
New Jersey
Court of Errors and Appeals.

Maria Riley,
Defendant in Error,
vs.

Camden & Trenton Railway
Company,
Plaintiff in Error.

In Tort.

On Error.

BRIEF FOR DEFENDANT IN ERROR.

FACTS.

This action was brought in the Burlington County Circuit Court by Maria Riley against the Camden & Trenton Railway Company, to recover damages sustained by the plaintiff by reason of the defendant company having (a,) cut down two large shade trees situated at the edge of the sidewalk in front of her property ; (b,) breaking down and destroying an ornamental iron fence in front of her property ; (c,) digging up and subverting to their own use a portion of the sidewalk in front of her property ; and (d,) for planting a pole upon and stretch-

ing a guy wire over the property of the said plaintiff without her consent.

The defendant company admitted that in cutting down the trees, it broke the iron fence and that the fence had not been replaced and that said company was responsible for the value of the fence. The jury returned a verdict for the plaintiff and assessed the damages at \$200. They did not specify, however, how they made up this amount ; whether for the breaking of the fence ; the cutting of the trees or for the other alleged wrong doings.

The defendant company assigns four causes of error. The first two may be considered together.

I.

Did the trial Judge commit error in allowing Chas. Riley and William Sheppard to give their opinions as to the damage to the property by reason of the trees having been cut down? Neither of these gentlemen were called as *expert witnesses* but were simply asked to give their opinions as to the damages caused by the cutting of the trees because they were conversant with the actual facts surrounding the case. Mr. Riley is the husband of the plaintiff and the actual owner of the place, the title, however, being in his wife's name. He has lived there over thirty years (Case p 22, line 3.) The trees had a growth of thirty years (Case p. 12, l. 31.)

The Court, in admitting his testimony, did not recognize him as an *expert witness*. The learned Judge stated that as "the owner of the property" he might give his testimony. He gave counsel for defendant an opportunity to cross examine him saying, "You may cross-examine him, of course, as to his knowledge, which will effect the weight of his testimony ; but the owner ought to be able to testify on that subject, (*actual damages*), as

a competent person, for no one can be better acquainted with it than the owner" (Case p. 18).

Mr. Sheppard's testimony will be found on pages 41 to 48 of the printed case. He had known the Riley property for 30 or 35 years and lives and owns a property adjoining the Riley property. Mr. Sheppard made an examination of the trees and property, after the trees were cut down, at Mr. Riley's request.

Mr. Sheppard was not called and did not testify as an *expert witness*. The Court allowed his testimony 10 the same as he allowed Mr. Riley's. The Court being satisfied that he had had the opportunity of observing and knew all about the circumstances surrounding the case, allowed him to express his opinion as to the damage.

There is a difference between "expert testimony" and opinion evidence.

It is for the Court to determine, under all the circumstances of the case, whether the opinion of a non-professional witness is to be received or not. 20

Rogers on Expert Testimony (2nd Ed.) on pages 7 and 8, says:—

When it is sought to introduce in evidence the opinions of non-professional witnesses, it becomes necessary for the Court to determine certain preliminary questions before such testimony can be given.

1. The Court must decide whether the subject matter to which the testimony relates is of such a nature as to warrant the introduction of opinion evidence from non-professional witnesses. In determining that ques- 30 tion the Court will be governed by the following principles:

(b) It is competent for a witness to state his opinion in evidence when the facts upon which the witness is to express his opinion are of such a nature that men

in general are capable of comprehending and understanding them.

2. It having been determined by the Court that the subject matter to which the testimony relates warrants the admission of opinion evidence from ordinary witnesses, the Court must then determine whether the witness in question is competent to express an opinion. The qualifications of the witness to express an opinion should be made to appear to the satisfaction of the
10 Court. The witness must first state the facts and his means of observation, and the Court may then decide whether the facts testified to and his means of observation are such as to justify the expression of an opinion.

A witness, who is not an expert, is not allowed to express an opinion unless he has a personal knowledge of the facts on which the opinion is based.

The trial judge in this case satisfied himself that both Mr. Riley and Mr. Sheppard had personal knowledge of the facts and then allowed them to express their
20 opinion as to the damage done by the defendant company.

The question of the admissibility of expert and opinion evidence must be left very much to the discretion of the trial judge; and his decision is conclusive unless clearly shown to be erroneous in matter of law.

N. J. Zinc & Iron Co. vs. Lehigh Zinc & Iron Co.
35 Atl. Rep. p. 915 (59 N. J. L., 189).

Interest affects the weight, not the legality, of such testimony. *Ib.*

30 I submit further that the trial judge stated very clearly and very correctly the rule of damages for the cutting of the trees in his charge to the jury. (See case p. 91, lines 20 to 31.)

II.

The third assignment of error is unworthy of argu-

ment If plaintiff had caused the broken iron fence to be taken or thrown away (which she and her husband denied) it does not follow that the defendant company was not liable for breaking down the fence while it was standing and in front of plaintiff property.

III.

The fourth assignment of error goes to what the learned judge charged the jury relative to the damage to the sidewalk. It is true that the plaintiff in the trial of the cause, did not materially press this point but there was evidence before the jury to show that the tracks of the trolley road, as actually constructed and laid down upon the ground, did not conform with the route as designated in the ordinances. 10

Mr Perkins, the manager of defendant company, admitted this on cross-examination.

Mr. Henry S. Haines, defendant's engineer, also testifies that the tracks were not constructed in front of the Riley property on the line laid down in the ordinances (Case pages 85 and 86) 20

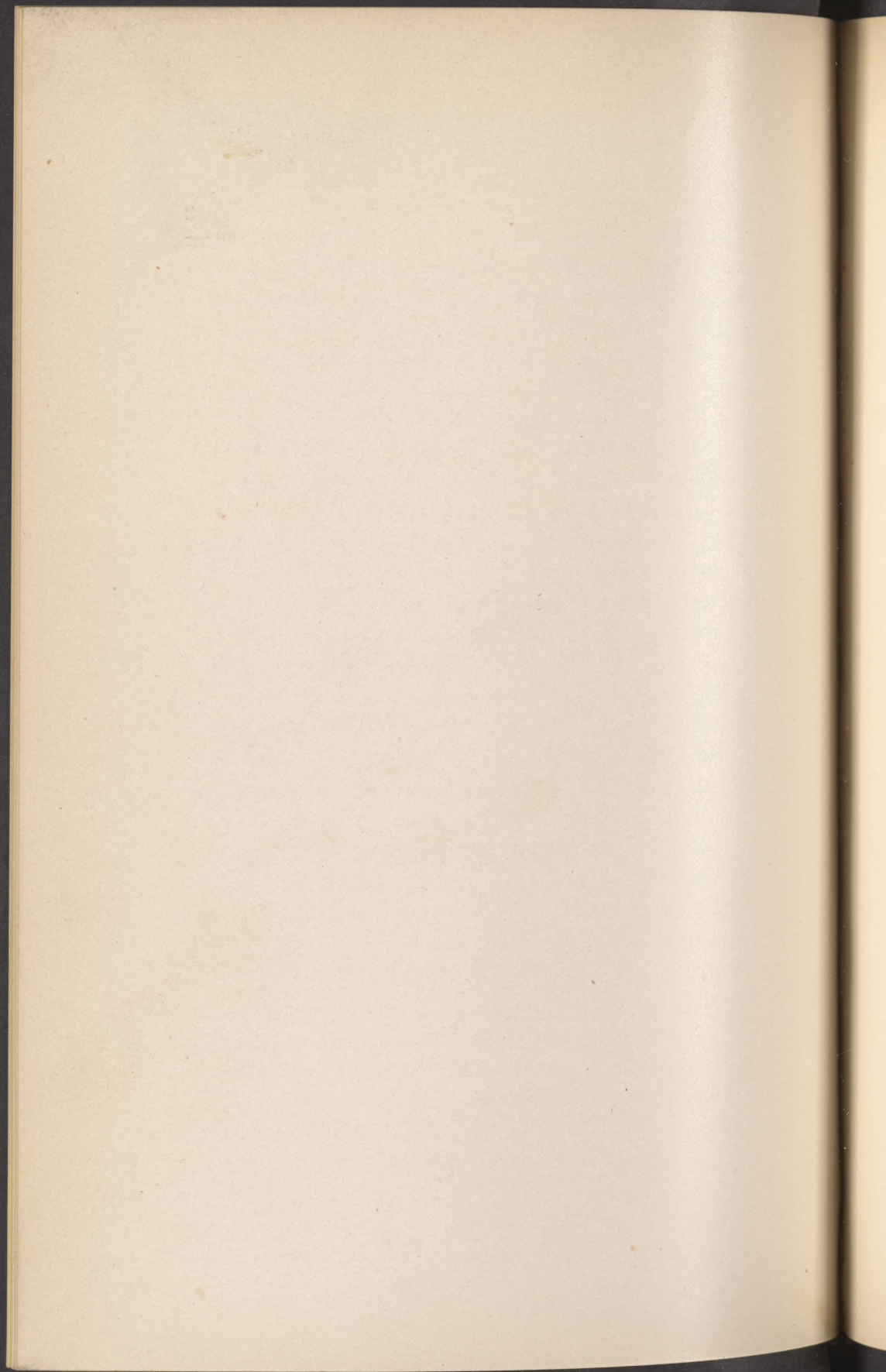
The only thing the trial Judge said in his charge on this point was—

“As to the breaking down of the sidewalk, there is no very complete evidence on that subject; but you will exercise the best judgment you have upon the evidence as you have heard it.”

Surely, there is no harmful error in this

I respectfully submit that the judgment of the Circuit Court should be affirmed.

CHAS K. CHAMBERS, 30
Attorney for Defendant in Error.



NEW JERSEY
Court of Errors and Appeals

CAMDEN & TRENTON RAILWAY CO., <i>Plaintiff in Error,</i> <i>vs.</i> MARIA RILEY, <i>Defendant in Error.</i>	}	In Tort. On Error.
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WRIT OF ERROR

NEW JERSEY, ss.

The State of New Jersey to James H. Nixon, Esquire,
{ L S } Judge of our Circuit Court, at Mount Holly,
in and for the County of Burlington, or such
Justice of the Supreme Court of the State of
New Jersey as shall hold such Circuit Court, greeting:

Forasmuch as in the record and proceedings, and also in
the giving of judgment in a certain plaint, which was in
our said Supreme Court of Judicature, before you, be-
tween Maria Riley, plaintiff, and the Camden and Tren- 10
ton Railway Company, defendant, in an action upon Tort,
manifest error hath intervened, to the great damage of the
said defendant, as it is said; we being willing that the error
if any there be, should, in due manner, be corrected, and

full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the First Tuesday of January next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon
 10 for correeting that error, what of right, and according to the law and custom of the State of New Jersey ought to be done.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the Third day of December, A. D. nineteen hundred and two.

WM. RIKER, JR., Clerk.

HOWARD FLANDERS,
 SAMUEL W. BELDON,
 Attorneys.

WRIT OF ERROR

NEW JERSEY, ss.
 The State of New Jersey to James H. Nixon, Esquire,
 Judge of our Circuit Court at Mount Holly,
 in and for the County of Burlington, or such
 Justice of the Supreme Court of the State of
 New Jersey as shall hold said Circuit Court sitting:
 I command you in the record and proceedings, and also in
 the giving of judgment in a certain plaint, which was in
 our said Supreme Court of Judicature, before you be-
 fore Maria Wiley, plaintiff, and the Camden and York
 and Railway Company, defendant, in an action upon Tort
 committed error with respect to the great damage of the
 said defendant, as it is said; we being willing that the error
 if it should be shown in the manner be corrected, and

RETURN TO WRIT OF ERROR

BURLINGTON COUNTY, ss.

The State of New Jersey to the Sheriff of the County of Burlington, Greeting:

{ L. S } We command you to summon Camden & Trenton Railway Company to be and appear before the Circuit Court to be held at Mount Holly, in and for the County of Burlington, on the fourteenth day of November, instant to answer unto Maria Riley, in an action in tort, wherein the plaintiff demands two thousand dollars, to her damage, as is said, and have you then and there this Writ. ¹⁰

Witness, James H. Nixon, Esquire, Judge of our said Court at Mount Holly aforesaid, the sixth day of November A. D. One Thousand nine hundred and one (1901.)

W. ROLAND WARRICK, Clerk.

CHARLES K. CHAMBERS, Attorney.

Burlington County Circuit Court of the Fourteenth Day of
November, A. D., Nineteen Hundred and One.

BURLINGTON COUNTY, ss.

Camden & Trenton Railway Company, a corporation,
the defendant in this suit, was summoned to answer unto
Maria Riley, the plaintiff therein, in an action in tort; and
thereupon the said plaintiff, by Charles K. Chambers,
her attorney, complains. For that the said defendant on
the first day of May, A. D., nineteen hundred and one and
10 on divers other days and times between that day and the
day of instituting this suit, with force and arms, etc., broke
and entered the close of said plaintiff, to wit, All that lot
or tract of land with the buildings and improvements there-
on, situate in the Township of Beverly aforesaid, and
bounded as follows:

Beginning at a stone in the middle of the Camden &
Amboy Railroad, corner to land late of David Per-
kins, now Charles R. Fenimore, and runs (1) by his line
north twelve degrees West, forty links to a stone standing
20 on the edge of said railroad; thence the same course still
with Perkins, now Fenimore's line, twelve chains and
twenty-nine links to a stone in the middle of the public
road, from Burlington to Delanco, another corner of the
said Perkins now Fenimore's; thence (2) South sixty five
degrees and fifteen minutes West, nine chains and twenty
links to a stone in the middle of said road to the line of said
Perkins, now Bainitz, and corner to the late Paul Jones,
now William M. Sheppard's land, thence (3) by said Shep-
30 pard's land South seventeen degrees East, eleven chains and
twenty-four links to a stone standing by the fence near the
railroad; thence on the same course fifty links to the middle
of the railroad aforesaid, and corner to the late Jones, now
Sheppard's land; thence (4) up said railroad on the course
eight chains and twelve links to the place of beginning,
containing ten acres of land exclusive of railroad more or
less.

Situate at or near Delanco in the township of Beverly, in the county of Burlington aforesaid, and then and there cut down, prostrated and destroyed two shade trees of the plaintiff, of great value, to wit, of one thousand dollars (\$1,000) and the timber, wood and branches thereof coming and arising of great value, to wit, of the value of one hundred dollars \$(100), took and carried away and converted, disposed thereof to its own use; and also then and there broke down, prostrated and destroyed a great part of the ornamental iron fence of the said plaintiff of and be- 10
longing to the said close.

And for the said defendant on the first day of May A. D. nineteen hundred and one, and on divers other days and times between that day and the day of instituting of this suit, with force and arms, etc., broke and entered the aforesaid close of the said plaintiff and then and there with shovels, pickaxes and other instruments, dug up, turned and subverted the sidewalk along the front of said close where the same adjoins the public highway, and took and carted away the materials of said sidewalk of said close, 20
and thereby during all the time aforesaid greatly encumbered the said close, and hindered and prevented the said plaintiff from having the use, benefit and enjoyment thereof in so large and ample a manner as she might and otherwise would have done.

And for that the said defendant on the first day of May, nineteen hundred and one, and on divers other days and times between that day and the day of the instituting of this suit, with force and arms, etc., broke and entered the aforesaid close of the said plaintiff, and then and there 30
entered, and stretched out wires and wire cables, and guy wires upon and over the said close of said plaintiff, and during all the time aforesaid, has continued and maintained the said wires, wire cables and guy wires upon and over the close of said plaintiff and thereby during all the time aforesaid grtatly encumbered the said close and hindered and prevented the said plaintiff from having the use, benefit and enjoyment thereof in so large and ample a manner as she might and otherwise would have done.

By means of which said several premises the said plain- 40

tiff, durng all the time aforesaid, was greatly disturbed and annoyed in the peaceable possession and enjoyment of said close of said plaintiff.

And other wrongs to the said plaintiff then and there did, in contempt of, and against the peace of the State and to the great damage of the said plaintiff, to wit, two thousand dollars (\$2,000). And therefore she brings her suit, etc.

CHARLES K. CHAMBERS,

Attorney of Plaintiff.

Burlington County Circuit Court, as yet of the fourteenth day of November, A. D., Nineteen Hundred and One.

Camden and Trenton	}	In Tort. Pleas.
Railway Company		
ads.		
Maria Riley.		

And the said defendant by Samuel W. Beldon and Howard Flanders, its attorneys, comes and defends the wrong and injury, when, etc., and says that it is not guilty of the said supposed trespasses above laid to its charge, or any or ether of them, 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, etc.

And the said defendant, for a further plea in this behalf, by leave of the court first had and obtained, accord- 10
ing to the form of the stautute in such cases made and provided, says that the said plaintiff ought not further to have or maintain her said action thereof against the said defendant, because it says, that the said defendant is a corporation of the State of New Jersey, existing under and by virtue of an act of the Legislature of the State of New Jersey, entitled "An act to authorize the formation of traction companies for the construction and operation of street railways or railroads operated as street railways, and to regulate the same," approved on March fourteenth, one 20
thousand eight hundred and ninety-three; that prior to the first day of May, one thousand nine hundred and one, to wit, on or about the fifteenth day of February, one thousand and nine hundred, the Township Committee of the Township of Beverly, in which said Township are situate the premises in the plaintiff's declaration above described, the said Township Committee being the governing body of the said township, did, by an ordinance passed the day and year last aforesaid, give permission and consent to the said defendant to construct, maintain and operate a 30

single track railway upon and through a public road leading from Burlington to Delanco, being the public road in the said plaintiff's declaration above referred to; that prior to the first day of May, one thousand and nine hundred, to wit, on the day of in the year one thousand and nine hundred, the Board of Chosen Freeholders of the County of Burlington, being or claiming to be a board, body or public authority having control of the said public highway did, by its ordinance, passed on
10 the day and year last aforesaid, grant permission and consent to the said defendant, to construct, operate and maintain a single track street railway through and upon the aforesaid road or highway; that the said defendant in the construction, maintenance and operation of its said single track of street railway in, through and upon the said highway as above mentioned, did enter upon that portion of the close of the said plaintiff described as being in the said public highway and did there in accordance with the permission of the said ordinances construct, maintain and
20 operate its said single track of street railway, doing on those occasions no unnecessary damage to the said plaintiff, which were the same supposed trespasses whereof the said plaintiff hath above complained against it.

And this the said defendant is ready to verify, and whereof it prays judgment if the said plaintiff ought to have or maintain her aforesaid action against it, etc.

HOWARD FLANDERS,
SAMUEL W. BELDON,
Attorneys of Defendant.

Burlington County Circuit Court as yet of the fourteenth
Day of November, A. D., Nineteen Hundred and One.

Maria Riley vs. Camden and Trenton Railway Company.	}	In Tort Replication.
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And the said plaintiff as to the plea of the said defendant by it first above pleaded, and whereof it hath put itself upon the Country, doth the like.

And the said defendant as to the said plea of the said defendant by it secondly above pleaded, saith that the said plaintiff, by reason of anything by the defendant in that plea alleged, ought not to be barred from having and maintaining her aforesaid action thereof against the said defendant, because she saith that the said defendant, at the same time when, etc., of its own wrong, and without the IO permission of the said ordinance, committed the said several trespasses complained against it, in manner and form as the said plaintiff hath above complained against the said defendant. And this the said plaintiff prays may be inquired of by the country.

CHAS. K. CHAMBERS,
Attorney of Plaintiff.

October 30, 1902. Circuit Court Case No. 4.

Maria Riley	}	C. K. Chambers.
vs		
Camden and Trenton		In Tort.
Rw. Co.		S. W. Beldon H. Flanders

This cause being regularly on the list for trial and being moved by the plaintiff, the sheriff returned a panel of jurors, who being called were duly sworn or affirmed as follows:

- 10
- S. 1. Edwin A. Holt.
 - S. 2. Albert Carty.
 - S. 3. Victor Ritzendollar.
 - S. 4. Clark Rogers.
 - S. 5. John W. Meaney.
 - A. 6. Thomas C. Hammitt.
 - S. 7. Schuyler C. Stratton.
 - S. 8. Henry C. Smith.
 - S. 9. Howard Wills, Jr.
 - S. 10. Bernard Adams.
 - S. 11. Theodore Miller, Jr.
 - S. 12. Samuel B. Matlack.

The following witnesses were called, sworn or affirmed, and testified:

For Plaintiff:

- 20
- S. 1. Charles Riley.
 - S. 2. Frank Jones.
 - S. 3. Wm. T. Baggs.
 - S. 4. M. B. Perkins.
 - S. 5. Wm. Sheppard.

For Defendant:

- A. 1. M. B. Perkins.
- S. 2. Harry B. Shedaker.
- S. 3. John Fenimore
- A. 4. Henry S. Haines.

THE CASE FOR THE PLAINTIFF.

CHARLES M. RILEY, Sworn.

BY MR. CHAMBERS.

Q. Where do you live ,Mr. Riley ?

A. I live on the Beverly stone road, between Beverly and Delanco, about mid-way.

Q. About mid-way from Beverly to Delanco ?

A. Yes, sir.

Q. Does your wife, Mary Riley ,live with you ?

A. She does.

Q. Who owns the property where you live ?

A. My wife.

Q. How many acres of land has your wife there ? 10

A. It is supposed to be ten acres.

Q. What kind of a house have you there ?

A. I have got a very large house, I suppose thirty-four feet by twenty-eight, for the main building, with a back building to that.

Q. What kind of a house ?

A. Frame.

Q. On which side of the road is that house ?

A. On the north side.

Q. Do you mean the north side ? Is it this side ? Is it the side near the Delaware River or the opposite side ? 20

A. Towards the railroad, opposite the Delaware River.

Q. It is the south side ?

A. South side, I should say.

Q. Between the main road and the stone road ?

A. Yes, sir.

Q. How near is the porch of your house to the road ?

A. I suppose about twenty or twenty-five feet.

Q. Is there a yard running in front of the house ?

A. Yes ,sir ; an ornamental yard, ornamental trees. 30

Q. What kind of a fence is there in front of that property, Mr. Riley ?

A. An iron fence, or there was; not at the present time though.

Q. Did you put that fence there?

A. I did, sir.

Q. Did that run the entire length of your property on the road there?

A. No, only in front, about one hundred feet.

Q. There was about one hundred feet of that iron fence, then, in front of the yard proper?

10 A. Somewheres in that neighborhood; I could not say exactly the measurement. I think it is about eighty feet, including the three gates, eighty, I think it is, to the best of my knowledge.

Q. What is there outside of the fence, right next to the fence?

A. Why, a sidewalk.

Q. About how wide is that sidewalk?

A. It s an eight foot walk, according to the Stone Road Surveyor. They left the monuments, which show that I
20 hold eight foot there, sidewalk, the whole seven hundred feet, or between six and seven hundred feet, my whole property contains.

Q. Are there any trees there, or were they any trees there?

A. There were two trees in front, and these cedar trees just below it.

Q. What kind of trees were the two trees in front that you speak of?

A. They were swamp maple.

30 Q. About how many years' growth?

A. Thirty.

Q. Were they shade trees?

A. Yes, sir; fine trees.

Q. How large across the butt?

A. I suppose fifteen inches; I never measured them, but
I—

Q. (Interrupting) Did those trees, or either of those trees afford shade protection for your property?

A. Yes, sir; very much. We miss them very much.

40 Q. Was there an electric railroad ever built in front of

your property ?

A. An electric railroad ?

Q. Yes, sir.

A. No, sir; oh, yes, sir, the trolleys.

Q. A trolley road, I mean ?

A. Yes, sir.

Q. When was that built there, Mr. Riley ?

A. I think it was—I can't recollect exactly; I think it was in the Spring of 1890, to the best of my knowledge; it was about that time.

10

Q. 1900, you mean ?

A. 1900, I mean.

Q. Before the road was built was there anything done by anyone to these trees ?

A. No, sir.

Q. After the road was built was there anything done to these trees by anyone ?

A. Mr. Vandegrift promised me five hundred dollars provided I would let him come there and trim my trees, and he did trim one tree.

20

Q. Who was Mr. Vandegrift ?

A. The contractor.

Q. Representing whom ?

MR. BELDON: One second; that is not the proper method of proof of a thing of that sort.

MR. CHAMBERS: Well, that is immaterial; it is not responsive to my question anyhow.

Q. I ask you if anything ever happened to these trees after the road was built ? 30

A. Only the trimming and the cutting down of a tree.

Q. That is what I want you to tell about; did they first trim one of the trees ?

A. They did, under the instruction of the engineer, Mr. — oh, I cannot think of his name just now.

Q. Clark ?

A: Mr. Clark, their engineer; and it was trimmed satisfactorily to him and to me; they trimmed it and took away the wood. 40

Q. Which tree was that, Mr. Riley?

A. The one that was right in front of my gate.

Q. Did anything happen to that tree afterwards?

A. Yes, sir; Mr. Edward Vansciver came there with four Italians, armed with axes, and a lineman, and they cut down that tree and pulled it over on the fence, on the iron fence.

Q. Do you know what day that was, or about what day it was?

10 A. About the 24th of May, I think it was.

Q. 1901?

A. 1901.

Q. Did you have any conversation with Mr. Vansciver about the matter?

A. Yes; I protested against it, and my wife protested against it, and he said that he would have it down; he wasn't going to lose his job.

Q. Was there any conversation as to who sent him there?

A. He said the Township Committee sent him there,
20 and Mr. Baggs. I sent for him, and Mr. Baggs said it was not the case; then he said he had a letter, had word from Mr. Perkins.

MR. BELDON: It seems to me this is a little objectionable, this matter of conversation that occurred between persons who don't seem to have been in any authority, particularly with Mr. Baggs.

MR. CHAMBERS: I think it is quite relevant. He said afterwards that Mr. Vansciver said he had a letter
30 from Mr. Perkins sending him there.

MR. FLANDERS: That was all after the objection; therefore, it is not before the Court.

MR. CHAMBERS: Well, he was telling the conversation entirely as it took place. He said at first the Township Committee had sent him there, and he sent for Mr. Baggs, who is the chairman, as I understand it, of the Township Committee, and Mr. Baggs said he had not authorized him to cut it down, and he afterwards said that Mr. Perkins, who we will show was an officer of this
40 railroad company, sent him there.

THE COURT: Well, that may be allowed to come in as possibly what was said, but it will have no weight against the defendant unless we find out Mr. Perkins relation to the company, and his official right to speak for them, which may appear afterwards.

MR. CHAMBERS (To opposing counsel): Do you admit that Mr. Perkins is an officer of this company?

MR. FLANDERS: We will admit that Senator Perkins was an officer of the company and that the cutting was done under the direction of Mr. Perkins. 10

Q. Now, you say that Mr. Vansciver came there on the twenty-fourth day of May, 1901, with these workmen, and cut down the tree; what time of the day was it, Mr. Riley?

A. Well, it was in the forenoon, just before dinner.

Q. Tell just how the tree was cut down, and what happened.

A. Well, they cut the tree down and pulled it over on the fence, this lineman, and before he went up the tree he 20 swung the axe over my wife's head—

MR. BELDON: One second; I object to that as having nothing whatever to do with the case.

THE COURT: That may be stricken out.

Q. You and your wife were out there protesting?

A. Yes, sir.

Q. Tell how the fence was broken, Mr. Riley.

A. By the fall of the tree right on the top of the fence 30 and gate.

Q. Well, how badly was the fence broken, I mean?

A. Mashed one section of it all down and ruined the other part.

Q. Was anything done by the company or its workmen afterwards concerning the fence?

A. No, sir; not to my knowledge, any more than they sent Mr. Wilson there to put it up, and Mr. Wilson said they never gave him material to do it with.

Q. Was any portion of the fence taken away by the 40

company?

A. Well, yes; Mr. oh, the assistant, Mr. Shedaker (he told me and my wife that he took it away.

Q. You did not see it taken away?

A. No, sir.

Q. Has it ever been returned?

A. No, sir.

Q. Has the fence ever been repaired in any way?

A. No, sir; in no shape or form.

10 Q. Have they ever paid you anything for the damage done to the fence?

A. Not a farthing.

Q. What is that fence worth, Mr. Riley?

A. Well, it is worth one hundred dollars.

Q. Where was this other tree that you speak of, Mr. Riley?

A. About thirty feet above, thirty feet, probably, above, towards Beverly.

Q. Was that in the curb line?

20 A. Yes, sir.

Q. I neglected to ask you just where this tree was situated that was cut down, how close was that to the fence?

A. Well, I suppose I could tell you how far it was from the fence; I suppose about between four and five feet.

Q. There was a walk-way between the tree and the fence?

A. There was, but there is no chance of anybody getting along it at the present time.

30 Q. And it is right on what we would term the curb line of the road?

A. Yes, sir.

Q. Now, the other tree was in the same relative position, was it, to the fence?

A. Yes, sir.

Q. Did any one cut that tree down?

A. Shedaker came there and cut it down.

Q. When?

A. I think it was in June; I cannot tell you exactly the date.

40 Q. Some ten days or two weeks later?

A. Oh, two or three weeks afterward, after the first tree was cut.

Q. Had they been operating their cars by that tree in the meantime?

A. From the time the cars first started they had been operating in front of that tree.

Q. They ran their cars by both trees, then, did they, before they cut them down?

A. Oh, yes, sir; every car went by that tree.

Q. What kind of a tree was the tree they cut down last? 10

A. It was the same, a swamp maple.

Q. Shade tree?

A. Yes, sir.

Q. Large?

A. Well, it was over twenty-five years old. Yes, it was, I suppose that thick through (indicating).

Q. In the construction of their roadway along there, did they take any portion of your sidewalk?

A. Yes, sir; they cut away from one end to the other, with the exception of my curb, which I had a curb in. 20

Q. Have you a curb along there?

A. Yes, sir.

Q. What kind of a curb is it?

A. Why, hemlock plank.

Q. Did they cut in through that?

A. No, they did not disturb that.

Q. Did they take part of the sidewalk?

A. Not right exactly in front of my place, but at each end.

Q. You have this curb, this hemlock curb, right in front 30 of your house proper?

A. From the driveway.

Q. Now, on the other end of your yard fence they went in?

A. Then they cut in probably three foot.

Q. How much, in your opinion, Mr. Riley, was your property damaged by reason of these trees being cut down?

MR. FLANDERS: I object, if the Court please, unless it is shown that he is in some way competent to judge; a 40

question of that character I think is too general.

THE COURT: The purport of the question is to ask him the actual damage.

MR. CHAMBERS: The actual damage to the property, yes, sir. That I understand to be the measure of damages, not what the trees were worth themselves, but I understand the rule of law to be that the measure of damage in a case of this kind is the damage to the freehold estate, the damage to the property.

10 MR. FLANDERS: I do not object to the measure of damages, I object to the method of proof.

THE COURT: I think an owner of property may give that testimony. You may cross examine him, of course, as to his knowledge, which will effect the weight of his testimony; but the owner ought to be able to testify on that subject, as a competent person, for no one can be better acquainted with it than the owner. I shall therefore allow him to answer the question.

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

JAMES H. NIXON, Judge.

A. I had my sidewalk all graded, and the damage, I suppose—I am satisfied, I have offered to sell it for one thousand dollars less than I would before and one thousand dollars less than it cost me.

Q. Then you consider the damage to your property, by reason of these trees being cut down in front of the house
30 there, a thousand dollars?

A. I do, yes, sir; it hurt the sale of it more than a thousand dollars; I would not have had it done; I would give a thousand dollars to have the place to-day as it was before.

Q. Mr. Riley, did this company ever place a guy wire from their poles over across your property?

A. Yes, sir; they extended one thirty feet or more over into my pear orchard.

Q. Tell how that was done; tell these gentlemen the manner of constructing that wire.

40 A. Ran from the top of the pole away over here (indi-

cating) and then there was another one here, in the line of my fence.

Q. A short one down into the line of your fence?

A. Yes, sir.

Q. And the other one reached clear out into your pear orchard?

A. The other one ran twenty paces.

Q. How was the one in the pear orchard fastened at the ground end of it?

A. To a pole, or something similar to a raft oar. 10

Q. Did their workmen come upon your land and put that pole in there, or that stub to fasten the guy wire to?

A. They did, the linemen.

Q. Did they have any permission to do that?

A. No, sir; my wife and I both protested against it, and I told Mr. Perkins to remove it, and he would not do it.

Q. Did you ever have more than one conversation with Mr. Perkins about it?

A. I had several conversations; told him to remove those for they obstructed my sidewalk and obstructed me from 20 attending to my little stuff that I had in my pear orchard.

Cross Examination.

BY MR. FLANDERS.

Q. You were acting on behalf of your wife, were you, in making these various protests?

A. I don't understand you, sir.

Q. I say, you were acting on behalf of your wife when you made these protests? 30

A. Yes, sir.

Q. You were her agent, were you not?

A. I was; yes, sir.

Q. When you protested to Senator Perkins, what guy wire did you have in mind?

A. Both of those that obstructed my pear orchard and my sidewalk.

Q. When did this protest take place, the first protest?

A. I don't know; I didn't make a memorandum of it.

Q. Was it before or after the trees had been cut down? 40

A. It was before and since, both.

Q. How long before the trees were cut down were the guy wires put there?

A. I don't know; I have got no memorandum.

Q. Was it done the same year?

A. They was put up separately.

Q. When was the first guy wire put in?

A. Before the railroad was started.

Q. Before the railroad was started?

A. Yes, sir.

Q. Were those guy wires put in by the railroad company?

A. I don't think they were.

MR. FLANDERS: If the Court please, I move that all the evidence given by this witness in relation to the guy wire, and all reference to the guy wire as suggested by the gentleman's opening, be stricken out.

THE COURT: I do not know what testimony will yet be produced on the subject.

MR. FLANDERS: Well, he said they were not put there by the railroad company, and they have sued the railroad company.

(Testimony of witness upon this point read.)

THE COURT: If they were not put there by the railroad company it follows, as matter of course, that the railroad company is not responsible for them.

MR. FLANDERS: That can be easily explained, if your Honor please. I can bring that out.

THE COURT: I say there may be some light thrown upon this question which might change my ruling. If I rule on it now without any further light being thrown upon that question, of course I shall have to throw it out. The railroad company is not responsible for what somebody else did. If it can be followed up by showing that while it was before the road was built yet it was done by the company, why, that is another matter; but as it stands now, his saying that the railroad company was not responsible for

its being put there of course nullifies all his testimony on that point. I shall, therefore, rule that out.

MR. CHAMBERS: Subject to our right to show that those guys were used by the railroad company?

THE COURT: Well, unless they were put there by the railroad company, the person who put them there is the trespasser, not the railroad company. The company may have used them afterwards, but the person who put them there was the original trespasser, and the railroad company could have used them by proper purchase, unless protested 10 against. That part of the testimony will be stricken out for the present.

(Exception noted for the plaintiff.)

Q. How much of the fence do you say was broken?

A. Well, I cannot say how many feet, for I never measured it.

Q. How much of the front of your property is inclosed with the iron fence to which you refer, the whole iron fence, 20 or was enclosed?

A. Somewhere in the neighborhood of eighty feet.

Q. How much of the fence was broken?

A. Well, it was all shattered more or less.

Q. Is it not a fact that some of the fence is in front of your property yet?

A. There is a portion of it standing, but it is all wrecked to pieces; it has been standing pretty nearly two years.

Q. How much remains there?

A. Well, I could not tell you, probably fifteen or thirty 30 feet, but it is all racked to pieces.

Q. All of the fence west of the gate still remains, does it not?

A. No, sir. The company used to drive—

Q. No. How long had that fence been up?

A. I could not tell you.

Q. Well, about?

A. I do not recollect.

Q. Well, about?

A. I cannot recollect.

Q. About ten years? How long have you lived in that property?

A. I have lived there over thirty years.

Q. How long after you moved there did you put up the fence.

A. I don't recollect now, I lived there quite a good while. I had a wooden fence there first.

Q. You had a wooden fence for some years, did you?

A. Yes, sir.

10 Q. And then this iron fence took its place?

A. Yes, sir.

Q. And it was an old-fashioned iron fence, was it not?

A. An old fashioned one?

Q. Yes, been there some time?

A. Well, I considered it a very pretty fence.

Q. Oh, I am not discussing its beauty, I am discussing its condition and age.

A. I don't know that it was out of style.

Q. Was it an iron fence?

20 A. Iron fence.

Q. Cast iron?

A. I cannot tell, I am not a judge of anything like that.

Q. You bought it, didn't you?

A. I purchased it, yes, sir.

Q. What did you pay for it?

A. I could not tell you now what I did pay for it.

Q. How do you figure that it was worth one hundred dollars?

30 A. It was worth more than that for the benefit to my property.

Q. No, that is not what I asked you; how do you figure that the fence was worth one hundred dollars?

A. I would not have it removed for that.

Q. Oh, then, that is your estimate of the value of the fence to your lot there, and not the value of your fence?

A. Not exactly the value of the fence, but the—

Q. (Interrupting) You could have replaced the fence for less than one hundred dollars, couldn't you, the entire fence?

40 A. I don't know that I could.

Q. Did you make any effort?

A. No, sir.

Q. Then it is pure guesswork about the value of the fence, is it not?

A. No, sir; I judge from the expense and from the advantages.

Q. Did you ever ask anybody what the fence was worth?

A. No, sir.

Q. Did you ever take any steps of any character to ascertain the cost of this fence or the cost of an artificial one like it? 10

A. No, sir.

Q. Do you know whether you could have replaced it or not with another fence?

A. No, sir; I do not.

Q. You made no effort?

Q. Then it is, as a matter of fact, purely simply guesswork?

A. No, sir.

Q. Well, how is it, how did you reach this value? 20

A. It is more than worth that much value to my property.

Q. Then if another fence was put there for twenty dollars that would be the damage, wouldn't it?

A. I would have been satisfied if they had replaced it.

Q. If a new fence had been put there for twenty dollars, then that would have been the amount of the damage, would it?

A. I should have received it as such.

Q. Well, weren't you offered a new fence? 30

A. No, sir.

Q. Didn't Mr. Vansciver come to you and offer to put a new fence up?

A. He talked about it but never offered it.

Q. Didn't he actually bring you a fence, and didn't you object to receiving it?

A. No, sir.

Q. Didn't he bring you a fence and you object to receiving the fence because the gate didn't hang correctly?

A. No, sir; I did not. 40

Q. Didn't he bring you a fence of any character?

A. No, sir.

Q. Do you know Mr. Wilson, the blacksmith of Beverly?

A. I do.

Q. Didn't Mr. Vansciver with Mr. Wilson come there to put up the fence?

A. He came there and talked about it. I never seen any signs of any fence.

10 Q. What did he say?

A. Said he was sent there for the purpose of fixing my fence and as soon as they fetched him the material he would put it up.

Q. What did you say then?

A. I told him I was very anxious to have it put up.

Q. Did you tell them then that they could put the fence up?

A. I did.

Q. And you gave them every opportunity to put it up, did you?

20 A. Yes, sir.

Q. And you have never seen a fence?

A. Never seen no signs of a fence.

Q. Excepting the one that was broken down?

A. Yes, sir.

Q. What became of the fence that was broken down?

A. That is what I couldn't say. I didn't see it taken away, any more than Mr. Shedaker's word.

Q. Mr. Shedaker told you what?

30 A. He told me and my wife that he took it away.

Q. Did he say where he took it from?

A. No, he didn't, not to my knowledge.

Q. Do you know where he took it from?

A. In front of my property.

Q. Do you know how it got in front of your property?

A. Why, it was mashed down by the tree.

Q. Didn't it mash down inside of your property?

A. Yes.

40 Q. As a matter of fact, didn't Mr. Shedaker take that fence from off the railroad track in front of your property?

A. Not to my knowledge. I know part of it stood, and I know he talked about—

Q. (Interrupting) Didn't you put that fence in front of your property on the railroad track?

MR. CHAMBERS (To the witness): Do not answer the question. I object. This railroad company has had this man indicted for placing obstructions on the track and for cutting these trolley wires. He does not have to answer any questions which implicate himself. 10

MR. BELDON: The question, as addressed to this witness, is whether or not he threw or placed a portion of the fence which was broken, from his property, or his wife's property, on the railroad track in front of their property; and the objection is now made by counsel to the answer being taken from this witness because it may prejudice him in the matter of an indictment. Is that correct?

MR. CHAMBERS: Certainly.

MR. BELDON: All right. That is all I wanted to know. I have no answer to make. 20

THE COURT: I will overrule the question.

Q. Let me get it straight before I leave this part of it: As a matter of fact, Mr. Riley, did not Mr. Vansciver, or some one else representing himself to be from the railway company, come to you and bring sections of a fence, that is to say, duplicate the sections which had been broken?

A. No, sir.

Q. Was not any part of a fence brought to you?

A. No, sir. 30

Q. Was not any offer of any kind made to you to either put in new sections—

A. (Interrupting) No offer, any more than his talk, which availed nothing.

Q. No offer made except talk?

A. That is all.

Q. Well, what was the talk?

A. On several occasions he said they were going to replace the fence, and I told them that it was all right.

Q. You said all right? 40

a new fence.

Q. You said if they could not match your fence, to put up a new fence?

A. Yes, and if they could not match my fence, to put up

A. Yes, but I would not have a part one thing and a part of another.

Q. Who did you say that to?

A. Vanseiver.

Q. Mr. Vanseiver. You recall the operation of the cars

10—I believe you say that the cars were operated?

A. Sir?

Q. You say the cars were operated after the track was put down?

A. It was operated, certainly, yes.

Q. You remember them passing forward and backward in front of your place, do you not?

A. I do.

Q. Do you know at the general rate of speed that they traveled before they got to your place?

20 A. No.

Q. You rode in them frequently, didn't you?

A. I rode in them very often.

Q. Between your house and Beverly, and between your house and Delanco, along the road?

A. I rode very often.

Q. Well, before reaching your house do you recall the rate of speed that they traveled?

A. I do not.

30 Q. Is it not a fact that when they reached your premises they slowed down very materially?

A. No, sir; they never slack up there that I know of, only when they slack up for a passenger.

Q. No, I am talking about before the trees were cut down; didn't they have to slack up very much when they passed your property?

A. Once in awhile, but at night they never slacked up.

MR. CHAMBERS: Is that proper cross examination?

40 THE COURT: Yes.

Q. Once in aw hile they slacked up, did they?

A. No, sir; the reverse.

Q. I am talking about the occurrences that took place before the trees were cut down; do not let us misunderstand each other; I am speaking about the speed of the cars before the trees were cut down.

A. I don't know anything about their time but they slack up—

Q. (Interrupting) Is it not a fact that before these trees were cut down the motormen of the cars slowed them up 10
very, very much when they were passing your property?

A. Only for the passengers.

Q. Only for passengers, and when there were no passengers they passed at the same rate of speed that they had before they reached that point; is that right?

A. That is correct.

Q. That is absolutely correct, is it?

A. Yes, sir.

Q. Don't you recall, Mr. Riley, an accident to one of the cars? 20

A. Never.

Q. Was there never called to your attention an accident to one of the cars?

A. Never.

Q. Did you ever hear of a car step being broken?

A. Never in the world.

Q. Don't you know that the trees projected over the track to such an extent as to make it dangerous to operate the cars past there?

A. No, sir. 30

Q. You know Senator Perkins, who is the general manager of that road, don't you?

A. I know Mr. Perkins, but I don't know what part—

Q. (Interrupting) I only asked you whether you knew him or not.

A. Yes, I know him.

Q. Didn't you have a talk with Senator Perkins about the method in which these cars were passing your property?

A. No, sir.

Q. Didn't he call your attention to the fact that the 40

trees had broken off one of the car steps—

A. No, sir.

Q. Wait until I get through; and made the passage of the cars dangerous to life and property?

A. No, sir.

Q. Nothing of that kind ever occurred?

A. No, sir.

Q. Didn't he tell you that a car step had been broken?

A. Never in the world.

10 Q. Didn't he call upon you and tell you about it, or about the danger that existed?

A. Never.

MR. CHAMBERS: I think that if this is for the purpose of contradiction he had better fix time and place a little more definitely.

THE COURT: This witness represents one of the principals. Cross examination of a principal is much broader than that of an ordinary witness.

20

Q. Well, prior to the time the trees were cut down, that is as near as I can come to it, none of these statements were made to you before the trees were cut down?

A. No, sir.

Q. Didn't you tell Senator Perkins that he could take one of the trees down?

A. No, sir, never.

Q. Wasn't the tree trimmed?

A. It was trimmed, yes, sir.

30 Q. Who trimmed the tree? I am speaking now of the first tree.

A. Why, let me see; what's his name, the contractor, the superintendent.

Q. The contractor for what, what contractor?

A. Why, James Vandegrift.

Q. Was he constructing the road for the Camden and Trenton road?

A. Yes, sir.

Q. Had the cars been operated at that time?

40 A. Yes, sir; no, I did not fairly understand you; they

were trimmed just afterwards; no, before they was operated; that is correct.

Q. Before the cars began to run?

A. Yes, sir.

Q. Well, after the cars began to run something was done to the trees, wasn't there, by you?

A. Not that I know of.

Q. Well, the trees had hoop irons around them, hadn't they?

A. I believe—no, they were straight up and down.

10

Q. Oh, then, they had irons on them straight up and down. How did those irons get on there, Mr. Riley?

A. That I cannot tell you.

Q. Don't know who put them on?

A. No, sir; I did not put all of them on.

Q. You did not put all of them on; well, we will confine it to those you put on. How many of them did you put on yourself?

A. I cannot tell you.

Q. Well, how many did you direct should be put on?

20

A. I don't know.

Q. Now, as a matter of fact, who did it?

A. I don't know.

Q. Who did you tell to do it?

A. I didn't tell anybody to do it.

Q. But you did put some on yourself?

A. I did, for the protection of my trees.

Q. You did what?

A. They threatened to cut it down and I put it on to prevent them from cutting it down.

Q. After the hoop irons were on it was impossible to further trim the tree, wasn't it?

30

A. No, it was trimmed then.

Q. No, but to further trim it?

A. There was no irons on it until after it was trimmed.

Q. And after it was trimmed you put the irons on?

A. Yes, sir.

Q. And after you did that they had difficulty in getting by without running into the branches of the tree, didn't they?

40

A. Had no difficulty that I know of.

Q. Whereabout did you put those hoop irons on, Mr. Riley?

A. To keep them from cutting the tree down which they threatened to cut down.

Q. Whereabouts on the tree?

A. On the trunk of it.

Q. Well, I know, but what part of the trunk?

A. Why, from the top of the limb down towards the
10 ground.

Q. From the top of the limb toward the ground? How close to the ground?

A. I could not tell you now.

Q. And how near up to the top of the limb, all the way?

A. No, sir.

Q. How far up?

A. I could not say, I never measured it.

Q. You put them within two or three feet of the ground, didn't you?

20 A. I did.

Q. And how many trees did you put these irons on?

A. Only one.

Q. And which tree was that?

A. Right in front of my gate.

Q. Was that the tree that was afterwards cut down?

A. Yes, sir.

Q. And was that the tree that was cut down first, the one that Mr. Vansciver cut down?

A. Yes, sir.

30 Q. How large in diameter did you say these trees were, the first tree?

A. I suppose it was about fifteen inches.

Q. What became of the trees after they were cut down?

A. Part of it was rolled in on our place and part of it was taken away, I don't know where to.

Q. What part of it was rolled in on your place?

A. The trunk.

Q. And the branches were taken away, was that it?

A. Yes, sir.

40 Q. And does that refer to both trees?

A. Refer to both trees? No, the last tree, the trunk, lays over on the opposite side of the road at the present time.

Q. You used the wood, didn't you?

A. No, sir.

Q. Didn't you use the wood of the tree that was put on your ground?

A. No, sir.

Q. Where is that wood now?

A. It is there yet.

Q. And you have not used it? 10

A. No, sir.

Q. Well, you told them where to put it, didn't you?

A. I did not.

Q. Didn't anybody talk to you about putting the wood on the ground?

A. Only Mr. Vandegrift.

Q. What did you say to him?

A. He told them to trim that tree and put the wood in where I said, but instead of that they took it away.

Q. Were you present at the time he said that? 20

A. I was. He mentioned that to me.

Q. And you agreed to that, didn't you?

A. To what?

Q. Why, that the tree should be trimmed and the wood should be put on there?

A. No, sir; I did not consent to it, nor my wife either.

Q. Did you protest against it?

A. I did; yes, sir.

Q. To Mr. Vandegrift?

A. I did. 30

Q. You did not take the wood off the ground after it was put there, did you?

A. I did not; it lays there yet where they put it, and the iron hoops, too, with it.

Q. There was a stump left from the cutting of the second tree, wasn't there? There was a stump left after the cutting of the first tree, wasn't there?

A. There was, yes, sir.

Q. And you told Mr. Shedaker that he could take that away? 40

A. I did not.

Q. Didn't you say anything at all to him about it?

A. Not about taking it away, or anything of the kind.

Q. What did you say to him about that stump?

A. I don't know. I was a little excited. I don't know what I said.

Q. Then you don't know whether you did tell him, or whether you didn't tell him?

A. I never told him anything of that kind.

10 Q. Did you tell him anything at all about taking the stump away or taking it out?

A. No, I did not. I will tell you what I said: I said if Mr. Perkins owned the tree he would know what to do with the wood, that if he claimed the tree he ought to know where the wood should go.

Q. Didn't you say to Mr. Shedaker that if the company would take the stump out that you didn't care anything about the tree?

A. I did not.

20 Q. If we would only take the stump out?

A. I did not.

Q. Didn't you say to him that "If you would take the stump out, if the company would take the stump out, it would be all satisfactory"?

A. No, sir; I did not.

Q. Or words to that effect?

A. No, sir.

Q. Or anything like it?

30 A. Nothing to that effect at all; no, sir.

BY MR. CHAMBERS.

Q. You say you put hoop irons around one of these trees, Mr. Riley?

A. I put it there when Mr. Perkins said that he was going to cut it down and sent the men there.

Q. You did that for the purpose of protecting the tree from being cut down?

A. That is all.

Q. And this was after they had trimmed the tree?

40 A. Oh, yes, sir; yes, sir.

Q. That was right?

A. Yes, sir; that is right.

Q. After Mr. Vandegrift had trimmed the tree, or caused the tree to be trimmed?

A. Yes, Mr. Perkins came there, and it became very annoying to me; and he threatened to cut it or saw it down.

FRANK JONES, Sworn.

BY MR. CHAMBERS.

10

Q. Mr. Jones, where do you live?

A. I live above Delanco, between Delanco and Beverly.

Q. In May and June, 1901, did you hold any position in the Township of Beverly?

A. Freeholder.

Q. Freeholder for that township?

A. Yes, sir.

Q. Previous to that time had a stone road been constructed on the road from Delanco to Beverly which runs in front of Mrs. Riley's property?

20

A. Yes, sir.

Q. You know where Mrs. Riley lives?

A. Yes, right neighbor of mine.

Q. Right close to you?

A. Right across the road.

Q. And as freeholder from that Township under the rules of the Board as they existed, did you have charge of that road?

A. Yes, sir.

Q. Did you give the Camden and Trenton Railway Company or any of its duly authorized agents, permission to cut down any trees in front of Mrs. Riley's property?

30

A. No, sir.

Q. Did you have any conversation about cutting down the trees with any of their officials?

A. Well, yes, I think there was some conversation in regard to it.

Q. Did you advise them in any way about it?

MR. BELDON: One moment. I do not think what ad- 40

vice this man may have given to the railroad would be of any importance at all in this case, or even relevant. I understand that he is sworn here as a former freeholder from the Township of Beverly, and he is asked whether he gave any persons permission. Although that will be argued afterwards, I do not ask to have that stricken out, or anything of that sort; but as to whether, or not he gave any advice to any of the people connected with the railroad, I cannot see has any relevancy at all.

10

(Question withdrawn.)

Q. Did anybody talk to you about cutting it down and ask you whether they could do it or not?

A. The first tree was taken out when I was away from home; I knew nothing of it. The second tree, Mr. Riley sent for me to come up, they were taking out the stump, and were going to cut down another tree, and I went up and Mr. Riley wanted me to forbid them to—

20

MR. BELDON: I object to the conversation between Mr. and Mrs. Riley and this witness. That cannot bind the defendant.

Q. In the presence of any of the agents of the railroad company, was this?

A. Oh, yes; Mr. Shedaker and his men were there at work, taking out the stumps, and Mr. and Mrs. Riley were present.

30

MR. BELDON: The objection is withdrawn.

Q. Proceed.

A. They asked me to forbid them to take them out. I said I didn't know that I had the authority to forbid them—that is the second tree, you understand—but I requested Mr. Shedaker not to take it out.

Q. You requested Mr. Shedaker not to do it?

A. Yes, sir, but I did not forbid him because I don't
40 think I had authority to.

Q. Was this second tree you speak of, the tree you have just been referring to, in the way of the cars at all?

MR. FLANDERS: I object to that. That question is too general.

THE COURT: If he knows. The extent of his knowledge may be inquired into on cross examination.

MR. CHAMBERS: I will show that.

Q. Under the ordinances, you had supervision of the building of the road along there, had you not, representing the county? 10

A. Yes, sir.

Q. You were there at the time the road was being constructed along there, were you not?

A. Yes, sir.

Q. You know the location of the road there and of this tree?

A. Yes, sir.

Q. Now, I ask you whether the tree was in the way of the operation of the cars on that track after the track was built, in the slightest? 20

A. After the track was built and the road operated?

Q. Yes.

A. The cars were operated after it was built, yes, sir, before the trees were taken out.

Cross Examination.

BY MR. BELDON.

Q. You say you were the resident freeholder of that township, Mr. Jones? 30

A. Yes, sir.

Q. And you were such during the time of the construction of the road?

A. The construction of what road?

Q. Of the trolley road.

A. Of the construction of the trolley road. Yes, sir.

Q. And as such, under the ordinances of the Board of Freeholders, and under your position, you had supervision 40

of the construction of the trolley road along that road; is that correct?

A. That is correct, yes, sir.

Q. And the trolley road there was constructed in accordance with such directions as you gave wherever your directions were pertinent; is that correct?

A. To the best of my recollection.

Q. You were in the habit of riding back and forth from Delanco to Beverly, or vice versa, on this road?

10 A. Yes, sir.

Q. Prior to the time when these trees were taken out?

A. Yes, sir.

Q. Do you recall noticing whether or not when the cars were passing the locality of these trees the speed was slackened?

A. It was at first, yes, sir, before the first tree was taken out.

Q. What did you say?

A. Before the first tree was taken out.

20 Q. You have heard the testimony of Mr. Riley, have you?

A. Yes, sir.

Q. And you know what trees were taken out, do you?

A. Yes, I know what trees were taken out.

Q. Then my question was intelligible to you, was it not?

A. Yes, sir.

Q. Did you have any knowledge, sir, of the step of a car striking one of these trees in the operation of the car passing the same?

30 A. That was the step that you get on the car, have you reference to?

Q. Yes.

A. No, sir.

Q. No, not the step by which you get on the car, but the step by which the top of the car is reached, that step being fastened on the upper part of the car?

A. Well, I don't know that I understand your question.

Q. You have seen the trolley cars that go up and down the road there?

40 A. I have seen them occasionally.

Q. Do you not know, sir, that there are iron steps by which a person having occasion to ascend to the top of the car reaches that top?

A. Yes.

Q. Now, I ask whether you do not know that in the swinging of a car over towards the tree that was first taken out, that step struck the tree?

A. No, I have no knowledge of that.

Q. I asked you whether you have knowledge of it?

A. I have no knowledge of it, no, sir. But the handle **10** on the top of the car struck the tree; but not the step, to my knowledge.

Q. You say you were away when the first tree was taken out?

A. Yes, sir; I was not at home.

Q. These trees, as I understand you, were on the edge of what sidewalk there was there; is that correct?

A. Yes, sir; that is correct.

Q. They were in the edge of the sidewalk prior to the construction of the trolley road along there? **20**

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Is there any curbing to the sidewalk along by Riley's?

A. Yes, in front of his house.

Q. Just in front of the house?

A. Just in front of the house, yes, sir.

Q. In the construction of the trolley road there was that sidewalk, where it is curbed, entered upon at all, was **30** it cut away?

A. What was that?

Q. In the construction of the trolley road in front of the Riley property, was the sidewalk cut into where it was curbed?

A. I don't think it was curbed, in my recollection, before the trolley road was built. It was curbed after the trolley was built; that is my recollection.

Q. Well, was it cut into there where it is now curbed?

A. Yes, sir; it was cut into where it is now curbed. **40**

Q. How far was it cut in?

A. That I couldn't say.

Q. Prior to the construction of the trolley road there, what sort of a sidewalk was there?

A. Well, the sidewalk that has been there for a number of years. We all have our sidewalks on our road.

Q. What was the character of the sidewalk; it was not paved, was it?

A. Oh, no, it was not paved.

10 Q. It was simply a flat space at the side of the road which was used as a side path?

A. It had been graded as a sidewalk.

Q. No gutter?

A. Yes, a gutter.

Q. A paved gutter?

A. Oh, no.

Q. Just a natural run for the water?

A. Mr. Beldon, probably I can explain it better.

Q. I wish you would.

20 A. When the stone road was built, the road was graded a certain width and there was a gutter the full length of the road from Delanco to Burlington, as far as the stone road was built and graded.

Q. The sidewalks, as you call them, or side paths, were left how high above the grade of the road?

A. Well, that depended on the grade that was established by the engineer of the stone road.

Q. Well, as it was left at the Riley property, how high was it?

30 A. Well, at the Riley property I presume it was from six inches at one end, six to eight inches, to two feet and a half.

Q. How high was it in front of their residence?

A. In the residence?

Q. Yes.

A. I should judge from twelve to fifteen inches, probably a little more than that.

Q. How far is their residence back from the road line?

A. I should judge about thirty feet, something like that,
40 twenty-five to thirty.

in what general direction is their house from the road?

A. South.

BY MR. CHAMBERS.

Q. Just one question I omitted. You did not authorize either one of these trees to be cut down?

A. I was never asked.

Q. Now, I understand you, Mr. Jones, that the first tree that was cut down was closer to the railroad than the second tree?

A. Yes, sir.

Q. How much closer?

A. Oh, well, I could not say; somewhat closer.

Q. Answer me this question: Was there any danger, then of the car striking the second tree?

A. The second tree?

Q. Yes, the second tree that was cut down?

A. No, I don't think so.

20

BY MR. BELDON.

Q. Just one second, Mr. Jones. At or about the Riley property is there any curvature in the line of the trolley track, as you recall it?

A. Well, now, that is a hard question to answer, Mr. Beldon.

Q. You don't remember exactly?

A. There are curves along the road, the road is not a straight road, and there are a number of curves, and I think it does curve out somewhat there, yes, sir, in front of Mr. Sheppard and Mr. Riley, both. 30

Q. I understand you to say, in answer to counsel's question, that in your opinion the cars could be operated by this second tree without danger of them striking; is that correct?

A. Without danger of the car striking?

Q. Yes.

A. Oh, yes, sir, certainly, without the car striking.

Q. In that you assume, of course, that there would be no swerving of the car; but if there was swerving of the car, 40

might there not be danger of it striking?

A. Well, there might. How much a car will swerve I could not say.

Q. Do you know what the overhang of a car beyond the track is?

A. No, sir; I do not.

Q. You don't know?

A. I don't know.

10 WILLIAM T. BAGGS, Sworn.

BY MR. CHAMBERS.

Q. Where do you live, Mr. Baggs?

A. On the Beverly and Delanco stone road.

Q. And do you know the property in question, Mrs. Riley's property?

A. Yes, sir, I do.

Q. And you passed and repassed there, of course, a great many times prior to these trees being cut down?

20 A. Yes.

Q. And you remember the trees?

A. I do.

Q. Did you in May and June of 1901 hold any official position in that township?

A. 1900 I did not; but in 1901 I did.

Q. You didn't in 1901?

A. Yes, in 1901, I did.

Q. What was that?

A. Member of the Township Committee.

30 Q. Were you chairman of the Township Committee?

A. I was.

Q. Did you at any time while Chairman of the Township Committee give the Camden and Trenton Railway Company permission to cut down these trees?

A. No, sir.

No Cross Examination.

MITCHELL B. PERKINS, Affirmed.

BY MR. CHAMBERS.

Q. What position do you hold, Mr. Perkins, in the Camden and Trenton Railway Company?

A. General manager.

Q. And how long have you been general manager?

A. Since the organization of the company. 10

Q. You know where these two guy wires are that were spoken of there, do you not?

A. Yes.

Q. Were those wires placed there by the Camden and Trenton Railway Company?

A. They were not; that is, to my knowledge.

Q. You know about it, do you not?

A. Yes.

No Cross Examination. 20

Adojurned until 1.30 o'clock P. M.

Afternoon Session.

Trial of the Cause resumed at 1.30 o'clock P. M.

(It is admitted by counsel for the defendant company that Mary Riley is the owner of the land in question in this suit.)

WILLIAM SHEPPARD, Sworn. 30

BY MR. CHAMBERS.

Q. Mr. Sheppard, where do you reside?

A. On the Beverly road about a mile from Delanco.

Q. Is that the road that we have been talking about here this morning?

A. Yes, sir.

Q. Are you acquainted with Mrs. and Mr. Riley?

A. Oh, yes; I live next to them, on the next place.

Q. And you are acquainted with their property? 40

A. Yes, sir.

Q. How long have you known that property?

A. Between thirty and thirty-five years.

Q. Are you an owner of real estate?

A. Yes, sir; I own the property I live on.

Q. What kind of property is that?

A. Mine?

Q. Yes.

A. Very near fifteen acres.

10 Q. A property similar to this property?

A. Well, it is a little larger.

Q. Did you, at Mr. Riley's request, go to his property after those trees were cut down and this fence destroyed?

A. Yes, sir.

Q. And make an examination there for him?

A. Yes, sir.

Q. What, in your opinion, was this iron fence worth?

MR. BELDON: That is objected to because it is simply
20 a matter of opinion in this matter. He is produced to that extent as an expert witness. As to whether or not he has any knowledge of the matter on which he speaks has not been disclosed to us.

THE COURT: You will have to lay a foundation for that question.

Q. Have you had any experience in buying fences of that kind?

A. No, sir.

30 Q. Do you know the value of such fences?

MR. BELDON: I object to that.

THE COURT: He says he has nothing to do with buying them. Now, you might ask him if he has sold them, or built them, or anything of that kind.

Q. Have you had any experience in buying or selling such fences?

A. I never bought or sold one of that kind, but I have
40 an idea something near what it is worth.

MR. CHAMBERS: Does that qualify him?

THE COURT: That is a mere matter of opinion. If a person has experience in the matter about which he is to testify, he can testify.

BY THE COURT.

Q. Do you own any iron fences?

A. No, sir.

Q. Never bought any?

A. No, sir; oh, wire fences and that kind, but never a fancy fence like Mr. Riley has there in front of his lawn, in front of his house, and mine was along the road and intervening fences between my neighbors' properties and mine.

MR. CHAMBERS: Well, we won't press the question.

MR. BELDON: I have not any objection at all if the man knows anything about it, but he says himself he does not, and he has not disclosed any knowledge of the kind that is necessary. You might as well take a man up here along the street and ask him what the value of that fence is and he might have an idea in regard to it. I have never seen the fence, and I have an idea in regard to it, and I think my idea is quite as valuable as his. It might not be the same, of course.

Q. What, in your opinion, was the damage to that property by reason of the cutting down of those two trees?

MR. FLANDERS: I cannot see that that is proper because while he says he is the owner of property it does not follow that he has any idea of the value of this property before or after the trees were cut. If he bought and sold real estate and then lived in the property, from one point of view, he might be competent.

THE COURT: He says he owns property adjoining it.

MR. CHAMBERS: Of the same character excepting a little larger.

THE COURT: I think that question is proper.

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

JAS. H. NIXON, Judge.

(Question repeated.)

A. Well, you say those trees have been there thirty years and you could not place a value on them.

10

THE COURT (To the witness): Hold on. Answer the question.

A. Well, if they were my trees, money would not buy them.

THE COURT: Just answer the question.

MR. BELDON: The witness having answered as he has,
20 I object to his answering any further upon the ground that he has practically stated that he could not form any opinion in regard to it. He has said by reason of the age of the trees, as I understand him, it was practically impracticable to place a value on the trees; now he says in his second answer if the trees were his money could not buy them.

THE COURT: It is the opinion of the jury we want. I shall have to overrule that. If he will answer your question let him say what he has to say to that. If he has any idea what injury has been done to the property, and can
30 give an intelligent answer, let him state it. I will allow that.

A. I think, waiting all the time they have to grow, I would not place a value on those trees under five hundred dollars apiece, waiting thirty-five years for a tree to grow and then have it cut down; I would not have them cut off of my place for five hundred dollars apiece.

THE COURT (To the witness): I have told you sev-
40 eral times to answer the question and stop. We don't want

your sentimental opinions about trees.

Cross Examination.

BY MR. BELDON.

Q. Mr. Sheppard, you have maintained a hostile attitude to this trolley road during all the time of its operation, have you not?

A. No, sir.

Q. Haven't you attended meeting after meeting in Beverly Township for the purpose of protesting against its being operated along that road?

A. No, sir.

MR. CHAMBERS: I object to this as not proper cross examination.

MR. BELDON: Haven't we the right to find out the animus of the man?

THE COURT: I don't think his examination in chief has laid that ground exactly. Some of his answers have somewhat laid ground for it, but those answers have been overruled.

MR. BELDON: If your Honor will permit a suggestion. The only reason of the inquiry is this: This witness is placing an estimate, or attempting to place an estimate upon, some damage, and it seems to me we have a right when a witness is called to express an opinion as this witness has, to show that he bears a hostile attitude toward one of the parties; I want to show the animus of the witness.

THE COURT: Well, on that ground it will go. Being on cross examination, you have a right to test whether his answers were correct and true and honest; whether they were answers in good faith. You have a right to inquire into that on cross examination.

Q. Is it not a fact, Mr. Sheppard, that you went out during the construction of that road with a revolver and threatened to shoot some of the persons in the construction?

A. No, sir; I never had a revolver in my hand in my

life.

Q. Didn't you threaten to get one and shoot them?

A. No, sir; never owned one.

Q. Didn't you threaten to shoot them?

A. Yes.

Q. What value do you place upon the property of Mrs. Riley's?

A. Well, about seven thousand dollars.

10 Q. If you knew that they purchased that property for thirty-two hundred dollars, would you say that the removal of those two trees damaged the property one thousand dollars?

A. Did you say they purchased it for thirty-two hundred dollars?

(Question repeated.)

A. Well, I don't know it.

Q. Well, if you did know?

A. No, if I did know that, that has nothing to do with it.

20 THE COURT (To the witness) Answer the question.

A. Well, am I to form an idea of the value of the property or am I to take it at the price he says they paid for it.

THE COURT: That is a hypothetical question which may be asked, if that is the consideration named in the deed, which I understand has been offered.

MR. CHAMBERS: The deed is not offered in evidence, no, sir.

30 MR. BELDON: The deed will be offered in evidence.

THE COURT: Well, in advance of that, I think the question is entirely too purely hypothetical to come in now on cross examination.

Q. You say the value of their property there is seven thousand dollars, in your opinion, at the present time?

A. It was then.

Q. Do you think the removal of those two trees injured that property one seventh of its value?

A. I do.

40 Q. Where were those trees with reference to the house,

sir; how far away from it?

A. Well, I suppose in the neighborhood of fifty or sixty-five feet.

Q. On which side of the house, the northerly or southerly side?

A. I cannot tell you that.

Q. Do you know where north is there?

A. Something near it.

Q. Well, that is what I asked you, whether they were on the northerly or southerly side of the house. 10

A. Well, they were on the northerly side in one way, one of the trees.

Q. Well, were they in two directions from the house?

A. Why, of course; they wasn't together.

Q. What did you say?

A. They wasn't together.

Q. How near together were they?

Q. I never measured, although I have passed them many dozen times.

Q. How wide is the sidewalk there? 20

A. Well, we claim four feet.

Q. No, I asked you how wide the sidewalk is?

A. I cannot testify to that for I never measured it.

Q. How large is this house occupied by the Rileys'?

A. I guess about thirty-four or thirty-six feet front, maybe twenty-six or twenty-eight feet deep; I never measured it.

Q. How many feet front is their property on the road?

A. Their house?

Q. Is their house on the road? How many feet front 30 is their property on the road?

A. I guess seven or eight hundred feet.

Q. Did you see these trees cut down?

A. Seen them cutting at them.

Q. Do you know which one was cut down first?

A. No, sir.

Q. You saw them cutting both down?

A. I seen them cutting one down; the other I don't remember anything at all about, but I could not testify which one it was. 40

Q. The trees were out in the road, were they?

A. On the sidewalk.

Plaintiff Rests.

MR. BELDON OPENS THE CASE FOR THE
DEFENDANT.

MR. BELDON: I understand that we are trying to
10 save ourselves the trouble of proving what is, in a sense,
unnecessary to prove. I understand my friend (Mr.
Chambers) is willing to agree, as we agreed, that Mrs.
Riley was the owner of the property; that he is willing to
agree that there was a proper ordinance passed by the
Board of Chosen Freeholders of the County of Burlington,
also one by the Township Committee of the Township of
Beverly, and that the road was constructed in practical
accordance with those ordinances; is that correct?

MR. CHAMBERS: That is correct, not admitting that
20 there is anything in either ordinance which allows the de-
fendant company to cut or trim trees in any way.

MR. FLANDERS: Unless the ordinance says so?

MR. CHAMBERS: Unless the ordinance says so; and
if it does, we want the ordinance produced.

MR. BELDON: When you say "without admitting,"
you mean without admitting that there is any specific
clause in the ordinance which refers to trees?

MR. CHAMBERS: Cutting or trimming trees, yes; I
30 think you will admit that.

MR. BELDON: I think that is the fact. Our general
contention is that under the general powers given by the
ordinance itself, we have a right to do it.

MITCHELL B. PERKINS, Recalled.

BY MR. FLANDERS.

Q. Whereabout do you live?

A. Beverly Township, on the road leading from Bever-
ly to Delanco.

40 Q. How near to the property in discussion in this mat-

ter?

A. About half a mile.

Q. How long have you lived in that neighborhood?

A. Twenty years; well, I have lived there all my life but not in the present location; twenty years.

Q. Are you a land owner?

A. Yes, sir.

Q. Are you acquainted generally with the value of property in Beverly Township?

A. Yes, sir.

Q. And the value of property along the road between Delanco and Beverly? 10

A. Yes, sir.

Q. What is your official position in relation to the Camden and Trenton Railway?

A. General Manager.

Q. How long have you been General Manager of that road?

A. Ever since the organization.

Q. Have you been cognizant of the construction of the roadbed of that road? 20

A. Yes, I have.

Q. From what time?

A. During the building of it, entirely from the commencement.

Q. From the beginning?

A. Yes.

Q. And until the present time?

A. Yes, sir.

Q. You know the property in question having relation to the location of the rails and ties and poles, do you? 30

A. Yes, sir.

BY THE COURT.

Q. Let me ask right here; I have not seemed to make note of the name of this road or street; has it any particular name?

MR. BELDON: They call it the road from Beverly to Delanco.

MR. CHAMBERS: The improved road from Beverly 40

to Delanco; that is the way we designate it.

THE WITNESS: The River Road.

BY MR. FLANDERS.

Q. Do you know Mr. and Mrs. Riley?

A. Yes, sir; I do.

Q. Did you have a conversation with either Mr. or Mrs. Riley in relation to the tree known as the first tree in this discussion?

10 A. I did.

Q. What was that conversation?

A. I told Mr. Riley that tree was too close to our track and must be removed; he told me go ahead and remove it.

Q. What occasioned this conversation?

A. That was the time we ran the first car by the tree.

Q. Ran the first car?

A. Ran the first car, yes, sir; on our return trip Mr. and Mrs. Riley was out in the yard and we stopped the
20 car and told him the trees were entirely too close for safety.

Q. In running the first car by the tree what was demonstrated to you?

A. It knocked off the step, off the top of the car.

Q. And then when you came back you had the conversation?

A. Had the conversation, yes, sir.

Q. And at that time he told you that you could remove the tree?

30 A. Yes, sir; told me that I could remove the tree.

Q. After that what was done there as far as you know?

A. After that the tree was bound up by hoop wires, hoop irons, and large spikes or nails driven in so that the tree could not be cut.

Q. Did your company do that, or anybody in your employ?

A. No, sir.

Q. What was the practical effect of binding it up with these hoop irons and wire and nails?

40 A. It prevented us from removing any part that pro-

jected over our track.

Q. And while it so existed, was it a matter of danger to operate a car?

A. It was; we could scarcely get by and we had to go at a very slow rate of speed in going by.

Q. And did you so instruct your motormen?

A. I gave a general order to run slow at that point always.

Q. And the cause of that general order was what? Why did you give a general order? 10

A. Because it was dangerous to go by there; in fact, it was really dangerous to go by at any rate at all.

Q. What is the overhang of these cars?

A. About twenty-six inches, I think.

Q. That is to say they hang over the track?

A. Over the track, yes; over the gauge line.

Q. While a car is operating at a certain speed, is there or is there not a sway or swaying of the body?

A. There is a sway, and the faster you go the more the sway is. 20

Q. Is that somewhat controlled by the number of people there are in the car?

A. Yes, sir.

Q. And the location of the people in the car has something to do with it, has it not?

A. Yes, sir.

Q. And while a car is travelling at a rapid rate of speed it will swing from side to side?

A. It will vary, at least from six to eight to ten inches at the top.

Q. It will sway from six to eight to ten inches at the top? 30

A. Yes, sir; possibly more than that.

Q. Now, do you know anything about the removal of the second tree?

A. I ordered it down.

Q. You ordered it down?

A. I did.

Q. What was your reason for doing that?

A. Because it was unsafe to operate by it. 40

Q. Was that close to the car ?

A. Yes, sir.

Q. How close ?

A. It was only, I think, about six or eight inches from the top of the car when the car was standing still, so that the operation of a car by it, going fast or loaded on one side, it would practically strike the car.

Q. If a person had been standing on the platform of the car on the side nearest the tree, would there or would
10 there not have been danger ?

A. There would.

Q. And if a person's arm had projected from a window, to any degree, would there have been danger ?

A. There would have been danger of knocking any part of the arm that extended over the tree.

Q. And even if these conditions had not existed, would there have been danger ?

A. Yes, there was danger at all times with the tree as close as it was to the track.

20 Q. You gave no orders for the destruction of the fence ?

A. No, sir; that was an accident.

Q. Had you observed these trees before they were cut down particularly ?

A. Yes, sir.

Q. And about what size were they ?

A. Oh, I suppose about fifteen inches in diameter.

Q. How many trees were there along there ?

A. There were those two trees in front of the house, and there are a number below the house.

30 Q. How close are the trees that are below the house to the trees that were cut ?

A. They, I think, are about a foot, possibly, a foot, at least a foot; possibly eighteen inches inside of these trees that are taken out.

Q. Yes, but how close were they, east or west of the trees; how close were the trees that were taken out ?

A. I think about fifty feet, fifty or seventy-five, possibly one hundred feet. Then they ran along in a line for several hundred feet.

40 Q. About how many feet was the house from the fence ?

A. I think at least fifty; I should think seventy-five or one hundred feet; seventy-five anyhow.

Q. And about how many feet was it from the fence to the curb line?

A. About five feet.

Q. And these trees stood on the curb line, did they?

A. Yes, sir.

Q. So that the trees were from seventy-five to eighty feet from the house?

A. Yes.

Q. On the north, east, south or west of the house?

10

A. On the north side of the house.

Q. And how high were they, about?

A. Thirty-five feet, I should think; possibly a little more; somewhere about thirty-five feet, possibly; I shouldn't think more than thirty feet.

Q. What were they, maple?

A. Maple, yes, sir.

Q. You know that this company was regularly organized, do you?

A. Yes, sir.

20

MR. CHAMBERS: That is all admitted.

MR. FLANDERS: You admit that the ordinances were obtained and so on?

MR. CHAMBERS: Yes, sir.

Q. Now, Mr. Perkins, how much, in your opinion, was the property of the Rileys worth prior to the destruction of these trees and when the action was commenced?

30

A. About three thousand dollars.

A. Yes, sir.

Q. About three thousand dollars?

Q. How much damage was done to it by the cutting of the trees?

A. I do not consider there was any real damage because—

Q. Having relation to the house?

A. They were on the highway.

Q. Having relation to the house, what value did the

40

trees have to the house? Were they or were they not shade trees?

A. They did not furnish shade to the house, because they were on the north side of the house. They furnish shade to the roadway but not to the house.

Q. How much damage, did you say, in money?

A. I would not consider they did it any particular damage. It cleared up the front of the property and I cannot see that it did any particular damage in that way, because
10 they did not afford any shade.

Q. Do you know how many sections of the fence were broken?

A. I think two.

Q. And how large were those sections?

A. That I do not remember.

Q. Do you remember the general characteristics of the fence?

A. Yes, sir; it was, I think, a cast iron fence with wire pickets, practically.

20 Q. In circles?

A. Yes, sir.

Q. One lapping over the other?

A. Yes, sir.

Q. Have you any idea what such a fence is worth by the foot?

A. I should think about seventy-five cents or eighty cents a foot.

Q. Have you taken occasion to inquire as to the value of the fence? 5

30 A. Yes, sir.

THE COURT: What experience has he had?

MR. FLANDERS: I probably asked that question a little ahead of time. I asked him if he has taken occasion to inquire as to the value of fences from persons who were conversant with it.

THE WITNESS: We had a new fence built for that place.

Q. And what did that cost, do you know?

40 A. I just forget; I think somewhere about, I think it

was either about twenty or twenty-five dollars.

Q. Did that new fence which you had built for the place embrace all of the fence?

A. It embraced that part that was injured.

Q. Embraced that part that was injured?

A. Yes, sir. It is an old style fence, and we had considerable trouble in getting the style made up.

Q. And was that fence tendered to the Rileys?

A. Yes, sir.

Q. And what answer did they make?

10

A. They would not permit it to be put up.

Q. Do you know what became of the old fence?

A. It was thrown on the track two or three times, and afterwards dragged down away from the property. I don't know what became of it.

Q. Well, after the fence was broken down, do you know what became of it immediately after it was broken; where was it put?

A. It was thrown on the track in front of our cars. We ran over it once or twice.

Q. Who threw it on the track?

20

A. Mr. Riley. That was the information I got.

Q. I beg your pardon; I thought you were testifying to your own knowledge.

A. No, I did not see Mr. Riley do it.

THE COURT: Strike that out then.

Q. Do you know what became of the wood from the trees?

A. Part of it was put in Mr. Riley's property; in fact I think in the wood pile where he directed it.

30

Q. Do you know how wide the sidewalk is along there?

A. I think four to five feet.

Q. Before the construction of the road, how wide was it, do you know?

A. Well, there really was not a sidewalk there. The ground was raised a little above the road, but no particular sidewalk. There was a depression in the road at that point; that is, the grade was lowered, and where the stone

40

road is that left the sidewalks higher than the road.

Q. And that is the sidewalk that has been referred to as having been cut into, is it?

A. Yes, sir.

Q. It had that character of a sidewalk?

A. That is the character. There is no improved sidewalk through there.

Q. This is not a built up portion of the country, is it?

A. No, sir.

10

Cross Examination.

BY MR. CHAMBERS.

Q. What is the character of this fence, Mr. Perkins?

A. I think it was cast iron railings with galvanized up-rights or pickets, you might call them.

Q. An ornamental fence?

A. Yes, in its day.

Q. It was all in good condition before the accident?

20 A. Apparently, yes, sir.

Q. You have said you made inquiry about the cost of such a fence?

A. We had the part matched and built—

Q. You can answer that question very easily, whether you have or have not made inquiry?

A. Yes.

Q. And you understood it would cost from seventy-five to eighty cents a foot?

A. Yes, sir.

25 Q. And you say you had a fence made to go in this section that was broken there?

A. Yes, sir; got it on hand now, ready to put in.

Q. Who made it?

A. I think Pettit.

Q. Who is he?

A. A fence man in Philadelphia, I think.

Q. Is that exactly like the fence there?

A. Yes, sir; said to exactly.

Q. I ask you whether it is?

40 A. Yes, sir; I think it is.

- Q. Have you ever examined it?
A. No, sir.
Q. You don't know then?
A. No, sir; that is, only through general orders to have it made.
Q. How much did you have made?
A. Enough to fill the part that was broken.
Q. How much was that?
A. I cannot tell you exactly.
Q. You are general manager of this road, aren't you? 10
A. Yes, sir; but I do not attend to matters of that kind.
Q. You have full charge of all of these things, don't you?
A. Not knowledge of a matter of that kind. I delegate it to somebody else.
Q. That has not been such a small matter that you have overlooked it entirely, has it?
A. As far as the repairing of the fence is concerned, yes, sir.
Q. After the trees were cut down and broke the fence 20 you dismissed that from your mind?
A. Delegated it to somebody else.
Q. How do you know that piece that you had made cost from twenty-five to thirty dollars?
A. That was the report given me by one of our men.
Q. You don't know anything about it then, except what somebody told you.
A. The report that was given to me by one of our men.
Q. Have you ever seen the bill for it?
A. I don't remember whether I have; I think not. 30
Q. Where is that fence now?
A. I think at the steamboat wharf in Beverly.
Q. Has it ever been taken there on the ground?
A. It was taken to Mr. Riley's, and he objected to it, and it was taken back there. He would not permit it to be put up.
Q. You never attempted, then, to rebuild the fence in whole?
A. The part that was injured, yes.
Q. I say as a whole? 40

A. Do you mean entirely?

Q. You never undertook to put a new fence there?

A. Replace the part that was not injured?

(Question repeated.)

A. No; could have done it cheaper than what we could have got this part built for.

Q. When did you begin to operate your cars along this track that was built there?

A. Can't remember the date.

10 Q. About when?

A. I cannot remember; I haven't the records; I cannot tell you.

Q. It was quite an event, wasn't it?

A. Yes, sir; but I did not carry it in my mind.

Q. Several people invited to take the initial trip over the road, weren't there?

A. Yes. We had two or three openings, but I don't remember this particular section, when we opened that.

Q. You have no remembrance at all?

20 A. No, sir; not entirely.

Q. Cannot fix the date within a month?

A. No, I could not.

Q. Can you fix it within two months?

A. No, I could not.

Q. Three months?

A. I won't fix it within a year.

Q. Won't fix it within a year, when you began to operate this road, and you have been General Manager of the road ever since it was started, and promoter of the road
30 before it was started?

A. Yes, sir; without reference to our records.

Q. You have an office at Riverside?

A. Yes, sir.

Q. And that is just across the bridge from where this property is?

A. Yes, sir.

Q. This property has given you a good deal of trouble, has it not?

A. Not very much.

40 Q. How long was it after you began to operate the road

before you told your men to cut this tree down?

A. I think, practically, immediately.

Q. How long was it before it was done?

A. That I don't just remember.

Q. Cannot remember that, either?

A. No, sir.

Q. Was that a month?

A. It might have been. In the meantime we had to run slow and cautiously.

Q. Why was it you did not have both of the trees cut ¹⁰ down at the same time, if they were both dangerous to the operation of the cars on the road?

A. We thought we could get by the upper tree, but we found that it was dangerous, too.

Q. It never touched the cars, did it?

A. I cannot say whether it did or not.

Q. Did you make an examination of that yourself before you gave these orders?

A. I did.

Q. Careful examination? 20

A. Careful examination; went to the tree myself.

Q. How far was that tree, at the foot, from the rail nearest to the tree?

A. I think at the bottom, about two feet eight or nine inches; but as the tree projected out at its limbs it was closer to the road.

Q. Now, you say the overhang of a car is twenty-six inches?

A. Twenty-six inches; yes, sir; that is right.

Q. Now, do I understand you, taking the second tree ³⁰ into consideration, that it was the limbs that interfered with the operation of the cars?

A. It was the part of the tree where the limbs projected, or the trunk of the tree where they bulged out.

Q. If that portion of the tree had been trimmed off, could you have operated your cars by there with safety?

A. You could not, because you would have to cut the tree right straight down.

Q. You could not cut off that limb that branched out towards the north? 40

A. No, it was like every other tree where the limbs branch out, the tree widens.

Q. What was it you were fearful would strike the tree?

A. The top part of the car.

Q. Against what part of the tree?

A. Against the part where the limbs branch out.

Q. Against the butt of the tree?

A. Against the trunk of the tree.

Q. The trunk of the tree?

10 A. Yes, sir.

Q. You are willing to swear, are you, that in the operation of those cars the top of your car might have struck the butt of the tree?

A. Yes, sir; that is, the trunk of the tree, where the limbs branch off from the tree.

Q. Well, would it be the limbs that would strike, or the trunk of the tree?

A. It would be the trunk of the tree where it is wider than midway from the ground to the limbs.

20 Q. You knew about the first tree being trimmed up there in order to let your cars pass by, did you not?

A. I don't remember whether I knew about that or not.

Q. You knew these trees were there before you had your road located on that highway, did you not?

A. Yes, sir; I did.

Q. And is your road to-day located on the line that is laid down as the proper line of the road in the ordinance that was granted to you by the township committee and the Board of Freeholders?

30

MR. FLANDERS: I object, because the papers themselves are the best evidence.

MR. CHAMBERS: The ordinance calls for the road to go to a certain place by metes and bounds. Now, I asked him if it is a fact that the road is actually laid on that line.

MR. FLANDERS: The question is whether this witness can know that.

THE COURT: He can answer yes or no, whether he knows or not. If he knows, he will say he does, that the
40 track is so laid; and if he don't, he will say so, or to the best

of his knowledge he can say.

A. To the best of my knowledge the track is laid to favor these trees; in other words, it is further away from the location provided than it ought to be.

Q. In other words, you had to vary from the line of the road as laid down in the ordinance, when you came to actual construction, in order to get away from these trees?

A. These and other trees; there are a number of other trees, and in order to avoid cutting them all down—

10

Q. (Interrupting) Went nearer the centre of the road?

A. We drifted a little further away from the line of the road. If we had gone in the line of the road as laid down by our ordinance we would have had to remove all the trees along there in front of all the properties. We diverted the least bit in order to save all the trees possible.

Q. When was the step that you speak of knocked off of the car?

A. The first trip through.

Q. The first trip?

20

A. Yes, sir.

Q. Now, are you willing to swear that that was a step or a handle?

A. We consider it a step; you can call it either one, either a step or a handle.

Q. You do not allow a passenger to stand on the steps of the cars when the cars are in operation, do you; it is against the rules of the road?

A. It is not that kind of a step.

Q. I am speaking of the step the passengers get on now.

30

A. What was your question?

Q. I say it is against the rule of the road to allow passengers to stand on the steps?

A. Yes, sir; excepting when the car's loaded.

Q. You allow it to be done then, do you?

A. When they cannot get inside, certainly they stand outside.

Q. Well, is that the rule of your road? Do they allow that to be done, or do they take their chances on it?

A. We permit it to be done.

40

Q. When the cars are loaded do you permit the passengers to stick their arms out of the cars?

A. We do not; no, sir.

Q. Have you a rule against that?

A. Yes, sir; they do it, however, occasionally.

Q. When they are loaded, I suppose?

A. Yes, sir; when they are loaded.

Q. You have a property along that road, haven't you, Senator?

10 A. Yes, sir.

Q. How much do you own along that road?

A. I own thirty acres.

Q. Is there a house on that thirty acres?

A. Yes, sir.

Q. How do you value your property?

A. Well, I paid—do you want to know what I paid for it?

Q. No, I don't ask you that.

A. I value my property about the same as Mr. Riley's; 20 it is on the same road.

Q. What do you mean by that?

A. Per acre.

Q. Well, I take it for granted that you would take your valuation on it rather than our witnesses' valuation on the land, then?

A. How is that?

Q. I say you are taking your valuation of the land and not Mr. Sheppard's valuation of the land?

A. Well, you asked me for my valuation.

30 MR. FLANDERS: He didn't say anything about Mr. Sheppard.

MR. CHAMBERS: No, but he says he values this property of his the same as he values Mr. Riley's.

THE WITNESS: You asked me for my valuation, and I say the same as I would value Mr. Riley's.

Q. Well, how do you fix the value of Mr. Riley's property by the acre? you have not done that yet.

40 A. You have not asked it.

Q. Well, how would you fix it?

A. You mean by—

Q. (Interrupting) How much would you value Mrs. Riley's property by the acre? That is a very plain question, Senator.

A. He has ten acres there, and I value it at three thousand dollars. That is three hundred dollars an acre, I believe, is it not?

Q. Yes. Have you ever been in his house?

A. Yes, sir; when I was electioneering. 10

Q. Don't you know the house cost more than that?

A. I would not think so.

Q. You think you could build such a house as that for three thousand dollars?

A. I should think so, yes, sir.

Q. To-day?

A. Yes, sir.

Q. Well, how much do you think such a house as that would cost to-day to build?

A. I don't know. 20

Q. Haven't any idea?

A. No, I can't always get for a property what the house cost.

Q. Well, would it cost two thousand dollars, Senator?

A. It might; but what a property is worth and what you can get for it are two propositions.

Q. Not to live in?

A. I know some properties that you can't get for them what the buildings cost, lots of them.

Q. Then if this house would cost two thousand dollars 30 you would only value the land at a thousand dollars?

A. I should figure it that way.

Q. That would be a hundred dollars an acre?

A. Yes.

Q. Would you be willing to sell your land along there for one hundred dollars an acre?

A. I know some that you can buy for that.

HARRY P. SHEDAKER, Sworn.

BY MR. FLANDERS.

Q. Where do you live?

A. Beverly.

Q. What is your occupation?

A. Superintendent for the Cinnaminson Electric Light Plant.

Q. At the time testified to by Mr. Riley what was your
10 position?

A. Assistant Superintendent Camden and Trenton Rail-
way.

Q. Do you know the location of the Riley property on the
River road?

A. I do.

Q. Do you know the tree as being cut down, the second
tree?

A. I do.

Q. Under whose direction was it cut down?

20 A. Mr. Perkins, the General Manager.

Q. And who supervised it?

A. I did.

Q. Why was it done?

A. To permit cars passing that point with safety.

Q. Before the trees were cut had any investigations been
made?

A. There had.

Q. What was found at the investigation in relation to
30 the safety?

A. You mean the last tree?

Q. Yes.

A. You are speaking of the tree that I cut?

Q. Yes.

A. That by the swaying of the car it would bring the
top of the car into the tree; that is, a fast motion of the car
would give the car a side motion, and that would swing it
into the tree.

Q. Was that so reported?

A. Yes.

40 Q. And then what was done?

A. Why, we removed the tree.

Q. When you came to take that tree down what did you find in relation to any other tree?

A. Why, I took the stump out, of the tree which had been previously taken out.

Q. How did you come to take that stump out?

A. By request of Mr. and Mrs. Riley.

Q. What was said to you, if anything, about it? What did you say to Mr. Riley, and what did he say to you, or what did you say to Mrs. Riley?

10

A. Both were there, both Mr. and Mrs. Riley.

Q. What was said by you, and what did they say to you?

A. Why, they said that they would not have cared anything about that tree if the stump had been taken out, that it was an unsightly object, and asked me to take it out, and I did.

Q. Do you know of the first tree being cut down?

A. I know of it being cut down, yes.

Q. Was, or was there not an investigation made on behalf of your company before that tree was cut down?

A. Oh, yes, sir.

Q. And what did that reveal?

A. Why, it revealed that we could not get a car by it unless moving very slow.

Q. Were any instructions or orders given after that was found out?

A. A general order was given by the General Manager, and I also gave an order myself.

Q. To what effect?

30

A. Why, to run slow, very slow by there.

Q. What happened after that order was given; what happened in the operation of the cars; did they or did they not run slow?

A. They did; they ran very slow; they had to.

Q. Do you know of any damage being done to the cars?

A. The steps was torn off the top of a car.

Q. How was it torn off, and whereabouts?

A. It was torn off by coming in contact with the trunk of the first tree cut down.

40

Q. While a car is running, does it or does it not sway according to the speed at which it is moving?

A. It does.

Q. And is that affected by the number of people that may be in the car?

A. It is.

Q. How much sway will there be under such circumstances?

A. Why, from eight to twelve inches; eight to ten inches
10 anyway.

Q. The higher the speed the greater the sway?

A. The higher the speed the greater the sway.

Q. Is there anything in the swing or sway of a car dependent upon the number of people that may be in it and the location of the people that may be in it?

A. Yes.

Q. Well, where? Explain.

A. If there is more people seated on one side of a car than there is on the other the car will incline that way, and
20 its tendency will be to swing more with that corner forward.

Q. Now, with your examination of the trees and your knowledge of the location of the track and the operation of the cars, was it possible or was it not possible to operate cars past those two trees with safety to the cars and the passengers?

A. It was not.

Q. It was not possible?

A. No, that is, when the cars were running full speed.

30 Q. Yes, I say in operating in their usual way, by the usual method?

A. No, it was not safe.

Q. Do you know what became of the broken fence?

A. It was thrown on the track.

Q. What happened to it then?

A. It was thrown on the track three times and I threw
it back.

Q. When it was thrown on the track first what happened to the fence then; what was done then to the fence?

40 A. Do you mean when we came up with the car?

Q. Yes.

A. Well, we came very near running over it the first time. I was standing on the front platform.

Q. When was that, day or night?

A. That was just about dusk; just shortly before dark.

Q. Well, now, what did you see?

A. The track was grown up with weeds and grass, and I saw the posts lying over the rail, and also the fence, when we were within about ten or fifteen yards.

Q. How far?

A. About fifteen yards.

10

Q. And when you were fifteen yards away from this fence at what speed were you traveling?

A. About five miles an hour.

Q. And if you had struck the fence what would have been the effect upon that car?

A. Derailed the car.

Q. What did you do when you got to the fence?

A. I reversed the car. I was standing there, and pulled the reverse lever—

20

MR. CHAMBERS: Is this proper?

THE COURT: I don't know what it will lead to. It is not pertinent, the question alone is not pertinent, but what it is coming to I don't know.

Q. What happened then in relation to the fence?

A. I threw it back on Mr. Riley's property.

Q. After the fence had been thrown back when did you see it again?

A. About thirty minutes; well, no; well, yes; I guess, 30
as near as I can judge, thirty minutes later.

Q. The same night?

A. The same night.

Q. Where was it then?

A. It was on the track again.

Q. What was done with it then?

A. Thrown back on Mr. Riley's property.

Q. And when did you see it again?

A. About, possibly, an hour afterwards, as near as I can 40

remember.

Q. Where was it then?

A. On the track.

Q. And what was done then with it?

A. Why, I hitched it to the car and dragged it down the road out of the way.

Q. What kind of a fence was this, Mr. Shedaker, and how big was it?

A. Well, the bars were wrought iron, and what I should
10 call the pickets were made out of galvanized wire.

Q. And how long, how large were the sections?

A. Oh, I presume there was fifteen feet or twenty feet of it.

Q. Fifteen or twenty feet of it?

A. Yes, sir.

Q. And what was the condition of this fence itself, of the part that was found, as to whether it was broken or otherwise?

A. Oh, it was broken.

20 Q. And what was the condition of the fence left standing in front of Riley's?

A. I considered it to be in good condition.

Q. Mr. Shedaker, do you know what was done, if anything, in relation to replacing the fence with a new one; I mean do you know anything about it?

A. Not personally.

Cross Examination.

30 BY MR. CHAMBERS.

Q. How old are you, Mr. Shedaker?

A. Twenty-four, I think.

Q. How much experience have you had in operating trolley cars?

A. A year.

Q. One year?

A. Yes, sir.

Q. Did you ever have any position anywhere before you took the position with this company?

40 A. Yes.

Q. In operating trolley cars?

A. No.

Q. That is the first experience you had in the operation of a trolley road?

A. Yes.

Q. What will be the sway of a car running on a straight track and full of passengers when they are running five miles an hour?

A. About six inches.

Q. Full of passengers, understand? It will sway six inches, will it? 10

A. Yes, taking the condition of the track; you must take that into consideration.

Q. Running five miles an hour it will sway six inches?

A. Yes, if the track is the same as it is there.

Q. What will be the sway, under the same conditions, on a good track when the car is running at the speed of ten miles an hour?

A. It will sway, about, I presume, about seven inches.

Q. On a good track?

A. I think so. 20

Q. It wouldn't make any difference about the track then, eh?

A. Yes, it makes some difference.

Q. What is the proportionate increase in the sway according to the rate of speed? Never mind, don't sit there and laugh at your counsel, just answer my question. Do you know, as a matter of fact?

A. I don't know.

Q. Do you know when these cars were first operated on this track? 30

A. I don't know the exact date, no.

Q. Were you Assistant Superintendent when they began?

A. I was.

Q. And have been from the beginning?

A. I have.

Q. You cannot fix the date?

A. Not the exact date, no.

Q. Can you fix it within a month of it? 40

A. Of the beginning?

Q. Of the beginning, when you first began operating?

A. No, I cannot.

Q. Well, was it in the summer or winter?

A. It was in the spring.

Q. Early spring or late spring?

A. No, it was in the early spring.

Q. How long was it after you began to operate the cars that this tree was cut down, Mr. Shedaker?

10 A. I do not know that.

Q. Well, can't you estimate it? You can tell about how long, can't you?

A. I presume it was about a couple of weeks; I wouldn't say that positively.

Q. It might have been more and it might have been less?

A. It might have been more and it might have been less, yes.

Q. How long was it before the second tree was cut
20 down?

A. About a month.

Q. How fast do you operate the cars on this road?

A. At present?

Q. Yes.

A. About twenty-five miles an hour, in certain places, that is, not in all.

Q. That is along this property?

A. Yes, we run that there now.

Q. Twenty-five miles an hour?

30 A. Very near.

Q. I understood you to say you had some conversation with Mr. and Mrs. Riley about the stump?

A. That was the stump of the first tree.

Q. I didn't catch that.

A. The stump of the first tree.

Q. No, it was the stump of the second tree, wasn't it?

A. No, the stump of the first tree.

Q. There was not any conversation about the stump of the second tree?

40 A. No.

Q. No conversation of any kind with you and Mr. and Mrs. Riley about the second tree that was cut down?

A. About the stump or tree?

Q. About the stump or tree either.

A. There was some conversation when I went there to cut it down, yes.

Q. They forbade you doing it, didn't they?

A. They objected to it, yes.

Q. They forbade you cutting the first tree down, didn't they?

1C

A. I didn't cut the first tree down.

Q. You cut the second tree down?

A. I cut the second tree down.

Q. But you are sure the conversation about the stump was about the stump of the first tree?

A. Yes.

Q. About how much of this fence was it that you hitched to the car that night and dragged off?

A. About fifteen feet, twenty feet of it, as near as I can judge.

Q. A big piece, was it?

2C

A. Oh, yes, a good-sized piece.

Q. Was it pretty well broken up?

A. Yes, badly broken.

Q. What did you do with it?

A. I dragged it on down a piece—well, I dragged it down the road about a quarter of a mile.

Q. Did you have charge of having this new fence made?

A. No.

30

Q. Have you ever seen this new piece of fence?

A. No.

Q. Don't know anything about it?

MR. FLANDERS: He said he didn't know anything about it; it is not cross examination because I asked the witness if he knew anything about it and he said he did not. Therefore, he cannot cross examine upon it.

THE COURT: He may test his credibility by cross examination.

40

Q. You have never seen it, Mr. Shedaker?

A. No, sir.

Q. Where is your office?

A. Riverside.

Q. And don't you go anywhere around the barn there, the car barn?

A. Very often.

Q. And you have never seen this piece of fence there?

A. I beg your pardon; I thought you had reference to
10 the new fence.

Q. Well, that is what I did have reference to.

A. The new fence?

Q. Yes, sir.

A. No, I never saw the new fence.

JOHN FENIMORE, Sworn

BY MR. FLANDERS.

Q. Where do you live?

20 A. Beverly road.

Q. Do you know the property where the Rileys live?

A. Yes, sir.

Q. How near is that to your property?

A. Right across the road, within a hundred yards.

Q. Do you know about the time the tree or trees, or the first tree was cut down?

A. About what time?

Q. Yes, do you know when it happened; you remember it happened, don't you?

30 A. Yes, sir; it was in May.

Q. Do you know what happened to the fence?

A. Yes, sir.

Q. In May of 1901?

A. Yes, sir. No, sir, it was 1900, wasn't it, year before last, that the tree was cut down?

Q. Yes, that is right; did you see the fence, Mr. Fenimore?

A. I saw it after the tree fell, yes, sir.

Q. Where was it?

40 A. Where was the fence?

Q. Yes.

A. It fell over in the yard.

Q. Did you afterwards see it again?

A. Yes, sir.

Q. Whereabouts was it?

A. I saw it lying along Mr. Riley's property.

Q. Did you again see it afterwards?

A. Yes, sir.

Q. Whereabouts?

A. On the track. 10

Q. Do you know how it got there?

A. Yes, sir.

Q. How did it get there?

MR. CHAMBERS: I object. I allowed the other witnesses to go ahead on this line, but I think it is quite time that I should object to this, in the face of all the circumstances in the case. It has nothing whatever to do with the value of the fence; how it got on the track, or who placed it there has nothing to do with the case. It is immaterial and irrelevant. 20

MR. FLANDERS: It makes, or might make a difference, it seems to me as to who threw the fence away. Somebody might have come along and thrown the fence away, while if the owner did it it would indicate that he had but very little idea of the value of the fence; and it seems to me it goes right to the value of the property, if he threw the fence on the track.

THE COURT: No, I do not see how it can be pertinent to this case at all. I have allowed these questions to be put, the rule generally being that if counsel does 30 not object to a question, but waits to see what is coming, to allow the answer to stand. But what became of this fence is not material. There is no proof that the plaintiff threw it upon the track. It is not material as to whether it was broken when upon the track or broken by being put there. There is nothing claimed in the issue as made up, and I have recently read the issue again to see how broad it was, except that they broke down this fence; and the value of the fence when it was broken down, and the cost to replace it are all that can be recovered. If some 40

stranger broke it into little bits and scattered it to the winds or waters it makes no difference; the plaintiff gets no more damage; and you relieve yourselves of no liability (if any should be shown) by showing that it was all broken to pieces afterwards. Therefore, I cannot see the pertinency of the question, and since it has been objected to I will have to overrule it.

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

JAMES H. NIXON, J.

Q. Did you see the fence that remained standing?

A. Yes, sir.

Q. What was its condition?

A. Well, there was part of it strained and part broken, and some that was not harmed at all.

Q. Some that was not harmed at all?

A. No, sir.

Q. About how much of it was not harmed?

20 A. I presume about part of it; I never measured it.

Q. About how much?

A. About part of the fence, probably a little more than half of it was not harmed.

Q. About half of it?

A. Yes, sir.

Q. Was in good condition?

A. Yes, sir.

Q. That is, not harmed at all?

A. Yes, sir.

30 Q. And the other was the injured part?

A. Yes, sir; never made a particular examination.

Q. About how many feet front did this fence occupy?

A. I presume about one hundred feet.

Q. Have you ever had any experience in buying fences of that character? Do you know anything about the value?

A. No, sir; I have had catalogues that quoted them about one dollar a foot; that is, cast iron fences. It depends on the work.

40 Q. You know there is considerable discount in cata-

logue prices, don't you?

MR. CHAMBERS: I object.

THE COURT: That is a proper question.

(Question repeated.)

A. Oh, yes, sir.

BY THE COURT.

Q. How many feet front did you say had been broken down by the fall of the tree? ¹⁰

A. I said that there was about one hundred feet of fence.

Q. Oh, yes, but how much was broken down?

A. Well, not quite half of it. The tree—in fact, I don't know how much.

Cross Examination.

20

BY MR. CHAMBERS.

Q. And some of the rest of the fence, I understand, was badly strained, you say, from the accident?

A. I mean that about that part of the fence was broken and strained together, yes, sir.

Q. About half the fence, then, in your opinion, was damaged so it ought to be repaired or fixed in some way?

A. To the best of my knowledge.

Q. Now, a good job could not be made of repairing that fence without they could put back fence in the broken portion which was just like the other fence, could it? ³⁰

A. That section could have been put back.

Q. That section would have to be made new, that was broken?

A. Yes.

Q. And it would not have made a good job of the new fence without the new section was exactly like the old portion, is not that a fact?

A. That is a fact.

40

BY MR. FLANDERS.

Q. This was a matter I overlooked on direct examination: Can you describe to the jury what kind of a looking fence this was?

A. Why, it was, I suppose, galvanized wire picket, what they call a picket; the top rail was pipe, what we term pipe, piping that the pickets run through; and the bottom part is some kind of wire, I presume.

Q. What kind of posts were they?

10 A. Iron; cast iron posts, I suppose.

Q. Were they light or heavy?

A. Medium.

Q. By the way, you have lived there a good while, haven't you?

A. Yes, sir.

Q. Do you remember how long that fence has been there?

A. No; but it is somewhere in the neighborhood of ten or twelve years, I presume, as near as I can judge.

20

HENRY S. HAINES, Affirmed.

BY MR. BELDON.

Q. Where do you live, Mr. Haines?

A. In Burlington.

Q. And what is your profession?

A. Civil engineer.

Q. And you have been engaged in that profession for how long?

30 A. About forty-five years.

Q. Do you know where the property of the Rileys in question is?

A. Yes, sir.

Q. In what township?

A. In Beverly township.

Q. And along what road?

A. The road from Beverly to Delanco.

Q. Did you, at the request of the defendant, make a survey of the property as related to the trolley road?

40 A. I did.

Q. Have you a map of that with you?

A. I have.

Q. Now, Mr. Haines, what designates, or what are the boundaries of the road; what designates the boundaries of the road here (referring to map now produced and shown witness)?

A. The heavy black lines.

Q. They are the extreme lateral lines, are they not?

A. Yes, sir.

Q. I notice a section of the road in a sort of drab color; 10
what is that?

A. Represents the stone road as constructed.

Q. How have you represented the property of the Rileys?

A. It lies between these lines with heavy black dashes, on the south side of the road.

Q. Now, I see a little enclosure marked "platform"; what is that?

A. That is a wooden platform constructed by the railway company for the purpose of allowing vehicles to enter Mr. Riley's grounds. 20

Q. Sort of a platform or bridge, is it?

A. Just a platform or plank to prevent the wheels from either miring or being interfered with by the rails.

Q. And how, here, have you indicated the rails?

A. The rails are in red lines.

Q. Here I see something that is marked "curb;" what is that?

A. That is Mr. Riley's curb or plank.

Q. Now, between the southerly rail and the line of the Riley property, that is, the red line, I see a number of marks; one is designated as "pole," the other is "cedar," etc.; what do these different marks designate? 30

A. They are trees and trolley poles, for a portion of the road.

Q. I see here one is marked "stump," green in color; what is that?

A. That is the stump pointed out to me as that of one of the trees cut down by the company.

Q. I see between the rail and these stumps and poles 40

figures, what do those figures indicate?

A. The distance from the nearer side of said object to the gauge line of the railway.

Q. What is the gauge line of the railway?

A. The inside of the rail next to the centre of the track.

Q. The figures which are marked on this stump seem to be 2 feet 9 inches; now what does that indicate?

A. That is the distance from side of the stump next to
10 the rail to the inside of the rail at that point.

Q. What is the width of the rail?

A. The width of the rail is about two inches and a half; probably two inches.

Q. Well, that being a fact, what would be the distance from the inner side of the stump to the inner side of the rail?

A. 2 feet 7 inches.

Q. Do you know what the overhang of the cars upon this railway is?

20 A. It is something over 2 feet; probably 26 inches.

Q. Have you had experience in the profession in observing the operation of trolley cars?

A. Yes, sir.

Q. About what is the natural swing of a car of the character which is used upon this road; that is, the top of the car?

A. That would depend entirely upon the condition of the road and the manner in which the car is loaded and its speed. There are no tabulated figures, to my knowl-
30 edge, to represent that thing.

Q. Yes, but from your judgment, what would be the ordinary swing of the top of a car upon a road in good condition (of course I do not mean a perfect condition), loaded evenly, the car being loaded evenly?

MR. CHAMBERS: I object because the witness has not shown himself an expert enough to testify; he has not shown that he has made this a study, or been employed in the operation of trolley cars. He says he is a civil
40 engineer.

BY THE COURT.

Q. Have you any knowledge of this kind?

A. Excepting as the literature of my profession affords me the means of reading it. I have no knowledge from practical operation.

THE COURT. Is it the contention of the defendant that his profession would give him this knowledge?

MR. BELDON: Yes, sir.

MR. CHAMBERS: He says there are no figures. 10

THE WITNESS: I say there are no tables, to my knowledge, nor could there be, because the conditions vary with every instance. A car striking an impediment or different elevation of the track, going at speed, might be thrown more than a foot out of line at the top; it would not take very much to do it. It does not take an engineer to know that. There would be no sway, theoretically, none, in a perfect road, with the cars evenly loaded.

Q. But in a road maintained as an average road is, what would be the swing? 20

A. I think that is a dangerous question for anyone to answer. It is a practical question that might vary very much with conditions; but I am quite sure that a car may sway more than twelve inches under some circumstances, even on a straight track.

Q. Does the manner of the loading of the car make any difference as to the inclination of the car?

A. Certainly it does.

Q. What difference does it make?

A. A car loaded on one side will incline somewhat to that side, because the construction of the car will permit it. 30

Q. Now, what is it, if anything, that makes a car swing at the top; what causes the swing?

A. Inequalities of the track, which are almost always experienced in every road; and accidental obstruction, such as sand or dirt or pebble stones on the track.

Q. A curvature will cause a swing of a car, will it not?

A. Oh, yes, very much.

Q. And upon a straight track I understand you to say, 40

obstructions upon the track, that is, upon the rail, will cause a swing?

A. Yes, sir.

Q. Now, when you say there would be no swaying of the car upon a perfect track, you mean that if the track could be made absolutely firm and there was never anything upon the absolutely smooth surface of the rail and there was never anything upon the absolutely smooth surface of the car wheel, and it never flattened in any way,
10 here would never be any swing, if the car was evenly loaded?

A. That is an absolutely scientific fact; yes, sir.

Q. And is it a fact that the swing or swaying of the car depends upon that approach to perfection?

A. With other causes, yes.

Q. On a country road, of the character of this, is it possible to construct a road so that there shall be no swaying of the car?

A. I never saw one so constructed.

20 Q. And, if so constructed, would it be possible to maintain the track or the wheels of the car so that there should never be any obstacle or unevenness in either?

A. In a country road I doubt it very much, unless there were a foundation made in concrete or other preparation.

Q. Would it be possible, without maintaining a constant grade upon every inch of the track to prevent the track from having something on it to cause an unevenness?

A. I do not think so.

30 Q. And is the same true with regard to the car wheels? Is it or is it not possible to maintain constant evenness in the car wheels?

A. No, sir; car wheels will flatten in themselves and cause some deviation from the upright, vertical line of the car.

Cross Examination.

BY MR. CHAMBERS.

40 Q. What authors do you get this information from,

Mr. Haines?

A. I don't know as I can give you the authors on this subject. We have lots of them.

Q. You say you get all your information from reading books in your profession?

A. We take all of the engineering periodicals that are published, pretty much, and we have the experience of engineering societies and associations as well as text books.

Q. What authors have you ever read on the subject of the sway of a car?

A. None; there are no such authors as I know of. As I said a while ago there are no tabulated figures; just exactly what I said is that there are no such statements to my knowledge. 10

Q. I understood you to say you got this information from your reading?

A. I said I failed to find it in reading; I distinctly disavowed any knowledge obtained from reading.

Q. You have had no practical knowledge, as you said to the—

A. (Interrupting) That I also disavowed formally a few moments ago. 20

Q. How did you get this information?

A. By reading and from observation.

Q. Where did you read anything about this? What articles; written by whom?

A. I just told you I have never read it, because there are none; therefore I cannot read it.

Q. I don't quite understand you; you say you got the information from reading? 30

A. I say I got no information and had none except what I have observed, and there is no tabulated—

Q. (Interrupting) You got all this information from observation, then?

A. I have not given you any information as to that fact; I have denied any knowledge of it, because there is not any.

MR. CHAMBERS: I think it is proper to move to strike out his testimony, if your Honor please. 40

THE COURT: He is speaking of his knowledge derived from his experience, as I understood it, as an engineer. Civil engineering is a profession. As a civil engineer he acquired knowledge of this matter. It was not obtained from reading. He says it was not obtained from his experience as a trolley man, but the general knowledge which a civil engineer will acquire by his observation and his work, as I understood it.

THE WITNESS: I have seen cars sway; I have witnessed it, and in a very dangerous way, where obstacles were sources of danger to the car; but what I meant is that there are no tabulated statements, so far as my reading or observation has gone, that will give that abstract matter any direct explanation.

THE COURT: That is understood; and that your figures are an expression of an opinion obtained by your experience as a civil engineer and your observation?

THE WITNESS: Yes, sir.

20 Q. Have you ever invented any device to measure the sway of a car while in operation?

A. No, sir.

Q. Have you ever measured the sway of a car while in operation in any way, except by the eye?

A. Except by the eye.

Q. And in doing that you have done it just the same as any other individual would do, riding in a car or seeing a car pass, from observation?

A. Except as I would be interested, through my business, to perhaps make a more critical observation than a layman would do.

Q. Then you do not pretend to have any special information on this subject, Mr. Haines?

MR. CHAMBERS: I do not think he is qualified to act as an expert, if your Honor please, and I renew my motion to strike out this testimony.

THE COURT: That part which relates to the distance which would be covered by the swaying of the car? What part? Some of his testimony is pertinent; what part do

you want stricken out?

MR. CHAMBERS: I do not think any of the testimony in which he has undertaken to tell us what would be the sway of a car under certain conditions is relevant, for he does not bring himself within the rule of law as an expert to testify in this way.

THE COURT: This witness was called, I imagine, from the offer to put in evidence this map, to show the courses and distances, and to illustrate for the information of the jury the locality. To that extent his testimony 10 was pertinent and proper; and also his testimony as an engineer to the one single fact that there is sway of a trolley car. The witness went on to give certain distances
LAW BOOK 27

which a trolley car might sway, the purport of that evidence being to show that the swaying of the car in this instance added to the danger to the travel, and went on to specify the number of inches and feet which it might sway. That part of it, as to the exact distance or any figures which he named I do not think he is competent to 20 testify to, from his own testimony. As I said before, his testimony and his experience as a civil engineer would qualify him to testify with more than the usual information that such a swaying of the top of the car would take place, but he has not shown knowledge which would enable him (and he disclaims it himself) to designate any particular amount of swaying, or whether that amount would be sufficient to add to the danger in this instance or not; and so far as that particular amount of swaying is concerned it is incompetent, and I shall have to strike 30 out that part of the testimony, and the stenographer will so strike it out.

BY MR. CHAMBERS.

Q. What is the front of the Riley property there?

A. Six hundred and seven feet and two-tenths, or something like that, as I measured it.

Q. You have not designated the iron fence on there?

A. No, sir; I know nothing about the iron fence whatever.

Q. You know nothing about it?

A. Nothing whatever of an iron fence?

Q. You were on the ground for measurements?

A. I was, yes, sir; several times.

Q. And you could not help but observe something about this fence when you were there, could you?

A. I did not observe it.

Q. Did not see it at all?

A. I don't know whether I saw it.

10 Q. Does this designate the house there (indicating on map)?

A. Well, I put that on there from Mr. Riley's own statement of his distance from the road, with a pencil.

Q. You know that is about correct?

A. About there, yes, sir.

Q. And you mean to say you went there and took these measurements of all these distances of his front, and went along as close to this fence as that, and did not notice the fence?

20 A. I could not say I noticed it at all; it was not part of my business as laid out to do, and I paid no attention at all to the fence.

Q. I am only asking what the fact is?

A. The fact is I don't know anything about the fence; I don't know how it looked.

Q. Didn't you see the part of it that was there?

A. I couldn't say that I did.

Q. How long have you been in the employment of this company?

30 A. I ran the road there originally.

Q. Done a great deal of work for the company?

A. I have.

Q. Been constantly in their employment since?

A. I have been quite generally, off and on.

Q. How is it you have not designated but one stump there?

A. It is the only one shown me; I tried to find the other and was informed it had been removed.

40 MR. BELDON: I want to be clear as to what part of .

the testimony of Mr. Haines remains. I understand his testimony from observation of things that there is a swaying of the top of a car on a road, without any exact figures, stands?

THE COURT: Yes.

MR. BELDON: And that that portion of his testimony which gives the incidents in the construction and operation of a road which would increase or diminish the swaying of a car also remains?

THE COURT: Yes; and any exact figures that he gave ¹⁰ of that as to the number of inches and amount of swaying—

MR. BELDON: That does not remain; the figures do not remain?

THE COURT: The exact figures do not.

MR. BELDON: But the other part does?

THE COURT: Yes.

THE WITNESS: I think I can help the Court and jury if I can make an explanation as to that, and in that way explain why it is impossible to tell. ²⁰

THE COURT: Well, I think it will not be necessary.

THE WITNESS: There are scientific certainties which can be explained, and I can explain those.

THE COURT: As to whether or not it was dangerous thus to operate the road will have to come from the testimony, and it is the jury's opinion we want and will have to have in the end.

BY MR. CHAMBERS.

Q. You have designated the line of the railroad company here? ³⁰

A. Yes, sir.

Q. Do you have the survey of the road as originally laid down in the ordinance?

A. I do, yes, sir.

Q. Is this line on that line?

A. No, sir; it is not; the track is nearer to the middle of the road than the ordinance would permit it to be.

Q. And does that apply to where these trees were?

A. It does. ⁴⁰

Q. And that was evidently done to avoid these trees?

A. I don't know the cause of it: I did not construct the track; I laid the road out originally for the company, and I have run it twice since to determine its whereabouts.

BY MR. BELDON.

Q. I understood you to say it was nearer the road there than if it was laid in exact accordance with the ordinance?

10 A. Yes.

BY MR. CHAMBERS.

Q. How much further?

A. At least two feet.

BY MR. BELDON.

Q. As I gather from this map, the northerly rail of the track as presently constructed is really within the line of the stone road?

20 A. About six inches inside of the line of the stone road.

THE DEFENDANT RESTS.

MR. CHAMBERS: I think Mr. Riley testified that he gave no permission to cut down this tree?

THE COURT: Oh, yes.

MRS. MARIA RILEY, Sworn.

30 BY MR. CHAMBERS.

Q. Are you the plaintiff in this case, Mrs. Riley?

A. Yes, sir.

Q. And you own the property in question, do you?

A. Yes, sir.

Q. Do you remember Senator Perkins coming to your house and saying something to you about it being necessary to cut down one of those trees?

A. Yes, sir.

40 Q. The first tree in question?

A. The first tree. He said it would have to come down.

Q. Did you give him permission to cut it down?

A. No, sir; I pleaded for God's sake not to cut the tree.

Cross Examination.

BY MR. FLANDERS.

Q. Were you present during the whole of the conversation that took place between Senator Perkins and your husband?

A. Why, it was me he was talking to, and Mr. Riley.

Q. He was talking to Mr. Riley, was he?

A. And me, too; both of us.

Q. Were you there all of the time?

A. All of the time.

Q. Whereabouts did the conversation take place?

A. On our porch.

Q. Before or after the road had been operated?

A. After the road. 20

Q. Were you standing all the time during the conversation in such places that you could hear all of the conversation?

A. All the conversation; anything that went on.

Q. Hadn't you learned just before that that a car had been injured by passing the tree?

A. No, sir.

Q. Didn't Senator Perkins tell you that a car had been injured? 30

A. No, sir.

Q. Didn't anybody tell you so?

A. No.

Q. Didn't Senator Perkins tell you there was great danger in operating the road?

A. No, sir.

Q. Didn't he say to your husband in your presence anything like that?

A. No.

Q. Then nothing was said at all about the operation 40

of the road?

A. No.

Q. Did he tell you that the tree ought to come down?

A. No, only he done it for spite.

Q. He didn't give you any reason?

A. No.

Q. Then he did it only for spite, did he?

A. Only for spite.

10

BOTH SIDES CLOSE.

CHARGE OF THE COURT.

NIXON, J.

Gentlemen of the Jury: This case you have listened to with considerable patience, and it has been ably discussed by counsel. I need not waste time by reviewing the evidence in full, but I will state the principles of law which you will keep in mind when you retire to consider your verdict. The suit is for damages alleged to have
 20 been sustained by the plaintiff in this case from the cutting down of two trees in front of her premises and the breaking down of the fence, and whatever may have been suffered, if anything, by the infringement upon the sidewalk in the operation of the road. The defendant, as a trolley road, operates cars in front of this property, and operates them, as stated in the proofs, here to-day, by authority first derived from the Board of Freeholders of this county and also from the governing body, the Township Committee of Beverly Township. The plaintiff's
 20 property is along the road running from Beverly to Delanco, called the "River Road" I think.

Now, formerly and before trolley cars and this system of propulsion were known, the highway was for the use of public travel by horses and vehicles. Then came street railway cars propelled by horses, and later this present and more general mode of propulsion by electricity; and early in these changes, the question was raised as to whether when rights were granted to use street cars and afterwards electric cars, such rights did not impose an
 40 additional servitude upon the highways in conflict with

their original use in the moving of vehicles by horses; and it was held that electricity was only another mode of propelling vehicles; instead of using horses they use electricity; therefore, it was not an additional servitude. Now then, what were the powers that a Township Committee could originally exercise over a highway? They could remove all obstructions that interfered with the free use of the highway. If a person planted trees in a highway the governing body, the Township Committee, could have them removed, because they interfered with the travel and the use of the highway as it was originally laid out and designed. They had that power without question. They have the same power now. And when a trolley company gets its franchise from the governing body of any municipality, that municipality, through its governing body, gives to that trolley road in the carrying out of that project, the building and operation of a trolley road, the same power which it had. So if there is a tree infringing upon the highway which the Township Committee originally had power to remove, the trolley company could remove it if it obstructed the running of the cars, because the authority they have derived from the governing body of the municipality permits them to do it. Therefore, if these trees were in the way, and this trolley project could not have been carried out, or the purposes for which this franchise was given would have been defeated or interfered with by these trees, the company had a right to remove them, if the Township Committee ever had that right. But while that is the law, as I view it, there are questions of fact which you are to determine; and the first question of fact is, Was it necessary to remove the trees? 10 20 30

The plaintiff in this case insists that the road was built and operated after the trees had been trimmed, and that the company having ascertained how many and how much of their branches should be cut off, cut them off and then operated their road; that they had exercised their judgment as to the extent to which these trees in the highway should be trimmed or cut off, and that no need for further cutting away ever arose. The company, on the 40

other hand, say that there was such need, that afterwards they found in the operation of the road, that safety required that they should cut more of these trees off, or, rather, cut them down, and they did cut them down.

Now, you may consider whether they could not have trimmed these trees still further. You have heard the testimony on that point, as to how near they trimmed to the trunks of the trees. You will consider whether they could have trimmed nearer the trunks of the trees and had enough room, to operate their cars. One thing they certainly did—they had operated their road. Now, could they not have trimmed nearer to the trunks of these trees and still operated their road? They say not. It is for you to draw the conclusion from the whole evidence whether they could have avoided it, for if they could they should not have taken down the trees. They did take them down, as they say, because they thought the safety of the travelling public required it. Now, it is for you to say whether they should have cut down these trees.

20 If the public safety did require it, then they should have cut them down rather than imperil people's lives. It is not for me to indicate to you the weight or credibility that you should give this evidence.

If you find, however, that they cut down these trees of Mrs. Riley's without a reasonable necessity moving them to do it, then the company should respond in damages. I do not mean that their judgment must have been infallible, nor do I mean that their first judgment exercised as to how much of these limbs they should and did cut off, precluded them from revising that judgment, and cutting off more of these limbs, or cutting the trees down altogether, if they found their first judgment on that point was at fault.

30

If you think it was not necessary to remove these trees, then the company should respond in damages in doing what they were not required to do. They had no power over these trees, or the limbs of the trees, except as it was necessary to effect the object of their franchise and the project which they had in view and which the Township had in view in giving them that franchise. They were limited

40

to that.

Now, if you find that they had a right to take these trees, in taking them, however, they had no right to injure other property, and the breaking down of the fence is something for which they should answer in damages. If it was necessary to take the trees, in taking them they should not, I will repeat, have broken down this fence, and they must pay for that in any event. Now, what amount should they pay? You have heard the testimony, which is very conflicting. The testimony one side is that it could have 10 been replaced and that the company undertook to replace it, and that the cost of the fence which they had made to replace it (which this plaintiff was not bound to accept) was, as they say, although the evidence on that point is not very clear, about thirty dollars. But even then, if the damage to the fence that did not fall down was considerable, that should be added. You cannot break down an iron fence just so many feet without damaging the fence on either side of it considerably, as a general rule.

Then, as to the value of these trees, if you find in your 20 deliberations that these trees should not have been cut down, what damage should you give? You are not limited, on the one hand, to the actual value of these trees if cut up into wood and sold; neither, on the other hand, are you bound to give a fancy sum on account of any sentiment as to what the persons who own the property may say they would not have them cut down for. A large sum in one direction, or the actual value of the wood which the trees would make in the other direction, is not the rule; but you will exercise your best judgment on the subject if 30 you come to the question of damages.

As to the breaking down of the sidewalk, there is no very complete evidence on that subject; but you will exercise the best judgment you have upon the evidence as you have heard it.

I do not think of any other rule of law to which I need call your attention, and will take up some requests to charge handed to me by the plaintiff.

I have been requested to charge by the plaintiff:

1. That the trees in question were the property of Mrs. 40

Riley.

They were her property in one sense, but they were subject, however, to be removed if they interfered with the rights of the public to the easement in the way of travel. She owned the trees subject to that right, just as she owned the soil clear to the middle of the street, as every abutting owner does. She owned these trees provided it did not affect the public travel or the rights which the public possessed in that highway.

10 2. That she, as abutting owner, was the owner of the soil of the road, subject to the public servitude.

Well, that is, in effect, just what I have said; I so charge you.

3. That the defendant corporation has no right, under any of its ordinances, to cut or trim trees.

I think I have, in substance, told you that if the easement and use of the highway and public travel require the trimming or cutting down of trees, the Township Committee may order them cut down, and this defendant corporation derived a franchise from the Township Committee to operate this trolley project, and if these trees were in the highway they had the right to cut them down.

20 4. Said company could only get such right by an express grant by ordinance, or otherwise, from the Township Committee or County to cut or trim trees, etc., in said highway.

I cannot so charge you, as it is admitted here that the franchise to operate this trolley road has been granted to them.

30 MR. CHAMBERS: With the express understanding that they had no power in the ordinance to cut or trim these trees, if your Honor please.

THE COURT: Is that in the ordinance?

MR. CHAMBERS: No, sir; I say it is not in the ordinance.

THE COURT: I do not think that it was necessary that it should be. Whatever it was necessary to carry out the franchise as granted, they had a right to do if legally
40 granted.

5. That the defendant company could have no larger power over the plaintiff's trees than was possessed by the Township and County which granted its permission to operate its trolley road.

Certainly not; but as I have repeatedly said, if the Township had power to remove these trees, then the trolley road had. Further than that, in this request I cannot charge. Let an officer be sworn.

MR. BELDON: There is just one thing I want to say if your Honor will permit me: I understood you to say something about the evidence on one question, and that was on the matter of replac^{ing} of the fence. My understanding of the defendant's evidence as to that was that the thirty dollars was the cost of sufficient fence to replac^e the entire frontage and not a part of it. That is my understanding of it. 10

THE COURT: I did not so understand it. They did not make enough fence to fence in the whole front of the ten acres.

MR. BELDON: No, sir; the one hundred feet, that is all. 20

MR. FLANDERS: The plaintiffs testified that there was one hundred feet of this character of fence, and the defendant's testimony was that they furnished enough to cover that one hundred feet.

THE COURT: Well, the gentlemen of the jury will follow their own recollection about the amount of the fence which was to be replaced. Thirty dollars worth was bought, and if that was for the part broken down the jury will remember it, or whether it was for the whole front, the jury will remember it. 30

PLAINTIFF'S EXCEPTIONS.

The plaintiff, by her counsel, prays exceptions to the charge of the Court in each of the following particulars:

1. To that part of the charge in which His Honor said something to this effect: "If the trolley project had been defeated or interfered with by these trees, then the trolley company had a right to remove them. Exception allowed.

2. To that part of the charge in which the court said it
10 was safe for the jury to infer that the company would not have taken down the trees if they could have avoided it, or the portion of the charge that has reference thereto. Exception allowed.

3. Also to the refusal of the Court to charge Request No. 3, No. 4 and the latter part of the last request. And a bill of exceptions is allowed as to each separate request.

DEFENDANT'S EXCEPTION.

The defendant, by its counsel, prays a bill of exceptions
20 to that part of the charge of the Court which left to the jury any question of any damages for any portion of the cutting of the sidewalk, it being entirely within the proof that there was no other portion of the sidewalk used than was necessary for the construction of the road under the municipal ordinances. And a bill of exceptions is allowed and sealed accordingly.

JAMES H. NIXON, J.

Exception is made to that part of the Judge's charge leav-
30 ing with the Jury discretionary conclusion for the safe operation of cars as the evidence was positive by more than one witness it was dangerous and which evidence was not contradicted by the plaintiff.

Also plaintiff's evidence was to effect that the fence was not in any event worth more than \$100. While the defendant's evidence shows that the fence has been refurnished for \$30.

Also, the Jury were in error awarding a judgment in excess of the cost of renewing the fence which should not in
40 any event amount to more than \$100 from evidence of

plaintiff, but from evidence by defendant should not exceed \$30.

IN REBUTTAL.

S. 6. Mrs. Riley.

The evidence and argument of counsel being all heard and the jury having been charged by the judge they retired to deliberate upon their verdict. Constable Beatty and Woodruff being sworn to attend.

The jury returned into Court and by their foreman say they find a verdict for the plaintiff in the sum of two hundred dollars. 10

It is thereupon ordered that judgment be entered against the said defendant and in favor of the said plaintiff in the sum of Two Hundred Dollars besides costs of suit to be taxed.

Rule entered October 30, 1902.

W. ROLAND WARRICK, Clerk.

BURLINGTON COUNTY CIRCUIT COURT. 20

The record and proceedings in a cause tried and determined in the Burlington County Circuit Court before me, wherein Maria Riley is plaintiff and Camden and Trenton Railway Company is defendant, together with all things touching the same, I herewith return to the Judges of the Court of Errors and Appeals in the last resort in all causes at Trenton, as by the annexed writ I am commanded.

James H. Norton
CIRCUIT COURT JUDGE. 30

NEW JERSEY COURT OF ERRORS AND APPEALS.

Camden and Trenton Railway Company Plaintiff in Error vs. Maria Riley, Defendant in Error.	}	Assignment of Errors.
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10 And now at this day the Plaintiff in Error assigns the following causes in error:

(1) Because the Circuit Court before which at and upon the trial of the issue joined between the parties aforesaid, admitted in evidence the declaration of Charles Riley as to the amount of damage suffered by the plaintiff by reason of alleged injuries complained of, without the said Charles Riley first showing any knowledge upon which the said declaration could be based.

20 (2) Because the Circuit Court, before which at and upon the trial of the issue joined between the parties aforesaid, admitted in evidence the declaration of William Sheppard as to the amount of damage suffered by the plaintiff by reason of alleged injuries complained of, without the said William Sheppard first showing any knowledge upon which his said declaration could be based.

(3) Because the Court before which at and upon the trial of the issue joined between the parties aforesaid, refused to permit John Fenimore, a witness called on behalf
30 of the defendant, from stating how and by whom a portion of the personal property, to wit: a fence, the alleged deprivation of which entered into the computation of the amount recoverable by the plaintiff, was taken or was carried away from the plaintiff's premises.

(4) Because the Court before which, at and upon the trial of the issue joined between the parties aforesaid in and by the charges under which it submitted the said issue to the jury, left it to the jury to determine the question of damage for the cutting of that portion of the public high-
40 way, in front of plaintiff's premises, which in the trial of

said cause was referred to as the sidewalk, it being uncontested and admitted that the street railway of the plaintiff was constructed in practical accordance with ordinances of the Board of Chosen Freeholders of the County of Burlington and the Township Committee of the Township of Beverly, the governing bodies of the municipality in which the plaintiff's property was situate, giving consent to the construction, operation and maintenance of the railway of the defendant corporation, and locating thereon the rails, poles, ties of said railway without proof that the rights IO thereby given to the defendant had been exceeded.

SAMUEL W. BELDON,
HOWARD FLANDERS,
Attorneys of Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Camden and Trenton Railway Company Plaintff in Error	}	Jonder in Error.
vs.		
Maria Riley, Defendant in Error)	

And hereupon, afterwards, to wit, on the Twentieth of May, A. D., nineteen hundred and three, the said Maria Riley, by Charles K. Chambers, her attorney, comes into court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and she prays here that the court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all 20 things be affirmed, etc.

CHAS. K. CHAMBERS,
Attorney for and of Counsel with Defendant in Error.

THE THEORY OF ERRORS AND MEASUREMENTS

The theory of errors and measurements is a branch of statistics which deals with the analysis of data obtained from experiments or observations. It is concerned with the estimation of the true value of a quantity from a set of measurements which are subject to random errors. The theory is based on the assumption that the errors are normally distributed and that the measurements are independent. The theory is used in a wide variety of fields, including physics, chemistry, biology, and engineering.

WILLIAM W. BENTON
NEW YORK

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