

NEW JERSEY COURT OF ERRORS AND APPEALS.

WILLIAM J. BURNS,

Defendant in Error,

vs.

DELAWARE AND ATLANTIC TELE-
PHONE AND TELEGRAPH COM-
PANY,

Plaintiff in Error.

OWEN DONOHUE,

Defendant in Error,

vs.

DELAWARE AND ATLANTIC TELE-
PHONE AND TELEGRAPH COM-
PANY,

Plaintiff in Error.

ARGUMENT OF NORMAN GREY,

Counsel for Plaintiff in Error.

These cases, which were tried together before Judge Nixon and a jury, at the Camden Circuit, are suits brought by the defendants in error against the plaintiff

in error, to recover damages for injuries sustained by the defendants in error from electric shocks and burns, which injuries were alleged to have been caused by the negligence of the plaintiff in error.

The jury rendered a verdict and judgments were entered for the plaintiffs below in the sum of two thousand dollars for William J. Burns, and in the sum of three thousand dollars for Owen Donohue, from which judgments these writs of error were taken.

At the trial the evidence showed that the plaintiffs below, at the time they were injured, were engaged in operating reels from which wires were being strung over poles of the defendant company, and that the injuries were caused by one of the wires breaking and thereby coming in contact with a live trolley wire, which was between the place where the reels were located and the end of the wires which were being strung.

The defence was that no negligence on the part of the defendant was shown, and counsel for the defendant company asked for a non-suit, which was refused, and that the jury be instructed to find a verdict for the defendant, which was also refused.

The judgments and verdicts arrived at are illegal and should be set aside and a new trial granted, for the following reasons:

I.

The Court erred in refusing a non-suit (see printed book, page 84), and in refusing to direct a verdict for the defendant (see printed book, page 127), because no negligence on the part of the defendant was shown.

The evidence on which the plaintiffs relied to show negligence consisted of the fact that the defendant had

not supplied to the plaintiffs boards or a platform on which to stand, or rubber gloves, and had not supplied a guard wire to prevent the wires being strung from coming in contact with the trolley wires.

Evidence was admitted, against the objection of the defendant, to show that these were the usual devices employed to protect men while engaged in unreeling wire (see printed book, pages 63, 68, 72, 74 and 81). Evidence on this point was given by Joseph L. Kelley (see printed book, pages 63-68), Thomas F. Lee (see printed book, pages 72-74), and Owen Kernan (see printed book, page 81). Kelley had worked for but two companies and was, therefore, incompetent to testify as to any usual practice. Lee had worked for only one company besides the defendant company, and was likewise incompetent; and Kernan was no more competent, as he had worked for but two companies, besides the defendant company. It was, therefore, error to allow evidence to be given of what had been done by the particular companies for which these men had worked.

Baldwin vs. Atlantic City R. Co., 35 *Vroom*, 232.

Stone Company vs. Combon, 32 *Vroom*, 355.

Atz vs. Manufacturing Co., 30 *Vroom*, 41, 45.

There being no competent evidence of any usual methods of guarding against danger in stringing wires, there was no evidence of negligence in the defendant's failure to supply board or a platform to stand on, rubber gloves or guard wires, and the Court's refusal to so charge was error. (See printed book, pages 133, &c.)

If there was any negligence in not furnishing boards, rubber gloves and guard wires it was the negligence of Jesse Naylor, a co-employee of the plaintiffs, and the defendant is not liable for his negligence. The refusal of

the Court to so charge was error. (See printed book, page 134.)

See

Olsen vs. Nixon, 32 *Vroom*, 673.
Knutter vs. Telephone Co., 52 *Atlantic Reporter*, 567.

These cases hold that if a foreman is engaged in common employment with other servants he is not a vice principal but a co-employee, and for his negligent act the master is not liable.

But the failure to furnish these protections was not the proximate cause of the accident to plaintiffs.

The injury to Burns was caused by his own negligence in allowing the wire he was unreeling to become kinked (see printed book, page 89), thereby causing it to break; and this was especially negligent on his part, because just previous to the accident he had been cautioned to pay strict attention to business and not allow the wire to become kinked (see printed book, pages 86 and 87). Such contributory negligence is an absolute bar to his right of action.

Beach on Negligence, Section 299.

The injury to Donohue was caused by the negligence of Burns, a co-employee, and said Donohue has no cause of action against the defendant.

The rule of law is well established that an employer is not answerable to an employee for the negligence of a co-employee. See

Harrison vs. Central Railroad Co., 31 *N. J. L.*, 293.
Olsen vs. Nixon, 32 *Vroom*, 673.
Knutter vs. Telephone Co., 52 *Atl. Rep.*, 567.

II.

The evidence as to the failure to supply rubber gloves and a guard wire was irrelevant and immaterial to the issue as framed.

The plaintiffs alleged in their declaration (see printed book, pages 3, 4 and 8) "that it was the duty of defendant's agents to use in the prosecution of plaintiffs' said employment boards or a platform for plaintiffs to stand on while stringing wires as aforesaid, yet the defendant's agent carelessly and negligently neglected to use said boards or platform."

The defendant, by its plea of general issue (see printed book, pages 4 and 8), denied that it was negligent in not furnishing said boards or platform; but, as plaintiffs did not allege that failure to use gloves or a guard wire was negligence, no issue was raised as to such failure, and the evidence given on that point was irrelevant, and it was error to admit it.

III.

The liability to the accident which occurred was one of the risks of employment assumed by the plaintiffs, and they have no cause of action for injuries caused by said accident.

The evidence showed that the plaintiffs had both been working for the defendant, erecting telephone lines, for some time—Burns for about three months (see printed book, page 22), and Donohue for about one month (see printed book, page 35)—and were, therefore, familiar with the work; that they both knew that the wires which they

were unreeling crossed a live trolley wire (see printed book, page 87), as they had crossed the trolley track several times that morning and had seen cars running thereon, and that they had been warned by Jesse Naylor, a co-employee, of the danger they were in, and to attend to their business. (See printed book, page 87.)

The danger, being a patent one, and the plaintiffs having been warned against it, they assumed all risks of the employment when they continued in it.

Foley vs. Jersey City Electric Light Co., 54 N. J. L., 412.

Western Union Tel. Co. vs. McMullen, 29 Vroom, 158.

Combon vs. Stone Company, 30 Vroom, 226; 32 Vroom, 353.

Chandler vs. Coast Electric R. Co., 32 Vroom, 381.

Anderson vs. Inland Telephone & Telegraph Co., 7 Amer. Elec. cases, 725.

The Court laid down the rule in the Anderson case as follows: "The employer is not an insurer of the safety and sufficiency of the tools, machinery or appliances furnished to the employee for his use, nor is he a guarantor of the safety of the place where or upon or about which the employee is required to work. The duty cast by law upon the employer is to use ordinary and reasonable care to furnish safe and sufficient tools, machinery and working places. If he has done this he has performed the full measure of his duty. The employee, in order to recover for defects in the appliances or working places of the business, must allege and *prove* that the appliance was defective, or the working place insecure; that the employer had notice or knowledge thereof, or that by the exercise of ordinary and reasonable care he might have

had notice or knowledge; and that the employee did not know the defect and had not equal means of knowing with the employer."

Again, the case of *William vs. D. L. & W. R. R. Co.*, 116 N. Y., page 628, holds, that a servant who enters upon an employment, from its nature hazardous, assumes the usual risks and perils of the service, and of the open, visible structures known to him, or which he must have known, had he exercised ordinary care and observation.

The plaintiffs in this case were both of mature age; they knew the conditions under which they were working and the danger attending an electric shock; and, under the cases cited, they assumed all risks and perils of the employment.

IV.

The Court allowed evidence to be given of what protection the defendant company furnished to its employes after the accident, under circumstances dissimilar to those in issue (see printed book, page 77). Such evidence could have no bearing on the question of defendant's negligence in the present case, and was clearly inadmissible.

But even if the circumstances had been the same after the accident as before, what the company did after an accident to protect its men is not evidence of negligence on its part before said accident.

Baron vs. Reading Iron Company, 51 Atl. Rep., 979.

The refusal of the Court to charge that, as to the plaintiff Burns, there was no proof of loss of earning capacity (see printed book, page 133), was error.

The evidence of Burns (page 20 of printed book) shows that he was making \$2.00 per day at the time of the accident; and that since the accident he has made not less than \$1.98 per day, and as much as \$2.25 per day, and that at the time of the trial he was getting \$2.25 per day, with a prospect of \$2.50 per day (see printed book, page 22). There being no proof of loss of earning capacity, the jury should have been so instructed, and a verdict arrived at without such instruction must be set aside.

Respectfully submitted,

NORMAN GREY,

Attorney for Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

WILLIAM A. J. BURNS, Defendant in Error, vs. DELAWARE AND ATLANTIC TELE- GRAPH AND TELEPHONE COMPANY, Plaintiff in Error.	}	In Tort.	10
	}	On Error to the Court of Errors and Appeals.	

OWEN DONOHUE, Defendant in Error, vs. DELAWARE AND ATLANTIC TELE- GRAPH AND TELEPHONE COMPANY, Plaintiff in Error.	}	In Tort.	
	}	On Error to the Court of Errors and Appeals.	20

BRIEF FOR PLAINTIFFS.

The plaintiffs, on the 30th day of July, 1901, were standing on a wet, marshy, muddy place, reeling wire off a reel upon telephone poles. The wire thus reeled off came in contact with a live trolley wire. They were each terribly burned. They had had no experience in such work and had no knowledge of the danger they were subject to. All the usual devices for their protection were wanting. This is the point of

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negligence. One got a verdict for \$3,000 ; the other for \$2,000. The cases were tried together by agreement.

1. The first assignment relates to the evidence of Kelly, who testified to the necessity of boards to stand on in a wet place (60). The objection was that he was non-expert. He thoroughly qualified himself (56, 57, 60, 61, 63, 67, 68). The Court pronounced him competent (63).

2. The second assignment relates to the same witness
 10 testifying to the use of gloves and protecting wires. The exceptions are on page 68 and 69. The witness being competent, his evidence is good. The ground of the objection was the lack of expert ability in the witness. No other ground is alleged.

In Donohue's case the narr. charges that the defendant "negligently and carelessly failed to protect him" (3, line 14) from the dangers of which he was ignorant and of which they knew. This provides the right to prove the omission by the defendant of ALL the usual
 20 devices against such dangers. The Burns narr. (8) charges only the omission to provide boards or platform. The cases were tried together by agreement. It might be that as to the Burns case, the omission of gloves and a guard wire might be objectionable as a piece of proof. But, if so, the defendant should have stated the ground at the trial, when an amendment could have been asked for. It was waived and cannot be enforced now. If antagonism between probata et allegata was relied upon, it should have been exposed at trial. There were two issues,
 30 two cases ; whereas counsel (68) speaks of "this case", this "issue".

3. The third assignment is to Lee's testimony (73). He had qualified (69, 71). He testified to the necessity of guards and gloves (74, 75) without objection. He is even cross-examined about it on page 76.

4. The fourth assignment is based on exception on page 77. The answer is that defendant introduced the subject on page 76. This gave the right to ask the question objected to on page 77.

5. The fifth assignment rest on exception on page 81. Kernan had qualified (78, 79, 80). The witness testified about boards, gloves and guard wires. The sole ground of the objection was his incompetency as an expert.

6. The sixth assignment is upon the Court's refusal 10
to non-suit (84). The case shows that the plaintiffs were standing on wet ground (16, 30) unreeling wire; that they had had no experience at the business (17, 29); that they had had no instructions or information (17, ~~29~~); that the wires so unreeled passed over a live trolley wire; that they were shocked (59) by electricity passing from the trolley through the wire so unreeled; that they were not supplied with the usual and ordinary means of protection, to wit, with boards to stand on, with rubber gloves or a guard wire; that the day after the accident 20
the defendant supplied these very things (76), (Drake vs. Mount, 4 Vr. 447, holds that instructions to blow a whistle less loudly may be evidence of negligence); and that they should have been supplied with such means of protection. If these facts, not then disputed, justified the inference of negligence on the part of the defendant, the motion was properly denied. Clearly it was the defendant's duty to protect these green and inexperienced boys from danger in no sense obvious or knowable. What the defendant did the day after the accident it 30
should have been the day before. To unreel wire on a wet ground without these various means of protection is to submit an employee to a danger from which the law requires protection. The instruments furnished were totally inadequate.

7. Seventh assignment. Naylor admitted that the work done by the plaintiffs was dangerous (86, 87) and that he had warned them. On page 88 he said to Mr. Grey that he knew no usual method or device for protection under such circumstances. It was thus made right to cross-examine him upon the point. Therefore the exception (90) is worthless.

10 8. The eighth assignment is based on exceptions on pages 94 and 95. They were proper questions because the witness had said in chief examination (88) that he never knew of these usual means of protection. To allow a witness, old in the business, to so state and then dis-allow cross-examination to prove him false would be to bind the plaintiffs hand and foot and deny them the legal means of escape.

20 9. Assignments 9 and 10 relate to a hypothetical question (100, 102). The witness was an expert. The question embodied the plaintiffs' case. It was therefore legally correct. The answer admitted the necessity to use the very means of protection the absence of which injured the plaintiffs.

10. The defense proved the plaintiff's case over again. Therefore a motion to direct could not prevail. The eleventh assignment is not sound.

11. The other assignments (133, 134) are so obviously properly dealt with by the learned trial judge that comment here is unnecessary.

The cases are meritorious and the verdict should stand.

Respectfully submitted,

JOHN W. WESCOTT,

Counsel for Plaintiffs.



NEW JERSEY COURT OF ERRORS AND APPEALS

NEW JERSEY, TO WIT:

State of New Jersey, to our Justices of
our Supreme Court, Greeting:

[SEAL] Because, in the proceedings and also in a
plaint which was in our said Supreme Court
before you, between Owen Donohue, plain- 10
tiff, and Delaware & Atlantic Telephone & Telegraph
Company, defendant, in plea of tort, manifest error does
intervene to the great damage of the said defendant, as by
its complaint we are informed, we being willing that
justice should be done to the parties aforesaid in this
behalf, do command you distinctly and openly, to send
under your seal, the records and proceedings aforesaid,
with all things touching and concerning the same, to our
Court of Errors and Appeals, to the Judges thereof, on
the 23d day of June, nineteen hundred and three, and 20
this writ, and that the records and proceedings aforesaid,
being inspected, we may cause to be further done there-
upon what of right and according to law ought to be
done.

Witness, William J. Magie, our Chancellor and Presi-
dent Judge of our Court of Errors and Appeals, at Tren-
ton, aforesaid, this sixth day of June, nineteen hundred
and three.

S. D. DICKINSON,

NORMAN GREY,

Attorney.

Clerk. 20

RETURN.

The answer of the Justices of the Supreme Court of
the State of New Jersey within named. The record and

proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE [SEAL],
C. J.

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NEW JERSEY SUPREME COURT.

OWEN DONOHUE,

vs.

DELAWARE & ATLANTIC TELE-
PHONE and TELEGRAPH COM-
PANY.

IN TORT.
ON POSTEA.

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JOHN W. WESCOTT,
Attorney.

As yet of the twenty-seventh day of January, A. D.
nineteen hundred and two.

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

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WILLIAM RIKER, JR.,
Clerk.

CAMDEN COUNTY, SS.

The Delaware & Atlantic Telephone and Telegraph Company, the defendant in this suit, was summoned to answer unto Owen Donohue, the plaintiff therein, in an

action of tort; and thereupon the said plaintiff, by John W. Wescott, his attorney, complains for, that heretofore, to wit, on the thirtieth day of July, nineteen hundred and one, at Ocean City, New Jersey, to wit, at Camden City, in said County of Camden, the defendant employed the plaintiff to string telephone wires on its poles in said Ocean City; that the plaintiff had no experience in said business and no knowledge of the dangers connected therewith; that the defendant and its agents knew that the stringing of said wires as aforesaid was dangerous, and likewise knew that the danger thereof was not known by the plaintiff; that the defendant and its agents negligently and carelessly failed to inform the plaintiff of the dangers of the said employment, and negligently and carelessly failed to protect him therefrom; that, while the plaintiff was employed as aforesaid, the defendant's agents carelessly and negligently permitted said telephone wires to come in contact with a live electric wire, and, because of the plaintiff's ignorance thereof and the defendant's agents' negligent omission to inform the plaintiff of the danger of his employment and to protect him therefrom, the plaintiff was shocked and burned by electricity passing through said telephone wires and permanently injured and incapacitated to follow his usual vocation and caused to suffer great pain of body and mind, and to expend large sums of money in his efforts to be cured of his injuries. 10 20

And the plaintiff further complains, that, at the time and place aforesaid, the defendant employed the plaintiff to string telephone wires over its poles; that the plaintiff was ignorant of the dangers connected with said employment and the defendant's agents knew his ignorance thereof; that the defendant's agents failed to inform the plaintiff of the dangers of his employment; that it was the duty of the defendant's agents, to use in the prosecution of the plaintiff's said employment, boards or a platform for the plaintiff to stand on while stringing wires, 30

as aforesaid, that the plaintiff might escape burning and shocking by electricity; yet the defendant's agents negligently and carelessly omitted to use said boards or platform and carelessly and negligently caused the plaintiff to stand in water or a damp place while stringing said telephone wires, and carelessly and negligently, at the same time, caused said telephone wires to come in contact with an electrical current, whereby the plaintiff was shocked and burned by electricity passing through said
 10 telephone wires and permanently injured and incapacitated to follow his usual vocation and caused to suffer great pain of body and mind and to expend large sums of money endeavoring to be cured of his injuries, all to his damage twenty thousand dollars; therefore he brings his suit, etc.

And the said defendant, by Edward A. and William T. Day, its attorneys, comes and defends the wrong and injury, &c., and says that it is not guilty of the said supposed grievances above laid to its charge in the second
 20 count of the said declaration, or any or either or any part thereof, in manner and form as the said plaintiff hath above thereof complained against it, and of this it puts itself upon the country.

And the said plaintiff doth the like.

Therefore let a jury thereupon come before our Chief Justice, or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court, to be holden at Camden, in and for the County of Camden, on the second Tuesday of December, A. D. nineteen hundred and two, by whom, etc., and the same day is given to the
 30 parties aforesaid there, etc.,

And now, at this day, to wit, the second day of June, A. D. nineteen hundred and three, before our said Supreme Court at Trenton, comes the said plaintiff, by his attorney aforesaid, and the Justice before whom, etc., having first sent hither his record, and before him in these words, to wit;

Afterwards, to wit, at a Circuit Court holden at Camden, in and for the County of Camden, before the Honorable Charles G. Garrison, one of the Justices of the Supreme Court of the State of New Jersey, on the twenty-sixth day of March, nineteen hundred and three, and a jury having been waived, according to the form of the statute in such case made and provided, comes as well the said plaintiff as the said defendant, by their attorneys within mentioned in the pleas aforesaid, and the said Justice did thereupon find that the said defendant, the Delaware & Atlantic Telephone and Telegraph Company, is guilty in manner and form as the said Owen Donohue hath, in his declaration, alleged against it, and they assess the damages of the said Owen Donohue, over and above his costs and charges in this behalf expended, at the sum of three thousand dollars, and for those costs and charges, six cents. 10

Therefore it is considered that the said plaintiff do recover against the said defendant his said damages, by the jury in the form aforesaid, found to be the sum of three thousand dollars, and also for his costs and charges aforesaid, by the Court now here adjudged to the said plaintiff, and with his assent, which said damages, costs and charges to the whole amount to 20

Judgment signed the second day of June, A. D. nineteen hundred and three.

WM. S. GUMMERE,

C. J.

I, WILLIAM RIKER, JR., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause, as the same remains of record in my office. 30

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

WILLIAM RIKER, JR., [SEAL]
Clerk.

NEW JERSEY, TO WIT.

State of New Jersey, to our Justices of our Supreme Court, Greeting:

[SEAL] Because, in the proceedings and also in a
 complaint which was in our said Supreme Court
 before you, between William J. A. Burns,

plaintiff, and Delaware & Atlantic Telephone and Tele-
 graph Company, defendant, in plea of tort, manifest error
 doth intervene to the great damage of the said defendant,
 10 as by its complaint we are informed, we being willing
 that justice should be done to the parties aforesaid in this
 behalf, do command you, distinctly and openly, to send
 under your seal the records and proceedings aforesaid,
 with all things touching and concerning the same, to our
 Court of Errors and Appeals, to the Judges thereof, on
 the 23d day of June, nineteen hundred and three, and this
 writ, and that the records and proceedings aforesaid, being
 inspected, we may cause to be further done thereupon
 what of right and according to law ought to be done.

20 Witness, William J. Magie, Chancellor and President
 Judge of our Court of Errors and Appeals, at Trenton.
 aforesaid, this 6th day of June, nineteen hundred and
 three.

S. D. DICKINSON,

NORMAN GREY,
 Attorney.

Clerk.

RETURN.

30 The answer of the Justices of the Supreme Court of
 the State of New Jersey within named. The record and
 proceedings whereof mention is within made, with all
 things touching and concerning the same, we do certify
 to the Court of Errors and Appeals of said State, in a
 certain schedule to this writ annexed, as within we are
 commanded.

WM. S. GUMMERE [SEAL],
 C. J.

NEW JERSEY SUPREME COURT.

WILLIAM J. A. BURNS,

vs.

DELAWARE & ATLANTIC TELE-
PHONE and TELEGRAPH COM-
PANY.

IN TORT.
ON POSTEA.

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JOHN W. WESCOTT,
Attorney.

As yet of the seventh day of February, A. D. nineteen
hundred and two.

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

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WILLIAM RIKER, JR.,
Clerk.

CAMDEN COUNTY, SS.

The Delaware and Atlantic Telephone and Telegraph Company, the defendant in this suit, was summoned to answer unto William J. A. Burns, the plaintiff therein, in an action in tort; and thereupon the said plaintiff by John W. Wescott, his attorney, complains for that herefore, to wit, on the thirtieth day of July, nineteen hundred and one, at Ocean City, New Jersey, to wit, at Camden city, in said county of Camden, the defendant employed the plaintiff to string telephone wires over its poles; that the plaintiff was ignorant of the dangers con-

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10 nected with said employment and the defendant's agents knew him ignorant thereof; that the defendant's agents failed to inform the plaintiff of the dangers of his employment; that it was the duty of the defendant's agents to use in the prosecution of the plaintiff's said employment boards or a platform for the plaintiff to stand on while stringing wires as aforesaid, that the plaintiff might escape burning and shocking by electricity; yet the defendant's agents negligently and carelessly omitted to use said boards or platform and carelessly and negligently caused the plaintiff to stand in water or a damp place, while stringing said telephone wires, and carelessly and negligently, at the same time, caused said telephone wires to come in contact with an electric current, whereby the plaintiff was shocked and burned by electricity passing through said telephone wires and permanently injured and incapacitated to follow his usual vocation and caused to suffer great pain of body and mind and to expend large sums of money endeavoring to be cured of his said injuries, all to his damage twenty thousand dollars; therefore he brings his suit, etc.

20 And the said defendant, by Edward A. and William T. Day, its attorneys, comes and defends the wrong and injury, &c., and says that it is not guilty of the said supposed grievances above laid to its charge in the second count of the said declaration, or any or either or any part thereof, in manner and form as the said plaintiff hath above thereof complained against it, and of this it puts itself upon the country.

And the said plaintiff doth the like.

30 Therefore let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Camden, in and for the county of Camden, on the second Tuesday in December, A. D. nineteen hundred and two, by whom etc., and the same day is given to the parties aforesaid there, etc.

And now at this day, to wit, the second day of June,

A. D. one thousand nine hundred and three, before our said Supreme Court at Trenton, comes the said plaintiff, by his attorney aforesaid, and the justice before whom, etc., having first sent hither, his record had before him in these words, to wit:

Afterwards, to wit, at a Circuit Court holden at Camden, in and for the county of Camden, before the Honorable Charles G. Garrison, one of the Justices of the Supreme Court of the State of New Jersey, on the twenty-sixth day of March, nineteen hundred and three, and a jury having been waived, according to the form of the statute in such case made and provided, comes as well the said plaintiff as the said defendant, by their attorneys within mentioned in the pleas aforesaid, and the said Justice did thereupon find that the said defendant, the Delaware and Atlantic Telephone and Telegraph Company, is guilty of negligence in manner and form as the said William J. A. Burns hath in his said declaration alleged against it, and they assess the damages of the said William J. A. Burns, over and above his costs and charges in this behalf expended, at the sum of two thousand dollars, and for those costs and charges, six cents. 10 20

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

Judgment signed the second day of June, A. D. nineteen hundred and three. 30

WILLIAM S. GUMMERE,

C. J.

I, WILLIAM RIKER, JR., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above

stated cause, as the same remains of record in my office.

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

WM. RIKER, Jr.,
Clerk.

10 Afterwards, to wit, on the twenty-second day of July, in the year of our Lord, nineteen hundred and three, before the Judges of the said Court of Errors and Appeals in the last resort in all causes, at Trenton, comes the said Delaware and Atlantic Telephone and Telegraph Company, by Norman Grey, its attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said Bill of Exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error in these respects, to wit:

20 First. Because the trial court admitted in evidence against the objection of the plaintiff in error, the testimony of Joseph L. Kelly as to what is the usual and necessary device used to stand on when men are reeling off, and as to what was done for their protection.

Second. Because the trial court allowed Joseph L. Kelly to testify as to what is the effect of rubber gloves to handle reel wires; and what is the use or purpose of putting protected wires above a live wire, which testimony was irrelevant and immaterial to the issue.

30 Third. Because the trial court admitted in evidence, against the objection of the plaintiff in error, the testimony of Thomas F. Lee as to what is the usual thing to use when men are unreeling wire and standing on damp ground.

Fourth. Because the trial court admitted evidence, against the objection of the plaintiff in error, that the plaintiff in error furnished rubber gloves and board for protection after the accident.

Fifth. Because the trial court, against the objection of the plaintiff in error, permitted Owen Kernan to testify as to what are the usual appliances for protecting men who are handling wires at a reel, witness not being competent to so testify.

Sixth. Because the trial court refused to grant the motion of the plaintiff in error for a non-suit.

Seventh. Because the trial court permitted Jesse Naylor to testify on cross-examination, against the objection of the plaintiff in error, what men usually have to protect themselves when they are working at a reel in a damp place, which is immaterial and irrelevant to the issue. 10

Eighth. Because the trial court permitted Jesse Naylor to testify on cross-examination, against the objection of the plaintiff in error, that the plaintiff in error furnished protection to its men after the accident under circumstances dissimilar to those in issue and also refused to strike out such testimony, which was immaterial and irrelevant.

Ninth. Because the trial court admitted in evidence, against the objection of the plaintiff in error, the answer to a hypothetical question which did not include all the facts. 20

Tenth. Because the trial court admitted in evidence against the objection of the plaintiff in error, as to what could have been done, in the hypothetical case assumed, to prevent a dead wire coming in contact with a live one, which is immaterial and irrelevant to the issue.

Eleventh. Because the trial court refused to grant the motion, of the plaintiff in error, that the court direct a verdict for the defendant below. 30

Twelfth. Because the trial court refused to charge, as requested by the plaintiff in error, "that as to Burns, no proof of loss of earning capacity has been shown."

Thirteenth. Because the trial court refused to charge, as requested by the plaintiff in error, "that there was no proof of any usual methods of guarding wires or working wires, under the circumstances of this case."

Fourteenth. Because the trial court refused to charge, as requested by the plaintiff in error, "that it was no portion of any duty of the plaintiff in error to supply gloves and boards or a platform under the circumstances in this case."

10 Fifteenth. Because the trial court refused to charge, as requested by the plaintiff in error, "that if the jury believes defendants in error or either of them, were warned of danger and continued in the employment, they assumed the risk, and the verdict must be for the plaintiff in error."

Sixteenth. Because the trial court refused to charge, as requested by the plaintiff in error, "that any neglect of duty to supply appliances, or gloves and boards, was negligence of Naylor, a co-employee, and the company is not liable."

Seventeenth. Because the said proceedings are in sundry other respects irregular, illegal and void.

20 Therefore, the said Delaware and Atlantic Telephone and Telegraph Company prays that the judgment aforesaid, by reason of the aforesaid errors and of other errors appearing in the record and proceedings aforesaid, be, as to William J. A. Burns and as to Owen Donohue, reversed, annulled and for nothing holden, and that the said Delaware and Atlantic Telephone and Telegraph Company may be restored to all things it has lost on occasion of the said judgment, etc.

NORMAN GREY,

Attorney for and of Counsel with Defendant,
Plaintiff in Error.

And hereupon, afterwards, to wit, on the tenth day of August, nineteen hundred and three, the said William J. A. Burns and Owen Donohue, by John W. Wescott, their attorney, comes into court and says, that there is no error either in the record and proceeding aforesaid, or in giving judgment aforesaid, and they pray here that the Court here, may proceed to examine as well the records and proceedings aforesaid, as the matters aforesaid, assigned in error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed. 10

JOHN W. WESCOTT,
Attorney for and of Counsel with Plaintiffs,
Defendants in Error.

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30

NEW JERSEY SUPREME COURT.

DECEMBER TERM, 1902.

WILLIAM J. A. BURNS,

vs.

10 DELAWARE & ATLANTIC TELE-
PHONE and TELEGRAPH COM-
PANY. IN TORT.

OWEN DONOHUE,

vs.

20 DELAWARE & ATLANTIC TELE-
PHONE and TELEGRAPH COM-
PANY. IN TORT.

APPEARANCES:

For the Plaintiffs—JOHN W. WESCOTT, ESQ.

For the Defendants—NORMAN GREY, ESQ.

Before NIXON, J., and a Jury.

30

WILLIAM J. A. BURNS, sworn.

By Judge Wescott:

Ques. Where do you live, Mr. Burns?

Ans. 2148 Auburn street, in the city.

Ques. How old are you?

Ans. I am going on twenty-two.

Ques. On the 30th of July, 1901, did you work for the Delaware & Atlantic Telephone and Telegraph Company?

Ans. Yes, sir.

Ques. Where were you working for them?

Ans. Ocean City.

Ques. Where?

Ans. Ocean City.

Ques. In Cape May County, New Jersey?

10

Ans. Cape May County, New Jersey.

Ques. Did you get hurt on that day, burned?

Ans. Yes, sir.

Ques. Now, at the time you got burned, what were you doing?

Ans. Why, unreeling wire.

Ques. Will you explain, in your own way, just exactly what that was?

Ans. Yes, sir.

Ques. No, sit down.

20

Ans. We was unreeling wire; that is, a horse pulled the wire and we tended the reels.

Ques. What are those reels?

Ans. Why, they are round, kind of a round concern that has the wire over them.

Ques. Wire rolled around them?

Ans. Wire rolled around them; and we left that wire out as the horse pulled it.

Ques. How would you let the wire out; did you handle it?

30

Ans. No, sir; just—well, we handled the wire, guided it; guided it with iron spokes on the wheel; guided it so it wouldn't run out so fast.

Ques. Who was with you doing this work at the time you got hurt?

Ans. A man by the name of Owen Donohue, and Al Duffield.

Ques. Now, who was helping unreel the wire?

Ans. Why, there was four of us there; I don't know the other fellow's name; he lives away up in Williamstown somewhere.

Ques. At the time the accident happened, who was unreeling the wire?

Ans. Why, there was Donohue and Duffield and I and Nelson.

Ques. All working at the same time?

10 Ans. And Tom McCrane.

Ques. Where had you your hands at the time you were hurt, on what part of the machine?

Ans. I had my hands on the iron rod, the iron bolt.

Ques. Did you see where the other men had their hands at the time?

Ans. No, sir; I did not notice where they had their hands.

Ques. You had your hands on an iron bolt which was a part of the reel?

20 Ans. A part of the reel; yes, sir.

Ques. Now, how were you dressed on that occasion?

Ans. I had a pair of overalls and jumper on and an undershirt and drawers.

Ques. Were your hands bare?

Ans. Yes, sir.

Ques. What were you standing on?

Ans. I was standing on wet ground, mud.

Ques. Was there water there?

Ans. Yes, sir; there was water there. The water had just went, went out about an hour ago.

30 Ques. What do you mean by that?

Ans. The water comes in for a certain time in the day, just like the ocean over here and the bay here; the bay over there and the ocean here (indicating) and at a certain time in the day the water comes in there.

Ques. You mean the tide?

Ans. The tide raises up to a height of two or three feet, maybe, at times.

Ques. And you were standing on that ground, were you?

Ans. Yes, sir.

Ques. Well, while you were doing this work, had your hand on this iron rod, what happened to you?

Ans. I received a shock of electricity.

Ques. Did you know at the time——

Ans. No, I felt it; that is all I know until I woke up the following day in the hospital.

Ques. Now, at the time you were doing this work, did you know of any danger of any sort? 10

Ans. No, sir.

Ques. Had anybody instructed you?

Ans. No, sir.

Ques. Given you any information at all about it?

Ans. No, sir.

Ques. Had you had any experience in doing this sort of work before?

Ans. No, sir; that was the first experience I had.

Ques. And none of the officers of this company gave you any instructions or information? 20

Ans. No, sir.

Ques. Well, you woke up in the hospital?

Ans. Yes, sir.

Ques. What hospital were you in?

Ans. The Ocean City Sanitarium. There is a Sanitarium down at Ocean City.

Ques. When you woke up, what did you find? What condition were you in?

Ans. Why, of course, I didn't feel nothing that day, but I was all tied up in bandages, and they put an ice bag on my head, and somebody else fanning me and somebody else shoving ice in my mouth. 30

Ques. How long did you stay in that hospital?

Ans. Eight weeks, going on nine, about eight weeks.

Ques. Well, what was the first you knew of suffering pain?

Ans. Why, the next day.

Ques. And where was this pain?

Ans. Why, all over me.

Ques. Did you find out what was the matter with yourself then?

Ans. Of course, I knew the next day, that day after I woke up, what was the matter with me.

Ques. Was the pain severe?

Ans. Yes, sir, very severe. I could hardly lay in bed sometimes.

10 Ques. Now, how many places did you get burned in?

Ans. I got burned in thirty places.

Ques. Are there any scars left on your body?

Ans. Yes, sir; there is twenty scars, twenty-six.

Ques. When did you get out again and about after you left the hospital?

Ans. Why, I got a little work to do in the office, in the Bell Telephone Company's office, a little light work to do.

20 Ques. How long was that after you had the accident?

Ans. That was a couple of days. After the accident?

Ques. A couple of days after you got out of the hospital?

Ans. After I got out of the hospital.

Ques. What has been your experience with reference to these scars since?

Ans. Why, the experience is that I don't feel the same since, and that I suffer with an awful itching.

Ques. Where do you itch?

30 Ans. Why, on the burns; the burns is always itching. In the left arm here, when I lift it up, it pains me, and when I go to lift anything with it, it hurts me, too; and I have an awful pain across the back whenever I bend to do anything; it pains me right across the back.

Ques. Where is the pain located when you undertake to work?

Ans. Runs right from here up the arm here (indicat-

ing). Then the pain runs right across the back here, across the shoulders.

Ques. Where those scars are?

Ans. Yes, sir.

Ques. Is the pain more pronounced one time than another?

Ans. Well, sometimes it is.

Ques. Under what circumstances?

Ans. That is, when I work a little harder than I usually do.

Ques. Have you had to change your clothing in any way, your working apparel, the use of any part of your clothing, to accommodate these burns?

10

Ans. Yes, sir; I can't wear suspenders no more and can't wear any rough shirts.

Ques. What effect, if any, have you noticed of these injuries upon your ability to sleep?

Ans. Well, going to bed, especially a warm night, they itch so bad I can't get asleep for a while; I have to rub them and put vaseline on every night before I go to bed.

20

Ques. Do they wake you up any time at nights itching and burning?

Ans. Not here of late they haven't, but they have been doing it, waking me up.

Ques. Now, are you able to do the same sort of work that you did before?

Ans. No, sir; I have had a job, several jobs, but I had to give them up, couldn't stand it.

Ques. Why?

Ans. Because my back would not leave me dig any holes any more, and I couldn't raise any poles; wasn't strong enough.

30

Ques. Have you any trade?

Ans. No, sir.

Ques. Are you able to make as much money by hard work now as you were before you were hurt?

Ans. No, sir; I am not.

Ques. How?

Ans. No, sir.

Ques. Can you give the jury an idea of about how much you made a day before you were hurt? I don't mean any particular job, but as an average?

Ans. Before I was hurt?

Ques. Yes, before you were hurt?

10 Ans. Well, I made \$2 a day at the time I was working for them. Then, after I got discharged from them I had jobs other places, where I made, maybe, \$1.98; that is the highest I made. Then I got another job, made \$2.25. That is the easiest job I had yet.

Ques. What was that job at?

Ans. Railroading.

Ques. Doing what?

Ans. Passing signals.

Ques. But you are not able to do heavy work, as you were before?

Ans. No, sir.

20 Ques. Have you noticed any effect upon your head?

Ans. Well, I have slight headaches once in a while in my head.

Ques. Did you have them before you were hurt?

Ans. No, sir; never had a headache before.

Ques. Well, when you say slight headaches, what do you mean by that?

Ans. Why, a certain pain, right from the back of my head here (indicating) to the forehead, when I go to bend down at any time.

30 Ques. Have you noticed any effect upon your vision, ability to see?

Ans. I don't understand that, Judge.

Ques. Your ability to see things; is your eyesight as good as it was before?

Ans. Well, my eyesight is pretty fair now.

Ques. After you were burned, did you notice any difficulty with your eyesight?

Ans. Yes; these things came glimmering in my eyes, glimmered right before my eyes.

Ques. Were your hands burned any?

Ans. Yes, sir.

Ques. Where?

Ans. All my fingers were burned except these two (indicating).

By Mr. Grey:

Ques. Finger and thumb, do you mean?

10

Ans. Finger and thumb.

By Mr. Wescott:

Ques. Take your little finger on your left hand, was that burned any?

Ans. Yes, sir.

Ques. Will you show the jury the effect upon that finger. No, go to the jury. Now, move that finger.

20

(Witness complies.)

Mr. Wescott: If your Honor please, I would like to have the jury be permitted to see both of these young men; I want them to see them stripped.

The Court: Very well.

Cross-examination.

30

By Mr. Grey:

Ques. Are you just as sick now as you were when you left the hospital?

Ans. Well, I ain't as sick; no, sir.

Ques. When did you leave the hospital, do you remember?

Ans. Around September 29th or 30th.

Ques. September 30th; what year was that?

Ans. Nineteen hundred and——

Ques. And one; the same year?

Ans. Yes, the same year.

Ques. Where did you feel the most sick when you left the hospital?

Ans. The most sick? Why, I felt it in my head.

Ques. Where were you worst hurt?

10 Ans. Why, in the head; that is, after I left it was.

Ques. Did you have a headache?

Ans. Yes, sir.

Ques. And how are you as to that now?

Ans. I get headaches, pain through my head, every once in a while; that is, when I am bending.

Ques. Where are you working now?

Ans. I am working on the Philadelphia & Reading Railroad.

Ques. What wages do you get?

20 Ans. \$2.50; \$2.25 I get. \$2.50 is the wages; I only get \$2.25, a green man.

Ques. How long have you been working for them?

Ans. About three months.

Ques. Had you ever been on the ground before when you were working that 30th of July, 1901?

Ans. The ground where I was working?

Ques. Yes, ever been there before?

Ans. No, sir.

Ques. The first time you were ever on that piece of ground, is it?

30 Ans. Well, I was down there putting the poles in, that is all, but no wire.

Ques. When did you first go on that part of the ground to set poles or for any other purpose,— I don't care what it was for— but when did you first go there?

Ans. The first time I went there was when I went down for the Bell Telephone Company.

Ques. You mean the Delaware & Atlantic?

Ans. The Delaware & Atlantic.

Ques. When was that?

Ans. That was in June, I think.

Ques. June, the same year?

Ans. Yes, sir.

Ques. Who were you working under then?

Ans. Working under Jesse Naylor.

Ques. How long did you work setting poles?

Ans. Why, about two or three— About two months, really, working for them about two months. **10**

Ques. Had you worked setting poles before that time for other people?

Ans. No, sir.

Ques. This was your first experience in setting poles?

Ans. Yes, sir.

Ques. You set these very poles on which the wires were afterward strung where the accident happened?

Ans. Yes, sir.

Ques. How near was the reel on which you were working to the nearest pole? **20**

Ans. To the nearest pole?

Ques. Yes.

Ans. Why, I just don't remember how near that pole was from the reels; I think it must have been about a pole length anyway.

Ques. A pole length?

Ans. A pole length anyway.

Ques. From where you were standing to the pole in front of you?

Ans. Yes, sir; a pole length. **30**

Ques. What business had you been in? What work had you done before this summer of 1901?

Ans. I used to work at the leather business, and used to work at the oilcloth business.

Ques. What had you been doing that Spring of 1901?

Ans. That Spring I was working in the leather business.

Ques. What wages did you get?

Ans. Got \$1.50 a day.

Ques. You say you are 22 now?

Ans. 22 nearly; going on 22.

Ques. You were about 19 then?

Ans. 19 then.

Ques. Where did you learn how to work a reel?

Ans. Why, Jess Naylor told me.

Ques. Jess Naylor told you how to work it?

10 Ans. Yes, that is, to run the reel; that is, to run the wire off.

Ques. Did you work reels before without running the wire off?

Ans. Yes, we used to hold them in our hands sometimes.

Ques. How long had you been working on this particular reel when the accident happened?

Ans. Well, I wasn't there only about five minutes.

Ques. What time of day was it?

20 Ans. It was about nine o'clock in the morning, around nine o'clock in the morning.

Ques. Did you start in to work at nine o'clock?

Ans. No, we start in at seven o'clock in the morning, but I was not working on that particular job on the wire; I was up further behind the team. I was sent for by Jess Naylor to come down and help run the reels. I was down there about five minutes before the accident happened.

Ques. How near were the horses to where the reels were?

30 Ans. Well, I couldn't say that, but from what I heard afterward that they were up——

Ques. No, never mind what you heard afterward?

Ans. I don't know where they was.

Ques. You went from the horses to the reels that very morning?

Ans. From the horses to the reels; yes, sir.

Ques. You don't know how far it was?

Ans. No, sir.

Ques. How did they get you; did they call to you to come back?

Ans. Sent a man up there to me.

Ques. What man did they send?

Ans. I think it was Thomas Lee, if I am not mistaken; I ain't sure now, I don't remember the fellow that came up to me.

Ques. Did you start your reel with a full coil of wire on it? Was the reel full of wire?

Ans. Yes, sir.

10

Ques. And how much had run off at the time the accident had occurred?

Ans. Why, about ten poles, I guess.

Ques. Was the reel nearly empty, or half empty, or how?

Ans. No, it was a full reel.

Ques. Still full?

Ans. Well, there was ten poles taken off it; that is about a quarter of a mile, I guess, taken a quarter of a mile.

20

Ques. You had run off a quarter of a mile then?

Ans. A quarter of a mile of wire.

Ques. Did you have any difficulty at all running your wire?

Ans. No, sir; ran as nice as ever it did.

Ques. And when you were hurt, at least, the last thing you knew, the reel was working all right and the wire was running off all right?

Ans. The last thing I knew? The last thing I knew the wire was running off all right off of my reel.

30

Ques. Any other reel in trouble?

Ans. Any other reel? Well, there was another reel in trouble, yes, Donohue's reel. One of the bolts flew out of it.

Ques. Did you see the bolt fly out?

Ans. No, it didn't fly out, but got loose and flew around; that made a quick jump up.

Ques. Did you see it?

Ans. Yes, sir. Naylor told me to jump away, and I jumped away, and then went and got a monkey wrench and fixed it.

Ques. What part of the reel is that?

Ans. That is where it holds the wire at. The wire goes around the bolt.

Ques. How many bolts are there in a reel?

Ans. Four.

10 Ques. A reel is something like a big spool, isn't it?

Ans. No, it ain't a spool, kind of a round concern, a reel, whatever it is. These iron bolts are put on, and the wire wrapped right inside the iron bolts.

Ques. Was Donohue working near you?

Ans. Yes, sir.

Ques. Right next to you?

Ans. Yes, sir.

Ques. How many wires were there there?

Ans. Why, there was ten.

20 Ques. Did you ever work for any telephone company before that, June, 1901?

Ans. No, sir.

Ques. Anywhere?

Ans. No, sir.

Ques. In describing how you were dressed that morning, you did not say anything about what you had on your feet; were you barefoot?

Ans. I had shoes on.

Ques. Was there any grass on that ground at all?

Ans. Yes, sir; there was grass on that ground.

30 Ques. High grass?

Ans. No, just kind of low grass. I don't just remember how high the grass was then.

Ques. Any trees in the immediate neighborhood?

Ans. Yes, sir; there was trees; there was a whole bunch of trees right before me in the other part where the wire was going.

Ques. You say that the tide had just run off of that ground?

Ans. Yes, sir; runs off there in the morning; I don't remember what time it ran off.

Ques. How do you know it ran off?

Ans. I know it ran off. Every once in a while in the day time there it runs in and runs out.

Ques. But you don't know what happened that morning before you got there, do you?

Ans. No, I don't know what happened that morning before I got there, but the ground was wet, damp; there was water there, let me know it all ran out. 10

By Mr. Wescott:

Ques. I want to ask you about your weight; have you lost any weight since you got these burns?

Ans. Yes, sir; I used to weigh 160 when I started; at least, before I got burnt; now I only weigh 140 to 144.

By Mr. Grey: 20

Ques. How soon before you were hurt did you get weighed?

Ans. Before I was hurt, I used to have a habit generally of weighing myself every once in a while; every time I came past a scale.

Ques. How long before that time had you happened to go past a scale, do you remember?

Ans. Before I got hurt?

Ques. Yes. 30

Ans. Well, I don't just remember now; there was a scale some place there I weighed myself; I don't just know where it is.

Ques. When was the last time you got weighed?

Ans. The last time I got weighed, I got weighed here day before yesterday.

Ques. On purpose for this trial?

Ans. No, not on purpose for this.

Ques. What did you weigh day before yesterday?

Ans. Day before yesterday, 144.

By Mr. Wescott:

Ques. With your clothes on?

Ans. Clothes on, all my clothes on.

10 Ques. Have you weighed yourself between the time you weighed 160 and day before yesterday?

Ans. Yes, sir.

Ques. What did you weigh?

Ans. Weighed 140, 135.

OWEN DONOHUE, sworn.

20 By Mr. Wescott:

Ques. Where do you live?

Ans. I live 1118 Roy street, Rising Sun, Philadelphia.

Ques. What is your age?

Ans. I will be 25 the last day of August, this year.

Ques. Have you any trade?

Ans. No, sir.

Ques. How long have you been in this country?

Ans. I will be three years here next Decoration Day.

30 Ques. Now, on the 30th of July, 1901, were you working for the Delaware & Atlantic Telephone and Telegraph Company at Ocean City, Cape May County?

Ans. Yes, sir.

Ques. What were you doing there on that day?

Ans. That day? Well, in the morning I got out with the gang, went out 7 o'clock in the morning. We all went down with the wagon together. I had been up,

helping them to clear along there where there was a lot of trees there that morning.

Ques. I don't care about that; did you unreel wire that day?

Ans. Yes, sir; I was unreeling wire that day. I was about ten minutes there. I was called down where they were, where the wire was about ten minutes.

Ques. Had you ever done that work before?

Ans. No, sir; that was the first experience I ever had unreeling wire.

Ques. Did anybody ever tell you about any danger connected with it? **10**

Ans. No, sir; I never knowed the first thing about it.

Ques. Did you know there was any danger about it?

Ans. No, sir; if I had, I wouldn't have done what I done?

Ques. What say?

Ans. If I had, I wouldn't have went to work there that morning. **20**

Ques. What were you doing when you got hurt?

Ans. I was uncoiling wire off a reel.

Ques. What were you wearing that day?

Ans. That day? Well, I had a light pair of shoes on, and I had overalls and a jumper on and a light shirt.

Ques. Anything on your hands?

Ans. No, sir.

Ques. What were your hands on when you got hurt?

Ans. My hands? Well, these pins that sticks up out of the wheel, you put your hand on to keep the wire from going around too fast. **30**

Ques. Iron spokes that stick up?

Ans. Yes, sir.

Ques. And as the wire is going off from the reel, you take hold of these spokes to keep it from going too fast?

Ans. Yes, sir; take your hand and keep it from going around too fast and getting caught.

Ques. What were you standing on?

Ans. I was standing on the wet ground.

Ques. What kind of ground was it?

Ans. It was wet, you know; the tide was up; the tide came in generally there, I guess; the tide had gone out. It was wet, just the same as mud.

Ques. I didn't hear you?

Ans. It was wet ground; it was mud, like.

Ques. Wet muddy ground?

10 Ans. Yes, sir.

Ques. Do you know when you got hurt?

Ans. No, sir; I just remember getting the shock, and I remember giving one holler and I heard the other fellows give a holler when they seen me; that is the last I knew.

Ques. You gave one holler and heard the other fellows give a holler, and that is the last you knew?

Ans. Yes, sir.

Ques. When did you know anything next?

20 Ans. When I knowed anything next, I was in the hospital.

Ques. Whereabout?

Ans. Ocean City Sanitarium, sir.

Ques. How long after you were hurt did you know anything?

Ans. It was that afternoon, I guess, somewhere, as near as I can tell; it must have been somewhere between two and three o'clock. I couldn't tell right; I don't remember.

30 Ques. Well, when you came to, did you have any pain?

Ans. Yes, sir; suffering very great pain.

Ques. Where was that pain?

Ans. It was all over my body; I couldn't tell where it was; I was on fire. I didn't know what happened; the electricity was all through my hands. I was holler-ing when the nurse woke me up with ice water, and I stuck my hands in the cold ice water to keep the electricity out of the nails of my fingers.

Ques. Did you suffer much?

Ans. Yes, sir.

Ques. How long were you in the hospital?

Ans. I was in the hospital about sixteen weeks.

Ques. Sixteen weeks?

Ans. Yes, sir.

Ques. When you got out of the hospital, where did you go?

Ans. I came up to the city here and went to the Bell Telephone office, 17th and Filbert.

10

Ques. Did you go to work?

Ans. No, sir.

Ques. Were you in any other hospital than the one down there.

Ans. Yes, sir; when I came up Mr. Ewen took me down to the University hospital, took me down there.

Ques. How long were you in there?

Ans. I wasn't down there; I used to go there. I guess I went there for a couple of months, back and forth; used to go there every day.

Ques. What did they do to you there?

20

Ans. Never done nothing for me at all; I might as well have gone to a place where there was no doctors at all. I used to go in there, and they would wrap a little bandage with a little dry powder on it, and before I would be out of the gate the bandage would be off again. When I was down at the hospital, they used to use massage, used to rub my arm; that was what my arm needed; I told them so; the bandage didn't do my arm no good; the bandage would fall right off.

Ques. How many places were you burned in?

30

Ans. My arm was burned all over.

Ques. How many places besides your arm?

Ans. I was burned in three places, on my breast and one burn on the little finger.

Ques. Now, from that time on, have these burns hurt you any?

Ans. Yes, sir.

Ques. Explain how they hurt you?

Ans. Well, I haven't got the use of my right arm; you may say I haven't got the use of it at all, hardly.

Ques. In what other way do they hurt you?

Ans. Well, I suffer from a headache all the time.

Ques. Did you have a headache before you were burned?

Ans. No, sir; I have never been sick; never been under the doctor's care before.

10 Ques. Do you have any itching or burning?

Ans. Yes, sir; itching all the time; my arm is sore all the time. I have to rub vaseline on it, and my arm gets stiff.

Ques. Have you as much strength in that arm as you had before?

Ans. No, sir; the skin keeps scaling off my arm where the muscle is all, all the time.

Ques. What did you make about, on an average, at the time you got hurt?

Ans. Well, I used to make \$2 a day.

20 Ques. Are you able to do the same work now, or hard work?

Ans. No, sir.

Ques. Have you made as much money since?

(Objected to.)

Ans. No, sir.

Ques. What do you make now?

Ans. Well, I make \$1.50 a day; that is all.

30 Ques. What do you do?

Ans. Well, I have been working with the Union Traction Company. I ain't working nowhere now.

Ques. Out of a job now?

Ans. Yes, I am out of a job, not working anywhere, now; used to work at the repair shop, Eighth and Dauphin, on the car-barn.

Ques. Do these burns disturb your sleep any?

Ans. Well, no; except in the hot weather, in the summer time; it got so I could not sleep in the night.

Ques. What did you weigh before you were hurt?

Ans. What did I weigh? Well, I used to weigh 174 pounds.

Ques. What do you weigh now?

Ans. I weigh 152.

Cross-examination.

10

By Mr. Grey:

Ques. You used to weigh a hundred and what?

Ans. 174 pounds.

Ques. When did you weigh that?

Ans. Before I got hurt.

Ques. How long before?

Ans. Well, that was generally my weight.

Ques. You always weighed that?

Ans. Yes, always weighed that, ever since I was about 20

21.

Ques. Do you know at all how long before you were hurt you were weighed, a year or a month, or two years?

Ans. No, sir; I weighed myself, I guess, pretty near every couple of weeks; I remember weighing myself down at Ocean City.

Ques. And you weighed 174. And when were you weighed last?

Ans. I was weighed yesterday.

Ques. Yesterday?

30

Ans. Yes, sir.

Ques. What kind of scales were they?

Ans. One of those scales you drop a cent in.

Ques. The same kind of a scale you weighed 174 on?

Ans. Yes, sir.

Ques. But not the same scales?

Ans. No, sir.

Ques. Did you get weighed between the time that you were hurt and yesterday?

Ans. Yes, sir.

Ques. What did you weigh?

Ans. What did I weigh? I used to weigh around 150 pounds; 152 or 153 pounds.

Ques. Did you ever weigh any less than 152?

Ans. No, sir.

10 Ques. Did you ever weigh any more?

Ans. Yes, sir; I weighed 174.

Ques. I mean, since you were hurt?

Ans. No, sir.

Ques. You always weighed 152 since you were hurt? Where did you work last?

Ans. Where did I work last? With the Union Traction Company in Philadelphia.

Ques. How long ago was that?

Ans. How long ago was that? I have been working there up to last week.

20 Ques. What did you get a day?

Ans. \$1.50.

Ques. Were you paid by the day or hour?

Ans. I was paid by the hour.

Ques. How much an hour?

Ans. Supposed to make nine hours for a day's work; 16 7-10 cents an hour.

Ques. What kind of work did you do?

Ans. Used to work in the repair shop, fixing up cars.

Ques. How long did you work there?

30 Ans. I worked there since last August.

Ques. What did you get when you first started?

Ans. I got the same wages, 16 7-10 cents per hour.

Ques. When did you go into the employ of the telephone company?

Ans. When did I go? I went in July.

Ques. What time in July?

Ans. As near as I can tell, about the 8th of July.

Ques. Some time after the 4th?

Ans. Yes, sir.

Ques. Where did you work before that?

Ans. I used to work in Dialogue's ship-yard.

Ques. What did you get there?

Ans. What did I get there? I used to make \$1.50 a day. I only worked there a couple of weeks.

Ques. Where did you work before that?

Ans. I worked out on a farm out to Merchantville, 10 driving a team.

Ques. What did you make there?

Ans. I was paid by the month.

Ques. How much did you get a month?

Ans. I got \$18 a month and my board.

Ques. When you started in with the telephone company on the 8th of July, 1901, what did you do?

Ans. What did I do? A ground man, worked on the ground.

Ques. What is that?

Ans. That is a man supposed to do the work on the ground. I didn't do no work on the poles. 20

Ques. What kind of work did you do on the ground? We don't know; we don't know much about that kind of thing, and would like to hear about it. What did you do?

Ans. Well, packing poles, digging holes and such things as that; laboring work on the ground.

Ques. Did you work on the poles that the wires were being strung on at the time you were hurt?

Ans. No, sir; I never worked on the poles; I worked 30 on the wires.

Ques. Well, you worked on the poles that you were putting up on the ground?

Ans. Yes sir; but not on them poles. Those poles were up there before.

Ques. Up before you got there?

Ans. Yes, sir.

Ques. Did you ever do any work on the reels?

Ans. No, sir; not until that morning.

Ques. That was the first time you ever saw a reel?

Ans. That was the first time I ever seen them working them until that morning.

Ques. You mean the first time you ever worked on them?

Ans. Yes, sir; or the first time I ever seen them worked.

10 Ques. Weren't the reels there before that morning?

Ans. Well, may have set there that evening, but I never seen them worked on until that.

Ques. Do you say these reels were brought there the evening before you were hurt?

Ans. Yes, sir.

Ques. Did you see them brought there?

Ans. Yes, sir; I seen them brought there.

Ques. Who brought them there?

Ans. I couldn't—— brought down on the wagon. The team driver brought them down.

20 Ques. Did you ever know that electricity was a dangerous thing?

Ans. I had no experience in electricity at all.

Ques. I didn't ask you that; I ask you whether you knew that electricity was a dangerous thing?

Ans. No, sir.

Ques. You didn't know that it was?

Ans. No, sir.

Ques. You never heard of anybody being hurt working on electric wires?

30 Ans. No, sir; I never knowed nothing about it at all.

Ques. Did anybody show you how to work this reel?

Ans. This reel that morning? Well, when I went down there, Jess Naylor, he showed me how to work it. After I was just a couple of minutes there, one of the wires got caught in one of the bolts, and the bolts wasn't tight enough. He told me to get away from there. When he told me, I came back and told him

what was the matter. Then he told me to get a monkey wrench and fix it up, and I done so.

Ques. You told him what was the matter?

Ans. Yes, sir.

Ques. Then he told you to get a monkey wrench?

Ans. Yes, sir.

Ques. How much wire was there on your reel?

Ans. How much wire?

Ques. Yes; was the reel full when you started?

Ans. We put a fresh coil of wire on.

Ques. What kind of wire was it?

10

Ans. It was bare wire, copper wire.

Ques. Well, when you put the fresh coil on, did that fill the spool up full.

Ans. Oh, no, sir; it didn't fill it up full.

Ques. Did you help put the coil on?

Ans. Helped put it on; yes, sir.

Ques. Who else was in the gang?

Ans. Who else was in the gang? William Burns was there and Al Duffield.

Ques. Is that all?

20

Ans. No, sir.

Ques. Was Jess Naylor there?

Ans. Yes, sir; Jess Naylor was there, and Mr. Nelson, John Nelson and Tom McCrane.

Ques. Were fresh coils put on the other reels that morning, too?

Ans. I could not tell, sir.

Ques. Well, you know whether you saw it or not?

Ans. I had only been down there a couple of minutes.

Ques. Then you don't know whether they were or not?

30

Ans. No, sir.

Ques. Did all the other reels have wire on them when you started in?

Ans. Yes, sir.

Ques. Did the other men start to work their ree's when you started yours?

Ans. Yes, sir; they were all working.

Ques. How much wire had you run off when you were hurt?

Ans. I can't tell; I only remember just taking the shock after the wire was put on; that is the last I remember.

Ques. Do you know how much wire you ran off?

Ans. No, sir.

10 Ques. How did you happen to know where your hands were when you got hurt?

Ans. I remember getting the shock from my hands on the reel, on this pin that stuck up out of the reel.

Ques. Where did the wire run from your reel; where did it go?

Ans. Where did the wire go? We run the wire up to the exchange office.

Ques. No, but I mean where could you see that the wire went? You were standing back of the wire, were you?

20 Ans. Alongside of it. I couldn't see through the woods there.

Ques. Did it go on the ground or up in the air?

Ans. Oh, it went up in the air; took it over the poles. There was a woods there.

Ques. You say that your reel you put a fresh coil of wire on; who had run off the wire that was there before?

Ans. I couldn't tell.

Ques. Where were you that morning before the time you took up this reel?

30 Ans. I was up helping them to clear the ground, away up where the team was, and they called me down.

Ques. Did somebody call you down?

Ans. Yes, sir.

Ques. Who called you down?

Ans. It was Sam Humphries; he had been a straw boss.

Ques. What expenses were you put to for doctors and hospital nursing and all that?

Ans. What expense? I was not put to any expense.

Ques. You weren't put to any?

Ans. No, sir.

Ques. Who paid your expenses?

Ans. I couldn't tell who paid them.

Ques. Did any of the doctors ask you to pay them?

Ans. No, sir.

Ques. Whose care were you under?

Ans. Whose care was I under? I was under a nurse, one at the hospital; her name was Miss Nace.

Ques. And any doctor?

10

Ans. Yes, sir; there was a doctor came in, Dr. Abbott; but he never done anything to me.

Ques. Didn't do anything to you?

Ans. No, sir.

Ques. You were in the hospital at Ocean City for a while?

Ans. Yes, sir.

Ques. Then you went to Philadelphia?

Ans. Yes, sir.

Ques. What hospital did you go to there?

20

Ans. The University.

Ques. Who attended you there?

Ans. I don't know the doctor there.

Ques. Would you know him if you saw him?

Ans. Yes, sir.

Ques. Just look at that gentleman (indicating person present in court-room). Did he attend you there?

Ans. Yes, sir.

Ques. How long did he attend you?

Ans. I guess he attended me a couple of months.

30

Ques. All the time you were there?

Ans. Yes, sir.

Ques. You said the bandages worked off in the night?

Ans. Worked off so they would be off before I got outside of the gate.

Ques. That was in the day time, when you were going away?

Ans. Yes, sir.

Ques. So you went to the hospital for attention and went away again every day?

Ans. No, not every day; every day they told me to come around there until I was discharged; told me I could go.

Ques. How often did you go?

Ans. When I went there first I used to go two or three times a week.

10 Ques. When you first went, you went two or three times a week; how much afterward?

Ans. Afterward, I used to go a couple of times a week until I stopped.

Ques. You never interfered with those bandages yourself?

Ans. No, sir.

By Mr. Wescott:

20 Ques. There are one or two questions I forgot to ask you about. Do you notice whether or not you are more nervous since this accident than you were before?

Ans. Yes, sir.

Ques. Why do you keep twisting your hands the way you do all the time?

Ans. Well, I can't help it.

Ques. Were there any grafts made on these burnt places?

Ans. Yes, sir.

Ques. When was that done?

30 Ans. It was done in Ocean City Sanitarium.

Ques. Where was the skin taken from?

Ans. It was taken off my leg, this leg here, right there (indicating).

Ques. Now, will you get up and take off your clothes so the jury can see you. We may as well get through with both of you in that respect; there are no ladies here, it won't make any difference; just strip off.

Mr. Grey: I want to ask him a question.

Mr. Wescott: Certainly.

By Mr. Grey:

Ques. You say you always work your hands that way?

Ans. Not all the time; since I got hurt, I do.

Ques. All the time since you got hurt?

Ans. Yes, sir.

Ques. Are you sure it had nothing to do with your
being on the witness stand this morning? 10

Ans. No, sir.

Ques. When you are working, do you work your hands
that way?

Ans. Work my hands that way?

Ques. When you are working at your business, do you
keep your hands going that way?

Ans. Well, my hands; I can't help it; I feel nervous.
When I am working sometimes there is a headache in
my head; I get all nervous so I can't see nothing. 20

Ques. Do you feel nervous when you are working?

Ans. Yes, sir.

Ques. Do your hands go that way when you are
working?

Ans. Of course, I have to use them when I am work-
ing.

Ques. They don't go that way when you are work-
ing?

Ans. Yes, sir; they do go that way.

Ques. Then they do go that way all the time you are
working, do they? 30

Ans. Yes, sir.

Ques. Do they go that way when you are asleep?

Ans. Well, I would be asleep; I can't tell then.

Ques. You don't know whether they do or not? They
don't interfere with you going to sleep?

Ans. Yes, sir; the pains in my arms.

Ques. No, I mean your hands going this way; that don't interfere with your going to sleep, does it?

Ans. With my going to sleep? Well, I feel nervous all the time.

Ques. Well, I suppose you do. Can you keep your hands quiet?

Ans. No, sir.

10 Mr. Wescott: Now, strip, Mr. Donohue, and I will have Mr. Burns strip.

By Mr. Wescott:

Ques. Now, where is it you have put vaseline?

Ans. Right here (indicating); put it there all the time.

Ques. Were any of the muscles burned out?

Ans. Yes, sir.

20 Ques. Keep your arm still, if you can. Now, walk down this way, so these gentlemen can see it. These scars on your body, are those the scars of burns?

Ans. Yes, sir.

Ques. Have you any others?

Ans. No, sir; only where they took the skin graft.

Ques. Well, show that.

Ans. They took it from here (indicating).

Ques. Is that where the skin was cut off your leg?

Ans. Yes, sir; all the way from here down to here (indicating).

30 Mr. Grey: I object. It seems to me this is no part of the plaintiff's case.

Mr. Wescott: I insist that it is; whatever he had to do to save his arm is part of this case.

The Court: Well, there is no proof that that was necessary yet.

Ques. Where was this done, the grafting; in the hospital?

Ans. Yes, sir; done in Ocean City .

WILLIAM J. A. BURNS, recalled.

By Mr. Wescott:

10

Ques. Are those scars in front there where you were burned?

Ans. Yes, sir.

Ques. Just point them out on your arms now; turn around so they can see. Is that one on your shoulder there?

Ans. Yes, sir.

(Witness starts to take off his trousers.)

20

Mr. Grey: What are you going to show now?

The Witness: Show this burn right down here (indicating) and another one right there (indicating on back).

Ques. Those are the scars you spoke of as causing you uneasiness?

Ans. Yes, sir.

30

Cross-examination.

By Mr. Grey:

Ques. What expense did you incur in getting yourself doctored and taken care of in the hospital by the doctors?

Ans. Nothing, sir.

Ques. Who did pay this expense?

Ans. I am informed the Bell Telephone Company did.

Ques. After you were well enough to work, when was it you resumed employment with the Bell people; do you know?

Ans. After I resumed work? Why, I think it was about— I went to work with them again in October; started the suit in January or February.

10 Ques. Were you working with them when you started the suit?

Ans. Yes, sir.

DR. WALTER W. NAYLOR, sworn.

By Mr. Wescott:

20 Ques. Where do you live?

Ans. Philadelphia.

Ques. What is your business?

Ans. Physician.

Ques. Are you connected with any institution?

Ans. I am assistant in the Nervous Department, University of Pennsylvania.

Ques. And a graduate of what school?

Ans. University of Pennsylvania.

30 Ques. Did you come to Camden this morning for the purpose of examining these two plaintiffs?

Ans. I did; yes, sir.

Ques. Did you examine them?

Ans. I did.

Ques. What did you find to be the condition of them?

Ans. I found that both of these young men had several scars where they had been badly burned, and this

Donohue, he has a scar on his right arm taking in the elbow. It commences about here and extends to here (indicating). It is about ten inches long and about five inches wide, and it is a rough, thick scar, showing that the burn had been deep down in the muscles, and there is a weakness of the arm on account of these scars; he can't get his arm straight. Besides that, there is a tenderness in the nerves of the arm, showing that there is an inflammation there, or a neuritis. Beside that, he has on his right side four or five scars—— **10**

Mr. Grey: Just a moment, please. If your Honor please, it seems to me that, as this plaintiff has been exhibited to the jury and the jury have seen all the man has that is apparent, it is not proper that this witness should testify also in detail what the jury have already seen in an exhibit. If any other kind of exhibit is offered to the jury, no testimony is allowed as to what that exhibit is; the exhibit speaks for itself. It seems to me the same rule must apply where the exhibit is a man or a paper or a block of stone. **20**

The Court: I think, where the exhibit requires technical explanation which the mere showing to the jury would not explain, that it may be explained.

Mr. Grey: That is exactly my idea; the effect of the scars and burns which the jury have seen may be testified to by this expert, but not the fact; the jury already has seen the fact; they know what the scars are. He is describing the length of the burn; the jury saw that. They saw what he could do with his arm. This witness said he could not bend his arm. The man moved his arm up and down, and the jury saw it. **30**

Mr. Wescott: No, he didn't.

The Court: I sustain the objection as to the appearance of the burn; it is well founded.

10 Mr. Wescott: Your Honor hit the nail on the head when you made your first reply. This gentleman here is an expert; as an expert he has examined these men in order to qualify him to state to the jury the actual condition, past, present and future. He is entitled in his own way to describe this man's condition; otherwise you take from under him his expert feet and he has nothing to stand on. Simply because the jury, which is not expert on these things, has seen these scars does not close the mouth of the expert.

The Court: My ruling is this: That so far as the scars themselves are concerned, they show for themselves. This is expert knowledge as to the condition—that is, the effect of these scars and burns which he may show and explain.

20 Ques. Doctor, how many scars did you find on Mr. Donohue's body, taking him first?

Ans. Large scars, there were six, I think; a large one on his arm and the ones on his back.

Ques. Were they superficial, or what kind of burns?

Ans. They were deep, all of them.

Ques. Now, what is the effect of a burn of that sort, so far as, in the first place, producing pain or discomfort is concerned?

30 Ans. A burn from an electrical current is always very painful, more so than from any other burn. Any burn is very painful, but an electrical burn is more painful than an ordinary burn by far.

Ques. Were these burns of a character to disturb the nerves?

Ans. They were, undoubtedly.

Ques. What will be the effect of that in respect to the patient's suffering?

Ans. That is a very hard thing to say. This man Donohue has a rise of temperature. He complains he has frontal headache. Besides that, he has some trouble with his right eye; the pupil is a good deal larger than the pupil of the left, showing there is some trouble there with the nerve of his eye.

Ques. Would those troubles be adducible from these burns?

Ans. Undoubtedly; it is from the electric shock. The shock that went through the whole nervous system rendered him unconscious. 10

Ques. Now, are these scars that you saw and that the jury saw, removable? Can they be erased?

Ans. Oh, no; positively no.

Ques. The condition that you find this boy in now, will it be a permanent one, or will it pass away?

Ans. No; I think this man here, especially, is permanently injured. He is a trifle nervous and troubled with his eye and troubled with his arm; that arm is weak. Undoubtedly he can move his arm, but he can't get his arm straight. Those muscles have been burned, making the arm weak. 20

Ques. I know what you said; you said he could not straighten it. Now, would these scars cause an itching or burning at any time?

Ans. Yes, sir; they do. An electrical burn usually causes a burning and itching.

Ques. Suppose the patient works, exercises himself, increases his circulation, gets warm, what effect would that have?

Ans. That would increase the burning and itching. 30

Ques. Do you know why the patient uses vaseline on this arm—Mr. Donohue?

Ans. I presume he does it for two reasons, one to keep the—

(Objected to.)

Ques. Well, leave out the word "presumption"; that is what frightens counsel.

Mr. Grey: No, it is not that. I object to the witness being asked why the plaintiff uses vaseline on his arm.

Ques. Is it necessary to make any application of anything superficially to this man's arm?

10 Ans. If he was a patient of mine, I would advise him to use some ointment.

Mr. Grey: I object. He is not a patient of the witness, and that is not testimony in this case, it seems to me.

Ques. Well, Doctor, what is necessary to be done to give this boy comfort?

(Objected to.)

20 Mr. Wescott: Well, I will stand on that.

The Court: That is asking not as to anything that has been done; that is the question in this case.

Mr. Wescott: All right; I am willing to take your Honor's suggestion.

Ques. What will have to be done in order to give this boy any comfort?

30 Mr. Grey: Oh, no; that was not the suggestion. What has been done is what the Court suggested. You can say what has been done to relieve him.

(Question repeated).

The Court: I shall allow that question.

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

Ques. What will have to be done, Doctor?

Ans. Some ointment or oil should be rubbed into that, especially that scar in his arm, every day to keep it soft and keep it from cracking. Those scars are very apt to crack, and when they crack they get very sore, and something rubbed in them every day will help to keep them from getting into that condition.

10

Ques. If it be true that this young man has lost from 174 lbs., or thereabouts, since he was—has gone down, rather; strike out lost—from 174 lbs. at the time he was injured and before he was injured to 152 or thereabouts since his injury, would that loss of weight be attributable to this shock and burning that he received?

Ans. Yes; undoubtedly.

Ques. Would such shock and burning as you saw the evidences of produce any effect upon the nervous system in general?

20

Ans. Yes, it would; and beside the shock, the electrical shock that he received to his brain and nervous system, that would render him nervous in the future.

Ques. Now, take Mr. Burns' case; do you find any evidence of injury in his case?

Ans. I do; Burns has several large scars on different portions of his body. He also has a tenderness of the nerves of his arm, and also complains of headache. He has also lost considerable flesh.

Ques. Would those difficulties be attributable to the shock which he says he got?

30

Ans. They would; yes, sir.

Ques. In his case, how deep are the burns, the scars?

Ans. They are all deep, through the skin and the flesh below, all deep burns.

Ques. Would they have the effect of causing him any uneasiness?

Ans. They would; yes, sir.

Ques. What, what character of uneasiness?

Ans. He would have the same burning and itching that the other boy has. He is nervous, but not as nervous as the other boy.

Ques. Will he ever be relieved from this burning and itching?

10 Ans. That is a hard thing to say. It will last for years, if it ever gets well.

Ques. Is it true or not that burns of this character sometimes get worse with time?

Ans. They do; break down and ulcerate, get sore.

Cross-examination.

By Mr. Grey:

20 Ques. Can you say whether these burns will break down and ulcerate?

Ans. No, I can't say that. The large burn in this boy's arm over here is very likely to.

Ques. This accident took place nearly two years ago. Wouldn't the burns be apt to give some evidence of that condition if they were going to do that thing?

Ans. No, they might not; no.

Ques. Did you ever see these men before?

Ans. Never saw them until this morning.

30 Ques. Then you have no idea how their comparative progress has been except what they told you?

Ans. No, except from the condition of these scars, and particularly this man's fever from the condition of his eyes.

Ques. I suppose you have had large experience in electrical burns?

Ans. I don't think there is any physician has had a very large experience in those things.

Ques. No, but have you?

Ans. No; I have seen, I suppose, ten or a dozen cases. I saw one boy who was made idiotic from an electric shock.

Mr. Grey: I ask that that be stricken out.

Mr. Wescott: It is responsive to your question.

Mr. Grey: No. Will your Honor strike it out? 10

The Court: Yes.

The Witness: Shocks such as this men have received——

Mr. Grey: There is no question; you have answered the question.

By Mr. Wescott: 20

Ques. What were you going to say about shocks?

Ans. I was going to say that shocks——

Mr. Grey: I object; he can't be asked what he was going to say in response to my question.

Mr. Wescott: You ask the question, and object to the answer. I ask the same question for the purpose of getting the answer. 30

The Witness: My answer was in reference to physicians——

The Court: That question was asked and answered. That is stricken out. That ended that matter. There has been no new question put since that I remember.

DR. WILLIAM A. WESCOTT, sworn.

By Mr. Wescott:

Ques. Where do you live?

Ans. I live in Berlin, this county.

Ques. What is your business?

Ans. I practice medicine.

Ques. And you have been at it for some time?

10 Ans. I graduated in 1883 and worked at it ever since, about twenty years.

Ques. I will have to disclose the fact that you are my brother.

Ans. Yes, sir.

Mr. Grey: It doesn't need disclosure; it is apparent.

Ques. Were you called to see these two plaintiffs this morning?

20 Ans. Yes, sir; got the message last night.

Ques. Did you ever see them before?

Ans. Never saw them before.

Ques. Did you examine them at my request for the purpose of testifying in Court this morning?

Ans. Yes, sir.

Ques. Take Mr. Donohue; what did you find to be his condition? Let me ask you, was Dr. Naylor present at the examination?

Ans. Yes, sir.

30 Ques. What did you find to be the condition of Donohue?

Ans. Of course, I found the evidence of this profound injury in the way of burning. The right arm showed the most of it. The right pupil in this boy's head does not respond normally to light, which shows that there is a central nerve wrong of some kind. Of course, I got the history of his having nearly been killed by elec-

tricity. The effect of a burn is that it never stays one way. The tissues, which you see in this boy's arm, which are normal, have the character of continued contraction. That will stay with him; you can't cure it. It is different from the scar which you find from a cut or bruise. I found the palpable evidence of nervousness, the twitching, and that which you have seen this morning, about this young man.

Ques. Now, if it be true that he was burned the way he said he was and shocked with electricity, and about that time he weighed in the neighborhood of 174 pounds, and since has come down to 152, and has headaches and nervousness, could these effects be attributable to this electric shock that he received? 10

Ans. Yes, sir; entirely so.

Ques. Would such burns as Donohue has cause him any distress?

Ans. Yes, sir. In the beginning, of course, he had profound distress, and there is no doubt in my mind that this boy is continually tormented by his condition.

Ques. And that is due to what? 20

Ans. To the actual injury that you see and the effect upon the nervous system. A man suffering a shock of that kind has the relationship betwixt the two parts of his nervous system so charged that the outgo is increased and he naturally gets thin; and he hasn't the power of response that he had previous to this injury.

Ques. Is there any way of relieving Donohue of this suffering he speaks of, such as itching and burning?

Ans. No. His anointing himself is a sort of instinctive measure to stop this friction and irritation that he speaks of all the time. Of course, the oil softens the skin and helps it somewhat, but it is there, and it is going to stay. 30

Ques. Is there any way of relieving him?

Ans. No, sir.

Ques. Take Mr. Burns' case; what generally did you find to be true about him?

Ans. If those scarred tissues had happened together, if that amount of burning had happened together at one spot on this man, the chances are it would have killed him, especially about his trunk.

Mr. Grey: I object to that. The burning did not happen together. At the same time, he can't hypothesize on something that did not occur.

10 The Witness: I haven't finished the idea. It might not have been a correct one, though.

Mr. Grey: I think we ought to stick to the facts that did occur; not some other situation. Then, you won't object to my asking that the question be ruled out?

The Court: The answer was not finished.

20 Mr. Wescott: No, I won't agree at all. He is testifying as an expert; he has a right to state it in his own way.

The Court: The answer was not finished; I will see when he finishes it.

Mr. Grey: He says if the burns had happened all in one spot, the defendant would have been killed. It seems to me, without going any further, that that should not be allowed in the testimony. That situation did not occur at all. It gives the jury a wrong idea; gives me a wrong idea.

30

Mr. Wescott: It might not be wrong if you allow the witness to finish it.

The Witness: Well, I judge from the physician's way of looking at it. Of course, the shock was short of taking the man's life, but the effect upon the nervous system was

very profound, and this boy's powers of resistance have been reduced proportionately. The shock was not centralized enough to kill him, but it has been throughout his entire body, and has caused a general effect upon the man which is deleterious, if I make myself clear.

Ques. Yes. Now, if he has lost weight since he received this shock, would it be attributable to the shock, or something else?

Ans. Yes, attributable to the effect on the nervous system, the change of outgo and income of his physical economy. 10

Ques. How deep were the burns on Burns' body?

Ans. They are all deep burns, gone through the skin and cellular tissue and muscles on the arm.

Mr. Grey: We are speaking of Burns.

The Witness: Yes, that little fellow.

Mr. Grey: You were speaking of the arm; I thought 20
you meant Donohue's right arm.

The Witness: This little gentleman. We had the men stripped together, but the same thing exists on each of these men.

Ques. Is there any way of curing these burns, scars?

Ans. No, sir.

Ques. Would they produce itching and burning sensations, these scars? 30

Ans. Yes, they would produce more than that. There is a continual sense of contraction there which is peculiar to that kind of scar. There is no other scar that acts that way; there is more than itching about it. There is a general pull on the nervous system there all the time.

Ques. Would that explain his inability to wear a suspender across his shoulder?

Ans. Yes, sir; increase the irritability.

Ques. How about if he gets heated and warmed up from overwork?

Ans. The same thing.

Ques. Would hot days and hot nights have any effect in starting up this disturbance?

Ans. Yes.

10

Cross-examination.

By Mr. Grey:

Ques. Did you ever see these men before?

Ans. No, sir; the first time I ever saw them.

Ques. To-day?

Ans. This morning, yes, sir; the first time.

20

JOSEPH L. KELLY, sworn.

By Mr. Wescott:

Ques. Where do you live?

Ans. 4721 Lancaster avenue, West Philadelphia.

Ques. What is your business?

Ans. Combination man, at inside and outside work at telegraphing and telephoning.

30

Ques. How long have you been in that business?

Ans. Been all together inside work three years, started in with Mr. Naylor on the Delaware & Atlantic, hired in Camden; went with him as a ground hand. When we got to Williamstown, I started to use the hooks.

Ques. Then you have been all through the business?

Ans. Yes, sir.

Ques. You know all about it?

Ans. Well, I know all about it; I don't know it all. I always find somebody who knows more.

Ques. But you regard yourself as a competent mechanic in this business?

Ans. Yes, sir.

Ques. Do you know Donohue and Burns?

Ans. I do.

Ques. Were you present at the time they were hurt? 10

Ans. Well, I wasn't present at the time, but I was on the pole.

Ques. You were there down at Ocean City?

Ans. I was in the gang; yes, sir.

Ques. How soon did you see them after they were burned?

Ans. Well, I judge about twenty minutes or so, maybe, more or less.

Ques. What did you notice about them then?

Ans. Why, we found Burns laying straight out on the ground there, froth was coming out of his mouth; we was working with him. The same way with Donohue, but Donohue, being strong will power, seemed to revive quicker than what Burns did. Burns was the nearest dead man I ever seen. 20

Ques. Were they badly burned?

Ans. They certainly were.

Ques. How about Donohue; was he badly burned?

Ans. Yes, sir, Donohue was burned; put your fingers in, you could, in his arm.

Ques. Was their clothing burned? 30

Ans. Yes, sir.

Ques. Now, at the time they were burned, what were you doing?

Ans. I was a second-class climber at the time; I was up at the pole; it was my next turn for the running. The rope being damp, I happened to feel the shock

from it, and George Harner,—he was in front of me—said: "Look out for those wires." At that time, Tom McCrane came running up the pike, said there was three men killed, and then we went down.

Mr. Grey: I will have to ask that that be stricken out, about three men being killed, about somebody running up the pike and saying three men had been killed. That is no part of the case.

10

The Court: Yes, that part of the testimony is not responsive.

Ques. At the time Burns and Donohue were burned, what were they doing?

Ans. Why, they were tending reels, I believe.

Ques. Now, do you know whether or not there was an electric current passing through a trolley wire—

Ans. Well, the cars was running.

20

Ques. Well, wait until the question is asked—at that place, Ocean City?

Ans. Yes, sir; the cars were running.

Ques. Do you know whether the wires which Mr. Donohue and Mr. Burns were reeling off of the reel were passing over a live trolley wire?

30

Mr. Grey: I object to the form of that question. The question suggests a whole lot of circumstances and asks the witness whether or not that is so. That has been thought to be a leading question of such character that it should not be admitted. I objected to it on that ground.

The Court: It would require only yes or no. If he asked what he knows about that, he can give his own statement of what he knows with a full explanation. I think the question is too leading.

Ques. What do you know about the wires that Mr. Donohue and Mr. Burns were reeling off when they were burned, going over live wires?

Ans. Well, the ground they were standing on was a sort of a mushy ground, and about twenty feet or so above them was a whole lot of bushes, and the wire passed over a ten-pin arm straight out, and they had an iron running board with snaps in it and the wires fastened on it, an iron running board and angle-shaped something on the shape of that (indicating). That was hitched on a rope. Of course, the climbers went ahead and lifted the running line along, carried it. Then they would reach out, undo the snaps, change the wires around and start them in their pins, and the reels—let's see; I think they were two poles from the trolley, about two poles. The reels were placed at just the section going up here passing the trolley. It was a very bad way, I think, anyhow, going over the trolley; the trolley should have guard wires on it. 10

Mr. Grey: I object to that, and ask that that be stricken out. 20

The Court: That part of it may be stricken out.

Ques. Did these wires reeled off pass over the trolley wire?

Ans. They passed over the trolley wire.

Ques. Where did the electricity that burned these two boys come from?

Ans. How is that? 30

Ques. Where did the electricity, the current that burned these two boys, come from?

Ans. Why, only one way it could come, from the trolley wire.

Ques. Now, let me understand. How many wires were running off this reel?

Ans. There was ten reels and one coil of wire at each reel, fastened on the running board with snaps to it.

Ques. What is this running board?

Ans. A little iron board we had made especially going through two pins on an arm.

Ques. And the wires are all attached to that?

Ans. Yes, sir; snaps on it.

Ques. Then they are fastened to a rope?

Ans. Yes, sir.

10 Ques. Then what pulled the wire?

Ans. A team of horses, two horses.

Ques. And it was coming in contact with this trolley wire that the electricity reached these boys?

Ans. Yes, sir.

Ques. Now, Mr. Kelly, what is the usual and necessary device used to stand on when people are reeling off wire as these two plaintiffs were?

Ans. Well, from other experience I have had since then, they always provide ground hands a board.

20 Mr. Grey: This witness has not been shown to be an expert, in the general business, and until he has been, he is not qualified to speak as to what is the general method of doing that kind of work.

The Court: The first question put to him was for the purpose, I suppose, of laying the foundation for him to give expert testimony, and these questions follow on that ground. I will permit you right here, if you are not satisfied with that examination, to ask him further as to his qualification. You made no objection at that time, and the Judge's questions were with that purpose in view, I supposed—

30

Mr. Wescott: Yes, sir.

The Court: But if your objection is interposed even

now, I will permit you to ask him as to his qualifications to testify as an expert.

Mr. Grey: This is the first question which has been asked which calls for any knowledge as an expert. I could not object to it before.

The Court: No, he was asked if he had a general knowledge of the business.

Mr. Grey: Nevertheless, if your Honor will allow me, I will examine him now. 10

By Mr. Grey:

Ques. Where have you been employed since July, 1901?

Ans. Been with the American District Telegraph Company and the Western Union, Philadelphia.

Ques. What kind of work did you do with them? 20

Ans. All around work, shooting trouble; going with the gang now and then.

Ques. Shooting trouble?

Ans. Yes, sir; hunting trouble. In other words, if there is a wire in trouble they have trouble men there in the city for it, and we go out and locate it and fix it up.

Ques. Do you call that hunting trouble?

Ans. Yes, sir; shooting trouble.

Ques. Have you run wire since this time this accident occurred?

Ans. Oh, yes; I have run wire since. 30

Ques. Who for?

Ans. The Western Union.

Ques. Whereabout?

Ans. Why, I am running them right in Philadelphia, here.

Ques. In the city?

Ans. Philadelphia; yes, sir.

Ques. Anywhere else?

Ans. Now and then, when there is a steal; we had one up on the Bustleton pike; we went up there.

Ques. Did you run wires there?

Ans. Yes, sir; replaced them, twenty sections.

Ques. Where is that?

Ans. Bustleton, Pa.

Ques. Anywhere else you ran wires?

10 Ans. I don't know, since. Running them every day in the city; inside work, too, along with them.

Ques. Have you had any other experience with any other company?

Ans. No, no other companies.

Ques. What were the two companies, the Bell Telephone—

Ans. No, no Bell Telephone.

Ques. What two companies were they?

20 Ans. American District and Western Union; and the time I started in with Mr. Naylor on the D. & A., I went on outside work, my first experience on outside work.

30 Mr. Grey: Now, if your Honor please, it seems to me the question asked is not proper to be asked to this witness. The question was: "Now, Mr. Kelly, what is the usual and necessary device used to stand on when people are reeling off wire as these two plaintiffs were?" This gentleman has had experience with only two companies, and the question must therefore be confined to what is used by those two companies. It seems to me that is not enough to qualify him as to what is the general practice. It has already been decided in this case that the witness cannot be asked any expert question as to what any particular company may do, but he may be asked if he has knowledge of what the general practice is in that particular. Now, he hasn't that knowledge, because his experience is confined to only two compan-

ies. I do not think that he is such an expert that he can be allowed to answer the question asked.

The Court: I think he has qualified himself to answer this question, although I think the question itself is somewhat leading and should be changed.

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

10

By Mr. Wescott:

Ques. Mr. Kelly, when a man is going to reel wire off while he is standing in a damp place, what is done for his protection?

Mr. Grey: I object; I can't see how that question would help the case. What is done, done by whom, by the man or the company he is working for, or how?

20

Ques. By the company? What does the company do or furnish?

Ans. Generally furnishes him a pair of rubber gloves.

Ques. What else?

Mr. Grey: I do not need to make an objection to the style of questions asked on this line. The one question your Honor has over-ruled and to which you allowed an exception goes to all these questions asked the witness as an expert, as I understand it?

30

The Court: Yes.

Ques. What else?

Ans. A man always looks around for a board. The foreman will tell his men to stand on a board on damp ground, a fence rail or something like that, if it is in the country.

Ques. What else is used in case the wire is going over a live wire?

Ans. A wire carrying a heavy charge, they generally use what they call a basket, otherwise a guard wire made out of rope spread out across so as to prevent it from dropping over such a heavy wire.

Ques. Dropping on the current wire below?

Ans. Yes.

Ques. Now, were any of those things used on this
10 occasion?

Ans. No, sir.

Ques. Do you know whether the company on the next day furnished rubber gloves?

(Objected to).

The Court: Yes, I will not allow that.

Mr. Wescott: I would like to have a little hearing on that question. I think it is competent to show that the
20 company so far recognized the fact that they failed to perform their duty that they immediately performed it the next day. I am going to show that the very next day they furnished the men that were reeling these wires off rubber gloves, furnished them planking to stand on, and protected the overhead wires from this live current; the very next day they did these things. More than that, I think I can show that they had these instrumentalities there but did not furnish them to the men; but I can show that they furnished them to do
30 this actual work the next day. Now, as I understand it, it has been held over and over again that where a defect is immediately repaired, it is evidence to go to the jury to show that the master did not do his duty. If your Honor has any doubt about that, I will furnish you some cases. The mere fact that they furnished all three of these appliances immediately after the accident shows that they should have furnished them before the accident.

Mr. Grey: The difference between Judge Wescott and myself seems to be the view as to what the law is. He suggests facts which he desires to prove, and asks that you permit these facts to come in as a basis on which the jury may find that the party, defendant, has admitted its guilt of negligence. I think the law is exactly the other way, and that these things are not allowed to be shown to the jury, because the law holds that these things are not evidence of any neglect of duty on the part of the defendant company. It does not follow because the defendant on the next day or some subsequent time supplied platforms and gloves, that therefore they were guilty of negligence under the law, on the day when this accident occurred; they may have done something that the law did not require them to do. Therefore, I request that it be overruled. 10

The Court: I founded my ruling upon this ground, that very often an accident will disclose conditions not known to the company which will lead them to take precautions which it was not known were necessary before. There is nothing in this case to show that it was known to the company that precautions were necessary previous to this accident. What they may have done afterward might have been the result of knowledge obtained through this occurrence; and to charge the company with negligence for not doing what they might not have known the necessity of doing before this accident, I think is going too far. 20

(Exception noted for the plaintiff.) 30

Mr. Grey: Now, if the Court is willing, and Judge Wescott desires, I will allow the testimony to come in, if your Honor will make a contrary ruling and allow me an exception. It is immaterial to me. I am willing to take an exception if your Honor and the Judge are willing to put it the other way.

The Court: Well, I will adhere to my ruling.

10 Mr. Wescott: In order that your Honor may understand clearly, I want to make the offer now. I offer to prove now that this defendant company at the time of this accident had, for the use of its employees, planking to stand on, in this damp place, rubber gloves to handle the naked wire with, and protected covered wires to pass over the live trolley wire, so as to avoid the electrical current. I further propose to show that on the very next day after this accident they furnished rubber gloves and planking to stand on and protected the wires from the live wire underneath owned by the trolley company.

(Offer overruled.)

(Exception noted for plaintiff.)

Cross-examination.

20 By Mr. Grey:

Ques. Were you on a pole at the time the accident occurred, did you say?

Ans. I was.

Ques. What pole was it in relation to the reels, how far away from the reels?

Ans. Well, I could not give you the exact distance; I think about the fifteenth pole or so.

Ques. The fifteenth from the reels?

30 Ans. About that.

Ques. Which direction was it?

Ans. I took it down there——

Ques. I mean, which direction from the reels were you? Were you in front of the men as they were working and fifteen poles away, or were you the other way, back of the men as they were working?

Ans. You couldn't run wire backward; the team goes this way.

Ques. I am asking you which way were you?

Ans. I was the way the team was.

Ques. Were you in front of the team or back of the team?

Ans. I was on the pole; the team was ahead of me.

Ques. Were you between the team and the reels?

Ans. I was; yes, sir.

Ques. How far were you away from the team, how many poles? **10**

Ans. I couldn't exactly give you the exact poles, how many it was, but I judge about six; had a good long run of wire, they had.

Ques. How far were you from the trolley line?

Ans. Let's see; about fourteen poles.

Ques. You said that you had strung a great many wires in Philadelphia since this accident; did you there observe this method that you mention about the board and gloves and that sort of thing?

Ans. Yes. **20**

Ques. Was there any damp ground that you worked on in Philadelphia?

Ans. Oh, I wasn't tending to reels; I was climbing then.

Ques. That is when you were climbing?

Ans. Yes, sir.

Ques. Did you ever see that method used as to the reels in Philadelphia?

Ans. Yes, sir; up in Green street, protected four with rubber gloves. **30**

Ques. Were the reels on damp ground there?

Ans. I couldn't say whether it was on damp ground or not that day, but they are always furnished with gloves.

Ques. In Bustleton, Pa., did you see the reels there on damp ground?

Ans. I was tending one reel there myself, and was standing on a fence rail.

Ques. Was there any damp ground around there?

Ans. Yes, sir.

Ques. Who supplied the fence rail?

Ans. I did.

By Mr. Wescott:

Ques. There is one question or two I want to ask you
What is the effect of rubber gloves to handle reel wires—

10

(Objected to.)

The Court: I see no objection to that question.

Mr. Grey: What has that to do with this case, what
effect rubber gloves may have upon either the person who
uses them or the wires, or electricity? What has that to
do with this case? I think the testimony must have some
relation to the issue here. Now, because some implement
may have some effect on the current or wire has no effect
on this case as yet.

20

The Court: I shall allow the question.

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

Ques. What are these rubber gloves used for?

Ans. To protect the men.

30

Ques. What are planks or rails used for?

Ans. You ain't always sure of a rubber glove with
a heavy current.

Ques. And what is the use or purpose of putting pro-
tected wires above a live wire?

Mr. Grey: I object. If your Honor makes the same
ruling, I also ask for an exception.

The Court: Yes, I will allow that question.

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

Mr. Grey: That objection is upon the same ground as the other.

Ques. Your using this basket that you speak of, what is the purpose of all that? **10**

Ans. That is to protect everybody in the line that is working, that is handling the wire. It is done for the protection of both the lineman and the people who would be passing by, to protect life.

THOMAS F. LEE, sworn.

By Mr. Wescott:

20

Ques. Where do you live?

Ans. 2926 West Susquehanna avenue, Philadelphia.

Ques. What is your business, please?

Ans. Telephone lineman.

Ques. How long have you been in the business?

Ans. Two years the 10th of next July.

Ques. How much experience have you had in it?

Ans. Well, I have had that much, that is all.

Ques. Well, during those two years, what kind of work have you done? **30**

Ans. Principally running wire, putting up poles and stringing wire.

Ques. Stringing wire?

Ans. Yes, sir.

Ques. Suppose an employee has to unreel wire, standing in a damp place——

Mr. Grey: Just a moment, please. Now the Judge is through examining the witness on the question of qualification as an expert, I would like to object to his being asked any questions on that ground, as I do not think he has qualified. I make this suggestion now because your Honor suggests I should have done it earlier with the other witness.

10 The Court: Is it the purpose to use him as an expert?

Mr. Wescott: Oh, yes; he has testified that he has had two years of experience in this particular line of business.

Ques. Is it necessary for a man to serve an apprenticeship in this business?

20 The Court: That has nothing to do with my ruling. If he is to be examined in regard to everything connected with this business, the fact that he says he has been two years employed as a lineman would not qualify him to testify to everything relating to this matter.

Mr. Wescott: Everything relating to stringing wire.

The Court: Well, if it is limited to that, of course.

30 Ques. What is necessary in order to protect men that are working at a reel in stringing wires?

Mr. Grey: I object. If your Honor will allow me to make some further examination of him as an expert before that question is answered; the question calls for knowledge——

The Court: Well, that is your privilege to examine him; then I can rule as to his evidence. That is always allowed.

By Mr. Grey:

Ques. What companies have you been with in those two years?

Ans. Worked on the Delaware & Atlantic for from the 10th of July until the 7th of October.

Ques. Two years?

Ans. In 1891.

Ques. 1891?

Ans. 1901. And I worked from the 15th, I think it was, of October; the same year until the present time for the Keystone Telephone Company, all that time stringing wire and putting up poles. **10**

Ques. Where have you strung wire, beginning with your experience with the Delaware & Atlantic Company?

Ans. All through Ocean City, all the way to Tuckahoe.

Ques. Is that all you did for them?

Ans. No, sir; transferred to Chester Heights, from Chester Heights to Media, then ran from Downingtown to a place called Green Tree or Paoli. **20**

Ques. And the Keystone, where did you lay it?

Ans. All through Philadelphia; north, south and west Philadelphia.

Ques. Is that pole work or underground?

Ans. Some pole work, some housetop work.

Ques. Some underground?

Ans. No, sir; didn't work no underground work; all overhead work; ran both covered wire and bare wire.

Ques. You got what little knowledge you have from your experience with these two companies in the work you have indicated? **30**

Ans. Yes, sir.

The Court: I think he is qualified.

(Question repeated as follows: Ques. What is neces-

sary in order to protect men that are working at a reel in stringing wires?).

Mr. Wescott: Particularly if they are in a damp place or water or mud?

10 Mr. Grey: I object. It seems to me that question don't mean what it should, what the Judge desires. He says, What is necessary to protect the men? Protect whom, from what?

Mr. Wescott: Well, this employee. This man knows enough to know that where there are wires used that are full of electricity, it will run from one to another, as happened in this case. If he don't know that, he is not competent to testify at all.

Mr. Grey: I will withdraw that objection.

20 Mr. Wescott: Just answer the question.

The Court: You withdraw your objection?

Mr. Grey: I understand your Honor overrules my objection. I will not take an exception; withdraw the question.

30 Ans. A man standing on ground at all,—ground is always damp, no matter where you go, more damp some places than other places—a man standing on ground at all, running bare wire over a trolley wire or electric light wire should be standing on a board.

(Objected to).

By Judge Wescott:

Ques. Should be what?

Ans. Should be standing on a board.

The Court: He is answering more than the question involves.

(Question repeated).

Mr. Wescott: His answer, I submit, is perfectly responsive.

The Court: It is responsive as far as the damp ground is concerned, but you asked him nothing about going over trolley wires. 10

Ques. What is the usual thing to use when men are unreeling wire and standing on the damp ground?

Mr. Grey: I object on the ground that this man has not had enough experience to know what is the usual custom; he can only testify as to the custom of the Keystone Telephone Company and the Delaware & Atlantic. He has no knowledge generally of the business, only of those two companies. 20

Mr. Wescott: The answer to that is that electricity is the same whether it is working for one company or the other.

The Court: That principle, of course, I cannot uphold. If a man worked forty years for a company, the same objection could be raised that he had worked for only one company. The question is allowed. 30

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

Ans. He usually stands on a board to protect himself.

Ques. What else is used for protection under those circumstances?

Ans. Use rubber gloves.

Ques. Suppose that wires are going to be strung over a live wire underneath, what is the uniform practice in protecting the men against a shock from that?

10 Mr. Grey: I object. This witness has not shown that he has knowledge of the uniform practice.

Ques. Well, what is the practice then,—strike out “uniform”—what is necessary to protect the men?

Ans. Have guard wires or run covered wire.

Ques. Were you present when these two boys were hurt?

Ans. No, sir; I was ahead with the team.

Ques. You were down there?

20 Ans. I was with the gang, yes, sir; I was there, ahead with the team.

Ques. How soon did you see them?

Ans. Just as long as it took us to go on a dead run from where we were notified; that was eighteen or twenty poles, I suppose it was. That would be that many times 180 feet; 180 feet apart, the poles were.

Ques. What did you notice about the appearance of these boys when you got there?

30 Ans. I noticed Mr. Donohue; he was lying there with the flesh off of his arm, you could see it hanging down. He was frothing at the mouth. Mr. Burns was lying on the ground completely unconscious, froth coming from his mouth. I thought he was dead; thought so for a couple of hours.

Mr. Grey: I object to what he thought.

Ques. He appeared to be dead?

Ans. He appeared to be dead; everybody thought so.

Ques. He appeared to be dead?

Ans. Yes; and appeared that way until the doctors revived him enough to get him up.

Ques. Now, were Donohue and Burns furnished with boards to stand on?

(Objected to).

Ans. I can't say.

10

(Objection withdrawn).

The Witness: I wasn't at the reels; I was ahead with the team.

Ques. Do you know whether or not they had gloves?

Ans. No, sir; they didn't have no gloves.

Ques. Do you know whether or not there was any guard to protect the wire that you were stringing from coming in contact with the live wire underneath?

20

Ans. No, sir.

Ques. There was not any?

Ans. No, sir.

Cross-examination.

By Mr. Grey:

Ques. How many wires were you engaged in stringing?

30

Ans. Ten wires.

Ques. In other words, on these poles?

Ans. Yes, sir.

Ques. How many?

Ans. I couldn't say how many. There were two ten pin bars on it, to the best of my knowledge, and they were running wires on the top bar.

Ques. That is, you were running wires above the wires already on the pole?

Ans. Yes, sir.

Ques. Do you think it is necessary to have, for the men to stand on, a board or platform, and have rubber gloves, in stringing wires from reels, in case the wires do not come in contact with any other electrical agent?

Ans. Not if they do not come in contact with any other wires, but if there is danger from any other wires, then it is.

10

Ques. Well, are the platform and gloves necessary to protect them from the danger or from the contact?

Ans. From the contact.

Ques. From the electricity?

Ans. From the electricity.

Ques. You have seen that method pursued by the Delaware & Atlantic Telephone Company, have you?

Ans. No, sir.

Ques. Whom have you seen it pursued by?

20

Ans. I saw it by them, yes, sir; after the accident.

Ques. Who else have you seen it pursued by?

Ans. I saw precautions taken by the Keystone, almost the same.

Ques. It is on your knowledge of those two facts that you base your testimony?

Ans. Yes, sir; that and other experience, theoretical experience.

By Mr. Wescott:

30

Ques. How soon after the accident did you say the defendant company had these things?

(Objected to).

Ques. Furnished gloves and boards and protection to the wires?

(Objected to).

Mr. Wescott: He brought it out himself, if your Honor please.

The Court: Oh, yes; I was going to say that that was new matter which the cross-examination brought out.

(Question withdrawn).

Ques. You remember the date of this accident, the 30th of July, 1901?

Ans. Yes, sir.

10

Ques. Now, what day in July, 1901, did this defendant company furnish gloves and boards and protection?

(Objected to).

The Court: I think it is allowable.

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

20

Ans. I cannot remember the day. It was the first time we ran wire over the next trolley wire; the first trolley wire we ran wire over afterward.

Ques. How soon after this accident?

Ans. Probably two or three days.

Recess until 1.30 P. M.

30

Trial of the cause resumed at 1.30 P. M. in the presence of Counsel for the respective parties.

OWEN KERNAN, sworn.

By Mr. Wescott:

Ques. Where do you live?

Ans. 800 Fern street, Camden.

10 Ques. Have you had any experience in the matter of stringing wires on telegraph poles?

Ans. Yes, sir.

Ques. How many years experience have you had in that matter?

Ans. Sixteen.

Ques. And during that time, what sort of work have you done?

Ans. Mostly all classes of work at the business.

Ques. You are familiar with it all, are you?

20 Ans. Well; pretty much.

Ques. Were you down in Ocean County when this accident happened?

Ans. No, sir.

Mr. Grey: If your Honor please, if the witness is to be used as an expert, I would like to ask him some questions.

Mr. Wescott: Go ahead.

30 By Mr. Grey:

Ques. For what company did you work, Mr. Kernan?

Ans. Worked for the Delaware & Atlantic Telephone Company, the Western Union and the Pennsylvania Telephone Company.

Ques. You began working sixteen years ago?

Ans. Yes, about sixteen.

Ques. Who did you work for then?

Ans. The Delaware & Atlantic Telephone Company.

Ques. And how long did you work for them?

Ans. About fifteen years.

Ques. And since then was the Western Union the next company you were employed with?

Ans. I worked with the Delaware & Atlantic about six months, then I worked with the Western Union about two months, then went back to the Delaware & Atlantic— No, then I went to the Postal Telegraph Company.

10

Ques. How long?

Ans. I judge about seven months, six or seven months.

Ques. Then after that, where were you?

Ans. Back to the Delaware & Atlantic.

Ques. Been there ever since?

Ans. Yes, sir.

Ques. Now in their employ?

Ans. No, sir; I left their employ a year the 14th of December last.

20

Ques. What kind of work did you do for the Western Union? You were only there two months.

Ans. Well, I did a little of everything, running wire and putting poles up.

Ques. You did some ground work, did you?

Ans. No, sir.

Ques. Did you do any reel work for them?

Ans. No, sir.

Ques. The Postal Telegraph Company, what kind of work did you do for them?

30

Ans. Line work.

Ques. Did you do any reel work for them?

Ans. No, sir.

Ques. And since you have been with the Delaware & Atlantic, have you done any reel work,—I mean reel, not real?

Ans. I know what you mean. No, sir; I have not;

but I have been in charge of the work for a good many years.

Mr. Grey: It seems to me this witness is not qualified to testify as an expert in all particulars, but as there is no question now pending which is objectionable, I suppose the proper time for my objection will be later on when such question is asked. If your Honor thinks my objection should be made now as suggested before, I make it now.

10

The Court: I think he has qualified himself by his answers to testify, unless he is drawn into a field that is not apparent now.

By Mr. Wescott:

Ques. During your sixteen years of experience, did you superintend, ever?

Ans. Yes, sir.

20 Ques. The construction of lines?

Ans. Yes, sir.

Ques. In all departments of the work?

Ans. Yes, sir.

Ques. How many years experience did you have as superintendent?

Ans. About eleven.

Ques. And during that time, did you do work yourself?

30 Ans. No, I didn't do work; I had men under me to do the work.

Ques. But before that, you did the various kinds of work connected with it?

Ans. Yes, sir; all kinds, most, starting first as a ground man with the Delaware & Atlantic Telephone Company.

Ques. Now, what are the usual appliances for protecting men who are handling wires at a reel?

(Objected to on the ground that the witness is not expert on that subject. Objection overruled).

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

Mr. Grey: I want to add another ground of objection, which was not in before, and that is, that he has done that character of work with only one company and therefore, could not have had enough experience to testify as to general custom or custom in use generally. 10

The Witness: How many companies is there to work for?

Ques. How many companies are there now in the United States to work for, big companies, that you know of?

Ans. Western Union, Postal and the Delaware & Atlantic, which is the Bell now, and the American Telephone Company. 20

Ques. You worked for all of them?

Ans. I worked for three of them.

Ques. Now, what are the usual appliances furnished a man who is handling wire off a reel?

Ans. Well, there is sometimes rubber gloves used; a wagon is the general thing for running wire. A man is safe in a wagon, because—— The biggest part of my running wire was off a wagon, tending reels off a wagon, that is, or whatever it might require. 30

Ques. And was that safe?

Ans. A man would be perfectly safe, because there would be no ground attached to it.

Ques. In case of a man standing in a wet place, what is it usual to give him to use there in addition to gloves?

Ans. Well, a board generally, or a platform, rather.

Ques. And if a man is placed to handle wires off a

reel, and the wires that he is reeling off are to go over a live wire, what is done to protect the man at the reel?

Ans. Sometimes they use what we call a guard wire to keep the wire we are running away from the wire that is charged; use rubber gloves.

Ques. Are there any different devices for keeping the wires from coming in contact?

Ans. Well, there is in some cases.

Ques. What kind of devices are used for that purpose?

10 Ans. Well, you see——

Mr. Grey: I object. It seems to me the witness's attention should be called to the time, at and prior to the date of this accident. There may be some devices used since not in existence then.

Ques. Before this accident, what were the devices usually used when wires were going to cross?

Ans. Well, I have used several kinds.

20 Ques. What kinds; what devices?

Ans. Well, in using guard wire, keeping the wire you are running away from the wire that is charged, that is stretched, the wire, the same way as the wire you are running over the wire that is charged so it will not drop on it; and rubber gloves and a platform or a wagon.

Ques. Have you ever known of any other means or devices used by any company for protecting the men at the reel?

30 (Objected to).

The Court: He has a right, I think, to ask the different kinds of devices, and the question objected to, as to whether there are any other than those he has described, I will allow.

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

Ques. Do you know of any other devices than those you have described, Mr. Kernan?

Mr. Grey: Will you address your question to the date of the accident, and prior to that?

Ques. Yes, at the date of the accident and prior to it.

Ans. No, sir; that is about the only three that you could use for protection against——

Ques. If all these means were absent, the man is bare-handed and standing in a wet place, and the wire he is reeling comes in contact with an electric wire, a live wire, what would be the result? 10

Ans. Well, he would not have much protection.

Ques. Would he have any?

(Objected to. Objection overruled.)

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

Ans. None at all.

Cross-examination.

By Mr. Grey:

Ques. You mean you only know of three telephone companies in existence, those that you named; is that all there are?

Ans. No, there are lots more. 30

Ques. Which of these companies that you have named have you ever known to supply these devices that you are suggesting, under the circumstances that he suggested to you by the direct examination?

Ans. I think all of them use them. I don't know whether the company supplies them; I couldn't say.

Ques. Do you know these plaintiffs, Mr. Donohue and Mr. Burns—do you know them?

Ans. Well, I just know them slightly, not acquainted with them much.

Ques. Did you know them at the time of the accident?

Ans. No, sir.

Plaintiff rests.

10

Mr. Grey: If your Honor please, I move that the plaintiff be non-suited on the general ground that he has not shown any negligent act on the part of the defendant which would make it liable to either of these plaintiffs for the damages which they undoubtedly received. There is no knowledge shown on the part of the defendant that the telephone wires were crossing a live wire. It is not shown that the telephone wire actually did come in contact with a live wire, a live trolley wire, resulting in this accident. It is not shown that the absence of boards and gloves was the proximate cause of the accident. It is not shown that it is the usual custom in the business for the companies to supply the devices suggested to men who are working under the circumstances that these men were. For all of these reasons and generally on the broad ground that no negligence or omission has been shown on the part of the defendant, I think both plaintiffs should be non-suited.

30

The Court: I shall deny the motion to non-suit.

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

THE CASE FOR THE DEFENDANT.

JESSE NAYLOR, sworn.

By Mr. Grey :

Ques. Where do you live?

Ans. No. 2643 N. Bancroft St., Phila.

Ques. What has been your business the last few years? **10**

Ans. The telephone business.

Ques. How many years?

Ans. About sixteen years this Spring.

Ques. What kind of work have you done?

Ans. Well, from ground man's work on up; different positions.

Ques. Are you familiar with the working of reels, the running of reels and the stretching of wires on poles?

Ans. Yes, sir.

Ques. How much of that kind of work have you done? **20**

Ans. Well, for about twelve years.

Ques. What companies have you worked for?

Ans. I have worked for the American Telephone Company, the Postal and the present company I am with now.

Ques. Are you familiar with the methods of carrying on that kind of work, stretching wires?

Ans. Yes, sir.

Ques. And running reels?

Ans. Yes, sir.

Ques. And with the devices used therefor?

Ans. Yes, sir. **30**

Ques. You were working with the plaintiffs down at Ocean City on the date of the accident, were you?

Ans. Yes, sir.

Ques. How long had they been with you at the time of the accident?

Ans. Burns had been about two months; Donohue had

not been—well, he came on between the 6th and 8th of July.

Ques. What wages did you give them, did the company give him?

Ans. \$2 a day.

Ques. Did these men know how to run reels?

Ans. Why, Burns had been tending reels for I guess a month before we went down to Ocean City, and Donohue claimed to be an old hand at the business, although

10 he was shown that morning.

Ques. Did you assist them in running the reels that morning, or any time prior to the accident?

Ans. Assist them?

Ques. Yes.

Ans. Why, Burns I did, and Donohue, too.

Mr. Wescott: Did what?

The Witness: Assisted running the reels.

20

Ques. Did you run any reels at all that morning yourself?

Ans. Why, yes.

Ques. What were you doing at the time of the accident?

Ans. I had just finished connecting up the wire.

Ques. Were you actually near the men when the accident occurred?

Ans. Yes; about a hundred feet, I guess.

30

Ques. Had you made any statements or given them any warning about there being any danger?

Ans. I had.

Ques. What warning had you given them and when?

Ans. Why, just a short while before I warned them of the danger they was in, to attend to their business.

Ques. What danger were they in? No, cross that out. What did you tell them; what did you say to them on that point?

Ans. I told them to 'tend their reels,—they had been caught several times—and quit making cigarettes.

Ques. Well, there was nothing said in that about danger.

Mr. Wescott: Don't argue with him.

Ques. You said you warned them of danger; what danger did you warn them of?

Ans. The trolley wire ahead of them,—“Don't let any wire get loose from them and get across this trolley.” **10**

Ques. What was the character of the ground on which they were working as to its being wet or muddy?

Ans. Why, it wasn't wet; it was kind of damp.

Ques. Was the place on which the men were standing higher or lower than the surrounding ground?

Ans. Higher.

Ques. How long had they been working there when the accident occurred?

Ans. About two hours.

Ques. And what time of day did the accident occur? **20**

Ans. About nine o'clock.

Ques. Had these plaintiffs been across the trolley track before that morning?

Ans. Yes.

Ques. Or, rather, before the accident?

Ans. Yes, the day before.

Ques. How many wires were there running on the poles on which you were running telephone wires that morning? How many wires were there there already?

Ans. Eight or ten, I think. **30**

Ques. And were the new wires being run above or below those?

Ans. Above.

Cross-examination.

By Mr. Wescott:

Ques. Why did you give these men warning of danger?

Ans. Why, in case of any wire, any place like that, I always do warn the men.

Ques. What was the danger?

10 Ans. Why, there was a trolley wire ahead of them.

Ques. A live trolley wire?

Ans. Yes.

Mr. Grey: May I be allowed to ask him a few questions? You can cross-examine on it all at once.

Mr. Wescott: All right.

By Mr. Grey:

20 Ques. Is there any usual method or appliance supplied by companies to their men working under these circumstances?

Ans. I never knew of any of them.

By Mr. Wescott:

Ques. There was a live wire?

Ans. Yes, sir.

Ques. And you were stringing naked wires over it?

30 Ans. Yes, sir.

Ques. And you had been in this business some sixteen years or so?

Ans. Yes, sir.

Ques. That is a very dangerous thing to do, isn't it?

Ans. Well, I don't know.

Ques. Well, isn't it? Isn't it a dangerous thing to string naked wires over wires charged with a deadly current?

Ans. Well, if the men attend to their business they are working——

Ques. Weren't these plaintiffs attending to their business?

Ans. I called them to task a couple of times.

Ques. When they got hurt, weren't they attending to their business?

Ans. They were 'tending the reels.

Ques. Well, if they were attending to their business, then, 'tending the reels, they wouldn't have got hurt, would they, according to your theory? **10**

Ans. Well, no.

Ques. Very well, then; if they were attending to their business and the reels and did get hurt, how do you account for it?

Ans. Why, they let the wire catch.

Ques. Where did the wire catch?

Ans. On the reel.

Ques. Whereabouts on the reel?

Ans. On Burns' reel.

Ques. And that is what caused the damage? **20**

Ans. Yes.

Ques. And it was not due to the electricity running through the wire?

Ans. Well, it was after the wire broke.

Ques. Where did the wire break?

Ans. On the reel.

Ques. Well, now, what caused the wire to break at the reel?

Ans. By letting it get caught.

Ques. Got caught how? **30**

Ans. On the reel.

Ques. Whereabouts on the reel?

Ans. I couldn't exactly tell you that.

Ques. It got caught on the reel and broke off?

Ans. Yes.

Ques. And then that enabled the electricity to run through it?

Ans. It went ahead and dropped on the trolley.

Ques. That is what did the mischief, eh?

Ans. Yes.

Ques. Wasn't it because you did not keep the overhead wire away from the trolley wire yourself?

Ans. How so?

Ques. That is, the horses, didn't the horses stop or back or something, and let the wire sag?

Ans. No, sir.

10 Ques. They did not?

Ans. No, sir.

Ques. Did the wire part, where they came in contact?

Ans. It did, when it fell on the ground.

Ques. What do men, working at a reel, when they are in a damp place, usually have to protect themselves?

Mr. Grey: I object; what the men usually have don't seem to me to be evidence.

20 Mr. Wescott: This man is here as an expert, if your Honor please, testifying for the defendant.

Mr. Grey: It is not in proof that they usually have anything.

30 The Court: Yes, it is a proper question as to what they usually have. Then another question which follows necessarily from it, of course, that the jury will have to determine, is which side ought to take that precaution? The fact that such a precaution ought to be taken it is certainly proper to show, and who ought to have taken it is something which follows afterward.

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

Ques. What do they usually have to protect themselves

with, the men at the reels, when the wire that they are unreeling goes over a live wire?

Ans. I have never used anything.

Ques. Don't they use gloves, rubber gloves?

Ans. Well, in some cases.

Ques. In what cases?

Ans. In cases where the wire is very thick.

Ques. And do they in case the men unreeling the wire stand in a damp place?

Ans. Well, just according to where they would be. **10**

Ques. What else do they use besides the rubber? Do they stand on boards?

Ans. Well, I never had occasion to use any boards.

Ques. Do they usually stand on boards?

Ans. Generally stand in wagons—sometimes.

Ques. Stand in wagons?

Ans. Yes, if we have enough wagons.

Ques. Did you have a wagon there on this day?

Ans. No.

Ques. What do they do in reference to protecting the dead wire from coming against the live wire? **20**

Ans. Well, it is just kind of what position you are in. Sometimes they might put up a rope.

Ques. What else?

Ans. That is all I know of.

Ques. What did you use on this occasion?

Ans. Why, I was running on top, on the line.

Ques. Well, while you were stringing these wires down there, did you use any guide or guard to prevent the two wires from coming in contact?

Ans. No, there was wires up on the line; the present wires were upon on the line. **30**

Ques. What do you mean by that?

Ans. Why, there was wires on the line; I was running on top.

Ques. Did you stretch wires across?

Ans. No, they had been stretched across.

Ques. They had been stretched across?

Ans. They was there; yes, sir.

Ques. Then you had a protection?

Ans. No, it is not what you would call a protection.

Ques. How did the wires come in contact if there was wires to keep them from coming in contact?

Ans. This one wire breaking.

Ques. When did you stretch this wire across to keep the dead wire from coming against the live one?

10 Ans. I didn't stretch it across?

Ques. Who did stretch it across?

Ans. I don't know.

Ques. It was there, was it?

Ans. Yes.

Ques. And it is a usual device to prevent wires from coming together, isn't it? Oh, well, now, you know it is; why don't you say so?

Ans. No, I don't know that it is at all.

Ques. Now, didn't you stretch that wire here yourself?

20 Ans. No, sir.

Ques. Or had it done?

Ans. No, sir.

Ques. Sure?

Ans. I am sure; yes, sir.

Ques. And didn't you have boards put down where these reels were for the men to stand on?

Ans. No, sir.

Ques. And didn't you warn them?

Ans. I warned them, yes.

30 Ques. Not to stand on the ground when they were handling these wires?

Ans. No.

Ques. And didn't you tell them to use gloves?

Ans. No, sir.

Ques. Didn't you use them after the accident happened?

Ans. No, sir.

Ques. And weren't gloves used and boards used and wasn't that protection for the wires used after the accident?

(Objected to).

Ans. No, sir.

Ques. You say they were not?

The Court: The fact that they were used afterwards **10**
by this line, I can see no harm in allowing.

Mr. Wescott: Will your Honor allow me to interrupt you just one second? Perhaps you do not understand the reason why this is asked. This witness said in the chief examination that he had never used any of these things. Now, I propose to prove that he used them right there.

The Court: Before the accident?

20

Mr. Wescott: No, he said he never used them at all before or after. Now, I ask him these questions for the purpose of contradicting him specifically and showing that he did use them right after this accident; that he ordered them and told the men to use them.

The Court: Yes, I think it is proper cross-examination, and I intend to allow the question.

Mr. Grey: My objection is to the fact that it was done after the accident. Your Honor overrules the objection and I ask for an exception. I understand your Honor holds that what the company does after the accident is no ground as to what they should have done before.

30

The Court: I will take care of that matter. What

the company may do afterward is not necessarily proof of carelessness in what took place, and yet the fact itself may be shown in cross-examination.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is signed and sealed accordingly).

10 Ques. These wires that you speak of as protection, were they running crossways, or the same direction you were stringing these wires?

Ans. In the same direction.

Ques. So they were all running parallel with each other?

Ans. Yes.

Ques. Then do you mean for the jury to understand that those wires were used there as a protection to protect these men, by running crossways?

Ans. Well, I didn't—

20 Ques. Now, is one of the usual devices to use covered wires where a dead wire has to cross a live one?

Mr. Grey: I object; the witness has said there is no usual method; and now the Judge asks him if that is the usual method to do so and so.

Ques. Well, do you do that in the course of your business?

Ans. Well, sometimes.

30 Ques. Well, did you do it on this occasion?

Ans. Not there.

Ques. Didn't you at Ocean City, where this accident happened?

Ans. Not at that point.

Ques. Well, did you do it at any point when you were stringing these wires?

Ans. Yes, sir.

Ques. Now, what point did you do this at, cover the wire so as to protect it?

Ans. Why, between 11th and 12th streets, I think, in Ocean City.

Ques. Was there a trolley wire there?

Ans. Yes, sir.

Ques. When did you put that protection on?

Ans. Why, I don't know; a couple of days afterward, I think, we were running there.

Mr. Grey: A couple of days after what?

10

Mr. Wescott: After the accident.

Mr. Grey: I ask that that be stricken out as not being evidence at all.

The Court: I shall allow it.

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

20

Ques. Why did you put that protection on a couple of days afterward?

Mr. Grey: I make the same objection.

(Objection overruled).

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

30

Ques. Why did you put that protection there?

Ans. We were so close to the trolley there and electric light.

Ques. How close to the trolley were you when this accident happened to these boys?

Ans. I judge eight or ten feet above.

Ques. Above the trolley?

Ans. Yes, sir.

Ques. And in the other case, you were how far above?

Ans. Why, we were wedged in between the trolley and electric light.

Ques. Wedged in between?

10 Ans. Yes.

Ques. What do you mean?

Ans. We were between the two.

Ques. How far from either were you, with your wire?

Ans. Oh, I could not exactly tell you the distance; I suppose four or five feet.

Ques. Four or five feet either side of your wire?

Ans. We were in the centre; the electric light over top, and the trolley ran——

Ques. You were over the top of the trolley?

20 Ans. We were on top of the trolley and the electric light over top of us.

Ques. When these boys got hurt, the wire was over the top of the trolley?

Ans. Yes, but there was nothing over top of us.

Ques. When these boys got hurt, weren't you up in the woods making a connection?

Ans. I was right a hundred feet from the reels.

Ques. The day these boys got hurt, you were stringing these wires by the aid of a horse or two horses?

Ans. Yes, sir.

30 Ques. And you were pulling how many wires at once?

Ans. Ten.

Ques. Now, the day afterward, how many did you pull?

(Objected to. Question withdrawn.)

Ques. You found it was impracticable to haul ten wires at once, didn't you, and changed to hauling one, stringing one at a time?

Ans. No, sir.

By Mr. Grey:

Ques. What was there between the telephone wires that you were stringing and the trolley wire?

Ans. There was eight wires.

10

Ques. Where the telephone wires crossed the track?

Ans. Eight wires.

Ques. Eight telephone wires?

Ans. Yes.

Ques. Were there any cross-arms on any of these poles?

Ans. Yes, sir.

Ques. What do you call them?

Ans. Cross-arms.

Ques. How many cross-arms were there below the telephone wires that you were stringing on these poles?

20

Ans. Either one or two; I don't just remember now.

Ques. And it was on these lower cross-arms that the ten or eleven other wires—how many did you say there were?

Ans. Ten we strung across.

Ques. No, but on the lower arms?

Ans. Eight or ten.

Ques. And it was on those cross-arms that the eight or ten wires were strung below your telephone wires?

Ans. Yes.

30

FRANK D. W. BUTLER, SWORN.

By Mr. Grey:

Ques. Where do you live?

Ans. No. 6105 Market street, Philadelphia.

Ques. What is your business?

Ans. Telephone.

Ques. How long have you been at it?

Ans. About seventeen years.

Ques. What company did you work for?

Ans. Southern Massachusetts Telephone Co., New England Telephone & Telegraph Co., Southern New England, American Telephone & Telegraph, Delaware & Atlantic, Ohio Telephone, Indiana Telephone, and several
 10 others, by being transferred from one to another.

Ques. What kind of work did you do in these various companies, what character of work?

Ans. Operating, ground work, climbing, trimming right of way.

Ques. Are you familiar with the work of laying or running wires?

Ans. Quite so.

Ques. Working reels?

Ans. Quite so.

Ques. And such other things?
 20

Ans. Yes.

Ques. Are you familiar with the methods and appliances used in the business, of stringing such wires and running reels?

Ans. Quite so, in a general way.

Ques. Is there any usual method pursued in working the reels and pulling the wires where the wires may cross some other electric wires?

Ans. So far as my experience goes, it is governed entirely by the existing conditions at different points and
 30 rulings of various companies. I know of no general ruling.

Cross-examination.

By Mr. Wescott:

Ques. Well, if you had a couple of men to reel off wire

that some distance on was going to cross a live trolley wire, what would you do to protect them from receiving a shock?

Ans. I would insist that they dead end their wire before they reached the point of danger.

Ques. Dead end the wire; how do you mean?

Ans. Run it to a certain point and stop.

Ques. Then no electricity could get through it?

Ans. Not in that way.

Ques. That is one way this defendant company could have prevented these young men—— 10

Ans. That is one way. That way is now enforced, but has recently come in, and was not known two or three years ago.

Ques. Well, was the method of stringing by wagon known then?

Ans. Yes.

Ques. That would have been safe, wouldn't it?

Ans. That would depend entirely on circumstances. If it was extremely wet ground, the wagons are usually so heavy with their equipment that it is impossible to get them on soft ground and out again; they sink. Ordinarily, on soft ground, the reels are put on the ground, carried in and out by hand. 20

Ques. Well, if the ground had not been soft, the wagon would have been a safe method, wouldn't it?

Ans. It would have been safer than the men standing in water.

Ques. Well, isn't it very dangerous for a man to stand in water and reel off where there is a possibility of contact between a dead and live wire? 30

Ans. It is more dangerous than otherwise.

Ques. Isn't it absolutely dangerous? Isn't he sure of getting some shock?

Ans. Not to my knowledge, it isn't.

Ques. One of the things to protect him against shock is to put planks, boards for him to stand on, isn't it?

Ans. If his feet are perfectly dry at the same time. If you would put them in a hot oven and put them on the planks, it would be a good deal safer than put them in the water and put them on the planks.

Ques. And rubber gloves, are they used for the same purpose?

Ans. They are to-day, quite generally.

Ques. Were they at that time?

Ans. Not to my knowledge, they weren't.

10 Ques. Do you know that they weren't?

Ans. I don't know that they weren't; I wasn't in this part of the country at that time.

Ques. Is it another pretty good thing to have some protection, to prevent the two wires from coming in contact; is that a usual thing?

(Objected to).

The Court: He may ask if that is a usual thing.

20

Ques. Well, is it a usual thing?

Ans. No, sir.

Ques. When do you use it?

Ans. Governed entirely by circumstances.

Ques. Very well, take these circumstances.

Ans. I don't know what they were, sir.

30 Ques. Well, I will tell them to you: Two men were standing in a wet place with naked hands, reeling dead wire, which dead wire, some distance up the road from them crossed a live trolley wire. Now, in that situation, would it have been a usual thing to have put up some protection to prevent the trolley wire and the dead wire from coming in contact with each other?

Mr. Grey: I object to that statement of facts. One of the questions in dispute is as to whether or not these plaintiffs were standing in a wet place. It cannot be

taken for granted and stated to the witness as a fact, because the jury is going to determine.

The Court: I would allow the question, if the word "if" was put before it. You can put a hypothetical question of that kind.

Ques. Suppose this case, then: Suppose two men are standing in a damp place, naked-handed, reeling a dead wire off, which dead wire, some distance down the road from them is to cross a live trolley wire; suppose that to be the case. Now, what would be done to keep these two wires from coming in contact with each other? **10**

(Objected to).

The Court: I would allow a hypothetical question like that.

Mr. Grey: On that point, if there is to be a hypothetical question, it must contain all the facts, otherwise it is an improper question. This question does not contain all the facts: for the additional facts were that there were, underneath the wires going across the trolley wire, eight or ten wires and one or two cross-arms between the telephone wire and the trolley wire complained of. Those things must be taken into consideration in order to know if there was any danger, and, if so, how much danger, and what precautions should be taken, if any, it seems to me. **20**

30

The Court: It must contain all the facts, undoubtedly, but this adds facts that are proved by the defendant's side.

Mr. Wescott: That is what it does; it contains the plaintiff's case, not the defendant's case.

The Court: I should allow the question as it stands.

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

(Question repeated).

Ans. Several things could be done.

10

Mr. Grey: I object. It seems to me it has nothing to do with this case what could be done. The question is: What ought the defendant to have done, if anything? and what he ought to have done was governed by the usual method of carrying on business under those circumstances. There has not been shown any usual method.

20

The Court: That is the object; to show what was usual, and what could have been according to the usages of that time. I think that can be shown, and there can be also asked the same kind of question upon the facts as you view them, and as the defendant has proved them.

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

30

Ans. I said that several things may have been done ordinarily to prevent two wires coming together, but in a case as I understand this case, if I may answer it in that way——

Ques. Just understand the case that I have put to you in the question, no other case; not what somebody has told you outside; just what I have put in the question.

Ans. To prevent the two coming together?

Ques. Yes.

Ans. Well, a basket or net, as one of the witnesses explained, could have been put up; a rope guard could have been stretched to have avoided part of that possibility, or the wire could have been dead-ended before they reachd that point.

Ques. What else?

Ans. That is all that I know of.

Ques. Couldn't they have been covered?

Ans. That is not answering the question as I understand it.

Ques. To avoid these two wires touching before you got there, a covered wire crossing the live wire would have absolutely no effect; the possibility of the men being hurt under those conditions would not have arisen? 10

Ans. If the wire had been covered——

Ques. If the wire at that point had been covered, then there could have been no possibility of their being hurt?

Ans. Not as I know of.

Ques. And if they did that the next day or the day afterward, covered this wire, then that was abundance of precaution thereafter? 20

Ans. At that point, you mean?

Ques. Yes.

Ans. Well, if I clearly understand you, or you me, it is a different case. We very frequently dead-end these wires and come back two or three weeks afterward, and fill in these odd spaces here and there with covered wire.

JOHN MULLIGAN, sworn. 30

By Mr. Grey:

Ques. What is your business? Where do you live?

Ans. I live 1677 Wilkin avenue, Philadelphia.

Ques. What is your business?

Ans. Inspector of lines, at present.

Ques. How long have you been in the telephone business?

Ans. In the telephone and electric business, you mean, or just the telephone?

Ques. The telephone, telegraph and electric?

Ans. Twenty-two years.

Ques. What companies have you been in?

10 Ans. Well, to begin with the first ones, I can mention the Mutual Union, Bankers & Merchants', American—they were gobbled up by the Western Union—the Baltimore & Ohio—they were gobbled up by the Western Union—the American Company, Postal Telegraph Company and D. & A.

Ques. Have you had any experience with stringing wires on poles in the country?

Ans. Yes, sir.

Ques. And the operation of reels with which to run such wires?

Ans. Yes, sir.

20 Ques. Have you had experience in the methods and appliances used in that business?

Ans. I have had a good deal of experience at it.

Ques. Is there any usual method or any usual appliances supplied to men who are working the reels on which telephone wires are being strung across poles, when such wires may possibly cross electric wires of other concerns, trolley or electric light wires?

Ans. Yes, we always use caution; under the circumstances, we use caution.

Ques. To prevent wires from coming in contact?

30 Ans. In case they are close enough to come in contact, we do.

Ques. What company do you speak of now when you say "we"?

Ans. Well, anybody, all companies. We are supposed to know dangerous wires, what we call deadly currents, such as electric light wire and heavy feed wires.

Ques. Were you down at Ocean City at all?

Ans. I have been there.

Ques. Down there at the time of this accident?

Ans. No, sir.

Ques. Been there since, have you?

Ans. Yes, sir.

Ques. Then you have seen this place where the feed wires cross the trolley wire?

Ans. I have never had it pointed out to me. I have no doubt been there, because I have done work over it several times.

Ques. Since the accident?

10

Ans. Yes, sir.

Cross-examination.

By Mr. Wescott:

Ques. You say that where there is a likelihood or possibility of wires coming in contact, you use some caution. What sort of caution do you use?

Ans. Well, as a rule, we have the men so cautioned as to look out and pay attention to their work, and to keep the wire—— As I believe I heard this young man say that they were holding on to the iron pin—that is the way they came in contact with the current; well, that is what they are placed there for, to hold this wire from going around so fast, and watch the wire from getting caught so it would be liable to break, keep it from going around too fast so it would get slack and come in contact with foreign currents. If you string a wire here, and were going on here (indicating) this wire would sag down like that; if you didn't hold your wire taut, it would sag down and come in contact with the wire below, but by holding it taut and letting it go as the horse pulled it, that would keep it then from sagging down.

20

30

Ques. That is one caution?

Ans. Yes, sir.

Ques. That is a caution to the men to do their work right?

Ans. Yes.

Ques. Now, what other caution do you use?

Ans. Well, the only caution I ever did use was cautioning my men going over a trolley.

Ques. Well, we have had the men cautioned; don't let's have them cautioned twice. What other caution did you use?

10 Ans. No other caution for a trolley wire.

Ques. No other caution?

Ans. No, but in electric light wires that are deadly——

(Objected to.)

Ques. Tell us about trolley wires; all trolley wires carry enough current to kill or hurt people?

Ans. They are not supposed to.

Ques. You never heard of a trolley wire doing any damage?

20 Ans. Oh, yes.

Ques. Suppose there was a trolley wire down at Ocean City on the 30th of July, 1901, conveying electricity, and a wire that these boys were unreeling came in contact with it and they got burned, what would you say about the capability of a trolley wire to do mischief?

Ans. I should say there was more than 500 volts in it.

Ques. It would have power enough to do some mischief, wouldn't it, would you think?

Ans. Yes, sir; must have had.

30 Ques. In a case of that sort, what do you use to protect them, to keep the two wires from coming in contact with each other?

Ans. Tell the men to hold the wires.

Ques. Outside of cautioning the men to hold the wires, what else would you do?

Ans. I have never done anything else.

Ques. Never did?

Ans. No, sir; not in a trolley.

Ques. How long have you been in this business?

Ans. Twenty-two years.

Ques. And in twenty-two years, you never heard of planks for men to stand on, rubber gloves for them to wear, or insulation or guard wire as a protection; never heard of those things?

Ans. I have heard of them; yes, sir.

Ques. Oh, you have heard of them, but never known them to be used? **10**

Ans. I say, I haven't used them.

Ques. You haven't personally?

Ans. No, sir.

Ques. Did you ever know of them being used by anybody?

Ans. What particular things do you mean?

Ques. When you heard of these things, did you hear of their being used in South Africa or Northeastern Asia?

(Objected to.)

20

Ques. Where did you hear of their being used?

(Objected to.)

Mr. Wescott: I would like to have a ruling as to whether that is pertinent to this case.

The Court: No, I shall overrule that.

30

Ques. Did you hear of their being used in the United States?

Mr. Grey: I object; it don't make any difference where he heard of their being used; it is hearsay, anyway.

Ques. You never knew of them being used, did you?

Ans. Yes, sir.

Ques. Where did you know of them being used?

Ans. In all parts of the country where I have worked.

DR. BENJAMIN T. ADAMS, SWORN.

10 By Mr. Grey:

Ques. Where do you live?

Ans. Ocean City, New Jersey.

Ques. Do you know these two plaintiffs?

Ans. Yes, sir.

Ques. And you saw them shortly after they were hurt?

Ans. I did.

Ques. And you examined them?

Ans. I did.

20 Ques. And they were pretty badly hurt?

Ans. Both, yes.

Ques. How long were they under your jurisdiction?

Ans. Each of them was under my care from the day of the accident, July 30th, until, I think, September—well, one of them went the last of September, and the other one until October, some time during the month of October.

Ques. Burns until September, and Donohue until October?

Ans. Yes, sir.

30 Ques. Donohue had the more severe injuries, didn't he?

Ans. Yes, sir.

Ques. When the plaintiff, Burns, left your care, how did he seem? What was his condition? Had he improved any from the time you first commenced to treat him?

Ans. Yes, sir; very much. The burns were cicatrizing; in fact, had cicatrized, and were hard, covered over, and

we considered him fit to go out; that is why we discharged him from the Sanitarium at Ocean City, and at that time Burns—Donohue, I mean, was unfit for service.

Ques. At the time that Burns left, Donohue was unfit?

Ans. Yes, sir; and we kept him later.

Ques. How much later? A month?

Ans. Well, yes; I judge so.

Ques. How was he when he left?

Ans. By reference to notes, I can tell just exactly 10
when he left the Sanitarium; I don't recall it in my mind.

Ques. Had he improved any when he left?

Ans. Yes, sir.

Ques. Did you see him this morning?

Ans. I did; I was an eye witness to the stripping.

Ques. Both of them?

Ans. Yes, sir.

Ques. Has there been any improvement in the appearance of either one since the time that they left your charge until this morning?

Ans. Well, in the case of Burns, I see a full and entire 20
cicatrizization has taken place; that is, the wounds of Burns have healed over entirely. In the case of Donohue, the cicatrized burns, on the surface look very much as they did when I saw him last in September, 1901.

Ques. You mean in October, 1901?

Ans. In October, 1901, except that they look firmer, 30
stronger, and more solidified. Then they were tender new flesh from the fact that we had used skin grafting in the case of Mr. Donohue. That we performed in September, and, of course, when I sent him to Philadelphia, the cicatrization had taken place, but the new skin was yet very tender.

Ques. When you saw them this morning, did they seem to be in better or worse physical condition as to weight and general appearance from the time when they left you?

Ans. As to weight and general appearance, I see very little difference. They have, of course, more the appearance of health and vigor than they had when they left the Sanitarium. I have not seen either gentleman since until to-day, and I should say that they had not only held their own, but had improved in general appearance.

Ques. Were they faithful in pursuing the remedies you suggested, do you know?

- 10 Ans. Yes, sir; quite. They made a little complaint, but no more than you or I perhaps would.

Cross-examination.

By Mr. Wescott:

Ques. These two boys were very badly burned, weren't they?

Ans. Yes, sir; one especially.

- 20 Ques. And when they came there to the hospital, there was some question about their pulling through, wasn't there?

Ans. Yes, I thought so, and the other doctors in attendance with me at that time thought so. That is, you mean immediately, the day they were brought there?

Ques. Yes, they were both very savagely burned?

Ans. Yes, sir.

Ques. The burns were deep?

- 30 Ans. Yes, sir; especially on the arm of Mr. Donohue, was quite deep.

Ques. The flesh was actually cooked, wasn't it?

Ans. Yes, sir.

DR. HENRY NORRIS, SWORN.

By Mr. Grey:

Ques. Doctor, what is your business?

Ans. I am a physician and surgeon.

Ques. And where have you been practicing the last two years?

Ans. Philadelphia.

Ques. Where were you in the Fall of 1901?

Ans. Philadelphia.

10

Ques. In the hospital?

Ans. University Hospital.

Ques. The University Hospital?

Ans. Yes, sir.

Ques. Do you know these plaintiffs, Donohue and Burns?

Ans. Yes, sir.

Ques. Saw them at the hospital?

Ans. Yes, sir.

Ques. About when did they come there?

20

Ans. Why, Burns came about the end of September, and the other man a month or so later.

Ques. What condition was Burns in when he came?

Ans. He had a number of scars over his body.

Ques. You saw him this morning, stripped?

Ans. Yes, sir. I forget just how many he had, but several of them weren't entirely healed up. They were granulating nicely, healing up rapidly.

Ques. How long was he under your treatment?

Ans. I think about six weeks, something like that; six or eight weeks, six or seven weeks.

30

Ques. And when you finished with him, what shape was he in then, what condition was in then?

Ans. Well, the wounds were entirely healed up, cicatrized.

Ques. Was he especially nervous when he was with you?

Ans. I didn't notice that he was.

Ques. Did he then complain of any itching of the scars.

Ans. No; not that I remember.

Ques. Did he stay at the hospital, or come there in the day time and go away?

Ans. He just came to be dressed, and then went away again.

Ques. How often did he come?

10 Ans. I think he came about three times a week at first, two or three times a week.

Ques. You saw him this morning; how did his condition compare with when he left the hospital, when he left your charge?

Ans. I didn't see very much change.

Ques. Did he seem to have the free use of his arms?

Ans. Oh, yes.

Ques. Now, about Donohue; what condition was he in when he came to the hospital?

20 Ans. Well, the principal trouble he had was this burn of the elbow, his right elbow, the interior part of the right arm. That was not healed up when he first came to me.

Ques. He was worse burned than the other man?

Ans. Yes, a little more extensive burn, deeper.

Ques. How long was he under your treatment?

Ans. I think about two months?

Ques. Did he come in through the week, or did he stay at the hospital?

Ans. He came through the week, didn't stay in the hospital.

30 Ques. Did he improve?

Ans. He did.

Ques. What condition was he in? How long, did you say—two months?

Ans. I think about two months.

Ques. What condition was he in when he left?

Ans. The wound had entirely healed. There was some

slight stiffening, which I told him would come all right if he worked with the arm, and had it massaged; told him there was nothing more I could do for him.

Ques. Did he complain of itching or pain in it?

Ans. I don't remember that he did. He said his arm hurt him when he moved it.

Ques. Did he seem especially nervous?

Ans. I didn't think so.

Ques. Did he complain of headache?

Ans. He did one time; yes, sir.

10

Ques. One time?

Ans. Yes, sir.

Ques. You saw him this morning?

Ans. I did.

Ques. Did he seem improved, in better health?

Ans. Well, his arm was better than when I saw him last; the man was better.

Ques. His right arm?

Ans. Yes, he moved it better this morning than when I saw him last.

Ques. How permanent do you consider Burns' injuries to be? Burns is the one sitting next to his counsel, with the moustache.

20

Ans. Well, speaking surgically, I would not say that these scars would bother him a great deal.

Ques. Do you think they would interfere or would now interfere with the use of his muscles?

Ans. No, I don't believe they do.

Ques. And do you think that in the future the injury will increase or decrease?

Ans. Well, I should say it would stay about as it is; I don't think there would be much improvement.

30

Ques. Over what it is now?

Ans. No, the scars wouldn't get smaller.

Ques. Now, as to Donohue; how permanent do you think his injuries are?

Ans. Well, of course, that right arm is slightly weaker than it was before.

Ques. Before the accident?

Ans. I should say yes, some loss of muscle there, but I should think with proper exercise, &c.—

Ques. You say the use of his right arm is better than when you saw him last?

Ans. Yes.

Ques. Do you think that would improve?

10 Ans. I should think it would; yes, sir.

Ques. Was Donohue faithful in the use of the remedies you suggested to him, supplied him with?

Ans. No, he was not.

Ques. How?

Ans. Well, I put him on one drug which at that time was beginning to be used for those conditions, for the absorption of scar tissue. He said it made him sick and refused to take it; said it gave him a headache, made him sick at his stomach. Naturally, I stopped it.

20 Ques. Did you bandage his arm?

Ans. I did.

Ques. Speaking of Donohue, now?

Ans. Yes.

Ques. What was his conduct as to those bandages; did he leave them undisturbed, or disturb them?

Ans. As far as I know, they stayed on all right. I heard him say they came off right away.

Cross-examination.

30 By Mr. Wescott:

Ques. How old are you?

Ans. Twenty-seven.

Ques. What medical school are you a graduate of?

Ans. University of Pennsylvania.

Ques. When did you graduate?

Ans. 1896.

Ques. Did you graduate from any classic school?

Ans. No college, of course; no.

Ques. Just went through the medical school?

Ans. Yes, sir.

Ques. In 1896.

Ans. Yes.

Ques. Then what did you do after you got through?

Ans. Served for a year and a half in the University Hospital. Then I went to Europe.

Ques. How long did you stay there?

10

Ans. About three months and a half.

Ques. Then when you came back, you had influence enough to get you in the hospital again?

Ans. I got in the hospital, yes.

Ques. Been there ever since?

Ans. Been there ever since.

Ques. What do you do in the hospital?

Ans. I have charge of the surgical dispensary.

Ques. By that, you deal out drugs and bandages and splints, and such things?

20

Ans. Deal them out? No, I don't deal them out.

Ques. Well, hand them out?

Ans. I treat them.

Ques. You use them; don't you use drugs and splints and bandages?

Ans. Yes, sir.

Ques. And if operations are performed, and it is necessary to furnish a piece of cloth, they call upon you to do it; or if they send a prescription in for so much drugs, you weigh them out, don't you?

Ans. No, the druggist does that.

30

Ques. What do you do, take it from the druggist's hands and hand it over?

Ans. No, I write out a prescription and give it to the patient.

Ques. In the case of Donohue, you say you gave him some new drug, which gave him the headache and made him sick at his stomach, and he wouldn't take it?

Ans. Yes.

Ques. And you are getting even with him now by saying he did not follow your treatment, and therefore his arm is bad?

Ans. He did not in that respect.

Ques. Does that account for the absence of muscle in his burned arm, his failure to take your drug?

Ans. No, of course it doesn't.

Ques. Does it account for loss of strength in his arm?

10 Ans. No.

Ques. You said there was some slight loss of strength, putting emphasis on the word "slight."

Ans. I didn't mean to emphasize it.

Ques. What did you mean?

Ans. I meant there was a loss of strength.

Ques. A whole lot of loss of strength, isn't there?

Ans. I wouldn't say how much; I haven't tested his arm for that.

20 Ques. Well, he has got a bad arm, hasn't he, or is it a good one?

Ans. It is not like it was before, of course; a bad scar.

Ques. As a medical expert, standing in the dispensary over there, you are prepared to say upon oath that his arm is not as good now as it was before he was burned?

Ans. It is not as good as it was.

Ques. Well, how near the surface of the skin do the nerves lie?

Ans. Well, some of the nerves are right in the skin, cutaneous nerves.

30 Ques. Well, under the skin, everywhere, in every part of the body, chock full of nerves?

Ans. Certainly.

Ques. And these burns were pretty deep, weren't they?

Ans. Yes.

Ques. And they burned up the nerves?

Ans. I suppose the cutaneous nerves, yes.

Ques. And twisted them out of shape a little, massed them together, didn't they?

Ans. I suppose they would be, perhaps.

Ques. And when this cicatrization occurred that you speak of the nerves were not in the same condition of normality that they would have been if the skin were whole, were they?

Ans. No.

Ques. Now, that abnormal condition of the nerves caused some distress, didn't it?

Ans. Yes.

Ques. And you say these scars won't grow less?

10

Ans. No.

Ques. They will stay there?

Ans. Yes.

Ques. So that the distress that they cause will have to go with these men all the time, won't it?

Ans. No, I wouldn't say that.

Ques. Oh, you won't say that?

Ans. No.

Ques. All right; if you don't want to say that, you need not, Doctor. That is all.

20

By Mr. Grey:

Ques. What are your duties at the University Hospital?

Ans. Well, I have charge of all the cases that come into the dispensary in the surgical line.

Ques. What cases come there?

Ans. All kinds of surgical conditions.

30

By Mr. Wescott:

Ques. You mean you perform the operations?

Ans. A good many, yes.

Ques. In the dispensary?

Ans. Yes.

Ques. Where they have drugs and cloths and such things?

Ans. We don't have many drugs there.

Ques. Whereabout is this dispensary where you perform these operations?

Ans. You mean, at the University Hospital?

Ques. Where you perform the operations, where is that dispensary?

Ans. It is on the second floor of the Agnew, near to the University.

Ques. Where do they have the operating room?

10 Ans. The floor above that.

Ques. What is done in the operating room?

Ans. Operations.

Ques. I thought you did them in the dispensary?

Ans. Well, we do minor ones—cases that don't have to stay in over night, can go out again.

Ques. Such as putting a bandage around a boil, something like that; you perform that kind of operation?

Ans. We don't consider that an operation.

Ques. You don't?

20 Ans. No, that is just a dressing.

E. W. SMITH, sworn.

By Mr. Grey:

Ques. Do you know these plaintiffs?

30 Ans. I know Mr. Donohue. I have seen both of them; I don't know them.

Ques. When did you first make his acquaintance?

Ans. When he came into the office for a position.

Ques. What office?

Ans. The office of the Bell Telephone Company.

Ques. Of this defendant, the Delaware & Atlantic Company?

Ans. Yes.

Ques. What did Mr. Donohue want?

Ans. Wanted a position.

Ques. He said what he could do?

Ans. He said he was a ground hand.

Ques. What is a ground man?

Ans. A man who works on the ground, distinguish between them and climbers, men who work on the poles.

Ques. When you say a ground man, does a ground man have anything to do with stringing wires or tending reels?

Ans. Yes, stringing wires and tending reels.

10

Ques. Was he employed to do the thing he said he could do?

Ans. Yes, sir.

Ques. When was that?

Ans. That was on the 6th of July, 1901.

Cross-examination.

By Mr. Wescott:

20

Ques. Whom do you work for?

Ans. I work for the Bell Telephone Company.

Ques. Did you work for the Delaware & Atlantic Telephone and Telegraph Company?

Ans. At that time, I did; yes, sir.

Ques. And where were you when Donohue made this statement to you?

Ans. I was in the office of the company.

Ques. Where?

Ans. Seventeenth and Filbert.

30

Ques. And this boy Donohue came there and told you he was a ground hand?

Ans. Yes.

Ques. Who else was there?

Ans. With him?

Ques. Yes.

Ans. Well, nobody at that time.

Ques. Who was with you?

Ans. With me?

Ques. Yes.

Ans. Nobody.

Ques. You and Donohue had that——

Ans. He came in the office and asked for that position. I went over and interviewed him for Mr. Young.

Ques. And you gave him the position?

Ans. No, I didn't give him the position; Mr. Young did.

10 Ques. Who is Mr. Young?

Ans. Assistant engineer of the lines at that time.

Ques. Did you send any word to Young?

Ans. Spoke to Mr. Young; yes, sir.

Ques. When?

Ans. At that time.

Ques. Was Young there?

Ans. He was.

Ques. Young was there and heard the conversation?

Ans. He didn't hear the conversation, no.

20 Ques. Did you send Young off in one corner, and have him put his fingers in his ears when you and Donohue talked?

Ans. When Mr. Donohue came in, he waited at the door; did not come all the way up to the desk. Mr. Young and I were both seated at the same desk. I went over to him and asked him what he wanted. He said he wanted a position. I asked him if he had ever worked for this company before; he said he had, the Delaware & Atlantic. I told Mr. Young, and he said if we needed a man any-

30 where we would put him on.

By Mr. Grey:

Ques. Was that the time he told you he was a ground man?

Ans. At that time, yes.

JOHN NELSON, sworn.

By Mr. Grey:

Ques. Do you know these plaintiffs?

Ans. Yes, sir.

Ques. Do you know these two gentlemen, Donohue and Burns?

Ans. Yes, sir; know them perfectly well.

Ques. Do you know Naylor?

Ans. Yes, sir.

10

Ques. You were there at the time of the accident?

Ans. Yes, sir.

Ques. Working in the gang?

Ans. Yes, sir.

Ques. The reel gang, the gang at the reels?

Ans. Yes, sir.

Ques. Did you hear Mr. Naylor give any warning?

Ans. Yes.

Ques. What warning did he give you?

Ans. He cautioned us all to attend to our work; said 20
probably there would be some danger ahead of us.

Ques. What did he say about holding the wires tight
so they wouldn't sag down?

Ans. Just told us to take care of that, and see that
they didn't get to sagging down.

Ques. You said a moment ago that he said there was
a trolley wire ahead; is that right?

Ans. No, he didn't say there was a trolley wire ahead;
we knew there was one ahead.

30

Cross-examination.

By Mr. Wescott:

Ques. You were there where these men got hurt, as
I understand, Mr. Nelson?

Ans. Yes, sir.

Ques. And you helped pull one of them out of the fire, didn't you?

Ans. Yes, one of them there; he got burned the most; at the same time, trying to pull him out.

Ques. Which one did you pull out?

Ans. Mr. Burns that I was trying to pull out.

Ques. All tangled up in the wire, was he?

Ans. Yes, he was all tangled up.

10 Defendant rests.

PLAINTIFFS' REBUTTAL.

OWEN DONOHUE, recalled.

By Mr. Wescott:

20

Ques. Do you know Smith, the witness who was on the stand here just a minute ago, a little fellow?

Ans. No, sir; I seen him in the office after I came back. I don't know him, not to know him.

Ques. Did you go to the office and tell him that you were a ground worker?

Ans. No, sir.

Ques. And did you tell him that you had worked for this company before?

30 Ans. No, sir.

Ques. What did you tell him?

Ans. I went in and asked him for a job. He asked me if I minded going down Jersey. I said I didn't care where he sent me so I got a job, and he said I should go down in Jersey.

Ques. Was that the whole of the conversation between you and him?

Ans. Yes.

Ques. Now, when this accident happened, did the wires at the reel break?

Ans. The wires at the reel break?

Ques. Yes; at your reel?

Ans. I can't tell because I was knocked down.

Ques. I know you were knocked down, but you knew before, didn't you?

Ans. When I got shocked, the imagination came to me I was picked up in the air, and the reel twisted me around; I was twisted around on the wheel. 10

Ques. Did it break before that?

Ans. No, sir; not the way it came to me.

Ques. Do you know Naylor?

Ans. Yes, sir.

Ques. Did he come to you and Mr. Burns, and tell you to attend to the reels, and show you how to handle them and tell you there was any danger, anything of the sort?

Ans. He told us to attend to the reels, but he didn't tell us there was no danger, how to handle it or nothing. 20

Ques. Did he show you how to attend to them?

Ans. No, sir; he said to go ahead and mind our business, 'tend to the reels; didn't say nothing about danger ahead, or nothing. I didn't know the first thing of anything being ahead.

Cross-examination.

By Mr. Grey:

30

Ques. You saw Naylor working at some of the reels there that morning, didn't you?

Ans. Yes, sir.

Ques. He worked your reel a little while, didn't he?

Ans. Not that I remember.

Ques. Did you tell Naylor that you were an old hand at the business, that you had been in this business before?

Ans. No, sir.

Ques. Did you tell him anything of that sort?

Ans. No, sir.

WILLIAM J. A. BURNS, recalled.

By Mr. Wescott:

10

Ques. Do you know Naylor?

Ans. Yes, sir.

Ques. Did he caution you of danger when you were working at that reel or before?

Ans. No, sir.

Ques. Did he ever say a word to you about danger?

Ans. No, sir; not at that particular time he didn't, because I was not working there. I was up where the team was. He was not down there when I came down, and he didn't tell me; all he said was, "Run the reel, Bill."

20

Ques. He never cautioned you about danger?

Ans. No, sir.

Ques. Did the wire break at the reel when this accident happened?

Ans. No, sir.

Ques. Are you sure of that?

Ans. Yes, sir.

Cross-examination.

30

By Mr. Grey:

Ques. You said you had never seen a reel before?

Ans. I had saw a reel before, before I worked down there; yes.

Ques. You had seen them worked, hadn't you?

Ans. Yes.

Ques. Before the accident?

Ans. Yes, sir; but I didn't see them working on a trolley wire.

Ques. But you had seen the reels worked, working the wires off?

Ans. Yes, sir.

Ques. And you had worked the reels before that moment that Mr. Naylor said, "Work the reel, Bill," hadn't you?

Ans. Not that day.

10

Ques. Not that day, but some other day?

Ans. Oh, yes; other days I had, certainly.

Ques. You can read and write, can you?

Ans. Yes, sir.

Ques. You know that electricity is dangerous?

Ans. I didn't know it then.

Mr. Wescott: I object; we have passed that point now. This witness was called back to rebut two specific points. Now, his cross-examination don't involve his knowledge of electricity.

20

Mr. Grey: I am through; that is all.

THOMAS F. LEE, recalled.

By Mr. Wescott:

Ques. Were you down there after this accident, and still continued to work for this company after the accident?

30

Ans. Yes, sir.

Ques. Did you see what was done to keep these two wires apart after the accident, and if so, what was it?

(Objected to.)

Ans. Do you mean the next trolley wire?

Mr. Grey: I object to that question as to what the company did immediately after the accident.

10 Mr. Wescott: This is to rebut the testimony of Nelson, who said that they did nothing there at all in the shape of keeping these two wires from coming together; they did nothing in the shape of furnishing gloves, or planking for the men to stand on. He said that on cross-examination. Now, I propose to contradict it.

The Court: I shall overrule this; it was all gone into this morning as to what was furnished and what was not furnished, and I do not recall that that witness said it was not furnished at any time; not furnished before the accident, he said.

20 Mr. Wescott: He said it was not furnished afterward, too, at any time.

The Court: Well, it is only a matter of discrepancy between witnesses that these precautions were taken. If the objection is insisted upon, I shall have to overrule this as going into the same testimony that has been gone over.

30 Mr. Wescott: Well, so I have my offer go down, which is to contradict the witness Naylor by showing that this company, immediately after this accident, furnished gloves for the men to use, furnished insulated and protected wire, and furnished planking for the men to stand on.

The Court: That is overruled.

(Exception noted for the plaintiff.)

Plaintiffs close.

Mr. Grey: I now move that the jury be directed to find a verdict for the defendant, on the same ground as the motion was made for a non-suit, but this time on all the evidence in the case, the evidence now being closed. I move that a verdict be directed for the defendant on the ground on which the motion for non-suit was made, which was, briefly, that no negligence has been shown on the part of the defendant. I do not think it is necessary to review in detail the grounds. They were mentioned this morning, and the testimony this afternoon has not changed, in my view, the facts as they were mentioned this morning, except to strengthen the facts for the defendant, which did not help the plaintiff's case, and, therefore, are not necessary to be considered in this motion. 10

The Court: I shall deny the motion to direct a verdict. I think there are some questions in this case that the jury should pass upon, and I do not feel warranted in taking this case away from the jury. 20

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

Both sides close.

CHARGE OF THE COURT.

NIXON, J. 30

Gentlemen of the Jury: You have heard the evidence in this case, and the arguments of the counsel, and it now becomes my duty to state to you some principles of law which govern such cases and which you will apply to this evidence. I shall not go over the evidence in detail, as counsel has done it so fully and ably, but I will remind

you of the law, which you will keep in mind when you retire to consider your verdict.

There are two cases which you have heard to-day, as you will remember, and the same evidence and the same principles of law apply to both—the same principles which apply to most accident cases. It is often necessary to reiterate principles very familiar to lawyers, but, of course, not so familiar to juries, which are composed of different men from different places.

- 10 An accident alone does not give ground for recovery against anybody. Accidents always have happened and always will, but it is only when an accident happens to a person through the negligence or carelessness of another person that there is any remedy which may be obtained by suit in the form of a pecuniary compensation. Nor, when there is negligence on the part of the person or corporation can there be recovery, if the person injured in any way contributed to bring about the injury which he suffered. In other words, where the plaintiff, suing a person or corporation, proves to the satisfaction of the jury that the defendant person or corporation was negligent, a verdict does not follow if he himself did anything which he ought not to have done, by which he helped to bring about the result; so if you find that the company was negligent, you will also have to find that the plaintiffs themselves were not contributory in negligence, or you cannot find a verdict for them.
- 20

- 30 The insistence of the plaintiffs, of course, is that they were not negligent, and that these accidents which occurred to them separately were through the negligence of the defendant company. In considering that question there are several matters you must consider. A person who seeks an employment, and represents himself to be acquainted with the work, is presumed to know his duties. If a person applies to a carpenter for work, he is presumed to know a carpenter's work and duties, and the same in any trade. If a lineman applies to a company for work as a lineman, and says he is a line-

man—or if he does not say he is a lineman, but does not come to be taught his trade—the employer may presume he knows his trade and its duties. So that, if these plaintiffs sought employment, and represented to the defendant company that they were linemen, or did not say they were not acquainted with their duties, the defendant company had a right to presume that they were acquainted with their duties. Then another principle of law is, and you must remember this, that when people seek employment, knowing what they will be engaged in, they take upon themselves the dangers incidental to the employment they seek. If a man gets employment in a powder mill, he is presumed to know that there are dangers incidental to that work, which he takes upon himself, and the same principle applies to all other employments, that if there are incidental dangers common to that employment, generally known to belong to that employment, a person seeking it engages in that work with the knowledge of the danger to which he becomes subject, and he cannot recover for any accident which follows incidental to that work. 10 20

These men were employed as linemen. They were about their work, reeling off wire, when the wire came in contact with a live wire. This which they were handling was a dead wire, as you have heard from the evidence, and they were stricken with a bolt of electricity which went from a live wire to the dead wire, and suffered the injuries that you have heard about to-day described by the physicians and the evidence of which you saw upon the persons of the plaintiffs themselves. Now, did they receive these injuries through the carelessness of the company, and without any carelessness upon their part? It is in evidence, of course, that they were hurt—there is no question about that—that they suffered great pain; that they were in a sanitarium at Ocean City, one about two months, the other about a month, and then, after that, needed some medical attention in another hos- 30

- pital in the city of Philadelphia. Therefore, the first question you will have to consider is: Did the company neglect to do what it ought to have done for the protection of these workmen? The plaintiffs insist that they were standing in a damp place, where they should have had a platform to stand on, or something which would have protected them from the dampness, and made them less liable, in case of an escape of electricity, to the consequences; further, that when this wire was being reeled
- 10 over the live wire of the trolley, the company should have had some guard wires to prevent the wire, if it should become slack, falling upon the live wire, and conveying the current to these workmen; further, that the company should have furnished them with gloves, which would have assisted to protect them. There is testimony also, from at least one witness, that it is not the company's duty to furnish gloves or these appliances. But, if it was the company's duty, another question is, whether these workmen were not aware of these dangers; that is,
- 20 that to stand in a damp place or to work without gloves was dangerous; and having, as the testimony shows, the knowledge that this trolley was running, and having seen the trolley wire, that they ought to have known that reeling a wire over it was dangerous. Where a danger is obvious and should be known by the workman—and he would be just as likely to know of the danger as his employer, or more likely—the employer is not responsible if the accident received is the result of obvious danger. That is for you to say. It is not for me to indicate to you what weight and credibility you shall give the evi-
- 30 dence; and I shall only call your attention to certain facts in the evidence to illustrate the principles I am laying down to you. You should consider whether the workmen ought not to have known these things and made application to their employer for better protection; but if you think that the employer, by failing to provide any of these things that I have enumerated to you, was guilty of negligence, and these men were not guilty of

any negligence, they were entitled to a verdict. Then again, if they were not acquainted with their duties, which a man is supposed to be acquainted with when he applies for a certain kind of work, you should consider another question, whether they should have been warned. If a person, ignorant of the general duties of the work he is engaged in, who is a learner, if you please, who is engaged in that kind of work for the first time, is warned of the danger and will not heed the warning, disregards the warning, he cannot recover; and if you believe that these men were warned or knew themselves that to reel a wire over a live trolley wire was dangerous—either warned, or should have known it themselves—they were guilty of contributory negligence. 10

One witness has said that while these things were usual devices, often used to prevent accident, that no company that he had ever worked for used them in crossing a mere trolley wire; that they were used in crossing electric light wires, or a collection of trolley and electric light wires, where the conditions were such as, in the judgment of the workmen for the company, they were needed. 20

These, I think, are the only rules of law I need call to your attention; and you will apply them to the evidence and reach the conclusion to which your best judgment leads you.

If you come to the conclusion, in your deliberations, that the company was negligent and did not perform its duty with a reasonable care for the safety of these plaintiffs, you then come to the question of damages. If you find that both parties, both the employing defendant company and these plaintiffs were negligent, the company negligent, and the plaintiffs negligent in some degree, there can be no recovery. There are no comparative degrees of negligence. You are not to consider which party was the more negligent, because if both were negligent there can be no recovery. If, in your conclusion, you find that the defendant company was negligent, and did not properly perform its duty to the plaintiffs, and the plain- 30

- tiffs not negligent, then you will consider the amount of damages. As you have heard, the plaintiffs did not pay doctor bills, hospital bills or bills for medicine, and these are not to be considered in the verdict. But you have a right to consider the suffering these plaintiffs underwent. It is very difficult to put suffering in the shape of dollars and cents, and, of course, you cannot do it, but exercise your best judgment. It is not the rule, in estimating or calculating damages, to consider what you yourself would undergo the same thing for. A man might not want his own arm cut off or his own body scarred for any amount of money; but where an accident has happened and suffering has been endured, and a measure of disability follows, you must allow for the suffering and disability; and in considering disability, you must consider whether it is temporary or permanent, and consider the loss of earning capacity in the future. All these things may be taken into account, and upon them you will base your verdict if you allow damages. In each of these two cases, you are not obliged to allow the same amount. If you estimate at all the question of damages and what should be allowed, you will take into account the evidence bearing upon that question as it affects each plaintiff; considering the injuries that the one suffered and the injuries that the other suffered, how they differ, and which are more likely to be permanent, or which of the plaintiffs is less likely to be able to earn in the future what he did earn in the past before this accident happened.

- 30 I am requested to charge you by defendant's counsel on the question of damages:

1. If the jury believe plaintiffs or either of them should have a verdict, damages must be compensatory only.

That, of course, is true, for there is no evidence in this case that any vindictive damages should be given.

Of course, the company deplore this accident, and it is only where accidents occur through some wilful, wrongful act of another that vindictive damages or punitive damages are allowed; therefore, these damages that are allowed to-day will be compensatory in the sense as I have indicated to you, loss of earning capacity, suffering and the probability of permanent injury or partial disability.

2. That, as to burns, no proof of any loss of earning capacity has been shown. **10**

That is a fact I will leave with the jury.

Mr. Grey: That is, your Honor declines to charge that?

The Court: Yes.

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

3. That there is no proof of any usual methods of guarding wires or working wires, under the circumstances of this case.

I cannot charge the request.

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

4. It was no portion of any duty of defendant to supply gloves and boards or a platform under the circumstances in this case. **30**

I cannot charge that. I shall leave it to the jury to say whether there was negligence in not furnishing these precautions, taking into account all the proofs you have before you in this case.

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

5. If the jury believes plaintiffs, or either of them, were warned of danger and continued in the employment, they assumed the risk, and the verdict must be for the defendants.

10 I can charge that, with the change of a few words, so that it will read in this way: If the jury believe plaintiffs, or either of them, were warned of danger, and were guilty of any negligence or disregarded the warning, they assumed all the risk, and the verdict must be for the defendant. That, I think, I have substantially told you already.

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

6. That any neglect of duty to supply appliances, or gloves and boards, was negligence of Naylor, a co-employee, and the company is not liable.

I decline to charge that.

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

7. If the jury believe the plaintiffs, or either of them, knew or ought to have known of the danger, they cannot recover.

I charge you that, as I think I have already, substantially.

30 Plaintiff's counsel ask me to charge: There can be but one recovery; all the plaintiffs ever get, if they get anything, they must get in this suit.

I so charge you, unless there should be a disagreement of this jury, then they could try this case again, of course.

Mr. Wescott: They could only get damages once, that is all.

The Court: Of course, there could not be two suits; they can only sue once, that is, in this suit; but they can have a dozen trials, if the jury disagrees. Let an officer be sworn.

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