New Jersey Court of Errors and Appeals

MARGARET SCHREIBER, *Plaintiff-Appellee,* vs. PUBLIC SERVICE RAILWAY COMPANY, *Defendant-Appellant.*	On Appeal from New Jersey Supreme Court.

Brief of Public Service Railway Company, the Defendant-Appellant.

The plaintiff fell into a ditch while about to board a trolley car. She recovered judgment against the defendant (p. 11) for the sum of three thousand three hundred dollars ($3,300). A rule to show cause (p. 7) was granted in the case, reserving to the defendant an exception to the refusal of the Trial Court to charge a certain request. The rule to show cause was subsequently dismissed after argument before Hon. Luther A. Campbell, Circuit Court Judge. (Opinion, p. 9, rule of dismissal, p. 10.) The matter which the defendant below desired to have charged, and concerning the refusal to charge which an exception was reserved to the defendant, was as follows: (P. 7, l. 18 to 25) "The plaintiff claims that while the car was standing still she attempted to board it, and while she had one foot on the running-board the car started and threw her into a

trench. She must satisfy you by a preponderance of the testimony that the accident happened as she described and if it happened any other way than as testified by her she cannot recover."

The aim of the request to charge was to confine the issue to the fact in controversy. It was, in effect, equivalent to the making of a motion for non-suit, at the close of the plaintiff's case, concerning one of two alleged acts of negligence charged in the complaint. No such non-suit motion was made, but we submit that this request to charge, at the end of the case, was its equivalent. The original complaint of the plaintiff (top of page 2) was that the car was prematurely started while the plaintiff was boarding it. In an amended complaint (p. 4, l. 21) the plaintiff repeats the allegation of premature starting of car, and (p. 4, l. 29) adds an allegation that the car was stopped "beside a certain deep ditch or trench in a position in which it was dangerous for persons to attempt to board the same, and the plaintiff while using due care for her safety, in attempting to board the said car fell into the said ditch by reason of the negligence of the defendant aforesaid."

It therefore might in a sense be said that the plaintiff *claimed* more than was contained in the requested charge (p. 7, l. 18), if it were not for the fact that the plaintiff's *case* absolutely negatives the "ditch or trench" proposition as an element of actionable negligence. *When a case is closed, we must look to the testimony to learn what a plaintiff claims, and not to allegations in the complaint which the testimony makes no attempt to support.* The plaintiff's testimony shows that she saw the ditch, that there was room to walk between the open car and the ditch, that she did walk between the car and the ditch, seeking a

place to board the car where the car was less crowded than at other points, and that a motion of the car threw her while she was attempting to board the car. In the testimony of the plaintiff's case, both in her own testimony and in that of her witnesses, *the ditch in no way figures as an element that was a proximate cause of the accident.* The only effect of the ditch was to increase the distance of the plaintiff's fall. The accident happened on a bright October afternoon. The defense was that she fell into the ditch before she touched the car, and while the car stood perfectly still. This defense was supported by the testimony of a number of witnesses. *The defense, therefore, did not assist the plaintiff's case, for the act of walking into a ditch in broad daylight, which ditch the plaintiff admits that she saw, was the plaintiff's own negligence.* The introduction of the stopping of the car beside a ditch or trench as actionable negligence confused the issue, and the intent of the defendant's request was to confine the issue to *the only allegation of defendant's negligence concerning which there was any testimony,* to wit, the alleged starting of a trolley car while the plaintiff was boarding it. The trial judge in discharging the rule to show cause said: (P. 9, l. 24) "Furthermore, the defendant is protected by the reservation of its exception specifically reserved in the rule to show cause. This exception, together with the jury's answer to the written interrogatories, undoubtedly will open the case to review upon appeal." As the judgment is a substantial one, and as the defense on the *real issue* was a very strong one, we feel that the defendant below was wronged by the repeated injection into the case of a false issue, and by the refusal of the Court to heed the defendant's effort to get that

false issue out of the case before it was submittel to the jury.

The real issue was, Did the car start prematurely while the plaintiff was trying to board it? The false issue was, Did the car stop at a dangerous place? On the latter proposition, we submit that the evidence both fails to show that it was an unsafe place, and fails to show that *the place* was the cause of the accident. The false issue was repeatedly dragged into the case.

The case was tried in the Hudson County Circuit Court, and was appealed to the Supreme Court. The latter court, in its opinion (p. 126), in speaking of the request to charge the refusal of which was the foundation of the appeal, said (p. 127, l. 25):

"The purpose of the request was to exclude from the consideration of the jury any question of negligence on the part of the defendant company in stopping its car alongside of this trench, and of such negligence being a producing cause of the accident to the plaintiff. We think the Court rightly refused to take this question from the jury, for they were justified in finding a verdict in favor of the plaintiff, even though they were not satisfied that the car started while she was attempting to board it, *if* the evidence supported the conclusion that the accident resulted from the stopping of the car in a place of danger, and was not contributed to by any neglect on the part of the plaintiff to use care for her own safety."

Note the words—"if the evidence supported the conclusion that the accident resulted from the stopping of the car in a place of danger, and was not contributed to by any neglect on the part of the plaintiff to use care for her own safety." The opinion does not say that the evidence *would* sup-

port such a conclusion. The opinion is based on the idea that the Jury could act as it did "if" the evidence supported such a conclusion. We consider that the Supreme Court thereby ignored the real issue. We consider that the Supreme Court was called on to say *whether or not such evidence in fact exists.* We claim that it does not exist. We ask the Court of Errors and Appeals to go beyond the "if" of the Supreme Court, and if it finds that no such evidence exists, we believe that it will agree with us that the request asked for was a proper one, as the repeated injection into the case of the false issue, despite the absence of evidence to support it, resulted in a confusion that made the requested charge necessary in order to confine the case before the jury to the real issue.

The trial judge (p. 119, l. 38) treated this false issue with great seriousness, and at considerable length, as though it in fact was a substantial part of the case. At the top of page 124, after the judge's charge, the plaintiff's attorney took exception to the judge's charge because he considered that it confined the jury to finding only one act of negligence, to wit, premature starting, *or stopping at a dangerous place,* and the attorney thought the jury should be allowed to find *both.* But *the plaintiff only claimed the one thing,* and her witnesses did no more. It was therefore eminently proper for the defendant to attempt, by a request to charge, to confine the plaintiff's case to *that which she claimed,* and to eliminate from the case that extraneous matter which had been dragged before the court. The effort of the request was to confine the case to *the issue raised by the evidence.*

It will perhaps be argued that the defendant's request was an attempt to direct the jury to the testimony of a single witness; but we submit that

the request recited, and was intended to direct the jury to, the *claim* of the *plaintiff*, as advanced by herself and by her single eye-witness. In other words, the attempt by us was to direct the jury to *the plaintiff's whole case on liability.*

The court's charge (p. 119, l. 38) was without a scintilla of evidence in the plaintiff's case to support it. It raised a false issue. Even if it had a basis in fact, the further fact that it was broad daylight, the testimony of the plaintiff that she saw the ditch, that there was room to walk between the open car and the ditch, and that she did so walk—this state of affairs would absolutely negative any theory that the place at which the car was stopped was in any way a proximate cause of the accident. And when we add to that the testimony of herself and of the only witness she produces who avers that he saw the accident, that the car started as she was boarding it, and threw her, the absurdity of the continued dragging of this false issue into the case becomes apparent. The attention of the jury was therefore improperly diverted to this false issue. The defendant was justified in endeavoring to confine the case to the true issue, and the request should have been charged. Presumably, following the custom, the request to charge was handed up to the court before the court charged the jury. Its evident intent was to eliminate from the case that part of the complaint which there had been no evidence to support. But after the court, in its charges, had given such serious and misleading consideration to the false issue, the importance to the defendant of the requested charge became much greater than it had been before.

The fact that this ditch or trench theory continued to be followed up, appears by a perusal of the "questions submitted to the jury" on page 6 of

the book. The answers to the questions indicate that the members of the jury were proper candidates for an insane asylum. We ask the Court carefully to note these questions and answers. No. 1 is supposed to consist of (a) and (b). The jury answered "yes" to the introductory sentence, which did not call for an answer, and to which the answer given is in fact no answer. To sub-division (a) the answer is "*Yes, by obstruction by passengers on the running-board.*" It will readily appear that this in fact was no answer whatever, as the question concerned itself with the sudden starting of the car. It would appear as if the jury had decided for the plaintiff *on an issue entirely outside of the pleadings,* to wit, that the plaintiff fell into the ditch while trying to board the car because of "obstruction by passengers on the running-board." The jury probably meant that the plaintiff was jostled by such passengers. At any rate, the answer of the jury cannot reasonably be held to be an affirmative to the proposition that we "so suddenly started said car, that the plaintiff was thrown off therefrom into the excavation."

To sub-division (b) the answer is "yes." This is the question that relates to the stopping of the car in a dangerous place. It is the only ground on which the jury *clearly found against us.* If there is any cloud upon the last assertion, it is due to the fact that the question in sub-division (b) is not complete. It relates to our alleged negligence, but it fails to connect that negligence with the accident. If we were negligent in stopping the car beside the trench, then, *what next?* How did the lady get into the trench? The Trial Court (which prepared these questions) did not give much weight to that circumstance. When it

charged the jury on this topic (pp. 119-120) the Court said:

"Again, she alleges this: That the negligence of the defendant company consisted in the fact that it did not use reasonable care in the place at which it stopped, but it did stop at a place which was dangerous for her to board the car, *and because of that,* and *as the proximate result of that* the injuries happened of which she complains." In this charge "proximate result" is intended to fill a large void. It may be negligence to stop a car at a dangerous place, but this fact alone will not hurt a lady. What else was there? If the car in fact did stop at a dangerous place, *what of it?* The issue was a false one. The Court in no way advances any theory on which such a stopping of the car could in any negligent sense be a proximate cause of the accident. The jury was misled by the Court's remarks. The fact that the defendant was likely to be prejudiced thereby is amply evident from the manner in which the Court in fact did charge on this extraneous issue, and from the special findings of the jury on page 6.

The special questions submitted to the jury were prepared by the Court itself. See bottom of page 122 and top of page 123.

It will be noted that in the Court's charge the propositions (a) and (b) are connected by the word "Or," but as the questions and answers are returned by the clerk of the court on page 6, this word "Or" is omitted.

In the amended complaint (p. 4) the two alleged acts of negligence are in a single count, and, so far as numbers of paragraphs are concerned, are (though actually separately paragraphed) in a single paragraph. It is too late to take advantage of the fact that this was poor pleading. It

is too late to move to compel the plaintiff to elect as to which alleged act of negligence she would rely on. *But the plaintiff did elect, because she only proved or attempted to prove one of them.* The other, therefore, became no issue at all, and should not have been retained in the case. The defendant's request for a charge that would remove it from the case was a reasonable and proper request.

The following is the manner in which the plaintiff, and her only eye-witness, Sutherland, testify that the accident happened:

The plaintiff said: (P. 17, l. 36) "Q. What did you do after the car stopped? A. I walked from the crosswalk I stood on and walked between the car and the opening of the sewer. * * * (P. 18, l. 15) Q. Now, I understand you walked between the car and the hole? A. Yes, sir. Q. How far up did you walk? A. Why, up towards the third seat from the front. Q. Up towards the third seat from the front? A. Yes, of the car. Q. When you got from the third seat in the front what did you do? A. I put my right foot on the run-board; it was an open car; I put my right foot on the run-board, and I went to reach and the men that stood on the run-board they stepped aside so I had room to put my foot on, and as I did the car jolted and I was thrown into the open ditch. * * * (P. 22, l. 16) Q. What time of day was it that this accident happened? A. Why, between two and half-past two in the afternoon. Q. Was it a bright, clear day? A. Yes, sir. Q. There was nothing to obscure your view at all? A. No, sir. * * * (P. 26, l. 33) Q. You noticed the sewer trench along there, didn't you? A. Yes, sir; I did. Q. And it was dug up past the avenue, going towards Bayonne? A. No, sir; it was towards down-town. * * * (P. 35) Q. Now,

how far was the ditch from the trolley car? A. How far? Q. Yes. A. How wide, do you mean? Q. Yes; how much distance was there to walk between the ditch and the side of the trolley car? A. *It was wide enough for anybody to walk on.* Q. *You did walk it, didn't you, Mrs. Schrieber?* A. *Yes, sir.* Q. And how far did you walk altogether before you got up to the trolley car? A. The car passed by to part of the second crosswalk, and I got on the third seat from the front of the car. Q. You walked out to the track from where you stood? A. I had to walk between the ditch— Q. (Interrupting) Iam asking you—you walked out from the place where you stood? A. Yes. Q. That is the place between the ditch and the track? A. Yes. Q. Then you walked up between the ditch and the track until you reached the car; then you walked up to the car until you got to the third seat from the front? A. Yes, sir. Q. Now, there was plenty of room for you to do that? A. The gentlemen were getting on. Q. You walked up there and saw it, didn't you? A. Yes, sir. Q. Then you got your foot up on the car? A. Yes, sir. Q. And then the car started, as you say, and threw you? A. The car started before I put my foot on the run-board. Q. I know; it was while you were getting on that you claim the car started? A. I had my foot on and it jolted."

It appears from the foregoing testimony—(1) that the plaintiff saw the ditch; (2) that it was a bright, clear day; (3) that there was room to walk between the ditch and the trolley car; (4) that the plaintiff did walk between the ditch and the trolley car; (5) that as the plaintiff was attempting to get upon the run-board of the car a jolt of the car caused her to fall, and when she fell she fell into the ditch.

JOHN SUTHERLAND says: (P. 39, l. 34) "Q. Well, did she walk on this path that has been spoken of as between the car and the ditch? A. Yes, she did. Q. Then what happened? A. I thought then she was about to get on, and I raised my foot to the car, and the car made a movement forward and she was in about the same position; I seen her pitch right over. Q. Now, what position was she in when the car made the move and you saw her pitch over? A. One of her feet was from the ground. Q. Whether it was on the car or not you don't know; you could not see? A. No; I could not see long past those people in front of me, any more than I saw she had her foot elevated. Q. How far did it go when the car lurched? * * * A. Only about half a wheel; it just started. * * * (P. 44, l. 3) Q. And as a matter of fact, the next think you knew she did fall in the hole? A. With her foot getting on the car. Q. I mean before she even got her foot on the car? A. No; I positively saw the lady start to go on the car, her hand and foot, both of them. * * * (P. 44, l. 29) A. It was after it got in motion that the accident occurred. * * * (P. 45, l. 3) Q. So you saw her get her foot on the runboard? A. I did. Q. Did she get hold of anybody? A. She reached her hand up; I could not see because then there was an interference. Q. What was the interference? A. Passengers on the run-board. * * * (P. 46, l. 11) Q. Were you looking out in this fashion to see if the lady had hold? A. Yes. Q. And you saw her foot go up? A. Yes, sir. Q. And you didn't pay any more attention to her? A. I waited to see if she would get it; but just about then the movement occurred—well, a second afterwards, perhaps, she was in the pit."

The defendant's evidence as to the occurrence did not improve the plaintiff's case. The defendant showed by a number of witnesses that the car *did not start* during the occurrence, and that the plaintiff simply *walked into the trench.* In view of the plaintiff's own testimony that it was a bright, clear day, that there was nothing to obscure her vision, that she noticed the sewer trench along there, and that the distance between the trench and the side of the trolley car "was wide enough for anybody to walk on," and that she did walk it, we submit that the defendant's case, shows that the plaintiff deliberately walked into the trench, does not bring into the plaintiff's case, as an element of defendant's negligence, the stopping of the car in a dangerous place. This trench, which she so clearly saw in broad daylight, was a condition the danger of which the plaintiff clearly assumed.

The defendant's evidence as to the accident is as follows:

MURPHY, motorman, stopped car, heard shout, saw lady in hole. (P. 60, l. 14) "Q. From the time you stopped your car, after the lady signalled to you to stop it until you heard the shout and looked around and saw the lady in the hole, had your car moved? A. Never made a motion." (P. 64, l: 26) "Q. And when you stopped the open car about half past this crosswalk B, you stopped part of the seats opposite the crosswalk? A. Right in the center from the car. (P. 61, l. 34) Q. (Interrupting) She gave you a nod as you stood there and you carried your car beyond the uptown crosswalk, and stopped out in the center of the street, didn't you? A. No; I didn't carry all the car; just a part of it; I left her room to get on."

McKENNA, conductor. (P. 66, l. 31) "Q. What did your car do? A. Came to a stop by the motorman. Q. What did the lady do? A. She walked to the step; I kept watching her; she walked in the street then. I said, 'Madam, look out for the hole.' Q. How far away were you from her when you said, 'Madam, look out for the hole'? A. About six or seven feet, I guess. Q. What did she do? A. She walked right in it, with her head up like that, and walked right in (p. 67) it before I could get near her, and another gentleman hollered to her, too. Q. And she stepped right into the hole? A. She stepped right into the hole. Q. Which way was she looking with her head up? A. Forward, toward the front of the car."

EMORY TILDEN (a passenger on the car) said: (P. 72, l. 26) "Q. Did your car make a stop there? A. It did. Q. Did you see this lady go toward the car? A. I did. Q. What did she do? A. She stepped up—I suppose, to get on the car. Q. You saw her step up towards the car? A. (Interrupting) With her head kind of tilted back, looking for a seat—the sun was shining, and just as she stepped out I said, 'Madam, look out for the hole.' Q. You told her? A. Yes, sir. Q. What did she do? A. She went right in it. Q. Hadn't she at that time reached the car? A. She had not, sir. Q. Did she at any time get her foot on the car and the car start and throw her? A. No, sir. * * * (P. 75, l. 25) Q. She didn't walk up between the car and the ditch and go in that way? A. No, sir."

JAMES H. PERRINE, a passenger, said: (P. 76, l. 38) "Q. A lady waiting for the car. Now, what did the lady do? A. She stepped off the

curb, and walked towards the trolley. P. 77) Q. What did she do? Did anything happen to her? A. She walked on an angle and walked right in the excavation that was there. Q. Did you hear any people call to her or warn her? A. I heard someone call, 'Look out for the ditch,' or 'Look out for the hole'; but it was too late. * * * Q. What did your car do? A. Waited for her to get on. Q. Did she at any time get past the hole and get her foot on the running-board? A. No, sir. * * * Q. What was the only way of getting to the car, was it on this Dr. Ghee's driveway, as they speak of? A. Yes, sir. Q. And that was about five feet wide, someone said. A. I should judge about that. Q. Now, were you sitting behind Dr. Ghee's driveway, or had you passed it? A. I was just about opposite it. Q. Opposite it? A. Yes, sir. Q. How many seats were opposite this driveway, could you tell? A. Well, I should judge probably there were three or four."

R. WALTER JARVIS (p. 80) was a passenger on the car, and testifies that the car stopped, that a lady stood there, that he saw her step from the curb, and walk towards the car. (P. 81, l. 9) "A. The next I heard was somebody calling to her to look out for the hole. Then I looked forward and saw that she had fallen into the hole. Q. But you didn't see her fall? A. No, sir; I did not. Q. At that time what was your car doing? A. Standing perfectly still. Q. Was there any jerk? A. No, sir; none whatever."

PETER DANHART (p. 83) was on the car. heard a scream, turned around and saw a lady in the pit. (P. 84, l. 6) "Q. Now, from the time your car came up there and stopped had it moved un-

til you heard the lady scream? A. No, sir. Q. Standing still? A. When it came to a stop she was standing perfectly still. * * * Q. Where was the front end of the car stopped (p. 85) with reference to the crosswalk at Virginia Avenue? Had it reached the downtown crossing? A. No; it was about half way over what they call the crosswalk or driveway."

JOSEPH L. SPINNING said: (P. 87, l. 22) "Q. What did the car do after it got up to Virginia Avenue? A. It stopped. Q. And did you see any lady there? A. Yes, sir. Q. Where was the lady? A. On the curbstone. Q. What did she do when the car stopped? A. She started to walk towards the car, and she went a little northeast and walked into an excavation. Q. Did you hear anybody call to her? A. Yes, sir; I called out as she stepped off the curbstone, 'Watch the hole, madam.' Q. And she kept on going? A. Yes, sir. Q. And she fell into the hole? A. Walked right into the hole. Q. Now, at any time did she get out alongside of the car and walk up to the third seat from the front and put her foot on the runboard, and the car start and throw her? A. No, sir. * * * (P. 90, l. 19) Q. And when she got down off the sidewalk what part of the street did she go into with reference to the crosswalk, I mean; did she cross on the crosswalk? A. Well, when she stepped off the curbstone she went on the crosswalk and then walked a little north, right into the excavation."

MARY ROSE said: (P. 93, l. 1) "Q. Were you on the car the day the accident happened, and the lady fell in the hole? A. Yes, sir. Q. What part of the car were you on? A. The fender part of the car. Q. Were you seated? A. Yes, sir.

Q. Now, when your car stopped did you see the lady? A. Yes, sir. Q. Where was the lady? A. On the crosswalk coming along. Q. Coming along towards what? A. The car. Q. Now, when the car stopped what did the lady do? A. She was looking up; she stepped down the elevation. Q. She stepped down into what? A. The elevation, in the hole. Q. The excavation. Did you see people go to take her out? A. Yes, sir. * * * (P. 93, l. 32) Q. And you testified at the last trial that this lady came walking along between the car and the ditch and that she passed in front of you and then went into the hole; you testified that, didn't you? A. I made a mistake because I didn't hear what you said. Q. Who told you that you made a mistake? A. Nobody told me; I studied it up afterwards myself. * * * (P. 94, l. 17) Q. Isn't it a fact that the lady walked in between you and the ditch and alongside of the car and fell in the ditch? A. No, sir. Q. It is not the fact? A. 'Tain't the fact. She came along down the sidewalk and stepped right deliberately down. I was right by the center of the car, by this hole, and she came right along and she stepped deliberately down into the hole."

ALEXANDER WHITTON said: (P. 99, l. 17) "Q. What did the lady do? A. Walked up to the car; started to walk along, looking for a seat, and walked directly in the hole. Q. She walked up to the car, started to walk along, and walked directly in the hole? A. Yes, sir. Q. What part of the car did she reach as she stepped up to it? A. Well, I should say she walked about five or six seats ahead of me. Q. Ahead of you? A. Yes. Q. And do you say you heard people calling to her? A. Yes, sir, 'Look out for the hole.' Q. And she stepped in the hole? MR. SIMPSON:

I object to leading the witness. Q. Did she at any time put her right foot on the car and start to go up and the car start and throw her? A. *She was not near the car. Cross-Examination by Mr. Simpson*: Q. I understood you said to Mr. Blake she started walking along the car, looking for a seat? (P. 100) A. Walked from the crossing to the car, turned facing Jersey City, started to walk along and walked in the hole. * * * Q. How did she walk that; you said she walked along the car and you say she was never near enough to the car to put her foot on the runboard. How do you reconcile that? A. *Well, the ground between the running-board and the excavation, there was enough room for anybody to walk on without going near the car.* Q. Well, that is where she walked, on this path between the car and this excavation? A. Yes. Q. How far did she walk along this excavation before she went in the hole? A. After she left the crossing. Q. No, no; when she got in the hole; what distance had she passed alongside this hole before she finally went in? A. About two feet. * * * (p. 103, l. 32) Q. Now, had this woman passed you at any time and walked along the car looking for a seat. Did she pass you? A. Did she pass me looking for a seat? Q. Yes; when she walked along, as you described, looking for a seat, did she pass you? A. She passed me. Q. How near was she to you when she passed you? A. Oh, I should judge two feet. * * * (p. 104, l. 23) Q. Now, how did she walk into this hole? Did she sidestep into it with her face kept up, or did she go into it diagonally? A. Her right foot went over the embankment. Q. Well, was she walking straight when her right foot went over the embankment, looking toward the front of the car? A. Looking up in the car. * * * (p. 105, l. 18) *Re-Direct Examination by Mr.*

Blake: Q. During all that time what was the car doing? A. Standing still."

There can be no doubt that, on the question as to whether or not the accident was caused by the car starting while the plaintiff was getting on, the great preponderance of evidence is with the defendant. The plaintiff and her witness Sutherland testify that the car started. But Motorman Murphy, (p. 60, l. 14) R. Walter Jarvis, (p. 81, l. 14), Peter Danhart, (p. 84, l. 8), Alexander Whitton, (p. 105, l. 20), all say that the car stood perfectly still, while Conductor McKenna, Emory Tilden, James H. Perrine, Joseph L. Spinning and Mary Rose join with the foregoing in giving an entirely different cause for the accident, to wit, that the plaintiff walked into the trench. Those who saw her walk in were McKenna, Tilden, Perrine, Spinning, Mary Rose, Whitton. Those who saw her after she was in, and who testify that the car stood still were Murphy, Jarvis, Danhart. The witness Whitton, besides actually seeing her walk into the hole, as above, states, as above, that the car stood still. Weight of evidence is, of course, not pertinent to the present issue, except to show that the defendant had a defence on the merits, and was, therefore, damnified by the injection into the case of the false issue that confused the minds of the jury.

The Court charged another request of the defendant (p. 122, l. 23) and commented upon it as follows: "Second, the defendant company had no control of the street, and if the plaintiff stepped in a trench such as described in the evidence before she reached the car, without using due care for her safety, she cannot recover from the defendant company. I so charge you. I will say in connection with that charge that the duty or care which is denominated as due care is that

care which I have previously spoken to you about; that is, the obligation upon her was to use that care for her own safety which a reasonably prudent person would have used under the circumstances.'' The weakness in the foregoing charged request was in the words ''without using due care for her safety.'' Their presence in the charge, and the Court's comment upon them, made it all the more urgent that the request which was denied should have been charged. The Court should have eliminated the ''trench'' theory entirely from the case, and the request which was refused (p. 7, l. 18; p. 124, l. 27) would have had that effect.

If the jury, in answering the questions demanding special findings, submitted to it by the Court (p. 6), had eliminated from the case the false issue concerning stopping at a dangerous place, then the refusal to charge as requested would have become unimportant. This argument might even hold good if the jury had found two distinct acts of negligence, one of which was within the issues, because the good one might have supported the verdict. But the answer to the question concerning premature starting of the car is, ''Yes, by obstruction by passengers on the running-board.'' It is not an answer at all. The word ''Yes'' cannot be taken alone. The sentence of which it forms a part must be taken in its entirety. The answer is practically a statement that the car *did not* start forward, but that ''obstruction by passengers on the running-board'' was the cause or a cause of the accident, and that the defendant was negligent in allowing such obstruction. The way in which the jury may have considered that such ''obstruction'' was a proximate cause of the accident can, of course, only be surmised.

Such a proposition was, in any case, *entirely outside of the issues.*

The answer to question (b) is unmistakably "Yes." Therefore, *as the only clear finding against the defendant in the case,* the jury found the defendant negligent, and "that negligence to have been"—

"That said defendant stopped the car beside a certain deep ditch or trench in a position in which it was dangerous for persons to attempt to board the same."

The extraneous subject, therefore, remained in the minds of the jury. But again we are constrainted to ask, How did that hurt her? What is the connecting link of proximate cause which all references to this subject fail to disclose?

> "It is a cardinal rule for the control of a Trial Court that the questions submitted to the jury should be within the issues raised by the pleadings."
>
> *Partridge* vs. *Woodland Steamboat* Co., 37 Vroom, 290.

It is quite true that the foregoing case is not directly applicable, because it relates to the issues raised by the *pleadings.* But the principle of it should be just as applicable to the issues raised by the *evidence.* The plaintiff in her complaint may claim what she likes, but when she only *offers evidence* on a single issue, then the case only contains that single issue, just as surely as if that were the only issue in the *pleadings.*

The foregoing remarks apply as well to the case of *Excelsior Electric Co.* vs. *Sweet,* 30 Vroom. 441, in the syllabus of which appears: "It is error to submit to a jury questions which are not within the issues raised by the pleadings."

Van Vehten vs. *N. Y. & N. J. T. & T. Co.,* 42 Vroom, 45, is not particularly pertinent to the present subject, but it contains the following pertinent expression: "Hence, when the defendant, holding such a bill of exceptions, requested the Court to instruct the jury correctly upon this point, it was the defendant's right to have its request, in substance, granted, i. e., to have the law correctly stated—so that the erroneous ruling of the Court to that extent might be corrected and the impression made by it removed as far as possible from the mind of the jury."

In the case at bar, after the Court, in its charge, had submitted the "trench" theory of alleged negligence to the jury, such theory was no longer innocuous. *The fact that no evidence on that theory had been submitted did not protect the defendant.* The Court's demand to the jury for a special finding on "trench" negligence made it a live, but highly improper, issue. The charge requested by the defendant was absolutely essential if the case was to be returned to a sane and reasonable channel.

In *Martinez* vs. *Runkle,* 28 Vroom, 111, on page 126, appears the following:

> "It is deemed that thus the elements of a complete estoppel clearly appear, which preclude the plaintiff's recovery in this suit. We think that the Judge erred in refusing to instruct the jury to find for the defendants."

In the case at bar, we consider that the testimony absolutely estopped the plaintiff from any further assertion of the "trench" theory of negligence. *And we consider that the trial court's act in commenting on that theory was equivalent to*

telling the jury that there was evidence to support that theory.

State vs. *Lovell,* 86 New Jersey Laws, 509, was a criminal case, but the principles there enunciated should be just as applicable to a civil case. The syllabus says: "A direction of the Trial Court which states as a fact proven in the case a condition of affairs which is not in the case, and not properly inferable from the testimony is not judicial comment, and presents ground for reversal."

The opinion (p. 510) in the above-quoted case says: "—it became all important that the jury should deal only with the actual testimony elicited, and should not have propounded to them as a fact, a very important evidential circumstance which the testimony did not supply. In this respect we think the learned Trial Court misconceived the effect of the testimony."

The above-quoted case also, on page 511, cites from other New Jersey cases as follows:

"*In State* vs. *Diamond,* 84 N. J. L. 17, Mr. Justice Garrison says: "It is injurious error for the Trial Court in a criminal case to charge in effect that an incriminating fact has been proved when such a fact has neither testimony nor the color of testimony to support it. Such a charge is not a comment upon testimony made for the benefit of the jury, but an elimination of testimony from the consideration of the jury." In an earlier case—*Smith and Bennett* vs. *State,* 41 Id. 374—Chief Justice Beasley, speaking for the Court of Errors and Appeals, deals with the same subject and reversed a judgment of conviction in that case, upon the ground "that a story is imputed to the defendant, and a fact of the utmost importance is imported into the testimony, and the introduction

among the proofs of such foreign admixture must of necessity be held to constitute error in law."

The case of *State* vs. *Lovell,* 86 N. J. Laws, 509, above referred to, was reversed by the Court of Errors and Appeals. In an opinion by Judge Black, filed November 15, 1915, the ground of reversal being that there was in fact sufficient evidence on which to base the statement of the trial judge which had been objected to, because there was evidence in the case from which the jury could draw such an inference. Such a reversal for such a reason, of course, does not upset the logic of the original opinion, but rather tends to accentuate it.

The case of *Smith and Bennett* vs. *State,* 41 N. J. Laws, above referred to as a quotation from the Lovell case, should, we deem, be more fully set out by a reference to the following paragraph on page 385 of the case:

> "It has already been said that it is competent for the judge presiding at a criminal trial to lay before the jury for their consideration his own views and inferences from the proofs, and that such expressions, no matter how ill advised or erroneous, can be reviewed on a motion for a new trial, but not on a writ of error; but the defect in this case is that a story is imputed to this defendant, and put in her lips, which she never uttered, and thus a fact, of the utmost importance, is, by unguarded expressions, imported into the testimony, and the introduction among the proofs of such foreign admixture must of necessity be held to constitute error in law."

We see no need of commenting at length on the law relating to the stopping of trolley cars in dan-

gerous places, for the issue is not properly in this case. Assuming, for the moment, that it is in fact in the case, there no doubt exist many reported cases of stopping cars at dangerous places, which concern injuries to *alighting* passengers, to whom a special duty of protection and care is due, there are doubtless reported cases concerning injuries to persons intending to board a car, where the car is stopped at a dangerous place *in the dark*, and where the prospective passenger *did not know the situation*. We do not, however, believe that counsel for the appellee will be able to produce any reported case, which, on close analysis, is shown to contain the following elements, which elements are found in the case at bar:

a. That it was broad daylight, and no obstruction to vision existed;

b. That the injured person had, prior to the accident, complete knowledge of the existence of the trench near the waiting trolley car;

c. That there was room between the trench and the side of the car for persons to walk;

d. That the injured person, prior to the accident, in broad daylight, with full knowledge of the facts, did walk between the trench and the standing trolley car.

To state that the defendant Company, under the foregoing conditions was, or might be, responsible for the injury to the plaintiff in walking into the trench is to state an absurdity. Citations can, doubtless, be given, containing general statements that may tend to becloud the question before us,

but we believe that, on analysis, none of them in which the plaintiff was allowed to recover, will be found to contain the elements above referred to, that appear in the case at bar.

Respectfully submitted,

LEFFERTS S. HOFFMAN,
LEONARD J. TYNAN,
GEORGE H. BLAKE,
Attorneys of Defendant-Appellant.

New Jersey Court of Errors and Appeals

MARGARET SCHREIBER, *Plaintiff-Appellee,* *vs.* PUBLIC SERVICE RAILWAY COMPANY, *Defendant-Appellant.*	On Appeal.

10

BRIEF FOR PLAINTIFF-APPELLEE.

The appellee objects to the brief of the appellant because it does not follow Rule #27, which provides for an orderly division of the briefs. That there shall be first, a concise or abstract statement of the case. Second. Specification of errors, or specifications of the grounds of appeal in civil cases, which shall be set out separately and particularly. Third. A brief of the argument exhibiting a clear statement of the points of law or facts to be discussed.

20

The brief served is undivided. There is no titular division of the three points, but plunging at once into an argument as if there was an argument on a motion for non-suit, whereas the matter under consideration is the refusal of the Court to charge a request of the defendant. ~~The brief on appeal makes no reference to the fact that there has been a determination of this matter on appeal in the Supreme Court and that this is an appeal from the Supreme Court. It seems to leave that hidden for some reason.~~

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The appellee therefore attempts to set out here-

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with a concise or abstract statement of the case as follows:

This is a suit for damages by an intending passenger on a trolley car, who while attempting to board the car on the 4th day of October, 1913, at the corner of Ocean and Virginia Avenues, Jersey City, fell into a hole or ditch, either because the car was started while she was boarding it, or because it had been stopped at a dangerous place.

10

There were two trials of the case and two Rules to Show Cause. On the first Rule to Show Cause the verdict was set aside. On the second Rule to Show Cause the Judge refused to disturb the verdict. All objections were waived except the one to the refusal of the Court to charge the request submitted by the defendant, which was as follows:

20

> "The plaintiff claims that while the car was standing still she attempted to board it, and while she had one foot on the running board, the car started and threw her into a trench. She must satisfy you by a preponderance of the testimony that the accident happened as she described and if it happened any other way than as testified by her she cannot recover."

It will be seen by this request that as a matter of law, the jury must disregard all the evidence in the case except the plaintiff's testimony, and if they did not believe that they could not bring in a verdict; that if they believed her witnesses but did not believe her, if they did not believe the accident happened as she described, there would be no action.

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2. The ground of appeal was the refusal of the trial Judge to charge that request.

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Argument.

The appellee argues that it was not error to refuse this request for two reasons:

1. That it was technically a bad request.

2. That it did not state the law.

1. It was technically a bad request.

1. The appellee argues that upon technical grounds there is no error before the court to be passed on. There is before the court the refusal of the trial court to charge as requested. In this request, the defendant asked the court to apply the law to facts, which it was not error for the court to refuse to do, under the following cases:

Blackmore v. Ellis, 41 Vr., 267;

Miller v. Delaware Co., 90 Atl., 288;
Fox v. Gt. Atlantic, 87 Atl., 339;
Chenowith v. Traction Co., 29 Vr., 419; 61 N. J. L., 554;
Fernetti v. Railroad, 93 Atl., 576;
Weinberger v. North Jersey St. Rwy., 44 Vr., 697.

2. It did not state the law.

1. If however, this court holds that a trial court must apply the law to facts when requested so to do, that it was not error for the court in this case to refuse to charge this request, because this request erroneously stated the law.

The refusal to so charge the request was taken to the Supreme Court and the Supreme Court affirmed the judgment, holding the refusal not error as the request was not a correct statement of the law. The appellant now seeks to have this court set the verdict aside on the refusal of the trial court to charge the request made by the defendant. What was the request? It was that unless the plaintiff proved the de-

fendant threw her from the car because of the sudden starting of the car, that she had no action, although there were facts in the case from which the jury might have found as a matter of fact, that the defendant, a common carrier of passengers, stopped the car at a dangerous place, knowing that the sun was in the eyes of the plaintiff as she approached the car and stopped the same unnecessarily beside a hole, and stopped the same with the running board crowded with passengers, and while she was attempting to board the running board she fell into the hole because the car was stopped at an unsafe place. That is, the defendant claims that a common carrier of passengers for hire is held under no duty as to where it receives passengers; that it can stop any place it chooses without using any care; it can stop beside an excavation or in a manifestly dangerous place and will be guiltless of negligence.

The following cases are to the contrary:

Messenger v. Valley City St. & I. R.R. Co., 32 L. R. A. (N. S.), 883;
Louisville & Northern Rwy. Co. v. Dyer, 48 L. R. A. (N. S.), p. 818.

And cases cited in note.

Reply to Defendant-Appellant's Brief.

The brief of the appellant on appeal is practically an argument of the whole case. As it attempted to do in the Supreme Court, so it does here, to argue the whole case on this narrow request. The Supreme Court was not confused by this attempt but decided the case upon the alleged errors of law involved. A renewed attempt is made in this Court to argue the whole case. Whatever the trial judge's mind may have been as to the value of the request cannot alter

the appeal. The appellant is confined to the legal error on the record and that is the request. This request is a narrow request and framed by the appellant, was evidently framed with a design to have a specific matter determined,—that was, that unless the plaintiff was telling the truth, no matter if her witnesses were telling the truth or not, the jury could find no verdict for her. Such an argument is its own reputation. The jury were not bound to believe the truth or correctness of the plaintiff's evidence, but if in any part of the case there was evidence of negligence, they had a right to find for the plaintiff.

The appellant's brief attempts not only to review the refusal to charge this request, but the evidence in the case, the entire charge of the Court, the remarks of the trial Judge on the Rule to Show Cause, goes into weight of evidence, et cetra. On what theory of law does not appear.

Compare the appellant's brief on page 5, beginning "The trial judge" down to the words in italics "the issue raised," as an argument, with any legitimate legal argument concerning the request involved.

The claim of the plaintiff is made in the complaint and if there was any evidence in the case, even that produced by the defendant which supported any claim made by the plaintiff in her complaint, which established negligence, the jury had a right to find a verdict. It was peculiarly the province of the jury to accept or reject evidence.

The Supreme Court found for the plaintiff-appellee, even though the Supreme Court broaden the request of the defendant to charge, because the Supreme Court held that even if the request was a request to charge that no action would lie for failure to use reasonable care to stop at a safe place for a boarding passenger, the request

was bad, whereas the appellee argues that the request was not as broad as that. The request is that if the plaintiff's individual evidence is rejected by the jury, either for untruthfulness or incorrectness, yet no verdict can be found on any other evidence.

Here follows the opinion of the Supreme Court in deciding this appeal:

10 NEW JERSEY SUPREME COURT.

June Tern, 1915.

MARGARET SCHREIBER,

vs.

PUBLIC SERVICE RAILWAY COMPANY,

Appeal from Hudson Circuit Court.

20 Argued before Gummere, Chief Justice and Justices Swayze and Bergen.

For the appellant, Lefferts S. Hoffman, Leonard J. Tynan, George H. Blake.

For the respondent, Alexander Simpson.

Per Curiam.

The plaintiff in this case sought to recover compensation for injuries received by her while attempting to board a car of the defendant in the City 30 of Jersey City. In her complaint as originally filed she averred that while she was attempting to board the car, which had stopped to let her on, it suddenly started up when she had one foot on the running board and the other on the ground, and threw her into a hole in the street which was alongside the car. Subsequently the plaintiff amended her complaint by adding a count charging that the defendant negligently stopped its 40 car besides a certain deep ditch, or trench, in a

position which made it dangerous for persons to attempt to board the same, and that the plaintiff, while using due care for her safety, in attempting to step upon the car fell into the ditch and received the injuries for which she sued.

On the trial of the case plaintiff had a verdict, and a rule to show cause why this verdict should not be set aside was allowed to the defendant. In that rule the following matter was reserved, viz: an exception to a refusal to charge as follows: 10

> "The plaintiff claims that while the car was standing still she attempted to board it, and while she had one foot on the running board the car started and threw her into a trench. She must satisfy you by a preponderance of the testimony that the accident happened as she described, and if it happened in any other way than as testified by her she cannot recover."

The rule to show cause was subsequently discharged, and counsel now seek on this appeal to obtain a reversal of the judgment entered on the verdict, because of the refusal of the trial court to charge the request just recited. 20

The purpose of the request was to exclude from the consideration of the jury any question of negligence on the part of the defendant company in stopping its car alongside of this trench, and of such negligence being a producing cause of the accident to the plaintiff. We think the Court rightly refused to take this question from the jury, for they were justified in finding a verdict in favor of the plaintiff, even though they were not satisfied that the car started while she was attempting to board it, if the evidence supported the conclusion that the accident resulted from the stopping of the car in a place of danger, and was not contributed to by any neglect on the part of the plaintiff to use care for her own safety. 30 40

The judgment under review will be affirmed.

Resume.

The appellee does not attempt to controvert every argument used in the brief of the appellant because the brief of the appellant is not confined to the point in issue. The brief of the appellant goes over the whole case and argues as if there was a direction of a verdict or motion for a non-suit and attempts to argue probability and weight of evidence, all on this strict narrow appeal; even refers to the question which the Court put to the jury, which questions were improper because they did not ask decided points of fact but asked for law. But there was no exception taken to these questions. They were put at the request of the defendant, the appellant, and answered and the whole matter of questions, answers and effect was argued on the Rule to Show Cause and expressly waived by that Rule to Show Cause. Yet, here the appellant attempts to reargue the whole matter. The only matter before this court is the appropriateness of this request and whether it should have been charged. The Supreme Court held that it should not have been charged because it did not correctly state the law.

The appellee argues that it should not have been charged, not only because it does not correctly state the law but because it was bad law. The jury should not have found a verdict for the defendant, rested entirely upon their belief or disbelief in the evidence of the plaintiff, but they were entitled to go through the whole evidence and if they found any evidence of the negligence alleged in the complaint, they had a right to find a verdict for the plaintiff. If the appellant, the defendant below, in the tactics of the trial attempts to take the benefit of such a narrow request, it should not now be allowed to reopen the whole case because it made an unscientific request.

Respectfully submitted,

ALEX. SIMPSON,
Attorney for Plaintiff-Appellee.

Addendum.

The defendant attempts to justify this request on the ground that the weight of the evidence showed that the accident could not have happened because of the negligence of the defendant in stopping the car at a dangerous place, but weight of evidence cannot be urged here. It was urged on the rule to show cause. The car was stopped in a dangerous place and the plaintiff did get into the hole while attempting to board the car and unless this court will say a common carrier is under no duty to use reasonable care in stopping a car to receive passengers with reference to the place selected, the request was improper because it would have removed from the jury matters that they should consider.

The excerpts of defendant's evidence contained in appellant's brief show how clearly there was a question for the jury as to whether the defendant used reasonable care in selecting a place to stop the car.

The request not charged was not an application for a direction of verdict as defendant-appellant attempts to argue, but it was an attempt to limit evidence of negligence to testimony of a single witness.

Evidence of negligence is sufficient if found anywhere in the case.

D. L. & W. R.R. v. Darling, 8 Vr., 526;
Hibernia v. Meyer, 10 Vr., 482;
Mayer v. North Hudson Co., 49 Law, 446;
Bostwick v. Willet, 72 Law, 21.

INDEX

TESTIMONY.

JUDGMENT RECORD

Complaint

Circuit Court

HOLDEN IN AND FOR SAID COUNTY.

State of New Jersey,
County of Hudson, } *s.s.* 10

MARGARET SCHREIBER, *Plaintiff,* vs. PUBLIC SERVICE RAILWAY COMPANY, *Defendant.*	Action at Law.

20

The defendant was summoned to answer unto said plaintiff therein in an action at law upon the following complaint:

The plaintiff above named, who resides at No. 27 Virginia Avenue, in the City of Jersey City, in the County of Hudson, and State of New Jersey, says that:

1. The defendant above-named is a corporation of the State of New Jersey, and a common carrier of passengers. 30

2. On the 4th day of October, 1913, while the plaintiff was attempting to board a car of said defendant, which was stopped for that purpose at the corner of Virginia and Ocean Avenue, the defendant negligently started said car in motion, and threw the plaintiff with great force into an excavation which was alongside said car, and in the public highway known as Ocean Avenue in Jersey City aforesaid. 40

3. The negligence of the said defendant consisted in this:

That it failed to give the plaintiff a proper opportunity to board said car, but, on the contrary, while the plaintiff was in the act of boarding the said car, and while the car had been stopped for that purpose, the defendant, by its servants and agents, so suddenly started said car, that the plaintiff was thrown therefrom onto an iron rammer into the said excavation and hurt thereby.

4. At the time of the said accident to the plaintiff, and at the time she suffered her said injuries, she was in the exercise of due care, and was at all times without fault or contributory negligence.

5. The injuries to the plaintiff consisted of a broken rib, injuries to the left breast and thigh, a scarring of her body, and nervous shock.

6. The plaintiff has lost wages to the amount of $600.00.

7. The plaintiff has laid out and expended in and about medical expenses the sum of $200.00.

The plaintiff demands $10,000.00.

ALEX. SIMPSON,
Attorney of Plaintiff.

Filed
Clerk's Office
May 31, 1914,
Hudson County, N. J.
John F. Crosby, Clerk.

Answer

The defendant answers as follows:

The defendant, a domestic corporation, answering the complaint herein, says:

1. It admits Paragraph One (1).

2. It denies Paragraph Two (2), Three (3), Four (4), Five (5), Six (6) and Seven (7) of said complaint.

FOR DEFENSE TO SAID ACTION, DEFENDANT SAYS: 10

1. That plaintiff received no injury and suffered no loss by reason of any negligence on the part of defendant or any of its servants.

2. That plaintiff did not suffer the injury or sustain the loss alleged in said complaint.

EDWARDS & SMITH,
Attorneys of Defendant.

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Filed
Clerk's Office
Apr. 18, 1914,
Hudson County, N. J.
John F. Crosby, Clerk.

30

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Amended Complaint

The plaintiff above named, who resides at No. 27 Virginia Avenue, in the City of Jersey City, in the County of Hudson, and State of New Jersey, says that:

1. The defendant above named is a corporation of the State of New Jersey and a common carrier of passengers.

10 2. On the 4th day of October, 1913, while the plaintiff was attempting to board a car of said defendant, which was stopped for that purpose at the corner of Virginia and Ocean Avenues, the defendant negligently started said car in motion, and threw the plaintiff with great force into an excavation which was alongside said car, and in the public highway known as Ocean Avenue in Jersey City aforesaid.

3. The negligence of the said defendant con-
20 sisted in this:

That it failed to give the plaintiff a proper opportunity to board said car, but, on the contrary, while the plaintiff was in the act of boarding the said car, and while the car had stopped for that purpose, the defendant, by its servants and agents, so suddenly started said car, that the plaintiff was thrown off therefrom onto an iron rammer into the said excavation and hurt thereby.

And the said defendant, being a common car-
30 rier of passengers, did not use a reasonable degree of care to stop the car which the plaintiff was attempting to board at a safe place, but, on the contrary, stopped the same beside a certain deep ditch or trench in a position in which it was dangerous for persons to attempt to board the same, and the plaintiff while using due care for her safety, in attempting to board the said car fell into the said ditch by reason of the negligence of the defendant aforesaid.

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4. At the time of the said accident to the plaintiff, and at the time she suffered her said injuries, she was in the exercise of due care, and was at all times without fault or contributory negligence.

5. The injuries to the plaintiff consisted of a broken rib, injuries to the left breast and thigh, a scarring of her body and nervous shock.

6. The plaintiff has lost wages to the amount of $600.00.

7. The plaintiff has laid out and expended in and about medical expenses the sum of $200.00.

The plaintiff demands $10,000.00.

ALEX. SIMPSON,
Attorney of Plaintiff.

Filed
Clerk's Office
Dec. 10, 1914.
Hudson County, N. J.
John F. Crosby, Clerk.

Substitution of Attorney

January 20, 1915, a substitution was filed making Lefferts S. Hoffman attorney of Defendant in place of Edwards & Smith.

Questions Submitted by the Court to the Jury and the Jury's Answers to Same

"1. If you find that the defendant was negligent then what do you find that negligence to have been?" "Yes."

(a) "That it failed to give the plaintiff a proper opportunity to board said car, but on the contrary, while the plaintiff was in the act of boarding the said car, and while the car had stopped for that purpose, the defendant, by its servants and agents, so suddenly started said car, that the plaintiff was thrown off therefrom into the excavation and hurt thereby." "Yes, by obstruction by passengers on the running board."

(b) "That said defendant stopped the car beside a certain deep ditch or trench in a position in which it was dangerous for persons to attempt to board the same:" "Yes."

2. "Do you or do you not find plaintiff guilty of contributory negligence?" "No."

Filed
Clerk's Office
Feb. 9, 1915,
Hudson County, N. J.
John F. Crosby, Clerk.

Rule to Show Cause, Reserving Exception.

Application having been made within six days after the rendering of the verdict herein for a rule to show cause;

IT IS on this Eighteenth day of February. Nineteen Hundred and Fifteen, ORDERED, on application of Lefferts S. Hoffman, attorney for the defendant, that the plaintiff herein, show cause before this Court on the Twentieth day of March next, at the Court House, Jersey City, New Jersey, at ten o'clock in the forenoon, or as soon thereafter as counsel may be heard, why the verdict heretofore rendered herein should not be set aside and for nothing holden, reserving to the defendant its exceptions to the trial court's refusal to charge the following request of the defendant:

"The plaintiff claims that while the car was standing still she attempted to board it, and while she had one foot on the running board, the car started and threw her into a trench. She must satisfy you by a preponderance of the testimony that the accident happened as she described and if it happened any other way than as testified by her she cannot recover."

LUTHER A. CAMPBELL,
Circuit Court Judge.

On motion of

LEFFERTS S. HOFFMAN,
Attorney of Defendant.

Filed
Clerk's Office
Feb. 20, 1915,
Hudson County, N. J.
John F. Crosby, Clerk.

Reasons on Rule

The defendant this day writes down the following reasons why the verdict heretofore rendered in this cause should be set aside:

1. Because the verdict is against the weight of the evidence.

2. Because the verdict of the jury is against the charge of the Court.

10 3. Because the damages awarded by the jury are excessive.

4. Because the jury in their special findings went outside the evidence and the pleadings.

5. Because the jury in their special findings found two distinct acts of negligence, which taken together, could not have been the proximate cause of the accident.

LEFFERTS S. HOFFMAN,

20 *Attorney of Defendant.*

Filed
Clerk's Office
Mar. 17, 1915,
Hudson County, N. J.
John F. Crosby, Clerk.

30

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Opinion Discharging Rule to Show Cause

Alex. Simpson, Esq., Attorney for Plaintiff.
Lefferts S. Hoffman, Attorney for Defendant.

CAMPBELL, *J.*

The reasons urged are that the verdict is contrary to and against the weight of the evidence.

This is the second trial of this issue.

The testimony in both trials as to the manner in which the plaintiff sustained her injuries was practically the same and produced from the same witnesses.

There is this difference in the second trial over the first, that plaintiff amended her complaint so as to allege an additional charge of negligence, namely, that defendant stopped its car at a place in the street dangerous for the plaintiff in boarding the car.

The result in both trials was the same in that the jury found the defendant negligent and the plaintiff without negligence.

Under the circumstances I do not feel warranted in disturbing the verdict.

Furthermore, the defendant is protected by the reservation of its exception specifically reserved in the rule to show cause.

This exception together with the jury's answern to the written interrogatories undoubtedly will open the case to review upon appeal.

Upon the question of excessiveness of the verdict there was testimony upon which the jury could have found permanent injury and permanent loss of earnings.

The amount of the verdict, Thirty-three hundred dollars, satisfies me they must so have found.

Plaintiff was probably earning from two hundred and fifty to three hundred dollars per year. She was forty-nine years old. At the age of forty-nine years the present value at 4 per cent of an annuity to produce One Dollar during life, the

first payment to be made at the end of the year is $13,1057. On this basis $3,300 will produce about $251.

From this, and considering that the verdict of $3,300 included not only loss of earnings but medical expenses and compensation for paid and suffering, I do not consider it excessive.

10 The rule will be dismissed.

Dated March 25, 1915.

LUTHER A. CAMPBELL,
Judge.

Filed
Clerk's Office
Mar. 27, 1915.
Hudson County, N. J.
20 John F. Crosby, Clerk.

Rule Dismissing Rule to Show Cause

The rule to Show Cause heretofore issued, in the above entitled cause, why the verdict should not be set aside and a new trial granted, is hereby dismissed.

30 Dated March 29th, 1915.

LUTHER A. CAMPBELL,
Judge.

Filed
Clerk's Office
Mar. 29, 1915.
Hudson County, N. J.
John F. Crosby, Clerk.

40

Judgment

This action was tried before Judge Luther A. Campbell with a jury at the Hudson Circuit February 8th, 1915.

The cause having been heard and submitted to the jury, they return their verdict as follows:

They say they find for the plaintiff, and against the defendant, and they assess the damages of the plaintiff on occasion of the premises at the sum of Thirty-three hundred dollars ($3,300.00).

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of Thirty-three hundred dollars ($3,300.00) and his costs which are taxed at Seventy Dollars and Eighty-one cents ($70.81), making in the whole the sum of Thirty-three Hundred and Seventy Dollars and Eighty-one Cents ($3,370.81).

Judgment entered this 5th day of April, 1915.

LUTHER A. CAMPBELL,
Judge.

Attest:
(L. S.) JOHN J. McGOVERN,
Clerk.

Notice of Appeal

HUDSON COUNTY CIRCUIT COURT.

MARGARET SCHREIBER, *Plaintiff*, vs. PUBLIC SERVICE RAILWAY COMPANY, *Defendant*.	Action at Law.

10

To

ALEXANDER SIMPSON, ESQ.,
Attorney of Plaintiff.

"Sir:

20 TAKE NOTICE, that the defendant appeals to the New Jersey Supreme Court from the whole of the judgment entered in this cause.

Dated, April 13, 1915.

Yours truly,

LEFFERTS S. HOFFMAN,
Attorney of Defendant.

Endorsed:—"Copy received April 15, 1915.
30 Alex. Simpson, Atty. of Plaintiff."

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Certificate

The answer of Luther A. Campbell, Esquire, Judge of the Circuit Court holden in and for the County of Hudson and within named, the record and proceedings of the plaint whereof mention is within made with all things touching the same I send to the Justices of our Supreme Court of Judicature at Trenton, N. J., at the day and year within contained, in a certain appeal to this writ annexed as within I am commanded. 10

LUTHER A. CAMPBELL,
Judge.

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Testimony.

HUDSON COUNTY CIRCUIT COURT.

February 8, 1915.

10 MARGARET SCHREIBER

vs.

PUBLIC SERVICE RAILWAY CO.

Tried February 8, 1915, before Judge Campbell and a jury.

20 ALEXANDER SIMPSON, ESQ., for the Plaintiff.
G. H. BLAKE, ESQ., for Defendant.

(Jury duly sworn.)

Counsel for plaintiff and defendant opened to the jury.

MARGARET SCHREIBER, sworn.

Direct Examination by Mr. Simpson:

30 Q. Where do you live, Mrs. Schreiber? A. 27 Virginia Avenue, Jersey City.

Q. How old are you? A. About forty-nine.

Q. How long have you lived in Jersey City? A. About twenty-three or twenty-four years.

Q. Where were you living in October, 1913? A. Why, 27 Virginia Avenue, Jersey City, with my daughter.

Q. Were you going to take a car of the Public Service on that day? A. Fourth of October, yes,
40 sir.

Q. And where? A. On the corner of Ocean and Virginia Avenue.

Q. Where were you going on the car; where did you intend to go? A. Why, I was going shopping that day; I was home that day.

Q. What time were you on the corner of Virginia and Ocean Avenue? A. Between two and half-past two. 10

Q. And what corner were you on; were you on the corner towards Jersey City or the corner towards Bayonne? A. Well, I was on the corner of Bayonne before the car came along; the car was kind of delayed and when I saw the car from a distance I crossed over to the downtown side on the crosswalk.

Q. By the downtown side you mean the crosswalk toward Jersey City? A. Yes, sir.

Q. Well, were you there when the car got there; were you on that downtown crosswalk? A. Why, yes, sir; I got there before the car came along, and it passed by to the second crosswalk. 20

Q. Where were you standing when the car passed by? A. On the first crosswalk.

Q. What do you mean by the first crosswalk? A. Why, on the downtown side as I crossed over from the Bayonne side.

Q. When you say the crosswalk do you mean that flagging which runs from the street to the car track? A. Yes, sir. 30

Q. Now, were you on that crosswalk towards Jersey City at Virginia Avenue when the car arrived there? A. Yes, sir.

Q. Waiting? A. Yes, sir.

Q. Now, when the car came what did you do? A. Why, the car passed by, and about the fourth or fifth seat passed the second crosswalk.

Q. When you say the second crosswalk what do you mean by the second crosswalk? A. Why, there is two crosswalks. 40

THE COURT: Gentlemen, may I interrupt you? Can we not use some sort of a diagram on the board? Don't you see how important it is? You are speaking of first crosswalk and second crosswalk. Another witness may say first crosswalk or second crosswalk and he or she may transpose it.

10

Q. Now, this is the downtown track. Here is the crosswalk towards Jersey City? A. Yes.

Q. Here is the crosswalk toward Bayonne. Does that mean anything to you, that picture; do you understand it? A. Why, the first crosswalk on that side I stood.

Q. I didn't ask you anything about that. I asked you about the picture. Does the picture mean anything to you? A. Why, yes.

20

Q. All right. Now, this is the downtown crosswalk and this is the uptown crosswalk; now, which of these crosswalks were you on when the car came along from Bayonne, on this one or on the other one? A. Why, on this one.

Q. This one, on the uptown? A. On the downtown.

Q. Well, this is the uptown; this is Bayonne here, and this is the uptown crosswalk? A. Yes.

Q. And this is towards Bayonne? A. Oh, well, then—

30

Q. (Interrupting) This is the one towards the ferry? A. That is the one.

Q. Well, now, were you on this crosswalk? A. Yes, sir.

Q. You were on A; that is the downtown crosswalk? A. Yes, sir.

Q. Now, when the car came along, what did it do; did it pass A or did it stop?

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MR. BLAKE: That is objected to as leading.

A. It passed by A there.

Q. How much of it passed by A? A. A good distance.

Q. All right, and did it stop then? A. It stopped. There is a crosswalk over there from that; it stopped just about the fourth or fifth seat from the first of the car, the front of the car.

Q. You say there is a crosswalk further down. Do you mean there is another crosswalk besides these two? A. Why, yes; the crosswalk is right in front of the doctor's.

Q. Oh, there is still a path in front of the doctor's house? A. Yes; and there is another one further.

Q. Which is down here further? A. Further down.

Q. Towards Jersey City? A. Yes, sir.

Q. About how far from the crosswalk A is the path to the doctor's house; how much more near to Jersey City? A. Why, from about the fifth seat from the front.

Q. How many feet is it from the crosswalk A,—this other path that you are talking about, the other path in front of the doctor's house? A. Well, about almost the end of the car.

Q. Well, is it twenty feet downtown? A. Really I couldn't—

Q. (Interrupting) But it is some way down here; there is a path? A. Yes, sir.

Q. Well, the car stopped where with reference to that path in front of the doctor's house; where did the car stop? A. Why, a good ways past the doctor's.

Q. What did you do after the car stopped? A. I walked from the crosswalk I stood on and walked between the car and the opening of the sewer.

Q. Now, where was the opening of the sewer;

was it on this side or that side? A. Right on that side (indicating).

Q. This side? A. Yes, sir.

Q. Did it go down that way?

MR. BLAKE: You should not ask her.

10 Q. Well, did it go that way? A. Toward Jersey City, yes, sir.

THE COURT: Mark it.

(Marked "hole.")

Q. Now, I understond you walked between the car and the hole? A. Yes, sir.

Q. How far up did you walk? A. Why, up towards the third seat from the front.

Q. Up towards the third seat from the front?
20 A. Yes, of the car.

Q. When you got from the third seat in the front what did you do? A. I put my right foot on the runboard; it was an open car; I put my right foot on the runboard and I went to reach and the men that stood on the runboard they stepped aside so I had room to put my foot on, and as I did the car jolted and I was thrown into the open ditch.

Q. It threw you into the open ditch. Where
30 did you land? A. Into the open ditch on my left side.

Q. Did you land on dirt or something? On what did you land? A. Some kind of iron, some kind of iron.

Q. Then what happened to you? A. I heard a scream, "Oh!" That is all I did hear.

Q. Before you went into the hole did you hear any one say anything? A. No, sir.

Q. On the car or off the car, to you? A. No, sir.

40 Q. What was done with you after you fell in

the hole? A. Why, there was some man got me out of the hole and carried me into the doctor's.

Q. What doctor's? A. Dr. Ghee.

Q. That is the colored doctor, isn't it? A. Yes, sir; just where it happened.

Q. What did he do; what did Dr. Ghee do? A. Why, he put me on the sofa; he dressed the side of my limb; I was all black from my hip down to the knee. 10

Q. And where were you taken? A. He took me home in his automobile.

Q. Did you go to bed or did you stay up? A. Why, they put me to bed, and he treated me then for some time.

Q. How long were you in bed? A. About two months.

Q. Then after you got up out of bed did you go right out or did you stay around the house? A. Why, I was just around, about two months after. 20

Q. How did you feel when they first put you to bed? Did you have any pains anywhere? A. Oh, yes; I screamed.

Q. Where? A. On my left breast.

Q. What doctor did you have? A. Why, I had two doctors; I had Dr. Ghee and I had Dr. Everitt.

Q. Where were you working at the time you were hurt? A. Why, no; I didn't go to work until the latter part of March. 30

Q. At the time you were hurt? A. No.

Q. Before you went into the hole did you have any business or anything? A. Oh, yes.

Q. Well, what? A. I used to work for Kraemer, down in Jersey City.

Q. Well, what did you do? A. I had been a canvasser there.

Q. And what did you earn a day? A. Well, two dollars a day and sometimes over time, I made a half day more. 40

Q. What did you do as a canvasser? A. Why, noticed the store.

Q. What was the store? A. Clothing, credit and cash house.

Q. What did they sell there? A. Clothing, men's furnishings, ladies' clothing.

Q. What did you have to do to notice the store?
10 A. Give out cards.

Q. Didn't you have to go anywhere to give them out? A. Why, yes.

Q. Where did you have to go? A. From house to house.

Q. Did you have to climb upstairs at all? A. Yes, sir.

Q. And how many hours a day would you work? A. Why, from half-past eight or nine o'clock till about five.

20 Q. Now, after you were hurt in October, when was the first time you went to work? A. Why, not until the latter part of March.

Q. And how long did you work then? A. Why, not so very long.

Q. Well, that does not mean anything, Mrs. Schreiber—"not so very long." It might mean a year; it might mean a day. How long did you work? A. A few days, because I could not keep up with my side.

30 Q. Why couldn't you keep up? A. I still suffered; I couldn't.

Q. At the time you went back to work in March, why couldn't you keep up? A. Because I suffered with my side.

Q. Well, how; how did you suffer? A. Why, pain, and I can't walk.

Q. Did you ever have any pains in your side before the accident? A. I have never been sick in my life.

40 Q. What do you say about your walking; you

said something about your walking? A. I can't keep up; I have to rest and stop now.

Q. Why? A. Because my side—

Q. (Interrupting) Did you ever have that trouble before? A. No, sir; never.

Q. Now, how much money have you earned since the time you were hurt? A. Why, since I was hurt? 10

Q. Yes, you said some time, and you went back to work. You must have earned something. How much did you earn? A. That I really don't remember.

Q. Well, have you earned a hundred dollars? A. Well, about that, I guess; around that, something like that.

Q. Since you were hurt you only earned a hundred dollars? A. No, not since I was hurt.

Q. That is what I am talking about. How much did you earn since you were hurt? A. About two days. 20

Q. About two days? A. Since the last trial.

Q. I am not talking about the last trial. From the time you went in the hole how much money have you been able to earn? A. Let's see; that is about—something around eighty or ninety dollars.

Q. Eighty or ninety dollars? A. Yes, sir.

Q. Are you working now? A. I only worked two days since the last trial. I am not able to keep up. 30

Q. Well, these gentlemen don't know when the last trial was. When were the two days that you worked? Was it a month ago or two months ago? A. About a month ago.

Q. About a month ago? A. Yes, sir.

Q. And you have not worked this last month. Now, why haven't you worked the last month? A. Because I can't keep up; I can't climb or walk. 40

Q. Did you climb before, and walk? A. Oh, yes; before I was hurt.

Q. And you supported yourself, didn't you? A. Yes, sir.

Q. Now, have you paid any doctor's bills yet? A. No; I haven't got the money to pay.

Q. Did you pay any money for medicine? A. Why, some; not all.

Q. Who took care of you? Did you have money enough to hire a nurse or did your daughter take care of you? A. My daughter, Mrs. McManus.

Q. You didn't pay her? A. No, sir.

Q. What time of day was it that this accident happened? A. Why, between two and half-past two in the afternoon.

Q. Was it a bright, clear day? A. Yes, sir.

Q. There was nothing to obscure your view at all? A. No, sir.

Cross-Examination by Mr. Blake:

Q. Kraemer & Company, you were employed by at the time of the accident? A. Yes, sir.

Q. How long have you been working for them? A. For Kraemer's?

Q. Yes. A. Well, I have been working off and on for about four or five years.

Q. I don't want the off and on. When did you work steadily? When did you start to work steadily for them before the accident? A. About —around March and April, and for the holidays.

Q. Well, by the holidays you mean Christmas holidays, don't you? A. Yes, sir.

Q. And you started to work some time in October and November, didn't you, for them? A. Yes, sir.

Q. Was that holiday trade, is it Easter trade —when you go to work about March sometimes? A. Yes.

Q. So you started to work for Kraemer somewhere in October before this accident, didn't you, two or three weeks before the accident? A. Yes, sir; I was with them at the time.

Q. And that is the only steady work you did at that time? A. No, sir; I had been steady with them years ago; I was a collector. 10

Q. I am not asking you about years before. I am asking you just prior to the accident. Now, from the Easter to that October just before the accident you had not worked for Kraemer, had you? A. Yes, before the accident I did work for them.

Q. But you worked for them two or three weeks before the accident, didn't you? A. Two or three weeks— 20

Q. (Interrupting) In October—isn't that when you started to work with them, and let's see. A. I had certain months—I don't really remember the months, but I know it was around April and around October and November, I know, for the holidays.

Q. The holiday season starts about October? A. Yes.

Q. And you used to go and work for them from about October until about Christmas time, didn't you? A. I may have, yes. 30

Q. Isn't that correct, from October to Christmas time you were employed by them; isn't that correct? Eh? You answer yes or no? A. Yes; I go there from October till Christmas.

Q. And then in the spring time you work from April until how long? A. April—along from about the last of March.

Q. Last of March until when is that season 40

over? A. Well, I will tell you. He always kept me sometimes longer than the others, that is how I don't remember, you know.

Q. When is the season ordinarily over; the season that starts in April or March? The season that starts in April or March? A. Yes.

Q. That is over in about May or June, isn't it?
10 A. Yes, sir.

Q. And then you didn't do anything until October, did you? A. Well, as I told you, he had kept me sometimes longer than the others.

Q. But that is the year you had not worked for them—from June until October, had you? A. I don't remember that.

Q. I don't hear you? A. I say I don't really remember that; I know he always kept me longer than the others.

20 Q. You know you didn't work the summer and fall for him; you know you didn't work in July, August and September? You know that, don't you?

THE COURT: That is the year 1913, the year in which you were hurt.

A. The year I was hurt; I worked before I was hurt.

30 Q. You worked a month before you were hurt? A. I had been working just shortly before I was hurt; I was working at the time.

Q. You were not working at the time? A. I was working just the same week I was hurt, a few days before.

Q. Is that the week you started, a few days before? A. No, sir I was with them before that.

Q. How long before that? A. I guess about three or four weeks.

40 Q. Well, that would bring it back in October, wouldn't it? A. About that.

Q. And you didn't work for them in September, or August, or July? A. Not in that year I was hurt, no.

Q. And your duties would ordinarily be over at Christmas time, wouldn't they—when you started in October? A. Yes; I may have a few weeks after that for—

Q. (Interrupting) And then you would ordinarily resume again in the spring and work the next Easter and spring season? A. About March. 10

Q. Now, you were hurt in November and you did go back to work again in March, didn't you? A. Not until the latter part of March.

Q. In the latter part of March you went back working for Kraemer? A. Yes, sir.

Q. And you got two dollars a day when you canvassed for him? A. Yes; sometimes two and a half with over-time. 20

Q. Now, on the afternoon when this accident occurred you lived on Virginia Avenue? A. Yes, sir.

Q. And you came down to Ocean Avenue, didn't you? A. Yes, sir.

Q. Now, which side of the street did you walk down on, do you recollect? A. What, to Ocean Avenue?

Q. Yes. A. Why, on the side I lived, between Jackson and Ocean, on the right-hand going to Jackson. 30

Q. That is on the Bayonne side of the street? A. Yes, sir.

Q. And you walked down here on the sidewalk, I presume? A. To Ocean Avenue.

Q. Did you cross over this crosswalk? A. Yes.

Q. Did you cross over this crosswalk? This is Ocean Avenue in here and this is toward Jersey City? A. Right over to A I walked. 40

Q. Well, which way did you go at A, down this

crosswalk and then along? A. No; I came right over to A there.

Q. Did you go down on this side of the street? A. No; I came down on that side and I crossed over to A.

Q. You came down this way? A. Yes, on that side.

10 Q. And then did you cross over? A. No; I came over to A, stood on the crosswalk.

Q. What do you mean; how did you get here? A. I crossed over.

Q. Did you cross diagonally from the Bayonne side? A. I crossed over to the down-town side.

Q. I know, but how did you get here, this side of Virginia Avenue to this side of Virginia Avenue; how did you get over there? A. I crossed

20 over to A.

Q. Take this piece of chalk and show me how you came down. A. Now, this is Jackson Avenue and this is Ocean (indicating). On the right-hand going to Jackson I came over here.

Q. Draw a line just the way you walked? You walked diagonally? A. Yes. I stood here on the down-town crosswalk.

Q. That is the route you took over here? A. Yes, sir.

30 Q. All right. Did you stop again—and you stood there about fifteen minutes? A. Yes, sir.

Q. You noticed a sewer trench along there, didn't you? A. Yes, sir; I did.

Q. And it was dug up past the avenue, going towards Bayonne? A. No, sir; it was towards down-town.

Q. Yes, but it was opened up towards Orient Avenue? A. I was not on Orient Avenue; I was on Virginia Avenue.

40

Q. You could see up towards Oak Avenue? A. I didn't notice any sewer being open up there.

Q. Did you notice the sewer being opened on the down-town side? A. Yes, sir.

Q. And you noticed that while you stood at this point marked A? A. I did.

Q. When the car came to a stop—it was an open car, so-called? A. Yes, sir. 10

Q. With a runboard? A. Yes, sir, passed by A.

Q. Now, all of the car didn't pass by A, did it? A. What is that?

Q. All of the car didn't pass by A, did it? A. It certainly did; the whole car passed by right to the other crossing they had there.

Q. Just let's get this straight. Where does Dr. Ghee live on there? Where would his house be? A. Will I show you? 20

Q. Just show me. Where is Virginia Avenue? Just show me where Dr. Ghee lives. A. (Witness indicates on blackboard.) Just about right there.

Q. Yes, but he has a house; how long is the front of the house? A. How long?

Q. Yes, his lot? A. This is where he comes in with the automobile.

Q. Now, Mrs. Schreiber, you have lived there how many years? A. Why, this place I am living now I am there about two years, this place. 30

Q. And you came down here frequently to take your trolley car? A. Yes, sir.

Q. And don't you know, Mrs. Schreiber, that the doctor's carriage, where he drives in, is right down here, and his house is across here; that is, his lot, and if you rode down Virginia Avenue and came up the middle of it you would go up his stoop? A. I understood that was Bayonne side.

Q. Yes, but if you came down Bayonne Avenue in the middle of it, you would go right up his 40

front steps? A. There is a crosswalk right there at the opening where he goes in.

Q. I am not asking you that. I am asking you if you came down the center line of Virginia Avenue, in the middle of it, you would go right up his front steps? A. There is a crosswalk right there at the opening where he goes in.

10 Q. I am not asking you that. I am asking you if you came down the center line of Virginia Avenue if you would not walk up the Doctor's front steps? A. I was standing right there.

Q. Will you answer the question? A. Yes, sir.

Q. If you came down Virginia Avenue, right down the center of Virginia Avenue, wouldn't you go up the Doctor's steps if you walked across? A. Not the front steps, but where he goes in with the carriage.

20 Q. Then you wouldn't go up the front steps?

MR. SIMPSON: That is what she says.

Q. So this carriage entrance is on the left-hand side of his house, on the Bayonne side? A. Yes, sir.

Q. And his carriage entrance is a little narrow alleyway, just room enough for his car to drive in there; isn't that correct? A. Yes, sir.

30 Q. Correct? A. Yes, sir.

Q. And on that side of the house is a little opening, two or three feet wide, that is directly opposite this crosswalk A; isn't that it? A. Yes, sir, —well, the crosswalk there is right almost on to the one where his carriage comes in.

Q. There are two crosswalks on Ocean Avenue? A. Yes, further down.

Q. And that is the one towards Bayonne where he drives in and out?

40

MR. SIMPSON: I object to that as irrelevant.

THE COURT: The only relevancy is to fix these crosswalks.

Q. You know where the Doctor's driveway is? A. Yes.

Q. And we will assume that the Doctor never drives in or out, but he has a driveway leading from the side of his house. Now, that driveway is on the side towards Bayonne, isn't it? A. Yes, sir. 10

Q. And his house is about opposite Virginia Avenue, isn't it? A. Towards down-town his house is, this way (indicating).

Q. Now, you know where the down-town side of his house is, don't you, as you call it? A. Yes, sir. 20

Q. There is a little narrow space between that house and the house next door to it, isn't there, two or three feet in there? Between his house and the house next door, going down-town, there is a space of two or three feet? A. That I don't know.

Q. That you are not sure of? But you say the trolley car passed the Doctor's alleyway where he goes with his car? A. Yes, sir.

Q. And how much of it passed that? A. Why, it passed all the way past that crosswalk that I stood on. 30

Q. Now, how far was the rear end of the car from the driveway into the Doctor's house when it stopped? A. Why, I know the car passed all the way on that crosswalk, all the way, until about the fifth seat from the second crossing.

Q. The trolley car passed all the first crossing where the Doctor's runway is and went over until 40

about the fifth seat to past the second; is that correct? A. It passed that crosswalk I was on.

Q. It passed that crosswalk you were on? A. Yes, and passed almost all the part of the car on the other crosswalk.

Q. And that left you how far from the rear of the car when the car stopped? A. About the third seat, because I was thrown right in between the third and fourth seat into the second crossing with the opening.

Q. How far was the rear of the car when you stood still on that crosswalk? How far was the rear of the car? A. How far was was the rear of the car?

Q. Yes. A. Why, it had passed me.

Q. I know, but how far had it passed you? A. All the way past.

Q. How many seats did it get away from you? A. That I don't know; I know I had walked up toward the front of the car.

Q. I am not talking about the front of the car. How far did you have to walk to get to the rear of the car? A. Why, about half way, I guess.

Q. Half way of what? A. No; I had to walk all the way past to the second crosswalk.

Q. Well, how far in feet did you have to walk to get to the rear of the car? A. How far?

Q. Yes? A. Well, I had to go to the third seat from the front; so the car was about the thrd or fourth seat from the second crossing; there is where I was thrown in.

Q. The car was about three or four seats from the second crossing? A. Yes, sir.

Q. What part of the car was— A. (interrupting): The front of the car.

Q. Where? A. The front of the car.

Q. Where would the back of the car be with ref-

erence to the crosswalk where you were standing? A. No; it was past.

Q. I know, but how far past was it? A. Why, a good distance; all the way up, almost.

Q. What do you mean by all the way up? A. Why, it was half way from the second crosswalk.

Q. It was half way between the first and second crosswalk—the rear of the car? A. No; it was just about half from the second one; it was all the way past the first one. 10

Q. To get up to the car you walked to cross this crosswalk A; is that correct? A. Yes, sir.

Q. Did you have to look towards Jersey City to see the car then? A. I had to walk towards Jersey City.

Q. Now, how far did you have to walk before you came to the back of the car? A. How far?

Q. Yes. A. Why, I guess—well, about almost three-quarters of the car. 20

Q. When you were on the crosswalk and the car went by you, how far did it go by you? Can't you give us any idea? A. No; I really don't know; I know just where it stopped at the second crossing.

Q. What part of it stopped at the second crossing? A. Why, about the third or fourth seat.

Q. So that part of the trolley car then covered the second crossing, didn't it? A. The upper part? 30

Q. Yes. A. No; it didn't cover the second; it was a distance from the—

Q. (Interrupting) Mrs. Schreiber, you say the trolley car went up and passed this crossing?

MR. SIMPSON: No; she does not.

Q. What do you mean by the second? A. Where it says Jersey City. 40

Q. Up here you think is another crossing? A. Yes, sir.

Q. And you say there is another crossing up here; is that correct? A. Yes, sir.

Q. All right. I will mark it. I will mark it B. You claim there is another crossing up there? A. Yes, there is.

10 Q. Is there another street there? A. It is the other side going to Jackson Avenue.

Q. Here is the other crosswalk leading to Jackson Avenue. That is the right side going up to Jackson—no, it is the left side going up to Jackson Avenue from Ocean Avenue; here is the right side going down. A. That is right.

Q. Which is it where the car stopped? A. Why, just where it says Jersey City.

20 Q. Just where it says Jersey City? A. Yes, sir.

Q. So that it crossed this crosswalk here from Bayonne? A. No.

Q. Now, listen. The car going up past this crosswalk towards Bayonne passed this crosswalk? A. No; there is no crossing there; that is the opening of the Doctor's garage there.

Q. Yes. A. The center one.

Q. The center one is the opening to the Doctor's garage? A. It is right in the center there.

30 Q. Well, doesn't the crosswalk which leads across leads on here so that you can walk up Jackson Avenue on the right hand side of Virginia? A. Well, there is no crosswalk here at all, this side.

Q. Now, you said this side. Which side do you mean? A. Towards Bayonne.

THE COURT: Towards Bayonne, she means.

40

Q. There is no crosswalk there? A. No, sir.

Q. Is that because the Doctor drives up there—the Doctor's runway goes there? A. I don't know what is in there.

Q. That does not say there is none there because you didn't notice? A. I wasn't standing there; I was standing there.

Q. Marked A? A. A. 10

Q. The trolley car passed the one marked A and goes to the one marked B; is that correct? A. It goes part past that.

Q. And had three or four seats that were past this crosswalk marked B? A. Yes, sir.

Q. How many seats were there in the trolley car? A. That I don't know; I didn't count them.

Q. Were there eight or ten? A. I couldn't tell you; I really don't know, because I don't know.

Q. Well, you know that there are a good many more than three seats in a trolley? A. Certainly, I do. 20

Q. And how wide is this crosswalk B? A. How wide?

Q. Yes? A. Something the same as the other one.

Q. About how wide is that, Mrs. Schreiber? A. Well, wide enough to stand on.

Q. Did the trolley side entirely cover this crosswalk B? A. It didn't really cover it; it went past. 30

MR. BLAKE: What is the answer?

Q. (Repeated by the stenographer.) Did the trolley side entirely cover this crosswalk B? A. It didn't really cover it; it stopped about the fourth seat from the front.

Q. Well, then, Mrs. Schreiber, if you walked out on this crosswalk you would run right into the trolley car when it stopped? A. Well, that was not the place for him to stop. 40

Q. I am asking you that question. I am asking you if you walked out past this crosswalk B you could step right into the trolley car? A. Because the sewer did that; crosswalk was open on each side; therefore I didn't stand there.

Q. I am not asking you that. I am saying if you walked out past this crosswalk B you would step up on the trolley car? A. I had to go back a few seats.

Q. You would have to get up on that trolley car. I am not asking you about the third seat. I am asking you about getting on the trolley car; whether you could get right up on the trolley car? A. There was no room to get on there.

Q. You could go right out there and get on the trolley there, couldn't you? A. If there had been room.

Q. The trolley car was standing in front of you so you could get on it? A. It was too crowded to get on there.

Q. If there had been no one on the trolley car at all couldn't you have walked out on this crosswalk and gotten right on the trolley there—if there had been nobody on it at all; couldn't you? A. I know I took the third seat from the front.

Q. Now, Mrs. Schreiber, we are asking a very simple question. You ought to be able to answer. If the trolley stopped here, with nobody on it at all, and you walked out from the sidewalk along this crosswalk, couldn't you have stepped up right on the trolley car? A. I may have, if there had been room.

Q. That is what I say,—if there were nobody there you could. Now, the ditch you were talking about ran up to each side of the crosswalk? A. Yes.

Q. Isn't that correct? A. Yes, sir.

Q. Now, how far was the ditch from the trolley car? A. How far?

Q. Yes. A. How wide, do you mean?

Q. Yes; how much distance was there to walk between the ditch and the side of the trolley car? A.It was wide enough for anybody to walk on.

Q. You did walk it, didn't you, Mrs. Schreiber? A. Yes, sir. 10

Q. And how far did you walk altogether before you got up to the trolley car? A. The car passed by to part of the second crosswalk, and I got on the third seat from the front of the car.

Q. You walked out to the track from where you stood? A. I had to walk between the ditch—

Q. (Interrupting) I am asking you—you walked out from the place where you stood? A. Yes.

Q. That is the place between the ditch and the track? A. Yes. 20

Q. Then you walked up between the ditch and the track until you reached the car; then you walked up to the car until you got to the third seat from the front? A. Yes, sir.

Q. Now, there was plenty of room for you to do that? A. The gentlemen were getting on.

Q. You walked up there and saw it, didn't you? A. Yes, sir.

Q. Then you got your foot up on the car? A. Yes, sir. 30

Q. And then the car started, as you say, and threw you? A. The car started before I put my foot on the runboard.

Q. I know; it was while you were getting on that you claim the car started? A. I had my foot on and it jolted.

Q. Now, was there anybody else there waiting to get on the car? A. What is that? 40

Q. (Repeated by the stenographer.) Now, was there anybody else there waiting to get on the car? A. I noticed a gentleman getting on, but I didn't notice who he was.

Q. Was he standing in the same place where you were? A. He was standing right near by on the crosswalk.

10 Q. Standing on the same crosswalk that you were? A. Right near by.

Q. You say right near by. Was he on the same crosswalk that you were standing on? A. Yes, sir.

Q. The same one? A. Yes, sir.

Q. And he walked out and got on the car ahead of you? A. He got on towards the back.

Q. He didn't have to walk up to the car to get it, did he—you did not? A. He got on toward

20 the back.

Q. He stepped right from the crosswalk up on the car? A. Why, no; he had to walk up the same way as I did.

Q. Was there a space up towards the front of the car? A. It was not quite as crowded as it was towards the back: therefore I—

Q. (Interrupting) And you noticed that, Mrs. Schreiber, as the car came up by—you noticed that there were more seats up on the front? A.

30 There were not as many men standing on the runboard on the front as there were on the back.

Q. I say you noticed that as the car came up and stopped, didn't you? A. I did.

Q. Did you see anybody—did you hear anybody calling to you to look out for the hole? A. No, sir; there was no one; I didn't hear anything.

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JOHN SUTHERLAND, sworn.

Direct Examination by Mr. Simpson:

Q. Mr. Sutherland, you live in Jersey City? A. 722 Ocean Avenue.

Q. How long have you lived there? A. About seven or eight years. 10

Q. What is your occupation now? A. Gentleman of leisure, I presume; I am not doing much.

Q. Well, you were employed in the Register's office, weren't you, some time? A. Yes, thirteen years.

Q. Thirteen years. And on the day of this accident, October 13th, were you on the corner of Virginia and Ocean Avenue? A. I was waiting for the downtown car.

Q. And did you see this lady there? A. She was on the opposite side when I saw her, but she crossed over to where I was and stood alongside waiting for the same car. 20

Q. Was there any one on the street at all besides you and she that you could see? A. Not at the time.

Q. Now, then, will you tell the jury what you saw occur then and there? A. Well, the car was perhaps behind time. We waited a long while for the car. When it got there—there was an excavation between the car track and the sidewalk; it was probably two and a half feet wide. There was probably about the same distance either side of the hole, near the curb and near the track, which, of course, you had to walk to get on the car. Coming from Bayonne the car passed—well, it left about three or four seats this side of the downtown crossing where it would be—three or four seats, then the rest of the car was beyond that. The excavation did not cross the uptown 30 40

side crosswalk; it only went as far as the lower crosswalk.

Q. That is A here? A. Yes, sir, that is confusing, that sketch there; that is.

Q. That is a little confusing.

Q. How is it confusing? A. Well, just as you have got it it came right close up to that.

10 Q. Ought it to be in the center? A. No; it is all right there. It comes right up here at this line (indicating).

Q. It comes right across the crosswalk A. Yes, sir.

Q. Like that? A. Yes, sir; we stood on the other crosswalk.

Q. This one (indicating)? A. Yes, sir.

Q. The trench came right up there? A. The trench came up to there, but we did not stand on

20 that crosswalk; we stood between that and the trench, directly in front of the doctor—

THE COURT: You have one marked A there. Mark this other one B that he speaks of now.

Q. That is the uptown crosswalk? A. That is where it should be, but I doubt if there is any flagging there.

Q. But that is the point where it would be? A.

30 It would be, yes.

Q. Now, you say that the trench crossed this downtown crosswalk A? A. Yes.

Q. And as a result of that you had to stand somewhere between B and A? A. We did. The crosswalk that they claim was between there is the runway from the doctor's garage.

Q. There is a runway, then, in the center? A. from the Doctor's garage.

Q. Like that (indicating)? A. No, not like

40 that; it is more towards C, on that order.

Q. That is a pathway that is used for automobiles? A. For automobiles.

Q. Now, where did you stand with reference to this— A. (Interrupting.) Right there; about that crosswalk just off the crosswalk on the sidewalk.

Q. I will mark that with a G. Now, where did you stand with reference to G-A; did you stand between G and A? A. Yes, sir. 10

Q. And near to A? A. Well, yes; I presume it was nearer to A.

Q. Now, what occurred when the car came up, before it passed A? A. It didn't pass fully past that excavation; it left about—

Q. (Interrupting) How much did it pass? A. It left about three seats on the Bayonne side.

Q. On the Bayonne side of A would be about three or four seats? A. Yes. 20

Q. What was the condition of the car; was it crowded? A. It was crowded; they were standing on the runboard.

Q. And it was an open car? A. Open car.

Q. Now, what did you see happen after it came to a stop? A. Well, I didn't know the lady at that time; I had frequently seen her, but I had never knew her. And I was anxious to see how she would get along. Well, I went one side of her and got to the car to step aside to see her go by, 30 which she did, and she walked along—I don't know just how far, but pretty near towards the front of the car.

Q. Well, did she walk on this path that has been spoken of as between the car and the ditch? A. Yes, she did.

Q. Then what happened? A. I thought then she was about to get on, and I raised my foot to the car, and the car made a movement forward

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and she was in about the same position; I seen her pitch right over.

Q. Now, what position was she in when the car made the move and you saw her pitch over? A. One of her feet was from the ground.

Q. Whether it was on the car or not you don't know; you could not see? A. No; I could not see long past those people in front of me, any more than I saw she had her foot elevated.

Q. How far did it go when the car lurched?

MR. BLAKE: There is no testimony that the car lurched.

A. Only about half a wheel; it just started.

Q. Then stopped. What happened to the lady? Did anybody take her out of the hole? A. Why, just I immediately got down off the running-board and together with the help of some of the trolley servants we pulled the lady out of the hole, and then she rested against me for a long time; I put her head up and made her as easy as possible.

Q. Where was she taken? A. Well, she asked at the time for somebody to notify her daughter that she was dying. Of course, nobody seemed familiar with the place outside of myself, and I asked somebody—I don't know just who it was—if somebody would take her into the Doctor I would go down.

Q. What was done; was she taken in to the Doctor's? A. She evidently was, because they were just about taking her when I started down to tell her daughter.

Cross-Examination by Mr. Blake:

Q. You were standing on the crosswalk waiting for the car? A. Well, we call it a crosswalk because it is a roadway to cross.

Q. How long have you lived at 822? A. Six or seven years.

Q. How far is that from Virginia Avenue? A. I think the Doctor's house might be 746 or something about that; I am 822.

Q. You are not very far away? A. No; I am just probably in the same row—same block, anyway. 10

Q. Don't you know, Mr. Sutherland, if you continued the line of the southerly curb of Virginia Avenue direct across Ocean Avenue, it would meet the northerly line of the Doctor's entrance to his garage? A. It would.

Q. So the northerly line or entrance to the Doctor's garage is the same as the southerly line of Virginia Avenue, right across like that; isn't that correct? A. It is not quite; no, there is a little difference in that, because there is an iron 20 fence probably about two feet.

Q. But there is not any more than two feet? A. It is about two feet or something like that.

Q. That is where you were standing? A. Just below the Doctor's runway we were standing.

Q. About how many feet below? A. Well, it was on that lower crosswalk, about.

Q. It was about where this lower crosswalk is here? A. No; that is the upper crosswalk, we call it, going to Bayonne, we call it. 30

Q. Then you were over near A? A. Yes, we were over near A, and walked this way to the Doctor's roadway, and then to take the car, both of us.

Q. You were standing nearer here? A. About there.

Q. Mark that B. A. Yes, about there.

Q. And when you saw the car coming you walked over? A. No, not that far; it wasn't necessary because— 40

Q. (Interrupting) Now, will you just come here and put it on yourself? A. The excavation goes to there; I measured it at the time, or shortly afterwards, and we were standing about here.

Q. All right; we will mark that B. That is just where you had your finger? A. That is just about where we were; she stood here and I stood a little more back.

Q. Where did the car stop? A. The car stopped three or four seats that side of this excavation, out this way.

Q. Three or four seats? A. Yes.

Q. Mark it like that, eh? A. Yes.

Q. Where was the front of the car? A. Yes.

Q. Where was the front of the car? A. The front of the car would be way over here.

Q. Is that correct? A. There was three-fourths of the car the other side of that excavation.

Q. Now, where did you say you walked back of the runway to get on the car? A. Well, you see, that excavation came right up there; they had thrown the earth out from that, and there was more or less earth right there. We just only moved far enough to go by that, and still the car was nearly opposite for me to get on.

Q. You mean towards Bayonne, to get past the pile of dirt, and still there was room enough for the car—for you to get in? A. Yes, sir; I got on the rear of the car, about the second last seat.

Q. So you did walk around and got on the car? A. Yes.

Q. So Mrs. Schreiber walked out, about following your steps? A. About following my steps.

Q. You stood by the rear of the car to let her pass? A. Yes; I had hold of the handle, leaning over.

Q. And you saw her walk out here safely? A. Yes.

Q. So far as you could follow her with your eyes? A. Yes; then when she attempted to get on—

Q. Now, didn't you start to get on the car? A. No; I wanted to see that lady.

Q. Well, why did you watch to see that the lady—

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MR. SIMPSON: I object to that on the ground that it is not proper cross-examination,—his motive for doing what he did. What he did may be relevant, but why he did it is not proper cross-examination. His motives do not go into it at all.

MR. BLAKE: I will withdraw the question.

Q. Mr. Sutherland, do you usually watch all the ladies that get on a car? A. There was an accident two or three days before, and I called the attention of the motorman at the time that something should be done to that hole. That was why I watched that lady.

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Q. Did you expect the same thing would happen? A. Well, I saw a child knocked in in a very similar way.

Q. You saw her fall into the hole—people walking along there? A. I saw a little child.

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Q. You saw other people fall into that hole? A. The child that I spoke of.

Q. You saw a child fall into the hole? A. Yes, sir.

Q. And you thought the woman might fall into it? A. I watched to see.

Q. But you thought she might? A. Probably I did.

Q. And that is the reason you watched her? A. I watched the lady.

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Q. Now, you did watch her go by the car? A. I did.

Q. And as a matter of fact, the next thing you knew she did fall in the hole? A. With her foot getting on the car.

Q. I mean before she even got her foot on the car? A. No; I positively saw the lady start to go on the car, her hand and foot, both of them.

Q. There were other people alongside of you? A. Yes; there were quite a number on the car.

Q. And what was your position on the car? A. I was down with one foot on the car—on the ground.

Q. And one foot on the car. Did you have hold with both hands going to pull yourself up? A. No.

Q. Didn't have hold with any hand? A. One hand.

Q. Just pulled yourself up? A. Yes, sir.

Q. Was the car at a dead standstill when you walked down? A. It was.

Q. And was it at a dead standstill when you stopped to let the lady go by? A. Yes, sir.

Q. Standing still then? A. Standing still then.

Q. And it was standing still when you raised your hand to go up on the handboard? A. It was after it got in motion that the accident occurred.

Q. You answer my question. You have a counsel.

MR. SIMPSON: He has no counsel in this case.

MR. BLAKE: Well, counsel in this case will bring out all the facts.

THE COURT: Don't attempt to answer a question until you have heard the question.

Q. It was standing still when you put your foot up on it? A. Yes.

Q. So you saw her get her foot on the runboard? A. I did.

Q. Did she get hold of anybody? A. She reached her hand up; I could not see because then there was an interference.

Q. What was the interference? A. Passengers on the runboard. 10

Q. What did they do? A. I presume they stood right there.

Q. How did that interfere with your seeing? A. I could not see whether she got hold of anything, because they were right between where my vision would land.

Q. They were standing on there when you put your foot on the step? A. They were on the running-board, yes, sir. 20

Q. Did they change their position? A. I think they did, but in what manner I don't know, because there was a commotion.

Q. There was no commotion until the lady fell, was there? A. Well, I think they moved more or less close to let the lady pass, because I imagined they would have to; I don't know that.

Q. Well, don't tell us if you don't know. You are only here to tell us what you saw, not what you think? A. I saw the lady pass. 30

Q. And did you try to get up in the car during all that time? A. No.

Q. Didn't you take hold of anything? A. Yes; I took hold of one of the handle bars.

Q. Why did you tell me just a minute ago that you didn't have hold of the handle bar? A. I didn't ask you—you asked me if I had hold with both hands, and I didn't.

Q. You just held with one hand? A. I took hold with my left hand. 40

Q. You thought it was unnecessary to tell me if

you had hold of it with one hand? A. No; I do not say so.

Q. I say you did not think it was necessary; you did not say you had hold of it with any hand? A. Yes—pardon me; I said I had hold of it with one hand.

Q. Which hand was it you had hold of it? A. The left hand.

Q. Were you looking out in this fashion to see if the lady had hold? A. Yes.

Q. And you saw her foot go up? A. Yes, sir.

Q. And you didn't pay any more attention to her? A. I waited to see if she would get it; but just about then the movement occurred—well, a second afterwards, perhaps, she was in the pit.

Q. What did it do to you? A. Pardon?

Q. What did the movement do to you? A. Why, I still held hold of the handle bar.

Q. You didn't fall? A. Why, no.

Q. Did you give your name to the lady? A. No, sir; I did not. I went down in that car and I spoke to different parties—

Q. (Interrupting) I asked you did you give your name to the lady. Now, that is all I asked you? A. No; I did not.

Q. You did not? A. Had you seen her from the time the accident happened until the first trial of this case; had you seen her and talked with her? A. No; I had no talk with her.

Q. Had you ever seen her? A. I was trying to think whether it was before or after the trial I saw her going out with a stick or something; I don't know whether it was before or after; I would not be sure of that.

Q. Is that the only time you have seen her since the accident? A. Up until I was subpœnaed here I didn't know who she was; only knew her daughter, of course, because I went there and notified her the accident occurred.

THOMAS COSTELLO, sworn.

Direct Examination by Mr. Simpson:

Q. Where do you live? A. 715 Ocean Avenue.

Q. How long have you lived there? A. About a year and a half, two years.

Q. Are you working? A. Yes, sir.

Q. Did you see this accident? A. No, sir.

Q. You were around at the time, weren't you? A. I was crossing the street from it.

Q. Did you see this lady there at any time? A. No, sir.

Q. You didn't see her in the hole? A. No, sir.

Q. Didn't see her when they took her out? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Well, then you did see her there some time. Did you see her there waiting for the car before the car came there? A. No, sir.

Q. You didn't see that? A. No, sir.

Q. What was the first thing that attracted your attention to the fact that there had been an acciden? A. I was sanding watching men fixing wires, and every one hollered; I went over to see.

Q. What did they holler? A. They all hollered "Oh!"

Q. "Oh!" That is all you heard, was it? A. Yes, sir.

Q. Where did the car stop with reference to the downtown crosswalk when you heard that shout "Oh!"? A. Between the two crosswalks.

Q. Between the two crosswalks? A. Yes, sir.

Q. And how much the other side of the downtown crosswalk was it? A. There was no downtown crosswalk; they had it taken up.

Q. Well, there was a place where it ought to be, wasn't there? A. Yes, sir.

Q. Had any of the car passed that? A. No, sir.

Q. It was between the two crosswalks? A. Yes, sir.

Q. It was not anywhere near the trench at all, was it, because the hole had ended—

MR. BLAKE: You are arguing with him now.

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MR. SIMPSON: I will withdraw that.

Q. The hole connected this crosswalk? A. No; it was all the way down Forrest Street, and Ege Avenue.

Q. And went over this crosswalk? A. The hole?

Q. Yes. A. Went under that.

Q. Under it, and under this? A. That cross-

20

walk was taken up.

Q. And was this one taken up? A. No, sir; that was down.

Q. Now, where was this lady lying in the hole?

MR. BLAKE: He indicates that the crosswalk at A had been taken up, and the trench went under the crosswalk marked C.

Q. The rest of it was all open? A. Yes.

Q. Until it got to here and then it went over

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the crosswalk?

THE COURT: May I ask all the parties interested to use designations.

Q. Between A and B there was a hole in the street? A. Yes.

Q. When it came to C it went under the cross-walk and continued a hole after it passed C? A. Yes, sir.

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Q. Did you see what part of the hole the lady was taken out of? A. No, sir.

Q. You didn't see that? A. No, sir.

Q. Did you go over at all? A. After she was on the sidewalk.

Q. After they got her out? A. Yes, sir.

Q. Well, nothing attracted your attention then until you heard the cry of "Oh!"? That is the first thing attracted your attention? A. Yes, sir.

Q. Up to that time you were watching men putting in the wires? A. Yes.

Q. You didn't want to testify to-day for this lady, did you?

MR. BLAKE: I don't think that is material.

MR. SIMPSON: I want to show he is a hostile witness. All right. I will withdraw it.

Cross-Examination by Mr. Blake:

Q. This plan of the crosswalk B—where is that in relation to the driveway or the alley which the Doctor uses? A. Crosswalk B is right in the middle of the driveway.

Q. How did the automobile get in and out during the time that that was torn up? A. Had boards across from the car track in.

Q. And you say there was no crosswalk here at A at all? A. No, sir.

Q. The only one was at C? A. Yes, sir.

Q. And the trench ran under it at that point? A. Yes.

Q. When the trolley car stopped can you tell us where it was? A. I think I ought to.

Q. Point it out. We want to find out? A. It was just about there; when I seen it it was just about there (indicating).

Q. You think the trolley was about in that position? A. Yes.

THE COURT: Suppose you mark the first one X, and the last one Y.

Re-Direct Examination by Mr. Simpson:

Q. Did you see Mr. Sutherland there at the time
10 the lady fell in the hole? A. After the accident?

Q. Well, when you went over? A. Yes, sir.

Q. Where was he standing then? A. Right where the automobile comes out from the gutter.

Re-Cross Examination by Mr. Blake:

Q. When this car came up and made a stop, young man, were you watching it? A. I was watching the wire.

20 Q. Well, when the car made the one stop, did you see it start and stop again? A. No, sir.

Q. Where were you standing, by the way? A. Over here (indicating).

Q. You were standing—what is your name? A. Thomas Costello.

THE COURT: Mark it Thomas—Thos., or something of that sort.

Re-Direct Examination by Mr. Simpson:

30 Q. Your father works for the Public Service, doesn't he? A. No, sir.

Q. You are sure about that? A. Yes, sir.

JOHN ROBERT EVERITT, sworn.

Direct Examination by Mr. Simpson:

Q. Doctor, you are a practising physician? A. Yes, sir.

40 Q. How long have you been such? A. Since 1872.

Q. And how long have you practised in Jersey City? A. The whole time; the whole time, except one year.

Q. And where is your office? A. 38 Boyd Avenue, Jersey City.

Q. 38 Boyd Avenue? A. Yes, sir.

Q. Did you attend this lady, Mrs. Schreiber, in 1913? A. I did. 10

Q. Where did you find her when you went to see her? A. At her home.

Q. And what was her condition when you got to the house? A. Well, there was a great deal of discoloration of the skin under the breast, and on the side of the thigh.

Q. What did you diagnose her condition to be? A. Diagnosed her condition as from the injury received, as peritonitis—that is, periostitis or pericronium. 20

Q. And how long did you see her, Doctor? A. About three weeks; three or four weeks.

Q. And shortly before the last trial—you examined her, didn't you? A. No, sir.

Q. Well, you testified at the last trial as to what she was suffering with, didn't you? You and Mr. Smith had quite a passage at arms over the subject. Well, I withdraw that. You testified what her condition was. What was it you testified her condition to be? 30

MR. BLAKE: I object to that.

THE COURT: The question is what was her condition, I suppose, at that time.

Q. Doctor, what condition did you find, if any, of this lady with reference to a fracture either of the rib or cartilage connected with the rib?

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MR. BLAKE: I object to that; there is no testimony as to a fracture.

MR. SIMPSON: I am asking about it. I am directing his attention to a certain specific condition. I can take them up one by one. If Mr. Blake wants all the bones and the brain and all that going right down through the human anatomy.

THE COURT: I suppose the usual way, Mr. Simpson, would be to ask the Doctor if he made an examination. If he says yes, then what he found.

Q. What did you find? A. I found evidence of periostitis or inflammation of the membrane of the cartilage, and fracture—and diagnosed a fracture.

Q. You diagnosed a fracture? A. Yes, sir.

Q. What is periostitis? What does that mean in the language of the layman? A. Well, the covering membrane of the bone is called periostium —called ostium; and the inflammation of it is periostitis. The word means inflammation; but the same membrane that covers the bone—an analogous membrance covers the cartilage; they both answer the same purpose.

Q. The first day you saw her was about the 11th of October? A. I don't remember the date; it was eight days after the accident.

Q. Now, what would be the effect upon her of such a condition as you describe? Would it or would it not be accompanied by pain? A. A great deal of pain.

Q. If she still complains of pain in that side, and it is true that she has the pain, what would that indicate—that that condition had disappeared or that it was still present? A. The periostitis might still be present.

Q. From what you know of the case how long would you say it would be before she would make a complete recovery from this condition? A. Well, a fracture might recover in four to six weeks, but inflammation of the periostium—there is no limit.

Q. No one can tell how long it will last? A. No, sir; no crisis. 10

Q. What is the pain? Is that one of the symptoms of its presence? A. Yes; that is the principal symptom.

Q. Could this condition that you have described have been caused by violence, by a blow? A. Yes, sir.

Q. Is that one of the most common causes of it? A. Yes, sir.

Q. Now, what was the amount of your bill, Doctor?- A. Well, I testified it was forty dollars the last— 20

Q. (Interrupting) Forty dollars at the last trial? A. Yes, sir.

Q. Well, have you treated her at all since the last trial? A. No, sir.

Cross-Examination by Mr. Blake:

Q. You have spoken about fracture, Doctor. What was it that was fractured? A. Well, the way in which I came to diagnose the fracture was that the pain was severe, and I applied local applications, with no results. I afterwards strapped the side of the body the same as I would for a fracture of the rib, and that gave her relief. 30

Q. Well, what was fractured, Doctor? That is the question I asked you? You say you found a fracture. Now, what did you find the fracture of? A. Well, I could only surmise by the locality.

Q. Well, what was fractured, Doctor? That is 40

the question I want to find out? A. I should believe it was the cartilage that was fractured.

Q. The cartilage was fractured? A. Or the sternum.

Q. Well, now, which was it? A. Well, I could not make a thorough examination on account of the pain.

10 Q. Well, you finally did make a diagnosis, didn't you? A. Yes.

Q. A fracture of the cartilage, Doctor, was that what you finally determined it was? A. Yes, sir.

Q. And that is the cartilage that holds the end of the ribs to this breast bone; isn't that right? A. Yes, sir.

Q. And you found that was broken? A. By the treatment, yes, sir.

20 Q. Which cartilage was that, Doctor, the cartilage on which ribs? A. Well, it was about the fifth rib.

Q. About the fifth, and where is that located? A. The fifth rib is located about two inches below the nipple.

Q. Two inches below the nipple? A. Yes, sir.

Re-Direct Examination by Mr. Simpson:

Q. Is that condition accompanied by any pain

30 at all? A. Yes, sir.

Q. Well, what kind of pain? A. Well, pain on palpation, and pain on movement of the body, and pain on respiration.

Q. Well, is it such a pain as would interfere with the normal use of the body, such, for instance, as climbing stairs? A. Well, it would interfere with the proper respiration and inspiration.

Q. You were present at an examination made by Dr. Furey, weren't you? A. Yes, sir.

40 Q. Was that the time you said that you could

not examine her because of so much pain—could not make a thorough examination? A. I examined her so far as the pain would allow me to.

Q. What do you mean by that? I don't understand what you mean? A. This was eight days after the accident, at that time. The periosteum became inflamed; for me to subject her to a thorough physical examination would be a hardship. I did not understand there was going to be a medical legal case, and I didn't think it was necessary.

Q. You mean it would give her great pain—

MR. BLAKE: I object.

MR. SIMPSON: I withdraw it.

Q. What do you mean, you couldn't give her a physical examination because of excessive pain—what do you mean by that? A. Couldn't handle the body.

Q. You mean your examination pained her? A. It would pain her, yes, sir.

Q. Is that the examination that you refer to at which Dr. Furey was present for the defendant company, or was it some subsequent examination? A. Well, I was there previous to Dr. Furey.

Q. Were you there at the time Dr. Furey was there? A. Yes, sir.

Q. Did you see Dr. Furey examine her? A. Yes, sir.

Q. Now, did that give you any information at all as to her condition—the information that Dr. Furey gave—examination that he made? A. From his actions he seemed to endorse—

Q. (Interrupting) What I want to know is did Dr. Furey's examination give you any information to make up your opinion on? A. No; there was no consultation.

Q. No consultation? A. No.

Re-Cross Examination by Mr. Blake:

Q. How many times did you see her, Doctor? A. I saw her about eight or nine times after Dr. Furey's last visit.

Q. When was the last time you saw her? A. I don't know.

Q. You cannot tell? A. Have no memory of it.

Q. Well, did you make these examinations—I mean did you pay these visits at intervals of a day or two, or were they made every day? A. They were made every few days at intervals.

Q. What was the greatest interval between any of the two visits? A. About three days.

Q. About three days? A. Yes, sir.

JOSEPH M. RECTOR, sworn.

Direct Examination by Mr. Simpson:

Q. Doctor, you are a practising physician and surgeon? A. Yes, sir.

Q. Of Jersey City? A. Yes, sir.

Q. How long have you been such? A. Twenty-one years.

Q. Have you made any specialty of bone surgery? A. Yes, sir, as a part of my general surgical work.

Q. What is periostitis, Doctor? A. It is inflammation of the covering of the bone proper.

Q. Is it attended by any pain? A. It is.

Q. Is it ever caused by violence? A. Yes, sir.

Q. By force? A. Yes, sir.

Q. Well, assuming that this lady met with an accident on the 4th of October, 1913, in which accident she fell or was thrown into a hole and in-

jured her side, and that subsequently periostitis developed, and that she still suffers from it with pain, which would indicate the presence of periostitis, how long in your judgment would it take to effect a recovery?

MR. BLAKE: I object to that part of the question which says, "Which would indicate she has periostitis." 10

MR. SIMPSON: That is the testimony of Dr. Everitt—if she had pain it would indicate she has periostitis.

THE COURT: Is there any question about that?

MR. SIMPSON: He did. If you doubt, we can look at the record.

THE COURT: It is my recollection he did so testify. 20

A. She would have continuous pain, chronic up to this time. If she was injured on the 4th of October, 1913, a year and a half, it would mean it was a continuous condition. There is probably an outgrowth of bone there.

Q. Is periostitis an inflammation of the covering? A. It is inflammation of the periosteum; that is the skin, as we call it, that surrounds the bone. The bone is covered entirely by a thin membrane. We call that the periosteum. It is the same as the skin that covers the muscles, or the skin that covers the fat from the body and sticks fast to the bone tissue, and new bone is thrown out around it, and by the connection with it the periosteum, that is, the covering of the bone, and the pressure upon the nerve by the growth of new bone tissue—from that we get more or less continuous pain. If that continues for a year and a half it is going to continue right along, and I believe will be permanent. 30 40

Cross-Examination by Mr. Blake:

Q. Is there any treatment possible, Doctor? A. Taking away that entire—an operation taking away the entire part of the bone.

Q. I understood you to say that periostitis is
10 inflammation of the covering of the bone proper; that was your language? A. Yes, periostitis.

Plaintiff rests.

DEFENDANT'S TESTIMONY.

PATRICK JOSEPH MURPHY, sworn.

20 *Direct Evamination by Mr. Blake:*

Q. Mr. Murphy, you are a motorman for the Public Service Railway Company? A. Yes, sir.

Q. And were you motorman on the Greenville car on the day this accident happened? A. Yes; I was.

Q. Now, this is a diagram, and what is shown is Ocean Avenue running north and south, Virginia Avenue crossing here, and the cars going to Jersey City going on this track, and this shows the
30 opening going into the Doctor's house, Dr. Ghee's house, I think it is, where the Doctor drives his automobile into. Now, will you show us with reference to that on the map where you stopped your car?

THE COURT: In the first place, do you understand the diagram?

A. Yes, sir.

40 Q. Now, come over here and you put a few

marks on it. A. Well, I stopped the front of the car right here.

Q. That shows you don't understand the diagram, because here are the tracks out here. A. Now, we put the back of the car right here.

Q. Between the two places marked X? A. Yes, sir.

10

THE COURT: Draw a line from X to X. Mark it Z.

Q. That is where you stopped your car? A. Yes, sir.

Q. Now, what was the condition of the street along there? A. Well, there was an excavation, putting in water pipe.

Q. Putting in water pipe? A. Yes, sir.

Q. Where did it run; where was the excavation? A. Why, alongside of the track. 20

Q. And how far away from the track, about? A. Well, from the running-board the tracks would be about four feet; from the running-board would be about two and a half.

Q. Now, with reference to this crosswalk at C, and in front of the Doctor's garage entrance, what was the condition of the street there? A. Why, opposite where the Doctor has his garage there is a driveway there; that slab was not taken up, the 30 sewer did not go over that. It was left there for to drive his car into.

Q. And on each side of that what was the condition? A. Well, there was an excavation.

Q. Now, an accident occurred there that afternoon, didn't it? A. Yes, sir.

Q. When you brought your car down, stopped it, did you see anybody near there to get on the car? A. Yes, sir; I saw this lady.

40

Q. What did she do to you? A. Why, she motioned to me, nodded her head for me to stop.

Q. What did you do with your car? A. Why, I stopped.

Q. Now, after you stopped your car did you hear anything after? A. Yes, after I stopped the car I heard a shout.

10 Q. What did you do then? A. Why, I looked around the side of the car and I saw this lady in the hole.

Q. In the hole? A. Yes, sir.

Q. From the time you stopped your car, after the lady signalled to you to stop it until you heard the shout and looked around and saw the lady in the hole, had your car moved? A. Never made a motion.

20 *Cross-Examination by Mr. Simpson:*

Q. You testified at the last trial? A. Yes, sir.

Q. And you are still working for the Public Service, aren't you? A. Yes, sir.

Q. Didn't you testify at the last trial, that at the place there was not any ditch alongside of the car? A. No; I did not.

Q. Did you testify that you stopped your car alongside of the ditch or hole? A. Yes, sir, a

30 part of the car.

Q. How much of the car? A. Well, might be about half of the car.

Q. And which half, the front half or the rear half? A. Well, extended both the front part and the rear part, but this place where the driveway was sloped ground.

Q. You say about half of your car was stopped alongside the ditch; do I understand you correctly to say that? A. Yes.

40 Q. Well, now, which half of your car was not

stopped alongside the ditch; which half of it? A. Why, there was a ditch alongside of the back of the car and the front of the car.

Q. And do you mean there was half of the car that had no ditch alongside of it? A. No; just the breadth of the driveway, about six feet.

Q. Well, with the exception of six feet then, your car was stopped alongside of the ditch? A. Yes sir. 10

Q. Six feet of your car was alongside of the driveway and the rest of that was alongside of the ditch, on the side of the driveway? A. Yes, sir, excavation, yes, sir.

Q. Where was the usual point for stopping, on the downtown crosswalk or the uptown crosswalk for cars going to Jersey? A. Well, the proper place would be on the downtown crosswalk. 20

Q. On the downtown crosswalk? A. Yes, sir.

Q. Where was this lady standing when she gave you the signal, on the uptown crosswalk or downtown crosswalk? A. On the uptown crosswalk.

Q. Was she in the middle or on the curb? A. On the curb.

Q. On the curb of the street? A. Yes, sir.

Q. She was not down in the middle of the street at all? A. No; she was not on the middle of the street at all; on the sidewalk where the driveway is. 30

Q. She had not yet stepped down into the street, had she? A. She—

Q. (Interrupting) She gave you a nod as you stood there and you carried your car beyond the uptown crosswalk, and stopped out in the center of the street, didn't you? A. No; I didn't carry all the car; just a part of it; I left her room to get on.

Q. How much of the car did you carry over? 40

A. Well, it is marked there; half of the car each side of the driveway.

Q. Each side of this driveway? A. Each side of the Doctor's driveway.

Q. So the woman notified you here at this crosswalk that she wanted to get on, and the last you saw of her she was standing on the sidewalk, and you stopped your car opposite this place here, for her to get on up here, did you? A. I don't understand that question.

10

Q. You say the woman was standing on the sidewalk? A. Yes, sir.

Q. Was she standing on the sidewalk when she signalled to you? A. Yes, sir.

Q. She never left the sidewalk as far as you saw, and you stopped your car when she notified you at the sidewalk; you had brought your car up over into the center of the street here somewhere? A. Part of the car.

20

Q. Part of it? You didn't move it in sections, did you? The car was one thing, wasn't it? A. Well, now, there was only the driveway there; I had to stop alongside of the hole, no matter where I stopped.

MR. SIMPSON: I ask to have that stricken out as not responsive.

30

Q. I am asking you what you did, not what you had to do—I withdraw that question.

Q. You saw the woman standing on the upper crosswalk and you drove over with your car in the center of the street before you stopped, didn't you? A. No; I did not.

Q. How much did you pass this crosswalk before you stopped? A. As I marked; about half of the car.

40

Q. How much is half of the car? A. Well, it is about twenty feet, I guess.

Q. Well, you went twenty feet past this woman before you stopped, did you? A. I didn't go twenty feet of the whole length of the car; about twenty feet of the car passed her.

Q. Twenty feet of the car passed her before you stopped? A. Yes. 10

Q. You didn't know there had been any accident at all until they took the woman out of the hole, did you? A. I didn't know until I heard the shouting and looked around.

Q. What shouts did you hear? A. I don't know; it was a scream or shout of some sort.

Q. Is that all you heard? A. That is all.

Q. And then you looked around? A. Yes.

Q. Was your car in motion when you looked around? A. No, sir. 20

Q. Was it still standing when you looked around? A. Sure was.

Q. How long had you been standing when you heard the scream or shout? A. Right away, about two or three seconds.

Q. Well, was it right away or was it two or three seconds? A. About two or three seconds.

Q. About two or three seconds after you had stopped your car you heard the shout? A. About two or three seconds, I guess. 30

Q. Did you see anybody else standing on this crosswalk towards Bayonne besides a lady? A. No, sir.

Q. Are you sure about that? A. I am sure about it.

Q. She was all alone on this upper crosswalk the last you saw of her? A. The last I saw of her.

Q. Did you see anybody on this crosswalk A' A. No, sir. 40

Q. Did you see anybody there? A. No, sir.

Q. Sure about that? A. I am sure about it.

Q. It was plain daylight, wasn't it? A. Yes, three or four in the afternoon; somewhere around that time.

Re-Direct Examination by Mr. Blake:

10

Q. From this point opposite the driveway going toward Jersey City how far did that trench extend? A. Oh, it extended all the way down to the bridge; it was running about a mile down, but it is closed in, you know.

Q. How far was it open across Virginia Avenue? A. Oh, it was open all the way across.

Q. How was it on this side of the street, at A? A. Well, I couldn't say—it was open down there, too, but I could not say whether the flagstone was taken up.

20

Q. I am asking you about the trench itself? A. It was open all the way down.

Q. Now, you had an open car, didn't you? A. Yes, sir.

Q. And when you stopped the open car about half past this crosswalk B, you stopped part of the seats opposite the crosswalk? A. Right in the center from the car.

30

Q. You don't ordinarily stop your car with the front platform where people are standing and invite them to get up where you are, do you? A. No.

Re-Cross-Examination by Mr. Simpson:

Q. But you ordinarily stop it on the down-town crosswalk? A. Yes, sir.

Q. You passed the down-town crosswalk? A. Yes, sir, passed it.

Q. Now, you say you don't know whether those flagstones were taken up at A, or not? You know

40

perfectly well they were? A. The sewer is right there.

Q. Don't you know this went under the flagstone and that the flagstone was left there? A. I don't know.

Q. But you had the car there? A. I did not.

Q. You did not have the car there at all? A. No, sir. 10

Q. You did not run your car this day at all? A. I sure did.

Q. You didn't pass Virginia Avenue and Ocean Avenue, did you? A. I did.

Q. Why don't you know whether the flagstones were taken up or not at this point where you stopped? A. These flagstones was not in front of me.

Q. But you were stopping to let passengers on and you don't know whether the flagstones were 20 down or up? A. I didn't look at the flagstones at that side of the street.

Q. And that is not the side of the street you usually stopped? A. Yes; that is the proper side of the street.

Re-Direct Examination by Mr. Blake:

Q. Which is the widest crosswalk, the one at the Doctor's or automobile driveway at C? A. The automobile driveway is about six feet wider, 30 I believe.

Q. Six feet wider? A. Yes, sir.

40

THOMAS McKENNA, sworn.

Direct Examination by Mr. Blake:

Q. Mr. McKenna, you were the conductor on this car? A. Yes, sir.

Q. And where were you on the car on the day in question? A. Well, I was up near the front of the car, around the center of the car.

Q. On what part of the car? A. On the running-board.

Q. And did your car make a stop that day at Virginia Avenue? A. Yes, sir.

Q. When it stopped did you see anybody there to get on? A. Yes, a lady on the sidewalk.

Q. On which side? A. On the south side.

Q. Where is that with reference to the driveway of Dr. Ghee's house? A. Oh, it was way on the other side of the driveway, about the center of it.

Q. Is there a crosswalk leading out from the driveway? A. Yes, sir; there is a crosswalk there.

Q. There is a crosswalk there? A. Yes, sir.

Q. Where was the lady standing in reference to that crosswalk? A. On the south side, the Greenville side.

Q. On the Greenville side? A. Yes, sir.

Q. What did your car do? A. Came to a stop by the motorman.

Q. What did the lady do? A. She walked to the step; I kept watching her; she walked in the street then. I said, "Madam, look out for the hole"

Q. How far away were you from her when you said, "Madam, look out for the hole"? A. About six or seven feet, I guess.

Q. What did she do? A. She walked right in it, with her head up like that, and walked right in

it before I could get near her, and another gentleman hollered to her, too.

Q. And she stepped right into the hole? A. She stepped right into the hole.

Q. Which way was she looking with her head up? A. Forward, toward the front of the car.

Cross-Examination by Mr. Simpson: 10

Q. Which crosswalk was this lady on when you saw her? On B or on A, B being to Bayonne, and A being to Jersey City? A. She was on C.

Q. Was she on the sidewalk or was she down in the middle of the street? A. On the sidewalk.

Q. And was she on the sidewalk when the car came to a stop? A. Well, as the car was coming to a stop--

Q. (Interrupting) Was she on the sidewalk when the car came to a stop? A. Yes, sir. 20

Q. Still on the sidewalk? A. Yes, sir.

Q. Now, after the car stopped what did she do? A. Well, she walked two or three steps on the sidewalk, then on the street.

THE COURT: In which direction on the sidewalk, towards Bayonne or towards Jersey City?

A. Towards Jersey City. 30

Q. She was right at the corner when you saw her, wasn't she? A. Yes, sir.

Q. How could she walk two or three steps towards Jersey City? That would bring her right down in the street if she walked two or three steps toward Jersey City? A. She walked one step forward and down into the street.

Q. Then she did not walk down the sidewalk two or three steps? A. She made a motion; she made a step down. 40

Q. Well, she stepped down to the street, didn't she? A. Yes, sir.

Q. How did she walk, along the crosswalk to the track, or along over the middle of the street to the car? A. She was right at the end of it.

Q. End of what? A. End of the crosswalk.

Q. Then she walked from the sidewalk to the car track on the crosswalk C? A. She walked to the end—right at the end of the crosswalk, right in the hole.

Q. Did she walk from the crosswalk to the car track on the crosswalk C? A. She did not get on the track.

Q. How much did she walk on the crosswalk C; how much of a distance did she walk? A. Two steps.

Q. And when she did walk two steps on the crosswalk C what did she then do? A. She was looking for a seat, and she stepped right in the hole.

Q. And at that point she stepped right in the hole? A. Right in the hole.

Q. Well, you know as a matter of fact two steps wouldn't bring her to that hole, because the hole was in the middle of the street. Was it between the car rail and the curb? A. It was not; it was near the curb.

Q. Near the curb? A. Near the curb.

Q. How near the curb? A. I don't know.

Q. As I understand you, she walked right from this crosswalk and into the curb?

MR. BLAKE: I object.

Q. Was she still on the crosswalk when she stepped in the hole? A. Right at the driveway there, where the automobile comes out.

Q. She was not on the crosswalk at all, then? A. No, sir.

Q. Then, after she had taken those two steps on the crosswalk she did not walk into the hole, but she walked up to the driveway, did she? A. No, sir.

Q. How did she get up to the driveway?

MR. BLAKE: Now, there is the driveway indicated right in front of C. This is the driveway referred to by your own witness. 10

Q. Well, do you say that this driveway is the same as the uptown crosswalk, that Dr. Ghee's driveway and the Bayonne crosswalk are the same thing? A. I think the driveway is more on the side than the walk.

Q. That is nearer to Bayonne, up this way; is that right? A. Yes, the driveway.

Q. Well, then she walked off the crosswalk up to Dr. Ghee's driveway and got in the hole? A. No, no; she was on the driveway, and she walked right into it. 20

Q. I am trying to find out from you how she walked right into it. You said that you saw her on this corner, on the crosswalk? A. On the driveway.

Q. You saw her on the driveway? A. Yes, sir.

Q. Then she never was on the crosswalk or near the crosswalk? A. Well, the driveway and the crosswalk is just the same. 30

Q. Then the driveway is not nearer Bayonne? We will rub this out. There is no driveway here, is there; the driveway and the crosswalk are the same thing; is that what you mean? A. The crosswalk was there.

Q. Oh, I guess it was, all right; but we are trying to find out if the driveway and the crosswalk are the same thing. Isn't that what you mean? A. I think the driveway is on the Bayonne side. 40

Q. Of the crosswalk—Mr. Blake does not, so

there is a little confusion. Now, let us try and get this thing straight in our own minds. There is a driveway of Dr. Ghee's, isn't there? A. Yes, sir.

Q. Now, that driveway, as I understand him, is somewhere with reference to the Bayonne crosswalk—is it on the Bayonne side or the Jersey City side of the crosswalk? A. I don't remember much.

Q. If you don't remember it, say so.

MR. BLAKE: If you do not, that is all. Say so; don't get scared about it.

MR. SIMPSON: Oh, no; don't get frightened. I am not near as dangerous as Mr. Blake. What we are trying to get is the fact.

Q. Now, is it true that this woman was standing at the upper crossing of the street, on the sidewalk, when you first saw her? A. When I was way up in the center of the car, and this woman was on the sidewalk; so she walked out on the sidewalk.

Q. You told us all about that. Don't go over that story again. Was the woman on the corner when you first saw her? That is what I asked you. A. She was on the sidewalk.

Q. All right, and was she on the sidewalk at Dr. Ghee's driveway or at the corner where the crossing is of the street? A. She was starting crossing.

Q. Now, you didn't know anything about this until the woman got in the hole, did you; you were up in front of the car, weren't you? A. In the center of the car.

Q. Attending to your business, and where was this woman lying when you found her in the hole; was she behind where you stood or in front where you stood? A. Behind where I stood.

EMORY TILDEN, sworn.

Direct Examination by Mr. Blake:

Q. Mr. Tilden, where do you live? A. Bayonne.

Q. What is your business? A. I am with the Pennsylvania Railroad.

Q. In what department? A. Freight. 10

Q. Freight Department. Were you a passenger on the car on the afternoon in question that this accident occurred? A. I was.

Q. Where were you on the car? A. About the sixth seat from the front.

Q. Do you recollect that car stopping at Virginia Avenue that day? A. I do.

Q. What was the condition of the road there, do you know? A. Well, there was an excavation there, to lay some kind of pipe line; I could not 20 say what kind.

Q. On which side of the street was it? A. On the same side that the car was going down to Jersey City.

Q. And did you notice on Virginia Avenue what the condition was there as regards the crosswalks? A. Yes, sir.

Q. Do you know where Dr. Ghee's house is there? A. Yes, sir.

Q. And do you know his driveway? A. Yes, 30 sir.

Q. What is the condition there where his driveway ran out in Ocean Avenue? A. The excavation ran almost to the driveway, and there was a space of, say, five or six feet which was left open, I suppose, for the driver to go in and out.

THE COURT: Which side did it go up to?

A. Up to this side. 40

Q. Now, you are going to Jersey City? A.

Yes, sir.

Q. Going this way. Now, show us where the driveway is there? A. I should judge it was about right here.

Q. You think the driveway was— A. (Interrupting) Up at the crossing.

Q. You say it was five feet wide. Where would
10 the other side be? A. About there.

Q. Now, you say the trench ran up to it, which side? A. Up almost to here.

Q. Did it cross it? A. I think it went under.

Q. It went under it? A. I think so.

Q. What did it do on—toward this side? A. It was all open.

Q. Open on both sides of the driveway? A. Yes, sir.

Q. About how wide was the driveway?

20 THE COURT: He said about five feet.

Q. Did you see any lady there? A. I did.

Q. Where was she standing? A. She was at the curbing, where the Doctor's driveway goes down.

Q. Did your car make a stop there? A. It did.

Q. Did you see this lady go toward the car? A. I did.

Q. What did she do? A. She stepped up—I
30 suppose, to get on the car.

Q. You saw her step up towards the car— A. (Interrupting) With her head kind of tilted back, looking for a seat—the sun was shining, and just as she stepped out I said, "Madam, look out for the hole."

Q. You told her? A. Yes, sir.

Q. What did she do? A. She went right in it.

Q. Hadn't she at that time reached the car? A. She had not, sir.

40 Q. Did she at any time get her foot on the car and the car start and throw her? A. No, sir.

Cross-Examination by Mr. Simpson:

Q. The sun was shining? A. Yes, sir.

Q. Shining in her face? A. Well, it was on its way over toward the west, and it must have been—

Q. Not what it must have been. Did you see? A. Well, I suppose the sun was shining; she was looking toward the west, which would make the sun go that way.

Q. Did you see the sun shining in her face? A. Yes; I saw the sun shining in her face.

Q. What seat were you in? A. About the sixth, I should judge; sixth.

Q. Did the seat that you were in pass the point where you saw this lady standing? A. Just came to her.

Q. So that you had to turn around to look at her? A. Yes, sir.

Q. When you passed and before you turned around and looked at her, what was the last position you saw her in? A. She had just stepped out as the car went up.

Q. Just stepped down in the street? A. Yes, sir.

Q. And how far was she from the hole when she stepped down in the street? A. Well, maybe —I couldn't say that; about a foot, maybe.

Q. And the hole went under the crosswalk? A. Well, that I don't know, sir.

Q. Well, why did you turn around and look at this lady if your car passed her, if you saw her step down in the street? A. Well, because I saw that the hole was there and unprotected, and for that reason I thought that she might step in the hole and I called to look out.

Q. You called too late, didn't you? A. No, sir; I called before she went in—

Q. How soon before she went in there? A. Just as she took the first step after she got on to the street.

Q. Well, was her foot over the hole when you called? A. It was very close to it, probably six inches away.

Q. The sun shining in her face and her head tilted? A. Well, it was not tilted; it was raised, looking for a seat.

Q. Was the car crowded? A. Not unusually so.

Q. Nobody standing on the runboards? A. Yes; there were some people on the runboard; I could not say how many.

Q. Don't you call that unusually crowded for a Bayonne car? A. No; I prefer to ride on the runboard.

Q. It wouldn't be not unusually crowded to you with a runboard full of people? A. Yes, sir.

Q. When I say crowded— A. (Interrupting) There was room in the seat that I was in for one more.

Q. Where you were sitting, on the end? A. Yes, sir.

Q. You didn't move out and let any one in? A. No; I never do.

Q. You keep the end seat? A. Yes, sir; I do.

Q. Did you get off the car to help take this lady out? A. I did.

Q. Did you help take her out? A. No, sir; there were four men there, the conductor--well, I didn't see anybody else that I remember at that time.

Q. Where did this car stop, the front of it; where was the front of it when it stopped? A. I should judge it was a little more than half way across the car track, say, about seven or eight

seats; say eight, about seven or eight seats; say eight seats.

Q. It had not got to the downtown crosswalk? A. No, sir.

Q. Did you notice whether the hole went over or under this downtown crosswalk? A. No; I didn't go that far.

Q. Where was she lying in the hole, how far from crosswalk C? A. Can I show you? 10

Q. Yes. A. (Witness indicates) About here.

Q. That is about how many feet toward Jersey City from crosswalk C? A. I don't know; maybe two feet.

Q. Now, when she stepped in the hole did she walk into the side of the hole, or did she walk over this driveway of Dr. Ghee's into the hole? A. Well, she had stepped down in the street, with her head tilted back looking toward the car, towards Jersey City, and she made one step, and just as she made the step I said, "Madam, look out for the hole"; but I was a little too late; she went in. 20

Q. She didn't walk up between the car and the ditch and go in that way? A. No, sir.

Q. How was she facing when she went into the hole, Jersey City or the car? A. Sideways, just like—

Q. With her face turned slightly towards Jersey City? A. Yes, a little more than slightly; her body was slightly turned. 30

Q. Did you hear any cries of "Oh!" at all when she went into the hole? A. Yes.

Q. How long was that after you said, "Look out for the hole"? A. Oh, maybe a minute or two.

Q. How far were you from her when you said "Look out for the hole"? A. Well, I could not say just how far. I suppose about five feet; from the way I was looking sideways back at her. 40

JAMES H. PERRINE, sworn.

Direct Examination by Mr. Blake:

Q. Mr. Perrine, where do you live? A. Bayonne.

Q. How long have you lived there? A. A little over thirty years.

Q. Are you in business there? A. Yes, sir.

Q. What is your business? A. Wholesale hardware.

Q. Were you a passenger on this car the day the accident occurred on Virginia Avenue? A. Yes, sir.

Q. What part of the car were you on? A. I think about the fifth seat from the rear.

Q. And do you recollect your car making a stop at Virginia Avenue? A. Yes, sir.

Q. And are you familiar with the locality there? A. Quite.

Q. Do you know where Dr. Ghee's house is, and his driveway? A. Yes.

Q. Where did the car stop with reference to the driveway? A. Why, I think it was about ten feet, I should judge, back of the driveway, in the rear of the car—about ten feet rear of the car.

Q. Where was that about the front of the car? A. About half way to it, almost at the crossing.

Q. Past the driveway? A. Past the driveway; Virginia Avenue is a narrow street; it is only about thirty feet wide, and the car is about forty feet long.

Q. Did you see anybody there on the driveway? A. Yes, sir.

Q. Standing? A. I saw a lady waiting.

Q. A lady waiting for the car. Now, what did the lady do? A. She stepped off the curb and walked towards the trolley.

Q. What did she do? Did anything happen to her? A. She walked on an angle and walked right in the excavation that was there.

Q. Did you hear any people call to her or warn her? A. I heard someone call, "Look out for the ditch," or "Look out for the hole"; but it was too late.

Q. It was too late; she walked into the hole? A. It was only a very short distance to the excavation. 10

Q. What did your car do? A. Waited for her to get on.

Q. Did she at any time get past the hole and get her foot on the running-board? A. No, sir.

Cross-Examination by Mr. Simpson:

Q. How near the downtown crosswalk was the front of the car when it stopped? A. I should judge it was almost to it. 20

Q. Had it reached? A. Pretty close.

Q. What do you mean by pretty close to it, or hadn't it reached it? A. I should say about five feet; I didn't take a measure.

Q. All right; five feet. Now, alongside of this car as it stood there was this open hole, wasn't it? A. Yes, sir.

Q. What was the only way of getting to the car, was it on this Dr. Ghee's driveway, as they speak of? A. Yes, sir. 30

Q. And that was about five feet wide, someone said. A. I should judge about that.

Q. Now, were you sitting behind Dr. Ghee's driveway, or had you passed it? A. I was just about opposite it.

Q. Opposite it? A. Yes, sir.

Q. How many seats were opposite this driveway, could you tell? A. Well, I should judge probably there were three or four. 40

Q. Three or four? A. Three or four seats there, anyway.

Q. And how many seats were there in the car? A. I should judge pretty close to twenty.

Q. Well, this lady as she came walking towards the car, did she come from the upper crosswalk or was she down in the middle of the street? A. No; she was on the curb; she stood on the curb down from C.

Q. Well, was she actually on the street or sidewalk when you saw her? A. She was standing on the curbstone.

Q. Did you see her step down? A. Yes, sir.

Q. Well, as I understand you, she came at an angle. Well, now, as she came at this angle did she pass by this Dr. Ghee's driveway on the Jersey City side? A. No; the driveway is on that side.

THE COURT: The Bayonne side?

A. Bayonne side.

Q. Of the crosswalk C? A. Crosswalk C.

Q. The dirveway on this side? A. No; Dr. Ghee's sidewalk is marked there now.

Q. This is Dr. Ghee's crosswalk? A. This side.

Q. Here? A. Yes, sir.

Q. Here is the driveway and here is the crosswalk C, as you call it? A. Crosswalk C.

Q. All right. Well, she was at the crosswalk C and not at the driveway at all? A. Well, they are both together; there is only about sixteen or eighteen inches between the two.

Q. If she walked on this angle she would go over this place or in the hole? A. In the hole.

Q. As she went from that place to the downtown crossing it was all excavated, wasn't it? A. Yes, sir.

Q. So that the only way for her to get on the

car was for her to get on an angle other than the way she went? A. Straight, perfectly straight, and then across.

Q. Across over Ghee's crossing? A. No; she would walk out straight to the car and then parallel with the car, between the car and the excavation.

Q. You mean on the crossing C or Dr. Ghee's driveway she walked straight to the car? A. She would walk straight out. 10

Q. How? A. To what she would walk straight.

Q. Isn't there any hole? A. The hole didn't cross this (indicating).

Q. The hole came to here? A. The hole came to about here.

Q. And did it go under here? A. I don't know that. The excavation was to about here, and about two feet of your crossing. She started from here and walked directly, and not evidently seeing the ditch, she fell into it. 20

MR. SIMPSON: That calls for a conclusion of his, and I ask that it be stricken out.

MR. BLAKE: Not evidently knowing it is all right as a conclusion.

MR. SIMPSON: That, I think, is a conclusion.

THE COURT, Well, "Not evidently knowing" ought to go out. 30

MR. SIMPSON: I don't object to the other, but "Not evidently knowing."

THE COURT: That may go out.

MR. BLAKE: Consented.

Q. Now, what attracted your attention to this woman standing on the corner? A. The stopping of the car.

Q. Well, it stopped many times before that on your trip, didn't it? A. Natural curiosity; you 40

would cast your eye to see who was going to get on there.

Q. Do you do that every time a car that you are on stops? A. Occasionally.

Q. If you see a woman on the corner do you always stop to see her go on? A. It does not have necessarily to be a woman.

Q. If it is a man or woman; you always stop? A. If I have nothing else to pass my time.

Q. There was nothing about this woman that attracted your attention? A. Absolutely nothing.

Q. Did you hear this cry of "Oh!"? A. Yes.

Q. And you say you also heard someone say, "Look out for the hole," but it was too late; what did you mean by that? A. Well, I meant when the warning came she had already fallen.

R. WALTER JARVIS, sworn.

Direct Examination by Mr. Blake:

Q. Mr. Jarvis, were you a passenger on this car? A. Yes, sir.

Q. Where do you live? A. 436 Forty-seventh Street, Bayonne.

Q. What is your business? A. Unemployed at present.

Q. What part of the car were you seated in? A. Why, in one of the last five seats.

Q. In one of the last five seats? A. Yes, sir.

Q. Do you recollect your car stopping at Virginia Avenue? A. I do.

Q. Did you see a lady standing there? A. I did.

Q. Did you see her walk out to board the car? A. I saw her step from the curb.

Q. Saw her step from the curb? A. Yes, sir.

Q. In what direction did she walk? A. Toward the car; I didn't look any further; I saw her take the first step down; and there wasn't anything to attract my attention any; I didn't look any further.

Q. Paid no further attention? A. No.

Q. Then what occurred? A. The next I heard was somebody calling to her to look out for the hole. Then I looked forward and saw that she had fallen into the hole. 10

Q. But you didn't see her fall? A. No, sir; I did not.

Q. At that time what was your car doing? A. Standing perfectly still.

Q. Was there any jerk? A. No, sir; none whatever.

Q. You didn't see her actually fall into the hole? A. I didn't see her fall in the hole, no, sir. 20

Cross-Examination by Mr. Simpson:

Q. There was nothing to attract your attention until the commotion when she fell into the hole, was there? A. No, sir.

Q. Well, how do you know your car stopped perfectly still? A. Why, that is very—that is out of the ordinary to ask something like that. I simply knew it; I couldn't tell you how I knew it; the fact remains that I do know it. 30

Q. What I am trying to get is up to the time this woman stepped into the hole it was like an ordinary ride on the trolley car? A. Yes, sir.

Q. Up to that time there had been nothing to attract your attention particularly? A. No; not up to that time.

Q. How do you know? Were you watching to see whether your car stopped and then went ahead, and stood still; were you watching to see that? A. Yes, sir. 40

Q. You always do that? A. No; I was then.

Q. Why were you watching to see if your car went half a wheel length? A. Because at that time my father happened to be in the Bayonne Council; they had a lot of trouble with the Public Service Commission, and I was looking out for just such things; anything out of the ordinary that I could give him as evidence.

Q. Carelessness on the part of the public? A. Yes, sir.

Q. And that is the reason you watched to see whether the car went on after it stopped? A. Yes, sir.

Q. And you are positive it did not? A. I am absolutely positive.

Q. Did it actually stop on that trip? A. No; that is, it didn't jerk.

Q. I don't mean jerk; I mean stop still—move a length, half a wheel length? A. No; there was nothing that started the car from the time I got on at any time during that trip.

Q. Where was this lady lying when you turned around? A. In the end of the ditch nearest Bayonne.

Q. And how far was she from this crosswalk C? A. I don't know the relative positions.

Q. I mean approximately; I am not trying to catch you at all. A. I mean I cannot say; I could not give you any idea; I was not measuring spaces or anything of the sort.

Re-Direct Examination by Mr. Blake:

Q. You did hear somebody holler, "Look out for the hole"? A. Yes, sir; I did.

Q. That is what attracted your attention? A. Yes, sir; that is what attracted my attention.

Re-Cross-Examination by Mr. Simpson:

Q. And when you turned around she was then in the ditch? A. She was then in the ditch.

RECESS TO TWO O'CLOCK.

AFTERNOON SESSION. 10

PETER DANHART, sworn.

Direct Examination by Mr. Blake:

Q. Mr. Danhart, where do you live? A. 212½ Seventh Street, Jersey City.

Q. What is your business? A. Telegraph lineman. 20

Q. For whom? A. For the Jersey City Police Department at the present time.

Q. Now, were you on this car the day the accident happened? A. Yes, sir.

Q. Where were you on the car? A. On the front of the car, standing on the end of the running-board.

Q. At the front of the car? A. Yes, sir.

Q. Do you recollect the car stopping at Virginia Avenue? A. Yes, sir. 30

Q. And did you see a lady there to get on the car—did you see a lady standing there? A. Well, I noticed somebody, but I don't know whether they were getting on, or anybody getting off; I was standing on the end of the running-board.

Q. Now, what did you hear as you stood there? A. I heard a scream.

Q. Yes. A. I turned around; I saw a lady down in the pit. 40

Q. Down in the pit? A. I got off and helped to take her up out of it.

Q. Did you hear any cry there, or any shouts? A. Only once.

Q. Just one scream? A. That is all.

Q. Now, from the time your car came up there and stopped had it moved until you heard the lady scream? A. No, sir.

Q. Standing still? A. When it came to a stop she was standing perfectly still.

Q. What part of the ditch was the lady in when you turned around? A. Where?

Q. What part of the ditch was the lady in when you turned around? A. Well, she was down in the middle of it; I could not tell just how far either way.

Q. I see; all right, sir.

Cross-Examination by Mr. Simpson:

Q. You are slightly deaf, aren't you, Mr. Danhart; slightly deaf? A. A little hard of hearing.

Q. You were standing on the running-board, weren't you? A. Yes, sir.

Q. And up towards the front? A. I was standing right at the end of the—

Q. Well, up towards the end, of the front? A. Towards the front of the door.

Q. Well, was this, as you say, opposite the—whereabouts, as you say, opposite the front seat, second or third, about where? A. Where the lady was—

Q. No; where were you standing? A. I was at the end of the running-board.

Q. At the extreme end? A. At the extreme end.

Q. That is the front end? A. That is the front end.

Q. Where was the front end of the car stopped

with reference to the crosswalk at Virginia Avenue? Had it reached the downtown crosswalk? A. No; it was about half ways over what they call the crosswalk or driveway.

Q. Yes. Well, where was the front of the car? You were standing on the front. Now, this is Virginia Avenue; where was the front of the car; was it here or was it in the center; where was it? A. About the center of Virginia Avenue.

Q. Center of Virginia Avenue? A. Yes; I didn't pay much attention to it.

Q. And with reference to where you stood where was the lady lying; was she lying; was she lying directly opposite you or behind you? A. Behind me.

Q. How far behind you? A. Probably three or four paces.

Q. What do you mean by three or four paces? A. Or steps.

Q. Three or four steps? A. Yes, sir.

Q. Well, will you say she was opposite the third seat from the front, or second seat from the front, or fourth seat from the front? A. Probably between the third and fourth.

Q. Between the third and fourth seat from the front, and you didn't see her before you saw her in the ditch, did you? A. I don't know as I did.

Q. Had you been riding on the running-board all the way? A. Yes, sir.

Q. Well, you had not been paying strict attention to how your car came to a stop, were you; were you paying particular attention to it? A. I was paying particular attention to it so I would not get chucked off.

Q. So you would not get chucked off yourself? Well, now, as it came to a stop there, what was there about it that made you think you might be

chucked off; what was there about the running of the car? A. As it came to a stop she stopped still, and I stood there, for a minute or half a minute. I heard a scream; I turned around, and I seen the lady down in the ditch.

Q. Well, how did it come to a stop; did it come to a stop slowly or did it come suddenly, or how did it come? A. Well, it came not quick, not fast.

Q. Not quick nor fast. And did he put his brake on gradually or did he put it on in a hurry?

MR. BLAKE: Well, that is objected to because you do not know what the motorman did. You can tell how the car stopped.

THE WITNESS: I don't know that.

Q. You don't know that? A. No.

Q. But you know after it stopped it stopped; you know that? A. Yes, sir.

Q. And it didn't go on again after it stopped? A. No.

Q. But you were not paying any particular attention to the method by which it came to a stop, were you? A. No.

Q. Now, do you know where the motion of the car began to get slower? How near were you to Virginia Avenue when it began to slow down? A. I didn't pay much attention.

Q. Didn't pay much attention? A. No.

Q. You don't know where it began to stop? A. No.

Q. And you don't know how long it took him to stop? A. No, sir.

Q. And the only thing you heard was this scream? A. Yes, sir.

Q. You didn't hear anybody say, "Look out, lady," or anything of that kind? A. No.

Re-Direct Examination by Mr. Blake:

Q. You said you were hard of hearing, didn't you? A. Sir?

Q. You said you were hard of hearing, didn't you? A. Yes, sir.

10

JOSEPH L. SPINNING, sworn.

Direct Examination by Mr. Blake:

Q. Mr. Spinning, where do you live? A. 105 Arlington Avenue, Jersey City.

Q. What is your business? A. Machinist.

Q. Were you a passenger on the car on the afternoon this accident occurred? A. Yes, sir.

Q. Where were you on the car? A. Standing on the runboard about the second seat from the rear. 20

Q. From the rear? A. Yes, sir.

Q. What did the car do after it got up to Virginia Avenue? A. It stopped.

Q. And did you see any lady there? A. Yes, sir.

Q. Where was the lady? A. On the curbstone.

Q. What did she do when the car stopped? A. She started to walk towards the car, and she went a little northeast and walked into an excavation. 30

Q. Did you hear anybody call to her? A. Yes, sir; I called out as she stepped off the curbstone, "Watch the hole, madam."

Q. And she kept on going? A. Yes, sir.

Q. And fell into the hole? A. Walked right into the hole.

Q. Now, at any time did she get out alongside of the car and walk up to the third seat from the front and put her foot on the runboard, and the car start and throw her? A. No, sir. 40

Cross-Examination by Mr. Simpson:

Q. Whom do you work for? A. Docks Contracting Company, Fourteenth Street and Broadway.

Q. How long have you been working for them? A. A year, this month.

10 Q. Where were you working at the time of this accident? A. Public Service.

Q. Public Service? A. Yes, sir.

Q. What were you doing for the Public Service? A. Machinist.

Q. How long had you been working for the Public Service? A. About nine months.

Q. Nine months? A. Yes, sir.

Q. And you were working for them at the time you made the statement to them about this acci-
20 dent, weren't you? A. Yes, sir.

Q. And you signed the statement? A. I did.

Q. Well, what seat were you in? A. I was not in a seat; I was standing on the runboard.

Q. Was it a crowded car? A. Well, not necessarily; no, sir.

Q. Then, why were you standing on the runboard? A. Because an employee riding with a bag is not allowed to sit down.

Q. Not if there are any vacant seats? A. No,
30 sir.

Q. Can't sit down if you work for the company if the whole car is empty? A. Well, you might be able to sit down then.

Q. Well, there were vacant seats in this car, weren't there? A. Yes, sir.

Q. And you were standing up? A. Yes, sir.

Q. Where had you come from? A. Home.

Q. Where is your home? A. At that time it was on Bostwick Avenue.

40

Q. What time had you left home? A. I guess a quarter after two.

Q. And what time was this accident? A. Around half-past two.

Q. And where were you going? A. Lower Jersey City.

Q. Where in lower Jersey City? A. No place in particular. 10

Q. No place; had no destination at all? A. No place.

Q. Anywhere you went to would be all right? A. Yes, sir.

Q. Was there anybody with you? A. No, sir.

Q. You are quite sure you saw this accident? A. Yes, sir.

Q. Are you a married man? A. Yes, sir.

Q. You were married then? A. Yes, sir.

Q. And you were off on a little trip not knowing 20 where you were going? A. Yes.

Q. Now, what day of the week was it this accident happened? A. Saturday afternoon.

Q. You are sure of that? A. Yes, sir.

Q. Do you remember that or did you look that up before you came here? A. No, sir; I remembered it.

Q. What seat were you standing opposite? A. About the second seat from the rear.

Q. Was any one else on the runboard? A. 30 There was probably one or two near the front; I don't know whether there was anybody behind me or not; I don't remember that.

Q. Where were you standing with reference to the Bayonne crosswalk of Virginia Avenue when the car came to a stop? A. About four seats south.

Q. That is four feet towards Bayonne? A. Towards Bayonne. 40

Q. Or four feet towards— A. Towards Bayonne?

Q. Towards Bayonne? A. Yes, sir.

Q. So you were standing opposite one seat; you say the second from the rear? A. About the second from the rear.

Q. And that would bring the second from the rear about four feet south of that crosswalk? A. Yes, sir.

Q. And where was this lady when you saw her first? A. On the curbstone.

Q. Was she in the street or up on the sidewalk? A. On the sidewalk.

Q. Anybody with her? A. No, sir.

Q. Any one else around there? A. I didn't notice.

Q. And when she got down off the sidewalk what part of the street did she go into with reference to the crosswalk, I mean; did she cross on the crosswalk? A. Well, when she stepped off the curbstone she went on the crosswalk and then walked a little north, right into the excavation.

Q. Did she walk on the driveway of this doctor, that has been testified as south of this crosswalk? A. No, sir.

Q. And she walked in a diagonal way off the south crosswalk right into this hole? A. Yes, sir.

Q. And how near was the hole to the sidewalk? A. I think it ran right to the sidewalk.

Q. Now, when did you shout out to her, "Lady, look out for the hole"? A. As she stepped off the curbstone.

Q. How far away was she from the curbstone then? A. About two feet.

Q. About two feet? A. About that, yes, sir.

Q. Did she give any sign that she heard you? A. I don't think so.

Q. How was she dressed on the day of the accident? A. I don't remember.

Q. You don't remember; don't remember whether she had any light coat on or not, do you? A. No, sir.

Q. What part of the hole did she go into? A. At the south end.

Q. On what? A. On the south end. 10

Q. South end? A. Right near the crosswalk.

Q. Did you see where the front end of the car was when it stopped? A. No, sir; I didn't notice.

Q. Did you see whether this hole went under the crosswalk, this south crosswalk, or whether there was a hole in the south crosswalk? A. I don't think there was.

Q. Now, although she had two feet to walk after you hollered to her, yet she still walked those two feet right into the hole? A. Yes, sir. 20

Q. Now, did you see where she was lying when they took her out of the hole? A. She was not lying; she was standing.

Q. Where was she standing, in the hole? A. Yes; I helped take her out.

Q. Where was she standing; what portion of the hole? A. Right near the south crosswalk.

Q. How near the south crosswalk? A. I watched her—pretty close, because all I had to do was to put my hand up under her arm. 30

Q. Now, you are reasoning about it, what do you say here that was; how close it was? A. About six inches.

Q. Six inches? A. Yes, sir.

Q. Now, the front of your car was half way over Virginia Avenue? A. I don't remember.

Q. She was not lying opposite the fourth seat of your car? A. No, sir.

40

Q. Because you only had to reach out and get her where she stood? A. No, sir; I had four feet to walk.

Q. She was not lying opposite the fourth seat from the front, was she? A. No, sir.

Q. She was lying towards the rear of the car? A. Yes, sir.

Re-direct Examination by Mr. Blake:

Q. You sitting in the rear, two seats from the rear, and where you were sitting was not right up to the driveway, where you were sitting? A. I was not sitting; I was standing.

Q. Standing? A. Yes.

Q. How long have you been working for this machine company? A. Where I am now?

Q. Yes? A. One year.

MARY ROSE, sworn.

Direct Examination by Mr. Blake:

Q. Mrs. Rose, where do you live? A. Speak a little loud, so mother can hear you.

Q. Where do you live, Mrs. Rose? A. 49 Armstrong Avenue.

Q. How long have you lived there? A. I am going on seven years in that house.

Q. How many years have you lived in Jersey City? A. Thirty-five years in Jersey City.

Q. Now, were you on the car the day this accident occurred; were you on the car the day this accident occurred? A. No; I was not—gentleman, I don't hear you; you must not speak so far away from me.

Q. Were you on the car the day the accident happened, and the lady fell in the hole? A. Yes, sir.

Q. What part of the car were you on? A. The fender part of the car.

Q. Were you seated? A. Yes, sir.

Q. Now, when your car stopped did you see the lady? A. Yes, sir. 10

Q. Where was the lady? A. On the sidewalk coming along.

Q. Coming along towards what? A. The car.

Q. Now, when the car stopped what did the lady do? A. She was looking up; she stepped down the elevation.

Q. She stepped down into what? A. The elevation, in the hole.

Q. The excavation. Did you see people go to take her out? A. Yes, sir. 20

Cross-Examination by Mr. Simpson:

Q. You were sworn as a witness in the last trial, weren't you? You were sworn as a witness in the last trial, Mrs. Rose, weren't you? A. What is that?

Q. You were a witness in the last trial, weren't you? A. Yes, sir.

Q. Now, what seat did you sit in in this car? A. The center of the car. 30

Q. And you testified at the last trial that this lady came walking along between the car and the ditch and that she passed in front of you and then went into the hole; you testified that, didn't you? A. I made a mistake because I didn't hear what you said.

Q. Who told you that you made a mistake? A. Nobody told me; I studied it up afterwards myself. 40

Q. Who studied it up with you, the claim agent of the Public Service? A. No, the claim agent did not.

Q. But you did say at the last trial that this lady walked along the path between the ditch and the car and passed in front of you, and then fell in the hole? A. Fell in the hole.

10

Q. Didn't you testify that at the last trial? A. Yes, sir.

Q. Then you did testify? A. Yes, sir.

Re-direct Examination by Mr. Blake:

Q. Now, is that the fact, Mrs. Rose, or is it not the fact? A. Give me to understand that again.

Q. Isn't it a fact that the lady walked in between you and the ditch and alongside of the car and fell in the ditch? A. No, sir.

20

Q. It is not the fact? A. 'Taint the fact. She came along the sidewalk and stepped right deliberately down. I was right by the center of the car, by this hole, and she came right along and she stepped deliberately down into the hole.

Q. Well, why did you say at the last trial, Mrs. Rose, that the lady walked out between you and the— A. Well, they asked me questions, and I couldn't just understand what they were asking me.

30

Q. Why didn't you understand, Mrs. Rose? A. Well, I suppose because with me being a little hard of hearing in my right ear, I didn't always catch the sound of everything that is spoken.

Q. Well, is it the truth that she stepped out in the hole before she got to the car? A. Yes, sir.

Re-cross Examination by Mr. Simpson:

Q. You mean because you didn't hear well you testified to things that are not so? A. What is that?

40

Q. Because you don't hear well, Madam, you testified to things that are not true; is that what you mean? A. No; I didn't testify at all that way.

Q. You didn't testify at all now, you say, that way? A. Wait a minute, now.

Q. Now, you testified at the last trial that you were sitting about the center of the car, didn't you? A. Yes, sir. 10

Q. And you were asked, "Now, you say she was walking to get to the car. Do you mean she was walking along on a heap of dirt between the car and the hole, and she stepped from that into the hole?" And you answered, "Yes, sir." Did you answer yes, sir. A. Yes, sir, I answered yes, sir.

Q. Now, you were also asked: "And had she passed you when she stepped in the hole?" And you answered, "Yes, sir." Didn't you? A. Yes, sir; I did. 20

Q. And you were asked: "And you were in the center of the car? And you answered: "Yes, sir"; didn't you? A. Yes, sir.

Q. And then you were asked: "So you could see her plainly, of course?" And you answered: "Yes, sir." Is that right? A. Yes, sir.

Q. And you were asked: "How far beyond you did she go when she stepped in the hole; how far ahead of you was she? How many steps?" And you answered: "About that far," indicating some distance in the room. Didn't you? A. She passed right along, stepped right down the elevation. 30

Q. But you answered that way at the last trial, Mrs. Rose, being asked: "How far beyond you did she get when she stepped in the hole; how far ahead of you was she; how many steps?" You answered, "About that far," indicating; didn't you? A. I may have misunderstood. 40

Q. I know, but Mr. Blake will fix that all up for you. What we want to know is what you said at the last trial. A. Yes, sir.

Q. Then you were asked: "About one seat ahead of you?" and you answered: "About that far"; indicating something, didn't you? (No answer.)

10 Q. Then you were asked, "You didn't see her then until she passed you walking along?" and you answered, "She passed me and went right down, right in the excavation." Didn't you? A. Yes; right down in the excavation.

Q. Yes; that is what you said the last time. You were asked this question: "Looked this way, and the car was stopped, and alongside of the car was some dirt about two and a half feet wide, and

20 on the other side was the hole, was it?" And you answered: "Yes, sir." Did you answer yes the last time? A. Yes, sir.

Q. Then you were asked this question: "She came walking along between the hole and the car and passed you and then deliberately stepped into the hole?" And you answered: "Yes, sir." Didn't you? A. Yes; she stepped in.

Q. I know she stepped in, according to you; but did you testify that way at the last trial? A. Yes,

30 sir.

Q. Now, since the last trial some one has been talking to you about the testimony, haven't they? A. I just looked at the claimer this morning; read over that; that does not make nothing in me.

Q. But the claimer read it over to you? A. Yes, sir.

Q. Now, when the claimer read it over to you he told you that was all wrong, didn't he? A. No, sir; he did not.

40 Q. You told him it was all wrong? A. I told

him there was some of that statement I was not exactly right.

Q. But it was your statement the last time, and it was your statement before you talked to the claimer? A. It was my statement.

Q. And you didn't change your statement until you talked to the claimer? A. I didn't change my statement; I didn't change my statement. 10

Re-Direct Examination by Mr. Blake:

Q. Now, Mrs. Rose, at the last trial even before you left the room you said that was wrong, didn't you? A. Yes, sir.

Q. But the lawyer didn't say anything about it, did he? A. That is right.

Q. Now, you testified this at the last trial, too, on your direct examination, didn't you? "Where was she when you first saw her?" And you answered: "Coming right along to go on the car." Isn't that right? A. Yes, sir. 20

Q. And you said: "Q. When she came along, as you say, what was the car doing; going or standing?" A. Standing still." And you said it was standing still waiting for her; is that correct? A. Yes, sir.

Q. Then you were asked: "What did you see her do?" You said, "She was looking up and she just deliberately stepped into the excavation." Isn't that what you said at the last trial? A. Yes, sir. 30

Q. And then you were asked: "Had she reached the car at any time?" And the answer was "No." Is that right? A. Yes, sir.

Q. Then you were asked: "What happened when she got down in the excavation; did anybody go to her"; and you answered: "Some of the gentlemen on the car went off and went to help 40

her;'' and that is what you answered at the last trial, wasn't it? A. Yes, sir.

Q. How old are you, Mrs. Rose? A. I am fifty-eight years old the 25th of November.

Q. Married? A. Yes, sir.

Q. Husband living? A. Yes, sir.

10 Q. Any children? A. Yes, sir.

Q. How many?

MR. SIMPSON: I object to that.

THE WITNESS: Three.

MR. SIMPSON: Is that to exculpate the trolley company if this lady has been prolific in giving birth to children.

MR. BLAKE: No, but I don't think a mother, fifty-eight years old is coming in

20 and perjuring herself.

MR. SIMPSON: I don't say so. She has been talking to the claimant.

ALEXANDER WHITTON, sworn.

Direct Examination by Mr. Blake:

Q. Mr. Whitton, where do you live? A. Ba-

30 yonne.

Q. What is your business? A. Fuller Construction Company.

Q. Were you a passenger on the car when this accident happened on Virginia Avenue and Ocean? A. I was.

Q. Where were you on the car? A. About the fourth seat.

Q. From the rear? A. From the rear.

Q. Had your car stopped when it came to Vir-

40 ginia Avenue? A. Stood perfectly still.

Q. And from where you were sitting did you see the crosswalk there or the driveway that has been spoken of? A. I did.

Q. Was that dug up there; was the driveway dug up? A. You mean the old wheel driveway? No.

Q. Did you see a lady standing there? A. Yes.

Q. Did you see the lady move toward the car? 10
A. When the car stopped she walked out to get on the car.

Q. Did you hear anybody call to her as she started to walk out? A. I did, yes, sir.

Q. What did they say to her? A. "Look out for the hole."

Q. What did the lady do? A. Walked up to the car; started to walk along, looking for a seat, and walked directly in the hole.

Q. She walked up to the car, started to walk 20
along, and walked directly in the hole? A. Yes, sir.

Q. What part of the car did she reach as she stepped up to it? A. Well, I should say she walked about five or six seats ahead of me.

Q. Ahead of you? A. Yes.

Q. And do you say you heard people calling to her? A. Yes, sir, "Look out for the hole."

Q. And she stepped in the hole?

30

MR. SIMPSON: I object to leading the witness.

Q. Did she at any time put her right foot on the car and start to go up and the car start and throw her? A. She was not near the car.

Cross-Examination by Mr. Simpson:

Q. I understood you said to Mr. Blake she started walking along the car, looking for a seat? 40

A. Walked from the crossing to the car, turned facing Jersey City, started to walk along and walked in the hole.

Q. Now, you have said walked along the car looking for a seat. Now, that is your language. Was she doing that? A. Yes, sir; that is what I said.

10

Q. How far did she walk along the car before she went into the hole? A. Oh, about five or six feet in front of me.

Q. And you were sitting in what seat? A. About the fourth seat.

Q. From the back? A. From the end.

Q. Well, then, she would be about nine seats up from the rear; she would have passed nine seats before she went in the hole? A. No, not as far as that; the fourth seat I was in—about the seventh seat.

20

Q. Seventh seat? A. Yes.

Q. Well, if you were in the fourth then she only got three ahead of you? A. That is all.

Q. How did she walk that; you said she walked along the car and you say she was never near enough to the car to put her foot on the runboard. How do you reconcile that? A. Well, the ground between the running-board and the excavation, there was enough room for anybody to walk on without going near the car.

30

Q. Well, that is where she walked, on this path between the car and this excavation? A. Yes.

Q. How far did she walk along this excavation before she went in the hole? A. After she left the crossing.

Q. No, no; when she got in the hole; what distance had she passed alongside this hole before she finally went in? A. About two feet.

40

Q. Two feet alongside of the hole? A. Yes, sir.

Q. And she went in on the side—she was walking between the side of the car and the hole, and into the side of the hole nearest the car? A. Well, the hole would be on the right hand side.

Q. Yes, because the car was on her left, and the hole was on her right, and she walked in it and went in the right hand side of the hole? A. Yes.

Q. That is, she went in the side of the hole nearest the car, whatever it is; the side nearest the car? A. (No answer.)

Q. Now, what crossing was she on, the downtown crossing or the uptown crossing? A. The downtown crossing.

Q. That is the side towards Jersey City, the crossing towards Jersey City. You testified as a witness at the last trial, didn't you? A. Yes, sir.

Q. And you testified as follows, being asked then: "The car was at a standstill when you saw her walk off the sidewalk into the street; that is a fact?" And you answered: "Yes, sir." Didn't you? A. Yes.

Q. And you were asked: "Where did she walk from; where did she step from the sidewalk into the street?" And you answered: "On the crossing." You were asked: "Which crossing?" and you answered: "The downtown crossing." A. I did.

Q. And the question was: "Downtown? All right. She did not come from the downtown crossing in the middle of the street and walk in the middle of the street; is that right?" And you answered: "No." A. Yes.

Q. "She stepped from the downtown crossing and walked into the hole?" And you answered: "Yes, sir." Now, it is not true that she was at the uptown crossing and stepped into the hole here, because according to your testimony she was always at the downtown crossing, wasn't she?

A. Well, the two crossings are downtown on Virginia Avenue.

Q. No, no; they are not; there cannot be two downtown crossings, unless you will explain it to us. A. Well, there is one crossing covered up entirely.

10 Q. Where is the one? A. The proper downtown crossing was covered up entirely.

Q. Well, is that the one she got off? A. No; she got off the one next to the automobile driveway.

Q. Now, where is the uptown crossing? A. Way up further.

Q. Is this it here, C? A. No.

Q. That is up towards Bayonne, the one you mean by the uptown crossing? A. Show me where
20 the uptown crossing is.

Q. What you call the uptown crossing? A. You mean the Bayonne crossing?

Q. No; you know what I mean, the uptown crossing. Here is the driveway here. A. Here is the driveway here. The uptown crossing is on this side of it; the other crossing is covered up entirely.

Q. On which side is the uptown crossing? On which side of the driveway, the Jersey City side?
30 A. Yes.

Q. Mark it. That is what you call the uptown crossing. Now, what do you call the downtown crossing? The one that was covered up? Mark it. A. In the middle of the street was the downtown crossing. Here is Virginia Avenue coming up here.

Q. Tell us what you mean by the downtown crossing, then. A. There was only one crossing there, and that was on the downtown side of the
40 driveway, automobile driveway.

Q. There is only what? A. There is only one crossing there.

Q. There was no downtown crossing at all, was there? A. That was covered.

Q. There was no downtown crossing at all? A. No.

Q. Then, why do you use the term downtown crossing, if there was no downtown crossing? Why did you use that term at the last trial if there is not any such thing? A. Well, it was on the south side of the driveway. 10

Q. That is the reason you used downtown crossing, eh? Have you gone over your testimony, too, since the last trial? A. I have not.

Q. You were asked this question: "But she stepped from the downtown sidewalk to the downtown crossing, and she walked into the hole?" and you answered: "Yes, sir." Didn't you? A. Yes. 20

Q. And you were asked: "That is a fact—she did not do that until the car came to a stop, did she?" And you answered: "So far as I seen it." Didn't you? Didn't you so answer it at the last trial? A. Yes; yes, sir.

Q. And you answered the question: "How far did you say?" You kept saying "As far as I did." And you answered: "Yes; that is all I seen; all I am telling you what I seen." Is that right? A. That is right. 30

Q. Now, had this woman passed you at any time and walked long the car looking for a seat. Did she pass you? A. Did she pass me looking for a seat?

Q. Yes; when she walked along, as you described, looking for a seat, did she pass you? A. She passed me.

Q. How near was she to you when she passed you? A. Oh, I should judge two feet. 40

Q. Were there any men on the running-board? A. There were.

Q. In front of you? A. Well, not directly in front; but further up in the front.

Q. There were men on the runboard up front from your seat? A. Not directly in front of me; in front of the car.

10

Q. Not directly in front of you, but in it, in front of you, there were men on the running-board, weren't there? A. Yes, sir.

Q. How many? A. Four or five.

Q. And you had no trouble in seeing what this woman did as she walked along in front towards the front of the car? A. There was nothing to obstruct my view out of the ordinary.

Q. You had no trouble in seeing? A. Not in any way.

20

Q. Although there were men on the running-board? A. (No answer.)

Q. Now, how did she walk into this hole? Did she sidestep into it with her face kept up, or did she go into it diagonally? A. Her right foot went over the embankment.

Q. Well, was she walking straight when her right foot went over the embankment, looking toward the front of the car? A. Looking up in the car.

30

Q. Was she walking straight then—she was walking straight then, wasn't she? You were asked on the last trial: "Q. How did she get from the downtown crossing into the hole? Did she walk straight into the hole or diagonally into the hole?" And you answered: "Diagonally, on an angle." Didn't you? A. Yes.

Q. When she went into the hole was she in front of where you stood or behind where you stood? A. In front of where I stood.

40

Q. How many feet? A. I didn't measure; about five or six feet.

Q. You were asked this question at the last trial: "She had passed you? Did she pass that space two feet and a half that was between you and the hole?" And you answered: "She had to pass me to strike that hole." Didn't you? A. Yes, sir. 10

Q. And that is the fact, isn't it? So that, as I understand you, she walked up to the car, and then faced to the front of the car and walked along the car and went into the hole. Is that what you say? A. Yes, sir.

Re-Direct Examination by Mr. Blake:

Q. During all that time what was the car doing? A. Standing still. 20

MR. BLAKE: Your Honor, this is the testimony Mr. Simpson has agreed I should read into the record:

WALTER COULTON, sworn.

Direct Examination Read by Mr. Blake: 30

Q. Mr. Coulton, what is your business? A. I am credit man for Kramer & Company.

Q. How long have you been with them? A. About three years.

Q. Were you with them in October, 1913? A. I was.

Q. Do you know Mrs. Schreiber, the plaintiff in this case? A. I do.

Q. How long have you known her? A. I have known her three years. 40

Q. Was she at times employed by Kramer & Company? A. At different times, yes.

Q. What position was it she had? A. Well, she was employed as canvasser and solicitor.

Q. Was it a steady position or intermittent? A. No, I would not call it a steady position—temporarily employed.

10 Q. What were the usual times that she was employed? A. During our Christmas season and Easter.

Q. What was your Christmas season? A. Well, our Christmas season would start about October 1st, and would terminate about December 23rd.

Q. And your Easter season? A. Easter season would start about March and terminate a few days before Easter.

20 Q. And you say she was employed in those seasons as canvasser? A. Yes; she was employed to this extent, that whenever we felt that the trade needed a little stimulation Mrs. Schreiber was sent out to see if she could not invite a few of the accounts to be reopened.

Q. Do you remember October, 1913—was she employed by you then? A. Yes, sir.

Q. This accident happened October 4, do you know how soon after the accident she came to 30 your store? A. Well, to the best of my knowledge it was about possibly six or seven weeks she came into the store and told me she was hurt. I have a very vague idea of what transpired.

Q. After that time do you know whether she went to work for you again? A. I believe she went to work during the holidays.

Q. During what? A. Christmas holidays.

Q. Doing what? A. The same.

Q. Canvassing? A. Canvassing.

40 Q. The same as she had before? A. Yes, sir.

Q. Well now after the holidays do you know whether if in March she came back to work for you again? A. Yes, sir; she came back again.

Q. What was she doing? A. Canvassing.

Q. As she had before? A. As she had before.

Q. I suppose after the Easter time, as you say, in April, she stopped work again? A. Yes, sir; she stopped. 10

Q. Was it exactly as she had been doing before the accident? A. Yes, sir; practically.

Cross-Examination Read by Mr. Simpson:

Q. The books of this company show the money that was paid to her subsequent to the accident? A. No; Mrs. Schreiber was classified as contingent help and we made no record of her name on any payroll, simply she was paid two dollars a day and it was charged to expense. 20

Q. You have nothing on your books that will show what was paid her after the accident? A. No.

Q. Whether you paid her as much as you did before, or whether you paid her less than you did before? A. No, we have no record.

Q. Do you know what day of the week the 4th of October, 1913, was? A. No; I cannot recall that. 30

Q. Do you know what day of the week she came in to see you? Was it a snowy day or a blowy day or a rainy day when she came in? A. It was a fair day, I believe.

Q. Was it after Thanksgiving or before Thanksgiving? A. I think it was before Thanksgiving.

Q. What day of the month did Thanksgiving fall on in 1913? A. I am sure I could not tell you that.

Q. How do you know if you do not know what day Thanksgiving was, whether this woman came 40

in before or after Thanksgiving? A. I am simply giving you—

Q. You are simply opinionating— A. I am.

Q. You are a pretty busy man? A. Yes, sir.

Q. You do not have a mental picture of this woman in the back of your brain all the time, did you? A. No, sir.

10

Re-Direct Examination Read by Mr. Blake:

Q. You can tell approximately the fact that she didcome back to work for the company? A. Yes, as a matter of fact Mrs. Schreiber used to stop in the store very often when she was not employed there. I made no note of her visits.

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

Q. At Christmas was the first she went to work —at the Christmas Holidays—after the 4th of October? A. Yes.

NICHOLAS N. FUREY, sworn.

Direct Examination by Mr. Blake:

Q. Dr. Furey, you are a practising physician in this county? A. I am.

30

Q. Have been for how many years? A. About eighteen years.

Q. You have made examinations for this defendant company, haven't you? A. I do.

Q. And have? A. I have.

Q. And you examined the plaintiff in this case, Mrs. Schreiber, did you? A. I did.

Q. When and where did you examine her? A. I examined her at her home; it was in October, in company with Dr. Everitt, October, 1913.

40

Q. What did you find from your examination of her? A. She complained of injuries on the left side of her chest, between the nipple and axillary lines, that is the nipple line in here, right over the nipple, by a line drawn through; axillary line here. This injury was midway about the fifth rib. 10

Q. Can you tell whether or not the rib was broken? A. I could not.

Cross-Examination by Mr. Simpson:

Q. When was the last time you saw the lady, Doctor? A. At the last trial here.

Q. At that time did you examine her; did you examine her then? A. No; I didn't examine her then; I only examined her once. 20

Q. You only examined her once? Now, what is this periostitis; is there such a thing? A. There is. Periostitis is an inflammation of the periosteum. The periosteum is the covering of the bone. It does not cover cartilage.

Q. Well, can this condition be produced, periostitis—by an accident? A. Yes, sir.

WILLIAM J. ARLITZ, sworn. 30

Direct Examination by Mr. Blake:

Q. Doctor, you are a practising physician in Hudson County? A. I am, sir.

Q. How many years have you been engaged in practice? A. Twenty-five years next month.

Q. Are you connected with any institutions? A. I am visiting surgeon and neurologist of St. Mary's Hospital, and the consulting neurologist of the North Hudson Hospital. 40

Q. Did you have occasion to examine Mrs. Schreiber on behalf of the company? A. I did, sir.

Q. When and where did you examine her? A. On the 16th day of September, 1914—

Q. Any others present? A. —at the residence of Dr. Everitt.

10 Q. Dr. Everitt. A. No one was present at the time of my examination; the Doctor was in the adjoining room.

Q. And did you examine the region of the fifth rib where the sternum crosses the nipple line? A. I did, sir.

Q. And did you discover any sign of injury there? A. I did not.

Q. Is there any cartilage at that point, Doctor, at the point midway between the nipple and outer
20 side? A. There is not.

Q. Is there any periosteum covering the cartilage? A. Periosteum covering cartilage?

Q. Yes. A. No; periosteum is the covering of bone.

Q. What is the word itself; how is it translated? What are the component parts of it—periostitis? A. Well, peri means above, and osteum means bone.

30 Q. Iostitis, what is that? A. Inflammation. It is the Greek for inflammation.

Q. So it is inflammation of the covering of the bone itself, is it? A. It is, sir.

Q. And that comes from an injury to the bone itself? A. No; periostitis is not in all cases due to injury of the bone. The injury may be confined to the periosteum itself, to the covering of the bone. A person sometimes might have had an injury to the bone, and periostitis might be
40 secondary to the bone injury.

Cross-Examination by Mr. Simpson:

Q. What is periostitis? A. Inflammation of the covering of the bone.

Q. Well, is it ever produced by trauma, by force? A. It is.

Q. Well, suppose this lady was thrown or fell into a hole and struck her breast by a piece of iron, and afterwards— 10

MR. BLAKE: I object to that. There is no proof.

Q. Well, struck her breast on a hard substance, if you like. So that it was discolored after the accident, and she had pains there, and has them still; would that be any indication of periostitis? A. It would not.

Q. Why? A. Periostitis is an inflammation of the bone covering, characterized by swelling and intense pain. In case of periostitis the pain is so intense that it is necessary to cut down and open it up to relieve the pressure symptom. 20

Q. That is, cutting will do it good, if you cut into a person? A. Yes, periostitis of any degree is always treated in that way.

Q. Now, at the time you examined this lady did you take the bandage off that she had on? A. She had an adhesive bandage on. 30

Q. She did not ask you to pull it off, did she? A. She did not.

Q. And you were not her attending physician at all, were you? A. I was not.

Q. But you pulled that bandage off and she hollered that you gave her pain by doing it, didn't she? A. She did not; she objected—

Q. Didn't manifest any pain at all when you pulled the bandage off? A. Why, just the same kind of discomfort that anyone would experience 40

from having an adhesive bandage removed from their body.

Q. What is the distinction between the amount of discomfort by the pulling off of an adhesive bandage and the amount of discomfort attending pains that accompany periostitis? A. There is a very decided difference.

10 Q. What is the difference? A. It is one of degree. The pulling off—

Q. What is the degree? A. I could not measure it in a mathematical way, but periostitis is a very painful condition, whereas the removal of a plaster bandage is not a very painful thing unless the person—

Q. Was this a plaster bandage? A. Adhesive plaster.

20 Q. How did you get it off? A. I just took hold of the edges, pulled it off quickly, as it should be pulled off.

Q. She hollered when you did? A. I do not recall that; she may have, but I do not recall it.

Re-Direct Examination by Mr. Blake:

Q. You were allowed to make the examination by both the plaintiff and plaintiff's physician, weren't you, Doctor? A. That was my under-

30 standing when I went there.

Q. And you could not examine it without taking off the bandage and looking at it? A. I could not examine her ribs, neither could I examine the tissues over the ribs unless I did remove that adhesive plaster.

Re-Cross-Examination by Mr. Simpson:

Q. But you didn't ask if it was necessary to take the bandage off; wouldn't it be the proper

40 thing to ask the attending physician if you ought

to take it off and not grab and yank it off? A. No; it would not be. The attending physician didn't put it there. It was put on by her daughter.

Q. He was the attending physician? A. No, sir; he was not; he had not seen her in a long time, and she told me these adhesive plasters were put on by her daughter. She said that they gave her comfort.

Q. And when you removed them you say she had some discomfort? A. Surely.

MRS. MARGARET SCHREIBER, the plaintiff, recalled.

Direct Examination by Mr. Blake:

Q. Did Dr. Rector make an examination of you? A. No, sir.

Q. Did he ever examine you? A. No, sir.

Q. Dr. Rector? A. No, sir—Dr. Rector—oh, yes; Dr. Rector; I thought it was Dr. Furey. Yes, Dr. Rector did. I understood—

Q. That is all. He made it before the last trial, didn't he? A. Yes, sir.

Cross-Examination by Mr. Simpson:

Q. When did you know who Dr. Rector was? A. You mean—this gentleman here? Yes.

Q. Dr. Arlitz examined you, didn't he? A. Yes, sir.

Q. This other gentleman? A. Yes, sir.

Q. What examination did he make? What did he do when he examined you?

MR. BLAKE: It is not cross-examination.

THE COURT: Have you finished?

MR. BLAKE: I rest my case.

THE COURT: Very well, then, you are recalling her in rebuttal.

MR. SIMPSON: Yes.

Q. Now, just state how this gentleman examined you; what he did to you? A. Why, I met the doctor at Dr. Furey's office, and he said he wanted to examine me; he was from the company. So he told me to undress and I took my things off; and I had a plaster on which Dr. Forbes had put on once before, and told me to keep on; and after that my daughter put one on, because I felt much better. It would hold up the pain; and this doctor said to me—

MR. BLAKE: Not what he said. I object to that.

MR. SIMPSON: I want everything that occurred at this examination. Dr. Arlitz has described his examination as being for the defendant, to show there is nothing the matter with this lady. Now, then, I want this testimony to show what was said and done by the parties at the examination; to show what the examination consisted of. Suppose he said, "You have periostitis," and now he says she has not got it?

MR. BLAKE: You can direct her attention to that. You cannot ask for general conversations.

Q. What did he do about the plaster? A. He says, "What are you doing with that on?"

MR. BLAKE: I object to whatever he said to her.

Q. Well, if they don't want to hear what Dr. Arlitz said to you, go on and tell us what he did? A. He pulled the plaster off me and I screamed. I said, "You hurt me; I have awful pains."

Q. Did you tell him where the pains were? A. Why, sure; right in here and under here. I have no power in that left side, either. 10

Q. Did you tell Dr. Arlitz that? A. Why, yes, I told him.

Q. How long had you been wearing that plaster that he pulled off you? A. Why, I had one on here only about—not quite a month.

Q. I mean before this time when he pulled it off; how long had you been wearing it? A. Why, I had had three or four on before that.

Q. Well, had you had them on before the time you got out of bed? A. Yes. 20

Q. What had they done for you; how did they make you feel? A. Why, they held me up.

Q. Held you up? A. Yes, sir.

Q. And after he pulled this one off you, did you put another one on? A. I had to, yes.

Re-Cross-Examination by Mr. Blake:

Q. Now, what was this plaster bandage, Mrs. Schreiber? A. Dr. Everitt prescribed it. 30

THE COURT: This particular one you are asked about; what was it?

Q. Was it a strip of adhesive plaster? A. It was about two inches long.

Q. Wide, and how long? A. Well, I had it over part of my back, all the way to here; all the way, and the whole side down.

Q. Did he take it all off? A. This doctor—yes. 40

Q. And then you did not put another one back? A. I had to.

Q. And how many had you had on and off before that? A. Before that, I guess about four.

Q. You had four different ones on and off, hadn't you? A. The same thing, you know.

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Q. Yes, but you had four different ones just like it taken off and put on; is that correct? A. Dr. Blanck put them on, too, for me, himself.

Q. How long would you keep each one on? A. Until it commenced to turn up.

Q. Until it commenced to turn up? A. Yes.

Q. And how long would that be? A. I couldn't really tell you.

Q. Would it last for three weeks? A. About that.

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Q. How long had this one been on that the doctor took off? A. How long?

Q. Yes. A. Well, I had that ready to take off.

Q. It was ready to take off, wasn't it? A. It was just beginning.

Q. It was just ready to take off, you said? A. It was not fit to leave on.

Q. So that when he took that off your daughter had to put another one on? A. I had to take hold, and her.

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Q. Your daughter? A. (No answer.)

Re-Re-Direct Examination by Mr. Simpson:

Q. Your daughter didn't make you yell with pain? A. She wet them to take them off.

Q. She didn't yank it off? A. No.

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DR. ARLITZ, recalled.

Direct Examination by Mr. Blake:

Q. What is the proper way, Doctor, to take off an adhesive plaster? A. Take hold of the margin of the plaster, and pull it off as rapidly as you can.

Q. Get it off as quickly as possible? A. Yes, sir. 10

Cross-Examination by Mr. Simpson:

Q. Would this plaster hold a woman up, if she says she has no power in her left side, and she needs that plaster?

MR. BLAKE: I object.

MR. SIMPSON: Just a moment.

Q. (Continuing)—and she needs the plaster to hold her up, would that plaster hold her up? A. No. 20

MR. BLAKE: I object to that.

THE COURT: The Doctor says no; it will not.

MR. BLAKE: All right; it is answered.

MR. BLAKE: If the Court please, I respectfully move for a direction of verdict for the defendant, on the ground that the overwhelming weight of the evidence is that the accident occurred by this lady falling into the ditch, and not by the sudden start of the car, as alleged. The testimony I do not see differs any in this trial from the last trial, and I therefore ask the Court to direct a verdict for the defendant. 30

THE COURT: I will leave this to the jury.

Counsel for the defendant and counsel for the plaintiff summed up to the jury. 40

Court's Charge to the Jury.

Gentlemen of the Jury:

This is an action brought by the plaintiff against the defendant company for the purpose of recovering damages which she alleges she has received growing out of some negligent act of the defendant company. Now, at the outset let me say to you what in part I said to you a few mo-
10 ments ago. The duty is yours to determine what the testimony is. You are to determine that from your recollection of what the several witnesses said when upon the witness stand. You are not to take the statements of counsel nor are you to take the statements of the court as to what the testimony is. You are not to be led astray even by the court. If I make a mistake, at any time during my charge, of the testimony, which does not match up with your recollection of what it was
20 as given, you are to totally disregard what I may say about it. and go back to your recollection of what was said. Having determined what the testimony was in that manner, you are then to determine from your recollection of it what is the truth. That truth is the evidence in the case. You are then to weigh the evidence. You are to determine its weight by the exercise of your good, sound judgment and discretion. You may take into consideration, amongst other things, the interest that
30 any witness may be shown to have had in the controversy; you may take into consideration their demeanor upon the stand, the manner in which they gave the testimony, and all such things as that.

Now, of course, it does not follow as a matter of course, that the number of witnesses upon one side or the other will control, but, if you find that the number of witnesses to whom you give equal credence, whom you find had an equal chance of
40 observation, and are, in your judgment, in that

position where they have equal or better chances than other witnesses to observe and know whereof they speak, and then you find that there are of that class of witnesses a greater number testifying to one fact or state of facts than another, it is a matter which you may consider in determining the weight to be given to the evidence upon any particular point. 10

Now, as I said, gentlemen, she is seeking to recover for damages which she alleges she received growing out of some negligent act of the defendant company. The burden is upon the plaintiff to satisfy you of the negligent act which she alleges, and the burden is also upon her to satisfy you that the damages she has received are the proximate result of that negligence.

Now, then, what does she allege as to the negliegnce of the defendant company? First, she says that when the car stopped she proceeded to board it; that she had gotten at some point at the car and was in the physical act of boarding it; that one foot was upon the runboard, and either she was reaching with her hand to grasp something or had already taken hold of some part of the car and was in the act of physically boarding the car when it gave a motion forward and she was thrown, and thrown into the excavation and thereby received her injuries. 20 30

Now, as I have said before, gentlemen, the burden is upon her to satisfy you as to the truth of that allegation by a fair preponderance of the evidence. If she has, and you find that that is what happened and that is what occurred, then she will be entitled to a verdict at your hands.

Again, she alleges this: That the negligence of the defendant company consisted in the fact that it did not use reasonable care in the place at which it stopped, but it did stop at a place which was 40

dangerous for her to board the car, and because of that, and as the proximate result of that the injuries happened of which she complains. Again, gentlemen, the burden is upon her to satisfy you of that allegation of negligence by a fair preponderance of the evidence. If she has not, then she cannot recover. Again, it is advanced by the defendant that that was not the cause or proximate cause of the happening, but that she herself was negligent in that she did not take that care of herself which the law imposed upon her. The law does impose a duty upon a person in her position, and that is that they must use that care for their own safety which a reasonably prudent person would use, time, place and circumstances considered.

Now, if upon the allegation last advanced you find that the defendant company was negligent, you are also to consider whether or not she performed that duty which was upon her in law. The burden of satisfying you as to that is upon the defendant, because that is a defense advanced by the defendant, and the burden is on the defendant in the same degree, as I have said the burden is upon the plaintiff in the other matters; that is, that they must have satisfied you by a fair preponderance of the evidence that she did not perform the duty which the law casts upon her. If they have, then she was guilty of contributory negligence, and even if you find that the defendant was guilty of negligence, yet if you find that she was guilty of contributory negligence then she cannot recover.

Now, gentlemen, those are the two principles that are involved in this case. If you find that she is entitled to recover under those rules which I have given to you, then what may she recover for? She may recover for pain and suffering, mental

and physical, which she has endured, may be enduring, or which she may endure in the future, as you may have been satisfied by the testimony upon the points, first, as to whether she has endured pain, next, whether she is still enduring any, and third, whether or not she will continue to endure it in the future. She is also entitled to be recompensed for whatever moneys she has satisfied you she has expended in and about effecting a cure. I do not recall from the testimony any item except one, of a physician's bill being forty dollars. If there are any other items that have escaped my attention you will, of course, recall them as you will remember the testimony. She also alleges as an item of damage that she has lost earnings in and about her business, which she otherwise would not have lost but for the happening of this casualty and the injuries resulting therefrom. She is entitled to recover, if she has satisfied you that she has met with such a loss—she is entitled to recover what she may have shown you that she has lost or is losing, or may lose in the future. The burden is upon her to satisfy you by a fair preponderance of the evidence as to whether or not she has lost anything, and also as to whether or not she is continuing to lose because of her injuries, and also as to whether or not she will continue to lose earnings in the future. If you find for her for any loss of earnings in the future you will capitalize that sum when you add it and place it in your verdict; that is, you will get the present day value of it, because, you see, if she is entitled to it at all she will be entitled to get it in the future, and whatever she is entitled to she must get as of to-day; so, therefore, you will find the present value of that.

Now, gentlemen, aside from those few matters, I do not know of anything that I can further state

that can be of aid or assistance to you. You are to deal with the matter in a hard, businesslike manner. You are not to be drawn aside from your duties by favor or sympathy either to the one side or to the other, but you are to deal with it as you find the facts to be, applying thereto the rules of law which II have given to you.

10 I have some requests to charge on the part of the defendant. The first is:

> "It was the duty of the plaintiff to make a reasonable observation as to the condition of the street to see if she could reach the car in safety."

I so charge you in connection with what I have already charged as to the duty which the law imposes upon such a person and in such a position as

20 the plaintiff was.

> Second, "The defendant company had no control of the street, and if the plaintiff stepped in a trench such as described in the evidence before she reached the car, without using due care for her safety, she cannot recover from the defendant company."

I so charge you. I will say in connection with that charge that the duty or care which is denomi-

30 nated as due care is that care which I have previously spoken to you about; that is, the obligation upon her was to use that care for her own safety which a reasonably prudent person would have used under the circumstances.

I think number three I have already charged.

Number four I will decline to charge.

Now, gentlemen of the jury, aside from what your verdict may be, there are two questions which the court is going to present to you for an-

40 swering. They are these:

First,—and they will be in writing, gentlemen, and presented to you, and you will answer them in writing, returning them at the time that you return your verdict—first,

> "If you find that the defendant was negligent, then what do you find that negligence to have been; (a) that it failed to give the plaintiff the proper opportunity to properly board the car, or, on the contrary, while the plaintiff was in the act of boarding said car, and while the car had stopped for that purpose, the defendant, by its servants and agents, suddenly started said car; that the plaintiff was thrown off therefrom into the excavation and hurt thereby. Or (b), that said defendant stopped the car opposite a certain ditch or trench in a position in which it was dangerous for persons to attempt to board the same."

Now, if you find that the defendant company was negligent, then you may answer those questions as you may find; that is, if you find that the negligence was as set out in "a" of that question you will answer yes; or, if you find that that was not so then you will answer no. If, on the other hand, you find that the negligence was as set out in paragraph "b" of that question, you will answer yes; otherwise you will answer no.

The question is do you or do you not find the plaintiff guilty of contributory negligence. That is answered simply by yes or no.

With that, gentlemen, you may take the case.

MR. SIMPSON: I want an exception to your Honor's telling them that they can only find an answer yes to one of those questions, because it is my understanding that they might find a double act of negligence. They might find that the accident was due both to throwing her into the hole and also stopping at a dangerous place.

MR. BLAKE: I would like an exception to the Court's refusal to charge my fourth request, and also an exception to that part of your Honor's charge where you said the plaintiff could recover if she could show by a preponderance of the evidence that the car stopped at an improper place, and as a result thereof she was injured; because plaintiff has testified that there was plenty of room to walk between the car and the ditch.

Defendant's Request.

4. The plaintiff claims that while the car was standing still she attempted to board it, and while she had one foot on the running-board the car started and threw her into a trench. She must satisfy you by a preponderance of the testimony that the accident happened as she described and if it happened any other way than as testified by her she cannot recover.

Grounds of Appeal.

NEW JERSEY SUPREME COURT.

MARGARET SCHREIBER, *Plaintiff-Appellee,* vs. PUBLIC SERVICE RAILWAY COMPANY, *Defendant-Appellant.*	Action at Law on Appeal from Hudson County Circuit Court.

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To Alexander Simpson, Esq.,
Attorney of Plaintiff.

Sir:

TAKE NOTICE that the following is the ground of appeal which the defendant-appellant will urge in the above-entitled cause:

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Because the court, although requested so to do by the attorney of the defendant-appellant, refused to charge the jury as follows:

"The plaintiff claims that while the car was standing still she attempted to board it, and while she had one foot on the running-board, the car started and threw her into a trench. She must satisfy you by a preponderance of the testimony that the accident happened as she described and if it happened any other way than as testified by her she cannot recover."

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Exception was duly taken to the court's refusal so to charge, and such exception was reserved on the subsequent rule to show cause.

Dated May 7, 1915.

Yours truly,
LEFFERTS S. HOFFMAN,
Attorney of Defendant-Appellant.

Endorsed—"Service acknowledged this 10th day of May, 1915, Alex. Simpson, Atty. of Pltff.-Appellee."

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Supreme Court Opinion.

(Filed November 5, 1915.)

NEW JERSEY SUPREME COURT.

June Term, 1915.

10 MARGARET SCHREIBER,

vs.

PUBLIC SERVICE RAILWAY COMPANY,

APPEAL FROM HUDSON CIRCUIT COURT.

Argued before Gummere, Chief Justice, and Justices Swayze and Bergen.

20 *For the appellant, Lefferts S. Hoffman, Leonard J. Tynan, George H. Blake.*

For the respondent, Alexander Simpson.

Per Curiam.

The plaintiff in this case sought to recover compensation for injuries received by her while attempting to board a car of the defendant in the City of Jersey City. In her complaint as originally filed she averred that while she was attempting to board the car, which had stopped to 30 let her on, it suddenly started up when she had one foot on the running board and the other on the ground, and threw her into a hole in the street which was alongside the car. Subsequently the plaintiff amended her complaint by adding a count charging that the defendant negligently stopped its car beside a certain ditch, or trench, in a position which made it dangerous for persons to attempt to board the same, and that the plaintiff, while using due care for her safety, in at-

tempting to step upon the car fell into the ditch and received the injuries for which she sued.

On the trial of the case plaintiff had a verdict, and a rule to show cause why this verdict should not be set aside was allowed to the defendant. In that rule the following matter was reserved, viz., an exception to a refusal to charge as follows: "The plaintiff claims that while the car was standing still she attempted to board it, and while she had one foot on the running board the car started and threw her into a trench. She must satisfy you by a preponderance of the testimony that the accident happened as she described, and if it happened in any other way than as testified by her she cannot recover."

The rule to show cause was subsequently discharged, and counsel now seek on this appeal to obtain a reversal of the judgment entered on the verdict, because of the refusal of the trial court to charge the request just cited.

The purpose of the request was to exclude from the consideration of the jury any question of negligence on the part of the defendant company in stopping its car alongside of this trench, and of such negligence being a producing cause of the accident to the plaintiff. We think the Court rightly refused to take this question from the jury, for they were justified in finding a verdict in favor of the plaintiff, even though they were not satisfied that the car started while she was attempting to board it, if the evidence supported the conclusion that the accident resulted from the stopping of the car in a place of danger, and was not contributed to by any neglect on the part of the plaintiff to use care for her own safety.

The judgment under review will be affirmed.

Order on Affirmance of Judgment.

NEW JERSEY SUPREME COURT.

June Term, 1915.

MARGARET SCHREIBER, *Respondent,* vs. PUBLIC SERVICE RAILWAY COMPANY, *Appellant.*	On Appeal from Hudson Circuit Court. Order on Affirmance of Judgment.

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This cause having been duly submitted on briefs at the June Term, 1915, of this Court, by Lefferts S. Hoffman, Leonard J. Tynan and George H. Blake, Esqs., of counsel for the appellant and Alex. Simpson, Esq., of counsel for the respondent, and the Court having inspected the record and judgment below, and considered the causes assigned for error and the grounds of appeal therein,

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It is thereupon, on this tenth day of November, 1915,

ORDERED, That the judgment of the said Hudson Circuit Court be in all things affirmed, and that the record and proceedings be remitted to the said Hudson Circuit Court, to be proceeded with in accordance with this judgment and the practice of the said Court.

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Entered November 10, 1915.

On motion of Alex. Simpson, Attorney for Respondent.

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Notice of Appeal.

(Filed November 22, 1915.)

NEW JERSEY SUPREME COURT.

MARGARET SCHREIBER, *Plaintiff-Appellee,* vs. PUBLIC SERVICE RAILWAY COMPANY, *Defendant-Appellant.*	Action at Law Notice of Appeal.

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To Alexander Simpson, Esq., Attorney of Plaintiff-Appellee:

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Sir:

TAKE NOTICE that the defendant-appellant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause in the New Jersey Supreme Court on appeal from the Hudson County Circuit Court.

Dated, November 16, 1915.

Yours truly,

LEFFERTS S. HOFFMAN,
Attorney of Defendant-Appellant.

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Ground of Appeal.

(Filed November 22, 1915.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

MARGARET SCHREIBER, *Plaintiff-Appellee,* vs. PUBLIC SERVICE RAILWAY COMPANY, *Defendant-Appellant.*	Action at Law. On Appeal Jersey Supreme Court.

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To Alexander Simpson, Esq., Attorney of Plaintiff-Appellee:

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Sir:

TAKE NOTICE that the following is the ground of appeal which the defendant-appellant will urge in the above entitled cause:

1. Because the New Jersey Supreme Court, on appeal to that Court from the Hudson County Circuit Court, refused to reverse, but on the contrary affirmed, a judgment entered in favor of the plaintiff-appellee in the said Hudson County Circuit Court, despite the fact that the said Hudson County Circuit Court, although requested so to do by the attorney of the defendant-appellant, refused to charge the jury as follows:

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"The plaintiff claims that while the car was standing still she attempted to board it, and while she had one foot on the running board, the car started and threw her into a trench. She must satisfy you by a preponderance of the testimony

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that the accident happened as she described, and if it happened any other way than as testified by her she cannot recover."

An exception was duly taken to the Court's refusal so to charge and such exception was reserved on the subsequent rule to show cause.

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Dated, November 16, 1915.

Yours truly,

LEFFERTS S. HOFFMAN,
Attorney of Defendant-Appellant.

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