

NEW JERSEY
Court of Errors and Appeals.

ROSARIO NOTTO, ADMRS., &C.,
Defendant in Error,
v.
ATLANTIC CITY RAILROAD COMPANY,
Plaintiff in Error.

Brief for Plaintiff in Error.

Plaintiff intestate was killed at Thirteenth street and defendant's crossing, in Hammonton, in August, nineteen hundred and five, and the writ of error is to review a judgment in favor of the administrator for twenty-five hundred dollars.

At the point of the crossing there are two tracks, one known as the north-bound and the other as the south-bound track. The train which caused the death was approaching from Winslow Junction toward Atlantic City on the southbound track. Both tracks are straight to Winslow Junction, a distance of two miles from the point of the crossing, and a train can be seen from the point of the crossing to the summit of an incline at Rose-dale, a distance of fifty-seven hundred (5700) feet by actual measurement. (Testimony of Dickinson, page 146.)

As to the distance from the near rail of the south-bound track a train can be seen—the named distance may be in dispute. The deceased was riding in an open farm wagon with his wife, and he was driving on the left hand side of the wagon, or the side nearest the approaching train. At the point of the crossing there is a sloping bank. The testimony on the part of both plaintiff and defendant shows that the bottom of the bank is eight feet from the rail of the southbound track; that the top of the bank is sixteen feet from the near rail, and that the high point of the bank is five feet eight inches from the level of the highway. It appeared by the testimony of the surveyor at page 147, and the photographer at page 145, that at any point within twenty-six feet of the south-bound track you can see a train approaching from Winslow Junction. There was testimony tending to show the existence of growing corn on the top of the bank, but the corn was not nearer to the southbound track than the line of telegraph poles, which poles, by the testimony of Charles King, a witness for the plaintiff (page 38), were twenty-six feet. The accident happened before six o'clock in the afternoon (testimony page 14), so that it was yet daylight. The only witness to the accident was Mrs. Sooy, whose testimony begins with page 7.

I.

THERE SHOULD HAVE BEEN A DIRECTION FOR THE DEFENDANT.

We think there was a failure to show negligence on the part of the defendant company. It is shown affirmatively by the testimony of the engineer and others that the whistle was blown and the bell rung at the requisite distance from the crossing, and, while there is testimony on the part of the plaintiff that no bell or whistle was heard, it does not appear that the witnesses

were heeding the noise of a whistle or bell, or that they were in a position to hear, so that their negative testimony cannot be considered in the face of the affirmative evidence on the part of the defendant. It will avail nothing to here set out at length the testimony touching the question of the ringing of the bell and the blowing of the whistle. We must ask the court to read and consider such evidence. At best we maintain this is a case wherein plaintiff's evidence is equally consistent with the absence as with the existence of negligence in the defendant, and we think the direction should have gone upon this ground.

Hummer v. Lchigh Valley Railroad Company,
67 Atlantic 1061 (not yet in State Reports), is directly in point.

See also *Holmes v. P. R. R.*, 66 Atl. Rep. 412.

But certainly the deceased was guilty of contributory negligence. It seems impossible that the accident could have happened had the deceased used his eyes and his ears. A reading of the testimony of Mrs. Sooy, the only eye witness, will make it plain that there was something wrong with the deceased or with the horse he was driving. She says that she was looking directly at him as he approached the crossing and that when within about twenty feet of the crossing, he began to pull at the horse; that the horse stopped, that the deceased looked up and down the tracks; that he then drove on and again pulled in his horse and stopped when within eight feet of the crossing, and that his actions were so peculiar and extraordinary that it provoked an inquiry as to what was the matter with him. See testimony page 9 as follows:

"Q. What did you see him doing when you first saw him pulling his horse back? A. I saw him walking with his horse towards the railroad, and I saw him go this way, and I saw him look up and down four or five times, and then he walked on and looked up and looked down, and then he started to pull up, and he pulled up

with his horse again, and I stood there and looked, then I was going to say to a friend I had visiting, 'What is the matter with that man?'

On cross-examination, at page 17, we have the following:

"Q. Now, how far was the horse's head from the nearest rail of the track on which the train was when Mr. Notto stopped? A. Well, the second stop when I seen him, twenty feet. I didn't see nothing of him after he made the second move. Q. You didn't see anything of him, do you mean after he stopped at twenty feet from the track? A. I seen him move once after that and look up and look down. Q. Did he stop when his horse's head was twenty feet from the track? A. Yes, sir. Q. And then he started on? A. Yes, sir, and stopped again. Q. Was his horse walking? A. Yes, sir. Q. He stopped again? A. Yes, sir. Q. Where was his horse's head with relation to the near rail when he stopped the second time? A. I think it would be about six or eight feet. Q. Then did he drive on? A. He started to drive, and I didn't see any more of him. Q. But you know that he stopped when his horse's head was within six or eight feet of the rail? A. Yes, sir. Q. Came to a dead stop? A. Yes, sir. Q. Did you then see him look up the track? A. Yes, sir.

If this testimony is to be believed, then it seems inconceivable how the accident could have happened unless deceased had failed to exercise the care required of him to avoid the accident. Of course, he was bound under a host of decisions to use his eyes and his ears at a point where their use would be effective. If it be that he couldn't see the approach of a train by reason of any alleged obstruction until he reached a point twenty feet from the track, that is the point where the law threw upon him the exercise of reasonable care. To have looked at a point where looking was non-effective was not the exercise of reasonable care.

We come, then, to the question as to what the undisputed proof indicates as to where looking and listening would have been effective. The high point of the bank was less than six feet from the surface of the highway, and it must be that the deceased sitting in the wagon could have seen above the top of the bank a train approaching when he passed beyond the cornfield, the edge of which was by the line of the telegraph poles, twenty-six feet from the track. If he had looked at that point and continued to look as he was obliged to do as he approached the track, there can be no question but that he would have seen the train at Rosedale in time to have saved himself from harm. The top of the bank is fourteen feet from the rail, and at this point it seems manifest he could have seen the approach of the train. If, however, the extent of the bank made it impossible for him to see until he had passed beyond the point of the top thereof, then all the more reason for his looking after passing that point in order that looking might be effective and save himself from harm. If the testimony of Mrs. Sooy is to be believed the deceased came to a dead stop at a point when the horse's head was eight feet from the track. At this point there can be no doubt that the driver could have seen up the track to Rosedale had he looked. Assuming that he did look and there was no train between him and Rosedale, then he certainly had sufficient time to drive over before being struck.

The inevitable conclusion must be that he did not look at a point where looking would have been effective. The description of the conduct of the deceased, as given by Mrs. Sooy, indicates confusion or loss of control of the horse. The following cases deal with the question of care to be exercised while approaching a railroad crossing:

Winter v. N. Y. & L. B., 66 Law 677.

Cantrell v. Erie, 64 Law 277.

Conklin v. Erie, 63 Law 338.

Diele v. Erie, 56 Atl. 156.

II.

IT WAS ERROR TO ADMIT IN EVIDENCE THE ENCYCLOPEDIA OF LAW TO PROVE THE MORTUARY TABLES.

There was no evidence in the case to prove the probable length of life of the deceased, and the undertaking was to prove the same by the offer of Volume 20 of the "American and English Encyclopedia of Law," second edition, page 885, which it was said contained the Carlisle Mortuary Tables. Cross examination of the witness who produced the book discloses that he had no means of knowing how the result, as displayed in the tables, was arrived at, or anything to show that the tables, as printed, were a correct copy of the Carlisle table.

We do not maintain that the Carlisle table of mortality is not admissible in evidence for the purpose of showing the probable expectancy of human life, but our insistence is that the authenticity of the paper should be established by satisfactory proof, and that this was not done in the case in hand.

See *Camden and Atlantic Railroad Company v. Williams*, 61 *Law*, 646.

In the cited case the court said "of course the authenticity of the paper produced as the table should be established by proof satisfactory to the court as by a witness familiar with it and with its use. There was no such proof in the case in hand, but both the exception and the assignment of error admit authenticity, and there is no complaint now on that score."

If then the table, as offered in the case in hand, was not established by satisfactory proof it was legal error to admit it over objection. An examination of the testimony will disclose that the witness had no knowledge whatever concerning the subject matter, but assumed because he found what purported to be the table printed

in the American and English Encyclopedia of Law, it afforded sufficient proof of the table's, themselves.

The book was not admissible for the further reason that as a matter of fact it does not exhibit the Carlisle Table. On the contrary, at page 885 it exhibits "a table of mortality based on American experience." On page 886 of the book there is a heading, "Expectation of life by Carlisle Tables from birth to ten years of age." What follows on that page limits itself to persons of ten years of age and there is nothing from which the jury could have found the probable expectancy of life of the deceased, because he was above the age of ten years. It will thus be seen that the book did not prove even what the witness claimed it proved, and it was, therefore, error to admit it as tending to make such proof.

III.

IT WAS ERROR TO PERMIT COUNSEL FOR THE PLAINTIFF TO DISCUSS BEFORE THE JURY THE QUESTION OF THE NON-EXISTENCE OF GATES AND A FLAGMAN AT THE CROSSING.

The case is barren of evidence touching the existence or non-existence of gates and a flagman at the crossing at the time of the accident. The declaration makes no claim that the crossing was unusually dangerous or that its existence imposed upon the defendant any higher degree of duty than that required by statute to blow a whistle or ring a bell. There is nothing in the declaration to bring the case within those which permit a jury to say if the company ought not under the circumstances to have done more than simply comply with the statute, nor does the proof, we think, justify the leaving of such a question to the jury. *Holmes v. P. R. R., ubi supra*. In this situation counsel for the plaintiff, in his argument to the jury (pages 155 and 156), was permitted to argue over objection that the crossing

was an unusually dangerous one, and that there was no gateman, and that there were no gates nor a flagman at the crossing. The learned justice, who tried the cause, overruled the objection and sealed an exception. The question for decision is first, did the fact that there was no evidence touching the existence of gates and a flagman warrant an argument that none existed, and if not, did such argument over objection legally prejudice the defendant company?

Our submission is that there was no warrant to assume that there was no flagman or no gates at the crossing. To argue that the crossing was unusually dangerous, and that the company ought to have had gates or a flagman, which it did not have, is clearly prejudicial, and the court having sustained the argument makes manifest error against the defendant.

In *Abbott's Trial Brief, Civil Trials, Second Edition, page 399*, we have this principle enunciated: "If counsel states as facts matters which are not in evidence, or uses language calculated to humiliate and degrade the adverse party without foundation in the evidence, or language calculated to arouse prejudice in the jury, irrelevant to the case, the adverse party may interpose, and if the court fail or refuse to check the abuse an exception lies."

The same principle is enunciated in *Blackman v. West Jersey and Seashore Railroad Company, 68 New Jersey Law, page 1*.

For these reasons we respectfully submit the judgment be reversed.

THOMPSON & COLE,

Attorneys for Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ROSARIO NOTTO, Admr.,	}	IN TORT.
Plaintiff and Defendant in Error,		
vs.		
ATLANTIC CITY RAILROAD COM- PANY,		
Defendant and Plaintiff in Error.		

BRIEF OF ANDREW J. KING and CARROW & KRAFT,
Attorneys of Defendant in Error.

The fourth assignment of error which relates to the refusal of the Court to direct a verdict for the defendant will be answered first.

This was a suit under the Death act. The decedent left four infant children, the oldest of whom was, at the time of the trial, eleven years of age, and the youngest two years of age. The verdict was for \$2,500.

Semino Notto and his wife were both killed on August 25th, 1905, while attempting to cross defendant's tracks at the Thirteenth street crossing, in Hammonton,

New Jersey, by an express train which Engineer Stolzberger (page 108) said made the run from Camden to Hammonton, a distance of 28 miles, in 24 minutes, and also ran a mile before it could be stopped after the accident.

The street along which decedent was driving was in a cut six feet below the adjoining lands and on the top of the embankment along the northerly side of Thirteenth street there was a dense growth of corn from six to eight feet high, which extended to within twenty-three feet of defendant's railroad tracks, and that upon defendant's right of way to within twelve feet of its tracks there was a growth of high Indian grass, brush and blackberry vines to the height of about three feet. Defendant's right of way extended thirty feet from the center line between its two tracks. Decedent was unable to see a south bound train until he was within ten or eleven feet of the crossing. In consequence of the cut and growing corn on top of the embankment and Indian grass and bushes on the right of way on the side of the embankment, an approaching south bound train could not be seen until within ten or eleven feet of the crossing, and then the horse would be almost on the track. These facts are made out by Charles S. King (p. 21, &c.); Jennie Notto (p. 48); Rosario Notto (p. 65, &c.); Antonio Battaglissa (p. 75); Benjamin Foglietta (p. 82); Louis Rosett (p. 88), and D. Campella (p. 94). Joseph Garten, a witness called for the defense (p. 31), also testified to these facts.

Decedent and his wife were seated in an open farm wagon drawn by a gentle horse and in approaching the crossing he stopped twice within twenty feet of the tracks

and appeared to be looking and listening for an approaching train, and neither seeing nor hearing any train or any signal of any train (the statutory signals not being given for the crossing) he attempted to cross the railroad when he was struck and killed. These facts are made out by Mrs. Chalkley Sooy (p. 10-16); A. Battaglissa (p. 76).

In *Weston vs. Penna. R. R. Co.*, 65 *Atl. Rep.*, 1015, the Trial Court directed a verdict for the defendant, on the ground that the plaintiff was guilty of contributory negligence.

Mr. Justice Fort, speaking for this Court on error, said: "We are unable to agree with the view taken by the learned Trial Justice. We think the case was for the jury. The learned Justice seems to have overlooked the fact that, in cases where there is a divergence in the testimony relative to the circumstances under which the accident occurred, the Court may not determine the issue by considering the probabilities of the case and the weight or credibility of the evidence. If there be evidence upon which reasonable minds may differ as to whether the defendant was negligent or the plaintiff guilty of contributory negligence, the case cannot be taken from the jury. *McLean vs. Erie R. R. Co.*, 69 *N. J. Law*, 57; 54 *Atl. Rep.*, 288; affirmed, 70 *N. J. L.*, 337; 57 *Atl. Rep.*, 1132. The proof in this case made it clear that at the crossing in question the railway right of way ran through a cut from eight to twenty feet in depth in the direction from whence the train approached the crossing at which the plaintiff, Mrs. Weston, was hit. It also appeared that upon the right of way of the defendant on the bank along the cut there had been allowed to grow trees and shrubbery.

All the evidence goes to show that a view of the track can only be obtained when a traveller in a carriage is within less than thirty-five feet from the tracks.

Judgment reversed, and a *venire de novo* ordered.

In *Goldboro vs. Central Railroad Co.*, 31 *Vr.*, 50, the Court said:

“The plaintiff was driving in an open wagon on a public road which approached the railroad crossing at about an angle of twenty degrees, and as his horses reached the track they were struck by a locomotive and killed, his wagon was thrown to one side and the plaintiff injured. The wagon road approached and entered upon the tracks on a down grade with banks on either side. The railroad tracks were also on a down grade, between banks on either side to a considerable height. Upon the apex thus formed there were growing some pine trees or bushes which, to some extent, obscured the vision. The train came from the plaintiff’s right, somewhat towards his back.”

Held, that the case was properly submitted to the jury.

“If a steam railroad company creates extraordinary dangers at a highway crossing it must use extra precautions to give notice of approaching trains.”

Hires vs. Atlantic City R. R. Co., 37 *Vr.*, 31.

“In an action where the gravamen is the negligence of the defendant, on a motion to non-suit on the ground of contributory negligence of the plaintiff, or the plaintiff’s intestate where death ensues, the contributory negligence must clearly appear as a conclusion of fact, or by neces-

sary exclusive inference, from the proof which is adduced by the plaintiff.

"No presumption of negligence in the decedent arises in any such action from the mere occurrence of the accident. The facts and circumstances as the basis for a non-suit must be of such probative force in the evidence of the plaintiff that contributory negligence so conclusively appears as to exclude any other legitimate inference or conclusion. The facts and circumstances, where they are of doubtful import and difficulty arises as to the solution of the question whether contributory negligence exists or not, are for the consideration and determination of the jury."

Penna. R. R. Co. vs. Middleton, 28 Vr., 155.

In view of the facts and law the Court very properly refused to direct a verdict for the defendant in this case.

II.

The first and second assignments of error relate to the admission of testimony regarding the decedent's earning capacity.

Decedent was a small farmer engaged in the growing of fruit and berries and, like about three-fourths of the farmers, kept no books. His children were entirely too young to know anything on the subject, and outside of himself his wife was probably the only person who had any actual knowledge as to his income, but unfortunately she, too, was dead, so resort was had to the best evidence of which the case would permit, namely, the value of decedent's crops in the market and the profits arising there-

from. This testimony was not only given by well qualified witnesses, but it was perfectly competent under the circumstances of the place; for, in determining the legality of testimony, justice should not be thwarted by any rules of evidence so technical as to be inconsistent with practical knowledge and human experience.

The amount of the verdict is a sure indication that defendant was not injured by any evidence of the plaintiff relating to decedent's earning capacity, for it is almost impossible to conceive that a sober, able-bodied white man, forty-four years of age, working every day, either on his farm or as a day laborer, would not be worth more than \$2,500 to his next of kin.

III.

The third assignment of error is based upon the admission (p. 100) of the Carlisle Mortuary Tables, as found in the 20th volume of the Encyclopaedia of Law (2d Ed.), p. 885.

This Court, in *Camden and Atlantic Railroad Company vs. William*, 32 Vr., 647, in discussing the admissibility of the Carlisle Mortuary Tables, said:

"It is common knowledge that approved mortuary tables are in constant use to aid in determining the probable expectancy of human life. They are derived from statistics preserved through a course of years, and have become standard by the test of subsequent experience. The courts have almost universally availed themselves of help from these sources when expectancy of life became involved in a judicial proceeding. * * * Among mortuary tables, those known as the 'Carlisle Tables of Mortality' stands pre-eminent.

"Held, that the Carlisle Table of Mortality may be assumed to be a standard table and is evidential, irrespective of the condition of health of the person whose expectancy of life is the subject of inquiry."

The book offered in evidence is a standard work of authority, recognized by our courts, and was evidential upon its bare production.

The admission of the book was fortified by the testimony of Mr. Carrow, who (p. 99) testified that the book contained the Carlisle Mortuary Tables.

In the fifth assignment of error learned counsel mistakenly assumes that there was no evidence that defendant failed to provide gates or flagmen at the crossing in question, but it will be observed that defendant put in evidence three photographs to show the actual physical condition of the crossing (p. 102); besides, Witness Husted (p. 143) and Witness Bakely (p. 122) testified to the situation in regard to what they saw at the crossing a short time after the accident, and as all of the evidence of the case failed to show either gates or flagmen, counsel was fully justified in assuming that they had not been provided by the defendant.

Respectfully submitted that the judgment should be affirmed.

ANDREW J. KING and
CARROW & KRAFT,
Attorneys for Defendant in Error.

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N. J. Court of Errors & Appeals

ROSARIO NOTTO, Admr., &c.,

Defendant in Error,

vs.

ATLANTIC CITY RAILROAD Co.,

Plaintiff in Error.

CASE.

CARROW & KRAFT,
Attorneys of Defendant in Error.

THOMPSON & COLE,
Attorneys of Plaintiff in Error.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

NEW JERSEY, SS.

[SEAL.] The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature, Greeting: 10

For as much as in the record and proceedings, and also in the giving of judgment in a certain plaint which was in our said Supreme Court of Judicature, before you, between Rosario Notto, administrator of Semino Notto, plaintiff, and Atlantic City Railroad Company, defendant, in an action in tort, manifest error hath intervened, to the great damage of the said defendant, as it is said; we being willing that the error, if any there be, should in due manner be corrected and full 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 proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the fourth Tuesday of May next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error what of right and according to the law and custom of the State of New Jersey ought to be done. 20

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the 13th day of May, nineteen hundred and seven. 30

S. D. DICKINSON,
Clerk.

THOMPSON & COLE,
Attorneys.

The answer of William S. Gummere, Chief Justice, within named.

The record and proceedings of the plea whereof mention is within named, with all things concerning the same, to the Court of Errors and Appeals in the last resort in all causes within specified, at the day and place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded.

WILLIAM S. GUMMERE,
Chief Justice.

10

NEW JERSEY SUPREME COURT.

	ROSARIO NOTTO, Admr., &c., of	}	
20	SEMINO NOTTO, deceased,		IN TORT.
	vs.		ON POSTEA.
	ATLANTIC CITY RAILROAD COM- PANY.		

ANDREW J. KING and HOWARD CARROW,
Attorneys.

30

As yet of the twenty-ninth day of November, in the year of our Lord one thousand nine hundred and five.

Witness, WILLIAM S. GUMMERE, Esq., Chief Justice.

WM. RIKER, JR.,
Clerk.

ATLANTIC COUNTY, SS.

The Atlantic City Railroad Company (a corporation of the State of New Jersey), the defendant in this suit, was summoned to answer unto Rosario Notto, administrator of all and singular the goods and chattels, rights and credits, moneys and effects, which were of Semino Notto, deceased, who died intestate, the plaintiff herein, of a plea in an action of tort, and thereupon the plaintiff, by Andrew J. King and Howard Carrow, his attorneys, complains for that whereas, the said defendant, before and at the time of the commission of the grievances hereinafter mentioned, was the owner and possessor and had the management and control of a certain steam railroad, with its tracks, locomotives and cars, extending from the city of Camden, in the county of Camden and State of New Jersey, through the town of Hammonton, in the county of Atlantic and State of New Jersey, to Atlantic City, in the county of Atlantic aforesaid, occupied and operated by the defendant for the conveyance and re-conveyance of passengers and freight, for hire and reward, between said terminals and intermediate points. 10

And whereas, before and at the time of the commission of the grievances hereinafter mentioned, to wit, on the twenty-fourth day of August, 1905, there was and still is a common and public road, street or highway in the town of Hammonton, and county of Atlantic, and State of New Jersey, called Thirteenth street, for all persons to travel, pass or repass, with horses, wagons, carriages and the like. 20

And whereas, the said Semino Notto, in his lifetime, to wit, on the day and year last aforesaid, seated in a certain wagon or carriage drawn by one horse, which said horse and wagon was the property of him, the said Semino Notto, was riding on and along said Thirteenth street, and was lawfully, carefully and cautiously and without negligence crossing the tracks of the said defendant at a point where said Thirteenth street crosses 30

said railroad tracks in the town of Hammonton aforesaid, nevertheless, the said defendant so carelessly, negligently and improperly drove, governed and directed a certain locomotive and cars on said track that by and through the carelessness, recklessness and negligent conduct of the said defendant, by its servants in that behalf, the said Semino Notto, and the said horse and wagon in which said Semino Notto was seated, was then and there struck by said locomotive with great force and violence, and said Semino Notto was then and there killed, and said horse was then and there killed, and said wagon or carriage entirely demolished and destroyed.

10

And the said plaintiff further avers, that on the eighth day of September, A. D. nineteen hundred and five, at Mays Landing, in the county of Atlantic aforesaid, administration of all and singular the goods and chattels, rights and credits, which were of Semino Notto, deceased, at the time of his death, who died intestate, was granted in due form of law by Emmanuel C. Shaner, Surrogate of said county of Atlantic, to said Rosario Notto, the plaintiff, and which said letters he brings here into Court, and the said Semino Notto left him surviving and still living the following next of kin, to wit, Katie Notto, Philip Notto, Carmilla Notto and Mattie Notto, his children.

20

And the said plaintiff brings this suit for the benefit of said next of kin of the said Semino Notto, deceased, under and according to the provisions of an act entitled, "An act to provide for the recovery of damages in cases where the death of a person is caused by wrongful act, neglect and default," approved March third, eighteen hundred and forty-eight, and the several acts supplementary thereto and amendatory thereof.

30

And the plaintiff avers that he is damaged by said wrongful act, commission and negligence of the said defendant; that the said next of kin have sustained great pecuniary loss and damage and injury, resulting from

the said death of the said Semino Notto, all to the plaintiff's damage, ten thousand dollars.

And therefore he brings his suit.

Now comes defendant, Atlantic City Railroad Company, by Thompson & Cole, its attorneys, and says that it is not guilty of any of the trespasses or acts laid to its charge in the declaration of the plaintiff, and of this it puts itself upon the country.

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

And now, at this day, to wit, the seventh day of November, A. D. nineteen hundred and six, before our said Supreme Court, at Trenton, comes the said plaintiff by his attorneys aforesaid, and the Justices before whom, etc., having first sent hither his record had before him in these words, to wit: 20

Afterwards, to wit, at a Circuit Court holden at Mays Landing, in and for the county of Atlantic, before Honorable Thomas W. Trenchard, one of the associate Justices of the Supreme Court, on the tenth and eleventh days of October, A. D. nineteen hundred and six, according to the form of the statute in such case made and provided, comes as well the said plaintiff as the said defendant by their respective attorneys within mentioned and the jurors of the jury between the parties aforesaid, in the plea aforesaid, being also summoned, come, who to speak the truth of the matters and things within contained, being chosen, tried and sworn, say upon their oath that the said defendant is guilty in manner and form as the said plaintiff hath in the said declaration alleged, and they assess the damages of the said plaintiff by reason thereof, over and above the costs and charges 80

by him about his suit in this behalf expended, at the sum of two thousand and five hundred dollars, and for those costs and charges six cents.

Therefore, it is considered that the said plaintiff do recover against the said defendant his said damages by the Court in form aforesaid found to two thousand and five hundred dollars and also sixty-two dollars for his costs and charges aforesaid, by the Court now here adjudged to the said plaintiff and with his assent, which
 10 said damages, costs and charges in the whole amount to two thousand and five hundred and sixty-two dollars.

Judgment signed this seventh day of November, A. D. nineteen hundred and six.

WM. S. GUMMERE,
 C. J.

20 I. WILLIAM RIKER, JR., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof, I have set my hand and the seal of said Court, at Trenton, this eighteenth day of May, A. D. nineteen hundred and seven.

[SEAL]

WM. RIKER, JR.,
 Clerk.

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NEW JERSEY SUPREME COURT.

ROSARIO NOTTO, Administrator,	}	IN TORT.	10
&c.,			
vs.	}		
ATLANTIC CITY RAILROAD COM-			
PANY.			

TESTIMONY.

Before Honorable Thomas W. Trenchard, Judge, and jury.

Appearances :

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For plaintiff, A. J. KING, ESQ.; MESSRS. CARROW & KRAFT.

For defendant, MESSRS. THOMPSON & COLE.

MRS. CHALKLEY SOOY, sworn.

Direct examination.

30

By Mr. Carrow :

Ques. Where do you reside, Mrs. Sooy?

Ans. Thirteenth street.

Ques. Now you live on Thirteenth street, in Hammon-
ton?

Ans. Yes, sir.

Ques. Did you live there last August?

Ans. Yes, sir.

Ques. Do you live alone or are you married?

Ans. I am married.

Ques. What is your husband's name?

Ans. Chalkley A. Sooy.

Ques. Chalkley A. Sooy?

Ans. Yes, sir.

Ques. How long have you resided in Hammonton?

10 Ans. I have resided in Hammonton seven years last September.

Ques. Did you know Semino Notto?

Ans. Only by seeing him pass the house. I never spoke to the man.

Ques. You knew him by sight?

Ans. Yes, sir.

Ques. Now, do you remember the date of the accident?

Ans. Yes, sir.

Ques. When was it?

20 Ans. On the twenty-fourth day of August last, in last year.

Ques. You mean 1905?

Ans. Yes, sir.

Ques. Where were you when it occurred?

Ans. I was standing on the road, out on the road, waiting for my family to come home to supper.

Ques. On the road in front of your dwelling house?

Ans. Yes, sir.

Ques. How far is that from the railroad tracks?

30 Ans. It would be about between thirteen and fourteen rods, as far as I know.

Ques. Which way were you looking?

Ans. I was looking up towards the Reading road.

Ques. The Reading Railroad?

Ans. The Reading Railroad.

Ques. Now, did you see anybody?

Ans. I saw these Notto folks.

Ques. Semino Notto?

Ans. Yes, sir.

Ques. And his wife?

Ans. And his wife.

Ques. What were they in?

Ans. They was in a kind of farm wagon, I call them.

Ques. How far were they—what street were they on?

Ans. Thirteenth street.

Ques. Were they coming towards you?

10

Ans. Yes, sir.

Ques. How far were they from the railroad tracks when you first saw them?

Ans. From the side he was killed about twenty feet, as far as I know.

Ques. When you first saw them?

Ans. Yes, sir.

Ques. What was he doing when you first saw him?

Ans. He was pulling this way with his horse.

Ques. Stopping his horse?

20

(Objected to.)

Ques. What do you mean by "pulling this way"?

Ans. Trying to pull his horse back was what I seen, and then he started on. He looked up and looked down four or five times, and he started and stopped again, but he kept on going this way with his lines.

Ques. What do you mean "by going that way"?

Ans. Pulling his horse back, I suppose.

Ques. What did you see him doing when you first saw him pulling his horse back?

30

Ans. I saw him walking with his horse towards the road, railroad, and I saw him go this way, and I saw him look up and look down four or five times, and then he walked on and looked up and looked down, and then he started to pull up again, pull up with his horse again,

and I stood there and looked, and then I was going to say to a friend I had visiting, "What is the matter with that man—"

Ques. Never mind your friend.

Ans. I was going to make a remark because I had no one else to make it to.

Ques. Just leave that out, please. What happened to him then?

10 Ans. He was killed. An express came down and killed him. Didn't kill him instantly, but killed his wife instantly.

Ques. How near was he to the tracks when he first did that, pulled up his horse and looked?

Ans. About twenty feet the first time.

Ques. The first time?

Ans. Yes, sir.

Ques. Where was he the second time?

Ans. He was nearer. He had walked on a little and then he stopped and pulled up again and looked up and looked down.

20 Ques. Between the twenty feet and the railroad?

Ans. Yes, sir.

Ques. Well, now, was the express train within sight or within hearing?

Ans. I didn't hear it at all.

Ques. Was it within sight?

Ans. I didn't see it at all until I seen it when it struck the folks.

Ques. Did you hear any whistle or bell rung?

Ans. No, sir; I didn't hear the whistle blown?

30 Ques. Or bell rung?

Ans. No, sir.

Ques. For that crossing?

Ans. No, sir.

Ques. You say that no whistle was blown or bell rung. What do you say in regard to that?

Ans. I said that I didn't hear the whistle blown.

Mr. Cole: I object. He asked the witness whether she heard the whistle blown or bell rung, and she says no, and then he asked her, "Was the whistle blown or bell rung?" I submit to the Court he should ask what she saw or heard.

The Court: With respect to a matter of this sort counsel should refrain from leading. The question in hand, however, does not seem to me to be leading. You may proceed.

10

(Question and answer repeated.)

Ques. What did you do when you saw the crash; what did you do?

Ans. I said, "I wonder what is the matter. All the folks have disappeared," when the express went by.

Ques. What do you mean by "all the folks have disappeared"?

Ans. The people I seen coming down Thirteenth street, Notto and his wife.

30

Ques. Had disappeared?

Ans. Yes, sir.

Ques. Well, did you see them?

Ans. I didn't see them after. I didn't go near the railroad because I didn't go on account of my condition, pregnant.

Ques. You were pregnant at the time?

Ans. Yes, sir.

Ques. Do you know what the condition was in the cornfield alongside of Thirteenth street?

30

Ans. Well, the corn what I seen was high.

Ques. How near did that come to the railroad, do you know?

(Objected to on the ground that the actual measurements should be produced. Question allowed.)

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

THOMAS W. TRENCHARD, [SEAL]
J. S. C.

(Question repeated.)

Ques. I mean the corn.

10 Ans. The corn? Well, three or four feet, I should think.

Cross-examination.

By Mr. Cole:

Ques. Mrs. Sooy, do you think you have a very good idea of distances?

Ans. I haven't a very good idea of distances. I never bother about them.

20 Ques. How far would you think it was across this room?

Ans. From my house to the railroad?

Ques. No, across this room here. How many feet do you think it is across this room?

The Court: From that wall to that wall.

Ans. How many feet, do you say?

Ques. Yes.

30 Ans. About forty feet.

Ques. This corn that you saw, was it on the top of the bank or at the bottom of the bank?

Ans. On the top of the bank.

Ques. How far did the bank begin from the nearest rail of the track on which the train was? How far was it from the nearest rail of the track on which the train was coming?

Ans. Well, about three or four feet.

Ques. From the nearest rail to the beginning of the bank?

Ans. Yes, sir.

Ques. Did that bank slope or was it straight up and down?

Ans. It is kind of a straight bank.

Ques. You are quite clear about that, are you, that it was straight?

Ans. As far as I saw it, yes.

Ques. Did you see a telegraph pole on the top of the bank? 10

Ans. I can't answer that question.

Ques. You don't remember seeing the telegraph pole?

Ans. I don't remember seeing it. It might have been there, but I don't remember it.

Ques. Do you remember seeing a sign post on the highway, Thirteenth street, "Look out for locomotive," or, "Stop, look and listen"?

Ans. Yes, sir.

Ques. Which side of the railroad track was that on, the side from which Notto was coming or on the side where you were standing? 20

Ans. There was one on the side where I was standing.

Ques. Was there one on the other side?

Ans. I just can't tell you that, either.

Ques. Don't you know whether there was a sign board on the side of the track coming from Folsom? He was coming from the direction of Folsom, wasn't he?

Ans. Yes, sir.

Ques. Wasn't there a sign post of the railroad company on that side of the railroad? 30

Ans. I can't answer that question.

Ques. How long have you been living there?

Ans. I have lived there four years, but I never bothered to go to the railroad.

Ques. Don't you ever use Thirteenth street?

Ans. Towards town I do.

Ques. Never use it towards Folsom?

Ans. Not much.

Ques. Now, which side of Thirteenth street do you live on? That is, are you towards Atlantic City or towards Camden?

Ans. Towards Camden.

Ques. Is your house directly on Thirteenth street?

Ans. Goes back a little.

10 Ques. Back off of the road?

Ans. Yes, sir.

Ques. What time of day was it that this train came along?

Ans. Between fifteen and twenty minutes to six.

Ques. Were you standing right out in the highway?

Ans. Yes, sir.

Ques. And how far were you standing on Thirteenth street from where Notto was when you say he was twenty feet from the track?

20 Ans. Well, between fourteen rods.

Ques. Fourteen rods?

Ans. Yes, sir.

Ques. How many feet do you understand there are in a rod?

Ans. Sixteen.

Ques. Sixteen feet. And you say you were how many rods?

Ans. Fourteen.

Ques. Do you know where the Pennsylvania Railroad tracks are?

30 Ans. Yes, sir.

Ques. How far is it from the Reading Railroad tracks to the Pennsylvania Railroad tracks?

Ans. Why, I should think nearly thirty rods.

Ques. Are you between the Reading and Pennsylvania tracks?

Ans. Yes, sir.

Ques. Are you nearer the Pennsylvania tracks or nearer the Reading?

Ans. I am nearer the Reading.

Ques. How far is it from the near rail of the track toward where you were standing and the near rail of the track to which Notto was approaching? Do you understand that?

Ans. I was further from the railroad than Notto was.

Ques. You were further from the railroad than Notto was?

Ans. Yes, sir. 10

Ques. When you first saw Notto?

Ans. Yes, sir.

Ques. When you first saw Notto, you were further than he was?

Ans. Yes, sir.

Ques. He was walking his horse?

Ans. Yes, sir.

Ques. The wagon was an open one?

Ans. Yes, sir.

Ques. What kind of a day was it? 20

Ans. About another day like to-day.

Ques. Clear day?

Ans. Yes, sir.

Ques. You didn't see this train?

Ans. No, sir.

Ques. Until it struck?

Ans. No, sir; I didn't.

Ques. Were you looking up towards Rosedale?

Ans. No, sir; I was looking up towards Folsom road.

Ques. How far is it from Thirteenth street crossing to Rosedale? 30

Ans. Thirteenth street crossing to Rosedale?

Ques. Yes.

Ans. I don't know.

Ques. You know where Rosedale is?

Ans. Yes, sir.

Ques. Is the track of this company at Thirteenth street and as it goes towards Camden straight or crooked?

Ans. The track of the Reading?

Ques. Yes.

Ans. There is what they call Nivison's Hill there.

Ques. Is the track straight? Does it run straight or crooked?

Ans. It runs straight.

10 Ques. How far does that track run straight from Thirteenth street crossing towards Camden before it turns or becomes crooked?

Ans. I don't know.

Ques. Well, doesn't it run straight as far as Winslow Junction?

Ans. I don't know; couldn't tell you.

Ques. Have you ever ridden over that road?

Ans. Yes, sir.

Ques. How long was it that you were over the road?

Ans. It has been a year since I was on the Reading road.

20 Ques. You were on over a year ago?

Ans. Yes, sir. You mean by train?

Ques. Yes.

Ans. Yes; over a year.

Ques. You didn't hear any whistle that day?

Ans. No, sir.

Ques. None at all?

Ans. I didn't hear it.

Ques. Didn't hear any bell?

Ans. No, sir.

30 Ques. You were near enough, I suppose, to hear a whistle if one had been blown?

Ans. Yes, sir. I can hear a whistle when I am in the house, even.

Ques. And you didn't hear any at all?

Ans. No, sir.

Ques. How far had the horse gotten on the track on which the train was before it was struck?

Ans. I couldn't tell you, because I told you I wasn't near the track. I didn't leave the front of my house.

Ques. Then you weren't able to see very well?

Ans. Yes, sir; I could see.

Ques. Were you able to see very well what took place at the crossing?

Ans. Yes, sir.

Ques. Well, now, I would like to know, if that is so, how far on the track the horse had gotten when it was struck?

Ans. I couldn't tell you. **10**

Ques. On which side of the wagon was Mr. Notto sitting?

Ans. Sitting towards the bank.

Ques. That is towards Camden?

Ans. Towards Camden.

Ques. He was nearest to the train?

Ans. Yes, sir.

Ques. Was he driving?

Ans. Yes, sir.

Ques. And he was on the left-hand side of the wagon driving? **20**

Ans. Yes, sir; as far as I saw of him.

Ques. Well, you saw him, didn't you?

Ans. Yes, sir; I saw him.

Ques. Did any other train pass Thirteenth street crossing while you were looking at Mr. Notto?

Ans. No, sir.

Ques. Now, how far was the horse's head from the nearest rail of the track on which the train was when Mr. Notto stopped? **30**

Ans. Well, the second stop when I seen him, twenty feet. I didn't see nothing of him after he made the second move.

Ques. You didn't see anything of him, do you mean, after he stopped at twenty feet from the track?

Ans. I seen him move once after that and look up and look down.

Ques. Did he stop when his horse's head was twenty feet from the track?

Ans. Yes, sir.

Ques. And then he started on?

Ans. Yes, sir; and stopped again.

Ques. Was his horse walking?

Ans. Yes, sir.

Ques. He stopped again?

Ans. Yes, sir.

10 Ques. Where was his horse's head with relation to the near rail when he stopped the second time?

Ans. I think it would be about six or eight feet.

Ques. Then did he drive on?

Ans. He started to drive and I didn't see any more of him.

Ques. But you know that he stopped when his horse's head was within six or eight feet of the rail?

Ans. Yes, sir.

Ques. Came to a dead stop?

Ans. Yes, sir.

20 Ques. Did you then see him look up the track?

Ans. Yes, sir.

Ques. And then he drove on?

Ans. Yes, sir.

Ques. And so far as you know he didn't stop again?

Ans. No, sir.

30 Ques. Have you ever stood on Thirteenth street crossing on the side of the railroad track from which Notto was coming to see how far you could go back from the near rail of the track on which the engine was and see straight up that track?

Ans. Yes, sir; I went over there one day.

Ques. When was that?

Ans. Just after the man was killed.

Ques. Where did you stand? How far were you from the track?

Ans. I was about six or eight feet from the track.

Ques. Stood six feet from the track. Were you in Thirteenth street?

Ans. In Thirteenth street.

Ques. And you stood six feet from the track?

Ans. Yes, sir.

Ques. Which way did you look?

Ans. I looked up towards Camden.

Ques. Could you look up the railroad track?

Ans. Very little.

Ques. What was in your way?

10

Ans. This bank at the time.

Ques. How high is this bank?

Ans. I don't know.

Ques. You say the bank was in the way at times?

Ans. Yes, sir.

Ques. What do you mean by that?

Ans. You couldn't see so very well.

Ques. Could you see at all?

Ans. Yes, I could see about—well, I could see a little way up the railroad track.

Ques. How far could you see when you were six feet away?

20

Ans. About thirteen rods up.

Ques. Did you try it from any other point?

Ans. No, sir; I didn't.

Ques. So you were standing six feet from the near rail of the track looking towards Rosedale, and you couldn't see but thirteen rods. Is that true?

Ans. That is so.

Ques. What was there beyond the thirteen rods that prevented you from seeing further?

30

Ans. I don't know. I didn't take so much notice.

Ques. Why did you go there and stand to take that observation?

Ans. Well, I walked over there because I seen a good many other people going there.

Ques. That is why you went?

Ans. Yes, sir.

Ques. Can you give me the exact date, Mrs. Sooy, that you were there?

Ans. No, sir; I don't think I could.

Ques. Did he appear to be pulling his horse back as he approached this crossing in order to stop the horse?

Ans. Yes, sir.

Ques. Was he still pulling on the horse when you last saw him?

10 Ans. Yes, sir.

Ques. The last thing you saw him doing was pulling his horse as though trying to keep it off the track?

Ans. Yes, sir.

CHARLES KING, sworn.

Direct examination.

20

By Mr. Carrow :

Ques. Where do you reside, Mr. King?

Ans. At Stratford, in Camden county, New Jersey.

Ques. Are you a surveyor as well as a counsellor-at-law?

Ans. I am and have been for twenty-five years.

Ques. Are you familiar with the crossing where the railroad intersects Thirteenth street, in Hammonton?

30 Ans. Perfectly so.

Ques. Were you familiar with it on the twenty-fourth of August of last year?

Ans. I can't say that I was familiar with the details of the exact condition on the twenty-fourth of August of last year. I hadn't been at that particular point for some little time prior to that date.

Ques. Were you raised in that neighborhood?

Ans. I took up my residence in Hammonton when I was nine years old and lived there for over twenty years, twenty-five years.

Ques. Were you familiar with that crossing?

Ans. Perfectly familiar with it.

Ques. Were you familiar with it as it was in August, 1905?

Ans. Yes.

Ques. Now, on the side of Thirteenth street, in the direction of Camden, what is there? **10**

Ans. Thirteenth street is cut. There is a cut on Thirteenth street, and the slope rises quite rapidly southwest-erly from the crossing of the Reading Railway, or Atlantic City Railway.

Ques. What do you mean by a cut?

Ans. The earth or natural level of the soil has been depressed by cutting it out and leaving a bank on either side of the road.

Ques. How high is the bank in the direction of Camden?

Ans. I shall have to refer to my map. **20**

Ques. All right, go ahead.

Ans. I made a survey of this location on the third day of May, 1906, and took the measurements which are indicated on this plan.

Ques. How high is the embankment?

Ans. I find the bank immediately adjacent to the railroad at that point five feet and eight-tenths above the level of the bottom of the railway construction, five feet and eight-tenths, the bank is.

Ques. How near does the bank come to the rails of the railroad? **30**

Ans. You refer to the bottom of the bank or top of the bank?

Ques. Bottom of the bank.

Ans. The bottom of the bank comes within eight feet of the southwesterly rail of the south bound track, the

nearest rail on the southwesterly side, and the top of the bank is distant fourteen feet from the same rail.

Ques. Do you know whether anything was planted on top of this bank in the month of August, 1905?

Ans. I do. Corn stubs of that crop of corn were there when I first visited the spot after the accident occurred.

Ques. What else was there?

10 Ans. The brush that lines the side of the road for some distance from the railway track southwesterly along the side of the road between the track of the road as used and the corn field.

Ques. How high were these bushes?

Ans. From two feet up to quite large trees, twenty feet high, I should judge, and also there was a considerable growth of Indian grass bordering the road and bordering the railroad bank between the corn field and the edge of the bank.

Ques. Did you observe any brush on the railroad bank?

Ans. I did.

20 Ques. How high? Was there much or little?

By Mr. Cole:

Ques. When was this, Mr. King, that you observed that?

Ans. I went there previous to the time I made this survey first. I observed some brush along the railway bank at that time.

Ques. What time was that?

30 Ans. That I can't say, but—

Mr. Cole: I object to this testimony unless it is related to the time of the accident.

Ans. It was shortly after the time of the accident. I can't state a specific date when I first visited the scene of the accident.

(Testimony admitted.)

By Mr. Carrow:

Ques. What about the brush and the Indian grass?

Ans. Most of the brush and the Indian grass had been removed at the time I made this survey, on the third day of May, 1906.

Ques. How do you know it had been removed?

(Objected to as being irrelevant and incompetent to what happened in May, 1906.) **10**

The Court: What was the condition of the top of that bank at the time of the accident is relevant.

Mr. Cole: He is talking of something that happened in May, 1906.

The Court: If it can be shown that since the happening of this accident that brush has been cut down, isn't that relevant? **20**

Mr. Cole: I think not. I object to it.

The Court: I think it is.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

THOMAS W. TRENCHARD, [SEAL.] **30**
J. S. C.

Ques. How do you know that the grass and brush were cut and removed before you made that survey?

Ans. Simply by the statements of those who lived in the vicinity.

Mr. Carrow: Strike that out, then.

Mr. Cole: I will ask your Honor now to charge the jury to ignore that testimony.

The Court: Yes. Gentlemen, you will entirely ignore that testimony. It will be stricken out.

10 Ques. I ask you, then, whether when you made that survey there was any brush or Indian grass on the embankment on the side of the railroad?

Ans. The brush had been removed previous to that time. I noticed the stumps and stubs of the grass where it had been recently cut, and I noticed the—

(Objected to as incompetent and irrelevant. Testimony admitted.)

20 (Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

THOMAS W. TRENCHARD, [SEAL.]
J. S. C.

Ans. —and noticed the Indian grass which had been recently cut.

Ques. How could you tell it had been recently cut?

30 Ans. By the matter of the stumps and stubs. It had been the growth of the previous year and it hadn't been cut long enough to have rotted down to enable me to tell that it had been cut within the last few months, within a period of six months. Further up the railroad track towards Camden northwesterly there still remains some brush and bushes which hadn't been cut and some Indian grass which hadn't been cut on the date of my survey.

Ques. How high were the bushes and how high was the Indian grass?

Ans. From two to three feet high.

Ques. Did you see this particular spot at this crossing in the month of August, 1905?

Ans. I did not.

Ques. Did you see it in the month of September, 1905?

Ans. I can't answer with positiveness as to that.

Ques. In the month of October, 1905?

Ans. It was some time during the month of September or October, if my memory serves me right.

Ques. What did you observe, if you observed anything, with reference to the brush and Indian grass or anything else on the railroad embankment at that crossing?

10

Ans. I observed that it had been recently cut and cleared off.

Ques. Was that in 1905?

Ans. Yes.

Ques. I think you said you observed that when you made the survey?

Ans. I also observed it then. The same condition prevailed both times.

20

Ques. What did you see in the fall?

Ans. I saw the corn stubble where the corn had been recently cut. The crop of the year 1905 had been cut down and the corn stubble remained there, corn stubble of that year.

Adjourned to October 11th, 1906, 10 A. M.

30

MAYS LANDING, N. J., Thursday, Oct. 11th, 1906.

Trial of the cause resumed at 10 A. M.

CHARLES KING, resumed.

By Mr. Carrow:

- 10** Mr. Carrow: At this point I desire to state to your Honor that I have an admission in writing from the defendant that the Atlantic City Railroad Company owned and operated the train which struck the deceased, and that the deceased's death was occasioned by that collision.

I would also at this same time, in order that I may not forget it, introduce the letters of administration that were granted by the Surrogate of this county to Rosario Notto, this plaintiff, upon the estate of Semino Notto.

20

(Letters of Administration marked Exhibit P1.)

Ques. Now, Mr. King, you say you made a map?

Ans. I did.

Ques. Have you the map here?

Ans. The map is there with you.

Ques. That is the map?

Ans. That is the map.

- 30** Mr. Carrow: I offer this map for illustration.

Mr. Cole: Objected to, even for the purpose of illustration.

The Court: I don't think it has been proved yet, Judge Carrow.

Mr. Cole: I object to it on the ground that there are things on that map that are improperly there. It is not such a map as should be permitted to go in evidence, even for illustration.

Ques. What does this map represent?

Ans. It represents the intersection of Thirteenth street and the Atlantic City Railroad, in the town of Hammonton, and the physical conditions immediately surrounding the scene of this accident which caused the death of the— 10

Ques. You are a surveyor?

Ans. I am.

Ques. How much experience have you had?

Ans. Twenty-five years.

Ques. Do you practice your profession as a surveyor yet?

Ans. Yes.

Mr. Carrow: I offer the map for illustration.

30

The Court: It will be admitted for that purpose only.

Mr. Cole: I object to it.

By Mr. Cole:

Ques. You have indicated on this map what you call the cornfield, trees and brush, Indian grass, grass and bushes. You have actually got lines there which I assume are supposed to indicate that? 30

Ans. That is correct.

Ques. Do you pretend to say that what appears on that map concerning the cornfield, grass and bush and Indian grass is put there by a survey, by measurements?

Ans. Each individual corn hill is not placed there according to scale, according to survey. I didn't locate

the individual position of each corn hill. I indicated and illustrated upon the map the general location of that cornfield, and the line along the railroad indicates accurately the relation of the cornfield with the railroad track.

Ques. When was the first day you were there after the twenty-fourth day of August, 1905?

Ans. I can't state with positiveness.

Ques. Did you make a record of it?

Ans. I did not.

10 Ques. Didn't you go there for the purpose of being a witness in this case?

Ans. Not at that time.

Ques. When did you first go there for the purpose of being a witness in this case?

Ans. On the date indicated on that map.

Ques. Which is May 3d, 1906?

Ans. Yes.

Ques. And that was the day your survey was made?

Ans. Yes.

20 Ques. And your survey—that is, what appears on the map, is a result of a survey made on May 3d, 1906?

Ans. Yes.

Mr. Cole: I object, first, that it is an improper map to go to the jury because of this cornfield, Indian grass and so forth representations, and because there is nothing to indicate the same conditions existed at the time of this survey as at the time of the accident.

By Mr. Carrow:

30

Ques. What, if anything, did you discover in the nature of a cornfield at that crossing? I mean, in May, when you made this survey.

Ans. Corn stubble, evidences of the existence of a crop of corn which had been planted there the previous year.

Ques. The corn hills and corn stubble?

Ans. Yes.

Ques. Is that what is represented on this map?

Ans. Yes, sir.

Ques. Is it the corn stubble and the corn hills?

Ans. Yes.

Ques. That you saw when you made the survey?

Ans. Yes.

Ques. Now, with regard to the lines indicating bushes, the line—what do these lines indicate?

Ans. Indicate bushes and Indian grass.

Ques. Did you see the bushes and Indian grass when you made this survey? 10

Ans. I saw many of the bushes and I saw the stubble of the bushes and Indian grass which had been cut immediately adjoining the railroad bank, and those lines are for the purpose of indicating the position of those bushes and stubble which grew at the points indicated on the map.

Ques. Now, can you say from the observation that you made of the grass and bushes that had been cut whether the cutting was recent or old? 20

Ans. The cutting was recent.

Ques. How do you know that?

Ans. From the character of the stubble and the stumps of the bushes.

Ques. How would you determine that?

Ans. Why, by the character of the stumps and stubble.

Ques. You said that before; just give us a few facts.

Ans. Well, grass which has been recently cut leaves a stubble which is intact, which shows the cutting of the scythe or the instrument which has been used in the cutting. If it has been cut for a great length of time, decay will set in and the grass stubble will rot away and leave no evidence, but the grass stubble was there intact and the stumps were fresh, showing that it had been recently cut. 30

Ques. Is that what you meant to illustrate by these lines?

Ans. Yes, and also many of the bushes along up the road southwest from the railroad track along up Thirteenth street, many of these bushes still remain. There are some quite large trees there, fifteen or twenty feet high.

Ques. Mr. King, how far did the cornfield extend down Thirteenth street in the direction of Folsom?

Ans. It extended three to four hundred feet, at least.

10 Ques. Now, with reference to the cut, what was Thirteenth street like in the direction of Folsom?

Ans. Thirteenth street rose. The grade was an ascending one from the railroad track.

Ques. Will you be kind enough to indicate on that map where Thirteenth street is, Mr. King? Where is Folsom?

Ans. Folsom is about three miles from the railroad in a southwesterly direction.

Ques. Now, where is Hammonton?

20 Ans. This is within the town of Hammonton. The depot at Hammonton, the main part of the town, is one-third of a mile from Thirteenth street down this way.

Ques. Where is Thirteenth street?

Ans. These lines indicate the position of Thirteenth street.

Ques. Which way does Thirteenth street run?

Ans. Northeast and southwest.

Ques. Where is Mrs. Sooy's house?

30 Ans. Mrs. Sooy's house is indicated right here upon the map, the first house on the northwest side of Thirteenth street, northeast of the Atlantic City Railroad, distant two hundred and forty-three and four-tenths feet from the south-bound track.

Ques. Where is the city of Camden?

Ans. The city of Camden is in a northwesterly direction, as indicated on the map.

Ques. Where is Atlantic City?

Ans. Atlantic City is in a southeasterly direction.

Ques. How many tracks are there there; railroad tracks?

Ans. Two tracks, south bound and north bound.

Ques. What is the space between the tracks?

Ans. Space between the tracks I think is eight feet; seven or eight feet.

Ques. What is the scale of the map?

Ans. The scale of the map is thirty feet to an inch.

Ques. What is the width of Thirteenth street?

Ans. Fifty feet.

Ques. What is the depth of the cut of Thirteenth street at the railroad crossing? **10**

Ans. I have here a cross section of Thirteenth street at the point where the accident occurred and showing the—

Ques. Leave that out.

Ans. The height of the bank adjacent to the railroad is five feet and eight-tenths.

Ques. At what point?

Ans. Adjacent to the railroad on Thirteenth street.

Ques. How close is the embankment alongside of the railroad tracks? **20**

Ans. The distance from the—

Ques. The beginning of the embankment?

Ans. The distance from the near rail; that is, the southwest rail of the south bound track to the bottom of the bank is eight feet.

Ques. What is the distance from the top of the bank to the railroad?

Ans. Fourteen feet to the same point. In other words, the slope of the bank occupies a space of six feet. **30**

Ques. Do you know the length of a horse?

Ans. The length of a horse, an ordinary horse, is about seven feet to seven and a half.

Ques. How near would a person sitting in a wagon— did you make observations by sitting in a wagon?

Ans. I did. I drove down in an ordinary lumber wagon, farm wagon, from a point from seventy-five to

a hundred feet southwest of the railroad on Thirteenth street down to the railroad track for the purpose of making an experimental observation.

Ques. How close would your horse be to the railroad tracks before you could see an approaching train?

Ans. The horse's head would be practically on the rail on the track.

Ques. Before you could see a train coming?

Ans. Before you could get a clear view up and down the tracks in either direction.

10 Ques. Is the railroad straight or curved?

Ans. Straight.

Cross-examination.

By Mr. Cole:

Ques. How far is the telegraph pole on the top of the bank from the nearest rail?

20 Ans. I have the telegraph pole indicated here; twenty-six feet.

Ques. How far is the signal board on the Folsom side of the rail to the nearest rail?

Ans. I didn't indicate the exact position of the signal board.

Ques. One there, isn't there?

Ans. There is one there.

Ques. Why didn't you put that on?

Ans. I overlooked it, I suppose.

30 Ques. Don't you know whether you overlooked it or not?

Ans. Certainly I did.

Ques. Then your map does not correctly represent the situation there?

Ans. It doesn't indicate every tie or every possible object that exists there; no. I didn't conceive that it is necessary to locate the signal board.

Ques. Did you go there and make this survey for the purpose of this suit?

Ans. I did.

Ques. Are you interested in this suit?

Ans. No, sir.

Ques. As a lawyer?

Ans. No; I am not counsel in the case.

Ques. That is not the question. Are you interested as a lawyer in this case?

Ans. No.

Ques. Have no financial interest in the outcome?

Ans. No.

Ques. Your father is the attorney of record, isn't he?

Ans. Yes.

Ques. What significance did you think it would have to put this building on here that is a hundred and forty-five feet, according to your map, southwest of the railroad track, and yet omit a signal board that is near the track?

Ans. The building was an important physical object in the vicinity.

Ques. How far is the building away from the track?

Ans. One hundred and forty-five feet.

Ques. How far is it from—did you make a survey of the distance from Thirteenth street crossing to Rosedale?

Ans. From Thirteenth street to Rosedale?

Ques. Yes.

Ans. I haven't made a recent survey from Thirteenth street to Rosedale.

Ques. Did you make a survey for the purpose of this suit?

Ans. I made this survey.

Ques. Does that show the distance from Thirteenth street crossing to Rosedale?

Ans. Rosedale is a mile from this location.

Ques. Will you note my question, please, Mr. King?

(Question repeated.)

Ans. It does not.

Ques. How far is the track of the defendant company straight towards Camden from Thirteenth street crossing?

Ans. According to my recollection, it is straight to a point near and perhaps beyond Winslow Junction.

Ques. How far is that from Thirteenth street?

10 Ans. Two miles and a half.

Ques. Does this bank finally slope to nothing towards Camden?

Ans. It does.

Ques. How far from Thirteenth street crossing is it that the bank slopes to nothing? Did you survey it?

Ans. I didn't make any measurement of the exact distance.

Ques. Don't tell us, then, because I will have actual measurements. Where did you get your information as to the width of Thirteenth street?

20 Ans. I was formerly a resident of Hammonton and was employed by the Town Council of the town of Hammonton to establish these streets many years ago and an ordinance was passed by the town of Hammonton establishing the width of all streets at fifty feet.

Ques. This bank, then, is in the street, is it?

Ans. Yes.

Ques. How much of the bank is in the street?

30 Ans. The bottom of the bank is within ten feet of the center of the street and the top of the bank is within fifteen feet of the center of the street.

Ques. How far does the bank run back from the railroad towards Folsom in the street?

Ans. In Thirteenth street?

Ques. Yes.

Ans. Why, from the bottom of the bank?

Ques. Yes.

Ans. Fifteen feet.

Mr. Carrow: He didn't understand that. He says, towards Folsom.

Ans. I understand. The bank runs back three hundred and thirty-two feet.

Ques. According to this map—what is there on this map to indicate that the bank slopes?

Ans. The distance between the two black lines as indicated on the map shows the slope of the bank each way along the railroad and along Thirteenth street. **10**

Mr. Cole: Before I ask him another question, there was some controversy about the admission of this map. Did your Honor rule that that map was admitted?

The Court: I admit the map for the purpose of illustration.

Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.) **20**

THOMAS W. TRENCHARD, [SEAL.]
J. S. C.

Ques. When did you make your observation as to the distance you could see the train?

Ans. At the time I made my survey.

Ques. Where was your wagon with relation to the bank on Thirteenth street? **30**

Ans. The wagon was in the middle of the road, Thirteenth street.

Ques. That is, in the middle of the road as of a width of fifty feet?

Ans. Yes, sir.

Ques. How high from the road were your eyes when you made this observation?

Ans. From four to five feet. How high above the ground, you mean?

Ques. Yes. Were you in the wagon?

Ans. I was in the wagon.

Ques. How high is the wagon?

Ans. I should judge the wagon, the side, was about three to three and a half feet, perhaps four.

Ques. How far was it from where you were sitting to your eyes? Perhaps four feet?

10 Ans. Yes.

Ques. Isn't there a distance to your eyes? You were sitting down? What is the distance from your body where you were sitting down to your eyes?

Ans. Probably two feet.

Ques. Then wasn't it six feet?

Ans. It might have been. It was in a low wagon without any springs.

Ques. Did you make your observation all the way along from this point?

20 Ans. I made my observation from a point about seventy-five feet southwest of the railroad down until I could get a clear view up and down the tracks.

Ques. What do you mean by a clear view?

Ans. An unobstructed view.

Ques. Do you mean to say that you couldn't see up and down the track until your horse's nose was near the rail?

Ans. No; I didn't mean to say that.

Ques. What do you mean to say?

30 Ans. I mean to say that I couldn't get a clear vision of the tracks so that I could see up and down the railway track with an unobstructed vision until I arrived at a point where the horse's nose was on the railroad track.

Ques. Now, at what point from the nearest rail of the south bound track toward Folsom could you see up the track at all?

Ans. While in the wagon?

Ques. Certainly. My questions are all confined now to your being in the wagon.

Ans. I measured the distance from that point to the rail and found it to be twelve feet.

Ques. What happened then? What could you see then?

Ans. At a point twelve feet from the—when my body was located at a point twelve feet from the rail I could then get a clear view of the railroad track.

Ques. How far?

10

Ans. As far as the railroad—until the railroad went over the hill.

Ques. How far is it to the point where the railroad goes over the hill?

Ans. Slightly over half a mile; from that to three-quarters of a mile.

Ques. If I were to tell you that it was fifty-seven hundred and eighty feet, by actual measurement, what would you say?

Ans. I should say it was incorrect.

Ques. Have you made a survey yourself?

20

Ans. Of the railroad?

Ques. Have you made a survey yourself of the distance from Thirteenth street to the summit of the hill at Rosedale?

Ans. Yes.

Ques. When did you make such a survey?

Ans. I made such a survey twenty years ago.

Ques. Did you consider it important to make a measurement of the distance from Thirteenth street to the summit of the hill for this case?

30

Ans. No, I did not.

Ques. Now, I want to know at what point, what distance from the nearest rail of the south-bound track, could you see up the track at all towards Winslow Junction?

Ans. Well, if I understand your question, I reiterate that I had to be within twelve feet of the nearest rail in order to get an unobstructed view up the track.

Ques. Then do I understand you to say that you would be no nearer than twelve feet of the nearest rail before you could see up the track at all? Is that right?

10 Ans. You must necessarily understand that as you approach the railroad track your line of vision constantly extends, in a triangular way. You can see a short distance up the railroad track. You can see a few feet up the railroad track when you are back perhaps a hundred feet away.

Ques. Won't you please tell us just how far up the track you could see at these various spaces from the time you began to make your observation until you got to twelve feet from the track?

Ans. I can't make that answer, because I didn't make that measurement.

20 Ques. Your observation, to which you have before referred, was simply to determine the point nearest the rail at which you could see up the track absolutely as far as your eye would carry you? Is that right?

Ans. Before I could get an unobstructed view of the railroad track.

Ques. Did you know this horse that was killed?

Ans. No, never saw it.

Ques. Mr. King, did you see any corn stubble in May, 1906, that was between the telegraph pole and the top of the bank?

Ans. No.

30 Ques. How far do you say the telegraph pole was from the nearest rail?

Ans. Twenty-six feet, I believe I testified. The corn stubble begins along about right along the edge of the telegraph poles. The line of telegraph poles is right in line with the end of the corn stubble.

Ques. So that if any one should get an impression from this map that the corn stubble in May, 1906, or corn in

August, 1904, was between the telegraph pole and the top of the bank, you want to have that impression dispelled?

Ans. I certainly do, because the end of the cornfield towards the railroad, its extremity, was just along about in a line with the telegraph poles, and that pole was twenty-six feet from the nearest rail.

Ques. Anyone with you when you made the observation?

Ans. There were several people there.

Ques. In the wagon?

Ans. No.

10

JENNIE NOTTO, sworn.

Direct examination.

By Mr. Carrow :

Ques. Where do you live, Miss Notto?

Ans. Hammonton.

Ques. What is your age?

Ans. Nineteen years old.

Ques. What is your father's name?

Ans. Rosario Notto.

Ques. Were you related to Semino Notto?

Ans. Yes, sir.

Ques. What relation was he to you?

Ans. He was my uncle.

Ques. Your father's brother?

Ans. Yes, sir.

Ques. Where did he live?

Ans. On Sandy Crossway. That was past Pine road.

Ques. How long had he lived there up to the time of his death?

Ans. About eight years, as near as I know.

20

30

Ques. What age man was he?

Ans. About forty-five.

Ques. Was he a married man?

Ans. Yes, sir.

Ques. Had a wife, had he?

Ans. Yes, sir.

Ques. Had he any children?

Ans. He had four.

Ques. What are the ages of the children?

10 Ans. The oldest was about eleven years old when he left her and the youngest was about two.

Ques. The oldest was eleven and the youngest two. Were they girls or boys?

Ans. Three girls and one boy.

Ques. Are your uncle's children here in the court room?

Ans. Yes, sir.

Ques. What kind of a man was Semino Notto in regard to health, so far as you could notice?

20 Ans. I think he was all right. He was healthy.

Ques. What?

Ans. I think he was healthy.

Ques. What size man was he?

Ans. You mean the height?

Ques. I mean in a general way.

Ans. Over five feet, I think.

Ques. Was he a full-grown, healthy, stout man?

Ans. He was full grown.

Ques. What did he work at?

Ans. Farmer.

30 Ques. Whereabouts?

Ans. At the place where he lived.

Ques. How many acres did he farm?

Ans. He farmed about sixty acres.

Ques. What did he raise?

Ans. He raised fruits; that is, blackberries and raspberries, strawberries, peaches and all sorts of farming, you know, vegetables.

Ques. Was he an industrious man or an indifferent man to his work?

Ans. He was industrious, handy.

Ques. What do you mean by that?

Ans. He could do all kinds of work.

Ques. What do you mean by that?

Ans. He could build a house.

Ques. Carpenter, was he?

Ans. His own carpenter he could do. He didn't go out to work carpenter.

10

Ques. What else did he work at?

Ans. Built up the cellar.

Ques. Masonry?

Ans. Yes, sir.

Ques. What other kind of work did he do?

Ans. All work around the farming.

Ques. Did he do all his own work on the farm?

Ans. Yes, sir.

Ques. Had he any other way to support his family than by work on the farm?

20

Ans. He went to work as a laborer.

Ques. Where did he work as a laborer?

Ans. Wherever he could find a chance to work out.

Ques. Did he build his own house and barn, do you know?

Ans. I don't know if he built his house, but I am sure he built the small house. That wasn't long before he died.

Ques. Well, was he a man that worked all the time or did he loaf part of the time?

Ans. He worked all the time.

30

Ques. What do you mean by that? All the day, or night time?

Ans. Only in the day, of course. He didn't work at night.

Ques. What kind of crops did he raise?

Ans. He raised blackberry crops and strawberries and raspberries.

Ques. What else?

Ans. He raised sweet potatoes and white potatoes, corn.

Ques. Did he raise good crops?

Ans. Yes, sir.

Ques. Did he raise any grapes?

Ans. Yes, sir.

Ques. How many grapes?

10 Ans. I can't exactly tell how many, but I know he could make about twenty barrels of wine, or ten. It depends how the season came.

Ques. What is wine worth a barrel?

Ans. Twenty dollars.

Ques. He could make twenty barrels a year?

Ans. Sometimes he could.

Ques. What could he make off his farm?

(Objected to.)

20 Ques. Are you familiar with farming? You live with your father on a farm?

Ans. Yes, sir; but I don't know much about it.

Ques. Do you know what wages he got as a laborer?

(Objected to.)

The Court: Don't answer if you don't know.

30 Ans. I know he could get a dollar and a half and a dollar and seventy-five.

By Mr. Cole:

Ques. Not what he could get.

Ans. He did that.

Ques. How do you know that?

Ans. I know it because papa used to work at that, too.

Ques. How do you know that he got that?

Ans. He did the same work that papa did.

Ques. How do you know that he got that?

Ans. Didn't I hear them speak about it?

Ques. Heard whom?

Ans. My uncle and father.

Ques. Is that the only way you know it?

Ans. Yes, sir.

10

Mr. Carrow: I won't ask it.

The Court: Strike it out.

By Mr. Carrow:

Ques. Do you know the rate that laboring men get as wages by the day or by the week in the neighborhood of Hammonton?

Ans. I do not.

Ques. Well, how many sweet potatoes would he raise? 20

Ans. I don't know.

Ques. You don't know how many?

Ans. No.

Ques. What was his chief crop; grapes?

Ans. Grapes and blackberries.

Ques. How many blackberries would he raise a season?

Ans. Well, I can't tell you exactly how many he could raise. I know he had good crops.

Ques. As near as you can tell us. 30

Ans. About two hundred and three hundred crates.

Ques. How much were they worth a crate, if you know?

Mr. Cole: I object to this. A man may raise blackberries, but I don't see how the jury can estimate damages on that point.

The Court: I think it is an element.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

THOMAS W. TRENCHARD, [SEAL.]
J. S. C.

10 Ques. Well, I am asking you now what was the market price of these blackberries?

Ans. About two and a half; sometimes three and sometimes three and a half.

Mr. Cole: When?

Mr. Carrow: When they are in season.

Ques. Do blackberries grow in the winter?

Ans. No, sir.

29 Ques. They come in blackberry time, don't they?

Ans. Certainly.

Ques. What are they worth in blackberry time?

Ans. Three dollars, three and a half and sometimes two and a half.

Ques. Do you know that?

Ans. Yes, sir.

Ques. A crate?

Ans. Yes, sir.

Ques. What other kind of berries did he raise?

Ans. Raspberries and strawberries.

30 Ques. How many raspberries would he raise?

Ans. At least I should say about a hundred crates.

Ques. And how much would they be worth in the market at the time when raspberries come in the market, per crate?

Ans. Three dollars.

Ques. Three dollars a crate?

- Ans. Yes, sir.
- Ques. How much did it cost to pick the blackberries?
- Ans. Forty-eight cents a crate.
- Ques. How much did it cost to pick the raspberries?
- Ans. Sixty cents.
- Ques. What other fruits?
- Ans. He had strawberries.
- Ques. How many strawberries would he raise?
- Ans. Well, I should say fifty to seventy-five and a hundred. **10**
- Ques. Crates?
- Ans. Yes, sir.
- Ques. And how much were they worth in the market a crate?
- Ans. Two and a half or three dollars.
- Ques. And how much did it cost?
- Ans. Forty-eight cents.
- Ques. Same price?
- Ans. Yes.
- Ques. Now, what else did he raise? **20**
- Ans. He raised corn.
- Ques. What kind of corn, table corn or horse corn?
- Ans. Horse corn and table corn both, only for the family use.
- Ques. What else did he raise for the family?
- Ans. Beans, tomatoes and of course all kinds of vegetables.
- Ques. The family lived off of the place?
- Ans. Certainly.
- Ques. How many members had he in his family? **30**
- Ans. Five and himself six.
- Ques. He had a wife and four children?
- Ans. Yes, sir.
- Ques. Did all his work himself?
- Ans. Yes, sir.
- Ques. What other kinds of fruit did he raise?
- Ans. He raised peaches.

Ques. How many peaches on an average?

Ans. I don't know.

Ques. What other kind of fruit?

Ans. That is all I know.

Ques. How many peach trees did he have?

Ans. I don't know; I never looked.

Ques. What kind of vegetables did he raise; I mean, to sell?

Ans. I don't know if he sold any vegetables or not.

10 Ques. What did you mean when you said he raised sweet potatoes? Did you say he raised sweet potatoes?

Ans. Yes, sir.

Ques. Well, did he raise them to sell or only to use in the house?

Ans. To use and he sold most of them.

Ques. How many sweet potatoes would he raise?

Ans. I don't know; about a hundred and fifty or two hundred barrels.

Ques. How much were they worth a barrel?

20 Ans. Sometimes they are worth two dollars and sometimes three.

Ques. Sometimes two dollars and sometimes three. He did all the work of planting and gathering these sweet potatoes himself?

Ans. Yes, sir.

Ques. Now, did he have any poultry?

Ans. He had chickens, but he didn't sell any.

Ques. How many horses had he?

Ans. Two.

30 Ques. What kind of a horse was it he had the day he was killed?

Ans. He was a good working horse.

Ques. What size horse?

Ans. I don't know; I can't tell you that.

Ques. Do you know whether he was a young horse or old horse?

Ans. Well, he looked to be young.

Ques. Now how far do you live from this crossing where your uncle was killed?

Ans. About a mile and a quarter.

Ques. In the direction of Folsom?

Ans. Yes, sir.

Ques. Were you at that crossing on the day your uncle was killed?

Ans. I was on that crossing on the same day he was killed.

Ques. When?

10

Ans. In the morning.

Ques. He was killed in the afternoon?

Ans. He was killed in the evening.

Ques. How did you go over the crossing, on foot or in a wagon?

Ans. In a wagon.

Ques. Had you frequently crossed there?

Ans. Yes, sir.

Ques. What was there—if you are seated in a wagon on Thirteenth street going over the railroad, what is there between you and Camden?

20

Ans. A bank.

Ques. On the twenty-fourth day of August, 1905, what was there on top of the bank, if there was anything?

Ans. There was grasses and bushes.

Ques. What else?

Ans. And there was a cornfield.

Ques. How high was the corn in the cornfield?

Ans. Well, I should say about six to eight feet high.

Ques. Was the corn thick or was it thin?

30

Ans. It was thick.

Ques. How high were the bushes?

Ans. About five to seven feet high.

Ques. And where were the bushes?

Ans. Growing on the bank.

Ques. On the bank?

Ans. Yes, sir.

Ques. What else was there besides the corn and the bushes?

Ans. Grass.

Ques. What kind of grass?

Ans. Indian grass.

Ques. How high was that grass?

Ans. About two to three feet high.

10 Ques. Now, what was there growing on the embankment alongside of the railroad in the direction of Camden?

Ans. Grass and small bushes.

Ques. How high were the bushes?

Ans. About three to five feet.

Ques. They were along the embankment alongside of the railroad?

Ans. Yes, sir.

Ques. How far did they extend along the railroad?

Ans. I don't know.

Ques. How near did they come down to the railroad?

20 Ans. About eight feet, I should say.

Ques. In order to see a train approaching that crossing from Camden and being seated in a wagon drawn by a horse, how near would the horse's head have to be to the railroad tracks?

Ans. Well, I couldn't see a train until the horse's nose was right on the railroad track.

Ques. Why not?

Ans. Because there is an embankment on front that in the way.

30 Ques. What else?

Ans. Grasses and small bushes growing on it.

Ques. How much of the time did Mr. Notto work as a day laborer away from his farm, if you know?

Ans. I don't.

Ques. Don't know?

Ans. No.

Ques. I don't mean the exact time, but as near as you can get at it?

Ans. I don't know; I couldn't tell you. He might have worked one month and he might have worked two. I can't tell you.

Ques. Was it in the winter time or in the summer that he worked?

Ans. May be he would work in the spring and in the fall.

Ques. Did you go when you heard of the killing of your uncle and your aunt to see them? **10**

Ans. No, sir.

Ques. You didn't see them?

Ans. I didn't see them.

Ques. You saw them buried, didn't you?

Ans. Yes.

Cross-examination.

By Mr. Cole:

20

Ques. Is your father here, Miss Notto?

Ans. Yes, sir.

Ques. Did your uncle own the farm that he farmed?

Ans. No, he worked on it.

Ques. For whom did he work?

Ans. Well, he had it on contract.

Ques. On a contract?

Ans. Yes.

Ques. With whom was the contract?

Ans. The building association. **30**

Ques. How old is your father?

Ans. He is between forty-five and fifty; I don't know.

Ques. Your father was older than your uncle?

Ans. Yes, sir.

Ques. How do you know he was forty-five, your uncle, at the time of his death?

Ans. I know because he was younger than papa, and papa always used to say he was forty-five.

Ques. When did you hear your father say he was forty-five?

Ans. At the time he died.

Ques. Had your uncle been to your house the day of the accident?

Ans. Yes, sir.

Ques. What time did he get to your father's house?

10 Ans. He was there from two o'clock to half-past five.

Ques. Were you there during the time that your uncle was at the house?

Ans. Yes, sir.

Ques. What was your uncle doing all the time he was at the house?

Ans. Talking. He came down on a visit because we had a sick boy in the house.

Ques. Your uncle had worked on this very railroad, hadn't he?

20 Ans. I don't know. I know sure if he did or not.

Ques. You don't know that your uncle worked for this very railroad?

Ans. I don't know.

Ques. How long had you remembered your uncle?

Ans. Well, I had remembered him about fifteen years old, as near as I could remember.

Ques. Well, do you pretend to be familiar with what he did in the last eight years?

Ans. I don't think I am.

Ques. You are not familiar, are you?

30 Ans. No.

Ques. You don't know that he worked for this very railroad as a laborer keeping the tracks in repair across this crossing?

Ans. Yes; I don't know if he did work or not.

Ques. You said that he worked as a laborer and made a dollar and a half a day. For whom did he work as a laborer and make a dollar and half a day?

Ans. He worked for farmers.

Ques. For whom else?

Ans. On the county road.

Ques. When did he work on the county road?

Ans. I don't know when he did.

Ques. How often did he visit your father?

Ans. Well, he didn't visit very often.

Ques. How often?

Ans. About a month.

Ques. Once a month? How long have you lived where
you are living now? 10

Ans. Well, since I was born I remember living there.

Ques. When your uncle came to see you, he used this
road, didn't he?

Ans. Thirteenth street.

Ques. Did he usually drive to see you?

Ans. Yes, sir.

Ques. How long had he had this horse, to your knowl-
edge?

Ans. I don't know.

Ques. Had he had the horse since you could remember? 10

Ans. He changed horses very often, so I can't remem-
ber if he had had it that long or not.

Ques. You didn't pay any particular attention to this
horse, I suppose?

Ans. No.

Ques. How far was the place where he lived from this
place where the accident happened?

Ans. I don't know. I should think it was about five
miles.

Ques. Now, this price that you have given on fruits— 30
did you ever sell any fruits yourself?

Ans. I didn't sell for myself, but I have been with my
father when he sold them.

Ques. Where did your uncle sell his fruits?

Ans. Shipped them to the markets or sold them in the
town.

Ques. Did you ever see any of the statements that were sent to your uncle showing how much he had received for his fruit?

Ans. No, sir.

Ques. Fruit seasons are sometimes a failure, aren't they?

Ans. Well, they change; yes.

Ques. Blackberry crops and strawberry crops and raspberry crops sometimes fail altogether, don't they?

10 Ans. No. The strawberries come in first, then comes the raspberries and then the blackberries.

Ques. I say, do these crops sometimes fail altogether?

Ans. Sometimes they do.

Ques. Where were you going this day of the accident that you were in the wagon?

Ans. I was going to the doctor.

Ques. What time of the day did you pass?

Ans. It was about ten o'clock in the morning.

Ques. What time did you come back?

20 Ans. About one.

Ques. At that time did you make this observation to see if you could see a train?

Ans. I always did when I was going up that way.

Ques. Were you in an open wagon?

Ans. Yes, sir.

Ques. Do you remember that you made an observation this very day in question?

Ans. Yes, sir.

Ques. Did you stop your horse?

Ans. No; I didn't stop, but he walked.

30 Ques. Any train come along while you were there?

Ans. No, sir.

Ques. How far were you where you sat from the near rail of the south bound track where this accident happened when you took the observation or notice the twenty-fourth of August, 1905?

Ans. How far you mean I sat from the railroad?

Ques. How far were you sitting from the track when you made your observation or notice the twenty-fourth of August, 1905?

Ans. Well, I think it was about from fifteen to twenty feet.

Ques. You were fifteen or twenty feet back of the track and then you could see how far?

Ans. I couldn't see much. I can't tell how far.

Ques. Could you see as far as the summit of the railroad at Rosedale?

10

Ans. Well, I could see that much when the horse's nose was right on the track.

Ques. Now, how far could you see when the horse's nose was two feet from the track?

Ans. I could only see very little.

Ques. How far?

Ans. About a few rods I should say.

Ques. How far could you see when the horse's nose was five feet from the rail?

Ans. I don't know.

Ques. When you gave these prices of fruit, did you take into consideration the freight?

20

Ans. No, sir.

Ques. You have to take the freight out of that?

Ans. Yes, sir.

ROSARIO NOTTO, sworn.

Direct examination.

30

By Mr. Carrow:

The Witness: I had better have an interpreter. I can't talk well.

Mr. Carrow: Well, we will see if you can talk plain enough.

- Ques. Where do you live?
 Ans. Hammonton.
- Ques. How long have you lived there?
 Ans. Twenty years.
- Ques. Twenty years?
 Ans. Yes, sir.
- Ques. What is your age?
 Ans. I am a working farmer.
- Ques. How old are you?
 10 Ans. Fifty years.
- Ques. What do you work at?
 Ans. Work at farming, work in brick yard, work
 anyway.
- Ques. What is that?
 Ans. Work farming and before the farming worked
 in the brick yard.
- Ques. Worked in the brick yard?
 Ans. Yes, sir.
- Ques. What other kind of work have you done?
 20 Ans. Any way, any kind of work.
- Ques. Laboring work?
 Ans. Yes, sir.
- Ques. You are no mechanic, are you?
 Ans. Well, I know some things for myself.
- Ques. Well, now, was Semino Notto your brother?
 Ans. Yes, sir.
- Ques. How old was he?
 Ans. He born '61.
- Ques. In '61?
 30 Ans. Yes, sir.
- Ques. Was he a married man?
 Ans. Yes, sir.
- Ques. Was he a married man at the time of his death?
 Ans. Yes, sir.
- Ques. Did he have any children?
 Ans. Yes, sir; four.
- Ques. How old are they?

Ans. The first one eleven years old and the last one two years old.

Ques. Are they the children, those little children?

Ans. Yes, sir; the last one is on this side.

By the Court:

Ques. How old are these other children?

Ans. Eleven years to two.

Ques. One is eleven years old? Is that a boy or girl? **10**

Ans. Girl.

Ques. What is the next oldest?

Ans. A boy.

Ques. And how old is he?

Ans. The boy ten years old.

Ques. And the next oldest, is that a boy or girl?

Ans. Girl.

Ques. How old is she?

Ans. She four years old. **20**

By Mr. Carrow:

Ques. Where did your brother live?

Ans. Sandy Crossway.

Ques. Is that near Hammonton?

Ans. About four or five miles from Hammonton, about three or four; can't tell sure.

Ques. How near did he live to you?

Ans. Oh, about six or seven miles.

Ques. Didn't live right alongside of you? **30**

Ans. No, sir.

Ques. What did he work at?

Ans. Well, work at farming.

Ques. What else?

Ans. Well, sometime in the winter time when the ground was in frost he work for the day for somebody else.

Ques. Whereabouts did he work?

Ans. Well, any kind of work; he work at carpenter and he built his cellar himself.

Ques. Did he work as a laborer around for other people?

Ans. Yes, sir.

Ques. Did you work with him?

Ans. Yes, sir.

Ques. How much did he get a day?

10 Ans. Well, dollar and a half and dollar seventy-five.

Ques. Was he a strong man?

Ans. Strong man, healthy man.

Ques. How much did he weigh?

Ans. Well, about a hundred and seventy-five pound,
I guess.

Ques. Was he a tall man?

Ans. What do you mean?

Ques. High.

Ans. Yes, sir; about my size.

Ques. About your size?

20 Ans. Yes, sir; more strong.

Ques. Was he a good hard worker or was he lazy?

Ans. He a good strong man, for work better than somebody else.

Ques. How much better was he than somebody else?

Ans. Well, I don't know. I got a good man to work and he get more money than somebody else sometimes.

Ques. What about getting more money?

Ans. Sometimes he got more money than somebody else.

30

Mr. Cole: Objected to. The latter part of the preceding answer is not responsive and is a conclusion of the witness and it is not a basis upon which the jury can measure damages.

Mr. Carrow: I think that anything that tends to show, any circumstance that tends to show the kind

of a man this deceased was, whether he was an industrious man, a healthy man, is an element.

The Court: I will allow it to stand.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

THOMAS W. TRENCHARD, [SEAL.]
J. S. C.

10

Ques. How many acres did he farm?

Ans. Sixty acres.

Ques. What did he raise?

Ans. Well, any kind of berries.

Ques. What is that?

Ans. Any kind of berries. Raised blackberry, raised dewberry, raised raspberry and strawberry and sweet potatoes and white potatoes, beans, cabbage, corn, tomatoes, pepper.

Ques. Did he raise any grapes?

Ans. Raised grapes.

20

Ques. How much of his place was in grapes?

Ans. Well, sometimes they got a good crop; a good season he make twenty barrel of wine or eighteen barrel of wine.

Ques. A year?

Ans. Yes, sometimes he make less.

Ques. How much was it worth a barrel?

Ans. Twenty dollar, twenty-one dollar and twenty-two dollar.

Ques. Twenty-two dollars a barrel?

30

Ans. I sell sometimes twenty-two dollar and twenty-one dollar.

Ques. You have known him to make that?

Ans. Yes, sir.

Ques. Now, how many strawberries would he raise?

Ans. Well, I can't tell you sure. I saw him carrying good berries, and nice berries.

Ques. How many acres did he have in strawberries?

Ans. Well, I don't know; about an acre or two acre; I am not sure.

Ques. Was he successful with his strawberries or were they a failure sometimes?

Ans. Well, I can tell you—

10 (Objected to. Question allowed.)

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

THOMAS W. TRENCHARD, [SEAL]
J. S. C.

Ques. What about his raspberries?

Ans. Well, about two acre or three acre.

Ques. How many of those would he raise?

20 Ans. What do you mean?

Ques. How many crates?

Ans. Well, about seventy-five crates or a hundred crates, hundred and fifty crates; I can't tell you for that.

Ques. How much were they worth a crate?

Ans. About three or three and a half, four dollars, sometimes. The first crop I sell five dollars. I sell for myself five dollars.

Ques. You are talking about raspberries now, aren't you?

30 Ans. The raspberry; yes, sir. The first crop I sell five dollars a crate. Sell them for thirty cents a quart, fifteen cents a pint, the first crop, I mean.

Ques. How many would he raise on an average in crates?

Ans. How many pints?

Ques. How many crates would he get. How many would he pick?

Ans. I don't know what you mean.

Ques. How many crates of raspberries would he gather?

Ans. Well, about a hundred crates, ninety crates, a hundred and fifty crates.

Ques. Depends on the crop?

Ans. Yes, sir.

Ques. Now blackberries?

Ans. He got blackberries about fourteen acre.

Ques. How many blackberries would he raise? 10

Ans. Well, he pick about three hundred, four hundred crates.

Ques. Three or four hundred crates?

Ans. Yes, sir.

Ques. How much were they worth a crate?

Ans. Well, sometimes the price too low I sell two and a half or two dollars, sometimes the price a little high I sell for three dollars, three and a quarter or three and a half.

Ques. How many crates of strawberries would he raise? 20

Ans. Well, about a hundred crates.

Ques. How much a crate?

Ans. Well, sometimes the price too low I get a low price, two dollar and dollar and a half and dollar and seventy-five or three dollars.

Ques. How much did it cost to pick these?

Ans. The strawberries cost forty-eight cents and the blackberry cost forty-eight cents; the raspberry cost him sixty cents.

Ques. How many sweet potatoes would he raise? 30

Ans. He raise a lot.

Ques. How many acres?

Ans. About two acres, two acres and a half, three acres sometimes.

Ques. How many barrels would he get?

Ans. Year before he died I dug about a hundred and fifty barrels.

Ques. A hundred and fifty barrels of sweet potatoes?

Ans. Yes, sir.

Ques. How much were they worth that year per barrel?

Ans. Well, about three, two and a half, two and a quarter or two dollars.

Ques. What about white potatoes the year before he died?

10 Ans. The white potatoes I don't know how many he dug.

Ques. How many acres did he have?

Ans. Well, about half an acre, one acre.

Ques. You don't know how many he got?

Ans. No, sir.

Ques. How many beans?

Ans. The beans, he used them in the family.

Ques. Peas.

Ans. He used them in the family.

Ques. What else did he raise to sell?

20 Ans. Well, peach trees.

Ques. How many peaches did he have?

Ans. Well, I don't know. He told me before he died, "I got three hundred baskets."

Ques. Did you see the peaches yourself?

Ans. Yes, sir.

Ques. Did you see the three hundred baskets yourself?

Ans. I saw the fruit trees. They got all full and I seen them carrying on peaches, and he told me—

Ques. Never mind what he told you. How many baskets were there, what you saw, as near as you can tell?

30 Ans. Well, about three hundred baskets, I tell you.

Ques. How much were they worth a basket that year?

Ans. A dollar and a quarter basket.

Ques. What else did he raise?

Ans. Well, that is all.

Ques. When he wasn't working on his farm, what did he work at?

Ans. I don't know what you mean.

Ques. I want to know when he worked as a laborer. When did he work as a laborer for other people?

Ans. Sometimes worked for building a house for a friend; sometimes worked in the county road.

Ques. In the county road?

Ans. In the county road, yes, sir; and sometimes worked for the people, for the horse.

Ques. Did he ever work for this railroad?

Ans. No, sir.

Ques. Do you know the crossing at Thirteenth street?

Ans. Yes, sir.

Ques. That is where Thirteenth street crosses the railroad?

Ans. Yes, sir.

Ques. Did he do all his own work on the farm?

Ans. Well, he worked himself and worked somebody else, too.

Ques. He worked for somebody else?

Ans. No; he got some man work for him.

Ques. How many men did he have?

Ans. I don't know.

Ques. That last year he was farming this place, did he do all the work himself or did he have somebody to help him?

Ans. I don't know; can't tell you.

Ques. Do you know what his income was from this farm; how much he made?

Ans. Well, about a thousand dollars.

Mr. Cole: I object. I would like to examine him about that. 30

By Mr. Cole:

Ques. Did he ever tell you how much he made on that farm?

Ans. Well, me, I say he make a thousand dollars.

Ques. Did he ever tell you how much he made on the farm in a year?

Ans. Him? He not tell me nothing, but I know.

Ques. If he didn't tell you how much he made on the farm in a year, how did you find it out?

Ans. Well, he tell me, "I make good money for living the farm."

Ques. Then he did tell you he made good money on the farm?

10 Ans. Yes, sir.

Ques. Did you know in any other way than from what he told you how much he made on the farm?

Ans. Well, I can't tell you for that.

Mr. Cole: Now, I object to it on the ground that it is purely hearsay.

By Mr. Carrow:

20 Ques. Now, from what you saw of his crops and of the prices that were then going in the market for these crops, can you say what his income would be from that farm or from his labor?

Mr. Cole: I object to it on the ground that the witness cannot, from what he has testified, state evidence to this jury from which they have any right to lay their verdict for damages. The elements that would go to make the net income from profits are not in the question.

30 Mr. Carrow: The witness has given us a detailed account of the crops the year before this man was killed. In a case of this kind we do not have to demonstrate with absolute accuracy the exact pecuniary income.

The Court: The question is somewhat different from that. The question now is, whether or not the witness ought to be permitted to answer this particular question.

Mr. Carrow: Yes. I am asking him now whether, from his knowledge as a farmer in that neighborhood and his knowledge of these crops and the prices of these crops that year, whether he can say what this man's income would be from his labor on that farm the year before he died.

The Court: Well, I am inclined to allow the witness to answer the question.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.) **10**

THOMAS W. TRENCHARD, [SEAL.]
J. S. C.

(Question repeated.)

Ans. Well, I better take an interpreter. I can't talk very well.

Ques. Do you understand the question?

Ans. No; I can't understand very well. I want somebody else to interpret. **20**

The Court: The witness seems to get on fairly well without an interpreter.

Ques. Did you farm the year before your brother was killed?

Ans. My farm?

Ques. Yes.

Ans. What do you mean? **30**

Ques. Did you work on a farm the year that your brother was killed?

Ans. I can't understand?

Ques. Did you carry on farming?

Ans. I don't know.

Ques. What did you work at?

Ans. Me?

Ques. Yes.

Ans. Worked at farming.

Ques. How big was your farm?

Ans. My farm; I got about twenty acres of fruit.

Ques. Twenty acres of fruit?

Ans. Yes, sir.

Ques. What kind of fruit?

Ans. Well, blackberry, strawberry, raspberry, black-
10 berries and grapes; that is all.

Ques. How long have you lived on the farm?

Ans. Well, sixteen years.

Ques. This very place you are living now?

Ans. Yes, sir.

Ques. Did you raise as much stuff as your brother, or did he raise more stuff than you?

Ans. He raise more stuff than me.

(Objected to. Objection sustained. Exception noted for plaintiff.)

20 Ques. Did you farm—did you work your farm the the year your brother was killed?

Ans. Yes, sir.

Ques. Did you know the market prices of stuff that year?

Ans. Yes, sir; I know the price.

Ques. Did you see his crops?

Ans. Well, I no see the crop. I got him more basket than me.

30 Ques. You are acquainted with the crossing where Thirteenth street goes over the railroad?

Ans. What do you mean? I don't understand that.

Ques. Do you know where Thirteenth street goes over the railroad tracks?

Ans. Yes, sir.

Ques. When you are coming from Folsom into Ham-
 monton what is there to prevent your seeing Camden or
 a train coming from Camden?

(Objected to.)

Ans. I can't see the train before the horse puts his feet near the track.

The Court: That question is objectionable. It assumes there is something there.

Ques. What is there on the side of Thirteenth street in the direction of Camden, if there is anything?

Ans. You mean on the outside cross Camden?

10

Ques. Yes.

Ans. Well, the other time I tell my girl I got a good patch of corn.

Ques. Where is the patch of corn?

Ans. Across the railroad left hand going to Hammon-
ton.

Ques. The left hand side going into Hammonton?

Ans. Yes, sir.

Ques. What is there there? What is the corn stand-
ing on?

20

Ans. Well, about seven or eight feet high.

Ques. And what is under the corn?

Ans. Well, the brushes, grass, any kind of brush, any
grass.

Ques. Was the corn—how high were the brushes?

Ans. About three, four feet.

Ques. How high was the grass?

Ans. Well, two or three feet.

Ques. What kind of grass was it?

Ans. Any kind of grass. I can't tell you what kind
of grass. Any kind of grass, Indian grass; I don't know
what you call it.

30

Ques. What was there on the embankment alongside
of the railroad? What was grownig on that?

Ans. Well, grass, bushes, anything. You mean across
the bank?

Ques. The railroad bank; yes.

Ans. Yes, sir.

Ques. Alongside of the railroad?

Ans. Yes, sir.

Ques. In the direction of Camden?

Ans. Yes, sir.

Ques. Were there many bushes or were there only a few?

Ans. Lots of bushes there all the time. That is a bad crossing there.

10 Ques. What is that?

Ans. That is a bad crossing there; got a lot of bushes all the time.

Mr. Cole: I ask that the statement by him that this was a bad crossing be stricken from the record.

Mr. Carrow: Strike out "That is a bad crossing."

20 Ques. Now, how close would you have to be if you are driving, sitting in an open wagon, to the railroad track before you a see a train which is coming from Camden?

Ans. Well, I can't see a train before the horse step his feet just across the rail, about eight or nine feet. I can't see the train any other time because they got a big bushes, big grass and big corn, high corn; can't see the train.

Ques. Did you see your brother?

Ans. Yes, sir; I see him before he die and two day he die.

30 Ques. Died the next day, did he?

Ans. Yes, sir.

Ques. What kind of a horse was it?

Ans. Young horse.

Ques. What kind of a horse was it, work horse or driving horse?

Ans. Work horse.

Ques. What was it worth?

Ans. Worked in the farm.

Ques. What was it worth?

Ans. Two hundred dollars.

Ques. What kind of a wagon was it?

Ans. The wagon cost about thirty dollars.

Ques. What kind of a wagon was it?

Ans. A work wagon.

Ques. And the harness?

Ans. The harness cost about twenty-five.

Ques. Did you see them when they were there?

10

Ans. Yes, sir.

Ques. Saw the man and his wife both dead?

Ans. Don't see them when they was killed; I saw them before, half an hour before.

Ques. Did you notice, with reference to those bushes and the corn and the grass, what was done to that?

Ans. What do you mean?

Ques. Was anything done to the bushes and the grass and the corn that was on the embankment? Was anything done to it after the accident?

20

(Objected to as irrelevant and incompetent. Question allowed.)

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

THOMAS W. TRENCHARD, [SEAL.]
J. S. C.

Ans. After the accident my brother killed, cut away the brush. After my brother dead a few days later I show you they cut all the brush, all the grass.

30

Ques. Did you see that?

Ans. Yes, sir.

Ques. Did you see them doing it?

Ans. Yes, sir.

Ques. Who did it?

Ans. I don't know; can't tell you; I saw it myself. I come by the bank. No brushes or grass or anything.

Cross-examination.

By Mr. Cole:

Ques. When was it that you saw some one cutting
10 the corn and the brush?

Ans. Well, the brush I saw after a few day. I don't know who cut, because I didn't see anybody myself. I passed there and saw the bank all clean.

Ques. You didn't see anybody doing it yourself?

Ans. No, sir.

Ques. You only passed there after it had been done?
It had been done when you passed?

Ans. When it passed me I said, "The bank aint got no more brush, all cut, the brush."

Ques. Did you see anybody cutting the corn down?
20

Ans. No, sir.

Ques. How long had your brother owned this horse?

Ans. What do you mean?

Ques. How long had your brother had this horse?

Ans. What do you mean? He kept the horse?

Ques. Yes.

Ans. Well, he buy it in the spring.

Ques. Just bought it that spring?

Ans. In the spring, about March.

Ques. Do you know who he bought the horse from?
30

Ans. I don't know; can't tell you for that.

Ques. Do you know how much he paid for it?

Ans. I know.

Ques. How much?

Ans. Two hundred.

Ques. Who told you that?

Ans. Him.

Ques. He told you?

Ans. Yes.

Ques. Do you know it in any other way?

Ans. No.

Ques. Did he buy the horse in Hammonton?

Ans. Don't know.

Ques. Didn't he tell you?

Ans. No, sir.

Ques. Did he buy the wagon at the same time?

Ans. No; he had that before.

10

Ques. Did he have any other horse before that time?

Ans. Yes, sir; one other one.

Ques. How many more?

Ans. Two, just two.

Ques. How many men did he have on his farm in 1905?

Ans. I can't tell you.

Ques. Did you go on his farm in 1905?

Ans. No; I got business myself. I can't tell you for that.

20

Ques. Did he have all of the sixty acres in farm in 1905?

Ans. Yes, sir.

Ques. How do you know that if you weren't on the farm?

Ans. Well, of course I know he got sixty acres of land.

Ques. When was the last time you were on your brother's farm before his death?

Ans. Oh, a long while ago.

30

Ques. How long ago?

Ans. Well, I don't know. I don't remember now.

Ques. When did your brother go on that farm? When did he first go on the farm?

Ans. What do you mean? How long he got the farm?

Ques. Yes,

Ans. Well, about eight, nine or ten years.

Ques. Do you know how many blackberries, how many crates of blackberries your brother got off of this farm in 1900?

Ans. Well, I tell you. You want to know the straight, I tell you the truth. Send for P. Luca and he tell you all about it.

Ques. The Secretary of the Fruit Growers' Union knows all about it, don't he?

10 Ans. Yes, sir.

Ques. And you don't know anything about that, do you?

Ans. No, sir; I know I pick a lot of berries.

Ques. You don't know how many berries he picked in 1900 do you?

Ans. No, sir; I know he picked more than me.

Ques. Do you know how many strawberries he picked in 1900?

Ans. No, sir.

20 Ques. You ship these berries away, don't you, by freight somewhere?

Ans. Well, ship them Providence, Boston, Providence, New York.

Ques. Who pays the freight?

Ans. The berries pay the freight.

Ques. Your brother pays the freight, don't he?

Ans. The berries pay the freight.

Ques. Suppose you don't get enough for the berries to pay the freight, then who pays the freight?

30 Ans. I can't tell you that, because for sixteen years I got a farm and I never do that way.

Ques. Did you ever have any berries yourself?

Ans. Yes, sir.

Ques. What kind of berries?

Ans. Any kind of berries, blackberries, raspberries, strawberries, grapes, pear trees, apple trees.

Ques. Never have your strawberries or blackberries to fail on you?

Ans. Yes, sir.

Ques. When did you have them to fail? When did they fail?

Ans. What do you mean? I don't understand.

Ques. Are you sure that your brother didn't work for the railroad company at Hammonton?

Ans. Sure. A long while ago—I don't remember—that he work at making new track, double track.

Ques. Don't you know that your brother did work on this very track right through Hammonton, for the railroad company? **10**

Ans. No, sir.

Ques. How often did your brother come to see you?

Ans. Was there the time he died.

Ques. How many times did your brother come to see you?

Ans. Well, he came sometime three, four or five time a year, one time a month, two times.

Ques. Did he always drive to your house?

Ans. Yes, sir.

Ques. Come down this Thirteenth street? **20**

Ans. Yes, sir.

Ques. And go back on Thirteenth street?

Ans. Yes, sir.

Ques. Do you know if your brother kept a bank account?

Ans. What do you say?

Ques. Did your brother keep any bank account in Hammonton?

Ans. I don't know.

Ques. You said your brother was a very strong man? **30**

Ans. Yes, sir; strong man.

Ques. Was he just as strong just before he was killed as he ever was? Was he just as strong when he was at your house in August?

Ans. Yes, sir; strong always.

Ques. Always well and strong?

Ans. All the summer.

Ques. Nothing the matter with him at all?

Ans. No, sir.

Ques. Ever have a doctor?

Ans. Well, I don't know for the doctor.

Ques. Don't know if he ever had a doctor?

Ans. No. I guess the doctor from Hammonton, he is here; I can't tell you.

10 Ques. Do you know what an automobile is, one of these things that go up and down the highway without any horses to them?

Ans. No.

Ques. Don't know an automobile?

Ans. No, sir.

Ques. Have you seen these things that go up and down the street and go up and down Thirteenth street in Hammonton that don't have any horses?

Ans. No.

Ques. Did your brother ever get struck by anything?

Ans. Where?

20 Ques. Ever get hit with an automobile?

Ans. Well, I don't know.

Ques. Ever have his ribs broken?

Ans. No, he was no broke nothing.

Ques. You know that, do you?

Ans. Well, I know that when he can come again all the summer he was all right.

Ques. Do you remember that two years before his death he was hit by an automobile or some other thing and had some ribs broken and had to go to a doctor in Hammonton?

30

Ans. I know he got in trouble. I don't know if he broke nothing.

Ques. What kind of trouble was it?

Ans. Well, trouble for a bicycle or automobile or something.

Ques. Did that hurt him any?

Ans. I don't know.

Ques. Did that hurt his strength. Was he just as strong afterwards as he was before?

Ans. Yes, sir.

Ques. Do you remember that he got some damages, some money—

(Objected to.)

Mr. Cole: This witness says he was strong and in perfect health. I am cross-examining. It shows whether the man knows whether his brother was injured or not. **10**

The Court: I think that you are within the limits of cross-examination. You may proceed.

(Exception noted for plaintiff.)

Ques. Do you know whether your brother was paid money because he had been hurt by the bicycle or automobile?

Ans. No, sir.

Ques. You don't know anything about his being hurt? **20**

Ans. No, sir.

Ques. Never heard of it before. Did your brother ever tell you he had been hurt?

Ans. What do you mean?

Ques. Did your brother ever tell you he had been hurt?

Ans. No, he told me. He work like before. I don't know about the trouble. I no doctor myself.

30

ANTONIO BATTAGLIESSE, SWORN.

Direct examination.

By Mr. Carrow:

Ques. Where do you reside?

Ans. Hammonton.

10

Ques. What do you work at?

Ans. Well, I don't do much work. I live there.

Ques. How long have you resided there.

Ans. Why, two years and a half the twentieth of this month.

Ques. Did you know the Notto that was killed?

Ans. I know he was killed, but I didn't know him before.

10 Ques. You live in the neighborhood of this railroad crossing where Thirteenth street crosses the railroad?

Ans. Yes, sir.

Ques. Do you recollect the twenty-fourth day of August, 1905, when Notto was killed?

Ans. Yes, sir.

Ques. Do you know the conditions, the physical conditions, at the crossing?

Ans. Yes; I was right at the corner and saw the train come and it struck him. That is all I can say.

Ques. Was the train going fast or slow?

Ans. Yes; fast.

20 Ques. Fast?

Ans. Yes.

Ques. How fast; do you know?

Ans. Well, how fast I don't know; fast; express.

Ques. How far did the train go before it stopped?

Ans. Well, it passed Hammonton; this side of Hammonton they stopped.

Ques. I mean in distance how far did the train go from Thirteenth street before it stopped, after it struck and killed Notto?

30 Ans. Well, it passed Hammonton. I guess about half a mile past Hammonton.

Ques. About half a mile before the train stopped?

Ans. Oh, more than that. About half a mile the other side of Hammonton.

Ques. The main station at Hammonton?

Ans. Yes.

Ques. That is more than half a mile?

Ans. I guess so.

Ques. Before the train stopped?

Ans. I guess so. I know they passed Hammonton.

Ques. What was there, if there was anything, on Thirteenth street?

Ans. I was there. On Thirteenth street when they come up?

Ques. Yes.

Ans. There was a bank there with a field of corn.

Ques. And how high was the corn?

Ans. Oh, about seven or eight feet high, I guess.

Ques. What else was there?

Ans. Why, kind of grass and brush there. Some kind of brush there yet. Lot of fields in the side, left hand; trees there yet.

Ques. What was there on the embankment alongside of the railroad?

Ans. There was a bank.

Ques. Alongside of the railroad in the direction of Camden?

Ans. Kind of grass and corn up there about twenty-five feet away from the rail, I guess the corn is.

Ques. How high was the brush?

Ans. The brush is about three and four feet, I guess.

Ques. And the grass?

Ans. The grass is about a couple of feet, I guess, or two feet and a half; I don't know.

Ques. Were the brush and grass on the embankment alongside of the railroad?

Ans. Yes; they were there. There was the grass there.

Ques. Now, how close—if you were seated in a wagon and going from the crossing—how close would your horse have to be in order to see a train coming from Camden?

Ans. Well, on account of the bank there so close I think the horse would have to touch the railroad to see right, to see straight, if you want to see good.

10

20

30

Ques. Why?

Ans. Because there is a bank there and you can't see right if you don't go a little ahead there, because the bank is a little beyond and there is a telegraph post there.

Ques. What else? What on top of the bank?

Ans. Nothing now.

Ques. What was there then?

Ans. There was grass and some brush there.

Ques. What else?

10 Ans. Corn field.

Ques. Where were you at the time?

Ans. I was right at the corner, about two hundred and fifty feet away, when it struck him. I saw just when it struck him, at that moment.

Ques. Was any whistle blown on the locomotive?

Ans. No; just a danger whistle when they struck him. Never heard the whistle before.

Ques. Was there any bell rung?

Ans. No; just a danger whistle. That is what I heard, a danger whistle when it struck him.

20 Ques. That occurred when it struck?

Ans. Yes.

Ques. No whistle before that?

Ans. No; I never heard any.

Ques. What happened, if anything, after the accident?

30 Ans. What do you mean? I ran over there and I saw a man lying down there and I turned him upside down. I thought he was dead and I saw he was alive. I looked for the horse and it was lying about a hundred feet away down the track, and I saw a hat like a man's hat, and I ran over to see, and it was a woman and she had no clothes on at all.

Ques. Was the woman dead?

Ans. Yes; I ran over again to see the man again.

Ques. Now, coming back to the crossing or the embankment after this accident—what was done there, if anything?

Ans. When?

Ques. After the man was killed? Was any work done on the embankment after the man was killed?

Ans. I can't tell that.

Ques. I mean regarding removing any brush or anything?

Ans. I couldn't tell that.

Ques. Did you see anybody there working, cleaning the place off?

Ans. No; I never saw anything like that myself.

10

Ques. You didn't see them doing the work?

Ans. No.

Ques. Could you see any change?

Ans. Well, I could see a change afterwards; they cut the brush there.

Ques. What was there different? You say you saw a change there after the accident.

Ans. It was cleaned and cut some brush there afterwards but I never seen anybody cutting.

Ques. Could you tell that the brush had been cut?

20

Ans. Oh, yes; the brush had been cut there.

Ques. How do you know that?

Ans. The boss stopped them from cutting the brush.

Ques. Did you work there in that corn field.

Ans. In the corn field—they stopped to cut the brush. It was high brush there.

Ques. Did you work for the man that owned the corn field?

Ans. No.

Ques. Were you in that corn field?

Ans. No; wasn't in the corn field at all. I was at the Fruit Growers' Union.

30

Cross-examination:

By Mr. Cole:

Ques. When this accident happened you were over at the building of the Fruit Growers' Union?

Ans. Yes, sir.

Ques. And that building is towards Hammonton from the track and also towards the railroad station of the railroad, isn't it?

Ans. No. I could see just as I see you from there where I was.

Ques. Isn't the building where you were, the Fruit Growers' Union, toward Hammonton from Thirteenth street?

10 Ans. Yes, sir.

Ques. And isn't it toward Hammonton from the Reading Railroad track?

Ans. On the side towards Hammonton.

Ques. How far is that building away from the Reading tracks?

Ans. Two hundred and fifty feet where I was myself.

Ques. That is, two hundred and fifty feet from the railroad track?

Ans. In the place where I was myself.

20 Ques. How far is it from Thirteenth street?

Ans. Why, me?

Ques. Yes; where you were?

Ans. Where I was, about two hundred feet, I guess.

Ques. Did you see these people driving down the road?

Ans. No; I just see when they struck them.

Ques. How far had the horse gone on the track when the train struck him?

Ans. He just got him over and then—

Ques. How far?

30 Ans. About in the middle of the track, they were.

Ques. The horse was about in the middle of the track?

Ans. Yes; right in the middle of the track.

Ques. Do you remember being out on the track and talking to this gentleman behind me after the accident? Do you remember talking to that gentleman about this accident?

Ans. I guess so; yes.

Ques. Where were you when you talked with him about it?

Ans. I was there.

Ques. On the railroad track?

Ans. One time I guess, and one time I was in the office.

Ques. Did he talk to you about this case?

Ans. No.

Ques. Did he talk to you about this case?

Ans. I don't remember. He called me and asked me what I know about what I saw. **10**

Ques. You told him what you saw?

Ans. Yes.

Ques. And what you heard?

Ans. Yes.

Ques. Did he put down anything?

Ans. I guess so?

Ques. See him writing?

Ans. I guess he write. I don't know if he write or not. **20**

Ques. You say there is a telegraph pole there?

Ans. Yes.

Ques. Is that on the top of the bank?

Ans. On the bank.

Ques. Was there a signal board to stop, look and listen, or something of that sort?

Ans. I can't tell. Just I saw when it struck him.

Ques. How long have you been living in that neighborhood?

Ans. Two years and a half the twentieth of this month. **30**

Ques. Did you know Mr. Notto?

Ans. No, sir.

Ques. Which side of the wagon was he on?

Ans. He was on the right side.

Ques. On the right hand side. That is, he was on the right hand side of the wagon driving across the track?

Ans. Yes.

Ques. Was he driving?

Ans. I couldn't tell that he driving, but he was on the right hand.

Ques. But you are sure he was on the right hand side?

Ans. Oh, yes.

Ques. How many times did you hear the whistle blow?

Ans. Which whistle? I never heard it; never heard it
10 at all; just the danger whistle.

Ques. How many times?

Ans. Two times.

Ques. Did you tell this gentleman—

Ans. I told him I only heard the danger whistle. That is what I told him. The gentleman knows that, too. I only tell one thing. I don't care for the company. If the man wasn't hurt, I tell what I know.

Ques. Did you tell this gentleman that you heard the whistle blow four or five times?

20 Ans. No, sir; never.

Ques. Did you tell him how many times you did hear it blow?

Ans. I told him only the danger whistle.

Ques. Did you tell him that you could stand twenty feet west of the railroad track and see for half a mile?

Ans. No, I said that if it had been clean. On account of the corn and things you can't see it.

Ques. Did you tell this man behind me while you were standing right at this crossing that you could stand
30 twenty feet west of the railroad track and see for half a mile?

Ans. If it had been clean.

Ques. Did you tell him that?

Ans. If it had been clean I told him, but with the brush and corn there they couldn't see.

Ques. Did you tell this man, while you were standing at the railroad crossing at Thirteenth street, that you could stand twenty feet west of the railroad track and see for half a mile? Did you tell him that?

Ans. If it had been cleaned you could have saw, yes; but you couldn't see on account of the brush. That is what I told him. If he put down one thing for another I can't help it.

Ques. Did you see him walk from the railroad track up the road, pace so many feet?

Ans. No, I just saw when it struck him in the middle of the track. 10

Ques. No. Did you see this man?

Ans. Which man?

Ques. Right there; that had the talk with you?

Ans. Yes, he was one time there. Just I showed where I saw the man low down; that is all.

Ques. Did you see him pace from the railroad track up Thirteenth street towards Folsom while you were standing there?

Ans. I saw a man one time there— 20

Ques. Did you see this man?

Ans. I don't remember.

Ques. Do you remember talking with the man at all?

Ans. I don't remember—I remember in the office and there, too, but I can't remember what we been talking about. I say just what I know.

Ques. Could you see a train from where you were standing coming down from Camden?

Ans. Yes, now, because they have cleaned the road.

Ques. You were standing down by the Fruit Growers' Union. Could you see a train from there? 30

Ans. No, because it was low. I was in a low place, low ground.

BENJAMIN FOGLETTO, sworn.

Direct examination.

By Mr. Carrow:

Ques. Where do you reside?

Ans. Hammonton.

Ques. How long have you lived there?

Ans. Thirty years or more.

10 Ques. You were born there, weren't you?

Ans. Pretty near.

Ques. Do you live in the neighborhood of this Thirteenth street crossing?

Ans. Yes, sir.

Ques. Are you familiar with the physical conditions at that crossing on the twenty-fourth of August, 1905?

Ans. Yes, sir.

Ques. What was there north or in the direction of Camden?

20 Ans. Why, an embankment and cornfield and telegraph poles and grass and brush on top of the embankment.

Ques. How high was the corn?

Ans. Well, the corn was six or seven feet high.

Ques. How high was the brush?

Ans. The brush about two or three feet.

Ques. How high was the grass?

Ans. About the same height.

Ques. What kind of grass was it?

Ans. Indian grass.

30 Ques. What was there on the embankment alongside of the railroad?

Ans. This grass and brush.

Ques. And how close would you have to be if you were driving to the railroad track to be able to see a train coming from Camden?

Ans. Why, you would have to be about ten or eleven feet, twelve feet. You have got to pass the embankment.

Ques. Were you present at the accident?

Ans. No, sir.

Ques. Did you know anything about it?

Ans. No.

Ques. Did you know Notto?

Ans. Yes, sir.

Ques. What kind of a man was he? Describe his appearance, please.

Ans. Well, he was a tall, raw-boned, strong man.

Ques. About what age did he appear to be?

Ans. Oh, I guess he was about forty to forty-five years old, between that; I don't know exactly the age. **10**

Ques. Was he a healthy man?

Ans. Yes, sir; I know him for a good many years.

Ques. Was he an industrious, hard working man?

Ans. Yes, sir; he worked for us, for my father.

Ques. What did he work at?

Ans. Why, at that time my father had a contract here in Mays Landing, clearing off this tract of land; he worked as foreman over a gang of men.

Ques. Do you know what his wages were? **20**

Ans. Yes.

Ques. What?

Ans. One seventy-five a day when we was paying the men a dollar ten. Kind of hard times at that time.

Ques. Do you know whether he worked as a laboring man around Hammonton?

Ans. Yes, sir.

Ques. Down to the time of his death?

Ans. The winter before that he worked for me, not directly but in an indirect way at Somers Point. **30**

Ques. What did he work at?

Ans. I had a contract to clear off a tract of land there for Dobbs and Frazier, and I sublet it to a gang of men, and there was some disagreement between them and the job didn't go on and they went to Notto and had Notto go with them and finish the job.

Ques. How long was he working at that?

Ans. Well, he was there about six or seven weeks.

Ques. Do you know what his wages were?

Ans. No.

Ques. Do you know what wages are paid for the kind of work he did?

Ans. I couldn't say, because he went there as a peace-maker.

10 Ques. What was the ordinary pay for a day laborer at that time?

Ans. For an ordinary one about a dollar and a quarter or a dollar and a half.

Ques. How much could he earn as a laborer?

Ans. Well, under the circumstances, being that he had a good home, I shouldn't think that he would go there as a peace-maker for less than a couple of dollars a day.

Recess to 1.30 P. M.

20

Afternoon session, 1.30 P. M.

BENJAMIN FOGLIETTO, resumed.

Further direct examination.

By Mr. Carrow:

30 Ques. What could he earn, without regard to his home, as a laborer in the neighborhood of Hammonton?

Ans. Dollar and a half or a dollar and seventy-five cents a day.

Ques. Now, what did you notice, if you ever noticed anything in the way of any change occurring at that crossing, at the Thirteenth street crossing, after the accident?

Ans. I noticed that the grass and brush was cleared away.

Ques. Where is that?

Ans. From the top of the embankment after the accident occurred.

Ques. How soon after the accident?

Ans. Two days.

Ques. Did you see it being removed?

Ans. No, sir.

10

By Mr. Cole:

Ques. How do you know it was removed in two days?

Ans. Why, it was cut off, disappeared.

Ques. Do you know it was there the time of the accident?

Ans. For one day it was there.

Cross-examination.

20

By Mr. Cole:

Ques. Know when the corn was cut?

Ans. No; I don't know exactly when the corn was cut, but that was cut later on. The corn was still there when the coroner was there.

Ques. Did you ever make a test by sitting in a wagon to see how far you could see a train looking up towards Rosedale?

Ans. Yes, sir.

Ques. When did you make it?

30

Ans. Why, I couldn't state just exactly when, but it was after that was cleared off.

Ques. Did you keep a record of your test, put it down in writing?

Ans. Not exactly.

Ques. Did you put anything down in writing?

Ans. No, sir.

Ques. How long was it after the accident that you did that?

Ans. I couldn't state how long it was.

Ques. How far were you back of the track when you made the observation?

Ans. I came down Thirteenth street.

Ques. I understand, but how far were you from the track when you made the observation up the track towards Rosedale?

10 Ans. We made an observation after you leave the corn field and after you leave the telegraph pole and so on all the way down.

Ques. Do you know how far the telegraph pole is from the track?

Ans. I should judge about twenty-five feet; I don't know exactly.

Ques. How far could you see up the track at the point where the telegraph pole was?

20 By Mr. Carrow :

Ques. When was this?

Ans. When we made the observation.

Ques. When was it?

Ans. I couldn't state; it was when the grass was cleared off of there.

By Mr. Cole:

30 Ques. How far could you see up the track from the point of the telegraph pole?

Ans. After you leave the telegraph pole sitting in a wagon and the bank being cleared, you could see pretty well up.

Ques. And as you got nearer the track from the telegraph pole, did the vision become easier?

Ans. No; it became worse.

Ques. As you went towards the track?

Ans. Yes; until you leave the bank, because it is down grade and as you get closer to the railroad the bank gets higher.

Ques. Do you mean to say that it is higher anywhere along that bank than where the pole is?

Ans. Yes, sir.

Ques. The railroad track goes up, too, don't it?

Ans. Yes, sir.

Ques. All the way up from Thirteenth street inclines towards Rosedale, doesn't it? **10**

Ans. No, sir.

Ques. Where does it stop inclining?

Ans. Why, about, I couldn't say just how much the distance is there, but very near half a mile just this side of Fourteenth street.

Ques. Is that where it stops?

Ans. No; it commences to go an incline then.

Ques. The incline begins at Fourteenth street and goes towards Rosedale? **20**

Ans. I should say this side of Fourteenth street, and if I am not mistaken, then the incline is towards Hammonton, too. It kind of comes down and up.

LOUIS ROSETT, called.

By the Court:

30

Ques. What is your name?

Ans. Louis Rosett.

Ques. Where do you live?

Ans. Hammonton.

Ques. How old are you?

Ans. I don't understand.

The Court: Is there an interpreter in court?

The Clerk: He is outside. He will be in in a minute.

(Louis Dargosa, interpreter, sworn.)

(Witness sworn through interpreter.)

Direct examination.

10 By Mr. Carrow:

Ques. Where do you live?

Ans. Hammonton.

Ques. What is your age?

Ans. Forty-five, forty-six.

Ques. How long has he lived in that neighborhood?

Ans. Nineteen years.

Ques. What does he work at?

Ans. In the farm.

20 Ques. Where is your farm?

Ans. It is laid with the railroad at Thirteenth street.

Ques. Was it your farm where the cornfield was, alongside of the railroad and Thirteenth street in August, 1905?

Ans. It was.

Ques. How high was the corn on the twenty-fourth of August, 1905?

Ans. Eight or nine feet high.

30 Ques. What else was there on the embankment alongside of the railroad?

Ans. It was grass, brush, blackberries, what grow there in that neighborhood.

Ques. How high were the brush?

Ans. About two or three feet high.

Ques. How high was the grass?

Ans. It was some short and some high, about two or three feet.

Ques. Was it thick or was it thin at the corner of the embankment?

Ans. Some places were thick and some places were not.

Ques. Were the bushes that you have mentioned thick or were they thin?

Ans. They were thick at the time but this year they were cut off and you would hardly notice it.

Ques. I mean on the twenty-fourth of August, when the accident occurred.

Ans. They were thick. 10

Ques. Was the corn on the embankment thick or was that thin?

Ans. Part were thick and part were not.

Ques. Was the corn along the road of Thirteenth street, along the embankment alongside of Thirteenth street—was that thick or was it thin?

Ans. They were mixed. They were both; some place they were thick and some places they were not thick.

Ques. Did the corn grow down to the edge of the embankment or away from it? 20

Ans. Just large enough where they could turn with a horse.

Ques. Now what happened to the brush and to the grass on that embankment at the corner of the railroad and Thirteenth street, if anything happened to it, after the accident?

Ans. Afterwards, with the permission of the boss, I gathered the stuff which belonged to the railroad. It was all cut off.

Ques. How soon was it cut off after the accident? 30

Ans. Two days.

Ques. What was cut off in two days after the accident?

Ans. They cut the grass and I went and collected it.

Ques. What about the brushes?

Ans. Along parallel with the railroad they cut brush and grass also.

Ques. Was that brush and grass cut along the embankment which ran along the railroad in the direction of Camden?

Ans. Yes, sir.

Ques. Did you see the men when they were at work cutting the brush and the grass?

Ans. I saw them but at a distance away.

10 Ques. Do you know who the men were?

Ans. No, sir.

Ques. I mean by that, was there any way by which he could tell whether the men that did this cutting were employed by the railroad company or not?

(Objected to as leading.)

Mr. Carrow: I asked him whether there was any way by which he could tell.

20 The Court: I will allow it.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

THOMAS W. TRENCHARD, [SEAL.]
J. S. C.

Ans. They were employed by the company.

30 Ques. How many men were there engaged in that work?

Ans. Two of them.

Ques. Did you know who the men were, that is to say, were you personally acquainted with the men?

Ans. That day I didn't know who they were.

Ques. On the twenty-fourth day of August, 1905, at the time this accident happened, if you are seated in an

open wagon about to cross the tracks of the defendant's railroad, how close would your horse have to be to the tracks in order for you to see a train coming from Camden?

Ans. The horse's feet would have to touch the rail before I could see a train approaching.

Cross-examination.

By Mr. Cole:

10

Ques. Is the telegraph pole on your property?

Ans. Yes, sir; there are eleven of them there.

Ques. Do you own the land next to the tracks of the railroad company?

Ans. It belongs to me. I have some association obligation to it.

Ques. Was this grass and shrubbery that was on the top of the bank on your property?

Ans. It belonged to the company.

Ques. You said the telegraph pole was on your property. At what point between the telegraph pole and the edge of the bank does your property end? 20

Ans. It is in conjunction with my farm with the railroad land.

Ques. Does your farm run to the edge of the bank?

Ans. Yes, sir.

Ques. Well, then, if your farm runs to the edge of the bank wasn't the grass and shrubbery which was cut off the top of the bank cut off of your property?

Ans. It does not. It belonged to the company, because the employes of the company cut them. 30

Ques. Was there any grass or shrubbery on the top of the bank between the telegraph pole and the edge of the bank.

Ans. There was.

Ques. If you owned the farm between the telegraph pole and the edge of the bank, how did the grass and

shrubby which grew on that bank between the telegraph pole and the edge of the bank belong to the railroad company?

Ans. Why, I think by the distance from the edge of the banking would belong to the railroad. They allow so much space between, and that is why I think that it belongs to the railroad.

Ques. Is this stuff, grass and shrubbery, which you say was cut between the telegraph pole and the edge of the bank wild?

10 Ans. They were wild.

Ques. Was it the stuff between the telegraph pole and the edge of the bank that you say was cut off two days after the accident?

Ans. Yes, sir.

Ques. When you say that your corn, that is, the distance between the corn and the end of your property was such as to allow a horse to pass, do you mean that that was between the corn and the telegraph pole or between the corn and the edge of the bank, that distance?

20 Ans. It was between the corn and the distance where the telegraph poles are.

Ques. What was the distance between the telegraph pole and the place where there was no corn, how many feet?

Ans. About three feet.

Ques. There was no corn within three feet of the telegraph pole?

Ans. There was not.

30 Ques. When did you sow the corn that was on the farm in 1905?

Ans. The later part of this month.

Ques. When did you gather it?

Ans. I piled it and then I collected it about a month afterwards.

Ques. You don't mean to say that you sowed the corn in October of 1905, do you?

Ans. Last year it was a little later, of the cutting of the corn.

Ques. When did you sow the corn, plant the corn that was gathered in 1905?

Ans. It was in May.

Ques. When did you gather it?

Ans. It was in between this month.

Ques. Was this corn in 1905 such as you usually get off the farm?

Ans. Yes, sir.

Ques. How high was the corn when you gathered it?

Ans. About eight or nine feet high.

10

DOMENICA CAMPANELLA, SWORN.

Direct examination.

By Mr. Carrow :

20

Ques. Do you talk English?

Ans. I think I can a little.

Ques. Where do you live?

Ans. Hammonton.

Ques. Where?

Ans. Hammonton.

Ques. How long have you lived there?

Ans. Twenty-six years.

Ques. Did you know Semino Notto?

Ans. Yes, sir.

30

Ques. How long did you know him?

Ans. Why, I knowed him for about twelve, fourteen years.

Ques. What kind of a looking man was he?

Ans. Fine looking man.

Ques. Was he large or small?

Ans. He was pretty large.

Ques. Was he a strong man or delicate man?

Ans. Very strong when he was young.

Ques. What did he work at?

Ans. He worked the farm, carpenter some times.

Ques. Was he an industrious man or a lazy man?

Ans. I think he was.

Ques. Which?

Ans. He was an industrious man.

- 10** Ques. Now, are you familiar with the physical conditions at the crossing where Thirteenth street and the railroad intersect?

Ans. I don't understand you.

(Question repeated.)

Ans. Yes.

Ques. Well, now, what were the conditions there on the twenty-fourth of August, 1905, if you know?

- 20** Ans. The condition what was there—I crossed about a week before the accident happened. We was driving in a buggy and I was about thirty or forty feet way up—I was coming on Thirteenth street and was going to cross the railroad and there was corn planted there and grass and brush alongside of the bank, and when I came near about thirty or forty feet near the bank I got off and walked up the track to see if there was any trains coming and then we crossed, but I think it is a pretty bad place.

- 30** The Court: Strike that out.

Ques. How high were the brush?

Ans. Brush was about from five to six feet, some place.

Ques. How high was the Indian grass?

Ans. About three or three and a half.

Ques. How high was the corn?

Ans. Corn run about six feet to seven feet high.

Ques. What was there on the embankment, the railroad embankment; that is to say, the embankment on the Reading property that ran along the railroad in the direction of Camden?

Ans. Indian grass, sassafras and all kinds of brush.

Ques. How high was the brush?

Ans. It ran from four to five and six feet high.

Ques. How high was the Indian grass?

Ans. From two and a half to three feet.

Ques. How high was the sassafras?

10

Ans. It began at five, six, seven, all sizes.

Ques. Was this brush and grass thick or thin?

Ans. It was thick enough, pretty thick.

Cross-examination.

By Mr. Cole:

Ques. You saw brush on the slope of that embankment five or six feet high?

20

Ans. Yes, sir.

Ques. Higher than your head?

Ans. Yes, sir.

Ques. How much higher than your head?

Ans. About a foot.

Ques. That was very thick?

Ans. Yes, sir.

Ques. All the way along the embankment?

Ans. Yes, sir.

Ques. For what distance?

30

Ans. Well, a good ways off.

Ques. A hundred or more feet?

Ans. Two or three hundred feet, I guess.

Ques. Did that same condition exist on the other side of the embankment across from where the corn was growing?

Ans. Same side as where the corn.

Ques. How high was it there?

Ans. From five to six feet high.

Ques. Very thick on that side of the road, too?

Ans. Yes, sir.

Ques. You aren't very friendly to this railroad, are you?

Ans. Sir?

Ques. You aren't very friendly to this railroad, are you?

10 Ans. I always ride on it. If I wasn't I wouldn't ride on it.

Ques. How long was it before August twenty-fourth that you noticed the condition of the slope of that bank?

Ans. How long before?

Ques. How long before?

Ans. Well, about a week before I was through there.

Ques. Do you remember seeing any men working on the slope of that bank before August twenty-fourth cutting down any grass or shrubbery?

20 Ans. I don't live near there. I live about two or three miles away from there. I no go there every day.

Ques. My question is, do you remember seeing anybody on the slope of that bank cutting grass or shrubbery before August twenty-fourth, 1905?

Ans. I didn't see anybody.

Ques. Were you there on August twenty-fourth, 1905?

Ans. I was there when the accident happened.

Ques. Where were you?

30 Ans. I was about three hundred or three hundred and fifty feet away from the railroad.

Ques. What were you doing there?

Ans. I was just going across the railroad at the time it happened.

Ques. Where were you going?

Ans. Across on Thirteenth street then.

Ques. For what?

Ans. On business.

Ques. Were you driving or walking?

Ans. Driving.

Ques. Driving away from the accident or toward it?

Ans. Towards the accident.

Ques. Did you go to the scene of the accident?

Ans. Yes, sir; I left my horse about three hundred feet away from it.

Ques. And on that day, August twenty-fourth, you saw grass and shrubbery on the slope of that bank? **10**

Ans. Not on that day. I saw it a week before that.

Ques. Was it there August twenty-fourth?

Ans. I suppose it was there.

Ques. On August twenty-fourth?

Ans. Yes, sir.

Ques. Sure of that?

Ans. Yes, sir.

Ques. Did you see any cinders or ashes on the slope of that bank on the twenty-fourth of August?

Ans. I guess it was there. **20**

Ques. Did you see ashes or cinders on the slope of that bank on the Twenty-fourth of August?

Ans. I didn't take any notice of the cinders.

Ques. Will you say that there were no cinders or ashes on the slope of that bank on August twenty-fourth, 1905?

Ans. I didn't take any notice.

Ques. You did take notice that there had been any of the grass and shrubbery on that bank on August twenty-fourth, did you? **30**

Ans. I didn't take any notice.

Ques. How close is the base of the bank to the railroad track?

Ans. The base of the bank?

Ques. Yes; where it begins to slope up?

Ans. About ten feet.

Ques. Was there any of this grass or shrubbery between the beginning of the bank and the railroad track?

Ans. No.

Ques. That was all cleaned, was it?

Ans. It was cleaned.

Br Mr. Carrow:

10 Ques. Was any whistle blown or bell rung for that crossing?

Ans. I didn't hear any.

By Mr. Cole:

Ques. Did you hear any whistle at all?

Ans. No, sir.

Ques. Didn't hear the danger whistle?

Ans. No.

20 Ques. What first attracted your attention to this place? What first drew your attention? How came you to look toward this place?

Ans. Because I heard the engine crack the wagon.

Ques. That is what first drew your attention?

Ans. Yes, sir.

Ques. And how far away were you?

Ans. About three hundred or three hundred and fifty feet.

Ques. On what street?

Ans. On Thirteenth street.

30 Ques. Were you towards Folsom or towards Hammonton?

Ans. Towards Hammonton. I was crossing the Pennsylvania Railroad track, and I went about a hundred feet and then the accident happened.

Ques. Did you see these people driving down the road?

Ans. No, sir.

Ques. Did you see anybody else on the road that day as you were coming up towards the Reading Railroad track? Did you see anybody else in Thirteenth street?

Ans. Only a lady a little ways from where I was.

Ques. Did you see anybody on a bicycle?

Ans. No, sir.

Ques. And this lady was the only one you saw, was she?

Ans. That was the only one at the time the accident happened, and I was the first man that went to the body. 10

Mr. Carrow: I offer the Carlisle Mortuary Tables as found in Volume 20 of the American and English Encyclopaedia of Law, second edition, page 885, for the purpose of showing the expectancy of life of a man forty-five years of age.

Mr. Cole: We object to the offer until there is proper proof introduced.

Mr. Carrow: Then I will have to go on the stand myself. 20

HOWARD CARROW, SWORN.

The Witness: The Mortuary Tables contained in this volume, this twentieth volume of the Encyclopaedia of Law, page 885, are tables which represent the reasonable expectancy of life as shown from the experience gathered by insurance companies in America and in England, and it is known as the Carlisle Table, and it is the table in general use in ascertaining the expectancy of life. It is not a certain test by any means, but it is one of the ways that are sometimes used in courts in cases of this class and in cases involving interests in property. I do not pretend to say that it is an infallible guide by any means, nor that the Court will be bound by it, but 30

it throws some light on the subject as to the reasonable expectancy of life.

Cross-examination.

By Mr. Cole:

10 Ques. Have you anything other than what you see in that book which you testify is a correct copy of the Carlisle Table?

Ans. I have not.

Ques. Have you compared with what you have seen in the book some table that you know has been recognized and established as the Carlisle Table?

Ans. I have not.

20 Mr. Cole: I object to the offer on the ground already stated and upon the further ground that it does not appear satisfactorily that what is introduced is the Carlisle Tables.

Mr. Carrow: If your Honor please, it is judicial notice. I maintain that no formal proof is necessary.

The Court: I will admit it for the purpose for which it is offered.

30 Mr. Cole: I object for the reason stated and because it is admissible for no other purpose than that for which it is offered.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

THOMAS W. TRENCHARD, [SEAL]
J. S. C.

Plaintiff rests.

DEFENDANT'S TESTIMONY.

HERVEY HARMER, sworn.

Direct examination.

By Mr. Cole:

Ques. You are in the employ of the Atlantic City **10**
Railroad Company?

Ans. Yes, sir; I am.

Ques. What is your position?

Ans. I am official photographer.

Ques. How long have you been a photographer?

Ans. Twenty-two years?

Ques. How long in the employ of the company?

Ans. Fourteen years.

Ques. Are you familiar with the Thirteenth street
crossing at Hammonton, of the railroad company? **20**

Ans. Yes, sir; I am.

Ques. How long have you known that crossing?

Ans. For about thirteen years I have been going up
there and been there at frequent times, along the road
at any place.

Ques. Did you, for the purpose of use in this case,
make photographs of that crossing?

Ans. Yes, sir; I did.

Ques. I have in my hand and show you three photo-
graphs and ask you if they are the photographs you made? **30**

Ans. They are.

Ques. Will you please take the photographs in their
order and state where you stood when you made the
photographs and what they represent?

Ans. This photograph that I have in my hand was
made at a point standing on Thirteenth street west of
the nearest rail of the south bound track twenty-one
feet away, looking towards Camden.

(Photograph marked Exhibit D1.)

Ans. This was made at a point standing on Thirteenth street west of the railroad, twelve feet away from the south bound track.

(Photograph marked Exhibit D2.)

10 Ans. This was made at a point on the railway track south of the Thirteenth street crossing and looking north towards the Thirteenth street crossing.

(Photograph marked Exhibit D3.)

Ques. Does Thirteenth street appear on all of these pictures or photographs?

Ans. Yes, sir; it does.

Ques. On Exhibit D3 there appear two signal boards. I ask you if those signal boards are on Thirteenth street.

20 Ans. They are, planted in the street either side of the crossing.

Qus. Do these photographs truly and correctly represent the situation as it was at the time you made them?

Ans. They do.

Cross-examination.

33 By Mr. Carrow:

Ques. When did you make these photographs?

Ans. The date is on the back.

Ques. October eleventh, 1906.

Ans. Whatever date is on the back of them. It is in my handwriting on the back of them; that is the identification mark.

Ques. The fifth month, second day in 1906?

Anc. Yes, sir; that is the date.

Ques. Were they all made at that time?

Ans. Same day.

PHILIP STOLZBERGER, SWORN.

Direct examination.

10

By Mr. Cole:

Ques. Were you the engineer in charge of the locomotive that struck Notto, the wagon?

Ans. Yes, sir.

Ques. What was your train out of Camden, the hour?

Ans. Ten minutes past five out of Camden.

Ques. That is five o'clock from Philadelphia?

Ans. Yes, sir.

Ques. Was that train a regular scheduled train?

20

Ans. Yes, sir.

Ques. How long had that train been running on August twenty-fourth, as near as you can remember?

That is, I mean, through what period of time, a month, a year or five years or how long?

Ans. Oh, that train has been running for years that I know of.

Ques. Do you remember the fact of this accident?

Ans. I do; yes, sir.

Ques. As you approached this crossing at Thirteenth street on which side of the engine were you?

30

Ans. Right hand side.

Ques. Was that nearest to or farthest from the point of the carriage; that is, were you nearer than the fireman or farther away?

Ans. I was nearest.

Ques. Did you see them as they were approaching the crossing?

Ans. Yes, sir.

Ques. Is there a whistle board for the Thirteenth street crossing?

Ans. Yes, sir.

Ques. Was there a whistleboard there on August twenty-fourth?

Ans. Yes, sir.

10 Ques. Did you blow for the Thirteenth street crossing on this day?

Ans. Yes, sir.

Ques. Where with relation to the whistle board did you blow the whistle for that crossing?

Ans. As I was approaching and passing the whistle board.

Ques. Do you know whether or not the bell was rung as the train approached that crossing?

Ans. I do.

Ques. Did you have a fireman?

20 Ans. I did; yes, sir.

Ques. What is his name?

Ans. Irving McIntyre.

Ques. Was the signal you gave for the Thirteenth street crossing the usual crossing signal?

Ans. It was; yes, sir.

Ques. How far do you think you were from the Thirteenth street crossing when you first saw the horse and carriage or wagon?

Ans. About a thousand feet.

30 Ques. And when you first saw the horse and wagon about how far were they from the track on which your train was?

Ans. Well, as near as I could judge from the cab window I judge they must have been anywhere between twenty-five and forty feet.

Ques. Did you lose sight of that wagon and horse from the time you saw it when it was twenty-five feet away from the track until you struck it?

Ans. I saw it all of the time.

Ques. What did you do, if anything, after you had given this signal for the crossing?

Ans. Immediately after I blew for the crossing I thought that they were getting pretty close and it looked to me as though they weren't going to stop. I couldn't, and I blew the danger whistle. **10**

Ques. How many times do you suppose you blew?

Ans. Oh, I couldn't tell that; I blew as often and fast as I could.

Ques. Then what did you do?

Ans. Shut off the steam and applied the brakes and turned and hid my face to keep from seeing the awful thing and besides that to keep probably from being struck by glass that might be broken.

Ques. Now how far had the horse gone on the track when he was struck? **20**

Ans. He was about in the center of the crossing.

Ques. Do you mean in the center of the track?

Ans. That is, he was in the center between the two rails that I was running on.

Ques. Now with respect to Thirteenth street where was this horse and wagon? That is, I mean, was it in the center of the street or was it farther to the left or right?

Ans. As near as I can recollect it was in the center.

Ques. Can you remember whether the man was on the right or left hand side of the wagon? **30**

Ans. Well, I wouldn't want to say that.

Ques. Do you know who was driving?

Ans. No; I don't know that either.

Ques. Did you see either of the persons in the wagon look towards Rosedale, from which point you were coming?

Ans. No, sir; I didn't.

Ques. Which way did the persons appear to be looking?

Ans. Appeared to be looking straight ahead.

Ques. Did you see the horse stop at any time after you saw it until it was struck?

Ans. No, sir.

Ques. Did the horse stop at any time after you saw it until it got to the track?

10 Ans. No, sir; it did not.

Ques. Was the horse running, walking or trotting?

Ans. Walking.

Ques. About how high are these locomotives from the track?

Ans. To the cab window?

Ques. Yes.

Ans. Why, we were about twelve feet, I guess. I never took any measurement and am only guessing at it now.

20 Ques. Did anything after the accident prevent this train from stopping sooner than it would stop after you applied the air and put off the steam?

Ans. Yes, sir.

Ques. What was it?

Ans. The horse being carried on the front of the engine and the slime and blood that came from the horse got on the wheels and rails and caused the wheels to slide instead of rotating as they should, and of course destroyed the retarding feature.

30 Ques. Did the train go further after crossing this crossing than it would if this substance had not been on the track?

Ans. Oh, my, yes.

Cross-examination.

By Mr. Carrow:

Ques. What is your name?

Ans. Philip Stolzberger.

Ques. Did you testify at the coroner's inquest?

Ans. Yes, sir.

Ques. Do you remember at the coroner's inquest being asked this question and giving this answer: "Now, how far were you from Fruit Growers' crossing before you saw these people. Ans. Why, I was about, I should judge, six hundred feet when I first saw them." Was that question propounded to you and did you give that answer at the coroner's inquest?

10

Ans. I can't say that it was.

Ques. Do you say that it wasn't?

Ans. I say that I can't say that it was in that way. I haven't any recollection of saying six hundred feet.

Ques. Do you say that you didn't swear to that at the coroner's inquest?

Ans. I won't swear now that I did say it.

Ques. Will you swear now that you didn't say it?

Ans. No.

Ques. I will repeat it in order that there may be no mistake about it. "How far were you from Fruit Growers' crossing before you saw these people? Why, I was about, I should judge, six hundred feet when I first saw them." You are asked again to say whether that was not your testimony at the coroner's inquisition?

20

Ans. I don't know now that I said just that thing.

Ques. Will you say that you didn't?

Ans. No, I won't say that I didn't.

Ques. Now, what time did your train leave Camden?

Ans. Why, it was due to leave five-ten.

Ques. What time was it due in Atlantic City?

30

Ans. Six o'clock.

Ques. It was a fifty minute train from Camden to Atlantic City?

Ans. Yes, sir.

Ques. What time was it due in Hammonton?

Ans. Five-thirty-four.

Ques. In other words, your run between Camden and Hammonton was twenty-four minutes?

Ans. Yes, sir.

Ques. How far did your locomotive go in the direction of Atlantic City after it had killed these Notto people?

Ans. About a mile.

Ques. The reason you couldn't stop the train sooner was because it was going so fast that you couldn't stop it; isn't that so?

10

Ans. That is not so.

Ques. Could you have stopped the train in less distance than a mile?

Ans. I could had it not been for the accident.

Ques. Well, now, with a train going at the rate of sixty miles in fifty minutes, how soon could you stop the engine?

Ans. You mean the engine alone or the engine and train?

20

Ques. The engine and train. I suppose the train will stop when the engine stops.

Ans. The reason I asked that is that there is considerable difference.

Ques. Is it the engine that stops the train?

Ans. No, sir; the air brakes throughout the train stop the engine and train both.

Ques. You know what I mean. Stopping the train. The train couldn't get ahead of the engine, can it?

Ans. Not very well, no.

Ques. Could you have stopped it sooner?

30

Ans. Had it not been for the accident; yes, sir.

Ques. In what space could you have stopped the locomotive?

Ans. At the outside two thousand feet.

Ques. A little less than half a mile, isn't it?

Ans. Yes, sir.

Ques. What is the distance between Camden and Hammonton?

Ans. Hammonton station is just a little bit short of twenty-eight miles.

IRVING McINTYRE, SWORN.

Direct examination.

By Mr. Cole:

10

Ques. Were you the fireman on this train in question?

Ans. Yes, sir.

Ques. How long had you been a fireman at the time of the accident?

Ans. How long had I been a fireman? Four years.

Ques. Do you remember the accident?

Ans. Yes, sir.

Ques. On which side of the engine were you at the time you reached Thirteenth street crossing at Hammonton? 20

Ans. On the left-hand side in the tank.

Ques. Do you know if the whistle on the engine was sounded for the Thirteenth street crossing on the day of the accident?

Ans. Yes, sir.

Ques. Do you know if the bell was ringing?

Ans. Yes, sir.

Ques. Who rang the bell?

Ans. I did.

30

Ques. At what point as you approached the Thirteenth street crossing did you begin to ring the bell? Where were you up the track when you began to ring this bell?

Ans. When I began to ring that bell I was at the whistle-board just down from Rosedale hill, and I rang that bell from Rosedale crossing until we got way below Hammonton station.

Ques. When did you first know that there had been an accident?

Ans. When the stuff came flying back and hit me in the face.

Ques. Could you have seen from where you were standing this wagon approaching from the Folsom side of the track?

Ans. No, sir; I couldn't.

10 Ques. Did you hear any other whistle than the whistle that was sounded for the road crossing?

Ans. Yes, sir; I heard the danger signals.

Ques. Have you any idea how far you were from the crossing when you first heard the danger whistle?

Ans. No, sir; I don't.

Ques. The train was going quite fast at that time, wasn't it?

Ans. Going pretty lively; yes, sir.

Ques. What happened, if anything, to the train? What was done to the train, either at the time the danger signal was sounded or immediately afterwards?

20 Ans. The engineer shut off the throttle and applied the brakes.

Ques. Could you feel that?

Ans. Oh, yes, sir; I could feel it.

No cross-examination.

30 HARRY GRAY, sworn.

Direct examination.

By Mr. Cole:

Ques. Where do you live, Mr. Gray?

Ans. Camden, New Jersey.

Ques. What is your business?

Ans. I am working in the wholesale grocery business at present.

Ques. Were you on this train in question?

Ans. Yes, sir.

Ques. At that time you were employed by the defendant company, weren't you?

Ans. Yes, sir.

Ques. What was your position?

Ans. Baggage master.

Ques. Do you remember the fact that this accident happened? **10**

Ans. Yes, sir.

Ques. Can you say whether the whistle of the engine was sounded for the Thirteenth street crossing where this accident happened?

Ans. It was.

Ques. Did you hear any other whistle than the crossing whistle?

Ans. Yes, sir.

Ques. What whistle did you hear?

Ans. Danger signals, a succession of short blasts. **20**

Ques. After you heard that, what, if anything, happened to the train?

Ans. There was a succession of short blasts and then the first thing I knowed there was another succession of short blasts and the engine was shut off and an application of the brakes.

Ques. What part of the train were you in when you heard the danger signals?

Ans. In the baggage car.

Ques. Did you look out? **30**

Ans. I attempted to look out, but there were missiles of all sorts flying so I withdrew myself.

Ques. Which side did you attempt to look out?

Ans. The right hand side.

Ques. Right hand side as you were going toward Atlantic City?

Ans. Yes, sir.

No cross-examination.

JOEL H. LANCE, sworn.

Direct examination.

10 By Mr. Cole:

Ques. You were the conductor on this train in question?

Ans. Yes, sir.

Ques. Where were you; that is, what part of the train were you when the accident happened?

Ans. I was going from the fifth to the sixth coach from the engine.

20 Ques. Where do you live, Mr. Lance?

Ans. Hammonton.

Ques. Can you recall what, if anything, attracted you to the fact that there was trouble at that crossing?

Ans. I opened the door to go out of the fifth coach into the vestibule between that and the sixth one, and there was an emergency application of the air made. I immediately opened the vestibule door on the rear end of the fifth coach and looked out ahead toward the engine.

Ques. On the right or left hand side?

Ans. On the right hand side.

30 Ques. Did you see anything?

Ans. I saw a white object fluttering from the bottom of the pilot of the engine.

Ques. On which side of the track?

Ans. On the right hand side of the south bound track.

No cross-examination.

MAURICE MINES, SWORN.

Direct examination.

By Mr. Cole:

Ques. Where do you live?

Ans. Camden.

Ques. You were the brakeman on this train, were you not?

Ans. Yes, sir. 10

Ques. Remember the accident?

Ans. Yes, sir.

Ques. What, if anything, first drew your attention to trouble at that crossing?

Ans. I was sitting in the last day coach on the rear of the train next to the parlor car. I had the vestibule door open. It was rather a warm day and I was sitting on the Pullman's porter's stool, and just as we were going into the crossing there at Hammonton where the accident happened I heard the danger signal blown. Of course it seemed very faint to me, and I glanced through the train and I saw my conductor rush to the right hand side of the train and open the door, and in the meantime I felt the brakes go on, and I rushed over to my car and looked out and saw this white object fluttering, but didn't know what it was at the time. 20

Ques. And that was on the right side of the train?

Ans. Yes, sir.

Ques. Can you recall whether you heard the whistle sounded for the crossing, for the railroad crossing?

Ans. No, I can't say as to that; no, sir. 30

Ques. Were the blasts of this whistle loud enough to have been heard a distance, that is, the danger signal blasts? How far, in other words, do you think they could have been heard?

Ans. I was inside of the coach—of course the vestibule of the train made it hard for me to hear it—and it

sounded very faint to me. I couldn't say how far it penetrated.

No cross-examination.

FRANK LA ROSA, sworn.

19 Direct examination.

By Mr. Cole:

Ques. Frank, where do you live?

Ans. Hammonton.

Ques. How long have you lived there?

Ans. All my life.

Ques. Were you somewhere near the Thirteenth street crossing on the day of the trouble?

20 Ans. Yes, sir.

Ques. Where were you?

Ans. On the siding, on the side track.

Ques. On the side track? Between Thirteenth street and the Hammonton station?

Ans. Yes, sir.

Ques. Was this side track toward Folsom or toward Hammonton from the track where the train was coming?

Ans. Why, it is kind of curved around toward the Pennsylvania.

30 Ques. Towards the Pennsylvania track?

Ans. Yes, sir.

By the Court:

Ques. Does that make it on the east or west side of the railroad track proper?

Ans. East side.

Ques. That is, the siding is on the east side of the right of way of the railroad?

Ans. Yes, sir.

By Mr. Cole:

Ques. About how far were you from the Thirteenth street crossing, how many feet, do you think?

Ans. Oh, I couldn't say. I think I would be about three hundred feet.

10

Ques. What were you doing?

Ans. I was unloading a car.

Ques. What was in the car?

Ans. Manure.

Ques. Did anything attract your attention to that Thirteenth street crossing?

Ans. Yes, sir.

Ques. What was it?

Ans. I was working along as usual and I heard the danger signal, and that was something unusual, so I just dumped the forkful what I had and turned around and just turned in time to see the crash.

10

Ques. How far had the horse gone on the track when the train struck him?

Ans. He was about the middle of the track.

Cross-examination.

By Mr. Carrow:

Ques. The crash immediately followed the danger signal? 30

Ans. No, sir.

Ques. The crash came immediately after the danger signal?

Ans. No, sir.

Ques. Why, you said you just heard the loud shrill danger signal and turned around and saw the crash.

Ans. I dumped the forkful that I had into the wagon and then turned.

Ques. Was the crash over when you turned or just happening?

Ans. Just happening.

AUGUST GERGER, SWORN.

10

Direct examination.

By Mr. Cole:

Ques. Where do you live, Mr. Gerger?

Ans. Philadelphia.

Ques. What is your business?

Ans. Steam and hot water heating.

Ques. Were you on the train in question?

20

Ans. Yes, sir.

Ques. Do you remember the fact of the accident?

Ans. Yes, sir.

Ques. Did you hear any whistle blown before you reached the crossing?

Ans. Yes, sir.

Ques. Can you tell how many whistles you heard blown?

Ans. I heard the regular whistle blown first, two long blasts and two short and a few seconds after that I heard the danger whistle.

30

Ques. How many times do you think that blew?

Ans. Oh, five or six.

Ques. What happened then?

Ans. The air brakes were applied and then I saw something fly past the window.

Ques. Which side of the train were you on?

Ans. Right hand side.

By Mr. Carrow:

Ques. You think there were eight or nine whistles blown altogether?

Ans. Yes, sir.

Ques. Eight or nine?

Ans. I should think so; yes.

Ques. They were not doing anything but blowing whistles right at that particular time?

Ans. No. There was a space between the whistles. **10**

W. D. DOMINICO, sworn.

Direct examination.

By Mr. Cole:

Ques. Where do you live? **20**

Ans. Hammonton.

Ques. How long have you lived there?

Ans. Well, about seventeen years.

Ques. Do you know Thirteenth street?

Ans. Yes, sir.

Ques. This railroad crossing?

Ans. Yes, sir.

Ques. Were you on Thirteenth street on the day of this accident?

Ans. Well, I just happened to go— **30**

Ques. Were you over on Thirteenth street on the day of the accident?

Ans. Yes, sir.

Ques. Did you go—were you going toward the place of the accident or away from it?

Ans. Towards the accident.

Ques. Were you walking or riding?

Ans. Riding.

Ques. On what?

Ans. On a bicycle.

Ques. As you were riding did you see this wagon with the man and woman in it?

Ans. Yes, sir.

Ques. Coming toward the track?

Ans. Yes, sir.

10 Ques. Now, whereabouts on Thirteenth street were you when you first saw this man and woman in this horse and wagon?

Ans. I was just coming around the corner of the hotel.

Ques. Where is that?

Ans. On the corner of the old Egg Harbor road and Thirteenth street.

Ques. Is that between the Pennsylvania Railroad tracks and the Reading?

Ans. Yes, sir.

20 Ques. Did you see them struck?

Ques. I was just riding slowly on the wheel before I seen them coming, but I didn't make any motion for them to stop as I thought the horse wasn't afraid and he was just walking up towards the railroad, and I thought they would stop but all at once I seen them blow the danger whistle.

Ques. Did you hear the whistle blown?

Ans. I heard the danger whistle; yes.

Ques. Did they stop before they got to this crossing?

30 Ans. No, they didn't.

Ques. How far were they from the track when you first saw them, do you think?

Ans. I don't know; it wasn't very far.

Ques. Are you quite sure they didn't stop?

Ans. Yes, sir.

Ques. Did you see them, that is either of them, look up the track toward Hammonton as they were approaching the crossing?

Ans. No, sir.

Ques. I mean towards Rosedale.

Ans. No, sir.

Cross-examination.

By Mr. Carrow:

Ques. From the distance that you were away you didn't see every little thing they did, did you?

Ans. I don't suppose I was very far.

Ques. You don't say that you pretend to see every-
thing they did? 10

Ans. No; of course not.

Ques. You couldn't tell which way his eyes were?

Ans. No; of course not. I wasn't looking at them right in the face.

Ques. And you couldn't tell when he was first stopping his horse?

Ans. He tried when he heard the danger whistle, I supposed that he tried to stop the horse back.

Ques. And no other whistle was blown but the danger whistle? 20

Ans. Yes, sir; he blowed his regular whistle.

Ques. Did you hear it?

Ans. Yes, sir, I did.

Ques. Did you see Campanella there?

Ans. I don't know.

Ques. Where was he?

Ans. I don't know where he was. I didn't see him there.

30

JOHN BAKELY, sworn.

Direct examination.

By Mr. Cole:

Ques. Are you in the employ of the railroad company?

Ans. Yes, sir.

Ques. What is your position?

Ans. Section foreman.

Ques. How long have you been a section hand?

Ans. Going on twenty-five years the second of next May.

Ques. What part of the company's tracks are you in charge of?

Ans. From Rosedale to Seventh street, south of Da Costa.

10 Ques. Does that cover the point of the accident?

Ans. Yes, sir.

Ques. Were you in charge of that part of the company's tracks in August of 1905?

Ans. Yes, sir.

Ques. Did you know Mr. Notto in his lifetime?

Ans. Yes, sir; he worked for me.

Ques. And do you know his brother Rosario, who was here as a witness?

Ans. Yes, sir; both of them worked for me.

20 Ques. Did they both work for you?

Ans. Yes, sir.

Ques. And they both worked for the railroad company?

Ans. Yes, sir.

Ques. What did Mr. Notto, the deceased, do when he worked for the railroad company?

Ans. Track laborer.

Ques. Did he work on this very section that you work on?

Ans. Yes, sir.

30 Ques. Did he ever work at this Thirteenth street crossing?

Ans. Yes, sir; I have no doubt but what he did. We worked up and down.

Ques. How long ago was it as near as you can recall that he worked for the railroad company?

Ans. I should say about five or six years. I can't tell you exactly.

Ques. How long ago was it that the brother worked for the railroad company?

Ans. I think he worked for me about a year after his brother did, something like that.

Ques. Do you know what the condition of the company's right of way was and the slope of the bank at the Thirteenth street crossing on the twenty-fourth of August, 1905?

Ans. I do, sir.

Ques. Was there any Indian grass or shrubbery or vegetation of any kind on the slope of that bank or on the company's right of way in August, 1905? **10**

Ans. No, sir; there were not.

Ques. Was it any part of your duty to keep the right of way and the slope of that bank clear?

Ans. Yes, sir; I had my orders to cut the grass and brush; I think it was on the twenty-eighth of July, I got my notice to cut the grass and brush.

Ques. You had orders on the twenty-eighth of July to cut the grass and brush along that road?

Ans. Yes, sir. **20**

Ques. Did you do it?

Ans. Yes, sir.

Ques. When did you finish that work?

Ans. I think as near as I can come at it between the eighth and ninth or tenth of August I finished my entire section.

Ques. What became of the stuff that was cut from the slope of the bank?

Ans. What little there were—on the side north of there there were very little; probably all we cut out there wouldn't make a forkful; from the time you leave that street until you get to the mile post, which is about a quarter of a mile from this crossing, I don't suppose you would gather a forkful off of that place, as Mr. Rosett uses it for a turn-row for his horse, and another thing the white sand blows so hard that the company filled it in with ashes. **30**

Ques. Were there ashes or cinders on the slope of that bank on August 25th, 1905?

Ans. Yes, sir; previous years to that, too.

Ques. I will show you a photograph offered in evidence and marked Exhibit D2, which shows the company's tracks and right of way and the slope of the bank. I ask you to look at that and say whether that photograph so far as any shrubbery or grass or trees on the company's right of way or the slope of the bank, represents truly the situation as it was in August, 1905?

10

Ans. Yes, sir; just about the same.

Ques. Just about the same?

Ans. Yes, sir.

Ques. Do you know whether these telegraph poles are on the company's property or not?

Ans. No, sir; they are not.

Ques. They are not?

Ans. No, sir; they are supposed to be outside of the company's line.

20

Ques. Do you know where the company's title ends?

Ans. Thirty feet from the center between the two tracks.

Ques. Thirty feet from the center between the two tracks?

Ans. Yes, sir.

Ques. Was the signal board which is on the Folsom side of the railway track there on the twenty-fourth of August?

Ans. Yes, sir.

Ques. How high was that signal board?

30

Ans. I think about ten feet.

Ques. Any words on it?

Ans. Yes, sir.

Ques. What was on it?

Ans. I think the words is there, "Stop, listen and look out for the locomotive," something similar to that.

Ques. Are the words in small or large letters?

Ans. Large letters.

Ques. Is there a like signal board on the other side of the road?

Ans. Yes, sir; I put them in there, both of them.

Ques. You put them in?

Ans. Yes, sir.

Ques. How far from Thirteenth street looking toward Winslow can you see a train coming in that direction?

(Objected to as irrelevant, immaterial and incompetent.) **10**

The Court: What relation has Winslow to the crossing?

Mr. Cole: Winslow is toward Camden from the crossing.

(Question repeated.)

The Court: That question is all right. **20**

Ques. On August twenty-fourth, 1905.

Ans. I could see it; I will say twenty-one feet from the track.

Ques. You don't understand my question.

(Question repeated.)

Ans. Well, that is standing out on Thirteenth street and looking towards Winslow, about twenty-three feet from the track you can see— **30**

Ques. No; I don't want to know how far you can stand back of the track and see a train. I want to know where if you see the train how far you can see it?

Ans. I can see the train anywhere from Thirteenth street over a measured mile and a half.

Ques. How far from the railroad track, on August 24th, 1905, could you stand and still have a view of that train from that point to the railroad track?

Ans. About twenty-three feet away from it.

Ques. Have you tried it?

Ans. Yes, sir.

Ques. Was there any shrubbery or grass or other vegetation two, three, four, five, six or seven feet high anywhere between the tracks of the railroad company and
10 the top of this bank on August 24th, 1905?

Ans. No, sir; there were not.

Ques. Were you anywhere near the point of the accident about the time of the accident?

Ans. No, sir; I was home eating my supper when it happened.

Cross-examination.

By Mr. Carrow :

20 Ques. When did you get the idea of twenty-three feet away?

Ans. Because I was right there and viewed the place right there.

Ques. Did anybody tell you that there had been a rule of the Supreme Court laying that down as a limit?

Ans. No, sir.

Ques. You never heard tell of it?

Ans. No, sir; my own judgment as I went there and measured it for myself.

30 Ques. How did you measure it?

Ans. With a tape line.

Ques. Did you see any corn growing on the top of that hill?

Ans. Yes, sir.

Ques. You saw the corn growing there?

Ans. Yes, sir.

Ques. That is the only thing that was there?

Ans. Yes, sir; that wasn't inside of the twenty-three feet.

Ques. Of the twenty-three feet?

Ans. The twenty-three feet from the track.

Ques. How wide is the company's right of way?

Ans. They have thirty from the center between the two tracks.

Ques. Well, how wide is the entire right of way at that point? 10

Ans. Sixty feet.

Ques. Where is your line?

Ans. Our line is thirty feet each side of the center of the track.

Ques. How far does your line go up the hill?

Ans. Clear up on Rosedale hill.

Ques. I mean to say, how far does your line run up that hill where the cornfield was.

Ans. Clear up to Rosedale station.

Ques. How far does the line of the railroad run up the embankment where the cornfield was? 20

Ans. You mean from the top of the embankment out to our right of way?

Ques. Yes.

Ans. I should judge it was four or five feet, five or six feet.

Ques. Do you mean to say that your right of way don't run up to the top of the hill?

Ans. It does at that point, yes, sir. I am saying four or five feet on top of the hill.

Ques. On top of the hill was brush and Indian grass which the company gave you instructions to clear off; isn't that so? 30

Ans. I had instructions and cleaned it before the accident.

Ques. There was brush and Indian grass on top of that hill?

Ans. No brush.

Ques. Isn't there brush there now?

Ans. No, sir.

Ques. Wasn't there brush there in August?

Ans. No, sir.

Ques. If there was nothing on top of the hill, no brush and no grass, how is it that you had to be so close as twenty-three feet in order to see up the tracks?

10 Ans. I wouldn't have to be that close. I could be three hundred feet and look through the corn and see Rose-dale hill.

Ques. You mean to say that the corn came down to twenty-three feet of the tracks?

Ans. The telegraph poles.

Ques. The corn and the telegraph poles came down to within twenty-three feet of the track?

Ans. Somewheres in the neighborhood of twenty-three feet.

20

ANTONIO LA ROSA, sworn.

Direct examination.

By Mr. Cole:

Ques. Where do you live, Mr. La Rosa?

Ans. Hammonton.

30 Ques. Are you employed by the railroad company now?

Ans. Yes, sir.

Ques. What do you do?

Ans. Section forman now.

Ques. How long have you been working for the railroad company?

Ans. I been working eighteen years.

Ques. How long have you been working for the railroad company?

Ans. I been working eighteen years and been leave the railroad last February and work on my farm all summer and been on the road about two months now.

Ques. About two months?

Ans. Yes, sir.

Ques. What were you doing in August, 1905, August a year ago?

Ans. Been work railroad.

10

Ques. Working for the railroad then?

Ans. Yes, sir.

Ques. Whereabouts were you working on the railroad in August, 1905?

Ans. Down below Hammonton.

Ques. Down below Hammonton?

Ans. Yes, sir.

Ques. Do you remember this accident?

Ans. I will.

Ques. Where were you when the accident happened?

20

Ans. I been across Fruit Growers' Union.

Ques. Across to Fruit Growers' Union?

Ans. Yes, sir.

Ques. Did you see the engine when it struck this horse?

Ans. Yes, sir.

Ques. How far were you away?

Ans. Four telegraph poles distant if you walking it from.

Ques. Toward Hammonton station?

Ans. Yes, sir.

30

Ques. Did you see these people as they were coming near the track?

Ans. Yes, sir.

Ques. Did the horse stop?

Ans. It stopped when it heard the danger whistle. He stopped the horse when he heard the danger whistle and tried to pull it back.

Ques. Did you hear the whistle?

Ans. I heard the regular whistle and heard the danger whistle.

Ques. Was it after that that he tried to pull the horse back?

Ans. Well, he no hear when they blow the first whistle at the whistle board, a quarter mile distant.

Mr. Carrow: I ask that that be stricken out.

10

Mr. Cole: I don't want that.

The Court: Strike it out.

Ques. Which way were you going?

Ans. I going home.

Ques. Up towards Rosedale?

Ans. Yes, sir; I going up Thirteenth street, because I live Thirteenth street.

20

Ques. Were you on the railroad track?

Ans. Yes; I go up the southbound track.

Ques. Right on the track that this train was on?

Ans. Yes, sir.

Ques. Did you cross over this track?

Ans. Crossed over when it been this side Fourteenth street.

Ques. Had you crossed over from the south bound track to the north bound track before the train struck?

Ans. Yes, sir.

Ques. Why?

30

Ans. Because I seen the train coming and heard the whistle blow.

Ques. Did you see either of the people in the wagon looking up towards Rosedale as they came to that crossing?

Ans. I no see that they come to Rosedale. When they blowed that whistle he stop and try to pull back.

Ques. Did you know Notto? Did you know him?

Ans. Yes, I know him. We been work together on the railroad.

Ques. On this very railroad?

Ans. Reading Railroad; yes, sir.

Ques. Whereabouts?

Ans. Somé while ago. About thirteen or fourteen years ago before he bought the farm.

Ques. Did you work along through Hammonton together?

Ans. No, sir. 10

Ques. Where was it you worked together?

Ans. Work in the section about fourteen years ago.

Ques. Did he work on this section you worked on?

Ans. Yes, sir.

Ques. Did he ever work near this Thirteenth street crossing?

Ans. He been working from Winslow Junction down to Da Costa station.

Ques. Do you know his brother?

Ans. Yes, sir. 20

Ques. He worked for the railroad, too?

Ans. Yes, sir; I been there when he worked there.

Cross-examination.

By Mr. Carrow:

Ques. Did you testify before the coroner?

Ans. Yes, sir.

Ques. Do you remember saying this: "The road was so low, the corn a little high, no matter what the people say you don't have a chance to see"? 30

Ans. No, sir.

Ques. You didn't say that?

Ans. No, sir.

Ques. Is your name Antonia Battagliesse?

Ans. No, sir.

Ques. How do you spell it?

Ans. L-a R-o-s-a.

Ques. How far is the Fruit Growers' Union in the direction of Atlantic City from Thirteenth street?

Ans. The building?

Ques. Yes.

Ans. Oh, it is about four hundred and fifty feet or five hundred.

10 Ques. Four hundred and fifty feet or five hundred?

Ans. Something like that.

Re-direct examination.

By Mr. Cole:

Ques. How far is the building back from the railroad track toward the Pennsylvania tracks? Isn't the Fruit Growers' Union building between the Reading tracks and the Pennsylvania tracks?

20 Ans. You turn two tracks because they have buildings both side there and I don't know what he means by the buildings. They have buildings on the right and left sides.

Ques. Both sides of what?

Ans. Of Thirteenth street.

Ques. I don't mean that. I don't mean both sides of Thirteenth street. I mean, aren't the buildings of the Fruit Growers' Union between the Reading railroad tracks and the Pennsylvania Railroad tracks?

30 Ans. They have one building there about three hundred feet, not quite.

Ques. From where?

Ans. From the side of the track.

JOSEPH GARTON, SWORN.

Direct examination.

By Mr. Cole:

Ques. Where do you live?

Ans. Hammonton.

Ques. How long have you lived there?

Ans. Thirty years. **10**

Ques. Were you one of the members of the coroner's jury in this case?

Ans. Yes, sir.

Ques. Did you know Mr. Notto in his lifetime?

Ans. Yes, sir.

Ques. Did you know this horse he had that was killed?

Ans. I have seen it, yes.

Ques. Do you know how much he paid for it?

Ans. Not absolutely certain. I had a note sent to me to collect for the value, one hundred dollars. **20**

Ques. Did you see him about it?

Ans. Yes, sir.

Ques. How much was the note for?

Ans. One hundred dollars.

Ques. Did you go to the scene of the accident?

Ans. Yes, sir.

Ques. How soon were you there after the accident?

Ans. Why, just as long as it took me to run from Twelfth street to Thirteenth, say five minutes.

Ques. When did the coroner's jury go to the scene of the accident? **30**

Ans. On the day of the inquest.

Ques. How soon was that after the accident?

Ans. I should say about three days afterwards.

Ques. Were all the members of the inquest there?

Ans. Yes, sir.

Ques. Did you notice the condition, physical condition that existed at that crossing at that time?

Ans. Yes, sir.

Ques. Why did you go to the scene of the accident?

Ans. To view it so I would have a right idea of how it occurred and how the place looked.

Ques. Were you in a wagon or buggy that day?

Ans. We went in a bus.

Ques. Who beside yourself were there?

Ans. Myself, Mr. O'Donnell, Coroner Gaskill, can't remember all the names of the jury.

10 Ques. Did you make any observations that day as to how far you could see trains coming from Winslow Junction?

Ans. Yes, sir.

Ques. At that time was there corn in the field?

Ans. Yes, sir.

Ques. How high was that field?

Ans. I should say about six foot.

Ques. Was it thick?

Ans. The corn was thick; yes, sir.

20 Ques. Did you notice the condition of the slope of the bank and the company's right of way?

Ans. Yes, sir.

Ques. How far back from the railroad track did you go to make your observation?

Ans. About twelve paces; walked back from the track towards Folsom.

Ques. How far were you back from the track when you were in the bus?

Ans. Well, we had the bus on the north side and we got out there.

30 Ques. Did you have a wagon on the Folsom side?

Ans. Not then.

Ques. Afterwards at any time?

Ans. I have been across in a wagon since but didn't go especially for that purpose.

Ques. Did you see any shrubbery or trees or Indian grass on the slope of that bank when you were there on the day of the accident?

Ans. Not on the slope.

Ques. Did you see any there on the day that you were there as a member of the coroner's jury?

Ans. No, sir.

Ques. Will you look at Exhibit D2, the photograph, and at the slope of the bank, and say if that truly represents the condition as you saw it on the two days that you were there in August, 1905?

Ans. Yes, sir; it does.

Ques. Was there anything in the way of seeing a train approaching from Winslow Junction after you pass the line of the telegraph poles coming toward the railroad track? **10**

Ans. There is nothing to stop the view. You can see clearly up the track for at least twelve paces back.

Ques. Now, at what point can you go back from the railroad track and have an uninterrupted view of a train approaching from Rosedale until you get to the nearest rail of the south bound track?

Ans. On foot? **20**

Ques. Yes.

Ans. About ten or twelve paces.

Ques. How about in a wagon?

Ans. Then I can see three hundred back on a regular spring wagon; I can see the train coming down the slope.

Ques. Did you know this wagon?

Ans. I have seen it up in my place, but I don't know it personally.

Ques. How far would you say the driver would be from the nose of the horse sitting in that wagon driving, how many feet? **30**

Ans. About eight feet; seven or eight feet, at least.

Ques. How high would you say the eye of the driver would be sitting in that carriage, above the highway?

Ans. That would be seven or eight feet too sitting on a regular seat in a spring wagon.

Ques. Did you take observations yourself?

Ans. Yes, sir; I didn't take any measurements.

Ques. I mean, did you take observations about the approach of trains?

Ans. Yes.

Ques. Did anyone else who was with you?

Ans. Yes.

Ques. Who?

Ans. Mr. O'Donnell. We looked over the bank and we looked up the track to see how far we could see.

10 Ques. At that time you were doing that, were you there to be a witness for the railroad company?

Ans. No, sir.

Ques. Why were you there?

Ans. I was there as foreman of the coroner's jury.

Ques. Were you subpoenaed to come here?

Ans. I was subpoenaed last Saturday; yes, sir.

Ques. Now, when you get a view of the train from Winslow, coming from Winslow, no matter where you stand, how far can you see it?

Ans. No matter where I stand?

20 Ques. Yes.

Ans. Oh, over a mile up the road if I stand by the crossing.

Ques. How long have you known Notto?

Ans. Oh, I guess ten years, anyway eight or ten years.

Ques. Had he ever worked for this railroad during the time you knew him?

Ans. Well, I don't know anything about that.

Ques. Do you know where he lived?

Ans. Yes, sir.

30 Ques. This Fruit Growers' Union building—isn't that between the Reading tracks and the Pennsylvania tracks?

Ans. Yes, sir.

Ques. About midway, aren't they?

Ans. The rear end of it, I think, is a little nearer to the Reading than what the front is to the Pennsylvania. The front is toward the Pennsylvania.

Ques. Do you know whether Notto ever met with an accident?

Ans. Yes, sir; he was struck by an automobile; his wagon was.

Ques. Was he injured?

Ans. Yes, sir.

Ques. To what extent?

Ans. He told me that he had one rib broke.

Ques. He told you that he had one rib broken?

Ans. Yes.

Ques. How long ago was that, Mr. Garton? **10**

Ans. It must have been two or three years before his death.

Cross-examination.

By Mr. Carrow :

Ques. Are you the coroner?

Ans. No, sir.

Ques. You are a Justice of the Peace at Hammonton? **20**

Ans. Yes, sir.

Ques. You do considerable work for the Reading Railroad Company?

Ans. No, sir.

Ques. Haven't you been working up this case?

Ans. No, sir.

Ques. Been around trying to get witnesses?

Ans. No, sir; I have not. I have never been approached on the subject whatever.

Ques. Do you mean to say that anywhere from three hundred feet away from the crossing and approaching the crossing in a wagon, notwithstanding the five foot embankment and corn six feet high on top of the embankment, that you can see through the embankment and corn so as to be able to discern the approaching train a mile down the track? **30**

Ans. I said nothing of the kind.

Ques. It is a fact that when the corn is there you can't see?

Ans. The embankment is five feet high just at the crossing, but not further back.

Ques. At the crossing, can you see when you are standing there looking over the bank and through the corn, can you see a train a mile down the track?

Ans. There is no corn on the corner at all.

10 Ques. When the corn was there?

Ans. There was no corn there at that time. There is a corn field back of it, but not along the edge of the track.

Ques. How many paces did you walk away from the track?

Ans. Twelve paces.

Ques. What would that be in feet?

Ans. Say twenty-five or thirty feet.

Ques. You heard this railroad man or section foreman say that you couldn't see further away than twenty-three feet, didn't you?

20 Ans. I don't care what he said. I am not testifying to what he said.

J. L. O'DONNELL, sworn.

Direct examination.

By Mr. Cole:

30 Ques. Mr. O'Donnell, where do you live?

Ans. Hammonton, Atlantic county, New Jersey.

Ques. How long have you lived there?

Ans. Over twenty-five years.

Ques. What is your business?

Ans. Well, something of a lawyer; I do anything that I can to earn an honest dollar.

Ques. Were you a member of the coroner's jury in this case?

Ans. Yes, sir.

Ques. Were you at the scene of the accident?

Ans. Yes, sir.

Ques. How soon after the accident?

Ans. Not until the coroner's jury went there to view the ground.

Ques. Do you know how many days that was after the accident?

Ans. I don't remember the date of the inquest. **10**

Ques. About how long were you around that crossing, near it; how long were you there?

Ans. About fifteen minutes.

Ques. What was your purpose in going there?

Ans. To view the ground and the crossing to get a correct idea as to the view of the trains coming to this crossing or passing over it.

Ques. Did you make observations that day?

Ans. Yes, sir.

Ques. Anyone with you? **20**

Ans. The coroner's jury.

Ques. All of you were there?

Ans. Yes, sir.

Ques. Notice the signal board there on the Folsom side of the track?

Ans. The crossing signal board?

Ques. Yes.

Ans. I don't think I took notice of that that day, but I know the board is there.

Ques. Did you notice the slope of this bank on the Folsom side? **30**

Ans. Yes, sir.

Ques. Did you see any shrubbery or Indian grass or trees there five, six or seven feet high?

Ans. No, sir.

Ques. Was the railroad's right of way on the slope of the bank clean or did it have Indian grass and stuff over it?

Ans. My recollection of it is that it was clean.

Ques. Can you say if this Exhibit D2, which is a photograph showing the right of way of the company's property and the slope of the bank, accurately shows the conditions that existed there on that day?

Ans. I think that is a fair representation of the ground.

10 Ques. Do you remember the line of telegraph or telephone poles on the bank?

Ans. I know where the telegraph poles are located along the right of way.

Ques. Did you know Notto?

Ans. Yes, sir; I was well acquainted with Mr. Notto.

Ques. Do you know if he worked for the company?

Ans. Yes, sir; I think I should—

Ques. Doing what?

Ans. He worked as a section hand.

Ques. On this very section?

20 Ans. On the Hammonton section.

Ques. Hammonton section included the Thirteenth street crossing, did it?

Ans. Yes, sir.

Ques. Now, Mr. O'Donnell, will you tell the jury, please, the result of the observations you made that day as to how far from the tracks towards Folsom you could see a train approaching?

30 Ans. My observations of it was—I took two views of it. The jury rode down in the bus that we rode up in and let the team walk down towards the tracks and over the tracks, and then we got out and looked over the ground on foot.

Ques. Will you give us the result of that observation?

Ans. In riding in the bus we had no difficulty in seeing a train that was coming from Winslow Junction towards Hammonton, could be seen between three-quarters and a mile towards Rosedale.

Ques. What distance from the track was it?

Ans. The further you were away from the track the better view that you would have. As you get down close to the track the road dips or is on an incline, the roadway, and about, I think, between twenty and twenty-five feet the bank is at the highest.

Ques. That is, you mean when you are twenty or twenty-five feet from the railroad track you have got the highest point of the bank?

Ans. Yes; the south bound track and the rail nearest the siding, between twenty and twenty-five feet, it is the highest point of the bank, and then you could see the train at least a half a mile, a plain view a half a mile, and in view between the half mile and the mile. 10

Ques. Was there any point between twenty feet of that track and the track that you couldn't see the train as far as you could see anywhere on the track?

Ans. In the bus?

Ques. Yes.

Ans. No; we could get a view of the train coming anywhere in the bus, seated in the bus. 20

Ques. Seated in the bus you could see the train as far up as it could be seen from any point?

Ans. Yes. There wasn't anything to obscure the vision.

Ques. Were you in an open bus?

Ans. All the curtains were up; it was in the summer time.

Ques. You say you tried it on foot?

Ans. Yes, sir.

Ques. What was the result of that? 30

Ans. When you got down within twenty or twenty-five feet from the rail, then, you would have to look up to see the train coming.

Ques. What about when you got within twenty feet of the rail and to the rail?

Ans. Then you had a clear vision of the track for a mile and a half towards Winslow Junction.

Ques. Now, how far back from the railroad track did you begin to make your observations in the bus?

Ans. I should think about three hundred feet, between two and three hundred feet back from the track.

Ques. And could you see the train coming from Rose-dale over the corn?

Ans. Yes, sir; in the bus.

Cross-examination.

10

By Mr. Carrow:

Ques. As you went on and got down nearer the tracks the embankment and corn and poles obscured your vision?

Ans. Yes, sir; as you go down the incline until you come to the bank.

Ques. Until you got a clear view from the side of the bank?

20

Ans. Yes, sir.

By Mr. Cole:

Ques. Was your view at any point in the bus obscured so you couldn't see this train coming?

Ans. No. You could see it at any point in the bus because the bus was up.

Ques. Is there any point from the track twenty feet that your vision is obscured either riding or walking?

Ans. Between the rail and the bank?

30

Ques. Yes.

Ans. No; I think not.

By Mr. Carrow:

Ques. You don't recollect the day you made those observations?

Ans. I don't recollect the date of the inquest.

Ques. You didn't know that the bank had been cleared off of this brush and Indian grass the day after the accident?

Ans. I don't know the conditions of the grounds the day of the accident any more than you do, sir.

WILLIAM A. HUSTED, sworn.

10

Direct examination.

By Mr. Cole:

Ques. You are in the employ of the company?

Ans. I am.

Ques. And you were on August 24th, 1905?

Ans. I was.

Ques. What was your business at that time?

Ans. Making investigations of accidents.

20

Ques. Did you make an investigation of this accident?

Ans. I did.

Ques. When were you at the scene of the accident after the accident?

Ans. About five or six minutes.

Ques. Where had you been during the day?

Ans. Atlantic City.

Ques. How did you learn of this accident?

Ans. I was going home on train sixteen, left Atlantic City sixteen. The board was against the train and it came to a stop, and I got off and went to this crossing.

30

Ques. Did you meet the witness, Antonio Battagliesse?

Ans. I did the next day.

Ques. What were you doing there the next day?

Ans. Going on with my investigation. The day of the accident after I got at the crossing there there was quite a number of people congregated there, and I stood there and looked up the track—

Ques. You met Battagliesse the next day?

Ans. Yes, sir.

Ques. Where did you first see him?

Ans. At the Fruit Growers' Union house there.

Ques. Did you go to the crossing with him?

Ans. I did.

Ques. Did you interview him?

Ans. I did.

10 Ques. Did he say anything to you as to whether or not he had heard danger blasts?

Ans. He said to me as we were on the crossing there, he said, "I heard four or five blasts of the whistle. I turned around and the train hit the wagon." He then gave me a practical demonstration of how the man went down the bank out of the wagon by jumping down himself.

Ques. Did you discuss with him the condition of that crossing?

Ans. I did.

20 Ques. What else did you do there in his presence?

Ans. I put my heel on the nearest rail, the southwest rail, and paced off seven paces and I stood there and looked and he was, I suppose, about a foot or fourteen inches away from me nearer to the rail, and he said, "This is about twenty feet and you can see way up the track."

Ques. And could you?

Ans. Sure; saw the crown of Rosedale hill.

Ques. Did you notice the physical condition of the company's right of way and the slope of the bank on that day?

30 Ans. I did.

Ques. What, if anything, was growing on the company's right of way or on the slope of the bank on the day of the accident?

Ans. On the slope of the bank was some green grass.

Ques. How high was it?

Ans. Just simple grass, ordinary lawn grass. The bank had been covered with cinders.

Ques. Did you see the cinders?

Ans. Yes, sir.

Ques. Did you see any shrubbery there, four, five, six or seven feet high?

Ans. No, sir.

Ques. See any Indian grass of such height?

Ans. No, sir.

Ques. Were there any trees on it?

Ans. No, sir; going on Thirteenth street, leaving the line of the telegraph poles there is quite some shrubbery there. 10

Ques. Showing you Exhibit D2, I ask you if that accurately shows the physical conditions as they existed on the ground the day you were there?

Ans. To the best of my recollection they are the same thing.

Ques. Did you make any observations on the day of the accident to see how far you could see?

Ans. I didn't take any measurements. I just walked to the middle of the road and made the remark to the people there that a driver tending to his business had no business to be hit there. 20

(Objected to. Ordered stricken out.)

Ques. How far from the nearest rail of the south bound track can you have an uninterrupted view of a train approaching from Winslow Junction?

Ans. Over, I think, about twenty-seven feet. I think I paced off nine paces there.

Ques. That is standing?

Ans. Standing. 30

Cross examination.

By Mr. Carrow:

Ques. You worked up the evidence?

Ans. I made the investigation; yes, sir.

Ques. And twenty feet away from the track on Thirteenth street you say you could see up the tracks, see a train that was coming from Camden?

Ans. Yes, sir.

Ques. Saw corn on top of the hill, didn't you?

Ans. The corn was growing in the cornfield there.

By Mr. Cole:

10 Ques. Was there any corn on the top of that bank between the telegraph poles and the edge of the bank?

Ans. There was not.

HERVEY HARMER, recalled.

Direct examination.

10 By Mr. Cole:

Ques. Mr. Harmer, were you at the point of the accident more than once?

Ans. Yes, sir; several times.

Ques. Were you there before you made the photographs?

Ans. I was.

Ques. When before you made the photographs were you there?

20 Ans. Sometime before I made those photographs I was down near there doing some work and I knew of this accident and went down and looked at the ground.

Ques. Did you make observations as to the distance you could see trains and see it coming from Winslow Junction?

Ans. I did; yes, sir.

Ques. Did you make them on both occasions or only on one?

Ans. On one I made measurements. On more than one occasion I made observations.

Ques. Have you those measurements here or can you recall them?

Ans. Yes, sir; I have them.

Ques. Will you tell the jury, please, the measurements you made and what you saw?

19

Mr. Carrow: I object because the witness's testimony is not confined to the time when this accident occurred.

Mr. Cole: There is no such change in condition as makes this testimony inadmissible.

(Testimony admitted. Exception noted for plaintiff.)

Ans. Standing on Thirteenth street at any point between twenty-one feet west of the nearest rail of the south bound track looking in the direction of Camden, you can see fifty-seven hundred feet. From a point twenty-two feet to sixty-two feet, three thousand feet. From a point sixty-two to one hundred and fifty feet, you can see two thousand feet. I went back of that, but didn't make any accurate measurements.

20

Ques. Did you make your record at the time you made the observations?

Ans. From the notes I made on the ground.

Ques. When did you make those measurements?

Ans. The second day of May, 1900.

30

Ques. You were afoot?

Ans. I was; yes, sir.

No cross-examination.

HARRY M. DICKINSON, sworn.

Direct examination.

By Mr. Cole:

Ques. Mr. Dickinson, you are an engineer in the employ of the defendant company?

Ans. Yes, sir.

10

Ques. Did you make the map on the board?

Ans. I did; yes, sir.

Ques. From what did you make the map?

Ans. Showing the tracks of the Reading Railroad and the public road and some buildings around Thirteenth street, Hammonton?

Ques. Map made from actual surveys made by you?

Ans. It is; yes, sir.

Ques. How far is it from the Thirteenth street crossing to the summit of the hill at Rosedale?

Ans. Fifty-seven hundred feet.

20

Ques. By actual measurement?

Ans. Yes, sir.

Ques. Track perfectly straight between Thirteenth street and the summit?

Ans. It is; yes, sir.

Ques. How wide is Thirteenth street actually, that is, how wide is it actually in use at the railroad crossing?

Ans. You mean on the crossing planks?

Ques. Yes.

Ans. The width of the crossing planks?

30

Ques. Yes.

Ans. Sixteen feet.

Ques. How far is the crossing signal board from the near rail of the south bound track from the Folsom side?

Ans. I will scale that to verify this. That distance is eighteen feet.

Ques. How far is the whistleboard at the Thirteenth street crossing from the crossing?

Ans. The whistleboard is twelve hundred and sixty-seven feet from the center of the crossing.

Ques. Is the whistleboard indicated on the map?

Ans. It is; yes, sir.

Ques. By this black mark here?

Ans. Yes, sir.

Ques. And is the crossing signal board indicated by a like mark?

Ans. It is; yes, sir.

Ques. How far is it from the near rail of the south bound track on the Folsom side to the top of the bank? **10**

Ans. From the near rail to the top of the bank at the road crossing?

Ques. Yes.

Ans. That distance is seventeen feet.

Ques. How far is the telegraph or telephone pole from the near rail of the south bound track?

Ans. Twenty-six feet.

Ques. When did you make your surveys?

Ans. November 1st.

Ques. Make any observations while you were there? **20**

Ans. Yes, sir.

Ques. Have you a record of them?

Ans. I have; yes, sir.

Ques. Will you tell the jury the result of those observations?

Ans. Yes, sir. At a distance from the near rail of the south bound track to a point twenty-six feet back, measured along the public road, you can see the railroad track for a distance of fifty-seven hundred and seventy feet to the summit of the grade. Then I took some points further back at the time I took these observations and standing at a point sixty-two feet back you could see a distance of three thousand feet and then back to a distance of a hundred and fifty feet you can see a distance of twenty-one hundred feet. **30**

Ques. Did you make those observations the same day you made your survey?

Ans. I did; yes, sir.

Ques. Anyone with you?

Ans. Well, there was several men helped me to measure, of course.

Ques. Is there anything in the way of an unobstructed view of a train from Rosedale coming to Hammonton anywhere from twenty-six feet of the rail of the south bound track to the south bound track?

Ans. No, sir; there is nothing to obstruct the view.

10 Ques. Does this map show the building of the Fruit Growers' Union?

Ans. It does; yes, sir.

Ques. And to what scale is the map drawn?

Ans. Thirty feet to an inch.

Ques. Are the buildings on this map correctly located for distance?

Ans. They are; yes, sir.

Ques. What is the distance between the rail of the south bound track toward Folsom and the rail of the north bound track toward Hammonton?

20 Ans. The distance from the nearest rail of the south bound track to the nearest rail of the north bound track, or in other words from center to center of the two tracks, would be twelve feet one inch.

Mr. Cole: I offer the map for illustration.

(Map admitted in evidence for illustration and marked B for identification.)

30 Both sides rest.

Mr. Cole: I conceive this is a case where there should be a direction as the whole case stands, upon the ground that by all the evidence that is worthy to go to the jury on the subject of the company's negligence, there has been no negligence shown. In other words, we have shown by affirmative proof, uncontradicted, that the whis-

tle was blown and the bell rung for the statutory distance. There is no evidence to show that that was not done. All of the evidence is directed to the point that they did not hear it, and it is perfectly manifest that no witness who said he did not hear the whistle blown was in a position to hear it blown.

On the question of contributory negligence, we submit that the evidence is plain that had they used their eyes on this occasion this accident could not have happened. I don't know whether your Honor has followed this testimony or not with a view to this motion for a direction. I do not propose to take the time to show that this accident could not have happened if the traveller in this instance had been exercising care. It is eight feet from the point of the bank at its beginning to the rail of the south bound track on which this train was. It is fourteen feet, by their claim, from the top of the bank to the nearest rail. By the undisputed proof and by the plaintiff's proof the eye of the traveller was at least six feet at all times above the highway, so that when he reached a point within fourteen feet of this south bound track he had a vision which was above the highest point of the bank where he could have seen this train coming from the summit of the hill at Rosedale, fifty-seven hundred and seventy feet away, by actual measurement.

The Court: I deny the motion to direct a verdict.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

THOMAS W. TRENCHARD, [SEAL.]
J. S. C.

COURT'S CHARGE TO JURY.

Gentlemen: On the twenty-fourth day of August, 1905, Semino Notto was driving a horse and wagon along Thirteenth street, on the outskirts of the town of Hammonton, in this county. Thirteenth street runs north-east and southwest. Notto was travelling in a north-east direction, and had his wife with him in the wagon.

10 Notto proceeded along Thirteenth street until he came to the crossing of the railroad tracks of the defendant company, the Atlantic City Railroad Company. These tracks run from Camden to Atlantic City, and they cross Thirteenth street, in the town of Hammonton, at a right angle. There are two tracks there. A locomotive engine, drawing a train of cars operated by the defendant company, south bound, on the westerly track of the railroad, struck Notto as he was crossing the tracks, killed him and his wife and his horse and destroyed his wagon.

20 This suit is brought by Rosario Notto, as administrator of Semino Notto, to recover statutory damages for his death for the benefit of his next of kin. Before he can recover from the defendant company he must satisfy you by a preponderance of the evidence that the defendant company was guilty of some negligence which caused this accident and the death of Notto. Has the plaintiff done that? Was the defendant company negligent?

30 Railroad companies are authorized by law to operate their trains and to run them, even at a high rate of speed, but in so doing they must observe the requirements of the law. The law requires that a bell, of a weight not less than thirty pounds, shall be placed on each engine and rung continuously in approaching a grade crossing of a highway, beginning at a distance of at least three hundred yards from the crossing and continuing until the engine has crossed such highway, or a steam whistle shall be attached to such engine and be

sounded, except in cities, at least three hundred yards from the crossing at intervals until the engine shall have crossed the highway. It was the duty of the defendant company to observe the requirements of the law in that respect. They are bound to either ring the bell or blow the whistle as I have stated. They are not bound to do both.

If the defendant company performed its duty in this respect, through the company's employes, it was not negligent, and your verdict must be against the plaintiff and for the defendant company. 10

Was the statutory signal given? As I have said, the burden of proving that the statutory signals were not given is on the plaintiff. Several witnesses on the part of the plaintiff testify that they did not hear any whistle blown or bell rung; that they heard no signal given. Some say that they heard no bell and no whistle at all. Some say that they heard no bell and no whistle except the danger whistle just as the accident happened. These witnesses were, some of them, it is insisted by the plaintiff, in a position to hear the whistle or the bell if they had been sounded, but that matter is for you to determine. 20

On the other hand, the witnesses on the part of the defendant company testify that the whistle was blown and the bell rung. The engineer says so; the fireman and others say so. The engineer says that he saw these people approaching the dangerous position and repeatedly sounded his whistle.

If you find, after a consideration of all of the evidence, that the defendant company did not observe the requirements of the statute, and was therefore negligent, you then come to the second question: whether Semino Notto, the deceased, himself was negligent. 30

If Notto, the deceased, was negligent, and that negligence was a contributing cause to the collision, his administrator cannot recover and your verdict must be for the defendant. If he, the deceased, failed to per-

form his duty, he was negligent. His duty was to take such reasonable care for his own safety as a man of reasonable prudence would do under the circumstances. His duty was to look and listen for an approaching train. His duty was to look and listen, not casually, but with attention, for the purpose of seeing and hearing an approaching train. He must look both ways and listen at a time when looking and listening are reasonably effective; that is, to look and listen when he can see and hear, and it is to be done in the way that a reasonably prudent man would do under the circumstances. If 10 Mr. Notto, the deceased, himself by his movements was making a noise, it was his duty to stop that noise so that he could hear; but if there was no noise being made by him which tended to prevent his hearing or which operated to prevent his hearing, then he was not bound to stop if he could hear just as well moving, and he would perform his duty by looking and listening while he was moving along. I repeat, that if Mr. Notto, the deceased, failed in his duty, he cannot recover. 20 Now was Mr. Notto negligent? In determining that question you are to consider all of the testimony in the case. You recall the situation at the crossing. The railroad tracks cross Thirteenth street at a right angle. Mr. Notto was traveling in a northeasterly direction along Thirteenth street. The train was coming from Camden, south bound, on the west track. The witnesses on the part of the plaintiff testify that at the time of the accident on August twenty-fourth, 1905, there was a 30 bank on which brush and vegetation was growing, on the north side of the highway and on the west side of the railroad, which tended to obstruct the view and which did obstruct the view, so they say. In other words, they say that a man traveling on Thirteenth street in a wagon, as Mr. Notto was traveling, was obliged to approach within, some say six or eight feet of the railroad track before a view could be obtain-

ed of a train approaching from Camden. Considering the situation at the crossing as you find it and the obstruction to view up the track from the road as you find it and considering the manner in which plaintiff's intestate approached this crossing as you find it and what the plaintiff's intestate did with respect to looking and listening, as you find it, it is for you to say under all of the evidence in the case whether the plaintiff's intestate exercised reasonable care. In connection with this you must consider the testimony and evidence on the part of the defendant. In regard to obstruction to view, witnesses for the defendant testify, as I recollect, that at a point ten or twelve paces from the crossing there was an unobstructed view up the railroad track. 10

You are not only to consider the testimony to which I have alluded for the purpose of giving point to the legal rules which I have stated, but you must also consider all of the evidence in the case, both that of the plaintiff and that of the defendant. You are the exclusive judges of the facts. It is your duty to find the facts of this case. It is your duty to determine for yourselves the weight of the testimony and the credibility of the witnesses. 20

If, under the law which I have given you, you find, first, that the defendant company was guilty of negligence, and, secondly, that Mr. Notto, the deceased, was guilty of no negligence which contributed to the injury, then you come to the third question; namely, what damages shall be awarded the plaintiff. If you find your verdict for the plaintiff, your next duty is to say how much the recovery should be. This is a statutory action, and the statute prescribes the rule by which the verdict shall be regulated. It prescribes it, indeed, in general terms, so as to leave much to the judgment of the jury. It cannot prescribe such a rule as it would have for measuring a carload of wheat or anything of that sort; but it does prescribe that the damages shall be limited 30

to the pecuniary loss of the next of kin. There can be no recovery in this case for the death of the wife, nothing for grief or injury to the feelings of the children for the death of their father. It is for the pecuniary loss; what they have lost in dollars and cents only is what the statute permits to be recovered in a suit of this sort. In determining that question you should consider all the testimony bearing on that question, including the testimony as to the age of the deceased, his health, character, occupation, earnings, his ability and strength to labor, habits of industry, thrift and expenditures. In this connection you may consider the Carlisle Table, which has been admitted in evidence. You are not to be bound by it. It is admitted merely to aid you, if you see fit to use it, in determining the probable duration of human life. It does not furnish an absolute rule of computation. Each case must stand by itself, on its own conditions.

What the plaintiff is entitled to recover, if he is entitled to recover at all, is a capital fund, so to speak, which will represent the present value of all the pecuniary loss which will fall to the next of kin by the premature taking off of the plaintiff's intestate.

PLAINTIFF'S EXCEPTIONS.

Mr. Carrow: I desire an exception to that part of the charge of the Court wherein the Court said: "Railroad companies are authorized by law to operate their trains and to run them, even at a high rate of speed, but in so doing they must observe the requirements of the law. The law requires that a bell of a weight not less than thirty pounds shall be placed on each engine and rung continuously in approaching a grade crossing of a highway, beginning at a distance of at least three hundred yards from the crossing and continuing until the engine has crossed such highway, or a steam whistle shall be attached to each engine and be sounded, except in cities, at least three hundred yards from the crossing at intervals until the engine shall have crossed the highway. It was the duty of the defendant company to observe the requirements of the law in that respect. They are bound to either ring the bell or blow the whistle, as I have stated. They are not bound to do both.

10

20

"If the defendant company performed its duty in this respect through the company's employes, it was not negligent, and your verdict must be against the plaintiff and for the defendant company."

(Which exception is hereby allowed and sealed accordingly.)

Mr. Carrow: Well, my friend says, "Why we blew the whistle, we rung the bell." Well, our witnesses say they did nothing of the kind. They were going too fast to do anything; but, gentlemen of the jury, it makes no difference if they did ring the bell, if they did blow the whistle; that is not all. The question is submitted to you. I think will be submitted to you under the charge of the

30

Court, whether in view of that dangerous crossing the fact that there was no gateman there, the fact—

Mr. Cole: I object. There is no evidence of gateman, gates or flagman. Objection overruled.

Mr. Carrow: Now then, I say, gentlemen of the jury, it is immaterial for the purposes of this case whether the whistle was blown or whether the bell was rung, because
 10 you have a right to say whether, under the peculiar physical conditions at this crossing, this railroad company wasn't required to do something more than give the statutory signals and clearly within the ruling of the Courts the opinion of Justice Reed that where the conditions are natural, where you can hear, where there are no obstructions, when the railroad has blown the whistle and given the signal, then the railroad company is absolved, but where the proof shows that the physical conditions were
 20 different from the ordinary then it is a question for the jury to say whether the railroad company should not have done more under the circumstances than ring the bell or blow the whistle. Now, I say, at the railroad there was no flagman. The railroad Company took no precaution. The railroad company didn't even keep its own right of way clear of brush and grass.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

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THOMAS W. TRENCHARD, [SEAL]
 J. S. C.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

ROSARIO NOTTO, Adm'r, etc.,	}	ON ERROR.	10
(Plaintiff), Defendant in Error,			
vs.			
ATLANTIC CITY RAILROAD COM-			
PANY,	}	ASSIGNMENTS OF ERROR.	
(Defendant), Plaintiff in Error.			

Atlantic City Railroad Company, plaintiff in error, comes now and assigns the following causes of error:

1. Because the Court permitted witness Jennie Notto to testify as follows: 20

“Ques. How many blackberries would he raise a season?”

Ans. Well, I can't tell you exactly how many he could raise; I know he had good crops.

Ques. As near as you can tell us.

Ans. About 200 and 300 crates.

Ques. How much were they worth a crate, if you know?” 30

2. Because the Court permitted witness Rosario Notto to answer the following question: “Now, from what you saw of his crops, and of the prices that were then going in the market for those crops, can you say what his income would be from that farm, or from his labor?”

3. Because the Court permitted plaintiff to offer in evidence Volume 20 of the American and English Encyclopaedia of Law to prove the Carlisle Mortuary Tables.

4. Because the Court refused to direct a verdict for the defendant.

10 5. Because the Court permitted counsel for the plaintiff, in his address to the jury, to say that the defendant did not have gates or a flagman at the crossing where the accident happened, there being no evidence upon the subject.

THOMPSON & COLE,
Attorneys for Plaintiff in Error.

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THE HISTORY OF THE UNITED STATES

OF THE

CONSTITUTION

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THE

DECLARATION OF INDEPENDENCE

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