. Up there against that door? A. Some times this way.

Q. Sometimes which way? A. Across this here.

Q. Suppose the hook was down here and was resting on the side here, as this is now, but instead of the prongs being there they were down on the floor, would that be a proper position? A. No, it would not.

Q. Why, not? A. Because of the liability to drop right off.

Q. Liability to keep projecting until it falls off? A. No, because this is the heaviest end of the iron with two inch prongs on.

Q. You don't think that if the bottom is heavier than the top the bottom will fall off? A. No, the bottom will hold it down in its place.

Q. That is what I want to know. If the prongs were down here and were heavier than that would it not cause it to project over the side? A. No, sir.

Q. Why not? A. Because it would not work. The weight of this hook would hold it in its proper position.

Q. Wouldn't the jostling of the engine—— A. The jostling of the engine would knock it off entirely.

Q. It would not work it gradually, it would jump right off? A. It would jump off on the first provocation.

Q. It would not work off gradually? A. It would fall off.

Q. It would take wings and fly off? A. It is liable.

Q. Now, these engines that you talk about, what is the measurement of the deck of engine 3189 across it? A. Across it?

Q. Yes. A. The top of the tank?

Q. Yes. A. About ten feet.

Q. Ten feet? And is it about that or is it actually that? A. I think it is about that; I never measured it.

Q. You haven't got any measurements? A. No, sir.

Q. And if you haven't got any measurements and haven't measured them how do you know they are the same. A. All these engines are the same because where an engine is built, they are built in lots of fifty or one hundred in different departments, and when the plans and specifications call for a locomotive and they are sent in the shop and they make them, they have got to be right what they call for.

Q. Then, you didn't measure 907, 904, and 992 at any time for the purpose of ascertaining the agreement in measurements, did you? A. No, sir.

Q. What you are testifying to is because of your general knowledge of the way they are manufactured? A. Yes, sir; and the plans and specifications which calls for them.

Q. Have you seen the plans an dspecifications of 907 and 904? A. Yes, sir.

Q. Are they here? A. No, sir.

Q. Where are they? A. In the classification book with which we are furnished.

Q. But the original plans and specifications, have you seen them? A. No, sir.

Q. Simply have seen them in your book. Now, you say it is customary to have this hook lying cross wise. Is it customary to have this hook projecting so that it is apt to hit a man on a passing train? A. No, sir.

Q. That is very improper, isn't it? A. Yes, sir.

Q. Have you known them to be lost very often? A. No, sir.

Q. Never heard of one being lost off a train, have you? A. I have.

Q. How was it lost? A. Being improperly placed.

Q. Being improperly placed? A. It must have been.

Q. In what way? A. It must have been carelessness of the fireman. The hook might have been hot and dropped off; couldn't handle it.

Q. He dropped it off? A. Couldn't handle the hook.

Q. But I am talking about what you said a moment ago—it might have been improperly placed and dropped off. How can that happen? I mean how could it be improperly placed so that it would drop off? A. Why, stuck in the gangway.

Q. And then it would drop off? A. Drop off.
By Mr. Carey

Q. If it were placed in the gangway the way you describe it, it would drop forward, wouldn't it and go down between the locomotive and the tender? A. And the tender.

Q. And not fall over the side of the tender? A. Not fall over the side.

Q. Right down between the space of the locomotive and the tank? A. Between the locomotive and the tank.

Mr. Carey: That is all.

(Witness excused.)

JAMES H. LEE recalled.

Direct Examination by Mr. Carey:

Q. Mr. Lee, you are an engineer in the employ of the New York Central? A. Yes, sir.

Q. And have been for how many years? A. Over twenty-two years.

Q. Before you were an engineer were you a fireman? A. Yes, sir.

Q. Were you the engineer on engine 3189 the night of February 16th, 1915? A. Yes, sir.

Q. That was a freight train that left Weehawken at about what time? A. Usually around about between seven and seven twenty.

Q. Do you recall at about what time you left that night? A. I think around about seven twenty.

Q. About seven twenty? A. I think so, as near as I can remember.

Q. And who was your fireman? A. Grant Hinckley.

Q. Who was the head brakeman? A. Harry Vaughn.

James H. Lee, (recalled) for Defendant—Direct

Q. Where did you take your engine that night, that is where did you get it? A. Granton Engine House.

Q. After getting it at the Granton Engine House, what did you do? A. Went down to the coal pockets, took on a supply of sand and coal and proceeded over to Weehawken over to the train.

Q. Do you know whether the fireman fixed his coal pocket at the New Durham coal pocket? A. He did.

Q. Take on coal there regularly, do you? A. Yes, sir.

Q. And the fireman regularly fixes his fire there? A. He does.

Q. What kind of coal did you put on there, hard or soft coal? A. That is anthracite, and bituminous.

Q. What did he put on the fire there, both? A. Both.

Q. What is it at the coal pockets as a rule? A. Only the one.

Q. What kind did you put on the fire there? A. Anthracite—hard coal.

Q. Then after taking on coal and water and so forth, what did you do—what did you do that night? A. Touched an electric button, notified the fireman I was ready to go out to Weehawken with the engine.

Q. And you did take the engine to Weehawken? A. I did.

Q. The Weehawken freight yard. Which direction was your engine going, backward or forward? A. Back over.

Q. Backing through the tunnel? A. Yes, sir.

Q. And where was your train located that night? A. I should say about a thousand feet west of the tunnel.

Q. Now, before you started out with your train that night——

The Court: West of the tunnel or east of the tunnel?

Witness: East of the tunnel.

Q. Before you started out with your train that night, did you look over your engine? A. I don't know as I looked over it at Weehawken. I did at Granton.

Q. You did at Granton? A. Yes, sir.

Q. Well, at Weehawken, before you started out, did you make any examination to see what the conditions were around your engine? A. Only the usual examination to see that everything was in order.

Q. That is what I mean, did you do that? A. I did.

Q. And that night did you observe the position of the fire hook? A. I did.

Q. And will you state what the position of the fire hook was? A. Crosswise the front end of the tender.

Q. I show you exhibit D-5 and ask you if that shows correctly the position of the fire hook on the tender that night just before you left the Weehawken yards? A. It does.

The Court: Do I understand you to say, Mr. Lee, that you had made the examination before you had left Weehawken, or when you left New Durham or where did you make the examination?

Witness: Well, at Granton engine house you oil the engine around and you examine her carefully and in Weehawken as a rule the engineer sees his sand is ready to go out on a heavy train and as a rule he goes around his engine to see whether the sand is running.

Q. (Repeated by the stenographer) Before you started out with your engine that night, did you look over your engine? A. I don't know as I looked over it at Weehawken, I did at Granton.

Q. You did at Granton? A. Yes.

Q. Well, at Weehawken before you started out did you make any examination to see what conditions were around your engine? A. Only the usual examination to see what the conditions were.

Q. Well, that is what I mean. A. I did.

The Court: Make a distinction between examination and inspection.

The Witness: Make a distinction between amination and inspection.

Q. What is the difference? A. Examination is to look around your engine; inspection is to scrutinize every part of your locomotive, inside and around.

Q. Which did you do at the Weehawken Yard just before you started out? A. Made an examination.

Q. Is that the time you saw the position of this fire hook? A. It is.

Q. Will you state whether or not it is your duty before starting out on your run to make such an examination as that to see that everything is all right? A. I consider it every engineer's duty to see that everything is in order.

Q. Well, is it your duty? A. Yes, sir.

Q. Do you recall passing the train on which Mr. Price was that night? A. I do.

Q. And will you state about where the train passed? A. Why, to the best of my recollection, between the block signal—tunnel block signal and the westerly portal of the tunnel.

Q. You were right across the gangway from Mr. Hinckley, the fireman? A. I was across the—

Q. You were on the side of the engine? A. Right side.

Q. Now, do you know whether or not Mr. Hinckley had made any use of the fire hook from the time he left the Weehawken yard until the two engines passed? A. He did not.

Q. You say that hard coal was put on at the New Durham Coal Pockets? A. Yes, sir.

Q. You say that hard coal fire lasts for about what distance? A. It varies, thirty miles; I had one fiorty-five.

Q. Now, at Dumont did you stop your engine? A. I brought the train to a stop at Dumont.

Q. And did you make any examination of the train at Dumont? A. I made an entire examination of the train.

Q. How far is Dumont from Weehawken? A. About thirteen miles.

Q. Had Mr. Hinckley made any use of the fire hook in the Weehawken yard until you arrived in Dumont? A. He did not.

Q. And did you observe the condition of the fire hook at Dumont? A. I did.

Q. What was its position? A. Proper position.

Q. And how in regard to the position it was in when you left the Weehawken yard? A. Substantially the same.

Q. About how much was the projection of the fire hook over the side of the tank? A. About three or four inches.

Q. And what part was actually projecting? A. The handle.

Q. Anything more than the loop of the handle? A. All that was projecting was the loop of the handle.

Q. Is the projection shown in D-5 practically

right as it was that night? A. Yes, sir.

Q. Now, the prongs of the hook are on which side? A. The prongs extend up.

Q. On which side of the engine? A. On the right side of the tender.

Q. As far as you could observe had the fire hook moved at all that night between Weehawken yard and Dumont? A. They did not.

Q. I call your attention to D-6 and ask you if you were present when that photograph was taken? A. I was.

Q. And do you notice on one of those engines a projection on the side of the tank, what is that? A. Handle end of the fire hook.

Q. And will you state whether or not that projection is the same as it was on the night of February 16th, 1915? A. About as near as it could possibly be.

Q. Did you see that fire hook when it was placed for this picture? A. I did.

Q. Do you recall who placed it? A. I do.

Q. Who was it? A. Fireman, Grant Hinckley.

Q. The man who testified before you? A. Yes, sir.

Q. I call your attention to D-7, the photograph, and ask you if that photograph was taken the same time as D-6? A. Yes, sir.

Q. The same day? A. Yes, sir.

Q. And Mr. Hinckley is sitting in the cab windows of one of the engines, is he? A. Yes.

Q. Will you state that is about the normal position of a fireman who has his head out of the window, out of the cab window, looking ahead? A. Well, that is about the way I used to sit, of course, that is years ago. It was my usual position.

Q. Now, is there any other place, on this type of the engine to carry the firehook than shown in Exhibt D-5? A. No, sir.

Q. Is that the customary place for a fireman to carry it? A. Yes, sir.

Q. Did Mr. Price ever fire for you? A. He did.

Q. And did he fire for you on this train, W. D. 3? A. He did.

Q. And do you recall for about how long a period? A. Oh, about three months, about three or four months, maybe more, maybe less.

Q. When he was firing when you were running the same type of engine, 3189, on that train? A. Yes, sir.

Q. That was the type of engine used on trains of that class? A. Yes, sir.

Q. Now, where did Mr. Price carry his hook when not in use? A. The same position as shown in the picture there.

Q. On this picture, D-5? A. The same position as shown there.

A recess was taken until two o'clock P. M.

AFTER RECESS.

Q. In your experience did you ever know a fireman on the type of engine 3189 carryin a fire hook in any other opsition than the fire hook was on the night of February 16th, 1915? A. I did not.

Q. Now, you say that Mr. Vaughn was in the cab that night? A. Yes, sir.

Q. And he was the head brakeman on your train? A. He was.

Q. And where does the head brakeman ride when not out on the train working? A. The proper place, on the seat with the fireman.

Q. In the engine cab? A. Yes, sir.

Q. And what does he do in that position? A. Why, his duties call for him to watch his signals

ahead, look back to see that the train is intact and in order.

Q. And he looked in both directions? A. Yes, sir.

Q. What is the effect of a head light looking in an opposite direction upon a fireman sitting next to the train on an opposite track? What effect would it have on the eyes as the train approaches?

The Court: I suppose he may have observed it.

Mr. Carey: Yes.

Q. As you may have observed it. You were a fireman one time. A. Well, as I have observed it in handling the train it kind of dazzles the eye, so it take a few seconds for the eye to get accustomed to objects.

Q. Then after you pass the head light what are the effects upon the ability to see for a few seconds? A. It takes a few seconds for the eyes to get accustomed to other objects, to see.

Q. Do you know the size of the iron under the handle of the fire hook? A. I do not.

Q. Have you had any experience with gas and smoke in the Weehawken tunnel? A. I have.

Q. Will you state what you experience has been and how it affected you? A. I have been affected, a feeling of oppressiveness, that is, coughing and sneezing and so forth. I felt kind of overcome on different occasions.

Q. What is that? A. I felt kind of overcome on different occasions.

Q. And what have you done on those occasions? A. I didn't do anything particularly. I always allow it to right itself, that is all.

Q. Did you ever do anything in connection with calling for assistance on anyone in the cab? A.

I have on different occasions called for the fireman to take charge of the engine, that the gas was so heavy.

Q. And had it affected you to that extent? A. It did.

Q. And on such occasions what did you do? A. Well, I would get down as low as possible on the engine where there would be—would be less gas, down on the deck of the engine.

Q. Yes. A. For air.

Q. What affect does it have on your breathing when the gases are of that density? A. Well, it is very difficult to breath.

Q. What is the feeling? A. Feels very much oppressed, lack of pure air.

Q. Any nausea, or anything of that kind? A. I can't say that it ever made me feel that way, outside of not being able to breathe, and so forth.

Q. What about coughing? A. I have coughed and sneezed.

Q. Do you know whether or not ice forms on the roof of the tunnel during the winter? A. It does.

Q. Have you seen it there? A. I have.

Q. Can you describe the character of the ice you have seen? A. Just forms and hangs down in large icicles.

Q. And how large or how long have you seen them? A. Any where from a foot—three foot.

Q. Can you give us any idea of the thickness? A. Anywhere from an inch to five inches in diameter.

Q. Inch to what?

The Court: Inch to five inches.

The Witness: Inch to five inches.

Q. Have you had any experience with ice falling while you were passing through the tunnel? A. I have.

Q. Well you state that experience? A. I carry with me a little shield window to screw on the side of the glass. I had that glass broken a number of times with ice falling against the shield and breaking the glass out.

Q. The glass in the frame? A. Glass in the frame, leaving nothing but the frame.

Mr. Carey: Cross examine.

Cross Examination by Mr. Simpson:

Q. How long before the 16th of February, 1915, have you seen ice in the tunnel? A. I cannot recall.

Q. What? A. I cannot recall.

Q. Was it a month or two months? A. I cannot recall.

Q. You don't know whether it was a month or two months before the 16th of February? A. During all the winter season.

Q. Tell me. You answer one way at one time and another at another time. Can you tell this jury how long before the 16th of February, 1915, you had observed ice in the tunnel? A. I cannot state.

Q. All right. Now, the night of the 16th of February, 1915, were you overcome by gas that night? A. No, sir.

Q. Nothing the matter with you as you came through the tunnel that night? A. Not any.

Q. So, as far as you know, there was not enough gas in the tunnel to effect you that night? A. Not that night, no, sir.

Q. Now, you say it is customary to operate trains with a fire hook projecting three or four inches over the side? A. Yes, sir. It is customary.

Q. It is a general custom then to operate an engine with a fire hook projecting three or four

inches over the side of the tank? A. It has come under my observation; it is.

Q. That is what I want you to tell me. Is it a general custom? A. Yes, sir.

Q. All right. You were asked this question, weren't you, at the last trial, page 247, top of the page; "Now, will you state whether or not is was customary before and after the time when Mr. Price was taken off his engine, February 16th, 1915, that the handle of the fire hook should be placed so that it should extend three or four inches or so outside of the outside plate of the tank? A. Not a general custom but I have seen hooks a number of times extended like that." Did you swear that at the first trial? A. I did.

Q. That it was not a general custom, did you? A. I did.

Q You swore now, a minute ago, that it is the general custom; now, which is the truth? A. Well, perhaps I didn't think of the "general."

Q. Which is the truth, that it is a general custom or that it is not? You swore that it was not at the first trial. Now you swear it is. Which is the truth? A. If you will allow me to explain, I will explain.

Q. Why, you don't need to explain. You can tell me which of those two conflicting statements is the truth. That is all I want to know. A. Well, so far as I have observed it is the general custom.

Q. Then why did you swear it was not a general custom at the last trial? A. Well, I swore at that time to the best of my knowledge, which I am swearing now.

Q. You knew then as much as you know now, didn't you. It was nearer the time of the accident? A. Yes.

Q. And the best explanation you can give for swearing then it was not a general custom and

now it is a general custom is that upon the first trial it was to the best of your knowledge. Is that right? A. (No answer.)

Q. Can't you answer that question? A. Well, that is the best of my knowledge now, that I observed during my time that that is a general custom.

Q. I know, but you have got good intelligence. You know that a thing can not be and be at the same time, don't you? A. I suppose.

Q. All right. Well, how can you swear—how could you swear at the first trial it was not a general custom and then tell these twelve men who were not at the first trial that it was the general custom? A. Well, perhaps there is a misunderstanding as to what you consider a general custom and what I consider a custom.

Q. That is the best answer you can give? A. That is the best.

Q. Now, during your examination at Dumont what kind of light did you have for this examination? A. What kind of a light?

Q. What kind of light? A. Torch.

Q. It was night and dark, wasn't it? A. Torch.

Q. And were you on the ground when you made the examination of the hook? A. On the ground an don the engine also.

Q. Well, when was it that you made your observation of the hook that you could say it only projected three or four inches over the outside of the tank? Where were you then? A. Well, I had observed that hook on a number of times on my trip from Weehawken to Dumont.

Q. I am not asking you that.

The Court: The time when you say you made this examination or inspection at Dumont, the question is whereabouts were you when you examined the position of this hook

at Dumont. Were you on the engine or off the engine or where were you?

The Witness: I was on the engine.

Q. And where on the engine? A. On the deck, between the tender and the engine.

Q. Did you have the torch? A. Yes, sir.

Q. And did you measure the distance the hook projected over the edge of the engine? A. I did not.

Q. Then that simply is your best judgment as to the distance, is it? A. Three or four inches.

Q. —when you said three inches? A. Yes, sir.

Q. You were the man who asked about the hook, didn't you, when you got the message to stop at Dumont? A. Yes, sir.

Q. Didn't you say to the fireman, "How is your hook?" A. Yes, sir.

Q. Why did you say that; why did you say, "How is your hook?" A. Why, did I say it?

Q. That is it. A. That is the only thing the fireman uses. I wanted to be sure he knew his hook was in proper position; that is all, proper place.

Q. That is the only moveable thing about the engine, isn't it? A. Oh, there is other things.

Q. Other things that are moveable, eh? A. Yes.

Q. All right. You were asked this question, page 250, at the last trial: "That is the only thing that could project from the locomotive, isn't it?" and you answered, didn't you, "Well, that is about the only moveable thing." Didn't you so testify at the last trial? A. I guess I did.

Q. Well, is it the only moveable thing? A. Well, I should think it would be generally accepted that there must be other things moveable besides the hook. There is tools.

Q. Why didn't you accept it?

Mr. Carey: He said about the only thing.

Mr. Simpson: I object to these comments. They are not objections at all.

The Court: I think the answer was "about," wasn't it?

Mr. Simpson: That is all right. But he makes no objection; he makes a comment.

Q. Now, this hook was behind you, wasn't it? A. Yes, sir.

Q. When you were in the engine? A. Yes.

Q. And you were going ahead? There was no occasion for you to turn and look at the fireman's hook? A. No; there was no occasion.

Q. That is you would have to be watching your signals and see where your train was going? A. Yes, sir.

Q. So was this hook this night in your opinion the usual hook? A. No, sir.

Q. It was no longer than the usual hook? A. No, sir.

Q. You are quite sure and clear about that? A. Yes, sir.

Q. Did you look at it to determine whether there was blood or hair on it? A. I did not examine it closely.

Q. Were you asked this question at the first trial: "Did you look at it to determine whether there was blood or hair on it?" and you answered "I did not scrutinize it as closely as that; I just looked at the hook to see if it was in its place and I would see anything on the hook." Did you so testify? A. I believe I did.

Q. Then you didn't make a scrutiny of the hook; you just looked at it to see what position it was in? A. Right.

Q. Now, if this hook had been carried with the prongs down in the gangway and the handle there

over the side, would that be the proper position to carry it in? A. It would be an improper position.

Q. And why would it be improper? A. It would be improper because the hook wouldn't ride but a short distance that way.

Q. What would happen to the hook? A. The hook would fall off.

Q. What time did you pass Price's train that night? A. Oh, as near as I can remember around twenty eight.

Q. And you passed him west of the west tunnel mouth? A. Yes, sir.

Q. About where did you pass him according to your recollection? A. Between the tunnel block signal and the westerly portal of the tunnel.

Q. About how far west of the block signal?

Mr. Carey: He did not say.

The Court: East.

Q. Well, how far east of the block signal? A. I cannot say.

Q. Well, was it a few feet? A. I cannot state; it was between those points.

Q. All right. Now, you say that Price worked as fireman for some time? A. He did.

Q. How long? A. To the best of my recollection maybe three or four months. It might have been five.

Q. He was steady at his work? A. He was.

Q. Good fireman? A. Yes, sir.

Q. And as far as you know nothing the matter with him? A. Not to my knowledge.

Q. And about this head light dazzling you, how close do you have to get to a head light coming in the opposite direction before it dazzles you? A. Well, that all depends on the head light, I presume, an electric head light——

Q. Well, was yours an electric head light on this train this night? A. No, sir.

Q. What kind was it? A. It was a nickel reflector.

Q. Oil, burn oil? A. Oil.

Q. Well, does that head light dazzle you as much as an electric head light? A. No.

Q. And take your head light which was on your engine. How close would one come to that, passing in an opposite direction, before they would experience this effect of dazzling that you have talked about. A. Why, up to almost passing time.

Q. You would then get almost on top of it? A. Up until passing time.

Q. At the time you passed it? That is when—you mean when it was almost directly opposite you? A. Yes, sir, about, yes.

Q. Then you would have to be looking right at it, into it, to be dazzled? A. That would be the finishing point of it.

Mr. Simpson: That is all.

By Mr. Carey:

Q. You say that would be the finishing point? Where would be the beginning point? As nearly as you can locate it. A. Oh, I should judge about six or seven car lengths.

Q. You said on cross examination you were looking ahead that night and watching signals. Do you have anything else to watch except signals? A. I do.

Q. What? A. We have the water level on the boiler.

Q. Anything else? A. Glancing around to see everything was all in order around the engine.

Q. Did you do that? A. That is part of my business.

Q. Did you do it that night? A. I did.

Q. And that is your custom, is it? A. Yes, sir.

Q. When you are on a run? A. Yes, sir.

Q. Now, your train that night consisted of about how many cars? A. Fifty-one.

Q. And did that make a heavy train or not? A. Quite a heavy train.

Q. And you had a large engine? A. I did.

Q. Can you state whether or not your engine was laboring as it went through the tunnel? A. All freight engines labor considerably going through the tunnel.

Q. And did yours that night? A. It did.

Q. And in so doing would you state whether or not it would give off——

Mr. Carey: Strike that out.

Q. Will you state what amount of gas and smoke would be given off, large or small? A. Well, I would state in my opinion a large volume would escape.

Q. Then how about the gas condition in the tunnel when you went through as compared before you went through? A. Well, there would be present a great deal more gas.

Q. Now, speaking about the custom, the general custom of carrying fire hooks so that they project. Have you observed those things since you testified here on the last trial? A. I have.

Q. Noticed them? A. Yes.

Q. And as a result of your observation since the last trial what do you say as to the frequency with which they are carried in that position? A. I have noticed no difference.

Mr. Carey: That is all.

By Mr. Simpson:

Q. This gas that your engine gave off in the tunnel this night, you never heard anybody being made insane by it, have you? A. I have not.

Q. You don't know any locomotive fireman or

engineer who has ever gone insane because of the gas in the tunnel, do you? A. I have not.

By Mr. Carey:

Q. Did you ever hear of anybody being made sick by it? A. I have.

Q. And ever hear of anybody being taken off of an engine on account of it? A. I have.

Mr. Carey: That is all.

(Witness excused.)

HARRY VAUGHN sworn.

Direct Examination by Mr. Carey:

Q. Mr. Vaughn, you are in the employ of the New York Central? A. Yes, sir.

Q. And were on February 16th, 1915? A. Yes, sir.

Q. In what capacity are you now employed? A. Conductor.

Q. Conductor on what? A. Freight.

Q. In what capacity were you employed February 16th, 1915? A. Freight brakeman.

Q. And how long had you been a freight brakeman at that time? A. About thirteen years.

Q. Were you on this train upon which Mr. Lee was engineer and Mr. Hinckley was fireman on the night of February 16th, 1915? A. Yes, sir.

Q. And your position on the train was what? A. Head brakeman.

Q. Do you recall being on the train just before it started out from the Weehawken yards? A. Yes, sir.

Q. About how far was the train from the easterly portal of the Weehawken tunnel? A. Why, around about a thousand feet.

Q. Around a thousand feet? A. Around a thousand feet.

Q. That is the engine was about that ditsance? A. Yes, sir.

Q. Just prior to the time when the train started will you state whether or not you saw the fire hook? A. Well, not just before the train started. I was on top of the train when it started.

Q. When it started? A. Yes, sir.

Q. Did you see the fire hook after the train started? A. Yes, sir.

Q. How long after the train started out? A. Oh, after it started before we went in the tunnel.

Q. Before you went in the tunnel? A. Yes, sir.

Q. You were out on the train at the time it started? A. Yes, sir.

Q. What did you do after the train started? A. Well, I got on and off the car and went over the coal into the engine.

Q. Went over the coal in the tender? A. Yes, sir.

Q. And in getting into the engine did you pass over the fire hook? A. Yes, sir.

Q. And did you notice the position of the fire hook? A. It was across the end of the tank.

Q. Did you notice the position of it? A. Yes, sir.

Q. What were you doing out on the train before you went into the cab? A. Getting signals from the rear end of the train.

Q. And anything else were you on there for? A. Why, walked over the top of the train to see that brakes were off.

Q. Now, will you state what the position of the fire hook was when you came over the tender and got into the engine cab? A. Went across the engine tank, the front end.

Q. I show you this photograph, D-5, and ask

you whether the fire hook was in that position, about? A. Yes, sir, that is just about how it was.

Q. Speak a little louder. A. Yes, sir.

Q. Now, the hook end was on which side? The fireman's or engineer's side? A. The engineer's side.

Q. Is that the regular place to carry the hook in? A. Yes, sir.

Q. With the handle on the fireman's side? A. Yes, sir.

Q. Now, will you state about how much the projection of the handle was over the side plate of the tank? A. About the width of the handle.

Q. As shown in that photograph there? A. Yes, sir.

Q. Did the handle—by the handle you mean this loop here, do you not? A. Yes, sir.

Q. And do you know whether that was the regular and customary place of carrying the fire hook? A. Yes, sir.

Q. When you are on as head brakeman do you frequently go from the cab to the train and from the train back to the cab? A. Why, I do; yes, sir.

Q. Now, why did you go into the cab? A. That is where—the place to ride on the head end when we are going over the road.

Q. Is that the place where the head brakeman customarily rides when he is not on duty, that is, out working the train? A. Yes, sir, I guess so.

Q. What do you do when in the cab? A. Why, I observe the signals and going around curves look back to see that the train is all right, to see that we have all the train and look for signals from the tail end.

Q. I show you Exhibit D-6 and ask you if that correctly represents the position of the fire hook on that night? A. Yes, sir.

Q. The handle. And D-7? A. Yes, sir.

Q. Do you remember passing train 72 on which Mr. Price was fireman? A. Yes, sir.

Q. And can you tell us about where you passed that? A. Between the west end of the tunnel and the block—east bound block from New Durham.

Q. That is the last block before you get to the tunnel? A. Yes, sir.

Q. The one shown in this photograph, D-1? A. Yes, sir.

Q. In your judgment, which were you nearer to at the time the engine passed, the mouth of the tunnel or the block? A. Well, I couldn't say which I was nearer.

Q. Did Mr. Hinckley, the fireman, make use of the fire hook from the time you got into the cab until after the two engines passed? A. No, sir.

Q. Did he make use of it prior to the time of reaching Dumont? A. No, sir.

Q. Do you know how far Dumont is from Weehawken? A. Yes, sir.

Q. How far? A. About thirteen miles.

Q. The westerly end of the tunnel is about how far from the station, do you know? A. From New Durham.

Q. No, from the Weehawken Station. A. Why, about a mile.

Q. Have you ever observed the condition of smoke and gas in the tunnel? A. Yes, sir.

Q. And will you state whether or not those conditions vary? A. They do.

Q. At what time of the day is there the most smoke and gas in the tunnel? A. Why, night, between five and eight o'clock.

Q. And in the morning? A. Morning, yes.

Q. And have you ever experienced any effects from the smoke and gas in the tunnel? A. No bad effects, no.

Q. You never have? A. I have seen it pretty

thick and hard to get your breath in there some times.

Q. What is the feeling you experience when that is the condition? A. You choke and sneeze.

Q. Cough? A. Cough.

Q. Have you ever observed ice hanging from the roof of the tunnel? A. Yes, sir.

Q. Well you describe the ice which you have seen hanging from the roof of the tunnel? A. It hanged down in icicles.

Q. Well, can you give us an idea of the size? A. Anywhere from a foot to three feet, maybe a little more.

Q. Well, go on and tell us the thickness. A. Three or four inches thick.

Q. Did you ever have any experience with ice falling? A. I have.

Q. Tell us what experience? A. Fall and break out the front window in the cab, break the glass.

Q. Is there any other place, proper place for carrying the fire hook on the type of engine 3189 except in the position it was in on that night? A. No, sir.

Mr. Carey: Cross examine.

Cross Examination by Mr. Simpson:

Q. Why not carry it lengthwise? A. There is no place to hold it on.

Q. What? A. There is no place to hold it on. Q. You couldn't put it lengthwise on the tank? A. No, sir.

Q. Why not? A. Nothing to hold it, it would fall off.

Q. There is nothing on the sides of the tank? A. No, sir.

Q. Couldn't you carry it—where do you carry the hook? A. In the tank.

Q. Inside of the tank or is it on top of the tank? A. On the top where we carry the hook.

Q. Well, isn't there space on it to hold the hook from falling off? A. Yes, sir.

Q. But why not lay your poker along the coal? A. It is full of coal.

Q. This was full this night? A. Yes, sir.

Q. Well, they are not always full; they use up the coal. You say you never saw a hook carried any way but across? A. That is all I see them carry it.

Q. You say it is the proper way to carry it? Why isn't it proper to carry it lengthwise?

Mr. Carey. If the court please, I do not think that is material. The testimony is it was not carried lengthwise on these engines.

Mr. Simpson: The cross examination is not directed to that question. It is directed to the questions that Mr. Carey asked: "Is it proper to carry it crosswise?"

The Court: I will overrule the objection.

Q. You say it is proper to carry it crosswise, as I understand you, is that right? A. That is the way they all carry them.

Q. No, but do you say it is? You have been asked for your own opinion, do you say it is proper to do that, or don't you know whether it is proper, or don't you intend to give any opinion on it? A. It is my opinion—it is the proper place to carry it.

Q. What experience have you had with them? Did you ever use them? A. No.

Q. How do you know the propriety of carrying them? That is what I want to know. Where do you get your information that makes you think you can give an opinion on this thing? A. Well, I have rode on them engines a good deal.

Q. And seen how they are carried? A. Yes, sir.

Q. And always saw them carried crosswise? A. Yes, sir.

Q. You don't pretend to testify anything about the condition of this hook at Dumont, do you? A. No, sir.

Q. You didn't see it at Dumont? A. No, sir.

Q. You didn't see it after you left Weehawken, did you? A. Not to take a particular notice of it.

Q. Not to take a particular notice of it. So that all you are testifying to is that when you saw it at Weehawken the handle was three or four inches over the side, is that right? A. Yes, sir.

Q. Now, what attracted your attention to the fire hook? It was not the first one you had ever seen in your life, was it? A. No, sir.

Q. Now, what was it on this night that particularly attracted your attention to this fire hook so that now you can tell us that it only projected three or four inches over the side at Weehawken? A. Oh, I used to look every night when I came over the top of the coal.

Q. You would take a careful look at the fire hook, would you? A. Yes, sir; I would step over it or step on it.

Q. Yes, all right. I understand your stepping over it and stepping on it, but why would you look at the handle which was over the side of the deck? What would make you look at the handle? A. Right close by. I would always look at it.

Q. Always look at it. It was the habit of yours, was it, to look at the handle of every fire hook you stepped over? A. Yes, sir.

Q. When have you contracted that habit? A. A long time.

Q. A long time? So that you can tell me the position of the handle of every fire hook that you stepped over in 1915, can you? A. Yes, sir.

Q. All right, did you step over a fire hook on June 30th, 1915? A. Well, I don't know as I did that date.

Q. Or June 29th? A. I don't know as I did then.

Q. Well, let us go back to February. You were out on this run on February 16th. When was your next run after that February 16th, 1915? A. I have been out every other night.

Q. All right, that would bring you to the seventeenth—the eighteenth, rather. Did you step over a fire hook on February 18th? A. I did if I went out that night.

Q. Well, you said every other night. So if you went out on the 16th you would go out on the 18th, wouldn't you? Now, when you stepped over a fire hook on the 18th, can you tell us how far that was over the side? A. Wasn't over three or four inches.

Q. Same as this one. Every one you saw was three or four inches over; is that right? A. About that.

Q. Well, some of them were shorter than others? A. Not as I know of

Q. You don't know that? A. No, sir.

Q. You don't know that some of these fire hooks were one length and some of another, do you? A. No, sir.

Q. When you got to Dumont what did you do? A. I got out and got the message.

Q. Got the message? A. Yes, sir.

Q. What was it?

Mr. Carey: I object to what the message was.

Q. Well, did you get a written or oral message? A. Written.

Q. Whom did you give it to? A. I think I gave it to the engineer. I am not sure.

Q. You think you handed it to the engineer? Then what did you do? A. Got on top of the train.

Q. And did what? A. Gave signals to back in.

Q. Back up, and went ahead? You didn't make any inspection at all, did you? A. No, sir.

Q. But after you had backed up did you go on with the train? Did you go out of Dumont on your way with the train? A. Yes, sir.

Q. Did you see the fire hook after you left Dumont? A. Yes, sir.

Q. Where was it? A. The same position it was before.

Q. And where did your run finally end that night? A. Ravena.

Q. How long did it take you to go to Ravena? A. About five hours, five hours and a half.

Q. Did you see the fire hook when you got to Ravena? A. No, sir.

Q. Didn't see it? A. I was not on the engine at Ravena.

Q. Well, where was the last place you saw the fire hook? A. Kingston.

Q. Was it in the same position that time? A. Yes, sir.

Q. Never changed its position at all? A. We used it once in a while.

Q. I know, but it was in practically the same position, according to you? A. Yes.

Q. With the handle three or four inches over the side? A. It might have moved half an inch.

Q. Beg pardon? A. It might have moved half an inch or so different from that.

Q. You still, of course, are employed by the New York Central Railroad? A. Yes, sir.

Q. Now, as to this gas, you said to Mr. Carey that you have never experienced any bad effects from it. What do you mean by that? A. Why, I never was overcome by it.

Q. Never been overcome by it? A. No, sir.

Q. How long have you been working for the

road going through that tunnel? A. Before that time?

Q. No, no. All together, now? A. A little over seventeen years.

Q. And in the seventeen years you have never been overcome once with gas, have you? A. No, sir.

Q. Now, about your icicles. Can you tell me when you saw an icicle break a window with reference to the 16th of February, 1915? How long before that? A. I don't know the date.

Q. Well, was it six months before that or after it or when? A. I couldn't say.

Q. You couldnt say whether it was six months after? That would bring you about in July. A. You would not find any there then.

Mr. Simpson: That is all; that is all, sir.

By Mr. Carey:

Q. When you were out on the train was it your duty to look at things on the train and see whether the things were in proper position or not? A. Yes, sir.

Q. And as you are going over the tank, was it your duty then to do that? A. Yes, sir.

Q. And in connection with that duty you looked at the fire hook. A. Yes, sir.

Q. Now, the coal on the tender is often above the sides of the tender, isn't it? That is, heaps up in the middle? A. Yes, sir.

Q. And when the tender is——

Mr. Carey: Strike that out.

Q. When you came out from Weehawken the tender is usually full isn't it? A. It is, yes, sir.

Q. It is heaped up in the middle? A. Yes, sir.

Q. And under those circumstances, would it be at all safe to carry the fire hook lengthwise of the tender? A. No, sir.

Q. And on these engines there is no provision made for carrying a fire hook lengthwise, is there? A. There is not, no.

Mr. Carey: That is all.

By Mr. Simpson:

Q. What provision is there made for carrying it crosswise? A. There isn't any particular.

Q. And this coal you speak of in the tender, why couldn't you put the hook between the center and the side of the tank? If it is heaped up in the middle why wouldn't there be a depression between the coal in the center and side of the tank? A. It is full of coal.

Q. Well, do you mean leveled off? A. No, rounded up.

Q. That is heaped in the center higher than on the sides? A. Yes, sir.

Mr. Simpson: That is all.

(Witness excused.)

CHRISTOPHER BELING, sworn.

Direct Examination by Mr. Carey:

Q. Doctor, where do you live? A. Newark, New Jersey.

Q. And you practice there? A. Yes, sir.

Q. You are a practicing physician and have been for how many years? A. I have been practicing there since 1897.

Q. Have you any specialty, doctor? A. Well, I specialize in nervous and mental diseases.

Q. You are a graduate of what institution? A. Of the Salem Medical College in 1897 and the College of Physicians and Surgeons, Edinboro in 1900.

Mr. Simpson: I will admit his qualifications to save time.

Q. Have you at any time been connected with the Morris Plains Hospital for the insane? A. Yes, sir.

Q. When and for how long a period? A. For a little over six years from about 1901 to 1907.

Q. Since that time you have practiced specially in nervous and mental diseases? A. I have.

Q. Doctor, you have examined the plaintiff in this case, Mr. Price, have you not? A. I have.

Q. And will you state when you first saw him? A. On the 20th of March 1919.

Q. And what did you do at that time? A. I made an examination of him.

Q. Go on and state generally the character of the examination you made? A. Well, I went to the State Hospital at Morris Plains and examined Mr. Price together with Dr. George Kirby. Dr. King was present and there was a stenographer present to take down the proceedings, the examination. At this examination we inquired into the mental state of Mr. Price and also made a physical examination. Do you want me to go on?

Q. Yes, go right ahead and give the detail of what you did and the results of what you got? A. Do you want me to detail the whole examination?

Q. Yes. Go through and describe it in detail.

Mr. Simpson: You don't want him to read all the questions and answers, do you?

Mr. Carey: No, but just give a general idea of the character of the examination and the result that he got.

A. At this examination we endeavored to find the appearance and attitude of Mr. Price, whether

he was able to observe correctly, to recall events, and whether he was able to relate the events and whether his attention was good, whether he could concentrate his mind and whether his memory was normal and we ascertained as to his orientation, that is whether he knew where he was, and as to the time of the day and the people who were around him. As a result of this examination we found he was apathetic, he was dull, and disinterested in our examination. He took no noticeable interest; he had his hands to his head, he complained of pain in his head, said he didn't want to be bothered, and he did—he made negative replies to questions and when he was forced to answer by repeated questions often—he said that he did not want to bothered, he would rather be away. When we asked him if he was doing the best he could to tell us what was the matter with him and the best he could to answer our questions, he said he wsa. So our examination continued investigating his mental state with regard to his capacity to testify. This examination was followed by a physical examination in which we found certain physical symptoms, such as morbid changes in the back of his eyes, in the back ground, loss of balancing power on the right side of his body, differences in the reflex responses, and a tendency to fall to the right side on a sudden test being made. There was some stiffness of the muscles of his neck. Those were the main objective symptoms as I recall them now of our physical examination.

Q. Now, will you state in a general way the character of the questions you asked him and the answers he made? A. We asked him his name, his age and where he was born and where he had lived and how long he had been at the Plains at the State Hospital. We asked him if he could—

whether he was married or single, and as to his complaint, whether he remembered what time of the month it was and the day and the date and so on.

Q. Now, will you state whether or not you were able to get from him answers to a large portion of your questions? A. Most of the time he made no answer. After urging he would say "Yes" or "No". He said "Sir" and to a few questions he made replies, but otherwise his answers were mostly of negative character.

Q. What do you mean by negative character? A. Yes or no.

Q. You mean negative as to result? A. Negative as to result.

Q. And were you able to get any information to any amount from him? A. No, he was abstracted, sort—looking down with his hands to his head, looking down at the floor and gazing intently, and when questioned repeatedly he would say would look up and answer "yes" or "no sir" and at times he would say "I don't want to be bothered" but when he was pressed for answers, for instance when he was told by Dr. Kirby to mention Dr. King's name and my name he was then asked to repeat it, he was able to repeat the question and repeated the question. He said "Now, who is this?" and they pointed to Dr. King, and he said it was Doctor King.

Q. Did you ask him anything about the incidents leading up to his injury? A. Yes, I think those questions were asked.

Q. Look on page 10 of your transcript at the bottom (witness does so). A. I asked him specially I said "Mr. Price do you remember what happened to you, about how you were injured". He said "No sir" "Do you remember anything about the time before you were injured" He said

"No sir" "Mr. Price, do you remember anything a few days before you were injured" No answer.

Q. Could you get any information from him as to the way he was injured? A. No, I think that—let me see—I don't know—let me see. There is something that—I think he said somewhere in the examination, that he was injured, if I recall correctly.

Q. Well, I call your attention—I will call your attention to that in a minute, Doctor. Page 7, in the middle of the page. A. Yes.

Q. What was the question and what was the answer? A. I asked him, he was asked "Were you injured in the locomotive when you were at your work?" and he said "Somebody hit me on the head."

Q. Who asked that question? A. I think that question was asked by Dr. King.

Q. What was his condition as to attention, memory, recollection concentration? A. He didn't seem to pay attention to us, or was unable to pay attention to us.

Q. And did you reach a conclusion as to his mental condition as the result of that examination? A. Yes.

Q. And what conclusion did you reach as to his condition? And what the cause of it was. A. The result of the examination?

Q. Just as a result of that examination—well, the result of that examination and any other element on which you base your conclusion——

Mr. Carey I will strike out that question.

Q. I ask you first were there any other elements on which you based your conclusion other than the facts developed by your examination? A. Why, yes, I took into consideration not only our examination of him on March 28th, but also

the testimony that was given by—the testimony given in a previous trial before.

Q. Which was in this printed book? A. Yes, that printed book and also the testimony of witnesses in this trial.

Q. Did you take that into account—— A. No, I thought you were asking me at the present time.

Q. Oh, I see. You had had the printed book and had read the testimony of the doctor? A. I did.

Q. Before you made the examination? A. Yes, sir.

Q. And you found Mr. Price in the asylum? A. Yes, sir.

Q. Now, then, were those the facts together with your examination, upon which you based your conclusion at that time? A. Yes, sir.

Q. And what conclusion did you reach?

Mr. Simpson: I object to that. He has no right to take hearsay into consideration. He simply read this printed book, there is no proof that the book he read is a correct transcript of the last trial.

The Witness: Well. I may say this: I misunderstood your question in relation to—that is as to the opinion I formed as to Mr. Price's condition at the present time.

The Court: You are asked now as to March 28th.

Q. March 28th? A. Yes, well my opinion——

The Court: Did you have in mind when you came to that conclusion, whatever it was, anything that you had read in the printed case of the last trial?

The Witness: No, I had in mind specially our examination of him and the fact that he was at the state hospital and that he had been committed there.

Q. Now, what conclusion did you reach as to his condition and as to what caused it? A. I was—my opinion was that he was suffering from a mental disorder the result of a damage to his brain, to the left side of his brain, especially in the frontal region of his brain.

Q. And what, in your judgment was the cause, if you reached a conclusion at that time—what was the cause of that condition of the brain? A. That probably it was due to a pressure or a damage that had been caused to the brain over this region.

Q. Did you reach the conclusion as to what produced the pressure at that time? A. Well, I could not say that I was able to form any definite conclusion.

Q. And what conclusion did you reach as to his capacity up to that time? A. Well, from the evidences that he gave me and the examination I concluded that he was—did not have the capacity to testify.

Q. When did you next see Mr. Price? A. In the court room, here.

Q. When? A. I think just a day or two before he testified—let's see, that was on about the fifth or sixth of April, I think.

Q. You simply saw him in the court room? A. In the court room.

Q. Were you present when he was examined by his Honor Judge Campbell? A. I was.

Q. And also when he testified before the jury? A. Yes, sir.

Q. And you have also, since you made the examination of him at the hospital had the benefit of hearing portions of the medical testimony taken at the former trial, read and acknowledged by the persons who gave that testimony? A. Yes, sir.

Q. And you have also heard the testimony of

the lay and medical witnesses you have been examined up to this time haven't you? A. I have.

Q. Now, adding this knowledge to what you derived from your examination—

Mr. Carey: No, strike that out.

Q. What did you observe in connection with Mr. Price's examination before the Court and before the Jury? A. I observed that Mr. Price presented the evidences of a man of a practically normal mind.

Q. In what way? A. Except—that is he was able to reserve, retain what was told him, to recall; and to relate, narrate events, and to understand the obligation of an oath.

Q. How about his grasping the questions that were asked him? A. He grasped the questions very well.

Q. And his ability to state—or answer the questions? A. He answered them generally; with hardly any exceptions very well.

Q. At the time you made the examination at the hospital, did you reach the conclusion that he was then doing as well as he could? A. Well, at the examination at the hospital we tried to find out if Mr. Price was co-operating and making an effort to do his best at the examination and we asked him that question and he told us he was. At this examination he presented conditions—mental conditions similar to those given by Dr. Evans in his testimony.

Q. We are speaking now of the examination at the hospital? A. At the previous trial.

Q. And so stated here, so brought out by you. That is, he had a lack of orientation, there was a loss of memory, lack of attention and comprehension, emotional irritability; then taking these facts into consideration together with the fact that he

was already in Morris Plains, that he had been adjudged a lunatic and he was telling the truth as best he could, why, the only conclusion we could come to was that he was suffering from a mental disorder; also taking into consideration the physical examination which indicated to us that there was a pressure upon his brain. I came to the conclusion that he was suffering from a mental disorder, because of the result of damage to his brain which prevented him, and made him incapable of testifying as a witness.

Q. And you are speaking now, doctor, of conditions as you observed them on your examination on the 28th of March? A. Exactly; granted, taking into consideration that he was doing the best he could and that he told us he was doing the best he could, and he told Dr. King who had previously examined him that he was doing the best he could. With that evidence that was my conclusion.

Q. Now, have you changed your views of his condition since hearing him on the examination before Judge Campbell and before the jury? A. Yes, I have.

Q. And will you state what has caused you to change your views? A. Because of the clear cut testimony he gave which was entirely different from what he did when we examined him.

Q. You have already stated the various mental incapacities, of various kinds, which he exhibited on the examination? A. Well he was oriented as to his surroundings. He did not show any loss of memory except that he failed to recognize I think, —recognize the examiners, either Dr. Kirby or myself. I don't quite recall. He was able to attend, to remember and to answer clearly and correctly—clearly and coherently in reply to questions.

Q. Did you know whether or not he made voluntary statements during his examination? A. He did not make any voluntary statements at the hospital.

Q. In court? A. Why, I think he did once or twice when he said he was trying to do the best he could, something like that, I don't recall, but he was readily responsive to every question that was asked him.

Q. And did you know his statement as to what instructions he received prior to his examination by you at the hospital? A. Oh, yes, he had told—he said on the stand, that his wife told him not to answer the questions. That was also one of the things I took into consideration in forming my opinion of him, of his mental condition subsequent to his testimony at the trial here.

Q. Now, taking into account what you saw of him at the Court House here in Jersey City, the examination here, will you state whether or not you now believe he was doing the best he could at the hospital? A. In my opinion he was not, he was not doing the best he could.

Q. Well, what was his attitude now as you believe it to have been? A. I believe his attitude was one of resistance to us and refusal to answer.

Q. Was his attitude under the control of his will, do you think? A. I think so, very largely, very largely under his will.

Q. Have you reached a conclusion as to the cause of the mental disability of Mr. Price as it has hereto existed? A. I think it is due to some lesion, a lesion affecting his brain, the left side of his brain.

Q. And what leads you to that conclusion? A. Well, I think that the physical symptoms lead me to that conclusion along with the mental symptoms which he has manifested.

Q. In your judment what was the cause of that lesion of which you speak? A. Well, it would be very difficult to state what the cause was; but I took into consideration all the possible causes of a lesion of that character and in my opinion it was a hemorrhage upon the brain.

Q. Located where? A. In the left frontal region of the brain mid-frontal region.

Q. Well, where with reference to the brain structure? A. I am of the opinion that it was on the outer covering, that is on the dura or the outer covering of the brain causing pressure between the dura and the bone.

Q. Would a lesion of that character account for the symptoms which have been testified to by the plaintiff's medical witnesses? A. Yes, sir.

Q. In your judgment was that hemorrhage spontaneous or caused by external force? A. Well, at the time of the examination at Morris Plains I could not definitely say what the cause of the hemorrhage was. It seemed to me—it seemed to me that all I could say was that there was a lesion of his brain and that it was due to this pressure of this lesion of his brain that caused these symptoms.

Q. Well have you reached any further conclusion from the information which you now have? A. As far as I have listened to the testimony, the weight of the evidence seems to show there were no marks of external violence and according to the description of the occurrence, the alleged occurrence, the injury to Mr. Price, I am of the opinion that such a hemorrhage must have been spontaneous that is, that it occurred from some other cause beside an injury.

Q. Is there anything in the testimony which would furnish the basis for a conclusion that the hemorrhage was spontaneous rather than trau-

matic in origin? A. Well, as far as I listened to the testimony, I think all the testimony points to that with the exception of the testimony of Mrs. Price and another lady, I cannot recall her name now.

Q. Mrs. Masterson? A. No, not Mrs. Masterman, let's see, another witness who said they observed a swelling on the head.

Q. That was Mrs. Masterson. A. Yes, that is right, Mrs. Masterson.

Q. What is your opinion as appears in the evidence which would justify a conclusion that this was—what particular thing? For example, as heat, exposure to smoke and gas, or anything of that kind? A. Well, they could cause hemorrhage. Exposure to hot and cold by raising the blood pressure temporarily, produces such a hemorrhage.

Q. Did you note whether or not Mr. Price was a full blooded man or not? A. It was so testified here.

Q. From your observation of him what would you say? A. Well, he looked to me like he was, he looked to be a well built, strong, robust, healthy man, good color, no evidence of poverty of blood.

Q. Have you reached a conclusion as to the probability of recovery on the part of Mr. Price? A. Well as to recovery I think that is indefinite.

Q. Well, make it definite in your answer? A. I think it will take him quite some time to be able to resume his work; that is he may clear up within six months or a year or it may take a longer or shorter time.

Q. Well, in your judgment, what are the probabilities of his being able, at sometime, to resume his work? A. Well, I think that would entirely depend. I don't know when he would be able to resume the work of a fireman, it would depend on

how his symptoms cleared up and that would take six months or more or a year more. Generally these cases have a certain emotional irritability upset which makes them rather nervous and it takes sometime for them to get over that. But these conditions are very often simply the result of suspense, anxiety as to the patient's situation, that is, the very fact this case is going on would keep him in a state of constant mental tension and upset, so there is no telling how long that will take. It may take six months or a year after this case is over, and if he were able to return home, why, he may be restored to health.

Q. Now, doctor, you heard, Dr. MacMurry and Dr. Evans testify in this case? A. Yes.

Q. And you also heard Dr. Evans acknowledge giving certain testimony in a former case as to the condition of Mr. Price at that time and you also heard Mr. Price's testimony as to how his health compared with the former occasion. Now, assuming the truth of description of Dr. King and Dr. Evans and Dr. MacMurray as to his condition between the 16th of February, 1915, and the time of the former trial, will you state whether or not, as you observe the man now, there has been improvement in him? A. Yes, I should say there was quite a good deal of improvement.

Q. In what way? A. Now he does not show any lack of co-ordination, his memory is good, his attention is good, his orientation is almost perfect. He can recall. He shows evidence of practically normal mind.

Q. Do you see anything in his condition now that would warrant a statement that he has no control over himself emotionally? A. Well, he exhibited pretty good emotion on the stand, especially going through an ordeal like the one he went through. It is true he was nervous and a little

bit figity, at times he had his hand to his head, and that he was prespiring. But mentally he had good control over himself. And up at the hospital, acting under the suggestion of his wife, he exhibited quite a good deal—quite a remarkable amount of mental control over himself.

Q. Is he now able to re-adjust himself? A. Well, I should think that he is to a very large extent able to re-adjust himself.

Mr. Carey: Cross examine.

Cross Examination by Mr. Simpson:

Q. Doctor, you examined this man on the 20th of March, did you? A. Yes, sir.

Q. In the Morris Plains Asylum? A. Yes, sir.

Q. You were then, of course, as you say, an alienist; you knew your profession, had direct experience in dealing with insane people, didn't you? A. I presume so.

Q. And having examined him you came in the court here and sat exactly where you are sitting now, and told the judge under oath that you thought the man was not capable of observation, didn't have intelligence enough to understand questions and answer them; that he had a very bad recollection and that he didn't understand the nature of an oath? Did you so swear? A. I stated some of the things that you stated, I do not recall that I said he had no power of observation.

Q. Did you say all the rest I said, eliminate the powers of observation? A. Yes, I did say those things.

Q. And were you asked this question: "Doctor, will you state what has led you to this conclusion which you have expressed" and did you answer that "He has a mental disorder which is due to chronic brain disease"? Did you so swear? A. Yes.

Q. In other words, you thought the man was so insane that he was incapable of being a witness didn't you? A. That is with the fact that I had; I certainly did.

Q. Well, you did so swear under oath? A. Yes, with the facts I had, as I have already stated.

Q. And the facts you had you gleaned up at the hospital after an examination which was taken down stenographically, didn't you? A. Yes, sir.

Q. Which you have now and which you have read? A. Yes, sir.

Q. Now, can you point out there the answer which you referred to and in which he told you he was doing the best he could? A. I don't know I can point it out; but I think—

Q. Well, we will pass it. Mr. Carey can look for it for you while it is going on. But what I want to get clearly in my mind is that you did swear that this man was a lunatic, didn't you? A. Yes. with the facts that I had at the time.

Q. Well, with the facts or without them you so swore. Now, you say he is not, don't you? In other words, you have changed your opinion in four days haven't you? A. Yes, I have changed my opinion since the 20th of March.

Q. Oh, no, since you took the stand on last Thursday? A That is right.

Q. Now, in other words, what you testified to last Thursday—I want these gentlemen to understand; they were not here,—what you testified to last Thursday was exactly a contradiction to what you are testifying to now; wasn't it? A. I don't know about its being a contradiction but I testified to what you have stated.

Q. Well, let's see if it is a contradiction or not. You were asked this question:—"When these questions were put to him what was the expression of his face." "Well he was abstracted. He

was looking most of the time—he was looking down, gazing at the floor with his hands to his head, paying very little attention, until he was aroused or stimulated in some way to make the answer. (Q.) And when aroused, would he have any expression different—any expression of the face different from what had existed before he was aroused? (A.) Not materially; he would look up for a moment and then look down again. (Q.) And when he answered some of the questions, as he did, and apparently answered them correctly, was there any difference in the expression of his countenance at that time? (A.) Not especially. (Q.) Did you locate the position of this brain lesion of which you spoke? (A.) Yes. (Q.) Where did you locate it? (A.)In the mid-frontal region of his brain, on the left side. (Q.) And can you, from that location, in your judgment, as to the character of the lesion, explain why it was that he seemed to be unable to comprehend questions and unable to answer? (A.) Particularly in this region of the brain, the left side of the brain, is contained the intellectual functions, and the position of this lesion interfered, first, as a direct consequence, with his balancing power, and, as an indirect consequence, by pressure on the frontal region, would interfere with the intellectual functions, and on the other side, with multi-function to a very moderate degree. As a consequence, there was a block, as it were, of the ability to transmit impulses and also to elaborate the mental impulses that are necessary for proper mental action, for normal mental action." Did you so testify? A. I certainly did.

Q. Now you say that is not so. Under oath you say that is not true, don't you? A. I said this—

Q. No, what do you say now? Do you say that is true? Or that it is not true? Is that true or

isn't that true? A. Well, I will have to explain that.

Q. No, you would not. You would only have to tell me whether that is the truth or whether it is not the truth. A. I am not putting myself in the proper light if I simply say "Yes" or "No" to that.

Q. Yes, you do. That is your language. A. At that time—at that time it was my opinion that that was the condition of affairs. Now, with other facts, I have to change my opinion, which I do.

Q. In four days you changed your opinion? A. Yes, I can change it in one day.

Q. You can change it in one day, but you, under oath, swore to this, knowing that on your testimony depended the ability of this man to tell his story to the judge. A. Yes, sir.

Q. And you swore with the purpose of keeping him off the stand so the jury wouldn't hear him didn't you? A. No, sir, I gave that opinion as the best opinion that I had, and knowing that the plaintiff would be produced on the stand here and examined by the judge.

Q. You swore that he was incapable of being a witness didn't you? A. Well, I knew that this man was going to be produced and examined and in my opinion he was incapable at that time because he didn't give me the evidences of being capable.

Q. What you knew was that the judge was taking testimony to see whether he would allow him to go on the stand, and you swore that in your opinion, as a mental expert, this man was incapable of being a witness didn't you? A. That was my best opinion at the time.

Q. And now that he has got on the stand, now that he has got on the stand, you say that he is

practically all right. A. I don't think I have to say any more than I observed as the result of the symptoms presented by him.

Q. Well, do you say this man is insane or not? A. Now?

Q. Yes. A. In my opinion this man has largely recovered his mental——

Q. Is he insane now or not? A. I do not think he is so profoundly insane as not to know his relations with other people; and he may be nervous at times, but I don't think he is——

Q. Well, he is not insane enough to be locked up in Morris Plains is he? And should not be kept there, should he? A. Why, if he was not fit to be in Morris Plains, I know that he would not be there; that Dr. Evans would discharge him.

Q. Well, what do you mean by saying that he has pretty nearly recovered his reason, telling this jury that he has pretty nearly recovered his reason if it is proper to keep him laid up there. A. Pretty near recovered his reason is just what I mean.

Q. Pretty near recovered his reason. So that you think Dr. Evans is the kind of man who keeps people locked up there who pretty near recover their reason, a man who is praying God to get back to his family? A. If you will see Dr. Evans' own testimony on that you will see he says he gets along very well, except for this particular emotional disturbance that he has; that he would not be a safe person to be allowed at large, and, therefore, I also state to you that it is for that reason I cannot tell how soon it will be before this man recovered and gets his full nervous balance.

Q. Have you ever been in the position before where you have taken the stand on Thursday of one week and testified to one set of facts, and gone on the stand Wednesday of the following week

and testified to an entirely different state of facts as an expert? A. Yes, sir.

Mr. Carey: I object to the question.

The Witness: I have been on the stand and changed my opinion over night because I wanted to tell the truth about it.

Mr. Carey. I object to that question on the ground the doctor testified to his opinion as to the insanity of this man.

Mr. Simpson: Well, I have no objection to having it stricken out.

The Court: Strike it out.

Mr. Simpson: Let him strike it out. If the doctor wants it stricken out I am perfectly satisfied.

Mr. Carey: Well, the doctor has not said that.

Mr. Simpson: Well, you are talking for him. I guess you know.

Q. Now, did you say that trauma could have had anything to do with the injury to his brain? A. In so far as the evidence is concerned, in my opinion, I do not think that trauma was the cause of his injury.

Q. Did you swear before Judge Campbell on last Thursday in answer to the question as to his injury, "Q. (By the Court.) Pardon me, but didn't I understand you to say, doctor, in your opinion, what Price was suffering from was not insanity, or did I misunderstand you?" (A.) "I stated to your Honor that he was suffering from mental disorder due to an injury to his brain." (Q.) "Well, to trauma to the brain or——" (A.) "Well, it may be due to trauma, it may be due to some other causes." And you so swore when you were before Judge Campbell that it could be due to trauma? A. Yes, at that time. I did not have this added evidence, that is all.

Q. Why, did you go on the stand at this inquiry if you had not made a complete investigation? A. I did make a complete investigation and as regards etiology, I frankly stated I did not know what was the cause of it. I had taken everything into consideration.

Q. But you did not say to the judge when you got on the stand, "I have not made a complete investigation, therefore, I am not capable of testifying," did you? A. I did make an investigation sufficient to justify and render my opinion as I did.

Q. Now, you say that you do think it was the gas in the tunnel that made this man have a hemorrhage? A. I did not say so, I said that that might be one of the factors. That is for you to decide.

Q. Did you ever hear of such a case, of a man thirty-one years of age who exhibited no syphilitic infection, no degenerative disease of the artery, no abnormal blood pressure, no diabetic disease, and no kidney disease, having suffering with a intra-cranial, spontaneous hemorrhage that you speak of? A. Yes, that is quite possible.

Q. When did you ever see one? A. When did I ever see one?

Q. Did you ever see a case of spontaneous intra-cranial hemorrhage in a man thirty-two, who exhibited no syphilitic infection, no degenerative disease of the artery, no abnormal blood pressure, no diabetic disease and no kidney disease and no traumatism, did you ever see that kind of hemorrhage in such a man? A. Well, I might not have seen that kind of hemorrhage in a man exactly thirty-two years of age, but I have seen hemorrhages.

Q. Do not split hairs about it, say thirty to thirty-five? A. Then, if you give me a little latitude on that I will answer it by saving that I have seen it?

Q. When did you ever see such a case? A. Well, that is the best of my recollection; I have seen cases of that type.

Q. Oh, when? Give us one case and locate it if you can, tell us when it was that you saw one? A. Well, I cannot recall just exactly; that is, I cannot tell you definitely, but my own knowledge of the fact is—or the matter is that I have seen cases of hemorrhage of the brain that occured spontaneous, without any apparent cause; and I have also seen hemorrhages following exposure to gas, I have seen hemorrhages following in people who have been in a tunnel and came out of it, I mean in a—I mean in a compression chamber. I have seen those cases.

Q. Well, do you think a tunnel and underground compression the same thing? A. No, I simply mentioned that in addition to other things.

Q. Let me go back to the question. Let me ask you again, because I think the jury want to find out something about it. Did you ever see a spontaneous intra-cranial hemorrhage in a man between thirty and thirty-five who exhibited no syphilitic infection, no degenerative disease of the arteries, no abnormal blood pressure, no diabetic disease, no kidney disease, and no traumatism, did you ever see such a case? A. I cannot tell you just now that I can recall any; but to the best of my knowledge I have such a recollection that I have seen; I cannot tell you any specific instance.

Q. You have a vague recollection of having seen—— A. Not vague——

Q. Well, where did you see that? A. I cannot recall that.

Q. Well, in Europe, America, Hoboken or Morris Plains? A. Or any other place; I cannot answer.

Q. West Shore tunnels? Now, what are the

symptoms which were exhibited in Charles Price on which you based your conclusion that this is not due to a blow on the head, this condition that he is in? What are the symptoms that you find? A. Well, I did not detail any symptoms and did not make any claim from the symptoms alone that this might not be due to traumatism.

Q. Well, now, tell me this: Suppose Price, as you saw him on the stand—he is a man thirty-two years of age, good health, good blood pressure, no kidney dsiease, no syphilitic infection, no disease of the kidneys, no diabetic disease, was at his work which he had been doing some time, and properly, that he got a signal as he entered the tunnel, and just after passing the signal he was struck on the head with an iron bar, and when he was found in the tunnel he was found in a dazed condition, taken to the hospital, remained dazed, and finally developed this condition that you found in him. Will you say that in your opinion his condition was due to that trauma? A. Well, it may be due to the trauma, but I would have to have other facts with regard to the question; that is whether a man coming in contact with a hard object, the man Mr. Price was supposed to have been injured,—that there were marks of external violence. Now, I cannot, without exact evidence, say anything, but with that evidence added, I would not exclude external violence.

Q. Now, I did not tell you anything about marks. I told you he got a blow on the head from an iron bar. That is all I say. A. All right.

Q. Now, if that is a fact, whether you saw external marks or not, would that account for his present condition? A. It may or it may not.

Q. What other cause would you attribute it to? A. He may have been coming into the tunnel and have been exposed to the heat of the engine, he

might be feeling badly and be choked up by the gas. His blood pressure might rise abnormally and he might have a bursting of a blood vessel.

Q. Even if he got the blow on the head? A. I mean even without having a blow.

Q. That is not what I am asking you. You are putting the gas in this case. I am not. Now, let me tell you——

Mr. Carey: Well, you are contributing a little toward it.

Mr. Simpson: Well, a little bit. But we will find out who put most of it in. If you will listen to my question.

Q. Now, then, my question was this. If this man of the age that he was between thirty and thirty-five, in good health, and working as a fireman, comes along, gives a signal, is struck on the head with an iron bar, and then is found in this condition of dizziness and then developes this disease, in your opinion, would that blow on the head be the cause of his mental disorder? That he got it—don't say if he did get it. A. Well, now, given those facts it is quite possible.

Q. It is quite possible? A. Yes.

Q. Well, thank you for that concession. A. That is all right, I will admit that, certainly.

Q. Well, do you say it is only possible? It is not conclusive? A. Well, I don't know what else might have occurred at the time. If those are the only facts, why, and a man develops a mental disorder, there is no other way to conclude, but to conclude that the injury caused it.

Q. Now, then, doctor, do you find any of these conditions—any condition of body? Any conditions like this in Mr. Price which would pre-dispose him to a spontaneous hemorrhage? A. Any condition?

Q. Of body, yes, which would pre-dispose him to a spontaneous hemorrhage? A. Oh, I cannot say that I have found any.

Q. Well, then, when you say you think in your opinion it is due to a hemorrhage it is purely speculative, isn't it? A. Oh, no. Now, you ask me in regard to the condition of his body; that is what was in his body itself—now, did you take the things that may affect his body, any normal man you know can be affected externally by external agencies, and then suffer.

Q. I want to know why you say, you tell these twelve men who are going to decide this case, a blow on the head, in your opinion, did not cause this at all. You say to them what caused it, gentlemen, was a spontaneous hemorrhage from a broken blood vessel. Now, why do you say that? That is what I want to know? A. Well, I told you once.

Q. Well, tell me again. You are not here for fun are you? You are getting your per diem aren't you?

Mr. Carey: I object to his speaking to the witness in that way.

The Court: Strike it out.

The Witness: Well, I wonder really whether you like to be pleasing or whether you mean to be insulting.

The Court: Now——

The Witness: Well , don't think I have to stand that, your Honor.

The Court: I have already directed that what was said be stricken out.

The Witness: Pardon me your Honor. I beg your pardon.

Mr. Simpson: The whole thing was caused by his saying he told me once.

The Court: Never mind Mr. Simpson.

Mr. Simpson: Now, tell me again.

Q. (Repeated by the stenographer.) I want to know why you say, you tell these twelve men who are going to decide this case that in your opinion a blow on the head did not cause this disease at all. You say to them what caused it, gentlemen, was a spontaneous hemorrhage from a broken blood vessel. Now, why do you say that. That is what I want to know. A. That is my best opinion.

Q. Why, upon what do you found your opinion? A. On my examination the symptoms he presented, the testimony adduced in court.

Q. Well, you always discarded your own examination and the symptoms presented in that by saying you have completely changed your opinion from the one you gave last Thursday?

Mr. Carey: I object to that question as entirely improper.

The Court: I sustain the objection.

Q. Well, do you say it partly on your examination? A. Partly on my examination.

Q. And partly on the physical condition you found? A. Yes, sir.

Q. And yet you testified in this court on Thursday on that same examination, and on those physical symptoms directly contrary to what you testify now, didn't you? A. No, sir. I told you that I had changed my opinion insofar that Mr. Price gave the other evidences besides the evidence I obtained at the examination at Morris Plains. I am still of the opinion that he had an injury to his head; that injury is located on the right side of his head; but the only point that I might have had opinion about was the extent of this injury; that the injury itself owing to the symptoms presented I thought was much larger injury than it actually was. That is the difference.

Q. Did you swear on last Thursday "Well, what

I intended to convey was that he did not have, as the result of the mental disorder, the ability to express himself or the ability to make a proper conception of his moral responsibility because of the serious mental disorder." Did you so swear that on Thursday. A. I stated as you read.

Q. Right. Do you say that now? A. No, I do not because I had to change my opinion with added facts.

Mr. Simpson: May I have that stricken out as not responsive? I asked him if he says that now? He said no and he gives me a qualification which is not responsive.

The Court: No, I do not think I will strike it out.

Q. Did Mr. Carey ask you this question: "And as to his understanding of the meaning of the words, and the sentences contained in the oath, do you think he has that capacity" did you answer "I don't think he has" on last Thursday? A. Yes.

Q. What do you say now, do you think he has? A. Well, he has with the added facts.

Q. No, he has not any added facts. I am asking you whether you think today in answer to this question? "And as to his understanding of the meaning of the words and sentences contained in the oath, do you think he has the capacity", how would you answer that today? A. The only way I could answer that is by qualifying that answer.

Q. Well answer it, qualify it, or do anything with it. A. No.

Q. What do you state to-day in answer to that question? A. I think after havingseen Mr. Price on the stand and having heard him, that, with the evidence he gave me, I have to change my opinion; but with the facts he gave me and the evidence he gave me on the 28th of April, when I examined him

I could not come to any other conclusion; but now I have to change my opinion because he shows an entirely different state of affairs, and those things can occur. That is all I have to say.

Q. Now, you testified that you thought he was doing the best he could in this examination, didn't you? A. That was my belief in reference—that is his responses to me.

Q. Referring to the examination made at Morris Plains on the 28th, at which you said that you thought he was doing the best he could, to give you a proper answer. A. Well, that was my opinion at the time. I was mistaken. It was a mistake on my part.

Q. Yes. A. That is all right.

Q. Well, you say that was a mistake on your part? A. That is my opinion—as to it was incorrect.

Q. Well, how do you know that this is not an incorrect opinion you are giving now? A. Well, that is for the jury to judge not for you to think about.

Q. No, it is not for you, either? A. No.

Q. You may change it again if you want to. Now, another thing you have made a physical examination of this man in Morris Plains? A. I certainly did.

Q. And stripped him? A. Didn't strip him.

Q. Made him lie down and get up and walk and stand on one foot? A. I made a sufficient physical examination to enable me to come to the conclusion I did.

Q. The conclusion that you expressed last Thursday? A. I suppose so.

Q. Is that right? A. Yes.

Q. And you examined his eyes didn't you? A. I did.

Q. You didn't put any drug in them, as this eye

specialist testified, yesterday, when you made an examination did you to dialate his pupils, did you? A. It was not necessary.

Q. Well, you didn't do it did you? A. No, I did not, and it wasn't necessary.

Mr. Simpson: I ask to have that stricken out.

The Court: You are asked whether you did or not.

The Witness: I did not.

The Court: That answers the question.

Q. Were you asked this by the court on last Thursday "Could you tell, doctor, from that examination whether that lack of answering those questions,—lack of answers or lack of information which you say was due to the patient's what I would call it, "mood" or to his lack of mental ability to carry, can you tell which it was, if it was either one of them?" And did you answer "Well, I think to a very large extent it was the lack of mental ability?" A. Yes.

Q. What do you think to-day? A. I think it is to a very large extent, that he had the mental ability. My opinion at that time was based on the facts as I had them, had to be changed as a result of the fact that I obtained later on.

Q. Were you asked this question on last Thursday: "Tell me, why you think that." (A.) "Well, because of the difficulty of—because of the failure first of all to comprehend questions. The questions did not seem to reach him as they would a normal person, after repeated stimulation then the question would reach him, and he would make a reply at times, and at other times would make no answer, showing that he was unable to reply to the question." Did you so swear last Thursday? A. Yes.

Q. What do you think to-day, is that correct or not? A. Well, I have changed my opinion as to it.

Q. I see. A. With the added facts that I have.

Q. Now, you said you had located the intellectual faculties last Thursday in the left lobe of the brain, didn't you? A. I had located them?

Q. Yes. That they were located there? A. Oh, no, no.

Q. That you could tell that intellectual faculties were in the left lobe of the brain; didn't you? A. No, I don't think I made such a discovery myself.

Q. Well, whether you thought you did—am I wrong about that? A. No, I did not.

Q. You did not say that? A. I said that the intellectual faculties resided in the frontal lobe, especially in the left frontal lobe.

Q. Of the brain? A. That is what I said.

Q. Have you changed your opinion about that. A. Why I have not changed my opinion. I still stick to that.

Mr. Simpson: Did you find that question I asked you for?

Mr. Carey: Page 4.

Mr. Simpson: "Q. I want to make sure you are making an effort to answer. Are you?" (A.) "Yes, I would rather not be bothered" (pointing to the doctor).

Q. And isn't it a fact that persons suffering from insanity sometimes have days when they are clearer than other days, their mind is clearer than at other times? A. Yes, sir.

Q. And is it possible when you saw this man on the 28th of March in your opinion his mind was in such a cloudy condition that he gave you the impression that he did, whereas when he was on the stand here the day before yesterday he had a better day and his mind was clearer, and so gave you

the impression that you received? A. No, I don't think so. I do not think his mind was so cloudy, because he came here and told us all the things that occurred; and, furthermore, he said that his wife had told him not to answer these questions.

Q. What he said his wife told him was if he did not feel well he did not have to answer the questions. That is what you heard in his testimony wasn't it. Isn't that what you heard him say? A. Well, he certainly acted well up to the feelings and suggestion.

Q. He didn't want to be bothered at all did he? A. All right.

Q. Didn't he tell you to go out two or three times that he wanted to be let alone, didn't want to be bothered? A. But if he had just given us the reasons that he didn't want to be bothered, that would have prevented it, but the state that he presented, the state of mind that left no conclusion except the conclusion we came to and we are just as frank to tell here or state we are ready to change that after further evidence.

Q. But did he give you a reason? That he did not feel well, that he wanted to go downstairs? A. No; he said he would rather not be bothered.

Q. Didn't he say "I don't feel well I want to go down stairs". A. I think he did.

Q. Isn't that a reason why he didn't want to answer your questions? A. Well, that was not sufficient reason for a man to desist from an examination.

Q. It was not sufficient reason for an insane man to give,—he was sick and didn't want to be bothered? A. If he had expressed himself differently, then in a dilusional manner and in a way that was incoherent or irrelevant, I could understand it.

Q. Well, then, on Thursday, I don't want to

emphasize that too much, about on Thursday,—but on Thursday you swore that in your opinion he was doing the best he could? A. Yes, in my opinion, in response to the question I asked him he said he was trying to do the best he could, and we gave him the benefit of the doubt that he was trying to do the best possible. What more could we do?

Q. Well, I do not know what more you can do than give two opinions? A. Well, I don't think that is necessary——

The Court: That may be stricken out.

The Witness: I do not think it is necessary for you to make that statement at all. You have nothing to do——

The Court: But gentlemen, both of you please——

The Witness: I beg your pardon, your Honor.

The Court: I think that is also due from Mr. Simpson, also.

Gentlemen, of the Jury, I will say that that which has just been said, that controversy shall be stricken out and you will disregard it.

The Witness: I am very sorry.

Q. Now, you say, doctor, he didn't say much to you about his injury at this examination, if I understand you correctly, he didn't give you any information about his injury? A. He did not.

Q. Did he say—Question by Dr. Kirby: "The doctor asked you if you had an injury and you said yes. Tell us where you were working that time." (A.) "Working on the railroad?" And then the question was asked "What railroad?" He answered "New York Central". A. Yes, sir.

Q. "How long were you working on the rail-

road." "No answer". "How long were you working on the New York Central?" "No answer." "What job did you have on the railroad?" "No answer." "What job did you have on the railroad?" "Sir." And isn't it a fact that all the time he was apathetic, dull, not interested took no noticeable interest in the presence of the examiner or his surroundings, sat forward with his right elbow resting on the arm of the chair, and with his right hand to his forehead and his left arm and hand resting on the arm of the chair, steadily gazed, blankly, toward the floor, was that his attitude? A. Oh, his attitude was mainly that during the examination. But he could be roused when questions were asked. He would look up and take his hand off his head and then after a while when the questions were resumed he would put his hand back to his head and stare vacantly towards the ground, and look like a person who was dull, apathetic and disinterested.

Recess until ten o'clock the following morning.

JAMES M. HART, recalled.

Direct Examination by Mr. Carey:

Q. Mr. Hart, you are in the employ of the New York Central? A. I am.

Q. In what capacity? A. Fireman.

Q. And were you employed in February 1915? A. I was.

Q. And how long have you been a fireman on the New York Central? A. Fourteen years last February.

Q. Do you know Mr. Price? A. I do.

Q. How long had you known him prior to February 16th, 1915? A. About eight years.

Q. Did you see Mr. Price on the night of February 16th- A. I did not.

Q. When did you see him after that time? A. The Sunday following his admission to the hospital.

Q. You saw him then at the North Bergen Hospital? A. North Hudson Hospital. 10

Q. North Hudson Hospital? A. Yes.

Q. Are you connected with the Brotherhood of Firemen? A. Yes, sir.

Q. And Mr. Price also? A. Yes, sir.

Q. You went there to see Mr. Price did you? A. I did.

Q. Did you see him on that occasion? A. Yes, sir.

Q. Did you notice his head? A. Yes, sir. 20

Q. Will you state what had been done with the hair on the head at the time you were there? A. The head had been clipped.

Q. At that time did you see any marks on the head of Mr. Price? A. Not to my observation.

Q. You didn't feel of his head did you? A. No, sir.

Q. Were you in conversation with him on that day? A. I was.

Q. Was he in bed or out? A. In bed. 30

Q. Did he say anything to you about having been struck with anything? A. He did.

Q. What did he say he was struck by? A. He said somebody hit him on the head with a hammer.

Q. Did you hear him say that more than once? A. I did.

Q. How many times did you see Mr. Price? A. On the average of five times a week.

Q. For how many weeks? A. Four weeks.

Q. On any of the occasions when you saw him 40

did you see any marks? A. No, sir.

Q. On his head? A. No, sir.

Q. You have had experience in going through the Weehawken Tunnel? A. Yes, sir.

Q. And you noticed smoke and gas in the tunnel when passing through it? A. I have.

Q. And has it had any effect on you? A. It did.

Q. In what way? A. Caused you to sneeze and vomit, headache?

Q. Cough? A. Yes, sir.

Mr. Carey: Cross examine.

Cross Examination by Mr. Simpson:

Q. It never caused you to burst a blood vessel, did it? A. It has not.

Q. In your brain? A. No, sir.

Q. And did you go through it on the night of February 16th, 1915? A. I did not.

Q. Don't know what his condition was that night? A. No, sir.

Q. Sometimes it was practically filled with smoke and gas wasn't it? A. Yes, sir.

Q. At other times it was not? A. Yes, sir.

Q. Now, how long have you been going through that tunnel. How long now is it that you have been working through that? A. Fourteen years.

Q. How many times have you sneezed and coughed and felt sick to your stomach? A. How many times?

Q. Yes. A. Why, I don't remember.

Q. Ten times? A. Yes, more than that.

Q. Twenty? A. Yes, sir.

Q. One hundred times? A. Yes, sir.

Q. Two hundred times? A. No; I don't put it that much.

Q. Between a hundred and two hundred times in fourteen years? A. Yes, sir.

Q. You work on an average every day or every other day? A. Every other day.

Q. For fourteen years? A. Yes, sir.

Q. You don't profess to be a surgeon to be familiar with traumatic injury? A. No, sir, I do not.

Q. Was this man's hair shaved off? A. No.

Q. Was it clipped? A. It was clipped at that time.

Q. Well, was it shaved on one side? A. No.

Q. Are you positive of that—that his left side of his head was not shaved? A. I am.

Q. Just as positive as everything else you said? A. Yes, sir.

Mr. Simpson: That is all.

(Witness excused.)

JOHN T. BEDELL, sworn.

Direct Examination by Mr. Carey:

Q. Mr. Bedell, you are employed by the New York Central? A. Yes, sir.

Q. In what capacity? A. Fireman, locomotive.

Q. How long have you been fireman for the New York Central? A. Fifteen years last January.

Q. And you still employed by the company? A. Yes, sir.

Q. Did you know Mr. Price? A. I did.

Q. How long had you known him prior to February 16th, 1915? A. Practically from the time he entered the service.

Q. That I think has been testified to as 1905. Did you see Mr. Price on the night of February 16th, 1915? A. No, sir.

Q. When did you see him after that date? A. Monday after his admission to the hospital.

Q. Where did you see him? A. At the North Hudson Hospital.

Q. Was he up or in bed? A. He was up, dressed in pajamas.

Q. Was he walking around any of the time that you were there? A. Yes, sir.

Q. Did you notice Mr. Price's head? A. Yes, sir.

Q. Did you see any indication of bruise or mark on the head of any kind? A. No, sir.

Q. Did you talk to Mr. Price? A. Yes, sir.

Q. Did he say anything about anything that had hit him? A. Yes, sir.

Q. What did he say hit him? A. He told me that somebody had hit him on the head with a hammer.

Q. How many times did you see him? A. I only saw him that one morning, that one day I saw him at the hospital.

Q. You have been through the Weehawken tunnel how many times? A. Yes, sir.

Q. And have you noticed the smoke and gas in the tunnel when you have been going through there? A. I have.

Q. What time of day is the most smoke and gas in the tunnel? A. At the time the commuter's trains run in the morning from six o'clock up until nine, and from four thirty about, until eight.

Q. And are there, along about that time, freight trains going out, that is between four thirty and eight o'clock in the evening? A. Yes, sir.

Q. Freight trains? Frequent trains going west? A. Going west.

Q. And which trains give off more smoke and gas, the freight trains or the passenger? A. The freight.

Q. Have you been affected in any way by the smoke and gas in the tunnel? A. I certainly have.

Q. In what way? A. Well, within a year I have been affected to that extent, I could not talk. I got out of the tunnel and sat down.

Q. Couldn't what? A. Talk.

Q. Couldn't talk? A. No, sir.

Q. What sensations do you have? A. Well, sneezing is the first, coughing and filling up inside when you get a good dose of that gas.

Q. Filling up inside? What do you mean, your stomach? A. Yes, sir, you are almost suffocated.

Q. Sense of suffocation? A. Yes, sir.

Q. Have you noticed ice hanging from the roof of the tunnel in the winter time? A. Yes, often.

Q. Have you had any experience with ice falling? A. Yes, sir.

Q. What experience have you had? A. I have had icicles fall down and break the storm window; that is the window we have for protection, screwed down to the side of the cab—broke it entirely.

Q. Breaks them entirely. What do you mean by breaking them entirely? A. Breaks the window right off, the middle window we have on the side of the cab, you know.

Q. That is glass with a frame around it? A. Yes, sir, and a frame.

Q. Was the frame broken off also? A. The frame was broken.

Mr. Carey: Cross examine.

Cross Examination by Mr. Simpson:

Q. When did you have the ice break the frame of your window? A. Oh, I could not exactly tell what window it was, it was in the winter time.

Q. You can not even tell what window it was? A. No, I was fireman—it was about six years ago.

Q. Six years ago? A. Yes, sir.

Q. About 1913? A. About that.

Q. And since then your window has not been assaulted by the ice in the tunnel? A. It has not happened in that length of time.

Q. Never knew of any ice falling since 1913?

A. Yes; I know them to fall, yes, sir.

Q. What? A. I know them to fall down since 1913.

Q. Break your window? A. No, I didn't have any window since that.

Q. Did you see any in 1915 fall down? A. No, I could not say.

Q. No. And this gas, when was it that you were overcome by the gas? A. About last April, I think it was.

Q. What did you do? A. What did I do? When I got outside of the tunnel I sat down. I would generally take my handkerchief and wet it when I could get to it.

Q. You sat down? How long did you sit down? A. Oh, I sat down there about fifteen minutes.

Q. Then what did you do? A. Well, through the air I recovered.

Q. What did you do? A. I got back on the engine again.

Q. Got back on the engine and went about your work? A. Yes, sir.

Q. You never lost more than fifteen minutes. A. I was distressed for longer than that, but I go on the engine.

Q. But you didn't lose any pay that day, did you, on account of that? A. No.

Q. You drew your pay; you never lost a cent of pay because of any bad effects of the tunnel and the gas, have you? A. No.

Q. Have you burst a blood vessel in the head on account of the gas? A. No.

Q. Go crazy? A. Hardly.

Q. Nothing like that. Now, when did you go to see Mr. Price in the hospital? A. The Monday following his admission.—following the accident.

Q. Did you examine his head to see whether there was a mark on it? A. I looked at his head, yes, sir.

Q. Did you examine it with your hand to see if it was tender? A. I was right up alongside of him.

Q. Did you examine—— A. No.

Q. ——it with your hand to see if it was tender? A. No, no.

Q. And his hair was clipped? A. Yes, sir.

Q. It was not shaved on the right side of his head? A. No, that I couldn't say, I would not be positive at this late day whether it was or not.

Q. What? A. I would not be positive after five years.

Q. So, although you cannot say whether it was shaved or not, you will swear to whether there was a mark on his head? A. Yes, sir, positively.

Q. Now, what observation did you make for a mark? A. Just "curosori" examination.

Q. What is that? A. Just by looking at it.

Q. "Curosori"? A. Yes, sir.

Q. And what was the "Curosori" examination? A. Just by lookin at it.

Q. Looking at it? A. Yes, sir.

Q. What did you expect to find, broken skin? A. I didn't know what I was to find.

Q. What were you looking for—what kind of a mark? A. Any kind of a mark.

Q. And you didn't see any mark? A. No, sir.

Q. Well, what was your interest in a mark? A. My interest was this, that I was at that time chairman of the Board of Relief of the Hudson River Lodge 349 of Brotherhood of Locomotive Firemen, Engine men.

Q. You were not a physician? A. No, sir.

Q. Did you have a physician? A. No, sir, not outside of Dr. Bissing was there.

Q. He was your physician? A. No, he was the Brotherhood physician you might say in a way.

Q. He was the Brotherhood physician? A. In a way he was, yes.

Q. Now, you do not pretend to be any expert witness—— A. No, sir.

Q. —as to medical knowledge of marks on men's heads do you? A. No, sir.

Q. Did you look at his scalp to see if it was discolored under the hair? A. No, I didn't brush his hair aside or anything like that, only what I could see there was no mark on him, by just looking at him that is all.

Q. Was there an ice bag on his head? A. No, sir.

Q. Nothing, do you say, at that time, on his head, no dressing at that time on his head? A. Not at that time.

Q. You didn't move his hair back to look at his scalp to see what color his scalp was, did you? A. No, sir.

Q. In other words you just looked at his head and you didn't see any marks? A. I didn't see any marks whatever.

Q. And you are still working for the New York Central? A. Yes, sir.

Mr. Simpson: That is all.

Redirect Examination by Mr. Carey:

Q. Did you say that you had none of those side windows after 1913? A. Well, I haven't used them, I don't think, since that time.

Q. Since 1913? A. Since 1913.

Q. And those were window glass in a frame attached to the side of the cab? A. Yes, sir.

Q. And what were they for? A. They were for to protect you from wind. See.

Q. A wind shield? A. They are only narrow things, only about so wide (indicating).

Q. Wind shields? A. Yes, sir.

Q. So you would look through that? A. Yes, sir.

Q. And be protected from the wind? A. Yes, sir.

Mr. Carey: That is all.
(Witness excused.)

JOHN JOHNSON, sworn.

Direct Examination by Mr. Carey:

Q. Mr. Johnson you are supervisor of tracks of the New York Central Railroad? A. Yes, sir.

Q. And what was your division? A. From Jersey City to Mile post 63.

Q. Where is that? A. That is west of Newburgh.

Q. A distance of about how many miles? A. Sixty-three miles from Weehawken.

Q. How long have you been supervisor of tracks? A. Since 1889.

Q. And you were supervisor of tracks in the month of February, 1915? A. Yes, sir.

Q. I show you photographs D. 6, D. 7 and D. 8 and ask you if you were present when those photographs were taken? A. Yes, sir.

Q. Do you know what the track centres were at the points where those photographs were taken? A. Thirteen feet from centre to centre of track.

Q. Just thirteen feet there? A. Yes, sir.

Q. That was not the division of track in which Mr. Chase made his measurements? A. "Well, I don't know where Mr. Chase made his measurements.

Q. Where were these tracks located? A. At Weehawken.

Q. And were these tracks straight at that point? A. Yes, sir.

Q. Both the tracks? A. Yes, sir.

Q. And on the same level? A. About on the same level.

Q. In the month of February, 1913, do you know of the track centres west of the tunnel—— A. Yes, sir.

Q. —between the Westerly portal and the first signal west of the tunnel? A. Yes, sir.

Q. What was the track centre? A. About thirteen foot three or a little over.

Mr. Carey: Did I say February, 1913?

The Stenographer. Yes.

Mr. Carey: I meant February, 1915.

The Witness: They were the same that time.

Q. And the level of the two tracks? A. About the same.

Q. Any substantial difference at all between the level of those two tracks? A. Not to speak of.

Q. The Weehawken Tunnel is under your jurisdiction? A. Yes.

Q. Are you familiar with the matter of ice formation in the tunnel? A. Yes, sir.

Q. And will you state whether or not during the winter icicles form on the roof of the tunnel? A. It does form.

Q. And where particularly, what part of the tunnel? A. All around the roof and on the sides.

Q. And the side of the icicles that you have seen hanging from the roof of the tunnel? A. They vary in size.

Q. What is the variation? A. Well, anywhere from a half an inch or quarter inch diameter to four or five inches in thickness at the butt.

Q. In thickness? A. Yes.

Q. And what length? A. Well, it varies in length.

Q. It varies? A. Yes, anywhere to two or three feet, and perhaps smaller at times.

Q. Do you know whether those icicles fall from the roof to the tunnel or not? A. Well, they are knocked down by a pole by a man on the ground.

Q. And do you know whether they fall sometimes between the times when they are knocked down—off with the pole? A. I have had reports from the superintendent that certain trains have reported icicles to hit the windows and break the same.

Q. You simply have had those reported? A. Yes, I have had those reports from the superintendent to investigate.

Mr. Carey: Cross examine.

Cross-examination by Mr. Simpson:

Q. In February of 1915, were there any icicles or stones fell to your knowledge in the tunnel? A. Not to my knowledge.

Q. Well, there were not any as far as you know? A. There was icicles in——

Q. Didn't you testify upon the last trial, page 286. (Q.) "When did you see an icicle in the tunnel or a stone? What is the nearest date you saw one with reference to the 16th day of February, 1916?" And didn't you swear: "Well, I have not not taken any date, but at several times I have seen that." Did you so swear? A. Yes, sir.

Q. Well, is that a fact that you cannot tell by dates whether there was any in February or not? A. No, sir.

Q. You don't know about February particularly do you? A. No, I don't about that month particularly.

Q. Now, that curve, west of the tunnel, what is the track centre at that curve? A. Thirteen feet three inches.

Q. Did you measure it yourself? A. I have.

Q. When? A. Well, I didn't have any date that I measured.

Q. Well, did you measure it around 1915, did you make any measurements of it? A. Yes, around about that date, but I couldn't give you the date of the month or the day that I done it.

Q. Well, Mr. Chase, said he was going to send a map with those measurements on it. Would that be more accurate than your memory—the map? A. I don't know.

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

Q. Mr. Chase is the engineer? A. Yes, sir.

Q. Now, the level of these tracks at the curve, are they on the same level identically? A. About.

Q. What do you man by "about"? A. Well they might vary a quarter inch or half inch or something like that.

Q. Well, did you measure them, did you ever put a level on them to see? A. I have put level boards on it.

Q. When? A. I could not give you the date.

Q. And you are testifying from memory then? A. Yes, sir.

Q. Now, what is the distance from the inner rail to inner rail of the west bound tracks at that curve, on the east bound track. A. What do you mean by that?

Q. West of the tunnel. You know the tracks that Mr. Price's train was on the night that he was injured, coming east, you know the eastbound track from Haverstraw? A. Yes, sir.

Q. West of the tunnel? A. Yes, sir.

Q. As it approaches the tunnel? A. Yes, sir.

Q. Well, at that curve what is the distance of the northerly rail of the east bound track to the southerly rail of the west bound track? A. You mean the distance between the two rails?

Mr. Carey: If the court please, it seems to

me that that is not material in this case. The testimony is that the engines passed—by Mr. Price—directly opposite to the signal; and as to the other witnesses, all of the railroad witnesses testified that the engines passed between the signal and the westerly portal of the tunnel; what they were up around the curve, it seems to me, is not material.

Mr. Simpson: Yes, but the proof here is that the curve extended fifty feet west of the signal. One witness said it ran fifty feet west of the signal.

Mr. Carey: About fifty feet east of the signal.

Mr. Simpson. Yes, fifty feet east of the signal, that is right. So that I should judge by the testimony—Price would be by his own testimony and the testimony of the other witnesses still in that curve at the time he was struck.

The Court: I think the objection chiefly would be that your question now goes to practically any part of that curve.

Mr. Carey: That is the idea, I have no objection at all——

The Court: It is simply a question of localizing it a little more.

Mr. Simpson: I know, but he has been produced as a witness for the defense, he knows all about the tracks. Now, then, either I have the right of cross-examination to find out what he knows or else he must be limited to exactly the things that they ask him.

The Court: Truly you have, Mr. Simpson; but if you ask a question directed to a location that has no pertinency to the case it cannot be of any value.

Mr. Simpson: It will show his knowledge.

Mr. Carey: He can, within his knowledge, as to the locations that have been made, it seems to me——

The Court. Let me hear the question.

Q. (Repeated by the stenographer.) Well, at that curve what is the distance of the northerly rail of the east bound track to the southerly rail of the west bound track?

Mr. Simpson: I will withdraw that question and ask him this:

Q. Have you measured the inside measurements of the inner rails of the east and west bound tracks at that portion which lies east of the signals? A. When the centre is thirteen——

Q. I am not asking you about the centre. I am asking you about the rails and the curve.

The Court: You are asked if you measured the distance between the inner rails, as it has been called; that is the rails of the tracks that lie nearest to each other from that point any where to the tunnel?

The Witness: I have.

Q. When? A. Well, I haven't got the dates.

Q. You don't know when it was? A. I didn't take any dates of it when I measured that.

Q. Was it three years ago? A. Yes, I have been every year that I have measured.

Q. Well, did they change that curve every year? A. No.

Q. How long has that curve been in its present condition? A. Ever since the road was built, or about where it is now.

Q. Do the inner rails go closer together as the curves spread or are they the same distance for the entire curve? A. They are about the same distance.

Q. The entire curve? A. Yes, sir.

Q. What is the measurements between the inner rails of the curve?

Mr. Carey: At the point of the accident do you mean?

The Court: Well, you do not know that.

Mr. Simpson: Why yes, he may know about it.

Q. What was the point of the accident? A. Well, it is testified—that would be at the signal—it would be about eight foot and six inches.

Q. Eight, six? A. Yes.

Q. From inner rail to inner rail? A. Yes.

Q. Do you know the overhang of these locomotives that were there? A. I never measured them.

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

Redirect Examination by Mr. Carey:

Q. You gave your testimony as to the track centres as they existed in February, 1915? A. Yes, sir.

Mr. Carey. That is all.

(Witness excused.)

MR. DOOLEY recalled

Direct-examination by Mr. Carey:

Q. Mr. Dooley, do you know the size of the iron rod that forms the handle of the fire handle? A. The slanted hook is five-eight at the handle end and an inch thick at the rake.

Q. And how far does the five eighths handle run? A. Oh, I should judge within three feet of the rake end.

Q. Then it is increased gradually from that

point? A. Well, it is generally a piece welded on that end.

Q. Have you had any experience with ice in the tunnel, Mr. Dooley? A. I have.

Q. Will you state what experience you have had? A. I have had my front window knocked out a couple of times.

Q. On an engine that you were on? A. Yes, sir.

Q. What were you at that time? A. Engineer.

Q. And do you know about the condition of gas and smoke in the tunnel? A. Yes, sir.

Q. Has that ever had any effect on you? A. Not outside of coughing and sneezing.

Q. Nothing outside of that? A. No, sir.

Q. What time of day is the gas and smoke most dense in the tunnel? A. In the morning and the evening.

Q. Between what hours? A. Well, between seven and nine and five thirty and seven thirty.

Mr. Carey Cross examine.

Cross-examination by Mr. Simpson:

Q. Did you ever burst a blood vessel in the head on account of the smoke and the gas in the tunnel and go crazy? A. No, sir.

Q. As I understand it all you did was sneeze a little and cough? A. Yes.

Q. Often did that when you smoked? Taken the smoke the wrong way if the cigar wasn't any good, haven't you? A. Yes.

Q. Now, this ice that broke your cab window, can you give us any date about that at all? A. No. I cannot I never kept track of it.

Q. Now, about the hook. Those standard hooks. There are different size pokers in use? A. In length they are.

Q. That is what I mean. Well, what do they run from. From what length to what length? A.

If the fire box is six foot we use a seven foot hook, on our I engines. If it is eight foot box we use a nine foot hook and on the K.-11, the thirty one hundred class, we use the ten foot hook for a nine foot fire box.

Q. That is the longest hook you have? A. At the present time.

Q. No, in 1915. A. Yes, sir.

Q. Weren't there 12 foot hooks in 1915? A. I never seen a 12 foot hook.

Q. Weren't you in the court room when Hinckley swore he lost his hook and that he had a 12 foot hook on the engine? A. No, I was not.

Mr. Carey: Of course, there was no such testimony given.

The Court: Well, we will have to look it up. I don't remember whether he said 12 foot. I know he said it was longer than the one he was in the habit of using?

(Witness Excused).

Mr. Chase recalled.

Direct Examination by Mr. Carey:

Mr. Chase, you were asked to bring up a map showing the curvature at the semiphore and also the curve beyond the semiphore, have you done that? A. I have it.

Q. Will you produce it to counsel so that he may look at it. A. (witness produces it) that is a small scale map drawn in order to illustrate the drains proposed and it does not show trackage as clearly as the maps I produced yesterday.

By Mr. Simpson:

Q. Well, where is the tunnel on this? A. West Portal.

Q. Right there? Where is the curve? A. The curve is right here.

Q. Right there? Where is the semaphore? A. Right there.

Q. All right.

Mr. Simpson: You can put that in. I cannot put it in. I will put it in when it comes my turn or you can put it in now if you like.

Mr. Carey: Go ahead and put in what you like.

Mr. Simpson: All right go ahead and put the whole thing in.

(Marked D-11 in evidence).

Mr. Carey: Do you want to put it up on the easel?

Mr. Simpson: Yes, I think that would be better.

(It is done)

By Mr. Carey:

Q. How many feet east of the semaphore does the curve run to? A. About fifty feet I should judge, I have not measured it.

Q. That is you have not measured it on the ground? A. I have not measureed it on the ground.

Q. As near as you can tell it is about fifty feet, that is from the map? A. About fifty feet, as shown on the smaller map I produced yesterday.

Q. And the smaller map is on a larger scale? A. The smaller map is on a somewhat—is on the same scale. It was drawn with greater care to illustrate trackage. The new map was not drawn to illustrate trackage but to illustrate a proposed drainage system.

Mr. Carey: Cross examine.

Mr. Chase, (recalled) for Defendant—Cross

Cross Examination by Mr. Simpson:

Q. Where does that big strip come from? I see a lot of tracks on the right and then that strip around on a curve, where did that come from? A. That is the common line of the tracks west bound towards Newburg, and north, and the large number of white lines you see there, New Durham yard, northwest of the bridge in question.

Q. Come down and show me where that semaphore is, the signal? A. The semaphore is at this point.

Q. Right there?? And this curve is still coming around here, and that is about fifty feet here. Show us where you say it ends. A. Right about in there.

Q. In there. All right, sir. And does this show the measurements of the inner rails on that curve, show what the distance is between the inner rails on that curve?

Mr .Carey: On the curve where?

Mr. Simpson: On the curve here at the semaphore.

Q. What does that show, does it show that? A. It shows, but it is just a small scale for the purposes of the map.

Q. You could not tell? A. Hardly. I know pretty well what the distance is for standard centre.

Q. Not centre. I am talking about the inner rails where these engines would be nearest to each other. That is what I am trying to find out. A. I don't know the distance exactly that it was in February, 1915. Our track centres are thirteen feet, and within two or three inches of standard.

Q. At the present time or in February? A. It is the same as it has been for years.

Q. That is the standard distance? A. That is the standard track centre.

Juror Number Three: Your Honor, may I ask a question. Is there any elevation on the outside of the curve, that is what would be commonly called the high side?

Mr. Carey: If the court please, I presume, Mr. Juror, that that refers to the elevation from the signal eastwardly towards the tunnel?

Juror Number Three: At about that point, yes.

The Witness: The elevation is very slight at the signal. It is not much, if anything between the signal and the tunnel. I might say nothing at all. It is level—it is a straight track and the rails level across. At the semaphore there may be the very slightest elevation.

By Mr. Simpson:

Q. Well, at the semaphore, there is an elevation, is that less than the elevation on the other part of the curve? A. Very much less, very much less.

Q. I see, so that there is an elevation west of the semaphore? A. There is is an elevation a considerable distance west of the semaphore.

Mr. Simpson: That is all.

Mr. Carey: That is all.

(Witness excused)

GEORGE H. KIRBY sworn.

Direct Examination by Mr. Carey:

Q. Doctor Kirby, where do you reside? A. I reside at Ward's Island, New York City.

George H. Kirby, for Defendant—Direct

Q. You are a physician? A. I am.

Q. Will you state your qualifications? A. For the past twenty years I have made a study of nervous and mental disorders, confined my practice to that specialty.

Q. Graduate of what institution? A. I am a graduate of the Long Island College Hospital in Brooklyn, and have been physician in the Worcester State Hospital, and for ten years was chief of staff at the Manhattan State Hospital at Ward's Island which was a large institution.

Q. For the insane? A. For the insane. Following that I was appointed medical inspector for the State Hospital Commission and after that director of the Psyiatric Institute which is a special department for the study and treatment of mental cases. I have also been for a number of years a professor of mental diseases at Bellevue and Columbia University Medical School and at present am professor of mental diseases at Cornell Medical School.

Q. Lecturing at both of those places? A. Cornell.

Q. At Cornell? Have you written on the subject of nervous and mental diseases? A. I have written a good many articles in recent years dealing with——

Mr. Simpson: I will admit his qualifications, if that is what he is trying to get at.

Mr. Carey: Very well.

Q. At the present time what is your position? A. At the present time I am director of the Psychiatric Institute, I have just been released from the army where I was in charge of the department for nervous and mental cases at the Army Hospital No. 1, Williamsbridge.

Q. How long were you connected with the army service? A. About eight months.

Q. And in connection with the army service did you have cases of traumatic insanity? A. Yes, I saw a great many cases of injuries to the head and brain, soldiers, aviators.

Q. Had you had much experience with traumatic cases prior to your entry into the service? A. Well, I had seen a great many cases as they were admitted to the Manhattan State Hospital New York City.

Q. Now, you say that you were discharged from the service? A. I am.

Q. And you are now holding what position? A. Director of the Psychiatric Institute on Ward's Island.

Q. And won't you tell the jury what that is? A. Well that is a department maintained by the State Hospital Commission of New York for special research and studies into mental disorders. It is a teaching institute as well as a research department.

Q. And how long have you held that position? A. I have been holding that position nearly two years.

Q. And during your experience have you seen a great many cases of insanity of all kinds? A. I have, large numbers.

Q. How many? A. I could not say as to——

Q. Running into the thousands? A. Yes, many thousands.

Q. Did you on March 28th in connection with Dr. Beling and also Dr. King make an examination of Mr. Price at the Morris Plains Hospital? A. I did.

Q. About how long did you take for your examination if you recall? A. That examination occupied nearly the entire afternoon, or about I should say, three hours.

Q. Will you describe the examination, both men-

tal and physical? Tell what you did and give the jury an idea of the character of the examination and the results obtained from Mr. Price? A. This examination of Mr. Price was made in the hospital library. Mr. Price was brought into the room and introduced to us by Dr. Evans who explained to him briefly the reason for the examination. We then proceeded to make the usual mental examination, questioned him to determine whether he was clear as to his whereabouts, whether he had a good recollection, his past life, and of recent events, whether he had any delusions or hallucinations, peculiar ideas, whether his attention and power of concentration were good, whether he realized that he was sick, mentally sick. We found that from the beginning, Mr. Price gave us very little information. He assumed an attitude of—non-communicative attitude. To a great many questions he did not answer at all. To some questions he answered after a great deal of urging. The physical examination consisted of the usual test for the integrity of the nervous system, and as to whether he had any lesion or disease of the nervous system. We found that the result of that examination—that there was a difference in the nervous control on the two sides of the body, that the reflexes as they are called, in the feet and on the body—the abdomen,—were different on the two sides, which indicated to us that there was a lesion on the opposite side of the brain corresponding to that side of the body, and we also found that he complained of tenderness on the left side of the head, or, at least, he winced when we touched him on that side of the head. We found that there were some indications of increased pressure in the skull, increased brain pressure. I don 't think there was anything else significant so far as the nervous system

went, except one other sign,—that when placed in an upright position with his feet close together he tended to fall over to the right side, somewhat backward and to the right side. That is a balancing test, a test for equilibrium.

Q. Did Mr. Price on that occasion appear to grasp the questions which you asked him and understand them? A. It was very difficult to tell whether he grasped the questions or not. He gave very few answers and only after urging, and some few questions he answered, which allowed us to form some conclusion as to his mental processes.

Q. At the time will you state whether or not you considered that he was doing the best he could? A. I did, I thought he was doing the best he could and thought that he had difficulty in understanding the questions, or at least, difficulty in giving us information.

Q. You have a transcript of the examination taken stenographically? A. I have a transcript which was sent to me by Registered mail by Dr. Evans.

Q. And you have examined that? A. I have.

Q. Will you state whether or not you consider it a correct transcript of the examination? A. It is substantially correct, I think there are only two parts of which there is an ommission or an error in the copy I have.

Q. And will you state what those errors or omissions are? A. On page eight of the transcript he was asked the names of his children, and the transcript contains no reference to an answer he gave in regard to the name of one of his girls.

Q. And what was the name of that girl do you recall? A. The name as he gave it to us, I recall, was Genieve.

Q. And the other correction? A. The other

error is on page sixteen where it states the "Oppenheim Reflex is present on the left but absent on the right." Our examination showed that the reflexes were present on the right and absent on the left; that is to say the words, "left" and "right" are transposed.

Mr. Carey: Mr. Simpson, have you your copy?

Mr. Simpson: No, sir.

Mr. Carey: I offer this transcript of the report of the examination in evidence.

Mr. Simpson: I object to it unless he shows it is a correct transcript.

The Court: He has, I think, Mr. Simpson, has he not?

Mr. Simpson: Oh, well, I haven't any objection to it, put it in. Let him put in everything he wants to, put in the transcript.

The Court: I have what I believe purports to be the correct transcript.

Mr. Simpson: Well, there is one here sworn to by a stenographer.

The Court: In other words, I do not mean to emphasize what Dr. Kirby has said as to its being correct, but I mean in this sense, he has spoken of certain omissions and imperfections in the one he has, and this one was handed to me by Dr. Evans and I take it it is complete. My thought is that it would be better to have one go in that is complete, if it is to go in, than one that is not complete.

Mr. Carey: Here is the affidavit by the man who took it, under oath. Will you turn to that place where the doctor has mentioned imperfections in his, and see what that shows?

Mr. Simpson. If this has any memoranda of the doctor's on it I will object to it going in.

Mr. Carey: Very well, what I wanted you to do if you will, is to turn to the place where he inserted the name of his daughter.

Mr. Simpson: Why don't you take that in and save as much time as you can?

Mr. Carey: On what page is that omission of the child Genieve?

Mr. Simpson: Eight, he said.

The Witness: Page eight.

Mr. Carey: Page eight. The other error or omission is on page 16 the last page. It says the Oppenheim reflex is present on the left, my copy does. It should be present on the right.

The Witness: Our examination showed it was present on the right and absent on the left.

Mr. Carey: Very well, we will put this one in evidence.

(Marked D. 12 in evidence)

Mr. Simpson: Is this one in, the one I offered?

Mr. Carey: The one you offered, yes.

Mr. Simpson: All right.

Q. Did Dr. Evans or any one connected with the hospital on that date tell you that Mr. Price was in poor condition or not well enough to undergo the examination? A. No.

Q. Did you know when you were there that Mr. Price had been told by his wife that he need not answer questions asked by you and Dr. Beling if he did not like it? A. I did not.

Q. Did you have any information that anything had been said to him by anyone to lead him to suppose it would be all right if he did not answer your questions? A. No, I had no such information.

Q. And you acted on the supposition that he was acting freely, of his own accord, doing the best he could? A. I did. Of course, I took as in the examination of all mental cases—one takes into consideration the possibility of a patient not co-operating, not yielding information freely.

Q. Yes. During the examination was the question asked you, or in your presence, of Mr. Price, if he could tell how he was injured? A. It was asked a number of times.

Q. And will you turn to page ten at the bottom and read from that the questions propounded to Mr. Price and the answers given by him? A. Page ten beginning at what line, sir.

Q. Towards the bottom of the page.

The Court: Dr. Beling is the interrogator.

Mr. Carey: Dr. Beling.

A. Question by Dr. Beling "Mr. Price, do you remember what happened to you, about how you were injured?" "No, sir" "Do you remember anything about the time you were injured——"

The Court: Before you were injured?

The Witness: "Before you were injured". I beg your pardon. "No, sir." "Mr. Price, do you remember anything a few days before you were injured" "No answer".

Q. Do you remember Mr. Price being asked if he knew Dr. Evans? A. I do.

Q. And what was his answer to that? A. His answer—his first answer was—I think that he didn't know anybody around. "I don't know anybody around." On another occasion he was asked "Do you know Dr. Evans" and he said "No, sir" "Do you know the superintendent of this hospital?" And he answered again "No, sir".

Q. Now, were you——

Mr. Carey: I withdraw that.

Q. Will you state whether or not you gave to Mr. Price the usual examination to test his mental condition? A. I did.

Q. Did you reach a conclusion after your examination of Mr. Price as to his condition and if so what conclusion did you reach? A. As a result of the mental and physical examinations which I made, and also bearing in mind the information I had received in the form of the testimony at the first trial, and some communication made to me by Dr. King at the time, I formed an opinion that Mr. Price was of unsound mind.

Q. And did you form an opinion as to his ability to testify? A. I did. I formed an opinion that he was in such a mentatl state that he would not be able to give testimony as a witness.

Q. Did his answer to you that he did not know how he was injured and what caused his condition have any influence on your conclusion? A. It did. He, on one occasion, said he was hit on the head.

Q. Can you turn to just the language he used in that connection? A. On page 7 the question was asked "Q. Were you injured in the locomotive when you were at your work?" His answer was "Somebody hit me on the head."

Q. Who asked that question? A. That question was asked by Dr. King.

Q. Did you, in your examination, take into consideration the possibility of Mr. Price trying to deceive you by refusing to answer and by making wrong answers? A. I did, and in that connection I repeatedly urged of Mr. Price to cooperate with us and answer sincerely and to the best of his ability. In forming a judgment as to whether he was answering us as to his best ability, I took also

into consideration the fact that Dr. King was present, one of his physicians and he also urged him to speak freely and frankly.

Q. And in this connection will you state whether or not you used your best effort to get from him information which would enable you to form an opinion? A. I did. We pressed him repeatedly and I used all of the tests I could in order to try to arrive at a correct idea of his mental condition.

Q. Since your examination of Mr. Price on the 28th of March have you seen Mr. Price, and if so, state under what circumstances? A. I have seen Mr. Price in court and have heard the examination Judge Campbell conducted and have heard Mr. Price's testimony as a witness.

Q. You have also heard testimony of the plaintiff's medical witnesses? A. I have.

Q. You have been in court the whole time during the trial, have you not? A. I have been here since the trial started.

Q. And have heard also the lay witnesses who have testified? A. I have.

Q. As to his condition on the night of February 16th? A. I have.

Q. And subsequent to that time? A. I have heard the witnesses.

Q. And as a result of this additional observation and knowledge have you changed your opinion as to the nature of his trouble? A. Not as to the nature of his trouble. I see no reason to change the view which I formed at the time of the first examination, namely, that Mr. Price was suffering from some lesion of the brain.

Q. Have you changed your view as to his mental condition? A. I have.

Q. Will you explain the change of view which you have undergone and the reason for it? A. Since having the opportunity of observing Mr.

Price further and hearing his examination in court, I have come to the conclusion that the apparent mental disability which he exhibited in my first examination was not genuine.

Q. And what has caused you to change your opinion in that respect? A. The fact that Mr. Price exhibited such good mental capacity on the witness stand and the fact that he had been instructed not to give information at the time of our first examination.

Q. If you had seen the same conditions in Mr. Price on the 20th of March that you saw in him at Court would you have reached the same conclusion as to his capacity to testify? A. I would not, I would have had no hesitation in saying that he was capable of testifying.

Q. What is his present mental condition in your opinion? A. I think at the present time he is approaching a stage of recovery from his mental trouble which evidently dates back to February 1915; that at the present time he still has some nervous symptoms as exhibited in somewhat unstable reaction, little easily excited, perhaps, by unusual stress.

Q. Have you any idea as to the length of time which will probably elapse before a recovery? A. As to that I could not say. Now I have no way of knowing when he is likely to be fully restored, it may be a question of months or it may be longer.

Q. You heard Dr. King's testimony in regard to his opinion of Mr. Price's ability on the 28th of March 1919? A. I heard, as I recollect, Dr. King testify that on March 28th, the time of our examination, Mr. Price then was in no condition to give testimony as a witness.

Q. You agreed with that opinion? A. I do.

Q. So far as the manifestations were concerned? A. I do.

Q. Now, as to the real condition of Mr. Price at that time, what is your opinion? A. I am of the opinion that if Mr. Price had made an effort, if he wanted to cooperate with us on March 28th, he could have given testimony—he could have given a statement; a good account of his history; he could have made the same appearances as he did here in court.

Q. You heard Dr. King's testimony, to the effect as I recall it, that he thought Mr. Price "put one over" on him? A. I did.

Q. Do you agree with that? A. Yes, I think Mr. Price was successful in deceiving us on March 28th.

Q. Now, have you an opinion as to what caused Mr. Price's condition? A. His mental trouble?

Q. Yes. A. My opinion of Mr. Price is that he suffered from a brain condition in the nature of a hemorrhage which has exerted an influence on his mental capacity; that formerly it was quite a severe influence, it disabled him mentally, but that there has been a gradual improvement as usually occurs in these cases.

Q. As to the cause of that condition have you any opinion? A. Well, as to the cause of a condition of that kind, one in forming an opinion, has to take into consideration all the history of the case and the attending circumstances under which the disability developed. In the first place, one had to determine whether or not the hemorrhage was the result of external violence, or not, and whether or not there was a brain disease which would cause this hemorrhage, or whether or not there was some unusual stress or strain at that time which might account for this bleeding.

Q. Now, you are using the phrase "brain hemorrhage" and I think the phrase "spontaneous hemorrhage" has been used throughout the trial.

Will you just explain to the jury what you mean by brain hemorrhage, and whether the expression "spontaneous hemorrhage" is an apt expression of it. A. Well, a hemorrhage in the brain or about the brain is very much like a hemorrhage in any other part of the body. The brain is very richly supplied with blood vessels, both throughout its substance and the coverings which cover it. This term of spontaneous hemorrhage, I believe, is used in medical writings; but I personally do not believe it is a very good term, because I do not believe a hemorrhage ever occurs without some cause. This word "spontaneous" seems to carry the meaning that a hemorrhage occured without any special reason. It is true that there are hemorrhages of the brain and other parts of the body which we cannot explain until perhaps we get an opportunity to make a post mortem examination and then can find out why a particular blood vessel gave way. But it is often during life not possible to tell why the man should bleed. For instance, to use a common illustration, a man had a nose bleed. We do not assume he is suffering from any special disease, but he had this hemorrhage from the nose and perhaps we cannot explain it; but we must from the medical standpoint, at least, think that there was some reason for it, that there was some weakness at that particular point in the circulatory system, if one has a hemorrhage from the nose; so that I would say in regard to this idea of a spontaneous hemorrhage that—I think we can only say that spontaneous hemorrhages occur which we cannot account for, certainly not during life. Very often we do find an explanation for the hemorrhage of the person if the person finally dies and we have an opportunity to examine carefully the brain and the blood vessels.

Q. The term "spontaneous hemorrhage" as popularly used means there is a hemorrhage as to which the cause is not discoverable? A. Not observed, or not explained, not found.

Q. In your judgment, was there a hemorrhage in the case of Mr. Price? A. In my judgment he suffered from a hemorrhage, experienced a hemorrhage.

Q. And will you state whether or not in your experience this hemorrhage was due to external violence? A. In my opinion that hemorrhage was not due to external violence for two reasons, chiefly; one is that the medical men who observed him immediately after the alleged occurrence found no evidence of external injury or violence; and the second reason is that he presented no symptom of physical concussion. A concussion is a symptom of external violence to the head. It has both mental qualities and physical signs. The mental quality is that the man's mind does not work as well as usual. He may be unconscious. The physical signs are well recognized. They are interference with the circulation seen by the skin becoming pale and hands often clammy, the pulse getting weak, by shallow respiration, and in some cases vomiting. I think that covers the physical symptoms of shock or concussion.

Q. Now, will you go on, doctor, and state other reasons if you have them, why you conclude that this hemorrhage from which Mr. Price suffered was not due to external violence? A. Take into consideration Mr. Price's own statement of what happened, it further confirms my belief that it was not due to external violence. Mr. Price repeatedly has given an explanation that he was struck; that he was hit with a hammer, that someone hit him, and he also described the sensation as if something was dripping from his head, which would, to my mind, point to a hemorrhage.

Q. Do you recall also the question which he is said to have asked repeatedly, if there was blood on his face or head? A. Yes, I remember that it was testified that he asked if there was blood on his face, and an examination at that time showed there was no blood.

Q. And is that sensation frequently present in cases of brain hemorrhage or intra-cranial hemorrhage? A. Well, when there is a hemorrhage the patients very often have a peculiar sensation as if something has happened in the head. They sometimes speak of it as something breaking, or something giving away. That is quite common.

Q. Sensation of a blow also? A. Well, the sensation of a throbbing is often complained of. I do not remember that I ever heard a case say definitely—describe it as a blow.

Q. Now, as to the onset of unconsciousness is there any difference between the onset in the case of trauma and in the case of an intra-cranial hemorrhage? A. Well, that varies a great deal, as a rule the onset of unconsciousness is the result of trauma immediately. A man is struck and he is knocked unconscious. Whereas in believing in a brain hemorrhage the gradual loss of blood sometimes—usually does result in the consciousness becoming or slowly lost.

Q. And from the testimony in this case what do you conclude was the nature of the unconsciousness with which Mr. Price suffered or semi-consciousness.? A. My opinion is that his unconscious condition was due to the hemorrhage.

Q. And the fact that he talked to the engineer after he reached the station at Weehawken, did that have anything to do with your conclusion? A. It would. It would tend to show in my opinion a gradual interference with the brain function and that his consciousness was not immediately or in-

stantaneously lost, as one would expect after an injury causing concussion.

Q. In your judgment, where is this lesion of the brain, and where is the pressure? A. Well, our physical examination showed that the pressure was being exerted on the left side of the brain, and that part which is called the frontal lobe; that is one of the foremost—anterior lobe of the brain, the lobe which has to do with the higher mental functions, the reasoning, thinking and judgment.

Q. And with respect to the covering of the brain, where do you locate this hemorrhage? A. I am inclined to the opinion that the hemmorrhage is located outside of the outer most covering of the brain on account of the tenderness which he complained of so much, and also the fact that the spinal fluid was reported as negative.

Q. Would the spinal fluid show positively if there had been a hemorrhage of the brain substance, itself? A. The spinal fluid is usually discolored and tainted where the hemorrhage is into the brain substance itself, or lying next—lying in the membrane which is immediately on top of the brain. There are really three membranes covering the brain, and if the hemorrhage is underneath the outer one you can expect to find traces of it in the spinal fluid.

Q. What is the outer covering called? A. That is called the dura, dura mater.

Q. Now, loss of consciousness you have testified might be occasioned by a hemorrhage not due to external violence. Are there other causes of loss of consciousness? A. Yes. Consciousness may be lost under a variety of conditions. It may be lost from any brain disease, such as a tumor growing in the brain; it may be lost as the result of alcoholism or as the result of an epileptic fit, or as the result of trauma—we have mentioned that.

The result of a hemorrhage which is a very frequent cause of loss of consciousness, because hemorrhages are of very frequent occurrence into the brain. Anything which—occurrence which tends to interfere with the brain function, could, of course, result in unconsciousness.

Q. Will you state whether or not you have had cases of insanity resulting from a hemorrhage causing pressure on the brain, and the hemorrhage being located on the outside of the dura? A. Well, hemorrhages to the brain and into the membrane are, of course, of very frequent occurence. One finds those in any series of cases that come to examination. I have had a number of cases in which a diagnosis of hemorrhage was made. Some of them have come to autopsy and have permitted us to confirm the diagnosis that was made. Of course, no two cases are parallel as to symptoms, and as to the actual occurrence of extra-dural hemorrhage. I recall one case of a man who was apparently normal, suddenly became confused and unable to orient himself and he later died, and we found that he had a rather excessive hemorrhage into the brain substance and also under the membrane.

Q. Do you frequently have cases of insanity caused by intra-cranial hemorrhage? A. Well, intra-cranial hemorrhage?

Q. Yes, brain. A. Brain hemorrhage, that is a very frequent occurrence and as a result of the brain hemorrhage, depending upon the damage which is done to the brain, one has mental disability or insanity.

Q. And are those cases frequent? A. Yes, they are quite frequent.

Mr. Carey: Cross examine.

Cross Examination by Mr. Simpson:

Q. Is Mr. Price in your opinion insane? A. At the present time?

Q. Yes. A. I think he is not normal.

Q. Well, I asked you whether he is insane or not? A. Legally insane? I should say yes.

Q. Well, what is the distinction between legally insane and medically insane? A. Well, there is no medical——

Q. Insanity? A. —insanity.

Q. They are all the same to you medical men. Now, doctor, at this examination by the judge while the jury was absent you were sworn as a witness, weren't you? A. I was.

Q. And you were sworn on an inquiry which you understood to be to ascertain whether or not Mr. Price was capable of telling his story in court to a jury, is that a fact? A. Yes.

Q. Did you testify on that examination in the absence of the jury as follows: "Q. And did you reach a conclusion? A. I reached a conclusion as to his mental state at that time.

Q. Now, will you state whether or not your examination had for one of its objects the ascertaining of whether he was in condition to observe, recall, narrate, and whether he could understand questions put to him, and understand—if he could give a reliable answer thereto, and whether he would be able to understand the nature and obligation of an oath? A. It was.

Q. And what conclusion did you reach with respect to those elements, doctor, of Mr. Price's mental condition? A. My conclusion was that he had very little power of observation.

Q. (Repeated by the stenographer) And what conclusion did you reach with respect to these elements, doctor, of Mr. Price's mental condition? A. (Repeated by the stenographer) My conclu-

sion was that he had very little power of observation (continuing); that his ability to concentrate his mind and to pay attention to the questions was seriously impaired; that he was unable to recall events that happened prior to February 16, 1915, and also events that had happened subsequently; that he was unable to communicate, to narrate his experiences at or on February 16, 1915, and subsequently; that he seemed to have no recollection of important personal data; and in the condition in which we found him on that day, my conclusion was that he would not understand the nature and implications of an oath.

Q. Have you finished the answer, doctor? A. Yes.

Q. Now, doctor, did the physical examination which you made of Mr. Price on this occasion enter into the answer which you have given? A. It did.

Q. Forming a part of the basis— A. It does.

Q. —of the answer? Will you state what the physical examination consisted of? A. The physical examination consisted of a careful testing of the nervous system, more particularly, and of the other bodily functions in a less detailed way. We found that Mr. Price complained of pain on the left side of the head; that there were certain symptoms on the opposite side of the body which would correspond to a condition affecting his brain on the left side. These symptoms were inability to maintain himself in an upright position when standing with his feet together and his eyes closed—that is a test—test of the equilibrium. We found that there was a difference in the nervous control of the two sides of the body as evidenced by a difference in the reflexes, the skin reflexes; that the reflexes of the right foot were different from those of the left foot; that the reflexes on

the right abdomen were different from those on the left side; and in addition we found that there was some evidence of intra-cranial pressure, that is to say, an increased pressure within the skull. Those were the principal tests; there were, of course, a good many other tests which we made but which I have not referred to.

Q. You asked Mr. Price a good many questions on the occasion of this examination? A. We did —I did.

Q. What was his general attitude with respect to understanding the questions which you asked him? A. It was difficult at times to tell whether he understood or not. He gave us very often no answer at all. On other occasions he would give a brief answer, which allowed us to form some idea as to the general condition of his mind.

Q. In your opinion, was he doing as well as he could? A. We asked him that question and tried to get him—a statement from him as to what effort he was making, as to whether he was co-operating with us. In my opinion he was co-operating with us to the best of his ability.

Q. You did not think that he was consciously resisting? A. He showed a disinclination at times to continue the examination. In my opinion that disinclination was based on his inability to give the information desired.

Q. As to the readiness with which he grasped the questions which you asked, what have you to say? A. He seemed very slow in grasping the questions, shown by the constant repetition of even very simple questions.

Q. As to his ability to express himself in answering, when he did answer, what have you to say? A. His ability seemed to be very slight. We had great trouble in getting answers even to very simple questions.

Q. From this examination which you made there, both physical and mental, what is your view with respect to his capacity to understand the nature of an oath? A. My opinion is that at that time he would not be able to understand the nature or the implications of an oath for the reason that his power of attention his mind on any subject and the slowness with which the mind seemed to work, would in my opinion make it very difficult for him to understand any sort of a proceeding, especially a complicated proceeding or understanding, such as is implied in an oath." Now, then, having read all that to you, did you testify to that at the examination before the Judge? A. That is my testimony as I recall it.

Q. Is it your opinion now? A. No, I have it stated that my opinion has been modified.

Q. Did you testify this: "Q. What have you to say as to his orientation? A. He apparently did not know his location and did not know the time. He told us that he did not know the names of those about him. We asked him particularly that question. Finally, I put the direct question to him, if he knew Dr. Evans, and his answer was, to the best of my recollection, 'No.' We asked him further, in regard to his orientation, if he knew the name of the institution, its location, or the time of day, and I could not get anything from him, could not get that he had such knowledge. I think, finally, he did say that this was a hospital, that he was in a hospital, but as to its location he could not give us any information.

Q. As to his mental condition, what did you find? A. We found this condition of indifference and with occasional evidences—that he was rather restive under the examination and wanted to leave the room, showing perhaps at certain amount of times certain indications throughout the examination.

Q. As to the rentenative quality of his mind, what did you find? A. We made a special effort to test that. I asked him to repeat after me the names of the physicians present and then to give immediately—five what I had told him. He became confused, made a mistake in identifying the physicians. And I also gave him the date or day of the week, month of the year, asked him immediately to repeat it after me, but we got no response.

Q. Now, what are the prominent outstanding symptoms of post traumatic''—that is enough. You testified to all that I have read to you, didn't you? A. To the best of my recollection, I did.

Q. And you said in your opinion that this man was not capable, because of his insanity, of being a witness, that was your opinion? A. That was the opinion I formed at that time.

Q. That you gave. Now, then, I understand you now, that, having given that testimony, then you saw him examined by the judge, is that a fact? A. I did.

Q. And that examination by the judge, in your presence, caused you to change your opinion about the diagnosis you made on the 28th of March, didn't it? A. That examination, and the fact that he had been instructed not to give us information on the 28th of March.

Q. But I am talking now not of his appearance before these gentlemen. His appearance before the judge and his examination by the judge caused you to change your opinion and made you think that your opinion already given under oath was of no value, didn't it? A. Not that alone. I took into consideration the other facts which I mentioned.

Q. But when you heard the examination you had already sworn to Mr. Carey—that when you

heard him examined by the judge you then changed your opinion, is that right? A. That was an element in the situation.

Q. All right. You knew that this inquiry was to aid the judge to say whether or not this man was capable of being a witness, didn't you? You knew that was the inquiry? A. Yes.

Q. All right. Then, if the examination by the judge changed your mind, and made you know that the testimony you had given under oath was worthless, why didn't you get up before the judge decided and say through Mr. Carey or yourself: "Judge, I have made a mistake in my testimony"? A. I did not have an opportunity.

Q. Why, you had the opportunity before the judge had decided that he would hear this man, to get up and say "Judge, don't pay attention to what I have said. What I have said is all wrong" didn'tyou? A. I have said now that I changed my view upon further facts.

Q. Yes. You didn't tell the judge who was depending, as far as you knew, upon your testimony as to whether he would allow this man to open his mouth to this jury or not, did you? A. I could only give the judge my opinion formed as the result of my examination.

Q. Yes, but you changed that opinion that you had given under oath, according to you, when you heard the man testify in court before the judge, and let the judge go on and decide, relying on an opinion given by you that you knew was not true, didn't you? A. I changed the opinion on the addition of further facts.

Q. All right. Let us get this one fact: Did you get up after you had changed your opinion, due to hearing this man answer the judge's questions and tell the judge "Don't rely on my evidence, Judge, I made a mistake"? Did you do that or didn't you do it? A. No, I did not do that.

Q. Now, you say now that you changed your opinion entirely as to the 28th of March examination. You now have an opinion which is different. Is your opinion different from that formed on the 28th of March as to the mental disorder he is suffering with? A. About the nature of the mental disorder?

Q. Yes. A. No.

Q. That is, now you have the same opinion that you had on the day that you testified before the Judge as to his mental disorder, whatever that is? A. I have the same opinion as to the nature of his mental disorder.

Q. As to the nature of it? A. But the symptoms are not what I thought they were.

Q. Now, do you say that you—you took his blood pressure, didn't you? A. Yes, sir.

Q. And his blood pressure was normal, wasn't it? A. That was a hundred and thirty, as I remember it, or one hundred and thirty-two.

Q. Is that normal? A. That is within normal limits.

Q. Would that be a symptom of any tendency towards spontaneous hemorrhage? A. That would not indicate anything one way or the other, alone.

Q. And does the testimony of Price here change your finding made through a physical examination of him? A. No.

Q. Your physical examination you still rely on, don't you? A. Yes, that was entirely objective, that is something that was not under his voluntary control.

Q. And how do you know of his oral hallucinations? A. I don't think he has any oral hallucinations.

Q. Well, if he says he hears a steam whistle in his ear all the time and he is telling the truth, would that be a hallucination? A. No, that is

simply an ear noise; that is very common. A person may have wax in the ear and hear all kinds of noises.

Q. Most everybody hears a steam whistle? A. Oh, it is a very common sound in ear trouble. That is not hallucination by any means.

Mr. Simpson: Well, that is good enough. The doctor says under oath that everybody is apt to hear a steam whistle when there is none around.

Mr. Carey: He said nothing of the kind.

Q. That is what I understood you to say, doctor, isn't it? That anybody is apt to hear a steam whistle in his ear when there is none around? A. No, I said anybody was apt to have ear noises.

Q. Well, if this man does think he hears a steam whistle in his ear and there isn't anyone blowing, isn't that a hallucination? A. Yes, that would be a hallucination.

Q. And if he thinks that his head is going up and down, is that a hallucination? That is, if the skull is not rising up and going down? A. No, that is simply a sensation, a throbbing sensation.

Q. But if he thinks the whole skull is lifting when it is not, is that a hallucination? A. Well, that would be a delusion.

Q. What is the distinction between delusion and hallucination? A. Delusion is a false belief, and hallucination is a false sense perception.

Q. Now, you said to Mr. Carey that one of the tests of finding a brain hemorrhage if it is without external violence is traces in the spinal fluid? A. Yes, we discussed that.

Q. Did you take the spinal fluid and examine it? A. No, I did not.

Q. If Dr. Donnett was testifying correctly and truthfully that he did take his spinal fluid and ex-

amine it and found no traces of the blood, would that have any effect of excluding your diagnosis from your mind A. No, it would tend to confirm it.

Q. If he didn't find the blood? A. If he didn't find the blood.

Q. I thought you said that blood in the spinal fluid was a symptom of a hemorrhage. A. It depends on where the hemorrhage is.

Q. In the brain? A. Yes, in the brain. If it is in the brain itself, then I would expect to find blood in the spinal fluid.

Q. That is why I asked you. And if it is not in the spinal fluid, do you say it would confirm that diagnosis? A. Yes.

Q. That is, the absence of the symptom would confirm your diagnosis? A. No, the location of the hemorrhage is what we are discussing.

Q. No, we are discussing the presence of the hemorrhage in the brain? A. Its location.

Q. Where do you say this hemorrhage is in your opinion— A. It depends on——

Q. Well, in your opinion where do you say it is? A. In my opinion the hemorrhage is on the outer covering of the brain.

Q. Well, would that hemorrhage leave traces in the spinal fluid? A. I don't think it would; in my experience it would not.

Q. Is sneezing a symptom of bursting a blood vessel? A. I don't think so.

Q. And have you ever of your own personal knowledge known of a man who had a blood vessel in his head broken by going through the West Shore tunnel and inhaling the gas? A. No, I have not. I know gas is pretty bad in there sometimes.

Q. I know it is. But have you ever under your personal observation had a case of a commuter or railroad man who had a blood vessel burst because

of the gas in the West Shore Tunnel? A. No, I never have.

Q. Now, doctor, with the physical examinations that you made of this man he could not deceive you on that, could he? A. Not as to the reflexes and the symptoms of the pressure.

Q. And isn't it a fact that over three fourths of your examination, your oral examination, were made up of questions asked him which he would not answer at all? A. I have not counted the number.

Q. Isn't it a great majority of cases that he gave no answer? A. A large number he gave no answer at all.

Q. Were you urging him to answer? A. We urged him, yes.

Q. And didn't you swear at this examination already referred to that in your opinion that was not a voluntary condition of his, but that he was not able to answer? A. I thought at the time he was unable to answer. He deceived me.

Q. Now, then, will you describe what you think he is suffering with? A. In my opinion he is suffering from a hemorrhage which I have located as on the left side of the head on the outer covering.

Q. And do you exclude the use of the word "spontaneous"? A. I did exclude it.

Q. Do you use it? A. Well, no, I don't use it unless I can explain what I mean by it.

Q. Well, you mean spontaneous by it? You used it. A. I don't think that there is any such thing as spontaneous in the sense that that is something that happens without any cause.

Q. Do you really think this hemorrhage happened without any cause? A. I think there must have been a cause, certainly.

Q. Take this man Price between thirty and thir-

ty-five, suppose his blood pressure was normal, his kidney, his liver, that he had no syphilis, he had no arterio-sclerosis, no constitutional disease—would you say that a man of that kind was liable in the full vigor of his manhood to have a blood vessel break in his brain? A. Well, if you exclude everything, all possible diseases, I could not answer the question, I don't know.

Q. I mean there must be some—there is something behind the man's condition that produces this hemorrhage, isn't there? A. Certainly, that is what I tried to emphasize, there must be a reason for the hemorrhage.

Q. And that must be a disease of some kind? A. Not necessarily.

Q. Well, what else? A. Well, it might be a temporary disturbance in the blood pressure, or intra-cranial pressure, it would not be looked upon as a disease any more than a hemorrhage, as I said a moment ago, from the nose, would be looked upon as a disease.

Q. What is intra-cranial pressure—what is that that you spoke of? A. Well, that is a normal pressure that exists in and around the brain.

Q. Normal pressure? A. Normal pressure.

Q. Well, why would normal pressure make a blood vessel burst if the blood was in healthy condition? A. Normal blood pressure doesn't make it burst unless the vessel was diseased.

Q. And what is the cause, in your opinion, of those diseases that caused that condition of the blood vessel—of the blood vessel? A. Well, the blood vessel may be diseased from a great variety of causes.

Q. Well, can you give them all so that we can see whether Price has them? A. No, I cannot give you them all. I do not believe I know them all, but I can give you the most important ones.

Q. Did you find any in Mr. Price? Did you find any of those diseases in Price? A. I didn't find any evidence of the blood vessels as far as I could examine them and feel them, as were diseased, I cannot examine the blood vessels of his head.

Q. No, but so far as you could examine, you can not now establish to the jury that he had any of those diseases which would produce a diseased blood vessel, can you? A. I do not know what you mean by those diseases.

Q. Well, you have mentioned them. I asked you what are the causes of a diseased blood vessel. You say many. A. Many.

Q. Well, did you find any of these present in Price? A. I didn't find any bodily disease which I thought would cause the hemorrhage.

Q. Did you find anything else which you thought would cause a hemorrhage, present in this man? A. No, I could not account for it.

Q. Well, then it is pure speculation on your part, isn't it? A. No, my opinion is formed on the testimony of what happened to him, and upon his symptoms here.

Q. Well, take this testimony: Suppose this man was going along in an engine cab and his head came in contact with an iron bar and he was taken out of the cab in a dazed condition, taken to a hospital unconscious, and diagnosed by one of the physicians there as having concussion of the brain, and that he was put to bed, said that somebody hit him on the head with a hammer, would ring a bell and wouldn't know why he rang it, would become irrational, and finally developed this condition that you found, would you still say it was due to a hemorrhage of the brain—this condition? A. Well, I would not say one way or the other.

Q. You wouldn't think the iron bar had any ef-

fect on him at all—hitting his head? A. Well, it would depend on how he was struck. And with what force and all the attending circumstances.

Q. Well, suppose it hit him on the left side of the head with sufficient force to produce concussion of the brain, would you then say that the iron bar had produced the condition, or that this hemorrhage coming from a diseased blood vessel had produced it? A. Well, if the iron bar hit him on the head with sufficient force to produce concussion it might also have produced a hemorrhage.

Q. No, but if the iron bar hit him with sufficient force to produce a concussion, would that concussion account for his present condition with or without a hemorrhage? A. I don't think so.

Q. Well, with a hemorrhage, would it? A. Yes.

Q. That is, if the iron bar produced the hemorrhage? A. Yes.

Q. Now, a hemorrhage in time would be absorbed, wouldn't it, taken up? A. Well, that varies a great deal, some are and some are not.

Q. Here is a man now you say is insane and this accident happened on the 16th of February, 1915, that is over four years ago. Would you expect a hemorrhage to be absorbed in four years? A. Well, they often are absorbed within less time than that.

Q. What physical sign did you find of intracranial pressure? A. Why, we found some evidence of pressure in his optic-disc, the examination of the eye.

Q. You are not an eye specialist, are you? A. No; I am not an eye specialist, but I am familiar with the use of the opthalmoscope.

Q. But you didn't dilate his pupil with any drug before you made the examination, did you? A. No, we were able to see the disc without doing that.

Q. You didn't need to do that? Now, you were

offered every opportunity to examine him in Morris Plains, Dr. Evans didn't stand in your way at all, did he? A. No, Dr. Evans didn't at all stand in our way.

Q. Now, assuming that Charles Price was committed to the New Jersey State Hospital for the Insane at Morris Plains on April 15, 1915, by two reputable physicians of Jersey City and on the Court Order signed by a Judge of the First Criminal Court of Hudson County because of the said Charles Price being a lunatic and assuming that the Medical Superintendent of the New Jersey State Hospital, Britton D. Evans, and a member of his staff, Dr. G. B. McMurray, have testified that this Charles Price has been a patient at the New Jersey State Hospital for the Insane at Morris Plains continuously from the date of his admission and during that time has complained of severe pains in the left side of his head and that he has auditory hallucinations as the blowing of locomotive whistles and steam continuously during this time and that he has periods of confusion as frequently as three or four times a week lasting from a few hours to a day, times when he is sullen, irritable, depressed and other days when he is more comfortable in mind, periods when he is extremely apprehensive having numerous phobias as the fear of engines and railroad trains, memory impairment especially for recent events, disorientation for time and place and inability to proper concentrate, periods of excitement and violence and lack of initiative, inability to properly apply himself for any length of time at any employment, evidence of mental deterioration and a history of having received an injury to his head; assuming, doctor, these facts set forth, are you of the opinion, as a scientific man, basing your opinion exclusively upon these facts and exclud-

ing all other facts that the person herein described, the said Charles Price, is sane or insane?

Mr. Carey: I object to the question, because, in the first place, it has been read too rapidly for understanding, and secondly, because it includes in fact, things which are not in the case, I think; I have not been able to follow it.

Mr. Simpson: Withdraw it.

Q. Now, you wrote an article, didn't you, doctor, on traumatic psychosis? A. No, I don't think I ever wrote an article on it, I have given lectures on it.

Q. Well, "the following notes are prepared for the committee by Dr. George H. Kirby, director, Psychiatric Institute, Ward's Island, New York City," this being statistical matter of the institution for the insane, sent to Morris Plains, 1918. Do you remember anything like that? A. I didn't send it to Morris Plains.

Q. No, no, of course, but you sent it to the world, I mean they got it in their treatment of the insane. I understand you could not send that to every hospital. A. That was distributed by an association. I was asked to prepare that phamplet.

Q. Is this written by you: "Following are the most familiar types of clinical psychosis which were specified in the statistical record of the hospital: a"—I do not read. "b:Traumatic constitution characterized by a gradual post-traumatic change in disposition with vaso-motor instability, headaches, fatigue, irritability or explosive emotional reaction, usually hypersensitiveness"—I will leave that hypersensitiveness out—is that a correct statement of traumatic constitution?

Mr. Carey: The doctor ought to have an

opportunity to look at that. Some of it has been left out.

A. I recognize that.

Q. Look at your own written work. A. I recognize that.

Q. Is that true, doctor? A. Yes, sir.

Q. Is that correct? A. That is correct, to the best of my ability.

Q. Doctor, are those correct? You said they were, I think. Now, don't you find those in Price —vaso-motor instability, headaches, fatigue, irritability or explosive emotional reaction—did you find those all in Price? A. No; I didn't find all those.

Q. Well, what didn't you find in him? A. Well, I didn't see any explosive emotional reaction.

Q. Well, when he told you he was tired and get out, pointing to the door, don't you think that is an explosive re-action? A. No, sir.

Q. Why not? Why wouldn't it be? A. I think he didn't want to be examined.

Q. What do you mean by "explosive emotional reaction"? A. That is sudden outbursts of emotion; sudden anger.

Q. That would not be when Mr. Carey interrupts one of my questions, would it?

Mr. Carey: It might be with you.

Q. Didn't you hear Dr. Beling testify to unstable emotion? A. Yes; I think he is unstable emotionally, but not in an explosive way.

Q. Well, you make that or. You say vaso-motor instabilty, headaches, fatigue, irritability, or explosive emotional re-action. Now, didn't you find those in him? A. Why, I didn't see any irritability.

Q. Well, let us look at that examination. A. I

think I said he was somewhat restive under the examination and rather disinclined—he wanted to go out.

Q. Well, he told you to get out of the room, didn't he, pointing to the door, that he didn't want to be bothered? A. No; he said he wanted to leave.

Q. Didn't he point to the door and say "I don't want to be bothered?" A. Yes, he said, "I want to go out."

Q. Didn't he point to the door without saying "I want to go out" and say "I don't want to be bothered?" A. I don't remember that now. But my impression is that he wanted to go out.

Q. Question, page 4, by Dr. Kirby "I want to be sure you are making an effort to answer, are you? Yes. I would rather not be bothered" (pointing to the door.) Don't you think that was irritable? A. No, I would not call that irritable, Mr. Simpson.

Q. All right. Now, if he said he had been hit—

Mr. Simpson: Withdraw that.

Q. There are periods in traumatic insanity when one has a better day than others, when his mind is clearer than other times? A. That condition varies from time to time in almost all psychoses.

Q. When a patient is in a bad condition, isn't he apt to have hallucinations that he would not have at other times? A. I don't think in traumatic constitution that you have been asking me about, you ever get hallucinations.

Q. Well, what I want to find out is this: When a patient is in a bad day, would there be hallucinations present which would not be present on a good day? A. No, I don't think he would have any hallucinations.

Q. Well, for instance, if a man said to you on

the 28th of March that he was hit on the head with a hammer and that was a hallucination, and on a clear day that he could tell exactly what happened, wouldn't you call that a hallucination if he had not been hit on the head with a hammer? A. No; I call that a delusion; that is false belief.

Q. Let us get that one thing clear. I understood you to say that when you saw him on the stand here, you thought he was competent as a witness, that he had powers of observation, recollection, that he understood questions and that he answered them intelligently, and that he understood the obligations of an oath; is that what you now say? A. I don't think I have passed upon his competency as a witness, but upon his mental condition at that time.

Q. Well, you said from what you saw of him on the stand you formed an opinion which changed your mind and made you think he was in better condition than you thought he was? A. Yes, sir.

Q. Well, how much better? A. A great deal better. So that I thought he was approachig a normal state of mind at the present time.

Q. Well, did he testify like a normal man who was testifying about something that he had seen and heard and known about, or did he testify like a lunatic who was testifying with hallucinations? A. No, he didn't testify at all like a lunatic. He testified like a man who was—who has good control over himself, good thinking capacity, and recollection and memory, and condition.

Q. And who was testifying to something he had seen? A. Well, he was testifying about his life, he gave his history and experience.

Q. What I want to find out is—I want to know whether this jury when they go in the jury room will go in with your imprimatur of this man as a witness whom you say had recollection and had

intelligence and knew what he was talking about, and who was not talking like a lunatic, or who was talking like a lunatic. That is all I want to know. A. I don't think he was talking like a lunatic. I don't think anybody would gain that impression from him.

Q. Is a blow on the head one of the greatest stresses to which the brain can be subjected? A. It is.

Q. It is as much the local effect of the injury as the general effect of the commotion on the brain which causes serious trouble? A. Well, I could not say, it depends all together on where the injury is, what its local effects are.

Q. Well, the blow or jolt to the head have any influence on the molecules of the brain as well as the brain mass? A. Well, the affect of the molecules—I don't know what you mean by molecules.

Q. Would a blow on the head set up a commotion of the brain besides dis-arrange other microscopic structures such as cells? If the blow is sufficient to produce complete loss of consciousness, will there not be a dazed bewildered condition, and the patient confused? A. Well, if he is unconscious, he is confused.

Q. May there not be a loss of memory more or less extensive, and more or less permanent—more or less permanent? A. Well, yes, loss of memory is a very frequent occurrence in traumatic conditions. Memory goes anterior to the accident as well as posterior.

Q. That is, will loss of memory be more intense following the accident than preceding the accident? A. No, I don't think so. There usually is a blank state of mind for sometime preceeding the accident.

Q. Would he experience train sensations while in the state of coma or semiconsciousness in which

he would imagine that somebody had struck him with a hammer, although this was not true? A. Well, I cannot say, I don't know.

Q. Does a man under a blow on the head sufficient to set up a commotion in the brain become dizzy and act like a drunken man? A. Well, if he is concussed he is apt to be dizzy.

Q. Is it a fact that in some cases no particular results are noticed after the trauma until after the lapse of a few hours or days, when suddenly a traumatic psychosis develops? A. I haven't seen any such case.

Q. After the psychosis has run the acute course, does a condition of chronic insanity or secondary dementia follow? A. Some cases are chronic.

Q. One thing I did want to ask you: I understand you to say that because there was no swelling on the man's head, or no broken skin that you don't think the blow, if he got a blow, was sufficient to produce concussion of the brain? A. That would be one of the things I would take into consideration.

Q. Well, how do you account for this case of a man Dr. Evans told us about who was hit on the head and showed no mark at all, went on playing billiards, and then went home and said he was dizzy and died in five hours from concussion of the brain? How do you explain that? A. I couldn't explain that. I have no facts at hand to offer an explanation of it.

Q. You think Dr. Evans is doing the right thing in keeping this man in the insane asylum? A. Oh, I think the man needs treatment, yes.

Mr. Simpson: That is all.

Redirect Examination by Mr. Carey:

Q. Doctor, you were asked about hemorrhages of the brain in people under thirty-five years of

age on your cross examination. Will you state in your experience—will you state any experience you have had in that connection. A. Well, I have seen a considerable number of cases in which the diagnosis of brain hemorrhage was made under the age of thirty-five.

Q. Were those cases, cases produced by external violence? A. No external violence could be established in those cases I am referring to.

Q. Can you give some example which has come under your observation? A. Well, I have recently seen a soldier, who, after a very fatiguing campaign was resting up, and rather suddenly he became confused, he could not talk rightly, and that condition involved also his speech faculty. He couldn't talk clearly, and the examination showed that there was nothing to account for that condition in the way of disease. He was twenty-three years old and he had no syphilis or other constitutional disease. It was a hemorrhage—the diagnosis was hemorrhage. That was one case of a young person. There were a number of other cases, the details of which I cannot recall now. I think you will find that it is generally admitted that hemorrhages occur from all ages from childhood and up.

Q. And is that your experience in your practice? A. Well, I have never seen a hemorrhage in a child because my practice has not taken me in touch with that class of patients, but I have in a number of young people.

Q. But you have from twenty-five to thirty-five years of age? A. Yes, from twenty-five on.

Q. And have you had numerous cases of those ages? A. I would not say numerous I have had a good many sir.

Q. Did you at any time see any sudden outburst on the part of Mr. Price? A. None at all.

Q. Rather mild in his manner, wasn't he? A. He was rather mild and rather insistent in not wanting to give information.

Q. He was mild when you were up at the hospital, was he not? A. Yes.

Q. Not peremptory in any of his statements to you? A. Not at all.

Q. You were asked about traumatic hallucinations in your examination. What is a traumatic hallucination? A. Well, a traumatic hallucination is not differentiated from any other kind of hallucination only that it may be said that a trauma sometimes determines a hallucination. An individual may hear voices, imagine people are talking to him. That may be due to mental disturbance connected with trauma, or not.

Q. It might be connected also with hemorrhage not resulting from trauma might it? A. Yes; any form of insanity is liable to be accompanied by hallucinations.

Q. What do you understand by a traumatic constitution? A. Traumatic constitution is a nervous —state of nervous instability which not infrequently follows head injury. Depending on the severity of the trauma there would be a corresponding severity of symptoms. It is really more of a neurosis than it is a psychosis.

Q. Did you find that condition in Mr. Price? A. No. I didn't find any symptoms of that.

Q. Now, you say that the traumatically insane have their good days and their bad days? A. Yes, as every insane person has.

Q. And is that frequently true of insane persons who are insane from hemorrhages not caused by a trauma? A. Yes, that is very common in all organic brain disease.

Q. You have no way of ascertaining or judging whether Mr. Price in his testimony was telling

the things which he had actually seen, had you? A. Referring to what period, sir?

Q. Referring to the period—well in February 16th, 1915, as he was coming down on the train? A. No, I have no information on that subject.

Q. Now, these examinations of the eye which you made and which were asked about on cross examination, are those conditions which you described constant or variable? A. Oh, they may vary from time to time depending on the intra-cranial pressure; that is the pressure within the skull.

Q. And that variation in the intra-cranial pressure is due to what? A. Well, that is due to the emotion, condition of the circulation, chiefly; vaso-motor or sympathetic control.

Q. Now, in cases of insanity are the eyes frequently examined? A. Yes, it is one of the ordinary tests.

Q. Repeatedly examined in the same patient? A. Yes, in order to——

Q. And is there or is there not a good deal of variation in eye condition in the same patient? A. Yes, I think that is generally admitted, that the signs vary from time to time, even from day to day.

Q. Do neurologists make these eye examinations? A. Why, I think practically all neurologists who are prepared to make a thorough examination make an eye examination.

Q. They do that without calling in the eye specialist? A. That is a custom at least in nervous conditions that you are dealing with.

Q. Is it necessary to dilate the pupils of the eye in order to determine whether there is intra-cranial pressure? A. Well in some cases it is; but in the majority of people with normal pupils, and pupils of average width or size there would not be any necessity for it.

Q. Was there any necessity of dilating the pupils of Mr. Price's eyes? A. We didn't find any because we could see the disc very clearly without that procedure.

Q. Pupils opened in Mr. Price's case? A. Pupils were medium size.

Q. Yes, sufficient for the examination? A. Yes.

Q. At the time when you made the examination? A. Quite so.

Mr. Carey. That is all.

Recross Examination by Mr. Simpson:

Q. Is this the history of the physical examination you gave him: "After slight stimulation of the muscles of the neck, perspiration has been brought out on the upper lip. Knee jerks are increased; equal on both sides. Elbow reflexes: Both arms equal but increased. Reflexes of the upper extremities are moderately exaggerated. Hand grips: equal and strong on both sides. When placed in the Rhomberg position, with both feet close together and eyes shut, he sways and tends to fall backward and to the right. Same reaction on repeated tests. Difficult to get patient to assume positions for tests. When standing on the right foot, tends to fall to the right and backward. Balancing on the left foot falls toward the right. Heel and toe tests: Forwards shows slight tendency to lean to the right. Backward he made an attempt and refused. Said it made him dizzy. "Now what did that indicate? A. Well, these symptoms all refer to the lesion which I have spoken of.

Q. What is the lesion? A. Well, the lesion is the seat of the disease.

Q. What is a lesion? A. Lesion is the seat of the disease, the diseased process.

Q. Seat of an injury also? A. Well, the injury may cause a lesion.

Dr. MacMurray, (recalled) for Defendant—Direct

Q. Now, the abdominal reflexes, you took them standing did you? A. Yes, sir.

Q. Is that the proper way to take them? A. They can be taken that way just as well as in any other position.

Q. Did you take them when he was lying down? A. The position does not influence him.

Q. Did you take them while he was lying down? A. No, I didn't take them lying down.

Q. Was he lying down when you took them? A. No, he was not.

Q. He was standing up? A. Standing up.

Q. Can you tell whether they respond or not by taking them that way? A. Yes. Very well. There was no doubt.

Q. Systolic 132; diastolic 92—is that normal? A. Diastolic, that is within normal range.

Q. Those do not show any diseased condition of the blood pressure? A. It would increased—an increased pressure; it does not show anything about the vessels themselves.

Q. Well, isn't an increased pressure—

Mr. Simpson: Well, that is all right. That is all.

(Witness Excused)

DR. MACMURRAY recalled.

By Mr. Carey:

Q. Doctor, you testified before Judge Campbell in the absence of the jury did you not? A. Yes, sir.

Q. Now, will you state whether or not on the 20th of March, 1919, when Mr. Price was examined by Dr. Kirby and Dr. Beling you considered that on that day he was able to give a connected

and correct recollection of what took place on February 16th, 1915? A. As to the incident that led up to his accident, I testified to that before.

Q. What is it? A. I told you before that I believed his ability to testify to what occurred at the time he was hurt—I believe that, Mr. Carey, is implanted in his brain so that he will never forget it.

Q. Now, then, doctor, was this question asked of you. "In your judgment was he on that day" (referring to March 28th) "capable of giving a correct recollection of what took place on February 16th, 1915" And did you answer, "No sir"? A. I don't believe so, Mr. Carey.

Q. I show you this transcript—

Mr. Simpson: Well, that does not show anything, that transcript. He has got to show the shorthand notes.

The Witness: This is February 16th, is it before the accident?

Q. This is the day of the accident? A. I would say that at the time—

Q. Wait a moment, please. You are not asked to explain anything but to state whether or not you testified in that way. A. If that is a correct copy I must have.

Mr. Carey: Well, we will have the stenographer's notes.

Mr. Simpson: Oh, we will admit that that is the thing. I think there is no question that he so testified; I don't think there is any question that he so testified.

Mr. Carey: Well, it is admitted that he did so testify?"

Mr. Simpson: It is admitted.

Mr. Carey: That is all, doctor.

Mr. Simpson. That is all, that is the case. (Witness excused).

Mr. Carey: I offer in evidence this certificate—this certified record of the proceedings in Chancery, certified under the seal of the Court.

The Court: Any objection?

Mr. Simpson: None at all (Marked D. 13 in evidence).

DEFENDANT'S MOTION FOR A DIRECTION OF VERDICT.

Mr. Carey: If the court please, I move for a direction of verdict on the ground that no negligence has been established against the defendant; that the negligence set out in the complaint has not been established; that if Mr. Price received an injury, he receeived it because of his negligence, not because of any negligence on the part of the defendant company; that if he, in fact, received an injury, such injury arose out of risk known to, and assumed by him, in connection with his employment; that the other possible or probable causes of injury which may have existed and produced the result of and the injury to Mr. Price have not been excluded; that is, other causes than the careless, negligent placing of the fire hook by the defendant or its agent; and that the affirmative evidence in the case establishes the fact that Mr. Price was not injured by being struck by a fire hook being placed by any employee of the defendant in a position so that it extended far enough over the side of the cab to strike him when he passed on his engine. I think he was acting in the usual, ordinary way of a fireman in that location under those circumstances. The evidence in this case with respect to the placing of the fire hook is substantially the same as it was on the former trial of the case; that it was placed in the usual, ordinary, correct position. If so placed, there can be no recovery in this case under the decision of the Court of Errors on the former judgment.

The Court: Plainly speaking, I think your motion should be denied, because I think

there are several jury questions presented and I think all those questions as they now stand are jury questions. I will deny the motion.

Mr. Carey: I note an objection.

The Court: You may have it.

(Recess to two o'clock. P. M.)

SUMMING UP BY COUNSEL FOR PLAINTIFF.

(Mr. Simpson had spoken a few words of his summing up before the stenographer was requested to report it by Mr. Carey.)

In that trial we proved that Price was firing on a cab; that he approached a signal and called out the signal; that just after he approached the signal an engine passed him on which was an iron hook which protruded some distance; that he was found in the station in a state of collapse; that he was taken in the station master's office, blood was found on the pillow, he was taken to the hospital and he became insane, and the doctors diagnosed it as traumatic insanity; and the jury thought that was enough and found a verdict in our favor, probably the largest ever found in our Court House——

Mr. Carey: I object to stating the amount.

Mr. Simpson: You referred to the case. I have not stated the amount. You referred to the case. I do not think you had any right to.

I state, the largest ever given in this Court House——

Mr. Carey: I object to that.

Mr. Simpson: Well, the trouble begins with him, with his "fairness"——

The Court: Now, gentlemen, and Mr. Simpson, we have gone through this case very nicely indeed up to this time. Now, do not let us get into any trouble.

Mr. Simpson. Well, I say that the case went up, as he tells, to the Court of Appeals, and the Court of Appeals said we ought to prove by some one who saw the firehook protruding at the time. Whether that is right or not, that is the law. Well, then, what is our situation? Why, then, we have got to find out

whether anybody saw that fire hook, we have got to try to put this lunatic on the stand, if he is able to testify.

Now, then, before I come to that part of it I want to show you that this defense is what I call a deceiving defense. It is not a fair defense at all. Mr. Carey read to you from this transcript of the testimony of this lunatic, and he deliberately suppressed one line. line. Now, if I didn't tell you what that was you would have an entirely erroneous idea of what that man testified to, because he deliberately suppressed the line. I will show you how he read it to you:

"The Court: Now, you have heard what was read." Now, this is what was read: "Between Granton and New Durham they are in very bad position; the blocks are located on the outside between Granton and New Durham tower, and the engineer, to get that block, if he had to make it he would have to come pretty near to a stop and lose a lot of time; so his fireman gets that block by watching out carefully, tells him it is all right when we get a certain distance from the block. We got by all the blocks from New Durham tower, but after we went under this bridge I seen this other engine come, but didn't pay any attention to him, just watching the block; just as that headlight passed me I seen that projecting hook, but it was too quick for me."

"The Court: Now, you heard what was read?" "Yes."

"The Court: What did you mean when you said: 'It was too quick for me'?" "I couldn't regain that position; I couldn't get myself away from that object."

"The Court: After that which you have

just told us, what happened?" "I couldn't tell. I don't remember what happened after that."

Now, the line that he suppressed was this. "The Court: What happened?" "The Witness: I felt that smash at the instant I saw it."

Now, that is what he did not read to you. Now, if I had not read that to you you would have got the idea that the man himself didn't see the hook and didn't know what hit him. Now I say that this is a deceiving defense. I say you are trying to be deceived if you have any respect for your own intelligence; that he is trying to deceive you by absolutely suppressing the testimony in this case.

Now, let us get to what this case is about. This man goes on the stand. You saw him and you heard him. You know whether he is telling the truth or not; and he described that thing to you as good as any witness I ever saw in this Court House, and I have seen them kinds of cases—murder cases and all kinds of cases; and that man was as clear and intelligent as could be. What did he tell you? Anything improbable? Not at all. He said: "I had to get that signal, and to get that signal I had to lean out and I had to lean out because the boiler was in front of me, and I couldn't make it if I looked through the window; so I leaned out." And he gave you the demonstration. He said here was the window, the seat, "and I leaned out this way. I leaned out so far I had to hold myself in, and just as I got to the signal, myself leaning out this way, I saw that hook, but it was too quick for me. I tried to get in and I got the smash as soon as I saw it." Now, he told you that.

Now, then, there is only one of two situations: either that thing happened or this insane man is lying. One of these two things you have got to take. You saw that man on the stand; you saw how he acted; you know how he talked. You are everyday business men. Now, then, Mr. Carey says it was suggested to him. Could anybody suggest the story that that man told and go through that examination? Why, Mr. Carey's own witnesses say that he was not testifying as a lunatic. His own doctors, one of them in the uniform of the United States Army, say that the man was not testifying as a lunatic. It was not suggested to him. So that he was either lying or telling the truth. Nobody would put that on his mind.

Now, then, if he is telling the truth then he was struck by this hook as his engine passed. Then Mr. Carey says, "Oh, no, that cannot be so; because here is a lot of measurements I bring to you. I show you a lot of measurements." Measurements taken where? Down in the yards at Weehawken. Any measurements taken on the curve? Any experiments with engines going this way at a passing speed of thirty-five miles an hour? Any experiments with a hook lying over a tank three inches to see how much more it would go than that over a curve? None of that. But two engines stationary with a man sitting in the cab, in the Weehawken yard; and they bring you those measurements, and then with a great deal of deliberation they say: "At this height it would be fifteen inches above his head; at this height it would be three inches under his head." and all that nonsense. For what purpose? The same purpose that he

suppressed the line of testimony—simply to get away from it if he can, to deceive you.

And then look at this picture. Here is the picture they bring you of this hook. Do you see any loop on the end of the hook? And if there was a loop on the end of the hook wouldn't it make a difference of five inches in the way the thing lay if the hook was turned? All for the purpose of throwing sand in your eyes.

Now, their whole defense is this: They produce this driver Hinckley—and Foster—and the other men to show this accident could have happened as "we" said it did. Now, let us see whether these men are telling you the truth. You saw Hinckley on the stand. Hinckley is the man we say caused this accident—no matter how you decide this case, we are trying a case involving the future of a woman and three children of a lunatic—he walks as if he was a clown at a circus. He thought it was funny. He thought the whole thing was a joke; but he was very sure that the hook was only three inches over the side of the engine. Now, let me demonstrate that this man is a liar—I won't use any plainer term than that—but show you that he is a liar by the clock. He swore here yesterday that the forks of this hook turned upwards that way; swore it deliberately. I got him to emphasize it, gave him every chance to say that there was no mistake; but he stuck to it. "All right", I said, "Did I ask you at the last trial: "and the forks, how did they stand? Did they lie parallel with the face of this little shelf on which the fire hook was resting or sticking up in the air? How?" "Well," he said, "I couldn't say about that, which

way they were pointing." Then when I called his attention to that I said to him, "Were you lying then or are you lying now?" He gave you an explanation, took him three minutes by the clock, and when he was finished the only impression I got was of a man whose mouth was full of mud; because he didn't say anything. He said phrase after phrase, repeated himself, and he had absolutely no explanation of that, and you couldn't have. There is an absolute contradiction. Both those things cannot be true, and yet they bring that man here and they say to you: "Gentlemen, on the testimony of this man we want you to find that this hook was only three inches over the side of this thing."

Now, even if you say he is telling the truth, if you feel kindly to him, want to take him to your bosom, and if you say he is telling the truth, it is only a guess on his part,—these three inches. He didn't measure it and he is guessing in favor of the company; because if he lied in favor of the company he will guess in favor of the company.

And then we have Brother Foster, who at the noon recess—this to me is pathetic. He says the man worked with him in his cab, probably had many a drink with him; I don't know. He is insane now in the hospital. His wife and three children are practically living on charity. Now, Foster goes up the street and buys this little funny cap, at recess. Nobody tells him to; he is not interested in the case; but he buys this cap for the purpose of seeing that this lunatic and family don't get a penny; and he brings this cap in here and he says, "That is the kind of cap he had, gentlemen;" and every other wit-

ness gets on the stand and says it is not the kind of cap; it is a heavier cap. And then I asked this fellow Foster: "Didn't you swear at the last trial that it was the custom of men to lean out of the cab?" "Yes," he did. "You just swore it was not, haven't you?" "Yes, I have." "Well, how do you explain that?" "Well, you didn't understand me." I just tell you that. I am not trying to throw any odium on these men. I am trying to show you how reliable their testimony is, that is all; because you have got to base your verdict on the testimony.

And then they put this man Lee on the stand. He is one of those "Yes or no" artists. "I did," "I didn't," and all that sort of thing; and I said, "Didn't you swear—what are you swearing now? That it is the general custom to have these hooks project over?" He said: "Yes, I swear it is the general custom to have these fire hooks projecting over." Then on reading his testimony at the last trial where he said it was not the general custom—"Well, you put it through the spine on the wall, can't get away." There he is nailed with a lie. How can you explain that? Well, you gentlemen understand the question. Why do I take your time up with this? Simply to show you that you cannot depend on this testimony, and if you can't you have to go back to the man who went on the stand and said to you, "Here, gentlemen, this is the way this thing happened. I don't want to be sick(I don't want any money from this railroad company. I pray God every night to get back to my family. This was my engine." Put him, lunatic as he is, against these three men from the New York

Central Railroad. I would sooner have his morality than the morality of these three gentlemen who come here and try to purjure the New York Central free from liability in this case. And they smile at it now. Look at Hinckley laughing now. He thinks it is such a joke.

Now, gentlemen, that is the cause of liability, as I see it. It is perfectly plain. You are intelligent men. I do not have to go over this with a fine comb. I do not care whether Mrs. Price saw the lump or Mrs. Masterson saw his lump. I got this man in the railroad cab. I have got him perfectly healthy. I have him passing a hook. I have him detailing what the hook did to him. I have him in the railroad station master's office in a state of collapse. His cap was torn on the left side exactly where his injury was. He is taken to the hospital in an ambulance in which there is blood. It may have come out of his ear when he got this blow on the head. He is taken upstairs, his hair is clipped. The left side of his head is shaved. The doctor in charge diagnosed the case as concussion of the brain. Do not get that out of your minds. Dr. Kooperman said concussion of the brain, and he tells you exactly what happened. Now, what hit him? Or did anything hit him? They say: "Oh, nothing, nothing hit him; it was the smoke in the tunnel that hit him, the gas that hit him. It was nothing else, it was this smoke and gas in the tunnel that hit him." I say this case is a demonstration.

Now, then, everybody admits he is insane. Even these doctors admit he is insane. But we had a very funny situation in this case.

I don't know whether you appreciate it or not. It becomes necessary—and it is not necessary for me to holler so loudly, but I am interested in this case—it became necessary to get the testimony of this man. Before we could do that we had to prove to the Judge's satisfaction that he had memory; that he had intelligence to know when a question was being asked him to understand it and to answer it, and that he understood what it was to tell the truth. So we took a day and a half while you were out in the hall there looking at the pictures—we took a day and a half in here with testimony, and I put on my doctors who swore that he did, and they put on these two gentlemen who swore practically that he was a raving lunatic; that he didn't have any intelligence; that he didn't have any recollection; that he didn't have any responsibility in his system—absolutely point blank. I read to you what they said in their presence. Then he went on the stand. What situation were they in then? They had sworn that this man was a lunatic, absolutely finished. Now, what position were they in? They couldn't take the stand then and say: He is not a lunatic. They couldn't take the stand and say: "We were right when we said he couldn't testify," because he had testified. They were in a box. Now, what were they going to do? They were going to try to wiggle out of it and they were going to wiggle out of it by saying: "Oh, well, when we saw him on the stand, when we saw the judge examining him, then we changed our mind." Now, here is a picture. I want you to get your minds if you believe these two men. Here they were in the court room. They

knew that this lunatic's case depended upon his going on the stand. They had sworn that he could not be a witness. According to them they saw him demonstrate that he could be a witness. Up to that time the judge had not decided whether he could be a witness or not. For all they knew, the judge was taking their testimony in consideration and would very likely say, if he believed them, "This man cannot be a witness; his mouth is sealed." This case is finished he can't get a nickel. He can't testify. That is what they knew; and they also knew, according to them, that the testimony they had given the judge was wrong; that nothing should be found on it. Did they get up and tell the judge before he dropped his gavel and decided. "Judge, don't pay any attention to what we said, it is wrong. This man can be a witness." Not at all. As Kirby admitted to-day, he kept his mouth shut. He was willing that the judge should decide on testimony that he knew was wrong that this man could not be a witness. Now, then, if you care for that kind of testimony from that kind of men, why, take it and keep it.

Now, then, how badly is this man hurt? Well, you have heard all this testimony. It is unpleasant to me. I do not know whether it is pleasant to you gentlemen to hear about these hemorrhages of the brain and all that sort of thing. Dr. Evans, who is vouched for by Dr. Beling and Dr. Kirby—both of them say he is a reputable physician. You know him, in charge of Morris Plains, been there for thirty years. Dr. Evans says this man is incurably insane. He has got to be kept here for the protection of society because at

times he gets dangerous. At times he is all right as you saw him; at times he gets dangerous. He has got to be kept here for the rest of his life. Dr. McMurray, who sees him twice a day, who is his physician, who takes care of him, says he is incurably insane. He has got to be kept here for the rest of his life. Dr. Berling says he has got to be kept there now, and Dr. Kirby says he has got to be kept there now. Everybody agrees in this case that this is a lunatic, whose proper place is in the asylum. But Dr. Beling says he will get well. "When, Doctor?" "I don't know." Dr. Kirby says he will get well. "When will he get well, Doctor?" I don't know. I don't know when he will get well." Now, what kind of testimony is that for you to say that this man is going to be cured? Or, for that, is there anybody in this Court House who is going to say that man is ever going to get well? Not a single soul. Not even their own doctors.

Now, a great deal has been made of this examination that they took up in Morris Plains. You will have it if you want to run through it here. This has been offered in evidence by Mr. Carey and it reads as follows:

Appearance and attitude of patient Charles Price:

Apathetic, dull and disinterested; took no particular interest in the presence of the examiners or surroundings; sat bent forward with right elbow resting on arm of chair and his right hand to his forehead and left arm and hand resting on left arm of chair; steadily gazed blankly toward the floor.

Then you will find the whole examination.

You will find the physical examination, too, You can read it. You will find that in no case did this man Price attempt to deceive anybody. He would not answer. Why not? You heard here. His wife said, "Charlie, there are two doctors coming from the railroad to examine you to-day." He put up his hand and said, "My God! more doctors!" I don't blame him with how many times he has been examined for this litigation.

"Do you feel well?" "No, I don't." "Well, if you don't feel well you don't have to answer." Now, you read that examination and see if he was trying to deceive anybody, or, "put it over". "I do not feel well, Doctor. I want to go downstairs. Leave me alone." "Where are you going?" No answer. "Have you a wife?" No answer. "Have you any children?" "Yes." "How many?" "Two." "What are their names?" "Has your wife had any child since you have been in the hospital?" No answer. "Let me alone. My head hurts. Let me alone." Read that and you will find he was trying to put one over on nobody. The man simply was sick, wanted to be let alone. Everybody agrees in this case. Dr. McMurray, Dr. Beling, Dr. Kirby and Dr. Evans, that on that day he could not have testified. Everybody admits that. There is no question about that. There is no question about that. The point is that he could have testified to-day. But do not run away with the idea that he is trying to put one over on somebody. He put one over on nobody. The man was sick. That was simply an assinine remark. This man was sick—sick. You saw him on the stand, how well he held himself together, and they

said to him: "Nothing the matter with you?" He said, "No, except I have this pain in my head and this steam whistling in my ear all the time." He was perfectly honest. Now, then, as to the amount of recovery in this case. Of course, I heard a man in New York where they sometimes have bigger ideas than we have—Iwish we had them sometimes—say to a jury: "Are you afraid to give a verdict?" when he was examining them. He said, "Are you gentlemen afraid of figures? If you are, sit down with a pencil and figure out what this man's damages are. Are you afraid?" And every one of them said, no, they were not afraid to give a verdict if on his conscience he believed it was right that it ought to be given. So I say to you gentlemen when you start to figure up this man's damages don't be afraid of figures, if you get the figures correctly. I do not mean any cornucopia fortuna thrown around, but I mean absolute figures.

Now, take this man—of course, Mr. Carey with his usual dexterity, has tried to make you believe it was only about three dollars a month or something of that kind. The last month he worked he earned a hundred and thirty-eight dollars. That was the last month he got paid—January—a hundred and thirty-eight dollars. Now, take off the thirteen dollars and make that a hundred and twenty-five dollars. That is fifteen hundred dollars a year. That is just his earnings. He was only thirty-two. If he earned for thirty years he would earn forty-five thousand dollars, if he never got a nickel more—and you know now under the government that firemen get a great deal more. If he didn't get a nickel

more than he got then he would earn forty-five thousand dollars in wages, and wages is the least item of damages in this case. It is being locked up in what I call a living Hell. It is being a live man dead. That is what that is. If this man were dead he would be better off. He is a living corpse—that is what he is. Of course, around that place they try to make his concentrate, and they put him on parole and send him to dances. He gets along all right. Then he suddenly goes bad. They say he will go bad all his life. What would you take to be locked up in a lunatic asylum the rest of your lives. That is no test, but it is an idea to give you an idea of what the damages in this case ought to be for this man; because Dr. Evans and Dr. McMurray and Dr. Beling and Dr. Kirby say this man is insane—every one of them. Every man in this case says this is a lunatic, an insane man. You can't get away from that. Of course, they say he will be cured.

And then just one more thing and I am through. I do not like to feel I am neglecting the case, because I feel I have got the interest of this woman and the three children and this man in my hands. I do not want to leave anything unsaid that ought to be said. Now, there is one thing in the case that seemed to me to be funny. They said that this man in their opinion was suffering from a bursted blood vessel, without any cause of violence. They all admitted that no man ever had a blood vessel burst unless he had arterio sclerosis or kidney disease, or a liver disease, or a disease of a blood vessel. That is what they admitted. Now, get that in your minds. Every one of them went on the stand and said

he found no evidence of any disease of this kind—a man of good health, except for this brain injury, never lost a day's work, was in good health on this day.

Now, then, this man in good health never had a bursted blood vessel. How can you take their opinion that this man has a bursted blood vessel? "Why do you say so, Doctor?" "Why do you say he has a bursted blood vessel?" "Well, that is my opinion". Well, if that is their opinion what good is an opinion that on the second day of April was that two and two were four, and yesterday that two and two were five? Because that is what the opinion of these two men amounts to. They are brought here by the defendant. They are paid a fee. They are sent to examine this man. On the second of April they say he is a hopeless lunatic, and yesterday they said he is a lunatic but he is going to get better. If you think that kind of testimony is worth anything, why, you are perfectly welcome to rest on it.

Now, the cap was only important—I only brought that in for this reason: that cap disappeared. When that cap was last seen it had a tear in the left side, right over this place where this man was struck, and that was the evidence that something had struck him. Mrs. Price had his jumpers. She got his bag out of the station master's office, but she never got the cap. It has disappeared. Nobody has ever seen the cap. The last that was seen of it was in the office of the New York Central Railroad Company. You have heard these gentlemen on the stand produced by the New York Central Railroad Company, who have lied either at one trial or the other.

You may think that they are capable of making the thing disappear or not. Either this is one of those magic caps that they used to have in the middle ages, that they would ride and be transported from Syria into England and disappeared of itself, or else it is a cap that has been put out of the way. Mr. Carey's feelings are hurt when I say it is suppressed. Well, I won't say it is suppressed. I will say they have been very careless about it—very careless about this cap.

Now, that is the case in a nutshell. They have put these things into show you the curve, to show you the general situation and show you the poker, diagram and measurements and all that sort of thing. But their measurements become valueless, don't you see, if Price is telling the truth. If Price was hit by this poker, as he swears he was, what good are the measurements? The measurements are to show that he was not hit—but he says he was hit. It is like the man across the street that the lawyer went over to the jail to see, looked at him through the bars, and he said he had twenty-five dollars, and the lawyer said, "They can't keep you here; they can't keep you here." "But," the man said, "I am here." That is the way with the Central. They say he couldn't be hit; here are the measurements, two inches, ten inches. But the man says: "I was hit—I was hit. I saw the thing. I tried to get out of the way and then it smashed me." Then he is taken out of the cab in this condition, and they then come in and try to explain this case.

Now, we have sued this defendant for fifty thousand dollars. I am sorry I did not sue for more. But I submit to you that we have

made out a case absolutely. This case has been sent back for a retrial simply because our case was all circumstantial evidence before; but I think we clinched every nail. Now, we have put this man on the stand. He has told his story and you have seen him and heard him. You have heard Dr. Evans, and you have heard Dr. McMurray. Now, what do you think about the case? If this man was hurt by this hook we are entitled to the very amount he is suing for, if his condition is as the doctors say it is.

Mr. Carey has endeavored to mislead you. He said the complaint was that they had placed the hook, which was, of course, about as correct as anything he said. What the complaint was was this: "That it was left by the employees of the defendant on the locomotive upon which they were projecting out beyond the said locomotive in such a manner that a locomotive passing said locomotive would strike the said iron bar or the said iron bar would strike the said locomotive or person thereon." Not that it was placed there, but that it was left there. You are not going to split hairs about this case like the old rhyme: "Strange all this difference should be twixt tweedledum and tweedledee." We want justice. If that bar was put in the position by these employees as he says it was and it hit him and he is in this condition, that is all you need to know; and I submit in tihs case we sould have a verdict of fifty thousand dollars.

Mr. Carey: If the Court please, I want to note some objection to remarks made by counsel in the summing up.

The Court. Why didn't you make them at

the time they were made? I haven't now as good an opportunity to correct them, you see.

Mr .Carey: For the reason that I interrupted counsel once.

The Court: All right. Let me have them now.

Mr. Carey: He made a great to do because I interrupted him. To that part of the counsellor's summing up in which he stated that he heard a man state over in New York, where they look at things in a larger way and have larger ideas than we have here,(dilate upon certain statements.

The Court: Wherein do you think a statement of that sort is improper?

Mr. Carey: Comparing the ideas of the people of New Jersey with the ideas of the people of New York.

Mr. Simpson: I will withdraw it. Just as if I had not said it.

Mr. Carey: Well, these things have done their damage after they are said. And the statement to the effect that Mr. Simpson was interested in the care or well being of this plaintiff and his wife and three children, his wife and three children being living practically on charity. That has nothing to do with the case whatever, and it is a very improper remark to be made in connection with the case. Also to his statement that they sent this man out on parole and sent him to dances and things of that kind, as to which there is no evidence in the case.

Mr. Simpson. Dr. Evans swore to that, that he could not concentrate, that they sent him out on parole and dances and that he could not concentrate.

Mr. Carey: That I had endeavored to mis-

lead the jury by stating to them about the evidence of the careless placing of the fire hook. That is the language used by the Court of Errors and Appeals in their opinion in this case as constituting the charge of negligence, and they say no other cause,—is the careless placing of an iron upon the locomotive in such a position,—those were the words which I used; and there was no effort on my part to mislead the jury; and the impropriety of these remarks was such that I move for a mistrial in the case.

The Court: I will decline to declare a mistrial, and I will say to you at this time, gentlemen of the jury, that the province and the right of attorneys in presenting a case to you is to deal with that which is the testimony in the case and to draw from it all reasonable and proper deductions and inferences for the purpose, of course, of aiding you and assisting you when you come to deliberate and pass upon those facts. If they refer to that which purports to be the evidence and that which they state is not the evidence, of course, you will disregard it; and as to whether or not it is the evidence is for you to determine from your recollection of what the testimony was as given; and in each and every one of these instances to which reference has been made and objection now entered upon the record, if you find that misstatements of evidence were made or improper deductions made from it, or improper statements made, you will disregard them. I cannot say anything more to you, gentlemen. I am talking to you, of course, as reasonable, sensible men, and believe that you see the inwardness of what I am not saying to you.

Mr. Carey: May I have my objection noted in the record?

The Court: That is already noted, I take it. You have noted it.

Mr. Simpson: I want you to direct the jury to pay no attention to what I said to them about the charity. Mr. Carey is probably correct about that. Iam perfectly willing to say that that has nothing to do with the case.

The Court: (To the Jury.) You will disregard that entirely.

Mr. Carey: My objection was to the refusal of the court to grant my motion.

The Court. You may have it entered on the record.

Court's Charge to Jury.

Gentlemen of the Jury:

This is an action brought and sought to be maintained by Charles Price by and through Margaret Price, his wife, as his next friend, against the New York Central Railorad. It is an action brought under what we know and commonly speak of as the Federal Employers' Liability Act, by and through which action it is sought to recover damages which it is alleged have been suffered by Charles Price growing out of a happening on February 16, 1915, at or near the westerly portal of the Weehawken tunnel, which happening it is alleged in turn was caused and produced by the negligence chargeable to the defendant company or imputable to it through acts of its agents and servants.

I hope, gentlemen of the jury, and I believe

that you will at this time and from this time on approach a consideration of the matters that are about now to be placed before you for your determination in a manner perfectly proper and suitable, and which will be in entire accord with your oath; that means, gentlemen, first, that you are not to let your judgment, your determination, your conclusion to be in any way swayed by sympathy or passion or anything other than your best judgment and your best endeavor to ascertain what the facts are from the testimony that has been presented to you, what the application of those facts is to the allegations and issues in the case, and in turn applicable to the law that may be and should be applied to those facts and those issues. In other words, your minds should be entirely free of all sympathy and passion. You should not be concerned as to who the parties are, what their positions in society are, or otherwise. But you are to deal, as I have often said, with the matters before you in a hard, matter of fact way and manner, taking the cold facts as you find them and applying thereto the principles of law which I shall endeavor to give you and in that way arrive at your verdict, be that verdict what it may and against whom it may be; that then would be of no concern to you. Your concern would be to have arrived at your verdict in that manner and the consciousness then that you have performed your full duties under your oath. In that direction, gentlemen, let me say to you, too, that you should be in no manner concerned over the fact that this case has previously been tried, what the result was of that trial, what the verdict was and which way it went, or

anything about it. You are trying this case now and you are trying it as if it had never been tried before. That is your position; that is your prerogative and that is your right; and, therefore, I say to you that you should not consider that question in any sense.

Now, of course, gentlemen, I cannot but have in mind the length of time which we have been at this work. It would not be a going away from a practice heretofore pursued by me, but it would, on the contrary, be a more strict adhering to a practice which has been an almost universal one with me to say that in whatever I shall have to say to you at this time I shall not refer to any of the testimony in the case by way of reciting it to you or attempting to do so, or in any manner passing upon it or pulling it apart, or laying it before you or commenting upon it; not that I have not the right to do so under proper regulations and proper restrictions, gentlemen, but because of the time and because in this case there has been so much testimony, and you, gentlemen, from what I have seen of you, have led me to believe, at least, that you have followed it closely, been so attentive to each and everything that has been brought before you, that it seems to me, first, to be absolutely unnecessary for me to refer to any particular part or parts of the testimony; and, secondly, I believe if you have given that attention to the testimony as it has been given, as it seems to me you have, it would be to no good purpose for me to spend any time in the direction of laying it before you and commenting upon it; because you must have it before you in every bit as good shape as I have it and as I

could give it to you. So I shall, therefore, content myself and ask you to be satisfied with my simply laying before you those questions of law and those rules of law which it seems to me will be applicable to the issues that you have before you and which you will need and which you will have to apply to the testimony as you may find it in order to properly arrive at a verdict.

This is an action for negligence, and, of course, the one prominent thing is, at the outset of your inquiry, what is the negligence of which and toward which the plaintiff is complaining? In other words, what is that act of negligence which the plaintiff says and alleges was the thing that caused and produced and brought about this alleged happening? To find that, naturally we go to the pleadings in the case and go to the plaintiff's complaint in the case, and you will find that it is confined to one simple, distinct allegation, and that allegation is this: "The negligence of the defendant consisted in this: That the employees of the said defendant upon another locomotive in passing the locomotive upon which the plaintiff was had a certain iron bar of a length of about twelve feet, which said iron bar was left by the employees of the defendant on the locomotive on which they were projecting out beyond said locomotive in such a manner that a locomotive passing said locomotive would strike said iron bar or the said iron bar would strike the said locomotive or person thereon; and while the plaintiff's locomotive was passing said locomotive upon which the said iron bar was so carelessly exposed the said iron bar without fault of the plaintiff came in contact with the head of the plaintiff and severely and

permanently injured the plaintiff in and about his head."

So you see, gentlemen, as I have but just immediately preceding that reading said to you, the allegation or charge of negligence is a simple and a single one, and that is that the employees of the defendant company, using an iron bar which has been called this rake or hook upon another locomotive, left it on that locomotive projecting out beyond the said locomotive in such a manner that a locomotive in passing would strike this iron bar or a person upon a locomotive passing would be struck by the bar, and they say that plaintiff was struck by the bar.

As against that the defendant says, first, "That is not so; we deny that allegation of negligence; secondly, that the cause of plaintiff's injury was due to something, some act or thing which he did or did not do which was solely his negligence, and no negligence whatever of ours, the company's, or of any of our agents or servants. Again, that the plaintiff even if he were injured in the manner which he alleges and that injury was produced and caused by negligence in his complaint, he, nevertheless, was negligent himself and negligent in that manner which contributed to what happened to him; and again," they say, "even if he were hit by this bar and the cause of his injury was that negligence of ours which they allege against us, nevertheless, it was caused by a thing which was a risk of employment assumed in fact and in law by Mr. Price."

Now, let me go back, gentlemen. Again, I say to you that the allegation of negligence is a single one, and that is that the employees

of this defendant company having this bar or rake or poker, left it—that is, the hook—left it in that position upon the locomotive upon which it was that it overhung so that another locomotive passing would be struck by it or a person such as Mr. Price upon that locomotive would be hit by it.

The burden in this case, and in all cases of this character, rests upon the plaintiff. The plaintiff must satisfy you by a fair preponderance of the evidence that, first, this thing which happened to him happened in the manner which he alleges; that is, that it happened by his head coming in contact with this poker or rake, whatever you want to call it, and, secondly, that that thing happened because of the negligence as charged in the complaint; and if he has not done that then he cannot have a recovery, and, of course, gentlemen, I am taking these things up and will take them up in such order as appears to me to be the logical order in which they should be taken up; that is the order in which you, who are the persons to pass upon these facts, would be likely to take them up and the order in which you should take them up.

Of course, the first question must be, has the plaintiff satisfied you by this degree of evidence that I have indicated, namely, fair preponderance of the evidence, that the thing of which he complains happened in the manner that he complains it did? If he has not, as I have said to you, that ends the case; there is no need for you to go any further or for you to give your thought and consideration to anything further in the case; because then he has failed to establish that essential thing which he must in order to have a recovery.

And right here, gentlemen, let me say to you this: You may be concerned at this moment as to what is meant by fair preponderance of the evidence. I will explain it to you in the same homely way that I have done scores of times, and that is this: where you have an issue raised, where one side asserts one thing to be true and the other side denies it—that raises an issue of fact—you are to take all of the testimony that you find that goes to support and uphold the allegation that that a thing is true or existed or happened, and you are to take all the evidence that you find on the other side that goes to the tearing down or the disassertion or the disproof of that, and you are to weigh them up. If you find they weigh equally, then, of course, the party upon whom the burden rests to establish it by a fair preponderance of the evidence has not met that burden, because you have an equilibrium; they weigh equally. If you find the evidence which stands in favor of the issue raised weight more than, or outweighs that which is against it, then you have a preponderance of the evidence. That is what is meant when I say the burden is upon the plaintiff to establish this or that question by a fair preponderance of the evidence. If he has not, gentlemen, then as I have previously said to you that was your consideration of this matter so far as you are concerned and your verdict must be for the defendant. If that has been established then you shall have to go further because you have not yet reached a point which permits you to render a verdict and render it properly; because the defendant says, first, that even if this thing happened and was caused in the way that the

plaintiff alleges it was, still the plaintiff himself was negligent and his negligence contributed to this thing which happened to him. Now, of course, there is a duty resting upon a person in such a position, in such a capacity, and in such an employment as Mr. Price was in, for and about his own safety; and that is, that, considering the work he was doing, the place he was at and all the circumstances and conditions surroundingthe occurrence and place, he was required in law to exercise reasonable care under those circumstances and under those conditions for his own safety; and if he did not and that lack of care—reasonable care—contributed at all to what happened to him then he was guilty of negligence contributing to the happening. That is what is meant by contributory negligence. That is a defense, an affirmative defense asserted and alleged by the defendant, and the burden is upon the defendant to satisfy you as to that, and the defendant must satisfy you of it if it is to have the benefit of that defense, by a fair preponderance of all of the evidence. If it has then it has made out that defense. The effect of that, if it has been made out, I will treat of later when I come to the question of the amount of the verdict, if, of course, you reach that point in your deliberations; because thereupon would it become more effective and more pertinent for me to place it before you.

But again the defendant says that this thing that thing that did cause this happening, if it was the thing which plaintiff alleges and it happened in the manner which plaintiff alleges it did, was a risk which was assumed by Mr. Price. There again there is

an affirmative defense, gentlemen, and there again the burden rests upon the defendant to establish it and to establish it again by a fair preponderance of all the evidence. Now, you will want to know naturally what is meant by assumption of risk. I can best place that before you by reading to you excerpts from findings upon that question by the courts of this state.

It has been said this: "The general rule is that a master is bound to exercise reasonable care to provide a safe place for his servant to perform his work and to furnish and adopt such means that he may be assured reasonable safety and protection in his work (meaning the employee), and to exercise reasonable care to maintain the place and means reasonably safe. The qualifications are that the workman takes upon himself during the continuance of his employment all the risks and dangers which are obvious to him or can be perceived by him in the exercise of his senses and in the use of ordinary care and circumspection. The risk must be obvious and apparent and known to the servant, or such as he should have known and perceived with the exercise of reasonable care on his part."

And again. "The rule that the servant assumes not only the ordinary risks incident to the employment but also such special features of danger as are plain and obvious, and also such as he would discover by the exercise of ordinary care for his personal safety, is well established in this state. The servant assumes as well those risks which arise or become known to him during the service as those in contemplation at the original hiring. That is, at the time he enters into the service."

Again, and finally: "The employee assumes the risk of such dangers attending the prosecution of his work as he would discover by the exercise of ordinary care for his personal safety, and that for hurt happening to him from those dangers the employer is not responsible."

That is what is meant, gentlemen, by assumption of risk. That is the definition that our courts have placed upon assumption of risk; and if it has been established by the degree of evidence which I have indicated, fair preponderance—and the burden is borne and met by the defendant—then again the plaintiff cannot have a verdict in this case; because then the law is that the thing which caused the happening to him was a risk assumed by him, and the master is not chargeable with the consequences.

Now, then, gentlemen, that will bring you or should bring you to that point where you have determined from the evidence and from the rules of law applied thereto as to whether or not the plaintiff in this action is entitled to have a verdict.

If he is entitled to have a verdict then you will want to know what that verdict may be for, what his grounds of recovery are, for what and upon what you are to assess the damage which he is entitled to have.

If he is entitled to a verdict he is entitled to be compensated for the pain and suffering, mental and physical, which he endured and suffered, which he is at this time enduring and suffering, and which in reasonable probability he will endure and suffer in the future as the proximate result of the happening in question. The burden rests upon him, gentle-

men, to satisfy you that he has had pain and suffering, mental and physical, and disability in the past; that is, from the time of the alleged happening up to the present day, if he is to have a recovery for the past; and what that pain and suffering have been, their and intensity, and all those things. As he may have satisfied you, if he has, upon that, he is entitled to be compensated. If he is to have compensation for pain and suffering and disability from this time forward into the future, the burden is upon him to satisfy you by a fair preponderance of the evidence that in reasonable probability he will have pain and suffering and disability from this time forward, as to how far in the future in reasonable probability that disability and pain and suffering will extend or go; what their degree will be, what their intensity will be. If he has satisfied you in that direction then as he has upon those things he would be entitled to be compensated. He is also entitled to be compensated for loss of earnings, or decreased ability to earn for the past, that is, from the time of the alleged happening, February 16, 1915, up to the present time, the burden being upon him to satisfy you that he has lost and what that loss has been; and for the future upon his satisfying you, if he has, that he will in reasonable probability have a loss in that direction and for that cause, and as to what that loss in reasonable probability will be, how far in the future it will extend. As he may have satisfied you, if he has, in those directions, he is entitled to be compensated.

There is this thing, gentlemen, which very prominently comes forward at this time: As to whether or not if the plaintiff is entitled to

a verdict and entitled to be compensated for pain and suffering, he has satisfied you in the manner which the law requires him to, that this pain and this suffering which he is complaining of, and this disability which he is complaining of, have been causally connected with the happening which he complains of, of February 16, 1915. To be more plain, what he is entitled to have for that pain and suffering and disability which he is entitled to be compensated for is for that pain and suffering and that disability which were caused by the happening of February 16, 1915, proximately coming from the negligence of the defendant company. What I mean by that is this: It is not enough for him to leave you in the position that you say, "Well, it is possible, even if he has established that he was hit in the head by this poker or this rake, that these infirmities and these disabilities of which he is now complaining were caused by that"—that is not enough; because the defendant is only bound to meet and answer for these losses and those damages which are the proximate result of its negligence. If the plaintiff is entitled to have a verdict and to have a recovery for pain and suffering and disability of which he is complaining, he must go to this extent in the evidence. He must satisfy you by a fair preponderance of the evidence to that point that you can say that from all of the facts and circumstances and conditions as they are portrayed and brought to you by the evidence it is reasonable for you to say that the pain, the suffering and the disability of which he is complaining and for which he is asking a recovery were caused by that act of negligence which he alleges

against the defendant company. If he has not satisfied you that any of this pain, suffering and disability was caused and produced in that manner, then he is not entitled to have a verdict for those things. If he has satisfied you that in part they were and in part they were not then if he is entitled to a verdict he is entitled to be compensated for just that part which he has satisfied you of in the manner I have indicated.

Again, gentlemen, I said to you some time back in my charge on the question of contributory negligence, that if it has been established in the manner I indicated it must be, in order to have been made out as a defense, that its application would be applicable at the time that you arrived at a point where you would be considering the amount of the verdict, if you arrived at that point.

The statute under which this action is brought and sought to be maintained provides in this manner: "That in all actions hereafter brought against any such common carrier (which this defendant company is) by railroad under, or by virtue of any of the provisions of this act to recover damages for personal injuries to an employee, or where such injuries have resulted in death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery; but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee."

Now, the Supreme Court of the United States has said of this section of the act under which this action was brought, this—and I am reading it to you, gentlemen, because it has seemed to me always to be as clear an

exposition of what was meant by that section as could possibly be made:

"At common law there could be no recovery in such a case (that is, where it may have been shown that the defendant may have been guilty of negligence which contributed to a happening, and where it had likewise had been shown that the plaintiff or the injured party himself or herself was guilty of contributory negligence. At common law the plaintiff under such circumstances could not have a recovery. The very fact that they were guilty or the injury was produced in part by their own negligence precluded or barred them from having a recovery.) At common law there could be no recovery in such a case, the contributory negligence being a complete bar or defense. But this statute rejects the common law rule and adopts another deemed more reasonable by declaring the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee."

The Court says that means this: "It means and can only mean, as this court has held, that where the causal negligence (that is, the negligence that caused the happening) is attributable partly to the carrier (that is the railroad company) and chargeable to the injured employee, he (meaning the employee) shall not recover full damages but only a diminished sum bearing the same relation to the full damage that the negligence attributable to the carrier bears to the negligence attributable to both."

So that if you find that the plaintiff is entitled to have a verdict and find that his damage is a certain sum of money and you likewise find that it has been established that the injury was brought about not solely by the negligence of the defendant company but partly by plaintiff's own negligence, then the plaintiff would not be entitled to have his verdict for that full sum, but for such a sum as would be represented by this: what the negligence of the railroad company bore to the negligence of both; and the clearest way I have seen to explain that, gentlemen, is this. mathematically the negligence of both would be the whole negligence, which would be one hundred per cent. If you find that the negligence of the railroad company was fifty per cent or seventy-five per cent of the whole negligence, or one fourth of the whole negligence, or one fifth of the whole negligence producing the result, then as the result may be, figuring it by percentage or by a fraction —if, for instance, you found the negligence of the defendant company was one fourth of the whole negligence bringing about the happening then your verdict would not be for the full amount. If you found that the negligence of the defendant company was one half of the whole negligence producing and causing the damage then the verdict would not be for the full sum but would be for the half of whatyou may have found to be the full sum. I am using that example, gentlemen, not with any idea of suggesting anything to you at all, but to give it to you in as simple a manner as possible and to aid and assist you if that proposition and that matter should arise and come before you.

Again, gentlemen, on the question of a verdict: If the plaintiff is to have one, and he is to have as a part of that verdict compensation for loss of earnings in the future, that is, from this time forward, whatever, if anything in that direction and for that purpose and for that reason may be put in his verdict, he is not entitled to have the full sum that you may find he would or could have earned over that period in the future, but that full sum reduced to its present worth, or, as is sometimes said, capitalized.

The reason for that is quite obvious—that if he could proceed from this time forward and earn and make a livelihood and get a recompense for it he would, of course, be receiving his recompense in stated periods as he earned it and would not get it all at one time, namely, the present time. So, therefore, he ought not to have as a part of his verdict at this time, that whole sum that he might earn for that period in the future, that sum which may have been shown, if it has, he will lose in the future, brought down to its present day worth—that lesser sum which represents the present day worth.

Now, finally, let me say to you, gentlemen, this: that while I have given you several items upon which in cases of this character verdicts may be based, I have done that for convenience of laying them before you, for the convenience of explanation and not for the purpose of indicating to you that if the plaintiff is entitled to a verdict his verdict is to be in these several parts. If he is entitled to a verdict then when you return your verdict you will do so in one lump sum. If you find, of course, that the defendant is entitled to a

verdict then, of course, your return would be that you find for the defendant and against the plaintiff. If you find for the plaintiff then you will return your verdict by saying that you find for the plaintiff and against the defendant and assess the plaintiff's damages in the sum of so much money, one lump sum.

Now, gentlemen of the jury, there is nothing more that I can think of. I have gone to much that will assist you—and I have gone really to a much greater length in my charge than I had anticipated I would; but in doing so I have not done it with any purpose of wearing you or tiring you any more than undoubtedly you are, but having in mind the importance of the issues and the necessity that I felt there was that I should make myself as plain to you as possible, and should give you those rules which seem to me applicable to the issues in just as simple language and in as simple form as I could so that you could most readily understand them. I hope I have been able to do that and that in turn you will, as you understand them, apply them to the evidence as you find the case to present, and that you will find your verdict accordingly.

Aside from what I have said to you, gentlemen, there are certain requests to charge which I am willing to charge. Some of them you may find go over the same ground that I have already charged you upon; others again may go aside from it; but nevertheless, whatever may be the case I am charging them as if they were a part of my charge proper:

First: "In this action but one ground of negligence is charged by plaintiff against defendant and that is that the employees on one

of defendant's locomotives carelessly left an iron bar about 12 feet in length projecting out from that locomotive so far that when the locomotive on which plaintiff was employed passed the locomotive upon which the iron bar was projecting, plaintiff's head came in contact with the iron bar, causing the injury complained of. Unless plaintiff has established by a fair preponderance of the evidence that he was injured in the manner alleged, and by reason of the negligence alleged the verdict must be for defendant."

Second: "Mr. Price assumed the ordinary and also the extraordinary risks incident to his employment, and risks caused by defendant's negligence, which were obvious or fully known to and appreciated by him."

Third. "Plaintiff assumed the risk of injury from the firehook on engine 3189, while it was carried in the usual and customary place and position."

Fourth. "If the firehook on engine 3189 was in the usual and customary place and position for carrying it when that engine passed engine 907, then plaintiff cannot recover."

Fifth: "If the firehook on engine 3189 was in the usual and customary position when that engine left the Weehawken yards, and it was not moved by the act of any employe of the defendant until engines 3189 and 907 passed each other, there can be no recovery in this case."

Sixth. "Unless the firehook struck Price and caused the injury complained of, there can be no recovery."

Seventh. "If the firehook was placed in proper position by Hinckley and the motion of the engine caused it to move so as to pro-

ject over the side of the engine far enough to strike Price, there can be no recovery in this case."

Eighth. "There is no claim in the complaint that the firehook was improper, hence there can be no recovery in this case even if the firehook in question was longer than some used by defendant."

I have nothing further, gentlemen, to say to you but that now you may retire, and you will have with you and bring into your room all of the exhibits that there are in the case.

Mr. Simpson: May I have an exception to your charging the defendant's requests, and also as to your statement of the mathematical computations in reference to contributory negligence, and to each request of the defendant?

The Court: You may have them.

Mr. Carey: Note objection to that part of the charge in which the court stated that assumption of risk must be established by the defendant by a fair preponderance of the evidence, and to the definition of assumption of risk as read from the decisions of the courts of the State of New Jersey.

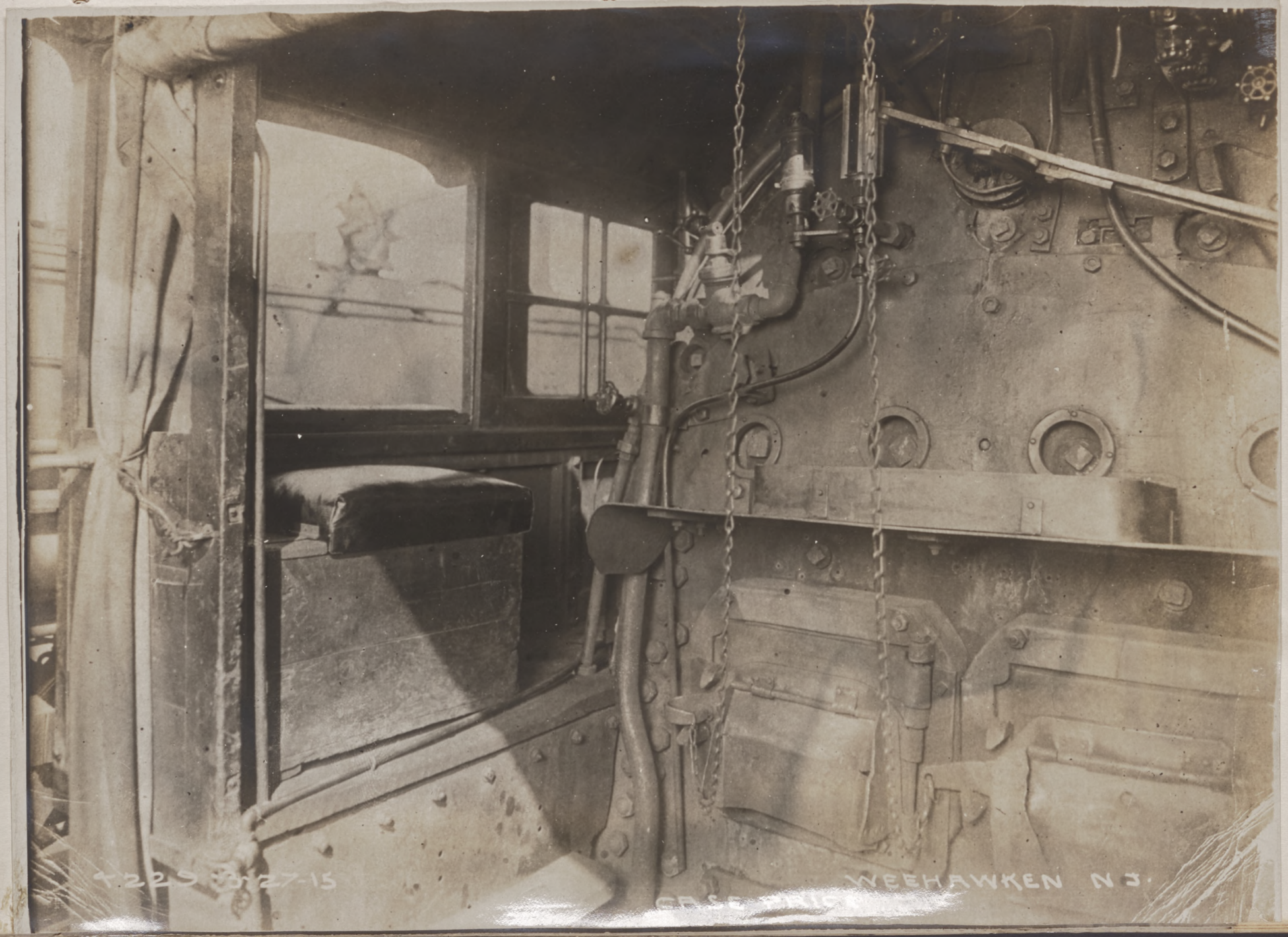
The Court: The objections may be entered. My quotations on the assumption of risk were taken from Dilemberger against Weingartner, 64 N. J. Law, at page 298, Court of Errors and Appeals; Dow against Erie Railroad Company, 70 N. J. Law, at page 454; and Cetola against Lehigh Valley Railroad Company, 89 N. J. Law, 691.

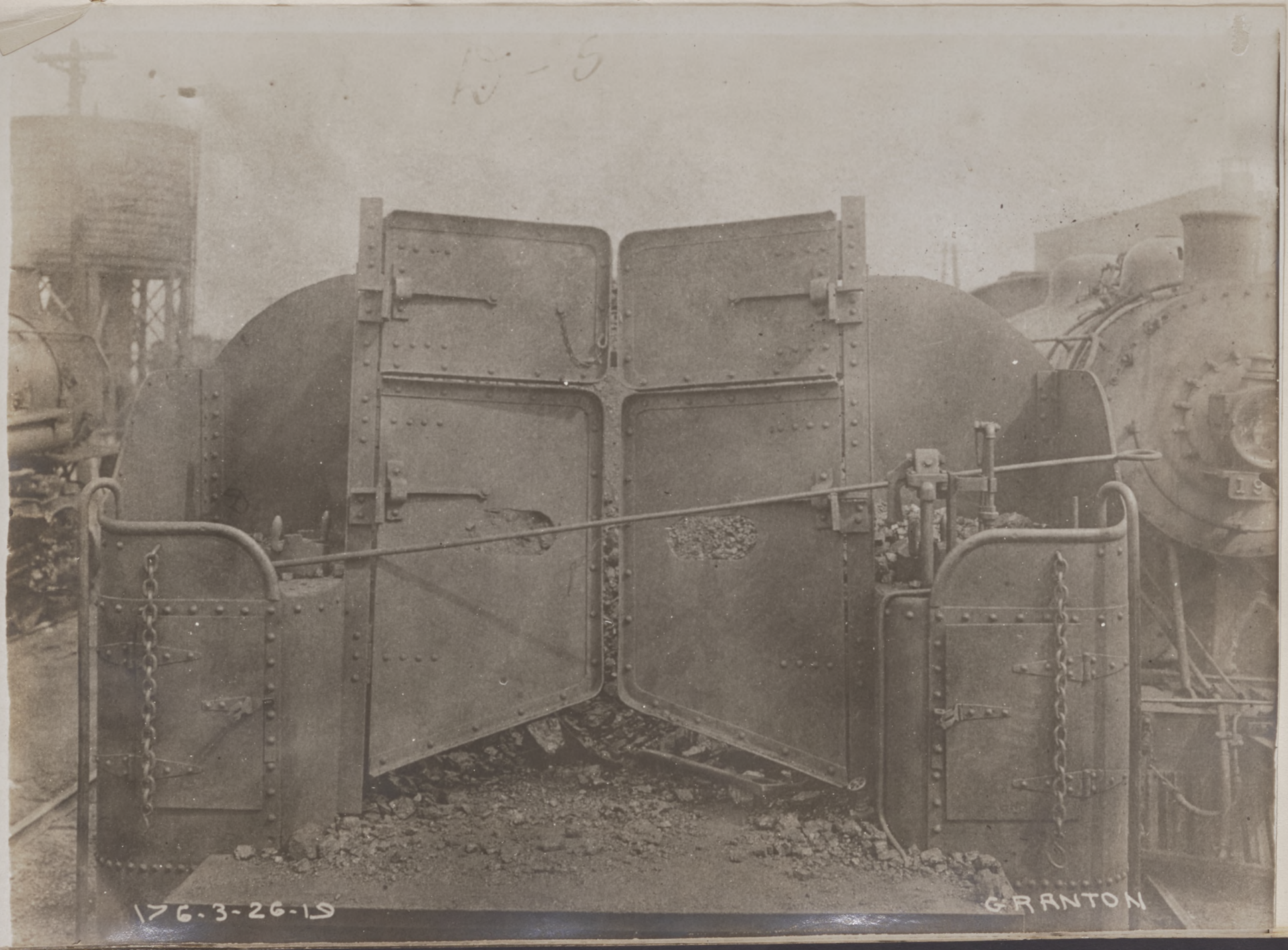


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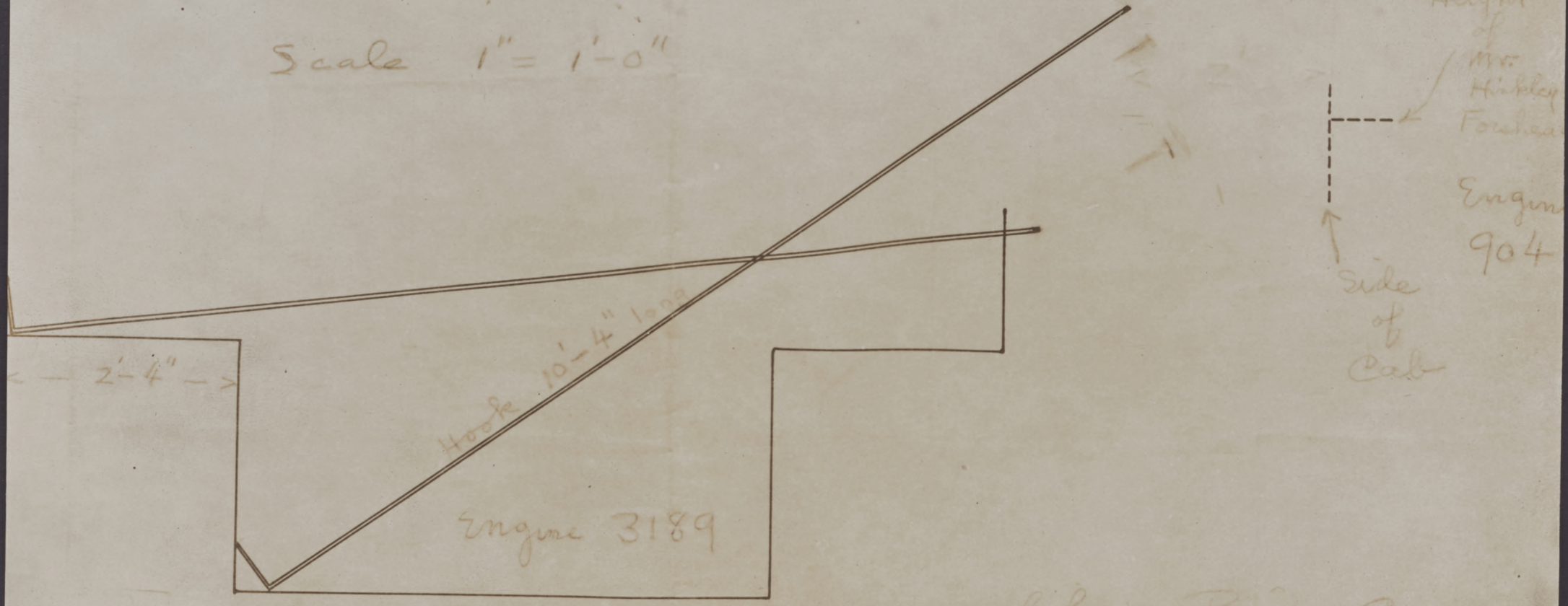
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Chas. Price Case

New Jersey Court of Errors and Appeals

BRIEF FOR PLAINTIFF-RESPONDENT

CHARLES PRICE, by Margaret Price, his next friend, Plaintiff-respondent, vs. NEW YORK CENTRAL RAILROAD COMPANY, Defendant-appellant.	Action at Law. Appeal from Supreme Court.

This is an appeal from a judgment of the Supreme Court affirming a judgment of the Hudson Circuit in an action by Charles Price against the New York Central Railroad. It is a suit for damages brought under the Act of Congress giving empoyees of interstate carriers an action for damage for the negligence of either their master or of co-employees.

The proof showed that while the plaintiff was working as a fireman on an engine, his head came in contact with an iron poker negligently placed in such a position on a passing engine as to strike the plaintiff while the plaintiff was in the discharge of his duty. There was a former trial of the action, in which the judgment was reversed, the Court of Errors and Appeals holding that

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there was failure in the proof attempted therein by circumstantial evidence. In the case at bar this was remedied by putting the plaintiff on the stand and taking his testimony, from which there is no longer circumstantial but direct evidence of the fact that his head had been struck by an iron poker. On pages 75, 113 and 114 he describes the accident. After a rigorous cross-examination by the defendant which lasted for some time, the plaintiff clearly and distinctly stated how as he approached the engine that was coming out of the tunnel, he saw the hook projecting, but it was too quick for him and struck him and the next he knew he woke up in the hospital. The cap which he wore had a tear on the side of the head upon which he was struck. See testimony on pages 113 and 114, which clearly shows that the plaintiff was struck by the projecting poker. The case, therefore, is now in a different position than it was when before the Court of Appeals upon circumstantial evidence, the Court holding that there must be something more than the complete chain of circumstantial evidence. 105 Atl., 187. There the Court of Errors and Appeals said: "The only question present in this record is whether the proven circumstances show not a possibility but a probability, that the plaintiff's head came in contact with the iron poker." The Court reversed because it said that even under all the circumstances proven, the jury would not have a right to assume that the plaintiff's head came in contact with the poker. On this appeal, his testimony supplies the link that the Court of Appeals said was missing in the prior trial. If the verdict is reversed it must be upon some hypothesis or argument other than that used in the opinion of the Court of Errors and Appeals in this case.

The Appellant's brief attempts to argue that because the complaint recites the poker was "placed" and the evidence of their witnesses is that it was not placed in such a way as to strike the plaintiff, there should be a reversal. But, the testimony of the defendant's witnesses shows that, if the poker was in the position that the plaintiff swears it was, it could not have been in that position except because it was placed there by the defendant's servants, because they demonstrated it would have been impossible for the poker if properly placed to have jarred down and got into the position it was when it hit him. Therefore, it was clearly for the jury to say who was telling the truth—the plaintiff who said he saw the poker projecting just a moment before it struck him and it did strike him as he testified, or, the defendant's witnesses who swear that it was placed in such a position that it could not strike him. It is quite true as alleged in the brief of the appellant that outside of the testimony of the plaintiff, the testimony at this trial did not differ from that at the first trial, but in the evidence of the plaintiff will be found the link which the Court of Errors and Appeals said was missing in the first trial. In fact, it is no longer a question of circumstances but there is direct evidence by the plaintiff as to how the accident happened. An attempt is made to argue that because the complaint alleges the careless placing that there was a failure to prove the careless placing, but that was for the jury to say, the defendant's witnesses having demonstrated it was impossible for the poker to have slipped into this position that it was when the plaintiff says it struck him; it could only have been in that position by the placing thereof by the defendant's servants, and it was

clearly for the jury to say who was telling the truth.

Much of the Appellant's argument is taken up with the circumstantial evidence, but upon the face of the case now the appellee believes that circumstantial evidence has been eliminated; that there is direct evidence of the plaintiff and that whether there was a bruise on his head or whether there was not, he testified directly that he was struck by a poker; that he saw the poker immediately before it struck him and did not have any opportunity to escape it. (See his testimony, Printed Case, pages 74-114, especially page 113, line 10 to page 114, line 12.)

All the argument under Point I is on the assumption that the jury must have believed the witnesses of the defendant. This of course, would be a very simple way of solving the question, but if the plaintiff's testimony was true, then the jury might have found that he was struck by an improperly placed poker, and if so, under the opinion in the prior trial there would be an action. It must also be borne in mind that the measurements which were used in the trial at bar were not taken at the point of the accident but at some distance from that point and therefore they are not enlightening, but confusing.

Under Point III the Appellant argues that the plaintiff's testimony did not contradict the evidence of the witnesses of both plaintiff and defendant as to the proper placing of the fire hook on Engine 3169 and did not raise a jury question. This overlooks the fact that if the testimony of the plaintiff was true and if the testimony of the defendant was true that the hook could not get into this position except by having been placed there, that it could not get here by the jounc-

ing or the motion of the train, then clearly it was for the jury to say who was telling the truth, because if it was in the position the plaintiff says it was, clearly the defendant's witnesses were not correct in their testimony.

The greater part of the argument in Appellant's brief as to the testimony of the plaintiff, goes to the weight of his testimony, but this clearly was for the jury under the charge of the Court. This is not a rule to show cause, unless the Appellant is trying to argue in this Court that the lower court should have set the verdict aside on a rule to show cause and therefore upon direct error there should be a reversal. If there was any testimony to go to the jury, it was for the jury (see *Uvalds Asphalt vs. Central Stockyard Co.*, 84 N. J. L., 297).

Most of the argument under Point III is for the purpose of having ~~the Supreme~~ this Court change the law as declared by the Court of Errors and Appeals in *Uvalds Asphalt vs. Central Stockyard Co.* If the testimony of plaintiff was true a cause of action was made out. See *Richey* on *Federal Employers Liability Act,* 2nd Edition, p. 122, Section 53.

The appellant argues that the jury should have disregarded the testimony of the plaintiff ~~or that the jury should have disregarded it~~. The plaintiff's testimony was simple—that as he was approaching the tunnel he suddenly saw before him the fire hook which struck him on the head. He was corroborated by his physical condition afterwards, and the car. Under what theory of law could the judge have disregarded this testimony and said there was no jury question? The testimony was plain, clear and distinct. The man was struck by some-

thing he saw and he could have seen the fire hook projecting; that he saw it almost at the instant it struck him and within too short an interval before the blow to escape it. Not only is the thing possible but it is probable because it was corroborated by his condition and the manner of his recital. Yet the appellant argues that this should be brushed aside on some fanciful theory that it is opposed to natural law. What is opposed to natural law, the blow on the head? Isn't a blow on the head recognized by the laws of physics? Isn't it common that men are struck and are propelled against objects seen by them immediately before being struck by them and unable to escape from them? This argument seems to the appellee not only metaphysical but non-physical, in an arbitrary hypothesis of the appellant in trying to escape the results of our simple system of law. If what the plaintiff testified to was true, it was apparent that he was injured by a fire hook in a position it should not have been and that this fire hook was under the control of servants of the defendant and that it was in the improper position that it was because those controlling it had put it either in an improper position or it was in such a position that it could become in an improper position. If authority is needed for the proposition it can be found in the following case, and many others.

Remarks of Counsel

The appellant is attempting to have this verdict set aside on the ground that counsel made improper remarks. At the outset of the argument on this point, it is well to remember that the State of Case is incomplete in this Court. The

Appellee objected within five days as to the sufficiency of the State of Case on the ground that the Case contains only a portion of the alleged summing up of plaintiff's counsel, and that this State of Case is misleading without the summing up of defendant's counsel and without the complete summing up of plaintiff's counsel. The Appellant after the objection was made, did not see fit to have a corrected State of Case made but is attempting to rely on this State of Case which is really not any State of Case at all, as far as the objections are made to the summing up of counsel. I have annexed hereto a copy of the objection served upon and acknowledged by the Appellant.

The first objection to counsel's remarks is that counsel said the jury in the former trial had given the largest verdict ever given in the Court House. Standing alone this might have been improper, but when it is remembered that all through the summing up counsel of defendant referred to the action of the Court of Errors and Appeals in the first trial, that the jury was clearly wrong in the first trial, that the Court of Appeals had set the verdict aside on the first trial and basing a great portion of his summing up on the action of the Court of Appeals in the premises as warranting a conclusion that the first jury was in the wrong, it was perfectly proper in reply to him to say what the jury had done in the first case, so that without this statement, the statement of counsel for the defendant would have been left wholly unanswered. But, even if it was erroneous, the Court clearly charged the jury to disregard anything that was not in the evidence, which charge was quite full and complete and counsel for the defendant did not take

any exception to the direction of the Court as to the insufficiency or otherwise, but the Court having upon his objection charged the jury to disregard the statement, now attempts to make it a matter of reversal (page 508 Printed Case).

The alleged reference to the wife and children of the plaintiff was withdrawn and the Court clearly charged the jury to disregard the statement. The remark was not made that the jury should give a verdict because the client was impoverished but counsel in summing up stated the responsibilites because of that condition, but upon objection this remark was withdrawn.

As to the objection on page 2, line 5, this was clearly in reasoning with the jury about the amount and in no way prejudiced the case. It is simply a matter of reasoning. One cannot sum up a case without attempting to reason in some way and surely counsel is not restricted to a parrot-like repetition of the evidence but is entitled to at least in some degree attempt to reason or to give what he assumes to be a reason for his conclusions (*State vs. Barker,* 39 Vr., 19).

As to the fourth statement, as a direct basis for the statement by plaintiff's counsel that the defendant's attorney had attempted to mislead the jury, he had deliberately suppressed one line in the testimony read by him. He had part of the plaintiff's testimony written and assumed to read it, but deliberately suppressed one line therein. Therefore, this statement was clearly proper by plaintiff's counsel, because it was a statement of fact; defendant's counsel had attempted to mislead the jury, because if they believed that he was reading the plantiff's testimony they would have believed something absolutely untrue, because he omitted the most important line. The

case did involve the future of a woman and three children, the wife and children of a lunatic, there is no doubt about that. The law in this state is plain as to what happens when counsel makes improper remarks. If counsel withdraws them or if the Judge directs the jury to disregard them, in the absence of a request for a mistrial, they are not error. There is no case in this State for the authority that the Court must rebuke counsel. All the cases collected in the brief of the Appellant are outside of the State of New Jersey. The cases in the State of New Jersey are as follows:

Minard vs. West Jersey, 64 Atl., 1054;
In re Warren, 9 N. J. Eq., 181;
Christiansen v. Lambert, 66 N. J. L., 531;
State vs. Barker, 39 Vr., 19;
Blackman vs. West Jersey, 69 N. J. L., p. 1.

Also see:

Minard vs. West Jersey, 74 N. J. L., 39;
Hahn vs. D. L. & W. R. R., 105 Atl., 459;
Smith vs. Brunswick Laundry. 108 Atl. Rep. 184

The position of the Appellant here is that he objected to certain remarks, some of which were withdrawn (p. 509). Upon his objection, the Court instructed the jury to disregard the remarks complained of. He remained satisfied with this and took his future to the jury and asked for no further instruction or action. He now, after a verdict against him, attempts to assign error upon the remarks of counsel. Clearly under the cases before cited the doctrine is that laid down

in *Minard vs. West Jersey R. R.*, 74 N. J. L., 39, which seems to be that only upon the refusal of the Court to correct the remarks or direct the jury to disregard them can error be assigned or a proper ground of appeal exists. The case is not here before this Court on rule to show cause but is here on strict appeal and for the appellant to claim relief he must have objected to the remarks and the Court have refused to instruct the jury. In this case the Court did instruct the jury pursuant to his objection and he made no comment or dissent upon the completeness of the instruction but allowed the case to go to the jury in that situation.

See:

Alair vs. Alair, 10 Vr., 113.

This Court must assume that the jury followed the direction of the Court.

See also:

38 Cyc., p. 1497.

Where no further action is asked by the complaining party after the Court has instructed the jury, remarks of counsel not ground of error.

Matts vs. Borber, 37 Pac., 159;
Southern Rwy Co. v. Brown, 126 Ga., p. 1;
Chicago vs. Loseth, 142 Ill., 642;
American Electric Works v. New England Electric Co., 196 Mass., 456;
Warn vs. Flint, 140 Mich, 573;
Winter vs. Peoples Housefurnishing Co., 165 Mo., 527;
Lee v. Dowd, 73 New Hampshire, 101.

which cases are taken from the 38 Cyc., 1504 and 1505, so far as consistent with the decisions in New Jersey heretofore referred to.

See also:

Bradley vs. Cleary, 90 Atl., 1015.
Kaigh v. Fox, 95 Atl., 994.

Under the discussion of this matter in Vermont, it was held in *Fadden v. McKinney,* 89 Atl., 351; 87 Ver., 316, that a statement of defendant's counsel was held to have invited a counter remark.

To the same effect is *Douglas & Farnum vs. Village of Morrisville,* 95 Atl., 810, holding that the law is that where the remarks of defendant's counsel were improper, he could not complain of improper remarks provoked by his remarks. In this connection it is well to remember that the Appellant has deliberately brought the State of Case here suppressing his own summing up, and although objection was made to the State of Case, has refused to remedy it. Therefore, he certainly should not be allowed to assign error upon an incomplete record made so by himself, where under the rules of the Supreme Court he should have brought it to the trial court and had the State of Case settled by the Court.

Some request must be made to the Court for action, otherwise improper remarks of counsel are not grounds of reversal.

State vs. Crowell, 93 Atl., 571.

See also *State v. Parker,* 83 Atl., 690, where the Court says, where counsel in addressing the jury transcends the proper and fair comment upon the evidence, the complaining party should promptly object, otherwise it will not furnish ground for reversal of the judgment. This is cited in contradiction of the cases cited by the Appellant that it is better to wait until the summing up is finished.

See:

State vs. Lockman, 83 Atl., 689.

In the *Lockman* case, the Court said:

> "The practice has been to interrupt counsel when he exceeds the limit of right and propriety in his address, so that any improper impression then created may be eliminated and counsel may be prevented from continuing to transgress. Such was the method pursued in *Wall v. U. S.*, 150 U. S., 76."

The Supreme Court has said:

> "The next cause of reversal is directed to an alleged error of the trial court in refusing to stop the Prosecutor of the Pleas in the summing up to the jury upon the application of the defendant. The language complained of was that the defendant was 'a monster in his passion, licencious in his desires, beastly in his love, brutal when thwarted, and cowardly when caught.'
>
> "It is necessary for the proper administration of justice that in summing up to the jury, counsel shall be given the widest latitude within the four corners of the evidence, so long as he confines himself to the evidence what is said by him in his discussion by way of comment, denunciation or appeal, affords no ground of exception."

Citing:

State vs. Barker, 39 Vr., 19.

This is excerpt from *State v. Lang,* 75 N. J., p. 8.

The Appellee respectfully submits that the doc-

trine of all these cases is that if counsel does make improper remarks, opposing counsel should interrupt immediately and should object and ask for action, and failure so to do will not result in foundation for error.

2. That improper remarks are cured by an instruction by the trial court to disregard them. That if the trial court acts and the appellant does not question the fullness or propriety of the instruction of the Court or its sufficiency, then no error can be laid because of the failure of the person who claims to be aggrieved below to act, after the Court had directed the jury to disregard the remarks. Also that the remarks as made, were called forth by the action of the defendant's counsel and to that degree were not improper.

Improper remarks of plaintiff's counsel called forth as retalitory statements by remarks of defendant's counsel, not improper.

See:

Decennial Digest, Title Trial, Column 129.

That the action of the Court in this case cured any vice in the remarks, if there was any, see New Jersey cases before cited.

Also see:

Decennial Digest, Title Trial, column 133.

Also as to sufficiency of objection; see *Decennial Digest,* Title Trial, column 131 and cases cited.

Rule 116, that no reversal shall be had unless it appears that substantial injury was done to the party appealing by the error.

Appellee respectfully prays for an affirmance.

ALEX. SIMPSON,
Attorney for Plaintiff-Appellee.

Notice of Objection to State of Case

NEW JERSEY SUPREME COURT

CHARLES PRICE, by next friend, Plaintiff-Respondent, vs. NEW YORK CENTRAL RAILROAD COMPANY, Defendant-Appellant.	On Appeal.

To Messrs. Vredenburgh, Wall & Carey, Attorney for Defendant-Appellant:

PLEASE TAKE NOTICE, that I object to the State of the Case served on me, because it contains only a part of the summing up of counsel for the plaintiff and no part of the summing up for the defendant, therefore it is misleading and I make that objection to the State of Case.

Dated November 21, 1919.

Yours, &c.,

ALEX. SIMPSON,
Attorney for Plaintiff-Respondent.

Served in due time, No. 24, 1919.
Vredenburgh, Wall & Carey,
Attys. for Deft. App.

Notice of Objection to State of Case

NEW JERSEY COURT OF ERRORS AND APPEALS

CHARLES PRICE, by next friend, Plaintiff-Appellee, v. NEW YORK CENTRAL RAILROAD COMPANY, Defendant-Appellant.	On Appeal from Supreme Court.

To Messrs. Vredenburgh, Wall & Carey, Attorneys for Defendant-Appellant:

PLEASE TAKE NOTICE, that I will object to the State of Case in the Court of Errors and Appeals, on the ground that the State of Case does not contain the correct and complete summing up of counsel for the defendant; also on the ground that the State of Case, page 490 states in parenthesis "Mr. Simpson had spoken a few words of his summing up before the stenographer was requested to report it by Mr. Carey." The mere statement by the stenographer, is no proof as to how much had been said or how it qualified the remainder.

Dated May 27, 1920.

Yours, &c.,

ALEX. SIMPSON,
Attorney for Plaintiff-Appellee.

Served May 29, 1920.
Vredenburgh, Wall & Carey,
Attorneys for Defendant-Appellant.

Notice of Objection to Argument

NEW JERSEY COURT OF ERRORS AND APPEALS

CHARLES PRICE, by next friend, Plaintiff-Appellee, vs. NEW YORK CENTRAL RAILROAD COMPANY, Defendant-Appellant.	On Appeal from Supreme Court.

To Messrs. Vredenburgh, Wall & Carey, Attorneys for Defendant-Appellant:

PLEASE TAKE NOTICE, that I will object to the argument of the above entitled cause before the Court of Errors and Appeals, on the ground that no proper ground of appeal has been filed in the Court of Errors and Appeals.

Dated May 27th 1920.

Yours, &c.,

ALEX. SIMPSON,
Attorney for Plaintiff-Appellee.

Served May 29, 1920.
Vredenburgh, Wall & Carey,
Attys. for Defendant-Appellant.

New Jersey Court of Errors and Appeals

CHARLES PRICE, by next friend, *Plaintiff-Respondent,* vs. NEW YORK CENTRAL RAILROAD COMPANY, *Defendant-Appellant.*	On Appeal from Supreme Court.

No. 61, June Term—1920.

REPLY TO BRIEF OF PLAINTIFF-RESPONDENT.

On page 11 of the brief of counsel for the plaintiff, he uses the following language:

> "Appellant has deliberately brought the State of the Case here, suppressing his own summing up, and although objection was made to the State of the Case, has refused to remedy it."

The evident purpose of this statement is to lead this Court to believe that the summing up of defendant's counsel to the jury was taken stenographically, and that it had been deliberately suppressed in preparing the state of the case.

Plaintiff's counsel knows perfectly well that the summing up of defendant's counsel was not taken; that no record of it was ever made, and

that it was impossible to incorporate it in the state of the case.

This effort to create a misapprehension as to the fact is in entire keeping with the conduct of plaintiff's counsel at the trial in his successful effort to get before the jury matters entirely outside of the record, which were contrary to the facts, and which the jury had no right to consider.

On page 7 of his brief plaintiff's counsel objects that his entire address to the jury is not incorporated in the state of the case. As soon as it became apparent that his address was to be a tirade and not an argument, the stenographer was requested to report it. That his entire misconduct is not incorporated in the state of the case would seem to be hardly a good ground for objection on his part.

On page 7 of plaintiff's brief it is charged that all through his summing up "counsel for the defendant referred to the action of the Court of Errors and Appeals in the first trial, that the jury was clearly wrong in the first trial," and * * * basing a great portion of his summing up on the action of the Court of Errors and Appeals," &c. There is no basis of fact for this statement. Counsel referred to the ruling of the Court of Errors and Appeals merely to the extent of pointing out to the jury the issue in the case. This ruling had been declared to the jury by the trial court during the course of the trial, and was therefore very properly referred to in pointing out to the jury the question for them to determine. No objection was made either by opposing counsel or by the court. There was nothing which could properly be objected to.

Neither is there any basis in fact for the charge of plaintiff's counsel on page 8 of his brief that defendant's counsel had attempted to mislead the jury, and had suppressed testimony.

Both sides had a copy of the testimony in question, and suppression, if desired, would have been impossible, and no such attempt was made. The charge was unfair, and without foundation.

The conduct complained of consisted of a willful, continuous, determined and successful effort to excite sympathy and prejudice, and to arouse passion in the minds of the jury by matters wholly outside the record to which the attention of the jury should never have been called, and which could only militate against the orderly and fair administration of justice. The question for determination is whether such conduct is to be permitted or condoned in the courts of this state.

Plaintiff's counsel has printed on page 16 of his brief a notice that he will object to the argument of this cause in this court on the ground that no proper ground of appeal has been filed herein. The ground of appeal filed herein conforms to the decisions of this court in *State* v. *Verona,* 108 *Atl.* 250, and *State* v. *Samaha,* 108 *Atl.* 254, and cases therein cited.

The point is not otherwise presented in counsel's brief and is not argued, and we assume, therefore, that it has been abandoned. If the slight verbal variations in the ground of appeal as filed from that expressed in the cases above referred to, should be regarded as rendering it technically defective, then it is requested that the ground be amended so as to conform absolutely to the language of this court in those cases.

Annexed hereto is a copy of the notice served upon the attorney for the plaintiff-respondent, requesting that we be furnished with that part of his address to the jury which he claims is not printed in the record, and demanding a particular statement of the alleged defect in the ground of appeal filed herein. No response has been received to this notice.

Respectfully submitted,
WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant-Appellant.

Notice.

NEW JERSEY COURT OF ERRORS AND APPEALS.

CHARLES PRICE, by next friend, *Plaintiff-Respondent,* vs. NEW YORK CENTRAL RAILROAD COMPANY, *Defendant-Appellant.*	On Appeal from Supreme Court.

PLEASE TAKE NOTICE:

That we request that you furnish us with that part of your address to the jury which you claim is not printed in the record. Upon receiving the same we will incorporate it in the printed case.

PLEASE TAKE FURTHER NOTICE:

That we demand a particular statement of the alleged defect in the ground of appeal filed by the Appellant in this Court.

Dated, June 10th, 1920.

Yours respectfully,

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant-Appellant,

To:

ALEXANDER SIMPSON, ESQ.,
Attorney for Plaintiff-Respondent.

Service of a copy of the within Notice is hereby acknowledged this 14 day of June, 1920.

Alex. Simpson,
Atty. for Pltff. Respondent.

New Jersey Court of Errors and Appeals

CHARLES PRICE, by Margaret Price, his next friend, *Plaintiff-Respondent,*	At Law.
vs.	On Appeal from Supreme Court.
NEW YORK CENTRAL RAILROAD COMPANY, *Defendant-Appellant.*	

BRIEF OF APPELLANT.

This is an appeal from a judgment of the Supreme Court affirming a judgment rendered by the Circuit Court of Hudson County, in favor of the plaintiff-respondent.

The grounds of appeal in the Supreme Court are found on page IX.

The ground of appeal in this court (the affirmance by the Supreme Court of the judgment of the Circuit Court) is found on page C.

The action is based upon the Federal Employers' Liability Act.

The plaintiff, Charles Price, an insane person, by Margaret Price, his next friend, sued to recover damages for injuries alleged to have been received February 16, 1915, while plaintiff was acting as a fireman on an interstate passenger train. He alleges that his injury was caused by his being struck on the head by a fire hook carried on an engine which passed plaintiff's engine, going in an opposite direction.

The two engines passed each other on adjacent main line tracks a short distance west of the westerly portal of the Weehawken Tunnel at Weehawken, N. J., at about 7:25 P. M. (Foster, p. 2, line 1).

The sole negligence charged is that defendant employees negligently left a certain iron bar (called in the evidence a fire hook), about 12 feet long, projecting so far beyond the side of the engine on which it was placed, that when this engine passed plaintiff's engine he was struck on the head by this iron bar, and thereby received the injuries complained of (Complaint, p. V, par. 4).

Defendant's answer denies—

(1) That plaintiff was injured in the manner alleged.

(2) That defendant or its employees were negligent.

(Answer, first defence, p. VII, line 3).

It also sets up—

(1) Negligence by plaintiff causing the injury.

(2) Assumption of risk.

(Answer, 2nd Def., p. VII, line 10).

The questions involved are—

(1) Was plaintiff injured in the manner and because of the negligence alleged in the complaint?

(2) Did plaintiff's injuries, if any, arise out of risks assumed by him?

(3) Should the court have granted defendant's motion to withdraw a juror and declare a mistrial because of the improper remarks and conduct of plaintiff's counsel in addressing the jury?

These questions are raised by—

(1) Defendant's motion for a non-suit.

(p. 244, line 1).

(2) Defendant's motion to direct a verdict. (p. 488, line 1).

(3) Defendant's objections to counsel's remarks and its motion to withdraw a juror and declare a mistrial. (p. 502, line 35).

This is the second judgment recovered by the plaintiff. The judgment recovered in the first trial was reversed by this Court because plaintiff had failed to prove the negligence set out in the complaint.

At the first trial the evidence as to the happening of an accident and as to defendant's liability therefor, was wholly circumstantial. Having failed to sustain that judgment the plaintiff was produced as a witness at the second trial in an effort to supply the fatal defect in the proof pointed out by the Court of Errors in reversing the first judgment.

Outside of the evidence of the plaintiff himself, his case at the present trial does not differ in any material respect from that made at the first trial.

The engine on which plaintiff was working as a fireman on February 16, 1915, was No. 907. Jacob Foster was the engineer. The train was an eastbound passenger train from West Haverstraw, New York. (Foster, p. 9, line 25).

The train which plaintiff met west of the Weehawken Tunnel was a freight train hauled by engine No. 3189, on which James H. Lee was engineer, Grant Hinckley, fireman, and Harry Vaughn, head-brakeman. (Hinckley, p. 48, line 1; Lee, p. 366, line 28; Vaughn, p. 383, line 30).

In the opinion reversing the former judgment, this Court says:

"The defendant's negligence upon which its liability is charged in plaintiff's complaint is the *careless placing* of an iron bar upon another locomotive in such a position that, in

passing the one on which the plaintiff was working, it struck him and injured his head. No other cause for the injury is alleged."

(*Price* v. *New York Central,* 105 Atl. p. 187).

To sustain the charge of negligently placing the fire hook in this projecting position, the plaintiff at the first trial relied upon the following circumstances which he claimed were established by the evidence:

(1) That plaintiff was in his normal condition on the run from West Haverstraw until a short time prior to passing engine 3189, just west of the Weehawken tunnel; that when he was next observed as the train was brought to a stop at the station platform, he was in a condition bordering on a collapse.

(2) That engine No. 3189 carried a fire hook. (This hook, according to the evidence of all the witnesses testifying on that subject, both for the plaintiff and the defendant, *was placed in its normal position* on the tank of engine 3189, with the handle end projecting over the side of the tank not more than three or four inches.)

(3)That after plaintiff was taken from the ambulance at the hospital, blood was found on the pillow case on which his head rested while in the ambulance.

(4) That a cap, claimed to belong to plaintiff was found in the engine cab or in plaintiff's possession which had a tear extending from a point near the front along the left side.

(5) That on the morning of the 18th of February, the second day after the alleged injury, a bruise was seen by Mrs. Price and her friend, Mrs. Masterson, on the left side of plaintiff's head, about two inches wide, by

three inches long. (Mrs. Price, p. 31, line 20; Mrs. Masterson, p. 114, line 35.)

(6) That after the removal to the hospital plaintiff became insane, and that his expert witnesses (none of whom saw him until weeks after the occurrence), testified that in their opinion he suffers from traumatic insanity.

On appeal, this Court held that, assuming these circumstances had been established, the plaintiff had not proved the negligence alleged in the complaint. To meet this situation the evidence of the plaintiff, an insane person, is now added, and this it is claimed raises a jury question.

It is undisputed in the evidence that on February 16, 1915, plaintiff performed his usual duties in the usual manner on the run from West Haverstraw up to and including the calling of the last signal located just west of the Weehawken Tunnel; that from that point he had no duties to perform until he reached the Weehawken Station; that from the time of calling the signal west of the Tunnel, Foster, the engineer, did not observe plaintiff's condition until he was bringing his engine to a stop at the Weehawken Terminal; that plaintiff was then in a condition bordering on collapse, and was assisted to alight from the engine and to walk to the station master's office in the station and that later he was taken to the North Hudson Hospital where he became insane.

The distance from the tunnel to the last signal which plaintiff called is 1322 feet.

(Chase, p. 333, line 9.)

The time plaintiff's engine arrived at this signal was about 7:25 P. M.

(Foster, p. 2, line 1.)

The only evidence indicating that blood came from plaintiff's person was given by the witnesses

Folk and Quinn. They testified that there was blood on the pillow in the ambulance after plaintiff was removed therefrom. (Folk, p. 18, line 10; Quinn, p. 229, line 18.) Folk saw no blood on plaintiff's person although he was in a position where he would undoubtedly have seen it had there been any blood on the head or face of the plaintiff.

(Folk, p. 20, line 15; p. 21, line 1.)

Quinn saw no blood on plaintiff's person, but claims that when he put his hand under plaintiff's head he got blood on his fingers. He made no mention of this in his testimony at the former trial, and his present testimony is in clear contradiction of that given at the first trial.

(pp. 229-233, inclusive.)

Folk saw no mark whatever on plaintiff's person. (Folk, p. 21, line 10.)

Four of plaintiff's co-employees looked at and examined his head and face, some of them very carefully, while he was at the station. They found neither blood nor any mark of any kind.

(Foster, p. 6, line 30; Nearpass, pp. 266-267; p. 268, line 1; Hicks, p. 273, line—; Seaman, pp. 236-237.)

Dr. Fendrick, the Company's surgeon, examined plaintiff at the station at about eight o'clock in the evening of February 16, and after the examination had him sent to the hospital. There plaintiff's hair was clipped closely all over the head and the left side of the head was shaved. Dr. Kooperman and Miss Sutcliff, a nurse at the hospital, clipped the hair and shaved the head. After this was done a very careful examination was made by Dr. Fendrick, Dr. Bissing, Dr. Kooperman and Miss Sutcliff to ascertain the cause of plaintiff's condition. There was no mark, no blood

and nothing to indicate external violence anywhere on plaintiff's person.

(Dr. Fendrick, p. 291, line 20 to p. 294, line 10; Dr. Kooperman, p. 339, line 10 to p. 340, line 40; Miss Sutcliff, p. 284, line 35 to p. 286, line 5; p. 287, line 17; p. 287, line 27 to p. 288, line 5.)

Dr. Bissing died in France prior to the last trial.

(Dr. Kooperman, p. 340; Dr. Fendrick, p. 294, line 8.)

When Dr. Fendrick first saw plaintiff at the station at eight o'clock in the evening (about 30 or 40 minutes after plaintiff passed the freight train), he found the pulse, respiration, temperature and condition of the skin practically normal. This condition continued during substantially all the time plaintiff was in the North Hudson Hospital, which was five weeks.

(Mrs. Price, p. 27, line 28.)

(Dr. Fendrick, p. 283, line 1 to line 20; p. 291, line 20 to p. 293, line 5; p. 296, line 18, Miss Sutcliff, p. 286, line 7; Dr. Kooperman, p. 340, line 40, to p. 341, line 5; p. 345, line 15.)

No one saw anything on plaintiff's person indicating a bruise, except Mrs. Price and Mrs. Masterson. They claim to have seen what they call a bruise on the left side of plaintiff's head on February 18th. Mrs. Price at first testified that she observed this on the 17th but she also testified that Mrs. Masterson was with her at the time she first saw it, and that Mrs. Masterson first went to the hospital with her on February 18th. Mrs. Masterson also testifies that she first went to the hospital with Mrs. Price on the 18th, and that she called Mrs. Price's attention to the bruise when

the ice cap fell off Mr. Price's head.

(Mrs. Price, p. 26, line 1; p. 27, line 10; p. 30, line 10; Mrs. Masterson, p. 114, line 35; p. 118, line 5; p. 127, line 5.)

The so-called bruise was puffed out and was red and blue or purple. The skin was unbroken. *It was perfectly smooth and showed no indication of having been scraped.* It showed no appearance of being caused by a glancing blow of an iron instrument.

(Mrs. Price, p. 31, line 18; Mrs. Masterson, p. 131, line 4.)

It is evident from the testimony that if Mrs. Price and Mrs. Masterson saw what they described as a bruise, no such mark was on plaintiff's head on the night of February 16th. If it had been, the very careful examination of the doctors and nurse would have disclosed it. It is also evident that the perfectly smooth mark with unbroken skin and no evidence that the skin had been scraped, could not have been made by a glancing blow by the rough iron handle of the fire hook.

The torn cap which figured in the former trial was not of sufficient importance to elicit any comment in the opinion of the Court of Errors. It is now practically eliminated from the case. Not only is there no evidence as to the condition of the torn cap prior to the alleged accident, but if it be true as is now claimed, that plaintiff wore a heavy wool cap with ear laps, there is no evidence that there was any tear in this cap. Every witness who saw the torn cap testifies that it was a black cap of very thin light weight material. None of the witnesses who saw the tear in the cap had ever seen Price wear the cap described by Mr. Price and Mrs. Masterson.

(Price, p. 111, line 1; Mrs. Masterson, p. 115, line 15; Foster, p. 7, line 30; Riker,

p. 44, line 30; p. 280, line 1; Hicks, p. 274, line 1; p. 267, line 8.)

From the foregoing brief summary of the evidence, it is apparent that as to the circumstances thus far reviewed, the evidence does not differ in effect from that discussed by this Court in the opinion filed upon the reversal of the former judgment.

(*Price* v. *N. Y. Central*, 105 Atl. 187.)

I.

There is no evidence to sustain the charge of negligence in placing the fire hook on Engine 3189.

The sole negligence complained of is the improper placing of the fire hook on engine 3189 by the employees of the defendant.

(See complaint, par 4, p. V, and citation from opinion of this Court, p. 3, of this brief.

The fire hook in question consisted of an iron rod about 5/8 inch in diameter, having a rakehead with two prongs or hooks on one end and a handle formed by bending this rod into a loop on the other end.

(Hinckley, p. 50, line 25; Dooley, p. 439, line 30.)

(Ex. D-5, p. 532.)

At the rake end the rod is one inch in diameter.

(Dooley, p. 439, line 35.)

The correct position of the fire hook is across the front end of the tender or tank, with the rake end resting on what is called the deck of the tank on the engineer's side, and the handle end resting

on the side or wing of the tank on the fireman's side. The correct position is shown in the photograph, Ex. D-5, p. 532.

The evidence of the proper placing of the fire hook is undisputed and is conclusive.

There are three men, Hinckley, the fireman, Lee, the engineer, and Vaughn, the head brakeman, who know how this hook was placed on engine 3189 on the night in question, *and no one else does.* The knowledge of each of these witnesses was acquired in the course of his duty and was the result of a specific direction of his attention, while in the performance of his duty, to the position of the hook.

Hinckley testifies that he boarded the engine at the Granton Engine House. The engineer Lee backed the engine to the New Durham Coal Pockets, where coal, water and sand were taken on. Hinckley there put a supply of hard coal onto the fire and there used the fire hook to level the coal. Then the engine was backed easterly through the tunnel and coupled to the freight train. He testifies that the position of the fire hook shown on the photograph, Ex. D-5, is the proper and only position in which to carry the fire hook when not in use. This photograph D-5 is a photograph of the front of the tender of engine 3189. The tender was uncoupled from the locomotive in order to take this photograph, and Hinckley testifies that after using the fire hook at New Durham Coal Pockets he placed it back on the engine in the same position shown in Ex. D-5, and that the handle end of the hook projected over the side plate of the tank three or four inches, being just the width of the loop forming the handle. The rake end rested on the deck of the tank right up against the side plate or wing of the tank on the engineer's side.

(Hinckley, p. 48, line 38, to p. 55, line 10.)

Hinckley noticed the position of the fire hook when the train pulled out from the Weehawken Yards, just before it entered the tunnel. It was then in its proper position and the projection over the side of the tank was not over three or four inches.

(Hinckley, p. 56, line 15 to line 40.)

Hinckley had not used the fire hook from the time he placed it in position after using it at the New Durham Coal Pockets until after the two engines passed each other, nor had he used it when the train was stopped at Dumont, 12 miles from Weehawken.

(Hinckley, p. 55, line 22.)

In fact, the first time Hinkley used the fire hook after leaving the New Durham Coal Pockets was at West Nyack, 25 miles from Weehawken (Hinckley, p. 65, line 38; p. 66, line 35).

It was unnecessary to use the fire hook until the hard coal burned out, and that would last from fifteen to twenty-five miles.

(Hinckley, p. 55, line 30.)

The train was stopped at Dumont, 12 miles from Weehawken by telegraphic order, and an inspection was made of the engine and train. Hinckley then noted the position of the fire hook; it was in the same position in which he placed it at the New Durham Coal Pockets.

(Hinckley, p. 58, line 10 to line 20; James H. Lee, p. 370, line 15.)

James H. Lee, the engineer, took out engine 3189 on February 16, 1915.

(Lee, p. 366, line 28.)

He took the engine at the Granton Engine House, backed down to the New Durham Coal

Pockets, took on water, coal and sand, and continued backing easterly through the tunnel to the Weehawken Freight Yards, where the engine was coupled onto the train. At Weehawken, before starting out, he examined the engine to see whether everything was in order. In doing so he observed the position of the fire hook and found it in the position shown by photograph Exhibit D-5. It was a part of his duty to notice the position of the fire hook before starting on his run.

(Lee, p. 367, line 1 to p. 369, line 27.)

The handle of the fire hook projected over the side of the tank about three or four inches. The part actually projecting was the loop of the handle.

(Lee, p. 370, line 32.)

Lee brought his engine to a stop at Dumont in obedience to a telegram and examined it. He there observed the position of the fire hook, and found it to be in substantially the same position as when he left the Weehawken Yards. The projection was three or four inches—the same as at Weehawken. The projection shown on the photograph D-5 is practically the same as it was that night.

(Lee, p. 370, line 14 to p. 371, line 1.)

Harry Vaughn was the head brakeman when it started. He was getting signals from the rear end of the train and walking over the top of the train to see that the brakes were off, etc. It was his duty when out on the train to see whether things were in proper position and in this connection it was his duty to look at the position of the fire hook. Before entering the tunnel, he came over the tops of the cars and over the coal in the tender, stepped over the fire hook and went into the cab of the engine on the fireman's side. He noticed the position of the fire hook as he

passed over it. It was lying across the front end of the tank in the position shown in the photograph, Exhibit D-5. The rake end was on the engineer's side and the handle end on the fireman's side. That was the regular place to carry the hook. The projection of the handle over the side plate of the tank was just about the width of the loop of the handle. His duty as head brakeman required him to go frequently from the engine cab to the train and from the train back to the cab. His place when not out on the train was in the cab on the fireman's side. When in the cab his duty was to observe signals and when going around curves to look back to see that the train was all right and to look for signals from the rear end. The position of the fire hook on the night in question is correctly shown in Exhibits D-6 and D-7 (p. 384, line 10 to p. 385, line 40; p. 392, line 20.)

After Vaughn got into the engine cab, just before entering the tunnel, Hinckley did not use the fire hook before the two engines passed, nor before the train reached Dumont.

(p. 386, line 14.)

This evidence is clear, positive and undisputed, that the firehook was placed in proper position by Hinckley after he used it at the New Durham yards; that it projected not more than 3 or 4 inches over the side of the tank; that it was in this same position when engine 3189 pulled out of the Weehawken yards and entered the tunnel, and that it was not used after being so placed until after the two engines passed. *Thus the negligent placing of the hook is not only not proved, but it is conclusively disproved.*

II.

The distance between track centers, the clearance between passing engines on adjacent main line tracks, and the relative elevation of plaintiff's forehead and the handle of the fire hook rendered it impossible that plaintiff's head could have been struck by the fire hook.

John Johnson is Supervisor of Tracks of the defendant Company and has been since 1889. (Johnson, p. 433, line 1.)

In the month of February, 1915, the distance between the track centers on the main line tracks between the tunnel and the first signal west of the tunnel was 13 feet 3 inches or a little over. (Johnson, p. 433, line 30, to p. 434, line 5.)

The elevation of the two tracks at this point was practically the same. There was no difference to speak of. (P. 434, l. 1.)

Charles E. Chase, the Assistant Division Engineer (by error of the stenographer called the Assistant Superintendent, p. 314), testified that from the westerly portal of the tunnel to the signal, the track elevations of the two main line tracks are the same. "The elevation is very slight at the signal. It is not much if anything between the signal and the tunnel. I might say nothing at all. It is level—it is a straight track and the rails level across. At the semiphore there may be the very slightest elevation."

(Chase, p. 444, line 15.)

Mr. Chase had engine 3189 and engine 904 placed on adjacent tracks having centers 13 feet 4 inches, and the same elevation, and took actual measurements to ascertain the clearance between the handle of the fire hook when so placed on engine 3189 as to have a projection of 4 inches over the side of the tank.

(Chase, p. 314, line 25 to p. 315, line 10.)

Plaintiff's engine 907 was not available for these measurements and engine 904 was substituted.

Frank A. Dooley, the defendant road foreman of engines, testified that engine 907 and engine 904 are of the same class and have the same dimensions throughout. The overhang and accessories and everything are the same.

(Dooley, p. 362, line 10.)

On engine 904 and also on engine 907 there was an arm rest outside the fireman's cab window which projected a distance of three inches (Chase, p. 315, line 24).

With the engines placed on adjacent track having 13 feet 4 inch centers, and the same elevation, with the fire hook projecting four inches beyond the side of the tank of engine 3189, there was a clear distance between the end of the fire hook and the arm rest on engine 904 of 2 feet, 9 inches. Had the track centers been 13 feet 3 inches, the distance between the handle of the fire hook and the arm rest on engine 904 would have been 2 feet 8 inches.

The clearance between the handle of the fire hook and the side of the cab of engine 904 with track centers 13 feet 3 inches was two feet 11 inches.

(Chase, p. 315, line 10 to line 38.)

At another time Mr. Chase took some measurements when Mr. Hinckley was sitting on the fireman's seat box in the cab of engine 992, looking out of the window. Engine 992 is of the same class as engines 907 and 904, having the same dimensions throughout, and the same overhang. (Dooley, p. 362, line 12.) Mr. Hinckley's position is shown by the photograph Exhibit D-7, p. 534. Mr. Chase found by actual measurements that

Mr. Hinckley's forehead in that position was 15 inches above the elevation of the handle of the fire hook.

(Chase, p. 315, line 35 to p. 316, line 15.)

If the projection of the fire hook had been extended a distance of 2 feet 8 inches so as to cover the clearance between engine 3189 and the arm rest on engine 992, Hinckley's forehead would then have been 9 inches above the handle of the fire hook.

(p. 316, line 15 to line 34.)

But the deck of the tank on which the rake end of the fire hook rested, is but two feet 4 inches. Therefore, if the fire hook was moved out two feet four inches, the rake end would fall two feet six inches and rest on the floor of the tank. In that position the handle would be 14 inches above Hinckley's forehead and 2 feet horizontally from the side of the cab of engine 992.

(Chase, p. 317, line 1 to p. 318, line 5.)
See also, Measurements on Ex. D-9, p. 536.

If, however, when the hook was extended out so the rake end fell from the deck of the tank to the floor, and the rod of the fire hook had fallen off the projecting support on the coal doors, the handle end would have then rested on the side plate of the tank and the elevation of the handle would be 3 inches below Mr. Hinckley's forehead, and the distance horizontally from the side of the cab of engine 992 would be 18 inches.

The engine photographed in Ex. D-7 showing Mr. Hinckley's head extending out of the fireman's window, is engine 992. This is of the same type and dimensions as engines 907 (the Price engine) and 904.

(Dooley, p. 362, line 12.)

Mr. Hinckley was sitting in the position in which a fireman would naturally sit when looking out of the cab window. His head was projecting about 6 or 7 inches, possibly 8 inches. In that position he could see plainly ahead on a straight track. If the tracks were curved to the left (as they were just west of the signal in question) it would not be necessary to extend the head so far, if indeed it would be necessary to extend the head at all.

(Hinckley, p. 348, line 35 to p. 349, line 10; Lee, p. 371 line 25.)

Mr. Hinckley is about the same height as Mr. Price. The difference not being more than two or three inches.

(Hinckley p. 346, line 25; p. 359, line 25.)

These photographs were taken when the engines were placed on tracks having exactly 13 foot centers (Johnson, p. 433, line 28).

On the evidence thus far discussed, and without the testimony of the plaintiff, the trial court would have been bound by the decision of this Court to direct a verdict for the defendant.

III.

Plaintiff's testimony did not contradict the evidence of the witnesses of both the plaintiff and the defendant as to the proper placing of the fire hook on Engine 3189, and did not raise a jury question.

On his direct examination plaintiff testified that the signals between Granton and New Durham were in a very bad position; that the blocks are located on the outside between Granton and New Durham Tower, and that the fireman calls that block for the engineer (p. 75, line 18).

The New Durham Tower is just west of the overhead bridge later referred to by the plaintiff. There is a block signal light at that tower (p. 78, line 1).

Continuing his direct testimony, the plaintiff says:

"We got by all the blocks from New Durham tower, but after we went under this bridge I seen this other engine come, *but didn't pay any attention to him, just watching the block;* just as that headlight passed me I seen that projecting hook, but it was too quick for me.

Q. And the next thing you remember you woke up in the State Hospital at Morris Plains? A. Yes, sir.

Q. You are there now? A. I am there now, yes, sir."

After his cross-examination had been completed, the Court had the testimony quoted above read to the plaintiff, and the Court then said:

"The Court: Now, you heard what was read? A. Yes.

The Court: What did you mean when you said, 'It was too quick for me'?

The Witness: I couldn't regain that position; I couldn't get myself away from that object.

The Court: What happened?

The Witness: I felt that smash at the instant I saw it.

The Court: After that which you have just told us, what happened

The Witness: I couldn't tell. I don't remember what happened after that."

(Price, p. 113, line 37.)

This evidence discloses nothing *as to the placing of the fire hook* which is the crucial point in

the case. Hence, it raises no question of fact for the jury.

This evidence is vague, indefinite and uncertain and does not support the contention that plaintiff was in fact struck by the fire hook.

The probative force of this evidence, if it ever had any, is wholly destroyed by other undisputed facts appearing in the record. *In fact, plaintiff's own testimony shows conclusively that under the circumstances testified to by him, he could not have seen and recognized a projecting fire hook on Engine 3189.*

The two engines passed between 7:20 and 7:30 P. M., February 16. This was nearly two hours after sunset.

(Foster, p. 2, line 1; Price, p. 86, line 29.)

Plaintiff saw the approaching engine and the block signal just west of the tunnel at the same time. His engine was then under the bridge at the New Durham Station.

(Price, p. 82, line 35.)

His mind was on the block signal, and not on the approaching engine. He paid no attention to that.

> "We got by all the blocks from New Durham tower, but after we went under this bridge I seen this other engine come, but didn't pay any attention to him, *just watching the block.*"
>
> (Price, p. 75, line 30.)
>
> "Well, we passed that train; we never paid strict attention to it because it was a freight train. We were on a passenger train. *My mind was on something else.* We passed hundreds of trains on the road and we never gave it any attention. We just kept our same position and watched out ahead."
>
> (Price, p. 80, line 40.)

"Q. Now, where were you—where was your engine when you first saw this engine on the freight train approaching? A. Just going under the bridge; I couldn't see it before that; I saw that train coming just as we went under the bridge; *but my mind was on the block, not on the engine.*"

(Price, p. 82, line 20.)

It was his duty to keep his eye on the block signal until the front of his engine passed it.

"Now, the frame of the cab, of the window, is right like that. You got to really hold on all you can to get that signal; and the rule is to hold the signal until you are by it."

(Price, p. 112, line 2.)

"Q. Until you are by it?

A. Yes.

Q. The rule is you have got to hold the signal until the front is by?

A. Until the front end is by."

(Price, p. 112, line 12.)

(See also testimony of Hinckley, p. 356, line 20.)

The night was quite dark and cloudy, with some mist and fog, and for that reason plaintiff was observing the block signal more intently than ordinarily, and necessarily to the exclusion of other objects.

After testifying that the trains passed between 7:20 and 7:30 in the evening, plaintiff continues:

"Q. And was it daylight or dark at that time? A. Kind of a misty night; just a little fog; that is what made me more observing.

Q. Was it daylight or dark? A. Just—February—just going dark.

Q. Just getting dark? A. *Yes, quite dark.*

Q. Was it dark when you left Haverstraw?

A. Well, it was quite dark, yes, sir.

Q. How long does it take you to go from West Haverstraw to Weehawken? A. Hour and a half on those runs.

Q. So it had been dark some time before you got to this signal which you see in this picture? A. Yes, sir.

Q. And *it was quite a dark night?* A. *Yes, sir; rather cloudy; that is what made me more observing.*"

(Price, p. 86, line 36.)

The two engines passed directly opposite the block signal, hence, plaintiff's attention was fixed on the signal and away from the approaching engine until the very moment when the two engines passed.

(Price, p. 89, line 38.)

"Q. Perhaps—but you say, as I understand you, that those two engines passed right at the signal?

A. Yes, sir.

(Price, p. 109, line 11.)

There were three lights on the front of the approaching engine, one being the head-light in the center and the others two small classification lights near the edge of the front end, and on either side of the headlight. All were white lights.

(Price, p. 90, line 10.)

The classification lights were small, and plaintiff could see nothing but their light.

"Q. Couldn't see anything from the light given out by those two classification lights, could you?

A. No, sir."

(Price, p. 110, line 10.)

The headlight has a reflector with sides and it collects the light and throws it ahead on the track.

(Price, p. 109, line 28.)

The handle of the hook was dark colored, and of 5/8 inch iron. In the night it would appear black.
(Dooley, p. 439, line 30; Ex. D-5, p. 532.)

Price's train was moving from twenty to twenty-five miles per hour. (Foster, p. 7, line 23.)
The freight train was moving from fifteen to twenty miles per hour.
(Hinckley, p. 48, line 10.)

Thus, the passing speed was from thirty-five to forty-five miles per hour, or from fifty-one to sixty-six feet per second.
(Chase, p. 334, line 1.)

The distance from the headlight on engine 3189 to the location of the handle of the fire hook was 45 feet.
(Dooley, p. 362, line 22.)

Price says he saw the projecting hook just as the headlight of engine 3189 passed him. (Price, p. 75, line 32.)
Thus, but the fraction of a second intervened between the passing of the headlight and the passing of the fire hook.
But the headlight of the approaching engine would partially blind the plaintiff for a few seconds.
(Foster, p. 310, line 18; Hinckley, p. 352, line 24; Lee, p. 373, line 15.)

Bearing in mind that the night was dark; that it was cloudy, a little misty and foggy; that plaintiff saw the approaching engine but paid no attention to it because his mind was on the signal block and not on the engine; that he was watching the block with unusual attention because of the darkness, mist and fog; that the headlight on each engine had reflectors which threw the light for-

ward on the track and cut it off from the side of the engine; that nothing could be seen from the light given out by the small classification lights; that the engines passed right at the block which plaintiff was watching until his engine had passed it, it is perfectly apparent that the plaintiff, in the fracton of a second could not possibly have turned his attention from the block which was to his right, and on the opposite side of the track, to the engine which was on his left and in which he had no interest, recover from the momentary blindness caused by the glare of the approaching headlight and recognized in the darkness the dark handle of a projecting fire hook made of 5/8 inch iron, which he had no reason to expect to see. *That he should have been able to do this is contrary to reason, to experience and to natural laws.* Being so, it raises no jury question.

Although one may testify that he looked and saw no approaching train when it is apparent that the train must have been in plain view at the time and place testified to, yet such testimony raises no jury question. One may testify that he could see an object through a tight brick wall. Such testimony raises no jury question. Neither does the plaintiff's testimony in this case.

Furthermore, plaintiff could not even see the engine crew on engine 3189.

(Price, p. 86, line 15.)

When engine 3189 passed him, plaintiff "didn't see nothing."

> "Q. Now, if that was the case you couldn't see the signal just at the time when these two engines pass, could you? A. When that engine passed me I didn't see nothing."
>
> (Price, p. 109, line 15.)

How then could he have seen the handle of the fire hook even if it had projected far enough to strike him?

Notwithstanding plaintiff's testimony in regard to seeing the projecting fire hook, he admits that he does not know what hit him.

"Q. Did you continue to sit on the seat of the fireman's seat—seat box, after you were hurt?

A. *I felt that crash and I don't know—it was just like fire before my eyes for a second. You can maybe imagine for a second anybody hits you, for a second, but I don't know which way I went or what took me. If I could tell you that I would be glad to tell you.*"

(Price, p. 108, line 10.)

This admission expressly precludes drawing any inference from his testimony that the fire hook struck him.

Plaintiiff says he felt what he calls "that crash." The effect upon him was that he could "*imagine for a second anybody hits you*, for a second, but I don't know which way I went, *or what took me.*" Clearly plaintiff merely imagined he had been struck, but whether by some person or by some thing he did not know.

In this connection it is to be observed that he nowhere directly states that the fire hook struck him. He says:

"Just as that headlight passed me I seen that projecting hook, but it was too quick for me.

The Court: What did you mean when you said, 'It was too quick for me?'

The Witness: I couldn't regain that position; I couldn't get myself away from that object.

The Court: What happened?

The Witness: I felt that smash at the instant I saw it.

The Court: After that which you have just told us, what happened?

The Witness: I couldn't tell. I don't remember what happened after that."
(Price, p. 113, line 32.)

He says he saw the projecting hook. It did project three or four inches. He does not say it projected further. It was too quick for him. He could not get away *from the object,* and he felt the smash at the instant he saw it, but he does not say a blow from the fire hook made the smash.

In the light of his positive statement *that he does not know what took him* (i. e., what struck him), there is no evidence in the case that the fire hook struck him.

The engineer did not notice Price after he called the last signal until he was stopping his engine at the station. Price did not call out or make any noise, as he naturally would have done had he been struck by the fire hook and not rendered immediately unconscious.
(Foster, p. 11, line 37.)

A very strange thing disclosed by the record is that before plaintiff testified at the last trial, it was never intimated that he had at any time told any one that he saw the projecting fire hook or that he had ever suggested that he had been struck by it.

He said nothing about seeing the hook or being struck by it on the night of the injury, although he did ask if there was blood on his face or any mark on his face.
(Foster, p. 15, line 35 to p. 16, line 20.)

He did repeatedly say that some one hit him on the head with a hammer or that some one hit him on the head.
(Mrs. Masterson, p. 122, line 20 to p. 123, line 10; Dr. King, p. 161, line 20 to line 35; Miss Sutcliffe, p. 285, line 32 to p.

286, line 20; Mr. Hicks, p. 273, line 30; p. 278 line 5; Dr. Fendrick, p. 293, line 5; p. 296, line 1; Mr. Hart, p. 425, line 30 to line 40; Mr. Bedell, p. 428, line 10; Dr. McMurray, p. 174, line 15.)

Doctors Beling and Kirby, on behalf of defendant, examined plaintiff at Morris Plains Hospital, March 28, 1919. This examination was pursuant to an order of the Court to ascertain his physical and mental condition. Doctors King and Evans were present on behalf of the plaintiff.

Very few of the questions asked plaintiff were answered. His failure to answer questions and the character of his answers to the few questions he did answer are well illustrated by the following testimony:

(Dr. King, pp. 153 to 157; Dr. Beling, p. 394-397; Dr. Kirby, p. 450-453.)

During this examination, which lasted several hours, questions were put to the plaintiff and answered by him as follows:

"Q. Mr. Price, do you remember what happened to you, about how you were injured?
A. No, sir."

(Dr. King, p. 154, line 10; Dr. Beling, p. 396, line 35; Dr. Kirby, p. 451, line 20.)

"Q. Do you remember anything about the time before you were injured?
A. No, sir."

(Dr. King, p. 154, line 15; Dr. Beling, p. 396, line 39; Dr. Kirby, p. 451, line 23.)

"Q. Were you injured in the locomotive while you were at work?
A. Somebody hit me on the head."

(Dr. King p. 397, line 10; Dr. Beling, p. 397, line 15; Dr. Kirby, p. 452, line 27.)

Thus, as late as March 28, 1919, he remembered nothing about the accident or what caused it. He still stated that someone hit him on the head. On April 7, he testified in court and claimed to have seen the approaching engine and a projecting fire hook.

It appears from the testimony of Mr. Price that just before the examination by Doctors Beling and Kirby, his wife saw him and asked him how he felt, and he replied that he did not feel extra well. She then told him he was to be examined by two doctors for the railroad company, and that if he did not feel well he did not need to answer; that he was going to court in a couple of days and he might just as well tell his troubles to the court. Acting on that suggestion, he told his wife that was what he was going to do and he wouldn't bother telling his troubles to anybody and he acted the way he felt.

(Price, p. 91, line 20.)

This may explain the reason for failing to answer most of the questions put to him, but it by no means explains away his repeated statements that he did not know anything about the accident or what caused it.

Moreover, this evidence does disclose how readily plaintiff accepted suggestions and how fully he lived up to them. That doubtless accounts for his testimony regarding the fire hook.

In this connection the evidence of Drs. McMurray and Evans as to statements made by the plaintiff with respect to the injury are most significant.

Mr. Price was committed to the Morris Plains hospital by Doctors King and Hasking. Dr. King first saw plaintiff at the North Hudson Hospital on March 22, 1915. He had him under observation for about five weeks, and he was then committed to the Morris Plains Hospital. (Dr. King, p. 144, line 12; p. 145, line 10; Mrs. Price, p. 28, line 5.)

Thus, it appears that Price was sent to Morris Plains in April, 1915.

Dr. McMurray testified that within a month or two after he was admitted to the hospital (p. 175, line 15) or at most three or four months thereafter (p. 176, line 40), plaintiff gave a rational and lucid account of the way he was injured and that frequently after that time he repeated this description (Dr. McMurray, p. 175, line 15; p. 176, line 10 to p. 177, line 5).

On the first occasion he spoke as clearly and as rationally as he has since that time (p. 176, line 15).

From the first he has varied *very, very little in his description of what took place* (p. 176, line 17).

Dr. McMurray reported this to Dr. Evans—just when he does not remember, but it was certainly within a year.

(Dr. McMurray, p. 177, line 22 to p. 178, line 5.)

Thus, as early as July or August, 1915, Dr. McMurray had from the plaintiff this clear description of what took place from which description plaintiff never materially varied and within a year from that time at most (i. e., by July or August, 1916), he had reported this to Dr. Evans.

In November, 1917, Dr. Evans testified at the first trial.

(Dr. Evans, p. 206, line 25.)

His description of the plaintiff and his judgment as to the plaintiff's condition as set forth in that testimony is found on pages 207 to 210, inclusive, of the present record.

Being asked if plaintiff had ever mentioned being struck on the head with a sledge hammer, Dr. Evans testified:

"I do not remember his using the term 'sledge hammer.' He has on numerous occa-

sions, not once by any means, but on numerous occasions, when I led up to it—I used to ask him why he is there which is a very frequent question to ask almost all the patients. He would say, 'Well, when I was on that engine something happened, and, Doctor, I don't remember anything since; I cannot remember anything right since then.' He says that repeatedly, *but he has said nothing about any particular sort of instrument being used or coming in contact with a particular instrument.*"

(Dr. Evans, p. 210, line 25.)

Thus, a year and a quarter after Dr. McMurray had reported to Dr. Evans plaintiff's clear and lucid statement of what took place when the two engines passed, Dr. Evans testified that on numerous occasions plaintiff has told him merely that something had happened when he was on the engine. Evidently he could not tell what it was; he had said that repeatedly, but has said nothing about any particular sort of an instrument being used *or coming in contact with a particular instrument.*

If since July or August, 1915, plaintiff has been telling to his doctors the same story that he told on the witness stand is it conceivable that he would not have been produced as a witness at the trial in this case in November 1917? Beyond question he would have been produced as a witness, but he was not produced until after the Court of Errors had held the testimony on the first trial insufficient to sustain the recovery, and as counsel states it in his summing up (p. 490, line 35), "'we ought to prove by some one who saw the fire hook protruding at that time * * * Why, then, we have got to find out whether anybody saw that firehook, we have got to try to put this lunatic on the stand, if he is able to testify."

So the lunatic is put on the stand and he then testifies to seeing the fire hook—something he had never mentioned prior to the first trial. On the contrary, prior to that time he had not only not mentioned the fire hook, but had repeatedly stated that he did not know what caused his injury. Up to that time his only explanation had been that "somebody" hit him on the head.

From all these circumstances but one conclusion can be drawn, and that is that the story which he now tells has, in some way, developed in his mind since November, 1917, and in view of the statements made by him to Doctors Beling and Kirby, it would appear that this development has taken place since March 28, 1919. His susceptibility to suggestions and his ability to follow them is illustrated by his testimony (p. 91, line, 20. etc.).

It is apparent that plaintiff's description of what he claims to have seen does not contradict the evidence as to the proper placing of the fire hook, and that evidence is wholly uncontradicted; it is further evident that plaintiffs' testimony is vague, uncertain, contrary to reason and experience, and to natural laws; that it is contradicted by the plaintiff himself, and by the great mass of circumstances proved in the case.

Under such circumstances the judgment should be reversed.

It is not necessary that there should be absolutely no evidence in the case in favor of the prevailing party in order to warrant the court in reversing a judgment on appeal. This has been held in many cases in this and other states.

In *P. R. R. Co.* v. *Righter,* 42, N. J. L., 180, the question was whether the servant of the plaintiff was guilty of negligence in driving upon the track in front of the approaching train. Three witnesses testifying on behalf of the plaintiff said they saw him look when he was at the proper place.

The Court of Errors said (p. 187):

"But such testimony cannot aid the plaintiffs where it is clear, if he looked with care, he must have seen the train."

The same rule should apply when it is apparent that plaintiff could not have seen what he testifies to.

In *Baldwin* v. *Shannon*, 43 N. J. L., 59, the Supreme Court says (p. 602):

"The power of a court to order a non-suit or direct a verdict does not depend upon the *absence of all testimony* in opposition to the case in favor of which the direction is given. The view that a mere *scintilla* of evidence was sufficient to carry a case to the jury, is completely exploded in the English courts."

After citing English cases dealing with the question, the court said (p. 603) that the rule now established is "that in every case, before the evidence is left to the jury, there is a preliminary question for the Judge, not whether there is literally no evidence, but whether there is anything upon which a jury can properly proceed to find a verdict for the party producing it upon whom the onus of proof is imposed."

This case is cited with approval by this Court in *Timlin vs. Dilworth*, 76 N. J. L., at p. 569.

In *McCormack* v. *Standard Oil Co.*, 60 N. J. L., 243, the question was whether the defendant had laid certain pipes in an excavation into which the plaintiff had fallen A witness testified that he had been employed by defendant prior to the time of the accident, in laying out a plan for the extension of defendant's plant and that the plan provided for laying pipes where plaintiff was injured This witness had seen trenches in the highway at or near the place of the accident, but was unable to state whether he had seen these ex-

cavations before or after the accident

The Supreme Court held that the refusal of the trial judge to non-suit was proper. The evidence of defendant's witnesses was to the effect that they had had charge of the laying of the pipes across the highway, and that the first excavation was made six days after the accident. The court said (p. 245)—

> "Their recollection was fortified by reference to time slips and work reports made by them at the time. There was no contradiction of their testimony and they stood unimpeached."

Held, therefore, that a direction of a verdict for the defendant was proper, and that the inference that defendant had opened the excavation into which plaintiff fell, which was possibly justifiable from plaintiff's evidence, was completely overthrown by the evidence of the defendant.

So in the cast at bar. Any possible inference in favor of the plaintiff which might be drawn from his testimony, is completely overthrown by the evidence of the defendant relative to the placing of the fire hook and its position when examined at Dumont.

In *C. R. R. Co.* v. *Smalley,* 61 *N. J. L.* 277, plaintiff was injured at a grade crossing. The negligence charged against the defendant was the failure to ring the bell or blow a whistle. Several witnesses testified that they did not hear any signal by bell or whistle from the engine which strck plaintiff, and he testified that he did not hear the train approaching and that he did not hear either bell or whistle; that at the time of the accident there was a moving coal train on an adjoining track and this Court held that the noise of the freight train must have greatly hindered persons in the immediate vicinity from distinguishing other sounds such as the ringing of a bell or

the blowing of a whistle. The Court said: (p. 278, bottom)—

> "There was no express evidence to show how much noise the coal train made, or indeed that it made any noise, nor under the circumstances was such evidence necessary. The thing spoke for itself. The court will not ignore common experience."

So in the resent case, the court will consider common experience and natural laws in determining the probative value of plaintiff's testimony.

In *Holmes* v. *Penna. R. R. Co.*, 74 N. J. L. 469, plaintiff's intestate was killed at a grade crossing. The negligence relied upon was failure to ring a bell or blow a whistle. One witness testified that he did not hear the bell rung, but did not know about the whistle. Another who was about half a square from the accident testified that she heard neither whistle or bell. The Court of Errors held that the evidence was perhaps sufficient to call for affirmative proof on the part of the defendant that the bell was rung or the whistle blown. This affirmative proof was given by the engineer and fireman and one brakeman. The Court said: (p. 471)

> "The credibilitiy of the witness who proved that the bell was rung was not impeached by any direct evidence, nor does the case disclose any reason for rejecting their testimony."

Held, therefore, that the plaintiff had not sustained the burden of proof that the bell was not rung and the direction of judgment in favor of the defendant was sustained.

In *Hummer* v. *Lehigh Valley R. R. Co.*, 74 *N. J. L.* 196, the negligence attributed to the defendant was that the engineer did not stop the train as soon as he reasonably might have stopped it after being warned that plaintiff's wagon was on the track.

The plaintiff testified that he ran down the track about four car lengths and swung his lantern in front of the train, but that the train did not slacken speed until it passed him; that he heard the brakes applied after the train had passed him. The train consisted of 16 cars and was running about twenty-five miles per hour. It was stopped just after the pilot struck plaintiff's wagon. The Supreme Court held that there was a question of fact whether the train had been stopped with reasonable promptness, and affirmed a judgment in favor of the plaintiff.

The Court of Errors held (75 L. p. 704) that plaintiff's testimony as to the stopping of the train did not raise a jury question. That it required a conclusion that a train of 16 cars running about 25 miles an hour on greasy rails could be stopped in the length of three or four cars. The court said: (p. 714)

> "Plaintiff's contention appeals neither to our reason nor to our knowledge of the subject of car braking."

In conclusion the Court said:

> "We do not hesitate to suggest in this case, quite as strongly as did the Lord Chancellor in *Metropolitan Company* v. *Jackson* that the only facts upon which the jury could have founded their verdict were that the defendant was a railway corporation and that there was an accident."

This remark is equally applicable to the case at bar.

In *Weiss* v. *Central R. R. Co.*, 76 *N. J. L.* 348, the negligence charged against the defendant was the failure to blow the whistle or ring the bell. The plaintiff testified that he heard neither, but there was evidence that his coat collar was turned up; that he wore a cap with ear lappets and that

he was relying upon a crossing bell for warning.

Another witness was within about 125 feet of the railroad track. He saw the train and also the plaintiff approaching the track. He saw the plaintiff stop, look and start off again. He heard no bell or whistle. He gave no warning to the plaintiff, although he apparently knew that the plaintiff was in danger of injury.

There was positive testimony of the ringing of the bell given by several witnesses. The Supreme Court said, (p. 351)—

> "For the reasons already given, we think the testimony of plaintiff and his witnesses is unreliable and negative, and that the testimony of defendants' witnesses upon this point is so overwhelming *that a verdict should have been directed for the defendant.*"

In *Blauvelt* v. *Erie R. R. Co.*, 81 N. J. L. 142, plaintiff sought to recover damages for injuries received at a grade crossing. The negligence alleged was failure to give the statutory signals by bell or whistle.

The plaintiff testified that he did not hear any bell or whistle, but the evidence showed that hearing was difficult because of a strong wind blowing the sound away from him. The Supreme Court said:

> "Undoubtedly, the condition of the wind described by the plantiff made it unlikely that he could have heard the whistle had it blown. *There was, therefore, no conflict of evidence requiring the submission of that fact to the jury.* Eissin vs. Erie, 44 Vroom 343; Holmes v. Pennsylvana Railroad, 45 Id. 469; Weiss v. Central Railroad, 47 Id. 348; Howe v. Northern Railroad, 49 Id. 683.
>
> "The motion to direct a verdict for the defendant should have prevailed on this ground."

Surely the difficulty of hearing the bell in the cited case was far less than the difficulties which would prevent the plaintiff in the present action from seeing what he claims to have seen.

In *McCauliffe* v. *Metropolitan & Co.*, 107 Atl. 258, the plaintiff testified that the insured "died from a cold as far as I know"; that he "was not sick" never had any trouble as far as she knew for five years except to get a cold. The attending physician testified that he had treated the insured for chronic bronchitis and asthma in November, 1915, and at various times thereafter These dates or some of them, were prior to the date of the policy.

The Court of Errors held that the testimony of the plaintiff was no contradiction of this testimony of the attending physician, and that a judgment for the plaintiff could not be sustained.

In *Chybowski* v. *Busyrus Company,* 127 Wis. 332, S. C. 106 N. W. Rep. 833, the Supreme Court held that where the evidence in plaintiff's favor in an action for personal injuries "*is contrary to all reasonable probabilities* the Court should direct a verdict in favor of defendant." The court further held that where the verdict was contrary to natural or scientific laws the judgment should not stand.

In view of Dr. McMurray's testimony that since August, 1915, plaintiff has been tellng clearly and lucidly with practically no variation the story of what occurred at the passing of the two engines, the Court should scrutinize with the greatest care the testimony now produced for the first time, and which was admittedly produced to meet the situation created by the decision of this Court in reversing the former judgment. Such care is particularly urgent in view of the fact that at the former trial plaintiff's alienist declared him to be without emotional control, much confused, disoriented, even when he appeared calm, without

capacity to appreciate facts or their bearing (Dr. Evans, pp. 207-210, incl.), and that he could not readjust himself, and when he tries to do so, he becomes depressed or agitated, and is emotionally out of adjustment, more out of adjustment than he is in a general way." (Dr. Evans, p. 214, line 39.)

Smith v. *Boston El. R. Co.* (C. C. A. 1st Circuit), 184 Fed. 387);
McCarthy v. *Interurban etc. Co.*, 93 N. Y. Sup. 548.

IV.

The address of plaintiff's counsel to the jury was highly improper and clearly illegal. The action of the court with respect to it was wholly inadequate and the denial of defendant's motion to withdraw a juror and declare a mistrial is reversible error.

(See Objections, p. 90, line 18; p. 506, line 35; Grounds of Appeal, p. IX.)

It would be difficult to point to any considerable part of the address which is not grossly improper and highly prejudicial to a fair trial of the case. It is misnomer to call it an argument. It is almost wholly a harangue, well calculated to arouse the prejudice and passions of the jury, to work upon their sympathy, to divert their minds from the evidence and to influence and control their conclusions by matters which are wholly outside of the case. Taken as a whole, as well as in sections and in detail, it was subversive of the due and orderly administration of justice. To permit such conduct amounts to a denial of justice.

Any one of the matters specifically objected to is sufficient to require a reversal.

The declaration that the jury at the former trial gave the largest verdict ever given in the Court House (p. 490, line 18) was highly prejudicial, indefensible and illegal. When objection was made counsel, instead of withdrawing the statement, emphatically repeated it. He never either apologized for it or withdrew it. On the contrary, he treated the objection to his remarks as offensive.

The Court did not rule upon the objection, rebuke counsel, or require him to withdraw the objectionable statement, nor did the Court direct the jury to disregard it. On the contrary the Court addressed both counsel in a manner which might well imply to the mind of the jury that the interruption of counsel for the defendant was equally as reprehensible as the unlawful remark of plaintiff's counsel (p. 490, line 18).

The reference to the wife and children of plaintiff, their impoverished condition and counsel's interest in and alleged duty to them, was contrary to all rules of proper practice, and called for a drastic action *sua sponte* by the Court.

(See Statements, p. 494, line 19; p. 495, line 30; p. 503, line 25; Objections, p. 507, line 22; Grounds of Appeal, p. X, subdivisions B, C and E.)

Equally indefensible was the statement of counsel with respect to the address to a New York jury where counsel stated they seemed to have bigger ideas than we have, etc., and counsel's queston "Are you afraid to give a verdict," etc.

(See Statement, p. 502, line 5;
Objection, p. 507, line 10;
Grounds of Appeal, p. X, sub. div. D.)

There was no basis for the statement that defendant's atorney had attempted to mislead the jury.

(See Statement, p. 506, line 15;
Objection, p. 507, line 40;
Grounds of Appeal, p. V, sub. div. F.)

Defendant's counsel had stated that the negligence alleged in the complaint was the improper placing of the fire hook. In so doing he simply followed the ruling of the Trial Court and the language of the Court of Errors at the begining of the opinion in 105 Atl. p. 187.

That all of the statements objected to, as well as many other parts of the address, were highly improper and illegal, and were most prejudiciial to a fair trial of the case is beyond question. Neither counsel nor the Court dealt adequately with them when objection was made.

Counsel neither withdrew nor apologized for the objectionable remark about the size of the former verdict, nor the remark that the case involved the future of a woman and three children of a lunatic, nor the remark that he had the interests of this woman and three children in his hands, nor his charge that counsel for the defendant had tried to mislead the jury. In a light, airy and indifferent way he did say with respepct to the reference to the summing up of the New York counsel in a New York case, "I will withdraw it. Just as if I had not said it." That was easily said, but it was wholly inadequate considering the character of the offense. Counsel did not even admit that it was wrong for him to make the statement. There was no shadow of apology or expression of regret in what he said. It was merely an attempt to escape the penalty and to leave as much of the effect with the jury as possible.

The same may justly be said about counsel's request to the Court to direct the jury "to pay no attention to what I said to them about *the charity*. Mr. Carey is *probably* correct about that.. I am perfectly willing to say that that has nothing to do with the case."

It is to be observed that this statement relates only to the use of the word charity and does not relate to the unauthorized calling to the attention of the jury that the case involves the future of the wife and children of the lunatic, nor his statement that he had the interests of the wife and the three children in his hands. It was merely another effort to bring himself within the law without a frank admission that he was absolutely wrong in mentioning this matter to the jury. The dealing of the Court with this matter was also entirely inadequate. Counsel was not required to withdraw his remark with respect to the former verdict, nor were the jury told that the remark was improper and that they should not consider it.

The Court merely complied with the request of plaintiff's counsel to direct the jury to pay no attention to what he said to them about *the charity*, using this language—

"You will disregard that entirely."

The Court not only did not condemn the remarks of counsel with respect to the summing up to the New York jury, but apparently regarded them as proper. (P. 507, line 15.)

As to all the other objections raised, the Court merely left it to the jury to determine whether the statements complained of were based on evidence and if so, whether they were fair deductions from the evidence. They were told that if misstatements of evidence had been made or improper deductions made therefrom, these were to be disregarded.

(P. 508, line 15.)

As these statements were obviously not based on the evidence and had no legitimate place in the case, it was improper to leave that question to the jury.

These were one and all so patently unfair, so

completely outside of the issues, so prejudicial to a fair trial, that the jury should have been clearly and explicitly told that they were improper, unlawful, and to be wholly disregarded. Counsel should have been squarely and forcibly reprimanded for making the statements, and should have been required to withdraw them. Even had this been done, it is entirely improbable that the injurious effect would have been overcome.

V.

It is respectfully urged that the Supreme Court erred in holding that the withdrawal of a juror was wholly discretional with the trial Court, and that the denial of defendant's motion so to do is not a ground for appeal.

The Supreme Court cites *Smith* vs. *Brunswick Laundry Co.*, 108 Atl. 184, as authority for its disposition of this objection and ground of appeal. But in this connection it is to be observed:

(1) The language in the cited case is to be construed with respect to the subject matter to which it is applied.

(2) The discretion of the trial Court in all cases of this character is a legal, not an absolue discretion, and is to be exercised in a reeasonable, not an arbitrary manner.

There are very few matters which are subject to the absolute discretion of the trial Court.

Surely that Court is not vested with such discretion as to any of the substantiial rights of the parties. Equally certain is it that it is a substantial right of a party to have the verdict based on the evidence and not on the unwarranted and unlawful statements of counsel.

In *Smith* vs. *Brunswick Laundry Co.*, the Court had under consideration a very minor impropriety of counsel, differeing widely from the reckless, studied and persistent offending disclosed in this case. In the Smith case, the matters complained of might well have been left to the discretion of the trial Court, for they were matters which might be and were adequately dealt with by that Court. Here, however, the Court is dealing with an intentional and successful effort to get before the jury illegal matter which was in the highest degree prejudicial to defendant.

It is confidently asserted that this Court has never laid down the rule in cases of this kind, that the trial Court has absolute discretion in the matter of withdrawing a juror and declaring a mistrial. On the contrary, it has clearly indicated that under unusual circumstances, a refusal to suspend a trial may be a ground for appeal.

In *Heiler* vs. *Goodman's &c. Co.*, 105 Atl. 233; 92 N. J. L. 415, the Court stated the *general rule* to be that declaring a mistrial is discretionary with the trial judge, but added:

> "Conceding for present purpopses that exceptional circumstances might remove the case from the operation of this rule, *we find nothing in the case at bar to justify such a course.*"

In *Smith* vs. *Brunswick Laundry Co.*, cited by the Supreme Court, this Court entertained the view that legal error might arise from the refusal of the trial Court to declare a mistrial, for after stating the general rule the Court adds:

> "We may add, however, that while the remarks of counsel objected to were improper, *they were not such as should lead to a reversal of the judgment.*"

In support of the general rule that the withdrawal of a juror is within the discretion of the

trial Court, *Heiler* v. *Goodman's etc. Co.*, cites *Cheselborough* v. *Conover*, 140 New York, 382, and *Cattano* v. *Metropolitan St. Railway Co.*, 173 New York 565, and *Smith* v. *Brunswick Laundry Co.*, cites *Williams* v. *Brooklyn Elevated R. R. Co.*, 126 New York 96. It is to be observed, however, that the New York Court of Appeals likewise holds that there are exceptional circumstances which justify an Appellate Court in reversing a judgment for refusal to withdraw a juror.

In *Loughlin* v. *Brassil*, 187 N. Y., 129, the plaintiff's counsel in summing up, said:

> "There was no evidence that he (the defendant) was insured, most of these people are. There is no evidence that there was anything of this kind here."

Defendant's counsel excepted and asked that a juror be withdrawn. This application was denied by the Court. Plaintiff's counsel again said—

> "Many people get insured but there is no evidence of any such thing in this case at all."

Defendant's counsel again excepted to the remark and the Court said:

> "There is no evidence and the jury will pay no attention to it."

The Court of Appeals said:

> "It can scarcely be said that the remark was one of thoughtlessness, because it was deliberately repeated in substance after counsel had objected to it. Under such circumstances the trial Court would have been amply justified in correcting much more vigorously than it did the imprudence of counsel, and either the trial Court, or the Appellate Division would have been quite justified in reversing the judgment."

In *People* v. *Manganaro,* 218 N. Y. 9, the prosecuting attorney introduced grossly improper matter in his address to the jury. The Court of Appeals said (p. 15):

> "The trial was rendered unfair by the use of improper and intemperate arguments and statements by the counsel for the People, the assistant district attorney, in his summation to the jury. The trespasses of the counsel in such regard, in and of themselves, might constitute ample cause for reversing a judgment of conviction. (*People* v. *Watson,* 216 N. Y. 565)."

After citing the language of the prosecutor, the Court continues (p. 17):

> "The safety and security of every citizen requires that if one accused cannot be fairly and lawfully convicted, he should not be convicted at all. The instruction to the jury to disregard certain of the statements of the counsel did not transform their pernicious character or eradicate their unjust effects. The rule that the withdrawal of prejudicial matter or an instruction to the jury to disregard it cures any error which may have been committed by its introduction, cannot be applied here, and for two reasons: The one, *the statements were of a character calculated to irrevocably affect and sway the minds of the jurors;* the other, the instructions of the court did not relate to all of the statements and were not sufficiently clear and specific."

The Supreme Court of Pennsylvania does not hesitate to reverse a judgment because of the use of improper language in addressing a jury.

In *Davis* v. *Stowe Township,* 100 Atl. 529, the action was to recover damages for the death of the plaintiff's husband. Plaintiff's attorney said to the jury—

"The plaintiff Helen Davis, and her children will have to be supported by charity unless the jury give them a verdict."

The Pennsylvania Court said—

"The remarks of counsel were not a discussion of the evidence, and, as is obvious, tended to arouse the sympathy of the jury and prejudice them against the defendant. We cannot permit a verdict obtained by such means to stand." (Citing many cases.)

"The trial court should have granted the request of defendant's counsel and withdrawn a juror."

VI.

When counsel seriously offends in addressing the jury, the burden of interposing should not be left upon opposing counsel. The presiding judge should assume this burden and take such drastice action as may be necessary to assure a proper administration of justice.

In *Hayes* v. *Smith,* 56 N. E. Rep. 879, the Ohio Supreme Court says (p. 884)—

"That the practice complained of is highly reprehensible, no one can doubt. It ought in every instance to be promptly repressed. For counsel to undertake by a side wind to get that in as proof which is merely conjecture, and thus to work a prejudice in the mind of the jury, cannot be tolerated. *Nor ought the presiding judge to wait until he is called on to interpose.* For it is usually better to trust to the discrimination of the jury as to what is and what is not in evidence, than for the opposite counsel to move in the matter. *For what practitioner has not regretted his un-*

toward interference when the counsel thus interrupted resumes.''

When objection is necessary because the effect of counsel's statements may possibly be cured by proper acts on his part and on the part of the court, the better practice is to reserve the objections until the close of the address. If objection is interposed at the time of making the statements, the tendency is to produce contention and distract the minds of the jury.

Mayo v. *Wright*, 63 Mich. 32; 29 N. W. 832.

VII.

Whenever counsel patently transgresses the rules of proper practice in addressing the jury, the trial Court is bound to make the corrective instructions to the jury clear, explicit and emphatic, and thus, as far as possible, to remove their injurious effects. The Court should also rebuke counsel and require a withdrawal of improper statements.

In *Alabama I. & F. Co.* v. *Benenante*, 11 Ala. App. 644; 66 So. Rep. 942, it was held that the correction by the trial court should be as broad as the error committed.

In *Mainard* v. *Reider*, 28 N. E. Rep. 196, it was held that if the trial court fall short in any substantial respect in nullifying the effect of improper remark of counsel, a new trial should be ordered.

In *Florence C. & I. Co.* v. *Field*, 104 Ala., 471; 16 So. Rep. 538, it was held that the mere statement by the trial court that the language of counsel was improper or out of order was not sufficient to cure the evil.

In *Watson* v. *Adams,* 104 Ala. 490; 65 So. Rep. 528, it was held that the mere statement by the Court in which the offending counsel concurred that a matter which had been excluded from evidence would not be before the jury for consideration, was not sufficiently positive and emphatic to enable the Appellate Court to say that the unfavorable impression on the jury was probably removed.

In *Herrick* v. *Town of Holland,* 77 Atl. 6, the plaintiff's counsel stated to the jury that if he had wanted to show the plaintiff in all her weakness he would have had her in court, sitting in her chair where they could see her collapse, as she had collapsed. Defendant's counsel objected that there was no evidence to show that she had collapsed during the trial.

The Court in its opinion said (p. 10)—

> "The Court told the jury in the time of it to disregard anything that plaintiff's counsel had said, if he had said anything, in regard to anything that did not appear in evidence, and to confine themselves to what appeared in court."

Held, that this was insufficient, and the judgment was reversed.

The Supreme Court held that the failure of the trial Court to adequately deal with the situation could not be considered on appeal because the objection thereto was not reserved in the rule to show cause.

It is true that no objection on this point was reserved in the rule to show cause, yet the failure of the trial Court to deal adequately with the situation had a very important bearing upon the right of the defendant to have a juror withdrawn. It emphasized an intolerable situation. It tended to create the impression that the conduct of counsel was not improper, or at least, that it should be

tolerated. It helped to create the exceptional circumstances which take this case out of the usual rule, and render the denial of the motion to withdraw a juror a proper ground of appeal.

VIII.

When counsel has made improper statements to the jury he is bound to do everything possible to rectify the wrong, including acknowledgment of error, withdrawal of the offensive remark and asking the jury not to consider it.

In *Bullard* v. *B. & M. Ry. Co.*, 64 N. H. 27; 5 Atl. 838. The Supreme Court of New Hampshire, discussing this question, says:

> "The law does not transfer the defendant's property to the plaintiff as damages without a fair trial, and in a legal sense a trial is not fair when such statements as were made in this case have any influence favorable to the party making them. He is therefore bound to do everything necessary to be done to rectify his wrong and restore to the trial the fairness of which he has devested it. He is legally and equitably bound to prevent his statement having any effect upon the verdict. This he cannot do without explicitly and unqualifiedly acknowledging his error, and withdrawing his remark in a manner that will go as far as any retraction can go to erase from the minds of the jury the impression his remark was calculated to make. But it is by no means certain that the jury will, at his request, disregard the fact stated."

To the same effect see:

Union Pr. Co. v. *Field*, 137 Fed. 14;
Wolffe v. *Minnis*, 78 Ala. 386.

IX.

The statements of counsel were so grossly unfair and so prejudicial as to be incapable of correction by any instructions of the Court or by any act of counsel. The sole remedy in such a case is to suspend the trial or to reverse any judgment rendered in favor of the offending party.

In *Bullard* v. *Boston & Me. R. R. Co.*, 64 N. H. 27, the New Hampshire Supreme Court says:

> "In spite of the fullest and frankest retraction and the most explicit and emphatic instructions, to lay the remark entirely out of consideration, the trial may not be fair. It may not be in the power of the retracting counsel and the Court to remove the prejudice. Their combined and vigorous exertions may not control the mental operations of the jury. * * * The statement, withdrawn not because it is contrary to the fact, but because it is not a legal mode of proving the fact, may do as much damage as if it had not been withdrawn."

In *Latham* v. *U. S.*, 226 Fed. 420 (U. S. C. C. A., 5th Circuit), defendant was indicted for using the U. S. Mails for obtaining money fraudulently. Defendant's counsel commented on the fact that the Government had produced but one witness to show that defendant had received money through the mails. The District Attorney in reply stated that if the train had not been late he would have had another witness who would have testified that he had been defrauded. Defendant's counsel objected and the Court properly cautioned the jury to disregard the statement.

The Circuit Court of Appeals said:

> "The defendant's counsel assigns these remarks as error, the almost unbroken line of

authorities hold that it is the action of the Court upon the objection to which error may be assigned; that if the Court stops counsel and cautions the jury, this cures the violation of the defendant's right to a trial and verdict on the testimony of witnesses. *And in ordinary cases, this is the correct rule. Yet in each of the cases expressions will be found which militate against this view in exceptional cases.*

"Every one must realize that there are exceptional cases where, although the Court does stop counsel, and does caution the jury, the impression has been made by the remarks of counsel, and although the jury honestly try to ignore that impression, it still enters into and forms a part of the verdict. In such cases the trial Court should set aside the verdict on motion for a new trial."

To the same effect see:

People vs. *Manganaro,* 218 N. Y. 9 (at p. 17);
Robertson v. *Madison,* 67 N. H. 205;
Rolfs vs. *Rumford,* 66 Me. 564.

X.

Where a case is a close one, or the evidence is sharply conflicting, the Appellate Court does not hesitate to reverse the judgment because of improper conduct of counsel.

McFadden v. *McKinney,* 89 Atl. Rep. 351;
Johnson v. *Slappery,* 11 S. E. Rep. 862;
McHenry Coal Co. v. *Sneddon,* 98 Ky. 684; 34 S. W. 228;
Killoren v. *Meehan,* 68 Missouri App. 212.

XI.

When counsel has injected illegal matter into the case inquiry is presumed, and the burden is upon the offending party to show that no injury has resulted.

In *Palmer* v. *Dimick,* 94 Atl. 268, the New Hampshire Supreme Court says—

> "The burden is on the offending party to show that it was corrected, and that the objectionable statement was so completely eliminated from the case that it had no effect in producing the verddict in his favor."

In *Story* v. *Railroad Co.,* 70 N. H. 364; 58 Atl. 28, the Court says—

> "If it does not appear that the verdict cannot have been influenced thereby, such error is fatal, unless upon oobjection the party in fault immediately withdraws the objectionable statement, asks the jury not to consider it, obtains an instruction to the jury from the Court to that effect, and a finding from the presiding justice that the error was cured and did not affect the result."

To the same effect are:

McFadden v. *McKinney,* 89 Atl. at p. 357;

Indianapolis Journal Co. v. *Pugh,* 33 N. E. 991.

XII.

The misconduct of counsel in the case was deliberate and permeated the entire address. Under such circumstances the error cannot be cured, and the objectionable statements are available on appeal without objection being entered.

Houston, etc. Co. v. *Rehn,* 82 S. W. Rep. 526.

This rule renders many of the statements of counsel available upon appeal, even though not specifically objected to. Among them may be noted the branding of the witness Hinckley as "a liar by the clock" because at the present trial he swore that the prongs of the hook stood up, while at the former trial he said he could not say which way they were pointed (p. 494, line 18). Also the charge against the witness Foster, that he "bought this cap for the purpose of seeing that this lunatic and family don't get a penny" (p. 495, line 35). Also his statement, "I would sooner have his (plaintiff's) morality than the morality of these three gentlemen who come here and try to perjure the New York Central free from liability in this case." (p. 497, line 1.)

We submit that all these statements are wholly unjustifiable, and the effect of them was incurable. Such conduct on the part of counsel as is disclosed by this record, makes a mockery of judicial procedure, and renders the due administration of justice impossible.

In exceptional cases of this kind, the Appellate Court should not allow a judgment to stand which was clearly affected by and doubtless obtained through such illegal conduct.

We respectfully submit that for all the reasons assigned, the judgment in this case should be reversed.

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