New Jersey Court of Errors and Appeals.

JOHN DAGGETT, AND NELLIE DAGGETT, HIS WIFE, *Plaintiffs, Defendants in Error,* *vs.* NORTH JERSEY STREET RAILWAY COMPANY AND E. A. WILLIAMS, *Defendants, Plaintiffs in Error.*	*In Tort On Error.*

Brief of North Jersey Street Railway Company

The writ of error in this case brings before the Court for review a joint judgment obtained by the plaintiffs in the trial of the issue before the Essex County Circuit Court.

The plaintiff, Nellie Daggett, was a passenger on a car of the street railway company which came in contact with a wagon owned by the other defendant. The car was an open car and plaintiff sat in the first cross-seat inside the car with her back to the motorman. At the time of the collision or immediately preceding the same her head was thrown backward (as the street railway company claims) by the sudden effort of the motorman to stop the car to avoid the collision. Her

head struck the window frame work breaking the combs in the back part of her head.

The railway company will base its argument for reversal on one point, namely, the refusal of the court to charge the jury specifically, although so requested to do :

> That if the motorman of the car suddenly found himself, without any negligence on his part, in a dangerous position, and exercised a quick effort to stop the car, thereby causing the plaintiff's head to be thrown back, the company would not be liable.

The Court charged the jury (p. 160, about line 10) " on the other hand, if the motorman was careful in the management of his car, and had not time enough to avoid a collision after he saw that danger was impending, because the wagon cut across him too closely, the motorman was free from negligence and the driver was in fault."

The request was based upon the case of Corkhill vs. Camden & Suburban Railway Company, 40 Vr., 97. In that case the motorman started his car at moderate speed to cross an intersecting steam railroad crossing after his conductor had gone forward upon the crossing and had used proper care to ascertain that no railroad train was to be expected ; while thus proceeding over the crossing at moderate speed the motorman became suddenly aware of a railroad train rounding a curve nearby and coming toward his car at a high rate of speed ; a collision seemed imminent and was in fact narrowly averted ; the motorman, on seeing the danger, instantly applied the power and increased the speed

of his car to the utmost in order to escape the collision; it was claimed that in the lurch of the street car thereby occasioned, the plaintiff was thrown to the floor of the car and injured. The Court held that a verdict attributing negligence to the motorman on these facts could not be supported.

The defendant in the case at bar was entitled to have the jury charged as requested:

1. Because the request presented a rule of law applicable to a given state of facts.

2. Because the evidence justified an inference from which the jury might reasonably have concluded that the plaintiff's injuries were caused in the manner described in the request.

As a Rule of Law.

The court in setting aside the verdict in the Corkhill case held that the facts did not show negligence. It is probably true that negligence might, in the abstract, be defined simply as a lack of care and as such be a question of fact; but the courts have to such an extent, taken upon themselves the decision of the question as to whether a given state of facts constitutes negligence, that it seems unquestionable at the present time that the legal conclusion as to care or lack of care, which has been drawn in the past from a given state of facts, has become law, and that, therefore, it is the duty of the court to charge it when requested.

In the case at bar, while it is perhaps clear to a judicial mind, that if the motorman's carelessness

did not contribute to the collision, his act of causing the car to jerk, by suddenly stopping it in an effort to avoid the collision, was not carelessness, such a relation of the facts was not necessarily clear to the minds of the jurors.

The legal conclusion based on the facts in the Corkhill case becomes, by virtue of that decision, the law, and the court should have charged it when requested. In the Corkhill case the court held that a certain state of facts did not constitute negligence. It would seem that whenever that same state of facts arose again or a state of facts from which a jury might reasonably conclude that the injuries were the result of an accident caused by a similar situation, the court, when requested to state the legal conclusion based on those facts, should have so charged.

What Judge Adams did charge was insufficient to cover the situation or to convey to the minds of the jury the legal point suggested in the request. What he charged bore upon the relative negligence of the motorman and the driver. This conclusion can be drawn not alone from the part of the charge quoted but from the part of the charge which precedes it. The way the matter was stated led the jury, on hearing it, especially in view of the general subject in which the language was embodied, to consider only the question of negligence as between the driver and the motorman. Our request to charge, which was refused, was entirely independent of any question of the driver's liability. Whether the driver was liable or not made no difference as to the applicability of the matter we desire to have charged. In order to make the situation clear to the jury the request

should have been the subject of an entirely independent charge, and should not have been muddled up in any way with questions regarding the liability of the driver.

If we reduce the language of the charge to its basic element, we find that it is merely a statement, that if the motorman was careful he was not negligent, and if the driver was careless he was negligent. There is nothing else in the language that has any applicability to the matter contained in the request. If, therefore, we try to find in the language of the charge any expression that has relation to the legal proposition we desired to have charged, we find only the statement that if the motorman was careful in the management of his car he was not negligent. This left the jury without any ruling as to the liability of the railway company for injuries received by the plaintiff resulting from the sudden stoppage of the car or the reversal of the current under conditions which did not, to a legal mind, import negligence, but might indicate negligence to a jury, and was not a sufficient statement of the legal proposition embodied in the Corkhill case.

Without such a charge the jury might have believed, although the motorman may have become a party to the collision without any negligence on his part, that it was negligence if the injuries were caused by the sudden stopping of the car or the reversal of the current.

The Request Was Justified by the Facts.

The car was moving on the south bound track on Bloomfield avenue in the City of Newark; the

wagon was approaching the car on the north bound track. The driver turned to cross the south bound tracks for the purpose of driving into Parker street. He crossed the tracks and had proceeded some two hundred feet down Parker street before his attention was called by a pedestrian to the fact that he had lost two large, empty bread boxes which were loaded on his wagon near the tail board. The driver went back to pick up these boxes and this was the first intimation he had that there had been a collision. That the car and the wagon came into contact with each other cannot be doubted, as the witnesses so state, and a window in the vestibule of the car was broken, but the preponderance of the testimony in the case indicates that the collision was of an exceedingly slight nature.

The plaintiff states (p. 10) "I heard the crash; my back was to it; and with that my head went back against the car"; that she struck the car right back of where she was sitting and felt the blow (p. 11) "right here" (indicating the lower part of the back of the head) "because my combs were all broken." "Q. Your back combs were all broken? A. Yes, sir. Q. *(p. 17) Did you feel any change in the movement of the car just before the crash came? A. Yes, sir. Q. What was that motion that you felt? A. A kind of jerk like that (indicating); that is when my head must have struck back.*" She thought the change in the movement of the car came at the time of the crash but was unable to say whether it was caused by the brakes being put on or by the car coming in

contact with something. She did not see the wagon at any time.

Emma Landmasser, plaintiff's only witness to the accident, sat opposite the plaintiff, facing the motorman. She did not see the wagon until "after it struck the car" (p. 43, 44). That the tail board of the wagon hit the car.

"Q. (*p. 47*) *Just before that* (*the crash*) *did you feel any stoppage in the progress of the car? A. Yes; it gave a sudden jerk.* Q. A sudden jerk? A. Yes. Q. How long before? A. Two or three minutes. The Court "You probably do not mean that. Q. How far were you away from the place of collision when you felt the car give a sudden jerk? A. Well, I don't know that either. Q. Very close to it? A. Well, *it was right before the car hit the wagon.*"

Frank Bockus (p. 73), driver of the wagon, says (p. 76) that he went from 200 to 250 feet down Parker street before he knew he had lost two boxes; that his attention was called to this by a pedestrian. He did not examine the boxes because the accident was so light; that the car stopped half way over the lower cross walk of Parker street. That when he turned to cross the tracks on which the car was running it was about 200 feet away. The court may judge of the accuracy of this witness's statement as to the distance of the car by reference to the testimony of Aaron Herme who was on the wagon with Bockus (p. 94).

John Drury, the first witness for the railway company (p. 97), states that in making the turn into Parker street the rear end of the wagon hit the right hand side of the car "and then I think the car immediately stopped"; that when the

driver got on the track on which the car was moving, the car was about thirty feet from the horses; that the car did not move over ten feet after striking the wagon (p. 99) and that the wagon hit the car.

This witness became somewhat confused when questioned as to distances. He stated (p. 113) that when the wagon had reached the lower crosswalk of Parker street the car was the other side of the upper crossing and that the distance between the two crossings was about one hundred feet, which would place the car about 110 feet from the wagon when the horses started to cross the track. He afterwards corrected this (p. 110) by reiterating his former statement that when the horses were on the track on which the car was moving, the car was only 30 feet away and (p. 111) " he (the driver) undertook to cross in front of the car and in order to get across and get into Parker street in front of that car he cut the car off ; and then had to make a short turn into Parker street, which, I believe, caused the collision, and swung the wagon so that the rear end of that wagon hit the front end of the car."

Henry Tozer (p. 112) was the motorman ; he had been in service for thirty years ; he says (p. 112) " I was coming along on my low speed ; and this wagon coming along on full speed ; I noticed him a block off before I got to Parker street ; and just as I got onto the other crossing, the up-crossing—well, I was ten feet in Parker street—he just whipped his horses with the lines and cut me off, and *I had to reverse the car;* why, if I hadn't I would have hit the horses. Q. When he crossed in front of you how far away was your car? A.

Why, it wasn't twenty feet. Q. How far did you go after you struck him? A. I didn't go two foot. Q. When he crossed in front of you what did you do? A. Why, I reversed my car right away" ; that (p. 115) as soon as he saw the horses turn to go across the track he reversed his power and put on his brake; that (p. 116) the horses had not crossed his track when he reversed the car, and when his car had stopped it was not more than eight or ten feet away from the lower crossing (p. 119).

Frank Schabatha states (p. 125) that when he first saw the horses crossing the track the car was about fifteen feet away and that the car stopped on the lower cross walk; *that (p. 127) the putting on of the reverse caused him to* look to see what was the matter. Q. *What effect did the reverse have on that car?* A. *Well, I felt the car stop, and* I looked to see what was the cause, and of course, I saw the horses coming across the front of the car. Q. Then, when you felt the reverse, had the horses cleared the track upon which the car was? A. Not quite. Q. (p. 129) *How long a time elapsed between your looking and seeing the horses and your feeling the reverse?* A. How long a time? *I couldn't say, but only a few seconds; that the car was then stopping, but before he applied the reverse it was going at about six or seven miles an hour.*

Timothy O'Donohue, a passenger on the car, saw the horses start to cross the track (p. 139); that he didn't see the motorman *but noticed the car slack up as soon as the horses started to swing;* that when the horses started to cross the track the car was about the width of the room away or about twenty-eight feet.

Elmer Campbell was standing on the run board

of the car and this is his story (p. 42) : "It (the car) crossed the crossing, the crossing towards Bloomfield ; we crossed that crossing * * * that is, I had myself * * * about ten feet, probably thirteen feet, and just at that instant the team started to turn ; he pulled short, as short as he possibly could, and about ten foot before we reached the opposite crossing * * * that is, the crossing towards Newark, *the car came to a perfect standstill;* that is, the wagon had crossed and the fender of the car was under the tailboard of this wagon. There wouldn't have been a collision if the hind wheels of this baker wagon hadn't slid ; the wagon slid, and by its sliding, at the speed that the horses were going, the boxes went right through the window. Of course, the fender, as I said, was right under the tail board of the wagon." This witness reiterates (p. 143) that the car was at a standstill and the wagon slid into it.

The testimony of all the witnesses for the railway company is to the effect that the wagon turned suddenly to cross in front of the car, making a sharp turning and going at a rapid rate of speed when the car was but a few feet away and travelling at about six or seven miles an hour. That there was nothing in the action of the driver to indicate to the motorman before that time his intention to turn into Parker street. Neither the plaintiff nor her only witness saw the wagon prior to the collision, so their testimony is valueless upon the distance of the car when the horses turned. The testimony of the driver and his friend is unworthy of acceptance as to the distance away of the car

when he started to drive across the tracks because it would be a physical impossibility to harmonize their testimony with their own statement as to the speed of the respective vehicles.

That the motorman reversed his power is not denied, nor is the fact that the car came to a sudden stop; and that there was an unusual movement in the car just prior to contact with the wagon is sufficiently supported by the statements of the plaintiff and her only witness, and by the further fact that the impact between the two vehicles was not sufficient to cause plaintiff's head to be thrown back against that part of the car immediately in her rear.

Neither is there anything in the medical testimony concerning her injuries to support any conclusion other than that she received but a very slight blow on the head—not more than sufficient to break the combs in her hair. Dr. Gale, who examined the plaintiff a few days after the accident, states (p. 151) that there was no injury to the head. Dr. Underwood who examined the plaintiff on the day of the accident states, (p. 149) that he examined her head for bruises and found none; that he examined her head because she said that she had struck it.

We, therefore, contend that the evidence would have fully justified the jury in concluding that the motorman had suddenly found himself in a dangerous position, without any negligence on his part in bringing about that position, and that he exercised a quick effort to stop the car, thereby causing the plaintiff's head to be thrown back; and we further contend that it was therefore es-

sential to have the request charged specifically in order to acquaint the jury with the law as applicable to the facts in the case.

Respectfully submitted,

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New Jersey Court of Errors and Appeals.

JOHN DAGGETT AND NELLIE DAGGET HIS WIFE, *Plaintiffs, Defendants in Error,* *vs.* NORTH JERSEY STREET RAILWAY COMPANY AND E. A. WILLIAMS, *Defendants, Plaintiffs in Error.*	*In Tort. In error to Essex County Circuit Court.*

Brief of Harry Kalisch for Defendant in Error.

STATEMENT OF THE CASE.

Nellie Daggett, wife of John Daggett, on the eighth day of June, 1905, was a passenger on a trolley car of the North Jersey Street Railway Company, which was propelled along Bloomfield Avenue in the City of Newark, and which collided with a wagon of the other defendant company, E. A. Williams, at the corner of Bloomfield Avenue and Parker Street. The testimony established that both defendants were to blame and a verdict was rendered against them both. The facts of the case are succinctly set out in the charge of the learned judge, commencing on p. 160. The North Jersey Street Railway Company sued out a writ of error and the E. A. Williams Company, by virtue of the act of 1906 joined in the prosecution of said writ and has assigned errors in its own behalf.

I.

The first assignment of error is without merit. The motion to non-suit made by the defendant, North Jersey Street Railway Company at the close of the plaintiff's case was the subject of the second assignment of error and was based upon three grounds:

A. That no negligence was proved against the defendant, North Jersey Street Railway Company.

B. That the proof does not support the allegations in the declaration.

C. That there is no proof that plaintiff suffered from any other cause than mere shock.

It is respectfully submitted that in disposing of this motion to non-suit, the evidence of the entire case ought to be considered and if there was any error in the refusal to non-suit at the close of the plaintiff's case it was cured by later testimony which made the question one for the jury. See *Esler* vs. *Camden and Suburban Ry. Co.* 42 Vroom, p. 180; *Van Cott* vs. *North Jersey St. Ry. Company,* 62 Atlantic Reporter p. 407; *Perth Amboy Manf. Co.* vs. *Condit,* 1. Zab. 659; *Del., Lackawanna and Western R. R. Co.* vs. *Daily,* 8 Vroom 526; *May* vs. *North Hudson County Railway Co.,* 20 Vroom 445.

A and B. The first two grounds advanced in support of the motion for non-suit are without foundation; there certainly was enough evidence of negligence to send the case to the jury and to support the allegations in the declaration. On page 17 the plaintiff, NELLIE DAGGETT, on cross examination testified as follows:

"Q Just prior to the happening of the accident, say a block or two blocks how fast was the car going?" "A I never seen a car go so fast and I was thinking if we ever strike anything what will become of us?" just as the crash came. "Q You felt that did you?" "A Yes, sir; I did."

On page 18 the same witness continuing, testifies as follows:

"Q Did the car slow up any just before the crash?" "A No, sir."

On page 38 Emma Landmesser, a witness sworn in behalf of the plaintiffs, testified as follows:

"Q Now before the collision happened how was the car going?" "A Pretty fast."

On page 39, this same witness testified, as follows:

"Q How far did the car go after the collision?" "A About a half a block I guess." "Q About half a block?" "A Yes." "Q Is it a straight road on the avenue all the way down to the place where the collision took place?" "A Yes, sir, it is a straight road."

On page 81, FRANK BACKUS, the driver of the wagon, a witness sworn in behalf of the defendant, E. A. Williams, testified as follows:

"Q When you got on the track on which the car was moving how far away was the car then?" "A It was between Parker Street and Highland Avenue, every bit from that corner 200 feet in my estimation."

And the same witness testifying on page 84 says, as follows:

"Q Now when you first saw the car you say it was between Highland Avenue and Parker Street?" "A Yes, sir." "And you were still on Bloomfield avenue, were you not?" "A I was right on the corner of Bloomfield avenue and Parker street." "Q Well you were going up Bloomfield avenue?" "A I was turning in—." "Q Answer my question?" "Were you going up Bloomfield avenue when you first saw the car?" "A I turned when I first seen the car." "Q At that time the car was 200 feet away from you?" "A Every bit of it."

On page 86, the same witness testifies as follows:

"Q So that when you turned your horses to go into Parker street your horses landed on the third rail, did they—the horse's heads?" "A Yes, sir."

"Q And then you went on, did you?" "A I went right on to the corner." "Q Now at that moment where was the car?" "A When I swung, the same time I looked up the road and saw the car and it must have been every bit of 200 feet.

And at the bottom of page 87 and continuing, the same witness testifies as follows:

"Q Now then, as I understand you—let me see if this is right—when your horses were on this track and you had turned into Parker street just as you had swung around, the car was 200 feet away?" "A When I started to swing around then I looked up the road and I seen the car and at the same moment as far as I estimate, the car must have been away 200 feet from me when I started to swing around." "Q 200 feet?" "A Yes."

And on page 96 John Drury, a witness sworn in behalf of defendant North Jersey Street Railway Company, testified as follows:

"Q On the eighth day of June, 1905, where were you?" "A Well, I was in the morning at business." "Q And in the afternoon?" "A In the afternoon I got on the trolley car around two o'clock to attend to some business in the market."

And on page 97 the same witness continuing testifies as follows:

"Q Did you notice anything at Parker street?" "A Yes, sir, there was a collision there with a bread wagon."

This evidence fixes the time of the accident. The foregoing evidence presents a strong case of negligence against the North Jersey Street Railway Company and was properly submitted to the jury.

C. The third ground upon which the defendant North Jersey Street Railway Company founded its motion to non-suit was that there was no proof that plaintiff suffered from any other cause than mere shock. A refutation of this contention is to be found in the evidence of Nellie Daggett, one of the plaintiffs, who testifies on page 10 as follows:

"Q Now did anything happen to that car?" "A Well I was sitting with my back to it and all at once I heard a crash, my head went back, and I don't remember nothing more;"— and continuing on page 10 the same witness testifies as follows:

"Q You say when you was sitting in the car you heard a crash, did you?" "A I heard the crash, my back was to it, and with that my head went back against the car." "Q Struck what—what did it strike?" "A It must have struck the wood." Mr. Bernhard: "No, no." "Q What did it strike?" "What was back of you?" "A Why the back of the car." "Q You were sitting against the back of the car?" "A Right against the back." "Q Where about did you feel the blow?" "A Right in here (indicating the lower part of the back of the head), because my combs were all broken." "Q Your back combs were all broken?" "A Yes, sir." The Court: The witness puts her hand on the back of her head.

It is quite evident from the foregoing testimony that the plaintiff received a blow and that it was not mere shock alone that the plaintiff suffered from. The motion to direct a verdict for defendant North Jersey Street Railway Company which is the subject of the third assignment of error, involves the same points contained in the second assignment of error and is therefore not separately discussed.

The fourth assignment of error alleges that the court erred in admitting illegal testimony of certain witnesses offered on behalf of the plaintiffs and the defendant E. A. Williams against the objection of the defendant North Jersey Street Railway Company.

A. Relating to the injuries received by the plaintiff Nellie Daggett in an accident which occurred subsequent to the one for which the case at bar was brought.

B. Relating to the sounding of bells.

This assignment of error does not comply with the well established rules of practice. It is too indefinite; it does not state what the evidence was, the ground of objection, or the names of the witness. It is also multifarious. See *Fivey* vs. *Penn. R. R. Co.*, 38 Vr., 635.

Associates vs. *Davidson,* 5 Dutcher, 415. See Vol. 2 of Encylopedia of Pleading and Practice, page 945 with notes. *Donnelly* vs. *State,* 26 N. J. L., page 512; *Driscoll* vs. *Carlin,* 50 N. J. L., p. 28.

A. But even if the court should consider the question raised by the defendant N. J. St. Ry. Co., it is difficult to see upon what ground the evidence was inadmissible. The question to which objection was made was propounded by counsel for E. A. Williams, one of the defendants, and asked the witness to tell what injuries she had received from another accident which had occurred subsequent to the one for which the case at bar was brought. The purpose of this question was to limit the damages to the results of the accident for which the case at bar was prosecuted and it was for the jury to say how much of the plaintiff's physical disability was attributable to the accident for which suit was brought and how much was attributable to something else and then to award damages accordingly. The trial judge in his charge carefully instructed the jury on this point. On page 162 beginning on line 17 the learned judge charged as follows:

"In considering this you will exclude the consequences of another accident that occurred later which was followed by a partial paralysis, by symptoms of numbness and which no doubt or very probably may have something to do with her present physical condition.

"For the consequence as detailed by the evidence of this collision manifested prior to the second accident she is entitled to compensation if she is entitled to recover and for those consequences separated from the consequences of the other accident, down to the present time and in the future, if they exist up to the present time and are likely to exist in the future."

The contention of the plaintiff is that the evidence which is the subject of the exception was beneficial instead of detrimental to the defendant's case. See *Consolidated Traction Co.* vs. *Mullin,* 34 Vroom, p. 22.

B. As to the evidence which related to the sounding of bells to which objection was made by the de-

fendant North Jersey Street Railway Company, what was said above with reference to the insufficiency of the assignment of error applies with equal force here as the evidence objected to in both instances are brought up for review under one assignment; but even should the court consider this exception it is insisted that the defendant North Jersey Street Railway Company was not prejudiced by the evidence objected to. The question was propounded to the driver of the wagon which collided with the car by counsel for E. A. Williams, one of the defendants and was:

"Q Did you hear any bells sounded?"

This question was objected to by counsel for North Jersey Street Railway Company on the ground that it was immaterial as he saw the car. Now it is very plain that this evidence merely tended to prove a fact which it is admitted by counsel for defendant North Jersey Street Railway Company had already been established, viz.: that he (the driver) saw the car. How then could defendant North Jersey Street Railway Company be prejudiced by this additional evidence of that fact? If this additional evidence was incompetent or immaterial (which is not conceded) that in itself is not sufficient to warrant a reversal of judgment. See *Chase* vs. *Caryl*, 57 N. J. L., p. 562. In that case the court in commenting upon the introduction of incompetent evidence said:

"If the facts were otherwise legally proved by competent evidence the admission of the incompetent evidence alone would not warrant a new trial." Also see *Whitaker, Receiver* vs. *Miller,* 34 Vr.; *Johnston* vs. *N. Y. & L. B. R. R. Co.,* 36 Vr.

And further it is contended that where immaterial evidence is admitted the rule is that the error is harmless for such evidence could not have influenced the verdict. See Encylopedia of Pleading and Practice, Vol. 2, page 534, foot notes. We therefore insist that this exception is without merit.

The fifth assignment of error was directed to the refusal of the court to charge as follows:

"That if the motorman of the car suddenly found himself without any negligence on his part in a dangerous position and exercised a quick effort to stop the car, thereby causing the plaintiff's head to be thrown back, the company would not be liable." The court did not err in refusing to charge as above requested.

If the motorman of the car (as stated in the request to charge) suddenly found himself without any negligence on his part in a dangerous position he was still required to use the highest degree of care and diligence and whether or not the exercise of a quick effort to stop the car constituted a high degree of care in this particular situation was a question for the jury, to be determined under all the circumstances existing at that particular time. The court could not say as a matter of law, that the exercise of a quick effort to stop the car constituted a high degree of care. It might or might not have been care according to the circumstances.

The *first error* assigned by E. A. Williams, one of the defendants, is without merit.

The second assignment of error is as follows:

"There is also errors in this, to wit, that the verdict of the jury is against the clear weight of the evidence."

This assignment cannot receive legal consideration.

This cause has been removed to the Court of Errors and Appeals by a writ of error and this court will not review the facts of the case to determine whether the verdict of the jury was against the weight of the evidence. See *Harrison* vs. *Allen,* 11 Vroom, p. 557; *Voorhis* vs. *Terhune,* 13 Atl., Rep. 391; *Nestal* vs. *Schmid,* 10 Vr., 686; *Flanigan* vs. *Guggenheim Smelting Co.,* 34 Vroom, p. 647.

The third assignment of error is as follows:

There is also error in this, to wit, for that the said judge before whom etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid refused to permit the following question

to be asked by the attorney for the defendant, E. A. Williams.

"Q Well was there anything unusual about the speed of the car?"

This assignment of error is insufficient. It fails to point out any particular error, it does not set forth any ground or reason, but merely asserts that the said judge refused to permit the question to be asked. Whether counsel asked the question on direct or cross examination does not appear.

The court ought not to be compelled to go beyond the assgnment itself to learn what the alleged error was. Taking this assignment in and by itself, it utterly fails to point out any error.

In the case of *Franz Falk Brewing Co.* vs. *Mielenz,* 5 Dakota Ter., 136, quoted from in 2 Encyclopedia of Pleading and Practice page 940 Note 1., the court said:

"It is not only necessary to allege or assert error on the part of the court in doing the act complained of, but there must be some ground alleged as the basis of the assignment that the act was erroneous and it must be specifically and definitely declared or set forth in the assignment and as part of it, how, why, in what way, on what ground, or for what reason an error was committed or exists or is claimed to exist. The very meaning of the word 'assign' is to 'mark out,' 'to allot,' 'to apportion,' 'to make over',—and there can be no assignment unless it declares and designates what is marked out, or alloted or apportioned, or made over. An assignment of error actually means the marking or pointing out of the error."

Should the court, however, come to a considerattion of the question it is difficult to see how the defendant, E. A. Williams, was prejudiced.

The plaintiff's contention is that the question could merely be a preliminary one which could be followed by further inquiry concerning the speed of the car.

Whether or not, "there was anything unusual about the speed of the car," could not in itself have any probative force.

This question could have been followed by the direct question as to what the speed of the car was, even though the court did rule out the preliminary question.

It is further insisted that this question assumes that there is a certain speed at which cars usually run, whereas there is nothing in the evidence from which this fact could be inferred. For these reasons it is contended that this assignment is without merit.

The fourth assignment of error does not conform to the rules of practice as recognized in this state.

There is no reason or ground assigned for the objection to the evidence and the court therefore ought not to give any consideration to this assignment. See *Associates of the Jersey Company* vs. *Davison,* 5 Dutcher, p. 415.

Should the court consider the question raised by defendant, E. A. Williams, it is contended that it is without merit.

The question to which objection was made was an hypothetical one and was asked by counsel for plaintiffs of Dr. Post on direct examination. It was as follows:

"Q Now, Doctor, assuming that the plaintiff was a passenger on a car and the car came into collision with a wagon by means whereof her head was thrown back with sufficient force to break her back comb and to render her unconscious for a long period of time, more than an hour; that she was taken to a hospital and then could recall for the first time where she was, and then that she had after this periods of severe headache and pain in the spine and nervous feelings, that before that time she had been a woman in good health, to what would you attribute this condition?"

The question was objected to by counsel for E. A. Williams on the ground that it did not state the facts as proved: first that the question did not say whether her head came in contact with anything—this fact is plainly inferable from that part of the question which reads that "her head was thrown back

with sufficient force to break her comb"—; secondly, that there is nothing in the question to show of what material the comb was made—in answer to this it may be said that there is no evidence in the case which in any way describes the particular comb that was broken, so it would be impossible to include in the question a description which does not appear in the evidence; thirdly, that the question did not include the speed of the car nor the force with which it was stopped. Now it may be taken for granted that counsel's object in having "the speed of the car" and "the force with which it was stopped" included in the hypothetical question was to determine the force of the blow which plaintiff received on her head. In examining the question, however, it will be found to include some facts which made it unnecessary to mention the speed of the car or the force with which it was stopped; I refer to the following facts, viz.: She was rendered unconscious, and remained unconscious for a long period of time, more than an hour, that she was taken to a hospital and then could recall for the first time where she was and then that she had after this periods of severe headache and pain in the spine, and nervous feelings, that before that time she had been a woman in good health. Now in view of all these facts which were included in the hypothetical question the other two facts concerning the speed of the car and the force with which it was stopped fade into insignificance; in fact, become valueless. Certainly it was not necessary to give the doctor the speed of the car or the force with which it was stopped after having given him the immediate effect which the blow had upon the plaintiff. The contention of the plaintiff is that there were no facts omitted in the hypothetical question which would have materially aided the doctor in forming his opinion, but should the court consider that the facts which were omitted would have affected the opinion advanced by the doctor, still it would not be necessary that the plaintiff should cover the entire body of testimony put forward by him on any particular point. See *Louisville, N. A. and C. R. Co.* vs. *Wood*, 14 North-

eastern Rep., page 579. *Davidson* vs. *State,* 34 North-eastern Rep., p. 974. *Stearns* vs. *Fields,,* 90 N. Y., p. 640. *Mercer* vs. *Vose,* 67 N. Y., 59. In the case of *Davidson* vs. *State,* supra, the court said:

"As to the second objection it would seem to be sufficient to say that it was not necessary that the hypothetical questions propounded to the witnesses should embrace all the facts proven upon the particular subject under investigation. In the examination of expert witnesses, counsel may embrace in his hypothetical question such facts as he may deem established by the evidence and if opposing counsel does not think all the facts established are included in such question he may include them in questions propounded on cross examination. Any other course would result in endless wrangles over the question as to what facts were and what were not established." See also Rogers Expert Testimony, 39.

It is contended that the hypothetical question propounded by counsel for plaintiffs stated sufficient facts to enable the doctor to formulate an intelligent opinion.

The fifth, sixth, seventh and eighth assignments of error will be considered together. There are no reasons given in any of the above assignments of error and therefore they ought not to be considered by the court. See *Van Alstyne* vs. *Franklin Council Jr. O. U. A. M.,* 40 Vr., 672. *Allaire* vs. *Allaire,* 10 Vr., 113. *Conover* vs. *Middleton,* 13 Vr., 382. *Packard* vs. *Bergen Neck Railway Co.,* 25 Vr., 553. *Lutlopp* vs. *Heckman,* 41 Vr., 272. *Donnelly* vs. *State* supra. *State* vs. *Lewis,* 10 Vr., 501.

Should the court, however, come to a consideration of these assignments of error it is insisted that they are without substance. The evidence of the entire case should be considered in disposing of these assignments. They all involve the question as to whether the case ought to have been submitted to the jury as far as E. A. Williams, one of the defendants, was concerned. The ground for taking the case from the jury was that there was no proof of negligence on the part of E. A. Williams. This defendant did

not rest its case at the conclusion of plaintiff's case after having made the motion to non-suit, but entered into a defense therefore as was observed above, the testimony of the entire case should be considered in determining the question here involved.

The plaintiffs contend that there was ample evidence from which the jury could find negligence on part of E. A. Williams. On page 97, John Drury, a witness sworn in behalf of North Jersey Street Railway Company, testified as follows:

"Q Won't you tell us briefly what you saw?" "A Why the car was going down Bloomfield avenue at a moderate rate of speed, I should say probably seven miles an hour, and at Parker street or just before we came to Parker street, I saw this bread wagon coming up Bloomfield avenue and the driver was beating the horses and had them going at top speed just about as hard as they could be driven—the kind of horses they were—to a heavy wagon and not on the macadam road but on the car track; and in turning out in order to cut the car and cross the other track he had to make another turn to get into Parker street and in making the turn to get into Parker street the rear end of the wagon hit the hight hand side of the car—that is the side the run board is on, the side I was standing on—and then I think the car immediately stopped; it hadn't gone, well the middle of the car I don't believe was beyond the corner, because some person, I can't say who it was, stepped into the hotel for a glass of water."

And continuing on page 105, beginning on line 21, the same witness testified as follows:

"Q There was nothing between the motorman and the wagon that prevented him (meaning the motorman) from seeing it (meaning the horse and wagon of E. A. Williams)?" "A No, sir."

And on page 109, line 13, the same witness testifying said:

"Q So that the car from the time you were at the upper crossing and saw the horses and wagon and they had turned—there was no difference in the speed of the car from the speed at which it was going at the

time the car and the wagon collided, was there?" "A There was no difference." "Q No difference?" "A No."

And on page 88, beginning at line 12, Frank Backus, the driver of the wagon, testified as follows:

"Q And when you did turn around, at the time you did turn around, the length of your horse and wagon you put your horse at the third rail do you?" "A Yes, sir, as soon as I swung, I kept on going, you know." "Q And then you had to put your wagon across and you had fourteen feet to cross, did you not, if that is the distance?" "A Evidently." "Q And during that time the car came fast?" "A Yes, sir; and I kept on going, I didn't stop the horses, I want to get over." "Q And you went right along?" "A Right along."

It is insisted that the foregoing evidence establishes a strong case of negligence against E. A. Williams.

It appears from the evidence; that the car was going fast. See page 17 of printed case, that the car, according to the testimony of the motorman, was one hundred feet away when the horses turned to cross into Parker street—some of the witnesses place the distance at two hundred feet—it was therefore a question for the jury to determine the distance—the motorman saw the wagon, and the driver of the wagon saw the car and saw that it was going fast according to his own testimony. See printed case p. 88, beginning on line 12; and it further appeared that there was no slowing down or difference in the speed of the car up to the time of the accident. See printed case p. 109. Now in view of all these facts the conduct of the driver of the wagon, in beating his horses and going at top speed can only be reconciled with a reckless disregard of the safety of others as well as of his own safety.

In the case of *Schwanewede* vs. *North Hudson Ry. Co.* 38 Vr., p. 450, the court said:

"A plaintiff cannot take chances of this kind and hold himself free from contributory negligence. There is a difference between an unforeseen peril and being overtaken by one recklessly incurred. If it appears

that the trolley car motorman is not going to respect your rights to cross the street first, you must wait or you are guilty of contributory negligence."

And in the case of *Earle* vs. *Consolidated Traction Co.* 35 Vr., p. 575, the court in commenting upon the conduct of the plaintiff in that suit said:

"Reasonable prudence required him to wait until he assured himself whether the motorman intended to stop or go ahead. He knew the car could not move except upon its tracks, and he also knew that he had a wide driveway on which he could turn his horse away from the trolley track and out of danger. If he was driving slowly, as was his duty under the circumstances known to him, there could have been no difficulty in avoiding the collision by waiting or turning away from the track. If he was driving at a rapid gait so that he could not control his horse he was negligent for his own safety."

It will be seen that the above extracts treat of the subject of contributory negligence. It certainly applies with equal force to the conduct of the defendant, E. A. Williams, because the same degree of care was required of the defendant's, E. A. William's, driver toward the plaintiff in this case as would be required of the driver of the wagon for his own safety. It is therefore insisted that the fifth, sixth, seventh and eighth assignments of error are without merit.

The ninth assignment of error is based on the refusal of the trial judge to charge the following requests:

"The vehicle reaching the point of crossing first, going at the rate of speed at which they were approaching the crossing, had the right of way."

This request to charge was rightfully refused.

It seems that the application of the principle invoked is made to depend upon the fact that the vehicle was going at a certain "rate of speed;" and the rate of speed depended upon for the application of the principle is—in the language of the request—"the rate of speed at which the vehicles were approaching the crossing." Now it is asked, what rate of speed is this; the case presents a mass of contra-

dictory evidence as to what the rate of speed of these vehicles were. Some witnesses testified that these vehicles proceeded at a moderate or slow speed—see page 91, line 26, as to slow speed of wagon and page 108, line 32, as to slow speed of car—and other witnesses testified just to the contrary—see page 17, line 34, as to speed of car and page 97, line 20, as to speed of wagon. Now, if we assume for the purposes of argument that the jury found that the vehicles proceeded at a slow rate of speed, was it then that the principle as to the right of way of the respective vehicles was to be applied?—or was it to be applied if the jury found that the vehicles were proceeding at a high rate of speed? The request to charge does not enlighten us on this point, and it is therefore insisted that the court very properly refused to charge as requested. For still another reason, it is urged that this request to charge was properly denied. It ignores the question of negligence entirely and it would give the jury to understand that the right of way which is accorded to the vehicle reaching the point of crossing first, could be exercised even if it was apparent to the person in charge of the vehicle crossing that he could not get across in time to avoid a collision.

To exercise one's right of way in view of such a situation would be inconsistent with reasonable care which the law requires of every individual. See *Electric Ry. Co.*, vs. *Miller*, 59 N. J. L., p. 423. See also *Schwanewede* vs. *North Hudson Ry. Co.*, 38 Vr., p. 450; *Earle* vs. *Consolidated Traction Co.*, 35 Vr., 575.

B. "The burden of proving negligence on the part of the defendant, E. A. Williams' Company, is upon the plaintiff." This request was properly disposed of by the learned judge charging as follows:

"I charge instead that the case having now closed and all the evidence on both sides having gone in, it is all without any reference to which side it comes from so much material for your judgment to act upon, and that in order that you should be satisfied that the E. A. Williams' Company was negligent it

must appear to you from all the evidence in the case that that conclusion is established."

C. "The same degree of care was not due from the E. A. Williams' Company to the plaintiff as from the traction company to the plaintiff."

This request to charge was properly denied. The court had already charged the jury in compliance with another request to charge made by this same defendant, concerning the degree of care which this defendant was bound to exercise. That request was as follows:

"The defendant, E. A. Williams, was only bound to exercise a reasonable degree of care under the circumstances."

This the court charged as requested. It was not necessary or proper for the court to compare duties owing by the defendants to the plaintiffs. All that the defendant, E. A. Williams, could be concerned in was in having the court declare to the jury just what the law required of E. A. Williams, and of no one else, and this the court did in the very language of that defendant. As to how the duty of this defendant compared with the duty of the other defendant was of no consequence and therefore the court very properly refused to charge the request.

D. This request to charge was as follows:

"If the motorman could have stopped his car by the exercise of due care and failed to do so there is no liability on the part of the defendant E. A. Williams Company. The court very properly refused to charge the above request because he had already charged as follows:

"If you conclude that one of the defendants was guilty of negligence solely productive of the accident your verdict should be in favor of the plaintiffs against that defendant. For instance if you conclude that the motorman was careless and that the driver was not you will find in that case in favor of the plaintiffs against the traction company, but as to the E. A. Williams Company you will find for the defendant, because your conclusion would be that no negligence had been established as to that defendant."

This very plainly states the law and there is nothing in the request to charge which is not fully and completely covered by this part of the judge's charge.

E. This request to charge was as follows:

"If the injury, if any there was, was caused by the sudden stopping of the car to avoid a collision with the wagon, if the motorman failed to exercise due care in stopping the car in time, there can be no recovery against the defendant, E. A. Williams Company." This request the court very properly modified to read as follows: "That if the accident occurred *solely* in consequence of the want of care of the motorman your verdict should be in favor of the E. A. Williams Company."

It is insisted that the ninth assignment of error is without merit.

The tenth assignment of error is based upon the failure of the court to charge the jury as to the degree of care due from the two defendants or each of the defendants to the plaintiffs.

Error cannot be assigned upon an exception to what the court *failed* to charge; it must appear that the court was requested to charge a particular proposition and refused so to do. See *Petre and Hadden* ads. *The State* 6, Vr. 64.

But should the court consider this assignment, it is insisted that E. A. Williams Company can only be interested in having *its own* duty toward the plaintiffs explained to the jury. This the court did in his main charge, and also in the second request to charge made by E. A. Williams Company.

The general rule is that every person who joins in committing a tort is separately liable for it and cannot escape liability by showing that another person or corporation is liable also; nor can one of several wrongdoers compel the plaintiff to sue him together with the persons with whom he has joined in committing the wrong.

The eleventh assignment of error is founded upon an exception taken to the charge.

The part of the charge to which exception is taken is misquoted, a very material part of it being omitted in the assignment.

The assignment reads, that * * * "If the motorman had not time enough to avoid a collision after he saw that danger was impending because the wagon cut across him too closely the motorman was free from negligence and the driver was in fault," whereas the charge reads: "That if the motorman was careful in the management of his car, and had not time enough to avoid a collision after he saw that danger was impending because the wagon cut across him too closely, the motorman was free from negligence and the driver was in fault."

It can readily be seen that a very important part of the charge has been omitted, and that there is no error in the charge as given by the court.

The twelfth assignment of error is founded upon an exception to that part of the judge's charge which reads as follows:

"He is also entitled to be compensated for the loss of his wife's society, of the comfort and advantages of the marital relation so far as the consequences of this accident have interfered with it, and her domestic services and duty as his wife." This part of the charge was excepted to on the ground that the marital relations were not interfered with.

There certainly is evidence to sustain this part of the charge, and from which the jury could infer that the marital relation was interfered with. On page 10, line 23, the plaintiff, Nellie Daggett, testified as follows:

"Q How long did you remain in the hospital?"
"A I remained there four or five days."

And on page 11, line 19, the same witness testified as follows:

"Q For how long a period were you under the doctor's care?" "A Well, I was under the doctor's care for a month." And on line 28 on the same page the same witness testified as follows:

"Q During that time were you able to do any housework?" "A Oh, no."

And on page 70, beginning at line 1, John Daggett, husband of the plaintiff, testified as follows:

"Q From the time your wife received this injury, do you know whether she has been the same woman that she was before or not?" "A No, sir; nowhere near." "Q In what respect was she different?" "A Why, she couldn't do her work and she is always sick."

And on line 20, same page, the same witness testified as follows:

"Q Well, just tell us about that?" "A When she had these bad spells, was sick with her spine and pain in her head, she was unable to do anything, and when I couldn't get a person to take care of the house, I stayed home and done it myself."

It is respectfully submitted that the judgment of the Circuit Court should be affirmed.

Respectfully submitted,

HARRY KALISCH,

Of Counsel.

New Jersey

Court of Errors and Appeals.

JOHN DAGGETT and NELLIE DAGGETT, his wife, Defendants in Error, vs. NORTH JERSEY STREET RAILWAY COMPANY and E. A. WILLIAMS COMPANY, a corporation, Plaintiffs in Error.	In Tort.

Brief of Defendant E. A. Williams Company.

This case was tried at the Essex Circuit before Judge Adams and a jury.

The facts are as follows:

The plaintiff, Nellie Daggett, a married woman, (p. 8) was a passenger upon an open trolley car of the defendant North Jersey Street Railway Company on Bloomfield avenue going from Bloomfield to Newark in June, 1905 (p. 9). She was seated upon the front seat with her back to the motorman (p. 16).

As the car approached Parker street a two-horse wagon of the defendant E. A. Williams Company, going in the opposite direction, turned

into Parker street in front of the car (p. 74). As the wagon crossed in front of the car two large empty boxes, used to hold loaves of bread, which were tied to the tail board of the wagon, were knocked off by contact with the right-hand front of the car (p. 44).

There is considerable contradiction in the testimony as to the speed of the car and the distance it ran, before being stopped, after the collision.

The plaintiff Nellie Daggett claims to have been injured by reason of her head being thrown suddenly back against the car (pp. 10-11).

POINTS.

I.

At the conclusion of the plaintiff's case the motion of the defendant E. A. Williams Company, to nonsuit the plaintiff, should have been granted.

(Exception, p. 72. Assignment of Error No. 5 on p. 174.)

There can be no doubt that there was no negligence shown on the part of the defendant E. A. Williams Company and that but for the reservation of the motion until after the close of the defendant's testimony it would have been the duty of the Court to have granted this defendant's motion.

At the close of plaintiff's case there was no evidence of negligence shown on part of defendant E. A. Williams Company. All that appeared was that the plaintiff was riding in a car of the defendant North Jersey Street Railway Company (p. 9) when, she testifies (p. 10, l. 2): "Q. Now, did anything happen to that car? A. Well,

I was sitting with my back to it, and all at once I heard a crash, and my head went back, and I don't remember nothing more," and on l. 37 "I heard the crash; my back was to it; and with that, my head went back against the car." On p. 11, l. 2: "Q. What did it strike? A. Why, the back of the car. Q. Whereabouts did you feel the blow? A. Right in here (indicating lower part of back of head)." Emma Landmasser, a witness for the plaintiff, testified that the car was going "pretty fast" (p. 38, l. 13) and that she did not notice the horses until after the collision (p. 38, l. 15-40 and p. 39, l. 30). There was no other witnesses to the accident called by the plaintiff.

The plaintiff's case disclosed no evidence whatever of negligence on the part of the defendant E. A. Williams Company, nor any facts from which there might have been a reasonable inference of negligence drawn. Had there been no further testimony produced, the plaintiff must have failed to make out a case against this defendant. If the E. A. Williams Company had been sued alone, the motion must have been granted at this time on the facts produced by the plaintiff; there was no duty upon this defendant to explain the cause of the accident. Furthermore, the evidence strongly tended to show that the plaintiff's condition was the result, not of physical injury but of shock alone, caused by reason of the sudden checking of the speed of the car in order to avoid a possible collision.

The affirmative burden to show negligence was upon the plaintiff and upon the failure of the plaintiff to sustain that burden the motion should have been granted. This right of the defendant is a substantial one.

McGilvery v. Newark Elec. Light & Power Co. 34 *Vroom*, 591.

Bien v. Unger, 35 *Vroom*, 597.
Stephen's Ev. Art. 95.
Best's Ev. (Morgan's Ed) §268.
Ill. Cent. R. R. Co. v. Hobbs, 58 *Ill. App.*, 130.
2 *Am. & Eng. Encl. Law*, 655.

II.

The Court erred in reserving the defendant E. A. Williams' motion to nonsuit until the close of the defendants' case.

(Exception p. 72. Assignment of Error No. 6 on p. 174.)

In refusing to pass upon the defendant E. A. Williams' motion to nonsuit until the close of the defendants' testimony (p. 72) the Court relied on *Bien* v. *Unger*, 35 *Vroom* on p. 599. That case was not against two separate defendants and the practice was there justified upon the theory that the plaintiff had "presented a case in which all of the relevant facts were so exclusively within the knowledge and control of the defendants, that the law imposed upon them the duty of offering explanatory testimony"

> *Bahr* v. *Lombard Ayers & Co.*, 24 *Vroom*, 233.

The Court is careful to explain that "this mere practice motion should not be confounded, as it sometimes is, with the doctrine of *res ipsa loquitur.*"

Both *Bien* v. *Unger* and *Bahr* v. *Lombard* are master and servant cases where the rights and obligations of the parties are measured by an entirely different rule from the case at bar.

In the earlier case Mr. Justice Garrison points out that "the existence of such a rule is among the unsettled matters of the law;" the practice was apparently justified in the latter case.

In *Perth Amboy Mfg. Co. v. Condit,* 1 *Zab,* 659; *D. L. & W. R. R. Co. v. Dailey,* 8 *Vroom,* 526; *May v. North Hudson County Ry. Co.* 20 *Vroom* 445; *Elser v. Camden & Suburban Ry. Co.* 42 *Vroom* 180, the practice is sanctioned, and now by *Bostwick, Ex'r. v. Willett* 43 *Vroom* 21 and *Van Cott v. North Jersey Street Ry. Co.,* 43 *id.* 229, it appears to have been settled, but in none of these cases were there two defendants, and the question now is whether this practice may be fairly and properly extended and applied to a case in which there are two defendants—to such a case as the one at bar—where the plaintiff, a passenger on the car of a common carrier sues the carrier and the owner of a wagon with which the car collided.

In the first place, all of the relevant facts were as much within the knowledge of the plaintiff as of either of the defendants and therefore the action of the court does not come within the theory upon which the practice was predicated in the cases mentioned.

And secondly, such a rule, applied to cases of this nature, puts upon each of the defendants, not only the burden of meeting the plaintiff's case, but of meeting and overcoming the case of his co-defendant—whose evidence would naturally be directed, as it was in this case, toward excusing itself and throwing the burden upon its co-defendant. This course relieves the plaintiff from the well settled duty of making out a *prima facie* case.

> "This right of the defendant to have his
> "plaintiff bear the burden of the affirma-
> "tive is a substantial one and not a mere
> "matter of form."
>
> *McGilvery v. Newark Electric Light and Power Co.* 34 *Vroom,* 591.
>
> *Bien v. Unger supra* on p. 597.

III.

At the conclusion of the defendants' case the Court should have granted the defendants' motion to nonsuit or should have directed a verdict in its favor.

(Exception p. 156. Assignments of error Nos. 7-8 on pp. 174-175.)

If the trial court was justified in refusing to nonsuit and in reversing the motion, it should have been granted at the conclusion of the defendants case because such other evidence which tended to show negligence on the part of this defendant came from its co-defendant, the North Jersey Street Railway Company, and should not weigh against this defendant for the reasons above set forth and, secondly, assuming that this court holds this contention to be without merit, then because, even upon all the evidence in the case, it appears that the driver of the wagon was justified in crossing in front of the car when he did, the car being sufficiently distant to have been checked if the motorman had the car under proper control at the time he saw, or ought to have seen, that the driver was about to cross the track in front of him.

IV.

The question propounded on p. 43 as to the speed of the car should have been admitted.

(Exception p. 43. Assignment of error No. 3 on p. 173.)

In view of the preceding testimony by the witness on page 42 l. 10-40 this question was proper.

The rate of speed was material.

Searles v. Elizabeth etc. Ry. Co., 41 *Vroom,* 391.

In a negligence suit, one may give his opinion as to the rate of speed of a train and whether it was under control.

C. B. & Q. R. R. Co. v. Johnson, 103 *Ill.,* 512.

Dowden v. Wilson, 12 *Brad.,* 297-299.

The rate of speed at which a railroad train was running at the time of the injury, may be considered by the jury in determining the question of negligence.

Martin v. N. Y. etc. R. R. Co., 27 Hun, 532.

Worthen v. Grand Trunk Ry. Co., 125 *Mass.* 99.

Penna. Co. v. Conlon 101 *Ill.* 93.

Missouri etc. Ry. Co. v. Collier 62 *Tex.* 318.

V.

There was errror in admitting the hypothetical question asked by plaintiff's attorney on page 56.

(Exception p. 57. Assignment of error No. 4 on p. 174).

This question was objected to on the general ground that it did not state the facts as proved in the case, and specifically because (p. 57)—the question does not state whether, when plaintiff's head was thrown back it came in contact with anything—it simply assumes that it did. There was nothing in the question from which the physician might determine whether the plaintiff's condition was the result merely of her head being thrown back, or whether her condition was the result of her head coming in contact with the car. The question did not include the speed of the car

nor the force of the collision. There is nothing in the question to indicate the kind of a back comb the question referred to or whether it was easily broken or not. Nothing from which the witness might be able to form an opinion as to the force of the impact if the question had included impact, which it did not. And further, the question assumed that the plaintiff's head was thrown back by means of a collision with a wagon, when as a matter of fact the evidence showed that a more reasonable hypothesis would be that her head was thrown back by the sudden slowing down of the speed of the car before it came in contact with the boxes on the wagon, (p. 17 1. 40; p. 18 1. 1-10 and p. 47 1. 37). The question states that after the accident she suffered from *periods* of severe headache and nervous feelings while the evidence shows (p. 13 1. 17) that she had *constant* headache and was very nervous at all times. It also appears that the plaintiff had "pains in her right side (p. 10 1. 33; p. 13 1. 17) and felt dizzy" (p. 28 1. 5) which symptoms were not incorporated in the question.

This question did not present fairly the facts as given in evidence nor all of the material facts necessary to enable the witness to properly answer the question.

There is nothing in the witness's testimony to indicate that he had heard all of the testimony, or whether his opinion was based alone upon the facts contained in the question.

An opinion based on such a question is incompetent.

> *Bergen County Trac. Co. v. Bliss* 33 *Vroom* 410.
>
> *Reber v. Herring,* 115 *Pa.* 599.

All material undisputed facts bearing on the matter should be included in a hypothetical question.

Catlin v. Traders' Ins. Co. 83 *Ill. App.* 40.
Levison v. Sands 81 *Ill. App.* 578.
Decatur v. Fisher 63 *Ill.* 241.

Hypothetical questions asked experts are improper unless they present facts fairly as they have actually been given in evidence.

The Berry will case 93 *Md.* 560.

In view of these objections we believe that the question was improper and that the court erred in admitting it.

VI.

The vehicle reaching the point of crossing first, continuing at the rate of speed at which each were approaching the crossing, had the right of way.

(Exception p. 167. Assignment of error No. 9 I. p. 175).

We submit that there was error in the refusal of the judge to charge the third request of the defendant E. A. Williams (p. 167).

The use of the expression "right of way" has been sanctioned for a long time by our courts as succintly expressing the relative rights of two vehicles approaching a point of crossing on a public highway.

Electric Co. v. Miller 30 *Vroom* 423.
Woodland v. North Jersey St. Ry. Co. 37 *Vroom* 455.
Knox v. North Jersey St. Ry. Co. 41 *Vroom* 347.
Searles v. Elizabeth etc. Ry. Co. 41 *Vroom* 388.

The trial judge in his charge (p. 160) has asserted his disapproval of the expression. The defendant Williams was entitled to a plain concise statement of the relative rights of the defendants

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in the circumstances with such explanation or illustration as might have been necessary to apply that statement of the law to the facts of the case.

As was said in the Searles case, *Supra,*

> "Another principle involved in this case "is that a driver at a crossing may obtain "the right of way over a street railway "when, in the reasonable exercises of his "rights he reaches the point of crossing in "time to safely go upon the track in advance of the approaching car, the latter "being sufficiently distant to be checked or "stopped, if need be, by the exercise of "due care."

VII.

The burden of proving negligence on the part of the defendant E. A. Williams Company is upon the plaintiff.

(Exception p. 167-8. Assignment of error No. 9. II. p. 175.)

After the court had read the request to the jury he said, (p. 164) "I charge instead that the case having now closed and all the evidence on both sides having gone in, it is all, without any reference to which side it comes from, so much material for your judgment to act upon, and that in order that you should be satisfied that the E. A. Williams Company was negligent it must appear to you, from all the evidence in the case, that that conclusion is established."

The right of the defendant to have his plaintiff bear the burden of the affirmative by preponderance of evidence is one of substantial law and not a mere matter of proceedure.

McGilvery v. Newark Elec. L. & P. Co. 34 *Vroom* 591.
Bien v. Unger 35 *Vroom* 596.

"The burden of proof remains on the par-
"ty affirming a fact in support of this case,
"and does not change in any aspect of the
"cause."

2 *Am. & Eng. Encl. Law* 655.

"The burden of proof in any proceeding
"lies at first on that party against whom
"the judgment of the court would be given
"if no evidence at all were produced on
"either side."

Stephen's Evidence Art. 95.

Best on Evidence (Morgans Ed.) §268.

In an action for personal injuries, the plaintiff must prove the negligence of the defendant.

Ill. Cent. R. R. Co. v. Hobbs, 58 *Ill. App.* 130.

The burden was upon the plaintiff to satisfy the jury that the driver had failed to use the degree of care that a reasonable person should have used under the circumstances.

Bliss v. Schaeffer Brewing Co. 38 *Vroom* 29.

The mere fact that all of the evidence is before the jury does not shift the burden of proof.

Heinemann v. Heard 62 *N. Y.* 448.

Dederich v. McAllister 49 *How. Pr.* 351.

People v. Cassata 6 *App. Div.* 386.

The court complied with the request of the defendant North Jersey Street Railyaw Company "That the burden of proof of the plaintiff's injury is upon the plaintiff" (p. 163) and we cannot understand why, if that proposition was considered sound as to the proof of injury, it was not equally sound ae to the proof of other elements of the plaintiff's case.

VIII.

This defendant was entitled to have the relative degree of care due from each defendant to the plaintiff explained to the jury, and to have the jury charged thereon.

(Exceptions pp. 165, 168. Assignments of Error No. 9, II. & No. 10. p. 175-6.)

This defendant's sixth request, that "the same degree of care was not due from the E. A. Williams Company to the plaintiff as from the traction company to the plaintiff," was refused. The court charged that either the driver or the motorman may not have used *due care;* (p. 158 1. 35) that "when a person is exercising a right in a place where other persons also are exercising rights, *the obligation is to use reasonable care to avoid conflicting with the rights of others;* (p. 159 1. 3) *that reasonable care was obligatory;* (p. 160 1. 18); "that if there was no negligence by either defendant, for which either defendant is *legally accountable,* then you will find a verdict for the defendants;" (p. 161 1. 4-7) that if the jury concluded "that the motorman exercised *all the care that was incumbent on him"* etc. (p. 161 1. 18-19.)

The degree of care required to be exercised in the discharge of any duty depends greatly upon the relationship which the parties sustain to each other.

16 *Am. & Eng. Encl. of Law,* p. 427

The degree of care due from each of these defendants to the plaintiff was not the same—The Traction Company, as a common carrier, was bound to exercise a *high* degree of care toward the plaintiff; the E. A. Williams Company, a *reasonable degree* of care under the circumstances.

"The company owes to a passenger a "high degree of care."

Paganini v. North Jersey St. Ry. Co. 41 *Vroom,* 385.

"A common carrier is bound to take a "high degree of care of its passengers."

Hansen v. North Jersey St. Ry. Co. 35*Vroom* 686.

It was the duty of the driver to use, toward other persons or vehicles using the highway "the degree of care that a reasonable person should have used under the circumstances."

Bliss v. Schaeffer Brewing Co. 38 *Vroom* 29.

The defendant E. A. Williams Company was entitled to have the jury instructed not only as to what was *due care* and *reasonable care* as applied to this case; to what extent either of the defendants was *legally accountable;* and what degree of care it was *incumbent upon* the motorman to exercise; but to have the degree of care required to be exercised by each defendant explained to the jury, or at least that the jury be instructed, as requested, that the same degree of care was not due from the E. A. Williams Company to the plaintiff as from the traction company to the plaintiff.

It may well be that had the jury been so instructed they would have been able to differentiate, in their application of the law and the facts, between the duty to plaintiff by these defendants and thereupon found in favor of the defendant E. A. Williams Company.

Had the jury been instructed by the court on this point as requested they would have been justified in finding that the injury, if any there was, was caused by the sudden stopping of the car to avoid a collision with the wagon "and that the motorman failed to exercise due care in stop-

ping the car in time" and that, therefore, the E. A. Williams Company was not liable.

We believe the failure of the court to charge on this point is reversable error.

IX.

If the injuries of the plaintiff were sustained by reason of the efforts cf the motorman to avoid a collision, attributable to his failure to exercise due care, this defendant cannot be held liable for plaintiff's injuries.

(Exception p. 169. Assignment of errors 9 V. p. 175.)

To the eighth request that "If the injury, if any there was, was caused by the sudden stopping of the car to avoid a collision with the wagon, if the motorman failed to exercise due care in stopping the car in time, there can be no recovery against the defendant E. A. Williams Company" the court said: (p. 164 l. 32) "I will modify that, and I will simply say this: That if the accident occurred solely in consequence of the want of care of the motorman, your verdict should be in favor of the E. A. Williams Company."

This is not even a substantial compliance with the request of the defendant Williams to charge on this point, and totally ignores the well settled law on this point which plaintiff was entitled to have considered by the jury.

Corkhill v. Camden & Surburban Ry. Co. 40 *Vroom* 97.

This instruction was pecularly applicable in view of the evidence of the plaintiff beginning at the bottom of p. 17, the car was going very fast:

"Q. Did you feel any change in the "movement of the car just before the "crash came? A. Well, yes.

"Q. What was that motion that you "felt? A. A kind of a jerk, like that (in- "dicating); that is when my head must "have struck back."

And on p. 18 l. 10.

BY THE COURT:

"Q. The change in the movement of the "car, then, was the jolt of stopping, was it, "or jolt of the crash? A. I couldn't say "what it was from, but I know it jerked "like that, and then—."

"Q. You are referring to the movement "that threw your head back? A. Yes, "sir.

And of Emma Landmasser, on p. 47 l. 31.

"Q. You say you heard the glass break? "A. Yes.

"Q. Was that the only crash you heard? "A. That is all I heard.

"Q. You did not hear any other crash? "A. No, sir.

"Q. Just before that did you feel any "stoppage in the progress of the car? A. "Yes, it gave a sudden jerk.

"Q. A sudden jerk? A. Yes.

"Q. How long before? A. About three "or four minutes before.

"Q. Three or four what? A. Minutes.

"Q. Minutes? A. Yes.

"THE COURT. You probably do not mean that.

"Mr. OSBORNE. No.

"Q. How far were you from the wagon "when you felt the car give a sudden jerk, "as you say? A. Well, I don't know.

"THE COURT. She cannot know that, because she did not see the wagon.

"Q. How far were you away from the

"place of collision when you felt the car "give a sudden jerk? A. Well, I don't "know that either.

"Q. Very close to it? A. Well, it was "right before the car hit the wagon.

"Q. Right before the car hit the wagon? "A. Yes.

"Q. Then this sudden jerk was not "caused by the car hitting the wagon, is "that right? A. I don't know.

"Q. You do not know what caused it? "A. No."

X.

If the motorman had time enough to avoid a collision after he saw or ought to have seen the impending danger, it was his duty to do so.

(Exception p. 165. Assignment No. 11 p. 176.)

Exception was taken to that part of the court's charge when he said that if the motorman "had not time enough to avoid a collision after he saw that danger was inpending," * * * he "was free from negligence and the driver was in fault." The point was not whether he had time enough to avoid a collision *after he saw* the danger impending—but whether he could have avoided the collision after he *should have seen* the danger, if he had been in the exercise of that degree of care which was incumbent upon him in the circumstances.

Hughes v. Camden & Suburban Ry. Co., 36 *Vroom* on p. 205.

Zolpher v. Camden & Suburban Ry. Co. 40 *Vroom* on p. 418.

Kaufman v. Bush 40 *Vroom* 645.

Conrad v. Elizabeth etc. Ry. Co. 41 *Vroom* on p. 678.

XI.

The plaintiff John Daggett cannot recover damages for any loss not proven.

(Exception p. 165. Assignment No. 12 p. 176.)

Exception was taken to that part of the court's charge where he said that the husband was entitled to be compensated for the loss "of the comfort and advantage of the marital relation, so far as the consequences of this accident have interfered with it." There was absolutely no evidence in the case that the husband had lost "the comfort and advantage of the marital relation" or that it had been interfered with as a consequence of this accident. The court's attention was called to this error at the conclusion of the charge (see p. 165).

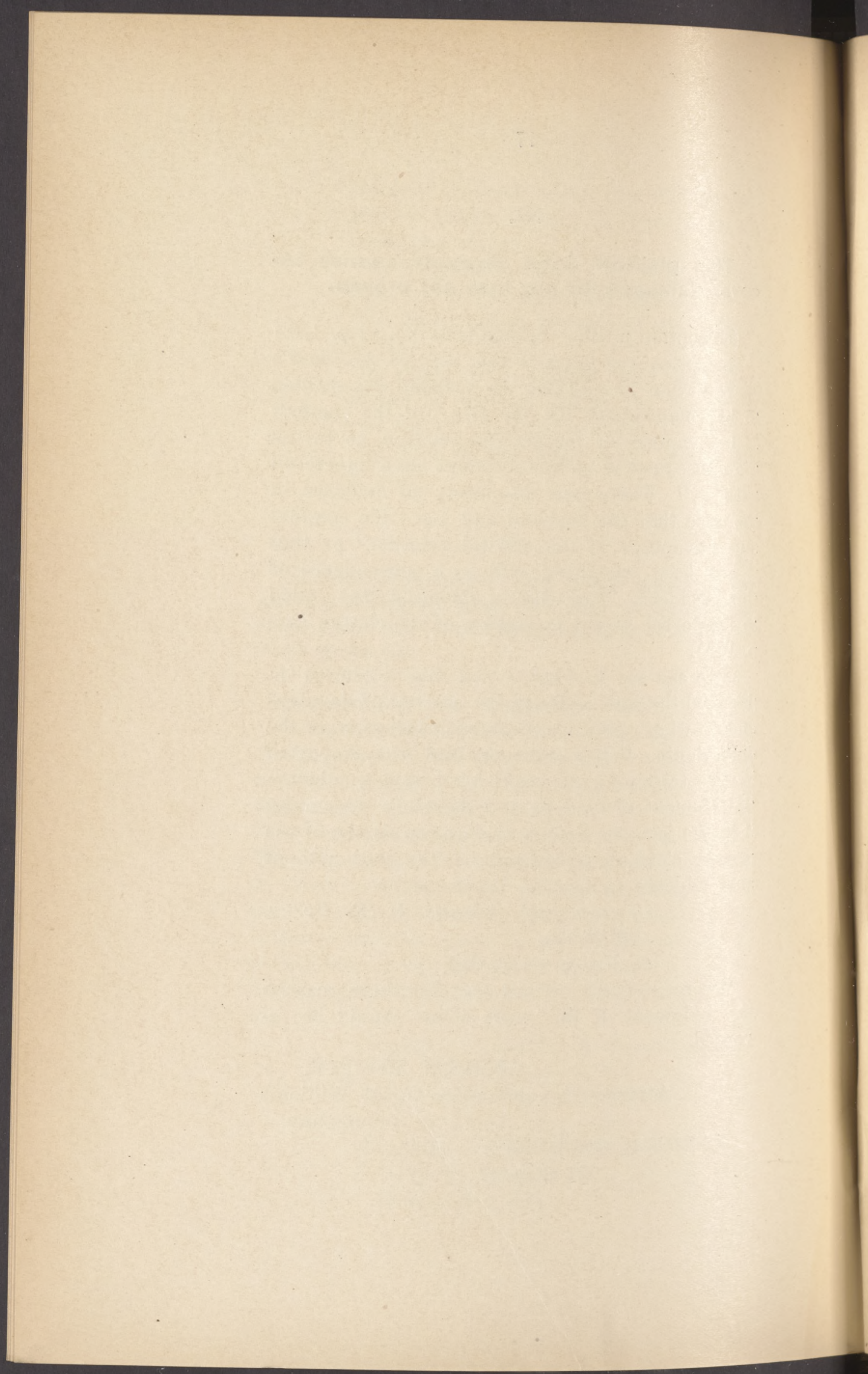
Who can say to what extent this statement influenced the jury in fixing the amount of damages and to what extent is operated injuriously to the defendants. If this statement had been supported by the testimony, it would have been a substantial element of damage and therefore presenting it to the jury for their consideration as one of the proven elements of damage in the case without any evidence to support it, was error.

Camden and Atlantic R. R. Co. v. Williams.
32 Vroom on p. 652.

We respectfully submit that for these reasons the judgment of the court below should be reversed.

JOHN J. HOPPIN,
Attorney for defendant E. A. Williams Company.

HARRY V. OSBORNE,
Of Counsel.



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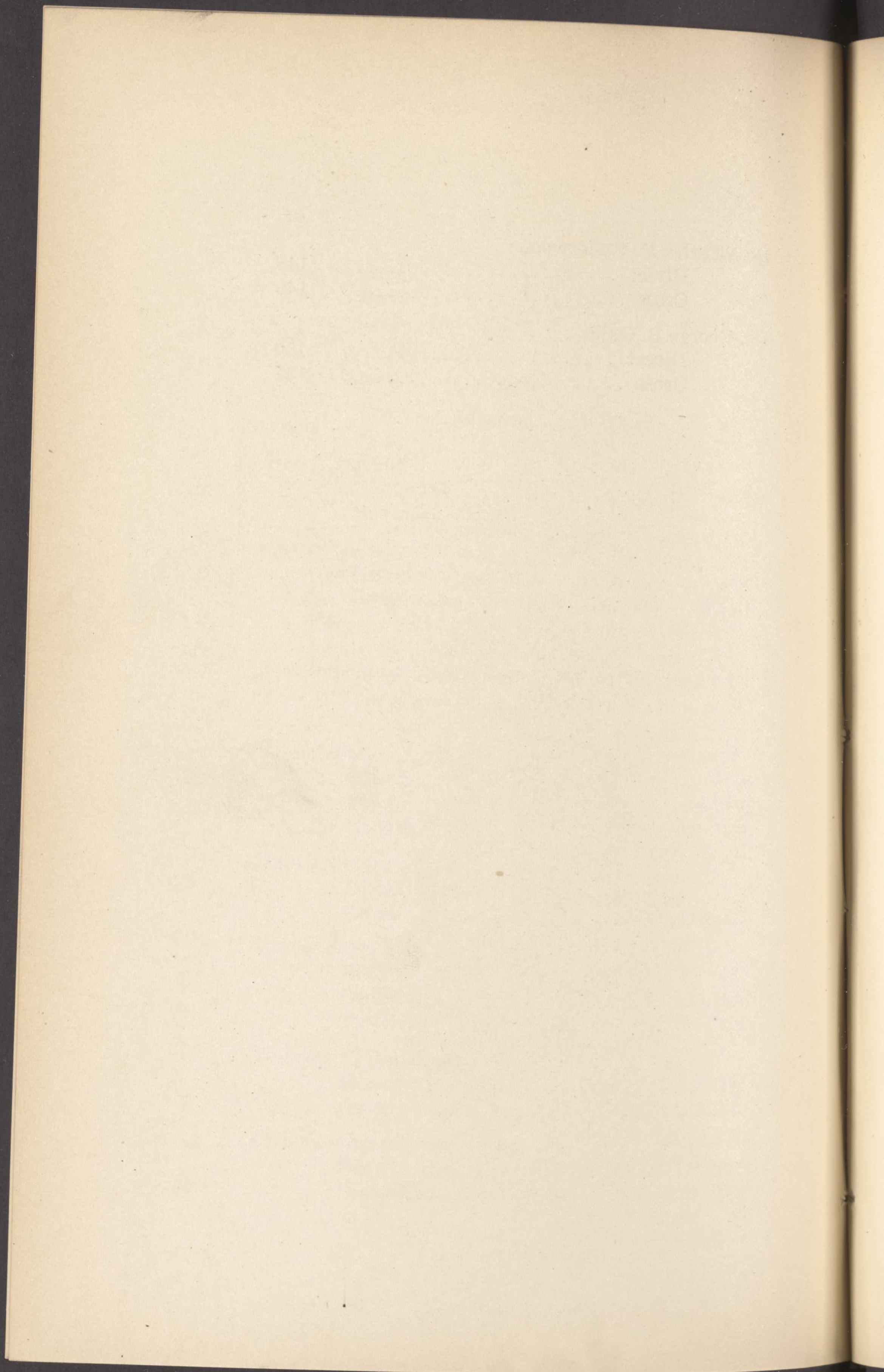

(Seal.) The State of New Jersey to Frederic Adams, Judge of the Essex County Circuit Court.

Greeting:

For as much as in the record and proceedings and also in the giving of judgment in a certain plaint which was in our Circuit Court before you between John Daggett, and Nellie Daggett, his wife, plaintiffs, and North Jersey Street Railway Company and E. A. Williams, defendants, in an action in tort, manifest error hath intervened to the damage of the said defendants as by their complaint we are informed, we being willing that such error, if any there be, should in due manner be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, that you distinctly and openly send under your hand and seal the record and proceedings aforesaid with all things touching and concerning the same, to our judges of our Court of Errors and Appeals in the last resort in all cases at Trenton on the twenty-eighth day of November, nineteen hundred and six, together with this writ, so that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for the correcting of error, what of right and according to the law and custom of the State of New Jersey ought to be done.

10

20

WITNESS, William J. Magie, Esq., our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the 12th day of November, nineteen hundred and six.

30

JOHN A. BERNHARD,
Attorney for
North Jersey Street Railway Company,
Defendant.

S. D. Dickinson,
Clerk.

40

Pleas before the Judge of the Circuit Court holden at Newark, in and for the County of Essex of the Sixth day of January, A. D., 1906.

Essex County, ss.:

North Jersey Street Railway Company, a corporation, and E. A. Williams, a corporation, the defendants in this suit, were summoned to answer unto John Daggett and Nellie Daggett, his wife,
10 the plaintiffs therein, of an action in Tort, and thereupon the said plaintiffs, by Harry Kalisch, their attorney, complain: For that whereas heretofore to wit, on the ninth day of June, nineteen hundred and five, the said North Jersey Street Railway Company was the owner and possessor and by its servants had the control and management of a certain passenger car which was operated and propelled by electricity in and along cer-
20 tain tracks which were situated upon and extended along Bloomfield Avenue, a public street or highway in Bloomfield, Essex County, said passenger car being propelled and operated as aforesaid for the conveyance of passengers for hire and reward to the said North Jersey Street Railway Company in that behalf; and whereas also on the day and year aforesaid, the said E. A. Williams was the owner and possessor and by its servants had the control, and management of a certain
30 horse or team of horses and a certain wagon which was used by the said E. A. Williams in the bakery business.

And the said plaintiffs aver that on the day and year aforesaid, the said Nellie Daggett, plaintiff, wife of the said John Daggett as aforesaid, became and was at the special instance and request of the said North Jersey Street Railway Company, a passenger on the said certain passenger car for a certain hire and reward to the said
40 North Jersey Street Railway Company, and for

the purpose of being safely and securely carried from the corner of Race Street and Bloomfield Avenue in Bloomfield, in the County of Essex, to the corner of New and Broad Streets in the City of Newark, in the County of Essex, and the said North Jersey Street ailway Company then and there received the said plaintiff, Nellie Daggett, as such passenger as aforesaid, and the said plaintiffs further aver that while she, the said Nellie Daggett, plaintiff, wife of the said John Daggett, 10
was riding in and upon said passenger car as such passenger as aforesaid to be safely and securely carried from said corner of Race Street and Bloomfield Avenue in Bloomfield, to said corner of New and Broad Streets in said City of Newark, in the County of Essex aforesaid, and while the said car was at the corner of Parker Street and Bloomfield Avenue, in said Bloomfield, the said North Jersey Street Railway Company, by its servants, did then and there so carelessly, negli- 20
gently and improperly operate, propel and run said car, and the said E. A. Williams, by its servants, did then and there so carelessly, negligently and improperly manage and drive its said certain horse or team of horses, with said wagon attached, along said Bloomfield Avenue, at the said corner of Parker Street, and in, upon and across said certain tracks along which the said car was then and there being propelled and operated as aforesaid, so that the said car and said horse or 30
team of horses with said wagon attached then and there collided with each other with great force and violence, throwing the said Nellie Daggett, from her seat in said car and with great force and violence against the casement of said car, whereby and by means of the premises the said Nellie Daggett, then and there received and sustained painful, serious and permanent wounds, bruises and injuries and also by means of the premises the said Nellie Daggett became and was sick, sore, 40

lame and disordered and so remained and continued for a long space of time, to wit, from thence hitherto, during all which time she, the said Nellie Daggett, suffered and underwent great pain and in the future will suffer and undergo great pain and was hindered and prevented and in the future will be hindered and prevented from transacting and attending to her necessary and lawful affairs by her during all that time to be perform-
10 ed and transacted, and lost and was deprived of and in the future will, lose and be deprived of divers great gains, profits and advantages which she might and otherwise would have derived and acquired, to wit, at Bloomfield, in the County of Essex, to wit, at Newark, in the County of Essex aforesaid, to her damage Twelve thousand dollars.

And also by means of the premises the said John Daggett, plaintiff, husband of the said Nellie Daggett during all that time and from thence hither-
20 to lost and was deprived of the company, aid and assistance of the said Nellie Daggett, his wife, which he might and otherwise would have had,and the said Nellie Daggett, his wife, by reason of her said injuries became permanently disabled from rendering and affording in the future to the said John Daggett that aid, comfort and assistance in and about his household and domestic affairs which she otherwise could and would have done; and thereby also the said John Daggett lost the
30 services of his wife for a long space of time, to wit, from the day and year aforesaid up to and until the present time, and also by means of the premises the said John Daggett was obliged to devote and consume a large amount of time in attendance upon his said wife, and also by means of the premises the said John Daggett suffered and underwent great agony, apprehension and anxiety of mind because of the injuries to his said wife; and also by means of the premises the said John
40 Daggett was forced and obliged to lay out and

expend the sum of Two hundred dollars in and about endeavoring to cure his said wife of her said wounds, bruises and injuries so received as aforesaid, to wit, at Bloomfield, in the County of Essex, to wit, at Newark, in the County of Essex aforesaid, to the damage of the said John Daggett, Three thousand dollars, and therefore the said John Daggett, and Nellie Daggett, his wife, bring their suit, &c.

HARRY KALISCH, 10
Attorney for Plaintiffs.

And the said defendant, John A. Bernhard, its attorney, comes and defends the wrong and injury when &c., and says that it is not guilty of the said supposed grievances above laid to its charge, or any or either of them in manner and form as the said plaintiff hath above thereof complained against it, and of this it, the said defendant, puts 20 itself upon the country, &c.

JOHN A. BERNHARD,
Attorney for Defendant.

And the said defendant, E. A. Williams, (incorporated) by John J. Hoppin, its attorney, comes and defends the wrong and injury, when &c., and says that it is not guilty of the said supposed grievances above laid to its charge or any or either of them or any part thereof, in manner 30 and form as the said plaintiffs have above thereof complained against it. And of this, it, the said defendant, puts itself upon the country.

JNO. J. HOPPIN,
Attorney for Defendant, E. A. Williams, (Inc.)

Therefore let a jury thereupon come before the Judge aforesaid, at Newark aforesaid, the second Tuesday of September next, who neither, &c., to 40

recognize, &c., because, &c., and the same day is given to the parties here, &c.

At which time before the Judge aforesaid, come the parties aforesaid, by their attorneys aforesaid, and the Sheriff hath not sent here the writ to him in this behalf directed nor hath he done anything thereupon.

And now at this day, that is to say, the fourth day of October, A. D. nineteen hundred and six, until which day the issue as aforesaid joined had been continued before the Judge aforesaid at Newark aforesaid, come the parties aforesaid by their attorneys aforesaid, and the jurors of the jury of whom mention is before made being summoned also come who to speak the truth of the matter within contained being chosen, tried and sworn upon their oath say, they find for the plaintiff John Daggett and assess his damages against the defendant at the sum of Three hundred dollars, and also find for the plaintiff Nellie Daggett the sum of Fifteen hundred dollars, and so they say all.

Whereupon it is considered that the said plaintiff do recover against the said defendant their damages in form aforesaid found, and also the sum of Fifty-nine dollars and seventy-four cents as for their costs about their suit in this behalf expended by the Court now here adjudged to them of increase with their assent, which damages, costs and charges in the whole amount to Eighteen hundred and fifty-nine dollars and seventy four cents.

And the said defendant in mercy, &c.

Judgment signed October 4th, 1906.

WM. S. GUMMERE,
Judge.

State of New Jersey, }
County of Essex, } ss.:

I, FREDERIC ADAMS, Presiding Judge of the Circuit Court, Essex County, New Jersey, do hereby certify and return to the Court of Errors and Appeals, in the Court of last resort in all causes in this state, the Judgment Record and all proceedings, together with all things touching and concerning the same, as by the within writ to me directed, I am commanded. 10

[SEAL.] WITNESS my hand and the official seal of said Court and County, at Newark, N. J., this 28th day of November, A. D. 1906.

FREDERIC ADAMS,
Circuit Court Judge.

20

30

40

ESSEX CIRCUIT COURT,

Wednesday, October 3, 1906.

JOHN DAGGETT et ux vs. NORTH JERSEY STREET RAILWAY COMPANY and E. A. WILLIAMS, a Corporation.	In Tort.

10

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

For plaintiff appears Harry Kalisch; Samuel Kalisch of counsel.

For defendant North Jersey Street Railway Company appears John A. Bernhard.

20

For defendant E. A. Williams appears Harry V. Osborne.

Mr. Samuel Kalisch opens for plaintiffs.

Mr. Kalisch: I understand that it is admitted that the E. A. Williams Company is a corporation organized under the laws of this state.

The Court: The plea admits that.

30

NELLIE DAGGETT, sworn in behalf of plaintiffs.

DIRECT EXAMINATION BY MR. SAMUEL KALISCH:

Q. Mrs. Daggett, how old are you?
A. Thirty-one.
Q. And you are married?
A. Yes, sir.

40

Q. Have you any family?

A. Yes, sir.
Q. Consisting of what?
A. Four children.
Q. What is your husband's name?
A. John Daggett.
Q. Where do you reside?
A. Bloomfield.
Q. And whereabouts in Bloomfield do you live?
A. 329 Franklin Street.
Q. And you have lived there for how long? 10
A. I have lived there about three years.
Q. On the 9th day of June, the 8th or 9th day of June—I do not know which it was—

The Court: The 9th.

Mr. Kalisch: The declaration says the 9th, but I think the accident was on the 8th.

Q. Well, on either the 8th or 9th of June you were in a trolley car, were you? 20
A. Yes, sir.
Q. In which you were injured, about the 8th or 9th of June, 1905?
A. Yes, sir.
Q. Whereabouts did you board the trolley car?
A. At the corner of Race Street and Bloomfield Avenue.

BY THE COURT:

Q. Is Race Street in Bloomfield? 30
A. Yes, sir.

BY MR. KALISCH:

Q. To go where?
A. I was going to Hahne's.
Q. To Hahne's?
A. Yes, sir.
Q. And did you pay your fare?
A. Yes, sir.
Q. How much? 40

A. Five cents.

Q. Now, did anything happen to that car?

A. Well, I was sitting with my back to it, and all at once I heard a crash, my head went back, and I don't remember nothing more.

Q. What is the first thing you do remember?

A. The first thing I remember is seeing the nurse standing over me.

Q. What?

10 A. The first thing I remember is seeing the nurse standing over me.

Q. Where?

A. At the City Hospital.

Q. Do you remember how you got up to the hospital at all?

A. No, sir; I don't remember anything.

BY THE COURT:

Q. The hospital where, in Newark?

20 A. In Newark, the City Hospital.

BY MR. KALISCH:

Q. Who attended you there at the hospital?

A. I don't know.

Q. How long did you remain in the hospital?

A. I remained there four or five days.

Q. From the hospital where did you go to?

A. I went home.

Q. When you first came to yourself in the hos-
30 pital did you have any pains or aches anywhere?

A. Oh, yes.

Q. Where?

A. In my head and all down my back and in the right side.

Q. You say when you were sitting in the car you heard a crash, did you?

A. I heard the crash; my back was to it; and with that, my head went back against the car.

Q. Struck what—what did it strike?

40 A. It must have struck the wood.

Mr. Bernhard: No, no.

Q. What did it strike? What was back of you?

A. Why, the back of the car.

Q. You were sitting against the back of the car?

A. Right against the back.

Q. Whereabouts did you feel the blow?

A. Right in here (indicating the lower part of the back of the head), because my combs were all broken.

Q. Your back combs were all broken? 10

A. Yes, sir.

The Court: The witness puts her hand on the back of her head.

Q. Now, after you went out of the hospital you went home, did you?

A. Yes, sir.

Q. Were you under a doctor's care?

A. Yes, sir.

Q. For how long a period were you under the doctor's care? 20

A. Well, I was under the doctor's care for a month.

Q. Now, what was the trouble with you?

A. Well, I don't know; he didn't seem to know.

Q. Well, what was it?

A. But in the back of my head and my back and in this side (indicating).

Q. During that time were you able to do any housework? 30

A. Oh, no.

Q. Before you met with this injury what was the condition of your health?

A. Very good.

Q. And who attended to the care of your household?

A. Well, I had two girls at first; I had a woman by the name of Ann Path, and Florence Brighton.

Q. They took care of your house before you were hurt? 40

A. No, after.

Q. I am asking you before.

A. Oh, nobody.

Q. Before you were hurt who kept the house?

A. I did.

Q. And did the work in the house?

A. Did everything.

Q. And after you got hurt you had these two women, did you?

10 A. Yes, sir.

Q. How long did you keep these women?

A. I kept one woman a month, and then I let her go, and I kept the other one until—all summr I kept her.

BY THE COURT:

Q. The summer of 1905?

A. Yes, sir.

Q. That is, a year ago?

20 A. Yes, sir.

Q. Last Summer?

A. Yes, sir.

BY MR. KALISCH:

Q. You kept her up until what time?

A. I kept her until school started, and then she went back again.

Q. Well, that would be September?

A. Yes, sir.

30 Q. 1905?

A. Yes, sir.

Q. Well, what was the condition of your health during those months?

A. Very bad.

Q. In what way?

A. Well, I had no appetite, couldn't eat; I had no strength, and I could just barely get around and that is about all; but as to doing any work, I wasn't able.

40 Q. Were those women paid?

A. Yes, sir.

Q. How much were they paid?

A. Well, the one woman was $14 a month.

Q. Which one was that?

A. Well, that was Ann Path.

Q. And the other one?

A. A dollar a week.

Q. A dollar a week?

A. Yes.

Q. Now, are you entirely recovered from the injuries, Mrs. Daggett? 10

A. No, sir.

Q. Well, what is the trouble, Mrs. Daggett?

A. Well, it seems to be my head and my back and side.

Q. Well, just tell us what you have there?

A. Constant headache, very sore spine, the pain in the right side and very nervous at all times.

Q. What is your ability now to take care of your house? 20

A. Well, I do a very little of the work.

Q. Have you got anybody to assist you?

A. Well, my mother always assists me.

Q. You have no hired persons now, then?

A. No, sir.

Q. Now, Mrs. Daggett, you were in another accident?

A. Yes, sir.

Q. When was that?

A. That was in June. 30

Mr. Bernhard: Is that material?

The Court: It affects the question of the lady's previous health, perhaps.

Mr. Kalisch: Well, they can bring it out if they like. I will stop right here.

Mr. Osborne: Was it before or after this accident?

Mr. Kalisch: After, I think in June. It 40

seems there was another collision with a trolley car in which she was injured, after she had gone on towards the recovery of her health.

The Court (after further discussion): What you may show is not the merits or demerits of the other accident, but merely the physical consequences.

10 Mr. Kalisch: Well, I will go on.

Q. When was the second accident?

A. It was in June, towards the last of June; I don't remember.

Q. What year?

A. This, 1906.

Q. 1906?

A. Yes, sir.

Q. Now, up to June, 1906, the present year—

A. Yes.

20 Q. —from the time you received your injury, what was the general condition of your health?

A. I was getting a little better.

BY THE COURT:

Q. Getting a little better?

A. Yes, sir.

BY MR. KALISCH:

Q. Now, up to June, 1906, had you recovered

30 your health altogether?

A. No, sir.

Q. What were you suffering from at that time?

A. The same things, my head and my back and side.

Q. What was the character of the second injury?

Mr. Bernhard: I think I shall have to object.

40 Mr. Kalisch: If it is objected to I will

not pursue it.

The Court: Do you desire to press the question?

Mr. Kalisch: No, I won't press the question; it is objected to.

The Court: Then it is not necessary for the Court to rule on it. The question is withdrawn.

(Question withdrawn). 10

Q. Now, since June, 1906, what did you suffer from?

A. The spine, the end of my spine.

Q. And anything else?

A. Well, of course, I have a headache—

Mr. Bernhard: I object to this, if your Honor please, because I do not understand that it is claimed that this occurred from the first accident. 20

Mr. Kalisch: Yes, the first accident.

Mr. Bernhard: Then I withdraw my objection.

Q. Now, what pains or ailments did you still suffer from since your second accident? That is what I want to know?

A. With my spine and my head and my side.

Q. Was it any different from what you had when you first—before the accident? 30

A. Well, I don't know; the pains were so great during both times, I don't know; there was very little difference.

Q. There was very little difference?

A. Yes, sir.

Q. In what respect was there any improvement in you?

A. In the first accident?

Q. Yes, I mean up to June, 1906. 40

A. Well, I seemed to be getting along pretty good.

Q. Well, in what way?

A. Well, I didn't suffer so much pain and not quite so much headache and my back didn't seem to bother me quite as much.

Q. But did your back bother you at all or did you have pains or did you have headaches at the time?

10 A. Before the second?

Q. Yes.

A. Oh. yes.

Q. That had not ceased then altogether?

A. No.

Q. Now, do you still suffer from headaches and pains?

A. Yes, sir.

Q. And backache?

A. Yes, sir.

20 Q. Have you a physician attending you?

A. Yes.

Q. Who is the doctor?

A. Dr. Post.

CROSS-EXAMINATION BY MR. OSBORNE:

Q. Mrs. Daggett, how long have you lived in Bloomfield?

A. About three years.

Q. You still live there?

30 A. Yes, sir.

Q. The same place that you lived when the accident happened?

A. Yes, sir.

Q. Was this an open car or a closed car?

A. It was an open car.

Q. You were sitting in the front seat?

A. Sitting right next to the motorman.

Q. With your back to the motorman?

A. Yes, sir.

40 Q. And how near the outside of the car were

you sitting?

A. Well, that I couldn't say.

Q. Were there many people on the car?

A. I don't remember.

Q. How long had you been on the car when the accident happened?

A. I had been on from the corner of Race Street until where the accident happened.

BY THE COURT:

10

Q. I do not think you have told us where the accident happened. Can you tell us how long you were on the car?

A. No, I could not.

Q. Can you tell us where the accident happened?

A. I couldn't tell myself; I only know what I have been told.

The Court: Well, never mind; we will find out.

20

BY MR. OSBORNE:

Q. Were there any people sitting in front of you?

A. I think there were, yes.

Q. On the seat directly in front of you?

A. Yes, sir.

Q. And were there people sitting on each side of you?

30

A. Yes.

Q. Just prior to the happening of the accident, say a block or two blocks, how fast was the car going?

A. I never seen a car go so fast, and I was thinking "If we ever strike anything what will become of us?" just as the crash came?

Q. You felt that, did you?

A. Yes, sir; I did.

Q. Did you feel any change in the movement of

40

the car just before the crash came?

A. Well, yes.

Q. What was that motion that you felt?

A. A kind of a jerk, like that (indicating); that is when my head must have struck back.

Q. Well, do you know what caused that?

A. No, I do not.

Q. Did the car slow up any just before the crash?

10 A. No, sir.

BY THE COURT:

Q. The change in the movement of the car, then, was the jolt of stopping, was it, or jolt of the crash?

A. I couldn't say what it was from, but I know it jerked like that, and then—

Q. You are referring to the movement that threw your head back?

20 A. Yes, sir.

BY MR. OSBORNE:

Q. That movement of the car that threw your head back happened before the crash, did it not?

A. No, sir.

Q. After the crash?

A. At the time of the crash.

Q. At the time of the crash?

A. Yes, sir.

30 Q. Could you tell whether that was caused by the car stopping from having its brakes put on or by coming in contact with something?

A. I don't know; I couldn't say.

Q. Was there a sudden slowing down of the motion of the car at the same time?

A. No, sir.

Q. Was this a very loud crash?

A. I didn't hear you.

Q. A very loud crash? You say you heard it?

40 A. Loud, yes.

Q. And do you know what caused it?
A. No, sir; I do not.
Q. Did you look around?
A. No, sir.
Q. Who was with you?
A. There wasn't nobody with me.
Q. You were alone?
A. Yes.
Q. Now, the next thing you say you remember was when you woke up at the hospital? 10
A. Yes, sir.
Q. You have no recollection of anything between that time?
A. No, sir; I do not.
Q. After you went home who was your doctor?
A. After I went home we had Dr. Henry.
Q. Dr. Henry?
A. Dr. Henry.
Q. How long did he continue to treat you?
A. Well, he continued to treat me until the last of July. 20
Q. That is, the following month after you were hurt?
A. Yes, sir.
Q. What part of the month of June were you hurt in?
A. The 8th of June.
Q. So that the doctor treated you until the latter part of July?
A. Yes, sir. 30
Q. Between one and two months?
A. Yes, sir.
Q. How often did he come?
A. Well, he came at first two or three times a week and at last he would come once a week.
Q. And then he ceased coming altogether?
A. Because he wasn't doing me any good, of course.
Q. Did you get another doctor then?
A. I certainly did. 40

Q. Who was he?

A. Dr. Post.

Q. How long did Dr. Post continue to come?

A. Up to the present time.

Q. How soon after you discharged the first doctor did you get Dr. Post?

A. I went to Dr. Post in the first of August.

Q. 1905?

A. Yes, sir.

10 Q. You went to his office?

A. I went to his office.

Q. You were able to go out and around?

A. I could walk; yes, sir; but that is about all.

Q. How often did you go to his office?

A. Well, I didn't always go to the office; when I would be taken with those spells I would have to have him come to the house; I wouldn't be able to get there.

Q. You say you were taken with spells; what 20 spells?

A. Why, one time I had a spell, my whole left side was paralyzed, my face and all.

Q. When was that?

A. Oh, that isn't so long ago.

Q. That is since the second accident, is it not?

A. No, sir.

Q. Before the second accident?

A. Yes, that is since the second accident.

Q. That is since the second accident?

30 A. Yes.

Q. Well, you never had any of those spells before the second accident, did you?

A. No, sir.

Q. So that you do not claim that that spell was the result of this first accident?

A. Oh, I had numb spells.

Q. You did have numb spells—numbness?

A. Numb spells.

Q. When did you have numb spells?

40 A. Well, I had them before the first accident; I

used to be in bed one or two weeks.

Q. Before the first accident?

A. Yes, sir.

Mr. Kalisch: Are you talking about before the first or second accident? You do not want to deceive her, do you?

Mr. Osborn: No, I was asking her a plain question.

BY THE COURT:

10

Q. When did these numb spells appear, before you were hurt at all in either accident?

A. No, sir; after I was hurt.

Q. After you were hurt the first time?

A. No, the second time—that numbness.

BY MR. OSBORNE:

Q. Then it was after you were hurt the second time that you felt the first numbness?

A. Yes, sir.

20

Q. You had not felt that before that?

A. No, sir.

Q. When you were hurt the second time how were you hurt?

Mr. Bernhard: I object.

A. On the spine.

Mr. Bernhard: Just a minute. I object on the ground that it is immaterial and incompetent in this suit.

30

Mr. Osborne: I mean physically.

Mr. Bernhard: I object, if your Honor please, because it does not appear that this suit is brought to recover anything occasioned as a result of the second accident, and it is unfair to get that before the jury; it is not sued for in this declaration and consequently it is not relevant in this suit.

40

The Court: I agree with you, of course, that there can be no recovery in this suit for anything but the consequences of the first accident as distinguished from the consequences of the second accident or from anything else. The view of the Court and jury must be limited, of course, in considering what damages are to be given, if they are given at all, to the damages inflicted solely by the first accident. But the question just now is as to the competency of evidence as to the nature and extent of an injury received subsequent to the first accident. Evidently this is the theory on which the question is asked; that the jury, in considering the present condition of which the plaintiff complains, may be able to discriminate between the consequences of the first accident and the consequences of the other accident. The witness complains of a certain present condition. Now, how much of that was due to the first accident? Suppose it appears that three-quarters of it was due to the second accident; it would be desirable for you to show that. It seems to me that the line of inquiry is not merely proper, but it is necessary for the purpose I have indicated—in order that the jury may be able to analyze the causes that have produced the plaintiff's present physical condition, and assign to the first accident the consequences that belong to it. The question is not what she felt on the day of the first accident merely, but what she feels now and what she is likely to feel in the future in the way of physical disability.

I overrule your objection.

Counsel for defendant North Jersey Street Railway Company prays an excep-

tion to this ruling of the Court.

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

FREDERIC ADAMS,
Circuit Court Judge.
(Seal.)

(Question and answer read.)

Q. On the spine?

A. Yes, sir.

Q. Any other way?

A. Well, I just struck on the end of my spine, that is all. 10

Q. You struck on the end of your spine?

A. Yes, sir.

Q. You said on direct examination that you were hurt the same way that you were hurt in the first accident?

A. I struck my head at the first accident.

Q. And the second accident you struck your spine?

A. Yes, sir. 20

Q. Now, how long after the first accident did that second accident happen?

A. It was a little over a year apart.

Q. A little over a year?

A. Yes, sir.

Q. You had been getting better then, had you not?

A. Yes, sir.

Q. Very much better? 30

A. Yes, sir.

Q. And were not then going to the physicians, were you?

A. Yes, sir.

Q. At the time of the second accident?

A. Yes, sir.

Q. Were you still going to the physician?

A. Yes, sir.

Q. To which physician?

A. Dr. Post. 40

Q. How often?

A. Well, I can't exactly tell how often I went.

Q. Had you been going to a physician before the first accident?

A. No, sir.

Q. Are you sure about that?

A. Before the first accident?

Q. Yes?

A. No, sir.

10 Q. You had not had any physician before the first accident?

A. No, sir.

Q. What was the name of the doctor you said was attending you immediately after the first accident?

A. I don't remember—right after I was hurt?

Q. Yes?

A. I don't know.

Q. What was the name of the doctor you discharged?

20 A. Dr. Henry.

Q. Dr. Henry?

A. Yes, sir.

Q. Of where?

A. Of Woodside.

Q. Do you know his address?

A. No, sir; I do not.

Q. How long had he been treating you?

A. Ever since I was brought home.

30 Q. Had he ever treated you before that?

A. No, sir.

Q. Had you ever had any physician treat you before that?

A. Yes, on certain occasions.

Q. What physician?

A. I had Dr. Wolf, the last physician I have had.

Q. Dr. Wolf of where?

A. Bloomfield.

40 Q. And some other physicians before that?

A. No, sir.

Q. Never had any other physician except Dr. Wolf prior to the first accident?

A. When I was first married I had Dr. Van Gieson.

Q. Dr. Van Gieson?

A. Yes, sir.

Q. Where is he from?

A. Bloomfield.

Q. And any other physician? 10

A. No, no other.

Q. Just those two?

A. Yes, sir.

Q. From the time you were first married up to the time of the accident?

A. Yes, sir.

Q. Did you say when you were married?

A. I have been married ten years the 29th of October.

Q. Well, you were married then on the 29th of October, nineteen hundred and what? 1896, is that right? 20

A. Yes.

Q. How many children had you had prior to the time of the accident?

A. Before the accident?

Q. Yes, before the first accident?

A. Four.

Q. You had had four children?

A. Yes, sir. 30

Q. Have you had any since the first accident?

A. No, sir.

Q. You say you were getting better just before the second accident?

A. Yes, sir.

Q. Better of the effects of this first accident?

A. Yes, sir.

Q. And that you did not suffer so much?

A. No, sir.

Q. So much pain? 40

A. No, sir.

Q. And you did not have so much headache?

A. No, sir.

Q. This pain in your side, where was it, which side?

A. In this right side, right in here, (indicating.)

BY THE COURT:

Q. In the right side?

A. Yes, sir.

10

BY MR. OSBORNE:

Q. Had you ever felt that before the first accident?

A. No, sir.

Q. Had you ever had headaches before the first accident?

A. No, sir.

Q. Had you ever had a sore spine before the first accident?

20

A. No, sir.

Q. Had you ever been nervous before the first accident?

A. No, sir.

Q. How much did you weigh at the time of the first accident?

A. I weighed one hundred and forty.

Q. One hundred and four?

A. One hundred and forty.

30

Q. And how long had you weighed as much as that?

A. Well, I had weighed that ever since my last child; after I got over the effects of the child I picked right up.

Q. And how much did you weigh at the time of the second accident?

A. I don't know what I weighed then.

Q. How much do you weigh now?

A. I was weighed about a month ago, and I weighed about one hundred and fifteen.

40

Q. One hundred and fifteen?

A. Yes, sir.

Q. You were picking up considerably after the first accident?

A. No, sir.

Q. You were not?

A. No, sir.

Q. You were feeling better?

A. Oh, I was feeling a little better, but I didn't pick up any weight. 10

Q. How long did you have to have this assistance in the house after the first accident?

A. I had it all that summer.

Q. And then dispensed with it in the fall?

A. Yes, sir.

Q. And did your own work again?

A. No, sir.

Q. Who did it?

A. Well, I did some of it, and the hardest work, if my mother didn't do it, when my husband came 20 home he did it; I washed dishes and did such work.

Q. Now, are you talking about before the first or second accident?

> The Court: She is talking about the time when she employed help.

Q. Before you were hurt you did all your own work, did you not?

A. Yes, sir.

Q. And took care of your four children? 30

A. Yes, sir.

Q. After the second accident did you feel very much worse than you had been feeling just before it?

A. Oh, yes.

Q. Oh, yes?

A. Yes.

Q. In what respect did you feel worse?

A. Well, I felt altogether different; I felt so different, and such numbness all through me. 40

Q. That is when the numb spells began and this attack of paralysis came on, after the second accident?

A. Yes, sir.

Q. And you had not felt dizzy before the second accident, had you?

A. Oh, yes; I felt dizzy.

Q. But that had been passing away gradually?

A. Oh, yes.

10 Q. And it came back again after the second accident?

A. Yes, sir.

Q. With reference to the headaches, did you feel those after the second accident?

A. Oh, I should say I did.

Q. More violently than you had been feeling them?

A. Oh, yes.

Q. They had almost ceased at the time of the
20 second accident, had they not?

A. Yes.

Q. And your spine was very much better at the time of the second accident?

A. Yes, sir.

Q. And you were not so nervous?

A. No, not quite.

Q. So that after the first accident, at least just before the second accident, you had almost recovered from the effects of the first accident, had you
30 not?

A. I was getting better; I don't know whether I recovered or not.

Q. So far as you knew it, you had recovered?

A. Yes, I was getting along.

Q. Are you quite sure that it was an open car you were on that day?

A. Yes, sir.

Q. And that you could not see what was going on ahead of you?

40 A. No, sir; I didn't see nothing.

Q. Did you turn around and look?

A. No, sir.

CROSS-EXAMINATION BY MR. BERNHARD:

Q. Do you remember what time you boarded the car?

A. It was right after dinner.

Q. And do you remember what time the accident happened?

A. I do not. 10

Q. How many minutes after you boarded the car?

A. I couldn't say.

Q. How many blocks from Parker Street did you board the car?

A. How is that?

Q. How many blocks from Parker Street did you board the car?

A. Well, I got on at the corner of Race and Bloomfield Avenue. 20

Q. How many blocks is that away from Parker Street, do you know?

A. No, sir.

The Court: What street do you name, Parker Street?

Mr. Bernhard: Parker Street.

A Juror: Parker Street in Newark.

Mr. Kalisch: There is a Parker Street in Newark. 30

A Juror: It is about two blocks below the old car stable.

Q. Is that near the old car-stable where this happened?

A. I don't know where it happened; I only know what I have been told.

The Court: We will find that out afterwards. 40

Q. Do you recall where the last stop was that the car made before the accident happened, how many blocks away?

A. No, I do not; I don't think it stopped at all, because it was going so fast.

Q. The place where the accident happened is a little up-grade, is it not?

A. I don't know.

Q. You travel along there frequently?

10 A. Well, I don't know; I never noticed.

Q. And you do not recall now whether it is up-grade or not, do you?

A. No, sir.

Q. Was there a young girl with you on that morning?

A. No, sir.

Q. Do you know Miss Emma Lockhart?

A. She was on the car, but she wasn't with me.

Q. And she sat in the same seat with you?

20 A. I don't think she did sit in the same seat with me.

Q. Right to the left of you, on your left, wasn't she on your left?

A. I know she got on the car, but I don't know where she was sitting; I can't remember.

Q. Was she on the car when you boarded it?

A. No, sir.

Q. She boarded it after you did?

A. I think we both got on at the same time, at

30 Race Street.

Q. And you sat so that your back was to the motorman?

A. Yes, sir.

Q. Do you recall whether the windows immediately back of the motorman were up or down?

A. I don't remember.

Q. If the windows were down, then there was an open space there, was there not?

A. I don't remember.

40 Q. But you know that there are windows back

of him?

A. Some windows I have noticed in the open cars there is iron runs across.

Q. Do you recall how this open car was constructed?

A. I don't remember now.

Q. Dr. Wolf atended you for the last time how long previous to the accident?

A. Attended me when my last child was born.

Q. About four months previous to the accident? 10

A. Six months.

Q. Do you recall whether the car came to a sudden stop or not?

A. I don't remember.

Q. How long after the first accident did Dr. Hendry attend you?

A. How long after the first accident?

Q. Yes, the first time after the accident when did he come to attend you?

A. Why, he came to me when they brought me 20 home from the hospital.

Q. Did you send for Dr. Hendry?

A. Yes, sir.

Q. Had he attended you previously?

A. No, sir.

Q. Who recommended him, do you know?

A. The man that we rented from recommended Dr. Hendry.

Q. How frequently did he come to see you after 30 the accident?

A. Well, at first he came two or three times a week.

Q. When did he last come to see you?

A. The last of July.

Q. How long after he left off seeing you did you call on Dr. Post?

A. Around the 1st of August.

Q. Then it is not true that Dr. Hendry left off seeing you because you no longer required medical 40 treatment?

A. No.

Q. Isn't that true?

A. No. I thought he wasn't doing me no good.

Q. And you discharged him?

A. Yes, sir.

Q. You are positive about that?

A. Yes, sir.

Q. And how long after he left off did you call on Dr. Post?

10 A. Around the 1st of August.

Q. What was the interval of time between the time that Dr. Hendry last saw you and the time that Dr. Post first saw you?

A. Well, it must have been a week or two weeks, I couldn't say.

Q. Did your mother live with you before the accident?

A. No, sir.

Q. Does she live with you now?

20 A. No, sir.

Q. Then when she does work for you she simply comes in and does the work?

A. Yes, she comes in and I have paid her lots of times.

Q. Previous to the accident, then, for some time, Dr. Wolf had been your regular physician, had he not?

A. No, sir.

Q. Only for the time the last child was born?

30 A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. KALISCH:

Q. Now, these doctors that you had before your first injury were doctors who attended you during your confinement?

A. Yes.

Q. That is what you had reference to?

40 A. Yes, sir.

BY THE COURT:

Q. Mrs. Daggett, where is Dr. Post's office?

A. 37 Park Place, Bloomfield.

Q. Do you keep house?

A. Yes, sir.

Q. You kept house at the time of this accident on the 8th of June, 1905?

A. Yes, sir.

Q. And you have kept house ever since? 10

A. Yes, sir.

Q. In the same house?

A. Yes, sir.

Q. Have you the entire house or only part of it?

A. Part of it.

Q. And your family then consisted of yourself and husband and four children?

A. Yes, sir.

Q. All living home?

A. Yes, sir. 20

Q. And now consists of yourself and your husband—

A. And four children.

Q. And your mother?

A. No, she doesn't live with me.

Q. She does not live with you?

A. No, sir.

Q. Has she ever lived with you?

A. Well, when we were first married we lived with her. 30

Q. I mean since the accident?

A. No, sir.

Q. You say she helped you; she used to come in to help you?

A. Yes, sir.

Q. How long did you employ this servant at $14 a month?

A. I had her one month.

Q. And how long did you employ the servant at one dollar a week? 40

A. Until school started.

Q. Do you remember how many weeks that was —from the time of the accident until September?

A. Yes, sir.

Q. Have you had any servant since then, since about the 1st of September or since school started in 1905?

A. No, sir.

Q. What is your husband's business?

10 A. He is a carpenter.

RE-CROSS EXAMINATION BY MR. BERNHARD.

Q. There was no mark on the back of your head, I understand, was there?

A. I don't know.

Q. Not so far as you know?

A. No.

Q. How far did your mother live from you at the time of the accident?

20 A. She lived a block over.

Q. And she still lives a block away from you?

A. Yes, sir.

Q. Do you know what part of the car the back of your head hit, as you say?

A. No, sir; I do not.

Q. Well, do you know whether it actually did hit any part of the car?

A. Well, it must have hit—

30 Q. No, not what it must have done. Do you know of your own knowledge, that it actually did hit?

A. Yes, my head struck something.

Q. And you do not know what it was?

A. No, sir; I do not.

Q. Do you know what part of your head it was, whether it was the top or the back or—

A. Right here (indicating the back of the head); it is sore yet; right in here; I can easily

40 tell where it is, for it is sore.

CHARLES E. TALBOT, sworn in behalf of plaintiffs:

DIRECT-EXAMINATION BY MR. SAMUEL KALISCH:

Q. You are employed in the City Hospital?

A. Superintendent of City Hospital.

Q. And do you remember the plaintiff being brought there?

A. I do not. 10

Q. June 8, 1905, do you recollect the plaintiff being brought there?

A. I do not, futher than the record goes.

Q. Who was the man who has charge of Ward 11?

A. Dr. Teed.

Q. Where is Dr. Teed?

A. In New York; I don't know what his address is.

Q. You do not know what his address is there? 20

A. No.

Q. How long has he been gone from the hospital?

A. I think a year this last September, if I am not mistaken; I don't remember just what time it was.

Q. And he is not any more at the hospital?

A. No, sir.

Q. And he had charge of that ward?

A. He was the house surgeon. 30

Q. From the record, was the plaintiff in that ward?

A. In the surgical ward.

Q. At that time?

A. At that time.

Mr. Kalisch: Do you want to let the record go in? It is the report of the City Hospital, Surgical Division.

Mr. Osborne: You can prove it if you like. 40

Mr. Kalisch: Do you object to it?

Mr. Osborne: Unless you prove it in some way.

Q. (Paper shown to witness). Look at this. What is this?

A. That is a history sheet of a patient in the City Hospital.

Q. Of the plaintiff?

10 A. That is the history of the patient in the City Hospital.

Q. Surgical division? Where is this on file?

A. That is on file in the hospital, and that is the history.

Q. And did you get it from the files?

A. From the file.

Q. Do you know whose handwriting it is in?

A. I do not.

Q. Where is the file kept?

20 A. In the office of the hospital.

Q. And you took it from the file?

A. From the file.

Q. When did you take it from the file?

A. This morning.

Mr. Kalisch: Now, what have you got to say, do you object to it?

BY MR. BERNHARD:

30 Q. You do not know whose writing that is?

A. I couldn't say whose writing it is.

Mr. Bernhard: Then I shall object to it.

BY MR. KALISCH:

Q. There are different physicians there?

A. Different physicians, different internes, evidently.

Q. Who have charge of the patient?

A. Yes, sir.

40 Q. And write the history?

A. Yes, sir.
Q. Nobody else writes the history, do they?
A. The doctor in charge or his assistant.

Mr. Kalisch: I offer this unless it is objected to.

Mr. Bernhardt: I object to it.

The Court: I sustain the objection.

CROSS-EXAMINATION BY MR. OSBORNE: 10

Q. Do you know how long this patient was there?
A. Only from the record, from the 8th to the 12th of the month.
Q. From the 8th to the 12th?
A. Yes.

EMMA LANDMASSER, sworn in behalf of plaintiffs: 20

DIRECT EXAMINATION BY MR. SAMUEL KALISCH:

Q. Miss Landmasser, where do you live?
A. 37 Spring street.
Q. In this city?
A. Yes, sir.
Q. And in June, 1905, where did you live? 30
A. 494 Bloomfield avenue.
Q. Do you remember on the 8th or 9th of June being a passenger on a trolley car which came in collision with a wagon?
A. Yes, sir.
Q. What part of the car were you sitting in?
A. Facing Mrs. Daggett.
Q. And what was this, an open or a closed car?
A. An open car.
Q. Were you looking towards the motorman? 40

A. Yes, sir.

Q. And Mrs. Daggett was facing towards the conductor?

A. No, sir; her back was turned towards him.

Q. What?

A. Her back was towards the motorman.

Q. Her back was turned to the motorman?

A. Yes.

Q. Yes, that is what I supposed. Where did you get on the car?

10 A. Corner of Race street and Bloomfield avenue.

Q. Where were you going?

A. Down to Newark.

Q. Now, before this collision happened, how was the car going?

A. Pretty fast.

Q. Did you notice a wagon?

A. No, sir; not until it struck the car.

Q. Where was the wagon?

20 A. Turning the corner.

Q. How were the horses that were attached to the wagon going?

A. Pretty fast, too.

Q. They were going fast, too?

A. Yes, sir.

Q. And which direction were they coming?

A. Going up towards Bloomfield.

Q. And in which direction was the car going?

A. Down towards Newark.

30 Q. How long had the car been going very fast or pretty fast?

A. Well, I couldn't tell you that.

Q. How long had you noticed that the horses that were being driven on this wagon were going fast?

A. Well, I never noticed them until after they hit the car.

Q. Well, how did you know that they were going fast?

40 A. Because I looked out of the car to see what

hit the wagen—hit the car.

Q. The car and the horses came together, or the car and the wagon.

A. Why, the wagon went to turn around the car and the back of the wagon hit the front of the car.

Q. How far did the car go after the collision?

A. About half a block, I guess.

Q. About half a block?

A. Yes. 10

Q. Is it a straight road on the avenue all the way down to the place where the collision took place?

A. Yes, sir; it is a straight road.

Q. I mean, is there any curve or anything in the road there, or is it straight? Could you see straight down the avenue if you looked straight ahead?

A. Well, the accident happened on the corner.

Q. I understand, there are cross streets, but 20 what I want to know is, does the car take a straight road down?

A. Yes, sir.

Q. Straight down?

A. Yes, sir.

Q. You can look a good ways down, can you not?

A. Yes, sir.

Q. From the front of the car?

A. Yes, sir. 30

Q. Now, do you know when you first saw the wagon—a horse and wagon—whether the horses were on the track or not, going up towards the car?

A. I never noticed; I was looking out of the side of the car.

Q. You noticed just as they were turning. is that it?

A. Just as they were turning I noticed it.

Q. And at that time you noticed that they were 40 going fast?

A. Yes.

Q. Did you see what became of Mrs. Daggett at the time of the crash?

A. Well, Mrs. Daggett—I had my eyes shut after I heard the crash, and then when I opened my eyes Mrs. Daggett was kind of laying frontwards, and I got up and went over to where she was sitting and sat next to her and put her head on my shoulder.

10 Q. Did she speak?

A. No, sir.

Q. Did she make any movement at all?

A. No, sir; I asked here if she knew me, and she never answered.

Q. What did you do with her?

A. I didn't do anything with her; two or three men carried her out of the car into the drug store down at Clifton avenue.

Q. Did you go with her?

20 A. Yes, sir.

Q. Did she speak at all at any time?

A. No, sir; only said, "Where is my baby." That is all she said.

Q. Did she have a baby with her?

A. No, sir.

Q. At the time of the accident?

A. No, sir.

Q. Did she speak any more than that?

A. No, sir.

30 Q. And when she was in the drug store was there anything done?

A. Well, the man in the drug store gave her some medicine; I don't know what he gave her.

Q. You went with her to the drug store?

A. Yes.

Q. What kind of medicine was it?

A. I don't know.

Q. Was it whiskey or—

A. No, it wasn't whiskey.

40 Q. Well, after the drug man had given her the

medicine did the woman recover?

A. No, sir.

Q. Did she speak at all?

A. No, sir.

Q. Do you know how long she remained there at the drug store?

A. About an hour, I guess.

Q. And did you remain with her during that hour?

A. Yes, sir. 10

Q. And during that hour did she show any signs whatever or say anything?

A. No, sir.

Q. And what happened then?

A. They took her to the City Hospital.

Q. Well, did anything come after her—an ambulance?

A. Yes, the ambulance came after her.

Q. Did you wait until the ambulance came?

A. Yes. 20

Q. Now, when the ambulance came what was done, how was she put in?

A. On a stretcher.

Q. She was put on a stretcher and carried into the ambulance?

A. Yes, sir.

Q. Did you go with her to the hospital?

A. No, sir; they wouldn't let me.

Q. Did you offer to go?

A. Yes, sir. 30

CROSS-EXAMINATION BY MR. OSBORNE:

Q. You are a friend of Mrs. Daggett?

A. Yes, sir.

Q. And do you live near her?

A. No, sir.

Q. Were you with her on the day of the accident?

A. No, sir. 40

Q. You sat opposite?

A. Yes, sir.
Q. Right in front of her?
A. Almost in front of her.
Q. Do you say this was an open or a closed car?
A. An open car.
Q. Were you talking to her?
A. No, sir.
Q. Anybody with her?
A. No, sir.
Q. Any other people on the seats?
10 A. Yes, sir.
Q. Now, as you approached the scene of the accident, how fast did you say the car was going?
A. Pretty fast.
Q. Pretty fast?
A. Yes, sir.
Q. Anything extraordinary about the speed?

Mr. Bernhard: I object. That is not cross-examination, as far as you are con-
20 cerned.

The Court: Do you object on the ground that it is leading?

Mr. Bernhard: Yes, I do.

The Court: Objection sustained. Ask her what she means by "pretty fast"?

Q. What do you mean by "pretty fast"?
A. It was going rapidly.
30 Q. Rapidly?
A. Yes, sir.
Q. Is that the best answer you can give to me as to what you mean by "pretty fast"?
A. It was going fast; that is all the answer I can give you.
Q. Do you know how fast trolley cars ordinarily run?

Mr. Bernhard: I object to that as imma-
40 terial.

The Court: I do not think it is possible to answer that question.

Q. Well, was there anything unusual about the speed of this car?

Mr. Bernhard: Objected to as leading.

The Court: Objection sustained.

Counsel for defendant E. A. Williams prays an exception to this ruling of the Court. 10

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

FREDERIC ADAMS. (Seal.),
Circuit Court Judge.

Q. What were you doing just before the crash came?
A. I was looking out of the side of the car? 20
Q. Out of the side of the car?
A. Yes, sir.
Q. Then you were not looking at the motorman?
A. No, sir.
Q. You do not know what he was doing?
A. No, sir; I wasn't watching him.
Q. And how long had you been looking out of the side of the car?
A. Ever since we left the car stables.
Q. You did not look down ahead of you at all? 30
A. No, sir.
Q. When did you first notice this wagon and how did you come to notice it?
A. After it struck the car.
Q. Then you did not see the wagon until the wagon and the car came in contact?
A. No, sir—yes, sir.

BY THE COURT:
Q. Is that true?
A. Yes, sir. 40

Q. You did not see the wagon—

A. Until after it struck the car.

BY MR. OSBORNE:

Q. Did the wagon stop then?

A. No, sir; it went three or four doors.

Q. What street did the wagon go up?

A. Parker street.

Q. Then, as I understand you, the wagon was
10 crossing the track?

A. No, sir; it wasn't crossing the track.

Q. How was it going with relation to the car, in what direction was the wagon going?

A. Well, it was on the same side as the car was on, but it went to turn the corner, and the back of the wagon hit the front of the car.

Q. You do not know where the wagon come from?

A. No, sir.

20 Q. What part of the wagon hit the car?

A. The back of the wagon.

Q. Well, what part of the wagon?

A. The tailboard.

Q. The tailboard, you are sure about that?

A. Yes, sir.

Q. It was not the wheel?

A. No, I don't think it was the wheel.

Q. Did the tailboard extend out?

A. Yes, sir; with the bread boxes on.

30 Q. Was it the bread boxes or the tailboard that hit the car?

A. The boxes, because the car knocked the boxes off the wagon.

Q. Then it was the box and not the tailboard that struck the front of the car, is that right?

A. No, sir; it was the tailboard.

Q. The boxes were sitting on the tailboard, were they not?

A. There was two boxes on the other side, but
40 there wasn't any on the side that hit the wagon—

hit the car.

Q. There wasn't any on the side—

A. No, sir.

Q. —that came in contact with the car?

A. No.

Q. How did it hit the box, then, if there wasn't any on that side?

A. The corner of the tail board went right through the front of the window, in front of the car. 10

Q. It did?

A. Yes.

Q. The front where Mrs. Daggett was sitting or the other side?

A. Where the motorman was.

Q. Oh, the vestibule?

A. Yes, sir.

Q. Was it not the box that went through that?

A. No, sir; I didn't see any boxes on it at all; they was on the other side. 20

Q. Well, you say you saw the boxes there?

A On the other side.

Q. There was a vestibule on this car, then, was there?

A. Yes, sir.

Q. You remember that distinctly?

A. Yes, sir.

Q. And glass in the front?

A. Yes, sir. 30

Q. Glass windows, you mean?

A. Yes, sir.

Q. Were the windows up?

A. Yes, the windows was up.

Q. That is, in position, so that when the car and the wagon came in contact the window on the one side—which was it, right or left?

A. The right side.

Q. —the window on the right side was smashed?

A. Yes, sir. 40

Q. You say the wagon went up Parker street?

A. Yes, sir.

Q. Was it going in that direction when the car and the wagon came in contact?

A. It just was turning the corner?

Q. It just was turning to go into Parker street?

A. Yes, sir.

Q. On the track?

A. No, sir; it wasn't on the track.

Q. It had cleared the track?

A. It was on the other side of the track.

10 Q. That is, on the right-hand side going down?

A. Yes, sir.

Q. As you face the motorman?

A. Yes, sir.

Q. Is that right?

A. Yes.

BY THE COURT:

Q. Parkhurst street, do you say?

20 A. No, sir.

BY MR. OSBORNE:

Q. Parker street?

A. Parker street.

Q. Did it break the wagon?

A. Not as I know of.

Q. Do you know whether it broke the bread boxes?

A. Not as I know of.

30 The Court: What kind of boxes?

Mr. Osborne: The bread boxes. This was a wagon that was delivering bread, and they had big boxes on it.

Q. You sat opposite Mrs. Daggett, you say?

A. Almost opposite.

Q. What was the first thing that you heard that attracted your attenion?

40 A. The smashing of the glass.

Q. The smashing of glass?

A. Yes.

Q. Then did Mrs. Daggett faint?

A. I don't know what she did, but I know she didn't know nothing.

Q. She became unconscious?

A. Yes.

Q. Were you looking at her when the glass was smashed?

A. No, sir. 10

Q. Which way were you looking then?

A. On Parker street.

Q. Did not the smashing of the glass attract your attention?

A. Yes, sir.

Q. Did you not then turn and look that way?

A. No, I didn't look towards the motorman at all; I looked down on Parker street to see where the wagon was.

Q. You did not pay attention to anything but 20 the wagon?

A. That is all.

Q. And how far did the wagon go?

A. About three or four doors.

Q. Did it stop then?

A. Yes, sir.

Q. How did it come to stop?

A. I don't know.

Q. Did you hear anybody tell them to stop?

A. No, sir. 30

Q. You say you heard the glass break?

A. Yes.

Q. Was that the only crash you heard?

A. That is all I heard.

Q. You did not hear any other crash?

A. No, sir.

Q. Just before that did you feel any stoppage in the progress of the car?

A. Yes, it gave a sudden jerk. 40

Q. A sudden jerk?

A. Yes.

Q. How long before?

A. About three or or four minutes before.

Q. Three or four what?

A. Minutes.

Q. Minutes?

A. Yes.

The Court: You probably do not mean that.

10

Mr. Osborne: No.

Q. How far were you from the wagon when you felt the car give a sudden jerk, as you say?

A. Well, I don't know.

The Court: She cannot know that, because she did not see the wagon.

Q. How far were you away from the place of collision when you felt the car give a sudden jerk?

20

A. Well, I don't know that either.

Q. Very close to it?

A. Well, it was right before the car hit the wagon.

Q. Right before the car hit the wagon?

A. Yes.

Q. Then this sudden jerk was not caused by the car hitting the wagon, is that right?

A. I don't know.

30

Q. You do not know what caused it?

A. No.

CROSS-EXAMINATION BY MR. BERNHARD:

Q. Do you ride up and down that way quite frequently?

A. Yes, sir.

Q. At Parker street, coming towards Newark, on Bloomfield avenue, is there quite a little incline there?

40

A. I never took notice.

Q. You do not know whether it is on the level or whether it goes up uphill a little bit?

A. I never took notice.

Q. When you saw the wagon turn into Parker street and pass three or four houses, during that time how fast were the horses going?

A. They were going fast, too.

Q. Now, after you heard the crash of glass did not the car come to a stop?

A. A half a block. 10

Q. What do you mean by "half a block"?

A. Well, the car went about half a block before it stopped.

Q. When it stopped was not the rear end of the car right at Parker street?

A. I never took notice.

Q. Now, just think a minute. When you got off—

A. I wasn't paying any attention; I was paying my attention to Mrs. Daggett. 20

Q. So you do not know exactly how far the car went, do you, if you were not paying any attention? (Witness pauses.) That is so, is it not?

A. Yes, sir.

Q. Previous to the time of hearing the crash of the glass there was not anything that attracted your attention to the speed of the car, was there?

A. Well, only I was looking out of the side of the car.

Q. And do you recall where the last stop was before the collision? 30

A. No, sir.

Q. Do I understand that after you boarded the car and until the time of the collision that the car passed the car barns, the old car barns?

A. Yes, it must have passed the car barns to get down there.

Q. Do you recall whether it stopped at the car-barns or not? 40

A. No, sir; I don't remember it.

Q. Do you know whether the old car barns were in use at that time, a year ago in June or July?

A. I don't know.

Q. You do not recall whether they were or not?

A. No.

Q. And you don't remember whether the car stopped there or not?

A. I don't remember.

Q. You do not know whether or not it stopped a block up or not?

10 A. I don't remember.

Q. Do you know how many men were on this wagon?

A. No, sir.

Q. Where did the glass that was broken come from, do you recall?

A. Out of the front of the car.

Q. Between the place where Mrs. Daggett was sitting and the motorman, do you know whether 20 that was an open space or whether there was glass there?

A. There was glass there, too.

Q. Do you recall whether that glass was up or down?

A. I never noticed.

Q. That was not the glass that was broken, was it?

A. No, sir; it was where the motorman was.

Q. In front of the motorman?

30 A. Yes, sir.

Q. Did you see Mrs. Daggett's head hit anything?

A. No, sir.

Q. Did you see anything hit Mrs. Daggett's hear?

A. No, sir.

Mr. Kalisch: She said she was not looking.

Mr. Bernhard: To be sure, Mr. Kalisch. 40 that is right.

Q. Do you know Miss Lockhart?
A. Yes, sir.
Q. Did you see her on that car?
A. That was me; that is my step-father's name.
Q. Are you Miss Emma Lockhart?
A. Yes.
Q. And live at 494 Bloomfield avenue?
A. Yes, sir.
Q. But your right name is Landmasser, is that it? 10
A. Yes, sir.
Q. Do you recall making a statement a day or two after the accident to some one who came to see you about it?
A. It was the next morning.
Q. Do you remember making a statement that morning?
A. I didn't make no statement at all.
Q. You did not say anything about how the accident happened at all? 20
A. No, sir.
Q. Some one did come to see you?
A. Yes.
Q. And you did not say anything at all?
A. No.
Q. Do you know who it was that came to see you?
A. No, sir; they never told me.
Q. Do you remember what time in the morning it was? 30
A. No, sir.
Q. What was said between you and the person that came to see you?
A. I don't remember.
Q. Do you remember whether anything was said or not?
A. All he said to me was whether I seen anything hit Mrs. Daggett, and I said no.
Q. Then you did make a statement to him? 40
A. Well, that is all I said.

Q. Did you not also say at that time that the car stopped suddenly?

A. No, sir.

Q. You did not?

A. No, sir.

BY THE COURT:

Q. Miss Landmasser, you were looking out of the side of the car, you say?

10 A. Yes, sir.

Q. Out of the right-hand side or out of the left-hand side?

A. The right-hand side.

Q. And on which side of the car did you see the wagon?

A. The right-hand side.

Q. On which side of the car is Parker street?

A. Right-hand side coming down.

Q. Do you remember whether the wagon was

20 drawn by one horse or by two horses?

A. I never took notice.

Q. The glass that was broken, did I understand you to say, was on the right-hand side of the car?

A. Yes, sir.

Q. In the front?

A. In the front, where the motorman was.

Q. On the motorman's right?

A. Yes.

30

FRANK BOCKUS, sworn in behalf of plaintiffs:

DIRECT EXAMINATION BY MR. SAMUEL KALISCH:

Q. Mr. Bockus, were you the driver of the wagon that came in collision with a car on the 8th day of June, 1905?

40 A. Yes, sir.

Q. In whose employ were you?
A. In the E. A. Williams Baking Company.
Q. I want to ask you, is this place where the collision occurred on Bloomfield—was it on Bloomfield avenue?
A. Yes, sir.
Q. Is it a straight road up there?
A. What do you mean by a straight road?
Q. How far up can a person see up the avenue?
A. It is a straight road all the way through. 10
Q. How far can one see?
A. I don't know; if you got good eyes you can see three miles.
Q. Along the road?
A. Yes, sir.
Q. I mean where the car tracks are?
A. Yes, sir; where the car tracks are.

Cross-examination waived.

20

WALTER POST, sworn in behalf of plaintiffs:

DIRECT EXAMINATION BY MR. SAMUEL KALISCH:

Q. Doctor, you are a practicing physician and surgeon?
A. Yes, sir.
Q. How long have you been such? 30
A. Seven years.
Q. Did you attend the plaintiff in this case?
A. I did.
Q. When were you called in to attend her first?
A. I was called—Pardon me! I wasn't called, the plaintiff came in my office—Mrs. Daggett came in my office one evening during office hours, during the first week in August.
Q. Did you make an examination of her? 40
A. I did.

Q. What did you find upon that examination?

A. Well, of course, as the patient walked in, that she walked very slowly, and as if something was troubling her, as if she was in pain.

BY THE COURT:

Q. This was in 1905?

A. This was in 1905, a year ago last August. And I asked her what I could do for her. Do you want me to continue?

10

BY MR. KALISCH:

Q. Just go on and tell us what you found?

A. I asked her what I could do for her.

The Court: Not what she said, but what you found.

Witness: And she said she had an awful headache.

20 Mr. Osborne: That is objected to.

Q. Just state what you found on examination first.

A. On physical examination?

Q. Yes, what tests you made?

A. I found that the woman—she gave me some symptoms that I won't relate, because they have been objected to, which led me to examine her spine and the back of her head.

30 Q. Yes, that is what we want.

A. And I found that her spine was sensitive to touch, to pressure, from the base of the skull down to the end of her spine, and more sensitive in the upper half, and that gave her pain enough, by firm pressure, as a physician will in examining, gave her pain enough to make her cry out; and on further examination to see whether that was a purely hysterical pain, or whether it was real pain or what might say fright pain, I distracted her at-

40 tention to some other part of the body with the

other hand, say with the right hand, and with the left hand, while talking to her about some other part of the body, I found that her spine was sensitive.

Q. And to what extent did you find that she had this sensitiveness in the spine?

A. As I say, enough to give her pain and make her cry out, enough pain to make her cry out that it hurt her. I don't mean that she screamed in my office,but she said it hurt, and her facial expression corroborated that. 10

Q. Well, Doctor, did you treat her?

A. I did.

Q. And did you visit her at her house?

A. Mrs. Daggett, as nearly as I can recall it, made two or three—I won't be positive about that —calls at my office, about three or four days apart, and then one evening I was sent for to call at her house—you stop me when you want to—and I found her in bed with severe headache, tossing 20 about the bed, holding her head, and pain in her spine, the headache mostly in the back of the head.

The Court: Can you tell us about when that was, Doctor?

Q. When was that, about?

A. That would be about the end of the second or beginning of the third week in August, 1905.

Q. Then did you treat her at the house? 30

A. I treated her at the house, I made, I think, about three calls then at the house, daily calls, the next morning and the day after and the day after that.

Q. And then?

A. And then she was able to come to my office again, and she continued to come about once a week to my office, except when another month rolled round I was again called to the house.

Q. How often altogether did you call at the 40

house up to, we will say, June 6, 1906, or the month of June, 1906?

A. I should say I made about twenty calls at the house.

Q. And how many calls did she make to your office during that period of time?

A. You have got me there; I don't know.

Q. Well, about?

A. I would have to judge it from the size of the
10 bill.

Q. Well, how much was your bill for treatment of her up to 1906?

A. They paid some cash. I think the bill amounted to about $85.

Q. And how much cash was paid?

A. $20 or $25, about there.

Q. About $25 cash?

A. Yes.

20 BY THE COURT:

Q. Of the $85 or additional?

A. Of the $85.

Q. Up to what time, did you say?

Mr. Kalisch: Prior to—

A. Prior to the second accident, in June of this year.

BY MR. KALISCH:

30 Q. Now, Doctor, assuming that the plaintiff was a passenger on a car, and the car came into collision with a wagon, by means whereof her head was thrown back with sufficient force to break her back comb and to render her unconscious, and that she remained unconscious for a long period of time, more than an hour; that she was taken to a hospital, and then could recall for the first time where she was; and then that she had after this periods of severe headache and pain in the spine
40 and nervous feelings; that before that time she

had been a woman in good health; to what would you attribute this condition?

Mr. Osborne: I object to the question on the ground that the question does not state the facts as proved in the case. The question says that her head was thrown back, but it does not say whether it came in contact with anything. Therefore the Doctor will be unable to determine whether the shock was by reason of the head merely being thrown back, or whether it was derived from coming in contact with the car. The question puts the plaintiff on a trolley car; it does not include the speed of the car nor the force with which it was stopped; and in referring to the breaking of the back comb, we do not know whether it was a cast iron back comb or rubber or what kind of back comb it was.

10

20

The Court: It seems to me that it is a fair hypothetical question.

Counsel for defendant E. A. Williams prays an exception to this ruling of the Court.

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

FREDERIC ADAMS, (Seal.)
Circuit Court Judge.

30

Q. To what would you attribute her injury?

A. If the woman was in perfect health, as I understand you, in good health, and had none of these symptoms before, such an accident and they were present afterwards, I should certainly put it down to the accident.

Q. This unconsciousness is the result of what? What do you call that, when a person's head is thrown back against an object and—

40

A. I should say concussion.

Q. Yes, concussion of the brain.

Mr. Bernhard: He did not say that.

Q. Well, is it a concussion of the brain?

A. Yes, sir. May I ask how long she was unconscious before I make that statement, first?

Q. It appears that she was unconscious for more than an hour; she did not recollect anything until she woke up in the hospital?

10 A. I answer the same.

Mr. Harry Kalisch: A day.

Q. She was unconscious for a full day in the hospital.

A. The same answer.

Q. Would the length of unconsciousness indicate the seriousness of the concussion?

A. Yes, to some extent. It would ordinarily,

20 but in different people it would vary, the same as a small accident will do up a weak person where it will not a strong man.

Q. We are assuming that she was in good health all through.

A. I don't know; I never saw the woman before that.

Q. Now, Doctor, you had treated her up to June, 1906, had you not, right along?

A. From the beginning of August, 1905; not be-

30 fore.

Q. And you had found the presence of these spinal symptoms?

A. Yes, sir.

Q. Troubles—nervousness, as you say?

A. Yes.

Q. Can you tell me whether they would be such as would result from a concussion of the brain?

A. They might be.

Q. And will you tell us whether concussion of

40 the brain involves the nerve centres?

A. It does; it is a shock to the nerve centres there.

Q. And will you tell me whether a shock to the nerve centres causes disturbances in the nervous system?

A. Decidedly.

Q. And did you find in examining the plaintiff any disturbance in the nervous system?

Objected to as leading.

10

Q. What did you find in the condition of the plaintiff as regards her nervous system?

A. Well, that she was terribly nervous; I did not find any nerve degenerations.

Q. But you found that she was terribly nervous?

A. Yes.

Q. When you say nerve degenerations, what do you mean?

A. I mean secondary degeneration as a result of pressure or injury.

20

Q. That is, paralysis or something of that sort, you did not find?

A. No, I didn't find any paralysis.

Q. Now, when you saw her for the last time in June, before she met with the second accident, to what extent, if any, had she recovered from the injury or the accident that you were treating her for?

A. I should say about one-third.

30

BY MR. OSBORNE:

Q. About what?

A. About one-third.

BY MR. KALISCH:

Q. And could you form any opinion as to how long, if things went on the way they had been going, it would take for her to recover her full health?

40

A. Probably another year.

Q. Another year?

A. Yes.

Q. Did you notice, Doctor, whether she had lost any weight during the time that you treated her up to June?

A. She had.

Q. About how much weight had she lost?

A. Oh, I should say ten or twelve pounds at least, just at a rough estimate in looking at her.
10 I didn't weigh her; I don't have a scale in the office.

Q. And did the loss of weight indicate anything as to her physical condition?

A. It indicated that she wasn't doing well. I won't say that during the last six months there was any loss of weight.

Q. No, I mean before June, 1906?

A. I mean in the last six months. She lost most of that weight during the first three or four
20 months after I was first called, after August, 1905.

Q. And what did that indicate, then, as to her nervous condition?

A. That it was interfering with her nutrition.

Q. And what did that indicate as to whether there was any damage done or not to her nervous condition?

A. Not much, only in that way; it indicated it through the disturbed nutrition of the body and, naturally, of the nerve centres and the nerves.
30 Q. You treated her for the second accident?

A. Yes.

Q. That was not until when?

A. I should say that was about three months ago.

Q. Now, Doctor, in your testimony that you have given here you have confined yourself, have you not, to all the symptoms of the plaintiff as exhibited to you when she first came to you, up to the time of the second accident, is that right?
40 A. She was still under my care at the time of

the second accident; I have related nothing that happened after that.

CROSS-EXAMINATION BY MR. OSBORNE:

Q. Doctor, you say she came to you the last of August?

A. The first week in August, 1905.

Q. And that you made an examination?

A. Yes, sir.

Q. And all that you found was that her spine was sensitive? 10

A. Her spine was sensitive, and that, as I say, extended up to the base of the skull.

Q. Did she, in giving you here symptoms, tell you about an injury sustained on a trolley car?

A. She didn't until after she had been there about ten minutes, or I don't think I would have taken up the case.

Q. Why not?

A. I am not fond of this. 20

Q. Why not?

A. Why, because just the work I am doing now takes my time away from my business; it isn't a paying business, if you want me to tell the truth.

Q. You say she did not tell you anything about it for about ten minutes?

A. Well, I was well into it, and I had to elicit that, and after we started into it I decided—

Q. You had been examining her?

A. Yes, before she spoke about the trolley accident. 30

Q. Up to that time to what did you attribute the injuries, before she told you about the trolley accident?

A. I hadn't drawn any conclusion.

Q. You had not drawn any conclusions?

A. No, sir.

Q. Prior to the time she told you she had been hurt in a trolley accident had she said anything about her antecedents, about how many children 40

she had had, and so on?

A. No.

Q. Hadn't you asked her?

A. No, I didn't ask her at that time—didn't ask her how many children.

Q. Would the condition that you found have any relation to the fact that she had had children?

A. No. I looked into that matter. I say no to that question.

10 Q. You say that the condition which you found could have no relation to or bearing upon childbirth?

A. No.

Q. Did she complain of any other injuries besides her spine?

A. Again, please?

Q. Did she complain of any other injuries except to her spine when she called again to see you at that time?

20 A. The spine and back of her head; she complained of the injury to the back of her head, and she did not say that her spine was struck.

Q. You discovered that?

A. I discovered that her spine was sensitive.

Q. Did she indicate upon herself what part of the back of her head she was hurt?

A. She put here hand back there (indicating.)

Q. I can't see where you have got your hands.

A. (Indicating.) I asked why her hair had
30 not been there.

Q. Why here hair had not been there?

A. Yes.

Q. Did she tell you?

A. No, she said she had her hair up on top of her head.

Q. Did she complain at that time of pain in her side?

A. Yes, she complained of pains running around both sides, and particularly the right—in-
40 tercostal neuralgia, I diagnosed that—part of the

spine pain, coming around, most of it around in the region of the liver.

Q. You think that was part of the spinal pain, do you?

A. Yes, sir.

Q. Did she complain of dizziness?

A. Vertigo, yes. I forgot that.

Q. Did she complain of numbness?

A. No.

Q. Not at all? 10

A. No, but she did of vertigo; she did not complain of numbness, not between the two accidents.

Q. Did she complain of headaches?

A. Decidedly; that was the thing that brought her to my office that night—the headache.

Q. Why didn't you tell us on direct examination of all these other things that she complained of?

A. Well, some things are apt to slip a man's mind. 20

Mr. Kalisch: I asked the question and it was objected to, and the Court said he not state what she said to him.

Q. You made a thorough examination in other respects besides her spine, did you not?

A. Yes, sir.

Q. Is she what you may call a nervous type?

A. Now she is; I don't know whether she was before; she was not my patient previous to that. 30

Q. Was she at the time you examined her?

A. Yes.

Q. Can' you tell a nervous type by the type without knowing about the history of the case?

A. One minute. You say, "nervous type"?

Q. Yes.

A. Yes, I will say yes.

Q. She was of a nervous type, then?

A. Yes.

Q. Now, what do you mean by "nervous type"? 40

A. Mean a patient who is nervous, who is apt to have nervous symptoms.

Q. Whose general makeup predisposes her to nervousness?

A. I don't say that. I don't know of any physical condition except disease of some portion of the body which can predispose a person to nervousness. After an operation a patient is predisposed to nervousness; that is sometimes an exciting cause to nervousness.

Q. Oftentimes after childbirth a woman is nervous, is she not?

A. No, a woman is expected to go through that, unless she has some complications.

Q. As a matter of fact, she—

A. It is not a usual occurrence.

Q. Where the children have come very rapidly, about as rapidly as they could be born and nourished, is it not a fact that it is very apt to make a woman nervous and break down and injure her physical constitution?

A. It will do it sometimes.

Q. Might the conditions which you found existing at this and your subsequent examinations between the two accidents have been caused by childbirth—frequent childbirth?

A. I didn't attribute it to that.

Q. I did not ask you that question. I asked you if those conditions could have been caused by it?

A. I don't think so.

Q. You do not think so?

A. No.

Q. Well, will you say they could not have been caused by it?

A. The pain in her spine could have been caused by that only on one condition that I can think of, and that is injury to the coccyx, and that is not present—that is the last three bones at the end of spine—which I know not to be present in this woman; I mean there is no dislocation, although the

coccyx is extremely sensitive, as the rest of her spine is.

Q. What about the headaches?

A. Well, unless there was something wrong with those parts after the childbirth, the headaches could not be caused by it. I know them to be all right.

Q. It is not a specific childbirth that I am speaking of, but I am asking you about a condition where a woman has had four children just as fast as she could have them and nourish them, whether she would not be apt to be in the condition that you found this woman in? 10

A. No.

The Court: I do not think we know anything about the ages of the children.

Mr. Osborne: Well, she said she was married ten years and she had four children.

Witness: I have got one patient that can give that cards and spades. 20

At one o'clock P. M. the Court took a recess of one hour.

After recess.

WALTER POST resumes the stand in behalf of plaintiffs: 30

CROSS-EXAMINATION (CONTINUED) BY MR. OSBORNE:

Q. Doctor, you recall having testified that on one occasion, the first occasion, in fact, that you were called to Mrs. Daggett's house, you found her quite nervous?

A. Yes, sir.

Q. She had headache and complained of her spine. You called for a couple of days and then 40

you said that when another month rolled by you called again; is that right?

A. That is right.

Q. Why did you use the term "when another month rolled by"?

A. Well, those periods are of interest to a woman in her physical life—certain things that appear regularly every month.

Q. So that this condition, then, might have been the result of that regular period?

10 A. Aggravated by that regular period.

Q. Aggravated by it?

A. Yes.

Q. That is, this nervous condition wouldn't naturally be aggravated by it?

A. This nervous condition, if present, would naturally be aggravated by that occurrence.

Q. In speaking of the injuries, the general injuries which you found, you said they might have

20 resulted from concussion of the brain. Might not they have resulted from any other cause?

A. Yes.

Q. You said that you found no nerve degeneration?

A. No, sir.

Q. Therefore the probabilities were that the patient would recover?

A. In time.

Q. And that she was rapidly recovering, was she

30 not, at the time of the second accident?

A. She was recovering; I can't say rapidly; I think "improving" would be the better term.

Q. Well, she testifies herself that she was very much better?

A. That may be; I don't know.

Q. That she did not feel so much pain?

A. She reported that way to me.

CROSS-EXAMINATION BY MR. BERNHARD:

40 Q. Can there be concussion, doctor, without

contact?

A. Beg your pardon!

Q. Can there be concussion of the brain without contact?

A. I should say no. You meant contact with the head, did you not?

Q. Yes, with the head.

A. Yes.

Q. Then if there had been no contact with the head, doctor, there could have been no concussion? 10

A. No.

Q. Could this condition which you found on August 1st have existed previous to the 8th day of June?

A. Yes, it could. I would have no means to know, because she was not my patient previous to that time.

Q. It may have come from any of a number of causes?

A. Yes, it may have come from a number of causes. 20

BY MR. KALISCH:

Q. Doctor, these nervous troubles, headaches, pains of that sort, may come from a lot of different causes, may they not?

A. Yes, sir.

30

JOHN DAGGETT, sworn in behalf of plaintiffs:

DIRECT EXAMINATION BY MR. SAMUEL KALISCH:

Q. Mr. Daggett, you are the husband of Mrs. Daggett?

A. Yes, sir.

Q. And one of the plaintiffs in this case?

A. Yes, sir. 40

Q. What is your business?

A. I am a carpenter, a greenhouse carpenter.

Q. Whereabouts?

A. Well, our business is in Tremont Avenue, Orange.

Q. How long have you been a carpenter there?

A. About fifteen years.

Q. How long have you been married?

A. Ten years.

10 Q. Do you remember the time that your wife met with an injury?

A. Yes, sir.

Q. You did not see the occurrence?

A. How?

Q. You were not with her at the time?

A. No, sir.

Q. When did you first learn of it?

A. Well, on the 8th day of June, 1905, I went to work, as usual.

20 Q. What?

A. On the 8th day of June—

Q. No, I asked you when did you first learn of it?

A. On the 8th day of June, in the evening.

Q. When you came home?

A. Yes, sir, when I came home from work.

Q. At that time were you engaged in building operations, or what?

A. Yes, sir; I was at work.

30 Q. Working for whom?

A. George Pierce.

Q. Before the happening of this injury to your wife was she a healthy woman?

A. Yes, sir; never was sick, always done her work and everything.

Q. And who took care of your house before she got this injury?

A. She always done it herself.

Q. Do you know how many days after the 8th

40 of June she came home to the house?

A. Yes, sir.

Q. Well, how long was it?

A. About four days, on a Monday.

Q. How long did she remain in the house?

A. Oh, she was there a month, anyway, and more.

Q. Do you know who attended her during that time?

A. Yes, sir.

Q. Who? 10

A. A woman by the name of Path, and a woman there by the name of Florence Brighton took care of the baby.

Q. When you had this woman Path how much did you pay her?

A. $14 a month.

Q. How many months did she remain with you?

A. I believe about a month or so, or a little over.

Q. What?

A. A month or so, not much over; it might have 20 a few days, or something like that, but practically a month.

Q. How long did the other woman remain with you?

A. Until school time, September.

Q. That was September?

A. Yes, sir.

Q. And you paid her how much?

A. A dollar a week.

Q. And the other woman you paid $14? 30

A. Yes, sir.

BY THE COURT:

Q. $14 a month?

A. Yes, sir.

BY MR. KALISCH:

Q. And she only remained a month, I understand?

A. Yes. 40

Q. From the time your wife received this injury do you know whether she has been the same woman that she was before or not?

A. No, sir; nowheres near.

Q. In what respect was she different?

A. Why, she couldn't do her work and she is always sick.

Q. Have you bought any medicines for her?

A. Yes, sir.

Q. Do you know how much?

10 A. Well, not very much in the drug store, but the doctor generally furnished his own medicine.

Q. Can you tell about how much you bought at the drug store?

A. Well, I should judge about $5 worth.

Q. You went to work right along, did you—kept right at work, did you?

A. No, sir.

Q. Well, just tell us about that.

20 A. When she had these bad spells, was sick with her spine and pain in her head, she was unable to do anything, and when I couldn't get a person to take care of the house I stayed home and done it myself.

Q. How many times did you do that?

A. Well, I have got a record of about fifteen days.

Q. How much did you earn as carpenter?

A. $3.60 a day.

30 Q. Now, I mean from the time when she was first injured up to the second injury.

A. Yes, sir.

Q. Those fifteen days are included in that, are they?

A. Yes, sir.

Q. Not after that?

A. Not since this last accident.

CROSS-EXAMINATION BY MR. OSBORNE:

40 Q. Mr. Daggett, when did you see your wife

next after the accident?

A. Why, it was the day after, in the evening.

Q. Whereabouts?

A. In the City Hospital, the eleventh ward.

Q. Did you see her head?

A. I saw her whole form, only she was covered.

Q. You did not see the back of her head?

A. No, sir; I saw her face, and she was unable to move. 10

RE-DIRECT EXAMINATION BY MR. KALISCH:

Q. Did you visit her every day there at the hospital?

A. I will tell you, if the Court will allow me to, I will relate the first of it—

Q. Did you visit her every day in the hospital?

A. I visited her the second day and went on a Sunday again, and I went on Monday with a closed carriage and brought her home. 20

Q. You took her to your own home?

A. Yes, sir.

Q. So you saw her in the hospital twice?

A. Yes, sir.

Q. And at that time she was lying in bed, in what condition?

A. Well, the first time she didn't know anything; the nurse says to her, she says, "Don't you know who this is, Nellie?"— 30

Objected to.

The Court: Never mind what the nurse said.

Q. And how about the second time?

A. Well, she could speak then.

Q. And that was how many days from the time of her injury?

A. That was three days, the 8th, 9th and 10th— That would be four days, wouldn't it? 40

Q. Four days?
A. Yes, Sunday.

PLAINTIFFS REST.

Mr. Osborne: In behalf of the defendant E. A. Williams I ask for a nonsuit, on the ground that no negligence has been shown as against that defendant.

10 The Court (After argument): I am disposed to follow the course spoken of in Bien vs. Unger, 35 Vroom, at page 599, and reserve the motion until the close of the defendant's testimony.

Counsel for defendant E. A. Williams prays an exception to this ruling of the Court.

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

20

FREDERIC ADAMS,
Circuit Court Judge.
[Seal.]

Mr. Bernhard: I have a motion based on a little different ground. First, that there has been no negligence proved on the part of the North Jersey Street Railway Company, and that consequently a nonsuit

30 ought to prevail; and secondly, that the proof does not support the allegations of the declaration, and that there is no proof in the case that this plaintiff suffered from anything more than shock, damages for which are not recoverable in a suit for damages. On those two grounds I rest my motion.

The Court: I think there is evidence from which the jury might infer that the plain-

40 tiff suffered from a blow to the back of her

head; I think there is a little evidence to go to the jury—not much, but a little.

It appears that this was a straight avenue and that the accident happened at a street crossing, and the plaintiff, on being cross-examined by Mr. Osborne, said she never saw a car go so fast before; and it appeared somewhere in the testimony that she was in the habit of frequently riding over this road. I think that the fact testified to by the plaintiff of unusual speed, taking the case as we find it now at this stage, and the locality, one that called for caution, together make up some evidence which ought to prevent the Court's taking the case from the jury.

Mr. Bernard: I ask an exception to your Honor's ruling on both grounds.

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

FREDERIC ADAMS,
Circuit Court Judge.
[Seal.]

Mr. Osborne opens for defendant E. A. Williams.

Mr. Bernhard opens for defendant North Jersey Street Railway Company.

FRANK BOCKUS, recalled in behalf of defendant E. A. Williams:

DIRECT EXAMINATION BY MR. OSBORNE:

Q. Mr. Bockus, where do you live?
A. 299 South Ninth Street.
Q. Newark?

A. Yes, sir.

Q. By whom are you employed?

A. By E. A. Williams Baking Company.

Q. Do you remember an accident which happened about the 8th of June, 1905, in which a collision occurred between your wagon and a car of the Public Service on Bloomfield Avenue?

A. I remember the accident, but I don't remember the date when it happened.

Q. You heard the testimony here this morning?

10 A. Yes, sir.

Q. And you recognized that as being the occasion?

A. Yes, sir.

Q. You were driving for this company?

A. **Yes, sir.**

Q. Just tell us what happened at that time.

A. I was coming up Bloomfield Avenue—

Q. Going in what direction?

20 A. Towards Bloomfield.

Q. Towards Bloomfield?

A. Yes, sir. When I reached the corner of Parker Street—

Q. Which side of the street were you going on?

A. Coming up on the right hand side of the street. When I reached the corner of Parker Street and Bloomfield Avenue, I was going into Parker Street toward the left hand corner, and in the middle of the block between Parker Street and

30 Highland Avenue I seen a car coming, and I drove in, and when I reached about 200 to 250 feet into Parker Street the people was hollering, "Hey, baker, there is your boxes laying there;" and I stopped the wagon; and the conductor was running after me and was hollering, "Hey, I want your name."

Objected to.

Q. Somebody called your attention to the fact

40 that the boxes were off of your wagon?

A. People on the street hollered, "Hey, baker, there is your boxes;" and I stopped the horses and looked around, on account I couldn't see through the wagon, and there was two boxes laying on the corner; two boxes I had on the tailboard and two boxes was laying on the corner.

Q. When you started to cross the track how far was the car away from you?

A. Well, it must be every bit of 200 feet.

Q. Going fast or slow? 10

A. Well, it seemed to me on a moderate speed.

Q. Moderate?

A. Yes.

Q. Did you have time enough to cross the track—

A. Yes, sir.

Mr. Bernhard: Just a minute.

Q. —and clear the car as it came down Bloomfield Avenue?

Mr. Kalisch: I object to that; that is a matter for the jury to determine. 20

Mr. Bernhard: That is a matter of conclusion.

The Court: That is a matter of opinion, I think. The facts being given, the jury will conclude how this question ought to be answered.

Q. Did you feel any jar as the rear portion of your wagon crossed the track in front of the car? 30

A. No, sir.

Q. Where was this car when you went back?

A. Where was what?

Q. Where was the car when you went back?

A. When I went back?

Q. Yes.

A. When I stopped the wagon—when I jumped off the wagon I seen the car standing half-ways down in Bloomfield Avenue; I only seen half of 40

the car; I was in Parker Street looking towards Bloomfield Avenue, and I only seen half of the car; half of the car was in Bloomfield Avenue.

BY THE COURT:

Q. When you went back for your boxes—

A. I turned the horses around and went back to the boxes and picked them up.

Q. When you were picking them up, did you see
10 the car from that point?

A. Yes, sir.

Q. Where was it?

A. I was every bit of two hundred feet in Parker Street.

BY MR. OSBORNE:

Q. Not where you were, but where was the car when you were picking up your boxes?

A. The car was laying right on the corner.

20 Q. On the corner?

A. On the corner, half-ways in Bloomfield Avenue and half-ways in the driveway from Parker Street.

Q. Which crosswalk, the one towards Newark or the one towards Bloomfield?

A. Half of the car was towards Newark and half of the car was towards Bloomfield.

Q. Was it the upper or the lower crosswalk?

A. The lower crosswalk.

30 Q. Towards Newark?

A. Yes, sir.

Q. Then it had almost crossed or partially crossed Parker Street when it stopped?

A. Well, crossing, half of the car, you know.

Q. Did you see Mrs. Daggett there?

A. No, sir; I didn't pay no attention to anybody, on account of the accident was so light to me, and picked up my boxes and tied my boxes on and went off.

40 Q. Did you examine your boxes?

A. No. Why should I examine the boxes?

Q. Did you look at them?

A. Picked them up; that is all I examined.

Q. Did you see anything wrong with them?

A. No, sir.

Q. Did you look at the front of the car?

A. No, I didn't pay no attention to the car; the accident was so light to me, I didn't pay no attention to nothing else.

Q. How were those boxes secured to the back of your wagon? 10

A. The boxes was tied on by half an inch rope on a little hook like.

Q. Were those boxes resting on the tailboard of the wagon?

A. Yes, sir.

Q. Was the tailboard down?

A. The tailboard was hanging on a chain.

Q. On a chain, you say?

A. Yes, sir. 20

Q. On what angle with relation to the floor of the wagon?

A. Right on the floor of the wagon.

Q. Right flat?

A. Yes, sir, the tailboard was flat.

Q. Did the boxes go all the way across the wagon or only partly?

A. The boxes was outside of the wagon on the tailboard; they didn't touch inside of the wagon. 30

Q. Did they go all the way across the tailboard?

A. Yes, sir.

Q. Did you hear any bells sounded?

Mr. Bernhard: Objected to. That is immaterial; he saw the car.

The Court: Yes, he saw the car, but nevertheless I think it is competent, in view of the triangular character of this suit. I will receive it. 40

Counsel for defendant North Jersey

Street Railway Company prays an exception to this ruling of the Court.

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

FREDERIC ADAMS,
Circuit Court Judge.
[Seal.]

(Question read.)

10 A. Well, I didn't hear no bells sounded, on account—

The Court: That answers the question.

Witness: No, sir.

Q. Did you see the motorman as you crossed the track?

A. I seen the car; I didn't see the motorman; that is all I looked at.

20 CROSS-EXAMINATION BY MR. BERNHARD:

Q. Was the grade of Bloomfield Avenue going towards Parker Street in the direction that you were going up or down?

A. Up.

Q. The car had to go up, did it?

A. The car was coming down.

Q. No, the direction that you were going before you reached Parker Street?

30 A. I was going up towards Bloomfield.

Q. You had to go up?

A. Yes, sir.

Q. The grade is up there?

A. Yes, sir.

Q. Isn't it true that the car had to go up grade?

A. The car was coming down; I had to go up.

Q. On what part of the road were you driving?

A. On the right hand side.

Q. By "the right hand side" do you mean in the
40 right hand track or on the right hand roadway?

A. On the right hand roadway.

Q. Clear of the other track?

A. Clear of the track; yes, sir.

Q. And how fast were you driving?

A. How fast you can drive a team up that hill

Q. Walking or trotting?

A. A regular trot.

Q. Then you were going that way when you started to cross the track?

A. Yes, sir. 10

Q. Did you notice that your wagon swerved around the corner?

A. Well, I cut the corner.

Q. It swung some, did it not?

A. Went right around the corner; yes, sir.

Q. It swung some, did it not?

A. Well, I can't remember that.

Q. You do not remember whether it did or did not?

A. No, sir. 20

Q. And you do not remember whether the swing of your wagon caught the trolley car? Do you know or don't you know?

A. No, sir.

Q. You are not willing to swear that it did not?

A. I won't swear either way.

Q. Was wour wagon loaded or empty?

A. The wagon was empty—

Q. Where were you going?

A. —except boxes I had inside. 30

Q. The boxes were empty?

A. The boxes were empty; there was no bread in them.

Q. Where were you going?

A. I was going home.

Q. You were anxious to get home, were you not?

A. I was going home, sure.

Q. What time had you started out in the morning?

A. Well, I can't tell you exactly the time, but 40

on that route we generally started out about half-past one, quarter to two or two o'clock.

Q. What time had you started out in the morning with a load?

A. Well, I can't tell you exactly the time I started on that morning, but generally on that route we started out half-past one or two o'clock.

Q. So that you had been out eleven hours, had you?

10 A. Every bit of it.

BY THE COURT:

Q. Do you mean half-past one to two o'clock A. M.?

A. Yes, sir.

BY MR. BERNHARD:

Q. Who was with you?

A. A driver was with me by the name of Aaron
20 Herme.

Q. Were you driving?

A. I was driving.

Q. What was the other man doing?

A. I was showing him the route; on account that man was sick, I was showing him that route, and on that day he was on the route with me.

Q. So that the man on the wagon with you—you were showing him the route?

A. I didn't show him the route, only showing
30 him the route, what condition it was in after he came back from his sickness.

Q. When you were going across the track you were not showing him the route?

A. No, sir.

Q. You were not saying anything to him?

A. No, sir.

Q. Not a word?

A. No, sir.

Q. Was he saying anything to you?

40 A. No, sir; not that I remember.

Q. You had a closed wagon?

A. Yes, sir.

Q. The front of it was closed on the side, too, was it not?

A. Closed on the side; the front was open.

Q. So that when you were driving up Bloomfield Avenue, just before you got to Parker Street, you saw this car?

A. Yes, sir.

Q. At that time you had not yet started to turn into Parker Street? 10

A. I was coming up the roadway, and I seen the car between Parker and Highland Avenue.

Q. Just a minute. You had not yet started to turn into Parker Street when you saw the car?

A. As far as I can recollect, the first time I seen the car I turned in—I swung in.

Q. You do not remember very much about this?

A. I don't remember nothing.

Q. You do not remember very much about the accident? 20

A. You have been asking me if I saw the car.

Q. Well, do you remember very much about the accident?

A. Sure, I remember a little bit.

Q. When you got on the track on which the car was moving, how far away was the car then?

A. It was between Parker Street and Highland Avenue, every bit from that corner 200 feet, in my estimation. 30

Q. At the time you got on the track on which the car was moving with your horses, at that time how far away was the car? If you do not know, say so?

A. Well, it must have been close to the corner.

Q. Surely, and it must have been close to your wagon?

A. Well, from that corner over to the other corner, where I estimated when I turned, when I was over the car tracks with my wagon, I seen the car 40

coming on the corner; that is about a hundred feet.

Q. You mean to say that you turned into the corner of Parker Street when you saw the car at the corner of Parker Street?

A. I didn't see the car on the corner of Parker Street; I seen the car, when I swung into Parker Street, between Highland Avenue and Parker Street.

Q. How wide is Parker Street?

10 A. Well, in my estimation, every bit of 40 feet, anyhow.

Q. And what part of Parker Street did you turn into?

A. On the left hand side, turned in towards Fifth Avenue.

Q. And how wide is Bloomfield Avenue there?

A. I couldn't give you exactly the measure, I didn't measure that, but it is a pretty wide street, you know.

20 Q. So that you ouly looked and only saw the car when you turned, did you?

A. When I come up Bloomfield Avenue I seen the car between Parker Street and Highland Avenue, and I thought there was plenty of time, and I fetched my wagon over the car track, and I come on on a regular trot, and I don't know whether it touched the car or not, until people hollered to me when I was 200 feet in Parker Street.

Q. You mean to say you were going so fast that

30 you did not hear the box drop out of the wagon?

A. Well, you want to consider that is a wooden wagon and that rattles; you have some noise.

Q. Then you were going so fast that your wagon was rattling?

A. Yes, sir; there is a kind of a gutter there, and you can catch—

Q. How many boxes fell off there?

A. Two.

Q. What kind of a roadway is there there,

40 macadam or cobble?

A. Bloomfield Avenue is macadamized and Parker Street is asphalted, I believe.

Q. Where did they fall?

A. Right there on Parker Street and Bloomfield Avenue, right there by the trolley pole there.

Q. How big are these boxes?

A. Four feet—pretty near four feet long.

Q. And how wide?

A. Well, every bit of two feet.

Q. And how deep? 10

A. Perhaps a little bit more. How deep? Well, four feet high, they must be; they hold two hundred loaves of bread.

Q. What kind of a car did you see coming down there, an open or a closed car?

A. Closed car.

BY MR. OSBORNE:

Q. Your wagon did not have rubber tires on it, did it? 20

A. What, the bread wagon? No, sir.

CROSS-EXAMINATION BY MR. KALISCH:

Q. You wagon was going towards Bloomfield?

A. Yes, sir.

Q. And you were driving a pair of horses?

A. Yes, sir.

Q. Were they young horses?

A. Well, we got one of them up there yet. The horses has been driven for the last eight years, 30 anyhow, on that bread wagon—on all the bread wagons; they changed them around. Every bit of seven or eight years we have got them up there, in my estimation.

Q. They have been driven every day, have they not?

(No response.)

Q. Were your horses gentle or not?

A. Gentle horses.

Q. Well, why don't you say so? 40

A. You didn't ask me.

Q. Now, when you first saw the car you say it was between Highland Avenue and Parker Street?

A. Yes, sir.

Q. And you were still on Bloomfield Avenue, were you not?

A. I was right on the corner of Bloomfield Avenue and Parker Street.

Q. Well, you were going up Bloomfield Avenue?

10 A. I was turning in—

Q. Answer my question. Were you going up Bloomfield avenue when you first saw the car?

A. I turned when I first seen the car.

Q. At that time the car was 200 feet away from you?

A. Every bit of it.

Q. Now, are the tracks in the centre of Bloomfield Avenue or on each side of the avenue?

A. I was on the right hand side coming up to-
20 wards Bloomfield.

Q. I did not ask you that. I want to know whether the trolley tracks are in the centre of the avenue or whether there is a track on each side of the avenue?

A. The track it is in the centre of the road.

Q. Two tracks?

A. Sure.

Q. And were you on the outside of the second track on the right hand side going up?

30 A. I was on the right hand side of the road—Bloomfield avenue.

Q. So that it was necessary for you to cross over into Parker Street, to cross the two tracks, was it not?

A. Yes.

Q. How wide is it between the tracks, about, between the rails, the outside of each track, how many feet across, do you know?

A. The rail to the sidewalk?

40 Q. No, where the two tracks are.

A. I couldn't tell you how much.

Mr. Kalisch: Do you know what the general width is there, Mr. Bernhard?

Mr. Bernhard: I know, but I do not know that they will let me tell it; I will tell it if there is no objection.

Mr. Kalisch: Yes, I will let you tell it.

Mr. Bernhard: 4 feet 8 inches between the rails of the track and 4 feet 6 inches between the inner rails. 10

Mr. Kalisch: That would be a little over 12 feet from rail to rail.

The Court: 13 feet 8 inches.

A Juror: 14 feet over all.

Q. Now, how far were you away from the rails of the track when you were going—when you had reached the corner of Parker. Street to turn in, how far were your horses and wagon away from the first rail? 20

A. From the first rail on the right hand side, you mean?

Q. Yes.

A. I was close by the rail.

Q. You were close by the rail?

A. Yes.

Q. Did you turn your horses straight across the track or diagonally across the track? 30

A. I turned them right over the corner; I cut the corner; I didn't go in the middle of the street.

Q. When you turned your horses around were your horses on the first track?

A. Which track do you mean, the first track on the right hand side or the left hand side?

The Court: The right hand side.

Q. You were going up the right hand side of the street? 40

A. Yes, sir.

Q. (Indicating.) Suppose this is the road here.

A. Yes.

Q. And here are the tracks. Now, I wanted to know how near your wheel or your horses were to this first rail here (indicating)?

A. When I turned them the hind legs were on the first rail there, and with the front legs they were pretty near over on the third rail; the centre of the wheels just fit over the first rail.

10 Q. So that when you turned your horses to go into Parker Street your horses landed on the third rail, did they—the horses' heads?

A. Yes, sir.

Q. And then you went on, did you?

A. I went right on to the corner.

Q. Now, at that moment where was the car?

A. When I swung, the same time I looked up the road and saw the car, and it must have been every bit of 200 feet.

20 Q. Now, before the end of your wagon had left the track—the rail—did you feel anything at all?

A. No, only I felt a jar going over the track and over the gutter.

Q. You felt no jar on your wagon, you say?

A. No, not that I know.

Q. And you did not know that you had lost a bread box?

A. No.

30 Q. And you did not know that there had been any windows broken?

A. No, sir.

Q. How long was your wagon?

A. Well, I can't tell you how long was the wagon; a big sized wagon, a big wagon.

Q. About what would you say it was, 10 feet in length?

A. I couldn't tell you about that; I didn't measure it.

40 Q. Was it as long as from where you are sitting

to where I am standing?

A. Yes.

Q. It was as long as that?

A. Yes.

Q. And it had a big cover on?

A. It was a top wagon, you know.

Q. Was there a cover in back?

A. We don't need no cover in back; there is a tailboard on it.

Q. Well, was there a cover in back? 10

A. No, sir.

Q. There were boxes inside of the wagon?

A. Yes.

Q. Were they piled away up?

A. Inside was four boxes.

Q. Full boxes?

A. Four boxes.

Q. So that you could look back and see through the end?

A. No, you can't look through, on account the 20 tailboard shuts the end of the wagon, and then the bottom tailboard comes down and hangs with a chain.

Q. I want to know what was there between where you were sitting and the tail end of the wagon, that you could not hear anything that was going on behind you?

A. There was four boxes inside of the wagon, and the top tailboard shut the wagon.

Q. So that you could not hear? 30

A. There is two tailboards; the tailboard is 'way in here (indicating)—the top—and the bottom one goes down and hangs with a chain; and the top tailboard was shut up.

Q. So that you could not hear what was going on behind you?

A. No, sir.

Q. Now, were your horses trotting?

A. Yes, sir.

Q. Now, then, as I understand you—let me see 40

if this is right—when your horses were on this track and you had turned into Parker Street, just as you had swung around, the car was 200 feet away?

A. When I started to swing around, then I looked up the road and I seen the car, and at the same moment, as far as I estimate, the car must have been away 200 feet from me, when I started to swing around.

10 Q. 200 feet?

A. Yes.

Q. And when you did turn around, at the time you did turn around, the length of your horse and wagon—you put your horse at the third rail, do you?

A. Yes, sir; as soon as I swung I kept on going, you know.

Q. And then you had to put your wagon across, and you had fourteen feet to cross, did you not, if 20 that is the distance?

A. Evidently.

Q. And during that time the car came fast?

A. Yes, sir; and I kept on going; I didn't stop the horses; I wanted to get over.

Q. And you went right along?

A. Right along.

Q. And you got to the third or fourth house in Parker Street, did you not?

A. Well, it must have been about eight or nine 30 houses, anyhow.

Q. And you heard a cry?

A. They then hollered, "Baker, there is your boxes laying;" and then I turned around and went back.

Q. Then you turned your horses back?

A. No, I jumped on the step and looked around first.

Q. Well, did you come back?

A. Sure.

40 Q. Now, after you came back you saw your

boxes lying where?

A. On the corner, in the gutter.

Q. In the gutter?

A. Yes.

Q. How many?

A. Two.

Q. Were they on top of one another?

A. Well, I can't remember that, whether they were on top of one another, but they were laying there when I picked them up. 10

Q. Were they lying in different places?

A. They were laying there on the corner; I couldn't tell you whether they were laying together or not; I couldn't tell.

Q. Well, you picked them up?

A. Yes, sir.

Q. Was the car standing there?

A. Yes, sir.

Q. Was it the rear part of the car you saw or the front? 20

A. The rear part of the car was standing there. Certainly when I got down to Bloomfield Avenue, then I seen the whole car.

Q. Where?

A. Standing on the corner.

Q. What do you mean, afterwards?

A. When I got down to the corner, then I seen the whole car.

Q. From Parker Street you could not see the whole car? 30

A. Only half of it.

Q. But when you got to the corner you saw the whole car?

A. Yes, sir.

Q. You did not go to look at the front of the car?

A. No, sir.

Q. Did you see any glass broken?

A. No, sir. 40

Q. Or anything like that?

A. No, sir.

Q. You did not look for that?

A. No, sir.

Q. And you say it was a closed car?

A. Yes, sir.

Q. You are sure about that?

A. Yes, sir.

Q. It was not an open car?

A. No, sir.

10

AARON HERME, sworn in behalf of defendant E. A. Williams:

DIRECT EXAMINATION BY MR. OSBORNE:

Q. Mr. Herme, what is your occupation?

A. Driver.

Q. And where do you live?

20 A. 375 Littleton Avenue.

Q. Whom do you work for?

A. Mangels & Schmidt's bakery.

Q. Were you on the wagon with Frank Bockus on the 8th of June, 1905?

A. I was.

Q. Do you remember an occurrence on Bloomfield Avenue when you drove across the street in front of a trolley-car?

A. Well, I didn't know there was any accident,
30 until I got the subpoena. We drove across the tracks at that point—

Q. Just a minute. You have heard the testimony here to-day?

A. I have.

Q. Do you recall the circumstance of your having been there at that time?

A. I do.

Q. Were you on the wagon with Bockus?

A. I was.

40 Q. Where were you sitting?

A. I was sitting on the left-hand side.

Q. Who was driving?

A. Mr. Bockus.

Q. As you came up Bloomfield Avenue, what did you do,—where did you go?

A. What is that?

Q. When you came up Bloomfield Avenue where did you go? Did you turn into any other street or go on?

A. No, we turned right into Parker Street. 10

Q. Now, tell me, as you came up Bloomfield Avenue, just before you turned into Parker Street what happened?

A. Well, we was on the right hand side going west towards Bloomfield, and this was coming down east—the car was—and we thought we had lots of opportunity to go across that track, if the conductor had slowed up—the motorman,rather—but he didn't seem to do it, and we thought we could get across. 20

Q. How far away was the car when you started to turn across the track?

A. Well, I should judge the car was close onto 200 feet, 150 or 200 feet, somewhere around there.

Q. How fast was your team going?

A. On a moderate gait, not very fast, because that team won't go fast; it is a slow time team.

Objected to.

30

Witness About five miles an hour.

Q. Trotting or walking?

A. No, he was trotting.

Q. Up hill or down?

A. Well, now, that I couldn't say; I don't know whether there is a grade there or not; I won't say positive whether there might be a slight grade there or not; I won't say.

Q. Do you know how fast the car was coming?

A. I don't think the car was going much faster 40

than we was going; the car, I don't think, was going more than seven or eight miles an hour, possibly around six or seven miles an hour.

Q. As you approached the track did you reach the point of crossing ahead of the car?

A. Yes, sir; we got across and I didn't even think we was struck.

Q. Did you feel any jar as you crossed the track?

A. Not a bit, only the jolt of the wagon, that is
10 all; and that is natural, going across a track, there is a rebound.

Q. Did anything out of the ordinary occur to attract your attention?

A. No, sir; I didn't pay no attention to anything at all whatever until we got up there.

Q. As you crossed the track at what angle did you go across?

A. Parker Street comes kind of to a point, kind of slanting, and we was going across here (indicat-
20 ing); we went right straight, right diagonally, right across.

CROSS-EXAMINATION BY MR. BERNHARD:

Q. Do you know what time this happened?

A. No, I don't know; it might have been half past one or two o'clock or it might be a little later than that; I don't know.

Q. I understood you to say a second ago that you did not know there had been an accident until you
30 were served with a subpoena?

A. I didn't know there was anything serious, I mean.

Q. What attracted your attention to the car 150 feet away?

A. The car coming the same direction that we were.

Q. Coming the same direction?

A. I mean we was going across the track, and we had a chance to get across if the motorman
40 had stopped, but he didn't stop.

Q. You would have had a chance to get across if you had waited until the car went by, would you not?

A. Undoubtedly.

Q. Well, why did you not do it?

A. Well, we had plenty of time to get across.

Q. When it was 150 feet away?

A. Yes, sir; going at moderate speed.

Q. You think it was 150 feet away?

A. Yes. 10

Q. And going about the same speed that you were going?

A. Yes, sir.

Q. And you had to cross about fourteen feet to clear the track, did you not?

A. Well, about twelve feet.

Q. And the car had to go 150 feet while you were going the 12 feet; that is so, is it not?

Mr. Kalisch: 14 feet. 20

Mr. Bernhard: 14 feet? Well the witness said 12.

Witness: 12 feet.

Q. What time in the morning had you gone out on the wagon?

A. I used to drive out the same time he did, about half past one or two o'clock.

Q. Did you get off the wagon after the accident?

A. No, sir; I didn't get off the wagon at all. 30

Q. Did you look back?

A. No, sir; I didn't even get off and help him on with the boxes.

CROSS-EXAMINATION BY MR. KALISCH:

Q. The car was going about seven or eight miles an hour, you say?

A. Well, I say possibly it might; I can't judge the speed—six or seven miles.

Q. And you were only going five miles an hour, 40

is that right?

A. What is that?

Q. The car was going seven or eight miles an hour?

A. Well, I say possibly six or seven.

Q. And you were going five miles an hour?

A. Yes, sir.

Q. And at the time you were crossing the car was 150 feet away from you?

10 A. About that, 150 to 200 feet.

Q. And you only had twelve to fourteen feet to go and the car had 150 feet to go, is that right?

A. That is right.

Q. And you were going five miles an hour, so that the car went 150 feet while you were going 12 feet, did it not?

A. About that; yes, sir.

Q. Is that right?

A. Yes.

20 Q. So that the car went about twelve times as fast as you went, and if you were going five miles an hour the car was going sixty miles an hour, was it not under those circumstances?

A. Well, under those circumstances, yes.

RE-DIRECT EXAMINATION BY MR. OSBORNE:

Q. How long was the wagon, Mr. Kalisch overlooked the length of the wagon in calculating the

30 12 feet?

A. With the extension, the tailboard down and everything?

Q. Yes.

A. Well, I should say that is about 12 or 14 feet.

BY MR. KALISCH:

Q. The length of the wagon was 14 feet?

A. With the tailboard down.

BY MR. OSBORNE:

40 Q. So that you had to cross those 14 feet besides

--you then had to cross 14 feet?

A. We had to cross 14 feet, and certainly the wagon was that length, so that that would make the 14 feet anyway.

Q. You only had 14 feet away from the last rail, so as to be clear of the entire track, is that what you mean?

A. Yes, sir.

Q. So that in the meantime that car came down? 10

A. Yes, sir.

Q. So that you went 26 feet?

Mr. Bernhard: No, no.

A. No, sir.

Mr. Osborne: 14 and 12 would be 26.

Q. Did you know how fast this car was going?

A. No, sir; I wouldn't say positive; I only judge.

Q. And when you said the car was going seven or eight miles an hour, you guessed at that, did you not? 20

A. I did.

Q. When you started to cross this track was the car far enough away so that, with the speed that you were going and the speed that you supposed the car was going, you could have got across the track?

Objected to on the ground that the question asks for the conclusion of witness. 30

The Court: That seems to be a matter of opinion.

Q. Did you get out of the wagon to see where the car was when you turned back to Bloomfield Avenue?

A. No, sir; I didn't know nothing about it; I didn't think there was an accident.

Q. You did not know anything about it? 40

A. No, sir.

BY MR. BERNHARD:

Q. What kind of a car was it that you saw?

A. The car that I saw coming up at that time was a closed car.

BY THE COURT:

Q. Did you notice the boxes to see whether they were fractured or scratched in any way?

10 A. No, sir; I did not; I didn't get off the wagon at all.

DEFENDANT E. A. WILLIAMS RESTS.

JOHN DRURY, sworn in behalf of defendant North Jersey Street Railway Company:

DIRECT EXAMINATION BY MR. BERNHARD:

20

Q. Mr. Drury, where do you live?

A. In Glen Ridge.

Q. And what is your business?

A. Produce dealer.

Q. On the 8th of June, 1905, where were you?

A. Well, I was in the morning at business.

Q. And in the afternoon?

A. In the afternoon I got on the trolley-car
30 around two o'clock, to attend to some business in the market.

Q. Which way was the car going?

A. Going to Newark.

Q. Where did you board the car?

A. At Liberty Street, Bloomfield.

Q. What kind of a car did you board?

A. An open car.

Q. Where did you take your position in that car?

40 A. On the runboard.

Q. Do you know where Parker Street is?

A. Yes, sir.

Q. How far is that from Liberty Street?

A. Well, I should judge about three miles or four.

Q. When you got to Parker Street on what part of the car were you?

A. On the runboard.

Q. What part of the running-board?

A. About midway. 10

Q. Did you notice anything at Parker Street?

A. Yes, sir; there was a collision there with a bread wagon.

Q. Did you see it?

A. Yes, sir.

Q. Won't you tell us briefly what you saw?

A. Why, the car was going down Bloomfield Avenue at a moderate rate of speed, I should say probably seven miles an hour, and at Parker Street, or just before we came to Parker Street, I 20 saw this bread wagon coming up Bloomfield Avenue, and the driver was beating the horses and had them going at top speed, just about as hard as they could be driven, the kind of horses they were, to a heavy wagon, and not on the macadam road, but on the car-track; and in turning out of the car track he made a short turn, in order to cut the car, and crossed the other track he had to make another turn to get into Parker Street, and in making the turn to get into Parker Street the 30 rear end of the wagon hit the right-hand side of the car—that is, the side the runboard is on, the side I was standing on—and then I think the car immediately stopped; it hadn't gone—well, the middle of the car, I don't believe, was beyond the corner, because some person, I can't say who it was, stepped into the hotel there for a glass of water.

Q. Where is the hotel? 40

A. On the corner or about there.

Q. The corner nearer to Newark?

A. Nearer Newark.

Q. What became of the horses and wagon?

A. The wagon was about 200 feet, I should judge, in Parker Street—probably 150.

Q. At what rate of speed had the horses gone from the time they turned across in front of the car until the time they got 200 feet in Parker Street?

10 The Court: 150 or 200 feet.

Mr. Bernhard: Well, whatever you said.

A. Well, it took him all that time to get those horses down to a stand, in my opinion.

Q. Did anything happen to the wagon or anything on the wagon?

A. The boxes tumbled out right on the corner.

Q. When he turned across the front of the car how far off was the car?

20 A. The car was just beyond Parker Street.

Q. About how many feet away was the car?

BY THE COURT:

Q. (Interposing.) When you say "just beyond Parker Street," what do you mean?

A. Well, a few feet from the corner, eight or ten feet.

Q. East or west?

A. It is north, isn't it?

30 Q. Towards Bloomfield?

A. Towards Bloomfield.

Q. You say the car was in that position when he did what?

A. When he crossed Bloomfield Avenue.

BY MR. BERNHARD:

Q. And when he got on the track on which the car was moving, how far away was the car at that time?

40 A. It was just about at the corner of Parker

Street.

Q. And about how many feet from his horses?

A. I should judge about 30 feet.

Q. And how far did the car go after the collision?

A. The car—well it didn't move over 10 feet, 10 or 12.

Q. What kind of a collision was it, of much force?

A. Well, the wagon hit the car—the rear end of the wagon hit that car so hard that it busted those windows all in. 10

Q. Which windows do you mean?

A. The right-hand side of the car, the windows in front of the motorman.

Q. Were they up or down, do you recall?

A. They were up—the one on the nearest side towards the street, towards Parker Street.

BY THE COURT: 20

Q. You mean up—

A. Closed; the window was closed.

CROSS-EXAMINATION BY MR. OSBORNE:

Q. Which track was this wagon coming up on?

A. On the north-bound track, I should call it.

Q. That is, the track bound towards Bloomfield?

A. Yes, sir.

Q. And whereabouts were you on the running-board? 30

A. I was midway in the car.

Q. Midway in the car?

A. Yes, sir.

Q. Anybody else on the running-board?

A. Yes, sir.

Q. The car was quite crowded, was it not?

A. Yes, there was quite a few people on the car.

Q. And people in front of you on the running board? 40

A. Yes, one person.

Q. How far away did you see this wagon?

A. Why, I saw this wagon coming at least a block away.

Q. So from your position on the right hand side of the car coming down, in this crowded car, with people on each side of you on the running-board, you could see this wagon coming up on the other track?

A. Yes, sir.

Q. You are sure about that?

10 A. Yes, sir.

Q. Were you with anybody or were you alone?

A. I was all alone.

Q. What attracted your attention to this wagon, anything?

A. Well, my attention was attracted to the wagon at the speed the horses were coming up the avenue.

Q. I mean when you first noticed it?

20 A. I saw the man coming along, and I thought myself he was driving the team—if it was my team he shouldn't drive them.

Q. They were trotting, were they not?

A. I believe one of those horses was on a run.

Q. You are not sure about that?

A. One of them was running and the other was trotting.

Q. You are not sure about it, are you?

A. Yes sir; I am sure; one of those horses were

30 running.

Q. Did they run all the time up the hill?

A. They had to run; the man was beating them; one of them was on a dead run and the other was trotting.

Q. One was on a dead run?

A. Running as hard as he could.

Q. And the other was trotting?

A. Yes, sir.

Q. Up the hill?

40 A. There is no hill there.

Q. No hill?

A. I don't think so; I drive over there every day.

Q. Is it level?

A. Yes, sir.

Q. How far were you away from that wagon when you first saw them?

A. About a block, I should judge.

Q. Do you know how far that is up there—how big the blocks are? 10

Q. Well, the blocks are not very long, sir.

Q. Three or four hundred feet?

A. It might be; I never measured them.

Q. And how soon after you saw the wagon did it turn into Parker street?

A. That is pretty hard to answer.

Q. How near Parker street was it when it started to turn?

A. How near Parker street?

Q. Yes. 20

A. It was almost opposite Parker street.

The Court: When it first started to turn?

Mr. Osborne: Yes, sir.

Q. (By the Court.) When it started to turn towards Parker street?

A. Yes, sir.

Q. (By Mr. Osborne.) Almost opposite Parker street? 30

A. Yes, sir.

Q. It turned diagonally across the track, did it not?

The Court: Slanting.

A. Right across the avenue, in that shape (illustrating.)

Q. (By the Court.) Well, how is that, on a slant or—

A. Yes, sir; on a side. 40

Q. (By Mr. Osborne.) On a slant, eh?

A. Yes, sir.

Q. It had been coming in the car track, in the upbound car track?

A. Yes.

Q. How far was the car from it when it started to cross, when it turned to cross the track on which your car was coming?

Q. What is the question, please?

10 The Court: How far from what?

Mr. Osborne: From the wagon. The previous question referred to the wagon.

Q. How far was your car, the car on which you were riding, from the wagon when you saw the wagon, if you did see it, turn to cross the track upon which your car was coming?

A. We were just beyond Parker street a few
20 feet.

Q. Almost down to Parker street?

A. Yes, sir.

Q. Then you were a little more than the width of Parker street?

A. We weren't below Parker; no, sir; we hadn't gotten to Parker street.

Q. How many feet away from Parker street cross-walk?

A. I should judge we were probably ten feet
30 away from Parker street.

Q. And how far away was the wagon below the lower crosswalk. You say it hadn't reached Parker street yet?

Mr. Bernhard: Pardon me! He said the car hadn't reached Parker street.

Mr. Osborne: In answer to a previous question he said that the wagon when it started to turn did so just before it reached
40 Parker street.

Q. Isn't that right?

A. No, sir; I told you it turned horizontally to Parker Street.

Q. But how far from Parker Street?

A. Almost opposite.

Q. Almost opposite?

A. Yes, sir.

Q. Had it reached the lower crosswalk? A. The wagon had reached the lower crosswalk.

Q. Was it on the lower crosswalk? 10

A. Yes, about the crosswalk.

Q. How wide is Parker street between the upper and lower crosswalks?

A. I think there is nearly a hundred feet there between crosswalks.

Q. Then you say that when you saw the wagon turn from the track upon which it had been coming up Bloomfield avenue across the other track towards Parker street, that you were about 110 feet away on the car—that the car was about 110 feet away? 20

A. I said the wagon was about this side of the crosswalk.

Q. You said it was about on the crosswalk?

A. The crosswalk is below Parker street.

Q. Yes, the lower crosswalk. You said the car hadn't reached—it was about 10 feet from, and had not reached the upper crosswalk, and that the street was a hundred feet wide. That would be 110 feet, would it not? 30

Mr. Bernhard: He did not say that.

The Court: He said the thought it was a hundred feet between the crosswalks.

Mr. Osborne: Between the crosswalks, exactly.

Q. So that that would make your car about 110 feet from the wagon when it started to cross into Parker street; isn't that so? 40

Mr. Bernhard: Objected to as calling for the conclusion of the witness.

The Court: Well, it is the witness's observation as to a matter of fact, is it not? Is it not simply his recollection. The objection is overruled.

Counsel for defendant North Jersey Street Railway Company prays an exception to this ruling of the Court.

10

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

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

(Question read.)

A. The wagon was this side of that crosswalk; the crosswalk was below Parker street.

20 Q. The crosswalk, then, is below Parker street?

A. The lower one is below Parker.

Q. Now, tell me, if you can, how far the car upon which you were coming down was from the wagon when the wagon started to turn to cross the track on which the car was coming?

A. How far?

Q. How many feet?

A. I don't understand that question.

Q. (Question read.)

30 A. We were about at the upper corner of Parker street.

Q. If you have any conception of the feet, tell me how many feet you were over it-

A. I don't know how many feet it is.

Q. Then why don't you say so? You say there was a hundred feet distance between the crosswalks?

A. I should judge.

Q. Well, you know something about feet, then. do you not?

40

A. Yes, sir; I do.

Q. Then how many feet were you from the wagon?

A. Was I from the wagon, or the car?

Q. The car.

The Court: The motorman, say, the front of the car.

A. Well, I suppose it was pretty nearly a hundred feet when he started to cross there. 10

CROSS-EXAMINATION BY MR. SAMUEL KALISCH:

Q. You say the car was about a hundred feet, and the horses then were turned towards Parker street, were they?

A. They began to turn in to the cross-walk.

Q. You could see that from where you were standing?

A. Yes, sir. 20

Q. There was nothing between the motorman and the wagon that prevented him from seeing it, was there?

A. No, sir.

Q. And you knew at that time—that is, you saw at that time that the horses' heads were turned in a direction to cross the tracks to go into Parker street, didn't you?

A. Yes, sir.

Q. Now, the car caught the edge of this wagon, did it not, as it just cleared the track? 30

A. I think—

Q. Not what you think.

A. On oath, the wagon hit the car.

Q. The car and the wagon came together, but was it not the edge of the wagon?

A. It was the tailboard of the wagon and the boxes; the boxes is what done the damage to the car.

Q. The boxes were strung along on the tail- 40

board?

A, The boxes were tied on the tailboard.

Q. And what part of the front of the car did the boxes hit?

A. The right hand side of the car.

Q. Smashed in the windows?

A. Yes, sir.

Q. Well, he car stopped almost instantaneously, did it not?

10 A. The car stopped almost instantly.

Q. Well, did it go halfway over the lower crossing?

A. It went about halfway—the car was standing about halfway between Parker street and Bloomfield avenue; half of it was on Parker.

Q. It had crossed the crossing below, had it?

A. No, sir; it hadn't got below the crossing.

Q. Well, had it got apast Parker street?

A. Half of the car was past Parker street.

20 Q. How long was this car?

A. I should judge the car—about 60 feet.

Q. About 60 feet, and you were standing halfway down the car?

A. The runboard; yes, sir.

Q. Did you get off the car?

A. Yes, sir.

Q. You said somebody got a glass of water from a drugstore; do you know for whom?

30 A. At a hotel or—

Q. For whom?

A. For a lady that was on the car.

Q. Did you see a lady taken off the car?

A. I did.

Q. Who took her off the car?

A. I can't remember.

Q. Did you recognize her here in court?

A. No, sir; I didn't.

Q. Do you know where they took that lady to?

40 A. I do know after the car started where they took her to.

Q. Well, did you see where they took her to?
A. After they took her off the car, I did, yes.
Q. Where did they take her to?
A. In a drug store.
Q. Who took her?
A. I can't tell you.
Q. More than one man?
A. I disremember.
Q. You do not remember that?
A. No. 10

Q. Now, your attention was called to the fact that these horses and the wagon were on the track going up Bloomfield avenue; you saw that?

A. I saw them; yes, sir.

Q. And the manner in which they were being driven; you saw that, too?

A. Yes, sir.

Q. They were driven in such a manner that you had your attention called to it?

A. I had my attention called to it. 20

Q. That is, it called your attention to it?

A. The manner in which the horses were going did; yes, sir.

Q. And that was all the way up the avenue?

A. As far as I could see them.

Q. Well, about how many blocks?

A. Well, I noticed this team about a block away.

Q. Were they between the two tracks or were they in the opposite track? 30

A. They were on the track going towards Bloomfield.

Q. Well, that would be the track next to the one that you were coming down on?

A. Yes, sir.

Q. Was the wagon entirely in the tracks, or were the horses and wagon between the two tracks?

A. The wagon was in the track, as near as I could see. 40

Q. Didn't you have some fear in reference to the horses being so near your car?

A. No, sir.

Q. You did not at all?

A. No, sir.

Q. You saw them prancing about, you said?

A. No, sir.

Q. Didn't you see them running?

A. Yes, sir.

10 Q. What was there about their running that was unusual?

A. What was unusual about it was a team of horses being driven to a heavy wagon that way; a man who drives horses or owns them himself don't care to see them abused, and that is why my attention was called to it.

Q. You thought the wagon was too heavy for the horses, is that right?

A. Well, for to be going at such a rate of speed;
20 yes, sir,

Q. It was a big, heavy wagon?

A. Yes, sir.

Q. And he was going up a slight grade, was he?

A. Well, I don't believe there is a grade there, as near as I can—

Q. Well, I do not know; maybe there is not; I only know from what some of the witnesses state. Now, at the time your car was coming down and you were a hundred feet away from the wagon and
30 the horses had been turned, how was your car going?

A. The car was going toward Newark at a very slow rate of speed, I should say.

Q. A slow rate, eh?

A. Yes, sir.

Q. Now, you say, though, that when the wagon and the car came together the motorman on the car stopped the car instantly. How do you know that?

40 A. How do I know that?

Q. Yes.

A. I was on the car and I know about how quick it stopped.

Q. Well, did you see him stop?

A. I didn't see the motorman stop the car.

Q. You did not see him stop the car?

A. No I wasn't on the front with the motorman.

Q. You simply felt the stoppage of the car?

A. There was no jar there to feel; the car simply stopped. 10

Q. There had not been any gradual slacking down, had there?

A. No, sir; just ordinarily, the same as you would if you stopped to let a passenger off.

Q. So that the car, from the time you were at the upper crossing and saw the horses and wagon and they had turned—there was no difference in the speed of the car from the speed at which it was going at the time the car and the wagon collided, was there? 20

A. There was no difference.

Q. No difference?

A. No.

Q. But right after the collision there was an immediate stoppage, was there, or as near as could be?

A. The car stopped in about ten feet, ten or twelve or fifteen feet.

Q. Then the motorman put on the brake to stop the car; is that right? 30

A. Well, I could not say what the motorman done.

Q. Well, that is the first time you felt there was a change in the movement of the car?

A. No, the first change I felt was when the boxes hit the car.

Q. But not before that?

A. No.

Q. The car moved along all the time up to the time of the collision at the same rate of speed, did 40

it not?

A. Yes, sir.

Q. There was no slackening down?

A. No.

Q. No change whatever?

A. Not in the speed of the car.

Q. No, that is what I am speaking of. You are sure of that?

A. Yes, sir.

10

RE-DIRECT EXAMINATION BY MR. BERNHARD:

Q. I understood you to say, Mr. Drury, that when the horses got on the track on which your car was moving your car was then about 30 feet away. Did you say that or did I misunderstand you?

A. The car was 30 feet away?

Q. Yes.

20

A. When they started to cross the track?

Q. When they got on the track on which your car was moving, your car was 30 feet away. Did I misunderstand you?

A. The car was about that distance about the time they started to cross the track,

Mr. Bernhard: That is what I understood you to say. That is all.

30

BY THE COURT:

Q. Mr. Drury, I understood you to say that the driver was beating his team. Did you say so?

A. Yes, sir.

Q. What was he beating them with?

A. With the lines.

Q. Well, do you mean slapping the lines or slapping the ends of the lines?

A. With the ends of the lines.

Q. You said the wagon had to make another

40

turn to get into Parker street. Just describe what

you mean by "another turn."

A. Well, in coming up Bloomfield avenue he undertook to cross in front of the car, and in order to get across and get into Parker street in front of that car he cut the car off; and then had to make a short turn into Parker street, which, I believe, caused the collision, and swung the wagon so that the rear end of that wagon hit the front end of the car.

Q. Now, you say it broke windows; what windows? 10

A. There is a window on the front of the car, I suppose, but they are for storms, you know, to protect the motorman, as near as I could find.

Q. Was that in the middle or on the side?

A. That is on the side of the car in the front.

Q. Which side?

A. The right hand side of the car.

Q. Was that window broken?

A. That window was broken. 20

Q. Was any other window broken?

A. No, sir; I don't think so.

Q. Then you do not mean that more than one window was broken?

A. No, sir; only that window.

Adjourned until to-morrow, Thursday, October 4, 1906, at ten o'clock A. M.

30

SECOND DAY.

Thursday, October 4, 1906.

Met pursuant to adjournment.

Present, counsel as before stated.

HENRY TOZER, sworn in behalf of defendant, North Jersey Street Railway Company:

Witness: You will have to talk pretty 40

loud, gentlemen, because I am awful hard of hearing.

DIRECT EXAMINATION BY MR. BERNHARD:

Q. You are a motorman, Mr. Tozer?

A. Sir?

Q. You are a motorman?

A. Yes, sir; I was at that time, not now.

10 Q. Where are you employed now?

A. On the same division; on Montclair division.

Q. How long had you been a motorman up to the time of the accident?

A. How long? Well, I have been street railroading since 1870—haven't done nothing else.

Q. For thirty years?

A. I have been on Bloomfield division twenty-eight years.

Q. Do you remember an accident at Parker

20 street on June 8, 1905?

A. Yes, sir.

Q. Just tell us what happened there, will you?

A. Yes, sir.

Q. Go ahead and tell us what happened.

A. Well, the way it happened, I was coming along on my low speed, and this wagon coming along on full speed; I noticed him a block off before I got to Parker street, and just as I got onto the other crossing, the up crossing, this side—

30 well, I was ten feet in Parker street—he just whipped his horses with the lines and cut me off, and I had to reverse the car. Why, if I hadn't I would have hit his horses.

Q. When he crossed in front of you how far away was your car?

A. Why, it wasn't twenty foot.

Q. How far did you go after you struck him?

A. Who, me?

Q. Yes.

40 A. I didn't go two foot.

Q. When he crossed in front of you what did you do?

A. Why, I reversed my car right away.

Q. And within what distance did you bring your car to a standstill?

A. What is that?

Q. Within what distance did you bring your car to a stop?

A. I didn't go two foot after I struck the wagon.

Q. When you saw him coming up Bloomfield avenue on what part of the road was he? 10

A. He was on his own side, the right hand side, toward the gutter.

Q. Do you remember what time of day this happened?

A. It happened about half-past two.

Q. What happened to the car?

A. What?

Q. What happened to the car?

A. To the car? 20

A. Yes.

A. Why, the window was broke, a light of glass.

Q. Which window was that?

A. Why, on the right hand side.

Q. Of what part of the car?

A. The vestibule.

Q. What became of the horses and wagon after that happened?

A. Why, they went a hundred foot in Parker street before he stopped—before he could stop. 30

Q. Why?

A. Why, he was going so fast.

CROSS-EXAMINATION BY MR. SAMUEL KALISCH:

Q. Where was your car at the time when you first saw the horses and wagon—

A. When I first saw him?

Q. Yes. Coming up Bloomfield avenue?

A. I was a block from Parker street; I was 40

about Highland avenue when I first saw him coming down the avenue.

Q. That is a long block, is it not?

A. No, it aint a very long block.

Q. Well, how many feet would you say there were in that block?

A. In that block?

Q. Yes.

A. I suppose about three hundred feet.

10 Q. Now, at that time when you saw the horses and wagon the horses were going very fast, were they not?

A. Yes, sir.

Q. When you first saw them?

A. When I first saw them; that is what made me notice them.

Q. And at what rate of speed were you going with your car?

A. Well, I was going on my first running point;
20 I suppose about five or six miles an hour.

Q. And within what distance could you have stopped your car at that point?

A. What?

Q. In what distance could you have stopped your car running at that rate of speed?

A. Well, I wasn't over twenty feet when I first see the horses going across.

A. No. I ask you, running at five or six miles
30 an hour, or being on the first running point, as you call it—

A. I had it on the first running point.

Q. —within what distance could you have stopped your car, if necessary?

A. Did I?

Q. Could you?

A. Could I?

Q. Yes.

A. Well, if I had a good car I could stop it in that time, within twenty foot.

40 Q. Within twenty feet?

A. Yes, sir.

Q. Did you continue at a greater rate of speed than you were running when you first saw the wagon?

A. I wasn't running no faster.

Q. And you continued that rate of speed until you came within how many feet of the wagon—within how many feet of the horses?

A. How many feet?

Q. Yes, you continued the same rate of speed until within what distance? 10

A. When the wagon crossed me?

Q. Yes.

A. Well, I was about twenty feet when I first see the horses go across the up-track and I reversed my car right away.

Q. And your car stopped within how many feet after you reversed it?

A. Why it didn't go no more than twenty foot.

Q. It did not go over twenty feet? 20

A. No, sir.

Q. Well, if it did not go over twenty feet, how came you to hit the wagon?

A. How could I?

Q. Yes.

Mr. Bernhard: No, how came you?

Q. How came you?

A. Well, I said the wagon was twenty foot when I seen it, when I see the horses go across, and when I hit the wagon the car didn't go two foot. 30

Q. So, then, I understand you to say that as soon as you saw the horses turn to go across the track—

A. Yes, sir.

Q, —you began to slow down your car?

A. Yes, sir.

Q. And reversed your power?

A. Yes, sir. 40

Q. And put on your brake?

A. Yes, sir.

Q. So that at the time when the impact came you stopped the car within two feet, is that what you say?

A. No, I wasn't twenty foot, I said twenty foot when I first see the horses go over the track; and I stopped the car in that length of time, sir.

The Court: I would like to clear up one thing, Mr. Kalisch, as we go along. I un-
10 derstood the witness to say that he changed his rate of speed when he saw the horses cross the track they were nearest to, not the track he was on.

Mr. Kalisch: Yes, I will find that out.

Q. You say when you saw the horses turn to cross—

A. Yes, sir.

Q. —you then were twenty feet—

20 A. Twenty foot from the horses; yes, sir.

Q. —from the point where the wagon was struck?

A. No, sir; from the horses.

Q. From the horses?

A. Yes, sir.

Q. Now, were the horses, do you mean to say, crossing the first track or the track upon which you were?

A. What is that?

30 Q. You mean to say upon the first track or upon the track you were on?

A. No, they was on the other track.

Q. They had not crossed the other track yet?

A. They hadn't crossed my track when I reversed the car.

Q. Then when you speak of the twenty feet you mean the twenty feet was between where you were standing and the horses, where they had crossed the other track?

40 A. No, as they was coming across the track.

Q. Which track, the first or the second track?

A. The up-track; yes, sir; they was coming across the up-track.

Q. Then your car was twenty feet away?

A. Yes, sir.

Q. They had not reached the track upon which your car was, then?

A. Sir?

Q. They had not reached the track upon which your car was being propelled? 10

A. No, sir; not when I reversed the car.

Q. And in which part of the roadway was the wagon, on the track, on the up-track, or was it in the roadway proper?

A. No, sir; it was in the roadway.

Q. It was in the roadway?

A. Yes, sir.

Q. Now, of course, when the driver turned his horses, did he not first pull in his horses before he started to cross the track? 20

A. No, sir; he licked the horses with the lines.

Q. Did he turn them abruptly over the track?

A. No, sir.

Q. Well, how did he turn?

A. He went right in ahead of me.

Q. Diagonally?

A. Yes, sir.

Q. Do you mean in this direction? (indicating.)

A. Cut right across here to the right (illustrating). 30

Q. Did he go in a slanting direction or did he go directly across?

A. Right across, sir.

Q. Not in a slanting direction?

A. No, sir; he cut me off between the curb and the—

Q. No, but I mean before he turned the horses to go into Parker street, did he not make a partial turn to go into Parker street? 40

A. No, sir; he was coming down on the road-

side, and when I got to Parker street he turned his horses right short.

Q. Then his wagon must have been slewed around in the roadway, was it not?

A. Turned right around short; it was as much as he could do to get in between the curbstone and my car.

Q. Well, you did not hit the horses?

A. No, sir.

10 Q. But you hit the rear end of the wagon, did you not?

A. The boxes struck the car.

Q. Did you see where your car struck the wagon?

A. I could see where the boxes scraped the post. The boxes was stuck on the tailboard.

Q. That was the rear end of the wagon?

A. Yes, sir.

Q. The very end of the wagon?

20 A. Yes, sir; the boxes was on the tailboard.

Q. Had you reached the lower crossing of Parker street, the crossing towards Newark, when this collision happened?

A. How far?

Q. Had you reached that place before you struck the wagon?

A. Well I was a block off when I seen him.

Q. No, you do not understand. I will put it this 30 way: You struck the wagon as it crossed your track, did you not—the very hind part of the wagon?

A. Yes, sir; when he was going across the down track.

Q. Now, was that in the middle of Parker street —would you say that was the centre of Parker street?

A. Where he struck me?

Q. Yes.

A. No, sir; right up close to the curb.

40 Q. Which curb?

A. The lower side of Parker street?

Q. The lower side of Parker street?

A. Yes, sir.

Q. How far was the front of your car then, when the collision occurred, from the lower crossing of Parker street?

A. I was on this side of the upper crossing on Parker street—my car was on the inside of the upper crossing on Parker street before he crossed me, 10

Q. But I mean at the time you struck him, how far was the front of your car from the lower crossing of Parker street?

A. My car from the lower crossing?

Q. Yes.

A. Well, it couldn't have been over eight or ten feet, I guess, from the lower crossing.

Q. Well, was part of your car on Bloomfield avenue below Parker street and a part of your car on a line with Parker street? 20

A. No, sir; it about laid on Parker street.

Q. The whole of your car?

A. Well, I suppose the hind end might have been on the lower crossing.

Q. You think the hind end of your car was on the lower crossing?

A. Yes, sir; it might have been on the lower crossing, because I know there wasn't over—

> The Court: Let us see which way he counts the ten feet. Was the car ten feet beyond the lower crossing or ten feet short of it? 30

Q. Was the front of your car ten feet in front of the lower crossing or ten feet beyond the lower crossing—the front of your car?

A. The front of he car?

Q. Yes.

A. On the lower crossing—it wasn't ten feet. 40

Q. Well, how far was it?

A, About six or eight feet, maybe.

Q. Below the lower crossing or above it?

A. Below the lower crossing—no, the lower—well, the crossing this way, I mean.

Q. The crossing towards Newark?

A. Yes, towards Newark.

Q. Had you reached the lower crossing at all before you struck the wagon?

A. No, sir.

10 Q. Then it was after you reached the lower crossing that you struck the wagon?

Mr. Bernhard: You do not mean to ask that queston, because he said he had not yet reached the lower crossing.

Mr. Kalisch: No, he didn't, did he.

Mr. Bernhard: Yes, I so understood him.

Mr. Kalisch: Well, I will withdraw that,
20 then.

CROSS-EXAMINATION BY MR. OSBORNE:

Q. How wide is Parker street?

A. How wide is it? Well, I couldn' say how wide it is; I never measured it.

Q. A hundred feet?

A. Oh, no; Oh, no; it has got to be a big street to be a hundred feet.

30 Mr. Bernhard: Well, now, you have answered the question.

Q. Had you reached the upper crossing—that is, the crossing towrads Bloomfield—when you saw the wagon turn to cross the track?

A. I was over the crossing when I first saw the horses turn across, my platform was 'way over.

Q. And you say you were about twenty feet from the wagon at that time?

A. Yes, sir; when I first see the horses go across
40 the track.

Q. And how soon after that did you first put on your brakes?

A. How soon? Well, just as quick as I see the horses.

RE-DIRECT EXAMINATION BY MR. BERNHARD:

Q. Do not answer this question until you see whether there is an objection or not. Now listen. If your car had continued at the rate of speed it was going when you first saw the horses turn across, what part of the horses or wagon would have been struck?

10

Mr. Kalisch: Well, now, I think that is a matter of speculation.

The Court: It is a matter of opinion. I sustain the objection.

(Question withdrawn).

20

FRANK SCHABATKA, sworn in behalf of defendant North Jersey Street Railway Company:

DIRECT EXAMINATION BY MR. BERNHARD:

Q. Mr. Schabatka, where were you employed on the 8th day of June, 1905?

30

A. North Jersey Street Railway Company.

Q. And how long had you been employed by them?

A. About eleven years.

Q. What were you doing on that day?

A. Conductor of a trolley car.

Q. And who was your motorman?

A. Henry Tozer.

Q. In the early part of the afternoon of that day which way was your car going?

40

A. In the early part of the afternoon?

(Question withdrawn.)

Q. Do you know where Parker Street is?

A. Yes, sir.

Q. Did anything occur at Parker Street with reference to your car?

A. Yes, a collision.

Q. What kind of a car were you operating, or were you on?

A. An open car.

Q. And what occurred?

A. Why, the rear end of a wagon struck against the front of the car.

Q. Which way was your car proceeding at that time?

A. It was going east.

Q. By that you mean towards Newark?

A. Yes, sir.

Q. Did you see the accident?

A. Well, I saw the wagon strike the car or the car strike the wagon, either one of the two, I don't know which.

Q. Where did you stand at that time?

A. On the running board.

Q. What part of the running board?

A. Towards the rear of the car; that is, the other side of the middle of the car, somewheres on the running board.

Q. Do you recall whether you stood in front of Mr. Drury or whether Mr. Drury stood in front of you?

A. That I don't remember, where Mr. Drury stood.

Q. Do you know how wide Parker Street is?

A. No, I don't know how wide it is; I think it is about sixty feet, looking at it.

Q. You have travelled up and down that road a good many times, have you?

A. A good many years; yes, sir.

Q. Can you tell us at Parker Street, in the direction in which the car was going, whether or not there is any grade on Bloomfield Avenue?

A. Yes, sir; there is a down grade towards Bloomfield.

Q. And at the time the accident occurred was your car going down grade or up grade?

A. Up grade.

Q. In the direction of Parker Street, in which the wagon was going, was the wagon going up or down grade? 10

A. Well, you know, I didn't see the wagon.

Q. Well, assuming that the wagon came from towards Newark?

A. Well, if it came from Newark it was coming down grade.

Q. Do you know how wide Parker Street is?

A. Not exactly.

Q. Do not say if you do not know.

20

Mr. Kalisch: He said about sixty feet.

The Court: You have already asked him that, and he estimated it as sixty feet.

Q. You never measured it?

A. No, never measured it.

Q. That is your best judgment you are giving us?

A. That is just judgment—a guess at it, that is all. 30

Q. Do you know at what part of Parker Street the collision happened?

A. Why, yes.

Q. Well, what part?

A. At the eastern part; that is, towards Newark.

Q. About how far from the eastern corner?

A. I should say about fifteen feet from the corner.

Q. What became of the horses and wagon after 40

the collision?

A. Why, they ran down Parker Street.

Q. How far?

A. Well, they passed the vacant lot and they passed three houses and they stopped at the fourth one.

Q. When you saw them going down Parker Street at what speed were the horses going?

A. They were running about as fast as they
10 could run.

Q. Did anything happen to the wagon or anything on the wagon?

A. The bread boxes was knocked off.

Q. Where were they knocked off?

A. One at the corner and one fell off a little beyond the corner.

Q. What, if anything, is there at the corner of Bloomfield Avenue and Parker Street with reference to the road that goes in from Bloomfield Ave-
20 nue to Parker Street? Do you understand the question?

A. In the gutter?

Q. Yes. Is there a crosswalk there, do you know?

A. There is a crosswalk, a crosswalk that runs into Parker Street.

Q. As Parker Street comes down into Bloomfield Avenue what is the grade of Parker Street? Do you know whether it is level or not?

30 A. I think the grade runs towards Bloomfield Avenue.

Q. Where were the horses at the time you first saw them?

A. They were just crossing the front of the car, coming into Parker Street.

Q. And at that time how fast were they going?

A. Well, ,they were going as fast as they could, I thought.

40 Q. What, if anything, was broken about the car?

A. What was broken about the car?

Q. Yes?

A. Well, the vestibule window.

Q. Which vestibule window?

A. On the right of the motorman.

Q. When you first saw the horses crossing the track, how far away was the car at that time?

A. About fifteen feet.

Q. And at that time how far did the car go after the collision? 10

A. Well, the car when it stopped was on the crosswalk.

Q. What kind of a crash was there, if there was any crash?

A. Well, there was a noise from the breaking of the glass; that is all I felt.

Q. Did you feel any jar?

A. No, only just merely the gripping of the shoes on the wheels, as I thought.

Q. Do you know whether the vestibule window 20 was up or down—the one that was broken?

A. It was up when it was broken.

BY THE COURT:

Q. That is, it was closed?

A. It was closed, the glass was up.

BY MR. BERNHARD:

Q. Do you know what part of the horses or wagon struck the vestibule window? 30

A. Well, the bread boxes struck it.

Q. And how far did they extend out of the wagon?

A. Well, I guess they filled up the whole tailboard, as far as I seen.

CROSS-EXAMINATION BY MR. SAMUEL KALISCH:

Q. You were on the running board? 40

A. Yes, sir.

Q. And this was an open car?

A. Yes, sir.

Q. On what part of the running board were you?

A. Towards the rear of the car.

Q. Any other passengers on the running board?

A. There was two or three.

Q. And the running board was on the right hand side of the car coming down, was it not?

10 A. Yes, sir.

Q. And the horses were on the left hand side of the road going up, were they not?

A. I suppose they were; that is where I saw them.

Q. Now, where was your car when you first saw the horses, at what particular place on the road?

A. Well, where I was on the car was just about at Parker Street.

20 Q. Then you did not see the horses before you saw them on the crossing, did you?

A. No, sir.

Q. You did not see them coming up the road?

A. No, sir.

Q. You could not see at what speed they were coming up the road?

A. No, sir.

Q. And you never observed them until they got on the very track upon which the car was?

30 A. Yes, sir.

Q. Now, at the time they got on the track on which the car was, the front of the car was then 15 feet away, was it?

A. That is what I think, as near as I can remember now, about that distance.

Q. Now, there was part of that wagon struck, or the boxes on the wagon struck, as you say—the rear end, was it not?

A. Yes, sir.

40 Q. And did the horses go fast?

A. They went fast.

Q. You saw the boxes fall off, did you not?

A. Yes.

Q. Did they make any noise in falling?

A. They made a noise—the boxes did; yes, sir.

Q. And when the reverse was put on the car, you felt that, did you not?

A. Well, that is what caused me to look to see what was the matter, when the car struck it.

Q. What effect did the reverse have on that car? 10

A. Well, I felt the car stop, and I looked to see what was the cause, and, of course, I saw the horses coming across the front of the car.

Q. Then when you felt the reverse had the horses cleared the track upon which the car was?

A. Not quite.

Q. But nearly?

A. Yes, nearly.

Q. So, then, when you felt the reverse the horses had nearly cleared the track upon which your car 20 was moving?

A. Yes.

Q. Then how far did your car go after it struck —after the collision?

A. How far did it go?

Q. Yes?

A. Well, it stopped on the crosswalk.

Q. Well, which part of the car stopped on the crosswalk?

A. Well, I think it was the front part of the car 30 on the crosswalk; that is, the forewheels.

Q. That is, the front of the car, where the motorman is—

A. Yes, sir.

Q. —was on the lower crosswalk?

A. On the crossing towards Newark.

Q. Then the hind end of the car was how far away from the west crossing?

A. How far the other crossing was from the car? 40

Q. Yes?

A. I didn't notice.

Q. How long was your car?

A. I don't know how long the car was.

Q. Have you any idea how many feet long it was?

A. No, I haven't.

Q. Was it one of those long cars?

A. Yes, sir; a twelve-seated car.

CROSS-EXAMINATION BY MR. OSBORNE:

10

Q. When you first saw these horses had you reached the upper crossing; that is, the crossing towards Bloomfield?

A. Had the car reached there? Yes, the car had passed that crossing.

Q. How far past had it gone—the front of the car?

A. I was at that crossing myself, or near it.

Q. You were there, were you?

20 A. And I was at the rear part of the car, between the middle and the rear part somewheres, on the running board.

Q. When you first felt the reverse had you reached the crossing?

A. Yes, sir.

Q. And how far had you gotten on the crossing?

A. That I couldn't say, how far I had gotten when I first noticed, for I looked down the car to see—

30

The Court: Which crossing are you now speaking of?

Mr. Osborne: The upper crossing.

Witness: The crossing towards Bloomfield.

Q. The first of the two crossings that you reached?

A. Yes, we had reached there.

40 Q. You had reached there?

A. Yes, sir.

Q. How long a time elapsed between your looking and seeing the horses and your feeling the reverse?

A. How long a time? I couldn't say, but only a few seconds.

Q. At the time you looked, you say, the horses had nearly cleared the track?

A. Nearly, yes.

Q. You mean the wagon, too, or just the horses? 10

A. No, not the wagon; the horses.

Q. In what direction, were they going with relation to the car?

A. They were going that way, across the front of it, into Parker Street (indicating).

Q. Diagonally, cat-a-cornered?

A. Well, almost straight.

Q. Almost straight?

A. Almost straight.

Q. They were going fast? 20

A. Fast.

Q. How fast was the car going?

Q. How fast was the car going just then?

Q. Yes?

A. It was stopping.

Q. It was stopping?

A. Yes, sir.

Q. How fast had it been going before you felt the reverse?

A. Well, it was on normal speed. 30

Q. What do you mean by "normal speed"?

A. I couldn't say just how fast; I suppose six or seven miles an hour.

Q. How long have you been a railroad man?

A. Twelve years.

Q. And you cannot tell us how fast the car goes?

A. I can't tell you exactly to within half a mile how the car was going.

Q. Well, tell us within half a mile?

A. Six or seven miles an hour. 40

Q. Within what distance can a car of that type be stopped when going six or seven miles an hour?

Mr. Bernhard: Objected to.

The Court: That question is rather too general. Within what distance could this car have been stopped, with the load it had and under the conditions that then existed?

10 Mr. Bernhard: I will make another objection to that question; because it does not appear that this man has ever stopped a car or ever run a car. He is a conductor, he doesn't know anything about a car.

The Court: If he cannot answer the question he can say so. I suppose a conductor has some experience and has made some observation.

20 Witness: A conductor never motors a car.

BY THE COURT:

Q. In the first place, is it a question that you are able to answer?

A. I don't think so.

The Court: If you cannot answer it, that ends it.

30 BY MR. OSBORNE:

Q. You have, in your experience of six or seven years as a conductor, observed cars stopping many thousands of times, have you not?

Mr. Bernard: Objected to as immaterial.

A. Yes.

The Court: I will allow it.

Counsel for defendant North Jersey

40 Street Railway Company prays an excep-

tion to this ruling of the Court.

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

FREDERIC ADAMS,
Circuit Court Judge.
[Seal.]

Q. And you have given them the signal to stop thousands of times yourself?

A. Yes. 10

Q. And you have observed the distance they went after you have given the signal to stop thousands of times, have you not?

Counsel for defendant North Jersey Street Railway Company objects to the question as immaterial.

Objection overruled.

Counsel for defendant North Jersey Street Railway Company prays an exception to this ruling of the Court. 20

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

FREDERIC ADAMS,
Circuit Court Judge.
[Seal.]

A. Yes. 30

Q. Can't you tell me within what distance that car, under the conditions existing at that time, could have been stopped?

A. Can't I tell you in what distance that car could have been stopped?

Q. That morning?

A. If I was a motorman and ran the car I could.

Q. I ask you now if you can tell me from your experience as a conductor?

Counsel for defendant North Jersey 40

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Street Railway Company objects to the question as immaterial and incompetent.

The Court: The question is whether he can tell. I will allow that question.

Counsel for defendant North Jersey Street Railway Company prays an exception to this ruling of the Court.

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

FREDERIC ADAMS,
Circuit Court Judge.
[Seal.]

Q. Answer the question?
A. I can't tell.

Mr. Bernhard: I just want to ask one or two questions that I forgot.

20 RE-DIRECT EXAMINATION BY MR. BERNHARD:

Q. Where are the old Bloomfield Avenue car barns with reference to Parker Street?
A. Just two blocks west.
Q. In June, 1905, do you recall whether or not the old Bloomfield Avenue car barns were in use?
A. They stored cars there.
Q. Do you remember where your last stop was
30 previous to your stop at Parker Street?
A. The last stop I remember was at Lake Street.
Q. Is that some distance from Parker Street?
A. That is two blocks. That was the last one I remember.

BY THE COURT:

Q. Mr. Schabatka, you have spoken of the lower crossing at Parker Street; that is the crossing nearer to Newark. How is that crossing with ref-
40 erence to the lower curb line of Parker Street?

A. You mean does it run straight across?

Q. Parker Street, I suppose, is a curbed street?

A. A curbed street.

Q. It has a curb on each side?

A. Yes, sir.

Q. One of those curbs is on the side towards Newark?

A. Yes, sir.

Q. Now, there is a crossing, which you call a Parker Street crossing, on the side towards Newark. How far is that crosswalk over Bloomfield Avenue from the curb line of Parker Street towards Newark? 10

A. Towards Newark?

O. Yes, the lower curb line and the lower crossing, how far are they apart, measuring down the avenue, if you know? If you do not know, say so?

A. I don't know exactly; they are not together; they are apart, but I couldn't say just how far.

Q. The crossing is further east than the curb-line? 20

A. The crossing is further towards Newark, I think, but I don't know how far.

BY MR. BERNHARD:

Q. If you started to cross the lower crosswalk at Bloomfield Avenue and Parker Street and kept in a straight line, where would it bring you, how far from the curb line? Do you know that? It is practically the same question put in another form? 30

The Court: He says he cannot answer that.

Q. Is there a sidewalk on Parker Street?

A. A sidewalk on Parker Street.

Q. Where would that line of walking bring you, on the sidewalk or in the gutter or where?

A. It would bring you on the sidewalk. 40

TIMOTHY O'DONAHUE, sworn in behalf of defendant North Jersey Street Railway Company:

DIRECT EXAMINATION BY MR. BERNHARD:

Q. Mr. O'Donahue, where do you live?

A. In Montclair, sir.

Q. On the 8th day of June, 1905, where were
10 you employed?

A. I was riding on a trolley car that day down to Newark.

Q. Where did you work?

A. I run a grocery store up in Montclair.

Q. Where were you going in the trolley cor?

A. I was coming down to Newark; I was on my way to Connecticut, Winsted, Connecticut.

Q. What kind of a trolley car were you on, an open or closed car?

20 A. One of the open cars.

Q. In what part of the car did you sit?

A. I think it was the fourth seat from the front.

Q. Looking towards the front?

A. Yes, looking right ahead.

Q. Do you know where Parker Street is?

A. Well, I remember the street where the—I know the street where the accident was.

Q. Did you see the accident?

30 A. Yes, sir.

Q. Now, just talk a little louder, and tell us just exactly what you saw, Mr. O'Donahue, please?

A. Well, I was riding on the car, and I saw this bread wagon coming towards the car as they came to Parker Street.

BY THE COURT:

Q. What is that last sentence?

A. As we came towards Parker Street I could
40 see it in the distance.

BY MR. BERNHARD:

Q. Where was the bread wagon when you saw it in the distance?

A. About half a block away, I should think.

Q. On what part of the road?

A. On the left of the road.

Q. But going towards Bloomfield, on what part of the road?

A. It would be on the right hand; it would be on the right going towards Bloomfield. 10

Q. What was the speed that the horses were going at?

A. They were going lively.

Q. And as they got close to Parker Street, what, if anything, did they do?

A. Well, they swung right across the track.

Q. And when they swung across the track and got into the track on which the car was moving, how far away was the car? Do you understand that question? 20

A. Yes.

Q. Well, tell us how far?

A. About the width of this room, I should think.

Q. How fast was the car going at that time?

A. Well, the car was kind of going slow at the time, not very fast.

Q. And what happened between the car and the wagon?

A. What happened? A collision. 30

Q. How far did the car go after the collision?

A. It almost came to a standstill before it.

Q. And how far did the horses and wagon go after the collision?

A. They drove along Parker Street; they were going along Parker Street quite a distance.

Q. How far up Parker Street did they go?

A. About twice the length of this room, to my idea.

Q. Did anything happen to anything on the 40

wagon?

A. Well, I saw boxes drop off on the street.

Q. How many boxes?

A. Two boxes I saw.

Q. At the time the wagon and the car came in collision what kind of a jar, if any, was there?

A. There was no jar that I could feel.

Q. Previous to the time that you—just before you got to Parker Street, how fast was the car going then?

10

A. I thought it was going pretty slow all the time, not very fast.

Q. Do you recall where the car made the last stop before it reached Parker Street?

A. I couldn't say, really.

Q. Did you see anyone knocked down in the car?

A. No, sir. After the collision I saw this lady. I stood up after the car stopped and I heard the glass fall, I stood up to look out, and I saw this lady right in front of me like she was asleep; she was unconscious, anyhow.

20

BY MR. HARRY KALISCH:

Q. What was that?

A. She seemed to be unconscious or asleep; I don't know.

BY MR. BERNHARD:

Q. After the wagon and car were in collision and you saw the horses going up Parker Street, how fast were they going?

30

A. They drove pretty fast all the ways down.

CROSS-EXAMINATION BY MR. SAMUEL KALISCH:

Q. Mr. O'Donahue, you sat in the body of the car?

A. Yes, the fourth seat from the front.

Q. And your attention was called to the horses before the collision?

40

A. Yes, sir; I see them in the distance.

Q. But your attention was not called to the speed of the car before the collision, was it?

A. Well, I thought it was going pretty slow, because I was in a hurry to catch the train for New York, and I thought it was going slow, anyhow.

Q. Well, it was not going as fast as a railroad train?

A. No, sir.

Q. Now, you say, as I understand, that at the time you saw the horses cross the track, the track upon which the car and the wagon came together, the front of the car was away from the horses about the width of this room? 10

A. Yes.

Q. Wasn't it more than the width of this room?

A. Well, it seemed to be about that to me.

Q. You are sure, about the width of this room?

A. Well, that is what I judge from observation.

Q. The front of the car—that when the horses were on the track upon which your car was going— 20

A. Yes, sir.

Q. —the car in which you were sitting—

A. Yes, sir.

Q. —you then saw the horses, I suppose, on the track in front of the car?

A. I saw the horses coming towards the car.

Q. When you saw the horses—I understood you to say, that when you saw the horses upon the track on which the wagon was struck the front of the car in which you were sitting was away from the place about the width of this room? 30

A. That is what I should think, yes.

Q. Is that right?

A. Yes, that is what I should judge from where I sat.

Q. Yes, I want to be correctly understood and I want you to understand the question. I understand that the wagon was struck on the track 40

upon which this car was coming down; that is right, is it not—your car came in collision with this wagon?

A. With the end of the wagon; yes, sir.

Q. Now, when you saw the horses on this very track on which the wagon was struck, do you mean to say that the car was no further away than the width of this room?

A. Well, when I saw them swinging across the
10 track that time.

Q. Where were the horses then?

A. Swinging on the track.

Q. On which the car was?

A. Swinging across the track.

Q. Crossing the track?

A. Yes, sir.

Q. On which your car was coming down?

A. Crossing from the side.

Q. On the track upon which your car was com-
20 ing down?

A. Well, yes, that is where the collision occurred; on the track I was coming down.

Q. Did the horses fly through the air?

A. No, sir; they got on the track.

Q. Did they get on the track upon which your car was coming down?

A. They were on the track—

Q. Were they on the track your car was on
30 when the collision occurred?

A. They must be.

Q. Well, did you see them?

A. I saw them cross the track, certainly.

Q. Did you see them on the track on which your car was coming down?

A. I saw hem cross the track, certainly.

O. Well, why don't you answer my question?

A. I did answer it dozens of times; several times I answered your question.

Q. What makes you think the car was only then
40 the distance of this room away from the horses?

A. Because I saw it.

Q. Were you excited?

A. Well, I was a little when I saw them cross the track, I did get excited.

Q. But your car was going slow?

A. But, then, the same time, I didn't think they had time to avoid a collision.

Q. You didn't think the width of this room was time to allow the horses, going pretty fast, and your car, going pretty slow, you say? 10

A. Yes, sir.

Q. You mean to say that you were frightened at that time?

A. Well, I had an idea that there was going to be a collision, all right.

Q. You had an idea?

A. Yes, sir.

Q. So that from where you sat, when you saw the horses on the track, you then had an idea that there would be a collision unless something would be done? 20

A. When I saw them swinging I got kind of scared, of course.

Q. Did you watch the motorman?

A. No, sir; I didn't see the motorman at all.

Q. Well, what did the car do?

A. I noticed the car slack up.

Q. When did it slack up?

A. As soon as the horses started to swing.

Q. Did the car stop? 30

A. Yes, sir.

Q. How far did the car go after the horses swung on the track?

A. Not very far.

Q. Well, tell us how far?

A. Well, I couldn't say.

Q. But you told us how far the car was away from the horses when you first saw them. Now, tell us how far the car went when it slowed up? 40

A. I couldn't say.

Q. Was it he width of this room? Did it go as far as the width of this room?
A. Well, I guess it did.

Mr. Kalisch: I would like to have the measurement of this room.

The Court: I can tell you what it is. I took the precaution to have the room measured the other day in both dimensions.

10 Mr. Bernhard: What is it, 28 feet?

The Court: 28 feet and 10 inches.

CROSS-EXAMINATION BY MR. OSBORNE:

Q. Where was the car in which you were sitting with relation to the upper crosswalk, when you first saw the wagon, how far from it?
A. From the upper crosswalk in Parker Street?

20 The Court: Yes, the crosswalk nearer to Bloomfield.

Witness: Well, ask that question again.

Q. (Question read.)
A. Oh, about a block away, I should think.
Q. Where was the wagon when you saw it first?
A. It was coming up from Newark, up towards Bloomfield.
Q. In the other car track?
30 A. On the other car track.
Q. It was not in the roadway, then?
A. On the other side.
Q. Well, was it in the other car track or was it in the roadway?
A. In the roadway, outside of the track.
Q. Outside of the track?
A. Yes, sir.
Q. Well, why do you say it was in the other car track?
40 A. Well, outside of the track I was on.

Q. Well, why don't you answer my question?

A. Well, I didn't understand you.

Q. Where was your car with relation to that upper crosswalk when you saw the wagon swing across the track?

A. It wasn't over the width of this room.

Q. Listen to the question. Where was the car in which you were sitting with relation to the upper crosswalk—how far from it was it—when you saw the wagon swing in? 10

A. I couldn't say that.

Q. You do not know?

A. I couldn't say.

Q. Don't you know?

A. I couldn't say positively how far.

Q. Do you know how fast the horses were going?

A. They were going pretty lively.

Q. Were they trotting?

A. Trotting; yes, sir.

Q. Both of them? 20

A. Yes, sir.

ELMER CAMPBELL, sworn in behalf of defendant North Jersey Street Railway Company:

DIRECT EXAMINATION BY MR. BERNHARD:

Q. Where do you live, Mr. Campbell? 30

A. Bloomfield, Woodside Place.

Q. On June 8, 1905, where were you employed?

A. In the Ordinary Department of the Metropolitan Life Insurance Company.

Q. Do you recall an accident at Parker Street and Bloomfield Avenue?

A. I do.

Q. Did you see it?

A. Yes, sir.

Q. Where were you when you saw it? 40

A. I had ahold of the first round of the car, standing on the running board.

Q. How far from the motorman?

A. About two feet; that is, from the side; I wasn't alongside of the motorman; I was right opposite this—

Q. What kind of an accident did you see there?

A. Shall I tell my story?

Q. Yes, tell your own story?

10 A. Well, it crossed the crossing, the crossing towards Bloomfield; we crossed that crossing—that is, I had myself—about ten foot, probably fifteen foot, and just at that instant the team started to turn; he pulled short, as short as he possibly could, and about ten foot before we reached the opposite crossing—that is, the crossing towards Newark—the car come to a perfect standstill; that is, the wagon had crossed and the fender of the car was under the tailboard of this wagon. There

20 wouldn't have been a collision if the hind wheels of this baker wagon hadn't slid; the wagon slid, and by its sliding, at the speed that the horses were going, the boxes went right through the window. Of course, the fender, as I said, was right under the tailboard of the wagon.

Q. You say "the speed that the horses were going;" what do you mean by that?

A. Well, the horses were on a dead run; they

30 had to be, because the man had hold of the lines with his left hand, and he had hold of the ends of the lines—I guess you all understand what I mean —and was whipping them with his other hand.

Q. Where did they go after they crossed in front of the car?

A. They was going into Parker Street.

Q. Now, how far into Parker Street did they go?

A. Well, I should judge probably from a hundred to one hundred and fifty feet.

Q. As the end of the wagon swung, what hap-

40 pened to the wagon or anything on the wagon?

A. The car was to a perfect standstill before there was any crash at all; then by the wagon sliding, under the short turn that the man took, naturally, those boxes on the tailboard crashed right up against the front window of the car on the right hand side of the motorman.

Q. What kind of a crash was that, Mr. Campbell?

A. Well, just simply the breaking of the glass, which you can all imagine. 10

Q. How close was that to where you were standing?

A. Well, I was right to it. It is a wonder I didn't get hit with the glass.

Q. Where were the horses when you first saw them?

A. Coming up Bloomfield Avenue towards Bloomfield.

Q. And at that time how fast were they going?

A. Well, I didn't notice them—I didn't notice the horses; I couldn't say how fast they was going until the man pulled the left line to steer into Parker Street; I didn't pay any attention to it. 20

CROSS-EXAMINATION BY MR. SAMUEL KALISCH:

Q. You could not see the horses until he did cross?

A. I didn't see them until he started to turn—pulled the left line. 30

Q. So that you do not know how he came up the avenue?

A. No, sir; I do not.

Q. The first thing you saw was when the horses were across the other track, is that it?

A. When he started to cross the opposite track.

Q. And at that time your car was where?

A. Our car was about fifteen feet into Parker Street.

Q. About fifteen feet, the front of the car?

A. Yes, sir.

Q. How far did the car go—Oh, you say it stopped within ten feet—

A. It stopped within fifteen feet of the crossing towards Newark.

Q. Did you make a measurement?

A. No, sir; but I judged it last night going home.

Q. Who told you to do it?

10 A. No one at all.

Q. Then you had to guess where the car stood, did you not?

A. Well, I remember the accident.

Q. But you simply took your observation? It is over a year ago that this happened?

A. No, I knew; because a man in one of the seats in the rear of me went in the hotel, and we hadn't got to the curb yet, nowhere near it.

Q. I am not asking you about another man; I 20 am asking you about your own knowledge. Did you know that this happened over a year ago?

A. Yes, sir.

Q. And do you mean to say that you could locate the exact spot where the fender of that car was?

A. No, sir; I cannot; I just guessed at it.

Q. And do you know how long the fender of that car was?

A. I could judge about.

30 Q. Do you know, have you got any actual knowledge?

A. Not positively.

Q. Do you know where the end of that fender was?

A. Yes, sir.

Q. Just the exact spot?

A. No, sir; not just exact, that I can say.

Q. You being on the running-board of that car, 40 your view was cut off by the vestibule, was it not?

A. What is that?

Q. You being on the running-board of that car, standing a few feet below where the platform is, your view of the other side of the road was cut off by the vestibule, was it not?

A. No, sir; it was not; there was glass in front of me.

Q. Weren't you standing on the running-board?

A. Yes, sir.

Q. How much lower than the body of the car is the running-board? 10

A. About a foot.

Q. You mean to say that you could see on the other side of the roadway?

A. Yes, sir.

Q. Standing two feet behind the vestibule?

A. I was standing with the same glass that the lady bumped her head up against, or the board, just even; I had ahold of the first round of the car.

Q. Then how was it that you did not observe these horses before they got on the track? 20

A. Well, because I had no idea—it hadn't anything to do with me—until I see them turning, and then I imagined it was going to happen.

Q. Then you first saw them on the track?

A. No, sir; on the roadway, when he was about to turn.

Q. That is when you knew the horses were turning, is that it?

A. Yes, sir.

30

CROSS-EXAMINATION BY MR. OSBORNE

Q. Are the tracks in the centre of the road or on each side of the road?

A. The tracks are in the centre of the road.

Q. And was this wagon when you saw it coming up on the other track?

A. No, sir; if I remember right, I think one wheel was about on the outside track; that is, the one track.

Q. Which wheel, the right or the left wheel? 40

A. The left wheel of the wagon.

Q. Was on the outer track?

A. About on the outer track, yes.

Q. Going towards Bloomfield?

A. Going towards Bloomfield.

Q. And when he started to turn had he reached the lower cross-walk; that is, the cross-walk towards Newark?

A. Just about.

10 Q. Just about?

A. Just about.

Q. Well, as his horses came over the track upon which the car upon which you were riding was coming down, were they on this cross-walk?

A. No, sir; they were not?

Q. Were they above it or below it?

A. Towards Blomfield.

Q. They were towards Bloomfield?

A. Yes, sir.

20 Q. That is to say, nearer your car?

A. Yes, sir; about ten feet from the crossing.

Q. How far was the front of the car from the horses when they were crossing the track?

The Court: Which track?

Mr. Osborne: The track on which the car was coming.

A. I should judge probably fifteen or twenty

30 feet; that is, when the horses were on the track.

Q. Do you know how wide this track is?

A. Not exactly.

Q. I do not mean the track; I mean Parker Street.

A. About—I would be willing to swear it is not over forty feet, at the most.

Q. Forty feet?

A. Yes, sir.

BY THE COURT:

40 Q. How do you measure that, between the curbs

or between the property lines?

A. Counting the sidewalks.

BY MR. OSBORNE:

Q. Were those horses trotting?

A. They were under a dead run, both of them.

Q. Both running?

A. Yes, sir.

Q. Not trotting?

A. No, sir. 10

Q. You are sure about that?

A. Sure, positive.

BY THE COURT:

Q. Mr. Campbell, you have spoken of a crash. The crash was produced by what?

A. By the wagon, the hind wheels of the wagon sliding. Of course, he made such a short turn—

Q. No, I do not mean that. What was it that crashed? 20

A. The window of the car; the bread boxes on the tailboard of the wagon collided with the window of the car.

Q. Up to that time had any part of the wagon or its load struck any part of the car?

A. No, sir.

Q. When the crash came where were the four wheels of the wagon?

A. Why the wheels were just beyond the car.

Q. In the first place, where were the front wheels? 30

A. The front wheels were about on the side—well, about on the sidewalk, I should judge, of Bloomfield Avenue; that is, on Parker Street; in the centre of the road or on the side of the road, up near the saloon.

Q. Let me see if I understand you.

A. The front wheels.

Q. What part of what street were the front wheels on? 40

A. Well, they were on Parker Street.

Q. They had crossed the line of Bloomfield avenue onto Parker sreet?

A. No, sir; they were on Bloomfield avenue—

Q. No, on what part of what street were the front wheels of the wagon?

A. They were in the gutter ot Bloomfield Avenue facing Parker Street.

Q. In the gutter?

10 A. Yes, sir.

Q. That is, both of them or one of them?

A. Both of the front wheels.

Q. Both in the gutter?

A. Yes, sir.

Q. Where where the horses?

A. The horses were about in the gutter, I guess, probably a little bit on Parker Street.

Q. Where were the hind wheels?

A. The hind wheels were just past the fender,

20 and that is all. The car was standing.

Q. Were any of the wheels then on the track on which the car was?

A. No, sir.

CHARLES F. UNDERWOOD, sworn in behalf of defendant North Jersey Street Railway Company:

30 DIRECT EXAMINATION BY MR. BERNHARD:

Q. Did you make an examination of Mrs. Daggett, the plaintiff in this case?

A. I did.

Q. When?

A. The 9th day of June.

Q. Where?

A. At the City Hospital.

40 Q. And what kind of an examination did you

make?

A. I examined her head for bruises, and found none.

Q. Why did you examine her head for bruises?

A. Because she said she had hit her head.

Q. Did she tell you that?

A. Yes.

Q. Go ahead.

A. I found no bruises; in fact, I found no evidences—external evidences of injury. She appeared to be very nervous and hysterical. That is about all I could determine about her. 10

BY THE COURT:

Q. When was this examination, Doctor?

A. That was the 9th of June, the day following the accident, in the morning.

Q. 1905?

A. 1905.

BY MR. BERNHARD: 20

Q. Could you tell, Doctor, from that examination, how long this hysterical nervousness was likely to last?

A. Well, no; I suppose until after the scare or the shock was over. I thought it was entirely simply a nervous shock. There were not any bruises.

Q. I understand you to say, then, that you assume that anything she was suffering from was a sort of a shock? 30

A. Shock, causing a hysterical condition—pupils dilated.

Q. And that that did not come from any injury?

A. No, I couldn't detect any injury whatever.

CROSS-EXAMINATION BY MR. SAMUEL KALISCH:

Q. You saw nothing, then, Doctor?

A. I saw no bruises or cuts or anything on the head, and there was no swelling. 40

Q. And that was the only time you saw her?

A. That was the only time.

GEORGE B. GALE, sworn in behalf of defendant North Jersey Street Railway Company:

DIRECT EXAMINATION BY MR. BERNHARD:

10 Q. Dr. Gale, did you make an examination of Mrs. Daggett?

A. I did.

Q. Do you recall when you made it?

A. About June 15, 1905.

Q. Do you recall where you made it?

A. At her home; she was in bed at the time.

Q. Did you have a conversation with Mrs. Daggett?

20 A. Yes.

Q. As a result of that conversation what kind of an examination did you make?

A. Well, I went there with Dr. Hendry, by appointment.

Q. Do you know who Dr. Hendry was?

A. He was her family physician or attending physician at that time. I went there by appointment with him, and I first got a history of the accident and also of her feelings. She stated that she

30 was in the hospial, and was unconscious for some ime. We examined her very carefully—

Mr. Samuel Kalisch: Speak of your examination, Doctor; do not speak of anybody else.

Witness: I examined her very carefully, and couldn't find a mark or discoloration of any kind.

Q. Was there anything said about an injury to

40 the head?

A. Yes.

Q. Did you make an examination of the head?

A. I did.

Q. And did you find any injury?

A. There was no injury to the head.

Q. What did you find as a result of that examination?

A. I recognized her as a nervous woman, and she was somewhat hysterical at that time.

Q. What could that hysterical condition have come from? 10

A. I suspected some pelvic trouble—that is, some organic womb trouble or some trouble with some other organ in the pelvic cavity—because there was nothing in the injury to account for the symptoms that she had. I made a vaginal examination.

Q. And what did you find as a result of that examination?

A. I found the womb about two and a half times its normal size; she had a transverse laceration—that is, the mouth of the womb was torn transversely; the womb was bent upon itself, and tipped backwards against the rectum, and it was displaced about two and a half inches downwards. The symptoms that she complained of are typical with those of that condition. 20

Q. Now, I want to ask you one question while I think of it. Could there be concussion without contact? 30

A. No.

Q. Could there be concussion of sufficient force to cause an hysteriacl condition without some outward indication of that concussion.

A. There could not, especially on that part of the head; that is, the occipital bone is fortified stronger than any other part of the skull, just because, probably, of the liability of people falling backwards.

Q. Was there any examination made of this wo- 40

man's spine at that time?

A. Yes.

Q. Did you make an examination of the spine?

A. I did. She had no spinal trouble whatever.

Q. Could the subsequent conditions of the spine come from the condition which you discovered when you made your vaginal examinations?

A. When I made the vaginal examination?

Q. Yes?

10 A. Why, the conditions of the spinal cord couldn't come from it, if that is what is claimed, but pain in the back—spinal conditions—might be caused by it. That is the great cause for backache and headache that almost the majority of women suffer with.

Q. You have answered my question. I was going to ask you: Could nervous headaches come from that condition?

A. That is the usual cause.

20 Q. As the result of that examination, Doctor, what have you to say as to the woman's condition at that time?

A. Why, I assumed at that time that her nervous condition was probably exaggerated or aggravated by the fright.

Q. Was there any physical injury to any part of that woman's system of which you could find an indication?

A. None whatever.

30 CROSS-EXAMINATION BY MR. SAMUEL KALISCH:

Q. Doctor, you just came from the other courtroom, did you not?

A. Yes, sir.

Q. Were you a witness there in a trolley case?

A. Yes, sir.

Q. How many times are you a witness in a trolley case?

40 A. Well, quite frequently.

Q. Your business is to examine persons who are injured by the trolley company?

A. That is part of it.

Q. Are you paid by them a salary or so much a case?

A. So much a case.

Q. How many cases have you examined since you examined the plaintiff?

A. I don't know.

Q. As many as a hundred? 10

A. Probably.

Q. Do you keep a memorandum?

A. Yes.

Q. And you mark it down and hand it in to the company, do you?

A. Yes.

Q. You found nothing the matter with this woman at all, did you?

A. Yes, I did.

Q. You saw nothing the matter with her spine? 20

A. There was nothing the matter with the spine.

Q. But you say something could have happened to the spine later on, do you?

A. Oh, of course it could.

Q. What is that?

A. Of course it could.

Q. You mean to say that these symptoms could have developed later on?

A. She had symptoms then that were not those of a healthy woman. 30

Q. She had symptoms of shock, did she?

A. No.

Q. That had all gone, eh?

A. If there had been any, yes.

BY MR. BERNHARD:

Q. You are engaged in the general practice of medicine, Doctor, are you?

A. I am.

DEFENDANT NORTH JERSEY STREET RAILWAY COMPANY RESTS. 40

NELLIE DAGGETT, recalled in behalf of plaintiffs, in rebuttal:

DIRECT EXAMINATION BY MR. SAMUEL KALISCH:

Q. Mrs. Daggett, did Dr. Gale examine your womb at all?

A. No, sir.

Q. Did he make any examination whatever of your womb?

10

Mr. Bernhard: I object.

A. Not of the womb.

Mr. Bernhard: There is no such evidence.

Mr. Kalisch: Yes, he said he examined her womb.

Mr. Bernhard: All right, go ahead.

20

Q. What was the only thing he examined when he came there?

A. He examined my back and up the back passage—the spine.

CROSS-EXAMINATION BY MR. BERNHARD:

Q. You were in bed?

A. Yes.

Q. He did make an examination of your spine?

30

A. Yes, the back passage.

Q. He made an examination of the back passage, up your spine?

A. Yes.

Q. Examined the pupils of your eye?

A. He examined my eyes by putting his hands over them.

Q. And asked you to hold out your tongue?

A. Yes, I held out my tongue.

Mr. Kalisch: That is not cross-examination. I object to this.

40

The Court: I hold that it is not cross-examination.

Mr. Bernhard: I will make her my own witness for this purpose, then.

Mr. Kalisch: You cannot do that; you cannot rebut your own doctor. I object to that, your Honor.

The Court: Do you wish to re-open your defence? 10

Mr. Bernhard: I do for this purpose.

The Court: I suppose this is discretionary with the Court. I will allow you to cross-examine, but not to re-open your case.

Q. Did he examine the reflexes of your—did he ask you to hold out your hand?

A. No, sir; he did not.

Q. Was Dr. Hendry present in the room at the time? 20

A. He was.

Q. Who else?

A. That is all, the two doctors.

Q. What time was it?

A. I don't remember.

Q. Did Dr. Hendry make an examination?

A. No, sir; he did not.

Q. Did you tell Dr. Gale what the trouble was?

A. No, I did not. 30

Q. You had no conversation with him at all?

A. I told him that I was in an accident and hurt my head and my back.

Q. Did he examine your back and head?

A. He pressed on the back on my head, yes.

PLAINTIFFS REST.

. DEFENDANTS REST.

Mr. Osborne: I desire to renew my mo- 40

tion for a non-suit at this time, on the ground that there has been no change in the case, so far as we are concerned, that affects our liability in any way or affects the plaintiffs in proving their case.

The Court: You renew your motion to non-suit?

Mr. Osborne: Yes, sir.

10 The Court: This is substantially a motion to direct a verdict. I think there is evidence to go to the jury, and I therefore deny your application.

Counsel for defendant E. A. Williams prays an exception to this ruling of the Court.

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

20 FREDERIC ADAMS,
Circuit Court Judge.
(Seal.)

Mr. Osborne: Will it be necessary for me to make a motion to direct a verdict, or will that be included in the original motion? If not, I will, in order to be on the safe side, now ask the Court to direct a verdict on the same grounds.

30 The Court: I deny that motion.

Counsel for defendant E. A. Williams prays an exception to this ruling of the Court.

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

FREDERIC ADAMS,
Circuit Court Judge.
40 (Seal.)

Mr. Bernhard: I move for the direction of a verdict on behalf of the North Jersey Street Railway Company, on the ground that there has been no negligence proved on the part of the defendant company, and, on the second ground, that it appears affirmatively by the evidence of the plaintiffs' physician that whatever injury Mrs. Daggett sustained was the result of shock, for which there can be no recovery. 10

The Court: I think there is evidence to go to the jury on both questions, and therefore deny your application.

Counsel for defendant North Jersey Street Railway Company prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly. 20

FREDERIC ADAMS,
Circuit Court Judge.
(Seal.)

Defendant North Jersey Street Railway Company calls on plaintiffs for an opening.

Mr. Samuel Kalisch opens to the jury.

Mr. Osborne sums up in behalf of defendant E. A. Williams. 30

Mr. Bernhard sums up in behalf of defendant North Jersey Street Railway Company.

Mr. Samuel Kalisch sums up for plaintiffs.

40

Court's Charge.

The Court charges the jury as follows:

ADAMS, J.:

Gentlemen of the Jury:—A common feature of a case of this kind is the question whether the plaintiff was negligent. That question does not in this case arise. There was no negligence on the part of the plaintiff, neither negligence solely pro-
10 ductive of the collision or contributory to it. Mrs. Daggett was a passenger, quietly seated in a car on which she had a right to ride, and had no agency in producing the occurrence which it is claimed led to her injury. The question, therefore, is as to the negligence of the agents of either or both of the defendants. Both are corporations, and each is a principal, and, like any other principal, is responsible for the acts of an agent acting within the scope of that agent's authority.

20 The collision occurred in broad daylight, within the corporate limits of the City of Newark, in a straight avenue, at or near the southeast corner of that avenue and an intersecting street named Parker Street. There were no obstructions to the view of the two men who were charged with the management of these two vehicles. The motorman could see the driver and his wagon; the driver could see the motorman and his car; and each did see the other.

30 It is conceivable that this collision occurred without the fault of either the motorman or the driver of the wagon, but it is certainly possible, and you may think that it is probable, that one or the other or both of them did not exercise due care, and that for that reason the accident occurred. The problem for you is to put the blame where it belongs. Was the motorman negligent? Was the driver negligent? Were they both negligent? Was neither negligent? What is the duty that rested
40 upon them? For negligence, which is a negative

term and describes a negative thing, is the failure to come up to a standard of duty which the law imposes. What was that duty? When a person is exercising a right in a place where other persons also are exercising rights, the obligation is to use reasonable care to avoid conflicting with the rights of others.

Now, what was the situation? The driver wished to cross from the right-hand roadway or the right-hand track on Bloomfield avenue, or from a position a little intermediate between those two places, to the left-hand side of Bloomfield avenue, in order that he might enter Parker street. He had a right to cross the avenue and enter Parker street, and he had a right to go fast, provided the position of the car was such when the driver of the wagon crossed that he, the driver, could fairly assume that if the motorman had the car under control and was observant, the car, which of course could not leave its track, would not collide with him. Various elements enter into this question: the speed of the two vehicles, the distance that the two vehicles were apart, the distance to Parker street. When do you think it became manifest to the motorman that the driver of the wagon intended to cross his track? Evidently, I suppose you would say, when the driver began to turn toward his, the driver's left, either from the right-hand roadway or from the right-hand track, or from a position between the two. The driver of the wagon by thus turning gave notice to the motorman of his intention to cross, and asserted by conduct a claim to a right to cross. If by following the line of motion that he thus chose to take the driver of the wagon gave notice to the motorman of his intention to cross the east-bound track in time for the motorman to avoid a collision, the motorman was bound to respect the driver's right thus asserted, and if the motorman failed to do so —that is, if he failed to avoid a collision when he

could, if he had been careful—the fault was that of the motorman, and the driver was without fault. (I have not used the expression "right of way," because I do not altogether like it, but I have, I think, expressed the idea that underlies that term so far as it is appropriate to a situation in the public highway, where there are no absolute rights, but where rights are relative.) On the other hand, if the motorman was careful in the manage-
10 ment of his car, and had not time enough to avoid a collision after he saw that danger was impending, because the wagon cut across him too closely, the motorman was free from negligence and the driver was in fault. But both may have been negligent, and that situation would be presented by reckless conduct on the part of both—by conduct attributable both to the motorman and to the driver inconsistent with the reasonable care that was obligatory upon each.

20 There is one fature of the case to which I will call your attention. Some evidence has been given that the wagon slid, and so struck the car, and all the evidence is that the part which did strike the car was the boxes which stood on the horizontal tailboard. Does it appear to you that the wagon had actually crossed the track? One of the witnesses, in response to a question by the Court, described where the wheels were; he said the wagon had got across the track and the collision was
30 caused by the wagon sliding. Suppose that this was the case. Who was responsible for the vehicles getting so near together that the sliding of the wagon would cause a collision? It is not to be supposed that it slid a great way. Was that situation produced by the reckless speed of the driver in his attempt to turn short at a high rate of speed; or was it produced by the motorman proceeding too rapidly or without arresting the speed of his car when he might have done so, and so
40 putting the driver of the wagon in a position of

danger when his position otherwise would have been one of safety; or was it a combination of the negligence of both of these persons?

If you conclude that there was no negligence by either defendant, for which either defendant is legally accountable, then you will find a verdict for the defendants. If you conclude that one of the defendants was guilty of negligence solely productive of the accident, your verdict should be in favor of the plaintiffs against that defendant. For instance, if you conclude that the motorman was careless and that the driver was not, you will find in that case in favor of the plaintiffs against the traction company, but as to the E. A. Williams Company you will find for the defendant, because your conclusion would be that no negligence had been established as to that defendant. On the other hand, if you conclude that the motorman exercised all the care that was incumbent on him, and that the accident was caused by the careless, negligent, reckless conduct of the driver, then you will find a verdict in favor of the defendant the traction company and against the Williams company. If you find that they were both guilty of negligence you will find a verdict against both.

Now as to the subjectof damages. Damages cannot ber ecovered in this state for a mere scare. The law in other states is different. As I understand the law in this state, if a person is sitting quietly in a parlor reading a newspaper, and a ten-pound stone is hurled through the window and falls at the feet of that person, without any of the glass striking him or her, however injurious the consequences might be of so sudden a shock and fright, there is no legal remedy, but if there is even the slightest physical injury, the law lays hold of that as the basis of the suit, and the plaintiff if he sues the wrong-doer, can recover not only for the physical injury, but for the fright or shock that accompanies it. So that a question that underlies the

plaintiff's right to recover at all is the quesion whether Mrs. Daggett suffered any physical injury or whether it was a mere fright. If it was a mere fright she cannot recover. If you think that her head, in consequence of the negligence of either or both of these defendants was injured from being thrown back, as she testified, and violently struck against some portion of the car—or, indeed, against anything else—so that she became unconscious, as detailed by the testimony, why, then, that is a physical injury which establishes a right to recover, if the wrong-doing of either defendant occasioned it; and for the nervous shock, if there was a nervous shock, that followed it she is entitled to be compensated; for her pain and suffering, for her physical disability, past present and probable in the future. In considering this you will exclude the consequences of another accident that occurred later, which was followed by a partial paralysis, by symptoms of numbness, and which, no doubt, or very probably, may have something to do with her present physical condition. For the consequences, as detailed by the evidence, of this collision manifested prior to the second accident, she is entitled to compensation, if she is entitled to recover, and for those consequences separated from the consequences of the other accident, down to the present time, and in the future, if they exist up to the present time and are likely to exist in the future. Dr. Post, Mrs. Daggett's physician, testified that she was much improved; he thought she had recovered about one-third, as he described it, up to June, 1906, when she was hurt again; he thought it would take probably another year for her to recover full health; and no permanent injury is claimed in this suit to have been occasioned.

In this case you have to find two verdicts, if you find for the plaintiffs; one in favor of the wife, who is the person injured physically, if anybody

was injured physically and the other in favor of the husband, whose right to recover, of course, depends on the right of his wife. If she has no right to recover, he has no right to recover. What she has a right to recover for I have already told you. What he has a right to recover for is his outlay, as the husband is bound to support his wife; and the items of this outlay, I presume, have been correctly stated to you. You remember the testimony. He is entitled also to be compensated for the loss of his wife's society, of the comfort and advantage of the marital relation, so far as the consequences of this accident have interfered with it, of her domestic services and duty as his wife. 10

I have been requested by both of the defendants to charge certain propositions.

On behalf of the trolley company I am asked to charge a proposition, No. 1, which I decline to charge except as I have charged it.

I charge the second request: "That if the jury believe that the condition of the plaintiff was the result of a shock and unaccompanied by any physical injury, the plaintiff is not entitled to recover." That I have already told you. 20

I charge the third request: "That the burden of proof of the plaintiff's injury is upon the plaintiff."

On behalf of the defendant, the E. A. Williams Company, I have been presented with a number of requests. 30

I charge the first: "The burden is not upon the defendant, the E. A. Williams Company, to show that it exercised a high degre of care."

Secondly: "The defendant E. A. Williams Company was only bound to exercise a reasonable degree of care, under the circumstances." That, I think, is good law.

The third request I deny except as I have charged. 40

The fourth I charge: "The driver of the wagon had the right to assume that the motorman had his car under proper control."

Again, I am asked to charge, and I refuse to charge: "The burden of proving negligence on the part of the defendant E. A. Williams Company is upon the plaintiff." I charge instead that the case having now closed and all the evidence on both sides having gone in, it is all, without any ref-
10 erence to which side it comes from, so much material for your judgment to act upon, and that in order that you should be satisfied that the E. A. Williams Company was negligent it must appear to you, from all the evidence in the case, that that conclusion is established.

I deny the next request, the sixth.

I charge the seventh request, with some modification: "If the wagon had acquired the right of way, as the Court has explained that matter, and
20 the motorman could have stopped his car by the exercise of due care, and failed to do so, there is no liability on the part of the defendant E. A. Williams Company." I have already told you that.

I am requested to charge this: "If the injury, if any there was, was caused by the sudden stopping of the car to avoid a collision with the wagon, if the motorman failed to exercise due care in stopping the car in time, there can be no recovery
30 against the defendant E. A. Williams Company." I will modify that, and instead I simply say this: That if the accident occurred solely in consequence of the want of care of the motorman, your verdict should be in favor of the E. A. Williams Company.

The jury retires.

Mr. Osborne: Will your Honor allow me an exception to that part of your Honor's
40 charge where you say that if he, meaning

the motorman, saw the danger impending he should have done certain things? I think that it should be "if he saw or should have seen the danger impending."

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

FREDERIC ADAMS,
Circuit Court Judge.
(Seal.)

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Mr. Osborne: Also, to that part of your Honor's charge where you failed to charge as to the degree of care due from the two defendants or each of the defendants to the plaintiff.

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

FREDERIC ADAMS,
Circuit Court Judge.
(Seal.)

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Mr. Osborne: Also to that part of your Honor's charge in which you refer to the marital relations between the plaintiffs—there being no evidence in the case that they were interfered with in any way.

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

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FREDERIC ADAMS,
Circuit Court Judge.
(Seal.)

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REQUESTS AND EXCEPTIONS OF DEFENDANT NORTH JERSEY STREET RAILWAY COMPANY.

The defendant North Jersey Street Railway Company respectfully requests the Court to charge:

(1) That if the motorman of the car suddenly found himself, without any negligence on his part, in a dangerous position, and exercised a quick effort to stop the car, thereby causing the plaintiff's head to be thrown back, the company would not be liable.

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Denied except as charged.

Counsel for defendant North Jersey Street Railway Company prays an exception to the refusal of the Court to charge specifically as requested.

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

FREDERIC ADAMS,
Circuit Court Judge.
(Seal.)

(2) That if the jury believe that the condition of the plaintiff was the result of a shock and unaccompanied by any physical injury, the plaintiff is not entitled to recover.

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Charged.

(3) That the burden of proof of the plaintiff's injury is upon the plaintiff.

Charged.

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REQUESTS AND EXCEPTIONS OF DEFENDANT E. A. WILLIAMS.

Counsel for defendant E. A. Williams requests the Court to charge:

(1) The burden is not upon the defendant E. A. Williams Company to show that it exercised a high degree of care.

Charged.

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(2) The defendant E. A. Williams Company was only bound to exercise a reasonable degree of care, under the circumstances.

Charged

(3) The vehicle reaching the point of crossing first, going at the rate of speed at which they were approaching the crossing, had the right of way.

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Denied except as charged.

Counsel for defendant E. A. Williams Company prays an exception to the refusal of the Court to charge specifically as requested.

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

FREDERIC ADAMS,
Circuit Court Judge.
(Seal.)

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(4) The driver of the wagon had the right to assume that the motorman had his car under proper control.

Charged.

(5) The burden of proving negligence on the part of the defendant E. A. Williams Company is upon the plaintiff.

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Denied.

Counsel for defendant E. A. Williams Company prays an exception to the refusal of the Court to charge as requested.

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

FREDERIC ADAMS,
Circuit Court Judge.
(Seal.)

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(6) The same degree of care was not due from the E. A. Williams Company to the plaintiff as from the traction company to the plaintiff.

Denied.

Counsel for defendant E. A. Williams prays an exception to the refusal of the Court to charge as requested.

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

FREDERIC ADAMS,
Circuit Court Judge.
(Seal.)

(7) If the motorman could have stopped his car by the exercise of due care, and failed to do so there is no liability on the part of the defendant E. A. Williams Company.

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Charged in substance.

Counsel for defendant E. A. Williams prays an exception to the refusal of the Court to charge specifically as requested.

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

FREDERIC ADAMS,
Circuit Court Judge.

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(Seal.)

(8) If the injury, if any there was, was caused by the sudden stopping of the car to avoid a collision with the wagon, if the motorman failed to exercise due care in stopping the car in time, there can be no recovery against the defendant E. A. Williams Company.

Denied except as charged.

Counsel for defendant E. A. Williams prays an exception to the refusal of the Court to charge specifically as requested.

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

FREDERIC ADAMS,
Circuit Court Judge.
(Seal.)

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NEW JERSEY COURT OF ERRORS AND APPEALS.

JOHN DAGGETT and NELLIE DAGGETT, his wife, Plaintiffs, Defendants in Error, vs. NORTH JERSEY STREET RAILWAY Co. and E. A. WILLIAMS, Defendants, Plaintiffs in Error.	In Tort. In Error.

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Afterwards, to wit, on the twentieth day of December, one thousand nine hundred and six, in the Court of Errors and Appeals for the State of New
20 Jersey, comes North Jersey Street Railway Comapny, by John A. Bernard, its attorney, and says that in the record and proceedings aforesaid, and also in the matters and things recited in the bill of exceptions, and also in the giving of judgment, there is manifest error in this, to wit:

(1) That by the record aforesaid it appears that the judgment aforesaid was given for the said John Daggett and Nellie Daggett, his wife, against
30 the defendants North Jersey Street Railway Company and E. A. Williams, whereas by the law of the land the judgment ought to have been given for the said North Jersey Street Railway Company against the said John Daggett and Nellie Daggett, his wife.

(2) That the Court before whom, &c., at and upon the trial of the issue joined between the parties aforesaid, refused to allow a judgment of nonsuit against said plaintiffs, although regularly
40 moved thereunto by the attorney for the North

Jersey Street Railway Company on the following grounds:

(a) That no negligence was proved against the defendant North Jersey Street Railway Company;

(b) That the proof does not support the allegations in the declaration;

(c) That there is no proof that plaintiff suffered from any other cause than mere shock.

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(3) That the Court before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, when the testimony was closed, refused to direct a verdict for the defendant North Jersey Street Railway Company, although motion for such direction was made upon the following grounds:

(a) That no negligence was proved against the North Jersey Street Railway Company;

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(b) That whatever injury plaintiff sustained was the result of shock.

(4) That the Court before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid erred in admitting illegal testimony of certain witnesses offered on behalf of the plaintiffs and the defendant E. A. Williams against the objection of the North Jersey Street Railway Company;

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(a) Relating to the injuries received by the plaintiff, Nellie Daggett, in an accident which occurred subsequent to the one for which the case at bar was brought;

(b) Relating to the sounding of bells.

(5) That the Court before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, erred in refusing to charge the jury as follows, although so requested

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by the defendant, North Jersey Street Railway Co.

That if the motorman of the car suddenly found himself, without any negligence on his part, in a dangerous position, and exercised a quick effort to stop the car, thereby causing the plaintiff's head to be thrown back, the company would not be liable.

JOHN A. BERNHARD,
Attorney for
10 Attorney for North Jersey Street Railway Company, Plaintiff in Error.

HOBART TUTTLE,
Of Counsel.

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COURT OF ERRORS AND APPEALS OF NEW JERSEY.

JOHN DAGGETT, et ux, Plaintiffs, Defendants in Error, vs. NORTH JERSEY STREET RAILWAY COMPANY and E. A. WILLIAMS, a corporation, Defendants, Plaintiffs in Error.	Assignments of Errors of Defendant E. A. Williams Company.

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Afterwards, that is to say, as of the present term in the Court of Errors and Appeals, the last resort in all causes of the State of New Jersey, comes the said E. A. Williams Company, a corporation, by John J. Hoppin, its attorney, and says that the records and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also the giving of the verdict and judgment aforesaid, there is manifest error in this, to wit:

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1. That by the record aforesaid, it appears by the judgment in form as aforesaid was given for the said plaintiff sagainst the defendant E. A. Wliliams, whereas by the law of the land judgment ought to have been given for the said defendant E. A. Williams against the said plaintiffs.

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2. There is also error in this, to wit, that the verdict of the jury is against the clear weight of evidence.

3. There is also error in this, to wit, for that the said Judge before whom, etc., at and upon the aforesaid trial of the said issues so joined between

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the parties aforesaid, refused to permit the following question to be asked by the attorney for the defendant E. A. Williams: "Q. Well, was there anything unusual about the speed of the car?"

4. There is also error in this, to wit, for that the said Judge, before whom, etc., at and upon the aforesaid trial of the said issue so joined between
10 the parties aforesaid permitted the following question to be asked over the objection of the defendant E. A. Williams:

"Q. Now, Doctor, assuming that the plaintiff was a passenger on a car, and the car came into collision with a wagon, by means whereof her head was thrown back with sufficient force to break her back comb and to render her unconscious, and that she remained unconscious for a long period of time, more than an hour; that she was taken to a
20 hospital, and then could recall for the first time where she was; and then that she had after this periods of severe headache and pain in the spine and nervous feelings; that before that time she had been a woman in good health; to what would you attribute this condition?"

5. There is also error in this, to wit, for that the said Judge, before whom, etc., at and upon the aforesaid trial of the said issue so joined between
30 the parties aforesaid refused to non-suit the plaintiff upon the motion of the defendant E. A. Williams.

6. There is also error in this, to wit, for that the said Judge, before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, reserved the motion to nonsuit, of the defendant E. A. Williams, until the close of the defendant's testimony.

40 7. There is also error in this, to wit, for that the

said Judge, before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid at the close of the defendant's case, refused to non-suit the plaintiff upon the motion of the defendant E. A. Williams.

8. There is also error in this, to wit, for that the said Judge, before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, at the close of the defendant's case refused to direct a verdict in favor of the defendant E. A. Williams and against the plaintiffs. 10

9. There is also error in this, to wit, for that the said Judge, before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused to charge the jury, upon the request of the defendant E. A. Williams, as follows:

1. "The vehicle reaching the point of crossing first, going at the rate of speed at which they were aproaching the crossing, had the right of way." 20

2. "That the burden of proving negligence on the part of the defendant E. A. Williams Company is upon the plaintiff."

3. "The same degree of care was not due from the E. A. Williams Company to the plaintiff as from the traction company to the plaintiff." 30

4. "If the motorman could have stopped his car by the exercise of due care, and failed to do so, there is no liability on the part of the defendant E. A. Williams Company."

5. "If the injury, if any there was, was caused by the sudden stopping of the car to avoid a collision with the wagon, if the motorman failed to exercise due care in stopping the car in time, there can be no re- 40

covery against the defendant E. A. Williams Company."

10. There is also error in this, to wit, for that the said Judge, before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused and failed to charge the jury as to the degree of care due from the two defendants or each of the defendants to the plaintiffs.

10 11. There is also error in this, to wit, for that the said Judge, before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, charged the jury as follows:
"—if the motorman * * * had not time enough to avoid a collision after he saw that danger was impending, because the wagon cut across him too closely, the motorman was free from negligence and the driver was in fault."

20 12. There is also error in this, to wit, for that the said Judge, before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, charged the jury as follows:
"He is entitled also to be compensated for the loss of * * * the comfort and advantage of the marital relation, so far as the consequences of this accident have interfered with it."

Therefore the said defendant E. A. Williams prays that the judgment aforesaid, by reason of
30 the aforesaid errors, and of other errors appearing in the record and proceedings aforesaid, may be reversed, annulled and held for nothing and that the said E. A. Williams may be restored to all things which it has lost by occasion of the said judgment, etc.

JOHN J. HOPPIN,
Attorney of defendant, E. A. Williams.

HARRY V. OSBORNE,
40 Of Counsel.