

Court of Errors and Appeals.

THE PENNSYLVANIA RAILROAD COMPANY,

Plaintiffs in Error,

vs.

CHARLES B. MATTHEWS,

Defendant in Error.

*Points for
the Plaintiff in
Error.*

When the plaintiff rested his case, there was proof of negligence on the part of the driver of the plaintiff's wagon which was sufficient in law to have required the court to have non-suited the plaintiff.

Ernst *vs.* Hudson River Railroad, 39 New York Rep., 61, 68.

Havens *vs.* Erie R., 41 New York, 299.

Baxter *vs.* Troy and Boston R. R. Co., 41 New York Rep., 506.

Wild *vs.* Hud. R. R. R., 29 New York, 331.

Grippen *vs.* N. Y. Central R. R., 40 N. Y., 50 and 51.

Wilcox *vs.* Rome, Watertown and Ogdensburgh R. R. Co., 39 New York, 358, 367.

Beisiegel *vs.* Central R. R. Co., 40 N. Y., 23.

Runyon *vs.* Central R. R., 1 Dutcher, 551.

The burthen of proof was on the plaintiff, to show that the driver used reasonable care on his part and that the de-

defendant did not use proper care and caution, and the court should have so charged the jury.

Baxter vs. Troy and Boston Railroad, 41 New York, 503.

Central Railroad Co. vs. Moore, 4 Zab., 824.

Harper vs. Erie Railway Co., 3 Vroom, 88.

Phelps vs. The Great Eastern Railway Co., 21 Law Times Rep., 443.

Tooney vs. The London, Brighton and South Coast Railway Co., 3 Com. B. N. S., 146.

Cornman vs. The Eastern Counties Railway Co., 4 Hurl. and Nor., 781.

Robinson vs. Fitchburg and Worcester R. R. Co., 7 Gray, 93.

Saunders on Negligence, p. 12, 13, 22, 23, 24, 25.

Allyn vs. The Boston and Albany R. R. Co., 105 Mass., 78.

The court erred in not charging the jury as requested, to find a verdict for the defendant.

Robinson vs. Fitchburgh and Worcester R. R., 7 Gray, 92.

Todd vs. Old Colony and Fall River R. R., 7 Allen, 207.

Butterfield vs. Western R., 10 Allen, 532.

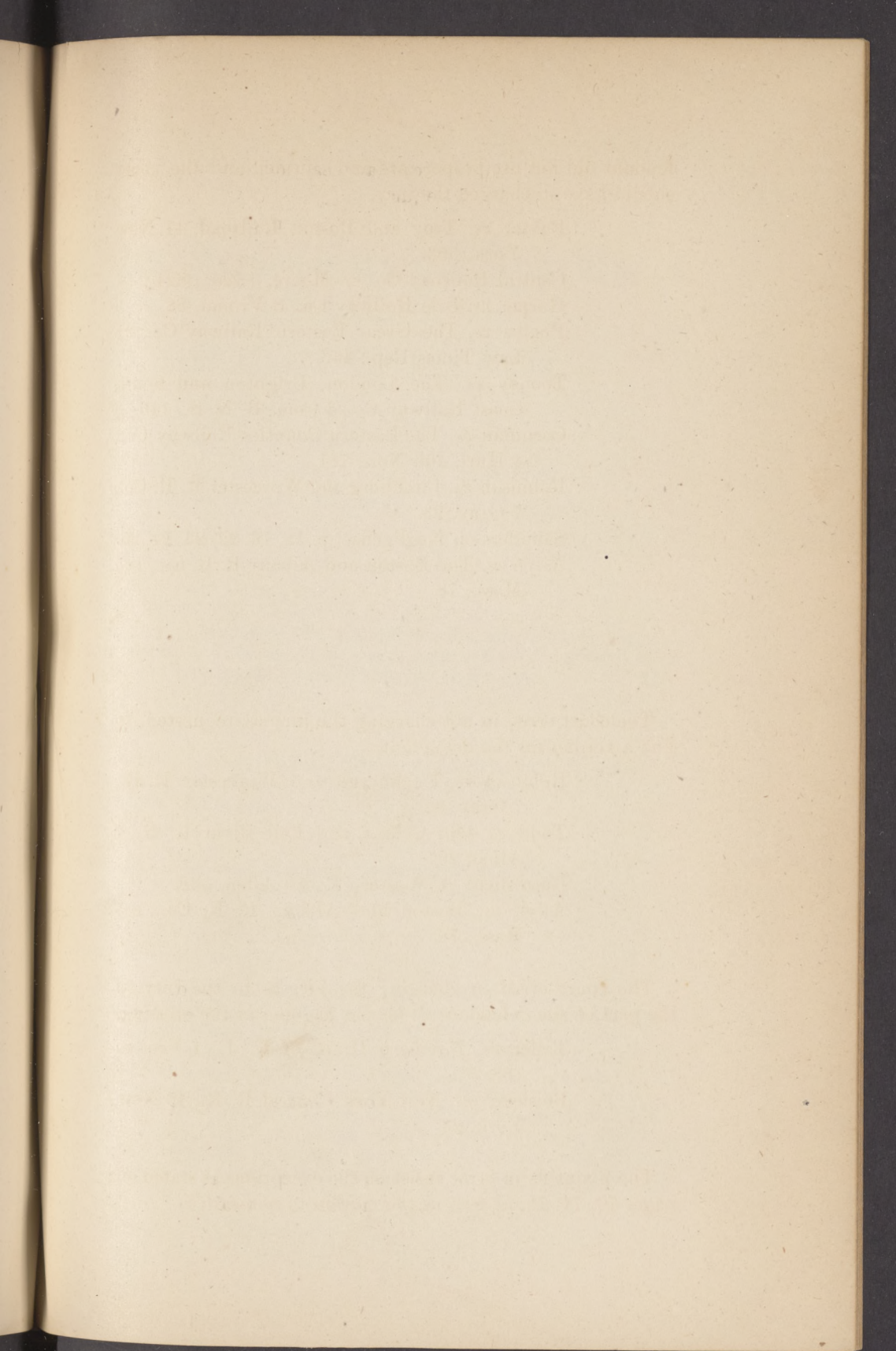
Allyn vs. Boston and Albany R. R. Co., 105 Mass., 78.

The court erred in charging the jury as to the duty on the part of the defendant to keep a flagman at the crossing.

Telfer vs. Northern R. R. of N. J., 1 Vroom, 188.

Beisiegel vs. New York Central R. R., 40 New York, 23.

The plaintiffs in error insist on the exceptions as stated on pages 70, 71, 72, as well as the motion to non-suit.



THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

REPORT OF THE PHYSICS DEPARTMENT

FOR THE YEAR 1955-1956

CHICAGO, ILLINOIS

1956

PHYSICS DEPARTMENT

New Jersey Errors & Appeals.

NEW JERSEY SUPREME COURT.

CHARLES B. MATTHEWS,

vs.

THE PENNSYLVANIA RAILROAD
COMPANY.

In Case.

On Postea, &c.

ESSEX COUNTY, SS. :

Charles B. Matthews, the plaintiff in this suit, puts in his place Parker & Keasbey, his attorneys, against the Pennsylvania Railroad Company, in a plea of trespass on the case. 10

ESSEX COUNTY, SS. :

The Pennsylvania Railroad Company, the defendants in this suit, put in their place, N. Perry, Jr., their attorney, in a plea of trespass on the case.

New Jersey Supreme Court, of the twenty-seventh day of February, in the year one thousand eight hundred and seventy-two.

ESSEX COUNTY, SS. :

The Pennsylvania Railroad Company were summoned to answer unto Charles B. Matthews, of a plea of trespass on the case, and thereupon the said Charles B. Matthews, by Parker & Keasbey, his attorneys, complains, for that whereas, the said plaintiff, heretofore to wit, on the twenty-third day of January A. D. eighteen hundred and seventy-two, at Marion, to wit, at Newark, in the County of Essex, was lawfully possessed of a certain wagon, and of two horses, then and there drawing the same, and also a double harness upon the said horses, and of divers goods and chattels then contained in the said wagon, to 20

wit: five barrels of spirits of turpentine, one barrel of alcohol, two cases of shellac, one can of oil, five coils of lead pipe, one grate, four iron pipes, one roll of zinc, one keg of emory, one bundle of hardware, and three boxes of tin; said goods and chattels being of the value of three thousand dollars, and the said plaintiff, by his servant, was then and there driving the said horses and wagon along a certain common and public highway, and being then and there upon the said highway, the said servant and the said horses and wagon with the said goods and
 10 chattels were lawfully crossing a certain railroad belonging to the defendants, to wit, at Marion aforesaid.

And the defendants were then and there possessed of a certain train of cars and a locomotive engine drawing the same upon the said railroad, which said cars and engine were under the care, management and control of certain servants of the defendants, who by their said servants were then and there driving the same along the said railroad.

Nevertheless, the said defendants on the day and year aforesaid, at Marion aforesaid, to wit, in the county of Essex aforesaid, so
 20 carelessly and improperly drove and governed their said engine and cars, that by and through the carelessness and improper conduct of the defendants by their servants in that behalf, the said engine of the defendants ran and struck with great force and violence upon and against the said horses and wagon containing the goods and chattels aforesaid, and then and thereby
 01 crushed, broke in pieces and demolished, the said wagon and harness; broke, scattered and destroyed all and every the said goods and chattels in the said wagon contained, wounded and
 30 killed one of the said horses, and so wounded and broke the limbs of the other, that by reason thereof he became of no value.

Whereby the said horses with their harness, and the said wagon and the goods and chattels therein contained, being of great value, to wit: of the value of three thousand dollars, became and were wholly lost and destroyed, (and the plaintiff was deprived of great profits in his business of express carrier), and was put to great trouble and expense. Wherefore he saith that he is injured and hath sustained damage to the amount of ten thousand dollars, and therefore he brings his suit, &c.

PARKER & KEASBEY,

Attorneys of Plaintiff.

NEW JERSEY SUPREME COURT.

[ESSEX CIRCUIT.]

CHARLES B. MATTHEWS,

vs.

THE PENNSYLVANIA RAILROAD
COMPANY.

In Case.

DEPUE, Judge.

PARKER & KEASBEY, Counsel for Plaintiff.

N. PERRY, JR., Counsel for Defendants.

On the thirteenth day of January, 1873, the above cause came on to be tried before the Honorable DAVID A. DEPUE, one of the associate Justices of the said Court, at the Circuit Court held at Newark, in and for the said County of Essex, upon the pleadings, (*pro ut* the same), whereupon a jury was empannelled for the trial thereof; and the said jury having first viewed the premises hereinafter referred to; the said plaintiff, by his counsel, having opened his case to the jury, called and examined as a witness in the said cause, in support of the issue on their part—

George Page, who being duly sworn, testified as follows: 20

Q. What is your business?

A. Expressman.

Q. Between Newark and New York?

A. Between Newark and New York.

Q. Do you remember the time of this accident?

A. I do.

Q. Do you remember the date of the accident?

A. Yes; 28th or 29th of January. I think it was a year ago.

Q. What were you doing at the time?

A. Driving a wagon, and was behind this man who was killed. 30

Q. What kind of weather was it?

A. Not stormy, but blowing very heavily and cold.

Q. What was this man's name ?

A. Van Wert.

Q. What kind of a wagon was he driving ?

A. A covered wagon, with a double team—one horse dark, and the other bay; I saw them on the road every day; it was a good team, and a platform spring wagon.

Q. How much of a load ?

A. A pretty heavy load—I was right behind him; I know he had a covered wagon, and always has a heavy load.

10 Q. How long had you seen him before the accident ?

A. Four or five minutes. I stopped to water my horses, and at four or five places along the road I was with him and spoke to him. It had been wet weather and quite freezy, and the wagon would kind of sink down, and could not go only slowly—at other places not.

Q. Which way did you go that day ?

A. The bridge was down on the plank road, and everybody had to go that way we went—there is a bridge, and you can go across with a light wagon; there is a paving stone about
20 one foot or fifteen inches to the dirt, and comes with a pitch; when you come to the watch factory we take the public road, the old traveled road, that used to lead from Bergen to Jersey City; every body used to take that road when I used to live down there.

Q. You saw him a few minutes before the accident ?

A. Yes; up by the hill—by the church there.

Q. Whereabouts were you ?

A. At the time of the accident I was right down here, between the church and the watch factory, on this road.

30 Q. Was it light or dark ?

A. Quite dark.

Q. And blowing hard ?

A. Yes.

Q. Could you see the accident ?

A. No. I could see shadows and glimpses a distance off. I could see a train of cars going away, and steam out of the pipe, and heard them strike the wagon. I supposed it was him, and I ran ahead and left my team, and got to where they were taking him up to carry him in. There was quite a crowd of
40 people I was acquainted with; I asked where is the flagman, and they said he had gone to supper. They asked who he was, and I said I knew, and would telegraph up to Newark, and I did.

Q. How far off were you when you heard it strike ?

A. Pretty near 80 yards, I think; my wagon was south of the bend—out through the bend.

By the Court :

Q. Had you turned round the bend and got into the road ?

A. Yes. It was quite muddy there,—I was quite in the bend at the time.

Q. That is the bend that turns into the straight road ?

A. Yes.

Further *examined* :

Q. There was a flagman usually there ?

A. Yes. I had always seen a flagman when I crossed, and I asked where was the flagman, and they said he had gone to supper.

Q. What time of the evening was it ?

A. 7.15 or 16. I judge from the time I was going on the road ; it took me twenty minutes, and when I started it was five minutes to seven. 10

Q. At what rate was the train going ?

A. Going very fast, and sparks were flying out, same as they always do when north-westerly wind is blowing heavy.

Q. How far was the wagon from the train ?

A. Not far off. There was another train coming up when I got there.

Q. Where was the poor fellow ?

A. Right by the track ; just picking him up when I got there. I suppose they had carried him some ways. 20

Q. Was there any whistles or bells ?

A. No. If there had been, I am positive, sure, I should have heard it.

Q. How long have you been acquainted with the road ?

A. A great many years—23 or 24.

Q. With that particular road ?

A. I used to live about this particular spot, and have been acquainted round there for a good while. 30

Q. How long had the bridge been down since you had been in the habit of going that way ?

A. I could not exactly say, but should say a couple of months. I know when I got down I was quite sick myself, and was going with the wagon with another man, and got him to drive my wagon and I got on the cars. It was the first of the snow and ice. It might not have been more than six weeks, but somewhere in that neighborhood.

Cross-examined :

40

Q. Was any body on the wagon with you ?

A. Nobody but myself.

Q. You say you had met Van Wert four or five times on the road ?

A. Just three times on the road ; first at a person's name Alex. McCoy, the only place on the road where we have to water horses.

By the Court :

Q. Is it a hotel—a drinking place ?

A. Yes.

Further cross-examined :

Q. Where was the next place you stopped ?

A. Going up the steep hill on the old plank road.

Q. Did you both stop ?

A. We did not stop but to rest the horses a little, coming up the hill.

10 Q. Where was the next place ?

A. As we turned down the stone hill to go up the hill, there is another steep place. There is Nicholson pavement part, and a stone road ; and this was the stone road that runs from Bergen City and Hudson City.

Q. This stone road is on the Nicholson pavement ?

A. Yes.

Q. Did you stop at any hotels to get anything to drink ?

A. No ; and no place to stop at that night.

Q. Did you drink with him that night ?

20 A. No. We watered our horses, and I caught him again on the hill.

Q. He was driving ?

A. When we go up the hill, the teams go slower than on Nicholson pavement.

Q. Were you heavily loaded ?

A. Yes ; about forty or forty-five hundred—and that is not called heavily loaded.

Q. What is the name of the hill by the church ?

A. I don't know that I can tell you the name of it.

30 Q. Is that the Avenue that runs by the little church ?

A. Yes ; one way, the way we came on, is.

Q. Is it paved up to the church ?

A. Yes ; I believe it stops right by the church. Behind this church is a road that comes down here.

By the Court :

Q. You were just in the turn here ?

A. Yes.

Further cross-examined :

40 Q. You say you had been familiar with this road, and expressmen had been in the habit of going that way ?

A. Yes ; for a good while.

Q. The last time you talked to him was up on Bergen Hill ?

A. Yes.

Q. How far was he ahead of you at this turn ?

A. A little way. I could not tell the number of rods.

Q. When you were at the church, was he about this corner?

A. Yes.

Q. And then when you were at turn, he was the on the track?

A. Yes.

By the Court :

Q. Was anything between you?

A. I think there was one wagon between us—Mr. Ed. Marsden's. I think he had passed this wagon and I had not. I think he had passed it at the time he was hit. 10

Further cross-examined :

Q. Why did you shout at him?

A. I said, "halloa there," and as soon as I could make my horses stand, I went right up to him. I did not see him struck, but knew he was hit. I am pretty certain if I had been in his place I would got hit same as he did. There was two little puddles of water, and right there was about 60 rods at least.

Q. Where did you see these sparks?

A. I saw them come out of the locomotive, flying like everything. I was looking right at it. 20

Q. Did you hear any whistles blow at all?

A. No. I know I spoke about it when I came up to the men, of there being no whistle or bell.

Q. Did that train stop at West End?

A. I think not. I am almost sure of that; I know it did not stop then.

Q. Why do you think it did not stop?

A. Because it was going so fast, and as soon as I come out of the stone place it struck the wagon.

Q. You think it would not have stopped at West End because it was going so fast? 30

A. I don't think it could have stopped, by the sparks flying out of it.

Q. Did you hear whistles blow when you jumped off the wagon?

A. No; not until after the wagon was hit. I did not pay attention until then.

By the Court :

Q. You did not hear any whistles blow?

A. No; not until then. 40

Further cross-examined :

Q. Did the train stop?

A. It did afterwards.

Q. You say it stopped and then went on, and another train came on?

A. Yes; towards the bridge, on the other track.

Q. Did that train stop?

A. Yes; the freight train stopped. One of their own men came off the train going towards New York, to see if the road was clear, and then went on.

Re-examined:

10 Q. Which way was the train coming that struck the wagon?

A. From New York to Newark.

Q. I see on the picture there a little house on that side, what is it?

A. Supposed to be the flagman's house—it is where the flagman comes out. I should call it south-east, next the watch factory.

Q. That house has been there how long?

A. I could not say. I know they did not used to have it there. The Company used to use what is called the telegraph office now. I have seen it there a few times before.

20 Q. I want to know exactly whether you had turned the corner or not, at the time of the accident?

A. I had just got on that turn, right on that corner where the water is.

Q. And the train was going at a high rate of speed?

A. Yes.

Q. How far had the train to go to reach the crossing when you saw it?

A. It had got to come by their depot, and then only two or
30 three rods before it struck the wagon.

By the Court:

Q. Is there any grading of the street where you turn in?

A. No. It is all low—mud and water.

Further re-examined:

Q. What is this? [Pointing to the building along the track.]

A. Kind of a place to put tools in.

Q. And just beyond the house, is that level or a bank?

A. Kind of rising bank up to the depot.

Q. How high, eighteen or twenty feet?

40 A. Yes; all that—the road crosses over it.

Plaintiff's counsel also called *Thomas McClure*, sworn:

Q. Where do you live, and what is your occupation?

A. 115 East Kinney Street; occupation, expressman.

Q. At the time of this accident, were you present?

A. I was.

Q. What were you doing?

A. I was driving a wagon from New York to Newark.

Q. Did you know Van Wert who drove this wagon?

A. I did.

Q. Had you seen him before on the road?

A. Yes.

Q. Where did you see him first on the road?

A. I passed him on the road in Grand Street, before he 10
stopped to water his horses; he passed me before he stopped,
and I passed him when he stopped. I stopped on the hill to
water mine, and while I was there he passed me again.

Q. At the top of the hill, how far were you off from him?

A. I got up with him again, my horses came up to his wag-
on, and I stopped my team to get on the wagon—I was walk-
ing—and he gained on me that distance while I stopped to get
on the wagon.

Q. How far did he gain on you?

A. Short of 100 yards. 20

Q. Was the night dark or light?

A. Not so dark—partially clouded. Soon after it cleared off
and was very bright moonlight.

Q. Was it stormy?

A. Not stormy; there was a very strong breeze.

Q. Cold?

A. Very cold—quite cold.

Q. Which direction was the wind?

A. I could not say exactly; in the neighborhood of north or
north-west. 30

Q. You saw this accident?

A. I did.

Q. Tell how it occurred?

A. I first saw a train coming through the cut—I saw smoke
coming very fast before the train came in view. I watched it;
it made no stop at Marion at all, but passed on and struck his
wagon, as near as I could judge, about the centre—as near as I
judge from where I was.

Q. Was he going fast or slow?

A. The train was going very fast; the wagon was going on a 40
very moderate walk, just an easy walk for a team.

Q. You know the bridge over the railroad?

A. Yes.

Q. And the tool house on this side?

A. Yes.

Q. How long did it take the train to go from the bridge to
the flag house?

A. So short a time I could hardly mention it.

[Counsel on both sides stated the distance from the bridge 50
down to the corner of the flag house, to be 883 feet.]

Q. How were the roads ?

A. Very heavy, muddy, and freezing at the time, but it would not bear a load.

Q. Sticky ?

A. Yes.

Q. It looks as if there was a rise on the road *here* ?

A. Yes; about one foot or one and a half feet, I should judge.

Q. When you are some thirty feet along that road from the track, can you see the up-track at all ?

A. The tool-house obstructs the view considerably.

Q. It is right in the way ?

A. Yes.

Q. Do you know or not, whether just before you got to the track, the road was better or worse, or about the same as all along ?

A. From the corner to the track it was rather worse than it had been, and on the corner, if I remember rightly, there were two or three mud hills.

20 Q. Was it hard pulling ?

A. Very hard.

Q. Did you keep them on a slow, easy, steady pull ?

A. Yes.

Q. How much rate of speed did you make—how many miles an hour ?

A. A moderate walk : just as a man would walk.

Q. How long did it take you to go from New York to Newark ?

A. From three to four hours.

30 *By the Court :*

Q. What rate do you suppose you were going ?

A. Five miles an hour.

Further examined :

Q. How many hours did it take you to go from Jersey City to Newark ?

A. Three to four hours; the distance was just double at that time.

Q. Do you know how fast a horse would walk ?

A. Some walk faster than others.

40 *The Court :*

Some gentleman on the Jury will probably know.

The 9th Juror :

Less than four miles an hour—three to three and a half.

Further *examined* :

Q. What time did you start that day from New York ?

A. I don't remember exactly.

Q. Was it light or dark ?

A. Light when I left New York.

Q. What time did you get to Newark that night ?

A. I could not say.

Q. Was it late ?

A. It was about bed time ; at least I went to bed as soon as I got my work done.

10

Q. You say you watched the smoke as the train was coming along, did you hear whistles ?

A. No whistles. There was a signal given ; there was no bell. I heard the signal for breaks at the instant the train struck the wagon. No signal was given for down breaks.

Q. What was the signal ?

A. Two short whistles.

By defendant's counsel :

Q. Where was the train when the first signal was given ?

A. Between the tool-house and the crossing—about passing 20 the tool-house.

Further *examined* :

Q. How fast did the train seem to be going when it struck the wagon ?

A. I could not say, but going fast.

Q. Not diminished its speed very much ?

A. Not that you could see.

Q. Could the wagon have got off the track after that whistle was blown ?

A. No.

30

Q. After the first whistle you heard ?

A. No ; not at the rate of speed the train was going.

Q. Give an illustration of how long it was ?

A. Same as if the first signal had hardly died away before another was given, and the wagon was struck almost instantly at the time of the second signal.

Q. How far was the driver thrown ?

A. Nearly the distance from the crossing to the first telegraph post.

Q. Where was the wagon thrown ?

A. Not far ; one part on the opposite track, and the other part lay between the two tracks.

40

Q. And the horses ?

A. One horse was thrown against the train, and the other horse right along side of it.

Q. You saw Van Wert ?

A. Yes.

Q. Was he quite dead ?

A. Yes.

By the Court :

Q. Where were the horses thrown ?

A. The horses were not thrown off the crossing.

Further examined :

Q. Did you notice the horses afterwards ?

A. I did not take particular notice of them, only how they
10 lay.

Q. Were they injured any ?

A. Yes. One of them, if I remember rightly, was dead, or very nearly dead ; it might have breathed a little.

Q. Were they torn, or not ?

A. Yes. This one which was nearly dead, was torn, and the other made two or three efforts to get up and could not ; his leg was hurt.

Q. How was the wagon, did it look much like a wagon ?

A. No ; more like timber.

20 Q. Was it broken to pieces ?

A. Yes.

Q. Was it all in one place, or different places ?

A. No ; it was scattered a great deal. The forward axle, with wheels on, was thrown on the opposite track.

Q. How about the rest of it ?

A. I did not pay much attention to it.

Q. Was there any flagman there ?

A. No.

Q. How long had you been traveling over that road ?

30 A. I could not say exactly, but for several weeks.

Q. Was this a passenger or a freight train ?

A. A passenger train.

Q. You say you had traveled for weeks over that road ; this was a passenger train, you say ?

A. Yes.

Q. Give the hour—did you notice the time of the accident ?

A. Between a quarter and half-past seven o'clock in the evening.

Q. Do you know what train this was ?

40 A. It left Jersey City about 7.10—that is about the time ; the train generally leaves about that time.

Cross-examined :

Q. For whom did you drive ?

A. At that time for S. E. Matthews.

Q. The brother of the plaintiff ?

A. Yes.

Q. Who do you drive for now ?

A. The plaintiff, Mr. Matthews.

Q. Do you have to take care of your own horses in Newark ?

A. Yes.

Q. Did Van Wert have to take care of his own horses ?

A. I suppose he did, but he worked for a different man to me.

Q. What time did you begin work ?

A. Five o'clock in the morning I generally pretended to commence. 10

Q. Had you been much delayed before this accident, by reason of the plank road bridge ?

A. The delay was caused by making the road so much longer for us.

Q. Did you get out to Newark early or late ?

A. Very late, generally.

Q. Did you drive out to Newark the night before with Van Wert ?

A. Not with him, in his company though on the road every night. 20

Q. Did you see him the night before ?

A. I could not say I did.

Q. You usually left New York about the same time ?

A. Well, in the neighborhood of the same time, as a general thing.

Q. Did you deliver your freight after you got to Newark ?

A. Not the same night ; we delivered our freight in Newark next morning.

Q. You say you have to take care of your horses after you get to Newark. Did you then ? 30

A. Yes.

Q. How late did you get through work ?

A. I could not say on that particular evening, but all hours generally.

Q. You went at five o'clock in the morning ; how late did you keep to work ?

A. I sometimes would get in at a reasonable hour, and sometime it would be twelve o'clock, and later, sometimes.

Q. During the time that you had had to make this circuit, you were kept up quite late, were you not ? 40

A. Yes ; as a general thing.

Q. At the time you stopped to get on your carriage, Van Wert was 100 yards ahead of you ?

A. I should judge that much, by the time I was getting on the wagon.

Q. At the time Van Wert reached the corner, how far up the hill were you ?

A. I was between him and the church ; it was at the church where I stopped to get on my wagon.

Q. And he kept about the same distance ahead of you ? 50

A. Yes.

- Q. Were you examined before the Coroner's Jury?
 A. I was.
- Q. Do you remember stating that you were behind him about 150 yards?
 A. I should judge about 100 yards or 150 I told them; it was only a rough guess; I did not take notice of it.
- Q. What do you think now it was?
 A. About 100 yards.
- Q. Could you see him plainly?
 10 A. Yes, quite plainly for the evening.
- Q. Did he have a top-covered wagon?
 A. Yes.
- Q. With side down?
 A. Yes.
- Q. The rear curtain down?
 A. Yes, I believe it was.
- Q. When did you see Van Wert last to speak with him?
 A. I had not spoken to him for 6 months before.
- Q. When did you see him last that night, personally?
 20 A. In his wagon, when he passed me when I watered my horses.
- Q. Not after, until he got on the track?
 A. No.
- Q. How was the driver's seat as to the location of the seat in the wagon?
 A. Right in front of the wagon, there is no dash-board, the covering comes to the edge of the seat.
- Q. Suppose this to be the body of the wagon, where does the cover come?
 30 A. Same as that desk, the seat and cover comes to the fore edge; where the man's head would come would be back, his head would be behind the covering and his feet project in front.
- Q. The last time you saw him was when he passed you on the hill?
 A. Yes.
- Q. You say the train did not stop at West End; how did you come to watch the train?
 A. Well, I generally, when I see a train coming and am about
 40 to cross, watch it, and not having a top wagon, it would be natural I should see it.
- Q. You watched the train and saw it did not stop at West End crossing?
 A. Yes.
- Q. Could you see the locomotive, the head-light, could you see sparks?
 A. Yes, before I saw the head-light I saw red smoke and sparks; when I first saw the smoke of the engine I was just on the corner by the watch factory.

By the Court :

Q. On the turn ?

A. Yes.

Further *cross-examined :*

Q. You watched and saw it did not stop ?

A. Yes.

Q. And you heard them whistle down brakes ?

A. Yes, when the engine was almost passing the tool-house or had passed it as near as I could judge.

Q. You saw the train, however, before that ?

A. Yes, as soon as it came from the cut. 10

By the Court :

Q. Do you mean after it came under the bridge ?

A. Yes, the train cannot be seen until it comes from under the bridge.

Further *cross-examined :*

Q. You saw the train as soon as it came under the bridge ?

A. Yes.

Q. Of course you could hear the noise of the train ?

A. I could not say I heard the train distinctly. 20

Q. How far is it, about, from the corner at the watch factory to the crossing—to the track ?

A. Well, I don't know I could say how far.

Q. About how far do you think it was—200 yards ?

A. Well, I could not say myself, but don't know but it might be 200 yards ; I should think it might be in the neighborhood, that is of 200 yards from the corner of the watch factory to the crossing.

Q. You say you don't know what attracted your attention to the train first ?

A. No, I could not say. 30

Q. Why did not you shout to Van Wert ?

A. Well, I could not say why I did not, but I did not.

Q. Did you think he was in danger ?

A. Well a person could not tell what a man was doing at the time ; until he was so far in danger as to be beyond redemption.

Q. You say he was 100 yards ahead of you when you turned the corner, and you say the corner was about 200 yards from the crossing, then Van Wert would be about 100 yards from the crossing ?

A. I should judge he was. 40

Q. Did you see Van Wert put his head out to look for the train ?

A. I don't know as I did.

Q. You don't know what he was doing?

A. I don't.

Q. You say you did not shout because you did not see the necessity for it until it was too late, until he was past redemption you say?

A. Well—[interrupted]

Q. If Van Wert had been as vigilant as you were could he have seen the train?

A. I don't know but he could; if he was far enough back he
10 might have looked for the train same way, but did not see it coming, and probably not heard it, and might have calculated to see the flagman there.

Q. If he had looked for the train at the same time as you, he could have seen it?

A. I don't know whether he could, he may have seen the smoke.

Q. Smoke and sparks were flying up into the air?

A. Yes.

Q. You are familiar with this locality I take it; now you
20 say that the team was going merely on a slow walk; is there a fence on that side?

A. Yes, but back to the watch factory.

Q. Between the watch factory and the track there is no fence?

A. I think not.

Q. Is there a path here?

A. I could not say.

Q. The team was going merely on a slow walk; how long
30 would it take to stop it, if he was driving with the reins in his hands?

A. A man could stop him on an instant almost.

Q. This is an ascent?

A. Yes.

Q. And the team could be stopped quicker then?

A. As soon as you spoke to them they would stop.

Q. How large is that flag house?

A. I don't know.

Q. About the ordinary size of a flag house?

A. Larger than a good many.

40 Q. As long as that desk?

A. I think it is, I could not say.

Q. You could see that track 15 feet from here?

A. I cannot see between *this* building and *this*, unless away
back; I think you would have to be *on the corner here*.

Q. What distance is there between that tool-house and the track?

A. I don't know.

Q. Suppose Van Wert, at this point, had seen that train, and
could stop his horses almost instantly, could he not at that
50 time have stopped the team in time to avoid the train?

A. I think not, because when he got far enough to see the

train the team would be on the track.

Q. He could stop when he got on the track?

A. Yes.

Q. Was there anything to prevent the turning of his horses on the side, so far as the road was concerned?

A. Nothing to prevent.

Q. How far is it from that corner to the track?

A. Very close on the track.

Q. Where was Van Wert when you came up?

A. He was on the crossing—the track.

10

By the Court:

Q. Thrown out on the opposite side of the track from the direction from which the train was going?

A. Yes.

Further cross-examined:

Q. Where were the horses?

A. One lay on the crossing and the other between the two tracks—I don't think any were on that side of the track.

Q. Then the whole thing was thrown off on the opposite side of the track?

20

A. The forward part of the wagon and horses and driver were on the other side of that track, on the right hand side of the road where the train was coming; the axle was unbroken, but the wheels were pretty badly broken and smashed up.

By the Court:

Q. Where were the contents found?

A. I could not say; I did not help to pick up anything of it; I saw it there, but did not take notice.

Further cross-examined:

Q. What was the condition of this road, just here close to the track, better than down on the road?

30

A. I could not say.

Q. Had not cinders been put on there?

A. I don't know.

Q. You don't know whether it had been graded just there on the rising to the track?

A. I don't think it was.

Q. Was not the road a little better just there than at the corner?

A. I could not say; it was heavy road from here.

Q. What kind of a night was it?

40

A. Rather clouded early in the evening—at 8 or 9 o'clock it was clear, very clear.

- Q. Were there lights there?
 A. I think there was a light there on this side of the track here.
 Q. And a light here at the flag-house?
 A. I don't know whether there was or not.
 Q. You could see the teams distinctly?
 A. Yes, if always ahead.
 Q. This was ahead of you, there was light enough for that?
 A. Yes, I could see that distinctly.
 10 Q. Who was the first man who reached this spot?
 A. I don't know, but I think a man from the watch factory—the first man; two men came down the track as near as I could judge; I heard one call out "here is the man down here," at the time I had got there—I don't know who they were.
 Q. Did you pick up Van Wert?
 A. I helped to take him up.
 Q. Where was your team standing; did you stop?
 A. No, I drove over the track before I stopped.
 Q. Did the train go on?
 20 A. It had got some ways before it stopped.
 Q. Did it go on?
 A. Not at the time, a number got off the train; there was a train came up from Newark and stopped.
 Q. Did you do anything with the material?
 A. No, I touched nothing.

Re-examined:

- Q. When you got towards the corner, Van Wert's horses would be on the track?
 A. Yes.
 30 Q. When you are on the track, is that house in the way to see the track?
 A. When you get to this flag-house I don't think you can see the track, because of this other house—they are so close together.
 Q. How far is the flag-house from the track?
 A. I never noticed particularly, it might be 5 feet.
 Q. On which track was the man struck?
 A. Nearest the flag-house.
 Q. Do you know the distance, in yards, anywhere along here?
 40 A. No, I only judge.
 Q. Do you know how near Van Wert was to the track when you saw him?
 A. No, I could see the train, and his gait, and it was very heavy going, he had a heavy load.
 Q. Could he have gone faster than a walk with the load he had?
 A. No.
 Q. During the time the train was going, could Van Wert

have gone further than this 10 feet in the time it took the train to get from the bridge?

A. No.

Q. How far would he go himself, from the time the train was coming from the bridge to the crossing, going at this slow walk I am speaking about?

A. I could not say exactly.

Q. As far as, or further than that railing [outside the bar]?

A. I think further.

Q. You have driven that way pretty often? 10

A. Not at present.

Q. But you are driving where you see trains going?

A. Yes, more or less.

Q. And acquainted with the rate of speed at which trains travel.

A. I would not like to make an estimate of that.

By the Court:

Q. Can you tell whether the train ran fast or slow?

A. I think the train was running very fast for a place of that kind,—very fast. 20

Further re-examined:

Q. Suppose I sat on the wagon, this way, does the seat come out beyond the boards of the wagon, or directly to them?

A. The front seat is directly to the front of the wagon.

Q. The cover of the wagon rises how?

A. Right in the front of the seat, and rather projects a little forward as it rises up; I don't know how about that wagon; generally it is projected from the seat.

Q. Where would be the cover suppose I sit here [Counsel illustrating]? 30

A. Just where your hand is.

Q. Do you not have a view round with your eyes?

A. Yes, more or less.

Re-cross-examined:

Q. You would have to lean forward to see an object, that way [Counsel looking to the side]?

A. Rather.

Q. You say you worked from 5 o'clock in the morning to 12 o'clock at night?

A. Yes. 40

Q. Don't you sometimes take a nap on the wagon?

A. I don't.

Q. It is not an uncommon thing?

A. It is; if I feel like that I generally get off; it is not safe to trust a team when it is going.

By the Court :

Q. Were you between the team driven by Van Wert and the team driven by Page?

A. I don't know that I saw the team of Page; I might have, passing on the road.

Q. Was there any team between you and the team driven by Van Wert?

A. No, sir.

Further re-cross-examined :

10 Q. Was there any team immediately behind you?
A. Not that I noticed. There was no team close behind me, there might have been back behind me.

Q. Do you know Page?

A. Yes.

Q. Do you remember seeing him that night?

A. I might have. I remember seeing him there, and might have seen him on the road, but he was not close behind me.

Q. When you stopped your team to get on the wagon, you could have seen him if he had been close behind you?

20 A. Yes.

By the Court :

Q. How far were you behind Van Wert when he was struck?

A. I should judge in the neighborhood of 100 yards, I could not say exactly.

Plaintiff's counsel also called *Joseph Holton*, sworn.

Q. You were present at the accident?

A. I was on the train of cars.

Q. What train was it?

30 A. I think about seven o'clock train; I am not positive, but it was early in the evening when I came from New York.

Q. What was the first you knew of the accident?

A. The first I knew was I felt a slight shock, and saw people going out of the other car—that was the first I noticed.

Q. What car were you in?

A. Pretty well back in the train.

Q. What speed was the train going at?

A. I could not say what it was going—very fast, I know.

Q. How do you know?

04 A. Because they were remarking in the car that we were going at a very fast speed, and said we will soon be there.

Q. Was there an expression of opinion that you were going very fast?

A. Yes, sir; that was the expression.

Q. How many cars were in the train ?

A. I don't remember, but it was quite a long train, and we were probably two cars from the back end—two or three cars.

Q. Do you remember hearing anything ?

A. I don't remember anything but what I say.

Q. You felt a shock, and saw people jump up ?

A. Yes.

Q. What did you do ?

A. I got up, and a lady drew my attention that I was acquainted with ; I spoke to her and got her quiet, and a number 10 of people got out, and I got out to the door.

Q. Where was the train then ?

A. I think the train stopped opposite the express stables ; opposite the Watch Factory.

Q. Where are the express stables ?

A. On the left hand side.

Q. Had the train been reduced in speed at the time of the shock ?

A. I don't know.

Q. You were going very fast, you said.

20

A. Yes.

Q. It did not make much of a shock ?

A. No. I felt a shock—quite a slight shock ; just such a shock as like *that*, and you go right on.

Q. Did it stop the car ?

A. No.

Q. Did you go back ?

A. No.

Q. Did you see the wagon ?

A. No.

30

Cross-examined :

Q. What were you doing at the time—reading ?

A. No, sir. I was talking.

Further examined :

Q. Did you travel on the cars a good deal ?

A. Yes.

Q. You are somewhat acquainted with the road and speed of trains ?

A. Yes, I know whether they are going fast or slow. I could not make the time they go.

40

Q. Could you make an estimate of how fast you were going ?

A. No.

Q. You say they were going fast ?

A. Yes.

Further *cross-examined* :

Q. What were you doing : reading—and conversing ?

A. Conversing with my wife.

Q. Could you tell whether the shock was produced by a collision, or the sudden application of brakes ?

A. I could not tell that.

By the Court :

Q. Did you hear any whistle for down breaks ?

A. No.

10 Q. Anything at all ?

A. Nothing until I felt the shock.

Q. Was it a local or through train ?

A. A local train.

Plaintiff's counsel also called *John Jacob Luke*. Sworn.

Q. Do you remember the night of this accident ?

A. Yes.

Q. Where were you ?

A. On board the train.

Q. What was the first you knew of the accident ?

20 A. The first intimation I had of danger was the signal for putting on brakes.

Q. What signal ?

A. I heard the whistle blow three times—twice in succession, and a third made three, and then he blew a second whistle.

Q. A common whistle is twice ?

A. Yes.

Q. This was an usual whistle ?

A. Yes ; for danger, as I understand it.

30 *Witness* : When the whistle was blown, I got up out of my seat and stood in the aisle of the car, expecting we would have a collision on hearing repetition of the whistle for danger ; and when the train came to a stand-still, I walked back to the scene of the accident.

Q. Did you feel any shock at the time of the accident ?

A. Not the slightest.

Q. Where were you in the train ?

A. About the middle of the train, as near as I can remember.

Q. You heard the whistle distinctly ?

A. Very distinctly.

40 Q. Was there any whistle before ?

A. I did not hear any.

Q. You saw this wagon and horses, did you not ?

A. Yes.

Q. What was the condition of the wagon ?

A. Smashed to pieces.

Q. Where did it lay ?

A. On the south side of the track.

By the Court :

Q. On the south side of the track you were running on?

A. Yes.

Further examined :

Q. Where did the horses lay?

A. On the north side.

Q. Did you notice the horses?

A. Yes.

Q. What was their condition?

A. They were badly cut.

Q. Tell about them. How much were they worth after? 10

A. I think one of the horses' hind quarters was fairly cut off, and the other was very much cut.

Q. Where was the other cut?

A. About the body, as near as I can remember.

Q. Did you notice whether they were dead or alive?

A. I did not notice particularly; I should think they were dead, by the appearance of them.

Q. Were they extended—just laying there?

A. Yes. 20

Q. Did they look dead or alive?

A. Dead, to me.

Q. Did you notice any goods?

A. Yes.

Q. What was the condition of the goods?

A. I think he had petroleum goods on board his wagon, and a barrel was spilt along the track; and some block tin was scattered along the track on both sides; on the side near the rails, and I think I noticed it on the southerly side, as I walked on the track. 30

Cross-examined :

Q. Were you in the habit of going back and forward on the road?

A. Yes.

Q. Frequently?

A. Every day.

Q. Each way every day?

A. Yes.

Q. Was your business in New York?

A. Yes. 40

Q. You noticed the signal because it was a danger signal?

A. Yes.

Q. Did you notice any other signal before that?

A. I did not.

Q. Did you notice a signal before you entered the cut?

A. No.

Q. You had not noticed any signal ?

A. No.

Q. The reason you noticed this was because it was for danger ?

A. It was the signal for danger.

Q. Might there not be other signals at the other times, not of danger, but an ordinary signal of one blow ?

A. There might.

Q. I do not understand that there was no signal given ?

10 A. I did not hear any but the danger signal.

Q. Were you engaged in conversation or reading ?

A. I think I was engaged in conversation, if I remember right—there was a gentleman sitting near me.

Q. You rose and stood in the aisle, and felt no shock ?

A. Yes.

Q. Did you notice the train going at an unusual speed ?

A. My attention was not called to it particularly, sir.

By a Juror :

Q. Was there any flagman ?

20 A. I did not see any.

By the Court :

Q. You saw no flagman about there at all ?

A. No.

Further examined :

Q. Were there many people there when you got back ?

A. Not many—numbering about 20, I should judge.

Q. Did they pick up any wreck when you got back ?

A. Not that I saw.

Q. Had they carried the driver away ?

30 A. They were about carrying him to the station house. I think I did not see him.

By the Court :

Q. Did you notice on which side—on which side of the track the wagon was ?

A. I think the whole of the wagon—the wreck—was on the south side.

Plaintiff's counsel also called *Simeon E. Matthews*, sworn.

Q. You are not the plaintiff in this suit ?

A. No.

40 Q. You are the same name—are you a relative ?

A. I am his brother.

Q. What is your business?

A. Express business.

Q. Are you in the habit of passing along the place in question?

A. No, sir; but just about that time I did.

Q. How often?

A. I would go over that track for about two weeks, if I recollect rightly.

Q. Was that in consequence of the bridge being down? 10

A. Yes.

Q. Ordinarily was there a flagman there—do you know?

A. Yes.

Q. And when you passed along there, you expected to see a flagman?

A. I did, sir.

Q. Were you along there that night?

A. No, sir.

Q. Can you remember now, about how long before that you had been there? 20

A. The day previous I crossed that track.

Q. Did you know this property which was destroyed—the horses and wagon?

A. I had an idea of them—yes, sir.

Q. You were acquainted and had long known the horses and wagon?

A. I knew one of the horses some time, but the other horse I am indefinite about.

Q. Give your idea of what the wagon was worth?

A. The wagon was in first-class repair. I should judge it 30 was worth from \$400 to \$500.

By defendants' counsel:

Q. Was it in first-class repair?

A. Yes.

Further examined:

Q. The horse you knew—what was it worth?

A. I could not state that, not owning the horse and having him in daily use.

By the Court:

Q. What would he sell for in the market? 40

A. He was worth a couple of hundred dollars while in use.

By defendants' counsel:

Q. Which horse was that?

A. The bay horse.

Further examined :

- Q. What was the color of the other horse ?
 A. I think sorrel.
 Q. Give your idea of what he was worth ?
 A. I don't know.
 Q. Do you know what load was on the wagon ?
 A. Yes ; I judge from the wreck what load was on.

By the Court :

- Q. Did you see it the same evening ?
 10 A. No ; the day following, as I was going down on the train ; they had it altogether on the south side of the track.

Further examined :

- Q. What did you see the next day ?
 A. I saw from 8 to 10 barrels, which originally contained turpentine and alcohol. I ascertained that by driving up there afterwards, that they were turpentine and alcohol barrels.
 Q. What else did you see ?
 A. The wreck of the wagon. I think everything else had been carried away. I saw barrels and boxes which contained
 20 varnish material.
 Q. You are an expressman : can you give an idea of the value of the barrels of alcohol ?
 A. I know what goods they were ; I have a pretty good idea of goods.
 Q. Tell us what the alcohol was worth ?
 A. Turpentine was worth about \$25 a barrel, and alcohol was worth at least \$100 a barrel.
 Q. You say you had traveled along this place ; had you occasion to observe the nature of the place as a crossing ?
 30 A. Yes.
 Q. What occasion ?
 A. So long as possible, we traveled across the bridge above there, we avoided that crossing ; but it became impassible and we could not get across there, and had to cross there and go down the other track, which was considered dangerous, to say the least.
 Q. Did you ever observe the point at which you could see a train approaching from the cut ?
 A. Yes ; as you turned the corner below the wall. I have no
 04 definite idea of the distance from the corner, but from this distance you first see the smoke stack, and the train comes gradually out of the cut. You don't observe the whole train at first sight, and as you got up closer to the track, your vision is obstructed by the buildings on the south side of the track.
 Q. Were you there the day before ?
 A. I was.

- Q. Was there a flagman there?
 A. There was.
 Q. Did you see danger that time?
 A. The flagman rushed out.

Defendants' counsel objected.

The Court:

The question as to the dangerous character of the crossing, must be determined from the configuration of the locality.

Cross-examined:

- Q. What time were you there the day before? 10
 A. Between 5 and 6 in the evening.
 Q. Was that as late as you had been there?
 A. Yes; when I drove over the road I was generally an "early bird." I got over the road a little quicker than other parties.
 Q. You had not been over before?
 A. Yes; on two or three occasions.
 Q. Then the night before was not the latest you had been there?
 A. No. 20
 Q. When had you been there lately?
 A. On several occasions. Several other teams were blocked in there at once, and have been as late as 8 or 9 o'clock in the evening.
 Q. There were several wagons blocked there then?
 A. Yes.
 Q. Was not that one of the reasons you preferred to go over the bridge?
 A. Yes.
 Q. Was there not a gully and sort of slough near the corner? 30
 A. There was no gully, but it was kind of soft; it was broke up and soft.
 Q. Was not that the reason?
 A. No; but because it was considered a dangerous place. I heard it remarked upon by numerous parties.
 Q. Were you acquainted with this young man who was hurt?
 A. Yes; a passing acquaintance.
 Q. You say that this horse was worth about \$200; how long had your brother owned him?
 A. I could not say as to that. 40
 Q. About how long?
 A. I suppose about six months; he had not been in the business over a year at that time.
 Q. Do you know what he was bought for—that horse?
 A. I cannot say.

Q. Do you know how much he gave for the wagon?

A. I do not; I had no interest in his business affairs.

Q. How do you know the wagon was in good repair?

A. I saw it going over the road with heavy loads—overloaded.

Q. Did you see it that day overloaded?

A. I should judge it was.

Q. What do you mean by overloaded?

A. In that time of the year it is usual to carry from 50 to 70
10 hundred, for such a wagon.

Q. It is overloaded because it is difficult for the horses to carry; that is the test?

A. Yes.

Re-examined:

Q. You did not see the wagon loaded?

A. No; not at the time it was loaded.

Q. Why do you say it was overloaded?

A. I don't say it was at that time.

Q. I thought you said it was?

20 A. I know I saw it on other occasions.

Re-cross-examined:

Q. Had it an ordinary or extraordinary load that day?

A. I don't say it had an extraordinary load; I know it had an ordinary load.

Q. Do you know anything about this being in good condition that day?

A. I think I saw it that day, but would not swear I did.

Q. You will swear it was in good condition that day?

A. I would not.

30 Q. Is your opinion based on any facts?

A. Based on facts.

Witness: I cannot say whether I saw it the whole trip or on the down trip.

Q. Are you in a position to say whether it was in a good condition that day?

A. I would not swear positively about there being any screw loose that day, but the wagon was in good repair, that is my opinion.

Q. You are the brother of the plaintiff?

04 A. Yes.

Q. Did you ever notice a sign there, "LOOK OUT FOR THE LOCOMOTIVE"—a signal board?

A. I don't recollect seeing any.

Plaintiff's counsel also called *Melissy Molton*. Sworn.

Q. Where do you live?

A. West End, now; I did not at the time of the accident.

Q. Did you see that accident?

A. Yes.

Q. Where were you standing?

A. On the Midland track.

Q. Where is that?

A. It runs across York Avenue from the Jersey road.

Q. Put your finger on that map, in the place where you were standing?

[Witness pointed out where she stood.]

A. As the train comes out out from New York, it crosses out 10 to go to the Midland track.

Q. About how far were you off?

A. Not much further than from here to that first door there, from the Midland to the New Jersey track.

Q. But from the main track?

A. About the same distance.

Q. What was the first that called your attention?

A. I saw a man whipping the horses, and say "get up;" he said "get up" twice as loud as he could holloa, but the wheels slewed on the track; but the locomotive was about as far as 20 that little front house—the depot is first, and then that little front house.

The telegraph was on the north side, and the little front house—the lumber men keep their tools there—and the engine was right there, when he was by the track.

Q. What happened next?

A. Then he got up and whipped the horses, and then he got up and looked [out; and I did not hear no whistle until the engine struck him.

Q. Did you hear any whistle then?

A. Yes.

30

Q. What kind?

A. Three shrill whistles, and then stopped about a second, and then three more.

Q. What became of the wagon and horses when they were struck; you say it struck them?

A. Yes; both horses were on the north side; one was cut in two, and the other was lying dormant, and bye-and-bye he 40 got up and walked. The train went right through the wagon, and all of the wheels went down towards New York Avenue.

By the Court:

Q. That is on the north side?

A. Yes.

Q. And the rest of the wagon was on the south side?

A. Yes.

Further examined:

Q. Was the train going fast or slow?

A. I could not tell; I did not see it until he holloaed to the 50 horses to get up.

Q. Do you live now at West End ?

A. Yes, now ; I did not at the time ; I was there that night looking for a house ; it was a very cold night ; I live there now.

Q. How often did trains pass there ?

A. I guess every hour.

Q. Did you ever see them follow one another.

A. Yes ; I have seen them have to slacken speed until they got through the cut.

Q. This was all very quick ?

10 A. Yes.

Q. You saw the wagon first, and then the train ; but did not you see the whole thing about as fast as you could tell it ?

A. I saw the wagon on the track, and the first I see was him whipping the horses, and saying " get up ;" and before he could get the horses started, the train struck him. It was at the front house where I saw it.

Cross-examined :

Q. Which way were you going ?

A. Towards the five corners—towards Jersey City.

20 *By the Court :*

Q. You were not going towards this crossing ?

A. I was on the crossing. I had got on from where I had started from to the Midland crossing ; I was going away from where this accident occurred towards New York Avenue. I was right by the crossing at the Watch factory, where you come by the Watch factory, and there is a large tree on the corner.

Q. Where is that railroad ?

A. [Witness pointed it out.]

30 *Further cross-examined :*

Q. You were there by that big tree ?

A. Yes.

Q. You were on the sidewalk ?

A. Yes.

Q. The tree was between you and the track ?

A. No ; the tree is on the left hand side.

By the Court :

Q. Then you were a little nearer the coming train than the crossing where the wagon was struck ?

40 A. I was almost abreast of it.

Further cross-examined :

Q. Did you look to see if a train was coming ?

A. No; I saw a light from the head-light that was a short distance from the depot, and the jump house, that is, the tool-house.

Q. The train was coming towards you when you saw the head-light?

A. Yes.

Q. And then you were attracted by this man shouting "get up?"

A. Yes.

Q. And then you turned? 10

A. Yes; I stayed there until all was over.

Q. Did the train strike the horses, or wagon?

A. I think it struck right between the centre and the back wheels; the thing flew so I could hardly tell.

Q. How dark was it?

A. It was moonlight.

Q. Did you notice any gas lights?

A. I did not.

Q. Was it so light you could see everything?

A. Yes. 20

By the Court:

Q. Did you see or hear the train before you saw the wagon on the track?

A. I did not.

Further cross-examined:

Q. You saw the head-light?

A. When it was at the tool-house; that was after I saw the wagon, I said; as I was going up New York Avenue, track on the right, and I saw a light by this tool-house, and heard the driver say, "get up"; and the wheels slewed on the track, and then he whipped his horses, and he could not get off the track 30 before the locomotive came up and struck him.

Q. You say you saw the wheels slewed; did you see how it happened?

A. I saw the wheels slewed, and then he whipped his horses quite hard.

Plaintiff's counsel also called *Charles B. Matthews*. Sworn.

Q. You are the plaintiff in this suit?

A. Yes.

Q. You carry on business as an expressman?

A. Yes. 40

Q. Where were you on the day of this accident—where were you at the time of the wagon starting from New York?

A. I saw him away, and gave him his order and helped to load his wagon, and saw everything tight and good, and gave him his ferry money.

- Q. You saw him off from New York?
 A. Yes.
 Q. What time was that?
 A. About 6 o'clock when he left the ferry.
 Q. Was it a good wagon?
 A. About the largest, heaviest and best wagon I had on my place at that time.
 Q. What did you pay for it?
 A. I bought it with a route; the route, wagon and business
 10 and all I bought for low prices.
 Q. You are acquainted with the wagon and know what it was worth; you have bought and sold them?
 A. I have.
 Q. What do you consider it was worth?
 A. This wagon was in the best state of repair.
 Q. What was it worth?
 A. It was worth to me \$500; in fact, I could not have replaced it at the time; it was in complete running order.
 Q. How was the top constructed?
 20 A. It was a canvass skeleton top, with a slight projection of the hood.
 Q. How far up did the hood project?
 A. About half way.
 Q. How far above the seat did the hood commence to project?
 A. About two feet.
 Q. As the man sat in the wagon, leaning forward, could he see both ways?
 A. By leaning forward, he could see all ways; by stooping
 30 forward, he could see easily.
 Q. Was it properly loaded?
 A. Yes; loaded securely, so as not to lose anything.
 Q. What was upon it?
 A. Alcohol, turpentine, hardware, plumbers' ware, lead pipe, pig tin, iron gas pipe, and considerable hardware that was brought through on the cow-catcher, I learn, and a barrel of alcohol, I saw in the papers at the time.

By the Court:

- Q. How much alcohol was there?
 40 A. I think two barrels of alcohol.
Witness: Here's a bill of P. W. Smith: 5 barrels turpentine, 2 cases shellac—they are the only articles not demolished; they were taken in; being covered with heavy canvass, it would not lose out, and they were taken by the police officers to Jersey City; one barrel of alcohol, two pounds of Prussian blue, &c., &c.
 The value of those were \$406 66, and interest added to it makes \$413.
 Q. What is this?

A. A bill of W. H. Drummond : 550 pounds lead pipe, one heater grate, 30 feet iron pipe—some of that lies up at the police Station in Hudson City ; I saw it lying there : the amount of the bill is \$63 37.

Q. Did you pay Mr. Smith's bill ?

A. Yes.

Q. And Drummond's ?

A. Yes ; that is receipted, as you see.

By defendant's counsel :

Q. Did you pay it ?

10

A. I paid it.

Further *examined :*

Q. What else was there ?

A. Underground Gas Company,	\$32 66
W. H. White,	4 00
Mr. Wm. Johnson,	12 00
Bliss and Drake,	33 75
For bundle hardware,	
Richard Hoffman,	12 00 20
	<hr/>
	\$564 45
	<hr/>

Q. Who have you not paid of the list ?

A. I have paid them all but one or two ; we were liable, in all cases, whether they were stolen from us or what—bound to pay for them.

Q. You are a common carrier ?

A. Yes.

Q. And a general expressman ?

A. Yes.

Q. You were in possession of these goods ?

30

A. Yes.

Q. And you say they were of this worth ?

A. Yes.

Q. The shellac was not injured ?

A. No.

Q. What did you do with that ?

A. Sold it.

Witness : After I had settled Mr. P. W. Smith's bill, he told me he would like to buy, and I sold it to him.

By defendant's counsel :

40

Q. What was the net amount of the bill ?

A. \$406 66.

By the Court :

Q. How much did you get for the shellac ?

A. For the shellac I paid him \$169 49.

Q. How much did *he* give *you* for it ?

A. I think I got a slight increase of one or two cents in the pound, and he gave me the advantage at the time ; I think I got \$169 for it.

By defendant's counsel :

Q. Have you a memorandum to show that ?

10 A. I have, but not with me.

By the Court :

Q. Did you save from the load anything else ?

A. No ; something else was recovered ; I saw it laying down at the police head-quarters, and I did not think it worth taking away ; I could not deliver it to the owners and recover anything, and I left it there, and some scraps of harness broken to pieces.

Further examined :

Q. What was the harness worth ?

20 A. It was a first-class set of harness ; when new it cost \$110, that was a couple of years before ; it had been in use since then.

Q. What was it worth ?

A. Worth all of \$50 to me.

Q. The horses, were they bought separately ?

A. One of them was, and one was not.

Q. How much was the worth of these two horses, give them separately ?

A. Well, they were worth to me more than they were worth to others—they were express horses.

30 Q. How much would a willing purchaser be willing to give for them ?

A. The class of horses that they were, I have paid from \$200 to \$300 apiece.

By the Court :

Q. How much was this worth ?

A. I consider they were worth a couple of hundred apiece to me.

Q. You bought the horses some time before—what did they cost ?

04 A. They cost me about \$200.

Q. How ?

A. By way of trade.

Q. What would be your judgment of the value of these horses ?

A. To me about \$400.

Further *examined* :

Q. We ask you what these would sell for in the market, not at a sheriff's sale ?

A. One of them was a horse I valued very highly.

Q. How much ?

A. I should judge it to be worth \$200 in the market—both.

Q. When did you hear of this accident ?

10

A. About 10 o'clock.

Q. And you went down ?

A. Yes ; immediately.

Q. The wagon was all broken to pieces ?

A. Into splinters and chips ; nothing was left but spokes and axles, and so forth.

Q. You have been down to the crossing to make measurements ?

A. Yes.

Q. Is this paper in your handwriting ?

20

A. Yes.

Q. What did you find to be the height of the flag house ?

A. 12 feet 5 inches.

Q. What is the length of the flag house, measured along the railroad ?

A. 21 feet.

Q. What was the size of that house down below the tool-house ?

A. The height of the front house, I have it 17 feet 6½ inches.

Q. What is its width ?

30

A. Along there, 33 feet.

Q. What was the other measurement ?

A. The medium height of the cut was taken about opposite this front house, they call it the tool-house.

Q. What was the width of it, what was it ?

A. Only a few feet, I should judge, not over six feet.

Q. Where did you take the height here ?

A. Near this telegraph pole near the switch ?

Q. What was the height ?

A. 11 feet, which I consider the medium height.

40

Witness : The height of the flag house was 12 feet 5 inches, and the length 21 feet.

Cross-examined :

Q. When did you make this measurement ?

A. Just before the last term of court.

Q. How did you make them ?

A. With a piece of twine. For instance, one little boy held

one corner and I the other, and I put a knot and a piece of paper for the height, and another knot and a piece of paper with the length, and when I got home I put it on a piece of paper.

Q. Were not all these papers torn off?

A. No; I carried them in my pocket.

By the Court :

Q. Are you not mistaken about the length of the flag house?

A. I don't think I am, I may be.

Further cross-examined :

- 10 Q. Are you sure the boy had hold of the string ?
 A. Quite sure.
 Q. When did you buy this wagon ?
 A. January, 1870, I think; I am not positive.
 Q. That's two years before ?
 A. Yes.
 Q. Who did you buy it of?
 A. I rather think it was a little later in the year—the latter part of January, of one James Towers.
 Q. Did you know how long he had it ?
 A. I don't.
- 20 Q. Had he been in the express business ?
 A. Yes.
 Q. Did he use this wagon ?
 A. I presume he did.
 Q. Was it not an old wagon when you got it, in point of years ?
 A. I could not say. I know James Towers told me it cost him in the neighborhood of \$1000. I don't know how long he had run it; it was a good one, and the only wagon I bought of
- 03 him.
 Q. How much did you allow him ?
 A. Nothing. I bought the route, business, horses, stock and everything. It was in the Sheriff's hands when I got it, and I got it at what I considered a low price; what the estimate of the wagon was, I don't know.
 Q. Had you no estimate of the wagon ?
 A. I don't know there was any.
 Q. What did you pay for the whole thing—route and stock and horses ?
- 04 A. It was for \$1000 or \$1200, and this wagon was about all the things I bought of him; one of the horses I gave away—there was another old truck in it—and one of the horses I replaced with another entirely.
 Q. What did you get ?
 A. This wagon.
 Q. How many wagons ?
 A. There was an old truck and a light one-horse wagon.

Q. What do you mean by that, a buggy ?

A. No; a light delivery wagon.

Q. A small express wagon ?

A. Yes; though it was not a wagon until it was made one; this was the only wagon I bought that *was* a wagon.

Q. How many horses did you get ?

A. One horse and two dead ones; one alive and two dead ones.

Q. How many horses did you get ?

A. Three. 10

Q. Two of them were on this wagon ?

A. No; one of them was.

Q. What became of the other ?

A. One I gave away.

Q. For how much ?

A. For nothing.

Q. How did you give him away for nothing ?

A. I gave him to my father, and told him to take him up in the country and do what he pleased with him.

Q. Why ? 20

A. Because he was no use to me.

Q. Was he no use to your father ?

A. No.

Q. What did you want to stick your father for ?

A. That is my business. I did not consider him worth anything, and my father gave him away, as you might say.

Q. What did your father get for him ?

A. He did not get anything at all. I will tell you the facts: He met a friend, and so he told him, "I will give this old horse for this watch." 30

Q. A silver watch ?

A. No, a brass watch: and he gave the watch away, I think; and the man who got the horse told me he gave the horse away, he was glad to give him away.

Q. What became of the other horse ?

A. I worked him a little while and then traded him off; I had not worked him any time, hardly; I worked him a month or so.

Q. What did you get for him ?

A. Another horse, by trading with him. 40

By the Court :

Q. One of these horses ?

A. No.

Further cross-examined :

Q. What did you pay to boot ?

A. I bought the other horse and gave this one in.

Q. What was this horse on the wagon, this other horse you drove it with?

A. He was a horse who had a reputation of being a good horse; he was known as a good horse, and I got him for my business.

Q. When did you get the other horse?

A. I have had him 5 or 6 months.

Q. How did you get him—what did you pay for him?

10 A. I think I traded a black horse for him, bought of "Levi," at the "Bull's Head" in Newark. I don't remember what I gave Levi for the black horse; I believe I gave him this horse for him in trade; I don't recollect exactly.

Q. State to us how you traded?

A. My memory is not so treacherous, but it is about a year ago, and I have bought and traded many horses since.

Q. Do you know that this truck was bought of Mr. Towers?

A. No; I think I got a portion of it; I got the axles, and had it made into a new one; I don't think there was but one axle in it.

20 Q. What was this small express wagon?

A. That I have still; I have had it repaired three times since by Mr. Doremus.

Q. What became of the goods of "Drummond and Company?"

A. I could not tell; I heard they came through on the cow-catcher, but never got a record of them.

Q. Did you enquire?

A. Yes, at the depot; but nobody could tell me anything about it.

30 Q. What became of the other goods?

A. The lead pipe and alcohol barrel with the head staved out, were lying there, but it had ruined them.

Q. The goods of Drummond?

40 A. The things left there, when I was there that night, the police officers packed up; there was a dozen cases of shellac and block tin lost from "Bliss and Drake;" what became of the rest I could not say. I enquired what became of them, and I was told that the "Police officers had covered it up;" and I went, and it lay in front of the office, and there were two cases there of shellac; the other things were only scraps and broken gas and water pipes, and a few sheets of this block tin.

Q. What became of the wagon?

A. There was no wagon left; the sticks remained, the axles were something we brought away.

Q. Did you bring the top away?

A. No; I did not know where it was, and I think I heard some one say it was wrapped round the engine and taken up to the Police Station; I think I saw it there—I did see two or three pieces of canvass lying there.

50 Q. Where was the grate?

A. On the wagon.

Q. When you got to West End, what did you see?

A. When I got to West End you could tell as much about it as I could tell you.

Q. These receipts of the Underground Gas Company?

A. I have a memorandum here, and the bill is paid; I sent a man last Saturday for the receipts.

It was sheet iron or block tin, \$33 66. For "White" there was a keg of emory. "Johnson's" was a bundle of hardware; I don't know what became of it. "Bliss and Drake's" I think was lead pipe, I know it was "Tatham's," New York. I don't know how much of it came to Newark—some of it was brought. 10

Plaintiff's counsel also called *Henry Müller*. Sworn.

Q. Where do you reside?

A. 173 East Kinney.

Q. What is your occupation?

A. Blacksmith.

Y. Did you know the team and wagon that has been spoken of as destroyed?

A. Yes. 20

Q. Are you well acquainted with the market value of horses and wagons?

A. Yes.

Q. From your trade?

A. Yes.

Q. Did you know the value of this wagon?

A. Yes.

Q. What would you estimate its value to be?

A. \$500.

Q. In what condition was the wagon? 30

A. In very good condition.

Q. How do you know?

A. I have repaired the wagon a few weeks before the accident occurred.

Q. How much expense was made on the wagon?

A. \$133 was the bill I gave to Mr. Matthews, and the money I received for it.

Q. What did you do to it, for that?

A. I put in new leaves in the springs, new arms and an axle I believe in the hind part, and general overhauling as to the wagon. 40

Q. The horses were bay and sorrel?

A. Yes.

Q. Did you know both?

A. I knew both.

Q. Do you know how much the market value of these horses were?

A. Between \$200 and \$250, I judge they were heavy draught horses.

Q. For both or apiece ?

A. Apiece.

Cross-examined :

Q. Was not this an old wagon, Mr. Müller ?

A. Yes sir.

Q. And were not those old horses ?

A. They were not very old ?

10 Q. Do you know what their age was ?

A. Not exactly.

Q. About ?

A. Between 9 and 11 years.

Q. Do you repair any more for " Matthews ?"

A. Yes.

Q. Was this bill of \$133 all for the wagon ?

A. For that wagon.

Q. It needed overhauling pretty badly ?

A. Yes sir.

20 Q. You have no idea how old the wagon was ?

A. I have no idea.

Q. You put it in order so that it would run ?

A. Yes, new tires and all such things.

Plaintiff rests.

Defendant's counsel moved to non-suit the plaintiff,

The Court denied the motion, and bill of exceptions granted, which is sealed accordingly.

DAVID A. DEPUE,

J. S. C.

30 Defendant's counsel opened the defence and called as a witness—

Smith Garrabrant, sworn :

Q. Where do you reside ?

A. Newark, New Jersey ; 402 Mulberry Street, Newark.

Q. How long have you lived in Newark ?

A. About 18 years.

Q. What is your business ?

A. Engineer on Pennsylvania Rail Road.

Q. How long have you been such ?

40 A. 14 years ; I have been engineer about 12 years.

Q. Were you at West End on the night of this accident ?

A. I was.

Q. In what capacity ?

A. Running the engine.

By the Court :

Q. You run the engine that run against this team ?

A. Yes.

Further examined :

Q. What is it your duty to do in approaching the West End station, in the way of signals ?

A. As we pass the West End station we generally blow the whistle, and also at the crossing at the same place.

Q. What is that signal ?

A. One long whistle at the Telegraph station, I blow. 10

By the Court :

Q. That is for the telegraphic operators ?

A. Yes.

Further examined :

Q. Did you give that signal that night ?

A. I did as I passed Marion station.

Q. Explain the system ?

A. Our orders are, within about 100 yards before we get to the crossing to blow a long whistle, to notify wagons or vehicles passing of our approach ; I did so that night, as I passed under the depot there at the Marion station ; I blew the long whistle. 20

Q. We have been calling it a whistle ?

A. Under that bridge the depot is on top.

Q. One whistle ?

A. One whistle.

Q. How do you know that ?

A. Well I knew I done it that night, and I always do it ; I never missed doing it.

Q. How do you know ?

A. I knew I did it at the time ; I thought of it when the accident occurred that night ; some said it was blown, and some it was not, and I remember it at the time. 30

Q. The effect of the accident impressed it on your mind ?

A. It did.

Q. Who else was with you on the engine ?

A. The fireman, Charles Metz.

Q. Any one else ?

A. No.

Q. How fast were you running ?

A. About 15 miles an hour. 40

Q. Did you have hand brakes or air brakes on the train ?

A. Hand brakes.

Q. At the time ?

A. At the time, yes sir.

Q. How close can you judge of the speed of the train, Mr. Garrabrant?

A. I think I can come pretty close to it, within 2 or 3 miles I should think.

By the Court:

Q. Within 2 or 3 miles an hour, do you mean?

A. Yes; I have been running 12 years, and I think I can judge pretty near.

10 Q. Have you any machinery to indicate?

A. We generally judge by the revolutions of our drivers.

Further examined:

Q. What was the duty of the fireman?

A. To ring the bell at all crossings.

Q. When you give the signal?

A. It is his duty to ring the bell at all crossings; I generally blow the whistle before he commences, and he generally rings until he passes the crossing.

Q. Do you know whether he did it that night?

20 A. I do.

Q. Did he?

A. He did.

Q. What first apprehension of danger did you have?

A. I saw the horses coming on the track; when I first saw them they were just about the head and fore shoulders of the horses were on the track as I was coming east this way.

Q. Could you see the heads of the horses as you came from the flag house?

30 A. I could see nothing; but as I turned the tool-house, the fore shoulders of the horses were on the track, and I saw them and instantly blew the whistle to call for brakes.

Q. Did you give the signal for brakes?

A. I blew the signal for brakes; I blew twice.

Q. What signal was given?

A. Two whistles.

Q. Two sharp whistles?

A. Two sharp whistles.

40 *Witness:* Two whistles for brakes, three to let off brakes, and one to back up, and I threw on my back motion and steam to back.

By plaintiff's counsel:

Q. How many whistles to back up?

A. Three to back up—I blew twice to brake up.

Further examined:

Q. You reversed your engine?

A. I threw the valve gear to resist the motion of the engine.

Q. Was there anything else you could do ?

A. Nothing at all. Before I backed up I blew the whistle again for brakes.

Q. And this all occurred before you struck the wagon ?

A. Yes.

Q. Was the head-light lit ?

A. It was.

Q. What kind of a night was it ?

A. Moonlight night.

Q. Where did you strike the wagon ?

A. Between the front and back wheels—about the centre of the wagon. 10

Q. What kind of a wagon was it ?

A. A large covered express wagon.

Q. Did you see any body before you struck it ?

A. No one at all but the horses.

Q. Did you see any whipping of the horses ?

A. Nothing.

Q. Did your head-light throw a strong, bright light—what kind of a light did the head-light throw ? 20

(Plaintiff's counsel objected to question as leading.)

By the Court :

Q. What effect did the head-light have on ability to see ?

A. The head-light burned bright ; there was no need of it ; the moon threw a light—there was no need of it ; it was light enough for me to see the wagon ; the head-light was burning good.

Further examined :

Q. Could you see any man leaning forward ?

A. I did not. 30

Q. If the man had leaned forward, could you have seen him ?

A. I could.

Q. What effect had this collision on the engine on your train—did it do any damage to the engine ?

A. Yes ; smashed the head-light all to pieces, broke the braces in front, also knocked the lower end of the front head in.

Q. What effect did the collision have upon the wagon ?

A. It broke the wagon in two in the centre ; the load was very heavy ; if it had been light we could have gone through the centre, but being heavy, it broke the wagon in two, and I 40 went right through it.

Q. Did you stop the train ?

A. I did, and went right back to see if anybody was hurt, and told the fireman to take care of the engine.

Q. How far did you go before you stopped ?

A. I did not take particular notice ; I should judge about 300 yards past the crossing.

By the Court :

Q. Do you mean the locomotive was 300 yards, from the crossing or the rear of of the train ?

A. The rear of the train ; about 400 yards altogether, the train might have been.

Q. How many cars were there to the train ?

A. Four cars.

Further examined :

Q. Baggage car ?

10 A. Baggage car and three passenger cars.

Q. When you returned, what did you find ?

A. When I returned to the scene of the accident, the horses and the front of the wagon laid to the right of the track, and the driver and the hind wheels on the south side of the track—the left hand side coming east. They had not picked the driver up when I had got there.

Q. Was the driver separate from the wagon when you found him ?

20 A. Yes ; he laid there with the rest of the barrels and other things ; nothing was onto him, and we took him up.

Q. The wagon was on the side nearest the Watch factory ?

A. Yes ; and he laid there in the rear part of the wagon.

Q. Was there a number of people there when you got back ?

A. Quite a number of passengers went back from the rear of the train, and there might have been twelve or fifteen of us.

Q. Was there any special reason at this time why you should be careful in looking for the West End signal ?

A. No, sir.

03 Q. Do you know what was the condition of the Hackensack bridge—was there any difficulty ?

A. I knew nothing about it.

Q. Do you know whether trains were running on the Hackensack bridge then ?

A. I think we were using both tracks ; I don't remember now.

Q. You say Mr. Metz was your fireman ?

A. Yes.

Q. How long had he been with you at that time ?

A. I think about two years.

04 *Cross-examined :*

Q. What train was this ?

A. 7 o'clock from New York.

Q. Destined for where ?

A. Newark.

Q. Due at the station when ?

A. About 7.16.

- Q. Starting from Jersey City when ?
 A. 7.10.
 Q. The distance from Jersey City to this place, what ?
 A. Well, I should judge—
 Q. Do you know ?
 A. I don't.
 Q. State your judgment.
 A. Two miles—two and a half—it might probably be two and a half; I don't think it is over that; I don't think it is over two miles—about two miles. I never heard the distance. 10
 Q. What time were you there ?
 A. There at .16.
 Q. You were there on time, then ?
 A. Yes ; and left Jersey City on time.
 Q. Starting in Jersey City, it took a little while to get the train under way ?
 A. Taking a few cars, it don't take longer than at other stations.
 Q. You started right off ?
 A. We have to get headway. 20
 Q. How do you do to get headway ?
 A. We do get headway at the rate of 12 miles an hour by the time we get one-half of a mile from the depot.
 Q. And then you increase the speed to what ?
 A. We don't generally exceed 15 miles an hour until we get to Hackensack bridge.
 Q. Hackensack bridge from this crossing is one-half mile ?
 A. No ; not over one-quarter mile from this crossing to the bridge.
 Q. What is the character of the grade just at this point ? 30
 A. At this point it is just beginning a little on the down grade.
 Q. Where does it begin the down grade ?
 A. About at the depot.
 Q. You state that you did all you could do ; there was nothing else that you could do, in so many words ; when you say that you mean it ?
 A. I did sir.
 Q. Have you had any experience before as to such matters, and what a man could do in cases of collision ? 40
 A. I have had similar things with regard to trains ahead of me, and come pretty close to trains.
 Q. Have you not had similar things with regard to collisions ?
 A. No sir.

(Defendant's counsel objected before the answer.)

The Court:

I think the matter of appliances for arresting the engine is the only question.

Further examined :

Q. I understand, when you were first asked, you blew the whistle here, but say you blew the whistle for the signal and the crossing ?

A. I always blow for the signal and the crossing ; they are both at the same point.

Q. You use the expression "I generally do?"

A. I always do.

Q. What is this blowing a whistle for the signal and the crossing ?

A. We have telegraph signals on the line of the road, and one train is not allowed to pass the signal until the other has passed the other signal ahead ; if it is not past the other signal they will hold the red signal on to us.

Q. Do they give you a signal ?

A. They give us a white signal ; they hold the red signal all the time, and if the other train has passed the signal ahead they give us the white signal.

Q. Then a train was ahead of you ?

20 A. No, they gave us the white signal.

Q. You say you blew the whistle for the crossing ; do you blow the whistle for signal always ?

A. Yes, I always blow the whistle for the signal.

Q. Where should you be when this white signal is to be given ?

A. As soon as we get in sight of them.

Q. Where is that ?

A. About that bridge ; when we pass under the bridge at the station I always blow for it as I pass under that bridge ;

30 generally before I can see the signal, I blow for it.

Q. Did you see the signal that night or not ?

A. I did.

Q. After or before the signal was given ?

A. After I whistled, that night ; I always blow as I pass under that bridge ; I cannot see the signal until I pass under the bridge on the platform.

Q. Where is the Telegraph station ?

A. It has been moved since.

Q. Where was it then ?

40 A. Right at the corner.

Q. Where is it now ?

A. About opposite this tool-house ; it stands about opposite to where this tool-house is.

By the Court :

Q. Which side of the track was the telegraph station ?

A. On the north side of the track, on the same side as it is now.

Further *examined* :

Q. You say it was moonlight ?

A. Yes.

Q. You saw the moon ?

A. I did not look at the moon ; I saw it was nice and light.

Q. When was this ; what month ?

A. The month of January.

Q. January last ?

A. Yes.

Q. And the 28th of the month ?

A. I could not say positively what date.

10

Q. It was nice and light when you went back ?

A. It was.

Q. And from the moon ?

A. And from the moon, yes sir.

Q. Did not the moon, on that night, rise about 8 minutes past eight ?

A. I know nothing about it : I could not tell.

Q. I understand you to say that you whistled about 100 yards of the crossing ; and you said this, that the rule is to blow 100 yards from the crossing, and to blow a long whistle, and you did blow that night in passing under the bridge ; what whistle did you blow ?

A. The alarm whistle, for both signal and crossing.

Q. You blow it the first time for the signal ?

A. I blow it for both at the same point ?

Q. And then, after that, the bell was rung, you say ?

A. Yes, sir.

Q. Now where were you when that bell was rung ?

A. The bell was rung all along through there, from the depot 30 to the crossing.

Q. Was your whistle done when the bell began ?

A. It might have been ringing when I was blowing the whistle, I am not positive.

Q. You don't know where he began ?

A. I know he was ringing the bell at the time, he was sitting and had nothing else to do ; I know he was ringing the bell all along there.

Q. You said he began to ring the bell and that you whistled ?

A. He was ringing the bell at that time.

Q. Was he ringing at the time you whistled, or afterwards ?

A. I stated he was ringing all along there.

Q. How was it ; you have said he began to ring the bell after you whistled, and now you say he might have been ringing before ?

A. [No answer.]

Q. It is the fireman's duty to ring the bell ; he commenced ringing after the whistle ?

A. I might have said it.

Q. Now did he commence before you whistled, or not ?

A. He was ringing the bell along there; I am not going to say anything of the kind; I cannot watch him and look ahead.

Q. Which way were you looking?

A. Ahead.

Q. And he was sitting behind you?

A. No, he was at the side of me, sitting; I could not tell the instant he took hold of the bell and pulled it; I could hear the bell ringing, and that was sufficient.

Q. You say he was sitting on a seat and had nothing to do but ring the bell?

A. I knew he did, I heard it ring.

Q. How do you know he was sitting on a seat?

A. Because he had been sitting all the way from Jersey City; all the way through the hill, all the way through the cut; if he had got off it, I should naturally have noticed the movement.

Q. This whistle you blew for the signal, and you blew at the same time for alarm; how long did you keep it up?

A. About 2 seconds.

Q. Just at that place there is a curve in the road, is there not; just along there where you approach this unfortunate accident?

A. The curve begins just as you turn the tool-house; we were just nicely getting on a straight piece of track, as we turn the tool-house.

Q. That curve, how is it; pretty sharp?

A. It is, a little further back there at the depot.

Q. Standing in the middle of the track there and looking down towards New York, is your vision obstructed by the curve; suppose you stand on this side of the track on the south side?

A. That is the track I was running on.

Q. Standing on the north side and looking towards New York is your sight intercepted by the curve?

A. Yes, I cannot see much further than the depot, not much beyond the depot.

Q. If you are on the south track, does it make any difference?

A. You could not see quite so far; no, sir.

Q. You don't stop at West End?

A. No.

Q. That train makes no stops there, does it?

A. It did not at that time. I have not been running it for some time, and I don't know that it is so now.

Q. Did you not say that the train does not make any stop?

A. It did not at that time; that train was not making any stop—no, sir.

Q. You said below—before the Coroner's Jury—that your instructions were to ring the bell at a distance of eighty yards before you go the crossing?

A. Yes.

Q. Now you say one hundred yards?

A. Eighty or one hundred, I said.

Q. Is there any difference between the whistle and the bell?

A. About the same.

Q. Is there any difference in your instructions between the whistle and the bell?

A. About the same distance, both the whistle and the bell.

Q. You said your instructions were to ring the bell at eighty yards before the crossing?

A. I believe that is according to our instruction book—eighty yards.

Q. You were striving to obey that instruction? 10

A. I was—I always do, I believe, about eighty yards from the crossing.

By the Court:

Q. Did you see the flagman there at that time?

A. I saw no flagman.

Q. You don't know whether he was there or not?

A. I don't think he was there.

Re-examined:

Q. If I understand you right, the signal you gave under the bridge was the signal for the signal station? 20

A. For the signal and the crossing.

Q. That was when you were under the bridge, near the tool-house?

A. Yes; two whistles.

Q. You reversed your engine?

A. Yes; I pulled her right back, and threw the reversing motion, and I blew the whistle for the brakes.

Q. Do you remember the bell ringing when you reversed the motion?

A. I do. 30

Q. And ringing up to the time of passing the crossing?

A. He saw it as soon as I did, and jumped off his seat and applied the brake; of course he was not ringing then.

Q. Did the bell swing?

A. It naturally would swing, I should think, for a distance of twenty-five or thirty yards after letting go of the rope.

By the Court:

Q. Do I understand that your instructions were to ring the bell and blow the whistle at eighty yards before you got to the crossing? 40

A. That is according to our instruction book, eighty yards before we got to the crossing.

Defendant's counsel also called *Charles Metz*. Sworn.

Q. Where do you live?

A. Newark.

Q. How long have you lived in Newark?

A. Very near five years.

Q. What is your occupation?

A. Fireman at the time of this accident.

Q. Were you fireman on the engine with Garrabrant?

A. Yes.

10 Q. What was your duty as fireman?

A. To fire up and look out for signals and ring the bell.

Q. What was your duty when approaching the West End station as to signals?

A. No more than look to see if they were right, in case the engineer should not see him.

Q. And what else?

A. Ring the bell for the crossings.

Q. Did you ring the bell on the night of this accident?

A. Yes; I commenced to ring the bell I guess one hundred
20 yards before I got to the depot.

Q. Did you continue to ring it?

A. Yes; up to the time I saw the wagon on the track.

Q. Where were you when you saw the horses?

A. On the seat.

Q. Where was the engine—can you point out there?

A. Just before we came to the tool-house I saw it; I was on the inside, on the south side, just before we come to the corner, or about the corner.

Q. Do you recognize the flag house?

30 A. Yes.

Q. With reference to that house, where was the horses?

A. Just about stepping on the track.

Q. And between the track and the flag house?

A. When I come around here, I just saw the horses stepping
on here, about the corner.

Q. What did you do when you saw the horses?

A. I jumped off my seat and put on the brake, and saw it about the same time as I jumped off to put on the brake.

Q. What did you have in your hand at the time you saw the
40 horses?

A. The bell rope.

Q. And you dropped that and jumped off to the brakes?

A. Yes; I dropped that and hollered about the same time.

Q. The brake on the tender, you mean?

A. Yes.

Q. Why do you know you rang the bell?

A. Because I always make a practice to ring before coming to the depot, and I know I was ringing the bell then.

Q. Did this accident serve to impress it on your mind—was anything done that impressed the fact of your ringing the bell?

A. No, sir. I was ringing the bell, and stopped ringing the bell when I saw the wagon and horses; I always ring the bell and keep on until I get to the crossing.

Q. Were you a witness at the coroner's inquest?

A. Yes.

Q. Did you testify to ringing the bell, at the coroner's inquest?

A. I believe I did; I believe he asked me that question.

Q. Where did the engine strike the team or wagon?

A. About the centre of the wagon, I should think; I did not stop to see where it was struck.

Q. Could you see distinctly the horses when they came on the track?

A. Yes.

Q. What enabled you to see it?

A. It was a moonlight night.

Q. Was it a moonlight night?

A. Yes.

Q. Was the light on the engine lit?

A. Yes.

20

Q. Were the horses and wagon distinctly visible?

A. Yes; the whole of the wagon was not visible—the horses were about stepping upon the track, just about there.

Q. Could you see the front part of the wagon distinctly?

A. Yes.

Q. Did you see any man there?

A. No.

Q. Did you see any whipping of the horses?

A. No; as soon as I saw the horses I hollered and jumped.

Q. If the man had been whipping, would you have seen it?

A. I don't know that I would have taken notice if he had.

Q. Are you certain about not seeing the man there?

A. No, sir; I saw no man.

Q. Do you remember whether the whistle was blown for a signal?

A. I don't; I remember the signal was white, so I could see it.

By the Court:

Q. Did he blow the signal to the crossing?

A. No.

Q. You make just one blow for the signal?

A. One blow.

40

Witness: There is the signal.

Further examined:

Q. Did you hear the whistle blown before the danger signal?

A. No, sir; I could not recollect.

By the Court :

Q. How many whistles were blown between the bridge and the crossing?

A. I recollect two blows—that was for brakes.

Cross-examined :

Q. You did not go back after that wagon was struck, did you?

A. No.

Q. You were sworn before the Coroner's inquest about this
10 poor man's death?

A. Yes.

Q. Did you say there, you did not think the deceased could have got off the track to save himself, not after the engineer blew down brakes?

A. No.

Q. Do you say so now; could he?

A. No, I don't think so; I suppose he might if it had struck his horses and not the centre of the wagon.

Q. Where were you when you jumped and hollered and
20 dropped the bell-rope?

A. Just when we were striking the tool-house, about going round that corner there; I had a little bit of advantage there, being inside the curve, not worth mentioning, I suppose.

Q. Where were you exactly, as far as you can tell on the ground, not in measurement, when you began to ring that bell?

A. Back of the depot, away back of the depot.

Q. I thought you said about 100 yards off?

A. Yes, before I got to the depot; about 100 yards before I struck the depot.

03 Q. That ringing had nothing to do with the crossing?

A. I ring until I get over the crossing; I always do, but I did not do it that night, because I got off my seat to put on the brakes.

Re-examined :

Q. When the horses had just reached the track and the signal was given, supposing the team had been stopped, would the wagon have been hit?

A. No, sir; the horses.

Q. Suppose the team had been turned off, would the wagon
04 have been struck?

A. No, sir, I don't think it would.

Defendant's counsel also called *Frank Weis*, sworn :

Q. Where do you live?

A. West End.

Q. What was your business?

- A. Telegraph operator and agent.
 Q. In the employ of whom?
 A. The Pennsylvania Rail Road.
 Q. In connection with the Western Union Telegraph Co.?
 A. Yes, sir.
 Q. Were you at West End on the night of this accident?
 A. I was.
 Q. Where were you?
 A. In the depot.
 Q. What part of the depot? 10
 A. Up stairs.
 Q. In the building or on the platform?
 A. In the building.
 Q. Did you hear this train coming?
 A. Yes.
 Q. What did you hear?
 A. The whistle, from under the bridge.
 Q. That was almost beneath your feet, was it not?
 A. Yes, sir, right underneath.
 Q. What else did you hear? 20
 A. The bell.
 Q. You heard the bell then?
 A. Yes.
 Q. What else did you hear?
 A. In about 3 seconds I heard the danger signal.
 Q. What did you do?
 A. Run to the window to see what was the matter.
 Q. Does that photograph show where you were?
 A. Yes, sir; the window there at the top.
 Q. What kind of a night was it? 30
 A. Moonlight.
 Q. So light that you could see objects at the crossing?
 A. Yes, sir; and further too.
 Q. What did you see when you looked out of the window?
 A. Nothing but the train and red lights.
 Q. Did you see this collision?
 A. Not strictly; I did not see the engine strike the wagon;
 I saw the things around afterwards.

By the Court :

- Q. You saw the train at the time when this collision took 40
 place?
 A. Yes, sir; I did.

Further examined :

- Q. Did you go to the place of the accident?
 A. I did.
 Q. Rapidly?
 A. About 2 minutes afterwards I was there.

- Q. Before any people returned from the train?
 A. Yes.
- Q. Who was there when you ran to the spot?
 A. Folks out of the watch factory, and so on.
- Q. What did you see when you got there?
 A. The wagon and the horses.
- Q. Tell us where they were?
 A. The horses and the front part of the wagon was on this north side of the track, and the rear part of the wagon was on
 10 the south side of the track, and also the driver.
- Q. Are there gas lamps on this crossing?
 A. Yes, one at each side.
- Q. Were they lit that night?
 A. I would not be sure.
- Q. Are they always lit?
 A. Always lit; I never knew them to fail.
- Q. Was it lit when you reached the crossing; was it light,
 that you could see objects readily?
 A. Yes, moonlight.
- 20 Q. Is there a signal station near the crossing?
 A. There was at that time.
- Q. What connection had you with that?
 A. I worked that signal in the day time.
- Q. How long since you had left that night?
 A. About 10 minutes.
- Q. In what condition did you leave it?
 A. In a proper condition, so far as the signal was concerned.
- Q. Do you remember whether that was a red light?
 A. We always kept it red at all times.
- 30 Q. How do you show it white?
 A. By pulling a cord.
- Q. When do you do that?
 A. When we hear the whistle on the engine.
- Q. Do you see that board on that photograph?
 A. Yes.
- Q. What is that?
 A. "Look out for the locomotive."
- Q. Was that there at this time?
 A. Yes, sir, it was.
- 40 Q. Where were you stationed, at that time, in the day-time?
 A. At West End telegraph office.
- Q. At what point was that located at that time?
 A. Opposite this flag-house; on the opposite side of the road.

By the Court :

- Q. On the north side of the road?
 A. Yes.

Further examined :

- Q. Have you noticed this man crossing the station?
 A. Yes.

Q. Had you ever seen this driver before ?

A. Yes, I have seen him before, but I could not say where.

Q. Did you notice his driving, in crossing railways, with reference to his care or carelessness ?

A. Yes.

Plaintiff's counsel objected before the answer was given.

The Court over-ruled the question and exception prayed and granted, and this exception is hereby sealed accordingly.

DAVID A. DEPUE,

J. S. C. 10

Further *examined* :

Q. Can you give us the size of the flag-house ?

A. 16 feet long, 7 feet wide and 12 or 13 feet high.

Q. How is the elevation as to grading ?

A. In good condition, and at each side as stone so as to make it come up good.

Q. It was paved ?

A. Yes, a sort of paved ; a sort of stone put in so as to furnish a hard bottom.

Q. Was there, at that time, any fence or obstruction along 20 the west side of that road ?

A. There was a fence ; it extended to the other side of the flag-house here ; there was nothing on the west side.

Q. What was the condition of the ground, generally level ?

A. Yes.

Q. Does this photograph show about the state of it at that time ?

A. Yes.

Cross-examined :

Q. You were telegraph operator there ?

30

A. Yes ; at that time.

Q. Where was your place at that time ?

A. At West End.

Q. At that station ?

A. Yes.

Q. Was there any telegraph office at the crossing ?

A. At that time it was at the crossing.

Q. Tell me why is the telegraph man there ?

A. They had a telegraph.

Q. Why is he there to telegraph ?

40

A. Various reasons : for the Western Union, for the railroad.

Q. Do you know the reasons for the railroad ?

A. To do their business—to run trains, to give the white signal when the track is clear from one station to another.

Q. Why is there any reason for that—because there are so many trains ?

- A. That is the rule of the Company, I suppose.
 Q. It is not because there are so many trains?
 A. I don't know anything about it.
 Q. How long is it your duty to be there?
 A. From seven in the morning to seven at night.
 Q. How long do you telegraph as to trains?
 A. Every day in the year.
 Q. How often are your hands at work?
 A. Whenever it becomes necessary.
 10 Q. How often does it become necessary?
 A. It becomes necessary whenever they call.
 Q. How often is that?
 A. I could not tell.
 Q. About?
 A. Once every three or four minutes.
 Q. Then once every three or four minutes a train was approaching?
 A. No; there is other business, like freight, telegraph messages or telegraph tickets.
 20 Q. How often is it necessary in telegraphing trains?
 A. When a train passed by I report it back.
 Q. How many trains pass that station?
 A. 123 time-table trains just now, I believe.
 Q. How many others?
 A. They average about fifteen or twenty.
 Q. A day?
 A. Yes; in twenty-four hours.
 Q. You leave this station at seven o'clock?
 A. No; at five minutes past seven.
 30 Q. Do you mean that the station was without any operator?
 A. No, sir; I don't.
 Q. Who operated it?
 A. The night operator, Jacob Van Wagener.
 Q. Then there is a night and day operator?
 A. Yes.

Defendant's counsel also called *John Van Wagener*.

- 40 Q. What is your business?
 A. Telegraph operator.
 Q. Was that your business a year ago?
 A. Yes.
 Q. Where were you stationed?
 A. At West End.
 Q. What business are you now?
 A. Nothing at all just now.
 Q. Were you in the employ of the Company?
 A. Yes.
 50 Q. Who did you relieve on the night of this accident?
 A. Mr. Weis, about seven o'clock.
 Q. What are your hours of business?

- A. From seven at night to seven in the morning.
- Q. What time did you go on duty that night?
- A. About five minutes after seven.
- Q. What is your duty?
- A. To run trains.
- Q. How do you run trains?
- A. By signal and telegraph.
- Q. What does that signal consist of?
- A. A red and white light; the light is white all the time and red over it; we pull the red from it with a cord. 10
- Q. When do you give that signal?
- A. When the road is clear ahead.
- Q. Did you have an office there?
- A. Yes.
- Q. Were you in the office that night?
- A. Yes.
- Q. Did you give the signal to this train?
- A. Yes.
- Q. How did you know it was coming?
- A. I got the report from the cut that it had left there. 20
- Q. Did you hear this train?
- A. Yes; I heard the whistle for the signal and the crossing.
- Q. What was the signal?
- A. One long whistle.
- Q. What did you do then?
- A. I pulled up the signal, to give him the white signal.
- Q. How long did you keep that up?
- A. Until the engine passed the signal post.
- Q. Did anything attract your attention that night?
- A. Yes. 30
- Q. Did you hear any danger signal?
- A. I did.
- Q. What did you do?
- A. I did not do anything; I had to stay inside—I could not leave my duty.
- Q. Did you see anything of the collision?
- A. No; I was inside and had two windows shut.
- Q. You had to hold on to this signal—to the string?
- A. Yes.
- Q. And that was the reason you could not leave?
- A. Yes. 40
- Q. Are there gas lamps on that crossing?
- A. Yes, there were.
- Q. Do you remember whether they were lit that night?
- A. Yes, both of them.

Cross-examined:

- Q. You got the report from the other end of the cut that this train was coming?

A. Yes.

Q. Where is that station ?

A. The other end of the cut, about a half mile off.

Q. What did you do when you got that report ?

A. Nothing, until I thought the train was near, and then I pulled up the signal.

Q. Then you pulled up the signal, knowing the train was coming and knowing the ground was clear, and thinking the train was near ?

A. Yes.

10 Q. You did not pull up in consequence of hearing the whistle ?

A. No ; I never do that ; I pull up the signal if I know the road is clear and get the report ahead.

Re-examined :

Q. Did you hear the signal that night ?

A. I did.

Defendant's counsel also called *Frank Singer*. Sworn.

Q. What is your business ?

A. Brakesman.

Q. What is your duty ?

20 A. We watch signals from the engineer.

Q. Does the train stop at Marion ?

A. We don't stop at Marion.

Q. Were you on the lookout for signals ?

A. Yes.

Q. Did you hear the signals blow ?

A. I heard the signals.

Q. One blow ?

A. One blow.

Q. When was that blown ?

03 A. Before we got to the depot—right under the bridge.

Q. What else did you hear ?

A. I heard the bell rung, and after that I heard a blow for brakes, twice.

Q. Where was the train then ?

A. Near the crossing.

Q. What is that blow ?

A. They blow twice.

Q. Two blows ?

A. Yes.

04 Q. How many times was the signal for brakes given ?

A. Twice ; two short, and two short again.

Q. Did you feel anything ?

A. No ; I did not feel anything.

Cross-examined :

Q. You put on the brakes hard ?

A. Yes ; as hard as I could.

Q. How many brakemen were on the train ?

A. Two.

Q. Where was the other ?

A. I guess he was in the rear of the cars.

Q. Whereabouts were you when you fetched up ?

A. We run about 300 or 400 yards.

Q. Do you remember where you were when you fetched up : what was along the side of the road where you stopped—do you remember a stable there ?

A. It was about 300 or 400 yards past the crossing. 10

Q. Did you not run down to that stable ?

A. Well, about that.

Defendant's counsel also called *Frederick Kearstead*. Sworn.

Q. Where do you live ?

A. 124 South Street, Newark.

Q. What was your business in January last ?

A. Brakesman on the railroad.

By the Court :

Q. Brakesman on this train ?

A. Yes. 20

Further *examined :*

A. Where were you on the train ?

A. On the rear car.

Q. Inside the car or on the platform ?

A. On the platform, at the brake.

Q. Did you hear the engineer blow for telegraph signal ?

A. Yes.

Q. What was that blow ?

A. One long whistle.

Q. Was the bell rung ?

A. Yes. 30

Q. Where was the train when the whistle was blown ?

A. A little above that cut—that bridge.

Q. Did you put the brakes on as hard as you could ?

A. Yes.

Q. Did you feel any jar ?

A. No.

Defendant's counsel also called *Elias O. Crane*:

Q. Where do you live ?

A. Market Street Depot. 40

Q. What is your business ?

A. Conductor on the Pennsylvania Rail Road.

Q. Were you, on the night of this accident, conductor of that train ?

A. I was.

Q. Will you tell us what occurred?

A. The first I knew, the whistle blew for signal; I looked out and saw a white signal given; I was between the baggage-car and the car behind; the train was then under the bridge; I had got through the train, and there it blew; I was going into the baggage-car.

Q. What next occurred?

A. Signal for brakes.

10 Q. Did you hear the bell?

A. I am not positive as to the bell; I hear it so often I cannot always remember.

Witness: It blew a second time, and I immediately turned round, and put the brake on the car next to the baggage-car; I was putting it on a second time; I had one brake on and found that the baggage-master had it on there, and I undertook to put that on, and could not put it on; I put on the brake next the baggage-car; I heard a second blow, and I immediately turned to put it on the next one, and found the baggage-master had it on.

20

Q. Did you feel any jar?

A. No.

Q. How far had the train passed the crossing?

A. 200 or 300 feet from the crossing.

Q. How far ahead of the stable—did it go as far as that?

A. It was not far from that stable; it was nearly opposite the Saint James Hotel—that stable is right behind there.

Q. What did you do when the train stopped?

A. I jumped right off, and went back with my lamp.

30

Q. What kind of a night was it?

A. Moonlight.

Q. Was there a lamp burning there?

A. I could not say; it was a nice moonlight night, and I had a lamp in my hand.

Q. Was there enough light?

A. Enough to see.

Q. To see objects readily?

A. Oh yes.

Q. What did you see?

40

A. I saw the horse and the front part of the wagon, on one side and the driver and the other part of the wagon on the other side; one was on the north and the other on the south side of the track. The driver and the hind part of the wagon were on the south side of the track.

Cross-examined:

Q. Do you recollect seeing the moon?

A. I don't recollect; I know it was moonlight; I don't know whether I looked up to see it or not.

Q. You say it was moonlight?

A. Did you not ever see it moonlight without looking at the moon? I remember very well it was moonlight.

Q. What sort of a night as to being cloudy?

A. It was not cloudy; there was a little bit of flying cloud between the moon and the earth.

Q. How high was the moon?

A. I don't know.

Q. Do you think it was high?

A. No; I have no idea about it.

Q. You had the impression that it was a light night? 10

A. It was moonlight; it was an ordinary light night; it was moonlight.

Q. This place where you say the train stopped or thereabouts that stable, how does it compare with the distance from the station to the depot?

A. I think it was further from this side than from the station to the crossing—from this way.

Defendant's counsel also called *Charles Kent*, sworn:

Q. What has been your business?

A. Expressman. 20

Q. Were you acquainted with the team of Mr. Matthews; the one that was killed; the horses?

A. With one horse.

Q. How old a horse was that, to the best of your judgment?

A. Well, I could not say how old he was; my son called him nine when he drove him for Mr. Howell; I drove him after that for Mr. Harrison, I think it was two years, I don't know it was quite as long as that; I drove him first for Mr. Towers, a year or a little more; I had known him some time before that, and when Mr. Harrison bought him I drove him for him, and I 30 drove him for Mr. Matthews.

Q. How old was he; that figures him up to 16 years?

A. Somewhere about that, according to what my son said; I never looked at the horse's mouth.

Q. He was an old horse?

A. Yes.

Q. What was he worth?

A. I could not say as to that; he might be worth more to Mr. Matthews than to me.

Q. How much would you give for him for the express 40 business?

A. I would not buy him.

Q. Why?

A. He was a horse that had been worked hard; I would not buy the horse for my use.

Q. How much was he worth, \$100?

A. He might be worth a great deal more than I would give for him.

By the Court :

Q. Have you dealt in horses any ?

A. I deal a great deal in horses.

Further *examined :*

Q. How much would he sell for ; would he sell for over \$100 ?

By the Court :

Q. Can you answer the question ?

A. I could not say what he was really worth.

Further *examined :*

10 Q. What do you think ?

A. I think, if I was asked the question, the horse might be worth \$100 or might not.

By the Court :

* Q. Give us your judgment as to what the horse might bring in the market, if set up for sale ?

A. He might bring \$100.

Further *examined :*

Q. Do you know anything about this wagon ?

20 A. The wagon, when I saw it, was in good repair, in good running order.

Q. How long have you known the wagon ?

A. Well I knew what was called the wagon, as "Crockett's wagon" for some years.

Q. Was it an old wagon ?

A. Yes, old axles ; he had it thoroughly overhauled ; they were as good axles as I ever run ; the last time I saw it, it had all been repaired up, and put in good order.

Q. How much was it worth ?

40 A. The wagon looked to me to be about worth, the top and wheels, I should think it was worth \$300, perhaps it would be more, I could not say, I only looked at it as it was.

Q. Do you remember buying out all this line for Mr. Matthews ?

A. Yes, distinctly.

Q. Do you know what the wagon was put in at ?

A. The wagon was in a great deal better order a few days before it was broke up, than when Mr. Matthews bought it.

50 Q. Do you remember what Mr. Matthews paid for the horse when he bought "Towers" out ?

A. No, sir ; he bought the whole line, wagons, horses and all ; bought it all together.

Cross-examined :

- Q. You used to drive for Mr. Matthews ?
 A. Yes.
 Q. You left him some little time ago ?
 A. Yes; I don't remember how long ago; it is some time since I left him.
 Q. Did you drive this horse for him ?
 A. Yes, I have drove him.
 Q. Did he use to work well ?
 A. He did when I drove him. 10
 Q. You have got some idea on the subject of his age ?
 A. Yes, I have got an idea about his age.
 Q. You have said the wagon might be worth \$300, it might be worth more; do you know how much had been spent on it ?
 A. No.
 Q. Supposing \$130 had been spent on it, and it had been put in order, what would you say about it ?
 A. No different to what I have said; if \$130 had been spent since the last time I saw it.
 Q. I mean the last time you saw it in bad order ? 20
 A. The last time I saw it in bad order it was past redemption.
 Q. That was after the accident ?
 A. Yes.
 Q. How far is it from the stable down to that crossing on the side of the road ?
 A. Well I have drove, off and on, 40 years, and seen this stable, but could not answer the question; I don't know the distance.

Defendant's counsel also called *John C. Rose*, sworn:

- Q. Are you familiar with the West End crossing, on the 30 Pennsylvania Railroad ?
 A. I am.
 Q. Have you made any measurements, with reference to the ability of a person, at different distances from the track, to see an approaching train from New York ?
 A. I have.
 Q. Will you tell us the result of that examination ?
 A. From this rail to the extreme southern rail 24 feet, or 8 ordinary paces a person is able to see a locomotive stack coming under the bridge, and have a complete view of the head- 40 light of the locomotive as it stands at the platform at the station above, and a general view of the train, looking between these two buildings, after it leaves the platform of the station.
 Q. Did you try any other distance ?
 A. At a similar distance from the crossing to the extreme end of the bridge 883 feet, the prospective view down the road to the crossing was good all the way from the bridge; from several points, at 24 feet from the southerly rail, the pipe of the locomotive might be seen emerging from the bridge.

Q. What distance is the flag-house from the track?

A. Not nearer than 3 feet to the rail; it does not exceed 12 feet in length, and probably 4 feet 6 inches in width.

Q. What is the condition of the road, as to the ability of a person to turn to the left or right?

A. It is good and can be easily turned; there is a street passing directly round here, parallel with the rail, towards the river, in front of the watch factory.

Q. Can a man turn his horse off that way?

10 A. He can.

Q. Is there any warning to drivers on the highway, at that point?

A. There is a cast iron sign-board "beware of the locomotive."

Q. Are you familiar with photography?

A. Quite so.

Q. What is the tendency of the camera to magnify objects nearer to it?

Plaintiff's counsel objected.

20 *By the Court:*

Q. What is your acquaintance with this subject?

A. Nothing practical.

The Court: He can make a criticism.

Further examined:

Q. How are objects on that photograph with reference to their relative sizes?

A. Undoubtedly, as the camera was placed, they must be right as they are.

Q. But the relative size?

30 A. I don't see they could be different to the relative size of the buildings.

Q. Are objects increased near the camera, and decreased in the distance?

A. Of course.

Cross-examined:

Q. You say at several points from 24 feet on the road the locomotive can be seen?

A. Yes.

Q. There are points where it is obstructed?

40 A. I noticed one point where the locomotive would be obstructed under the bridge.

Q. Where was that?

A. It must be at least 200 feet from the rail; *that* building would obstruct it.

Q. From here, is not the tool-house an obstruction to seeing the locomotive coming under the bridge?

A. I think at that point, between the flag-house and the rail, it would.

Q. The locomotive would be opposite the tool-house?

A. No further up; the locomotive runs beyond the platform.

Q. It is pretty near the tool-house when you can see the locomotive?

A. About half way between the platform and the tool-house when you can see the locomotive. 10

By the Court:

Q. What distance is it from the tool-house to the crossing?

A. 550 feet.

Further cross-examined:

Q. Is that the same flag-house that was there at the time of the accident?

A. I cannot say.

Q. Was the map taken at the time?

A. Yes.

Q. Then the flag-house was taken as it is put down, correctly? 20

A. Yes.

Q. And shows the correct size of the flag-house?

A. I suppose it does.

Q. At what distance would it show along that street?

A. I should not think it would show over 50 feet.

Re-examined:

Q. If I understand right, the view you took was that which the driver of the wagon must have taken?

A. Yes.

Q. This photograph takes the view a man would get from 30 the left hand side of this photograph?

A. Yes.

Defendant rests.

Plaintiff's counsel re-called *Charles B. Matthews:*

Q. Have you an experience in driving teams?

A. Yes; I have occasionally had to drive extra wagons, and have had drivers leave me in New York; I have had to drive frequently.

Q. And in all sorts of weather?

A. Yes, I have. 40

Q. Tell us, if you can, about what is the speed of a horse walking; a team of horses drawing such a wagon as this, and such loads; about how fast do they go?

- A. My men frequently come in and tell me they have driven from New York ; they come in and tell me they have driven in such a time, and I tell them they have not.
- Q. From your own experience, about what rate would a team of horses, drawing such loads, go at ?
- A. When heavily loaded they don't make the road, if they walk the whole road, in 3 or 4 hours from New York to Newark ; the distance then was called about 3 or 4 miles further.
- Q. Then it took 3 or 4 hours to go the long route ?
- 10 A. Not when it was shorter.
- Q. What was the length of the route then, at the time of the accident ?
- A. 3 or 4 miles further.
- Q. What was the distance then ?
- A. 10 or 11 miles, by that route.
- Q. Was it 3 or 4 hours ?
- A. Our teams were as long as 3 hours coming from New York.
- Q. What did it take you to walk your horse from New York
- 20 here, and how many miles was it ?
- A. I don't think I ever walked a horse over that road ; I should have to judge about it.
- Q. Can you answer the question ?
- A. No, sir ; I could not.
- Q. Did they walk $2\frac{1}{2}$ or 3 miles ?
- A. They did not walk over from $2\frac{1}{2}$ to 3 miles an hour.
- Q. Do you mean that was the rate the horses walked when you drove ?
- A. I never drove them over this road ?
- 03 Q. Over any road ?
- A. Over the plank road, generally, they walked about 3 miles an hour.
- Q. And walked faster over the plank road than on any other road ?
- A. Yes.
- Case closed.

DEPUE, J., charged the Jury as follows :

- 04 The action, gentlemen, in this case, is brought to recover damages for an injury sustained by a collision between the wagon of the plaintiff and the locomotive of the defendants, at a point where the track of the defendants crosses a public highway.

At the time of the injury both these parties were in the exercise of a lawful right. The defendants by law were authorized to travel upon the line of their track in the mode and with the means they were traveling at the time of the occurrence. So also the plaintiff was entitled to travel over this highway by

the means with which he was traveling at the time of this occurrence. Both parties being in exercise of a legal right, these two propositions must be established as the result of the evidence in this case in order to a recovery by the plaintiff:

First. That the defendants were guilty of negligence in omitting proper precautions in the exercise of their legal rights.

And *Second.* That the injury in question was not contributed to, to any degree, by the negligence of the driver.

If you find neither of these propositions in favor of the defendants, your verdict will be for the plaintiff. 10

On the other hand, if you find either of these propositions in favor of the defendants, your verdict should be for the defendants.

The defendants owed a duty to the traveling public, which may be summed up in this one sentence. They were bound to use all such precautions as are reasonably necessary to give to persons crossing their track on the highway, warning of the approach of their trains in order to enable persons crossing over the track by the highway to avoid collision.

In that proposition is embraced all the law of the case: that the company were bound to give reasonable warning, either by signals or by a flagman, to persons traveling the highway, to enable them to avoid collision by the company's trains. 20

It is insisted on the part of the plaintiff that the defendants were guilty of negligence in the non-performance of their duty in two respects:

First. In their failure to place a flagman at the crossing.

The law is very briefly and concisely stated in the extract read by counsel from the case cited, and may be stated thus: There is no general rule of law by which a railroad company is bound to place a flagman at any particular crossing, and it is only where, by the configuration of the country, that is, the situation of the adjoining land with respect to the railroad, or where the travel is so constant and frequent over their road, that the use of ordinary signals would fail to give reasonable notice to the public having occasion to cross the track, that the company is bound to place a flagman at the crossing. 30

It will be for you to determine whether this crossing was so situated with respect to the track of the defendants, by reason of the configuration of the surrounding ground, as that, by means of the ordinary signal, reasonable protection would not be afforded to the traveling public. 40

If you find that, then you may find they have been remiss in their duty in not maintaining a flagman at that crossing.

If you find that such protection might be afforded by the use of the ordinary signal, and that a flagman was not necessary, then the other question whether the defendants have been guilty of negligence in the failure to give the proper signal, becomes a material question in this case.

It appears that there was no flagman at this crossing at the time of this occurrence. Under these circumstances, if you 50

find from the situation of the ground it was not necessary to have a flagman at the crossing, it will be for you to determine, from the evidence, whether, at the time of the occurrence, taking into consideration the speed with which the train was going, the signals were given in such manner as to give reasonable notice of the approach of the train to enable the driver to avoid collision with the train.

If you find that such notice was given, the defendants will be entitled to a verdict.

10 On that subject counsel have referred to the statutes requiring railroad companies either to blow a whistle or ring a bell at the distance of three hundred yards from a public crossing, and to keep on until the highway may be crossed. In a civil action, where the object is to recover damages for an injury occasioned by a collision, the jury are not concluded by this statute, which was designed for the enforcing a penalty, but they have a right to consider that the Legislature considered that the traveling public would be protected only by the precautions pointed out by the statute.

20 In some cases the jury may find that less notice would be sufficient. In other cases, by reason of the configuration of the country, and the rate of speed, such warning may not be sufficient for a reasonable protection to persons crossing the highway; and the jury may properly conclude that further means for the protection of travelers were necessary.

30 With respect to blowing the whistle, and the place at which the blowing commenced, there is controversy in the case. I don't propose to refer to the evidence. It is for you to determine what the facts were, and whether, at the time of the occurrence, the whistle was blown at such a distance from the crossing as to give the driver reasonable notice, taking into consideration the speed with which the train was running, to enable him to avoid collision with the train.

If you find these propositions in favor of the defendants, this case ends.

40 On the other hand, if you find that the company has been in default, either with regard to the placing of a flagman at the crossing or in giving signals of the approach of the train, another question will arise, whether the injury in question was contributed to by any negligence or want of care on the part of the driver of the wagon; for the law is entirely settled that where a party brings his action to recover damages for the negligence of a defendant, if it is shown that the injury was contributed to by his own neglect, he is not permitted to recover, because to some extent he may be said to be the cause of his own injury, and the law denies him redress.

On that subject the law is fully expressed in the Runyon case, and I will read an extract from it:

50 "It must be considered now the settled law, that in cases of this kind, if by the exercise of ordinary skill and care the plaintiff could have avoided the injury, or if his conduct contributed to produce it,

he is not entitled to recover, even though the defendants were also guilty of negligence. The subject was fully discussed and settled in the case of *Moore v. The Central Railroad*, in this Court (4 Zab. 268), and subsequently in the Court of Errors, in the same case, and those decisions are in accordance with the current authority in this country and in England, before and since.

"The necessities of railroad travel demand a speed at which it is impossible to stop in time to prevent a collision, if persons traveling on the highways rush carelessly or recklessly upon a crossing ahead of an approaching train; and every collision of the kind places not only the party driving on the track, but the passengers in a train of cars, in imminent peril; many times occasions great loss of life. Every precaution should be used, by both the drivers of the train and persons traveling in their own conveyances, to guard against coming in contact. The proper signals should always be given from a locomotive on approaching a crossing, and the omission of this caution should be punished. But besides this, persons approaching a crossing in vehicles of their own, must use their eyes and ears, and exercise common care and prudence to avoid a collision commensurate with the danger, or they are no less reprehensible."

If you come to the conclusion that the company in this case was guilty of negligence, they will nevertheless be entitled to a verdict if you find from the evidence in the cause that the driver of the vehicle did not exercise, in the language of this case, common care and prudence to avoid a collision, that is, if he did not use his eyes and ears and his faculties to discover the approaching train and avoid injury by coming in contact with it.

That, too, is a question of fact for your consideration. In determining it you are to have regard to the driver's ability to see and to discover the train from any point in the road approaching the crossing, where he might have turned aside in safety to himself; and so, also, you are entitled take into consideration on this subject the fact that a flagman had been previously stationed at this crossing.

Though the company was not bound to place a flagman at this crossing, if you find from the evidence that a flagman had been kept there a sufficient length of time to justify the public in believing that he would be there to give warning of approaching trains, although the absence of the flagman would not excuse the driver from using his eyes and ears for his protection, yet you may consider the extent to which a prudent man in approaching the track might be induced to believe the crossing safe, from the fact that the flagman was absent at the time of the approach of the train. A man has no right to rush recklessly on the track because he finds the accustomed flagman absent; but in deciding whether he exercised that care that a prudent man would, you are entitled to look at the circumstance that the company had previously kept a flagman at the crossing, and that his absence is some assurance on the part of the company that the way is safe.

You must look at what the driver was doing at the time of

the accident. The proof by Mrs. Molton is—and it is the only direct evidence on this subject—that she saw him; that he rose in his seat and struck the team, and endeavored to get off the track out of the reach of the train.

There is also evidence on the part of the defence that he was not taking care of the team at the time.

I also refer you to the place where the body was found. The evidence is clear that the locomotive struck the wagon midway, and the horses were thrown on one side, and the hinder wheels
10 on the other side. There is also evidence that the body of the driver was found on the side of the track on which the rear part of the wagon was found.

It is for you to determine the two propositions I have mentioned:

First. Whether the defendants were guilty of negligence or want of care.

Second. If they were, whether the driver exercised proper care to avoid the collision.

If you find both these propositions for the plaintiff, he will be
20 entitled to a verdict. On the other hand, if you find either of them in favor of the defendants, they will be entitled to a verdict.

If you find a verdict for the plaintiff, give him compensation that will be represented by the value of the load at the time, \$395, and the value of the horses, wagon and harness, deducting from the amount of those several values what in your judgment was the value of the remains of the wagon and load; adding interest from the 28th January, 1872, to the 28th February, 1873.

30 This being a Supreme Court case, no judgment can be entered on your verdict until the first day of the Supreme Court.

Defendant's counsel asked the Court to charge the jury the following points:

First. "That from the nature of the crossing, and the circumstances attending the accident as proven, the Court should direct the jury to find a verdict for the defendants."

The Court. I refuse so to charge.

40 *Second.* "If plaintiff's carelessness contributed in any degree whatever to the accident, they must find a verdict for defendants, unless they believe the defendants intentionally ran into him."

The Court. I have so charged.

Third. "If the jury have a reasonable doubt whether the driver exercised legal care or not in approaching and crossing the track, they must find a verdict for defendants."

The Court. My charge is, that unless it appears from the evidence on the part of the plaintiff or defendants that the injury was contributed to by the negligence of the driver, plaintiff is entitled to recover if the negligence or default of the defendants is shown.

Fourth. "If the driver, after he saw the train, could have backed his team or turned them from the track, plaintiff cannot recover."

The Court. All I can say is, you are to determine from the situation of the driver what course would be required of a prudent man—what course a prudent man would have pursued to escape from the dangers which threatened him. 10

Fifth. "If the driver, after he saw the train, could have stopped in such a position that either by turning or backing, the horses only would have been killed, plaintiff cannot recover for damage done to wagon and contents."

The Court. That is fairly included in the proposition before that: If you believe by careless or improper conduct he made the injury greater than it was, he will only be entitled to such part as necessarily resulted therefrom. 20

Sixth. "If the defendants were ringing the bell or had blown the whistle at the point sworn to by the engineer, then the defendants were not negligent, and are not liable."

The Court. That is already embraced in my charge. I have charged you that, as a question of fact, such notice must be given as gave reasonable notice to the driver in order to enable him to avoid the injury.

Seventh. "If the jury have a reasonable doubt whether the whistle was blown or whether the bell was ringing, they must find for defendants." 30

The Court. You must determine from the evidence in the cause whether there was any negligence on the part of the defendant.

Eighth. "The payment of claims by the plaintiff is an admission that the accident could have been avoided by the exercise of extreme care."

The Court. My charge is, that the plaintiff was an insurer as a common carrier, and responsible to the owners of the goods for their value; and although they were the goods of others he was responsible for them, and is entitled to compensation for their full value. 40

And the defendants' counsel thereupon excepted to such refusal to charge, in accordance with the said first request, and to the charging of the Court on the third, sixth and eighth requests, respectively, and his exceptions are thereupon sealed accordingly.

DAVID A. DEPUE,

J. S. C.

[L. s.]

1. Whereupon, counsel for defendants excepted to so much
10 of said charge as related to the rights and obligations of plaintiff and defendants at the crossing.

2. To so much of said charge as qualifies the general rule, that the defendants were not bound to place a flagman at any particular crossing.

3. To so much of said charge as stated that the jury were to decide whether or not the defendants were legally bound to maintain a flagman at this crossing.

4. To so much of said charge as states that defendants were
20 bound to give such reasonable notice as to enable the driver of the wagon to avoid the injury.

5. To so much of said charge as construes the statute requiring railroad companies to blow a whistle or ring a bell at crossings.

6. To so much of said charge as states that the absence of a flagman on the occasion of this accident, affected the duty of the driver to use due precaution when approaching this crossing.

And thereupon the defendants' counsel excepted to the charge of the Justice upon the several points thereof above stated, and his exceptions are hereby sealed accordingly.

DAVID A. DEPUE.

J. S. C.

30 [L. s.]

NEW JERSEY, SS.:

The State of New Jersey to our Justices of our Supreme Court of Judicature of the State of New Jersey,

[SEAL.]

GREETING:

Forasmuch as in the record and proceedings, and also in the giving of judgment of a plea which was in our Court before you, between Charles B. Matthews and the Pennsylvania Railroad Company, of a plea of trespass on the case, as it is said, manifest error hath intervened to the great damage of the said 10 the Pennsylvania Railroad Company, as by their complaint we are informed.

We being willing that the error, if any there be, should in due be manner corrected, and full and speedy justice be done to the party aforesaid in this behalf, do command you, that without delay you distinctly and openly send, under your seal, the record and proceeding aforesaid, with all things concerning the same, to our Court of Errors and Appeals, in the last resort in all causes, as heretofore, on the second Tuesday of March next, whatsoever they shall be, in the said State, together with this 20 writ; that the record and proceedings aforesaid being inspected we may farther cause to be done thereupon what of right and according to law ought to be done.

Witness, ABRAHAM O. ZABRISKIE, Esquire, Chancellor, at Trenton, this twenty-sixth day of February, A. D. eighteen hundred and seventy-three.

HENRY C. KELSEY, *Clerk.*

N. PERRY, Jr., *Attorney.*

And the said Charles P. Matthews, by Parker & Keasbey, his attorneys, comes here into Court, and says that there is no 30 error, either in the proceedings aforesaid, or in giving the judgment aforesaid; and he prays that the said Court of Errors and Appeals now here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form given, may be in all things affirmed.

PARKER & KEASBEY,
Attorneys.

NEW JERSEY ERRORS AND APPEALS.

 PENNSYLVANIA RAILROAD COMPANY

vs.

 CHAS. B. MATTHEWS.

On Error.
*Assignment of
Errors.*

The said the Pennsylvania Railroad Company, plaintiffs in error, by N. Perry, Jr., their Attorney, come and say, that in the record and proceedings aforesaid, there is manifest error, and the said plaintiffs hereby assign the following causes of error :

- 10 1. That the said Justice refused, after the plaintiff had first rested his case, to grant the defendants' motion to nonsuit the plaintiff, and thereby erred.
2. That said Justice erred in overruling defendants' testimony tending to show habitual carelessness in plaintiff's driver. See testimony of Frank Weis.
3. That said Justice erred in not directing the Jury to find a verdict for the defendants in accordance with the first request of defendants' counsel.
- 20 4. That said Justice erred in charging on the third, sixth and eighth requests of defendants' counsel.
5. That said Justice erred in so much of said charge as related to the rights and obligations of plaintiffs and defendants at the crossing.
6. That said Justice erred in so much of said charge as qualified the general rule, that the defendants were not bound to place a flagman at any particular crossing.
7. That said Justice erred in so much of said charge as stated that the jury were to decide whether or not the defendants were legally bound to maintain a flagman at this crossing.
- 30 8. That said Justice erred in so much of said charge as states that defendants were bound to give such reasonable notice as to enable the driver of the wagon to avoid the injury.

9. That said Justice erred in so much of said charge as construes the statute requiring railroad companies to blow a whistle or ring a bell at crossings.

10. That said Justice erred in so much of said charge as states that the absence of a flagman on the occasion of this accident, affected the duty of the driver to use due precaution when approaching this crossing.

And, also, that there is error in this, that the declaration aforesaid and the matters therein contained are not sufficient in law for the said Charles B. Matthews, the plaintiff, to have or maintain his aforesaid action thereof against the said defendants. 10

And, also, there is error in this, that the judgment aforesaid was given for the defendant in error and against the plaintiffs in error; whereas, by the law of the land, said judgment ought to have been given for and not against the said plaintiffs in error.

And the plaintiffs in error pray that the judgment aforesaid for the errors aforesaid, and for other errors in said record and proceedings, may be reversed, annulled, and altogether holden for naught, and that they may be restored to all things which they have lost by occasion of the said judgment. 20

N. PERRY, JR.,

Attorney for Plaintiffs in Error.

INDEX

Table with multiple columns containing page numbers and titles, including entries like 'INDEX', 'CONTENTS', and various numbered sections.

INDEX.

PLAINTIFF'S WITNESSES.	DIRECT.	CROSS.
	PAGE	PAGE
George Page,	4	5-8
Thomas McClure,	8, 18	12, 19
Joseph Holton,	20	21
John Jacob Luke,	22, 24	23
Simeon E. Matthews,	24	27
Melissy Molton,	28	30
Charles B. Matthews,	31	35, 65
Henry Müller,	39	40
DEFENDANT'S WITNESSES.		
Smith Garrabrant,	40	44
Charles Metz,	50	52
Frank Wise,	52	55
John Van Wagener,	56	57
Frank Singer,	58	58
Frederick Kearstead,	59	--
Elias O. Crane,	59	60
Charles Kent,	61	63
John C. Rose,	63	64
Judge's Charge,	66	