

NEW JERSEY COURT OF ERRORS AND APPEALS.

ANNA K. HOLMES, Administra-
trix of JOSEPH J. HOLMES, de-
ceased,

Plaintiff in Error,

vs.

PENNSYLVANIA RAILROAD COM-
PANY,

Defendant in Error.

IN TORT.

ON ERROR TO BUR-

LINGTON COUNTY

CIRCUIT COURT.

BRIEF FOR DEFENDANT IN ERROR.

This action arises out of the death of Joseph J. Holmes by alleged reason of being killed while crossing the tracks of the defendant company, at Cooper street, in Beverly.

The allegation of negligence in the railroad company is that on the 4th day of November, 1902, while Joseph J. Holmes was crossing the tracks of the defendant, at Cooper street, in Beverly, the defendant negligently oper-

ated a certain locomotive and cars so that the engine and cars ran upon the said Holmes and caused his death.

The plaintiff in error, for reversal of judgment below against this defendant, relies upon the direction of verdict for the defendant by the Trial Judge at the close of the case. This defendant relies, in support of the charge just stated, upon the failure of the plaintiff to prove any acts of negligence on the part of the defendant which would entitle it to the consideration of the jury, and also because the testimony of defendant's witnesses showed beyond cavil that every duty required of the defendant had been fulfilled.

Samuel Wickward, on behalf of the plaintiff, said, on pages 71 and 72, that he met the deceased somewhere about two o'clock in the morning, or a little later, driving south, on Cooper street, toward the station, trotting along slowly about a medium gait, not too fast, a good trot, until he got to the railroad, and his horse stopped trotting at the railroad, and he heard the crash of the train. No other witness knew anything about the accident.

This defendant contends that the plaintiff was not entitled to have the case go to the consideration of a jury unless she has presented proof of facts necessary to the recovery which she seeks.

Bahr vs. Lombard, Ayres & Co., 24 Vr., p. 233. This cause was argued in the Court of Errors and Appeals, and the opinion there given has been frequently cited in subsequent cases. Justice Garrison states, on page 237:

“The principle is quite institutional, that whenever a right of action springs from the conduct of a defendant,

“the plaintiff must present proof of the facts necessary
 “to the recovery which he seeks. It is furthermore the
 “general rule of law that the mere proof of the occurrence
 “of an accident raises no presumption of negligence.”

The doctrine of “*res ipsa loquitur*,” as defined in the case just cited, and explained on page 238 of the opinion, cannot be applied to the case at bar, because there was nothing unusual in the action of the defendant which, speaking for itself, would show that there had been negligence or which would impute negligence to the defendant. The only testimony as to the blowing of the whistle or ringing of the bell was that of Samuel Wickward, who, on page 72 of the printed book, said he did not *hear* any whistle blown, and when pressed as to the bell said he would not like to say whether he heard any bell or not. Lena Wilmerton (page 83) said she had occasion to get up in the night of November 4th; that she did not *hear* the whistle blow or the bell ring; she lived, (page 81) half a square, or a three-minute walk, from the track.

Bien vs. Unger, 35 Vr., p. 596. This cause was argued in the Court of Errors and Appeals, and Justice Garrison, in rendering the opinion of the Court, said:

“With respect to this accident, nothing is proved excepting that it happened, and if it happened without interference with the treadle no hypothesis whatever has been advanced to account for it that has the slightest foundation in the testimony. Now, the issue taken by the narr. placed upon the plaintiff the burden of proving something by preponderance of proof—something that was, to say the least, more consistent with the negligence of the defendants than it was with their innocence. This right of the defendant to have him, plain-

"tiff, bear the burden of the affirmative is a substantial one and not a mere matter of form. Quoting *McGilvery vs. Newark Electric L. & P. Co.*, 34 *Vr.*, 591."

The opinion continues on page 599:

"This is not one of those cases in which the plaintiff, in default of proof of the particular in which the defendants were negligent, may point to the occurrence by which he was injured and say that this of itself made the probability that the defendants had acted carelessly of greater weight than the presumption that they had not, which is the doctrine called *res ipsa loquitur*."

It will be noted that no person was produced by the plaintiff who testified that the whistle was not blown and that the bell was not rung, and the witness who was nearest the accident could not be made to give a distinct statement as to whether the bell was rung or not; and further, that two witnesses were produced on the part of the defendant, namely, Arthur P. Turnbull and William P. Adams, who testified that on a certain occasion the witness, Samuel Wickward, made the following statement:

"As I said, I heard the train coming and Mr. Holmes was on the crossing and the train was at the freight station when the bell rang, so that will show you how fast the train was going." (Pages 94 and 98.)

The defendant further contends, that the imputation of negligence is abundantly overcome by the evidence of the crew of the train alleged to have caused the accident.

The defence showed, by the testimony of Charles E. Stockton, on page 99, that three freight trains passed through Beverly in the neighborhood of 2 o'clock in the

morning, November 4, 1902, which was the time of the accident, and offered to produce the train crews of all three trains, but the plaintiff stated (page 124) that it was unnecessary to produce the crews of the other two trains, who had not testified at that time.

The engineman of train No. 401, Henry Dewees, on page 102, stated that the engine was one of the smallest running on the road; that the speed was about twenty-five miles an hour, not much over, because it was pulling a heavy train up a heavy grade from Burlington; that his schedule limit was thirty miles an hour; that the fireman and head brakeman were in the cab with him, and the fireman was attending to his fire, while the head brakeman was ringing the bell as they came through.

He stated (page 103, line 20) that he blew the whistle at Beverly station two different times, which would be eight blows; that he blew the whistle the first time at the whistling post, and the second time when he was not over one hundred yards from the station; that the last blast was to get the operator's attention so as to receive his signal for running (page 104); that he was a quarter of a mile from Cooper street the first time he blew at the regulation whistling post.

That he told the head brakeman, who was not well acquainted with the road, while he was whistling, to ring the bell and to continue until he told him to stop; and that the head brakeman began ringing the bell east of Beverly station near the whistling post, and kept it up until the crossing had been passed, when he told him to stop ringing.

Charles H. Sanford, the fireman of train No. 401, said (page 114) that he was in the cab on the night of No-

vember 4th, 1902, with the engineman, Dewees, and the brakeman; he also testified that the engine was a small one and was pulling up grade at a speed of not over twenty-five miles an hour and within the schedule limit as to speed; that he was standing behind the engineer and had been firing all the way up hill to Beverly, and that the head brakeman was taking his place on the left side of the engine. He said (page 115) that the engineman blew at the quarter of a mile post and gave a second blast one hundred yards from the signal; that he heard the engineman give instructions to the head brakeman with reference to ringing the bell, and that he heard him tell the brakeman to ring the bell after he blew the whistle and also heard the brakeman ringing the bell after receiving the instructions.

Thomas J. Beagen said, on page 120, that he was the brakeman on the train in question and rode in the cab of the engine on the fireman's side; that he did not know the road and had been ringing the bell as the train came down from Burlington to Beverly when the engineman called his attention to it. He said further (page 121) that he began to ring the bell after the engineman told him and that he kept it up until the engineman told him to stop, for he did not know the road, as it was about the first time that he had gone over it.

The defendant company cannot be held liable at law for damages for the death of Joseph J. Holmes, unless there had been negligence on its part. No responsibility can be attached to it because the crossing was dangerous, as was alleged to be the case by elaborate testimony.

Charles Stokes testified to making the map which was used by the plaintiff for the purpose of illustration, and

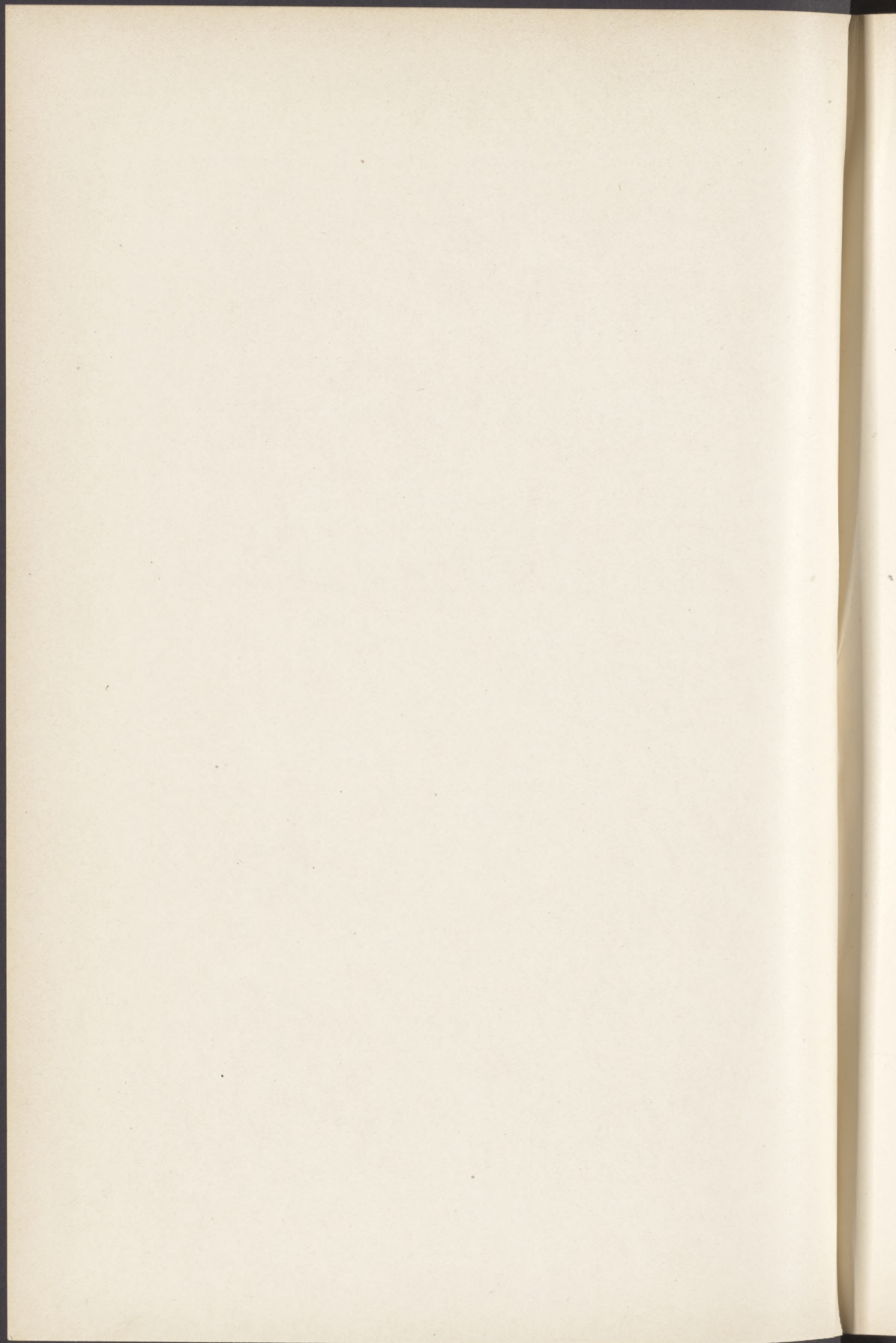
said (page 24), as to the view going out Cooper street in a southerly direction and looking eastwardly, that at a point fifty-eight feet from the track, for a space of twenty-five feet, a clear view could be had, and that again, nine feet from the track, a clear view of an approaching train could be had. He said, on page 26, that when a person was eleven feet from the middle of the track, he could see all the way up the track; and, on page 30, said, on cross-examination, that when nine feet from the track he could see eastwardly toward Trenton as far as the eye will go, and that, moving back along Cooper street away from the station, the view continued but for a lessening distance, and that when ninety feet away a person would still have a view of two hundred yards up the west bound track.

Plaintiff's other witnesses vary the testimony but slightly as to the character of the crossing.

Mr. Stokes testified as to observations made by him as to the view eastwardly by a person coming down Cooper street in a southerly direction while the leaves were on the trees, but the accident happened on the 4th of November, 1902, when the trees were without leaf.

Counsel therefore respectfully submit that judgment below be affirmed and the writ of error be dismissed with costs.

GASKILL & GASKILL,
Attorneys for and of Counsel with
Defendant in Error.



NEW JERSEY COURT OF ERRORS AND APPEALS.

ANNA K. HOLMES, Administratrix	}	
of JOSEPH J. HOLMES, deceased,		
Plaintiff in Error,		IN TORT.
vs.		ON WRIT OF
THE PENNSYLVANIA RAILROAD	}	ERROR.
COMPANY,		
Defendant in Error.		

BRIEF OF PLAINTIFF IN ERROR.

Error is assigned on the record and proceedings and the matters recited and contained in the bill of exceptions, and also in the giving the verdict and judgment—that by the record judgment was given for the said railroad company against the plaintiff, whereas, by the law of the land, judgment ought to have been given for the said plaintiff against the defendant.

That the Trial Judge, at and upon the said trial, erred in directing the jury to find a verdict for the said defendant against the said plaintiff.

This action was brought by the plaintiff against the defendant for damages to the widow and the next of kin of the said Joseph J. Holmes, deceased, in causing his death at the crossing known as the Cooper street crossing, at Beverly, in the county of Burlington, on the fourth day of November, 1902, by the negligence of the said defendant company.

No one saw the accident, but the proof shows conclusively that he was killed by a west bound freight train of said company, at or about two o'clock in the morning of November 4th, 1902.

It was foggy, very foggy; the engineer testified that he could not see more than a car length's ahead of him. (Page 103.)

Mr. Holmes went out Cooper street in a falling top wagon, horse trotting along, but came down to a walk before crossing was reached. (See testimony of Samuel Wickward, pages 71 and 75; also see testimony of Russ, Kiple, Horner and Mrs. Wilmerton, and the company's telegraph operator, Stockton, as to time.)

The horse was not killed, but went home, harness broken, quilers gone, breaching and dutch collar broken and holes in traces, ripped out. (See testimony of Helen Holmes, pages 84 and 85.)

Wreckage of wagon found on track. (See testimony of Prickett, page 38, and Adams, page 96.)

He, Joseph J. Holmes, was found along the track dead. (See testimony of Prickett, pages 35-38, and Dr. Adams, page 39 ~~45~~ ~~46~~)

The question of contributory negligence was eliminated from the case by the Trial Judge, in directing the verdict. The Judge directed the verdict on the ground that he was satisfied there had been shown no evidence of negligence on the part of the defendant company.

Even had the mind of the Trial Justice been in some state of doubt upon the question whether the decedent exercised that degree of care which his legal duty exacted then it was a matter within the exclusive power of the jury to determine.

Pennsylvania R. C. vs. Middleton, 28 Vr., 154; 31 Atl., 616.

Railroad Co. vs. Matthews, 36 N. J. L., 531.

Railroad Co. vs. Shelton, 55 N. J. L., 342.

The testimony shows the railroad company has, by the erection of its station building close along its track, heightened the danger in the use of Cooper street at the Cooper street crossing.

a. The station was sixty feet long, along the railroad; main building eighteen feet wide, with a bay window toward the railroad projecting out five feet. (Page 29.)

b. The defendant admitted the ownership of the passenger station, and that it had been erected by the Pennsylvania Railroad Company. (See page 55.)

c. The danger was heightened by the cutting off the view of persons driving south on Cooper street (the same direction that Mr. Holmes was going when the fatal accident occurred) for at least fifty feet from the west bound track, until the horse would be on the track. (Pages 23, 24, 26, 43, 44, 51, 52, 60, 61.)

d. Since the accident gates have been erected while the other conditions are the same as at the time of the accident. (Pages 13, 42 and 53.)

What protection was afforded at the crossing at the time of the accident?

Only fast trains flagged. (Pages 53, 62 and 63.)

As to the whistle: The engineer didn't know whether he blew the whistle at the whistling post or not (pages 103 and 108), and that he blew it a hundred yards from the station, still couldn't see more than a car's length ahead (pages 103 and 104). Did not know when he got to the crossing. (Page 107), "We were not looking at the crossing at all."

On direct examination the fireman said the engineer blew at the whistling post (page 115). On cross-examination, that he was very busy firing all the way from Burlington to Beverly (page 117). On page 117, "Ques. How do you know that the whistle was blown at the whistling post?"

"Ans. Because the engineer is a very prompt man at that particular business; he is very particular about blowing at all the posts along the road; and, besides, always coming into Beverly, or any station, for that matter, the whistle is blown." And didn't see the whistling post. (Page 117.)

The brakeman, who was on the engine, said he did not hear the engineer blow the whistle coming toward Beverly station. (Page 121.)

Samuel Wickward, on the part of the plaintiff, on cross-examination, said that he did not hear any whistle blown (page 75); also on direct examination (page 72).

Lena Wilmerton, on the part of the plaintiff, said, on cross-examination, she did not hear anything before she heard the crash (page 83); also on same page, on direct examination, said did not hear the whistle blow; also that she was up about ten minutes before she heard the crash (page 83); she lived about a half a square from the Cooper street crossing, along the railroad (page 81);

saw the freight train go down after the crash. (Page 82.)

As to bell: Engineer said bell was rung at crossing, but still did not know when he got to the crossing. (Pages 105 & 107.)

The fireman said he could not exactly locate the place where instructions were given as to bell being rung (page 115); couldn't tell exactly how long continued to ring bell; "I was busy at my work (pages 115, 116), was firing engine when we went over crossing at Beverly." (Page 119.)

The brakeman, on a direct examination, said he was ringing the bell when he passed the crossing at Beverly station (page 121); and, on cross-examination, said he didn't know when he got to Beverly crossing. (Page 123.)

Wickward didn't hear the bell. (Page 77.)

Lena Wilmerton didn't hear the bell. (Page 83.)

The engineer said the bell was rung all through Beverly (pages 105 and 108); Mrs. Wilmerton, who lived right along the railroad half a square from crossing saw the train go down but she did not hear the whistle blow or bell ring (pages 82 and 83), although in a position to hear them had the whistle been blown or bell rung, and having been up at least for ten minutes.

The motion to instruct the jury to find a verdict for the defendant was upon the ground that no act of negligence had been proven in the defendant, as required by law. (Page 125.)

The Judge, in directing the verdict, said: "I am satisfied that the clear weight of the testimony is that this company performed its legal duty. As to the distance at which they commenced to ring the bell, the tes-

timony seems to be that they rang it before they needed to, and for a longer time than they needed to. The testimony of the engineer is that he blew the whistle more than he was required to. Altogether I am satisfied there has been shown no evidence of negligence on the part of this defendant company."

There is no positive proof that the company ever performed its statutory duty; it certainly admits of very grave doubt. (See reference to testimony above stated as to the ringing of bell and blowing whistle.)

This question should have been left to the jury, not only on the question of the statutory signals, but also on the question of a dangerous crossing.

The party moving for such direction admits, therefore, not only the facts contained in the evidence against which his motion goes, but every conclusion which a jury might fairly infer from that evidence. (Ency. of P. & P., Vol. 6, page 693.)

If there was any doubt as to the credibility of any witness as to the inferences to be drawn from any fact, or as to the evidence to prove a fact, then it was, of course, a question for the jury.

MacKay vs. N. Y. Central R. R. Co., 35 N. Y., 75.

See 88 N.Y. 667 and 36 N.Y. 132

"If there is a slight doubt about the facts, no matter how slight, the Court should not settle it, but leave it to the jury."

Dwyer vs. St. Louis R. Co., 52 Fed. Rep., 87.

Where the conflict of proof raised disputed questions of fact for the jury to decide, the direction of the verdict for the defendant was therefore legal error. (*Gwynne vs. Hitchner, et al.*; *Omallery vs. same*, New Jersey Court of Errors and Appeals, 38 Vr., 654; 52 Atl., 997.

A non-suit should not be granted nor a verdict ordered for defendant if the evidence is conflicting and leaves the mind in a state of some doubt. The credibility of witnesses is a question for the jury. But where there is a conceded or manifest fact which shows that the evidence on one side cannot be true, the Court may take the case from the jury. The duty of the Court is to settle the law of the case. The province of the jury is to settle disputed facts.

Baumann vs. Hamburg-American Packett Co., 38 Vr., 250; 51 Atl., 461. Citing a number of cases.

In the case of *Pennsylvania Company vs. Mathews*, 7 Vr., 531, it was held that if the company sees fit to put up buildings close along its track and by that means heightening the danger in the use of such highway, 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.

Also in case of *Hires vs. Atlantic City R. R.*, 37 Vr., 30, Justice Dixon held that "If a steam railroad company creates extraordinary danger at a highway crossing it must use extra precautions to give notice of approaching trains," and that "The view of approaching trains by persons travelling north on the highway was obstructed more than is usual at highway crossings, and, therefore, a proper case was presented for submitting to the jury the question whether the company owe to the public the duty of giving extra warning against danger. It is not claimed that any extra warning was provided, and if the jury concluded that such a precaution was required the defendant's negligence was established."

In *Railroad Company vs. Randall*, 18 Vr., 144, the Court of Errors and Appeals unanimously re-affirmed

the rule "that where a railroad company has created extra dangers it is bound to use extra precautions."

In the case of *Del. L., W. R. Co. vs. Shelton*, 26 *Vr.*, 342, it was held by this Court, "Where a railway company, at a crossing of a public highway or street, creates by the construction or maintenance of its tracks, buildings or other erections, a situation of unusual peril and risk to those having legal occasion at such crossings, it is bound to avert such peril and risk by the employment of every reasonable precaution beyond the ordinary cautionary signals, and such precautions may extend to the erection of gates at such crossings, and to keeping them closed while trains are passing."

In the case of *Inhabitants of Palmyra Township vs. Pennsylvania R. Co.*, 17 *Dick.*, 601; 50 *Atl.*, 369, where the passenger station had been erected by the company along the railroad near the crossing, it was held by Vice Chancellor Grey and affirmed by this Court, for the reasons stated by him, that "On the inquiry it is found as a fact that the railroad company has so located its station house building that Cinnaminson avenue crossing has been made additionally dangerous. All the cases which discuss the relations of highway crossings from any point of view, agree that where the conduct of the company has increased the danger at any particular highway crossing, this, of itself, charges the company with a duty to provide additional safeguards at that crossing which shall afford protection commensurate with the increased danger. This condition imposes upon the railroad company an obligation to provide additional safeguards to protect the public travelling that highway."

I respectfully submit that the direction of a verdict for for defendant was error in law, and the judgment should therefore be reversed.

GEORGE GILBERT,
Attorney for Plaintiff in Error.

N. J. Court of Errors & Appeals

ANNA K. HOLMES, ADMINISTRATRIX OF JOSEPH J.

HOLMES, DECEASED,

Plaintiff in Error,

VS.

THE PENNSYLVANIA RAILROAD COMPANY,

Defendant in Error,

IN TORT.

ON WRIT OF ERROR.

GEORGE GILBERT,
Attorney for Plaintiff in Error.

GASKILL & GASKILL,
Attorneys for Defendant in Error.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

NEW JERSEY, SS.

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The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature, Greeting :

Forasmuch as in the record and proceedings, and also in the giving of judgment of a certain plaint, which was in our said Supreme Court of Judicature, before you, between Anna K. Holmes, administratrix, etc., of Joseph J. Holmes, deceased, plaintiff, and The Pennsylvania Railroad Company, defendant, in an action of tort, manifest error hath intervened, to the great damage of the said plaintiff, as it is said; we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the eighteenth day of August, instant, together with this Writ, that the record and proceedings aforesaid being inspected, we may further cause to be done what of right and according to law ought to be done.

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Witness, Honorable WILLIAM J. MAGIE, our Chancellor and President Judge of our said Court of Errors and Appeals in the last resort in all causes, at Trenton, afore-

said, the fourth day of August, nineteen hundred and five.

S. D. DICKINSON,
Clerk.

GEORGE GILBERT,
Attorney for Plaintiff in Error.

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The answer of William S. Gummere, Chief Justice within named, the record and proceedings of the plaint whereof mention is within made, with all things concerning the same, to the Court of Errors and Appeals in the last resort in all causes within specified, at a day and place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded.

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WM. S. GUMMERE,
C. J.

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NEW JERSEY SUPREME COURT.

ANNA K. HOLMES, Administra- trix, etc., of JOSEPH J. HOLMES, deceased, vs. THE PENNSYLVANIA RAILROAD COMPANY.	}	IN TORT. ON POSTEA. JUDGMENT FOR 10 DEFENDANT.
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JOS. H. GASKILL,
Attorney.

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As yet of the twenty-ninth day of July, A. D. nineteen hundred and three.

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

WILLIAM RIKER, JR.,
Clerk.

BURLINGTON COUNTY, ss.

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The Pennsylvania Railroad Company, a body politic and corporate in law, the defendant, was summoned to answer unto Anna K. Holmes, administratrix of the goods and chattels, rights and credits which were of Joseph J. Holmes, late of the county of Burlington, deceased, who died intestate, plaintiff in an action of

tort, and thereupon the said plaintiff, by George Gilbert, her attorney, complains for that whereas, the defendant heretofore, before and at the time of committing the grievances hereinafter mentioned, to wit, on the fourth day of November, A. D. nineteen hundred and two, was possessed of, in the control of, and engaged in operating a certain steam railroad for the carriage and conveyance of passengers and freight between the city of Bordentown, in the county of Burlington and State of New Jersey, and the city of Camden, in the county of Camden and State aforesaid, and intermediate points, for hire and reward, and in running locomotives, cars and carriages thereon; and whilst so operating its said certain railroad, at, to wit, the time and place aforesaid, the said Joseph J. Holmes, to wit, at the crossing in the township of Beverly, in said Burlington county and State, known as Cooper street crossing of the tracks of the said defendant, then and there laid upon and across said Cooper street, was then and there lawfully driving upon said Cooper street and the said crossing, it, the said defendant, by its servants, carelessly, improperly, negligently and wrongfully propelled, drove, ran and managed a certain locomotive, cars and carriages then and there operating by the said defendant, over and along the said track of the said defendant, and at the said Cooper street crossing upon which the said Joseph J. Holmes was then and there so lawfully driving, as aforesaid, so that by and through the carelessness, negligence and improper and wrongful conduct of the defendant, by its servants, and without any fault or negligence on the part of the said Joseph J. Halmes, ran and were driven against and upon the said Joseph J. Holmes and threw him down with great force and violence and then and there greatly bruised, hurt and wounded him, by reason of which hurts and wounds he died, to wit, on the fourth day of November, A. D. nineteen hundred and two,

And also for that whereas, the said defendant heretofore, before and at the time of committing the grievances hereinafter mentioned, to wit, on or about the fourth day of November, A. D. nineteen hundred and two, was possessed of, in control of and engaged in operating a certain steam railroad for the carriage and conveyance of passengers and freight between the city of Bordentown, in the county of Burlington and State aforesaid, to the city of Camden, in the county of Camden and State aforesaid, and intermediate points, for hire and reward, and in running locomotives, cars and carriages thereon, and was, by its servants, driving, running and managing a certain locomotive and cars by steam power along its certain railway, which said locomotive and cars were then and there under the management and care of the said defendant, at, to wit, Cooper street crossing aforesaid. And while the said Joseph J. Holmes in his lifetime was then and there driving upon the said Cooper street crossing, it, the said defendant, without any fault or negligence on the part of him, the said Joseph J. Holmes, wrongfully and carelessly ran and drove, against and upon him, the said Joseph J. Holmes, the said locomotive and cars, by means whereof the said Joseph J. Holmes was injured and from such injuries died, whereby, under and according to the provisions of an act of the Legislature of the State of New Jersey, entitled "An act to provide for the recovery of damages in cases where the death of a person is caused by wrongful act, neglect, or default," approved the third day of March, eighteen hundred and forty-eight, and the supplement thereof and amendments thereto, an action hath accrued to the said plaintiff.

And the said plaintiff avers that she is damaged by said wrongful acts and negligence of the said defendant; that the said next of kin have sustained great pecuniary loss and damage and injury resulting from said death of

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the said Joseph J. Holmes, all to the plaintiff's damage twenty thousand dollars. Therefore she brings her suit, etc.

And the said defendant, the Pennsylvania Railroad Company, by Joseph H. Gaskill, its attorney, comes and defends the wrong and injury when, etc., and says that it is not guilty of the several supposed grievances above laid to its charge, nor any of them, nor either of them, nor of any part thereof, and of this the said defendant
10 puts itself upon the country, etc.

And the said plaintiff doth the like, etc.

Therefore, let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Mount Holly, in and for the county of Burlington, on the fourth Tuesday of April, in the year of our Lord one thousand nine hundred and four, by whom, etc., and the same day is given to the parties aforesaid there, etc.

And now at this day, to wit, the twenty-fifth day of
20 May, A. D. nineteen hundred and four, before our said Supreme Court at Trenton, come the said parties, by their attorneys aforesaid, and the Justice before whom, etc., having first sent hither his record had before him in these words, to wit:

Afterwards, to wit, on the eleventh day of May, A. D. nineteen hundred and four, at a Circuit Court held at Mount Holly, in and for the county of Burlington, before his Honor, Allen B. Endicott, Judge of the Circuit Court of the county of Burlington, according to the
30 form of the statute in such case made and provided, comes as well the within named plaintiff as the within named defendant, and the jurors of the jury, between the parties aforesaid, in the plea aforesaid, being summoned to come, who, to speak the truth of the matters and things contained, being chosen, tried and sworn, say the said defendant is not guilty of the wrong and injury

and of the several supposed grievances, nor of any or either of them, within laid to its charge in manner and form as the said plaintiff hath within thereof complained against it.

Therefore, it is considered that the said Anna K. Holmes, administratrix, etc., of Joseph J. Holmes, deceased, take nothing by her said writ, and that the said Pennsylvania Railroad Company do go thereof without day, etc.

Judgment signed this twenty-fifth day of May, A. D. 10
nineteen hundred and four.

WM. S. GUMMERE,
C. J.

I, WILLIAM RIKER, JR., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office. 20

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

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

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

10	ANNA K. HOLMES, Administra- trix of JOSEPH J. HOLMES, de- ceased, Plaintiff in Error, vs. THE PENNSYLVANIA RAILROAD COMPANY, Defendant in Error.	}	IN TORT. ASSIGNMENT OF ERRORS.
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20 Afterwards, that is to say, on the eighteenth day of August, nineteen hundred and five, in the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, comes the said Anna K. Holmes, administratrix of Joseph J. Holmes, deceased, by George Gilbert, her attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving the verdict and judgment aforesaid, there is manifest error in this, to wit:

30 1. That by the record aforesaid it appears that the judgment in form aforesaid was given for the said The Pennsylvania Railroad Company against the plaintiff, Anna K. Holmes, administratrix of Joseph J. Holmes, deceased, whereas, by the law of the land, judgment ought to have been given for the said Anna K. Holmes, administratrix of Joseph J. Holmes, deceased, against the said The Pennsylvania Railroad Company.

2. And for that the Trial Judge, at and upon the said trial, erred in directing the jury to find a verdict for the said defendant and against the said plaintiff.

Therefore, the said plaintiff prays that the judgment aforesaid, by reason of the errors aforesaid and all other errors appearing in the record and proceedings aforesaid, be reversed, annulled and held for nothing, and that the said plaintiff may be restored to all things she has lost by reason of the said judgment, &c.

GEORGE GILBERT,

Attorney for and of Counsel with Plaintiff
in Error.

10

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

ANNA K. HOLMES, Administra-
trix,

Plaintiff in Error,

vs.

PENNSYLVANIA RAILROAD COM-
PANY,

Defendant in Error.

JOINDER IN

20

ERROR.

And hereupon, afterwards, to wit, on the nineteenth day of September, A. D. nineteen hundred and five, etc., the said Pennsylvania Railroad Company, by Gaskill & Gaskill, its attorneys, comes into court and says that there is no error either in the record or proceedings aforesaid, or in giving the judgment aforesaid, and it prays here that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

30

GASKILL & GASKILL,
Attorneys for Defendant in Error.

NEW JERSEY SUPREME COURT.

BURLINGTON COUNTY CIRCUIT.

ANNA K. HOLMES, Administra-
trix,

10

vs.

IN TORT.

PENNSYLVANIA RAILROAD CO.

MAY TERM, 1904.

Appearances:

For the Plaintiff, GEO. GILBERT and
G. DORE COGSWELL, ESQS.
20 For the Defendant, NELSON BURR GASKILL, ESQ

BEFORE HON. A. B. ENDICOTT AND A JURY.

THE CASE FOR THE PLAINTIFF.

30 CHARLES STOKES, affirmed.

By Mr. Gilbert:

Ques. Mr. Stokes, where do you live?

Ans. Beverly.

Ques. What is your business?

Ans. Surveyor.

Ques. Have you made a map of the Cooper street crossing at Beverly?

Ans. I have.

Ques. (Showing witness map.) Is this the map?

Ans. That is it; yes, sir.

Mr. Gilbert: (To opposing counsel.) Have you any objection to it?

Mr. Gaskill: Oh, yes.

10

Ques. When was that map made?

Ans. That map was made a year ago, somewhere in that neighborhood; I cannot exactly name the date. It is only dated the year 1903; that is the date on it; but the month and day I cannot name.

Ques. You don't know just the date?

Ans. No, sir; I could not name the date.

Ques. It has been made since the accident?

Ans. Oh, yes; a good while afterwards.

20

Ques. It shows the true situation around that crossing?

Ans. Yes, sir.

Mr. Gilbert: We want to use the map.

Mr. Gaskill: The map is objected to, for the reason that it appears to have been made a year after the date of the accident, and there is no testimony that it correctly shows the condition of affairs as they existed at the time of the accident; and the map is further objected to for the reason that it contains a delineation of physical objects which do not necessarily have the appearance or the physical value that the situation possessed at the time the accident occurred. I refer particularly to the delineation of trees in luxurious foliage upon the map. It seems to me that the location of the trees can be

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properly indicated upon a map by points marked "Tree"; but to draw trees in full growth upon a map is to present not necessarily a location or the position of various objects, but to give the map some evidential character, which a map, as I understand it, cannot have. For these reasons the map is objected to.

Mr. Gilbert: Mr. Stokes has said that this map shows the true situation.

10

The Court: You had better ask him if it is made from actual drawings or measurements upon the ground.

Ques. Well, Mr. Stokes, is this made from actual measurements upon the ground?

Ans. Yes, sir.

Ques. In every respect?

Ans. Yes, sir.

20

The Court: You may proceed now, Mr. Gilbert, to show the accuracy of that map.

Ques. Now, Mr. Stokes, was this made from actual measurements upon the ground?

Ans. Yes, sir.

Ques. And all these trees were actually located?

Ans. Yes, sir.

Ques. From measurements by you on the ground?

Ans. Yes, sir.

30

Ques. And the tracks and streets, poles and buildings?

Ans. Yes, sir.

The Court: (To Mr. Gaskill.) You may cross-examine, if you desire.

Mr. Gaskill: I desire first to have my complete objection before the Court: First, that the map contains evi-

dential characteristics; second, that it was made a year after the accident, and has not been connected with the conditions as they existed at the time of the accident.

The Court: Yes, you will have to overcome that, Mr. Gilbert, before I can let it in.

By Mr. Gilbert:

Ques. Mr. Stokes, does that map show the conditions at that crossing and around that crossing that existed on November 4th, 1902? 10

Ans. I don't know of any changes that have taken place there since I made that map, with the exception of the gates.

Ques. Gates have been erected there?

Ans. That is all.

By the Court:

Ques. You said since you made the map? 20

Ans. Yes, sir.

By Mr. Gilbert:

Ques. I mean since November 4, 1902; since the accident, or at the time of the accident?

Ans. Oh, I don't know of any changes that have taken place since that, except the erection of the gates.

By Mr. Gaskill: 30

Ques. Did you make any plan of that situation before the accident on November 4, 1902?

Ans. Before the accident?

Ques. Yes.

Ans. This map was not made before the accident; oh, no, sir.

Ques. You had made no survey, then, prior to 1903?

Ans. No.

Ques. Then you have no accurate and detailed knowledge, therefore, from personal observation, as to what the conditions were prior to the time that you made that map in 1903?

Ans. No, sir.

Mr. Gaskill: I press my objection.

10

Mr. Gilbert: I will ask him another question.

Ques. You live right there in that neighborhood, and were well acquainted with the surroundings?

Ans. Yes, sir.

Ques. And frequently surveyed around there?

Ans. Yes, sir; very frequently.

Ques. And you know of no changes?

Ans. No, sir.

20

By the Court:

Ques. You were familiar with the conditions there at the time of the accident?

Ans. Yes, sir.

Ques. The surroundings?

Ans. Yes, sir.

By Mr. Gilbert:

30

Ques. And before the accident?

Ans. Yes, sir.

The Court: Now, Mr. Gaskill, have you any objection?

Mr. Gaskill: I would like to ask one further question, if that objection is to be overruled. I merely want to cross-examine on the general features of this map,

The Court: I think, as it now stands, I will have to admit it.

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

Circuit Court Judge.

By Mr. Gaskill:

Ques. Is this map made to a scale? 10

Ans. Yes, sir.

Ques. What is that scale?

Ans. Forty feet to the inch.

Ques. You have located three tracks here, have you?

Ans. Yes, sir.

Ques. The track that you have labelled "West Bound Track," refers to what?

Ans. What do you mean by "refers"?

Ques. What does the meaning of the words "West Bound Track" have, with reference to the— 20

Ans. (Interrupting.) "West Bound Track" means the track upon which the trains are bound westwardly.

Ques. Which way are trains bound westwardly, from point to point?

Ans. This way. (Indicating.)

Ques. From Trenton to Camden?

Ans. From Trenton towards Camden.

Ques. What meaning have the words "East Bound Track"?

Ans. From Camden towards Trenton. 30

Ques. Are the buildings which you have labelled at various points made to a scale?

Ans. Yes, sir.

Ques. Are the distances between these trees made to a scale?

Ans. Yes, sir.

Ques. Are the sizes of the trees as you have drawn them made to a scale?

Ans. To the extent that the distance could be practically gotten. I can explain that to you, if you want me to.

Ques. The size of these trees as you have drawn them varies?

Ans. Yes, sir.

Ques. Are they made from actual measurement?

10 Ans. They are made from actual measurement, in this way: If you want me to explain it, from the out edge of the limb to the out edge of the other limb.

Ques. You have made them all of the same density?

Ans. Yes, sir.

Ques. Are they all of the same density?

Ans. Well, I couldn't say positively that they were; they are all pretty large trees, though.

Ques. Were they all in full leaf on November 4th?

Ans. Well, I cannot tell.

20 Ques. Then the condition of those trees might vary from time to time?

Ans. When the leaves are off, as far as density is concerned.

Mr. Gaskill: I further object to the map, for the reason that it contains delineations of features which do not appear to have borne a definite reference on the map to the conditions as they existed at the time of the accident.

30 Mr. Gilbert: He says that he made it from actual measurements.

The Court: Yes; I think the only question now is about the representation of the trees.

Mr. Gilbert: Well, he says they are marked there as they are branched out.

The Court: I will allow you to mark the map for illustration. Of course, it does not go in evidence, but you may use it to illustrate. Maps are never admitted in evidence, they are simply used to illustrate.

Mr. Gaskill: But the point of my objection is that a map, though used in illustration, will have an evidential character by reason of the manner in which it is drawn.

The Court: Yes; I understand that. So far as I know the representation on a map of trees in full leaf is, to me at least, a new question, and I prefer not to deprive the plaintiff of the use of it, and I will admit it, and you may enter your exception. 10

(Exception noted for defendant.)

Ques. Now, Mr. Stokes, what does this represent (indicating on map)?

Ans. Cooper street.

Ques. That represents Cooper street? 20

Ans. Yes, sir.

Ques. What does this represent (indicating)?

Ans. The railroad station, the passenger station.

Ques. And along here, what does this represent?

Ans. The platform and trees.

Ques. And what does this represent here (indicating)?

Ans. That represents the east bound track.

Ques. And this one (indicating)?

Ans. The one nearest the station, yes. 30

Ques. No, this one (indicating)?

Ans. That is the east bound track.

Ques. No; look. The map is turned around.

Ans. The west bound track, yes. The map is turned around.

Ques. That is the west bound track?

Ans. Yes, sir.

Ques. Or the track that is going towards Camden?

Ans. Yes, sir.

Ques. And what does this track up here represent (indicating)?

Ans. The freight track.

Ques. No, this one. (Indicating.)

Ans. Oh, that represents the east bound track.

Ques. And this track over here? (Indicating.)

10 Ans. Freight track.

Ques. Now, there are how many trees along here next to this platform?

Ans. Six.

The Court: Well, that does not indicate anything on the record, Mr. Gilbert. Won't you, in your question, locate these trees by the points of the compass, and the tracks, so that if you need to use it hereafter it may be in a shape where the question will indicate to what you are referring? Is that south of the track?

20

• The Witness: It is north of the track.

The Court: Well, then, state "north of the track" or "a certain side of an avenue." That will locate them on the record.

Ques. What is north of the track here? North of Cooper street and near the station?

Ans. Five trees and the lamp post shown on the map.

30 There is a signal board of some kind right there (indicating).

Ques. What do you mean by "right there"?

Ans. A signal board right off of the line of the street, at the station.

Ques. Now, what is there on the other side of the station; that is, east of the station?

Ans. There is a great deal you see that the map represents. Do you want me to enumerate it all?

Ques. Yes, I mean near the station.

Ans. There are six or seven, three here (indicating) and a telegraph pole there, right out next to the tree.

Ques. And what else?

Ans. A lamp post here (indicating).

Ques. This is the corner of Cooper street, is it not (indicating)?

Ans. Yes, sir.

10

Ques. And what is known as Railroad avenue here? (Indicating.)

Ans. Yes, sir.

Ques. What do you find at that corner (indicating)?

Ans. A tree.

Ques. And what do you find in running from Cooper street to Elizabeth street?

Ans. Find three trees and three telegraph poles.

Ques. Now, on Elizabeth street how many trees are marked?

20

Ans. Both sides, do you mean? Ten trees and a telegraph pole.

Ques. Now, on Railroad avenue, above Elizabeth street, or east of Elizabeth street, what do you find?

Ans. Fifteen trees on Railroad avenue and thirteen on Walton avenue.

Ques. Are they large trees or small trees?

Ans. They are small.

Ques. Those trees that are east of the station and near the station, are they large trees or small trees?

Ans. Large trees.

30

Ques. Very large trees?

Ans. Yes, sir.

Ques. Been there a number of years?

Ans. Yes, sir.

Ques. And the trees that are west of the station, are they large trees or small trees?

Ans. All, with the exception of one. One is small; one is not as large as the others.

Ques. These two trees that stand out here more prominently than the others—that is, out further from the line—are what?

Ans. They are large trees.

Ques. This one that is at the corner of the platform and right near the station is what?

Ans. A large tree.

10 Ques. Now, did you make any observations at this crossing, or near the crossing?

Ans. Yes, sir.

Ques. When did you make those observations?

Ans. Last evening.

Ques. Will you kindly explain to the jury what those observations were?

Mr. Gaskill: I object.

20 The Court: If you are going to show the condition last evening you must connect it up, and show that the situation was the same as at the time of this accident, or what changes have taken place since; otherwise, it is immaterial what the situation was there last night. The question is, what was the situation at the time this accident occurred.

Ques. How was the situation last night compared with the time that the accident occurred?

30 (Objected to, on the ground that counsel is not asking what the conditions were at the time of the accident, or if he knew what the conditions were at the time of the accident.)

The Court: He has already said he is familiar with all the surroundings there, had been for a number of years, has lived near it and surveyed it. I will allow the question.

Ans. I took general observation last night. I don't know hardly where to begin to give it in detail.

Mr. Gaskill: I ask that the answer be stricken out as not responsive.

The Court: Yes, strike it out.

The Witness: Shall I take it just as we took them?

Ques. Yes.

10

The Court: Here was a map made some time ago. Why do you want to show the situation last night?

Mr. Gilbert: Well, as to observations he made there, the running of the trains, and so on.

Mr. Gaskill: Oh, if he is going to show that trains were running last night and how trains were running last night, I decidedly object.

20

The Court: Yes; if that is the purpose, it is not competent.

Mr. Gilbert: Well, I mean as to the view, as to the obstructions there.

The Court: That is not permissible, unless you show that the conditions were the same as they were at the time of this accident. If you show that first, then I will let you show the conditions last night; otherwise, I will have to rule it out.

30

Ques. How is the situation there now, compared to the fall of 1902, at that crossing?

Ans. As far as the observations were concerned, there is no difference; only the trees might be two years older, that is all.

The Court: Was not this witness familiar with the surroundings at the time of the accident? Has he not already said that?

Mr. Gilbert: Oh, yes.

The Court: Then why ask him about last night? Ask him about the time of the accident.

10 Ques. You were familiar with the surroundings at the time of the accident?

The Witness: (To the Court.) The question now, Judge, is as to the observations.

By the Court:

Ques. Did you test by making observations before last night?

A. No, sir.

20 The Court: I will allow it. You may have an exception, Mr. Gaskill.

30 Mr. Gaskill: I would like to state the objection in full: The question is objected to for the reason that the situation is not the same last evening as at the time of the accident, for the reason that this witness states trees that are alleged to be the principal obstruction have had two years' additional growth, and for the further reason that the foliage conditions are not shown to be the same. This accident occurred in November, 1902, and the question of the weather at that time of the year is of importance, and the conditions which would remove foliage from the trees, and the present condition of the foliage, in the spring, and the determination of both of which matters would have great effect upon the opportunity to see down the track through or beyond those trees.

The Court: I think you are on dangerous ground, Mr. Gilbert, but if you take the chances, the Court will not restrain you.

(Exception noted for defendant.)

Ques. Was that observation last night made through the foliage?

Ans. Made in the opening, as far as I could see between the foliage.

Ques. Between the foliage?

10

Ans. Yes.

Ques. What were your observations? State to the jury.

Ans. Well, do you want me to state just what I did?

Ques. Yes.

Ans. Putting that question that way, I hardly understand it. Shall I just tell what I——

Ques. (Interrupting.) In going out Cooper street, over the crossing, how is the view obstructed?

20

The Court: Won't you give Mr. Stokes a pointer? Then he can stand back and show us.

(Pointer handed the witness.)

Ans. The view up the railroad, going over the railroad now northwardly, the course in which this man entered upon the railroad—

Mr. Gaskill: I object.

30

The Court: The objection is sustained. It has not been proven yet how it occurred.

Ans. (Resuming.) The view, from a distance point at the middle of the track, the east bound track, for a

point of fifty-eight feet, is practically obscured, looking up the railroad. From the end of fifty-eight feet, for a distance of about twenty-five feet, anywhere between that, coming this way, there is a point there from which you can get a view right down between these trees. Now, these trees there set further back than that line of trees does (indicating). Now, there is an open space right down between there, and right back of the station, right out between that twenty-five feet and that fifty-eight feet, where the distance becomes obscured again, just gives you a sight right up the railroad.

10

Ques. You don't mean all the way up the railroad?

Ans. Oh, no; just on an angle right through these trees.

Ques. You mean across the railroad?

Ans. Across the railroad, running at an angle across it, up about as far as the end of the map. So much for my observation, so far as obscurity is concerned.

Ques. Now, after you pass that and go toward the railroad, what obscures the vision then?

20

Ans. The railroad station and these trees. (Indicating.) There is a point about nine feet from the middle of the track, back here, before you strike the obscurity, that is occasioned by the trees and the station, that you can see all the way up the track.

Ques. About nine feet from the centre of the west bound track, you mean?

Ans. Nine feet from the side of the track, not from the centre; it would be eleven feet from the middle of the track, about eleven and a half feet.

30

Ques. And a person driving out there, where would the horse be when he could see?

Mr. Gaskill: I object.

The Court: I think that question is a little indefinite. The question is too general. It ought to be more specific, as to where he was driving, on what street and in what direction.

Ques. Well, driving out Cooper street, and getting so that he could see all the way up the track, where would the horse be?

Mr. Gaskill: I object. It is calling for the conclusion of the witness. He has stated the distance from which a person can see. Now, if you establish the fact that the horse was a certain distance from a person sitting in a wagon, then it seems to me you have a right to ask the question; but until that is done, it seems to me he is practically calling for the conclusion of the witness. 10

(Objection sustained.)

Ques. Did you test the view in the space last mentioned with a horse and wagon?

Mr. Gaskill: I object.

(Question allowed. Exception noted for defendant.) 20

Ans. Yes, sir.

Ques. And where was the horse, as to the track, when you could see up the track?

Mr. Gaskill: I object, for the reason that it does not appear that the conditions are the same, with respect to foliage; and also that the wagon does not appear to have been in any way similar to the one in which Holmes was riding at the time of the accident. 30

(Question allowed. Exception noted for defendant.)

Ans. As I recall it, sitting in the carriage, with the horse stopped about where a horse would stop, probably a foot or two, or two feet back from the tracks, I don't think but what you were right in range with the

obstruction; but that is a question which anybody could answer themselves, pretty nearly, by the length of the horse's head back to the wagon. At a distance nine feet from the track—

Mr. Gaskill: I object to this.

(Objection sustained.)

- 10 Ques. Well, do you know where the horse would be?
 Ans. I don't know where the horse would be. There is no way of telling unless I got right down against the train. A party wouldn't be likely to do that.

Mr. Gaskill: I object, and ask that the latter part of the answer be stricken out.

The Court: Strike it out.

- 20 Ques. Well, now, if you drive to the crossing so that you can see clear up the track, then where will the horse be as to the track?

Mr. Gaskill: I object, for the reason that the question is indefinite, the "distance up the track" being indefinite.

Ques. That is, when you can see all the way up the track?

- 30 Ans. You have got to be between a point eleven feet from the middle of the track and the track, to see all the way up the track. At any point between eleven feet from the track and the track you can see up the track.

Ques. That is, the middle of the west bound track?

Ans. Yes, sir.

Ques. Did you see a train approaching the station last evening?

(Objected to.)

The Court: He may answer that yes or no.

Ans. Yes.

Ques. Was that train on the west bound track?

Ans. Yes.

Ques. Where were you?

Ans. Standing about in the centre of the opening that I have just described, on Cooper street.

10

Ques. Well, which opening?

Ans. The twenty-five feet opening, as I explained, between the end of the fifty-eight feet and where the view becomes obscured again; right about there (indicating on map), looking right up that opening.

Ques. Then you looked east?

Ans. Yes, sir.

Ques. Under the branches of the trees?

Ans. Yes, sir.

Ques. And what did you observe as to the passing of that train, as to the time of its passing?

20

(Objected to. Objection sustained.)

Ques. You could only see a portion of the track, in looking that way, as I understand?

Ans. Yes, sir.

Ques. And you saw the train approaching?

(Objected to.)

30

The Court: Do you mean last night?

Mr. Gilbert: Yes, sir.

The Court: Well, I will allow that, just limiting his answer to yes or no.

Ans. Yes.

Ques. And you were looking under, that is, your view was under the branches of the trees, was it not?

Ans. Yes, sir.

Ques. Did you time how long it would take from the time you saw the light of the train from that opening to pass through the opening?

(Objected to. Objection sustained.)

10

Ques. Mr. Stokes, how near is the station to the west bound track?

Ans. I really could not tell you.

Ques. You could tell from measurement, could you not?

Ans. If I put the scale on it. (After scaling the distance on the map.) About eighteen feet.

Ques. About eighteen feet.

Ans. Eighteen feet.

20

Ques. By that do you mean—

Ans. (Interrupting.) From the front of the station to the west bound track.

Ques. Do you mean to the rail of the west bound track that is nearest the station?

Ans. Yes, sir.

Ques. This is the west bound track, is it? (Indicating.)

Ans. That is the west bound track and there is the station (indicating). According to the scale, it is eighteen inches; I am measuring from the rail.

30

Ques. To the station?

Ans. To the offset there in the station it would be a little less; (after scaling) about twelve feet.

Ques. About twelve feet?

Ans. Yes, sir.

Ques. That the view was obscured at the station?

Ans. Yes, sir.

Mr. Gaskill: I object. There is no question about the obscuration, and the point of obscuration does not appear.

(Objection sustained.)

Ques. What is the size of that station, Mr. Stokes, the dimensions of it?

Ans. (After scaling on the map.) About sixty feet long.

Ques. That is along the railroad, you mean? **10**

Ans. Exactly.

Ques. And how wide is it?

Ans. About eighteen feet.

Ques. That is, the main building?

Ans. Yes.

Ques. And to that there is a projection, a bay window, toward the railroad?

Ans. Toward the railroad.

Ques. How far does that project out?

Ans. About five feet. **20**

Cross-examination.

By Mr. Gaskill:

Ques. Mr. Stokes, what kind of trees are these shown on the map?

Ans. I think they are maple.

Ques. Do you know where the whistle post is located, on the west bound track, coming into Beverly? **30**

Ans. No, sir.

Ques. You have not located that on your map?

Ans. My attention was not called to the whistle post, therefore I would not know it if I would see it.

Ques. I understand there is a point nine feet from the rail of the west bound track at which there is a clear view westwardly for a considerable distance?

Ans. Eastwardly.

Ques. Eastwardly?

Ans. Yes, sir.

Ques. That is, toward Trenton?

Ans. Toward Trenton.

Ques. For how far?

Ans. Well, as far as the eye will go.

Ques. As you move back along Cooper street road, away from the station, there is still a view, but for a

10 lessening distance, is there not?

Ans. Yes, sir.

Ques. How far up Cooper street can you go and still see two hundred yards up the railroad track?

Ans. How much further up Cooper street from what point?

Ques. From the west bound track, can you go, and still have a view of two hundred yards up the west bound track?

Ans. You go beyond it ninety feet.

20 Ques. At a point ninety feet from the track you can see two hundred yards up the track?

Ans. You cannot see beyond ninety feet. I will say nearer eighty-five feet.

Ques. At a point eighty-five feet from the west track you can see two hundred yards up the track toward Trenton?

Ans. Well, I never measured the distance on the railroad, but that comes in that opening that I have just described.

30 Ques. At a point nine feet you can see as far up the track as the eye will reach?

Ans. Yes, sir.

Ques. As you move back along Cooper street, away from the track, that distance will decrease, won't it?

Ans. Sure.

Ques. What is the obstruction that the eye does not pass?

Ans. What is the obstruction that the eye does not pass? What do you mean by that?

Ques. What obscures the view as you move back from this point?

Ans. Oh, the trees and the station.

Ques. Can you see under those trees?

Ans. After you get out beyond those trees you see the station, and then after you get back here a way—

Ques. Wait. Can you see under those trees at the station? 10

Ans. You can, yes.

Ques. Then the thing that really obscures the view is the station building, is it not?

Ans. Yes, sir.

Ques. As you move back along Cooper street from the railroad track, how far can you go along Cooper street and still see by the railroad station up the track?

Ans. As I have described, at fifty-eight feet you get a view back of the station.

Ques. How far back do you have to go until you get clear of the railroad station again? 20

Ans. Fifty-eight feet.

Ques. Do you mean to say that from the nine feet to the fifty-eight feet the view is entirely obscured?

Ans. East of the station.

Ques. East of the station?

Ans. East of the station—not entirely obscured. There is a point eighteen feet from the middle of that track that there is an opening of four feet, that you can see back of these trees.

Ques. Will you mark the point on that map, at nine feet from the track? Make a cross mark on the map. 30

Ans. (Witness complies.)

Ques. Now, from that point on the map, looking eastwardly, you can see as far as the eye will reach?

Ans. Yes, sir.

Ques. By the corner of the railroad station?

Ans. Yes, sir.

Ques. Now, as you move back along Cooper street, following the line of Cooper street, how far can you see up toward Trenton, when you have reached a point fifteen feet back from the railroad track?

Ans. Cannot see it at all; that is, not farther than the station.

Ques. You cannot see anything at all?

Ans. No; no further than the station.

10 Ques. When you have reached the point fifty-eight feet back from the track, how far up the track can you see?

Ans. I suppose probably a thousand feet.

Ques. How far back do you have to go from the fifty-eight feet before the view is again obstructed?

Ans. Twenty-five feet.

Ques. What obstructs the view when you have reached the end of the twenty-five-foot space?

Ans. The trees on the side of the street, the small trees.

20 Ques. Nothing else?

Ans. Nothing else, I don't suppose.

Ques. Can you see under those trees?

Ans. No; you strike the ground before you strike the railroad.

Ques. Can you see anything between them?

Ans. You can see between them between the fifty-eight feet and the twenty-five feet.

Ques. When you reach the twenty-five-foot point the trees obscure the view?

30 Ans. Yes, sir.

Ques. Then the amount of obscuration depends on whether there are leaves on the trees or not?

Ans. They are very dense trees. That would have something to do with it, sure.

Ques. You can see better when the leaves are off than when the leaves are on?

Ans. Sure.

Ques. When you looked down there the leaves were on?

Ans. Yes, sir.

Ques. How far back from the end of the twenty-five-foot point did you have to go before you got a clear view again?

Ans. I don't think you would get it at all.

Ques. Have you made any measurements at all?

Ans. No; walked down it and took an observation. 10
There was no necessity to measure at any point, because there wasn't any point that would give a view.

Ques. Why not?

Ans. Because of the trees and buildings across here (indicating).

Ques. Does that depend upon whether there are leaves on the trees or not?

Ans. To a certain extent it would.

By Mr. Gilbert:

20

Ques. Now, Mr. Stokes, you say that you could see up the track for probably a thousand feet. You mean—

Mr. Gaskill: I object.

The Court: The objection is sustained. Let him tell what he meant; you must not state it.

Ques. What did you mean by "you could see up the track for a thousand feet"? Where? 30

Mr. Gaskill: I object further because it is not proper re-direct examination.

(Question allowed. Exception noted for defendant.)

Ans. I made a point of observation about half way on the twenty-five-foot line, or twelve feet and a half from the fifty-eight feet, a view up, where it would cross the railroad, would be about a thousand feet. It would run out to nothing at a thousand feet.

Mr. Gaskill: I object to that.

The Court: I will allow it.

10

Ques. Do you mean you could see a thousand feet of the railroad?

Ans. I should judge so. I did not measure it.

Ques. When you were out here on Cooper street, how much could you see (indicating on map)?

Mr. Gaskill: I object to that as not proper re-direct examination.

20

(Question withdrawn.)

Ques. Mr. Stokes, this is a matter I meant to ask before in direct examination: Were you shown where the body was found?

The Court: Counsel assures the Court that he has overlooked that, and I will allow it at this time.

Ans. Yes, sir.

30

Ques. Can you show upon that map where it was?

Mr. Gaskill: I object. The witness' information does not arise from any personal knowledge, but from the testimony, through him, of others.

The Court: (To the witness.) Have you located it on the map?

The Witness: No, sir.

The Court: Well, then, I do not think that he is the best one to show that.

The Witness: I simply measured the distance.

The Court: Cannot you show by someone else where it was found, and that he, being shown that spot, measured it? That would be competent, I think. I think you had better recall him after you have produced your other testimony; you had better leave it out now, and after you have laid the necessary foundation, to recall him. I will allow you to do it. 10

MARK PRICKETT, SWORN.

By Mr. Gilbert:

20

Ques. Where do you live, Mr. Prickett?

Ans. Beverly.

Ques. What is your business?

Ans. Dealer in flour and feed.

Ques. Do you live near the Cooper street crossing?

Ans. Yes.

Ques. Where did you live on November 4, 1902?

Ans. At the corner of Cooper street and Railroad avenue.

Ques. Did you find the body of a man on the railroad on the morning of November 4, 1902? 30

Ans. Yes, sir.

Mr. Gaskill: I object to the question as leading.

The Court: The objection is well taken, I suppose, but, having been answered before the objection was made, I will allow it to stand.

Ques. Whose body did you find?

Ans. Joseph Holmes'.

Ques. Where was that body as to Cooper street crossing?

Ans. About two hundred feet west.

Ques. About two hundred feet west of Cooper street crossing?

Ans. Yes, sir.

Ques. Did you measure the distance?

10 Ans. Yes, helped to do it.

Ques. Helped measure it?

Ans. Yes.

Ques. Could you tell on this map about where the body was found?

Mr. Gaskill: I object. In the first place, the witness can have no knowledge of this map, and, in the second place, he has already testified as to the distance, and thereby accomplished the purpose.

20 The Court: Well, I think he may show him generally the representations on the map, and ask him if he can then point out where the body was found.

(Exception noted for the defendant.)

Ans. This is Cooper street? This is north? (Indicating on map.)

Ques. Yes. This is east and this is west (indicating).

30 Ans. It was about two hundred feet from the crossing, between the east and west bound tracks. It lay right along there, somewheres right here (indicating on map).

Ques. Will you mark it (handing witness a pencil)?

Ans. (Complying.) Somewheres right there, two hundred feet from the crossing, about.

Ques. What condition was the body in?

Ans. Well, there was blood on the side of the face, and one foot was somewhat hurt. That was all I seen of it.

Ques. And which way was the head lying?

Ans. His head lay to the east.

Ques. And what was his position?

Ans. He lay nearly straight with the track, but his head was further off than his feet from it, some.

Ques. Did he lay on his back or side?

Ans. He laid on his back.

Ques. About what time was the body found? **10**

Ans. Between half-past five and six o'clock. I don't know exactly what time.

By the Court:

Ques. In the morning?

Ans. Yes. There was a train leaves Burlington at half-past five. I think it was just after that passed.

By Mr. Gilbert: **20**

Ques. What did you do?

Ans. I went to the station and called the agent.

Ques. Then what?

Ans. We went down there, and I staid there while he went after Dr. Adams.

Ques. Then what?

Ans. We carried him over or took him over on a wheelbarrow to Dr. Adams' office.

Ques. Did you notice any cuts or bruises on the body? **30**

Ans. I did not see the body. I came away right away. All I saw was the blood on his face, or on the side here; I don't know whether that was cut, or whether the blood had run there.

Ques. By the ear?

Ans. It was right along here by the eye, I think, or just above it; I cannot tell exactly where now,

Ques. How did you happen to find it out?

Ans. I had went across down to a building we have there, and when I came back I found some pieces of wreckage, and then I looked for it—wreckage of a carriage.

Ques. You saw that?

Ans. I saw that first, and that was the reason I came to look to see what else there was there.

10 No cross-examination.

DR. ELLSWORTH S. ADAMS, affirmed.

By Mr. Gilbert:

Ques. Where do you live, doctor?

Ans. City of Beverly.

20 Ques. And are you a practicing physician?

Ans. Yes, sir.

Ques. A graduate from where?

Ans. Jefferson Medical College, of Philadelphia.

Ques. How long have you been practicing?

Ans. Fourteen years.

Ques. In Beverly all this time?

Ans. In Beverly.

Ques. Do you remember the 4th of November, 1902, being called over to the railroad track, near the Cooper street crossing?

30 Ans. I do.

Ques. By whom were you called?

Ans. By the night operator of the Pennsylvania Railroad depot at Beverly.

Ques. What is his name?

Ans. Mr. Stockton, I think, was the operator at that time.

Ques. What did you find?

Ans. We found the body of Joseph Holmes on the track, or rather, in the interspace between the east and west bound tracks, about two hundred and ten feet westwardly from the middle of the Cooper street crossing.

Ques. Did you measure that distance?

Ans. I did.

Ques. How was the body lying?

Ans. The body was lying in a line slightly northwestwardly and southeastwardly, the feet a little nearer the rail of the west bound track than the head, the inner rail. 10

Ques. What was the condition of the body?

Ans. There was a crush of the right foot, across the instep, and three toes from the left foot off. There were general contusions about the head and face, but I failed to find any fracture of the skull.

By the Court:

Ques. What did you say, doctor, about the three toes of the left foot—crushed, were they? 20

Ans. They were crushed off; yes, sir.

Ques. Three toes?

Ans. Yes, sir.

Ques. Off entirely?

Ans. Yes, sir; and some hemorrhage from the right ear, and there had been some hemorrhage from the toes and foot, but, in my opinion, not sufficient to cause death.

By Mr. Gilbert:

30

Ques. In your opinion, doctor, what was the cause of this injury?

Ans. The cause was evidently from some large moving object having struck the body, causing complete shock.

Ques. What was done with the body?

Ans. It was removed to my office at Beverly, and the Coroner notified.

Ques. Who did you find there with the body?

Ans. Mr. Mark Prickett and Mr. E. H. Van Sciver and Mr. Henry Wells, I think, were the parties on the track.

Ques. Doctor, do you live near this Cooper street crossing?

Ans. A short distance from it; yes.

Ques. Have you occasion frequently to pass over that crossing?

10

Mr. Gaskill: I object.

(Question allowed. Exception noted for defendant.)

Ans. I should say on an average of about half a dozen times a day.

Ques. And at night, too?

Ans. Frequently at night.

Ques. What is the situation at that crossing as respects the railroad and the street?

20

Mr. Gaskill: The question is objected to.

The Witness: What do you mean by "the situation," please?

The Court: The doctor has asked for a more definite question, so you had better withdraw the present one and ask another.

30

Ques. As you approach that crossing, how can you see around there, in what manner?

Ans. In which direction?

Mr. Gaskill: The question is objected to because it is indefinite and because the direction of the approach is not given.

The Court: The objection is sustained.

Ques. As you approach the crossing from Beverly, going out Cooper street, going south—

The Court: Does that mean north or south?

Ques. That is, going south—how is the view as to the track?

Ans. Going southwardly it is partially obscured looking eastwardly, and partially obscured looking westwardly. **10**

Ques. What obscures the track looking eastwardly?

Ans. Well, I should say the trees and the depot and some poles, possibly.

Ques. Can you get a clear view up the track?

Mr. Gaskill: I object to the question as indefinite; the point of view is not given.

Ques. At any point? **20**

The Court: Well, I think it is still indefinite. I think your question should also indicate to what time you refer. There must, of necessity, with trees, be a difference in views in the winter and summer, and the situation may be somewhat different now from what it was a year or two ago when this accident occurred. I think your question should be more definite as to time and as to place, so the doctor can answer knowingly. **30**

Ques. You had occasion to pass over there for the past two or three years?

Ans. Yes, sir.

Ques. Occasion to pass over there in November, 1902?

Ans. Yes, sir.

Ques. What were the conditions then as to the crossing?

(Objected to as indefinite.)

Ques. As to the surroundings at the crossing?

The Court: Well, approaching the track from what direction and looking in what direction?

Ques. Going south and looking east?

10 Ans. Going southward, and looking eastwardly, the conditions, I would say, are the same, with the exception that gates have been erected—

Mr. Gaskill: I ask that that be stricken out.

The Court: No; I think that is proper.

Mr. Gaskill: The question is directed to obstacles as to the view.

20 The Court: I know. I will let that stand, I think.

(Exception noted for the defendant.)

Ans. (Resuming.) And that the foliage is more profuse now than it was then.

Ques. Now, in going south toward the railroad, and looking east, at what point would you be able to see up the railroad?

30 Ans. Do you mean to see as far as the eye can reach, or to see—there are two openings there, as I recall them, one at a distance probably between fifty and sixty feet back from the track, and another nine or ten feet from the track that the view is plain; otherwise it is obscured.

Ques. At the opening, at about sixty feet back of the track, as you say, would you be able to see up the track, or across the track?

Ans. See across the track.

Ques. Now, as you pass from this sixty feet, south toward the railroad, is the view obscured, or can you see?

Ans. It is obscured.

Ques. By what?

Ans. By the depot. The depot is the first obstruction.

Ques. And what other obstruction?

Ans. As you pass nearer the track some trees come as an obstruction.

Ques. Are there some trees east of the station?

Ans. There are. 10

Ques. Are they large trees or small trees?

Ans. Small, I think.

Ques. East, I mean?

Ans. Immediately next to the station are some large trees, but further up they are smaller.

Ques. Those large trees, do they obstruct the view?

Ans. They do somewhat.

Ques. By the butts of the trees?

Ans. By the butts of the trees.

Ques. Now, as you get near the crossing, going south, how is the view? 20

Ans. The view, at a distance of about nine or ten feet, is clear.

Ques. That is, you mean to the track?

(Objected to.)

The Court: The objection is sustained. It is too suggestive.

Ques. What do you mean by being clear? 30

Ans. I mean you have a clear view up the west bound track.

Ques. You have frequently driven over this crossing?

Ans. I have.

Ques. And going south?

Ans. I have.

Ques. And if you were driving, going out over the crossing, where would your horse be when you could see east?

(Objected to.)

The Court: Let me suggest that you place the Doctor at a point so many feet from the crossing and ask him what view he has from that point.

10

Ques. Now, when you were driving out Cooper street, or south, and you are able to look up the track, in this space of nine feet, as you say, where would your horse be as to the track?

(Objected to.)

The Court: Do you mean if the Doctor and his carriage are nine feet from the track, where would his horse's head be?

20

Mr. Gilbert: No; I mean in that space.

The Court: The question is allowed.

(Exception noted for defendant.)

Ans. The horse's head would be very near the track. I have a very short horse.

30

Mr. Gaskill: I ask that the latter part of the answer be stricken out as not responsive.

The Court: Oh, I think I will let that stand.

Cross-examination,

By Mr. Gaskill:

Ques. Was Mr. Holmes dead when you found him lying on the track?

Ans. He was.

Ques. How long had he been dead?

Ans. I should say over an hour, at least.

Ques. Any longer than that?

Ans. Possibly.

Ques. Is there any way that you can tell?

10

Ans. Well, rigor mortis had thoroughly established itself. The body was cold.

Ques. Is it not possible that he might have been dead longer than that?

Ans. Yes.

Ques. Four or five hours longer?

Ans. Yes, it is possible.

Ques. Could there have been any indication, externally, by which you could have positively determined just how long Mr. Holmes had been dead?

20

Ans. No, sir.

Ques. Did you make an autopsy?

Ans. No, sir.

By the Court:

Ques. What hour did you say this was?

Ans. Five forty-five.

By Mr. Gaskill:

30

Ques. You found no fracture of the skull?

Ans. No, no external fracture.

Ques. Did the death result in the cutting off of the toes of the left foot?

Ans. No, sir.

Ques. Would that, in itself, be sufficient to produce death?

Ans. No, sir.

Ques. Could you say positively that that accident, or that injury, was created at the same time the other injuries were created?

Ans. At the same time?

Ques. Yes.

Ans. I could say; yes, sir.

Ques. Positively?

Ans. Yes, sir; positively.

10 Ques. That the toes were cut off the same time the other injuries were sustained?

Ans. The foot was crushed when the contusions occurred; yes, sir.

Ques. It was absolutely impossible that the injuries to the body might have been sustained at one time and the injury to the foot at a later time?

Ans. Absolutely impossible.

Ques. Why?

20 Ans. Well, the wound was raw, undressed, having been done within the last few hours at least.

Ques. Is it not possible that it might have preceded or followed the other injury by an hour or so?

Ans. I think not.

Ques. Will you say that it was impossible?

Ans. I say it was impossible that these injuries could have been separate, one from another, for any length of time. The bleeding was the same throughout.

30 Ques. Suppose two trains had passed that spot within half or three-quarters of an hour of each other, might not one train have caused one injury and the following train the other injury?

Ans. I think not.

Ques. Will you say that it was impossible?

Ans. It was impossible.

Ques. Is it not possible that all these injuries might have been received on the body of Mr. Holmes after his death?

Ans. No, sir.

Ques. Absolutely impossible?

Ans. Absolutely impossible.

Ques. If Mr. Holmes had been dead a short time, and had been struck by a train, would not similar injury have been produced?

Ans. No, sir.

Ques. There would be reasons for distinguishing them?

Ans. Yes, sir.

Ques. What are they?

Ans. There would not have been the hemorrhage, and the position of the feet as to the track.

Ques. Do you know whether or not the body had been moved when you came?

Ans. I do not.

Ques. It might have been moved, might it not?

Ans. The evidence was——

Ques. It might have been moved, might it not, Doctor?

Ans. It might have been.

Ques. Doctor, as you drive down this Cooper street road, from the north, going south toward the crossing, what is the first point, as you approach the station, at which you begin to get a view eastwardly along the west bound track?

Ans. Did you say going north or going southwardly?

Ques. Going from the north toward the south.
(Former question repeated.)

Ans. I should say between fifty and sixty feet. I have never measured the exact distance.

Ques. There is a place in there of twenty-five feet where you get an open view, is there not?

Ans. A few feet; I don't know how many.

Ques. Is it not equal to twenty-five feet?

Ans. I could not answer that accurately.

Ques. How far up the track do you get a view from that point?

Ans. You get a view, an angular view, striking the track in the space between the depot and the trees.

Ques. How far up the track from the crossing is that point of view?

Ans. I should think it is one hundred and fifty yards, at least.

Ques. At least one hundred and fifty yards?

Ans. Yes.

Ques. Is it not more than that?

10 Ans. It may be slightly more. I have never measured the distance.

Ques. After you have crossed this space of 25 feet your view is obstructed again?

Ans. Yes, sir.

Ques. By what?

Ans. By the large trees and the depot.

Ques. The obstruction of the trees will depend upon the time of the year, will it not?

Ans. No, sir; not much; not those trees.

20 Ques. Are those the trees that are situated between the railroad building and the track?

Ans. Between the railroad building and the track?

Ques. Yes.

Ans. No, sir.

Ques. Those are trees that are behind the station?

Ans. Those are trees that are eastward along Railroad avenue.

Ques. Further up the track?

Ans. Further up the track.

Ques. Are those large trees?

30 Ans. Very large.

Ques. How high above the ground do they branch out?

Ans. About twenty feet.

Ques. Have they been trimmed up that far?

Ans. Yes, sir.

Ques. Do you get absolutely no view at all through there?

Ans. You get some view; of course, there was some space between those trees.

Ques. And the amount of view you could get will depend upon whether there are leaves on the trees, will it not?

Ans. No, sir.

Ques. If there are no leaves on the trees, wouldn't you have more view?

Ans. I should say that would have nothing to do with the large trees. 10

By Mr. Gilbert:

Ques. How is the view at night, Doctor?

Mr. Gaskill: I object to that as not proper re-direct examination.

The Court: Yes, that is part of your original examination. You did ask him if he had driven across it at night on direct examination; and I suppose it would differ according to the darkness of the night, whether it was moonlight or stormy or cloudy. I do not think that would help you. 20

EDWARD R. VANSIVER, sworn.

By Mr. Gilbert: 30

Ques. Mr. Vansiver, where do you live?

Ans. I live in Willingboro township.

Ques. How far from Beverly?

Ans. A mile and a half.

Ques. Did you know Joseph J. Holmes in his lifetime?

Ans. Yes, sir.

Ques. How long had you known him?

Ans. Thirty years.

Ques. Did he ever work for you?

Ans. Yes.

Ques. How long did he work for you?

Ans. Twenty-two years.

Ques. What kind of a man was he for work?

Ans. The best I ever had.

10 Ques. Industrious?

Ans. Very.

Ques. Are you acquainted with what is known as the Cooper street crossing, at Beverly?

Ans. Yes.

Ques. Do you frequently drive over that crossing from Beverly, south?

Ans. Very frequently.

Ques. What is your business?

Ans. Fruit and produce, shipping and farming.

20 Ques. And where do you ship from?

Ans. Beverly.

Ques. Beverly station?

Ans. Beverly station.

Ques. What are the surroundings at Cooper street crossing, and as you approach the crossing going south?

Ans. In the way of trees or obstructions, or what do you mean?

Ques. Any of the conditions.

30 Mr. Gaskill: The question is too general; I object.

Ques. What are the conditions as to the view east?

Ans. Going southward?

Ques. Going southward, as you approach the crossing?

Ans. Well, the station and trees shut the view off in a great measure, not entirely.

Ques. At what point, in going south over the Cooper street crossing, would the view up the track be unobstructed—that is, how near the track would you be?

Ans. Well, I suppose you would be about fifty-five to sixty feet from the track. It is about twenty paces from the track before you can see up the track; I should judge that would be about fifty-five or sixty feet from the track before you could see at all.

Ques. I mean, where your view up the track will be entirely clear? 10

Ans. Oh, that is different. You would have to be on the track, or within—Are you speaking now of crossing with a horse and wagon?

Ques. Crossing with a horse and wagon.

Ans. I suppose it would be about eight to ten feet where you would be unobstructed, where you could see to Edgewater.

Ques. Have you driven out there in a fall top, with a horse?

Ans. Very often. 20

Ques. And when you could get in a position where you could get a clear view up the track, where would your horse be as to the track?

Mr. Gaskill: I object. The conditions with reference to this man's position in his wagon and behind his horse are not shown to be similar or in any way like those in which Holmes was situated at the time he was driving over this crossing.

Mr. Gilbert: I will connect that after a while. 30

The Court: I suppose that is simply one way of showing what view one could have of the track from the road, and, therefore, what diligence would be required of the traveler. I think I will allow it.

(Exception noted for defendant.)

Ans. His nose would be right on the track.

Ques. On which track?

Ans. The west bound.

Ques. In approaching Cooper street crossing, going south, is there any other point, other than you have mentioned, where you can see the west bound track, looking east?

10 Ans. About twenty paces from the track, toward the river; you then can get an oblique view of the track, looking across it.

Ques. Across the track?

Ans. Yes; it looks across this way (indicating); I should judge about fifty-five or sixty feet, somewhere there; about twenty paces from the track. I estimate a pace is about three feet.

Ques. Now, have you made observations there at night?

Ans. I have crossed it very many times at night.

Ques. In 1902?

20 Ans. For thirty years.

Ques. And almost every day?

Mr. Gaskill: I object.

Ques. How often?

Ans. How often each day?

Ques. No; how often?

Ans. Hundreds upon hundreds of times; thousands; every day of my life.

30 Ques. And at night time?

Ans. Yes.

Ques. Are the conditions at night better or worse as to seeing up the track?

Ans. Worse.

Ques. What protection have they at this crossing, other than the statutory ringing of the bell or blowing of the whistle?

Mr. Gaskill: I object, as immaterial and irrelevant.

The Court: It seems to me that there is another objection which inclines me to rule it out, and that is, it is calling for a conclusion as to what is protection. I think the better plan and the proper way would be to let him state the situation there, what he saw, and then the jury will draw their conclusion as to whether it is conclusion or what it is. The question calls for his conclusion as to what is protection, even if it is relevant or material. It is objectionable in that form. 10

Mr. Gilbert: I will withdraw the question and ask it in another way:

Ques. Has the Pennsylvania Railroad provided any protection, or did the Pennsylvania Railroad provide any protection in November, 1902, at the Cooper street crossing, other than the statutory ringing of the bell and blowing of the whistle? 20

Mr. Gaskill: I object.

The Court: Yes; I think it is practically the same question, and the same objection exists. You may show what was there, whether there were gates or anything of that sort.

Ques. What was at the Cooper street crossing to warn people of approaching trains in November, 1902?

Ans. There wasn't anything there, with the exception of one train, one very fast train, that went by, was flagged by a flagman. 30

By the Court:

Ques. What train is that?

Ans. It is known on the road as the Nelly Bly. It runs from New York to Atlantic City. That train was flagged.

Ques. What protection is there now?

(Objected to. Objection sustained.)

Ques. Have the Pennsylvania Railroad Company erected safety gates at this crossing since the accident?

10

Mr. Gaskill: I object. It is immaterial, irrelevant and incompetent, and, further, it is an attempt to prejudice the jury by stating in the form of a question an answer which counsel expected to get by a former question ruled out.

The Court: I will sustain the objection on the ground that it is leading and too suggestive. You may ask it in another form.

20

Ques. What has been provided by the Pennsylvania Railroad Company at this crossing since the accident?

(Objected to. Objection sustained.)

Ques. Is a flagman stationed at that crossing now?

(Objected to.)

The Court: These questions are all objectionable, on
30 the ground that they are suggestive of the answers.

Mr. Gaskill: I have a further objection, if your Honor please.

The Court: I know. I am trying to get it in form where we can discuss the question on its real merits. (To Mr. Gilbert:) You may ask him what there is on either side of the tracks at this crossing.

Ques. Mr. Vansciver, what is there on either side of the railroad tracks at this crossing, at this time, which was not there at the time of the accident?

Mr. Gaskill: I object, upon the ground that the evidence is incompetent, irrelevant and immaterial, for the reason that whatever conditions may exist there now have no bearing whatever on the conditions which existed at the time of the accident, and, therefore, do not determine the duty, and do not tend to determine the duty, which the railroad company owed, if it owed any duty at all, to Mr. Holmes at the time he attempted to cross this Cooper street crossing. 10

(After discussion on the objection by counsel, the Court reserved its ruling on this question for the present.)

Ques. Mr. Vansciver, do you know who put up this passenger station near the Cooper street crossing? 20

Mr. Gaskill: We admit the ownership of that station.

Mr. Gilbert: And that it was erected by the Pennsylvania Railroad Company?

Mr. Gaskill: Oh, yes; we do not deny that.

Ques. Now, Mr. Vansciver, are there some trees west of the station? 30

Ans. You mean toward Cooper street?

Ques. Toward Cooper street, yes.

Ans. Next to the track?

Ques. Right west of the station.

Ans. Yes.

Ques. Are they large trees or small trees?

(Objected to as leading.)

The Court: The question is allowed. I do not know how else he can let him know what he wants.

Ans. Two are very large trees and four are smaller trees.

Ques. Is there a platform between the station and the west bound track?

Ans. Yes.

Ques. And is there anything along the platform?

10 Ans. Two lamps.

Ques. Are they lamps of the Pennsylvania Railroad Company?

Ans. I presume so. They are kept lighted by the company at night.

Ques. When you were driving out Cooper street—that is, south—across the railroad at night, when you got within the space next to the track where there is a clear view up the track, did you see these lights?

(Objected to as leading. Question allowed. Excep-
20 tion noted for defendant.)

Ans. Yes.

Ques. Are those lights in any way confusing, as to whether a train is coming or not?

(Objected to as immaterial and irrelevant.)

The Court: I do not know that I know just what the question means—in what way?

30 Mr. Gilbert: Well, there are two lights that are on this platform, or along this platform here, which he says can be seen when you get in this space here, looking east.

The Court: Yes; well, what next? (To the stenographer:) Read the question.

(Question repeated.)

The Court: I do not understand what the question means.

Mr. Gilbert: Well, it means, if I must explain it——

Mr. Gaskill: I object to the explanation, because that might be as open to objection as the question or the answer.

(Counsel thereupon discussed the matter at side bar with the Court, after which the Court allowed the question to be asked.) **10**

(Exception noted for defendant.)

Ans. They are very confusing at night time.

By the Court:

Ques. In what way are they confusing, Mr. Vansciver? **20**

Ans. Well, you would think they were the headlight of a locomotive. I have stopped a good many times, going over there, on account of those lights, at night time.

By Mr. Gilbert:

Ques. And you would not know whether a train was coming or not? **30**

(Objected to. Question withdrawn.)

Ques. Do you know what kind of a night the 4th of November, 1902, was, whether it was a clear night or not?

Ans. The 4th of November?

The Court: The night of this accident?

Ans. My recollection of that is that there was a heavy fog.

Ques. In the morning?

Ans. In the early morning of that particular night. I do not mean the early morning of the 3d. He was killed on the 4th. There was a fog that laid close to the river.

10

Cross-examination.

By Mr. Gaskill:

Ques. Mr. Vansciver, can you distinguish the two lights on the station platform from the headlight of an approaching train if you had stopped and looked?

Ans. Can I tell them from a headlight? Oh, yes.

20 Ques. And the effect of those lights is to make you a little more cautious of the crossing, is it not?

Ans. Well, it is to me, yes.

Ques. Do you know whether that condition of fog existed all night on the night of the 3d and morning of the 4th?

Ans. I could not say positive.

Ques. Do you know when the fog came down?

Ans. I can say generally when it comes down.

Ques. You don't know what time it came down that night, or that morning?

Ans. No.

30 Ques. And you don't know what time Mr. Holmes attempted to go over that crossing—you don't know absolutely?

Ans. Well, not personally, no.

Ques. You don't know whether it was foggy then or clear?

Ans. No, sir; I couldn't say.

By Mr. Gilbert:

Ques. When you could get so you could see these lights at the station, if you were driving on Cooper street south, where would your horse be?

(Objected to as not re-direct examination.)

The Court: Yes; you ought to have shown it originally, but if you forgot it I will allow you to show it now. 10

Mr. Gilbert: I did, sir.

Ans. Well, the nose of the horse would be right to the west bound track.

BERTEN KIPLE, SWORN.

20

By Mr. Gilbert:

Ques. Mr. Kiple, where do you live?

Ans. Beverly City.

Ques. What was your business in November, 1902?

Ans. Well, I run a stage coach there, and delivered express from Beverly station all over the town.

Ques. Are you well acquainted with the surroundings at the Cooper street crossing at Beverly? 30

Ans. Yes, sir; I drove there for over six years.

Ques. In going out Cooper street, south, over the crossing, what are the conditions as to the view east, near the station?

Ans. Well, how far back from the track?

Ques. Well, any distance back from the track?

Ans. I would say that it would be impossible to see a train coming from the east, after you left a point of about fifty-eight feet, until you was so close that your horse would be hit before you would see the train.

Mr. Gaskill: I object to the latter part of the answer as a conclusion and not stating a fact.

The Court: Strike out about the hitting. (To the witness:) Say how many feet you would be from the west bound track before you could get another view.

10 Ans. Well, I don't see that you could get any view, after you left that fifty-eight-foot point, until it would be too late. So the real answer would be you could not see at all.

Ques. What obstructs your view, looking east?

20 Ans. Well, there is two large trees that have been there ever since I can remember, and there are three small trees along the edge of the platform next to the street driveway of Railroad avenue, and there is one large tree at the end—no, there is a small lamp post comes next to these small trees, a railroad lamp; then there is a large maple tree about nine feet from that, and it is right in the line of where you would be able to get a view.

Ques. Does anything else obstruct the view?

Ans. Well, the station.

Ques. Now, after you leave that space toward Beverly, going north, what is the condition there?

30 Ans. Well, there is a space there, I suppose twenty some feet, that would give you a view of the railroad across in that direction (indicating); not lengthwise of the railroad, across; and that would give you a view, I suppose, of about three to four cars.

Ques. Are there trees east of the station toward Burlington?

Ans. Yes, there are several trees there.

Ques. Large or small trees?

Ans. Both.

Ques. No; just east of the station, I have reference to.

Ans. Quite a number; I suppose maybe five or six, possibly seven, large trees; and then there is a row of small trees.

Ques. What protection was provided at this crossing in November, 1902?

10

(Objected to.)

The Court: I will allow him to show whether there were gates there or a flagman at the time of the accident.

Mr. Gaskill: Well, it simply calls for what is his idea of protection.

The Court: Oh, yes; that objection has been raised before. Try to avoid that now, Mr. Gilbert. 20

(Question withdrawn.)

Ques. Was there a flagman there, or gates, at this crossing in November, 1902?

(Objected to as leading. Question allowed. Exception noted for defendant.)

Ans. No, sir; only at two trains through the day. Now, I would like to explain that answer. 30

Mr. Gaskill: I object to the explanation.

The Court: Except a flagman for two trains, did you say?

The Witness: Two trains; yes, sir; through the day, I said.

Mr. Gilbert: I would like to ask him the same question as the one that is now being held for decision.

The Court: You may ask him what trains they were.

Ques. What trains were they?

10 Ans. There is one train that comes by there about half-past nine in the morning; it is a New York train, I believe; and the other one is this Atlantic City express.

By the Court:

Ques. Do you mean in the afternoon?

Ans. Well, it goes each way, you know. There is one train that goes to New York from Camden that gets along there about half-past nine in the morning.

20 By Mr. Gilbert:

Ques. What time in the afternoon is the train you speak of where there is a flagman?

Ans. Well, there is one that goes up about 3.38 or 3.39, along there, and there is another one that comes down at four something, 4.40 or 4.50, along there. That is what I meant by explaining about the trains. I considered that one train.

30 Ques. Have they gates or flagmen there now?

(Objected to.)

The Court: That question we agreed to pass until after the noon recess. You may call him again after recess, if necessary. Just withdraw the question until after recess.

(Question withdrawn.)

Cross-examination.

By Mr. Gaskill:

Ques. Have you ever had any trouble with the station agent at Beverly?

Ans. No, sir; best of friends.

RUEL KIPLE, sworn.

10

By Mr. Gilbert:

Ques. Where do you live?

Ans. Beverly.

Ques. What is your business?

Ans. Laborer.

Ques. Did you know Joseph J. Holmes in his lifetime?

Ans. Yes, sir.

20

Ques. When did you last see Joseph J. Holmes alive?

Ans. About ten minutes before two on the 4th of November.

Ques. Where?

Ans. At Beverly, at Cooper and Warren.

Ques. Was that in the morning or afternoon?

Ans. In the morning.

By the Court:

30

Ques. Where was it you saw him?

Ans. Cooper and Warren, Beverly, New Jersey.

By Mr. Gilbert:

Ques. How do you know it was ten minutes of two?

Ans. Why, Mr. Holmes called me to the fall top and asked me what time it was, and I walked across the street and looked in Hurry's window, underneath the curtain. It was ten minutes of two by his clock, and I went back to him and told him.

Ques. Were you talking with him?

Ans. Yes, sir.

Ques. Where did he go, if anywheres, after that?

10 Ans. Nowheres, except he said it was getting late, and he must be getting home, and he turned his horse around toward Beverly station, and that was the last I seen of him.

Ques. What kind of a night was it?

Ans. Foggy.

Ques. What kind of a wagon was he in?

Ans. Fall top.

Ques. Curtains on or off?

Ans. I think they was off.

20 Ques. When he left you he was going south on Cooper street, toward the station?

Ans. Yes, sir.

Cross-examination.

By Mr. Gaskill:

Ques. How far is Warren street away from the station?

Ans. I think it is three squares, three large squares.

30 Ques. Half a mile?

Ans. Very nigh that; yes, sir.

By the Court:

Ques. How far from the crossing?

Ans. I judge about half a mile.

By Mr. Gaskill:

Ques. Did you have a watch of your own?

Ans. No, sir.

Ques. Do you know whether that clock was right?

Ans. No, sir.

Ques. Where did you go after you left Mr. Holmes?

Ans. Went home.

Ques. Did you look at any clock when you got home?

Ans. No, sir.

Ques. Did Mr. Holmes have the falling top of the buggy raised?

Ans. Yes, sir.

Ques. Are you sure that the side curtains were off?

Ans. I couldn't say for sure, but I think they was.

Ques. Didn't he lean forward in his buggy to talk to you?

Ans. He called me, and I walked out to him and put my foot on the step of the buggy, and he began to talk to me about the old school days that we had.

Ques. Began to talk to you about the old school days?

Ans. At Charleston; yes, sir.

Ques. Did you think there was anything funny in that?

Ans. Well, I suppose the reason he was speaking about that was about two men wrestling there.

Ques. Two men wrestling?

Ans. Wrestling, yes; and we were looking at them.

Ques. Did you know where Holmes had come from?

Ans. No, sir.

Ques. Did he say anything else to you?

Ans. No, sir.

Ques. Except to ask what time it was?

Ans. He asked me what time it was, and I went to see and told him, and he said it was time he was getting home and left me, bade me good-night, shook hands with me.

Ques. Didn't he lean forward in his buggy and talk to you around the curtains?

Ans. No, sir; not as I know of, not as I remember.

Ques. How long had the fog been down that night; do you know?

Ans. Well, when I first took notice of it, it was about eleven o'clock.

Ques. Was it down all the time, or did it rise and fall again?

10 Ans. It was down all the time.

Ques. How long did it last?

Ans. Until I went home.

Ques. What time did you get home?

Ans. Well, I judge from the time I looked at that clock it was about ten minutes—fifteen minutes.

Ques. Did you live near by?

Ans. Two squares.

Ques. You don't know what happened after that?

Ans. No, sir.

20 By Mr. Gilbert:

Ques. This was election morning?

Ans. Yes, sir.

EDWARD RUSS, SWORN.

30 By Mr. Gilbert:

Ques. Where do you live, Mr. Russ?

Ans. Beverly City.

Ques. What is your business?

Ans. Keeping a hotel.

Ques. Did you see Joseph J. Holmes on the night of the 4th of November, 1902?

Ans. Yes, sir.

Ques. Where did you see him?

Ans. At my corner, corner of Warren and Cooper streets.

Ques. What was he doing?

Ans. Sitting out in a fall top, talking to some men out there. I expect there was about a dozen of them on the corner there. He was talking to them there.

Ques. Did you see Joseph J. Holmes go up Cooper street; that is, south, toward the railroad?

10

Ans. Yes, sir.

Ques. About what time was that?

Ans. Five minutes of two.

Ques. How do you know the time?

Ans. I looked at the clock.

Ques. This was on the morning of the 4th of November, 1902?

Ans. Yes, sir.

Cross-examination.

20

By Mr. Gaskill:

Ques. Do you know where Mr. Holmes went after he left your corner?

Ans. Went out Cooper street, is all I know, sir.

Ques. You don't know where he went after he left you?

Ans. No, sir.

30

WALTER HORNER, SWORN.

By Mr. Gilbert:

Ques. Where do you live, Mr. Horner?

Ans. Beverly City.

Ques. What is your business?

Ans. Laborer.

Ques. Did you see Joseph J. Holmes on the morning of the 4th of November, 1902?

Ans. Yes, sir.

Ques. Where did you see him?

Ans. On Cooper street.

Ques. Whereabouts on Cooper street?

10 Ans. Between Cramer's and Roger's grocery store and Eddie Perkins' printing office.

Ques. Did you have any conversation with him?

Ans. Yes, sir.

The Court: Can he give us the time?

Ques. Do you know the time?

Ans. It was as near two o'clock as I could judge. I had no watch on, nothing to tell the time with.

Ques. How did you happen to see him?

20 A. I hollered at him going home.

Ques. Then what occurred?

Ans. He answered me back and wanted to know if that was me; I told him yes; he asked me for a match; I walked out to the wagon and gave him a match, and he lit a cigar and bade me good-night and went home. That is the last I saw of him.

Cross-examination.

30 By Mr. Gaskill:

Ques. How far from the railroad station were you?

Ans. It is about two squares and a half.

Ques. Half a mile?

Ans. No.

Ques. Quarter of a mile?

Ans. About that.

Ques. Was it between the hotel that Mr. Russ keeps and the railroad station?

Ans. Yes, sir.

Ques. You say this was two o'clock?

Ans. As near as I could judge.

Ques. Wasn't it later than that?

Ans. No, sir.

Ques. Wasn't it half-past two?

Ans. No, sir.

Ques. Did you testify at the Coroner's inquest?

10

Ans. Yes, sir.

Ques. Didn't you testify then it was between two and half-past two?

Ans. I said as near two as I could get it. I didn't have any watch to tell the time.

Ques. See if you recognize this question: "Q. What time of the morning did you last see Mr. Holmes? A. Between two and half-past two." Is that right?

Ans. Something of that kind; yes, sir.

Ques. "Q. Did you look at your watch? A. I didn't have any to look at; it may have been a little later than half-past two; I didn't have any watch and couldn't tell exactly." Is that right?

20

Ans. That is right, I guess.

Ques. Then it might have been later than two o'clock?

Ans. It might have been a little; I couldn't tell exact.

Ques. It was somewhere between two and half-past, wasn't it?

Ans. I couldn't say.

Ques. Well, you remember stating to the Coroner's jury that it was between two and half-past, don't you?

30

Ans. Yes, sir.

Ques. Well, that was right, wasn't it?

Ans. As near as I can judge.

Ques. It is still right, is it not?

Ans. I guess it is, as near as I can judge at it.

Ques. You said before the Coroner's jury it might have been a little later than half-past two, didn't you?

Ans. I don't know; I don't remember it.

Ques. Didn't you make this answer in reply to the question, "Did you look at your watch?" "A. I didn't have any to look at; it may have been a little later than half-past two; I didn't have any watch, and couldn't tell exactly"?

10 Ans. I remember speaking about the watch, but I don't remember speaking about "later than half-past two."

By Mr. Gilbert:

Ques. Then, as near as you could tell, it was about two o'clock?

(Objected to.)

20 Ans. Yes, as near as I could judge. I didn't have any watch—

The Court: Strike out the answer. The objection is sustained.

SAMUEL WICKWARD, SWORN.

By Mr. Gilbert:

30

Ques. Where do you live, Mr. Wickward?

Ans. Burlington, now.

Ques. What is your business?

Ans. Basket maker.

Ques. Where did you live on November 4th, 1902?

Ans. I lived in Beverly township, they say; I thought I lived in Beverly, but they tell me it is only the township.

Ques. That question came up in an election matter, did it not?

Ans. Yes, sir.

Ques. When did you last see Joseph J. Holmes alive?

Ans. On the 4th of November, in the morning.

Ques. 1902?

Ans. Yes.

Ques. Now, where did you see him?

Ans. I saw him somewheres about there by Martin's store; couldn't tell you exactly; right close to Church and Cooper. 10

Ques. What was he doing?

Ans. Sitting up in his fall top, driving his horse along.

Ques. Any curtains on the fall top?

Ans. No, sir; the top was up; no curtains.

Ques. Which way was he going?

Ans. Out towards the station.

Ques. South on Cooper street?

Ans. Yes, sir.

Ques. Where did you go after he had passed on up the street? 20

Ans. I started right on up, right after him. I was going right up Cooper street when he passed me.

Ques. What was the next that occurred?

Ans. Well, he was driving along, trotting along slowly, about a medium gait, until he got to the railroad.

Ques. Speak out louder, please.

Ans. He was driving along, not too fast, a good trot, until he got to the railroad, and his horse stopped trotting to the railroad, and I heard the crash of the train hitting him, which I thought, and I started on up there as hard as I could go, and when I got up there I couldn't see nothing nor hear nothing. I thought maybe I might have been mistaken, but I expected to find him there, dead, and his wagon, too; and I listened, and I heard the horse going down on the stone road, and I thought maybe that I might have made a mistake, but I looked 30

up and down and around there to see if I could see anything or hear anything, and I didn't hear nothing, only the horse going out home.

Ques. You were not off of the crossing when you were looking?

Ans. Sir?

Ques. You were just on the crossing when you were looking around?

10 Ans. On the crossing, yes; I was on the crossing and looking all around, down as far as the electric light would let me see, because I expected to see something of him and the wagon.

Ques. What kind of a night was it, or morning?

Ans. Well, it was kind of a foggy night.

Ques. Did you hear any bell rung or whistle blown for the train?

Ans. No whistle at all.

Ques. Nor bell?

Ans. I don't know; I wouldn't like to say whether I heard any bell or not.

20 Ques. A passenger train or freight train?

Ans. Freight train.

Ques. How was it running?

Ans. Pretty fast.

Ques. Going east bound or west bound?

Ans. It wasn't going quite as fast as the Nelly Bly was sometimes. It was running as fast as some passenger trains you see running.

Ques. Was it going east bound or west bound, toward Philadelphia?

30 Ans. Toward Philadelphia; yes, sir.

Ques. Do you know what time in the morning it was?

Ans. I couldn't tell exactly; somewheres about two or a little after; somewheres along there. It might have been a little later. I had a watch, but I didn't look at the time.

Ques. You don't know the time?

Ans. I don't know the time exactly. I know it is somewheres along about that time.

Ques. Somewhere about two o'clock?

Ans. Yes.

Cross-examination.

By Mr. Gaskill:

Ques. What time in the morning did you see Joseph Holmes come out of Russ's saloon? **10**

Ans. Out of Russ's saloon? It must have been about half-past one, or a quarter past one, I suppose, when I saw him there coming out.

Ques. Where was his horse at the time?

Ans. Under the wagon shed at Mr. Russ's at that time.

Ques. Did he take the wagon out from under the shed?

Ans. He was getting it out when I went through the yard; yes, sir. **20**

Ques. Where did you go?

Ans. I went up to the river bank.

Ques. How long were you gone?

Ans. I suppose I was gone about ten or twelve minutes—fifteen minutes.

Ques. Talk just a little louder, please.

Ans. Ten or fifteen minutes.

Ques. Did you go back to Beverly?

Ans. I came right back.

Ques. Where did you go? **30**

Ans. Right back, and went home.

Ques. Didn't you go to Perkins's store?

Ans. Perkins's?

Ques. Yes.

Ans. No, sir; I didn't go to no store. I came right down to the Five Points.

Ques. Didn't you go over to Worth's store?

Ans. I went across to Worth's store.

Ques. And across Cooper street?

Ans. Yes, sir.

Ques. On your way to Five Points?

Ans. Crossing Five Points, that was.

Ques. There is where you met Holmes, wasn't it?

Ans. I seen Mr. Holmes there; yes, sir; standing at Five Points, talking to these men.

10 Ques. A crowd of men standing there?

Ans. Yes, sir.

Ques. You wanted to get out of their way, didn't you?

Ans. I crossed over there, yes.

Ques. Why did you want to get out of their way?

Ans. Because it was the nearest way for me to cross over to get home, and I didn't want to get in the crowd when I could help it.

Ques. Was the crowd doing anything you wanted to keep out of?

20 Ans. No, sir; not at all.

Ques. Were you going the same way on Cooper street that Holmes was going?

Ans. Yes, sir.

Ques. Did he pass you?

Ans. Yes, sir.

Ques. Well, where were you on Cooper street when Holmes passed you?

Ans. Somewheres right there close to Church street, at Martin's store.

30 Ques. How far is that from the crossing?

Ans. I should judge about—well, you might say two squares, Beverly squares.

Ques. Two squares?

Ans. Beverly squares; yes, sir. I don't think it is in the city.

Ques. You heard a train coming when you got about there, didn't you?

Ans. I heard the train coming when it left Edgewater; yes, sir.

Ques. The train was at Edgewater when you heard it, wasn't it?

Ans. The train was leaving Edgewater when I heard it.

Ques. What was it you heard coming?

Ans. I just heard the noise of the train.

Ques. Didn't you hear any whistle blow up there?

Ans. No whistle whatever.

10

Ques. It was just the noise of the train?

Ans. Yes, sir.

Ques. That was loud enough to hear?

Ans. That was loud enough to hear.

Ques. Mr. Holmes was driving right by you, wasn't he?

Ans. Driving right by me.

Ques. He went on down the street ahead of you, didn't he?

Ans. Yes, sir.

20

Ques. Did you hear the train keep on coming?

Ans. Yes, sir.

Ques. You saw Mr. Holmes going on?

Ans. Yes, sir; heard his horse trotting and the wagon going.

Ques. Did you hear his horse stop?

Ans. Yes, sir.

Ques. Did you hear his horse's hoofs after it stopped?

Ans. No, sir.

Ques. Did it stop still, or just come down to a walk?

Ans. Came down to a walk before it got to the railroad, and I heard it walk on the track.

30

Ques. You heard it walk on the track?

Ans. Yes, sir; heard the horse walk on the track.

Ques. Didn't you hear any whistle blown before you heard the horse walk on the track?

Ans. No, sir.

Ques. Didn't you hear a bell rung?

Ans. No, sir; not to the best of my knowledge.

Ques. You testified at the Coroner's inquest, didn't you?

Ans. I think I did; yes, sir.

Ques. Didn't you say that you thought you heard the bell ring right there by the crossing?

Ans. I said the bell might have rung.

Ques. You might have heard it?

10 Ans. I said the bell might have rung; I didn't say I heard it; I said it might have rung.

Ques. The question was asked you, "Didn't the bell ring?" "A. I think I did hear the bell right there by the crossing."

Ans. I say I wouldn't like to say whether I heard the bell or not. That is what I said at the Coroner's inquest.

Ques. The question was this: "Q. The bell didn't ring? A. I think I did hear the bell ring right there by the crossing." Was that the answer you made?

20 Ans. I won't say. I don't think I did; not that way.

Ques. Will you say it was not the answer you made?

Ans. No, sir; it was not the answer I meant to make, if it is there. My answer I made was this, that I didn't know.

Ques. Do you know a man by the name of Blaisdell—Have you ever seen this man before? (Indicating a gentleman seated near examining counsel.)

Ans. I think I have; yes, sir.

30 Ques. Did you make a statement to him about this case?

Ans. I told him the case; yes, sir; told him what I have told here.

Ques. Didn't you say to him, "I think I heard the bell ringing on the engine when the train was between the freight station and the passenger station?"

Ans. No, sir.

Ques. You did not say that?

Ans. No, sir.

Ques. Wasn't Mr. Stockton, the agent at Beverly, in the company when you said that?

Ans. I don't know Mr. Stockton when I see him. I know a boy they said was in the office.

The Court: You pointed to a man, Mr. Gaskill, and said "this man"—what is his name?

10

Mr. Gaskill: A. P. Turnbull.

Ques. Do you remember Mr. Turnbull and another man coming to see you on the 16th of December, 1902?

Ans. Yes, sir; came in a fall top, I believe, wasn't it?

Ques. Did you know the other man who was with Mr. Turnbull?

Ans. No, sir.

Ques. You had a talk with them with reference to this, hadn't you?

20

Ans. Yes, sir.

Ques. Didn't you say to these two men: "I think I heard the bell ringing on the engine when the train was between the freight station and the passenger station, but they didn't blow the whistle until they had passed the crossing and were near Perkins' Lane"?

Ans. No, sir; I said the bell might have rung and I not heard it.

Ques. What makes you think it might have rung?

Ans. Well, I am used to hearing bells, and there might have been such a thing as they tapped the bell, but they hadn't no time to tap the bell the way they was running that train, to tell the truth of it; they had no time for nothing.

30

Ques. You say it was a foggy night?

Ans. Foggy night; yes, sir.

Ques. Didn't you say to Mr. Turnbull that the night was clear?

Ans. Well, it was light in Beverly; there was electric lights, of course.

Ques. Didn't you say to Mr. Turnbull that it was so clear on the crossing that you could see a pin on the road?

Ans. No, sir; didn't say no such words.

Ques. Didn't you say to Mr. Turnbull and the other man: "The lamp on the corner was lighted and it was very clear at the crossing, and you could see a pin on the road, but I think it was a little misty in some parts"—

10 wasn't that what you said?

Ans. I don't remember saying those words, in any such way.

Ques. You had difficulty in finding the key-hole when you got home, hadn't you?

Ans. No, sir; I had no key with me; I had to knock at the door.

Ques. Didn't you say to Mr. Turnbull that when you got home you "couldn't find the key-hole, and it didn't seem to work right, and I rang the bell and my daughter

20 came down and let me in"?

Ans. I told him I hadn't my key with me, and she had to come down and let me in. That is what I told him.

Ques. When you went down to the crossing and listened, you heard the horse going on up the road?

Ans. I heard the horse going on up the road; yes, sir.

Ques. Was the horse running?

Ans. Well, the horse trotted about the same gait as he was driving.

Ques. About the same gait?

30

Ans. Just about the same gait; yes, sir.

Ques. That was a slow trot, wasn't it?

Ans. Yes. I thought to myself, "Well, I am mistaken," and I went home satisfied.

Ques. Do you know what time this was?

Ans. I couldn't say exactly the time.

Ques. Was it after two o'clock?

Ans. I should think it was, as near as I can come at it.

Ques. How long did you stay there on the crossing?

Ans. I suppose I was there about two minutes.

Ques. Which way did you look?

Ans. I looked down.

Ques. Did you look up?

Ans. No, sir.

Ques. Did you walk out on the track at all?

Ans. Yes; I walked all around, and went clear over as far as the store on the upper side of the street; I was on this side of Cooper street, and I went clear on down. **10**

Ques. How far along the track did you walk?

Ans. I walked as far as from here across the room.

Ques. How far is that?

Ans. Well, I judge I walked about, I couldn't exactly tell the distance, but I will say the width of Cooper street and a half. I went back, at Cooper street, down where Prickett's feed store was; I didn't go down below the store, but about half way of the house part.

Ques. Did you see any pieces of wagon? **20**

Ans. Didn't see nothing, or hear nothing.

Ques. Was it clear enough to see?

Ans. There was an electric light down by there.

Ques. You could see there?

Ans. I could see there; yes, sir.

Ques. And you didn't see anything at all?

Ans. Didn't see anything at all.

Ques. Didn't hear anything?

Ans. Didn't hear nothing except this horse trotting up the road, and then I went right off.

Ques. Do you know where the train was when Mr. Holmes was on the crossing? **30**

Ans. Well, it was there by where Burkheads had his shirt factory, and where Mr. Holmes stopped trotting was on the track.

Ques. How far away was that?

Ans. Couldn't tell that distance; I haven't measured it.

Ques. Is it one hundred yards?

Ans. Yes; I judge it was. These gentlemen knows more about it than I does.

Ques. What makes you think the train was one hundred yards away when Mr. Holmes was on the crossing?

Ans. Well, I heard them both.

Ques. You heard them both?

Ans. Yes; I could tell where the train was, pretty near, you know.

10 Ques. Did you hear the noise the train was making?

Ans. Yes.

Ques. Wasn't it there you heard the bell on the train?

Ans. I didn't hear no bell, as I know of.

Ques. Didn't you say to Mr. Turnbull, "As I said before, I heard the train coming, and Mr. Holmes was on the crossing, and the train was at the freight station when the bell rang, so that will show you how fast the train was going"?

20 Ans. No, sir; I didn't say nothing about the bell; the bell might have rung and I didn't take notice of it. If they have got that down they put that down in their own way.

Ques. Then you went right on home from there?

Ans. I went right on home. My daughter let me in. I hadn't any trouble with the key-hole at all.

Ques. You have got a key-hole to that door, haven't you?

Ans. Oh, yes; have to have.

Recess until 2 o'clock P. M.

30

LENA WILMERTON, SWORN.

By Mr. Gilbert:

Ques. Where do you live, Mrs. Wilmerton?

Ans. Beverly.

Ques. What do you do?

Ans. Work in the underwear department.

Ques. Where did you live on the 4th of November, 1902?

Ans. Railroad avenue and Laurel street.

Ques. How far from the Cooper street crossing is that?

Ans. Why, I couldn't say.

Ques. No way of fixing it?

Ans. Well, I judge it is about half a square.

Ques. About how long would it take you to walk it? **10**

Ans. About three minutes.

Ques. Did you have occasion to get up in the night, or the morning of November 4th, 1902?

Ans. Yes, sir.

Ques. What did you hear, if anything, while you were up?

Ans. Well, I heard a heavy crash.

Ques. From what direction did it come?

Ans. East bound.

Ques. Do you mean from—

20

Mr. Gaskill: I object.

(Objection sustained.)

Ques. It came from the east?

(Objected to as leading; objection sustained.)

Ques. Where is your house as to the Cooper street crossing at Beverly, New Jersey?

Ans. Where? **30**

Ques. Where is it, as to Cooper street crossing?

Ans. On Railroad avenue.

Ques. In what direction?

Ans. East.

Ques. Is it toward Philadelphia, or toward Burlington, from Cooper street crossing?

Ans. Why, the house part, the front door, faces the city.

Ques. Well, I mean as to Cooper street crossing; is it toward Philadelphia or toward Burlington, that is, your house?

Ans. Towards Burlington.

Ques. No; your house?

Ans. Oh, towards the city.

Ques. From which direction did this sound come?

Ans. Why, from Burlington—the down train.

10 Ques. Toward the station?

Ans. Yes, sir.

Ques. What did you observe next, if anything, after you heard this noise?

Ans. Well, I heard the heavy crash.

Ques. No; I mean after that; what did you observe, if anything, on the railroad after that?

Ans. No; I didn't hear anything.

Ques. No; on the railroad, what did you observe?

Ans. Oh, the train.

20 Ques. Freight train or passenger train?

Ans. Freight train.

Ques. Which way was it going?

Ans. Down.

Ques. Toward Philadelphia?

Ans. Yes, sir.

Ques. About what time was this?

Ans. Two o'clock.

Ques. How do you know it was two o'clock?

Ans. Looked at the clock.

30 Cross-examination.

By Mr. Gaskill:

Ques. Was there any other train in that neighborhood at that time?

Ans. No, sir.

Ques. No train going the other way?

Ans. No, sir.

Ques. Were you up and about the house when you heard this noise?

Ans. I was in my bed-room.

Ques. Windows closed?

Ans. Yes, sir.

Ques. Did you hear anything before you heard the crash?

Ans. No, sir.

Ques. Did you hear the noise of the train after the crash?

Ans. Why, the train had gone by.

Ques. How long was it before any other train went by?

Ans. I didn't hear any more.

Ques. What made you look at the clock?

Ans. Because I was up.

Ques. Do you look at the clock other times when you get up?

Ans. Yes, sir.

Ques. Do you look at it for any purpose?

Ans. No.

Ques. Was it before two'clock or afterwards?

Ans. No; it was just two.

Ques. Exactly at two o'clock?

Ans. At two.

By Mr. Gilbert:

Ques. There is one question I overlooked: Did you hear the whistle blow, or the bell ring?

Ans. No, sir.

By the Court:

Ques. How long were you up before you heard the crash?

Ans. About ten minutes.

10

20

30

HELEN HOLMES, sworn.

By Mr. Gilbert:

Ques. Where do you live, Miss Holmes?

Ans. Beverly.

Ques. Are you a daughter of Joseph J. Holmes?

Ans. I am.

Ques. And your mother is the plaintiff in this case?

10

Ans. Yes.

By the Court:

Ques. Your mother brought the suit?

Ans. Yes, sir.

By Mr. Gilbert:

Ques. When did you last see your father alive?

20 Ans. About somewhere around seven o'clock, November 3d, in the evening.

Ques. 1902?

Ans. 1902.

Ques. Where did you live then?

Ans. Coopertown road, just below the Coopertown Corner.

Ques. South of Beverly?

Ans. Yes, sir.

Ques. Did you see your father go away in the evening?

30 Ans. Yes, sir.

Ques. What did he go away in?

Ans. Fall top.

Ques. With a horse and a fall top?

Ans. Yes, sir.

Ques. That is the last you saw your father alive?

Ans. It is.

Ques. Did you see the horse after that?

Ans. Yes, sir; at home.

Ques. When did you next see the horse?

Ans. About half-past five the next morning.

Ques. Whereabouts?

Ans. In the stable.

Ques. What did you do to the horse, if anything?

Ans. I took the harness off.

Ques. What harness were on the horse?

Ans. I could tell you the ones that was gone best. **10**

Ques. Well?

Ans. The quilers were gone, the breaching, and the Dutch collar was broken.

Ques. What condition was the traces in?

Ans. Broken.

Ques. Where were they broken?

Ans. The holes were ripped out?

Ques. Any wagon with the horse?

Ans. No, sir.

20

No cross-examination.

MRS. ANNA K. HOLMES, SWORN.

By Mr. Gilbert:

Ques. Where do you live, Mrs. Holmes?

Ans. In Beverly.

Ques. Are you the widow of Joseph J. Holmes, deceased? **30**

Ans. Yes.

Ques. Where did you live in November, 1902?

Ans. In Coopertown.

Ques. South of Beverly?

Ans. Yes, sir,

Ques. When did you last see your husband alive?

Ans. Seven o'clock, the 3d of November.

Ques. Where was he then?

Ans. Home.

Ques. What was he doing?

Ans. Getting ready to go away to Beverly.

Ques. Did he go?

Ans. Yes, sir.

Ques. What kind of a rig had he?

10 Ans. Horse and buggy.

Ques. When were you married to Joseph?

Ans. 1880, second day of November.

Ques. And how many children have you of the marriage?

Ans. Eight.

Ques. Will you give their ages?

Ans. Oh, yes, sir; I can give their ages: William, twenty; Helen, fifteen; Rena, twelve; Edward, ten; Joseph, eight; Elwood, seven; Fleetwood, four; Anna, two.

20 Ques. Where do those children live now?

Ans. They all live with me but one.

Ques. Which one is that?

Ans. William.

Ques. At Beverly?

Ans. Yes, sir; they all live with me at Beverly.

Ques. What means of support have you?

Ans. I haven't anything, only what I earn at the wash tub.

30 Ques. You are the administratrix of Joseph J. Holmes, deceased?

Ans. Yes, sir.

Ques. And the plaintiff in this case?

Ans. Yes, sir.

Ques. What was your husband's age?

Ans. Forty-six.

Ques. What was his business?

Ans. Farmer.

Ques. For whom did he work?

Ans. Mr. Sherman Borden.

Ques. What wages did he receive?

Mr. Gaskill: I object. It seems to me that the testimony is incompetent on this point. The best evidence is not that of this woman, who must have heard it by hearsay.

Mr. Gilbert: I will withdraw the question, if your Honor so rules. 10

The Court: I will not so rule. She might know by seeing it paid. If she only knows by being told, it is incompetent. The Master is here, is he not?

Mr. Gilbert: Yes, sir; he is here. I withdraw the question.

Ques. What was the state of his health? 20

Ans. Very good.

Ques. An industrious man?

Ans. Yes, sir.

No cross-examination.

SHERMAN BORDEN, SWORN.

30

By Mr. Gilbert:

Ques. Where do you live?

Ans. Coopertown Corner.

Ques. Willingboro township?

Ans. Willingboro township.

Ques. Did you know Joseph J. Holmes in his lifetime?

Ans. I did.

Ques. Did he work for you?

Ans. He did.

Ques. How long had he worked for you?

Ans. Commenced work about the middle of March.

Ques. Of what year?

Ans. Of the spring of 1902.

10 Ques. What wages did you give him?

Ans. Well, I gave him a fixed sum, house rent free, and product off the place for his family.

Ques. Well, just state what the wages were; that is, the fixed sum.

Ans. When I hired him I agreed to give him seven dollars and a half a week, house rent free, and vegetables off the place, and I was to have laid him in his potatoes for the winter, and furnish him his firewood, and then about the 1st of May I increased his wages to eight dollars, and about the 1st of June I gave him nine dollars

20 in money.

By the Court:

Ques. And these other things in addition?

Ans. These other things in addition.

By Mr. Gilbert:

30 Ques. Quite a large family to be provided with vegetables?

Ans. A family of eight.

Ques. Was he a good hand?

Ans. I never employed a better one.

Ques. Was he industrious?

Ans. Sober and industrious; yes, sir.

Ques. How was his health?

Ans. He never lost a day while he was working for me.

Cross-examination.

By Mr. Gaskill:

Ques. Mr. Borden, were these increases permanent or temporary?

Ans. I made them permanent as long as he worked for me. 10

Ques. He was to receive nine dollars during the winter?

Ans. As long as he worked for me; yes, sir.

Mr. Gaskill (to Mr. Gilbert): What have you done with that question as to the safety gate?

Mr. Gilbert: Well, we will withdraw that. 20

The plaintiff rests.

Mr. Gaskill (at side bar): The defendant moves that the plaintiff in this suit be non-suited, for the reason that she has not produced proof of a quality sufficient to establish any negligent act on the part of the defendant. 30
The contention of the declaration is that the negligent act of the defendant consisted in the operation and government of a locomotive engine. The only testimony with reference to the government of the engine is an exceedingly hazy statement by a witness named Wickward. Wickward first met Holmes somewhere at a

- point a quarter of a mile from the railroad station. As they proceeded together down the street, Holmes passed Wickward, driving towards home and towards the railroad station. As Holmes passed, Wickward says he could clearly hear the train coming toward the Beverly crossing from the direction of Edgewater Park and while the train was at Edgewater Park. This noise continued and was clearly audible to the witness Wickward during the whole of the time. He states that he
- 10 heard, above the noise of the train, the hoofs of the horse which Holmes was driving toward the railroad station; he heard the horse walk out upon the platform; this was followed by a crash, after which, in the quiet which succeeded, the witness supposed he heard the horse's hoofs continuing on down the road at the same rate at which they had advanced toward the crossing. This, he says, was a slow trot. He is positive in his statement that no whistle was blown. Upon the question of the ringing of the bell his statement is not positive; he will not say that the bell was not rung, but says
- 20 that "it might have been, or might not have been." This is the only testimony which is produced in reference to the operation of the locomotive which is alleged to have struck the wagon, except the statement of a woman named Wilmarton, who was living a half a square away, or, as she says, "three minutes' walk." She was in her bedroom, with her windows closed, and heard an unusual noise, but says that the noise was not preceded by the blowing of a whistle or the ringing of a bell, within her knowledge. It is submitted that this
- 30 witness was not in such a position that her testimony has any evidential character, for the reason that she could not have heard whether the signals were or were not given. Her statement is not that the signals were not given, but that they were not heard by her.

It is submitted that this is not enough to put the defendant to proof. There will be no presumption of negli-

gence against this defendant by reason of what is alleged to have been a dangerous condition of this crossing. It is stated in the case of *Bahr vs. Lombard, Ayres & Co., 24 Vroom, 238*, in an opinion by Mr. Justice Garrison, quoting from *Smith on Negligence*, with reference to the inference of negligence: "There is a class of cases in "which there has been no direct evidence of any particu-
 "lar act of negligence beyond the mere fact that some-
 "thing unusual has happened which caused the injury.
 "In such cases each will depend upon its own facts, with **10**
 "this understanding, that where a certain course of ac-
 "tion has been pursued by any person without injury to
 "others, and he, upon changing that course, injures an-
 "other, the thing (unexplained) speaks for itself, that
 "such person has been negligent; or, if something un-
 "usual happens with respect to the defendant's property,
 "or something over which he has control, which injures
 "the plaintiff, and the natural inference on the evidence is
 "that the unusual occurrence is owing to the defendant's
 "act, the occurrence, being unusual, is said to speak for **20**
 "itself that such act was negligent." It is submitted
 that there is no proof that any unusual act was committed
 by the defendant, or that the ordinary circumstances of
 its conduct was changed, so that, in lack of absolute proof
 of any act of negligence, the plaintiff should be non-suited.

As a further reason, the defendant calls the attention of
 the Court to the fact that the necessary basis for an action
 for damage for death by wrongful act has not been
 proven. The damage for death by wrongful act consists
 of the earning capacity of the decedent, from which
 must be subtracted his own personal expenses, and this **30**
 is continued for what is known as the "probability of life."
 It has been shown that this decedent, prior to his injury,
 was earning nine dollars a week and an indefinite sum in
 addition, the value of which has not been fixed. Nor
 has the expenditure which the deceased himself was in
 the habit of making upon himself been fixed. So that

the income of the family, aside from the personal expenses of the decedent, is left absolutely to the imagination and estimation of the jury, instead of being submitted as a fixed fact. Further, there is no proof before the Court at this time as to the probable duration of the life of this decedent, which can be established, according to the laws of this State, at a fixed period, and the damages which must be awarded in a case of this kind are always the sum which results from the multiplication of the probability of life by the amount of income which the family receives from the work of the decedent after his personal expenses have been subtracted therefrom.

10

The Court: Is it your notion that they must prove what part of his earnings was given to or spent on the family?

Mr. Gaskill: Yes, sir.

20

The Court: Have you any authority for that in this State?

30

Mr. Gaskill: I have none at my tongue's end. But that matter was threshed out so thoroughly in those Atlantic City accident cases, which occurred a number of years ago, that I am quite confident I can find those authorities by looking back for them. In other words, the family is not to be allowed to recover and to enjoy the sum which the decedent would have expended upon himself; and that their income must be what they would have received from him—not what would come to him from his employer.

The Court: (After argument by counsel for plaintiff.) At the present time the motion for a non-suit is denied.

(Exception noted for defendant.)

THE CASE FOR THE DEFENDANT.

Mr. Gaskill opens the case for the defendant.

ARTHUR P. TURNBULL, SWORN.

By Mr. Gaskill:

Ques. Where are you employed, Mr. Turnbull?

Ans. Jointly by the West Jersey & Seashore Railroad
and the Pennsylvania Railroad Companies.

Ques. What are your duties?

Ans. Clerk in the office of the special agent at Camden.

Ques. What are the duties of the special agent?

Ans. Arranging for and the disposition of accident
claims.

Ques. Did you attend the Coroner's inquest over the
body of Joseph Holmes, in Beverly, on the 6th of No-
vember, 1902?

Ans. Yes, sir; I did.

Ques. For what purpose did you go there?

Ans. For the purpose of making a transcript of the evi-
dence that was presented.

Ques. Do you remember one Samuel Wickward testi-
fying at that inquest?

Ans. Yes, sir; I do.

Ques. Did you take notes of his testimony?

Ans. I did; I made a verbatim copy of his testimony.

By the Court:

Ques. Stenographic?

Ans. Yes, sir.

Mr. Gilbert: I think this is open to objection, because
the Coroner had a stenographer there who took the notes,
and the evidence on file is what took place there, the re-
port of it.

The Court: I think any person present may testify as to statements made. I do not think his notes are evidence.

Mr. Gaskill: I do not propose to use his notes in evidence.

The Court: The objection is overruled.

10 Ques. Did you hear Samuel Wickward asked a question as follows: "The bell did not ring?" and answer, "I think I did hear the bell right over there by the crossing."?

Ans. Yes, sir; I did.

Ques. Were you present at a meeting with Samuel Wickward in a swamp, where he was making baskets, in company with a third person, the station agent of the Pennsylvania Railroad Company at Beverly, on the 16th day of December, 1902?

Ans. Yes, sir; I was.

20 Ques. Did Samuel Wickward, on that occasion, state to you, "I think I heard the bell ringing on the engine when the train was between the freight station and the passenger station"?

Ans. He did.

Ques. Did Samuel Wickward, on that occasion, say to you, "As I said, I heard the train coming, and Mr. Holmes was on the crossing, and the train was at the freight station when the bell rang, so that will show you how fast the train was going"?

30 Ans. He did.

Mr. Gilbert: It seems to me that this is not proper. It is what he said, not for him to read from his notes. He can state what Wickward did say.

The Court: Yes, but this is contradiction, and the witness was specifically asked if he did not say these

things, and he said "No." Therefore, I think it is competent to rebut it in this way.

Mr. Gilbert: But I don't think he can ask these questions in this way.

The Court: He could not, if he had not asked the witness for the plaintiff specifically these questions and they had been denied. After that was done I think he has the right to do this. You had better enter an exception to my ruling, so you will have the benefit of it. **10**

(Exception noted for the plaintiff.)

ALLEN B. ENDICOTT, [L. S.]
C. C. J.

Ques. What was the name of the other person who was present with you on the sixteenth day of December, 1902, when Wickward made this last statement?

Ans. I don't recall his first name, but his last name is Adams. **20**

Ques. The agent of the company at Beverly, now employed there?

Ans. He is.

No cross-examination.

Adjourned until May 12, 1904, at 9.30 o'clock A. M.

WILLIAM P. ADAMS, sworn. **30**

By Mr. N. B. Gaskill:

Ques. Where are you employed?

Ans. At Beverly, as agent.

Ques. By what company?

Ans. The Pennsylvania Company.

Ques. How long have you been employed there?

Ans. About three years and a half.

Ques. Were you employed there on the 4th of November, 1902?

Ans. Yes, sir.

Ques. Do you remember the occasion of the accident to Joseph Holmes at that crossing?

Ans. Yes, sir.

10 Ques. Did you have occasion to examine the wreckage of his wagon the morning he was injured?

Ans. Yes, sir.

Ques. Where did you find that wreckage?

Ans. Why, a part of it was about fifty-seven yards west of Cooper street crossing.

Ques. West of Cooper street crossing?

Ans. Yes, sir.

Ques. Did you find any in any other locality?

Ans. Yes, sir; part of it was found up opposite the ball grounds.

20 Ques. Where are the ball grounds located?

Ans. Located about east of Beverly station—about, I should judge, four hundred yards.

Ques. East of Beverly station?

Ans. East of Beverly station.

Ques. Are you acquainted with the location of the station at Beverly with reference to Cooper street?

Ans. Yes, sir.

Ques. How far is the station building located from the east side of Cooper street?

30 Ans. I should judge two hundred and twenty-five feet.

Ques. From the side of the street?

Ans. Yes, sir.

Ques. I show you a map of Burlington county—a map marked "Map of Beverly"—and ask you if you locate upon that map the track of the Pennsylvania Railroad Company?

Ans. Yes, sir.

Ques. Do you also locate upon that map the street known as Cooper street, in the city of Beverly?

Ans. Yes, sir.

Ques. Can you locate upon that map, on Cooper street, the intersection of Church street with Cooper street?

Ans. Yes, sir.

Ques. How far, or how many squares, are there between Church street and the railroad crossing on Cooper street? **10**

Ans. Three squares.

Ques. Can you locate upon that map the property of one Morrell or Murrell?

Ans. Yes, sir.

Ques. Where is that located?

Ans. Corner of Cooper and Church.

Ques. Have you made any measurements to determine how far that Morrell corner is from the crossing of Cooper street over the Pennsylvania Railroad Company's tracks? **20**

Ans. Yes, sir.

Ques. What is that distance?

Ans. Three hundred and five paces.

Ques. How many feet to a pace?

Ans. Three feet.

Ques. Making what distance in feet?

Ans. Nine hundred and fifteen feet.

Mr. Gaskill: The map is offered. **30**

The Court: If there is no objection, it may be admitted for the purpose of illustration only.

Ques. Do you know Mr. Turnbull, of the claim agent's office?

Ans. Yes, sir.

Ques. Did you go with Mr. Turnbull to see Samuel Wickward on the sixteenth day of December, 1902?

Ans. I did.

Ques. Where did you find Mr. Wickward?

Ans. Out at his home, at Lyon Swamp.

Ques. Did Mr. Wickward, in your presence, say, "I think I heard the bell ringing on the engine when the train was between the freight station and the passenger station"?

10 Ans. Yes, sir.

Ques. Did Mr. Wickward, in your presence, say, "As I said, I heard the train coming and Mr. Holmes was on the crossing, and the train was at the freight station when the bell rang, so that will show you how fast the train was going"?

Ans. Yes, sir.

Cross-examination.

20 By Mr. Gilbert:

Ques. How do you know that the station is about two hundred and twenty-five feet from Cooper street?

Ans. Why, by judgment.

Ques. Haven't measured it?

Ans. No, sir.

Ques. You are an employee of the Pennsylvania Railroad Company?

Ans. Yes, sir.

30

GEORGE E. STOCKTON, SWORN.

By Mr. Gaskill:

Ques. Where are you employed?

Ans. At Florence.

Ques. Where were you employed in November, 1902?

Ans. At Beverly, at nights.

Ques. By whom were you employed?

Ans. The Pennsylvania Railroad Company.

Ques. What were you doing for them?

Ans. Telegraph operator.

Ques. Where was your place of business?

Ans. Beverly.

Ques. Well, what part of Beverly?

10

Ans. In the passenger station.

Ques. Is it any part of your duty to keep a record of passing trains?

Ans. Yes, sir.

Ques. Do you know what trains passed Beverly station in the neighborhood of two o'clock on the morning of November 4, 1902, west bound?

Ans. There was 401—the train called 401 went west at two o'clock. There was train 403 went west about 2.56, somewhere around there, and one went east at 2.39; that was 406.

20

Ques. There were three trains, then, passed Beverly between two and three?

Ans. Between two and three o'clock; yes.

Ques. The first was 401, which passed at two o'clock?

Ans. Yes.

Ques. That was a west bound train?

Ans. That was west bound.

Ques. Freight or passenger?

Ans. Freight.

Ques. The next train was 403, at what time?

30

Ans. 2.55.

Ques. Bound west?

Ans. West.

Ques. Was that a freight train or a passenger train?

Ans. Freight train.

Ques. Where were these two freight trains bound?

Ans. Bound to Camden.

Ques. What was the next train that passed through Beverly, west or east?

Ans. East.

Ques. There was one at 2.39; that was between the two?

Ans. Yes; that was between the two.

Ques. Was that a freight train or a passenger train?

Ans. Freight.

10 Ques. Where was that bound?

Ans. Jersey City, I think.

Ques. Where had it come from?

Ans. Camden.

Ques. Are you acquainted with the station at Beverly with reference to Cooper street?

Ans. Yes, sir.

Ques. How far is that station building located from Cooper street?

Ans. I should judge about two hundred and fifteen or twenty yards, or feet.

20

Cross-examination.

By Mr. Gilbert:

Ques. Do you know how far it is located from Cooper street?

Ans. Only by looking at it and judgment.

Ques. You are an employee of the Pennsylvania Railroad Company?

30 Ans. I am.

Ques. Were these trains running on schedule time?

Ans. No; they were late.

Ques. Which ones were late?

Ans. All of them.

Ques. How late was the two o'clock?

Ans. The two o'clock must have been an hour late, I guess, possibly.

Ques. Didn't you testify at the coroner's inquest that that train was due there at 12.17?

Ans. I don't remember; I took it off the time-table; whatever time it was on the time-table at that time.

Ques. You won't say that you didn't?

Ans. No.

Ques. But you think it was an hour late?

Ans. At least an hour late, I think; yes.

10

HARRY DEWEES, sworn.

By Mr. Gaskill:

Ques. Where are you employed, Mr. Dewees?

Ans. Pennsylvania Railroad Company.

Ques. What did you do for them?

Ans. The position?

Ques. Yes.

20

Ans. Engineer.

Ques. Do you remember what train you were running on the 4th of November, 1902?

Ans. On train A1 west bound.

Ques. Train 401?

Ans. Train 401; yes, sir.

Ques. Are A1 and 401 the same train?

Ans. Yes, sir.

Ques. What sort of a train was it, freight or passenger?

Ans. Freight train.

30

By the Court:

Ques. What does A1 mean?

Ans. A1 is the initials of the train from Jersey City in, but 401 is the schedule train on the time-table.

By Mr. Gaskill:

Ques. In other words, the train had two numbers, one on the New York Division and one on the Amboy Division; on the New York Division it was A1, and on the Amboy Division it was 401?

Ans. Yes, sir.

Ques. What is the grade of the road as you pass Burlington and Edgewater Park and go toward Beverly?

10 Ans. It is up grade all the way from Burlington coming all the way into Beverly; it is up grade, they say.

Ques. What sort of an engine were you running that night?

Ans. One of the smallest engines there is running on the road now, what they call a P engine.

Ques. What speed were you making that night?

Ans. I suppose it was running about twenty-five miles an hour through there that night; not much over, because you could not get much over that with a heavy train.

20 Ques. Were you running over your schedule time?

Ans. No, sir.

Ques. What is your rate of speed which your schedule allows you to run?

Ans. Run thirty miles an hour on freight.

Ques. Could you make thirty miles an hour up grade on that engine?

Ans. No, sir; we could not, with the heavy grade from Burlington up.

30 Ques. What sort of a night was the 4th of November, 1902?

Ans. Very foggy.

Ques. How far ahead could you see by means of your headlight?

Ans. Well, from the headlight might see two cars ahead; when we came to Beverly station to look for the signal, couldn't see more than a car ahead,

By the Court:

Ques. Do you mean a car's length?

Ans. Yes, sir; you couldn't see more than a car's length to see the signal.

By Mr. Gaskill:

Ques. As you approached Beverly station, who were riding in the engine cab?

10

Ans. The fireman and the head brakeman was with me.

Ques. What was the fireman doing?

Ans. The fireman was attending to his fire at the time; coming up there it is a heavy grade, you know.

Ques. What was the head brakeman doing?

Ans. The head brakeman was ringing the bell as we came through there.

Ques. What did you do as you came up to Beverly station?

20

Ans. I blew the whistle two different times, which means for two crossings, which would mean eight blows.

Ques. Where did you blow the whistle the first time?

Ans. About the whistling post, between Edgewater and Beverly.

Ques. Why did you blow the second time?

Ans. The second time I don't suppose I was over one hundred yards from the station. I blew then to call the operator's attention, so if he was busy at anything else we would get the signal. It is an order signal and a danger signal, too. It is a danger signal in this way: If we chance to run by it and it is red we would be apt to run into another train if it was a foggy night; if it was a clear night we might see the other train ahead of us. As I say, that is a danger signal; we could not see it more than two car lengths ahead of us and I blew the whistle so as to call his attention so we would get the white signal.

30

Ques. So he would be sure to see you?

Ans. Yes.

By the Court :

Ques. How far from the station were you when you first blew?

10 Ans. Between Edgewater Park and Beverly, about the whistling post; two whistling posts between Edgewater Park and Beverly.

Ques. How far was that from Cooper street in yards or feet, about?

Ans. It is considered a quarter of a mile the first time I blew.

By Mr. Gaskill :

Ques. That is the regulation whistling post, is it?

Ans. Yes.

20 By the Court :

Ques. And the last time you blew, you were about a hundred yards, I understand?

Ans. About a hundred yards of the whistling post for the next crossing.

Ques. How far from Cooper street?

Ans. East of Beverly; I blew there not for the next crossing but to get the attention of the operator.

30 By Mr. Gaskill :

Ques. How far were you away from the station when you blew the second time?

Ans. Not over a hundred yards, I don't think.

Ques. As you blew your whistle at the first whistling post, a quarter of a mile from the station, did you have any conversation with the fireman or with the head brakeman?

Ans. No more than I called his attention long before that time, when I was whistling, to ring the bell, because he was not very well acquainted with the road and he would ring it on until I told him to stop.

Ques. Did he begin to ring the bell when you told him to?

Ans. Yes, sir.

Ques. Where was this?

Ans. That was east of Beverly station.

Ques. Near this first whistling post?

Ans. Yes, sir.

10

Ques. Did he begin to ring the bell when you told him to?

Ans. Yes, sir.

Ques. How long did he keep it up?

Ans. Kept it up until we passed the crossing and I told him to stop ringing. He wouldn't know where to stop ringing.

By the Court:

20

Ques. What crossing?

Ans. Across Beverly; he would ring it all along there because there is two or three road crossings west of Beverly station, that we didn't stop ringing the bell at all until we got past them all.

By Mr. Gaskill:

Ques. Was there a crossing by the station?

Ans. Right by the side; yes, sir.

30

Ques. Was that the place you told him to stop?

Ans. No; I didn't tell him to stop until we got by all the crossings, because we rang the bell all the way through there, the crossings are so close together; they are not more than a half a mile apart until we reached Delanco.

Ques. After you told the fireman to begin ringing this bell, he began to ring the bell and kept up the ringing until after you had crossed the road crossing there by Beverly station?

Ans. Until I told him there was no need to ring; yes, sir.

Ques. Was he a new man on the road?

Ans. Yes, sir; I don't know how long he had been on. He was not acquainted with the road; he was not ac-

10 quainted with the crossings.

Ques. How long had he been running down there?

Ans. This brakeman?

Ques. Yes.

Ans. I don't know how many trips he had made.

Ques. Where was his regular run?

Ans. I think he was a Jersey City man.

Ques. Had you been instructing him about ringing the bell on the way down?

Ans. Yes, sir.

20 Ques. Did you notice anything unusual as you went over this Cooper street crossing at Beverly?

Ans. No, sir; I did not.

Ques. Did you hear any unusual noise?

Ans. No, sir.

Ques. Did you see anything of a man in a buggy?

Ans. No, sir; I did not.

Ques. Were you conscious that the engine that you were running had struck anything at that crossing?

Ans. No, sir; didn't know anything at all about it until later.

30 Ques. Did you feel any shock at all?

Ans. No, sir; and one thing— Can I speak a word?.

Ques. Yes.

Ans. Running along with a fifty or fifty-five ton engine striking a wagon weighing five hundred pounds, especially when you are looking for something else, you wouldn't notice it.

Ques. There wouldn't be shock enough to feel?

Ans. No, sir; some of them we have weigh seventy or eighty tons; this was a fifty-five ton engine.

Ques. You didn't see anything at all of a wagon and man at that crossing?

Ans. No, sir.

Ques. When was the first thing you heard of any accident at that crossing?

Ans. When I got in Camden the next day.

Ques. Was that the first you knew of it?

10

Ans. Yes, sir; I was very much surprised.

Ques. Was the light lighted at the crossing as you went over it.

Ans. The electric light, I guess, was lighted there, but that didn't seem to throw any reflection on this signal we were looking for, you know.

Ques. It throws light on the crossing, doesn't it?

Ans. I think it does; I am pretty certain it does.

Ques. So that you got a good view of the crossing, didn't you?

20

Ans. No; we hadn't a very good view of the crossing; we were not looking at the crossing at all; we were looking for the signal on the left hand side. An engineer coming west, the signal post; that is, the order signal or danger signal—it would be both—it is on the left hand side, near, I suppose, thirty feet high; it is on the left hand side of the engineer going west, and both the fireman and I—I guess the fireman was looking for it, too, at the time.

By the Court:

30

Ques. Did you have the block system there?

Ans. Yes, sir; part of the road from Camden to Burlington.

By Mr. Gaskill:

Ques. Did you cross the Cooper street crossing before you got to this signal?

Ans. No, sir; we got the signal a little west of the crossing.

Ques. Got the signal before you reached the crossing?

Ans. A little bit west of the crossing; yes, sir.

Ques. Do you remember where you were when you told
10 the fireman to stop ringing the bell?

Ans. We got then below all the crossings then; as I said before, there is two or three crossings very close together, and we were ringing it all the way through there, the bell; they are not a quarter of a mile apart until we passed the rope walk, not over a quarter of a mile apart. There are three crossings there, two more, if not three, between there and the rope walk; very close together.

Ques. And the bell was being rung all this time?

Ans. Yes, sir.

20 Cross-examination.

By Mr. Gilbert:

Ques. You said that you blew the whistle about at the whistling post?

Ans. Yes, sir.

Ques. It may have been a little west of the whistling post?

30 Ans. It might be a little one way or the other.

Ques. Might be a little west of the whistling post?

Ans. Yes.

Ques. You wouldn't swear positively you blew it right at the post?

Ans. No, sir.

Ques. And then did you blow it at intervals until the crossing was passed?

Ans. I only blew it twice there, the same as two crossings; that means eight times there when I was coming into Beverly that night.

Ques. How many crossings are there through there?

Ans. I think—if you are taking it all over the whole system, I couldn't tell you.

Ques. No; I mean through what you call Beverly?

Ans. Well, there is one coming up before you get to Edgewater Park and one after coming about half way, or about a quarter of a mile west. 10

Ques. You speak too fast; we can hardly understand you.

(Question and answer repeated.)

The Witness: There is a crossing about half way between Edgewater Park, somewhere along there, and Beverly, but this crossing we are speaking about now, right at Beverly station, the whistling post for that crossing was about a quarter of a mile, probably; they might vary a little bit; that is, east of Beverly station; and then there is another whistling post again about a hundred yards at the station—if the gentleman will look now and have it measured—pretty near that, for the west crossing, west of Beverly; that is the crossing I told you I had to get a signal from the operator, for him to give me a signal. 20

Ques. At which crossing did you blow for the signal?

Ans. About a hundred yards; that was the last crossing I blew for, Beverly crossing; the whistling post is about a hundred yards east of Beverly station, which I need not have blowed there for the crossing, for I had blowed once before for the crossing, but I blew this time now to call the attention of the operator so he would give me a signal. It was so foggy we could not have seen the signal until we got within a car length of it anyhow, very 30

foggy; we need not have blowed that signal; that was not necessary.

Ques. When you were nearing the crossing, what were you doing?

Ans. Nearing the crossing?

(Question repeated.)

Ans. Looking for the signal then.

10 Ques. Looking for the signal then, not looking for the crossing?

Ans. Not looking for the crossing; no, sir.

Ques. You are an employee of the Pennsylvania Railroad Company?

Ans. Yes, sir.

Ques. Was this train loaded or empties?

Ans. Sir?

Ques. This freight train, was it a loaded train or was it empties?

20 Ans. A loaded train, all of them, I guess, nearly, anyhow, as far as I know.

Ques. You don't know whether it was loaded or empty?

Ans. I know most of them were loaded.

Ques. Most of them were loaded?

Ans. Yes, sir.

Ques. How long a train was it?

Ans. Twenty-four cars.

Ques. Twenty-four cars?

Ans. Yes, sir.

30 Ques. You don't know whether they were all loaded or not, or what ones were loaded?

Ans. I know they were nearly all loaded, any way.

Ques. How do you know it?

Ans. Because we hauled very few empties coming west.

Ques. How do you know it? Did you examine them?

Ans. No, I didn't examine them, but they are usually sealed up, and the conductor usually tells me if we have any empties on the train.

By the Court:

Ques. Was this a through train or local?

Ans. A through train.

Ques. Through train from where?

Ans. Jersey City.

10

Ques. Made no stops from Jersey City?

Ans. We made some little, but not much, on this division here; pick up some little on the New York division and once in a while, maybe, probably at Amboy, South Amboy. We don't call it a local train; it is not a local train; never have to call it a local train. A local train is one that stops at all the stations and unloads and picks up, what we call a local train.

By Mr. Gilbert:

20

Ques. Where had you stopped before you reached Beverly?

Ans. To the best of my knowledge, Bordentown, for to take water.

Ques. You are not positive of that?

Ans. I am pretty positive we stopped there to take water there. This engine, if I remember now, had a small tank. I know we would have to take water there to make Camden.

30

Ques. Was the train late?

Ans. Yes, sir.

Ques. How late?

Ans. About an hour and forty some odd minutes late there.

Ques. And you were running to make up time?

Ans. Not any more than usual; no, sir. We couldn't make up much time coming up there, that grade.

Ques. Well, you were making up all the time you could?

Ans. You couldn't get a heavy train—

Ques. Answer the question.

Ans. No; I don't say that it was. I wouldn't say I was making up all the time I could; no, sir. We hardly ever take out of an engine all there is in it. I wouldn't say we were making all we could; no, sir.

10 Ques. Aren't you required, when you are late, to make up the time?

(Objected to.)

The Court: I do not think that is cross-examination; the objection is sustained.

Ques. Did you find blood on the engine the next morning?

Ans. No, sir.

20 Ques. Didn't see blood on the engine?

Ans. No, sir.

Ques. How was your attention called to the accident?

Ans. I was called to the Camden office the next morning. He told me about a horse and wagon being killed—I mean a wagon being struck at Beverly and a man being killed.

Ques. Who called you?

Ans. Mr. Thompson, the road foreman of engines, sent for me to come down. That is the first I knew anything at all about it, a man being killed there and a

30 wagon struck.

Ques. What did you learn?

(Objected to as immaterial.)

The Court: Yes; declarations of a third party to him I do not think he can relate. The objection is sustained.

Ques. How many men were on the engine?

Ans. Three of us.

Ques. Is that the number that is required on there?

Ans. The engine only requires two, the engineer and fireman. The head brakeman rides there occasionally; he was on this date. They have to throw switches, probably, if we have to take a turn out, and he is handy there to throw the switches. Not all times they don't ride on the engine, neither.

Ques. What is the business of the brakeman?

10

Ans. The business of the brakeman in a local freight is to help unload the freight. In case the air should happen to give out, for to brake on the train; couple up the cars at the end of the road, in case we should break in two along the road, and to help out with the conductor.

Ques. Is it his business to help out on the locomotive?

Ans. It is his business to ring the bell if we want him to ring it. There is a rope on each side of the engine for the bell to be rung.

20

Ques. Is it his business to ring the bell?

Ans. It is not his business; no.

CHARLES H. SANFORD, SWORN.

By Mr. Gaskill:

Ques. Mr. Sanford, where were you employed on November 4, 1902. 30

Ans. Train 401.

Ques. What company was operating that train?

Ans. The Pennsylvania Railroad Company.

Ques. What was your duty on that train?

Ans. Fireman.

Ques. What is the name of the engineman?

Ans. Mr. Harry Dewees.

Ques. Was any one else in the engine cab that night in addition to yourself and the engineman?

Ans. The brakeman.

Ques. Do you know his name?

Ans. I do not.

Ques. How long had you been running as fireman on that line?

10 Ans. I should judge I had been on 401 in the neighborhood of about a year and a half.

Ques. Are you acquainted with the grade of the road from Burlington up toward Beverly as you go toward Camden?

Ans. It is up grade.

Ques. Up grade?

Ans. Yes.

Ques. What sort of an engine was pulling the train you had that night?

20 Ans. We had a small engine, 1064.

Ques. Have you any idea of the speed you were making as you were coming up that grade toward Beverly from Burlington that night?

Ans. I should judge about twenty—not over twenty-five miles.

Ques. Were you within your schedule limit as to speed?

Ans. We were; yes, sir.

Ques. What is your schedule limit?

Ans. Thirty miles an hour.

30 Ques. Could you have made thirty miles an hour up that grade with that train that night?

Ans. Could not.

Ques. What were you doing with reference to the management of the engine as you approached Beverly that night?

Ans. I was standing behind the engineer down the tank, on the apron between the tank and the engine.

Ques. What had you been doing?

Ans. Previous to that?

Ques. Yes.

Ans. I had been firing the engine all up the hill, up to Beverly.

Ques. Did the up grade make your attendance at the furnace necessary?

Ans. Very much so.

Ques. Who had replaced you on the left of the engine while you were firing?

10

Ans. The brakeman was in the cab.

Ques. The head brakeman?

Ans. Yes, sir.

Ques. Do you recollect any whistle signal being given as the train approached Beverly station?

Ans. He blew at the regular whistling distance, the quarter of a mile post, I think it is, about east of Beverly depot.

Ques. Did the engineman give any other whistle signal?

20

Ans. The second time about a hundred yards from the signal.

Ques. Did you hear the engineman give any instructions to the head brakeman with reference to the bell ringing?

Ans. I did; yes.

Ques. Where was that?

Ans. Well, I couldn't exactly locate the place. He was a new man on the road, and he told him to ring the bell after he blew the whistle.

Ques. You heard him tell that?

30

Ans. Yes, sir.

Ques. What did the brakeman do after receiving those instructions from the engineman?

Ans. Rang the bell.

Ques. Do you know how long he continued to ring the bell?

Ans. I couldn't say; I was busy at my work; I couldn't tell exactly how long he continued to ring the bell.

Ques. You are sure he began to ring the bell when he was instructed to do it?

Ans. Yes.

Ques. Did you hear any noise as the engine went over the crossing?

Ans. Sounded as if the wheels had slipped, that is all.

10 Ques. What sort of a noise does the slipping of the wheels make?

Ans. Why, I wouldn't hardly know how to describe it; kind of——

Ques. Is it a bang or rattle or what?

Ans. A bang and rattle, a whirling noise; the wheels whirl; makes a rattle.

Ques. You thought you heard some such noise as that?

Ans. Yes, sir.

Ques. Did you speak of it to any one?

20 Ans. Spoke of it to the brakeman.

Ques. Had the brakeman heard anything?

Ans. The brakeman had his head out of the window. I asked him if he saw anything on the crossing. He said no.

Ques. What did you do after that?

Ans. I went on with my work.

Ques. Did you see anything of a wagon on the crossing?

Ans. I did not.

Ques. Or near the crossing as you passed over it?

30 Ans. I did not.

Ques. What was the first you learned of any accident having occurred at that crossing?

Ans. I had orders to report to the Camden office.

Ques. When?

Ans. The next day.

Ques. Did you learn then for the first time that an accident had occurred at that crossing?

Ans. I did.

Ques. What sort of a night was that night?

Ans. Very foggy.

Cross-examination.

By Mr. Gilbert :

Ques. You said that you were firing the engine ; when did you commence to fire the engine?

10

Ans. Jersey City.

Ques. I mean, as you approached Beverly?

Ans. All the way up the hill ; you have got a very busy job from Burlington approaching Beverly.

Ques. Firing all the way from Burlington to Beverly?

Ans. Yes ; very busy all the way along there.

Ques. How do you know that the whistle was blown at the whistling post?

Ans. Because the engineer is a very prompt man at that particular business ; he is very particular about blowing at all the posts along the road ; and besides, always coming into Beverly, or any station for that matter, the whistle is blown.

20

Ques. That is the only reason you know?

Ans. I heard the whistle.

Ques. You heard the whistle?

Ans. Yes.

Ques. Where were you when you heard the whistle?

Ans. I was standing back of the engine.

Ques. Did you see the whistle post?

Ans. No, sir.

30

Ques. Didn't see the whistling post?

Ans. No, sir.

Ques. Then you don't know that he blew at the whistling post?

Ans. Not exactly at the post ; I couldn't swear it was right at the post.

Ques. May have been west of the post?

Ans. Might have been, or east of the post, either.

Ques. Did the bell ring at intervals as it approached Beverly crossing?

Ans. The bell rang, always rang after he blew the whistle. He instructed the brakeman so to do.

Ques. I mean, was the whistle blown at intervals as you approached Beverly?

10 Ans. Blown— Now, what do I understand you, at intervals?

Ques. Two distinct times, regular signals, or—

Ans. He blowed at the signal post, as near as I could know, and he blowed again before he came to Beverly depot.

Ques. How do you know that?

Ans. Because I was standing there watching the signal right behind him, and he blowed the whistle to draw the operator's attention so we could have a clear signal.

Ques. You were not firing the engine then?

20 Ans. No; not just that minute I wasn't.

Ques. Not just at that minute?

Ans. No.

Ques. Was there a new man at the bell?

Ans. There was a new man on the engine.

Ques. What was his business?

Ans. He was a brakeman.

Ques. Whose duty is it to attend to the ringing of the bell?

Ans. Mine, when not otherwise employed.

30 Ques. And when you are otherwise employed, then whose duty is it?

Ans. It is supposed to be the engineman's duty or anybody that is on the engine; if he asked them to ring the bell they would do it; in fact, he tells them to do it.

Ques. This brakeman was not employed by the company to ring the bell, was he?

Ans. He was employed as a brakeman,

Ques. Just as a brakeman?

Ans. Yes.

Ques. Did the new man understand about the—

(Objected to. Objection sustained.)

Ques. When did you first notice he was not ringing the bell, giving the proper signals?

(Objected to.)

10

The Court: The objection is sustained; the first part of the question may stand, if you desire it.

Ques. When did you first notice he was not ringing the bell?

Ans. It is a long road from Jersey City to Camden.

Ques. Oh, well, you are too bright; I have reference to the Cooper street crossing. You know what we are talking about.

Ans. He rang the bell approaching the Cooper street crossing. 20

Ques. How do you know he rang the bell?

Ans. Well, I didn't see him pull the bell rope, but you can hear a bell rung on the engine.

Ques. You are an employee of the road?

Ans. Yes; sir.

Ques. Did you examine the engine the next morning?

Ans. I did not.

Ques. How did you learn of the accident?

Ans. I got orders to report at Camden; I was informed there there had been a man killed at the Beverly crossing. 30

Ques. Is that the first you knew of it?

Ans. That is the first I knowed of it.

Ques. Where were you when you passed over the crossing at Beverly?

Ans. I was firing the engine.

THOMAS J. BEAGEN, sworn.

By Mr. Gaskill:

Ques. By whom were you employed on November 4th, 1903?

Ans. The Pennsylvania Railroad.

Ques. What was your business?

Ans. Brakeman.

10 Ques. What train were you on that night?

Ans. A1 out of Jersey City.

Ques. What was the number of that train on the Amboy division?

Ans. 401, I believe.

Ques. Where were you on the train as you came near the Beverly station on the Amboy division?

Ans. The cab of the engine, on the fireman's side.

Ques. Did you know that road?

Ans. No, sir.

20 Ques. What had you been doing as you came down from Burlington toward Beverly?

Ans. I had been ringing the bell, because the engineman called my attention about ringing the bell going over this crossing.

Ques. Now, don't talk quite so fast, Mr. Beagen, and talk to these men here and not to me. Now, begin that again?

Ans. What was that question?

(Question and answer repeated.)

30 Ques. Did he call your attention to the necessity of ringing the bell?

Ans. Yes, sir.

Ques. What was the fireman doing?

Ans. Firing, throwing coal into the box.

Ques. Where was he standing?

Ans. Standing on the engineer's side, I believe.

Ques. Where were you sitting?

Ans. On the fireman's side.

Ques. Did you hear the engineer give any signal as you came toward Beverly station?

Ans. I couldn't swear to it; no, sir.

Ques. Did you hear him blow the whistle?

Ans. No, sir.

Ques. Did he say anything to you about ringing the bell?

10

Ans. Yes, sir.

Ques. Did you begin to ring the bell after he had told you?

Ans. Yes, sir.

Ques. How long did you keep it up?

Ans. I kept it up until he told me to stop, for I didn't know that road; it was about the first time I went over it, and I didn't know much about it.

Ques. You kept on ringing until he told you to stop?

Ans. Yes; because me being a Jersey City man, I have been over the New York division and know the roads but never been over that Amboy division.

20

Ques. Do you know where you were when he told you to stop ringing the bell?

Ans. No, sir.

Ques. Do you know whether you had passed the Beverly station?

Ans. No, sir; I do not.

Ques. Did you hear any noise when you passed the crossing from Beverly station?

Ans. I heard a little racket there; the fireman called my attention to it. I didn't pay no attention to it.

30

Ques. What were you doing when you passed over that crossing?

Ans. I was ringing the bell still.

Ques. You were still ringing the bell?

Ans. Yes.

Ques. Were you looking out of the engine or in the engine?

Ans. I was looking out of the engine, because it is the general rule to look out of the engine for the hind end; see that the hind end is coming.

Ques. Did you see anything of a horse and wagon on this crossing as you passed over?

Ans. No, sir.

10 Ques. Did the fireman say anything to you about a noise?

Ans. Yes, sir.

Ques. Did you see anything to cause a noise?

Ans. No, sir; I did not.

Ques. Do you know how far you went after you passed the crossing before the engineman told you to stop ringing the bell?

Ans. No, sir; I couldn't tell you that.

Ques. Had you passed over the crossing?

Ans. Yes, sir.

20 Ques. Had you been ringing the bell until he told you to stop?

Ans. Yes, sir.

Cross-examination.

By Mr. Gilbert:

Ques. There are several crossings from Burlington down, aren't there?

Ans. I couldn't tell you that.

30 Ques. Did you ring at the Edgewater crossing?

(Objected to.)

Ans. I don't know where it is.

The Court: I will allow that; I think he has a right to test his recollection.

(Exception noted for the defendant.)

(Question repeated.)

Ans. I don't know where Edgewater crossing was.

Ques. Do you know the crossings down that road?

Ans. No, sir; I do not.

Ques. And you didn't know when you got to Beverly crossing?

Ans. No, sir.

10

WILLIAM B. LUDLOW, sworn.

By Mr. Gaskill:

Ques. Where were you employed on the night of November 4th, 1902?

Ans. Pennsylvania Railroad Company.

Ques. What was your business?

20

Ans. Conductor.

Ques. What train did you have?

Ans. 401.

Ques. What was your position on that train?

Ans. I was at the rear end of the train, the caboose.

Ques. Is that the place where your duty as conductor calls you?

Ans. I have a right to be any place on the train I have a mind to be.

Ques. That is the place you happened to be that night?

30

Ans. Yes, sir.

Ques. As you approached Beverly station?

Ans. Yes, sir.

Ques. Do you know how many cars you had that night?

Ans. Twenty-four cars.

Ques. Were they loaded or empty?

Ans. Loaded cars.

Ques. Can you, from your position in the rear of the train, hear the giving of signals on the engine?

Ans. No; you cannot hear them very plain. The noise of the train a good ways back of her—

Ques. Were you so situated that you could hear, that night, whether signals were given as you approached Beverly crossing or not?

Ans. Yes; sat up there in the skylight, the window open.

10 Ques. Could you hear whether they were given or not?

Ans. Couldn't hear.

Ques. What prevents your hearing?

Ans. Well, the noise of the train, the roaring of the train along the road will do that.

No cross-examination.

20

Mr. Gaskill: Now, if your Honor please, I have here the train crews of the train which passed at 2.55 and the train that passed at 12.39. The plaintiff has limited all his testimony to two o'clock. If the counsel for the plaintiff or Court or jury wants the testimony of the other two train crews I am perfectly willing to produce them. It is simply the statements of these men that they know nothing whatever about it. If it is necessary to take up the time in that way I am perfectly willing to do it, but this is the crew of the train which passed at the time at which the plaintiff has fixed the accident, and if the plaintiff and jury are satisfied with that, I am perfectly willing to stop at this point, but I tender the crews of these other two trains.

30

Mr. Gilbert: We do not ask for them.

Defendant rests.

Mr. Gaskill: The defendant moves that the Court instruct the jury to find a verdict for the defendant, upon the ground that no act of negligence has been proven in this defendant, as required by law.

The Court (after argument): I think the duty of the Court is to direct a verdict. I was reluctant to grant a non-suit, although, perhaps, I would have been justified in having done so yesterday. The testimony of the woman who was in a closed room some distance away was simply that she did not hear any bell or whistle. The testimony of the man who was driving behind was indefinite and uncertain, and while, perhaps, you could gather from it that he did not know that the bell did ring, the testimony of two witnesses shows that he testified differently on other occasions; and while, perhaps, that justified the Court in refusing the non-suit yesterday, now, with the testimony of the defendant in, I am satisfied that the clear weight of the testimony is that this company performed its legal duty. As to the distance at which they commenced to ring the bell, the testimony seems to be that they rang it before they needed to and for a longer time than they needed to. The testimony of the engineer is that he blew the whistle more than he was required to. All together, I am satisfied there has been shown no evidence of negligence on the part of this defendant company. I will direct a verdict for the defendant, and the plaintiff may enter his exception and have the benefit of it, if counsel thinks the Court has erred.

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

ALLEN B. ENDICOTT, [L. S.]
Circuit Court Judge.

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at the Court House
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