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Notice of Appeal.

NOTICE OF APPEAL.

Filed.

New Jersey Supreme Court

WARREN COUNTY CIRCUIT.

10

ANNA GOLDFARB, an infant, by
Samuel Goldfarb, her next
friend, and SAMUEL GOLDFARB,
individually,

Plaintiffs,

vs.

PHILLIPSBURG TRANSIT COM-
PANY, a corporation,

Defendant.

*Action at
Law.*

*Notice of
Appeal.*

20

To William L. Greenbaum, attorney for plaintiffs.

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

Dated November 1, 1926.

W. H. WALTERS,
Attorney for the Defendant,
Phillipsburg Transit Company.

30

Due and legal service of the within notice is
hereby acknowledged this 2nd day of November,
1926.

WM. L. GREENBAUM,
Attorney for Plaintiffs.

40

Grounds of Appeal.

GROUND OF APPEAL.

Filed January 12, 1927.

New Jersey Court of Errors and Appeals

10	ANNA GOLDFARB, an infant, by Samuel Goldfarb, her next friend, and SAMUEL GOLDFARB, individually, <i>Plaintiffs-Appellees,</i>	}	<i>Action at</i>
	<i>vs.</i>		<i>Law.</i>
	PHILLIPSBURG TRANSIT COM- PANY, a corporation, <i>Defendant-Appellant.</i>	}	<i>Grounds of</i>
			<i>Appeal.</i>

20

The defendant-appellant herewith states its grounds of appeal from the whole of the judgment entered in this cause:

1. The Trial Judge erred in refusing to direct a verdict for the defendant.

2. The Trial Judge erred in his charge to the jury, respecting the care required of the motorman, in charging the jury as follows:

30

(a) "When negligence arises out of an act of commission by an act of one for whose conduct another is responsible, as in this case the defendant company, it must be with reference to some duty the responsible person owed to the party injured. That duty on the part of this defendant company through its employees, such as the motorman in question, was the exercise of the care which reasonably prudent persons would observe in the given circumstances; as for example, with reference to the duty of the motorman, we find our Courts saying this:

40

Grounds of Appeal.

that whether the car at the time of the accident was going at a reasonable rate of speed or the motorman operating it was properly on his guard and reasonably careful and vigilant in looking out for the safety of human life on and near his tracks is peculiarly a question for the jury; and as you decide that question do you decide whether or not the motorman here involved was negligent within the definition of the law. Obviously it was his duty to exercise the sort of care which would comprehend the features suggested in the rule just given to you, to keep his car within a reasonable rate of speed, to be on his guard, and reasonably careful and vigilant in looking out for the safety of human life on and near his tracks." 10

(b) "It is unnecessary for me to make any comment on the value or weight of the testimony, because that is not my function. You pass upon that yourselves, although I may say in passing that it has been suggested by counsel for the plaintiffs that the failure to clang the gong or ring a bell on the part of the motorman, if such failure did occur, was negligence on the part of the motorman. As I recall, there is some evidence in the case which tends to indicate that no sound of that character was given; and if you should find, in your consideration of the evidence in the case, that the motorman's failure to sound a gong or ring a bell was an evidence of negligence and a natural, proximate result of which was the accident involving the running over of this child, then you may find as a fact that he was negligent in such a way as to entitle the plaintiffs to recover. That is a mere comment; it is not an instruction of a binding character whatever, and you will so understand." 20 30

(c) "However, you must remember that the question of the contributory negligence of the child is not involved here. 'If a motorman running a trolley-car on the highway in 40

Grounds of Appeal.

the daytime perceives a person passing along on foot upon or closely beside the track and apparently heedless of signals and the motorman can arrest the movement of the car before striking such person, his failure to do so is evidence of negligence, which must be submitted to the jury to decide as a fact.' For that reason this case comes to you to decide; but do not forget that in addition to the remarks just made, and I have been following very good authority in this State, you are also to remember what the Court said to you in the beginning regarding the duty of the motorman to exercise that care which would involve a reasonable rate of speed, that he be properly on his guard, and reasonably careful and vigilant in looking out for the safety of human life on and near his tracks."

20 3. The Trial Judge erred in refusing to charge the following request to charge of the defendant:

"Under the law and the evidence the verdict must be for the defendant."

4. The Trial Judge erred in refusing to charge the following request to charge of the defendant:

"Under all the evidence, the plaintiff has not shown negligence on the part of the defendant company."

30 5. The Trial Judge erred in refusing to charge the following request to charge of the defendant:

"The defendant is not chargeable with negligence in failing to keep a proper lookout for a child of tender years on the sidewalk in the middle of a block, which child suddenly runs into the street and directly into the side of an approaching car."

W. H. WALTER,
Attorney of Defendant-Appellant.

Complaint.

COMPLAINT.

Filed.

New Jersey Supreme Court

WARREN COUNTY.

10

ANNA GOLDFARB, an infant, by
Samuel Goldfarb, her next
friend, and SAMUEL GOLDFARB,
individually,

Plaintiffs,

vs.

PHILLIPSBURG TRANSIT COM-
PANY, a corporation,

Defendant.

*Action at
Law.*

Complaint.

20

The plaintiffs, residing in Alpha, County of
Warren, State of New Jersey, say that:

FIRST COUNT.

1. On the 20th day of May, 1926, the plaintiff
Samuel Goldfarb, was appointed as the next
friend of Anna Goldfarb to prosecute this action
against the defendant the Phillipsburg Transit
Company, a corporation. 30

2. On July 13, 1925, said plaintiff Anna Gold-
farb then an infant of the age of five years,
was lawfully crossing Central avenue, near Fifth
avenue, in the City of Alpha, Warren County,
New Jersey.

3. That prior to and on the thirteenth day of
July, 1925, the said defendant Phillipsburg
Transit Company, was the owner and had con- 40

Complaint.

trol and management of certain tracks which were laid upon said Central avenue, in Alpha, aforesaid, upon which said tracks it (the said defendant) on the thirteenth day of July, 1925, operated and controlled certain passenger cars in the conduct of its business, as a common carrier of passengers.

10

4. That while said plaintiff Anna Goldfarb was crossing said Central avenue, as aforesaid, she was run into and knocked down, and was run over by a certain trolley car belonging to the said defendant, then being under the control and management of one of its servants who was running and operating the same in the course of his duties as a servant of the defendant, the Phillipsburg Transit Company, a corporation.

20

5. The collision between the car of the defendant and the said Anna Goldfarb was due to the carelessness and negligence of the servant or agent of the said defendant, in charge thereof, in propelling, running and operating the said trolley car of the said defendant at a high, reckless and unlawful rate of speed, without making due and timely observation to discover the presence of the said Anna Goldfarb, near and to the said trolley car, in not having said trolley car under proper control, and in failing to give due and timely notice and warning of the approach of said trolley car near and to the place over which the said Anna Goldfarb was crossing or about to cross the said tracks, and in otherwise operating said trolley car, on the day and date aforesaid, in a careless, reckless and negligent manner.

30

6. By reason of the collision between the said Anna Goldfarb and the trolley car of the said defendant, as aforesaid, she the said Anna

40

Complaint.

Goldfarb, received severe, painful and permanent injuries, to wit: she received injuries which necessitated the amputation of one of her legs, and the amputation of a part of her other leg in order to save her life.

7. The said plaintiff Anna Goldfarb, also suffered and sustained other severe painful and permanent bruises, wounds and injuries to and about her head, face and body. 10

8. By reason of the injuries suffered and sustained by the said Anna Goldfarb, as aforesaid, she the said Anna Goldfarb, became sick, sore, lame and disordered, and so remained and will continue to be so for a long time, and in the future, the said plaintiff Anna Goldfarb, will be sick, sore, lame and disordered, and will be permanently wounded and disabled. 20

9. Also, by means of the aforesaid premises the said Anna Goldfarb lost and was deprived of, and in the future will lose and be deprived of divers great gains, profits and advantages which she would have received and derived, but for the negligence of the said defendant in causing the injuries to her aforementioned.

Plaintiff, Anna Goldfarb, demands on the First Count the sum of Fifty Thousand (\$50,000) Dollars, damages. 30

SECOND COUNT.

1. Plaintiff, Samuel Goldfarb, repeats all of the allegations contained in the foregoing Count, and makes them a part hereof, and further says:

2. He, the said Samuel Goldfarb, is the father of Anna Goldfarb, who since her birth and up to the present time has been and still is 40

Complaint.

a member of his household, and that he has ever since her birth and still does now, support and maintain her.

3. By means of the injuries sustained by his daughter, Anna Goldfarb as hereinbefore mentioned, the plaintiff Samuel Goldfarb was obliged
10 to pay, lay out and expend and in the future will be obliged to pay, lay out and expend divers large sums of money endeavoring to cure the said Anna Goldfarb of her bruises, wounds and injuries suffered and sustained by her as set forth in the First Count herein.

4. Also, by reason of her injuries as aforesaid, plaintiff Samuel Goldfarb has lost and in the future will lose all of the rights and advantages which he would have received and derived from the said Anna Goldfarb, his daughter,
20 but for the injuries to her as aforesaid.

Plaintiff, Samuel Goldfarb, demands on the Second Count the sum of Fifteen Thousand (\$15,000) Dollars as damages.

WM. L. GREENBAUM,
Attorney for Plaintiffs.

30

40

Answer.

5. Defendant denies the allegations set forth in paragraph 5 of plaintiff's complaint.

6. The defendant has no knowledge or information sufficient to form a belief as to the matters and things contained in paragraphs 6, 7, 8 and 9 of the complaint, but it alleges that plaintiff
10 sustained no injuries, loss or damage, by reason of any negligence on the part of this defendant, its servants, agents or employees.

SECOND DEFENSE.

The defendant is not guilty of the negligence charged in the complaint.

THIRD DEFENSE.

20 The agents or employees of the defendant were not guilty of the negligence charged in the complaint.

FOURTH DEFENSE.

1. The defendant violated no duty which it owed to the plaintiff.

2. The injuries sustained by the plaintiff, if any, were due to her own negligence, and this
30 defendant says that at the time of the happening of the alleged accident plaintiff failed to exercise reasonable care for her safety, in that she failed to observe the trolley car which it is alleged struck her, although the same was in plain view, and defendant alleges therefore that plaintiff was guilty of contributory negligence, barring recovery.

Answer.

DEFENSE TO SECOND COUNT.

Defendant repeats all of the answers and defenses to the foregoing count, and makes them a part hereof and further says:

1. Defendant has no knowledge or information sufficient to form a belief as to the matters and things contained in paragraphs 2, 3 and 4 of the second count of the complaint, but it alleges that plaintiff sustained no injuries; loss or damage by reason of any alleged negligence on the part of this defendant, its servants, agents or employees; and that he, the said Samuel Goldfarb, ought to be barred from any recovery as alleged in his complaint. 10

W. H. WALTER,
Attorney for Defendant. 20

30

40

*Reply.***REPLY.**

Filed.

NEW JERSEY SUPREME COURT.

WARREN COUNTY CIRCUIT.

10

ANNA GOLDFARB, an infant, by
Samuel Goldfarb, her next
friend, and SAMUEL GOLDFARB,
individually,

*Plaintiffs,**Action at
Law.**vs.**Reply.*

PHILLIPSBURG TRANSIT COM-
PANY, a corporation,

Defendant.

20

The plaintiffs reply to the answer of the de-
fendant filed herein, and says:

REPLY OF ANNA GOLDFARB TO FOURTH
DEFENSE TO FIRST COUNT.

30

Plaintiff denies that the injuries sustained by
her were due to her own negligence, and that she
was guilty of contributory negligence, as alleged
therein.

NOTICE.

40

The said plaintiff reserves the right, at or
before the trial of the above said cause, to move
to strike out the above named defense, upon
the ground that the said plaintiff, at the time of
the accident, was five years of age, as set forth
in her said complaint, and that therefore she is
not chargeable in law with contributory negli-
gence.

Judgment.

REPLY OF PLAINTIFF, SAMUEL GOLD-
FARB, TO DEFENDANT'S DEFENSE TO
SECOND COUNT.

Plaintiff denies all of the allegations of the
said defendant in its "defense to Second Count."

WM. L. GREENBAUM,
Attorney of Plaintiffs.

10

JUDGMENT.

NEW JERSEY SUPREME COURT.

ANNA GOLDFARB, an infant by
Samuel Goldfarb, her next
friend, and SAMUEL GOLD-
FARB, individually,
Plaintiffs,

20

vs.

PHILLIPSBURG TRANSIT COMPANY,
a corporation,
Defendant.

This action was tried before Judge Rulif V. 30
Lawrence, Circuit Court Judge, to whom the
said cause was duly referred for trial, with a
jury, in the presence of the counsel for the re-
spective parties, at the Warren Circuit, on Oc-
tober 22, 1926.

The cause having been heard and submitted to
the jury, they returned a verdict in favor of the
plaintiff, Anna Goldfarb, by Samuel Goldfarb,
her next friend, and against the defendant,
Phillipsburg Transit Company, and assessed 40

Judgment.

10 said plaintiff's damages at the sum of Fifteen Thousand (\$15,000.00) Dollars, and said jury also returned a verdict in favor of the said plaintiff, Samuel Goldfarb, and against the said defendant, Phillipsburg Transit Company, in the sum of Five Thousand Five Hundred (\$5,500.00) Dollars.

Whereupon it is adjudged that Anna Goldfarb an infant, by Samuel Goldfarb, her next friend, plaintiff, do recover of the said defendant, Phillipsburg Transit Company, a corporation, the sum of fifteen thousand dollars damages, and that the plaintiff, Samuel

20	Damages	\$15,000.00	A. G. Goldfarb, individually,
	“	5,500.00	S. G. Goldfarb, plaintiff, do recover of the said defendant, Phillipsburg Transit Company, a corporation, the sum of five thousand, five hundred dollars damages, together with
		20,500.00	
	Costs	59.76	
		\$20,559.76	

30 their costs, which have been taxed at the sum of fifty-nine dollars and seventy-six cents, making in the whole the sum of twenty thousand, five hundred fifty-nine dollars and seventy-six cents.

Judgment entered October 27, 1926.

WM. S. GUMMERE,
C. J.

A true copy.

EDWARD J. KELLEHER,
Clerk.

Opening.

NEW JERSEY SUPREME COURT.

No. 9, Warren Circuit.

September term, 1926.

ANNA GOLDFARB, an infant, by Samuel Goldfarb, her next friend, and SAMUEL GOLDFARB, individually,	}	10	<i>Plaintiffs,</i> <i>Action at</i> <i>vs.</i> <i>Law.</i>
PHILLIPSBURG TRANSIT COM- PANY, a corporation,		<i>Defendant.</i>	

Transcript of shorthand notes of testimony, etc., taken in the above-entitled matter on the trial thereof before Hon. Rulif V. Lawrence, Circuit Court Judge, and a jury, at the Court House, Belvidere, New Jersey, on Thursday, October 21, 1926. 20

Appearances:

William L. Greenbaum and Benjamin M. Weinberg, for the plaintiffs.

William H. Walters and Asher Seip (Pennsylvania Bar), for the defendant. 30

(Jury called and sworn.)

(Mr. Weinberg opened for the plaintiffs.)

(Mr. Seip opened for the defendant.)

Mr. Weinberg: If your Honor please, the doctors, as usual, are anxious to get away.

The Court: All right. Put them on out of order. 40

Dr. Paul Correll, direct.

DR. PAUL CORRELL, sworn for the plaintiffs.

Direct examination by Mr. Weinberg.

Q Dr. Correll, are you a licensed physician?

A I am.

10 Mr. Seip: If the Court please, I have personally known Dr. Correll for a number of years and I will admit his qualifications.

Q Where do you practice, doctor? A Easton, Pennsylvania.

Q Were you called on at any time to attend and examine a child named Goldfarb? A The child was brought to the hospital on the evening of July 13th.

20 Q Which hospital? A Easton Hospital.

Q How was she brought there? Do you know?
A I do not know. In some vehicle. And I operated on her at that time. She had a traumatic amputation at the knee on the right side, and the foot on the left side. We did an amputation at the knee joint, or right immediately above the knee joint, on the right leg at once, and then later on, at a time when the child rallied we did
30 two more on her because of the crushing of the left foot. Of course, we attended to the left foot as much as was possible that night, but her condition was not such as to permit very much operative work.

Q You say you performed an operation at the knee joint. What was the condition of the right leg when you first saw the child? A Oh, it was all— The bones of the right leg were all crushed and smashed, and the muscles were all
40 torn from the leg to the knee joint.

Dr. Paul Correll, direct.

Q Did that crushing extend beyond the knee joint? A Well, there were some lacerations beyond the knee joint on the back side of the open space.

Q And it therefore became necessary, I suppose, to operate at once? A Absolutely imperative. 10

Q Just about where did you make your amputation? A It is what we call a conoid amputation of the knee joint, which is taking the knee cap and opening it up and cutting off the lower end of the femur or thigh bone and stitching the kneecap over and making a protected stump on the long bone, which makes a good carrying support.

Q That is, you made a flap and then sewed the flap over the edge of the bone? A Yes, sir. 20

Q Was that all done the same night when you first saw the child? A That part was; yes.

Q Now, there was something on the left leg, you say. What was that? A Well, I will give you the date of that second operation—on the 29th—July 29, 1925—we re-operated the foot, that is the crushed foot.

Q What was the first operation? A That was more cleansing and controlling hemorrhage of the foot. 30

Q What was the matter with it? A That was the foot which was crushed; that is the left foot. The first night, on the 13th, we removed her leg and did a temporizing operation on her left foot. On the subsequent date, which I have just given you, we cleaned that up and excised the tissues and made somewhat of a semblance of a foot for carrying power. 40

Dr. Paul Correll, direct.

Q Just what was the extent of the injury to that left foot? A It was crushed. I think it was the first and third toes were torn off; and the soft tissues in the foot and instep were crushed out.

10 Q What did you do for that condition? A We did a re-operative operation.

Q What was it? A We took the odds and ends we had left and sutured them together and made something which is the best carrying support, for the material we had at hand.

20 Q Has the child any toes on the left foot now? A Yes; the child, if I remember, has three fused toes with one toe natural. It tapers down to a point and is one toe naturally with three fused toes, which are the first one—the cause of that is that the second was already stripped off from the instep on down, and as you heal these you heal them in continuity and they fuse instead of staying separate.

Q In other words you made one toe where there were three? A Yes, sir; practically that, giving the best surgical result you could get for that kind of injury.

30 Q Is the rest of that foot all right? A The heel is all right and she has motion in the ankle joint.

Q Just exactly what amount of that foot is usable in walking? A Oh, it is not a satisfactory walkable foot. As far as weight bearing is concerned it is a satisfactory foot; yet the child can never walk as well because it has not the flexion or extension of the toes, which are very useful in the art of walking.

40 Q Are you able to describe the child's injuries without demonstrating to the jury, or would it be of assistance to the Court and jury if you did?

Dr. Paul Correll, direct.

The Court: I think the witness has sufficiently described the situation. I see no necessity for it, unless counsel desire it. Just let the child walk up here so that the doctor can illustrate his testimony.

By the Court.

10

Q Has she a wooden leg now, doctor? A Yes, sir. It is rather a bad one, too.

The Court: Now you may illustrate, doctor. Proceed.

By Mr. Weinberg.

Q Can the child walk now unassisted? A I have not seen her try to, because I only saw her yesterday after a lapse of a number of months, and she was then lame. 20

Mr. Weinberg: Will you walk over here, little girl?

Q Did you prescribe for her an artificial limb, or didn't you know anything about that? A She was taken to Philadelphia for that. It was essential to have that. The father was told that when she left the hospital. 30

Q Did that in your opinion seem to be fitted as well as a limb can be fitted to a little one? A Well, children grow, and legs that may be measured to be adapted to that child five or six months ago would be outgrown in this short time.

By the Court.

Q In other words changes will be required at periods of six or eight months? A Yes, sir. 40

Dr. Paul Correll, direct.

By Mr. Weinberg.

Q How often, in your opinion will it be necessary to renew the artificial leg, doctor? A At least from nine months to a year; as long as the child is in the active growing period. That is from her present age until she reaches fourteen.
10 It is not quite so prolific after that, in the development of height and weight.

Q And after that will she have to have more than one artificial limb? A She will have to have probably one every year and a half.

Q At the time the little one was brought to you was she conscious or unconscious? A Oh, she was unconscious.

Q Was she as tall as she is today? A I hardly recall that. I saw her only in bed for
20 a period of a month and a half.

Q How long was she in the hospital, if your records will tell you? A From July 13th to August 27th.

Q And her condition when she was discharged, do you recall that? A It was not very good.

Q Was she able to get around at that time? A No, sir.

Q Do you know how long it was after that when she was sufficiently improved to get out?
30 A I do not. She was then treated by her family physician, who is here.

Q That terminated your professional connection with the case? A I saw her, I think, on two occasions, and this occasion of yesterday.

Q Doctor, will the condition of the left foot as you found it—do I understand you saw her last night again? A I saw her yesterday.

Q Will her condition as you found it last
40 night or yesterday change or improve? A No;

Dr. Paul Correll, direct.

there is no prospect it will improve or get worse. It is stationary.

Q There will be no change in the condition from what it is now? A No. As the child's weight gets greater there will be more strain put on that left foot.

Q And the greater the strain on that left foot the greater the— What? Disability or otherwise? A It is a question of condition. It depends on the child's general nutrition. 10

Q Assuming she is a normal child and grows the ordinary way that young ladies today are permitted to grow, how would she be able to carry herself on that left foot? A Well, the disability will probably remain stationary.

Q Do you expect her to have a permanent limp, even with the use of the artificial limb she is now wearing? A Yes, because she will have a heel gait on the left foot always. 20

Q In addition to the artificial limb? A Yes, sir.

Q Was there any charge made at the hospital? A I do not know about the charge at the hospital and I do not know what my own bill was, but I know it was paid.

Q By whom? A By the child's father.

Q Was there any complication that you can now recall in that right leg? A No. The child had a general sepsis. 30

By the Court.

Q By which you mean what, doctor? A Blood poison.

By Mr. Weinberg.

Q How long did the child have that condition?

A The child ran a very high temperature for 40

Dr. Joseph Samuel Cohen, direct.

a period of two or three weeks, and we were very uncertain as to the final outcome, as to whether the child would live or not.

Q And so far as your recollection goes or your professional notes show was there anything else the matter with the child than what you
10 have stated here? A No, sir.

Mr. Weinberg: Cross examine.

Mr. Seip: No questions.

DR. JOSEPH SAMUEL COHEN, sworn for the plaintiffs.

Direct examination by Mr. Weinberg.

20 Q Doctor, where do you practice your profession? A In Easton, Pennsylvania.

Q How long have you practiced medicine?
A Nineteen years.

Mr. Seip: Mr. Weinberg, I know Dr. Cohen also.

The Court: It is admitted that he is
30 qualified.

Q When, if at any time, were you called in to look at or attend to this little Goldfarb child who was here a moment ago? A I was first called to see her on the afternoon of July 13, 1925. I was called up and told that she was run over by a trolley car.

By the Court.

40 Q You went to see her, doctor? A Yes, sir.

Dr. Joseph Samuel Cohen, direct.

By Mr. Weinberg.

Q Just answer the questions, doctor. A I went to see her at the hospital.

Q And found her in bed, I assume? A Yes, sir.

Q Did you make an examination of her? A Yes, sir. 10

Q And you found, I assume, what Doctor Correll has testified to here? A Yes, sir.

Q What if any connection did you have with the case after that time? A Being the family physician, I was naturally interested in the case, in her condition, and I was retained by the family to look after her also while she was in the hospital and after she came back from the hospital. 20

Q During the time she was in the hospital what attention did you give her? Did you assist in the operating? A No, sir.

Q What did you do? A I looked after her general health.

Q What was the matter with her general health? A She had blood poison.

Q Did you attend to her for that? A Occasionally.

Q Well, come up to the time when she left the hospital and went home—did you see her at her home? A Yes, sir. 30

Q Did you treat her at all there? A Yes.

Q For what? A I had to re-dress both the stump and the foot, which was still in bad shape when she got home.

Q What did that consist of? A Well, the left foot was infected; there was pus in the stump and the dressings had to be changed; the foot had to be cleaned up every once in a 40

Dr. Joseph Samuel Cohen, direct.

while; and the stump also had some parts that were not healed yet and had to be attended to.

Q How long did you continue to attend her?

A Until the end of November.

Q Last year? A Yes, sir.

10 Q At the time you left her what was her condition? A As far as the foot and leg were concerned, she was all heeled up.

Q Is that the last time you saw the child or made any observation or examination of her?

A No. I have seen her since.

Q When? A I just can not recall the dates.

Q About when was the last time you examined her? A Oh, about two weeks ago.

Q Did she have an artificial limb on at the time you examined her? That is, did you take it off? A No, sir.

20 Q How was the stump of the leg the last time you saw it? A All healed.

Q What is your recollection of the place where the stump commenced in the right leg? A It is right above the knee.

Q Is there any bone in the right leg below the knee joint? A No, sir.

Q I mean in this child? A No, sir.

30 Q Has she any part of the femur down to the knee joint? A All but a little part that was taken off at the operation.

Q Does the femur extend down to the knee joint or stop above it, or does it go below the knee joint? A It stops above it.

Q Is there a movable joint on the right leg? A No; not as far as I can see.

Q Did you have anything to do with prescribing the artificial leg? A No, sir.

Q Do you know who did? A I do not.

40 Q Do you recall whether you were paid for your services? A Yes, sir.

Frank Tuckoch, direct.

Q What was the reasonable value of the services performed by you for which you were paid?

A Sixty-five dollars.

Q And you are not, I assume, attending to her or looking after her in any way? A Not just now.

Q In your opinion is there anything to do for her now? A Well, the artificial leg will probably have to be changed. 10

Q I mean doing something for her physically. There is nothing more to do for the child, herself? A No, sir.

Q The only thing you can do is bring her comfort by supplanting the right leg with something artificial? A Yes, sir.

Mr. Weinberg: That is all.

20

Mr. Seip: No questions.

FRANK TUCKOCH, sworn for the plaintiffs.

Direct examination by Mr. Weinberg.

Q Mr. Tuckoch, where do you live? A In Alpha. 30

Q How old are you? A Twenty.

Q What do you do for a living? A I am a lather.

Q Where were you living in July, 1925? A On 7th avenue, on the Vulcanite side.

Q Is that also in Alpha? A Yes, sir; that is in the Borough of Alpha.

Q What were you doing at that time? A I was driving a truck.

Q For whom? A For James Horvach. 40

Frank Tuckoch, direct.

Q Are you related in any wise to the Goldfarbs? A No, sir.

Q On July 13, 1925, do you recall anything of an accident that occurred on Central avenue?

A Yes, sir. A child—

Q Just answer yes or no. A Yes, sir.

10 Q Where were you on the day that the accident happened? Just where were you? A On the corner of Central avenue and 5th.

Q On what side of Central avenue? A On the south side.

Q Will you turn around and tell the Court and jury if you understand that little diagram that is posted up there? A Show the jury where I was standing?

20 Q Yes. Do you understand that diagram? A Yes, sir.

Q What direction is 5th street, as shown on that map— What side of the map is 5th street on? A On the other side—

Q Do you know which is north and south?

Mr. Walters: Is it 5th street or 5th avenue?

The Witness: It is 5th avenue.

30 Q Do you know which is north and south? A Yes, sir.

Q The upper part is north? A And the lower, south.

Q The right hand is east and the left is west? A Yes, sir.

Q Where were you at the time of the accident? A Just about opposite the end of the car line.

40

Frank Tuckoch, direct.

By the Court.

Q On the sidewalk? A No; I was standing there by my vehicle with one foot on the running board.

Q At the curb? A The machine was parked at the curb and I was toward the street car.

Q You were on the street side? A Yes, sir. 10

Q Not the sidewalk side? A Yes, sir.

Q Which way was the automobile facing? A The automobile was facing east.

By Mr. Weinberg.

Q Which way were you facing? A I was facing west.

Q Where was Anna when you first saw her on that day? A She was standing on the curb. 20

Q On what side of the street? A The north side.

Q Whereabouts on the street was she, with reference to 5th street, or any other object that is there, or 5th avenue, rather? A About opposite the store.

Q Whose store? A Mr. Goldfarb's.

Q Can you indicate about where that is? A (Indicating.) Right about there.

Q You are pointing to the trolley tracks? A 30 She was standing there (indicating).

Q That is the curb line? A Yes, sir.

Q Did you observe at that time whether there was a trolley car on that street or not? A Yes, sir; there was a trolley car.

Q Did you see them both that afternoon? A Yes, sir.

Q About what time was this? A I imagine about 6 or 7 o'clock.

Q Was it light or dark? A It was light. 40

Frank Tuckoch, direct.

Q Was it daylight saving time you are talking about now? A I think we did have daylight saving time at that time.

Q This was July 13th? A Yes.

Q At any rate it was perfectly light, you say?

A Yes, sir.

10 Q Was it a clear day? A Very clear.

Q Dry or wet under foot? A Dry.

Q Now, will you tell this Court and jury what, if anything, you saw either or both the trolley car and Anna do from the time you first observed them?

By the Court.

Q You saw this accident, did you? A Yes, sir.

20 Q That is what he asks you. Tell us what you saw? A I saw the child going across the street and the street car coming at the same time and sensed the accident.

Q Tell us what happened.

Mr. Seip: I move to strike that out.

The Court: Strike out the part about sensing an accident.

30 A Well, I knew there was going to be an accident.

Q No. Tell us what you saw.

By Mr. Weinberg.

Q Where was Anna, if you saw her, any time after the time when you saw her on the sidewalk? A She was going across the street.

40 Q What was the trolley car doing in the meantime? A It was coming down.

Frank Tuckoch, direct.

Q Now, what, if anything, did Anna do, and what, if anything, did the trolley car do after that point? A Anna kept on walking and the car kept coming down closer to each other.

Q Did you do anything? A Yes, sir; I shouted.

Q To whom? A To the motorman. 10

Q How far were you away from the motorman when you shouted? A About thirty feet.

Q How was his car coming at that time? A Well, he was putting on his brakes, slowly turning the handle.

Q Which way was he looking when you shouted at him? A He was looking at me—or down the tracks.

Q At the time you shouted at him did you do anything else? A Well, when I seen the girl fall I ran over to the side of the car. 20

Q In addition to shouting to the motorman did you do anything else to call his attention to it? A No, sir.

Q Did you see the trolley car strike the child? A No, sir.

Q Tell us just how much of it you did see. A I seen her get up pretty close to the car and I looked under and saw her fall.

Q What do you mean by that? A She fell 30
down suddenly.

Q Where was the car at that time? A Right up close to her.

Q Where was the front of the car with respect to Anna at the time when you saw her fall?

A The front of that car was about opposite this part of that building (indicating on diagram).

Q Where was Anna in respect to the front part of the car at the time when you saw her fall? A About near the door. 40

Frank Tuckoch, direct.

Q I assume this trolley car came in between your view and Anna? A Yes, sir.

Q You being on the south side? A Yes, sir.

Q Could you from where you were see where the contact was between Anna and the trolley car? A No, sir.

10 Q Could you see from where you were about where the contact was, that is, where they both came together? A Well, I imagine about the door.

Mr. Seip: Objected to.

The Court: Strike it out.

Q What you saw. A I didn't see.

20 Q When she dropped how far was the front of the car past her, if it was past her? A About three or four feet.

Q And then you say you looked under the car? A Yes, sir.

Q What did you see happening? A I just seen Anna fall.

Q After you looked under the car did you see anything? A I did not see anything else.

30 Q Did you see the car run over her at all? A No, sir.

Q Did you see the car stop? A Yes, sir.

Q When the car stopped where was Anna? A About the rear of the car.

Q And about what position was she in? Whereabouts was she lying? A Right at the end of the car.

Q What part of the street was she in? A Near the tracks.

40 Q That is the position you say Anna was in when the car stopped? A Yes, sir.

Frank Tuckoch, direct.

Q How near to the end of the track on Central avenue was the front of this trolley car when it did stop? A About twenty feet.

Q Twenty feet—what—west? A Twenty feet west from the end of the car.

Q What was the general stopping place of that trolley car? A I never noticed that much. 10
I never gave it any attention.

Q As this car approached the point where you say you saw Anna crossing did it or not give a signal? A I did not hear any or see any.

Q Were there any noises to prevent your hearing if there was one sounded? A No, sir.

Q Can you tell us if you know what was the approximate speed of that trolley car as you saw it approaching the point where you saw Anna? 20

Mr. Seip: I will have to object to that if the Court will permit me, for the reason that this witness has not qualified.

The Court: Do you mean as to whether he is familiar with the speeds of trolley cars?

Mr. Seip: Yes, sir.

By the Court.

Q Are you familiar with the speed of trolley cars? A Well, I am now, but I do not think I was at that time. 30

Q What do you mean by that? Have you been making a study of it since? A I have owned three or four cars since then.

Q Oh, you did own motor cars since then? A Yes, sir.

The Court: You may develop whether it was going fast or slow, or how. 40

Frank Tuckoch, direct.

By Mr. Weinberg.

Q Can you tell us how the trolley car was going as it approached the point where Anna was just before the accident? A Well, it was not going very fast. I imagine about five or ten miles an hour.

10 Q How was Anna going when you saw her? A She was walking.

Q Who picked Anna up? A I do not know who picked her up. I think I saw Mr. Goldfarb pick her up.

Q Do you know who the motorman was? A Yes, I know him if I see him, but I do not know the name.

Q Do you know whether he saw you at the time you called to him? A I think he did.

20 *By the Court.*

Q Not what you think. What did he do when you called? Was he looking at you? A He was looking at me or down the car tracks.

By Mr. Weinberg.

30 Q Was he looking on the side from which Anna came? In other words, was he looking toward the north? A He was looking in my direction.

Q That means toward the south? A Yes, sir.

Mr. Seip: I think you were in error there when you made the remark, "That is toward the south."

Q Were you on the north or south side of the street? A I was on the south side of the street.

40 Q That is the direction in which he was looking? A Yes, sir.

Frank Tuckoch, cross.

Mr. Weinberg: Cross examine.

Cross examination by Mr. Seip.

Q Now, let me start where Mr. Weinberg left off. You said that you saw the motorman looking toward you at the time when he brought this car to a stop, did you not? A Yes, sir. 10

Q And you also said that you were on the south side of the street? A Yes, sir.

Q And then Mr. Weinberg said that then the motorman was looking south, and you said "Yes." Now let us see whether Mr. Weinberg was in slight error there. The trolley track runs east and west, doesn't it? A Yes, sir.

Q And you said you were near the corner of 5th street, on the street side of an automobile parked along the south curb. Is that right? A Yes, sir. 20

Q And you had your foot on the running board, looking west? A Yes, sir.

Q The trolley car was coming east toward you, wasn't it? A Yes, sir.

Q And the motorman was looking in your direction? A Yes, sir.

Q In the direction where you stood? A Yes, sir. 30

Q That would be looking more east than south, wouldn't it? A Southeast.

Q Now, let us cover another thing. You said you understood this map, and in a general way you undoubtedly do. We all do. Now you see what I am now pointing to, that which will hereafter be called a "Station," and that is a station, and this along the north rail of the trolley track. Do you see those marks there? A Yes, sir. 40

Frank Tuckoch, cross.

Mr. Seip: No engineer has been called yet, if the Court please, but I am going to make a statement which the engineer will bear out.

Mr. Weinberg: All right.

10 Q Between each one of these stations is fifty feet. The distance on this map between each one of these stations represents fifty feet over on the ground in Alpha, on the tracks. Now, bearing that in mind, the automobile on which you had your foot, the running board of which you had your foot, on the street side, was some distance removed from the corner of 5th street, wasn't it? A Yes, sir.

20 Q At the intersection of the curb of 5th street and Central avenue there is a pole, isn't there? A Yes, sir.

Q And there is actually a pole there? A Yes, sir.

Q You were west from that a little ways? A Yes, sir.

Q You are familiar with the end of the rails there, aren't you? A Yes, sir.

Q And they are west from the curb line of 5th avenue, aren't they? A Yes, sir.

30 Q Was your automobile west of the end of those rails, where it stood there on the south side of Central avenue? A It was south of the rail.

Q But was it west of the end of the rail? A I imagine the front part of the car was just about even with the rail.

Q And it was headed east, wasn't it? A Yes, sir.

40 Q Even with the end of the rail? A Yes, sir.

Frank Tuckoch, cross.

Q Now, you looked up the street and then you saw Anna—and I believe this (indicating) is the point which was pointed to when you said Anna stood over here by the curb on the north side? A Yes, sir.

Q Indicating a point along the curb under the word "Walk" on the map. Now, at the time when you saw Anna standing there by the curb did you see any other children there? A There were some children on the sidewalk. 10

Q But not on the curb. At the time that you saw Anna there by the curb and before she started across the street, where did you see the trolley car, if you saw it, before she started across the street? A I did not see the car before she started.

Q Where was the car when you first saw it? A Right opposite this other building here (indicating). 20

Q The one to which I now refer? A Yes, sir.

Mr. Weinberg: What is that?

Mr. Seip: The building indicated by a rectangle under the words "Iron Fence."

Q The car was about here, where I now point, was it? A Yes, sir. 30

Q And the word to which I now point, within the line of the rails, is "Phillipsburg," isn't it? A Yes, sir.

Q Would you say the trolley car was where I now point? A Yes, sir.

Q That is at Station One plus 50— Do you see that? A Yes, sir.

Q At the time you saw the trolley car coming there was it going fast or slow? A I do not know whether you would consider it fast. 40

Frank Tuckoch, cross.

Q Did you notice the motorman doing anything as you saw the car coming there? A I saw the motorman putting on his brakes when the child was halfway across.

10 Q Where was the motorman then with the car, where you have indicated, where the word "Phillipsburg" is, or farther toward you, where the word "Transit" is? A Where the "company" is.

Q That would be Station Two? A Yes, sir.

Q Then Anna was coming across the street, was she? A Yes, sir.

Q And the motorman was applying his brakes? A Yes, sir.

20 Q Were you at that time familiar with that trolley car that was there, that is, so far as the braking system of it was concerned? Did it have an air brake or one of the old-fashioned hand brakes? A One of the old-fashion hand brakes.

Q When you say you saw the motorman applying the brakes do we understand you to mean that you saw the motorman with one or the other of his hands going around in the motion that I am now making? A Yes, sir.

30 Q As he did so what was happening to his car? Did it slow up? A Naturally it would be slowing down.

Q Not what it would naturally do. Did it slow down? A Yes, sir.

Q And it had almost come to a stop, hadn't it? You say it was here, at Station Two. Now, it had almost come to a stop, hadn't it? A Yes, sir.

40 Q When it did actually come to a stop the front of that trolley car was about opposite the word "Walk," on the south side of Central avenue on this map, wasn't it? A No, sir.

Frank Tuckoch, cross.

Q Was it a little farther east? A Farther east, yes, sir.

Q (Indicating.) Was it there? A Where that Two plus 50 is.

Q The front of that car, as you recollect, stopped at the station marked on this map Two plus 50? A Yes, sir. 10

Q Now, let me ask you this: Did Anna at any time, as you looked at that situation that day, get in front of that trolley car? A No, sir.

Q What was the first thing you did after the trolley car came to rest? A I ran over to that side of the car where the child was.

Q That would be on the north side of the car and its left hand, going in the direction in which it had come; the left-hand side of the car if it had continued to go in the direction in which the car came? A Yes. 20

Q As you went over there did you see the motorman do anything? A He got out of the car.

Q On which side did he get out? A I cannot recall.

Q Did this trolley car have doors in front and to the rear? A Doors on the side.

Q In the center? A Towards the front of the car. 30

Q On either side of the space where the motorman stands there is a door, is there not? A Yes, sir.

Q And there was on this car? A Yes, sir.

Q But which door the motorman came out, that you say you do not know? A I didn't see.

Q Did you see the conductor do anything that day before the trolley car came to a rest? A No, sir. 40

Frank Tuckoch, cross.

Q Did you see the conductor do anything that day after the trolley car came to a rest and before he got off the car? A No, sir.

Q When you got over on the side where Anna lay where did you find her lying there on the ground? A She was lying at the end of the car.

10 *By the Court.*

Q Which end, the rear or front end? A The rear end.

Q In reference to the left rear wheel where was she? A I imagine about three or four feet.

By Mr. Seip.

Q To the west of the left rear wheel? A To the west.

20 *By the Court.*

Q That is back of the car? A Yes, sir.

Q Clear back, was she? A Yes, sir.

By Mr. Seip.

Q And only three or four feet from the rear wheel? A I cannot exactly judge the distance on that.

30 Q Now, from where you sit to some point in the court room here; from the end of this rail here or any part of this desk that you may select. A I would say the end of the rail.

By the Court.

Q From where you are sitting to the end of the rail? A Yes, sir.

40 Mr. Seip: That we may determine to be about six and a half feet, if the Court please.

Frank Tuckoch, re-direct.

The Court: Yes. That is a liberal distance, I should say.

Mr. Seip: Well, six to six and a half feet.

By Mr. Seip.

Q Did you assist in picking her up? A No, sir. 10

Q Who picked her up, if you know? A Well, I do not know, really.

Q Did you go with her to any place? A No, sir.

Q As the trolley car was passing Anna the trolley car was going very slowly and just about coming to a standstill, wasn't it? A Well, I can't say it was going very slowly but it was going slowly.

Q And it came to a standstill within the length of the car after the front of it had passed her, didn't it? A Yes, sir. 20

Q You know what I mean by that, don't you? A Yes, sir.

Re-direct examination by Mr. Weinberg.

Q When you saw Anna fall she was just about near or opposite the front of the car on its left-hand side. Is that right? A Yes, sir. 30

Q After she fell did the car move or not? A Yes.

Q How far did it move? A The full length of the car.

Q And left her some six feet behind the rear? A Yes, sir.

Frank Gearsay, direct.

FRANK GEARSAY, sworn for the plaintiffs.

Direct examination by Mr. Weinberg.

Q Mr. Gearsay, where do you live and what is your occupation? A My occupation is driving a truck and I live in Alpha.

10 Q And you lived in Alpha in July, 1925? A Yes, sir.

Q Are you related in any way to the plaintiffs in this case, the Goldfarbs? A No, sir.

Q Do you know where their store is, on Central avenue? A Yes, sir.

Q Do you know the little girl who was hurt? A Yes, sir.

Q Were you on the street on the day of the accident? A Yes, sir.

20 Q Where were you? A Sitting on the foundation.

Q Where was that foundation? A On the north side.

Q Of Central avenue? A Yes, sir.

Q And about where with respect to the Goldfarb store was this foundation? A I was pretty near at the end of the foundation, going east.

30 Q How far would that be from a point opposite or across the street from the Goldfarb store? A About forty feet.

Q Were you with somebody else? A Yes, sir.

Q Who? A Joseph Sabo.

Q What were you doing there? A We were talking together.

Q Had you been working that afternoon? A I was working that day.

40 Q What time were you at the point you mention? A About six o'clock.

Frank Gearsay, direct.

Q And daylight, was it? A Yes, sir.

Q While sitting there did you notice little Anna Goldfarb at any time? A No, sir.

Q At any time? A Yes, when I seen the car hit her.

Q Where was Anna at the time you saw the car—did you say “Hit” her? A Yes, sir.

10

Q Where was Anna at the time you say you saw the car hit her? A Right outside the car there; right in front of it.

By the Court.

Q Where was Anna when the car hit her? A In front of the car.

Q Where was the car when you first saw it? A About four feet away from Anna.

Q Did you see it at any time before it got to that point? A No, sir.

20

Q Were you looking or not? A No; I was looking east.

Q At the time you saw the car about four feet from Anna just where was Anna? A She was right alongside of the railroad.

Q On the side of the track do you mean? A Yes, sir.

Q Did you see what if anything struck Anna? A The door hinges struck her.

30

Q Just what are the door hinges? A Right where the door hangs on.

Q About which way was Anna facing, if you noticed, at that time? A I do not know.

Q Now, after you saw the car as you say, or part of the car strike Anna, what happened to Anna? A It knocked her over and rolled her right under the wheels.

Q Knocked her over where? A Right under the tracks.

40

Frank Gearsay, direct.

Q That is impossible.

The Court: Under the car.

The Witness: Under the car.

10 Q Under what part of the car? A The front part.

Q What if anything happened to her? A Both wheels went over her.

Q Both wheels or the truck? A Of the car, the front end and the rear.

Q Then do you mean both trucks ran over her? A Both wheels; yes, sir.

Mr. Seip: It is a single truck car.

Mr. Weinberg: Where is that truck?

20 Mr. Seip: In the center.

Q Do you know where that truck is, or was, under that particular car? Was it in the front, rear or middle? A In the front.

Q Well, it is the truck that ran over her? A Yes; the front wheels ran over her, the front and back.

30 Q After the front and back wheels ran over her what if anything did that car do? A It stopped about three feet after it went across—after the last ones went over her.

Q It stopped about three feet? A Yes, sir.

Q What do you mean by that? A Anna laid in back.

Q About how far? A About three feet.

Q About three feet back of the car? A Yes, sir.

40 Q She laid there, and she had already been badly hurt, I suppose? A Yes, sir.

Frank Gearsay, cross.

Q Did you hear any signal given by the trolley car before you saw it coming? A No, sir; not a bit.

Q Were there any whistles blown or other noises at that time? A No, sir.

Q So that you do not know where Anna was or where she came from until she reached this point, you say, just about as the car hit her? A Yes. 10

Q When the car came to a stop about where was the front end of it, with respect to the tracks in the street? A About fifteen feet from the end of the rail.

Q From the end of the tracks? A Yes, sir.

Q That is, the front of the car was? A Yes, sir.

Q Did you see what became of Anna? A It cut her legs off. 20

Q You saw her taken off the street, did you? A No.

Q You did not see anyone pick her up? A No.

Q What did you do? A I turned my face away.

Q Why? A I could not stand looking at it.

Q Then I suppose somebody else had the task of picking her up and taking her away? A Yes, sir. 30

Mr. Weinberg: Cross examine.

Cross examination by Mr. Seip.

Q When you saw this you were excited, too, weren't you? A Not so much.

Q You had never seen an accident of this kind before, had you? A No, sir. 40

Frank Gearsay, cross.

Q Was it the first accident where anybody was hurt that you had seen? A The first one I seen.

Q When you first saw Anna did I understand you to say the car was hitting her? A The car hit her.

10 Q Yes, but what I am trying to find out from you is: the first time you saw Anna there in the street was just at the time when the car hit her? A She was about four feet from the car.

Q The car was going slowly, wasn't it? A Yes.

Q How many wheels were under this car? A I do not know how many wheels, but I know the front wheel and the back wheel went over her.

Q Don't you know how many wheels were under this car? A No, sir.

20 Q Do you know what I mean by a double-truck car? A No.

Q Do you know what a truck is under a trolley car? A No, sir.

Q Are you acquainted with steam railway cars? A No, sir.

Q Haven't you ever observed a coal car on a railroad, or a freight car on the railroad? A I don't get what you mean by that.

30 Q Well, you know the Lehigh Valley Railroad? A Yes, sir.

Q And the Central Railroad? A Yes, sir.

Q They run through Alpha, don't they? A Yes, sir.

Q They run cars? A Yes, sir.

Q They have locomotives connecting freight cars and coal cars and passenger cars and all kinds of cars? A Yes, sir.

Q Now, there are wheels under those cars? A Yes, sir.

40

Frank Gearsay, cross.

Q Did you ever look to see what kind of wheels those were, to see how they were arranged under those cars? A No.

Q Have you ever seen the trains stop at the Alpha station there? A No, sir.

Q Have you ever seen a freight car stand on a siding? A No, I don't monkey around with that kind of stuff much. 10

Q Have you ever ridden on these trolley cars that go over there to Alpha? A Yes, sir.

Q Some are longer than others, aren't they? A Yes, sir.

Q Was this one of the longer or shorter cars, that hit Anna? A I do not remember.

Q You would not say whether it was a short car or a long car? A No, sir.

Q But you do know that the short trolley cars have only four wheels under them? A I do not know how much they have. 20

Q And that the long cars have eight wheels under them? A I don't know that.

By the Court.

Q You never had any curiosity to look at a car, eh? A No, sir.

By Mr. Seip.

Q You live here in Alpha, don't you? A Yes, sir. 30

Q You have lived here all your life? A Yes, sir.

Q Are you acquainted with Central avenue all your life? A No, sir.

Q Is it Central avenue or Central street? A Central street.

Q And this car track comes to an end just before it reaches Fifth avenue? A Yes, sir. 40

Frank Gearsay, cross.

Q You said that the front of the trolley car was about fifteen feet from the end of the trolley tracks when the trolley car came to a standstill?

A Yes, sir.

Q What is your idea of fifteen feet from where you sit to some point here in the court room? A About from here to that thing there, to the end of the platform here (indicating).

Q And you say it was that close to the end of the track? A Yes, sir.

Q Did you give much notice to that, to see how close it was to the end of the track? A Not so very much.

Q Just in passing— You did not look to see how far it was at the time, did you? A I took notice of it though.

Q You did not look especially to see, did you? A No.

Q You turned your face away from the thing? A Yes, sir; but I seen where the car stopped.

By the Court.

Q Do you know where the Goldfarb store is? A Yes, sir.

Q How near to the Goldfarb store was the trolley car? A About twenty feet.

Q Twenty feet from the Goldfarb store? A Do you mean sidewise, or how?

Q Well, sidewise— A It was about thirty-five feet this way.

Q Was it on a line with the Goldfarb store? A No, sir; it was sidewise like.

By Mr. Seip.

Q Was the Goldfarb store further toward the west, that is, toward Easton, than the trolley

Frank Gearsay, cross.

car, or not; that is, to the rear of the trolley car when the trolley car stopped? A West?

By the Court.

Q Had it passed the Goldfarb store? A Yes, sir.

Q How far past? A Do you mean the rear 10 wheels?

Q Well, either. A About thirty-five feet past the store.

Q Toward the end of the track? A Yes, sir.

By Mr. Seip.

Q What is your idea of thirty-five feet from where you sit to some point in the court room here? A (Indicating.) About from here to 20 the next to the last window there.

Q That would be the second window from this end? A Yes, sir.

Q How far would you say that it was from the front of Goldfarb's store down to the end of the trolley tracks; from the front door of Goldfarb's store to the end of the trolley tracks? A About forty-five feet.

Q Did you see the motorman do anything 30 when you first saw the trolley car? A No, sir.

Q Did you look? A No, sir.

Q Did you see the conductor when you first saw the trolley car? A No, sir.

Q Did you look? A No, sir.

By the Court.

Q Did you hear anyone shout? A Yes, 40 sir; I heard some one holler.

Frank Gearsay, cross.

By Mr. Seip.

Q Do you know who? A No, sir.

Q Now, when the trolley car came to a rest you said that Anna lay three feet after the wheels went over her. What did you mean by that? That Anna lay three feet behind the rear
10 wheels of the trolley car? A Yes, sir.

Q Now, let us be sure that you understand what I mean. There were wheels under this trolley car, whether there were four on a side or only two on a side. A Yes, sir.

Q And one of those wheels must have been the rear wheel? A The front and rear.

Q And Anna lay about three feet to the rear of that rear wheel? A No; from the end of the trolley car about three feet.

20 Q Why did you say that she was three feet after the wheels went over her?

Mr. Weinberg: I object to the question. I do not think the witness said that.

The Court: Well, you may ask the question again.

Did you say that she was three feet from the last wheel?

30 The Witness: From the end of the trolley car.

Q On which side of the north rail of the trolley track, that is the rail nearest to you, did she lay? Now, there are two rails to this track? A Yes, sir.

Q She laid on the side of the track toward you, didn't she? A Yes, sir.

40 Q Outside the rail and not inside the rail? A She was outside the rail and one of her legs was inside of the rail.

Frank Gearsay, cross.

Q Her body was on the outside of the rail?
A Yes, sir.

By the Court.

Q She lay across the rail then, did she? A
Yes, sir.

10

By Mr. Seip.

Q Was the body across the rail or was just
her one leg across the rail? A Just one leg.

Q And the body was on the outside of the
rail? A On the outside.

Q Now, you said two things here and I do
not know whether you meant both of them. I
understood you to say that she was in front of
the car, and then I understood you to say that
the hinges of the door hit her. Now, let us see
what you recollect about that. Where were the
doors on this trolley car? A In the front.

20

Q And on either side? A Yes, sir.

Q There is a front to the trolley car, where
the motorman stands, isn't there? A Yes, sir.

Q And then on either side, right and left of
the motorman, is the door, is there not? A
Yes, sir.

Q That door opens and closes to let passen-
gers on and off? A Yes, sir.

30

Q It was the door on the front left side of
the car that you refer to, the hinges of which
hit Anna? A Yes, sir.

Q You do not mean that Anna stood within
the tracks in front of the trolley car as it came
down there, do you? A No. All I seen first
she was about four feet.

Q From where? A From the end of the
trolley car when the car hit her.

40

Frank Gearsay, re-direct.

Q From the side of the trolley car when the car hit her? A Yes, sir.

By the Court.

Q How did she get out there? Did you see her leaving the curb? A No, sir.

10 Q You did not see her leave the curb? A No, sir. I was looking in an east direction.

By Mr. Seip.

Q Then you saw her near the car? A Yes, sir.

Q Now, you do not mean to be understood by the Court and jury that Anna was in the middle of the tracks in front of the trolley car?

A No; not in the middle.

20 Q But to the side of the tracks toward you?

A Yes, sir.

Q And when you first saw her she was right there by the front left door of the trolley car, wasn't she? A Yes, sir.

Q But about four feet away from it? A Yes, sir.

30 Q Did you see what she did from that point over to the car? Did you see her go at all, walk or run or anything like that? A No, sir.

Q You did not see anything like that? A No, sir.

Q How old are you? A Past eighteen; going on nineteen.

Re-direct examination by Mr. Weinberg.

40 Q When you speak about this distance of four feet will you kindly tell us just what you are referring to? A From the trolley?

Frank Gearsay, re-direct.

By the Court.

Q What do you mean by four feet? A From the trolley car.

Q Three or four feet from the trolley car?

A Yes, sir; when I seen her.

By Mr. Weinberg.

10

Q And where was the trolley car? A The trolley car was coming.

Q How far away? A About four feet from the girl when I saw her.

Q And then you say the hinge on the left side struck her? A Yes, sir.

Q How did she get close enough to the car to be struck by the hinge? A I do not know.

Mr. Seip: I will have to object to that. 20

The Court: He says he does not know.

Q Then the next thing you saw, after seeing her four feet away from the track, was what you have described here? A When she rolled over and the wheels went over her.

Q Did you see the contact between Anna and the hinge of the door? A No, sir.

Q Do you know what I mean by "contact?"

A No, sir.

30

By the Court.

Q Did you see the hinge of the door strike her? A Yes, sir.

Mr. Weinberg: That is what I mean.

 40

Joseph Sabo, direct.

JOSEPH SABO, sworn for the plaintiffs.

Direct examination by Mr. Weinberg.

Q Mr. Sabo, state your name, age and occupation, please—and address.

10 *By the Court.*

Q What is your full name? A Joseph Sabo.

Q Where do you live? A Alpha.

Q What is the occupation? A In the foundry.

By Mr. Weinberg.

Q Do you live in Alpha? A Yes, sir.

Q And you lived there in July, 1925? A
20 Yes, sir.

Q And you were working at that time? A
Yes, sir.

Q Are you married or single now? A
Single.

Q Where did you live with respect to the
corner of Fifth street and Central avenue? How
far away from that corner were you living at
that time? Did you live near that place? A I
30 lived above.

Q Were you in the neighborhood of the scene
of an accident in which Anna Goldfarb was hurt?
A Yes, sir.

Q Where were you at the particular time
when she was hurt? A I was sitting on the
foundation there.

Q Were you the fellow who was sitting with
this Frank, who was just on the stand? A Yes,
sir.

Q Whereabouts do you say the place where
40 you were sitting was with reference to Gold-

Joseph Sabo, direct.

farb's store? Were you across the street to the east or to the west of it? A We were across the street.

Q To the east or west of the Goldfarb store?

A It was to the north side.

By the Court.

10

Q Were you on the same side the Goldfarb store was on? A No.

Q On the other side? A Yes, sir.

By Mr. Weinberg.

Q You know where the ends of the tracks are? A Yes, sir.

Q Just where were you in respect to that? Were you across the street from Goldfarb's store or farther down the street or toward Easton? A Farther down than Goldfarb's store.

20

Q Did you notice Anna that afternoon before she was hurt? A Yes, sir; I saw her before she was hurt.

Q Where was she before she was hurt, when you saw her? A She was on the sidewalk.

Q How far from you? A About thirty feet.

Q Which way? In what direction? A Toward the west.

30

Q At the time you first saw her what was she doing? A She was standing on the sidewalk.

Q Did you see her at any time leave the sidewalk? A I saw the trolley car coming, and she started out from the sidewalk, too.

Q Did you notice where the trolley car was at the time when she left the sidewalk? A It was about forty-five or fifty feet away from the place.

40

Joseph Sabo, direct.

Q Will you turn around and look at that map and tell the Court and jury if you can recognize that as being the location in question? Do you know what that is a map of?

By the Court.

10 Q Can you tell anything about that map?

A No, sir.

Q You do not know the map. A No, sir.

Q Do you know where the Goldfarb store is on that map? A (Indicating.) Right there.

By Mr. Weinberg.

20 Q Would it help you if I were to point to these markings and tell you that these are the Goldfarb stores? A Yes, sir.

Q And in the direction of my pointer, at the end of this sort of a pink line is the end of the trolley track. That is Fifth street, crossing on the left? A Yes, sir.

Q You understand it now? A Yes, sir.

Q You were on the north side, which is the upper part of that map here? A Yes, sir.

30 (Counsel confer.)

Q I am told by counsel that this black line to which I am pointing represents the stone wall on which you were sitting? A Yes, sir.

Q Now, do you say you were sitting opposite the point I am pointing to now?

The Court: Where were you sitting on that stone wall?

40 The Witness: About the center.

Joseph Sabo, direct.

Q That would be about opposite the end of the drygoods store, as it is marked here; is that right? A Yes, sir.

Q Was there a vacant lot on the corner? A What do you mean, on the other side?

Q No. On the south side. A Yes, sir.

Q You say when you saw Anna leave the sidewalk you saw the trolley car approaching? A Yes.

10

Q Now, I ask you to tell us, if you can, about where that trolley car was, without speaking now in feet or inches, at that time. A (No response.)

By the Court.

Q Where was the trolley car when Anna left the curb to go into the street, if you know? A (No response.)

20

Q How many feet away from her? A About forty.

Q That is the best you can say? A Yes, sir.

By Mr. Weinberg.

Q What is your idea of that distance? What is forty feet?

30

By the Court.

Q From where you are sitting to the end of the court room— How far is forty feet? Do you know? A Where them two women are sitting back there.

Q Which two? A These front two here.

Q Midway of the court room? A Yes, sir.

40

Joseph Sabo, direct.

By Mr. Weinberg.

Q Did you watch both the trolley car and Anna after the time when you saw the trolley car at that place? Did you see what both of them did, or either of them did, from that time on? A Yes, sir.

10 Q Now tell us.

The Court: What happened?

Q What did the trolley car do from the time you saw it until the accident? A (No response.)

Q Do you know what I am asking you? A No, sir.

By the Court.

Q Did you see the child hurt? A Yes, sir.

20 Q Tell us what happened. A (No response.)

Mr. Weinberg: Can you tell us how it happened?

Q Tell us how it happened, in your own way. How did it happen? A (No response.)

Q Tell us in your own way just how the accident happened. A (No response.)

30 *By Mr. Weinberg.*

Q Are you bashful—or what? A (No response.)

By the Court.

Q Are you excited? A (No response.)

By Mr. Weinberg.

40 Q Are you nervous or don't you know what we are asking you or can't you speak, or what? A (No response.)

Joseph Sabo, direct.

By the Court.

Q How was the child hurt? A I do not know what you mean by that.

Q Well, you saw the child hurt, didn't you?

A Yes, sir.

Q What did she do? Did the trolley car run into her, or she run into the car, or what? You were sitting there, weren't you? A Yes, sir. 10

Q Sitting on the foundation? A Yes, sir.

Q And you saw the child walk out into the street? A Yes, sir.

Q Did she walk or run? A She walked.

Q Where did she go? A She walked about four feet off the sidewalk and she stopped.

Q Then what did she do? A She waited for the trolley car to come down; so the trolley car came down and slowed down a little bit, and she started off and the trolley car started off again. 20

Q Then what happened? A Then she got there near the car tracks and the left front door hinges hit her.

Q You saw the hinges hit her? A Yes, sir.

Q And was she knocked down? A Yes, sir.

Q Then what happened? A Then she rolled toward the trolley car and the front wheel went over her. 30

Q You saw the front wheel go over her? A Yes, sir.

Q Then what happened? A Then the rear wheel went over her and she was back about four feet from the rear of the car.

Q And one leg was over the track? A Yes, sir.

Q And the body was on the other side? A Yes, sir.

Q On the rail nearest you? A Yes, sir. 40

Joseph Sabo, direct.

Q Who picked her up? Do you know who picked the child up? A I think Goldfarb, the father.

Q Did you see him? A I ain't sure.

Q You saw someone pick her up? A Yes, sir.

10 Q Is that all you know about the accident? A That is all.

Q Did you hear any signal given by the trolley car? A No, sir.

Q Any bell rung? A No, sir.

Q No clang of the bell? A No, sir.

Q How fast was the car going? A At the time it hit the child?

Q Yes. A About fifteen miles an hour.

Q Do you drive an automobile? A Yes, sir.

20 Q You are familiar with speeds, are you? A Yes, sir.

Q How long have you driven an automobile?

A Two years and a half.

Q So you think the trolley car was going about fifteen miles an hour? A Yes, sir.

Q And it stopped about four feet from where she lay on the rail? A Yes, sir.

30 *By Mr. Weinberg.*

Q What did you mean by the expression that the car started off again? You said it slowed down and started off again. A The motorman took his brakes off and the conductor had to put his rear-end brakes on.

Mr. Seip: I object to that and move to strike it out.

40 The Court: Did you see the conductor put the brakes on the rear-end?

Joseph Sabo, direct.

The Witness: No, sir.

The Court: Strike it out, then.

Q Explain just what you mean by the car starting up again, or whatever it was you said. What do you mean by that? You answered his Honor's question, and if his Honor would kindly put that question I will be obliged. 10

By the Court.

Q You say the car slowed down? A Yes, sir.

Q Do you say it started up again? A Yes, sir.

Q What do you mean by starting up? Did the brakeman put on his brake? A I do not know. I didn't see the brakeman put on his brakes. 20

Q But you saw it slow down? A Yes, sir.

Q And you say it started up again? A Yes, sir.

Q What was the motorman doing? A I didn't watch the motorman.

Q The motorman was where he should be, on the front of the car, was he? A Yes, sir.

Q You say as it started up Anna was struck by the hinges of the door? A Yes, sir. 30

By Mr. Weinberg.

Q When it started up was it going faster or slower than it was when you say it slowed down?

A It was going a little faster.

Mr. Weinberg: Cross examine.

The Court: You are permitted to cross examine, if you can get any answer. 40

Joseph Sabo, cross.

Mr. Seip: Will your Honor permit me to consult with my associate a second?

The Court: Well, cross examine if you like.

10 Mr. Seip: I was just revolving a certain thing in my mind, as to whether I wanted to at all.

Cross examination by Mr. Seip.

Q Joe, how many wheels were under this trolley car? A There was four.

Q This was one of the short cars, wasn't it?

A Yes, sir.

Q You know the difference between a single truck and double truck trolley car, don't you?

20 A Yes, sir.

Q You have ridden on them? A Surely.

Q Where was Anna when you saw the trolley car slow up? A She was half way off the sidewalk.

Q Half way between the curb and the trolley track? A Between the curb and the trolley track.

30 Q How near was the trolley to Anna when you saw the trolley car slow up? A About twenty feet.

Q Would you say as far as from where you are sitting down to where I stand now? Is that twenty feet? A I don't believe it is twenty feet.

The Court: Walk back. Tell him to stop when you think it is twenty feet.

40 Q You tell me to stop when I am at the end of twenty feet? A That is enough, there.

Joseph Sabo, cross.

Q That is twenty feet? A Yes, sir.

Q How fast was the trolley car going when it slowed down at that point—very slow? A It was going pretty slow.

Q Five miles an hour? A About five miles an hour.

Q It came down to about five miles an hour. Then you say Anna stopped, too? A Yes, sir. **10**

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

Q And she stopped dead, didn't she? A Yes, sir.

Q Then the trolley car moved slowly, about five miles an hour, until she stopped? A Yes, sir.

Q Then the trolley car, you say, started up again? A Yes, sir.

Q When the trolley car started up again it went faster, didn't it? A Yes, sir. **20**

Q Did it go fifteen miles an hour then? A About fifteen.

Q Then Anna started, too, didn't she? A Yes, sir.

Q But Anna did not start until after the trolley car started, did she? A After the trolley car started.

Q After the trolley car started up to go again then Anna started going toward the trolley car? A Yes, sir. **30**

Q Did Anna walk or run? A She walked.

Q Which way did Anna look when she started to walk? A Toward the store.

Q That is toward the store or the car? A Yes, sir.

Q You saw this whole thing happen, didn't you? A Yes, sir.

Q Did you yell? A I hollered to a fellow with a machine over there. **40**

Joseph Sabo, re-direct.

Q Before or after it happened? A After it happened.

Q I mean at the time when you saw Anna start to walk again from the middle of the road, after she had stopped, did you say, "Anna, stop"? A No.

10 Q You knew Anna? A Yes, sir.

Q You knew she was Mr. Goldfarb's daughter? A Yes, sir.

Q And you were only about thirty feet away from her? A Yes, sir.

Q You knew she was a child about five years old? A Yes, sir.

Q You did not make any effort to jump off the wall and save her? A No, sir.

Q You sat still and saw the whole thing happen? A Yes, sir.

20 Q You want the Court and jury to believe that after the trolley car started it went faster and went about fifteen miles an hour? A Yes, sir.

Q And when it came to a stop Anna was lying just three feet behind the car, wasn't she? A Yes, sir.

Re-direct examination by Mr. Weinberg.

30 Q Did you hear anybody else holler out at that time? A No, sir.

By the Court.

Q Did you see anyone with his foot on the running board of an automobile on the opposite side? A No, sir.

(Adjourned until Friday, October 22, 1926,
at ten o'clock in the forenoon.)

Mrs. Dora Goldfarb, direct.

Belvidere, N. J., October 22, 1926.

Case resumed pursuant to adjournment.

Appearances as before noted.

MRS. DORA GOLDFARB, sworn for the plaintiffs. 10

Direct examination by Mr. Weinberg.

Q Mrs. Goldfarb, where do you live? A Alpha, New Jersey.

Q What is your husband's name? A Samuel Goldfarb.

Q How long have you lived in Alpha? A The last six years.

Q You are the mother of Anna Goldfarb? A Yes, sir. 20

Q How many children have you? A Six.

Q What is the age of the youngest? A Five.

Q And the eldest one? A Sixteen.

Q What is Anna's age? A Anna is six this July.

Q When is her birthday? A The 4th of July.

Q At the time of her accident she was just about a week over five. A Yes, sir.

Q She was five years old on July 4th, 1925? A Yes, sir. 30

Q Where were you living in July, 1925? A I lived on Central avenue.

Q Your husband conducted and still conducts a general merchandise and a grocery business there? A Yes, sir.

Q You are on what we call the south side of the street? A Yes, sir.

Q Do you know the points of the compass at all? A I think I do. 40

Mrs. Dora Goldfarb, direct.

Q Do you know the difference between north, east, south and west? A Yes, sir.

Q What side of the street are you on? A The south side.

Q The end of the track is in what direction? A Southeast.

10 Q There is but one track on that street? A Yes, sir.

Q How far from your store does that track end? A Fifty feet away.

Q Is there more than one door to your store? A There is now.

Q At that time how many were there? A Two.

Q One store was the butcher shop? A That was just built last year.

20 Q Before the accident had Anna gone to school? A No, sir.

Q Does she go now? A Yes, sir.

Q Do you remember the day of the accident? A Yes, sir.

Q Where were you at the time? A Outside on the sidewalk.

Q Was Anna with you at the time you were outside? A She had been with me before she was outside in the middle of the street.

30 Q When had she gone out of the house, how long before the accident? A About five or ten minutes; I could not say exactly.

Q Did you see the actual accident itself? A Yes, sir.

Q Will you tell the Court and jury, please, in your own way just how that accident happened?

A I was outside, standing at the end of the curb on the sidewalk and saw Anna across the street on the north side between the curb and the tracks in the middle of the street, and I glanced over

40

Mrs. Dora Goldfarb, direct.

to the west side and I saw the trolley car about— well, farther than this end of the court-room, about a block away, and I saw the trolley car coming, and after she was half-way over she stopped and it started to go slowly in order to come to a stop and she got over where all the trolleys stop there and she started to go past and I noticed the child coming over and she stopped right near the tracks and she was running as fast as she could and I ran down and she was thrown over and I started to scream. I started to run to the back and by the time I got over the car was still moving and I found the child along the street with the feet all crushed to pieces and I started in the house to call my husband and somebody handed her to my husband.

Q You used the expression “she” did this. Were you referring to the child or the trolley car? A The trolley car slowed up and I expected—

Q When the trolley slowed up, as you say, about where was Anna, so far as you can remember? A About the front seat there, the front row.

Q Do you mean that is how far ahead of the trolley car Anna was? A Yes, sir.

Q And how far from the rail was she at that time? A At that time she was in the center— between about four or five feet, like from here to there (illustrating) between the rail and the side of the street where she was standing.

By the Court.

Q The curb? A (Illustrating) No; the curb was there, and then is the track and there the child was.

Mrs. Dora Goldfarb, direct.

By Mr. Weinberg.

Q What do you mean by "there"? Just point to something now. A The child was so far from the track, like from that bannister to here.

10 The Court: Someone said it was about five or six feet.

Q You say that is how far Anna was away from the rail at the time the trolley car was at the distance that you have indicated in this court room?

The Court: The length of the court-room would seem to be sixty-five feet, by tradition.

20 Q You indicated the front row. A That is where it was slow.

Q That is where the car started to slow up?
A Yes, sir.

Q The car was then about twenty-five feet from her. Now then, what did both of them do at that time? A The trolley started to run faster and the kid started on walking over.

30 Q Then what happened? A The car was real near and I saw the child right near the track only a little ways from the track, about that much (illustrating).

Q What happened then? A The car ran past her and the last I seen of her was the side of her face and being that way and being that the car rushed by so fast I was fearful that the car would knock her over and I saw that it did knock her over.

40 Q What part of the car knocked her over?
A I couldn't say, because I was on this side and she was on the other side.

Mrs. Dora Goldfarb, direct.

Q Then you said you ran around and the car was still moving? A It was.

The Court: Then she was on the north side of the track?

The Witness: Yes, sir.

Q And you were on the south side? A On the south side, on the side of my store.

10

By the Court.

Q Where were the doors on this trolley car? A On the side.

Q Were the doors open? A No, sir.

Q Both closed? A Both closed. On the other side I do not know whether they were open or closed.

20

Q Your answer then is as to the doors on the south side. A The side I was on; they were closed.

By Mr. Weinberg.

Q Was there any warning given of the approach of this trolley car? A Someone was hollering but I didn't pay no attention to who it was.

30

Q Did the person who hollered do that to the motorman? A Or someone in the street; someone in the street.

Q Did the car give any special notice of its approach? A No, sir.

Q What time of the day was it? A About six o'clock.

Q Was it very light? A Very light.

Q Now I understand Anna was taken to the hospital in Easton? A Immediately.

40

Mrs. Dora Goldfarb, direct.

Q You saw her there a number of times? A I went every day.

Q And after she came home was she put to bed or not? A She was in bed quite a few months; she could not sit up.

10 Q How long after the accident was it before she could sit up? A I couldn't say. It was a long time. It was the middle of the winter when I was able to get her up a little bit and carry her down and set her on the couch downstairs. I couldn't dress her before. She was always in bed.

Q I suppose you have looked at her legs at different times, have you not? A The doctor used to come every day and dress her at first and afterward I used to dress her myself.

20 Q Whereabouts has her right leg been cut off? A Right about the knee joint.

Q Where? A Right at the joint.

Q How is the stump? Is it straight or not? A It was all wrinkled up together, the skin, and all in the back of it.

Q Is it tender, do you know? A I know it irritates her every time she has got that leg on. I have to take it off.

30 Q You mean the artificial limb irritates it? A Yes, sir; it makes it all red; and it is all stitched together there, and sore most of the time.

Q How is the foot on the left leg? What is the condition of that? A It is crooked.

Q Has she the large toe there? A She hasn't got nothing, only this side part; she has only got this here (indicating).

Q Are there any toes there at all? A Not that I can see.

40 Q Is the ankle part of it— Is the instep part of the foot the same shape the foot was be-

Mrs. Dora Goldfarb, direct.

fore the accident? A No, sir; it has a big lump there. That part of it is cut off.

Q It is not then as the doctor described, three toes being grown together? A It don't look like a foot at all.

Q Can she stand on that foot? A Not alone, unless you hold her by the hand. She always goes sideways; she cannot stand straight on it. 10

Q When was this artificial limb put on? A It was brought to the house April 29th.

Q Of this year? A Yes, sir.

Q Who ordered that? A Mr. Goldfarb, my husband.

Q Did the doctor tell you to get one? A Yes, he told me to get one. It was sometime in April that the man brought back the cast and he said, "You might as well take the measurement now and by the time I bring the foot it will be better." 20

Q Someone measured her for it? A Yes, sir.

Q Who puts it on in the mornings? A I do.

Q Is she able to do it herself? A She cannot do it herself.

Q How is it fastened on? A With a strap on her neck and then it hooks on here.

Q Around her waist? A It is connected here by the knee joint with straps and a piece of leather here laces up around the leg. 30

Q Is that heavy? A Very heavy.

Q How does she get around with this artificial limb? A Not very well. She limps.

Q Does she walk readily with it? A No. You can see.

Q Can she play around with her artificial limb on? A She don't go anywhere to play.

Q Did she used to play before the accident?

A Naturally she did. 40

Mrs. Dora Goldfarb, cross.

Q Of course you take this off when she goes to bed at night. A Yes, and I put alcohol on her stump.

Q In warm weather does this strap that goes around her neck chafe at all? A It makes her neck red in back.

10 Q Does she complain about that? A Many times.

Q This is the first artificial limb that you have had made? A Yes, sir.

Q How about this injured foot? In cold weather has she made any complaint about that? A She has always complained, if it is very cold it is like ice, and she has a woolen stocking on and you take it off and the leg is like ice cold.

20 Q What do you mean by "a stocking"? A It is a piece of wool cloth that the artificial limb company provided for her, too. When I take that off—it is made out of wool and it still keeps her foot cold. Her foot is always just like ice.

Cross examination by Mr. Seip.

30 Q Mrs. Goldfarb, this that I am pointing to, that yellow reddish strip there with the words "Phillipsburg Transit Company" between the two parallel black lines, represents the track of the company on Central avenue in front of your house? A Yes, sir.

Q And where the words "Central Street" are is the street part, the curbstone being represented by the black line I now point to? A Yes, sir.

Q Do you understand the map? A Yes, sir.

40 Q Here is Fifth avenue. Over here is Fourth avenue and your properties are nearer Fifth avenue than they are Fourth avenue? A Yes, sir.

Mrs. Dora Goldfarb, cross.

Q And here they have placed three rectangles on this map and they are to represent your properties. Do you recognize them as such? A Do you mean the whole thing?

Q Yes. The one in red, as I understand it, is the latest one? A That is toward the west.

Q And that was not there when this accident happened? A No. 10

Q The other two are marked in yellow? A Yes, sir.

Q Those were there where this happened? A Yes, sir.

Q Then beside the new one there is a driveway? A Yes, sir.

Q That is your driveway? A Yes, sir.

Q The two in yellow were there then? A Yes, sir.

Q And there is a front door, too? A Yes, sir. 20

Q Now the space marked with the word "Walk" is the pavement in front of your house?

A Yes, sir.

Q And then across the street is the pavement? A Yes, sir.

Q And then there is a stone wall along the side? A Yes, sir.

Q This black mark here is to represent the stone wall? A It is a foundation; that is all. There are no houses there. 30

Q You say you were outside at the time this occurred? A Yes, sir.

Q Standing near the curb, I believe you said? A Yes, sir.

Q In front of which store were you? A The one toward Fifth street.

Q That building is marked "Dry Goods" and the other is "Grocery Store." You were in 40

Mrs. Dora Goldfarb, cross.

front of the door above where it is marked "Dry Goods?" A Yes, sir.

Q And near the curb? A Yes, sir.

Q Was Anna directly across the street from you? A Yes, sir.

10 Q Was she over by the curb when you first saw her? A No, sir. I saw her in the middle of the street.

Q What do you mean by that? The real middle of the street is occupied by the tracks. A I mean she was between the curb and the tracks.

Q She was in the middle between the north curb and the car tracks? A Yes, sir.

20 Q Then when you say "in the middle" you do not mean to be bound by just exactly the middle, but in that neighborhood? A In that neighborhood. She was between the curb and the tracks. I did not measure the distance, whether she was nearer to the sidewalk or the tracks.

Q Your best judgment is she was somewhere in the middle between the track and the north curb line? A Yes, sir.

Q Were there any other children with her? A I did not notice any.

30 Q Had you just come out or had you been outside a while when you saw them there? A I had been out a few minutes, not long.

Q What had you been doing? A Just out on the sidewalk.

Q Nothing particular? A No.

Q This was on a Sunday evening, was it? A On Monday.

Q (Indicating.) Now, Anna was there. Where was the trolley car when you first saw it? A More than a block away.

40 Q That would be west, toward Fourth street? A She was right here.

Mrs. Dora Goldfarb, cross.

Q By "she" you mean the trolley car? A Yes, sir.

Q That would be in the neighborhood of Fourth street? A Yes, sir.

Q When you say the curb there you mean the east curb line of Fourth street? A Yes, sir.

Q Well, that was not a full block away then, was it? You were down here and it was whatever distance it was between you and where you say the car was? A It was at that corner there when I saw it. 10

Q You saw the car at this Fourth street corner? A Yes, sir.

Q Was the car coming rapidly when you first saw it? A The way it always comes.

Q Was that fast or how? A It was coming the way the cars usually run there. I did not take notice of it, whether it was fast or slow. 20

Q Not at the time you saw it at Fourth street? A No, sir.

Q Then you saw the child coming toward you, did you? A I did not see her coming there at that time.

Q Where was the trolley car when you saw Anna start to come toward you? How far had the trolley car come toward you when you saw Anna start to come toward you? A (Indicating.) About right there. 30

Q About up on the track? A Yes, sir.

Q (Indicating.) About right there? A Yes, sir.

Mr. Seip: Indicating a point where the figures 4.7 are within the line of the track. If the Court will permit me I will put a lead pencil check mark there. 40

Mrs. Dora Goldfarb, cross.

Q When you saw the car at this last point you speak of was it going slower than at Fourth street? A Coming half-way of the block it started to go slow.

10 Q Did you see whether the motorman was doing anything to the car? A I didn't see nothing. He wasn't doing anything.

Q Did you look at him? A Yes, and he was slowing down.

Q You did not see a movement of his arm? A I know he looked and seen me. I saw the motorman, but I didn't see him do anything, but he was looking toward me.

20 Q But at the same time the car was slowing down? A It started about half-way of the block to slow down. There is an electric pole there where the cars usually stop.

Q You do not mean the pole that I marked here, do you? A I don't know about that.

Q You see that black spot there with the word "pole" under it? A Yes, sir.

Q There was then a pole in front of the property on which you have since put a building, wasn't there? A A telegraph pole.

Q A pole from which the wire for the trolley pole runs? A Yes, sir.

30 Q You call it an electric pole? A That is what we always have been calling it.

Q (Indicating.) Do you mean this pole? A Right in front of the newly built place is an electric pole.

40 Q Now, I point to a black spot on this map with the word "pole" under it and tell you that right beside it is an electric pole in front of your place. Now, you say the car slowed down as it came into about the middle of the block? A Yes, sir.

Mrs. Dora Goldfarb, cross.

Q And it kept on slowing down until it got in front of that electric pole? A Yes, sir.

Q When it got in front of that electric pole, had it altogether stopped there? A Not altogether. It was very slow, and I thought—

Q Not what you thought; but the motorman was going slow there? A He was going very slow as far as that. 10

Q Now, we have the car down to the point I now point to opposite that pole? A Yes, sir.

Q And that is where the word "Co." appears on that map? A Yes.

Q When the trolley car was there and going slow, as you said, where was Anna? A In the center of the street.

Q Anna was still in the middle between the car track and the north curb? A Yes, sir. 20

Q And right over from you, was she? A Right across.

Q Right across from where you stood? A Yes, sir.

Q And you stood in front of the door nearest to Fifth avenue? A Yes, sir.

Q Anna then had not started to come across the street when the car was in front of the pole?

A She started in walking and the car started. The car had gone slow and then about the time that the car started to go faster Anna started to walk. She started to walk before the car started to go faster. 30

Q Which went the faster, the car or Anna? A The child was just walking slow.

Q Did the car go faster than Anna when it started to move? A Certainly it did. Anna was standing when the car started to go faster.

Q Now, as the car was passing Anna you say it was going pretty fast? A Very fast. 40

Mrs. Dora Goldfarb, cross.

Q How much? A It was going fast and made a terrible noise and it scared me so I was afraid.

Q Your husband drives an automobile, doesn't he? A Yes, sir.

Q Do you drive with him in the front seat?
10 A Yes, sir.

Q Have you got a speedometer on it? A Yes, sir.

Q Do you observe his speed once in awhile?
A Sometimes I do.

Q Would you say you would be able to judge whether or not this trolley car as it passed Anna was going five or ten or fifteen miles an hour? A I think it went more than fifteen miles an hour.

20 Q But it only went very slowly when it came to that pole? A That is all.

Q When the trolley car came to a stop, where did it stop? A Nearly to the end of the tracks.

Q I now point to a point on this map at the end of the two trolley lines between the curb line. Do you recognize that as the end of the tracks? A Yes, sir; that is the end.

30 Q Now, you take the pointer and show me where the front of the trolley car— A All I noticed is the child lying in back of the car, because I screamed and ran to see what was the trouble and I didn't look to see where the car was at that time, when I saw the kid lying there.

Q Just exactly how near the trolley car was to the end of the track you could not now say?

A I could not tell you. I did not look at it at all, because when I ran the car was still moving.

40 Q You ran out to where Anna laid? A Yes, sir.

Mrs. Dora Goldfarb, cross.

Q You saw her lying there in the street? A Right on the street, with her feet smashed right on the tracks.

Q Did you notice how far back of the trolley car she laid? A Yes, sir.

Q How far back of the trolley car was she? A (Indicating.) From there to here. Here was the trolley car and here she was laying. 10

The Court: Three or four feet?

Mr. Seip: About three or four feet, yes, sir.

Q You saw her lay there and you turned around and ran in to tell your husband? A Yes; I couldn't see the sight.

Q You ran in to call your husband. Did you find him in the store? A He was in the kitchen. 20

Q That is back of the storeroom? A Yes, sir.

Q Of course, he came out? A Yes, sir.

Q Then you proceeded with the help that was rendered there to take Anna to the hospital? A Somebody handed her to my husband; I don't know who.

Q She was taken to the hospital? A Immediately. 30

Q When you saw Anna over there in the middle of the street and when you saw this trolley car approaching did it occur to you that you ought to go over there and pick up your child?

Mr. Weinberg: Objected to as immaterial.

The Court: It is immaterial. Objection sustained. 40

Samuel Goldfarb, direct.

Mr. Seip: I may have gotten on the wrong track, because in our State that is material.

10 Q Now, you are sure that this trolley car as it approached Anna did not run faster than fifteen miles an hour? A I think it ran faster.

Q Could you tell us now as you stood there how far Anna was from the track, that is, the north rail of the track, as the car got even with her, as the front of the car got even with her? A (Illustrating.) About that near.

Q Indicating about a foot? A Yes, sir.

20 Q So, that Anna walked from the middle of the street over to within a foot of the track in the time that the trolley car came from the place where it slowed down to its slowest, up here where this mark 4.7 is? A She had not been within a foot of the track at that time.

Q Anna came from the middle of the street, between the trolley track and the north curb over to the track while the car was going from the front of this electric pole down to here (indicating)? A Yes, sir.

30 SAMUEL GOLDFARB, one of the plaintiffs,
sworn.

Direct examination by Mr. Weinberg.

Q Mr. Goldfarb, how old are you? A Thirty nine years old.

Q You are the husband of the witness who was just on the stand? A Yes, sir.

40 Q You were married when? A About seven-
teen years ago.

Samuel Goldfarb, direct.

Q How long have you lived at Alpha, New Jersey? A For the last six years.

Q You have been conducting a general store there on Central avenue? A Yes, sir.

Q You have six children, I understand? A Yes, sir.

Q Anna, the plaintiff in this case, being the youngest? A Yes, sir. 10

Q You were not at home the day she was injured? A I was at home, in the store.

Q You were not outside? A No, sir.

Q What was the first you knew of an accident? A I heard a scream. I came out from the door of my kitchen and met my wife there.

Q Did you go outside? A Yes, sir. I was going to run outside and she came in screaming.

Q Did you go outside? A After she told me what happened. 20

Q When you went outside what did you see? A The child was handed to me.

Q By whom? A I cannot recollect by whom it was.

Q Did you see the trolley car there? A The trolley car was still there.

Q What kind of weather was it at the time? A It was very nice.

Q Light? A Yes, sir. 30

Q What did you do with Anna after you received her injured body? A A machine turned around and took her up there to the Easton Hospital.

Q How long was Anna at the Easton Hospital? A I cannot remember. Probably about two months.

Q Did Dr. Correll, the physician who testified here yesterday, take care of her in that hospital?

A Yes, sir. 40

Samuel Goldfarb, direct.

Q And did the other physician, Cohen, also look after her? A Yes, sir.

Q Did any other physician look after her for this injury? A Well, many physicians in the hospital.

10 Q Do you know who operated on her? A Dr. Correll.

Q Were you there at the time? A I was outside of the operation room.

Q What was Anna's physical condition before this accident? A Very good.

Q Was there anything the matter with her at all? A Absolutely nothing.

Q By that you mean perfect? A Yes, sir.

Q Was she a normal child? A She was normal like any other child.

20 Q Do you know about when it was that Anna came back from the hospital? A I can't remember exactly the date.

Q How long was it before Anna got out of the house? A What do you mean?

Q Before she was able to go outside, out of doors? A It was some time in the middle— It was about seven or eight months surely before we took her out.

30 Q You purchased an artificial limb for her? A Yes, sir.

Q When was that? A That was in April they measured it for her.

Q Was she able to get around before that time? A She was crawling around.

Q How long after she was fitted with this artificial limb was it before she was able to walk around alone? A It took quite some time.

Q You saw her walking in court yesterday? A Yes, sir.

40 Q Did she walk any better or differently from that? A No, sir.

Samuel Goldfarb, direct.

Q She does not do any better than she did in court here? A No, sir.

Q Does she ever use anything or does anybody ever help her in getting around with this artificial leg? A We do.

Q What do you have to do for her? A We sometimes have to take her across to school, and in school they help her down the steps. 10

Q Can she get up and down the steps herself? A She can, but she falls many times.

Q Does she get in an automobile herself? A No. We have to take her in there.

Q Where did you get this artificial limb? A In Philadelphia.

Q Do you know from whom? A Penn Artificial Company, it is called.

Q How much did you have to pay for it? A Two hundred dollars. 20

Q That is the first one you purchased? A Yes, sir.

Q And she has had this on since last April? A No; in April they fitted her for it, and brought it around—about two or three months later, because the foot was not healed up yet.

Q Does the limb fit as well as it did when it was first put on? A Well, I can't tell about that. 30

Q Did you pay any physicians anything for their services? A I did.

Q Who did you pay and what did you pay? A I paid Dr. Correll a hundred dollars; Dr. Cohen, sixty-five dollars.

(Witness refers to papers.)

Mr. Seip: May I ask whether you are testifying from receipts?

The Witness: From the receipts. 40

Samuel Goldfarb, direct.

Q Do you know what you paid the hospital?

A Two hundred and twenty dollars.

Q Did you pay the nurses anything? A I paid three hundred and eighty dollars for nurses.

Q Were they nurses in the hospital? A The nurses were private nurses. They were in the hospital.

10

Q Did you have any other expenses in connection with this injury? A Two hundred dollars for the artificial leg. This is all that I can find a receipt for, but I paid some that I cannot recollect.

The Court: What is the total?

Mr. Weinberg: \$965.00.

Q Does Anna require any attention today?

20

A She does.

Q What? A Dressing her, and many times to wet her stump with alcohol because it irritates her and the doctor tells us to do it.

Mr. Weinberg: Cross examine.

Mr. Seip: No cross examination.

Mr. Weinberg: If your Honor please, in view of the testimony of the mother as to the little girl's injuries, I am wondering whether in your Honor's discretion it would not be proper, this being a very young child, to show the injury, in order to have it before the jury.

30

The Court: I see no objection to that. You may take the child to the library here and let the jury see it.

G. W. Kidney, direct.

G. W. KIDNEY, sworn for the defendant.

Direct examination by Mr. Seip.

Q Where do you live? A Allentown.

Q What is your business? A Civil engineer.

Q By whom are you employed? A The Lehigh Valley Transit Company. 10

Q Does the Phillipsburg Transit Company operate under the Lehigh Valley Transit Company? A Yes, sir.

Q How long have you been employed as a civil engineer by this company? A By the Transit Company about two years.

Q Did you at my request make that map there? A Yes, sir.

Q That map which we will now mark Exhibit 20
A? A Yes, sir.

Q Will you tell the Court and jury what you did in the making of Defendant's Exhibit 1?
A Field and office work.

Q What did you do on the field? A Made measurements of various objects and locations, and then went to the office and plotted the map.

Q And this is the result, Exhibit 1? A Yes, sir. 30

Q I now point to you two parallel lines with an orange color between the two. What does that represent? A The trolley track.

Q And you have indicated it by "Phillipsburg Transit Company," have you? A Yes, sir.

Q Have you plotted the curb on the map? A Yes, sir.

Q And what I now point to—is that the curb on the south side? A Yes, sir.

Q Have you plotted the north curb also? A Yes, sir. 40

G. W. Kidney, direct.

Q What I now point to, is that the curb on the north side? A Yes.

Q Have you indicated the sidewalk on either side of this block? A Yes, sir.

Q Have you indicated that on the map by the word "sidewalk"? A Yes, sir.

10 Q And so on either side of the street? A Yes, sir.

Q Did you indicate Fifth street? A Yes, sir.

Q What I now point to is Fifth street? A Yes, sir.

Q Did you indicate Fourth street? A Yes, sir.

Q And what I now point to is Fourth street? A Yes, sir.

20 Q Coming to the block between Fourth and Fifth streets, on the south side, you have plotted here three properties, one with red and the word "grocery" on the inside, one with yellow and the word "property" and one with yellow and the word "dry-goods"? A Yes, sir.

Q Whose properties do those represent? A The Goldfarb properties.

Q Between the Goldfarb property, as it stands there today, and Fifth street, is there any property? A A vacant lot.

30 Q No improvement on it? A No, sir.

Q Can you tell us what this black line represents on the north side of Central street and north of the curb line and the sidewalk? A There is a line of masonry there, presumably put there for building purposes.

Q But no houses erected on the masonry work? A No, sir.

By the Court.

40 Q Part of the foundation of a house not built? A Yes, sir.

G. W. Kidney, direct.

By Mr. Seip.

Q In plotting this map did you also put what we ordinarily call the trolley poles on the map?

A Yes, sir.

Q And I now point to one at the southwest intersection of Fifth and Central streets? Is a pole there? A Yes, sir. 10

Q You have put a black dot there and the word "pole"? A Yes, sir.

Q Further west, on the same side of the street, in front of the Goldfarb property, is a pole location? A Yes, sir.

Q And you have indicated that by a black mark? A Yes, sir.

Q And the word "pole"? A Yes, sir.

Q And so wherever on the sidewalks there appears the word "pole" and a black dot there is a trolley pole location? A Yes, sir. 20

Q Does the overhead wire suspend from these poles? A Yes, sir.

Q That is to say, there is a cross wire from the pole on the south side of the street to the corresponding pole on the north side of the street, and from that cross wire the trolley wire is suspended? A Yes, sir.

Q I now point you to certain little circles that you have placed on the north rail of the trolley track at certain intervals. What are they? A Stations. 30

Q And you start with station ought? A Zero.

Q Immediately west of the intersection of Fourth street with Central street? A Yes, sir. That is the west property line.

Q And how much space in feet is represented on the ground between each of these stations on this map? A Fifty feet. 40

G. W. Kidney, direct.

Q So that the distance between station zero and the station marked "plus fifty" is fifty feet?

A Yes, sir.

Q And the distance between station 50 and station 1 is also fifty feet? A Yes, sir.

10 Q And so on until we come to the station 2 plus 50? A Yes, sir.

Q What is the distance from station 2 plus 50 to the end of the track? A Forty-one feet.

Q What is the width of the street between curb lines? A Thirty-six feet.

Q What is the width of the car track? A Four feet, eight and one-half inches from gauge line to gauge line.

20 Q What do you mean by "from gauge line to gauge line"? A Gauge line is the portion of the rail that comes in contact with the flange of the wheel.

Q Four feet and eight inches is from the inside of the top of the rail to the inside of the top of the other rail? A Yes, sir.

Q What is the distance between the north rail and the north curb line on Central street? A Fifteen and eight-tenths feet.

30 Q And is the distance between the south rail and the south curb line the same? A Fifteen and five-tenths feet.

Q What is the width of the sidewalk in front of the Goldfarb property? A It extends all the way back to the building, thirteen and one-half feet from the curb line to the building line.

Q When did you make this map? A October 12th or 13th; I don't know.

Q The 12th or 13th of October of this year? A Yes, sir.

40 Q Were you familiar with the location of things over there in that territory prior to a year ago? A Yes, sir.

G. W. Kidney, cross.

Q Your duties called you there from time to time? A Yes, sir.

Q Save and except the Goldfarb property, which you have encircled in red, was the situation at the time you took the measurements in October the same as it was in July, 1925? A Yes, sir.

10

Mr. Seip: Cross examine.

Cross examination by Mr. Weinberg.

Q I believe you forgot to tell us what the scale of that map is? A One inch equals twenty feet.

Q Twenty feet for every inch shown on the map? A Yes, sir.

20

Q What do you mean by putting stations on that map? What do you mean by "station"? There is nothing on the street to indicate a station? A Stations are given distances from a given point.

Q There are no such things on the ground there? There are no such things as stations marked on Central avenue? A They are unless they have been erased.

Q How marked on the street? A Marked with a steel chain.

30

By the Court.

Q You are not understanding each other apparently. Counsel has asked you whether there are any physical marks on the street. A There were keel marks on there, unless they have been erased.

Q You put them there? A Yes, sir.

Q In making the survey? A Yes, sir.

40

G. W. Kidney, cross.

Q For your own purposes? A Yes, sir.

Q There were none there until you marked them? A No, sir.

By Mr. Weinberg.

10 Q There was nothing there like a pole or shanty or anything like that to indicate a station such as you indicate on the map? A There is the west building line of Fourth street there.

Q What do you call in common language a station? What is a station? A A station is nothing more than a mark to show distance. It is some mark to start from.

20 Q It is nothing we can see unless we look down on the track and see where you put a little crowfoot on something? A I presume you can see the intersection of the building line and the track.

Q There is nothing on Central avenue to indicate those stations, is there, no markings there, no station known as 1 plus 50, or anything of that sort? (No answer.)

30 Q What is the grade of that street, if you noticed it, at that particular neighborhood? A The grade on that street varies from two per cent. to two and one-half.

By the Court.

Q In which direction? A Towards the end of the track.

By Mr. Weinberg.

40 Q Towards the east. And for what distance is that grade maintained? A That's the distance between Fourth and Fifth; about half of it is two and about half two and one-half.

Emory Werkheiser, direct.

Q And where is the greater grade, towards the end of the track or towards Fourth street?

A Towards the end of the track.

Q It gets deeper as it gets down towards the end of the track? A Five-tenths per cent.

Q How far is the electric light pole in front of the Goldfarb grocery store from the word "walk" on the north side of the street? That is approximately two-thirds of an inch, isn't it? A To the beginning of the word "walk" is about thirteen feet. 10

EMORY WERKHEISER, sworn for the defendant.

Direct examination by Mr. Seip. 20

Q Where do you reside? A Easton; Wilson Borough.

Q Wilson Borough is immediately adjoining, to the west of Easton? A Yes, sir.

Q What is your employment? A Motorman.

Q For what company? A Lehigh Valley Transit Company.

Q How long have you been employed by the Lehigh Valley Transit Company? A It has been taken over. By the Easton Transit Company since 1918, June 10, 1918. 30

Q That is, you went into the employ of the Easton Transit Company in June, 1918? A Yes, sir.

Q And subsequently the Easton Transit Company, by corporate action, went under the control of the Lehigh Valley Transit Company? A Yes, sir. 40

Emory Werkheiser, direct.

Q Did the Lehigh Valley Transit Company, and does it now, operate the Phillipsburg Transit Company in Phillipsburg? A Yes, sir.

Q Were you the motorman on this car when the accident happened? A Yes, sir.

10 Q How long had you been a motorman on this particular line prior to this accident?

Mr. Weinberg: I don't think that is material.

The Court: I will allow him to answer it.

By the Court.

Q Approximately how long? Was it a year? A Not on that run.

20 Q That is what we are talking about, this particular run. A I started on that run on May 30, 1925; from May to July, 1925, on run 55.

By Mr. Seip.

Q Had you been on that run at any time prior to that? A Not on run 55; on a different run, different schedule.

30 Q You are talking about runs and I am talking about this line. Had you been on any other run on this line? A Yes, sir.

Q How long had you been, whatever the run may have been, operating as a motorman on this line prior to this accident? A For a number of years.

Q Who was your conductor on this day? A Spragle.

40 Q On this particular occasion, will you describe to the Court and the jury just what you saw and what you did? A Leaving Center Square, Easton, at 6:10 P. M., July 13th, 1925, and proceeding towards Alpha—

Emory Werkheiser, direct.

Q Never mind what occurred between the point of leaving and the time you got on Central avenue. Describe what occurred when you got on Central avenue, Alpha. A Going on Central avenue, coming towards the end of the line, I started to slow down to slow down to come to a stop. I saw a lot of children fooling around, but none anywhere near enough to interfere with the operation— 10

Mr. Weinberg: That is objected to; that is a mere conclusion.

The Court: He may say where they were.

Mr. Seip: May I say to the witness this: You must not state any conclusions.

A They were about halfway between the car tracks and the curb. 20

Q A group of children? A Yes, sir. I don't know how many, because I didn't pay any attention to them.

By the Court.

Q You didn't count them? A No, sir.

By Mr. Seip.

Q On which side? A On the north side of the track. 30

Q And between the track and the curb? A Yes, sir, about halfways, as near as I could judge.

The Court: How wide is that street?

Mr. Seip: Thirty-six feet.

Q Where was your trolley car when you first observed those children, with respect to 4th street? A Probably twenty or thirty feet. 40

Emory Werkheiser, direct.

Q East or west of 4th street? A They were east.

Q Where was your trolley car, if you remember, when you first saw the children? A About twenty or thirty feet away from the children.

10 Q Then you had crossed 4th street? A Yes, sir.

Q Do you know where Goldfarb's store is? A Yes, sir.

Q Will you take this pointer and show me where these children were with respect to Goldfarb's store? This is the sidewalk (indicating on Defendant's Exhibit A); that is the car track; this is the north side and that is the south side.

A They were on this side of the car track, about
20 right across from the store door, as near as I could say; this door, I guess.

Q The middle door? A Yes, sir.

Q That is the door in front of the store called grocery? A I don't know what is on the door.

Q It is on the map here? A Yes, sir.

Q They were about where you put your pointer now? A Yes, sir.

Q Where I have placed a check mark? A
30 Yes, sir.

Q Where had your car come by that time? You say about twenty feet from the children?

A It was coming down Central avenue between 4th and 5th street, about twenty feet from that place where the children were playing on the sidewalk.

Q What is your conception of twenty feet from where you sit to some object in the room here? A About from here to the end of the
40 platform.

Emory Werkheiser, direct.

Q From here to the rubber mat there? A Yes, sir.

Q And the front of your car was about that far away from the children when you observed them? A Yes, sir.

By the Court.

10

Q Was that the first time you saw them? A The first I took notice of them, because there is always lots of them around the street.

By Mr. Seip.

Q What were they doing there? Did you notice that? A I did not. I suppose playing and running around there.

Q Did you notice what they were doing? A No, sir.

20

Q Were they standing up or sitting down? A Standing up, as far as I know.

Q What did you do to your car as you approached not only these children but the end of this track? A Taking up my brake, coming to a stop, before I come anywheres close to the children.

Q Had you put on your brake before you saw the children? A Yes, sir.

30

Q How fast were you going, would you say, as you were coming towards the children? We will say within a distance of fifty feet of them.

Mr. Weinberg: That is objected to. He has said that he didn't notice these children until he was about twenty or thirty feet from them.

The Court: You have improperly included a distance there.

Mr. Seip: I will withdraw the question. 40

Emory Werkheiser, direct.

Q Did you start to brake before or after you had passed 4th street? A Right after you cross 4th street you take up your brake.

Q What did you do? A Took up the brake to bring the car to a stop.

10 Q Did you do that on this occasion? A Yes, sir.

Q Did you or did you not bring your car to a slower speed as you came on down Central avenue? A Coming slower all the time.

Q When you got to within fifty feet of Goldfarb's store, or thereabouts, how fast was your car going, would you say? A It wasn't hardly going at all; it was just about moving.

Q Was it going as fast as a man would walk? A No, sir.

20 Q When you first saw those children how fast was your car going? A It might have been going at the rate of a mile or so when I first saw them, because I was pretty close to the end.

Q When you came within that distance of the children, and going at the speed that you say you were going, did you or did you not resume speed again? A No, sir; no power used whatever.

30 Mr. Weinberg: I object to the answer. That is not the question.

By the Court: His answer is "No."

Q Did you put on any power on that car between 4th avenue and the place where you stopped? A No, sir.

Q Did you at any time release your brake after you started to put it on before the car came to an actual stop? A No, sir.

40 Q When the car did come to an actual stop did it move again? A No, sir.

Emory Werkheiser, direct.

By the Court.

Q Where did it stop? A Within about six or eight or ten feet of the end of the line. I didn't take no measurements.

By Mr. Seip.

Q Will you show me by the pointer where the front of your car was with respect to the end of the rails? When the Court asked you how close to the end you were you made an answer. Where was your car? A The rear-end of the car was right from Goldfarb's door. 10

Q Which door? A The back end of the car.

Q The back end of the car, you say, was opposite Goldfarb's door? A Yes, sir.

Q He had two doors? A Yes, sir.

Q Which door was it, the one nearest 5th street or the other one? A Which door do you mean? 20

Q Which door of Goldfarb's store? A The grocery door, the middle door.

Q And the rear-end of your trolley car was about opposite that? A Opposite that door, yes, sir.

By the Court.

Q How long was your car? Do you know? A I never took the measurements. I should judge about thirty feet, or in the neighborhood of that. 30

By Mr. Seip.

Q Did you know or not whether anything had happened, before your car came to a stop on that day? A No, sir.

Q Did you see this or any other child run towards your car as you passed those children? A No, sir. 40

Emory Werkheiser, direct.

Q Did you keep your eye on those children as you passed them?

Mr. Weinberg: That is objected to leading.

10 *By the Court.*

Q What did you do as you passed the children? A I wasn't doing anything. I just seen I had enough clearance to pass them all, that they were half-way between the car and the curb, and I didn't pay any attention to them.

By Mr. Seip.

20 Q Did they or didn't they stay there as you passed, as far as you could see? A They stayed, as far as I could see.

Q When the front of your car was passing the children did you observe whether any of the children had started to walk or run towards your car? A I didn't take notice of any.

By the Court.

30 Q Did you look? A When the front end passed, so that you have enough clear that you don't hit anybody.

By Mr. Seip.

Q You looked when the front of the car passed? A Yes, sir.

Q And you saw no one of them coming?

Mr. Weinberg: That is objected to as leading.

40 Mr. Seip: I will withdraw the question.

Emory Werkheiser, direct.

Q State whether or not as the front of your car passed you saw any of these children, and this child in particular, move towards your trolley car? A No, sir.

By the Court.

Q Did you look to see? A Not particular. 10

By Mr. Seip.

Q Did you look to see whether any of them were coming towards your car, as you were approaching the children? A Yes, sir.

Q Were any of them coming towards your car as you were approaching the children? A No, sir.

Q Did you see Mrs. Goldfarb on the sidewalk? A No, sir. 20

Q State whether or not you saw any automobile parked in an easterly direction on the south side of Central avenue, down towards the end of the track. A I did not; not that I took notice of.

Q You didn't see or there wasn't any there? A No, sir.

Q When was it that you first learned that there had been an accident here? A After the car was stopped. 30

Q What did you do? A A fellow motioned or hollered, whatever it was.

Q Where was this fellow? A He was in front of the car, probably fifteen or twenty feet, nearer 5th avenue.

Q Was that the first time that you heard that man or any other person holler? A Yes, sir.

Q Did you see that man in court here this week? A Yes, sir. 40

Emory Werkheiser, direct.

Q Is that the man, Tuckoch? (Indicates.) A
It looks like him.

Q Did you see him there then afterwards?
A Yes, sir.

Q Were you on the trolley car or off the
trolley car when you heard him holler at you? A
10 On the trolley car.

Q What did you do? A Got off; opened
the door on the right-hand side, got off, and went
along the car to see what was wrong, what he
meant.

Q Before we get off the car let me ask you
this: How many doors for getting on and off
the car has this trolley car? A Four; two at
each end.

Q How do they open? A By hand lever.

20 Q That is, on this day they operated by hand
lever? A Yes, sir.

Q Do the doors break as they open? A Yes,
sir.

Q How many breaks in them? A There is a
double door, and each door makes one break.

Q That is, one-half of the door moves for-
ward, towards the front, and the other half
moved backwards? A Yes, sir.

30 Q And the half that moves forward breaks
and folds together? A Yes, sir.

Q And the half that moves backwards breaks
and folds together? A Yes, sir.

By the Court.

Q Do they open inwardly? A No; they
open outwardly, but they flop together then.

40 Q When the car stops and the doors are
open outwardly, but they flop together then.
something like that.

Emory Werkheiser, direct.

By Mr. Seip.

Q As your car came down the line there were your doors open or closed? A Closed.

Q How long did you keep them closed? A Until the fellow pointed to me and hollered.

Q Had the car stopped before the doors at your end of the car were opened? A Yes, sir. 10

Q Which door did you open, the right or left? The right, traveling east.

Q Did you open the left, traveling east? A No, sir.

Q Was the left-hand door open at all coming down along the line there? A No, sir.

Q It was not? A No, sir.

Q Now let us get off the car and walk back. When you got back there what did you find? A A blood spot. 20

Q Had the child been picked up? A Yes, sir.

Q Where was that blood spot with reference to the rear of the car? A I should judge about three feet, somewheres in that neighborhood. I didn't take the exact measurements.

Q About three feet to the rear of the rear end of the car? A Yes, sir. 30

By the Court.

Q On the right-hand side? A On the north rail.

By Mr. Seip.

Q That would be the left-hand side in the direction in which you were going? A Yes, sir.

Q Let me ask you another thing: You see these pole locations on either side of the street in 40

Emory Werkheiser, cross.

front of the Goldfarb store, marked with the word "pole"? A Yes, sir.

Q Are there any poles there? Do you remember poles there on that street, from which the trolley wire is suspended? A There must be.

10 Q Not what must be. A I don't remember.

Q If, while you were coming, just coming, to the Goldfarb store, you were going very slowly state whether or not you could have picked up a speed of fifteen miles an hour and come to the stop that you did? A No, sir.

Q Why not? A Because the car wouldn't gain that much speed in that short a distance.

20 Q At the end of this track here is there, or isn't there, any physical thing to stop the car from running off the track? A No, sir; nothing but the plain rails.

Q And they just end there? A Yes, sir, they just end there.

Q There is no block or anything there to stop them? A No, sir.

Cross examination by Mr. Weinberg.

30 Q Did you carry a speedometer on your trolley car? A No, sir.

Q Have you any idea how much time you cover in a given time going at a mile an hour? A Well, not exactly.

Q Did you ever attempt to check up the speed at which your trolley car traveled at any time? A Check up speed?

40 Q Yes. Did you ever try to check up to find out how much your trolley car traveled in miles per hour at any time, any place, since you have been in the service? A No, sir.

Emory Werkheiser, cross.

Q Then what have you got to form an opinion as to how fast your car was traveling on the day in question? What knowledge have you? A Well, say a man can walk five miles an hour, and I wasn't going as fast as a man generally walks.

Q So that if a man generally walks at the rate of five miles an hour you were going about one-fifth as fast? A Yes, sir. 10

Q Do you mean that? A Yes, sir; just moving slowly, just about moving.

Q How fast were you going as you rounded the turn, getting into Central avenue? A Not very fast.

Mr. Seip: That is objected to, because we don't know anything about a turn into Central avenue.

Mr. Weinberg: I will withdraw the question. 20

Q When did you turn into Central avenue? A After leaving the other street; I don't know what they call it.

Q How far away is that from the end of the line? A I should judge about three blocks or so.

Q There is a turn there? A Yes, sir; coming down along the railroad tracks you turn into Central avenue. 30

Q That is west on that map? A Yes, sir.

Q As you made the turn into Central avenue, about three blocks away from the end of the line, how fast would you say you were going, if you noticed your speed? A Probably five or six miles an hour.

Q And after you made the turn, coming down Central avenue, how fast were you going? A Not any faster. 40

Emory Werkheiser, cross.

Q Before you made the turn and at any time on your trip did you exceed five miles an hour?

A Yes, sir.

Q How fast? What is the fastest you go? A Ten or twelve or fifteen.

Q That is all the faster you go? A Yes, sir. Cars aren't geared up any higher.

10 Q How do you know that? A You can't get any more out of them.

Q How do you know that? A According to what fellows running machines tell me, you can't go any faster.

Q When you made this turn three blocks away you had a straight-of-way? A Straight way up grade.

Q Down grade as you go towards 5th avenue? A Yes, sir. From about the middle of the turn towards the end of the line is up grade, and then it starts to go down grade.

20 Q How far is the middle there, as you call it, from the point where the accident happened? A I should say about 2nd or 3rd avenue, whatever they call them there, a couple of short blocks.

Q A clear street? A Yes, sir.

Q Clear view? A Yes, sir.

30 Q Nothing in your way on that evening? A Nothing that I saw.

Q Nothing to prevent you from seeing children on the street? A No, sir.

Q Will you tell the jury why you didn't see these children until you were within twenty or thirty feet of them? A I wasn't looking for anything that far ahead.

Q When were you looking in the direction of the children? A I was looking straight ahead.

40 Q You were not looking towards where the children were, on that side of the street, were you? A Not until I got closer to them.

Emory Werkheiser, cross.

Q How many children were there that you saw? A I couldn't tell you; more than one.

Q Two? A More than two.

Q How many? A I couldn't tell you. There might have been half a dozen. I didn't count them.

Q There might have been two dozen, but how many did you see do you think? A I don't know; more than one. 10

Q What were their sizes, as far as you could see? A I didn't take particular notice.

Q Do you know whether they were children well grown up? A No. They were, I should judge, below twelve years old, somewheres in that neighborhood.

Q Did you notice the smallest or youngest one in the crowd? A No, sir.

Q You have made that run a great many times, haven't you? A Yes, sir. 20

Q You know the Goldfarbs have a few children? A Yes, sir.

Q You know there are other children in the neighborhood there? A Yes, sir.

Q You know it is a place you are likely to meet children? A Yes, all through that territory.

Q Fairly well built up? A Yes, sir. 30

Q As you came down that street did you see this fellow, who you said, motioned to you? A No, sir.

Q You saw him waving to you, pointing to something, didn't you? A After the car had stopped.

Q You saw him pointing to something, didn't you? A After the car had stopped.

Q You did see him do that. Where was your car at the time that you saw Frank motioning to you? A The car was stopped. 40

Emory Werkheiser, cross.

Q Where was it? A At the end of the line.

Q How close to the end of the line did you go? A About eight or ten feet, somewheres in that neighborhood.

Q Did you hear Frank yelling? A No, sir.

10 Q Didn't you say that you heard somebody hollering at you? A Yes, but I don't know who.

Q Did you hear somebody yelling at you? A Yes, sir, and pointing.

Q Did you hear what he said? A No, sir.

Q You think this was done after you stopped after the accident happened? A Yes, sir.

Q Then he was pointing? A Yes, sir.

Q You immediately opened your door and got out? A Not right away. I didn't know what he meant.

20 Q Did you take time to think it over? A No. I just opened the door and walked around there.

Q And by the time you got out the little girl's body had already been taken away? A Yes, sir.

Q You didn't see her taken across the street? A No, sir.

Q You don't know where she went? A Not until he had her in his arms to take her in the machine to go to the hospital.

30 Q Where was the first time you saw him? A Going towards the automobile.

Q But that was back of your car? A On the east end.

Q You didn't see these children, and particularly Anna, from the time that your car was thirty feet away from her until you saw her mangled body. Is that right? A I seen them before I got there, thirty feet or so.

40 Q We will assume that Anna was one of this crowd. From the time that you saw her

Emory Werkheiser, cross.

when you were thirty feet away, between that time and the time that you saw her in her father's arms you didn't see her? A Not at all, no, sir.

Q You didn't see how she got towards the track? A No, sir.

Q You didn't see how she got hurt? A No, 10
sir.

Q Did you see the boys on the north side of the street? A No, sir.

Q Sitting on the wall? A No, sir.

Q You didn't see Mrs. Goldfarb? A I did not.

Q Do you know Frank Sabo? A No, sir.

Q You didn't see the two Franks that were on the wall? A No, sir.

Q You didn't see Mrs. Goldfarb? A No, sir. 20

Q Did you see anything on the street that day? A I seen them children.

Q What were you thinking about when you came along the street that day?

Mr. Seip: That is objected to.

Mr. Weinberg: I will withdraw the question.

Q Were you thinking about anything when 30
you came along the street that day? A Not anything more than you actually would about your work.

Q And you saw nothing, excepting as you told us? A A clear track.

Q Will you tell us what you did with your car as you came down that grade preparatory to stopping? Just what did you and the conductor on that car do? A Wound up the brake; took up the brake. 40

Emory Werkheiser, cross.

Q You took up your brake in the front? A Yes, sir.

Q What does the conductor do? A After the car is stopped you give the signal on the bell and the conductor takes up the brake on the other end.

10 Q Do you both take that up at the same time? A No, sir.

Q Isn't this what happened, that you release your brake and the conductor in the rear puts on the brake? A No, sir, not until after the car is stopped.

Q So that when the car is stopped what was the front then becomes the rear on which the brakes are loose and the brakes in front are tight. Isn't that so? Isn't that what you do?

20

Mr. Seip: That is objected to.

The Court: The objection is overruled.

Q If, as you come down that grade towards the end, you and the conductor should both release your brakes the car will start up and gain some speed, won't it? A No, sir.

30 Q Won't the car start up if both the brakes are released on that little hill? A It would if they are both released.

Q And as you were coming down ready to stop did you not on that occasion open the door on the left front end? A No, sir.

Q Are you sure of that? A Yes, sir.

Q How do you remember that now? A Because I never change the handles. The conductor always done that before he loaded up.

40 Q That is your custom. You don't remember distinctly what happened on this day over a year ago? A I know all about this.

Emory Werkheiser, re-direct.

Q Are you stating now to the Court and jury as a fact that you recollect that you came down that afternoon and didn't start to open or partly open the door on the left front end? A I positively didn't.

Q How do you know that? A I know that because I never done it. 10

Q You do open that door before you start to come back? A Not the motorman. The conductor does that.

Q Somebody does that? It has got to be opened? A The conductor, when he starts to load passengers.

Q How do you take passengers, on the front end or rear end? A The rear end that time.

Q So the front of your car would be the rear when it comes back on that trip? A The front end coming in would be the rear end coming back towards Easton. 20

Q This was a nice day? A Yes, sir.

Q The road was dry? A Yes, sir.

Q The rails weren't slippery? A No, sir.

Re-direct examination by Mr. Seip.

Q You were asked whether or not you opened the left-hand door on that occasion and you said that you had not. Where is the lever that is used on that car to open the door, with respect to the place where you, as the motorman, stood? A Back of me. 30

Q Where is the lever to open the other door, as it is operated when you are in motion? A Right in front of me, by the right-hand door.

Q Immediately back of you, and where you stand as the motorman, is there or isn't there a fare-box post? A Yes, sir. 40

Charles Doud, direct.

Q Can you open the left-hand door with the lever in front of you, which operates to open the right-hand door? A You cannot open it until you change handles.

Q What do you have to do with that lever?

A Take that lever and put it on that stand back of the fare-box, and that opens the left-hand door then.

Q Did you make such a change on that day?

A No, sir.

Q Would you or would you not have to make that change before you could open the left-hand door? A Yes, sir, you would have to.

Q Do you remember the number of this car?

A 305, two-man operation.

20

CHARLES DOUD, sworn for the defendant.

Direct examination by Mr. Seip.

Q Where do you live? A Wilson Borough.

Q West of Easton? A Yes, sir.

Q What is your business? A Master mechanic for the Lehigh Valley Transit Company.

30 Q How long have you been master mechanic for that company? A Since February, 1919.

Q And have you been in the continuous employ as master mechanic of this company since that time? A Yes, sir.

Q And are today? A Yes, sir.

Q What are your duties as master mechanic, so far as the cars of the company are concerned?

A I have full charge of all their equipment and maintenance at all times, and all men employed in that department.

40

Charles Doud, direct.

Q Do you know car number 305? A Yes, sir.

Q Did you know it in July, 1925, and before? A Yes, sir.

Q Tell the Court and jury what the length over-all of that car is. A The length over-all is thirty-two feet, six inches.

10

Q What is the width of the car over-all? A Eight feet, six inches.

Q Is it a double or single truck car? A Single truck.

Q That means that it has but four wheels? A Four wheels.

Q What is the construction of the body, so far as entrance doors are concerned, front and rear doors? A Front and rear doors.

Q Is the space where the motorman stands on this car fenced off or separated from the body of the car? I mean now as of July, 1925. A There is a fare-box stands about the center, right behind the motorman, with a rail running from the stanchion over to the left-hand side of the car.

20

Q Leaving the right-hand side, facing the front of the car, open for passengers to get out?

A Yes, sir.

Q The doors on this car were folding doors, as described by the motorman?

30

A Yes, sir.
Q Will you describe them to the Court and jury? A The doors split into four sections, and two sections fold back this way, towards the front of the car, and the other two sections fold back towards the body of the car.

Q How are these doors hinged? A Three hinges. Do you mean where they are split?

Q Yes. A Where the folding part goes in?

Q Yes. A With a strap hinge on the inside of the car door.

40

Charles Doud, direct.

Q What do you mean by a strap hinge? A It is a flat hinge, a regular door hinge.

By the Court.

Q What material? A Steel.

10 *By Mr. Seip.*

Q Indicate to the Court and jury the length of those hinges on those doors when open. A The hinge folds up.

Q Is the hinge that long or that long (indicating) or just an inch long when open? A When open the hinge is about two and a half inches long, possibly three.

20 Q Is that secured fast to the inside or the outside of the door? A Inside the door.

Q Does any part of those three hinges extend out when the doors are closed, to the outside? A No, sir.

Q Is the entire hinge inside when the doors are closed? A Yes, sir.

30 Q Is the entire hinge inside when the doors are folded? A Yes, sir. The side of the door here is what we called rabbled out. There is an iron bar comes down that fits right in the edge of the door, and a little strap band goes around that.

Q Does any part of that extend out to the outside of the door? A The only part of that that extends out would be that band around the rod, not an eighth of an inch thick.

Q How is the door fastened to the front part of the car? A The same method.

Mr. Seip: You may cross examine.

40

Mr. Weinberg: No questions.

Harry Spragle, direct.

HARRY SPRAGLE, sworn for the defendant.

Direct examination by Mr. Seip.

Q Do you live in Easton? A Yes, sir.

Q In July of 1925 were you in the employ of the Lehigh Valley Transit Company, operating into Phillipsburg? A Yes, sir. 10

Q On the occasion of this accident were you the conductor on the car? A Yes, sir.

Q Tell the Court and jury just what you happened to see and what you did on this occasion. Do you remember the occasion? A Yes, sir.

The Court: I notice that the defendant is the Phillipsburg Transit Company. There is no question about that being the proper defendant? 20

Mr. Seip: No. The relation between the Lehigh Valley Transit Company and the Phillipsburg Transit Company is such that the Lehigh Valley Transit Company is responsible if there is a verdict rendered against the Phillipsburg Transit Company.

The Court: There is no question about the operation of this car in Phillipsburg at this time under the control of the Phillipsburg Transit Company? 30

Mr. Seip: No, sir.

Mr. Weinberg: It is admitted in the pleadings. The answer admits that.

(By the Witness): We left Center Square at 6:10 on July 13th.

Q Go right over the scene. As you came into Central avenue what did you do? A I was back on my station on the rear platform of the car. 40

Harry Spragle, direct.

Q Which way were you looking? A Backward. I was on the back platform, waiting for the signal from the motorman to take up the brake after the car had come to a dead stop.

Q Did you get a signal? A He gave me a signal, yes, sir.

10 Q Did you take up the brake? A Yes, sir.

Q Did you observe anything as you were taking up the brake that happened on the outside? A I did not until I heard a scream. Then I went out the front door and saw the little child.

Q Which do you call the front door? A The motorman's end before we changed ends.

Q Were either of your doors open at that time as the car had come to a stop? A Both closed.

20 Q Were both of your doors closed or weren't they as you came down eastward on Central avenue? A Both doors closed.

Q Did they remain closed until the car came to a stop? A Until it came to a dead stop.

Q Then, I understand you to say, you left them closed and went out the door on the motorman's end? A The motorman's end. I changed the pole.

30 Q What distance were you on the rear platform, facing backwards, ready to put on this brake, before you got the signal so to do, that is to say, had the car passed 4th street already when you went back there, or not? A Yes, it passed Fourth. I changed the fare-box, and we were, I should judge, 100 feet from the end of the line when I went to the back end to get ready to take up the brake.

40 Q What did you say you did with the fare-box? A I moved the fare-box from the back end of the car.

Harry Spragle, cross.

Q To the forward end? A Yes. We change ends there.

Q Where is this fare-box on this car? A Right back of the motorman.

Q That is, on a post there? A On a post; yes, sir.

Q Is it in the center line on the car or to the side? A In the center, in the center of the car, right by the rod that leads out to the left. 10

Q By the center you don't mean the center lengthwise, but the center across? A The center across; yes, sir.

Q And right back of the motorman? A Yes, sir.

Q Then having taken the fare-box forward you returned to the rear of the car to take up the brakes? A Yes, sir. 20

Q Did you observe what was going on on the outside or not? A I did not.

Q Did the car stop or slow down and then start out again? A No, sir.

Cross examination by Mr. Weinberg.

Q Just where was your car when you started to move your fare-box? A Just passing 4th avenue when I moved the box forward. 30

Q You have to loosen it? A You have to raise it up; yes, sir.

Q Then you carried it towards the front of the car? A I put it on the other standard; yes, sir.

Q Then you turned around to go back again? A Yes, sir.

Q Did you get as far as the rear of the car when the accident happened? A The car was to a stop. 40

Harry Spragle, cross.

Q The car was stopped when? When you got back? A No, I didn't know an accident happened until I heard this scream.

Q You didn't get the question. You transferred the fare-box from the rear of the car to the front? A Yes, sir.

10 Q Then you went back? A Yes, sir.

Q To the rear of the car? A Yes, sir.

Q Where was the car at that time, when you got back to the rear? A I judge one hundred feet from the end of the line.

Q The accident hadn't happened yet? A No. I didn't know of any accident.

Q Then you received a signal to take up the brake? A Yes, sir.

20 Q Where was the car at that time? A The car was at a dead stop; I should judge about twenty feet from the end of the car line.

Q The accident had already happened? A The accident had already happened; yes, sir.

Q Did you receive any signal before you heard the scream? A No, sir.

Q Then your brake was open as you came down Central avenue? A The motorman had the brake.

30 Q I said yours. A I have no brake.

Q You have none at all? A No, sir.

Q What brake did you take up? A The other end of the car, after the motorman takes up his end. The conductor doesn't do any braking. After the car comes to a dead stop he gives you a gong, and as you wind up his brake releases on the other end.

Q Where did you wind up? A The opposite end from the motorman.

40 Q That is, the rear of the car? A Yes, sir.

Harry Spragle, cross.

Q What sort of steps did you have on this particular step at the time that this accident happened? A There is only the one step.

Q What kind? A A floating step.

By the Court.

Q It opens and closes with the door? A 10
Yes, sir.

By Mr. Weinberg.

Q And there are handles on that floating step? A Yes, sir, two handles.

Q On the outside? A On the inside.

Q They stick out on the outside, too, don't they? A No, sir, they do not.

Q No part of it? A No, sir. They fold up 20
on the inside.

Q When they fold up what is there that shows on the outside? A Nothing.

Q Where is this hinge on the step? A
There is one on each side; probably three hinges
over each end.

Q The step isn't perfectly flat with the side of the car when it is closed up, is it? A When it folds up it folds up tight against the bottom of the door. 30

Q And what is there on the outside of that? A Not a thing.

Q What have you got on the outside of your car, if anything, what attachments or appliances, along the side on the left front end? A When the door is closed there is nothing protruding; there is nothing outside. It folds up.

Q And if they should be open or partially open what would you have? A Then the step would be down or they would be protruding. 40

Harry Spragle, cross.

Q The step goes down gradually, doesn't it?

A Yes, sir.

Q It first starts with a very slight opening and then would stick out an inch, then two inches, and so on until it gets down the entire way? A Yes, sir; but those doors, when they are closed, the ratchet locks them.

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By the Court.

Q His question is whether the door cannot be partially opened. A No, sir; completely closed or completely open. The weight of the step opens the door.

By Mr. Weinberg.

Q Your door opens gradually? It doesn't fly out like a shot, does it? A It opens very quick. The weight of the step will swing those doors.

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Q How do you control the opening of that door? A With a lever handle.

Q Inside? A Inside.

Q You can hold it at any position you want? A You can if you want to keep both hands on it.

Q Do I understand that you didn't see anything of those little ones at all as you came along that street that day? A I did not.

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Q Where do you think you were at the time that your car was approaching the neighborhood of the Goldfarb store? A I was on the rear platform of the car, with my back turned, ready to take up the brake.

Q Did you have your back towards the north side of the street? A Of course. I would have to, on account of the brake.

Q Was your back towards the north side of the street? A Yes, sir.

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Alphonse Tersigni, direct.

ALPHONSE TERSIGNI, sworn for the defendant.

Direct examination by Mr. Seip.

Q You live in Alpha? A Yes, sir.

Q Do you remember the time when this accident occurred? A Yes, sir. 10

Q Were you in the neighborhood there? A Yes, sir.

Q Will you tell the Court and jury just what you saw and what you did? A I seen a number of children.

Q Where? A Behind my car. My car was standing at the curb. Frank and I were talking baseball.

Q Where was your car with reference to the end of the trolley line? A On the south side. 20

Q Headed east? A Yes, sir.

Q How near Fifth street? A Just at the end of the line.

Q Where were these children? A Right back of my car.

Q On which side of the street, north or south of the track? A South side.

Q What did you see those children do? A They were standing there playing. 30

Q Did you see them go to the north side of the street? A Some.

Q What further did you see with respect to the trolley car? A I seen the trolley coming. I heard the noise of the trolley and I turned around. I had my back towards the west, and the trolley was coming towards my back.

Q You turned around then? A Yes, sir.

Q As the trolley approached did you see whether the speed of the trolley was increased or decreased? A Decreased. 40

Alphonse Tersigni, direct.

Q Did you observe the motorman in the trolley care? A No, sir.

Q As this trolley car approached the Goldfarb property what did you notice with respect to its speed—increasing or decreasing? A Decreasing.

10 Q You know where the Goldfarb stores are, don't you? A Yes, sir.

Q As the car came to the front of those stores was it going fast or slow? A Slow.

Q Just at that time what did you observe that happened? A I seen the child run across the street.

Q Run or walk? A Just a fast walk.

Q And did you recognize the child? A No, sir, not at the time.

20 Q Did the child get in front of the trolley car or not?

Mr. Weinberg: Objected to.

The Court: Let him tell what he saw.

Q What did you see this child do then? A Walk across.

30 Q What did you see the trolley car do? A After I seen the child walk across I turned my head.

By the Court.

Q How far was the trolley car from the child as it walked across? A I judge about five feet.

By Mr. Seip.

40 Q Did you observe the trolley car as the front of the trolley car passed the child?

Alphonse Tersigni, direct.

Mr. Weinberg: That is objected to. The witness has not said that the front of the trolley car passed the child.

The Court: Reframe your question.

Q Did you see the front of the trolley car pass the child? A No, sir. 10

Q Did the trolley car get between you and the child at any time? A No, sir.

Q Do you know what I mean by that? A Yes, sir.

Q You were down here? (Indicates on Defendant's Exhibit A.) A The trolley car was at my back all the time.

Q Your car was down here where I indicate, or in the neighborhood of the southwest corner of Central avenue and Fifth street? A Yes, sir. 20

Q Did you turn your back again to the trolley car before the trolley car passed the child? A No, sir.

Q Did you observe the car come to a standstill? A No, sir.

Q You did not observe the trolley car come to a rest? A No, sir.

Q Did you see the car pass the child? A No, sir.

Q You saw the child walk across? A Yes, sir. 30

Q About five feet in front of the car? A Yes, sir.

Q That's all you saw? A Yes, sir.

Q You didn't look to see what happened? A No, sir. I didn't look to see what was going to happen or what happened.

Q You didn't see where the child was after she crossed the track? A No, sir.

Q Did you see the child under the car? A No, sir. 40

Alphonse Tersigni, cross.

Q Did you hear the scream? A Yes, sir.

Q You and I had a conversation downstairs?

A Yes, sir.

Q Yesterday, wasn't it? A Yes, sir.

Q Will you say that you told me the same thing that you are telling me now here? A Yes, sir.

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Q You would? A Yes, sir, what I recollect.

Q Didn't you tell me yesterday—

Mr. Weinberg: Are you going to discredit this witness?

Mr. Seip: I have the privilege, if I am surprised.

The Court: If you are surprised by what he said you may cross examine him.

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Mr. Seip: You may cross examine.

Cross examination by Mr. Weinberg.

Q What is your business? A Silk worker.

Q Where do you work? A Standard Silk Company.

Q Where is that? A Phillipsburg, New Jersey.

Q Where do you live? A Alpha.

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Q Are you related to the Goldfarbs. A No, sir.

Q Do you know me? A No, sir.

Q Did you ever see me before this minute? A Yes, before this minute.

Q Do you know Frank Tuckoch? A Yes, sir.

Q Did you see Frank on the day of the accident? A Yes, sir.

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Mr. Seip: Objected to as not cross examination.

Alphonse Tersigni, cross.

The Court: He said he was talking baseball to him. I will allow it.

Q Did you see Frank that day? A That afternoon, yes. He was with me.

Q Was yours the car that was referred to as standing on the south side of the street and there was a Frank Sabo or something like that on the other side of the street? A Yes. 10

Q Did you see Frank Gerçi and another fellow sitting on the foundation wall? A I just noticed Sabo.

Q Didn't you make a mistake before when you said that the child walked from the south side to the north side? A No, I didn't make a mistake.

Q Which is the south side of the street? A Where the Goldfarb property is. 20

Q Were you on the south side? A Yes, sir.

Q Did you see the child walk from the side you were on, across the tracks? A Yes, sir.

Q That was sometime before the accident? A A matter of a few minutes.

Q When did you hear the scream, how soon after? A After the car came to a standstill. 30

Q Did you see the child go back from the north side of the street, towards her father's store? A No, sir.

Q You only saw her going over? A Yes, sir.

Q You don't know what happened after she got over? A I turned my head.

Q Do you say she was struck coming from the south side to the north side? A I don't know. I didn't see when she was struck. 40

Alphonse Tersigni, re-direct.

Q You are sure that at that time you saw her going from the Goldfarb side of the street to the other side? A Yes, sir.

Re-direct examination by Mr. Seip.

10 Q You said that you saw the child go across in front of the car, about five feet in front of the car, and you also said a few minutes ago that the child went from the south side to the north side, a matter of two or three minutes before the accident. Which do you mean? A Just judging by my way.

By the Court.

20 Q What do you mean by two or three minutes? A Just in front of the trolley.

Q Do you literally mean that it was two or three minutes? A About two or three seconds. It was just that quick, that's all.

At this point Court adjourns to 1 o'clock of the same day.

30 Pursuant to adjournment court convenes Friday afternoon, October 22, 1926, at 1 o'clock.

Mr. Seip: We offer Exhibit D. 1 in evidence, and rest.

TESTIMONY CLOSED.

Mr. Seip addresses jury.

Mr. Weinberg addresses jury.

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*Charge to Jury.***CHARGE OF THE COURT.**

Ladies and Gentlemen of the Jury:

The evidence in this case has been sufficiently discussed with you, as it seems to me, by the respective counsel to make it unnecessary for the Court to indulge in any rehearsal of the occurrence which forms the basis of this action, suffice it to say that it appears that on the 13th day of July, 1925, on Central avenue, at Alpha in this County, a child apparently was run over by a trolley car operated by a motorman in the employ of the defendant company, and by reason of such employment the latter would be responsible for any negligence of which the motorman may have been guilty within the definition of the law as I shall give it to you.

It is needless for me to say to you that the injury to the child was an exceedingly serious one, necessitating the amputation of the right leg, and a very serious injury to the left foot. The mere happening of the accident, however, I am obliged to say to you, would not justify the awarding of damages to the plaintiffs, because the action is based upon a charge of negligence on the part of the motorman of the trolley car in question. When we speak of negligence in an action of this sort we mean that it is either the omission to do something which a reasonable person, guided by circumstances which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do; and when negligence arises out of an act of omission by an act of one for whose conduct another is responsible, as in this case the defendant company, it must be with reference to some duty the responsible

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Charge to Jury.

person owed to the party injured. That duty on the part of this defendant company through its employees, such as the motorman in question, was the exercise of the care which reasonably prudent persons would observe in the given circumstances; as for example, with reference to the
10 duty of the motorman, we find our Courts saying this: that whether the car at the time of the accident was going at a reasonable rate of speed or the motorman operating it was properly on his guard and reasonably careful and vigilant in looking out for the safety of human life on and near his tracks is peculiarly a question for the jury; and as you decide that question do you decide whether or not the motorman here involved was negligent within the definition of the law. Obviously it was his duty to exercise the
20 sort of care which would comprehend the features suggested in the rule just given to you, to keep his car within a reasonable rate of speed, to be on his guard, and reasonably careful and vigilant in looking out for the safety of human life on and near his tracks. As suggested to you by counsel, if this be a case where the motorman was within the exercise of that reasonable care, within the definition just given you, and was
30 reasonably observing the features incorporated in that rule, and the accident to this child was in nowise occasioned by the negligence of the motorman, then, I charge you, there can be no recovery in the case. On the other hand, if the plaintiffs have satisfied you under the greater weight of the evidence that the motorman was negligent within such definition as has been given you, then, I charge you, there can be a recovery. So that you will observe that you are the judges of the fact but that you must observe the law as
40 the Court has given it to you.

Charge to Jury.

It is unnecessary for me to make any comment on the value or weight of the testimony, because that is not my function. You pass upon that yourselves, although I may say in passing that it has been suggested by counsel for the plaintiffs that the failure to clang the gong or ring a bell on the part of the motorman, if such failure did occur, was negligence on the part of the motorman. As I recall, there is some evidence in the case which tends to indicate that no sound of that character was given; and if you should find, in your consideration of the evidence in the case, that the motorman's failure to sound a gong or ring a bell was an evidence of negligence and a natural, proximate result of which was the accident involving the running over of this child, then you may find as a fact that he was negligent in such a way as to entitle the plaintiffs to recover. That is a mere comment; it is not an instruction of a binding character whatever, and you will so understand. The case thus resolves itself, as I see it, into the single question as to whether or not the motorman was negligent within the definition of the law at the time with which we are concerned.

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The question of contributory negligence of the child is not involved, because there is no authority in this State which holds that a child under the age of six years can be guilty of contributory negligence; and, in fact, there is no suggestion or evidence in the case, as indicated to you by counsel for the defendant company, to indicate at all that the child in question could either be presumed or charged with contributory negligence, because of its tender years, that is to say, under the age of six years at the time of the accident. For that reason I say to you that

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Charge to Jury.

the question with which you will be concerned is the negligence or non-negligence of the motorman. As you decide that question you decide this case from, the standpoint of the facts.

I may say to you, in addition to what I have already observed as to the law, that street railway companies have no superior or predominant right to the use of the highways in which their cars run over the rights of other persons passing on foot or with vehicles, except the inability of their cars to deviate from their tracks. Because of that other passengers must give them the right to pass when the occasion requires. A correlative duty therefore devolves on other passengers to permit the passage of such cars when they observe or are informed that such passage is required. A foot passenger on the public highway has the right to use any part thereof; whether the selection of the part used is one which a prudent man would make must depend upon circumstances. However, you must remember that the question of the contributory negligence of the child is not involved here. "If a motorman running a trolley car on the highway in the daytime perceives a person passing along on foot upon or closely besides the track and apparently heedless of signals and the motorman can arrest the movement of the car before striking such person, his failure to do so is evidence of negligence, which must be submitted to the jury to decide as a fact." For that reason this case comes to you to decide, but do not forget that in addition to the remarks just made, and I have been following very good authority in this State, you are also to remember what the Court said to you in the beginning regarding the duty of the motorman to exercise that

Charge to Jury.

care which would involve a reasonable rate of speed, that he be properly on his guard, and reasonably careful and vigilant in looking out for the safety of human life on and near his tracks.

Should you find that there was no negligence on the part of the motorman, then, as I have said before, that is the end of the case, and there should be a verdict of "No cause of action," in favor of the defendant company. On the other hand, if you find that the motorman was negligent within the definition of the law given you, then you would pass on to the assessment of damages; and the rule there is this: that so far as the child is concerned she would be entitled to be awarded a sum which in your sound judgment and discretion would compensate her for the bodily injury sustained, the effect upon her health, according to its degree and probable duration—as likely to be temporary or permanent—and the pain and suffering undergone, in relation to which you would have regard to the serious character, I may say in comment, of the injury, namely, the loss of the leg, and the effect, as suggested to you by counsel for the plaintiffs, upon her future existence. You will eliminate, however, all speculative phases of that character, and have in mind what the reasonable probabilities would be in that regard, the deprivations which she will experience by reason of the injuries which she sustained. Of course, you cannot imagine what her deprivations will be, you cannot guess, you cannot speculate; but you have a right to consider the reasonable probabilities as the result of her present condition, that is to say, with regard to her future ability to work and in the aspect to which counsel has referred.

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Charge to Jury.

An amount has been suggested in the complaint filed in this Court. I am obliged to say to you that you are not bound by that, because the law does not provide any automatic schedule of damages to be awarded by a jury where it is legally proper in a case of this character. It is
10 left to the sound judgment and discretion of the jury, and your desire, I take it, will be to be fair, not to be exorbitant, nor to be niggardly, shall I say? but to be fair and just, so that it may be said that the jury has exercised sound judgment and discretion. This is a case in which, if you decide that negligence has been proven of the character that warrants a recovery, there should be a substantial sum returned in behalf of this
20 child if you find the right to recover is a fact, based always, of course, upon the definition of the law of negligence as I have given it to you. With regard to the father, assuming that you find negligence as a fact within the law as given to you, he would be entitled to recover in the first place what moneys he expended in and about the care and treatment of the child, such as the services of a surgeon, doctor and nurses, and at the hospital; that sum, I understand, has been stated by him to be \$965.00, and he has the right
30 to have that included in the measure of damages to be awarded to him, if you find that there may be a recovery as a fact under the rules of law given you. In addition to that you have the right to consider the future expenses to which he may be put by reason of the providing of substituted wooden legs as this child grows. You have had the testimony of the doctor, who suggested that changes of that character would be necessary every six to nine months, as the Court recalls
40 his testimony, in any event, whatever you find

Exceptions to Charge.

the fact to be, because you are the judges of the facts and you must recall what the evidence was on any points that has been raised by counsel or referred to by the Court; your recollection must finally prevail. In addition to such future expenses which may appear reasonably to be expected the father would be entitled to be awarded a sum which would compensate him for the loss of services of his daughter, which again must be based upon a reasonable expectation of the pecuniary advantage to be derived by the father from his daughter and which he cannot receive by reason of these injuries. Of course, that is a question of fact for you to determine.

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You are to understand that you are endeavoring to consider this case within the rules of law given you by the Court and, while I have discussed the question of damages with you, that the Court expresses no opinion one way or the other, because we must be fair and just. It is very easy in a case of this character to have our sympathies aroused, but however that may be bear in mind that you are in the nature of arbitrators, you are the judges of the facts in the case, and as you find the negligence on the part of the motorman or the absence of negligence of an actionable character depends entirely whether you pass upon the question of damages.

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With these remarks the Court leaves the case to you with the injunction that you consider the case as a whole, having regard to the law that the Court has given you; and having done so you will have done justice to these parties.

Mr. Walters: We except to all that part of the charge respecting the care required of the motorman, and to the Court's refusal to charge our requests.

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Defendant's Requests to Charge.

Mr. Weinberg: I except to the Court's refusal to charge my requests.

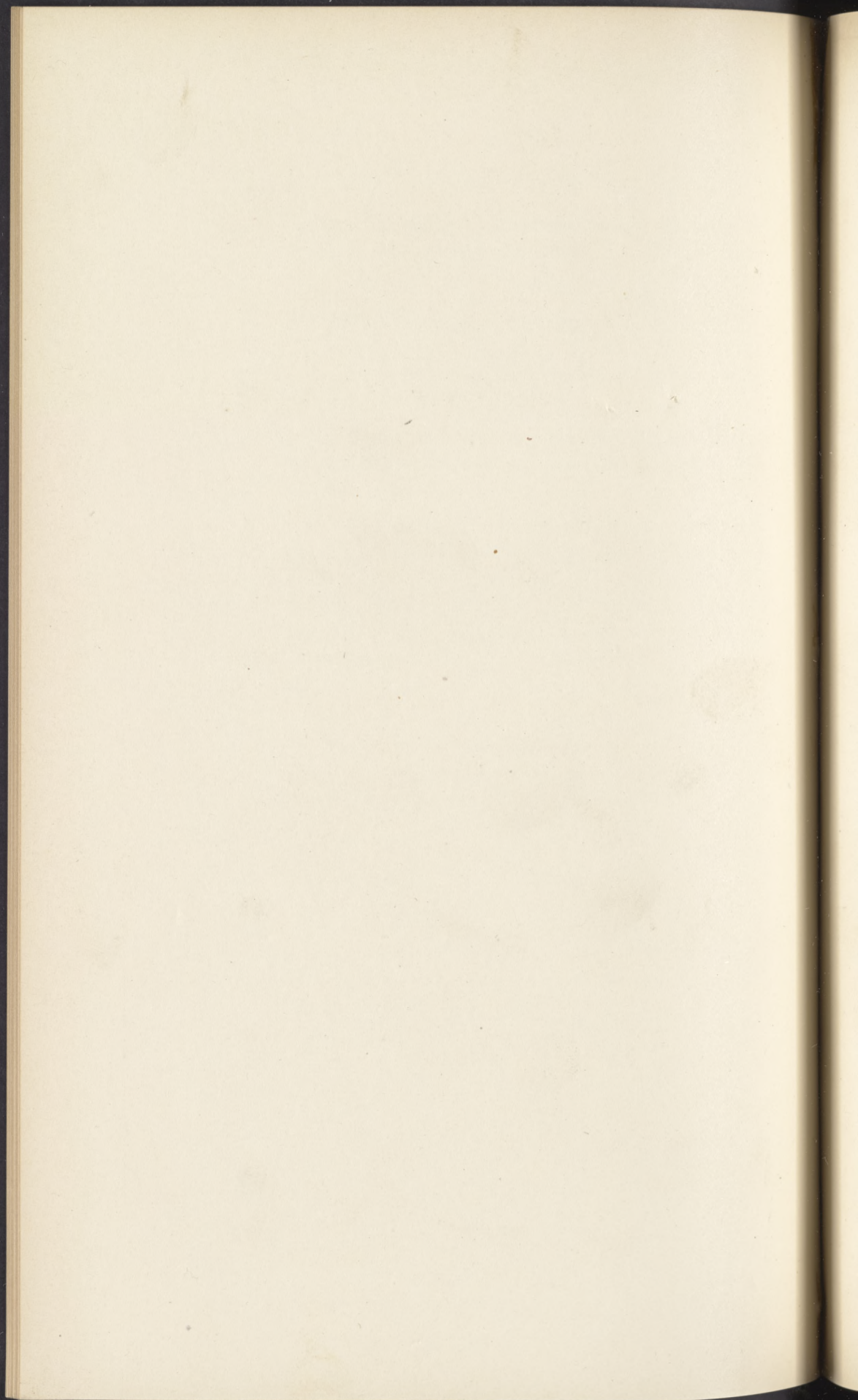
DEFENDANT'S POINTS FOR CHARGE.

- 10 1. Under the law and the evidence the verdict must be for the defendant.
 2. Under all the evidence, the plaintiff has not shown negligence on the part of the defendant company.
 3. The defendant is not chargeable with negligence in failing to keep a proper lookout for a child of tender years on the sidewalk in the middle of a block, which child suddenly runs into the street and directly into the side of an approaching car.
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New Jersey Court of Errors and Appeals.

ANNA GOLDFARB, an infant, by
SAMUEL GOLDFARB, her next
friend, and SAMUEL GOLDFARB,
individually,

Plaintiffs-Appellees,

VS.

PHILLIPSBURG TRANSIT COM-
PANY, a corporation,
Defendant-Appellant.

Action at Law.

On Appeal from
Supreme Court.

BRIEF FOR DEFENDANT-APPELLANT.

This case comes up on an appeal from a judgment entered in the Supreme Court. The case was tried at the Warren Circuit before Circuit Judge Lawrence and a jury, and verdicts aggregating \$20,500 were returned, upon which judgments were entered (pp. 13 and 14).

The plaintiff Anna Goldfarb was an infant about five years of age. The plaintiff Samuel Goldfarb is the father of Anna. The plaintiffs founded their case upon the charge that as Anna was crossing Central Street "she was run into and knocked down and was run over by a certain trolley car belonging to the said defendant" (p. 6, line 11), and that the collision between the car and Anna was due to the negligence of the motorman in operating at a high speed, without making due and timely observation to discover the presence of Anna near the trolley car, and in not having the trolley

car under control, and in failing to give warning of its approach (p. 6, lines 20-35).

The fact is Anna walked into the side of the trolley car, and so was injured.

The accident happened in the Borough of Alpha. Central Street runs east and west, and is the street in which the trolley tracks were. Fourth Street and Fifth Street cross Central Street at right angles, a block apart. Fourth Street is toward the west, and Fifth Street toward the east. The trolley car came from the ~~east~~^{west}, crossed Fourth Street, and entered the block very slowly in order to stop at the terminus of the rails, near the end of the block at Fifth Street. The accident occurred in about the middle of the block.

Samuel Goldfarb had a grocery and dry goods store located on the south side of Central Street. Just prior to the accident, Anna, with some other children, was playing on the sidewalk on the north side of the street. After the trolley car had entered the block between Fourth and Fifth Streets, Anna left the sidewalk, slowly entered the street, and without paying attention, walked into the side of the trolley car, as it was proceeding slowly to the terminus of the rails at Fifth Street.

The great weight of the evidence was against the plaintiffs' allegations of negligence. The place where the accident occurred was not far from the terminus of the trolley tracks, and the car was slowing down to stop, and barely moving at the time the accident happened (see testimony of plaintiffs' witness Tuckoch, p. 29, line 15, and defendant's witness Werkheiser, who was the motorman, p. 94, lines 15 to 30, and defendant's witnesses Spragle, p. 113, lines 20 to 25, and Tersigni, p. 117, line 37 to p. 118, line 10).

Other witnesses for the plaintiffs admitted that the car slowed down to a practical stop, but said that it started up again at a faster speed just prior

to the moment of the accident (see Sabo, p. 61, line 22, and Dora Goldfarb, mother of Anna, p. 75).

The motorman and conductor knew nothing of the accident until it was all over. The accident happened within one hundred feet of the terminus, and the witnesses on both sides agree that when the car stopped, Anna lay about three feet behind the rear of the car (see Tuckoch, p. 30, line 30; Gearsay, p. 42, line 34, and Werkheiser, p. 99, line 28).

The same evidence answers the charge that the trolley car was not under proper control. There was no positive evidence that a warning was not given. Some of the witnesses testified that they did not hear any warning (p. 31, line 15; p. 43, line 5; p. 58, line 13).

All this, however, had nothing whatever to do with the happening of the accident. The uncontradicted proof was that Anna walked into the side of the trolley car, and that the motorman did not know that the accident had happened until it was over; and that the trolley was moving slowly.

Plaintiffs' witness Tuckoch says when he first saw Anna "she was standing on the curb on the north side of the street (p. 27, line 20), and almost opposite Goldfarb's store (p. 27, line 26)". At that time, he says, "there was a trolley car" (p. 27, line 34); he saw them both. He saw Anna leave the curb and go into the street and "going across the street" (p. 28, line 21). She was walking (p. 32, line 11).

The trolley passed between him and Anna, cutting off his view (p. 30, lines 1 to 10), but he saw her "get up pretty close to the car and I looked under and saw her fall" (p. 29, line 28).

He "saw the motorman putting on his brakes, when the child was half way across" (p. 36, line 5). When the trolley car came to a stop, the front end was at the point 2 + 50 on the map (p. 37, line 9), which the map shows was a few feet east of

the Goldfarb store, and about 75 feet from the end of the car line.

The most significant statement in his testimony was this (p. 37, line 11) :

“Q. Now, let me ask you this: Did Anna at any time, as you looked at that situation that day, get in front of that trolley car? A. No, sir.”

This testimony of Tuckoch, that Anna never was in front of the trolley car, and so was not hit by the front of the car, not only was not contradicted, but was reiterated in various ways by all the eye witnesses.

The fact cannot be disputed, nor is there any evidence upon which reasonable minds could disagree, that Anna walked into the side of the trolley car and so was injured.

The plaintiffs' witnesses all bear out the fact that Anna walked into the side of the trolley car.

Gearsay sat on a stone wall on the north side of the street, which was the same side that Anna came from, and about opposite the Goldfarb store. He says when he first saw the trolley car, it was about four feet away from Anna (p. 41, line 19), and that “she was right alongside of the railroad” (p. 41, line 26), and that “the door hinges struck her” (p. 41, line 30).

He said further that when he first saw her, she was right there by the front left door of the trolley car, about four feet away from it (p. 50, line 25), and that then he saw the hinge of the door strike her (p. 51, line 35).

It is obvious that for the hinge of the door, which was on the side of the car, to hit her, she must have walked into the car.

Sabo, who sat on the same stone wall with Gearsay, saw Anna on the sidewalk about thirty feet away, and saw her start out from the sidewalk (p. 53, lines 28 to 36). He says she walked about

four feet off the sidewalk, and then stopped, p. 57, line 16), and "then she got there near the car tracks and the left front door hinges hit her" (p. 57, line 25).

He said further that when Anna was about twenty feet from the trolley, it slowed down to about five miles an hour (p. 60, line 30, and p. 61, line 7), and that the car continued to move very slowly until she stopped, when the car started up again at a rate, he says, of fifteen miles an hour (p. 61, lines 10 to 20). He then says that after the trolley started up, Anna also started toward the trolley car (p. 61, line 30) and was hit by the hinges on the door.

Dora Goldfarb, the mother, was on the south side of the street (p. 63, line 37), which was across the street from where Anna was, and she said "the car ran past her" (p. 66, line 34), and that she could not say what part of the car knocked her over "because I was on this side, and she was on the other" (p. 66, line 40), indicating clearly that the accident happened, not by Anna being struck by the front of the car, but by walking into it from the other side. She also testified that when she saw Anna walking in the street, the car was going very slowly, and that it was right across from where she stood, and that Anna was standing when the car started to go faster (p. 75).

Werkheiser, the motorman, said that when he was about in the middle of the block, which was near the location of Goldfarb's store, the car was hardly moving at all (p. 94, lines 15 to 30); that he did not know anything had happened until after his car came to a stop, and that he did not see any child run towards his car (p. 95, lines 35 to 40). He said he saw children, but that he had enough clearance to pass them by, and that there was none in front of his car (p. 96). After his car had stopped, some fellow motioned, or hollered, and then he

learned for the first time that the child had been run over (p. 97, lines 30 to 40).

The fundamental allegation, therefore, of the complaint, as set forth in paragraph 4 (p. 6, line 12) that Anna had been run into and knocked down, and was run over by the trolley car, is not established by the proofs in the case. On the contrary, the fact that is established, without any contradiction, is that Anna walked into the side of the moving trolley car, and so was injured. The testimony of Gearsay and Sabo that she was hit by the hinges on the side of the door is of no value, except to show she walked into the side of the trolley car. The testimony of the master mechanic, Doud, demonstrated that the doors were folding doors, and that the only part which extended out was an iron band around the rod, about an eighth of an inch thick (p. 110, line 35). Werkheiser, the motorman, said that the left door was shut at the time of the accident, and that it could not be opened without his changing the handles which operated the door (p. 108, line 10).

This being the state of the proofs, the real question involved is whether there was any negligence established on the part of the defendant company which would entitle the plaintiffs to a recovery.

The Trial Judge erred in refusing to control the jury and charge as requested.

The defendant requested the trial judge to charge as follows:

“1. Under the law and the evidence the verdict must be for the defendant.

“2. Under all the evidence, the plaintiff has not shown negligence on the part of the defendant company.

"3. The defendant is not chargeable with negligence in failing to keep a proper lookout for a child of tender years on the sidewalk in the middle of a block, which child suddenly runs into the street and directly into the side of an approaching car."

Request No. 3 should have been charged as bearing directly on the facts of the case.

Requests 1 and 2 should have been charged, unless there was evidence from which a jury could say that the defendant failed in some legal duty which it owed to the plaintiff, Anna. We submit that there was no such evidence.

It is elementary that some legal duty must exist upon which to predicate a charge of negligence.

In *Hoff v. Public Service Ry. Co.*, 91 N. J. Law, 641, this Court said (p. 644) :

"To invoke the rule of liability for negligence, which is predicated upon the omission to perform, or the performance negligently of some legal duty by the defendant, it must appear that the legal duty existed as *sine qua non* to the defendant's liability. *Kingsley v. D. L. & W. R. R.*, 81 N. J. L. 536. Such a duty cannot be presumed, but must be proved. Add Torts. 36."

So in *Alvino v. Public Service Ry. Co.*, 97 N. J. L. 526, this Court said (p. 527) :

"Negligence is a fact which must be shown. It will not be presumed. There is always a presumption against negligence. *McCombe v. Public Service Railway Co.*, 95 N. J. L. 187. The only presumptions of fact which the law recognizes are immediate inferences from the facts proved. *Price v. New York Central Railroad Co.*, 92 N. J. L. 429; *McCombe v. Public Service Railway Co.*, *supra*; *Adriance v. Schenck Bros.*, 95 N. J. L. 185. Proof of a collision or facts from which a collision could be inferred by a jury does not make out a *prima*

facie case of negligence. The doctrine or maxim *res ipsa loquitur* is not applicable. *Conover v. Delaware &c. Railroad Co.*, 92 N. J. L. 602. To establish a case of negligence and fix the liability of the defendant, it is incumbent upon the plaintiff to prove some fact which is more consistent with negligence of the defendant than with the absence of it. *Toomey v. London, &c. Railway Co.*, 3 C. B. (N. S.) 150."

In *Fitzhenry v. Consolidated Traction Co.*, 64 N. J. L. 674, a girl of nine and a boy of three years of age came into collision with a trolley car. The evidence was (p. 677) :

"Q. They got in front of the car? A. No, sir; the boy was right at the edge of the fender and the girl was knocked right into the fender as far as they could go. * * *

"Q. Didn't they walk into the side of the fender? A. The boy did, yes.

"Q. And the girl too? A. Yes, sir; the girl was in the middle of the fender.

"Q. She fell forward, having come against the side of the fender? A. Yes."

And this Court, in sustaining the non-suit in the case brought by the girl, said (p. 677) :

"It is true that in such cases the question of contributory negligence is generally, if not always, a question for the jury. But this doctrine will not warrant a recovery when the child suddenly puts himself in a dangerous place, where there was no reason to expect him, and too late for the danger to be averted by the person inflicting the injury. 7 *Am. & Eng. Encycl. L.* (2d ed.) 409, and note."

It is also interesting to note that this Court observed that the accident happened in the middle of the block (p. 676), just as it did in the case at bar.

In *Baier v. Camden &c. Ry. Co.*, 68 N. J. Law 42, a boy was riding on the rear of a wagon, which was traveling in the same direction, and just ahead of a

trolley car. The trolley car passed the wagon without striking it, and as it did so, the boy dropped off and moved in front of the trolley car and was run over. The Court said :

“The car slowed up as it approached the wagon; the motorman was under no duty to stop the car; he had a right to pass the wagon, using due care to do so without striking it.”

And again (p. 44) :

“The burden is upon the plaintiff to prove negligence on the part of the defendant, and, under the circumstances of this case, there is an entire absence of anything from which negligence can be imputed to the defendant company. The motorman saw the plaintiff, who was in a place of safety, and he had no reason to suppose that he would leave that position and run into a place of danger. The duty of the motorman was to avoid collision with the barrel wagon, which might have resulted in injury to all who were upon the wagon, and to accomplish that his attention was necessarily drawn from the position which the plaintiff occupied. No want of due care appears on the part of those in charge of the car.”

In *Jelly v. North Jersey Street Ry. Co.*, 76 N. J. Law 191, the plaintiff (p. 192)

“walked for a short distance towards Millburn and then determined to take a car which he saw approaching. He was standing about two feet from the car as it approached, near enough to ask the motorman whether that car went to Millburn, and was told that it did not, and then turned and started to walk away; as he was doing so he was struck and knocked down and injured. It appears that the front of the car passed him, but that the rear of the car, in swinging around the loop, projected beyond the track far enough to strike him.”

The trial court refused to direct for the defendant, and on writ of error, the Supreme Court said :

“We are unable to see in this testimony any evidence of negligence on the part of the motor-

man. He was running the car in the ordinary way around the loop. He saw the plaintiff two or three feet away from the car with no reason to apprehend that he would remain in a place where he was likely to be struck."

And again (p. 193) :

"There is no reason why the motorman should not continue with the car around the loop, nor had he any reason to suppose that the plaintiff would remain so near as to be struck by the rear of the car as it went by."

A somewhat similar case, on the facts, is *Miller v. Public Service Corporation*, 86 N. J. Law 631, where this court sustained the judgment of non-suit.

The salient facts in the case at bar, as bearing on the question of liability, are the facts that at no time was Anna in front of the trolley car or on the tracks, and that all the time that she was where the motorman could see her, she was in a place of safety.

The plaintiffs' witnesses mentioned no other children, besides Anna, as being on the sidewalk or in the street. Werkheiser, the motorman, says that when his car entered the block between Fourth and Fifth Streets, he saw a number of children playing on the sidewalk about the middle of the block (p. 92) on the north side, and some of them about half way between the car tracks and the curb (p. 91, line 20). His car was about twenty feet away when he saw them (p. 92, line 35). The trolley car was then barely moving as he was approaching the end of the rails (p. 94, lines 10-30).

His testimony was (p. 95, line 35) :

"Q. Did you know or not whether anything had happened, before your car came to a stop on that day? A. No, sir.

"Q. Did you see this or any other child run towards your car as you passed those children? A. No, sir."

And again (p. 96, line 10) :

“By the Court :

“Q. What did you do as you passed the children? A. I wasn't doing anything. I just seen I had enough clearance to pass them all, that they were half-way between the car and the curb, and I didn't pay any attention to them.

“By Mr. Seip :

“Q. Did they or didn't they stay there as you passed, as far as you could see? A. They stayed as far as I could see.”

There is not a scintilla of evidence that Anna ever was in front of the trolley car, or was run into by it; nor is there any evidence from which it can be said the motorman failed in any duty which he owed towards Anna in the operation of his car.

All the plaintiffs' witnesses bear out the motorman that his car was going extremely slowly at the time Anna was in the street walking toward it.

Tuckoch says the motorman was putting on the brakes and looking down the tracks (p. 29, lines 14 to 18). And that Anna was walking (p. 32, line 10) :

Gearsay testified (p. 50, line 23) :

“Q. And when you first saw her she was right there by the front left door of the trolley car, wasn't she? A. Yes, sir.

“Q. But about four feet away from it. A. Yes, sir.

“Q. Did you see what she did from that point over the car? Did you see her go at all, walk or run or anything like that? A. No, sir.

“Q. You did not see anything like that? A. No, sir.”

He says the car was going slowly, p. 44, line 15).

Sabo says Anna was about half way between the curb and the track when the trolley car slowed up (p. 60, lines 20 to 30) and that “it was going pretty slow—about 5 miles an hour” (p. 61, line 6).

He testified (p. 61, line 10) :

“Q. It came down to about five miles an hour. Then you say Anna stopped, too? A. Yes, sir.

“Q. In the middle of the road? A. Yes, sir.

“Q. And she stopped dead, didn't she. A. Yes, sir.

“Q. Then the trolley car, you say, started up again? A. Yes, sir.

“Q. When the trolley car started up again it went faster, didn't it? A. Yes, sir.

“Q. Did it go fifteen miles an hour then? A. About fifteen.

“Q. Then Anna started, too, didn't she? A. Yes, sir.

“Q. But Anna did not start until after the trolley car started, did she? A. After the trolley car started.

“Q. After the trolley car started up to go again then Anna started going toward the trolley car? A. Yes, sir.

“Q. Did Anna walk or run? A. She walked.”

Mrs. Goldfarb says, “the car ran past her” (p. 66, line 32). She said the car “was coming the way the cars usually run there” (p. 73, line 20), and that “coming half way of the block it started to go slow” (p. 74, line 5).

She then testified (p. 75, line 15) :

“Q. When the trolley car was there and going slow, as you said, where was Anna? A. In the center of the street.

“Q. Anna was still in the middle between the car track and the north curb? A. Yes, sir.

“Q. And right over from you, was she? A. Right across.

“Q. Right across from where you stood? A. Yes, sir.

“Q. And you stood in front of the door nearest to Fifth avenue? A. Yes, sir.

“Q. Anna then had not started to come across the street when the car was in front of the pole? A. She started in walking and the car started. The car had gone slow and then about the time that the car started to go faster

Anna started to walk. She started to walk before the car started to go faster.

“Q. Which went the faster, the car or Anna?
A. The child was just walking slow.

“Q. Did the car go faster than Anna when it started to move? A. Certainly it did. Anna was standing when the car started to go faster.”

These are all the eye witnesses called by the plaintiff. No where is there testimony, nor is there any evidence to fasten any negligence or failure of duty on the motorman. He saw the group of children. He slowed down his car so that it barely moved. He passed by the children and (from the story of the plaintiffs' witnesses) apparently gave his car enough power to carry it to the end of the block, which was also the end of the rails.

How could he have anticipated that Anna would walk into the side of the car! When he passed her, going very slowly, she was several feet away from it. And how can his company be held to respond in damages upon such a state of facts! If these facts gave rise to a legal liability on the part of a trolley company, it would be impossible for any such company to operate, for every time a child appeared anywhere in the street on either side of the car, the motorman would have to stop. Such cannot be the rule of law.

That such is not the rule, appears from what the Supreme Court said in *Stillwell v. Public Service Ry. Co.*, 1 N. J. Misc. Reports 560, as follows:

“The last point is directed to the instruction to the jury upon the question of the care required to be used by the motorman. The instruction is as follows: ‘The law requires that ordinary care be used in connection with the control that is exercised in the operation of the car, so that the car's progress may be slowed or entirely halted, if prudence requires that to be done, in behalf of the safety of those

who are on its track or in its path.' This instruction we think was erroneous. It overlooks the doctrine laid down by the Court of Errors and Appeals in *Geyer v. Public Service Railway Co.*, 98 N. J. Law 470."

In *Traction Co. v. Heitman's Admr.*, 61 N. J. Law, 682, the decision and the cases cited to support it, all turned on the fact that the child was in front of the trolley car, and so was run over by it, and the question for the jury was (p. 683) :

"as to the motorman's negligence in failing to observe the children *in the immediate front* of his car until after he was warned by the shouting of a passenger sitting behind him in the car."

A similar situation applies to what the Supreme Court said in *Markey v. Consolidated Traction Co.*, 65 N. J. Law 82, affirmed 65 N. J. Law 682.

The case of *Dirigolano v. Jersey City &c. Ry. Co.*, 76 N. J. Law 505, is helpful by way of contrast. There a number of children were playing in the street around a lumber pile. They were driven away by the caretaker, and ran in various directions. The plaintiff slipped and fell on the trolley track and was run over by a trolley car, which, all the evidence showed, was running at a high rate of speed (p. 506). This Court held that the case presented a jury question, because of the speed with which the motorman approached the children. The Court said (p. 507) :

"While the car was thus approaching the motorman, in the exercise of proper circumspection, would have seen that there were children in the street, and in a general way what their ages were and what they were doing there, at least it was open to the jury to find that he would. Whether in view of what he would thus have seen, reasonable precaution would have dictated, that he slow down his car while running past the children, or at least

that he refrain from going at 'a high rate of speed', or 'very, very fast', were certainly questions that under our trial system are passed upon by juries and not by judges."

In contrast to that situation, the motorman in the case at bar slowed down almost to a stop and did not increase his speed a particle, until after he was past the children, and had a clear track ahead.

In *Migliaccio v. Public Service Ry. Co.*, 3 N. J. Ad. Reports 1427, the injury resulted from the collision of an automobile and a trolley car. The Supreme Court, by Justice Katzenbach, said (p. 1429) :

"It is necessary for a plaintiff, in order to recover, to prove that the defendant did an act or omitted to do an act which a person of ordinary prudence could foresee might naturally and probably produce the injury complained of; and that such act or omission did actually cause the injury."

What act, we ask, did the motorman do or omit to do, in the case at bar, which can be said, under the evidence in the record, to have caused the injury to Anna?

In *Harbison v. Camden &c. Ry. Co.*, 74 N. J. Law 252, affirmed on opinion, 76 N. J. Law 824, the plaintiff was riding a bicycle in the street. The facts as stated by the Court were (p. 253) :

"he traveled on the right hand side of the avenue for about half a block, keeping close to the trolley track (within a foot or two of it), and then suddenly turned across it towards the left hand side of the street. Just as he got upon the track he was struck by the car which was proceeding along the street in the same direction as the plaintiff. Plaintiff was unaware of the proximity of the car as no gong was rung upon it, and he did not look to see if the track was clear before attempting to

cross. These being the facts in evidence when the plaintiff rested his case the trial judge directed a non-suit."

In sustaining the non-suit, the Court said (p. 253) :

"In the first place, these facts do not speak negligence on the part of the motorman operating the defendant company's car. The plaintiff was riding on the right hand side of the avenue which by 'the law of the road' was his proper place. At the point where he attempted to cross over to the other side there was no intersecting street or anything else to suggest to the motorman the probability of his attempting to do so, nor did the plaintiff do anything before making the attempt to suggest to the motorman his intention. He did not even look around in the direction of the car, and thereby perhaps indicate that its proximity might be a matter of moment to him. The failure of the motorman to anticipate the plaintiff's action was, therefore, not negligent, and as he had no reason to anticipate such action there was no cause for the ringing of his gong. Nor can the failure of the motorman to stop the car, after the plaintiff started to cross the track, in time to prevent the collision, be deemed negligence on his part. The fact that the plaintiff was not more than a foot or two from the track when he turned to cross it, coupled with the further fact that he was struck just as he got upon the track, demonstrates that the car was so close upon the plaintiff, when his intention to cross over was first made manifest to the motorman, that the bringing it to a standstill before colliding with him was an impossibility."

In *Rose v. Alcott, et al.*, 77 N. J. Law 538, the plaintiff was walking in the trolley tracks. The facts as stated by the Court were (p. 539) :

"seeing a trolley car approaching him on that track in the distance, he went over to the other

track. While walking there he was approached in the rear by a stage driven by the defendant Alcott, whose horses were upon a trot. Somebody cried to the plaintiff and others to get out of the way, and the plaintiff, in order to make way for the stage, without looking ahead, walked diagonally toward the track from which he had come, and while doing so forgot the trolley car, being excited, as he says, and was struck and injured by the car. It appeared that he walked *into the side* of the car that was nearest to him just back of the steps."

The Court affirmed the non-suit as to the defendant Trolley Company, and said (p. 539):

"with respect to the Public Service Corporation the case discloses no negligence upon the part of its employes. If the company was liable at all, it must have been in respect to some negligence of the motorman. His duty was to run the car with such care and at such a rate of speed that persons on foot might use the street in safety, provided they exercised reasonable care for their own protection. The evidence fails to show any want of care upon the part of the motorman, either in the management or speed of the car."

Graham v. Cons. Traction Co., 64 N. J. L. 10, is strongly in point. It came before the Supreme Court on a rule to show cause, but the law as stated by Chief Justice Magie is equally applicable to the case at bar, because of the similarity of the facts. The allegations of negligence were almost identical with those in the case at bar (p. 11):

"namely, maintaining an excessive rate of speed in the locality where the injury occurred, or not keeping a proper lookout for persons crossing in front of his car, or not giving warning to such persons by ringing the gong of the car."

The facts relating to the happening of the accident, as stated in the opinion were that plaintiff's decedent (p. 12) :

“was playing with other boys on the sidewalk; that there was nothing in his conduct to indicate that he intended to go upon the street and cross in front of the car, and that suddenly, when the car was very near to them, two boys started into the street and attempted to cross over the car track; one of the boys, who was in advance, just managed to get over safely; the second boy was the deceased, who was struck by the fender; another boy ran out, as he says, to catch the deceased and take him from the place of danger, but failed to do so, and ran himself into the side of the car and was knocked down.”

Commenting on this, the Court said (p. 12) :

“Upon the weight of this evidence there is no justifiable inference that the motorman failed to keep a proper lookout. The deceased crossed, not at a crossing, but in or near the middle of a block; his act was sudden, and the motorman had no reasonable ground to expect him to attempt to cross.”

Commenting on the charge of negligence in failing to sound the gong on the car, the Court said (p. 13) :

“There is no statutory duty imposed upon street railway companies in respect to giving audible signals of the approach of their cars such as is imposed by law upon railroad companies. The duty of street railway companies in that regard arises out of their use of public highways, in which the public has a right of passage. Since they are permitted to use cars running upon rails from which they cannot deviate, and since this construction forbids their turning out to make way for the passage of other vehicles or passengers, a duty to give reasonable warning of the moving car may

arise. Such a duty may reasonably require audible signals, but the circumstances disclosed by the evidence do not justify the inference that such duty arose in this case. The clear evidence is that the boys, in their play on the sidewalk, gave no indication that they intended to cross the track, no signal nor warning as to them would have been appropriate or required. When they rushed from the sidewalk and ran directly in front of the car, the motorman made every effort to arrest the motion of the car. The car was visible and visibly moving; the signal by the gong would have been of no avail. From the evidence, an inference of failure of duty in this respect could not reasonably be drawn."

Those same rules of law are directly applicable to the case at bar.

The failure of the motorman to sound his gong had no bearing on the accident at all. Anna was off to one side, first on the sidewalk, and then in the middle of the street after the car had passed by, and what was said in the *Graham* case on that subject applies equally here.

So in the matter of the charge that the motorman failed to keep a proper lookout. He did in fact keep a lookout and had a clear track ahead and has no responsibility, under the *Graham* case, for the sudden and unexpected action of Anna in walking into the side of the car.

We submit, therefore, that each of the three requests to charge was proper, and that it was error to have refused to so charge.

The evidence failed to establish a case for the plaintiffs. The first request (p. 4, line 23) amounted to a motion for a directed verdict. If it can be said that that request came too late after the summing up, certainly the second request (p. 4, line 26) was both timely and proper.

The plaintiffs failed completely to show negligence, or to show facts, entitling them to recover. The farthest that the proofs went was to show the happening of the accident.

There was no dispute or conflict in the evidence, on the fundamental facts, namely that the car was operated slowly until up and past where Anna was, and that Anna walked into the side of the car. Nothing that the motorman could have done in the exercise of reasonable care could have prevented it.

The third request (p. 4, line 30) was equally proper and should have been charged.

The facts here did not bring the case at all within the rule of law quoted by the trial judge (p. 126, line 27). The motorman in the case at bar was safely past the children, including Anna, and had a perfect right to suppose that he could go on his way without one of them walking into the side of the car.

The Trial Judge erred in his charge to the jury.

The trial judge said (p. 3, line 37) :

“However, you must remember that the question of the contributory negligence of the child is not involved here. ‘If a motorman running a trolley-car on the highway in the daytime perceives a person passing along on foot upon or closely beside the track and apparently heedless of signals and the motorman can arrest the movement of the car before striking such person, his failure to do so is evidence of negligence, which must be submitted to the jury to decide as a fact.’ For that reason this case comes to you to decide.”

We submit that when the trial judge, after quoting from the law as he did, said “for that reason the case comes to you to decide,” he practically

instructed the jury, or at least impressed upon their minds, that the facts of the case came within that rule of law. That instruction amounts to telling the jury that the motorman, in the face of his denial, and of all the other evidence, saw Anna walking on or near the track and should have stopped his car, and that the fact of the collision between Anna and the car argued negligence on the part of the motorman.

What else could it have meant to the minds of the jury, particularly when, after reading the quotation (p. 4 line 1), which spoke of a situation where the motorman saw the person, who was unheeding, and that the failure to stop the car before hitting him was evidence of negligence, the trial judge said "for that reason this case comes to you."

For what reason (in the jury's mind) : why, for the reason that the car and the girl collided and therefore the motorman was negligent.

It is not enough to say that the trained mind of a lawyer, or judge, could make the necessary distinction between the rule there and the facts here. From the standpoint of the jury, this must have had the effect of an instruction to find the motorman negligent. The quotation made by the trial judge had no real application to the facts in the case at bar, and the instructions as applied to this case was erroneous.

We submit that the record sent up contains harmful error, which should lead to a reversal of the judgments.

Respectfully submitted,

W. H. WALTERS,
Attorney for Defendant-Appellant.

CONOVER ENGLISH,
Of Counsel with Defendant-
Appellant.

THE
COURT OF COMMONS

IN PARLIAMENT ASSEMBLED

THE 10th DAY OF APRIL 1850

IN WITNESS WHEREOF

WE HAVE HEREUNTO SIGNED

OUR HANDS AND SEALS

THIS 10th DAY OF APRIL 1850

IN THE PRESENCE OF

New Jersey
Court of Errors and Appeals

ANNA GOLDFARB, by Samuel Goldfarb, her next friend, and SAMUEL GOLDFARB, individually, Plaintiffs-Appellees,		Action-at-Law On Appeal from Supreme Court, Warren County Circuit
vs.		
PHILIPSBURG TRANSIT COMPANY, a corporation, Defendant-Appellant.		

BRIEF ON BEHALF OF PLAINTIFFS-APPELLEES

Preliminary Statement

On July 13, 1925, the plaintiff, Anna Goldfarb, then a few days over five years of age, came into collision with a trolley car of the defendant company while she was crossing from the north to the south side of Central Avenue, in the little Town of Alpha, Warren County, New Jersey. She was run over by said trolley car and lost her right leg and part of her left foot.

Verdicts were rendered in favor of herself, for the damages sustained by her, and in favor of her father for his consequential losses. Upon the judgments entered in favor of the plaintiffs, this appeal is taken.

Statement of Facts

Plaintiffs' Evidence:

The Goldfarb home and store are located on the south side of Central Avenue, which is a short distance from Fifth Street, where the trolley line had its terminus. The child, Anna, had left her home and crossed to the north side of the street, where she and other children had been playing. On her return to her home, she was struck by a car of the defendant company, which was being operated in an easterly direction, on a single track located in the center of the highway. The evidence, as will be hereafter shown in detail indicated that the child had walked from the sidewalk to a point close to the nearest rail, when a trolley car, east bound, made its appearance. Before getting to the point where the child was, it slowed down and the child stopped. The child then started walking, at which or about which time, the trolley car speeded up and the result was that the child was caught and injured in the manner above pointed out.

There was much proof in the case that the child was in clear view of the motorman for a considerable distance, but that the motorman, heedless of the child's situation, ran her down without giving any signal by bell or gong and without making any effort to stop his car before reaching the child. It was in the early evening in July, when it was very light. The street was dry and there was no obstructure in the view of the motorman.

FRANK TUCKOCH, the first witness on behalf of the plaintiff, swore that on the day of the accident, he was on the south side of Central Ave.

nue, at the corner of Fifth Street. He first noticed the plaintiff when she was standing on the curb on the north side of the street. He, at that time, observed a trolley car coming down (p. 27). He saw the child going across the street and the street car coming at the same time (l. 20, p. 28). Anna kept on walking and the car kept on coming down and they got closer to each other. He shouted to the motorman, who was looking either at him or down the tracks. He says that he saw Anna getting pretty close to the car and looked over and saw her fall suddenly. At that time she was near the front door (p. 29). He says that he did not hear any signal from the car and that there were no noises then present to prevent his hearing (l. 12, p. 31). He says that there were other children on the sidewalk from whence Anna came (l. 10, etc. p. 35). He noticed the motorman putting on his brakes when the child was halfway between the curb and the tracks.

On page 39, he was asked the following questions:

“Q. When you saw Anna fall, she was just about near or opposite the front of the car on its left-hand side. Is that right?
A. Yes, sir.

“Q. After she fell, did the car move or not? A. Yes.

“Q. How far did it move? A. The full length of the car.

“Q. And left her some six feet behind the car? A. Yes, sir.”

FRANK GEARSAY, was sitting on a wall on the north side of Central Avenue, about opposite to where the accident occurred. He saw the car hit the plaintiff and says that she was “*right outside the car there; right in front of it*” when the

car hit her (p. 41). In answer to this question put by the court, "Where was Anna when the car hit her, he said, "*in front of the car*" (l. 15, p. 41).

He first saw the car when it was about four feet from Anna. He gave it as his opinion that the front door hinges struck her and says that it knocked her over and rolled her right under the wheels (bot. p. 41). He says that both trucks of the car ran over her, and when the car stopped, Anna laid about three feet back of the car (p. 42). He describes her position as lying with one leg across the rail with her body on the outside (top p. 49).

JOSEPH SABO, another witness sworn on behalf of the plaintiff, was sitting on the wall with the preceding witness, across the street from the Goldfarb home and store. When he first saw Anna, she was standing on the sidewalk. He saw the trolley car coming as he started out from the sidewalk, at which time it was 45 or 50 feet away (bot. p. 53). Describing the accident, he said that he saw the child walk off the sidewalk and go about 4 feet when she stopped. "She waited for the trolley car to come down; so the trolley car came down and slowed down a little bit and she started off and the trolley car started off."

"Q. Then what happened? A. Then she got there near the car tracks and the left front door hinges hit her.

"Q. You saw the hinges hit her? A. Yes, sir.

"Q. And you saw her knocked down? A. Yes, sir.

"Q. Then what happened? A. Then she rolled toward the trolley car and the front wheel went over her.

“Q. You saw the front wheel go over her? A. Yes, sir.

“Q. Then what happened? A. Then the rear wheel went over her and she was back about four feet from the rear of the car.

“Q. And one leg over the track? A. Yes, sir.

“Q. And the body was on the other side? A. Yes, sir.

“Q. On the rail nearest you? A. Yes, sir” (p. 57).

The above questions were asked by the court.

Witness further says that he heard no signal or bell given by the car, which was going about fifteen miles an hour at the time it hit the child (l. 10, p. 58).

On his cross-examination, he stated that when the trolley car slowed up it was about 20 feet from Anna, (l. 28, p. 60); that when it slowed down it was going about 5 miles an hour, at which time Anna stopped “dead” in the middle of the road. Then the trolley car started up again at a speed of about 15 miles an hour. Anna walked all this time (p. 61).

DORA GOLDFARB, mother of Anna, testified that the plaintiff became five years of age on July 4th, which was nine days before the happening of the accident. She was standing outside her home on Central Avenue, and saw Anna across the street on the north side between the curb and the tracks. Her statements as to what she saw, are as follows:

“I saw the trolley car about—well, farther than this end of the court room, about

a block away, and I saw the trolley car coming, and after she was halfway over, she stopped and it started to go slowly in order to come to a stop and she got over where all the trolleys stop there and she started to go past and I noticed the child coming over and she stopped right near the tracks and she was running as fast as she could and I ran down and she was thrown over and I started to scream" (top p. 65).

It appears that her use of the pronoun "she" in referring to "running as fast as she could," was meant to describe the trolley car, as the question following the above quotation, shows. If any doubt, however, should exist on that score, a reference to the bottom of page 72 and top of page 73, removes the same, for in referring to the movement of the trolley car, she was asked,

"By she you mean the trolley car," and her answer is, "Yes, sir."

Thereafter, her testimony made it clear that the child's gait was always limited to a walk. Continuing with her recital of the occurrence, so far as she was acquainted with it, she says that when the child reached a distance, estimated by the court from a fixed object in the court room, at about five or six feet from the nearest rail of the track, the trolley car was about 65 feet away; that the car then started to slow up and that when it was about 25 feet from her,

"The trolley car started to run faster and the kid started on walking over" (p. 66), and commencing on line 36, she said, "I was fearful that the car would knock her over, and I saw that it did knock her over."

On her cross-examination, when asked specifically concerning the slowing down of the car, she stated that it slowed down about the middle of the block and it continued slowing down. At that time Anna was between the curb and the track. From then on she describes the movements of both car and child as follows:

“She started in walking and the car started. The car had gone slow and then about the time that the car started to go faster, Anna started to walk. *She started to walk before the car started to go faster.*”

This witness also made it clear that the motorman, as he came along the street, was not looking on the side where the children were, but was looking on the south side of the street where she was, for she testified that when the car came along Central Avenue, she saw the motorman,

“But I didn’t see him do anything, but he was looking toward me” (l. 15, p. 74).

That the motorman was negligent almost to the point of criminality, is evident from his own testimony, as appears from the following extracts of his testimony.

Defendant’s Evidence:

EMORY WERKHEISER, the motorman in charge of the car, testified that, coming along Central Avenue, he started to slow down to come to a stop, when, to use his own language,

“I saw a lot of children fooling around, they were then about halfway between the car tracks and the curb.”

When his attention was called to the number of the children, he said that he did not know how many there were in the group, because,

“I didn’t pay any attention to them” (p. 91).

He further stated that the first time he remembered seeing the children was when he was about 20 or 30 feet away from them (top p. 92). When asked by the Court if that was the first time he saw them, he answered,

“The first time I took notice of them, because there is always lots of them around the street” (l. 10, p. 93).

“Q. (By Mr. Seip) What were they doing there? Did you notice that? A. I did not. I suppose playing and running around there (same page).

“Q. (Asked by the Court) What did you do when you passed the children? A. I wasn’t doing anything. I just seen I had enough clearance to pass them all, that they were half-way between the car and the curb and *I didn’t pay any attention to them*” (l. 10, p. 96).

He stated that he did not see the plaintiff after the front of his car passed the children, and when asked by the court:

“Q. Did you look to see?” he answered, “*Not particular*” (p. 97).

It is clear that this witness did not make the slightest observation as he came along Central Avenue, for he testified on cross-examination, that he made a turn into Central Avenue, which was about three blocks or so from the place where the

accident occurred, part of the road being upgrade and part downgrade; that it was a clear street; that he had a clear view; that there was nothing to prevent his seeing the children on the street, and that the reason why he did not see the children until he got within 20 or 30 feet of them, was, using his own language, because

“I was not looking for anything that far ahead,”

and in answer to the question as to whether he was not looking toward where the children were, on that side of the street, he said:

“Not until I got closer to them” (p. 102).

He says that there were a number of children playing then, but could not describe them, and that he knew it was a place where he would likely meet children; that the neighborhood was fairly well built up and that he knew it was a place where

“There were children all through that territory.”

To make clear his negligent conduct, he repeats that he saw the children when he was 30 feet or so away from them, and did not see the plaintiff again between that time and the time she was in her father's arms. Asked if he saw how the plaintiff got towards the track, he answered, “No, sir.” Asked if he saw how she got hurt, he answered, “No, sir” (bot. p. 104, top p. 105). That, as he came along Central Avenue, he was apparently oblivious to everything, is apparent from his answers to questions which indicate that but for the brief instant when he observed these children when he was thirty feet away from them, he did not ^{again} see them. It appears that he did not

see the witnesses that were sitting on the wall on the north side of the street; nor did he see Mrs. Goldfarb. He did not even know that he was having an accident, and it was only after his attention was called by a man who waving at him (p. 103), that he got off the car, walked back and saw blood about three feet to the rear of his car on the north rail (p. 99).

Neither this witness, nor any other witness, gave any evidence as to the giving of a signal by bell or gong as the car came along the street, preceding the accident.

It appears that it was the custom of the employees of that car, when reaching the end of the line, ^{which} when as shown above, was a very short distance from the place of the accident, to change the fare box from the front to the rear, and also to tighten the brake at one end of the car and loosen it on the other, so that when the car made its return trip, the fare box would be in the rear at the conductor's post, and the brake at his end would be loose.

HARRY SPRAGLE, the conductor of the car, testified that he changed the fare-box when the car was about 100 feet from the end of the line at which time he also went to the back to get ready to take up the brake (bot. p. 112); that he was just passing Fourth Street, when he moved the box forward, being obliged to loosen and raise it up, and that he carried it towards the front of the car and put it on the other standard (bot. p. 113).

It appears from the testimony of this witness, that the car was equipped with a folding step, on which there were three hinges over each end (l. 25, p. 115).

Summary of the Evidence

It is at once apparent that every requirement of the law, was violated by the motorman in charge of the car that caused the lamentable injuries to the little plaintiff. It is shown that in broad daylight, on a clear day, upon an open straightaway stretch of track, the motorman drove his car, paying no attention to anything or anyone on the highway, although he knew that many children played all along the street in that particular neighborhood. He apparently came along Central Avenue from the time he turned into it, some three blocks away from the point of the accident, with his eyes closed, or his attention otherwise diverted; that he observed the children for an instant when he was some 30 feet from them and made no further observation, or did anything to protect them thereafter, and was oblivious to everything and realized nothing until the accident was over.

If there was no testimony in the case, other than that of the motorman, the negligence of the company would have been clearly made out. But the proofs on the part of the plaintiff, strengthen, if necessary, the charge of negligent conduct. Mrs. Goldfarb's testimony that the child stopped near the track; that the car then slowed down, and that as the child started, the car started up swiftly and caught her, independent of any other testimony, indicates negligence on the part of the motorman. And the testimony of the three young men, called on behalf of the plaintiff, clearly proved the negligence of the motorman, in that, they also observed this trolley car coming along the avenue, slowing down and rapidly

starting up again, giving no signal and running into the child as she walked across the street.

Under all the evidence, therefore, it is submitted that the court did not err in sending the case to the jury on the question of the defendant's negligence.

ARGUMENT OF THE LAW

Before going into any question of the law, plaintiffs point out to this court, that no exceptions are presented to the court, which entitle the defendant to a review thereon.

1. There was no motion to non-suit the plaintiff.

2. There was no motion to direct a verdict in favor of the defendant.

3. There was no exception to or instruction on the question of contributory negligence.

4. No exception of a specific nature was taken to anything. Even though the plaintiffs may consider that they are not called upon to answer any of the alleged reasons for reversal advanced by the defendant, they nevertheless, answer the same in the manner hereinafter shown.

Five grounds of appeal are urged by the defendant. The first ground is that,

THE TRIAL JUDGE ERRED IN REFUSING TO DIRECT A VERDICT FOR THE DEFENDANT.

The second ground is that

THE TRIAL JUDGE ERRED IN HIS CHARGE TO THE JURY RESPECTING THE CARE REQUIRED OF THE MOTOR-MAN.

The third ground is that

THE TRIAL JUDGE ERRED IN REFUSING TO CHARGE DEFENDANT'S REQUEST THAT "UNDER THE LAW AND THE EVIDENCE, THE VERDICT MUST BE FOR THE DEFENDANT."

The fourth ground is that

THE TRIAL JUDGE ERRED IN REFUSING TO CHARGE DEFENDANT'S REQUEST THAT "UNDER ALL THE EVIDENCE PLAINTIFF HAS NOT SHOWN NEGLIGENCE ON THE PART OF THE DEFENDANT COMPANY."

The fifth ground is that

THE TRIAL JUDGE ERRED IN REFUSING TO CHARGE THE FOLLOWING REQUEST OF THE DEFENDANTS "THE DEFENDANT IS NOT CHARGEABLE WITH NEGLIGENCE IN FAILING TO KEEP A PROPER LOOKOUT FOR A CHILD OF TENDER YEARS ON THE SIDEWALK IN THE MIDDLE OF A BLOCK, WHICH CHILD SUDDENLY RUNS INTO THE STREET AND DIRECTLY INTO THE SIDE OF AN APPROACHING CAR."

Starting with the last request first, it seems a waste of time to discuss the same at length. The statement of fact that the child suddenly ran into the street and directly into the side of an approaching car, is not borne out by the evidence in such a manner as to entitle a binding instruction on that point. There was no evidence that the child suddenly ran into the street and directly into the side of the car. The testimony on the part of all of the witnesses, is that the child walked and no one said that she ran into the side of the car. There was some evidence that she was struck by a hinge on the front end of the car, while ~~ONE~~ of the witnesses, viz., Frank Gear-

say ~~and Mrs. Goldfarb~~, swore that she was in front of the car when she was struck. Under such circumstances, the court could not properly have granted the request of the defendant.

Cavanaugh v. Ridgefield, 94 N. J. L., 197.

Anderson v. Director General, 94 N. J. L., 421, (424).

The other four reasons present a single question, viz., was the defendant, by its motorman, guilty of negligence, which negligence was the proximate cause of the accident?

Taking the testimony of Mrs. Goldfarb, the case is not distinguishable from that of *Van Cott v. North Jersey Street Ry. Co.*, 72 N. J. L. 229. In that case, the plaintiff was about to cross a street upon which defendant ran its cars. The child stood for a moment on the curb and then made a couple of steps to walk in a diagonal direction across the street and looked and saw the car, and then made a few steps—running style. The motorman rang the bell at that time, which attracted the child's attention and she stopped at about the first rail of the track. The car slackened speed and as it did so, "plaintiff made a swift run to cross the track in front of the car." The car put on an extra burst of speed and the child was struck.

Justice Garrison, speaking for the Court of Errors & Appeals, said that:

"The motorman, by slackening the speed of his car, led the plaintiff to believe that she could safely cross in front of it, and that under such circumstances, the impart-

ing of an extra burst of speed to the car, after it had come to a semi-halt, was an act of negligence on the part of the motorman.’”

This was the case in which the only evidence favorable to the plaintiff, came from the the motorman on the defendant’s case. That case, to some extent, was even weaker than the instant case, in which it appears from all of the testimony, that no signal, by bell or gong, was given by the motorman at any time as he came along Central Avenue, before striking the plaintiff.

In *Traction Co. v. Heitman’s Admr.*, 61 N. J. L. 682, plaintiff, a young child, was struck and killed while attempting to cross in front of a trolley car. Justice Vredenburgh, speaking for the Court of Errors & Appeals, said (on p. 685).

“In this class of casualties, including injuries by the cars of electric traction companies, going often with great rapidity in the public highways, motormen are properly held to a careful and constant lookout for every movement of human life on their front, and especially for the movements of children, who are of such tender years as to be incapable of contributory negligence.”

The Court, after citing cases, said (p. 686):

“If the motorman in the present case, had exercised even a reasonable degree of vigilance in the direction his car was moving, he would have seen the children on the side of the rail either before or certainly as soon as the passenger behind him saw

them. The gain of this instant of time by the earlier discovery by the motorman of the presence of the children in the front, and his prompt action, might have saved the child's life; at least it is impossible for this court to say it would not, and this was a proper question for the jury to determine from all of the evidence."

It might seem as if the court was referring to the case now under consideration, for certainly, had the motorman discovered the presence of the plaintiff, Anna Goldfarb, earlier than ^{in time} what he did, and had he made some attempt to prevent the accident, the child would have been spared the deplorable injuries sustained by her.

In the case of *Markey v. Consolidated Traction Co.*, 65 N. J. L. 82, the facts were that the plaintiff, a child between four and five years of age, suddenly left the curb and started to cross the street; that as soon as the motorman saw the plaintiff walking across the street, he reversed his power and put on his brakes, using every effort to stop his car promptly. On the exception taken to the refusal to direct a verdict, the present Chief Justice, said: (at p. 83)

"If the motorman, under the conditions stated, was unable to stop his car in time to prevent the running down of the plaintiff, that fact alone required the submission of the case to the jury for the purpose of determining whether the car was not being run through the street at a rate of speed sufficiently high to indicate negligence in its operation."

In the instant case as herein pointed out, no effort was made by the motorman, in the slightest degree, after seeing the plaintiff, and the other children, to either check or stop the speed of his car.

In *Balog v. Mitchell*, 130 Atl. 441, Justice Min-turn, speaking for the Supreme Court, in a case where a child undertook to run in front of defendant's auto, said:

“He (the defendant), having observed the child playing in the gutter with no one in charge of it, could not foretell what the child would do or would not do, and it was certainly a question for the jury to say whether or not it was his business, in the exercise of reasonable care, to have his car under such control that he could stop it almost immediately if the child should suddenly undertake to run across in front of the car as it was proceeding along the street.”

Under the cases above cited, therefore, the court would have committed error had it withdrawn the question of the defendant's negligence from the jury.

The general principles governing the question of when facts are to be submitted to a jury on the question of negligence, are too well known to be herein further referred to, but see,

Newark Passenger Ry. Co. v. Block,
55 N. J. L. 605;

Napodensky v. West Jersey, etc, R. R.
Co., 85 N. J. L. 336:

Baer v. Lehigh & Hudson River Ry.
Co., 93 N. J. L. 85.

The citations hereinabove set forth, make it clear that the court, therefore, was justified in denying the request of the defendant for the direction of a verdict, as set forth under the first assignment; in refusing to charge that under the evidence, the verdict must be for the defendant, as set forth under the third assignment, and that the court did not err in refusing to charge that under all the evidence, the plaintiff had not shown negligence as set forth under the fourth assignment, and that the court did not err in charging on the question of negligence as set forth under the second assignment. As to the court's charge as now objected to under the said second assignment, it is obvious that the court's statements with respect to the defendant's duty, were extracted from the cases hereinabove cited, the identical language therefrom, having substantially been used by the court.

While defendant's second assignment merely goes to the part of the court's charge respecting the care required of the motorman, there has been printed on pages 2, 3 and 4 of the State of the Case, extracts from the charge of the court on negligence, weight of evidence and contributory negligence. To these various propositions, the exception does not specifically point, and it is unknown to us at this time, just what will be urged. We have considered that portion of the charge which refers to defendant's duty, but if it is intended to raise the question of contributory negligence of the infant plaintiff, we refer to the case of *Baker v. P. S. Ry. Co.* 79 N. J. L. 249, the ruling in which was exactly followed by the trial court.

In concluding the argument herein, the following points are stressed:

1. No exception properly brings anything before this court for review.

(a) No motion to direct a verdict having been made, the trial court, we believe, could not direct a verdict on a mere request to charge, where the plaintiff has had no notice of defendant's intention and is deprived of argument thereof. The usual procedure is to move for a direction and if denied, an exception thereto. No such motion having been made, and no exception thereto, being before the court, the defendant cannot now avail itself of any error on the part of the court in that respect. *Altieri v. P. S. Ry. Co.* 128 Atl. 547.

(b) The exception to the court's charge is bad because of its generality. See *Baer v. Lehigh & Hudson River Ry. Co.* 93 N. J. L. 85.

2. No error has been pointed out by the defendant with respect either to the court's charge to the jury, or the court's refusal to direct a verdict in favor of the defendant.

It is therefore, respectfully submitted that the appeal herein taken should be dismissed, and the verdict of the lower court affirmed with costs.

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ADDENDUM.

The defendant devotes a large portion of its brief arguing that the verdict is against the weight of the evidence; that certain inferences that have been drawn from the testimony should not have been so drawn, and that certain other parts of the testimony cited are contradicted by certain other parts of the same, etc.

It has been so often reiterated by this Court that with the credibility of witnesses and the weight of evidence this Court is not concerned, that it is deemed wholly unnecessary to cite cases on the subject but see *Oshun vs. DeYoung* 99 N. J. L. 204 (p. 207).

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