

NEW JERSEY COURT OF ERRORS AND APPEALS.

---

CLAYTON L. ANDREWS, Defendant in Error, vs. • THE CAMDEN AND SUBUR- BAN RAILWAY COM- PANY, Plaintiff in Error.	} ERROR TO SUPREME COURT.
--	---------------------------------

---

BRIEF FOR DEFENDANT IN ERROR.

The judgment sought to be reviewed was entered upon a verdict rendered at the Camden Circuit in an action in tort. A servant of the plaintiff had been to a Philadelphia market with a load of farm produce, and was returning about eleven o'clock at night with a wagon team of mules and empty baskets, all the property of the plaintiff. While so doing the wagon was struck from behind by a car of the defendant containing its general

manager and some others, which car had been specially ordered to make this run. The result was, both of the mules were badly injured, one of them so seriously that he was ordered to be killed by the defendant's general manager; the wagon, harness and baskets were considerably broken and destroyed. The jury rendered a verdict for the plaintiff of \$500.

#### FIRST ASSIGNMENT.

The first assignment of error is a general demurrer to the declaration. No demurrer was filed in this case. Indeed there could not have been a demurrer, as a default judgment was opened to permit the defendant to plead.

As a demurrer this assignment would have been held bad as it fails to state the grounds of demurrer.

*Laws of 1903, page 573, sec. 131.*

No objection was made at the trial to any defect in the declaration and none can be made here.

No objection to the declaration is indicated in the assignment. The declaration consists of two counts, both of which, it is submitted, are good.

#### SECOND ASSIGNMENT.

This relates to the time when the judgment was entered. That is entirely a matter of practice with the Supreme Court and is not reviewable. The rule for judgment is not brought up.

The statute expressly authorizes the judgment to be entered forthwith.

*Laws of 1903, page 592, sec. 210.*

#### THIRD ASSIGNMENT.

The question stated in this assignment was not asked or answered. The question which was asked appears on page 25, line 24. Counsel now seeks to inject other words into this question, notably the word "injured" before the word "mule." If by this it is intended to insinuate that the other mule was not injured, it is not borne out by the testimony. It appears by the testimony that both mules were injured and one of them so seriously that the defendant's general manager ordered it killed. The mule being so seriously and incurably injured, it was a humane act to put it out of its misery. The plaintiff was entitled to show that the killing was done by direction of the defendant. But, as we have already stated, the question assigned was not asked and the assignment should not be considered.

#### FOURTH ASSIGNMENT.

The cost of the care of the sick mule is a proper subject for consideration in fixing the damages.

*St. Louis vs. Biggs, 50 Ark., 169;*

*Street vs. Laumier, 34 Mo., 469.*

The only limitation is that the total damages shall not exceed the original value of the animal.

*Gillett vs. Western R. Corp., 90 Mass., 560;*

*Keyes vs. Minn. Ry. Co., 36 Minn., 290.*

The question appears on page 32. Justice Garrison in charging the jury (pages 55 and 56), directed them not to consider this. So that the plaintiff was entitled to have this evidence introduced, and the plaintiff, not the defendant, was injured by the direction not to consider it.

#### FIFTH, SIXTH AND NINTH ASSIGNMENTS.

These are substantially the same. This witness, who was the motorman, testified on direct examination that he saw a wagon about sixty feet ahead, blew the whistle, saw the wagon clear the track, and then, after witness had put the power on and got within twenty or thirty feet of it, the wagon turned back upon the track.

*Testimony, pages 39, 40 and 41.*

On cross-examination for the purpose of discrediting the witness, he was asked (pages 42 and 43), if he did not, immediately after the accident, say to Mr. Harrington in the presence of Mr. Chambers, that he did not see the wagon till he struck it. In answering, the motorman denied making this statement. Afterwards the witness in whose presence the statement was made took the stand and swore (page 54), that he heard the motorman make this statement.

This method of impeaching a witness is common. For the right to do it see—

*Greenleaf on Evidence, sec. 462.*

It is not an effort to prove declarations of an agent to bind the principal and in no way conflicts with the opinions of this Court in

*Huebner vs. Erie R. R. Co.*, 40 Vr., 327, or  
*King vs. Atlantic City G. & W. Co.*, 41 Vr.,  
679.

It will be noticed that Justice Garrison at the trial, having in mind the decisions of this Court in *Huebner vs. Erie R. R. Co.* and *King vs. Atlantic City*, in both of which he wrote the opinion, at first denied the right to cross-examine as to statements made by the witness (page 42, lines 25 to 30). The argument in favor of the next question does not appear. After objection was made to it, counsel for plaintiff stated his purpose to impeach the witness by showing he had previously made statements the direct opposite of those he now made. For this purpose it was admitted.

It appears by the ruling of the Court (page 43, lines 11 to 13), that this was admitted only for the purpose of discrediting the witness, and in the Court's charge (pages 57 and 58), the jury were especially instructed that there was no testimony before them to the effect that the motorman said he had not seen the wagon till he struck it, and this must not be considered by the jury for the purpose of bearing on the defendant's liability. He stated that it was permitted solely for the purpose of enabling the jury to judge of the credibility of the witness.

The extent of cross-examination is largely in the discretion of the Court.

*50 Century Digest*, 1162, sec. 923.

Where one of the charges of negligence is that the conductor did not stop the car in time, and he has testified on direct examination that he applied the brake as quickly as he could and did all he could to stop the car, it is proper to ask him, on cross-examination, whether he had not stated that he forgot to put on the brake and that he could have stopped the car if he had not lost his head.

*Central R. Co. vs. Allmon, 147 Ill., 471; 35 N. E., 725.*

#### SEVENTH AND EIGHTH ASSIGNMENTS.

These are directed to questions asked the conductor on cross-examination. The questions were harmless.

The extent of cross-examination is largely in the discretion of the court.

*50 Century Digest, 1162, sec. 923.*

The Court in its discretion may allow cross-examination as to irrelevant, collateral or immaterial matters.

*50 Century Digest, 1167, sec. 926.*

#### TENTH ASSIGNMENT.

This concerns the measure of damages. The Court charged that the measure of damages was the value of mules, harness, wagon, baskets and wagon cover immediately before the accident, less what they were worth at the time of the trial.

If wrong in any particular the charge is too

favorable to the defendant. There is no evidence that any of these things were worth less at the time of the trial than they were immediately after the accident, and the presumption is great that with the care and attention given him the living mule would improve during that time.

Courts have held the measure of damages to be the reduction in value by reason of the injury.

*Davidson vs. Michigan C. R. Co., 49 Mich., 428.*

Or the difference between the market value before and after the injury.

*Galveston W. Co. vs. McYoung, Z Willson Civ. Cas. Ct. App., 642.*

To this difference of value is sometimes added the expense incurred in curing the animal.

*St. Louis, &c. vs. Biggs, 50 Ark., 169;*

*Street vs. Laumier, 34 Mo., 469.*

Also reasonable compensation for the loss of the use of the horses while under treatment, provided the whole damages do not exceed the original value of the property.

*Gillett vs. Western R. Corp., 90 Mass., 560;*

*Keyes vs. Minneapolis Ry Co., 36 Minn., 290.*

If there has been any error it has in no way harmed the defendant.

Harmless error is not ground for reversal.

*Whitaker vs. Miller, 34 Vr., 587;*

*Johnston vs. N. Y. & L. B. R. Co., 36 Vr.,  
421;*  
*Christensen vs. Lambert, 37 Vr., 533.*

The eleventh assignment fails to specify any error and should not be considered.  
The judgment should be affirmed.

JOSEPH KAIGHN,  
Attorney for Plaintiff.

FRENCH & RICHARDS,  
Of Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS.

NO. 25. JUNE TERM, 1906.

---

CLAYTON L. ANDREWS,  
Defendant in Error,  
vs.  
CAMDEN AND SUBURBAN RAIL-  
WAY COMPANY,  
Plaintiff in Error.

ON ERROR  
TO  
SUPREME COURT.

---

BRIEF OF E. A. ARMSTRONG, OF COUNSEL WITH  
THE DEFENDANT, PLAINTIFF IN ERROR.

---

The writ of error in this cause was sued out of this Court, directed to the Supreme Court, to review a judgment in favor of the plaintiff Andrews against the defendant, Camden and Suburban Railway Company, upon a verdict for five hundred

dollars for the injury to a team of mules, wagon and contents, owned by the plaintiff, on the third of October, nineteen hundred and four, by reason of a collision with a car of the defendant company. The case was tried October ninth, nineteen hundred and five, before Justice Garrison and a jury.

Two objections to testimony were made, on which exceptions were sealed. One is as to the order for the killing of the mule (found on page 25), and the other, the expenses for the care of the mule (found on page 32). It is urged that both of these are improper elements to make up damages against the defendant. The ordering of the mule to be killed is nothing that can be charged against this defendant. If it is guilty of the tort, that consists in what damages was done to the mule by the collision—not because it was subsequently killed. So, too, as to the care of the other mule, subsequent to the inquiry. Neither of these things were proper elements to go to the measure of plaintiff's damage.

Another objection on which an exception was sealed was the inquiry of the motorman (see page 43), as to the conversation he had after the accident ~~by an agent of the defendant, such as this~~ <sup>and the contradiction of his denial thereof by</sup> Samuel E. Chambers (found on page 53).

His Honor seemed to have grave doubts as to the propriety of this, as will be seen in his remarks on page 53, but permitted it to be asked upon plaintiff's counsel assuming the responsibility for it.

It is respectfully urged that this evidence was clearly inadmissible. Declarations after the acci-

dent by an agent of the defendant such as this motorman was, are not admissible.

*Ashmore vs. Penna. Steam Towing & Trans. Co.*, 9 *Vr.*, 13.

*Steamboat Co. vs. Flanagan*, 12 *Vr.*, 115.

*Blackman vs. West Jersey & S. R. R. Co.*, 39 *Vr.*, 1.

*Huebner vs. Erie R. R. Co.*, 40 *Vr.*, 327.

*King vs. Atlantic City Gas & Water Co.*, 41 *Vr.*, 679.

Nor is such testimony, being inadmissible and immaterial, proper to be used as a basis of contradiction to attack the credibility of the witness. The true test is its materiality as evidence, and if immaterial for that purpose it cannot be used as a basis of contradiction.

*Greenleaf Ev.*, Sec. 462.

*Carter vs. State*, 36 *Neb.* 481; 54 *N. W.*, 583.

*Teel vs. Meravey*, 12 *Ill. Ap.*, 32.

*Morris vs. Atlantic Ave. R. R. Co.*, 116 *N. Y.*, 552; 22 *N. E.*, 1097.

*Robinson vs. Old Colony Street Rwy. Co.* (*Mass.*), 76 *N. E.*, 190.

Statements made out of Court by a witness contradicting his testimony on material points are capable of being used to affect credibility. But further than this they are not allowed to go. This allowable thing is a very different matter from attempting to prove declarations and statements made by an agent witness to contradict his denial

of such statements when asked if he had made them.

Taking materiality as the basis, suppose when the questions asked the motorman (page 43, line 10 to bottom), he had answered in the affirmative, it would not for a moment be contended that such would be proper evidence against the defendant, and its admission would be error. How then can the error in permitting the asking of the question be cured by the answer? It is admittedly a statement not binding on the principal if made by the agent, and yet he may have said it and admit saying it, and by this means the plaintiff gets it to the ears of the jury, to the great damage of the defendant.

His Honor, the trial justice, in his charge (page 57), told the jury that they were not to regard this testimony at all, except only as affecting the credibility of the motorman. In other words, he told them to perform the physical and mental impossibility of hearing the testimony for the purpose of believing it, if they were so minded, on a minor and collateral thing, and absolutely give no consideration to the facts stated. If they believed that the motorman said what he is reported to have said, it would tend, of course, to show that he was careless and negligent, and the influence of the rest of the testimony would be entirely lost on the jury, because they would have believed that the principal witness had himself admitted his culpability. No matter what charge or direction the Court gave the jury, the harm to us was accomplished and the error committed.

His Honor tells the jury that there is no such evidence before them for one purpose and yet it is there for another. It cannot be that the law requires such mental gymnastics of a jury as this would demand. Being in the case at all, therefore, I submit is reversible error. When incompetent evidence is admitted, the error is not corrected by telling the jury to disregard it.

*Bullock vs. State, 36 Vr., 557.*

Indeed, striking out the testimony does not cure, because the jury has heard and has been affected thereby.

*State vs. Sprague, 35 Vr., 419.*

If a verdict is based on illegal testimony, no matter how slight or how inadvertently it came in the case, it cannot be permitted to stand.

*West Jersey R. R. Co. vs. Paulding, 29 Vr., 178.*

There is another exception to the charge. The Court charged (see page 55, lines 27-31), at the request of the plaintiff: "I charge you that the proper verdict, if the plaintiff recovers a verdict, is the value of the mules, harness, wagon, baskets and wagon cover, less what the same are now worth."

My exception to that is found at the bottom of page 58. The error in this is that the trial took place on the ninth of October, nineteen hundred and five; the accident, the third of October,

nineteen hundred and four, more than one year before that. The true measure of damages was the difference in value between the things damaged immediately before the accident and immediately after; not what they happened to be worth a year or more afterwards. The jury was permitted under the charge to find the value of the property at the time of the trial.

Indeed, it appears in the case that by the neglect of the plaintiff, the wagon, baskets and harness were abandoned by him, and by affirming this request and charging as he did, the trial justice permitted the jury in assessing damages to estimate damages to the value of property which may not have been occasioned by the defendant at all and for which it was not liable if it was for anything.

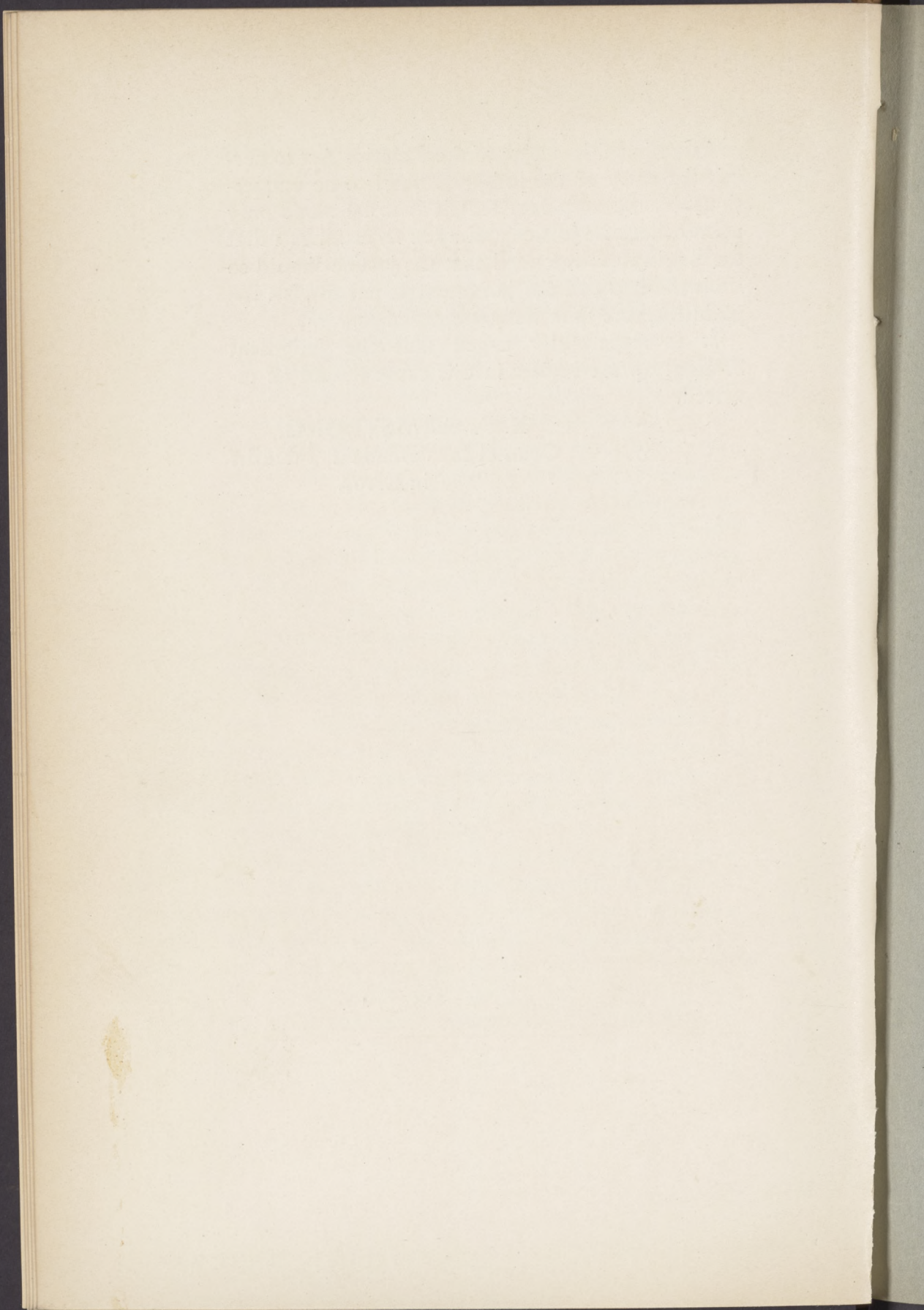
The second assignment of error is, that the judgment was prematurely entered. The verdict was for five hundred dollars. That, to be sure, was the amount of the damages as assessed by the jury as of the first day of the next term of the Supreme Court, which was the eighth day of November. Judgment was allowed to be entered on the eighteenth day of October, by an order of a Justice of the Supreme Court, under and by virtue of Section 210 of the Practice Act.

While in this case it is quite inconsequential, so far as the amount is concerned, still the plaintiff by this means is given a greater recovery than that allowed by the jury in assessing damages, to the extent of the interest on the recovery from the date of the entry of judgment until such time as it was to be entered in contemplation by the jury.

Assuming this section of the Practice Act to permit the entry of the judgment final to be unquestionable, the very fact that it is to be made only upon order of a justice and *upon terms*, shows that the Legislature intended that the justice should so limit the entry of the judgment as not to give the plaintiff more than he was entitled to.

It is respectfully urged that the judgment brought up for review in this cause should be reversed.

E. A. ARMSTRONG,  
Counsel for defendant, Plaintiff  
in Error.



---

---

**N. J. Court of Errors & Appeals**

---

CLAYTON L. ANDREWS,

Defendant in Error,

vs.

THE CAMDEN AND SUBURBAN RAILWAY COMPANY,

Plaintiff in Error.

---

IN TORT.

---

WRIT OF ERROR TO THE SUPREME COURT.

---

Appearances :

For the Defendant in Error,

JOSEPH KAIGHN, ESQ.,

SAMUEL H. RICHARDS, ESQ.

For the Plaintiff in Error, E. A. ARMSTRONG, ESQ.

---

---

## INDEX.

Assignments of Error.....	59
Charge of the Court.....	54
Defendant's Exceptions .....	58
Joinder in Error.....	63
Postea.....	3
Return.....	6
Writ.....	1

### PLAINTIFF'S WITNESSES.

Andrews, Clayton L.....	29
Cross-examination.....	33
Recalled.....	37
Chambers, Samuel E.....	16
Cross-examination .....	26
Rebuttal.....	52
Southwick, James.....	7
Cross-examination .....	12
Recalled.....	37

### DEFENDANT'S WITNESSES.

Dolson, Warner.....	38
Cross-examination .....	41
Lovell, William J.....	44
Frech, William.....	46
Cross-examination .....	48
Hogddom, Benjamin M.....	48
Cross-examination .....	50

## NEW JERSEY COURT OF ERRORS AND APPEALS.

---

The State of New Jersey to our Chief  
[L. s.] Justice and our Justices of our Supreme  
Court, Greeting:

10

Because in the record and proceedings, and also in the giving of a judgment in a plaint which was in our said Supreme Court, before you, between Clayton L. Andrews, plaintiff, and the Camden and Suburban Railway Company, defendant, on a certain action in our said Supreme Court, manifest error has intervened, as it is said, to the great damage of the said The Camden and Suburban Railway Company, as by its complaint we are informed, and we being willing that the error, if any there be, should in due manner be corrected and full justice be done to the parties in this behalf, do command you that if judgment be thereupon given that you send distinctly and openly, under your seal, the record and proceedings and plaint aforesaid, and all things touching and concerning the same, to our Court of Errors and Appeals, before our Judges thereof, on the eighteenth day of November, instant, together with this writ, that the record and proceedings aforesaid being inspected we may cause to be further done thereupon what of right and according to law ought to be done.

20

30

Witness the Honorable WILLIAM J. MAGIE, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this thirty-first day of October, in the year nineteen hundred and five.

S. D. DICKINSON,  
Clerk.

E. A. ARMSTRONG,  
Attorney.

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

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

10

---

[ENDORSED.]

NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.

CLAYTON L. ANDREWS,  
Defendant in Error,

20

vs.

THE CAMDEN AND SUBURBAN RAILWAY COMPANY,  
Plaintiff in Error.

---

IN TORT. ON ERROR TO SUPREME COURT.

30

E. A. ARMSTRONG,  
Attorney.

Filed November 9th, 1905.

S. D. DICKINSON,  
Clerk.

NEW JERSEY SUPREME COURT.

CLAYTON L. ANDREWS,	}	IN TORT.	
vs.		ON POSTEA.	
THE CAMDEN AND SUBURBAN		JOSEPH KAIGHN,	
RAILWAY COMPANY.		ATTORNEY.	10

As yet of the twenty-eighth day of February, A. D. 1905.

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

WILLIAM RIKER, JR.,  
Clerk.

20

CAMDEN COUNTY, SS.

The Camden and Suburban Railway Company, a corporation created by and existing under the laws of the State of New Jersey, the defendant in this suit, is summoned to answer unto Clayton L. Andrews, the plaintiff therein, in an action of tort; and thereupon the said plaintiff, by Joseph Kaighn, his attorney, complains for that, on the third day of October, nineteen hundred and four, in Camden county, to wit, at or near Horning Grove, in said county, plaintiff's agent was lawfully driving one of plaintiff's teams on the public highway, between Merchantville and Moorestown, to wit, upon the Camden and Moorestown Turnpike; that the defendant, through its servants and agents, at the time and place aforesaid, without any fault on the part of the plaintiff, or his agent aforesaid, negligently and care-

30

lessly drove one of its trolley cars into and upon plaintiff's said wagon, harness and two mules belonging to said plaintiff, attached to said wagon; and of great value, to wit, of the value of fifteen hundred dollars; that by reason of the carelessness and negligence of the said defendant and its servants and agents, plaintiff's wagon was broken, smashed and destroyed, his harness was destroyed, cut and broken, and plaintiff's said team of mules killed, maimed and injured; wherefore, and by reason of all of which, plaintiff has been caused to sustain damages to a large amount, to wit, to the sum of fifteen hundred dollars.

10 And for that whereas, heretofore, to wit, on the third day of October, nineteen hundred and four, the said plaintiff, by his agent, was, without fault or negligence, driving in and along the public highway, between Merchantville and Moorestown, in the county of Camden, New Jersey, at or near Horning Grove, a certain wagon, with a team of mules, harness and load of baskets and other merchandise, said wagon, mules, harness and load

20 being the property of the plaintiff and of great value, to wit, of the value of fifteen hundred dollars, and that the defendant, through its servants and agents, at the time and place aforesaid, was propelling a certain trolley car, known as the Harrington Special, at a great rate of speed along the said highway, behind and traveling in the same direction as the said team of the plaintiff, and without warning to the said plaintiff, or his agent, the said defendant carelessly and negligently did, with great force and violence, drive the said trolley car into the said

30 team of the plaintiff, and did thereby kill one of said mules and so seriously cut, hurt, lacerate, wound and maim the other mule that it is now of no value, and did break, tear, injure and destroy the said harness, wagon and load, whereby the said plaintiff not only lost the said team, wagon and harness, but had to expend divers large sums of money in furnishing medical aid and care

to the said mule not killed, and in hiring a team and wagon to use in the stead and place of the one so destroyed by the defendant, to wit, the sum of fifteen hundred dollars, wherefore the said plaintiff says he is injured and has sustained damage to the amount of fifteen hundred dollars, and therefore he brings his suit, &c.

And the said defendant, The Camden and Suburban Railway Company, by E. A. Armstrong, its attorney, comes and defends the wrong and injury, when, &c., and says that it is not guilty of the supposed tort, wrong and injury as the said plaintiff hath thereof complained against it, and of this it puts itself upon the country, &c. 10

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

And now at this day, to wit, the eighteenth day of October, A. D. nineteen hundred and five, before our said Supreme Court at Trenton comes the said plaintiff, by his attorney aforesaid, and the Justice before whom, etc., having first sent hither his record had before him in these words, to wit: 20

Afterwards, to wit, at a Circuit Court holden at Camden, in and for the county of Camden, before Honorable Charles G. Garrison, one of the Justices of the Supreme Court, on the ninth day of October, in the year of our Lord one thousand nine hundred and five, according to the form of the statute in such case made and provided, comes as well the said plaintiff as the said defendant, by their respective attorneys within mentioned, and the jurors of the jury between the parties aforesaid in the plea aforesaid being also summoned come, who, to speak the truth of the matters and things within contained, being chosen, tried and sworn, say upon their 30

oath that the said defendant, The Camden and Suburban Railway Company, is guilty of the tort, wrong and injury within laid to its charge in manner and form as it stands charged and they assess the damages of the said plaintiff, by reason of the said tort, wrong and injury of the said defendant, at the sum of five hundred dollars, besides plaintiff's costs to be taxed.

10 Therefore, it is considered that the said plaintiff do recover against the said defendant his said damages by a jury in form aforesaid found to five hundred dollars, and also forty-four dollars and seventy-four cents for his costs and charges aforesaid, by the Court now here adjudged to the said plaintiff and with his assent, which said damages, costs and charges in the whole amount to five hundred and forty-four dollars and seventy-four cents.

Judgment signed the eighteenth day of October, A. D. nineteen hundred and five.

WM. S. GUMMERE,  
C. J.

20

---

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

30 In testimony whereof, I have set my hand and the seal of said Court, at Trenton, this first day of November, A. D. nineteen hundred and five.

WM. RIKER, JR., [SEAL.]  
Clerk.

## NEW JERSEY SUPREME COURT.

CAMDEN COUNTY CIRCUIT.

No. 12. SEPTEMBER TERM, 1905.

CLAYTON L. ANDREWS,	}	IN TORT.	10
vs.			
CAMDEN AND SUBURBAN RAIL- WAY COMPANY.			

Appearances:

For the Plaintiff, JOSEPH KAIGHN, ESQ., and  
SAMUEL H. RICHARDS, ESQ.

For the Defendant, E. A. ARMSTRONG, ESQ. 20

---

BEFORE GARRISON, J., AND A JURY.

---

JAMES SOUTHWICK, sworn.

By Mr. Richards:

30

Ques. Mr. Southwick, where do you live?

Ans. On the Albany road.

Ques. Do you remember the 3d of October, 1904,

Mr. Southwick?

Ans. Yes, sir.

Ques. For whom were you working at that time?

Ans. Clate Andrews.

Ques. The plaintiff in this case?

Ans. Clate Andrews.

Ques. The plaintiff in this case?

Ans. Yes, sir.

Ques. Where had you been that night?

Ans. Been to the city with a load of stuff.

Ques. And were returning to the home of Mr. Andrews?

10 Ans. Yes, sir.

Ques. Where is that situated? Where does Mr. Andrews live?

Ans. This side of Moorestown.

Ques. On the pike?

Ans. No, sir.

Ques. How far this side of Moorestown?

Ans. About a mile.

Ques. And you were proceeding with the team. The teamed consisted of what—horses?

Ans. Mules.

20 Ques. Two mules?

Ans. Yes, sir.

Ques. What kind of a wagon was it?

Ans. A truck wagon.

Ques. What did it have in it?

Ans. Empty baskets.

Ques. Empty baskets?

Ans. Yes, sir.

Ques. Anything else?

Ans. That is all I know of, and canvas.

30 Ques. Wagon cover?

Ans. The wagon covers; yes, sir.

Ques. The mules were good mules, were they?

Ans. Yes, sir.

Ques. You were going from Camden toward Moorestown?

Ans. Yes, sir.

Ques. What time of night was it?

Ans. About eleven o'clock.

Ques. What time?

Ans. About eleven.

Ques. Which track were you on?

Ans. On the right hand side going home.

Ques. Were you on or off the track?

Ans. I was astraddle the track.

Ques. Astraddle of the track?

Ans. Yes.

Ques. What do you mean, stradling the track?

10

Ans. One mule each side of the track.

Ques. One mule each side of the track?

Ans. Yes, sir; each rail.

Ques. One mule on each side of the right hand rail?

Ans. No; the left hand rail it was.

Ques. One mule on each side of the left hand rail?

Ans. Yes, sir.

Ques. How far had you got before the accident happened?

Ans. About five miles.

20

Ques. What point along the road, if you can designate it?

Ans. The other side of Jordantown road.

Ques. About how far the other side of Jordantown road?

Ans. About a quarter of a mile.

Ques. Then what happened?

Ans. Then the trolley struck me.

Ques. Is it called Burr's hill there or not, if you know?

30

Ans. We call it Horning's Grove now.

Ques. Is it opposite Leon Collins' place?

Ans. Yes, sir.

Ques. Did you hear the car approaching?

Ans. No, sir.

Ques. Didn't hear any whistle?

Ans. No, sir.

Mr. Armstrong: Counsel has been leading the witness all the time. I do not think on these points he ought to lead.

Ques. What did you hear?

Ans. Didn't hear it until it struck me in the collision.

Ques. Were you awake?

10

Ans. Yes, sir.

Ques. Were you sober?

Ans. Yes, sir.

Ques. Had you been drinking any that day?

Ans. No, sir.

Ques. What was the result of the accident? What did it do? Did it throw you out of the wagon or not?

Ans. No, sir; I caught on the gig-top with my hands.

Ques. What effect did it have on the wagon?

Ans. Why, it mashed it up pretty good.

Ques. Has the wagon been used since?

20

Ans. No, sir.

Ques. How about the harness?

Ans. The harness has not either.

Ques. Were they cut up?

Ans. I couldn't tell you; no, sir.

Ques. You know they have not been used since?

Ans. Yes, sir; they ain't been used.

Ques. How about the mules?

Ans. They haven't been used either.

Ques. Well, are they living?

30

Ans. One of them is.

Ques. What happened to the other one?

Ans. Broke his hind leg.

Ques. What was done with him then?

Ans. Well, one was left there; I don't know what they done with it, knocked it in the head, I suppose.

Ques. You don't know who did that?

Ans. No, sir; I don't. I didn't stay there to see it done.

Ques. What about the contents of the wagon, the baskets and wagon cover?

Ans. They were all left there.

Ques. Did you hear anyone order the mule killed while you were there?

Ans. Sir?

Ques. Did you hear anyone order the mule killed while you were there?

Ans. Yes, sir.

Ques. Who?

10

Ans. I think it was Harrington.

Ques. What is he? What was he then, manager of the road?

Mr. Armstrong: I object; find out what he knows about it, not tell him what he was and then ask him if that is true.

Ques. The baskets and the wagon cover, were they injured?

20

Ans. I couldn't tell you at all about it.

Ques. What was the quality of that mule team, Mr. Southwick, was it good or bad?

Ans. It was a good team.

Ques. How old were the mules?

Ans. Coming five years old.

Ques. How much?

Ans. Coming five.

Ques. Do you know how much they were worth?

Ans. No; I do not.

30

Ques. Were they sound mules?

Ans. Yes, sir.

Ques. Have they been able to use the mule that is living?

Ans. No, sir.

Ques. What is his condition, do you know?

Ans. He is lame.

Cross-examination.

By Mr. Armstrong:

Ques. How many trips had you made that day?

Ans. One.

Ques. Before this?

Ans. No, sir.

Ques. This was the only trip?

10

Ans. That was the only trip.

Ques. What time did you start down?

Ans. I don't know what time it was.

Ques. You don't know what time you left home to go down?

Ans. No, sir; I do not.

Ques. Morning, afternoon or night?

Ans. It was afternoon.

Ques. Before dark or afterward?

Ans. It was before dark.

Ques. Where did you go?

20

Ans. To the city, Callowhill street.

Ques. Whereabouts?

Ans. Newmarket and Callowhill street.

Ques. When did you leave there?

Ans. I don't know when I left there, what time it was; I didn't look.

Ques. Don't you know about the time?

Ans. No, sir; I don't remember what time it was.

Ques. Before or after dark?

Ans. It was after dark.

30

Ques. How long after supper?

Ans. I don't know that either.

Ques. Where did you cross; which ferry did you cross?

Ans. Vine street.

Ques. Do you know what time you crossed the river?

Ans. No, sir.

Ques. Do you know what time you left the ferry going out Market street?

Ans. No, sir; I do not.

Ques. And you cannot tell me anything about the hour, whether it was early or late?

Ans. It was early, yes, sir; it was early but I don't know what hour it was.

Ques. What do you mean by early?

Ans. In the evening.

Ques. Before eight o'clock?

Ans. No; it was after eight.

Ques. Before nine o'clock, do you think?

10

Ans. I don't know; couldn't tell you.

Ques. Couldn't tell me anything more definitely than that?

Ans. No, sir; I don't know what time it was.

Ques. Where did you stop in Camden?

Ans. I didn't stop nowhere in Camden.

Ques. Drove directly out?

Ans. Yes, sir.

Ques. How far beyond Merchantville is Horning's Grove where you say the accident happened?

Ans. Horning's Grove is about a mile from Merchantville. 20

Ques. And you had driven out, as you say, straddling the track all the way?

Ans. I had from Cove Road.

Ques. That is above Merchantville?

Ans. Outside of Merchantville, the other side of Merchantville.

Ques. The other side of Merchantville?

Ans. Yes.

Ques. The first you heard of anything was when you were struck? 30

Ans. Yes, sir.

Ques. Do you know just where you were on the road, or didn't you notice at that time?

Ans. No; I didn't notice just where I was when I was struck.

Ques. Didn't know until after you were struck?

Ans. No, sir; I didn't know until after I was struck.

Ques. When did the mule break his leg, when he kicked?

Ans. I couldn't tell when it was.

Ques. Do you work for Mr. Andrews now?

Ans. Yes, sir.

Ques. Worked for him ever since?

Ans. Yes, sir.

10 Ques. You say you heard no noise whatever until you were struck?

Ans. No, sir.

Ques. Did you see any light?

Ans. No, sir.

Ques. Weren't you listening for a car coming behind you?

Ans. Yes, sir.

Ques. Did you look out any?

Ans. Yes, sir.

20 Ques. Why did you look out?

Ans. Watching the cars.

Ques. Watching the cars coming after you, were you?

Ans. Yes, sir.

Ques. You knew you were across the track on which the cars went the same direction you did?

Ans. No, sir.

(Question repeated.)

30 Ans. I was on the track; yes, sir.

Ques. Well, straddling the track, as you say?

Ans. Straddling the track; yes, sir.

Ques. And you knew that cars coming out that way came behind you?

Ans. Yes, sir.

Ques. I suppose you didn't notice anything about the car after you were struck, especially; don't recall anything now?

Ans. No, sir.

Ques. You are positively you saw no light ahead?

Ans. No, sir.

Ques. Ordinarily the light is cast some distance ahead of the car, so you can see it?

Ans. I know it is sometimes.

Ques. And ordinarily you can hear the noise of the car, can't you?

Ans. Sometimes.

Ques. I say ordinarily you can?

Ans. Yes.

10

Ques. You had a window in this gig top so you could see?

Ans. Yes, sir.

Ques. You were used to driving up and down this road, I suppose?

Ans. Yes, sir.

Ques. Driven for some years?

Ans. Yes, sir.

Ques. At this time you hadn't dozed off any at all, you are sure?

20

Ans. Yes, sir; I am sure.

Ques. Well, you had on that trip, hadn't you?

Ans. No, sir.

Ques. Not once?

Ans. No, sir.

Ques. You feel positive of that?

Ans. Yes, sir.

Ques. You were alone?

Ans. Yes, sir; I was alone.

Ques. Beyond Cove road is where the tracks spread to the side of the road, isn't it?

30

Ans. Yes, sir.

Ques. And the main part of the road is there in between the tracks, isn't it, from Cove road to Moores-town?

Ans. Well, the whole business is the road.

Ques. No, I am not talking about that; I am speaking about the location of the track.

Ans. The track is on each side of the pike.

Ques. And the pike in between the tracks?

Ans. Yes, sir.

By Mr. Richards:

10 Ques. Had you been off the track for some distance prior to the time you were struck?

Ans. No, sir; I didn't leave the track from the time I left Cove road until I was knocked off.

---

SAMUEL E. CHAMBERS, SWORN.

By Mr. Richards:

20 Ques. Mr. Chambers, do you know Clayton L. Andrews, the plaintiff in this case?

Ans. Yes, sir.

Ques. Do you know Mr. Harrington, who was the manager of the Camden & Suburban Railway Company?

Ans. Yes, sir.

30 Mr. Armstrong: I object; he may know Mr. Harrington and he can identify him any way he sees fit that is attached to Mr. Harrington, not by an office of this defendant company, unless of his own knowledge this witness knows something about it.

The Court: The objection is that the question embodies the only material part of the testimony. The question and answer may be stricken out, pending the putting of another one.

Ques. Do you know who was manager of the Camden and Suburban Railway Company on the 3d of October, 1904?

Mr. Armstrong: Wait a moment; I want to cross-examine him on that.

The Court: Cross-examine him.

By Mr. Armstrong:

10

Ques. Of your own knowledge, do you know anything about the offices of the Camden and Suburban Railway Company?

Ans. Yes, sir.

Ques. You know of your own knowledge?

Ans. Yes, sir.

Ques. How did you gain the knowledge?

Ans. Because I often went there to charter trolley cars for the Red Men and several occasions for the church at Moorestown, several of them.

20

Ques. Whom did you see when you went there?

Ans. Saw Mr. Harrington and Mr. Rudderow, I think. I always went direct to Mr. Harrington. He took me to another one.

Ques. Took you to Mr. Corliss, didn't he?

Ans. Yes.

Ques. Mr. Corliss is the one you made all the arrangements with?

Ans. I didn't on the last occasion, because I couldn't make no arrangements with Mr. Corliss, and Mr. Harrington,—I went direct back to him, so he made the arrangements with me.

30

Ques. He made the arrangements with you?

Ans. Yes; and if it hadn't been for him, I wouldn't have got the car.

Ques. When was this?

Ans. That was on the Red Men's excursion.

Ques. When?

Ans. Last July a year ago, when we went to Atlantic City.

Ques. And that is the way you had any knowledge of his connection with the company?

Ans. I knew he was manager before that time.

Ques. How did you know, except by hearsay; that is the only way you knew him?

10     Ans. I was introduced here to him, one day in Camden; they called him that, introduced me to Mr. Harrington, manager of the trolley company.

Ques. That is the way you got acquainted with him?

Ans. Yes, through that; but that has been some years before, not been just lately.

By Mr. Richards:

Ques. You found him in charge of their business?

20     (Objected to.)

The Court: The question is leading.

Ques. What is his first name, do you know?

Ans. William.

Ques. William Harrington?

Ans. Yes, sir.

Ques. How long have you known him?

Ans. I think I know him about—

30     The Court: You need not pursue any further examination on the cross-examination; just continue your examination-in-chief.

Ques. Do you remember—

The Court: Well, the question which was pending and which was stricken out was one which tended to establish in your case the position of Mr. Harrington. Now, that question you have the right to put again.

Ques. Did you know Mr. Harrington, who was the manager—

The Court: No; don't put it in your question; just ask him to testify in chief if he knows what is the position of Mr. Harrington. **10**

Ques. Do you know what position Mr. Harrington held in the Camden and Suburban Railway Company?

Ans. Yes, sir.

Ques. What position was it?

Ans. Manager.

Ques. Do you remember the occasion of the 3d of October, 1904?

Ans. Yes, sir.

Ques. Where were you at that time? **20**

Ans. I got on the car at Centre street, Merchantville.

Ques. At Merchantville?

Ans. Yes.

Ques. Who were on the car?

Ans. There was no one on but Mr. Harrington and the motorman and conductor when I got on.

Ques. Was this a regular car, a regular trip?

Ans. No; only as far as Cove road.

Ques. What conversation did Mr. Harrington have about your getting on? **30**

(Objected to.)

Ques. How did you come to get on that car?

Ans. I stood at the corner of Centre street, in Merchantville, waiting for a car for Moorestown, and this

car came along and I asked the conductor if he went to Moorestown. He said, "No; only to Cove road," and then Mr. Harrington gave the word that he would take that car on to Chester avenue, Moorestown, for us to get on; so we got on.

Ques. Who else got on?

Ans. Mr. Lovell and some young girl; I don't know who she was.

Ques. Whereabouts in the car did you sit?

10 Ans. I went on through to the smoking car.

Ques. The smoking compartment of the car?

Ans. The smoking compartment; yes.

Ques. Was that in the front of the car?

Ans. That was in the front.

Ques. Where did Mr. Lovell sit?

Ans. In the rear end of the car.

Ques. And where was Mr. Harrington?

Ans. In the smoking compartment.

Ques. With you?

Ans. Yes.

20 Ques. What happened going out on that car?

Ans. What do you mean, right there what happened?

The Court: With reference to this wagon?

Ques. Yes; did you go on to Moorestown on that car?

Ans. No, sir.

Ques. Well, what happened?

30 Ans. When we started, got beyond Cove road across the bridge and up at the Half-way House, going down grade, the motorman blew his whistle, which I thought he blew for the Jordantown road.

Ques. How far away from the accident was that?

Ans. I judge the Jordantown road is between one hundred and fifty and two hundred yards from where the accident occurred.

Ques. Did he blow any more after that?

Ans. I didn't hear him blow no more, but I know he blew before he got to the Jordantown road; that is positive.

Ques. You didn't hear the whistle after that?

Ans. No; the next thing I heard was, or felt, was the jar of the car as if he was putting on the brakes and right after that a fetch-up.

Ques. How much time was there between the time you felt the brake put on suddenly and the time of the collision?

10

Ans. Why, I don't actually believe there was more than about a second or two; I don't think there was, two or three seconds.

Ques. Mr. Chambers, where they blew the whistle, this point they blew the whistle was before they came to the Jordantown road, was it, before they crossed the Jordantown road?

Ans. Before they crossed the Jordantown road.

Ques. Opposite the woods there, was it?

Ans. Yes, sir. Now, he might have blowed after that, but I didn't hear it. Mr. Harrington and I was talking.

20

Ques. What about the light that was on the front of the car that night, Mr. Chambers; did you notice anything peculiar about that?

Ans. Yes; where I sat, I sat the same as here, and Mr. Harrington right alongside of me here (indicating); I could see right out of the window, and I made the remark to Mr. Harrington, I said, "Harrington, how is this? The light don't show up the track right." He said, "It ain't hardly the right position." That was just a little while before it struck. That was after we crossed the Jordantown road. Now, ahead of that time, I couldn't say how the light was, from Centre street to that point.

30

Ques. Shining how was it,—on the side of the road?

Ans. It was just shining on half of the track and the ditch for the balance. It didn't light the left hand track at all, but it lighted the right hand track and the ditch.

Ques. What effect did the collision have on you; did it throw you?

Ans. Well, of course, it—Well, where we were sitting there, Mr. Harrington and I, there was no seat in front of us, the smoking compartment, just the same as this here chair (indicating). There was a door to go out where the motorman was, and of course the fetch-up threw Mr. Harrington against the door and me on top of him. If we had been sitting back in the car and had a seat in front of us, it wouldn't have done that.

10 The car was not going very fast at that time because the car stopped within the length of it, although for all of that it threw Mr. Harrington against the door and me on top of him, right up against him.

Ques. Did you hear Mr. Harrington have any conversation with the motorman about it?

Ans. Yes; the motorman was trying—

Mr. Armstrong: Wait a moment.

20 Ques. What was the conversation?

(Objected to.)

Ques. Did you hear Mr. Harrington ask the motorman if he saw the wagon?

(Objected to; objection sustained.)

30 Ques. Did you hear the motorman say to Mr. Harrington that he never saw the wagon until he struck it?

(Objected to.)

The Court: I understand the rule is that no statement made by any servant is admissible in evidence unless it was a case in which he was expressly authorized to talk by his master, or unless it was some conversa-

tion which was necessary to perform the master's duty ; but that after there has been an accident no servant could give any history of it, or narrative of it, or any remark about it which can be introduced in evidence against his master.

(Exception noted for the plaintiff.)

Ques. Did you examine the team, Mr. Andrews, after the accident?

Ans. Yes, sir.

10

Ques. What was its condition?

Ans. Why, as soon as I got off the car—

Ques. What was it, a mule team?

Ans. I never saw the team before.

The Court: No; a mule team he asked.

The Witness: Oh, yes; it was a mule team; I thought he said a new team; the first time I saw the team to recognize it. The first time I got off the car, I went and looked under the shelving; it was so dark I couldn't see nothing, so I took a match out of my pocket. When I got off the car first I went and saw Jim; went up to him; didn't know him; walked up and looked at him, and I said, "Hello, Jim, is this you?"

20

Ques. By Jim, you mean Mr. Southwick there?

Ans. Yes; I knew him for a great many years; always call him Jim, and I asked him if he was hurt. He said, "No, he wasn't hurt." Then I says, "Jim, didn't you—"

30

Mr. Armstrong: I suppose this conversation is not admissible.

Ques. Well, Mr. Chambers, the difficulty is about what you said. Just tell us what you saw, rather than what you said.

The Court: State how badly—

The Witness: I asked him if he saw the car; he said, "No, he never—"

Ques. No; what you saw.

The Court: No, Mr. Chambers, let me tell you; just state how badly any injury was done by the accident; just state what was broken or what was damaged.

10

Ans. I went on, looked under the wagon; I couldn't see; it was so dark under there, so I took a match out of my pocket and lit the match. The mules were lying there quiet.

Ques. Lying down, though?

Ans. Yes; part of the wagon was on them; they couldn't get up. So then I held that match there until it burned out, and lit another one; that was half burned, and then the mule began to kick; he kicked like everything. I looked at him kick and his legs were all right. While he was kicking he broke that leg in kicking. Then I lit the third match, and that leg hung right down; he broke it right here (indicating). He was lying there and his hind legs were out first, when I first lit the matches. After I lit the third match his leg hung down; he done no more kicking. We got him out, took him across to that field of Leon Collins. When we left there that was the last I seen of the mule.

20

Ques. You don't know what happened to the other mule?

30

Ans. The other mule, we got him up and tied him to the railing and Mr. Southwick took him home. I took the blankets, put them on the next car out and took the blankets to my place of business and delivered them over to Mr. Andrews the next morning.

Ques. The blankets?

Ans. Yes; from the team.

Ques. How about the wagon; was that badly injured?

Ans. Well, I couldn't say anything about the wagon, because I actually didn't examine the wagon at all.

Ques. Was the mule ordered killed while you were there?

Mr. Armstrong: I object to the form of the question. There is also no allegation here as to the killing of the mule. **10**

The Court: I think it is competent. The question is if you can connect the person who so ordered it with anyone in this suit.

By the Court:

Ques. Do you know who it was ordered the mule killed?

Ans. Yes. **20**

By Mr. Richards:

Ques. Who ordered the mule killed?

(Objected to.)

The Court: It will be allowed.

Whereupon the defendant, by his counsel, prays a bill **30**  
of exceptions, which is allowed and sealed accordingly.

C. G. GARRISON,  
Justice Supreme Court.

Ques. Who ordered the mule killed?

Ans. Mr. Harrington.

Cross-examination.

By Mr. Armstrong:

Ques. Mr. Chambers, you, so far as you now recall, have no recollection of the whistle blowing after it blew, as you think, for the Cove road?

Ans. The Jordantown road.

Ques. The Jordantown road, whatever it is?

10 Ans. No, sir; it blew for that road and possibly after that.

Ques. That you remember noticing?

Ans. Yes; but we were talking after that and didn't pay any attention.

Ques. You were talking after that and didn't pay any attention?

Ans. Yes.

Ques. And you just happened to recall it did blow for that road?

20 Ans. Well, it blew loud enough, for I could hear it if I was at that road.

Ques. Did the car slow up for the road crossing?

Ans. Yes, sir.

Ques. What do you mean by that, coming under control, as they usually pass the cross roads?

Ans. Yes, sir; they generally slack up when they cross a road.

Ques. And it did that at this time?

Ans. Yes.

30 Ques. Had it regained its ordinary speed after that, so far as you recollect, before the accident, or didn't you notice as to that?

Ans. No, sir; I don't think that car was running hard at the time of the accident. It was not running as hard as some I have seen going there and been on.

Ques. You felt the brakes go on the car, you say?

Ans. Yes; kind of a jerk, you understand.

Ques. And then almost immediately after that the sound of the collision, the force of the collision?

Ans. Yes, sir; right after that.

Ques. Now, you said, but I don't recall, about how far the car went after that collision that threw you and Harrington up against the door?

Ans. Why, it stopped the length of itself.

Ques. Stopped within the length of the car?

Ans. Yes; Mr. Harrington made the remark to me, said, "Sam, did you ever see a car stop the length of itself like that one did?" He said, "I never did." I says, "This is the first one I have ever been on when any accident happened; I don't know much about it." 10

Ques. Then when you got out, where were you along the road?

Ans. Where the accident happened?

Ques. Yes.

Ans. Between one hundred and fifty feet and two hundred feet above the Jordantown road; I judge about that distance.

Ques. How far, two hundred and fifty feet? 20

Ans. No; one hundred and fifty or two hundred feet.

Ques. Just the other side of the road?

Ans. Yes.

Mr. Richards: I think the witness is confused on that; does he mean feet?

The Witness: No; I meant to say yards; excuse me, I meant yards.

30

Ques. I understood you to say that when you looked out after having gone a certain distance—I don't know how long—that the light seemed to light up the right hand track. You mean the right hand rail by that?

Ans. Yes, sir.

Ques. And how far did that show up; a long distance up the rail?

Ans. No; it cut across the rail; you see, it didn't exactly go the full length, just cut across it, the same as that there was the rail (indicating); you see, it shot off this direction.

Ques. How far ahead did it show?

Ans. It showed quite a ways up along the ditch.

Ques. On the side of the road, the hedge?

Ans. Yes; along the ditch.

Ques. Did it show up a considerable distance?

10 Ans. Yes, sir; along there, but it didn't show along the right hand track, I judge, no more than about eight or ten feet of the car, I judge; it crossed that.

Ques. Where was the wagon with relation to the car when you got out?

Ans. Where was the wagon in relation to the car?

Ques. Yes.

20 Ans. Why, right opposite, the wagon was— Here is the car here (indicating) and it was just the whole length, just completely turned the wagon right around, the tongue, right on back toward Merchantville. The end of the car was here, and up here the car when it struck, just turned it right around, just ran the length of it.

Ques. Just ran the length of the wagon?

Ans. Yes.

Ques. The car was practically opposite the wagon at the time it stopped?

Ans. Yes; so far as I could see.

Ques. That is, the wagon turned around and the rear of the wagon was near the front of the car?

30 Ans. Yes.

Ques. And the pole of the wagon near the rear of the car?

Ans. Yes.

Ques. I understood you to say the horse that got his leg broken was apparently not hurt when you first saw him; that he broke his leg by kicking; is that correct?

Ans. Yes.

Ques. You didn't notice anything about the other mule?

Ans. No; we got the other mule up; he seemed to get up all right and walk; and we tied him to the railing there; Mr. Southwick tied him to the railing along the road there.

---

CLAYTON L. ANDREWS, affirmed.

10

By Mr. Richards:

Ques. Mr. Andrews, you are the plaintiff in this case?

Ans. Yes, sir.

Ques. Did you have a mule team prior to the third day of October, 1904?

Ans. Yes, sir.

Ques. What happened to it?

Ans. Well, it got killed, or one of them got killed on the road home from market; the other one got disabled.

20

Ques. Have you been able to use the disabled mule since?

Ans. No, sir.

Ques. Have you tried it?

Ans. We have let it out several times to see what we could do with it, but it makes a decided drop in the left hand hip and I was a little afraid to put him to work for fear the mule might give out completely and there be some question about it, so I thought I would wait and see if the mule would come right. We have taken care of it.

30

Ques. The other one, you say, was killed?

Ans. It never came back.

Ques. You didn't kill it?

Ans. I was down on the road—

Ques. You didn't kill the mule, did you?

Ans. No, sir.

Ques. It never came back?

Ans. No, sir.

Ques. Do you know who killed it?

Ans. No, sir.

Ques. How much was that mule team worth?

Ans. I don't think I could replace it for less than \$500 at the time.

Ques. How old was the mule team?

10 Ans. Supposed to be coming five; four years old that spring.

Ques. Was it in good condition prior to the accident?

Ans. It was.

Ques. Sound?

Ans. It was, to the best of my knowledge.

Ques. What was the value of the wagon?

Ans. I should think it was worth fully a hundred dollars.

Ques. Have you been able to use the wagon since?

20 Ans. No, sir.

Ques. Where is it?

Ans. At William Frech's blacksmith shop.

Ques. Who took it there?

Ans. That I can't tell you.

Ques. What was the harness worth?

Ans. The harness was a set of harness I had made at McCulley's. The body harness cost me \$34; the collars and bridles would stand me \$40.

Ques. All together?

Ans. Yes.

30 Ques. Have you been able to use that since?

Ans. No, sir.

Ques. Where is that?

Ans. I think it is at William Frech's shop. I went down on the road the morning of the accident and they were laying there, kind of thrown in a pile on the stone road, and I got out and was going to gather them together

and a man said, "Leave them alone." I said, "They belong to me." "No," he said, "they don't." I left them and went away.

Ques. Who was the man?

Ans. I couldn't tell you; there was two or three junk men along there; I was afraid the harness would get away. It was a new set of harness, wasn't paid for at the time, hadn't had it on more than two weeks. I hated to see them laying there in a pile. Two men forbid me from touching them. They said they were sent out by the Camden and Suburban—

10

(Objected to.)

Ques. They said they were sent out by the Camden and Suburban and ordered you not to take them away?

(Objected to.)

The Court: It may be stricken out; the answer may be stricken out.

20

Ques. Why didn't you take them home with you?

Mr. Armstrong: He did not, and I suppose that is enough.

The Court: The objection is sustained.

Ques. How many baskets did you have on?

Ans. Empties?

Ques. Yes.

30

Ans. I couldn't tell you; the rules are to bring home enough for a load—

Mr. Armstrong: Never mind that.

Ques. What was the wagon cover worth?

Ans. The wagon cover?

Ques. Yes.

Ans. I supposed about seven or eight dollars.

Ques. Have you used that since?

Ans. It was cut up at the time; part of the wagon cover was over the mule's head.

Ques. Not in a condition to use?

Ans. No, sir.

Ques. What was that worth? What was the wagon cover worth?

Ans. I say about seven or eight dollars.

Ques. Now, have you been compelled to hire a team to use instead of the team that was injured?

Ans. Yes, sir.

(Objected to as immaterial.)

The Court: That is not the proper method of proving it.

20 Ques. What has it cost you to care for the sick mule that was injured?

(Objected to; objection not sustained.)

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

C. G. GARRISON,  
Justice Supreme Court.

30 Mr. Armstrong: As I understand, the declaration is for the value of the mules. Of course, if he attempts to recover the value of the mule and recovers the full value once for all that is all there is to it.

The Court: No; the declaration charges that he expended large sums of money in the care of the mule that was not killed. Continue.

Ques. What has it cost you to care for the mule that was not killed?

Ans. Well, I should think it would cost a hundred dollars easy.

Ques. How far is it from the woods this side of the Jordantown road to the place where the accident happened?

Ans. I should think it was very nearly a quarter of a mile.

Ques. How long has James Southwick been in your employ? 10

Ans. I think it is over thirteen years.

Ques. Have you found him a careful man, a careful driver?

(Objected to as improper in form and substance.)

The Court: It is leading; beyond that I do not think it is objectionable.

Ques. What has been your experience in regard to Mr. Southwick as to whether or not he exercised care in the management of teams? 20

(Objected to; objection sustained.)

Cross-examination.

By Mr. Armstrong:

Ques. You didn't do anything with the wagon? 30

Ans. No, sir.

Ques. And didn't do anything with the harness?

Ans. No, sir.

Ques. Someone brought the mule home?

Ans. Mr. Southwick brought the mule home.

Ques. You say you estimated it cost you one hundred dollars to take care of the mule since that time?

Ans. I should think that would be a fair estimate. He has been put in the stable and been fed and taken care of every day since.

Ques. That is what you mean by the cost of caring for him, with your other stock?

Ans. The care and feed; yes.

Ques. That is, feed?

Ans. Yes, sir.

Ques. And you have not used him because you have  
10 this suit pending; isn't that so?

Ans. That is partly so.

Ques. That is why you have not undertaken to get your wagon, because you had this suit pending, isn't it?

Ans. The wagon is not worth repairing; to my knowledge, I don't think it is worth repairing.

Ques. You said, "to your knowledge," or is that your estimate about it?

Ans. By the looks of the wagon I would not have had  
20 it repaired if it had been my own accident; in every particular sense of the word, the wagon would not have been repaired.

Ques. You did not get any estimate of what it would cost to repair it?

Ans. I did not have any estimate made whatever.

Ques. You yourself have not made any estimate of what it would cost?

Ans. No, sir.

Ques. You have not attempted to repair it?

Ans. No, sir.

Ques. The harness you have not got?  
30

Ans. No, sir.

Ques. Don't know what the condition of the harness is of your own knowledge?

Ans. Well, they didn't look to be damaged a great sight.

Ques. But you don't know where they are now?

Ans. I do not.

Ques. You have been told where they were?

Ans. Yes.

Ques. But you have not gone for them?

Ans. I have not.

Ques. When did you buy these mules?

Ans. I had them a year and a half, about; I think it was March one year preceding.

Ques. Where did you get them?

Ans. A. C. Roberts.

10

Ques. What did you pay for them?

Ans. Paid \$375 for them unbroken.

Ques. You broke them, did you?

Ans. Mr. Southwick broke them; he and I together used them.

Ques. This was the second summer you used them?

Ans. The first summer we never had shoes on them; worked them on the place entirely.

Ques. This was the first fall that you had sent them down to market?

Ans. We had them shoed in June, about the first of June of that year.

20

Ques. When did you start them down to market?

Ans. The first of June is when berries commenced; we started them in the berry season; I couldn't say whether it was the last of May or about the first of June.

Ques. About that time?

Ans. About the first of June.

Ques. And during the summer, down to the time of the accident, they were going off and on to market?

Ans. Yes, sir.

30

Ques. You have not undertaken to replace this team at all?

Ans. Well, I don't know how to answer that question. I have gotten some other animals to take the place of them to a certain extent. I thought I couldn't afford to put in a good team to go down there again with, so I got some plugs that filled my bill.

Ques. You have done nothing at all with this mule that you have been keeping now since October, 1904?

Ans. We have let him out of the stable and around the yard a few times to see if we could use him.

Ques. And you say he seemed to be favoring his shoulder?

10 Ans. No, his hip; he would make a decided drop; in turning around a curve, he would drop. He might walk for the length of this room straight and all right; give him a little turn and he would flinch down on the left hip, break down.

Ques. You put no harness on him?

Ans. No, sir; had nothing on but a halter from that day to this, to the best of my knowledge.

Ques. Yes, I am speaking about your knowledge.

Ans. It is pretty good.

By Mr. Richards:

20 Ques. The Society for Prevention of Cruelty to Animals would have gotten after you if you had used him, don't you think?

(Objected to).

The Court. That is not competent.

Ques. Why was it you did not get the wagon, Mr. Andrews? Judge Armstrong asked you if you got it, the wagon and harness?

30 The Court. Wait a minute; it seems to me that is a matter which was within the knowledge of this witness in his examination in chief; he could have testified to that if material. I do not think this is redirect examination.

Ques. Judge Armstrong said something about your not using the mule because this suit was pending. Did you consider it safe to use the mule?

(Objected to).

The Court. I think that is all within the original examination, not proper redirect examination.

---

10

JAMES SOUTHWICK, recalled.

By Mr. Richards:

Ques. I neglected to ask you how many baskets there were on that wagon?

Ans. About 150.

Ques. Do you know what they were worth?

Ans. No, sir; I do not.

20

No cross-examination.

---

CLAYTON L. ANDREWS, recalled.

By Mr. Richards:

Ques. How much were those baskets worth, do you estimate? 30

Ans. I should suppose about \$7 or \$7.50.

Cross-examination.

By Mr. Armstrong:

Ques. You didn't get those baskets, either?

Ans. No, sir.

Ques. You know where they are?

Ans. No, sir.

Ques. Do you know where they are?

Ans. No, sir; I supposed they were in the wagon.

Ques. Oh, no; you didn't look for them?

Ans. No, sir.

Plaintiff rests.

10

---

THE CASE FOR THE DEFENDANT.

WARNER DOLSON, sworn.

By Mr. Armstrong:

Ques. What is your business?

20 Ans. I am a motorman on the cars.

Ques. What was your business in October of last year?

Ans. Motorman on the car.

Ques. Do you remember the night of October 3d, 1904,  
the night of this accident?

Ans. Yes, sir.

Ques. Were you motorman of the car that was in the  
accident?

Ans. Yes, sir.

30 Ques. The regular trip of that car was extended that  
night beyond the usual place, wasn't it?

Ans. Yes, sir.

Ques. Where were you directed to take the car?

Ans. To Moorestown.

Ques. Will you tell the Court and jury all the facts  
and circumstances surrounding this accident?

Ans. Why, going on out on the other side of Cove  
road, going down there by the Haddonfield road—that is

what they call it—I blew the whistle; then on the other side I seen a wagon and blew it again, and the wagon pulled clear of the track, and as I was feeding up again, all of a sudden the team came right over, the right hand corner came over on the right hand side, just came over.

Ques. The right hand corner of what came over?

Ans. Of the wagon, and I throwed on the brakes and throwed the reverse, but it came over too quick.

Ques. Now, you said you blew for what you call the Haddonfield road, but what has been called the Jordan-town road here, I think. You blew for that road? **10**

Ans. Yes, sir.

Ques. Where did you blow for the road, before you passed it or afterward?

Ans. Before I passed it.

Ques. What, in relation to the speed of the car, if anything, as you approached the road?

Ans. Why, I cut the speed down, to have it under control.

Ques. After you had passed the road you say you fed up? **20**

Ans. Fed up.

Ques. What do you mean by that?

Ans. Why, I had half power on and I throwed off.

Ques. You had half power on?

Ans. Yes.

Ques. And you throwed off that as you were passing the road?

Ans. Yes.

Ques. Then what did you start to do after that, the power being off? **30**

Ans. No; that was on the other side of the road I fed up again.

Ques. On the other side of the road you fed up?

Ans. Going across roads we never have no power.

Ques. What do you mean by feeding up?

Ans. Why, pull your handle round.

Ques. Putting on the power?

Ans. Yes.

Ques. And as you crossed the road you had no power on?

Ans. No, sir.

Ques. Then after that you put power on?

Ans. Yes, sir.

Ques. What had you done with relation to speed when you saw the wagon?

10 Ans. Why, threw it off again.

Ques. Yes; but how far had you gotten your speed on?

Ans. Half speed.

Ques. Half speed?

Ans. Yes.

Ques. What did you do when you saw the wagon?

Ans. Threw it off again.

Ques. What signal did you give?

Ans. Blew the whistle.

Ques. What did the wagon do then?

Ans. Why, it pulled off.

20 Ques. What did you then do, if anything, in relation to speed?

Ans. I fed up again, and as I almost got up there the wagon came right over.

Ques. How near were you to the wagon when it came back on the track, as near as you can tell?

Ans. About twenty or thirty feet.

Ques. What did you then do so far as the brakes are concerned and the reverse?

Ans. I threw the brakes on and pulled the reverse.

30 Ques. Before you had thrown the brakes on and pulled the reverse, what had you done, if anything, in relation to power?

Ans. I threw my power off.

Ques. Could you reverse with the power on?

Ans. No, sir; can't do that.

Ques. Where did you strike the wagon?

Ans. About a hundred or a hundred and fifty yards on the other side of the Haddonfield road.

Ques. And what part of the wagon?

Ans. The rear end, the right corner of the rear end.

Ques. When you brought the car to a stop, how far did you go after you had struck the wagon?

Ans. About half a car's length, or a car's length.

Ques. Was or was not the stopping of the car sudden?

Ans. What is that?

(Question repeated.)

10

Ans. Sudden.

Ques. Did it make a jar as it stopped?

Ans. Why, brought it all up in a bunch, as quick as I could.

Ques. When you first saw the wagon and it turned off the track, as you state, about how far was it ahead of you, as near as you can estimate?

Ans. About sixty feet.

Ques. Could or could you not have stopped the car before you reached the wagon if it had not left the track?

20

Ans. Yes, sir.

Cross-examination.

By Mr. Richards:

Ques. Who directed you to take the car to Moorestown?

Ans. The conductor.

Ques. Does that car usually go to Moorestown?

30

Ans. It does certain trips.

Ques. Have you ever made it before with that car?

Ans. Yes, sir.

Ques. Who were aboard the car that night?

Ans. That I couldn't say.

Ques. Don't know of anybody that was aboard?

Ans. I know that I picked up Mr. Harrington.

Ques. Who was he?

The Court: In what respect is this cross-examination.

Mr. Richards: Judge Armstrong asked him, or he replied to Judge Armstrong's question that he was directed to take the car to Moorestown. I am following that up a little to show where the directions came from.

10 The Court: That would not, on any legal rule, justify any inquiry as to the contents of the car and the number and nature of the passengers.

Mr. Richards: Merely to connect Mr. Harrington.

The Court: You cannot do it except by calling some witness or in proper cross-examination.

20 Ques. Mr. Dolson, why did you tell Mr. Harrington that you never saw the wagon until you struck it?

(Objected to.)

Ans. I didn't say that.

30 The Court: One moment; if my recollection serves me, that question was asked, was overruled and the Court made a ruling stating for the conduct of this trial its legal impropriety. I understand this question is objected to as being illegal and improper; that objection is sustained.

Ques. After the accident, did you or did you not say to Mr. Harrington that you did not see the wagon until you struck it?

(Objected to, on the same ground that any such statement would be entirely incompetent and not cross-examination and ought not to be allowed.)

The Court: The objection is not sustained.

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

C. G. GARRISON,  
Justice Supreme Court.

Ans. I didn't say.

Ques. Did you or did you not say in the presence of Mr. Chambers—

10

The Court: If you are doing this for the purpose, as I understand it now, of affecting credibility, you can put it directly; you need not put it in the alternative.

Ques. Did you after the accident say, in the presence of Mr. Chambers, who was just on the stand, that you did not see the wagon until after you struck it?

Mr. Armstrong: I object to that on the further ground that, as I understand the rule, you cannot use things which would be illegal and improper if directly testified to, by asking the witness concerning them and then undertaking to test his credibility; and I submit it is entirely improper to ask of this witness as to declarations that would not be admissible at all in the case if undisputed, and which if stated as true could not be used in this way.

20

The Court: The objection is not sustained.

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

30

C. G. GARRISON,  
Justice Supreme Court.

(Question repeated.)

Ans. I didn't say.

WILLIAM J. LOVELL, affirmed.

By Mr. Armstrong:

Ques. Mr. Lovell, Where do you live?

Ans. Moorestown.

Ques. Do you remember the night of October 3d, 1904, the accident to Andrews' team?

Ans. Yes, sir.

10 Ques. Where were you that night?

Ans. I left Moorestown to go down to Merchantville on a business errand, got down there about between ten and half-past and—

Ques. I mean in relation to the car, this car?

Ans. In relation to this car? I was waiting for this car until it came, and took it at the same place that Mr. Chambers did, on the corner of Centre street.

Ques. You were a passenger on the car at the time of the accident?

Ans. Yes, sir.

20 Ques. At the place where this accident occurred, how does the railroad and turnpike run? On what part of the turnpike does the railroad run?

Ans. That I couldn't tell you; I am not familiar with the road there at all, hardly ever go over it.

Ques. Where were you in the car?

Ans. I was sitting in the back part of the car, facing the south; that is, I was turned around in the seat, as I am now. The car was running this way and I was facing out to the south.

30 Ques. You yourself didn't see the accident?

Ans. Well, perhaps I could tell you by my impressions. I heard the breaking of the glass, and I had been thinking of some of my business that I had been down about and looked around to see how it was that a bough—I thought it was a bough that struck against the car, the bough of a tree; the shock was so slight I didn't suppose anything had happened beyond that.

Ques. Just preceding the accident do you recall as to the speed of the car?

Ans. It was going about the ordinary speed, as far as I can recall.

Ques. What in relation to signals that evening after you left Merchantville?

Ans. I am clear about remembering that he signalled on the outskirts of Merchantville, and how often after that I couldn't tell. I became absorbed in what I was thinking about and didn't notice.

10

Ques. Nothing especially to attract your attention to the signals at all?

Ans. No, sir.

Ques. Do you remember whether it blew for the crossing of this road, or don't you recall about that?

Ans. I don't even know where the road comes in; I couldn't tell.

Ques. When you went out of the car—did you go out of the car?

Ans. Yes, when the others started to go out. That was the first intimation I had that anything had happened. The car stopped, and they went out in the forward part and I went out in the back.

20

Ques. What did you find?

Ans. I seemed to almost step into a kicking mule—that was close by the back of the car.

Ques. Where was the wagon?

Ans. The wagon was between the two mules, one mule on one side and one mule on the other side.

Ques. In relation to the car, where was the wagon?

Ans. Well, certainly within six or seven feet of where I stepped off the back platform.

30

Ques. Which end of the wagon was there, the front end?

Ans. The front end of the wagon was turned around back toward Merchantville.

Ques. And the front end went where you stepped off?

Ans. Yes.

Ques. After the jar and breaking of the glass that you speak of, what distance did the car go, as near as you can tell?

Ans. Oh, a very short distance; I couldn't tell how far; didn't seem to me to go further than the length of the car.

Ques. The jar, you say, so far as you were concerned, was not very much?

10 Ans. Oh, in back part of the car it would have passed, as I say, just for a bough, a bough hanging down and striking it, and the thought that occurred to my mind was, "I wonder how on earth that bough has been left there?" I thought that if it had struck the car before, it surely ought to have been moved before ours came along.

Ques. And your impression was, before you found out differently, that the collision was with a bough of a tree?

20 Ans. Yes.

Ques. Do you remember noticing anything about the headlight of the car?

Ans. Not after leaving Merchantville, because I was in the back part of the car. The car was lighted up brightly.

No cross-examination.

---

30 WILLIAM FRECH, SWORN.

By Mr. Armstrong:

Ques. What is your business?

Ans. Wagon builder.

Ques. Do you know this wagon of Andrews?

Ans. Yes, sir.

Ques. Where is it?

Ans. Laying in our works.

Ques. Have you examined it?

Ans. Yes, sir.

Ques. Who built the wagon?

Ans. I couldn't say.

Ques. It was not one of your build?

Ans. No.

Ques. A similar wagon to those you build?

10

Ans. No.

Ques. Are you acquainted with that kind of wagon?

Ans. Yes.

Ques. And you know the value of it?

Ans. Yes, I say, not similar, but we do build them occasionally.

Ques. So you know about the construction of the wagon and its value and so forth?

Ans. Yes.

Ques. Did you make any estimate as to the damage of this wagon?

20

Ans. Yes, sir.

Ques. Do you recall what that estimate was?

Ans. About \$69.

Ques. What do you mean by that?

Ans. I mean that for \$69 I would have put the wagon in as good shape as it was before the accident, as near as possible.

Ques. Well, would or would not it have been in as good condition after the expenditure of that money as it was before the accident, the best you could tell?

30

Ans. Well, a wagon always receives a jar after an accident of that kind, of course, but barring that it would have been.

Ques. Did you see the harness?

Ans. Yes.

Ques. What damage, if any, was done to the harness?

Ans. I don't remember that.

Ques. You don't recall as to that?

Ans. No; I do not; appeared to be slightly damaged, but I don't remember just what.

Ques. I will see if your memory can be refreshed about it. Do you remember that there was two straps broken in the harness? Now, do you recall that?

Ans. I think so; I remember going over the harness and finding only what we supposed was slight damage, the straps or something.

10

Cross-examination.

By Mr. Richards:

Ques. Where did the wagon appear to have been struck?

Ans. Well, from the way it was broken it appeared to be struck right from the back.

Ques. Right in the rear?

20

Ans. From what I could tell; yes.

---

BENJAMIN M. HOGDDOM, sworn.

By Mr. Armstrong:

Ques. What was your business in October, 1904?

Ans. Conductor, Moorestown trolley car.

30

Ques. Were you conductor at the time of the accident to Andrews' mule team?

Ans. Yes, sir.

Ques. Of that car?

Ans. Yes, sir.

Ques. Do you remember the time of the accident?

Ans. I do.

Ques. Whereabouts did the accident happen?

Ans. I should judge about one hundred and twenty-five yards the other side of the Haddonfield road.

Ques. The Haddonfield road is what is also called the Jordantown road, near Horning's Grove, is it?

Ans. Yes, sir.

Ques. Can you tell me whether or not at that point the tracks are in the middle or on the side of the road?

Ans. On the side of the road.

Ques. A double or single tracked road?

10

Ans. A double tracked road.

Ques. And one track on one side of the road and one on the other?

Ans. Yes, sir.

Ques. Which track were you on?

Ans. We were on the right hand track going east.

Ques. On the south side of the road?

Ans. Yes, sir.

Ques. Will you please tell as to the operation of the car in crossing what you call the Haddonfield road?

20

Ans. Well, it is always—

Ques. No; this time, this night.

Ans. Well, he went down the grade there and slowed up for the road, blowed for the road; he was crossing the road and I don't judge he fed over three points when he throwed off again.

Ques. What do you mean by feeding three points?

Ans. Well, there is nine points on the car, you know; he got about three.

Ques. After you crossed the road, do you recall whether or not any signals were given?

30

Ans. I believe the whistle was blowed.

Ques. What did you hear in relation to the accident, if anything, before the accident occurred?

Ans. What did I hear?

Ques. Yes; or what did you observe?

Ans. Nothing, only the sound of the whistle.

Ques. Yes; but what in relation to the operation of the car?

Ans. Why, it was slowing down.

Ques. How was it slowing down?

Ans. Well, the motorman, I suppose, threw off and applied the brake.

Ques. When the accident happened, how soon did the car stop?

Ans. About half a car's length.

10 Ques. You didn't see the accident yourself, of course?

Ans. No.

Ques. Where were you?

Ans. I was inside collecting fares.

Ques. How was the stop, short or sudden or slow?

Ans. Quite sudden.

Ques. What did you do after the accident?

Ans. I went out to see if anything was hurt, opened the front doors, to see if the motorman was hurt or what had happened.

20 Ques. And where was the wagon in relation to the car? The front, side or where?

Ans. The side of the car, about middle way.

Ques. Were both mules on the ground when you got out?

Ans. Yes, sir.

Ques. Had they started to kick when you got out or did that happen after you got out?

Ans. That happened after we got out.

30 Cross-examination.

By Mr. Richards:

Ques. Do I understand you, Mr. Hogddom, that you were in the rear of the car when the accident happened?

Ans. No, sir.

Ques. Where were you?

Ans. I was in the front of the car.

Ques. You said you were inside collecting fares; is that the front of the car, the inside of the car?

Ans. The front part of the car, yes, sir; the front part inside.

Ques. Were you in the smoking compartment or the other compartment?

Ans. In the other compartment.

Ques. The rear compartment—then the smoking compartment was ahead, wasn't it?

10

Ans. No, sir.

Ques. The smoking compartment was in the rear?

Ans. The smoker was in the rear.

Ques. Who directed you to take that car on to Moorestown?

(Objected to as not cross-examination; objection not sustained.)

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

C. G. GARRISON,  
Justice Supreme Court.

Ans. The general manager.

Ques. He was aboard, was he?

Ans. He was.

Ques. It was not a regular run, was it?

Mr. Armstrong: I object; I don't know what he means by a regular run. There is no dispute about it being the company's car and the company's track. 30

(Objection not sustained).

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

C. G. GARRISON,  
Justice Supreme Court.

Ans. It was, if ordered so.

Ques. It was specially ordered in this case; is that correct?

Ans. Yes, sir.

Ques. You were not paying much attention to what was going on, were you?

Ans. I was attending to my duty inside of the car.

Ques. And when you say you believe the whistle has been blown; isn't that correct?

10

Ans. No, sir.

Defendant rests.

At this point a recess was had until one forty-five o'clock P. M.

20 Trial of the cause resumed at one forty-five o'clock P. M. in the presence of counsel for the respective parties.

#### PLAINTIFF'S REBUTTAL.

SAMUEL E. CHAMBERS, recalled.

By Mr. Richards:

30 Ques. You have already been sworn, Mr. Chambers. You appear here under subpoena from the defendant, do you?

(Objected to as immaterial).

Mr. Richards: If your Honor thinks it improper I won't press it.

Ques. You have seen Mr. Dolson, the motorman, on the stand, have you?

Ans. Yes, sir.

Ques. Was he the man who was in charge of the car the night of the accident, the motorman?

Ans. Yes, sir.

Ques. Did you hear him have any conversation with Mr. Harrington after the accident?

Ans. Yes, sir.

Ques. What was the conversation?

(Objected to; objection sustained).

10

Ques. Did or didn't you hear the motorman tell Mr. Harrington that he never saw the wagon until he struck it?

Mr. Armstrong: I object; there is no proper foundation laid for such a question as that. I also object on the further ground that if this had any bearing it would be in the line of undertaking to prove negligence by declaration. It is not the case of trying to contradict a witness, but it is putting in something that would be clearly illegal and improper and therefore cannot be used for this purpose at this time. The declaration, even if so made, would not at all affect the liability of the defendant and therefore it cannot be brought in in this indirect way.

20

Mr. Richards: Does your Honor wish to hear from me?

The Court: If your are willing to take the responsibility of a ruling, I will rule in your favor.

30

Mr. Richards: All right.

The Court: The objection is overruled.

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

C. G. GARRISON,  
Justice Supreme Court.

(Question repeated).

Ans. Did I hear him say that? Yes, sir.

10 No cross-examination.

Both sides rest.

---

#### CHARGE OF THE COURT.

GARRISON, J.:

20 *Gentlemen of the Jury:* From the testimony in this case, two different accounts are given from the witness stand as to the manner in which this collision occurred. The plaintiff's testimony is to the effect that the team of the plaintiff was being driven and had been for some time, at least some hundreds of yards, so that part of the wagon was over one of the rails of the southerly track, what is called driving the mules straddle of one of the rails of that track; that it had been driven that way for some considerable distance along the track, and that

30 while it was still proceeding in that way it was run into from the rear, creating the collision, the accident. That is the plaintiff's case. The testimony of the defendant is to the effect that the collision occurred by reason of the fact that after the giving of a certain signal by the motorman, the team, which had been in front of the car, was drawn off sufficiently from the track to give safe passage for the car; that the car then at a proper rate

of speed was availing itself of the open track, and that as the car was about to engage in passing the wagon, or nearly so, the team returned to its former position on the track so immediately in front of the moving car that the application of the proper machinery on the car was unable to avert the collision.

Now, the plaintiff brings the suit and must succeed by virtue of making you accept his version of this accident by the greater weight of proof; so the question for you is whether from all the testimony you are satisfied that the plaintiff's account is the true one. If you are so satisfied, your verdict should be for the plaintiff; if you are not so satisfied, your verdict should be for the defendant.

If your verdict is for the plaintiff, that means that the plaintiff is entitled to be compensated for what loss fell to him owing to the accident. Now, the mule team was in the accident and the proper measure of damage is stated in a request which counsel for the plaintiff asked me to give you, and which I charge for your guidance: "The measure of damages is the value of the mules, wagon, harness, baskets, wagon cover," and he adds here, "and cost of the care of the living mule, less what these things are now worth." Now, of course, the cost of the care of the living mule is not now worth anything, so I eliminate that one sentence, "the cost of the care of the living mule" and I charge you the rest; that is, I charge you that the proper verdict, if the plaintiff recovers a verdict, is the value of the mules, harness, wagon, baskets and wagon cover, less what the same are now worth. You may eliminate, put aside from your minds, the testimony about the cost of the living mule. It is inconsistent with the charge which I am giving you, because I am telling you to give to the plaintiff, if you find a verdict for him, the value of both of his mules as they were an hour before the accident less what they are now worth. Of course, the one that

10

20

30

is dead was a total loss. In regard to the other one, you must determine whether it is worth anything, and if so how much; then ascertain what it was worth, and the measure of damage is what the man has lost by virtue of having the mule in the condition in which it is now instead of the mule as it was shown to have been at the time of the accident. You can throw out the question of the cost of its keep; I think it is not consistent with the request of the plaintiff to charge which I have charged you.

10 With respect to the wagon, the same rule applies. If the wagon was so totally injured that it being worth \$100 then it is not worth anything now, if the damage to it is \$100, or if it is \$69, or whatever you find from the testimony, it would be the proper measure of damage.

In regard to the harness and baskets, this rule comes in—it is no new rule; it is the same as I have stated—that the plaintiff is only entitled to recover for the losses that happened to him from the accident. Now, there was nothing in the nature of the accident which led him to necessarily abandon his harness or his baskets; and the amount which he is to recover is the damage to these things, no matter where they are, if they are hanging up in one place or another. The question is not whether he neglected to go and get them; the question is, how much they are damaged. He may go and get them tomorrow, if, for instance, the baskets are all there—there is no proof about that—or if somebody has stolen them, then the question is whether the plaintiff exercised reasonable care in preserving his own property, because he cannot leave it on the road and charge it against the defendant. The same rule applies to the harness; he cannot abandon it and say, “I will put it down as a total loss.” The question is, how much was the harness hurt? It is hurt a dollar’s worth, if its value before was forty dollars and it is worth thirty-

20

30

nine dollars now. It is utterly immaterial where it may be. There is no proof that he was prevented by anybody from this company from getting it; the proof that he said someone prevented his taking it has nothing to do with this case at all.

As to the wagon cover, I think it is thoroughly covered by the testimony as to its cost, its value, and as to its being in the accident, and participating in the injury.

There is one other matter which I wish to speak to you about on the question of the way the accident happened, and on the question of which version of the accident you accept as the true one. I will say to you that there is no testimony before you upon that question to the effect that the motorman said he had not seen the wagon until he struck it. Now, that requires a word of explanation. You heard Mr. Chambers, one of the witnesses on the stand, say that he had heard the motorman say that; and yet I state to you that as a matter of law there is no testimony in the case on the question of the liability of the defendant that the motorman ever said any such thing, and that is for this reason: That testimony was permitted to be given solely that the jury might judge of the credibility of that witness, solely that the jury might have an opportunity to say how trustworthy that witness was, not only as to his willingness to tell the truth, but as to his memory, as to his accuracy; therefore, he was permitted to be contradicted. He stated that he had not said so to Mr. Harrington. Another man, Mr. Chambers, comes on and says he heard him say so. Now, that is to be confined by the jury solely to weighing the testimony of the motorman. If you believe that he did not say it, then, of course, his testimony is not affected by it. If you believe that he did say that and that he either has forgotten it or that he is inaccurate about his recollection, or that he purposely has stated what he knew was not true, of course, if you believe that of the testimony, you will take the rest of his testimony and to some extent

view it in that light. But that is the sole use of that little piece of testimony that Mr. Chambers gave, and that does not go into the case for the purpose of bearing on the liability of the defendant and having the jury understand that he did say so for the purpose of judging as to how the accident happened; it is not in the case for that purpose and must not be so considered. It is to be used solely on the question of how accurate or truthful a witness you believe the motorman to be; and

10 when you have used that testimony of Chambers on that point in weighing the motorman's testimony and judging how you will regard the rest of his testimony, then you are to throw it out of the case and not to consider it as bearing on how the accident happened at all. That you are to judge of from the other testimony and not from that little testimony of Mr. Chambers. You may retire.

---

#### DEFENDANT'S EXCEPTIONS.

20

The defendant, by its counsel, prays a bill of exceptions to the charge of the Court in the following particulars, viz:

1. As to what the Court said in regard to the measure of damages in connection with the plaintiff's request, the Court charging that the measure of damage was the value of the things injured, less their present worth, and what the Court said in that connection.

30

The Court: In so far as I tried to lay down that the measure of damage was the value of those things, less what they are now worth, in so far as I charged that, I will allow you an exception.

And a bill of exceptions is signed and sealed accordingly.

C. G. GARRISON,  
Justice Supreme Court.

NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.

CLAYTON L. ANDREWS,  Defendant in Error,  vs.  THE CAMDEN AND SUBURBAN  RAILWAY COMPANY,  Plaintiff in Error.	}	ON ERROR TO SU-  PREME COURT.  ASSIGNMENTS OF  ERROR.	10
---	---	---	----

Afterwards, to wit, on this day, before the Judges of the said Court of Errors and Appeals, comes the said The Camden and Suburban Railway Company, by E. A. Armstrong, its attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error, and assigns the following as causes for error: 20

1. That the declaration aforesaid and the matters therein contained are not sufficient in law for the said Clayton L. Andrews to have his said action against the said The Camden and Suburban Railway Company. 30

2. Because in ordering judgment to be entered for the plaintiff and against the defendant, the same was improperly and illegally ordered to enter and entered and execution issued thereon before the eighth day of November, A. D. 1905, when the same could properly and legally be entered.

3. Because the Justice who tried the cause improperly permitted this question to be asked and answered: "Who ordered the injured mule to be killed?" over the objection of the defendant.

4. Because his Honor, the Justice who tried the cause, permitted testimony to be offered over objection, as to the cost of the care of the sick mule.

**10** 5. Because his Honor, the Trial Justice, permitted the following question to be asked of and answered by the motorman of the defendant company:

"Ques. After the accident, did you or did you not say to Mr. Harrington that you did not see the wagon until you struck it?"

6. Because his Honor, the Trial Justice, permitted the following question to be asked of and answered by the motorman of the defendant company, over the objection of the defendant:

**20** "Ques. Did you after the accident say, in the presence of Mr. Chambers, who was just on the stand, that you did not see the wagon until after you struck it?"

7. Because his Honor, the Justice who tried the cause, permitted the following question to be asked of one of the witnesses for the defendant, Benjamin M. Hogddom, over the objection on cross-examination, the same being claimed not to be proper cross-examination:

**30** "Ques. Who directed you to take that car on to Moorestown?"

8. Because his Honor, the Justice who tried the cause, permitted the following question to be asked of one of the witnesses for the defendant, Benjamin M. Hogddom, over objection, on cross-examination, the same being claimed not to be proper cross-examination:

"Ques. It was not a regular run, was it?"

9. Because his Honor, the Justice who tried the cause, permitted the plaintiff on rebuttal to ask a witness for the plaintiff, Samuel E. Chambers, notwithstanding the objection of the defendant's counsel:

"Ques. Did or didn't you hear the motorman tell Mr. Harrington that he never saw the wagon until he struck it?"

10. Because his Honor, the Justice who tried the cause, improperly instructed the jury as to the measure of damages, in that he permitted and instructed the jury to assess the damages of the plaintiff at the value of the property alleged to have been injured at the time it was injured, less its value at the time of the trial. **10**

11. Because his Honor, the Trial Justice, improperly admitted illegal evidence for the plaintiff, over the objection of the defendant's counsel.

And the said The Camden and Suburban Railway Company prays that the judgment aforesaid may, for the reasons aforesaid, be reversed, annulled and altogether for nothing holden, and that it may be restored to all things which it has lost by occasion of said judgment, &c. **20**

E. A. ARMSTRONG,  
Attorney for and of Counsel with  
Plaintiff in Error.

---

Service admitted of the above assignments in error. **30**

JOSEPH KAIGHN,  
Attorney for Plaintiff, Defendant  
in Error.

[ENDORSED.]

NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.CLAYTON L. ANDREWS,  
Defendant in Error,

10

vs.

THE CAMDEN AND SUBURBAN RAILWAY COMPANY,  
Plaintiff in Error.

---

ON ERROR TO SUPREME COURT.

20

---

ASSIGNMENTS OF ERROR.  

---

E. A. ARMSTRONG,  
Attorney.

Filed December 7th, 1905.

S. D. DICKINSON,  
Clerk.

30

NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.

CLAYTON L. ANDREWS,	}		
Defendant in Error,			
vs.		JOINDER IN	10
THE CAMDEN AND SUBURBAN		ERROR.	
RAILWAY COMPANY,			
Plaintiff in Error.			

And hereupon, afterwards, to wit, on this day, the said Clayton L. Andrews, by Joseph Kaighn, his attorney, comes into court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c. 20

JOSEPH KAIGHN,  
Attorney.

SAMUEL H. RICHARDS, 30  
Of Counsel with Defendant in Error.

[ENDORSED.]

NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.

CLAYTON L. ANDREWS,

Defendant in Error,

10

vs.

THE CAMDEN AND SUBURBAN RAILWAY COMPANY,

Plaintiff in Error.

—————  
JOINDER IN ERROR.

20

—————  
JOSEPH KAIGHN,  
Attorney.

Filed December 13th, 1905.

S. D. DICKINSON,  
Clerk.

30

