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EXHIBITS

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Notice of Appeal.

(Filed December 27, 1922.)

NEW JERSEY SUPREME COURT.

ANTHONY SCHREINER, Executor,
etc., of FRANK SCHREINER, de-
ceased,

Plaintiff-Respondent,

vs.

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, et al.

Defendants-Appellants.

10

TO LEWIS B. EASTMEAD, ESQ.,
Attorney of Plaintiff-Respondent.

20

SIR:

YOU WILL PLEASE TAKE NOTICE, that the De-
fendant-Appellant, The Delaware, Lackawanna
and Western Railroad Company, herewith ap-
peals to the New Jersey Court of Errors and
Appeals from the judgment of affirmance of
the Hudson County Circuit Court made and en-
tered in the above matter and that it will, within
the time prescribed by law and the rules of the
Court, serve upon you its reasons or grounds of
appeal.

30

Dated, November 30, 1922.

Yours, etc.,

FREDERIC B. SCOTT.

Attorney for The Delaware, Lacka-
wanna and Western Railroad
Company, Defendant-Appellant.

40

Grounds of Appeal.

(Filed January 3, 1922)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	ANTHONY SCHREINER, Executor, etc., of FRANK SCHREINER, de- ceased, <i>Plaintiff-Respondent,</i> <i>vs.</i> THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COM- PANY, et al. <i>Defendants-Appellants.</i>	}	Action at Law. Grounds of Ap- peal.
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20 TO LEWIS B. EASTMEAD, ESQ.,
 Attorney of Plaintiff-Respondent.

SIR:

YOU WILL PLEASE TO TAKE NOTICE, that the above defendant appeals to the New Jersey Court of Errors and Appeals from the judgment of the New Jersey Supreme Court and all parts of the same entered on the Twenty-second day of November, 1922, and that it herewith sets forth its reasons and grounds of appeal:

I. Because the New Jersey Supreme Court erred in giving judgment for Anthony Schreiner, Executor, etc., of Frank L. Schreiner, deceased, Plaintiff-Respondent, instead of The Delaware, Lackawanna and Western Railroad Company, defendant-appellant.

II. Because the New Jersey Supreme Court erred in refusing to set aside the said judgment

Grounds of Appeal.

for the reason or ground of appeal filed in that Court, to-wit:

“Because the trial court refused to direct a verdict in the favor of The Delaware, Lackawanna and Western Railroad Company and against the plaintiff for the following reasons: 10

“1. Because no negligence has been shown as against the Railroad Company.

“2. Because the plaintiff's decedent was guilty of contributory negligence.

“‘Because the injury to the plaintiff's decedent was proximately caused by the negligence of the driver of the motor truck of this defendant's co-defendant, the Efficient Motor Transportation Company.’”

III. Because the New Jersey Supreme Court 20
erred in refusing to set aside said judgment for the reason or ground of appeal filed in that Court, to-wit:

“Because the Trial Court erroneously charged the jury as follows:

“‘It has also been insisted by and through the testimony in the case that passengers used the team gangways for the purpose of reaching that portion of the boat which I have last spoken of. As to whether or not that is so, depends on what you may find the evidence in this case to show you and satisfy you; and to be satisfied of it you must find it from the greater weight of the evidence. It must be shown you in order to permit you to so find, by the greater weight of the evidence, that the practice was so continuous, or had continued so long that it could be said that either the company permitted it expressly, or that it was charged with knowledge of it and had not prevented it, and therefore, impliedly permitted it to be 30 40

Grounds of Appeal.

done. As to whether or not that is so, gentlemen, I say to you again so that you shall not mistake it, is for you to determine from the evidence in the case: and you can only be legally and under your oaths satisfied provided you have been satisfied by the greater weight of the evidence. I say that in contradistinction to the use of that portion of the forward deck forward of the fog chain, which I spoke to you about, because that portion apparently was used and permitted to be used and designated to be used by passengers during the rush hours of traffic, and the question of the use of the team gangway may be of importance to you in the decision of this case in at least two different ways or as to two different things; that one, as to whether or not (and, of course, they are very closely connected with each other), at the time of this happening the plaintiff's decedent was in that part of the boat where he had a right to be and have a right to the protection of that high degree of care which I have already defined to you, and again important upon the question as to whether or not he was negligent (that is, the deceased, Mr. Schreiner), as to whether he was living up to the rule of law as to his own care. For that reason I say, gentlemen, that question may be of importance, and its decision, therefore, is important,—its correct decision.'”

Yours truly,

THE DELAWARE, LACKAWANNA AND
WESTERN RAILROAD COMPANY,

By FREDERIC B. SCOTT,

Its Attorney.

Notice of Appeal and Grounds of Appeal.

(Filed December 28, 1922.)

HUDSON COUNTY CIRCUIT COURT.

ANTHONY SCHREINER, Executor of
the Last Will and Testament of
FRANK L. SCHREINER, deceased,
Plaintiff-Respondent,

vs.

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, a corporation, and in the
alternative, HARRY CLOEREN,
RAYMOND A. WEBBER and ED-
WIN J. WEBBER, partners trad-
ing under the firm name and
style of EFFICIENT MOTOR
TRANSPORTATION COMPANY,
Defendants-Appellants.

10

Action at Law.
Notice of Ap-
peal and
Grounds of Ap-
peal.

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TO LEWIS B. EASTMEAD, ESQUIRE,
Attorney of Plaintiff-Respondent.

TAKE NOTICE that the defendants, Harry Cloe-
ren, Raymond A. Webber and Edwin J. Web-
ber, partners trading under the firm name and
style of Efficient Motor Transportation Com-
pany, appeal to the New Jersey Court of Errors
and Appeals from the whole of the judgment en-
tered in this cause upon the following grounds:

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I. Because the Supreme Court of the State
of New Jersey erred in affirming the judgment

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Notice of Appeal and Grounds of Appeal.

entered in the Hudson County Circuit Court in this cause.

10 II. Because the Supreme Court of the State of New Jersey erred in affirming the said judgment because the said Hudson County Circuit Court refused to non-suit said plaintiff on the following grounds:

1. That no negligence had been shown on the part of these defendants.

2. On the ground that the deceased was guilty of contributory negligence.

3. On the ground that the deceased assumed the risk of the accident that happened by taking the position that he took on the ferryboat at the time of the accident.

20 III. Because the New Jersey Supreme Court erred in affirming the said judgment because the said Hudson County Circuit Court erred in refusing to direct a verdict against the plaintiff and in favor of the Efficient Motor Transportation Company on the same grounds as stated in its motion for a non-suit and on the additional ground that the proofs show that the deceased came to his death by reason of an unavoidable accident and that the defendants are not liable, therefore, to respond in any damages to the plaintiff.

Yours Truly,

HARRY CLOEREN, RAYMOND A. WEBBER and EDWIN J. WEBBER, partners, trading under the firm name and style of EFFICIENT MOTOR TRANSPORTATION COMPANY,

By SIDNEY JACOBS,

Attorney.

Opinion of Supreme Court.

(Filed November 21, 1922.)

NEW JERSEY SUPREME COURT.

No. 40, June Term, 1922.

ANTHONY SCHREINER, Executor,
etc., of FRANK SCHREINER, de-
ceased,

*Plaintiff-Respondent,**vs.*

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, et al.

Defendants-Appellants.

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Submitted July 6, 1922; Decided November 21,
1922.

20

On appeal from the Hudson County Circuit
Court.

Before GUMMERE, Chief Justice, and JUSTICES
SWAYZE and TRENCHARD.

For the Appellant, D. L. & W. R. R. Co.,
FREDERIC B. SCOTT.

30

For the Appellant Efficient Motor Transpor-
tation Co., SIDNEY JACOBS (FRANK G. TURNER
on the brief).

For the Respondent, LEWIS B. EASTMEAD.

Per Curiam:

The plaintiff, executor of decedent, sued the
Delaware, Lackawanna and Western Railroad 40

Opinion of Supreme Court.

Company and the Efficient Motor Transportation Company in the Hudson County Circuit Court, and the plaintiff had a verdict and judgment against both defendants. Both defendants prosecute this appeal.

10 At the trial it appeared that plaintiff's decedent, Frank L. Schreiner, was a passenger on a ferry boat owned and operated by the Railroad Company from 23rd Street, New York, to Hoboken. He boarded the ferry boat and proceeded to a position in the front end of the boat, being the central portion of the forward part of the boat chained off apparently for the use of passengers. At any rate it appeared and was in effect admitted that the space was reserved for foot
20 passengers during the rush hours, at which time the accident happened. While there, a heavy motor truck, owned and operated by the defendant, the Efficient Motor Transportation Company, came through the team gangway at a high and dangerous rate of speed, entirely out of control, and crashed through the chain, causing it to snap and strike the plaintiff's decedent, throwing him in front of the truck which then ran over him and injured him so severely that
30 he died. So at least the evidence tended to show.

With respect to the negligence of the Efficient Motor Transportation Company, it is sufficient to say that the evidence respecting the plainly obvious defective condition of the brake and driving chain of the truck, made the negligence of the company in inspection and repair a jury question. So, too, the questions of the alleged
40 contributory negligence and assumption of risk of the decedent, were at most, for the jury.

Opinion of Supreme Court.

Consequently, the motions to non-suit and to direct a verdict made by that company were properly refused.

As to the Railroad Company, their contention is that their negligence in failing to take proper precautions for the safety of the decedent was not the proximate cause of defendant's injury, and therefore, a verdict should have been directed in the railroad's favor, or a non-suit granted as to it. But with respect to this it is sufficient to say that the facts upon which contention is predicated were in dispute, and hence a verdict could not have been directed nor a non-suit granted.

The judgment will be affirmed, with costs.

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Rule of Affirmance and Remittitur.

(Filed 1922.)

NEW JERSEY SUPREME COURT.

10	<p>ANTHONY SCHREINER, Executor, etc., of FRANK SCHREINER, de- ceased, <i>Plaintiff-Respondent,</i> <i>vs.</i> THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COM- PANY, et al. <i>Defendants-Appellants.</i></p>	<p>On Appeal. Rule of Af- firmance and Remittitur.</p>
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20 This cause coming on to be heard before the Court and the Court having heard the argument of counsel of the respective parties, and duly considered the same,

IT IS ORDERED that the judgment removed by appeal in the above cause be and the same is hereby affirmed with costs, and the record re-mitted to the court below to be proceeded with according to law and the practice of said court.

Entered November 22, 1922.

30 On motion of
LOUIS B. EASTMEAD,
Attorney for Plaintiff.

Notice and Grounds of Appeal.

(Filed May 5, 1922.)

HUDSON COUNTY CIRCUIT COURT.

ANTHONY SCHREINER, Executor,
etc., of FRANK SCHREINER, de-
ceased,

*Plaintiff-Respondent,**vs.*

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, et al.

Defendants-Appellants.

10

Action at Law.

TO: LEWIS B. EASTMEAD,

Attorney of Plaintiff-Respondent.

20

SIR:

YOU WILL PLEASE TO TAKE NOTICE that the de-
fendant, The Delaware, Lackawanna and Western
Railroad Company, appeals from the whole of the
judgment rendered and entered in the above en-
titled cause to the New Jersey Supreme Court
and that it particularly sets forth its reasons and
grounds of appeal to be as follows:

I. That the trial court refused to direct a ver-
dict in its favor and against the plaintiff-re-
spondent for following reasons:

30

(1) Because no negligence had been shown
as against the Railroad Company;

(2) Because the plaintiff's decedent was
guilty of contributory negligence;

(3) Because the injury to the plaintiff's
decedent was proximately caused by the neg-

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Notice and Grounds of Appeal.

ligence of the driver of the motor truck of this defendant's co-defendant, The Efficient Motor Transportation Company.

II. Because the trial court erroneously charged the jury as follows:

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"It has also been insisted by and through the testimony in the case that passengers used the team gangways for the purpose of reaching that portion of the boat which I have last spoken of. As to whether or not that is so, depends on what you may find the evidence in this case to show you and satisfy you; and to be satisfied of it, you must find it from the greater weight of the evidence. It must be shown you in order to permit you to so find, by the greater weight of the evidence, that the practice was so continuous, or had continued so long that it could be said that either the company permitted it expressly, or that it was charged with knowledge of it and had not prevented it, and therefore, impliedly permitted it to be done. As to whether or not that is so, gentlemen, I say to you again so that you shall not mistake it, is for you to determine from the evidence in the case; and you can only be legally and under your oaths satisfied provided you have been satisfied by the greater weight of the evidence. I say that in contradistinction to the use of that portion of the forward deck forward of the fog chain which I spoke to you about, because that portion apparently was used and permitted to be used and designated to be used by passengers during the rush hours of traf-

Notice and Grounds of Appeal.

fic, and the question of the use of the team gangways may be of importance to you in the decision of this case in at least two different ways or as to two different things; the one, as to whether or not (and, of course,

they are very closely connected with each other), at the time of this happening the plaintiff's decedent was in that part of the boat where he had a right to be and have a right to the protection of that high degree of care which I have already defined to you. and again important upon the question as to whether or not he was negligent (that is, the deceased, Mr. Schreiner), as to whether he was living up to the rule of law as to his own care. For that reason I say, gentlemen, that question may be of importance, and its decision, therefore, is important,—its correct decision.”

Yours truly,

THE DELAWARE, LACKAWANNA AND
WESTERN RAILROAD COMPANY,

By FREDERIC B. SCOTT,

Attorney.

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Notice and Grounds of Appeal.

(Filed May 5, 1922.)

HUDSON COUNTY CIRCUIT COURT.

10 ANTHONY SCHREINER, Executor of
the Last Will and Testament of
FRANK L. SCHREINER, deceased,
Plaintiff-Respondent,
vs.

20 THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, a corporation, and in the
alternative, HARRY CLOEREN,
RAYMOND A. WEBBER and ED-
WIN J. WEBBER, partners trad-
ing under the firm name and
style of EFFICIENT MOTOR
TRANSPORTATION COMPANY,
Defendants-Appellants.

Action at Law.

TO LEWIS B. EASTMEAD, ESQUIRE,
Attorney of Plaintiff-Respondent.

30 TAKE NOTICE that the defendants, Harry Cloe-
ren, Raymond A. Webber and Edwin J. Webber,
partners, trading under the firm name and style
of Efficient Motor Transportation Company, ap-
peal to the Supreme Court of the State of New
Jersey from the whole of the judgment entered
in this cause upon the following grounds, to wit:

I. Because the court refused to non-suit said
plaintiff on the following grounds:—

1. That no negligence had been shown on
the part of these defendants.

2. On the ground that the deceased was guilty of contributory negligence.

3. On the ground that the deceased assumed the risk of the accident that happened by taking the position that he took on the ferry-boat at the time of the accident.

II. In that the trial court erred in refusing to direct a verdict against the plaintiff and in favor of the Efficient Motor Transportation Company on the same grounds as stated in its motion for a non-suit and on the additional ground that the proofs show that the deceased came to his death by reason of an unavoidable accident, and that the defendants are not liable, therefore, to respond any damages to the plaintiff. 10

Yours truly,

HARRY CLOEREN, RAYMOND A. WEBBER and EDWIN J. WEBBER, partners, trading under the firm name and style of EFFICIENT MOTOR TRANSPORTATION COMPANY, 20

By SIDNEY JACOBS,
Attorney.

Summons.

(Served August 15, 1921.) 30

THE STATE OF NEW JERSEY to:

Delaware, Lackawanna and Western Railroad Company, a corporation, and *Harry Cleeren, Raymond A. Webber*, and *Edwin J. Webber*, partners, trading under the firm name and style of "*Efficient Motor Transportation Company.*" (Seal.) 40

10 You are summoned to answer the annexed complaint of Anthony Schreiner, executor of the last will and testament of Frank L. Schreiner, deceased, in an action at law, in the Hudson County Circuit Court AND TAKE NOTICE that unless you file your answer to said complaint with the Clerk of the Hudson County Circuit Court, at Jersey City, within twenty days after service upon you of this writ, and the annexed complaint, the plaintiff may proceed in the suit and judgment be entered against you.

WITNESS, Honorable LUTHER A. CAMPBELL, Judge of the said Court at Jersey City, this 12th day of August, nineteen hundred and twenty-one.

JOHN J. MCGOVERN,

Clerk.

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LEWIS B. EASTMEAD,
Attorney.

30

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Complaint.

(Filed August 20, 1921.)

HUDSON COUNTY CIRCUIT COURT.

ANTHONY SCHREINER, Executor of
the Last Will and Testament of
FRANK L. SCHREINER, deceased,
Plaintiff,

10

vs.

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, a corporation, and in the
alternative, HARRY CLOEREN,
RAYMOND A. WEBBER and ED-
WIN J. WEBBER, partners trad-
ing under the firm name and
style of EFFICIENT MOTOR
TRANSPORTATION COMPANY,
Defendants.

Action at Law.
Complaint.

20

Plaintiff, residing at No. 309 Kerrigan Avenue,
in the Town of West Hoboken, County of Hudson,
and State of New Jersey, says that:

1—Defendant, Delaware, Lackawanna and
Western Railroad Company, was and still is a
corporation and at all the times herein mentioned
was a corporation and common carrier of pas-
sengers by ferryboat, in New York Harbor.

30

2—On June 22nd, 1921, said defendant Dela-
ware, Lackawanna and Western Railroad Com-
pany, was as such common carrier of passengers,
the owner and operator of a certain ferryboat,
“Musconetcong,” which was on that said date
plying across the North River, between 23rd

40

Complaint.

St., New York City, and 14th Street, Hoboken.

10 3—At about 5:30 P. M., on June 22nd, 1921, one Frank L. Schreiner, having lawfully paid his passage money, or fare, to the said defendant, Delaware, Lackawanna and Western Railroad Company, boarded the ferryboat "Musconetcong," which was then and there lying in the slip at the foot of West 23rd St., New York City, and proceeded to the front of the said ferry boat to the place provided for passengers in front of a chain stretched across the vehicle gangway, of said boat, from the forward end of the men's cabin to the forward end of the women's cabin.

20 4—While said Frank L. Schreiner was lawfully a passenger on the said ferryboat, "Musconetcong," at the time and place aforesaid, a motor truck owned and operated by the Efficient Motor Transportation Company, its agents or servants, drove on said ferryboat "Musconetcong," at a high, dangerous and reckless rate of speed, and crashed through the chain aforesaid, causing said chain to snap and strike Frank L. Schreiner, who was then and there in front of said chain, so violently as to throw him directly in the path of the truck which struck and grievously and
30 fatally injured Frank L. Schreiner.

5—Defendants Harry Cloeren, Raymond A. Webber, and Edwin J. Webber, are partners trading under the firm name and style of "Efficient Motor Transportation Company" and are now and were on the said 22nd day of June, 1921, the owners and operators of the motor truck aforesaid.

40 6—Defendant, Delaware, Lackawanna and Western Railroad Company, negligently failed to provide a safe place for said passenger Frank L.

Complaint.

Schreiner, to travel in and negligently permitted him to be injured by the reckless and negligent manner in which said motor truck was operated on said ferryboat.

7—Said defendants, Harry Cloeren, Raymond A. Webber and Edwin J. Webber, partners trading under the firm name and style of "Efficient Motor Transportation Company, by their agent, servant or employee negligently and recklessly propelled and operated said motor truck on the ferryboat Musconetcong, on said June 22nd, 1921, in such manner as to lose control of the said motor truck and to cause the said Frank L. Schreiner to be grievously and fatally injured. 10

8—As a result of said injuries, to wit on June 27th, 1921, and within twenty four (24) calendar months of the commencement of this action, said Frank L. Schreiner died. 20

9—Said Frank L. Schreiner died at Hoboken, N. J., leaving a will by which plaintiff was appointed executor and on July 8th, 1921, said will was admitted to probate by the Surrogate of Hudson County and letters testamentary thereon were issued to plaintiff, who accepted the same and brings them into court.

10—Said accident resulting in the death of the said Frank L. Schreiner, was due solely to the negligence of the agents, servants, and employees of the defendants, or one of them. Plaintiff's testator was not guilty of any negligence that contributed to said accident. 30

11—Said Frank L. Schreiner, left surviving him a sister, and two brothers, one of whom is the plaintiff, herein, as his only surviving next of kin and who have by his death, suffered great pecuniary loss. 40

Plaintiff demands as damages the sum, of twenty-five thousand dollars (\$25,000.00) against the defendant Delaware, Lackawanna and Western Railroad, and in the alternative against the defendants Harry Cloeren, Raymond A. Webber, and Edwin J. Webber, partners trading under the firm name and style of "Efficient Motor Transportation Company."

10

LEWIS B. EASTMEAD,
Attorney for Plaintiff.

Answer.

(Filed September 1, 1921.)

HUDSON COUNTY CIRCUIT COURT.

20

ANTHONY SCHREINER, Executor of
the Last Will and Testament of
FRANK L. SCHREINER, deceased,
Plaintiff,

vs.

30

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, a corporation, and in the
alternative, HARRY CLOEREN,
RAYMOND A. WEBBER and ED-
WIN J. WEBBER, partners trad-
ing under the firm name and
style of EFFICIENT MOTOR
TRANSPORTATION COMPANY,
Defendants.

Action at Law.
Answer, and
Cross-Action
Complaint.

40

The Delaware, Lackawanna and Western Rail-
road Company, one of the defendants in the above
entitled action, answering the plaintiff's com-
plaint, says:

Answer.

I. That it will on or at or before the trial of the above entitled action move to dismiss said complaint for that the same, as it appears on the face thereof, does not state a cause of action against the said defendant, The Delaware, Lackawanna and Western Railroad Company.

II. Further answering the allegations contained in the said complaint this defendant says that it admits the allegations contained in the first and second paragraphs of the plaintiff's complaint. 10

III. That it denies the allegations contained in the third paragraph of the plaintiff's complaint, with the exception that "at about 5:30 P. M. on June 22nd, 1921, one Frank L. Schreiner, having lawfully paid his passage money or fare to the said defendant, The Delaware, Lackawanna and Western Railroad Company and boarded the ferryboat *Musconetcong*, which was then and there lying in the slip at the foot of West 23rd Street, New York City." 20

IV. It admits the allegations contained in the fourth paragraph of said complaint with the qualification that the said Frank L. Schreiner, at the time of the injuries complained of in said paragraph, was not in or at a place where he had a lawful right to be. 30

V. It has not knowledge or information sufficient to form a belief so as to answer the allegations contained in the fifth paragraph.

VI. It denies the allegations contained in the sixth paragraph of the plaintiff's complaint.

VII. It admits the allegations contained in the seventh paragraph of the plaintiff's complaint with the qualification that it had no fore-knowledge of the negligent operation of said motor truck or that it could have in any manner con- 40

Answer.

trolled the actions of the driver of said motor truck in time to have avoided the accident to the said Frank L. Schreiner.

VIII. It has not knowledge or information sufficient to form a belief so as to answer the allegations contained in the eighth or ninth paragraphs of the plaintiff's complaint.

IX. It denies the allegations contained in the tenth paragraph of the plaintiff's complaint.

X. It has not knowledge or information sufficient to form a belief so as to answer the allegations contained in the eleventh paragraph of the plaintiff's complaint.

AND FOR A SEPARATE AND DISTINCT DEFENSE, this defendant says that the said plaintiff ought not to have or maintain his action against it for that the said plaintiff's deceased was guilty of contributory negligence in taking the position he was in immediately prior to the accident and injury to him complained of in the plaintiff's complaint.

BY WAY OF CROSS-ACTION AGAINST ITS CO-DEFENDANTS, Harry Cloeren, Raymond A. Webber and Edwin J. Webber, partners trading under the firm name and style of Efficient Motor Transportation Company, this defendant complains as follows:

I. On the day mentioned in the plaintiff's complaint, to wit: June 22nd, 1921, the said defendant, the Efficient Motor Transportation Company, having duly paid its passage for the motor truck and passengers thereon to this defendant, became entitled to the privilege of transportation on the said ferryboat Musconetcong.

II. That the said defendant duly entered its

Answer.

motor truck upon the said ferryboat *Musconetcong* and upon entry on said ferryboat the driver of said motor truck, disregarding the direction of the employees of this defendant and the rules of this defendant, well known to it, proceeded down the way provided for motor vehicles at a reckless and negligent speed and manner. 10

III. That as a result of said negligent operation of said motor truck as hereinbefore stated, the said defendant, the Efficient Motor Transportation Company injured and destroyed parts of the fixings and appliances of said ferryboat to the damage of this defendant.

IV. The defendant, The Delaware, Lackawanna and Western Railroad Company, therefore, demands damages against Harry Cloeren, Raymond A. Webber and Edwin J. Webber, partners trading under the firm name and style of Efficient Motor Transportation Company, the sum of Six Hundred Dollars (\$600.00). 20

FREDERIC B. SCOTT,
Attorney for The Delaware, Lackawanna and Western Railroad Company.

30

40

Answer and Cross-Action Complaint.

(Filed September 10, 1921.)

HUDSON COUNTY CIRCUIT COURT.

10 ANTHONY SCHREINER, Executor of
the Last Will and Testament of
FRANK L. SCHREINER, deceased,
Plaintiff,

vs.

20 THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, a corporation, and in the
alternative, HARRY CLOEREN,
RAYMOND A. WEBBER and ED-
WIN J. WEBBER, partners trad-
ing under the firm name and
style of EFFICIENT MOTOR
TRANSPORTATION COMPANY,
Defendants.

Complaint.
Action at Law.
Answer and
Cross-Action

The answer of Harry Cloeren, Raymond A. Webber and Edwin J. Webber, named in the complaint as partners trading under the firm name and style of Efficient Motor Transportation Company.

30 1—They deny the allegations of the Complaint of Anthony Schreiner, Executor, &c.

2—They say that the deceased, Frank L. Schreiner at the time of the accident alleged in the Complaint, was guilty of contributory negligence.

40 3—They say that the alleged accident set forth in the plaintiff's complaint was caused through the carelessness and negligence of the Delaware, Lackawanna & Western Railroad Company.

Answer and Cross-Action Complaint.

ANSWER TO CROSS-ACTION COMPLAINT OF THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.

1—Defendants deny paragraphs one, two, three and four of the cross-action complaint of the Delaware, Lackawanna and Western Railroad Company. 10

CROSS-ACTION AGAINST DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.

By way of cross-action against their co-defendant, Delaware, Lackawanna and Western Railroad Company, these defendants complain:—

1—On June 22, 1921, defendants paid transportation charges to said Delaware, Lackawanna and Western Railroad Company for transportation of their motor truck on the said Ferry Boat *Musconetcong*, being then operated by said defendant as a common carrier for hire, and said truck was driven upon said boat by defendant's agent. 20

2—It then and there became and was the duty of said carrier to use reasonable care to furnish reasonably safe means of ingress and egress for said motor truck to and from the said Ferry Boat, and to use reasonable care to keep the passage ways to be used by said truck free from dangerous obstructions. 30

3—Said defendant carrier carelessly and negligently maintained said passage way with dangerous obstructions therein, and on said date while the defendants' truck was being carefully driven along the passage way on said boat, a certain loose and unfastened block on the floor of said 40

Answer and Cross-Action Complaint.

passage way, maintained by said carrier, was raised and struck upon and against the driving chain of defendants' motor truck disconnecting the same and thereby preventing control of said truck all through the carelessness and negligence of the said defendant carrier.

- 10 4—By reason of the carelessness and negligence of the said defendant carrier, the automobile of Efficient Motor Transportation Company was collided with and was struck and injured by certain parts of the said Ferry Boat and certain chains, blocks and other objects maintained by said carrier in said passage way of said Ferry Boat damaging the said motor truck in and about the chassis, gears, chains, radiator, hood, body, paint
- 20 and other parts thereof all to the damage of the said defendant Efficient Motor Transportation Company.

5—Wherefore these defendants claim they are injured and will claim damages against Delaware Lackawanna and Western Railroad Company in the sum of One Thousand Dollars.

SIDNEY JACOBS,
Attorney of Defendants,
Harry Cloeren, *et als.*

30

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**Reply to Answer of Cross-Action and
Answer to Cross-Action of Defendant
Efficient Motor Transportation Com-
pany.**

(Filed September 15, 1921.)

HUDSON COUNTY CIRCUIT COURT.

ANTHONY SCHREINER, Executor of
the Last Will and Testament of
FRANK L. SCHREINER, deceased,
Plaintiff,

vs.

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, a corporation, and in the
alternative, HARRY CLOEREN,
RAYMOND A. WEBBER and ED-
WIN J. WEBBER, partners trad-
ing under the firm name and
style of EFFICIENT MOTOR
TRANSPORTATION COMPANY,
Defendants.

Action at Law.
Reply to An-
swer of Cross-
Action and An-
swer to Cross-
Action of De-
fendant Effic-
ient Motor
Transportation
Co.

10

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REPLY TO ANSWER TO CROSS-ACTION COMPLAINT OF
THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY.

30

The Delaware, Lackawanna and Western Rail-
road Company replying to its co-defendant's an-
swer, says:

1—That it denies the allegations set forth in
the answer of its co-defendant.

ANSWER TO CROSS-ACTION AGAINST THE DELAWARE,
LACKAWANNA AND WESTERN RAILROAD COM-
PANY.

40

*Reply to Answer of Cross-Action and Answer to
Cross-Action of Defendant, Efficient Motor Trans-
portation Company.*

The Delaware, Lackawanna and Western Rail-
road Company replying to the cross-action against
it by its co-defendant, The Efficient Motor Trans-
portation Company, says:

10 1—It admits the allegations contained in the
first and second paragraphs of its co-defendant's
cross-action.

2—It denies the allegations contained in the
third and fourth paragraphs of said cross-action.

WHEREFORE this defendant prays that its
cross-action against it may be dismissed with its
taxed costs.

FREDERIC B. SCOTT,
Attorney.

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30

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**Reply to the Answer of Cross-Action
against The Delaware, Lackawanna
and Western Railroad Company.**

(Filed September 17, 1921.)

HUDSON COUNTY CIRCUIT COURT.

ANTHONY SCHREINER, Executor of
the Last Will and Testament of
FRANK L. SCHREINER, deceased,
Plaintiff,

vs.

THE DELAWARE, LACKAWANNA
AND WESTERN RAILROAD COM-
PANY, a corporation, and in the
alternative, HARRY CLOEREN,
RAYMOND A. WEBBER and ED-
WIN J. WEBBER, partners trad-
ing under the firm name and
style of EFFICIENT MOTOR
TRANSPORTATION COMPANY,
Defendants.

10

Action at Law.
Reply to the
Answer of
Cross-Action
against The
Delaware, Lack-
awanna and
Western Rail-
road Company.

20

Harry Cloeren, Raymond A. Webber and Edwin
J. Webber, partners trading under the firm name
and style of Efficient Motor Transportation Com-
pany, plaintiffs in cross-action filed against The
Delaware, Lackawanna and Western Railroad
Company, replying to the answer of the said The
Delaware, Lackawanna and Western Railroad
Company, say:

30

I. That they deny the allegations set forth in
the answer of the said The Delaware, Lackawanna
and Western Railroad Company in said cross
action.

SIDNEY JACOBS,
Attorney of Efficient Motor
Transportation Company.

40

Rule for Judgment Final.

(Entered February 11, 1922.)

HUDSON COUNTY CIRCUIT COURT.

10	ANTHONY SCHREINER, Executor, etc., of FRANK L. SCHREINER, de- ceased, <p style="text-align: center;"><i>Plaintiff-Respondent,</i></p> <p style="text-align: center;"><i>vs.</i></p> THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COM- PANY, et al. <p style="text-align: center;"><i>Defendants-Appellants.</i></p>	}	Action at Law.
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20 This action was tried before the Honorable Luther A. Campbell, Judge of the Hudson County Circuit Court, with a jury in the presence of counsel for the respective parties on February 8th, 9th and 10th, 1922.

The case being heard and submitted to the jury, they returned their verdict as follows:

30 "We find in favor of the plaintiff and against the defendants, The Delaware, Lackawanna and Western Railroad Company and against the defendants, Harry Cloeren, Raymond A. Webber and Edwin J. Webber, partners trading under the firm name and style of the Efficient Motor Transportation Company in the sum of Eight Thousand Dollars (\$8,000.)."

40 WHEREUPON, it is adjudged that the plaintiff recover of the defendant, The Delaware, Lackawanna and Western Railroad Company, and the

defendants, Harry Cloeren, Raymond A. Webber and Edwin J. Webber, partners trading under the firm name and style of the Efficient Motor Transportation Company, the sum of Eight Thousand Dollars (\$8,000), together with his costs to be taxed.

LUTHER A. CAMPBELL,
Judge.

10

Judgment entered this 11th }
day of February, 1922, on }
motion of }

LEWIS B. EASTMEAD,
Attorney of Plaintiff.

Testimony.

HUDSON COUNTY CIRCUIT COURT.

20

ANNE SCHREINER, Executrix,

vs.

DELAWARE, LACKAWANNA & WEST-
ERN R. R. Co., et al.

At Law.

A P P E A R A N C E S :

30

LEWIS B. EASTMEAD, for the plaintiff.

F. B. SCOTT, for the defendant, Delaware, Lacka-
wanna and Western R. R. Co.

SIDNEY JACOBS, (Mr. Frank G. Turner), for the
defendant, Efficient Motor Transporta-
tion Co.

The above entitled case was tried February 8,
1922, before Hon. Luther A. Campbell, Judge, 40
and a jury.

Colloquy.

Mr. Eastmead opened the plaintiff's case to the jury.

Mr. Scott opened the case to the jury on behalf of the defendant, Delaware, Lackawanna and Western R. R. Co.

10 Mr. Turner opened the case to the jury on behalf of the defendant, Efficient Motor Transportation Co.

MR. EASTMEAD: If the court please, from Mr. Turner's opening, I assume that it will not be necessary for me to prove the ownership of the truck. You admit that, I suppose.

MR. TURNER: Yes.

20 THE COURT: You admit the ownership and liability for operation?

MR. TURNER: One of our partners was driving the truck.

THE COURT: You admit the ownership and also the liability for the operation. I do not mean liability for negligence, I mean responsibility for the acts of the driver.

MR. TURNER: We owned and operated the truck.

30 MR. EASTMEAD: If the court please, I offer in evidence a copy of the letter testamentary granted to the plaintiff.

MR. SCOTT: No objection.

(Paper marked P-1 in evidence.)

William Spellman—Direct.

WILLIAM H. SPELLMAN, sworn.

DIRECT EXAMINATION BY MR. EASTMEAD:

Q. Now, Mr. Spellman, were you a passenger on the ferry boat Musconetcong on the 22nd day of June of last year? A. I was.

10

Q. About what time of the day were you a passenger on that boat? A. Five-thirty.

Q. In the morning or in the afternoon? A. Afternoon.

Q. And when you boarded the boat, where did you board the boat? A. Boarded the boat at the Women's Cabin.

Q. Now, we have here a diagram of the Musconetcong. This represents the 23rd Street slip at New York. Did you board the boat on the New York side? A. On the New York side.

20

Q. And the Women's Cabin, that is this portion marked here "Women's Cabin"? A. That is it.

Q. Where did you proceed then? A. Proceeded right on to the Women's Cabin—through the Women's Cabin to the front of the boat.

Q. And were you one of the first passengers on the boat? A. Well, about the first.

30

Q. When you arrived at the front of the boat, where did you go then? A. Stood up against one of the poles, right next to the chains—gate chains.

Q. You mean these poles? A. One of those little poles.

Q. Will you just describe to the court and the jury what you observed when you reached that point, if anything? A. I stood there and seen a few passengers come in and noticed a truck coming

40

William Spellman—Direct.

through at quite a rapid rate of speed, and just as the truck got to the chains—just a couple of minutes before the truck got to the chains, Mr. Schreiner happened to come through the Women's Cabin and the front end of the chain—he was walking in the front of the chain when the automobile hit the chain. So it hit the chain, the chain snapped, and the chain hit Mr. Schreiner and knocked him down flat.

10

Q. Where was this truck, in which team gangway? A. Right side, on the men's side.

Q. That is, this team gangway here? A. Yes, sir.

20

Q. And where was Mr. Schreiner with reference to the team gangway? Was he standing in the left or right of the team gangway? Was he standing in the left or right team gangway? A. He was coming in through the women's passageway.

Q. When you saw him you say he was in front of the chain? A. He was in front of the chain.

Q. You mean this chain here, the fog chain, so called? A. The fog chain.

30

Q. And about where? Will you just step down here and point out about where he was when you first saw him? (Witness goes to the easel.) A. He was around here.

MR. SCOTT: May we have it marked with an S?

A. It was over in this direction, standing there, this way.

Q. Where was Mr. Schreiner? A. Well, he came out here and was walking right in front and was about here when the chain snapped.

40

Q. About the middle here, would you say? A. Right about there.

William Spellman—Direct.

Q. And where was this at? A. The automobile was right about here, too, coming up through this way.

Q. And about where did the auto hit the chain?

A. Hit the chain right here.

MR. EASTMEAD: How will I mark that point where the auto hit the chain? 10

MR. SCOTT: Mark it with an E.

Q. About there? A. About there.

Q. Is that right? A. About there.

Q. The chain snapped—and when it snapped it knocked Mr. Schreiner down and the— A. When it snapped it knocked Mr. Schreiner down and the front left side run up the side.

Q. Run up on the side of what? A. On the side of Mr. Schreiner. 20

Q. Did you see whether or not it dragged him any? A. Why, it dragged him about two feet; about two or three feet.

Q. About two or three feet; knocked him down, you say? A. Knocked him over on his stomach.

Q. And what did you then do? A. Well, I went over to him. The time I got over to him a couple of gentlemen got hold of him and picked him up and carried him into the Women's Cabin. 30

Q. At the time the truck struck the chain, was there any deck hand of the ferry boat at that end of the boat? A. No deck hand whatsoever.

Q. And you say the truck was coming through at some rate of speed. Just what would you say the rate of speed that that truck was coming through at, through that team gangway? A. About fifteen miles an hour, something like that.

Q. Making a loud noise? A. No noise—well, as though something was dragging; well, I couldn't tell you what was. 40

William Spellman—Direct.

Q. You say something was dragging? A. Something was dragging.

Q. Along the front of the boat, I suppose you mean? A. Yes.

10 Q. What sort of sound was it? Can you describe the sound? A. I couldn't describe it much; something like some chain or something; I couldn't hear it until it was almost on top and hit Mr. Schreiner.

Q. Did you hear and horn sounded? A. No horn, or nothing; no, sir.

Q. What did the boat do then? Did the boat remain at the New York slip? A. Loaded up passengers and proceeded over to Hoboken.

20 Q. When the truck stopped did you notice anything about the chain on the truck? A. The chain on the truck?

Q. Yes. A. No, sir.

Q. When it stopped? A. No.

Q. You say that is the driving chain? A. No; I couldn't tell you nothing about the truck.

30 Q. When the boat reached Hoboken, what did you do? A. Why, a couple of gentlemen carried him off and I followed him behind over to the chair, and they sent for the ambulance and when they sent for the ambulance I went down to the hospital with him.

Q. What hospital was he taken to? A. St. Mary's Hospital.

Q. And you went in the ambulance with him to St. Mary's Hospital? A. Yes, sir.

Q. Were you personally acquainted with Mr. Schreiner? A. Never met the man before.

40 Q. Did you hear the driver of this truck say anything at the time of the accident? A. No; I couldn't tell you, no, sir.

William Spellman—Direct.

Q. Didn't hear him? A. Didn't hear him.

Q. Now, Mr. Spellman, are you a frequent passenger on these boats? A. In the summer time, that is about all; in the summer time; that is about all.

Q. And how often do you usually cross on that line? A. Just at night; that is all. 10

Q. Every night in the week? A. Every night.

Q. Have you travelled very often on those boats? A. In the summer time, that is all; in the winter time I take the tubes.

Q. Well, how often would you travel during the summer? Several months? A. Four months, three or four months.

THE COURT: What do you want to show, the practice of putting passengers in front of the chain? 20

MR. EASTMEAD: Not only the practice of putting passengers in front of the chain, but elsewhere, and also as to the different sizes of the chains, as to the relative sizes, in some degree, of the chains.

Q. In the first place, Mr. Spellman, this chain in the front here, up near the sliding gate, how big is that in your judgment, with relation to this other chain here marked fog chain, as regards diameter? A. The distance? 30

THE COURT: No.

Q. No, what is the relative diameter of this chain as regards this other chain? A. That I couldn't tell you. The back chain, I imagine, is a little bit smaller than the front chain.

Q. You don't know how much smaller? A. I 40
couldn't tell you.

William Spellman—Direct.

Q. You don't know what proportion? A. No, I couldn't tell.

Q. Now, Mr. Spellman, in the course of your travels on these boats and during the rush hours such as this was, have you ever noticed whether or not passengers go through these team gangways in going to the front of the boat? A. They do sometimes, yes.

Q. During rush hours do they go through these team gangways to the front of the boat?

MR. SCOTT: I object to your leading the witness.

MR. EASTMEAD: Well, he has already answered it.

MR. SCOTT: Well, do not lead him any more, then.

MR. EASTMEAD: I will withdraw the question.

Q. Have you observed during the rush hours—

MR. EASTMEAD: I will withdraw that.

Q. Did you on the day of this accident observe any passengers using the term gangways to proceed to the front of the boat?

MR. SCOTT: I object to it as immaterial. What passengers did on that particular night charges us with no liability, except that if he wants to prove this man walked down this team gangway—

THE COURT: This witness has not put the decedent in that position at all, Mr. Eastmead.

MR. EASTMEAD: I am not asking him, with relation to the decedent, if your Honor please, I am asking him with respect to other pas-

William Spellman—Cross.

sengers. I want to show that it was common practice. In other words, if I can, of course,—I will withdraw that question and frame another one.

Q. How often have you seen passengers in the course of your travels over those boats—about how often have you seen them going through the team gangways? A. They generally start through before the trucks start to come on; when the last truck has gone on some of them generally run through. 10

Q. About how often would you say that? On about how many trips that you would make on those boats would you observe that condition to exist? A. Pretty near every night.

Q. Pretty near every night. You didn't see the driver of the truck or hear the driver of the truck make any remarks at all at the time of the accident? A. No remarks at all. 20

MR. EASTMEAD: That is all. Take the witness.

CROSS EXAMINATION BY MR. SCOTT:

Q. You say you did not know Mr. Schreiner? A. No, sir. 30

Q. And you came through the Lady's Cabin? A. The Women's Cabin, yes, sir.

Q. And you say you were one of the first passengers? A. About the first passenger; I just missed the other boat.

Q. Did you see Schreiner walking ahead of you through the Lady's Cabin? A. Ahead of me?

Q. Yes. A. He came on after me; I was the first. 40

Q. He came on after you. Where were you when you first saw him? A. I was standing

William Spellman—Cross.

against the pole, front end of the boat.

Q. Where you have indicated on the map? A. Where I have indicated on the map.

Q. Or the sketch. Where was Schreiner when you saw him? A. When I saw Schreiner?

10 Q. Yes. A. Schreiner was coming through the Women's Cabin in front of the chain.

Q. Did you notice him come out of the cabin? A. I noticed him coming out of the cabin.

Q. You saw Schreiner come out of the Women's Cabin? A. I sure did; yes, sir.

Q. And cross over this sort of planking there? A. Across the planking, right in front of the chain. I don't know whether he was going to the front of the boat.

20 Q. Did he pass you? A. What.

Q. Did he pass you? A. Did he pass me? No; I was way up front. He passed the back chain; he passed the fog chain.

Q. Were you looking backwards? A. What is that?

Q. Were you looking towards the ferry? A. I was looking toward the ferry; yes, sir.

30 Q. Had he stopped walking when this accident took place, or was he still moving? A. Why, he was still moving. He was walking along and when the chain snapped it hit him and threw him down.

Q. And his back was towards you at the time when you first saw him? A. His side was towards me.

40 Q. His side was towards you? A. Yes, as he was walking in front of the chain. As he was coming out of the Women's Cabin his face was towards me.

Q. At the time he was struck, was he facing the

William Spellman—Cross.

Men's Cabin? A. He was facing the Men's cabin; yes, sir.

Q. About how far from the front of the chain was he? A. About how far?

Q. Yes. A. He was right alongside of the chain.

Q. Well, by alongside—— A. About half a foot, I guess. 10

Q. About half a foot from the chain? A. Yes.

Q. How long had you been there before you heard this automobile coming down the passageway? A. I was only there a couple of minutes.

Q. You were only there a couple of minutes? A. About two or three minutes.

Q. About two or three minutes? A. Yes; about two or three minutes. 20

Q. And you speak about the auto going fifteen miles an hour. How did you gauge that speed, by the noise it made? A. Why, no; I rode in enough of them.

Q. Well, did you see the automobile before it struck Schreiner? A. I didn't see it on the other side before it went on the boat; I saw it struck him; I saw it when it was laying there; I was waiting for the boat to come off.

Q. Well, was it in the slip? A. It was in the slip, and when it hit him I saw it come through the driveway. 30

Q. Then did you see it come down the slip for the team gangway? A. I didn't see it coming down the team gangway; I was in the front of the boat.

Q. You were in the front of the boat then? You didn't see it start from the slip to go on the boat? A. I didn't see it start; I was on the boat when it started, I guess. 40

William Spellman—Cross.

Q. And you—your knowledge of the speed of the automobile is gotten in what way? A. Well, I guess about fifteen—

Q. You didn't see it come up through the men's team gangway, did you? A. I sure did; I could see it half way.

10 Q. How far back in the team gangway was it when you first observed it? A. I could see about half way.

Q. About half way? A. Yes.

Q. About that time you say it was proceeding about fifteen miles an hour? A. About fifteen miles an hour, yes.

Q. And how far did it go before it slackened its speed? A. Didn't slacken at all; went right on through.

20 Q. Didn't slacken at all? A. Not a bit.

Q. Not until after the accident? A. Until after the accident.

Q. Well, when he got about near the chain, did he keep right on? A. Why, when he hit the chain, when it hit Mr. Schreiner, Mr. Schreiner kind of stepped between the chain, and between the chain and Mr. Schreiner it stopped the car itself. It dragged Mr. Schreiner about two or three feet.

30 Q. And did the front wheels of the automobile turn in any direction? A. Well, it turned at an angle, not very much.

Q. Toward the lady's cabin? A. Towards the lady's cabin, yes.

Q. You say you saw this machine about half way down there? A. Well, about that way; yes.

Q. And at that time it was going about fifteen miles an hour? A. At that time it was going about fifteen miles an hour.

40

William Spellman—Cross.

Q. And you say that fifteen miles an hour is based on your judgment and your experience in riding in cars? A. In my judgment, yes.

Q. When this Musconetcong came in, did you observe any cars going off it? A. Why, we stood there until a few of the passengers went off and then we carried off. 10

Q. No, before you went on the boat, over in New York, did you observe any trucks coming off? A. I didn't notice; I was inside the women's cabin.

Q. In the ferry house? A. No; on the ferry; standing alongside of Mr. Schreiner.

THE COURT: He means you got on the boat at 23rd Street, stepped from the dock onto the boat or from the wharf onto the boat, did you notice other vehicles going off the boat into New York? 20

THE WITNESS: Didn't notice them; no sir.

CROSS EXAMINATION BY MR. TURNER:

Q. Mr. Spellman, taking this part of the boat here to fog chain here to fog chain here, on each end of the boat, is that all covered over, roofed over? A. Yes, all covered over from one fog chain to the other fog chain. 30

Q. It is all roofed? A. All roofed.

Q. Now, in the passageway here which I marked team gangway, are there any windows or are they all closed on the side? A. They are all closed as much as I know—yes, they are all closed.

Q. There is no way for light to get in except from the end of the boat? A. Only from the end; they have electric lights in the middle of the boat; I thing they have, at least. 40

William Spellman—Cross.

Q. Did you see any electric lights that day? A. Not that day; no, sir.

Q. So that the only way light could get in was to come from one end of the boat or the other end of the boat? A. One or the other.

10 Q. And when you first saw this automobile, would you say that it was about opposite this part which is marked engine room, about the middle of it? A. Well, about a couple of feet, I guess, up further than that.

Q. Up further? A. Yes; just about there; about there I could notice it.

Q. Now, do you know whether those boats—do you know whether this boat inclined from the centre toward either end? A. Why, it does, yes.

20 Q. It does incline? A. Yes.

Q. And you heard the sound of dragging of the chain on this automobile, did you? A. Just about a minute about it hit Mr. Schreiner; it was almost on top of him then.

Q. Then you heard the sound of dragging of the chain? A. Of the dragging of the chain.

30 Q. Now, will you tell us about where the automobile was just before or just at the time you first heard the dragging of the chains? A. I guess you better point it out yourself, because I don't know where to point.

Q. Just show us where the automobile was when you first heard the sound of the dragging of the chain? A. About here.

Q. May I put a "C" on the map here; is that the point? A. Right there.

40 Q. Right there. This sound of the dragging of the chain continued, did it, from the point "C" on the map to the fog chain? A. It did, yes.

Q. Do you recall exactly what Mr. Schreiner

William Spellman—Cross.

was doing at the time that the chain was struck? Have you got a picture in your mind as to what he was doing at that particular minute? A. He was walking in front of the chain. That was all I could see him doing. I don't know whether he was going to the men's side, or up to the front end of the boat, or where he was going; I know he was walking alongside of the chain. 10

Q. Did you notice whether he was on the outside of the chain, that is, toward the bow, or whether he was inside of the chain? A. Outside of the chain toward the end of the boat.

BY THE COURT:

Q. How far away was he from the chain? A. About a foot; he was right alongside the chain, like here is the chain, he was walking right alongside of it. 20

Q. Close enough so that you would say his hand would touch it as he walked? A. His hand would touch it, yes.

Q. Now, Mr. Schreiner was about how many feet from the chain where the automobile struck the chain? A. How many feet was Mr. Schreiner?

Q. Yes; when the automobile struck the chain how many feet away from the automobile was Mr. Schreiner? A. He was right alongside of the chain, the chain hit the automobile and he was right there alongside of it. He was not more than half a foot away. 30

Q. When the automobile hit the chain, as I understand here you have marked "he" where the automobile struck the chain? A. Struck the chain.

Q. And "S" where Mr. Schreiner stood? A. That is right about where the left hand front 40

William Spellman—Cross.

wheel was, right where he was standing.

Q. The left front wheel? A. The left front wheel came right up on him.

THE COURT: Which hit the chain, the left wheel?

10 THE WITNESS: I don't know whether it was the radiator or the wheels or what hit it; just that I could not tell you.

Q. Then the automobile must have swerved from its passageway down the team gangway; did it not? A. Why, it is kind of a turn there to the front of the boat.

Q. Just a little turn? A. Just a little turn, yes.

20 Q. Then the automobile must have turned a little more, did it not? A. Turned to the left as it was coming in.

Q. Now, just how far in feet, if you can, will you tell us the automobile travelled when you could see it distinctly? A. About fifteen miles an hour.

30 Q. How great a distance in feet did the automobile travel from the time you first saw the automobile plainly until it struck the chain? A. That I couldn't tell you, just about a little ways up from the middle of the boat; I couldn't just tell you how many feet at all it was.

Q. Approximately how many feet? A. I have poor judgment on that.

Q. Can you tell us approximately how many feet in your judgment? A. I couldn't tell you.

40 Q. Can you point to something in this room that will tell how far it travelled, I mean that you could see the automobile travelling? A. I guess about from here to the door.

William Spellman—Cross.

Q. From where you are sitting over to the door where the gentleman is just going out? A. Yes.

MR. SCOTT: May we agree on what that distance is?

MR. EASTMEAD: The point you are arriving at now I take it, is the point where you first saw the automobile? 10

MR. TURNER: Where he could first see the automobile travelling until it hit the chain.

MR. EASTMEAD: That is where he first noticed the automobile, from his position before the accident?

MR. TURNER: Before the accident.

MR. EASTMEAD: Well, as I understand it, he has already designated a certain point.

MR. SCOTT: He has not designated it in feet. 20

MR. EASTMEAD: Not in marking, but from his testimony.

MR. SCOTT: He has not designated it in feet. It might be well to show that that point indicates on this witness' judgment, so many feet away. I think that is what Mr. Turner has in mind.

MR. TURNER: Yes; I just want to fix it so the jury can form some idea of the distance. 30

THE COURT: To about what is the centre of the door from the witness stand is 34 feet 9 inches.

MR. EASTMEAD: That expresses the distance as measured in this room, and not actual measurement on the boat.

THE WITNESS: It may be a little more or little less. 40

William Spellman—Cross.

Q. Now, during the time this automobile traveled that space, which we will call thirty-four feet, could you see all of the automobile during that time? A. No, I could not, I could see the front of the automobile.

10 Q. Just the front. Now, how far did the automobile travel from the time you could see all of it? A. I didn't notice all of it at all; I was just looking at the front of the car as he was coming through

Q. Was there any time when you could see all the automobile? A. No; I could not. I couldn't even tell you what kind of truck it was; I know it was some kind of gravel truck; I couldn't just tell you what it was.

20 Q. When you were looking at the automobile were you simply looking at the hood; in other words, was it coming directly to you? A. Looking at the radiator of the car, that is all.

30 Q. Did the—if the automobile had kept on in a straight path it would have struck you? A. Well, it may have, but I don't think so; I was over a little too far; I was away over on the other end of the boat; it would have struck about the middle of the boat, I should imagine, the middle of the gate.

THE COURT: You were at the women's side?

THE WITNESS: I was at the women's side.

Q. And you couldn't see the rear wheels moving at all? A. I couldn't see the rear wheels moving at all.

40 Q. Could you see the front wheels? A. The front wheels I saw.

Q. And you could see the radiator? A. The radiator.

William Spellman—Cross.

Q. You could see the driver? A. The driver.

Q. And you judge the speed of that automobile by looking down into this covered passageway and seeing the hood or the radiator and the front wheels? A. Yes, sir; that is all; that was about what I should judge, yes.

Q. Now, what is it that makes you think it was travelling fifteen miles an hour? A. Why, the speed. I travel quite a lot; I travel twice a day on jitneys. **10**

Q. Well, you saw this car a distance of thirty-four feet. Now, how long did it take it to travel that thirty-four feet? A. I couldn't tell you.

Q. Well, would it take a minute or more or less? A. It would not take much more than that. **20**

Q. How much more than a minute? A. About a minute or so; I couldn't say just how long.

Q. Would you say it took a minute and a half? A. I couldn't tell you; it was around a minute or so. I don't just—a minute and a half or minute, something like that.

Q. But you are trying to tell us how fast this car went per hour? A. Yes, the speed; but I just couldn't tell you; I wasn't noticing how long it was going to take from the middle of the boat to the front; I was not just keeping my eyes right on that automobile; I was watching the whole front of the boat there. **30**

Q. Well, would you say that the car was going any more than five miles an hour? A. Oh, yes, it was going more than five miles an hour.

Q. How much more do you think it was going than five miles an hour? A. I told you about fifteen miles an hour—in my estimation; it may be a little more or it may be a little less. **40**

George Deer—Direct.

Q. You cannot tell us how long it took to travel the thirty-four feet? A. I couldn't tell you that, no; I couldn't tell you that.

MR. EASTMEAD: That is all.

BY MR. SCOTT:

10 Q. What familiarity have you with automobiles outside of riding in jitneys? A. That is about all; I never drove one or never had any.

Q. You are not familiar as to the character of the automobile? A. No.

Q. This truck you say you saw was sort of a sand truck, or something like that? A. That is about all.

20 Q. But you don't know whether it was what they call a chain driven truck? A. No; I couldn't tell you anything about the style of the automobile.

Q. Or shaft drive? A. I don't know anything about automobiles at all.

MR. SCOTT: That is all.

(Witness excused.)

GEORGE DEER, SWORN.

30

DIRECT EXAMINATION BY MR. EASTMEAD:

Q. Mr. Deer, were you a passenger on the ferry-boat Musconetcong, on the 22nd of June, last? A. Yes, sir.

Q. And about what time of day was it you were a passenger on that boat? A. About 5:25 or 5:30; something like that.

40 Q. What part of the boat were you sitting in or what part of the boat were you riding in on that trip? A. I was in the ladies' cabin, sitting down.

George Beer—Direct.

Q. What part of the ladies' cabin? A. Right near the door.

Q. The front door? A. Yes, sir.

Q. That is the forward door? A. Yes, sir.

Q. Did you see this accident? A. I didn't see the accident, but I seen Mr. Schreiner getting carried in. 10

Q. Into the ladies' cabin? A. Into the ladies' cabin.

Q. Did you see the chauffeur of the truck there that day? A. Yes, sir.

MR. EASTMEAD: Stand up, Mr. Thorne.

MR. TURNER: We admit operation. Why do you want to identify him?

MR. EASTMEAD: I want to show a conversation with the gentleman. 20

Q. That is the gentleman you saw there? A. Yes, sir.

Q. Did you hear him say anything at the time they brought Mr. Schreiner into the ladies' cabin?

A. He come in and he asked me if I seen the accident happen, and I told him I did not; all I done was sit in the seat there, so he says "You know it was not my fault," he said, "the driving chain jumped and I lost control of the car." 30

Q. Did he say anything else? A. No; then he was looking for witnesses.

Q. Did he say anything—did you hear him say anything at all about an emergency brake?

MR. TURNER: That is leading, if the court please, I think.

THE COURT: Well, it is. It is important, of course, Mr. Eastmead.

MR. EASTMEAD: I will withdraw it and 40 reframe it.

George Deer—Direct.

Q. Did you hear him say anything about the condition of his brake? A. He didn't say nothing about his brake. All that he said was that he lost control of the car.

Q. I see. And did you observe the condition of Mr. Schreiner at the time he was brought in?

10 A. Well, he looked very bad, pale, and he was sweating, and some one asked to get him some water—

THE COURT: Pardon me; is there any need of going into all that, Mr. Eastmead? This is an action for his death, and pain, suffering, etc., are not recoverable for.

20 MR. SCOTT: It might be a question whether his death was proximately caused by this accident.

MR. EASTMEAD: I do not understand that there is any question, but I understand that the defendant refused to admit it as a matter of record. I understand in the face of the denial of the defendant I must go into that.

THE COURT: All right.

Q. Was he carried into the cabin? A. Yes, sir.

30 Q. And do you know who carried him in? A. No; I don't remember who carried him in.

Q. Was that before the boat had left the 23rd Street slip? A. That was before the boat had left the slip.

Q. Did the boat proceed to Hoboken with Mr. Schreiner still on board? A. Yes, sir.

Q. When it arrived at Hoboken, did you see anything further of Mr. Schreiner at the Hoboken side? A. I stayed with him until they
40 put him in the ambulance.

Q. Did you see them put him in the ambulance? A. Yes, sir.

George Deer—Cross.

Q. What ambulance? A. I don't know the ambulance, but I know the witness that was here before got in the ambulance, and a young lady.

MR. EASTMEAD: Miss Bruggeman, will you stand up?

Q. Was that the young lady you saw get in the ambulance? A. I believe it is. 10

Q. That is all you know about the accident, is it? A. That is all.

Q. Did you observe the truck—that is, this truck, before you left the boat? A. When I was getting off the ferryboat I seen some one working underneath the truck trying to put on the chain, but who it was I don't know.

Q. Was the chain off at that time? A. The chain was off at that time. 20

Q. When you say chain, what sort of chain is that? A. Driving chain, that drives the truck.

Q. You don't know who that was that was under the truck? A. No, I cannot say.

Q. You cannot say who it was? A. I cannot say it was him.

CROSS EXAMINATION BY MR. SCOTT:

Q. You didn't see the accident? A. No. 30

Q. You don't know what truck struck the man?
A. No, sir.

Q. And you don't know whether the person who was fixing the chain was fixing the chain on the truck that struck Mr. Schreiner? A. Well, I seen him——

Q. So you don't know? A. I seen that gentleman there driving the truck afterwards.

THE COURT: This same truck that you saw them fixing the chain on? 40

THE WITNESS: Yes, sir.

MR. SCOTT: That is all.

George Deer—Cross.

CROSS EXAMINATION BY MR. TURNER:

10 Q. Well, now, this truck where the chain was being fixed, with relation to the point on the ferryboat here designated as "fog chain," where was the truck when the man was underneath it fixing the chain? A. I guess it was about three foot and a half or so on this side of the fog chain, towards the other chain.

Q. Towards—— A. The front of the boat.

Q. This is the ladies' cabin and this is the men's cabin. Towards which cabin? A. It was on the gents' cabin side.

Q. On the gents' cabin side, on this side? A. Yes, sir.

20 Q. Does that point there indicate its location, about? A. What is that?

Q. Just point out its location, where the man was fixing the chain underneath the truck after the accident?

THE COURT: I thought he had designated it, three or four feet forward of the fog chain.

THE WITNESS: Yes, sir.

30 Q. Three or four feet forward of the fog chain? A. Yes, sir.

Q. Where the fog chain had been? A. Yes.

Q. It was not there then, of course? A. What did you say?

Q. The fog chain was not there? A. No; it could not be there because the truck was there.

Q. About three or four feet from where the fog chain had been hanging, is that it? A. What is that?

40 Q. Three or four feet forward of where the

John Bloom—Direct,

fog chain had been hanging across? A. Yes, sir, that is where the truck was.

Q. And you saw this gentleman here drive that truck where the chain was being fixed after the accident? A. After the truck was ready to go off.

10

MR. EASTMEAD: That is all.
(Witness excused.)

JOHN BLOOM, sworn.

DIRECT EXAMINATION BY MR. EASTMEAD:

Q. Where do you live, Mr. Bloom? A. I live 415 Summit Avenue, West Hoboken.

20

Q. Were you on the 22nd of June, last, a passenger on the ferryboat Musconetcong? A. I was.

Q. About what time of day were you on that boat? A. Well, around half past five.

Q. When you boarded the boat, what part of the boat did you proceed to? A. I come through the gents' cabin.

Q. Through the gents' cabin? A. Yes, I stood in the front of the boat.

Q. Can you designate on this diagram of the boat here where you were standing? A. Right at the front.

30

Q. Just step down here and designate? A. Right here.

Q. Opposite that stanchion? A. Yes.

Q. I will mark that with a "B."

MR. SCOTT: Yes.

Q. Right forward of the heavy chain? A. Yes, right forward of the heavy chain.

40

Q. When you arrived at that point, what did

John Bloom—Direct,

you observe, if anything? A. Well, the first I knew I heard the crack of a chain.

Q. What—— A. I heard the crack of a chain.

Q. The crack of a chain? A. Yes, the crack of a chain, and I looked around, and as I looked around I saw right on the floor there, I seen a big
10 motor chain dragging a man along.

Q. How long a distance did that motor truck drag the man? A. About three feet.

Q. Did you see the driver of the truck? A. Yes, I seen the driver.

Q. Is he in court? A. He didn't make any noise, no alarm or anything else.

THE COURT: No, is that driver in court?

20 A. I don't know.

Q. Did you hear any horn sounded? A. I didn't hear any horn sounded.

Q. Before the impact of the chain, had your attention been called to this, before you heard the crack of the chain in any way? A. No; it had not been called. The chain is what attracted my attention.

Q. And what else did you observe? A. Well, that is all I seen of it.

30 Q. Well, now, did you see what happened to the man as he was lying on the floor? A. Well, there was another man and I picked him up from the wheel.

Q. Oh, you picked him up? A. Yes.

Q. And what did you do with him? A. Well some other man took him in the ladies' cabin.

Q. Carried him into the ladies' cabin? A. Yes.

40 Q. Did you go into the ladies' cabin with him? A. I did not.

John Bloom—Cross.

Q. Did you see him put in the hospital ambulance? A. I did not.

Q. Did you observe anything about his condition, that is his physical condition after the accident? A. No; I did not.

Q. Mr. Schreiner's condition. Did you hear the driver of this truck say anything in your presence? A. Well, he was going around looking for witnesses; that was all I heard him say. 10

Q. Did you hear him say anything else? A. That is all I heard him say.

Q. Did you observe the truck itself after the accident? A. Well, he and the other fellow pulled him out from under the truck.

Q. Well, did you observe anything about the condition of the truck itself after you pulled him out from under the truck? A. No; I did not. 20

Q. Did you notice any parts of the automobile truck itself, the condition of it? A. No; I did not; I only heard him say, the man who was driving it, that his chain broke or snapped, or something.

Q. You heard who say that? A. The man who was driving.

Q. That the chain had broken loose? A. Well, he says it broke; broke off, I think he said. 30

Q. That is all you know about it? A. That is all I know about it.

MR. EASTMEAD: That is all.

MR. SCOTT: I have no questions.

CROSS EXAMINATION BY MR. TURNER:

Q. Would you recognize the man that helped pick up Mr. Schreiner? A. No; I would not; I could not. 40

Genevieve Bruggeman—Direct.

MR. TURNER: Just stand up.

Q. Can you say whether that is the gentleman that helped pick him up? A. No, he was a little short fellow, I think.

10 Q. Do you remember the man who was driving the truck? A. No; I don't remember him.

Q. Did you see Mr. Schreiner before the accident at all? A. No; I didn't see him; I didn't see him at all.

Q. When you turned around after you heard the chain snap, did you see Mr. Schreiner then? A. I seen him laying under the wheel of the automobile and the automobile dragging him along.

20 Q. That was after the chain snapped? A. As the chain snapped; that is what drew my attention, the chain snapping.

Q. Could you hear any noise from the running of this automobile? A. I didn't hear anything about the automobile.

Q. You were not paying any attention, were you? A. No; I was not paying any attention.

MR. TURNER: That is all.

(Witness excused.)

30

GENEVIEVE BRUGGEMAN, sworn.

DIRECT EXAMINATION BY MR. EASTMEAD:

Q. Miss Bruggeman, were you a passenger on the ferryboat Musconetcong on June 22, last year? A. Yes, sir.

40 Q. And about what time of day were you—
A. 5:30.

Q. What? A. 5:30.

Genevieve Bruggeman—Direct.

Q. Speak up a little louder, please, so the last juror over here can hear you. A. Yes.

Q. When you boarded the boat, where did you go, what portion of the boat? A. I walked over towards the men's cabin, to walk through the team gangway, and I saw an auto going through, and there was a chain dragging, that is what drew my attention to the auto. 10

Q. And where were you? Will you step down here and show us on this map where you were when you first saw that automobile? Now, where did you say you were? A. That is the New York side?

Q. That is the New York side, at that end. Now, you were in the team gangway, you say? A. I got on at the ladies' cabin, and I walked down over towards the men's team gangway there, and I just happened to get about here when I saw the auto pass me with the chain dragging, and I walked in back of it, and then I heard the chain snap about in front of the boat, and when I reached the front I seen Mr. Schreiner lying under the auto. 20

THE COURT: Then what do we understand by that? That you had gotten on the boat first with respect to this automobile, or had the automobile gotten on the boat before you did, or how was it, do you know. Was the automobile first, or you first? 30

THE WITNESS: We both got on together, I guess.

THE COURT: Were on about together?

THE COURT: The automobile passed in front of you as you were crossing over the team gangway? 40

THE WITNESS: As I was passing the

Genevieve Bruggeman—Direct.

gangway there, this other auto passed through, see?

THE COURT: Had passed in front of you?

THE WITNESS: Yes.

10 THE COURT: How far from the end of the boat that was in the dock—how far from the end of the boat was this automobile at the time you first saw it?

THE WITNESS: Well, right before passing through where the boat starts, the men's and women's cabin.

THE COURT: About at the beginning of the cabin towards the New York side?

THE WITNESS: Yes, sir.

20 THE COURT: Do you know what they call the fog chain?

THE WITNESS: The first chain from the cabin.

THE COURT: The first chain at the cabin?

THE WITNESS: Yes.

THE COURT: Well, where was it with respect to that chain, where that chain would have been if it had been strung across?

THE WITNESS: Well, I guess in front of it.

30 THE COURT: You guess in front of it; and it was at that time you say you saw the chain dragging?

THE WITNESS: Saw and heard the chain dragging.

Q. And how fast was this automobile going, if you know? A. Well, I should judge it was going fast going on the ferryboat.

40 Q. Have you any idea as to how fast it was going? A. I have no idea of the speed of autos.

Q. Well, was it going as fast as you could walk, or faster? A. Well, it was going faster

Genevieve Bruggeman—Direct.

than I could walk, I guess.

Q. And you saw the automobile proceed to the front of the boat; then you heard a chain snap?

A. Yes, sir.

THE COURT: Now, let me stop you right there for a moment, if I may. You said you saw the chain dragging on the automobile, and heard it, I think you said, did you? 10

THE WITNESS: Yes.

THE COURT: Whereabouts did you see this chain on the automobile that was dragging; that is, the chain that was dragging, whereabouts on the automobile was that?

THE WITNESS: On the back of the auto, on the wheel nearest to me.

THE COURT: That was on the left hand side of the car as it was going forward? The automobile was going toward the front of the boat? 20

THE WITNESS: Towards the ladies' cabin.

THE COURT: Towards the ladies' cabin, which was on the left hand side of the boat?

MR. EASTMEAD: That is the left wheel.

THE COURT: All right. The wheel you say towards the rear? 30

THE WITNESS: The back wheel.

THE COURT: The back wheel, and on the left hand side?

THE WITNESS: Yes, sir.

THE COURT: All right. And when you got to the front of the boat, you saw Mr. Schreiner under the wheels of the truck?

THE WITNESS: Yes, sir.

Q. What did you do then, if anything? A. Well, I stood there for a minute; I didn't know 40

Genevieve Bruggeman—Direct.

what it was until they carried him over and picked him up, and then I recognized him as Mr. Schreiner, and two people—two men picked him up and brought him in the ladies' cabin, and then I went in and nobody knew his name, so I gave his name and address,—I didn't know just the
 10 address, but I knew the block where he lived, and asked for the driver of the truck, and nobody had seen him just at that moment, but then he come along himself and he said that he was the driver, and he wanted to know if anybody had seen the accident; though everybody there had said no, until Mr. Spellman stepped up and said that he had seen it; that was all.

Q. And did you hear the driver say anything
 20 about the chain? A. He was speaking to some man behind me, but I was paying attention to Mr. Schreiner, and I didn't hear what he said.

Q. You didn't hear what he said? A. No.

Q. What then happened? A. Why, they brought him into the ladies' cabin, and they went over to the Hoboken side.

Q. Then they called for the ambulance from St. Mary's Hospital? A. Mr. Schreiner and myself got into the ambulance then, and went down
 30 to St. Mary's Hospital with him.

Q. And what did you do at the hospital? A. Why, we just went up to the room and they took him into a room and the doctor said he would attend to him, and we stood there, and then we went away.

Q. Did you see this automobile in front of you in the team gangway make any sound? A. No, sir.

Q. That is, by way of a signal, I mean? A.
 40 No, sir.

Genevieve Bruggeman—Cross.

Q. How often have you walked through the team gangway on those boats? A. I have walked through there quite often.

Q. Would you say it was a frequent occurrence for passengers to walk through the team gangways on those boats? A. Yes, it is.

Q. Have you ever seen anybody stopped from walking through the team gangway? A. No, sir. 10

Q. Have you ever seen any signs on those boats forbidding passengers from using the team gangways? A. No, sir.

CROSS EXAMINATION BY MR. SCOTT:

Q. When you go through the team gangways during the rush hours, that fog chain is up—you know what the fog chain is? A. Yes, sir. 20

Q. On the front of the boat. And if you went over, or anybody went over, you would have to climb over that chain, wouldn't you? A. Yes, sir.

Q. Is it high enough for you to climb over? A. Yes, sir.

Q. Now, when you saw this chain dragging behind the automobile and on the wheel nearest you, was it dragging down on the floor of the ferryboat? A. It must have been dragging on the floor. I heard it. 30

Q. And saw it, too? A. Yes, sir.

Q. It was thumping along on the floor as it passed you? A. Yes, sir.

Q. And the automobile just—as I take it—you were over in the ladies' cabin and were you coming over to the men's side? A. Yes, sir.

Q. Were you in the passageway between the two gangways when this automobile passed you? 40

Genevieve Bruggeman—Cross.

A. I was just in the middle of the gangway nearest to the ladies' cabin.

Q. About in the middle of this gangway; here is the women's and here is the men's. You were about in the middle? A. Between the ladies' cabin and the middle there; right there, yes, sir.

10 Q. In the middle? A. Yes, sir; and the auto passed me.

Q. And the automobile passed you there? A. Yes, sir.

Q. You saw the automobile first when it was by the fog chain? A. Yes, sir.

Q. And at that time the chain was dragging along and bumping? A. Yes, sir.

MR. EASTMEAD: Not the fog chain.

20 Q. No, the chain that you noticed on the automobile? A. Yes, sir.

BY MR. EASTMEAD:

Q. That fog chain at the rear end of the boat at that time, of course, was down, wasn't it?

A. That was down.

CROSS EXAMINATION BY MR. TURNER:

30 Q. Now, after you came across from here, did you come down between the gangway? A. I walked through the gangway.

Q. On the men's side? A. Men's side.

Q. What was it that caused you to do that on that day? A. Well, I always do it; I always did do it.

Q. Was there a crowd that made it necessary? A. No, there was no crowd. We always stood
40 on the men's side so we could get out and get our first car out.

Genevieve Bruggeman—Cross.

Q. Well, why did you come down the team gangway that day? A. Well, it was my practice. I always did it. I always went through there.

Q. You came down the team gangway, rather than go to the men's cabin? A. I couldn't go through the men's cabin. 10

Q. You say you could not?

THE COURT: I suppose she means by that she did not care to.

A. I didn't think women went through the men's cabin.

Q. Now, you walked down the team gangway on the men's side in the rear at this place you spoke about, did you? A. Yes, sir. 20

Q. And were there trucks coming in back of you? A. I didn't look, I suppose they were coming.

Q. Well, there were trucks coming in besides this one truck?

THE COURT: She said she didn't look. She supposed so.

Q. Well, had you heard them? A. I didn't hear any. 30

Q. You didn't hear any other trucks. Now, then, you walked along in the rear of the truck, did you? A. Yes, sir.

Q. And how close were you to this truck when you were going down the team gangway? A. Oh, the truck was quite a way in front of me.

Q. About how many feet? A. I couldn't judge.

Q. Beg pardon? A. I couldn't judge.

Q. Well, will you point to something in this room and tell us how far in front of you the 40

Genevieve Bruggeman—Cross.

truck was there? A. Oh, I suppose up to that door back there.

Q. Up to the door? A. Yes, sir.

Q. That is thirty-four feet it was in front of you?

10 THE COURT: Perhaps you can tell us where you were at the time you say you heard,—whatever you said about the chain—in the front. You said, didn't you, that you heard that snap, or something?

THE WITNESS: Yes.

THE COURT: Now, can you tell us where you were in the gangway, whereabouts in the gangway you were at the time you heard that?

20 THE WITNESS: I guess about half or three-quarters of that engine room.

THE COURT: Just about three-quarters of that engine room?

Q. Point out on the map. A. Right here.

Q. You were about at that point in front of the engine room when you heard that chain snap? A. Yes.

30 Q. Now, tell us when you were coming out here, did you walk or did you run? A. Walked.

Q. Walked, and did you walk slowly or fast? A. Ordinary rate of walking.

Q. About three or four miles an hour? A. Yes.

40 Q. The fact is that while you walked from this fog chain here out to this point towards the engine room, this truck during that same period of time ran by the fog chain up to this fog chain? A. Yes.

Q. In other words, the truck ran less than

Genevieve Bruggeman—Cross.

twice the distance that you walked; didn't it? A. It ran——

Q. A little less than twice the distance that you walked? You walked a little bit more than half the distance the truck ran, is that right? A. Yes.

Q. Now, during all of this time that you walked down back of this truck, were you about the same distance away from the rear, about the same thirty-four feet all the time? A. I didn't notice. I didn't notice. 10

Q. Well, did the distance between you and the truck change any, as you walked down? A. Well, see, it got way past me; at first it passed me right at the beginning, and then it got way up past me and then when I heard it hit the thing I was three quarters of the way to that engine room. 20

Q. Now, as the truck got into this part that it covered here, this team gangway, could you see the chain dragging then? A. I couldn't see the chain, as far as I noticed the truck, but I could hear it all the way through.

Q. You heard it all the way through? A. Yes.

Q. Well, when did you first see it? A. When I first got to the women's cabin to cross over to the men's as it passed me I first noticed the chain. 30

Q. And you heard it then? A. Yes.

Q. And you heard it all the way through? A. I heard it all the way through, but I didn't notice it all the way through; I wasn't looking at the car all the way through.

Q. The car was directly in front of you, wasn't it? A. Yes, sir.

Q. The car was between you and the cabin? A. Yes. 40

Genevieve Bruggeman—Cross.

Q. But you were not looking at it? A. Well, I might have been looking at it, but I was not paying any attention to the car in front of me; I didn't think anything was going to happen to notice it.

10 Q. Were you alone when you went through there? A. Yes, sir.

Q. All alone? As you went along that passageway, did you walk on the side of the gangway, or did you walk in the middle? A. What do you mean the side?

Q. Well, I mean did you walk close to the walls or either of them, or did you walk in the middle of the driveway? A. I just walked from the gangway; I didn't notice if I was in the middle of it or to the side. I think I was toward the middle.

20

Q. Did you see anything on the floor there in that driveway? A. No, sir.

THE COURT: The question is, did she.

Q. Was it light enough so that you could see? A. I didn't notice.

Q. You cannot tell whether you could see or not? A. No.

30 Q. You were not looking towards the floor, you were looking up towards the light; I suppose? A. Yes, sir.

MR. TURNER: I guess that is all.

CROSS EXAMINATION BY MR. SCOTT:

Q. Was it so dark you could not see where you were going? A. I didn't notice the light.

40 Q. Well, I say, was it so dark you could not see where you were going? A. Well, I knew I was going through the gangway.

Genevieve Bruggeman—Cross.

Q. Well, you knew you were going through the gangway, but was it so dark you did not know where you were going? A. I don't know how you mean that.

THE COURT: Let me ask you this question: Do you know what the condition of light or darkness was there that day? Have you any recollection of it? 10

THE WITNESS: No, I have not.

Q. All I want to know is whether it was so dark you could not see where you were going as you went down that passageway? A. I could see I was walking through the gangway.

Q. And it was what time of night you were going through? A. About five-thirty. 20

Q. And was it dark at that time? A. No, not in June, it is not very dark.

THE COURT: You say five-thirty. Was that by the daylight saving time?

THE WITNESS: Five-thirty in the afternoon.

THE COURT: Are you speaking of daylight saving time or standard time?

MR. SCOTT: New York time or— 30

THE COURT: Greenwich time.

THE WITNESS: New York time.

Q. Four-thirty in New York, last June? A. Yes.

Q. When you went down, your recollection is you went down sort of in the middle? A. Yes.

Q. You didn't have any trouble going down that passageway; there was nothing to interfere with you? A. I couldn't walk right through because the car was in front of me. 40

Q. But outside of the car, that was the only

Henry G. Ulrich—Direct.

thing that interfered with you? A. Yes, sir.

Q. There was nothing on the floor to interfere with you? A. No; not that I know.

Q. That would cause you to trip up? A. No, sir.

10 MR. SCOTT: That is all.
(Witness excused.)

HENRY G. ULRICH, sworn.

DIRECT EXAMINATION BY MR. EASTMEAD:

20 Q. Mr. Ulrich, were you a passenger on the ferryboat Musconetcong on the 22nd of June, last year? A. Yes, sir.

Q. And about what time of day were you a passenger on that boat? A. Five-thirty.

Q. Where did you go after you boarded the boat? A. I went through the team gangway on the men's side.

Q. Men's side? That is this team gangway here? A. At the men's side.

Q. Yes; that is the men's side? A. It is the right hand side, facing Jersey.

30 Q. Yes. How far to the front of the boat did you proceed? A. I was just over the chains.

Q. And will you just step down a minute and show us where you were standing? A. Right here. Is this pole in the center right off the engine room?

Q. Yes. A. I was on the side; I came right on the side here.

40 Q. How far in front of the fog chain were you? A. About two steps from the fog chain.

Henry G. Ulrich—Direct.

MR. EASTMEAD: Mark "U" on the diagram.

Q. When you got to that point, Mr. Ulrich, what did you observe, if anything? A. When I got that far?

Q. Yes. A. Well, before I crossed the cabin, I heard a noise, a rumbling noise, as if something fast was coming, and hearing that noise, I hurried up to get across, and as I got across I turned around and I thought I seen a black object in front of me and it hit this gent, hit this gent who was just in the act of crossing, hit the chain as he was crossing; the chain tightened and threw this gentleman under the wheel. 10

Q. When you say this gent, do you mean Mr. Schreiner? A. Yes, sir; I found out later it was Mr. Schreiner. 20

Q. Where was he in relation to you when you first observed him? A. He was right behind me in the team gangway.

Q. He was right beyond you when you first saw him? A. Yes, sir; right on the side.

Q. When you saw him, was he in the right or the left team gangway? A. He was towards the women's side, just opposite that pole in the centre, that spot. 30

Q. Just opposite this pole. And when you say opposite just what side do you mean, to your right or to your left? A. To the right, about here. It knocked him over.

Q. What portion of his body was over the chain, if you know? A. That is something I could not say.

THE COURT: Where was he standing with relation to that chain when you first saw him? Was he on the—— 40

Henry G. Ulrich—Direct.

THE WITNESS: Just in the act of making the step. The chain was between his legs, and the truck came and hit him—hit the chain, at least.

10 Q. Was that after the chain had snapped, or before? A. Before.

Q. When you say the truck hit the chain, did it? A. Yes, sir.

Q. Then what happened to the chain and to Mr. Schreiner after the chain was—— A. The chain tightened and threw this gent under the wheel.

Q. Did it snap? A. From the sound of it, it must have snapped, but I didn't see the chain after the automobile hit the chain.

20 Q. What was the next thing you observed happened to Mr. Schreiner? A. I just seen him being pushed along.

Q. By what? A. By the wheel; front wheel.

Q. Wheel of this automobile? A. Yes, sir.

Q. Did you see the driver of this automobile? A. Not until after the accident.

30 Q. Did you hear him say anything? A. I heard him say something about the chain coming off the wheel.

Q. Just tell the court and jury what you did hear him say? A. He had quite an argument with some gent here; I don't know whether he is here; I haven't seen him, with regards to the chain being off.

40 Q. And what did he say in that argument? Just express to the jury his words? A. He told this gentleman that he lost control of his truck by the chain coming off and this gent said he didn't; that it came off by reversing the brakes; and that was the whole argument there.

Henry G. Ulrich—Direct.

Q. Do you know what that gent was, as you call him? A. No; I don't know who he was; I never seen him before.

Q. Have you ever seen him since? A. No, sir.

Q. Have you seen him here in court? A. No, sir.

Q. Did you see Mr. Schreiner put into the ambulance? A. No, sir; at the time I seen the ambulance I ran right back of the post to the deck hands; I didn't wait that long. 10

Q. You ran back and got a deck hand, and where did you find the deck hand? A. One deck hand was directing the traffic, and the other was standing on the side, on the box there.

Q. Did they come to the front? A. They came to the front; in fact, they got there before I did. 20

Q. Was there any deck hend in front of the boat at the time of this accident? A. On the Jersey side?

Q. Towards the Jersey side? A. No, they were both in front.

Q. Do you make it a question of walking through the team gangways? A. I did until this accident.

Q. You did until this accident? Have you ever been stopped from using this team gangway? A. I haven't been stopped, but once in a while the deck hands have called to us to stay out of the gangway. 30

Q. What is that? A. I say, once in a while the deck hands you would hear them call out, "Stay out of the gangway; you will get hurt."

Q. And did you hear them call it out that night? A. Not that night.

THE COURT: Before this night? 40

THE WITNESS: Yes, sir.

Henry G. Ulrich—Cross.

Q. Did you ever see any signs up on the boat prohibiting the use of the team gangways by passengers? A. I never took notice.

CROSS EXAMINATION BY MR. SCOTT:

10 Q. Where did you first see Schreiner? A. As he was crossing the chain.

Q. As he was crossing the chain? A. I turned around; yes, sir.

Q. And what direction was he facing? A. He was facing the Jersey side, walking forward.

Q. Facing the Jersey side? A. Yes, sir.

Q. Walking forward? And did he have his legs over the chain? A. No, one leg; was just in the act of putting one leg over the chain.

20 Q. Well, where was he, between the New York side end of the boat and the chain, when you first saw him? A. I didn't clearly get that.

Q. Well, was he coming down the team gangway? A. He must have come down the team gangway to get there, yes, sir.

Q. Was he just in the act of stepping over? A. He was just in the act of stepping over.

30 Q. Had one foot in the act of putting it over the chain? A. Yes, sir.

Q. When you say the machine struck him? A. Yes, sir.

Q. Or struck the chain and tightened up the chain and threw him? A. Yes, sir.

Q. Would you mind telling me again just what you heard the driver of the car say with respect to losing control of the car? A. He claimed he lost control of the car by the chains coming off the wheel.

40 Q. By reason of the chains coming off the

Henry G. Ulrich—Cross.

wheel? A. Yes, sir; that is what his argument was with the other gent.

MR. SCOTT: That is all.

CROSS EXAMINATION BY MR. TURNER:

Q. When the automobile struck the chain at the time Mr. Schreiner was climbing over the chain, how far was the point that the automobile struck the chain from the point where Schreiner was climbing over the chain? A. How far was it? It was very close, very close. 10

Q. How many feet? A. Well, I couldn't say anything about feet; I don't know about that.

Q. Well, can you point to some object in this room and show us the distance? A. Well, about from here to here. 20

Q. From the point where the automobile struck the chain was from Mr. Schreiner a distance of about three feet?

THE COURT: He didn't say quite so far. He said from the inside. Pretty close to two feet, I take it.

MR. TURNER (measuring the distance indicated by the witness with a ruler): Twenty-four inches. And then when the automobile struck the chain a distance of two feet from Mr. Schreiner, I understood you to say that the chain tightened up and did it wind around Mr. Schreiner? 30

A. No; it tightened up and threw him; one leg towards Jersey and one leg toward New York.

Q. The chain tightened as he was in the act of crossing it? A. Yes, sir.

Q. And threw him? A. Yes. 40

Q. And threw him under the car? A. No, under the front wheel.

Q. Under the front wheel. That is all.

(Witness excused.)

Frank Bergen—Direct.

FRANK BERGEN, sworn.

DIRECT EXAMINATION BY MR. EASTMEAD:

Q. Mr. Bergen, were you a passenger on the ferryboat Musconetcong, on the 22nd of June, 10 last? A. Yes, sir.

Q. And about what time of day was it? A. Five-thirty.

Q. When you boarded the boat, where did you go? A. I went through the team gangway.

Q. The team gangway. Which team gangway did you go through? A. On the women's side.

Q. That is the left hand team gangway? A. Yes, sir.

Q. Was there any trucks of any kind in that 20 team gangway? A. No, sir.

Q. Where did you go then after you went through the team gangway? A. I was going through the team gangway. As I was going through this here man was in front of me, and as we got right near ahead of the chain in the front of the boat this automobile came tearing through the boat, and just as this man was crossing this chain, why, the automobile hit the chain 30 and it snapped the chain and threw him under the front wheel.

Q. When you saw this man, you mean Mr. Schreiner? A. Yes, sir.

Q. He was in front of you in the left team gangway; is that right? A. Yes, sir; he was in front of me in the left team gangway.

Q. Out here somewhere? A. Yes, sir.

Q. And right over the chain, you say? A. He was straddling the chain.

Q. Straddling the chain. A. When the auto- 40 mobile—

Frank Bergen—Direct.

Q. That means he had one leg over the chain and one leg behind the chain? A. Yes, sir.

Q. Did you see this automobile? A. I didn't see it until it hit the chain.

Q. Was that automobile in the same gangway as you were? A. No, sir; it was on the left side.

Q. It was in the left gangway. Did you hear a sound in particular of any kind? A. No, sir. 10

Q. Did you see the chain snap, or break, yourself? A. I seen the chain break.

Q. And what did you next observe happen to Mr. Schreiner? A. Well, as he was straddling the chain when the chain broke it drove him under the front wheels and I ran over there to pick him up, and as I did, some other man went over and bent down before me and picked him up. He carried him into the lady's cabin. 20

Q. How long a distance did this automobile drag Mr. Schreiner? A. About three foot.

Q. You helped pick him up and take him in the cabin? A. No, sir, I didn't help pick him up and take him in the cabin. There was somebody else got there before me.

Q. Somebody beat you to it? A. Yes, sir.

Q. Did you see the chauffeur of the truck there? A. I seen the chauffeur, but I couldn't recognize him now; he was pretty well greased up, I guess, and dirty-faced. 30

Q. You mean he had his working clothes on? A. Yes, sir.

Q. Did you hear him say anything? Did you hear any conversation in which the chauffeur took part? A. No, I didn't hear any conversation. 40

Q. Did you go to the hospital with Mr. Schreiner? A. No, sir.

Frank Bergen—Direct.

Q. Did you make it a practice of going through the team gangway on those boats? A. Yes, sir; I did until after the accident.

Q. Were you ever stopped going through there? A. No, sir; never stopped.

10 Q. Did you ever see any signs up there prohibiting you from going in there? A. No, sir.

Q. Can you tell us anything about the relative diameter of the fog chains and the team chain as marked on that diagram?

MR. SCOTT: I do not see how that is material. I object.

20 MR. TURNER: Well, suppose I withdraw that question and simply ask after the diameter, if he has any knowledge as to the diameter of the fog chains. That is purely material, I think.

MR. SCOTT: Then I object to that question as immaterial.

Q. Do you know what the diameter of that fog chain is? A. No, sir.

30 Q. After the automobile struck the chain, what happened to the chain, do you know? A. No, they gathered up the chain and put it on the men's side.

Q. Well, what position was this chain in before they gathered it up, if you know? A. That is something I can not tell you.

Q. Did you see the chain back—

MR. EASTMEAD: I withdraw that.

40 Q. Will you just describe to the jury—I don't know but you have already testified to it, but I have forgotten—just what happened to the chain when the automobile struck the chain? A. The automobile struck the chain; this man was just

Frank Bergen—Cross.

stepping over the chain, and as he did the chain snapped and drove him under the wheel. After he was drove under the wheel, I was going to bend down to pick him up, but there was another man got there before me. He was picked up and carried into the lady's cabin——

10

THE COURT: That is as far as the question goes.

Q. Now, when you say the chain snapped, you say it drove him under the wheel? Did you see whether or not any part of the chain struck Mr. Schreiner? A. No, sir; all I know is that the chain twisted around him and dragged him under the wheel.

MR. EASTMEAD: That is all.

20

CROSS EXAMINATION BY MR. TURNER:

Q. You say the chain twisted around Mr. Schreiner? A. Yes, sir.

Q. Now, what part of Mr. Schreiner's body did the chain twist around? A. Twisted right around his legs, up here.

Q. Both legs? A. Both legs.

Q. That pulled him under the car? A. That pulled him under the car.

30

(Witness excused.)

Recess at two o'clock.

40

Leo Murphy—Direct.

After Recess.

LEO MURPHY, sworn.

DIRECT EXAMINATION BY MR. EASTMEAD:

10 Q. Now, Doctor, you are a practicing physician of the State of New Jersey? A. Yes, sir.

Q. And have been such for how many years?
A. About two and a half.

Q. Where do you practice, Doctor? A. West Hoboken.

Q. Your office is in West Hoboken? A. Yes.

Q. Were you in June, of last year, connected in any capacity with St. Mary's Hospital, in Hoboken? A. Yes.

20 Q. On June 22nd. Just state to the jury what your connection with the hospital was at that time? A. Assistant Surgeon, assistant on the surgical service for all cases coming in.

Q. All surgical cases coming in? A. Yes.

Q. On June 22, 1921, were you called upon to treat one Frank Schreiner? A. Yes.

30 Q. Will you just explain to the jury what condition you found him in when you were first called upon to treat him? A. Well, the first I saw Schreiner, he was practically a young man, in shock, what we call surgical shock; that is, meeting a damage in the chest to such an extent that the man was surgically shocked; that is to say, he was terribly sick from something happening suddenly, which usually does not happen in the case where a man has not been well for some time. The man had evidently been perfectly well and received an injury to the chest, and
40 when I examined his pulse it was running probably a hundred and twenty, or over a hundred, and very rapid respiration, pain on breathing.

Leo Murphy—Direct.

evidence of cracked rib, and damage done to the chest——

MR. TURNER: I object to "evidence," unless the doctor made some examination to find out what it was.

THE COURT: Did you examine this case? 10

THE WITNESS: Yes, sir; we have to examine all cases.

THE COURT: But you examined this?

THE WITNESS: Yes.

THE COURT: What did you find?

THE WITNESS: There was evidence of some blood in the inside line of the chest, and the lung shoved to the upper portion, the upper part of the chest cavity, and the whole conclusion was that there was a traumatic chest, as we call it; that is, blood in the chest, local damage to the rib, or torn pleura; an artery or vein had been torn and the man was in surgical shock. So the treatment there simply amounted to putting him to rest as much as possible and giving him quieting enough to quiet the pain, and wait what might come as a result of that treatment. That was the first examination. 20 30

Q. When did you next examine him? A. Well, we saw him every day in the hospital; saw him at my rounds every day. We have to make rounds every day.

Q. Did you have X-ray made? A. I don't remember about X-ray.

Q. Just state to the jury what the progress of this case was. A. Well, I do not remember the length of time he was there, but the man went on gradually—I could not say from bad to worse, but the condition just kept about the same, and 40

Leo Murphy—Cross.

the heart, of course, could not stand the strain on it for any length of time, and probably—I don't remember how many days he was there—during the whole stay. How many days was he in the hospital?

10 THE COURT: Well, of course, if you have nothing else to refresh your recollection, we will have to depend on what your recollection is.

THE WITNESS: Well, he remained in the hospital for a few days or a week, if I remember correctly, and passed out.

Q. Would you say, in your opinion, as a physician, that the cause of him "passing out," as you say it, that means dying, of course? A. Yes.

20 Q. Could you tell us the cause of his death? A. Well, my opinion is that the man died as a result of injuries received to the chest in which the heart and lung were injured and overcrowded, and death resulted on account of the sailing of the heart to make up for it—the pneumonic condition, congestion, pneumonia happening, or traumatic pneumonia—anything due to traumatism.

30 Q. And that was due to injuries outside or within? A. It was an outside injury. The history of the case gives you outside injury, and the condition of shock as soon as seen.

CROSS EXAMINATION BY MR. SCOTT:

Q. Doctor, were there any physicians in attendance on Mr. Schreiner, any of the physicians? A. Dr. Schutk; Dr. Schutk is visiting surgeon; I am assistant surgeon.

40 Q. You are assistant visiting surgeon? A. Assistant visiting.

Leo Murphy—Cross.

Q. Did you have anything to do with the making of the death certificate? A. No; we leave that to the house surgeon, usually.

Q. And who is he? A. I think it was Menscher at that time.

Q. And what part did he take in the ministration to Mr. Schreiner? A. Well, just the capacity of house surgeon on a private case amounts to just carrying out our orders; they would have to carry out the orders of Schutk and myself. 10

Q. And the diagnosis as to the cause of death, would that be ascertained by the party who signed the death certificate, or would they gather that from you and Dr. Schutk? A. Well, we usually don't make any definite statement. The house surgeon, of course, they come to their own conclusion as far as signing the death certificate. If the case dies and the visiting surgeon or surgeons—we don't make our own death certificate; we leave that up to the house surgeon. 20

Q. Don't you take any part in seeing whether the death certificate correctly represents the cause of the death? A. Usually not.

Q. Usually not? A. No, excepting in some cases where probably there would be some question about it. 30

Q. Mr. Schreiner died of pneumonia, did he not? A. Pardon me.

Q. He died of pneumonia? A. Yes, a certain class of pneumonia.

Q. No X-ray was taken with respect to ascertaining whether he had any fractured wrist or the location? A. No, the man was in too great shock to be moved, if I remember correctly. A man who is in shock you should not remove him for X-ray. X-ray, you have to lay—to locate 40

Leo Murphy—Cross.

the patient; and a man suffering and gasping for breath and turning blue, it is not justice to move him to an X-ray room. There you take it for granted that there is traumatism and treat the symptoms.

10 Q. What surgical symptoms did you note? A. Visible?

Q. Visible, when he first came in? A. Well, visible injuries would amount to the symptoms, you see—a man very short of breath and in pain, that is more of a symptom which you would see; it is a symptom of pain which must be somewhere.

Q. But I understand you to say that you were the first physician that saw him when he came in? A. I would not be sure if I was the first
20 or second or third.

Q. But you made an examination of him, a physical examination? A. Yes.

Q. Now, without some records, can you tell us from your recollection what the physical condition was, what the object of symptoms of any injury he was suffering from were? Did he have a cut on his head, or was his nose smashed? A. No. The visible injuries in the chest case are such that you have to leave the man quiet. The
30 fellow is in terrible pain. You are not going to move everything around to examine the chest.

Q. But you can open the shirt, can't you? A. Yes.

Q. Well, did you? A. Yes.

Q. What did you find? A. Swelling, if I remember, on the right side, I think, of the chest; swelling and pain on breathing.

Q. And where was that located? A. About
40 half way down in the chest.

Q. Was there a pronounced swelling? A. I

Leo Murphy—Cross.

would not be sure; I just remember of him having had a swelling with pain on pressure, about half way down on the right chest.

Q. On the right chest. Now, in your examinations, do you recollect any other observable condition with respect to his body, whether his body in any other place— A. No. 10

Q. —was injured? A. No.

Q. Were his legs injured? A. No.

Q. Or his arms? A. No.

Q. Or his head? A. I don't remember any of that.

Q. Would any records of the hospital be of any assistance to you in refreshing your recollection? A. To a certain extent, yes.

Q. What records are they, doctor? A. They are the records of the hospital written by the house surgeon. 20

Q. By the house surgeon? A. Yes; the physical examination—

Q. But those are not records made by you? A. No, no.

Q. And you have nothing to do with the making of the records by the house surgeon? A. No.

Q. And you don't know as a matter of fact whether the house surgeon put down— A. No. 30

Q. —was accurate as regards your observations? A. As regards my observations.

Q. As regards your observations? A. No.

Q. You don't know whether the house surgeon put down what you found, or whether he put down what he thought he found? A. Exactly.

Q. So those records wouldn't assist you in refreshing your recollection? A. Well, they do. 40

Q. Now, are there any other records? A. No.

Q. You made no records yourself? A. No.

Leo Murphy—Cross.

Q. Did you direct anybody to make any records? A. Well, there is an understanding that the house surgeon is supposed to make all records for conferences with such a patient. They are supposed to keep track of them.

10 Q. Now, assuming the house surgeon does what he is supposed to do, according to this understanding, do you check him up, as it were, and read over these records? A. Sometimes.

Q. In this particular Schreiner case, did you check up the house surgeon's records to see if they verified your diagnosis? A. No, sir; I have not seen the records since.

20 Q. So far as you know, there is nothing in existence of a record nature which you know as a matter of fact will refresh your recollection and at the same time be accurate with respect to what you saw at the time you made the examination? A. Yes; as far as my own part is concerned. Our records, of course, cover observations by those who had to write them down, and I have remembered some of them.

30 Q. But you know of no record that if it were brought to court you could say, this record I know is a true record, and looking at that tells me or refreshes my recollection to the extent that I can say now that such and such things were the condition then? A. Yes.

Q. There is no such record? A. Oh, yes; our records from the hospital will give us that ground. Hospital records must give you that, assuming that the house surgeon does his work.

40 Q. Yes, but what I am driving at is,—I want to know if there is any such record there which if brought to court, you can look at and say, "I know that that record is true," and "looking at

Leo Murphy—Cross.

that record, that refreshes my recollection, and now I can say that besides what I have testified, these other things were present when I made the examination." Is there any such record that you know of in existence? A. No.

CROSS EXAMINATION BY MR. TURNER:

10

Q. Now, doctor, with what is ordinarily known as pneumonia to the layman, is there a pain or pressure? A. No.

Q. Of the lungs? A. No.

Q. If you press the lungs is there not a pain in pneumonia? A. No.

Q. Where is the pain in pneumonia? A. There usually is none.

Q. No pain? A. No.

20

Q. Can you tell us what kind of looking man this patient was that you had there? A. As to stature and build, and so on?

Q. Yes. A. I could not describe him any better than the man here, his brother; I think they are two of the closest men I ever met. I could not tell one from the other. If one fellow came in to see me I could not say which was which.

Q. You say it is only necessary to look at the brother to describe the other? A. I think a verbal description would be out of place with that man around.

30

Q. Now, doctor, do you remember whether this patient was in the hospital more than a week? A. No, I don't.

Q. Cannot tell that? A. I imagine from the length of time that we went in to see him that it was about a week.

40

Leo Murphy—Re-Direct.
T. John Shuck—Direct.

RE-DIRECT EXAMINATION BY MR. EASTMEAD:

10 Q. Pneumonia might follow—as in an injury such as you have described here, the fact that pneumonia developed might occur in any case following an injury of that kind; might it not?

MR. TURNER: I object to what might.

THE COURT: Yes. What is the probability of it, doctor?

MR. TURNER: It is leading, too.

A. Most likely.

Q. Most likely? A. Most likely. That is the danger we are always looking for.

20

(Witness excused.)

T. JOHN SHUCK, sworn.

DIRECT EXAMINATION BY MR. EASTMEAD:

Q. Doctor, you are a practicing physician of this State? A. Yes, sir.

30 Q. How long have you been such? A. About twelve years.

Q. Where is your office? A. 58 Ninth Street, Hoboken.

Q. Were you connected in June of last year, in any capacity, with St. Mary's Hospital? A. Yes, sir.

Q. Just tell the jury in what capacity? A. I have been attending surgeon in St. Mary's Hospital for the last eight or nine years.

40 Q. In June of last year, did you have occasion to treat one Frank L. Schreiner? A. Yes, sir.

Q. Will you just explain to the jury what condition you found him in when you examined him?

T. John Shuck—Direct.

A. I found him in a condition of extreme shock, with symptoms of fracture of several ribs on the right side of his chest. He was breathing with very great difficulty, with great pain in his chest, and on examining his chest I found symptoms of fracture with the air under the skin, that is, a crackling of the skin due to the escaping of air from the lungs, indicating by that that through the fractured rib the lung has been injured. 10

Q. How often did you see him, Doctor, before his death? A. Oh, I saw him a good many times. I saw him probably twice or three times a day.

Q. And was he suffering from shock all that time? A. He rallied from the shock after the first time, he was a little improved from the shock, but the condition of his chest, of course, got progressively worse. 20

Q. And could he talk at all? A. Yes, sir.

Q. With ease or with difficulty? A. With difficulty.

Q. Do you know how long he was in the hospital before he died? A. Approximately five days.

Q. What would you say would occasion an injury such as you have described; how would such an injury in your experience be brought about, from within or from without? A. Oh, only from without. 30

Q. And would it be the result of violence or otherwise, such an injury? A. Violent external cause.

Q. Violent external cause. And would you say from your treatment of Mr. Schreiner in this case that he died—is it your professional opinion that he died as the result of this external violent force which injured him about the chest? 40

A. Yes, sir.

T. John Shuck—Cross.

CROSS EXAMINATION BY MR. SCOTT:

Q. Pneumonia was the immediate cause of his death, was it not, Doctor? A. Why, pneumonia is a very wide term. Pneumonia may mean a very great many things. He died from injury to his lung which caused pneumonia.

10 Q. But he died of pneumonia? A. No, he didn't die of pneumonia. He died of an injury to the lung.

Q. And the injury to the lung, was that the proximate cause of his death? A. Why, the proximate cause of his death was the wound of the lung.

20 Q. And not pneumonia? A. Why, pneumonia may mean a filling up on the lung with blood, or may be a filling up with exudation due to inflammation of the lung, due to germ infection, or it may mean a congestion of the lung due to heart disease, or a filling of the lung due to old age and long continued lying in bed. It is simply a term, a very wide term; it does not mean anything unless it is specified by the cause.

30 Q. I mean I am not talking about the cause of pneumonia, but I am asking you whether he died of pneumonia, just yes or no? A. The State Board of Health examiner would not accept a diagnosis of pneumonia unless it is modified by what the pneumonia is—whether it is bronchial pneumonia, lobar pneumonia, or hypostatic pneumonia.

40 Q. After you have answered here as to whether he died of pneumonia, you can explain, if Mr. Eastmead desires, what kind of pneumonia it was, or what the cause of death was. A. No; he did not.

T. John Shuck—Re-Direct—Cross.

Q. What I want to know is whether he died of pneumonia? A. Not as the term is ordinarily understood.

RE-DIRECT EXAMINATION BY MR. EASTMEAD:

Q. When you say pneumonia, as ordinarily understood, what do you mean by that? A. We mean a lobar pneumonia, which means infection due to a germ which is breathed in through the air passages, and lodges in the lungs. 10

Q. That is the sort of pneumonia that is very prevalent in the winter months? A. Yes.

Q. There was no indication of that in this case of Mr. Schreiner? A. No.

Q. And in your opinion his death was solely due to accidental, or at least, the outward, external violence? A. Absolutely. 20

CROSS EXAMINATION BY MR. TURNER:

Q. Now, Doctor, do you say in your opinion his death was due to the fact that his lung filled up or not? A. Why, his death was due to the heart stopping,—I mean if you want to bring it down to a fine point.

Q. Then that was not pneumonia at all? A. Why, I am trying to make clear that pneumonia does not mean anything to a medical man. Pneumonia without an adjective does not mean anything to a medical man. 30

Q. You said pneumonia meant filling up of the lungs? A. Yes.

Q. I am asking you was it this filling up of the lungs that killed this man? A. Why, there was no autopsy. I imagine it was the lack of functioning of that lung which ultimately caused his death. 40

T. John Shuck—Cross.

Q. What caused the lung to cease to function?

A. The wound that it received through the fractured rib.

Q. Well, did the lung fill up? A. Yes.

Q. Did that make it stop functioning? A. Yes.

10 Q. And then that is what you call pneumonia, isn't it? A. No.

Q. Is it not? A. No.

Q. Then you say this man did not have pneumonia? A. I cannot say the man had pneumonia without saying what sort of pneumonia he had. If I had signed his death certificate, I would say he had traumatic pneumonia, pneumonia due to an injury, either a puncture or bullet wound or blow or anything of that sort, any external

20 cause.

Q. Well, did your hospital certify that this man died of pneumonia? A. I did not see the death certificate.

Q. Do you know whether it did or not? A. The death certificates are usually filled out by the house surgeon, because the bodies are taken there during the day when the attending physician is usually not there.

30 Q. Now, what evidence of wounds did you see? A. I saw the escaping air under the skin; I felt the crackling when I put my hand on the side of the chest; I felt the crackling of air under the skin.

Q. How could you see it? A. Can't see it; you could feel it.

Q. You couldn't see? A. Can't see air, no.

Q. You couldn't see anything to indicate it?

A. Couldn't see anything to indicate air?

40 Q. Could you? A. I don't get that.

Q. You said you could feel it. I am asking

T. John Shuck—Cross.

you what you could see now? A. You could not see any air under the skin because the skin was not broken.

Q. You could not see anything at all, then, to indicate it to you, could you? A. I couldn't see any air under the skin, no.

Q. Well, what could you see under the skin that made you feel there? A. I cannot look through the skin. 10

Q. Did you see the skin raised or lowered or anything of that sort?

MR. EASTMEAD: I object to this. I think the witness has testified that he felt it, not that he saw it. Now, it is manifestly impossible to see through the skin.

THE COURT: The Doctor said over and over that he could not see it. 20

Q. Well, I am asking now whether he felt it.

THE COURT: Tell us what made you feel. You said by feeling you could tell it?

THE WITNESS: Yes, sir.

THE COURT: Why did you feel? What caused you to feel?

THE WITNESS: I felt the man's chest, because he complained of great pain on that side, and in the course of my examination, I discovered this broken rib, and anybody who felt it could tell it immediately. It is a crackling like—it is hard to describe; it is the air filling up the places underneath the skin, and when you put your hand on it it gives a crackling sound. It is called emphysema and anybody who has ever been experienced in examining would immediately recognize it. 30 40

T. John Shuck—Cross.

Q. Was there anything broken on his body at all? A. I don't remember. He had no wound.

Q. There was no outward wound, was there, Doctor? A. He may have had some abrasions, but he had no wound; no cut.

10 Q. You cannot recall a single abrasion or wound on his body, can you? A. That I don't remember. I would have to think. I do not remember that he had any wound that attracted my attention particularly.

Q. What could you find he had in the way of manifestation of injury on him outwardly? A. Well, injuries to his chest was so overshadowing everything that I don't recall at the moment whether he had abrasions or contusions at other
20 parts of the body. He was suffering so intensely from this chest condition that I don't recall for the moment whether he had other injuries or not.

Q. Well, his chest condition was all internal, wasn't it? A. If you call fractured ribs internal, yes.

Q. And there wasn't anything outwardly visible on him at all, was there? Any mark or abrasion, or cut or wound, or anything of the
30 kind? A. I don't remember.

Q. If there were any you would have remembered it, wouldn't you? A. No, not necessarily.

MR. TURNER: That is all.

(Witness excused.)

Recess at 9:45 A. M., to-morrow morning,
February 9, 1922.

Genevieve Bruggeman—Direct.

MR. SCOTT: Before Mr. Eastmead rests, may I recall the young lady, Miss Bruggeman. We would just like her to mark on the map where she testified she was.

MISS GENEVIEVE BRUGGEMAN, recalled.

10

BY MR. SCOTT:

Q. Yesterday you were asked the following questions and you answered as follows: "Were you in the passageway between the gangways when this automobile passed you?" and you answered, "I was just in the middle of the gangway nearest to the lady's gangway." A. Yes, sir.

Q. "That was in the middle of this gangway? Here is the women's and here is the men's. You were in about the middle?" "Between the lady's cabin and the middle there, right there." A. Yes, sir.

20

Q. "In the middle?" "Yes, sir, and it passed me." "And the auto passed you there?" "Yes, sir." "You saw the automobile first when it was by the fog chain?" Now, will you look at that map? This is the women's cabin and this is the men's cabin, and here is the passageway: Will you mark about where you were when you first saw the automobile? This is the men's cabin side here. A. This is the beginning of it?

30

Q. Yes. A. And this is the—

Q. That is the overhead? A. I was just coming across right over here, and I just about got to the middle of this.

Q. How far out were you from this combing here? You know there is a sort of curb or step. About how far in the team gangway were you?

40

A. Well, I don't know just that.

Genevieve Bruggeman—Direct.

Q. Well, were you half way across to the men's cabin side? A. If I would have been there the auto would have hit me.

Q. Then you were between the middle and the lady's cabin? A. Why, I guess.

10 Q. And about where the letter "A" is, that I have underscored on this word "team"? A. Yes; I guess about there.

MR. SCOTT: I understood Mr. Eastmead was going to offer a diagram.

MR. EASTMEAD: I will offer a diagram for this time, and, before I rest, I understand he has that particular fog chain in court and I would like to ask him to produce it.

MR. SCOTT: I have no fog chain.

20 MR. EASTMEAD: I understood you have. I offer the diagram in evidence and ask that it be marked. I presume there is no objection to the diagram.

(Diagram marked P-2 in evidence.)

(PLAINTIFF RESTS.)

30

40

Defendant's Motion for Nonsuit.

MR. SCOTT: May it please the court, at this time I respectfully request a nonsuit in favor of the railroad company, and my reasons are two; one, that no negligence has been shown as against the railroad company, and the second that the plaintiff's decedent was guilty of contributory negligence; and in view, as Mr. Turner said, of the importance of this case I would like to argue somewhat at length with respect to some of the points involved.—Argument. 10

MOTION FOR NON-SUIT ON BEHALF OF THE DEFENDANT EFFICIENT MOTOR TRANSPORTATION COMPANY. 20

MR. TURNER: Now, on behalf of the defendants whom I represent I move for a nonsuit against Anthony Schreiner, etc., on the ground, first, that no negligence has been shown there on the part of these defendants. 20

Secondly, on the ground that the deceased was guilty of contributory negligence, and,

Third, on the ground that the deceased assumed the risk of the accident that happened by taking the position that he took on the ferryboat at the time that he took it, when the accident happened.—Argument. 30

THE COURT: I am going to deny both motions at this time. I may change my mind before the conclusion of the case or at the conclusion of the case. At the present time I will deny both motions. I will say, however, that I do not accede to your theory with any definiteness at this time. 40

Paul Nadalo—Direct.

MR. SCOTT: Allow me an exception?

THE COURT: You may have it.

MR. TURNER: May I also have an exception?

THE COURT: You may have it.

10

RAILROAD'S CASE.

PAUL NADALO, sworn.

DIRECT EXAMINATION BY MR. SCOTT:

Q. Mr. Nadalo, where do you live? A. 53 Jefferson Street.

Q. Hoboken? A. Yes sir.

Q. Are you employed by the Lackawanna Railroad? A. Yes sir.

20

Q. And you were employed on June 22, 1921? A. Yes sir.

Q. And employed as a deckhand on the ferry boat Musconetcong? A. Yes sir.

Q. Do you remember dealing with an accident that occurred on that day on the boat? A. Yes I remember; I don't know what day; I can not tell what day it was; I know of it.

Q. Where did this accident happen, over on the New York side or Jersey side? A. Jersey side.

30

Q. What? A. It happened on the Jersey side; we were on the New York side.

Q. No, where was the boat, in New York? A. New York side.

Q. At 23rd Street? A. At 23rd Street; yes sir.

40

Q. And as a deck hand—I want you to come down here and look at this map or sketch of the ferry boat Musconetcong so that you will be familiar with it. This is New York, 23rd Street

Paul Nadalo—Direct.

side, and this is the ballast of the ferry boat and these are the gates, here is the women's cabin, and here is the men's cabin, here is where the team chain and the fog chain are when the boat is going out in the river. A. Yes sir.

Q. The team chain and the fog chain are not up when the boat is the end near the dock, are they? They are not up at that time? A. No. 10

MR. EASTMEAD: I object to the question as leading.

THE COURT: It is leading, perhaps, but we all know that that is so; because they could not get an entrance to or exit from the vessel if that were not so, if they were up.

Q. Where were you stationed? A. There is my station stand. 20

Q. Your station stand is where? A. Right here, right here by this chain here.

Q. Right about where I marked the letter N? A. Yes; I have to watch out what goes on the boat there.

Q. When this truck came on the boat,—when this truck came on the boat, Mr. Nadalo, did you say anything to the driver? A. Yes sir; I see that he comes down. 30

Q. And what did you say to the driver? A. I lift the hands to him and I holler to peoples "Look out the gangway."

Q. Did you holler anything to the driver? A. I see he come fast—

Q. I say did you holler to the driver? Did you say anything to the driver? A. I say to him "You stop" because I see he is coming so fast; that is all I say. 40

Q. What did he do? Did he stop or did he go right on? A. No; he drive right through.

Paul Nadalo—Direct.

Q. Did you speak to him after this accident?
Did you speak to him after the accident? A. Yes
sir.

Q. Well, now just tell the jury what he told
you? A. And I come to him and I says, "Why
not stop in time I tell you?" He told me he can't
10 stop——

MR. EASTMEAD: I object. It can not be
binding on us. We were not there.

THE COURT: Well, how is it binding upon
the plaintiff, Mr. Scott?

MR. SCOTT: I do not know what his answer
is.

THE COURT: No; it might be beneficial and,
at the same time, it might be otherwise.
20

MR. SCOTT: Assuming he says this man
said the reason he did not stop was that his
brakes were out of order, that affects the
plaintiff's action because that is practically
the only thing that goes to this anticipatory
situation. Here is a man coming down and
the employee says "Stop" and he goes on.
The man hollers "Look out the gangway" to
the passengers. Then he goes up and sees
30 this fellow and he says, "Why didn't you
stop?" He says, "My brakes were out of
order." I am just assuming that would be
the answer.

THE COURT: Now, let me ask you what is
the purpose of this question, to get an admission,
if there be that, as against interest
on the part of the driver of this vehicle.

MR. SCOTT: In our cross action perhaps
40 yes. In our defense of this suit it goes to
show the circumstances as to whether it was
a situation that we were bound to anticipate.

Paul Nadalo—Direct.

THE COURT: Well, I think, Mr. Eastmead, it would be admissible certainly upon the first contention of Mr. Scott,—the admission against interest of the defendants upon their cross action.

MR. EASTMEAD: Well, of course, the situation is that the plaintiff intestate is not here, and he was not present. 10

THE COURT: Well I can not prevent them from having evidence which would be relevant in their cross action. Perhaps because it might be detrimental to you. As to whether or not it is valuable to you I think can well be left until later.

MR. EASTMEAD: It may even be beneficial to me, for all I know. 20

MR. SCOTT: Well, I do not take it that counsel are here to see that we can get something and if we do not like what we get, to get it out.

MR. EASTMEAD: I won't press the objection.

THE COURT: Very well.

Q. (Question repeated by the stenographer.) Well, now, just tell the jury what he told you? A. 30
And I come to him and I says, "Why not stop in time I told you?" He told me he can't stop.

Q. Did he tell you why, "He can't stop"? A. He says the brakes is no good; he shows me the chain is off, and I am walking back in my place; that is all.

MR. SCOTT: That is all.

THE COURT: What was that last paragraph? 40

Paul Nadalo—Cross.

A. (Repeated by stenographer.) He says the brake is no good; he show me the chain is off, and I am walking back in my place; that is all.

CROSS EXAMINATION BY MR. TURNER:

10 Q. Now did you see this chain off this truck?

A. The chain was shown.

Q. He showed it to you? A. Yes sir.

Q. Right at the time of the accident did he show it to you? A. Right away at the time was the accident.

Q. Right away? A. Yes, because I come to him—I get sore why he no stop him, because he go against me and I say, “Why no stopping?”
20 And he says, “Buddy, I can’t stop. My brakes is out of order.”

THE COURT: You saw the chain off.

THE WITNESS: He showed it to me.

THE COURT: When was that, after the accident or before the accident?

THE WITNESS: I come after the accident there.

THE COURT: After the accident?

THE WITNESS: Yes.

30 THE COURT: All right.

Q. Now you saw him coming on the ferry boat, did you? Did you? A. Yes sir.

Q. And when you saw him coming on the ferry boat you were standing up here at this point marked “M”? A. Yes sir; outside.

Q. And did you tell him on which side of the ferry boat to go? A. Right hand.

40 Q. Right hand side? A. He was right hand, too.

Paul Nadalo—Cross.

Q. Did you motion to him to go on the right side? A. Yes sir. I holler him, "Go on the right side."

Q. You hollered to him to go on the right side; then did he go on the right side? A. What?

Q. Did he go on the right side? A. Yes sir.

Q. He went just where you told him to go? A. Yes sir. 10

Q. And after you saw him go down this team gangway on the right side how far down the gangway could you see the truck? A. I see come off the bridge.

Q. Well, after it got on the bridge did you stand here so you could see the truck where it got clear down to this point marked "G"? A. I was up to that side on the engine when I no see it no more, the time it goes; I can't see no more there. 20

Q. Where was the truck when you couldn't see it any more? Where did it leave your vision? A. Up right from the engine room there, up this side.

Q. At that point? A. Yes sir.

Q. After it got up to this point on the forward part of the engine room you couldn't see it any longer? A. No; I can't see no more. 30

Q. Because the engine room shut off your view of it; did it? A. Yes sir.

Q. Then after this truck went up to that point and you couldn't see it any longer did you stand here all that time at this point marked "N"? A. Yes; I was standing there; that is my place.

Q. You never left the point marked "N" did you? A. No sir.

Q. Stayed there all the time? A. Yes sir. 40

Q. What was it that made you go up to the forward end of the boat? A. It is my partner that side.

Paul Nadalo—Cross.

Q. Your partner? A. Yes sir; he was to be on the other side.

Q. Did your partner call you and tell you to go up there? A. No; I got to stand on my side to take care of at New York, and my partner he got to be on the Hoboken side.

10 Q. Your partner had to be on the Hoboken side? A. Yes, and me in New York; the time in Hoboken I got to be on New York side.

Q. You went on the New York side and your partner on the Hoboken side? A. Yes sir.

Q. So that you didn't know, then, about this accident until you had walked up on here on the New York side to take your place; is that it?

A. Yes, and when he come to Hoboken I got work on the New York side; hearing teams close one to another.

Q. So the plan is that one deck hand works on the New York side of the boat and one deck hand works on the Hoboken side of the boat; is that right? A. One deck hand—the time I am in New York side, got to plan teams and trucks, keep an even boat.

Q. So that your boat keeps on an even keel?

30 A. Yes; I've got to watch them come out the bridge; some heavy and some light; I got to watch them to get them perfect.

Q. That is the New York side, isn't it? A. Yes.

Q. Then after the boat started to go out of the slip on its trip, did you come out to the Hoboken? A. Got to go through the cabin, yes, to see if everything is all right, and back again on the New York side.

40 Q. Then when the boat left the slip on this day you came through the men's cabin and walked

Paul Nadalo—Cross.

to the Hoboken end of the boat to see if everything was all right? A. Yes.

Q. Is that right? A. Yes.

Q. Then when you got out to the Hoboken end of the boat it was then, was it, that you had the talk with the driver of the truck? A. With the chauffeur.

10

Q. With the chauffeur? A. Yes; I asked him why he no stop; he told me he can't stop because his brake is on the bum.

Q. Well, now—— A. That is all he said to me.

Q. Well, now, if it is a fact that you hollered to him when he went on the boat because he was going so fast, then why did you wait until the boat left the slip before you went to the end of the boat where the truck then was? A. The time I saw he hurt the man and I walked right away there. My partner he take care of the man that was hurt and I only said to the chauffeur—I said that way to him—I said, "Why not stop?" "Buddy," he said,—he told me the brakes are on the bum and I walking back.

20

THE COURT: When was it that you heard a man had been hurt? Was it before the boat left the slip in New York or after the boat had left the slip in New York?

30

THE WITNESS: The time he come on the boat, the first truck.

THE COURT: He came on the boat as the first truck?

THE WITNESS: Yes sir.

THE COURT: Now, the boat left the slip in New York, didn't it? You made the slip from New York to Hoboken?

40

Paul Nadalo—Cross.

THE WITNESS: Yes; we were standing in New York.

THE COURT: You said you heard that a man had been hurt?

10 THE WITNESS: Yes; because I heard people start to holler.

THE COURT: When did you hear that, before the boat left the slip in New York or after?

THE WITNESS: No; it was yet on the New York side.

THE COURT: You were still on the New York side?

THE WITNESS: Yes, sir.

20 THE COURT: And as soon as you heard it—

THE WITNESS: I walked to him and I saw the man in the cabin and my partner was there taking care of him.

Q. Who told you that a man had been hurt?

A. I hear people hollering; I hear people holler "A man got hurt." I say—I don't know, you know, because there was a crowd of people.

30 Q. Now, when you saw this truck going up the ferry at a fast rate of speed why didn't you run after it? A. Run after him?

Q. Yes. A. I got to wait for another one come right away, because another truck following him again.

Q. Wasn't your partner there to take care of the trucks coming on? A. I don't have to run after him, because my partner is on the Hoboken side already.

40 THE COURT: That is what I understood him to say; that his partner was on the Hoboken side or on the other end of the boat;

Paul Nadalo—Cross.

he was standing about on the stern of the boat to receive and direct the vehicular traffic coming in on the New York ferry.

Q. Then after you told this man to go on the right side of this boat you didn't pay any more attention to him? A. No; I wait for another one and told another fellow where he got to go. 10

Q. Now, you say you held up your hand to him. Did you say anything when you held up your hand? A. I lifted the hands to him and at the time there was a crowd of people and it was five-thirty, I think, and I holler people "Look out the gangway," and I lift the hands to him to stop.

Q. You hollered to the people to look out for the gangway? A. Yes. 20

Q. And you held up your hands to him but you didn't tell him to stop; you didn't say anything to him? A. That is what I mean by lifting the hand, to stop.

Q. You just held up your hand to him; that is the way you told him to stop; but you didn't say any words; did you? A. That is the stop signal.

Q. You didn't stop him? A. And he move to right hands; he goes close to me and I told him to go right hands. 30

Q. What you did was to hold up your right hand and motion to him to go on the right side? A. I hollered to him to go on the right side.

Q. And that was all you did do to him, wasn't it,—to him? A. (No answer.)

THE COURT: Just tell us, Mr. Witness. Suppose he was coming on the boat in front of you now; just show us what you did with your hand as you saw him coming. 40

Paul Nadalo—Cross.

THE WITNESS: What I do with my hand?

THE COURT: Yes. Suppose this truck was coming towards you now, coming on the boat. Just how did you show up your hand? Just show us.

10 THE WITNESS: I see the truck coming down and I see it going so fast and I lifted the hand to him to slow down.

THE COURT: You lifted your hand up the way you have it there?

THE WITNESS: Yes sir.

THE COURT: And what did you call out to the passengers?

THE WITNESS: I called passengers, "Look out the gangway."

20 THE COURT: And what did you do to indicate to the driver of this truck he was to go on? Did you say anything to him there at all or did you simply motion with your hands?

THE WITNESS: Sometimes I told him right hand, sometimes I raise the hand this way.

30 THE COURT: In this case, with this man, did you motion with your hand which way he should go, or did you say "Right side"?

THE WITNESS: "Right side", and he do.

Q. Did you make any motion? A. I say to him, "Right side."

THE COURT: I understood him to say that before, but I wanted to be sure of that, Mr. Turner.

40

Paul Nadalo—Cross.

CROSS EXAMINATION BY MR. EASTMEAD:

Q. You testified that your partner was supposed to be on the Hoboken end, is that right?

A. Yes sir.

Q. When you were standing there and that truck came down on the boat, where was your partner, do you know? A. He was supposed to be on the Hoboken side. 10

Q. He was supposed to be on the Hoboken side; but do you know where he was? A. Well, I don't see him around there; he must be there; he must be on his own job.

Q. You don't know whether he was there at the other end yourself? A. No; I don't see him around there; he must be there; he must be on his own job. 20

Q. You don't know whether he was there at the other end yourself? A. No; I can not tell that.

Q. Is that a rule of the company—— A. He is supposed to do that.

Q. Now, do you know how thick this chain is here, this fog chain?

MR. SCOTT: I object to that as not part of the cross-examination. There was no question about the chain? 30

MR. EASTMEAD: All right, I withdraw it. That is all.

RE-CROSS EXAMINATION BY MR. TURNER:

Q. Mr. Nadalo, when you motioned this truck to go on the right han side,——

THE COURT: He did not say he motioned.

Q. When you told the driver of this truck to 40

Paul Nadalo—Cross.

go on his right hand side, did you have any chocks there to put under the wheels? Do you know what a chock is? A. Yes; I know.

Q. Did you have any chocks to put under the wheels?

10 MR. SCOTT: I object.

A. I was going to put a chock—

MR. SCOTT: I do not see how that is material.

A. I was standing on the left side the time he come down; I can't go across; I have to watch myself.

20 MR. SCOTT: I will withdraw the objection.

THE COURT: All right, go ahead.

Q. Did you have any chocks there to put under the wheels of the trucks so they would not run off the boat? A. There was four chocks there both sides of the boat.

Q. How many stops on each side of the boat? A. Four.

Q. Four on each side of the boat? A. Yes sir.

30 Q. Now, what is a chock? Just tell us. Explain to the jury what a chock is? A. That is the time the truck come on the boat and stop it, you got to put that chock on the first wheel.

Q. What is a chock; what is it made of? A. Of wood.

Q. Of wood. How heavy a piece of wood is the chock? A. Well, it is three corners chock, three corners.

40 Q. Three corners? A. And it is about a foot long.

Q. And it is about one foot long and how high?

Paul Nadalo—Cross.

A. It is about five inches—about five inches high.

Q. Five inches high and a foot long, and it is a three cornered thing? A. More than five inches; some are five inches, some six; something like that.

Q. Some five and some six? A. I never measured that. 10

Q. Does it have a chain fastened to it? A. Yes sir; a chain fastened to the chock.

Q. How long is this chain that is fastened to the chock? A. Well, I can not swear to you how long because some chains are more long; some chains are not so long.

Q. What is the shortest chain you have? A. Four foot.

Q. Four foot? A. I think it is about four foot. 20

Q. That means that there are eight chocks on every— A. Four on the end of the boat.

Q. Four on each end? A. Yes; that is got to be—the driver sometimes put chock on his own wheel.

Q. The chocks are laid on the deck of the boat; aren't they? A. Yes sir—on the side.

Q. Did you see the chocks on your end of the boat that day? A. Sure; got to be; they got no chock there they got to call a man to put there. 30

Q. You notice there that there were four chocks there, did you? A. Yes sir, sure.

THE COURT: There are four chocks on each end; that is, two on each side of each end of the boat?

THE WITNESS: Yes sir.

THE COURT: You say on the end you would be on that you would have four chocks, two on the side where you stood and two on the other side of the boat; is that right? 40

Paul Nadalo—Cross.

THE WITNESS: Yes, and two on the right side of the boat, and two at the left, and two at the right and two at the left side of the boat.

10

THE COURT: Now, you were asked if you saw the chocks on that side of the boat that day, I presume, at or about the time when this truck came on. Did you see them?

THE WITNESS: Yes, sure.

THE COURT: Where were they?

THE WITNESS: The chocks?

THE COURT: Where did they lie?

THE WITNESS: Laying on the chain on the floor.

THE COURT: Whereabouts on the floor?

20

THE WITNESS: One close to the fog chain and another one is close to that small chain.

Q. Can you point out on the map and show where they were? A. Sure; the chocks right here; nail them up right here, the first one, and the second one was right here.

MR. SCOTT: Mark them 12.

THE WITNESS: This is another one.

30

MR. SCOTT: 3.

THE WITNESS: That must be this way, I think; I can't tell you as much as a foot.

Q. But you were the only deck hand on your end of the boat, weren't you? A. Yes sir.

40

Q. And were you looking out for the chocks on the other side of the boat? A. Well, doing the work on the boat; I got to go through the cabin and go through the end of the—backing up to the gangway.

THE COURT: I think he is not following

Paul Nadalo—Cross.

you as to "The other side of the boat." If you say the other end of the boat perhaps he will know what you mean.

Q. You were on which side, the right or the left? A. I was standing on the left side.

Q. On the left side? A. Sometimes I stand on the right, sometimes—at that time I was on the left side. 10

Q. At that time when this truck came on the boat? A. Yes sir.

Q. Now, did you see this truck on the right side of the boat when you were standing on the left? A. Sure; there was a chock there; it can't get out; it is supposed to be there.

Q. It is supposed to be there? A. Yes, because that is the first thing I take watch for, that you got everything on the boat, everything. 20

Q. This is during rush hour, and a great many people were passing on the boat and a great many teams, weren't they? A great many vehicles? A. (No answer.)

THE COURT: He evidently does not understand your question.

MR. TURNER: I will withdraw it, because there is no answer to it. 30

Q. Did you look for your chocks on your end of the boat after this accident? A. I supposed to see that every second, every minute; I don't need to waited until we got over to New York; I got to come back again; the time we got to Hoboken I got to come back to New York side and I got to see there is a chock and put it on the outside. I have to do that. 40

Q. Then when the truck goes out the chocks are

Paul Nadalo—Re-Cross.

left in the gangway and you have to take them out? A. Put one side, clean them out.

MR. SCOTT: The prior question was that he took the chocks away?

10 THE COURT: Yes; he said that. Do you take them from under the wheels or does the driver do that?

THE WITNESS: Sometimes chauffeurs take them; sometimes deck hand.

Q. Sometimes chauffeurs take out the chocks and sometimes you take them out? A. Yes; he puts them in sometimes.

20 Q. Sometimes the chauffeur puts the chocks under the wheels? A. He do himself sometimes, but other times we got to do that.

Q. But if you do not take the chock out of the gangway it is left there, isn't it? A. Well, you got to take that off the gangway because a wheel come on that chock it could jump over and slap somebody in the face; you got to put it on the outside.

30 Q. You say if a chock were left in the gangway the automobile would jump over it and slap somebody in the face or something? A. Sure; you got to put it one side, clean up the gangway.

MR. TURNER: That is all.

RE-CROSS EXAMINATION BY MR. EASTMEAD:

40 Q. It was the duty of the man at the front end of the boat—what was he supposed to do, your partner, when he was at the Hoboken end of the boat? What was he supposed to do?

MR. SCOTT: I object. I think it is improper to prove the duties of an employee

Francis Marvinny—Direct.

by an employee of this character who is not there on that ground.

THE COURT: I do not know; I suppose he may speak. He has been speaking as to what his work was there, Mr. Scott.

MR. SCOTT: I won't press it.

Q. (Repeated by the stenographer.) It was the duty of the man at the front end of the boat—what was he supposed to do, your partner, when he was at the Hoboken end of the boat? What was he supposed to do? 10

THE COURT: You mean as the boat laid in the slip at 23rd Street? When you were at the end of the boat, in the dock, what was your partner's duty at the front end of the boat? 20

A. He split trucks and call another fellow get close, and put some more; because some fellow would take all our room and we can't put so much trucks on. You got to follow them, maybe one—get them close one to another. That was all we had to say.

(Witness excused.)

FRANCIS MARVINNY, sworn. 30

DIRECT EXAMINATION BY MR. SCOTT:

Q. You were a deck hand of the ferry boat Musconetcong on June 22, 1921? A. I was.

Q. And around five thirty on the evening of that day while you were over at New York, docked at New York, or shortly thereafter did you learn of an accident happening on your boat? 40

A. I did.

Q. You were the deck hand on which end of

Francis Marvinny—Direct.

the boat, the Hoboken side or New York side?

A. Mine was the Hoboken end.

Q. What was the first knowledge you had of the accident? A. Well, I was walking—that is when the boat arrived in New York and had discharged; that is, the vehicles had gotten off.

10 Q. Passengers had been discharged? A. Passengers and vehicles also. I was walking through the right gangway.

Q. Which was that, next to the men's cabin?

A. Next to the men's cabin; yes sir; to go up to the front end of the boat to store the teams; that is, to get them as close as possible to one end and another, and I was about mid-way in the gangway when I heard a rumbling noise behind me.

20 THE COURT: You were walking from the stern of the boat, then, as it lay there, toward the bow of the boat?

30 THE WITNESS: Yes sir; and I heard a rumbling noise behind me and I turned around and I seen a truck coming at a very rapid speed; I had all I could do to get out of the way of it; and then about three or four minutes—seconds, I should say, seconds, a passenger come running toward me and told me there had been an accident up at the front end of the boat. I ran up there as quick as I could to get there and they had told me that someone had brought a man into the cabin that was injured.

40 Q. Now did you see the driver of the truck subsequently? A. First off I went in to see the man in the cabin to see what I could do for the man that had been injured and I found they had seated him on the inshore end of the cabin, and

Francis Marvinny—Cross.

I told them to seat him on the opposite side where there was an open window; and I seen he was in pain and I ran up to the pilot house and got a glass of water for him, and I asked if they wanted me to get the ambulance in New York; that is, I asked the young lady; I believe it was Miss Bruggeman who was with him; and she said, "No; he lives in Jersey. We will get a Jersey ambulance." So with that I went upstairs and told the captain that the man had been injured and then I came down again. I spoke to the driver, the chauffeur of the car. 10

Q. That is the gentleman, Mr. Cloren over here? A. I believe it is.

Q. Did he tell you anything? A. He told me something about his brakes being rotten; that is just the language he put it in. He says, "Look at my chain." And I seen his chain drive—that is, the drive chain on the back of the boat, hanging from the wheel at the back of the boat; and I turned around and tried to get as many witnesses as I could to the accident. 20

MR SCOTT: That is all.

CROSS EXAMINATION BY MR. TURNER: 30

Q. Did you look at the drive chain that was hanging down at the back of the boat? A. Yes sir.

Q. Was it on the right wheel or the left? A. Left, I believe.

Q. Are you sure? A. I am sure.

Q. Left wheel? A. Yes.

Q. Now, did he tell you that he could not operate his brakes because of this chain having come off? A. No. 40

Francis Marvinny—Cross.

Q. Did he tell you that anything had interfered with the operation of his brakes? A. No, sir.

Q. Didn't mention his brakes at all? A. He did say his brakes were rotten; that was just the language he put it to me.

10 Q. That was all the conversation you had with him, was it? A. That was all. He was in a highly nervous state; he wouldn't say much more.

Q. You had walked down in front of this truck had you, through the gangway? A. No.

Q. I thought you said you heard a rumbling noise behind you? A. Well, I had walked down when the boat had been empty of vehicles. I started to walk down the right gangway and I
20 had been half way down that gangway when I heard this rumble behind me. That is what I said.

Q. Well, now, when you heard this rumbling noise behind you were you half way down the gangway about from this middle of the engine room? A. I had been. I will say a little more forward of the engine room.

Q. A little this way? A. Towards the Hoboken end, yes.
30

Q. About three quarters? A. Yes.

Q. And where were you when you first heard this rumbling noise? A. Right where I told you; about three quarters of the way in the gangway; that is alongside of the round house, as we call it.

Q. How close was this automobile truck to you when you heard this rumbling noise? A. Well, I will say about twenty feet.

40 Q. Twenty feet. You mean the radiator of the

Francis Marvinny—Cross.

truck was within twenty feet from you? A. I guess so.

Q. And when you heard this rumbling noise you sensed that there was danger to you, didn't you?

A. Surely.

Q. And how did you get out of the way? A. Why, there is a combing there alongside of that round house. You notice that yellow mark there. 10

Q. A combing? A. A combing; it is a combing about a foot and a half wide for an ordinary person to stand on a high step.

Q. You call it a combing? A. Yes sir; a combing; that is the term we use.

Q. And this runs all along the engine room, doesn't it? A. All the way around the round house. 20

Q. All the way around the round house? A. Yes sir.

Q. That is a foot wider than—I take it at least about a foot of space in the passage? A. About a foot.

Q. A vehicle can not run up on that very conveniently, can it? A. Why, no.

Q. How high is it? A. Oh, about three or four inches. 30

Q. Four or five inches high? A. About four inches.

Q. Does that go on this map here, that combing? A. Beg pardon. I guess that yellow mark is the combing.

Q. Then you stepped up on the combing next to the engine room, about three quarters up? A. Yes.

Q. And you stayed there until the automobile went past you, did you? A. I had to stay there 40

Francis Marvinny—Cross.

out of the way, he was coming so fast.

Q. But you did stay there? A. Yes.

Q. And he went past you? A. Yes; and I hollered to the passengers in the gangway to watch themselves.

10 Q. When he passed you? A. No, before he passed me, when I turned around and see him coming fast, and I warned the passengers—there were a few ahead of me—to look out.

Q. What did you do after that, after he had passed you? A. Why, it was three seconds afterward when I heard him hitting the chain, and a passenger come running towards me and told me there was an accident.

20 Q. You were standing—— A. I didn't stand; I just pulled aside. I had no more than got on the combing when he passed me by, he was going so fast.

Q. You were walking or standing? A. Walking, surely.

Q. Walking in the same direction he was going? A. Walking in the same direction he was going.

Q. Then did you continue to walk in that direction? A. I started to run when they told me someone had been hit.

30 Q. Well, before they told you that did you run or walk? A. Walked.

Q. Then you got down out there and you found someone had been hit? A. Yes sir.

Q. Now, where was this automobile when it stopped? Here is the fog chain here. A. Yes sir. Oh, about four feet inside of the fog chain; that is towards the Hoboken end, toward the bow of the boat, when I seen it.

40 Q. And had it come to a dead stop? A. I suppose; it was stopped.

Francis Marvinny—Cross.

THE COURT: It was stopped when you saw it then?

THE WITNESS: It was stopped when I seen it, yes your Honor.

MR. TURNER: That is all.

CROSS EXAMINATION BY MR. EASTMEAD:

10

Q. You didn't shout any warning to anybody in the left team gangway, of course? A. I couldn't see with that combing there; that interfered with my seeing it.

Q. You say that your duty is to stow the automobiles. Have you any other duty when you are out in the front end of the boat? A. None whatsoever.

20

Q. Is there any regulation of the company as to how far back of the fog chain you are to keep the first automobile? A. Why, no.

Q. Now under the regulations of the company they are permitted to go right out against the chain? A. Well, I would not say—I don't remember that regulation.

Q. You know of no regulation prohibiting it, then? A. No.

Q. Did you see this chain that you heard snap? A. I did.

30

Q. Can you tell us how thick it was in diameter? A. Well, I would say about an inch and a half.

Q. In diameter. You mean the links? A. I mean the links, the space of a link.

Q. Can you tell how much—the diameter of the link itself was, the circular part of the link, how thick it was? A. I would say a little over half an inch.

40

Francis Marvinny—Cross.

Q. The fog chain, now. Would the fog chain be half an inch in diameter, each link? A. I suppose it is.

Q. You are not sure? A. I never measured it; no.

Q. You never measured it? A. No.

10 Q. Has the ferry boat company any regulations concerning what you are to do with respect to passengers when you are out at the forward end of the boat?

MR. SCOTT: The regulations, if there are any, are proved by the regulations themselves.

20 MR. EASTMEAD: I submit that this employee knows what his instructions are. I will withdraw the question and ask him if he had any particular instruction.

THE COURT: That is quite a different thing.

MR. EASTMEAD: I will withdraw the question and reframe it.

Q. Have you any instructions from your superiors with regard to your duties to passengers when you are up at the forward end of the boat?

30 MR. SCOTT: I object to the question as indefinite. I think if I had a job as a deck hand I could not answer that question.

A. I do not understand it.

THE COURT: He says he does not understand it himself.

THE WITNESS: I don't get it.

MR. EASTMEAD: I will reframe it.

40 Q. What are your instructions with regard to your duties when you are at the forward end of

Francis Marvinny—Re-Cross.

the boat? A. Well, we have no instructions than to go up there. It is only that we go up there to get the trucks as close as possible to one another so we can get more; that is, as much as we possibly can on the boat.

Q. To get them as close to the chain as possible? A. Not close to the chain, as close as possible to one another, behind one another. 10

Q. You just do that of your own volition? A. Yes.

Q. You have no instructions on that point? A. We have no instructions but we have notices once in a while put up on the board to get as many trucks as possible on the boat with safety.

MR. SCOTT: With safety, you said. 20

THE WITNESS: With safety.

MR. EASTMEAD: That is all.

RE-CROSS EXAMINATION BY MR. TURNER:

Q. Now, when this man came on the back this was the first truck on, wasn't it? A. Yes sir.

Q. And did you have charge of stowing the vehicles on the end of the boat toward which he was going? A. Yes sir. 30

Q. And didn't you tell him to go as far forward as possible? A. I didn't tell him anything because he had passed me. If he were coming at the ordinary rate of speed that is allowed, which I believe is four miles an hour coming on the boat, coming down the bridge, I would have beaten him to the other end; but he was making at least fifteen miles an hour and he beat me to it, he got there before I did. 40

Q. Are you sure you didn't tell him to go to

Francis Marvinnie—Re-Cross.

the forward end of the boat as far as possible?

A. No sir.

Q. "Go ahead as far as possible"? A. No sir; I did not.

10 Q. Didn't say anything to him? A. I couldn't say anything to the man. He would have knocked me over if I stood there talking to him.

Q. And you didn't say anything to him as he went by? A. I could not, it happened so quickly; I didn't have a chance to open my mouth.

Q. You were twenty feet ahead of him when you heard this rumbling noise? A. Yes.

20 Q. And he went past you and you stepped up on the combing, but you didn't say a word to him at all? A. You know fifteen miles an hour is some speed.

Q. You were frightened, weren't you? A. Sure was; not exactly to be frightened, but I wanted to save myself.

MR. TURNER: That is all.

RE-CROSS EXAMINATION BY MR. EASTMEAD:

30 Q. You say four miles an hour is the lawful speed in the team way there? A. I am not saying from any authority it is, but I believe that is so. I have heard so from drivers and other people.

MR. TURNER: I ask that that be stricken out.

THE COURT: It may be.

MR. EASTMEAD: We withdraw it.

(Witness Excused.)

40

Recess till two o'clock.

Edmund Henckel—Direct.

AFTER RECESS.

EDMUND F. HENCKEL, sworn.

DIRECT EXAMINATION BY MR. SCOTT:

Q. You are a civil engineer and drew this sketch and plan? A. Yes sir. 10

Q. Of the ferry boat? Will you come down here? A. (Witness goes to the blackboard.)

Q. I would like to have you tell us how far the point (marking under the letter in "team") is from the end of the boat, the New York end of the boat? A. It is just sixteen feet.

Q. And from the same point up to the fog chain at the bow of the boat? A. It would take a little work on that. (After figuring.) That 20 is about two hundred and twelve feet.

Q. And the team gangway on the men's cabin side? A. Eight feet.

Q. And the combing around the engine room? A. Why, that is just a little over a foot.

Q. And the combing around the engine room? A. That is the same; a foot.

MR. SCOTT: That is all.

(Witness excused.) 30

The defendant, the Delaware, Lackawanna and Western Railroad Company rests.

Howard Cloren—Direct.

CASE OF THE DEFENDANT, EFFICIENT
MOTOR TRANSPORTATION COMPANY

HOWARD CLOREN, SWORN.

DIRECT EXAMINATION BY MR. TURNER:

10

Q. Mr. Cloren, you are in partnership, are you, with Mr. Raymond and the other two defendants?

A. Yes sir; I am.

Q. Men about your own age? A. Sir?

Q. Men about your own age? A. Yes; they are.

Q. And did you buy an automobile truck? A. Yes sir.

20

Q. Was that a Garford truck, a five ton truck; was it? A. Yes sir.

Q. Now, did you have that truck on the 22nd of June, 1921? A. I did.

Q. And how long have you had that truck? A. I assume about nine months or ten months.

Q. Was it new or second hand when you bought it? A. Why, it was rebuilt.

30

Q. Rebuilt. Now, on the 22nd of June, 1921 tell us what time you started out that day? A.

That is from the garage, about seven thirty.

Q. About seven thirty? A. Yes sir.

Q. And where did you drive to from the garage? A. Down to the National Asbestos Company, Jersey City; that is Henderson Street—well, it is near the public dumps there. I don't know whether there is a street marked off; that is cross wise; but it is on Henderson Street below the Morris Canal.

40

Q. And where did you go from there? A. From there I went up to 182nd Street and to Intervale Avenue, I think it is.

Howard Cloren—Direct.

Q. New York City? A. Yes sir.

Q. And where did you go from that point? A. Started to go to the location of the garage.

Q. Jersey City? A. Jersey City; yes sir.

Q. Had you been driving all that day from practically seven o'clock in the morning until the time of this accident? A. Yes sir. 10

Q. Now, what time of day did you go down to the 23rd Street ferry of the D. L. & W.? A. believe I missed the five five boat, or five ten boat; I am not just certain; but it was shortly after five o'clock; and I got the boat running nearest to that time.

Q. Then for the next boat did that put you at the head of the line? A. Yes sir.

Q. Now, did you wait there some time before this boat came in that you went on? A. Yes sir; I had to wait until one went out and the other one came in and discharged. 20

Q. Now, did you stop your engine during the time you were waiting? A. Yes sir.

Q. How did you start it, by crank or by self starter? A. By crank; it has no self starter.

Q. By crank. You cranked up your engine then to go on this boat after five o'clock, didn't you? A. Yes sir. 30

Q. Now, when you cranked her up did you go down to the car—did you go down to the ground? A. Yes sir.

Q. And are you able to tell us whether at that time both your drive chains were on? A. Yes sir.

Q. Were they? A. Yes sir.

Q. Then you cranked the car and what did you do after that? A. Proceeded to drive toward the 40

Howard Cloren—Direct.

gate that was open—for the toll man to take my fare; stopped while he made change for me.

Q. You stopped for the toll gate? A. Yes sir.

10 Q. What did you do after that? A. I proceeded on in the direction of the boat and stopped at the—well, I assume about twenty feet before the entrance on to the bridge, as the other trucks were still coming up and passengers going on and coming off.

Q. And you had to wait for them to all get off? A. For the trucks to get off; yes sir; the last trucks.

Q. Did you have any trouble stopping at that point? A. No sir.

Q. Your brakes worked all right? A. Yes sir.

20 Q. How long did you stand still there? A. Not more than a minute or so.

Q. And then what did you do? A. I proceeded to go on the boat by instructions to do so, as the man at the head of the bridge—that is, right abreast of me where I was standing—

Q. The man was an employee of the railroad company? A. Yes sir.

Q. How did he tell you to go on the boat? A. He said, "All right, go ahead."

30 Q. Then you went ahead, did you? A. Yes sir.

Q. Then did you go on the boat? A. Yes sir.

Q. Were you on the boat did any ferry hands direct you how to go? A. Why, there was a gentleman standing there to the left of me and made a motion to hold me up so as to let other passengers go by; that is, they were crossing across the team gangway from the left side of the boat to the right with intentions of going into either
40 the cabin or up through the team gangway.

Howard Cloren—Direct.

Q. What did you do? A. Why, I applied brakes and slowed; that is, even slower than what I had been moving at the time.

Q. Did you slow down all right? A. Yes sir.

Q. Then after those different parties in front of you—was it in front of you they were going?

A. Yes sir. 10

Q. Then what did you do? A. Why, I was instructed to go ahead as far up as I could.

Q. Who told you that? A. The same deck hand that halted me.

THE COURT: Where were you at the time that you last spoke of, when you say you put on your brakes and slowed up more?

THE WITNESS: Why, I might say I had the full length of the truck on the boat. 20

THE COURT: You were already on the New York end of the boat—on the boat?

THE WITNESS: Yes sir.

Q. And this same deck hand had told you to go ahead as far as you could? A. Yes sir.

Q. Did he tell you what side of the boat to go on? A. He mentioned to the right; that is, I—

Q. Which side did you go on? A. To the right. 30

Q. Now, did anything happen to your car while you were in this passageway going to the right? A. Yes sir.

Q. What happened? A. Why, apparently some object was struck; or, at least, collided—the rear wheel of the truck collided with some object in the team gangway.

Q. The rear wheel of the truck collided with some object in the team gangway? A. Yes sir.

Q. And what did that do to your truck? A. Why, from all appearances I could not find any- 40

Howard Cloren—Direct.

thing wrong until I got further in the boat, and attempted to stop. On arriving at the front end of the boat.

Q. How do you know that you collided with something? A. From the sudden jolt.

10 Q. What did your truck do? A. Why, it just apparently stopped a second or so, you know, continued to go on. I assumed that there was nothing in any respect the matter.

Q. Of course, you are familiar with the sensation that you get when your truck goes over an object? A. Yes sir.

Q. Was that that kind of a sensation? A. Why, not exactly; no; it was a sort of glancing you might say. It veered a bit.

20 Q. A glancing blow? A. Yes, under those conditions.

Q. Then point to this diagram here and show us where it was when you felt this glancing blow? A. I assume this is the right side.

Q. This is the team gangway here. A. Yes sir. About here.

Q. Just step back a little from the jury. A. About this particular point.

30 Q. You mean about a quarter way up from the engine room? A. Yes.

MR. SCOTT: Have it marked, Mr. Turner. How about an "X"?

MR. TURNER: Put an "H".

MR. SCOTT: All right.

Q. Right there; is that right? A. Yes; that is right.

40 Q. Now, how far down the right team gangway had you gone when you say you discovered some-

Howard Cloren—Direct.

thing was wrong? A. Why, within about fifteen of the fog chain.

Q. Within about fifteen feet of the fog chain?

A. Yes sir.

Q. What did you do then? What did you do with your automobile? A. Why, I applied the foot brake and found no action.

10

Q. Yes. A. And not finding any action there after several quick motions on the brakes I applied the emergency brake; not finding any action there after several quick motions on the brake, that is, in the act of stopping, I applied the emergency brake.

Q. Yes. A. And that only had semi-effect, so to speak. It didn't bring the required results.

Q. Didn't stop your car? A. No sir. What I mean to say, I felt the drag as though something went on, but it didn't have the desired effect that was necessary to bring the car to the stop that I had—in the way that I had often stopped it before.

20

Q. Then what did you do when you found that your car wouldn't stop? A. I veered a ways, I veered the wheels, turning the front wheels toward the inside of the boat.

30

Q. Just point to where you turned it in? A. To this point, and then a foot or so of the fog chain.

Q. Did you strike the fog chain? A. Yes sir.

Q. Now, point to the fog chain and tell us where you struck it, about? A. About right here.

Q. About where the letter "E" is? A. Yes sir.

Q. And when you struck the fog chain did you see Mr. Schreiner there? A. Yes sir.

Q. Where was he? A. He was right alongside of the truck in the act of stepping over the—

40

Q. Stepping over what? A. Fog chain.

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Q. Well, now, how close was he to your truck?

A. Why, at the time I saw him move a foot and a half to the left.

Q. All right. Now, had you seen Mr. Schreiner before the accident? A. Yes sir.

10 Q. And where had you seen him? A. About ten foot in front of me, to the left.

Q. Well, did you see him in the team gangway before that? A. Why, I didn't notice him; no sir.

Q. When you saw him ten feet in front of you what was he doing then? A. Walking towards the fog chain, north.

20 Q. Walking from the interior of the boat? A. No sir; coming in the team gangway; that was called the engine room.

Q. Which team gangway was he in? A. Well, I might say that he was on either particular side; that is, he was to the left of me; the wheel had parted through the divisional gangway, I may say; the divisional part of the gangway.

Q. Now, how fast did you come on the boat? A. Not more than five miles.

30 Q. Then when you slowed up on the signal there how fast were you going then? A. Not more than four or five; four to five.

Q. And after you got down towards this point where you felt this blow on your truck how fast were you going after that? A. Less than five.

Q. Well, then, what was it that stopped that truck? A. This object that I struck.

Q. I mean—— A. In the team gangway.

Q. In the team gangway? A. Yes sir.

40 Q. Then after you got past that and got out towards the Hoboken side of the boat what was it

Howard Cloren—Direct.

that finally stopped your truck when you found the brakes would not work?

MR. SCOTT: I object because when he finally stopped—the witness has already said that this object stopped him.

THE COURT: I do not know in what sense 10
the word "Stop" is used, Mr. Scott.

MR. SCOTT: If you can come to a stop and then have something else as a final stop I am at loss to understand what it is.

MR. TURNER: Oh, well, these are quite some distance apart; this first stop when he struck this object, and when it struck finally stopped.

THE COURT: I think what Mr. Scott is 20
reaching for is this: If he stopped at the point where the obstacle was encountered then he may want to know how he started up again, where he started from and went on, or what; whether he started up and went on or what?

Q. When you struck this object did your truck come to a dead stop? A. No sir.

Q. Did it go over it? A. Yes sir. 30

THE COURT: And was that point indicated on the map?

A. Yes sir.

THE COURT: Whereabouts is it indicated?

MR. TURNER: That is where the letter "H" is.

Q. Then after your truck went over this object here and "H" and came down here to the Hoboken end of the boat and came out and finally 40

Howard Cloren—Direct.

stopped, what was it that stopped your truck? A. Why, I assume that it was a combination of the chain and the wheel striking gutter, curving on the side of the boat on which I had swerved it.

Q. There is a curbing there? A. Yes sir.

10 Q. And you struck that, did you? A. Yes sir.

Q. Well, did you examine your car to find out what the difficulty was with it after you stopped? A. Yes sir.

20 Q. What did you find had happened to your automobile? A. I found that the left hand driving chain had come off and in coming off had fell over the emergency brake rigging in such a way as to tangle with the emergency brake lever and pull it around against the applying direction to such an extent as to break the camshaft lever, and thereby making the brake semi-ineffective as far as the emergency brake was concerned. The foot brake was out of gear through this condition of the chains coming off, also due to its particular construction.

30 Q. With this chain, this driving chain off, would your foot brake work? A. No sir; that is, the brake would apply, but would not have any effect on the stoppage of the engine for which it was designed.

Q. So the effect of this in coming off was to put your brakes entirely out of commission? A. Yes sir.

Q. Now, up to the time you went on the ferry boat had your brakes been in good condition? A. Yes sir.

40 Q. Had you had any trouble at all with your brakes or with the driving chain or any other part of the car that day? A. No sir.

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Q. Had you been running loads that day? A. Been running what, sir?

Q. Carrying loads? A. Yes sir.

Q. In the trip up to New York did you have any hills? A. Yes sir.

Q. Did you have your brakes on coming down those hills? A. Yes sir. 10

Q. Did your brakes work all right? A. Yes sir.

MR. TURNER: Now, we have agreed as to the extent of the damages. It is agreed that the damages to your car were twenty dollars.

THE WITNESS: Yes sir.

MR. SCOTT: And that the damage to the chain is five dollars. 20

MR. TURNER: And that the damage to the chain is five dollars.

Q. Now, Mr. Cloren, this passageway on the ferry boat, what was the condition of the light there at that hour? A. Why, I may say it was semi-darkness.

Q. Could you see this object on the floor of the team deck before you struck it? A. No sir. 30

THE COURT: I do not know how he could. He has not said that he did see it.

Q. Well, I mean could you have seen it before you struck it? A. I don't imagine I could from my position in the truck and the conditions of the light that prevailed there.

MR. SCOTT: I ask that go out, as to his imagination. 40

Q. Was it light or dark so that you could see it? A. I don't assume I could.

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MR. SCOTT: I ask that that go out.

THE COURT: I do not see how he could, Mr. Scott, because he does not know what the object was.

10 Q. What was the condition of the light there as regards the floor or the gangway? A. It was very dark.

Q. Were there any electric lights lighted? A. No sir; there is electric lights there, but not lit.

Q. The only light that you got then was from either end of the boat? A. Yes sir.

MR. TURNER: Cross examine.

CROSS EXAMINATION BY MR. SCOTT:

20 Q. Mr. Cloren, do you mean to tell the jury that it was so dark you could not see where you were going? A. No sir.

Q. It was light enough for you to proceed with safety, wasn't it? A. Taking the sky line of the horizon outside of the other end of the boat led me in the direction to which I was going.

Q. And there was no other truck ahead of you? A. No sir.

30 Q. And it was about four thirty New York time, under the daylight saving? A. Yes sir.

Q. It was about three o'clock the old time? A. I believe you are mistaken. It was five o'clock day light saving time, making it four o'clock geographical time.

Q. And it was a bright clear day, wasn't it? A. Well, it was not exceptionally clear. It seemed to be hazy.

40 Q. And you say when you came down the gangway on to the ferry boat you were coming at what speed? A. About four or five miles.

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Q. And how long is that gangway leading down to the ferry boat? A. I don't understand your question.

Q. Well, there is a sort of a slip or team gangway as you come down to the ferry boat? A. You mean the bridge.

Q. The bridge, yes. How long is that? A. **10**
How long is that?

Q. Yes. A. I assume over one hundred feet.

Q. And you came down at what speed, four or five miles an hour? A. Yes sir.

Q. How was the bridge that day, was it absolutely level with the boat? A. I am inclined to believe that it was high tide there, thereby making the bridge an incline to me.

Q. An incline to you? A. Yes sir.

Q. That is you had to climb up to get on the boat? A. Yes sir. **20**

Q. When you got to the boat proper and got on the boat, what speed did you enter upon the boat, four or five miles an hour? A. Yes sir.

Q. And how far did you go before you changed your speed at all as you have told us you did? A. About immediately after—this man, the deck hand, put his hand up.

Q. Well, how far was that? A. I may say **30**
that the truck had full length on the boat; the truck being about twenty two feet.

Q. Twenty two feet? A. Yes sir.

Q. After your truck was on then you reduced the speed? A. Yes sir.

Q. To what? A. About three miles an hour.

Q. About three miles an hour? A. Yes sir.

Q. And did you continue that speed until the accident happened? A. Why, no, I assumed that **40**

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the engine had probably picked up again.

Q. Had picked up? A. Why, yes.

Q. Then when you resumed—how long did you travel at this reduced speed, the speed that was reduced after the deck hand had told you to slow up? For how long a distance? A. How long I travelled at the reduced speed?

Q. Yes, when you came on the boat, the deck hand, you say, told you to slow up and stop. A. Yes sir.

Q. And you reduced you speed? A. Yes sir.

Q. To three miles an hour? A. Yes sir.

Q. Now, how long did you travel at the three miles an hour? A. About fifty feet or so, before the engine got back to its normal speed.

Q. Then when you travelled the fifty feet it picked up to four or five miles an hour again? A. I assume that, yes.

Q. Well, we are interested in what actually happened, not what you assume. Did you pick up speed to four or five miles an hour again? A. Well I can't off-handedly tell that.

Q. Well what is your recollection? A. I guess that I increased speed.

Q. You did increase speed? A. Yes sir.

Q. And after you had gone about fifty feet, what speed did you then go until you struck the chain, a uniform speed? A. A uniform speed.

Q. What? A. Of about five miles an hour.

Q. Of about five miles an hour? A. Yes sir.

Q. At no time from the time you entered the railroad premises at 23rd Street to go on this boat until the accident happened do I understand you to say you drove more than four or five miles an hour? A. No sir.

Howard Cloren—Cross.

Q. That was the highest rate of speed you travelled? A. Yes sir.

Q. And while you were driving after you picked up speed, after travelling at reduced speed for fifty feet, you went down the team gangway toward the chain? A. Yes sir.

Q. And did you turn on your lights or anything? A. No sir; had oil lamps.

Q. What is that? A. I have oil lamps on that equipment.

Q. How wide is that truck, Mr. Cloren? A. I assume about eighty-seven inches over all, from outside wheel to outside wheel in the rear.

Q. And in proceeding down that gangway did you keep over towards the men's cabin or were you towards the engine room? A. I stayed as nearly central as possible.

Q. You stayed as near the center as possible? A. Yes sir.

Q. Observing where you were driving? A. Yes sir.

Q. Did you have your eyes directly in front of you? A. Why, no; I was looking forward towards the direction I was going.

Q. And while looking forward in the direction in which you were going, what did you see in front of you? A. I noticed the other end of the boat and particularly the fog chain which I was going to come to and stop at.

Q. Did you see any people out there, outside of the fog chain? A. Not more than four or five to the best of my recollection.

Q. And you didn't see anything—you didn't see anything in the team gangway at any time; I mean on the floor of the team gangway, before you struck the fog chain, did you? A. No sir.

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Howard Cloren—Cross.

Q. And the only reason you know about what you know, about hitting something, is an account of this jolt that you say momentarily stopped your car? A. Yes sir.

Q. And you indicated where that was? A. Yes sir.

10 Q. And that is the proper place where you indicated—I mean approximately? A. Well, approximately, yes; it is not due to actual measurement; it is the best of my ability in gauge.

Q. And by momentarily—you say it stopped momentarily; it just gave a jolt and you went on? A. Yes.

Q. And from the time of this jolt until you struck the fog chain did you keep up your five
20 mile an hour speed? A. Yes sir.

Q. What experience have you had in driving cars? A. About three years.

Q. I take it that you can tell us how quickly you can stop a car going at different rates of speed, a truck like you were driving? A. A truck like I was driving I can stop—well, I would say within ten feet, depending on the speed I was making; but the greater speed the truck
30 made; you could stop it within ten feet on a level road.

Q. That is going on a level road like this—the ferry boat floor was a level floor, wasn't it? A. Yes sir.

Q. Going on a level floor, going five miles an hour how quickly could you stop that car? A. Within about three or four feet.

Q. Three or four feet? A. Yes sir.

Q. This truck was a Garford truck? A. Yes
40 sir.

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Q. Have you had any familiarity with any other kind of truck? A. Yes sir.

Q. What other kind of truck? A. Thomas trucks, Master trucks, and U. S. trucks.

Q. Your partnership had these various kinds; your partnership owns those various kinds of trucks? A. Yes. 10

Q. And have at times past? A. Yes sir.

Q. Was that a chain driven—were they all chain driven trucks? A. No sir.

Q. This Garford truck you were driving on that day was a chain driven truck; wasn't it? A. Yes sir.

Q. You say that just as you got to the chain you tried to apply your brakes and they refused to work? A. Yes sir. 20

Q. How many sets of chains have you used on that truck before? A. How many had I used before?

Q. On that particular truck? A. Only the one set that was on there.

Q. That one set of chains? A. Yes sir; as I had one spare on the truck.

Q. How often did you adjust those driving chains? A. Why, I adjusted them accordingly. 30

Q. Well about how often? A. Well, it is at random, according to the usage or the slack, or tendency to wear in it.

Q. What I want to know is how often you did adjust those driving chains? A. I didn't adjust them at all.

Q. You didn't do it at all? A. No sir.

Q. Do you know how often they were adjusted by anybody else? A. Well, no; they have not been adjusted during the period we had the truck. 40

Q. From the time you got the truck? A. Not to my knowledge.

Howard Cloren—Cross.

Q. And the driving sprockets on that car, how old were they, do you know? A. Not any older than the truck; that is, during the period that we had it.

Q. And you had had it for how many years? A. We had it for nine months.

10 Q. You had it for nine months? A. I assume nine months; yes, not over that.

Q. You don't know how old that truck was before you got it, before that, do you? A. Not readily, no; I couldn't say. I don't imagine any more than two years from that time.

Q. What month was that? A. I believe the month was about in June, 1919.

20 Q. After this accident—after the accident how did you find all the braking apparatus of the truck? Just explain to us the condition of the various braking apparatuses of the truck? A. Why, with reference to the emergency brake, which is in the rear wheels, in the rear driving wheels, the camshaft lever, which is attached to the hand lever at the front of the truck was twisted around so as to break the camshaft, thereby making the brake on that particular wheel semi-inattentive.

30 Q. How about your emergency? A. That is the one I am speaking of now, sir. And the foot brake was absolutely impact as far as the shoes around the brake were concerned and the operation thereto; and it would take hold of this particular drum but would have no particular effect due to this drive chain being off, and the power being diverted to the jackshaft on which the chain was off, and that running idly and having no effect
40 on the driving side.

Q. How high were those driving sprockets

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from the floor? A. About twenty inches, or two feet.

Q. About two feet from the floor of the car?

A. That is, assuming the sprockets on the drive shaft, not on the rear wheel.

Q. On the drive shaft? A. Yes sir.

Q. They were about two feet? A. Yes sir. 10

Q. From the floor. And did you have—what were the sizes of tires you were using on that truck on the front wheels? A. On the front wheels, thirty six by six I believe. I am not certain but it is very close to that.

Q. They are about six inches wide? A. Yes sir.

Q. And the driving sprocket line up in line directly in back of the front wheels? A. Yes 20
sir.

Q. Now, this accident happened when, Mr. Cloren? A. June 22, 1921, on Wednesday.

Q. You still have that truck in your possession or in possession of the partnership? A. Yes, sir.

Q. And the driving mechanism was not changed, has not been repaired or changed; has it? A. No, sir.

Q. In the same condition as it was at the time of the accident? A. Yes, sir. 30

Q. Now, as you got off the boat, what repairs were necessary to get off? A. Well, it was necessary to put the link together and put it back on both the driving sprockets and the wheel sprocket.

Q. What position was the chain in when you started to make this repair? A. Why, it was off the rear driving sprocket—and off the front—off the jack shaft, and also off the rear wheel, lying over the radius rod; that is, wedged in 40
between the radius rod and the lever itself.

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Q. Mr. Cloren, going back to this object that you say jolted your car about mid-ship of the boat, you never went back to find out what it was? A. Yes sir.

Q. I say you never went back? A. I did.

10 Q. You did? A. Yes sir.

Q. Do you remember being examined before trial in this case? A. Yes sir.

Q. And that was on November 25, 1921? A. Yes sir.

Q. Do you remember testifying on that trial as follows, being asked the following question and answering as follows: "Q. After you brought your machine to a stop did you go back to find out what it was?" Do you remember that ques-
20 tion? A. Yes sir.

Q. Do you remember answering this as: "A. No sir; I did not. I noticed that this man was hurt; that is, I noticed seeing him turn to me and fall like. I seen his hands go up over his head like that (indicating) and I knew that something had happened, don't you see, and got off the truck, and ran around to see what happened, and I found him lying at the left hand wheel, just slightly in front of it; I might say
30 diagonally,—if this was the wheel (indicating) he was lying like this, and it was the first thing that came to my mind; I picked him up and took him in the ladies' cabin, after which somebody went to get some water, and some other people were assisting him in administering first aid and the like, and I proceeded to get some witness-
40 nesses; but I neglected to go back and see what the obstruction was. At that time I might say that the boat was half way across the river already, or very nearly so; in fact, the boat was

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on the way, and the rest of the vehicles had all been in back of me.”

Q. Do you remember being asked that question?

A. Yes sir.

Q. And answering in this manner? A. Yes sir.

Q. Now, there are only one or two questions more. You say that these chains were stuck in between the radius rods. Now, how far away was the chain when you stopped from the camshaft pin which the emergency brake handle was attached to? A. How far was it? 10

Q. Yes. Was it lying directly on top of the support for the camshaft lever? A. It was lying directly on top of the support for the camshaft lever. 20

CROSS EXAMINATION BY MR. EASTMEAD:

Q. I understand you to say in reply to a question from Mr. Scott that the first time you knew that something had happened was when you saw the man fall in front of the wheel. Was that your testimony in answer to this question? A. Why, no.

Q. Well, was that what occurred? A. That was not what occurred; no sir. 30

Q. When did you first see Schreiner? A. In the act of stepping over the chain.

Q. On direct examination you testified that he was ten feet in front of you? A. To the left.

Q. Now, where were you at that time? A. Proceeding toward the chain.

Q. And were you in the team gangway? A. Yes sir. 40

Q. And where was he, in what team gangway?

Howard Cloren—Cross.

A. Why, in that particular part of the boat there is no division or line of the team gangway. Both team gangways run into one.

Q. Just step down here please and show us where he was with reference to you at the time?

A. I was about—assuming this is ten feet he was
10 directly ahead of me.

Q. Was he to the right? A. To the right? To the left of the stanchion, to the left of me, and to the right of the stanchion instead of that stanchion.

Q. And directly in front of your machine or to the left of your machine? A. In front to the left.

Q. To the left. And how far to the left of
20 your machine was it? How far in feet? A. About a foot and a half.

Q. When did you first know that you had struck him? A. When I struck the chain, the same instant I struck the chain I noticed the particular person was sort of throwing his hands in the air; couldn't see the lower part of him.

Q. And whom do you mean by the particular person? A. Mr. Schreiner.

Q. And what part of your machine struck him?
30 A. No part of the truck.

Q. Didn't the wheel of your truck strike him? A. No sir; not to my knowledge.

Q. You were arrested after this accident; weren't you? A. Yes sir.

Q. Do you remember making a statement in the police court or in the police station? A. I don't—

Q. Did you make a statement in the police court to this effect—that the front wheel struck Mr.
40 Schreiner on the back? A. No sir; I did not.

Q. You didn't make that statement in the

Howard Cloren—Cross.

Hoboken police station? A. No sir.

Q. Do you know whether or not the police report of the accident contains that statement over your signature? A. I didn't get that plainly.

Q. (Repeated by stenographer.) Do you know whether or not the police report of the accident contains that statement over your signature? 10
A. I don't.

Q. You do not know? A. No sir.

Q. Would it surprise you to know that it does?
A. It would; yes sir.

Q. Now, you stated you were going five miles an hour when you went on the boat; is that right?
A. Yes sir.

Q. Now, in how short a distance can you stop 20
when you are going five miles an hour? A. Within three feet.

Q. Three feet? A. Yes sir.

Q. Did you stop anywhere on that trip on the boat? A. Only momentarily in striking this object.

Q. What do you mean by momentarily, just for a fraction of a second? A. Just so, I might say, to impede the movement of the truck at the time. 30

Q. You say when you arrived at this point designated "H" here; that is when you arrived at this point marked "H" here? A. Yes sir.

Q. Was there any perceptible slackening of the speed of your truck at that time? A. Yes sir.

Q. Did you actually stop? A. No sir.

Q. How? A. No sir.

Q. You did not. Well, just what did your truck do at that time? A. Well, I might say it just hesitated under the impact of the stroke. 40

Howard Cloren—Cross.

Q. Can you describe it any better than hesitated so that we will know what you mean? You say you did not stop; but just hesitated. Do you mean just bumped over the chock and kept on going?

10 MR. SCOTT: I object.

THE COURT: Yes. Strike it out.

MR. SCOTT: You are assuming that he bumped over something that he does not know anything about.

MR. EASTMEAD: That is so. I will withdraw the question.

Q. You say it slackened imperceptibly; is that it, at the time you arrived at the point designated "H"? A. Yes sir.

Q. You really kept on going as a matter of fact, didn't you? A. Yes sir.

Q. And, as a matter of fact, anybody in back of your truck would not have even noticed that you had slackened your speed? A. Well, I don't know as they would; I couldn't say that.

Q. What did you see happen to Schreiner directly after you struck the chain? A. I didn't see no part of his body after striking the chain.

30 As I stated before, I only seen his hands over the dash board of my truck.

Q. And did you see his hands over the dash board of your truck? A. That is, in the air; I could only see that part of his body.

Q. In the air? A. Yes sir.

Q. Then if you saw his body over the dash board of your truck— A. Not his body; I said that part of his body, his hands.

40 THE COURT: He does not mean that Mr. Schreiner's body was hanging over the dash

Howard Cloren—Cross.

board of his truck. That by looking over the dash board of the truck he saw the decedent in that position or that posture.

Q. The dash board of your truck is at the front end, isn't it? A. Yes sir.

Q. And if it were true that he was to the left of your truck by your looking over the dash board you would not have seen him; that is so; isn't it? A. Why, at that particular time he was not as far to the left of me as he was before. 10

Q. That is what I am trying to get at. What happened to him after you struck the chain? You say the chain snapped and struck him. Then what happened to Mr. Schreiner's body, or Mr. Schreiner, rather—it was not his body at that time? A. I couldn't see. 20

Q. You couldn't say? A. I could not see.

Q. As a matter of fact; you do not know whether or not your front left wheel did strike him; do you? A. Not from the position I was in; no.

Q. Then as far as you know your left wheel may have struck him; is that correct? A. Well, it is possible.

Q. Yes. How far beyond the fog chain did your truck go after you struck the chain? A. I don't suppose more than a foot or two foot, I might say. 30

Q. Did you go on or did you get off your truck? A. Yes sir.

Q. Where did you see Schreiner at that time? A. He was laying at the left of my front wheel.

Q. How far away from the left front wheel? A. Not more than a foot.

Q. Not more than a foot. Was he laying prone on his back or on his stomach? Was he lying 40

Howard Cloren—Cross.

flat on his back or his stomach? A. Well, laying on his left side.

Q. Horizontally? A. Lying on his left side with his face towards Hoboken.

10 Q. I mean was he laying flat? Was his entire body along the deck of the boat or was he semi-upright? A. He was in sort of crouched position, I may say.

Q. Doubled up, I suppose? A. Well, not exactly.

Q. Did you see any deck hand in front of the boat when you drove on? A. No sir.

THE COURT: You mean which end?

MR. EASTMEAD: On the front end, referring to the Hoboken end.

20 THE COURT: It was rather confusing to me.

Q. I mean the end toward Hoboken, the front end of the boat as you were driving on; that is the furthest away from the slip. Did you see any deck hand at that end of the boat? A. No sir.

30 Q. Did you pass any as you passed through the gangway? A. No sir; not through the gangway. Before I entered the gangway I might say, ahead of the engine room at the New York side of the boat.

THE COURT: That was the deck hand that indicated to you to stop.

THE WITNESS: No sir.

THE COURT: What.

THE WITNESS: No sir.

THE COURT: Was it another one?

THE WITNESS: Yes sir.

40 THE COURT: Where was he located?

Howard Cloren—Cross.

THE WITNESS: You might say just aft of the engine room.

THE COURT: Just westward?

THE WITNESS: About right here (indicating on diagram).

THE COURT: Do you know that deck hand or could you recognize him? 10

THE WITNESS: Yes.

THE COURT: Is he in court?

THE WITNESS: Yes sir.

THE COURT: Pick him out

THE WITNESS: That gentleman right here.

THE COURT: Someone stand up. That one.

THE WITNESS: Yes sir. 20

BY MR. SCOTT:

Q. Now, will you just step down and mark the place where you say you saw him? A. (Witness does so.)

Q. I will mark that with a "Z". That is where you say you saw Mr. Marvinny.

Q. Were you in court yesterday? A. Yes sir.

Q. Do you remember hearing Mr. Ulrich, one of the other witnesses, state that he went back for one of the deck hands after the accident? A. Yes sir. 30

Q. Did you see him going back for one of the deck hands? A. No sir.

Q. Did you see him come back with one of the deck hands? A. No sir.

MR. SCOTT: I object.

THE COURT: He says, "No sir".

Q. Was any deck hand at all—did any of these deck hands— 40

MR. EASTMEAD: I withdraw that question.

Howard Cloren—Re-Cross.

Q. Did any of these deck hands give you any instructions as to where you were to go on the boat? A. The man I just referred to said, "Way up" as I passed him.

10 Q. Did you receive any other instructions from this other deck hand, Mr. Nadalo? A. I don't know the designation or the distinction between the two of them by name. I don't know which one you have reference to.

THE COURT: Will Mr. Nadalo please stand up.

Q. Did you receive any instructions from him of any kind? A. No sir; not any more than the statements made as he put up his hand.

20 Q. Did you see this other deck hand, Mr. Marvinny, after observing him in the place which you designated on the map here as "Z"? When did you next see him, if at all? When did you next see this deck hand after observing him? A. I didn't see him until I was almost ready to proceed off the boat after the accident. He asked me for the names of the witnesses I had and I gave them to him.

30 MR. EASTMEAD: That is all.

RE-CROSS EXAMINATION BY MR. SCOTT:

Q. That place you marked "Z", in talking about this ferry boat they spoke about the Jersey end and New York end—— A. Yes sir.

40 Q. Now, which end of the boat do you understand that sketch shows the Jersey end and which is the New York end? A. I understand that that end is the New York end.

THE COURT: The left hand as you sit?

THE WITNESS: Yes.

Howard Cloren—Re-Direct.

RE-DIRECT EXAMINATION BY MR. TURNER:

Q. When you cranked your car just before going on the ferry did you have a chance to observe the tightness of your driving chains? A. I did have a chance; yes sir.

Q. Well, now, how were your driving chains that day? A. They were in running fit. 10

Q. Neither too loose nor too tight? A. No sir.

Q. All right, were they? A. Yes sir.

Q. There was a regular method of what you call driving fit; that is to say— A. Yes sir.

Q. That is of seeing that they are neither too loose nor too tight? A. Yes sir. If a driving chain is too loose in starting up you would notice it immediately by letting your clutch come in. There would be a certain slack there that would not be there if your chain was tight. So, being that that particular action was all right I assume that the chains were driving fit. 20

BY MR. SCOTT:

Q. You say the chains were just all right? A. Yes sir.

THE COURT: Where is the motor of this car? 30

THE WITNESS: Why, it was directly, as you may say,—there is two seats in the cab and the motor is right under the cab, and the seat being on the right side the motor is right to the left of me.

THE COURT: Where is the starting shaft of it? Where did you start your car from?

THE WITNESS: In the front of the dash, at the bumper. 40

THE COURT: Yes. Now, you say at the

Howard Cloren—Re-Direct.

time that you started it up before coming on to the boat you had an opportunity then to see that the driving chains were in proper condition?

THE WITNESS: Yes sir.

10 THE COURT: How?

THE WITNESS: I didn't look at them.

THE COURT: That is what I suppose, that you did not; that is what you were asked, I imagine. You went to the front of the car to start it, didn't you?

THE WITNESS: Yes sir.

20 THE COURT: Now, with that in mind did you at the time of starting the car up before going on the boat have an opportunity, or did you examine your chains, your driving chains?

THE WITNESS: No sir.

THE COURT: Now, you have two driving chains on this car?

THE WITNESS: Yes sir.

THE COURT: One on each side in the rear?

THE WITNESS: Yes sir.

30 THE COURT: So that both of the rear wheels are driving wheels, are they?

THE WITNESS: Yes sir.

THE COURT: Just tell us again, just describe to us again the occurrence that you have spoken of as you were going through the right hand gangway when you say something happened to your car. Just describe that to me again, will you?

40 THE WITNESS: Why, as I was coming through the gangway there I struck an object that momentarily impeded the speed of the truck; in a sense of the word I may say went over it or glanced by it, with absolutely

Howard Cloren—Re-Direct.

no other result that I could find in the matter of harm to the truck.

THE COURT: And after this accident had happened—what did you say you found to be the condition of the driving chain on the left side, was it?

THE WITNESS: Yes sir. 10

THE COURT: What do you say was the condition of it?

THE WITNESS: It was off

THE COURT: To what extent was it off?

THE WITNESS: Why, it was off the driving sprocket and also off the rear wheel.

THE COURT: Was it hanging down to the floor of the boat or dragging on the floor of the boat or how was it? 20

THE WITNESS: There was a part of it hanging down between the front and rear driving wheel; yes sir.

THE COURT: Touching the floor of the boat?

THE WITNESS: I am not sure of that. I could not state that to the best of my recollection.

THE COURT: And you say that after this thing happened, after you went over or glanced against some object.—from that time until you applied your foot brakes when you were approaching the fog chain— 30

THE WITNESS: Yes sir.

THE COURT: —you observed no difference in the operation of your car?

THE WITNESS: No sir.

THE COURT: None whatever?

THE WITNESS: No sir. 40

THE COURT: Had you applied or attempted to apply your foot brake at the time when

Howard Cloren—Re-Direct.

you say this happening took place?

THE WITNESS: No sir.

THE COURT: Until the time that you say you tried to, just before reaching the fog chain?

10

THE WITNESS: Yes sir.

THE COURT: Had you applied your brakes at all?

THE WITNESS: No sir.

THE COURT: And you had found no difference in the driving of your car during that period?

THE WITNESS: No sir.

20

THE COURT: Do you know whether or not there is an appreciable difference in the driving of that car when one of the chains is not operating?

THE WITNESS: Yes sir.

THE COURT: You can feel it, can you not, as you are driving?

THE WITNESS: Why, not unless you are starting; you couldn't notice rolling.

THE COURT: If it were rolling you could not notice it?

30

THE WITNESS: No sir.

THE COURT: I do not know whether you want your attention called to it or not, Mr. Scott. You have produced no evidence at all on the question of damages in your cross action.

MR. SCOTT: We have agreed.

THE COURT: Oh, the twenty dollars was for the loss to the automobile, and the five dollars was for injury to your fog chain?

40

MR. SCOTT: Yes sir.

William Cole—Direct.

WILLIAM COLE, sworn in rebuttal.

DIRECT EXAMINATION BY MR. SCOTT:

Q. Captain Cole, you were the captain of the ferryboat Musconetcong on June 22, 1921? A. Yes sir. 10

Q. And you had charge of that boat at the time it was docked at the Twenty-third Street ferry in New York City for the 5.30 trip over to Jersey—I mean to Hoboken? A. At New York.

Q. At about 5.30 will you tell the court and jury where you were on the boat? A. Well, at the time I was in the New York end pilot house.

Q. New York end pilot house? A. Yes, sir. 20

Q. And from there could you look down to the deck of the boat? A. I happened to be standing looking out of the window at the time when the team passengers were going off, and I still stayed there looking out of the window until the boat was loaded.

Q. Do you recollect seeing the first motor truck come aboard that boat to the right or starboard side? A. Yes sir.

Q. Will you tell the court and jury how it went upon the boat? A. Well, it went at a pretty good rate of speed from the first I saw it until it was out of sight. Then I could hear it still kept about that speed, because the weight of the truck made the vibration on the boat. 30

Q. You own an automobile and drive one yourself, Captain? A. I did have one, yes sir.

Q. From your experience as an automobile driver can you tell us approximately how fast 40

William Cole—Cross.

that truck was going as it came upon the boat—how fast it was going? A. Well, all during the time that I saw it from the head of the bridge until it got out of my sight it was going twelve to fifteen miles an hour.

10 MR. SCOTT: That is all.

CROSS EXAMINATION BY MR. TURNER:

Q. How many feet did this automobile travel while you saw it, Captain? A. Well, in the neighborhood of a hundred feet, I should imagine.

Q. One hundred feet? A. From the head of the bridge until it got on the boat.

20 Q. How many times did it stop from the head of the bridge until it got to the boat? A. Didn't stop at all.

Q. Well, didn't the man take up the ticket or do something? A. The man took the ticket at the gate.

Q. Yes. A. And it stopped at the head of the bridge, that is about twenty-five feet from the head of the bridge, abreast of the waiting room door.

30 Q. How long is the bridge? A. Well, I should imagine it was seventy-five foot or so.

Q. Seventy-five feet? A. Seventy-five to eighty foot.

Q. Then is the bridge down grade? A. Well, it is according to the tide; and sometimes it is down——

Q. This particular day? A. Well, as near as I can remember it was almost level.

40 Q. Was it high tide? A. I cannot say now whether it was or not.

Q. You do not remember what the tide was?

William Cole—Cross.

A. I don't remember at that time.

Q. You don't remember whether the bridge was inclined up or down, or how it was; do you, Captain? A. No sir.

Q. So it may have been necessary for this man to put on additional power in order to get on the ferryboat, may it not? A. Well, the truck as near as I can remember was light; it was not loaded; and as near as I can remember the bridge was almost level. 10

Q. But do you know, of course, that a truck going up hill makes more noise than going down hill; don't you? A. Well, the exhaust might, yes.

Q. Then did you see the car stop when the deckhand held up his hand there? Did you see him? A. I saw the deckhand and I saw the car. 20

Q. Did you see the deckhand there? A. Yes sir.

Q. With relation to the fog chain here, where is the pilot house on the boat? A. The pilot house is right above those docks there.

Q. This thing here? A. Yes; there is a pilot house on both ends. That is the steering house.

Q. That is the steering house, and the pilot house is above that? A. Yes sir. 30

Q. And all this is covered over the fog chain? A. Yes sir.

Q. Did you see the truck from the time it came on the boat until it got—to what point? A. Till it got underneath this upper structure.

Q. But your pilot house is away back from this covered edge? A. Yes.

Q. But you could see it until it got within five or six feet of the roof? A. Yes; about there.

Q. You have never driven a truck, I suppose Captain? A. No sir. 40

William Cole—Cross.

Q. Have you ever had occasion to observe the speed of trucks? A. No; I never had any occasion to, only my own experience in driving my own car.

10 Q. Well, you are pretty certain in your opinion that this five ton truck was going fifteen miles on the boat? A. I said twelve to fifteen; I could not say exactly.

Q. It might have been ten? A. I should judge it was going about ten miles.

Q. How long a time had you observed it? How long did you actually see it? A. Well, I don't believe I saw it—from the time it started at the head of the bridge down out of sight I don't believe it was more than five seconds, five or six
20 seconds.

Q. Could you see the driver of the truck? A. Oh, I could see him when he was coming on.

Q. Was he covered up so that you could not see him, or could you see him? A. I could see him, yes; I don't remember seeing him, but I know I could see him; from my pilot house I know I could see him.

Q Do you remember whether the truck had a
30 cab on it or not? A. Well, I am pretty sure it did. I cannot say certainly.

Q. You are not sure; the only thing you are sure about is the speed? A. The only thing I am sure about is the speed of the car coming on.

MR. TURNER: That is all.

(Witness excused.)

Paul Nadalo—Direct.

Paul Nadalo—Cross.

PAUL NADALO, recalled.

DIRECT EXAMINATION BY MR. SCOTT:

Q. Mr. Cloren has indicated this is the New York end of the boat and he says he saw you at this end of the place, on the boat, marked Z, and that you hollered to him as he was coming on board or as he was on board to go way up forward, or something to that effect; tell the jury whether that was a fact or not. 10

MR. EASTMEAD: Well, he has already testified to that.

A. I didn't give him no instructions whatever. 20

Q. When that truck came aboard were you in the place marked "Z" on that boat? A. I was about here.

THE COURT: Was that about as far forward as you had gotten.

THE WITNESS: Yes sir, yes sir.

MR. SCOTT: That is all.

CROSS EXAMINATION BY MR. EASTMEAD: 30

Q. When you say you had gotten that far, was that after the truck passed you or before? A. No; I had gotten about that far when the truck overtook me, it was coming so fast I had to get out of his way.

(Witness excused.)

MR. SCOTT: I desire to offer in evidence a copy of an order your Honor made in this case for the inspection of the truck involved 40

Oscar Arlitz—Direct.

in this accident.

MR. TURNER: I do not see how it is material.

MR. SCOTT: I will follow it up.

10 THE COURT: It is part of the pleadings, part of the case, and is subject to offer. All right.

(Paper marked D-1 in evidence.)

OSCAR ARLITZ, sworn in rebuttal.

DIRECT EXAMINATION BY MR. SCOTT:

20 MR. SCOTT: I would like to say to the jury, instead of reading this, that this was an order made by his Honor, Judge Campbell, for permission of the witness on the stand, Mr. Arlitz, to examine this truck that was involved in this accident.

Q. Mr. Arlitz, your name is Oscar Arlitz? A. Yes sir.

30 Q. And in pursuance of the order made by Judge Campbell, in this case, did you go to the designated place to examine the Garford Motor truck, the five ton Garford Motor truck? A. Yes sir.

Q. Just explain when you went, how you went and where you went?

40 MR. TURNER: Well, I do not see how it is material, unless he did examine the truck. I do not see what difference it makes, where he went or how he went. The prime question is what he found when he examined the truck.

THE COURT: I will let it be answered. Go on.

Oscar Alitz—Direct.

A. I proceeded from the claim department of the Lackawanna Railroad on the Union Hill car,—no, I beg your pardon, I went on the White Line, at the foot of the hill at Paterson Plankroad where it starts to wind up into Jersey City.

Q. Just tell briefly where you went to? A. 10
And halfway up the side of this hill there was a number 320 that I had received from the company as the address where this truck was to be examined, was to be found.

Q. Did you find it there at that time? A. I found a truck there.

Q. Now, did you get any communication of—did you get in communication with any member of the Efficiency Motor Transportation Company, partner of the Efficient Motor Transportation 20
Company? A. I spoke to Mr. Webber, I think it was, from the offices of the Lackawanna, and he told me that I would find this truck at 320 Paterson Plankroad, Jersey City, New Jersey.

Q. And when you got to that place—you finally went to that place, did you not? A. Yes sir; on January 3rd.

Q. And what kind of place was it? A. It was seemingly a garage in course of construction. 30
That is, the front was built and the side walls, and the top of the place had, I think, some steel beams across, and had not been covered in yet.

Q. When you got in there did you see any motor trucks?

A. Yes, sir; I saw a truck there.

Q. Were there any other motor trucks? A. No sir.

Q. That was the only motor truck in there? A. 40
Yes sir.

Q. And did you proceed to examine that motor truck? A. Yes sir, I did.

Oscar Arlitz—Cross.

Q. And was that a five ton Garford motor truck? A. No sir.

Q. Chain driven? A. No sir.

MR. SCOTT: That is all.

10 CROSS EXAMINATION BY MR. TURNER:

Q. You were to meet some member of the firm there? A. Yes sir.

Q. Did you meet Mr. Webber? A. Yes.

Q. Did you see him? A. No; he was not there when I arrived.

Q. Weren't you supposed to be there at a particular hour? A. The first time yes; but the second time I told him when I would be there.

20 Q. You were to telephone Mr. Webber in advance, weren't you? A. I went up immediately after I had been in communication with Mr. Webber—No, I telephoned to Mr. Webber the evening before, and he made an appointment with me in the morning, and I think the proximate time that I was to be there was about half past eight or a quarter to nine. I was there at a quarter to nine and there was not anybody there except a young gentleman who was in a small shack,
30 a building there, and didn't know anything about the Efficient Motor truck, or about Mr. Webber, or anybody; couldn't give me any information; and outside of that there were half a dozen Italians working there.

Q. You don't know whether the premises were occupied by more than one concern, do you? A. That I don't know.

40 Q. Why didn't you meet Mr. Webber the first time you were there? A. Why, the first time I spent half a day trying to find the place. I got

Oscar Arlitz—Cross.

out as far as Secaucus. No one seemed to know where 320 Paterson Plankroad was; and I made inquiry in Hoboken from the Lackawanna, and at the police station. When I got up on top of the hill they drove me all over, because there were only two places on the side of this hill that goes into Jersey City. One of them is a gas station which is just below where they are building this garage. So that is the garage itself, and I suppose the general public didn't have any knowledge of it, and I didn't. 10

Q. Well, then, the reason you didn't meet Mr. Webber the first time was because you didn't know the location of 320 Paterson Plankroad? A. No sir; I spent the afternoon trying to find it.

Q. Was that the reason you did not meet him the first time? A. Yes sir. 20

Q. Because you did not know where 320 was located? A. Because I couldn't find it.

Q. And you found 320 the second time? A. No sir; I found it the first time, but by the time I found it it was about half past five at night, and it was dark and everybody had gotten away.

Q. You got there too late? A. I got there too late.

Q. When you got there the second time had you made arrangements with Mr. Webber in advance? A. Yes sir, the night before. 30

Q. What time did you get there? A. I got there a quarter to nine.

Q. Was Mr. Webber there? A. No sir.

Q. And you didn't find any member of the firm? A. No sir.

Q. What day was that? A. January 3rd.

Q. Did you ever take it up with Mr. Webber afterward? A. No sir, I did not. 40

Oscar Alitz—Cross.

Q. After January 3rd? A. No.

Q. Didn't anybody tell you—you testified when you got to the place there was some garage being built or something. Did anybody tell you that the automobiles had been taken out to make way for the building? A. No sir.

10 Q. None of the men that you saw around the place? A. No sir.

Q. Nobody told you that the automobile was on the lot in back of this property? A. No sir. Mr. Webber told me the automobile was there. I spoke to him. I said to him, "Where is the car? Can I meet you where the car is"? Because the night that I went there after hunting all around to try to find the place I looked in there and I couldn't discover that there was any car in there. I thought perhaps the car was at some other place and I wanted to know where the car was so I could meet him directly where the automobile was.

20 Q. Well, isn't it a fact that Mr. Webber told you that if you missed him at 320 Paterson Plankroad, that if you went to the vacant lots in the street in the back, Palisade Avenue, you would find him there with the truck? A. No
30 sir.

MR. TURNER: That is all.

MR. SCOTT: That is all.

MR. EASTMEAD: No questions.

(Witness excused.)

MR. SCOTT: We rest.

MR. TURNER: We rest.

40 MR. EASTMEAD: I would just like to call one witness in rebuttal.

Genevieve Bruddman—Cross—Direct.

MISS GENEVIEVE BRUGGEMANN;

CROSS EXAMINATION BY MR. EASTMEAD:

Q. Miss Bruggemann, do you remember seeing any deckhand in the Hoboken end of the boat before the accident, before the accident? A. I don't remember seeing any. He might have been there. 10

Q. But you did not see him? A. No.
Motion for Direction of Verdict on behalf of Defendant, Efficient Motor Transportation Co.

DIRECT EXAMINATION BY MR. EASTMEAD:

Q. When you walked through this passageway on the men's cabin side was there any deckhand in there then? A. I don't remember seeing any. 20

MR. TURNER: That is all.

DIRECT EXAMINATION BY MR. SCOTT:

Q. You were not looking for deckhands, were you? A. No sir; I don't think so.
(Witness excused.)

[PLAINTIFF RESTS.]

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Motion for Direction of Verdict on behalf of Defendant, D. L. & W. Railroad Company.

10 MR. SCOTT: May it please the court, I am not going to talk, except to put a motion for direction of verdict on the record. Your Honor knows pretty well how I feel from a legal standpoint, and I repeat my reasons that I urged on the nonsuit, and add to them the additional reasons that the evidence has now developed that the injury to Mr. Schreiner was proximately caused by the negligence of the driver of the motor truck.

Motion for a Direction of Verdict on behalf of Defendant, Efficient Motor Transportation Company.

20 MR. TURNER: I move for a direction of verdict on behalf of the defendant Efficient Motor Transportation Company, on the same grounds as stated on the motion for nonsuit; and on the further ground that the proofs show that this was an unavoidable accident and that the defendants are not liable to respond in damages to the plaintiff.

30 THE COURT: I will decline to direct in both directions, and on both motions to direct. Counsel may have their exceptions entered if they wish.

MR. SCOTT: Exception.

MR. TURNER: Exception.

THE COURT: There is another matter I would like to speak of. I would like to know what you gentlemen think is the rule in the matter which has to do with the part-

40

Motion for Direction of a Verdict.

nership defendants as against the Delaware, Lackawanna & Western. The negligence there, I take it, as charged, so far as the evidence would disclose, is the alleged happening as this car was proceeding through this gangway, it having gone over some obstacle or object, or having struck some obstacle or object. That is all that the evidence gives us. We haven't anything in the evidence to show what the obstacle was, if there were one there, nor have we anything which in anywise indicates to us, if there were such an obstacle or object there, and it was run over or struck against, or what length of time it had been there; or whether or not the defendant had knowledge of its existence there, or that it had been there for such length of time as to charge the defendant with knowledge of it. My apprehension is that that rule is applicable. 10 20

MR. SCOTT: I think under those circumstances——

THE COURT: So the rule of care would be reasonable care, I take it, to keep the place in a reasonably safe condition to drive through. 30

MR. TURNER: They would owe a high degree of care to us just the same as to a foot passenger. We were in there operating a vehicle. Their failure to exercise this high degree of care (which is our contention) is exactly what caused this accident.

THE COURT: Yes; that is so. If you were a passenger it is beyond the rule of reasonable care. 40

Motion for Direction of a Verdict.

MR. SCOTT: I am willing to submit it without argument.

MR. EASTMEAD: I cannot concede that.

MR. TURNER: I am willing to submit it on the charge of the court.

10 MR. TURNER summed up to the jury for the defendant, Efficient Motor Transportation Company.

Recess to ten o'clock to-morrow morning.

February 10, 1922, trial of the case resumed.

20 THE COURT: Before proceeding further, gentlemen, I wanted to place this question before you, Mr. Scott, and you, Mr. Jacobs; because it is a matter of no interest, I take it, to Mr. Eastmead. It has to do with your cross actions, as to what you conceive your respective positions to be in this matter upon your cross actions.

30 The question is as to whether or not irrespective as to whether the verdict is for the plaintiff and against both defendants, either one of you can have on your cross actions a verdict against the other. Let us assume that upon the main issue, which is the action of the plaintiff against both defendants, the jury should find in favor of the plaintiff and against both defendants. May either one of you have a verdict against the other?

I am presuming, gentlemen, that you have thought that thing all out. It did not strike me until a very short while ago.—Argument.

40 MR. SCOTT: If it would lighten the burden

Colloquy.

of the jury and the court, we are perfectly willing to withdraw our cross action if Mr. Jacobs is; because they are both, with respect to the amount involved, very immaterial.

THE COURT: As far as my labor is concerned, I am perfectly willing to undertake it and do the best I can. The difficulty is not with myself, but the issue is an important one; important one for all parties, both plaintiff and defendants; and while we may be able any time to discuss this thing as persons supposed to be trained in the law, yet we are having difficulty in applying. Now, let us measure that by men who have not had any legal experience at all.

MR. SCOTT: It occurred to me that if we who are supposed to know something about it do not know very much about it, we cannot expect the jury to know all about it.

THE COURT: That is right.

MR. SCOTT: And I am perfectly willing to withdraw our counterclaim if Mr. Jacobs is. We can settle the matter between ourselves.

THE COURT: If I should be permitted to say anything about this subject, gentlemen, I think it is one of those cases where, if it, is possible so to do, the cross actions should be withdrawn without prejudice, again, I say to you, not because of any difficulty under which I may be put, although I realize I am going to have great difficulty in placing the matter of the cross actions before the jury so as not to misstate what the law is and at the same time make the jury understand

Colloquy.

10 the situation; and perhaps either through a misstatement upon my part, or a misconception of what the law is upon my part, or perhaps a misunderstanding of the situation on the part of the jurors, or perhaps all combined, the original issue may become confused in the minds of the jurors and you will get something that will be neither useful nor understandable to anybody. Now that is very plain talk, gentlemen, but that is the situation.

MR. SCOTT: Well, I have made my suggestion, and I am willing to stand by it.

20 MR. JACOBS: My motion is, if counsel for the co-defendant will withdraw his cross action, to withdraw the company's cross action.

THE COURT: If they are lifted out of this present action the amounts involved would require them to go into another jurisdiction; otherwise I would say to you under the Practice Act, I would have the right upon motion to exercise my right to sever the causes.

30 MR. SCOTT: The only sacrifice the company makes—and we do make a real sacrifice in making the suggestion to withdraw our counterclaim,—is that I am strictly limited to the evidence on the main case then; and there are certain things that came out on the cross action case which are so interwoven, especially with respect to the credibility of the defendant, that I feel that
40 we are making a real sacrifice; because I

Colloquy.

will be obliged to confine myself directly to the main case.

THE COURT: Well, now, that is news to me, and a surprise to me. I did not understand that any of this evidence was particularly directed, and exclusively directed, let me say, to the cross action. I presume you had reference to the last witness you put on the stand. 10

MR. SCOTT: I have reference on the cross action to the testimony of Mr. Cloren on the stand, perhaps in the main case under my cross-examination, or under cross examination, that he went back to find out what this thing was, and then I examined him before trial in the cross action, and in the cross action he says he never went back. 20

THE COURT: Well, I do not see that that much is taken away from you. I do not think it is.

MR. SCOTT: Well, if your Honor thinks I have a right—I do not want to say anything to the jury that I have not a strict right to say.

THE COURT: I do not think it is, because it did not appeal to me that it was strictly upon the question of the cross action. 30

MR. SCOTT: Well, I just want to make myself clear on that point.

The other feature as to which I think we would make a sacrifice in withdrawing it, is that we obtained an order to examine this truck in the cross action, and the testimony is that when the man went up there—and 40

Colloquy.

I would argue on my cross action that the truck which we were to examine under the order of the court was not there, and that they either substituted a truck or did some funny work with it. Nevertheless, I am willing to withdraw it.

10 THE COURT: Perhaps the easiest way would be to determine whether both parties defendant are willing to withdraw the cross action.

MR. SCOTT: I make the motion.

THE COURT: And leave the testimony stand as it is.

MR. JACOBS: We are willing to withdraw our cross action without prejudice.

20 THE COURT: And leave the testimony as it is?

MR. JACOBS: Yes.

30 THE COURT: Without pulling it apart; because it would be hard to pull it apart. If you start to pull it apart I do not know where you will land. I think this is very much to your credit on both sides, and I think it is very much in the interest of justice, and it gives us something concrete that we can place before the jury. The reason I raised the question at this time was that if there was anything else to be said by Mr. Turner I would give him a chance to do so. But now that you have withdrawn them it is not necessary. If we came to any other conclusion as to these cross actions that he did not have an opportunity to speak upon, and he had some further argument in mind,

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he should have the right to express it.

Very well, gentlemen, you may sum up to the jury.

(Mr. Scott summed up to the jury for the defendant the Delaware, Lackawanna and Western Railroad Co.)

(Mr. Eastmead summed up to the jury for the plaintiff.)

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Court's Charge to the Jury.

GENTLEMEN OF THE JURY:

This is an action by Anthony Schreiner, executor of the last will and testament of Frank L. Schreiner, deceased, against the Delaware, Lackawanna & Western Railroad Company, and Harry Cloren and others, partners trading under the firm name and style of Efficient Motor Transportation Company, in which the plaintiff is asking for and seeking to have a recovery under the Death Act for damages alleged to have come to the next of kin of plaintiff's decedent through an alleged act or acts of negligence sought to be charged against either the Delaware, Lackawanna & Western Railroad Company or the Efficient Motor Transportation Company, as I will term it hereafter, or alleged negligent acts of both in an occurrence taking place on June 22, I believe, of 1921.

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There are many things of importance, gentlemen, requiring your consideration and determination in this cause, which may be said to be perhaps not only difficult but complex, and that

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Charge.

perhaps particularly because of the fact of the different relationships in which the parties to this action stood toward each other. I mean the legal relationship.

10 As to the defendant, the Delaware, Lackawanna & Western Railroad, the plaintiff alleges its negligence to be two-fold, and I will now read the allegation of the plaintiff as to that defendant from the complaint and that is in this language:

“Defendant, Delaware, Lackawanna & Western Railroad Company, negligently failed to provide a safe place for said passenger Frank L. Schreiner, to travel in.”

20 That is the first allegation of negligence. And the second:

“And negligently permitted him to be injured by the reckless and negligent manner in which said motor truck (the other defendant) was operated on said ferryboat.

30 “The allegation of negligence on the part of the plaintiff against the Motor Transportation Company is that it or they by their agent, servant or employee, negligently and recklessly propelled and operated said motor truck on the ferryboat *Musconetcong* on said 22nd day of June, 1921, in such manner as to lose control of the said motor truck and to cause the said Frank L. Schreiner to be grievously and fatally injured.”

40 Now, before I go further and speak of these relationships, these legal relationships existing, as to the rules of care that relate to each of them, let me bring this matter to your attention, and

Charge.

let me say before doing so that it is always difficult to know in just what order the court should array those things which it should state to the jury; that is, in what order it would be most convenient for the jury to have them considering the manner and order in which they will take up the different things that have to be passed upon by them. Perhaps, gentlemen, the array in which I will give you them, the order in which I will present them, will not be the order in which you will use them; and the way in which I do give them to you, does not at all indicate to you and shall not that I am insisting or even suggesting that that is the order in which you should take them up and decide them; but it seems to me that this is the first thing that should require your attention; because your decision upon the question may or may not be absolutely dispositive of the issue that is before you, and that is the question of the death of Frank L. Schreiner. To be plainer about it, here is the situation: There has been a contest as to whether or not his death, which has been established as having taken place subsequent to this happening, was the proximate result of the injuries which it is said he received by and through this happening. Now, it is enough for me to say to you if his death was not the proximate result of those injuries then the action in hand cannot be maintained for his death, and that is what this action is for—for damages resulting under the death act from the death of Mr. Schreiner as the proximate result of the injuries which it is alleged he received.

The burden of satisfying you as to that rests upon the plaintiff; that is, the burden is the plain-

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Charge.

tiff's to bring forward and secure the production of that evidence which will satisfy you by its greater weight that plaintiff's decedent, Frank L. Schreiner, came to his death by and through the injuries he received on June 22, as the proximate result of the happening in question; that is, if it has not been established to you by the greater weight of the evidence that his death was the proximate result of, or proximately caused by this happening, and the injuries he then received, then the plaintiff has failed to establish the death as the proximate result of the injuries which he received, and if that be so, why, then of course, they cannot have a recovery in this action. The reason I say to you that a decision upon that question may or may not require your consideration further of the case is that if upon that question you have not been satisfied by the greater weight of the evidence then your verdict must immediately be for the defendants.

If you have been satisfied that the death of Frank L. Schreiner was the result proximately of the injuries received by him on June 22, then you will be required to proceed to other issues in the case.

Now, admittedly the deceased, Mr. Schreiner, was a passenger of the defendant company, the Delaware, Lackawanna & Western Railroad Company, and as such the company owed to him care in the manner in which it would carry and transport him as a passenger. The care that it owed to him was that care which we ordinarily describe and speak of as a high degree of care. That is defined in this manner and in this language—

Charge.

and let me say to you, gentlemen, that it is of the utmost importance that you should understand and realize what the different degrees of care are which I am now about to speak to you of; because it is of the utmost importance that you should understand them and know them so that you can apply them to the facts in the case. They are, as it were, the measures or the yardsticks by which you are to measure up the evidence in the case and pass upon these important issues. 10

A high degree of care is defined to be this: the utmost care, skill and diligence that human fore-sight, skill or experience can suggest to careful, diligent and skillful persons. 20

It does not, however, amount to insurance, for the reason that if it did there would be no limit to the degree of care that it would be obliged to exercise. If it amounted to insurance that would then mean that any happening to a passenger, to his person or his property, would subject the carrier to answer in damages. That is not so. I will read again—high degree of care means the utmost care, skill and diligence that human foresight, skill or experience can suggest to careful, diligent and skillful persons. 30

Again, as to that care, our courts have said this: the carrier (and I will speak of the Delaware, Lackawanna & Western Railroad as a carrier of passengers)—the carrier owes to a passenger the duty of exercising a high degree of care to protect him from injury by other persons on its vehicle. If the danger is—and pay attention closely, gentlemen, because it is important— if the danger is, or in the exercise of due care 40

Charge.

can be known by them or it, referring to the carrier, and if it fails in its duty in this respect it is liable for the resulting injury.

10 Again, a common carrier of passengers must use a high degree of care to protect them (the passengers) from danger that foresight can anticipate. By foresight is meant not foreknowl-
edge absolute, nor that exactly such an accident as has happened was expected or apprehended, but, rather that the characteristics of the accident are such that it can be classified among the events that without due care are likely to occur and that due care would prevent. And, further, that this care which I have already spoken of is due to the
20 passenger in or upon any part of the carrier's vehicle where the passenger is permitted to ride or be by the carrier's consent, express or implied; and this would extend to passageways actually and to the knowledge of the carrier used by foot passengers, although designed for use by vehicles.

Now, in this case, gentlemen,—just let me digress for one moment—apparently during rush hours, (and apparently the time of this happening was what is known as rush hours) the Delaware,
30 Lackawanna & Western Railroad Company permitted passengers to be at, in and upon that portion of its boat, the forward or bow end, forward of the position known as the space forward of the fog chain, and, as has been said, within a reasonable distance of the team chain which was more nearly to the extreme bow of the boat.

It has also been insisted by and through the testimony in the case that passengers used the
40 team gangways for the purpose of reaching that portion of the boat which I have last spoken of.

Charge.

As to whether or not that is so depends on what you may find the evidence in this case to show you and satisfy you; and to be satisfied of it you must find it from the greater weight of the evidence. It must be shown you in order to permit you to so find, by the greater weight of the evidence, that the practice was so continuous, or had continued so long that it could be said that either the company permitted it expressly, or that it was charged with knowledge of it and had not prevented it, and, therefore, impliedly permitted it to be done. As to whether or not that is so, gentlemen, I say to you again so that you shall not mistake it, is for you to determine from the evidence in the case; and you can only be legally and under your oaths satisfied provided you have been satisfied by the greater weight of the evidence. I say that in contradistinction to the use of that portion of the forward deck forward of the fog chain which I spoke to you about, because that portion apparently was used and permitted to be used and designated to be used by passengers during the rush hours of traffic, and the question of the use of the team gangways may be of importance to you in the decision of this case in at least two different ways or as to two different things; the one, as to whether or not (and, of course, they are very closely connected with each other), at the time of this happening the plaintiff's decedent was in that part of the boat where he had a right to be and have a right to the protection of that high degree of care which I have already defined to you, and again important upon the

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Charge.

question as to whether or not he was negligent (that is, the deceased, Mr. Schreiner) as to whether he was living up to the rule of law as to his own care. For that reason I say, gentlemen, that question may be of importance, and its decision, therefore, is important,—its correct decision.

Now, to go back to the allegations of negligence against the Delaware, Lackawanna & Western Railroad Company, as I have said to you before, and as I have already read to you, the alleged acts or the alleged negligence is of two parts; first, the plaintiff says that the defendant company did accord to Mr. Schreiner that high degree of care which I have defined it in law to be when it permitted him to be upon or assigned as a place for him to be, or permitted him to be, that part of its boat where he was at the time of the happening, in that by the exercise of what has already been spoken to you of and read to you as a reasonable foresight, perhaps, the company should have foreseen that a danger existed or in reasonable probability would exist or come to persons directed or permitted to be in those portions of its boats; and, that being so, defendant company was negligent in either permitting Mr. Schreiner to be there, or there to be under the conditions existing upon that boat.

The other is that the other defendant, the Motor Transportation Company, through its agent and servant was negligent in the manner in which it operated and propelled its motor vehicle upon the boat, that the defendant, the Delaware, Lackawanna & Western Railroad Company either knew of the manner in which that ve-

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hicle was being propelled upon the boat, or in the exercise of proper care upon its part, care owing to plaintiff's decedent, Mr. Schreiner, it should have known of that condition and situation, and, knowing it, did not exercise, again, a high degree of care for and towards the safety of Mr. Schreiner by prohibiting or stopping that negligent operation of the truck. 10

Of course, gentlemen, you have to go back always to the definition or definitions which I have given you.

Now, upon that score, it is very proper, I take it, that I should again read to you what I have already read, because it seems to me that it becomes particularly pertinent to this allegation of negligence, so far as the Delaware, Lackawanna & Western Railroad Company is concerned. That portion is this: "A carrier of passengers must use a high degree of care to protect them (the passengers) from a danger that foresight can anticipate. By foresight is meant not foreknowledge absolute—that is, not through an attempt, as it were, and a successful attempt to correctly forecast future events; that is not what is meant by it. It says, by foresight is meant not foreknowledge absolute, nor that exactly such an accident as happened was expected or apprehended, but, rather, that the characteristics of the accident are such that it can be classified among events that without due care are likely to occur, and that due care would prevent." 20 30

Now what is the position that you are in, and what is it that you are called upon to decide upon those two allegations of negligence as against 40

Charge.

the defendant, Delaware, Lackawanna & Western Railroad Company? You may take them up as you please, in any order that you please, and the question always will be and in each instance will be this: Have you been satisfied by the greater weight of the evidence that the defendant, Delaware, Lackawanna & Western Railroad Company, was negligent? Did it fail to do that which it should have done in the exercise of a high degree of care toward Mr. Schreiner? Or did it do something that it should not have done in the exercise of a high degree of care toward Mr. Schreiner? If your answer to those questions should be "No, we have not been satisfied by the greater weight of the evidence that the Delaware, Lackawanna and Western Railroad Company upon both these allegations of negligence, have shown to have failed in its duty of high degree of care," as I have explained it to you, "toward the decedent, Mr. Schreiner," then the plaintiff is not entitled to have a verdict against the Delaware, Lackawanna & Western Railroad Company.

If your answer to that question is, "Yes, we have been satisfied by the greater weight of the evidence that the Delaware, Lackawanna & Western Railroad Company as to either one of these acts of alleged negligence was negligent and failed in the performance of its duty towards Mr. Schreiner, the deceased, of exercising a high degree of care for and toward him and his safety," as that care has been defined by me, then but for what I may say to you further regarding the conduct of Mr. Schreiner himself, the plaintiff would

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be entitled to have your verdict against the Delaware, Lackawanna & Western Railroad Company.

Going to the other defendant, and that is the Motor Transportation Company, as to Mr. Schreiner it owed not a high degree of care, but reasonable care. You see, in a sense they were co-passengers, as it were; they were both passengers of the Delaware, Lackawanna & Western Company, upon its boat. While the Delaware, Lackawanna & Western Railroad Company owed to both a high degree of care, yet the Motor Transportation Company owed to the deceased, Mr. Schreiner, not a high degree of care, but the exercise of reasonable care. 10

You will want to know what reasonable care is, what its definition is, and you will find, of course, that it is more or less elastic, I may say, dependent upon the facts and circumstances and conditions of each particular case. The definition of reasonable care is this: it is that care which a reasonable, prudent person would or should exercise, having in mind all the facts, circumstances, conditions and surroundings existing at and immediately about the time of the happening complained of, so that that person will not do harm to others. 20 30

Now, how would you arrive at a determination of that, gentlemen? It always seems to me and I always try to say to jurors that what you must do first is to go to the evidence and find out what its greater weight shows you were the facts, the circumstances, the conditions and surroundings existing at and immediately about the time complained of; because, you see, it is upon those things that you are to find which way the rule 40

Charge.

bears down, as it were; they are things you must know before you can apply your measure. So, therefore, go to the evidence and search it out, weigh it out and determine what the greater weight shows you were those facts, circumstances, conditions and surroundings, and then apply the rule. Under those facts, circumstances, etc., what would a reasonably prudent person do or what should he have done, so as not to bring harm to other users of this boat? When you have done that, gentlemen, then the question as to the Motor Transportation Company will be this: have you been satisfied by the greater weight of the evidence that defendant was negligent? That is, have you been satisfied by the greater weight of the evidence that it either did something that it should not have done or failed to do something which it should have done in the exercise of reasonable care under the circumstances of the particular case? If your answer to that question is, "No, we have not been satisfied that the defendant was negligent," that ends the case as far as that defendant is concerned.

On the other hand, if your answer to that query is, "Yes, we have been satisfied that under the circumstances, and conditions existing, to which we have applied the rule of reasonable care, this defendant was negligent," then except for what I may further say as to the conduct of the decedent himself, the plaintiff would be entitled to a verdict against the Motor Transportation Company.

I have already talked to you upon the question of the negligence of the Delaware, Lackawanna & Western Railroad Company. I have also spoken to you upon the question of how you may proceed

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to determine negligence or lack of negligence upon the part of the other defendant, and I have said to you as to the Delaware, Lackawanna & Western Railroad Company, that if your finding be thus and so upon such an application of the rule the plaintiff would be entitled to a verdict against that company; and likewise as to the other set of defendants. Both of those statements, however, gentlemen, are subject to this further thing, and that also is aside from the question of the conduct of the decedent himself; that is, it is not enough only to find that a defendant is negligent, as charged, but if a defendant or defendants are found to be negligent, as charged, there is this further thing requiring your attention and consideration, just as important as the question of negligence itself, and that is, have you been satisfied that the negligence charged and found, if you have found negligence, was the proximate cause of the happening? That is, was the negligence that you find, if you have found negligence, of either or both of these defendants,—was that the thing, was that negligence the thing, or the negligences the things, that produced and brought about this happening? Because there are situations and occurrences where one may be found to be negligent in and about his duty owing to another, and yet he may escape any consequences of that negligence by not having brought damage to another; that is, that special act of negligence may not have reached so far and gone so far as to produce injury or damage to another. In that case, of course, there could be no recovery for damages for such negligence. So that, therefore, it is not only necessary to establish that one charged

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Charge.

with negligence is in fact negligent, or was in fact negligent, but the further thing must be established, and that also by the greater weight of the evidence,—that that negligence, whether it be upon the part of one defendant or on the part of several, was the proximate cause of the happening. That must be made out, gentlemen, as I have said, by the greater weight of the evidence. If not, if it has not been made out as to either defendant, why, then, of course, your verdict should go in favor of the defendants. That question gentlemen, is just as important, let me say to you again, as the question of negligence itself.

Now, if both of those things have been made out, namely, negligence, and that the negligence was the proximate cause of the happening to Mr. Schreiner, and, of course, if the death of Mr. Schreiner has been satisfied to you to have been the proximate result of the injuries he received, then the plaintiff would be entitled to your verdict, and that verdict would be, as I have said, against either one or the other of these defendants, or against the both of them, dependent upon what your finding may be as to negligence of either one or both, and as to the injuries being the proximate result of that negligence of either one or both; except that you are still to inquire into the conduct of Mr. Schreiner himself.

He was under a duty to exercise care for his own safety. While the Delaware, Lackawanna & Western Railroad Company owed to him a high degree of care, which I have already defined to you; while the Motor Transportation Company owed to him and he was entitled to expect to

Charge.

have from it this reasonable care which I have also defined to you yet the law placed a duty upon Mr. Schreiner himself for his own care and his own protection, and that was to exercise reasonable care. It is not necessary for me to define it to you again, gentlemen, because the definition of it as applicable to him is the same as I have already given to you. You will go about it in the same way that I have suggested that you go about it with respect to the Motor Transportation Company. The only difference is this: that as to the question of negligence, and as to the question of the proximate cause of the happening, the burden of the establishment of those rests upon the plaintiff. The plaintiff must come forward, the plaintiff must bring forward and secure the production of evidence in the cause which will amount to the greater weight of all the evidence in order to establish it.

As to the question of contributory negligence, or negligence upon the part of Mr. Schreiner contributing to the happening, that is a defense, and the burden of bringing forward and bringing out and securing the production of the evidence upon that point rests upon the defendant, and it must be established by the greater weight of the evidence. If the greater weight of the evidence satisfies you that the deceased, Mr. Schreiner, was himself guilty of negligence, and that that negligence in anywise contributed to the happening to him, then the plaintiff in this case cannot have a verdict, because that is the law applicable to cases of this character; that one who claims, or by and through whom the claim for damages is made, is shown to have himself been negligent,

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and that his negligence contributed in the least-wise to the happening complained of,—the establishment of that is a complete and absolute bar to a recovery of damages. So that if that be established in the manner I have indicated then the plaintiff is not entitled to have your
10 verdict.

If that has been established, and the other matters I have already spoken to you of have been established in favor of the plaintiff in the manner and under the rules which I have given you; then the plaintiff is entitled to your verdict. Of course, it would only be when you have reached that conclusion, gentlemen, if you do, that you will need to know what a verdict may be for
20 in a case of this character.

I have to say to you at this time, gentlemen, that when you do reach, if you do, that position where you find that the plaintiff is entitled to your verdict your labors will have been by no means completed. You will find that they are just as difficult as perhaps upon any other question which you may up to that time have passed upon. I am saying that, gentlemen, so that you
30 will pay as strict attention as possible and attend as understandingly as possible to what I am now about to say to you, that is, for what a verdict may be had in a case of this character if the plaintiff is entitled to your verdict.

This action is maintained and can only be maintained under the Death Act. That is a statute of this state, a statute given us by the legislature of this state. Without it there could not be a re-
40 covery for damages because of a happening and injuries resulting in death. I say that to you,

Charge.

gentlemen, so as to more firmly impress upon you, if I may, the importance of what I am about to say to you is the admeasurement of damages in a case of this character. You are limited by what this statute says damages may be for. You cannot go outside of what is provided for in that statute in finding a verdict. 10

The statute says the amount recovered in every such action shall be for the exclusive benefit of the widow or husband and next of kin of such deceased person, and shall be distributed in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate.

In this case, of course, there is no husband or widow, the deceased Mr. Schreiner, being an unmarried man, his next of kin being two brothers and one sister. The act still goes on and says: "In every such action the jury may give such damages as they shall deem fair and just with reference to the pecuniary injury resulting from such death to the widow or husband and next of kin." 20

Now, certain definitions, as it were, have been given to us by our courts; certain constructions have been placed upon this act by our courts. Those of them which seem to me will be useful to you are these: 30

What the plaintiff is entitled to recover is a capital fund which shall represent the present value of the pecuniary loss which falls upon the husband or widow and next of kin by the premature taking off of the intestate; (that is, the taking off of Mr. Schreiner by his death) that fund is ascertained by taking into account all the possibilities. 40

Charge.

Now, I will attempt to state a few of those possibilities to you, gentlemen, but I do not mean to say to you that these few things I will speak of are all of the possibilities and exigencies that you must take into consideration. They are only
10 some of them, simply for the purpose of illustrating to you and as a matter of example to you. For instance, it might be that had not this happening taken place and death resulted to Mr. Schreiner from it, if it did, that he might have died shortly after the time he did, and have died from natural causes; and of course, the benefit of any pecuniary contributions or pecuniary benefit from his living would have stopped at the time of his death, so far as his next of kin
20 the concerned. It might have been that but for this happening to Mr. Schreiner, had Mr. Schreiner lived he might have met with financial reverses, so that there would be no reasonable opportunity of pecuniary benefit that would come from him to his brothers and sisters after that time. He might have become physically or mentally incapacitated so that again all opportunity of pecuniary advantage from him so far as
30 his brothers and sisters were concerned, would have ended. Again, had this thing not happened, and had he continued to live, it might be that his brothers and sisters would pre-decease him, and, although they are presently living, they might die within a short time after the time to which we are now talking, and, of course, that would end any opportunity of contribution or pecuniary advantage to them.

40 Now, I say, gentlemen, those are only some of

Charge.

the things which are to be taken into consideration.

Further, the courts have said this, and you are to meet it, of course.

“Nothing is to be added for loss of society or wounded feelings, or anything else which cannot be measured by money and satisfied by pecuniary recompense.” 10

That is, the grief and the sorrow that undoubtedly did come and undoubtedly still continues with these brothers and sister. They are not things which this statute permits you to use as a measure for a part of the damage.

Again the courts have said:

“The damages are to be determined by reference to the pecuniary injury resulting to the next of kin of the deceased by his death.” 20

Now, “pecuniary” is also defined, and defined to be this:

“Pecuniary loss is a loss of money or of something by which money or something of money value may be acquired.” 30

And still further the courts have again said as to this injury for which there may be recompense and compensation in a case of this character.

“The injury to be recovered for has been defined to be (now, this may seem complex to you, gentlemen, but it really is not), it is defined to be the deprivation of a reasonable expectation of pecuniary advantage which would have resulted by a continuance 40

Charge.

of the life of the deceased. Compensation for such deprivation, is, therefore, the sole measure of damages."

10 Now, the burden is the plaintiff's to satisfy you by the greater weight of the evidence that the next of kin, all of them or some of them, had a reasonable expectation of pecuniary advantage to come to them, one of them or some of them or all of them, from the continuance of the life of the brother, the deceased Mr. Schreiner. If they have done that, then, of course that advantage, or that pecuniary advantage, more properly speaking, would undoubtedly have been realized to them from time to time, from week to week, month to month or year to year during the life
20 of Mr. Schreiner and during their respective lives, dependent upon the question of who survived the other. Therefore, a verdict would not be what I may term that gross sum, but it would be that sum which you find would be the total pecuniary advantage that they would receive, capitalized, or reduced, as our courts have said, to a sum in hand.

I cannot give you, gentlemen, a definite rule;
30 I cannot give you a specific example of how you are to determine that, I mean how you are to calculate that; because I have not the necessary elements before me upon which to do it. But this is what is meant, this is as nearly as I can explain it to you: If one should be receiving a certain sum per week and that sum is to continue to be received by that person for some definite time in the future, and in place of it, in place of
40 those periodical contributions or installments, that person wished to have a principal sum in

Charge.

hand today, that principal sum would be that sum of money, which put at a fair rate of interest for the period of contribution would produce that income which, together with such use of the principal from time to time as would be necessary, would be sufficient to make the periodical payments, the principal sum being exhausted at the end of the period of contribution. 10

Now, what I mean to say is this,—and it is so far away, perhaps, from anything having to do with this case that I may lay it before you to explain what I mean by the principal sum exhausting itself. We will assume that the sum is one hundred dollars put out at a fair rate of interest for a number of years, whatever it may be, five, if you wish,—so that the income of it plus the eating into the principal each time will at the end of the period have done this: it will have given to the parties having the right of participation a regular participation and at the end of the time of participation the principal itself will have been exhausted. Now, that is as nearly as I can explain to you, gentlemen, what the capitalizing of the statute, under the construction of the court, means. It means that sum of money in hand which will give to such parties as are entitled to your verdict the pecuniary advantage which they may have shown you, if they have, they had a reasonable expectation of receiving from the deceased brother, that sum of money with the income from it exhausting itself so that there would be nothing left at the end of the time when the contributions or pecuniary advantage would have ended. That, gentlemen, is what a verdict in a case of this character may be for. 20 30 40

Charge.

There are several things which I may say to you perhaps,—there are perhaps two others which I should say to you.

Use of mortality tables has been resorted to in this case. I think perhaps that the explanation of the actuary may have been ample to have made
 10 you understand what they mean, what they are. For instance, he said under the Carlisle table, that the expectancy of life of a person forty-eight years of age was twenty-two and a half years; under another table twenty-three and three sixth years; of a person forty-six years of age the expectancy was 23.82; under the other table, 23.81 years, and of a person thirty-nine years of age the expectancy of life was 28.28; and under the
 20 other table 28.90; that the joint expectancy under the Carlisle table was this: as between two persons each of forty-eight years 16.25 years; under the American Experience table 16.10; as between persons respectively forty-eight and forty-six years of age the joint expectancy under the Carlisle table was 16.63 years, and under the American Experience table, 16.57 years. As between two persons forty-eight and thirty-nine years of age respectively the joint expectancy under the Car-
 30 lisle table was 17.85; and under the other table 17.94.

Those things, gentlemen, are not to be relied upon by jurors absolutely. For instance, it does not mean as, of course, you gentlemen undoubtedly know, that a person who is forty-eight years of age may consult one of these tables, the Carlisle table, for instance, and find that that shows
 40 that he has an expectancy of continuance of life of twenty-two and a half years, and

Charge.

be able to know with absolute assurance that he is going to live just twenty-two and a half years. He may die within a year, after the time that he is forty-eight; he may die within the very day that he makes the examination of that table; he may live more than 10
 twenty-two and a half years. All that these tables are for and the use that they are to you is this; to aid and assist you, if they do, in arriving at a proper verdict. I say to you again, that you cannot, you are not, to take them abstractly and absolutely as the measure of the continuance of life that this decedent would have had; nor are you to take them as the measurement of the continuance of the life of his next of kin. They are to be used only to assist you, if they do, in connection with the other evidence that there may be in the case. 20

One other thing, and that is as to the weight of evidence. I have spoken to you repeatedly of course, upon what I have termed the greater weight of the evidence. I do not doubt but you know what it means, but I want to be perfectly sure that you do. How are you to get at it and determine whether or not it exists? When one 30
 side asserts the thing and the other side denies it that raises an issue of fact. That issue of fact is determined by the greater weight of the evidence which may be in the case applicable and relevant to that particular issue. You are to search the evidence or the testimony; you are to take all of the testimony that you find in favor of the establishment of the issue; you are to take all that you find that goes toward the disestablishing of it or pulling it down and you are to weigh up the two lots. You are to test it by 40

Charge.

every means known to you by which you might test truth and veracity and weight. If you find that which is in favor of the establishment of the issue outweighs that which is against it then you have in favor of that issue and its establishment a greater weight of evidence or fair preponderance as it is sometimes called. If the two lots weigh equally and one balances the other, then you have not greater weight of evidence in favor of the establishment of that issue; and again, of course, if that which you find against the establishment of the issue weighs more and is entitled to more credence than that which you find in favor of it, you have not evidence of greater weight in favor of the establishment of the issue, but, on the contrary, you have evidence of greater weight against it. Now, that is, gentlemen, as nearly as I can explain to you what is meant by greater weight of the evidence and in a rather homely way, but yet an understandable way, I believe, to you, as to how you are to proceed to determine what is or is not the greater weight of the evidence. With that, gentlemen, you may take the case.

JUROR No. 4: May I ask a question?

30 THE COURT: Yes.

JUROR No. 4: We have co-defendants here, and it seems to me it is going to be difficult for us to decide with regard to reasonable care and high degree of care, just how to divide the damages if there is to be any.

THE COURT: I have already spoken to you on that, sir. There is to be no division of the damages at all. If both the Delaware, Lackawanna and Western Railroad Company and the Motor Transportation Company have been shown

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Charge.

to have been negligent as charged, and their negligence or their negligences was the proximate cause of this happening, and if for all other reasons or every other reason your verdict should be for the plaintiff, and as against both sets of defendants, there will be no division of your verdict. The law does not permit, where two or more are shown to be liable for happening and the damage resulting therefrom,—the law will not permit the jury to assess as between the parties defendant, or whether one should pay so much and the other should pay so much. Your verdict in a case of that character would be simply one lump sum as against both defendants. If your verdict is as against one only, then, of course, your assessment of damages under the rules I have given you should be as against that one only. Does that answer your question?

JUROR No. 4: Yes. The second question I have is, if we find that damages are due to the plaintiff only in the case of the female plaintiff, would that be decided in that manner or would it be decided according to law?

THE COURT: No; you will not designate at all. There is only one plaintiff in this action, and that is the executor, and whether your finding be based upon a showing and satisfaction to you that the pecuniary loss has come to one only, or to two, will be a matter of no concern in rendering your verdict; that is, you will not separate it and say for which the pecuniary loss is assessed.

JUROR No. 4: The third question: Does the Death Act give the percentage in which the capital sum should be calculated?

THE COURT: Of course, the interest would

Charge.

not be more than six per cent, and that is the reason I spoke about a reasonable rate of interest.

JUROR No. 8: Do you mean by high degree of care that the railroad company should anticipate such an accident?

THE COURT: As this?

10 JUROR No. 8: Yes.

THE COURT: That is what I am leaving to you, sir.

JUROR No. 8: I mean does the wording of it imply that?

THE COURT: I cannot answer you, sir. I can only give you the definitions which I have before given you, and send you to the facts in the case, to apply the rule to the facts in the case, as
20 you find them. That is your particular province, and your particular duty as a juror.

Is there anything else, gentlemen, that I can say to you or help you with before you retire?

JUROR No. 4: Is it possible for us to adjourn now and come back so that we won't be disturbed in the interval, or do we have to stick it out until we reach a verdict?

THE COURT: Well, I leave that to the at-
30 torneys in the case.

MR. SCOTT: I waive any right we may have to deprive them of their food.

THE COURT: What do you say, Mr. Jacobs?

MR. EASTMEAD: I certainly have no objection. I know what the pangs of hunger are myself.

MR. SCOTT: The court will undoubtedly instruct the jury.

THE COURT: How much time do you want for
40 your lunch?

A JUROR: Half an hour.

Charge.

THE COURT: Will that be enough for you all?

A JUROR: Yes.

THE COURT: Of course, gentlemen, the sooner you can get back the sooner you ought to complete it.

We will recess to a quarter to one, and when you do it, do it with these things in your mind: 10
that the oath that you took when you went in the jury box is still bearing down upon you, and that is, that you are to decide the case according to the evidence, plainly speaking. Now, that means, extended, as it were, that you are to permit no outside influence to interfere with that determination as your oath requires it; and, going further, you are not to permit any person to talk to you about this case from now until you come back and go into your room; nor are you to discuss it with anybody else; and I will say that as a matter of 20
exact precaution for you and for your protection you should not discuss this case amongst yourselves while at your luncheon. Wait to commence your discussions until all of you have arrived and have retired to your room. With that, you may go.

MR. SCOTT: I except to that part of the court's 30
charge with respect to leaving to the jury the question as to whether the passageways were used by permission, etc. As we view it, there was no evidence warranting the jury in finding such characteristic use of the premises.

THE COURT: All of your requests, Mr. Eastmead, I have incorporated in my charge, except 7 and 8. I did not incorporate them in my charge, because, as I had to say to Juror number 40
8, if I charged these I would have to decide the

case. That is the reason I did not charge 7 and 8.

MR. EASTMEAD: I except to the court's refusal to charge requests 7 and 8 of the plaintiff.

Plaintiff's Requests to Charge.

10 1. The company (carrier) is bound to exercise a "high" degree of care to carry its passengers safely in or on whatever part of the car they are permitted to ride—Judgment (sup. 1899) 63 N. J. L. (34 Vr.) 407-43 Atl. 1660 Affirmed 1900 Scott 5 Bergen Co. Traction Co. (Err. & App.) 48 Atl. 1118.

20 2. A coming carrier of passengers is bound to carry passengers with such safety as can be obtained by the utmost care and skill of the most prudent men practically obtainable—D. L. & W. R. R. & Dailey 37 N. J. L. (8 Vr. 526)

30 3. A company operating an electric street railway is bound to exercise a high degree of care to carry its passengers safely in and upon whatever part of the car they ride with the express or implied consent of the company.—Trussell v. Morris County Traction Co., 77 A. 535, 79 N. J. Law, 533.

4. A common carrier of passengers must use a high degree of care to protect them from danger that foresight can anticipate.—Rivers v. Pennsylvania R. Co., 83 A. 883, 83 N. J. Law, 513, reversing judgment (Sup.) 76 A. 455, 80 N. J. Law, 217.

40 By foresight is meant not foreknowledge absolute nor that exactly such an accident was appre-

Plaintiff's Requests to Charge.

hended, but that the characteristics of the accident are such that it can be classified among events that, without due care, are likely to occur, and that due care can not prevent.—*ID.*

5a. A common carrier of passengers must use a high degree of care to protect them from danger that foresight can anticipate. By foresight is meant, not foreknowledge absolute, nor that exactly such an accident as has happened was expected or apprehended, but rather that the characteristics of the accident are such that it can be classified among events that, without due care, are likely to occur and that due care would prevent. The crowding of a trolley car, and especially of those parts of it that are used for entrance and exit, is attended with a liability to danger that the carrier should anticipate and employ care to avert. *Hansen v. North Jersey Street R. Co.*, 64 N. J. L. (35 Vr.) 686, 46 Atl. 718. 10 20

6. Contributory negligence is a defense and the burden of establishing it is upon the defendants. *Rhodelhouse v. Director General of Railroads*, 111 Atl. 632.

7. A ferryman must exercise the utmost care, skill, and vigilance in managing his boat and in providing against injury to passengers and property while in course of transportation, and failure in duty in this respect resulting in injury to a passenger or to property renders the ferryman liable in an action for damages. Negligence in operation often consists of a number of concurring elements, no one of which by itself is sufficient evidence of actionable negligence. It is not ne- 30 40

Plaintiff's Requests to Charge.

10 necessary that the ferryman should have had notice
 that a failure to take certain precautions would
 result in accident, if the possibility of its happen-
 ing was clear to the ordinary prudent mind. A
 ferryman is chargeable with knowledge that an-
 25 C. J. Page 1076.
 imals are easily frightened, and that automobiles

8. A ferryman must equip his boat with such
 guard rails, chains, barriers, and other appliances
 as are necessary to secure the safety of passengers
 and property in transportation, but not the safety
 of trespassers on the boat while it is moored to its
 20 should have had notice that his failure to provide
 safe-guards would result in accident, if the possi-
 bility of accident should have been foreseen. 25
 C. J. Page 1078.

9. Passageways habitually used by foot passen-
 gers, although designed for vehicles, must be kept
 in reasonably safe condition for foot passengers.
 25 C. J. Page 1079.

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Rule to Show Cause.

Filed Feb. 14, 1922.

HUDSON COUNTY CIRCUIT COURT.

ANTHONY SCHREINER, Executor
of the Last Will and Testament
of FRANK L. SCHREINER,
Plaintiff,

vs.

DELAWARE, LACKAWANNA & WEST-
ERN RAILROAD COMPANY, a corp-
oration, and in the alternative
HENRY CLOEREN, RAYMOND A.
WEBBER, and EDWIN J. WEBBER,
partners, trading under the firm
name and style of EFFICIENT
MOTOR TRANSPORTATION COM-
PANY,

Defendants.

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Action
at Law
Rule to
Show Cause

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Application having been made within six days
after the rendering of the verdict in the above en-
titled cause on behalf of the defendants trading
as Efficient Motor Transportation Company, only,
it is on this Tenth day of March, One Thousand
Nine Hundred and Twenty-two.

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Ordered that the plaintiff and defendant, Dela-
ware, Lackawanna & Western Railroad Company,
show cause before the Hudson County Circuit
Court at the Court House in Jersey City, on
Friday, the 24th day of March, One Thousand
Nine Hundred and Twenty-two, at ten o'clock in

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Rule to Show Cause.

the forenoon of that day why the verdict in the above entitled cause should not be set aside and a new trial granted on the following grounds:

1—The verdict is excessive.

10 The following exceptions are hereby reserved to the defendants who have applied for and obtained this rule.

1—The Refusal of the Court to direct a judgment of a non-suit.

20 2—The refusal of the Court to direct a verdict in favor of the defendants, Harry Cloren, Raymond A. Webber and Edwin J. Webber, partners trading under the firm name and style of Efficient Motor Transportation Company and their right to appeal on said grounds shall not be limited or barred by this Rule to Show Cause.

LUTHER A. CAMPBELL,
Judge.

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Court's Memorandum on Rule to Show Cause.

Filed March 30, 1922.

HUDSON COUNTY CIRCUIT COURT.

<p>ANNE SCHREINER, Executrix</p> <p align="center">vs.</p> <p>DELAWARE, LACKAWANNA AND WESTERN RAILROAD Co., <i>Et</i> <i>als.</i></p>	}	<p>On Rule for new Trial</p>	<p>10</p>
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LEWIS B. EASTMEAD, Esq., Attorney for plaintiff.

FREDERICK B. SCOTT, Esq., Attorney for Delaware, Lackawanna and Western Railroad Company. 20

MESSRS. SIDNEY JACOBS and FRANK G. TURNER, Attorneys for Efficient Motor Transportation Company.

Conclusions.

CAMPBELL, J.

Plaintiff has a verdict for Eight Thousand (\$8,000) Dollars and defendant, Efficient Motor Transportation Company has a Rule directed to the plaintiff and the defendant Delaware, Lackawanna and Western Railroad Company, contesting the verdict on the ground of excessiveness. 30

Verdicts in cases of this character are difficult to assess and of necessity considerable latitude

Court's Memorandum on Rule to Show Cause.

must be given to the jury and unless the verdict is plainly and shockingly excessive it should not be disturbed by me. In coming to this conclusion I have given due consideration to the argument of defendant's counsel that decedent's two brothers have, in a large measure, if not entirely, made up to their sister, her loss of contribution formerly made by her deceased brother. An annual contribution of Five Hundred (500) Dollars capitalized for eighteen years at five per cent, is Five Thousand Eight Hundred forty-four and eighty one hundredths (5,844.80) Dollars; Six Hundred (600) Dollars is Seven Thousand thirteen and sevtny-six one-hundredths (7,013.76) Dollars and Seven Hundred and fifty (750) Dollars and twenty one-hundredths (8,767.20) Dollars. Juries cannot be expected or be required to employ exact mathematical calculations in arriving at their verdicts.

A variation of weekly contributions for Ten (10) Dollars per week to Twelve (12) Dollars and Fifteen (15) Dollars would warrant verdicts for the capitalized sums above stated by the strict and exact methods of mathematics.

The Rule to Show Cause will therefore be dismissed and an order for that purpose may be had.

LUTHER A. CABELL,
Judge.

Order Discharging Rule to Show Cause.

Entered April 7, 1922.
 HUDSON COUNTY CIRCUIT COURT.

ANTHONY SCHREINER, Executor,
 etc., of FRANK L. SCHREINER,
 deceased,

Plaintiff-respondent,

vs.

THE DELAWARE, LACKAWANNA
 AND WESTERN RAILROAD COM-
 PANY, *et al.*,

Defendants-appellants.

Action
 at Law

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A Rule to Show Cause having been heretofore
 made why a new trial should not be granted on
 the ground that the verdict was excessive; and
 the same having been argued by Sidney Jacobs,
 of counsel for the defendants, Harry Cloeren,
 Raymond A. Webber and Edwin J. Webber, part-
 ners trading under the firm name and style of
 Efficient Motor Transportation Company; and
 Louis B. Eastmead in opposition in behalf of the
 plaintiff, and also in the presence of Frederic B.
 Scott, of counsel for the defendant, The Dela-
 ware, Lackawanna and Western Railroad Com-
 pany; and due deliberation having been had
 thereon by the court, and the court being of the
 opinion that the verdict was not excessive.

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IT IS on this 7th day of April, 1922, ORDERED
 that the Rule to Show Cause be and the same
 is in all respects dismissed with costs.

LUTHER A. CAMPBELL,

Judge.

On motion of LEWIS B. EASTMEAD,

Attorney of Plaintiff.

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New Jersey Court of Errors and Appeals.

MARCH TERM 1923.

On Appeal from New Jersey Supreme Court.

ANTHONY SCHREINER, Executor of
the last Will and Testament of
FRANK L. SCHREINER, deceased,
Plaintiff-Respondent,

vs.

DELAWARE, LACKAWANNA, and
WESTERN RAILROAD COMPANY, a
corporation and HARRY CLOREN,
RAYMOND A. WEBBER and EDWIN
J. WEBBER, partners trading un-
der the firm name and style of
EFFICIENT MOTOR TRANSPORTA-
TION COMPANY,

Defendants-Appellants.

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Action
At law.

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**BRIEF OF PLAINTIFF-RESPOND-
ENT.**

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Statement.

This appeal seeks to review the affirmance by the New Jersey Supreme Court of a judgment for the plaintiff against both defendants entered in the Hudson County Circuit Court on February 10th, 1922. The facts are briefly as follows:

On June 22nd, 1921, the plaintiff's testator, Frank L. Schreiner was a passenger on the Ferry-boat Musconnetcong, which was owned and operated by the defendant, Delaware, Lackawanna & Western Railroad Company. The said Frank L.

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Schreiner had boarded the said ferryboat, Musconnetcong, while she was lying in her slip at 23rd Street, New York City, and had proceeded to a position in the front end of the boat, which was provided for passengers. The said portion of the boat occupied the space between a chain commonly called the fog chain, which was stretched from the end of the men's cabin to the end of the women's cabin, and another chain which extended from post to post within a foot or so of the sliding gates at the extreme forward end of the boat. This portion of the boat, that is, the space between the said chains, was admittedly reserved for the use of foot passengers, during rush hours, at which time the accident occurred. When the decedent, Frank L. Schreiner had reached a position in front of the *left* team gangway, and in front of the fog chain at the forward end of the boat, a heavy motor truck, owned and operated by the defendant, The Efficient Motor Transportation Company, came tearing through the *right* team gangway, at a very high, dangerous and reckless rate of speed, and crashed through the fog chain, causing it to snap and strike decedent, Frank L. Schreiner, and threw him directly in the path of the said automobile, which then struck and ran upon the said Schreiner and injured him so severely that he died as a result of the said injuries.

The testimony shows that the driver of the automobile had lost all control of the same, that its brakes were defective, and that the driving chain of said automobile was dragging along the floor of the boat. The testimony also shows that the defendant, Delaware, Lackawanna & Western Railroad Company failed in its duty as a common carrier of passengers to exercise the high degree

of care required of it for the protection of plaintiff's decedent, Frank L. Schreiner.

No effort of any kind was made by the defendant, Delaware, Lackawanna & Western Railroad, its agents or servants, to stop the progress of said automobile, nor to protect or warn the decedent, Frank L. Schreiner.

After a trial lasting three days, the case went to the jury, who returned a verdict against both defendants in the sum of \$8,000.00. Thereafter, defendant, Efficient Motor Transportation Company, obtained a rule to show cause why the verdict should not be set aside on the ground that the damages assessed by the jury were excessive. (See page 205 State of the Case.) The Rule was argued before Hon. Luther A. Campbell, Circuit Court Judge, in the presence of counsel for both defendants and the rule was thereupon dismissed. (See page 207 State of Case for conclusions of Judge Campbell on the rule. See also page 209 State of Case for order dismissing said rule.)

The Supreme Court in a per curiam opinion filed November 21, 1922 affirmed the judgment of the Hudson County Circuit Court as against both defendants. (For copy of opinion see pages 7-8 and 9 State of Case.)

The plaintiff-respondent will first take up the appeal of the defendant, Delaware, Lackawanna & Western Railroad Company. The original grounds of appeal of said defendant are set forth in Notice and Grounds of Appeal filed by said defendant. (See pages 2-3 and 4 of the State of Case.)

The said defendant in his brief expressly waives the third ground of appeal set out on page 3 line 20 et seq., of the State of the Case, and also urges the Court to consider only the first ground, which is the general ground that the Supreme

Court gave judgment for the respondent instead of this appellant and *the third reason of the second ground.*

Therefore the appeal of the defendant Delaware, Lackawanna & Western Railroad Company comes before the Court on the following ground alone:

- 10 1. That the Trial Court refused to direct a verdict in its favor and against the plaintiff for the following reason:

“Because the injury to plaintiff’s decedent was proximately caused by the negligence of the driver of the motor truck of this defendant’s co-defendant, the Efficient Motor Transportation Company.”

POINT I.

- 20 **The New Jersey Supreme Court did not err in giving judgment for Anthony Schreiner, Executor, etc., of Frank L. Schreiner, deceased, Plaintiff-Respondent, instead of The Delaware, Lackawanna and Western Railroad Company, Defendant-Appellant.**

- 30 The Supreme Court in its opinion in this case (page 9 State of the Case) says:

- 40 “As to the Railroad Company, their contention is that their negligence in failing to take proper precautions for the safety of decedent was not the proximate cause of defendants’ injury and therefore, a verdict should have been directed in the railroads favor or a non suit granted as to it. But with respect to this, it is sufficient to say that the facts upon which this contention is predicated were in dispute and hence a verdict could not have been directed or a non-suit granted.”

It is respectfully submitted that this opinion of the Supreme Court is amply sustained by the authorities and decisions cited hereinafter in Points II and III.

POINT II.

The Trial Court properly refused to direct a verdict for the defendant, Delaware, Lackawanna and Western Railroad Company because the question of proximate cause where the facts are in dispute is for the Jury and it was not error for the Judge to refuse to take the case from the Jury. 10

“The question of the proximate cause of an injury is ordinarily one of fact for the jury.” 20
29 Cyc., 639.

“Where it cannot be said as matter of law that an intermediate object or agency in the chain of causation was the immediate or proximate cause of the injury, it becomes a question for the jury under the circumstances to determine whether defendant’s act if wrongful was the proximate cause of the injury.”

Cox vs. Pennsylvania R. R., 71 Atl., 250;
76 N. J. L., 786. 30

“Where the existence of negligence depends upon the conclusion to be reached from a variety of circumstances considered in relation to and their reaction upon each other, the jury and not the Court is normally the tribunal to draw such conclusion.”

Sutton vs. Bell, 77 Atl. 42, 79 N. J. L., 507.

“On motion to non-suit and direct a verdict when fair minded men might honestly differ as to the conclusions to be drawn from facts the question is for the jury.” 40

Hummer vs. Lehigh Valley R. R. Co.,
74 N. J. L., 196, 65 Atl., 126.

“When fair minded men might honestly differ as to the conclusions to be drawn from facts whether controverted or uncontroverted, the question at issue should go to the jury.”

10 *Nolan vs. Bridgeton Traction Co.*, 74 N. J. L., 559, 65 Atl., 992.

“The Court is justified in directing a verdict only when the testimony will not supply any other verdict.”

Meyers vs. Birch, 59 N. J. L., 238; 36 Atl., 95.

POINT III.

20 **There was no error in the Trial Court refusing to direct a verdict for the defendant Delaware, Lackawanna and Western Railroad Company, because the question of proximate cause was immaterial as between said company and its co-defendant, who were joint tort feasers.**

30 “If the damage has resulted directly from concurrent wrongful acts or neglect of two persons, each of these acts may be counted as the wrongful cause and the parties held responsible either jointly or severally for the injury.”

Cooley on Torts, page 31.

40 “As a general rule it may be said that negligence to render a person liable need not be the sole cause of an injury. It is sufficient that his negligence concurring with one or more efficient causes other than plaintiff’s fault, is the proximate cause of the injury so that where two causes combine to produce

injuries, a person is not relieved from liability because he is responsible for only one of them."

29 Cyc., 496.

"Where although Concert is lacking the separate and independent acts or negligence of several combine to produce directly a single injury each is responsible for the entire result, even though his act or neglect alone might not have caused it." 10

38 Cyc., page 488, citing *Newman vs Fowler*, 37 N. J. L., 89.

Another New Jersey case directly in point is *Matthews vs. D. L. & W. R. R. Co., et als.*, 56 N. J. L., 34, page 34; 27 Atl., 919. In that case the court held as follows:

"One injured by a collision between a locomotive of a railroad company and a car (in which he was a passenger) of a street railway company may maintain a joint action against both companies if the collision was produced by the neglect of the railroad company to give notice of the approach of the locomotive concurring with the neglect of the railway company to observe proper care in crossing the railroad track." 20

Ibid.

"Although such duties are diverse and the neglect to perform each is separate and disconnected, yet as the wrongdoing of one company unites with that of the other in causing injury, the tort is joint and one or both tort feasons may be used." 30

Ibid.

"When each of two or more persons owe to another a separate duty which each wrongfully neglects to perform, then although the duties were diverse and disconnected and the negligence of each was without concert if such several neglects concerted and united in causing injury the tort is equally joint and 40

the tortfeasors are subject to a like liability."

This doctrine was announced in this Court by the Chief Justice in *Newman vs. Fowler*, 37 N. J. L., 89. Ibid.

10 This decision applies with great force to the instant case. The defendant Delaware, Lackawanna and Western Railroad Company, was a common carrier of passengers and as such owed a high degree of care to plaintiff's decedent who was its passenger. The jury by its verdict showed that it did not believe the said defendant had fulfilled its duty, and the defendant Efficient Motor Transportation Company also failed in its duty to the plaintiff's decedent.

20 The testimony clearly justifies the jury in finding that it was the negligence of both defendants that concurred in causing the injuries to plaintiff's decedent. It is therefore respectfully urged that the trial Court did not err in refusing to direct a verdict for defendant, Delaware, Lackawanna and Western Railroad Company. In considering the appeal of the defendant, Delaware, Lackawanna and Western Railroad Company, it is also important to bear in mind the duty owed by it to plaintiff-Respondent's decedent.

30 "The company carrier is bound to exercise a high degree of care to carry its passengers safely in or on whatever part of the car they are permitted to ride."

Scott vs Bergen Co. Traction Co., (Sup. 1899), 63 N. J. L., 34, (Vr), 407; 43 Atl., 1060. (Affirmed, 48 Atl., 1118.)

40 "A company operating an electric street railway car is bound to exercise a high degree of care to carry its passengers safely in

and upon whatever part of the car they ride with the express or implied consent of the company.”

Trussell vs. Morris County Traction Co.,
77 Atl., 535; 79 N. J. L., 533.

“A common carrier of passengers must use a high degree of care to protect them from danger that foresight can anticipate.”

Rivers vs. Pennsylvania R. Co., 83 Atl.,
883; 83 N. J. L. 513.

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“By foresight is meant not foreknowledge absolute nor that exactly such an accident was apprehended, but that the characteristics of the accident are such that it can be classified among events that without due care are likely to occur and that due care would prevent.”

Ibid.

“A ferryman must exercise the utmost care, skill and vigilance in managing his boat and in providing against injury to passengers and property while in course of transportation and failure in duty in this respect resulting in injury to a passenger or to property renders the ferryman liable in action for damages.”

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25 Corpus Juris, 1076.

“Negligence in operation often consists of a number of concurring elements, no one of which by itself is sufficient evidence of actionable negligence. It is not necessary that the ferryman should have had notice that a failure to take certain precautions would result in accident if the possibility of its happening was clear to the ordinary prudent mind.”

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25 Corpus Juris, 1076.

“A ferryman is chargeable with knowledge that animals are easily frightened, and that automobiles may not be at all times under adequate control.”

40

25 Corpus Juris, p. 1076, citing *Meisle v. N. Y. Central R. Co.*, 219 N. Y., 317; 114 N. E., 347; Ann. cases, 1918 E., 1081.

10 "A ferryman must equip his boat with such guard rails, chains, barriers and other appliances as are necessary to secure the safety of passengers and property in transportation. It is not necessary that the ferryman should have notice that his failure to provide safeguards would result in accident if the possibility of an accident should have been foreseen."

25 C. J. 1078.

20 "A ferry company, being a common carrier of passengers is bound to use a high degree of care to protect a passenger from harm; and where a passenger was hit and injured by the hook end of a rope (used to draw trucks off the boat), which the evidence tended to show flew off the electric power 'winch' by reason of the careless operation and insufficient manning of the appliance, the question of the negligence of the ferry company was for the jury."

30 *Williams vs. Pennsylvania Railroad Company*, 115 Atl. page 447 affirmed by the Court of Errors and Appeals in 117 Atl., page 927.

Under these decisions it was properly the function of the jury to decide as to the negligence of the defendant, Delaware, Lackawanna and Western Railroad Company, and it was not error for the Trial Court to refuse to nonsuit or direct a verdict in favor of said Company, nor was it error for the Supreme Court to affirm the said judgment.

40 It is therefore respectfully urged that the appeal of the defendant, Delaware, Lackawanna and

Western Railroad Company, be dismissed, and that the decision of the Supreme Court affirming the judgment of the Hudson County Circuit Court be affirmed.

Considering next the appeal of the defendants trading as Efficient Motor Transportation Company, we find that the grounds of appeal relied upon by them are set forth in the Notice of Appeal on pages 5 and 6 of the State of the Case. 10

POINT IV.

The New Jersey Supreme Court did not err in affirming the Judgment of the Hudson County Circuit Court against the Defendants Efficient Motor Transportation Company.

The Supreme Court in its opinion in this case, (page 8 State of the Case says): 20

“With respect to the negligence of the Efficient Motor Transportation Company, it is sufficient to say that the evidence respecting the plainly obvious defective condition of the brake and driving chain of the truck, made the negligence of the company in inspection and repair a jury question. So, too, the questions of the alleged contributory negligence and assumption of risk of the decedent, were at most, for the jury. Consequently, the motions to non-suit and to direct a verdict made by that company were properly refused.” 30

The alleged Errors of the Trial Court which were urged in the Supreme Court and again urged in this Court are as follows:

I. Because the Trial Court refused to non-suit plaintiff on the following grounds: 40

1. That no negligence had been shown on the part of these defendants.

2. On the ground that the deceased was guilty of contributory negligence.

3. On the ground that the deceased assumed the risk of the accident that happened by taking the position that he took on the ferryboat at the time of the accident.

10 II. In that the Trial Court erred in refusing to direct a verdict against the plaintiff and in favor of the Efficient Motor Transportation Company on the same grounds as stated in its motion for non-suit and on the additional ground that the proofs show that the deceased came to his death by reason of an unavoidable accident, and that the defendants are not liable, therefore, to respond in any damages to the plaintiff.

20 The three points in the first ground are made also in the second ground and I believe may therefore be taken up together.

POINT V.

30 **Whether negligence had been shown on the facts of this case as against defendants Efficient Motor Transportation Company was purely a Jury question and the Trial Court committed no error in refusing to non-suit or direct a verdict.**

40 There was abundant testimony to the effect that defendant's truck was being operated in a reckless manner at a high and dangerous rate of speed. Testimony of William H. Spellman (page 33, State of Case). Testimony of George Deer, (page 52, line 3) that driver stated "he lost control of the car." Testimony of John Bloom (page 57, lines 24 and 25), "I only heard him say, the man who was driving it, that his chain broke or snapped or something." Testimony of Gene-

vieve Bruggeman, (page 59, line 11), "that chain on automobile was dragging." Also (on page 60, lines 37 and 38, same witness testified "automobile was going fast." Testimony of H. G. Ulrich (page 74, lines 37-38 and 39), "he claimed he lost control of car by the chains coming off the wheel." Testimony of Frank Bergen (page 76, line 27), "This automobile came tearing through the boat." 10

There was absolutely no testimony about brakes being in good working order all day as alleged in Point I of Defendant's Brief.

"Where there is evidence in the case which, if believed by the jury, fairly tends to support plaintiff's right to recover, the Court does not err in refusing to take the case from the jury."

Rutphen vs. Hedden, 67 N. J. L., 324; 51 Atl., 721. 20

"On a motion to non-suit where fair minded men might honestly differ as to the conclusions to be drawn from facts, the question at issue should go to the jury."

Dederick vs. Central R. R. Co., 74 N. J. L., 424; 65 Atl., 833.

"Where the evidence is conflicting, it is the peculiar province of the jury to determine the credibility of the witnesses and settle the facts and the Court will not interfere with the verdict unless it clearly appears to be against the weight of the evidence." 30

Garrett vs. Drewes Harris Wire Co., 70 N. J. L., 382; 57 Atl., 127.

"Where there is any evidence tending to support the issues in the case, although slight, it should be submitted to the jury and it is error to order a non-suit or direct a verdict." 40

Coxe vs. Tillo, 13 N. J. L., 215;
Bartow vs. Brands, 15 N. J. L., 248.

“The question of the plaintiff’s evidence to sustain his case is for the jury.”

William vs. Sheppard, 13 N. J. L., 76;
Campbell vs. Ely, 13 N. J. L., 150.

10 “It must be a plain case that will justify a reversal for refusing to non-suit.”

New Jersey Co. vs. West, 33 N. J. L., 430, 432;

Central Railroad Co. vs. Moore, 24 N. J. L., 824, 836.

“The Trial Judge cannot order a non-suit unless the proof in the case is so clear that no other reasonable legitimate conclusion can be reached by the jury.”

20 *King vs. Ziers*, 73 N. J. L., 134; 62 Atl., 287 (case);

Consolidated Traction Co., Pros., vs. Reeves, 58 N. J. L., 573; 34 Atl., 128;

Day vs. Donahue, 62 N. J. L., 380; 41 Atl., 934;

Voorman vs. North Jersey R. Co., 70 N. J. L., 818; 59 Atl., 459.

30 “It is only where the testimony offered is of such conclusive character as would compel the Court in the exercise of sound legal discretion to set aside a verdict returned in opposition to such testimony that a binding instruction to the jury should be given.”

Maurer vs. Gould, 59 Al., 28, aff’d 72 N. J. L., 314; 60 Atl., 134;

Crue vs. Caldwell, 52 N. J. L., 215; 19 Atl., 188.

40 It is obvious from the foregoing decisions that no error was made by the Trial Court in refusing to non-suit or direct a verdict for defendant Efficient Motor Transportation Company. The evidence of its negligence is overwhelmingly obvious

throughout the whole testimony. Its driver uttered no warning and sounded no horn or signal of any kind.

POINT VI.

There is no evidence of contributory negligence on the part of plaintiff's decedent and it therefore was not error for the Court to refuse to nonsuit or direct a verdict. 20

Plaintiff's decedent, at the time of the accident, was admittedly in a place reserved for the exclusive use of foot passengers during rush hours, which it was also admitted took place during rush hours.

The evidence as to whether decedent was straddling the chain was contradictory, one witness testifying he was in front of chain and one or two testifying he was stepping across the chain. 20

Defendant, Efficient Motor Transportation Company, states in Point II of its brief that *eight* witnesses testified to seeing defendant and that seven saw him straddling the chain. This is manifestly untrue and is not borne out by the evidence. Plaintiff only had *six* witnesses who testified to the accident and only three testified with regard to decedent and the chain. In any event the question raised by the conflict in the evidence was for the jury. 30

Defendant cites the case of *Hoboken Ferry Co. vs. Feist*, 58 N. J. L., 198, which is obviously not in point because that accident occurred in the *teamway* of the *ferry slip* and not on the *boat*. In the present case plaintiff's decedent was admittedly in a place where he had a right to be and which was reserved for foot passengers. (See the Court's Charge to the Jury, page 180, lines 40

25 to 37 stating that such was admitted at the trial.) This fact is also conceded by the brief of the defendant, Delaware, Lackawanna and Western Railroad Company. The rule in the *Hoboken Ferry* case just cited is therefore inapplicable.

10 It is also to be borne in mind that decedent was in front of the *left* teamway and the automobile of the defendant came through the *right* teamway which made it impossible for decedent to see the same, the two teamways being divided by the engine room.

The testimony clearly shows that the *left* teamway in front of which decedent stood, was clear of all vehicles at the time of the accident.

20 It is respectfully urged that the cases cited in Point I are also controlling on this point. In addition thereto the following decisions are respectfully submitted:

“Where, under the evidence, reasonable minds may differ as to whether defendant was negligent or the plaintiff guilty of contributory negligence, the Court cannot di-

Weston vs. Pennsylvania R. Co., 74 N. J. L., 484; 65 Atl., 1015.

30 “Where at the close of plaintiff’s case there was evidence on which the jury might find for the plaintiff the Court should not direct a non-suit nor at the close of defendant’s case direct a verdict for defendant on the ground of contributory negligence where both are disputed questions of fact.”

Spargo vs. Central R. Co. of N. J., 84 N. J. L., 251; 86 Atl., 385.

40 “Contributory negligence is a defense and the burden of establishing it is upon the defendants.”

Rhodehouse vs. Director General of Railroads, 111 Atl., 632.

"The question of contributory negligence is one of fact for the jury when the evidence in regard thereto is in dispute or is conflicting or uncertain."

29 Cyc., 633.

In the case of *Napodenssay vs. West Jersey & S. R. Co.*, reported in 88 Atl., 1033, Mr. Justice Minturn, writing the opinion for the Court of Errors and Appeals, says: **10**

"This rule of substantive law has been the subject of frequent reiteration by this Court to the effect that where the plaintiff has rested his case and the evidence leaves the question of his contributory negligence in doubt the determination of the question of the negligence of the defendant presents an issue of fact which must be submitted to the jury." **20**

Citing:

Brewster vs. N. Y. Central R. Co., 80 N. J. L., 447; 78 Atl., 160;
Dickinson vs. Erie R. Co., 81 N. J. L., 464; 81 Atl., 104; 37 L. R. A., 150;
Anderson vs. Public Service, 81 N. J. L., 700; 80 Atl., 480.

Under these decisions cited, it is apparent that the Trial Judge did not err in refusing to take the case from the jury. **30**

POINT VII.

Plaintiff-respondent's decedent did not assume the risk of the accident and the refusal of the Trial Court to take the case from the Jury was proper.

Decedent had a perfect right to select any place reserved for foot passengers as a place for him- **40**

self to ride. The reasoning and the decisions cited in Points I and II are apt in this point and are therefore reiterated in support of this point. It is to be noted in passing that the brief of defendant Efficient Motor Transportation Company shows almost a total absence of citations of authorities for any of its contentions. The case of *Dwejer vs. N. Y. L. E. & W. Ry.*, 47 N. J. L., 9, is not in point. Plaintiff-respondent's decedent was *not in a dense crowd* and therefore could not have assumed any such risk.

POINT VIII.

The Trial Court did not err in refusing to direct a verdict for the defendant on the ground that testator met his death as the result of an unavoidable accident.

There is absolutely no testimony in support of this theory. The reasoning and citations in Points I and II hereof are therefore urged against this last Ground of Appeal of the defendant, Efficient Motor Transportation Company.

IN CONCLUSION, it is respectfully urged that each and every Ground of Appeal urged by the defendant, Delaware, Lackawanna and Western Railroad Company and by the defendants, trading as Efficient Motor Transportation Company, was properly denied by the Trial Court and that each and every issue raised in this appeal was properly left to the jury and that the Trial Court made no error in refusing to non-suit in favor of either defendant and in refusing to direct a verdict in favor of either defendant.

Therefore it is submitted that the New Jersey Supreme Court did not err in affirming the Judgment of the Hudson County Circuit Court.

We therefore respectfully request that the Decision of the Supreme Court affirming the Judgment of the Hudson County Circuit Court be affirmed by this Court as to each and every Defendant herein. 10

LEWIS B. EASTMEAD,
Attorney for and of
Counsel with Plaintiff-Respondent,
ANTHONY L. SCHREINER.

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40

The undersigned is authorized to
 New Jersey Superior Court and one
 in signing the Judgment of the Hon-
 orable County Circuit Court.
 The undersigned is authorized to receive
 the proceeds of the Judgment of the Hon-
 orable County Circuit Court of the Hon-
 orable County Circuit Court to be paid by
 this Court as to each and every Defend-
 ant herein.

10

Lewis H. Hartman
 Attorney for and of
 Court of which Plaintiff is Defendant
 ANTHONY J. SCHNEIDER

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New Jersey Court of Errors and Appeals

March Term, 1923.

Case No.

On Appeal From the New Jersey Supreme Court.

ANTHONY SCHREINER, Executor of
the last will and testament of
Frank L. Schreiner, deceased,
Plaintiff-Respondent,

vs.

DELAWARE, LACKAWANNA and West-
ern Railroad Company, a cor-
poration, and in the alternative
Harry Cloeren, Raymond A.
Webber, and Edwin J. Webber,
partners trading under the firm
name and style of Efficient
Motor Transportation Company,
Defendants-Appellants.

Action
At Law.

**BRIEF FOR DEFENDANTS TRAD-
ING AS EFFICIENT MOTOR
TRANSPORTATION COMPANY.**

This is an action brought in the Hudson Cir-
cuit Court by the executor of the estate of Frank
L. Schreiner, deceased, to recover damages under
the Death Act from the Delaware, Lackawanna
and Western Railroad and the Efficient Motor
Transportation Company for the death of said
Frank L. Schreiner alleged to have been caused
by the acts of the defendants.

On June 22nd, 1921, the ferry boat "Musconetcong", belonging to the defendant, Delaware, Lackawanna & Western Railroad and operated by them as a common carrier, was operating across the Hudson River between Twenty-third Street, New York City and Fourteenth Street, Hoboken.

On that day said Frank L. Schreiner boarded the boat as a foot passenger on the New York side of the River and at the same time a motor truck belonging to and operated by defendant, Efficient Motor Transportation Company also boarded this boat as a passenger.

The motor vehicle proceeded through the team gangway and ran into a fog chain which was stretched across the front of the team gangway. Schreiner at time chain was hit was either straddling chain or standing close to it. The chain broke and hit said Frank L. Schreiner, injuring him and said Schreiner died five days later from the injuries.

The case was tried before the Circuit Court and a jury and the jury brought in a verdict of \$8,000.00 in favor of the plaintiff and against both defendants. An appeal was taken by both defendants to the Supreme Court which affirmed the judgment entered below.

The Efficient Motor Transportation Company, one of the defendants-appellants, respectfully urges:

I. That the Supreme Court erred in affirming the judgment entered in the Hudson County Circuit Court in this cause, because the said Circuit Court refused to non-suit said plaintiff on the following grounds:

1. That no negligence had been shown on the part of these defendants.

2. On the ground that the deceased was guilty of contributory negligence.

3. On the ground that the deceased assumed the risk of the accident that happened by taking the position that he took on the ferry boat at the time of the accident.

II. Because the New Jersey Supreme Court erred in affirming the said judgment because the said Hudson County Circuit Court erred in refusing to direct a verdict against the plaintiff and in favor of the Efficient Motor Transportation Company on the same grounds as stated in its motion for a non-suit and on the additional ground that the proofs show that the deceased came to his death by reason of an unavoidable accident and that the defendants are not liable, therefore, to respond in any damages to the plaintiff.

I.

No negligence had been shown on the part of these defendants.

The driver had operated the truck from seven o'clock in the morning on the day of the accident until about 5:30 P. M. when the accident occurred (Page 127, Lines 8 to 15). He had no trouble with the brakes all day and did not know but what the truck would respond to his application of the brakes when he got on the boat.

As was stated in the case of *Guinn vs. Del. & Atl. Tel. Co.* 72 N. J. Law, 276; 62 Atl. 412; 3 L. R. A. (N. S.) 988, the test of defendants

liability to a particular person is whether injury to him ought reasonably to have been anticipated.

This was a pure accident which was not, and could not be anticipated, and no liability attaches where the injury resulted from what is termed pure or inevitable accident.

McGuire vs. Central Railroad, 68 N. J. Law, 608; 53 Atlantic 696.

The driver had done considerable riding with the truck all day and brakes had been in good working order, so that he had no reason to expect that the brakes would refuse to respond when he entered the boat.

There is no evidence of negligence unless there appears to be something unusual in the manner of handling the car.

The driver exercised due care in operating the vehicle and proceeded to the place to which he was ordered by the employees of the Railroad Company (page 129, lines 12 to 29), and it is no evidence of negligence in a driver of a car or truck that he was going at a certain rate of speed unless there appears to be something unusual in the manner of his handling the car or truck. *May vs. North Hudson Railroad Co.*, 49 N. J. Law, 445.

II.

Decedent was guilty of contributory negligence.

If the decedent had not occupied the position he did he would not have been injured, but because he straddled the chain (page 76, line 38; page 72, line 2), which he had no right to do, he was guilty of contributory negligence.

Defendant straddled the chain taking a chance that he could get over before the truck reached him. He was in a hurry to get to the front part of the boat and walked through the team gangway (page 71, line 22; page 76, line 35) climbed the chain and got partly over it when the chain snapped.

If he had not straddled the chain he would not have been injured, even though there might have been negligence on the part of the driver of the vehicle, and he who places himself in danger is guilty of contributory negligence.

A person cannot take chances and hold himself free from contributory negligence. *Schwanewede vs. North Hudson Railroad Co.*, 67 N. J. Law, page 449; 51 Atl. 696.

If the testimony of Spellman is correct the decedent was still guilty of contributory negligence for he placed himself in a dangerous position by standing so closely to the fog chain and he must have known or should have known that if the chain snapped for any reason he would be hit by the chain.

One who places himself in a position which may be a point of danger assumes the risk of an accident. *Dwyer vs. New York, etc. Railway Co.*, 47 N. J. Law, 9.

Decedent unnecessarily exposed himself to danger by placing himself so close to the vehicle when he could have been in another part of the boat where there were no vehicles; there were two cabins on the ferry boat and also open space exclusively for foot passengers on each end of each cabin. Decedent was one of the first passengers on the boat and could have chosen a safe place; he was not compelled to sit on the chain or stand close to it.

Where a danger is obvious a person is bound to use ordinary care to avoid it. *Runyon vs. Central Railroad*, 25 N. J. Law, 556, and recovery cannot be had where the person injured by the exercise of ordinary care could have avoided the injury even though defendant was negligent.

Decedent was required to use reasonable care for his own safety and protection and decedent did not use reasonable care when he placed himself on the chain or close to it.

One who does not use reasonable care in looking after himself is guilty of contributory negligence.

A person is bound to exercise ordinary care not only to avoid dangerous places, known or seen, but also those of the existence of which he is ignorant. *Quimby vs. Filter*, 62 N. J. Law, 766; 42 Atl. 1051.

Of the eight witnesses who testified that they saw decedent, seven of them testified that he was straddling the chain. The one witness who testified that decedent came through the women's cabin says he did not know decedent and that witness came on the boat first and decedent was behind (page 39, lines 29 to 42).

Non-suit should be directed in an action for negligence, the evidence though showing no negligence in plaintiff, showing none in defendant but merely an accident. *McGuire vs. Central Railroad, supra*, 68 N. J. Law, 608. *Mannebach vs. Stevens*, 71 N. J. Law, 368; 58 Atl. 1089.

Spellman, the witness most favorable to plaintiff, says decedent was walking right in front of chain (page 34, line 36) and also says he was alongside of chain (page 41, line 8; page 45, lines 19-32).

Decedent was in act of climbing chain and had been in the team gangway (page 71, line 23; page 76, line 35).

In *Hoboken Ferry Co. vs. Feist*, 58 N. J. Law, 198, it is held:

“Ferry exits, for common use of foot passengers and for teams and vehicles are places of obvious danger, and passage over them suggests and requires a prudent watchfulness against the danger attendant upon that use.”

And in the case of *Pennsylvania Railroad Co. vs. Righter*, 42 N. J. Law, at page 182, the Court says, “Where a person received an injury has, by his own negligent conduct, partly aided in occasioning the injury, he cannot recover from the other party whose act assisted.”

And further on at page 183 the Court says, “It is also settled that the comparative degree of the negligence of the respective parties will not control the question of liability but that if a plaintiff in *any* degree proximately contributes to the injury he cannot recover.”

In the case at bar, if the decedent had kept away from the chain he would not have been injured. No one else was injured and it was only because decedent was careless that he received his injuries.

III.**Defendant assumed the risk of the accident.**

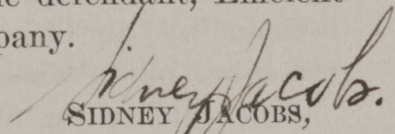
The decedent was not obliged to be in the position he placed himself. There were two cabins on the boat and open space at each end of the boat reserved exclusively for foot passengers.

Decedent did not choose to occupy any of these places, but chose to occupy the place where vehicles had a right to be and by so doing assumed the risk of any accident that might occur in that place.

One who occupies a place of obvious danger assumes the risk of an accident, and he is bound to use care accordingly. *Gassert vs. Central Railroad Co.*, 74 N. J. Law, 11; 64 Atl. 1014.

If a passenger conducts himself without a reasonable degree of care and if his negligence contributes to his injury he cannot recover. *Gassert vs. Railroad, supra*; *Hoboken Ferry Co. vs. Feist, supra*.

It is respectfully submitted that the judgment should be set aside as to the defendant, Efficient Motor Transportation Company.


SIDNEY JACOBS,

Attorney for and of Counsel
with Defendants-Appellants,
Efficient Motor Transporta-
tion Company.

New Jersey Court of Errors and Appeals.

ANTHONY SCHREINER, Executor, etc.,
of FRANK L. SCHREINER, deceased,
Plaintiff-Respondent,

VS.

THE DELAWARE, LACKAWANNA AND
WESTERN RAILROAD COMPANY, *et al.*,
Defendants-Appellants.

Action at Law.

March Term, 1923.

Case No. 80.

BRIEF OF THE APPELLANT, THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COM- PANY.

Statement.

This appeal seeks to review the affirmance by the Supreme Court of a judgment entered in the Hudson County Circuit Court jointly against The Delaware, Lackawanna and Western Railroad Company and the Efficient Motor Transportation Company for \$8,000 on account of the death of one Frank L. Schreiner, a passenger, at the time of the happening of the accident to him, on one of the ferry-boats of the appellant Railroad Company.

The plaintiff, in his complaint, alleged that the Appellant Railroad Company negligently failed to provide his decedent with a safe place to travel in and negligently permitted him to be injured by the reckless and negligent manner in which it per-

mitted the motor truck of its co-defendant to be operated on said ferry-boat.

Complaining against this appellant's co-defendant, the Efficient Motor Transportation Company, the plaintiff alleged that said Motor Company's motor truck was driven on the ferry-boat at a high, dangerous and reckless rate of speed, crashing into a chain stretched across the vehicular gangway of the Railroad Company's ferry-boat causing said chain to strike and knock down the plaintiff's decedent who was subsequently run into and upon by the said motor truck.

Both of the appellants herein filed cross-complaints against each other, the Railroad Company seeking damages for the injury to its ferry-boat by the motor truck of its co-defendant and the Transportation Company seeking damages against the Railroad Company for injury to its motor truck. Said cross-actions were both withdrawn before the cause was submitted to the jury, it being stipulated and agreed, however, that the evidence introduced relative to said cross-actions be not withdrawn from the consideration of the jury in determining the case of the plaintiff-respondent p. 174, l. 10 *et seq.*).

The theory of the Motor Transportation Company's cross-action against this appellant being the same as its explanation and defense to the plaintiff-respondent's claim against it, an examination of the Motor Transportation Company's cross-complaint best serves to elucidate the theory of its defense to the plaintiff-respondent's action and the method by which it sought to relieve itself from liability, and cast the sole liability upon this appellant.

The second, third and fourth paragraphs (p. 25, l. 34 *et seq.*) of the Transportation Company's cross-action against this appellant, in substance, reads as follows: That it was the duty of this ap-

pellant to use reasonable care to furnish reasonably safe means of ingress and egress for said motor truck to and from said ferry-boat and to use reasonable care to keep the passageway used by said truck free from dangerous obstructions; that while said motor truck was being carefully driven on the passageway of said ferry-boat a certain piece of unfastened block on the floor of the passageway was raised and struck against the driving chain of the motor truck disconnecting the same and preventing control of said truck, rendering it unmanageable.

The Transportation Company, having obtained a rule to show cause why the verdict should not be set aside as against it on the ground that it was excessive, reserving its exceptions to the Trial Court's refusal to direct a non-suit and a verdict in its favor (pp. 204-5), and brought on the argument of said rule; but same was discharged (pp. 207-8), whereupon this appellant and its co-defendant have brought this appeal to review the judgment aforesaid affirmed by the Supreme Court.

While this appellant has filed three grounds of appeal, it expressly waives the third one (p. 3, l. 20 *et seq.*), and asks consideration by this Court on its appeal only of grounds I and II (p. 2, l. 30 *et seq.*; p. 3, l. 1 *et seq.*), ground I being the general ground of appeal that the Supreme Court gave judgment for the respondent instead of this appellant, and ground II, because the Trial Court refused to direct a verdict in favor of this appellant, for the reasons therein set out, only one of which reasons, to-wit, *because the injury to the plaintiff's decedent was proximately caused by the negligence of the driver of the motor truck of this appellant's co-defendant, Efficient Motor Transportation Company, being now pressed and urged upon this Court for consideration.*

History of the Accident.

On June 22, 1921, the plaintiff-respondent's decedent boarded at Twenty-third Street, New York, the Railroad Company's ferry-boat *Musconetcong*. The lower deck plan of this boat showed a women's and a men's cabin, between which were two team-gangways used for carriage of vehicles. These two team-gangways were partly separated by the housing of the engine room and were over some 200 feet in length.

At the end of the team-gangways, in the bow of the boat, there was stretched across from the men's to the women's cabin a chain which is designated throughout the testimony as a "fog chain". Some distance forward of this fog chain and almost directly in back of the ferry-boat gates at the bow, there was stretched another chain known as the team chain, also running from the passageway out of the women's cabin to the passageway of the men's cabin.

During the rush hours of the day (the accident to the plaintiff-respondent's decedent having happened at that time), this appellant had allowed and permitted passengers to use the place between the two chains.

The evidence on the trial of the cause was contradictory as to how the plaintiff-respondent's decedent came upon the boat, one of the witnesses testifying that he came through the women's cabin and took up a position in front of the fog chain, while other witnesses testified that he walked through the team-gangway and was in the act of stepping over the fog chain when he was hit by this appellant's co-defendant's motor truck. We take it, however, that the jury was amply justified in finding that the position the plaintiff-respondent's decedent occupied just prior to the time of

the injury to him was not a position in which he could have been said to have contributed to the accident, the jury, we think, being amply justified in determining that the plaintiff-respondent's decedent had a right to be where he was at the time he received the injuries complained of.

Argument.

Charged with negligence in failing to provide the plaintiff's intestate with a safe place to travel in, this appellant evidently did not satisfy the jury on that point; but on the charge that it negligently permitted the injury by the reckless, negligent manner in which its co-defendant's motor truck was operated upon the ferry-boat, *in view of the fact that its co-defendant denied any negligent operation, the question as to whether said motor truck was negligently operated was made a distinct issue for the determination of the jury.* We contend that the verdict rendered against both the defendants necessarily establishes that the reckless and negligent manner in which this defendant's co-defendant operated its truck upon said ferry-boat was the proximate cause of the injury and death of the plaintiff's decedent, and that there was error on the part of the Trial Court to allow the jury to pass upon this appellant's liability against its reason urged for a direction of a verdict in its favor because,—

“There are three, and only three, tests of proximateness, namely, intention, probability, and the non-intervention of an independent cause.

“Any intended consequence of an act is proximate. * * * Probability has the same meaning here as in connection with duties of probability where the duty is to act or not to act in a way that will probably produce certain consequences.”

28 *Harvard Law Review*, at p. 17.

“The third test of proximate-ness is non-intervention of an independent cause between the original cause and the consequence in question.”

Id., p. 20.

Neither the first nor second tests of proximate-ness have any application to the instant case; and applying the third test, *i. e.*, the non-intervention of an independent cause between the original cause and the consequence in question, the record in the instant case, beyond a peradventure, shows the act of its co-defendant in operating the motor truck to be that of a complete intervention of an independent cause between the original cause, *i. e.*, the furnishing of the decedent with an unsafe place, and the consequent striking by the motor truck of the chain stretched across this appellant's passageway, which caused the plaintiff's decedent to fall and be injured by the motor truck.

We cannot subscribe to our co-defendant's contention that the injury to the plaintiff's decedent was a pure accident which could not have been anticipated, and that no liability attaches to it for that reason, because an examination of the record will undoubtedly convince this Court that there was something manifestly unusual in the handling of the motor truck just prior to the accident.

This Court, speaking in *Smith v. Public Service Corporation*, 78 N. J. L. 478, lays down the rule which we urge is applicable to the instant case. We quote from the opinion by Mr. Justice Trenchard (p. 481) :

“If it is, obvious that the act or omission was not the natural and proximate cause thereof, the question is for the court.”

No matter how speedily this appellant allowed the motor truck to enter upon the ferry-boat, if that was a fact, this appellant's co-defendant owed

a duty to the plaintiff's decedent not to injure him; for, as said by this Court in *Styles v. Long Co.*, 70 N. J. L. 301, speaking through Mr. Justice Swayze (p. 304):

"In a case where the duty to the plaintiff rests in the first instance upon some one not the defendant, and the plaintiff is injured by a failure to perform that duty, the proximate cause of the injury is the failure of the one who is under a duty immediately to the plaintiff."

A consideration of the authorities of our State as to what has been considered the natural and proximate cause of accidents, and the application of that doctrine to the instant case, shows that—

"The proximate cause is the efficient cause—the one that necessarily sets the other causes in operation. *The causes that are merely incidental or instruments of a superior or controlling agency are not proximate causes* and the responsible ones though they be nearer in time to the result."

Batton v. Public Service Corp., 75 N. J. L., at p. 859.

Thus,—

"Inasmuch as the law cannot undertake to trace back the chain of causes indefinitely, it stops at the first link in the chain of causation and only looks to the person who is the proximate cause of the injury."

Cuff, Admrx., v. *N. & N. Y. R. R. Co.*, 35 N. J. L., at p. 30.

Conceding, for the sake of the argument, that the place furnished by this appellant to the plaintiff-respondent's intestate to stand in on its ferryboat was not a safe place, as alleged in the plaintiff-respondent's complaint, we take it that this appellant's negligence at most was only one of

the antecedents or conditions of an event from which it is relieved of liability on account of the intervening negligence of its co-defendant; for, as said by this Court in *Pyers v. Tiers*, 89 N. J. L., at p. 522:

“* * * a person whose negligence may have been one of the antecedents or conditions of an event is relieved juridically from liability if such negligence is applied to the particular event by the intervening negligence or malice of a third party.”

for the reason that,—

“* * * an intervening cause is the act of an independent agency which destroys the casual connection between the negligent act of the defendant and a wrongful injury, independent act being the immediate cause, in which case damages are not recoverable because the original act is not the proximate cause.”

Davenport v. McClellan, 88 N. J. L. 654.

In the case at bar the negligence of the two defendants was of an entirely distinct character. At best this appellant's negligence can be said to be of a purely negative character,—furnishing the condition,—while that of its co-defendant was of the positive and active type. The intervening agency, *i. e.*, the reckless driving of the motor truck, between this appellant's negligence, transmitted no force to this appellant's wrong, and, therefore, no casual connection existed between the two negligent acts. Thus, this appellant's original wrong was in no way the proximate cause of the death of the plaintiff-respondent's decedent.

See,

D. L. & W. R. R. Co. v. Salmon, 39 N. J. L., at p. 310.

The jury having found by its verdict that this appellant's co-defendant was negligent, as charged

by the plaintiff-respondent, surely such a finding establishes that the intervening act of the driver of the motor truck was the wrongful act and the culpable and efficient agency between this appellant's fault. And it would be only when—

“* * * the fact that between the defendant's fault and the plaintiff's injury there are intermediate acts of other persons, even of the plaintiff, * * * if the intervening acts are not wrongful and either naturally follow upon the defendant's misconduct or merely furnish the conditions upon which that misconduct operates.”

Newark R. R. Co. v. McCann, 58 N. J. L. 642, 645,

that these would be liability on the part of the appellant.

In view of the fact that this appeal necessitates this Court to examine with particularity the record setting forth the testimony of the witnesses on the trial, with the exception of the medical witnesses, Dr. Shuck and Dr. Arlitz (p. 88, *et seq.*; p. 162, *et seq.*), no endeavor has been made by this appellant to set out the testimony of the other witnesses in the case at length; we feeling that an examination of the record will establish that the intervening cause directly bringing about the death of the plaintiff's intestate was not set in motion by the original act of this appellant, we agreeing with what the Supreme Court said in its opinion, that—

“With respect to the negligence of the Efficient Motor Transportation Company, it is sufficient to say that the evidence respecting the plainly obvious defective condition of the brake and driving chain of the truck, made the negligence of the company in inspection and repair a jury question” (p. 8, l. 32 *et seq.*).

because the—

“* * * heavy motor truck, owned and operated by the defendant, the Efficient Motor Transportation Company, came through the team gangway at a high and dangerous rate of speed, entirely out of control, and crashed through the chain, causing it to snap and strike the plaintiff's decedent, throwing him in front of the truck which then ran over him and injured him so severely that he died” (p. 8, l. 21 *et seq.*),

which conclusion, if also concurred in by this Court, we are satisfied will show that the Efficient Motor Transportation Company alone is responsible to the plaintiff-respondent, for the situation disclosed by the record is not very dissimilar to the case of *Burton vs. W. J. Ferry Co.*, 114 U. S. 474, where an elderly woman was unable to obtain a seat upon a crowded ferry boat which collided with a barge. The Court held that the failure of the company to provide her with a seat was not the proximate cause of the injury which she sustained from the collision.

“Cases”, says Justice Minturn, after referring to the above case, in the case of *Powers vs. Standard Oil Co.*, 119 Atlantic Reporter, 273, “might be multiplied in an effort to elucidate the principle, and to emphasize the differentiation, between an immobile, inefficient condition, innocuous in itself as a motive power for harm, and an efficient operating proximate cause, without whose intervention and instrumentality damage was impossible.”

See also,—

Potter v. Batt, 72 N. J. L. 473;

Hammil v. P. R. R. Co., 56 N. J. L. at p. 379;

Justesen v. P. R. R. Co., 92 N. J. L. at p. 259.

Tested by the rule as laid down in the various decisions of our courts herein referred to, we take

it that the Supreme Court, in its affirmance of the judgment rendered by the Trial Court, erred in sustaining the Trial Court in refusing to direct a verdict in favor of this appellant; and we respectfully submit that its error be corrected by this Court by a reversal of the judgment as against this appellant, The Delaware, Lackawanna and Western Railroad Company.

Respectfully submitted,

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