

# New Jersey Court of Errors and Appeals

Francis J. Egan,  
Plaintiff, Deft. in Error,

vs.

Jersey City, Hoboken & Pat-  
erson Street Railway  
Company,  
Defendant, Plaintiff in  
Error.

## BRIEF

*For Defendant on  
on Appeal.*

MINTURN & McCAULEY,  
*Attorneys.*

## FACTS.

THIS action is for injuries received and damages sustained by the Plaintiff being run down by one of the Defendant Company's cars on May 1st, 1903, on Paterson Plank Road and Homestead Place, at Homestead. The Paterson Plank Road at this place runs almost due north and south and is traversed by two parallel set of trolley tracks upon which cars of the Defendant Company run between Jersey City and Rutherford; (the cars bound for Rutherford are commonly styled; west bound cars, and those bound for Jersey City: east bound cars).

ABOUT 11:00 o'clock in the forenoon of May 1st, 1903, the Plaintiff boarded a west bound car at Jersey City in order to reach his place of employment at Homestead (see case, page 9-10). Before reaching Homestead Place, he signalled the conductor to stop and when the car had pulled up at that street, he alighted and then walked in a westerly direction around the rear end of the car he had just left and started to

cross the east bound tracks. (see case, page 17). He looked up, saw no car and heard no warning or bell, and had just stepped away from the west bound track when he was hit and knocked down by an east bound car and received the injuries for which he brought this suit.

As some efforts were made by the defendant to show that Homestead Place has only paper existence, it may be well to recall the testimony of the Plaintiff, (see case page 10), of witness Nash, see case page 34 line 20), and of the witness Pflingsten (see case page 42, lines 8 to 11), all of which shows it to be a public thoroughfare used as such with the old wooden firehouse on its southerly side and to the west of the Plank Road, and a new brick firehouse on its northerly side and to the east of the Plank Road. The new firehouse, as the witness Nash (see case page 36, line 11), who was working in a trench in front of it, says, is situate about 170 feet from the cars or back that distance from the Plank Road. So that it is unreasonable to believe that this street has no real existence or to think that the municipal authorities would place a new brick firehouse over 150 feet back from the Plank Road and in the woods as the Defendant's Counsel endeavored to show on the trial of the case. Homestead Place has an actual existence and runs at right angles to the Paterson Plank Road, (see case page 42, line 131) and is a recognized stopping place on the trolley line as is evidenced from the testimony of Conductor Fields (see page 60, line 17), and Motorman Smith (see case, page 63, line 40).

## **POINTS AS TO PLAINTIFF'S CASE.**

### **POINT I.**

*The Plaintiff acted as any reasonably prudent man under similar circumstances and conditions would have acted.*

He signalled the conductor and waited until the car stopped, (see case page 10), got off the rear of the car at the corner (see case, page 17), took his time, turned around and passed in back of the car from which he alighted to cross both tracks in order to reach his office. He had hardly stepped from behind the west bound car (which at this particular place was pointing north) when he was hit and knocked down by an east bound car. There is no evidence of any undue haste or indiscretion on the part of the Plaintiff, all his actions were deliberate and reasonably prudent.

He is a young man who holds a responsible position; is bright, intelligent and trustworthy. There is nothing sleepy or dull about him and there is nothing in his testimony or of his witnesses to justify the inference that he was guilty of contributory negligence.

#### POINT II.

*The car that struck the plaintiff gave no warning of its approach.*

The fact that the plaintiff did not hear the machinery of the east bound car may be explained by the plaintiff mistaking the sound of its machinery, if it made any that was audible to him, for the noise made by the car he had just left and which had again resumed its way; or, the west bound car being between the plaintiff and the east bound car must have blanketed the noise of the east bound car. Moreover, it does not seem possible that the witnesses who alleged they heard the rumble of the east bound car could really distinguish between the noise made by the two cars in motion within so short a distance of each other.

Trolley cars, however, are provided with a special and recognized method of giving a warn-

ing of their approach, namely, a bell. Yet the plaintiff (see case page 10, line 11) heard no bell or warning of any kind.

Williams (case page 32, line 29), did not hear any bell—Nash heard no bell, although he was attracted to the accident by what must have been the clapping on of the brakes and the sudden stopping of the car, rather than the noise it made in motion, as defendant's counsel endeavored to show on the trial.

The witness Pfungsten (case page 38, line 30) did not hear any bell sounded. So that so far as the plaintiff's case went we have all this unimpeached testimony that the east bound car, gave no warning of its approach, and this despite the fact that the motorman in charge of the car admitted (case page 63, line 40) that the west bound car had pulled up at the usual stopping place.

### POINT III.

*The east-bound car was going at an excessive rate of speed and was not under control.*

The plaintiff did not have an opportunity to step aside; he stepped from behind the west bound car and was struck as it were by a thunderbolt. The witness Williams (case page 31, line 18) says the car was going so fast he would not take a chance to jump on it, and he is a rather active looking young man. Again on cross examination (case page 33, line 9) he says the car was going pretty fast. The witness Nash says the cars might have been ten feet apart when they stopped. Witness Pfungsten (case page 39, line 20) says the cars were fifteen or twenty feet apart when they stopped. (These cars were not the small city cars, but the long suburban cars). (Case page 51). So that when we bear

in mind that the plaintiff had just alighted from the west bound car, and that it was just gathering headway when he was struck by the east bound car, and that both cars came to a standstill as quickly as possible, we are justified in concluding that the east bound car was not under control, when, its motorman, with all his safety appliance, (which he must have applied with a vengeance when they attracted the deaf man Nash one hundred and seventy feet away) could not avoid hitting the plaintiff and could not stop within a car length, and going up a slight incline at that, as defendant's counsel drew from the witness Pfungsten (case page 42, line 19).

#### POINT IV.

*The plaintiff had been a passenger on the west-bound car and was hit by the east-bound car.*

There is no question but that plaintiff was a passenger on the west bound car.

The witness Williams (case page 32) very clearly states that the east bound car hit the plaintiff as he was near the middle of the east bound track. Counsel for the defendant company endeavored to belittle this testimony yet the witness knew the houses and the lay of the land better than counsel and his testimony as to the happening of the accident is unimpeached and must stand. His cross examination served to strengthen plaintiff's case rather than weaken it.

#### POINT V.

*The plaintiff suffered painful and permanent injuries.*

The cross examination of the plaintiff on pages 10, 11, 12, 13, 14, 15 and 16 clearly brings out the

nature of the plaintiff's injuries and the fact that although the accident happened on May 1st, 1903, the plaintiff at the time of the trial, January 8th, 1906, was still suffering from the affects of the injuries he had sustained and also the damages he suffered by reason of his loss of employment, doctor bills, etc.

The testimony of Dr. Brynes, the physician who attended the plaintiff stands unimpeached and is found on pages 18, 19, 20, 21, 22, 23, 24 and 25 and was to the effect that the plaintiff had sustained serious injuries and "had lost some of the upward motion of his arm," that "his condition is a paralytic condition," that "for certain purposes he had lost the lifting power of his arm," that "he would be liable to have as much pain after a days work or sore than he would while working," that "he is now suffering from neuritis, the result of a chronic inflammatory condition of the nerves, that this is the source of his pain," that "the muscles cannot be right if the nerve is not, because it is governed by the nerve."

Besides this testimony as to his injury is that of his mother, Mary Egan, whose simple narrative describes the pain and sufferings of her boy when he was brought home to her, and during the weeks he was confined to the house and under her care. Thus as to the plaintiff's physical injuries and sufferings, we have the unimpeached testimony of the plaintiff himself, his physician and his mother.

### LAW.

*From the foregoing points it is clear that a non-suit was properly refused.*

There was no question of a superior right on the part of the defendant company over the plaintiff. He was not bound by the rules of law relative the crossing of a steam railroad. He

was on an equal footing with any vehicle on that thoroughfare. Having been a passenger of the defendant's on its west bound car, defendant owed him a particular duty which it failed to perform in allowing its east bound car to come along without warning and at an excessive speed and run down the plaintiff.

In *Traction Co. vs. Glynn*, 30 Vr. 432, the testimony of the plaintiff was that he saw the car 300 feet from where he was struck; that he waited two or three seconds and then proceeded to cross the street without looking again for the approaching car and was struck before he succeeded in crossing the tracks.

THAT case was up on the refusal of the trial judge to grant a non-suit on the testimony above stated. And the Court of Errors and Appeals, there said that the non-suit was properly refused; that contributory negligence cannot, as a matter of law, to be predicated on the evidence of the plaintiff; that trolley cars must be run with such care and at such a rate of speed that other persons, either on foot or in vehicles, may use the street in safety, provided they use reasonable care for their own protection.

If the testimony of the plaintiff in that case was sufficient to sustain the action of the trial judge in his refusal to grant a non-suit surely the action of the trial judge in this cause must meet with the approval of this Court and be upheld.

This effectually answers assignments 2 and 3 of the defendant company.

See also *Dennis vs. N. J. St. Ry. Co.*, 35 Vr., page 440.

Assignment 3 can be answered in the language of this Court as expressed by Mr. Justice Hendricksen in *Traction Co. vs. Scott*, 29 Vr., page 685, etc., as follows:

"It is not for him (the trial judge) to say

whether there are any facts proven in a given case from which the jury would be justified in finding negligence on the part of the defendant, (who is the plaintiff below), but rather whether any facts have been established by evidence from which negligence might be reasonably inferred by a jury.

“As stated by Mr. Justice Magie, in delivering the opinion of this court in *Newark Passenger Railway Co. vs. Block*, 26 Vr., 605: “In performing this function the trial judge must take care not to trench on the peculiar province of the jury to determine questions of fact, and must bear in mind that the question is not whether he would infer negligence from the established facts, but whether negligence can be reasonably and legitimately inferred therefrom by the jury.” In applying this general rule to the examination of the facts, it must be remembered that “negligence is not a fact which is the subject of direct proof, but an inference from facts put in evidence.” “Now negligence,” says Dr. Wharton, “may be disputed when the facts are undisputed, and the question in such case, where the dispute is real and serious, is eminently one for the jury, under the direction of the court.” *What. Neg.* 3420.

“Whether the facts are disputed or undisputed, if different minds might honestly draw different conclusions from them, the case should properly be left to the jury, and that, in order to withdraw such a case from the jury, the facts should not only be undisputed, but the inference, in respect of the defendant’s failure of duty, which arises from these facts, should be indisputable.” 2 *Thomp. Tr.* 1208. This same doctrine has been repeatedly laid down by this court. *Bonnell vs. Delaware, Lackawanna and Western Railroad Co.*, 10 *Vroom* 189; *Bahr vs. Lombard Ayres Co.*, 24 *Id.* 233; *Baldwin vs. Shannon*, 14 *Id.* 596;

Delaware, Lackawanna and Western Railroad Co. vs. Shelton, 26 Id. 342; Pennsylvania Railroad Co. vs. Matthews, 7 Id. 531.

"Can it be said, as a matter of law, that upon the facts stated there was no duty laid upon the defendant at this public crossing to so regulate the action of its cars, as to rate of speed, the giving of signals or otherwise, that pedestrians should be protected from unnecessary exposure to danger from collision with its passing cars. The counsel for the plaintiff in error, in his argument, admitted that the company might owe such a duty to a passenger who alighted from the north bound car and had passed behind it in making his exit, by reason of its contractual relation with the passenger.

"Indeed, it has been held that in an action for injuries to plaintiff's intestate while crossing defendant's car track, negligence and contributory negligence are questions for the jury, where it appears that the intestate, on alighting from one of the defendant's cars, passed behind it and attempted to cross the other track when he was struck by an approaching car, which was running at its ordinary speed, and there is no evidence that any signal or warning of its approach was given. *Robert vs. Troy City Railway Co.*, 36 N. Y., Supp't 105.

"In another case, an instruction that the care required of a street car company to persons upon its tracks is not that high degree of care which it is required to exercise toward passengers, was held to be incorrect when applied to a company running electric cars on city streets. *Dallas Rapid Transit Railway Co. vs. Dunlap*, 26 S. W. Rep. 877.

"It is well settled that at crossings street cars and pedestrians have equal rights to the use of the streets, and it has held in that connection that what is proper care and precaution on the

part of those in charge of cars, to prevent accidents, in a question of fact in each case. *Schulman vs. Houston W. S. and P. F. Ry. Co.*, 36 N. Y. Supp't. 439."

"That such a duty toward pedestrians who are thus passing along the crossing of a public street traversed by a street car company, becomes chargeable to the latter is emphasized by the fact that such crossings are necessarily and legally frequented by not only the adults but by the children of the town, attended or unattended by older people, and that such duty becomes more or less exacting according to the circumstances of each case.

"The facts in the present case, to say the least, fairly raised a question for the jury, whether the defendant was in the exercise of due and reasonable caution, when it permitted its south bound car to pass the standing car at that public crossing and at such a rate of speed under the circumstances. In forming a judgment upon that question, there were subsidiary questions, equally calling for consideration and judgment, such as—was it the duty of the motorman, in the exercise of due and proper care, as he approached the standing car which would obstruct his view of passengers or pedestrians who might be waiting to pass, to sound his bell or gong as a warning; and did he so sound his bell or gong; and should he have had his car under control at this crossing; and did he have it under such control when approaching the standing car? These facts and the inferences to be fairly drawn from them, under the principle before alluded to, it seems to me, clearly, were matters for the jury exclusively, and that the trial judge was right in so submitting them and refusing to non-suit.

"The next ground of contention, why the motion to non-suit should prevail, was because of alleged contributory negligence on the part of the

plaintiff's intestate. But, like the preceding ground, in order to give it the effect of requiring the court to arrest the trial and take the matter from the jury, the fault of the intestate must appear to be clearly established by the evidence that there can be reasonably only one opinion on the subject."

This lengthy extract from the Scott case is particularly pertinent to the present case and demolishes assignment No. 3.

See also

Suburban Electric Co. vs. Nugent

29 Vr., 659.

Consolidated Traction Co. vs. Chenowith

Id. 416.

Consolidated Traction Co. vs. Lamberton

30 Vr. 297.

Traction Co. vs. Haight

30 Vr. 577.

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### POINTS AS TO THE DEFENDANT'S CASE.

*The defendant's witnesses are at variances with themselves and each other.* Witness Goldman (see case page 43, line 31) alleges that he was sitting beside Mr. Egan in the front of the car. On page 45 line 24, we find him saying that he was sitting up in the front of the car right opposite Mr. Egan. So that if we follow the testimony of this witness, it is hard to reconcile his many conflicting statements or to believe that from the position he occupied in the front of the car, (which was closed page 43, line 31 and very long page 51), it was possible for him to see the actions of Mr. Egan in alighting from the car and going around the rear of it as he alleges. Especially is this so when we bear in mind that the car was a long closed vestibule

car with the conductor, the witness Pflingsten and also the witness Rintleman standing on the back platform. (case page 60, line 22). This witness seemed particularly anxious to stretch his imagination in favor of the defendant company and it was he who dropped the cue, taken up by the other witnesses of the defendant company, that it was "a blustry day;" yet even this witness will not say that he heard the approach of the east bound car. His testimony together with his peculiar actions on the stand and his unexplained interest in the defendant company, and his close association with one of their employees undoubtedly deprived his testimony of any weight was either the court or the jury and it is safe to say that he did the plaintiff more service than the defendant.

The witness Rintleman (case page 54) who stood on the rear platform of the west bound car with the witness Pflingsten, did not hear the east bound car approaching neither did he see the witness Goldman on the car nor come back to the back platform as he has alleged.

Fields, the conductor of the west bound car (page 63, line 12) says he heard the machinery of the east bound car and not the bell, and further, he says the east bound car went a full length after it hit the plaintiff before it came to a stop and says the plaintiff was "right in back of the vestibule door of the other car (the east bound car) when they picked him up; I helped to pick him up" (case page 59, line 12).

As to the testimony of the witness Smith, who was the motorman on the east bound car that hit the plaintiff, we find the counsel of the defendant company using his utmost efforts to turn it into meaning that the plaintiff ran into the car instead of the car running into him. But reading Smith's testimony in its entirety, there can only be one conclusion, and that is that he

first saw the plaintiff six or eight feet in front of his car, that the front of his car struck him a glancing blow and as it knocked plaintiff to one side Smith saw him through his vestibule door as the car shot by despite his efforts to stop it.

It may also be recalled that this witness of all those produced by the plaintiff or defendant is the only one who makes the positive assertion that he was ringing his bell but whether he was or not was a question of the jury to decide on the testimony submitted and from its verdict, the jury has properly answered that question. It might also be well to recall the admissions of same witness that at the time of the accident he knew he was approaching a stopping place (case page 63, line 40); that there was a firehouse on this cross street (case page 68, line 20) that at this point "there is a drive way to a lumber yard." (case page 68, line 23).

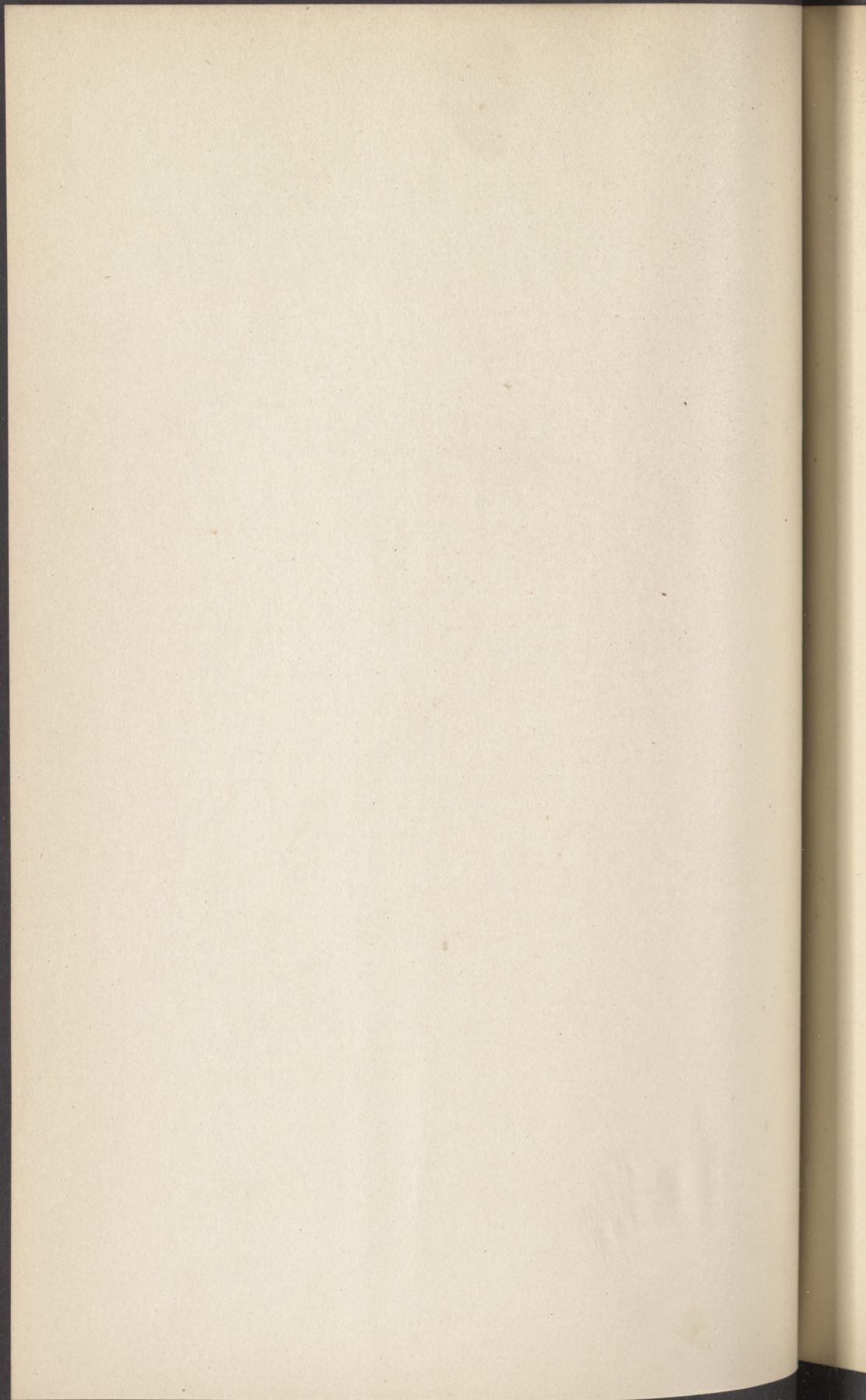
The defendant's evidence alone would have compelled the trial judge to submit the case to the jury but coupled as it must be with the plaintiff's evidence, the trial judge was certainly correct in refusing to direct a verdict for the defendant and allowing the case to go to the jury. Negligence on the part of the defendant company could surely be inferred from the evidence in the case and contributory negligence on the part of the plaintiff had not been proven. So that it was clearly within the province of the jury to determine whether or not the defendant had been guilty of negligence and the plaintiff guilty of contributory negligence. The case was submitted to the jury under a proper charge. The verdict rendered by the jury was reasonable and warranted by the evidence before it. So that considering the case in its entirety and referring to the authorities previously cited, and also to *Klotzbach vs. Paterson Railway Compony*, 44

Atlantic 933 and Alexander Dye Works vs. Roufousse, 28 Vr. 700, assignment No. 4 is of no effect. Therefore it is respectfully submitted that the Appeal in this case be dismissed with costs.

MINTURN & McCAULEY,

Attorneys for Defendant in Error.





NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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FRANCIS J. EGAN,	)		
Plaintiff,	)		
Defendant in error,	)		10
vs.	)	In Tort.	
	)	On Error to Hud-	
JERSEY CITY, HOBOKEN &	)	son County Cir-	
PATERSON STREET	)	cuit Court.	
RAILWAY COMPANY,	)		
Defendant,	)		20
Plaintiff in error.	)		
_____	o		

BRIEF FOR DEFENDANT, PLAINTIFF IN  
ERROR.

This action was tried before the Hon. Charles W. Parker, Judge of the Hudson County Circuit Court, and a jury. It resulted in a verdict for the plaintiff 30 in the sum of \$1,500.

FACTS.

The plaintiff alleges he boarded a car of the defendant company running along the Paterson Plank Road in Hudson County. The car proceeded to the west, or toward Rutherford, in Bergen County. The plaintiff sat in the car; when the car reached a point on the Homestead Hill, plaintiff alleges he signalled the conductor to stop the car, which was done, and that he alighted therefrom in safety, walked around 40

the back of the car, and was struck by something (which afterwards turned out to be a car coming in the opposite direction). That he heard no bell or any warning of any kind. The accident happened about 11 o'clock in the morning. The day was clear and bright.

At the close of the plaintiff's case the defendant moved for a non-suit; the motion was denied, the  
10 Court stating that he would allow the case to go to the jury "on the lines of the Scott case."

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### POINT I.

The first assignment of error is as to the refusal to non-suit, upon the grounds (1) that the plaintiff had proved no negligence on the part of the defendant,  
20 and (2) that the plaintiff had been guilty of contributory negligence.

The testimony of the plaintiff and his witnesses will be found on page 9, etc., of the printed case. He testifies that he boarded the car at Jersey City, the car proceeded to Homestead. That he got off the car in safety, and then states on direct examination, as follows (page 10):

A. I signalled to the conductor to get off, he stop-  
30 ped the car for me. I got off the car, taking my time, turned around, went to cross the track, and the first thing I know I was struck by a car—struck by something;—I know I was struck, and that is all I know.

Q. Did you hear any gong? A. No gong.

Q. Any warning of any kind? A. No, sir.

On cross-examination he states, (page 10):

40 Q. A clear day? A. Yes, sir.

Page 17:

Q. Is it a straight track at that point? A. Yes, sir, a straight track at that point—

Q. You went around the end of the car? A. Back of the car.

Q. You looked? A. I looked up.

Q. Why didn't you see the car coming? A. Because the other car obstructed my view.

Q. When you got off the car? A. I couldn't see <sup>10</sup> nothing, the first thing I knew the car struck me.

Q. You listened? A. Yes, sir.

Q. Why didn't you hear the car coming? A. No, sir, I didn't.

The plaintiff next introduces as a witness to the accident, one George Williams, a colored man, who testifies, page 30, that he was standing in front of a saloon on the corner, a short distance away; that he saw the car stop and the plaintiff alight in safety; that <sup>20</sup> he walked around the back of the car, and was struck by a car coming in an opposite direction.

He says (page 30):

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

Q. Did you hear any warning of any kind? A. No, sir.

Page 31:

Q. How far away from the accident where he was <sup>30</sup> struck did the car stop, after it had struck him? A. about half the length of a car—

Q. How was it going, as far as speed is concerned?

A. Well, it was going pretty fast, it was going so fast that I wouldn't take a chance to jump on.

On cross-examination, he testifies, (page 32):

Q. The car stopped? A. Yes.

Q. And he got off? A. Yes.

Q. Walked around the rear of the car? A. Yes. <sup>40</sup>

Q. What kind of a day was it? A. Nice day.

Q. Clear? A. Yes.

Q. Any wind blowing? A. No, sir.

Q. Perfectly still? A. Yes.

Q. A summer's day? A. It was a nice day.

Q. How was this car coming from Homestead—the other car, I mean? A. Coming from Hackensack?

13 Q. You saw it? A. Yes, sir.

Q. When did you first see it? A. I seen the car coming up right over McCullom's.

Q. Has it to go up a hill? A. Not much, a little bit.

Q. Could you hear it? A. Yes, sir.

Q. You were standing on the sidewalk? A. Yes, he did not ring the bell or nothing.

Q. I did not ask you that. Could you hear the car coming? A. Yes, sir.

20 Q. Then you could turn around and see it? A. Yes, sir.

Q. Which side of the car was the gentleman on, toward you or the other way? A. Toward me.

Q. Then he had almost got across? A. It caught him in the middle of the track.

Q. Did it throw him toward the rear of the other car or toward you? A. It threw him toward me.

Q. The car did not run over him? A. It hit him in the left side.

30 Q. He was walking in the rear of the other car, you say? A. Walking around, yes, sir.

Q. Then was not his right side toward this car? (No answer.)

Q. I see his right side was toward the other car, but the car hit him on the left side—how long did you stay there? A. Not long after that.

The next witness for the plaintiff was Joseph Nash; his testimony will be found on pages 34, &c., of the printed case. He testifies as follows, on direct examination, page 34:

Q. You are a little hard of hearing, I understand?

A. Sir?

Q. Tell us what you saw happen to Mr. Egan? A. Both cars were coming, we call it down hill and up hill, because the Plank Road when it runs up hill runs south.

Q. Is there any hill there? A. Yes, sir.

Q. You mean they were close together? A. The gentleman got off the car and walked around the 10 back, the other car came up that was going south, we call it—uphill; of course the other one that runs down hill like this you know—of course you say down and up; that is the proper way of it, but a good many people get mixed up but this is the idea. Both cars came along, and the gentleman came there, and we saw him lying down in the track, I saw him myself; a motorman and some one else got ahold of him, I was about 150 or 175 feet from the accident; before 20 I could get there they took him down to Hollingshead's Moulding Mill, and that is all I know about it.

Q. Did you see him struck? A. No, sir, I did not. He was lying down when I saw him. All I heard was when he (the motorman) put the brake on, you know, and the car struck suddenly just as if two cars clapped together.

On cross-examination he testifies, (page 36, &c.).

Q. How near were you to where the accident happened—about how far—how far were you working 30 from the accident? A. About 170 feet.

Q. Toward Jersey City or Hackensack? A. I was right over Paterson Plank Road, where the fire house is at Homestead Place.

Q. Were you nearer to Jersey City or the car? A. It stopped so suddenly that I looked up out of the hole, and there was the man.

Q. Had the car that he got off passed you? A. That I do not know, the man was lying in the car track; I cannot tell you any more of it. 40

Q. Well, you did not see him struck at all? A. No, he was lying there; they picked him up, the other man with me would not come down, whether he was between the two tracks or where I do not know.

Q. You heard the car coming from Hackensack? A. From Paterson, yes, sir.

Q. And your hearing was just as good then as it is now? A. Yes, sir.

10 Q. No better? A. No better, no.

Q. Did you see this colored man (referring to the witness George Williams) there? A. No, sir, that is where he got into it—I don't know how I got into it.

Q. You did not see him there at all? A. No, sir, we were the only two that was in that hole.

Q. Was the colored man in the hole, too? A. No, sir. There you are.

30 The next witness produced by the plaintiff was Gustav Pfingstein, who testifies, (page 38), as follows:

I am a real estate broker in Jersey City. I remember the occasion when Mr. Egan was injured, the first of May, 1903. I was on the same car that he was on.

Q. Do you remember it stopping to let him off? A. No, I do not think it stopped.

30 Q. Do you remember Mr. Egan getting off the car? A. I do.

Q. What did he do? A. Do you want me to tell you what transpired?

Q. I want to know whether he got off the car or whether the car stopped to let him off? A. I don't think the car stopped; it had slackened up and almost come to a standstill. Mr. Egan left the car and got out the back of the car that he left, and the car that came up the hill from Homestead struck him.

Q. Where was he when the car struck him? A. 40 Well, I didn't see him struck, I could not see him.

Q. Did you hear any bell? A. No, I didn't hear any bell.

Q. Or any warning of any kind? A. I didn't pay any attention, I didn't look.

Q. If there had been a bell, you would have remembered it? A. I might have.

BY MR. EDWARDS:

Q. And might not? A. I might not.

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BY MR. MINTURN:

Q. How far beyond the place where Egan was struck did the car pass before it stopped—how far did it go, the car that struck Egan? A. Well, when my attention was drawn to it, they were fifteen or twenty feet apart, possibly.

Q. Where was Egan thrown by his contact with the car? A. I think between the tracks, about the center of the tracks.

20

Q. The up and down track? A. Yes.

Q. Did you see anybody pick him up? A. Our car then stopped and three or four of them picked him up.

Q. Where did they put him? A. They took him over across the track on to Hollingshead's Mills.

#### CROSS-EXAMINATION.

Page 39.

30

Q. Where were you on the car? A. On the rear platform.

Q. Do you remember where Egan was before he got off? A. I think he came from the inside of the car.

Q. The car was slowing up, was it? A. Slackening up.

Q. And he jumped off? A. He stepped off, he d'dn't have to jump.

Q. How far do you suppose the car went after he

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stepped off, before it came to a stop? A. Well, I think the conductor then rang the bell for him to go ahead; it stopped when the accident happened, then he pulled the bell.

Q. How far had the car gone when he went to go across the tracks, should you say? A. Four or five feet or something like that.

Q. Did you notice how he was looking at all? A. Well, I didn't pay no attention to it, I saw him get off the car.

Q. He seemed in a hurry, did he not? A. I didn't pay no attention.

Q. Did you hear the other car coming? A. I think I did, yes.

Q. You heard it coming, but you don't remember any bell? A. Yes, I heard it coming.

Q. You were on the rear platform? A. The rear platform.

Q. Is it a straight track there? A. Yes.

Q. Do you know what part of the car struck this man, could you say that? A. No, I couldn't say.

Q. Whether it was the front or the side of the car you can't say? A. I can't say.

Q. After he was struck he lay between the tracks? A. Just about in the middle of the track.

Q. He wasn't there on the other side, toward Mr. Williams, the colored man? A. I didn't see Mr. Williams.

Q. Mr. Williams was at the saloon there, was he? A. No, he was not that I saw.

Q. Could you say how fast the other car was coming? A. No, I couldn't say it was in front of us.

Q. It stopped very suddenly down there, didn't it? A. I should say it was about fifteen feet we were apart when the two cars stopped.

Q. When it stopped was it at about at the corner then—the car coming toward Jersey City? A. It was about at the saloon corner.

Q. That was the proper place for it to stop? A. It always crosses there, certainly.

Q. Do you remember particularly what kind of a day it was? A. It was a clear day overhead, but it was blustery.

Q. Did you notice whether this man Egan looked when he crossed the track; can you tell us anything about that? A. I didn't pay any attention.

It thus appears from the testimony of the plaintiff that he left the car in safety, walked behind the car, and was struck by a car coming in the other direction. The only eye witness to the accident on the part of the plaintiff is the colored man Williams, who claims to have been at a saloon a short distance away. He was not seen by any of the other witnesses—they testified they did not see him around there. His testimony should be taken with a great deal of caution. But even in view of the testimony of this witness, there is not, in the plaintiff's case, any evidence showing negligence on the part of the defendant. The plaintiff states that he looked for a car coming in the opposite direction, before he attempted to cross, and that his view was obstructed by the car he had left, yet when he alighted from the car and going behind it, there was nothing to obstruct his view, and had he looked he must have observed the car coming. Others saw it, and he could have seen it had he looked.

Another important feature is that at this point there is quite an incline, and the wheels of a car coming up the hill make a loud noise as they grind upon the track, and the hum of the machinery can be heard a long distance, and although the plaintiff insists that he listened, he insists that he heard nothing. Had he listened, he must have heard the oncoming car. The other witnesses heard it; Williams, the colored man, heard it, and he was further away than the plaintiff; Pfingstein heard it, and he was on the rear platform of the car plaintiff had alighted from, and most important of all, the witness Nash heard it. Nash is almost deaf, and was almost deaf at the time

of the accident. His testimony shows that although spoken to in a loud voice in the quiet of the court room, he could hardly understand, and frequently his answers were made without reference to the question addressed to him. Yet, notwithstanding his deafness, and the fact that he was about one hundred and seventy feet further away than the plaintiff, he heard the car coming, and so testifies (page 37). It thus appears from the testimony of the plaintiff's own witnesses that he (plaintiff), had he looked and listened, must have known the car was coming, and that if he did not know the car was coming, then he neither looked nor listened. In fact, the testimony of the plaintiff shows that he neither looked nor listened, but walked directly into the car, without regard for his safety. This was plainly contributory negligence. The great weight of authority is to the effect that it is negligence per se to endeavor to cross street railway tracks without looking or listening for the approach of cars.

“But in regard to street railroads, and especially those whose cars are propelled at a considerable rate of speed, by underground cables or overhead electric wires, the general disposition of the Courts now is to apply the rule which is applied in respect to steam railways, and to hold that the failure of the traveller, unless excused by special circumstances, to use his faculties by looking and listening for the approach of cars, before he attempts to cross a street railway, is negligence per se, such as will, if the evidence be undisputed, authorize the Court to direct a non-suit or to give a peremptory instruction to the jury to find for the defendant.”

Thompson on Negligence, (2nd Edition),  
Vol. 2, par. 1438.

Vol. 1 St. Ry. Reports, p. 670, note (b) and cases cited.

This is the rule in U. S. Courts, Michigan, Colorado, Missouri, Pennsylvania, California, Massachusetts, New York, Louisiana, Ohio, Minnesota, Wisconsin and other States.

The weight of authority is also to the effect that it is contributory negligence as a matter of law to attempt to cross a street railway track behind a car which has just passed, without looking to see whether a car is approaching on the further track. 10

Thompson on Negligence, 2nd Ed., Vol. 2, par. 1461.

Blaney v. El. Traction Co., 184 Pa. State, 524.

39 Atl. Rep., 294. 20

Thorsell v. Chicago City R. Co., 82 Ill. App., 375.

McCarthy v. Detroit, &c., St. R. Co., (Mich.) 79 Northwestern Rep., 631.

"It is contributory negligence as a matter of law \* \* \* to pass hurriedly around the rear end of an electric car, from which the person has just alighted, without looking or listening to find out whether a car is approaching on the other track." 30

Thompson on Negligence, 2nd Ed., Vol. 2, par. 1461.

Smith v. City &c. R. Co., 29 Ore. 539.

Baltimore Trac. Co. v. Helms, 84 Md. 515.  
36 Atl. Rep. 119.

Stowers v. Citizens St. Ry. Co., 21 Ind. App. 434. 40

Kan. City R. Co. v. Gallagher, 75 Pac. 469.

Metropolitan St. Ry. Co. v. Ryan, 77 Pac.  
267.

Indianapolis St. Ry. Co. v. Tenner, 67 N.  
E. 1044.

10 Doty v. Citizens' St. Ry. Co., 88 N. W.  
1050.

Landigram v. Brooklyn Heights R., Co.,  
48 N. Y. Supp. 454.

Giradina v. St. L. & M. Ry. Co., 185 Mo.  
330.

The Courts of this State have held that it is a per-  
son's duty when about to cross a street to use his  
power of observation (and hearing) to discover ap-  
20 proaching vehicles and a reasonable judgment when  
and how to cross.

Newark Pass. Ry. Co. v. Block, 26 Vr. 605.

Sheets v. Connolly R. R. Co., 25 Vr. 518.

North Hudson R. Co. v. Flanagan, 28 Vr.  
696.

30 Brady v. Con. Trac. Co., 35 Vr. 375.  
and many other cases.

In this instance the evidence plainly discloses that  
had the plaintiff performed this duty in the least de-  
gree, he would have known the car was coming, and  
have avoided the accident.

It must be assumed that the car was run at lawful  
speed, because there is not one word of testimony to  
indicate excessive speed of the car; the only testi-  
mony on the plaintiff's side as to speed is that of the  
40 colored man Williams, who says the car was going  
so fast he would not take a chance to jump on.

This certainly is no proof of excessive speed. The ordinary man would not take a chance to jump on a moving trolley car, going at even three or four miles an hour, and therefore, unless there be proof of excessive speed, it must be assumed that the car was going at a lawful rate of speed. This is borne out by the fact that the car was stopped (at the greatest distance as testified to by Williams) within half a car length, while all the other witnesses agree **10** that when the plaintiff was picked up after the accident, he lay between the cars. That the car was stopped in such a short distance conclusively proves that it was under perfect control, and was being slowly driven. The only reason given by the plaintiff for not observing the approaching car was that "the other car obstructed my view." The plaintiff was aware that cars might pass at that point. He knew that there were double tracks in the street, and that after stepping from behind the standing car, **20** he would be upon the other track, and in the path of an approaching car on that track. Having this knowledge he neglected to take ordinary precautions, and look for the approaching car, because "the other car obstructed his view." Was it not his duty to delay going upon the track until he had taken precautions to discover if another car was approaching and if his view was temporarily obstructed, to wait until that obstruction was removed, or to look around the obstruction and ascertain if anything was **30** approaching?

The Court of Errors in Newark Passenger Ry. Co. v. Block above, states:

"In crossing the roadway a foot passenger must use his power of observation to discover approaching vehicles, and a like judgment when and how to cross without collision. In the latter case, doubtless the degree of care required exceeds that required in the former **40**

case, not because the right of the foot passenger and the right of a driver of a vehicle differ, but because of the circumstances. The vehicle usually travels at a greater speed; it cannot be so quickly stopped or diverted from its course; a street car cannot deviate from its track, while a passenger on foot may quickly stop, turn aside or even retrace his steps."

10

"SO IT MAY BE ALSO GENERALLY SAID THAT IF OBSTACLES TEMPORARILY INTERVENE TO PREVENT OBSERVATION REASONABLE PRUDENCE WOULD DICTATE DELAY UNTIL SUCH OBSERVATION AS IS REQUISITE HAS BEEN MADE."

20

Newark Pass. Ry. Co. v. Block, 26 Vr. 612.

This rule has been applied to both steam railroads and street railroads in this State.

30

"If the vision or hearing of such a person is limited by permanent obstructions or disturbances he should for that reason be cautious; if his vision or hearing is limited by transient obstructions or disturbances, under circumstances which oblige him to rely on the sense thus limited, he should wait until it has again become efficient to warn him of peril. One sense, if well used, may give warning enough. To go on a railroad crossing in the way of a train which can neither be seen nor heard, but which would be either visible or audible except for some temporary hindrance to sight or hearing, is to be negligent."

40

"The governing rule was thus declared by this Court (Errors and Appeals) in Newark

Passenger Ry. Co. v. Block 26 Vr., 605-612, in language immediately referring to impediments to sight, but equally applicable to impediments to hearing: It may be generally said that if obstacles temporarily intervene to prevent observation, reasonable prudence would dictate delay until such observation as is requisite has been made.' "

Central R. R. Co. v. Smalley, 32 Vr. 280. 10

"He was driving an ice wagon, with scales, ice tongs and other utensils, along a macadamized roadway, with his horses on a jog trot, causing considerable noise, which might interfere with his hearing the usual signals. His wagon was a covered one, with curtains down and a slanting hood over the front, with a glass in the curtain on either side. 20  
Under such circumstances the duty of the traveller on the highway does not stop with looking and listening, but he must exercise care to select a position from which an effective observation can be made, and he must also exercise care to make the act looking and listening reasonably effective."

Conkling v. Erie R. R. Co., 34 Vr., 338-342. Citing Newark Pass. Ry. Co. v. Block 30  
above.

"So too it is entirely settled that if his ability to see or to hear an approaching train is temporarily diminished or destroyed by obstructions or disturbances which are transient in their nature, reasonable prudence requires him to wait until such obstructions or disturbances have disappeared and his senses have again become efficient to warn him of danger before attempting the crossing. 40

Swanson Admr. v. Central R. R., 34 Vr.,  
605-607.

Keyley v. Central R. R., 35 Vr., 357.

Burke v. Central R. R. Co., 35 Vr. 578.

Citing the Block case.

10 McGrath v. North Jersey St. Ry. Co., 37  
Vr. 312.

As to other States see

Buzby v. Philadelphia Trac. Co., 17 Atl.  
Rep. 895.

McCarthy v. Detroit Citizens' St. Ry. Co.,  
79 Northwestern 631.

20 Chrisman v. East Harrisburg City Pass.  
Ry. Co., 24 Atlantic Rep. 596.

Doherty v. Detroit Citizens' St. Ry. Co.,  
76 Northwestern 377.

Garect v. Peoples Ry. Co., (1906) 64 At.  
(302) 256.

While it may be true that, under some circum-  
stances, a traveller is not bound by the same strict  
rules to "STOP, look and listen" while crossing a  
30 street railway track, as he is while crossing a steam  
railroad, it is also true that the traveler is bound to  
use all his faculties (sight and hearing included) as  
to how and when to cross; AND IF HIS OBSER-  
VATION IS TEMPORARILY OBSTRUCTED  
HE MUST WAIT UNTIL SUCH OBSTRUC-  
TION IS REMOVED. (See Block and other cases  
cited above).

Obstructions as applied in the rule embraces ob-  
structions to hearing as well as obstructions to  
4c sight..

Applying, therefore, the rule, it is plainly evident that the plaintiff was guilty of contributory negligence in this case. Had he looked he must have seen. There was nothing to prevent him seeing the approaching car when he alighted and before passing to the rear of the standing car. The approaching car was in sight (see testimony of Williams, page 32). The plaintiff's statement therefore that he did not see is evidence that he did not look. 10

Again, under the rules he should have waited until the car which obstructed his view proceeded and left unobstructed view of the tracks. (See Block and other cases above cited).

Further, although the plaintiff says he heard no signal, the presumption must be that he paid no attention to his surroundings but hurried across in an inattentive manner. He was bound to use his 20 faculty of hearing. (See *C. R. R. v. Smalley* above). That he did not do so is apparent. The testimony of his own witnesses shows that the car was coming up a hill and could be heard at a greater distance than that between the plaintiff and the car, AND WAS HEARD BY A MAN WHO WAS ALMOST DEAF AND WHO WAS NEARLY TWO HUNDRED FEET FURTHER AWAY THAN THE PLAINTIFF, and was heard by all of the plaintiff's witnesses. 30

If the noise of the car upon which he had been riding, and had just alighted from, obstructed his hearing, he was bound in law to wait until such obstruction was removed, or to delay crossing until such time as he could hear.

*Merkel v. Erie R. R. Co.*, 20 Vr. 473.

*West Jersey Railroad Co. v. Ewan*, 26 Vr. 574.

Newark Pass. Ry. Co. v. Block, 26 Vr. 612.

Central R. R. Co. v. Smalley, 32 Vr. 279.

Citing Newark Pass. Ry. Co. v. Block  
above.

Conkling v. Erie R. R. Co., 34 Vr. 338-  
342.

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Citing Newark Pass. Ry. Co. v. Block  
above.

Swanson Adm. v. C. R. R. Co., 34 Vr.  
605-607.

Keyley v. Central R. R. Co., 35 Vr. 357.

Although the plaintiff alleges he looked and list-  
ened but did not see or hear the car coming the evi-  
dence of his own witnesses establishes the fact that  
the car was in plain sight, and could be easily heard.  
This being so it will be presumed that the plaintiff  
neither looked nor listened.

It is a well established rule that if the car was  
within sight and could have been seen by the plain-  
tiff had he looked, or could have been heard by him  
had he listened, the law will presume that he  
neither looked nor listened, or else, that having per-  
ceived it coming, he thrust himself in front of it and  
took his chance of getting across ahead of it.

This brings us to the question whether the  
law will tolerate the absurdity or fraud of al-  
lowing the traveller to prove that he looked  
but did not see the train; where the view  
was unobstructed, and where, if he had look-  
ed, he must have seen it. The law will tol-  
erate no such nonsense. If the position of  
the traveller, with respect to the approach-  
ing train, was such that he must have seen

40

it if he had looked, or heard it if he had listened, the law will conclusively presume that he neither looked nor listened, or else, that, having preceived it coming, he thrust himself in front of it and took his chances of getting across ahead of it. ”

Thompson on Negligence (2nd Ed.) Vol. 2 par. 1655 and cases cited.

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This rule has been applied in New Jersey in the case of *Righter v. P. R. R.* 13 Vr. 180 at 187.

*Brady v. Consolidated Trac. Co.*, 35 N. J. L. 375.

The Court allowed the case to go to the jury “along the lines of the Scott case.” The case mentioned by the Court is that of *Scott vs. Consolidated Traction Company*, 29 Vr. 682. This was a case<sup>20</sup> where a boy of about seven and a half years of age was walking across the street and endeavored to cross behind a standing car of defendant, and as he stepped from behind the standing car he was struck by a car coming in an opposite direction at a rapid speed. The testimony was that no bell or gong was sounded by the approaching car, and that no one heard the same, and that the car approached without noise or<sup>30</sup> sound of any kind, and that no one heard it approach or was aware of its coming, that the car was beyond control of the motorman and that the boy was carried thirty or forty feet before the car stopped. The Court was requested to charge “if the plaintiff’s intestate entered upon the south-bound track without first looking for an approaching car, the plaintiff cannot recover.” The Court refused to so charge, and error was assigned upon such refusal. The Court of Errors in considering the case said (By Justice Hendrickson):<sup>40</sup>

“I think in view of the authorities named and CONSIDERING THE EXTREME YOUTH OF THE PLAINTIFF'S INTESTATE, that the trial judge could not have properly charged this request, and thus hold THAT UNDER THE CIRCUMSTANCES OF THIS CASE the failure of plaintiff's intestate to look for an approaching car before entering upon the southbound track would be negligence per se that should bar a recovery.”

The Court thus sends the case to the jury in view of the circumstances of this case (the absence of noise, the car being beyond control, &c.) and of the extreme youth of the plaintiffs intestate”—seven and a half years. Had the plaintiff been an adult, we think the Court would have held differently.

It must be also remembered that the place of the accident in the Scott case was a busy corner, the inter-section of two important streets, where people both adults and children were liable to pass at any moment, and there was reason for the exercise of great caution in passing slowly moving or standing cars, while the place of the accident in this case was on the Paterson Plank Road—out in the country—where there were no established street lines, and as one witness said “you couldn't tell whether there was a street there unless somebody told you.” (Page 68). There was no street crossing at the point where plaintiff came into contact with the car, the path or roadway which the plaintiff has called Homestead Place ran into the Plank Road from the North and not across it, so that there was no streets crossing from North to South, where the motorman of the car coming from Hackensack reached the car going in the opposite direction; also in the Scott case the motorman admitted he did not have his car under control. In this case, there is no such testimony.

The evidence of the defendant will be found on pages 43 etc. The first witness was Gilbert Goldman, a passenger who testifies (page 43) that he is commercial traveller and on the day in question was on the car with Egan, and sat opposite him in the car. He then states:

Q. What happened, just tell us? A. To the best of my knowledge and belief, Mr. Egan got up from the front of the car, and as he was going toward the back, the conductor pulled the bell for the car to slacken up. Mr. Egan, before the car stopped, jumped off the back of the car, and crossed in back of the car to the other track, the track going toward Jersey City. It was a very windy and blustery day—in fact it was very difficult for anybody to walk without holding their hats down to prevent the dust from getting in their eyes, which Mr. Egan did also—I guess that is his name—I didn't even know his name until I came to-day—which Mr. Egan did himself and directly opposite our car, almost, there was a car coming, going toward Jersey City and from the outlook of it Mr. Egan must have gone right into the side of the car with his head down, (page 45). 20

Q. How did he hold his hat on that day? A. With his hand to his head, down this way, and he tried to prevent the dust from getting in his eyes. 30

Q. Bending forward? A. Bending forward. 30

On cross examination, he states (page 46):

Q. How long after Egan got off was it he rang the bell for the sudden stop? A. Immediately after because the two cars were close together.

Q. Did you see Egan get off? A. Yes sir.

Q. Which side of the car were you on? A. The side toward Jersey City. He got off that side I was sitting going toward Paterson. 40

Q. Had you been talking at all? A. No sir, I did not.

Q. Had you been reading a newspaper? A. I might have.

Q. Did you have a newspaper in your hand? A. I don't remember.

Q. What time of day was it? A. Around 11 o'clock, it was Friday.

10 Q. How do you remember distinctly it was windy?  
A. Because I remember the accident exactly.

Q. Was it windy when you got on? A. It was windy, I came from Hoboken, I had seen some trade in Hoboken first, and had gotten on the car at Hoboken. (page 51).

Q. Well, sitting next to the door in this very long car on this blustery day, you saw Mr. Egan get off the back platform? A. Yes sir.

Q. He was on the seat opposite to which you  
20 were sitting and you saw him around behind the dashboard the back dashboard? A. Yes sir.

Q. And you saw him hold his hat on? A. I saw him hold his hat on and bend his head down.

Q. What attracted you to Mr. Egan doing that?  
A. I don't know what attracted my attention to it, but I just happened to look out of the window, being a windy day, when he stepped back—

Q. What window did you look out of? A. I looked back of the car.

30 Q. Then, looking straight back through the back of the car you saw this short man going around the back of this car? A. Yes sir.

Q. On this blustery day? A. Yes sir. Well we were a little bit away from Mr. Egan at the time when he went back of the car, don't forget that.

Q. How far away from Mr. Egan were you when you saw him? A. Well, I should judge about five or six feet away from him, but the car had started off.

Q. And hadn't crossed the track at that time? A.  
40 He did not when the other car came in back of him.

Q. You saw him holding his hat on? A. Yes sir.

Q. And head down? A. Yes.

Q. And you don't remember any gong? A. I don't remember hearing any.

Q. And have you no reason to give to the Court and Jury why you looked down the back of the car and saw what Mr. Egan was doing? A. No particular reason.

Q. You think you had a newspaper that day? A. 10 I would not say I did, or didn't.

Q. Had you been reading on the car? A. I do not remember.

Q. As I understand it, you remained seated? A. No, I think I went to the back platform to smoke a cigar, if I am not mistaken\*\*\*I got up just about the time Mr. Egan got up to get out of the car; whether it was a minute or so after I do not remember, but I was right behind him getting out on the back of the platform, to smoke a cigar. 20

Q. Then you followed Egan out? A. I followed Egan out to the back platform to smoke a cigar.

Q. Why didn't you tell Mr. Edwards that? A. He did not ask me.

Q. You say you sat opposite Mr. Egan? A. Yes, sir.

Q. When did you go out on the back platform? A. Just as Mr. Egan was crossing the back—after he had hit the car.

Q. After the car had struck him then you went in 30 the back? A. Yes, sir, I went to the back of the car to smoke a cigar.

Q. After he had been struck? A. Yes, after he had been struck. I didn't see him just when he was struck.

Q. When you were seated at the front of the car, do you think he was crossing the back of the car? A. Yes, sir.

The next witness was Mr. William Rintelman who testifies (page 54) that he was a passenger on the 40

same car with plaintiff, and was standing on the rear platform thereof, and then states (page 54).

Q. Do you remember Mr. Egan getting off the car? A. I do.

Q. Had the car stopped when he got off? A. No sir.

Q. After he got off what did he do? A. He got down to the back of the car, pulled his hat down and went ahead.

10 Q. Why did he put his hat down? A. I suppose because it was windy.

Q. What happened after that? A. I don't know, after that.

Q. He went out of your sight? A. Yes, sir.

Q. Did you see the other car? A. Yes, sir.

Q. Where was he lying after he was hit? A. Back of our car.

20 Q. Between the two tracks? A. Between the two tracks.

Q. How soon did your car stop after he was lying there? A. Well, the conductor gave the motor-man a bell, and he went about twenty feet ahead toward Homestead and stopped.

On cross examination he states (page 55).

Q. You saw Mr. Egan get off? A. I did.

30 Q. You heard the bell ring for the car to stop and let him off? A. Yes.

Q. The car had about stopped? A. It didn't come to a stop at all.

Q. But very nearly stopped, did it? A. Pretty nearly, yes.

Q. Were you facing the front of the car? A. Inside of the car.

Q. You were looking straight ahead then? A. Yes, sir.

40 Q. You didn't see Mr. Egan going around back of the car at all? A. I did.

Q. You were looking straight through the car?  
 A. At the time he got off, I turned around and looked at him, I just turned around like that.

The next witness was Timothy J. Field, the conductor of the car on which Egan was a passenger. He states (page 58).

Q. Do you know Mr. Egan? A. I know him <sup>10</sup>  
 yes,

Q. He had been a steady rider with you? A.  
 Yes, sir.

Q. Do you remember his getting off the car? A.  
 Yes, sir.

Q. In what condition was the car when he got off?  
 A. Coming to a stop.

Q. He got off when it was in motion? A. Yes,  
 sir.

Q. Where was the car coming to a stop? A. <sup>20</sup>  
 Right near that planing mill there, Hollingshead's,  
 I think the name is.

Q. Is there a street there? A. A kind of a path  
 there, a lane or something.

Q. What did he do after he got off the car? A.  
 Well, he walked around the back of it to go into the  
 mill.

Q. What kind of a day was it? A. If I remember  
 right it was a kind of windy; the wind was blowing a  
 little. <sup>30</sup>

Q. Where were you at the time? A. Standing on  
 the rear platform.

Q. D'ld you notice this gentleman, Mr. Egan? A.  
 Yes, sir.

Q. What did he do? A. He went around the back  
 of the car, and he put his head down, as if it was  
 windy, and so as not to strike him in the face; the  
 dust; Mr. Pflingstein drew my attention to it; I  
 gave the motorman three short bells.

On cross-examination, he states (page 60): <sup>40</sup>

Q. Had the car almost stopped when he got off?  
A. Almost; yes, sir.

Q. Some April showers or something, but not a very severe day? A. Well, it was blustery.

Q. You don't mean to say you followed Mr. Egan on his travels to see how he got around? A. Yes; I watched him.

Q. Did you watch him go around the car? A.  
10 Yes, sir.

Q. With your back to him? A. Not with my back to him.

Q. Why did you watch him go around the car? A. Because I watch all passengers; because there might be another car coming.

Q. Did you hear this car coming? A. Yes.

Page 63:

Q. Did you hear the other car coming? A. Yes,  
20 sir.

Q. What signal did it give? A. I heard it coming up the hill, it just left Homestead.

Q. What signal did it give? A. I could hear the machinery.

Q. Could you hear the bell? A. I do not remember about the bell.

Q. But you could hear the machinery? A. I could hear the car coming; in fact, I saw the front of the vestibule of the other car coming up the hill when  
30 I was going down.

The next witness was Edward Smith, the motorman of the car going toward Jersey City, who testifies (page 63):

Q. As you were going towards Homestead Place, did you see the other car? A. Yes, sir.

Q. Did the other car stop at all? A. It didn't come to a full stop; no, sir.

Q. Did it slow up? A. Not more than they usual-  
40 ly do on account of nearing the stop there.

Q. What did you see after the car slowed up at that point,—did you see any man coming from behind it? A. After the car had passed, I saw a man; yes, sir.

Q. How far was he in the rear of the car, should you say? A. About six or eight feet, I should say.

Q. Were you giving any signal before— A. I was ringing the bell.

Q. Where were you ringing the bell? A. Direct- 10  
ly as I came to the car.

Q. Were you ringing it the full length of the car? A. Yes, sir.

Q. You saw this man about six or eight feet back of the car; how was he moving,—toward the car or how? A. He was walking a little diagonally toward the railroad; that is north, isn't it?

Q. Yes; how was he walking? A. With his head turned down.

Q. Did you notice anything about his hat? A. His 20  
hat was pulled right down.

Q. What kind of a day? A. A very blustery day; the wind was blowing.

Q. Did you see him in front of the car, or where? A. No, sir; the first I saw him was the other side of the vestibule; I had the door open.

Q. Did the front of the car strike this man? A. No, sir.

Q. When did you find out that he had been hurt? A. Well, I saw him coming with his head turned 30  
down toward the car; that is the side of the car to the vestibule; he didn't pay any attention to me, and I don't know whether he heard me or not; I had the electric brake on the car, and I put the electric brake on, and the emergency; I stopped the car, I should say it went about half the length of the car.

Q. Where was this man struck, if he was struck by your car? A. He must have been struck in the left side, because I was in a different position from him.

Q. On his left side? A. If he continued to go as he started. 40

Q. How far from the front of your car was he struck? A. Well, I should say, to my best judgment, between the vestibule of the car and the center of the car; I couldn't say exactly to a few inches.

Q. Are you sure the fender didn't strike him—only the front of the car? A. No, I saw him from the side door—he was not near enough to get hit then.

10 Q. When you stopped the car where did you find him lying? A. Right near the vestibule—between the tracks, he was lying facing the Susquehanna tracks.

Q. From the way he was coming toward the car, it would have struck his left side, is that it? A. If he had continued to go in the direction he was going.

Q. That was the natural thing? A. Yes, that was the natural thing.

On cross-examination, he states (page 65):

20 Q. You saw this man coming, you say? A. Yes, sir.

Q. You did not ring any bell? A. Yes, sir.

Q. How was it he didn't hear? A. It was very blustery, the wind was blowing hard.

Q. What kind of a day was it? A. Rather cloudy.

Q. What time of day was it? A. About 11 o'clock.

Q. Had it rained that day? A. Not that I know of.

30 Q. Did it rain that day? A. I couldn't tell you; it was kind of stormy.

Q. That street is paved? A. Yes, Belgian blocks.

Q. Is it kept pretty clean? A. Well, it is dirty, as a general rule; the street is; ordinarily there is considerable dirt there; directly after a rain it is clean.

Q. You saw this man six or eight feet ahead of you? A. Not ahead of me; on the other track.

Q. Where was he when you first saw him? A. In the middle of the other track.

40 Q. And making for across the street, wasn't he? A. Yes, sir.

Q. Then he was six or eight feet away from you?

A. When I first saw him he was in the middle of the track, about six or eight feet from the other car.

Q. That would be how far away from you? A. Why, it is about four feet, isn't it, between the tracks—perhaps six feet.

By the COURT:

Q. When you say the middle of the track, do you<sup>10</sup> mean the middle of the north bound track or between the two tracks? A. Right on the north bound track.

Q. The one you were not on? A. The one I was not on; between the rails of that track.

By Mr. MINTURN:

Q. How near was he to you then? A. When I saw him—about six feet.

Q. And coming directly across, in front of that car,<sup>20</sup> was he? A. Not directly; no, sir; he was going diagonally across.

Q. You saw his car stop? A. Yes, at Homestead.

Q. You saw the car stop at Homestead Place? A. No—that is, he didn't stop.

Q. The conductor says it slowed up to stop? A. It might have slowed up, but I didn't see it.

Q. Did you hear the conductor give the bell on that car to stop? A. No, sir.

Q. You didn't hear that? A. No, sir.

Q. Did you hear two bells given to go ahead? A. No, sir.

Q. Didn't hear that? A. No.

Q. Your eyes were right ahead of you all the time, weren't they? A. Not all the time.

Q. What were you looking over behind this car for? A. I was watching the car; you always have to watch a car—

Q. How were you coming, full speed? A. No, sir.

Q. Why were you watching this car? A. To see<sup>40</sup>

whether anybody was coming around or getting off; I couldn't tell.

Q. You saw this party? A. After the car passed.

Q. Six or eight feet? A. Yes, sir.

Q. Was your car under control then? A. Yes, sir.

Q. Did you put on the brakes promptly? A. Just as soon as I saw him walking across the track.

Q. You saw he was walking right in front of you?

10 A. He was going in front of the track, but not in front of me.

Q. He was going in that direction, across the track? A. Yes, sir.

Q. You knew he was going to cross the track? A. I didn't know.

Q. Wasn't there some indication from his movements that he was going to cross? A. Yes, sir.

Q. Why didn't you put the brakes on; you say he was going to cross the track, facing in that direction?

20 A. He was not going that way; he was going diagonally across the street, toward the back of the car.

Q. Did you know Mr. Egan at all? A. No, sir.

Q. Never saw him? A. I might have seen him, but not to remember him.

Q. You knew this crossing; there was a street there, Homestead Place? A. I don't know whether it was a street.

Q. There was a fire house on it? A. Yes, sir.

30 Q. And it was a street, wasn't it? A. I don't know whether it is called a street.

Q. Is was a passageway? A. There is a driveway down to that lumber yard.

Q. There is a passageway for people to go down this thoroughfare, in front of this fire house? A. There is no fence there; you can go in most any direction.

By Mr. EDWARDS:

Q. It is out in the country? A. Yes, you couldn't tell whether there was a street there unless somebody told you.

By Mr. MINTURN:

Q. Isn't there a curbstone there, at the corner crossing? A. Not that I know of; I never took notice of that.

Q. What led you to believe Mr. Egan was going to cross the track? A. Because he was going toward the car—the back of the car.

Q. When did you make up your mind that he was going to cross the track? A. When I saw him from the side vestibule. 10

Q. For the first time? A. Yes, sir.

Q. Did you slow up then? A. Directly as we crossed the track.

Q. When you say you made up your mind that he was going to cross that track, did you slow up? A. Yes, sir.

Q. Put on the brakes? A. Yes, sir.

Q. And you say the car went a full length from where this car struck? A. I didn't say so. 20

Q. Your conductor says so? A. That was not my conductor.

Q. The conductor of the other car said so, and he picked him up; how was it if your car was under full brake, as you say, it went a full length beyond where this man was struck? A. I put the brake on when I saw him going by the vestibule.

Q. I want to know, if you put the automatic brake on and all these other patent brakes you speak of, how this car went a full length before it struck the man? 30

Mr. EDWARDS: He said it didn't.

Q. I am taking the testimony of your own conductor, of the other car, who said he picked the man up?

A. That was not my conductor; that conductor got off the other car.

Q. He picked the man up right at the rear vestibule of your car— 40

Mr. EDWARDS: That is what this man says.

Q. You had your car under full control? A. Yes.

Q. How did it go a half length, if it stopped before it came to the place the man was struck? A. I put the brakes on directly I saw the man at the side of the vestibule.

10 Q. Then you had gone by the man? A. I had gone by the man.

Q. And then you put your brakes on— A. Because I saw his head coming at the side of the car, and I didn't know whether he was going to walk at the side of the car, or where he was going.

Q. That is the only reason you put your brakes on? A. That is the only reason I put my brakes on.

By Mr. EDWARDS:

20

Q. He never was on the track in front of your car, was he? A. No, sir.

By Mr. MINTURN:

Q. Do you know what hit him? A. No, sir.

Q. You know he was hit? A. I suppose he was hit, because he laid there in the street.

Q. He laid there looking dead, didn't he? A. He 30 was unconscious, I should say.

Q. You don't know what hit him? A. I don't know what hit him.

By Mr. EDWARDS:

Q. Whether the side of the car or the rear? A. I don't know.

Q. But you know it wasn't the front? A. No.

Q. Or the edge of the vestibule? A. No, sir; it was not.

40 Q. Or the end of the fender? A. No.

The next witness of the accident was William Stengowitch, who was the conductor of the car going toward Jersey City. He testifies (page 79):

Q. Did you see this man, Egan? A. We started off May 1, 1903; started about ten minutes past eleven at Homestead; that is the regular start; I started collecting fares at the hind end; I heard both motormen ring bells; I saw a man walk round the car; it was a windy day; he held his hat down like that (shows); he didn't cross the track, but walked to the side of my car holding his head down; a windy day; to the hind part of our car; he fell down between the two tracks. 10

Q. Which of his sides did the car strike? A. His left side.

Q. About where on the car do you think he struck? A. Right by the door, a little ways from the front door a little front. 20

Q. Where did his body seem to strike the car? A. At his shoulder.

Q. How far did the car go beyond him? A. I guess about ten feet and the car stopped; he was lying between the two tracks; his head was toward Homestead; he was lying on his right side.

Q. Did the car stop? A. Yes; both cars stopped.

CROSS-EXAMINATION by Mr. Minturn (page 80): 30

Q. Did you hear more than one bell? A. I did.

Q. What bell did you hear? A. I heard the bell on both cars; the motorman's bell, not the conductor's bell; I pulled the bell to stop when I saw the man cross the track.

Q. When did you first see the man? A. When he got off the other car and walked around.

Q. Where was he when you first saw him? A. He was behind the car crossing the track, holding his hat down. 40

Q. Which way was the wind blowing? A. To the southeast, toward New York.

Q. Was it a very windy day? A. Quite windy and dusty.

Q. Do you remember the day of the month? A. It was May 1st.

Q. The car was coming up the hill, the man was coming round the back of the car, you were collecting fares from this side and that side, and you saw that while you were collecting fares in that way you saw this man over on the track behind the car on a windy day coming along in your direction, is that so? A. Yes.

Q. And Egan was behind the car when you first saw him? A. Yes, he jumped off the car and came down, at the same time I heard the bell, and I looked to see what was on the road.

Q. You didn't see Egan until you heard the bell? A. No.

Q. How many times did you hear that bell ring? A. About six or seven times.

Q. Six or seven times you heard your motorman ring that bell? A. Yes.

Q. What time of day was it? A. About ten minutes past eleven.

Q. Did you hear the motorman of the other car ring the bell? A. Yes.

Q. How many times did he ring it? A. About the same.

Q. What did he ring the bell for? A. In case anybody got off my car he should look out.

Q. They were all ringing at the same time? A. Yes.

Q. It made a tremendous noise? A. Made a noise?

Q. So it could be heard some distance? A. Yes.

Q. Where did this man fall? A. He fell between the two tracks.

Q. Did you see him strike the car? A. I did.

Q. What part of the car did he strike? A. Just a little ways from the hind door, that door was closed;

he struck the drip board; the moulding of the car struck him.

Q. He had his hat on going along toward Homestead? A. Yes, he was going this way (showing), holding his head down.

Q. The car was going down this way? A. The car was going to his face, and he was coming with his back to the car.

Q. Which way was he going? A. He was going 10 like this.

Q. He was going with his right hand up? A. No, with his left hand up.

Q. Then he must have had his back to the car? A. He was going this way (shows).

Q. How far had the car that he got off got away when your car struck him? A. About half a block.

It thus appears by the testimony of the witnesses of the defendant that the plaintiff left the car of the 20 defendant before it had stopped; that he pulled his hat down over his eyes, bent forward and walked immediately in back of the car and was struck by the other car. It also appears that they, as well as the witnesses of the plaintiff, heard the other car as it came up the hill. The motorman testifies expressly that he rang his bell and that the car was under perfect control; his conductor swears he heard the motorman's gong, and that he rang his bell also. The 30 only witness on the part of the plaintiff to the accident is the colored man, Williams. His testimony, vague as it is, is not corroborated by a single witness, and is directly and positively contradicted by the testimony of five witnesses on the part of the defendant. He was not seen at the place of the accident by any of the plaintiff's witnesses, nor by any of the defendant's witnesses. After the whole case was in, the Court should have directed a verdict for the defendant as requested. It clearly appears that any number of verdicts could not be sustained upon the evidence produced. The plaintiff had certainly not 40

proved his case by a preponderance of evidence. In fact, the evidence so greatly prepondered in favor of the defendant, that the Court should have directed a verdict.

"A verdict in favor of the plaintiff which is not supported by a preponderance of the testimony, is without legal justification, and cannot be permitted to stand."

10 Ames v. North Jersey St. Ry. Co., 36 Vr., page 110.

Hatcher v. Pa. R. R. Co., 40 Vr., 227.

Lee vs. Elizabeth, Plainfield and Central Jersey R. Co., 40 Vr., 607.

It is respectfully submitted that the verdict should be set aside.

20

WILLIAM D. EDWARDS,  
EDWIN F. SMITH,  
Of Counsel with Defendant.

30

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NEW JERSEY, ss.:

THE STATE OF NEW JERSEY to  
Charles W. Parker, Esquire, Judge  
(Seal.) of our Circuit Court, at Jersey City,  
in and for the County of Hudson,  
GREETING:

Forasmuch as in the record and proceedings, and <sup>10</sup>  
also in the giving of judgment in a certain plaint,  
which was in our said Circuit Court holden at Jer-  
sey City, in and for the said County of Hudson, be-  
tween Francis J. Eagan, plaintiff, and the Jersey City,  
Hoboken and Paterson Street Railway Company,  
defendant, in an action of tort, manifest error hath  
intervened to the great damage of the said defend-  
ant as is said; we being willing that the error if any  
there be should in due manner, be corrected, and full <sup>20</sup>  
and speedy justice done to the parties aforesaid in  
this behalf, do command you that if judgment be  
thereupon given and affirmed, then you distinctly  
and openly send under your seal the record and pro-  
ceedings aforesaid, with all things touching the  
same, to our Judges of our Court of Errors and Ap-  
peals in the last resort in all causes at Trenton on the  
16th day of July next, together with this writ, that  
the record and proceedings aforesaid being inspect-  
ed, we may cause to be done thereupon, for correct- <sup>30</sup>  
ing that error, what of right and according to the law  
and custom of the State of New Jersey, ought to be  
done.

WITNESS, our Chancellor and President Judge  
of our said Court of Errors and Appeals at Trenton  
aforesaid, the twenty-seventh day of June, one  
thousand nine hundred and six.

S. D. DICKINSON,  
Clerk.

BEDLE, EDWARDS & HOLMES,  
Attorneys. <sup>40</sup>

The answer of Charles W. Parker, Esquire, Judge of the Circuit Court of the County of Hudson, within named, the record and proceedings of the plaint whereof mention is within made, with all things touching the same, I certify to the Court of Errors and Appeals in the last resort in all causes, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed as I am com-  
 10 manded.

CHARLES W. PARKER,  
 Judge.

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HUDSON COUNTY, ss.:

The State of New Jersey to the Sheriff of the County of Hudson, Greeting: We command you to summon Jersey City, Hoboken and Paterson  
 20 Street Railway Company, a corporation, to be and appear before the Circuit Court to be held at Jersey City, in and for the County of Hudson, on the tenth day of May, 1904, to answer unto Francis J. Eagan, in an action in tort wherein the said Francis J. Eagan demands ten thousand dollars as is said, and have you then and there this writ.

WITNESS, Charles W. Parker, Esquire, Judge of our said Court at Jersey City aforesaid, the twenty-  
 30 eighth day of April, A. D. one thousand nine hundred and four.

MAURICE J. STACK,  
 Clerk.

MINTURN & McCAULEY, Attorneys.

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## HUDSON COUNTY CIRCUIT COURT.

Of the tenth day of May, 1904.

HUDSON COUNTY, ss.:

The Jersey City, Hoboken and Paterson Street Railway Company, a corporation of the State of New Jersey, the defendant in this suit, was summoned to answer unto Francis J. Eagan, in an action of tort, and thereupon, the said plaintiff, by Minturn and McCauley, his attorneys, complains for that whereas the said defendant, on the first day of May, A. D. 1903, owned and operated a street railway in, through and along the public street and highway known as Paterson Plank Road, in the Township of North Bergen, in the County of Hudson and State of New Jersey, and was then and there the proprietor and possessor and operator of a certain motor car, which by a certain motorman and a certain conductor, as its servants and agents, by means of electricity, it then and there propelled, operated and ran along the tracks of its said railway, and along and through the said Paterson Plank Road aforesaid, to wit, on the first day of May, A. D. 1903, at and near the intersection of the said Paterson Plank Road and Homestead Place, in the said Township of North Bergen, to wit, at the City of Jersey City, in the County aforesaid.

And whereas the said plaintiff was, on the said first day of May, lawfully in and upon the said Paterson Plank Road at the place where the same intersects the said Homestead Place, in the said Township of North Bergen, and was then and there crossing over the said Plank Road, at the usual place of crossing for pedestrians, in a careful and prudent manner, whereby it became and was the duty of the said defendant then and there, towards the said plaintiff, to use proper care and diligence in the

operation of its said railway, track and motor car, and to run the said motor car at a reasonably safe rate of speed and to keep a proper and reasonably careful lookout for pedestrians crossing said Plank Road and in front of said car, and to have the said motor car under the control of its said motorman, so as not to negligently injure him, the said plaintiff, then and there, and to give proper warning of the  
10 approach of the said car.

Yet, the said defendant, disregarding its duty in this behalf, and wrongfully and unjustly intending to injure, prejudice and aggrieve the said plaintiff, on the said first day of May, in the said Township of North Bergen, in the said County of Hudson and State of New Jersey, and by its servants and agents, by means of electricity, unskillfully, negligently and unlawfully propelled said motor car along said tracks on said Paterson Plank Road at and near the  
20 intersection of said Plank Road and Homestead Place, in said Township; and then and there unlawfully and negligently failed to keep a proper lookout or to exercise due care to keep such lookout for said plaintiff, while he was crossing said street, so as to avoid danger and not to injure him, the said plaintiff, while he was crossing said Plank Road as aforesaid, and then and there unlawfully and negligently failed to keep said motor car under reasonably safe  
30 control of its said motorman; and then and there unlawfully and negligently propelled said motor car at an unusually high and dangerous rate of speed, and without giving any warning of its approach, so that the said motor car was then and there, through the negligence of the said defendant and its agents and servants, as aforesaid, run and propelled with great force and violence against the said plaintiff, and then and there violently flung him to the ground and thereby greatly injured, bruised and lacerated his head, limbs and body, internally and externally, and this without any fault or negligence on the part of  
40 him, the said plaintiff.

By means of which said wrongs and injuries the said plaintiff became and was sick, sore, lame, paralyzed and otherwise injured, diseased and disordered, and therefrom suffered great pain and anguish of body and mind, and thereby became and was, and has been from thence hitherto, and now is and evermore during his natural life will be permanently injured in his head, body, mind and otherwise, and thereby was forced to lay out and expend, and still is, and shall in the future, be forced to lay out and expend large sums of money in and about endeavoring to alleviate and cure his said injuries and sufferings and thereby was prevented from pursuing and attending to his lawful affairs and business, from which he was accustomed to receive large sums of money, and is still unable to perform his usual services and to attend to his usual affairs. 10

Wherefore, the said plaintiff, Francis J. Eagan, says that he has been injured and suffered damage 20 by reason of the negligence of the said defendant, in the sum of ten thousand dollars, at the Township of North Bergen, to wit, at Jersey City aforesaid. And therefore he brings his suit, etc.

Filed May 28, 1904.

A true copy:

MAURICE J. STACK,  
Clerk.

30

40

## HUDSON COUNTY CIRCUIT COURT.

_____o		)	
	FRANCIS J. EAGAN,	)	
		)	
	Plaintiff,	)	
		)	
	vs.	)	In Tort.
10	JERSEY CITY, HOBOKEN)	)	Plea.
	AND PATERSON STREET)	)	
	RAILWAY COMPANY,	)	
		)	
	Defendant.	)	
		)	
	_____o	)	

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

Filed, June 18, 1904.

30

THEREFORE, to try the issue above joined let a jury come before the said Circuit Court, at Jersey City, aforesaid, on the eighth day of January, one thousand nine hundred and six, as yet of the Term of December, in the year of our Lord, one thousand nine hundred and five, who neither, &c., by whom, &c., to recognize, &c., because as well, &c., the same day is given to the parties aforesaid, at which day before the said Circuit Court come the said parties by their attorneys aforesaid, and the jurors of

the jury above mentioned also come, who to speak the truth of the matters aforesaid being chosen, tried and sworn, say upon their oath, that the said defendant is guilty as the said plaintiff hath thereof above complained against it, and they find in favor of the plaintiff and against the defendant, and they assess the damages of the plaintiff on occasion of the premises at one thousand five hundred (\$1,500) dollars and \_\_\_\_\_ cents, over and above his costs <sup>10</sup> and charges by the said plaintiff about his suit in this behalf expended.

THEREFORE, it is considered that the said plaintiff do recover against the said defendant damages aforesaid, in manner aforesaid found, and also \_\_\_\_\_ dollars, and \_\_\_\_\_ cents, for his costs and charges by the said Court now here adjudged and which said damages, costs and charges in the whole amount to \_\_\_\_\_ dollars and \_\_\_\_\_ cents. <sup>20</sup>

And the said defendant in mercy, &c.

Judgment entered and signed this fifteenth day of June, A. D. one thousand nine hundred and six.

C. W. PARKER,

J.

30

40

## HUDSON COUNTY CIRCUIT COURT.

_____o		
FRANCIS J. EAGAN,	)	
	)	
Plaintiff,	)	
vs.	)	In Tort.
10 JERSEY CITY, HOBOKEN)	)	
AND PATERSON STREET)	)	
RAILWAY COMPANY,	)	
Defendant.	)	
_____o		

## APPEARANCES:—

20

F. H. McCAULEY and JAMES F. MIN-  
TURN, Esqs., for Plaintiff.

BEDLE, EDWARDS & THOMPSON  
(by MR. SMITH), for Defendant.

BE IT REMEMBERED that on the tenth day of  
30 May, one thousand nine hundred and six, at a Cir-  
cuit Court holden at Jersey City, in and for the  
County of Hudson,, before his Honor, Charles W.  
Parker, Esquire, Judge of said Circuit Court, the  
issue joined in the above stated cause between the  
said parties (pro ut the pleadings) came on to be  
tried by a jury for that purpose duly empaneled and  
thereupon the plaintiff and defendant offered evi-  
dence (as hereinafter set out) to maintain the issue  
on their respective parts, as follows:—

40 Mr. McCauley opened the case for the plaintiff.

## FRANCIS J. EAGAN.

FRANCIS J. EAGAN, the plaintiff, called as a witness in his own behalf and sworn, testified as follows:—

DIRECT EXAMINATION by Mr. Minturn:—

I reside at 418 Liberty Street, Union Hill, and have resided there since June, 1905; I have been in Union Hill twenty-two years; I am at present a bookkeeper and have been about three years; I am employed by B. R. Hollingshead, Homestead, New Jersey, sash and blind business; I have been employed there about two years and eight months. <sup>10.</sup>

Q. What was the date you were injured? A. May 1, 1903.

Q. Were you in the employ of Hollingshead & Co. on that day? A. Yes, sir. <sup>20</sup>

Q. And had been how long prior to that? A. About the October before that, I believe.

Q. What wages were you earning there? A. Fifteen dollars a week.

Q. As bookkeeper? A. As bookkeeper.

Q. Are you single or married? A. Single at that time.

Q. What are you now? A. Married.

Q. Whom were you living with then? A. My mother. <sup>30</sup>

Q. In Union Hill? A. In Union Hill, yes, sir.

Q. Is your father living or dead? A. Dead.

Q. And was at that time? A. Yes, sir.

Q. This accident happened on what date? A. May 1, 1903.

Q. About what time? A. About 11.10 in the morning.

Q. State to the Court and jury just how it happened? A. I was coming from the People's Safe Deposit and Trust Company, Jersey City, and I got <sup>40</sup>

## FRANCIS J. EAGAN.

The car at the transfer station, after transferring from a Summit and Central Avenue car. The car took me to Homestead Place. I signalled to the conductor to get off; he stopped the car for me; I got off the car, taking my time; turned around, went to cross the track, and the first thing I know I was struck by a car—struck by something; I know I was  
 10 struck, and that is all I know.

Q. Did you hear any gong? A. No gong.

Q. Any warning of any kind? A. No, sir.

Q. You say you got off the car; did you go behind the car? A. I went behind the car, yes, sir.

Q. Did the car stop for you when you signalled the conductor? A. Yes, sir.

Q. And then you got off and walked behind the car? A. I got off and walked behind the car.

20

BY MR. SMITH:—

Q. Was the car coming the other way that struck you? A. The car was coming in the opposite direction.

Q. What time in the day was this? A. About  
 11.10 in the morning.

Q. A clear day? A. Yes, sir.

30 Q. Where were you going at the time you were struck? A. To the office of Hollingshead & Company.

Q. Your employer? A. Yes, sir.

Q. Was it in the direction in which you were going? A. Yes, sir.

Q. So that to get to the office you had to cross the track? A. Yes, sir.

Q. What do you next remember about that accident? A. The next thing I remember I was home.

Q. Where. A. How in the house, in the kitchen.

40 Q. What house? A. My mother's house.

## FRANCIS J. EAGAN.

Q. Where? A. 111 Franklin Street, Union Hill.

Q. Then you were conscious, were you? A. I was conscious, yes.

Q. You don't remember anything after the accident until you got to your mother's house? A. No, sir, I do not.

Q. How were you injured as a result of that collision? A. Well, the doctor said it was a compound <sup>10</sup>—it was a dislocation of the shoulder, that is it.

Q. Were you injured in any other place beside the shoulder? A. Well, I had a bruise on my forehead.

Q. A bruise or a cut? A. It was a cut, and the blood running from it.

Q. Did you suffer any pain? A. I suffered pain, yes, sir.

Q. Where? A. In the shoulder.

Q. Suffer any pain in the head? A. No, sir; I <sup>20</sup> don't think I did.

Q. Whom did you call in to doctor you, or who was called in to doctor you? A. Dr. Worden.

Q. Is he living or dead? A. Dead.

Q. When did he die? A. The exact date I don't know; I think he is dead about a year and a half, if I am not mistaken.

Q. He was there at Union Hill? A. Yes, sir.

Q. How long did he treat you? A. He treated me from May 1st, till the early part of September. <sup>30</sup>

Q. Of that year? A. Of that year.

Q. Did he come to the house, or did you go to him? A. To the house sometimes and sometimes I went to him.

Q. Were you laid up in bed as a result of this accident? A. Yes, sir; for over three weeks.

Q. Did he treat you every day during these three weeks? A. He treated me three times a day, for about four days; then he treated me once a day for about a week and a half, and then he would make about two calls a week. <sup>40</sup>

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Q. Did he treat you after you left the bed? A. Yes, sir, he did.

Q. How long did you stay in the house after you left the bed, before you were able to resume business? A. How long did I stay in the house?

Q. How long was it before you were able to go back to work? A. I went back to work about July 10 23rd or 22d. I was not able to do very much then; I had my arm in a sling and could just do a little work about the office; I couldn't get books out of the safe and put them on the desk, or anything.

Q. Which arm was hurt? A. The left arm.

Q. At the shoulder? A. Yes, sir.

Q. When were you able to leave the house? A. I left the house the day before Decoration Day, the 30th of May. I had my arm done up in plaster and 20 had my arm up under my other clothes.

Q. You were three weeks in bed, you say. A. Yes, sir.

Q. And the accident happened on the first of May? A. Yes.

Q. And you were not able to get out until the day before Decoration Day? A. Yes, sir.

Q. When you went out did you go to work? A. No, I didn't go to work; just to get a little fresh air; I sat on the front porch.

30 Q. Your arm was tied in a sling? A. It was tied in a plaster—I don't know what you call it; it was a sort of cloth plaster on my arm, all the way around me.

Q. Then your arm was tightly tied down to your body; is that the idea? A. Yes, sir.

Q. How long was it before you were able to use that arm? A. Well, I am not able to use it yet; I can't raise it higher than the level of my shoulder.

Q. You can't raise it higher than the level of your 40 shoulder now? A. No, sir.

## FRANCIS J. EAGAN.

Q. Can't you lift anything with it? A. No, sir, I could not.

Q. How is it when you are trying to get your coat on? A. It is a little work, yes, sir.

Q. Did you suffer any pain as the result of that injury? A. Yes, sir; I did.

Q. Right along? A. Right along, and I am suffering to-day. 10

Q. Does it affect you in sleeping? A. It does; I can't lie on that shoulder at all; sometimes I can't sleep at night for the pain.

Q. Can't you turn on that side? A. No, sir; I can't turn on that side at all.

Q. After Dr. Worden had died, were you treated by any other physician? A. Yes, sir; I went to Dr. Byrnes, of West Hoboken—Weehawken Heights, that time. 20

Q. How often did you go to him? A. I guess about five times.

Q. What did he do? A. Well, he just examined my shoulder and gave me a little liniment to rub on it;—I think it was liniment—and tried to reduce the pain in some way.

Q. Did this accident affect your sight? A. Yes, sir, it did.

Q. In what way? A. Well, it affected me so I couldn't do any reading at night for a month, and I wore blue glasses; when I was laid up I had to sit in a dark room. 30

Q. And wear blue glasses? A. Not until then—I didn't wear blue glasses till then.

Q. Who told you to wear blue glasses? A. The doctor advised me to.

Q. How long did you continue wearing blue glasses? A. About a month.

Q. Before this had you worn glasses? A. Yes, sir. 40

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Q. What was your reason for wearing glasses?

A. I happened to have a pain in the head and went to the Doctor, and he said I ought to wear glasses.

Q. After the accident, in what way were you affected in the head? A. Well, there was pain in the head at times.

10 Q. Pains more serious than the pains you previously had? A. Yes, sir.

Q. Pains of a different kind? A. Pains of a different kind; yes, sir.

Q. How often did they last? A. Well, up to the present time, they come; I get terrible pains in the head, I can hardly stand it.

Q. Did you have those pains before the accident? A. No, I just merely had a little headache.

20 Q. How is your sight at night? A. At night I can do no writing at all.

Q. How was it before the accident? A. Before the accident I could write all right.

Q. How is it, as far as reading is concerned? A. I can't do very much reading.

Q. At night? A. At night.

Q. How in the day time? A. In the day time all right.

30 Q. How was it before the accident? A. Before the accident I could read all right; it didn't bother me in the day time or night time either.

Q. Could you write very well, too? A. Yes, sir.

## CROSS EXAMINATION by Mr. Edwards:—

Q. How old are you? A. Twenty-five years.

Q. Were you working at the time of the accident? A. Bookkeeper at Hollingshead Mill.

Q. At the same place? A. Same place.

40 Q. What wages did you get then? A. Fifteen dollars a week.

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Q. What are you getting now? A. Eighteen dollars a week.

Q. When did they raise you to eighteen? A. They raised me to eighteen in June.

Q. Of 1905? A. 1905.

Q. Did you lose any time, there, in wages? A. Yes, sir, I did.

Q. How many weeks did you lose? A. I lost—<sup>10</sup> well, I was hurt on Friday and I was paid that week, and from then on I didn't draw any wages until July—the latter part of July.

Q. You lost about five weeks? A. Well, it is more than that.

Q. How many? A. May, June and most of July.

Q. Then you went back to work at your old wages? A. I went back to work then. <sup>20</sup>

Q. And have kept at it ever since? A. Yes.

Q. How high can you lift your arm? A. Only from the level of my shoulder.

Q. Just show us. (Witness does as requested.)

Q. Could you lift it higher before? A. I could before the accident.

Q. How long have you worn glasses? A. I have worn glasses—I guess I have worn glasses about four years.

Q. The same glasses? A. No, sir. <sup>30</sup>

Q. When did you change? A. I have changed them about five times since.

Q. Your eyes have been getting gradually worse then? A. Yes, sir.

Q. When did you begin to change the glasses? A. Well, the first glasses I changed was right after the accident.

Q. That was the first change? A. That was the first change.

Q. But you had been thinking of a change before <sup>40</sup>

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that, had you? A. No, sir, I hadn't; my glasses were all right then.

Q. What did you have to wear glasses for? A. Well, I can't see out of one glass; one glass I generally change—the left eye.

Q. Always been that way? A. No, sir.

Q. It was that way before the accident? A. No,  
10 sir, it was not.

Q. What did you wear glasses for? A. I wore glasses because I had pains in the head, I was suffering from headache.

Q. You had had headaches before the accident? A. Yes, sir.

Q. And so severe you had to get glasses? A. Yes, sir.

Q. And you had headaches since the accident? A. No, not headaches—pains in the head.

Q. Where were you struck? A. I was cut right  
20 here (showing).

Q. Any mark there? A. I don't think there is.

Q. Could you see anything a week after the accident? A. Yes, sir.

Q. How long after the accident could you see that mark? A. Ten days.

Q. Is Dr. Byrnes here? A. Yes, sir.

Q. What kind of a day was this? A. Clear day.

Q. Windy? A. No, sir.

Q. What car did you get off of. A. The car coming  
30 from Jersey City, going to Rutherford.

Q. At what point did you get off the car? A. I got off at the first crossing, the first curb of the street crossing.

Q. At what point? A. Near Homestead—Home-  
stead Place and Paterson Plank Road.

Q. And how near to the railroad were you when you got off? A. Well, I guess it was only a block,  
40 because the street is only a block long, about.

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Q. Did you get on at the corner? A. Yes, sir.

Q. Did the car stop? A. Yes, sir.

Q. Is it a straight track at that point? A. Yes, sir, a straight track at that point.

Q. You got off at the corner? A. I got off at the corner.

Q. There are two tracks there? A. Two tracks. <sup>10</sup>

Q. Are both tracks on the left there? A. Yes.

Q. And the track coming from Paterson is about how far—how far apart are the tracks? A. Well, I should say about four feet.

Q. Was there any wind blowing that day? A. No, sir.

Q. Not a high wind? A. No, sir.

Q. You went around the end of the car? A. Back of the car.

Q. You looked? A. Yes, sir; I looked up. <sup>20</sup>

Q. Why didn't you see the car coming? A. Because the other car obstructed my view.

Q. When you got off the car? A. I couldn't see nothing; the first thing I knew was the car struck me.

Q. You listened? A. Yes, sir.

Q. Why didn't you hear the car coming? A. No, sir; I didn't.

Q. Was it a ghost car? A. No, sir; I didn't see anything— <sup>30</sup>

Q. Is it on a grade coming up there? A. No, sir; I don't think it is.

Q. You don't know what part of the car struck you? A. No, I don't know what part of the car struck me.

## DR. THOMAS BYRNES.

DR. THOMAS BYRNES, called as a witness on behalf of the plaintiff, and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Minturn:—

10 Q. You are a physician in Union Hill? A. In that neighborhood.

Q. How long have you been practicing there? A. About twenty years.

Q. Are you acquainted with Mr. Egan, who just left the stand? A. Yes, sir.

Q. Did you treat him medically? A. I did, about a year ago, off and on.

Q. What did you treat him for? A. For neuralgia—he had pains in his arms and so forth.

20 Q. What did you find him to be suffering from? A. I found him to be suffering from severe pains in his left arm—inability to raise it above the level of the shoulder, and in getting the history of his case in the beginning, he told me he had a dislocation, which accounted for the symptoms that he complained of.

Q. What were the symptoms? A. Pain and a certain amount of paralysis and a loss of sensation in 30 certain parts of the hand—that is, in the shoulder.

Q. You have seen him here in Court. A. I did.

Q. Raising his arm in answer to the question of Mr. Edwards? A. I did.

Q. Is that real or simulated? A. That is real, in his case it is real.

Q. He cannot raise his arm any higher than that, in your judgment? A. No, except by possibly making extraordinary effort he might get a very slight degree higher.

Q. A little higher? A. Yes, very little higher.

40 Q. What did you call his trouble?

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The COURT:—Neuralgia, he said.

A. Well, it is more of a neuritis than it is of a neuralgia, in this way, that it is due to injury, causing an inflammation of the nerve.

Q. What did you say that injury was? A. Pressure on the head of the bone during the dislocation 10  
—on the nerve trunk.

Q. What is the probability of his permanent recovery from that injury? A. Well, it is now quite a number of years. What is the question?

Q. What is the likelihood of his permanent recovery, his ability to use the arm in the future? A. I don't think he will ever be any better than he is now.

BY THE COURT:—

20

Q. Is the hand atrophied, doctor? A. Slightly.

CROSS EXAMINATION by Mr. Edwards:—

Q. Did you measure it? A. Yes.

Q. When? A. Once in the office and once in the counsellor's office.

Q. How much did you find it different? A. I 30  
couldn't say just now.

Q. Generally the left arm is smaller than the right? A. The hand is, as a rule.

Q. And the arm, too? A. Not necessarily.

Q. I didn't ask you that; I asked you, what is the fact, generally? A. I don't think it is.

Q. That is all you examined him for there, his arm? A. That, and the pain in his head.

Q. He made no complaint of his sight to you, did he? A. Well, no, not particularly. 40

## DR. THOMAS BYRNES.

Q. There is no dislocation there now? A. No.

Q. That has been cured? A. The bone is back in its proper position.

Q. Its proper place? A. Yes, sir.

Q. Of course, all his symptoms that you are telling us about are subjective there are no objective symptoms? A. Nothing that you can see.

10 Q. Do you know whether he can raise that arm higher than that? You don't know, do you? A. I made him try.

Q. And it is only on account of this trial that you can say so? A. He had no reason to deceive me.

Q. He might have; you knew he had a case against the Trolley Company, didn't you? A. Not at that time.

20 Q. You never heard of anybody trying to deceive when they had trolley cases, did you? A. Yes, lots of them.

Q. That is a very common cause of deceit, isn't it—trying to exaggerate injuries? A. They do for other causes besides that, too.

Q. When did you see him? A. To the best of my recollection, it was about six months after the accident occurred; somewhere in that neighborhood; I couldn't say just now; I have not got my book with me, I didn't make any memorandum of it particularly.

30 Q. You could have found out by putting him under ether, as to whether he had motion or not in that arm, couldn't you? A. What do you mean?

Q. If you put him under ether, then you could find out whether he could move it, if you had taken his will out of the question? A. He has motion—limited motion.

Q. He has strength in the arm, hasn't he? A. Well, not as much as he ought to have, to be normal.

40 Q. What proportion of strength did you suppose

## DR. THOMAS BYRNES.

he has in that arm, seventy-five per cent.? A. Oh, possibly.

Q. About what per cent. of motion has he got—ninety per cent. of motion, hasn't he? A. He has got all the motion but the upward motion.

Q. He has got the upward motion of the hand, hasn't he, from the elbow, up and down? A. Prob- 10  
ably like that he would have.

Q. Can he touch his head this way (showing)? A.  
A. Where it is necessary to get his elbow up—

Q. He cannot put his arm up straight, like that (raising arm to full height)? A. No, he cannot.

Q. But he has all the motion from the elbow? A. Yes, sir.

Q. And what little constrictural motion he has in the shoulder? A. It is in the paralysis—

Q. To that shoulder? A. Injury to the nerve 20  
that governs that shoulder.

Q. When you want to find out whether there is motion or not, you have to get rid of the will of the patient, don't you? A. I have not met many of those cases where you would have to do that; it would have to be something very extreme, going to extremes.

Q. Suppose a man was shamming; how would you find it out? I don't say he is, but suppose he were, how would you find it out? A. Supposing he 30  
were shamming?

Q. Yes? Put him under ether, wouldn't you?  
A. Then the man is practically dead.

Q. Then you could tell whether he had any full movement or not, couldn't you? A. You could tell whether there was constriction, but you could not tell whether there was paralysis of the muscles.

Q. Constriction is a symptom of paralysis of the muscle, isn't it? A. No.

Q. Well, it is in effect? A. No. 40

## DR. THOMAS BYRNES.

Q. What is it then? A. It is a spasmodic condition, which is only overcome by giving an anaesthetic.

Q. If he didn't have constriction or this weakening of the nerve he would not have this difficulty, would he? A. You can have paralysis without having this  
10 plastic condition.

Q. You examined this man for his reflexes, did you? A. Yes, sir.

Q. Did you find anything the matter there? A. Yes, sir.

Q. His circulation is all right, isn't it? A. His circulation is good, yes.

Q. All you find the trouble with him is this slightly limited movement of the shoulder? A. Yes, sir; and some lack of dexterity in the hand.

20 Q. That ought not to be painful except when he tries to strain it, should it? A. Yes.

Q. Why should it be painful except when he tries to strain it? A. Well, it is more painful sometimes than when at rest,—when you get it in a certain position.

Q. Which is the healthy side for a man to sleep on? A. They usually say the right side.

Q. Don't doctors say that? A. Not always; the  
30 side that is the most comfortable.

Q. There is the heart pumping from the right side? A. The normal heart doesn't which side you sleep on.

Q. Isn't the natural side for a man to sleep on his right side? A. It depends on the man, the individual.

Q. Most men sleep on the right side; is not that the medical experience? A. Well, I never followed it up, never watched that closely.

Q. Where do you sleep? A. Both sides, either  
40 side, any side.

## DR. THOMAS BYRNES.

Q. Generally on both sides at once? A. Well, I have no preference.

Q. Is not movement the proper cure for this sort of thing? A. Massage.

Q. Yes. A. Massage and rubbing, anything of that kind.

Q. That if persisted in ought to help him, hadn't it? A. Well, if it is curable. 10

Q. Has he tried massage? A. He has.

Q. How do you know? A. Because I told him to.

Q. Do you know whether he did what you told him to or not? A. I couldn't say that.

## RE-DIRECT EXAMINATION by Mr. Minturn:

Q. You spoke of paralysis; is that what you call his condition? A. Certainly. 20

Q. A paralytic condition? A. Paralytic condition.

Q. How will it be with him in regard to lifting, can he lift anything; for instance, can he carry an ordinary bookkeeper's book; a journal or a day-book, or anything of that kind, with the same facility he could prior to the accident? A. No.

Q. Could he lift that chair, for instance? A. No.

Q. So that he has practically lost the ability to use that arm for lifting, for ordinary purposes? A. For certain purposes he has. 30

## RE-CROSS EXAMINATION by Mr. Edwards:—

Q. Couldn't he lift that bag with his arm? A. Maybe—

Q. From the floor like that, couldn't he lift it? A. Yes.

Q. And carry it? A. Surely. 40

## DR. THOMAS BYRNES.

Q. The only thing he couldn't do is putting it up like that (showing)? A. Well, that is by bringing his shoulder muscles—

Q. Every movement he has with that arm that doesn't affect it like that (showing); it isn't paralyzed? A. He may be able to do it but not with as great facility as formerly.

10 Q. In other words, you think he cannot lift quite as much as he used to? A. Certainly.

Q. But if he could lift fifty pounds this way before the accident, how much do you suppose he could lift now, forty? A. About thirty-five.

Q. So he can lift, can he? A. Oh, yes, he can lift.

Q. And men do most of the lifting with the right hand? A. Not I.

Q. You are left-handed? A. No, right-handed; 20 but if I have to carry anything heavy I take the left hand; if I carry a bag or anything of that kind I always take the left hand, because I imagine I can carry it better.

Q. You don't think he would have any trouble in handling books with his left hand? A. It depends on what he has to do with them and how heavy they are.

Q. Well, suppose they are not heavy—ordinary 30 bookkeeper's books, the only difficulty he would have with his sick arm would be at this point (showing)? A. When he would put them on a shelf or take them down he will have difficulty.

BY MR. MINTURN:—

Q. Will he experience any pain after lifting the bag of the Senator—which we know is always heavy—would he have any pain when lifting that? A. Well, he at times would be liable to have as much pain after a day's work, or more, than he would 40 while working.

## DR. THOMAS BYRNES.

BY MR. EDWARDS:—

Q. This man is well nourished? A. Apparently, yes.

Q. He doesn't show any sign of nervousness at all, does he? A. He doesn't appear to be—nothing hysterical about him. 10

Q. Any sign of sleeplessness? A. Well, he looks kind of careworn, I think.

Q. But not sleepless? A. I think he can sleep fairly.

BY MR. MINTURN:—

Q. You spoke of neuritis; how does that affect him? A. That is where your pain comes in—the result of the chronic inflammatory condition of the nerve. 20

Q. Does that affect him now, the neuratic condition? A. Yes, that is what causes the pains in his arms.

BY MR. EDWARDS:—

Q. The muscles are all right—his arm is a little bit out, that is all? A. The muscles cannot be right 30 if the nerve is not, because it is governed by the nerve.

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## MRS. MARY EGAN.

MRS. MARY EGAN, called as a witness on behalf of the plaintiff, and sworn, testified as follows:—

DIRECT EXAMINATION by Mr. Minturn:—

Q. You are the mother of the plaintiff in this case,  
10 Francis J. Egan? A. Yes.

Q. How old is your boy? A. He will be twenty-six next birthday, the 11th or 12th of March—the 11th of March.

Q. Do you remember the time that he was injured by this accident? A. Yes, sir.

Q. On May 1, 1903? A. Yes, sir.

Q. When did you learn that he was injured? A. When he was brought in to me off the ambulance.

Q. About what time was that? A. Well, as far  
20 as I think it was about between eleven and twelve.

Q. Between eleven and twelve in the daytime?  
A. Yes, sir.

Q. When he was brought in, was he conscious or unconscious? A. He was conscious, he was able to speak to me.

Q. How was he brought in? A. The man on the ambulance helped him in.

Q. How many men? A. Only one; that is all  
30 was on the ambulance.

Q. When he came in what did you do with him?  
A. I sat him down—the doctor asked if they should take him in; I said yes. They brought him in; we undressed him, and he examined him, and he was in such a nervous condition he could say nothing, until he got to bed in the afternoon.

Q. Who was the doctor? A. Worden.

Q. He is dead now, is he? A. Yes, sir. When he undressed him he said it was in a very bad condition, the shoulder bone where it was disjointed, and  
40 he told me I should get him to bed as quick as I

## MRS. MARY EGAN.

could, until his nerves would get quieted and so I did, and gave him medicine; the doctor came in the afternoon and fixed the shoulder.

Q. How long was he in bed? A. Well, as far as I can remember he was in bed, for going on a couple of weeks and for going on a week he had the doctor three times a day to him.

Q. For a week? A. For a week. 10

Q. And after that? A. And after that he came twice a day for a week, and after that he came once a day, and after that he laid off, then he would come every other day, and so on, until twice a week.

Q. How long was it before your son was able to go to work? A. Well, he wasn't able to go to work, as far as my judgment goes, for two months; I don't know exactly the date; I could not say exactly what date he went to work or exactly how long 20 but as far as my opinion, it must be that, if not more.

Q. Was he able to use his arm? A. No, sir.

Q. What was done by the doctor with his arm? A. He bandaged his arm, in bandages, and it was so for I don't know—I could not say how many weeks; it was bandaged when he went to his work; he couldn't do anything any more than to go there and come back again.

Q. Did you do anything for him? A. All I could do for him; I had to sit up nights going on two 30 weeks—never lay down—trying to ease him; he was turning from one side to another with the pain in the head and in the shouder, in fact he didn't know what his pain was.

Q. Did he suffer pain, as far as you could see?

A. He suffered very badly with his head, and fever, and shoulder.

Q. Did he groan? A. Yes, sir.

Q. How long did that continue during the night?

A. Well I am pretty sure it was up to two weeks that I didn't get rest or he either. 40

## MRS. MARY EGAN.

Q. Could he sleep on that side he was injured on?

A. At the end I suppose he could; that I really don't know; at the time he was injured he couldn't sleep on the side—he was on every side, and I was back and forward and had to be up with him all the time, giving him his medicine during the night.

10 Q. He couldn't sleep at all? A. He couldn't sleep at all for a week—he was just tossing and turning.

Q. For how long? A. Well, it was over a week; I couldn't say exactly.

Q. Was he cut on the head? A. He was cut on the head—injured on the head, when he came in to me.

Q. When was he married? A. The 22nd of June last—no; excuse me, the 28th of June.

20 Q. He was home with you until that time? A. He was home with me until that time.

Q. Did this accident affect his sight, as far as you could see? A. As far as I could see, I couldn't say anything; but he was told—

Objected to and motion to strike out.  
Motion granted.

30 Q. Did he make any change in glasses? A. Yes.

Q. What change? A. Well, blue or green glasses; there was some change in them—

Q. Do you know how long he wore them? A. Well, as far as I can remember, four or five weeks; I couldn't say exactly the time, about that time; somewhere about there.

CROSS EXAMINATION by Mr. Edwards:—

40 Q. He didn't complain any more after he stopped wearing blue glasses, did he? A. All the time he

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complained of pains—he thought his sight was failing.

Q. When he stopped wearing the blue glasses he didn't complain of his sight? A. He was wearing them because his sight was so poor. Of course he changed his glasses then for other glasses; I don't know exactly when.

10

RE-DIRECT by Mr. Minturn:—

Q. Did he complain of pains in his head? A. He complained of pains in his head, of course; his head affected him; he really didn't know what his pain was.

Q. He suffered all over? A. He suffered all over; he did not know where his pain was, in the shoulder or on the head or the body; his doctor said when he came, he didn't know really how he was injured inwardly, or how he was injured, but of course the shouder was the main thing.

20

BY MR. EDWARDS:—

Q. That was when he was in the house? A. When he was in the house, yes.

30

40

## GEORGE WILLIAMS.

GEORGE WILLIAMS, called as a witness on behalf of the plaintiff, and sworn, testified as follows:

DIRECT EXAMINATION by Mr. Minturn:—

I live in New Durham; my business is driver. I  
 10 remember the time that Mr. Egan was injured, near  
 Homestead, on May 1, 1903. I was on the corner of  
 Berberick's saloon, on that day; I seen a car coming  
 down, and saw a man get off of it, this Mr. Egan;  
 the car he got off of was at Homestead Place.

Q. Did the car stop?

Mr. EDWARDS:—I object to leading this  
 witness.

20

The COURT:—What car?

Q. That car that Mr. Egan was on? A. Yes.

Q. Did that stop and let him off? A. Yes, sir.

Q. Then you saw him do what? A. Walk across  
 over to the mill.

Q. What did you see happen to him before he  
 got to the mill? A. The car coming up struck him.

Q. A car came up and struck him? A. Yes, sir.

30 Q. Did you hear any bell sounded?

Mr. EDWARDS:—I object to leading the  
 witness that way.

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

Q. Did you hear any warning of any kind? A.  
 No, sir.

Q. What became of him when the car struck  
 him? A. I seen a man pick him up—the motorman  
 40 and conductor pick him up and put him on the car.

## GEORGE WILLIAMS.

Q. Did you see where the car that struck him stopped? A. Yes, sir.

Q. How far away from the accident, where he was struck, did the car stop after it had struck him? A. About half the length of a car.

Q. What did they do with him after they put him on the car? A. Well—

Q. You didn't see anything more? A. No. 10

Q. You didn't see him brought over to the shop? A. No, sir.

Q. How was that car going that came along and struck him, how was it going? A. Going south.

Q. How was it going as far as speed is concerned? A. Well, it was going pretty fast; it was going so fast that I wouldn't take a chance to jump on it.

## CROSS EXAMINATION by Mr. Edwards:— 20

Q. Where were you standing? A. I was standing on the corner of Berberick's saloon.

Q. Which side of the road was that on, the north or the south side? A. That was on the south side.

Q. Which side of the road was the car that this man got off? A. It was on the right hand side coming down the hill.

Q. The right hand side going toward Hackensack River? A. Yes, sir. 30

Q. That is the north side? A. Yes, sir.

Q. And you were on the other side of the street? A. Yes, sir.

Q. You were nearer to Hackensack River or to Jersey City, than the car when it stopped? A. Well, I was nearer to Jersey City.

Q. Then the car went by that stopped? A. Yes.

Q. How far did it go by you? A. About the length of half a car, the car that hit him.

Q. I mean the car that he got off of, had that 40

## GEORGE WILLIAMS.

gone by? A. No, it was right opposite me.

Q. Did you see this man get off the car? A. Yes, sir.

Q. Where was he going? A. Over to the mill, Hollingshead's.

Q. There is not any street corner there, is there? A. Homestead Place.

10 Q. The car stopped? A. Yes.

Q. And he got off? A. Yes.

Q. Walked around the rear of the car? A. Yes.

Q. What kind of a day was it? A. Nice day.

Q. Clear? A. Yes.

Q. Any wind blowing? A. No, sir.

Q. Perfectly still? A. Yes.

Q. A summer day? A. It was a nice day.

20 Q. How was this car coming from Homestead—the other car, I mean? A. Coming from Hackensack.

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

Q. When did you first see it? A. I seen the car coming up right over from McCulloni's.

Q. Has it to come up a hill? A. Not much; a little bit.

Q. Could you hear it? A. Yes, sir.

Q. You were standing on the sidewalk? A. Yes. He didn't ring the bell or nothing.

30 Q. I didn't ask you that. Could you hear the car coming? A. Yes, sir.

Q. Then you could turn around and see it? A. Yes, sir.

Q. You say you saw the car strike him? A. Yes, sir.

Q. Which side of the car was the gentleman on, toward you or the other way? A. Toward me.

Q. Then he had almost got across? A. It caught him in the middle of the track.

40 Q. Did it throw him toward the rear of the other car, or toward you? A. It threw him toward me.

## GEORGE WILLIAMS.

Q. The car didn't run over him? A. It hit him in the left side.

Q. He was walking in the rear of the other car, you say? A. Walking around, yes, sir.

Q. Then wasn't his right side toward this car? (No answer).

Q. I say his right side was toward the other car, but the car hit him on the left side. How long did you stay there? A. Not long after that. 10

Q. Did you wait there till they picked him up? A. Yes, sir.

Q. Where did they carry him? A. As far as I know they put him on the car.

Q. Which car did they put him on? A. The car going up, the car going to the ferry.

Q. Did they go off with him on that car? A. Yes, sir. 20

Q. Did you talk to the man? A. No, sir.

Q. Did you know him? A. I knowed him.

Q. Known him for years have you? A. Yes, sir, quite a while.

Q. You work in the same shop? A. No, sir.

Q. Whom did you work for? A. Tony Roselle.

Q. You say that the car that afterwards struck him went half a car length? A. Yes.

Q. Was it going fast? A. Yes, sir, pretty fast. 30

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GEORGE WILLIAMS, recalled:—

BY MR. EDWARDS:—

Q. Did Mr. Egan have anything in his hand? A. That I couldn't tell you.

Q. Did he have an umbrella? A. I couldn't say. 40

## JOSEPH NASH.

JOSEPH NASH, called as a witness on behalf of the plaintiff and sworn, testified as follows:—

DIRECT EXAMINATION by Mr. Minturn:—

Q. You are a little hard of hearing I understand?

<sup>10</sup> A. Sir?

Q. Speak loud so the jury can hear you. I will stand here. What is your business? A. Paving.

Q. Where do you live? A. In Homestead.

Q. Do you remember the occasion when Mr. Egan was hurt, down there near Homestead? A. Yes, sir.

Q. What were you doing? A. Well, I was doing a little blasting there, at the fire house, on Homestead Place.

<sup>20</sup> Q. Tell us what you saw happen to Mr. Egan? A. Both cars were coming. We call it down hill and up hill, because the Plankroad, when it runs up hill runs south.

Q. Is there any hill there? A. Yes, sir.

Q. Where the cars was is it hilly? A. No, they were on the Plankroad.

Q. At that point where these cars were, and where the accident happened, how is the street? A. Like that, on Homestead Place (indicating).

<sup>30</sup> Q. You mean they were close together? A. The gentleman got off the car and walked around the back, the other car came up that was going south, we call it—up hill; of course the other one that runs down runs like this, you know,—of course you say down and up; that is the proper way of it, but a good many people get mixed up; but that is the idea. Both cars came along and the gentleman came there; and we saw him lying down in the track; I saw him myself; a motorman and some one else got <sup>40</sup> hold of him; I was about a hundred and fifty or a

## JOSEPH NASH.

hundred and seventy-five feet from the accident; before I could get there they took him down to Hollingshead's moulding mill, and that is all I know about it.

Q. Did you see him struck? A. No, sir; I did not; he was lying there when I saw him; all I heard was when he (the motorman) put the brake on, you know, and the car struck suddenly, just as if two cars clapped together. 10

Q. What called your attention to it? A. I couldn't say that, sir.

Q. Was it the brake? A. I don't know whether he put the pressure on or what, but the car stopped suddenly; the man was down and out.

Q. Could you hear the brake when he put it on? A. I couldn't say what he put on before the car stopped; the other one stopped, too, after they took him down to Mr. Hollingshead's lumber shop. 20

Q. Could you hear the brake when the car stopped? A. I couldn't hear that brake, no, sir; it was the sudden stop of the car.

Q. What kind of a day was it? A. I couldn't tell that; it is so long ago, and I didn't get picked up until yesterday, and I don't know anything more about it, only what I saw and that is all.

Q. If it was a very windy or dusty day you would remember it? A. I don't remember the number of the car or nothing more. 30

Q. If it was a very dusty or windy day you would remember it? A. Well, I could say it was a clear day, because I was working outside; it was a clear day, I do remember that; otherwise I couldn't remember any other part of the business.

CROSS EXAMINATION by Mr. Edwards:—

Q. Who was it fixed you up yesterday?

40

## JOSEPH NASH.

The COURT:—Picked him up, he said.

A. Yes—well, the gentleman that got hurt, he asked me would I please come up; he found out I was in this place working.

Q. How near were you to where the accident happened, about how far—how far were you working from the accident? A. About 170 feet.

Q. Toward Jersey City or Hackensack? A. I was right over Paterson Plankroad, where the fire house is, at Homestead Place.

Q. Were you nearer to Jersey City or the car? A. It stopped so suddenly that I looked up out of the hole, and there was the man.

Q. Had the car that he got off of passed you? A. That I don't know; the man was lying in the car track. I can't tell you any more of it.

Q. Where was the man lying in the car tracks, between the two tracks? A. That I would not admit; I couldn't get down so far as that.

Q. Where was he lying, was he thrown between the tracks—between the two cars? A. He was hit with the up car; the up car that was going south.

Q. Which way did that car throw him, to the left or to the right? A. Well, that was going to the right, going up hill.

Q. Which way did it thrown him, on the left hand side or the right hand side? A. They picked him up so quick, before I could get to him, before the motorman and somebody carted him away.

Q. Then you didn't see him struck at all? A. No; he was lying there; they picked him up; the other man with me would not come down; whether he was between the two tracks or where, I don't know.

Q. When you saw the cars were they right close together? A. One was going up and the other

## JOSEPH NASH.

down; the down car stopped, when they heard the smash, I suppose.

Q. Their platforms were about opposite, weren't they? A. A little past one another.

Q. About how far, five or six feet? A. I couldn't say that.

Q. How far? A. Well, I would not want to say; 10 it might have been ten feet; I would not have no idea of that.

Q. You heard the car coming from Hackensack? A. From Paterson, yes, sir.

Q. And your hearing was just as good then as it is now? A. Yes, sir.

Q. No better? A. No better, no.

Q. Did they put this man that was hurt on the car and carry him home? A. No, sir. They took 20 him right down to Hollingshead's lumber mill.

Q. Did you see this colored man (referring to the witness George Williams) there? A. No, sir; that is where he got into in—I don't know how I got into it.

Q. You didn't see him there at all? A. No, sir; we were the only two that was in that hole.

Q. Was the colored man in the hole, too? A. No, sir. There you are.

30

40

## GUSTAVE PFINGSTEN.

GUSTAVE PFINGSTEN, called as a witness on behalf of the plaintiff and sworn, testified as follows:—

DIRECT EXAMINATION by Mr. Minturn:—

10

I am a real estate broker, in Jersey City. I remember the occasion when Mr. Egan was injured, the first of May, 1903; I was on the same car that he was on.

Q. Do you remember it stopping to let him off?

A. No, I don't think it stopped.

Q. Do you remember Mr. Egan getting off the car? A. I do.

Q. What did he do? A. Do you want me to tell  
20 what transpired?

Q. I want to know whether he got off the car or whether the car stopped to let him off? A. I don't think the car stopped; it had slackened up and almost came to a standstill. Mr. Egan left the car and got at the back of the car that he left, and the car came—the car that came up the hill from Homestead struck him.

Q. Where was he when the car struck him? A. Well, I didn't see him struck; I couldn't see him.

30 Q. Did you hear any bell? A. No, I didn't hear any bell.

Q. Or any warning of any kind? A. I didn't pay any attention; I didn't look.

Q. If there had been a bell you would have remembered it? A. I might have.

BY MR. EDWARDS:—

40 Q. And might not? A. I might not.

## GUSTAVE PFINGSTEN.

BY MR. MINTURN:—

Q. How far beyond the place where Egan was struck did the car pass before it stopped—how far did it go, the car that struck Egan? A. Well, when my attention was drawn to it they were about fifteen or twenty feet apart, possibly. 10

Q. Where was Egan thrown by his contact with the car? A. I think between the tracks, about the center of the tracks.

Q. The up and down track? A. Yes.

Q. Did you see anybody pick him up? A. Our car then stopped and three or four of them picked them up.

Q. Where did they put him? A. They took him over across the track on to Hollingshead's mill. 20

CROSS EXAMINATION by Mr. Edwards:—

Q. Where were you on the car? A. On the rear platform.

Q. Do you remember where Egan was before he got off? A. I think he came from the inside of the car.

Q. The car was slowing up, was it? A. Slackening up. 30

Q. And he jumped off? A. He stepped off; he didn't have to jump.

Q. How far do you suppose the car went after he stepped off, before it came to a stop? A. Well, I think the conductor then rang the bell for him to go ahead; it stopped when the accident happened; then he pulled the bell.

Q. How far had the car gone when he went to go across the track, should you say? A. Four or five feet, or something like that.

Q. Did you notice how he was looking at all? A. 40

## GUSTAVE PFINGSTEN.

Well, I didn't pay no attention to it; I saw him get off the car.

Q. He seemed in a hurry, did he not? A. I didn't pay no attention.

Q. Did you hear the other car coming? A. I think I did, yes.

10 Q. You heard it coming but you don't remember any bell? A. Yes, I heard it coming.

Q. You were on the rear platform? A. The rear platform.

Q. Is it a straight track there? A. Yes.

Q. Do you know what part of the car struck this man; could you say that? A. No, I couldn't say.

Q. Whether it was the front or the side of the car you can't say? A. I can't say.

Q. After he was struck he lay between the tracks?  
20 A. Just about in the middle of the track.

Q. He wasn't there on the other side, toward Mr. Williams, the colored man? A. I didn't see Mr. Williams.

Q. Mr. Williams was at the saloon there, was he?  
A. No, he was not that I saw.

Q. Could you say how fast the other car was coming? A. No, I couldn't say it was in front of us.

Q. It stopped very suddenly down there, didn't it? A. I should say it was about fifteen feet we  
30 were apart when the two cars stopped.

Q. When it stopped was it about at the corner then—the car coming toward Jersey City? A. It was about at the saloon corner.

Q. That was the proper place for it to stop? A. It always crosses there, certainly.

Q. Do you remember particularly what kind of a day it was? A. It was a clear day over head, but it was blustery.

Q. Did you notice whether this man Egan looked when he crossed the track; can you tell us anything  
40 about that? A. I didn't pay any attention.

## GUSTAVE PFINGSTEN.

Q. Where did they take him after the accident?

A. To Hollingshead's.

Q. You saw him taken into the mill? A. I saw him taken down that way, toward the mill.

RE-DIRECT by Mr. Minturn:—

Q. Where did the car stop to let Egan off? A.<sup>10</sup>  
At this cross street, whatever it is.

Q. Homestead Place? A. I don't know what they call it.

Q. Did you hear the bell rung by the conductor, to let him off? A. I saw him pull the bell—pull the strap.

RE-CROSS by Mr. Edwards:—

20

Q. Is there any cross street that runs all the way across there at that point? A. Well, I don't know.

Q. Where is this factory? A. Hollingshead's mill is right at the railroad, about a block away from the Plankroad.

Q. About opposite where this accident happened? A. About opposite.

Q. The street doesn't go through on that side, does it? A. The street makes a break, I think; and then probably fifty or sixty feet it doesn't run<sup>30</sup> straight across, where this new fire house is, I think the street is about fifty feet below the other, toward Homestead.

Q. Toward Homestead, the southerly side? A. Toward Homestead.

BY MR. MINTURN:—

Q. The fire house is where? A. The fire house is on the westerly side of the Plankroad; I think at 40

## GUSTAVE PFINGSTEN.

that time it was on the westerly side, a little frame building, at that time.

Q. Where was it, on the corner? A. No, immediately adjoining the saloon; at that time it was a little frame building, they used it for a fire house.

Q. It is on Homestead Place, the fire house? A. Both of them are, the new one and the old one, but  
10 it is on the easterly side and one is on the westerly side.

Q. Homestead Place runs at right angles with the Paterson Plankroad? A. Yes.

BY MR. EDWARDS:—

Q. By the way, do you remember what the grade is there? A. A slight incline from Homestead.

Q. Up hill toward Jersey City? A. Yes.  
20

BY MR. MINTJRN:—

Q. It is very slight, though? A. Very slight.

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 PLAINTIFF RESTS.
 

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30

Mr. EDWARDS:—I ask for a non-suit, your Honor. It does not appear that there was any negligence on the part of the Company or any of its servants, and it does appear affirmatively that there was contributory negligence on the part of the plaintiff.

The COURT:—I think I will let this case  
40 go to the jury, on the lines of the Scott case.

## GILBERT GOLDMAN.

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

C. W. PARKER, J. (Seal.)

Mr. Edwards opens case for defendant.

10

## DEFENDANT'S EVIDENCE.

GILBERT GOLDMAN, called and sworn as a witness on behalf of the defendant, testified as follows:—

DIRECT EXAMINATION by Mr. Edwards:—

20

I reside at 67 East 84th Street, New York City; I am a commercial traveler; at the time of the accident I travelled for the American Lady Corset Company; at present I am with the Adriance Health Brace Company.

Q. Do you remember the date of the accident?

A. I don't remember.

Q. I don't mean the day of the month. Were you on the car that day? A. I certainly was.

30

Q. Where were you going? A. To Passaic.

Q. Where were you on the car? A. Sitting right beside Mr. Egan, in the front of the car.

Q. What kind of a car was this? A. A closed car.

Q. Did you know Mr. Egan at all? A. I did not.

Q. Do you remember the car coming to a stop, or do you remember the car slowing up? A. The car slowed up.

Q. What happened; just tell us? A. To the best of my knowledge and belief, Mr. Egan got up from 40

## GILBERT GOLDMAN.

the front of the car, and as he was coming toward the back the conductor pulled the bell for the car to slacken up; Mr. Egan before the car stopped, jumped off the back of the car, and crossed in back of the car to the other track, the track going toward Jersey City; it was a very windy and blustery day—in fact, it was very difficult for any body to walk without  
 10 holding their hats down to prevent the dust from getting in their eyes, which Mr. Egan did also—I guess that is his name; I didn't even know his name until I came to-day—which Mr. Egan did himself, and directly opposite our car, almost, there was a car coming, going toward Jersey City, and from the outlook of it Mr. Egan must have gone right into the side of the car, with his head down.

20 Mr. MINTURN:—I object, and ask to have that stricken out.

The COURT:—I do not think this witness can undertake to guess what happened. He can state what he saw.

30 The WITNESS:—I saw him after he came over back of the car; the car came to a sudden stop, because the conductor gave three bells; I got out and went to the back of the car in a hurry; I knew there was some accident; I saw Mr. Egan lying in between the two cars.

Q. How far beyond him had the other car gone?  
 A. About twenty feet, I should judge, that is about all; our car had passed him about half a block,—a distance of about a half a block from our car to where he was; by the time our car stopped and everything—they couldn't have slackened up any  
 40 sooner than that.

## GILBERT GOLDMAN.

Q. Did you hear the car coming? A. Well, to the best of my knowledge, I didn't, because I was—

Q. Did you hear any bell rung? A. That I don't remember.

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

Q. How did he hold his hat on that day? A. With his hand to his head, down this way, and he tried to prevent the dust from coming in his eyes. 10

Q. Bending forward? A. Bending forward.

## CROSS EXAMINATION by Mr. Minturn:—

Q. You reside, I think you said, in New York?  
A. I do.

Q. You have resided there how long? A. All my life; that is not in that house; I only lived there since the first of April; but I lived in 114th Street for 20 thirteen years.

Q. What were you going to Passaic for that day?  
A. On business.

Q. You sat up in the front of the car? A. Yes, right opposite Mr. Egan; he sat on one side and I on the other.

Q. How near the front? A. We were right near the front door.

Q. How many others in the car? A. That I don't know; I didn't stop to count the passengers. 30

Q. How did you recognize Mr. Egan? A. I didn't any more than I did any of the others.

Q. What called your attention to the fact that there was an accident? A. When the conductor rang the bell three times for the car to stop suddenly.

Q. Which conductor? A. The conductor of our car.

Q. Had your car started on again after Egan got off? A. Yes, sir. It got two bells to go ahead and when it ran into the other car the conductor rang the bell three times for the car to sudden stop. 40

## GILBERT GOLDMAN.

Q. How long after Egan got off was it he rang the bell for the sudden stop? A. Immediately after, because the two cars were so close together.

Q. Did you see Egan get off? A. Yes sir.

Q. Which side of the car were you on? A. The side toward Jersey City; he got off that side; I was sitting going toward Paterson.

10 Q. Had you been talking at all? A. No, sir, I did not.

Q. Had you been reading a newspaper? A. I might have.

Q. Did you have a newspaper in your hand? A. I don't remember.

Q. What time of day was it? A. Around eleven o'clock; it was Friday.

Q. How do you remember distinctly it was windy? A. Because I remember the accident exactly.

Q. Was it windy when you got on? A. It was windy; I came from Hoboken—I had seen some trade in Hoboken first, and had gotten on the car at Hoboken.

Q. Where had you been in Hoboken before you got on the car? A. I stopped in I. M. Bach & Co., on the business street there, I forget the name.

30 Q. What time did you go there? A. Well, I left my home at half-past eight in the morning and got there about nine or after nine, something around there.

Q. Where did you get that car? A. At the street there, Washington Street, right at the City Hall building there, or the bank building, something like that.

Q. You got the car there, did you? A. I think so.

Q. At the City Hall? A. Well, I don't know the name of the place at all there; I am not acquainted.

40

## GILBERT GOLDMAN.

Q. You remember the City Hall? A. No, I don't remember.

Q. You said the City Hall? A. I think it is.

Q. You said the bank building or the City Hall; which is it? A. I don't remember; there was some big building—it was corner of Washington Street, wherever that car goes there; I don't just know <sup>10</sup> what the street is.

Q. What induced you to say that you got on at the City Hall? A. Well, I don't know one part of that town from the other.

Q. What induced you to say it was the bank there? A. I imagined it was.

Q. Why did you imagine it was? A. Because I saw a big building there; I don't know whether it was the Court House or City Hall, or what.

Q. What kind of a building was it? A. It looked <sup>20</sup> to me like a gray building.

Q. Did it set back in a square? A. I don't remember.

Q. Was there a flag-pole on it? A. I don't remember that either.

Q. A brick building? A. No; it looked to me as though it was a stone building.

Q. What color was the stone? A. Gray, I think.

Q. What side of the street were you on when you got on? A. Well, when I got on I was going to-<sup>30</sup> ward Paterson. I should consider it the right side of the street.

Q. You were on the right hand side of Washington Street as you go to the Ferry? A. Well, I said where the car stops—that is not the side nearest to New York; I was on the other side.

Q. The west side? A. I don't know whether it was north or west, or what.

Q. The side nearest to the—? A. I was on the side furthest from the river, because I don't know north, south, east or west in some of these towns. <sup>40</sup>

## GILBERT GOLDMAN.

Q. Do you know whether the corner you got on at there was a cigar store? A. I don't know; the only way I happen to know Washington Street is doing business on that street.

Q. How often have you been doing business on that street? A. I go over there on an average of once a month.

<sup>10</sup> Q. Once a month on Friday, you see this same man, Bach? A. And sometimes I go on to Paterson; I work around the other way other times, and come on from Hackensack and go into Paterson.

Q. What do you sell? A. At that time corsets of the American Lady Corset Company.

Q. Where is Bach's place? A. Washington Street, just what streets it is between I don't know.

Q. Do you remember the number of it? A. No, <sup>20</sup> sir.

Q. But you think that you got on at the corner, by the City Hall?

Mr. EDWARDS:—He didn't say that.

A. Let me collect my thoughts.

Q. Let me ask you; how often have you been coming to Hoboken during the last five years? A. On an average of three or four times a year—five <sup>30</sup> times a year.

Q. And you have no difficulty in finding Bach's place? A. No, because I am well acquainted with that place; I know where Washington Street is, but I don't know where any of the other streets are.

Q. Do you know where the City Hall is? A. No.

Q. Do you mean to say you go up Washington Street, and don't know where the City Hall is? A. No, I never found out the name of anything else.

Q. You know where the bank is beside the City Hall? A. No, I don't know; if I am not mistaken <sup>40</sup>—doesn't this car run right opposite—let me see;

## GILBERT GOLDMAN.

I. M. Bach is—have you any idea where Geismar & Meyer are?

Q. Yes. A. Well, I think the car goes pretty nearly past that door; Bach is half a block above Geismar & Meyer.

Q. You think this car goes by it or pretty nearly?  
A. A block away, or half a block; I don't know exactly which, any more than I know I have taken it<sup>10</sup> several times, but don't know just where.

Q. Did you come over here on business to-day?  
A. No, sir; I came at the request of the Company.

Q. What interest have you in the Company? A. Absolutely none.

Q. Are you a stockholder? A. No.

Q. In no way identified with it? A. No.

Q. Who asked you to come over? A. The lawyers asked me to come over, for the simple reason<sup>20</sup> that this accident took place—

Mr. MINTURN:—Objected to; don't answer that.

Mr. EDWARDS:—I want the answer.

Question and answer read.

The COURT:—He said the lawyers for<sup>30</sup> the Company; that is all he need say.

Q. Did you give your name to those lawyers? A. No sir; I gave it to the conductor.

Q. On the day of the accident? A. On the day of the accident.

Q. Who asked you for it? A. The conductor as a witness.

Q. Did you tell the conductor what you saw on that day? A. I did.<sup>40</sup>

## GILBERT GOLDMAN.

Q. And gave him your name and address? A. I gave him my name and address; yes, sir.

Q. And you came over here to-day without a subpoena? A. Without a subpoena; yes, sir.

Q. Who asked you to come over? A. Mr. Van Horne wrote to me a letter, asking me if I would  
10 appear.

Q. Mr. Van Horne who is connected with the trolley Company wrote you a letter asking you if you would appear? A. Yes, being that I said I would in case they wanted me.

Q. Where do your travels take you as a travelling man? A. At that time through the State of New Jersey, State of Pennsylvania and through the State of New York.

Q. Where were you yesterday? A. I was at  
20 home.

Q. Where were you on Saturday? A. In New York.

Q. And all last week? A. Well, I told you I changed my position since then; since the first of the year. I am now a commercial traveller for the Ad-  
ance Health Brace Company.

Q. Still a commercial traveller? A. Yes, sir.

Q. When were you last away from New York City, for any lengthy period, as commercial trav-  
30 eller? A. Since last October.

Q. Have you been home since then? A. Yes, sir.

Q. Have you had any talk with Mr. Van Horne, or anybody in this Company? A. I don't know Mr. Van Horne.

Q. Have you had any talk with Mr. McGovern? A. I don't know him.

Q. Do you know anybody connected with the trolley company? A. I do not, absolutely nobody.

Q. You don't mean to say that you haven't talked this matter over since court assembled here this  
40 morning? A. I have talked nothing over; I have

## GILBERT GOLDMAN.

not seen any people this morning till half-past twelve when I entered this court building with Mr. McManus, whom I met at the lawyer's office.

Q. The lawyer's office? A. The company's office.

Q. You went into the Company's office, did you?

A. Where they requested me to call on Mr. Van Horne. 10

Q. In the Company's office? A. Yes, sir.

Q. And you came up here with the Company's man, Mr. McManus? A. I don't know whether he is the Company's man.

Q. You say you met him in the Company's office?

A. Yes, sir.

Q. And they sent you up here in his company?

A. Yes, sir; to see Mr. Van Horne.

Q. And you say you have not talked the matter 20 over with somebody in this Court room? A. No, sir.

Q. Not even during the recess, or out in the lobby here? A. No, sir.

Q. How long is that car? A. Now that—

Q. In your judgment, how long a car was it; was it a short car, or a very long car? A. No; it seemed to me as though it were one of the long cars.

Q. You were sitting how near the door? A. Right close to the door. 30

Q. Do you mean to tell this court and jury, sitting next to the door—you are short sighted, too, I notice? A. No, I am far sighted, at that time I didn't wear glasses, either.

Q. Well, sitting next to the door in this very long car, on this blustery day, you saw Mr. Egan get off the back platform? A. Yes, sir.

Q. He was on the seat opposite to which you were sitting, and you saw him go around behind the dashboard—the back dashboard? A. Yes, sir.

Q. And you saw him hold his hat on? A. I saw 40

## GILBERT GOLDMAN.

him hold his hat on and bend his head down.

Q. What attracted you to Mr. Egan doing that?

A. I don't know what attracted my attention to it, but I just happened to look out of the window, being a windy day, when he stepped back—

Q. What window did you look out of? A. I  
10 looked back of the car.

Q. Then, looking straight back through the back  
of the car, you saw this short man going around the  
back of the car? A. Yes, sir.

Q. On this blustery day? A. Yes, sir. Well we  
were a little bit away from Mr. Egan at the time  
when he went back of the car; don't forget that.

Q. How far away from Mr. Egan were you when  
you saw him? A. Well, I should judge about five  
or six feet away from him, but the car had started  
20 off.

Q. And hadn't crossed the track at that time? A.  
He did not, when the other car came in back of him.

Q. You saw him holding his hat on? A. Yes, sir.

Q. And head down? A. Yes.

Q. And you don't remember any gong? A. I  
don't remember hearing any.

Q. And have you no reason to give to the Court  
and jury why you looked down the back of the car  
and saw what Mr. Egan was doing? A. No partic-  
30 uar reason.

Q. You think you had a newspaper that day? A.  
I won't say I did or I didn't.

Q. Had you been reading on the car? A. I don't  
remember.

Q. As I understand it, you remained seated?  
A. No, I think I went to the back platform to smoke  
a cigar, if I am not mistaken, after the car had stop-  
ped there.

Q. After the accident? A. No, before the acci-  
dent, if I am not mistaken. I got up just about the  
40 time Mr. Egan got up to get out of the car; whether

## GILBERT GOLDMAN.

it was a minute or so after that I don't remember, but I was right behind him getting out on the back of the platform, to smoke a cigar.

Q. Then you followed Egan out? A. I followed Egan out to the back platform, to smoke a cigar.

Q. Why didn't you tell Mr. Edwards that? A. He didn't ask me, 10

Q. You said you sat opposite Mr. Egan? A. Yes, sir.

Q. When did you go out on the back platform? A. Just as Mr. Egan was crossing the back—after he had hit the car.

Q. After the car had struck him then you went in the back? A. Yes, sir. I went to the back of the car to smoke a cigar.

Q. After he had been struck? A. Yes, after he had been struck. I didn't see him just when he was 20 struck.

Q. When you were seated at the front of the car, do you think he was crossing the back of the car? A. Yes, sir.

## RE-DIRECT EXAMINATION by Mr. Edwards:

Q. You gave your name to the conductor, did you not? A. I certainly did. 30

Q. And the Company afterwards wrote to you as to what you knew of the accident? A. Yes, sir.

Q. And you answered them at once? A. Yes, sir; voluntarily.

Q. And from that day to this you haven't seen them? A. I have not seen anybody.

Q. Until you were asked to come as a witness? A. Yes, sir.

Q. And you felt it your duty to come? A. Because I had promised them I would in case I was wanted as a witness. 40

## WILLIAM RINTELMAN.

Q. Why did you promise the conductor you would come?

Objected to.

Q. You came because you had your views as to how the accident happened? A. I did.

10

BY MR. MINTURN:—

Q. You were not subpoenaed? A. No, sir.

WILLIAM RINTELMAN, called as a witness on behalf of the defendant and sworn, testified as follows:—

20

DIRECT EXAMINATION by Mr. Edwards:—

I live at Weehawken Heights; I am a liquor dealer; I am thirty years old. I remember the day of the accident to Mr. Egan; I had not known him before that time. I was on the car going to Paterson, standing on the rear platform.

Q. Do you remember Mr. Egan getting off the car? A. I do.

30

Q. Had the car stopped when he got off? A. No, sir.

Q. After he got off, what did he do? A. He got down to the back of the car, pulled his hat down and went ahead.

Q. Why did he put his hat down? A. I suppose because it was windy.

Q. What happened after that? A. I don't know after that—

Q. He went out of your sight? A. Yes, sir.

40 Q. Did you see the other car? A. I did.

## WILLIAM RINTELMAN.

Q. Where was he lying after he was hit? A. Back of our car.

Q. Between the two tracks? A. Between the two tracks.

Q. How soon did your car stop after he was lying there? A. Well, the conductor gave the motorman a bell and he went about twenty feet ahead, toward Homestead, and stopped. 10

Q. Did you see the other car coming? A. No, sir.

Q. Did you hear it? A. No, sir, I didn't; we were busy talking there.

Q. You were talking to some one? A. Yes sir.

Q. Did you give your name to the conductor? A. Yes.

CROSS EXAMINATION by Mr. Minturn:— 20

Q. You were subpoenaed here? A. Yes sir.

Q. You were smoking, I think you said, on the rear platform? A. I guess I was smoking a cigar that day; Mr. Pfingsten gave me a cigar; I remember it.

Q. This gentleman who was on the stand here today? A. Yes, sir.

Q. You were talking with him, were you? A. Yes, sir. 30

Q. You saw Mr. Egan get off? A. I did.

Q. You heard the bell ring for the car to stop and let him off? A. Yes.

Q. The car had about stopped. A. It didn't come to a stop at all.

Q. But very nearly stopped, did it? A. Pretty nearly, yes.

Q. Were you facing the front of the car? A. Inside of the car.

Q. You were looking straight ahead then? A. Yes, sir. 40

## WILLIAM RINTELMAN.

Q. You didn't see Mr. Egan going around back of the car at all? A. I did.

Q. You were looking straight through the car? A. At the time he got off I turned around and looked at him; I just turned around like that.

Q. Did you watch him go around the back of the car? A. I don't know.

10 Q. You don't ordinarily do that when people get off the car? A. I don't do it always; I just happened to, I turned my head, that was all.

Q. You were talking with Mr. Pflingsten? A. Yes, sir.

Q. Smoking your cigars together, I presume? A. Yes.

Q. What were you talking about? A. I don't remember.

20 Q. Something interesting? A. I don't know.

Q. You didn't know Mr. Egan at all? A. No, sir.

Q. You had no interest in him whatever? A. No, sir.

Q. All you remember is that he got off the car and then you went and turned around to see? A. I turned around and faced that way, about.

Q. Why did you do that? A. I don't know; it just came to me.

30 Q. Do you do that every time anybody gets off of a car? A. No, I just happened to.

Q. What kind of a hat did he wear? A. A derby.

Q. Did he wear glasses? A. I think he did wear glasses.

Q. Are you sure? A. Yes, positive.

Q. Did he have anything in his hand? A. I didn't notice if he did.

Q. And the car went twenty feet after it started on again, did it? A. Well, it didn't stop at all; it  
40 went on to Homestead station.

## WILLIAM RINTELMAN.

Q. It got two bells? A. Two bells to stop.

Q. After Egan got off it got two bells to go ahead? A. No; he got a bell to go right ahead.

Q. One bell to go right ahead? A. Yes.

Q. And he got two bells to stop? A. One to stop; two to go ahead.

Q. You think when the car stopped it was with the three bells? A. There was three bells; he went about twenty feet. <sup>10</sup>

Q. Goldman says three bells were rung— A. I don't know that.

Q. It went twenty feet, anyhow? A. About twenty feet, I should judge.

## RE-DIRECT EXAMINATION by Mr. Edwards:

Q. You didn't count the bells, whether it was two or three? A. No. <sup>20</sup>

Q. Mr. Pfingsten was on the car? A. Yes, sir.

Q. Did you see any of the other gentlemen that had been sworn on that car? A. No, I did not.

Q. Did you see Mr. Goldman? A. No, I did not.

## BY MR. MINTURN:—

Q. You didn't see Goldman come back and smoke a cigar, did you? A. No, sir. <sup>30</sup>

## BY MR. EDWARDS:—

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

Q. By the way, you gave your name to the conductor, didn't you? A. Yes, sir.

## BY MR. MINTURN:—

Q. Did you give it to him, or did the conductor go around looking for it? A. He looked for it. <sup>40</sup>

## TIMOTHY J. FIELDS.

TIMOTHY J. FIELDS, called as a witness on behalf of the defendant, and sworn, testified as follows:—

DIRECT EXAMINATION by Mr. Edwards:—

10 I reside at Paterson; I am a conductor on the J. C., H. & P.; I have been such conductor six years.

Q. Were you the conductor on the day of the accident to Mr. Egan? A. Yes, sir.

Q. Which car were you on? A. The car going to Paterson.

Q. Do you know Mr. Egan? A. I know him; yes, sir.

Q. He had been a steady rider with you? A. Yes, sir.

20 Q. Do you remember his getting off of the car? A. Yes, sir.

Q. In what condition was the car when he got off? A. Coming to a stop.

Q. He got off when it was in motion? A. Yes, sir,

Q. Where was the car coming to a stop? A. Right near that planing mill there, Hollingshead's, I think the name is.

30 Q. Is there a street there? A. A kind of a path there, a lane or something.

Q. What did he do after he got off the car? A. Well, he walked around the back of it, to go into the mill.

Q. What kind of a day was it? A. If I remember right, it was kind of windy—the wind was blowing a little.

Q. Where were you at the time? A. Standing on the rear platform.

40 Q. Did you notice this gentleman, Mr. Egan? A. Yes, sir.

## TIMOTHY J. FIELDS.

Q. What did he do? A. He went around the back of the car, and he put his head down, as if it was windy, and so as not to strike him in the face, the dust; Mr. Pfingsten drew my attention to it; I gave the motorman three short bells.

Q. You didn't see him struck? A. No.

Q. How was he lying? A. In between the rails.

Q. Not on the side of the street? A. No, sir. <sup>10</sup>

Q. Where was the other car? A. The other car stopped about a car length; he was right in back of the vestibule door of the other car, when they picked him up; I helped pick him up.

Q. No part of the car had run over him? A. No, sir.

Q. Can you say what part of the car struck him?

A. I could not say that; I could not say that.

Q. What did you do? A. I helped him up, to carry him down to the planing mill. <sup>20</sup>

Q. You don't remember putting him on the other car? A. No.:

Q. How long did you stay there? A. About ten minutes.

Q. Did you get the names of witnesses? A. Yes,

Q. Did you get the name of Mr. Pfingsten? A. Yes, sir.

Q. And the name of Mr. Rintelmann? A. Yes, sir.

Q. And the name of Mr. Goldman? A. Yes. <sup>30</sup>

Q. You remember them all? A. Yes, sir.

Q. They were all on your car? A. Yes, sir.

## CROSS EXAMINATION by Mr. Minturn:—

Q. Are you still in the employ of the trolley company? A. Yes, sir.

Q. Where are you employed now? A. Stationed at Paterson.

Q. You are not running between Jersey City and <sup>40</sup>

## TIMOTHY J. FIELDS.

Hoboken? A. Yes, sir—between Hoboken and Paterson.

Q. On the same line? A. Yes, sir.

Q. You remember getting a signal from Mr. Egan to stop the car, don't you? A. He walked to the back platform, and I knew he got off there, and I pulled the bell.

10 Q. You knew Egan, then? A. I didn't know him personally, but knew he got off there.

Q. You knew he was employed at Hollingshead's mill? A. I didn't know where he was employed, until after the accident. I knew him from riding and getting off at that particular place.

Q. So that when he started to get off, you knew that it was his stopping place? A. I knew he was about to get off.

20 Q. Had the car almost stopped when he got off? A. Almost, yes, sir.

Q. Who was standing on the back platform with you? A. Mr. Pfingsten and that other gentleman.

Q. Goldman? A. No, that other gentleman; the second one that was up here.

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

Q. He was smoking, was he not? A. I don't know whether he was.

Q. Was he with Mr. Pfingsten? A. Yes, sir.

30 Q. You didn't see anybody else on the back platform? A. Well, I don't remember now—I think there was three or four passengers on the back platform.

Q. How many people were inside of the car? A. I think probably about eleven or twelve passengers.

Q. This was about what time? A. About ten o'clock in the morning, I think.

Q. You left Hoboken ferry what time? A. I think about 9.20, or a little later.

Q. It took you about how long to get to this 40point? A. It is about a thirty minute run.

## TIMOTHY J. FIELDS.

Q. Up to that point? A. Yes, sir; it may have been a little later than that; I won't be sure of the time.

Q. Was it a sunshiny day? A. No, kind of windy day.

Q. It was the first of May? A. Yes, sir.

Q. Nice weather about that time? A. It generally is, about the first of May, but this day was one of those off days. 10

Q. Some April showers or something, but not a very severe day? A. Well, it was blustery.

Q. You were supposed to be watching the man get off the car and see that he was safely off the car? A. Yes, sir.

Q. Then your duty is to ring the bell for the motorman to go ahead? A. Yes, sir.

Q. You are not supposed to look around to see if a man walks around the car, or what he is doing, are you? A. No, not supposed to. 20

Q. After getting off the car your duty is at an end? A. Yes, sir.

Q. You don't mean to say you followed Mr. Egan on his travels to see how he got around? A. Yes; I wached him.

Q. Did you watch him go around the car? A. Yes, sir.

Q. With your back to him? A. Not with my back to him. 30

Q. Why did you watch him go around the car? A. Because I watch all passengers, because there might be another car coming.

Q. Did you hear this car coming? A. Yes.

Q. You picked Egan up, I think you said? A. Yes, if I remember right?.

Q. Did any one else pick him up? A. I think somebody helped me pick him up.

Q. You didn't yell to Egan, or tell him there was any car coming? A. No, sir. 40

## TIMOTHY J. FIELDS.

Q. Didn't give any notice of any kind? A. No, sir.

Q. And you brought him to Hollingshead's? A. Yes.

Q. Was he cut then? A. I think he was bleeding.

Q. Was he cut over the eye? A. I didn't notice any cut; I think he was bleeding from the nose.

Q. Was he conscious when you picked him up? A. <sup>10</sup>No, sir.

Q. Was he able to talk to you? A. He didn't talk for some time.

Q. He was quite limp? A. Yes, sir.

Q. You two had to carry him in? A. He walked in; we supported him.

Q. Where did you bring him? A. To the office of the planing mill, Hollingshead's mill.

Q. Whom did you give him to there? A. Well, we brought him in the office there, there was some-  
<sup>20</sup>body in charge there, I don't know who he was; there was some one in charge.

Q. Did he stay there any length of time? A. Ten minutes; yes, sir.

Q. What did you do for him, anything? A. We tried to help all we could; asked him if he wanted an ambulance, and we telephoned to the doctor; he seemed to want to go home—he didn't want to go to the hospital.

Q. He was quite stunned, wasn't he? A. Yes, <sup>30</sup>sir.

Q. I think you said that the car that struck him had gone its full length before it stopped, from the point where it struck him? A. Its full length.

Mr. EDWARDS:—He said he didn't know where it struck him.

Q. From the point where he was on the road, when you looked around and saw him and picked  
<sup>40</sup>him up? A. The rear of the car—

## EDWARD SMITH.

Q. (Interposing.) Then the car had gone by him the full length? A. Yes, sir.

BY MR. EDWARDS:—

Q. Did you hear the other car coming? A. Yes, sir.

Q. What signal did it give? A. I heard it coming<sup>10</sup> up the hill; it just left Homestead.

Q. What signal did it give? A. I could hear the machinery.

Q. Could you hear the bell? A. I don't remember about the bell.

Q. But you could hear the machinery? A. I could hear the car coming; in fact I saw the front of the vestibule of the other car coming up the hill when I was going down.

20

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EDWARD SMITH, called as a witness on behalf of the defendant and sworn, testified as follows:—

DIRECT EXAMINATION by Mr. Edwards:—

I reside at 107 Park Avenue, Paterson; I am a motorman for the J. C., H. & P. I have been in the employ of that Company since the 2nd of May, 1902. I<sup>30</sup> am still in their employ, and still running on this line. I remember the day of the accident to Mr. Egan; I was the motorman on one of the cars; the car going to Jersey City.

Q. As you were going toward Homestead Place did you see the other car? A. Yes, sir.

Q. Did the other car stop at all? A. It didn't come to a full stop; no, sir.

Q. Did it slow up? A. Not more than they usually do, on account of nearing the stop there.<sup>40</sup>

## EDWARD SMITH.

Q. What did you see after the car slowed up at that point; did you see any man come from behind it? A. After the car had passed I saw a man; yes, sir.

Q. How far was he in the rear of the car, should you say? A. About six or eight feet, I should say.

10 Q. Were you giving any signal before— A. I was ringing the bell.

Q. Where were you ringing the bell? A. Directly as I came to the car.

Q. Were you ringing it the full length of the car? A. Yes, sir.

Q. You saw this man about six or eight feet back of the car; how was he moving—toward the car or how? A. He was walking a little diagonally toward the railroad; that is north, isn't it?

20 Q. Yes; how was he walking? A. With his head turned down.

Q. Did you notice anything about his hat? A. His hat was pulled right down.

Q. What kind of a day? A. A very blustery day; the wind was blowing.

Q. Did you see him in front of the car, or where? A. No, sir; the first I saw him was the other side of the vestibule; I had the door open.

30 Q. Did the front of the car strike this man? A. No, sir.

Q. When did you find out that he had been hurt? A. Well, I saw him coming with his head turned down toward the car; that is the side of the car to the vestibule; he didn't pay any attention to me, and I don't know whether he heard me or not; I had the electric brake on the car, and I put the electric brake on, and the emergency; I stopped the car; I should say it went about half the length of the car.

40 Q. Where was this man struck, if he was struck by your car? A. He must have been struck in the

## EDWARD SMITH.

left side, because I was in a different position from him.

Q. On his left side? A. If he continued to go as he started.

Q. How far from the front of your car was he struck? A. Well, I should say, to my best judgment, between the vestibule of the car and the center of the car; I couldn't say exactly to a few inches. 10

Q. Are you sure the fender didn't strike him—only the front of the car? A. No, I saw him from the side door—he was not near enough to get hit then.

Q. When you stopped the car where did you find him lying? A. Right near the vestibule—between the tracks, he was lying facing the Susquehanna tracks.

Q. From the way he was coming toward the car, it would have struck his left side; is that it? A. If he had continued to go in the direction he was going. 20

Q. That was the natural thing? A. Yes, that was the natural thing.

## CROSS EXAMINATION by Mr. Minturn:—

Q. You are still employed by the trolley? A. Yes, sir. 30

Q. Where are you now? A. Paterson.

Q. Same line? A. I was working first on the Hoboken & Paterson; now I am working on the line in Paterson.

Q. In Paterson? A. In the city; yes, sir.

Q. You saw this man coming, you say? A. Yes, sir.

Q. You didn't ring any bell? A. Yes, sir.

Q. How was it he didn't hear? A. It was very blustery; the wind was blowing hard.

Q. What kind of a day was it? A. Rather cloudy. 40

## EDWARD SMITH.

Q. What time of day was it? A. About eleven o'clock.

Q. Had it rained that day? A. Not that I know of.

Q. Did it rain that day? A. I couldn't tell you; it was kind of stormy.

Q. That street is paved? A. Yes, Belgian blocks.

10 Q. Is it kept pretty clean? A. Well, it is dirty, as a general rule, the street is; ordinarily there is considerable dirt there; directly after a rain it is clean.

Q. You saw this man six or eight feet ahead of you? A. Not ahead of me; on the other track.

Q. Where was he when you first saw him? A. In the middle of the other track.

Q. And making for across the street, wasn't he? A. Yes, sir.

20 Q. Then he was six or eight feet away from you?

A. When I first saw him he was in the middle of the track, about six or eight feet from the other car.

Q. That would be how far away from you? A. Why, it is about four feet, isn't it, between the tracks—perhaps six feet.

BY THE COURT:—

30 Q. When you say the middle of the track, do you mean the middle of the north bound track or between the two tracks? A. Right on the northbound track.

Q. The one you were not on? A. The one I was not on; between the rails of that track.

BY MR. MINTURN:—

Q. How near was he to you then? A. When I  
40 saw him—about six feet.

## EDWARD SMITH.

Q. And coming directly across, in front of that car, was he? A. Not directly, no, sir; he was going diagonally across.

Q. You saw his car stop? A. Yes, at Homestead.

Q. You saw the car stop at Homestead Place?  
A. No—that is, he didn't stop. 10

Q. The conductor says it slowed up to stop? A. It might have slowed up, but I didn't see it.

Q. Did you hear the conductor give the bell on that car to stop? A. No, sir.

Q. You didn't hear that? A. No, sir.

Q. Did you hear two bells given to go ahead? A. No, sir.

Q. Didn't hear that? A. No.

Q. Your eyes were right ahead of you all the time, weren't they? A. Not all the time. 20

Q. What were you looking over behind this car for? A. I was watching the car; you always have to watch a car—

Q. How were you coming, full speed? A. No, sir.

Q. Why were you watching this car? A. To see whether anybody was coming around or getting off; I couldn't tell.

Q. You saw this party? A. After the car had 30 passed.

Q. Six or eight feet? A. Yes, sir.

Q. Was your car under control then? A. Yes, sir.

Q. Did you put on the brakes promptly? A. Just as soon as I saw him walking across the track.

Q. You saw he was walking right in front of you?  
A. He was going in front of the track, but not in front of me.

Q. He was going in that direction, across the track? A. Yes, sir. 40

## EDWARD SMITH.

Q. You knew he was going to cross the track? A. I didn't know.

Q. Wasn't there some indication from his movements that he was going to cross? A. Yes, sir.

Q. Why didn't you put the brakes on. You say he was going to cross the track, facing in that direction? A. He was not going that way; he was going  
10 diagonally across the street, toward the back of the car.

Q. Did you know Mr. Egan at all? A. No, sir.

Q. Never saw him? A. I might have seen him, but not to remember him.

Q. You knew this crossing; there was a street there, Homestead Place? A. I don't know whether it was a street.

Q. There was a fire house on it? A. Yes, sir.

Q. And it was a street, wasn't it? A. I don't  
20 know whether it is called a street.

Q. It was a passageway? A. There is a driveway down to that lumber yard.

Q. There is a passageway for people to go down this thoroughfare, in front of this fire house? A. There is no fence there; you can go in most any direction.

BY MR. EDWARDS:—

30

Q. It is out in the country? A. Yes; you couldn't tell whether there was a street there unless somebody told you.

BY MR. MINTURN:—

Q. Isn't there a curbstone there, at the corner crossing? A. Not that I know of; I never took notice of that.

40 Q. What led you to believe Mr. Egan was going

## EDWARD SMITH.

to cross the track? A. Because he was going toward the car—the back of the car.

Q. When did you make up your mind that he was going to cross the track? A. When I saw him from the side vestibule.

Q. For the first time? A. Yes, sir.

Q. Did you slow up then? A. Directly as we  
crossed the track. 10

Q. When you say you made up your mind that he was going to cross that track, did you slow up? A. A. Yes, sir.

Q. Put on the brakes? A. Yes, sir.

Q. And you say the car went a full length from where this car struck? A. I didn't say so.

Q. Your conductor says so? A. That was not my conductor.

Q. The conductor of the other car said so, and he  
picked him up. How was it if your car was under  
full brake, as you say, it went a full length beyond  
where this man was struck? A. I put the brake on  
when I saw him going by the vestibule. 20

Q. I want to know, if you put the automatic brake on and all these other patent brakes you speak of, how this car went a full length before it struck the man?

Mr. EDWARDS:—He said it didn't.

30

Q. I am taking the testimony of your own conductor, of the other car, who said he picked the man up? A. That was not my conductor; that conductor got off the other car.

Q. He picked the man up right at the rear vestibule of your car—

Mr. EDWARDS:—That is what this man says.

40

## EDWARD SMITH.

Q. You had your car under full control? A. Yes.

Q. How did it go a half length, if it stopped before it came to the place the man was struck? A. I put the brakes on directly I saw the man at the side of the vestibule.

Q. Then you had gone by the man? A. I had gone by the man.

<sup>10</sup> Q. And then you put your brakes on— A. Because I saw his head coming at the side of the car and I didn't know whether he was going to walk at the side of the car or where he was going.

Q. That is the only reason you put your brakes on? A. That is the only reason I put my brakes on.

BY MR. EDWARDS:—

<sup>20</sup> Q. He never was on the track in front of your car, was he? A. No, sir.

BY MR. MINTURN:—

Q. Do you know what hit him? A. No, sir.

Q. You know he was hit? A. I suppose he was hit, because he laid there in the street.

Q. He laid there looking dead, didn't he? A. He was unconscious, I should say.

<sup>30</sup> Q. You don't know what hit him? A. I don't know what hit him.

BY MR. EDWARDS:—

Q. Whether the side of the car or the rear? A. I don't know.

Q. But you know it wasn't the front? A. No.

Q. Or the edge of the vestibule? A. No, sir, it was not.

<sup>40</sup> Q. Or the end of the fender? A. No.

DR. WILLIAM J. ARLITZ.

BY MR. MINTURN:—

Q. Was your vestibule door open at that time?

A. The front one, yes, sir.

Q. You don't know whether it was that hit him?

A. I know because it was too far front to hit him.

Q. What is there on the side of the car that could knock a man down? A. I will tell you—if you walk<sup>10</sup> into a car standing still you will go down.

Q. But your car was under brakes and came to a full stop? A. I don't suppose it was moving when he went into it.

Q. It stopped, according to your testimony, about half the length of the car—it couldn't have been moving fast. How could it knock that man down even if it ran into him head first and damage him as it did, and break his shoulder? A. I couldn't say.<sup>20</sup>

DR. WILLIAM J. ARLITZ, called as a witness on behalf of the defendant and sworn, testified as follows:—

DIRECT EXAMINATION by Mr. Edwards:—

I am a physician and surgeon; I practice my profession in Hudson County, and have for fifteen and a half years; I am connected with St. Mary's Hospital as surgeon and neurologist; I make a specialty of accident surgery; I am chief surgeon of the Jersey City, Hoboken & Paterson Street Railway Company.<sup>30</sup>

Q. Have you been in the employ of that company for some years? A. Yes, sir.

Q. And testify occasionally in their cases?

Mr. MINTURN:—Very often.

## DR. WILLIAM J. ARLITZ.

A. Quite often.

Q. All that Mr. Minturn has, you testify in? A. Yes, sir.

Q. Did you examine this young man, Mr. Egan?

A. I examined him on several occasions; I examined him once for the Jersey City, Hoboken & Paterson Street Railway Company, on the 24th of September,  
10 1904.

Q. That was about a year and a half of the accident, which happened in May, 1903? A. About a year and four months.

Q. Just tell what condition you found his left arm in? A. I examined him at that time in the office of Mr. Minturn, in conjunction with Dr. Byrnes of Union Hill; he presented a slight enlargement at the  
20 bone. With that exception he is perfectly normal and well nourished.

Q. Could he lift his arm. A. He complained of some impairment of that particular function, that is, the function of the deltoid muscle in lifting the arm forward.

Q. But he has all the lifting motions from the elbow? A. He had at that time all the motions except that one of lifting the arm directly from the side, which is accomplished by one particular muscle.

30 Q. How would that affect the lifting capacity of that arm? A. It would not affect the lifting capacity of that arm, because lifting is not performed by that muscle; it would only prevent his lifting his arm in that direction, and that would improve in time.

Q. What would improve it? A. Use and massage.

Q. Did you find any atrophy or wasting? A. There was on atrophy, no injury to the nerve structure.

Q. Did he complain of any injury to his eye-  
40 sight at that time? A. He did not.

## DR. WILLIAM J. ARLITZ.

Q. He said nothing to you about it? A. He complained of severe injury in the shoulder.

Q. He knew you were examining him for the results of this accident, didn't he? A. That was the understanding.

Q. And he said nothing about any eye trouble?  
A. There was no mention of any eye trouble. 10

Q. Would a blow over the eye, the temple, affect the eyesight; is that the place in the brain of the blood supply— A. That is not the center of the blood supply for the eye.

Q. Just show me where that is? A. A blow on this side of the head—that is, where the nerves of the sight inside—would affect this here (illustrating).

Q. That is to say, a blow on the left, on the back of the head, would affect the right eye? A. It comes here, the corticle fibre, and then crosses over by way 20 of the optical membrane. And injury on this side of the head would affect the left eye.

Q. Then an injury from the temple would not have any effect on the eyesight? A. Not there, no, sir; an injury directly over the eye might affect that eye.

Q. Do you think this condition of the arm would be permanent if properly massaged? A. I think he would make a good recovery if he uses the arm and has it massaged; but I should say it was rather late 30 for massage, however; it is nearly three years ago.

Q. If a man has an injury of that kind and refuses to use the arm—(interrupting). A. He will lose a certain amount of energy in that arm.

Q. Necrosis? A. No; he never will have that.

Q. Any dislocation? A. I don't think he ever had a fracture; I think he had a dislocation of the collar bone.

Q. Did you examine him after that? A. I examined him for the New York Life Insurance Com- 40 pany.

## DR. WILLIAM J. ARLITZ.

Q. What for? A. He applied to the New York Life Insurance Company for insurance.

Q. For how much? A. I don't remember; it was either one thousand or two thousand dollars, possibly three thousand.

Q. Did you pass him as a good risk? A. I passed him as a first-class risk.

10

## CROSS EXAMINATION by Mr. Minturn:—

Q. His arm would not affect his right to life insurance, would it? A. His arm? Not at all; but if he had an obstruction which caused some trouble with his eyesight, it would have a very decided effect upon the issuance of that policy.

Q. If a man was struck by a moving trolley car, over the left eye, would that affect him in any way?

20 A. Most assuredly, it would affect him.

Q. What, in your judgment, would be the result of a stroke of that kind? A. It would all depend on how the force was expended, and what the damage was to the superficial tissues.

Q. Would it affect the eyesight? A. I don't think so.

Q. Suppose he were to tell you that after the accident of that kind he had been forced to wear, under the advice of his physician blue goggles or glasses, 30 for three or four weeks, or a month or so, what would you say was the cause? A. He wore blue glasses, as I understand it. I would assume that he had had what is called a traumatic conjunctivitis; that is, an inflammation as the result of a blow; that inflammation is confined to the superficial structure and does not affect the eyesight.

BY MR. EDWARDS:—Q. Does it pass away? A. It is relieved by medication and the wearing of blue 40 or smoked glasses.

## DR. WILLIAM J. ARLITZ.

Q. Suppose he were to complain to you that after an accident of that kind he had suffered from intense headaches that he had not had previously; that as a result of that accident he was not able to read consecutively for any length of time, or write; what would you say? A. I would say the headache was brought about by some error of refraction, and I would say an error of refraction before the accident, my theory being that having worn glasses before that time, it was a natural result in the error of refraction. 10

Q. But you leave out of the calculation in your deductions entirely the fact that he had been struck by this trolley? A. If he had a typical shocked disc, or inflammation of the optic nerve, then I should say that traumatism might.

BY MR. EDWARDS:—

20

Q. A blow? A. That the blow might have been a factor in the causation of that condition, but the wearing of blue glasses or medication would not relieve the condition.

Q. Would not the blow under such circumstances intensify the condition, the trouble? A. Trauma very frequently intensifies other diseases.

BY MR. EDWARDS:—

30

Q. But it would intensify disease of the eyesight?

A. If he had a shocked disc?

Q. Yes? A. That might intensify; there is nothing to show that he had a shocked disc.

BY MR. MINTURN:—

Q. You haven't examined it? A. I only have his word.

40

## DR. WILLIAM J. ARLITZ.

Q. You haven't made any examination of his eyesight or head? A. Yes; I examined his head in your office, the reflexes, his ocular and superficial reflexes, and there was absolutely no indication of any disease of that kind.

Q. Did he make any complaint to you when you examined him? Did he tell you of his symptoms?

10 A. That is part of my examination; I always examine the eye, the knee reflexes, the skin reflexes—

Q. Isn't it a fact that when a surgeon is called upon to examine a patient for a fracture—at least, for dislocation or an injury such as this plaintiff received—the surgeon tells the patient, informs him of the trouble, the nature of the injury? A. That the surgeon does tell him?

Q. Yes? A. Why, at times it might be advisable  
20 to tell the patient, and at other times it would not be advisable.

Q. Isn't it also advisable for the surgeon, and isn't it generally the practice that the surgeon informs the patient whether or not the injury is to be permanent?

Q. How could he tell—

Q. Well, from his observation? A. He couldn't tell, at that particular time. How would he have knowledge of the amount of injury that was done to the nerve structure, and in a dislocation of that kind  
30 that would be the only permanent injury he might look for, and that would show itself by a shrinking of the muscles of the arm.

Q. Don't you think this man's injury is likely to be permanent? A. I do not imagine that he had a severe injury, but I will strip him for you and show you that he has a perfect arm now, if you wish it.

Q. I don't care for that, unless the jury does. You don't mean to say this man's arm is as good today as before the accident? A. I just mentioned how he had a limited function of the deltoid muscle.

40 Q. The jury will not probably understand that.

## DR. WILLIAM J. ARLITZ.

Will you explain it? A. (Witness illustrates.) That is one motion, and that is another, and that is another. Now he has some loss of function when he attempts to bring his arm up; he can bring it up like that, about in that way; there is one muscle which especially accomplishes that particular act;—the deltoid muscle; that is inserted about here.

Q. Is that muscle in operation when a man is lifting, say an ordinary bag like that of Mr. Edwards's there, from the floor up; is that put in operation then? A. No, harmoniously with many other muscles; that is not accomplished by the deltoid muscle; if a man should try to bring it up in that motion (illustrating) the deltoid muscle would play a very prominent part in the accomplishment of it, but men don't lift that way. <sup>10</sup>

Q. If he could lift it straight, then the deltoid muscle would not make any difference— A. The deltoid muscle is only used for lifting the arm upwards from the side; the other positions are accomplished by other muscles acting harmoniously and independently of that particular muscle. <sup>20</sup>

BY MR. EDWARDS:—

Q. This man has what you call in baseball parlance "a glass arm"? A. No.

Q. Can he throw a ball as we would in baseball? <sup>30</sup>

A. I don't suppose he could with his right hand—

Q. Suppose he is a left hander? A. I think he could bowl a ball, he couldn't bowl nine pine, and he could throw a baseball, but he couldn't bowl a cricket ball.

BY MR. MINTURN:—

Q. If he was throwing a baseball it would be an overhand throw? A. Yes, this motion in baseball <sup>40</sup>

## DR. WILLIAM J. ARLITZ.

(illustrating), you don't bring that into play at all if you want to throw a curve, but for all ordinary uses in baseball, the arm, assuming that he was left handed, would be normal.

Q. How would it be if he were batting a ball, would that arm lose any of its ability? A. That arm only acts as an inferior in baseball batting, because  
 10 he would stand this way; the force of the bat is with the right arm in that case.

Q. How would it be—suppose he was struck and wanted to defend himself; would that arm be as useful; could he use it as well in defending himself? A. He would not strike that way; it has absolutely no effect on that muscle.

Q. He complains he cannot bring it up any higher than that (illustrating)? A. On the side—he does not use it that way.

20 Q. You mean to say he could use it that way (arm extended out)? A. Yes.

Q. Just as effectually as before the accident? A. Yes.

BY MR. EDWARDS:—

Q: In other words, he could give a heavy jab but not a round one? A. He could swing his arm out, but he couldn't bring it up in that particular position.

30 Q. If he had complained of these terrible headaches, would you have passed him for life insurance? A. Well, I passed him as a first class risk; that is evidence of what I would do.

Q. If he had complained of these terrible headaches, and trouble of the eye, would you have passed him as a first class risk? A. I would not.

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40 ADJOURNED to to-morrow, January 9,  
 1906, at 10 A. M.

## WILLIAM STENGOWITCH.

WILLIAM STENGOWITCH, sworn on behalf of  
the defendant, testified as follows:—

DIRECT EXAMINATION by Mr. Edwards:—

Q. Where do you reside? A. Brooklyn.

Q. What is your occupation? A. Conductor for  
Rapid Transit, Third Avenue, in Brooklyn. 10

Q. Were you in the employ of the Jersey City,  
Hoboken & Paterson Street Railway Company at  
the time of this accident to Mr. Egan? A. Yes, sir;  
I was on the White Line.

Q. Were you conductor of one of the cars that has  
been testified to in this case? A. Yes, sir.

Q. Which way was your car going? A. Toward  
New York.

Q. What was the number of your car? A. 513. 20

Q. Was it an open or closed car? A. Closed car.

Q. Do you remember the accident that happened  
at Homestead? A. Yes sir.

Q. Where were you at the time? A. I was inside  
the car collecting fares.

Q. Which way were you looking? A. Front.

Q. Did you see this man Egan? A. We started  
off May 1, 1903, started about ten minutes past  
eleven at Homestead, that is the regular start; I  
started collecting fares at the hind end; I heard  
both motormen ring bells; I saw a man walk round  
the car; it was a windy day; he held his hat down  
like that (shows); he didn't cross the track but walk-  
ed to the side of my car holding his head down; a  
windy day; to the hind part of our car; he fell down  
between the two tracks. 30

Q. Which of his sides did the car strike? A. His  
left side.

Q. About where on the car do you think he  
struck? A. Right by the door a little ways from the  
front door a little front. 40

## WILLIAM STENGOWITCH.

Q. Where did his body seem to strike the car?

A. At his shoulder.

Q. How far did the car go beyond him? A. I guess about ten feet and the car stopped; he was lying between the two tracks; his head was toward Homestead; he was lying on his right side.

10 Q. Did the car stop? A. Yes both cars stopped.

Q. Do you know where the sash and blind factory is there? Was that more toward Homestead than to Jersey City when he was struck? A. More toward Homestead.

Q. What did they do with him after the accident?

A. We got off the car picked him up and took him into the office of the sash and blind factory.

## CROSS EXAMINATION by Mr. Minturn:—

20

Q. When did you leave the Traction Company's employ? A. Last August.

Q. Where were you living when you were employed by the Rutherford line? A. Passaic New Jersey.

Q. Did you move to Brooklyn? A. No my wife is in Passaic, I board in Brooklyn.

30 Q. You have been employed by the Brooklyn Trolley line ever since you left here? A. No sir; I was out of work about three months then I got on the Brooklyn trolley line.

Q. Were you here on Monday of this week? A. No, I was not; I came here yesterday.

Q. Did you ever see Mr. Egan in your life? A. Not before that.

Q. Did you hear more than one bell? A. I did.

40 Q. What bell did you hear? A. I heard the bell on both cars, the motorman's bell, not the conductor's bell; I pulled the bell to stop when I saw the man cross the track.

## WILLIAM STENGOWITCH.

Q. When did you first see the man? A. When he got off the other car and walked around.

Q. Where was he when you first saw him? A. He was behind the car crossing the track, holding his hat down.

Q. Which way was the wind blowing? A. To the southeast, toward New York.

Q. Was it a very windy day? A. Quite windy and dusty. 10

Q. Do you remember the day of the month? A. It was May 1st.

Q. How do you remember that? A. I can remember it because I remember the day all right.

Q. Did you make a note of it; how do you remember the date? A. I made an accident report that same day.

Q. Did the car have side seats? A. Side seats. 20

Q. Which way was you facing? A. I was facing toward New York.

Q. Were there any passengers behind you? A. Two on the rear platform.

Q. How many behind you? A. I only had about fifteen passengers, some one side and some on the other side of the car.

Q. How many on the Hackensack River side of your car? A. About half of them; I collected fare from both sides.

Q. The car was coming up the hill, the man was coming round the back of the car, you were collecting fares from this side and that side, and you say that while you were collecting fares in that way you saw this man over on the track behind the car on a windy day coming along in your direction, is that so? A. Yes. 30

Q. Were you making change for your passengers? A. No, some had nickels, some had dimes.

Q. You say there were about fifteen people on the car? A. I was not collecting when that hap- 40

## WILLIAM STENGOWITCH.

pened; it was only about half a block from where we started from Homestead when that happened.

Q. How far in were you from the tail end of the car? A. About three or four feet.

Q. How many fares had you collected? A. About three or four two on the hind end.

10 Q. So there were about eleven more fares to be collected, and you mean to tell us that while you were collecting those fares on each side of the car you could see this man behind the car making over in the dust to your car? A. That car was ahead of us, anybody could see him.

Q. How far ahead of you was this car when you saw him; how far behind the car was Egan when you first saw him? A. About twenty feet.

A. About twenty feet behind the car? A. Yes.

20 Q. How far was the other car from you, the car that was coming down the hill? A. About twenty feet.

Q. How far was your car away from the other car? A. About twenty feet.

Q. And Egan was behind the car when you first saw him? A. Yes, he jumped off the car and came down, at the same time I heard the bell, and I looked to see what was on the road.

30 Q. You didn't see Egan until you heard the bell? A. No.

Q. How many times did you hear that bell ring? A. About six or seven times.

Q. Six or seven times you heard your motorman ring that bell? A. Yes.

Q. What time of day was it? A. About ten minutes past eleven.

Q. Did you hear the motorman of the other car ring the bell? A. Yes.

Q. How many times did he ring it? A. About the  
40 same.

## WILLIAM STENGOWITCH.

Q. What did he ring the bell for? A. In case anybody got off my car he should look out.

Q. They were all ringing at the same time? A. Yes.

Q. It made a tremendous noise? A. Made a noise?

Q. So it could be heard some distance? A. Yes.

Q. Where did this man fall? A. He fell between <sup>10</sup> the two tracks.

Q. Did you see him strike the car? A. I did.

Q. What part of the car did he strike? A. Just a little ways from the hind door, that door was closed; he struck the drip board, the moulding of the car struck him.

Q. He had his hat on going along toward Homestead? A. Yes, he was going this way (showing), holding his head down.

Q. The car was going down this way? A. The <sup>20</sup> car was going to his face, and he was coming with his back to the car.

Q. Which way was he going? A. He was going like this.

Q. He was going with his right hand up? A. No, with his left hand up.

Q. Then he must have had his back to the car? A. He was going this way (shows).

Q. How far had the car that he got off got away <sup>30</sup> when your car struck him? A. About half a block.

Q. That was half a block below you, toward McCulloms, when your car struck this man? A. Yes, we were down the hill, he went a little faster than we did.

Q. Sure of that? A. Sure.

Q. Was Egan on his back when you picked him up? A. No, lying on his side.

Q. He was not conscious, was he? A. No.

Q. He could not speak? A. No. <sup>40</sup>

## GEORGE BRADOCK.

GEORGE BRADOCK, sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION by Mr. Edwards:—

Q. Where do you reside? A. Paterson, New Jersey.

Q. What is your business? A. Carpenter.

Q. Do you know the cars that run on the Paterson line, between Hoboken and Paterson? A. Yes.

Q. The closed cars? A. Yes.

Q. Do you remember car 513? A. Yes.

Q. Is that car still running? A. Yes.

Q. Have they changed the number of it? A. Yes.

Q. What is the number? A. 972.

Q. Changed all those numbers? A. Yes.

20 Q. Are the cars all alike that run on that line? A. No they are not.

Q. Around the side of the car is there what they call a drip board? A. Yes.

Q. Describe it? A. It is a strip running from end to end of the car, between the window and the lower panel, it goes out from the car three inches, and it tapers from two inches against the body of the car; it is four or five feet from the ground.

Q. Measure that on this side wall?

30

(Witness shows on side wall how high four or five feet is from the floor).

Q. That run the whole length of the car? A. Yes.

Q. Are you speaking of this car in question? A. Yes.

Q. What kind of a car is it? A. It is a double truck car, side seats, 35 to 38 feet long, a heavy car.

Q. Are you employed by the Public Service people? A. Yes, sir.

40

## FRANCIS J. EAGAN.

Q. This is your business to look after cars as car-  
 penter in their shop? A. Yes.

Q. Were you here Monday last? A. No, sir.

Q. Were you here yesterday? A. No, sir.

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 DEFENDANT RESTS.
 

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10

FRANCIS J. EGAN, called by Mr. Minturn:

Q. You have heard the testimony of the witness  
 before the last, the conductor of the car which was  
 coming up the hill, did any car pass you as you were  
 going across the tracks? A. No, sir. 20

Q. Did you pass any car in your effort to cross  
 the tracks? A. No, sir.

Q. Sure of that? A. Positive.

Q. Then whatever hit you, hit you before it passed  
 you? A. Yes.

Q. Did you incur any expenses in your efforts to  
 be cured, doctor's bills, medicines, and so forth? A.  
 I did.

Q. What did you expend? A. About one hun- 30  
 dred dollars.

Q. Did you pay the doctor anything? A. I paid  
 Dr. Worden about eighty dollars, and Dr. Byrnes  
 about ten dollars; I paid seven or eight dollars for  
 bandages.

Q. What did you pay for blue glasses? A. They  
 cost me \$2.25, and the glasses I have on cost me  
 \$5.00.

Q. You wore glasses before this accident, didn't  
 you? A. Yes.

Q. Were the glasses you wore at the time of the 40

## FRANCIS J. EAGAN.

accident injured? A. They were destroyed; I have not seen them since; these cost me five dollars; I had to change the lenses since; the lenses cost me thirty-five cents apiece.

## CROSS-EXAMINATION:

10 Q. You don't know what struck you? A. The car struck me.

Q. Weren't you telling the truth when you swore on the stand before, "The first thing I knew I was struck by a car, struck by something; I know I was struck, and that is all I know?" That is the truth, isn't it? A. Yes, sir.

Q. As to what part of the car struck you, you don't know? A. No, sir.

## 20 RE-DIRECT EXAMINATION:

Q. You are positive no car passed you? A. I am.

Q. Did you go along with your head down? A. No.

Q. You heard the testimony of this witness that you attempted to get across the street, hat down and your hand up to your hat? A. I heard it.

Q. Did you attempt to get across the track in that way? A. No, sir.

30 Q. Did you have your hand up to your head? A. No.

Q. What kind of a hat did you wear that day? A. A derby hat.

Q. Where did you get these glasses? A. Of an optician; he tested my eyes and gave me the glasses.

Q. (By the Court.) One is a little different from the other? A. Yes, sir.

Defendant moves for the direction of a verdict on the ground that no negligence has been shown on the part of the defendant.

Second, that negligence on the part of the plaintiff has been shown.

Third, that it appears now, as the whole case is in, that there is no evidence upon<sup>10</sup> which a verdict could be sustained.

The Court refuses to direct a verdict as requested.

To which refusal defendant prays an exception may be allowed, and it is allowed, and signed and sealed accordingly.

C. W. PARKER, J. (L. S.) 20

Mr. MINTURN—We abandon all claim for injury to the eye.

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Gentlemen of the Jury:—

There seems to be no question in this case but that<sup>30</sup> the plaintiff was injured on May first, 1903, by coming in contact with a trolley car operated by this defendant company. There seems to be no question but that the plaintiff sustained some injuries by that contact; the amount of the injuries, under certain circumstances, it may be your duty to ascertain, and a question in the case will be for you to determine whether the plaintiff ought to suffer his damages without compensation, or whether he is entitled to have the defendant pay for them. 40

The general situation at the time and place of the accident seems to be substantially conceded on both sides. The plaintiff had been a passenger on a car of the defendant going north, he desired to alight at a place called Homestead, and so notified the conductor, and the car either stopped, or as stated by some of the witnesses, slowed down so much as to allow the plaintiff to get off without any ill consequences to himself. He desired to cross both tracks  
10 toward the westward to go toward the mill where he was employed, and he did what is the most natural and obvious thing for a man to do under the circumstances, and perhaps what most all of us do frequently, he started around behind the rear of the car from which he alighted, and he came in contact with another car of the defendant, which was proceeding from the north toward the south, and the question is raised at this point by the defendant  
20 whether that car ran into the plaintiff, or whether the plaintiff, in effect, ran into the car. On the decision of that question of fact will depend in a large measure your verdict, because as is claimed by the defendant, the plaintiff was proceeding, as testified to, in a diagonal direction across the track with his head down, to avoid the wind and dust, and his hat pulled down over his eyes, and if he ran into the side of the car it would seem to be very obvious that no blame should attach to the motorman of the  
30 southbound car, who, if his story is to be believed, saw the plaintiff, not in front of him, but at the side of the car; saw him through the side windows, or through the vestibule, and whom, nevertheless, anticipating danger undertook to stop his car as soon as he could. If that was the situation, it would not seem to make any difference whether the motorman on the southbound car rang his bell or not, because there would be no occasion to ring the bell; even if you should find that he did not ring the bell, and consider that to be an act of negligence, it would not  
40 be such negligence as would relate to the accident.

So, if you find that the plaintiff ran into the car in the way the defendant claims he did, there would seem to be no ground to find the defendant liable, and your verdict would be against the plaintiff and for the defendant. But the plaintiff, and his witnesses tell another story, and it is your function to decide which of the stories is the correct one; whether the plaintiff was hurt in the way he claims he was, and if so, whether there was any negligence of the 10 motorman of the southbound car which produced or helped to produce injury in that way. The testimony for the plaintiff was taken some two days ago, and some of the testimony may have passed out of my mind, but as nearly as I can remember the plaintiff himself has not described to you just how the accident happened. All that he was able to say was that when passing across the track he was struck; he didn't know by what he was struck; he knows that he was struck, and afterwards found himself 20 lying in the road. That is my recollection of his testimony, but it is your business to remember what his testimony was. Then there is the testimony of the colored man, George Williams, who said, among other things, that he saw the plaintiff struck by the front of the car and saw him thrown on the west side of the track, in contradiction to most of the other witnesses who said that the plaintiff when picked up was between the two tracks. There may be 30 other testimony in support of this same theory, but I don't recollect it at this time, and will leave it to you.

Now, suppose that is so, the plaintiff, as I have already said, was entitled to pass behind the car for the purpose of going across that track. The duty of the motorman of the southbound car was to use reasonable care in keeping a proper lookout for persons upon the tracks in front of him, and especially seeing, as he says he did see, this other car going up and apparently coming to a stop, or slowing up 40 sufficiently to let a passenger off. He said he look-

ed out for passengers coming around behind the car, because they were doing it all the time; anticipating the presence of some possible passenger that had alighted from the northbound car, it was his duty to use reasonable care to avoid running into him, and also to use reasonable care to give warning of the approach of his own car by ringing the bell, or in some other way. He says he did ring the bell and one or  
10 two other witnesses say that the bell was rung. The plaintiff says he didn't hear any bell, other witnesses say they didn't hear any bell, and that testimony, although negative in character, is entitled to your consideration as well as that of the witnesses who say that they did hear it. Now, if he did not ring it, under those circumstances I have said it might be considered by you as evidence of negligence on the part of the motorman of the southbound car, assuming that you find the plaintiff was run into by the  
20 southbound car while he was upon the southbound track. We often see a car in motion when slowing up go by more slowly because of the fact of the other car discharging passengers, and if this motorman went by at a high rate of speed you would be entitled to consider that as evidence of negligence. If the plaintiff was struck in that way, if you find on the whole case that there was negligence on the part of those operating the southbound car which produced, or helped to produce, the accident, then the  
30 further question is raised for your consideration as to whether the accident was produced in part by any want of care on the part of Mr. Egan himself for his own safety, for he had no right to pass blindly across the trolley track on which he knew that cars were constantly running and where his view was necessarily obstructed by the car from which he had just alighted without using some precaution to avoid possible accident with a southbound car. He was not entitled to assume, for example, that any southbound car would be brought to a stop until the way  
40 was clear; it was his business in undertaking to cross

that track to use the care and caution that a reasonably prudent man would use under those circumstances to look out for another trolley at that point.

Mr. MINTURN—Egan said he didn't see the other car coming because the other car obstructed his view.

The COURT (resuming): Gentlemen, you are to 10  
take the testimony in the case and find out what he  
did do, and what he did not do, and ask yourselves  
whether his conduct under the circumstances was  
that of a reasonably prudent man. The presumption  
in the first instance would be that it was. The de-  
fendants having claimed that the plaintiff was negli-  
gent must sustain the burden of proof, just as the  
plaintiff must sustain the burden of proof when he  
says the motorman was negligent, and you will say  
upon the evidence whether the plaintiff has shown 20  
to you satisfactorily by way of evidence that there  
was negligence of the motorman which caused or  
helped to cause the accident, and if not, your ver-  
dict should be for the defendant. But if the plaintiff  
has so satisfied you then has the defendant satisfied  
you on the whole case by weight of evidence that  
there was negligence on the part of the plaintiff  
which caused, or helped to cause, the accident; if  
there was not, and you have found negligence in the  
motorman, your verdict will be for the plaintiff. If 30  
there was negligence on the part of the plaintiff  
which caused, or helped to cause, the accident, then  
the law says that the plaintiff is not entitled to re-  
cover, no matter how slight the proportion of his  
negligence may be as compared with the other. If  
there was no negligence on his part which was a fac-  
tor in the accident, without which it would not have  
occurred, he is not entitled to recover.

Those are the principles of law, as the Court un-  
derstands them, and if you, upon the application of  
these rules of law, to the evidence, think there ought 40

to be a verdict for the plaintiff, the question of the amount to be awarded is raised, and is for you to determine.

The plaintiff has testified that he was incapacitated from the first of May until the latter part of July, a period of something like twelve weeks; he was earning fifteen dollars a week then; if his incapacity was due to that accident and you find in his favor, that  
 10 would be a hundred and eighty dollars that he lost by reason of it. He paid one doctor eighty dollars and another doctor ten dollars, and for medicines and eyeglasses, which will bring the amount up to something like one hundred eight dollars, and if you believe him in that respect he is entitled to be allowed for that. He claims that his shoulder was injured and his head was hurt, and you would allow him such a fair sum for that as would compensate him for the pain, the suffering and inconvenience.  
 20 Then there is the alleged disability which he claims is permanent, some disability in the use of his arm; he says his arm is disabled to a certain extent, that he cannot raise it to a certain position. You will consider all these matters and award him such reasonable sum as will compensate him under the circumstances.

There is no claim insisted upon for injury or damage to his eyesight except the pain incident from the stroke on the head.

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The COURT—I am asked to charge you that the mere happening of the accident is not proof, in itself, of negligence on the part of the defendant. I think I have covered that sufficiently.

Verdict for plaintiff, \$1,500.00.

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NEW JERSEY COURT OF ERRORS AND  
APPEALS.

_____o		
FRANCIS J. EAGAN,	)	
	)	
Plaintiff,	)	
	)	10
Def't. in Error.	)	
	)	In Tort.
vs.	)	
	)	Assignments of
JERSEY CITY, HOBOKEN &	)	Error.
	)	
PATERSON STREET RAIL-	)	
	)	
WAY COMPANY,	)	
	)	20
Defendant,	)	
	)	
Pltff. in Error.	)	
	)	
_____o		

And now at this day the said defendant, plaintiff in error, assigns the following causes of error.

1. Because after the plaintiff rested his case, the Court refused to non-suit the plaintiff although a non-suit should have been granted. 30

2. Because it clearly appeared from the evidence produced by the plaintiff, that the plaintiff had been guilty of such contributory negligence as would bar a recovery in said action, and a non-suit should have been granted.

3. Because the plaintiff proved no actionable negligence upon the part of the defendant, or any of its servants, and a non-suit should have been granted. 40

4. Because the Court refused to direct a verdict for the defendant upon the following grounds urged by the defendant: (1) that no negligence had been shown upon the part of the defendant or any of its servants; (2) upon the ground that the plaintiff was guilty of contributory negligence; (3) upon the ground that after the whole case was in, there was no evidence upon which a verdict for the plaintiff could  
10 be sustained.

Dated July 30, 1906.

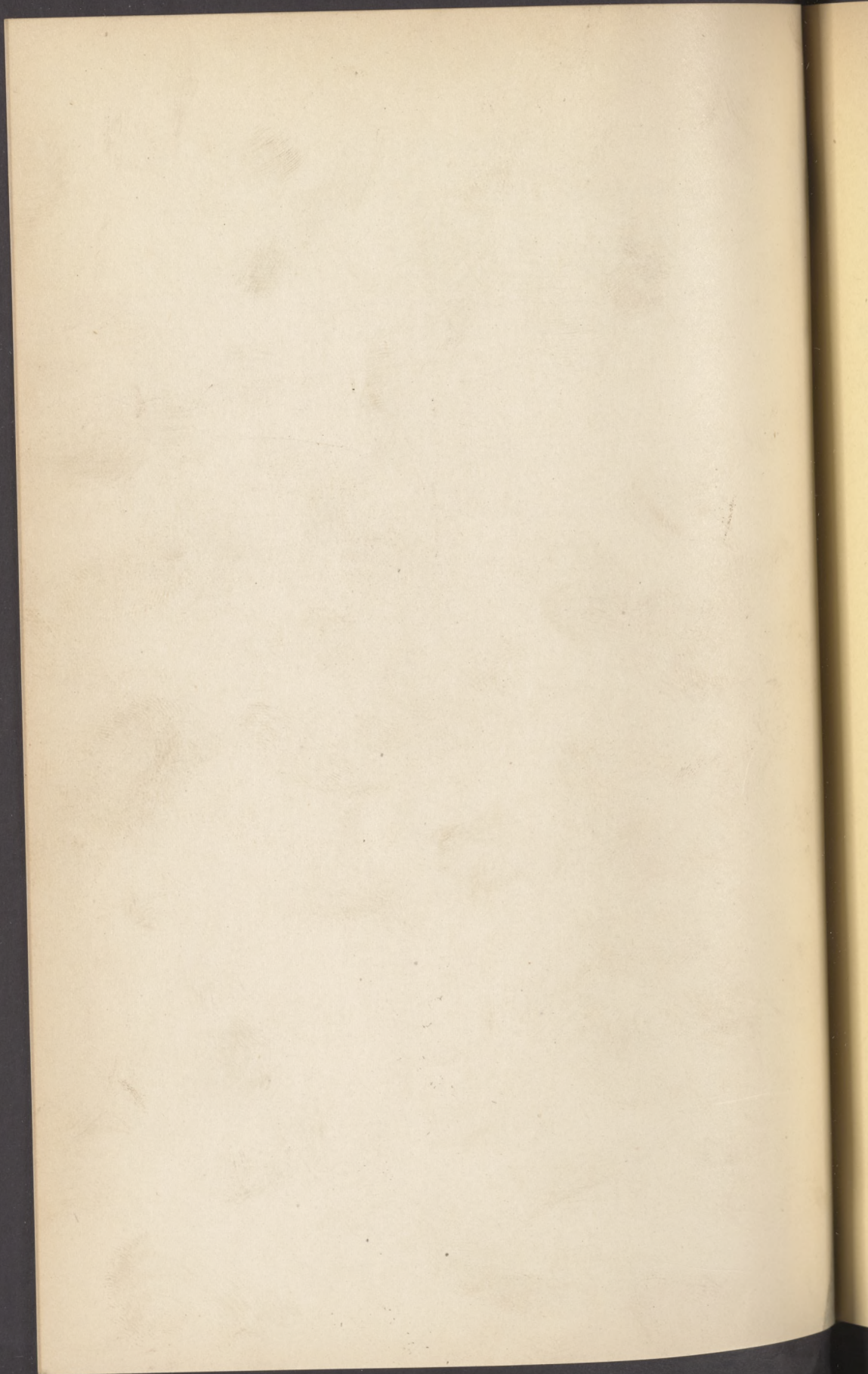
BEDLE, EDWARDS & HOLMES,  
Attorneys for, and of Counsel with  
Plaintiff in Error.

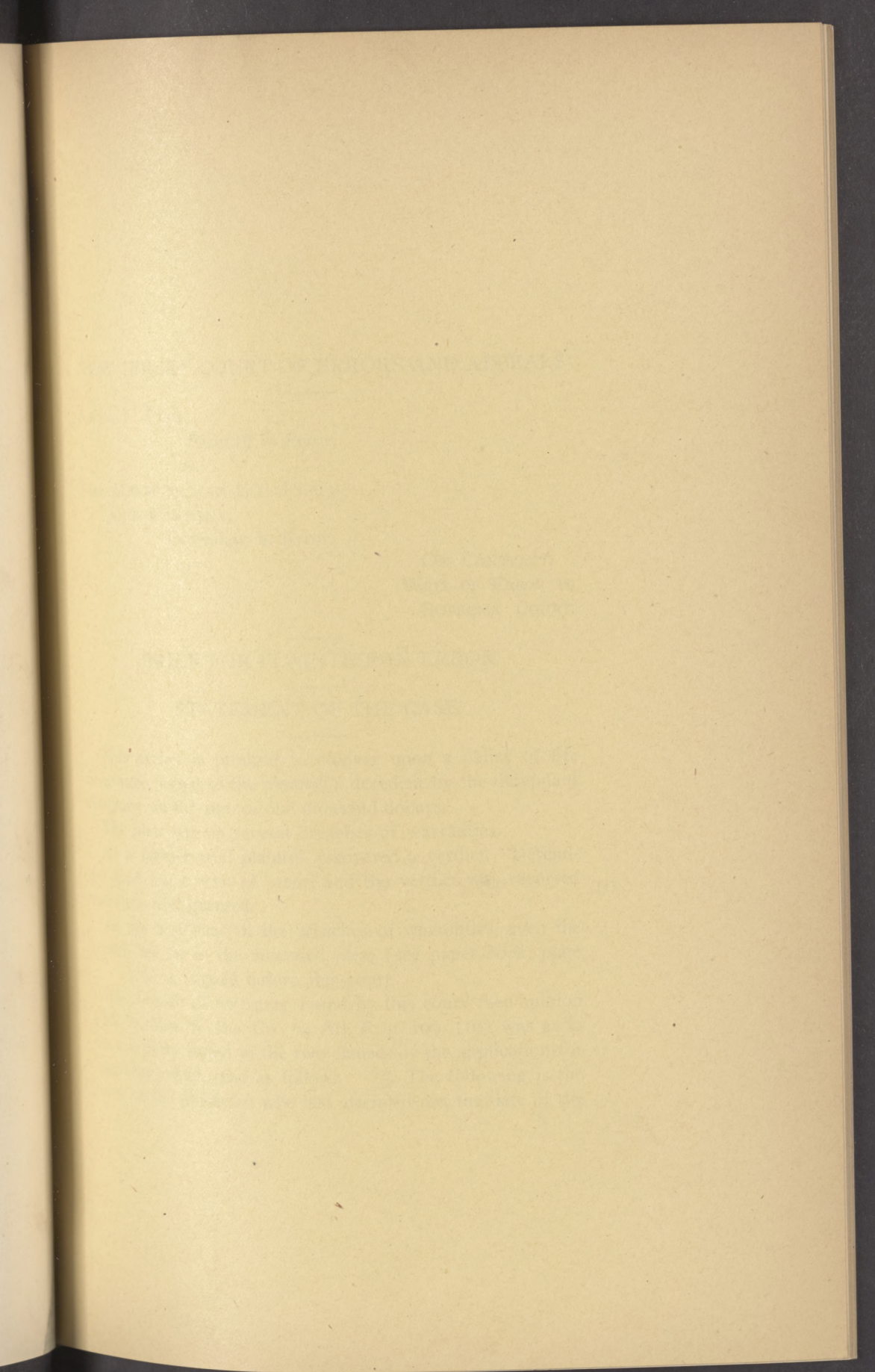
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