New Jersey Court of Errors and Appeals

KARL F. RAEUBER, *Plaintiff-Appellant,* vs. PUBLIC SERVICE RAILWAY COMPANY, *Defendant-Appellee.*	Action at Law On Appeal from Supreme Court.

BRIEF OF PUBLIC SERVICE RAILWAY COMPANY. DEFENDANT-APPELLEE.

Statement of the Case.

The statement of the case set out in the brief of the appellant is incomplete. He takes a meager portion of the testimony of the plaintiff, which relates to a jerk of the car, adds to this the following assertion, "The defendant produced evidence to show that there was no observable jerk of the car at the time stated," and calls this his state of the case. We submit that the state of the case should also contain the following elements:

I.

That the plaintiff below fell from the car long before the car reached the corner. The inference from the quoted testimony is that it was very near the corner. This is not the fact. The plaintiff said, (p. 9, l. 27) "Q. How near was it to the

crossing? A. I don't know exactly how near it was. (Mr. Kramer) Well, he wasn't in a condition to see, I am afraid; he was knocked unconscious, he says. * * * Q. How near were you to Eighth Street when you attempted to get off? A. I can't exactly say how near, although when I told the conductor that is where I wanted to get off, at Eighth Street he said, "Yes," and reached up and pulled the rope, (p. 10) must have pulled the bell. *Now, whether it was one or two or three or four, I couldn't tell you.* Q. Three or four what? A. Houses below."

The plaintiff's uncertainty as to distance of course makes his testimony on that subject of no value, so we turn to the testimony of *the plaintiff's witness,* Clarence Ross, who said, (p. 18, l. 15) "Q. You say Mr. Raeuber was lying on the ground a little nearer to Eighth Street than Seventh, as you recall it? A. Yes. Q. About in the middle of the block? A. Well, a little nearer to Eighth, I suppose. Q. A little nearer to Eighth? A. Yes." He then proceeds to estimate the number of doors from the corner that plaintiff fell, but we judge his general impression to be more reliable than such estimate. Speaking of whether it was the front of the car or the back of the car the position of which he was trying to fix by the number of doors below the corner, he said, (p. 17, l. 27) "A. I couldn't say whether the front or back, I don't just remember, so long ago. Q. *It was a considerable ways on the other side of Eighth Street, down the block?* A. *Yes.* Q. *And that was when you saw the plaintiff fall off the car?* A. *That is when I seen it.*"

The appellant's attorney tried the case on a theory which we refuted, but which is of interest, not alone as bearing on *this element of distance,*

but as showing a situation which, if true, could fully account for an irregularity in the motion of the car without charging the defendant-below with any negligence. See page 61, line 36, on the renewal of the motion for a non-suit and motion for direction of verdict, where Mr. Kramer, the plaintiff's attorney, said:

"Now, bear in mind that there is a farm wagon coming down on the other side of Eighth Street, on the same track that this car is coming up on. None of the defendant's witnesses have a word to say about that wagon. That, in our theory of the case, was the reason that this car *slowed up in the middle of a block,* and then jerked forward when it crossed off."

So that is the way the plaintiff's attorney felt about it, after the testimony on the subject of distance was all in.

The appellant, on page 20 of his brief, says: "There was some attempt on the part of the appellant below to raise the question that the car had not reached the crossing for the purpose of permitting the plaintiff to alight. The exact position of the car as respected Eighth Street was not clear."

We submit that, although we did offer evidence on that subject, there was really no need of our raising the question as to the car not having reached the crossing, for the case of the plaintiff below amply showed it, and left no doubt on that subject that called for the interposition of a jury. However, the plaintiff's case failed to show (1) *where the car stopped,* (2) *why the car stopped,* and (3) direct testimony as to *how far behind the car he laid in the street.*

As there was a motion for a direction of verdict, and the motion for non-suit was at the same

time renewed, we call the court's attention to the following testimony of the defense:

Jones, the motorman, said (p. 31) that the car was about a car length from Eighth Street, when it stopped, that the usual place of stopping is "right before you cover the sidewalk," that the car is forty-five feet long (p. 32), and that the front of the car was a car length from the crossing; at the bottom of page 32, he makes it "about half a car length," and at the top of page 33 he again says that it was a car length. (p. 33, l. 9) "Q. Are you speaking about the front of your car being a car length from Eighth Street? A. The front end, yes sir. * * * Q. Did you bring your car to a stop on this occasion at the same place you usually bring it to a stop, on the Eighth Street crossing? A. No, I did not. Q. Why not? A. Because after I got the one bell, and made a smooth stop I heard some one say a man fell off the car. Q. Who was that? A. Some lady in the street, on the sidewalk. * * * * (p. 33, l. 31) Q. Did you do anything further to stop your car when you got that word from the street? A. Oh, yes, we brought the car to a nice smooth stop. The man laid back of my car then, the man laid away back; I stopped closer to Eighth Street; he was away up there. Q. You went back to help the plaintiff? A. Yes. * * * (p. 34) Q. Was he near the rear— A. No, sir, about two car lengths back. Q. Two car lengths back of what? A. Of my car. Q. Two car lengths back of the rear of your car? A. Yes."

Herbert K. Buckner, conductor, said, (p. 36, l. 10) "Q. What did you see? A. The man was then in a sitting position, in the act of getting up. Q. And where was he with reference to the car? A. About seventy feet in the rear of the car."

Joseph T. Bodell, a passenger on the car, said, (p. 42, l. 14) "Q. What was the first that you knew that an accident had happened? A. Why, the car made a little extra long stop at Eighth Street, and I commenced to look to see what the trouble was, and I looked back and saw a crowd in the middle of the block. I thought I saw the crowd there in the middle of the block, and that is the first I knew that anything had happened until the conductor got on and told me some one had fell off. Q. Never mind that. Did you go back to see what happened? A. No, sir. Q. Was the car standing or in motion when you noticed the crowd in back there? A. Standing. Q. How far was that crowd from the rear end of the car? A. I don't know, I didn't measure it, in the neighborhood of a hundred feet. Q. A hundred feet? A. Yes."

Mrs. Florence Beatty (p. 44, l. 36) "Q. Tell the jury just what you saw when this man came off the car. A. I saw the man fall off the car; the conductor didn't see him fall, we hollered, me and a girl friend of mine, hollered, said, "Somebody fell off the car."

The last statement accords with that of Emma Ramsey (p. 48, l. 15). "Q. And did it come to a stop? A. It stopped after we hollered, it didn't stop until we hollered."

Mrs. Eliza Armstrong (p. 52, l. 30) "Q. Did you see a man fall off the car? A. Yes, sir. Q. Was the car moving fast or slow at the time? A. An ordinary rate of speed *between the blocks,* I noticed that. Q. Did it stop afterward? A. It stopped apparently as soon as it could. * * * Q. And where did it stop? A. Well, *some little distance above where the man fell,* I couldn't tell you the distance."

There is some slight effect made in the testimony of the fact that the last-named witness did

not remember the date, and does not know who fell, but there is no great probability that her testimony relates to a different occurrence.

J. Herbert Ferris (p. 55, l. 29) "Q. Tell the jury what you saw happen. A. I saw an object leave the car and then I went down where he was lying in the street; I assisted the man to rise and the conductor then asked me for my name and I gave it to him. Q. Was the car—you say you saw an object leave the car; what was the object? A. A man. Q. Was the car standing or moving at that time? A. Moving. Q. And at what rate of speed was it going, would you say? A. At about the usual rate in city limits. Q. Did you notice any increase or decrease of speed immediately at the time the man left the car? A. No, sir. Q. Did the car stop afterward? A. Yes, sir. Q. Where? A. At Eighth Street, near Eighth Street; I didn't observe whether it was— Q. How far was the point where the man came off the car from the rear of the car after it stopped at Eighth Street? A. *About fifty feet.*"

Mrs. Florence Beatty (p. 45, l. 20) said that the car stopped at Eighth Street and (p. 45, l. 37) that the place where the plaintiff fell was about the fifth house from the corner. Emma Ramsey (p. 48, l. 17) says that the car stopped just at Eighth Street, and (p. 48, l. 23) that the accident happened in front of No. 728. Mrs. Eliza Armstrong (p. 51, l. 35) lived at 718 Market Street. The accident (p. 52, l. 12) seemed to be about three or four pavements from her home toward Eighth Street. When she says "pavements," she says, "A. I mean the width of the houses." Henry Vogt, (p. 41, l. 13) testifies that dwellings at that point have fifteen foot fronts. There is a map in evidence.

While the distances vary somewhat, it is evident from the foregoing that this appellant was not by any means *alighting from a car at a corner.* He clearly placed himself in a position of danger, and fell from the car, much before the car reached the corner. He is not in any sense in the same legal category as a passenger who gets down on the step as a car *is reaching* a corner.

II.

That the appellant was perfectly familiar with the neighborhood. He says (bottom of page 11) that he was on his way home, that he usually went that way home, that he is familiar with the crossings on Market Street at Eighth and Seventh Streets, and that he got off mostly at Ninth Street. (Page 12) "Q. You got off at Eighth Street sometimes, didn't you? A. Well, sometimes when I had something to do at Eighth Street. * * * (p. 12, l. 33) Q. Do you know about how long a block it is between Seventh and Eighth Street? A. I have gone it many times, I didn't measure it, but I walked it many times. Q. Well, about how many feet is it? A. About two or three hundred feet, something like that."

The effort of the appellant, in quoting, as he does, a brief part of the appellant's testimony, clearly is to indicate that this was an accident that arose when a car was *nearly at a stop at a corner.* As a matter of fact, the car was still, as such distances go, such a distance from the corner that a man familiar with the neighborhood, as was the plaintiff, had no right to suppose that the car would not make divers movements before it stopped, and the motorman had no reason to assume that a person intending to alight at Eighth Street would get down on the step of the car at such a time.

As (top of p. 61) there was a motion for direction of verdict, and at the same time the motion for non-suit was renewed, the testimony furnished by the defense as to where and why the car stopped (on which matters the plaintiff's case is silent) is properly before the court. The same is true, so far as it accords with and does not contradict the plaintiff's case, of the testimony of the defense as to the distance behind the car that Raeuber was when the car stopped. The appellant offers the incident of a wagon (pp. 14, 15, 16 and 17) as evidence of the probability that the car did slacken its speed because of the wagon, and then start up again. The motorman, Jones, absolutely denies (p. 28, l. 24) that any wagon incident had anything to do with his conduct. And, indeed, the situation of the wagon, on the other side of Eighth Street, makes it improbable. However, as the plaintiff has advanced this incident, in order to augment the plaintiff's testimony of a jerk, devoid as that testimony is of any description of the jerk's degree and character, by thus creating what he evidently considers a probability, he also by so doing creates for us, if his theory be correct, an excuse. If any reasonable caution induced the motorman to check the speed of his car, until he felt that it was safe to proceed, after which he "let out" the speed, and proceeded toward the corner at which he was to stop, we fail to perceive any negligence in his conduct, even if he had a bell to stop at the next corner.

III.

Another matter that the statement of the case should contain is a ground of appeal which this appellee argued in the Supreme Court, but which

the Supreme Court did not pass upon in deciding the case. It is Number Seven, at the top of page 75, and reads as follows:

> "7. Because the Court denied a motion of the defendant's attorney to withdraw a juror and direct a mistrial, on the ground that the plaintiff's counsel had made a statement to the jury that the plaintiff was entitled to $1,500 or $2,000."

As it is our intention again to argue the above matter, and to have the advantage thereof, if necessary, on this appeal, we assume that it should be included in the statement of the case, to which the arguments of the respective parties shall refer.

The Argument.

The plaintiff said (p. 13, l. 26), "Q. How soon after the conductor pulled the bell did you step *down on the step?* A. As soon as I seen the car slacken up."

It is to be noted that he does not say that he *held on.* As his effort throughout the case, necessarily, is to show that the "jerk" which he says the car made, was something other than such jerk as is incident to the ordinary operation of a car, it would seem that the burden was on him to describe that "jerk," or at any rate to describe the effect of that "jerk," and the question as to whether or not he held on, enters very much into the matter. The burden of showing the exact conditions surrounding the situation, was on him. He does not claim that he held on. He should have shown that he took the best of care of himself in that dangerous position. Even when a car

is really slowing down to stop, it would be negligence for a man to get down on the step of a car, without *holding on.* Furthermore, it has been repeatedly held, that persons who ride on run-boards and platforms, assume the risk of those perils incident to the ordinary operation of a car. And it has also been held that a jerk that is not an extraordinary jerk, is not evidence of negligence. Such jerks are incident to the ordinary operation of a car.

If he was on that step without holding on, a very slight irregularity in the motion of the car would be sufficient to cause him to fall.

As this case contains both a motion for non-suit, which was renewed (top of page 61), and a motion for direction of verdict (top of page 61), the question becomes pertinent, as to whether the evidence of the defendant, to show that there was no *observable* jerk of the car, is proper for consideration. The appellant's state of the case as set forth in his brief (top of page 4), says, "The defendant produced evidence to show that there was no observable jerk of the car at the time stated." In view of this statement in the appellant's brief, it is needless for us to summarize the evidence on that subject. We submit that such evidence was not contradictory of the plaintiff's case. It did not necessarily contradict the proposition that there was a "jerk," but as the plaintiff utterly failed to describe the force of the "jerk," testimony produced by the defendant, of persons who did not notice the jerk, is available to show that it must have been a very slight jerk. We will not attempt to refer to the testimony on the subject, but will content ourselves with the appellant's admission, in his brief, that such testimony existed.

The case of *Schmidt* vs. *North Jersey Street*

Railway Co., 37 Vroom, 424, embodies the principle for which we contend. That case refers to a person attempting to board a moving car, instead of a person attempting to alight therefrom, but it speaks of both classes of persons, and says that "in order to charge negligence upon the person controlling the propulsion of the car, some affirmative act of his, showing a lack of due care for the probable contingency of passengers getting *on or off*, must be proved. In the case in hand, for example, it would have been necessary to prove that the motorman increased the speed of the car *at a time when he had reasonable cause to suppose* that a passenger might be in the act of getting upon it. * * * The motorman necessarily has to slacken his speed, and then shut off his power entirely, in order to make the normal stop, and if, through miscalculation, the momentum of the car will not carry it far enough, he may have to again apply the power, and it may happen that for other causes, such as the movement of persons and vehicles having equal rights in the street, he may be obliged to check and then accelerate his speed."

The Schmidt case then says, that it is too much to expect that in these operations, he (the motorman) must always anticipate that persons standing on the upper corner of the street may be expecting to board the moving car. And we say that, in the case at bar, it is too much to expect that, in these operations, he must always anticipate that persons desiring to alight will, many feet from the stopping place, get down upon the step of the car, prepartory to alighting at the stopping place. We do not believe that at such a distance from a corner, the slowing down of a car, even when it follows a signal, or signals, of the bell to stop, is an invitation to a passenger to get

down on the car step. The passenger has, perhaps, a right to go there, in preparation for a hurried alighting, if he assumes the risks incident to the ordinary motions and operations of the car. But his presence upon such step cannot force upon the responsibility-laden motorman an additional and extraordinary care for the safety of such passenger. If, for instance, a motorman should make an error of judgment, after getting a bell to stop at the next corner, and turn off his power too soon, resulting in his being compelled to turn it on again in order to reach the desired stopping place, must he, before he so augments the speed of the car, stop to warn any impatient passenger that may have prematurely got down on the car step, of his intentions?

In the discussion of the non-suit motion, the Court misquotes some of the testimony. This is not important to our present argument, but is here mentioned so that your Honors may not be misled by such misquotation. Note the following (p. 24): "The Court: Yes, but Mr. Coult * * * and the car almost stopped, it slowed down. I think his language was, 'It slackened down so much I thought it stopped,' and then relying upon the conductor to let him off at Eighth Street, he starts to get off, and then the car suddenly moves, moves with enough violence to throw him in the street, I think there is a case from which—" The utter irrelation of this summary to the facts is so evident that we will not attempt to point out the errors in detail. We think that the Court's argument (p. 26, l. 23) was an unfortunate utterance for the jury to hear. The Court said, "If the motorman gets a bell to stop, that means to stop, don't it—it don't mean to go on?" Mr. Coult, our trial lawyer, properly answered, "No,

sir, it means to stop *at the stopping place,* and if there were an obstruction in the road, the motorman would certainly be compelled to bring the car to a slower rate of speed and then go on at a faster rate of speed."

We again call the Court's attention to the theory of the case advanced by the plaintiff, in Mr. Kramer's argument, on the renewal of the motion for non-suit, (near the bottom of page 61), which theory, if the facts to sustain its probability exist, as the plaintiff claims they do, furnishes a most excellent excuse for an irregularity in the motion of the car. Mr. Kramer said, (pp. 61-62) "Now, bear in mind that there is a farm wagon coming down on the other side of Eighth Street, on the same track that this car is coming up on. None of the defendant's witnesses have a word to say about the wagon. That, in our theory of the case, was the reason that this car slowed up in the middle of the block, and then jerked forward when it crossed off."

The brief of the appellant is evidently prepared on the theory that the fact that the alleged jerk threw the appellant off the car, was in itself sufficient to raise a jury question as to that jerk being an unusual and violent jerk. The plaintiff said (p. 9) "A. As soon as I seen the car slacken up I walked out on the step." By this, he evidently means *step.* Just above, on page 9, he tells of speaking to the conductor when he got on the *platform.* And while standing on that step, there is no evidence that he *held on.* In speaking of the "jerk," he absolutely fails to describe its degree.

The case of *Faul* vs. *North Jersey Street Ry. Co.* (Vroom 41, 795), said: "In order to resume his progress, after 'slowing up' and avoiding the wagon, he was, of course, compelled to turn on

his power and release his brake, the effect of which was to cause the plaintiff's witness, who was standing, to swing to the side 'a little bit,' or 'fall a little to the side.' No court, certainly, of this state, has yet declared that such an effect justified an inference of negligence in car operation against the carrier. On the contrary, in *Burr* vs. *Pennsylvania Railroad Company,* 35 Vroom, 30, the Supreme Court, Mr. Justice Van Syckel writing the opinion, declared that if there is no more violence and lurching than ordinarily attends the starting of a railroad train, the jury cannot draw from it the inference that the company was negligent; and that "it was not until extraordinary lurching and violence was shown that negligence could be presumed," etc.

In the above-quoted Faul case, we find in the syllabus the following: "The actual management of the car in such cases, not the resultant effects, should determine the question of the carrier's negligence."

Of course, if the above-quoted syllabus were followed, the appellant's case would be barren, for he has not testified to any extraordinary lurching or jerking. There are, however, cases in which, we believe, the reasoning can well be from effect to cause, rather than from cause to effect. Some of these appear in the appellant's brief. Before reviewing them, we beg to call attention to the New Jersey case of *Chester* vs. *Public Service Railway Company,* decided by our Supreme Court, May, 1915, reported in 94 Atlantic Reporter, 953, which reads: "The gravemen of this action was the extraordinary lurching of the defendant's car, due to its negligent operation. Upon the crucial question, whether there was any such extraordinary lurching, the burden was upon the plaintiff.

The ordinary progress of a trolley car, from rail to rail, is, in a sense, a succession of jolts or lurches, * * *; but these are not evidence of negligence. The ordinary incidents of operation may unbalance a passenger standing up, as the plaintiff was, without any adequate support. This, however, is not actionable unless accompanied by proof of a lurching so unusual and violent as to suggest, if not to demonstrate, negligence."

The appellant refers to the following cases: *Consolidated Traction Company* vs. *Thalheimer,* 59 N. J. L., 474. That case undoubtedly raised the maximum of res ipsa loquitur, because the lady, after notifying the conductor of her desire to alight, walked to the rear door of the car and was *just going out of it,* and "was thrown into the street by a movement of the car which she called a "lurch" or "jerk," which she described as being of sufficient force to "throw her right off." There is no question that a jerk that could throw her into the street, as she was just passing through the door of the car to the rear platform, must have been a very violent one. The position from which she was thrown, makes the case entirely inapplicable to the case at bar.

Paganini vs. *North Jersey Street Railway Co.,* 70 N. J. L., 385. In this case, the plaintiff went out the front door of the car, reached the motorman, and notified him to stop the car. The motorman put on the brake and slowed down the car, and while it was moving slowly, the plaintiff went through the iron gate on the right side of the car, and with his violin case in his right hand and with his left on the gate, he placed his right foot on the step and his left on the platform, preparatory to alighting from the car. While so standing, waiting for the car to stop, it started

forward so suddenly that it threw him off the car. It appeared that passengers were being let on to the car by way of the front steps as well as the rear, that the platform was crowded, as well as the car itself, that this was the only practicable exit open to the plaintiff, and that the plaintiff found the gate open, and the car moving slowly at the time, with every indication that it was about to stop. We submit that, in this Paganini case, there were special circumstances. No attempt was made, as in the case at bar, to charge the motorman with knowledge that a passenger, intending to alight, had got down on the step of the *rear* platform, a distance from the alighting place. In the Paganini case, the passenger had notified the *motorman,* and was right *beside the motorman,* and the motorman was chargeable with knowledge of his position. The case is not applicable to the case at bar.

McCollum vs. *Atlantic City & S. R. R. Co.,* (77 N. J. L., 603). In the above case, the quotation in appellant's brief shows that the plaintiff intended to alight at Massachusetts Avenue, that the conductor gave the usual signal for the car to stop, that the car lessened its speed, and, as she testified, was "very nearly at a stand-still," She then attempted to alight, and the car jerked, and threw her. This case differs from the case at bar, in two essential particulars. In the McCollum case, the car was evidently *at* Massachusetts Avenue, and was also very nearly at a stand-still. Neither of these elements appear in the case at bar. Enough has been said to show that Mr. Raeuber attempted to alight when the car was a relatively long distance from the corner, and as opposed to the McCollum statement, "very nearly at a stand-still," the best that Mr. Raeuber says

is, "Q. How much had it slackened up? A. Well, just about enough, I thought he was going to stop."

In the McCollum case (77 N. J. L., 603) the first paragraph of the opinion might erroneously lead to the conclusion that the plaintiff's attempt to alight at Massachusetts Avenue, was futile, and that she *subsequently* notified the conductor to ring the bell, etc. This is not the fact, and was probably not the intention of the writer of the opinion. It happens that the appellant, in his brief, has carried us behind the printed opinion, in both the McCollum case and the Thalheimer case, by citing testimony that he has found in the printed state of case in each of those cases, in the State Library. This shows great industry on the part of his counsel, but we are not certain that industry exerted in that direction is entirely commendable, for judicial decisions are usually based upon conclusions that the Court draws from the testimony, and upon such actual testimony as the Court may choose to quote in such opinions. If lawyers, in seeking precedents, are free to go behind the opinions as filed, and refer to the testimony, in order to establish what the opinions mean, there will be no safety or conclusiveness in precedents, for all of us know that the testimony and the opinion have, at times, only a remote relation to each other. Referring, however, if we may, to the testimony which the appellant has dug out of the records in the McCollum case, we find, (at the bottom of page 7 of appellant's brief): "Q. What did you do when you arrived near Massachusetts Avenue? A. I got up, I motioned to the conductor to stop and got up to get out, and as I went to get out, the car started and throwed me off. Q. When you got—was the car in motion? A. It was very near to a stand-still. Q. At the

time you got up? A. At the time I got up." If the foregoing carries with it an inference that the car *had reached* the stopping place, and was nearly at a stand-still, there can be no question that it created, as to the negligence of the trolley company, a jury question. The situation was entirely different from that of the case at bar, in which the car was still a considerable distance from the corner, and the only reduction of speed was that embodied in the appellant's answer, "Well, just about enough, I thought he was going to stop." In the McCollum case, the testimony of the witness, Stephen Collins, for the plaintiff, on page 9 of appellant's brief, illustrates the relation of the accident to Massachusetts Avenue. He was on Massachusetts Avenue, he saw the car coming up, and at the time of the accident, "A. The car gave a sudden lurch forward. The car stopped pretty near the opposite side of Massachusetts Avenue."

We, therefore, submit that an accident at a corner with the car "very near to a stand-still," has no relation to the present case. It is worthy of note, that in the McCollum case, the first paragraph of the syllabus says, "Where the facts are in dispute,—" and the second paragraph of the syllabus says,—"Where the facts are disputed." In the case at bar, however, the legal situation appears in the plaintiff's own case, and is made clearer by undisputed evidence from the defendant's case. So far as concerns this argument, there are no facts in dispute.

Oakerson vs. *Atlantic Coast Electric Railway Co.* (77 N. J. L., 769). This appears to have been a mere case of a car starting while the plaintiff was alighting. It was probably based on a direct conflict of testimony, as to whether or not the car

had stopped when the plaintiff was alighting. The case at bar is not, in any sense, an alighting case, but rather the case of a man who got down on the step of a car, relatively far from the stopping place, merely because the car slackened up, "Well, just about enough, I thought he was going to stop,"—with no evidence that he held on to anything; and the distance from the corner being such that the motorman, at the other end of the car, doing his best to regulate the speed of his car, to bring it to a stop at the next stopping place, and to slacken up and start again, if and when necessary to avoid collision with other vehicles upon the street, had no reason to assume that a foolhardy passenger had put himself, at such a distance from the corner, in such a dangerous position.

New Jersey Traction Co. vs. *Gardner* (60 N. J. L., 571). From the above case, we quote the following: "He insists that he notified the driver that he wished to get off, and the driver applied the brake and "slackened up." One of his companions, Gilroy, also testified that the brake was applied by the driver and the car "almost stopped" as he got off. The other companion, Keegan, who alighted at the same place, says "the car slackened up and then gave a big jolt ahead." The defendant in error in numerous repetitions, both in his examination and cross-examination, testified that when he saw the car slackening its speed and almost coming to a stop, he got down upon the step of the front platform and was in the act of getting off when "the car shot right ahead and struck him on the left shoulder," causing the accident. We see nothing in the above that is pertinent. In alighting from the *front* platform, after notifying the driver of the horses,

and after the driver had applied the brake, and slackened up, and the car almost stopped, Gardner had a right to assume that the driver would not cause the car to give what Keegan called, "a big jolt ahead," until all three of them had safely alighted.

Scott vs. *Bergen County Traction Co.* (63 N. J. L., 407). Mrs. Scott, after notice to the conductor, after the conductor rang the bell, as she supposed, for the car to stop, and as the car slowed down, went to the rear platform to await the stoppage of the car. "She testifies that the car was going very slowly, as she was proceeding to the platform and whilst she was standing on it. She says she thought the car *had come to a stand-still,* when the lurch forward took place, and threw her off." She was thrown from the *platform,* and not from the *step,* as in the case at bar. She says she thought the car had come to a stand-still, when the lurch forward took place, which is widely different from the case at bar. We submit that the case has no bearing on the case at bar.

On page 15 of appellant's brief, in speaking of the Scott case, appellant says: "Surely the strongest inference to be drawn from these circumstances, as well as the circumstances of the Paganini case, would be that the motion that caused the accident was an ordinary motion of the car; not an extraordinary movement." We think that a lurch that would throw the lady from the platform, after, as she thought, the car had come to a stand-still, as in the Scott case, was a *violent* motion of the car, whatever the cause for it may have been.

We will not attempt to enter upon a discussion of the cases that the appellant cites from other states. Undoubtedly there will be found cases

having special circumstances, and cases not well considered, in which the slowing down of a car, after the bell to stop has been given, may be accepted by the passenger as an invitation to him to proceed to alight; but it is a generally accepted practise for a conductor to ring a bell for the next stop, when a passenger so desires, regardless of the distance of that next stop away. Where the button signal system is installed in cars, passengers do the same. After passing A Street, it is time to signal, if one desires to alight at B Street. If, after receiving such a signal, the motorman's caution induces him, for any reason, to slow down in the middle of a block, can the motorman not, when the reason for caution is past, augment the speed of his car in order to reach the signaled street? We can conceive that if, in the middle of a block, a wagon on the track compels a trolley car to come to a dead stop, perhaps the motorman should not attempt to start without being certain, despite the fact that the stop was not a trolley station, that no passengers are in the process of alighting; but when he merely slows down momentarily, for prudential reasons, at a distance from the next stop, it would be unreasonable to hold that such a slowing down was an invitation to the passenger to proceed to alight, or to go so far in his preparation for alighting as to stand upon the step of the car. Before it can be said that the plaintiff below has made out a case, we must find negligence on the part of the defendant. Here there was merely a jerk, absolutely unexplained as to direction or character, quite consistent with the usual and ordinary operation of a trolley car, occurring at a place where the motorman should not have to suppose that any passenger had, in his hurry to alight, proceeded to the step of the

rear platform. The brief of appellant, at page 20, says, "It is evident from the testimony of the motorman that, although he stopped forty-five feet from the corner, he made such stop in obedience to the signal he received after leaving Seventh Street." This is a misstatement of the evidence, and the inference which is attempted to be drawn from such misstatement, of course must fall with it. The motorman said (p. 33, l. 15): "Q. Did you bring your car to a stop on this occasion at the same place you usually bring it to a stop, on the Eighth Street crossing? A. No, I did not. Q. Why not? A. Because after I got the one bell, and made a smooth stop I heard some one say a man fell off the car. Q. Who was that? A. Some lady in the street, on the sidewalk. * * * (l. 32) Q. Did you do anything further to stop your car when you got that word from the street? A. Oh, yes, we brought the car to a nice smooth stop. The man laid back of my car then, the man laid away back; I stopped closer to Eighth Street; he was away up there." The motorman's testimony is, as has been pointed out, borne out by the testimony of two women who called out, when the plaintiff below fell from the car.

It is worthy of noting, that a "middle of the block" case, which the appellant drags in from Sioux City, (at the top of page 21 of his brief), when looked at more closely (top of page 22), shows gross negligence of the conductor, with full knowledge of the circumstances, in the following: "And the conductor winked and motioned me this way (indicating). I said 'Yes' and he blew the whistle and the car slacked up, and I went down on the running-board, on the lower board; * * * and then he whistled twice, the conductor, and then

the car gave a big move, you know, kind of jerk, and then I fell down * * *." The above quotation, of course, shows a gross and culpable negligence on the part of the conductor. It has no relation to the case at bar.

We, therefore, submit that our New Jersey Supreme Court was right when it said, in the case at bar (page 77 of book): "There is no proof that the jerk of which plaintiff complains was abnormal, or anything more than was merely incidental to the proper operation of the car. Consequently, no negligence was shown which rendered the defendant company responsible for plaintiff's injury. The plaintiff, in taking his position upon the step, assumed the risk of accident which might result from normal operation, and had only himself to blame for the injuries which he received."

In the Maryland case of *Dawson* vs. *Maryland Electric Rys. Co.*, 86 Atlantic Reporter, 1041, appears the following:

"The fact that the car gave a sudden jerk is no evidence of negligence on the part of the appellee. It does not appear that the sudden movement of the car was due to any defect in the car or to any carelessness or negligence of those in charge of it. It is well known that electric cars do not run perfectly smoothly, and that there are certain irregular movements to which they are subject and which do not justify the inference of negligence or carelessness on the part of those in charge." In the case of *Yorktown Turnpike Road* vs. *Cason*, supra, the court said, "Judges cannot denude themselves of the knowledge of the incidents of railway traveling, which is common to us all"; and in the case of *Charles* vs. *United Rys. Co.*, 101 Md. 183, 60 Atl. 249, Judge Schmucker says, "It is a matter of common knowledge of which the

courts will take cognizance that street cars do not run with entire smoothness but are subject to occasional jars and undulations as they enter or leave switches or cross intersecting tracks or encounter obstacles or slight inequalities in the track.

In *Sanson* vs. *Philadelphia Rapid Transit Co.*, 86 Atlantic Reporter, 1069 (Penn.) appears the following:

"We agree that, where the negligence charged is an unusual or extraordinary jump or jerk of a trolley car, the burden is on the plaintiff to prove the unusual or extraordinary character of the jump or jerk in order to make out a case. It should not be overlooked that street railway companies in cases of this character are only liable for the negligent operation of their cars. It is a matter of common knowledge that in the ordinary and customary operation of trolley cars jerks will frequently occur in starting and stopping them. Clearly, the company would not be liable for an injury that might incidentally result from a slight jerk of the car, and one such as may frequently occur even under the most careful operation of a car. It is only where the jerk is out of the ordinary, and is unusual and extraordinary, that liability attaches on the ground of negligent operation. That is not negligent which is incidental to and a recognized consequence of the operation of street railway cars."

Graf vs. *West Jersey & S. R. Co.* (New Jersey) 62 Atlantic Reporter, 333,

"Where a train, just as it stopped, gave a lurch to one side, which caused the door of a car to shut upon the fingers of a passenger who stood in an open doorway, the facts did not warrant an inference of negligence; the motion of the car appear-

ing to have been no more than the usual motion incident to stopping."

Pascell vs. *North Jersey Street Railway Co.*, 46 Vroom, 836.

"2. Where a little girl, impatient to alight from a trolley car, arose and walked to the rear platform and stood near the edge of the platform with her left hand loosely holding some part of the car, and the conductor rang the bell for the next street crossing, and the car slowed down and ran into a turn-out just before reaching the crossing, and by reason of the motion caused by the car entering the turn-out the child fell from the platform—Held, that no inference arose that the accident occurred by reason of some negligence in handling the car."

In the case at bar, the slowing down, if it were on account of a wagon ahead, and the subsequent acceleration of speed, were just as much necessary elements of operation of the trolley car as was the "turn-out" in the Pascell case. The latter case was decided by our Court of Errors and Appeals, and no dissenting vote appears. In the Pascell case, the girl stood "with her left hand loosely holding some part of the car—" In the case at bar, there is no evidence that the plaintiff held on to anything.

Nirk vs. *J. C. H. & P. Street Railway Co.*, 46 Vroom, 642.

"While it is not negligence per se for the passenger to ride upon the platform of an electric street railway car (*Scott* vs. *Bergen County Traction Co.*, 34 Vroom 407), nevertheless a passenger who voluntarily rides on the platform, when there is room for him inside the car, takes upon himself the duty of looking out for, and of protecting himself against the usual and obvious perils attendant

upon his position, such as the danger of being thrown from the platform by the ordinary jolting and swinging of the car."

Sanderson vs. *Boston Elevated Railway Co.*, 194, Mass., 337, 5 Street Railway Reports, 435.

"Even if plaintiff's theory of the accident be adopted, the evidence discloses no negligence of the defendant. There does not appear to have been any evidence of defect in the car or tracks, or of incompetency of the defendant's servants. The car was moving slowly. The plaintiffs were not hurt by any movement of the car at the time and place where the defendant was ready to discharge passengers. Sanderson knew that the alighting place was not reached, and that the car would not stop until it reached there. He was accustomed to ride upon electric cars and was familiar with their operation. There may be movements of a car so severe that a mere description of them and their results may justify the inference that they were attributable to some negligence on the part of the carrier, but the movement described in this case is not of that character. It was not due to any defect, and the possibility of such movement is a thing which every one who gets upon a street car must be taken to contemplate."

In the case at bar, the motion for non-suit (p. 23) is upon two grounds, to wit, (1) No negligence of the defendant, and (2) contributory negligence of the plaintiff. On the second ground, it may have been for the jury to say as to whether or not the plaintiff's going on the step before the car stopped, and as to his going on the step so far from the stopping place, was negligence. Perhaps, on the contributory negligence theory, we cannot even assume (there being absolutely no

testimony either way on the subject) that he did not hold on to anything while on or going to the step. Perhaps "assumption of risk" would be a more pertinent term than "contributory negligence." There can be no question that in doing what he did he assumed the risk of the ordinary motions of the car. Neither does there appear any proof, or any reason to assume, that the motion of which the plaintiff complains was other than such ordinary motion. It must be remembered that no witness *says* that the car, after slowing down, increased its speed. That was a mere supposition, drawn from the fact that a wagon was on the track on the other side of Eighth Street. And it appears to be absolutely disposed of when Jones, the motorman, says (p. 28, l. 24): "Q. Was there any obstruction in front of your car? A. Not at the time. Q. Did you see any wagon *approaching you?* A. No, sir. Q. Did your car stop at any time between Seventh Street and Eighth Street? A. No, sir. Q. Did you reduce your speed and afterward increase it at any time between Seventh and Eighth Street? A. No, sir. * * * (p. 31, l. 15) Q. Didn't you see this wagon coming on the track? A. It might have been, it was way ahead of us probably. That didn't signify, if it was in the other block."

The plaintiff furnishes us with no description of the "jerk." It is just as likely to have been a sidewise lurch, as a forward movement. Indeed, if the plaintiff was not safeguarding himself, the mere *checking of the speed of the car* for the purpose of bringing it to a stop at the next corner, could overbalance him.

Improper Remarks to the Jury.

The seventh assignment of error is one concerning which we know of no distinct precedent in New Jersey. The exception is at the bottom of page 68, and the subject is the denial of the following motion by the defendant's attorney:

"Mr. Coult: I object to counsel's statement that the plaintiff is entitled to fifteen hundred or two thousand dollars, and request the withdrawal of a juror and the direction of a mistrial."

Quinn vs. *Philadelphia Rapid Transit Co.* (Penn.), 73 Atlantic Reporter, 319.

"There is a second specification of error, wherein complaint is made of the refusal of the court below to withdraw a juror and continue the case, because of counsel for plaintiff having stated in his argument to the jury that he asked 'for $20,000 in this suit.' It is error for counsel to state to the jury the amount of damages claimed in the declaration. The damages are to be ascertained by the jury from the evidence, and are not to be determined by any estimate of counsel, not based on the evidence. Any suggestion to the jury of the arbitrary amount in which the damages are laid, in the declaration, is highly improper. *Reese* vs. *Hershey,* 163 Pa., 253; 29 Atl., 907; 43 Am. St. Rep., 795. The second assignment is sustained, but it becomes unimportant in this case by reason of the lack of anything in the evidence which properly sustains the charge of negligence against the defendant company."

Carothers vs. *Pittsburg Rys. Co.* (Penn.) 79 Atlantic Reporter, 134—"In a personal injury action, it is improper for plaintiff's counsel to state in his closing argument to the jury the amount claimed by plaintiff, and it is reversible

error in such case for the court to refuse to withdraw a juror and continue the case upon the defendant's request." The Carothers case, quoting from another case, says,—"Placing the figures named in the statement before the jury in the Court's charge gives a basis not established by the evidence, on which to calculate the verdict. Admonitions by the court that such is not the purpose in stating the amount claimed will not be sufficient to eliminate it entirely from the minds of the jurors. It will remain with them, and, consciously or unconsciously, it will influence them in arriving at a verdict."

We do not know of the New Jersey courts having taken any decided position on the above matter. We admit that the Pennsylvania position, above referred to, is not universal (38 C. Y. C., 1497). In *Blackman* vs *W. J. & S. R. Co.,* 39 Vroom, 1, the following appears in the syllabus:

"3. Where counsel, in summing up to the jury, travels outside the evidence, bases arguments upon facts which have not been proved and appeals to the prejudice of the jury, it is the plain duty of the court, upon objection made, to interpose; and a refusal of the court to interpose, where otherwise the right of the party would be prejudiced, is legal error."

We can well understand that, in an action in which the evidence itself concerns calculations and figures, such as is usually the case in contract actions, comments by court and counsel upon the *figures that are in evidence* would be natural and proper; and as the complaint contains an ad damnum clause, and the jury are privileged to examine the complaint, we would not consider as improper the reading of the ad damnum clause to the jury; but when, in an action for personal in-

juries, the attorney of the plaintiff advances to the jury his personal opinion as to the amount of damages to which the plaintiff is entitled, we submit that the action of such attorney is improper, that a figure is put in the jury's mind which has nothing in the evidence to sustain it; and that the only thorough and efficient way to cure the irregularity is to grant the motion, when the same is made, as it was in this case, for the withdrawal of a juror and the direction of a mistrial.

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New Jersey Court of Errors and Appeals

Karl F. Raeuber,
Appellant,
vs.
Public Service Railway Company,
Respondent.

On Appeal from Supreme Court.
Brief of Appellant.

BRIEF OF APPELLANT.

I.

STATEMENT OF THE CASE.

A suit was brought in the Camden County Circuit Court by the appellant against the respondent to recover for injuries sustained by the appellant while he was in the act of alighting from a trolley car of the respondent upon which he was a passenger, it being claimed that the car gave a jerk while he was alighting therefrom which threw him from the car to the ground, injuring him severely.

The parenthetical references are to the State of the Case.

From a verdict for appellant in the trial court the

respondent appealed to the Supreme Court, which reversed the judgment on the ground that there had been no proof of negligence making the respondent liable for plaintiff's injury, and that the plaintiff had only himself to blame for the injuries which he received (p. 76).

The plaintiff was the only witness in his own behalf as to the happening of the accident. He testified that on July 23d, 1914, he was a passenger upon one of defendant's trolley cars on Market Street in Camden and had informed the conductor that he wished to alight at Eighth Street, an intersecting street (p. 8). Upon arriving at Seventh Street he again told the conductor that he wished to alight at Eighth Street, the conductor gave the signal to the motorman and the car slackened its speed. The testimony of the plaintiff (p. 9) is as follows:

"Q. When you got on the platform, did you "speak to the conductor or did he ——

"A. I only told him, 'This is Eighth Street "where I want to get off.'

"Q. What did the conductor do?

"A. Reached up and pulled the rope.

"Q. And did the car slacken up at that time?

"A. The car slackened right away.

"Q. What did you do?

"A. As soon as I seen the car slacken up I "walked out on the step.

"Q. Then what happened?

"A. *Then the car gave a jerk and threw me "out in the street.*

"Q. How far had the car slackened down, Mr. "Raeuber, in response to the conductor's bell, "when that happened?

"A. Well, he slackened up as soon as he got "the bell.

"Q. How much had it slackened up?

"A. *Well, just about enough, I thought he "was going to stop.*

"Q. And what happened to you, that is, you "personally?

"A. Well, I was lying unconscious there un- "til the people picked me up.

"The Court: How near was he to the cross- "ing?

"Q. How near was it to the crossing?

"A. I don't know exactly how near it was.

"Mr. Kramer: Well, he wasn't in a condition "to see, I'm afraid; he was knocked uncon- "scious, he says.

"By the Court:

"Q. When you attempted to get off, you want- "ed to get off at Eighth Street?

"A. Yes.

"Q. How near were you to Eighth Street "when you attempted to get off?

"A. I can't exactly say how near, although "when I told the conductor that is where I "wanted to get off, at Eighth Street, he said, " 'Yes,' and reached up and pulled the rope, "must have pulled the bell. Now, whether it "was one or two or three or four, I couldn't tell "you.

"Q. Three or four what?

"A. Houses below.

"By Mr. Kramer:

"Q. You were approaching Eighth Street, "were you, Mr. Raueber?

"A. Yes.

"Q. What happened to throw you off?

"A. *The car gave a jerk.*"

The above comprised the plaintiff's evidence of negligence on the part of the defendant.

The defendant produced evidence to show that there was no observable jerk of the car at the time stated.

This appeal is from the decision of the Supreme Court reversing the verdict of the Circuit Court.

II.

GROUNDS OF APPEAL (p. 79).

The grounds of appeal may be divided into three heads: 1st—Those involving the question of appellant's contributory negligence (ground 2); 2nd—Those involving the proof of the respondent's negligence (grounds 4, 5 & 6); 3d—Consideration of the question of fact by the Supreme Court (ground 3).

III.

BRIEF OF ARGUMENT.

That part of the case which relates to the alleged contributory negligence of the appellant can be disposed of in a few words.

It was the contention of the respondent that the appellant was guilty of contributory negligence founded upon plaintiff's statement (p. 9) that when he gave the signal the car slackened up and he walked out on the step.

In the case of *Consolidated Traction Co. vs. Thal-*

heimer, 59 L. 474; 37 Atl. 132, which was a case almost identical with the one now under consideration, this Court in reviewing the testimony made the following statement:

> "The contention that the evidence showed "that Mrs. Thalheimer was guilty of contribu- "tory negligence is no better founded. When "notified that the car was near the place where "she wished to get out, she arose and went to "the door of the car, as thousands of passen- "gers in such cars daily and hourly do. Her "movement was made in preparation for "speedily leaving the car. Such conduct is not "negligence *per se.*"

In the case of *Paganini vs. N. J. St. Ry. Co.,* 70 L. 385; 57 Atl. 128, the Supreme Court reviewed the facts of that case in the following language:

> "The car was running fast, and did not stop "at Brunswick Street, whereupon plaintiff went "out the front door, which was open and reach- "ed the motorman, through the crowd, with some "difficulty, and, with a tap on the shoulder, "notified him to stop the car. The motorman put "on the brake and slowed down the car and "while it was moving slowly the plaintiff went "through the iron gate on the right side of the "front, which was open, and, with his violin "case in his right hand, and with his left on the "gate, he placed his right foot on the step and "his left on the platform, preparatory to alight- "ing from the car * * * * and while so stand- "ing waiting for the car to stop it started off "so suddenly that it threw him off. * * * * It "cannot be said that the plaintiff's act was neg- "ligent *per se.*"

In the case of *McCullom vs. Atlantic City and S. R. R. Co.*, 77 L. 603; 72 Atl. 87, this Court summarized the facts in the following language:

> "She intended to alight at Massachusetts Av-
> "enue and attempted to attract the conductor's
> "notice for the purpose of notifying him of the
> "fact; but, failing in that, she stood up and mo-
> "tioned to him and he gave the usual signal for
> "the car to stop. The car lessened its speed,
> "and as she testified, was 'very nearly at a
> "standstill.' She then attempted to alight and,
> "she testified, 'the car jerked and throwed me
> "out' as she was in the act of stepping from the
> "platform of the car to the running board or
> "step. * * * * Under the adjudged cases, her
> "acts cannot *per se* be characterized as proxi-
> "mate cause of her injury, so as to take from
> "the jury the questions of fact."

In the case of *Oakerson vs. Atlantic Coast Electric Railway Company*, 77 L. 769; 73 Atl. 496, this Court said:

> "The record in the case at bar presents es-
> "sentially the same questions of fact that were
> "presented in the McCullom case and is, of
> "course, to be controlled by the application of
> "similar principles of law."

It is plain, therefore, under our decisions, that the appellant was not, as a matter of law, guilty of contributory negligence in taking his position on the step of the car preparatory to alighting therefrom. While it is true that he assumed the risk of danger from the ordinary operation of the car, he did not assume the risk of dangers created by the defendant's negligence.

IV.

We come then to the consideration of whether the plaintiff had made out a case of negligence which was sufficient for the jury to consider.

The principal cases in this State involving facts similar to those under consideration in this case are:

New Jersey Traction Co. vs. Gardner, 60 L. 571; 38 At. 669;
Paganini vs. North Jersey Street Railway Co., supra;
McCollum vs. Atlantic City & S. R. Co., supra;
Oakerson vs. Atlantic Coast Electric Railway Co., supra;
Consolidated Traction Co. vs. Thalheimer, supra;
Scott vs. Bergen County Traction Co., 63 Law 407, 43 Atl. 1060.

We have drawn at length upon the printed testimony in the McCollum and Thalheimer cases. We have been unable to procure any copies of the State of the Case in either the *Paganini* case or the case of *Scott vs. Bergen County Traction Company.* These being Supreme Court cases are not in the State Library.

The evidence of the plaintiff in *McCollum vs. A. C. & S. R. Co., supra,* as to the negligence of the defendant was as follows (pp. 8 & 9 of the State of the Case):

"Q. What did you do when you arrived near "Massachusetts Avenue?

"A. I got up. I motioned to the conductor to "stop and got up to get out, and as I went to "get out, the car started and throwed me off.

"Q. *When you got—was the car in motion?*
"A. *It was very near to a standstill.*
"Q. At the time you got up?
"A. At the time I got up.
"Q. What happened after you got up?
"A. I simply couldn't tell you. I was "knocked unconscious, and don't know anything "from that ——
"Q. Do you know what happened after you "stood on your feet?
"A. I went to step out; I know that.
"Q. What happened when you went to step "out?
"A. *The car jerked and throwed me;* I re- "member that.
"Q. Where were you standing then?
"A. *I was about to step down on the cross- "piece that goes along across the car.*
"Q. You mean the foot-board of the car?
"A. Foot-board, yes."

(And on p. 18):
"Q. When you motioned, what did he do?
"A. He tapped the bell.
"Q. That is, you mean he pulled the bell "cord?
"A. Yes; tapped the bell cord.
"Q. How near were you to Massachusetts Av- "enue when he signaled the motorman by pull- "ing the bell?
"A. Sometime after I passed the firehouse I "motioned for him to stop.
"Q. After you motioned for the conductor to "stop and he pulled the bell rope, what did you "do?
"A. I raised up.

"Q. You raised up? The car was still mov-
"ing?
"A. Yes; just slowly.
"Q. Did you step down on the running board?
"A. I was in the act of stepping out and *the*
"*car took a sudden jerk and I went.*
"Q. The car hadn't come to a stop when it
"took this sudden jerk?
"A. I couldn't say whether it was a complete
"standstill, but it had slacked up."

William B. Hawkins, a witness produced for the plaintiff, testified as follows (p. 21):

"Q. Where was Miss McCollum when the car
"almost slowed up?
"A. About the fourth or fifth seat from the
"end.
"Q. What was her position?
"A. She was standing.
"Q. Then what happened?
"A. When this car *gave the sudden start or*
"*whatever you may call it*, it throwed her off.
"She was just about going to alight. I suppose
"she thought that the car would stop."

The witness, Stephen Collins, testified for the plaintiff as follows (p. 26):

"Q. Will you state to the jury just what
"you saw?
"A. I was coming along Massachusetts Av-
"enue. I had left my horse and wagon on Mas-
"sachusetts Avenue, below Atlantic, and com-
"ing up, and I seen a car coming up, and this
"lady standing up ready to get off, and the
"car was going rather slow, and the car *give a*
"*sudden lurch* and threw her in a heap on the

"ground there. Four men went and picked her "up and carried her in the barber shop. I went "on about my business.

"Q. You say the car was going slowly?

"A. Yes, sir.

"Q. And at that time she was standing up?

"A. Yes, sir.

"Q. And then you say it gave what?

"A. *The car gave a sudden lurch forward.* "The car stopped pretty near the opposite side "of Massachusetts Avenue."

Michael Cillons testified for the plaintiff as follows (p. 27):

"Q. Do you know what made this woman fall "off?

"A. She got jolted against one of the up- "rights that supports the seats as you go along, "I guess.

"Q. What jolted her, Mr. Cillons?

"A. *The sudden jump of the car jolted her.*"

The case of *Consolidated Traction Company vs. Thalheimer, supra,* resembles the present case both in the facts and the circumstance that the plaintiff furnished the only testimony as to the defendant's negligence. This testimony was as follows:

"Q. Did anything happen to you on the 13th "of August last?

"A. Yes, sir.

"Q. Just state to the Court and jury where "you were and what you did.

"A. I was going home. I was in a car.

"Q. What car were you in?

"A. The Orange Street car.

"Q. Of the defendant company?

"A. The trolley, you know the Orange Com-
"pany, going to Roseville, the Traction Com-
"pany's car; and I told him to let me out at 5th
"Street; he was in there. I don't know whether
"he was collecting fares or not; he said 5th
"Street; I got on the platform *and the car gave*
"a jerk, or I do not know what, and threw me
"right off. That is all I know. * * * *

"Q. Then you say the car gave a lurch?

"A. Yes, sir; and threw me right off. * * * *

"Q. Just explain, Mrs. Thalheimer, to the
"jury what kind of a jerk this was that threw
"you off, as near as you can.

"A. *It gave a jerk like this* (*illustrating*) *and*
"threw me off; it gave a jerk to one side and
"off I was—just a jerk that way, and off I
"was. * * * *

"Q. Had the car come to a standstill?

"A. I do not know whether it had or not. I
"told him to stop at 5th Street and he hol-
"lered '5th Street,' I don't know whether he
"pulled the bell or not, but *the car gave a jerk,*
"and off I was.

"Q. Had the car stopped?

"A. If it had stopped I wouldn't have fell.

"Q. Had the car been to a stop at 5th Street?

"A. No, sir; that is where I wanted to get
"out.

"Q. And it hadn't stopped?

"A. It couldn't have stopped, or I would not
"have fell; it threw me off. * * * *

"Q. How fast was the car moving when you
"got up to get out; was the car moving then?

"A. Moving like any other time, I believe;
"I don't know if it moved any faster than us-
"ual, but I know I only just got up when he
"hollered '5th Street.'

"Q. Was the car coming to a stop then?
"A. I thought it was going to stop, but it "seemed it didn't.
"Q. Couldn't you tell from the move of the "car?
"A. *All I know the move I got was a jerk.*
"Q. Before then?
"A. I don't know before it stopped or not. "If it had stopped I wouldn't have fell. *And "it jerked and threw me right off.*
"Q. How far was the car away from 5th "Street then?
"A. It might have been very—I don't know "the very spot. He hollered '5th Street' and I "got up, *and the car gave a jerk and threw me "off,* and that is all I know."

If the testimony above differs at all from that under consideration, such difference consists in the reiteration by the plaintiff of the statement that *the car gave a jerk and threw her off.* This, however, adds no weight to her testimony, as a simple statement would have been legally just as strong as many repetitions. The Court in considering the case digested plaintiff's testimony in the following language:

"When the car approached Fifth Street the "conductor called out the name of that street; "that she got up from her seat while the car was "still in motion, walked to the rear door of the "car, which was open and when she arrived at "the door and was just coming out of it, she was "thrown into the street by a movement of the "car, which she called a 'lurch' or a 'jerk' and "described of sufficient force to 'throw her right "off.'"

We fail to see any difference between a statement that a jerk was of sufficient force to throw a party off a car, and testimony that the car gave a jerk and threw a person off. If the jerk was not sufficient to throw the plaintiff off the car there would have been no accident, and the jury had the right to infer negligence from such a circumstance.

In the Thalheimer case, after the denial of the motion for non-suit, the Traction Company gave evidence which, if believed, showed that Mrs. Thalheimer fell upon the street after she had safely alighted from the car, and which might justify the inference that her fall was due to the inequalities of the service of the street, which was paved with cobble stones. The Court said:

> "Our review is limited to the consideration "of the question whether Mrs. Thalheimer's "testimony, if credence were given it, was suffi- "cient to establish the liability of the Trac- "tion Company to answer for her injury. The "contention that the evidence in question was "insufficient to show a breach of the duty which "the Traction Company, as a carrier of passen- "gers, owed to Mrs. Thalheimer cannot, in my "judgment, prevail."

The testimony in *Scott vs. Bergen County Traction Company, supra,* as stated by the Court, is as follows:

> "Mrs. Scott, on April 13th, 1897, took a car "of the defendant at Undercliff Ferry to go to "a crossing at Cogtesville, there to change cars "for her home at Undercliff. She says she paid "her fare to the conductor, and told him to let "her off at the crossing. As the car was ap- "proaching the crossing, the conductor rang the

"bell,—as she supposed, for the car to stop,—
"and as the car slowed down, she, with a small
"basket in her hand, arose from her seat in the
"car, and went to the rear platform, to await the
"stoppage of the car, *and while so waiting on*
"*the platform the car gave a lurch forward and*
"*she was thrown off to the ground,* upon her
"face, and injured. She testifies that the car
"was going very slowly as she was proceeding to
"the platform and while she was standing on it.
"*She says she thought the car had come to a*
"*standstill, when the lurch forward took place,*
"and threw her off. She says the conductor was
"standing on the platform and she thought it
"was all right to stand there, for, if it was not,
"he would have said so. She had a small bas-
"ket in her hand and she did not have hold of
"the hand rail of the car. The fact of having
"the basket in her hand did not prevent her
"taking hold of the hand rail. There is some
"evidence in the plaintiffs' case, that, if she
"had taken hold of the hand rail, it might have
"saved her from falling. She says she expected
"no such lurch, and therefor did not take hold
"of the hand rail, and, in fact, her attention was
"not attracted to it. Another witness on the
"part of the plaintiffs saw Mrs. Scott standing
"on the platform and *describes the motion as a*
"*sudden increase of the speed of the car,* and
"then Mrs. Scott fell off. This witness says
"*there was another car just ahead, stopping and*
"*starting suddenly, and that this car was fol-*
"*lowing in the same manner.* This is the sub-
"stance of the evidence in behalf of the plain-
"tiffs, except as to injuries and damages suf-
"fered."

All of the above cases are very similar to the one under consideration and the *Thalheimer case* in particular would appear to us to be almost identical.

We would also call attention particularly to the facts in the Scott case, lastly above referred to. The motion of the car which caused the injury was described as a sudden increase in the speed of the car or a starting and stopping suddenly at intervals while following another car. Surely the strongest inference to be drawn from these circumstances, as well as the circumstances in the *Paganini* case, would be that the motion which caused the accident was an *ordinary* motion of the car; not an *extraordinary* movement. The Appellate Court, however, decided that it was within the province of the jury to infer negligence from the circumstances.

In the case of *New Jersey Traction Co. vs. Gardner, supra,* plaintiff and two companions were riding along Warren Street in Newark, on the front platform of a street horse car. They all desired to leave the car at First Street and two of them did so safely, although the car was in motion, while the defendant-in-error met with the accident to recover for which the action was brought, which was occasioned by a sudden increase in speed of the car. He testified that he notified the driver that he wished to get off and the driver applied the brakes and "slackened up." One of his companions also testified that the brake was applied by the driver and the car "almost stopped" as he got off. The other companion who alighted at the same place, said "the car slackened up and then gave a big jolt ahead."

A judgment for the plaintiff was had in this case and affirmed by this Court.

The Court, in *McCollum vs. Atlantic City and S. R. Co., supra,* stated that it was for the jury to dis-

tinguish between the degree of care which a party should exercise in alighting from a horse car and that used in alighting from an electric car.

The rule as laid down in a number of cases in other States, under similar circumstances, is substantially as follows:

> "Where on the signal of a passenger for a "stop, the speed of a street car is slackened to "the speed at which it is usual for passengers "to alight, it is negligence for the operatives "of the car then to cause it to start suddenly "forward."
>
> *Little Rock Ry. Co. vs. Doyle,* 79 Ark. 378; 96 S. W. 353;
>
> *Sandlin vs. Lex. Ry. Co.,* 33 Ky. Law Rep. 518; 110 S. W. 374;
>
> *Peck vs. Springfield Traction Co.,* 131 Mo. App. 134; 110 S. W. 659;
>
> *Cohen vs. Sioux City Tract. Co.,* 119 N. W. 964 (Iowa);
>
> *Louisville and S. I. Traction Co. vs. Corbe,* 90 N. E. 483;
>
> *Ft. Wayne & W. V. Traction Co. vs. Ollinger,* 90 N. E. 652.

In *Consolidated Traction Company vs. Thalheimer, supra,* this Court made the following statement:

> "As street cars run upon rails fixed and lev- "eled in the highway, and not permitting lateral "motion, and are provided with brakes which, "when applied quickly, or when, after being ap- "plied, are released quickly, before the momen- "tum of the car has been overcome, produces "known mechanical effects upon persons on the "car, the occurrence of a lurch or jerk of the

> "violence described fairly justifies an inference "that either the tracks were improperly laid, "or were out of order, or the brakes were im- "properly handled. At all events, the fact that "such a lurch or jerk occurred as would have "been unlikely to occur if proper care had been "exercised, brings the case within the maxim " '*res ipsa loquitur.*' "

The "lurch or jerk of the violence described" in the above case was a lurch or jerk of sufficient force to throw the passenger from the car while she was standing on the platform waiting to alight. Of course, the doctrine expounded by the maxim does not necessarily mean that in all cases the proof of negligence against the defendant is conclusive, but it places the burden upon the defendant of furnishing an explanation for the apparent negligence. If, in the present case, the defendant had admitted in answer to the plaintiff's case that there was some movement of the car, but that it was unavoidable by reason of circumstances existing at the time and was incident to the ordinary operation of the car, it might be that unless the plaintiff could produce proof in rebuttal to the contrary, the latter would be defeated in his action. In this case, however, the defendant did not attempt to explain the jerk of the car, but denied that it ever occurred, and this, coupled with the inference to be drawn from the occurrence of the jerk itself, raised strictly a jury question.

V.

We think that the situation in the present case was one where the jury upon the plaintiff's testimony might have drawn one of two inferences. They might have been justified in assuming from the plaintiff's testimony that there was no evidence of negligence on the part of the defendant company, but we submit that they would have been equally justified in assuming that a jerk which was sufficient to throw the plaintiff from the car to the street could be due to no other cause than that of negligent operation of the car. It was not for the Court to draw the inference from this state of facts, but for the jury. It well comes within the rule laid down in *Consolidated Traction Company vs. Scott,* 58 Law, 682; 34 Atl. 1094, as follows:

> "Whether the facts are disputed or undis-
> "puted, if different minds might honestly draw
> "different conclusions from them the case should
> "be properly left for the jury, and that in
> "order to withdraw such a case from the jury
> "the facts should not only be undisputed, but
> "the inferences * * * * which arise from these
> "facts, *should be indisputable.*"

Neither are the inferences for the witnesses to draw. The plaintiff would not have been permitted to say in so many words—"The car gave a jerk, but such jerk was not due to the ordinary operation of the car and was due only to its negligent operation." It was for the plaintiff to testify to the facts and for the jury to draw the inferences therefrom. If, therefore, the plaintiff testified to facts from which more than one inference could be drawn, he has sustained his burden of proof.

Before the Supreme Court, counsel for the defendant made reference to the case of *Schmidt vs. New Jersey Street Railway Company,* 66 Law, 388, 49 Atl. 438.

The case is not in any degree similar to the present case. It is an action for injuries sustained in attempting to board a moving trolley car. There was no evidence to show that either the conductor or motorman knew that the plaintiff wished to board the car.

In a later case having the same title, 58 Atl. 72, the facts were similar but there *was* evidence showing that the motorman knew the plaintiff intended to board the car. In both of these cases the injuries were occasioned by an alleged increase of speed on the part of the trolley car. In the first Schmidt case there was held to be no liability and the second the judgment for the plaintiff was affirmed.

The plaintiffs in the above cases were different parties.

VI.

This then brings us to the ground of appeal based upon the Supreme Court's consideration of the facts in the case and the weighing of the testimony. We cannot insist too strongly that the Supreme Court attempted to weigh the evidence and to draw inferences from the testimony, which were clearly within the exclusive province of the jury to deduce. It would almost appear from the opinion of the Supreme Court that it had misapprehended the form in which the appeal was before it and conceived that it was in the shape of a rule to show cause, and not in the form of an appeal upon strict questions of law.

VII.

There was some attempt on the part of the appellant below to raise the question that the car had not reached the crossing for the purpose of permitting the plaintiff to alight. The exact position of the car as respected Eighth Street was not clear. The plaintiff (p. 8) testified that it had left Seventh Street some distance. The witness, Ross, testified (p. 16) that the car might have been three or four doors below the corner; the motorman, Jones, testified (p. 31) that he had stopped about a car length from Eighth Street and that the length of the car was forty-five feet. There was some testimony that the rear of the car was near the middle of the block, but there was no testimony to show the length of the block except the testimony of the motorman, Jones, who had never measured it. He testified that it was two or three hundred feet long, which would make the car itself almost a quarter of a block in length. We do not think, however, that this point is of any great significance and if any question at all was raised by the testimony in this respect it was for the jury to reconcile the conflict between the statements as to the position of the car. We submit, however, that it makes no difference even though the car stopped near the middle of the block. It is evident, from the testimony of the motorman, that although he stopped forty-five feet from the corner, he made such stop in obedience to the signal he received after leaving Seventh Street, so that if there was any weight in the contention of the defendant that the plaintiff attempted to alight in the middle of the block it would fall through the testimony of its own witness.

"If a passenger indicates by word or gesture "to a conductor a desire to leave a car, though "it be in the middle of the block, and the con- "ductor understanding the request, indicates his "assent, and the car stops or slows down, so that "the passenger, acting as a reasonably prudent "person, with the conductor's knowledge, at- "tempts to alight, and while so doing is thrown "off by a sudden increase in speed, it is neg- "ligence for which the company is liable."

Cohen vs. Sioux City Traction Co., supra.

The Appellate Court, in reviewing the above case, summarized the plaintiff's testimony as follows:

"The plaintiff's evidence tends to show that "on the evening of July 7th, 1906, at the corner "of 5th and Douglas Streets, in Sioux City, he "boarded one of defendant's cars moving east "along 5th Street and in the direction of Pierce "Street. The car was of the open or summer "pattern, passengers entering their seats from "the side over foot-boards provided for that "purpose. Plaintiff took a seat near the middle "of the car, but before it reached the alley in "the middle of the block one Renstad, standing "upon the street, called to plaintiff to come back. "Responding to his call, plaintiff asserts that "he arose, and, standing upon the foot-board, "supported himself by grasping the handhold "or bar with one hand, and with the other gave "the conductor, who was looking at him, the "signal to stop. His version of what then oc- "curred is stated in the abstract, as follows: 'I " 'was on the top board and raised my hand " 'for the conductor to stop. I saw the con- " 'ductor at the time. He was ahead of me,

"'I was standing at the running board and held
"'with my left hand the brass bar and with
"'my right hand signalled for him to stop, and
"'the conductor winked and motioned me this
"'way (indicating). I said "yes" and he blew
"'the whistle and the car slacked up, and I
"'went down on the running board, on the lower
"'board; yes, on the lower running board, and
"'then he whistled twice, the conductor, and
"'then the car gave a big move, you know, kind
"'of jerk, and then I fell down * * * *' One
"or two other witnesses corroborate him in the
"statement that as he was in the act of alighting
"there was a *jerk* or increase of speed by the
"car, and that he fell * * * *"

It would appear to us that where a passenger gives a signal that he wishes to alight and the car slackens down in obedience to such signal, and the passenger attempts to alight, a species of estoppel is created on the part of the trolley company through its slackening the speed of the car. It creates in the mind of the passenger the impression that such slackening will continue until the car comes to a full stop and if he acts upon such impression to his injury the defendant cannot be heard to assert the contrary.

VIII.

We respectfully submit, therefore, that the judgment of the Supreme Court, reversing the judgment of the Court below, was erroneous and should in turn be reversed and the verdict of the Circuit Court be affirmed.

STACKHOUSE & KRAMER,
Attorneys for Appellant.

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Notice of Appeal.

Camden County Circuit Court

KARL F. RAEUBER, *Plaintiff,* vs. PUBLIC SERVICE RAILWAY COMPANY, *Defendant.*	Action at Law Notice of Appeal to Supreme Court.

To

STACKHOUSE & KRAMER, ESQS.,
Attorneys of Plaintiff.

SIRS:

TAKE NOTICE that the defendant appeals to the Supreme Court from the whole of the judgment in this cause.

Dated, January 18th, 1915.

LEFFERTS S. HOFFMAN,
Attorney of Defendant.

(Endorsed) Service of the within notice acknowledged this 18th day of January, 1915.

STACKHOUSE & KRAMER,
Attorneys of Plaintiff.

FILED, Jan. 18, 1915.

F. F. PATTERSON, JR.,
County Clerk.

Certificate.

STATE OF NEW JERSEY.

COUNTY OF CAMDEN.

I, FRANCIS F. PATTERSON, JR., Clerk of the County of Camden, do hereby certify, that the foregoing is a true copy of Notice of Appeal to Supreme Court in the case of

KARL F. RAEUBER, vs. PUBLIC SERVICE RAILWAY COMPANY,	Action at Law

Filed, January 18, 1915, in the Clerk's Office of the County of Camden.

(SEAL) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Camden, this nineteenth day of January, A. D. 1915.

F. F. PATTERSON, Jr.,
Clerk.

Judgment Record.

CAMDEN COUNTY CIRCUIT COURT.

KARL F. RAEUBER, vs. PUBLIC SERVICE RAILWAY COMPANY,	Action at Law. Judgment on Verdict.

Witness, HOWARD CARROW, Judge.
STACKHOUSE & KRAMER, Attorneys.
F. F. PATTERSON, JR., Clerk.

Judgment entered on the fifth day of January, A. D., nineteen hundred and fifteen.

Damages	$1,000.00
Costs	52.11
	$1,052.11

The plaintiff of the City of Camden, County of Camden and State of New Jersey, says that:

1. On the 23rd day of July, 1914, defendant was a common carrier of passengers by means of trolley cars on Market Street, Camden, New Jersey.

2. Plaintiff was a passenger on one of defendant's trolley cars on said day.

3. While plaintiff was such a passenger he requested the defendant, through its agents, servants and employees to stop the car at 8th and Market Streets, Camden, New Jersey, in order that he might alight therefrom.

4. While the car was approaching said Eighth and Market Streets, Camden, which was a regular stopping place for said car, its speed was gradually diminishing and had slackened to such

a point that it was safe for plaintiff to alight from said car.

5. Plaintiff thereupon attempted to alight from said car and while he was in the act of alighting therefrom defendant, by its agents, servants and employees, violently propelled the said car forward, by means of which plaintiff was thrown therefrom to the ground, with great violence.

6. By reason thereof plaintiff was severely and permanently injured, suffered a great, severe and permanent shock to his nervous system, has suffered and will suffer great pain of body and mind, has been and will be put to a great expense for medical services, has been and will be prevented from following his vocation and deprived of the earnings thereof, and the defendant many other wrongs then and there did to the plaintiff.

7. Plaintiff demands $10,000 damages.

The defendant, a corporation of New Jersey, having its principal office at the City of Newark, in the said State of New Jersey, says that:

1. It admits the first paragraph of the complaint.

2. It denies the second, third, fourth, fifth, sixth and seventh paragraphs of the complaint.

First Defense.

1. It avers that the negligence of the plaintiff contributed to the happening of the said alleged accident.

The plaintiff denies all of the affirmative allegations of the answer and gives notice that it will object at the trial of the above cause to the defense of the defendant alleging contributory negligence on the ground that contributory negligence is alleged as a conclusion instead of setting forth the state of facts in such a way as fairly to

apprise the plaintiff what is intended to be proved under such defense.

Therefore the Sheriff is commanded that he cause to come before the Judge of our Circuit Court at Camden in the County of Camden, on the 5th day of January, 1915, twelve etc., by whom, etc., who neither, etc., to recognize, etc., because as well, etc. the same day is given to the parties, etc., and the jurors of the jury whereof mention is made also come who to speak the truth of the matter within contained being chosen, tried and sworn upon their oaths say that they find for the plaintiff damages at the sum of $1,000.00 and the Court doth order judgment final in favor of the plaintiff and against the defendant for the sum of $1,000.00, besides costs of suit to be taxed.

Therefore, it is considered that the said plaintiff do recover against the said defendant his damages by the jurors aforesaid in form aforesaid assessed and also the sum of $52.11 for his costs and charges by the said Court before the Judge thereof now here adjudged, of increase to the said plaintiff and with his assent which said damages, costs and charges in the whole amount to the sum of $1,052.11.

And the said defendant in mercy, etc.

Judgment entered and signed this 5th day of January, 1915.

HOWARD CARROW,
Circuit Judge.

Certificate.

STATE OF NEW JERSEY.

COUNTY OF CAMDEN.

I, FRANCIS F. PATTERSON, JR., Clerk of the County of Camden, do hereby certify that the foregoing is a true copy of the record and proceedings in the case of

KARL F. RAEUBER, vs. PUBLIC SERVICE RAILWAY COMPANY,	Action at Law

Filed, January 5, 1915, and recorded in the Clerk's Office of the County of Camden, in Book J of Circuit Court Judgments, page 535.

(SEAL) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Camden, this nineteenth day of January, A. D. 1915.

F. F. PATTERSON, JR.,
Clerk.

Testimony.

CAMDEN COUNTY CIRCUIT COURT.

KARL F. RAEUBER, vs. PUBLIC SERVICE RAILWAY COMPANY,	Action at Law

December Term, 1914.

APPEARANCES:

For the Plaintiff, STACKHOUSE & KRAMER, ESQS.
For the Defendant, L. S. HOFFMAN, ESQ.
JOSEPH COULT, ESQ.

Before
CARROW, J. and a Jury.

The Case for the Plaintiff.

(MR. KRAMER opens the case for the plaintiff to the jury.)

(MR. COULT opens the case for the defendant to the jury.)

KARL F. RAUEBER, sworn.

By Mr. Kramer:

Q. Your full name is Karl F. Raueber, I think? A. Yes, sir.

Q. And you are the plaintiff in this suit? A. Yes, sir.

Q. You remember being on a car of the Public Service Railway Company on the 23rd of July, 1914? A. Yes, sir.

Q. Where did you take that car? A. Market and Broadway.

Q. And where were you going? A. I wanted to go up to 10th Street first; then I knew I had something to attend to on 8th Street, so I wanted to get off at 8th.

Q. Did you notify your conductor as to the destination? A. I told the conductor I wanted to stay outside, I was only going two squares, but he told me it was customary to go inside, so I went inside.

Q. I don't care anything about that conversation; did you tell him where you were going to get off? A. Eighth and Market.

Q. Where did you tell him that? A. I told him right there, Sixth and Market.

Q. Do you remember the car arriving at Seventh Street on that trip? A. Why, I told him I wanted to get off at Eighth.

Q. Answer my question; do you remember the car arriving at Seventh Street? A. Yes, I remember that.

Q. Did it stop at Seventh Street? A. No, sir.

Q. It did not? A. No.

Q. Now, do you remember it passing Seventh Street? A. I remember that.

Q. What did you do, if anything, at that time? A. I was sitting inside.

Q. Well, what did you do afterward? A. Well, as soon as he rang I walked out on the platform and told him that is where I wanted to get off, Eighth Street.

Q. Where was the car when you left your seat to get off at Eighth Street—about where was it? A. I couldn't exactly tell how far it was away from Eighth Street.

Q. Had it left Seventh Street some distance? A. Oh, my, yes.

Q. When you got on the platform, did you speak to the conductor or did he— A. I only told him, "This is Eighth Street where I want to get off."

Q. What did the conductor do? A. Reached up and pulled the rope.

Q. And did the car slacken up at that time? A. The car slackened right away.

Q. What did you do? A. As soon as I seen the car slacken up I walked out on the step.

Q. Then what happened? A. Then the car gave a jerk and threw me out in the street.

Q. How far had the car slackened down, Mr. Raueber, in response to the conductor's bell, when that happened? A. Well, he slackened up as soon as he got the bell.

Q. How much had it slackened up? A. Well, just about enough, I thought he was going to stop.

Q. And what happened to you, that is, you personally? A. Well, I was lying unconscious there until the people picked me up.

THE COURT: How near was he to the crossing?

Q. How near was it to the crossing? A. I don't know exactly how near it was.

MR. KRAMER: Well, he wasn't in a condition to see, I am afraid; he was knocked unconscious, he says.

By the Court:

Q. When you attempted to get off, you wanted to get off at Eighth Street? A. Yes.

Q. How near were you to Eighth Street when you attempted to get off? A. I can't exactly say how near, although when I told the conductor that is where I wanted to get off, at Eighth Street he said, "Yes," and reached up and pulled the rope,

must have pulled the bell. Now, whether it was one or two or three or four, I couldn't tell you.

Q. Three or four what? A. Houses below.

By Mr. Kramer:

Q. You were approaching Eighth Street, were you, Mr. Raueber? A. Yes.

Q. What happened to throw you off? A. The car gave a jerk.

By Mr. Kramer:

Q. What time of the day was this? A. It was between eight and nine at night.

Q. Dark? A. Yes, sir.

Q. Now, what injuries, if any, did you sustain as the result of this accident? A. I had my head cut, elbow broke and splintered—

MR. COULT: I object to the taking of proof of damages until negligence has been shown on the part of the Company.

THE COURT: The objection is overruled.

Q. Proceed, Mr. Raueber, tell us about your injuries. A. And I got my head cut, that was one, and I got the arm bone splintered, had the elbow cut, had my knee cut, and that is all the injuries I had.

Q. What business were you engaged in at that time? A. The harness business.

Q. Were you in business for yourself? A. Yes, sir.

Q. Where? A. 923 Market.

Q. What were your earnings approximately? A. Well, when I had a partner, we earned about six or seven dollars a day, sometimes.

Q. I mean at the time of the accident? A. It was then about $3.50, something like that.

MR. COULT: I object to that on the ground that it is indefinite, it is a matter of conclusion. The books should be produced.

THE COURT: What was the question, please?

MR. COULT: About what his earnings were per day.

THE COURT: Well, what has that to do with the case? Did he lose time?

MR. KRAMER: Certainly, this man has been incapacitated ever since and he is unable to use his arm.

THE COURT: That is all right then, go ahead; he has a right to show the loss of earnings, of course.

MR. KRAMER: His answer is about $3.50 or $4.00 a day.

Q. By whom were you treated, Mr. Raueber? A. Dr. Bentley.

Cross-Examination by Mr. Coult:

Q. Where were you going, Mr. Raueber, on the evening that you got injured? A. On the way up—

Q. Where were you going at the time that you got injured? A. I was on my way home.

Q. And is that the way you usually went home? A. Yes, sir.

Q. You are familiar with the crossings on Market Street? A. I should think so.

Q. Eighth and Seventh Streets? A. Yes.

Q. And you usually got off at Eighth Street? A. No, mostly at Ninth Street.

Q. Mostly at Ninth? A. Yes.

Q. You got off at Eighth Street sometimes, didn't you? A. Well, sometimes when I had something to do at Eighth Street.

Q. Did you speak to the conductor about stopping the car more than once? A. I told him that is where I wanted to get off, Eighth and Market.

Q. Did you speak to him about it more than once? A. No, sir.

Q. Only once? A. Well, when I went on here, I told him that is where I wanted to get off. I had a pass from Ninth and Kaighn's Avenue.

Q. Did you tell the conductor first when you got on the car where you wanted to get off and then afterward tell him again? A. Yes, sir.

Q. I see, and you went inside of the car after getting on at Broadway? A. He told me to do so.

Q. And you did? A. Yes, sir.

Q. And where did you sit in the car? A. I was the only passenger there in the back part.

Q. You were the only passenger on the car? A. In the back part, it was a partitioned car.

Q. And do you know where the car was about, when you got up to go out on the back platform, preparatory to alighting? A. Well, it was between Seventh and Eighth, but I don't know how near to Eighth, couldn't say that.

Q. Had it passed Seventh Street when you walked out of there? A. Yes, it had passed that, yes, sir.

Q. Do you know about how long a block it is between Seventh and Eighth Street? A. I have gone it many times, I didn't measure it, but I walked it many times.

Q. Well, about how many feet is it? A. About two or three hundred feet, something like that.

Q. Nearer three hundred than two hundred feet, isn't it, Mr. Raeuber? A. Well, it might be, I never measured it.

Q. How far had you gotten past Seventh Street when you came out and told the conductor to let you off at Eighth? A. As soon as I saw Eighth Street was coming, I walked out and said, "This is Eighth Street where I want to get off."

THE COURT: What did he say?

THE WITNESS: The conductor reached up and pulled the rope.

By the Court:

Q. But what did he say? A. He said, "All rght," and reached up and pulled the rope. I was the only one got off and nobody went on there.

Q. Could you see where you were with reference to Eighth Street? A. Why, not there, not quite there.

Q. You weren't qnite near Eighth Street? A. I though it was near to it when the car slackened up.

Q. But you don't know? A. I don't know how far off.

By Mr. Coult:

Q. How soon after the conductor pulled the bell did you step down on the step? A. As soon as I seen the car slacken up.

Q. Did it slacken up immediately after the bell was rung? A. It might have been a minute or two after.

Q. And do you know where the car was when you stepped down on the step? A. I looked down the track and I couldn't see no car; I thought it was gone, but I was told afterward that the car stopped about three or four yards afterward.

Q. You say it was dark at the time? A. Yes, sir.

Q. Well, it was a clear day, wasn't it? A. That is what I don't know.

By the Court:

Q. What time was it? A. Between eight and nine.

Q. In the morning? A. In the evening.

By Mr. Coult:

Q. It had been a clear day, hadn't it? A. That is what I don't remember.

Q. You don't recall? A. No, sir.

CLARENCE ROSS, sworn.

By Mr. Kramer:

Q. Mr. Ross, do you remember the night of July 23, 1914? A. Yes, sir.

Q. Where were you about eight o'clock on that evening? A. Well, I don't know just what time it was.

Q. You recall Mr.— This man being thrown off the car? A. Yes, I remember that.

Q. Was it after dark? A. Why, it was after dark.

Q. What was the condition of the weather? A. Well, what do you mean—cloudy.

Q. Well, had it been raining, was it raining? A. Well, I don't just remember; it has been so long.

Q. You don't recall? A. No.

Q. Where were you, please? A. Why, I was on a farm wagon.

Q. And which way were you driving? A. Coming in toward the ferry.

Q. What side of the farm wagon were you on, that is, what part of the driver's seat? A. I was on the left hand side.

Q. Were you driving? A. No, sir.

Q. Did some one else have control of the team? A. The fellow that I was with.

Q. Now, were you compelled for any reason to turn out of the track when you were approaching Eighth Street or between Eighth and Ninth? A. I expect there was, I think there was a car behind us.

Q. Just yes or no. A. There was a car behind us.

Q. Well, did you turn out of the track? A. I didn't; he did.

Q. Well, did your team turn out of the track? A. Yes, he turned to the left.

Q. And did you drive across the tracks of the Company? A. What, to the left?

Q. Yes. A. Yes.

Q. And how far over did you go? A. Oh, I guess we went all the way over to the other track.

Q. Did you cross that track? A. No, I don't think we crossed it.

Q. Now, did you see Mr. Raueber on that night? A. Did I see him on the car?

Q. No, just answer my question. Did you see him that night? A. Yes, I seen him that night.

Q. When was your attention first called to him? A. Well, when I seen something falling from the car; I just seen him fall.

Q. Did you afterward see him while he was lying on the ground? A. Well, he was part way up when I got there.

Q. Still on the ground though, was he? A. Well, he was partly up.

Q. What do you mean by that? A. He was trying to get up.

Q. Now, about how far below the corner, not in actual feet, but as near as you can describe it to us, was Mr. Raueber at that time? A. I judge

he was between Seventh and Eighth, but he was a little nearer to Eighth than he was to Seventh.

Q. About how many houses or doors, as you say, was he away from the corner? A. Well, that might have been four doors below the store, three or four, something like that.

Q. Three or four doors below the corner? A. Yes.

Q. What kind of car was he on? A. I don't remember.

Q. Didn't you look to see whether it was a large car or small car? A. No, I didn't take that much notice of it.

Q. About how far east of Eighth Street was it that your team drove over on to this outbound track? A. Oh, I judge about ten feet or so.

By the Court:

Q. How far, about, was the car away from the crossing? A. Well, I judge about four houses below the corner, below the store corner, below Eighth Street.

Cross-Examination by Mr. Coult:

Q. This material that was placed in the street, Mr. Ross, was to the east of Eighth Street, wasn't it? A. I expect you would call it east, right hand side coming in on the trolley.

Q. No, I mean it was on Market Street, wasn't it? A. Yes.

Q. And it was on the further side of Eighth Street? A. Yes, sir.

Q. And was there much of it? A. There was from Eighth Street clear up to them old houses above the Garden State, all the way along.

Q. Where did Mr. Shafer first turn the wagon to the left? A. To the left?

Q. Where? A. Whereabout?

Q. Yes. A. Well, about forty feet above Eighth Street, more or less.

Q. When you say forty feet above Eighth Street, you mean forty feet to the east of Eighth Street? A. Out Federal.

Q. Out toward the country? A. Yes.

Q. Now, where did Mr. Shafer pull his team back to the right again? A. I judge it was about ten feet or so above Eighth.

Q. Then you were still on the other side of Eighth Street when he pulled his team back on to the right hand side of the road? A. He pulled across to his right then.

Q. And you hadn't crossed Eighth Street then? A. No.

Q. Now, did you notice this trolley car coming at the time this farm wagon was turning back into the road? A. I didn't exactly notice it, I just happened to be looking that way and it was pulling across.

Q. Where was the trolley car then? A. The trolley car was about four doors below the corner.

Q. The front of the car or the back of it four doors below the corner? A. I couldn't say whether the front or back, I don't just remember, so long ago.

Q. It was a considerable ways on the other side of Eighth Street down the block? A. Yes.

Q. And that was when you saw the plaintiff fall off the car? A. That is when I seen it.

Q. What did you do then? A. Well, I jumped off the wagon and ran over there same as most everybody else would do. When I got over there, somebody asked him did he know anybody that was standing around there. He looked around; it seems I was the only one he knowed, and he told the conductor or somebody, "I know this fellow."

So I took him on—I asked him where he wanted to go. If I ain't mistaken he said he wanted to go to the druggist or doctor. I went in the druggist's with him, got the druggist to 'phone for his doctor, and from there took him home.

Q. You took him home from the drug store? A. Yes.

Q. Did you know him before this? A. Just knew him by taking harness there and getting it fixed is all.

Q. You say Mr. Raueber was lying on the ground a little nearer to Eighth Street than Seventh, as you recall it? A. Yes.

Q. About in the middle of the block? A. Well, a little nearer to Eighth, I suppose.

Q. A little nearer to Eighth? A. Yes.

Q. You said something about its being four doors beyond a grocery store? A. Yes, that would make it about five doors from the corner.

Q. That would be near the middle of the block? A. I suppose it would.

Q. Do you know how long that block is? A. No, sir.

Q. Well, it is two or three hundred feet, isn't it? A. I couldn't tell you that, I never noticed that much.

DR. DAVID BENTLEY, sworn.

By Mr. Kramer:

Q. Doctor, you are a practicing physician in Camden? A. Yes.

Q. You have been practicing how long? A. Ten years.

Q. Do you hold any official position? A. Not at present.

Q. Have you held any official position? A. Yes.

Q. What? A. Coroner.

Q. Do you know Mr. Raueber? A. Yes.

Q. The plaintiff in this case? Were you called to attend Mr. Raueber about the 23rd day of July, Doctor? A. Yes.

Q. Where did you see him? A. At home.

Q. Do you recall what the weather conditions were on that day or when you saw him? A. Well, it was either raining or drizzling, because the man's clothes were wet and muddy, see, when I went to see him. It seems to me it had been drizzling.

Q. Where was he living at that time? A. 933 Pearl Street.

Q. What were his injuries? A. Well, he evidently had fallen on his right side. The injuries were all down the right side, over the right hand, the sleeve in his coat was torn here, and also the knee of his pants. When I made an examination of him I found the skin broken in all those places, and generally broke up.

Q. Were any bones broken? A. Well, I didn't think so at the time; apparently the bones did not seem to be broken. Later on, after a reasonable amount of treatment and no improvement seemed to take place, why then I had an X-ray made of the shoulder to find out if there was anything further, and I found that there was a splinter from the head of the humerus.

Q. What effect has that on his ability to use his arm? A. It seems that that impinges on the socket joint, you know; when he tries to raise his arm this way, that small splinter evidently catches, because he has trouble about getting his arm up.

Q. Mr. Raueber, just step out there to the doc-

tor for a minute. Will you take his arm now and show the jury how far it is possible for him to raise it and use it? A. (Indicating). See, that is about as far as he claims he can raise it that way. He has motion this way, from the elbow, like that, and over that way, but to fetch it up, like a harness-maker has to, draw the arms out this way, that is what catches him. (Indicating). It is stiff there, but it is getting better than what it was, slightly; that is where it catches him, right here. The X-ray plate shows a small splinter right here.

Q. How long, Doctor, approximately how long, wil it be before Mr. Raueber is able to have the full use of his arm? A. Well, it may never be as good as it was, certainly. I think it is improving somewhat, it may come around so that he will be able to work.

Q. Will he recover the full use of it? A. I doubt it.

Q. In the same condition it was before this accident? A. It is very doubtful.

Q. What was the effect on his general physical condition as the result of the accident? A. As I say, he looked as if he had been through a threshing machine when I went to see him.

Q. Did that help or hurt his general physical condition? A. Well, a heavy man, he was in a pretty nervous condition and well shook up; I think naturally it would be detrimental to anybody.

Q. Has he been under your care ever since? A. Yes.

Q. Is he under your care at the present time? A. He is yet.

Q. What, about, has been your bill for medicine and services? A. I didn't give him any bill.

Q. Can you give us an idea what the bill is? A. I say I didn't render any bill yet.

Q. Could you give us any idea what that bill is? A. It wouldn't fall short of $50 at least.

Q. Does that include your services as well as the medicine? A. Yes.

Q. Has he fully recovered from the other effects of the accident aside from the bone situation? A. Yes, he is all right every other way.

Cross-Examination by Mr. Coult:

Q. You have been treating Mr. Raueber continuously since the date of this accident, Doctor? A. Yes, sir.

Q. And have you kept any record of your visits to him? A. Yes, sir.

Q. And where do you keep the record of it? A. Home.

Q. Keep books, do you? A. Yes.

Q. You didn't bring those books here with you? A. No.

Q. Did anybody ask you to bring them here? A. No.

Q. Those books would show just what your bill against Mr. Raueber would be, wouldn't they? A. I went over it roughly to get an idea; of course, I am not through with the man yet, I wouldn't hand him a bill until I was through with him.

Q. No, but you could tell us your bill to the present time, couldn't you, by reference to your books? A. So I have done.

Q. Well, you say it would not be less than $50 or something of that kind? A. Yes.

Q. Now, can't you tell us just exactly how many calls you made? A. We will say fifty. Yes, I had them down, I looked them up, I think I have got it in my overcoat pocket. (After examining pa-

per). Twenty calls at his house and twenty-eight he has made to me beside liniments and other stuff I used on him.

Q. And the injury that Mr. Raueber is now suffering from is a splinter of the shoulder? A. Yes.

Q. Do you think he will be cured of that? A. Well, I say it is doubtful that he ever has as good use of his arms as he had originally.

Q. Would any operation help it? A. Very doubtful.

Q. Who took the X-ray picture? A. Dr. Roberts at the Cooper Hospital.

Q. Do you have the plate with you? A. No, but the plate can be had.

Q. Where is it? A. At the hospital.

Q. That would show the fracture very clearly, I suppose, wouldn't it? A. Yes.

Q. And that would show just how this little splinter of bone prevents the plaintiff's arm from being raised beyond a certain point? A. Yes.

Q. The other injuries to Mr. Raueber were cuts and abrasions, weren't they? A. That is all.

Q. And they are all healed up and he has recovered from them? A. Yes, sir.

Q. None of those were of any serious character, were they—ordinary scratches? A. No.

Q. Did you ever treat Mr. Raueber before this accident? A. Yes, at different times.

Q. Did he suffer from diabetes? A. Well, he was supposed to; I had a sample of his urine examined at one time and it gave a trace of sugar; that is supposed to be a sign of diabetes. Apparently that recovered.

Q. But do you know that to be so? A. No further trouble and no signs of sugar in later examinations.

Q. When did you make later examinations? A. Since that sickness.

Q. One of the symptoms of diabetes is dizziness, isn't it, Doctor? A. Yes.

Q. Sudden accesses of dizziness, isn't that so? A. Sometimes.

Q. Do you recall the time when Mr. Raueber previous to this accident had been brought home in an ambulance? A. Yes.

Q. When was that, Doctor? A. I couldn't just say, but I suppose a couple of years back.

Q. Did you treat him then? A. Yes.

Q. That was an atack of dizziness, wasn't it? A. Yes.

Q. Do you know of the plaintiff's having had other attacks of dizziness beside that one? A. No.

Q. Did he ever complain to you of dizziness? A. That is the only time.

Q. Was that when you took the sample of his urine? A. Yes.

Q. And you found sugar in it? A. Supposed to be; I didn't examine it but I had it examined.

Q. And sugar was reported? A. That is the report I had, yes.

By Mr. Kramer:

Q. That was two years ago, was it, Doctor? A. Not less than that.

Q. What has been his normal condition since? A. He has been all right, had no further difficulty with him and he has attended to his business.

PLAINTIFF RESTS.

MR. COULT: Now, if it please the Court, I will move for a non-suit on two grounds: first that there has been no negligence proved on the part of the defendant company, and, secondly, it appears as an un-

disputed fact in the case, that the plaintiff was guilty of contributory negligence. There is not the slightest claim in this case, to begin with, that the car in question ever was at a standstill, that is, that the car was brought to a stop and that the passenger attempted to alight and was thrown by a premature start. The case is based, as I take it, upon the theory that when a car is nearing a crossing a passenger desirous of alighting goes out on the platform and the speed of the car has been reduced at the crossing to such a point that it is safe for the passenger to get down upon the step with intent to get out at a proper stopping place, and then having descended upon the step there is some unusual jerk or jolt of the car and the passenger is thrown to the street by reason of such unusual jerk or jolt, then there is liability.

THE COURT: Yes, but Mr. Coult, this was night-time. The passenger told the conductor that he wanted to get off at Eighth Street; he was near the door and he got up and the conductor rang up the motorman to stop the car, and the car almost stopped, it slowed down, I think his language was, "It slackened down so much I thought it stopped," and then relying upon the conductor to let him off at Eighth Street, he starts to get off, and then the car suddenly moves, moves with enough violence to throw him in the street, I think there is a case from which the jury may infer negligence upon the part of the defendant. Doesn't that create a jury question?

MR. COULT: Well, sir, I think that would be so if this had happened at Eight Street, but the point is this, sir: the negligence complained of is the negligence of the motorman.

THE COURT: Now, suppose he didn't want to get off at Eighth Street, he wanted to get off in the middle of the block.

MR. COULT: It has been proved that there is no stopping place in the middle of the block.

THE COURT: Well, suppose a passenger wanted to get off in the middle of the block and the car stops to let him off, hasn't he a right to get off?

MR. COULT: Yes, sir, absolutely so.

THE COURT: Hasn't he a right to get off in safety?

MR. COULT: Yes, but the point, as I take it, is this: The car at no time was at a stop, and this theory that the passenger has a right to descend upon the step of a moving car applies only to those places which are regular stopping places on the line, because there the Court says that the passenger has a right to believe, because he is at a regular stopping point, that he has a right to get on the step of the car, even though it be moving. Now, if they prove that, that this car had stopped in the center of the block and this man had stepped down on the step to get off and the car had started, that would be negligence, probably, apparently, but in order to recover in the case of a fall from an actually moving car, there must two things be shown: first, that the car was coming to a regular stop,

secondly, that it was going so slowly that approaching a regular stop a passenger had a right to assume that he could alight at the regular stop in safety. Now, this accident occurred almost in the middle of the block, according to the plaintiff's own witness, and there is no testimony that the car was at any time at a standstill.

THE COURT: Didn't the plaintiff say, "I want to get off at Eighth Street," and the conductor said, "Yes."

MR. COULT: Yes.

THE COURT: "This is Eighth Street."

MR. COULT: No, I don't think the conductor said, "Yes, this is Eighth Street." You see, the negligence complained of is the motorman's negligence and not the conductor's negligence. The motorman had had a bell to stop at Eighth Street.

THE COURT: If the motorman gets a bell to stop, that means to stop, don't it—it don't mean to go on?

MR. COULT: No, sir, it means to stop at the stopping place, and if there were an obstruction in the road, the motorman would certainly be compelled to bring the car to a slower rate of speed and then go on at a faster rate of speed, that there is nothing to show there was any jolt or jar; he simply said he got on the step and the car started to go fast and he was thrown; there is no negligence in that.

THE COURT: That would be for the jury, whether or not it was an unusual movement of the car. I am inclined at this time to deny your motion. You may renew it, though, at the conclusion of the case.

(Exception noted for the defendant).

The Case for the Defendant.

FRANK L. JONES sworn.

By Mr. Coult:

Q. Mr. Jones, where do you live? A. 940 Pearl Street.

Q. What is your business? A. I am a matrix setter for the Victor Talking Machine Company at the present time.

Q. What was your occupation on the 23rd day of July, 1914? A. Motorman for the Public Service Railway.

Q. And where were you employed? A. Camden, New Jersey.

Q. Camden, New Jersey? A. Yes, sir.

Q. And on what line? A. On the Market Street, Federal Street line.

Q. And on that day you were driving an old type closed car of the company in an easterly direction on Market Street in that city, weren't you? A. Yes.

Q. Do you know the plaintiff in this case? A. Yes, sir.

Q. How long have you known him? A. About a year—about ten months by sight, not his name.

Q. And you recall his being thrown from the car that you were operating on that day? A. Yes, sir.

Q. Where were you at the time? A. I was on the front end.

Q. What were you doing? A. Motoring the car.

Q. Do you know where the plaintiff got on the car? A. Yes.

Q. Where? A. Right out her at the transfer point.

Q. That is at the corner of Broadway and Market Street, isn't it? A. Yes, right out in front of this building.

Q. And do you remember whether you made any stop between the transfer point and Eighth Street? A. I did not.

Q. Did you stop at Eighth Street? A. On this side.

Q. Did you receive any signal for that stop? A. Got one bell.

Q. Where? A. Before I approached Eighth Street.

Q. Do you know where you were, between Seventh and Eighth Street, when you received that bell? A. I was a little closer to Eighth than I was to Seventh Street, about two car lengths beyond Seventh, one car length this side of Eighth.

Q. How fast were you going when you got the bell? A. Eight miles an hour.

Q. And what did you do on receiving the bell? A. Brought the car to a nice smooth stop.

Q. What did you do to do that? A. Put on the air, had air brakes.

Q. Was there any obstruction in front of your car? A. Not at the time.

Q. Did you see any wagon approaching you? A. No, sir.

Q. Did your car stop at any time between Seventh Street and Eighth Street? A. No, sir.

Q. Did you reduce your speed and afterward increase it at any time between Seventh and Eighth Street? A. No, sir.

Cros-Examination by Mr. Kramer:

Q. What kind of car was it, Mr. Jones? A. It was an old type enclosed car.

Q. Well, we don't know what you mean by "an old type"; one of the big cars with the smoker on the back? A. No, sir, Federal Street line.

Q. One of those very heavy cars? A. Yes.

Q. About how long? A. Forty-five feet.

Q. And you stopped on the westerly side of Eighth Street, didn't you? A. Yes.

Q. And you say that you got a bell to stop that car when you had passed the center of the block, when you were nearing Eighth Street? A. Yes.

Q. Do you know how long the block is? A. I don't know the exact number of feet to a city block.

Q. Now, had you stopped your car from the time you left the transfer point at Broadway? A. No, sir.

Q. You were going along at a pretty lively rate of speed then from the time you left Broadway until you got your bell? A. Yes.

Q. What makes you think it was going eight miles an hour? A. Well, that is what we judge the speed we go.

Q. You were going at the average speed that you go between blocks, weren't you? A. No, sir.

Q. You were not creeping along? A. No, sir, weren't going the average speed.

Q. I asked you whether you were going the average speed, Mr. Jones? A. No, sir.

Q. Were you going less than the average speed? A. Yes.

Q. Why were you going less than the average speed? A. We were going in the barn, on our last trip, and we didn't have to run fast.

Q. You were getting ready to go home, weren't you? A. We were going to the barn on the last trip.

Q. And you were going slower on your home-bound trip than you would be on your usual trip, is that the idea? A. We are not supposed to go in the barn ahead of time at no time, whether going home or going out.

Q. You had made your ferry at the regular time? A. Yes.

Q. And they had given you a certain time, the usual running time, in from the ferry to the barn? A. Yes.

Q. So the running time going to the barn is just about the same running time as on your regular trip, isn't it, and you hadn't any stop from the transfer point to Eighth Street? A. No, sir.

Q. And there was nothing ahead of you? A. No, sir.

Q. And you were running very slow? A. Moderate speed.

Q. Less than eight miles an hour? A. Yes, sir.

Q. You are sure it was eight miles an hour? A. Well, I couldn't swear to the exact distance, couldn't guess it that close, the speed of a car; a motorman or a passenger couldn't guess it that close.

Q. Now, you say you didn't see any obstruction in the tracks? A. No, sir.

Q. And as soon as you got—how long after you got the bell did it take you to come to a full stop? A. Well, when you are running a moderate speed it takes about—you can stop your car in about the length of it.

Q. Where did you stop your car? A. On this side of Eighth Street.

Q. Well, that is your regular stop? A. Yes.

Q. You made no effort to stop the car before you got there excepting the regular effort following the bell? A. Yes, sir.

Q. And if Mr. Raueber was thrown off in the middle of the block, you made no effort to stop the car and got no signal to stop the car to go back and get him, did you? A. We got no signal in the middle of the block.

THE COURT: Did he say anything about where Mr. Raueber was thrown?

MR. KRAMER: This man?

THE COURT: Yes.

MR. KRAMER: Not yet, apparently he was running the front end of the car.

By the Court:

Q. You don't know anything about that? A. No, we are not supposed to look back; we don't see what is going on back there.

By Mr. Kramer:

Q. Didn't you see this wagon coming on the track? A. It might have been, it was way ahead of us probably. That didn't signify, if it was in the other block.

By the Court:

Q. How near were you to Eighth Street when you stopped? A. About the length of the car.

Q. About the length of the car from the street? A. Yes.

Q. About the length of the car, that is the usual place—that is the place you usually stop? A. Well, generally stop right before you cover the sidewalk.

Q. What is the length of the car? A. Forty-five feet.

Q. Well, two forty-five lengths would be ninety feet? A. Ninety feet.

Q. You stopped about ninety feet from the corner? A. No, one car length I said.

By Mr. Kramer:

Q. Now, we will go back to this. You stopped, Mr. Jones—you made no attempt and got no signals to stop before you got to the crossing?

THE COURT: He said that; there is no use going over that three times.

MR. KRAMER: It is very important, it seems to me, in this case.

THE COURT: Important for what?

MR. KRAMER: To show that this man had a right to believe that the car was about to stop.

THE COURT: Well, if he says it three times it don't make it any stronger than once. He said he only got one bell to stop.

MR. KRAMER: Yes, and he stopped at the crossing. Now, in answer to your Honor's question as to whether you stopped at the crossing, you said you didn't stop right at the crossing?

A. No, sir.

Q. How far back from the crossing? A. About a car length.

Q. A whole car length from the crossing? A. Yes, as near as I can fix it.

Q. You don't mean the front of the car? A. Yes.

Q. The front of the car was a car length west of the crossing?

THE COURT: That is what he said, Mr. Kramer.

By Mr. Coult:

Q. State to the Court and jury where you brought the front of your car to a stop when you came to Eighth Street? A. Why, I brought my car to a stop on this side of Eighth Street.

Q. Where did you bring the front of the car to a stop with reference to the Eighth Street crossing? A. Nearer to Eighth Street, about half a car length.

By the Court:

Q. About how far? A. Just this side, I will say a car length, as near as I can tell.

By Mr. Coult:

Q. Are you speaking about the front of your car being a car length from Eighth Street? A. The front end, yes, sir.

Q. Was that your usual stopping place? A. Eighth Street is the usual stopping place if we get a bell at the corner.

Q. Did you bring your car to a stop on this occasion at the same place you usually bring it to a stop, on the Eighth Street crossing? A. No, I did not.

Q. Why not? A. Because after I got the one bell, and made a smooth stop I heard some one say a man fell off the car.

Q. Who was that? A. Some lady in the street, on the sidewalk.

Q. Then what did you do when you heard that? A. Went back to assist the man, looked back and seen a man lying there, went back to assist him.

By the Court:

Q. Who was the man? A. Mr. Raueber.

By Mr. Coult:

Q. Did you do anything further to stop your car when you got that word from the street? A. Oh, yes, we brought the car to a nice smooth stop. The man laid back of my car then, the man laid away back; I stopped closer to Eighth Street; he was away up there.

Q. You went back to help the plaintiff? A. Yes.

Q. Where was he lying with reference to your car? A. He was lying facing the car, toward the track.

Q. Was he near the rear— A. No, sir, about two car lengths back.

Q. Two car lengths back of what? A. Of my car.

Q. Two car lengths back of the rear of your car? A. Yes.

HERBERT K. BUCKNER, sworn.

By Mr. Coult:

Q. Mr. Buckner, what is your occupation? A. Conductor.

Q. And in whose employment? A. Public Service Railway Company.

Q. And you were so employed on the 23rd day of last July, weren't you? A. Yes.

Q. And on that day you were motorman in charge of a trolley car travelling on Market Street, Camden? A. Yes, sir.

Q. And at some time near eight o'clock at night on that day you recall having a trip in an easterly direction on Market Street when the plaintiff in this case met with some injury? A. Yes, sir.

Q. Where did you first see the plaintiff on that evening? A. Standing on the corner of Broadway and Market.

Q. Where were you? A. On the rear platform of the car.

Q. The plaintiff got on the car there, did he? A. Yes, sir.

Q. What did he do then? A. He said he wanted to get off at Eighth Street. I asked him to step inside of the car. He took the first cross seat in the rear of the car. We got to Seventh Street,

the car came to a slow-down at Seventh, and the car crossing Seventh Street, the rear of the car crossing Seventh Street, I gave the motorman the bell to stop at Eighth.

Q. Now, previous to that time, previous to giving the bell, did the plaintiff say anything else to you—had he said anything? A. Just told me when he got on the car at Broadway he wanted to get off at Eighth Street.

Q. Did he speak to you again before you pulled the bell? A. Didn't speak to me before I pulled the bell.

Q. Where was the car running before you pulled the bell? A. The rear of the car was just passing Seventh Street, the east side of Seventh.

Q. What happened then? A. I called Eighth Street and the man got up and said he wanted to get off at Eighth Street. I had already given the motorman the bell.

THE COURT: You called Eighth Street then?

THE WITNESS: I called Eighth Street after I passed Seventh Street. The man got up here, said he wanted to get off at Eighth. He came walking out. I saw he was staggering, so I put my hand up to the door to stop him. He said, "I am all right." I kind of held him back a little bit more. There was several people sitting in the car—I pulled my hand in again and called out "Eighth Street." The man proceeded out of the car on the platform—he was standing on the platform—I put my head in the car and called out "Eighth Street" again, and the car was then coming to a stop, slowing down.

Q. Yes, what did you do then? A. I turned around expecting to see the man there, but he wasn't there.

Q. Then what did you do? A. The car had already come to a stop. I immediately got off the car and looked back.

Q. What did you see? A. The man was then in a sitting position, in the act of getting up.

Q. And where was he with reference to the car? A. About seventy feet in the rear of the car.

Q. Then what did you do? A. Went back and assisted him to get up on his feet.

Q. Was there anybody else there? A. A few people standing around.

Q. Men or women? A. A couple of women, several men.

Q. Did your car stop at any time between Seventh and Eighth Streets? A. No, sir.

Q. At what rate of speed were you running at the time you passed Seventh Street when you gave the bell to the conductor? A. A slow rate of speed.

Q. Well, can you give the jury some idea of the miles per hour or by comparison or otherwise? A. Well, the car had made a sort of check stop at Seventh Street.

Q. What do you mean by that? A. A slowdown; we then proceeded and was just picking up.

Q. What happened when you gave the bell to the speed of the car? A. The speed decreased immediately as though the motorman was shutting off the power.

Q. And did the speed increase again after that? A. None whatever.

Q. Was there any jerk or jolt of the car? A. Not that I noticed.

Q. Did you see this plaintiff fall off the car? A. I did not.

Q. What were you doing at the time? A. I put my head inside the car to call out "Eighth Street."

Q. How many passengers were in your car at the time? A. Three.

Q. Where were they?

By the Court:

Q. Had the car come to a stop when the plaintiff got off? A. Had the car come to a stop when he got off?

Q. Was it very near a stop? A. About one hundred and twenty-five feet away from the corner.

By Mr. Coult:

Q. How fast was the car running at the time you put your head in the car to call "Eighth Street," and the plaintiff disappeared? A. I was then running about four miles an hour.

Q. And had the car come to a stop when you noticed that the plaintiff had gone? A. It was just coming to a slow stop then.

Q. Now, you said the plaintiff was sitting up when you saw him in the street? A. He was sitting up.

Q. And how far was he from the rear of the car? A. About seventy-five feet.

Q. How near was he to the middle of the block? A. About part way in the middle.

Q. Well, by that, do you mean he was near the middle of the block? A. Near the middle.

Q. Nearer Eighth or Seventh Street? A. Nearer Eighth.

Cross-Examination by Mr. Kramer:

Q. Mr. Buckner, you tell us that you stopped, you gave the bell to stop the car just as the rear of the car was crossing Seventh Street? A. Passing the east side of Seventh.

Q. When it reached the east side of Seventh? A. Yes.

Q. Had you cleared the east side of Seventh? A. As we cleared the east side.

Q. How far about? A. Well, about five feet from the curbing.

Q. Now, wouldn't the giving of the bell to your motorman five feet east of Seventh Street indicate to your motorman that he was to stop at once? A. No.

Q. What would it indicate? A. Stop at the next crossing.

Q. That he would stop at Eighth Street? A. The next crossing, yes, sir.

Q. Seventh to Eighth Street in Camden on Market Street is a good-sized block, isn't it? A. Yes.

Q. Approximately three or four hundred feet? A. Well, not four hundred.

Q. Well, it is a good block, a city block—I don't ask you to be too explicit. Now, this man disappeared from your car when he was in the middle of the block, did he? A. Yes.

Q. And your car then had slowed down to four miles an hour? A. Yes.

Q. And the conductor or motorman has been telling us what a smooth stop he made; it was a regular stop that he did make, wasn't it? A. Yes.

Q. Now, a car going at four miles an hour can be stopped in how many feet? A. I don't know anything about motoring a trolley car.

Q. You don't know anything about that? A. No.

Q. Do you know enough to say that it can be stopped almost instantly? A. Well, we can stop so we will throw pretty nearly everybody out of the seats.

Q. At four miles an hour? A. At four miles an hour.

Q. If it were stopped in ten feet, would it throw everybody out of the seats? A. That is something I don't know.

Q. Have you ever ridden in a car which you knew was going four miles an hour? A. Many a time.

Q. Going back to the regulation of your speed, would you say that a car could not be stopped in a very few feet without throwing passengers out of their seats? A. Oh, I don't mean throwing them out of their seats, I mean bringing them up.

By Mr. Coult:

Q. Just one other question; how far did your car go after you noticed that the plaintiff was gone? A. The car came to a stop almost immediately; the car was coming to a stop.

Q. That is when it was going four miles an hour, isn't it? A. Yes.

By Mr. Kramer:

Q. One question I overlooked. You called "Eighth Street" how many times? A. Twice.

Q. Called it twice? A. Yes.

Q. After you left Seventh Street? A. After we left Seventh.

HENRY VOGT, sworn.

MR. KRAMER: We will admit that is the map, if you say so.

MR. COULT: I think I would like to put the engineer on just to explain a few things about it.

By Mr. Coult:

Q. You are an engineer and surveyor? A. Yes, sir.

Q. And employed by the Public Service Railway Company? A. Yes.

Q. In Camden? A. Yes.

Q. Did you make this map I am now showing you? A. I did, sir.

Q. And just explain it briefly to the jury? A. The map here shows the intersection of Eighth and Market Streets in the city of Camden, and is made beginning at a point about two hundred feet west of this west curb of Eighth Street, a distance of two hundred feet on this side of Eighth Street. The direction here indicated is toward Merchantville and the direction from Seventh to Eighth Street, going from west to east.

Q. You did not indicate the whole block between Seventh and Eighth Street, did you? A. No, sir.

Q. You made this from measurements that were taken on the ground? A. Yes.

Q. Have you your notes with you? A. Yes.

Q. Can you tell by reference to your notes how long the block is from Seventh to Eighth Street? A. I did not measure the whole distance from Seventh to Eighth Street, but judge in the neighborhood of three hundred feet.

Q. What are these numbers which I am now indicating to you, right below the irregular red line? A. They are the house numbers.

Q. The house numbers? A. Yes.

Q. And this word marked on the corner signifies what? A. That signifies a store on the corner there.

Q. About how long, Mr. Vogt, are these fronts of the dwellings on the south side of Market Street to the west of Eighth Street? A. They are fifteen foot fronts.

Q. This scale is what? A. One inch is equal to ten feet.

Cross-Examination by Mr. Kramer:

Q. You show two hundred feet on the map? A. Two hundred feet west of Eighth Street.

Q. Does the map show the numbers of the houses? A. Number 716 is about one hundred and ninety feet west of Eighth Street.

JOSEPH T. BODELL, sworn.

By Mr. Coult:

Q. Where do you live, Mr. Bodell? A. 1007 Cooper Street, Camden.

Q. What is your occupation? A. Locomotive engineer.

Q. And employed where? A. By the Pennsylvania Railroad at Camden.

Q. On the 23rd day of July last you were a passenger on an eastbound Market Street car in the city of Camden which was involved in the accident which is the basis of this suit, were you not? A. Yes, sir.

Q. Where were you sitting in the car? A. In the rear seat back by the door.

Q. Now, this car was divided, was it not, into two compartments? A. Why, I don't just remember.

Q. Do you recall whether you were in the smoking compartment or not? A. I don't think I was.

Q. You were in the rear seat of the regular compartment of the car? A. Yes, sir.

Q. And did you see the accident? A. No, sir.

Q. What was the first that you knew that an accident had happened? A. Why, the car made a little extra long stop at Eighth Street, and I commenced to look to see what the trouble was, and I looked back and saw a crowd in the middle of the block. I thought I saw the crowd there in the middle of the block, and that is the first I knew that anything had happened until the conductor got on and told me some one had fell off.

Q. Never mind that. Did you go back to see what happened? A. No, sir.

Q. Was the car standing or in motion when you noticed the crowd in back there? A. Standing.

Q. How far was that crowd from the rear end of the car? A. I don't know, I didn't measure it, in the neighborhood of a hundred feet.

Q. A hundred feet? A. Yes.

Cros-Examination by Mr. Kramer:

Q. You did not get out of the car? A. No, sir.

Q. Didn't leave your seat? A. No, sir.

Q. And you glanced out of the window? A. Yes, sir, glanced back, it was dark.

Q. In back you glanced?

By the Court:

Q. Was it a dark rainy night? A. It was dark; I don't think it was raining.

By Mr. Kramer:

Q. Had it been raining? A. I don't know, I don't think so.

Q. So your statement about a hundred feet, that is just a guess? A. At a glance I judged that.

Q. How many feet were you from the corner the other way, do you know? A. I didn't get out and look.

Q. But you were some distance, were you? A. I couldn't say that; I didn't get out of the car, so I couldn't say. I know we were to Eighth Street by seeing the store on the corner.

Q. You were at Eighth Street by seeing the store on the corner? A. I know the stop at Eighth Street, because I know the land marks, the store on the corner.

Q. You were sitting pretty well back in the car and in what direction from the store? A. I thought we had stopped right at Eighth Street.

By Mr. Coult:

Q. What were you doing at the time? A. I just forget, I think I was reading a paper, I wouldn't say sure about that.

Q. Had you noticed any jar or jerk or jolt of the car previous to that? A. I did not notice any.

By Mr. Kramer:

Q. Your mind was not on the operation of the car at all, was it? A. No, I wasn't watching the operation.

By Mr. Coult:

Q. How long have you been a locomotive engineer? A. Nearly nine years.

MRS. FLORENCE BEATTY, sworn.

By Mr. Coult:

Q. Mrs. Beatty, where do you live? A. 517 Cedar Street.

Q. In the city of Camden? A. Yes, sir.

Q. Did you recall seeing an accident which happened on Market Street between Seventh and Eighth Streets in the city of Camden on the 23rd day of July last? A. Yes.

Q. Where were you at the time? A. Walking toward the ferry.

Q. On what street? A. Market Street.

Q. And on which side of the street? A. The south side.

Q. You know the plaintiff in this case by sight? A. Yes.

Q. You saw him at that time? A. Yes.

Q. Where were you when you first saw the plaintiff? A. I was on Market Street.

Q. Yes, but what point between Seventh and Eighth Streets, can you tell about it? A. I don't know, I walked toward the ferry and saw the man fall from the car.

Q. When you saw the man fall from the car where were you? A. Between Seventh and Eighth Street, walking toward the ferry.

Q. Yes, but can you tell us how far you were from either corner? A. I was more toward Eighth Street.

Q. Were you near the center of the block? A. No, not quite the center.

Q. Tell the jury just what you saw when this man came off the car? A. I saw the man fall off the car; the conductor didn't see him fall, we hollered, me and a girl friend of mine, hollered, said, "Somebody fell off the car." We helped pick

him up, but he was so heavy we couldn't pick him up, so the car conductor came and assisted him up.

Q. How was the car going, fast or slow, at the time he came off? A. Well, pretty fast.

Q. Can you give the jury some idea about how fast it was going, I mean, compared with the trotting of horses or walk of a man, something like that? A. Pretty fast.

Q. Well, was it going as fast as a man would walk? A. Oh, faster.

Q. Was it going faster than a horse would trot? A. Faster than that.

Q. Did the man come off the step or the platform of the car? A. He was on the platform, fell from the platform.

Q. Fell from the platform? A. Yes, fell from the platform.

Q. And how far did the car go after that? A. Stopped at Eighth Street, went as far as Eighth Street when it stopped.

Q. Did you call out at the time? A. We both called out, my girl friend and I both called.

Q. What is the name of your girl friend? A. Miss Emma Ramsey.

Q. Did the plaintiff say anything to you while you were picking him up? A. No. Oh, yes, he said he had dizziness of the head.

Q. Said he had what? A. Dizziness, he felt dizzy, that is how he came to fall from the step that time.

Q. Now, about where did he fall in the block, do you know? A. Toward Eighth Street.

Q. Can you tell near what house it was? A. The fifth.

Q. The fifth house from the corner? A. Yes.

Q. How do you fix that? A. About to the fifth, I don't know.

Q. You don't know? A. No.

Cross-Examination by Mr. Kramer:

Q. What makes you think it was the fifth, Mrs. Beatty, conversation with some one about the case? A. No.

Q. Haven't you talked with anybody about the case? A. No, sir.

Q. Not a soul? A. Not a soul.

Q. How did they come to get your name? A. I don't know how they got my name.

Q. Did you give it to anybody? A. Oh, yes, I gave it to the car conductor.

Q. The car conductor didn't see this man fall off the car, but he was right there getting your name, wasn't he? A. Well, he said, "Who seen the accident?"

Q. That was right away, wasn't it? A. Right away, yes.

Q. Now, Mrs. Beatty, the car was going faster than a horse could trot? A. Pretty fast; I don't know how fast a horse can trot.

Q. You just made a guess at the horse's trotting, did you? A. Yes, it went pretty fast.

By the Court:

Q. What was it? A. The car was going pretty fast.

By Mr. Kramer:

Q. About how many miles an hour would you say it was going?

THE COURT: How can she tell that?

MR. KRAMER: She has got a horse trotting; I think we ought to test the witness on that point.

THE WITNESS: I don't know how many miles.

MR. KRAMER: I don't want to be unfair with the witness, but it is very important. The conductor has got it down to four miles an hour.

MR. COULT: It is not fair to say that. He turned around to look and when he saw the man was gone, the car was going ten miles an hour.

Q. You say Mr. Raueber fell off the platform of the car? A. Yes.

Q. He did not get on the step at all? A. No, he fell off.

EMMA RAMSEY, sworn.

By Mr. Coult:

Q. Where do you live, Miss Ramsey? A. 832 Birch Street, Camden.

Q. Just raise your voice, Miss Ramsey. A. Why, as I was walking toward the ferry—

Q. Wait, I haven't asked you yet; wait until I ask you a question. You were on Market Street with Mrs. Beatty? A. Yes.

Q. On the 23rd day of last July? A. Yes.

Q. In the evening? A. Yes.

Q. You saw the accident in which this plaintiff here in this case was involved, didn't you? A. Yes.

Q. Did you see the plaintiff fall? A. I saw him fall.

Q. Where was he when he fell? A. He was on the platform.

Q. Of what? A. Of the trolley car.

Q. And where were you at the time? A. I was coming from Eighth Street, going toward the ferry.

Q. And were you nearer Eighth Street or Seventh on Market? A. Nearer Eighth Street.

Q. Were you on the same side of the street that the man fell on? A. Yes, sir.

Q. Was the car moving or standing at the time that he fell? A. The car was moving.

Q. And was it going fast or slow? A. It was going fast.

Q. And did it come to a stop? A. It stopped after we hollered, it didn't stop until we hollered.

Q. Where did it stop? A. It stopped just at Eighth Street.

Q. Did this plaintiff say anything to you about how he came to fall? A. He said when he got off that he had felt dizzy.

Q. And can you tell the jury where this thing happened on the street? A. Why, it was just about 728, right in front of that house, because I happened to turn around and look at the house and got the number.

Q. Have you any friends that live along there? A. I haven't any friends, I just know them by sight.

Q. Do you know whose house that is there? A. Yes, it is O'Neill's house.

Q. And you know it was in front of O'Neill's house that this happened? A. Yes.

Q. When this plaintiff fell, did he fall forward or backward? A. Backward.

Q. Did he lay still for any length of time after he fell? A. He lay still, he couldn't move. My girl friend and I went to pick him up. I couldn't get him up, and some one came to help.

Q. Do you know who came to help? A. The car conductor and I think there was a young fellow.

Q. Was that the young man who was on the stand here? A. Yes.

Cross-Examination by Mr. Kramer:

Q. You had been calling, Miss Ramsey, at some friend's house on Market Street? A. No, I was walking toward the ferry, I was going then.

Q. You were about passing some friend's house? A. I was just about passing it.

Q. Had you spoken to them? A. No, no one was out at all; it was just this house, I knew the number.

Q. Was it a warm evening? A. I don't remember that.

Q. Was it raining? A. I don't remember that; oh, I know it wasn't raining, I don't know whether it had been raining or not.

Q. Had it been raining? A. I don't know.

Q. You were chatting with Mrs. Beatty, I suppose, that is, walking down the Street? A. Yes.

Q. Which side were you on? A. The south side of the street.

Q. On which side of Mrs. Beatty were you on, toward the houses? A. She was toward the outside, I think.

Q. So that you were looking toward her? A. Yes.

Q. And this man fell from the platform of the car? A. Yes, sir.

Q. And he fell backward? A. Yes, sir.

Q. And the car was running at a high rate of speed? A. Yes, sir.

Q. Was it running at the usual speed that trol-

leys get up between streets? A. Yes, I think it was.

Q. A good safe rate of speed. Now, were you toward Eighth Street of the car when the accident happened, or were you immediately abreast of the car? A. Right in front of Seventh Street, we were going toward Seventh Street.

Q. You were going across Seventh Street? A. Toward Seventh.

Q. Now, I want to know whether you were nearer to Eighth Street? A. We were nearer to Eighth than the accident.

Q. Just wait; the car was coming up Market Street, you were going down? A. Yes.

Q. Had you got opposite the car or was the car still coming toward you? A. The car was still coming toward Eighth Street and we stopped it.

Q. Just get my question, please. Were you nearer to Eighth Street than the car was, or were you and the car right abreast of each other? A. The car was nearer to Eighth Street.

Q. Then the car had gotten past you, had it? A. Yes.

Q. How far had the car gotten past you? A. I don't know just how far.

Q. Well, how much did you have to turn around to see this? A. Why, we saw the man falling when it was about a half car length, I guess.

Q. Now, you are not making it very clear, Miss Ramsey; let's get it on the map here. Now, this is Market Street, here, and this is the track going out on which that car was, if you can picture that pencil as the car; what number were you opposite then? A. 728.

Q. So that you were there (indicating on map)? A. Yes.

Q. Now, where was the car, whether here or up there? (Indicating). A. Up there.

Q. It was up there? A. Yes.

Q. So that you had to turn around to see this man fall off the car, didn't you? A. No, the man had fell off the car.

Q. Where were you when the man fell off the car? A. At 728.

Q. Where was the car? A. The car was up near Eighth.

Q. Up there? A. Yes.

By the Court:

Q. When the man fell off was the car near Eighth? A. When he fell off, we saw him fall off before we turned around to the car, and the car was up at Eighth Street at that time.

Q. You say the car was near Eighth Street when he fell off? A. No, it wasn't right near Eighth Street; we had turned around after he had fallen off.

By Mr. Coult:

Q. Where was the man lying on the street? A. Right in front of 728.

MRS. ELIZA ARMSTRONG, sworn.

By Mr. Coult:

Q. Where do you live? A. 718 Market.

Q. That is about eleven houses west of Eighth Street on Market Street? A. Yes, sir.

Q. Did you see the accident in Market Street on the 23rd day of July last about eight o'clock in the evening? A. I don't remember the date, but I saw the accident.

Q. About what time of day was it? A. It was between 8:15 and 8:30 in the evening.

Q. Where were you at the time? A. In a chair, sitting on my front step.

Q. Do you know this plaintiff here? A. I have seen him pass my home.

Q. Was he involved in that accident? A. I can't say who it was fell off; I saw a man fall off.

Q. And where did that occur? A. As I noticed it, it was—it seemed to be about three or four pavements from my home.

Q. Three or four pavements from your home? A. Yes.

Q. Toward Eighth Street? A. Yes.

Q. When you say "pavements" you mean houses? A. I mean the width of the houses.

Q. And that would be about in front of No. 724 or 726? A. About that, yes.

By the Court:

Q. How near did you say it was to your house, —two or three houses, did you say? A. Three or four, I should say; I should say about fifty feet, sixty maybe.

By Mr. Coult:

Q. Did you see a man fall off the car? A. Yes, sir.

Q. Was the car moving fast or slow at the time? A. An ordinary rate of speed between the blocks, I noticed that.

Q. Did it stop afterward? A. It stopped apparently as soon as it could.

Q. That is, after that? A. Yes.

Q. And where did it stop? A. Well, some little distance above where the man fell, I couldn't tell you the distance.

Q. Did you see any crowd gather around the man? A. A few people.

Q. Do you recognize any of the people in this court room? A. No, it was too far away from me.

Q. Do you know whether there were any women there? A. There seemed to be.

Q. Did you notice whether this car increased its speed at the time of this accident or diminished it? A. It was the ordinary speed it was going when the man fell off; it came to a stop as soon as it naturally could.

By the Court:

Q. Could you tell, Mrs. Armstrong, whether the man fell from the platform of the car or the step of the car? A. I would say from the way he fell that it was from the platform; he fell so heavy and backward.

Q. He fell backward? A. Yes, backward, I noticed that particularly; it struck me so horrible that he should fall backward.

Cross-Examination by Mr. Kramer:

Q. What date was it, Mrs. Armstrong? A. I don't remember the date.

Q. You are not positive of the date? A. No.

Q. That you are testifying about? A. No, I had no reason to remember it.

Q. And you are not positive of the man that you are testifying about? A. I am not positive of the date, because there wasn't anything to impress it upon my mind.

Q. I can readily understand that and you don't know Mr. Raueber? A. Only by seeing him pass my place.

Q. And you don't know who the man was that night? A. No.

Q. So that you don't know it was Mr. Raueber except from hearsay? A. That is all.

Q. And you don't know how many feet it was down the street? A. I only measured as I looked up.

Q. And you don't know how many pavements it was away from you when the car stopped? A. Yes.

Q. Except by a rough estimate, do you? A. I know all the houses and neighbors; I say it was three or four pavements away.

Q. About that, and you have said in answer to his Honor's question that you would say that he fell from the platform? A. He did fall from the platform.

Q. Why did you say, "I would say that he fell from the platform"? A. Oh, a manner of speech, I suppose.

Q. What? A. Just my manner of speech.

Q. But you don't know who it was that fell from the platform? A. No.

By Mr. Coult:

Q. Did you notice whether the conductor—did you see the conductor—Strike that out. After this man fell off the car from the platform, did you see the conductor of the car do anything? A. I saw him get off the car and come down to the man, help to lift him up.

J. HERBERT FERRIS, sworn.

By Mr. Coult:

Q. Where do you live, Mr. Ferris? A. 520 Bergen, Gloucester.

Q. Where were you on the 23rd of last July, about between eight and half-past eight in the evening? A. In front of 704 Market Street.

Q. That is near Seventh Street? A. Yes, sir.

Q. How many doors from the corner of Seventh Street, do you know? A. Three.

Q. Who lives there? A. Mr. Evans.

Q. What were you doing there? A. I was in conversation with Mr. Evans.

Q. A friend of yours? A. Yes.

Q. Do you know where he is today? A. I do not, no, sir.

Q. Did you see any accident happen on Market Street at that time? A. I did, yes, sir.

Q. Do you know the plaintiff in this case? A. No, sir.

Q. Did you ever see him before? A. Only the evening of the accident.

Q. Did you see him the evening of the accident? A. Yes, sir.

Q. Tell the jury what you saw happen? A. I saw an object leave the car and then I went down where he was lying in the street; I assisted the man to rise and the conductor then asked me for my name and I gave it to him.

Q. Was the car—You say you saw an object leave the car; what was the object? A. A man.

Q. Was the car standing or moving at that time? A. Moving.

Q. And at what rate of speed was it going, would you say? A. At about the usual rate in city limits.

Q. Did you notice any increase or decrease of speed immediately at the time the man left the car? A. No, sir.

Q. Did the car stop afterward? A. Yes, sir.

Q. Where? A. At Eighth Street, near Eighth Street; I didn't observe whether it was—

Q. How far was the point where the man came off the car from the rear of the car after it stopped at Eighth Street? A. About fifty feet.

Cross-Examination by Mr. Kramer:

Q. I didn't get your name, please? A. Ferris.

Q. Mr. Ferris, you were busy in conversation with a gentleman at 704 Market Street? A. Yes, sir.

Q. You, of course, knew nothing whatever of what was going on on the car? A. No, sir.

Q. You hadn't any interest? A. No, sir.

Q. You hadn't any special occasion to watch the speed of the car? A. No, sir.

Q. The car was rapidly moving away from you toward Eighth Street? A. I shouldn't say rapidly, I think if it had been moving rapidly it would have attracted my attention.

Q. Then it was moving slowly? A. Well, that I didn't look up.

Q. In fact your mind was not on the speed of that car, and you had no interest in the car? A. No, sir.

Q. But the thing that struck you was the falling of a body from the car? A. Yes.

Q. And that is all you knew about it until you went up and examined it? A. Yes.

Q. Then you found the body approximately fifty feet back of the car? A. Yes.

DR. DANIEL STROCK, sworn.

By Mr. Coult:

Q. Dr. Strock, you are a practicing physician and surgeon in the city of Camden, New Jersey? A. Yes, sir.

MR. COULT: You will admit the Doctor's qualifications?

MR. KRAMER: Yes.

Q. About how long have you practiced, Doctor? A. About thirty-eight years.

Q. You made an examination of Karl Fred Raueber on the seventh day of August last? A. Yes.

Q. Who is the gentleman who is sitting almost directly behind me, the plaintiff in this case? A. Yes.

Q. Where did you examine him? A. At his home.

Q. Of what did that examination consist? Did you get the history of the case from him? A. Yes, I asked him what happened to him.

Q. What did he say? A. He said that the car instead of stopping gave a jerk and threw him off.

Q. And there that he received injury? A. Yes, sir.

Q. Did you find any symptoms of injuries? A. In the right brow or about the right brow there was a healed scar of a small cut or abrasion, as we term it. His right arm had a black and blue mark about four inches in diameter in both directions below the shoulder, no marks of any injury over the shoulder proper. On the back of the right elbow was a partly healed abrasion or scrape about the size of a silver dollar, and on the right knee was one about the same size and about the

same condition of healing, partly healed. He said he could not raise his arm completely, he could not raise it to the right angle, but he had some motion of the arm, motion of the fingers and so forth, but he couldn't, as he claimed, raise the arm up to a right angle, as we ordinarily do. He said his shoulder hurt him.

Q. Did you make any test of that condition of the arm to find out whether it could be raised above the shoulder? A. Well, when I attempted to raise it, he resisted me and claimed it was too painful to pursue the attempt.

Q. Did the plaintiff complain of any other injuries except those that you have mentioned? A. No, sir, I have no recollection of his doing so.

Q. There were no subjective symptoms except the trouble in the shoulder? A. No, sir, his power of motion except that in the arm seems to be unimpaired.

Q. In your opinion, Doctor, is it impossible for the plaintiff to raise his arm above the level of his shoulder? A. At that time?

Q. Yes, at the time of this examination? A. I don't think he could have done it without pain, because evidently there had been a bruise of the muscles concerned in making that movement, and it was not surprising that he should feel pain on undertaking it, and really feeling that he could not do it.

Q. Is that condition permanent, Doctor? A. In my opinion, it was not, no, sir.

Q. He could have been cured when? A. Well, in the course of two or three weeks after the period that I saw him my expectation was that he would be well.

Q. Have you made any other examination of the plaintiff? A. No, sir.

Cross-Examination by Mr. Kramer:

Q. Doctor, when was it you saw Mr. Raueber? A. It was the 7th of August.

Q. And you thought that he ought to be well on the 23rd of—three weeks would be about the 23rd of August? A. The three weeks from the period I saw him would be the 23rd.

Q. You say he ought to be well about three weeks after you saw him? A. Yes.

Q. So that would make it about the 28th of August. Have you seen him since? A. No, sir.

Q. You are the regular examiner for the company in these cases? A. Yes.

Q. And is there any reason why you could not have gone back, knowing that the suit was pending? A. I have no knowledge of that at all; I do not solicit the examinations.

Q. I understand that thoroughly, Doctor, I don't want to reflect for a moment on you. The fact that he is not well since then would indicate that your assumption was wrong at that time? A. If he is not well at this time, of course, I must assume that I made a mistake in estimating the length of time that he would be in getting well.

DR. E. A. Y. SCHELLINGER, sworn.

By Mr. Coult:

Q. Where do you live, Doctor? A. 429 Cooper Street, Camden.

Q. A practicing physician and surgeon of Camden? A. Yes.

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

Q. Do you know the plaintiff in this case? A. Yes, sir.

Q. Did you make an examination of him on the 27th day of December, 1914? A. Yes, sir.

Q. Where? A. At his home.

Q. Of what did that examination consist? A. The examination consisted of making an examination of the right should.

Q. Did you get any statement or history of the case from the plaintiff? A. I asked him how the accident occurred; he said he was standing on the step of the car and there was a jolt and it threw him off.

Q. And what trouble did you find in that shoulder, Doctor? A. An inability to raise the arm above a right angle.

Q. Did you find anything which would cause such inability? A. Except that I believe that it gave him pain; I believe it was a sense of pain which prevented him from raising the arm. He could get perfect motion in the joint; there didn't seem to be any bony interference at all.

Q. In your opinion, what was the cause of the condition you found? A. After receiving the history of the fall, I assumed that the trouble originated from that, and that the inability to raise the arm was the effect of non-use, that is, that the arm had not been used, and I believe by use it would come all right.

Q. You say then in your opinion if the plaintiff had used his arm it would have been all right at the time you examined it? A. I believe so, yes, sir.

Q. Did you find any other symptoms of injuries? A. No, they just told me about having bruises on the right side and on the face; he said they had healed.

No cross-examination.

DEFENDANT RESTS.

BOTH SIDES REST.

MR. COULT: I renew my motion for non-suit, if the Court please, upon the same ground that I have already stated. I also move your Honor for the direction of a verdict on the same ground and on the further ground that the weight of the evidence is so overwhelmingly in favor of the defendant that a new trial would be granted if judgment was given for the plaintiff.

THE COURT: I will hear the other side, whether there is anything for the jury to consider.

MR. KRAMER: We respectfully submit that there is considerable for the jury to consider, if the Court please, in view of the testimony. We have the plaintiff's testimony to the effect that he boarded a car of the defendant company at the transfer point, paid his fare, apparently no dispute about that, and gave notice to the conductor when he got on the car that he was getting off at Eighth Street. That was a very natural thing for this man to do, because he was about a block and a half away from his destination at that time. This car did not stop after it left that transfer point until it had crossed Seventh Street. The testimony of the plaintiff is that he heard a bell which the motorman admits was sounded, and that he stepped out on to the platform and was about to alight from the car that was coming to a stop, that he was suddenly thrown to the ground. Now, bear in mind that there is a farm wagon coming down on the other side of Eighth Street, on the same track that this car is coming up on. None of the defendant's witnesses have a word to say about that wagon.

That, in our theory of the case, was the reason that this car slowed up in the middle of a block, and then jerked forward when it crossed off. Now, we claim that this plaintiff did not commit any negligence on his own part by stepping on the platform or even on to the step. The cases in this State—I think your Honor is very well acquainted with them—hold that that is not negligence per se; therefore, he had a right to prepare to alight from a car which he believed was going to come to a stop. The motorman proves that statement by saying that as soon as he got a bell from the conductor that he brought that car to a smooth stop, as soon as he got a bell. The conductor amplifies that statement by saying he gave him the bell when he was five feet east of Seventh Street. Now, we have the car finally coming to a stop at Eighth Street. Isn't it fair to assume and isn't it a question for this jury whether or not Mr. Raueber tells the full history of the case or whether the motorman and conductor tell the full story? We have got the motorman practically denying what the conductor says.

THE COURT: What do you say to the testimony of the two pedestrians?

MR. KRAMER: The two girls?

THE COURT: Yes.

MR. KRAMER: I should say that their testimony was so uncertain that it should not be counted against this plaintiff as testimony for a non-suit. Neither of these young ladies were very clear as to the speed of the car. The fact is, they were

walking along the street and chatting as two girls would of that age.

THE COURT: They swear that the plaintiff said he was dizzy and fell off the car.

MR. KRAMER: No, that he was dizzy when they saw him.

THE COURT: No.

MR. KRAMER: Very well then, I would like to rebut on that point. I was going to rebut, but it struck me as being so light.

THE COURT: You will have a chance; you may ask him the question.

KARL F. RAUEBER, recalled.

By Mr. Kramer:

Q. Were you dizzy before you fell from that car?

(Objected to).

THE COURT: No, that is not the question. Did he say to these women, Mrs. Beatty and Miss Ramsey, when he was arising from the fall that he was dizzy and fell off the car?

MR. KRAMER: Answer that question.

A. I wasn't dizzy before I fell, but I was dizzy when they lifted me up. It is no wonder, I was bleeding like a pig.

MR. KRAMER: Does that clear your Honor's mind on that point? Otherwise I would like to examine him at length.

THE COURT: Well, I only want the facts.

THE WITNESS: I never felt dizzy be-

fore, only when they lifted me up, I lost so much blood I must have felt dizzy.

THE COURT: The motion will be denied. The case must go to the jury. Proceed.

MR. COULT: I wish your Honor would permit me to proceed after lunch, because I would like to look at two or three cases which will bear on this case.

THE COURT: You want me to hold the matter over?

MR. COULT: Yes, until after lunch.

THE COURT: All right, gentlemen, we will come back at half-past one. I will hold this motion open if you think you have some cases.

MR. COULT: I think so, yes.

THE COURT: And the other side, I hope, will get diligent, because it is a very close question, indeed.

At this point a recess was taken until 1:30 o'clock P. M.

Trial of the cause resumed after recess, pursuant to adjournment, in the presence of counsel for the respective parties.

KARL F. RAUEBER, recalled.

By the Court:

Q. Did you say to Mrs. Beatty or to Miss Ramsey that you had fallen from that car because you were dizzy? A. No, sir.

No cross-examination.

MR. COULT: As I was about to say to your Honor, I found a couple of cases here and they are not the cases I was looking for, but I think they throw light on the subject. I explained to your Honor before I went out that the reason I was not fortified with the cases I desired to have was because I anticipated that this case would take a much different course, and my anticipation of that was based upon the complaint which apprises us of the case. (Reading complaint). Now, the natural conclusion to be drawn from that complaint is that this case is within the purview of these decisions which hold that when a car is approaching a regular stopping place as alleged in this declaration and the speed is reduced to a point where it is safe for the passenger to alight, the passenger has a reasonable ground to believe that if he steps down on that step there at that point, he has a right to do so, and he won't be thrown off by any violent jerk or lurch of the car, and that a violent jerk or lurch of the car at that point is negligence on the part of the motorman. That is what I assumed. Now, in this case, we have an entirely different state of facts. We have this, that the plaintiff intended to get off at Eighth Street, which was a regular stopping place as he alleged in his declaration; he did not intend to get off or expect to get off anywhere else between Seventh and Eighth Street, and he so stated. He says he went out on the rear of the car, that the speed of the car slackened, that he thought he must be at Eighth Street, and he says

in his testimony, in which he was mistaken, that he got down on the step believing that he was going to alight at his destination, and that the car then did nothing more than to start up, increase its speed. Now, there isn't a word in here to prove about a violent jerk or lurch or anything that would indicate that the motorman did anything more than increase his speed, that he slowed up in the center of the block and started forward. Now, to hold this defendant, it must be said, first, that the slowing up of the car itself was an invitation for the plaintiff to alight, no matter where, and that though he was mistaken as to the point where the car had reached, he had a right to get down on the step, that the motorman then must anticipate that somebody was on that step, and that he must not increase his speed so as to throw any one off of the step. Now, that is an entirely different proposition. The conductor had rung his bell and that was a notification, as the proof of this case states and it is uncontradicted, that the car was to be stopped at the next stopping place, namely at Eighth Street, and that is what the plaintiff says he anticipated when the bell was rung. It was the duty then of the motorman to stop his car at Eighth Street and to make a proper stop at that point. Now, we will assume that he did slow his car down and did start it up, and we will assume that the slowing down and starting up was of such a character that if a passenger at that time had been on the step he would have been thrown off— I am taking the plaintiff's construction of

his own case. Now, if that is so, then in every case where the motorman after receiving a signal for any purpose whatsoever reduces the speed of his car and increases it again, before he stops, he must be guilty of negligence.

THE COURT: You have another factor to deal with. When the conductor has called out Eighth Street, slackened the speed of the car by the bell signal to the motorman and called out Eighth Street twice, the signal to stop twice and in the night time when the car had almost stopped or slowed up so that the plaintiff says he thought it was about to stop. The passenger then, according to his contention, while in the act of alighting was thrown off of the car by a sudden and unexpected movement of the car.

MR. COULT: There is no evidence, if the Court please, that the conductor signalled the motorman twice.

THE COURT: He said so.

MR. COULT: No, sir, no, I think the case is barren of any such thing as that. He rang only once. He said he stuck his head in the door and called out "Eighth Street" twice, but he did not notify the motorman that there was to be any stop between Seventh and Eighth Street. It is the negligence of the motorman that is being complained of.

THE COURT: Now, what was the car stopped for?

MR. COULT: Assuming that the testimony of the plaintiff is true, why was the speed of the car reduced? There is an explanation provided by the plaintiff himself

in his case; he said there was a wagon in front which swung out across the street, and that must have been the reason, so stated in the plaintiff's opening to the jury, so proved here, that there was a wagon approaching that turned out across the track and the motorman under those circumstances would have to reduce the speed of the car to avoid a collision, and it could not be said that that is negligence upon his part.

THE COURT: (After further argument): I am inclined to think it is a jury case. Proceed with the argument, gentlemen. The motion is declined.

(Exception noted for the defendant).

During the argument the following objection was made by Mr. Coult.

MR. COULT: I object to counsel's statement that the plaintiff is entitled to fifteen hundred or two thousand dollars, and request the withdrawal of a juror and the direction of a mis-trial.

THE COURT: The amount of the verdict, of course, is exclusively for the jury, and even though counsel did mention a sum, the jury, of course, would not be bound by that, and I do not deem that is of sufficient consequence to justify the withdrawal of a juror and a continuance of the case. The motion, therefore, is denied.

(Exception noted for the defendant).

Charge of the Court.

CARROW, J.:

Gentlemen:—This is an effort to charge the defendant with negligence. Negligence in contemplation of law means a neglect of duty. The plaintiff cannot recover except by a preponderance of evidence, which must show in a substantial and convincing way that the defendant was guilty of negligence. The case cannot rest upon guess work or haphazard conclusion; you must be convinced by the evidence that the defendant was guilty of negligent conduct, that is, a failure of duty.

Now, the complaint in this case, which I will read, says that on the 23rd day of July, 1914, defendant was a common carrier of passengers by means of trolley cars on Market Street, Camden, New Jersey; second, plaintiff was a passenger on one of defendant's trolley cars on said day; third, while plaintiff was such passenger he requested the defendant, through its agents, servants and employees, to stop the car at Eighth and Market Streets, Camden, New Jersey, in order that he might alight therefrom; fourth, while the car was approaching said Eighth and Market Streets, Camden, which was a regular stopping place for said car, the speed was gradually diminished and it slackened to such a point that it was safe for plaintiff to alight from said car; fifth, plaintiff thereby attempted to alight from the said car, and while he was in the act of alighting therefrom, defendant by its agents, servants and employees, violently propelled the said car forward, by means of which plaintiff was thrown therefrom to the ground with great violence, and he claims to have sustained personal injuries in consequence of the fall.

The plaintiff's contention with regard to the merits is that he boarded one of defendant's Market Street cars at Broadway; he told the conductor he wanted to get off at Eighth Street; that when the car was beyond Seventh Street, the conductor was again told by the plaintiff that he desired to get off at Eighth Street, that the conductor called out, "Eighth Street" to the passengers in the car, that he then signalled the motorman to stop the car, that brakes were at once applied by the motorman and the speed of the car was slackened in such a way as to cause plaintiff to believe that the car was about to stop at the Eighth Street crossing; that the night was dark and stormy and that the conductor had called Eighth Street twice before plaintiff attempted to alight, and that while plaintiff was in the act of alighting, the car was suddenly and unexpectedly started, as a result of which plaintiff was thrown into the street. Whether this contention is borne out by a preponderance of the proof is a jury question. The only duty the defendant owed the plaintiff, in view of the circumstances, was to afford the plaintiff a reasonable opportunity to alight in safety from its car; that is the only duty the defendant owed the plaintiff.

What I have thus far said relates to the plaintiff's side of the case. But there is another side to the case, which you are bound under your oaths to consider; your verdict must be the result of independent and impartial judgment. The defense in the case is that the plaintiff took a chance, and got off the car carelessly, that the plaintiff was, therefore, guilty of contributory negligence, and if by the evidence he is shown to have been guilty of contributory negligence he cannot recover. It is the law of this State, which you, as a jury, are bound by just the same as I

am as the Judge of this Court, that a plaintiff in a negligence case cannot recover any damages if he is shown to have been guilty of contributory negligence, nor can a plaintiff recover in a negligence case, if the injuries about which he complains are the result of the joint negligence of himself and the defendant. Contributory negligence—bear that in mind, gentlemen, as clearly as you can—either in whole or part upon the part of a plaintiff in a negligence case will defeat his action under the law of the State of New Jersey. If the plaintiff took a chance and got off of this car carelessly in the way claimed by defendant, he was guilty of contributory negligence, and it would be your duty, regardless of the consequences, to return a verdict for the defendant.

The plaintiff's case, I am obliged to say, depends almost exclusively upon the testimony of the plaintiff; as has been said by his counsel, the plaintiff has no witnesses to this occurrence. Several witnesses have been called by the defence. The preponderance of evidence must be borne by the plaintiff. Of course, the preponderance does not necessarily mean the greater number of witnesses; it does not mean that, yet where there is only one witness on one side and a large number of witnesses on the other side, that is a circumstance which the jury cannot disregard. It may not be a controlling circumstance; but it, nevertheless, is a circumstance calling for consideration, a circumstance, as I have said, which the jury cannot disregard.

Now, gentlemen, you have both sides of the case; you have the plaintiff's contention that it was a rainy night, and dark, that the conductor had called out Eighth Street, the car had slackened, that plaintiff believed from its circumstances that he had reached his destination; you have that con-

tention on one side, and you have the contention of the defendant on the other side, that plaintiff fell from the platform of the car and not the step and fell from the platform backward, that he was dizzy, that it was his dizziness which caused him to fall. There you have the two sides.

It is your duty to consider both sides thoroughly, and if you decide that the defendant was not negligent you will say so by your verdict. But if you find on the other hand that the defendant was negligent, then you will allow the plaintiff fair and reasonable compensation, nothing more and nothing less. In fixing the compensation, you will take into consideration the different medical expenses the plaintiff has had to lay out or may have to lay out in consequence of his injuries; you will also take into consideration the pain and suffering which he has endured or may endure in consequence of his injuries and such physical disability as he has sustained. There seems to be a dispute between the doctors as to the extent of the plaintiff's injuries. The plaintiff's doctor thinks that the man's arm or shoulder may not be—he does not say it will not be—it may not be as good as it was before, while Dr. Strock and Dr. Schellinger on the other hand, say that there is no reason why he should not be well, there is nothing about his condition that suggests that his injuries are permanent. If plaintiff's injuries are not permanent, of course, the damages will not be as great as if they were. The man is entitled to just compensation; that means full compensation; it does not mean exorbitant or excessive compensation. The value of a verdict consists in its reasonableness and consistency with the law and evidence. You may retire.

Grounds of Appeal.

(Filed March 13th, 1915.)

NEW JERSEY SUPREME COURT.

KARL F. RAEUBER, *Plaintiff-Appellee,* vs. PUBLIC SERVICE RAILWAY COMPANY, *Defendant-Appellant.*	Action at Law. On Appeal from Camden County Circuit Court.

To

STACKHOUSE & KRAMER, ESQS.,
Attorneys of Plaintiff.

SIRS:

TAKE NOTICE that the following are the grounds of appeal which the defendant-appellant will urge in the above-entitled cause:

1. Because the Court, at the close of the plaintiff's case, although requested so to do by the defendant's attorney, on the ground that no negligence on the part of the defendant had been proved, refused to non-suit the plaintiff.

2. Because the Court, at the close of the plaintiff's case, although requested so to do by the defendant's attorney, on the ground that the negligence of the plaintiff had contributed to the happening of the accident, refused to non-suit the plaintiff.

3. Because the Court, at the close of the whole case, although requested so to do by the defendant's attorney, on the ground that no negligence on the part of the defendant had been proved, re-

fused to direct a verdict in favor of the defendant.

4. Because the Court, at the close of the whole case, although requested so to do by the defendant's attorney, on the ground that the negligence of the plaintiff had contributed to the happening of the accident, refused to direct a verdict in favor of the defendant.

5. Because the Court, at the close of the whole case, although requested so to do by the defendant's attorney, on the ground that the weight of the evidence was so overwhelmingly in favor of the defendant that a new trial would be granted if judgment were given for the plaintiff, refused to direct a verdict in favor of the defendant.

6. Because the Court, over the objection of the attorney of the defendant, admitted testimony on the part of the plaintiff as to the earnings of the plaintiff, as follows:

> "Q. What were your earnings approximately? A. Well, when I had a partner, we earned about six or seven dollars a day, sometimes. Q. I mean, at the time of the accident? A. It was then about $3.50, something like that. MR. COULT: I object to that on the ground that it is indefinite, it is a matter of conclusion. The books should be produced. THE COURT: What was the question, please? MR. COULT: About what his earnings were per day. THE COURT: Well, what has that to do with the case? Did he lose time? MR. KRAMER: Certainly, this man has been incapacitated ever since and he is unable to use his arm. THE COURT: That is all right, then, go ahead; he has a right to show the loss of earnings, of course. MR. KRAMER: His answer is about $3.50 or $4.00 a day."

7. Because the Court denied a motion of the defendant's attorney to withdraw a juror and direct a mis-trial, on the ground that the plaintiff's counsel had made a statement to the jury that the plaintiff was entitled to $1,500 or $2,000.

Dated, March 10, 1915.

LEFFERTS S. HOFFMAN,
Attorney of Defendant.

(Above grounds of appeal are endorsed with acknowledgment of service by attorneys of plaintiff.)

OPINION OF SUPREME COURT.

(Filed Nov. 5, 1915)

NEW JERSEY SUPREME COURT.

KARL F. RAEUBER,		JUNE T., 1915.
VS.		APPEAL FROM CAMDEN CIRCUIT COURT.
PUBLIC SERVICE RAILWAY COMPANY.		

Argued before GUMMERE, Chief Justice, and Justices SWAYZE and BERGEN.

For the Appellant, LEFFERTS S. HOFFMAN, LEONARD J. TYNAN and JOSEPH COULT, JR.

For the Respondent, STACKHOUSE & KRAMER.

Per Curiam:

This was an action for personal injuries received by the plaintiff while alighting from a car of the defendant company in the City of Camden. The plaintiff had a verdict and judgment. The defendant appeals.

Plaintiff's case was that, being a passenger on the

defendant's car, and desiring to leave the car at Eighth Street, he advised the conductor of his wish. That upon arriving at Seventh Street, he again told the conductor to let him off at Eighth, and the conductor gave the necessary signal to the motorman. That after the signal was given he (the plaintiff) went out on the platform; that the car slacked up; that he stepped onto the step; and that just at that moment the car gave a jerk which threw him into the street.

We think this judgment cannot be sustained. There is no proof that the jerk of which plaintiff complains was abnormal, or anything more than was merely incidental to the proper operation of the car. Consequently, no negligence was shown which rendered the defendant company responsible for plaintiff's injury. The plaintiff, in taking his position upon the step, assumed the risk of accident which might result from normal operation, and had only himself to blame for the injuries which he received.

It is true that the motorman testified that there was no observable jerk after he began to slow down the car. But, conceding that the jury had a right to disbelieve this statement, the nullifying of his testimony will not supply the evidence which the plaintiff was bound to produce, namely, evidence showing abnormality in the operation of the car.

The judgment under review will be reversed.

RULE FOR REVERSAL.

(Filed November 12, 1915)

NEW JERSEY SUPREME COURT.

KARL F. RAEUBER, *Plaintiff-Appellee,* vs. PUBLIC SERVICE RAILWAY COMPANY, *Defendant-Appellant.*	ACTION AT LAW. ON APPEAL FROM CAMDEN COUNTY CIRCUIT COURT. RULE ON REVERSAL AND REMITTITUR.

The Court having heard the arguments of counsel, and having inspected the judgment and proceedings removed by the appeal in this cause, and having duly considered the grounds of appeal,—

It is Ordered that the said judgment be in all things reversed, set aside and for nothing holden, and that the said cause be remitted to the Camden County Circuit Court to be proceeded in according to law.

Entered November 12, 1915.

On motion of

LEFFERTS S. HOFFMAN,
Attorney for Appellant.

NOTICE OF APPEAL.

(Filed Nov. 30, 1915)

NEW JERSEY SUPREME COURT.

KARL F. RAEUBER, *Appellant,* vs. PUBLIC SERVICE RAILWAY COMPANY, *Respondent.*	ON APPEAL FROM SUPREME COURT. NOTICE OF APPEAL.

To Leonard J. Tynan, Attorney for Respondent:

Take Notice that the appellant appeals to the Court of Errors and Appeals from the whole of the judgment of reversal entered in the New Jersey Supreme Court on the 12th day of November, 1915, on appeal from the Camden County Circuit Court, on the following grounds:

1. The Supreme Court reversed the judgment of the Circuit Court when it should have been affirmed.

2. The Supreme Court decided that the appellant was guilty of contributory negligence when he was not guilty of any negligence.

3. The Supreme Court decided questions of fact on the appeal when such questions were exclusively for the consideration of the jury.

4. The Supreme Court decided that the appellant had not sustained his burden of proof, when, in fact, he had done so.

5. The Supreme Court decided that there was no question for the jury, when there was a jury question in the case.

6. The Supreme Court decided that there was no negligence on the part of the respondent, while as a matter of fact sufficient negligence was shown for the jury to consider.

STACKHOUSE & KRAMER,
Attorneys for Appellant.

[ENDORSED]

Service acknowledged this 26th day of November, 1915.
Lefferts S. Hoffman,
Atty. of Respondent.