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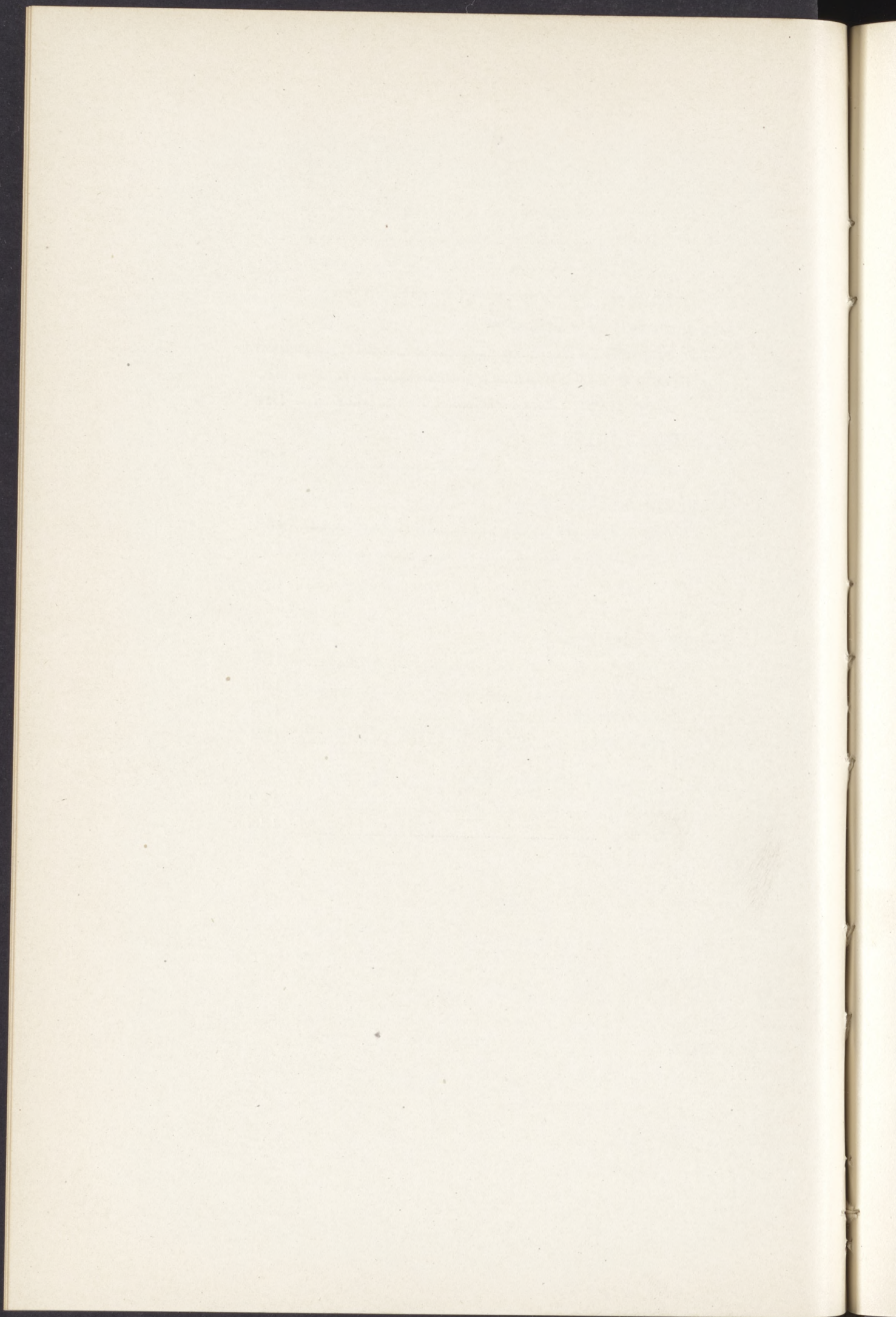
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Notice of Appeal.  
(Filed Sept. 15, 1917.)

Hudson County Circuit Court

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JOSEPH CHIAPPARINE, <i>Plaintiff,</i>	}	10
vs.		Action
PUBLIC SERVICE RAILWAY COM- PANY, <i>Defendant.</i>		at Law.

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To ALEXANDER SIMPSON, 20  
Attorney of Plaintiff.

Sir:

TAKE NOTICE that the defendant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause.

Yours truly,

LEFFERTS S. HOFFMAN,  
Attorney of Defendant. 30

(Endorsed.)

Service acknowledged this 13th day of September, 1917.

ALEXANDER SIMPSON,  
Attorney of Plaintiff.

**CIRCUIT COURT RECORD.**

(Filed in Court of Errors and Appeals Oct. 6,  
1917.)

**Summons.**

10 The State of New Jersey to Public Service Rail-  
way Company:

(Seal)

20 You are summoned to answer the annexed com-  
plaint of Joseph Chiapparine, in an action at law  
in the Circuit Court of the County of Hudson.  
And take notice, that unless you file your answer  
to said complaint with the Clerk of said Court,  
within Twenty Days after the service upon you  
of this writ and the annexed complaint, the plain-  
tiff may proceed in the suit and judgment may be  
entered against you.

Witness, Luther A. Campbell, Judge of the Cir-  
cuit Court of the County of Hudson, at Jersey  
City, this thirty-first day of August, Nineteen  
Hundred and Sixteen.

JOHN J. McGOVERN,  
Clerk.

30 ALEXANDER SIMPSON,  
Attorney.

**Complaint.**

## HUDSON CIRCUIT COURT.

JOSEPH CHIAPPARINE, <i>Plaintiff,</i>  vs.  PUBLIC SERVICE RAILWAY COM- PANY, <i>Defendant.</i>	}	Action at Law.	10
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The plaintiff, who resides at No. 520 Paterson Avenue, in the Town of West Hoboken, in the County of Hudson and State of New Jersey, says that:

20

1. The defendant, Public Service Railway Company, is now and was at all times hereinafter mentioned, a corporation operating an electric street railway across a certain public highway known as Anderson Avenue, in the Town of Fort Lee, in the County of Bergen.

2. On the 20th day of August, 1916, the plaintiff, Joseph Chiapparine, was in an automobile which he was lawfully driving along said Anderson Avenue, Fort Lee, New Jersey, and the defendant, Public Service Railway Company, negligently propelled against the said automobile an electric street railway car, thereby injuring the plaintiff.

30

3. The negligence of the defendant consisted in this:

That it did not use reasonable care to propel the said car at a rate of speed safe to persons using said highway, but propelled said car at an ex-

40

*Complaint.*

---

10 cessively high rate of speed; that it did not use reasonable care to give any warning of the approach of said car; that it did not use reasonable care to keep a lookout for persons in the vicinity of said car; that no reasonable care was used by the persons in control of said car to keep and maintain control of said car so that it might be stopped to avoid injury to other persons; that the tracks and road-bed of the defendant crossing over said Anderson Avenue were maintained in a dangerous condition in that there was no opportunity to persons approaching same to see the approach of said car and the same approached at a great rate of speed.

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

5. By reason of the said accident, the plaintiff sustained two compound fractures of the right hip, two compound fractures of the right arm and both collar bones were broken and he was permanently injured in and about his body, and the automobile in which he was driving was badly damaged.

30 6. The plaintiff expended for medical expenses \$500.00, and lost earnings he otherwise would have made, to wit, \$2,500 and will hereafter lose earnings.

The plaintiff demands \$50,000 damages.

ALEX. SIMPSON,  
Attorney for Plaintiff.

Filed Clerk's Office, Sept. 13th, 1916, Hudson  
County, N. J.

40 JOHN J. McGOVERN,  
Clerk.

**Answer.**

The defendant answering the complaint in the above-entitled cause says that:

1. It admits the first paragraph.
2. It denies the second paragraph.
3. It denies the third paragraph.
4. It denies the fourth paragraph. 10
5. It denies the fifth paragraph.

**DEFENSES.**

1. Defendant alleges that the plaintiff was guilty of negligence which contributed to the happening of the accident.

LEFFERTS S. HOFFMAN,  
Attorney of Defendant. 20

Filed Clerk's Office, Sept. 30, 1916, Hudson  
County, N. J.

JOHN J. McGOVERN,  
Clerk.

30

40

### Rule to Show Cause.

Application having been made within the time required by law after the rendering of the verdict in the above-entitled cause,

10 IT IS, on this 22nd day of June, Nineteen Hundred and Seventeen, ORDERED that the plaintiff show cause before this court on Friday, the 29th day of June, Nineteen Hundred and Seventeen, at the Court House in the City of Jersey City, at ten o'clock in the forenoon of that day, why the verdict heretofore rendered in the above-entitled cause should not be set aside and a new trial granted the defendant for the following reasons:

20 FIRST: Because the verdict of the jury was against the charge of the court;

SECOND: Because the verdict of the jury was contrary to the weight of the evidence;

THIRD: Because the damages awarded by the jury, namely, the sum of Ten Thousand Dollars, were excessive.

30 IT IS FURTHER ORDERED, that the following exceptions and objections shall not be waived by the making of this rule, but shall be reserved to the defendant:

40 FIRST: An exception or objection taken to that portion of the court's charge in which the court quotes Subdivision 3 of Section 8 of the Traffic Act, being the Laws of 1915, Chapter 156, and in which the Court states in effect that if the jury find that the provisions of that section were violated that such a finding would constitute negligence on the part of the defendant, or what the

*Rule to Show Cause.*

---

court said on that subject substantially, or whatever the court may have said on that subject;

SECOND: An exception or objection to that portion of the court's charge in which the court lays down the rule with regard to the duty of a person placed in a position of peril by the negligence of another as to his choice of pursuing two or more courses of conduct which may be open to him under the circumstances, and his failure to take that which calm judgment would demand of him, or whatever the court said on that subject, such exception or objection having been taken because, in the opinion of the defendant, the evidence disclosed no such situation; 10

THIRD: An exception or objection taken by the defendant at the trial to the admission of evidence offered by the plaintiff regarding the purchase price of the automobile damaged in the accident, which forms the basis of this action. 20

On motion of

LEFFERTS S. HOFFMAN,  
Defendant's Attorney.

I allow this rule. Let it be entered. 30

LUTHER A. CAMPBELL,  
Judge, Circuit Court of Hudson County.

Filed Clerk's Office, June 25th, 1917, Hudson County, N. J.

JOHN J. McGOVERN,  
Clerk.

Service of a copy of the within rule to show cause hereby acknowledged. 40

**Opinion Discharging Rule.**

HUDSON COUNTY CIRCUIT COURT.

10

JOSEPH CHIAPPARINE,  
*Plaintiff,*

vs.

PUBLIC SERVICE RAILWAY COM-  
PANY,  
*Defendant.*

On Rule.

ALEXANDER SIMPSON, Esq., Attorney for Plain-  
tiff.

20

JOSEPH COULT, Esq., Attorney for Defendant.

CONCLUSIONS.

CAMPBELL, J.

Upon a review of the entire testimnoy, tested by  
the legal standards of measurement, I am unable  
to find that the jury's verdict is not warranted.

The verdict should not be disturbed and this  
rule is therefore dismissed with costs.

30

Dated August 28, 1917.

LUTHER A. CAMPBELL,  
Judge.

Filed Clerk's Office, Sept. 7th, 1917, Hudson  
County, N. J.

JOHN J. McGOVERN,  
Clerk.

40

### Judgment.

This action was tried before Judge Luther A. Campbell with a jury at the Hudson Circuit June 16th, 1917. The cause having been heard and submitted to the jury they returned their verdict as follows:

They say they find for the Plaintiff and against the Defendants and they assess the damages of the Plaintiff on occasion of the premises at the sum of Ten Thousand Dollars (\$10,000). 10

Whereupon it is adjudged that the Plaintiff recover of the Defendants the sum of Ten Thousand Dollars (\$10,000) damages and his costs which are taxed at Seventy-four dollars Thirty-two cents, making in the whole the sum of Ten Thousand Seventy-four Dollars Thirty-two cents (\$10,074.32.) 20

Judgment entered this 19th day of Sept., 1817.

LUTHER A. CAMPBELL,  
Judge.

---

### Return.

The answer of Luther A. Campbell, Esquire, Judge of the Circuit Court, holden in and for the County of Hudson, and within named, the record and proceedings of the Plaintiff whereof mention is within made with all things touching the same, I send to the Judges of our Court of Errors and Appeals of the last resort of all causes at Trenton, N. J., at the day and year within contained, in a certain schedule to this appeal annexed as within I am commanded. 30

LUTHER A. CAMPBELL,  
Judge. 40

*John Chiapparine—Direct.*

---

**Testimony.**

HUDSON COUNTY CIRCUIT COURT.

10

JOSEPH CHIAPPARINE,  
*Plaintiff,*

vs.

PUBLIC SERVICE RAILWAY COM-  
PANY,  
*Defendant.*

20

Transcript of shorthand notes of testimony taken on the 4th day of June, 1917, before Judge Campbell and a jury.

Appearances:

Alexander Simpson, Esq., for Plaintiff.

Joseph Coult, Esq., for Defendant.

JOSEPH CHIAPPARINE, sworn.

*Direct Examination by Mr. Simpson:*

30

Q. Where do you live, Mr. Chiapparine? A. In West Hoboken, 528 Paterson Avenue.

Q. What is your business? A. Embroidery.

Q. How old are you? A. Forty-one.

Q. On the 20th of August last were you on Anderson Avenue in an automobile? A. Yes.

Q. Where were you coming from? A. From Fort Lee.

Q. And going where? A. Going home—going  
40 Nungesser—Union Hill.

*John Chiapparine—Direct.*

Q. Going toward Nungesser's in Guttenberg?  
A. Guttenberg.

Q. What time of day or night was it? A. It was 20th of August, nine o'clock in the night.

Q. Was it dark? A. Quite dark.

Q. As you came along to Anderson Avenue did you approach the crossing of the trolley there at Anderson Avenue? A. Yes, sir. 10

Q. Which crossing was it? A. Well, the car running over—going to Paterson, I think.

Q. Paterson line, you think? As you approached that crossing how fast were you going, as you came up to the crossing? A. Well, on passing the crossing I was slow down about twelve miles. 20

Q. You were going twelve miles and then you slowed down. Where were you when you slowed down; how far from the crossing? A. A hundred feet far away from the track.

Q. How slow did you slow it down to? A. When I approached the track?

Q. No; you say you slowed it down. How slow did you make it? A. About twelve and thirteen miles and so on.

Q. When you slowed it down, when you got slow? A. When we approached the track, see the trolley car, I give both brake; it was about six mile. 30

Q. How far were you from the tracks when you saw the trolley car? A. About ten or fifteen foot.

Q. Where was the trolley car when you first saw it? A. About a hundred feet far away.

Q. What happened when you put on both 40

*John Chiapparine—Direct.*

brakes when you were ten feet away from the crossing and you saw the trolley car about a hundred feet away? What happened? A. As soon as I saw the trolley car I say——

10 Q. I don't care what you said; what did you do?— A. Well, I give a twist to my car to go—to try to get away from the trolley car.

Q. How was the trolley coming, fast or slow? A. Yes, coming quite fast.

Q. Well, how fast; was it coming very fast or only half fast, or how fast? A. About twenty-five or thirty mile an hour.

Q. Did you hear any bell or whistle before you saw the car? A. No, no bell, no whistle.

20 Q. What was the situation around there at that crossing; were there houses, trees or anything else there? A. Well, I can't see the trolley coming, because it come up the hill; besides this is one house on the corner and some trees and a big, high fence.

*By the Court:*

Q. Which direction was this trolley car coming from? A. Trolley car?

20 Q. Yes. A. It is coming from Ridgewater, from east going west.

*By Mr. Simpson:*

Q. Going west? A. Yes.

Q. Did it come on your left hand or on your right hand? A. Well, came—I was on my right hand, my right way, and the car is coming on left.

40 Q. Coming on your left hand? A. Yes.

*John Chiapparine—Direct.*

---

Q. Was there anybody in your machine with you? A. Yes, was a lot of men with me.

Q. As you came up to this trolley track, as you approached it—do you understand that? A. Yes.

Q. As you approached it, was there anything on your left hand between you and the trolley car; I mean houses or trees or anything like that? 10

A. On the left hand?

Q. Yes, the way the trolley car came? A. Well, it is this trees, this house here, this big high fence; you can't see the car coming.

Q. Why couldn't you see it coming? A. Because it is all this—you can't see the car—as you approach the track—suppose you can't see a car maybe ten or fifteen feet far away from the track. 20

Q. You can't see it until you get there? A. Yes.

Q. What did it do to you when you twisted your car to try and get out of the way? What happened? A. Well, trolley car coming; I don't know much more, but it struck me.

Q. What happened to you after it struck you? A. I don't know much about it.

Q. Where did you wake up? Where were you when you came to? A. Hospital. 30

Q. Which hospital? A. North Hudson Hospital.

Q. What was your condition? What was the matter with you? A. Well, I have some pain in the back here and pain right here, and arm was broke.

Q. How long did you stay in the hospital? A. Eight weeks, seven weeks.

Q. When you came out of the hospital were you 40

*John Chiapparine—Direct.*

in your house any time at all? A. Yes, I am—I can walk—I can't get out of the house for six weeks.

Q. What business were you in? What was your business? A. Embroidery.

10 Q. Where? A. 520 Paterson Avenue.

Q. Did you employ any people or did you do it yourself? A. Well, I do lot of work myself and I employ some people, too.

Q. Before you were hurt were you making any profit in the business at all? A. Yes, sir.

Q. Well, what? How much profit a week did you make in the business before you were hurt?

20 MR. COULT: I object. Not the way to prove profit.

MR. SIMPSON: I think it is under the case in 73 Law. I was reading that just before I came in. *Barto vs. Erie*.

THE COURT: I presume that goes principally to the question as to whether he kept any books of account or not.

30 MR. SIMPSON: It doesn't say it was essential in that case. In that case the man said he made eleven hundred dollars a year gross, and the Supreme Court said it was not sufficient; he didn't show what the net was, nor did he produce any books. It didn't say it was essential he should produce books. They said there must be some data from which the jury can estimate. If he knows, even without books, he made so much a week profit, under that case in 71 Law it is quite competent.

40

*John Chiapparine—Direct.*

THE COURT: If he has books which show profit, then the defendant is entitled to have the benefit of those books.

Q. Would your books show your profit? A. Yes, sir.

10

Q. Well, where are your books? A. It is home.

Q. I told you to bring them to-day, didn't I, when you were in the office last Saturday; didn't I tell you to bring your books here? A. I haven't got them now.

Q. Well, what were your doctors' bills? A. Well, the first doctor bill was two hundred and fifty dollars.

Q. Who is that? A. Dr. Farr.

Q. What other doctor did you have? A. For consultation, Mr. Dickinson.

20

Q. What was his bill, Dr. Dickinson?

MR. COULT: I object. I suppose you are going to produce the doctors, Mr. Simpson?

MR. SIMPSON: Yes, but I think he can prove the bills.

MR. COULT: He cannot prove whether they are reasonable or proper charges. It is not relevant, if he has paid them.

30

THE COURT: Do I understand you are going to produce the doctors?

MR. SIMPSON: Yes, they will be here, but I think I can shorten it by finding out.

MR. COULT: I don't like to have it shortened in any way. I think it is not the proper way to prove the doctors' bills. You must have somebody who can testify the services are proper and reasonable.

40

*John Chiapparine—Direct.*

10

THE COURT: Of course it leaves one feature of it still open, Mr. Coult, I realize. The witness may testify that he has paid a bill, for instance, a physician's bill. Of course that is not the full testimony that you must have. You must have the evidence that the bill was necessary and reasonable under the circumstances.

MR. COULT: I will then move—I will ask to reserve the right to move to strike it out in the event that—

THE COURT: That you may have.

20

MR. SIMPSON: Then I ask the opportunity to put in the books—of course we cannot finish the case to-day, and he will have to bring his books here.

Q. What did Dr. Dickinson do for you? A. Examined me in the North Hudson Hospital.

Q. How many times? A. Examined me once.

Q. Did he treat you? A. No.

Q. Now, how is your right arm now? A. I can use it. It is—on union.

Q. Can't use it yet? A. No.

30

Q. Is it necessary for you to use it in your business? A. Yes.

Q. What do you have to do with it in your business? A. Well, do some designing, stitch the sample on the machine and fix my own machine, and do all the rest.

Q. Did you employ anybody in your shop while you were ill, to take your place? A. Yes.

Q. Who? A. I employed a forelady, and another man, and my wife to take care of the rest.

4

*John Chiapparine—Direct.*

Q. What did you pay the forelady? A. Well—

MR. COULT: I object.

A. I paid the forelady—

MR. COULT: I can't tell whether—how 10  
they are going to claim profits. Of course  
that is one way to estimate the loss.

THE COURT: I understand now he is  
going to show, because, as is alleged, of the  
disability of the plaintiff, he was obliged  
to employ others to take the place and do  
that which he would have done had he not  
been under the disability.

MR. COULT I think that is the proper 20  
way to prove the damages. I won't object  
to that.

(Question repeated by stenographer.)

A. I paid ten dollars a week.

Q. How long did you employ her? A. Well, it  
is employed all along—still there.

Q. Do you go to business there yourself now?

A. If—what?

Q. Do you want an interpreter? Don't you 30  
understand English? A. Yes, I understand.

Q. Read the question.

(Question repeated by stenographer.)

A. Yes.

Q. How long have you been going to business?

A. Well, I do the best I can with the left hand  
from the last couple months.

Q. Where is your place of business? A. 520  
Paterson Avenue.

*John Chiapparine—Direct.*

Q. What kind of a machine were you driving?

A. It is an automobile, Chalmers.

Q. Where had you bought this Chalmers? A. Bought over in New York, the Chalmers people.

10 Q. Was it a new machine? A. No, second-hand machine.

Q. Was it from a regular dealer that you bought it, the Chalmers? A. From the dealer, yes.

Q. What did you pay for it?

MR. COULT: I object, on the ground it is not material and not competent or relevant; it is not a criterion of value.

20 MR. SIMPSON: Same question you had the other day.

THE COURT: It is an element which may go to the present value. I will overrule the objection.

MR. COULT: I ask an exception.

THE COURT: You may have it.

Q. How much did you pay for it? A. I paid nine hundred dollars.

30 Q. How long did you have it? A. A year and a half, I think.

THE COURT: Before the accident?

A. Before the accident. I think so.

Q. Use it all the time for the year and a half?

A. Well, I am using it in that time once a week or sometimes once every two weeks.

40 MR. COULT: At this point I will move to strike out the evidence as to the purchase

*John Chiapparine—Direct—Cross.*

price, as it now appears it was a year and a half before the accident, and that is too remote.

THE COURT: No. We need another element, Mr. Coult, which may be shown. I won't say yet it is enough. There are other elements which must go with the cost and term of service before the jury has yet enough to determine value. 10

MR. COULT: Exception.

THE COURT: You may have it.

Q. Now what was the first that you saw of the trolley car? What was it you saw when you first saw it? A. I see the track—see first—

Q. You don't understand English, do you? 20  
Read him the question.

(Question repeated by stenographer.)

A. Oh, well, I don't remember exactly. I seen the trolley car and after I don't remember much what happened.

Q. Now, up to the time that you first saw it, had you heard any horn or whistle, or any warning? A. No horn was blown and no whistle.

Q. You say now, as I understand you, when you first saw it, it was about a hundred feet away from you? A. A hundred feet away, yes. 30

*Cross-Examination by Mr. Coult:*

Q. When you first saw it it was about a hundred feet away from the intersection of the roadway? A. From the—yes, from the roadway.

Q. A hundred feet up the private right of way? A. No, a hundred feet—well, I was ten feet away from the track and I seen the trolley car coming. 40

*John Chiapparine—Cross.*

Q. Yes; was a hundred feet away from you then? A. A hundred feet away, yes.

Q. Coming pretty fast? A. Oh, the trolley car? Yes, quite fast.

10 Q. Where were you coming from? A. I am coming from Coytesville.

Q. How long had you been out in the automobile that day? A. Since half-past five.

Q. Where did you start from? A. I start from Cliffside.

Q. Cliffside? A. Cliffside.

Q. Where did you first go after you left Cliffside? A. I go with my cousin, because he keep a printing office and I go do some business.

20 Q. Where did you go first? A. I got this cousin here in one place, where he takes some work; he told me to take him down there and he go to get some job.

Q. Did you and your friend have anything to drink up there? A. Well, he have—eat supper there.

Q. I know, but did you drink your supper? A. No, I ate it.

30 Q. Did you have anything to drink up there? A. Yes, we have a bottle of wine.

Q. Any beer? A. No, no beer.

Q. Whiskey? A. No, no whiskey.

Q. How many drinks had you had while you were out? A. This is first time—this is the first place we stop.

40 Q. How many did you have there? A. We had our supper and with the boss—this Mr.—I don't know the name; he treat one bottle—after we had the order.

*John Chiapparine—Cross.*

Q. Well, how many drinks did you have from the time you left home until the time this accident happened? A. We had this bottle of wine in this place here.

Q. Can't you tell me? That is a plain question. How many drinks did you have, one, two, three, or what? A. From the time the accident? 10

Q. From the time you left home until the time the accident happened. A. Well, maybe—as far as I remember, maybe two—two drink in a bottle of wine.

Q. Two or three bottles of wine? A. No; drink out of the bottle of wine, I suppose—small glass; and I stopped in another place for another bottle of beer between the two—there was three drinks. 20

Q. Had about three drinks? A. About three drinks.

Q. So you did have some beer? A. I have beer, yes.

Q. Had a good time while you were gone?

MR. SIMPSON: I object.

MR. COULT: Withdrawn.

MR. SIMPSON: He seems to have had a pretty good time after he got in the hospital. 30

Q. You first slowed down when you were about a hundred feet from the crossing? A. Yes, sir.

Q. Why did you do that? A. Because I see track. Every time I see a track I slow down.

Q. You knew there was a crossing there? A. Well, sure, I know it is crossing.

Q. Been over that road before? A. Yes, sir.

Q. Often? A. About three or four times. 40

*John Chiapparine—Cross.*

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Q. You couldn't see anything to indicate that there was a crossing at the time you began to slow down, could you? A. I see tracks. I noticed the crossing. I see the track and I stop to slow down a hundred feet away of it.

10 Q. How fast had you been going just before you came down to twelve or thirteen miles an hour?

A. About fifteen to twenty or so—this is generally I go.

Q. And you continued at the rate of twelve or thirteen miles an hour until you got within ten or fifteen feet of the track; is that right? A. Yes, sir—no; I am going twelve miles. As soon as I see the tracks I slow down about twelve miles, and after when I see the car coming I slow down and I get both brake and I try to twist my car away; I am just going about six miles—six or seven miles, I don't know.

20

Q. Were you going six or seven miles when you saw this car coming? A. Yes, sir.

Q. Going six or seven miles? A. Six or seven, yes.

Q. Six or seven? A. Yes, sir; it was practically still.

30

Q. Had you changed your gears as you approached the track? A. No; I threw both brake, the foot brake and the emergency.

Q. Had you changed your speed? What speed were you in, first, second or third? A. The speed was changed before; as soon as I seen the track I threw my second.

Q. When you saw the track you went in second speed? A. Yes.

40

Q. That brought you down to twelve or thirteen miles an hour? A. Yes, sir.

*John Chiapparine—Cross.*

Q. Then you continued on, and as you neared the track you reduced your speed to about six miles an hour? A. Yes.

Q. And you were going in second speed? A. Second speed, yes.

Q. You were about fifteen feet away from the track? A. Yes. 10

Q. And you saw this trolley coming on the private right of way? A. Yes.

Q. Going very rapidly? A. Yes.

Q. How fast could that automobile of yours go on a good road? A. Oh, go about thirty-five.

Q. Thirty-five? A. Thirty-eight or so.

Q. Think it would go about forty? A. I don't think so, a second-hand Chalmers. 20

Q. How do you know they go thirty-eight? A. Because they told me they go thirty-eight, but I never made that speed.

Q. How fast have you made it go?

(Objected to as not proper cross-examination. Objection overruled.)

A. Make it go thirty.

Q. You have made it go thirty yourself? A. Yes; fastest speed I go, make thirty-two—thirty-one or thirty-two. 30

Q. What kind of pavement was there on this street at the place where the street crossed the trolley track? A. What kind of floor, you mean?

Q. What kind of pavement? A. It is asphalt.

Q. Good road, wasn't it? A. A good road, yes.

Q. How long had you been driving an automobile? A. I have automobile for six or seven years. 40

*John Chiapparine—Cross.*

Q. Were you a licensed chauffeur at the time this accident happened? A. Yes.

Q. What kind of brakes did you have on this car? A. I had the emergency brake and the foot brake.

10 Q. Which of those did you put on when you saw the trolley car coming? A. I have the foot brake on and I give the emergency besides.

Q. Put on both brakes? A. Both brakes.

Q. Had you ever driven your automobile at six miles an hour before this? A. Oh, yes.

Q. Often? A. I cross the city and sometimes I going four miles, two miles, according—

20 Q. Well, now, you know that a man can easily walk four miles an hour, don't you? A. Yes, sir, I know.

Q. So the rate at which you were traveling when you saw the trolley car was about as fast as a man—about half again as a man would walk; is that right? A. About six miles, a little more.

30 Q. About six miles. Now, with your automobile travelling about six miles an hour on a pavement like that on a place where your accident occurred, and your machine in second speed, and your brakes working properly, within what distance can you stop your car if you try? A. Stop it in ten, twelve feet or so.

Q. Take you ten or twelve feet to stop that car? A. Ten or fifteen feet, I don't know exactly.

Q. I will show you a photograph, and I ask you if that photograph is a correct picture of the crossing as it was at the time that you approached it, assuming that the automobile is going in the direction of this picture? A. Yes, sir.

*John Chiapparine—Cross.*

Q. Is that right? A. Well, this coming from Fort Lee, yes.

Q. Yes?

THE COURT: The portion of the picture towards him is the portion towards Fort Lee? 10

Q. Yes, the way he was going.

MR. SIMPSON: He was going away from Fort Lee.

Q. Yes, I say in other words you are looking away from Fort Lee, the way you were going?

THE COURT: Would be towards Nungesser's. 20

MR. SIMPSON: Towards the crossing.

Q. Yes. A. I am coming from this way. This house is on this corner. The corner where I got the accident. That is the reason you can't see.

Q. Well, now, you were going south, weren't you? A. I going south.

THE COURT: If he was going to Nungesser's he was undoubtedly going south. 30

Q. Isn't that what that crossing looked like as you approached it looking south? A. No. There is one house right there. It must be this house.

Q. Wasn't there a vacant tract right on the corner? A. This fence—it is a fence coming up down there by the corner.

Q. Well, all right. I will have it marked for identification. 40

*John Chiapparine—Cross.*

(Photograph marked D-1 for identification.)

Q. Did you see the automobile after the accident? A. No, I don't see it.

10 Q. What? A. No.

Q. Never saw it again afterwards? A. Never saw it again.

Q. Do you know what the number of your driver's license was at the time this accident happened? A. I don't remember now.

Q. Do you know what happened to you when this collision occurred? Which way did you fall? A. I don't remember. After this thing, why, I don't remember anything.

20 Q. Did you have hold of the steering wheel at the time the accident happened? A. I drive, yes.

Q. Were you injured in the chest? A. Well, I have all these bone broke. I have three bone broke, and so on; I don't know the rest.

Q. Do you remember that shortly before this accident happened a policeman fired a shot as your car passed him just a little further up the road?

30 MR. SIMPSON: I object to it as not—

A. No.

MR. SIMPSON: Well, it is answered.

Q. You don't remember that? A. Never happened.

Q. Never happened. That's all.

40

*John Chiapparine—Re-Direct.*  
*Frank J. Houghtaling—Direct—Cross.*

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*Re-Direct Examination by Mr. Simpson:*

Q. You said you had eight bones broken, and where were the eight broken. A. I have three bone—two bone is in back here, and one right here in the front; I got two bone here and one here, and broke one of the arm. 10

Q. Broke them? A. Broke.

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FRANK J. HOUGHTALING, sworn.

*Direct Examination by Mr. Simpson:*

Q. Mr. Houghtaling, is that photograph a correct representation of Anderson Avenue crossing of the trolley line as it appeared on the 24th of August, 1916? A. It is. 20

MR. SIMPSON: I offer it in evidence.  
 (Photograph marked Exhibit P-1.)

MR. COULT: May I cross-examine?

*Cross Examination by Mr. Coult:*

Q. Where is that picture taken from, do you know? A. Taken from little south of the tracks there at Anderson Avenue, looking north towards Fort Lee. 30

Q. How many feet south of the tracks? A. About twenty feet.

Q. It is not taken from the middle of the road, is it? A. No, little to the west.

Q. Taken over about the gutter, isn't it? A. Not quite to the gutter. About, I should judge, 40

*Frank J. Houghtaling—Cross.*  
*Dr. Gordon K. Dickinson—Direct.*

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10 twenty feet. Here is the sidewalk here. There is the pathway on the sidewalk and there is the curb. That was taken about over here—about here—a little further, I should say twenty or twenty-five feet south of the railroad crossing.

Q. Twenty to twenty-five south of the railroad crossing, but how far—

MR. SIMPSON: Let me take Mr. Houghtaling off the stand for a minute. I want to put Dr. Dickinson on. He is a very busy man.

(Witness temporarily withdrawn from the stand.)

20

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DR. GORDON K. DICKINSON, sworn.

*Direct Examination by Mr. Simpson:*

Q. Doctor; you examined the arm of this man, Chiapparine—this man Chiapparine over here—the right arm? A. I have.

30 Q. When did you make the examination? A. Last time I think was about a week ago.

Q. Had you seen him before that time? A. I had.

Q. How many times? A. Why, several times at the office and once or twice in the hospital.

Q. What is the condition of his right arm now? A. There is no union.

Q. Can he use it in the condition it is now? A. No.

40

*Dr. Gordon K. Dickinson—Direct—Cross.*

Q. And if that condition of no union is permanent, will it permanently deprive him of the use of that arm? A. Very largely.

Q. Have you sent him a bill for your services?  
A. I really don't know.

Q. Don't know what the amount of your bill is? 10  
A. No; it is up to the bookkeeper.

*Cross Examination by Mr. Coult:*

Q. Do you know why there was no union on this— A. Beg pardon?

Q. Why there was no union of the bone, do you know, Doctor? A. Oh, I couldn't tell you that. Perhaps because the system had so much to do. When I first saw him he had more fractures than I ever saw in a man before and be 20  
alive, and there is always one bone that is a little bit tardy, and then again there may be some of the soft parts in between.

Q. Will he get a union in his arm? A. The only way I can see is to go down and plate it—what we call it, plate it, unite it, wire it together.

Q. When will you be able to tell whether or not he will get a union? A. After the operation. 30

Q. Not before? A. No.

Q. Isn't it possible that the bone may unite even now without an operation? A. I doubt it, because it has a good deal of overriding, according to the X-ray plate.

Q. Well, what sort of an operation would be necessary in order to get a union? A. Well, we cut down and chisel out the bone which is diseased and then put in clamps and screws as a rule to keep them in place. 40

*Dr. Gordon K. Dickinson—Cross.*

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Q. Is that an unusual operation? A. Not very.

Q. What is the cost of it? A. What is it?

Q. What is the reasonable cost of it? A. Cost? Oh, we charge all kinds of—doctors' charges are elastic.

10 Q. I know, but I am talking to you. What is the reasonable cost? A. I haven't any figure.

Q. Reasonable cost of such an operation? A. Reasonable cost would be nothing. I do it for nothing every now and then.

*By the Court:*

Q. When you are paid for it, Doctor, under all of the circumstances, considering the circum-  
20 stances of this patient—

MR. SIMPSON: That depends on the financial ability of the man. If he gets ten thousand dollars from the trolley company the Doctor will probably charge him ten times as much as if he gets a thousand.

A. No, I know what you mean. I will try to answer, but really down in my office I have no set  
30 figure; I charge what I am worth and take what I can get. I think a job like this is worth not less than two hundred and fifty dollars to the average man in this town, but I don't get it.

*By Mr. Coult:*

Q. Two hundred and fifty dollars? A. That is what I would probably charge. Might charge more if I had a lot of trouble.

Q. How long under normal conditions would it  
40 take a man to recover from such an operation as

*Dr. Gordon K. Dickinson—Cross—Re-Direct.*

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that and for the bone to unite? A. If he does not get pussy—if he gets no complications he will be all right in about four weeks, but we do have a lot of trouble in these cases at times.

*Re-Direct Examination by Mr. Simpson:*

10

Q. There is no surety then that it would be a success? You mean you cannot guarantee it would be a success? A. No; you cannot guarantee these cases because you put in something that is very irritating to some people, that is, a plate.

Q. Would he continually have more trouble with the plate than if he had the natural union and never had been a fracture? A. If he gets a good union the plate won't bother him.

20

Q. You said something about he had more fractures than you had ever seen in a man. When was it? A. I saw him within a day or so after the accident.

Q. He had a number of fractures, did he? A. He did.

Q. Remember how many he had? A. Well, those that I could reach without the X-ray, fracture of his thigh bone, the fracture through his arm, both collar bones, one shoulder blade, and then I was pretty sure that he was pretty well broken up in his pelvis, that is the bones through here, but I could not discover the worst of them without the X-ray. That was not up to me.

30

Q. All those fractures cleared up except this right arm? A. Pretty well.

Q. While he was suffering with them were they attended with any pain, in your opinion? A. Oh, yes, he had a good deal of pain.

40

*Frank J. Houghtaling—Cross—Re-Direct.*

FRANK J. HOUGHTALING resumes.

*Further Cross-Examination by Mr. Coult :*

10 Q. I think I was asking you about the point where a man was seated in the roadway? A. Yes, sir.

Q. You say about twenty-five to the north of the track? A. To the south.

Q. To the south of the track, but it is taken practically from a point in the gutter? A. Close to the gutter.

Q. Did you take the picture? A. No; my associate took the picture and I directed it.

20 Q. You directed where he was to take it? A. Yes.

Q. You are connected with Mr. Simpson's office, aren't you? A. I am not. I was employed by Mr. Simpson to investigate the case.

Q. I see.

MR. SIMPSON: I offer it in evidence.

MR. COULT: No objection.

(Picture marked Exhibit P-1.)

30 *Re-Direct Examination by Mr. Simpson :*

Q. Look at that picture and tell me what it is?

A. That is a picture taken from the west side of the roadway, showing the trolley tracks as coming from the east, that is from the Palisade Park direction.

Q. Is it a correct portrayal of the physical situation on the 24th of August, 1916? A. It is.

MR. SIMPSON: I offer it in evidence.

*Frank J. Houghtaling—Re-Cross—Re-Re-Direct.*

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*Re-Cross Examination by Mr. Coult:*

Q. How far from the roadway is that taken?

A. That is taken from on the sidewalk.

Q. From on the sidewalk? A. Yes; over on this side here, south of the tracks.

10

THE COURT: Is that all as to this?  
(Photograph marked Exhibit P-2.)

*Re-Re-Direct Examination by Mr. Simpson:*

Q. That you say is looking up the trolley tracks towards what? A. The east.

Q. Towards Fort Lee, or the other way? A. No, towards Edgewater.

Q. Now I show you that and I ask you if you were present when that picture was made? A. I was.

20

Q. Is that a correct portrayal of the condition of the plaintiff's automobile on the 24th of August, 1916? A. Yes.

MR. SIMPSON: I offer that in evidence.  
(Photograph marked Exhibit P-3.)

MR. COULT: What is this alongside?

MR. SIMPSON: Another automobile standing there.

30

MR. COULT: We have a great deal better picture than that.

MR. SIMPSON: All right. Let us see it. Well, if you will let me use this picture I will withdraw that Exhibit P-3. I will offer these two.

Q. Are those a correct portrayal of the condition of the automobile, those two? A. Yes.

40

*Frank J. Houghtaling—Re-Re-Direct—Re-Re-Cross.*

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MR. SIMPSON: Offer those in evidence.

THE COURT: Let them be marked.

(Photographs marked Exhibits P-3 and P-4.)

10

Q. Did you at the time you were there make any observation coming from Fort Lee along this road to see whether or not the tree which shows on the picture and the house and the other objects obscured the vision of any one approaching the crossing from Fort Lee? A. I did.

*Re-Re-Cross Examination by Mr. Coult:*

20

Q. Twenty-five feet from the crossing you could see a trolley car? A. See the lights of a trolley car or the top of a trolley car over the hedge that runs alongside of the westbound track.

Q. Now have you had any experience in investigating cases, accident cases? A. About fifteen years.

Q. Done a lot of it? A. I have.

Q. And you superintended or directed the position at which the camera was to be placed when these photographs were to be made of the crossing? A. Yes, sir.

30

Q. Why didn't you have the camera put far enough back to show the whole view there? A. I think we did show the whole view. I don't know what else to show. We show the width of the roadway and as far as the sidewalk was concerned, and we show the house to the east of the roadway, north of the tracks, and we took in all the roadway.

40

*Frank J. Houghtaling—Re-Re-Cross.*

Q. Did you think that a photograph taken twenty-five feet from the track, at a point practically in the gutter, would throw any light on the distance at which anybody could see a trolley car approaching that track?

10

(Objected to. Question withdrawn.)

Q. You were on the ground and looked this situation over generally? A. Yes, sir.

Q. You took observations from different points along the road, did you not? A. In that particular point, around there, the scene of the accident, yes.

Q. Didn't it occur to you at the time that it would be useful for the purposes of this case to take a photograph from a point far enough down the road to show what the situation was to the right and the left? A. No; because it happened on the westbound track. I show that in that photograph and show both tracks. The automobile is coming from the north. I show that.

20

Q. Did you take any observation from a point in the roadway two hundred feet to the north of the intersection of the roadway and the trolley tracks? A. No.

Q. Why not? A. Well, because I didn't think it was necessary. I showed the scene of the accident and showed both the tracks. I showed all the roadway, I showed the east from where the trolley car approached, showing the hedge which obscured the view of the person coming from the north. I showed everything.

30

Q. You say you did not take any observation from the point— A. I took observations, but not photographs.

40

*Frank J. Houghtaling—Re-Re-Cross.*

Q. I say did you take any observation from a point two hundred feet north of the intersection?

A. I took observations from various points there, but only took two photographs.

10 Q. I am not asking you about photographs? A. Well, I did.

Q. I say did you take any observations? A. I did.

Q. From a point two hundred feet to the north of the intersection of the trolley track and the highway? A. Yes, and more than two hundred feet north.

20 Q. Did you take any about two hundred feet away? A. No, I didn't take any particular—pay any particular attention to its being two hundred feet away. I took various observations.

Q. At what point did you take observations of the highway? A. We were at both sides of the track.

Q. At what points? At what points, can you recall? A. I can't recall.

30 Q. Well, can't you fix with any definiteness at all the points at which you could see the trolley car twenty-five feet from the intersection of the roadway and the— A. I did not.

Q. So, so far as you know, a trolley car twenty-five feet from the intersection of the roadway and the trolley tracks, might be discernible two hundred feet? A. It might be.

Q. To the north of the intersection. That is all.

*Louis Josephson—Direct.*

LOUIS JOSEPHSON, sworn.

*Direct Examination by Mr. Simpson:*

Q. Where do you live, Mr. Josephson? A. 57 Twelfth Avenue, Paterson. 10

Q. Are you in business in New York? A. In New York, yes.

Q. Were you on this car that came into collision at the Anderson Avenue crossing with this plaintiff's automobile? A. I was.

Q. Where did you get on the car? A. I got on the car at Edgewater, that is the Fort Lee Ferry, they call it now.

Q. Where was the last place the car stopped before the accident? A. If I remember right I think it stopped at Palisade Park. 20

Q. The entrance? A. The entrance.

Q. When it got its passengers from that place was the car crowded or not? A. Why, it was quite a number of people standing up in the car, in fact, somebody stood up in front of me.

Q. As it approached Anderson Avenue crossing was it going fast or slow? A. I don't know if the accident happened at Anderson Avenue crossing. 30

Q. Well, at the point of accident? A. It was going at a high rate of speed.

Q. Very fast, do you mean by that? A. Why, it was—certainly it was fast.

Q. Did you hear any bell or whistle given by the motorman as it approached this crossing up to the time of the collision? Did you hear any? A. Well, I was talking to my neighbor and during my conversation I did not overhear any whistle; I 40

*Louis Josephson—Direct—Cross.*

couldn't say if one was blown or not, but I did not overhear any whistle.

Q. Didn't hear any warning at all? A. I didn't hear any warning.

10 Q. What was the first you heard of the collision?  
A. When I heard a crashing sound and the glass flew around me.

Q. What happened then? A. Why, I—the car stopped and I got off and I seen the running board was cut away and I walked over, I seen a gentleman in an automobile was stretched over. I helped carry him from the automobile, and I tried to stop somebody in an automobile to take him to the hospital, and somebody said, "Never mind, we are going to send for the ambulance," and somebody 20 tapped me on the shoulder and said, "A friend of yours is hurt," and I took care of my friend.

Q. A friend in the car? A. Yes.

*Cross-Examination by Mr. Coult:*

Q. Hurt your friend in the car? A. His leg was hurt; I think he was sitting on an outside seat.

Q. Sitting on the outside seat on which side?

Q. On the side where the accident occurred?

30 A. When the automobile went into the trolley car.

Q. Where were you sitting? A. I was sitting on the other side, on the other side of the car, one seat from the end.

Q. Where did this glass go? A. Why, it flew in the air practically.

Q. Any of it come in the car? A. It did.

40 Q. Where did it come from? A. Why, I couldn't see where it come from, but I should think or judge it came from the headlights of the automobile or so forth. I don't know where it came from. I

*Louis Josephson—Cross.*

didn't stop to see where it came from. I knew it flew.

Q. Was there any glass—did you see the automobile after the accident? A. Why, I looked at it as far as that is concerned. I couldn't see in the darkness; it was pretty dark around there. 10

Q. Notice whether there was any glass in the windshield or not? A. I didn't notice, no, sir.

Q. What part of the trolley car were you sitting in, about the center? A. No, a little more towards the rear. I wouldn't say it was in the rear; a little more towards the rear.

Q. To the rear of the center? A. Now, I didn't get that.

Q. You say a little towards the rear of the center, back of the center? A. I wouldn't say exactly in the center, but a little more towards the back than to the center. 20

Q. Towards the back. This accident happened right opposite where you were sitting, did it? A. Why, I don't know where it exactly hit. I only know that my friend had been in front, I think, if I judge right. Now this is the first time I have been called in on this case, you understand. If I should judge right it was hit in the first half of the car—hit the trolley—the automobile hit the first half. 30

Q. What did you say you were doing just before the accident? A. I was talking to two young ladies. One was sitting on both sides of me. I was sitting one seat off the end.

Q. You were not paying any particular attention? A. No; I just remarked to my friend. I said, "We are going to get home in a jiffy, the way this car is going." 40

*Louis Josephson—Cross—Re-Direct.*

Q. You didn't notice particularly whether or not any bell was rung? A. I can't say positively on that point, whether a bell was rung or not.

10 Q. You don't know? A. I know I was talking, and my conversation was not interrupted in any way by a bell or gong.

Q. You don't know whether a bell or gong was rung or not? A. I couldn't say positively about that.

Q. The first you knew of the accident was when you heard the crash? A. Yes.

20 Q. How was it, a pretty loud crash? A. Why, I don't know; I thought a bomb struck it or something. I couldn't tell you; I thought a Zeppelin had come from——

Q. Did you feel the trolley car raise up? A. Why, no. I didn't feel anything. It hit me over the head and I wouldn't feel anything then either.

Q. It was such a violent blow? A. Yes, sir.

Q. So that the automobile came into the trolley car pretty solidly, didn't it? A. Well, I suppose so.

*Re-Direct Examination by Mr. Simpson:*

30 Q. The trolley car came into the automobile pretty good, too. You said to your friend you would be home in a jiffy; why did you say it? A. Because the car was going at such a rate of speed.

Q. Where did you live? A. Paterson.

Q. So you said you would soon be home, eh? A. Yes, sir; but it took me longer to get home that night than any other night.

*Louis Josephson—Re-Cross.**Re-Cross Examination by Mr. Coult:*

Q. How far were you from the scene of the accident when you said that to your friend? A. Why, it was right after we left Fort Lee there—well, Palisade Park, the car started to speed up. 10

Q. The car started to speed up? A. It usually does speed up there.

Q. Always speeds up there? A. Yes.

Q. Quite a ways from there to where the accident occurred? A. I don't get it.

THE COURT: From the Palisade entrance it is quite a distance from that point to where the accident happened?

A. I don't get that. 20

Q. Isn't it quite a distance from where you made that remark? A. Right after the car left the Palisades it starts to speed up.

Q. From here to where the accident happened it is quite a little distance? A. I couldn't judge the distance because I never walked the distance.

Q. At the time that this car was travelling that distance you were engaged in talking to your friends? A. Yes, sir. 30

Q. You were not talking all the time about how fast that trolley car was going, were you? A. No; we were talking and the car was—happened to blow my hat off and I thought we were going at a dreadful rate of speed, and just as soon as I said the remark, bam, I thought something struck.

Q. That's all.

*Max Lederman—Direct.*

MAX LEDERMAN, sworn.

*Direct Examination by Mr. Simpson:*

10 Q. Where do you live, Mr. Lederman? A. Paterson.

Q. Were you in this trolley car that was in this accident this Sunday night? A. Yes.

Q. What part of it did you sit in? A. In the middle car.

Q. In the middle of the car? A. Yes, sir.

Q. As the car came to this Anderson Avenue crossing, did you notice whether it was going fast or slow? A. The car?

20 Q. Yes. A. Yes, the car goes ever so fast and the automobile comes fast, too.

Q. You saw the automobile and the car going. Did you hear the gong of the motorman or any whistle before the accident? A. No, sir; no whistle, no gong.

30 Q. What was the first you knew of the accident? What was the first you knew? A. I sitting in the front car, just by the end, and had a satchel with my hand, you know, and I put it into the back, and I put in my legs like this, and I saw just coming an automobile so fast I can't think, just the lamps in my face on this side—just bang, in my side, from where I sitting, and I had, you know, my legs down below cut off right away from me—

Q. When they came together your legs had been cut off? A. Yes.

40 Q. And when you saw this automobile, was that just before they came together, or had you seen it for a long time before? A. No, sir; I just saw

*Max Lederman—Direct—Cross.*

the automobile coming, the lamps' light in my face just on the side, bang right away—glasses through my head and cut my lips and here and here.

Q. It was right at the time of the accident? A. Yes. 10

Q. The moment of the accident? A. Right on the time the accident happened.

Q. Before that you had not seen that automobile, had you? Before that time, before the accident you did not see the automobile, did you?

A. Before I had never see. I see when the accident come. I see just about a minute before I see the lamps in my eyes.

Q. The glare of the light in your eyes? A. Yes. 20

Q. You saw the car as it came up to this street. How was the car coming—fast or slow? A. Car goes fast—not so fast—the lamp, you know, on the automobile comes faster like the car—just bang in my side here I sitting.

Q. Where were you sitting? A. I sitting just on the front car.

Q. At the end of the car? A. The end—just like that.

Q. Was that an open car? A. Open car, yes. 30

Q. You were sitting at the end? A. In the end.

*Cross Examination by Mr. Coult:*

Q. Were you nearer to the motorman or the conductor on the car? A. Near the middle car.

Q. Near the middle of the car, and on the end of the seat? A. End of the seat.

Q. End of the seat, middle of the car? A. Middle of the car and end of the seat. 40

*Max Lederman—Cross.*  
*Caesar Lorenzetti—Direct.*

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Q. When this automobile and trolley car collided, did it make any noise? A. I didn't hear no noise.

10 Q. Did it hit the car hard or not? A. Yes, sir, hard. It hit the car, you know, and them wheels come right in this. (Indicating.)

Q. Which was going the fastest, the trolley car or the automobile? A. I think the automobile goes faster.

Q. The automobile goes faster? A. I saw just about a minute, I saw the lights in my face, bang—I think it comes in my face—just comes right in my face.

20 *By Mr. Simpson:*

Q. You didn't see the automobile, but the lights came in your face? A. Before I never seen only the lights.

MR. COULT: I object to it as leading.

THE COURT: I think he has already been over it before.

30

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CAESAR LORENZETTI, sworn.

*Direct Examination by Mr. Simpson:*

Q. Where do you live, Mr. Lorenzetti? A. Fairview, New Jersey.

Q. Were you with Mr. Chiapparine the night of this accident? A. Yes.

40 Q. Where did you sit, on his left hand or on his right hand? A. On his left hand.

*Caesar Lorenzetti—Direct.*

Q. As you came near this crossing of the trolley car did you see any trolley car as you came up to it? A. Well, I see the trolley car when we were about fifteen feet from the tracks.

Q. How was it going then, fast or slow? A. Well, really I couldn't tell you, because I wasn't paying any attention to that—to any accident at all, see—so as soon as I seen the car coming, you know, it was just like a light, you see—as soon as I saw the light coming from the trolley car, I guess that didn't pass a second, about. 10

Q. About a second? A. From that time—

Q. When you saw the trolley car how far was the machine from the tracks? A. Well, it was about one hundred feet there. 20

Q. The machine, the automobile? A. The automobile, yes.

Q. When you saw the trolley car how far was the machine from the track? A. Well, it was about one hundred feet there.

Q. The machine, the automobile? A. The automobile, yes.

Q. When you first saw the trolley car? A. No, it was about fifteen feet when I first saw the trolley. 30

Q. How far was the trolley away from it? A. When I met the trolley?

*By the Court:*

Q. No; when you were fifteen feet from the trolley tracks, how far was the trolley car away from you? A. Well, it was about fifteen feet when—when we saw the car coming up. 40

*Caesar Lorenzetti—Direct.*

*By Mr. Simpson:*

Q. You were fifteen feet away from the corner when you first saw the car; is that right? A. Yes, sir.

10 Q. Now you keep that in your mind? A. Yes.

Q. How far away was the trolley car when you first saw it from you? A. Oh, well, I couldn't remember, but it was about—as I told you, see, I couldn't remember. Say it was——

Q. What did you say about a hundred feet? What do you mean by a hundred feet? A. It was a hundred feet——

MR. COULT: He hasn't said anything about it.

20 THE COURT: He said something.

A. It was a hundred feet when we saw the tracks—when the track is over there, see.

Q. When you first saw the track you were a hundred feet away? A. Yes, sir.

Q. Then you kept on going toward the track? A. Yes, sir.

30 Q. How near were you to the track when you first saw the trolley car? A. Oh, it was about fifteen feet.

Q. Fifteen feet? A. Yes.

Q. Then when you saw the trolley car, where was the trolley car? A. Well, I couldn't—really I couldn't tell you. Maybe was about a hundred feet and maybe was about a hundred and ten, I couldn't tell you.

Q. Did you hear the bell before you saw it, or hear any whistle on the trolley car? A. No.

40 Q. What happened then? A. Well, I only re-

*Caesar Lorenzetti—Direct—Cross.*

member that as soon as my cousin there; he noticed the car was coming up, he heard me—you know, he pulled my elbow here, and he says, “Look at this,” just like a surprise, see.

Q. Yes. A. Then I saw him monkeying around, you know, with the steering wheel; you know the way they do there. 10

Q. I don't know the way they do. What did he do with it? A. I saw him moving aside, to place where he was seated there.

Q. Then what happened? A. Then I couldn't remember no more what happened.

Q. Where were you when you came to? Where were you? A. I was seated with him.

Q. But after the accident, were you still sitting with him? A. No; then when I recovered I was in the hospital. 20

Q. What hospital? A. North Hudson.

Q. What time was this; was it night or day time? A. In the night time.

*Cross-Examination by Mr. Coult:*

Q. How fast was the automobile going just before the accident happened? A. Well, it was going about fifteen, sixteen miles, it was going, before the accident happened. 30

Q. Was Chiapparine driving his automobile fast when he hit the trolley car?

MR. SIMPSON: I object to it as assuming something which is not in evidence. He assumes that this witness is testifying that Chiapparine hit the trolley car.

THE COURT: Well, when they came in contact—that relieves the situation.

MR. SIMPSON: Yes. 40

*Caesar Lorenzetti—Cross.*  
*John Harsche—Direct.*

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*By the Court:*

10 Q. When the trolley car and the automobile that you were in came together, the question is, was Mr. Chiapparine—was your cousin driving fast? A. No; he never used to drive fast his car, never.

*By Mr. Coult:*

Q. You know Dr. Poole, don't you? A. Dr. Poole? Well, I only saw him.

Q. Is Dr. Poole here? Stand up, Doctor. You know Dr. Poole, standing in the court room now?

20 A. Yes.

Q. Do you remember when he saw you at the hospital on the 21st day of August, 1916, the day after the accident happened? A. Yes, I remember.

Q. Didn't you tell Dr. Poole that your cousin was driving the car too fast and hit the trolley car? A. No, sir; never said that.

Q. Didn't say it? A. I didn't say that.

30 Q. Did you say anything that meant that? A. No; never said anything like that.

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JOHN HARSCHÉ, sworn.

*Direct Examination by Mr. Simpson:*

Q. Mr. Harsche, where do you live? A. In Paterson.

Q. Were you on this trolley car that collided with the automobile on this night? A. Yes.

40 Q. Where did you get on the trolley car? A. On the 125th Street ferry.

*John Harsche—Direct—Cross.*  
*Bessie Laderman—Direct.*

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Q. As the car came toward this crossing was it crowded or not? A. It was crowded.

Q. Where were you? A. I was on the first seat in the middle of the car.

Q. Were you there when they came together? When the automobile and the car came together were you still on the first seat? A. I was still in the first seat. 10

Q. Did you hear any bell or whistle before they came together? A. I did not.

Q. How was the car coming? The trolley car, was it going fast or slow as it came to this street crossing? A. The car was going fast.

Q. Very fast? A. Yes. 20

*Cross-Examination by Mr. Coult:*

Q. What part of the trolley car were you sitting in? A. Right in the middle of the car.

Q. Right in the middle of the car? A. Yes.

*By the Court:*

Q. You mean the middle of the length of it or the middle of the width of it? A. The long. 30

Q. The middle of the long. All right.

MR. COULT: No questions.

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BESSIE LADERMAN, sworn.

*Direct Examination by Mr. Simpson:*

Q. Miss Laderman, where do you live? A. Paterson. 40

Q. Were you on this trolley car that had the collision with this automobile? A. Yes.

*Rose Blumenthal—Direct.*

Q. Where did you get on the trolley car? A. At Fort Lee ferry.

Q. As the trolley car approached Anderson Avenue there, was it crowded or not? A. Yes, it was quite crowded.

10 Q. What part of the car did you sit in? A. About the center.

Q. As the car approached Anderson Avenue, was it going fast or slow? A. The car was going quite fast.

Q. Did you hear any bell or whistle by the motorman before they came together? A. No, sir.

No Cross-Examination.

20

ROSE BLUMENTHAL, sworn.

*Direct Examination by Mr. Simpson:*

Q. Miss Blumenthal, where do you live? A. Paterson.

Q. Were you on this trolley car that came into collision with this automobile on the Sunday night? A. Yes, sir.

30 Q. Where did you get on the car? A. Fort Lee.

Q. Do you know where it happened, where the accident happened—Anderson Avenue, know the place? A. Yes.

Q. What part of the car were you sitting in? A. The center.

Q. As the car approached Anderson Avenue did you hear any bell or whistle blown? A. No, sir, I did not.

40 Q. Up to the time of the collision? A. No, I did not.

*Rose Blumenthal—Cross—Re-Direct.*

Q. How was that car going; was it going fast or not? A. Yes; it was going fast.

Q. What would you say it was going, very fast, or— A. Oh, no, not very fast.

Q. Just fast.

10

*Cross-Examination by Mr. Coult:*

Q. Did you see this accident? A. I saw the car coming—the automobile coming.

Q. You saw the automobile coming and you saw the collision? A. Yes.

Q. And have you talked to Mr. Simpson about it?

MR. SIMPSON: He means me.

20

A. No, I have not.

Q. Talked to anybody about it before you went on the witness stand? A. No, I have not.

Q. That's all.

*Re-Direct Examination by Mr. Simpson:*

Q. Weren't you down in the Public Service Railway this morning? A. I was down.

Q. Didn't you talk to any of their agents down there? A. They didn't ask me anything.

30

Q. You were down there? A. I was down there.

Q. That's all.

40

*Dr. John C. Farr—Direct.*

DR. JOHN C. FARR, sworn.

*Direct Examination by Mr. Simpson:*

Q. You are a practising physician and surgeon?

10 A. I am.

Q. Where is your office? A. Hoboken.

Q. How long have you been practising medicine? A. Fifteen years.

Q. Did you see this plaintiff, Mr. Chiapparine, on the 20th of August last, the day he was hurt, at the North Hudson Hospital, or did you see him after that? A. I saw him the following day.

Q. What was his condition? A. He had a fracture of both collar bones, one shoulder blade, both  
20 bones of the right forearm, the neck of the thigh bone.

Q. How long was he under your treatment? A. Why, he has been up until recently, up until within the last month.

Q. How long did it take him before he recovered from all of those fractures except the one of the right arm? Has he recovered all in your opinion yet? A. Why, he was probably—it was probably about ten to twelve weeks before he was  
30 able to use his leg and the use of his right arm is still limited.

Q. Well, with the exception of the right arm, the other fractures have cleared up, haven't they—I mean the unions? A. They have done well, yes.

Q. How long did it take before that condition was present? A. Well, it was about three months before he could walk.

Q. Were those injuries attended with much pain? A. Yes.

40 Q. Now what is the present condition of his

*Dr. John C. Farr—Direct.*

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right arm? What is the reason he cannot use that? A. Well, it was a very bad fracture and there is a large amount of callus which interferes with the free motion of the bone, and the union is not yet strong, it is what is known as fibrous union.

Q. Would it require an operation before there was a complete union there? A. Well, I would be afraid to risk an operation. I am afraid the result would not be as good as what he has. 10

Q. And the condition it is in now, has he complete use of the right arm? A. No, he has not.

Q. Is that condition without an operation permanent, in your opinion? A. Oh, yes, it is permanent.

Q. About what percentage of loss of the use of the right arm has he, would you say, if it can be estimated in percentage? A. Why, I should say he has less than fifty per cent use of it. 20

Q. What has been your bill up to date for services? A. Two hundred and fifty dollars.

Q. And in your opinion, considering his circumstances in life and considering your services, is that a fair and reasonable charge? That is a fair and reasonable charge? A. No; it is merely a nominal charge. It is worth—if I had to do it again I wouldn't undertake it for less than a thousand dollars. 30

Q. You were in constant attendance on him for a long time? A. Yes.

Q. About how long? Ever since you say until a few months ago? A. Yes.

Q. The accident was the 20th of August; that would be about ten months? A. Yes.

Q. Almost ten months. That's all.

No Cross-Examination.

*Charles B. Paxton—Direct.*

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MR. SIMPSON: We rest.

THE COURT: That leaves only the books to be produced.

PLAINTIFF RESTS.

10

**Defendant's Testimony**

CHARLES B. PAXTON, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live, Mr. Paxton? A. Paterson, New Jersey, Albion Place.

20 Q. What is your business? A. Motorman.

Q. For the Public Service Railway Company?  
A. Going for thirteen years.

Q. On the 20th of August, 1916, were you motorman of a car that was involved in an accident with an automobile at the crossing of the highway of Anderson Avenue after you left Palisade Park?  
A. Yes.

30 Q. What time of the day or night was it? A. I don't recollect what time it was, because I haven't saw the report since.

Q. Was it light or dark? A. Just getting dark.

40 Q. What have you to say about the speed at which your car approached the Anderson Avenue crossing? A. Why, I left Palisade Junction and came to Anderson Avenue on—when I got very near, within fifty or seventy feet, I slowed down and I looked south and I looked north, and the first look I saw nothing, so I looked again to be sure, and the second time I looked I seen an automobile coming southbound—two dim lights.

*Charles B. Paxton—Direct.*

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Q. How was it coming? A. Well, I saw it and I didn't know how fast it was coming until I got within seventy-five or fifty feet of the car and I could hear it a-whizzing then.

Q. Where was the front of your trolley car when you first saw these lights? A. Just approaching the road. 10

Q. How far had you gotten out on the highway? A. Just starting to get out on the road.

Q. About what rate of speed were you going then? A. Why, about seven or eight miles—just starting to pick up, you know—everything was clear.

Q. Did you see the collision? A. No, sir; I heard it. It near knocked me off the track. The automobile near knocked the back of the car off of the track. 20

Q. Did it make much noise? A. Yes.

Q. What part did the automobile hit? A. Around the center.

Q. What happened to the trolley car? A. Why, it tore the running board off and tore big iron braces off, half an inch or an inch thick.

Q. I show you what seems to be a picture of a Hudson River trolley car and ask you whether or not that is a correct representation of that trolley car as it was after the accident? A. Yes, it is. That is it. 30

MR. COULT: I offer this photograph.  
(Photograph marked Exhibit D-2.)

Q. Now I call your attention to certain pieces along the side of this car at the point where the running-board appears to be broken, and I ask 40

*Charles B. Paxton—Direct.*

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you what those short pieces which appear to be broken off are? A. They are the hangers that hold the running-board up.

Q. What material are they made of? A. Are supposed to be steel.

10 Q. Eh? A. Wrought steel.

Q. Were any of them broken? A. Yes.

Q. How were they broken? A. Broken—snapped right off. The automobile hit them so hard it knocked them right off.

Q. What happened to the automobile after it struck the trolley car, do you know? A. Why, I saw it right after, as soon as I stopped. As soon as I stopped I looked at it and it looked all crumpled up into a heap. It jarred back about  
20 —well, it jarred back quite a distance from the track after it hit the car.

Q. How far was it from the track when you saw it?

THE COURT: After the accident?

Q. After the accident? A. About ten or twelve feet, as near as I could judge. The people grabbed and pulled on me, so I didn't know where I was  
30 at the time. Everybody was——

Q. What was the condition of the front of the automobile? A. Why, really I couldn't say. I didn't get a chance. The people says, "How will we get home," and all this and that, and I said, "You will get home all right. There will be another car right up and I will take you right on as soon as we get another car."

40

*Charles B. Paxton—Cross.**Cross-Examination by Mr. Simpson:*

Q. You were going seven miles an hour when this accident happened? A. When I first approached the crossing.

Q. I know, but when the collision occurred? A. 10  
When the collision happened, why, I suppose I was going about seven or eight miles an hour, when the collision was.

Q. That is as fast as a man can walk? A. Yes, sir, on a good stiff walk.

Q. Yet walking as slow as that your running board was stripped right off your car? A. The automobile hit me at a high rate of speed.

Q. I know, but it tore—your car went along, and as it went along the running-board came off, didn't it? A. The automobile hit it so hard it 20  
knocked it off.

Q. It was stripped off, wasn't it? A. The automobile hit it and slid alongside of it.

Q. The automobile hit the car and the running-board was stripped off and you were running about seven miles an hour. Now, when you came up to the street you knew the condition as you approached the street? A. Yes. 30

Q. You knew you could not see the street until you got right directly on top of the street? A. You could see it within seventy feet.

Q. Can you see through this tree here? As you come up to the crossing you pass that tree, don't you? A. There is one little tree on the right about that—

Q. This is the little tree, eh? A. Yes.

Q. That is the little tree, and you had no trouble in seeing through that little tree? A. I could see. 40

*Charles B. Paxton—Cross.*

Q. Which I will mark for you. I will mark that little tree that I refer to as "A." You had no trouble in seeing through that little tree? A. No.

10 Q. How far back of that little tree were you when you first got a full view of the street? A. Why, fifty feet back of that tree.

Q. You could see up the street? A. I could see up the street to the right.

Q. Then you saw these two dim lights? A. Not then yet.

Q. When did you see the two dim lights? A. After I slacked up at the crossing.

20 Q. Were you on the street? Was the front of your car over into the street, level with the sidewalk, when you saw these two dim lights? A. Why, just about coming, I see the two dim lights.

Q. Had you reached—had your motorman's place reached the sidewalk, the first sidewalk that you would come to? I don't know the points of the compass.

THE COURT: Is it north?

30 A. When I first saw the headlights the center part of my car was just reaching the roadway; I was going slow.

Q. Those two lights were down—— A. Way down the road.

Q. You continued at seven miles an hour going over the street? A. I started to pick up a little.

40 Q. Well, you were only going about seven when you heard the crash, weren't you? A. When I heard the crash, why, I was going about eight. just starting to pick up.

*Charles B. Paxton—Cross.*

Q. Where was this automobile in reference to the street when it came in collision with your car; was it on the left side of the roadway? A. It was southbound.

Q. I know, but was it on the west side of the roadway? A. On the north side—on the west side, yes. 10

Q. West side of the roadway. How near to the sidewalk? A. On the west side?

Q. How near to the west sidewalk was the automobile when it came in collision with your car? A. Oh, he was about twenty-five feet away; he was pulled away down.

Q. Did you look again after you saw him seventy-five feet away from you? A. Sure I looked at him and seen him—heard the brake on that grinding. 20

Q. How near was he to you then? A. When I heard the brakes grinding he couldn't have started to put them on until he was about seventy-five or fifty feet away from me.

Q. Did you see him again after that? A. Not until I heard the crash.

Q. Did you do anything when you heard the grinding of the brakes? Did you stop your car or anything of that kind? A. Stopped the car as soon as I got over the crossing. 30

Q. No; but before you got over the crossing, when he was fifty feet away from you and you heard the grinding of these brakes, did you stop your car then? A. No, sir.

Q. Kept right on? A. I went on across the road.

Q. You are sure you were not going very fast as you approached this crossing? A. I was not. 0

*Charles B. Paxton—Re-Direct—Re-Cross.*

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When I came to the crossing I slowed down.

Q. Did you stop? A. I didn't stop; no, sir. Ain't supposed to stop. Supposed to slacken up and see that nothing is coming.

10 Q. Don't you stop there now? A. I don't work down there.

*Re-Direct Examination by Mr. Coult:*

Q. When you saw that car seventy-five feet away, was there any portion of your car on the roadway? A. I had the whole road covered.

Q. Whole road covered? A. Yes.

Q. Been a good place to stop, wouldn't it? A. Why, if I wanted to make trouble it would—

20 Q. That's all.

*Re-Cross Examination by Mr. Simpson:*

Q. You say you had the whole road covered. Either you or I don't understand each other. Didn't you say a minute ago that you had just reached the east sidewalk before you got into the roadway when you saw these lights seventy-five feet away? A. We was further than seventy-five when I first saw him.

30 Q. How far was it? A. Pretty near two hundred feet when I first saw him.

Q. When is the time you saw him seventy-five feet away? A. When I was right on the road, covering the road.

Q. Is that when you heard the brakes grinding? A. That is when I heard the brakes grinding.

40 Q. Seventy-five feet away from you you heard his brakes grinding? A. Yes, sir; somewhere in the neighborhood of that. It was a good big distance.

*Charles B. Paxton—Re-Cross—Re-Re-Direct.  
Gustave F. Zweil—Direct.*

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*Re-Re-Direct Examination by Mr. Coult:*

Q. Did you give any signal of your approach to that highway? A. Yes.

Q. What was it? A. Why, I blow my whistle 10  
four times just lightly. Ain't supposed to blow  
at all. I wanted to be safety first, and I didn't  
blow too loud.

*By Mr. Simpson:*

Q. What did you do, make a cuckoo sound? A.  
There is others there and I didn't want to blow  
the whistle, and I didn't want to disturb the——

Q. You just gave four gentle blasts? A. Just 20  
easy.

---

GUSTAVE F. ZWEIL, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live? A. Palisade Park, Sev-  
enth Street and Central Boulevard.

Q. Were you on a trolley car that was involved 30  
in an accident on the 20th day of August last at  
the crossing of Anderson Avenue and the private  
right of way of the Public Service Railway Com-  
pany? A. I got on that car at Palisade Junction.

Q. Where were you sitting in the car? A. I was  
sitting in the last—I was standing in the last seat  
of the car proper.

Q. Immediately before the happening of that  
accident, how was the car running, fast or slow? 40

*Gustave F. Zweil—Direct.*

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10 A. Why, he left Palisade Junction fair rate of speed and he reduced his speed just before he reached Anderson Avenue; I should judge he was running about eight miles an hour; he blew his whistle—I heard him blow his whistle and then I could hear him release his brakes and started to pick her up again.

Q. Did you see the collision? A. Why, I did just as soon as he hit. I heard the brakes—even heard the brakes grinding on the auto.

20 Q. What did you see of this collision? A. Well, I heard the brakes grinding and I looked and I had my wife alongside of me, and I said, “My God, is he going to go underneath the car,” and it just picked the car up bodily and she dropped back down, and it picked the car up again and she dropped back down and the car went right along—I guess the motorman didn’t know—as soon as he heard the crash—I guess he didn’t know he was hit until the car was thrown over—the auto rebounded and went over within two or three feet of the west curb there.

30 Q. How was the automobile coming at the time of the collision, fast or slow? A. I didn’t see it coming until it hit, but it hit with an awful impact—it must have—I told——

MR. SIMPSON: I object.

Q. Never mind? A. Well, if it hadn’t happened that the car was crowded and the people were standing in the car, it is my opinion——

MR. SIMPSON: I object.

*Gustave F. Zweil—Direct—Cross.*

Q. Never mind. Don't make any observations about it. Did it hit the car with any force? A. Hit the car very hard, yes.

Q. Make any noise? A. It did.

Q. What did it sound like? (Witness laughs.)

Q. Crash? A. Sounded like a heavy crash.

10

Q. Did you look at the automobile after the accident? A. Yes.

Q. What was the condition of the front of the automobile? A. Why, the right side, headlight was smashed, and the radiator was dented in.

Q. What was the position of the automobile after the accident? A. It was—she was facing south, just turned a little bit to the west.

Q. How near was it to the track? A. Why, it was about ten or twelve feet away from the track.

20

*Cross-Examination by Mr. Simpson:*

Q. What first attracted your attention? A. The grinding of the brakes.

Q. Did you look up then? A. I looked down; I was standing up in the car.

Q. What did you see when you looked down? A. Well, I saw a black object; the next instant I heard the crash.

30

Q. How near was the black object when you looked down as soon as you heard the grinding?

A. It was within a couple of feet of the car.

Q. After the collision the motorman kept right on going, you say? A. The motorman kept right on.

Q. How far did he go? A. He went about twenty-five feet the other side of the crossing.

40

*Gustave F. Zweil—Cross.*  
*Jannette Zweil—Direct.*

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Q. The rear of the car was twenty-five feet the other side before he stopped? A. Well, that is—I mean from the road bed, you know.

10 Q. That is what I mean? A. Where the road bed is.

Q. Then he completely crossed over and went twenty-five feet over? A. Completely crossed the street.

Q. Before he stopped. Did you see whether anybody stopped him or not—the conductor make any signals to stop or notify him or anything of that kind? A. No, sir.

20 Q. The reason I ask you is that you said on your direct examination the motorman didn't seem to know that the collision had occurred. Why did you say that? A. Well, the way he kept going. Well, he did—the conductor give him a stop bell, I think.

Q. The three bells? A. No, one bell.

Q. One bell? A. That is I suppose he pulled the bell.

30 Q. Why did you say the motorman did not seem to know there had been any collision? A. Because he kept right on going. The car kept going after the crash.

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MRS. JANNETTE ZWEIL, sworn.

*Direct Examination by Mr. Coult:*

Q. Mrs. Zweil, you are the wife of the witness who was last on the stand? A. Yes.

40 Q. Were you with him at the time this accident occurred? A. Yes, I was with him.

*Jannette Zweil—Direct.*

Q. What part of the trolley car were you in?  
A. On the very back seat.

Q. Were you toward the outside of the seat or the inside? A. No, I was the inside.

Q. Inside? A. Inside.

Q. How far were you from the edge of the trolley car, where the steps are? A. From what? 10

Q. From where the steps are, where people get in and out? A. I was away from—about middle ways, I was, and then he was on the other side.

Q. About middle way? A. Yes.

Q. Did you see this accident? A. No, I didn't see it; I only felt it.

Q. You knew about it? A. The car went up and I thought the car was going to turn over. 20

Q. Did you hear any noise? A. Yes, I heard the noise.

Q. What was it like? A. Well, it was just like some,—I don't know—a heavy lift up and then down, like a fall or something.

Q. Well, was it a loud noise or not? A. Pretty loud, and I asked what was the matter.

Q. Did you see the automobile after the accident? A. No, I didn't. I felt the glass come over me from something and I thought it was the front of the car, and my husband said, "Oh, it is an automobile run in." 30

Q. Any of the glass strike you? A. Just a little—shower.

No Cross-Examination.

*Mrs. Clara Taylor—Direct.*

MRS. CLARA TAYLOR, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live, Mrs. Taylor? A. Providence.

01 Q. Did you see this accident? A. Yes.

Q. Where were you at the time? A. I was sitting about the middle of the car.

Q. On which side of the car, towards the accident or away from it? A. I was sitting next to the end where you get on to the car, where the step was.

Q. You were the next seat to the step? A. Yes; there was one person between me and the step.

20 Q. Did you see the automobile before the accident occurred? A. I see it coming—

Q. How was it coming, fast or slow? A. It looked to me as though it was coming fast.

Q. How far away was it when you first saw it? A. I don't know just exactly how many feet, but I see it coming and I no more than see it before it was come right up on the seat like where we were—crashed right against the car, a good crash, and glass—

30 Q. Was the trolley car going fast or slow at the time? A. It was going about mediate gait.

Q. Do not let your voice fall at the end of the sentence. Which was going faster, the automobile or the trolley car? A. Oh, the automobile, sir.

Q. Well, how much faster than the trolley car was it going? A. I didn't quite catch it.

Q. I say how much faster than the trolley car was it going? Twice as fast or three times as fast?

40 A. It was going a great deal faster than the trolley car was.

*Mrs. Clara Taylor—Direct—Cross.*

Q. Would you say it was going twice as fast?  
A. Yes, I should think it was.

Q. What part of the trolley car did it collide with? What part of the trolley car did it hit? A. About midway, where I was sitting.

Q. What happened when it struck the trolley car? A. Well, there was a big crash, and the car went across, so, and the automobile ripped the running board from where we sat—it ripped it off.

Q. Did you notice any glass about? A. Yes. I carried a piece of glass home in my hat, unbeknownst to myself.

Q. Did you see the automobile after the accident? A. No, sir, I didn't get off the car.

*Cross-Examination by Mr. Simpson:*

Q. How soon after you first saw the automobile did it collide with the car? A. Well, I am in no position to give no stated time.

Q. Was it instantaneous? A. Yes.

Q. That is when you first—from the time you first saw it until the collision it was almost the same time, wasn't it? A. I saw it and I no more than see it and realize it was an automobile when it struck the car.

Q. Then it must have been pretty near, wasn't it? A. That is what I say; it was not such a great ways apart; it was dark at night.

Q. Wasn't it pretty near to the car when you first saw it? A. Well, it had quite a speed before it hit the car.

Q. So you said twice already. Now, will you answer the question.

Q. Wasn't it quite near to the car when you first saw it? A. Yes, I think it was.

*Mrs. Clara Taylor—Cross.*  
*Dr. Louis E. Poole—Direct.*

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Q. And from the time you first saw it until the time it struck the car was almost instantaneously, wasn't it? A. Yes.

10 Q. Then how can you tell how fast it was going?  
 A. I said I couldn't tell how fast it was going.

Q. How could you tell it was going as fast as the car if the whole thing happened in an instant of time? A. Well, it was coming pretty fast and I no more than saw it coming when it happened. It was quicker than I can tell it.

20 Q. How could you tell whether the automobile was going fast or slow when the whole thing from the beginning to the end according to you happened in an instant of time? (No answer.)

Q. That is all. I don't want to keep the lady on the stand all day. That is all I have. (No answer.)

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DR. LOUIS E. POOLE, sworn.

*Direct Examination by Mr. Coult:*

30 Q. Where do you live, Doctor? A. West Hoboken, New Jersey.

Q. How long have you practised your profession? A. Since 1890, for twenty-seven years, this year.

Q. Where are you practising now? A. My office and residence is West Hoboken, but my practice extends outside of West Hoboken; I practice throughout the county.

Q. Are you a surgeon? A. Yes.

40 Q. And a physician? A. Yes.

*Dr. Louis E. Poole—Direct—Cross.*

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MR. SIMPSON: I will admit his qualifications.

Q. Do you know Joseph Chiapparine, the plaintiff in this case? A. I do, yes.

Q. Did you make any examination of him? A. 10  
I did, yes, at the office.

Q. When was that? A. Last August, last year.

Q. Remember what date? A. It was the 21st.

Q. 21st of August? A. Yes.

Q. Where was the examination? A. At the—he was in bed in the North Hudson Hospital.

Q. Where is that located? A. Weehawken.

Q. What did you find to be the matter with him?  
A. Why, he had a fracture of both collar bones, 20  
a fracture of the forearm, a fractured shoulder blade and several contusions and abrasions.

Q. Did you see Caesar Lorenzetti on that day?  
A. Yes.

Q. Where was he? A. He was in the same hospital.

Q. Make an examination of him too? A. Yes, after I made the examination of Mr. Chiapparine.

Q. At that time and place did Caesar Lorenzetti say to you that at the time of this accident his 30  
cousin was driving too fast and hit the trolley car, or words to that effect? A. That was his statement. In making and taking the history of the case he made that statement, yes.

Q. Were those the words he used? A. Yes.

*Cross-Examination by Mr. Simpson:*

Q. How long have you been testifying for the defendant, Doctor?

*Dr. Louis E. Poole—Cross.*

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MR. COULT: I object. People do not testify for anybody. They are called as witnesses.

10 MR. SIMPSON: I think I have a right to show his interest. If he is a regularly retained physician of the company.

THE COURT: That is different.

MR. COULT: People do not testify for or against.

THE COURT: They testify for and toward the truth, theoretically.

MR. SIMPSON: I will withdraw it.

20 Q. You are a regularly retained physician of this company up in that district, aren't you, Doctor? A. I am hired by the case. Whenever they have accidents, if they wish, I suppose, they hire me.

Q. Well, how long have they been hiring you, up there, Doctor? A. I have worked at intervals for them for fifteen years, I guess, or more.

30 Q. When you examined the plaintiff you did not ask his consent at all; you simply went in and examined him, didn't you? A. Simply go in and examine him, yes.

Q. You have some sort of a position up in that hospital, or had, which gives you the entree there? A. I am the consulting surgeon, one of them.

Q. And also retained by the company to do their examining, aren't you? A. On this particular case, yes.

Q. So that you had excellent opportunity without the consent—

*Dr. Louis E. Poole—Cross.*

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MR. COULT: I object. I think the witness ought to be given a chance to answer.

MR. SIMPSON: I am forgetting. He always seems to be quite glib.

THE COURT: I think on the question of speed you are a little faster than he. 10

(Question repeated.)

Q. So you had no trouble, by reason of your official position in the hospital, of going in and examining this man, whether he wanted you to or not, did you? A. I don't see any reason why I should have any trouble.

Q. Suppose he told you he didn't want you to examine him? A. Then I wouldn't do it.

Q. You would stop? A. Yes. 20

Q. This was the day after he had all these fractures that you examined him, wasn't it? A. I believe it was the same or next—the next morning after the accident.

Q. Did you think he was in any condition to say whether he wanted you to examine him or not so short a time after having received all these fractures? A. He not only wanted me to examine but he wanted me to take care of him and treat him. 30

Q. You did take care of him and treat him? A. I did not, no, but he wanted me to.

Q. When did you talk with the other man? A. Which man do you mean?

Q. Lorenzetti, or whatever his name is? A. The same day.

Q. Was he suffering from injuries at the time that you talked to him? A. He had the injuries, yes.

*Dr. Louis E. Poole—Re-Direct—Re-Cross.*

Q. Did you tell him when you had your conversation that you were getting evidence from him that might be used against him in his own case against the trolley car company? A. I did not, and I had no idea of that at the time.

10 Q. But you got this statement from him, didn't you? A. I got the regular history from him the same as the interne would take, certainly.

Q. That is all.

*Re-Direct Examination by Mr. Coult :*

Q. Did either of these people make any objection to your examining them? A. No, not a bit.

20 *Re-Cross Examination by Mr. Simpson :*

Q. By the way, did you make any written memorandum of that statement in your report to the company? A. I did. I wrote the statement right out at the time. The full, complete history is written out right at the bedside.

Q. Which you hand in to the company? A. Yes.

MR. COULT : Like to have it? (Showing Mr. Simpson a paper.)

30 MR. SIMPSON : Yes.

Q. That you hand in to the company? A. I keep a copy of it, but that is the original.

(Mr. Simpson examines paper.)

Q. What else did he say to you, do you remember, at the time—Lorenzetti? A. Well, principally—I asked him questions you know, such as might

*Dr. Louis E. Poole—Re-Cross.*

appear on a history form, and he made the answers which I copied down.

Q. Well, do you remember anything else without looking at this paper that he told you at the time? A. That is about all he said, as I wrote it down. 10

Q. As far as you recollect it? A. The object of the history is to determine the——

Q. I don't care about the object of the history; I am simply asking you a very simple question. It is not necessary to evade. Whether that is all you remember of what he said. A. That is all I remember.

Q. That is all.

MR. COULT: I will offer the Doctor's report in evidence. 20

MR. SIMPSON: I will object to it.

MR. COULT: Don't you want it?

MR. SIMPSON: I don't want all this truck about the medical stuff and pictures of skeletons and all that sort of thing. What has that to do with the case?

MR. COULT: I will offer to read in that portion that applies only to the history of this case. 30

MR. SIMPSON: I object, on the ground that the Doctor has already testified, and it cannot be buttressed at all by any memorandum.

THE COURT: Call your next witness.

*J. Fletcher Burdette—Direct.*

J. FLETCHER BURDETTE, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live, Mr. Burdette? A. Palisade, New Jersey.

01 Q. How near to the intersection to the trolley company's right of way and this Anderson Avenue? A. Between seven and eight hundred feet.

Q. Do you live on Anderson Avenue? A. On Anderson Avenue, yes.

Q. To which side of the crossing, north or south? A. North of the crossing.

Q. On which side of the street, east or west? A. On the east side of the street.

20 Q. Did you see the accident that occurred at that crossing on the 20th of August, 1916, between the trolley car and the automobile? A. I did not see the accident, no.

Q. Did you hear it? A. I heard it very plainly.

Q. Previous to hearing the accident did you see any automobile on Anderson Avenue? A. I did.

Q. Which way was it going? A. Going south.

30 Q. How long before the accident did you see this automobile going south on Anderson Avenue? A. Well, the trolley—the automobile passed my house, and I turned around to my daughter-in-law and I said, "That fellow is going more than forty miles an hour."

MR. SIMPSON: I object.

Q. Never mind. You said something to your daughter-in-law? A. I was hardly done saying it when I heard the crash.

40 Q. How was that automobile going when it

*J. Fletcher Burdette—Direct.*

passed your house—fast or slow? A. That is the remark I made—so you can judge.

MR. SIMPSON: I object.

THE COURT: Not the remark. How fast was it going? 10

A. Well, in my opinion forty miles an hour.

Q. Forty miles an hour? A. Yes.

Q. Now here is Exhibit P-1, now look at that and tell us about where your house is? A. That doesn't show my house. It shows the other side of the street.

Q. So that on that photograph you cannot see your house because it is on the left hand side as you look? A. That is right, yes. 20

Q. How many houses are you from the corner—I don't mean from the corner, I mean from the crossing? A. I can show you the house on that exhibit.

MR. COULT: This is a photograph taken on the north end. I don't suppose you want to have that go in?

MR. SIMPSON: How does he know, if he hasn't seen it at all? 30

Q. Have you ever seen that photograph before? A. Yes, sir.

Q. Where did you see it? A. This identical photograph—I suppose—I guess I saw it at the Public Service office.

Q. When? A. Today.

Q. I see. Now can you point out your house on that photograph? A. There is my house. That house you can see quite distinctly, and the next building to that house is mine, right in there. 0

*J. Fletcher Burdette—Direct—Cross.*

Q. Then will you just mark on the photograph with a pencil a B where your house is? A. Mark it out in the street opposite the house? A. Yes.

Q. Yes, the letter B. (Witness complies.)

10 Q. Does that correctly represent the general physical situation at the crossing of Anderson Avenue and the trolley company? A. That is a good picture of it.

MR. COULT: I offer this for the purpose of showing where the house is.

MR. SIMPSON: No objection.

Q. And no leaves on these trees?

MR. SIMPSON: It is winter time.

20 Q. I suppose it is. There don't seem to be any leaves, and I don't want to put it in for any other purpose.

(Photograph marked Exhibit D-3.)

*Cross-Examination by Mr. Simpson:*

Q. What is your business? A. Dealing in real estate.

30 Q. Any connection with the defendant company or any of its subdivisions at all? A. No way whatever.

Q. How far is your house from the Anderson Avenue crossing? A. Between seven hundred and eight hundred feet.

40 Q. What kind of a looking automobile was the one which you saw which you say was going forty miles an hour; was it red or black or white, or what? A. Well, it is a very hard thing to answer, what kind of a looking automobile going—when it was going at the rate what I suppose was forty miles an hour.

*J. Fletcher Burdette—Cross.*

Q. Could you tell? A. That is true, that is all I could say.

Q. Was it a runabout or touring car or a goods car? A. It was a touring car.

Q. Have you any particular notion about speed? I mean do you study speed or observe speeds so that you have any more than ordinary knowledge about speeds? A. I have owned a car over ten years. 10

Q. Have you ever driven at forty miles an hour? A. No, I do not.

Q. And when you say this car was going forty miles an hour, that is only your estimate of the speed, isn't it? A. That is right.

Q. You did not time it with your watch? A. No. 20

Q. You think it was going very fast? A. That is only my judgment.

Q. It was then seven hundred feet from the crossing? A. Yes.

Q. You did not see it at the time—when it was a hundred feet from the crossing? A. I didn't see it after it passed the house.

Q. That's all.

*Re-Direct Examination by Mr. Coult:*

Q. Did you go to the scene of that accident afterwards? A. Yes, immediately. 30

Q. Was there any other automobile that passed your house immediately before or after this one? A. I don't think so.

Q. Can you say whether or not the automobile that you saw at the crossing was the same one that passed your house? A. No, I couldn't swear to that.

Q. Couldn't say that? A. Oh, no. 40

*George F. Burdette, 2d—Direct.*

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GEORGE F. BURDETTE, 2nd, sworn.

*Direct Examination by Mr. Coult:*

10 Q. Where do you live, Mr. Burdette? A. 30  
Anderson Avenue, Palisade.

Q. You related to the last witness? A. That is  
my father.

Q. You live in the same house with him? A.  
Same house.

Q. On the 20th day of August, 1916, do you re-  
call of an accident that happened at the corner  
of Anderson Avenue, the crossing of Anderson  
Avenue with the private right of way of the Pub-  
lic Service Railway Company? A. I do.

20 Q. About how far is that from the house where  
you live? A. About seven or eight hundred feet.

Q. Where were you immediately previous to the  
happening of that accident? A. On the porch of  
the house.

Q. How do you know when the accident hap-  
pened? A. How do I know when it happened.

Q. Yes. A. Well, I heard a noise.

Q. What kind of a noise was it? A. Oh, very  
loud impact.

30 Q. What did it sound like? A. It sounded like  
a heavy crash.

Q. Just previous to that had you seen any auto-  
mobile passing your house? A. Just previous to  
that? No. There just seemed to be a lull at that  
time. No others passed that I know of.

Q. Did you see any passing before this acci-  
dent? A. Well, before it happened, yes, but not  
long before it happened.

40 Q. Not long before it happened? A. No.

*George F. Burdette, 2d—Direct.*

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Q. How soon before? A. Oh, three or four minutes, something like that, as they go by—one goes by, and another, you know—two or three minutes.

Q. What is that? A. I say about three or four minutes before this one came, I should judge.

Q. Oh, you don't understand what I mean. What about this automobile? A. Yes. 10

Q. Did you see this automobile before the crash? A. Sure. Well, I am not sure—yes, I saw that automobile before I heard the crash.

Q. How long before the crash? A. Oh, maybe half a minute.

Q. Half a minute? A. Yes.

Q. How was it going, fast or slow? A. Very fast. 20

Q. Now, just indicate to the jury the time that elapsed between the passing of the automobile by your house and the crash, if you can? Can you illustrate to them how it was? A. Well, I should say—just as my father said—as he turned around to speak—that was barred before, but that is the only thing I can tell you—just as he turned around to speak to his daughter to say how fast it was going; he hadn't hardly answered when— 30

MR. SIMPSON: I object to what father said.

THE COURT: What he said may be stricken out.

Q. Then you would estimate that at about a half a minute? A. Half a minute, I should judge, yes.

Q. I see. How soon after the automobile passed did your father speak; did that follow immediately or not? A. As it was passing he turned and spoke. 40

*George F. Burdette, 2d—Direct—Cross.*

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Q. He turned and spoke, and then what followed. A. Well, about as he was figuring they heard the crash.

Q. Did you go to the scene of the accident? A. I did.

10 Q. What did you find there? A. Why, I found the automobile smashed and one man sitting up back of the wheel and the other man on the ground.

Q. Can you say whether or not that was the automobile that you saw passing the house? A. I couldn't say that; no.

Q. Had there been any other automobile passing the house before that or after that? A. Why, surely. They are passing back and forth there  
20 all the time.

Q. How long before? A. Probably a minute or two—three or four, something of that kind.

Q. Was there any other automobile in sight on the street when that one went by? A. No.

Q. How was it going, fast or slow? A. Fast.

Q. Do you know how many people were in it? A. No.

Q. How fast would you say it was going in  
30 miles per hour? A. Well, much faster than other automobiles go by there. I can't say miles per hour—much faster than the ordinary rate of automobiles going by.

*Cross-Examination by Mr. Simpson:*

Q. That is a very busy street about that time, isn't it; lots of automobiles going back and forth? A. Not just at that time it didn't happen  
40 to be.

*George F. Burdette, 2d—Cross.*

*Elmer E. Frost—Direct.*

Q. I mean at that time of night, aren't there lots of automobiles usually on that street? A. Sometimes there is a continual line and then there is a lull for a few minutes.

Q. Isn't that the way up to Fort Lee, where people go over to the 125th Street Ferry? A. Yes, sir.

10

Q. You wouldn't say on your oath whether the machine which you saw which you say was going so fast was this plaintiff's machine or not? A. I do not.

Q. That is all. A. I say the machine I saw was going fast.

Q. That's all.

20

ELMER E. FROST, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live? A. Paterson, New Jersey.

Q. You are a conductor in the employ of the Public Service Railway Company? A. Not just now; I was at that time.

30

Q. You are not now? What are you now? A. Driving an automobile.

Q. Driving an automobile? A. Yes.

Q. For whom? A. Rodman Tickler, in Paterson, New Jersey.

Q. Were you a conductor in charge of the car that was involved in this accident? A. Yes.

40

*Elmer E. Frost—Direct.*

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Q. How long had you been in the trolley company's employ at that time? A. Oh, I should say three years.

10 Q. Did you see this accident? A. I did not see it. I heard it. It came from back of me and I didn't see it coming.

Q. Where were you at the time? A. I was on the running board collecting fares.

Q. How near were you to the point of collision, the place where the car and the automobile came together? A. Why, I was right there where it struck, only I heard the noise coming and I jumped up and lifted myself up and just the minute the crash came, just in time to get away from being killed.

20 Q. What kind of a crash was it? A. Oh, crash—I might say—almost deaf, it was so loud; such a crash.

Q. Anything done to the trolley car? A. It took the running-board off, all those big iron rods and big screws on it, about an inch thick—cut them off just like a saw.

Q. Do anything to your grab handles? A. No, didn't knock them off; they were quite high.

30 Q. What about that part of the running-board that you had been standing on? A. Knocked it clear off, just like you cut it off with a saw.

Q. What made you get inside of the car? A. I heard a noise and I heard something coming down the road, so I just jumped up in time in the car.

Q. Was there any flying glass about? A. Yes; when the crash came something flew and hit me

*Elmer E. Frost—Direct—Cross.*

on the arm and cut my arms—close to my arm—I wouldn't say what it was.

Q. Hurt your arm any? A. Give me a cut, that's all.

*Cross-Examination by Mr. Simpson:*

10

Q. These screws that were cut off like a knife; were they screws that went into the body of the car? A. No, they were big bolts.

Q. They enter into the car. They are crosswise of the car? Are they lengthwise or crosswise of the car? A. Crosswise.

Q. So the car moving that way, they would be cut off, you say, as if cut off with a knife? A. The bolts were just cut off.

20

Q. How far did the car go after you heard this? A. Just across the road.

Q. Where did the collision occur? Where was the car? A. Right on the crossing.

Q. On the crossing? A. On the crossing.

Q. Had the front of the car reached the west side? A. There was just a block; nothing could get through on either side.

Q. It was just blocking the crossing? A. Yes, sir.

30

Q. You heard the grinding of the brakes, did you? A. I heard the noise when he slammed the brakes on and I made a jump.

Q. That is what made you jump? A. Yes.

Q. Did that seem to be very near you when you heard them? A. I couldn't say, because I was in back of it—coming from the back of me.

40

*Elmer E. Frost—Re-Direct.*

*Wilbur F. Holt—Direct.*

*Re-Direct Examination by Mr. Coult:*

Q. And opposite what seat were you on the running-board? A. I was about the sixth seat  
10 from the rear almost in the center.

Q. You say after the accident the trolley car crossed the road. Where was the rear of the trolley car with relation to the roadway? A. Just about clear of the road we were when we stopped the car.

Q. The rear of the car just about cleared the road? A. Just about cleared the road when we stopped.

20 (Recess to June 6th, 1917, 10 A. M.)

Jersey City, N. J., June 6th, 1917, 10 A. M.

WILBUR F. HOLT, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live, Mr. Holt? A. Palisade,  
30 New Jersey.

Q. Where with reference to the intersection of the private right of way with Anderson Avenue? A. About three hundred feet to the north.

Q. On Anderson Avenue? A. On Anderson Avenue, yes.

Q. Which side of Anderson Avenue did you live on? A. On the west side.

Q. How many houses from the crossing? A.  
40 First house from the crossing.

*Wilbur F. Holt—Direct.*

Q. About how many city lots? A. Well, meaning twenty feet to a city lot?

Q. Well, I should think way up there about twenty-five feet, I suppose? A. Well, they are fifty feet there. There are about six lots between my house and the corner crossing. 10

Q. Six fifty foot lots? A. Yes, sir.

Q. Do you recall an accident that happened at that crossing in which a trolley car and an automobile were involved? A. I do.

Q. Where were you at the time? A. I was on the second floor of my house in one of the front rooms.

Q. Anybody with you? A. Yes, Mrs. Holt was with me.

Q. About what time of day? A. Why, I should say between half-past nine and ten o'clock in the evening. 20

Q. Do you remember the day of the month? A. I do not definitely now, no. It was about the middle of August, as I recall it.

Q. Well, about the 20th of August, did you see the accident? A. No, I didn't see it.

Q. What do you know about it, just tell the jury? A. Why, it was a hot night and the windows were open, and I heard this automobile coming down the road. Now you can—if an automobile is speeding you can tell it by the sound, pretty well. Well, I heard this automobile come by the house with a rush, and then I heard the brakes go on with a squeak, and then almost immediately afterwards I heard a crash like that (illustrating). 30

Q. Now what kind of a crash was it? A. Very loud crash. Very loud crash. 40

*Wilbur F. Holt—Direct—Cross.*

10 Q. Just what did you do? A. I rushed to the window and looked out the side window. My side window commands the tracks there and I looked out and I saw the trolley car standing here, and this automobile down under the lights at the corner, and I immediately got some clothes on and beat it down there.

Q. Where was the trolley car standing? A. Trolley car standing just on the west side of Anderson Avenue as it had stopped.

Q. Was it completely across the road or not? A. Yes, it was completely across the road.

20 Q. Where was the rear of the trolley car with reference to the sidewalk? A. Why, I should say it was pretty nearly on a line with the sidewalk, the rear of the trolley car.

Q. Where was the automobile lying? A. The automobile was lying just about at the end of the sidewalk, a little to—well, the road there, the center of it is amesite, and on both sides it is dirt or macadam, and the trolley car was lying to the north of the tracks and just between the amesite and the curb.

30 Q. You mean the automobile? A. The automobile, yes.

Q. Between the amesite and the curb? A. Yes, sir.

*Cross-Examination by Mr. Simpson:*

Q. Was it near the curb, the automobile? A. Was the automobile near the curb?

Q. Yes. A. Yes.

40 Q. It was on its right side of the road, on the right hand side? A. On the right hand side going down.

*Wilbur F. Holt—Cross—Re-Direct.*

Q. Near the curb? A. Yes.

Q. In the direction in which the automobile was going. As I understand you, you did not see the automobile until after the accident? A. No.

Q. Just heard the machine pass your house and then heard the brakes on and then you heard a crash? A. Yes. 10

Q. How soon after the crash—how soon after the brakes, the noise of the brakes, did you hear the crash? A. Why, immediately, because it was while they were squeaking that I say I heard a crash.

Q. The brakes were going on at the time you heard the crash? A. Yes.

Q. Is that all that you heard up to the time of the passing of the automobile, the noise of the brakes and the crash, is that all you heard? A. That is all I noticed. 20

Q. You heard no bell of a trolley car or whistle of the trolley car? A. I don't recall that.

Q. That's all.

*Re-Direct Examination by Mr. Coult:*

Q. One thing I omitted. Did you go to the scene of the accident in the morning? A. Yes. 30

Q. Did you make any examination of the condition of the roadway? A. Yes.

Q. What did you find there? A. Why, I found there a long mark—I should say it was seventy-five feet long—on the amesite road, apparently where an automobile had slid. It looked to me as though one set of brakes, the brakes on one side held and the other side did not. 40

*Wilbur F. Holt—Re-Direct—Re-Cross.*  
*Mrs. Mabel S. Holt—Direct.*

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10 Q. What sort of a mark was it? A. Why, it was a mark about three or four inches wide and long and continued running right down the roadway. I mean it is just the kind of a mark that you will see wherever an automobile slides.

*Re-Cross Examination by Mr. Simpson:*

Q. You mean the mark looked as if one set of wheels had locked and the other had not? A. Yes, it looked that way.

Q. The two wheels on one side had gone around and the other two had not? A. Yes, sir.

Q. Just sliding? A. Yes.

20 Q. That was for about seventy-five feet? A. Yes.

Q. As if the brakes had been on for seventy-five feet? A. Yes.

Q. That's all.

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MRS. MABEL S. HOLT, sworn.

30 *Direct Examination by Mr. Coult:*

Q. Mrs. Holt, you are the wife of the witness last sworn, are you not? A. I am.

Q. Were you with him on the evening of August 20th in the front room of your home? A. Yes.

Q. Did you see the accident that occurred at the crossing of the private right of way and Anderson Avenue on that evening? A. At the time it occurred?

40 Q. Yes? A. No.

*Mrs. Mabel S. Holt—Direct—Cross.*

Q. Now what do you know about it. Tell the jury. A. Why, I was in the room and heard the automobile going by at a great rate or high speed, I heard the squeak of the brake and I heard the crash.

Q. What makes you say the automobile was going at a great rate of speed? A. From the sound of it. 10

Q. How long was it from the time you heard the automobile pass the house and the crash? A. Oh, matter of seconds, very few seconds.

Q. What kind of a crash was it? A. A very loud crash. A crash of two bodies coming together, very loud.

Q. Did you look out to see what happened? A. No, I did not see. 20

Q. Did you go to the scene of the accident? A. Not at the time.

*Cross-Examination by Mr. Simpson:*

Q. Mrs. Holt, how do you distinguish the sound of an automobile going twenty and one going thirty miles an hour? What is the difference, if any, of them? A. Well, it is a louder noise to it according—going a great rate of speed. We hear them speeding by Anderson Avenue and I have seen them go by at different speeds. 30

Q. You are testifying now from the sound and I want to understand what I do not understand, that is how you can tell by listening and not seeing an automobile is going at twenty or going at thirty miles an hour? A. Well, I heard a great rush by of that machine. It just went whizzing by and the squeaking and like that (illustrating). 40

*Mrs. Mabel S. Holt—Cross.*  
*Harry W. Burdette—Direct.*

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Q. And the crash? A. It seemed to come almost together.

Q. Almost together? A. Yes.

10 Q. You heard the whistle of the trolley car? A. Only two or three seconds, probably.

Q. Did you hear the whistle of the trolley car? A. I don't recall hearing anything.

Q. Bell of the trolley car? A. No, I don't recall hearing anything, because it was so loud I was paying attention to that alone.

20 Q. Well, did you hear—could you distinguish how much time elapsed between the time you heard the brakes put on and the time of the noise of the collision? A. Why, I should say they were instantly afterwards the collision happened from the time I heard this squeak and then that (illustrating).

Q. Practically contemporaneous, the things you heard, the brakes and the crash, were they? A. Well, possibly two or three seconds, I couldn't say.

Q. That's all.

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30 HARRY W. BURDETT, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live, Mr. Burdett? A. Fort Lee.

Q. Where on Anderson Avenue? A. I do not live on Anderson Avenue; I live in Fort Lee.

40 Q. Pardon me. Do you recall the accident that occurred at the intersection of Anderson Avenue and the private right of way of the Public Service

*Harry W. Burdette—Direct—Cross.*

Railway Company on the night of August 20th, 1916? A. Yes, sir.

Q. Where were you at the time? A. Why, I was at my father's residence.

Q. Where does he live? A. 30 Anderson Avenue. 10

Q. How far was that from the intersection of the private right of way and Anderson Avenue? A. Oh, probably seven or eight hundred feet.

Q. Did you see the accident? A. No, I did not see it.

Q. Did you hear it? A. I heard it, yes.

Q. Now did you see anything just before you heard it? A. I saw an automobile going by, yes.

Q. How soon was that before the accident happened? A. Oh, probably fifteen seconds. 20

Q. Which way was the automobile going? A. In a southerly direction.

Q. Towards the crossing? A. Towards the crossing.

Q. How was it going? A. Why, it was going very fast.

Q. Can you give us the amount per hour? A. Yes.

Q. How fast can you say that automobile was going? A. Between forty and forty-five miles. 30

*Cross-Examination by Mr. Simpson:*

Q. You say it was going forty and forty-five miles, and did you hear the crash? A. Yes, sir.

Q. Well, it was fifteen seconds after you saw the automobile you heard the crash, was it? A. About that, yes.

Q. How far were you standing from the place 40

*Harry W. Burdette—Cross.*  
*Philip Heft—Direct.*

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of collision? A. About seven or eight hundred feet.

Q. And you think it was going forty or fifty miles an hour? A. Yes.

10 Q. And it took it fifteen seconds to go that distance that you described? A. Well, it would take it a little less than that time.

Q. You just said fifteen seconds? A. I said about fifteen seconds.

Q. Don't you know an automobile going only twenty miles an hour goes 1,760 feet in a minute, and you say it took this automobile about fifteen seconds going forty to forty-five miles an hour to make that seven hundred feet? That's all. (No answer.)

20

Q. One question I want to ask you. Was not this automobile you saw a large brown touring-car—the one you saw going fast—a National? A. I couldn't distinguish any color. It was night time.

*By Mr. Coult:*

Q. You don't know whether it was a dark Chalmers touring car with two men in it, do you? A. No, sir.

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PHILLIP HEFT, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live, Mr. Heft? A. Fort Lee.

Q. What is your business? A. Officer.

Q. What kind of an officer? A. Police officer.

40 Q. I don't mean a good one or bad one. A po-

*Philip Heft—Direct.*

lice officer. Do you recall an accident that happened at the intersection of Anderson Avenue and the Public Service private right of way on the night of August 20th last year? A. The ninth?

Q. August 20th? A. Yes, sir.

Q. You did not see the accident? A. No, sir.

10

Q. At the time this happened where were you?

A. I was about one-third of a mile, I guess, north of the accident.

Q. What were you doing there? A. On duty.

Q. What was that? A. Well, walking around looking out for things.

Q. While you were at that point did you see any automobiles going toward the crossing? A. Well, while I was standing there there was two of them. They came down there quite fast and I went out there and tried to stop them.

20

Q. Yes? A. So they refused to stop for me. The one fellow almost tried to run over me, so I shot in the air. I thought probably it would draw his attention and would pull up, but he didn't; he went right on. So the second machine pulled up.

Q. Now when you first saw them how were they going, these two machines?

30

MR. SIMPSON: Where is this? I object to this. There is no identification of his being in the machine. He has not identified the machine, the place or the time or anything else.

MR. COULT: Just state the time of the accident.

MR. SIMPSON: He wasn't at the place of the accident. He don't know where the accident occurred.

40

*Philip Heft—Direct.*

A. These machines passed me about 9:45 in the evening.

Q. Yes.

10 MR. SIMPSON: What time was the accident?

MR. COULT: Nine forty-five.

MR. SIMPSON: Then I still object. If they passed him at 9.45 they couldn't be struck at 9.45, demonstrating it was not these machines.

THE COURT: Well, let's go ahead with the witness and see whether he can connect it up.

20 MR. COULT: If I can't connect it up I will consent to have it stricken out.

MR. SIMPSON: That is all right. When the jury hears it what good is it to strike it out, if they think this was this machine. I still have my objection, your Honor.

THE COURT: What is the motion?

MR. SIMPSON: I will withdraw it.

(Question repeated.)

A. They were going rather fast.

30 Q. When you say that you shot in the air what was it that you shot? A. Revolver.

Q. What kind of a revolver? A. Thirty-two.

Q. Make a loud report? A. Quite a loud report.

Q. What became of the machine that slowed up?

A. Well, he went on again, he slowed up, but went on again.

Q. What became of the one that went on? A. Well, that I don't know.

40 Q. How was it going when you last saw it? A. Going fast.

*Philip Heft—Direct—Cross.*

Q. Now, do you know who was in the machine that went on? A. Well, I noticed that there were two men in the machine, that I noticed.

Q. What kind of a machine was it? A. Well, that I couldn't say.

Q. Well, generally, can you describe it—closed car or open car? A. Oh, an open car, two seated. 10

Q. Touring car? A. Touring car, two seated car.

Q. Two men in the front seat? A. Two men sitting in the front seat.

*Cross-Examination by Mr. Simpson:*

Q. How many cars did you see that day, open cars with two men on the front seat? A. This was at night. 20

Q. What? A. This was in the night time.

Q. Well, at night how many men did you see? How long were you on duty? A. From half-past seven at night until five in the morning.

Q. How many men passed you—how many cars passed you with two men in it, open cars? A. That I don't know.

Q. You don't know that. It is a common thing, isn't it, for two men to pass you in a touring car? Nothing uncommon about that, is it? Is there anything uncommon in Fort Lee about a touring car going by with two men in it? (No answer.) 30

Q. There is nothing uncommon about that? A. No.

Q. You see lots of touring cars? A. See lots of them.

Q. Was this car that stopped a brown car? A. That I couldn't notice. It was at night. 40

*Philip Heft—Cross.*

Q. You were right there. The cars stopped.

THE COURT: The one that stopped?

A. Oh, the car that stopped?

10 Q. Yes. A. It didn't stop altogether to a standstill.

Q. Slowed down? A. Slowed down.

Q. You could see what color it was? A. No; at the time the car slowed down I guess he was half a block away from me, all of that.

Q. When it passed you, couldn't you see what color it was? A. No.

Q. You could see he was going fast? Wasn't there an electric light where you were standing?

20 A. I couldn't notice what the color of the car was.

Q. Wasn't there an electric light where you stood? You are the director of traffic up at Fort Lee? A. No, no director.

Q. Just the boss? A. Ordinary patrolman.

Q. Where was your post? A. On Anderson Avenue—well, it is all over there, from the Palisades.

Q. Where were you at the time you saw these machines? A. I was at Anderson Avenue and Central Boulevard.

30 Q. Anderson Avenue and Southern Boulevard?

A. Anderson Avenue and Central Boulevard.

Q. How far is that from where Anderson Avenue goes into Convent Avenue? A. Where?

Q. Where Anderson Avenue goes into where that convent is; how far is that from where you were? A. I should judge that is three quarters of a mile.

40 Q. Toward Guttenburg you were? You were on the sidewalk and you saw two cars and you can't

*Philip Heft—Cross.*  
*Arthur J. Brady—Direct.*

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tell what color they were, what make they were or anything about that, can you? A. No, sir.

Q. Can't tell whether the men in them were white or colored, can you? A. No, sir.

Q. Might have been Chinamen for all you know? That is all. (No answer.) 10

Q. It is not uncommon for automobiles to go fast there? You often see automobiles speeding there, don't you? A. Well, not such an awful lot.

Q. They all go slow on Anderson Avenue? A. Well, going along pretty fair.

Q. That's all.

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ARTHUR J. BRADY, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live, Mr. Brady? A. Palisade. 4 Palisade Avenue, Palisade, New Jersey.

Q. Where were you on the evening of the 20th of August of last year, about a quarter of ten? A. I was standing on the corner of Anderson Avenue and Doren Court Road. 30

Q. How far is that from the point where the Public Service right of way intersects Anderson Avenue? A. I should say it was about a thousand feet.

Q. Did you see an accident that occurred there about that time? A. I did not see the accident.

Q. Did you hear it? A. I heard it.

Q. Now, before that accident happened just tell the jury what you saw and heard? A. Why, as I was standing on the corner I heard a roar, which 40

*Arthur J. Brady—Direct.*

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seemed to be in the woods—that is about—I would say the woods are about equal distance from me as the trolley tracks were on the other side. I looked up the street and I saw the two pairs of headlights coming toward me in the road, but from  
10 the sound of the roar they made it impressed me they were going very fast, and I watched them closely and the next thing I heard was a pistol shot and the noise seemed to die down and it seems that one machine stopped or slowed up—that is what I inferred from the way the noise stopped—but the other machine kept on coming, and when it passed me it was going very rapidly, and I watched it to the next corner, which was Bluff  
20 Road, and then I couldn't see it any more because of the trees on the same side of the street I was standing on, but I turned my back to the road, and I had no more than turned my back to the road than I heard a crash. Well, it struck me right away what the crash meant, knowing the trolley crossing was at that point, and I rushed down as fast as I could—well, I ran down from where I stood and I arrived shortly after the accident happened.

30 Q. What did you find when you got there? A. I found the machine lying on the side of the road badly smashed up and the trolley car just off the crossing with the running-board smashed practically off the car, in the center of the car.

Q. Now, can you describe what this automobile looked like as it passed you in the road? A. Why, it was dark—not entirely dark, but practically was at the corner where I stood. I could see from the lines, from the street, it was a touring car, and  
40 that people were only sitting in the front seat.

*Arthur J. Brady—Direct—Cross.*

Q. I see. Are you familiar with the speed of vehicles on the highway in miles per hour? A. Well, to a certain extent. I have driven a car myself for a number of years, and I have witnessed a great many cars traveling at high rates of speed and medium.

10

Q. What would you say this car was traveling at when it passed you? A. Well, at the time I spoke to some one and I said—

Q. You can't tell what you said. A. Well, I thought at the time that it was at least fifty miles an hour.

*Cross-Examination by Mr. Simpson:*

Q. Ever see a second-hand Chalmers go fifty miles an hour? A. Well, I—no.

20

Q. You heard the shot, you say, and then you saw this car coming? A. Yes, sir.

Q. Wasn't a brown National touring car that you saw? A. I couldn't tell you, sir, what the make of the car was, or the color of it. It was dark.

Q. What is that roar that you describe, the noise of the machinery or the noise of the motion of the car? A. Well, as the car travels very rapidly it emits a sound—the explosions are almost continuous, especially a six-cylinder car, and the roar that it made—

30

Q. Was this a six-cylinder car? A. Why, I don't know.

Q. Why did you mention six cylinder? A. Because—I said as a six cylinder car would, or even eight or twelve.

Q. You are describing the speed this car made, and you say that the noise was a series of con-

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*Arthur J. Brady—Cross.*

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tinuous and uninterrupted explosions such as a six cylinder car? A. Yes, but you remember there were two cars, and I don't know whether this was a six cylinder car, or this one was.

10 Q. Which one do you say went fast? Did they both go fifty miles an hour? A. When the car passed me it was more of a noise of rush of air than of explosions.

Q. Well, why did you pick out the explosions then to give your reason for your relying on the sound, if it was the swish of the car as it went through the air? A. As the car came through the woods the roar of the car first attracted my attention.

20 Q. Was it the continuous and uninterrupted explosions that attracted your attention? A. Well, it was the general noise of it. They may have had their cut-outs open; I don't know.

Q. You spoke of two cars. What is the other car? A. I don't know. I didn't see them.

Q. You saw them at the time? A. I saw them coming through the woods, the headlights, but they didn't get to me before I started.

30 Q. Which was the one that was going fifty miles an hour, the one that passed you first? A. The second car did not pass me.

Q. It did not get past you? A. No.

Q. You simply saw the two headlights? A. I saw the two headlights coming through from the woods.

Q. What is your occupation? A. Why, at the present time I am living at home.

Q. I mean you are not connected with the Public Service? A. No, sir.

*William Clookie—Direct.*

Q. You did not hear any bell or whistle on this trolley car, did you? A. No; I was up too far away to hear the bell.

Q. You did not hear it? A. I didn't hear it.

10

WILLIAM CLOOKIE, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live? A. Paterson, New Jersey.

Q. What is your business? A. I am a mechanic.

Q. Were you a passenger on a trolley car that was involved in an accident with an automobile at the intersection of Anderson Avenue and the private right of way of the trolley company? A. Yes, sir.

20

Q. Took the car at the Palisade Park? A. No, at Weehawken Ferry.

Q. Where were you going? A. To Paterson.

Q. Anybody with you? A. My wife was with me.

Q. At the time the accident occurred, where were you sitting in the car? A. About midway.

30

Q. Open car? A. Yes, sir.

Q. What part of the seat were you sitting on? A. I was sitting against the upriser that supports the seat at the end.

Q. Did you see the automobile before the accident happened? A. Well, I should judge it was probably ten or twelve feet when I saw it.

Q. How was it moving then, fast or slow? A. Quite a rapid speed.

40

*William Clookie—Direct.*

Q. What happened after you first saw it? A. Crash.

Q. What made the crash? A. When the automobile hit the car.

10 Q. How did it hit the car? A. With a terrific force.

Q. Why do you say it was terrific? A. Because the noise it created.

Q. Anything happen to the trolley car near where you were sitting? A. Yes, it broke the upriser that I was sitting against and drove it in against my hip.

Q. Hurt your hip any? A. A little, yes.

20 Q. Did you take any memento of that accident? A. I did.

Q. Have you got it with you? A. Yes, sir (produces piece of wood.)

Q. Where did you find that? A. Lying right aside of me.

Q. Know where it came from? A. Yes.

Q. Where? A. Off the upriser that supports the seat and the roof.

Q. Who wrote "August 20, 1916"? A. I did.

30 Q. When did you do that? A. The day it happened—that night.

Q. What part of the upright near your seat did that come from, do you know? A. It came from just about that high from the seat (indicating).

Q. You mean from this? That is about how high? A. About a foot.

Q. Ten inches above the seat? A. Ten inches or a foot.

40 MR. COULT: I offer this piece of wood in evidence.

*Cross-Examination by Mr. Simpson:*

Q. What seat were you sitting in? A. About midway of the car.

Q. Center of the car? A. Yes.

Q. On the end? A. On the end of the seat. 10

Q. The automobile came in collision on the same side of the car that you were on? A. Yes, sir.

Q. Was the car moving when it came in collision with the automobile? A. Yes.

Q. How far did it go after it came in collision with the automobile? A. Possibly two lengths of the car.

Q. Was it going fast at the time it came in collision? A. Well, might have been ten miles per hour, something like that. 20

Q. No faster than ten miles per hour? A. I couldn't say—possibly.

Q. Were you watching the speed of the car or talking to somebody? A. I was talking, yes.

Q. Then your mind was not on the speed of the car, was it? A. Well, not actually.

Q. What attracted your attention to the automobile when you saw it ten or twelve feet away from you? A. The party that I was sitting with looked quick and it caused me to look. 30

Q. And you looked quick? A. Yes.

Q. When you looked you saw an automobile only ten or twelve feet away from the car? A. Yes, sir.

Q. Was the man trying to turn the automobile or what was he doing? A. I couldn't say.

Q. You couldn't see what he was doing? A. No.

Q. Did you hear the noise of the brake? A. No, 40  
sir.

*William Clookie—Cross—Re-Direct.*

Q. Were you watching the automobile when it actually came in contact with the car? A. I was facing the automobile when it came in contact.

Q. Which side of it came in contact, left or right side? A. The right hand side.

10 Q. Of the mudguard? It didn't come in—you didn't—did you see the automobile afterwards? A. No, sir.

Q. You don't know whether this is a correct picture of it or not? A. No, sir.

Q. How did it come in contact; the whole side of the automobile or what part of it, the right mudguard or— A. Head on.

Q. Head on—right side? A. Yes.

20 Q. You received any money from the defendant company for your— A. No, sir.

Q. That's all.

(Piece of wood marked Exhibit D-4.)

*Re-Direct Examination by Mr. Coult:*

Q. I want to ask the last witness a question that I forgot. At the time this accident happened, how was the trolley car running? A. Well, about ten  
30 miles an hour; something like that; I couldn't say exactly.

Q. Where did the trolley car stop after the accident?

THE COURT: He was asked all that on cross-examination. He said about two lengths after the crash, and ten miles an hour.

40 MR. COULT: I did not hear it. I was busy with Mr. Hespe.

MR. SIMPSON: That is correct.

*F. William Hesse—Direct.*

F. WILLIAM HESPE, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live? A. Union, New Jersey.

Q. What is your occupation?

10

MR. SIMPSON: I admit his qualifications.

Q. You are a civil engineer and surveyor for the Public Service Railway Company? A. Yes, sir.

Q. What is this paper that hangs on the easel by the jury? A. It is a map of the private right of way and Anderson Avenue in the Borough of Fort Lee, New Jersey, showing the right of way of the trolley company at its intersection with Anderson Avenue.

20

Q. Who made that map? A. I did.

Q. From what? A. From surveys on the premises.

Q. When did you make the map? A. On December 30, 1915.

MR. SIMPSON: I will admit that is a correct map if you want to save time. I will admit it is a correct map drawn to scale.

30

MR. COULT It is admitted it is a correct map drawn to a scale from the surveys taken on the premises.

MR. SIMPSON: Yes.

Now, Mr. Hesse, give us the width of the private right of way at the intersection of Anderson Avenue? I mean on the line of Anderson Avenue? A. The right of way itself is only a portion

40

*F. William Hespe—Direct—Cross.*

of what is known here as Columbia Avenue. I presume you want the whole width?

Q. Yes. A. Seventy-eight feet.

Q. How wide is Anderson Avenue at the point of intersection? A. Forty feet.

10 Q. What are the yellow marks—yellow figures on the map? A. They represent frame buildings.

Q. Are there any buildings near that crossing that you have not indicated? A. There are some at a distance of over three hundred feet north on Anderson Avenue.

Q. The nearest building is over three hundred feet to the north, is it? A. Yes, sir—I should say over two hundred feet.

20 Q. How far is it? A. It is three hundred and twenty-one feet on the westerly side of Anderson Avenue. On the easterly side of Anderson Avenue is a building over two hundred feet. I don't know the exact measurement from the right of way.

Q. The scale of that map is one inch to ten feet? A. Yes, sir.

30 Q. Are there any obstructions to the view to the private right of way on either side as you approach it from the north? A. There are not.

Q. You mean aside from the buildings that you have shown on your map and the ones that you have described? A. There are not.

*Cross-Examination by Mr. Simpson:*

40 Q. How about the tree on the corner? Isn't there any tree on that corner? A. There are some small trees, but I mean things that do not act as obstructions.

*F. William Hesse—Re-Direct—Re-Cross.*

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Q. How high are they? A. Well, there are trees there I should say about twenty feet high.

Q. They do not obstruct the view at all? A. They do to an extent, but not completely.

Q. That is all.

10

*Re-Direct Examination by Mr. Coult:*

Q. What do you mean to an extent? You can see through the branches of the trees? A. Just at the present time they are in full leaf and I would show them that way obstructing the view now more than ever, and still one can obtain a view of an approaching car.

Q. The foliage on these trees, does it run all the way down to the ground? A. It does not.

20

Q. How high is it above the ground where they branch out? A. About eight or ten feet.

Q. Eight or ten feet. Anything besides the trunks of these trees to obstruct the view? A. What's that?

Q. For eight or ten feet above the ground is there anything besides the trunks of the trees to obstruct it? A. There is not.

*Re-Cross Examination by Mr. Simpson:*

30

Q. Is this a correct picture of the north side? It has been offered in evidence? A. It is.

Q. Show me on that tree where it is eight feet above the ground before the leaves commence?

MR. COULT: What tree?

MR. SIMPSON: A tree.

A. It doesn't show on the picture. This morning when I made observations I had no difficulty in seeing them.

40

*F. William Hesse—Re-Cross.*

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Q. All right. It changed this morning. That is all.

MR. COULT: Here is a photograph I want to offer in evidence.

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MR. SIMPSON: All right. Take that writing off.

MR. COULT: Well, that writing. Shall I take it off?

MR. SIMPSON: Anderson Avenue is there. What is the——

MR. COULT: Showing an approaching car.

MR. SIMPSON: That is all right.

MR. COULT: You don't mind that?

20

MR. SIMPSON: When was it taken?

MR. COULT: It was taken the day after the accident.

MR. SIMPSON: All right.

MR. COULT: I will offer a photograph which it is admitted was taken after the accident and shows the crossing at a point a hundred feet looking south on Anderson Avenue.

30

(Photograph marked Exhibit D-1 and shown to the jury.)

MR. COULT: Is Mr. Chiapparine in court?

MR. SIMPSON: Yes.

MR. COULT: Take the stand.

MR. SIMPSON: I have a witness I would like to put on out of order.

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*Joseph Chiapparine—Recalled—Direct—Cross.  
—Re-Direct.*

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JOSEPH CHIAPPARINE recalled.

*Direct Examination by Mr. Coult:*

Q. Mr. Chiapparine, what model automobile was it that you were driving? A. 1913. 10

Q. How many cylinders? A. Six cylinder.

Q. What horse power? A. It was thirty horse power, I think.

MR. SIMPSON: While I have him on the stand, I omitted to ask him.

*Cross-Examination by Mr. Simpson:*

Q. As a result of this accident is your right leg any shorter than your left? A. Yes. 20

Q. Are you in doubt about it at all? How much shorter is it? A. It is an inch—an inch or three-quarters of an inch, was the last measurement at the doctor.

Q. An inch or three-quarters of an inch? A. Yes.

*Re-Direct Examination by Mr. Coult:*

Q. When did you find that out? A. Long times ago. 30

Q. You don't know whether Mr. Simpson knew about it when you were on the stand the other day? A. Who?

Q. Mr. Simpson know about it when you were on the stand? A. Yes, he know. He forgot, I suppose.

*By Mr. Simpson:*

Q. This was a 1913 machine? A. 1913. 40

*Joseph Chiapparine—Recalled—Re-Direct.  
Samuel Silverman—Direct.*

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Q. Did you ever get fifty miles an hour out of it? A. No, I never go fifty miles an hour—second-hand machine.

10 *By Mr. Coult:*

Q. Just a minute. How do you know you can't get fifty miles an hour out of it? A. Because I can't go even if I want to go.

Q. What? A. I tried to push it plenty time, about twenty-seven or thirty it ever go.

Q. You tried many times to see how fast you could make it go? A. Yes.

20 Q. On this particular night did you have any better success in getting your speed out of it than you had before? A. I don't speed. I haven't for a year and a half. I don't speed for a year and a half.

Q. That's all.

MR. SIMPSON: I want to call Mr. Silverman, if I can.

THE COURT: This is by way of rebuttal?

30 MR. SIMPSON: Yes; I want to call him out of order.

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SAMUEL SILVERMAN, sworn.

*Direct Examination by Mr. Simpson:*

Q. Mr. Silverman, you are in the insurance business in Jersey City? A. Yes.

40 Q. Where is your place of business? A. 15 Exchange Place, Jersey City.

*Samuel Silverman—Direct—Cross.*

Q. On Sunday, the 20th of August, were you on Anderson Avenue in an automobile? A. Yes, sir.

Q. Were you shot at by the police? A. Yes, sir.

Q. How fast can your machine go? A. Well, the Fairview police said she was going sixty-five miles an hour, one night, and she would go about seventy. 10

Q. Did you hear this crash after you got over the crossing? A. Oh, I was about two or three blocks past the crossing; I was on my way to Hackensack.

Q. You heard a crash? A. Yes, after I passed the tracks.

*Cross-Examination by Mr. Coult:*

Q. What were you doing when the police shot at you? A. Why, we were going to Hackensack. 20

Q. Racing with another car? A. No; we were just going along Anderson Avenue and generally knew it was a speedway to a certain extent.

Q. When did you find out you were going to be a witness in this case? A. I got a telephone call this morning to be at Campbell's court; I didn't know anything about it.

Q. What's that? A. I got a telephone call I was wanted at Campbell's court. 30

MR. SIMPSON: Judge Campbell's court.

A. Pardon me, Judge.

THE COURT: That is all right.

Q. What time was that? A. Why, the telephone to my office was about quarter to ten, I believe.

Q. Where is your office? A. 15 Exchange Place, Jersey City. 40

*Samuel Silverman—Cross.*

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Q. What is your business? A. Fire adjuster.

Q. What? A. Fire adjuster, real estate and insurance.

Q. Do you know where the telephone message came from?

10

MR. SIMPSON: Came from me.

A. Mr. Simpson's office.

MR. SIMPSON: No mystery about it. I telephoned.

A. Mr. Simpson's office.

20

MR. COULT: Let the witness tell about it. Maybe he can tell it better.

Q. Had you talked to Mr. Simpson about this or about being shot at on that road before? A. No, sir.

Q. Did you ever talk to anybody about it before? A. Why, yes; there was a man spoke to me here about four or five months ago.

Q. Four or five months ago; who was that? A. I don't know. I met him right in front of the Court House; he recognized me and he says, "How are you getting along?" And I says, "Fine," and he started to talk did I remember about that incident, and I said yes.

30

Q. Who was with you when this happened? A. What say?

Q. Who was with you when this happened? A. My chauffeur and I think there was two people in the back of the car going—two lady friends of ours.

40

Q. Some lady friends of ours? A. Yes.

*Samuel Silverman—Cross.*

Q. In the car at the time? A. Yes.

Q. So far as you know this mysterious gentlemen that met you out by the Court House was the only person you talked to about it? A. Yes.

Q. You haven't talked to anybody about it since? A. No, sir; because we had the Fairview police after us and gave us a summons one time for going—they claimed—the chief claimed my car was going sixty-five miles; I told him I didn't think my car would go that far. 10

Q. That is all. A. I paid a dollar and twenty cents costs.

*By the Court:*

Q. Did I understand you, Mr. Silverman, to say this shot was fired at the time you were on your way to Hackensack? A. Yes, sir; we passed the half way movie there and went all the way around. 20

Q. What road were you on when the shot took place? A. Upon Anderson Avenue.

*By Mr. Coult:*

Q. Have you ever been convicted of crime? A. Why, no, sir. They claim I was tampering with the Grand Jury, but I appealed my case, I said I was innocent— 30

Q. Somebody claimed you had been tampering with the—

MR. SIMPSON: I object. He has a right to ask him if he has been convicted of a crime, and he answers no, which is a fact, because nobody has ever—

MR. COULT: Now, Mr. Simpson.

THE COURT: What is your answer? 40

A. Why, I was convicted and fined a hundred dollars and I took an appeal and I thought I was innocent and the case is still pending on appeal and therefore I believe I am innocent.

10 Q. What was the nature of the charge against you? A. They claimed tampering with the Grand Jury, or contempt of court.

Q. Don't you know which one it was? A. Contempt of court.

Q. Contempt of court? A. Yes.

20 MR. SIMPSON: I ask to have that stricken out now because it manifestly is not a crime—contempt of court is not a crime, and I ask to have that evidence struck out on the ground that under the statute it is only a conviction of crime that can be proved to impeach the credibility of the witness. Manifestly this is not a crime.

THE COURT: I am in doubt as to just what it is.

30 MR. SIMPSON: Justice Swayze brought Judge Heppenheimer and Dr. Arlitz and everybody up in court and fined them for approaching the Grand Jury. He was one of them. That is what it is.

THE COURT: I presume that does not come within the category.

MR. COULT: I don't know what it is.

THE COURT: If that is the situation—I suppose it is not by indictment, of course—I suppose it doesn't come within the category of a crime.

40 MR. SIMPSON: It is just contempt of the Oyer and Terminer, that is all.

*Samuel Silverman—Cross.*

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*By Mr. Coult:*

Q. You are quite sure that you have not talked to anybody about being shot at or over on Anderson Avenue on the 20th of August, except to this one man in front of the Court House some months ago? A. I am pretty sure he was the only one, yes. 10

Q. He was the only one? A. Yes.

Q. So from that time until this you have not mentioned it to anybody? A. No; I didn't care to speak about it.

Q. You didn't know you were going to be a witness in this case until you received a telephone summons from Mr. Simpson this morning? A. I would have been home sleeping yet if I hadn't been called on this morning. 20

Q. Still be asleep? A. Yes; I got home late, I was out on business.

Q. After you got this telephone call did you come direct to the Court House? A. Came right down from the office, and I got to my office and I called up Mr. Simpson's office and the girl said Mr. Simpson wanted to see you in Mr. Campbell's court. 30

Q. So you came right down here? A. Came right down here.

Q. Where do you say you were going? A. We were going—

Q. If you were going south on Anderson Avenue you were going away from Hackensack? A. We went all the way down below Pathe's movie place there and we turned around on a big hill—Bogota or whatever you call it. 40

*Samuel Silverman—Cross.*

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Q. Where were you coming from? A. We were up in North Bergen.

Q. North Bergen.

*By the Court:*

10

Q. What direction were you traveling, Mr. Silverman? A. Why, we were coming to North Bergen, and up through Palisade Park and all that section.

Q. I know; which way were you traveling toward? Were you going toward Fort Lee or were you going down toward Nungesser's and that direction towards Hudson County? A. No; we were going the other way.

20

Q. Which way were you going? A. Going towards the Pathe that is there.

Q. That is towards Fort Lee? A. Yes.

Q. You were not traveling south? You were traveling north? A. I was going the other way.

Q. You were going away from Hudson County, were you? A. No, no. We were in Nungesser's and we had a few drinks there and then we went to Palisade Park.

30

Q. Yes. A. From Palisade Park we came all the way down and we were going down to Bogota or Hackensack, and the party that I was with said I better go back, and as I was coming up the road there somebody fired a shot and just as we passed the trolley car something crashed into the back of us and I went further ahead and we stopped at Nungesser's about twenty minutes after the accident.

Q. That's all.

40

*Varley Pawski—Direct.*

VARLEY PAWSKI, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live, Mr. Pawski? A. 119 Mercer Street, Jersey City. 10

Q. What is your business? A. Demonstrator.

Q. Of what? A. Automobiles.

Q. Are you familiar with the Chalmers Six touring car of the 1913 model? A. Yes.

Q. Do you recognize that photograph as such a car or not. A. Yes, sir.

Q. Now are you familiar with the locality at the crossing of Anderson Avenue with the Public Service right of way near Palisade Park? A. I have been over Anderson Avenue quite a few times; I have often crossed the tracks. 20

Q. Do you know what kind of paving there was on that Anderson Avenue last summer in August, 1916? A. Well, I couldn't just exactly say what kind of paving was there at that time.

MR. SIMPSON: Well, state it and I will admit it. I don't know what it is.

THE COURT: Why, it was an amesite pavement, if you want the court's knowledge of it. 30

MR. SIMPSON: Well, amesite.

MR. COULT: Let us use this photograph.

Q. Now on an amesite paving such as this, a car being driven in the direction which that photograph—which you face that photograph—Chalmers car, 1913 model, in good condition, with brakes in proper working order, traveling at six miles an 40

*Varley Pawski—Direct.*

hour in second speed, within what distance should such a car be stopped if reasonably operated?

10 MR. SIMPSON: I object, on the ground there is no proof this car was in good condition or what condition it was. Nobody that knows anything about this car has been examined as to its condition. Therefore, this evidence is not competent until it is shown what the condition of this car was on the night of the accident.

THE COURT: I suppose the only condition that he could complain of as not having been shown is the condition of the brakes.

20 MR. COULT: That was asked of the plaintiff. He said it was in good order; he had an emergency brake and a foot brake and they were in good order, and he used them both.

THE COURT: I think there was testimony the brakes were in good order. I will overrule the objection.

MR. SIMPSON: Exception.

30 A. That car going about twelve miles an hour—

Q. No, read the question.

(Question repeated by stenographer.)

A. May I look at the card, Judge?

THE COURT: I don't know what card it is.

40 Q. What did you want to see that card for?

*Varley Pawski—Direct—Cross.*

MR. SIMPSON: I object to his testifying from his card.

A. I made a brake test some time ago, and I can give you a pretty good idea as to what the car could do on a brake. 10

Q. You made a brake test? A. Yes.

Q. What kind of car? A. 1912 model.

THE COURT: That is a different car.

Q. But can you tell within what distance, a Chalmers car? A. At six miles an hour in second speed he ought to stop between three and four feet, if the brakes are right.

20

*Cross-Examination by Mr. Simpson:*

Q. Did you ever try to stop a Chalmers in second speed, 1913 model, with a trolley car on top of you, coming fast? A. No, I did not.

Q. You don't know what distance it could be stopped in under those circumstances, do you? Depends a good deal on the man who is operating it, whether he is cool or whether he is rattled, whether he is frightened, or what his condition is, as to how quick his brain works, doesn't it? 30

MR. COULT: I object.

MR. SIMPSON: This is an expert.

THE COURT: If you leave out "how quickly his brain works" and say how quickly he will be able to manipulate his brakes, I do not think there would be any objection.

40

*Varley Pawski—Cross.*

Q. Depends on the man, doesn't it? One man can stop a car quicker than another, can't he; his mind works quicker—or haven't you anything to say on the operations of the mind??

10 (No answer.)

Q. Did you ever drive a Chalmers 1913? A. Yes, sir.

Q. When? A. I couldn't exactly tell you when I drove it.

Q. How many years ago? A. Last 1913 Chalmers I drove was about three months ago.

Q. How long had it been used? A. Well, it has been used since 1913.

20 Q. Where did you try to stop it with the brake going six miles an hour? A. Along Mercer Street.

Q. On a slippery pavement? A. No, sir; dry pavement.

THE COURT: Smooth pavement, you mean?

A. Smooth pavement.

30 Q. Going in second gear? A. No, sir, not in second year.

*By the Court:*

Q. How fast was it going when you tried to stop it? A. That I couldn't exactly tell you. It is just going along slow looking out for people crossing the street.

*Varley Pawski—Cross.*  
*Christian Muller—Direct.*

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*By M. Simpson:*

Q. You made some tests with a model preparatory to testifying here? A. Not in this case, no, sir.

10

Q. What kind of brakes has the Chalmers 1913 that you operated? A. Has—I couldn't exactly say whether it is 16 inch drum or 18 inch drum.

Q. What is it lined with? A. Rebestos, they are generally lined with.

Q. You say generally; was this one lined with raybestos? A. I couldn't exactly tell you that.

Q. I think that's all.

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CHRISTIAN MULLER, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live, Mr. Muller? A. Glen Ridge.

Q. What is your business? A. Automobiles.

Q. Where? A. 1748 Broadway, New York.

Q. Do you know anything about the Chalmers car? 30

A. Yes, I do; I sold Chalmers cars from 1908 until last year, last August.

Q. Are you familiar with the Chalmers six, 1913 model? A. I am, yes.

Q. Have you ever driven such a car? A. I have, often.

Q. Have you ever driven automobiles generally? A. Very much.

Q. On an average of how many miles in the 40

*Christian Muller—Direct—Cross.*

year? A. Oh, probably twenty-five thousand in the year.

Q. Have you done anything in the way of demonstrating Chalmers cars? A. Yes, a great deal.

10 Q. Are you familiar with this crossing on Anderson Avenue with the private right of way of the Public Service? A. I think I am. I am just looking at this photograph, trying to satisfy myself on it. (Examines photograph.) This is at Grantwood up here?

Q. Really, I can't tell you. That is a car—  
A. This is looking south, anyway, isn't it?

Q. Yes, that is looking south at that crossing and is taken a hundred feet from the crossing?  
20 A. Yes, I think I know just where it is.

Q. Having looked at Exhibit D-1 you say that you recognize the locality of this accident? A. Yes.

Q. Now on that road with a Chalmers 1913, six cylinder car in good order, last summer, in August, traveling at the rate of six miles per hour in second gear, within what distance should that car be stopped if reasonably operated? A. With a  
30 dry pavement, as I have heard before, and on that road, in good order, a car should be stopped inside of—well, inside of five feet—between four and five feet.

*Cross-Examination by Mr. Simpson:*

Q. You are assuming of course that the brakes are in good working order? A. I assume that all things are equal, that the brakes are in good working order, and in second speed a car should be  
40

stopped a good deal more easily than in high speed, especially a six cylinder motor of that type.

Q. If the brakes are in good order? A. Well, it will slow down the car considerably where the brakes are run in good order, but it will help in second speed more than in high. 10

Q. The slower you are going, of course the easier it is to stop? A. Not alone that; your leverage on that second speed.

Q. Will, the condition of the brakes have anything to do at all with stopping the car? A. A good deal. They will either stop it or won't stop it.

Q. 1913 car that has been in constant use is apt to wear the brakes some, isn't it? A. Brake lining wears. 20

Q. How often does it have to be replaced if the car is in constant use, of that type? A. According to what use a driver gives, for one driver may use a brake a good deal more than another.

Q. That is, a man that is not a professional driver; a man who drives his own car and doesn't know anything about machinery, and he is apt to wear the brakes quicker than a man who knows about machinery? A. Well, I have seen them wear twenty-five or thirty thousand miles, and I have seen them hold a good deal less than that. 30

Q. You did not see this car before the accident? You don't know what condition it was in? A. I don't know. If I knew from whom the car was bought, if it was a second-hand car, I might be able to tell if it was sold from here. I might know the car personally, but I don't know that.

Q. That is all. 40

*Dr. Murray D. Beck—Direct.*

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DR. MURRAY D. BECK, sworn.

*Direct Examination by Mr. Coult:*

10 Q. Where do you live, Dr. Beck? A. I live at North Hudson Hospital, Weehawken.

Q. You are a physician and surgeon? A. House surgeon.

Q. How many years experience have you had in the practice of your profession? A. Why, I have had one year, graduated in 1916.

Q. Where did you graduate from? A. New York Homeopathic Medical College, Flower Hospital.

20 MR. COULT: Will you stand up, Mr. Chiapparine, please?

Q. There is Mr. Chiapparine standing in the court room. He is the plaintiff in this case. Ever see him before? A. I have.

Q. Thank you. Where did you first see him? A. I first saw him—I admitted him to our emergency room, North Hudson Hospital.

30 Q. What was his condition? A. He was bleeding somewhat from the face and pretty well mussed up.

Q. Could you see whether or not he had been drinking? A. Well, I consider that expert testimony.

Q. Well? A. I have not been qualified here to give expert testimony yet. If you so desire—

Q. You mean that you should be paid an expert's fee?

*Dr. Murray D. Beck—Direct*

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MR. SIMPSON: I object to that.

A. Yes, I do.

MR. SIMPSON: I object to examining him in the presence of the jury on that subject. That is a question that should have been put before they put him on the stand, and I object to that. 10

A. I think that it is expert testimony to tell whether a man has acute alcoholic intoxication or not—a layman's mind cannot tell that.

THE COURT: I do not know that that is the question put to you.

(Question repeated by stenographer as follows: "Could you say whether or not he had been drinking.") 20

THE COURT: The question is not whether he was suffering from acute alcoholic intoxication.

A. I could say yes.

Q. Had he been drinking or not? A. He had.

Q. He had? A. Yes.

Q. How did you know he had been drinking? 30

A. I smelt his breath.

Q. Any other way? A. Vomiting.

Q. Where did this vomiting take place? A. In the hospital.

Q. Where in the hospital? A. In the ward—male ward, emergency room.

Q. Was there anything offensive about what was raised in the vomiting? A. There was.

*Dr. Murray D. Beck—Cross—Re-Direct.*

*Dr. Maxwell G. Keeler—Direct.*

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Q. How was it offensive? A. Not very pleasant to smell.

Q. What kind of a smell was it, alcoholic or otherwise? A. Well, had the perfume of beer.

10 Q. Yes. Now you have not been asked for any opinions, have you, Doctor? A. Beg pardon?

Q. You have not been asked for any opinions? A. No.

*Cross-Examination by Mr. Simpson:*

Q. May a shock produce vomiting? A. It will.

Q. That's all.

20 *Re-Direct Examination by Mr. Coult:*

Q. Will shock without beer produce the effect of beer, in odor? A. No, will not.

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DR. MAXWELL G. KEELER, sworn.

*Direct Examination by Mr. Coult:*

30 Q. Doctor, where do you live? A. At present 760 Palisade Avenue, West New York.

Q. On the 20th of August, what was your occupation? A. At that time I was House Surgeon, North Hudson Hospital, Weehawken.

Q. Did you see Mr. Chiapparine, the plaintiff in this case, on that night? A. I did.

Q. At the hospital? A. Yes.

Q. Could you say whether or not he had been drinking? A. He had been drinking.

40

*Dr. Maxwell G. Keeler—Direct.*

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Q. How did you know it? A. Well, in the first place you could tell he had been drinking by the smell of his breath, in the second place that he was under the influence of liquor, that he had had enough in—more than a few glasses of beer; his pupils were widely dilated and did not react to light, and the second place—later he vomited a large amount of what was without doubt beer, mixed with spaghetti, I think it was. After that, the next day, on doing the urine analysis I found acetone in his urine, and that would not appear in his urine unless he had some other disease—unless it was alcoholism. 10

Q. Did he tell you how this accident happened? A. Why, he was in no condition to tell us anything about it at the time he came in. Later in the morning he reacted a little and could talk then. 20

Q. What did he say to you? A. Why, I don't just remember.

Q. Well, now, Doctor, did you make a notation of the plaintiff's story? A. I think I did, yes.

Q. Now, what is that paper that I hand you? A. Well, in the hospital we call that a history.

Q. Whose handwriting is it in? A. It is mine. 30

Q. There seems to be something written here under the heading "Patient's story"; look at that; can you refresh your recollection and tell me what this man said about how this happened?

A. Why, in writing a medical history, a patient's story does not necessarily have to come from the patient, it may come from any one who can throw any light on the condition.

*Dr. Maxwell G. Keeler—Direct—Cross.**By the Court:*

Q. Where did you get that information from which you wrote there as the history, do you remember? A. Why, that I got from the men that  
 10 came in with Mr. Chiapparine, I think, and the ambulance driver——

*By Mr. Coult:*

Q. Then it is not the patient's story at all? A. A. Well, not what he told me, no.

Q. Did he tell you how this accident happened? A. Later he did, yes, not at the time he came in.

Q. All right, Doctor.

20 *Cross-Examination by Mr. Simpson:*

Q. What will dilate the pupils besides beer?

A. Well, there are quite a few conditions that will dilate the pupils. For instance——

Q. Shock? A. Not necessarily.

Q. Well, will it? Will it or not? Not necessarily or otherwise. Will it do it? A. Well, I am speaking in medical terms now.

Q. I am not talking in medical terms. I am  
 30 talking English. I want to know. You have testified that the man's pupils were dilated. I understand that. Now I ask you whether shock will dilate the pupils? A. Shock may dilate the pupils, not necessarily.

Q. And you base your diagnosis on the fact that his pupils were dilated and did not react to light and the odor of his breath and this acid condition of his urine? A. Not acid—presence of acetone.

40

*Dr. Maxwell G. Keeler—Cross.*

Q. What is acetone? A. Acetone is one of the urine bases.

Q. What? A. One of the urine bases.

*By the Court:*

Q. What is that? A. That is a chemical compound. 10

Q. What I am trying to get at, to get it down in the ordinary every-day language, so that the jury-men will understand what you mean. It may be perfectly understandable to you medical men, but not to these twelve laymen, I take it, unless they have—

Q. When alcohol is taken into the body and broken up, acetone is one of the by-products formed, and that will appear in the urine. 20

*By Mr. Simpson:*

Q. Well, is that true of the amount of alcohol, whether you take one dram or two drams, or must there be a sufficient amount of it before it appears in the urine, this acetone? A. Why, there must be a fair amount of alcohol taken in.

Q. One glass of beer show a trace in the urine? A. I think not. 30

Q. How many glasses would? A. Well, I should think about six would show a distinct trace.

Q. Have you ever experimented with one glass of beer on a man and examined his urine to find out whether there was acetone in it? A. No; I have never done any experimental work.

Q. Where did you get this knowledge you have testified so freely to—from the books? A. Yes. 40

Q. You have never then made any physical tests yourself on urine to find out how many glasses of beer would show in the urine? A. No, I have not.

10 Q. This man, when he came into the hospital, was practically unconscious, wasn't he; he had a lot of fractures on the legs and arms and so on? A. He was.

Q. Well, could you tell the difference between the smell of one glass and the smell of two glasses of beer on a man's breath? A. Why, not so much from his breathing. You can tell from the amount he vomits pretty closely, though.

20 Q. I didn't ask you that. I asked you if you could tell by the smell of his breath whether he had only one or two glasses of beer? A. I said no.

Q. One beer scents you up as nicely as two, doesn't it? A. Well, that is a hard question to decide. I don't think it does.

Q. You do not think it does? A. No.

Q. How many beers do you think it takes before there is not any difference in the odor of the breath, after which the succeeding beers become negative as to perfume? A. Well, I don't consider myself as an authority on that subject at all.

30 Q. How long was this man unconscious before he came out? A. Well, I think he was admitted to the hospital about ten thirty; he was then unconscious, and I think that he had returned to consciousness to a large degree by the next morning when I saw him, that was about six o'clock.

Q. He was practically unconscious for twelve hours then? A. No.

40 Q. Eight hours? Unconscious for eight hours, was he? A. Yes, about that.

*Dr. Maxwell G. Keeler—Cross—Re-Direct.*

Q. Now, when did he vomit; when he came in or the next morning? A. No, he vomited about—well, as soon as we had his fractures fixed up as well as we could then and took him up to the ward. That was probably an hour after he came in.

Q. Did you have to give him any ether or any anaesthetic to fix him up? A. No; we gave him nothing. 10

Q. When he brought up this— A. Just a minute. He did have some morphine.

Q. Morphine. When he brought up the contents of his stomach it was food as well as drink, wasn't it—spaghetti? A. There was spaghetti, yes, sir.

Q. Well, there was other food, without going into the details, besides spaghetti, wasn't there? A. I don't remember anything else. 20

Q. When this beer came up, that came up with food, didn't it? A. Yes.

Q. That's all.

*Re-Direct Examination by Mr. Coult:*

Q. Doctor, how many glasses of beer were indicated by the vomiting? A. Well, it depends on the size of the glasses, where he got them. 30

Q. Well, how many good big glasses—Hudson County glasses? A. Oh, this was Bergen County.

Q. Well, put it in Hudson County.

MR. SIMPSON: Bergen County. They may be more abstemious there.

A. There was pretty near two quarts of body.

Q. Two quarts of beer came up? A. Two quarts of fluid. 40

*Dr. Maxwell G. Keeler—Re-Direct.*

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THE COURT: You wouldn't know whether it was all beer.

*By Mr. Simpson:*

10 Q. Did you weigh the spaghetti and the beer? Separate them and weigh them? A. No, no.

Q. What you think is that out of this man's stomach came the contents of about two quarts of a mixture of spaghetti and food and beer? A. Yes.

Q. That's all.

*By Mr. Coult:*

20 Q. When you say two quarts do you include the spaghetti and the fluid? A. Yes, we include it. There was mostly fluid; there was not much food in it.

Q. Fluid smelling like what? A. I hate to tell you.

THE COURT: I think you have told us.

*By Mr. Simpson:*

30 Q. You made no analysis, did you, of the contents of this stomach at all, did you? A. No.

Q. No chemical analysis? A. No.

Q. That's all.

*Miss Rose McMunn—Direct.*

MISS ROSE McMUNN, sworn.

*Direct Examination by Mr. Coult:*

Q. Where do you live? A. 225 Highwood Avenue, Weehawken.

10

Q. Were you connected with the hospital in August, 1916? A. Yes, I was on night duty in the North Hudson Hospital.

Q. The nurse there? A. Yes.

Q. Are you a trained nurse? A. I am a graduate nurse now.

Q. Do you know Mr. Chiapparine, the plaintiff in this case, who stood up here a couple of times yesterday? A. Yes.

Q. Did you see him on the night of August 20th, 1916? A. I did.

20

Q. He was hurt? A. Yes.

Q. Had he been drinking or not? A. I got that impression.

Q. You got that impression. Where did you get it from? A. Well, he vomited considerably, and the emesis smelt like beer.

Q. Smelled like much beer or little beer? A. Well, I don't know, just smelt like beer.

30

Q. Very strong? A. Yes.

No Cross-Examination.

MR. COULT: I have explained to the court I have a witness coming from Trenton who is not here and he ought to be here; the next train is at quarter of twelve, I am advised, here in Jersey City.

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*Abraham Moskowitz—Direct.*

THE COURT: Aside from that have you any further witnesses?

MR. COULT: I have a witness I can use, yes, who is here.

10 THE COURT: Have you any rebuttal?

MR. COULT: Well, I will use Mr. Moskowitz. I did not want to tire the jury with the same kind of testimony.

ABRAHAM MOSKOWITZ, sworn.

*Direct Examination by Mr. Coult:*

20 Q. Mr. Moskowitz, you were a passenger on the trolley car that was involved in this case, were you not? A. Yes.

Q. Where were you standing on this car? A. The center.

Q. Did you see the automobile before the accident happened? A. Yes.

Q. Where was it when you noticed it? A. About seventy-five feet away.

Q. How was it moving, fast or slow? A. Fast.

30 Q. Did it reduce its rate of speed between that time and the time of the collision? Did it go any slower? A. I don't think so.

Q. What happened? A. It smashed right in the car, the center of the car?

Q. Did it smash into the car easy or hard? A. Hard.

Q. What happened to the car? A. Smashed the running board off.

40

*Abraham Moskowitz—Direct—Cross.*

Q. Where were you seated, did you say? A. In the center right the front seat by the running-board.

*Cross-Examination by Mr. Simpson:*

Q. Where was your car when you first saw the automobile? A. Just about to pass on Anderson Avenue. 10

Q. The front part or center of it or what part of it? A. The front of it.

Q. The front of it. Then the front of it had not reached Anderson Avenue yet when you saw this automobile seventy-five feet away? A. Well, I was sitting in the center of the car on the front seat by the running-board. 20

Q. The center of your car had not reached Anderson Avenue when you first saw the automobile? A. No, did not reach yet.

Q. How could you see through the tree on the corner there this automobile if the center of your car had not reached Anderson Avenue? A. Well, I looked out.

Q. You had no trouble at all in seeing the automobile and then you had not yet reached Anderson Avenue, your part of the car? A. Yes, as I was about to pass Anderson Avenue. 30

Q. No, you said a minute ago the front of your car had just got to Anderson Avenue when you saw the automobile; is that true or isn't it true? A. Yes; when we passed Anderson Avenue I seen the automobile coming down.

Q. You did not say that. You said that when the front of the car got to Anderson Avenue, you, 40

*Abraham Moskowitz—Cross.*  
*Joseph Vinginna—Rebuttal—Direct.*

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sitting in the front of the car, first saw the automobile. Is that a fact? A. Yes.

Q. It is. And the automobile was only seventy-five feet away? A. Only seventy-five feet away.

10 Q. And coming very fast? A. Very fast.

Q. And it did not hit the car until the car was almost over Anderson Avenue, did it? A. No, it hit about the center.

Q. Center of the car? A. Yes.

Q. That's all.

Q. And that center of the car had almost crossed Anderson Avenue, hadn't it? A. No, it hadn't.

Q. How far over had it got? A. Just about  
20 three-quarters of the way.

Q. Three-quarters of the way? A. Yes.

Q. Did you hear the grinding of the brakes before the automobile hit the car? A. I did not.

Q. Did not hear any brakes being put on at all?  
A. No.

MR. COULT: We will rest, with the exception of the person from Trenton.

DEFENDANT RESTS.

30

PLAINTIFF'S TESTIMONY IN REBUTTAL.

JOSEPH VINGINNA, sworn.

*Direct Examination by Mr. Simpson:*

Q. Do you know Joseph Chiapparine, the plaintiff in this case? A. Yes, sir.

40 Q. Did you see him on Sunday night, August the 20th, the night of the accident? A. Yes, sir.

*Joseph Vinginna—Rebuttal—Direct—Cross.*

Q. About how long before the accident? A. About ten minutes before the accident.

Q. Where did you see him? A. In Cella's Hotel.

Q. Was he drunk or sober? A. Sober.

Q. Was he having his dinner there? A. No, sir.

Q. That is a hotel and restaurant? A. Hotel and restaurant, yes. 10

*Cross-Examination by Mr. Coult:*

Q. Well, what time was this? A. About nine o'clock when I seen Mr. Chiapparine come in there and he had his glass of beer and went right out.

Q. About nine o'clock? A. About nine o'clock. I was still in there having my supper.

Q. Did not eat anything there at all? A. Didn't eat anything there that I see. 20

Q. Just walked in and got a drink and walked out again? A. Walked right out and sit there about five minutes.

Q. Was there anybody with him? A. Mr. Lonzetti.

Q. Did Lonzetti have a drink? A. Each had a bottle of beer between the two of them.

Q. Each had a bottle of beer? A. Yes.

Q. Who paid for the drinks? A. I couldn't tell you; I was busy having my supper. 30

Q. Did they just come in there and one buy a drink and the other man not buy anything at all? A. No; he had just one drink and I said, "How do you do," and he just had his drink and walked right out.

Q. You don't know where they came from? A. No, sir.

Q. Or where they went to? A. No, sir. 40

*Joseph Vinginna—Rebuttal—Re-Direct—  
Re-Cross.*

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Q. The only thing that you know is that they were drinking that evening? A. I seen them drink a glass of beer and he told me he was going home.

10 Q. But you know they were drinking, both of them? A. I seen them drink their glass of beer there.

Q. You don't know how many other places they drank in? A. No, but I know they were sober when I seen them in there.

*Re-Direct Examination by Mr. Simpson:*

Q. They just split a bottle of beer? A. Yes; they had a bottle of beer between them.

20

*Re-Cross Examination by Mr. Coult:*

Q. You said they had a bottle of beer apiece?

Q. I said they had a bottle of beer and they had a glass of beer between them.

Q. They split a bottle of beer? A. Yes.

Q. Why did you say in the first place they each had a bottle of beer? A. Each had a glass of beer.

30 Q. You understood what Mr. Simpson meant when he spoke about splitting a bottle of beer? A. Yes, sir.

MR. SIMPSON: Didn't you understand it?

Mr. COULT: Perfectly.

*Mrs. Margaret Chiapparine—Rebuttal—Direct.*

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MRS. MARGARET CHIAPPARINE sworn.

*Direct Examination by Mr. Simpson:*

Q. You are the wife of the plaintiff? A. I am.

Q. And you keep these books for him? A. I do. 10

MR. COULT: Do not waste time going all through these books.

MR. SIMPSON: Here is a digest of them.

MR. COULT: I did not mean to demand the books; all I want is to show his gross receipts and the expense and the net profit.

Q. Tell me, by consulting this memorandum prepared by you and from the books, what were his gross sales for six months continuously before the accident? A. Gross sales was \$13,707.72. 20

Q. What were his expenses? A. \$8,944.

Q. What were his profits? A. \$3,941.27.

Q. What were his gross sales for the six months succeeding the accident? A. \$10,365.99.

Q. What were his expenses? A. \$8,230.63.

Q. What were his profits? A. \$1,513.40.

Q. Have you anything subsequent to that? You have given me six months before and six months after; have you anything subsequent to the six months after the accident? The accident was about ten months ago. Have you anything for the current four months? A. We have everything in the books. I haven't got it on the memorandum. I haven't a slip of that. 30

Q. You will take up too much time. You would have to figure it out? A. Yes.

Q. Then I don't want it. A. I have everything here. 40

*Mrs. Margaret Chiapparine—Rebuttal—Cross.**Cross-Examination by Mr. Coult:*

Q. What is the nature of that business? A. Embroidery manufacturing.

10 Q. Ordinarily do the sales remain just the same all the year around? A. Well, no.

Q. The first six months of the year better than the last six months? A. I can't tell you that.

Q. Can't tell anything about it? A. No, not how they would run.

Q. I notice that the expenses of the business seem to be about the same for both periods of six months; that is true, isn't it? A. No, there is quite some difference.

20 Q. Well, between eight and nine thousand dollars. A. Yes.

Q. But the large difference is in the sales? A. Well, we hadn't Mr. Chiapparine there to attend to matters.

Q. Do the sales remain constant all the year round in that business? A. No.

Q. Sometimes more than others? A. Just like any other business.

Q. That is all.

30 MR. SIMPSON: I think that is all that I have in rebuttal.

MR. COULT: Just a moment, something that I forgot.

*By Mr. Coult:*

Q. Isn't there a strike on in the embroidery works? A. Not this year. That was March, 1916—March, 1916, I suppose.

40 BOTH SIDES REST.

MR. COULT: Your Honor, let us have five minutes recess. This man ought to be here now. The train is due at Exchange Place at 11.45.

THE COURT: He will not be here in five minutes.

MR. SIMPSON: If he comes in then I have sent for a document to contradict him, and if you hold the case open to put him in I ask you to hold the case open to put my testimony in. The woman left about fifteen minutes ago. It was simply to get a paper at her house that we needed to contradict this witness which they will produce. 10

MR. COULT: Cannot your Honor allow us about five minutes, until five minutes of twelve? 20

THE COURT: Very well then. You see if your man comes in at that time and Mr. Simpson's party has not got back it will mean another wait of ten or fifteen minutes, and if yours doesn't arrive I suppose it will end it. If that is the situation? 20

MR. COULT: Yes.

THE COURT: If he does not produce his witness in five minutes, or by five minutes of twelve, then it won't make any difference to you whether your witness is here? 30

MR. SIMPSON: No.

THE COURT: If his does come?

MR. SIMPSON: Then I want an opportunity to put in this paper.

THE COURT: That carries us probably to ten minutes after twelve.

MR. COULT: If I understand, Mr. Simpson sent for it some time ago. 40

MR. SIMPSON: She ought to be back five minutes after twelve.

THE COURT: Let us take a recess until five of twelve. If this witness does not come then we are relieved of that situation.

(Recess to 11.55 A. M.)

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(At 11.55 A. M. the jury returned to the court room.)

THE COURT: That seems to close the case, gentlemen, as far as the testimony is concerned?

MR. COULT: Yes, sir.

THE COURT: All right.

(There was some discussion as to the length of the argument.)

20

MR. COULT I have my certified copy which, just came.

THE COURT: Yes, I suppose—

MR. SIMPSON: I will object to this paper on the ground it is not properly authenticated.

THE COURT: Certification in this state.

MR. SIMPSON: We can go ahead and sum up and I can put my license in when it comes. It is simply an offer of the license.

30

MR. COULT: Pamphlet Laws 1913. No certification necessary. What do you say to that?

MR. SIMPSON: It is simply a driver's license. I did not put that in.

MR. COULT: Why can't I talk about this paper and then you can talk about yours when it comes.

40

THE COURT: This paper is offered with the understanding that Mr. Simpson

*Court's Charge to the Jury.*

can put in the license when it comes, provided it comes before the summing up is concluded.

MR. COULT: I offer in evidence the certificate of the Department of State.

(Paper marked Exhibit D-6.)

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(Mr. Coult sums up to the jury.)

MR. SIMPSON: I want to put in this license. I have it here. I offer it.

(Paper marked Exhibit P-4.)

(Mr. Simpson sums up to the jury.)

**Court's Charge to the Jury**

20

Gentlemen of the Jury

This is an action being maintained by Joseph Chiapparine against the Public Service Railway Company in which the plaintiff is seeking to recover damages which he alleges he has suffered as the proximate result of a happening on August 20th last, which happening he further alleges was the proximate and natural result of negligence with which the servants of the defendant company operated one of its trolley cars at a crossing at Anderson Avenue in Bergen County, this state, I believe.

30

For plaintiff to recover or to have a right of recovery in an action of this character, amongst other things—and I may say primarily he must establish by a fair preponderance of the evidence that the servant of the defendant company was negligent in the manner in which he operated, controlled and managed the car of the defendant

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*Court's Charge to the Jury.*

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company, and that such negligence, if so established, was the proximate cause of the happening in question from which and out of which his alleged injuries arose.

10 This case is almost entirely, gentlemen, a fact case. Doing as has been my practice, therefore, there will be very little for me to say to you and which can aid you in your deliberations. My practice has been, and the one which I am continuing to pursue is that I will advert to and speak of and refer to the testimony in the case as infrequently as it is possible for me to do so and properly present the matters of law to you which are applicable to the case.

20 In the first instance it will be necessary that you should know what the degree of care is which the law imposes upon servants of a company such as this defendant company in the operation and control of its cars at situations of the character described in this case.

30 The general rule is that they must exercise reasonable care, or, as it is otherwise put, they must use that care which a reasonably prudent person would or should exercise, considering time, place, circumstances and conditions, so that they will not bring harm to other users of the public highway. You have probably heard that rule repeated to you possibly by myself many times during your service here.

There is a statute in this state which we know by various titles, but most commonly as the Traffic Act, which has this provision in it:

40 "The motorman or driver of any street car approaching road intersections or street crossings shall sound his signal bell in quick succession at a

*Court's Charge to the Jury.*

reasonable distance from such intersection and shall also sound such signal when approaching teams or carriages or persons, and no person, after striking of the bell shall delay or hinder the passage of the car."

The latter portion, of course, does not apply. It is the first portion only. That is a provision which the legislature of this state has given us to assist the reasonably prudent person in regulating his conduct when he wants to or attempts to make use of a public highway.

Now, as I have already said, gentlemen, the burden is upon the plaintiff to satisfy you of this thing which I am speaking of. The first question for you will be, has the plaintiff satisfied you by a fair preponderance of the evidence that the servant of the defendant company, namely, the motorman, was negligent in the manner in which he propelled, moved or conducted the operations of this car. Was he negligent under that rule, and this provision of the statute, which I have just read to you. If the plaintiff has not made that out, then you need not go any further, because then he has not made out an important, essential thing in his case, and then your verdict must be for the defendant. If he has made it out, the next question for your determination is, has he made out also by a fair preponderance of the evidence that that negligence which he has so made out, was the proximate, natural cause of this happening of which the plaintiff complains. If he has not, then, again, your verdict must be for the defendant, because then another essential thing for him to have made out has not been made out. If he

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*Court's Charge to the Jury.*

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has made both of those out by that degree of evidence which I have already indicated to you, then your attention will have to go in another direction, and that is as to the conduct of the plaintiff himself.

10       While the law does place upon the servants of such a company as this defendant in the operation of its cars that rule of care which I have already indicated to you, the law likewise places a rule of conduct in front of such users of the public highways as this plaintiff was; and the rule of care upon him I shall have to state in practically the same language as I have already stated, and that is that the law requires that he should use that  
20       care which a reasonably prudent person would or should have used, time, place, circumstances and conditions considered, so that he would not bring harm to himself.

Now it is true that as the motorman of this car was approaching this public street he was charged with notice that he was approaching a public street upon which he might expect to find other members of the traveling public making use thereof, and of course, he, the motorman, had a right to  
30       assume that such other users of this public highway,—while it was reasonable to expect that he might meet them there or find them there in the lawful use of that highway—he had a right to assume that they would be using it in a lawful way and in conformity with this rule which I have already given you.

Likewise the plaintiff, as he was making use of Anderson Avenue in the driving and propelling of his automobile, it seems from the testimony,  
40       had knowledge of this railroad crossing at this

*Court's Charge to the Jury.*

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point, and he was charged with this knowledge that he might expect the cars of the defendant company to be operated over those tracks at that crossing, and he had a right to assume, likewise, that the servants of the defendant company in so operating its cars across this highway would do so under that rule of conduct which I have already given you. 10

Now it appears, gentlemen, that the plaintiff's automobile was proceeding from north to south along Anderson Avenue, while the car of the defendant company, that is the trolley car, was proceeding from east to west; in other words, the automobile was approaching the trolley car from the right of the trolley car. You may have in your mind, and if you have I want to disabuse your mind of the idea, that there was a right of way of the automobile over that of the trolley car. The situation as our courts have placed it is this—and the rule which they have given us for our guidance is this—and this happens to be an excerpt from an opinion in which the casualty was as between an automobile and a trolley car. The court says, speaking of what the proper and correct rule is: 20 30

“That rule is that the driver of the automobile would have the right of way if proceeding at a rate of speed which under the circumstances of the time and locality was reasonable, he should reach the point of crossing in time to go safely upon the tracks in advance of the approaching car, the latter, that is, the trolley car, being sufficiently distant to be checked and if need be stopped before it should reach him.” 40

*Court's Charge to the Jury.*

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10 You see again, the court in this case speaks of that rule of reasonable care which I have already given you. I will repeat that rule. That rule is that the driver of the automobile would have the right of way if proceeding at a rate of speed which under the circumstances of the time and locality was reasonable he should reach the point of crossing in time to go safely upon the tracks in advance of the approaching car, the latter being sufficiently distant, that is, the trolley car being sufficiently distant to be checked, and if need be, stopped, before it should reach him.

20 So that if the plaintiff made out those matters which I have said to you it is essential that he shall, and you come to the consideration of the conduct of the plaintiff in this action, the question before you prominently will be, was the plaintiff himself negligent, considering the rule which I have given you, and if he was, did that negligence upon his part contribute to what happened to him. If it did, and you so find, then even if the plaintiff has made out those things I have already talked to you of the plaintiff cannot have a verdict because the law then says that your verdict shall be 30 for the defendant.

Now the burden of satisfying you as to the conduct of the plaintiff is upon the defendant. They must establish it by a fair preponderance of all of the evidence. If they have, then, as I have already said, again your verdict must be for the defendant.

40 Now there has been another situation suggested and that is that this plaintiff found himself in a position of peril and in attempting to extricate himself therefrom he might not have done that

*Court's Charge to the Jury.*

thing of two or more things that could have been done which was the perfectly proper one to have been done and which would have extricated him therefrom. The rule as to that is this, gentlemen: If this plaintiff in the exercise of that care which he should have exercised under that rule which I have given you in approaching this crossing was put in a position of peril because of the negligent manner in which the defendant's servant operated this car and he had two or more ways by which he might have extricated himself or two or more things which he might have done some of which might have averted the accident, but he in that extremity in which he found himself exercised the one which did not, then you are not, the law says, to find that he was guilty of contributory negligence because he did not use that good, clear judgment which might have directed him to use the one or the other means which would have extricated him from it. But understand now the position that this plaintiff must have been in in order to have that rule which I have just given you invoked in his favor.

He must have been exercising that care which a reasonably prudent person would or should have exercised, time, place, circumstances and conditions considered, so that he would not bring harm to himself. He must have been within that rule and been brought into his position of peril, if he was, by the negligence of the defendant's servants under that same rule, before he can have that rule which I have just given you applied to his situation.

Now, gentlemen, if the plaintiff has satisfied you that the defendant company, through its agents

*Court's Charge to the Jury.*

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and servants, was negligent, and mind you, that is by a fair preponderance of the evidence always, and he has satisfied you that that negligence so established, if established, was the proximate cause of this occurrence, and the defendant has not satisfied you by a fair preponderance of the evidence that the plaintiff himself was guilty of negligence which contributed to this happening, then the plaintiff is entitled to a verdict, and then only; and if he is entitled to a verdict, then the question next before you is, what that verdict may be for.

He is entitled to be compensated—and mind you, gentlemen, I use the word compensated—that is, he is entitled to be made whole, put back as nearly as you can by money in the position which he would have been in had this occurrence not taken place. He is entitled to be compensated I say, therefore, for pain and suffering, mental and physical, which he has endured or which he has and may be enduring or which he has endured, is enduring and will in reasonable probability endure in the future, as the proximate, natural result of what happened to him on the 20th of August, 1916. Upon all of those points, upon all of those matters, the burden is upon the plaintiff to satisfy you thereof by a fair preponderance of the evidence. He is also entitled to be compensated to whatever extent he may have satisfied you he has expended moneys or has obligated himself to expend moneys in and about effecting a cure, notably those would be physicians' bills and such like bills. The obligation is upon him to satisfy you as to the reasonableness of the services as well as to the reasonableness of the charges, and to satisfy

*Court's Charge to the Jury.*

you by a fair preponderance of the evidence that he either has paid them or has obligated himself to pay them. He is also entitled to recover for loss of earnings or such disability, if any, as he may have shown resulting in loss of earnings or earning capacity to him. That goes not only as to the past but to the present as well as to the future, provided, of course, that he must have shown you by a fair preponderance of the evidence that he has suffered a disability which in turn as a natural result cost him loss of earning capacity or loss of profits in the past; he must likewise have satisfied you by a fair preponderance of the evidence upon the same points as to the present time, if he is to have a recovery for the present; and as to the future he must have satisfied you by a like degree of the evidence that it is reasonably probable that he will meet with a loss in that direction, the burden remaining, as you will understand me, gentlemen, upon the plaintiff to satisfy you of all of these matters by a fair preponderance of the evidence.

He also contends for the recovery of the value of the automobile which was in this particular accident. What one is entitled to for loss of chattel or thing of this kind ordinarily is this, and it is the general rule and the rule for your guidance after all, gentlemen, when it comes to chattels: The difference in the value, the fair, reasonable value of the article or chattel directly before the happening and its fair, reasonable value immediately after the happening. I do not recall that in this case there is any direct evidence going to this point, except, if I recollect the testimony correctly, there is testimony that after the occurrence the

*Court's Charge to the Jury.*

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automobile had no value. As to that, however, gentlemen, if I am in error you will correct the error by your recollection of what the testimony is. There is some evidence as to what the cost of the automobile was. That is, however, gentlemen, only one element which should be before you in your passing upon what a plaintiff in a case of this character should have for the loss of a chattel of that character. What is the purchase price of an article purchased in the usual course of business from a regular dealer is an item which is a proper item to be before you, but that is not the sole measure of the value of the article. You are entitled to have and you must have before you something further than that, and that is the length of time which the article in question has been used since its purchase and its condition or state of repair or disrepair or wear at the time of the occurrence in question, so that from all of it you have something substantial or reasonably substantial from which you may draw a reasonable conclusion as to what its reasonable value was at the time of the happening. Then, of course, as against that you set off what the reasonable value of it was directly after the happening, and the difference of those two items would be the amount which the plaintiff would be entitled to recover. Of course, gentlemen of the jury, upon that point also the burden is upon the plaintiff to satisfy you by a fair preponderance of the evidence of all of the elements which I have just spoken to you of in order that he may have a verdict, if he is entitled to a verdict for the loss in value of the automobile in question. If he has fallen short or has not satisfied you of these items you are not here

*Court's Charge to the Jury.*

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for the purpose of making a random guess at what his loss was upon that score, but the burden, you will understand, is upon him to supply you by a fair preponderance of the evidence all of those items which I have spoken to you of, so that you may have something substantial upon which to base a reasonable judgment as to value. If he has not presented those matters to you in that manner, then to the extent he has not he is not entitled to a recovery. 10

There is nothing more that I can say to you, gentlemen, in a case of this character, than I have already said. You will keep in mind, of course, what you have probably heard me say to you every time you have been before me, and that is that if counsel or court has in any manner or in any particular made reference to what purports to be evidence and those references do not match up with your recollection of what the evidence is, to that extent you will disregard them and go back to your recollection of the evidence, because that is what the evidence is after all, and it is for you, gentlemen, to measure up and weigh and determine what degree of credibility and weight you are to give to each and every part of the evidence. 20 30  
When you have done that, under the rules of law which I have given you, the result will be your verdict.

With that you may take the case.

(Jury retires.)

**Defendant's Exceptions.**

10 MR. COULT: I pray an exception to that portion of the Court's charge in which the Court quotes subdivision 3 of section 8, of the Traffic Act, being Laws of 1915, Chapter 156, and in which your Honor states in effect that if the jury finds that the provisions of that section were violated that such a finding would constitute negligence on the part of the defendant company.

THE COURT: You said I said in effect. I don't know whether that is so, whether I did say it in effect.

MR. COULT: Which the Court says substantially, or whatever the Court may have said.

20 THE COURT: I said that was one of the provisions which the legislature had given to regulate the reasonably prudent man in his conduct under the rule which I had already given.

30 MR. COULT: The point I was making is it seems to me that under the tenor of the charge your Honor rather charged the jury that if they should find that the provisions of that act were violated that that would constitute negligence; whereas I take it the violation of the provisions of the act would subject the company merely to a penalty, and it is merely a circumstance.

THE COURT: That is what I think I said. If I didn't, that is what I intended to say.

(Stenographer repeats portion of charge referred to.)

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*Defendant's Exceptions.*

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MR. COULT: Then I wish an exception to that portion of the Court's charge in which the Court lays down the rule with regard to the duty of a person placed in a position of peril by the negligence of another, as to his choice of pursuing two or more courses of conduct which may be open to him under the circumstances and his failure to take that which calm judgment would demand of him, or whatever the Court said upon that subject. 10

THE COURT: What do you think was the error in it?

MR. COULT: It seems to me the evidence in this case disclosed no such situation. 20

THE COURT: Of course. That may be. I am not passing on that.

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**Grounds of Appeal.**

(Filed Sept. 28, 1917.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10

JOSEPH CHIAPPARINE,  
*Plaintiff-Appellee,*

vs.

PUBLIC SERVICE RAILWAY  
COMPANY,  
*Defendant-Appellant.*Action at  
Law.  
On Appeal  
from Hud-  
son County  
Circuit Court.

20

TO ALEXANDER SIMPSON, Esq.,  
*Attorney of Plaintiff-Appellee.*

SIR:

TAKE NOTICE that the following are the grounds of appeal which the defendant-appellant will urge in the above-entitled cause:

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1. Because the trial court, despite an objection made thereto by the attorney of the defendant-appellant, charged the jury as follows:

“There is a statute in this state which we know by various titles, but most commonly as the Traffic Act, which has this provision in it:

‘The motorman or driver of any street car approaching road intersections or street crossings shall sound his signal bell in quick succession at a reasonable distance from such intersection and shall also sound such signal when approaching teams or carriages or persons, and no person, af-

40

*Grounds of Appeal.*

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ter striking of the bell shall delay or hinder the passage of the car.'

"The latter portion, of course, does not apply. It is the first portion only. That is a provision which the legislature of this state has given us to assist the reasonably prudent person in regulating his conduct when he wants to or attempts to make use of a public highway. 10

"Now, as I have already said, gentlemen, the burden is upon the plaintiff to satisfy you of this thing which I am speaking of. The first question for you will be, has the plaintiff satisfied you by a fair preponderance of the evidence that the servant of the defendant company, namely, the motor-man, was negligent in the manner in which he propelled, moved or conducted the operations of this car. Was he negligent under that rule, and this provision of the statute, which I have just read to you. If the plaintiff has not made that out, then you need not go any further, because then he has not made out an important, essential thing in his case, and then your verdict must be for the defendant. If he has made it out, the next question for your determination is, has he made out also by a fair preponderance of the evidence that that negligence which he has so made out, was the proximate, natural cause of this happening of which the plaintiff complains. If he has not, then, again, your verdict must be for the defendant, because then another essential thing for him to have made out has not been made out. If he has made both of those out by that degree of evidence which I have already indicated to you, then your attention will have to go in another direction, and that is as to the conduct of the plaintiff himself." 40

*Grounds of Appeal.*

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2. Because the trial court, despite an objection made thereto by the attorney of the defendant-appellant, charged the jury as follows:

10 “Now there has been another situation suggested and that is that this plaintiff found himself in a position of peril and in attempting to extricate himself therefrom he might not have done that thing of two or more things that could have been done which was the perfectly proper one to have been done and which would have extricated him therefrom. The rule as to that is this, gentlemen: If this plaintiff in the exercise of that care which he should have exercised under that rule which I have given you in approaching this cross-  
20 ing was put in a position of peril because of the negligent manner in which the defendant’s servant operated this car and he had two or more ways by which he might have extricated himself or two or more things which he might have done some of which might have averted the accident, but he in that extremity in which he found himself exercised the one which did not, then you are not, the law says, to find that he was guilty of contributory negligence because he did not use  
30 that good, clear judgment which might have directed him to use the one or the other means which would have extricated him from it. But understand now the position that this plaintiff must have been in in order to have that rule which I have just given you invoked in his favor. He must have been exercising that care which a reasonably prudent person would or should have exercised, time, place, circumstance and conditions considered, so that he would not bring harm to  
40 himself. He must have been within that rule and

*Grounds of Appeal.*

been brought into his position of peril, if he was, by the negligence of the defendant's servants under that same rule, before he can have that rule which I have just given you applied to his situation."

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3. Because the trial court, at the trial of the case, and despite the timely objection of the defendant-appellant, admitted the following testimony of the plaintiff-appellee offered on the part of the plaintiff-appellee, such evidence referring to the purchase price of a second-hand automobile which it had been claimed was injured in the accident concerning which the suit was brought and for injury to which damage was claimed in the action,—“Q. What did you pay for it? Q. How much did you pay for it? A. I paid nine hundred dollars.”

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Dated, September 22, 1917.

Yours truly,

LEFFERTS S. HOFFMAN.  
*Attorney of Defendant-Appellant.*

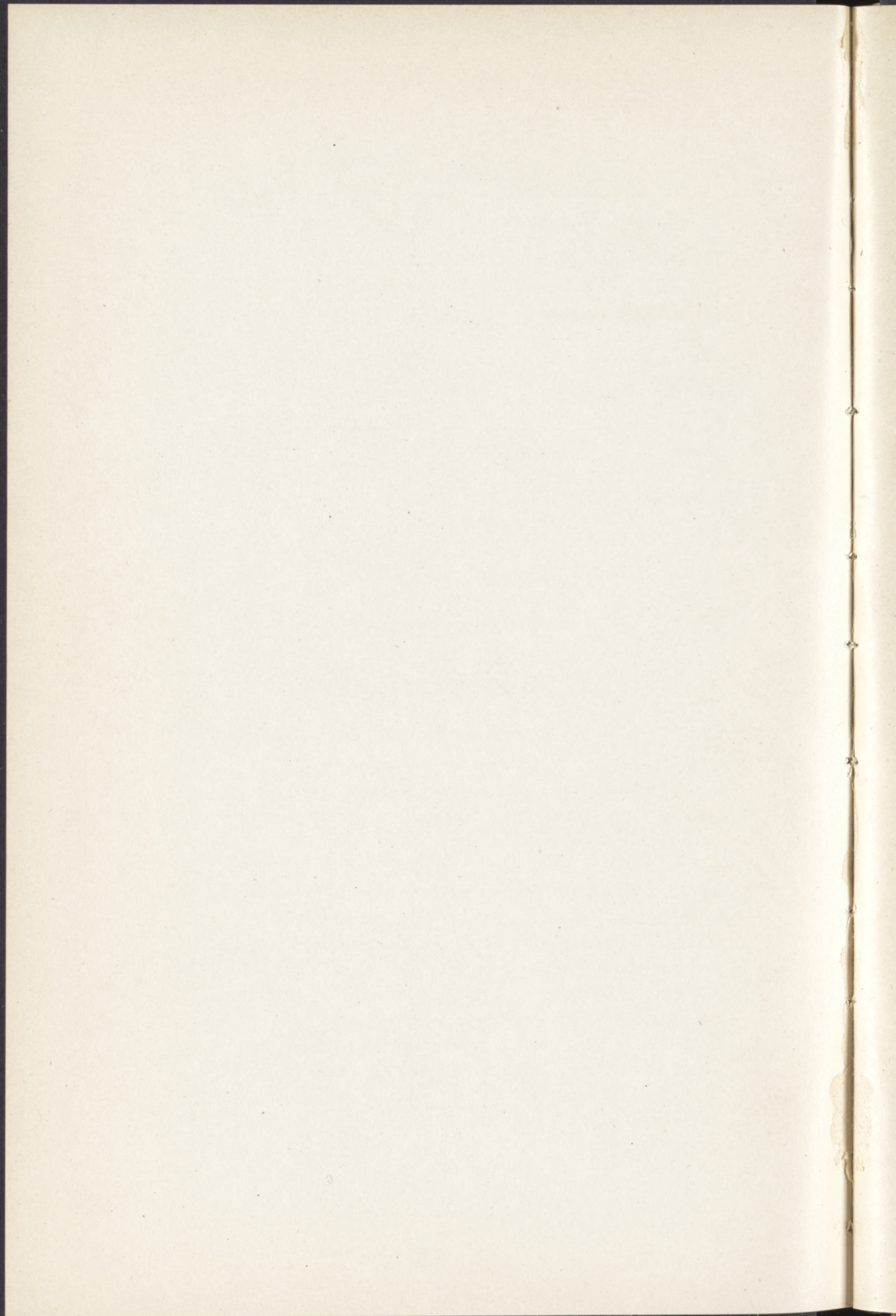
(Endorsed)

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“Service acknowledged this 25th day of September, 1917.

ALEXANDER SIMPSON,  
*Attorney of Plaintiff-Appellee.*”

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# New Jersey Court of Errors and Appeals

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JOSEPH CHIAPPARINE, Plaintiff-Appellee,	} On Appeal.
vs.	
PUBLIC SERVICE RAILWAY COM- PANY,	
Defendant-Appellant.	

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## **BRIEF FOR PLAINTIFF-APPELLEE**

### **POINT I**

The first exception is an exception to the quotation by the Court of the Traffic Act in its charge to the jury. What the Court read to the jury was the legislative enactment regarding the duty of a motorman or driver of a street car approaching an intersection of a street. The accident under investigation was caused where the lines of a trolley intersected a public highway. The Court did not say that if the motorman violated this section he was guilty of negligence, but simply charged that it was a provision which the legislature had given to assist reasonably prudent persons in regulating their conduct, which was true. The Judge did not charge as a matter of law that the defend-

ant's motorman was guilty of negligence if he violated the provision; he simply called the attention of the jury to the law of this state regulating traffic so far as street railways are concerned, but did not make it an exclusive criterion. There was no error in requesting the jury's attention to the statute; if the legislature enacted the statute it should have been considered in determining whether or not both persons, plaintiff and defendant, exercised reasonable care in the use of the highway. The exception may have been on the ground of the case of *Reed vs. Public Service R'y*, 99 Atlantic, 100, recently decided, but in that connection this case is not appropriate to be considered because there is no parallel between the case at bar and that case. The charge of the Court in the *Reed* case was improperly classing a street car as a vehicle, and giving an automobile the right of way over it. This the Court said in the *Reed* case could not be read into the statute, but in the case at bar, the Chippairine case, the Court read the provision of the statute as to the duty of a street railway motorman, and this is not a parallel with the action of the Court in the *Reed* case, which read into the statute something which did not exist in the statute, and the Court, in the case at bar, went further than the defendant had a right to demand because it said, "There is a statute in this State which we know by various titles, commonly as the Traffic Act, which has this provision in it" (reading provision), and went on to say:

"was the motorman negligent under the rule obliging him to use reasonable care, and this provision of the statute which I

have just read to you making the negligence of the motorman depend upon something besides the statute, whereas if he violated the statute the jury had a right to take that violation under consideration ~~in considering~~ *in considering* ~~this~~ *his* ~~negligence~~ *negligence.*

The rule referred to by the Court which must be taken by the jury in conjunction with the statute is found in page 144 in the charge, wherein the Court says "The general rule is that they must exercise reasonable care," or, as it is otherwise put:

"they must use that care which a reasonably prudent person would or should exercise, considering time, place, circumstances and conditions so that they will not bring harm to other users of the highway."

But the true rule which was more drastic against the defendant, was that if the legislature had made a rule for the use of the highway and defendant violated that rule the jury could find him guilty of negligence, but the Court said that the violation of that rule was not enough; that there must also be a violation of the general rule to use reasonable care, and the jury might have found that the motorman did not sound the bell, or did not give any warning, but yet if ~~he~~ used reasonable care they could exculpate the defendant from negligence, whereas, under the true rule if he did ~~so~~ violate the statutory regulation he was guilty of negligence so that the exception by the defendant is to a portion of the charge which was more favorable to the defendant than it had a right to ask.

**POINT II**

The second exception to the charge of the Court ~~to the effect~~ that one put in a situation of danger by reason of the negligence of another is not to be held guilty of contributory negligence as matter of law because he does not do the best possible thing he could under the circumstances. In the case at bar if the jury believed some of the testimony they might find that the defendant suddenly produced a situation of danger by propelling a rapidly moving electric car practically out of ambush without giving any signal, and that the plaintiff was suddenly confronted with this danger. If in this situation he did not do the best thing he would not be guilty of contributory negligence, as a matter of law. It would be for the jury to say as to what was the degree of negligence of the plaintiff, or whether he was free from negligence.

See *Westcott v. Decker*, 90 Atl. 291; 85 N. J. Law, p. 716.

**POINT III**

The remaining exception of the defendant had to do with the admission of a question and answer. The plaintiff's automobile was damaged in the accident, and the plaintiff was allowed to prove the price of this automobile bought in the ordinary course of trade through a regular dealer. The objection was to the competency of this evidence. Unconnected with other evidence it might not be of much weight, but it was clearly competent under

*Luse v. Jones*, 39 N. J. Law, (Vroom. 107).

Respectfully submitted,  
ALEX. SIMPSON,  
Attorney for Plaintiff.

## New Jersey Court of Errors and Appeals.

JOSEPH CHIAPPARINE,  
*Plaintiff-Appellee,*

vs.

PUBLIC SERVICE RAILWAY  
COMPANY,  
*Defendant-Appellant.*

Action  
At Law.  
On Appeal  
From Hudson  
County  
Circuit Court.

### Brief of Defendant-Appellant.

This case is based on an accident which occurred at nine o'clock at night on August 20, 1916, at Fort Lee, New Jersey, where Anderson Avenue crosses the private right of way of the defendant.

The plaintiff was driving his automobile in a southerly direction on Anderson Avenue when he came into collision with the side of a west-bound open trolley car of the defendant. The collision resulted in injuries to both the plaintiff and his automobile.

The case was tried before Mr. Justice Campbell and a jury at the Hudson Circuit on June 4, 1917, resulting in a verdict in favor of the plaintiff in the sum of Ten Thousand Dollars. Thereafter the trial judge allowed defendant a rule to show cause why the verdict should not be set aside (P6) which reserved the exceptions upon which this appeal is based. The rule was discharged (P8).

The plaintiff in his complaint charged the defendant with negligence (P3) as follows: "That it did not use reasonable care to propel the said

car at a rate of speed safe to persons using said highway, but propelled said car at an excessively high rate of speed; that it did not use reasonable care to give any warning of the approach of said car; that it did not use reasonable care to keep a lookout for persons in the vicinity of said car; that no reasonable care was used by the persons in control of said car to keep and maintain control of said car so that it might be stopped to avoid injury to other persons; that the tracks and road-bed of the defendant crossing over said Anderson Avenue were maintained in a dangerous condition, in that there was no opportunity to persons approaching same to see the approach of said car and the same approached at a great rate of speed."

### **Reasons Upon Which the Defendant Will Rely in Support of Its Appeal.**

The reasons relied upon in support of this appeal relate to the charge of the court. They will be found on pages 156-159 of the printed book and may be summarized as follows:

1. Because the trial court charged in effect that the motorman of the defendant's trolley car would be guilty of negligence if the jury found that he had violated the provision of subdivision 3, section 8, of the traffic act of 1915, chapter 156, providing that the motorman of a street car on approaching street crossings shall sound his signal bell.

2. Because the court charged the doctrine that one may not be held guilty of contributory negligence where in moments of peril he chooses a course of action which may not have been the best possible course under the conditions existing at the time of such choice.

## ARGUMENT.

**1. That Part of the Charge Relating to the Traffic Act Is Erroneous.**

The court, referring to the traffic act (P144, L35) charged as follows: "There is a statute in this state which we know by various titles, but most commonly as the Traffic Act, which has this provision in it: 'The motorman or driver of any street car approaching road intersections or street crossings shall sound his signal bell in quick succession at a reasonable distance from such intersection and shall also sound such signal when approaching teams or carriages or persons, and no person, after striking of the bell, shall delay or hinder the passage of the car.'

"The latter portion, of course, does not apply. It is the first portion only. That is a provision which the legislature of this state has given us to assist the reasonably prudent person in regulating his conduct when he wants to or attempts to make use of a public highway.

"Now, as I have already said, gentlemen, the burden is upon the plaintiff to satisfy you of this thing which I am speaking of. The first question for you will be, has the plaintiff satisfied you by a fair preponderance of the evidence that the servant of the defendant company, namely, the motorman, was negligent in the manner in which he propelled, moved or conducted the operation of this car. Was he negligent under that rule, *and this provision of the statute*, which I have just read to you. If the plaintiff has not made that out, then you need not go any further, because then he has not made out an important, essential thing, in his case, and then your verdict must be for the defendant. If he has made it out, the next

question for your determination is, has he made out also by a fair preponderance of the evidence that that negligence which he has so made out, was the proximate, natural cause of this happening of which the plaintiff complains. If he has not, then, again, your verdict must be for the defendant, because then another essential thing for him to have made out has not been made out. If he has made both of those out by that degree of evidence which I have already indicated to you, then your attention will have to go in another direction, and that is as to the conduct of the plaintiff himself."

While the foregoing is the whole ground of appeal, we call the court's attention to that part of the charge at page 147, line 18, which served to emphasize the importance of the charge to which exception was taken by contrasting it with a part of the traffic act which did not apply. The court there says:

"The automobile was approaching the trolley car from the right of the trolley car. You may have in your mind, and if you have I want to disabuse your mind of the idea, that there was a right of way of the automobile over that of the trolley car."

Evidently the trial court did not charge any rule regarding right of way based on the traffic act because that part of the traffic act relating to the right of way of one approaching from the right is not applicable to trolley cars. (*Reed vs. Public Service Railway Company*, 99 Atlantic, 100.)

The effect of the charge was, practically, to say to the jury that if the defendant's motorman had violated the traffic act in failing to sound the gong as the car approached the crossing such violation

constituted negligence. That the court also charged that such violation must be the proximate cause of the accident to entitle plaintiff to recover does not limit or modify that part of the charge complained of, as, of course, any negligent act to form the basis of a recovery for an injury must be the proximate cause of such injury.

The case of *State vs. Schutte*, 96 Atlantic, 659, decided by this court in 1916, sustains the proposition that the violation of a statute does not constitute negligence, but is only a circumstance to be considered in passing upon the question of negligence. Schutte was convicted of assault and battery by wilfully striking a man with his automobile, and the Supreme Court in its opinion affirming the conviction said that the allegations of the indictment were sustained by proof that the plaintiff in error ran his automobile at a rate of speed in excess of that prescribed by the traffic act. This court affirmed the judgment of the Supreme Court, but calls attention to the statement of the Supreme Court as to the effect of the Traffic Act in the following language:

“This clause is to be taken as a recitation of the facts proved in this particular case to sustain the indictment, rather than as a statement of what is necessary to sustain such an indictment. The fact that the automobile was exceeding the speed limit prescribed by the Motor Vehicle Act is not the controlling factor, but is only a circumstance to be considered in deciding whether or not the defendant was running his automobile at a rate of speed which, under the existing conditions, was obviously dangerous to pedestrians or others using the highway. A man who deliberately drives his car into a mass of people standing in the street

looking at a baseball score-board is guilty of assault and battery for running over some of them, although his automobile is traveling far below the speed limit; whereas, one driving on a lonely country road with no pedestrians on it in sight might be entirely guiltless of the crime of assault and battery for running over a child which suddenly darted from a concealed position by the highway, although the automobile at the time was exceeding the speed limit."

We call the court's particular attention to the unreported case of Mayor and Aldermen of Jersey City vs. Public Service Railway Company, in which our Supreme Court holds that the violation of a city ordinance does not ipso factor constitute negligence. Following is a complete copy of the opinion:

"Appeal from Jersey City District Court. Argued February Term 1914. Decided June Term 1914. Argued before Justices Garrison, Trenchard and Minturn.

"Per Curiam.

"The suit was for damages caused by a collision between defendant's trolley and a fire engine of the plaintiff, upon one of the street intersections in Jersey City. The trial court rendered judgment for the defendant upon the ground that the plaintiff had not shown the existence of negligence as the causal act of the damage.

"Our view of the testimony leads us to conclude that the judgment was supportable by the testimony, and under those circumstances we will not review it.

"While the violation of the city ordinance subjected the defendant to the pen-

alty prescribed, it does not ipso facto constitute negligence. *Mika vs. Passaic Print Works*, 47 Vr. 566. We think therefore this judgment should be affirmed.”

See also the case of *Fane et al. vs. Philadelphia Rapid Transit Company*, 77 Atlantic 806, in which it is held by the Supreme Court of Pennsylvania that where it appears that an injury has been caused by the omission of a duty imposed by an ordinance such ordinance may be considered with the other facts of the case in determining the defendant's liability. The court says, “In such a case the ordinance is admissible in evidence, but at most it is merely evidence of negligence.”

That the court in our present case omitted to say that the violation of the Traffic Act by the motorman was only a circumstance to be considered in passing on his negligence, undoubtedly gave the jury the false impression that if it found that the motorman failed to sound his bell as he approached Anderson Avenue he was guilty of negligence as a matter of law.

When defendant's attorney took the exception to the court's charge, the court said that in referring to the Traffic Act in his charge he intended to say that the violation of that Act was only a circumstance to be considered by the jury. If the court felt that way it should have distinctly so charged, but as the charge was actually given it appears that the question of the motorman's negligence or freedom therefrom is controlled by the decision as to whether or not the motorman carried out the provision of the Traffic Act relating to giving signals.

By reading the charge, beginning at page 144 line 20 and continuing through the part forming the basis of the exception now under discussion, it will be seen that the court states a general rule relating to the "operation and control" of cars at situations similar to that in our present case, and then immediately charges about the application of the Traffic Act relating to sounding signals on approaching crossings. The court thus places negligence in failure to sound a gong solely under the Traffic Act and in a class by itself. While it may be said that the term "operation and control" includes sounding a gong, yet when that expression is followed by the one particular reference to sounding a gong the jury would no doubt conclude the term "operation and control" did not include sounding signals and that the law in reference thereto was controlled by the Traffic Act. Therefore when the court submits to the jury the question "was he (the motorman) negligent under that rule, *and this provision of the statute*, which I have just read to you," the jury undoubtedly concluded that if it found as a fact that the motorman failed to sound his bell as provided by the Act he was guilty of negligence.

On the other hand, if the general rule laid down regarding "operation and control" included the duty of the motorman as to giving signals, then we submit the court is in error in superimposing the Traffic Act on the common law rule regarding the motorman's duty of care, with the result that the charge imposes upon the motorman a higher duty as to giving signals than such common law rule.

The court states (P144, L26) the common law rule of care required under the circumstances of this suit. Then the court proceeds to read the

section in question of the Traffic Act, saying (P145), "That is a provision which the legislature of this State has given us to assist the reasonably prudent person in regulating his conduct when he wants to or attempts to make use of a public highway."

The court further charges (P145, L25), "Was he negligent under that rule, and this provision of the statute, which I have just read to you?" Here was a direct charge of the common law duty with the statute superimposed thereon.

The court again says (P146, L10), "While the law does place upon the servants of such company as this defendant in the operation of its cars that rule of care which I have already indicated to you," etc. This was a direct charge *that the motorman must ring his bell when approaching street crossings* instead of leaving it to the jury to consider the matter of the statute merely as a circumstance to be considered in passing upon the motorman's negligence in this particular case.

Of course, assuming that the court intended to add the statute to the common law rule then every time thereafter that the court spoke of "that rule of conduct which I have already given you" it necessarily included both the common law rule of which it had spoken and the statute which it had added thereto.

Another point to which we wish to call the court's attention is the fact that the suit was not brought upon the statute in question, there was no mention of it in the complaint, and it was not referred to even remotely in the evidence. The first time it was brought up was when court included it in the charge. While we do not discuss the question as to whether or not any action could be

brought upon this statute, we do submit that it was improper for the court to charge the jury respecting this statute in the manner in which it did in view of the pleadings and evidence.

In the case of Dowd vs. Erie R. R. Co., 70 N. J. L., 452, decided by our Supreme Court in 1904, it appeared that the plaintiff was injured in the gearing of some machinery and at the hearing on a rule to set aside a verdict for the plaintiff the question of the application of the factory act was first brought up. In respect to this argument the court says, "The statute seems to be applicable to the present case but the plaintiff in his declaration did not rely upon the statute and failed to apprise defendant that it was sued for a violation of a statutory duty. The only issue tried was as to the breach of the defendant's duty at common law, and the case was submitted to the jury upon that issue only. The statute is first suggested as justifying a recovery by the plaintiff's brief in this court. We cannot sustain the verdict upon that ground."

## **2. That Part of the Charge Relating to a Choice of Action in a Moment of Peril Is Error in This Case.**

The second reason relied upon by the defendant will be found on page 158 of the printed book, and relates to that part of the charge of the court on pages 148 and 149, wherein the court lays down a rule of law to the effect that one in a position of peril is not chargeable with contributory negligence when having the choice of two or more courses of action he follows that course which may not, under the circumstances, have been the safer.

We have no fault to find with this rule merely as an abstract proposition of law, but we submit that it has no application to this case, and the fact that it has no such application was distinctly pointed out to the trial court as the ground of the objection, as appears (P155) by the conversation between Mr. Coult, who represented the defendant at the trial, and the court. "THE COURT: What do you think was the error in it? MR. COULT: It seems to me the evidence in this case disclosed no such situation. THE COURT: Of course, that may be. I am not passing on that."

By reference to the pleadings (Pages 3 to 5) it will be seen that there is nothing in them which involves the question referred to in that part of the charge to which this exception relates. The plaintiff's claim was that as he approached Anderson Avenue crossing from the north and was a hundred feet away from the track, with the location of which he was familiar, he was driving his automobile at about twelve miles an hour; that as he reached a point about ten or twelve feet from the track he saw the trolley car approaching about a hundred feet away and put on both brakes of his automobile and (P12) gave it a twist to get away from the trolley car. As to what happened then he testifies (P13, L22): "Q. What did it do to you when you twisted your car to try to get out of the way? What happened? A. Well, the trolley car coming; I don't know much more; but it struck me." Again he testified (P19, L17), "Q. Now, what was the first that you saw the trolley car? What was it you saw when you first saw it? A. I see the track—see first. Q. You don't understand English, do you? Read him the question. (Question repeated by stenographer.) Q. Oh, well, I don't remember exactly. I seen the

trolley car and after I don't remember much what happened."

The plaintiff described what he did on approaching the car tracks as follows: (P22), "Q. And you continued at the rate of twelve or thirteen miles an hour until you got within ten or fifteen feet of the track; is that right? A. Yes, sir—no; I am going twelve miles. As soon as I see the tracks I slow down about twelve miles, and after when I see the car coming I slow down and I get both brake and I try to twist my car away; I am just going about six miles—six or seven miles, I don't know. Q. Were you going six miles when you saw this car coming? A. Yes, sir. Q. Going six or seven? A. Yes, sir; it was practically still. Q. Had you changed your gears as you approached the track? A. No; I throwed both brake, the foot brake and the emergency. Q. Had you changed your speed? What speed were you in, first, second or third? A. The speed was changed before; as soon as I seen the track I throwed my second. Q. When you saw the track you went in second speed? A. Yes. Q. That brought you down to twelve or thirteen miles an hour? A. Yes, sir. (P23). Q. Then you continued on, and as you neared the track you reduced your speed to about six miles an hour? A. Yes. Q. And you were going in second speed? A. Second speed, yes. Q. You were about fifteen feet away from the track? A. Yes."

Plaintiff's only other witnesses who testify as to the collision, Josephson (P39, L35) and Lederman (P42, L30), say that the automobile ran into the trolley car, but there is no suggestion in their testimony, or that of any of the other witnesses for the plaintiff, that there was any condition which necessitated the plaintiff choosing between

two or more courses of action. As soon as he saw what the conditions were he did the only rational thing that he could do, that is, put on both his brakes and try to swerve from the path of the trolley car. This undoubtedly was the best thing to do, if, as the plaintiff says, he was twelve or fifteen feet from the track, running in the second gear at only six miles an hour, under which conditions he himself testifies he could stop the automobile in ten or twelve feet (P24, L30).

In the defendant's case it appears that a car of the kind operated by the plaintiff, under the conditions existing at the time and place, could be stopped, according to the testimony of Pawski (P119) in three or four feet, and according to the testimony of Muller (P122, L30) in between four and five feet. This testimony was introduced for the purpose of showing that the automobile was approaching the trolley track at a very high rate of speed and that the plaintiff was not telling the truth when he said that he approached the crossing at a rate of speed not exceeding ten or twelve miles and slowed his car down to a speed of six miles an hour, and tended to corroborate defendant's claim that the automobile approached the crossing at high speed and that notwithstanding the plaintiff applied both the foot brake and the emergency brake of the automobile it crashed into the side of the trolley car with terrific force, as is shown by the following testimony: Plaintiff's witness Josephsen, who testified (P39) that the automobile ran into the trolley car, and as to the loudness of the crash said (P40) "Q. How was it, a pretty loud crash? A. Why, I don't know; I thought a bomb struck it or something. I couldn't tell you; I thought a Zeppelin had come from—"; plaintiff's witness Lederman, who testified (P43,

L20) that the automobile was going faster than the car; defendant's witness Fletcher Burdette, who testified (P74, L30) that when the automobile passed his house, seven or eight hundred feet from the track, it was running at the rate of forty miles an hour; defendant's witness George Burdette, who testified (P79, L20) that the automobile was going very fast; defendant's witness Holt (P85, L30) that the automobile went by his house with a rush, immediately after which he heard the squeak of the brakes and then the crash. Mrs. Holt (P89) testified to the same effect as the last witness. Harry Burdette (P91, L30) estimated the speed of the automobile at between forty and forty-five miles an hour. Arthur J. Brady testified (P97) that although a thousand feet from the crossing he heard the crash of the accident. William Clookie, who sat in the end of the seat of the open car which figured in the accident, testified (P101) that he saw the automobile ten to twelve feet from the car coming at quite a rapid speed and that (P102, L10) it struck the car with *terrific force*.

See also the further testimony of Holt (P67) that there were marks on the road for 75 feet before reaching the tracks, showing the distance the auto had evidently slid after the brakes were put on and before striking the trolley car, and the testimony of Paxton, the motorman (P56, L20) that on striking the trolley car the auto rebounded ten or twelve feet.

It will be noticed by the foregoing testimony that one of the principal issues involved was whether the plaintiff approached the crossing at a very slow rate of speed or whether he approached it at a very high rate of speed; in fact, at so great a speed that when he got near enough

to the track to make an observation his automobile was going so fast that it could not be stopped within any reasonable distance. There was no suggestion whatever in this defendant's evidence that the plaintiff was placed in a position of peril where he had to choose between two or more courses of action, and nowhere does it appear that the propriety of the plaintiff's conduct after he realized his danger was challenged or questioned by the defendant.

Our contention is that the charge in not relating to any issue raised either by the pleadings or the evidence is reversible error. *Duel vs. Municipal Plumbing Company*, 92 Atlantic 367; *Murphy vs. North Jersey Street Railway Company*, 71 N. J. L. 5, 58 Atlantic 1018; *Martinez vs. Runkle*, 57 N. J. L. 11, 30 Atlantic 593; *Excelsior Company vs. Sweet*, 59 N. J. L. 441, 31 Atlantic 721; *Partridge vs. Woodland Steamboat Company*, 66 N. J. L. 290, 49 Atlantic 726; *Whitford vs. Palmer*, 100 Atlantic 312 (Rhode Island); *Gerety vs. W. J. & N. Y. Company*, 98 Atlantic 400.

In the Gerety case, decided by our Court of Errors in 1916, it appeared that the conductor of the defendant took up the commutation ticket of the plaintiff because it read "Mr." instead of "Miss." The court charged that plaintiff was entitled to recover for injured feelings by being made a public spectacle, when there was no evidence tending to show that she had been made a public spectacle. It was held that the charge was error.

In the Whitford case, decided by the Supreme Court of Rhode Island in 1917, it was claimed that because of a defect in the road the plaintiff, a woman, was thrown from a wagon in which she was riding. The court charged that if the plaintiff

assumed any unusual risk on account of her dress and the nature of the vehicle in which she was driving, and that the accident was caused by such risk, there could be no recovery. As there was no evidence that the plaintiff was in any way hampered by her clothing, or that it contributed to the accident, the instruction was held erroneous as intending to introduce immaterial matter which might mislead the jury.

In the *Duel* case the question at issue concerned the duty of one licensee towards another and in no way involvd the duty of the owner of the land, yet the trial court charged the rule laid down in the case of *Phillips vs. Library Company* relating to the duty of the owner of land to an invitee. It was held that while the charge as given was sound as an abstract legal proposition, it constituted reversible error, as being entirely without application to the case in hand.

The whole defense in our present case was simply aimed at proving how the accident really occurred, which was contrary to the plaintiff's story in all its essential details.

The real issue being thus defined, that part of the charge to which objection is made could have no application and tended only to mislead and confuse the jury. The jury naturally would think that the court, in giving the charge, meant it to be applied *somewhere*, which afforded the jury an opportunity to indulge in misleading speculations.

There were several photographs introduced in evidence. All of those in the possession of the defendant are filed with the clerk of this court.

Plaintiff's exhibits P3 and P4 are referred to on page 34 of the printed book and show the condition of the automobile after the accident. The condition of the automobile indicates that it struck

the car head on with great force, as the automobile appears to be crumpled up.

Defendant's exhibit D1 is referred to on pages 25, 26 and 108 of the printed book, and was taken at a point on Anderson Avenue north of the railroad track looking south, in the direction in which the plaintiff was driving his automobile at the time of the accident.

Defendant's exhibit D3, referred to on page 76 of the printed book, shows the crossing where the accident occurred, looking north on Anderson Avenue.

Defendant's exhibit D2, referred to on page 55 of the printed book, shows the damage to the trolley car which figured in the accident. It will be noticed that the automobile struck the car almost in its center and tore away the running board.

None of the above photographs are material to our argument in this brief, except D2 of the trolley car, showing what part of the trolley car was struck by the automobile.

Respectfully submitted,

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