

## I N D E X

	PAGE.
Summons . . . . .	1
Complaint . . . . .	2
Answer . . . . .	4
Reply . . . . .	6
PLAINTIFF'S TESTIMONY:	
Rocco Passarello—Direct . . . . .	8
Cross . . . . .	18
John Graziano—Direct . . . . .	31
Cross . . . . .	38
Frank Graziano—Direct . . . . .	43
Cross . . . . .	47
Felix Bella—Direct . . . . .	53
Cross . . . . .	57
DEFENDANT'S TESTIMONY:	
George T. Smith—Direct . . . . .	63
Cross . . . . .	65
Recalled—Direct . . . . .	150
Recalled—Cross . . . . .	153
Robert Hartley—Direct . . . . .	69
Cross . . . . .	73
William Cook—Direct . . . . .	88
Cross . . . . .	96
William S. F. Pierce—Direct . . . . .	105
Cross . . . . .	109
Joseph Gondolfo—Direct . . . . .	113
Cross . . . . .	115

	PAGE
Winfield Cook—Direct . . . . .	117
Cross . . . . .	119
Everett Somers—Direct . . . . .	121
Cross . . . . .	123
Harry L. Ostrander—Direct . . . . .	127
Frank Dare—Direct . . . . .	129
Cross . . . . .	132
Abraham C. Schneider—Direct . . . . .	134
Cross . . . . .	135
Joseph B. Schock—Direct . . . . .	136
Louis Severino—Direct . . . . .	138
Cross . . . . .	142
 PLAINTIFF'S REBUTTAL:	
William Flexton—Direct . . . . .	158
Cross . . . . .	159
Rocco Passarello—Recalled—Direct . . . . .	165
Recalled—Cross . . . . .	166
 DEFENDANT'S REBUTTAL:	
Abram Lane—Direct . . . . .	167
Cross . . . . .	167
Charge of the Court . . . . .	169
Defendant's Exceptions . . . . .	173
Defendant's Request to Charge . . . . .	174
Verdict . . . . .	175
Notice of Appeal . . . . .	176
Certification . . . . .	178

SUMMONS AND COMPLAINT.

(Served Feb. 2, 1921.)  
(Filed Feb. 6, 1921.)

THE STATE OF NEW JERSEY to 10  
West Jersey and Seashore Railroad Com-  
pany, a corporation. You are summoned  
to answer the annexed complaint of Rocco  
Passarello in an action at law in the  
Camden County Circuit Court. And take  
notice that unless you file your answer to said com-  
plaint with the clerk of the Camden County Circuit  
Court, at Camden, within twenty days after service  
upon you of this writ and the annexed complaint,  
the plaintiff may proceed in the suit and judgment 20  
may be entered against you.

Witness, FRANK T. LLOYD, Judge of the Camden  
County Circuit Court, at Camden, this fourth day  
of February, A. D. nineteen hundred and twenty-  
one.

WILLIAM D. BROWN,  
*Clerk.*

ALBERT S. WOODRUFF,  
*Attorney.*

## COMPLAINT.

## CAMDEN COUNTY CIRCUIT COURT.

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	ROCCO PASSARELLO,	}	Action at Law.
	<i>Plaintiff,</i>		
10	v.	}	Complaint.
	WEST JERSEY & SEASHORE		
	RAILROAD, a corporation,		
	<i>Defendant.</i>		

---

Plaintiff, Rocco Passarello, of Atco, Camden County, New Jersey, says that:

20 1. On December 20, 1920, defendant owned and operated a steam railway running through the Town of Atco, Camden County, New Jersey, and there-over operated its steam trains. Where said railroad crosses the main street of the town of Atco at grade defendant maintained a watchman for the protection of persons using said highway and crossing said tracks at grade and it was the duty of defendant's servants and agents in control of its trains to give sufficient signal by bell, whistle or other means of

30 the approach of defendant's trains to said public crossing.

2. During the evening of said day plaintiff, who was the owner of a new Ford sedan, was driving the same eastwardly on said main street in the Town of Atco, Camden County, New Jersey, and lawfully at-

tempted to cross defendant's said railroad tracks at said public crossing, where defendant's crossing watchman was located; at said time and place one of defendant's trains was approaching from the north and defendant's servants and agents in control thereof carelessly and negligently failed to give proper and sufficient signal by bell or whistle of its approach to said crossing; at said time and place defendant's said watchman remained in his watchman's box until said train was in immediate proximity to said crossing and plaintiff had driven his machine upon the railroad tracks over which said train was approaching. Defendant's said crossing watchman then came from his watchman's box, signalled and called to plaintiff to warn plaintiff of the approach of said train. Plaintiff, in order to save his life, jumped and was assisted from said machine and the machine was struck by the train of said defendant and demolished. Plaintiff lost the entire value of his said automobile.

10

20

3. Said accident was caused entirely by reason of the carelessness and negligence of the defendant, its servants and agents, in that no sufficient warning by bell, whistle or other means was given of the approach of defendant's said train to said public crossing, and in that defendant's said crossing watchman failed and neglected to warn plaintiff of the approach of such train notwithstanding the fact that he was placed and maintained there for that purpose.

30

Plaintiff demands \$1500.00 damages.

ALBERT S. WOODRUFF,  
*Attorney of Plaintiff.*

## ANSWER.

(Filed Feb. 21, 1922.)

## CAMDEN COUNTY CIRCUIT COURT.

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10 ROCCO PASSARELLO,  
*Plaintiff,*  
 v.  
 WEST JERSEY & SEASHORE  
 RAILROAD, a corporation,  
*Defendant.*

} Action at Law.  
 Answer.

---

20 The defendant, a corporation of the State of New Jersey, making answer to the complaint filed in the above cause, says:

1. Defendant admits that on December 20, 1920, it owned and operated a steam railway running through the Town of Atco, Camden County, New Jersey, but denies the rest of paragraph 1.

2. Defendant denies paragraph 2.

3. Defendant denies paragraph 3.

30

## FIRST DEFENSE.

There can be no recovery on the part of the plaintiff because he was guilty of contributory negligence in attempting to go over the crossing in front of the on-coming train.

SECOND DEFENSE.

There can be no recovery on the part of the plaintiff because he was guilty of contributory negligence in attempting to pass over the crossing when the approaching train was in plain sight and hearing.

THIRD DEFENSE.

Plaintiff was guilty of contributory negligence in attempting to cross the tracks of the defendant when the crossing watchman was giving warning of the trains approach.

10

FOURTH DEFENSE.

Plaintiff assumed the risk of injury and property loss in attempting to go upon the crossing in front of the on-coming train.

20

FIFTH DEFENSE.

Plaintiff was negligent in going upon the tracks of the defendant at a time when the approaching train was in plain sight and hearing, which negligence precludes a recovery in this case.

BOURGEOIS & COULOMB,  
*Attorneys for Defendant.*

30

REPLY.

(Filed March 1, 1921.)

CAMDEN COUNTY CIRCUIT COURT.

10

ROCCO PASSARELLO,  
*Plaintiff,*

v.

WEST JERSEY & SEASHORE  
RAILROAD, a corporation,  
*Defendant.*

Action at Law.  
Reply.

20

The plaintiff denies every allegation as set forth  
in the answer.

ALBERT S. WOODRUFF,  
*Attorney of Plaintiff.*

30

TESTIMONY.

CAMDEN COUNTY CIRCUIT COURT.

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ROCCO PASSARELLO, <i>Plaintiff,</i> v. WEST JERSEY & SEASHORE RAILROAD, a corporation, <i>Defendant.</i>	}	Action at Law.	10
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December Term, 1/10/23.

APPEARANCES: 20  
 For the plaintiff, A. S. WOODRUFF, ESQ.  
 For the defendant, BOURGEOIS & COULOMB, ESQS.

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Before LLOYD, J., and a jury.

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(Mr. Woodruff opens the case to the jury for the plaintiff.) 30

(Mr. Coulomb opens the case to the jury for the defendant.)

## THE CASE FOR THE PLAINTIFF.

ROCCO PASSARELLO, SWORN.

By Mr. Woodruff:

- Q. Mr. Passarello, where do you live?  
10 A. Atco.  
Q. How long have you lived in Atco?  
A. All my life, for thirty years.  
Q. Where do you work?  
A. At the broom factory.  
Q. Is that in Atco?  
A. Yes, sir.  
Q. How near to this main crossing at the station?  
A. Oh, I guess about three hundred feet.  
Q. So that you are familiar with the Atco station  
20 and the main platform, are you?  
A. Yes.  
Q. The main crossing?  
A. Yes.  
Q. Where does your brother live?  
A. Right across from the railroad crossing.  
Q. How far?  
A. About thirty yards, I guess.  
Q. And in what direction from this main cross-  
ing?  
30 A. That is toward Philadelphia, to the north.  
Q. Is there a street there by his house?  
A. Yes.  
Q. Which way does the street run?  
A. Well, it runs north and south.  
Q. The same as the railroad?  
A. The same as the railroad does.

The Court: You are the plaintiff in the case, are you?

Mr. Woodruff: Yes.

Q. What kind of place does your brother have there?

A. A pool room.

Q. Does he live there, too?

A. Yes.

10

Q. Is there anything between his house and this main crossing, I mean, any houses or anything of that kind?

A. No.

By the Court:

Q. What crossing is it—where is it?

A. They call that Atlantic Avenue along the railroad here.

20

The Court: Atlantic Avenue where, Camden?

Mr. Woodruff: No, Atco.

By Mr. Woodruff:

Q. The street that your brother lives on, that runs parallel with the railroad, they call that Atlantic Avenue?

A. Yes.

30

Q. Is that the one where the broom factory is on, too, further down?

A. Yes.

Q. Now, the main crossing runs which way, where this accident happened?

A. Runs east and west, crosses over like that (indicating).

Q. You crossed over east and west, did you, with the vehicle?

A. Yes.

Q. And that street, that is called what?

A. Atco Avenue.

Q. That runs from White Horse Pike, the main corner right over past the station, does it?

10 A. Right over by the station.

Q. How many tracks are there?

A. Four; it has two tracks for two trains.

Q. Two tracks for two trains—four rails for two tracks?

A. Yes.

Q. At the time of this accident, did they have a watchman there?

A. Yes.

Q. What did he have to get in out of the weather?

20 A. A little shanty.

Q. Where was that shanty?

A. Up near the station.

Q. On what side of the crossing?

A. On the other side, the east side.

Q. On the east side of the railroad?

A. Yes.

Q. That is the opposite side from your brother's?

A. Yes.

30 Q. And which side of the roadway, the north side or south side of the roadway?

A. The north side.

Q. The same side that the station is?

A. Yes.

Q. That is where the main station in Atco is, is it, right at that crossing?

A. Yes.

Q. Where had you been that day just before this accident?

A. Why, I was just going to take the two fellows home; I went over in the pool room and got the two fellows to take them home.

Q. You went over to your brother's pool room to take them home?

A. Yes, to take them home.

Q. What kind of machine did you have?

A. A Ford sedan.

10

Q. And how long had you had it?

A. A little over four months; it was almost new.

Q. What had you used it for?

A. Just for my own use.

Q. You had not used it at the broom factory, for your work there?

A. No.

Q. Who did you buy that of?

A. Flexon, William Flexon.

Q. Where is his place?

20

A. Williamstown, New Jersey.

Q. How much did you pay for it four months before this accident?

A. Ten hundred and forty-six dollars.

Q. Had you put any attachments on it that cost you money?

A. I put on attachments that amounted to about fifty or sixty dollars, about that.

Q. What did you put on?

30

Mr. Coulomb: That is objected to; I don't find any allegation about that here.

Mr. Woodruff: I think that is right; we will leave that out, Mr. Coulomb.

Q. What time of the day was it when you went to the pool room to get these boys?

A. It was around 8 o'clock, quarter of eight, I guess.

Q. Did you go in the pool room?

A. I went in the pool room, yes.

Q. Did you stay there any time?

A. I was in there until the game—they were shooting a game, until the game got over.

10 Q. Shooting a game of pool?

A. Yes.

Q. And you waited until they finished their game?

A. Finished the game, yes.

Q. When you came out, where was your Ford—where had you left your Ford?

A. Right in front of the pool room.

Q. That is on what would be Atlantic Avenue?

A. Yes.

Q. How many of you got in?

20 A. Three of us altogether, me and two other fellows.

Q. What were the two boys' names?

A. Frank Graziano and John Graziano.

Q. Now, in taking them home, which was the direction that you were going?

A. Why, I had to turn the machine around.

Q. You had to turn the machine around?

A. Yes, the machine was facing the way the train was coming.

30 Q. North?

A. North, yes.

Q. That is where you had come up and stopped in front of your brother's place, with your machine facing north?

A. Yes.

Q. And when you got in, you faced north; did you?

A. Yes, sir.

Q. Now, before you turned around, let me get your description of the condition; looking north up the railroad track from your brother's there toward this main crossing, can you see a train approach?

A. You can't see a train at all.

Q. Why can't you see—what is the obstruction?

A. The train runs through a cut, then there is big trees there and a little shed they have got there too, on the side; you can't see nothing around that curve. 10

Q. What is the shed that they have there?

A. Just for passengers, I guess.

Q. Is it an open shed?

A. An open shed, yes.

Q. And it is on the opposite side of the tracks from their regular passenger station?

A. Yes.

Q. Just an ordinary waiting shelter?

A. Yes.

Q. Does the track run straight from the main 20 crossing northwardly?

A. It does from the crossing down toward Atlantic City, but from the crossing coming toward Camden, there is a bend there, a real sharp bend.

Q. And where is that bend with respect to this cut?

A. Right by the shed there, right around the corner.

Q. Where does the curve start, how close to the main crossing? 30

A. Well, I guess about a hundred and fifty feet.

Q. And then it curves—where does the cut start, where does the rise in the ground start?

A. Oh, it starts all the way up—about a quarter of a mile away from the station, where the cut starts.

Q. Where the cut starts?

A. Yes.

Q. But the curve starts then closer to the main crossing than the cut?

A. Yes, that is the deepest place right there, right before you get to the crossing.

Q. The deepest place—which do you mean, of the cut or the curve?

A. The cut and curve both.

Q. Well, now, when you were in the Ford —

10 The Court: You haven't either of you got a plan of this thing, have you?

Mr. Coulomb: No, if your Honor please, we have not.

Mr. Woodruff: I don't usually make them.

20 Q. Now, Mr. Passarello, when you got in your Ford, then you were facing north, were you?

A. Yes.

Q. And that is in a position to look right up in the direction from which the train would come, coming from Camden?

A. Yes.

Q. At that time could you see any train?

A. I couldn't see any.

Q. Were there any signals?

A. No.

30 Q. Then what did you do with your Ford?

A. I turned it around and started across.

Q. And that took you in what direction, when you turned and started to cross the main crossing?

A. Well, that took me in the direction toward the avenue.

Q. East or west?

A. That would be south, where the railroad runs.

Q. Yes, but I mean the direction of your Ford; you wanted to go across this crossing, didn't you?

A. Yes.

Q. And you were facing north and turned around?

A. Turned around to my right, right around.

Q. Turned to the right?

A. Yes.

Q. Then you had to go which direction to cross the crossing itself? 10

A. I had to follow the railroad down a little ways and then turn to the left again.

Q. How far did you have to follow the railroad?

A. About ten yards, I guess.

Q. Then you go in which direction?

A. Turn to my left again.

Q. To your left, which would take you east?

A. Yes.

Q. Who was seated up in the front part of the Ford with you, any one? 20

A. Yes, Frank Graziano.

Q. Frank was up front?

A. He was up front.

Q. Who was in back?

A. John, his brother, was sitting in back.

Q. Now, when you turned around and came on down to the crossing, was there anything to obstruct your view of the watchman, if he had been out there on the crossing? In other words, could you see the crossing clearly? 30

A. I could see the crossing, but didn't see anybody standing there.

Q. That was open, you say—there wasn't anything between you and the crossing?

A. Yes.

Q. Do you know the watchman?

A. Yes.

Q. What was his name?

A. Louis Severino.

Q. He was an Italian, too, wasn't he?

A. Yes.

Q. How long had he worked there?

A. Oh, he worked there quite a little while.

Q. And you knew him by sight from seeing him there, did you?

10 A. Yes.

Q. Now, when you came on down those few yards of the street and turned to go out across the railroad tracks, was there a watchman out there then?

A. No, the watchman wasn't there then.

Q. How far did you get before he came out?

A. The first two rails, the first track, the single track, one track, I was over one track with the two front wheels.

Q. Where did he come from?

20 A. He come from the flag station and hollered something, "Stop," or "something is coming"—I don't know what he said, something he hollered out there.

Q. What do you mean, the flag station?

A. That is the box where they stand at all the time.

Q. What we spoke of before as the box?

A. Yes, that is the box.

Q. Had he been inside of that and came out?

30 A. He was inside, yes.

Q. And came out?

A. Then he came out.

Q. What were his actions when he came out—what did he do?

A. He hollered, put his hand up and hollered to go back.

Q. What did you try to do?

A. I didn't try to do anything. As he hollered to go back, that train was right on top of me, and the other fellows jumped out; we all jumped out.

Q. Did you get out clear?

A. Just about.

Q. What happened to the Ford?

A. Went all to pieces.

Q. Was anything left of it except junk?

A. That is all, junk.

10

Q. Were any of you struck at all, any of you boys?

A. No.

Q. You all got out safely, did you?

A. Yes, we all got out safely.

Q. When the train was coming down then, when you saw it, was there any signal from it then either by bell or by whistle?

A. No, there is no bell there.

Q. Well, on the train itself, was there?

A. Well, even if there was on the train, you can't hear that when it goes by there; you can't hear it before the train comes to the crossing.

Q. Why not?

A. The bell, I can't, and nobody else can, I guess.

Q. Why can't you hear there?

A. Most of the time they are not ringing.

Q. Well, in this particular case, I want to know in this case of yours whether there was any signal from that engine at all either by bell or whistle?

A. No, sir.

30

Q. Even when you say it was on top of you almost?

A. I didn't hear it.

Q. How far did the crossing watchman come out—how close did he get to you?

A. Why, he stepped right ahead of me, on the other side of the other track.

Q. Did he have a lantern in his hand or a signal?

A. He had one of these side lanterns there with plates on each side that you can only see in front like.

Q. That throws the light in one ——

A. Yes, in one direction.

Q. That is what he had when he came out?

A. Yes.

10 Q. Did he have that inside the box or have it outside on the ground and lift it up?

A. They keep that inside with them.

Q. So when he first came out, he had it with him, did he?

A. Yes, when he first came out.

Q. Now, what was done with the remains of the Ford?

A. Why, it was laying on the side there, and finally some junk man got hold of it.

Q. Did you ever get anything out of it?

20 A. My brother, too, didn't want it in his yard any more; they had to take it away.

Q. Did you ever get anything out of it at all?

A. No, sir.

Q. Do you know how many miles you had driven?

A. Oh, I guess altogether—I don't think she ran over seven hundred miles, only used it for the one use, that is all.

Cross-examination.

30

By Mr. Coulomb:

Q. Is Mr. Flexon, the man that you bought this car from, an automobile dealer?

A. Yes.

Q. In Williamstown?

- A. Yes.
- Q. Was the car new or second-hand?
- A. New.
- Q. A new car?
- A. A new car.
- Q. Have you the contract of sale or bill of sale with you?
- A. No, I haven't that with me.
- Q. Did you ever have one?
- A. I had one, yes. 10
- Q. This accident happened December 8, 1920?
- A. December when?
- Q. December 8th?
- A. No, sir.
- Q. December 20th?
- A. December 20th.
- Q. What kind of night was it?
- A. Well, it was at night, that is all.
- Q. A clear night, cold night, dry night, or wet night? 20
- A. I don't know; it was a cold night.
- Q. It was a cold night?
- A. Not very cold, right in between, I guess.
- Q. What do you mean—was it cold?
- A. It wasn't what you would call cold; you didn't have to wear an overcoat.
- Q. Did you have your windows on the car closed?
- A. I always have my window down on the left-hand side.
- Q. Always have it open? 30
- A. Always, yes.
- Q. And had it open on this occasion?
- A. Yes.
- Q. How about your windshield in front, was that open or closed?
- A. That was closed.

Q. Closed tight?

A. The windshield, yes.

Q. How long were you in the pool room before you came out and got in your automobile?

A. About ten or fifteen minues, I guess.

Q. Was the window closed when you went in, the left side window?

A. No, it was open.

Q. You left it open?

10 A. I had it open all day.

Q. As I understand it, your brother's pool room where you went, is right along Atco Avenue, at the corner of Atco Avenue and Atlantic Avenue?

A. Yes, but it ain't right on the corner of Atco Avenue.

Q. Is there anything between it and Atco Avenue?

A. There is nothing in between it, but it is about ten yards away from Atco Avenue.

Q. Ten yards away from it?

20 A. Yes.

Q. And is the entrance toward the railroad or north toward Camden?

A. Toward the railroad.

Q. Which direction did you leave your car when you stopped there for these boys?

A. Standing toward the north.

Q. So that in order to cross this crossing, you had to turn around?

A. Yes.

30 Q. Make one turn to the right?

A. Yes.

Q. And then another turn to the left to cross it?

A. Correct.

Q. The starting of this car required some little attention from you, didn't it?

A. No, sir.

Q. None at all?

A. No, sir, I had a starter, I didn't have to do anything.

Q. You didn't have to do anything?

A. No, sir, only just push on it and it will start.

Q. You say you looked north before you made any turn at all?

A. Yes.

Q. You looked for what?

A. Looked to see whether a train was coming. 10

Q. I see, you looked to see whether a train was coming?

A. Yes.

Q. Then you didn't see any?

A. No, sir.

Q. Then you made this turn and as I understand it the next thing you saw was the watchman out there with his lantern?

A. Yes, sir, when I was on the track.

Q. After you started to make that turn, before 20 you came up to the track, did you again look to see whether there was a train coming?

A. Sure, you couldn't see anything; there was the station there and everything.

Q. I am asking you whether you looked?

A. Yes, I looked.

Q. You looked notwithstanding you couldn't see?

A. Yes.

Q. You have lived there thirty years?

A. Yes. 30

Q. And crossed this track frequently?

A. Once in a while, yes.

Q. What do you mean by "once in a while"—once or twice a day?

A. No, sir, maybe once or twice a week.

Q. What side of the railroad did you live on?

A. On the north side.

Q. What side do you work on?

A. On the north side.

Q. You say you crossed about once or twice a week?

A. Yes.

Q. And you are thoroughly familiar with it?

A. Yes, sir.

10 Q. Now, where was it you made the second observation in the direction from which this train was coming? How far was your automobile from the track when you made the second observation?

A. Well, before I got on the track, I looked again.

Q. How far were you from the track?

A. I don't know how far, ten or fifteen feet, I guess ten feet.

Q. Did you stop the car at that point?

A. I was going along slow, because —

Q. I say, did you stop the car?

20 A. No, sir, I didn't stop the car.

Q. How fast were you going?

A. About six or eight miles an hour.

Q. You were going about six or eight miles an hour; that is the fastest you had been going since you started?

A. Since I started, yes.

Q. And your speed never exceeded six or eight miles an hour?

A. No, sir.

30 Q. Now, where was your car when the watchman came out on the track, on the first track?

A. The front wheels were over the first rails, over the first rail.

Q. And is that where it stopped?

A. That is where I stopped when he hollered.

Q. Exactly; you stopped right where you were?

A. Yes.

Q. Now, do you know what he said—did you hear what he said?

A. I didn't exactly hear what he said; I guess he said, "Go back," or "stop;" he said something.

Q. And you stopped immediately that you heard him make this cry, is that right?

A. Yes.

Q. Did you see the red lantern at that time in his hand?

10

A. In his hand, yes, he was coming out of the box.

Q. This was one of the red lanterns that had a reflector on it that only shows in one direction?

A. In one direction.

Q. Now, when did you know that the train was coming, having stopped in this place—as you stopped on the track, what attracted your attention to it?

A. Why, he hollered.

Q. How did you know what it was that he hollered for?

20

A. I didn't know what he was hollering at.

Q. Which direction did you look for the train?

A. Why, I looked both directions.

Q. Which direction did you look first?

A. I don't remember which direction I looked first.

Q. And where was the train?

A. The train was coming right around the bend.

Q. How far away from you?

A. About a hundred feet.

30

Q. About a hundred feet?

A. Yes.

Q. And you could see it?

A. Sure, I could see it.

Q. You think that bend is only a hundred feet from the crossing?

A. Well, I guess it is a hundred and fifty or a hundred, I don't know; I never measured the thing.

Q. Well, you think it is about a hundred and fifty feet?

A. I think it is about a hundred.

Q. You think it is about a hundred?

A. Yes.

Q. Was the train moving fast or slow?

A. Oh, I should judge—the agent told me it was  
10 going eighty miles an hour when it hit my machine.

Q. Did you think it was going that fast?

A. I don't know; I didn't have no speedometer on it.

Q. I didn't ask you if you had any speedometer on it; I asked you whether you thought it was going that fast?

A. I don't know whether it was going eighty miles an hour or seventy or fifty miles an hour.

Q. I see; when you saw it, at any rate, it was a  
20 hundred feet from your car, is that correct?

A. Somewhere around there, yes.

Q. Was it, more or less?

A. I don't know whether it was more or less.

Q. You have just testified here as to the distance?

A. I imagine around a hundred feet.

Q. Don't get angry about it; we only want to get the truth of this thing.

A. Yes, but you are not going to make me say the  
30 same thing twice. Go on; I will answer your questions.

Q. I want to know how far you say this bend was in the railroad track around which you saw this train coming?

A. It was about a hundred feet.

Q. Now, as I understand, these Ford sedans have one door one each side?

A. One door on each side.

Q. Can you get out of that door from the back seat without moving one of the front seats?

A. Yes.

Q. The door opens directly into the back seat, does it?

A. Right in the center of the car.

Q. So that the front seat can remain in position and people can be seated in the front seat, and yet a person in the back seat can get out without disturbing them? 10

A. Sure.

Q. Now, can the person in front get out without moving one of the seats?

A. Sure, all you have got to do is to step over one.

Q. Oh, you have to step over?

A. Either step over or move the seat out of your way.

By the Court:

20

Q. You can't get out of the door next to your driving seat?

A. No.

Q. There is no door there?

A. There is a door there right in back of the driving seat.

Q. You say the door is in the center of the car and not immediately aside of you?

A. No.

30

By Mr. Coulomb:

Q. Now, there was some one seated in that seat immediately alongside of you, wasn't there?

A. Yes.

Q. Do you know who got out of the car first when the car stopped there?

A. I don't know; I think it was the fellow sitting in the back got out first.

Q. Did you get out next or were you the last one to get out?

A. I was the last one; they got me out, I was going to try to back off the track.

10 Q. I see; what did you do in order to try to back off the track?

A. Well, I was going to try to back off the track, then they hollered; they got me out; they told me to come out and leave the car there because the train was coming.

Q. Did you make any effort to get the car out?

A. No, the train was too close.

20 Q. How close was the train to you when you got out; you said it was a hundred feet when you first saw it; now, how far was it from you when you got out?

A. Well, it was somewhere around a hundred and seventy-five or a hundred feet, too, that is the time I seen it, when they told me to get out.

Q. Oh, you didn't see it before they told you to get out?

A. No, I didn't see it.

Q. These people were already out then when they told you to get out?

A. One of them was, yes.

30 Q. Yet you had not seen the train at the time he got out?

A. Well, as soon as he got out he hollered.

Q. Had you seen the train before he got out?

A. No.

Q. You had not—did you see the train before your other man got out?

A. No, sir.

Q. So they both got out before you saw the train?

A. And they told me to get out.

Q. And they told you to get out?

A. Yes.

Q. At that time this train was between a hundred and a hundred and fifty or a hundred and seventy-five feet away?

A. No, sir.

Q. Well, what was it—what is the situation? 10

A. I didn't say a hundred and seventy-five feet, I said a hundred feet.

Q. You didn't say a hundred and seventy-five feet?

A. No, sir, I didn't say a hundred and seventy-five feet.

Q. Then when you saw the train after these two men had gotten out and one of them called or both of them called for you to get out, you for the first time saw the train and it was a hundred feet from you? 20

A. Yes, sir, the first time.

Q. Was that the first time you knew the train was coming?

A. Yes.

Q. Did you know why those people were getting out of the car so fast?

A. We all seen the train at the same time; why shouldn't I?

30

(Question repeated.)

A. Because the train was coming.

Q. They saw the train before you did then, did they?

A. Yes, sir.

Q. But they didn't tell you about it until they got out?

A. They hollered at the same time, just as they seen the train, they told me it was coming.

Q. What did you see of the train when you saw it, what part of it?

A. Just the light.

Q. Just the head-light?

A. Yes.

10 Q. Do you know about what time of night it was when that accident happened, Mr. Passarello?

A. About 8 o'clock.

By the Court:

Q. Did that train come from your right or left?

A. From my left.

Q. You have got a patch over your right eye.

A. Yes, he said I had a patch over my left eye.

20 Q. Well, I am not talking about that; I am asking you, you have got a patch over the right eye?

A. Yes.

Q. Did you have it then?

A. Yes, sir.

By Mr. Coulomb:

Q. Does that effect the vision in your left eye any?

30 A. No, sir.

Q. Not a bit?

A. Not a bit.

Q. Now, you heard the watchman call to you to stop, didn't you, or to do something at any rate?

A. Yes, when I was on the track.

Q. But you heard him call to you to stop, didn't you?

A. I heard him holler, not to call me.

By the Court:

Q. Well, you understood it was to stop?

A. Yes, it must have been to stop or something.

By Mr. Coulomb:

Q. Did you hear anybody else call you?

A. No, sir.

10

Q. Nobody at all?

A. No, sir.

Q. Did you see anybody around there?

A. No, sir.

Q. After the accident did you see anybody there?

A. After the accident I guess there must have been a hundred there.

Q. But you didn't see a soul before the accident except the watchman?

A. No, sir, there was nobody around there.

20

Q. There wasn't a soul around there at all?

A. No, sir.

Q. Now, you said in your direct examination that you could not hear the bell ringing on the engine; what did you mean by that?

A. Why, I didn't hear it ring, no.

Q. You said you couldn't hear it?

A. No, I couldn't hear it.

Q. Why couldn't you hear it?

A. I don't know why.

30

Q. Have you observed that you couldn't hear a bell on other occasions than this?

A. Yes, I can't hear the bell; most the time they are not ringing their bells.

Q. Well, the times when they are ringing, do you hear them?

A. That all depends if I am listening to them.

By the Court:

Q. Were you listening this day?

A. Yes, sir.

By Mr. Coulomb:

10 Q. Why were you listening?

A. Because I was going over the crossing.

Q. Did you expect a train around that time?

A. No, sir.

Q. You didn't think there was any train coming along at all around 8 o'clock?

A. No, sir.

Q. You never heard of the bridge train passing through Atco about 8 o'clock?

A. No, sir, most nights it was late.

20 Q. Did you expect it might be late on this night?

A. No, sir, I weren't even thinking about trains.

Q. You weren't thinking about trains?

A. No, sir.

Q. As I understand, Mr. Passarello, you saw this red lantern in the watchman's hand as soon as he came out of the shanty?

A. Yes.

Q. And at that time one of your front wheels was over the first rail?

A. Yes.

30 Q. And was the train in sight at that particular instant?

A. Yes, sir.

Q. And it was about a hundred feet away from you?

A. Yes, sir.

Q. How long do you suppose it took you and your companion to get out of the car after it stopped?

A. I don't know.

Q. Have you any idea?

A. Less than a minute.

Q. Less than a minute?

A. Oh, yes.

Q. How much less than a minute?

A. Maybe about twenty seconds, I guess.

Q. About twenty seconds?

A. Yes.

10

By Mr. Woodruff:

Q. You got out as quickly as you could, did you?

A. I certainly did.

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JOHN GRAZIANO, SWORN.

20

By Mr. Woodruff:

Q. How old are you, John?

A. Twenty-two.

Q. Where do you live?

A. Atco.

Q. How long have you lived down there?

A. All my life.

Q. Were you at Passarello's pool room in Atco the night of this accident?

A. Yes, sir.

30

The Court: Mr. Woodruff, I have some papers here in a case which seems to have been discontinued.

Mr. Woodruff: Yes, if the Court please, there were two suits, one against the Pennsylvania Railroad and one against the West Jersey. The Pennsylvania Railroad case was discontinued, because it appears that this was a West Jersey operation.

Q. You were in the pool room when Passarello came there, were you?

A. Yes, sir.

10 Q. Now, had you been out in his Ford before?

A. Yes, sir.

Q. When you came out, what time was it?

A. Out of the pool room?

Q. Yes.

A. About five minutes of eight, 8 o'clock.

Q. What did you do then?

A. Got on the car.

Q. The Ford?

A. Yes.

20 Q. How did you get in—what positions did you take?

A. I came out of the pool room and jumped right in the car.

Q. Well, who drove?

A. Rocco.

Q. Where did you sit?

A. Sat in the back.

Q. Where did your brother sit?

A. Sat in the front.

30 Q. Which position was the car in when you came out—what way was it facing?

A. Facing toward Philadelphia, this way.

Q. And that street on which Mr. Passarello's pool room is, does that run the same as the railroad?

A. The same as the railroad.

Q. And it was facing toward Camden, was it?

A. Yes, sir.

Q. Now, when you came out of the pool room and got in the machine, afterward you turned around, didn't you, or made a turn so as to go in another direction?

A. Yes, he turned right around.

Q. Before that, did you listen for signals from any train?

A. Yes.

Q. Were there any from any train approaching at that time?

A. I couldn't see none.

Q. Could you hear any?

A. I didn't hear any.

Q. Now, as you turned, what direction did you go?

A. We were going in the direction toward home.

Q. Toward Atlantic City?

A. Toward home; we had to make a turn, a left-hand turn at the railroad.

Q. A left-hand turn which took you across the railroad?

A. Yes.

Q. Or would have taken you across, is that right?

A. Yes.

Q. Is there anything between the pool room house, the house in which the pool room is, and this main crossing, any buildings or anything at all?

A. There is a little station there where the people gets in when it rains, you know, for the train.

Q. Where is that with regard to the crossing?

A. That is right around near the bend, by the big trees, a lot of trees there.

Q. And this waiting platform that you speak about, the shed, how big is it?

10

20

30

A. Oh, it ain't very big, enough for about thirty or forty to get in there.

Q. Thirty or forty people—that is on which side of the track?

A. On the left side coming up this way.

Q. On the same side as Passarello's pool room, is it?

A. Yes, sir.

10 Q. And what else is there on that side up in that direction to obstruct your view of any train coming?

A. Trees there, that is all.

Q. Is the track straight up there?

A. No, it is on a curve.

Q. Which way does it curve?

A. It comes down straight and then turns like that right to the left.

Q. When you are going which direction does it turn to the left?

20 A. Toward Camden.

Q. When you are going toward Camden it turns around toward the left?

A. Yes.

Q. Toward the west?

A. Yes.

Q. Is that ground level where this curve is?

A. Well, it ain't very level, it is a little hill up there, coming up there.

Q. Does the railroad track go up over the hill or through it?

30 A. Goes right through it.

Q. A cut there, is it?

A. Yes, a cut.

Q. Do you know how deep that is?

A. I couldn't tell you how deep.

Q. When you are going across the main crossing from Passarello's pool room to go east across that

crossing, can you see a train that is coming from the direction of Philadelphia or Camden?

A. Can't see nothing.

Q. Why can't you see it?

A. Because there are trees there and there is a station there; you can't see nothing.

Q. Do you know this watchman, too?

A. Yes.

Q. That was stationed there at that time?

A. Yes.

10

Q. Now, as you turned around, how far did you have to go parallel with the railroad tracks before you bent over to go in an easterly direction?

A. What do you mean, the crossing?

Q. How far is Passarello's house above Ateo Avenue?

A. It is right close there, some ten yards above there.

Q. Something like thirty feet above there, is it?

A. About that.

20

Q. Is Atlantic Avenue a regular street going through, graded?

A. Well, it runs through as far as that little station; there is a little road there all the way through.

Q. And between Passarello's house and the railroad, the main crossing, is there any regular street laid out and graded, with gutters?

A. Going to the —

Q. How is it there?

A. Going toward Camden, you mean?

30

Q. No, from Passarello's pool room over toward the little shed by the station?

A. Yes, it is hard there, you know, that is where they turn around to wait for people to get off the train.

Q. But it is all hard all the way over to the main crossing?

A. Yes.

Q. Just the same as one continuous street all the way over to the main crossing and across the track?

A. Yes.

Q. As you bent around there to go over this crossing, what observation did you people in the machine make to know whether or not a train was coming—you people in the machine?

A. When?

10 Mr. Coulomb: You mean all persons in the machine?

Q. What did you do yourself to know whether there was a train coming or not as you came up to the crossing?

A. When I went across, you mean?

Q. As you came up to it, before you came across?

A. I looked to see if there was anything coming.

20 Q. Did you see anything coming?

A. Didn't see nothing coming.

Q. Did you hear any signals at that time?

A. Didn't hear nothing.

Q. Where did you see the watchman—where were you then?

A. Right on the first rail.

Q. Where did the watchman come from?

A. On the other side, he was coming.

Q. Where about?

30 A. There is a little path where you cross the railroad, you know, where people goes across; right across the railroad there.

Q. Well, where was he when you first saw it?

A. We was on this side and I saw him on the other side coming.

Q. You were on which side?

A. On the first rail.

Q. And where was he, how far away from you?

A. Oh, he wasn't far; he was on the other side of the railroad.

By the Court:

Q. Where was he?

A. Right near the little house there.

10

By Mr. Woodruff:

Q. Is that his house?

A. No, that is where he stays in.

Q. Well, it is his little shelter box that he goes in?

A. Yes.

Q. How close to that was he when you first saw him?

A. He was right close there.

20

Q. What did he have with him, anything?

A. A lantern.

Q. What did he do?

A. He hollered and told us to go back.

Q. Where were you then?

A. The first rail.

Q. Did he come over any closer to the crossing after that?

A. Yes, he came closer after we got hit.

Q. What was he doing at the time that you first noticed him over by his little box?

30

A. He was coming toward us.

Q. Coming toward you?

A. Yes.

Q. Can you tell me how close, when you first observed him, he was to his box, how many steps?

A. I couldn't tell you how many steps, about three or four steps from there.

Q. Three or four steps from the box?

A. Yes.

Q. How far is the box from the crossing, from the track?

A. From the first rail it is about five or six steps away from there, I guess.

10 — Q. That is the rail—when you say the first rail

A. The rail on the other side, where he is at.

Cross-examination.

By Mr. Coulomb:

Q. Graziano, you lived in Atco all your life, you say?

A. Yes.

20 Q. Twenty-one or twenty-two years?

A. Yes.

Q. What side of the railroad do you live on?

A. I live between—I don't live right in Atco.

Q. You live outside of Atco—you live on the east side of the railroad?

A. I live near that big bridge there.

30 Q. Is that on the east side of the railroad or west side of the railroad? In order to get from your home to the pool room, did you have to cross the railroad?

A. Yes, had to cross it.

Q. When did you make your first observation to see whether there was a train coming?

A. When we were near the pool room.

Q. Was that before you left the pool room?

A. Yes.

Q. Before you turned around?

A. Yes, I looked there, and then when we got near the railroad —

Q. Before you started the car?

A. Yes.

Q. Then where did you look again?

A. I looked when we got up close, pretty near to the railroad.

Q. How far were you, would you say, from the railroad track when you made your second observation? 10

A. About five or six feet.

Q. Now, how far can you see along the tracks when you are five or six feet from the railroad?

A. See about a hundred feet.

Q. You can see about a hundred feet, and you didn't see any train coming then?

A. Didn't see nothing coming.

Q. How fast was your automobile moving?

A. Oh, it was moving slow, because we had just got started, about seven or eight miles an hour. 20

Q. Who was driving?

A. Rocco.

Q. What side of the car were you sitting on?

A. I was sitting in the back on the left-hand side.

Q. Is there a window right alongside of you?

A. There is windows all around, glass all around.

Q. How many of the windows were open?

A. There was one window open.

Q. Which one was that?

A. That was the one in the front, right where he is sitting down. 30

Q. Was the window alongside of you open?

A. No.

Q. Did your car slow down as you came to the railroad track for the purpose of making this observation, or did it keep on at the same speed?

A. He kept on going slow.

Q. Did anybody direct your attention to the fact that the watchman was out, or did you see him yourself?

A. I saw him myself.

Q. And did you say anything to anybody when you saw him?

A. When I saw him, why, I seen the express coming, and I kicked the door open and jumped out.

10 Q. And how far was the train away from you when you did that?

A. Right near the little station.

Q. It was right near the little station?

A. It is about not quite fifty feet.

Q. That is the first that you saw the train?

A. Yes.

Q. You kicked the door open and got out—which side did you get out?

A. I got out on the left side.

20 Q. That is the side from which the train was coming?

A. Yes.

Q. And where did you go when you got out?

A. I gave one jump, and I went toward the pool room, see; then I hollered to the other fellows, "Jump out, it is an express."

Q. I see, you first made this jump toward the pool room, then you called out to them to jump?

30 A. Yes, no sooner than I stepped off the car, I hollered to them.

Q. Did they get out?

A. They got out.

Q. How long did it take before the three of you were out?

A. I jumped out, my brother after me, and Rocco—the last step he gave, the express hit it.

Q. Did you all get out on the left-hand side?

A. All of us, because that door was open.

Q. Where was that door when it was open with respect to the first rail of the track?

A. Where was it?

Q. Yes, was it right over the rail or was it toward the pool room from the rail or on the track itself—the door I am speaking about?

A. The front wheels were on the first rail.

Q. On the first rail?

10

A. Yes.

Q. Did you stop immediately you heard the watchman call?

A. I didn't stop; I heard him.

Q. Did Mr. Rocco Passarello stop the car?

A. He didn't stop; he jumped off.

Q. Didn't he stop the car at all?

A. I don't remember whether it stopped or not; it was going yet, I believe, going slow.

Q. You mean the engine was going?

20

A. The engine.

Q. You think the engine was going, but I mean the car itself, had that stopped?

A. Not quite.

Q. It was still moving a little?

A. Yes.

Q. I see; it was moving when you jumped out then?

A. Yes.

Q. And moving when Mr. Passarello and your 30 brother jumped out?

A. When Passarello jumped out, it was about stopped then.

Q. Well, was it moving or had it actually stopped?

A. It stopped then; when I jumped out it just about was moving.

Q. And when it finally stopped, the front wheels were on the first rail?

A. Yes, sir.

Q. How far were you from the first rail when you saw the watchman, the crossing watchman?

A. How far was I?

Q. How far was the car?

A. It was right there near the railroad.

Q. How near?

10 A. Right close to it; if this was the railroad, the car was right there, right close to it (indicating). He just had enough time to jump out.

Q. You said the car continued to move after you heard the crossing watchman give this call, the automobile continued to move?

A. Yes.

Q. Now, where was it when you first heard him give this call to do something or other, either to stop or go back?

20 A. It was on the first rail.

Q. It did not move any further than that at any time?

A. No, sir.

Q. So it wasn't moving when you jumped out?

A. When I jumped out it was moving; when he jumped out it wasn't, just about stopped when I hollered to him.

Q. In what direction was it moving?

A. It was going frontward.

30 Q. Toward the railroad—I see.

A. It was on the railroad.

Q. Moving eastward across the railroad?

A. Yes, sir.

Q. Where were the front wheels when it finally came to a stop?

A. When the car stopped?

Q. Yes.

A. The front wheels—I couldn't tell you; it was all to pieces then by that time. I just had enough time to get out.

Q. How long do you suppose it took you and your friends to get out of that car?

A. I guess took us about ten seconds; we made it as quick as we could.

Q. About ten seconds, you think, before you were all out?

10

A. Yes, sir.

---

FRANK GRAZIANO, SWORN.

By Mr. Woodruff:

Q. Frank, are you the brother of John who was just on the stand?

20

A. Yes.

Q. Were you in this Ford?

A. Yes, sir.

Q. You got in there at the pool room, too, did you?

A. Yes.

Q. Now, after you came out of the pool room, what did you do before you got in the Ford, or at the time you got in the Ford, to see whether any train was coming?

A. Just looked to see whether a train was coming.

30

Q. Well, was there any coming at that time that you had any notice of?

A. No.

Q. Any whistle or any bell or any signal at all?

A. No, I didn't hear none.

Q. Where did you sit, what part of the Ford?

A. On the right-hand side.

Q. Up front?

A. Yes.

Q. What did Rocco do with the machine after you got in?

A. Started off.

Q. Which way did you go?

10 A. Turned around.

Q. Then which way?

A. Toward Atlantic City.

Q. You turned around toward Atlantic City, then which way to go across the crossing?

A. To go over the crossing?

Q. Yes.

A. Why, you have got to turn to your left, to the east.

Q. Over to the east?

20 A. Yes.

Q. Is that all gravel there, all around there?

A. It ain't all gravel, but it is all graded.

Q. It is all hard ground where you can run over?

A. Yes.

Q. No gutter or anything of that kind?

A. No, it is all solid.

Q. When you made your turn and when you came on up to the tracks, did you look to see whether there was any train coming and listen?

30 A. Yes, listened.

Q. Was there any signal at all from any whistle or bell?

A. No.

Q. Was there any watchman out at that time?

A. I didn't see any or I wouldn't have told him to go across.

By the Court:

Q. Were you paying attention to whether there was a bell or whistle sounded?

A. Yes.

By Mr. Woodruff:

Q. You have been over that crossing many times, haven't you?

10

A. Yes.

Q. What chance did you have to see a train coming from Camden?

A. It wasn't no chance at all.

Q. Why not?

A. There is a little station, what they call, on that side; then there is trees, then a bank, a curve there.

Q. How close up to that little station does that train have to be before you can see it from the main crossing?

20

A. Well, it has got to go between the trees and station there anyhow before you can see it.

Q. How deep a cut is there there?

A. Well, it is pretty deep; you can't see it unless you get on the track, then you can see it.

Q. Before you can see the train?

A. Yes.

Q. Now, how far did you get before you saw the watchman at all—where did you get with the Ford?

30

A. About on the first rail.

Q. Where was the watchman?

A. Well, the watchman—down on the other side of the two tracks.

Q. Where did he come from?

A. He must have come from the flag house, couldn't come no other way.

- Q. Where did you see him first?  
A. That is where I seen him, on the other side.  
Q. What did he do when you first saw him?  
A. I didn't see him doing anything.  
Q. Did you hear him say anything?  
A. No, I didn't hear him say anything.  
Q. What did you do?  
A. I don't know, I seen when I got on top of the thing, I seen the train coming, and I turned around  
10 to open the door, and my brother just was jumping out, and I hollered, "Rocco, jump out." At the same time, I jumped out, and the train was right on top of us, you might as well say.  
Q. You all got clear, did you?  
A. Yes.  
Q. When Rocco got out, how close was the train?  
A. It was pretty close, I don't know; I couldn't tell you how close, because as soon as I hit the ground, I thought sure he was killed; I seen him  
20 alongside of me, and he must have hit the ground when the express hit the car; I don't see how he cleared it.  
Q. It was that close, was it?  
A. It was that close, yes.  
Q. Now, how far away was the watchman?  
A. How far away?  
Q. Yes.  
A. From the track?  
Q. Yes.  
30 A. Well, between the tracks and the other side.  
Q. Where does he stand when he warns people not to go across when a train is coming?  
A. At the crossing.  
Q. Where was he this time when you first saw him?  
A. At the crossing on the other side.

Q. Was he where he usually stands to warn people if there was a train coming?

A. I couldn't tell you right quickly; it was so close I couldn't judge whether it was the same place or not.

Cross-examination.

By Mr. Coulomb:

Q. How many times have you crossed the tracks there, Mr. Graziano? 10

A. That night?

Q. No, during the time you lived there?

A. Sometimes I go over that track two or three times a day, sometimes don't go once a week.

Q. You are thoroughly familiar with the crossing?

A. Yes.

Q. And with the trains?

A. Yes. 20

Q. I understand you to say that you made an observation to see whether there was a train coming when you first got in the car in front of the pool room?

A. Yes.

Q. Did anybody tell you to make that observation, or did you just look?

A. I just looked.

Q. Did you say anything to anybody about having made it? 30

A. No.

Q. Did you tell Mr. Rocco Passarello that the way was clear, to go ahead, anything of that sort?

A. No, I didn't tell him that.

Q. You just simply looked?

A. Just simply looked.

Q. What made you look?

A. Because I know it is dangerous to go across there.

Q. Were you expecting the 8 o'clock bridge train through about that time?

A. Well, I didn't expect it; I didn't know what time it was.

Q. You did not know what time it was; do you  
10 know now what time it was?

A. Yes.

Q. What time was it?

A. They say it was the 8 o'clock express, but I didn't time it.

Q. That goes through there every night, doesn't it?

A. Yes.

Q. Sundays and week-days as well?

A. I don't know whether it goes through there  
20 on Sunday or not.

Q. What night did the accident happen on, the night of the week?

A. December 19th, I think it was.

Q. I know, but what night of the week—what day of the week, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday or Sunday?

A. I don't remember whether it was Monday or Tuesday.

Q. It was not Sunday night, was it?

30 A. No, it wasn't on Sunday night.

The Court: The pool room wouldn't be open on Sunday night, of course.

The Witness: No.

Q. Where did you make your second observation?

A. When we made the turn.

Q. How close were you to the railroad tracks then?

A. Oh, pretty close.

Q. Well, how close, how many feet were you from the railroad tracks?

A. I judge about ten feet.

Q. You were about ten feet?

A. Yes.

Q. Did anybody ask you to make an observation then? 10

A. No.

Q. You just simply did it independently?

A. Just looked myself, yes.

Q. And you did not make any comment upon what you saw, or did not say to any one—you didn't say anything about it?

A. No, I didn't say anything about it, for I didn't see nothing.

Q. Now, how far did you say you could see along this railroad track when you were ten feet from it? 20

A. You have got to get on top of the railroad to see it.

Q. No, but how far can you see along the railroad track in the direction from which this train was coming when you are ten feet away, the place where you made your second observation?

A. I guess about a hundred, I guess.

Q. About a hundred feet? 30

A. Yes.

Q. Where was it that you first saw the crossing watchman?

A. When we hit the first rail.

Q. When you hit the first rail; and where did you see him?

A. Across the other side of the crossing.

Q. Where was he?

A. I couldn't tell you if he was right in the center or not, because I didn't have time to look for him that time; I saw the train coming.

Q. Was he pretty close to the center?

A. He must have been pretty close to the center, yes.

Q. That was the first you saw him?

10 A. That was the first I saw him, but I saw the train at the same time.

Q. And your machine was right on the first rail of the southbound track?

A. Yes.

Q. And how far was the railroad train away at that time?

A. Up by the station, that little station.

Q. You mean the little shed?

A. The little shed, yes.

20 Q. How far is that shed from your automobile, how many feet?

A. I don't know how many feet, it ain't very far.

Q. Well, when you say "very far" would you say the distance of the length of this room?

A. About twenty feet, I guess.

Q. You think about twenty feet?

A. Yes.

Q. That was the first that you saw the locomotive?

A. Yes.

30 Q. And the train?

A. Yes.

Q. What directed your attention to the locomotive and train, made you look in that direction?

A. Made me look?

Q. Yes.

A. Because he was going across the railroad.

Q. Then you looked at that time not because of the watchman, but because you wanted to see what was coming, was that it?

A. Yes, I didn't see no watchman first.

Q. You saw the watchman first?

A. No, I seen the train first; I didn't see no watchman.

Q. You saw the train first?

A. Yes. 10

Q. Then you saw the watchman in the center of the crossing?

A. Yes.

Q. Did you hear him say anything to you?

A. I didn't hear him; the other fellows say they heard him.

Q. Were the windows open or shut?

A. Where the driver was sitting, that side was open.

Q. Was the headlight of the engine burning? 20

A. Yes.

Q. And the engine was about twenty feet from you?

A. Yes.

Q. Was the seat that you were sitting on a movable seat, one that moves back and forth?

A. It is a Ford sedan; I don't know whether they move; I never took notice.

Q. The door of the automobile is in back of where you were sitting, wasn't it? 30

A. In the center of the car, yes.

Q. But in back of where you were sitting?

A. Yes, there is none on front.

Q. You had to step either over or around the seat to get out, didn't you?

A. Around the seat, yes.

Q. Is that the way you did on this occasion?

A. Yes.

Q. Did anybody call to you, I mean, any of your party, either Mr. Passarello or your brother, call to you that the train was coming?

A. I heard my brother holler in back; I had saw it at the same time myself.

Q. I see, you saw it at the same time yourself?

A. Yes.

10 Q. And you immediately got out?

A. I had to.

By the Court:

Q. Which side did you get out of, the right or left?

A. The left.

Q. And he, too?

A. Yes.

20 Q. Both of you out of the same side?

A. Yes, he got out before me.

By Mr. Coulomb:

Q. That was the side from which or toward which this train was coming?

A. Yes.

Q. You did not hear anything from the train at all?

30 A. No.

Q. How long do you think it took you and your companions to get out of the car?

A. I don't know, it was done pretty quick.

Q. You have no idea how long?

A. No idea, because I rushed right out and hol-  
lered to Rocco to jump out.

Q. But you had to climb over the back of this seat to get through the door and out on the ground?

A. I didn't climb over the seat.

Q. How did you get out?

A. It was an open way like this; I just went around.

Q. You stepped around?

A. Yes.

Q. And Mr. Passarello followed you?

A. He followed me; I don't know how he got out. 10

By Mr. Woodruff:

Q. Frank, how far is it from where your Ford was standing in front of Passarello's pool room, altogether, how far from there over to the tracks, the crossing, where the Ford was struck, can you give us some idea of that?

A. I should judge it was about thirty feet, I guess.

Q. It is that short a distance, is it, that you had to go, altogether? 20

A. Yes.

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FELIX BELLA, SWORN.

By Mr. Woodruff:

Q. Felix, where do you live? 30

A. Atco.

Q. How long have you lived there?

A. About five years and a half.

Q. Five years and a half?

A. Yes.

Q. Where were you standing or walking or where were you at the time that the Ford was struck by the train, Passarello's Ford?

A. I go in the store at that time, want to go across the railroad, because the store was the other side of the railroad from me.

Q. The store that you were going to, was that the same side as Passarello's pool room?

A. On the same side as Passarello's pool room.

10 Q. And what crossing were you going to cross?

A. The same one Passarello was going, the same crossing.

Q. And you were coming from the other side?

A. Yes.

Q. Going a different way from the Ford?

A. A different way, yes.

Q. How close were you to the tracks when the Ford was struck?

A. I was around twenty feet.

20 Q. Twenty feet away from the accident, were you?

A. From the accident, yes.

Q. Did you see Rocco's Ford when it came up there on the track?

A. Yes, I seen the Ford.

Q. How far was it when it got struck—where did the cowcatcher hit the Ford—where did the cowcatcher catch the Ford?

A. Well, you see, the front wheel was pretty near in the first rail.

30 Q. Well, the cowcatcher—what part of the automobile did it hit?

A. It must have been in the middle of the track.

By the Court:

Q. What part of the automobile was hit by the train?

A. The front part.

By Mr. Woodruff:

Q. What part of the train?

A. The engine.

Q. Well, what part, on the side?

A. The mudguard and engine.

Q. How about the front wheel, where was that?

A. That was in the front track, standing there in 10  
the first track.

Q. That was on the first rail?

A. Yes.

Q. And that is where it was struck, was it?

A. Yes.

Q. Did you know this watchman—do you know  
who he was?

A. I know who he was.

Q. Where was Passarello when he came out, when  
he first came around? 20

A. Well, I saw him, he was coming; that is the  
time I saw him, because I go not in the store, to the  
shanty; there was a watchman sitting in the night  
time, I just stay back of the shanty and the car  
came out.

Q. When the car came out?

A. Yes.

Q. Where did the watchman come from?

A. From his shed.

Q. From his little watchman's box? 30

A. Yes.

Q. And I want to know how far Mr. Passarello  
had gotten along when that watchman came out of  
his shed?

A. Well, they pretty near came out the same time;  
Passarello came out toward the railroad —

By the Court:

Q. Where was the Ford car when the watchman came out of his box?

A. Pretty near coming toward the railroad.

Q. Well, how near to the railroad was it?

A. Well, might be five feet, not far.

By Mr. Woodruff:

10

Q. You mean coming toward the railroad?

A. Yes.

Q. It was that close when the watchman first came out of his box, was it?

A. Yes.

Q. What did the watchman do?

A. Well, he came out with his lamp, and he see the car and started to holler to them, "Get back."

Q. And what did you do?

20

A. I hollered the same way, I hollered to get out.

Q. How close were you to the man?

A. I was about, around twenty-five feet.

Q. From the watchman?

A. Might be thirty, see; I was close to the watchman, might be ten feet to the watchman.

Q. That is what I mean, you were that close to the watchman?

A. Might be ten feet.

30

Q. And you both hollered at the same time, did you?

A. Yes, he hollered, "Get back;" I was hollering, "Get out."

Q. He hollered "Get back," and you hollered, "Get out"?

A. Yes.

Q. What did the Ford do then?

A. The Ford stopped that time.

Q. At the same time?

A. At the same time the Ford stopped.

Q. What did the men do?

A. They got out.

Q. How long had they gotten out before the train hit?

A. Well, it ain't very long.

Cross-examination.

10

By Mr. Coulomb:

Q. Mr. Bella, do you know Mr. Passarello, the plaintiff in this suit?

A. Yes, I know him.

Q. How long have you known him?

A. Well, just as long as I live there now, five and a half years.

Q. Had you seen his automobile, this Ford automobile before? 20

A. Yes, sir.

Q. Where were you on the night of the accident?

A. Well, I come out from my home; the woman says, "Go down to the store and get some stuff."

Q. Now, did you have to cross the railroad track to get to the store?

A. Yes, I have to go across the railroad.

Q. Were you in an automobile, too?

A. No, I ain't.

30

Q. You were walking?

A. I was walking.

Q. What side of the railroad were you on at the time of the accident?

The Court: He said the opposite side.

A. The same one the flagman was on.

Q. The same side the flagman was on?

A. Yes.

Q. And Mr. Passarello was coming from the opposite side?

A. Yes.

Q. Did you see Mr. Passarello's car prior to the accident, before the accident?

A. Before the accident.

10 Q. Where was it when you first saw it?

A. Well, it come toward the railroad.

Q. Was that the first you saw of it?

A. That is the first I saw of it.

Q. And was it in motion at the time you saw it—was it moving? Was the automobile moving when you first saw it?

A. Yes.

20 Q. Was it turned in a straight direction to cross the railroad, or was it still running along the street that runs along with the railroad?

A. Well, they come toward the railroad.

Q. Do you know the name of the street that crosses the railroad at that point?

A. Atco Avenue.

Q. Were they in Atco Avenue when you first saw them?

A. Yes.

Q. The automobile was in Atco Avenue?

A. In Atco Avenue.

30 Q. How far from the railroad crossing itself, the railroad track, was it?

A. Well, you mean ——

Q. When you first saw the automobile, Mr. Bella, how far was the automobile from the ——

A. From me?

Q. No, from the track, from the nearest track?

A. Oh, close, you might say five or six feet.

Q. You can't say very accurately, I suppose?

A. No.

Q. And where was the crossing watchman at that time?

A. He come out at the same time, and I don't know, I shouted hard, "Jump," started to holler, "Get out."

Q. What did the machine do?

A. Well, they stopped it. 10

Q. Did they make any movement at all toward the track after you called to them?

A. Well, I don't know just how far they moved it, whether they moved it or not. I hollered to them; I was scared myself.

Q. Where were you standing?

A. I was standing near the shed, about ten feet from the shed.

Q. Were you preparing to cross the railroad?

A. I was going to go across, too. 20

Q. You were getting ready to cross over?

A. Yes.

Q. Why didn't you cross over?

A. Because I seen the watchman come out and holler to them in the machine, and I thought something —

Q. Was there any other reason why you did not cross the railroad track?

A. No, I had none.

Q. Did you hear the train coming? 30

A. I heard it.

Q. What did you hear of it?

A. I heard the whistle blown.

Q. You heard the whistle blown?

A. Yes.

Q. Do you know a Mr. Hartley?

A. Yes.

Q. Was he there?

A. He was about two hundred or more, two hundred and fifty, about two hundred feet from the railroad, Mr. Hartley, what-is-his-name here?

Q. Well, Mr. Hartley was there about two hundred feet from the railroad?

A. And he was talking, that three men, was talking to themselves, Hartley and What-is-his-name.

10

Mr. Coulomb: Oh, well, there is no question pending; that is all.

By Mr. Woodruff:

Q. Now, wait just a minute; you say you heard the whistle, did you?

A. Yes.

Q. Could you see the train then?

20 

A. No, I couldn't see the train.

Q. You saw no train at all?

A. Because I was back of the station, the station in front of me; I couldn't see anything.

Q. Where were you when you say you heard this whistle?

A. I was pretty near back of the station.

By the Court:

30 

Q. How far back from the track?

A. About around fifteen foot.

By Mr. Woodruff:

Q. How many times did you hear it blow?

A. Well, I heard him blow one time, there was a blow.

Q. Now, that is all you heard, was it?

A. Yes.

Q. That is all the sound you heard from the train?

A. It sounds to me like something coming.

Q. Now, that is the only sound that you heard, is that all, that one whistle?

A. That is the only one I heard.

Q. Did you know then that was from a train on this side or where it was?

A. No, I didn't know where it was, because I 10 never see it, because of the station in front of me.

Q. You don't know what direction that sound came from?

A. What direction? How far that was, of course, you couldn't tell.

By the Court:

Q. How soon did the accident happen after you 20 heard the whistle?

A. Well, it is a pretty short direction.

Q. How far do you think the train went?

A. Oh, I don't know, you might say two or three hundred feet or more, I can't tell by that, Judge.

By Mr. Woodruff:

Q. Had the watchman come out when you heard 30 the whistle?

A. I didn't notice, because he was out, he is out.

Q. Already out when the whistle sounded?

A. Yes, he was outside.

Q. And before that you didn't hear any whistle?

A. No.

By Mr. Coulomb:

Q. Did you see the watchman come out of the shanty?

A. Yes.

Q. And that was at the time the whistle sounded or before?

A. Pretty near the time the whistle.

Q. You heard this whistle blow on this train?

10 A. Yes, sir.

Mr. Woodruff: If the Court please, I have Mr. Flexon, but he has not arrived yet.

The Court: What, on the car?

Mr. Woodruff: Yes, the value; if he comes later I would like permission to call him.

20 The Court: Very well.

PLAINTIFF RESTS.

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THE CASE FOR THE DEFENDANT.

GEORGE T. SMITH, SWORN.

By Mr. Coulomb:

Q. Mr. Smith, are you employed by the West Jersey & Seashore Railroad Company?

A. Yes.

10

Q. In what capacity?

A. Civil engineer.

Q. Have you made recently some measurements at Atco station with respect to the view in a northerly direction from the main street, looking in the direction of Camden?

A. Yes, I made them this morning.

Q. Who helped you make those, if any one?

A. Mr. Charles E. Clark.

20

Q. How were those observations and measurements made?

A. Why, they were made by standard tape, and by observing a man on the track and afterward measuring to the point.

Q. Measuring to the point where the man was standing?

A. Yes, sir.

Q. And how were the measurements made with respect to the distance from the railroad track along the highway?

30

A. They were made with tape down the center of the road.

Q. Who stood in the highway for the purpose of making those observations?

A. I was on the highway.

Q. And who was it that was on the railroad track?

A. Why, Mr. Clark.

Q. What points, what distances in the highway from the railroad track were those measurements made?

A. I made one at ten feet from the first rail of the track, one at fifteen, twenty-five and fifty feet.

Q. At a point ten feet from the railroad track, what view have you in the direction of Camden, the  
10 direction in which this train was coming?

A. Six hundred feet.

Q. And at a point fifteen feet?

A. Three hundred and fifty.

Q. At a point twenty-five feet?

A. Two hundred and fifty.

Q. And at a point fifty feet?

A. Two hundred.

Q. Are there any trees in the vicinity of this crossing?

20 A. There are some trees on the west side of the crossing.

By the Court:

Q. Looking north?

A. Looking north, north of the crossing, a little beyond the station shelter there, on a knoll or hill there above the cut that the railroad passes through.

30 By Mr. Coulomb:

Q. Did either the trees or the cut that you speak of or the station shelter interfere with the views that you have mentioned from these various points?

A. No, did not interfere with those views at all. The views I mentioned were clear of the front of the shelter, that is, the side of the shelter nearest the track.

Q. Clear of the front of the shelter?

A. Yes, an absolutely clear view.

Cross-examination.

By Mr. Woodruff:

Q. Did you measure the distance from where an automobile would stand out in front of Passarello's place over to this crossing?

10

A. No, sir, I did not, sir.

Q. That is all level ground there, graded ground?

A. Practically level, yes.

Q. In other words, you don't have to come down what would be Atlantic Avenue to Atco Street and then turn at right angles to come up to the crossing?

A. No.

Q. You can go across?

A. It is all the station driveway there.

20

Q. Where people drive in and turn around with their machines?

A. Yes.

Q. And you did not measure that distance, from where a machine would stand in front of Passarello's pool room and go across there?

A. No, sir, I did not.

Q. How near would it be, as far as you can give it to us?

A. I should judge it would be a trifle over a hundred feet.

30

Q. It is that close, is it?

A. It might be a little more than that; of course, that is an estimate.

Q. In front of Passarello's place—where are you measuring from in your mind?

A. I recall seeing a pool room over there; I judge that is the one you wanted.

Q. So that the most that a Ford would have to go would be somewhere within a distance of a hundred feet—you measuring from the house to the crossing as a hundred feet, it would have to go less than that distance?

A. It is not less than a hundred feet, I am pretty sure.

10 Q. From the house to the crossing itself?

A. Yes.

Q. And that is all ground that you could go any direction over, take the shortest route and cut across if you wanted to?

A. Yes.

Q. How deep is that cut?

A. Why, the top of the bank is about five and a half feet above the top of the rail.

Q. How far away is it?

20 A. Why, I should say about six or seven hundred feet.

Q. Six or seven hundred feet from where?

A. From the crossing.

Q. What is on top of the cut?

A. Right in the vicinity of the railroad, there is nothing but grass.

Q. I mean up on the hill your cut goes through and your rails go through—what is on top of this hill?

30 A. Right in the vicinity of the top of the bank it is grass.

Q. Where are the trees?

A. The trees I would say—I should say would be about thirty feet from the track.

Q. Thirty feet from the track?

A. Just about.

Q. They are up there along that right of way, aren't they?

A. Well, they are off the right of way.

Q. They are off the right of way, but just far enough to be off the right of way?

A. Yes.

Q. And in that field or whatever it is where the cut goes through the hill?

A. Yes.

Q. How big a waiting room is this on the west 10 side?

A. It is about twelve by sixteen feet.

Q. How high?

A. About fourteen or fifteen to the peak of the roof.

Q. And how wide an obstruction running at right angles to the track?

A. Twelve feet.

Q. And its length is what?

A. Sixteen, about.

20

Q. Your measurement at fifty feet—measuring fifty feet, did you stand back and look past this waiting station to the west or to the east?

A. Why, the view I gave of two hundred was to the east of the station, that is, on the track side.

Q. Between the two stations, in other words, between the two stations?

A. Yes.

Q. And where did you stand?

A. In the center of Atco Avenue.

30

Q. How wide is Atco Avenue?

A. It is quite wide there, I should judge it is in the neighborhood of sixty feet wide.

Q. So that you were thirty feet beyond where the roadway and tracks first meet, or, in other words, the northerly side of that roadway?

A. Just about, yes.

Q. So that all these distances, if you were crossing on the northerly side of Atco Avenue, crossing the railroad track, all of these distances you have given, three hundred and fifty, two hundred and fifty, and so forth would be cut at least by thirty feet, wouldn't they?

A. Yes, they would.

Q. How far is the watchman's box away?

10 A. Well, that is directly across the track; it is on the westerly side of the track.

Q. Whereabout?

A. About seven feet from the rail.

Q. And which side of Atco?

A. Of the avenue?

Q. Yes.

A. On the north side.

Q. Is it at the station?

A. Yes, sir, it is right at the end of the platform.

20 Q. Is the station between it and the direction that this train would come from, coming from Camden?

A. Yes, the station is north of the watch box, yes.

Q. Is there any sidewalk or anything between the watchman's box and the station building?

A. There is a platform; the watchman's box is closer to the track than the station.

The Court: I understood him to say it was at  
30 the end of the platform leading to the station house, that is, the station building.

Q. That is out toward Atco Avenue?

A. Yes, the Atco Avenue end of the station building.

By Mr. Coulomb:

Q. How far from the center line of Atco Avenue would this signal-man's box be?

A. Oh, about fifteen or twenty feet.

Q. From the center line of Atco Avenue?

A. Yes.

Q. Is Atco Avenue nearer to the east side of the railroad than it is to the west?

A. No, but the crossing is forty feet wide, and the watch box is right at the edge of the crossing. Atco Avenue is quite a wide street there. 10

Q. Did I understand you to say that the watch box was on the westerly side of the track or the easterly side of the track?

A. On the easterly side of the track, the opposite side from the pool room; if I said "westerly" I did not mean it.

Q. I rather thought that you said westerly.

A. I beg your pardon. 20

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ROBERT HARTLEY, SWORN.

By Mr. Coulomb:

Q. Mr. Hartley, where do you live?

A. Atco.

Q. And how long have you lived there?

A. Twenty years, I guess, a little over twenty years. 30

Q. Were you living there on the night of December 20, 1920?

A. Yes.

Q. Do you know Mr. Passarello?

A. Positively, he is a friend of mine.

Q. Where were you at the time of the accident?

A. I was getting ready to go home.

Q. What side of the railroad track were you on?

A. I was on the opposite side to where he was coming.

Q. You were on the east side, were you?

A. Yes.

Q. And your direction home, would that carry you  
10 across the railroad track?

A. Well, not just exactly there, but we walked down the railroad track perhaps, we will say, seven or eight hundred yards, and then crossed the track again down below; there is another crossing below that, to go to my home.

Q. Now, you were on the opposite side of the railroad track from where Mr. Passarello was?

A. Yes.

Q. And where the pool room is?

20 A. Yes.

Q. And you were on the same side of the railroad track where the crossing watchman is?

A. Yes.

Q. What street were you on?

A. I was on Atco Avenue.

Q. And what part of the street were you in?

A. Pretty near in the center of the street; of course, we cross from the watchman's side to come down and go home, but naturally we heard the train  
30 coming, and we were walking along leisurely—we had plenty of time; it was only eight o'clock; me and Mr. Cook was going home together.

Q. You were walking toward the railroad along Atco Avenue?

A. Right, sir.

Q. Did you see the crossing watchman?

A. Sure.

Q. What did you see of him?

A. He come along with his lantern and stood in the center of the road.

Q. How far were you from the crossing when you saw the station watchman reaching the center of the road?

A. Oh, I don't suppose I was ten feet away from him, not more than that.

Q. How far away from him were you when you saw him coming out of his box and walking toward the center of the road? 10

A. As I was walking across his path to come to the center of the road, I suppose we met pretty near—see the idea?

Q. Which side of the street were you on?

A. I was on the side that the box was on.

Q. On the side toward Camden?

A. Then I had to switch across to go over to the other side of the path, see, and we naturally wound up in the middle of the road right back of the crossing watchman. 20

Q. Right across back of the watchman?

A. Yes.

Q. Did you see Mr. Passarello in his automobile?

A. I really couldn't say I knew it was Passarello, but I seen a car coming, but I realized it afterward.

Q. Where was the car when you first saw it?

A. It was coming from the pool room, approaching toward the railroad. 30

Q. Did you see him leave the pool room?

A. Well, I seen these three fellows jump in the car and come around and make that switch —

Q. Where was the watchman when you saw the three fellows getting in the automobile?

A. He was practically, as near as you can put it, in the center of the road; I wouldn't say that he

was quite, but his lantern was waving that way,  
“Keep back.”

Q. Did you see the lantern?

A. Why, positively.

Q. Did you hear the train coming?

A. Sure, that was what I was afraid of.

Q. And what did you hear of the train?

A. I heard the train, but I don't say that I heard  
the whistle, but I seen the train myself personally,  
10 because you can see it from that point, you know,  
and I says, “Here she is, coming around the bend,”  
I said, “If you can't get out, if you can't start the  
car, jump out;” that is just the words I used; I  
even used a little further words than that.

Q. Before you come to that, having seen the  
watchman, as you say, in the center of the road,  
and an automobile with three meen getting in it,  
just describe the movements of the automobile up  
until the time it stopped on the track.

20 A. I don't know whether you would call it chok-  
ing it, or putting the brake on it, or what you do,  
but he did; he got over the track, and he stood there,  
and he couldn't move it, and I said to himself per-  
sonally or one of his friends that was in there with  
him —

Mr. Woodruff: I object to that unless it is iden-  
tified.

30 Mr. Coulomb: It doesn't make any difference  
about that.

Mr. Woodruff: Was it at the time?

The Witness: Why, sure.

Mr. Woodruff: While they were there on the  
track?

The Witness: Why, sure.

Mr. Woodruff: All right then.

The Witness: I said, "If you can't move it, jump out," I said, "she is coming around the bend." Now, the bend, we will say, is three hundred feet from where we was. I said he might have pushed it off the track, if he had only jumped out at that time. I wanted to do it and tried hard enough to get them out, and I am glad they are safe at that. 10

Q. Did they get out afterward?

A. They did, all got out on the right side too, safe, yes.

Cross-examination.

By Mr. Woodruff:

Q. You don't mean, Mr. Hartley, that you wanted to push that machine, do you, from the side you were on? 20

A. I believe I could have pushed it back off the track.

Q. Well, at the time?

A. Sure, I had plenty of time, if they had jumped out of that car, I could have it carried it back myself bodily, why, sure, and anybody else could.

Q. Now, wait; Mr. Hartley, you were on the east side of that crossing, weren't you? 30

A. I sure was.

Q. On the east side; the machine was coming from the opposite direction?

A. Yes.

Q. Did it get all the way over the track?

A. It got in the middle of the track, pretty close, I suppose, to the middle of the track.

Q. And that is where he stopped it?

A. He stopped, he said he couldn't reverse it, or what-you-call-it; I am no automobile man, you know.

Q. He talked with you, did he?

A. Why, positively, reversed back.

Q. What did you say to him?

A. I said, "Then get to hell out." Now, you  
10 asked the question.

Q. He said to you he could not back it, couldn't reverse it?

A. He said, "No, nothing doing," and then they all jumped. I says, "Here she is, coming around the bend, jump," and they jumped, and I don't know how they got out myself.

Q. But you hadn't said anything to them about the train before they got there on the track, had you, and stopped?

A. Why, no, I didn't see nothing of them when  
20 they ain't got on the track, surely not.

Q. The watchman had not said anything to them?

A. Yes, indeed, he hollered to them to keep back. I suppose he put his brake on and she skid along until she got in the middle of the track.

Q. How close to that rail were they when he hollered to them to stop?

A. Oh, the machine, you know, jumping like that, you couldn't say, maybe a second, whatever it may  
30 be.

Q. No, I mean in distance—was he right up on the track when he hollered to them to stop and he came to a stop there?

A. Well, he could have stopped, no doubt, but he didn't stop, simply his brake didn't work.

The Court: The question was how near the automobile was to the track when the watchman called to them to get back?

The Witness: Well, I suppose he had time ——

The Court: No, in distance, how many feet?

The Witness: Well, we will say a few feet, I don't know how many feet.

10

By Mr. Woodruff:

Q. You can't tell us how many feet he was away when the watchman first hollered?

A. I couldn't come down to feet on that point of it; there was time enough.

Q. You did not hear the train then, did you?

A. You could hear the train and see the train.

Q. Then, could you?

20

A. Why, sure. In the circle the watchman was standing, you could see that train a terrible long distance; you can hear it, can hear anyway, because she is coming a terrible gait.

Q. Over on your side you can see pretty well?

A. Positively.

Q. Your side is not blocked by that waiting room?

A. No, you have got proper scope.

Q. You could see the train through the cut?

A. Yes, you can see the smoke of the engine.

Q. Did you see the smoke that night at 8 o'clock?

30

A. The smoke? I wouldn't say that, but I heard it; you can hear it.

Q. You won't say you heard the whistle, will you?

A. No, sir, I did not hear the whistle, I was too excited.

Q. The first you spoke about the train was when she came through that cut, coming around the curve, wasn't it?

A. When I seen it coming around the cut, then I knew they had to do something.

Q. That is when you attempted to talk with them?

A. I sure did.

Q. And between the time that it was coming the three hundred and fifty feet, the three hundred and  
10 twenty feet at most, you did all this talking?

A. No, I guess I did the talking before; I mean to say, we could have got the car off that track if they had only jumped out when I wanted them to.

Q. Well, Mr. Hartley, the first thing you said to them was that the train was coming through the cut or coming around the curve?

A. I said, "She is coming around the bend, boys, you have got to get out now."

Q. That is the first thing you said?

20 A. No, I hollered before that, too, to them.

Q. What talk did you have before that?

A. I told them to get out, that we would push it back. I got witnesses to prove it.

Q. And that is when he said he couldn't reverse it?

A. He could not reverse it, no.

Q. How close were you standing to him then?

A. Well, here is the track, and here I am; I suppose within five or six feet, I suppose about that  
30 close.

Q. Then you had this conversation with him while the train was coming from that cut down to the crossing, did you?

A. Yes, sir.

Q. Was she making sixty miles an hour?

A. I suppose she did; I know she comes through there pretty lively.

Q. She comes right past that crossing full speed, doesn't she?

A. Yes, indeed, she does.

Q. And that is the bridge train express that comes through there every night?

A. Yes, sir, every night.

Q. And you had time to do that while it was coming from that cut to the crossing?

A. I imagine you can do a whole lot of things in a little excitement.

10

Q. I don't want you to imagine; I want you to tell us what you did do.

A. I didn't do anything, only hollered.

By the Court:

Q. How far was the train away, do you know, when you saw the watchman come out of his box?

A. Oh, it was not in sight at all when he come, when we met him.

20

Q. Did you hear it at that time?

A. You could hear her, yes, and there was a bell ringing; you know there is a bell rings there.

Q. What do you mean, at the crossing?

A. At the crossing, for the watchman to get out on his job; all the time, you can always hear that, if you are around within a certain radius, within a few feet.

Q. Did you hear that bell ring?

A. Sure.

30

Q. You are sure you heard that?

A. I am positive of that, because that is the reason why we didn't cross ourselves. We don't generally —

Q. When you heard that, what happened?

A. This machine came.

Q. What else happened—what did the watchman do, anything?

A. He hollered for him to stay back.

Q. No, when the bell rang in his box?

A. He attended to his business, attended to his job.

Q. Was he inside the box at any time?

A. No, he wasn't in his box before the train ever came and for perhaps half an hour before that, I don't know, but he was out when we came down.

10 Q. How long had you been in sight of the watchman?

A. We had been standing up at the corner a few minutes, maybe ten or fifteen minutes, I wouldn't say, but not talking to the watchman then.

Q. Did you notice the watchman at that time?

A. I seen him then.

Q. Where was he then?

A. He was standing—there is a little sidewalk goes up there, a path, and he naturally stands there; his box is right there.

20 Q. Did you talk to the watchman that night?

A. Not before this happened, no.

Q. That is what I mean, before the accident?

A. No.

By Mr. Woodruff:

Q. What crossing was it you were standing on talking with these men?

30 A. Which men?

Q. You were talking with Mr. Cook and Mr. Bella, weren't you?

A. Yes, up at the grocery store there.

Q. The grocery store?

A. Yes.

Q. How far is that?

A. Well, we will say fifty feet or more.

Q. East?

A. Right on the same side of the road as they —

Q. Well, it is on the east side of the tracks, isn't it?

A. Yes.

Q. And it is over on another street that runs the same as the railroad?

A. Yes, there is another street goes across there, 10  
yes.

Q. And that is across that street, isn't it? Isn't that right just across that other street which runs the same as the railroad?

A. Yes.

Q. Now, how much distance is there between that street and the railroad?

A. Well, I don't know, I never measured it, but it didn't look to me, it wouldn't run over fifty or sixty yards, or maybe not over that; I wouldn't say. 20

Q. Between that street that runs parallel with the railroad and the railroad?

A. Yes, I don't think it is very much more.

Q. And you were across that street at the grocery store on the corner, weren't you?

A. No, we was coming down there; we came from there.

Q. I mean, you stood over at that grocery corner, didn't you, talking to these other two men?

A. Yes. 30

Q. That is where you stood?

A. I stood there before this train ever happened, yes.

Q. And you stood there fifteen minutes or so?

A. Oh, we may have stood there an hour before that, I wouldn't say.

Q. While you were standing there, do you mean now to say that you looked over and saw the watchman, while you were there at the grocery store?

A. I can see the watchman from that point.

Q. No, I am asking you if you did that night?

A. Now, I am not going to swear that I seen him or talked to him; I didn't say anything to him until this accident happened, no.

Q. Then you didn't see him until this accident  
10 happened?

A. I imagine I did.

Q. But you can't say that you did?

A. Well, I wouldn't take no oath to it, because I can see him where I was.

Q. The trouble is you are under oath now; I want to know everything under oath. You stood over there on that corner talking?

A. Yes.

Q. You can't say positively that you saw the  
20 watchman at that time, can you?

A. Well, I imagine—well, I feel positive, I must have seen him, because I couldn't help but see him. Of course, I am not going to say; why should I take notice to him?

Q. How long have you known this watchman?

A. Oh, known him for twenty years, I guess.

Q. Now, then, you left this man, Mr. Bella, didn't  
you?

A. Yes, he went down that way, across the road.

Q. He was going across the main crossing, wasn't  
30 he?

A. Yes.

Q. Over to another store, isn't that right?

A. Yes, sir.

Q. And you and Mr. Cook were going to go on down the street that the grocery store is on, along

the railroad to the lower crossing by the broom works and go across there to your home, weren't you?

A. That is where we were going.

Q. You were not going to go across this main crossing?

A. Well, sometimes we cross it, we have got two roads, but we didn't do that that night.

Q. That night you were going down to the lower crossing?

10

A. Yes.

Q. And there cross over to the west side of the tracks?

A. Yes.

Q. Did you start from the grocery store to do that?

A. No, we wasn't near the grocery store; we was on this here thoro fare, street, standing talking, me and Mr. Cook.

Q. Now, you say when you stood talking, you stood on the grocery store corner?

20

A. Pretty close, yes.

Q. Pretty close to the grocery store corner, on Atco Avenue and this other avenue?

A. I don't know what you call this other street there.

Q. I don't know either, but which one were you on, that street that runs the same as the railroad —

A. I can't practically tell you what the street is. I have been there for twenty years and don't know the name of the street now.

30

Q. I am not asking you the name of the street now, but that street —

A. I was practically on Atco Avenue; never got off of Atco Avenue.

Q. Were you over by the grocery store, on that side of the street that we don't know the name of?

A. I don't see why I should really want to know whether I was on that side or the other side, because it was no object to me until this accident —

Q. Don't you know which side you were on?

A. No, sir.

Q. The grocery store was only on one corner, wasn't it?

A. Yes.

Q. That is where you were?

10 A. I wouldn't say I was on that side or this side of the street.

Q. You have already said you were on the grocery store corner?

A. Well, practically; if you were five or six feet from the grocery store, you were on the grocery store corner.

Q. Were you that close—that is what I am trying to find out?

A. Yes.

20 Q. You were that close to the grocery store? The grocery store is on which side of Atco Avenue, the south side toward Atlantic City or the north side toward Camden?

A. Toward Camden, the same side the shanty is on.

Q. So it stands on the northeast corner of Atco Avenue and whatever this other street is, is that right?

A. Yes.

30 Q. Now, when you go down to the lower crossing, you go along that avenue, don't you?

A. Cut across the road.

Q. You go along that avenue, don't you, and then cross right down where the bell is?

A. Yes.

Q. And so go across below the broom works and go to your home, don't you?

A. Yes.

Q. And you don't come over this main crossing at all, do you, when you do that?

A. In the country towns, we don't take the streets, we take the road; we come off a curbing and walk right down the street and go home.

Q. Were you going to walk on the railroad tracks?

A. No, but we don't try to follow on the sidewalk; we are glad to walk in the street sometimes.

Q. I may have misunderstood you, Mr. Hartley, 10  
but you wanted to go to that lower crossing on the east side of the railroad—didn't you, isn't that right?

A. Yes, I suppose that is where we were going; we were going home.

Q. And you weren't going to walk down the railroad track?

A. No.

Q. You weren't going to walk down on the west side of the railroad? 20

A. No.

Q. Did you start away when Mr. Bella went over toward the watchman's box to go across the crossing?

A. I don't know where Mr. Bella went; me and Mr. Cook went together.

Q. You had been talking with Mr. Bella, hadn't you?

A. With Mr. Bella, yes.

Q. And you don't know which way he went? 30

A. I don't know; I didn't notice Mr. Bella afterward.

Q. He didn't go the way you went?

A. No, sir.

Q. Didn't he go right toward the watchman's box?

A. I don't know anything about Mr. Bella.

Q. You didn't go the way he went?

A. No.

Q. You didn't go toward the watchman's box?

A. No.

Q. You went toward the south crossing?

A. There is a little turn that goes into that station; we walked through there and out in the center of the road, and this machine was coming from  
10 over there, and the train was coming, and naturally me and Mr. Cook stood talking together for a second, I suppose, and we seen this performance coming off, and then we had to get into it.

Q. Mr. Hartley, do you mean you left the place where you had been standing talking, and then went on out Atco Avenue and then stopped again in the middle of Atco Avenue to talk?

A. Sure.

Q. You stopped again in the middle of Atco Avenue to talk?  
20

A. If there is a train coming, we stop anywhere.

Q. You didn't know when you stopped to talk that there was a train coming, did you?

A. Yes, we did.

Q. While you were standing there talking?

A. Yes, we did; you could hear that train coming where I am speaking of.

Q. How long did you talk?

A. Didn't have no chance to talk then, because  
30 there was too much excitement going on then.

Q. What did you see when you stopped—did you stop to talk or did you see something?

A. We seen this car coming, and the flagman tried to stop the car from coming over, and he didn't, he got a little too far over and the trouble started.

Q. At that time you were walking southwardly, weren't you?

A. Walking straight for the station.

Q. Were you going to the station, Mr. Hartley?

A. Yes, in the center of the road, sure, Atco Avenue.

Q. But you were already on the side the station is, that is, the north side of Atco Avenue; you wanted to go down south to another crossing a block below, and you wanted to keep on the east side of the track—didn't you walk in the direction you wanted to go?

10

A. We didn't get that far.

Q. You started in that direction?

A. That part is all right.

Q. Then you didn't start toward the station, did you?

A. Yes, sir, we have got to get to the station to get down that far.

Q. If you started toward the station, you started west from where you were standing, didn't you?

A. I suppose you call it west there.

20

Q. You wanted to go south but you started west, is that right?

A. Well, but you have got to go a certain portion, and then you have got to go the other way, if you are going to go home where I live to. Then it was only 8 o'clock and we were in no hurry to go anywhere; that was our time.

Q. But, Mr. Hartley, if you wanted to go to your home, using the main crossing, you would go west and cross over Atlantic Avenue, and then follow down Atlantic Avenue to the broom works and go across to your home?

30

A. We didn't have to go that way.

Q. That is not the way you were going home; you were going to stay on the same side of the track that night?

A. We did it, yes.

Q. Can't you tell us where Mr. Bella went when he left you and started away?

A. Mr. Bella, no doubt he went down and followed his path to go across to his store, wherever it was.

By the Court:

Q. Mr. Hartley, do you know or are you just  
10 simply surmising?

A. I don't know nothing about Mr. Bella.

The Court: Then say so.

By Mr. Woodruff:

Q. If you started in that same direction, why  
didn't you remain? You were all talking together,  
you say; now, you started the same way he started;  
20 he didn't walk with you, did he?

A. No.

Q. And you didn't stop there by the flagman's  
shanty, did you?

A. No, sir.

Q. You did not see the flagman come out of his  
shanty?

A. The flagman was not in the shanty.

Q. I say, you didn't see him come out?

A. No.

Q. At any time you didn't see him come out?  
30

A. He wasn't in his shanty.

Q. But you started across Atco Avenue, didn't  
you?

A. Started down Atco Avenue.

Q. Didn't that put your back to the watchman's  
box?

A. No, sir, that puts me pretty near on the other side from the watchman's box, pretty near in the center of the road to the watchman's box.

Q. In other words, the watchman's box would be on that side, would it?

A. The watchman's box would be over there, yes, sir.

Q. Well, I understood you before in your direct examination to say that as you started across Atco Avenue the watchman came, and there you met him 10 pretty nearly in the middle?

A. That is right.

Q. Then did he come from the other side of Atco Avenue?

A. He has to come from his watchman's box into the street where he stands.

Q. But, Mr. Hartley, you and the watchman were both on the same side of Atco Avenue, weren't you—when he was at his box and you were standing at the grocery store corner, you were both on the 20 same side of Atco Avenue?

A. If I had followed the same path all the way down, I would have been on the same path that he was, but I didn't do it.

By the Court:

Q. Were you on the same side when you started across the street that the watchman was on, of Atco Avenue?

30

A. Sure, on the same side of the street.

Q. But further east?

A. That is right.

Q. Then you say you started toward the center of the road or street and he started toward the center?

A. Yes.

By Mr. Woodruff:

Q. But you don't know where Mr. Bella went?

A. Mr. Bella—I do remember him, talking to him, but I don't know, as far as him being—wherever he landed, I don't know.

Q. You didn't see him there by the watchman?

A. No, no.

10

WILLIAM COOK, SWORN.

By Mr. Coulomb:

Q. Mr. Cook, where do you live?

A. Atco.

Q. How long have you lived there?

A. Thirty-eight years.

20 Q. And of course you were living there the night of this accident, December 20, 1920, you were living in Atco at that time?

A. Yes, sir.

By the Court:

Q. You were living there then at the time of the accident?

A. Yes.

30 By Mr. Coulomb:

Q. Do you know Mr. Hartley, who has just been on the stand?

A. Yes.

Q. And do you know Mr. Bella who was on the stand a few minutes ago?

A. Yes.

Q. Do you know Mr. Passarello, the plaintiff in this suit?

A. Yes, sir.

Q. How long have you known Mr. Passarello?

A. I should judge about fifteen years.

Q. How long have you known Mr. Hartley?

A. About the same.

Q. Do you know the crossing watchman there also at this crossing? 10

A. Yes.

Q. How long have you known him?

A. Well, I should judge eight years.

Q. What is your business?

A. I am everything, that is the best I can tell you.

Q. And were you with Mr. Hartley on December 20, 1920, at night about 8 o'clock?

A. Yes.

Q. Where were you—where did you meet Mr. Hartley that night? 20

A. Him and I walked from the grocery store together.

Q. From the grocery store?

A. Yes.

Q. And where were you going?

A. We were going home.

Q. What side of the railroad track do you live on as compared with the grocery store—do you live on the same side or the opposite side?

A. The opposite side only down. 30

Q. That is, toward Atlantic City?

A. Yes.

By the Court:

Q. How far is the grocery store from the crossing?

A. I should judge seventy-five yards.

By Mr. Coulomb:

Q. Now, Mr. Cook, at the crossing—you know Atco Avenue that crosses from east to west over the railroad?

A. Yes.

10 Q. Is there an avenue running parallel with the railroad on the east side?

A. How?

Q. Running along with the railroad, the same way as the railroad on the east side of the railroad?

A. Is there an avenue?

Q. Is there an avenue there?

A. On the left-hand side, yes, sir.

Q. The left-hand side going toward Atlantic City?

By the Court:

20 Q. You mean that there is a street on the east side of the railroad?

A. On both sides.

By Mr. Coulomb:

Q. Running the same direction as the railroad?

A. The same direction as the railroad.

30 Q. What side of Atco Avenue is—do you know the name of that street that runs parallel with the railroad right of way where the grocery store is?

A. The one on the right?

Q. The one on the left?

A. No, I do not; I never heard it, I don't know the name of it.

Q. What is the one on the other side of it called?

A. Atco Avenue or ——

Q. Atlantic Avenue?

A. Atlantic Avenue.

Q. Now, what side of Atco Avenue is the grocery store on where you and Mr. Hartley were standing, or where you met?

A. On the right-hand side as you are going east.

Q. Going east?

A. Yes.

Q. That would be on the south side of Atco Avenue, wouldn't it?

A. Atco Avenue runs —

10

Q. East and west, and this grocery store would be on the south corner of Atco Avenue, is that right?

A. There is one on both corners.

Q. Oh, there is a grocery store on both corners?

A. Yes.

By the Court:

Q. The one you are talking about, which side of Atco Avenue is that on?

20

A. On the left-hand side as you are going out toward the railroad.

Q. Then it would be on the north side?

A. Yes.

Q. The side toward Camden?

A. No, the side toward Atlantic City.

The Court: Well, that is what I supposed, that is, if the other witness was right.

By Mr. Coulomb:

30

Q. Now, where did you go from there with Mr. Hartley?

A. Went home.

Q. And as you went home, in what direction did you go?

A. Went right down along the railroad.

Q. And how did you go in order to get to the railroad?

A. How do we go to get to the railroad?

Q. Yes.

A. Why, go right down Atco Avenue.

Q. Walking west?

A. Yes.

Q. Did you see the crossing watchman?

10 A. I certainly did.

Q. Where was he when you first saw him as you approached the railroad?

A. Standing in the middle of the road with his light in his hand; I don't say right in the middle, but he was out there.

Q. And did you see Mr. Passarello's car?

A. No, I saw a car, but I don't know whether it was Mr. Passarello's.

Q. Where did you see it?

20 A. I saw it on the opposite side.

Q. How far from the railroad?

A. Well, when I saw it, it was about, I should judge, thirty feet, twenty-five anyway.

Q. And was it moving?

A. Yes, it was coming quartering.

Q. Coming quartering, and from which quarter was it coming, the north quarter or the south quarter.

A. Why, the north quarter.

30 Q. Do you know whether there is an amusement place on the opposite side of the railroad from where you were—is there a pool room there?

A. Oh, yes.

Q. Do you know whether or not this automobile was coming from the pool room?

A. Well, now, I couldn't say.

Q. Was it coming from that direction?

A. It was coming from that direction.

Q. What, if anything, did the flagman do as the car approached, the automobile approached the railroad track?

A. He said, "If you can't start it, jump out."

Q. Who said that?

A. The watchman.

Q. And what happened?

A. And also Mr. Hartley.

Q. What did Mr. Hartley say?

10

A. He done the same; he said, "If you can't start it, jump out."

Q. How long was the watchman out in the middle or about the middle of the road with his lantern before the automobile came up to the railroad?

A. Well, I should judge—well, the watchman came out of his shanty just about the time that we saw the automobile coming, and I says to Mr. Hartley—

Q. Never mind what you said to him, but where was the automobile when you saw the watchman out in the road with his lantern?

20

A. Where was it?

Q. Yes.

A. Coming around this turn.

Q. Making the turn?

A. Yes.

Q. And how far from the railroad crossing?

A. Well, now, I should judge twenty-five feet, thirty feet.

Q. Did you hear the train coming?

30

A. I certainly did.

Q. Did you hear the train coming before you saw the automobile or afterward?

A. Yes, sir, before.

Q. Before?

A. I heard him blow his whistle.

Q. Could you see the train at the time?

A. I certainly did; I said to Mr. Hartley, "There comes the train down the road; if them fellows don't stop, they are going to get killed."

Q. What did the automobile do after you first saw it until the time that these gentlemen that were in it finally got out, the men that were in it?

A. I don't know whether he put his brake on to stop it or whether his engine stalled; I couldn't say.

Q. Did it finally come to a stop?

10 A. It certainly did.

Q. And where did it come to a stop?

A. Right on the crossing.

Q. Do you know how many men were in it?

A. Three.

Q. Did they get out right away?

A. How is that?

Q. Did they get out immediately that the car stopped?

20 A. Well, no, not immediately; one pulled the other one out; I know that, I saw it.

Q. How long did they stay there, would you say, after the last one of them got out?

A. When the man's foot left the automobile, the engine struck it.

Q. Did you hear any one of the men in the automobile say anything either to Mr. Hartley or the crossing watchman as to the operation of the car?

A. I heard them—I thought they were talking to themselves in the car.

30 Q. What did you hear them say, if anything?

A. I heard them say, "If you can't start it, get out."

Q. Who said that?

A. I couldn't say which one of them said it; there was three of them in the car.

Q. Some one said that in the car?

A. Yes.

Q. I understood that Mr. Hartley said that?

A. Mr. Hartley hollered across the street; the watchman said, "Go back."

Q. Now, you were on the east side of the railroad track, as I understand it?

A. Yes, sir.

Q. And the car was approaching from the west side?

A. Yes.

By the Court:

10

Q. Mr. Cook, where exactly was the watchman? Just a moment—now, listen to me carefully—where was the watchman when you first saw the automobile coming toward the track from the direction of the pool room?

A. Standing in the middle of the road.

Q. Now, how long had he been in the middle of the road, do you know?

A. Well, I should judge a minute and a half.

20

Q. Was he there before the automobile started up or came in sight?

A. Well, no, he was there, because the automobile when he turned—before we saw the automobile we saw the man.

Q. Saw what man, the watchman?

A. The watchman, yes.

Q. Where did you see the watchman when you saw the automobile come in sight?

A. Standing on the crossing.

30

Q. In the middle, you mean, or approximately in the middle?

A. In the middle of the tracks.

Q. How long before that did he come from his box?

A. Well, I saw the watchman before I saw the car.

Q. You saw him come from his box, you mean, before you saw the car?

A. Yes, sir.

By Mr. Coulomb:

Q. Mr. Cook, just let me ask you one question: Did you see the watchman actually leave his box, actually come out of the box itself, out of the  
10 shanty?

A. Yes, sir.

Q. And did he have his lantern with him at that time?

A. Yes, sir, red and white.

Cross-examination.

By Mr. Woodruff:

20 Q. Which did you see, red or white, which side of the lantern did you see?

A. I saw the white.

Q. How did you know it was red?

A. How did I know? I saw the other side when he came out with it; then when he got to the crossing, where he stood, it showed red this way and white up the railroad.

Q. Well, Mr. Cook, you did not see the automobile stop up at Passarello's pool room?

30 A. No, sir, I did not.

Q. It had already started up and was coming to the crossing?

A. We saw the light, the reflection of the light coming toward the crossing.

Q. That is where you first saw it, coming toward the crossing?

A. Yes.

Q. Had you left the grocery store corner then?

A. We was between the grocery store and the railroad track.

Q. At that time?

A. Yes, sir.

Q. Well, Mr. Cook, if I understand it — Do you live down near Mr. Hartley?

A. Do I live near Mr. Hartley? I should judge a quarter of a mile.

Q. Well, you live down beyond that lower crossing, do you? 10

A. Yes.

Q. And do you live so that you go down to the lower crossing and go over past the broom works, go over that way?

A. Yes.

Q. And you were going to go that way with Mr. Hartley, weren't you?

A. Yes, I did go that way with him.

Q. Mr. Cook, I have tried to draw a little sketch 20 here—see here, where I have made the railroad tracks.

A. Yes.

Q. And here the station?

A. Yes.

Q. And over here Passarello's pool room?

A. Yes, sir.

Q. The little waiting shed?

A. Yes, sir.

Q. That is right, isn't it? Now, your broom works 30 are on down here somewhere, aren't they?

A. Yes.

Q. And this lower crossing you come over is down here?

A. Beyond the broom works, down by the coal yard.

Q. And you go down, go down to this crossing and go home somewhere down here?

A. That is right.

Q. There are two grocery stores, one at this corner and one over here?

A. Yes, the post office in between.

Q. This is the grocery store at which you were standing? (Indicating on sketch.)

A. Yes, that is the one we started from.

10 Q. That is the one you started from here?

A. Yes.

Q. And you were to go over this lower crossing to go down to your home somewhere down here?

A. No, we wasn't going over the railroad crossing; we were going down that street.

Q. This first street that you don't know the name of?

A. Yes.

20 Q. You hadn't gotten down to that crossing yet, of course?

A. Yes, we were within fifteen feet of that crossing.

Q. Of the lower crossing?

A. No, this crossing here, where the watchman is.

Q. You were within fifteen feet of the crossing by the station?

A. Yes.

Q. But you were going to go down this street?

30 A. Just like this; here is a street that turns right here by the crossing and goes right down along the siding.

Q. Maybe I am mixing you up worse.

A. You have got it mixed up.

Q. I thought I would make it clear; I guess I have made it worse. There isn't any question but what you were going to stay on the same side of the rail-

road, and go down and go over the lower crossing, is there?

A. Sure.

Q. That is what you were going to do?

A. Yes.

Q. And you were on the far side of that street, whatever it is, that runs along parallel with the railroad?

A. Yes.

Q. The further side away from the railroad? 10

A. It was on the side toward Atco Avenue or the grocery store.

Q. When you left there, had Mr. Bella already left you and gone away?

A. Who?

Q. Mr. Bella, the Italian man?

A. Had he gone away?

Q. He had been standing there talking with you and Mr. Hartley?

A. No, he wasn't talking with us. 20

Q. Wasn't he there with you people?

A. No, sir, we were as far as from here to you from him, a little further than that.

Q. But he was on the corner, wasn't he?

A. He was on the corner and we was in the middle.

Q. Did you see him when he went over past the watchman's box to go over the main crossing?

A. Who?

Q. Bella—you didn't see him? 30

A. He didn't go across the watchman's box to go across the main crossing; he was on the opposite side from Passarello.

Q. Yes, he was on the opposite side from Passarello, but, I say, did you see him start over that way, as if he was going to go across that main crossing?

A. No, sir.

Q. Where did you see him?

A. I saw him come out of his watch box and go right out in the middle of the street.

Q. I am not talking about the watchman, I am talking about Mr. Bella, the man that was there near you at the grocery store, the man that was a witness here awhile ago.

A. I don't know him.

Q. You don't know him at all?

10 A. No, sir, I don't know Mr. Bella.

Q. You don't know this Mr. Bella that we have been talking about and Mr. Hartley spoke of, and he said he spoke to Mr. Hartley?

A. No, sir, I do not.

Q. And you didn't see him there?

A. No.

Q. How long did you talk to Hartley that night?

A. Him and I came from the grocery store together.

20 Q. Came there together and went away together, started away together?

A. Yes.

Q. And you don't remember Mr. Hartley talking to that man at all?

A. No, sir, I don't remember Mr. Hartley talking to that man at all.

Q. This watchman's box was on the opposite side of Atco Avenue from the grocery store corner where you were, wasn't it?

30 A. Yes.

Q. On the Camden side?

A. Yes.

Q. And you were on the Atlantic City side?

A. Yes.

Q. When you started home, you say you saw him leave the box, is that right?

A. Saw him, yes.

Q. How far had you gone before you saw him leave the box?

A. Well, we just came from about opposite the post office to the crossing.

Q. Well, how far in feet had you started away?

A. Well, probably across this building.

Q. Across this room?

A. Yes.

Q. You had gone that far before anything at all happened? 10

A. Yes.

Q. Before you saw the crossing watchman or anything?

A. Just about that far, yes, as near as I can tell.

Q. You had not heard the train then, had you?

A. Yes, sir, heard the train and saw it, saw it coming down the track.

Q. Before you started away from the grocery corner?

A. The post office. 20

Q. The post office corner?

A. Yes.

Q. Before you started to go home, you heard the train?

A. You can see from where we was up the road about two miles, see the headlight coming.

Q. Had you seen it?

A. Yes, saw it coming over the hill.

Q. You saw the headlight beyond that hill?

A. As soon as it raised up on the hill we saw it. 30

Q. Were you still standing at the grocery corner then when you saw it?

A. No, sir, we were between the post office and the crossing.

Q. Where were you with respect to the big station that is there?

A. How is that?

Q. Where were you with respect to the big station? The big station is between you and that cut then, isn't it?

A. No, sir, not from where we stood, we could look right behind the station, right up the track.

Q. Oh, you were still further away from the tracks than the station, were you?

A. Yes.

Q. And you looked on that side, on the east side  
10 of the station up the track?

A. Yes.

Q. And there you saw the headlight?

A. Yes, sir.

Q. Had the watchman come out at that time?

A. No, sir, not just at that time he hadn't.

Q. Not at that time when you saw the headlight?

A. No, sir.

Q. There isn't any crossing bell there, is there?

A. No, sir, not there.

20 Q. No crossing bell at that main crossing?

A. There wasn't then; there is now.

Q. But there wasn't at that time, was there?

A. No, sir.

Q. This little bell they talk about is a little bell that is in the watchman's box to let him know there is a train coming?

A. When a train comes over by the bell up by the second crossing, it rings the bell in the watchman's box.

30 Q. That is inside the watchman's box?

A. Yes, as soon as the train strikes that, that watchman is out.

Q. Where were you in Atco Avenue when the watchman came out of his box?

A. Between the post office and the crossing.

Q. Which way were you walking then?

A. How is that?

Q. Which way were you walking then—were you walking on Atco Avenue?

A. Walking on down to the railroad.

Q. On Atco Avenue?

A. Yes.

Q. Then you were going to go across the main crossing, weren't you?

A. No, sir, we weren't going to go across the main crossing, going down as far as the crossing and then walk up the road.

10

Q. On the railroad?

A. No, on the wagon road.

Q. But there is quite a space between that wagon road you are talking about and the railroad, isn't there, something like fifty or sixty yards there?

A. There is two wagon roads in there, two on the east side and one on the west side.

Q. There are two wagon roads on the east side?

A. Yes, sir.

Q. And where is this one that you are talking about now that you were going to follow?

20

A. Right next to the track, right next to the siding.

Q. That goes down there by the cars they put on the siding?

A. Yes, sir, that is the one we went down.

Q. Had you started to go down that?

A. No, sir, we hadn't got quite to it yet.

By Mr. Coulomb:

30

Q. Mr. Cook, did the crossing watchman come out at the time the bell rang on this occasion?

A. How?

Q. You say there was a bell in the watchman's shanty which indicated the approach of the train;

do you know that there is a bell in the watchman's shanty?

A. Yes, sir.

Q. And didn't you say that that bell indicated that a train was coming and was a warning to the watchman that the train was coming?

A. Yes, when it is in order.

Q. Did you hear it on this night?

A. Oh, no.

10 Q. Did you see the watchman come out on this night?

A. Yes.

Q. And where was the train when you saw the watchman coming out?

A. Oh, up around the curve.

Q. How far?

A. I couldn't just tell you how far, up to the second crossing anyway.

Q. Up to the second crossing?

20 A. Yes.

Q. How far is that second crossing from this main crossing where the accident happened?

A. Why, I should judge five hundred feet.

Q. You don't think it is any further than that.

A. It might be further than that.

At this point a recess was taken until Monday morning, January 15, 1923, at 10 o'clock A. M.

Camden, N. J., January 15, 1923.

Trial of the cause resumed at 10 o'clock A. M., pursuant to adjournment, in the presence of counsel for the respective parties.

WILLIAM S. F. PIERCE, SWORN.

By Mr. Coulomb:

10

Q. Mr. Pierce, where do you live?

A. Atco, New Jersey.

Q. How long have you lived at Atco?

A. Twenty summers and three winters.

Q. Were you living there on the night of December 20, 1920?

A. I was.

Q. Do you remember an accident in which Mr. Passarello's car was damaged?

A. I do.

20

Q. About what time of night did that accident take place?

A. Somewhere around 8 o'clock.

Q. Was it dark?

A. Well —

Q. I mean, it was night?

A. It was night, oh, yes, 8 o'clock.

The Court: If it was 8 o'clock, it was quite dark.

The Witness: In the winter time, it usually is. 30

Q. Where were you at the time of the accident?

A. I was coming down Atco Avenue to go to the north or east, rather, on Atco Avenue, and just before I started across the track, the bell in the watchman's box rang. As I crossed the track, the watch-

man came out, and I walked east on Atco Avenue, and had gotten about, oh, a hundred and twenty-five or a hundred and fifty feet, to Githens' corner there, when I heard a shouting, and I turned around, and saw the car on the track and the men scrambling out, and a couple of minutes later, or a moment more, the engine struck the car and splintered it.

Q. Where were you when the watchman came out of his box?

10 A. I was just crossing the track; I had just practically passed him.

Q. How far did you say you walked before you heard this shouting?

A. About a hundred and twenty-five feet, I judge it was.

Q. And of course, at the time you heard the shouting — Just let me change that question. Which way were you facing at the time you heard the shouting?

20 A. I was facing east.

Q. That would bring the car, of course, in back of you, the automobile?

A. Yes.

Q. Did you turn around at the time of the shouting?

A. I did; I neglected to state that when I came east on Atco Avenue, as I passed, there was a car standing facing north.

Q. Standing where?

30 A. At Passarello's—is that the name?

By the Court:

Q. You mean at the crossing or above or where?

A. Standing right at the side of the house.

By Mr. Coulomb:

Q. Is that a pool room there, do you know?

A. I don't know anything about that; I saw a car standing there and afterward come on.

By the Court:

Q. Which side of the railroad was it, west or east side?

A. West side.

Q. And which side of the open space there, west or east side, toward the railroad or away from it? 10

A. It was on the west side.

Mr. Coulomb: I think I may aid him, if the Court please; just pardon me a minute. I have a plan here of this; it is not in evidence, but I will have it verified.

The Court: Suppose you show it to Mr. Woodruff, and he may consent that you use it.

Mr. Coulomb: If the Court please, Mr. Woodruff consents that we may use it, and I will offer it in evidence now and have it marked. This is east and this is west (indicating). (To the jury) Ladies and gentlemen, this is a plan showing the crossing at which this accident happened, this being the side from which Mr. Passarello was coming, this being north, toward Camden, and this south toward Atlantic City; this side is west and of course this is east. This is the crossing here. I think this is the pool room that he speaks of, this corner building, right in the corner there. 20 30

By the Court:

Q. Mr. Pierce, which way was that car facing?

A. When?

Q. North or south?

A. When I first saw it?

Q. When you first saw it standing?

A. Facing north.

Mr. Coulomb: The crossing box is right in here, this is the main station and this is the shed, the waiting shed about which testimony has been given,  
10 this small square, and there are the trees. What is the scale of this map, Mr. Smith?

Mr. Smith: Forty feet to the inch.

Mr. Coulomb: There is the grocery store and this is the post office here and here are the two roads about which —

By Mr. Coulomb:

20

Q. Now, Mr. Pierce, this is a map which has been offered in evidence; the direction of my right hand on the map is north toward Camden and the direction of my left hand is south toward Atlantic City; the direction toward you is east and the direction opposite to you on the map is west.

A. Then according to that, this is Passarello's house, is that it?

30 Q. This is Passarello's house; now, where did you see the automobile when you approached the corner?

A. It was facing north.

Q. On the north side of this driveway immediately in front of this corner house?

A. Well, I think it was up here a little; I didn't pay particular attention to it; I saw there was an automobile there.

Q. How far away, how far north of Atco Avenue was it?

A. It was about fifty feet, I judge about that.

Q. Now, about where were you, putting your location on the map, when you heard the shouting that you speak of?

A. I was just about here; I was stepping right up on the crossing when I heard the shouting, and I stood on this corner.

Q. That would be the northeast corner of Raritan 10 Avenue and Atco Avenue?

A. Yes.

Cross-examination.

By Mr. Woodruff:

Q. Mr. Pierce, you say that you were going east on Atco Avenue right on across to the grocery store over on the northeast corner? 20

A. I wasn't going to the grocery store; I was going in that direction, yes.

Q. And you finally got over to that corner when the thing happened?

A. Yes.

Q. And where were you when the watchman came out of his box?

A. I had just crossed; I was almost right to him.

Q. About opposite to his box, the watchman's box?

A. Yes, the bell started just as I crossed the railroad, started to cross the track. 30

Q. That is the little bell that tingles in his box?

A. Yes.

Q. And then you went on away from the direction of the crossing from then on until you heard the shouting?

A. Yes.

Q. You did not turn around at any time until you heard the shouting?

A. No.

Q. So that you did not know what was happening back of you except when you looked after the shouting occurred?

A. That is all, when I heard the shouting I turned and saw the men scrambling out of the car.

10 By Mr. Coulomb:

Q. How close was the train to them at that time, Mr. Pierce?

A. When they were scrambling out of the car?

Q. Yes.

A. Oh, I judge it was at least—well, going at that rate of speed, I judge it was about two hundred feet.

By the Court:

20 Q. You did not see the watchman, did you?

A. Well, I saw a man come out of the box and I judged he was the watchman.

Q. Did you notice when he came out?

A. Well, he was ——

Q. How far the train was away?

A. Well, the train must have been four or five hundred feet at least; yes, it must have been five hundred feet at least.

30 Q. You spoke of the bell ringing at the time in the box, or the bell ringing in the box; how about his coming out with relation to that?

A. Why, he came out almost immediately after that. I had just crossed—I was about across the double track.

By Mr. Coulomb:

Q. Will you indicate on this map where you were when you saw the car facing north?

A. I was coming down Atco Avenue, and I was going east on Atco Avenue.

Q. Had you come into the driveway known as — There apparently is no name for it, but this driveway that runs parallel with the railroad on the west — had you come into that avenue?

A. Well, the car was right here.

Q. Yes, but I mean, had you come in — 10

A. I was crossing that avenue, yes.

Q. You were crossing the avenue which runs parallel with the railroad on the west?

A. Sure.

Q. Now, where were you when you saw the watchman come out of the box?

A. Well, I was just coming right across this platform here as he came out, and I didn't think anything of it, I walked right on.

Q. You were crossing the railroad track when he came out? 20

A. Yes.

By Mr. Woodruff:

Q. Do you know the watchman?

A. No, I didn't; I know him by sight, but I don't know him by name.

Q. Well, Mr. Pierce, you say you judge he was the watchman; how close were you to the man?

A. Oh, I suppose I was within probably five feet 30 of him, but I didn't pay any attention to him.

Q. Did you see this Mr. Bella?

A. Who?

Q. Mr. Bella, the man who was on the stand here the other day?

A. The watchman?

Q. No, the other man who was walking from the direction of the grocery store?

A. No; well, I didn't pay any attention to anybody outside of—I was just walking up the street.

Q. And that is the reason that there is some uncertainty in your mind as to whether this was the watchman or not?

A. Well, I don't know the watchman by name, but I know him by sight.

10 Q. Did you speak to him?

A. No.

Q. You didn't say anything to him?

A. No, I did not.

Q. Did you see him do anything more than come away from that box?

A. No, I did not.

Q. You did not see what direction he was going or what he was doing?

20 A. Well, I saw him go toward the center of the road there.

By Mr. Coulomb:

Q. Was the man that you saw come out of the box the watchman, the crossing watchman?

A. To the best of my knowledge and belief.

Q. Did you see the train when you saw him come out of the box?

A. No.

30 Q. So when you give your judgment as to distance—that is only a judgment and not by what you saw?

A. No.

JOSEPH GONDOLFO, SWORN.

By Mr. Coulomb:

Q. Mr. Gondolfo, where do you live?

A. Atco.

Q. And did you live there in December of 1920?

A. I did.

Q. How long have you lived in Atco? 10

A. Fourteen years.

Q. What is your business there?

A. I don't work there.

Q. Oh, I see, you live there and work elsewhere?

A. I live there, yes, sir.

Q. Were you in the vicinity of the Acto crossing of the West Jersey & Seashore Railroad Company on the night of December 20, 1920?

A. I was.

Q. Do you remember the accident in which Mr. 20 Passarello's car was injured?

A. I do.

Q. Where were you at the time of the accident?

A. About two hundred yards from the crossing.

Q. And on which side?

A. On the north side.

Q. Which avenue were you in?

A. Atco Avenue.

Q. Mr. Gondolfo, this map which I show you is a map of the locus at the point of the accident; the 30 direction on the map toward my right hand being toward Camden and toward my left hand being toward Atlantic City. Now, which way were you going?

A. Coming across this way (indicating).

Q. You were going west then?

A. I was coming here.

Q. Oh, you were going east?

A. Coming across this way, coming toward the grocery store.

Q. You were coming toward the grocery store?

A. Yes.

Q. How far away from the railroad were you?

A. Was I?

Q. Yes.

A. About two hundred yards. I may state I was  
10 in an automobile.

Q. You were in an automobile?

A. Driving across the avenue.

Q. Driving yourself?

A. Yes.

Q. Just tell what you saw of the accident, Mr. Gondolfo.

A. Well, I saw a red light coming out to the center of Atco Avenue, and I started to slow down; I knewed that there was a train coming, and as I got  
20 up toward the track, I stopped, but I had heard a crash previous to getting to the track. When I got up there I seen the automobile all demolished and Mr. Passarello standing alongside, well, within about ten feet of the automobile that was demolished.

Q. Did you know Mr. Passarello?

A. I do, well acquainted with him.

Q. Did you see the automobile, Mr. Passarello's automobile, as you approached the crossing?

A. I don't know whose automobile it was, it was  
30 demolished when I seen it.

Q. Well, did you see it prior to that time?

A. No, I did not, and I stopped and asked him, Mr. Passarello, if anybody was hurt, and he says, "No." I thought I could be of some assistance, and I says, "Whose automobile is it?" he said, "It is

mine." I said, "My God, how did you come to do that?" He said, "My engine stalled," and I got in the automobile and went on; that is all I know.

Q. How far were you away from the crossing when you heard the crash?

A. Well, I judge I was about a hundred feet.

Q. When you first saw the lantern, you were about two hundred yards, you say?

A. About two hundred yards, yes, I think.

10

Cross-examination.

By Mr. Woodruff:

Q. Mr. Gondolfo, I don't understand—were you going from the White Horse Pike toward the railroad?

A. Yes, sir.

Q. From the White Horse Pike?

A. Yes, sir.

20

Q. From the west toward the east?

A. Yes, sir.

Q. And you were beyond Atlantic Avenue then when you first saw this red light?

A. Beyond Atlantic Avenue?

Q. Yes, beyond the avenue that runs along parallel with the railroad?

A. No, I had not crossed the railroad yet; I was about two hundred —

Q. You had not crossed Atlantic Avenue, had you? 30

A. No, I was about two hundred yards from the railroad crossing when I noticed the red lantern.

Q. Now, how far had you gone before you heard the crash?

A. Well, I should say about probably, about four hundred feet.

Q. Could you see the machine?

A. No, I didn't see the machine until I heard the crash.

Q. You did not see the machine at all?

A. No.

Q. Didn't see any lights?

A. No, only the one red light; when I first started to slow down, a machine came a different direction from the way I was coming, a machine came off from  
10 Atlantic Avenue.

Q. Came off Atlantic Avenue to Atco Avenue, and you were both going across the crossing in the same direction, weren't you?

A. The same direction, yes.

Q. And you say you saw only one red light?

A. At the time I slowed down, yes.

Q. And that red light you say was coming from the north and going toward the south?

A. Going toward the south.

20 Q. And that is the only red light you saw?

A. That is the only red light I saw.

Q. And you saw nothing else until this crash came?

A. That is all.

Q. You did not see who had the red light or what it was on or anything about it, did you?

A. No.

Q. You could not even see the machine itself?

A. I didn't see the machine at all.

30 Q. You could not see any persons around there at that distance?

A. No.

By Mr. Coulomb:

Q. Just let me ask you, just describe the movements of this red lantern that you saw when you were two hundred yards —

Mr. Woodruff: He did not say it was a red lantern, a red light.

Q. The red light?

A. It came out toward the center of the road.

Q. Then what happened?

A. What happened?

Q. What happened to the red light?

A. My view was obstructed after that by something, but I couldn't tell what it was. 10

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WINFIELD COOK, SWORN.

By Mr. Coulomb:

Q. Mr. Cook, are you employed by the West Jersey & Seashore Railroad?

A. Yes, sir. 20

Q. What is your business with that company?

A. Engineer.

Q. Were you engineer on the bridge train leaving Philadelphia on the night of December 20, 1920?

A. Yes, sir.

Q. Do you remember coming to Atco station and an accident at that station?

A. Yes, sir.

Q. Were you on time at Atco?

A. Yes, sir.

Q. How fast was your train going as you passed through Atco? 30

A. Why, between sixty and sixty-five miles an hour.

Q. Did you blow your whistle as you approached the main crossing at Atco station?

A. Yes, sir.

Q. Where did you blow it?

A. Why, I blowed it about a half a mile above the road crossing signal, and about a half mile above, and also after I passed that at the mile post, the whistle post, I mean.

Q. What sort of blast did you give at each one of these crossings?

A. Two long and two short.

Q. Is that the ordinary whistle?

10

A. Yes.

Q. Do you know whether or not the engine bell was ringing as you went through Atco?

A. The engine bell was ringing.

Q. Who was ringing it?

A. The fireman.

Q. Where did it start to ring with respect to this Atco crossing, that is, the main crossing south of Atco station, immediately south?

A. Well, it started above the whistle post.

20

Q. Where did you say the crossing was, the grade crossing north of Atco station?

A. Well, I should judge it was pretty close to half a mile above there.

Q. You were on the side of the cab on which this automobile was coming?

A. Yes, I was on the right side.

Q. How far did your train go after you hit the automobile?

30 A. Well, I couldn't just tell; I should judge about a quarter of a mile, between a quarter and a half.

Q. Did you leave your train at all?

A. No, sir.

Q. What did you do after your train came to a stop?

A. Just as soon as I stopped, I told the fireman to go back, and I got down and looked around my engine to see what was broken on the engine.

Q. Was there anything broken on your engine?

A. No, there wasn't anything broken.

By the Court:

Q. A steam engine, was it?

A. Yes, sir.

Cross-examination.

10

By Mr. Woodruff:

Q. What crossing is there above the Atco station, above Atco Avenue?

A. What crossing is it? I couldn't tell you what crossing it is.

Q. How far is it?

A. About a half a mile.

Q. Was that the crossing that you blew for first?

A. Yes, I blew for first, yes.

20

Q. Was there a whistle post for that?

A. Yes, sir.

Q. Then you say you blew the regular road crossing signal again as you approached Atco Avenue?

A. Yes, sir.

Q. Where were you with regard to this cut when you blew it?

A. The cut?

Q. The cut through the hill there?

A. Where was I? Well, I was right at the whistle post.

30

Q. Well, where is the whistle post with regard to this cut?

A. It is right close to the cut, as far as that goes.

Q. Well, which side of the cut?

A. Why, the right side.

Q. Well, your railroad goes through a cut through a hill there, doesn't it?

A. Well, there is, yes, a little hill there, a little cut.

Q. Was it before you come to that that you blew this?

A. Before you come to that, yes.

Q. Did you stop blowing when you came to that cut?

A. Well, the whistle post is right close to the cut there, as far as that goes.

10 Q. Did you stop blowing when you came up to the cut?

A. I stopped blowing shortly after I reached the whistle post.

Q. Do you know how far that whistle post is?

A. No, not for certain; it is about nine hundred feet, or right close to it.

Q. From the crossing?

A. Yes.

Q. Did you give the danger signal after that?

20 A. No, sir.

Q. Had you seen the automobile?

A. Well, yes, just about. Of course, I couldn't just tell what it was, about a hundred or a hundred and fifty feet from it.

Q. You could not see it until you got that close?

A. No, sir.

Q. Why not?

A. Well, on account of the track and curve there; my headlight shone over toward the station.

30 Q. And there is a little shelter for passengers there and trees and a hill that is in your way, too, isn't there, as you come around that curve?

A. No, not to bother me any.

Q. It didn't bother you any?

A. No, sir, I could have saw him.

Q. Then why didn't you see him until you got that close?

A. Because it was dark, and my headlight did not shine on the track.

Q. Coming around the curve the headlight shone off in the other direction?

A. The headlight shines toward the station.

Q. What were the people doing—was the automobile in movement when you first saw it?

A. I don't know, I couldn't say; I didn't see anybody there at all.

Q. Hadn't they got out? 10

A. No, just as soon as I saw the automobile, saw I was going to hit him, I threwed the emergency brakes on.

Q. Was the automobile moving when you first saw it?

A. I couldn't say about that.

Q. You couldn't say whether it was moving or standing still?

A. No, it looked to me like it was standing still; I couldn't say for certain. 20

Q. And you couldn't say whether the men jumped out after you saw it or before?

A. No, I couldn't say.

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EVERETT SOMERS, SWORN.

By Mr. Coulomb:

Q. Mr. Somers, were you employed by the West Jersey & Seashore Railroad Company in December of 1920? 30

A. Yes, sir.

Q. What was your position with them?

A. Fireman.

Q. Were you on the train that passed through Atco about 8 o'clock, the bridge train that night?

A. Yes, sir.

Q. Do you remember the accident?

A. I do.

Q. What side of the cab were you sitting on?

A. The left.

Q. What have you to say with respect to the blowing of the whistle as you approached Atco crossing?

10 A. Well, the whistle was blown at the whistle post for the crossing north of Atco, and also for the one at Atco station.

Q. Did you hear it?

A. I did.

Q. What were you doing at the time?

A. I was sitting on the seat box ringing the bell.

Q. How long had you been ringing the bell prior to the accident?

20 A. Oh, before we came to the first road crossing above Atco, about the time he blew for the road crossing north of Atco.

Q. How long did you continue to ring the bell?

A. Well, I was ringing it until we hit and I heard a crash, you know, and I saw we hit something, you see, and I stopped.

Q. What did you do?

A. I began to look to see what it was.

Q. Could you see anything?

A. No, I couldn't see nothing.

30

By the Court:

Q. Did you know there was a car —

A. No, I didn't know what it was.

Q. The engineer had said nothing to you?

A. No.

By Mr. Coulomb:

Q. Was your train on time at Atco station that night?

A. Just about on time.

Q. And how fast were you going?

A. Oh, I suppose around between sixty, sixty-five, somewhere.

Q. Is that the usual speed for that train if it is on time at Atco?

10

A. Yes.

Q. How far did your train go after you struck the automobile?

A. Well, I should say between a quarter and a half, somewhere about that.

Q. Between a quarter and a half of what, a mile?

A. A mile, yes.

Q. Did you go back to the scene of the accident?

A. I didn't get all the way back there; I met the conductor, and he told me there wasn't anybody hurt, we hit an automobile; he said everything was all right.

20

Q. So you went back and you did not get back then to the scene of the accident?

A. No, I didn't see anything; all I saw was, I got back as far as where the bows, I call it, the top of the car, laid along the track, where we had carried it, I suppose.

Cross-examination.

30

By Mr. Woodruff:

Q. What was the previous crossing above that one, just north of Atco Avenue?

A. Well, there is a road crossing up there about half a mile above.

Q. Then what northward of that—what is the next one?

A. Berlin.

Q. None between Berlin and that crossing?

A. I don't think so.

Q. Where had you been firing last?

A. I fired as we come through Berlin.

Q. After you came through Berlin?

A. Yes, sir, somewhere around Bishop's Bridge  
10 there.

Q. You have to do a lot of firing to keep that train going sixty or sixty-five miles an hour, don't you?

A. Well, it all depends on what kind of engine you have got.

Q. Didn't you have to do a lot of work to keep that steam up?

A. If you have got a good steaming engine to pull it don't; this night we had a good engine, right on  
20 time, a light train, didn't have to work very hard.

Q. Were you on time?

A. About on time, yes.

Q. You were not ahead of time, were you?

A. No, sir.

Q. Were you then a little late?

A. No, I was about on time.

Q. Why do you say "about on time" if you were not ahead of time?

A. Well, I don't know, I just imagine I was.

30 Q. Do you know at the Berlin station whether you were on time or not?

A. No, I couldn't say for sure there.

Q. Don't you check up?

A. Not always, no.

Q. You don't know whether you were on time at Berlin or not?

A. No.

Q. You weren't ahead at Atco?

A. No.

Q. But you were about on time?

A. Yes.

Q. You can't tell me any more definitely than that?

A. No.

By the Court:

10

Q. Is it any part of your duty to check the time of the train?

A. No, sir, it is not my duty; of course, it is customary, you know, to watch the time.

Q. You mean you do it for your own curiosity?

A. Yes, see ——

Q. But I mean, is it any part of your duty, the same as it is of the engineer and fireman to keep track of the time?

A. No, the engineer's ——

20

Q. The engineer or the conductor, rather?

A. No.

By Mr. Woodruff:

Q. When you blow for the crossings, does that reduce your steam pressure?

A. No.

Q. It does not reduce your steam pressure—it doesn't take any steam?

30

A. Oh, it does take steam, yes, but you don't notice it.

Q. Did you blow for the lower crossing at Atco?

A. The engineer did; I didn't.

Q. He blew for that; did you pass that before you came to a stop?

A. I don't know whether we were by that or not; I wouldn't say; it was dark.

Q. Then do you know whether he blew for it or not?

A. He blew for the road crossing north of Atco and Atco Avenue; I don't know that.

Q. You don't know whether he blew for the lower one or not?

A. No, I don't.

10 Q. Do you know whether you rang your bell for that or not?

A. No, I was ringing the bell after he hit this automobile; then he put on the brakes.

Q. Do you know whether he came to a stop beyond the lower crossing or not?

A. I don't know where it was, whether below the crossing or above it.

By Mr. Coulomb:

20 Q. Just let me ask you one question: You say there is no crossing between Berlin and this crossing about half a mile north of the station; you mean by that that there are no crossings at all or no grade crossings?

A. No grade crossings; there is one at Bishop's Bridge, not grade.

Q. Do you know how far it is from Berlin to Atco?

30 A. About, I guess, nearly three miles.

HARRY L. OSTRANDER, SWORN.

By Mr. Coulomb:

Q. Mr. Ostrander, were you conductor of this bridge train that had this accident at Atco on the night of December 20, 1920?

A. Yes.

Q. What part of the train were you in at the time of the accident? 10

A. I was in the rear of the rear parlor car.

Q. Was that the last car?

A. The last car on the train.

Q. And how many cars were on that train?

A. Six.

Q. What were you doing?

A. If I remember rightly, I was sorting over my tickets to see if everything was all right.

Q. When did you first know that an accident had happened? 20

A. When the engineman applied his emergency brakes.

Q. Had you heard a whistle or bell prior to that time?

A. I was busy back there, I wasn't paying attention to the crossing signals.

Q. Did you get out of the train?

A. Yes.

Q. Was your train on time or not at Atco station? 30

A. Yes.

Q. It was on time?

A. As near as I can remember, we were right on time.

Q. And what did you do when you got out of the train?

A. I started forward to see what the trouble was.

Q. You started forward?

A. Forward toward the engine, and I met the head brakeman on the way back, and he said that we had struck something.

Q. Had your train passed Atco Avenue at that time when you came to a stop, had the train passed Atco Avenue?

A. Oh, yes.

Q. How far beyond Atco Avenue, how far south  
10 of Atco Avenue were you when you came to a stop?

A. As near as I can judge it would be about a quarter of a mile or nearly, afterward.

Q. As a result of your conversation with the head brakeman, did you go back to Atco Avenue?

A. Yes.

Q. When you got back there, what did you observe?

A. I observed an automobile, or the wreck of it.

Q. Did you see anybody around there?

20 A. Yes.

Q. Do you know Mr. Passarello?

A. No.

Q. Did he make himself known to you?

A. Only when I asked who the driver of the car was and he said he was.

Q. Did he have anything else to say with respect to the accident other than saying he was the owner of the car?

30 A. I don't remember him saying whether he was the owner; he said he was the driver of the car. I asked him what the trouble was, and he said his engine stalled.

No cross-examination.

FRANK DARE, SWORN.

By Mr. Coulomb:

Q. Mr. Dare, were you employed by the West Jersey & Seashore Railroad Company in December of 1920?

A. Yes, sir.

Q. And what was your position with that company? 10

A. Head brakeman.

Q. Were you the head brakeman of this bridge train that had this accident about 8 o'clock at Atco Avenue in Atco?

A. Yes, sir.

Q. What, if anything, first attracted your attention to the fact that something unusual had occurred at that crossing?

A. Something broke the window on the coach. 20

Q. Of the coach that you were in?

A. I was in the first coach; we had a combined car, then came the coach; we called the combined car the smoker.

Q. Smoking and baggage car?

A. Then a ladies' coach and another ladies' coach.

Q. Which coach were you in?

A. The first coach.

Q. That would be the second car from the engine?

A. No, the third car, we had a refrigerator car ahead. 30

Q. Oh, you had a refrigerator car and then a combined car?

A. Then the coaches, then the parlor car.

Q. Then you were in this first coach, which was the third car?

A. Yes.

Q. Which side of the train were you sitting on?

A. I wasn't sitting.

Q. Where were you just at the time?

A. I was walking.

Q. Did I understand you to say something broke the window or something hit the window?

A. Something hit the window and broke it.

Q. Do you know what it was that hit the window?

A. No.

10 Q. Did it come through, do you know?

A. It didn't come through.

Q. About what portion of the car was this window that was broken?

A. About the fifth or sixth window.

Q. Had you heard any crossing signals prior to that time?

A. Only the whistle blowing, was all.

Q. And how with respect to this breaking of the window, how long before that was it that you had  
20 heard the whistle?

A. Well, I don't know as I could say that.

Q. Well, was it a short or a long period?

A. Well, I don't know just how long, but I know it was a different whistle from the regular engineer's is the reason I noticed it.

Q. How far did the train go after it passed Atco Avenue?

A. Well, I should judge it went a quarter of a mile.

30 Q. Did you get out?

A. Yes.

Q. Did you go back to Atco Avenue, the scene of the accident?

A. Yes, sir.

Q. By the way, was your train on time at that crossing, at that station?

A. Yes, sir, I looked at my watch; it was just fifty-eight.

Q. Is that the usual time, the scheduled time, I mean, for that train?

A. Right on time.

Q. As I understand it, you have a time-table which, while your train does not stop at these different stations, it does indicate the time that you are going to pass, is that correct?

A. We have a passing time of each station. 10

Q. Did you go back to the scene of the accident?

A. After I looked the track over.

Q. Did you know Mr. Passarello prior to the accident?

A. No, sir.

Q. Did he make himself known to you when you went back to the crossing?

A. No, sir, I asked who the man was that owned the car.

Q. What was the answer to you? 20

A. They pointed him out to me.

Q. Did you have any conversation with him about this accident?

A. I asked his name, and he gave it to me. I asked him if there was anybody with him and he said yes, and he pointed another young fellow out to me, I got his name. I asked if there were any more and he said yes, there were three of them, and I think two of them are brothers, I don't know.

Q. Well, did you have any conversation with Mr. Passarello as to how this accident happened? 30

A. Well, I asked him what was the trouble that he was on the track, and he just said, "My engine stalled."

Cross-examination.

By Mr. Woodruff:

Q. Where was your watchman then?

A. The watchman? Why, he was standing there with the rest of the crowd.

Q. Did you talk to him?

A. I talked to him, yes, sir.

10 Q. And that is the only conversation you had with Passarello, he said the engine stalled?

A. Said the engine stalled, and I asked him if he had time to get the car off, and he said he was looking out for himself.

Q. Looking out for himself?

A. Yes.

Q. Did you find out how close they came to being hurt themselves?

A. No.

20 Q. How short a time it was after they left the machine before it was struck?

A. No, sir, but the way the machine looked, he was pretty lucky.

Q. Now, the only signal that you heard was the blowing of the whistle, which was an unusual blowing, is that right?

A. An unusual blowing, yes.

Q. Was that a danger whistle?

A. Well, it was two long and two short.

30 Q. Two longs and two shorts?

A. Yes, that is our blow for stations.

Q. Well, why was it unusual—what is there about that that was unusual?

A. Well, we had a regular engineer on there by the name of Mr. Wilkinson, and whenever he came to the Atco signal whistle post, he most generally always held the whistle down until he passed Atco

station. This night it was two longs and two shorts; that is what called my attention to the blowing of the whistle.

Q. And you don't know how long before that was?

A. No, I couldn't tell you how long.

Q. That is the only signal that you heard?

A. That is the only signal that I heard, until I heard it against the train.

Q. How far apart are the two crossings, the Atco Avenue crossing and this crossing above to the north? 10

A. What, toward Camden?

Q. Yes, the one that is just north of the station there always?

A. Well, I should judge it was half a mile anyway.

Q. Half a mile? You don't remember any bell on the engine?

A. No, sir, you couldn't hear it.

Q. You couldn't hear that?

20

A. We couldn't hear the bell.

By Mr. Coulomb:

Q. Will you say that it wasn't ringing or that you could not hear it if it had rung?

A. We couldn't hear it.

By the Court:

Q. What did you mean—you haven't told us yet whether it is possible to hear it or whether you simply did not hear it? 30

A. Well, the speed of a train going that fast, I don't think that you could hear the bell ringing, I mean a train especially with steel cars.

Q. In the winter time were your windows down?

A. The windows all down, and I was working the steam heat.

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ABRAHAM C. SCHNEIDER, SWORN.

By Mr. Coulomb:

10 Q. Mr. Schneider, were you employed by the West Jersey & Seashore Railroad Company on the night of December 20, 1920?

A. Yes.

Q. What was your position with the company?

A. Rear brakeman, rear flagman.

Q. Were you on this train, this bridge train that had an accident at Atco crossing on that evening?

A. Yes, sir.

20 Q. What part of the train were you in at the time of the accident?

A. The rear end of the rear car.

Q. What sort of car was it?

A. Parlor car.

Q. What part of the car were you in?

A. The rear end.

Q. On the platform or inside?

A. No, inside.

30 Q. What drew your attention to the fact that an accident or something unusual had happened at that crossing?

A. The brakes going into emergency.

Q. Did you hear the train signals before that time, the crossing signals?

A. I don't recollect, no, sir.

Q. Did you get out?

A. Just as soon as the train stopped I went out to protect the rear of the train.

Q. How far back did you go?

A. Well, I went nearly to what they call Atco Avenue.

Q. You were toward Camden from this Atco Avenue crossing?

A. Yes, sir, that is after I went out to flag.

Q. Did you have any conversation with any of the men at the scene of the accident, or did you go right back to your post?

A. I had no conversation, as I recollect, only with 10 the head brakeman.

Q. How far had your train gone past Atco Avenue crossing when it came to a stop?

A. I judge about a quarter of a mile, maybe a little more; I judge about a quarter of a mile.

Cross-examination.

By Mr. Woodruff:

Q. Mr. Wilkinson was your regular engineer, was he? 20

A. I understand he was, yes, as far as I know now, yes.

Q. Were you new that night?

A. What is that?

Q. Were you new on that run at that night?

A. No, at that time that was my regular run, at the time.

Q. Then you knew of Mr. Wilkinson's custom of blowing a long, shrill whistle through Atco, didn't you? 30

A. Well, I don't remember often hearing the engine whistle on account of being on the rear end of the train, not unless you pay particular attention to it; it is hard to hear it, that is, in the train in the rear end.

Q. And you did not know of his previous custom of blowing a long whistle?

A. Well, sometimes, yes, they blow a little different from others, but the usual custom is two long and two short blows for a road crossing.

Q. There wasn't anything which called your attention to any different signals or anything of that kind that night?

A. I didn't hear it, that is, on account of being  
10 on the rear end of the train, it is hard to hear anything.

---

JOSEPH B. SCHOCK, SWORN.

By Mr. Coulomb:

Q. Mr. Schock, were you on the train that had  
20 this accident at Atco Avenue on the night of December 20th?

A. Yes.

Q. You are employed by the West Jersey?

A. Yes.

Q. What was your position on the train that night?

A. Baggage master.

Q. What part of the train were you in?

A. The second car from the engine.

Q. Were you in the baggage part of that car or  
30 in the passenger part?

A. The baggage.

Q. What were you doing at the time of the accident?

A. Why, I was checking up baggage I think at the time.

Q. Checking up baggage?

A. Yes.

Q. Did you know that an accident had happened—did anything indicate to you that an accident had happened?

A. Just felt the brakes, the emergency, and heard a little noise like the stone ballast was hitting under the car.

Q. Did you get out of the train when it came to a stop?

A. Yes. 10

Q. How far was your train from Atco crossing, Atco Avenue crossing?

A. About a quarter of a mile.

Q. What have you to say, Mr. Schock, as to whether or not there was any bell or whistle signal for the Atco Avenue crossing?

A. Well, you couldn't hear a bell.

Q. Did you hear a whistle?

A. From the noise of the train, I just couldn't say whether I heard it or not. 20

Q. You don't know?

A. No.

Q. Were you paying any attention to any signals—was there any reason for you to pay any attention to any signals?

A. No.

By the Court:

Q. What did you say you were doing? 30

A. I was checking up, making a way bill on baggage.

No cross-examination.

LOUIS SEVERINO, SWORN.

By Mr. Coulomb:

Q. Mr. Severino, were you the crossing watchman at the Atco crossing?

A. Yes.

10 Q. Keep your hand down, Mr. Severino, and talk so the jury can hear you, please. How long had you been crossing watchman at that crossing?

A. Three years and a half.

Q. What were your hours of duty?

A. Three to eleven.

Q. That is, three in the afternoon to eleven at night?

A. Yes, sir.

Q. Do you remember the night of the accident?

A. Yes, sir.

20 Q. Do you know Mr. Passarello here, the plaintiff in this suit?

A. Yes, I know him.

Q. Where is your watchman's box or shanty as it has been termed?

A. This is the station, and nearly alongside of the station is my box.

Q. Well, point it out on this map; here is Atco Avenue, Mr. Severino, and here is the railroad station?

A. Yes.

30 Q. And there is a little square between the avenue and the station; is that your box?

A. Yes, that is my box.

Q. I see, that little square place?

A. Yes.

Q. Now, how far is it from your shanty or box to the road?

A. Well, about five feet, I guess.

Q. Talk a little louder, will you please.

A. Five feet.

Q. Do you remember the 8 o'clock bridge train, that is, the bridge train that passes through Atco about 8 o'clock?

A. Yes, sir.

Q. Do you remember it coming along on the night in question?

A. Yes, sir.

10

Q. How long before that train came along did you go out to flag?

A. Well, as soon as the train give me the signal in the shanty, ring the bell, I go out on the crossing.

Q. Do you get a signal in your crossing box?

A. Yes.

Q. Of the approach of this train?

A. Yes.

Q. Did you get such a signal on that night?

A. Yes.

20

Q. What did you do when you got the signal?

A. As soon as I get the signal I go out on the crossing with my red light.

Q. What part of the crossing do you stand in?

A. Well, I can't answer, you know, what is the name, but I stand on this side of the railroad, because the train was coming on the other side.

Q. You stand on the opposite side of the railroad from the track that the train is running on?

A. No, on the other track.

30

By the Court:

Q. Do you stand on your box side of the track or the other side?

A. Yes, on the box side of the track, yes.

By Mr. Coulomb:

Q. Whereabout in the road did you stand?

A. In the middle of the road.

Q. In the middle of the road?

A. Yes.

Q. What kind of lantern have you or do you use?

A. Red light.

Q. How is it arranged—has it got any ——

10 A. Got a wing on both sides to show the train, because if you show a red light to the train, it will stop.

Q. These wings then prevent the red light from showing in the direction of the train?

A. Yes.

Q. And which direction does the red light show?

A. Why, the red light, both streets, you know, up Atco Avenue and the other end.

Q. It shows up Atco Avenue and the other way?

20 A. Yes.

Q. At the time that you went out on the road on the night in question with your red lantern, having received the signal, did you see Mr. Passarello's automobile?

A. No, I seen him in front of the pool room.

Q. He was over in front of the pool room?

A. Yes.

Q. What movement did it make?

30 A. Well, all at once turned around, you know, and come; I don't know if he want to cross the railroad; I thought he going the other way. Pretty soon he comes on the railroad and stops the machine.

Q. What did you do to try to stop him?

A. Well, I hollered three times, "Stay back, the express is coming down."

Q. Where was he when he finally came to a stop?

A. He was pretty near on the first track.

Q. What did the men in the automobile do?

A. Well, he jumped out.

Q. How far was the train away when they jumped out?

A. Well, I don't know, because I don't want to say how far the train was.

Q. You don't know how far it was?

A. No, I don't know, five hundred feet, four hundred feet, three hundred feet—I don't know; I couldn't tell.

10

Q. What were you interested in at that particular minute—what was occupying your mind at that particular minute?

A. Well, to see, watch the man and tell them to stay back.

Q. How many times did you say you called to him to stay back?

A. Three times.

Q. And where was he when you called the first time, how far?

20

A. Well, he was about three or four feet on the other side of the railroad.

Q. Clear of the track?

A. Yes, sir.

Q. Did you see the automobile start away from in front of the pool room?

A. Yes, I see when it started from the pool room.

Q. Where were you at the time?

A. I was in the middle of the crossing, right in the middle of the crossing with my red light.

30

Q. What did you have with you?

A. Had Mr. Cook and Mr. Hartley.

Q. No, what did you have with you?

A. I had my red light.

By the Court:

Q. You mean the men who testified here the other day?

A. Yes.

By Mr. Coulomb:

Q. Did you hear the train coming?

A. Yes.

Q. What did you hear?

10 A. I heard it blow a whistle.

Cross-examination.

By Mr. Woodruff:

Q. How long have you known Mr. Cook?

A. How long I know Mr. Cook? I know Mr. Cook fifteen years.

20 Q. Fifteen years; how long have you known Mr. Hartley?

A. Well, I know him twenty years.

Q. Twenty years?

A. Yes.

Q. Where did they come from?

A. Well, they come from my side, where I stand by the box with the red light.

Q. They came from your side where the box was?

A. Yes.

30 Q. And walked out with you to the middle of the road?

A. No, he was stopped, because he seen me with the red light; he stopped for the train to go by, then go across the road.

Q. But as they came from where your box was —

A. No, he never came to my box; I was in the middle of the road.

Q. No, you don't understand me; you say first Mr. Cook and Mr. Hartley came from the side where your box was, is that right?

A. Sure, from where I have got a shanty there by the railroad.

Q. And they walked out to the middle of the road?

A. I walked out to the middle; he was walking right in the middle of the road alongside of the pavement there.

10

Q. Well, did he come from the side where your box was or didn't he?

A. No, on the other side.

Q. He came from the other side?

A. Yes, he came on the other side to my box.

Q. The Atlantic City side?

A. Yes.

Q. And he was walking from the Atlantic City side over toward your box?

A. No, he was coming down this street to go down this way (indicating).

20

Q. Well, that is what I want to know; was he walking right down the middle of the road?

A. Not the middle of the road, on the pavement.

Q. He was walking on the pavement?

A. Yes.

Q. Now, which pavement, on the side where your box is or the side toward Atlantic City?

A. The other side.

Q. The side toward Atlantic City?

30

A. Yes.

Q. Did they talk to you?

A. No, sir.

Q. How close did they get to the track?

A. Why, he got close, I don't know, about twenty-five feet.

Q. Twenty-five feet?

- A. I judge.
- Q. They didn't get any closer than that?
- A. No.
- Q. Did you know them, see them, know who they were?
- A. I know them, yes.
- Q. At that time, did you see them?
- A. Yes.
- Q. Did you recognize them?
- 10 A. Yes.
- Q. Speak to them?
- A. After the train go by there.
- Q. But before the train went by you didn't speak to them?
- A. No, sir.
- Q. Did you look around there and see them?
- A. No, sir.
- Q. Well, when did you see them?
- A. I seen them before the train come down, then
- 20 I look at the people in back of me.
- Q. When did you do that, when you were out in the middle of the road?
- A. Sure, when I was out in the middle of the road, sure, I seen people come down and the express come down, that is all.
- Q. When you were out in the middle of the road you turned around and looked at Mr. Cook and Mr. Hartley?
- A. Yes.
- 30 Q. Who were twenty-five feet away over to the east on the other sidewalk?
- A. Yes.
- Q. Where was the Ford automobile then when you turned around and looked at Hartley and Cook?
- A. The automobile pretty near comes on the railroad then.

Q. At that time, when you turned around to look at Mr. Cook and Mr. Hartley?

A. Yes, because I hollered three times to stop.

Q. Well, was that before you looked around at Mr. Cook that you hollered for them to stop or afterward?

A. It was afterward.

Q. After you turned around and looked at Mr. Cook?

A. Yes.

Q. Then you turned around and hollered "Stop" three times? 10

A. Yes.

Q. What words did you say, "Stop, stop, stop"?

A. I said, "Stay back, because the express will come," three times.

Q. "Stay back"?

A. Yes, "Stay back."

Q. "Stay back, stay back, stay back"?

A. Yes, sure. 20

Q. Well, what words?

A. What do you mean, what words?

Q. What words did you say, "Stay back," or, "stop," or what?

A. I said, "Stay back, stop, the express will come down."

Q. And he was about four feet from the track then?

A. Yes.

Q. You had not hollered to him when he was over 30 further away?

A. Well, when he come to the first rail —

Q. You had not hollered at him when he was ten feet or twenty feet away?

A. Well, I didn't think he was coming toward the railroad; I thought he was going the other way.

Q. That was the first time you hollered, when he was four feet away?

A. Yes.

Q. Coming right toward you?

A. Yes.

Q. Was he coming fast?

A. Well, I can't say how fast the machine goes; I can't tell.

Q. Where did you get your lantern?

10 A. Outside of the shanty, alongside of the shanty I got my lantern.

Q. Outside of the shanty on the ground?

A. Yes, right alongside of the box, where the door comes out.

Q. Which way does your box open, toward Atlantic Avenue or toward the railroad track?

A. Toward Atlantic City.

Q. You walk out toward Atlantic City, on that side?

20 A. Yes.

Q. Did you see Felix Bella?

A. He was standing right close to the shanty there.

Q. Right close by your shanty?

A. Yes.

Q. He was there when you came out?

A. I was out before he came down; he stopped right alongside of the shanty there and waited for that express.

30 Q. What were you doing before he came down?

A. He came down the street.

Q. What did you do before he came down?

A. I was in the middle of the road.

Q. You went out in the middle of the road before Bella came down the street?

A. Yes.

Q. Did you have your lantern then?

A. Sure, I had my lantern there.

Q. And you did not holler to Passarello until he was four feet away from the track, is that right?

A. Well, I saw him going across the railroad, and I hollered to him, "Stay back," because I thought he was going the other way.

Q. The train was how close then?

A. I couldn't tell you.

Q. When he was four feet away from the track, how close was the train? 10

A. I don't know, because I never measured.

Q. Had you seen it—had you seen the train?

A. Sure, I seen the train.

Q. You had seen it before that?

A. Yes.

Q. On your side of the track, you can see around the curve further, can't you?

A. Yes.

Q. And you had seen the train coming?

A. Yes, sir. 20

Q. You can't tell us how close it was?

A. No, I can't.

Q. Was it still in the curve when he came up there?

A. Oh, sure, it was in the curve over there.

Q. When the automobile came up to four feet, it was still around in the curve?

A. Yes.

Q. Have you a little waiting shed that is there, is that right? 30

A. What?

Q. You know the little waiting shed?

A. Yes.

Q. On Passarello's side?

A. Yes.

Q. It was past that, past the trees around the curve?

- A. No, it was further up.  
Q. Further yet?  
A. Yes.  
Q. Further toward Camden?  
A. Yes.  
Q. That is when the machine came up to four feet?  
A. Yes.  
Q. That is when you hollered "stop" three times?  
10 A. Yes.  
Q. Or something to stop him?  
A. Well, yes.  
Q. Then he came and stopped right on the rail, didn't he?  
A. He come to the first rail and stopped there; I don't know.  
Q. How soon did the engine hit the Ford after the men got off the machine?  
A. I don't know, I can't tell.  
20 Q. Who was the last one to get out?  
A. It was Rocco.  
Q. Rocco Passarello was the last one to get out?  
A. Yes.  
Q. Did you see where he fell or where he jumped?  
A. He jumped out.  
Q. Down on the ground?  
A. No, just pumped out on his feet.  
Q. On his feet?  
A. Yes.  
30 Q. Well, down onto the ground?  
A. Down to the ground, yes.  
Q. How quick then did the engine hit the Ford?  
A. I don't know, I can't tell that.  
Q. Didn't it hit it right away?  
A. I don't know.  
Q. You don't know that?  
A. Well, it hit, and I don't know how long it be.

Q. What was Mr. Cook doing?

A. It was farm work and carpenter.

Q. What was he doing when the automobile came up?

A. What he was doing?

Q. Yes, what did he say—what did he do?

A. I don't understand you.

Q. Did he say anything, did he talk to the boys in the machine?

A. I don't know, I never see if he talked to the boys or not. 10

Q. He was twenty-five feet further away from you, wasn't he?

A. Yes.

Q. And he wasn't talking to these boys about getting out and pushing the machine back or anything like that?

A. No.

By Mr. Coulomb:

20

Q. You did not hear him do any such talking, did you?

A. No, I did not.

Q. Was he on your left-hand side or right-hand side?

A. On the left.

Q. On your left?

A. Yes.

Q. You say that you turned and looked at him? 30

A. Yes.

Q. What did you do, turn your head or whole body?

A. Just turned my head.

Q. Did that have any effect on the way the lantern showed up and down Atco Avenue?

A. No, just red light both sides of the street.

GEORGE C. SMITH, recalled.

By Mr. Coulomb:

Q. Mr. Smith, you made this map which has been offered in evidence?

A. Yes, I did.

10 Q. And it has been admitted in evidence, but I want to get some of the distances. First, I want to know where Mr. Passarello's pool room is, whether it is the first or second house?

A. It is the second; it was at that time, it is not a pool room now.

Q. The second house?

A. Yes.

Q. How far is that house from the corner of Ateo Avenue?

A. 130 feet.

20 Q. Are you sure about that, Mr. Smith, that that is the pool room?

A. Well, there was a pool room there at one time, but whether there was another pool room or not, I couldn't say.

Q. In the second house?

A. No, I wouldn't say whether that was Passarello's pool room or not.

The Court: Is that a fact, Mr. Woodruff?

30 Mr. Woodruff: No, this house was built with this long end for the pool room.

The Witness: There was a pool room in this building a couple of years ago.

Mr. Coulomb: Then this building here, Mr. Woodruff, is the pool room?

Mr. Woodruff: Yes.

Q. How far is that from the corner?

A. From the curb?

Q. Yes.

A. Thirty-five feet.

Q. What is the width of the driveway between the curb line and the railroad?

A. Sixty feet to the edge of the platform.

Q. What is the distances from the store on the east side of the railroad to the railroad? 10

A. That is a hundred and ninety feet.

Q. What is the distance of this train shed or this waiting shed north of the crossing?

A. 185.

Q. And the circles, which I suppose indicate trees?

A. They are the trees, yes.

Q. Where is the nearest of them?

A. About the same distance. 20

Q. From the crossing?

A. Yes, 200 feet.

Q. Now, how far is the next crossing, the next grade crossing north of Atco Avenue crossing?

A. 2450 feet.

Q. Are there any other grade crossings between that one and Berlin?

A. No, sir, the next crossing is just south of Berlin; there are three roads go over there.

Q. What kind of curve is this? 30

A. A one degree curve.

Q. What does that mean?

A. It has a fifty-seven hundred and thirty foot radius, what would be termed a light curve in rail-roading.

Q. Now, north of the Atco crossing, do the tracks

run through what has been testified to here as a cut?

A. They do, yes.

Q. When making this map, you were there on what day?

A. On Friday, Friday morning.

Q. Did any train pass going south at the time that you were there?

A. Yes, sir, there was an express train went by.

10 Q. What have you to say as to your view of that train in the direction in which it was going?

A. I was standing about fifteen feet from the track here at the crossing, right about in here, where I indicate, and up that road I could see the train—I could see the window-sills of the car, in other words, I could see about half the train above the cutting.

Q. About half the train above the cut?

A. Yes.

20 Q. And how far away was it?

A. That was, the first view I got of it, was thirteen hundred feet from the crossing.

Q. Now, where does this cut begin, how far from the Atco crossing?

A. You mean the south end of it?

Q. Yes.

30 A. It begins right beyond the shelter shed, starts right in where these trees are, and goes up gradually until it reaches its deepest place about six hundred feet from the crossing.

Q. How deep is it at its deepest place?

A. Well, it is not over five and a half feet any-way above the rail.

Cross-examination.

By Mr. Woodruff:

Q. You, of course, were standing still at the time that the train was coming?

A. I was, yes.

Q. And at a point only fifteen feet from the track?

A. Yes.

Q. You say it did not come in sight at all until it was within thirteen hundred feet of this crossing? 10

A. Thirteen hundred feet of the crossing.

Q. You can't see at all beyond that?

A. No.

Q. Then from thirteen hundred feet, you begin to see the upper part of the train, do you?

A. Yes.

Q. And gradually, of course, you can see more and more of the train until it gets down to the crossing? 20

A. You can, yes.

Q. The distance that you measured to the Passarello house was to the far side of the house, wasn't it, from Atco Avenue?

A. From Atco Avenue about to the center; I can give you anything you want there, the near side?

Q. No, the center of the house?

A. The center of the house from the edge is thirty-five feet.

Q. And how far diagonally across from what would be a point out in front of the house to the near side of the crossing? 30

A. To the near side of the crossing is eighty feet.

Q. So that on a machine you have approximately eighty feet to go?

A. About that, yes.

Q. And this is all gravel across here except for these telephone poles?

A. There are the station lots; the platform is raised about ten feet out from the edge, and from there to the other side of the street is the driveway.

Q. Is there a platform along here?

A. There is just a raised cinder; it slopes off to the driveway.

10

By the Court:

Q. Where is the building, on that side?

A. This building, that is a shelter shed or station.

Q. How wide is that?

A. That is about twelve feet; it is about twelve feet.

Q. How long?

20 

A. About sixteen.

By Mr. Woodruff:

Q. The height of it—you were there last week—was what?

A. About fourteen feet.

Q. About fourteen feet high?

A. I haven't measured it, I judge that.

Q. And do you know how large these trees are?

A. They are large trees.

30

Q. And have branches out?

A. They have branches out; the branches are quite high.

Q. Is there any sidewalk, Mr. Smith, on the southerly side of Atco Avenue between the grocery store and the railroad?

A. These lines shown here are curb lines, and there is gravel inside of those curbs that you might term sidewalks, not a paved sidewalk, not a cemented sidewalk.

Q. An actual path, is it?

A. An actual path.

Q. You didn't show on your map the lowest crossing by the broom works?

A. No, sir, I did not, didn't go that far.

Q. There is a lower crossing here parallel with 10 Atco Avenue?

A. Yes, there is.

Q. Another street that runs the same way?

A. Yes.

Q. This street that we did not know the name of the other day is Raritan Avenue?

A. Yes, that our map shows.

Q. And Raritan Avenue runs down here and joins this other street by the broom works, doesn't it?

A. I think so, I haven't walked down there. 20

Q. Did you take this from your other maps or location?

A. I located it on the ground; I never have been down on the ground to where it shows.

Q. To show the driveway here?

A. Yes.

Q. Does that connect into Raritan Avenue?

A. That connects into Raritan Avenue.

Q. So if you walk southwardly here by the post office, you can go into this path and go down here 30 to the lower crossing?

A. You could, yes.

Q. Or you could come down here and go into one of these driveways?

A. Either one, yes.

Q. Where are these, in your yard?

A. They are in the yard, yes.

Q. And this is a path that goes down into the lower crossing?

A. Well, yes, as Raritan Avenue runs out in this direction, it keeps getting further away from the railroad all the time, see, and there is a little driveway that runs from Raritan Avenue into here.

Q. Which is not shown because your map does not go that far?

A. The map don't go that far.

10 Q. Now, how far from this grocery store is it to this crossing, from the grocery store corner—measured from the corner?

A. That is a hundred and eighty feet.

By Mr. Coulomb:

Q. Mr. Smith, do you know whether people use this driveway right along the route of the railroad for walking?

20 A. Yes, there was quite a number of people walking down there when I was there on last Friday.

Q. Does that connect with the railroad crossing below?

A. It does, yes.

Q. A road crossing, I mean, below?

A. Yes.

By Mr. Woodruff:

30 Q. Last fall, were you familiar with the work that was done down there at that cut, reducing the grade of it?

A. In the cut?

Q. Yes.

A. No, sir, I was not.

Q. Don't you know that that was reduced?

A. I do not, no, sir, haven't heard anything of it.

Q. Don't you know anything about it all?

A. There was some track work done there at the station, but that was the only work.

Q. Don't you know that that was cut down, that hill there, so to be less of an obstruction?

A. I do not, no, sir.

Q. That last fall, since this accident?

A. I haven't heard of that, no. 10

Q. Well, you are giving us five feet and a half as it is today?

A. Yes.

Q. Not at the time of this accident?

A. Yes.

Q. Were you sent down there to make any measurements at the time of the accident or right afterward?

A. No, sir, I was not.

Q. So that you can't tell us about that? 20

A. No, sir, I can't.

By Mr. Coulomb:

Q. Had there been any work done on that cut down there with respect to changing it or altering it or reducing it, would you have known of it in your position on the railroad?

A. I believe I would, yes; I am very much surprised to hear there had been something. 30

Q. Do you know whether or not there has been?

A. Not to my knowledge, no.

Q. And would you have knowledge of it had it been done?

A. I believe I would, yes.

Q. What is your position with the railroad?

A. Civil engineer, from the division engineer's office.

Q. And under whose supervision would such work be done, if it was done?

A. The supervision of the division engineer.

Q. And you are in his office?

A. I am, yes, sir.

By Mr. Woodruff:

10 Q. Mr. Smith, when you were down there the other day, you saw a new gravel road that went up over that hill, didn't you?

A. There was a gravel road there, but I would not call it a new one.

Q. You don't know whether that was there or not at the time of the accident, do you?

A. No, I do not.

Q. You don't know when they put that road there how much of a cut they made last fall?

20 A. No, sir, I do not; I don't know what road work was done there.

#### DEFENDANT RESTS.

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#### PLAINTIFF'S REBUTTAL.

WILLIAM FLEXON, SWORN.

30

By Mr. Woodruff:

Q. Mr. Flexon, what is your business?

A. Automobile business.

Q. Where is your place located?

A. Williamstown.

Q. You handle Ford cars?

A. Yes.

Q. Still handle them, do you?

A. Yes.

Q. And did you in 1920?

A. Yes, sir.

Q. Now, you sold a sedan to Rocco Passarello; this sedan was smashed on December 20, 1920.

What was it worth at that time?

A. About nine hundred dollars.

10

Q. You were familiar with the sedan, were you, saw Rocco driving it?

A. Yes.

Q. Had you sold him another car before that, another Ford?

A. Yes.

Q. Had you seen him drive often?

A. Yes, I often saw him drive.

Q. What kind of driver was he?

20

Mr. Coulomb: I think that is immaterial and irrelevant.

The Court: It is harmless as far as it has gone; I expect the next question you want to stop.

Mr. Woodruff: Well, if Mr. Coulomb objects, we won't press it.

Cross-examination.

30

By Mr. Coulomb:

Q. What sort of Ford was it that you sold Mr. Passarello?

A. A sedan, Ford sedan.

Q. Was that a new Ford at the time you sold it to him?

A. When I sold it to him, yes.

Q. What was the sales price of that Ford at that time?

A. The selling price? It came equipped about like it was for a little over ten hundred dollars, and he had some extras on it. I haven't got the figures with me, just exactly what the list price was on it  
10 at that time, but figuring on the selling price of slightly used cars, it was worth about nine hundred dollars.

Q. The testimony is that the car had been driven about, I think, seven hundred and fifty or eight hundred miles. What is the depreciation in the car, whether it had been driven carefully or not, covering that much mileage?

A. It depends largely on how it is used; a car selling for around ten hundred dollars at that time,  
20 at that time the second-hand value was around nine hundred dollars.

Q. After it had had four or five months use?

A. Yes.

Q. Would you have given nine hundred dollars for it?

A. I have done it.

Q. Would you have given nine hundred dollars for it on December 20, 1920?

A. In exchange prices we usually —

30 Q. I am not asking you about an exchange; I am asking you the selling price?

A. The selling price? I don't think there would have been any question of getting nine hundred dollars for it at that time.

Q. When was the price of Fords reduced after August of 1920?

A. I really can't tell you; I don't know that.

Q. There was a reduction, wasn't there?

A. There was a reduction, yes.

Q. How much was the reduction?

A. We usually reduce them in January.

Q. How much was the reduction?

A. About ninety dollars.

Q. About ninety dollars?

A. Yes.

10

By the Court:

Q. Do you know whether it was in the interim, between the time he got it and the 20th of December?

A. I couldn't tell; they have been reducing ever since 1920. I can show you, if I had the number.

By Mr. Coulomb:

Q. There have been a number of reductions since 1920? 20

A. Yes, there has been a number of reductions; it would be hard to carry them in your mind; of course, a car now and then is a different price.

By the Court:

Q. What are they down to now—down to their lowest now since the war?

A. I don't know, they are dropping considerably. 30

Q. Is this the lowest price since the war?

A. This is the lowest price since the war, yes.

By Mr. Coulomb:

Q. You think the reduction was only about a hundred dollars between a brand new car and a car

that had been driven seven hundred miles in four or five months?

A. Yes, the reduction in price—I don't think there was any reduction in the list price of the car until after—

Q. I don't mean a reduction in the list, in the depreciation in a used car?

A. Yes.

10 By the Court:

Q. Does a Ford hold up better as a second-hand car than other cars?

A. Yes, it does; in fact, I have customers that I would exchange every year for about a hundred dollars on a touring car; that was the exchange price, and we always came out good and sold them readily for that price. Of course, recently there is more of a depression, because the new ones are cheaper.

20 Q. You are stuck on cars, too, aren't you, second-hand cars?

A. Yes, there is not the demand for the second-hand ones when they can get the new ones so much cheaper, but at that time the new ones were hard to get.

By Mr. Coulomb:

30 Q. Mr. Flexon, just let me ask you one more question: For the purpose of testifying here, how do you fix the price at which you sold that car to Mr. Passarello? Is that just your judgment or your recollection of it, or have you some record of it?

A. I have records in my books at home, and I had the bookkeeper to go over the records this morning

Q. That is what I want to know, that is, how you came to it, by what somebody has told you?

A. No, I looked up the record, and Mr. Passarello bought two Ford sedans from me, and it appears that this record that they gave me was the sale of the previous car. I can tell you just what this car sold for, but the question in my mind is if this is the proper car or not. He bought, I think, four cars from me, and this car less any equipment came to nine hundred and thirty-nine dollars, without any equipment.

Q. What are you reading from there? 10

A. A copy from my records at home.

Q. Well, do you know whether that was the car that was destroyed or not?

A. No, I don't know; that is the question; I said, I don't know whether this was the very car, because he bought another sedan. He bought two very close together; he bought one and sold—

By the Court:

20

Q. Was there a difference in price?

A. Yes, there was a difference.

By Mr. Coulomb:

Q. What was the difference in price?

A. Now, you are asking me to guess at it; I can't tell you.

Q. You can tell approximately, can't you?

A. There was a car that we sold that ran over 30 one thousand dollars, and that was less the demountable rims. Now, this car was fully equipped with demountable rims that he had direct; there was an extra tire, bumper—

By the Court:

Q. Did you see the car that was wrecked?

A. Yes, I saw it, I saw it a while before it was wrecked, because Mr. Passarello had done some driving for me, and often came to my place. Then I saw it afterward, because I went there to get some of the parts, for instance, the curtains and some of the cushions, because they were in excellent shape, and I wanted them because at the time parts were hard to get. I used some out of this top, this body  
10 that was wrecked, and it was in excellent condition.

By Mr. Coulomb:

Q. You mean the parts of the car that were wrecked were in excellent condition?

A. The parts that I wanted were in excellent condition, yes.

Q. Did you pay for them?

A. No, I didn't pay for them, because they were  
20 no good to Mr. Passarello; for instance, it was just like curtains, cushions, something like that.

Q. Well, what was the value of that?

A. The curtain was valued at \$2.50, and it was worth \$2.50; the cushions, they run about five dollars. The rear cushion was torn to pieces; I didn't use that.

Q. Any other part of the car that you were able to use?

A. No.

30 Q. How long after the accident was it that you saw the car?

A. I think I saw the remains lying by the railroad the next day.

Q. When were these cars purchased? You say Mr. Passarello bought two or three cars or four cars, I think you said; when were they purchased, all about the same time?

A. No, he had been dealing with me for I guess about three or four years, four years or more; he bought one or two cars and sold them.

By Mr. Woodruff:

Q. Mr. Flexon, just one question: At the time of this accident, did he have more than one car or had he traded in previous cars?

A. He had traded in the previous cars. 10

Q. So that he only had the one sedan at the time?

A. He only had the one sedan at the time.

By Mr. Coulomb:

Q. Do you know what year's model this car was?

A. 1920.

---

PLAINTIFF'S REBUTTAL.

20

ROCCO PASSARELLO, recalled.

By Mr. Woodruff:

Q. Mr. Passarello, what did they do to this hill last fall down there?

A. Why, they cut it down, and they built a new road over the top of it.

Q. That was built by the railroad or by the township? 30

A. By the township.

Q. How was it graded?

A. Graded with cinders they got from the railroad.

Q. They got the cinders from the railroad to grade it?

A. From the railroad, yes.

Q. Before it was cut down, what part of a train could you see as it came through the cut?

A. Couldn't see no part of the train at all.

Q. Now you can see what?

A. See about a couple of feet, I guess, just the top of the cars.

Q. But before the accident it was that much higher, was it?

10 A. It was that much higher, yes.

Cross-examination.

By Mr. Coulomb:

Q. How much higher was it in feet before the accident than it is now?

A. I judge about three or four feet higher.

Q. And they cut off about three or four feet, did they?

20 A. Yes.

Q. When did they cut off three or four feet?

A. Last fall sometime.

Q. Who did it?

A. The township.

Q. And for what distance did they cut off three or four feet?

A. Well, from Atco Avenue up to around the curve there.

Q. Cut off three or four feet all the way along?

30 A. I don't know just exactly if they cut all the way along, but on the top of the hill, they cut more just as it went up to the grade.

Q. Lowered it three or four feet?

A. Yes.

Q. You are sure of that?

A. Positive.

PLAINTIFF RESTS.

DEFENDANT'S REBUTTAL.

ABRAM LANE, SWORN.

By Mr. Coulomb:

Q. Mr. Lane, where do you live?

A. I live at 852 Haddon Avenue, Camden. 10

Q. What is your business?

A. I am in the automobile business.

Q. Where is your business located?

A. 567 and 569 Haddon Avenue.

Q. In Camden?

A. Yes, sir.

Q. How long have you been in the automobile business in Camden?

A. Been in it since 1910.

Q. Are you familiar with Ford cars? 20

A. Well, that is the general car I look for the repair work on.

Q. Do you know the price of a Ford car fully equipped, 1920 model?

A. 1920 model, fully equipped, with demountable wheels and demountable rims, less any other accessories that a man might buy and put on, was \$867.81 delivered, filled with gas.

Cross-examination. 30

By Mr. Woodruff:

Q. Is that the sedan, Mr. Lane?

A. Yes.

Q. What time in 1920?

A. In October.

Q. And you say that was without the other extras?

A. Without any other extras or accessories a man might put on.

Q. Just flat?

A. Just flat; the car was delivered.

Q. You are not a Ford dealer, are you?

A. No, sir.

Q. Don't have a Ford agency?

10 A. No, only in the second-handed game, that is all, buying and selling second-hand cars.

BOTH SIDES REST.

At this point a recess was taken until 1.30 o'clock P. M.

---

20 Trial of the cause resumed at 1.30 o'clock P. M., pursuant to adjournment, in the presence of counsel for the respective parties.

## CHARGE OF THE COURT.

LLOYD, J.

Ladies and Gentlemen: The plaintiff in this case is seeking to recover for damages done to his car. Fortunately the accident resulted in no injuries to the parties themselves (the occupants got out safely), but the train probably pretty well damaged and 10  
destroyed the car.

The claim of the plaintiff rests upon the proposition that the loss of the car was due to the negligent operation of the train or to the failure of the flagman to perform his full duty at the crossing. Under the law as it stands today, the duty which a railroad company owes to the users of the highway is to either sound a whistle for a distance of nine hundred feet until the crossing is reached, at intervals, or to ring a bell of prescribed size for the same distance. 20  
In this case, however, the railroad company had placed a watchman, and it is claimed that in addition to the legal obligation which the railroad company owed to the traveling public, that it had assumed an additional obligation upon which the users of highways crossing the railroad tracks at that point were entitled to rely; and I am going to say to you that if you find that the railroad company, as you will, placed a watchman there, and that he failed to perform the functions that he was placed 30  
there for, namely, the warning of travelers upon the highway, that you may infer from that act a want of care by the railroad company itself.

There is some confusion possibly in the law on this subject; there seems to be a contrary line of rulings in some of our Courts, but the view which I have taken is one which I think is sustained by

the fundamental law of the State as declared by our Courts, and is in keeping with our sense of reason; so that you will have to find in this case that the railroad company neglected a duty which was owing to this plaintiff in one of two respects, either in the warning from the engine that I have already referred to, or a proper warning from the gateman, from the flagman.

10 Now, upon those points there is a great deal of testimony in this case. The plaintiff says that his car was turned north in front of a pool room on the west side of the railroad, a property nearly opposite the station, that he turned around and then went toward the track, and that he got very close to it before the flagman came in view or gave any warning of the approach of a train. He said further that he heard no sound of bell or whistle from the train itself. In that he was supported by one or two of the men in the automobile with him. One  
20 of them had made no observation; he did not see the flagman. A man who was on the street, by the name of Bella, said that the watchman came out of his box when the plaintiff came toward the track and he was about five feet away; he came out and called to him to get back. Against that the railroad company has called a number of witnesses who claim to have been in the neighborhood, including the watchman, and they have called the men on the train and some off of it as to the signals given by the engineer.  
30 Now, in those circumstances it becomes a question for you to say whether or not there was any failure on the part of the defendant to perform its duty that night.

Obviously trains must be run upon their tracks, and they have the right of way upon the tracks. You can see at once if it were otherwise there would be no such thing as rapid transit in our railway sys-

tem; if every time a train came to a crossing it should have to look out for people crossing on highways, there would never be any such thing as rapid movement of trains upon the railways, and in consequence the law has given the right of way for trains to operate at any speed that they find practicable. Now, the burden is on the plaintiff in this case to show that the railroad failed in its duty to give warning in one or more of these respects, and that it was in consequence of such negligence that the plaintiff's injuries were sustained, that is, the damages to his car. 10

Another question arises in this case, and that is whether— The plea of contributory negligence, I suppose, is raised?

Mr. Coulomb: Yes.

The Court: Another question that arises in the case is as to the conduct of the driver of the car himself; he happens to be the owner and driver, so that his responsibility for the damage to the car is complete if he was in any way responsible by his negligence in the operation of his car. It is obvious to us all that when one approaches a railroad crossing, he approaches a place of extreme danger, and consequently the law exacts of him the exercise of care according to the circumstances. Now, if he failed in the exercise of that care on this occasion, the law says that he cannot recover from the other party even though that other party was in like default. So that in this case you have got to determine first whether there is any proof of negligence on the part of the railroad company that satisfies you by its preponderance that negligence exists; if it does not, then that is the end of the case. If it does exist, if you find that there was negligent operation or negligent failure of the flagman to perform his 20 30

duty, then you determine whether or not the plaintiff himself was guilty of any negligence in his conduct in approaching this track.

The burden is on the defendant to show the plaintiff's negligence just as the burden is on the plaintiff to show the defendant's negligence. If you find either of these propositions against the plaintiff, that is to say, if you fail to find negligence in the railroad company, the verdict should be for the  
10 railroad company; if you find that the negligence of the railroad company in combination with that of the plaintiff caused the damage to the car, then likewise the railroad is entitled to a verdict. If you find that it was due to the negligence of the driver of the automobile alone, why, obviously, he would have no right to complain of anybody but himself. If it is an accident pure and simple without negligence on the part of any one, then in that situation the railroad, of course, is not responsible. If the accident  
20 was due to the negligence of the railroad company directly and to that alone, then you would reach the question of what damages the plaintiff had sustained in the injuries to his car.

Now, I am not going over that, because there isn't a very great margin of difference between these parties. It was a Ford car; they are not the most expensive car in the world, and they were not at that time; they may be the cheapest, I don't know, but if it was destroyed by the negligence of the de-  
30 fendant and by that alone, then of course the plaintiff is entitled to its worth, whatever it was. If it was not caused by the defendant's negligence or it was an accident pure and simple, without negligence on the part of any one, or if it was due to the combined negligence of both the driver and the defendant, then the defendant is not liable in this case. The request, Mr. Coulomb, is denied, and I will allow you an exception.

DEFENDANT'S EXCEPTIONS.

Mr. Coulomb: I ask an exception also to that portion of the charge in which your Honor said, "If the watchman failed to perform his functions, you may infer want of care."

(Exception noted for defendant.)

10

Mr. Coulomb: Also to another section where your Honor said, "So that you will have to find in this case that the railroad company neglected a duty which was owing to this plaintiff in one of two respects, either in the warning from the engine that I have already referred to, or a proper warning from the gateman, from the flagman."

The Court (To the jury): Ladies and gentlemen, 20  
I started a sentence without finishing it. I said that you would have to find that there was negligence in the railroad company in either one of these respects, that is, referring to the bell or whistle or the watchman. I did not mean that you would have to find it as a fact; I meant that before you could find the defendant answerable you must find one of two things, either that the railroad company failed to sound a whistle at intervals for a period of nine hundred feet before the crossing was reached and also failed 30  
to sound a bell continuously for a like distance, or that there was a failure on the part of the gateman to give the warning which an approaching traveler would have the right to expect under the circumstances. You see, unless one of those two things existed, there is no failure on the part of the railroad company to do its duty by the traveling public,

it having the right of way upon its tracks. Now, I think that clears up what I said to you and what I think may readily have been misunderstood. That covers it, doesn't it?

Mr. Coulomb: Yes, I think so.

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10      DEFENDANT'S REQUEST TO CHARGE.

1. The failure of the crossing watchman to be out on the crossing in time to warn the plaintiff of the approach of the train, if you believe there was such a failure, cannot be considered by you as a ground of negligence, but only with respect to the contributory negligence of the plaintiff.

20

30

VERDICT.

THE STATE OF NEW JERSEY.

CAMDEN COUNTY CIRCUIT COURT.

January 15, 1923.

ROCCO PASSARELLO,	}	Action at Law— Verdict.	10
v.			
WEST JERSEY SEASHORE RAILROAD COMPANY.			

\$867.91	Damages
70.00	Costs

\$937.91

A. S. WOODRUFF, *Attorney.* 20

Judgment rendered against the West Jersey & Seashore Railroad Company to above named defendant at the suit of Rocco Passarello the plaintiff therein in an action at law in the Circuit Court in and for the County of Camden for the sum of eight hundred and sixty-seven dollars and ninety-one cents damages and seventy dollars costs of suit.

Which said damages and costs in the whole amount to the sum of nine hundred and thirty-seven dollars and ninety-one cents.

Judgment entered and signed this fifteenth day of January, A. D., nineteen hundred and twenty-three.

FRANK T. LLOYD,  
*Judge.*

A True Copy.  
WM. D. BROWN, *Clerk.*

## NOTICE OF APPEAL.

(Served Feb. 8, 1923.)

(Filed Feb. 15, 1923.)

A True Copy.

WM. D. BROWN, *Clerk.*

10

## CAMDEN COUNTY CIRCUIT COURT.

ROCCO PASSARELLO,

*Plaintiff-Respondent,*

v.

WEST JERSEY & SEASHORE  
RAILROAD COMPANY, a cor-  
poration,

20

*Defendant-Appellant.*Action at Law.  
Notice of Appeal.*To Albert S. Woodruff, Esq., Attorney for the above  
named Plaintiff-Respondent:*

30 TAKE NOTICE, that defendant-appellant appeals from the judgment and every part thereof, entered in the above stated cause, from the Camden County Circuit Court to the Court of Errors and Appeals, for the following reasons:

1. Because the Court charged "I am going to say to you that if you find that the railroad company, as you will, placed a watchman there, and that he failed to perform the functions that he was placed there

for, namely, the warning of travellers upon the highway, that you may infer from that act a want of care by the railroad company itself.”

2. Because the Court refused to charge: “The failure of the crossing watchman to be out on the crossing on time to warn the plaintiff of the approach of the train, if you believe there was such a failure, cannot be considered by you as a ground of negligence, but only with respect to the contributory negligence of the plaintiff. 10

BOURGEOIS & COULOMB,  
*Atty. for Def't-Appel't.*

Dated February 5, 1923.

20

30

## STATE OF NEW JERSEY

COUNTY OF CAMDEN.

I, WILLIAM D. BROWN, Clerk of the County of  
Camden, Do Hereby Certify, that the foregoing is  
10 a true copy of Notice of Appeal in the case of  
Rocco Passarello,  
Plaintiff-Respondent,

v.

West Jersey & Seashore  
Railroad Company,  
Defendant-Appellant.

Action at Law.

filed February 15th, 1923, and recorded in the clerk's  
office of the County of Camden.

20

In Testimony Whereof, I have hereunto  
set my hand and affixed my official seal,  
(SEAL) at Camden, this 23rd day of February,  
A. D. 1923.

WM. D. BROWN,  
Clerk.

30

NEW JERSEY COURT OF ERRORS  
AND APPEALS

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ROCCO PASSARELLO,  
*Plaintiff-Respondent,*

v.

WEST JERSEY & SEASHORE RAILROAD COMPANY, a cor-  
poration,  
*Defendant-Appellant.*

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ACTION AT LAW.

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BRIEF OF PLAINTIFF-RESPONDENT.

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INTRODUCTORY STATEMENT.

Plaintiff had a judgment below of \$867.91, the value of an automobile destroyed at a public crossing at Atco, Camden County, New Jersey, December 20th, 1920.

The evidence was clear that this was an unusually dangerous crossing. The train approached from the north; the plaintiff from the west. The tracks one hundred and fifty feet north of the highway passed through a deep cut and curved to the west. On top of the hill in the angle between the north side of the highway and the west side of the tracks, were trees.

The defendant company had there erected a waiting shed fifteen feet high, sixteen feet long, and twelve feet deep. The deepest portion of the cut and the sharpest part of the curve were just north of and close to the crossing. Between the time of the accident and the trial this hill had been graded but at the time of the trial the cut was so deep that no part of the approaching train could be seen at the crossing. There was also a line of poles along the railroad right of way west of its tracks and north of the highway. This crossing was the main crossing in the little town of Atco and led directly to defendant's station and yards. Acknowledging the unusual danger inherent in this crossing, due chiefly to the construction of defendant's right of way and maintenance of its waiting shed and telegraph poles, it maintained at that crossing a flagman to warn travelers of the approach of its trains. This flagman for his convenience had a watch box east of the railroad tracks and north of the crossing. Directly between this box and the curving tracks to the north of the crossing was the main station building of the defendant. The flagman at his box had no view of the tracks to the north whatever and was entirely dependent upon a bell signal of the approach of a train from that direction.

The testimony made it a clear jury question as to the absence of signals from the approaching train. That this was a jury question was not and is not controverted. At the time of the accident the train was moving sixty to sixty-five miles an hour. In driving his automobile to and across the crossing plaintiff could not see the approaching train until it was within one hundred to one hundred and fifty feet.

Plaintiff, with two passengers, entered the automobile at a point sixty to one hundred feet distant

from the crossing, made observations to guard against an approaching train, turned, approached the crossing, and continued their observations. As the front wheels of the automobile were upon the first rail of the first tracks, the one on which the train was approaching, the flagman ran out from his box at the opposite side of the crossing with a lantern, threw up his hand, and called to plaintiff to go back. The plaintiff instantly stopped and he and his passengers jumped from the automobile. As plaintiff's feet left the running-board of his automobile its front wheels were struck by the cow-catcher and the engine. The automobile was completely demolished, and the verdict represented its then value.

Defendant's counsel states as a fact that excepting for plaintiff and his two friends all the witnesses testified that the flagman was out in ample time to warn travelers of the approach of the train. This is not correct. The witness, Felix Bella, p. 56, l. 25, a pedestrian, was within ten feet of the flagman. He testified that the flagman came out with his lantern when the automobile was within five feet of the rail where it was struck, p. 56, ll. 1-16.

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ARGUMENT.

TWO REASONS ASSIGNED AS ERROR  
ARE ARGUED.

First—The refusal of the trial Judge to charge the single request made, viz: The failure of the crossing watchman to be out on the crossing in time to warn the plaintiff of the approach of the train, if you believe there was such a failure, cannot be

considered by you as a ground of negligence, but only with respect to the contributory negligence of the plaintiff.

#### AS TO THE SECOND REASON.

Second—Exception to an isolated sentence of the charge.

In assigning the second reason defendant ignores other portions of the charge upon the same point explaining the portion excepted to. In this connection the Court said:

“It is claimed that in addition to the legal obligation which the railroad company owed the traveling public, that it had *assumed an additional obligation* upon which the users of highways crossing the railroad tracks at that point were entitled to rely; and I am going to say to you that if you find that the railroad company, as you will, placed a watchman there, and that he failed to perform the functions that he was placed there for, namely, the warning of travelers upon the highway, that you may infer from that act a want of care by the railroad company itself.

“There is some confusion possibly in the law on this subject; there seems to be a contrary line of rulings in some of our Courts, but the view which I have taken is one which I think is sustained by the fundamental law of the State as declared by our Courts, and is in keeping with our sense of reason, so that you will have to find in this case that the railroad company neglected a duty which was owing to this plaintiff in one of two respects, either in the warning from the engine that I have already referred

to, or a proper warning from the gateman, from the flagman.”

Defendant's counsel thought this language might be misunderstood and the Court said to the jury:

“The Court: Ladies and gentlemen, I started a sentence without finishing it. I said that you would have to find that there was negligence in the railroad company in either one of these respects, that is, referring to the bell or whistle or the watchman. I did not mean that you would have to find it as a fact; I meant that before you could find the defendant answerable you must find one of two things, either that the railroad company failed to sound a whistle at intervals for a period of nine hundred feet before the crossing was reached and also failed to sound a bell continuously for a like distance, or that there was a failure on the part of the gateman to give the warning which an approaching traveler would have the right to expect under the circumstances. You see, unless one of those two things existed, there is no failure on the part of the railroad company to do its duty by the traveling public, it having the right of way upon its tracks. Now, I think that clears up what I said to you and what I think may readily have been misunderstood. That covers it, doesn't it?”

After this portion of the charge above quoted, the Court addressed counsel for the defendant, asking “That covers it, doesn't it?” Counsel replied: “Mr. Coulomb: Yes, I think so.”

This assignment and reason is therefore objectionable because it attempts to isolate a single phrase of

the charge, when the charge taken as a whole was unobjectionable.

*Brown v. Spence*, 79 N. J. L. 472.

And counsel for the defendant had stated to the Court that the Court's charge as clarified, covered the legal situation. Even if the charge had stated an incorrect theory, if defendant's counsel agreed thereto, he cannot be heard to complain.

*Austrian v. Laubheim*, 78 N. J. L. 178.

#### THE FIRST REASON AND ASSIGNMENT.

The appellant argues one point alone as requiring a reversal, i. e., that the Crossing Acts of 1909, p. 137, are directed to the question of contributory negligence and do not increase the obligation of a railroad company.

The complaint alleged combined negligence of defendant's servants in charge of its train in failing to give signals, and of its servant, the flagman, stationed by it at this dangerous crossing, in failing to give timely warning to the plaintiff. This claim did not rest solely upon the crossing acts and those acts were not referred to in the complaint or during the trial.

Appellant relies upon two Supreme Court cases, *Johnson v. Central Railroad of New Jersey* and *Nadasky v. Public Service Railway Company*.

Each case was before the Supreme Court on a rule to show cause.

In the *Johnson* case the Act of 1909, page 137, was directly invoked by the plaintiff. The Court was not asked to consider the question of negligence irrespective of the statute and it did not consider that question.

In the Nadasky case the Court held that the Act of 1909, page 137, did not apply to the situation before it. In that case, as in the Johnson case, counsel for the plaintiff had predicated the claim of defendant's negligence directly upon the Crossing Acts of 1909 and 1910, and the Court there said that it was unnecessary in that case to give any special consideration to the Act of 1909.

#### THE COMMON LAW RULE.

In *Pennsylvania Railroad Company v. Mathews*, 36 N. J. L. 531, Er. & Ap. 1873, a situation almost identical with that in the present case was before the Court. There was the unusually dangerous crossing, made dangerous by the same features that made the crossing dangerous here. A train was moving at high speed; the flagman stationed there by the defendant was casually absent. Beasley, C. J.:

“But while I thus say that these additional burdens cannot be imposed by the courts upon these companies, I also say, at the same time, and with quite as much emphasis, that the companies may, by their own conduct, impose such burdens on themselves. If one of them chooses to build its track in such a mode as to unnecessarily make the use of a public road which it crosses, greatly dangerous, I think such company, by its own action, must be held to have assumed the obligation of compensating the public for the increased danger, by the use of additional safeguards. The reasonable and indispensable implication is, that the railway is to be constructed so as not unnecessarily to interfere with the safe use of the public roads; and if a railroad, for its own convenience, curves

its track, as it leaves a deep cut, within a few feet of a highway, and also sees fit to put up buildings close along such track, and by these means, or either of them, heightening the danger in the use of such highway, it seems to me very clear, that such company must be held to have taken upon itself the duty of averting such danger, by the employment of every reasonable precaution within its power. On such occasions as this, or whenever the situation is embraced within the principle stated, the presence of a flagman, or some equivalent safeguard can be demanded of the company. The rule is, as I understand it, that when the company has created extra danger, it is bound to use extra precautions. If, the track is put in a position where the trains, when close to their transit over a public street or road, cannot be seen, this is an extra danger which calls for more than the ordinary cautionary signals. I can see no difficulty in applying this rule; it will, obviously, be very much under the control of the Court."

In *Berry v. Penna. R. R. Co.*, Er. & Ap. 1886, 48 N. J. L. 141, 4 Atl. Rep. 303, the Court had before it a situation where a flagman ran out at too late a time, and a horse and wagon was stopped on the track. There the question of plaintiff's contributory negligence was before the Court. That question is not raised here. There Parker, J., said of the plaintiff that "he must not rely *entirely* on the flagman."

In *Dela. L. & W. R. Co. v. Shelton*, Er. & Ap. 1893, 55 N. J. L. 342, 26 Atl. Rep. 937, plaintiff's judgment was affirmed. This was an extra dangerous crossing and plaintiff made proper observations. Lippincott, J. pointed out that though as a general rule

the railroad company is not bound to keep a flagman at a crossing, that obligation could be assumed by reason of the construction of the road. The charge of Justice Depue, who presided at the circuit, was approved. Referring to the open gates and the rule that this in itself would not absolve plaintiff from the observations of due care, he said: "It is a circumstance that is pertinent." Commenting thereon the Court of Errors said:

"Reading these parts of the charge together it will appear that it was clearly presented to the jury that the force, weight and effect of the fact of the open gates were left entirely to their judgment. They were only instructed that it was a fact for them to consider."

In *VanRiper v. N. Y. S. & W. R. Co.*, Supreme Court 1904, 71 N. J. L. 345, 59 Atl. Rep. 26, the case turned upon the doctrine of contributory negligence, which is not here before the Court, but in that case a flagman running to the crossing too late, had helped cause the accident. Gummere, C. J., said: "Notwithstanding that such non-action on the part of the railroad company's employees is, in effect, a declaration that the way is clear, the failure of the traveler on the highway to make independent observations is ordinarily a failure to exercise a reasonable degree of prudence which the law requires." In the present case such observations were admittedly made.

*Hires v. Atl. City R. R. Co.*, Sup. Ct. 1901, 66 N. J. L. 30, 48 Atl. Rep. 1002 The flagman gave no warning It was a dangerous crossing. Dixon, J.:

"Therefore a proper case was presented for submitting to the jury the question whether the company owed to the plaintiff the duty of giving extra warning against danger."

In *Shafer v. Lehigh Valley R. R. Co.*, Sup. Ct. 1907, 75 N. J. L. 75, 66 Atl. Rep. 1072, the Court said:

“Open gates are an invitation to cross. Although they do not excuse a failure on the part of the traveler either to look or listen, yet open gates under such circumstances are clearly evidence of the negligence of the agents of the defendant company.”

In *Record v. Penna. R. R. Co.*, Er. & Ap. March 1909, 76 N. J. L. 800, 72 Atl. Rep. 62, the Court said the mere erection of safety gates was a recognition by the railroad company that the crossing was a dangerous one. It there held that a flagman having been located at the crossing, the railroad company was responsible for his negligence.

In *Napodansky v. W. J. & S. S. R. R. Co.*, Er. & Ap. 1913, 88 Atl. Rep. 1033, 85 N. J. L. 336, the common law rule was invoked. The crossing acts were not in question and the trial Court did not submit the case to the jury under these statutes.

Minturn, J.:

“The fact cannot be gainsaid that the bell was at the crossing and maintained there by the company.

“Negligence in such circumstances becomes a relative term, incapable of exact determination, except upon consideration not only of the facts, but of all the circumstances, and in view of the entire environment in which the actor is placed.

“In charging the jury the Court made no reference to that phase of the case but submitted the question at issue to the jury entirely from the standpoint of the status of the parties under the conflicting testimony and entirely irrespec-

tive of their rights and liabilities under the statute.”

In *Baer v. Lehigh & H. R. R. Co.*, 93 N. J. L. 85, 106 Atl. 421, the Court held in a case where observations had been made by the plaintiff and a crossing bell was not ringing, “at common law as evidenced by our adjudications, and devoid entirely of the super-added legislative protective requirement of the crossing act, the question of negligence and contributory negligence thus presented were for the jury.”

There are two cases exactly in point and it would seem necessarily controlling in the present case.

*Wolcott v. N. Y. & L. B. R. Co.*, Sup. Ct. 1902, 53 Atl. Rep. 297, 68 N. J. L. 241, Gummere, C. J., said:

“Whether or not a duty rested upon the Long Branch Company to protect this crossing by a flagman or not is immaterial. *It assumed that duty, and having done so, was bound to perform it with due care.* Where the flagman stood, and whether he waved his lantern or not as a signal that a train was approaching, were matters in dispute. If he stood on the southern edge of the highway, not in the wagon way at all, as some of the witnesses say, and if he gave no signal with his lantern, as decedent’s widow testifies, it cannot certainly be said, as matter of law, that he fully and carefully performed the duty which he had undertaken, of giving warning of the approaching train. It was for the jury to determine where he stood and what he did, and, if they found that he stood by the side of the road and gave no sign with his lantern, then to say whether he gave efficient warning to the deceased.”

The doctrine enunciated in the Wolcott case was approved by the Court of Errors and Appeals in *Brown v. Erie R. R. Co.*, 87 N. J. L. 487, 91 Atl. 1023.

In *Carleo v. D. L. & W. R. Co.*, Er. & Ap. March 1909, 72 Atl. 89, 77 N. J. L. 607, in the opinion, this Court pointed out that as an essential to plaintiff's case proof of negligence "in the management of its gates there or in failing to give the statutory signals of bell and whistle." The Court said in the Carleo case:

"If the safety gates had been properly lowered at the crossing in front of the advancing boy, or the bell had been rung or whistle blown to announce the coming of the rapidly moving train, those warnings might have startled him and delayed his advance, or hastened his retreat in order to avoid being run over. At all events the defendant cannot, under the conditions presented by the evidence above recited, be heard to urge that these legal requirements, even if they had been complied with by it, might have been unavailing to prevent the plaintiff from going upon its track. In view of this clear testimony, whether its truth was disputed or not by the defendant, the trial Court was without authority, we must conclude, to take the cause away from the province of the jury."

#### DECISIONS UNDER THE CROSSING ACTS.

In *Hatch v. Erie R. R. Co.*, Sup. Ct. 1916, 97 Atl. 38, 88 N. J. L. 545, the question now directly raised was touched upon by the Court. It held that it was not necessary to decide the point but said:

"Although the argument that a person about to cross the track may rely upon an invitation

to be implied from the raising of the gates and is not under any duty to listen for signals, or any other noise which an approaching train might make, for the signal cannot well be noticed unless one listens to hear it, is not without force.”

In *James v. D. L. & W. R. Co.*, Er. & Ap. 1918, 104 Atl. Rep. 328, 92 N. J. L. 149, the Court (Walker, C.) said that in principle there was no difference between the placing of gates and the placing of a flagman at a crossing, both being for the purpose of warning the traveling public of danger, and preventing them from crossing over a railroad. The Court points to the circumstance that by chapter 96 it is provided, “no plaintiff shall be barred of the action because of his failure to stop, look and listen.” “The clear legislative intent in this title (chapter 96) is to provide protection for travelers upon the public streets and highways.”

In *Baer v. Lehigh & H. R. R. Co.*, 93 N. J. L. 85, 106 Atl. Rep. 421, this Court said that the crossing act operated as a make-weight additional to the common law duty of a railroad company.

In *Snuffin v. McAdoo*, 107 Atl. Rep. 422, 93 N. J. L. 231, the direct negligence claimed was the failure of a crossing bell to ring though not noticed as “out of order.” This Court said that plaintiff was relieved from any obligation to stop, look, and listen before starting to cross the railroad tracks, and was entitled to assume that it was safe for him to cross.

In *Brown v. Erie R. R. Co.*, 87 N. J. L. 487, 91 Atl. Rep. 1023, this Court said that where a safety appliance had been installed through legal direction, or its installation assumed by the railroad company, its obligation was the same, to use due care that such device be sufficiently operated for the purposes in-

tended. And the Court pointed particularly to the fact that in the situation in which the plaintiff's in-  
testate there found himself, the action could not be  
barred because of his failure to stop, look and listen.

In the instant case, the statute having declared to  
Passarello, you cannot be barred of an action if you  
do not listen for this train, the flagman not being at  
his post, it is inconceivable that the sounding of a  
signal then from the train could bar his action.

In this case, as in the Shelton case, the Court be-  
low "clearly presented to the jury that the force,  
weight, and effect of the fact of the open gates (neg-  
ligent flagman) were left entirely to their judgment.  
They were only instructed that it was a fact for  
them to consider.

The legal principle charged by the Court has been  
directly adopted by this Court in the Carleo case,  
the Wolcott case, approved in the Brown case, and  
in the Mathews, Shelton, Hires, Shafer, and Napa-  
densky cases.

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The trial Court before charging the jury referred  
to the Wolcott case and as defendant's counsel sug-  
gests in his brief, based his charge upon the doc-  
trine there affirmed.

Counsel argues that the Supreme Court cases of  
Johnson and Nadasky in effect overrule this case.  
But subsequent to the passage of the crossing acts  
and as late as 1914, this Court in the Brown case  
quoted the opinion in the Wolcott case and unquali-  
fiedly approved its declaration of the law.

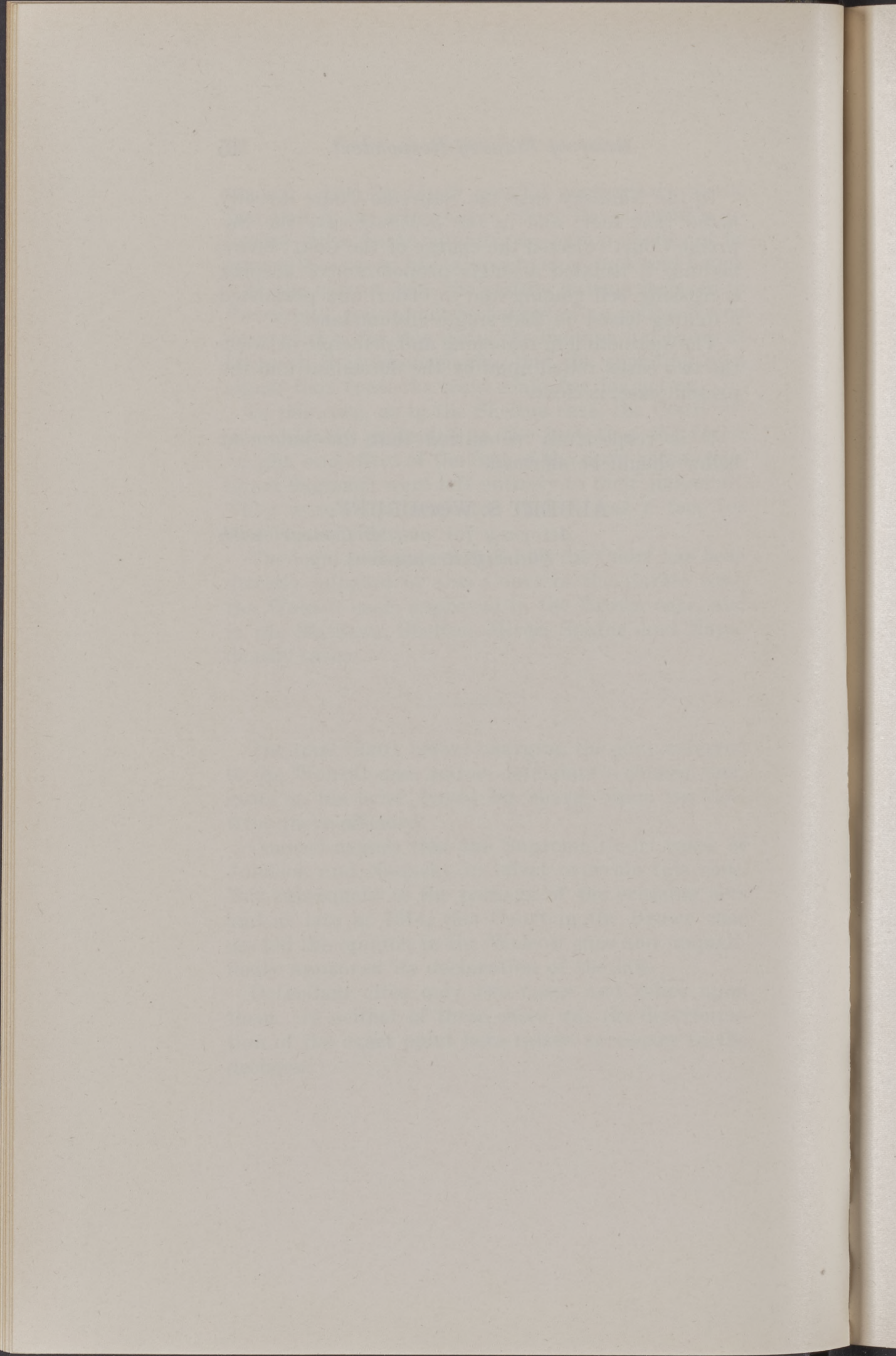
Defendant cites only two cases and relies upon  
them. In neither of these cases was the determina-  
tion of the exact point here raised necessary to the  
decision.

In the Nadasky case the Supreme Court directly noted that fact; and in the Johnson case the Supreme Court rejected the charge of the Court below because it isolated a single proposition of keeping a crossing bell ringing and in order, and permitted a finding based on that single circumstance.

The distinction in reasoning and principle between the two cases relied upon by the defendant and the present case, is clear.

It is respectfully submitted that the judgment below should be affirmed.

ALBERT S. WOODRUFF,  
*Attorney for and of Counsel with  
Plaintiff-Respondent.*



NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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ROCCO PASSARELLO,  
*Plaintiff-Respondent,*  
v.  
WEST JERSEY AND SEASHORE  
RAILROAD COMPANY, a  
corporation,  
*Defendant-Appellant.*

Action at Law.  
On Appeal.

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BRIEF OF BOURGEOIS & COULOMB,  
ATTORNEYS FOR DEFENDANT-  
APPELLANT.

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The appeal in this case brings here for review a judgment in favor of Rocco Passarello, the plaintiff, and against the West Jersey and Seashore Railroad Company for \$867.91, being the value of a Ford sedan, which was destroyed at the Atco Avenue crossing of the West Jersey and Seashore Railroad Company at Atco, New Jersey, on the evening of December 20th, 1920, it being claimed by the plaintiff that the accident was due to the negligence of the railroad company in failing to give the statutory signals, and the negligence of its crossing watchman in not being at his post of duty in time to warn the plaintiff of the approach of the train.

## FACTS.

Plaintiff had been in a pool room in Atco, New Jersey, on the night of the accident and had left his Ford sedan car in front of the place which was about sixty yards north of the railroad crossing. The auto faced in a northerly direction. Plaintiff came out of the pool room shortly before eight o'clock with some friends, got into the car, turned it around to face the south, proceeded south about sixty yards which brought him to the railroad crossing and then started to go over the tracks from west to east. He states that when he got onto the first or southbound track he saw the watchman of the defendant railroad company come running out of his shanty with a red lantern in his hand and hollered to him to stop. He stopped the car on the first track and his friends and himself managed to all get out of the sedan an instant before it was struck and demolished by a steam train, going southwardly toward Atlantic City. All of the witnesses, excepting the plaintiff and his two friends testified that the watchman was out in ample time to warn travelers of the approach of the train. Nevertheless, the verdict of the jury was in favor of the plaintiff for the full value of the worth of the car at the time it was demolished.

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ARGUMENT.

There are two reasons assigned as error, which are as follows, and which may be argued together.

Assignment of error No. 1 is the refusal of the trial Judge to charge the following request (pg. 174, line 10).

1. The failure of the crossing watchman to be out on the crossing in time to warn the plaintiff of the approach of the train, if you believe there was such a failure, cannot be considered by you as a ground of negligence, but only with respect to the contributory negligence of the plaintiff.

Assignment of error No. 2 is that part of the charge of the trial Judge which was as follows (pg. 169, line 27; pg. 173, line 1):

“I am going to say to you that if you find that the railroad company, as you will, placed in a watchman there, and that he failed to perform the functions that he was placed there for, namely, the warning of travelers upon the highway, that you may infer from that act a want of care by the railroad company itself.”

The contention of the appellant West Jersey and Seashore Railroad Company is that the crossing acts of 1909, page 137, are directed to the question of contributory negligence of travelers on the highway and do not increase the obligation of a railroad company, and therefore the trial Judge erred in refusing to charge the plaintiff's requests to charge as set forth in assignment of error No. 1 and further erred in charging the jury in the language of assignment of error No. 2 set forth above.

The case of *Johnson v. Central Railroad of New Jersey*, which was before the Supreme Court in February, 1919, on a rule to show cause, reported in 109 Atl. 359, was a case where there was a crossing collision between a locomotive engine and a wagon, and which crossing was protected by a crossing bell. The Court below charged that:

“The negligence would consist solely in failing to blow the whistle or ring the bell, or keep the signal bell at the station ringing, and in

order, or, if they had kept the gateman there, to have that gateman on duty.”

The Supreme Court held that this permitted the jury to find the defendant negligent if it failed to keep the signal bell at the station ringing and in order, and the verdict for the plaintiff may have been based on that failure alone. The Court said that the Act of 1909 does not assume to increase the obligation of the railroad company, and said that under the title of the act no other construction is permissible, and made the rule to show cause absolute.

Again, the case of *Nadasky v. Public Service Railway Company*, 117 Atl. 478, was a suit brought to recover damages for injuries sustained by plaintiff at a crossing of defendant and from a judgment in favor of plaintiff in the trial Court a rule was prosecuted by the defendant.

In that case the Supreme Court (page 479) considered the crossing acts of 1909 and 1910, and more especially that of 1909, page 137, and stated that such acts have the effect of conferring upon the plaintiff a right to a warning by bell or light, or both, but these acts seem to bear entirely upon the question of contributory negligence.

The Court held in that case, there being no evidence of negligence shown, the rule would be made absolute.

The trial Court based his action in the present case upon the case of *Wolcott v. N. Y. & Long Branch R. R. Co.*, 68 L. Ed. p. 421, in which the Supreme Court held:

“When a railroad company assumes to protect a highway crossing, by a flagman, it is responsible for injuries received at that crossing, by a traveler in the highway, which have re-

sulted solely from the negligence of such flagman."

This case was decided at the November Term, 1902, several years before the crossing acts were passed, and such effect as it has must be limited by those acts, and the opinions of the Supreme Court, above cited, construing those acts. Whatever may have been the legal responsibility of a railroad company, who undertook to guard a crossing prior to the passage of the crossing acts, the effect of those acts was to make a failure to guard the crossing have reference solely to the contributory negligence of the plaintiff, and not to the primary negligence of the defendant.

We respectfully submit that the judgment should be set aside.

BOURGEOIS & COULOMB,  
*Attorneys for Defendant-  
Appellant.*

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...and the ...

...of ...

